

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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DONALDSON TWYMAN,	)	
Plaintiff,	)	
	)	No. 16-cv-04182
v.	)	
	)	Honorable Virginia Kendall
S&M AUTO BROKERS, INC., SAED	)	
IHMOUD and MOHAMMED IHMOUD,	)	Magistrate Judge Sheila Finnegan
Defendants.	)	

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**REPLY IN SUPPORT OF PLAINTIFF’S MOTION FOR PROTECTIVE ORDER**

Defendant’s counsel engaged in improper and unprofessional conduct that prevented Plaintiff from being able to depose one of Defendant’s expert witnesses. Defendant’s counsel repeatedly made speaking objections, instructed the witness not to answer questions, coached the witness how to answer questions (or simply answered for the witness), made abusive comments to Plaintiff’s counsel, and used profanity. In its response brief, Defendant largely admits that its counsel engaged in such conduct. The transcript of the abbreviated deposition, which the court reporter terminated after approximately 1.5 hours of questioning, reveals the extent of Defense counsel’s obstruction. *See Exhibit A*. To prevent similar conduct in the future, Plaintiff requests that this Court enter a protective order and appoint Magistrate Judge Finnigan to supervise the remaining depositions.

**I. Instructing the Witness not to Answer**

Defendant admits that its counsel instructed the witness, Ayan Hasan, one of its expert witnesses, not to answer questions. Resp., ¶4. Defendant argues its counsel only gave the witness this instruction when a question had been asked and answered. First, “asked and answered” is not a valid basis for giving such an instruction. Fed. R. Civ. P. 30(c)(2); *Redwood v. Dobson*, 476 F.3d 462, 468-69 (7th Cir. 2007). Second, Defense counsel instructed the witness not to answer

questions for other—equally unjustified—reasons. For instance, Defense counsel instructed the witness not to answer questions because they “assumed facts not in evidence”:

Q. (By Mr. Lubin) Sir, were you aware that the oil pan had already been fixed by Dreyer and resealed by Dreyer & Reinbold when you did your inspection?

MR. BRODSKY: Objection.

MR. LUBIN: You can't make a speaking objection.

MR. BRODSKY: Objection. Assumes a fact not -- assumes a fact, so -- that's not in evidence. So don't -- don't answer the question.

**Exhibit A, 49:9-18.**

At one point, Defense counsel instructed the witness not to answer until Plaintiff's counsel explained the relevance of his question to Defense counsel:

Q. Yeah, okay. And are you aware that if you improperly seal an oil pan that that can void the factory warranty?

MR. BRODSKY: Objection. What's the relevance of that? Objection. What's the relevance of that? Don't answer.

Q. (By Mr. Lubin) Sir, are you aware of that?

MR. BRODSKY: What's the relevance of that?

MR. LUBIN: I'm not answering that. I'm not here to answer your question. We --

MR. BRODSKY: Okay. Then don't answer the question. If you can't explain the relevance, then --

Q. (By Mr. Lubin) Will you answer the question, sir?

MR. BRODSKY: -- don't answer.

A. No, I won't answer the question.

**Id. at 55:15-56:9.**

At another point, Plaintiff's counsel attempted to probe the witness's memory of documents he had reviewed moments prior to the deposition. These documents detailed repairs made to the subject vehicle prior to the witness's inspection. Defense counsel refused to let the witness testify from memory and ordered the witness not to answer questions until Plaintiff's counsel agreed to first show the witness documents listing these repairs:

Q. Okay. Was the -- was the oil -- was the repair to the oil -- the resealing of the oil pan, was that done under warranty?

MR. BRODSKY: Show it to him, the documents --

MR. LUBIN: Well, I'm asking him. He's looked at -- he said he saw -- it was all --

MR. BRODSKY: No, you --

MR. LUBIN: It was all --

MR. BRODSKY: You -- he's not going to memorize a 12-page document.

MR. LUBIN: I'm not going to argue with you. I'm not --

MR. BRODSKY: So I'm not going to -- I'm going to tell him not to answer a question.

MR. LUBIN: Okay. Sure.

MR. BRODSKY: If you can show him the document, show him the document.

Q. (By Mr. Lubin) Sir, are you going to -- are you going to follow your lawyer's advice and not an -- the lawyer's advice and not answer the question?

A. Look, I don't remember. I'd -- I'd have to see.

MR. BRODSKY: He wants to see the document.

MR. LUBIN: Could you read back his testimony where he said the stuff wasn't covered under warranty?

MR. BRODSKY: You don't have to read it back. Look, it's not a guessing game. If you want to show him it was covered under warranty. He didn't memorize a 12-page document in one -- by looking at it one time. Okay? So what was covered under warranty, was covered under warranty; and what wasn't, wasn't. If you want to ask about a specific thing, show him the document and ask him. It's not a guessing game.

MR. LUBIN: Okay. This is --

MR. BRODSKY: It's not a memory test.

MR. LUBIN: This is coaching. You're --

MR. BRODSKY: No, it's not.

MR. LUBIN: -- supposed to object as to form, and you're not supposed to instruct him not to --

MR. BRODSKY: I'm telling --

MR. LUBIN: -- answer the question --

MR. BRODSKY: -- telling you on the proper way to take a deposition. So if you want to ask him a question that he -- about his document, show him the document.

***Id.* at 15:16-17:8.**

Several times during the deposition, Defense counsel instructed the witness not to answer questions that Defense counsel deemed “misleading”:

Q. (By Mr. Lubin) So does that refresh your recollection that you didn't look at the Manheim condition report in conjunction with preparing your report?

A. Correct.

Q. And you never saw the Manheim condition report until you looked at it at your deposition today; correct?

A. Correct.

Q. And if you haven't looked at it and you don't know what's in there, you can't give an opinion whether it's true or false; correct?

MR. BRODSKY: Objection. That's -- objection. That's improper. He can give an opinion if he -- after he looks at it, if whether or not it's true or false.

Q. (By Mr. Lubin) Sir, are you giving an opinion as to whether that's true or false?

MR. BRODSKY: No, that's -- objection. He hasn't looked at it, so he can't give an opinion.

MR. LUBIN: Okay.

MR. BRODSKY: That's a misleading question. Don't answer it.

MR. LUBIN: Okay.

Q. (By Mr. Lubin) Will you answer the question, sir?

MR. BRODSKY: No, he's not answering the question. It's a misleading question.

Q. (By Mr. Lubin) Sir --

MR. BRODSKY: The type of baloney that you've engaged in through this entire case. He said he never looked at it, so how can he give an opinion about it. So he's not going to say he can't give an opinion about it so you can misquote it in your response to the Summary Judgment Motion. That's not what he's saying.

Q. (By Mr. Lubin) Sir, do you know whether the Manheim report is true or false?

MR. BRODSKY: Objection. He can't -- he never looked at it, so how can he know? He already said he never looked at it.

Q. (By Mr. Lubin) Will you answer the question, please, sir?

MR. BRODSKY: No, don't answer the misleading question.

Q. (By Mr. Lubin) Will you answer the question, sir?

MR. BRODSKY: No, he's not answering --

A. I won't answer the question.

*Id.* at 86:6-88:6; *see also id.* at 100:2-103:14; *id.* at 103:15-105:1.

Q. (By Mr. Lubin) Sir, were you aware that the hood split apart in the accident?

MR. BRODSKY: No.

Q. (By Mr. Lubin) Yes or no?

MR. BRODSKY: Don't answer that answer that question.

Q. (By Mr. Lubin) Can you answer the question?

MR. BRODSKY: It's a misleading question.

Q. (By Mr. Lubin) Can you answer that question, sir?

A. No.

MR. BRODSKY: No, don't answer that question.

*Id.* at 116:2-20.

Other times, Defense counsel instructed the witness not to answer based on an improper asked and answered objection:

Q. (By Mr. Lubin) Were you aware when you -- when you dropped the oil pan that Mr. Twyman had already had it resealed on November 19 --

MR. BRODSKY: Objection.

Q. (By Mr. Lubin) -- 2015?

MR. BRODSKY: Asked and answered.

THE COURT REPORTER: 2015?

MR. LUBIN: Yes.

THE COURT REPORTER: Thank you.

MR. BRODSKY: Objection. Answered and answered. He already answered he didn't know about anything done with the oil pan before.

Q. (By Mr. Lubin) Will you answer the question, sir?

MR. BRODSKY: Don't repeat the question --

Q. (By Mr. Lubin) No, you won't answer the question?

A. No, I won't answer the question.

MR. BRODSKY: Stop. You've already answered it. He doesn't know if anybody had anything to -- if the pan was dropped and resealed before. He doesn't know. He already said that.

MR. LUBIN: I don't want your testimony. I want his --

MR. BRODSKY: Well, you already have his testimony.

*Id.* at 56:10-57:12; *see also id.* at 52:7-53:10.

Regardless of whether the question had been asked and answered, Defense counsel deemed the question misleading, or any of the other proffered excuses for giving the instruction to the witness. The instruction was improper. *See* Fed. R. Civ. P. 30(c)(2) (“An objection . . . must be noted on the record, but *the examination still proceeds; the testimony is taken subject to any objection.*” (emphasis added)). Defendant argues that the instruction was proper because it filed its own motion for a protective order under Rule 30(d)(3) after the deposition. Defendant, however, did not terminate the deposition after giving the instruction not to answer in order to bring a motion under Rule 30(d)(3). Defendant gave the instruction, the deposition continued, then later Defendant filed its motion. Defense counsel should be ordered not to give the witness such an instruction, except for the reasons set forth in Rule 30.

## **II. Speaking Objections and Coaching the Witness.**

Numerous times during the deposition, Defense counsel improperly interjected himself into the questioning of the witness. Defense counsel interfered with the deposition by coaching the witness and suggesting answers to him:

Q. So you don't -- so you don't have an opinion whether or not the steering column was damaged in the accident; correct, sir?

MR. BRODSKY: Wait, wait. Wait, wait, wait. He asked -- you're assuming -- first, it assumes -- he doesn't know whether or not it was ever repaired because he told you he didn't look at anything before he did his examination. So that question's misleading. And it's already been asked and answered. His opinion is -- in the written opinion, he says the car was in a -- was in a very -- was a slow speed, front and --

MR. LUBIN: Well, here you go -- here you go coaching again.

MR. BRODSKY: -- fender bender --

A. No, I put that in there.

MR. BRODSKY: I'm not coaching him. That's his report.

MR. LUBIN: Yeah, I understand that's his report.

MR. BRODSKY: So that's -- so now, are you ask -- so you're asking him if a steering column could be damaged in a front and slender bender? Is that what you're asking him? Because your question is misleading.

MR. LUBIN: No, that's not what I'm asking him.

MR. BRODSKY: Okay. So --

MR. LUBIN: Now you're telling him what to say --

MR. BRODSKY: No, I'm not. And I'm trying to make --

MR. LUBIN: You actually are.

MR. BRODSKY: I'm trying to understand your --

MR. LUBIN: And it's --

MR. BRODSKY: -- question.

MR. LUBIN: You actually are. And it's --

MR. BRODSKY: No. One, it's a --

MR. LUBIN: -- and it's really not, sir.

MR. BRODSKY: -- misleading question. You're asking a misleading question.

MR. LUBIN: All right. We're going to be going to the Court for a protective order soon.

MR. BRODSKY: I -- right, right, whatever. You're going -- look it -- look, you've -- you're asking misleading questions. You have his opinion in front of you that says it was at a slow speed. Now you're asking him --

*Id.* at 112:2-114:1; *see also id.* at 69:8-70:13 (Defense counsel takes over the questioning of the witness during Plaintiff's examination); 81:3-82:17; 96:22-98:13; 99:9-100:1.

Q. (By Mr. Lubin) Oh, here's the witness's copy. Here you go. Sir, if you look at -- if you look at Exhibit 7B, sir, PROG -- PROG067. Do you see that? They're right in order, so if -- you can go to 67.

A. I need glasses. Now I'm here. Okay. What about this page?

Q. Did you ever see that picture before making your report?

MR. BRODSKY: Objection. He's already said he didn't see any pictures of the accident.

A. I told you I didn't see --

*Id.* at 134:23-135:10.

Q. And if you look at the next page, PROG068, did you see that the car had been dented in the back in the collision, that picture?

A. Do I see this picture now?

Q. Yes.

A. I see it now.

Q. Did you -- did you see that when you made your report?

MR. BRODSKY: Objection. He already said he didn't see anything. You don't have to keep asking that question a thousand times.

A. I already answered.

*Id.* at 135:24-136:11; *see also id.* at 140:24-141:15; 142:2-142:18; 169:10-15; 170:21-171:10.

At other times, Defense counsel interfered with Plaintiff's counsel's questions by showing the witness documents or photographs to suggest answers to the witness:

Q. Are you sure that crack is not still there today?

A. I can't be 100 percent sure, but I don't think so. I don't -- I -- I'd have to look through my pictures again to see if the picture picked it up, but I --

Q. But you don't have any pictures of that part of the car, do you?

MR. BRODSKY: Well, he looked at other pictures though.

Q. (By Mr. Lubin) You looked at other pictures?

A. Yeah, these. These.

Q. Okay. Show me if that part of the car, if there's any photograph of that. In the 49 pictures attached to your report, if there's any pictures of the same area as PROG029?

MR. BRODSKY: Well, here, here.

MR. LUBIN: Well, Mr. Brodsky, you're not supposed to be taking the exhibit and showing him what to look at. Let the record reflect that instead of the witness looking at the documents on his own, that Mr. Brodsky is looking at them, pointing at them, telling him what to look at, which is not proper.

*Id.* at 144:9-145:9.

Q. Okay. Now, do you mind if I point? You see how the bumper guard covers up the surface of the crush plate?

A. Okay.

Q. So you can't look at the surface of the crush plate where the bumper guard attaches to that without removing the bumper guard; correct?

A. Yes.

MR. BRODSKY: Objection. Asked and answered. Wait a second. We've got a picture of that.

(WHEREUPON, discussion was had off the record.)

MR. LUBIN: I don't want you to be showing the witness --

MR. BRODSKY: Because you're telling him something that --

MR. LUBIN: I'm not tell -- I'm not telling him anything. I'm showing him one picture and asking him a question.

MR. BRODSKY: No. You were --

MR. LUBIN: Okay. You and your client are not supposed to be showing the witness photographs of --

MR. BRODSKY: Well, then don't -- you are misrepresenting something.

MR. LUBIN: No. There --

MR. BRODSKY: You asked him if there was a picture, and there is.

MR. LUBIN: No, I didn't ask him that --

MR. BRODSKY: Yes, you did.

MR. LUBIN: -- and now you guys are coaching him, you and Mohammed.

MR. BRODSKY: No. I'm showing him a picture where you can see from underneath the surface of the crush plate.

*Id.* at 67:8-68:17.

As the transcript reveals, Defense counsel did not show the witness photographs only “to help the witness find the picture that the Plaintiff’s attorney was asking him about,” contrary to what Defendant argues in its response. Resp., ¶8.

Twice during the deposition, Defense counsel told the witness to “quit babbling” when he thought the witness was saying too much or not saying the right thing:

Q. No. I'm talking about when -- in your -- when you looked at the car, did you determine that the front cover had been repaired in the front where it had been cracked here as shown in PROG83? Did you know that?

A. No. I was -- wait a second. I don't remember, but I'm pretty sure it was -- so it was replaced? I don't even -- I don't know. I -- I -- I would have to look at my report. I don't remember.

Q. So you don't know if the bumper cover was repaired or replaced; correct?

A. I think it was replaced. I'd have to look at it. I don't know.

Q. So it's your opinion the bumper --

MR. BRODSKY: -- you don't know?

THE WITNESS: I don't remember.

MR. BRODSKY: Well, then say you don't know. Quit babbling, man.

THE WITNESS: All right. I'm --

MR. LUBIN: But you're not allowed to tell him to quit babbling and tell him, say you don't know. That's not proper.

MR. BRODSKY: Well, I didn't say don't -- I said don't -- just answer the question.

MR. LUBIN: No, you're not allowed to tell him what to say.

MR. BRODSKY: I can tell him not to babble and just answer the question.

MR. LUBIN: You can't tell him anything.

MR. BRODSKY: Yes, I can.

MR. LUBIN: You can object as to forms of the question. Not tell him anything about how he's answering the question.

MR. BRODSKY: He's babbling. Just answer the question.

*Id.* at 138:9-139:20; *see also id.* at 154:8-155:13.



Later, Defense counsel removed the witness from the deposition in order to conference with him about the deposition. Defense counsel admitted on the record that the conference with the witness was about the deposition and Plaintiff's counsel's questions. *Id.* at 117:1-119:2. When Plaintiff's counsel attempted to question the witness about what the witness and defense counsel talked about during the conference, Defense counsel refused to let the witness answer the questions and threatened to terminate the deposition if Plaintiff's counsel asked about the discussions during the conference. *Id.* at 119:3-121:10.

When Plaintiff's counsel objected to Defense counsel's speaking objections and conferences with the witness, Defense counsel insisted that he was entitled to make speaking objections, *id.* at 19:13-15, and conference with the witness during the deposition about his testimony, *id.* at 117:1-121:10. Defense counsel was wrong on both accounts. *Hall v. Clifton Precision*, 150 F.R.D. 525, 528, 529 n.7 (E.D. Pa. 1993).

### **III. Accusing Plaintiff's Counsel of Being a Liar and Running a Criminal Enterprise and Using Profanity**

As explained in Plaintiff's motion, Defense counsel repeatedly directed abusive and insulting language at Plaintiff's counsel. *See, e.g.*, **Exhibit A** at 71 (calling Plaintiff's counsel a liar); 122 (accusing Plaintiff's counsel of running a criminal enterprise), 170 ("Quit asking these worthless, ridiculous questions and get to something that actually means something."). Although Defendant attempts to downplay Defense counsel's "criminal enterprise" comment by arguing that he made it in a private conversation, the transcript reveals that Defense counsel made the comment on the record and later bragged about making the comment and the fact that he was not trying to hide it from the record. *Id.* at 125:3-17 ("Get this one down too. You keep putting it [the 'criminal enterprise' comment] in there [the record] like I'm trying to hide it. I've said it in

writing.”). The transcript also reveals that Defense counsel used profanity on the record twice during the deposition. *Id.* at 58, 73.

As the attached transcript reveals, Defense counsel’s conduct was improper and interfered with Plaintiff’s counsel’s ability to question Mr. Hasan. Without a protective order, Defense counsel is likely to interfere with future depositions in a similar manner. Accordingly, Plaintiff requests that this Court grant his motion for a protective order and appoint Magistrate Judge Finnigan to supervise the remaining depositions.

DONALDSON TWYMAN

By: /s/ Peter S. Lubin  
One of his attorneys

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**CERTIFICATE OF SERVICE**

I, Peter S. Lubin, the undersigned attorney, hereby certify that on this 4<sup>th</sup> day of April, 2017, I served a true and correct copy of the foregoing REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PROTECTIVE ORDER upon all counsel of record via the Court's CM/ECF System.

/s/ Peter S. Lubin

# **EXHIBIT A**

AYAD HASAN  
TWYMAN vs S&M AUTO BROKERS

March 29, 2017

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1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF ILLINOIS  
3                           EASTERN DIVISION  
4  
5 DONALDSON TWYMAN,                           )  
6                   Plaintiff,                           ) Case No.  
7           vs.   ) 16-cv-04182  
8 S&M AUTO BROKERS, INC.,                    )  
9 SAED IHMOUD and MOHAMMED IHMOUD,        )  
10                   Defendants.                            )  
11  
12                   The deposition of AYAD HASAN, called as a  
13 witness herein for examination, taken pursuant to  
14 the Federal Rules of Civil Procedure of the United  
15 States District Courts pertaining to the taking of  
16 depositions, taken before ELIA E. CARRIÓN, CSR No.  
17 084.004641, a Certified Shorthand Reporter of said  
18 state, at Joel Brodsky Law, 8 South Michigan Avenue,  
19 Suite 3200, Chicago, Illinois, on Wednesday, the  
20 29th day of March, 2017, at 8:59 A.M.  
21  
22  
23  
24

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1   PRESENT:  
2           DiTOMMASO □ LUBIN  
3           (17W 220 22nd Street, Suite 410  
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7           psl@ditommasolaw.com), by:  
8           MR. PETER S. LUBIN  
9                   appeared on behalf of the Plaintiff;  
10  
11           JOEL BRODSKY LAW  
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17           MR. JOEL A. BRODSKY  
18                   appeared on behalf of the Defendants.  
19  
20   ALSO PRESENT: Mr. Jim DiTommaso [Law Clerk]  
21                   Mr. Mohammed Ihmoud  
22  
23   REPORTED BY: ELIA E. CARRIÓN, CSR, RPR, CLR  
24                   C.S.R. CERTIFICATE NO. 084.004641.

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1                   (WHEREUPON, the witness was duly  
2                   sworn.)  
3                   AYAD HASAN,  
4 called as a witness, having been first duly sworn,  
5 was examined and testified as follows:  
6                   EXAMINATION  
7 BY MR. LUBIN:  
8   Q. Could you please state your name for the  
9 record?  
10 A. Ayad Hasan.  
11 Q. And if you don't understand one of my  
12 questions, you can just ask me to clarify it and I  
13 will. Okay?  
14 MR. BRODSKY: I think we need to identify  
15 ourselves.  
16 Q. (By Mr. Lubin) I'm --  
17 MR. BRODSKY: Just tell him who you are.  
18 Q. (By Mr. Lubin) Okay. Pete Lubin, and I  
19 represent the plaintiff. And this is Jim DiTommaso.  
20 He's my law clerk.  
21                   And now, have you ever been deposed  
22 before?  
23 A. Excuse me?  
24 Q. Have you ever had -- given a deposition

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1 before?  
2 A. No.  
3 THE COURT REPORTER: Could you have him spell  
4 his name, if you don't mind.  
5 MR. LUBIN: Sure.  
6 Q. (By Mr. Lubin) Could you spell your  
7 name?  
8 A. First name Ayad, A-Y-A-D; last name,  
9 Hasan, H-A-S-A-N.  
10 Q. And, Mr. Hasan, so do you understand that  
11 if you don't understand one of my questions, you can  
12 just ask me and I'll rephrase it?  
13 A. Yeah.  
14 Q. And don't say yes -- try to say yes and  
15 don't say "uh-huh" or don't nod your head. Because  
16 for the record, it's hard if you say -- you know,  
17 I'll try to correct you, too, if -- if you do that.  
18 Because otherwise, the record will be unclear.  
19                   And have you ever been convicted of a  
20 crime?  
21 A. No.  
22                   (WHEREUPON, a certain document was  
23 marked Exhibit 1, for  
24 identification, as of

AYAD HASAN  
TWYMAN vs S&M AUTO BROKERS

March 29, 2017  
5-8

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1 March 29, 2017.)

2 Q. (By Mr. Lubin) Would you -- would you

3 look at Exhibit 1, please, sir. You were served

4 with a subpoena in this case; correct?

5 A. Yes.

6 Q. And if you'd look at the -- at this

7 subpoena, do you see the rider attached to it, to

8 the document rider?

9 A. No.

10 Q. If you'd turn three pages, four pages?

11 A. Okay.

12 Q. Now, did you -- did you take photographs

13 of the car when you inspected it?

14 A. Yes.

15 Q. And are those digital photographs?

16 A. iPhone.

17 Q. Okay. And do you -- do you -- do you

18 have the photographs still on your iPhone in digital

19 format?

20 A. Yes, should be.

21 Q. Okay. And you didn't bring a digital

22 copy here today of those photographs?

23 A. No.

24 Q. Were you aware that you were requested to

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1 bring documents here today?

2 A. Not the pictures, no.

3 Q. Were you aware that you were requested to

4 bring any documents today?

5 MR. BRODSKY: Not the -- we al -- we gave -- we

6 sent you the photographs over by e-mail about three

7 days ago.

8 THE WITNESS: Yeah, I got those, but...

9 MR. BRODSKY: In digital.

10 MR. LUBIN: Well, you sent the 15 -- well,

11 let's -- I'll just ask the witness.

12 MR. BRODSKY: But I mean, you were telling

13 him -- I'm telling you, we sent you his photographs.

14 MR. LUBIN: You sent 15 digital photographs.

15 MR. BRODSKY: Right.

16 MR. LUBIN: There were 49 photographs, and we

17 don't have those in digital. We just have those

18 in --

19 MR. BRODSKY: The 49 were not taken by him.

20 Q. (By Mr. Lubin) Okay. You didn't -- you

21 didn't take the other -- the other 49 photographs

22 attached to your report?

23 A. Wait.

24 Q. Well, why don't we look at your report?

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1 A. Wait. Let me -- let me see the pictures.

2 I'll tell you which pictures --

3 Q. Well, let's look at your report,

4 Exhibit 2.

5 A. Okay.

6 (WHEREUPON, a certain document was

7 marked Exhibit 2, for

8 identification, as of

9 March 29, 2017.)

10 Q. (By Mr. Lubin) And if you look at the

11 first paragraph, it says: I took 49 pictures while

12 I was doing the inspection, copies of which are

13 attached to this report. Is that accurate, sir?

14 A. Yeah. Here they are. Uh-huh.

15 Q. No, no, no. There's -- there's copies

16 that were attached to the report, the first ones

17 that you looked at. Exhibit B weren't attached to

18 the report.

19 Sir, if you -- could you back up, please?

20 Just look at the photos that are attached to the

21 report in -- in the Exhibit 2A, please. Are those

22 the 49 photographs that you took?

23 MR. BRODSKY: These. These.

24 A. No. These are not my pictures.

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1 Q. (By Mr. Lubin) Okay. Your -- your

2 report says: I took 49 pictures while I was doing

3 the inspection.

4 A. Yeah, they're right here.

5 Q. Okay. Those are 15 photographs.

6 Exhibit 2B, you're referring to; correct?

7 Sir, just here. I'm sorry to point, but

8 Exhibit 2B, if you look in 2B, those are the

9 photographs you say that are on your iPhone?

10 A. Yeah.

11 Q. And there's just 15 of them?

12 A. I'd have to go back to my iPhone and look

13 at it to see how many there are.

14 Q. Okay. But you don't know if -- the ones

15 that are here in B, are those the only ones that you

16 relied on for your report?

17 A. No. I looked at all of them.

18 Q. Okay. Who took the other 49 -- the other

19 photos that -- that were in Exhibit 2A?

20 A. 2A.

21 MR. BRODSKY: 2, Exhibit 2. Okay. 2A, these

22 pictures. Who took these pictures?

23 A. You're asking who took these pictures?

24 Q. (By Mr. Lubin) Yes.

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Page 9

1 A. No, I didn't take these pictures.  
 2 Q. But -- but who did?  
 3 A. I'm assuming the body shop.  
 4 Q. Okay. So your report says that you took  
 5 the 49 pictures that are attached to your report,  
 6 and these are the ones that were attached to your  
 7 report in 2 and 2A. And you're saying you didn't  
 8 take those?  
 9 A. No, I didn't take these.  
 10 Q. So that's a mistake in your report, that  
 11 it says you took those pictures? It's the end of  
 12 the first paragraph.  
 13 A. Yeah. I mean, there are so many pictures  
 14 taken that I also went through, so it's possible.  
 15 Q. Okay. But --  
 16 A. I didn't count them.  
 17 Q. But you didn't take the -- well, you can  
 18 count them, there's 49.  
 19 A. Okay.  
 20 Q. You didn't -- you didn't take those  
 21 49 pictures that are in 2A; correct?  
 22 A. No.  
 23 Q. And to the extent those were attached to  
 24 your report, that's a -- that's a mistake that those

Page 10

1 are the pictures that you took?  
 2 A. Yes. It must have been.  
 3 Q. Okay. Did you -- did you look at the  
 4 report and the -- and the pictures that were  
 5 attached to it before you signed off on it?  
 6 A. Yeah. I did look at the pictures, yes,  
 7 in the report.  
 8 Q. Okay. But did you look and see that the  
 9 report says that they were pictures that you took?  
 10 When you signed the report, you didn't notice that?  
 11 A. Yeah, I didn't pay attention to that.  
 12 Q. Okay. Was this -- is this -- do you have  
 13 a letterhead for your business or auto shop?  
 14 A. Yeah. Yeah, this is mine.  
 15 Q. This letter wasn't written on your  
 16 letterhead; correct?  
 17 A. No, that's -- I think that's my letter  
 18 here.  
 19 Q. No, did you have a stationery for your  
 20 store? This is plain white paper --  
 21 A. Yeah.  
 22 Q. -- Exhibit 2A, and this isn't your --  
 23 your store's stationery; correct? Star Auto Repair  
 24 stationery?

Page 11

1 A. No.  
 2 Q. Okay. Was this -- was this report  
 3 written on your computer or Mr. Brodsky's computer?  
 4 A. This report?  
 5 Q. Yes. This letter, whose computer was  
 6 this written on?  
 7 MR. BRODSKY: If you know.  
 8 A. I don't remember. I don't -- I'll be  
 9 honest with you.  
 10 Q. (By Mr. Lubin) But did you prepare it on  
 11 your computer, the report?  
 12 A. Yeah.  
 13 Q. So this is in your computer at your -- at  
 14 your auto shop?  
 15 A. Yeah. It should be.  
 16 Q. And did you -- did you write this whole  
 17 thing yourself?  
 18 A. Yeah.  
 19 Q. So if you go back to Exhibit 1, sir,  
 20 did -- did you look at any documents to prepare your  
 21 report?  
 22 A. From picture-wise?  
 23 Q. No. Other than pictures, did you look at  
 24 any documents?

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1 A. No.  
 2 Q. Did you -- did you look at a Progressive  
 3 insurance estimate or photographs relating to the  
 4 accident that this car was in?  
 5 A. No.  
 6 Q. Were you aware that they were Progressive  
 7 insurance photographs or accident -- or -- or --  
 8 A. No.  
 9 Q. Did you look at the Manheim auction  
 10 report regarding the condition of the car before  
 11 preparing your report?  
 12 A. No.  
 13 Q. Did you -- did you look at our expert's  
 14 affidavits or declarations regarding -- regarding  
 15 the condition of this car?  
 16 A. No.  
 17 Q. Did -- did you look at the Dreyer &  
 18 Reinbold mechanic's -- mechanical inspection of the  
 19 car after Mr. Twyman purchased it?  
 20 A. I'm not sure which one that is. What --  
 21 Q. Well, did you ever look at something from  
 22 the Infiniti dealer in Indianapolis called Dreyer &  
 23 Reinbold, their -- their -- their work orders or --  
 24 A. That -- yeah. That, I see where the car

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Page 13

1 was still under a...

2 Q. You saw -- you saw the Dreyer & Reinbold

3 work orders regarding repairing the car?

4 A. Are these the reports that you're talking

5 about from the dealer, what -- what was done at the

6 dealer?

7 Q. Yes. Did you see that?

8 A. Yeah.

9 Q. Did you bring that here today?

10 A. I think that -- here.

11 Q. Okay. You didn't attach that to your

12 report; correct?

13 A. No.

14 Q. Did you rely on that in doing your

15 report?

16 A. No.

17 Q. Why did you look at the Dreyer & -- the

18 Dreyer & Reinbold documents?

19 A. Why? Because they -- they're trying to

20 say that the car was in a major collision. So when

21 I looked at that report from the dealer, it's

22 showing that they did some front work to the front

23 lighting of the car regarding the bumpers. And from

24 my experience, if a car was wrecked, there would

Page 14

1 have been voided warranty. You can see that the

2 stuff was repaired under a factory warranty.

3 MR. LUBIN: Could you mark this as Exhibit 15,

4 please.

5 Q. (By Mr. Lubin) So you're saying all

6 the -- all the work that was done --

7 THE COURT REPORTER: Hold on. Hold on.

8 MR. LUBIN: Okay. I'm sorry.

9 (WHEREUPON, a certain document was

10 marked Exhibit 15, for

11 identification, as of

12 March 29, 2017.)

13 Q. (By Mr. Lubin) Sir, when did you -- when

14 did you look --

15 THE COURT REPORTER: Wait, I have to get my

16 hands on the machine.

17 MR. LUBIN: I'm sorry.

18 Q. (By Mr. Lubin) Sir, when did you look at

19 Exhibit 15? Before or after you prepared your

20 report?

21 A. At what? This?

22 Q. Yes, Exhibit 15, when did you --

23 A. After.

24 Q. When? When was the first time? So you

Page 15

1 prepared your report first and then you looked at

2 this?

3 A. No. I -- I didn't -- my -- my report was

4 before that. This is afterwards.

5 Q. Afterwards. So you prepared your report

6 and you signed that and then you looked at these

7 Dreyer & Reinbold documents after you prepared your

8 report?

9 A. Yes.

10 Q. When was the first time you looked at

11 those?

12 A. That one is today.

13 Q. So you never saw these Dreyer & Reinbold

14 documents until today?

15 A. No.

16 Q. And are you sure that all the repairs

17 that were done by Dreyer & Reinbold were done under

18 warranty?

19 A. From what I could see, yes.

20 Q. Okay. Was the -- was the oil -- was the

21 repair to the oil -- the resealing of the oil pan,

22 was that done under warranty?

23 MR. BRODSKY: Show it to him, the documents --

24 MR. LUBIN: Well, I'm asking him. He's looked

Page 16

1 at -- he said he saw -- it was all --

2 MR. BRODSKY: No, you --

3 MR. LUBIN: It was all --

4 MR. BRODSKY: You -- he's not going to memorize

5 a 12-page document.

6 MR. LUBIN: I'm not going to argue with you.

7 I'm not --

8 MR. BRODSKY: So I'm not going to -- I'm going

9 to tell him not to answer a question.

10 MR. LUBIN: Okay. Sure.

11 MR. BRODSKY: If you can show him the document,

12 show him the document.

13 Q. (By Mr. Lubin) Sir, are you going to --

14 are you going to follow your lawyer's advice and not

15 an -- the lawyer's advice and not answer the

16 question?

17 A. Look, I don't remember. I'd -- I'd have

18 to see.

19 MR. BRODSKY: He wants to see the document.

20 MR. LUBIN: Could you read back his testimony

21 where he said the stuff wasn't covered under

22 warranty?

23 MR. BRODSKY: You don't have to read it back.

24 Look, it's not a guessing game. If you want to show



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1 him it was covered under warranty. He didn't  
 2 memorize a 12-page document in one -- by looking at  
 3 it one time. Okay? So what was covered under  
 4 warranty, was covered under warranty; and what  
 5 wasn't, wasn't.  
 6 If you want to ask about a specific thing, show  
 7 him the document and ask him. It's not a guessing  
 8 game.  
 9 MR. LUBIN: Okay. This is --  
 10 MR. BRODSKY: It's not a memory test.  
 11 MR. LUBIN: This is coaching. You're --  
 12 MR. BRODSKY: No, it's not.  
 13 MR. LUBIN: -- supposed to object as to form,  
 14 and you're not supposed to instruct him not to --  
 15 MR. BRODSKY: I'm telling --  
 16 MR. LUBIN: -- answer the question --  
 17 MR. BRODSKY: -- telling you on the proper way  
 18 to take a deposition. So if you want to ask him a  
 19 question that he -- about his document, show him the  
 20 document.  
 21 Q. (By Mr. Lubin) Sir, you -- you -- you  
 22 testified earlier that all the work that Dreyer &  
 23 Reinbold did was covered under warranty and that's  
 24 how you knew that they had concluded that work

Page 18

1 wasn't caused by the accident; correct?  
 2 A. Well, you asked if -- I'm -- I'm going  
 3 toward what I looked at when it came to repairs to  
 4 the front bumper in the front of the car.  
 5 Q. Repairs to the front bumper you looked at  
 6 regarding what Dreyer & Reinbold --  
 7 A. What you guys are saying were --  
 8 Q. Okay.  
 9 A. -- it has to do with the front of the  
 10 collision, whatever you guys are saying. So I  
 11 looked at -- when I looked at the re -- when I  
 12 looked at this report shows that lights were  
 13 replaced in the front bumper, some kind of repair  
 14 was done. Well, if the car was what you guys are  
 15 assuming was a total wreck, the car would not be  
 16 repaired under factory warranty.  
 17 Q. And this Exhibit 15, these are the --  
 18 these are the only Dreyer & Reinbold documents that  
 19 you looked at today?  
 20 A. Yeah.  
 21 Q. And -- and you only looked at them today  
 22 to make this new opinion that you're giving today  
 23 that's not in your report?  
 24 A. Yeah.

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1 MR. BRODSKY: It's not an opinion. He's saying  
 2 that it was -- it's not an opinion. He's saying  
 3 that there's fact -- there's warranty repairs done  
 4 and that if it was in a serious accident it wouldn't  
 5 have been -- that's -- so don't misrepresent what  
 6 he's saying.  
 7 MR. LUBIN: The pro -- the proper way to object  
 8 is to object just to the form.  
 9 MR. BRODSKY: Well, I'm telling you what the  
 10 proper way is not to misrepresent what he's saying.  
 11 MR. LUBIN: Okay. You're not supposed to --  
 12 you're not supposed to make speaking objections.  
 13 MR. BRODSKY: I'm making speaking objections  
 14 when you're making misrepre -- when you're making  
 15 misleading questions.  
 16 MR. LUBIN: Well, I'm going to please ask you  
 17 not to make speaking objections.  
 18 MR. BRODSKY: And I'm going to please ask you  
 19 not to ask misleading questions.  
 20 MR. LUBIN: Okay. Well, please don't make  
 21 speaking objections. That's not proper.  
 22 MR. BRODSKY: Then don't ask --  
 23 MR. LUBIN: You can object as to form and --  
 24 and -- and --

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1 MR. BRODSKY: Don't ask -- don't make  
 2 misleading statements or questions.  
 3 MR. LUBIN: Okay. Just please don't make  
 4 speaking objections.  
 5 MR. BRODSKY: I won't as long as you don't ask  
 6 misleading questions.  
 7 MR. LUBIN: All right. Well, if the speaking  
 8 objections continue, we're going to have to take  
 9 that up with the judge.  
 10 MR. BRODSKY: And if you make misleading  
 11 questions, we'll take that up with the judge.  
 12 Q. (By Mr. Lubin) Sir, so the Dreyer &  
 13 Reinbold documents are not mentioned in -- in your  
 14 report; correct?  
 15 A. No.  
 16 Q. And this is -- so this is a new opinion  
 17 that you're giving today after Mr. Brodsky showed  
 18 you Exhibit 15 before the deposition started?  
 19 A. Yes.  
 20 Q. And is there any other documents you  
 21 looked at other than Exhibit 15?  
 22 A. Don't think so.  
 23 Q. So -- so if Mr. -- Mr. Brodsky --  
 24 let's -- let's look at -- and just to be clear, you

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21-24

Page 21

1 didn't look at the Dreyer & Reinbold document,  
2 Exhibit 15, when you were preparing your report;  
3 correct?  
4 A. No.  
5 Q. That's correct?  
6 A. Yes.  
7 (WHEREUPON, a certain document was  
8 marked Exhibit 6, for  
9 identification, as of  
10 March 29, 2017.)  
11 Q. (By Mr. Lubin) And let's look at  
12 Exhibit 6A, sir. I'm sorry, 6B. 6 -- 6B. It --  
13 it -- it looks just like this in the front. If you  
14 go to Exhibit 6 and then go to B, Tab B.  
15 A. Oh.  
16 MR. LUBIN: And this will be something you'll  
17 have to make copies of.  
18 Mr. Brodsky, at some point, did you make copies  
19 of Exhibit 15 so we can all have it?  
20 MR. BRODSKY: You already disclosed it. It's  
21 part of your discovery disclosure.  
22 MR. LUBIN: Okay. Well, you can just make  
23 copies.  
24 Q. (By Mr. Lubin) So do you see Exhibit 6B,

Page 22

1 sir?  
2 A. Yes.  
3 Q. Did Mr. Brodsky show you that at any  
4 time, Exhibit 6B from Dreyer & Reinbold?  
5 A. No.  
6 Q. So the first time you're seeing that is  
7 here today at your deposition, Exhibit 6B; correct?  
8 A. Yes.  
9 Q. And did you look at the Moorehouse Body  
10 Shop estimate for the body work on the car before  
11 preparing your report?  
12 A. I'd have to look at it again. I don't  
13 remember.  
14 Q. Well, sir, what documents did you look at  
15 other than the Dreyer & Reinbold --  
16 A. Today?  
17 Q. -- documents today?  
18 A. That.  
19 Q. Okay. And in preparing your report, you  
20 didn't look at any documents; correct?  
21 A. I don't remember.  
22 Q. Well --  
23 A. I'd have to see them. I don't remember.  
24 Q. Well, do you -- so you don't remember

Page 23

1 looking at any documents in conjunction with  
2 preparing your report itself; correct?  
3 A. No.  
4 Q. Correct? That's correct?  
5 A. Correct.  
6 Q. And if you look at Exhibit 9, sir, have  
7 you ever seen either 9A or B before?  
8 MR. BRODSKY: Exhibit 9? There is no  
9 Exhibit 9.  
10 MR. LUBIN: Oh, I'll give it to you.  
11 (WHEREUPON, a certain document was  
12 marked Exhibit 9, for  
13 identification, as of  
14 March 29, 2017.)  
15 (WHEREUPON, discussion was had off  
16 the record.)  
17 Q. (By Mr. Lubin) Here you go, sir. Have  
18 you seen Exhibit 9 before, 9A or 9B?  
19 A. No.  
20 Q. And would you look at 9B? You're looking  
21 at 9A.  
22 A. Oh.  
23 MR. BRODSKY: The question is have you ever  
24 seen it before.

Page 24

1 Q. (By Mr. Lubin) Have you ever seen those  
2 documents?  
3 A. I don't remember. I'll be honest with  
4 you.  
5 MR. BRODSKY: You don't remember seeing those  
6 before? Okay. That's your answer.  
7 THE WITNESS: No.  
8 Q. (By Mr. Lubin) Okay. Please go back to  
9 Exhibit 1 and then look at the rider.  
10 A. Which one is Exhibit 1? This one?  
11 Q. Yes. And look at the rider, page 4 of  
12 Exhibit 1. Sir, are you related to any of the  
13 owners or people who work at the Defendant S&M?  
14 A. No.  
15 Q. Are you personal friends with anybody  
16 that works there?  
17 A. No.  
18 Q. How did you meet the people at S&M?  
19 A. I do repair for them.  
20 Q. You do mechanical -- you have a company  
21 called Star Auto Repair --  
22 A. Yeah.  
23 Q. -- Foreign & Domestic, Inc.?  
24 A. Yes.

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1 Q. And how long have you done work for S&M,  
2 Star -- your company?  
3 A. Maybe five, six years, maybe.  
4 Q. And they own more than one -- the people  
5 who own S&M own more than one used car dealership;  
6 correct?  
7 A. Yes, I assume.  
8 Q. So how -- how many different companies  
9 that they own do you do business with?  
10 A. I only know of one, S&M.  
11 Q. Okay. And that's who your invoices go  
12 to?  
13 A. Yes.  
14 Q. And do you have -- at your mechanic shop,  
15 do you have software that prepares the work orders  
16 and estimates?  
17 A. Yes.  
18 Q. And do you -- and that same software  
19 prepares your invoices, then; correct?  
20 A. Yes.  
21 Q. And do you provide S&M with estimates and  
22 work orders before you do work for them?  
23 A. Sometimes. Sometimes you just talk to  
24 them on the phone, and I get an authorization -- a

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1 verbal authorization if I just tell them what the  
2 repair is.  
3 Q. Okay. And then do you prepare an invoice  
4 and send that to them to get paid?  
5 A. Once the car -- vehicle is done, yes.  
6 Q. And does your business have a general  
7 ledger that lists all of the -- the revenues that  
8 you get from various customers?  
9 A. I don't know.  
10 Q. Would you have a bookkeeper?  
11 A. I don't do the paperwork.  
12 Q. Who does the paperwork for Star Auto  
13 Repair?  
14 A. Numerous. I got my brother. I got my  
15 sister.  
16 Q. Okay. And they prepare the -- the  
17 financial records and they give those to your  
18 accountant?  
19 A. Yes.  
20 Q. And what's the name of your brother and  
21 sister?  
22 A. Ronnie and Dunia.  
23 Q. Same last name?  
24 A. Yes.

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1 Q. And what's --  
2 (Court reporter clarification.)  
3 A. Ronnie and Dunia, D-U-N-I-A.  
4 Q. (By Mr. Lubin) And the -- and your  
5 invoice and work order records are kept on your  
6 computer in your -- at your business at Star Auto  
7 Repair?  
8 A. I'm sure they are. I don't know. I  
9 don't do the paperwork.  
10 Q. But they work at your office, your  
11 brother and sister; correct?  
12 A. Yes. Yes.  
13 Q. And then they're the ones who interact  
14 with the accountants, getting them the financials to  
15 prepare your tax returns?  
16 A. Yes.  
17 Q. And so as far as you know, you have in  
18 your computer invoice -- all your invoices that  
19 you've generated for S&M Auto Repair; correct?  
20 A. Should.  
21 Q. And did you bring those here today?  
22 A. No.  
23 Q. Do you see -- do you see that --  
24 MR. BRODSKY: He didn't because I told him not

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1 to because it's none of your business to see  
2 invoices. Okay? So if we can move on...  
3 Q. (By Mr. Lubin) Sir, did -- did  
4 Mr. Brodsky -- is he your attorney? Is Mr. Brodsky  
5 your attorney?  
6 MR. BRODSKY: That's -- that's not -- that's  
7 privileged --  
8 A. I don't think so.  
9 MR. BRODSKY: -- whose his attorney.  
10 Q. (By Mr. Lubin) Okay. Sir, is  
11 Mr. Brodsky your attorney representing you today?  
12 A. I didn't know I needed an attorney.  
13 Q. Okay. So did -- did -- did you bring --  
14 did you bring your documents --  
15 MR. BRODSKY: I told him not to. Okay?  
16 MR. LUBIN: Well, I'm asking him. Okay?  
17 Q. (By Mr. Lubin) Sir, did you bring -- did  
18 you bring --  
19 A. No.  
20 Q. No, you didn't bring any documents  
21 showing the revenues you've generated from S&M?  
22 A. No.  
23 Q. You -- you do have records showing the  
24 revenues you generated from S&M?

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Page 29

1 A. I'm sure I do.  
 2 Q. Okay. And Mr. Brodsky told you not to  
 3 bring them?  
 4 A. He told me not to bring them, no reason  
 5 for them.  
 6 Q. Did you discuss that with him?  
 7 MR. BRODSKY: You don't have to answer that  
 8 question. Okay. Go --  
 9 Q. (By Mr. Lubin) Will you answer the  
 10 question, please?  
 11 MR. BRODSKY: Don't answer the question. Move  
 12 on to the --  
 13 MR. LUBIN: Well, no, I have to get him to  
 14 say --  
 15 Q. (By Mr. Lubin) You're not going to  
 16 answer?  
 17 A. I'm not going to answer.  
 18 MR. LUBIN: Sir, what's the basis for saying  
 19 that he can't --  
 20 MR. BRODSKY: Don't answer it.  
 21 Move on to the next question.  
 22 MR. LUBIN: Mr. Brodsky, I'm asking you a --  
 23 MR. BRODSKY: Please move on to the next  
 24 question.

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1 MR. LUBIN: No, I'm asking you --  
 2 MR. BRODSKY: Please move on.  
 3 MR. LUBIN: -- since there's not an  
 4 attorney-client relationship, what's the --  
 5 MR. BRODSKY: Please move on to the next  
 6 question.  
 7 MR. LUBIN: Okay.  
 8 Q. (By Mr. Lubin) Sir, would you have --  
 9 would you have brought -- did you know you were  
 10 supposed to -- that the rider called for the  
 11 records?  
 12 MR. BRODSKY: Don't answer.  
 13 Please move on to the next subject.  
 14 Q. (By Mr. Lubin) Sir, did you know the  
 15 rider called for the --  
 16 MR. BRODSKY: Please move on to the next  
 17 subject.  
 18 THE COURT REPORTER: I'm sorry, you guys are  
 19 talking over each other.  
 20 MR. BRODSKY: Please move on -- please move on  
 21 to the next subject.  
 22 Q. (By Mr. Lubin) Sir, did you -- did you  
 23 know that this rider called for --  
 24 MR. LUBIN: I have to get an answer, Joel.

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1 MR. BRODSKY: Please move on to the next  
 2 subject.  
 3 A. I'm not going to answer that.  
 4 Q. Okay.  
 5 MR. BRODSKY: Okay. Move on to the next  
 6 subject.  
 7 MR. LUBIN: Well, you can't yell, Joel, and I  
 8 have to --  
 9 MR. BRODSKY: I'm not yelling. Move on to the  
 10 next question.  
 11 MR. LUBIN: And I don't have to move on to the  
 12 next subject. What I need to do is I need to get a  
 13 yes --  
 14 MR. BRODSKY: No, you're not going to get a yes  
 15 or no.  
 16 MR. LUBIN: Well, no, I need to get a --  
 17 THE COURT REPORTER: I can only take one person  
 18 down. Whoever I hear first, I'm going to --  
 19 MR. LUBIN: Sure. Sure.  
 20 MR. BRODSKY: You're not going to get a yes or  
 21 a no. Move on to the --  
 22 MR. LUBIN: I need to get him to say he's not  
 23 going to answer the question based on --  
 24 MR. BRODSKY: He already said he's not going to

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1 answer the question.  
 2 THE COURT REPORTER: Based on what?  
 3 MR. LUBIN: He -- he actually didn't.  
 4 MR. BRODSKY: Yes, he did. Move on to the next  
 5 subject.  
 6 MR. LUBIN: No, he actually didn't, because you  
 7 kept telling me to move on and didn't let him answer  
 8 the question.  
 9 MR. BRODSKY: Move on to the next subject.  
 10 Q. (By Mr. Lubin) Sir, approximately how  
 11 much revenue does your company generate each year  
 12 from S&M?  
 13 A. If I have to guess --  
 14 MR. BRODSKY: Approximately.  
 15 A. -- 1, 2 percent.  
 16 Q. (By Mr. Lubin) Well, what's that in  
 17 dollars? What would your estimate be?  
 18 A. A yearly?  
 19 Q. Yeah.  
 20 A. Five, six grand, maybe.  
 21 Q. And that's 1 to 2 percent of your total  
 22 revenues for your business?  
 23 A. I'm not good at numbers. I don't know.  
 24 Q. So you're saying it's -- how many repairs

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Page 33

1 do you generally do for them each year?  
 2 A. Five, ten repairs.  
 3 Q. On different cars usually?  
 4 A. Yes.  
 5 Q. And you -- and you estimate that's about  
 6 \$500 per repair? Is that what you're saying?  
 7 A. Yeah. Guesstimating.  
 8 Q. And that's been consistent for the last  
 9 five or six years?  
 10 A. I can't remember all that now.  
 11 Q. You don't know how many years back  
 12 that -- without looking at your records, you --  
 13 A. Yes.  
 14 Q. -- don't know how many years back --  
 15 A. No.  
 16 Q. -- that your relationship with S&M goes?  
 17 A. I'm guesstimating five, six years maybe.  
 18 Q. All right. But if you looked at your  
 19 records, then --  
 20 A. Yes.  
 21 Q. -- you would know the exact amount?  
 22 And if you looked at your records, you'd  
 23 know the exact amount of revenues your business has  
 24 generated from S&M; correct?

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1 A. Yes.  
 2 Q. Okay. And how did you -- how did you  
 3 meet S&M so that they started doing business with  
 4 your company, Star Auto Repair?  
 5 A. I guess he was referred.  
 6 Q. Who was referred to? Who are you  
 7 referring to?  
 8 A. Somebody -- they must have been referred  
 9 to come to us.  
 10 Q. But is there a person that you're saying  
 11 is --  
 12 A. No, not that -- I don't know. Not that I  
 13 know.  
 14 Q. Who is the person at S&M that you  
 15 generally deal with?  
 16 A. Mohammed.  
 17 Q. And that -- when you were referring to  
 18 "he," that's who you were referring to?  
 19 A. Maybe he got referred to.  
 20 Q. And who asked you to testify in this  
 21 case? Mohammed or Mr. Brodsky?  
 22 A. Mohammed.  
 23 Q. And when did he do that?  
 24 A. I don't remember. A while back. I -- I

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1 couldn't remember. I don't even know.  
 2 Q. Are -- are you getting paid for your  
 3 testimony?  
 4 A. Yes.  
 5 Q. Have you been paid yet?  
 6 A. No. Once it's all done.  
 7 Q. Once the case is all done. And how much  
 8 are you going to get paid?  
 9 A. I haven't figured it out, but I don't  
 10 know. I guess maybe around 1,500 bucks maybe.  
 11 Q. Okay. And how -- how is -- how  
 12 are you -- are you going to do that on an hourly  
 13 basis? How are you going to figure that out?  
 14 A. Oh, just a -- it's just a fee. Not  
 15 hourly, no. It's just a fee I'm going to think  
 16 about. How much time I'm going to be spending with  
 17 him, you know.  
 18 Q. Okay. And why are you -- why are you not  
 19 getting paid now and only waiting until the end of  
 20 the case?  
 21 A. I mean, I trust him. I'm sure -- I'm not  
 22 worried about him not paying.  
 23 Q. And when did you reach this arrangement  
 24 that you'd only get paid at the end of the case?

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1 A. When did we reach it? I don't know.  
 2 When we talked about it. Because every time I do  
 3 repairs on his vehicles, he pays me at the end. And  
 4 I -- I'm assuming this is like a -- you know, a  
 5 repair on his vehicle. I'm doing it --  
 6 Q. Well, you --  
 7 A. -- for him and then when I'm done, I'll  
 8 get paid.  
 9 Q. Well, you did the report. You didn't get  
 10 paid for the report when you finished the report;  
 11 correct?  
 12 A. No. But I'm not worried about it either.  
 13 Q. Okay. And when you finish this  
 14 deposition, you're not going to get paid either;  
 15 correct?  
 16 A. Yeah. I'm not going to -- I'm waiting  
 17 till this case is over and I'll get paid. I trust  
 18 him.  
 19 Q. And -- and there's no -- there's no set  
 20 rate or anything? You don't know what --  
 21 A. No, no. But that price is just a guess,  
 22 a guesstimation right now.  
 23 Q. And how long has Star Auto been in  
 24 business?

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1 MR. BRODSKY: I can hear, so just keep going.  
 2 A. 17 years. I think, yeah, 17 years.  
 3 Q. (By Mr. Lubin) And are you the founder  
 4 of Star Auto?  
 5 A. Yes.  
 6 Q. And before that, you worked for a  
 7 Mercedes dealership?  
 8 A. Mercedes dealer, yes.  
 9 Q. Does Star Auto do body repairs or just  
 10 mechanical repairs?  
 11 A. Mechanical.  
 12 Q. So you -- Star Auto doesn't have a body  
 13 shop?  
 14 A. No.  
 15 Q. Who do you refer your body work to when  
 16 you -- when you -- when Star Auto sees a car that  
 17 needs body work?  
 18 A. There's a few places I deal with.  
 19 There's a place down the street called Athenian.  
 20 There's Maaco.  
 21 (Court reporter clarification.)  
 22 A. Athenian. Sorry.  
 23 Q. (By Mr. Lubin) Okay. Have you ever  
 24 referred it to Mr. Ramos's business?

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1 A. No.  
 2 Q. Do you know anything about his business?  
 3 A. No.  
 4 Q. Do you know anything about his  
 5 qualifications --  
 6 A. No.  
 7 Q. -- as a -- as a body shop?  
 8 A. No.  
 9 Q. So you don't know whether he does a good  
 10 or bad job; correct?  
 11 A. No.  
 12 Q. No, that's correct?  
 13 A. Oh, yeah. I don't know if he does a good  
 14 or bad job, no.  
 15 Q. Okay. And you don't know anything about  
 16 his expertise; correct?  
 17 A. No.  
 18 Q. And -- and you don't have any -- you  
 19 yourself don't have any certifications in -- in --  
 20 in collision repair or body repair; correct?  
 21 A. No.  
 22 Q. That's correct?  
 23 A. Correct.  
 24 Q. Don't answer no when I'm asking you if

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1 that's correct.  
 2 A. Oh, I'm sorry. I'm sorry.  
 3 Q. Okay. So -- and -- and -- and yes,  
 4 it's -- it's correct you're not I-CAR certified?  
 5 A. What's I-CAR certified?  
 6 Q. You don't know what I-CAR certified is;  
 7 correct?  
 8 A. No.  
 9 Q. And you don't know anything about any of  
 10 the certifications --  
 11 A. ASE -- ASE certified.  
 12 Q. ASE is for mechanics?  
 13 A. Yes.  
 14 Q. Okay. And you don't have any -- any --  
 15 you don't have any certifications regard --  
 16 regarding body repair or collision repair; correct?  
 17 A. No.  
 18 Q. That's correct?  
 19 A. Correct, no.  
 20 Q. And -- and you don't know what I-CAR  
 21 certified is; correct?  
 22 A. No.  
 23 Q. And -- that's correct?  
 24 A. Correct.

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1 Q. And -- and you haven't had any training  
 2 in estimating to -- to -- you've had no training or  
 3 certification in -- in body repair or collision  
 4 repair; correct?  
 5 A. Correct.  
 6 Q. And no certification in -- in frame  
 7 repairs; correct?  
 8 A. Correct.  
 9 Q. And you don't have a frame machine at  
 10 Star Auto to put a car up and measure the frame to  
 11 see if it's bent; correct?  
 12 A. Correct.  
 13 Q. And you didn't measure this car's frame  
 14 to see if it was bent; correct?  
 15 A. Correct.  
 16 Q. And you don't know how to calibrate a  
 17 frame or do that work; correct?  
 18 A. Correct.  
 19 Q. That would be something that would be  
 20 done a body shop; correct?  
 21 A. Correct.  
 22 Q. And your opinion is you looked at this  
 23 car and you determined it was mechanically sound at  
 24 the time you looked at it; correct?

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1 A. Correct.

2 Q. And you didn't look at the car at the

3 time Mr. Twyman purchased it; correct?

4 A. Correct.

5 Q. And you're not making a determination in

6 your report whether Mr. Twyman's car was

7 mechanically sound at the time he purchased it;

8 correct?

9 MR. BRODSKY: Ob -- objection. Don't put words

10 in his mouth. He's -- he's repor -- he's saying

11 what's ever in his report.

12 MR. LUBIN: Well, you're not supposed to take

13 the report out, open the page up, which I'm not

14 showing him.

15 Q. (By Mr. Lubin) Could you please close

16 the book, sir?

17 MR. BRODSKY: Well, it doesn't --

18 MR. LUBIN: And no --

19 MR. BRODSKY: This is not --

20 MR. LUBIN: Let the record reflect you opened

21 the book --

22 MR. BRODSKY: Yeah, I put -- this is not a

23 guessing game.

24 MR. LUBIN: But -- no, this is --

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1 MR. BRODSKY: You --

2 MR. LUBIN: -- not where --

3 MR. BRODSKY: This is not a guessing game.

4 MR. LUBIN: No. You're not supposed to

5 interject, start making --

6 MR. BRODSKY: This is not a guessing game.

7 Q. (By Mr. Lubin) Sir, could you please

8 close the book.

9 MR. LUBIN: Okay. And please don't make

10 speaking objections and comments. It's improper.

11 MR. BRODSKY: You're putting words in his

12 mouth.

13 MR. LUBIN: Okay. We're going to -- we're

14 going to go --

15 MR. BRODSKY: Ask question --

16 MR. LUBIN: -- to the judge about that.

17 MR. BRODSKY: All right. You're asking him --

18 MR. LUBIN: I'm --

19 MR. BRODSKY: Right, we'll --

20 MR. LUBIN: -- cross-examination --

21 MR. BRODSKY: It's not cross-examination. It's

22 a deposition.

23 MR. LUBIN: Yes, it is cross-examination.

24 MR. BRODSKY: No, it's not. It's a deposition.

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1 MR. LUBIN: I can -- I can cross-examine at a

2 deposition.

3 MR. BRODSKY: No, it's not a cross-examination.

4 MR. LUBIN: So you're saying I can't ask

5 leading questions? I can --

6 MR. BRODSKY: You can't put words in his mouth,

7 no.

8 MR. LUBIN: Okay. Well, that's -- right. Yes,

9 I can ask leading questions and I can -- and I can

10 cross-examine this witness and --

11 MR. BRODSKY: It's not a cross-examination.

12 This is a discovery deposition.

13 MR. LUBIN: There's no such thing as a

14 discovery deposition in the federal court.

15 MR. BRODSKY: I can -- well, it is a discovery

16 deposition. It's under the discovery rules.

17 MR. LUBIN: All right. Please stop making

18 speaking objections. I'm asking you again. I'm

19 really --

20 MR. BRODSKY: This is -- don't --

21 MR. LUBIN: I'm really -- I'm really pleading

22 with you to follow the rules.

23 MR. BRODSKY: And I'm pleading with you not to

24 ask misleading questions and don't put words in his

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1 mouth.

2 MR. LUBIN: Okay. Well, I'm asking you in a

3 very polite and -- and nice way that you cannot make

4 speaking objections.

5 MR. BRODSKY: And don't -- you can't use

6 misleading questions.

7 MR. LUBIN: We're going to -- not at this

8 deposition, but before the next deposition, if this

9 continues, we're going to have to go to the court

10 for a protective order about the speaking

11 objections.

12 MR. BRODSKY: And we'll have to go to the court

13 about you asking misleading questions and putting

14 words in his mouth.

15 Q. (By Mr. Lubin) Okay. Sir, did you --

16 did you -- do you know -- did you look at any

17 documents to determine what the condition of the car

18 was at the time Mr. Twyman purchased it at the time

19 you prepared your report?

20 A. No.

21 Q. Okay. And, sir, did you determine what

22 the mechanical condition of the car -- Mr. Twyman's

23 FX37 was at the time he purchased the car, before

24 you did your inspection?

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1 A. When you say "purchased the car," this is  
2 when he first purchased the car?  
3 Q. Yeah. He purchased it well before you  
4 did your inspection.  
5 A. And you're asking?  
6 Q. Yeah, did you determine what the  
7 condition of the car was at the time he purchased  
8 it, the mechanical condition?  
9 A. No.  
10 Q. So you don't know what the condition of  
11 the car was at the time Dreyer & Reinbold did  
12 repairs to it; correct?  
13 A. No.  
14 Q. That's correct?  
15 A. [No audible response.]  
16 Q. And one of the things you did was you  
17 said you dropped the oil pan; correct?  
18 A. Correct.  
19 Q. And do you have an Infiniti at your  
20 dealership? Did you work on a lot of Infinitis?  
21 A. Yeah.  
22 Q. And at your -- your -- I'm sorry, not  
23 your dealership -- at Star Auto Repair, do you do  
24 work on Infinitis?

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1 A. Yes.  
2 Q. Okay. And have you ever done a work on  
3 an FX37 before?  
4 A. Yes.  
5 Q. And -- and when you were examining  
6 Mr. Twyman's car, did you compare its body panel  
7 alignment to other FX37s?  
8 A. No.  
9 Q. And -- and your report, when you dropped  
10 the oil pan, did you follow -- did you have an  
11 Infiniti manual to follow the procedures that  
12 Infiniti provides for taking out the -- opening up  
13 the oil pan and breaking the seal?  
14 A. Is there a -- ask the question again,  
15 man. I don't --  
16 Q. Did you look -- did you have an Infiniti  
17 manual for how to do that?  
18 A. I didn't need one.  
19 Q. Did you do a work order before you did  
20 that?  
21 A. I'd have to find out for you on that.  
22 Q. Did you take photographs of the dropping  
23 the oil pan?  
24 A. Yes.

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1 Q. Are those attached to your report?  
2 A. No. I don't see them in the report.  
3 Q. Did you verify the oil level by using a  
4 dipstick?  
5 A. Yes.  
6 Q. How much oil was required after you  
7 reinstalled the oil pan?  
8 A. I don't remember.  
9 Q. Is it a general industry auto service  
10 inspection procedure to drop an oil pan?  
11 A. What?  
12 Q. Is that -- is that a general inspection  
13 procedure, to drop an oil pan and open it up? Is  
14 that something you generally do when you inspect a  
15 vehicle?  
16 A. No.  
17 Q. Why did you open up the oil pan?  
18 A. Because I was told that there -- that you  
19 guys were -- the defendant or whoever it is, you  
20 guys are saying that there was problems with the  
21 motor internally or something.  
22 Q. Who -- who told you that?  
23 A. I think it was Mohammed when I talked to  
24 him.

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1 Q. Were -- were you aware at the time you  
2 did your inspection that the oil pan had already  
3 been resealed and fixed by Dreyer --  
4 MR. BRODSKY: Objection.  
5 Q. (By Mr. Lubin) -- & Reinbold?  
6 A. No.  
7 MR. BRODSKY: Assumes a fact not in evidence.  
8 Don't -- when I say objection, don't say  
9 anything.  
10 THE WITNESS: Oh, okay.  
11 MR. BRODSKY: Assumes a fact.  
12 Q. (By Mr. Lubin) So your answer was no;  
13 correct, sir?  
14 A. No.  
15 MR. BRODSKY: His answer was --  
16 MR. LUBIN: He already answered it.  
17 MR. BRODSKY: I objected. Well, I had --  
18 didn't know. Because it assumes a fact that it was  
19 actually done, and there's no -- nothing that says  
20 that it was actually done by Dreyer; so...  
21 MR. LUBIN: Did you -- did you -- did you --  
22 did you -- did you get the answer?  
23 THE COURT REPORTER: Let me check, please.  
24 MR. BRODSKY: When I say objection, you don't



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1 say anything.  
 2 THE WITNESS: I wasn't paying --  
 3 MR. BRODSKY: Well, pay attention.  
 4 THE WITNESS: -- attention.  
 5 THE COURT REPORTER: I don't have it on here,  
 6 but maybe my audio picked it up. Hold on.  
 7 (WHEREUPON, discussion was had off  
 8 the record.)  
 9 Q. (By Mr. Lubin) Sir, were you aware that  
 10 the oil pan had already been fixed by Dreyer and  
 11 resealed by Dreyer & Reinbold when you did your  
 12 inspection?  
 13 MR. BRODSKY: Objection.  
 14 MR. LUBIN: You can't make a speaking  
 15 objection.  
 16 MR. BRODSKY: Objection. Assumes a fact not --  
 17 assumes a fact, so -- that's not in evidence.  
 18 So don't -- don't answer the question.  
 19 Q. (By Mr. Lubin) Sir, will you answer the  
 20 question?  
 21 A. I answered the question.  
 22 MR. LUBIN: That's improper to instruct the  
 23 witness not to answer the question.  
 24 MR. BRODSKY: Okay. Go ahead.

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1 MR. LUBIN: So are you standing on your  
 2 instruction not to answer?  
 3 Q. (By Mr. Lubin) Sir --  
 4 MR. BRODSKY: It assumes a fact that wasn't --  
 5 it assumes a fact -- there is no evidence that --  
 6 Q. (By Mr. Lubin) Sir, do you know one way  
 7 or the other whether Dreyer & Reinbold had already  
 8 sealed -- sealed the oil pan and fixed the problem  
 9 with that?  
 10 A. I -- you're -- what -- what's the  
 11 question?  
 12 Q. I'm asking if you know one way or the  
 13 other whether Dreyer & Reinbold did that when you  
 14 did your inspection?  
 15 A. No.  
 16 Q. You're not aware that they did that?  
 17 MR. BRODSKY: He doesn't -- objection.  
 18 Q. (By Mr. Lubin) You don't know whether  
 19 they --  
 20 MR. BRODSKY: That assumes a fact.  
 21 Q. (By Mr. Lubin) -- you don't know whether  
 22 Dreyer & Reinbold did or didn't reseat the oil pan  
 23 before your inspection; correct?  
 24 A. No. I don't know if they took it apart

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1 or put it -- I don't know.  
 2 Q. Okay. You don't know any of the repairs  
 3 that Dreyer & Reinbold did on the car, correct,  
 4 when you did your --  
 5 MR. BRODSKY: Objection. Assumes --  
 6 Q. (By Mr. Lubin) When you prepared -- when  
 7 you prepared your report, you weren't aware that  
 8 Dreyer & Reinbold had done any repairs; correct?  
 9 MR. BRODSKY: That assumes repairs were done.  
 10 Objection.  
 11 A. Correct.  
 12 Q. (By Mr. Lubin) Okay. And even after  
 13 looking at Exhibit 15 before your deposition today,  
 14 as you sit there now, you're not aware what repairs  
 15 Dreyer & Reinbold did or didn't do when Mr. Twyman  
 16 brought it in; correct?  
 17 A. Rephrase that question, man.  
 18 Q. Are you aware of any repairs -- what  
 19 repairs do you know of that Dreyer & Reinbold did?  
 20 A. Well, I mean, I looked at -- I've seen  
 21 the sheets that --  
 22 Q. Okay. But I'm asking you, from your  
 23 memory, what repairs do you --  
 24 A. Oh, I don't remember. That's it.

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1 Q. So do you know if they -- if they did  
 2 anything with the steering column?  
 3 A. No, I don't remember. I don't know.  
 4 Q. Do you know if they did anything with the  
 5 wheel bearings?  
 6 A. No.  
 7 Q. And you don't know if they did anything  
 8 with the oil pan; correct?  
 9 MR. BRODSKY: Asked and answered.  
 10 A. Right. I answered that question I guess.  
 11 Q. (By Mr. Lubin) Okay. Do you know if --  
 12 MR. BRODSKY: You don't say anything, okay?  
 13 Don't talk over me.  
 14 Objection. He already asked and answered that  
 15 question.  
 16 Q. (By Mr. Lubin) Sir, do you know if they  
 17 did anything with the oil --  
 18 MR. BRODSKY: He already answered -- answered  
 19 that question. Now move on to another question.  
 20 Q. (By Mr. Lubin) Can you answer the  
 21 question?  
 22 MR. BRODSKY: No. Don't answer the question.  
 23 You already answered. Okay?  
 24 MR. LUBIN: Are you instructing the witness --

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1 MR. BRODSKY: Yes, because you already asked  
2 and answered --  
3 Q. (By Mr. Lubin) Will you answer -- will  
4 you answer the question, sir?  
5 MR. BRODSKY: No. Stop. No.  
6 You already asked and answered the question.  
7 Don't --  
8 MR. LUBIN: You got his answer, no?  
9 THE COURT REPORTER: I can only take --  
10 A. No, I won't answer the question.  
11 MR. LUBIN: Okay. You got that?  
12 THE COURT REPORTER: I got that.  
13 MR. LUBIN: Mr. Brodsky, it's improper to  
14 instruct the witness --  
15 MR. BRODSKY: And it's improper to ask him  
16 questions multiple times.  
17 MR. LUBIN: -- not to answer --  
18 THE COURT REPORTER: I can't take down both of  
19 you at the same time.  
20 MR. BRODSKY: Don't ask him questions multiple  
21 times.  
22 MR. LUBIN: Okay.  
23 MR. BRODSKY: You asked, he said he didn't know  
24 before that they did anything to the pan. And you

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1 just asked him again. You don't get to ask the  
2 questions three times.  
3 MR. LUBIN: It's improper because you're --  
4 you're instructing the witness not to answer the  
5 question --  
6 MR. BRODSKY: Because he already asked and  
7 answered the question.  
8 MR. LUBIN: Okay. Well, you're interfering  
9 with the deposition.  
10 MR. BRODSKY: No, I'm not. You already --  
11 MR. LUBIN: Well --  
12 MR. BRODSKY: -- you are improperly asking him  
13 questions multiple times, the same question.  
14 Q. (By Mr. Lubin) Did you -- did you notify  
15 the plaintiff or Mr. Twyman or any of his  
16 representatives that before you prepared your  
17 report, that you had dropped the oil pan and -- and  
18 resealed it?  
19 A. Plaintiff -- who -- which one is the  
20 plaintiff? I don't know.  
21 Q. Mr. Twyman.  
22 A. Did I notify them?  
23 Q. Did you notify them?  
24 A. No.

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1 Q. Did you notify the person that picked up  
2 the car that you dropped the oil pan and resealed  
3 it?  
4 A. Yes.  
5 Q. So you're saying you no -- you notified  
6 them when you dropped -- when they picked it up that  
7 you had resealed the oil pan?  
8 A. For S&M.  
9 Q. Did you notify S&M? Or did you notify  
10 the person that -- the person that picked it up for  
11 the plaintiff?  
12 MR. BRODSKY: What are you talking about?  
13 Q. (By Mr. Lubin) S&M, is --  
14 A. Mohammed.  
15 Q. Yeah, okay.  
16 And are you aware that if you improperly  
17 seal an oil pan that that can void the factory  
18 warranty?  
19 MR. BRODSKY: Objection. What's the relevance  
20 of that? Objection. What's the relevance of that?  
21 Don't answer.  
22 Q. (By Mr. Lubin) Sir, are you aware of  
23 that?  
24 MR. BRODSKY: What's the relevance of that?

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1 MR. LUBIN: I'm not answering that. I'm not  
2 here to answer your question. We --  
3 MR. BRODSKY: Okay. Then don't answer the  
4 question. If you can't explain the relevance,  
5 then --  
6 Q. (By Mr. Lubin) Will you answer the  
7 question, sir?  
8 MR. BRODSKY: -- don't answer.  
9 A. No, I won't answer the question.  
10 Q. (By Mr. Lubin) Were you aware when  
11 you -- when you dropped the oil pan that Mr. Twyman  
12 had already had it resealed on November 19 --  
13 MR. BRODSKY: Objection.  
14 Q. (By Mr. Lubin) -- 2015?  
15 MR. BRODSKY: Asked and answered.  
16 THE COURT REPORTER: 2015?  
17 MR. LUBIN: Yes.  
18 THE COURT REPORTER: Thank you.  
19 MR. BRODSKY: Objection. Answered and  
20 answered. He already answered he didn't know about  
21 anything done with the oil pan before.  
22 Q. (By Mr. Lubin) Will you answer the  
23 question, sir?  
24 MR. BRODSKY: Don't repeat the question --

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1 Q. (By Mr. Lubin) No, you won't answer the  
2 question?  
3 A. No, I won't answer the question.  
4 MR. BRODSKY: Stop. You've already answered  
5 it.  
6 He doesn't know if anybody had anything to --  
7 if the pan was dropped and resealed before. He  
8 doesn't know. He already said that.  
9 MR. LUBIN: I don't want your testimony. I  
10 want his --  
11 MR. BRODSKY: Well, you already have his  
12 testimony.  
13 MR. LUBIN: Well, it was a different question.  
14 MR. BRODSKY: What was the -- what was the  
15 difference?  
16 Q. (By Mr. Lubin) Sir, were you aware that  
17 the service records reflected that there had been a  
18 sludge in the engine before Mr. Twyman purchased it?  
19 MR. BRODSKY: Objection. It assumes a fact.  
20 Your question assumes a fact that's not in evidence.  
21 Why don't you rephrase the question?  
22 MR. LUBIN: No.  
23 Q. (By Mr. Lubin) Sir, were you --  
24 A. I don't understand the question.

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1 Q. (By Mr. Lubin) Were you aware that the  
2 service records reflected that there had been  
3 reports of sludge in the engine before Mr. Twyman  
4 purchased it?  
5 MR. BRODSKY: Once again, that assumes a fact.  
6 So it's not -- it may or may not -- which may or may  
7 not be true. So you can ask him if he's aware of  
8 any reports that -- if there were any reports of  
9 sludge. You can't ask him as if it was an actual  
10 fact.  
11 Q. (By Mr. Lubin) Sir, were you aware that  
12 the service records reflected that there were  
13 reports of sludge in the engine before Mr. Twyman  
14 purchased the --  
15 MR. BRODSKY: That assumes a fact.  
16 You can't answer that question.  
17 Q. (By Mr. Lubin) Sir, are you going to  
18 answer the question?  
19 MR. BRODSKY: God damn, unbelievable.  
20 A. No.  
21 MR. LUBIN: And let the record reflect that  
22 Mr. Brodsky swore and said, God damn, unbelievable.  
23 MR. BRODSKY: Under my breath.  
24 MR. LUBIN: Yes, under your breath. Please

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1 don't do that. And please stop instructing the  
2 witness not to answer and please stop --  
3 MR. BRODSKY: Well, then please ask a --  
4 MR. LUBIN: -- making speaking objections.  
5 MR. BRODSKY: -- proper question.  
6 MR. LUBIN: I think that is a proper question.  
7 MR. BRODSKY: And you asked -- it assumes that  
8 the record -- that there's something in the records  
9 that may or may not be there; so...  
10 MR. LUBIN: It's a perfectly proper question  
11 under this record.  
12 MR. BRODSKY: No, it's not.  
13 MR. LUBIN: Okay.  
14 Q. (By Mr. Lubin) Sir, did you look at any  
15 of the service records for this car before  
16 performing your inspection?  
17 A. No.  
18 Q. Sir, why didn't you attach to your report  
19 the photographs of dropping the oil pan?  
20 A. I'll be honest --  
21 MR. BRODSKY: It assumes that there are  
22 photographs of him dropping the oil pan.  
23 MR. LUBIN: He testified that he did take  
24 photographs of that.

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1 Q. (By Mr. Lubin) So why didn't you attach  
2 those to your report?  
3 A. I don't know. I don't know why I  
4 didn't -- I don't know.  
5 Q. Why did you attach the photographs to  
6 your report that were taken by someone else?  
7 A. I don't know. I looked at them. It  
8 might have been a mistake. Who knows?  
9 Q. Okay. If we look at those 49 reports in  
10 Exhibit 2A, sir --  
11 MR. BRODSKY: 49 reports?  
12 Q. (By Mr. Lubin) -- 49 photographs attached  
13 in Exhibit 2A, not 2B. No, not 2B, 2A.  
14 MR. BRODSKY: 2. Okay. And then A.  
15 A. Okay. All right.  
16 Q. (By Mr. Lubin) Do any of these  
17 photographs in 2A support any of the findings in  
18 your report?  
19 A. Yes.  
20 Q. Which ones? Okay, which page -- which  
21 page of the photographs are you in in Exhibit 2A?  
22 There's -- there's -- there's multiple -- which page  
23 number are you on? If you look at the  
24 photographs --

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1 A. One, two -- what are there? Three pages  
2 or four pages?  
3 Q. You're in the fourth page, you're saying,  
4 of the photographs?  
5 A. Yes, the fourth page.  
6 Q. Okay. And on the fourth page of the  
7 photographs, which is the one that you're pointing  
8 to?  
9 A. The center, the center picture.  
10 Q. The center -- so it's -- there's three  
11 columns --  
12 A. The first -- yeah, first column --  
13 Q. The first one on the left-hand side of  
14 the second column; correct? Right in the middle?  
15 A. The second one, yeah, toward the spiral.  
16 Q. Yes. Right towards the -- the one right  
17 next to the spiral?  
18 A. Yes.  
19 Q. And can --  
20 MR. LUBIN: I'm going to mark that on the  
21 court reporter's copy as No. 1.  
22 Can you -- can you -- Ms. Court Reporter, can  
23 you -- can I -- can you give me Exhibit 2A for a  
24 second.

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1 THE COURT REPORTER: Okay.  
2 MR. LUBIN: I'm going to show everybody this so  
3 we all know what we're looking at.  
4 Q. (By Mr. Lubin) Is this -- this is the  
5 photograph right here?  
6 MR. BRODSKY: What does "this" mean?  
7 Q. (By Mr. Lubin) I'm pointing -- the one  
8 I'm pointing at, sir. That's the same one you --  
9 MR. BRODSKY: We don't know the one you're  
10 pointing at for the record.  
11 Q. (By Mr. Lubin) That's the same one that  
12 you're looking at; correct, sir?  
13 A. The same one, yes.  
14 Q. On the court reporter's copy, could you  
15 make a No. 1 right here in the white part of the  
16 photograph, sir? Just write a No. 1 here.  
17 A. [Witness complies.]  
18 MR. BRODSKY: Go ahead. And put your initial  
19 by it.  
20 Q. (By Mr. Lubin) Okay. So you relied  
21 on -- on this photograph in -- in preparing your  
22 report; correct?  
23 A. That's one of them, yes.  
24 Q. Okay. Can you tell me what about this

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1 photograph you relied on?  
2 A. I think the -- it's got the original  
3 crush plate on there.  
4 Q. So there's a bumper -- there's a metal  
5 bumper protector -- the metal bumper guard. And  
6 then next -- and in between that and the -- and  
7 the -- and the -- connecting it to the car is  
8 this -- is this bumper guard. Could -- could --  
9 let's --  
10 MR. BRODSKY: Objection. That's not what he  
11 said. He said it's a crush plate.  
12 MR. LUBIN: Oh, the crush plate.  
13 Q. (By Mr. Lubin) But I'm saying this is  
14 the -- and do you mind if I point? So this is the  
15 bumper guard, and this is the crush plate; correct?  
16 A. Yes.  
17 Q. So could you -- could you -- could  
18 you mark on the photograph on the court reporter's  
19 edition -- here, just circle the bumper guard and  
20 write BG -- or just write BG on the bumper guard --  
21 I'm sorry -- the bumper plate. The bumper plate,  
22 BP.  
23 MR. BRODSKY: Is it the bumper plate or  
24 bumper guard?

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1 A. Which one are you talking about?  
2 Q. (By Mr. Lubin) The plate, the plate.  
3 A. The crush, the -- this?  
4 Q. Yeah. Just write BP, bumper plate.  
5 MR. BRODSKY: What is that? Is that a  
6 bumper guard or a bumper -- a crush plate?  
7 THE WITNESS: That's the crush plate.  
8 Q. (By Mr. Lubin) Okay. Then write CP,  
9 crush plate.  
10 MR. BRODSKY: And initial it.  
11 Q. (By Mr. Lubin) And initial it.  
12 And then for the bumper guard, write BG  
13 and initial that.  
14 A. [Witness complies.]  
15 Q. Okay. And you're saying that you relied  
16 on this photograph because it's the original  
17 crush plate; correct?  
18 A. Yes.  
19 Q. Now, did you take off the bumper guard to  
20 look at the crush plate?  
21 A. On this one?  
22 Q. Yes. In doing your inspection, did  
23 you -- did you remove the bumper guard to look at  
24 the crush plate?

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1 A. Yes.

2 Q. And do you have any photographs of the

3 bumper guard removed?

4 A. I'd have to look at it. No.

5 Q. So you looked at the photographs --

6 MR. BRODSKY: Look at all of them before you

7 say no.

8 THE WITNESS: Oh.

9 Q. (By Mr. Lubin) So you looked at the

10 photographs in both 1A and 1B, and none of them show

11 a removed bumper guard; correct?

12 A. No, that's not correct. The first

13 pictures show a bumper removed.

14 Q. No, no. No, the bumper guard I'm talking

15 about, the metal, the piece of metal that's attached

16 to the crush plate, did you remove that in

17 conjunction with your inspection? The metal

18 bumper guard?

19 A. Oh, no.

20 Q. Now, you removed the bumper cover;

21 correct?

22 A. Yes.

23 Q. Okay. So you didn't look at the

24 crush plate after removing the metal bumper guard;

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1 correct? 'Cause you didn't do that?

2 A. No.

3 Q. No, you didn't look at that?

4 A. I'm sorry?

5 Q. It's correct you did not look at the

6 crush plate in conjunction with removing the

7 bumper guard; correct?

8 A. Yeah, I -- it's -- it's there. I don't

9 need to remove the bumper guard to look at the

10 crush plate.

11 Q. You can't look at the surface of the --

12 of -- of the crush plate where -- where -- where the

13 bumper guard connects to it without -- without

14 removing the bumper guard; correct?

15 A. No. You could look at it. If you lift

16 up the vehicle, you can see the crush plate from

17 underneath the car.

18 Q. Can you see the part of the crush plate

19 that -- that -- that is bolt -- where -- where the

20 bumper guard's bolted onto it?

21 A. You see it from underneath the vehicle.

22 You could.

23 Q. My understanding is the bumper guard is

24 flush to the surface of the crush plate. If you

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1 look at Exhibit 1, sir --

2 MR. BRODSKY: Argumentative.

3 Q. (By Mr. Lubin) If you look at the

4 photograph on -- on -- on 1. The one you marked 1

5 in Exhibit 2A, the photograph that you marked 1 in

6 the --

7 A. Okay.

8 Q. Okay. Now, do you mind if I point? You

9 see how the bumper guard covers up the surface of

10 the crush plate?

11 A. Okay.

12 Q. So you can't look at the surface of the

13 crush plate where the bumper guard attaches to that

14 without removing the bumper guard; correct?

15 A. Yes.

16 MR. BRODSKY: Objection. Asked and answered.

17 Wait a second. We've got a picture of that.

18 (WHEREUPON, discussion was had off

19 the record.)

20 MR. LUBIN: I don't want you to be showing the

21 witness --

22 MR. BRODSKY: Because you're telling him

23 something that --

24 MR. LUBIN: I'm not tell -- I'm not telling him

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1 anything. I'm showing him one picture and asking

2 him a question.

3 MR. BRODSKY: No. You were --

4 MR. LUBIN: Okay. You and your client are not

5 supposed to be showing the witness photographs of --

6 MR. BRODSKY: Well, then don't -- you are

7 misrepresenting something.

8 MR. LUBIN: No. There --

9 MR. BRODSKY: You asked him if there was a

10 picture, and there is.

11 MR. LUBIN: No, I didn't ask him that --

12 MR. BRODSKY: Yes, you did.

13 MR. LUBIN: -- and now you guys are coaching

14 him, you and Mohammed.

15 MR. BRODSKY: No. I'm showing him a picture

16 where you can see from underneath the surface of the

17 crush plate.

18 THE WITNESS: I told him that.

19 Q. (By Mr. Lubin) Okay. No, that's what he

20 already told me.

21 MR. BRODSKY: Okay.

22 Q. (By Mr. Lubin) Sir, you see here where

23 the bumper guard touches the crush plate right here?

24 Crash plate [verbatim]?

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1 A. Yes.

2 Q. Okay. Can you see that surface without

3 removing the bumper guard?

4 MR. BRODSKY: Asked and answered. He said yes,

5 from underneath. It's asked and answered.

6 You don't have to answer it three times.

7 A. You can see it from underneath.

8 Q. (By Mr. Lubin) So you're saying the

9 bumper guard doesn't -- doesn't -- doesn't -- it

10 doesn't completely seal to the -- to the bumper

11 crash plate?

12 MR. BRODSKY: Asked and answered. He already

13 said --

14 MR. LUBIN: That's what I'm trying to --

15 MR. BRODSKY: -- he could see it from

16 underneath.

17 A. Yeah, you can see it from underneath.

18 You know, I don't understand what you're getting --

19 Q. (By Mr. Lubin) What I'm saying is, is

20 the -- is it -- does it seal like this, like my two

21 hands are holding together so that you can't -- that

22 you can't see the surface of the -- of the

23 crash plate?

24 A. The bumper is not on there now. I

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1 don't -- I don't have the car in front of me. I

2 can't tell you that. I can't answer that.

3 Q. You don't know?

4 MR. BRODSKY: Well, wait a second.

5 A. No, I can't answer.

6 MR. BRODSKY: You said you can see the surface

7 of that from underneath the car?

8 THE WITNESS: Yes.

9 MR. BRODSKY: Okay. That's it. We're done.

10 Move on.

11 MR. LUBIN: Now you're asking questions that --

12 MR. BRODSKY: Because you're twisting what he's

13 saying.

14 MR. LUBIN: No, I'm not. I'm not twisting

15 anything.

16 MR. BRODSKY: When you get an answer you don't

17 like, you don't get to put words in his mouth.

18 MR. LUBIN: I'm not trying to put words in --

19 MR. BRODSKY: He said he saw it from -- you can

20 see it from underneath. Why don't you ask him if

21 there's a picture that shows how you can see it from

22 underneath and he'll show you the picture.

23 MR. LUBIN: Well, that's a picture you and

24 Mohammed just --

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1 MR. BRODSKY: Yeah. And it's a picture that's

2 in here too.

3 MR. LUBIN: Please stop arguing with me.

4 MR. BRODSKY: So why don't you just do it the

5 right way --

6 MR. LUBIN: He said --

7 MR. BRODSKY: -- instead of trying to twist and

8 lie like you have through this entire case?

9 MR. LUBIN: Please don't say that I've

10 twisted --

11 MR. BRODSKY: Well, it's the truth. So if you

12 can't handle the truth --

13 MR. LUBIN: You're saying I'm twisting and

14 lying?

15 MR. BRODSKY: Yes. Through this entire case,

16 you have been.

17 MR. LUBIN: Okay. Let the record reflect that

18 you're insulting me now.

19 MR. BRODSKY: The truth is not an insult, it's

20 the truth.

21 MR. LUBIN: That you're calling me a liar?

22 MR. BRODSKY: Yes.

23 Q. (By Mr. Lubin) All right. Now, sir, do

24 you see -- is the -- is the -- is the -- is -- what

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1 is this thing called again, because now I'm losing

2 my train of thought? What's that thing called?

3 A. It's the bumper guard.

4 Q. Okay. Is the bumper guard bolted onto

5 the surface of the crash plate?

6 (Court reporter clarification.)

7 Q. (By Mr. Lubin) The bumper guard and the

8 crash plate, are they bolted together?

9 A. It's bolted on, yes.

10 Q. Okay. And are they bolted on at the top

11 and the bottom of the crash plate? Yes?

12 A. If I remember right.

13 Q. Okay. So at the place where they're

14 bolted together, can you see the surface of the

15 crash plate --

16 MR. BRODSKY: Objection. He --

17 Q. (By Mr. Lubin) -- itself? Or is it

18 covered by the bumper guard?

19 THE COURT REPORTER: Can you repeat that?

20 MR. BRODSKY: Asked and answered. He already

21 said you can see it from underneath. I don't know

22 how many times --

23 MR. LUBIN: I don't think that's -- I don't

24 think that's physically possible.

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1 MR. BRODSKY: Well, then, that's your opinion.  
 2 You don't --  
 3 MR. LUBIN: It's not an opinion. I'm trying to  
 4 ask him a question without you --  
 5 MR. BRODSKY: No, it's not. He already said  
 6 you can see it from underneath. That's it.  
 7 Q. (By Mr. Lubin) Can you --  
 8 MR. BRODSKY: So I don't know what you --  
 9 Q. (By Mr. Lubin) Okay. So can you explain  
 10 to me if it's bolted onto the surface of the  
 11 crash plate, how you can see the surface of the  
 12 crash plate either on top or from the bottom?  
 13 A. With a mirror.  
 14 Q. What?  
 15 A. With a mirror.  
 16 Q. Well, isn't the bumper guard covering up  
 17 the surface of the crash plate where they're bolted  
 18 together?  
 19 A. No, you can still see it. If you get a  
 20 mirror in there good enough, you'll see it.  
 21 MR. BRODSKY: I don't give a flying fuck.  
 22 A. Flex mirrors.  
 23 MR. LUBIN: Okay. Now let the record reflect  
 24 that Mr. Brodsky said under his breath, I don't give

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1 a flying fuck.  
 2 MR. BRODSKY: No. I -- and it wasn't referring  
 3 to you. And I was talking to my client, and that  
 4 was not correct.  
 5 MR. LUBIN: You shouldn't be having an ongoing  
 6 discussion with your client, with your client giving  
 7 his --  
 8 MR. BRODSKY: I can do what I want at a dep.  
 9 You can't tell me what I can do --  
 10 MR. LUBIN: No, your client is not --  
 11 MR. BRODSKY: -- at a deposition.  
 12 MR. LUBIN: -- can be a passive participant,  
 13 but depositions are --  
 14 MR. BRODSKY: No. I can talk to my client  
 15 during the deposition. Okay? If you don't like it,  
 16 that's too bad.  
 17 MR. LUBIN: Okay.  
 18 Q. (By Mr. Lubin) Sir, could you show me  
 19 the photograph that Mohammed showed to you in -- in  
 20 Exhibit 2B, please? And show me where that shows  
 21 the crash plate, that you can see the crash plate's  
 22 surface where it's bolted to the bumper guard?  
 23 MR. BRODSKY: Oy gevalt.  
 24 MR. LUBIN: Let the record reflect now that

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1 Mr. Brodsky said, oy gevalt.  
 2 MR. BRODSKY: Yeah. If you want -- okay?  
 3 Q. (By Mr. Lubin) Could you look at  
 4 Exhibit 2B, please.  
 5 A. Right here?  
 6 Q. Yes.  
 7 A. And what do you want me to show you?  
 8 Q. What I'd like to -- what I'd like to --  
 9 to show me is the photograph where you say you can  
 10 see the surface of the crash plate in Exhibit 2B,  
 11 the one that Mohammed and Mr. Brodsky were saying  
 12 proves that I am -- I'm twisting and lying about  
 13 things.  
 14 A. Hold on. I'll find it.  
 15 MR. BRODSKY: I think this is the one you want  
 16 to look at.  
 17 MR. LUBIN: Let the record reflect that  
 18 Mr. Brodsky said, this is the one you want to look  
 19 at, and then took out a photograph and pointed to  
 20 it.  
 21 Q. (By Mr. Lubin) Can you show me which one  
 22 now, sir?  
 23 A. This. That's the factory crush plate  
 24 right there.

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1 Q. Okay. So which -- can you tell me  
 2 what -- in Exhibit 2B, how many photographs in from  
 3 the front is that?  
 4 A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13  
 5 pictures.  
 6 MR. BRODSKY: Oh, over here.  
 7 THE WITNESS: That's the crush plate right  
 8 there.  
 9 A. You can see it from the bottom. You can  
 10 take a mirror, and you can see it from the top.  
 11 MR. BRODSKY: So you've got the whole --  
 12 Q. (By Mr. Lubin) Is this -- which is  
 13 the -- is this the -- can you just open it and show  
 14 me which picture you're looking at?  
 15 MR. BRODSKY: It's 13.  
 16 MR. LUBIN: I know, but I can't -- they're  
 17 not numbered.  
 18 MR. M. IHMOUD: That's not the one.  
 19 Q. (By Mr. Lubin) this isn't the one.  
 20 Which -- is it -- which --  
 21 MR. LUBIN: I'll count.  
 22 MR. BRODSKY: 13.  
 23 A. Picture 13.  
 24 Q. (By Mr. Lubin) 1, 2, 3, 4, 5, 6, 7, 8,

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1 9, 10, 11, 12 --

2 A. I think maybe the last picture, right

3 here. Oh, that's not it.

4 Let's go. You may be mixing yours up.

5 Hold on. Oh, there it is.

6 Q. Okay. Can I just make sure that we have

7 the same -- is yours --

8 A. Here. Oh, yeah.

9 Q. So it's not 13. Let's just count in to

10 make sure which number it is now.

11 A. Sorry.

12 Q. It's the second-to-last picture in the

13 book?

14 A. Yes. Yes, second to the last, yes.

15 Q. So I think if there's 15 pictures, it's

16 14. But let me -- let me just count to make sure.

17 A. All right.

18 Q. Yeah, that would be --

19 So I think there's 15 pictures total, so

20 let me just make sure.

21 A. You know what? I counted 13. That was

22 the 14th picture.

23 Q. That was the 14th picture?

24 A. I think that was it. 1, 2, 3, 4, 5, 6,

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1 7, 8, 9 -- 11, 12, 13. Yeah, I counted 13.

2 Q. Now, where -- where is the crash plate

3 on -- on -- the --

4 MR. BRODSKY: Crush plate. It's not a crash

5 plate.

6 Q. (By Mr. Lubin) -- Photo 14?

7 MR. BRODSKY: It's a crush plate.

8 MR. LUBIN: I'm sorry.

9 Q. (By Mr. Lubin) On the crush plate?

10 A. Right there.

11 Q. And show me where you can see the surface

12 of it where it -- where it marries to the -- where

13 it's bolted to the -- where it's bolted to the --

14 the bumper guard.

15 A. I mean, I -- you can't see it from here.

16 But when I had it up in the air, you could see it.

17 I mean, I'd have to have the car in front of me to

18 show you exactly where it's --

19 Q. Well, I understand you can see --

20 A. But my thing was to show you that it

21 wasn't crushed, it wasn't damaged at all.

22 Q. Okay. I understand that. But I'm saying

23 you can't see the surface of it where it marries the

24 bumper guard; correct? 'Cause that's where they're

Page 79

1 bolted together? And you --

2 A. When you say --

3 Q. -- can't see that part?

4 A. -- surface, you mean between them?

5 Q. Yeah, the place where -- where the --

6 A. Where they're --

7 Q. -- bumper guard -- yeah, where they mount

8 together?

9 A. No one can see it. They're mounted

10 together.

11 Q. Right. So the only way you could see

12 that would be by taking the bumper guard off;

13 correct?

14 A. You'd have to take the bumper guard off

15 to see -- I mean, there's no reason -- I mean, I

16 don't know what the reason is to take it apart to

17 see the surface of it.

18 Q. But you don't know if the surface is bent

19 or not; correct?

20 A. Well, you could tell it's not bent.

21 Q. Well, that steel, if it got -- a new

22 bumper guard got put on there; correct?

23 A. Yes.

24 Q. 'Cause the bumper guard was replaced

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1 after the accident?

2 A. Yeah.

3 Q. And that -- your inspection showed that;

4 correct?

5 A. Yes.

6 Q. And you don't know when it was rebolted

7 on, if that -- if the steel -- they remeld it

8 together and bent a little bit; correct?

9 A. I don't know. But it would have --

10 This -- you see the grooves inside the

11 crush bar? Those are the weakest points. Those

12 would have been collapsed before anything else got

13 bent.

14 Q. So you're saying -- you're saying that

15 the crush plate wasn't -- wasn't bent?

16 A. No.

17 Q. And you don't know where -- where the

18 impact was of the accident because you didn't see

19 photographs of the accident; correct?

20 A. No, I didn't see photographs.

21 Q. Do you know whether the car was hit in

22 the front and the back in the accident?

23 A. No.

24 Q. So did you inspect the back of the car



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1 for accident damage?  
 2 A. Yes.  
 3 Q. Okay. And did you -- did you have a  
 4 chance to look at the Manheim report regarding  
 5 the -- the body condition of the car at the time  
 6 that S&M purchased it, the Manheim --  
 7 A. No.  
 8 Q. And so you're not giving an opinion on  
 9 whether the Manheim report is accurate or inaccurate  
 10 because you've never seen it; correct?  
 11 A. I -- what -- what do you mean -- I don't  
 12 understand --  
 13 Q. You're not giving an opinion that the  
 14 Manheim report is inaccurate because you've never  
 15 seen it; correct?  
 16 A. You're asking me if I'm going off of  
 17 their --  
 18 Q. No, are you giving an opinion that the  
 19 Manheim report is inaccurate?  
 20 MR. BRODSKY: He's giving an opinion that --  
 21 MR. LUBIN: No, no, you're not going to --  
 22 MR. BRODSKY: That's a misleading question  
 23 you --  
 24 THE COURT REPORTER: I'm sorry. I'm done.

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1 MR. BRODSKY: That is a misleading question.  
 2 THE COURT REPORTER: I can't take you all at  
 3 the same time.  
 4 MR. BRODSKY: That is a misleading question.  
 5 Q. (By Mr. Lubin) No, sir, are you  
 6 giving an --  
 7 MR. BRODSKY: You're putting words in his  
 8 mouth.  
 9 Q. (By Mr. Lubin) Sir, have you looked at  
 10 the Manheim report?  
 11 A. I don't remember. I got to -- I got to  
 12 look -- I don't -- I got to --  
 13 Q. Okay. But do you remember if you're  
 14 giving an opinion about the Manheim report?  
 15 A. No.  
 16 MR. BRODSKY: It's not in his written opinion.  
 17 A. I -- I don't need to go off the report.  
 18 Q. (By Mr. Lubin) Okay. But you're not  
 19 giving a report one way or the other about the  
 20 Manheim report because it's not in your report;  
 21 correct?  
 22 A. I'm going off of what I see.  
 23 Q. Okay. And you're not giving an -- you  
 24 didn't look at the Manheim report to see whether you

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1 agree or disagree with it; correct?  
 2 A. Yeah. Not that I remember, no.  
 3 Q. Well, let's look at the Manheim report  
 4 and see if you've ever seen it. That's exhibit --  
 5 MR. LUBIN: What, Jim, was it?  
 6 MR. DITOMMASO: 8.  
 7 (WHEREUPON, a certain document was  
 8 marked Exhibit 8, for  
 9 identification, as of  
 10 March 29, 2017.)  
 11 MR. LUBIN: Do you have copies for Mr. Brodsky?  
 12 MR. DITOMMASO: I already gave it to him. We  
 13 already gave him Exhibit 8.  
 14 MR. LUBIN: Why did you do that?  
 15 MR. DITOMMASO: We gave him Exhibit 8 already.  
 16 MR. LUBIN: That was the Manheim report. We  
 17 didn't give him Exhibit 8.  
 18 MR. DITOMMASO: The Manheim, I thought I did.  
 19 MR. LUBIN: Yeah, I know.  
 20 MR. DITOMMASO: Oh, no. I'm sorry. That was  
 21 Exhibit 9.  
 22 That's Exhibit 8.  
 23 MR. LUBIN: There you go.  
 24 Q. (By Mr. Lubin) Sir, have you ever seen

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1 that Manheim report before, 8A or 8B?  
 2 A. No, not that I remember.  
 3 Q. You're looking at 8A. Have you ever seen  
 4 8B? Have you ever seen that document before, 8B?  
 5 A. I don't remember.  
 6 Q. Well, let's look at your report, sir.  
 7 Does your -- does your report -- does your report --  
 8 does your report mention the Manheim report?  
 9 Look -- look at Exhibit 2A, sir.  
 10 A. 2A. This is 2A?  
 11 Q. Yes.  
 12 A. Oh, okay.  
 13 Q. You can close up Exhibit 8.  
 14 A. Oh.  
 15 Q. I'm not gonna -- I'm going to take  
 16 Exhibit 8 back 'cause I'm not questioning on that  
 17 one.  
 18 A. Okay. All right.  
 19 Q. All right. Your -- your report doesn't  
 20 mention anything about the Manheim condition report;  
 21 correct, sir?  
 22 A. Correct. Right, you got it. It doesn't  
 23 say it.  
 24 Q. All right. And if you look at Exhibit 1,

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1 sir, please, the rider to your subpoena. Look at  
 2 Exhibit 1. It's in the beginning here, if you just  
 3 turn -- I'm sorry. And then look at the rider.  
 4 No. You have to look in -- on three  
 5 pages in to the rider.  
 6 A. This?  
 7 Q. No. One more page, the rider. Okay.  
 8 Do you see it asks you to bring to the  
 9 deposition all documents and information you  
 10 reviewed or relied upon in forming your opinions or  
 11 conclusion in this case? Do you see that, sir?  
 12 A. I can't.  
 13 Q. Do you see that? The second bullet  
 14 point: All documents and information you reviewed  
 15 and relied upon in forming opinions or conclusions  
 16 in this case. Do you see that, sir?  
 17 A. Yeah, I see it.  
 18 Q. And you didn't bring any documents here  
 19 today; correct?  
 20 A. No.  
 21 Q. And you didn't look at any documents in  
 22 forming your opinions in your report; correct?  
 23 A. No.  
 24 MR. BRODSKY: That's the third time --

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1 Q. (By Mr. Lubin) That's correct?  
 2 A. Correct.  
 3 Q. Okay.  
 4 MR. BRODSKY: That's the third time he's  
 5 testified to that.  
 6 Q. (By Mr. Lubin) So does that refresh your  
 7 recollection that you didn't look at the Manheim  
 8 condition report in conjunction with preparing your  
 9 report?  
 10 A. Correct.  
 11 Q. And you never saw the Manheim condition  
 12 report until you looked at it at your deposition  
 13 today; correct?  
 14 A. Correct.  
 15 Q. And if you haven't looked at it and you  
 16 don't know what's in there, you can't give an  
 17 opinion whether it's true or false; correct?  
 18 MR. BRODSKY: Objection. That's -- objection.  
 19 That's improper. He can give an opinion if he --  
 20 after he looks at it, if whether or not it's true or  
 21 false.  
 22 Q. (By Mr. Lubin) Sir, are you giving an  
 23 opinion as to whether that's true or false?  
 24 MR. BRODSKY: No, that's -- objection. He

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1 hasn't looked at it, so he can't give an opinion.  
 2 MR. LUBIN: Okay.  
 3 MR. BRODSKY: That's a misleading question.  
 4 Don't answer it.  
 5 MR. LUBIN: Okay.  
 6 Q. (By Mr. Lubin) Will you answer the  
 7 question, sir?  
 8 MR. BRODSKY: No, he's not answering the  
 9 question. It's a misleading question.  
 10 Q. (By Mr. Lubin) Sir --  
 11 MR. BRODSKY: The type of baloney that you've  
 12 engaged in through this entire case. He said he  
 13 never looked at it, so how can he give an opinion  
 14 about it. So he's not going to say he can't give an  
 15 opinion about it so you can misquote it in your  
 16 response to the Summary Judgment Motion. That's not  
 17 what he's saying.  
 18 Q. (By Mr. Lubin) Sir, do you know whether  
 19 the Manheim report is true or false?  
 20 MR. BRODSKY: Objection. He can't -- he never  
 21 looked at it, so how can he know? He already said  
 22 he never looked at it.  
 23 Q. (By Mr. Lubin) Will you answer the  
 24 question, please, sir?

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1 MR. BRODSKY: No, don't answer the misleading  
 2 question.  
 3 Q. (By Mr. Lubin) Will you answer the  
 4 question, sir?  
 5 MR. BRODSKY: No, he's not answering --  
 6 A. I won't answer the question.  
 7 MR. BRODSKY: It's a misleading question.  
 8 We're not going to --  
 9 Q. (By Mr. Lubin) So you're going to follow  
 10 Mr. Brodsky's advice and not answer that question,  
 11 sir?  
 12 A. I'm not.  
 13 Q. Is that correct?  
 14 A. No, I'm just not answering your question.  
 15 MR. BRODSKY: Go ahead. It's a misleading  
 16 question. You don't get to -- he said he never  
 17 looked at it.  
 18 Q. (By Mr. Lubin) So you haven't given any  
 19 opinion about the Manheim condition report; correct,  
 20 sir?  
 21 MR. BRODSKY: Objection. He said he's never  
 22 seen it. You're not going to get to take this out  
 23 of context. You can quote it out of context in your  
 24 response to the Summary Judgment like you did with

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1 Mr. Moorehead's [verbatim] report. It doesn't work  
2 that way. He said he's never seen it.  
3 MR. LUBIN: Well, this witness is going to have  
4 to come back for --  
5 MR. BRODSKY: Well, you -- that's what you  
6 think, but --  
7 MR. LUBIN: Yes, I do think that because you're  
8 not --  
9 MR. BRODSKY: Okay. Well, I don't --  
10 MR. LUBIN: -- supposed to instruct him not to  
11 answer the question.  
12 MR. BRODSKY: I'm telling you, you don't get to  
13 ask misleading questions. He said he's never seen  
14 the report.  
15 MR. LUBIN: And what we're going to also do is  
16 before the next deposition of the next witness,  
17 we're going to go into court for a protective order.  
18 MR. BRODSKY: Well, and I'm going to go in --  
19 MR. LUBIN: You --  
20 MR. BRODSKY: -- and ask you for not asking  
21 misleading questions 'cause you can't ask -- he said  
22 he never saw it. So now you can't ask him about  
23 whether --  
24 It's improper to ask him if he can give an

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1 opinion about something he's never saw so you can  
2 quote it in a deposition out of context. It's a  
3 ridiculous question. It's misleading. And it's  
4 just more of the same.  
5 Q. (By Mr. Lubin) Sir, can you give an  
6 opinion about something you've never seen?  
7 MR. BRODSKY: Answer that.  
8 A. No.  
9 Q. (By Mr. Lubin) You can't?  
10 A. No.  
11 Q. So you can't give an opinion right now  
12 about the Manheim report --  
13 MR. BRODSKY: Objection.  
14 Q. (By Mr. Lubin) -- you've never seen --  
15 MR. BRODSKY: You don't get to -- stop. Stop.  
16 Stop.  
17 Q. (By Mr. Lubin) -- before; right?  
18 MR. BRODSKY: If you pull that again, we're  
19 terminating this deposition.  
20 MR. LUBIN: Well, do you --  
21 MR. BRODSKY: Don't pull it again. Don't pull  
22 that again.  
23 MR. LUBIN: I'm not pulling anything.  
24 MR. BRODSKY: You are --

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1 MR. LUBIN: If you want to terminate the --  
2 MR. BRODSKY: You are pulling it again --  
3 MR. LUBIN: -- deposition --  
4 MR. BRODSKY: You are trying to put them out of  
5 context --  
6 MR. LUBIN: You're --  
7 MR. BRODSKY: -- so you can quote it out of  
8 context like you did with Moorehead's deposition.  
9 MR. LUBIN: Moorehouse's deposition. And  
10 you're --  
11 MR. BRODSKY: Right, Moorehouse. And I --  
12 MR. LUBIN: -- and you're raising your voice  
13 and --  
14 MR. BRODSKY: I'm raising -- okay. I'm not  
15 raising my voice.  
16 MR. LUBIN: You were raising your voice.  
17 Luckily, we have a tape recording.  
18 MR. BRODSKY: Good. So go ahead. Ask another  
19 question.  
20 MR. LUBIN: So are you saying even with the  
21 tape recording that you weren't raising your voice,  
22 sir?  
23 MR. BRODSKY: Okay. Yeah, just go ahead.  
24 MR. LUBIN: Were you raising your voice?

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1 MR. BRODSKY: Go ahead.  
2 MR. LUBIN: No, you did --  
3 MR. BRODSKY: I am not answering --  
4 MR. LUBIN: Were you raising your --  
5 MR. BRODSKY: -- your questions.  
6 MR. LUBIN: Okay. Well, then don't -- then  
7 don't say you're not raising your voice because --  
8 MR. BRODSKY: Then don't --  
9 MR. LUBIN: -- you are.  
10 MR. BRODSKY: -- don't mis -- don't worry about  
11 me.  
12 MR. LUBIN: I am worried about --  
13 MR. BRODSKY: Okay? I said I -- I said I  
14 didn't raise my voice, and that's that.  
15 So go ahead, move on to the next question.  
16 Q. (By Mr. Lubin) Sir, when the car was  
17 inspected, did you use any body panel gap measuring  
18 tools --  
19 (Court reporter clarification.)  
20 Q. (By Mr. Lubin) Did you use any body  
21 panel gap measuring tools to measure the gaps  
22 between the body panels?  
23 A. No.  
24 Q. And your report doesn't give any opinion

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1 regarding whether the body panels are properly  
2 aligned; correct?  
3 A. No, it doesn't.  
4 (Court reporter clarification.)  
5 Q. (By Mr. Lubin) Whether the body panels  
6 are correctly aligned; correct? It does not do  
7 that?  
8 A. Correct.  
9 Q. And you didn't compare the body panel  
10 alignment on Mr. Twyman's FX37 with a FX37 that  
11 hadn't been in an accident; correct?  
12 A. Correct.  
13 Q. And -- and you're not an expert on body  
14 panel alignments because you're not a body man;  
15 correct?  
16 A. Correct.  
17 Q. And you're not giving a condition -- any  
18 opinion regarding the fit and finish of the body in  
19 this car; correct?  
20 A. You're asking me if I'm --  
21 Q. Are you giving an opinion? Your report  
22 doesn't mention anything about the fit and finish;  
23 correct? Why don't you look at your report.  
24 A. Did I see it?

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1 Q. Exhibit --  
2 A. A?  
3 Q. -- 2A. 2A, your report. You're --  
4 you're -- you're -- you're looking at the  
5 photographs of 2A.  
6 A. Oh, there it is.  
7 Correct.  
8 Q. And you're not giving an opinion  
9 regarding the condition of the hood; correct?  
10 A. Correct.  
11 Q. And you didn't inspect the repairs on the  
12 hood -- the body work on the hood to see if it had  
13 been properly repaired; correct?  
14 A. I don't understand the question.  
15 Q. Did you look at the repair and --  
16 A. -- properly repaired?  
17 Q. Did you see if the hood had been properly  
18 repaired?  
19 A. In what way?  
20 Q. Well, whether the paint was cracking due  
21 the repairs? Whether -- whether too much bond had  
22 been used? Whether it had been crimped together?  
23 Did you -- did you examine any of that?  
24 A. Examine, no.

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1 Q. And did you take any photographs of the  
2 hood?  
3 A. You know what? No, I don't think I did.  
4 Q. Did you observe whether the paint that  
5 had been redone on the hood was cracking?  
6 A. No.  
7 Q. You didn't see that?  
8 A. No.  
9 Q. That's correct, you didn't see that;  
10 right?  
11 A. Yes. I didn't look for that.  
12 Q. And did you look at the paint to see if  
13 the paint that had been redone was properly redone  
14 on the car?  
15 A. What do you mean, properly redone?  
16 Q. Did you notice whether the car had been  
17 repainted or not?  
18 A. Are you asking me if I --  
19 Q. Yes.  
20 A. -- checked if it's been repainted?  
21 Q. Yes.  
22 A. No, I didn't check.  
23 MR. BRODSKY: Well, that's not what he asked  
24 you. He asked you if you noticed it had been

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1 repainted.  
2 A. Oh, did I notice if --  
3 Q. (By Mr. Lubin) No. Did you check to see  
4 if it had been repainted?  
5 A. What do you mean, checked by? I mean,  
6 how --  
7 Q. Did you see if it had new paint on it  
8 that wasn't factory original?  
9 A. Did I check if there was anything -- I  
10 didn't -- I didn't pay attention for -- to see if it  
11 had been repainted or not.  
12 Q. And you didn't compare the paintwork to a  
13 paintwork on an Infiniti that hadn't been in an  
14 accident; correct?  
15 A. Correct.  
16 Q. And did you test-drive the car?  
17 A. Yes.  
18 Q. Did you -- did you -- did you check the  
19 frame around the door to see if the door was  
20 properly closing?  
21 A. I checked -- yes.  
22 Q. Did you see if the door -- if the paint  
23 was -- was -- if the door was -- was rubbing against  
24 the -- the driver's side door was rubbing against

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1 the -- the -- the frame when it was closing and that  
 2 the paint was rubbing off? Did you notice that?  
 3 MR. BRODSKY: Objection.  
 4 A. I don't --  
 5 MR. BRODSKY: It assumes --  
 6 A. I don't understand where you -- what --  
 7 MR. BRODSKY: It assumes a fact that's not  
 8 in --  
 9 Q. (By Mr. Lubin) Did you --  
 10 MR. BRODSKY: -- evidence.  
 11 Q. (By Mr. Lubin) Did you see any problems  
 12 with the door rubbing paint off as it -- as it  
 13 hit -- yes or no, did you see that or not?  
 14 A. Where?  
 15 Q. When the driver's side door closed, did  
 16 you see that the paint was rubbing off?  
 17 MR. BRODSKY: Objection.  
 18 A. Rubbing where?  
 19 MR. BRODSKY: That assumes a fact --  
 20 Q. (By Mr. Lubin) Rubbing -- coming off of  
 21 the -- coming off where the -- where the -- where  
 22 the door closed. Did you see any -- observe any  
 23 paint missing around where the driver's side door  
 24 was shut?

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1 A. Yeah, I don't understand the question  
 2 because I don't know where you're talking when it  
 3 comes --  
 4 Q. Did you see any -- any -- any --  
 5 any paint that had -- that had come off by the --  
 6 where the door was closing, the driver's side door?  
 7 Yes or no?  
 8 A. I guess, I don't know.  
 9 Q. You don't know?  
 10 A. I don't know. I didn't --  
 11 MR. BRODSKY: Did you understand his question?  
 12 A. I don't understand the question, and I  
 13 don't know.  
 14 Q. (By Mr. Lubin) Do you understand  
 15 sometimes if the fit of the door isn't right --  
 16 MR. BRODSKY: Did you ask --  
 17 Q. -- it can rub against --  
 18 MR. BRODSKY: -- did he ask you if you  
 19 inspected the --  
 20 MR. LUBIN: I'm asking if he saw -- if he saw  
 21 paint missing where the door closes and -- and  
 22 marries into the -- into the frame of the car.  
 23 Q. (By Mr. Lubin) Yes or no?  
 24 MR. BRODSKY: Did he look at that? Are you

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1 asking if he looked at that?  
 2 Q. (By Mr. Lubin) Did you look at that?  
 3 A. Oh, I don't know. I don't remember if I  
 4 looked at it. I'm pretty sure I did.  
 5 Q. Okay. Would you have photographs of  
 6 that?  
 7 A. I don't know. I'd have to look,  
 8 you know.  
 9 Q. Sir, did you -- did you determine whether  
 10 or not the windshield was a new win -- a factory  
 11 original windshield or it had been replaced?  
 12 A. I didn't. No, I did not determine that.  
 13 I didn't look at that.  
 14 Q. Did you know that the -- that the  
 15 windshield had been cracked --  
 16 MR. BRODSKY: Objection.  
 17 Q. (By Mr. Lubin) -- where the --  
 18 MR. BRODSKY: That assumes a fact -- that  
 19 assumes a fact not in evidence, so it is --  
 20 Q. (By Mr. Lubin) Will you answer the  
 21 question?  
 22 MR. BRODSKY: All he said, he -- you asked that  
 23 he didn't look at the windshield.  
 24 A. Yeah, that's it.

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1 MR. BRODSKY: Okay. So that's it.  
 2 Q. (By Mr. Lubin) Okay. And, sir, did you  
 3 know that the windshield had been cracked prior --  
 4 MR. BRODSKY: No. That's assuming a fact --  
 5 Q. (By Mr. Lubin) -- Mr. Twyman --  
 6 MR. BRODSKY: -- not in evidence.  
 7 THE COURT REPORTER: Prior -- I'm sorry, I  
 8 didn't hear that question.  
 9 Q. (By Mr. Lubin) Sir, did you know that  
 10 the windshield had been cracked prior to Mr. Twyman  
 11 purchasing it?  
 12 MR. BRODSKY: All right. No, don't answer  
 13 that.  
 14 That assumes a fact not in evidence. He said  
 15 he didn't look at the windshield. That's it. We're  
 16 done.  
 17 Q. (By Mr. Lubin) Will you answer that  
 18 question, sir?  
 19 MR. BRODSKY: No. Don't answer that misleading  
 20 question.  
 21 A. I'm not going to answer it, again.  
 22 MR. BRODSKY: It's misleading.  
 23 MR. LUBIN: Joel, if you instruct him not to  
 24 answer, the only thing --

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1 MR. BRODSKY: It's a misleading question.  
 2 MR. LUBIN: Okay. I'm not arguing with you.  
 3 MR. BRODSKY: He said he didn't look at the  
 4 window.  
 5 MR. LUBIN: Look, I don't want to argue with --  
 6 MR. BRODSKY: So you don't get to --  
 7 MR. LUBIN: -- you.  
 8 MR. BRODSKY: -- put in that it was cracked.  
 9 MR. LUBIN: Joel, I'm not arguing with you.  
 10 You've instructed him not to answer. It's improper.  
 11 All I'm --  
 12 MR. BRODSKY: It's improper --  
 13 MR. LUBIN: All I'm --  
 14 MR. BRODSKY: You're asking improper questions.  
 15 MR. LUBIN: Look, I don't want to argue with  
 16 you. All I --  
 17 MR. BRODSKY: Then don't -- ask --  
 18 MR. LUBIN: -- need to --  
 19 MR. BRODSKY: -- proper questions.  
 20 MR. LUBIN: All I need to do is get the witness  
 21 to say he's following your direction and he's not  
 22 answering the question.  
 23 MR. BRODSKY: Just don't --  
 24 MR. LUBIN: I'm required to do that.

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1 MR. BRODSKY: -- ask -- no, you're not.  
 2 MR. LUBIN: Yes, I am.  
 3 MR. BRODSKY: Ask him proper questions.  
 4 MR. LUBIN: I am required to get the witness to  
 5 say when you instruct him not to answer --  
 6 MR. BRODSKY: He did. He said he --  
 7 MR. LUBIN: -- that he won't answer the  
 8 question.  
 9 MR. BRODSKY: -- he's not answering the  
 10 question.  
 11 MR. LUBIN: Okay. But you're interrupting when  
 12 I'm just trying to get him to say he's following  
 13 your directions after you've told him not to answer.  
 14 MR. BRODSKY: He's not going to answer it.  
 15 It's a misleading questions.  
 16 MR. LUBIN: Okay. You shouldn't be instructing  
 17 him not to answer. We're going to be going to the  
 18 judge about that.  
 19 MR. BRODSKY: Good. And don't ask a misleading  
 20 question. The guy says he didn't see and look at  
 21 the window. Now you're asking --  
 22 MR. LUBIN: That wasn't my question.  
 23 MR. BRODSKY: Then your question was, you  
 24 don't -- did you know that it was --

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1 MR. LUBIN: Right.  
 2 MR. BRODSKY: -- you didn't see that it was  
 3 cracked? He doesn't know. He hasn't looked at any  
 4 records.  
 5 MR. LUBIN: Okay. And all --  
 6 MR. BRODSKY: He didn't look at anything. He  
 7 doesn't know. It's an improper way of inserting  
 8 baloney into the record for a deposition. Ask him  
 9 questions he knows.  
 10 MR. LUBIN: I think it's perfectly proper.  
 11 MR. BRODSKY: No, it's not. Maybe the way you  
 12 practice it is, but it's not --  
 13 Q. (By Mr. Lubin) Sir --  
 14 MR. BRODSKY: -- proper.  
 15 Q. (By Mr. Lubin) -- sir, did -- did you --  
 16 did you look at the -- at the -- at the -- list of  
 17 repairs that had been done to the car after the  
 18 accident?  
 19 MR. BRODSKY: He already said he didn't look at  
 20 any documents.  
 21 Q. (By Mr. Lubin) Did you look at --  
 22 MR. BRODSKY: How many times has he got to  
 23 say --  
 24 Q. (By Mr. Lubin) -- the list, sir? Do you

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1 know any of the repairs that were done to the car  
 2 after the accident, sir?  
 3 A. No.  
 4 Q. So did you check to see if any of those  
 5 repairs were done properly or had been done at all  
 6 when you inspected the car?  
 7 MR. BRODSKY: He said he didn't look at the  
 8 list. How many times does he got to say that?  
 9 A. No.  
 10 MR. BRODSKY: Quit...  
 11 Q. (By Mr. Lubin) Okay. So --  
 12 MR. BRODSKY: When I -- go on.  
 13 Just wait until I'm done with --  
 14 Q. (By Mr. Lubin) Were you -- were you  
 15 aware that Progressive had done -- had -- had  
 16 prepared an open-ended repair estimate for the car  
 17 after the accident?  
 18 MR. BRODSKY: Okay. He said he -- objection.  
 19 He said he didn't look at any documents at least  
 20 five times now. And now you're asking him about  
 21 documents when -- you insert stuff into the record  
 22 that doesn't belong there. He didn't. This is  
 23 about his deposition and what he saw. Ask proper  
 24 questions.

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1 Don't answer it. It's baloney.  
 2 Q. (By Mr. Lubin) Does -- sir, does -- in  
 3 your experience as a mechanic, does a steering  
 4 column usually fail after 17,000 miles?  
 5 A. After 17,000 miles?  
 6 Q. Yeah.  
 7 A. No.  
 8 Q. That's unusual?  
 9 A. It is in my experience, but anything can  
 10 happen. Anything can fail. You know, I -- I've  
 11 seen cars...  
 12 Q. Okay. Do the wheel bearings generally  
 13 fail after 17,000 miles -- a car that's been driven  
 14 17,000 miles?  
 15 A. It's possible.  
 16 Q. But is that something that you've seen  
 17 happen very often?  
 18 A. I mean, I've worked, you know, on  
 19 multiple different lines. So I mean, it's possible.  
 20 Q. I understand it's possible, but have you  
 21 seen wheel bearings fail after 17,000 miles, a car  
 22 that's been properly driven and hasn't been in an  
 23 accident?  
 24 MR. BRODSKY: Objection. It affirm -- assumes

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1 facts not in evidence. So your question was had he  
 2 ever seen it?  
 3 MR. LUBIN: No.  
 4 Q. (By Mr. Lubin) Is it -- is it -- is that  
 5 something that's typical, a car with 17,000 miles to  
 6 have to have the wheel bearings replaced?  
 7 MR. BRODSKY: You asked if he's -- now, first,  
 8 you asked if he's ever seen it. Now you're asking  
 9 is it typical. Which is your question?  
 10 Q. (By Mr. Lubin) The question is: Is it  
 11 typical, sir, the one I just asked you?  
 12 A. Is it possible?  
 13 Q. No. That's not -- you keep saying is it  
 14 possible. I said, is that --  
 15 A. That's what you're saying.  
 16 Q. No, I said, is that typical -- a car with  
 17 17,000 miles, is that usual and typical for the  
 18 wheel bearings to fail after 17,000 miles?  
 19 A. Typical, possible. It's possible.  
 20 Q. I mean, but I -- is that something you  
 21 often see with cars at 17,000 miles, the wheel  
 22 bearings failing?  
 23 A. If it's 17,000 miles, it's going to be  
 24 under factory warranty.

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1 Q. I under -- but I'm asking you: Is that  
 2 something you generally see?  
 3 A. If it's --  
 4 MR. BRODSKY: Now it's generally see. Is it --  
 5 A. If it's 17,000 miles, I don't work on  
 6 cars -- they're going to be under factory warranty,  
 7 so I couldn't tell you.  
 8 Q. (By Mr. Lubin) So you don't know one way  
 9 or another whether the wheel bearings on an FX37  
 10 generally fail at 17,000 miles 'cause you don't work  
 11 on cars that are under warranty usually; correct?  
 12 A. Yeah. But -- I mean, yes. Under  
 13 warranty, I don't work on cars under warranty.  
 14 Q. And you don't know whether on an FX37 the  
 15 steering column generally fails at 17,000 miles  
 16 because you don't work on -- you don't gen -- you  
 17 don't work on FX37s that have 17,000 miles because  
 18 those are still under warranty; correct?  
 19 A. Possible.  
 20 Q. But you -- have you ever worked on an  
 21 FX37 with 17,000 miles?  
 22 A. I'd have to look at my records. No, I  
 23 don't know.  
 24 Q. But you don't recall ever doing that?

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1 A. I don't know. I'd have to look.  
 2 Q. You generally don't work on cars that are  
 3 still under factory warranty because those generally  
 4 go to the dealer; correct?  
 5 A. That would have to be done under factory  
 6 warranty, yes.  
 7 Q. At the dealer?  
 8 A. At the dealer.  
 9 Q. And you don't do Infiniti factory  
 10 warranty work; correct?  
 11 A. No. No one does but the dealer. Any  
 12 kind of automobile line --  
 13 Q. So that's correct, you don't do Infiniti  
 14 factory warranty work?  
 15 A. Yes.  
 16 Q. And you don't do work on FX37s that have  
 17 17,000 miles that are under factory warranty;  
 18 correct?  
 19 A. Is it under factory warranty?  
 20 Q. Yes, yes.  
 21 A. No, I'm not going to do repairs if  
 22 it's -- go to the dealer.  
 23 Q. And you don't know whether the steering  
 24 column in this car -- from your own observations,

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1 you don't know whether that needed to be repaired  
 2 because of the accident or not, based on your --  
 3 MR. BRODSKY: Objection.  
 4 Q. (By Mr. Lubin) -- own observations;  
 5 correct?  
 6 MR. BRODSKY: Wait a second. Objection. He  
 7 said that he didn't know if the car -- if the wheels  
 8 had been re -- if the steering column had been  
 9 repaired. He said he didn't know whether or not  
 10 it's been done. So that question, once again, is  
 11 inserting -- is an improper recitation of what he  
 12 already said. He said he didn't know. It's already  
 13 been asked and answered. He doesn't --  
 14 Q. (By Mr. Lubin) Sir, you have no opinion  
 15 one way or the other whether the steering column was  
 16 damaged in the accident; correct?  
 17 MR. BRODSKY: Now wait a second. Wait. That's  
 18 a different question. Because he --  
 19 MR. LUBIN: You know, you get to object as to  
 20 the form.  
 21 MR. BRODSKY: That's a different question.  
 22 MR. LUBIN: Will you read the question back and  
 23 see if he'll answer it.  
 24 ///

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1 (WHEREUPON, the record was read by  
 2 the reporter.)  
 3 MR. BRODSKY: That's not what he said. That's  
 4 not -- that's not his opinion. That's not what his  
 5 opinion is in his written opinion. So I --  
 6 Q. (By Mr. Lubin) Sir, you don't have an  
 7 opinion whether the steering column was damaged in  
 8 the accident; correct?  
 9 MR. BRODSKY: That's not what he says in his --  
 10 in his report. So I'm not --  
 11 MR. LUBIN: You know what? This is -- we're  
 12 going to come close to terminating the deposition  
 13 because --  
 14 MR. BRODSKY: Well, you know --  
 15 MR. LUBIN: -- you're --  
 16 MR. BRODSKY: -- because you don't --  
 17 MR. LUBIN: Okay. I'm really going to have to  
 18 terminate the deposition if you don't limit your  
 19 objections to form.  
 20 Q. (By Mr. Lubin) Sir, do you have an  
 21 opinion one way or the other --  
 22 Please close your -- your exhibit book,  
 23 sir, and look at me.  
 24 MR. BRODSKY: No, he gets to look at his

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1 exhibits.  
 2 MR. LUBIN: No, he doesn't get to look --  
 3 MR. BRODSKY: Yes, he does. No, he can look at  
 4 his exhibits to see what his opinion --  
 5 Q. (By Mr. Lubin) Sir, I'm not asking  
 6 you --  
 7 MR. BRODSKY: -- is in his report.  
 8 Q. (By Mr. Lubin) -- about your report. I'm  
 9 saying: Do you have an opinion whether or not the  
 10 steering column was damaged in the accident or not?  
 11 A. Do I have an opinion?  
 12 Q. Yes.  
 13 A. I have an opinion, yeah.  
 14 Q. What's that?  
 15 A. About what?  
 16 Q. Did you -- did you examine the steering  
 17 column before it was repaired?  
 18 MR. BRODSKY: He couldn't have, because it  
 19 would be --  
 20 A. How -- yeah.  
 21 Q. (By Mr. Lubin) Right, you couldn't have;  
 22 right?  
 23 A. How could you?  
 24 Q. Okay.

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1 A. I never seen the car before --  
 2 Q. So you don't -- so you don't have an  
 3 opinion whether or not the steering column was  
 4 damaged in the accident; correct, sir?  
 5 MR. BRODSKY: Wait, wait. Wait, wait, wait.  
 6 He asked -- you're assuming -- first, it assumes --  
 7 he doesn't know whether or not it was ever repaired  
 8 because he told you he didn't look at anything  
 9 before he did his examination. So that question's  
 10 misleading. And it's already been asked and  
 11 answered.  
 12 His opinion is -- in the written opinion, he  
 13 says the car was in a -- was in a very -- was a slow  
 14 speed, front and --  
 15 MR. LUBIN: Well, here you go -- here you go  
 16 coaching again.  
 17 MR. BRODSKY: -- fender bender --  
 18 A. No, I put that in there.  
 19 MR. BRODSKY: I'm not coaching him. That's his  
 20 report.  
 21 MR. LUBIN: Yeah, I understand that's his  
 22 report.  
 23 MR. BRODSKY: So that's -- so now, are you  
 24 ask -- so you're asking him if a steering column



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1 could be damaged in a front and slender bender? Is  
 2 that what you're asking him? Because your question  
 3 is misleading.  
 4 MR. LUBIN: No, that's not what I'm asking him.  
 5 MR. BRODSKY: Okay. So --  
 6 MR. LUBIN: Now you're telling him what to  
 7 say --  
 8 MR. BRODSKY: No, I'm not. And I'm trying to  
 9 make --  
 10 MR. LUBIN: You actually are.  
 11 MR. BRODSKY: I'm trying to understand your --  
 12 MR. LUBIN: And it's --  
 13 MR. BRODSKY: -- question.  
 14 MR. LUBIN: You actually are. And it's --  
 15 MR. BRODSKY: No. One, it's a --  
 16 MR. LUBIN: -- and it's really not, sir.  
 17 MR. BRODSKY: -- misleading question. You're  
 18 asking a misleading question.  
 19 MR. LUBIN: All right. We're going to be going  
 20 to the Court for a protective order soon.  
 21 MR. BRODSKY: I -- right, right, whatever.  
 22 You're going -- look it -- look, you've -- you're  
 23 asking misleading questions. You have his opinion  
 24 in front of you that says it was at a slow speed.

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1 Now you're asking him --  
 2 MR. LUBIN: No, no, no, no.  
 3 Q. (By Mr. Lubin) Sir, okay, you're --  
 4 MR. BRODSKY: You already gave that opinion.  
 5 Q. (By Mr. Lubin) What's the basis of your  
 6 opinion that it was in a slow speed accident?  
 7 MR. BRODSKY: Ah.  
 8 A. What was the basis of my opinion?  
 9 Q. (By Mr. Lubin) Yeah.  
 10 A. There's no front end -- no -- any heavy  
 11 damage -- any kind of damage into the car.  
 12 Q. You didn't look at the car at the time  
 13 it -- before it was repaired; correct?  
 14 A. Before who repaired it?  
 15 Q. Before it was repaired after the  
 16 accident, you didn't look at the car; correct?  
 17 A. I couldn't have. I don't -- I never seen  
 18 it before that.  
 19 Q. And you didn't look at photographs of the  
 20 car, of its condition after it was in the accident;  
 21 correct?  
 22 A. Correct.  
 23 Q. Were you aware that there are photographs  
 24 of the car after it was in the accident?

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1 A. I don't know. I don't remember if I was  
 2 aware of that or not.  
 3 Q. Okay. And -- and -- and you don't need  
 4 to look at photographs of the car after it was in an  
 5 accident? That's your position?  
 6 A. I -- say it again.  
 7 Q. Sir, were you aware that in the accident  
 8 that the hood got bent and split apart from the  
 9 accident? Were you aware of that?  
 10 MR. BRODSKY: Objection. He said he is not  
 11 aware of anything that happened before --  
 12 Q. (By Mr. Lubin) Sir, I'm asking you: Are  
 13 you aware that the hood split apart?  
 14 MR. BRODSKY: No, he doesn't know that. That's  
 15 asking a question that he doesn't know the answer  
 16 to, because he said he --  
 17 MR. LUBIN: Joel, but I've got to get his  
 18 answer.  
 19 MR. BRODSKY: -- didn't see it. So you don't  
 20 get to insert stuff in the record that may or may  
 21 not be true through him because he said he doesn't  
 22 know. He already said he didn't look at the --  
 23 MR. LUBIN: We've already been over that with  
 24 the judge.

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1 MR. BRODSKY: So --  
 2 Q. (By Mr. Lubin) Sir, were you aware that  
 3 the hood split apart in the accident?  
 4 MR. BRODSKY: No.  
 5 Q. (By Mr. Lubin) Yes or no?  
 6 MR. BRODSKY: Don't answer that answer that  
 7 question.  
 8 Q. (By Mr. Lubin) Can you answer the  
 9 question?  
 10 MR. BRODSKY: It's a misleading question.  
 11 Q. (By Mr. Lubin) Can you answer that  
 12 question, sir?  
 13 A. No.  
 14 MR. BRODSKY: No, don't answer that question.  
 15 MR. LUBIN: I think we're going to have to call  
 16 the judge.  
 17 MR. BRODSKY: You don't have to insert stuff in  
 18 the record --  
 19 MR. LUBIN: I think we're going to have to --  
 20 MR. BRODSKY: He said he never saw --  
 21 MR. LUBIN: Let the record --  
 22 THE COURT REPORTER: I'm not -- I'm going to  
 23 take a break.  
 24 (WHEREUPON, a recess was had.)

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1 MR. LUBIN: Well, let the record reflect that  
 2 over my objection, Mr. Brodsky was coaching the  
 3 witness and --  
 4 MR. BRODSKY: Objection. I was not coaching  
 5 the witness. Don't -- quit your lies.  
 6 MR. LUBIN: Okay. Well --  
 7 MR. BRODSKY: Stop lying.  
 8 MR. LUBIN: I'm not lying.  
 9 MR. BRODSKY: Yes, you are lying.  
 10 MR. LUBIN: I can hear him and --  
 11 MR. BRODSKY: You are lying.  
 12 MR. LUBIN: No, I'm not --  
 13 MR. BRODSKY: Stop lying and putting lies into  
 14 the record.  
 15 MR. LUBIN: No, I'm not putting lies into --  
 16 MR. BRODSKY: You are putting lies into the  
 17 record.  
 18 MR. LUBIN: I actually heard you telling the  
 19 witness -- speaking to the witness about the  
 20 deposition.  
 21 MR. BRODSKY: No, I was not --  
 22 MR. LUBIN: And it was --  
 23 MR. BRODSKY: I was not coaching the witness.  
 24 You can stop lying.

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1 MR. LUBIN: You were having an extensive  
 2 conversation about --  
 3 MR. BRODSKY: I was not having an extensive  
 4 conversation. You are again lying.  
 5 MR. LUBIN: Well, there's two witnesses --  
 6 there's three witnesses here, including the  
 7 court reporter.  
 8 MR. BRODSKY: Stop lying.  
 9 MR. LUBIN: Please don't --  
 10 MR. BRODSKY: Stop lying.  
 11 Q. (By Mr. Lubin) Sir, were you just --  
 12 were you having conversations with --  
 13 MR. BRODSKY: Stop --  
 14 Q. (By Mr. Lubin) -- Mr. Brodsky just now?  
 15 A. We were conversating. That's all.  
 16 Q. And you were talking about the  
 17 deposition; correct?  
 18 A. Does this have to do with the --  
 19 Q. Sir, were you talking to Mr. Brodsky  
 20 about the deposition?  
 21 MR. BRODSKY: What was I -- what was I  
 22 explaining to you about -- what was I explaining to  
 23 you about misleading questions and how --  
 24 THE WITNESS: And how you were repeating --

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1 A. Yeah, and I actually told him that he  
 2 keeps repeating the questions.  
 3 Q. (By Mr. Lubin) Okay. So you were  
 4 discussing with Mr. Brodsky the subject of my  
 5 misleading questions?  
 6 A. I didn't say you were misleading the  
 7 question. I just said you were -- kept -- you know,  
 8 I felt like you kept repeating the question.  
 9 Q. Okay. And then Mr. Brodsky was -- was --  
 10 was getting pretty animated when he was talking with  
 11 you; correct?  
 12 A. You're saying correct. I'm not saying  
 13 correct.  
 14 Q. Did you hear me -- did you hear me when  
 15 you were talking --  
 16 MR. BRODSKY: All right, we're done. Are we  
 17 even -- this is not about me.  
 18 Q. (By Mr. Lubin) Did you --  
 19 MR. BRODSKY: This is not -- again, if you want  
 20 to ask a deposition question, ask a deposition  
 21 question or we are done.  
 22 Q. (By Mr. Lubin) Sir, did you hear me when  
 23 you were talking to Mr. Brodsky ask him not to  
 24 discuss the deposition with you? Did you hear me

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1 say that?  
 2 A. At that time, I was talking to Mohammed.  
 3 I wasn't paying attention.  
 4 Q. So you didn't hear me say anything to  
 5 Mr. Brodsky when you were talking to him?  
 6 A. I heard you say something, but I didn't  
 7 understand what you were saying.  
 8 Q. So you did hear me?  
 9 MR. BRODSKY: Objection.  
 10 A. I don't know what you said.  
 11 MR. BRODSKY: Are we going to move on to a  
 12 deposition question? Or are we going to --  
 13 Q. (By Mr. Lubin) Did you hear me tell  
 14 Mr. Brodsky --  
 15 MR. BRODSKY: If you ask one more question  
 16 about that, I'm terminating the deposition. Ask  
 17 questions about the -- what he's here to do or  
 18 we're done.  
 19 Q. (By Mr. Lubin) What did you say to  
 20 Mr. Brodsky --  
 21 MR. BRODSKY: We're done.  
 22 Q. (By Mr. Lubin) -- and what did he say to  
 23 you?  
 24 MR. BRODSKY: We're terminating the deposition.

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1 We're done.  
 2 MR. LUBIN: All right.  
 3 MR. BRODSKY: We're done.  
 4 Q. (By Mr. Lubin) You're not going to tell  
 5 me what you -- what you discussed with Mr. Brodsky?  
 6 MR. BRODSKY: We're -- we are -- we're done.  
 7 We're done. We're done. We're done.  
 8 MR. LUBIN: Okay.  
 9 MR. BRODSKY: We're done. We're done. We're  
 10 done. I... We're done.  
 11 MR. LUBIN: Okay. Well, before we do the next  
 12 deposition, we're going to go to court and seek a  
 13 protective order.  
 14 MR. BRODSKY: Well, go ahead. Because I think  
 15 the protective orders will be mine because you're  
 16 asking misleading questions.  
 17 MR. LUBIN: We need to get the transcript  
 18 fairly expedited. I'll talk to you about it, and  
 19 you can call my office.  
 20 THE COURT REPORTER: Are we off the record?  
 21 MR. LUBIN: Uh-huh.  
 22 THE COURT REPORTER: Yes? Off the record?  
 23 MR. BRODSKY: I guess.  
 24 MR. LUBIN: Mr. Brodsky, can I have my copies

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1 of the witness's exhibits back?  
 2 (WHEREUPON, discussion was had off  
 3 the record.)  
 4 MR. LUBIN: Can you put on the record that he  
 5 just said I'm a criminal enterprise?  
 6 MR. BRODSKY: It is. This is all a criminal  
 7 enterprise.  
 8 MR. LUBIN: Did you put -- so did you hear --  
 9 did you get that, that Mr. Brodsky said --  
 10 MR. BRODSKY: I thought we were off the record.  
 11 MR. LUBIN: I want --  
 12 MR. BRODSKY: If you want it on the record, my  
 13 opinion -- my opinion, this entire case is totally  
 14 concocted, fabricated in an attempt to make money  
 15 where there is no case at all.  
 16 MR. LUBIN: And you just said this case is a  
 17 criminal enterprise. Is that --  
 18 MR. BRODSKY: I think I did. And I've said  
 19 it before.  
 20 MR. LUBIN: And that was when your client asked  
 21 me about settlement; correct?  
 22 MR. BRODSKY: And your client -- my client  
 23 wants to put an end to this --  
 24 MR. M. IHMOUD: I say -- I say --

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1 MR. BRODSKY: He doesn't want to settle. He  
 2 doesn't want to settle. He doesn't want to settle.  
 3 MR. LUBIN: Now, you're just -- let the  
 4 record -- you dragged the client out as he was  
 5 trying to talk about settlement.  
 6 MR. BRODSKY: My client doesn't get to talk to  
 7 you. You talk to me.  
 8 MR. LUBIN: No, your client did talk to me. He  
 9 said --  
 10 MR. M. IHMOUD: I'm not talking about  
 11 settlement, sir. I'm talking both of you is going  
 12 over the argument and finish this one today.  
 13 MR. LUBIN: That's --  
 14 MR. M. IHMOUD: That's what I said.  
 15 MR. LUBIN: Let's finish it.  
 16 MR. M. IHMOUD: We are going to finish the  
 17 settlement deposition. The deposition, finish the  
 18 deposition.  
 19 MR. BRODSKY: Then ask relevant questions.  
 20 MR. LUBIN: Okay.  
 21 MR. M. IHMOUD: Yeah.  
 22 MR. BRODSKY: Don't put stuff in the record --  
 23 MR. M. IHMOUD: The questions is the same thing  
 24 all over again.

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1 MR. LUBIN: Sir, we can ask questions.  
 2 MR. M. IHMOUD: That's all --  
 3 MR. BRODSKY: Well, don't ask questions about  
 4 what --  
 5 MR. M. IHMOUD: I said with the coming here to  
 6 do this for you, just take --  
 7 MR. LUBIN: I'm happy to ask him questions.  
 8 MR. M. IHMOUD: Just ask him questions.  
 9 MR. BRODSKY: But don't ask questions along the  
 10 lines of --  
 11 MR. LUBIN: Well, we have a disagreement. I  
 12 respectfully disagree with you, Mr. Brodsky. If you  
 13 talk to the witness about his deposition during the  
 14 break, I'm entitled to --  
 15 MR. BRODSKY: No, you're not.  
 16 MR. M. IHMOUD: Just let's --  
 17 MR. LUBIN: All right. Okay. I'm not going to  
 18 going to get into a dispute.  
 19 First of all, he's not your client. He's an  
 20 independent witness. And even if he was your  
 21 client, you're not allowed to talk to him --  
 22 MR. BRODSKY: Yes, I am.  
 23 MR. LUBIN: -- during a deposition.  
 24 MR. BRODSKY: Yes, I am.

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1 MR. LUBIN: No, you're --  
 2 THE COURT REPORTER: Please.  
 3 MR. LUBIN: Okay. I'm sorry, ma'am.  
 4 Very respectful to Mr. Brodsky who has already  
 5 said I'm part of a criminal enterprise --  
 6 MR. BRODSKY: I can prove it too.  
 7 MR. LUBIN: Let's take a --  
 8 THE COURT REPORTER: All right. I'm just going  
 9 to --  
 10 MR. M. IHMOUD: He does not mean it either.  
 11 MR. LUBIN: I hope not.  
 12 MR. M. IHMOUD: No, he does not mean it.  
 13 MR. BRODSKY: I've said it in writing.  
 14 MR. LUBIN: Could you please get that down?  
 15 MR. BRODSKY: Get this one down too. You keep  
 16 putting it in there like I'm trying to hide it.  
 17 I've said it in writing.  
 18 MR. LUBIN: Mr. Brodsky is repeatedly -- you  
 19 keep saying that my -- this is part of a criminal  
 20 enterprise, and your client disagrees with that.  
 21 MR. BRODSKY: No. This client doesn't. He  
 22 just wants to get this deposition over with so he  
 23 doesn't have to come back.  
 24 MR. M. IHMOUD: Just get this deposition over

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1 with.  
 2 MR. LUBIN: Okay. But you don't think this is  
 3 a criminal enterprise?  
 4 MR. BRODSKY: You don't get to ask him  
 5 questions.  
 6 MR. M. IHMOUD: Sir, I'm not in deposition.  
 7 Okay? I'm just asking, please, you guys finish.  
 8 This is wasting the man's time, and he want to go.  
 9 MR. LUBIN: Okay. Just so the record -- so the  
 10 record reflects, without them interrupting. It's  
 11 our position that when Mr. Brodsky talks to the  
 12 witness during the breaks about the deposition, that  
 13 that's discoverable and I'm entitled to ask him  
 14 questions about that. Mr. Brodsky has not allowed  
 15 those questions to be asked and said --  
 16 MR. BRODSKY: You didn't ask those questions.  
 17 You didn't ask him what was said out there. You  
 18 never asked him that question. You kept trying to  
 19 put words in his mouth.  
 20 MR. M. IHMOUD: Mr. Hasan --  
 21 MR. BRODSKY: Tell him what I said when --  
 22 MR. M. IHMOUD: What exactly were you talking  
 23 about?  
 24 THE WITNESS: Talking about the questions being

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1 repeated all the time.  
 2 Q. (By Mr. Lubin) Did you talk about other  
 3 things with Mr. Brodsky?  
 4 A. No.  
 5 Q. How long did the conversation last?  
 6 A. I don't know. We just sat out there a  
 7 few minutes, not even --  
 8 MR. M. IHMOUD: Not even a --  
 9 A. I was in the washroom.  
 10 Q. (By Mr. Lubin) Sir, I was here. It went  
 11 on for an extended period of --  
 12 A. Okay. Well, three to four --  
 13 MR. BRODSKY: You don't get to -- you don't get  
 14 to testify. You get to ask questions.  
 15 Q. (By Mr. Lubin) You were talking to him  
 16 for four or five minutes?  
 17 A. I can't -- I don't know. I don't know.  
 18 THE COURT REPORTER: If you want to continue  
 19 the deposition, let me start up my file again.  
 20 MR. LUBIN: Okay.  
 21 (WHEREUPON, a recess was had.)  
 22 EXAMINATION [resumed]  
 23 BY MR. LUBIN:  
 24 Q. Sir, did you look at the bumper cover

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1 after it was removed?  
 2 A. Yeah, I think I did.  
 3 Q. Did you know whether or not there had --  
 4 did you notice whether or not there had been a new  
 5 bumper welding done to put -- to -- to affix the --  
 6 a new grill to the bumper?  
 7 A. From the inside of the bumper?  
 8 Q. Yes.  
 9 A. I think there was some kind of a little  
 10 bit of repairs.  
 11 (Court reporter clarification.)  
 12 A. Yes.  
 13 Q. (By Mr. Lubin) Did you observe whether  
 14 or not the paint was cracked on the front of the  
 15 bumper where it married to the new -- the grille  
 16 that was there?  
 17 A. I didn't see that. I didn't pay  
 18 attention to that.  
 19 MR. BRODSKY: Speak up.  
 20 A. I didn't pay attention. I didn't see  
 21 that.  
 22 Q. (By Mr. Lubin) That's not part of your  
 23 opinion; correct?  
 24 A. Yeah, I -- I didn't look at it. I don't

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1 know if you're saying it's -- I didn't say it's not  
 2 part of my opinion. I said I didn't know -- I don't  
 3 remember looking at it.  
 4 Q. Well, do you -- you don't mention  
 5 anything in your opinion about the condition of the  
 6 front bumper; correct? If you look at Exhibit 2?  
 7 A. No, yeah, I don't mention it.  
 8 Q. You don't mention that; correct?  
 9 A. Yeah.  
 10 Q. And you don't have an opinion at this  
 11 time about the condition of the bumper; correct?  
 12 A. I mean, I can give you my opinion.  
 13 Q. I don't want your opinion. You're not  
 14 giving me that opinion in your report; correct?  
 15 A. No. But what I -- in what way? I mean,  
 16 I give my opinion of the vehicle of what the car --  
 17 the kind of collision the car was in.  
 18 Q. Okay. But I'm not asking you about that,  
 19 sir.  
 20 A. Okay.  
 21 Q. Sir, do you know whether or not the  
 22 grille was the -- was the factory original grille or  
 23 a replacement grille?  
 24 A. The what?

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1 Q. The grille, the metal grille on the front  
 2 of the Infiniti. The grille?  
 3 A. What about it?  
 4 Q. Was that -- is that a factory original  
 5 grille or was that replaced after the accident?  
 6 A. I -- I didn't even -- I couldn't even  
 7 tell you.  
 8 Q. Okay. And you don't know whether the  
 9 grille was damaged in the accident or not; correct?  
 10 A. I don't think it was 'cause that -- from  
 11 looking at it when the car came, it didn't look like  
 12 it. There was no reason for me to check the grille  
 13 because there was no heavy collision done to the car  
 14 from underneath.  
 15 Q. Sir, that's not what I'm asking you. I'm  
 16 asking you whether or not you know whether or not  
 17 the grille was replaced or not.  
 18 A. No, I don't -- I couldn't even tell you  
 19 if it was or not.  
 20 Q. Did you look at the condenser or -- or  
 21 the radiator to see if that had been dented in the  
 22 collision?  
 23 A. There was no damage to it.  
 24 Q. There was no dent on the -- on the

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1 condenser?  
 2 A. Not that I see.  
 3 Q. And the condenser is in the back of the  
 4 bumper guard; correct? In the crash plates?  
 5 A. Yeah, condenser, then radiator.  
 6 Q. Okay. And you saw no dent in that -- in  
 7 that?  
 8 A. I didn't pay attention. I didn't see it.  
 9 I didn't say I didn't see it. There mi -- I didn't  
 10 pay attention to that.  
 11 Q. Would a condenser be damaged and bent  
 12 in -- in a low-impact collision?  
 13 A. Not really.  
 14 Q. So if the condenser was, in fact, damaged  
 15 and dented, that might change your opinion about  
 16 whether or not it was in a low-impact collision;  
 17 correct?  
 18 A. It won't change my opinion because it  
 19 still could still be a low-impact collision and the  
 20 condenser might have got hit slightly.  
 21 Q. But you didn't see that?  
 22 A. No.  
 23 Q. And you don't know whether the car was  
 24 hit from the rear and the front at the same time,

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1 correct, in the accident?  
 2 A. I never inspected the car at the time of  
 3 the accident.  
 4 Q. But do you know whether it was hit in the  
 5 rear and the front at the same time?  
 6 A. From what I observed through the pictures  
 7 and what I've seen from what I looked underneath the  
 8 car, it doesn't look like it was in any kind of  
 9 collision from the front and back -- in a major  
 10 collision, that is.  
 11 Q. But do you know whether there was a  
 12 collision in the back at the same time there was a  
 13 collision in the front?  
 14 A. I didn't pay -- no. I can't tell you if  
 15 there was a major collision in the back or the  
 16 front. It doesn't look like it was hit in the back.  
 17 Q. Do you know whether the back was repaired  
 18 after the collision or not?  
 19 A. After what -- I couldn't even tell you if  
 20 it was. It didn't look like it.  
 21 Q. And you're not giving a report regarding  
 22 the condition of the fit and finish of the body  
 23 panels in the back of the car; correct?  
 24 A. No, that's not in my report. Is it? I

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1 don't remember. I don't see it.  
 2 MR. BRODSKY: Just --  
 3 Q. (By Mr. Lubin) It's not in your report;  
 4 correct?  
 5 A. No.  
 6 Q. Yes, correct, it's not in your report;  
 7 right?  
 8 A. Yes, it's not in my report.  
 9 Q. Do you know whether or not the windshield  
 10 washer holder was cracked in the collision?  
 11 A. You're asking me if I knew?  
 12 Q. Do you know whether it was cracked in the  
 13 collision or not?  
 14 A. I already asked it. I didn't know the  
 15 car was in a collision. I mean, you're asking me if  
 16 the car was in a collision. To be honest with you,  
 17 you keep asking me if the car --  
 18 Q. Have you ever seen -- have you ever seen  
 19 this document, PROG081, where it shows the  
 20 bumper guard pushed into the -- into the condenser?  
 21 A. No. I don't remember if I've ever seen  
 22 that before, no.  
 23 Q. And you haven't seen any pictures of the  
 24 car after the accident; right?

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1 A. What do you mean, after the accident? I  
 2 just seen -- I seen the car when it was bringed  
 3 [verbatim] to me.  
 4 Q. Right. But you haven't seen -- you  
 5 didn't see the car when it had the actual accident  
 6 damage before the bumper guard was replaced; right?  
 7 A. No. At the time of the collision, I  
 8 didn't even know the car.  
 9 Q. Okay. And did you -- did you --  
 10 MR. DITOMMASO: This is Exhibit 7.  
 11 (WHEREUPON, a certain document was  
 12 marked Exhibit 7, for  
 13 identification, as of  
 14 March 29, 2017.)  
 15 Q. (By Mr. Lubin) Look at Exhibit 7B,  
 16 PROG067, sir.  
 17 MR. DITOMMASO: Mr. Brodsky --  
 18 MR. LUBIN: That's the wrong one. That's the  
 19 wrong one.  
 20 MR. DITOMMASO: Oh, here it is.  
 21 (WHEREUPON, discussion was had off  
 22 the record.)  
 23 Q. (By Mr. Lubin) Oh, here's the witness's  
 24 copy. Here you go.

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1 Sir, if you look at -- if you look at  
 2 Exhibit 7B, sir, PROG -- PROG067. Do you see that?  
 3 They're right in order, so if -- you can go to 67.  
 4 A. I need glasses. Now I'm here. Okay.  
 5 What about this page?  
 6 Q. Did you ever see that picture before  
 7 making your report?  
 8 MR. BRODSKY: Objection. He's already said he  
 9 didn't see any pictures of the accident.  
 10 A. I told you I didn't see --  
 11 MR. BRODSKY: How many times are you going to  
 12 ask that question?  
 13 Q. (By Mr. Lubin) So I'm asking you if you  
 14 saw --  
 15 A. I think I answered.  
 16 Q. -- PROG067?  
 17 A. No.  
 18 MR. BRODSKY: He already --  
 19 Q. (By Mr. Lubin) So that wasn't part of --  
 20 you didn't look at that in making your opinion that  
 21 it was in a low-impact collision; correct?  
 22 A. No. I didn't see any of these  
 23 pictures --  
 24 Q. And if you look at the next page,

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1 PROG068, did you see that the car had been dented in  
 2 the back in the collision, that picture?  
 3 A. Do I see this picture now?  
 4 Q. Yes.  
 5 A. I see it now.  
 6 Q. Did you -- did you see that when you made  
 7 your report?  
 8 MR. BRODSKY: Objection. He already said he  
 9 didn't see anything. You don't have to keep asking  
 10 that question a thousand times.  
 11 A. I already answered.  
 12 MR. LUBIN: Okay.  
 13 Q. (By Mr. Lubin) And, sir, if you look at  
 14 PROG82 of Exhibit 7B.  
 15 A. 82, you said?  
 16 Q. Yeah. Okay. Do you -- do you -- do  
 17 you -- if you look right here, you see that, where  
 18 that -- where there -- where there -- where there's  
 19 a crack in the front bumper cover, sir?  
 20 A. Okay. Yes, I see it.  
 21 Q. You didn't -- you didn't see whether  
 22 there's spidering where that's been repainted when  
 23 you examined the car; correct? On the paint?  
 24 A. Yeah, I didn't inspect -- I didn't see

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1 that. I didn't -- and I'm not saying I didn't see  
 2 it. I can't remember if I did see it.  
 3 Q. But that's not part of your report?  
 4 A. No. Well, when it comes to a report, I  
 5 looked over the whole car. And from my see, it's a  
 6 low-impact collision. You know, the body was in  
 7 good condition and --  
 8 Q. Sir, sir, you're saying that now after  
 9 you talked to Mr. Brodsky in the hall; right?  
 10 MR. BRODSKY: Objection. No.  
 11 A. That has nothing to do with that. I  
 12 don't even know what you're talking about. It has  
 13 nothing to do with it.  
 14 MR. M. IHMOUD: Sir, honestly --  
 15 MR. BRODSKY: Don't say anything.  
 16 MR. M. IHMOUD: -- he --  
 17 MR. BRODSKY: Stop. Stop. He doesn't care.  
 18 Stop.  
 19 MR. M. IHMOUD: When we supposed consider this  
 20 and finish it, please.  
 21 MR. BRODSKY: Stop. Stop. Stop. Stop.  
 22 Q. (By Mr. Lubin) Sir, do you see -- look  
 23 at PROG083 -- 083, the next page. Were you -- were  
 24 you aware that the front bumper cover had been

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1 repaired when you did your report?  
 2 A. On this one?  
 3 Q. Yes. Had been repaired right there where  
 4 it's cracked, next to the grille?  
 5 A. No. I can't tell if it's been repaired.  
 6 Q. So you don't know whether the front  
 7 bumper cover was repaired or not?  
 8 A. Not that I can see in this picture, no.  
 9 Q. No. I'm talking about when -- in your --  
 10 when you looked at the car, did you determine that  
 11 the front cover had been repaired in the front where  
 12 it had been cracked here as shown in PROG83? Did  
 13 you know that?  
 14 A. No. I was -- wait a second. I don't  
 15 remember, but I'm pretty sure it was -- so it was  
 16 replaced? I don't even -- I don't know. I -- I --  
 17 I would have to look at my report. I don't  
 18 remember.  
 19 Q. So you don't know if the bumper cover was  
 20 repaired or replaced; correct?  
 21 A. I think it was replaced. I'd have to  
 22 look at it. I don't know.  
 23 Q. So it's your opinion the bumper --  
 24 MR. BRODSKY: -- you don't know?

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1 THE WITNESS: I don't remember.  
 2 MR. BRODSKY: Well, then say you don't know.  
 3 Quit babbling, man.  
 4 THE WITNESS: All right. I'm --  
 5 MR. LUBIN: But you're not allowed to tell him  
 6 to quit babbling and tell him, say you don't know.  
 7 That's not proper.  
 8 MR. BRODSKY: Well, I didn't say don't -- I  
 9 said don't -- just answer the question.  
 10 MR. LUBIN: No, you're not allowed to tell him  
 11 what to say.  
 12 MR. BRODSKY: I can tell him not to babble and  
 13 just answer the question.  
 14 MR. LUBIN: You can't tell him anything.  
 15 MR. BRODSKY: Yes, I can.  
 16 MR. LUBIN: You can object as to forms of the  
 17 question. Not tell him anything about how he's  
 18 answering the question.  
 19 MR. BRODSKY: He's babbling. Just answer the  
 20 question.  
 21 THE WITNESS: All right.  
 22 MR. BRODSKY: All right?  
 23 Q. (By Mr. Lubin) Sir, do you -- do  
 24 you know -- have you looked at PROG050?

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1 A. We're going back?  
 2 Q. Yeah. PROG -- Exhibit 7B.  
 3 A. Huh?  
 4 MR. BRODSKY: Keep going.  
 5 Q. (By Mr. Lubin) 750.  
 6 A. Oh, here it is.  
 7 Q. Let me see what you're -- I don't think  
 8 you're looking at -- okay.  
 9 Sir, do you know whether or not that  
 10 water bottle was replaced or was factory original  
 11 when you examined the car?  
 12 A. Do I know if it was replaced or not?  
 13 Q. Yeah.  
 14 A. No, I don't know. I don't know.  
 15 Q. So you don't know if the water bottle was  
 16 damaged in the accident; correct?  
 17 A. Not that I see, no.  
 18 Q. And if you look at PROG044 --  
 19 A. Okay.  
 20 Q. -- do you see where the hood is popping  
 21 up a little bit when it's closed, where it's near  
 22 the windshield in that picture, sir?  
 23 A. Yes.  
 24 Q. Okay. Did -- did you ob -- did you

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1 make -- did you make any measurements of the fit and  
 2 finish of the hood to see if that damage had been  
 3 properly repaired?  
 4 MR. BRODSKY: Objection. He already testified  
 5 he didn't do any measurements of the fit and finish  
 6 of the car, so quit -- it's a ri --  
 7 A. Yeah, I already answered that --  
 8 MR. BRODSKY: This has already been asked and  
 9 answered.  
 10 A. -- I didn't do measurements.  
 11 Q. (By Mr. Lubin) Okay. So you didn't  
 12 inspect whether or not the fit and finish after it  
 13 was repaired after the accident was proper or not;  
 14 correct?  
 15 MR. BRODSKY: He -- he already answered that.  
 16 Q. (By Mr. Lubin) As to the hood there,  
 17 where you're looking at the picture in PROG44, did  
 18 you examine that part of the car?  
 19 A. After it was repaired?  
 20 Q. Yeah. Right where it's -- yeah, after it  
 21 was -- when you inspected the car, did you look to  
 22 see whether -- whether -- whether the hood was  
 23 still -- was still sep -- more separated than  
 24 normal? Did you look at that or not?

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1 A. No. I didn't do any measurements.  
 2 Q. Okay. And you didn't compare the --  
 3 the -- right there where the -- where the hood is up  
 4 by the windshield to what a -- what an FX37 should  
 5 look like --  
 6 A. No.  
 7 Q. -- that wasn't in an accident; right?  
 8 MR. BRODSKY: He already testified to that.  
 9 Quit asking him the same question over and over --  
 10 MR. LUBIN: I'm entitled to show him the  
 11 photographs of the accident and ask him whether he  
 12 examined whether those were --  
 13 MR. BRODSKY: He already said he didn't examine  
 14 it. He already said he didn't examine it for fit  
 15 and finish.  
 16 Q. (By Mr. Lubin) Okay. Sir, if you look  
 17 at --  
 18 MR. BRODSKY: He already said that.  
 19 Q. (By Mr. Lubin) -- PROG29, PROG029 of  
 20 Exhibit 7B, the photograph after the accident.  
 21 A. 29?  
 22 Q. Yeah. Do you see where the metal is  
 23 completely cracked from the accident? Do you see  
 24 that, sir?

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1 MR. BRODSKY: Objection. It assumes the --  
 2 what it was cracked from, but it doesn't --  
 3 Q. (By Mr. Lubin) Do you see the metal is  
 4 cracked there, sir?  
 5 A. I don't know if that's metal or I don't  
 6 know if it's plastic, I don't know if it's -- I  
 7 couldn't tell you.  
 8 Q. Well, you see right next to it, there's a  
 9 screw bolting into it?  
 10 A. It doesn't have to be metal.  
 11 Q. And it's right underneath the -- right  
 12 underneath the condenser; correct?  
 13 A. Yeah.  
 14 Q. Yes, is it underneath the condenser?  
 15 A. It's either a condenser or a radiator. I  
 16 can't tell. I don't -- have to see the whole  
 17 picture.  
 18 Q. Okay. And -- and -- so when you examined  
 19 the car, you don't know whether that -- that --  
 20 that -- that -- that flat piece underneath the  
 21 condenser or radiator -- when you examined the car,  
 22 you didn't determine whether that was metal or  
 23 plastic; correct?  
 24 A. I wasn't asked to determine if it was

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1 metal or plastic. I'm just -- I can't tell from  
 2 this picture if --  
 3 Q. Did you see that -- did you see that  
 4 crack there when you examined the car?  
 5 A. No, I didn't -- there was no cracks.  
 6 Q. You're saying there's no -- there's no  
 7 crack there and that's not still there today?  
 8 A. No. I didn't see no cracks there.  
 9 Q. Are you sure that crack is not still  
 10 there today?  
 11 A. I can't be 100 percent sure, but I don't  
 12 think so. I don't -- I -- I'd have to look through  
 13 my pictures again to see if the picture picked it  
 14 up, but I --  
 15 Q. But you don't have any pictures of that  
 16 part of the car, do you?  
 17 MR. BRODSKY: Well, he looked at other pictures  
 18 though.  
 19 Q. (By Mr. Lubin) You looked at other  
 20 pictures?  
 21 A. Yeah, these. These.  
 22 Q. Okay. Show me if that part of the car,  
 23 if there's any photograph of that. In the 49  
 24 pictures attached to your report, if there's any



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1 pictures of the same area as PROG029?  
 2 MR. BRODSKY: Well, here, here.  
 3 MR. LUBIN: Well, Mr. Brodsky, you're not  
 4 supposed to be taking the exhibit and showing him  
 5 what to look at.  
 6 Let the record reflect that instead of the  
 7 witness looking at the documents on his own, that  
 8 Mr. Brodsky is looking at them, pointing at them,  
 9 telling him what to look at, which is not proper.  
 10 A. I don't have a -- a book.  
 11 Q. (By Mr. Lubin) You have a book. You  
 12 have your book right here. He gave you his book,  
 13 and then he started pointing at what you should look  
 14 at.  
 15 A. And so now what are you asking me?  
 16 Q. Show me if there's a photograph anywhere  
 17 in your report -- without Mr. Brodsky pointing at  
 18 you and telling you where to look --  
 19 MR. BRODSKY: No, I'm pointing at what you're  
 20 asking because your questions are so unclear that --  
 21 MR. LUBIN: No.  
 22 Q. (By Mr. Lubin) I'm talking about PROG29.  
 23 I'm asking if there's any photographs --  
 24 MR. BRODSKY: Of the same area.

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1 Q. (By Mr. Lubin) -- of the same area that  
 2 show whether there's a crack there or not?  
 3 A. Picture of that same area. I'm trying to  
 4 find it, see if we have the same area. You got the  
 5 same area, but I don't see no damage.  
 6 Q. (By Mr. Lubin) Which -- which picture --  
 7 MR. BRODSKY: That's not -- that's not what  
 8 he's asking --  
 9 Q. (By Mr. Lubin) -- which picture --  
 10 MR. BRODSKY: -- for. He's --  
 11 Q. (By Mr. Lubin) -- are you --  
 12 A. Huh?  
 13 Q. Show me a picture of the same area in --  
 14 in -- in -- in --  
 15 MR. BRODSKY: Show it to him.  
 16 Q. (By Mr. Lubin) -- in 7A?  
 17 A. Well, I'm looking roughly around -- like  
 18 this area.  
 19 Q. You don't know whether that's the same  
 20 area or not where the photograph was taken, do you?  
 21 MR. BRODSKY: No. He --  
 22 A. I can't tell. Your picture is not clear,  
 23 so I can't really tell.  
 24 Q. (By Mr. Lubin) Okay. So you don't know

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1 for sure whether that crack's there or not; right?  
 2 A. Now?  
 3 Q. Yes, now.  
 4 A. From the pictures, no, I don't see no  
 5 cracks.  
 6 Q. Well, no. You said -- show me a picture  
 7 of that area -- specific area of the car. You  
 8 haven't been able to show me one.  
 9 MR. BRODSKY: Because he can't -- he said he  
 10 can't tell what exact area --  
 11 Q. (By Mr. Lubin) Oh, so you don't --  
 12 A. What area is this? Is this the left?  
 13 The right? I'm not sure.  
 14 Q. So you don't know whether on the left or  
 15 right side of the car underneath the radiator,  
 16 whether it's cracked or not; correct, sir? For  
 17 sure?  
 18 A. Is this underneath the radiator?  
 19 Q. That's the radiator right there.  
 20 A. I don't know if that's --  
 21 Q. That's the air conden -- that's the air  
 22 condenser.  
 23 A. You're saying that. I don't know. Is  
 24 this from the inside or the outside of the car?

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1 Q. Did you see any cracks underneath the  
 2 condenser?  
 3 A. No, I didn't see no cracks.  
 4 Q. Okay. So you don't know whether that  
 5 damage from the accident was repaired or not?  
 6 MR. BRODSKY: He said he didn't see any cracks,  
 7 so that's all he can --  
 8 A. Well, I don't know. I can't --  
 9 Q. (By Mr. Lubin) Look at -- look at --  
 10 look at PROG28, sir. You see that's another photo  
 11 of the same crack?  
 12 A. Yes.  
 13 Q. That -- you never saw that crack;  
 14 correct?  
 15 A. Yeah, I didn't see it on the car.  
 16 Q. And that -- that -- that's clearly metal  
 17 that's cracked, correct, from that photo?  
 18 A. I don't -- I can't tell.  
 19 Q. You can't see that that same piece, that  
 20 there's -- it's bolted in with a -- with a metal --  
 21 A. It can be bolted into metal, fiberglass,  
 22 plastic.  
 23 Q. Do you see that it's -- it's corroded on  
 24 the top like metal?

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1 A. That looked -- it could be corrosion. It  
 2 could be old antifreeze. It could be anything. It  
 3 could be salt from the road.  
 4 Q. And you're telling me that that part that  
 5 we're looking at that's cracked in 28 and 29 might  
 6 be plastic? That's your opinion?  
 7 A. It's possible, yes.  
 8 Q. And if you look at 27, sir, you see  
 9 that's the same picture of the same crack?  
 10 A. 27?  
 11 Q. Yes.  
 12 A. Yeah.  
 13 Q. PROG27?  
 14 A. I see the picture, yeah.  
 15 Q. And you didn't see that -- that --  
 16 that -- that crack there when you looked at the car;  
 17 correct?  
 18 A. No, I didn't see it.  
 19 Q. And you didn't see whether or not the  
 20 condenser above that was dented from the accident;  
 21 correct?  
 22 A. I'm just looking off the picture. I  
 23 don't see a crack -- you know, I don't know what  
 24 we're looking at right here.

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1 Q. Here, there's an arrow and there's a  
 2 crack right at the orange arrow.  
 3 A. Yeah, but I don't know if that's the  
 4 condenser -- is this picture from the inside or the  
 5 outside of the car?  
 6 Q. Well, the bumper cover is off and it's  
 7 right underneath the condenser, so it's the inside.  
 8 A. I can't -- I can't tell. That's -- this  
 9 is -- I don't know what this is in front of you. I  
 10 just see a finger with a -- this could be on the  
 11 inside of the car he's pointing at, from the inside  
 12 of the --  
 13 Q. Okay. Let's look at 2 -- let's look at  
 14 26.  
 15 A. Okay.  
 16 Q. That shows you exactly where he's  
 17 pointing, doesn't it? It's the inside of the car,  
 18 isn't it? It's the metal right underneath the  
 19 condenser; correct?  
 20 MR. BRODSKY: That's not metal. He said he  
 21 doesn't -- can't tell if that's metal or --  
 22 A. What are you pointing at? What are you  
 23 going after?  
 24 Q. (By Mr. Lubin) Right here, where he's

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1 pointing at the same crack.  
 2 A. I don't know what he's pointing at, but I  
 3 can't -- like I told you, I don't know if it's  
 4 metal, plastic, or what. I mean, if you could tell,  
 5 you're good.  
 6 Q. Okay. And do you see -- do you see in  
 7 the accident where the -- where the bumper cover --  
 8 the metal bumper cover -- you agree that's metal;  
 9 correct? The bumper guard?  
 10 A. This piece right here?  
 11 Q. Yeah. Yeah.  
 12 A. Yeah, it's like a --  
 13 Q. It's what you were calling the  
 14 bumper guard.  
 15 A. [Unintelligible.]  
 16 Q. And that's cracked, correct, from the  
 17 accident?  
 18 A. I can see it bent, yes.  
 19 Q. And it's cracked too? The metal's  
 20 cracked right -- right -- right where -- where it's  
 21 touching the condenser; correct, on PROG26?  
 22 A. I can't tell you 100 percent.  
 23 Q. You can see it's cracked right here,  
 24 can't you?

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1 A. Yeah. Well, I don't want to say yes  
 2 because I don't know if it's 100 percent if  
 3 something fell on it or if there's just something on  
 4 there that look -- making it look like a crack. If  
 5 you've got another picture, I'll tell you.  
 6 Q. But it looks like a crack? You would  
 7 agree with that?  
 8 A. No, I can't agree with that. I've got --  
 9 I've got to see another picture and I'll tell you if  
 10 it's a crack.  
 11 Q. Look at PROG29 -- or 25. I'm sorry. 25.  
 12 You see that photograph with a crimp above the wheel  
 13 where there's two arrows there?  
 14 A. Okay.  
 15 Q. Did you see whether or not that crimp is  
 16 still there or not? Do you know whether that was  
 17 still there or not when you inspected the car?  
 18 A. Well, that's in the -- what is that, in  
 19 the plastic trim? That's a plastic trim right  
 20 there.  
 21 Q. Do you know if that's still -- if that's  
 22 still dented or not there?  
 23 A. No, I -- I'd say no, I can't tell.  
 24 Q. You don't know whether when you inspected

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1 the car, you didn't see whether that was there or  
 2 not still; correct?  
 3 A. I mean -- I mean -- I mean --  
 4 MR. BRODSKY: Where do you see a dent here?  
 5 A. I don't know if that -- yeah, I couldn't  
 6 even tell you.  
 7 Q. (By Mr. Lubin) Well, look at 23, sir,  
 8 PROG23. It's a picture of the same thing.  
 9 A. Okay.  
 10 Q. Do you see -- do you see where the --  
 11 above the wheel, where the -- where it's --  
 12 A. Yes.  
 13 Q. -- crimped in?  
 14 A. Yes, I see it.  
 15 Q. Okay. And did you know whether -- did  
 16 you -- when you inspected the car, did you see  
 17 whether that crimp is still there or not?  
 18 A. No, I couldn't tell you for --  
 19 Q. You don't know whether it's still there?  
 20 A. No.  
 21 Q. The answer is, yes, I do not know  
 22 whether --  
 23 MR. BRODSKY: Well, wait --  
 24 A. Oh --

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1 MR. BRODSKY: I'm sorry. What was the question  
 2 before that?  
 3 THE COURT REPORTER: Wait.  
 4 A. If I see it --  
 5 THE COURT REPORTER: Wait. Mr. Mohammed is  
 6 talking, you're talking, everybody's talking. I  
 7 can't get you all.  
 8 Q. (By Mr. Lubin) Sir, do you know in  
 9 PROG -- when you inspected the car, you don't know  
 10 whether the crimp above the --  
 11 MR. BRODSKY: I don't see a crimp there.  
 12 MR. LUBIN: He already said he saw it.  
 13 MR. BRODSKY: Do you see a crimp there?  
 14 A. I did. It looked like some --  
 15 MR. BRODSKY: Well, you're babbling, man. Do  
 16 you see a crimp there?  
 17 THE WITNESS: Man, when you take a picture, I  
 18 got to say -- if I seen the car in front of me, I'll  
 19 tell you exactly --  
 20 MR. BRODSKY: That's not what I'm asking.  
 21 THE WITNESS: Yeah.  
 22 MR. BRODSKY: Do you see a crimp there --  
 23 MR. LUBIN: You're not supposed to be asking  
 24 any questions, sir.

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1 MR. BRODSKY: No, I mean --  
 2 MR. M. IHMOUD: [Unintelligible.]  
 3 MR. LUBIN: He already said he saw it.  
 4 Q. (By Mr. Lubin) Well, no, you're not  
 5 going to change any --  
 6 MR. BRODSKY: He can change whatever he wants.  
 7 A. I'm not changing -- I'm not going to  
 8 change, but I -- somebody pulled this off. So when  
 9 you pull it, you're going to bend it. See how this  
 10 is pulled off of this? So whoever inspected it,  
 11 pulled it. And when they pulled it, they -- they  
 12 collapsed it. I mean, it could pop straight back in  
 13 again.  
 14 Q. (By Mr. Lubin) Do you know whether  
 15 that's still bent there or not?  
 16 A. I can't -- well, you understand where I'm  
 17 coming from? Do you see how this thing is right  
 18 here?  
 19 Q. No, I'm not -- that's not my question.  
 20 A. Well, I mean, I'm just showing you.  
 21 Q. I'm not trying to understand where you're  
 22 coming from. What I'm --  
 23 A. Well, you're not --  
 24 Q. -- trying to understand is: Did you

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1 inspect the -- when you inspected the car, did you  
 2 see whether or not that crimp or dimple,  
 3 whatever you're calling it --  
 4 A. I don't -- I would have --  
 5 Q. -- in PROG23 was there still?  
 6 A. I would've noticed something like that if  
 7 it was there.  
 8 Q. Did you take a photograph of that?  
 9 A. No.  
 10 Q. And you don't know whether that's still  
 11 there or not; correct?  
 12 A. Well, I'll tell you, if somebody pulled  
 13 on it, they will cause it to collapse. You  
 14 notice -- you notice how this thing's supposed to  
 15 be -- see -- let me show you. Can I show you?  
 16 Q. No. I'm -- we're going on to the next  
 17 question because you're not answering my question.  
 18 A. I'm answering --  
 19 MR. BRODSKY: He's trying to answer your  
 20 question, but you don't want to hear it.  
 21 MR. LUBIN: That wasn't my question.  
 22 A. You're telling me there's a bend, right?  
 23 Somebody bent it as they pulled it off the bumper.  
 24 Q. (By Mr. Lubin) I'm not -- that's not

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1 what I'm telling you.  
 2 I'm asking you: Did you see whether that  
 3 bend was there? Yes or no?  
 4 A. Was it there? No, I don't think so. I  
 5 don't know. I couldn't tell you.  
 6 Q. Okay. And then let's --  
 7 A. It looks like somebody bent it now.  
 8 Q. Let's look at PROG -- well, that was bent  
 9 after the accident, sir.  
 10 MR. BRODSKY: No.  
 11 A. Somebody pulled on it. This is supposed  
 12 to be lifted up against here. All right?  
 13 Q. (By Mr. Lubin) Sir, let's -- let's look  
 14 at PROG21 in Exhibit 7B.  
 15 A. 21?  
 16 Q. Yeah.  
 17 A. Same --  
 18 MR. BRODSKY: 21. That's 22.  
 19 A. All right. 21.  
 20 Q. (By Mr. Lubin) Do you see right here  
 21 where -- where the -- where the -- where the mount  
 22 is broken, cracked off?  
 23 A. Where is this at? Where is this picture  
 24 taken? This is a plastic --

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1 Q. Yes.  
 2 A. -- this looks like a plastic trim.  
 3 Q. Yeah. You see where the plastic is  
 4 cracked off where -- where -- where you would --  
 5 where you would put the front bumper cover back on  
 6 and marry it to that?  
 7 A. I don't know if it's supposed to be  
 8 cracked up like that or is it -- is it supposed to  
 9 slide into a -- is there a metal clip that goes  
 10 over that?  
 11 Q. There's supposed to be -- have a curve  
 12 right around here and then you put it right into the  
 13 bumper cover.  
 14 A. You have to give me something to compare  
 15 it to.  
 16 Q. It should look exactly like this.  
 17 A. No. That's the opposite side. That's --  
 18 is that --  
 19 Q. Same thing.  
 20 A. That's not the same thing.  
 21 Q. Same piece, yeah.  
 22 A. Oh, it --  
 23 Q. Same photograph, the same photograph.  
 24 A. I know it's the same photograph, but this

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1 is not the same piece.  
 2 Q. Do you know --  
 3 THE COURT REPORTER: Hold on.  
 4 Q. (By Mr. Lubin) -- whether or not --  
 5 THE COURT REPORTER: This is a conversation,  
 6 not a question and answer.  
 7 Q. Do you know whether or not --  
 8 THE COURT REPORTER: I can't get you.  
 9 Q. (By Mr. Lubin) Do you know whether or  
 10 not the fastener there is -- that's in -- pictured  
 11 in PROG21 is still cracked off or not?  
 12 A. I don't know if it's cracked. It looks  
 13 like somebody might have took it off.  
 14 Q. You -- you don't know whether the  
 15 plastic's cracked there or not?  
 16 A. Believe me, the way they mold stuff, I'd  
 17 have to see another picture of how it's supposed to  
 18 look.  
 19 Q. And you don't -- and you don't -- and so  
 20 you don't know one way or the other whether that was  
 21 damaged in the accident and hasn't been repaired;  
 22 correct?  
 23 A. I don't know where this picture is taken  
 24 off of.

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1 Q. So you don't know -- you don't know  
 2 whether or not the -- the -- when you looked at the  
 3 car, did you see whether it looked like this still  
 4 today or not? Like PROG21?  
 5 A. Where -- I -- my whole thing is, where is  
 6 this picture from?  
 7 Q. It's a picture of the car after the  
 8 accident.  
 9 A. Yeah, I don't know if it's the front,  
 10 back, side. Where is this? Front -- front of the  
 11 car? The back of the car?  
 12 Q. Sir, it's the front of the car. You can  
 13 look right here at PROG20.  
 14 A. Okay. Let me go back.  
 15 Q. You can see -- it's clear that the  
 16 plastic is cracked.  
 17 A. Yeah, okay.  
 18 Q. Do you see -- see where the piece is  
 19 cracked?  
 20 A. Yes.  
 21 Q. Okay. And when you examined the car and  
 22 took the bumper cover off, was that piece still  
 23 cracked or not?  
 24 A. I didn't take that part to see if there

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1 was a crack in there.  
 2 Q. So you don't know if that hasn't been  
 3 repaired or not; correct?  
 4 A. No.  
 5 Q. And then who took off the bumper cover?  
 6 You or Ramos?  
 7 A. I took off part of it.  
 8 Q. Okay. And then you -- and then -- was  
 9 Ramos there when you did that?  
 10 A. No. I guess they picked -- someone else  
 11 took it off.  
 12 Q. Did Ra -- was Ramos present when you  
 13 inspected the car?  
 14 A. No. Not when I inspected the car, no.  
 15 Q. So was -- were you present when Ramos  
 16 took the photographs?  
 17 A. No.  
 18 Q. Were you present when the photographs  
 19 attached to Exhibit 2A were taken, the 49  
 20 photographs, these small ones? Were you present  
 21 when those were taken?  
 22 A. No.  
 23 Q. Those weren't -- that wasn't part of your  
 24 inspection?

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1 A. I looked them over. That was part of the  
 2 inspection once I looked them over.  
 3 Q. You looked them over after you did the  
 4 report or before you did the report?  
 5 A. Before I did the report.  
 6 Q. Okay. And -- and -- so -- so when the  
 7 car came to you, was the bumper cover already off of  
 8 it or was it on?  
 9 A. It was on. I took it off.  
 10 Q. Okay. Do you know whether Ramos took it  
 11 off or not before you?  
 12 A. He must have. He took pictures of it.  
 13 Q. Okay. And so -- so did you look at the  
 14 back of the bumper cover yourself when you -- when  
 15 you inspected it? The backside, where the bumper  
 16 welds were?  
 17 A. On the back? I didn't take the back  
 18 bumper off.  
 19 Q. No. The front bumper in the inside, did  
 20 you look at the bumper welds to determine whether  
 21 those were factory original or whether they'd been  
 22 repaired?  
 23 A. I didn't -- even if I didn't take them  
 24 off, when I -- like I had -- I took the bumper

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1 off -- even if the bumper's on or off, I could tell  
 2 if they were --  
 3 Q. Did you use --  
 4 A. -- replaced?  
 5 Q. Did you use a rubber mallet to put the  
 6 bumper back on?  
 7 A. No, I didn't use a rubber mallet. Who  
 8 would use a rubber mallet?  
 9 Q. Well, one of the tools that's listed in  
 10 the interrogatory answer is that it was a rubber  
 11 mallet.  
 12 A. I mean, they list it. You don't need to  
 13 use a rubber mallet to push it in.  
 14 Q. How many -- how many lifts do you have in  
 15 your dealership -- in your repair facility?  
 16 A. Five lifts.  
 17 Q. And -- and how many repairs -- cars do  
 18 you repair a month, approximately?  
 19 A. A lot. I don't know.  
 20 Q. And you're ASE certified?  
 21 A. Yes.  
 22 Q. What -- what other certifications do you  
 23 have?  
 24 A. I got Level 1 through Mercedes and BMW

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1 certifications. It's the top of --  
 2 Q. Do you have any certifications for  
 3 Infiniti?  
 4 A. Well, certifications through Mercedes,  
 5 the A -- they go through ASE themselves.  
 6 Q. Okay. But do you have any certifications  
 7 through Infiniti?  
 8 A. No. I never worked for Infiniti; so...  
 9 Q. Have you ever taken any classes  
 10 specifically regarding and repairing Infinitis?  
 11 A. No, I didn't take no classes for  
 12 Infinitis.  
 13 Q. Okay. And now looking again at PROG20,  
 14 you're saying you don't know whether that was  
 15 still -- you didn't see whether that crack -- that  
 16 crack fastener marrying piece was still cracked at  
 17 this time; correct?  
 18 A. Right. I don't know if that was there or  
 19 not before.  
 20 Q. And that's not part of your opinion.  
 21 And if you look at PROG19 --  
 22 A. These are -- whose pictures are these?  
 23 Ours?  
 24 Q. Progressive insurance, after the accident

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1 was --

2 MR. BRODSKY: That's from the accident.

3 A. Okay. Because it looks like --

4 Q. (By Mr. Lubin) These are from the

5 accident. You see PROG19? Do you know if -- do you

6 see where the paint is dented right there?

7 MR. BRODSKY: It's not dented.

8 Q. (By Mr. Lubin) Do you see where the

9 paint is off and there's a -- there's -- there's a

10 scratch?

11 A. It doesn't have to be. It could be a

12 piece of rubber coming out, for all I know. I --

13 I'd have to --

14 Q. Okay. But do you know whether that's

15 still there or not?

16 A. No. I couldn't tell you.

17 Q. Is the -- is the light -- that light,

18 that front light there, is it straight or crooked?

19 Do you know?

20 A. You can't tell from this picture.

21 Q. Well, did you know from your inspection

22 whether it's straight or crooked?

23 A. From my inspection, the car didn't look

24 like it --

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1 Q. I'm asking you about this particular

2 light. Did you examine whether --

3 MR. BRODSKY: He's trying to answer. Quit

4 interrupting him.

5 Answer the question.

6 Q. (By Mr. Lubin) Is it in your report

7 whether this light is --

8 MR. BRODSKY: That's not what you asked him.

9 You asked him --

10 Q. (By Mr. Lubin) First, let's look at your

11 report.

12 MR. BRODSKY: Quit changing the report --

13 Q. (By Mr. Lubin) Sir, let's look at your

14 report.

15 MR. BRODSKY: Quit changing your question.

16 Q. (By Mr. Lubin) Do you mention anything

17 about whether the lights are straight or crooked in

18 your report?

19 A. No. I gave you a general of the car,

20 plus the collision of the car.

21 Q. Okay. Did you -- did you -- did

22 you examine whether the lights were straight or

23 crooked?

24 A. If I would have seen something out of the

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1 ordinary, I would have reported it.

2 Q. If you look at PROG14, sir --

3 A. Okay.

4 Q. -- did you observe any damage there,

5 whether that was repaired or not when you did your

6 inspection?

7 A. What are you --

8 Q. Where the finger is pointing.

9 A. Where is the damage in here? I don't see

10 the damage in here.

11 Q. Sir, you can see the closeup that we

12 looked at where there was a scratch. Look at

13 PROG16 -- 15. Do you see that? Passenger right

14 fender. Do you see that right there, above the

15 light?

16 A. Okay.

17 Q. Do you know whether that was properly

18 repaired and painted?

19 MR. BRODSKY: He said he didn't do an

20 inspection of the painting. How many times --

21 A. Yeah --

22 MR. BRODSKY: -- are you going --

23 Q. (By Mr. Lubin) So you don't know?

24 A. Yeah.

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1 MR. BRODSKY: Well, he said he didn't do --

2 Q. (By Mr. Lubin) So that's not -- so

3 that's not part of your opinion; correct? The

4 PROG --

5 MR. BRODSKY: We've already gone over --

6 Q. (By Mr. Lubin) -- the damage shown in

7 PROG15, whether that was -- that was not part of

8 your opinion; correct, sir?

9 A. Like I said, if I would have seen

10 something out of the ordinary, I would have reported

11 it.

12 Q. Yeah, but -- and if -- and if you look at

13 PROG13, sir, do you know whether that -- where the

14 finger is pointing, whether that chip is still there

15 or not?

16 MR. BRODSKY: He's testified that he's not --

17 didn't do anything on the body. He's not the body

18 man. He's the mechanic.

19 Q. (By Mr. Lubin) So you've done nothing on

20 the body condition; correct?

21 MR. BRODSKY: Other than a general look --

22 A. Yeah.

23 MR. BRODSKY: -- he said he didn't do --

24 Q. (By Mr. Lubin) So do you agree with your

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1 counsel that you didn't do anything with the body  
 2 other than a general look?  
 3 A. I'm not agreeing with him. I'm telling  
 4 you what I'm telling you. I'm telling you that --  
 5 that the -- I did a general look at the body. If  
 6 there was anything out of the ordinary, I would have  
 7 put it in the report. I didn't see nothing out of  
 8 the ordinary. I checked the mechanics and the frame  
 9 and the structure of the car.  
 10 Q. Did you -- did you specifically look at  
 11 this, to see whether this chip is still there or not  
 12 in PROG13?  
 13 MR. BRODSKY: He just said he didn't. How many  
 14 times he got to --  
 15 A. I can't tell if there's a chip there.  
 16 Q. (By Mr. Lubin) You can't tell if there's  
 17 a chip right here where the finger is pointing,  
 18 where it's black?  
 19 A. How do I know that's not a piece of  
 20 dum-dum right along there, making it look -- I don't  
 21 know who's taking that picture. That doesn't  
 22 mean --  
 23 Q. That's --  
 24 A. -- I'd have to see the --

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1 Q. -- that's Progressive insurance's  
 2 estimator.  
 3 A. I don't care.  
 4 Q. That's what these documents are --  
 5 A. That means he's great, he's good? I'd  
 6 have to see it myself.  
 7 Q. And you didn't see any of the damage to  
 8 the car -- any -- to the car yourself? Or verify --  
 9 you didn't call up Progressive's estimator and ask  
 10 him questions about his estimate; correct?  
 11 A. That's none of my business --  
 12 MR. BRODSKY: Why would he do that? He didn't  
 13 know -- he said at the beginning of this he didn't  
 14 know about the report. He didn't know about it, so  
 15 how could he call up their investigator?  
 16 Quit asking these worthless, ridiculous  
 17 questions and get to something that actually means  
 18 something.  
 19 Q. (By Mr. Lubin) Sir, look at PROG53.  
 20 A. Okay.  
 21 Q. Were you aware that the windshield was  
 22 cracked in the --  
 23 MR. BRODSKY: We already went over that.  
 24 MR. LUBIN: Yes --

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1 MR. BRODSKY: We already talked about --  
 2 MR. LUBIN: -- but you said it assumed facts  
 3 not in evidence.  
 4 MR. BRODSKY: Right.  
 5 MR. LUBIN: Now I'm showing him the evidence.  
 6 MR. BRODSKY: Okay.  
 7 Q. (By Mr. Lubin) Now, were you aware that  
 8 the windshield was cracked?  
 9 MR. BRODSKY: He said he didn't see anything  
 10 about the accident. He didn't see it --  
 11 A. You asked me that.  
 12 MR. BRODSKY: How could he be aware? You  
 13 already asked this question.  
 14 A. I got to get to work. Are you going to  
 15 ask me some questions about what I did?  
 16 MR. BRODSKY: You asked about what he did?  
 17 Q. (By Mr. Lubin) So yes or no, did you  
 18 know that it was cracked?  
 19 MR. BRODSKY: He already asked and answered  
 20 that question three times.  
 21 MR. LUBIN: No, he didn't.  
 22 MR. BRODSKY: Yes, he did.  
 23 MR. LUBIN: You wouldn't let him answer that  
 24 question.

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1 MR. BRODSKY: No, I did. He said three times  
 2 he didn't --  
 3 MR. LUBIN: Well, why don't you just let him  
 4 answer the question?  
 5 MR. BRODSKY: He wasn't -- he already said it.  
 6 He already said he wasn't aware of any --  
 7 Q. (By Mr. Lubin) Sir, is that correct, you  
 8 weren't aware of the --  
 9 MR. BRODSKY: -- of any damages --  
 10 Q. (By Mr. Lubin) -- of the windows --  
 11 MR. BRODSKY: -- of any damage to the car.  
 12 Q. (By Mr. Lubin) -- in the car?  
 13 A. Yeah, I told you. I mean, I didn't know  
 14 there was any damage to the car. I told you that.  
 15 If you ask me about my report, man, you know...  
 16 Q. We'll get to that.  
 17 A. Well, if you ask me about my report --  
 18 Q. Sir, if you look at PROG39, please. Did  
 19 you see that red arrow when you inspected the car?  
 20 A. I don't even know what I'm looking at  
 21 here.  
 22 Q. PROG39, did you see a red arrow in the  
 23 inside of the car?  
 24 MR. BRODSKY: The red arrow is on the picture,

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1 and the arrow was not on the --  
 2 MR. LUBIN: And I'm asking him --  
 3 MR. BRODSKY: -- on the car.  
 4 MR. LUBIN: I'm asking him if it's still -- if  
 5 it's --  
 6 MR. BRODSKY: The red arrow was never on the  
 7 car. It's part of the picture.  
 8 MR. LUBIN: That's actually incorrect. It's in  
 9 the pictures that he took.  
 10 MR. BRODSKY: It's in the pictures that the  
 11 mechanic took.  
 12 MR. LUBIN: No, that they took. I'm asking him  
 13 now --  
 14 MR. BRODSKY: Is that a picture --  
 15 Q. (By Mr. Lubin) Sir, do you know whether  
 16 that red arrow is still on the car or not, in that  
 17 part of the car?  
 18 MR. BRODSKY: This is --  
 19 Q. (By Mr. Lubin) Yes or no, do you know?  
 20 MR. BRODSKY: -- not in the picture. This  
 21 was -- the red arrow was not in the picture.  
 22 Q. (By Mr. Lubin) Do you know whether that  
 23 red arrow is still on the car or not? Yes or no, do  
 24 you know as you sit there now, without looking at


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1 the picture?  
 2 MR. BRODSKY: It's on the picture --  
 3 A. If there's an arrow on the car?  
 4 Q. (By Mr. Lubin) Yeah, this red arrow  
 5 that's in this picture --  
 6 MR. BRODSKY: It was never on the car.  
 7 THE COURT REPORTER: Okay. You know what? I'm  
 8 going to call the office to find a reporter who can  
 9 get all of you down. That's what I'm going to do.  
 10 MR. BRODSKY: Go ahead.  
 11 THE COURT REPORTER: Maybe they'll find a  
 12 reporter who's capable of getting five people at the  
 13 same time.  
 14 (WHEREUPON, a recess was had.)  
 15 (WHEREUPON, the deposition was  
 16 adjourned sine die.)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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1 STATE OF ILLINOIS )  
 2 ) SS:  
 3 COUNTY OF C O O K )  
 4  
 5 I, ELIA E. CARRIÓN, a Certified Shorthand  
 6 Reporter of said state, do hereby certify:  
 7  
 8 That previous to the commencement of the  
 9 examination of the witness, the witness was sworn to  
 10 testify the whole truth concerning the matters  
 11 herein;  
 12  
 13 That the foregoing deposition transcript  
 14 was reported stenographically by me, was thereafter  
 15 reduced to typewriting under my personal direction  
 16 and constitutes a true record of the testimony given  
 17 and the proceedings had;  
 18  
 19 That the said deposition was taken before  
 20 me at the time and place specified;  
 21  
 22 That I am not a relative or employee or  
 23 attorney or counsel, nor a relative or employee of  
 24 such attorney or counsel for any of the parties

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1 hereto, nor interested directly or indirectly in the  
 2 outcome of this action;  
 3  
 4 IN WITNESS WHEREOF, I do hereunto set my  
 5 hand of office at Chicago, Illinois, this 2nd day of  
 6 April, 2017.  
 7   
 8  
 9 C.S.R. Certificate No. 084.004641.  
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