

1 A Okay, visit April 5, 2023, pages 91 to 97
 2 is correct. Okay, this -- this says -- the last page
 3 is 106. This says to 107. This is --
 4 Q Okay. So we're clear, ma'am, on page?
 5 A 8/24 date is the visit.
 6 Q Yeah, this one August 22, 2023.
 7 A Yeah, this is August 24 on the next sheet.
 8 Q So it should -- what you're telling me is
 9 the yellow tag is wrong, but it should be page 98
 10 through?
 11 A 106.
 12 Q 106; is that correct?
 13 A Yes, correct.
 14 Q Okay. That's fine. And again, we're going
 15 to take these tags off.
 16 A Okay. I got it.
 17 Q We just want to identify the dates.
 18 A Okay.
 19 Q Okay.
 20 A Okay. Visit 8/24/2023 pages 107 to 115 is
 21 correct.
 22 Q Okay.
 23 A Does that say 28?
 24 Q Let's see. I think it's August 28, 2023.
 25 A Okay, good. So visit August 28, 2023, 116

1 to 127.
 2 Visit August 30, 2023, 128 to 139; visit
 3 9/5/23, pages 140 to 151; visit 9/8/2023, pages 152
 4 to 163. So it doesn't matter if that's wrong. It
 5 says to 161.
 6 Q Okay. Well, you've identified it for the
 7 record?
 8 A Okay. That's what I'm saying, so I
 9 don't -- I don't need to mention it, right.
 10 Q Yeah, that's fine.
 11 A Visit 9/12/2023, pages 164 to 169; visit
 12 9/12/2023, pages 170 to 185; visit 9/19/2023, pages
 13 130 -- sorry, 186 to 202; visit 9/28/2023, pages 203
 14 to 212; visit 9/29/2023, pages 213 to 244.
 15 Q Are you aware of any additional records
 16 that were produced in connection with this case?
 17 A No.
 18 Q Okay. Now, on page 25 of the records for
 19 August 16, 2023 through August 18 of 2023, there's a
 20 description that you may have given a doctor of the
 21 incident?
 22 A It is a description, yes.
 23 Q Okay. So the description is you tripped?
 24 A Yes.
 25 Q Okay. Is that what you recall telling the

1 doctor?
 2 A Okay. If you've ever broken your femur,
 3 you are in excruciating pain, your body is in shock,
 4 and you do not remember what you told people at the
 5 time.
 6 Q Okay. So well, let me ask it to you this
 7 way then, ma'am, are you telling me you do not recall
 8 what you have told -- what you may have told a doctor
 9 immediately after the incident. That's what you're
 10 telling me?
 11 A Yes, with caveats.
 12 Q Okay. What would be the caveats?
 13 A That you're in pain, you're in shock.
 14 You're lying on a gurney not even in a private room
 15 in a corridor. It's a stressful -- it's a stressful
 16 time.
 17 Q Okay. Well --
 18 A And also -- and also, might I just say it's
 19 14, 15 months ago. I mean, time has elapsed and you
 20 don't -- you don't always remember what you had for
 21 lunch yesterday.
 22 Q Okay. Well, I just need to be clear. We
 23 just need some clear testimony, and I'm not trying to
 24 trick you.
 25 Is it that you don't remember what you may

1 have told a doctor or are you saying that whatever
 2 description is on page 25 of --
 3 A Well, I'd also -- excuse me, I'm sorry to
 4 interrupt, but I also would like to make the point
 5 and I have -- I have this proof in my own medical
 6 records that even when you're in a stressful state,
 7 what you tell a doctor doesn't always get accurately
 8 transcribed.
 9 Q That was going to be my next question,
 10 ma'am. Do you recall -- so again, let's first start
 11 off with is it you don't recall what -- what you told
 12 the doctor or are you saying this is incorrect?
 13 A I'm not saying either. It's -- prima facie
 14 it's a description of what happened. It's exactly
 15 what I said or did they transcribe it exactly what I
 16 said, we'll never know.
 17 Q Okay. Well, and you're telling me today
 18 anyway that you don't really remember what you may
 19 have said?
 20 A I don't remember precisely what I said.
 21 Q That's fine, ma'am. Going on to another
 22 group of materials that were Dropboxed to us. This
 23 is Exhibit 7 and I understand that those are medical
 24 bills that you believe relate to this incident; is
 25 that correct?

46 1 A Yes, yes. 2 Q Okay. Take a quick look because I have 3 some questions about whether they all relate to this 4 incident. 5 A Oh, I'll get them. I'll get them. I'll 6 get them. And those two pages don't. 7 Q Okay. Just so -- ma'am, again, can you 8 keep them all together. And let's -- so we're 9 talking about Exhibit 7 at this point, correct? 10 A Yes. 11 Q Okay. And I think you've identified what 12 were the last two pages of this exhibit? 13 A Yes. 14 Q And you agree that those two pages do not 15 relate to the incident at Kahala Mall; is that 16 correct? 17 A Correct. 18 Q Okay. So what I want you to do is take 19 with a red pen and mark at the bottom of the page not 20 related and sign it so we have a clear record again 21 of what you're talking about. And again, Exhibit 7 22 will be an exhibit to this deposition so. 23 A Actually, this page does relate. 24 Q Okay. 25 A So this one.	48 1 Exhibit 2. I think we're on No. 9 at that point so 2 let's move on. 3 Number 10 asked you to state the physical 4 or mental injuries or conditions you claim resulted 5 from the accident. I believe in the first paragraph 6 you're talking about the fractured femur and the hip 7 replacement. The second paragraph, I believe, you're 8 talking about your mental state. Have you had a 9 chance to look at it, ma'am? 10 A Yes. 11 Q Am I understanding of what you're claiming 12 the hip replacement or fractured femur and hip 13 replacement and some kind of emotional or mental -- 14 A Yes. 15 Q -- issue? 16 A Yes. 17 Q Okay. Anything else? 18 A No. 19 Q Okay. With regard to No. 11, question 11, 20 I -- take a look at your answer. It looks like you 21 in, the second paragraph, you talk about spinal 22 stenosis. 23 A Yes. 24 Q Which I understand is a condition you've 25 had since at least 2016. Am I correct about that?
47 1 Q Okay. 2 A So just not related? 3 Q And you can -- if you can initial it for 4 me, and that will be fine. 5 A (Witness complies.) 6 Q That's good. 7 A Do you want me to date it? 8 Q No, that's fine. It's going to be an 9 exhibit to your deposition so. 10 A Okay. 11 Q Again -- 12 A Oh, sorry. 13 Q All right. This is, I believe, the last 14 portion of the files that have been Dropboxed to us. 15 It's a series of various photographs some of which, I 16 believe, are of Kahala Mall, some of are your 17 injuries and some are of your shoes. And actually, 18 some of these may be places outside of Kahala Mall. 19 But in any event, my question to you is are these the 20 photographs you reference in your Answers to 21 Interrogatories No. 9 because remember that's where 22 we were? 23 A Yes, they are. 24 Q Okay. Then for now we can put that aside. 25 Thank you. Going back to -- let's see, this is	49 1 A Correct. 2 Q Okay. And that's your low back, correct? 3 A Correct. 4 Q And so you previously -- you acknowledge 5 you previously had cortisone injections because you 6 had pain, correct? 7 A Yes. 8 Q Okay. If you can turn to -- let's see, 9 page 12, which is your listing of physicians, you 10 list David Lee? 11 A Yes. 12 Q What type of doctor is Dr. Lee? 13 A Cardiologist. 14 Q Okay. You also list Anna Parlin. You see 15 that? 16 A Yes. 17 Q Okay. What kind of doctor is she? 18 A I get -- I get confused. So she's an eye 19 doctor. She actually does retinas or I get confused 20 as to ophthalmologist, optometrist, optician. I 21 don't know what they all -- so I don't know what her 22 exact opt title is. 23 Q Okay. Well she's an M.D. as opposed -- 24 A Correct. 25 Q -- to a Ph.D.? Okay. And question 14 that

13 (Pages 46 to 49)

1 relates your response is -- well, question 14 relates
2 to the medical or health care expenses incurred, and
3 that is what we've identified as Exhibit 7, correct?

4 A Correct.

5 Q Okay. Let's talk a little bit about
6 Exhibit 5 if we can. Exhibit 5, page 5 in paragraph
7 15, I believe, is your description of what actually
8 happened.

9 A Yes.

10 Q Okay. And so you stated that, I guess,
11 previously under oath that you tripped on the storm
12 grating?

13 A Yes.

14 THE REPORTER: On the storm?

15 MR. KAYA: Grating.

16 BY MR. KAYA:

17 Q Okay. And when you say you tripped, what
18 caused you to trip?

19 A Well, I don't -- I don't know exactly. But
20 when I went back to look at it, there's a gap.
21 There's two of the bars are wider than the rest of
22 the bars, and all the concrete surrounding the
23 grating has deteriorated. So it could have been
24 either catching my foot in the bar or on the uneven
25 surround.

1 Q Okay. Well, do you know which?

2 A No.

3 Q Okay. Which direction were you going?

4 A Towards the separate crossing.

5 Q So you're talking toward the crosswalk. Is
6 that what you're saying?

7 A Correct.

8 Q Okay. So describe for me now say in the
9 minute before you tripped to the point that you
10 tripped, what happened?

11 A The car stopped right by the separate
12 crossing so I could use that to walk across the -- to
13 go to Whole Foods. I stepped out of the car, I
14 turned to my left and tripped.

15 Q Okay. So was the door open or closed --

16 A It was instant.

17 Q -- when you tripped?

18 A The door was closed. I'm pretty sure I
19 closed the door. Well, no, I know I must have closed
20 the door and I'll tell you why because my hand was
21 underneath the car and Craig was starting to leave
22 and it was only the people shouting at him that
23 stopped him running over my hand.

24 Q Okay. So we're clear, ma'am, you exited
25 the passenger's side of the vehicle?

1 A Correct.

2 Q Okay. And where you exited is a red curb,
3 correct?

4 A I don't know if there's a red curb there.

5 There's lots of red curbs at Kahala Mall.

6 Predominantly red curbs at Kahala Mall.

7 Q When you look -- when you look at page 6 of
8 exhibit -- of the exhibit.

9 A Yes, there's a red curb there.

10 Q Okay. So you stopped in a no parking, no
11 stopping zone. That's what you're telling us, right?

12 A But it's right by a separate crossing.

13 Q Again, you stopped in a no parking, no
14 stopping zone?

15 A I don't know that that's a no stopping no
16 parking zone because there are no signs to say so.

17 Q Okay. But red to you indicates what, that
18 you can stop and park there?

19 A I don't know. I don't know the meaning of
20 red curbs in a private shopping mall as opposed to
21 the open road.

22 Q Okay. On the open road, does that mean you
23 can stop there?

24 A No, you can't stop there.

25 Q Okay. So you then exited -- is that your

1 vehicle by the way in the photograph?

2 A It is.

3 Q Okay. So you exited your Sentra or Versa?

4 A Versa.

5 Q Okay. And you say you closed the door, and
6 you started to walk towards the crosswalk that we see
7 on page 6, correct?

8 A Yes.

9 Q Okay. And that you tripped on -- you're
10 not sure either the grating or the surround -- the
11 area surrounding the grating.

12 A Yes.

13 Q Is that what you're saying?

14 A Yes.

15 Q Okay. At any point, did you look down
16 before you tripped?

17 A I did not look down.

18 Q Okay.

19 A I don't look down when I get out of a car.

20 Q And why would that be, what were you
21 looking at then?

22 A Cars.

23 Q What cars?

24 A The cars behind me and the cars in front
25 because I wanted to make sure it was going to be safe

1 to cross the crosswalk.

2 Q Okay. So you're telling me you walked
3 towards the crosswalk looking behind of you?

4 A No, I was standing still and I didn't get
5 to walk towards the crosswalk because I fell almost
6 immediately.

7 Q Okay. So are you saying that you, as you
8 put your foot out the door, you fell immediately?

9 A No, because I had to close the car door, so
10 I didn't fall immediately. I got out of the car.

11 Q So there was some movement of your body
12 before you fell?

13 A I had to step forward, yes.

14 Q Okay.

15 A Away from the car.

16 Q You then closed the door --

17 A Yes.

18 Q -- turned to your right to start to go
19 toward the crosswalk?

20 A No, turned to my left.

21 Q Okay. You turned to your left. So your
22 back was to --

23 A The car.

24 Q Your car, okay.

25 A On the car -- on to the main entrance.

1 Q And you were looking for cars behind and
2 oncoming traffic. Is that what you're telling me?

3 A Yeah, looking right and left as you're
4 taught to do.

5 Q Okay. So you're telling me now you're
6 facing the parking structure and you're looking left
7 and right?

8 A I looked right and then left.

9 Q Okay. With -- with the car behind of you,
10 correct?

11 A My car behind me.

12 Q Okay. And the reason you were looking left
13 and right was to look for --

14 A Traffic.

15 Q -- either oncoming traffic coming in your
16 lane or traffic coming in the opposite direction?

17 A Correct.

18 Q Am I right? Okay.

19 And you didn't look down, and you say you
20 took one or two steps. Was it one step?

21 A I don't remember.

22 Q Okay. But there was movement of your body
23 at the time, correct?

24 A Yes.

25 Q Okay. And then you fell?

1 A Yes.

2 Q Okay. And did you fall forward, backward?

3 A No, to my left.

4 Q To your left. So you would have fallen
5 with your head to --

6 A I fell on this side, so I fell to my left
7 with my arm outstretched to as you automatically do
8 to support yourself.

9 Q Okay. So again, looking at the photograph
10 on page 6, you would have fallen toward the
11 crosswalk?

12 A But that photograph was not taken on the
13 day.

14 Q Well, are you saying the crosswalk --

15 A So the car --

16 Q Would have been someplace else?

17 THE REPORTER: Wait.

18 MR. KAYA: I'm sorry, I'm sorry.

19 Please.

20 BY MR. KAYA:

21 Q So let's take a step back. Please finish
22 your answer and then I'll follow up.

23 A How far did you get?

24 Q So my question then at that point -- well,
25 let me first ask you, are you done with your

1 response?

2 A Well, the car was a -- the car was a little
3 bit further back. So I took a step to my left.

4 Q Okay. And I believe you said that your
5 husband almost ran over your left hand, correct?

6 A He started to move the car.

7 Q Okay. And how far away had you stepped
8 away from your car?

9 A I don't remember.

10 Q So one full step, half a step, do you know?

11 A I don't remember.

12 Q Okay. But the car is behind you. Am I
13 right?

14 A Yes.

15 Q Okay.

16 A I was clear at the car.

17 Q Okay. And you can't tell me if you took
18 one step or a half step but you believe it was a step
19 and then you fell?

20 A Yes.

21 Q Okay. And when we talk about taking a
22 step, are you taking a step toward the curb or a step
23 toward the crosswalk?

24 A I was taking a step towards the crosswalk.

25 Q Okay. So you were stepping sideways?

- 1 A When you get out of a car, the passenger
2 door is -- so you're going to be facing that way so
3 you have to turn sideways to start your walk towards
4 the crosswalk.
5 Q Okay. So again, we're trying to go step by
6 step about what happened. So let's go back. You say
7 you exit the car, you're standing outside the
8 vehicle, correct?
9 A Correct.
10 Q Okay. The car starts to go. Am I right?
11 A No.
12 Q Okay. Is it -- is the car moving at the
13 time you start your fall?
14 A No.
15 Q Okay. So you're not --
16 A He doesn't move the car until he can't see
17 me anymore.
18 Q Okay. Well, let's go through this again.
19 So you've taken -- you've gotten out of the car. At
20 that point when you get out of the car, which
21 direction are you facing?
22 A The parking structure.
23 Q You're facing the parking structure, okay.
24 So again, you mentioned you look left and right or
25 right and left and then you took a step; is that

- 1 correct?
2 A Correct.
3 Q Okay. And you're telling me now you turn
4 from facing the parking structure, you turn to facing
5 the crosswalk. Is that what you're telling me?
6 A I took a step left.
7 Q Before or after you turned?
8 A To turn.
9 Q Okay. So you took a step to turn left?
10 A Yes.
11 Q Okay. And is that when you fell?
12 A Yes.
13 Q Okay. And just so we're clear from the
14 point you got out of the vehicle to the point that
15 you started to fall, you never looked down where your
16 feet were; is that correct?
17 A I did not.
18 Q After you started to fall -- now, this is
19 where I'm getting a little confused because I know
20 that you mentioned that he almost ran over your
21 foot -- I mean, your hand. So what I take from that
22 is that you've already fallen to the ground; is that
23 right?
24 A Correct.
25 Q Okay. So you've fallen to the ground and

- 1 is that when the car starts to move?
2 A Correct.
3 Q Okay. And which tire almost runs over your
4 hand?
5 A It would have been the rear off side tire.
6 Q Again, don't guess. If you don't know
7 it's --
8 A No, I've got to picture it in my mind.
9 Q Okay, okay. But again, I want to caution
10 you, please don't guess and it's perfectly okay to
11 tell me I don't remember or I don't know.
12 A Please, sir, I am not guessing. I know
13 which way the car was facing. I know where I was
14 lying. I just was trying to think of describing -- I
15 was trying to think of near side or off side, near
16 side the driver's side, right? Off side is the
17 passenger's side.
18 Q Okay. That's your terminology, but I can
19 go -- I understand what you're saying.
20 A Right. So the rear off side wheel, rear --
21 I can't say back. Rear is back. The rear off side
22 wheel.
23 Q Okay. So anyway, it's the rear passenger's
24 side wheel that --
25 A Correct.

- 1 Q -- almost ran over your -- that almost ran
2 over your hand?
3 A Correct.
4 Q Is that what you're saying? Okay. And
5 that's because -- by the way, you mentioned that you
6 were facing toward the crosswalk when you landed; is
7 that right?
8 A I was diagonal.
9 Q You were diagonal?
10 A Yes.
11 Q So partially toward the red curb. Is that
12 what you're saying?
13 A My feet would have been towards the red
14 curb.
15 Q Oh, you're telling me that you nearly fell
16 into the car?
17 A No, no, no, no, I was using that as a -- as
18 -- this is the way I fell. The car's got nothing to
19 do with it. That's the way I fell with my hand.
20 Only my hand and my sunglasses went under the car.
21 Q Okay. How tall are you?
22 A Five foot six.
23 Q Okay. So the space between where you --
24 where your feet were and the car would have been
25 several feet -- you would have been several feet away

1 from the car then, right?

2 A Where I was when I was standing and where I
3 was when I fell are two different things so because
4 you're falling, your body isn't in the same shape so
5 this arm is out stretched which is the bit that lands
6 underneath the car. But what happened to the rest of
7 my body because I fell because I couldn't stay
8 upright anymore.

9 Q Well, I guess what I'm trying to find out,
10 ma'am, is when you say -- when we talk about
11 tripping, sometimes people trip and they take a step
12 or two and then hit the ground, okay. Or are you
13 saying that you tripped and went straight down and
14 hit the ground?

15 A I would I tripped and went straight down.

16 Q Okay. And you say that your husband did
17 not move forward with the car. In other words, the
18 car stopped because bystanders said stop?

19 A Correct.

20 Q Okay. Now in paragraph 17 you say -- you
21 agree you shouldn't have exited the car at that
22 location but you indicate that you've done it many
23 times before. Is that --

24 A No, it says with hindsight.

25 Q Okay.

1 A So it's --

2 Q With hindsight?

3 A I'm just saying it's easy to say. I'm not
4 saying I said it or thought it. I'm saying with
5 hindsight it's easy to say you shouldn't have got out
6 there, but it's right by the separate crossing, so it
7 makes sense to be dropped there so that I could use
8 the separate crossing and not walk through the car
9 park with cars going everywhere.

10 Q Now, it also says in this same paragraph
11 that you've seen other people get out of the car, get
12 out of their respective vehicles at or near the same
13 area; is that right?

14 A Yes.

15 Q Okay. Did any of them fall?

16 A I haven't seen anybody fall.

17 Q Okay. So as far as you know, you're the
18 only person that tripped on that grate?

19 A I don't know of anybody else.

20 Q Okay. Now, on page problem 14, there's
21 some discussion about, I guess, emails with a
22 Mr. Mick. Do you see that paragraph 39?

23 A Yeah, I do.

24 Q Okay. Were you a party to those
25 communications?

1 A I -- not those communications. As before,
2 I did research into rules and regulations regarding
3 drains and what have you. I did not do the physical
4 side of it.

5 Q Okay. So you're the person that looked up
6 the building code and the ADA requirements?

7 A Yes.

8 Q Okay. And you understand that the building
9 code does not apply to this drain, right?

10 A There's no building code for this drain.

11 Q Correct. You understand that, right?

12 A But the Kahala Mall has the -- has --

13 Q Ma'am, my question is --

14 A Yes.

15 Q -- you understand?

16 A Yes, yes.

17 Q Okay. And you also understand from
18 paragraph 39 that the ADA does not apply to this
19 grate, correct?

20 A That is not correct.

21 Q Well, if you look at paragraph 39, it
22 appears to say that the ADA would apply if it was
23 located within or part of the accessible route.
24 However, the grate shown in the picture is at the
25 flared portion of the raised crosswalk and the flared

1 portions of the raised crosswalk are typically not
2 part of the accessible route. That's what you wrote,
3 correct?

4 A Yes.

5 Q Okay. So you understand that the location
6 of this grate is not part of the accessible route?

7 A I do not accept that.

8 Q Well, you understand that's what the ADA
9 person told you?

10 A No.

11 Q No? That's not what he said?

12 A I do not accept that the ADA rules do not
13 apply to that grate.

14 Q Okay. I understand you may not accept it,
15 ma'am, and I'm not trying to argue with you, okay.

16 What I'm trying to ascertain is whether you agree
17 that the ADA person told you folks that that -- that
18 the ADA would not apply to this grate. Do you agree
19 or disagree with that?

20 A Where is it?

21 Q Paragraph 39.

22 A They also said it would be covered by the
23 ADA and it requires it to be mandatory as it is a
24 public accommodation.

25 Q And why don't you read the next

- 1 paragraph -- I mean, the next sentence, ma'am. The
2 requirement would only apply when the grates are
3 located within or part of the accessible route. Do
4 you see that?
- 5 A I do see that.
- 6 Q Okay. And the next sentence says that the
7 grate shown in the flared portion of the raised
8 crosswalk and the flared portions of the raised
9 crosswalks are not typically part of the accessible
10 route?
- 11 A Not typically. That does not mean they
12 would not be applied.
- 13 Q Well, did I misread what?
- 14 A No, you did not misread. It's an
15 interpretation.
- 16 Q Okay. It's your interpretation, right?
- 17 A Not necessarily my interpretation. It's an
18 interpretation typically. It doesn't say it's
19 mandatory or it's not or no. It says typically.
- 20 Q Okay. Have you obtained a professional
21 opinion that the grate location is part of the
22 accessible route?
- 23 A I don't know.
- 24 Q The question is not if you know. The
25 question --

- 1 A I haven't.
- 2 Q Okay. We can take a break if you want, a
3 short break for the reporter.
- 4 (Recess from 12:43 p.m. to 1:19 p.m.)
- 5 BY MR. KAYA:
- 6 Q Let's go back on the record. And now I
7 think we're talking about the incident, and I need to
8 ask you first which foot tripped? Was it your --
- 9 A The left.
- 10 Q -- right foot or your left, okay. And you
11 said you fell sideways, right?
- 12 A Diagonally, I think.
- 13 Q In other words, it wasn't falling forward
14 or falling backward. It was diagonally sideways?
- 15 A Yes.
- 16 Q Okay. And as I understand it, you put your
17 left hand out to try and break the fall, is that
18 right, that's why it almost got run over?
- 19 A Yes.
- 20 Q Okay. And when you came to rest on the
21 ground, your left hand was -- was it on the actual
22 raised portion of the crosswalk?
- 23 A No.
- 24 Q Was it on the same level as the grating?
- 25 A Yes.

- 1 Q Now, did the car move at all?
- 2 A He started to pull forward when he was
3 ready to move.
- 4 Q Okay. When you say he started to pull
5 forward, was it -- and if you don't know, you don't
6 know, okay. But was it step on the gas started to
7 pull forward or was it just started to roll forward?
- 8 A Just started to ease forward.
- 9 Q Okay. And I think the description is some
10 bystanders said something?
- 11 A They were yelling stop.
- 12 Q Okay. And do you know where the bystanders
13 were situated?
- 14 A I don't -- I -- I can't remember how many
15 there were. There were quite a few, but I would say
16 they were behind -- behind me. So by the separate
17 crossing on, so they were on my side of the...
- 18 Q They were on the parking structure --
- 19 A Correct.
- 20 Q -- side of the roadway behind you?
- 21 A Correct.
- 22 Q So closer toward the Whole Foods entrance,
23 correct?
- 24 A No.
- 25 Q No, okay. Closer to what would be over

- 1 there?
- 2 A The separate crossing by the Lyft.
- 3 Q Okay. Did you get the names of any of the
4 people that yelled?
- 5 A I'm sorry, I'm lying there in so much pain.
- 6 Q Okay.
- 7 A And even though I don't think I've broken
8 anything, I had a sneaking suspicion I wasn't going
9 to be able to put any weight on that leg, so no, I
10 didn't get any names.
- 11 Q Would you be able to describe the people
12 that may have yelled?
- 13 A They were behind me.
- 14 Q Okay. So the answer is no, right?
- 15 A Correct.
- 16 Q Now, while you're on the ground -- this is
17 after your husband stopped the vehicle, someone --
18 people came to assist, am I right?
- 19 A Yes.
- 20 Q Okay. Do you know where they came from?
21 I'm just asking if you do or if you don't.
- 22 A No.
- 23 Q Okay. Did you recognize any of the actual
24 people that came to help you?
- 25 A No.

1 Q Now, did you ever, after you had fallen,
2 did you try to stand up?
3 A Yes.
4 Q Okay. And what happened?
5 A I couldn't put weight on my leg.
6 Q Okay. Now, my understanding is at some
7 point someone that you believe is Kahala Mall
8 security came by; is that right?
9 A Yes.
10 Q My understanding is that they were not in
11 the area of the fall at the time of the fall; is that
12 correct?
13 A Correct.
14 Q Okay. Do you know about how much time went
15 by before someone from Kahala Mall came?
16 A No.
17 Q Okay. Are they the first people that
18 offered to call an ambulance or did someone else
19 offer to call an ambulance, if you know?
20 A I don't know.
21 Q Okay. Did you hear anyone ask do we need
22 a -- do we need -- should we call an ambulance?
23 A I think so, but I can't be sure.
24 Q Okay. Did your car remain in the same
25 place it was stopped at?

1 A Yes.
2 Q And it remained there until you folks left
3 the mall?
4 A Correct.
5 Q Okay. And my understanding is you folks,
6 rather than waiting for an ambulance, you folks went,
7 drove down to Straub?
8 A Yes.
9 Q Okay. And the type of shoes you were
10 wearing are the Skechers that you have pictures of,
11 correct?
12 A Yes.
13 Q Do you still have the shoes?
14 A Yes.
15 Q Okay. Have you used the shoes since the
16 fall?
17 A No.
18 Q That day, in other words, immediately after
19 you fell until the point that you left the mall, did
20 you see anything that caused you to fall?
21 A I'm sorry, could you repeat that?
22 Q Okay. That day, in other words, the day of
23 the fall, until the time you left the mall, okay, did
24 you see anything specific that caused you to fall?
25 I'm talking about that day.

1 A I understand. I was in pain. I didn't
2 look at anything.
3 Q Okay. Were any photographs taken that day
4 of the area of the fall that you know of?
5 A No. And/or I don't know.
6 Q Okay. Do you know if your husband examined
7 the area of the fall that day?
8 A He did not.
9 Q Now, we've already talked about you're not
10 being sure what you may have told medical personnel
11 when you went to the hospital, correct?
12 A Correct.
13 Q Okay. Do you recall telling any medical
14 personnel at any time while you were in the hospital
15 so initially after the fall to the point you were
16 discharged, anything about how you fell?
17 A No, because then I was focused on
18 recovering.
19 Q Now, I'm going to explain what I'm asking.
20 My question is going to be do you have any medical
21 opinions, okay, not reports, okay. But actual --
22 excuse me, not medical records but actual medical
23 opinions written out in a report form that explains
24 your injuries and what your medical bills related to
25 this incident, the incident at Kahala Mall, what they

1 might be?
2 A I don't know.
3 Q Have you ever asked a physician to furnish
4 that kind of medical report?
5 A I don't remember.
6 Q Going back to Exhibit 5, my question is who
7 took the photographs that are in this?
8 A Both of us Craig and Marjorie.
9 Q Okay. Do you know which photographs you
10 took?
11 A I do not.
12 Q Do you know when the photographs were
13 taken?
14 A I'd have to look at the photographs to see
15 the date on it. They'd be date stamped.
16 Q Okay. So there's a version of the
17 photographs that are date stamped but the ones just
18 so we're clear, the ones that are part of this
19 exhibit don't appear to be date stamped.
20 A But the iPhone just keep freckles of
21 everything. I think it can even tell you where you
22 were this time last year; so there will be time and
23 date within the iPhone system.
24 Q Now, do you presently wear corrective
25 lenses?

- 1 A I do not.
 2 Q When was the last time you had your eyes
 3 checked before the incident of August 2023?
 4 A I don't remember. I'd have to look at my
 5 calendar.
 6 Q I think you mentioned Dr. Parlin is an
 7 eye physician.
 8 A I see doc -- sorry.
 9 Q Correct?
 10 A Yes, I see Dr. Palin.
 11 Q Okay. And --
 12 A Parlin, sorry, Parlin.
 13 Q And do you recall when the last time you
 14 had seen her before the incident of August 2023?
 15 A I don't remember. I'd have to look at the
 16 calendar.
 17 Q But you had been seeing Dr. Parlin before
 18 August of 2023?
 19 A I think so.
 20 Q Do you know what your -- what your vision
 21 is, in other words?
 22 A No, I'd have to look at my records.
 23 Q Okay. When was the last time you saw a
 24 physician for your hip?
 25 A It's approximately one year after the

- 1 surgery.
 2 Q So in your mind, August of 2024?
 3 A It might have been September.
 4 Q Okay. And do you recall which physician
 5 that was?
 6 A It's the PA. Dr. Nakasone was the surgeon,
 7 but subsequent appointments were held by his PA.
 8 Q The physician's assistant?
 9 A Correct.
 10 Q Okay. Do you recall what that person's
 11 name is?
 12 A I should, and I don't. Hold on. Well, I
 13 hopefully put in here Straub bone scan and hips. So
 14 sorry, I haven't put his name in. I'd have to go
 15 back.
 16 Q Okay. Well, the last visit would have been
 17 for a scan then and some kind of followup to discuss
 18 whatever the scan showed. Is that what you recall?
 19 A Correct.
 20 Q Okay. And your recollection is the
 21 followup would have been through the physician's
 22 assistant?
 23 A Correct. All of -- all of my appointments
 24 post apart from one, all of my appointments
 25 postsurgery were with a physician's assistant.

- 1 Q What is the present condition of your hip?
 2 A It still aches from time to time, but I do
 3 sleep better than I had. And sometimes, you know --
 4 sorry, I'm still looking for the name. Sometimes I
 5 have a little bit of numbness in the leg.
 6 Q Okay. And as far as walking, are you
 7 presently experiencing any difficulty with walking?
 8 A Only for longer -- short walks are fine,
 9 just longer walks.
 10 Q And what do you define as a longer walk?
 11 A Maybe more than a mile.
 12 Q Okay. Do you have any difficulty with
 13 lying down?
 14 A Yes, I still have to lie on my right side.
 15 Q Is that something you discuss with your
 16 physicians?
 17 A Okay. It's a culture thing, okay. I'm
 18 very British and we're just get on and get up with
 19 it. And I know there are people in more serious need
 20 than me, so I'm just managing it myself with ice
 21 packs and heat pads and so the answer is no.
 22 Q Okay. So any difficulties with sitting?
 23 A No.
 24 Q What about standing?
 25 A Yeah, I can't stand for a long period of

- 1 time.
 2 Q And so what is -- what do you mean by a
 3 long period?
 4 A Well, maybe after 20 minutes.
 5 Q Do you have any difficulty walking up or
 6 down stairs?
 7 A No.
 8 Q Do you ever climb up or down ladders?
 9 A I have a little one in the kitchen.
 10 Q That's a step stool. That's different.
 11 A No, it's dangerous don't you know.
 12 Q So --
 13 A I do not -- I do not use ladders.
 14 Q And you don't use ladders, but that's not
 15 related to this incident. You just don't use
 16 ladders?
 17 A I don't use ladders.
 18 Q Okay.
 19 A It might if I have to change a lightbulb.
 20 But I'm sorry, I've been looking. I can't find the
 21 name. I'd have to check my other records.
 22 Q That's fine. Now, say in the week before
 23 the incident, what were your chores around the house?
 24 A Cooking, cleaning, tidying up, vacuuming.
 25 Just -- I don't know how many more I could itemize.

1 It's just all regular household duties. It's
2 everything, laundry.

3 **Q** The reason I ask is you're both retired
4 so --

5 **A** Yes.

6 **Q** I would have -- I would have. I don't
7 know, maybe I thought that you divided the chores as
8 opposed to you did -- are you telling me you did all
9 the chores, the household chores?

10 **A** Yes.

11 **Q** Okay.

12 **A** It's -- again, it's a culture thing. I was
13 brought up to get on and do it.

14 **Q** Okay. And for how long did you have any
15 difficulty doing or returning to those chores?

16 **A** A long time. I'd have to -- I made notes
17 so I'd have to go back and check my notes.

18 **Q** So you're telling me today you can't tell
19 us?

20 **A** No, no.

21 **Q** Okay. What about hobbies, what was say a
22 typical hobby in the month before the incident of
23 August 2023?

24 **A** Walking the dog.

25 **Q** Okay. What else?

1 **Q** Okay. So you're talking about your
2 response to question No. 10. Is that what you're
3 saying?

4 **A** Well, it's that. It's because of the pain
5 and because -- there are parts at times where I just
6 feel I didn't want to live anymore. It just --
7 because you -- you just don't think you're ever going
8 to recover. I just --

9 **Q** Now, ma'am, you know, again, I don't mean
10 to pry but the loss of consortium also includes
11 intimacy.

12 **A** Yes.

13 **Q** Okay. So I need to ask you in say the two
14 months before, what -- what was the frequency of you
15 and your husband being intimate?

16 **A** Probably on average twice a week. If he's
17 lucky, it's three to four times a week.

18 **Q** Just so we're on the same page --

19 **A** Yes.

20 **Q** -- we're talking about vaginal intercourse,
21 right?

22 **A** Yes.

23 **Q** Now, then you have this incident. And for
24 how long were you unable to engage in that kind of
25 intimacy?

1 **A** Oh, going to movies, going to -- well, I
2 don't know that's probably not hobbies, is it?
3 Videos, I like making videos. I like going hiking.
4 We go to Koko Head Crater and Foster Gardens. So I
5 like walking. I've always walked. I like exercise,
6 I like doing exercise.

7 **Q** Have you been able to return to those
8 hobbies as you --

9 **A** I -- I can -- I can do some of the walking.
10 I can do the videos. I can't -- I haven't yet got
11 back to the exercise.

12 **Q** Now, I don't mean to pry but your husband
13 made a claim for loss of consortium, so I'm going to
14 have to ask you. How is it that you believe you've
15 been unable to provide companionship to your husband?

16 **A** I think it's a combination of what I wrote
17 in my statement and --

18 **Q** Why don't you tell me which paragraph.

19 **A** I just -- I just -- I don't -- it's not --
20 is this the one? I don't remember. It was the one
21 you asked me about what the contains the mental
22 state. It's just -- I just --

23 **Q** Oh, you're talking about your Answers to
24 Interrogatories. Is that what you're saying?

25 **A** Yes.

1 **A** I don't remember. You'll probably have to
2 ask him.

3 **Q** Okay. And --

4 **A** Excuse me, can I just clarify because
5 unless you think I'm being coy about this, I'm -- I
6 can't remember the end of movies. So I couldn't even
7 remember how long I've been married because
8 Einstein -- Einstein famously said that he didn't
9 keep things in his brain because he could always go
10 to the library and get a book and read it. And
11 whatever right brain left brain thing is, I tend
12 to -- I tend to live in the moment and not keep a lot
13 of stuff absorbed. So I'm not being coy. I'm being
14 honest.

15 **Q** Okay. Well, see, this is -- let me give
16 you some lead up because my understanding is your
17 husband has an injury claim from before the fall at
18 Kahala Mall. Are you aware of that?

19 **A** Yes.

20 **Q** Okay. So the injury claim is to his low
21 back; is that right?

22 **A** Yes.

23 **Q** Okay. So the question would be are you
24 telling me that even with a low back injury, he was
25 able to engage in intimate activities with you three

1 to four times a week?

2 A Yes, because he has Oxycontin if he needs
3 it or sometimes it's Aleve.

4 Q At present, do you have any plans for
5 future treatment?

6 A I do not.

7 Q Tell me what an ordinary work weekday is
8 for you folks now.

9 A An ordinary day, just a day?

10 Q Just a regular day.

11 A Okay. We try to let the dog out, meet
12 friends, go to a movie. I always liked movies. And
13 go and look at -- we always like places -- I don't
14 know what you call them but Foster Garden or you
15 don't call them national parks. What do you call
16 them, you know, like Koko Head Crater or I can't
17 remember the names of them all but what do you call
18 them? Not national parks but parks.

19 Q I know what you're talking --

20 MR. WALSH: Botanical gardens.

21 THE WITNESS: Botanical gardens, yes.

22 BY MR. KAYA:

23 Q Botanical gardens, yes.

24 A Yes, yes, yeah, in and amongst the laundry
25 and the cooking and the cleaning and the...

1 Q Now, with regard to the medical bills, has
2 anybody notified you of a lien? In other words, have
3 you gotten any kind of correspondence from any of the
4 insurers you identified in -- what is it?

5 Paragraph -- paragraph 15 that they have a lien
6 against any recovery that you may make in this
7 lawsuit?

8 A I don't know.

9 Q Well, do you recall ever receiving any kind
10 of correspondence -- let me finish, ma'am. Because
11 typically they send you something in writing saying
12 we hereby assert a lien.

13 A You talked earlier about division of labor,
14 okay, and it's what skills and what skills. I was
15 brought up on the NHS, so I really don't understand
16 the medical insurance in the U.S. so Craig handles
17 all of that. So you'll have to ask Craig.

18 Q Going back to -- look at Exhibit 5,
19 photographs. The one on page 6 which depicts your
20 vehicle. Ma'am, you agree with me that grate is in
21 plain site, right? There's nothing obscuring your
22 vision of that grate?

23 A No.

24 Q No, there is something obscuring your
25 vision?

1 A No, there's nothing obscuring the vision.

2 Q Okay. And you mentioned that you've
3 previously been dropped off in the same area; is that
4 right?

5 A Yes.

6 Q So you knew the grate was present?

7 A No.

8 Q You did not know?

9 A No.

10 Q How many times had you previously been
11 dropped off there?

12 A I don't know.

13 Q Over how many years have you been going to
14 Kahala Mall?

15 A Well, I haven't lived here continuously.
16 So off and on, I don't know how many years, but I
17 haven't lived there continuously so if I use the
18 number of years I've been associated with Hawaii,
19 it's a lot. But I haven't always been here, so I
20 don't know.

21 Q Okay. Well, when was the last time you
22 lived elsewhere?

23 A 2016.

24 Q Okay. So since 2016, how many -- how many
25 times have you been to Kahala Mall?

1 A I don't know.

2 Q And in those times you have been to Kahala
3 Mall, you have been dropped off in the same area?

4 A No, no.

5 Q No?

6 A No, we're dropped -- no, sometimes we park
7 the car, sometimes he'll drop me right outside.
8 Depends on how much traffic is behind us, he'll drop
9 me right outside Whole Foods. It depends on the
10 traffic situation.

11 Q Okay. So your testimony is you simply had
12 never seen that there before the day it occurred?

13 A Correct.

14 Q Okay. Now, you mentioned that there's a
15 grating that's a little wider than the others; is
16 that right?

17 A Two of the -- two of the -- so if you look
18 at this -- this example here, from there to there are
19 all the same but two of these are bent.

20 Q Okay.

21 A And bent open.

22 Q But you can't tell me that's what caused
23 you to fall?

24 A I -- I can't tell you it's what caused me
25 to fall. I can't tell you it isn't what caused me to

1 fall.

2 Q Ma'am, I think we're done.

3 A I'd like to do a couple of clarifications
4 about --

5 Q Okay.

6 A -- what we've talked about, if I may.

7 Q What do you want to clarify?

8 A I want to talk about the definition -- I
9 sort of feel like Bill Clinton but the definition of
10 fall.

11 Q Excuse me, what?

12 A The definition of fall.

13 Q Fall, okay.

14 A Because you asked me if I'd ever fallen and
15 the honest answer to that is no. However, when I was
16 a kid, I crashed my bike and came off it. But I
17 didn't fall. Something caused it to happen. I
18 slipped on some ice when I was living in Vermont, and
19 broke my wrist, but I slipped on ice. I didn't fall.
20 And one time I missed a step when I was going down
21 some steps and sprained an ankle, but that's the
22 limit. But I don't call those falls because they
23 aren't where I just toppled over. Something caused
24 it to happen. So it's slipping or tripping or
25 crashing.

1 Q Okay. Anything else you want to clarify?

2 A Yes, I do. I'd like to go back to your
3 questioning about any knowledge or education or
4 whatever I've had about planning or building permits
5 or I just would like to elaborate that while I
6 haven't had any professional education or
7 qualifications during our Transax business, we owned
8 eight properties in five different countries.

9 And in our personal life over time, we've
10 owned eight different properties. And particularly
11 if we go back to the dog hotel, which is a sort of
12 commercial property, all of those involved blue --
13 they call them blueprints. I can't remember what do
14 they call it? The thing but the planning, rules and
15 regulations, building permits, visits from agents to
16 make sure you've complied with those building
17 permits. So it's not that I don't know anything.
18 It's just I've never done it in a professional
19 capacity.

20 Q Then let's clarify then. You've had --
21 you're telling me you've had some experience in
22 discussing permits?

23 A Dealing with cancels.

24 Q Okay.

25 A Dealing with builders.

1 Q And with specific reference to your dog
2 hotel?

3 A Well, that would be -- well, if you want to
4 talk about whether it's commercial or whether it's
5 domestic, the eight houses would be domestic for the
6 most part except for when we added the dog hotel
7 which was going to be a commercial property, so --

8 Q And this is --

9 A -- that had to meet a certain code.

10 Q Okay. And this is what time frame, what
11 year?

12 A That would have been 2004ish to 2000 --
13 2010.

14 Q And 2004 to 2010 in English?

15 A Correct.

16 Q Okay. What about in America?

17 A It would -- The Poi Company in Kihei.

18 Q And what did you do to the structure at The
19 Poi Company in Kihei?

20 A We adapted -- adapted some -- some of
21 the -- we had OSHA visitors so that will tell you we
22 adapted some of -- we adapted the rooms as was
23 necessary for the operation of The Poi business. So
24 peeling of taro, putting in the machinery to process
25 that taro into poi.

1 Q And you had to submit building plans that
2 got -- had to get approved, right?

3 A Yes, yes.

4 Q And those --

5 A Yes, to give you -- excuse me, to give you
6 an example, we bought the lot next door to provide
7 parking and what have you. And when we asked to turn
8 the water on, they told us it was going to be \$15,000
9 because the -- there had been a house there
10 previously and they just walked away. But -- but
11 after Craig talked story, all of a sudden it came
12 down to nothing and it could be turned on the
13 afternoon.

14 So yeah, so we had experience of dealing
15 with the rules and the regulations and making sure we
16 complied. And I told you we had OSHA visit and they
17 would interview the staff.

18 Q Ma'am, with regard to The Poi Company where
19 you talk about submitting building plans, those are
20 not plans drawn by you --

21 A Correct.

22 Q -- or your husband, correct?

23 A Correct.

24 Q Okay. You had to hire an engineer or
25 architect or something -- someone like that?