

**HOW TO INTERVIEW THE CLIENT  
TO GET THE STORY ON DAMAGES—  
Believe it or not, the client has (most of) the answers**

**ADVOCACY TRACK  
AAJ WINTER CONVENTION  
MIAMI BEACH, FLORIDA  
FEBRUARY 13, 2013**

**By John H. (Jack) Hickey  
Hickey Law Firm, P.A.  
Miami, Florida  
[www.hickeylawfirm.com](http://www.hickeylawfirm.com)**

**A. QUESTIONS AT INTAKE**

- List every part of your body which was injured or affected by this accident and describe how.
- List every complaint/problem which these injuries have caused.
- List every part of the body where you have suffered pain and which was caused by this accident.
- For each and every doctor, chiropractor, physical therapist, psychologist, or health care professional you have seen **after the accident**, please provide:
  - Name of Doctor
  - Specialty
  - Name of hospital, clinic, or outpatient facility where the doctor works
  - Address of hospital, clinic, or outpatient facility
  - Date(s) you saw him/her
  - Reason for seeing him/her and a description of the treatments, surgeries, and tests you received
- For each and every hospital, clinic, or outpatient facility you have been to **after the accident**, please provide the name, address, dates you were there, and a description of the treatments, surgeries, and tests.
- How much is the total of all of your medical bills as a result of this accident? (Make sure to include your doctor, hospital, and any other medical bills that were a result of the accident. Include all bills, including what you have paid, what you owe, and what your insurance has paid.)
- Have you applied for Workers' Comp benefits as a result of this accident or has your employer paid for your medical attention?
- List each insurance company or governmental entity which has paid any of your medical bills.
- Are you Medicaid or SSI eligible?
- How much did you make each week, before taxes, on the average, **before the accident?**

(This includes wages, bonuses, tips, commissions, and all other compensation)

- Have you lost or will you lose wages, bonuses, tips, commissions, raises, promotions, or compensation of any kind as a result of the accident?
- How much of each have you lost since the accident?
  - Wages
  - Bonuses
  - Tips
  - Commissions (How do you calculate it?)
  - Raises and promotions (Describe how you have lost out on these as a result of the accident)
  - Other Compensation (Describe)
- Has your employer or Workers' Comp paid your wages since this accident?
  - If so, how much and from when to when
- How many sick days have you used up since the accident?
- How many vacation days have you used up since the accident?
- How many days have you missed from work in total since the accident?
- Please provide the number of days/weeks/months you were confined to or used the following **after this accident**
  - Bed
  - Wheelchair
  - Walker
  - Crutches
  - Cane
  - Brace
  - Cast
- Have you taken any medication since the accident? If yes, **for each and every** medication please list:
  - Name of the medication
  - Dates taken
  - How often taken
- Have you ever brought a lawsuit before? If yes"
  - Date and Place
  - Name of Defendant(s)
  - What was lawsuit for?
  - How was it resolved?
- Have you ever made a claim for personal injuries before? If yes:
  - Name of Attorney
  - When?
  - Against whom?
  - Describe the injuries
  - Result of claim
- Have you ever made a workers' comp claim before? If yes:
  - When?
  - Provide name of your employer at the time and name of the employer's workers' comp insurance carrier
  - Describe the injuries

- Have you ever been injured **before this accident**? If yes:
  - When?
  - How did it happen?
  - What were your injuries?
  - Provide the names of all doctors, hospitals, or clinics which treated you, as best as you recall
- Have you ever been to a hospital, clinic, or outpatient facility at any time **before this accident**, other than listed above? If yes, please provide:
  - Name of hospital, clinic, or outpatient facility
  - Address of hospital, clinic, or outpatient facility
  - Doctor who treated you while there
  - Dates you were there
  - Description of any and all treatments, surgeries, and tests
- What is your weight now?
- What was your weight before this accident?
- Do you wear glasses?
  - If yes, what is your prescription?
- Do you use a hearing aide?
- Have you ever been fired from a job? If so, please provide us with:
  - Full name of employer
  - Address of employer
  - Your title
  - Date you were terminated
  - Why you were terminated
- Have you ever been accused of fraud, lying, forgery, or falsifying a document? (We ask because if you have, the Defendant will find out and they will get all of the files and documents to support that and it may come into evidence) If so, please give us a full description of what happened and where the documents would be (for example, in a personnel file or in a criminal record in a certain state).
- Have you ever been accused of, arrested for, convicted of, or pled guilty to a crime? If so:
  - In what jurisdiction?
  - Case number?
  - What were all of the charges?
  - On what date was the initiation of these proceedings?
  - On what date was the resolution?

**FOR MEDICAL MALPRACTICE AND NURSING HOME CASES:**

- Date of surgery or procedure
- Date you first saw the doctor you think caused you injury or harm
- Which doctor, hospital, clinic, or HMO referred you to that doctor?
- Have you ever been a member of an HMO? If yes, provide:
  - Name of HMO
  - Address of HMO
  - Your HMO ID Number
- Did an HMO refer you to a doctor you think is connected to this malpractice? If yes, please provide:

- Name of HMO
- Name of doctor
- If this is a claim involving a nursing home, how often did you or how often have you visited your loved one in the last one year?
- Did you complain about the condition of your loved one? If yes:
  - To whom?
  - What did you say?
  - What did they say?

**B. QUESTIONS BEFORE DEPOSITION**

**You are entitled to economic and non-economic damages.**

**ECONOMIC DAMAGES** include your lost wages, bonuses, benefits, raises and promotions in the past and in the future. It also lost ability to earn income in the future. Economic damages also include medical expenses in the past (we should have that calculated) and in the future (including the cost of surgeries and other medical care). Finally, other economic damages also include your expenses for housekeepers, helpers or modifying your house because of your injuries.

**MEDICAL EXPENSES:** Damages includes **medical expenses** in the past (we have calculated those) and medical expenses in the future. (Your doctors may have told you about these. The lawyer on the other side will ask you if you are going to get those procedures done).

**OUT OF POCKET EXPENSES:** This includes the cost of installing ramps in your house, the cost of medications, the cost of orthotics or devices, maids, housekeepers, and other help.

**LOST WAGES:** Damages also includes past **lost wages** and future lost wages or ability to earn income. These questions include the following:

- Since the accident, I have missed \_\_\_\_\_ days of work.
- Since the accident, I have missed \_\_\_\_\_ months of work.
- Amount of Income Lost
- Raises Lost
- Promotions Lost
- Will your pain and disability will affect your ability to work overtime, get raises, get promotions, get bonuses, keep your job? How so?
- How much have you lost in the following as a result of the accident?
  - Days off
  - Vacation
  - Sick days
  - Overtime (in hours and dollars)
  - Bonuses
  - Raises

- Promotions

### **LOSS OF EARNING CAPACITY IN THE FUTURE:**

This is a loss of your potential. Here are factors which show potential:

- Your past jobs/career/professions
- Your education
- Your plans for the future especially if you have taken steps to pursue your plans (applying to schools; applying for jobs; etc.)

### **NON-ECONOMIC DAMAGES** include:

- pain and suffering, in the past and in the future: Think of all the pain you have been through with this and all of the pain on a daily basis with the activities of daily living. Describe this:
- disability, in the past and in the future: Think of all of the small things, the activities of daily living you cannot do. Also think of all of the things which you liked to do before that you cannot do now, or do less now, or do but with pain now. Describe this:
- physical impairment, in the past and in the future. Describe this:
- disfigurement, in the past and in the future: What is this and how does it affect you? Describe this:
- scarring:
  - How have you changed the way you dress because of the scars or disfigurement?
  - How have you changed what you do because of the scars or disfigurement?
  - How do the scars or disfigurement make you feel in public?
  - How do the scars or disfigurement make you feel when you are intimate with your loved one?
  - How do the scars or disfigurement make you feel when you are by yourself?
- inconvenience, in the past and in the future. Describe this:
- loss of enjoyment of life, in the past and in the future. Describe this:
- Describe what the doctors and nurses told you before the surgeries about the possible complications and problems. How did you feel about that?
- Describe what the doctors and nurses told you about what could happen in the future (problems, complications, surgeries). How do you feel about that?

- mental anguish, in the past and in the future: This is the worry over how you will recover and the worry over what will happen in the future. (pain, suffering, surgery, complications, disease, further loss, loss of the ability to earn a living, loss of the ability to enjoy life, loss of your ability to care for your spouse, children, parents, other loved ones, and loss of your dreams and hopes for the future.)

**MEDICAL TREATMENT/CONDITIONS/INJURIES/ACCIDENTS IN THE PAST.**

**PAIN AND SUFFERING:** Your damages will also include money for **pain and suffering, loss of the enjoyment of life, disfigurement, mental anguish, and disabilities**, all in the past and in the future. Some of the questions on this are listed below:

Please list and describe your disabilities, complete disabilities or partial disabilities, you have suffered since this accident. Remember, this includes not only your **inability to work** (from when to when) and **your inability to play sports** but also the **inability to perform the daily activities of life**.

- A. Do you have chronic pain, that is pain which comes on a regular basis?
  - How often?
  - How does it affect you?
  - What do you do about it?
- B. Describe what activities you are **unable to do now** that you could do before the accident.
- C. Describe what activities you **do not do as much, as often, as well, or as intensively** as you did before the accident.
- D. Describe what activities you do now but **with pain** or **with some limitations**.
- E. For each activity below write down how the accident affected it, unless you never did that before the accident. For example write **“Unable”**, **“Do Less”**, **“N/A”** (Not applicable because I never did this before the accident), or **“With Pain”**:

- \_\_\_\_\_ Lift heavy objects.
- \_\_\_\_\_ Carry heavy objects.
- \_\_\_\_\_ Grocery Shopping
- \_\_\_\_\_ Reach forward, backward, or up.
- \_\_\_\_\_ Twist or turn (My body, hand, arm, foot, leg, etc.)
- \_\_\_\_\_ Walk for a long distance.
- \_\_\_\_\_ Run for a long distance.
- \_\_\_\_\_ Jump
- \_\_\_\_\_ Stand for a long period of time.
- \_\_\_\_\_ Sit for a long period of time.
- \_\_\_\_\_ Get Dressed.

- \_\_\_\_\_ Comb Hair
- \_\_\_\_\_ Brush Teeth
- \_\_\_\_\_ Shower & Bathe
- \_\_\_\_\_ Use Toilet
- \_\_\_\_\_ Get up from seated position.
- \_\_\_\_\_ Drive Car
- \_\_\_\_\_ Take out garbage.
- \_\_\_\_\_ Clean the house (dishes, vacuuming, wiping down furniture, picking up things on floor, taking out paper, etc.)
- \_\_\_\_\_ Turn on ignition to car.
- \_\_\_\_\_ Use stick shift of car.
- \_\_\_\_\_ Open heavy doors.
- \_\_\_\_\_ Gardening
- \_\_\_\_\_ Playing with children (names and ages)
- \_\_\_\_\_ Playing with grandchildren (names and ages)
- \_\_\_\_\_ Taking medication (this is a good indication of how much pain you are in).
- \_\_\_\_\_ Intimate relations with your loved one (sex)

**People with chronic pain often suffer from 3 things:**

a. \_\_\_\_\_ **Insomnia/sleep deprivation/sleep interruption.**

How often?

How does it affect you the rest of your life, attitude, ability to enjoy things, ability to work effectively, ability to play effectively:

\_\_\_\_\_

What do you do about it?

b. \_\_\_\_\_ **Fatigue/ getting tired sooner and for no apparent reason.**

How often?

How does it affect How does this affect the rest of your life, attitude, ability to enjoy things, ability to work effectively, ability to play effectively:

\_\_\_\_\_

What do you do about it?

c. \_\_\_\_\_ **Depression.**

How often?

How does this affect the rest of your life, attitude, ability to enjoy things, ability to work effectively, ability to play effectively:

\_\_\_\_\_

What do you do about it?

Before the accident, did you play with your kids, grandchildren, nephews, etc. (List Names & Ages of these kids)

Play sports such as \_\_\_\_\_

- \_\_\_\_\_ Jog with a friend, neighbors, family, club.
- \_\_\_\_\_ Walk
- \_\_\_\_\_ Bike
- \_\_\_\_\_ Golf
- \_\_\_\_\_ Bowl
- \_\_\_\_\_ Fish
- \_\_\_\_\_ Basketball
- \_\_\_\_\_ Baseball
- \_\_\_\_\_ Football
- \_\_\_\_\_ Tennis

Describe how the pain and disability affect your attitude: \_\_\_\_\_

Have you ever either before or after this accident suffered from (and say whether it was before or after the accident):

Dizziness? \_\_\_\_\_

Vertigo or loss of balance? \_\_\_\_\_

Passing out? \_\_\_\_\_

Syncope? \_\_\_\_\_

Low blood pressure? \_\_\_\_\_

Muscle spasms? \_\_\_\_\_

Radiating pain? \_\_\_\_\_

Headaches? \_\_\_\_\_

Restriction of movement? \_\_\_\_\_

Nausea? \_\_\_\_\_

Vision disturbances? \_\_\_\_\_

Neurosis? \_\_\_\_\_

Depression? \_\_\_\_\_

Anxiety? \_\_\_\_\_

Bruises? \_\_\_\_\_

Physical therapy and massage treatment? \_\_\_\_\_

Delays and gasps in treatment? \_\_\_\_\_

Medication? \_\_\_\_\_

Hospitalization? \_\_\_\_\_

Duties under duress? Duties under duress refers to the injured person's having to continue working, performing household chores, or attending school even though doing so caused increased pain and discomfort.

\_\_\_\_\_

Level of impairment? \_\_\_\_\_

When? \_\_\_\_\_

How often? \_\_\_\_\_

When was the last time you suffered from that? \_\_\_\_\_

Have you ever taken medication for this? \_\_\_\_\_

What medication? \_\_\_\_\_

When is the last time you ever took this medication? \_\_\_\_\_

The defense attorney will ask you about that and will want to argue that the accident was caused by your dizziness or passing out, rather than by their own negligence.

Please list here the URL of each website on which you are featured or mentioned: (includes your own website, your company website, Facebook, Myspace, etc...).

### **C. SPECIAL CASES: WRONGFUL DEATH.**

First stop: the statute. **Read the entire wrongful death statute in your state to see:**

-Who are “survivors” entitled to recovery. Spouse, children, parents of minor children, dependents who are also blood relatives.

-What is the recovery for each: Loss of support, companionship, etc.

-What is the recovery for the estate (decedent’s pre-death pain and suffering; loss of net accumulations, funeral expenses, etc.)

Bring out the giving nature of the decedent.

Compare that to the actions of the Defendant here.

Use throughout the case all of the adjectives which describe the decedent. For example:

- Family oriented
- Leader
- Provider
- Caring
- Nurturer
- Church goer
- Helper
- Friend
- Husband
- Father
- Son
- Brother
- Charitable
- Honest
- Compassionate
- Warm
- Nurturing
- An example to others
- Special skills
- Interests
- Hobbies
- Helps around house
- Conscientious
- Neat
- Organized; and

**GO TO THE HOUSE.** In order to get the story, do 2 things. First, go to the family's house and meet the family there. See where they have the photos of the decedent (refrigerator, bookshelf, by the beds, etc.), where they have not touched the closet full of clothes for the years since his/her death, what jewelry of the decedent they still wear, what gifts they still have and look at on a daily basis, what memorials did they build like planting a tree in their honor, and other memorabilia and habits. Consider photos and videos of the house.

**INTERVIEW FAMILY, FRIENDS, AND CO WORKERS.** Second, interview the family and coworkers, neighbors, clergy, friends, teachers, etc. Get the specific stories and vignettes which illustrate the character and what they feel about the decedent. Here are some issues/questions:

- How are you suffering?
- What have you lost?
- How do you remember him or her?
- How often do you think of him or her?
- When and under what circumstances?
- What are holidays without the decedent like?
- What did the decedent add to the holidays, birthdays, Sundays, special event?
- What activities did you do with the decedent?
- How often do you and the kids go to the grave sight?

**COLLECT TRIAL EXHIBITS.** Collect trial exhibits at the house: photos of the decedent and family, video of the decedent and family, trophies for the activities they did together, memorabilia which you will not know about unless and until you go to the house.

#### **D. SPECIAL CASES: TRAUMATIC BRAIN INJURY.**

Who to interview and what to ask. TBI checklist.

The injured person may be the worst source of information either in your office or at the scene of the injury to determine (a) whether they lost consciousness, and (b) what if any problems they are experiencing as a result.

People who suffer brain injury do not know and cannot know if they suffered a loss of consciousness at the scene. When asking the injured person about this, ask whether there is a gap in time in their memory after the accident. If there is, that is amnesia.

Traumatically brain injured people also sometimes cannot recall events before the accident happened. That is called retrograde amnesia. In retrograde amnesia, the loss of memory is usually for events immediately preceding the event. Amnesia, retrograde or not, is a significant factor in determining whether there has been a brain injury.

Loss of consciousness does not have to be a state where the injured person has eyes closed and is lying without movement other than breathing. The brain injured person can have a feeling or

perception after the accident which can be described as “dazed” and other feelings of being “out of it”. Consciousness is not like an on/off switch. There is a lot more than being asleep and being awake and alert. There are all of the shades of consciousness in between.

These injured people can be the worst people to turn to for a description and accurate list of all of their problems. They will deny memory or thinking problems especially if they are men. The best people to provide an accounting of all of their problems are their significant others or whomever they live with. We provide the TBI checklist to the injured person and to the significant other. The sections of the TBI checklist should be:

- Loss of consciousness/confusion/drowsiness/“out of it” at scene
- Low breathing rate or drop in blood pressure
- Convulsions
- Fracture in the skull or face, facial bruising, swelling at the site of the injury, or scalp wound
- Fluid drainage from nose, mouth, or ears (may be clear or bloody)
- Amnesia
- Short term memory loss
- Long term memory loss
- Blackout since accident
- Photophobia: sensitivity to light
- Epileptic episodes; in mild (non-bleed) cases, this can present as episodes of blacking out
- Speech difficulties
  - Mild TBI: loss of words
  - Moderate to Severe TBI: difficulty in finding words, stutter
- Irritability (especially in children), personality changes, anger, inability to hold back emotions, or unusual behavior
- Slurred speech or blurred vision
- Inability to move on or more limbs
- Stiff neck or vomiting
- Memory problems
- Difficulty concentrating
- Inability to focus
- Loss of ability to think and solve problems
- Loss of ability to handle stress
- Stuttering or stammering
- Impaired abstraction or literalness
- Deficits in processing information
- Difficulty learning new things
- Difficulty taking care of yourself
- Getting lost or easily confused
- Loss of ability to handle more than one thing at a time
- Impaired sense of self
- Feelings of depression

- Persistent anxiety
- Loss of wit and humor
- Temper outbursts that you could not control
- Headaches or head pains
- Easily fatigued
- Trouble falling asleep
- Sleeping too much
- Aggressiveness
- Overly emotional, sentimental, mood swings: tranquil one minute and blow up the next, frequently irritable and frustrated
- Loss of emotional intelligence and ability to deal and to connect with people, avoiding contact with people
- Hyper vigilance, feeling “on guard”
- Blurred vision, especially when fatigued
- Double vision, especially when fatigued
- Sensitivity to sound or noise
- Sensitivity to light or sun

**E. QUESTIONS AT TRIAL:**

**The Four Most Important Questions**

1. What have you lost?
2. Why is that so important to you?
3. What did your future look like before the accident?
4. What does your future look like now?

**F. SAMPLE TRIAL TESTIMONY ON DAMAGES.** (Excerpts).

**Goran Bakalar v. Royal Caribbean Cruise Line**

Q. The jurors have been waiting to hear from you. Tell us your name.

A. My name is Goran Bakalar.

Q. Mr. Bakalar, where do you live? Where are you from?

A. I am from Croatia and I do live in Split in the middle of the Croatia coast.

Q. Let me stop you there. Let me stop you there. Why did you go into the Navy and out to sea? Why did you do that in your life?

A. Well, uh, I mean, in my family, my father was working in the Navy, so it was likely for me to go to the Navy.

Q. First officer? Did you have to undergo any physical examinations to become a first officer on board the ships?

A. Yes, I did have a medical exams and I passed them well.

Q. Tell us about the medical exams, just briefly.

A. Medical exams are – ones that they ask you about your – any medical history if you have, and they check the hearing, your viewing, movements, bendings, blood and that's it.

Q. Okay, do they give you a back exam?

A. They do back exams, yes, to move the body in all directions, to bend the body, the same as these doctors do here in the United States.

Q. After the accident, I think we had covered the accident, and after the accident we were starting to talk about your pain within the couple of weeks after the accident. Tell us about the pain and where it was.

A. The pain was radiating through my leg and it was still remaining my back, in my back and it was coming to the heel, to the foot.

Q. Did you still work at the time?

A. I was still working at that time.

Q. You went to the ship's doctor two days after the accident. Did he say to you you should not work or prevent you from working?

A. No, he didn't say so.

Q. Describe for the jury, if you would, your medical treatment from two days after the accident until – really, until today. But if you could describe for us the medical treatment – at least why don't we do this. Describe your medical treatment from two days after the accident when you reported to the ship's doctor to September of 2003.

A. I did report two days after the accident. I go to painkillers. And the next period of a month or two months I go to more painkillers. I was sent to South Miami Hospital, as I recall, in December. That's about two and a half months after the accident. That was the first time that I was sent to the hospital.

Q. And then what happened? Why did you go back after a couple of weeks as opposed to three and a half months?

A. There was an opening and the staff captain asked me if I want to get it and I took it. Otherwise, somebody else, another first officer should come on the position and I should come after three and a half months. But I wanted to work so that was good for all of them. I know the ship. I am already there. And it was good for them.

Q. Who from Royal Caribbean called you, if you recall?

A. Who did I call for what?

Q. Who from Royal Caribbean called you about this opening and did you want to cut your vacation?

A. Staff captain.

A. Yes, I did. Within 15 days when I was at home I advised their neurologist. So that was also part of the medical care.

Q. What was his or her name?  
A. He was Dr. Kulic.  
Q. Dr. Kulic, Petar Kulic?  
A. Yes.  
Q. What did Dr. Kulic do at that time?  
A. He did the test of – he observed the MRI films, he did do the test of my motorics (sic) and the muscles and feelings in the leg. That was the electric test with big needles that he touches wherever I can feel. And in the car was feeling of the muscles and of the –  
Q. That was the EMG Dr. Lustgarten talked about?  
A. That was EMG. And then he confirmed that I have a disc protrusion. And after that I went back to the ship. And once I came on the ship I have seen the ship doctor again. I continued to work and the pain increased in the way that I was once in real time and I started to pull my leg because of pain.  
Q. What do you mean, pull your leg?  
A. I couldn't walk normal any more.  
Q. Go ahead. Then what happened?  
A. And then they sent me to hospital again. And then Dr. Nieves in the hospital say that I cannot pull or push more than ten pounds and that I can not participate in rescue activities.  
Q. What hospital was that?  
A. South Miami Hospital. And I came back to the ship with that paper and they told me after a while that after an hour that I am not fit for duty, that I have to go home.  
Q. Were you at MMI at that point?  
A. I was not at MMI.  
Q. When did you go to South Miami Hospital? When you saw Dr. Nieves, what was the date?  
A. It was March 23<sup>rd</sup>, 2003.  
Q. Did you go in through the emergency room?  
A. Yes.  
Q. So you get off the ship. I guess that what, the ship is in Miami, you get off the ship and someone takes you over there to the hospital?  
A. Yes, that's correct.

Q. Read for the jury, please, what it says that went back to the cruise line. What it says there in the middle where the doctor types something.  
A. It says that diagnosis, protrusion disc dorsomedial (Latin). It should be disc protrusion. Radiculopathy compressa SI bilateral.  
Q. Bilateral?  
A. Bilateral. SY lumbar seaga lateral SY lumbrosacral chronic (Latin.)  
Q. Lumbosacral chronic?  
A. Yes.  
Q. What else?  
A. That's all. And that says recommended treatment. Patient wants to go back to work after completion of this physical therapy round. 18<sup>th</sup> of September – control with neurological NSR through Vioxx as needed.  
Q. Vioxx, painkiller?  
A. Vioxx.

Q. And did you, in fact, after that, did you, after that time, were you allowed to go back to follow up with the neurosurgeon?

A. I was allowed because he says control neurosurgeon.

Q. Did they, in fact, did the cruise line pay for medical care after that date?

A. They stopped paying after that date. And then happen that I forward this to Diann Hardwick.

Q. You forwarded that to Diann Hardwick?

A. Yes.

Q. You wanted to work?

A. I did want to work. That's why I did it.

Q. And then what happened in September of 2003? What communications? What did they tell you at Royal Caribbean?

A. They told me that I have to be 100 percent fit for duty and that I cannot go back to work. And I try a few times, the other comments in different ways. Her comment was always you are not 100 percent fit for duty and you cannot go back to the ship.

Q. When did you first go see Dr. Sal Ramirez, the doctor chosen by Mr. Salas?

A. It was in May, 2004.

Q. And what did he tell about whether you are fit for duty?

A. He told me that his opinion, his report was that I can go back to work.

Q. And did the cruise line after that at any time ever offer your job back?

A. No one contacted me after that from the cruise line, offer the job because nothing about it.

Q. As a matter of fact, what happened with regard to communications between you and Diann Hardwick after that, September, 2003, when they said you are not fit for work, you can't come back?

A. I have tried to communicate with her after that. It was always I didn't get any answer after that.

Q. Before the accident – I am going to move on to another topic. Before the accident how was your health?

A. I was a healthy person, active. I jogging, doing some exercises, no problem with.

Q. Did you drink excessively?

A. No.

Q. Did you smoke cigarettes?

A. No.

Q. You did exercise on a regular basis?

A. Yes.

Q. You weren't on any drugs or illegal medication or anything?

A. I was not.

Q. Did you intend to -- what were your intentions in regard to a career on cruise ships? Tell us about that.

A. I wish to continue my career on cruise ships. I was planning until the end of my work life.

Q. Sometime would you say: Gee, you know, three and a half months on the ship, that's tough. Were you planning to continue your career even though that's the case?

A. Yes, it is tough. It is a seaman's life. That was my life that I was willing to live that.

Q. What physical activities – tell us about the physical activities you did before the accident.

A. I used to job, to climb the mountain, I used to play water polo, ride horses, walk a lot. And to play sometimes basketball, soccer on small court, concrete small court. And that's all that I cannot do now.

Q. I don't know if I ever asked you this: Did you ever have back problems before this accident?

A. I had no back problems.

Q. Did you ever feel back pain before this accident?

A. No.

Q. Did you ever feel that radiating pain into your right leg?

A. I did not.

Q. Before the accident?

A. No.

Q. Ever feel that pain into your right foot before this accident?

A. No.

Q. Ever unable to do anything because of feeling in the back before this accident?

A. No.

Q. Let me get back to these photos. And I am sorry, I think it's best that we go through these now. And I am looking at I in this notebook, which is part of 36, Exhibit 36. What are we seeing there?

A. We can see the dancing at my wedding.

Q. Once again, you are not telling us who is there.

Q. What else have you done? We need to know everything you have done to find a job there in Croatia.

A. After that I realized that I cannot work on a ship. And I tried to find a job in officers or any other job. At that time I had to support my family and myself. I had tried. I used to read the newspaper on Saturday, used to have advertisements for the job if anybody wants new employees. And through the Internet, watching on TV, I was calling mostly on Mondays whatever I found during the weekend, those newspapers or whenever I found something in that Internet.

So some of – on TV some of the jobs I applied that I have seen on TV. That first one that I call is to work security. And I have call them and they sent me to the doctor to do exam. And I came on there. I told her that they sent me my from security name of the agent name of the company is Sokol, S-O-K-O-L, and they send me to Dr. Antonovic (phonetic).

She pulled regulations. I told her that I have a back injury. And she pulled state regulations for that job. Anything you want to work in our country, you have a certificate for that. And to be able to get the certificate, everyone want education background for that.

So to be able to enter the course for security I had to pass the medical exam. And she pulled a state regulation that say that protrusion cannot be employed any way, problems or no problem with that. And that regulation was signed by the Minister of Internal Affairs and Minister of Health. That was the one I had to go to do medical exam.

Q. What happened with that job?

A. I didn't get the job.

Q. Go ahead.

A. The other job that I recall were in Cargo Master office that is familiar with my profession. They didn't change people there for a very long time. I saw the same faces since I started to sail. Just one person changed. And the job that I applied down there was to do the watch at the second entrance of the building and to respond to the yachts or ferries or cruise ships that enter the port. It's kind of same like on ship but they keep watch every four hours I think there is.

Q. What happened with that?

A. And the contact, I got contact with Captain Alfonso and there is no opening. I am in contact if something happens. But this is always getting employed by connection and knowing somebody. I have contact, I did plenty phone calls and try also to sell the books.

They wanted me to lift the boxes and to transport them. I did call. There was another, Sem, S-E-M, and they were opening some office job and they told me they got somebody else.

Q. Let's talk about the pain you have now. Tell us about the pain you have now.

A. I have pain that I correct by taking painkillers. I take three different painkillers and sometimes I cannot, like yesterday was the showers. I took two painkillers 400 milligrams and it doesn't help me until the shower past. And that pain is in back connecting with the butt and I have the cramps in the calf. And after that it starts to hurt the heel.

Q. How often do you have that?

A. There are good and bad days. I mean, I have pain all the time but different levels.

Q. Tell us about -- first of all, before we get into something else, at this point do you want the surgery that Dr. Lustgarten recommended, the fusion surgery?

A. Yes. I want -- yes, in a way to avoid, I am afraid to how it goes to take damage more seriously my spine and I can't remain a cripple for the rest of life. And I am not able to work anything. It should at least make me more calm to not to think about being a cripple.

Q. Tell us about the things that you did before the accident that you cannot do now or that you do in pain now. Tell us about that.

A. I was playing some sports. Some activities I cannot do. I cannot work. My career is gone.

Q. You mentioned running?

A. I used to run, jog, play water polo that is very popular in Croatia in summertime.

Q. Can you do that now?

A. No.

Q. Basketball?

A. Basketball I used to play. I cannot play it now. Soccer on small court we used to play. I cannot do that now. I cannot go to the -- weight on the backboard to climb for a long time. I cannot walk longer than 700 yards, let's say.

Q. How about sitting and standing?

A. Longer sitting, longer standing. Everything bother it. You can see me moving all the time over there. When I get cramps in the calf I have pain coming to this. I tried to extend, I extend. Sometimes it's better for very short period, for five, ten minutes. Sometimes it's not longer than one minute.

Q. Now, you have exercises that you learned how to do; is that right?

A. Say that again.

Q. You have exercises for stretching that you learned how to do that the doctor told you?

A. Yes. I have exercises for lower back, spine and water exercises that make muscle stronger to fight the pain maybe. Or to fight injury.

Q. Does it feel better to get into certain positions?

A. Yes, it feels better.

Q. Now, can you bend over and tie your shoes; things like that?

A. I can do not all of that. I can do that that is kind of open for my back. That is one of the exercises. There are many exercises doing kind of bending but not exactly.

Q. How does it make you feel that you have lost the ability to do these activities?

A. That makes me feel bad about and disappointed and depressed. And I get irritated easily, much more nervous. That drive my wife mad.

Q. You had a baby. You mentioned that. When did you have the baby, you and your wife?

A. That was in December last year so that is my son is four months old now.

Q. How big is he? Can you pick him up?

A. He is already nine kilos that is close to 20 pounds. I cannot hold him any more.

Q. How does that make you feel that you can't hold him?

A. That is bothering.

Q. Who taught you soccer? Who taught you how to play soccer?

A. That was my father. And that is a thing that I cannot do with my son.

Q. How do you feel about the possibility of not continuing your career as a seaman?

A. I feel bothered by that.

Q. How do you see the future now? How did you see the future before this accident?

A. I was a strong person, exercising, having good career. I have nothing of that now. So my life is a struggle.

Q. How do you see the future now?

A. I don't see anything bright in my future, struggle for life to support family. I not the kind of father to my son that my father was to me. I probably feel -- myself and my wife, we fight much more than earlier.

Q. The surgery has risks and you have heard about that. How do you feel about undergoing the risk of surgery, going through that for three or four months after the surgery, as well?

A. I know it's risky. I was in physical therapy with the people urinating pants after the surgery. They were not doing that before the surgery.

Q. Are you willing to undergo those risks?

A. I have to.