



Compressed Transcript of the Testimony of
FRED BEANS, 5/11/11

Case: Santai v. Fred Beans Ford, Inc., et al.

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHERIE SANTAI, : C.A. NO: 10-2367

Plaintiff, :

vs. :

FRED BEANS FORD, INC., and :
FRED BEANS HYUNDAI and :
FRED BEANS INDIVIDUALLY and :
on behalf of Fred Beans :
Ford, Inc., and :
ELIZABETH BEANS-GILBERT, :
Individually and on behalf :
of Fred Beans Ford, Inc., :

Defendants.

Oral deposition of FRED BEANS, held in the offices of Fred Beans Ford, 3960 Airport Boulevard, Doylestown, Pennsylvania, on Wednesday, May 11, 2011, commencing at 1:08 p.m., taken by and before Marcy C. Muzyczka, Registered Professional Reporter, Certified Court Reporter, and Notary Public.

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WITNESS PAGE

FRED BEANS

By Mr. Kimmel 4

EXHIBITS

Number Ref/Marked

BEANS-1 Two-page Employee Exit Report 167, 211

* SZPANKA-1 One-page Expense Reduction Summary 210

* Exhibit previously marked.

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REPRESENTING DEFENDANTS

(It is hereby stipulated and agreed by and between counsel for the respective parties that filing, reading, signing, sealing, and certification are waived; and that all objections, except as to the form of the question, are reserved to the time of trial.)

FRED BEANS, having been duly sworn/affirmed, was examined as follows:

EXAMINATION

BY MR. KIMMEL:

Q. Sir, can you state your name for the record?

A. Fred Beans.

Q. Mr. Beans, I'm going to ask you several questions today. And I'm assuming you have given a deposition before?

A. I can't remember.

Q. You don't remember giving a deposition before?

A. No.

Q. Have you ever been involved in a court case before?

A. I'm pretty sure I have never given a deposition. I can't remember. I honestly can't.

Q. Okay. Do you recall ever being a defendant before

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1 in a lawsuit?
 2 A. No.
 3 Q. Okay. So this is the first one?
 4 A. I think my daughter was once.
 5 Q. Okay. But you personally were not?
 6 A. Maybe -- oh, maybe some incidental slip-and-falls
 7 and those kind of things, but I think they were settled
 8 with insurance companies.
 9 Q. Okay. So you never had to give a deposition?
 10 A. I don't think I have.
 11 Q. Okay. You were here for most of the deposition of
 12 Mr. Szpanka earlier today; is that correct?
 13 A. Yes, sir.
 14 Q. Okay. And I just want to go over a few of the
 15 rules that I went over with him so that we understand
 16 each other about how the deposition should go. Is that
 17 okay?
 18 A. I think I understand. I heard you before, but if
 19 you want to go over them again you can.
 20 Q. If you think you understand --
 21 A. Yeah, I do.
 22 Q. If we have a problem, I'll just let you know
 23 there's a problem and why and we can take it from there.
 24 A. Fine.

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1 Q. Okay. Great. Sir, can you please state your
 2 address?
 3 A. 41 Church Street, Doylestown, Pennsylvania.
 4 Q. Right here in the borough?
 5 A. 18901. Yes, sir.
 6 Q. And your date of birth?
 7 A. 4/4/39.
 8 Q. And, sir, can you give me a little bit of your
 9 educational background?
 10 A. Public high school. George School, Pennsylvania.
 11 George School in Newtown, Pennsylvania. Ryder College.
 12 Numerous automotive courses.
 13 Q. When was the first time you worked in an automobile
 14 business?
 15 A. In high school.
 16 Q. Okay. And in what capacity was that?
 17 A. Basically, in the shop in used car reconditioning
 18 in the summer.
 19 Q. Were you ever a mechanic?
 20 A. In 1957 -- '58, '57 going to Ryder College I worked
 21 part-time in a service station. 1959 I bought that
 22 service station and operated it for 12 years as an
 23 owner, as a mechanic. I've done practically every job
 24 on a car that you can do, other than paint and automatic

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1 transmissions.
 2 Q. Did you ever obtain any ASE certifications?
 3 A. Pardon me?
 4 Q. Did you ever obtain --
 5 A. At that time we didn't have ASE certification.
 6 That was in the '50s. I left there in '72.
 7 Q. Okay. And you've never been certified as a
 8 mechanic since then?
 9 A. No.
 10 Q. Okay.
 11 A. We took courses then, but there was no
 12 certification.
 13 Q. Okay. Fair enough. You sold the service station
 14 you said in 1972. What did you do at that time?
 15 A. 1972 I became a partner in Bill Marsh Ford,
 16 February 28, 1972.
 17 Q. Bill Marsh?
 18 A. Newtown, Pennsylvania.
 19 Q. Newtown, Pennsylvania. I think they have since
 20 closed.
 21 A. No, they're still open.
 22 Q. It's the other dealership.
 23 A. It's the same Bill Marsh that's now in Traverse
 24 City, Michigan.

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1 Q. Okay. And how long did you remain at that
 2 dealership?
 3 A. Three years.
 4 Q. And then what happened?
 5 A. February 28th I came to Doylestown as the owner.
 6 Q. Of what dealership?
 7 A. With Bill Marsh, Fred Beans Ford.
 8 Q. Okay. So he was your business partner?
 9 A. He was.
 10 Q. Okay. And you opened it under your name?
 11 A. Yes.
 12 Q. Is that the same business that is now known as Fred
 13 Beans Ford, Inc.?
 14 A. Yes.
 15 Q. Okay. And just real quickly, I don't think it's
 16 going to be much of a problem, I just want to remind you
 17 that for purposes of the transcript it's best if I
 18 finish what I'm saying --
 19 A. Yes, sir.
 20 Q. -- before you talk and then --
 21 A. Yes.
 22 Q. -- vice versa. I'm probably going to break that
 23 rule and so are you, but let's try to adhere to it.
 24 ---

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1 MS. WALKER: For the sake of the
 2 court reporter, if for no one else.
 3 MR. KIMMEL: She will definitely
 4 let us know if we're not doing a good job at that.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. You've heard what Mr. Szpanka said earlier today.
 8 Did you, sir?
 9 A. I did.
 10 Q. Okay. As far as how the corporation is organized,
 11 would you agree with his testimony earlier today?
 12 A. For the most part, yes.
 13 Q. Are there any differences that come to mind from
 14 what he testified to earlier today?
 15 A. I don't think he was clear on the allocation of why
 16 the management company existed.
 17 Q. Okay. Could you clarify that for me, please?
 18 A. The management company exists to oversee the
 19 dealerships and help them run, what I consider, by the
 20 book.
 21 Q. What "book" would that be?
 22 A. I have a principle centered statement that we want
 23 to be the best we can be in every area. We want to be a
 24 company that's admired by our customers. Our long-term

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1 goal would be to be written up as a smaller business
 2 that's treated our employees properly in the Wall Street
 3 Journal. That's kind of my long-range goal. And the
 4 dealerships pay the management company \$20 a new vehicle
 5 sold. \$2,000 a month and 10 percent of the profit.
 6 It's not to generate money over here. It's to cover the
 7 people that work here --
 8 Q. I see.
 9 A. -- that are involved, because we only have some
 10 consistency as to how we come forth to do business.
 11 Pretty -- I don't to like the term principle centered,
 12 but I don't consider myself an average car dealer. I
 13 think that we're a clean, well-run organization and
 14 would have more corporate goals and satisfying the
 15 owner's whelms.
 16 Q. Okay. Are there any other things that come to mind
 17 as to what Mr. Szpanka testified to that you feel needs
 18 clarification?
 19 ---
 20 MS. WALKER: Objection to the form.
 21 About every subject or --
 22 MR. KIMMEL: No. Just about --
 23 MS. WALKER: -- about the
 24 organization?

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1 MR. KIMMEL: -- the corporate
 2 organization structure.
 3 MS. WALKER: Okay. Thank you.
 4 ---
 5 BY MR. KIMMEL:
 6 Q. Do you understand the question?
 7 A. Can you repeat that again?
 8 Q. Sure. You had said earlier -- when I asked you
 9 about the corporate organizational structure that
 10 Mr. Szpanka testified to, you said that you had some --
 11 you had taken note of some areas where he didn't fully
 12 articulate certain things, and you had just answered in
 13 part, I think, where those differences were. Is there
 14 anything else --
 15 A. I don't think -- I don't think that he was clear on
 16 the funding of the fees that are paid to the management
 17 company. They are not paid. They are to enrichen me
 18 and the retention of funds in the dealership. I don't
 19 know where you were trying to take him, but we have
 20 never withdrawn funds out of any of these dealerships.
 21 Q. That wasn't meaning to say that you did, sir.
 22 A. Okay.
 23 Q. Any other discrep --
 24 A. We don't operate that way. I want you to

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1 understand that.
 2 Q. I understand that, and I take you at your word.
 3 That wasn't my purpose.
 4 A. Okay.
 5 Q. Are there any other discrepancies or clarifications
 6 with regard to the corporate structure that you'd like
 7 to bring to light?
 8 A. No, not that I know of.
 9 Q. Okay. What is your ownership stake in Fred Beans
 10 Holdings, Inc.?
 11 A. 100 percent.
 12 Q. There's no other shareholders?
 13 A. In Holdings, Inc.? No.
 14 Q. Are there any other shareholders --
 15 A. Yes, sir.
 16 ---
 17 MS. WALKER: Let him finish his
 18 question.
 19 THE WITNESS: Okay.
 20 ---
 21 BY MR. KIMMEL:
 22 Q. Are there any other shareholders in any of the
 23 other companies that you own that sell cars?
 24 A. Yes.

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1 Q. Okay. With regard to the Hyundai store, are there
 2 any other --
 3 A. No.
 4 Q. -- partners? No other partners?
 5 A. Huh-huh.
 6 Q. You own the companies that own the Hyundai store?
 7 A. Yes.
 8 Q. Did you -- strike that. Do you own 100 percent of
 9 the company that owns the Hyundai store?
 10 A. Yes.
 11 Q. What is your understanding of who owns the
 12 company -- the Hyundai store?
 13 A. Fred Beans Ford --
 14 Q. Okay.
 15 A. -- originally acquired the Hyundai franchise.
 16 Q. From whom?
 17 A. From Hyundai.
 18 Q. Okay. And you opened it in Doylestown?
 19 A. We opened it in Doylestown.
 20 Q. And what year was that?
 21 A. We opened it in Doylestown, and I can't remember
 22 the year.
 23 Q. Okay.
 24 A. I believe that it was probably in the late '80s.

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1 Q. So you were there at the beginning when there were
 2 some growth pains --
 3 ---
 4 MS. WALKER: Objection to the form.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. -- with the company? I'm talking about the early
 8 quality control. It's not relevant. If you don't want
 9 to answer, that's fine.
 10 A. That had already happened.
 11 Q. Okay.
 12 A. It was at a low level.
 13 Q. Okay. All right. Smart buy as it turns out. Good
 14 for you.
 15 The Fred Beans Ford, Inc.
 16 Dealership, that's 100 percent owned by you?
 17 A. Yes, it is.
 18 Q. No other shareholders?
 19 A. No.
 20 Q. I think your daughter testified last month, or
 21 maybe it was a little earlier than last month, that
 22 there are approximately 1,800 employees?
 23 A. I think today there are probably around 1,650.
 24 Q. 1,650. Would you agree with her that at the height

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1 there were approximately 2,200?
 2 A. I don't think there were that many.
 3 Q. Okay. Do you have any business partners who own
 4 shares in any of the dealerships that you own shares in?
 5 A. Yes, I do.
 6 Q. Can you identify those dealerships?
 7 A. New Holland Ford.
 8 Q. Who's your partner in New Holland Ford?
 9 A. Geoffrey, G-E-O-F-F-R-E-Y, C-L-A-S-S.
 10 Q. Any others?
 11 A. Dennis Malloy.
 12 Q. With what dealership?
 13 A. Spence Ford in Boyertown.
 14 Q. Any others?
 15 A. That's Fred Beans Ford of Boyertown. Mr. Todd
 16 Buch, McCafferty Ford of Langhorne. We own 45 percent
 17 of McCafferty Ford in Langhorne.
 18 Q. Anybody else?
 19 A. His name is B-U-C-H. And McCafferty Ford in
 20 Harrisburg -- Mechanicsburg, we own 75 percent of that
 21 with Mr. Todd Buch.
 22 Q. Same individual?
 23 A. Yes, sir.
 24 Q. Okay. Any others?

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1 A. No.
 2 Q. Okay. This is a sensitive question. I apologize
 3 for asking it. How is your compensation derived?
 4 A. My compensation is a salary of \$3,500 a week.
 5 Q. And are you paid a bonus?
 6 A. I'm paid a bonus on the profitability after all
 7 expenses to the management company. I believe that's
 8 about -- I don't have the exact number. Approximately
 9 10 percent.
 10 Q. Can you tell me with a fairly high degree of
 11 certainty what your annual compensation was in total for
 12 2010? Not including stocks or any other passive income.
 13 A. No, I can't. I could get that information, but I
 14 don't know it.
 15 Q. Would you say that it was greater than seven
 16 figures?
 17 A. Not for compensation, no.
 18 Q. How about from all -- all earnings of any type,
 19 other than passive earnings?
 20 ---
 21 MS. WALKER: Objection to the form.
 22 ---
 23 BY MR. KIMMEL
 24 Q. Okay. If you like --

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1 A. Most of -- do you want me to answer that?
 2 Q. Let me ask it in a different way, since your
 3 attorney has an issue with it.
 4 You receive a salary and you
 5 receive I think you referred to it as a bonus from the
 6 company, Fred Beans Holding. Do you get paid from any
 7 other company through your Fred Beans dealerships?
 8 A. No.
 9 Q. Okay. So Fred Beans Holding, Inc., is the sole
 10 source of your income, other than stocks, bonds,
 11 annuities, that type of thing --
 12 ---
 13 MS. WALKER: Objection to the form.
 14 ---
 15 BY MR. KIMMEL:
 16 Q. -- is that correct?
 17 A. No.
 18 Q. Okay. Can you tell me your sources of income
 19 besides Fred Beans Holding, Inc.?
 20 A. Real estate.
 21 Q. Real estate. Is the real estate real estate that
 22 is occupied by any of the companies that you derive
 23 income from?
 24 A. Yes.

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1 Q. Okay. So real estate that the dealer's building
 2 sits on? .
 3 A. I'd really like to address income versus expense
 4 because --
 5 Q. And that's what I'm addressing.
 6 A. -- I don't want this to be misconstrued.
 7 Q. Okay. I don't know where there could be
 8 misconstrued --
 9 A. I think it can be.
 10 Q. Okay.
 11 A. You want me to tell you how?
 12 Q. If you want. I just am trying to understand --
 13 ---
 14 MS. WALKER: You can tell him how.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. Sure.
 18 A. Let me tell you how. When you buy a property, you
 19 would like to have the rent cover the mortgage and
 20 interest; right?
 21 Q. Sure.
 22 A. In order to do that, with a 37-year depreciation,
 23 frequently you have to charge a higher rent.
 24 Consequently, I have an exorbitant amount of taxes that

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1 I pay where I don't have any income. So it looks like I
 2 got a lot of income because you're paying taxes as
 3 depreciation wears down on the building; correct? You
 4 have "X" cash flow, but you don't have the expenses
 5 against the depreciation and interest, even though you
 6 have a mortgage to pay out.
 7 So it could look like I had a great
 8 amount of income, but I have a great amount of taxes at
 9 the end of the year. It's pretty pathetic the tax
 10 situation. If you looked at anybody that owned real
 11 estate today, you would see that the difference
 12 37-and-a-half years makes. So I'm not in a real estate
 13 business to make money, but I did -- we do want to
 14 acquire these properties and control them.
 15 Q. So, for example, your partnership with Mr. Thompson
 16 in the shopping center, are you referring to that?
 17 A. I own 16 percent of that shopping center.
 18 Q. Okay. Is that the type of real estate you are
 19 referring to?
 20 A. No. The dealership properties.
 21 Q. Oh, okay. All right. So you derived an income
 22 stream on paper from those properties that the
 23 dealerships sit on?
 24 A. An income stream without any income.

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1 Q. The income is then converted for purposes of --
 2 A. Paying taxes.
 3 Q. -- paying taxes. But at some point the
 4 depreciation will come to an amount where you are
 5 deriving a positive income; right?
 6 A. At some point. When you don't have a mortgage, it
 7 all should work out. Unfortunately, what's happened is
 8 every one of these buildings, the Ford store that was
 9 about 440,000 just took \$2 million to remodel it for
 10 Ford. So the building was paid for.
 11 Q. And you have to take that on to sell their product?
 12 A. You either have to step up and find the money for
 13 it or remortgage the building which is not one of my
 14 favorite things.
 15 Q. I understand.
 16 A. Been done. Don't like it.
 17 Q. Do you have an idea of how much you reported in
 18 income for 2010?
 19 A. You're going to laugh --
 20 ---
 21 MS. WALKER: Objection to form.
 22 THE WITNESS: -- but I really don't
 23 look it at.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. Okay. Does somebody prepare that information for
 3 you?
 4 A. They do.
 5 Q. And who would that be?
 6 A. Boyer and Ritter, and my accountant, Valerie
 7 Morton.
 8 Q. Okay. Is Miss Morton the same Miss Morton that
 9 Mr. Szpanka was talking about earlier today?
 10 A. Yes, sir.
 11 Q. So she does corporate and personal work for you?
 12 A. Assembles that work, yes.
 13 Q. Okay. Is she also your personal accountant?
 14 A. I would say that she does all the accounting for
 15 our company.
 16 Q. For you specifically?
 17 A. With the aid and the supervision of -- she does the
 18 grunt work, I guess.
 19 Q. So her efforts are vetted and approved by Boyer and
 20 Ritter?
 21 A. Yes.
 22 Q. Okay. And so when you go to sign your tax return,
 23 you are presented with a document from Boyer and Ritter
 24 to sign?

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1 A. I have -- no. I have -- they are reviewed by Boyer
 2 and Ritter.
 3 Q. Okay. So Miss Morton has Boyer and Ritter review
 4 them and it's given to you by Miss Morton; is that
 5 correct?
 6 A. Yes.
 7 Q. Okay. Has your income changed at all from 2010
 8 back to 2009?
 9 A. I couldn't tell you how much.
 10 Q. Well -- but has it changed?
 11 A. 2010? I'm confident it was a lot better.
 12 Q. Okay. And you said you can't tell me how much.
 13 How about 2008 to 2009?
 14 A. I'd have to go back and look. I believe there was
 15 a period of time where I suspended my salary.
 16 Q. Okay.
 17 A. I have suspended my salary several times because I
 18 thought I wasn't worthy of a salary when I ran a company
 19 that wasn't making money.
 20 Q. I understand. Prior to testifying here today, did
 21 you prepare for this deposition?
 22 A. No.
 23 Q. Did you review any documents prior to testifying
 24 here today in anticipation of this litigation --

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1 A. No.
 2 Q. -- anticipation of this deposition?
 3 A. No.
 4 Q. How would you identify yourself as far as your
 5 title in the company? Would you call yourself the
 6 president of Fred Beans Holding, Inc., or some other
 7 designation?
 8 A. I don't really use a title, but I'd rather be
 9 referred to as a managing partner.
 10 Q. Okay.
 11 A. I'm not big on titles.
 12 Q. Okay. Managing partner, but there are no other
 13 partners; correct?
 14 A. Well, Mr. Class in New Holland.
 15 Q. Okay.
 16 A. Mr. Buch.
 17 Q. Sure.
 18 A. Mr. Malloy.
 19 Q. Do you manage all the dealerships that you are
 20 associated with?
 21 A. Do I manage them all?
 22 Q. You said "managing partner."
 23 A. Well, I'd like to refer -- I'd prefer to be known
 24 as a managing partner than a president, CEO. I just

Page 24

1 don't like those titles.
 2 Q. Okay. So is it fair to say, though, that as to
 3 Mr. Class and Mr. Buch that you operate the dealerships
 4 in that partner and that they take a subservient role to
 5 you as far as the daily operations?
 6 ---
 7 MS. WALKER: Objection to the form.
 8 THE WITNESS: I probably take a
 9 subservient role to Mr. Buch and Mr. Class and
 10 Mr. Malloy. Possibly to all of them, I hope.
 11 ---
 12 BY MR. KIMMEL:
 13 Q. Okay. So in those dealerships --
 14 A. I'm certainly a believer in servient leadership.
 15 Q. Okay. Can you define what you mean by that?
 16 A. Well, I think it's my job to help our people grow.
 17 I have always felt that way. I think it has a lot to do
 18 with our success.
 19 Q. Do you know what the revenue of Fred Beans Holding,
 20 Inc., was for 2008?
 21 A. I don't.
 22 Q. Do you have any of that information for 2009 or
 23 2010?
 24 A. I believe in 2010 it was, approximately, a little

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1 more than \$800 million.
 2 Q. Okay. And that's total revenue of all the
 3 companies; correct?
 4 A. Yes, sir.
 5 Q. And when I said Fred Beans Holding, Inc., I'm
 6 referring --
 7 A. Which would be everything that we are involved in.
 8 Q. Okay. Do you know what the net profit was, if any,
 9 for that period of time, for that company and all the
 10 companies underneath it?
 11 A. No, I don't.
 12 Q. Do you know what your operation margin is, the
 13 profit?
 14 A. I know it by -- I know what our goal is. And our
 15 goal would be to be two-and-a-half percent. We're
 16 certainly not dwelling on two-and-a-half percent.
 17 Q. And two-and-a-half percent, do you feel confident
 18 that that can outperform the market for passive income?
 19 A. I don't understand what you mean by "passive."
 20 Q. If you took the same money and you put it in the
 21 stock market, do you think that your profitability
 22 returns are greater than --
 23 A. Well, we don't have \$800 million, number one. This
 24 is revenue of \$800 million.

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1 Q. Right.
 2 A. No. I think that -- no, I don't think so.
 3 Q. So how do you stay in business?
 4 A. Well, we don't have \$800 million.
 5 Q. I understand.
 6 A. If we had \$800 million at two-and-a-half percent,
 7 it wouldn't be a very smart thing to do. That's the
 8 revenue. We should be able to generate 2.5 percent of
 9 revenue --
 10 Q. Okay.
 11 A. -- right? And that's not a lot either, in my
 12 opinion. Because I always wonder when they put a
 13 postage stamp on something, how many dollars does --
 14 \$50; right? That's 50 cents; right? So you need to do
 15 \$25 worth of business.
 16 Q. I never thought of it that way.
 17 A. I think about it that way, because that's the waste
 18 of a paper towel on the floor. People that know me know
 19 I think about it that way.
 20 Q. I have heard. I have heard. I think that's what
 21 makes you successful, sir.
 22 Would you say in 2008 you had fewer
 23 employees than you had in 2009?
 24 A. By the end of 2008?

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1 Q. Yes.
 2 A. Absolutely.
 3 Q. What do you think the numbers were 2008 as opposed
 4 to 2007, difference in employees? For example, if you
 5 had 2,000 employees in 2007, how much --
 6 A. I would think -- I would estimate about between 10
 7 and 15 percent.
 8 Q. Okay.
 9 A. We certainly didn't add salesmen when we loss them.
 10 Q. So sales took the majority of the cuts or didn't
 11 take the majority of the cuts? I'm trying to
 12 understand.
 13 A. No. If we lost salespeople which we did, we didn't
 14 replace them later.
 15 Q. I see.
 16 A. And we reduced -- in every case where we could
 17 reduce a department and still be a functional as a
 18 business or some semi-functional, we did reduce. Excuse
 19 me for lounging in my chair.
 20 Q. You're totally permitted to sit any way you like.
 21 I understand some dealerships had
 22 more than one service manager; is that correct?
 23 ---
 24 MS. WALKER: Objection to the form.

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1 ---
 2 BY MR. KIMMEL:
 3 Q. Do you know if that's correct?
 4 A. More than one service manager?
 5 Q. It's my understanding, for example, at one time
 6 your Ford dealership had more than one service manager.
 7 A. Not to the best of my knowledge.
 8 Q. Okay. Are there any of your dealerships that had
 9 more than one service manager that you are aware of?
 10 A. In New Holland we have the largest service
 11 department in our company. Today its staff is divided
 12 by two people that share different responsibilities.
 13 They're both called service managers. But that's -- to
 14 put it in perspective, about -- about six times the size
 15 of what the Hyundai store was.
 16 Q. Okay. So --
 17 A. That's because everything is under one room.
 18 Q. A lot more business?
 19 A. 36 technicians, but don't forget that's Toyota,
 20 Chrysler, and Dodge and Jeep and Ford.
 21 Q. Okay. But the standalone store, typically, have
 22 one service manager?
 23 A. That's correct.
 24 Q. Okay. In 2008, October, there were layoffs of a

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1 number of employees. Do you remember that?
 2 A. I do.
 3 Q. Do you know how many service managers were let go
 4 in 2008, October?
 5 A. I know -- I can't recall the exact date, but we had
 6 a fairly highly compensated service manager at the Ford
 7 store and he was let go and I don't know the date, but I
 8 can get that for you.
 9 Q. Was that service manager -- let me interrupt you.
 10 Was that service manager the only service manager of the
 11 Ford store at that time?
 12 A. That service manager at that time was the only
 13 service manager.
 14 Q. Did you eliminate the service manager position at
 15 the Ford store?
 16 A. No. I put somebody else in that position for a lot
 17 less money and I thought may be better qualified to do
 18 the job.
 19 Q. Was the person you put in that position male or
 20 female?
 21 A. Male.
 22 Q. Was the person put in that position somebody who
 23 had been with you for a while?
 24 A. Yes.

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1 Q. How long?
 2 A. Probably four years.
 3 Q. Four years. Were there any other service managers
 4 that you are aware of that were let go in October of
 5 2008?
 6 A. No.
 7 Q. Who do you think your best service manager was in
 8 2008, if you have somebody that you can identify as the
 9 best?
 10 A. I would identify what I would consider good
 11 operations.
 12 Q. Whatever way you want to define it, sir.
 13 A. So that would -- sometimes a good service manager
 14 is actually propped up by a good general manager; right?
 15 That's a fair statement, I think. I think West Chester
 16 did a very good job. And I think that Boyertown did a
 17 good job. I think prior to the demise of Saturn,
 18 Steve Zdunczyk was still with us, did a very good job.
 19 Without looking at dates, I think Mike Minniti at our
 20 Ford store did a good job.
 21 Q. You named four or five men; correct?
 22 A. I did.
 23 Q. Are there any women that you feel would have been
 24 good service managers?

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1 A. Pardon?
 2 Q. Are there any women that you feel were good service
 3 managers?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: Good?
 7 ---
 8 BY MR. KIMMEL:
 9 Q. Well, you just testified as to who you thought was
 10 a good service manager. I asked you that question. I'm
 11 asking, are there any women that you felt were good
 12 service managers --
 13 ---
 14 MS. WALKER: Objection to the form.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. -- by your definition?
 18 A. I'd have to know what your definition of "good" is.
 19 If you're asking me if Cherie was a good service
 20 manager?
 21 Q. Well, do you think she was?
 22 A. I think that everybody in our company wanted Cherie
 23 to be good, including myself.
 24 Q. Okay.

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1 A. I think we were very loyal to her over a long
 2 period of time.
 3 Q. And was she a good service manager, in your mind?
 4 A. Today are we asking that question, about today?
 5 And knowing what I know today and looking back and where
 6 we are at and where we were.
 7 Q. Either way, sir.
 8 A. Well, she really wasn't very reliable when it came
 9 to coming to work on time.
 10 Q. Okay. And what do you mean by that?
 11 A. Didn't come to work on time.
 12 Q. Did you change her hours?
 13 A. We -- I believe she was allowed -- I believe that
 14 she was allowed to come in two days a week at 8:30.
 15 Q. Did you make an exception for her as compared to
 16 other people?
 17 A. Absolutely.
 18 Q. Why did you do that?
 19 A. I think we were loyal to her. She came to work for
 20 us when she was a young girl. I believe that we even
 21 offered her other positions because of -- people have to
 22 have a leader. People have to have -- people that come
 23 to work have to have somebody there to lead them.
 24 The -- our customer satisfaction level was not very good

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1 when she was there. Okay?
 2 Q. What point in time are you speaking of?
 3 A. I'm talking about prior, in 2008.
 4 Q. Okay. So do you believe that you terminated her
 5 because she was not a good service manager?
 6 A. No. I believe we terminated her solely because of
 7 economics.
 8 Q. And why was she chosen as opposed to another
 9 service manager in another company?
 10 ---
 11 MS. WALKER: Objection to the form.
 12 MR. KIMMEL: Why are you objecting
 13 to the form of that question? It's the same question as
 14 the last question I asked, except I'm asking a different
 15 question.
 16 MS. WALKER: Because it assumes --
 17 it assumes that the decision was made -- you really want
 18 me to talk about the substance of it?
 19 MR. KIMMEL: No. I --
 20 MS. WALKER: I think it has a lack
 21 of foundation and makes some false assumptions about the
 22 manner in which the determination was made.
 23 MR. KIMMEL: I don't have to lay
 24 foundation in discovery. I can ask questions.

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1 MS. WALKER: You still have to --
 2 MR. KIMMEL: It's not a trial.
 3 MS. WALKER: You are assuming
 4 something in that question that.
 5 MR. KIMMEL: Please don't yell at
 6 me. I don't think that I raised my voice once today,
 7 and I don't appreciate you raising your voice at me.
 8 MS. WALKER: You are assuming
 9 something in that question that is inaccurate.
 10 MR. KIMMEL: Okay. And if the
 11 gentleman, who is a highly intelligent, very successful
 12 man with an \$800 million revenue business, has a problem
 13 with my question, I think the gentleman can say to me,
 14 "I don't understand your question. Could you rephrase
 15 it?"
 16 MS. WALKER: Counsel, I object to
 17 the form of the question. That is my responsibility as
 18 an attorney representing Mr. Beans here. And I have
 19 made my objection.
 20 MR. KIMMEL: Right. But this is --
 21 MS. WALKER: I'm not withdrawing
 22 it. It's staying on the record. I object to the form.
 23 MR. KIMMEL: I don't want you to
 24 withdraw it. I'm trying to move this deposition

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1 forwarding without hearing you object every time in a
 2 federal court discovery deposition. That's all.
 3 MS. WALKER: You know what? If you
 4 don't want me to object, then ask questions that are not
 5 laden with false assumptions and then I won't object.
 6 But as long as you're going to ask questions laden with
 7 false assumptions, I'm going to object to them.
 8 MR. KIMMEL: What was the last
 9 question please? Could you read it back?
 10 ---
 11 (The court reporter read back as
 12 follows:
 13 "QUESTION: And why was she chosen
 14 as opposed to another service manager in another
 15 company?")
 16 ---
 17 MS. WALKER: Objection to the form.
 18 MR. KIMMEL: And what was the
 19 foundation that I didn't lay again?
 20 MS. WALKER: Okay. The first thing
 21 is you assume that Cherie was selected to be let go as
 22 opposed to eliminating the service manager position in
 23 the Hyundai store based on what the dealership needed to
 24 do to fix the unbalance between profit and cost in the

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1 Hyundai store.
 2 MR. KIMMEL: Well, first of all, I
 3 think it's called "Hyundai." And second of all, I think
 4 that your response has a number of false assumptions
 5 that have yet to be proven in any aspects of this case.
 6 And what you're doing is presenting your client's
 7 perspective instead of your client's facts. I'm trying
 8 to understand your client's facts because your client
 9 has facts that I'm not aware of. That's why we are here
 10 today.
 11 MS. WALKER: You know what? I have
 12 made my objection to the form of the question. I have
 13 told you why. I'm not going to argue it with you.
 14 MR. KIMMEL: Okay.
 15 ---
 16 BY MR. KIMMEL
 17 Q. So sir --
 18 ---
 19 MR. KIMMEL: Could you please read
 20 the question back? I know your objection. Could you
 21 please answer it, sir? She'll read it back.
 22 ---
 23 (The court reporter read back as
 24 follows:

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1 "QUESTION: And why was she chosen
 2 as opposed to another service manager in another
 3 company?"
 4 ---
 5 THE WITNESS: You want an answer to
 6 that question?
 7 MS. WALKER: If you can answer the
 8 question as phrased, you can answer it. If you can't,
 9 you can't. I'm not -- I have objected to the form of
 10 it.
 11 ---
 12 BY MR. KIMMEL:
 13 Q. That still means you should answer the question, if
 14 you can.
 15 A. Number one, that's not a fair question because we
 16 evaluate each dealership based on its profit and loss,
 17 based on its service absorption. So we looked at each
 18 unit that we had as to where we could reduce expenses,
 19 from turning off the computers to eliminating the
 20 janitor service to not washing cars to not cleaning
 21 windows.
 22 When it came to the Hyundai store
 23 and we started to analyze that store, we had a used car
 24 manager -- and let me qualify that. That used car

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1 manager's job was not to manage people, but that was to
 2 manage the trading in of cars, the reconditioning of
 3 them, getting them to frontline for sale. We looked at
 4 the Hyundai store's lack of profitability. We looked at
 5 the Hyundai store's lack of contribution in the service
 6 department. We looked at poor CSI in the service
 7 department. We looked at lack of revenue, the amount of
 8 losses which you all heard here this morning. And
 9 that's part of the record. We looked at the new car
 10 department, new car manager that served as sort of a
 11 sales manager, new and used quasi service manager, Matt
 12 Tucker. And we eliminated his job --
 13 Q. Her job?
 14 A. -- personally.
 15 Q. Her job?
 16 A. His job.
 17 Q. Who's?
 18 A. As a sales manager in the store.
 19 Q. I'm sorry. I misunderstood. You said Matt Tucker?
 20 You eliminated Matt Tucker's --
 21 A. No. We eliminated Matt Tucker as sales manager.
 22 Q. I see.
 23 A. May have been referred to as new car manager. He
 24 was really a sales manager with new and used car

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1 responsibilities of selling cars. We retained one
 2 person, Mr. Ryan Ofner as used car manager. Not as a
 3 sales manager but to recondition cars and get cars
 4 frontline ready. We looked at the new car department,
 5 used car department. We reduced every expense we could
 6 there. And we looked at the service department that was
 7 underperforming, poor CSI and underperforming. And not
 8 just in selling gross but in contribution to fixed
 9 expenses --
 10 Q. Okay.
 11 A. -- which you dwelled on earlier with Mr. Szpanka.
 12 And you just can't look at selling gross. You can have
 13 a lousy selling gross and work hard at improving it.
 14 You can have a lousy selling gross and no business. And
 15 that business wasn't growing. We had no choice but to
 16 eliminate that expense, and we did. And our
 17 profitability in that department went up, I believe,
 18 between -- that expense of around \$60,000. I believe
 19 our documentation shows that we went up about \$100,000.
 20 We can't operate a company. You as an attorney, I don't
 21 care where the courts are, we don't have pockets with no
 22 floor plan to lose \$300,000, \$300,000 a year. It just
 23 doesn't work.
 24 We were on the position that if

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1 this thing would have lasted much longer, and you heard
 2 his testimony today, that this company could have filed
 3 for bankruptcy.
 4 Q. I didn't hear him say that.
 5 A. Well, I'm going to tell you it could have. And I
 6 could tell you it was probably damn close. Because with
 7 no -- in October we got a letter from the Bank of
 8 Santander which banked us with Sovereign Bank. And
 9 Sovereign Bank left the retail business.
 10 In November -- approximately
 11 November, early December, we got a letter as their
 12 largest lender, largest floor plan dealer and we had no
 13 floor plan. That to me was the end of our company. If
 14 you walked in here and said, Fred, give me the keys,
 15 I'll take over these responsibilities, I believe I would
 16 have handed them to you.
 17 Q. My offer stands then.
 18 A. Ha?
 19 Q. I said, I'll do it today for you, then.
 20 A. Well, today is a different story. We have a floor
 21 plan line. And we went to Wachovia which is now Wells
 22 Fargo. And they looked at us and they did not want a
 23 Ford franchise and they didn't want a Chevy franchise
 24 and they didn't want a Chrysler franchise. I don't

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1 think you realize what position we were in.
 2 Q. I don't think you realize what this case is about,
 3 sir.
 4 A. Ha?
 5 Q. I don't think you realize what this case is about.
 6 We all have suffered the economic problems. My question
 7 to you -- excuse me.
 8 A. We had no choice but to look at reduction of
 9 personnel, and we did it and we did like decent human
 10 beings.
 11 Q. Do you know what my question was, sir, that started
 12 this whole response? Specifically -- I'm going to ask
 13 her to read it back again, because I don't want to
 14 mischaracterize what I asked you.
 15 ---
 16 (The court reporter read back as
 17 follows:
 18 "QUESTION: And why was she chosen
 19 as opposed to another service manager in another
 20 company?")
 21 ---
 22 MS. WALKER: Objection to the form.
 23 ---
 24 BY MR. KIMMEL:

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1 Q. You can answer, sir.
 2 ---
 3 MS. WALKER: I think he already
 4 did. He said he couldn't answer that question.
 5 MR. KIMMEL: He did not say that.
 6 MS. WALKER: Could you read back
 7 the beginning of his answer? All right. Do you need
 8 her to read back the question, Fred?
 9 THE WITNESS: No, I think I'm okay.
 10 MS. WALKER: Object to the form of
 11 it.
 12 THE WITNESS: We looked at each
 13 business unit, each individual dealership, what expenses
 14 could be eliminated, and that's how we dealt with it.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. And so you choose Miss Santai after going through
 18 that analysis?
 19 A. We chose -- we chose several people in that
 20 dealership to eliminate.
 21 Q. Well, Miss --
 22 A. Service manager, a sales manager, and we asked our
 23 general manager to assume the basic responsibilities.
 24 Q. Who is the person with ultimate responsibility of

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1 the store, at the Hyundai store, was it the general
 2 manager?
 3 A. Yes.
 4 Q. Why didn't you replace the general manager since he
 5 bears ultimate responsibility for how the store is run?
 6 A. That's an interesting question.
 7 Q. I've been waiting to ask it for a while.
 8 A. Because he did a great job there and he's done a
 9 great job since then.
 10 Q. How has he done a great job when the people
 11 underneath him so completely failed, in your testimony?
 12 A. I didn't say --
 13 ---
 14 MS. WALKER: Objection to the form.
 15 THE WITNESS: I didn't say
 16 "failed."
 17 ---
 18 BY MR. KIMMEL:
 19 Q. Okay. When they were found inadequate and you were
 20 laying them off.
 21 ---
 22 MS. WALKER: Objection to form.
 23 THE WITNESS: I don't think I said
 24 "inadequate."

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1 ---
 2 BY MR. KIMMEL:
 3 Q. Why were they let go and the general managers kept
 4 on?
 5 A. I would say to you -- I think this is kind of a
 6 ridiculous question when it comes to running a business.
 7 Somebody has to be there to run the business. Somebody
 8 has to be there to unlock the door, hire the people,
 9 discipline the people, take care of customer complaints.
 10 Somebody has to be there lead the band. Would you fire
 11 the orchestra leader, or would you terminate an
 12 employee? I don't know. I don't think so. I think
 13 that Tucker did a good job. And, incidentally, Tucker's
 14 record speaks for itself today.
 15 Q. And --
 16 A. And we can substantiate that. In our sales
 17 penetration, our customer satisfaction, we had no
 18 choice. We were bleeding money. We had to look at
 19 everybody in that dealership that could be eliminated.
 20 Q. Why not other dealerships?
 21 A. We did, one by one. Let minute me finish on
 22 Tucker. We looked at Tucker. We looked at everybody
 23 who worked for Tucker. We had an underperforming
 24 service department. We had to reduce the expenses. You

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1 saw the selling gross yourself today at 36 percent, but
 2 no volume. 36 percent of nothing ain't a hell of a lot.
 3 Q. Right. How many of the stores that you were
 4 involved with were performing to your expectations at
 5 that time?
 6 A. In the sales departments, probably none of them.
 7 Q. How about the service department?
 8 A. In the service departments, I think in most cases
 9 we were holding our own.
 10 Q. What does holding your own mean as opposed to not
 11 holding your own in dollar terms?
 12 ---
 13 MS. WALKER: Objection to the form.
 14 ---
 15 BY MR. KIMMEL:
 16 Q. How do you define "holding your own"?
 17 A. "Holding my own" would be possibly not going
 18 backwards in service. We certainly weren't going
 19 backwards all across the board in sales. And we did
 20 eliminate -- we eliminated expenses in every department
 21 of every dealership.
 22 Q. You do know that the PHRC, sir, found that your
 23 company -- found probable cause for your company having
 24 violated my client's rights as a pregnant person?

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1 ---
 2 MS. WALKER: Objection to the form.
 3 THE WITNESS: I don't believe it.
 4 ---
 5 BY MR. KIMMEL:
 6 Q. You don't believe that?
 7 A. That we violated her rights?
 8 Q. Do you know that the PHRC --
 9 A. Say that again. What?
 10 Q. Did you know that the PHRC found probable cause --
 11 ---
 12 MS. WALKER: Objection.
 13 ---
 14 BY MR. KIMMEL:
 15 Q. -- in the claim that my client filed against your
 16 company for discrimination?
 17 ---
 18 MS. WALKER: Objection to the form.
 19 THE WITNESS: I don't think it's
 20 right.
 21 ---
 22 BY MR. KIMMEL:
 23 Q. You don't think my characterization is right or you
 24 don't think the finding is right?

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1 A. I don't think that finding is right.
 2 Q. Okay. Do you know what rights a pregnant person
 3 has during their pregnancy as compared to other --
 4 A. Family pregnancy leave; right?
 5 Q. Is that your answer?
 6 A. We have many women that work for this company and
 7 we encourage them. My daughter encourages them. This
 8 wasn't about her being pregnant.
 9 Q. It wasn't?
 10 A. This is about reducing our expenses.
 11 Q. How many weeks or months before she was going to go
 12 out on leave do you believe my client had when you
 13 terminated her?
 14 ---
 15 MS. WALKER: Objection to the form.
 16 ---
 17 BY MR. KIMMEL:
 18 Q. Do you recall?
 19 A. How many more weeks did she have?
 20 Q. Before she was going out on maternity leave.
 21 A. I don't remember the date that I found out she was
 22 pregnant. She was terminated in October.
 23 Q. Do you know when she was out on leave?
 24 A. No.

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1 Q. Do you know how many years she was with you when
 2 you terminated her?
 3 A. I believe about six, but I'm not positive.
 4 Q. 16.
 5 A. 16?
 6 Q. Yes, sir.
 7 A. I don't know.
 8 Q. 1994 was her first year, I believe. 14.
 9 A. I know that she worked in different capacities.
 10 Q. She worked her way up through the company; right?
 11 Yes?
 12 A. I would suppose so.
 13 Q. And generally you liked her prior to this?
 14 A. As a person?
 15 Q. Yes.
 16 A. Yes.
 17 Q. When did you decide to eliminate the position?
 18 A. You didn't ask me if I liked her now, did you?
 19 Q. Well, sir, anybody that is being sued, I imagine
 20 that you don't like the person.
 21 A. Well, I think she knows she's wrong.
 22 Q. Well, that's a different question in your mind.
 23 But the question that you wanted me to answer -- this is
 24 your deposition. The question is whether you liked her

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1 today, and my response is I'm sure that if you're being
 2 sued, you don't like the person that is suing you. I
 3 think that's a fair assumption. We can all agree on
 4 that.
 5 A. I don't think that's a fair assumption.
 6 Q. Okay. Well, then, we won't argue. We'll just go
 7 back to the traditional deposition questions.
 8 You know my client had other
 9 children prior to this pregnancy; correct? Is that a
 10 yes?
 11 A. Yes.
 12 Q. And she returned to the company each time?
 13 A. Yes.
 14 Q. Did you find any problem with her work when she had
 15 come back from her pregnancy with those other children?
 16 A. I didn't work directly with her.
 17 Q. But you knew her and you knew she was being
 18 promoted in your company; right?
 19 A. I think when she came back, she came back as a
 20 service manager. I don't remember. I think she had --
 21 I think she came -- she had one pregnancy leave. I
 22 think she might have been at our Chevrolet dealership at
 23 that time. I'm not sure.
 24 Q. If she was not an adequate service manager, why was

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1 it in 2008 that you chose to let her go? Why didn't you
 2 let her go earlier --
 3 ---
 4 MS. WALKER: Objection to the form.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. -- years earlier?
 8 A. You know, I never said that she wasn't adequate. I
 9 said that we have done substantially better since she
 10 left.
 11 Q. The economy has done substantially better too;
 12 right?
 13 A. But we have done better at customer satisfaction.
 14 Q. Okay.
 15 A. We have done better in employee morale, I believe.
 16 Q. So --
 17 A. But that's not the point. The point is that we
 18 were dying as a company.
 19 Q. Uh-huh.
 20 A. We eliminated every expense that we could eliminate
 21 that we didn't need. Very simple.
 22 Q. I'm trying --
 23 A. My job is -- my job in our company is that I have
 24 to answer to all the people who work here. I have to be

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1 profitable. My job is to provide them with good
 2 leadership, a good income, hospitalization, and
 3 hopefully -- hopefully good leadership, and good people
 4 to lead it with. I believe that's what I'm charged
 5 with.
 6 Q. Okay.
 7 A. It wasn't about Cherie. It's about eliminating
 8 expenses.
 9 Q. Was she an adequate service manager?
 10 A. Adequate, yes.
 11 Q. Did she do a good job as a service manager, above
 12 average?
 13 A. When we were ready to bring somebody back in as a
 14 service manager, we offered her a job.
 15 Q. I understand. That's a different question. Let's
 16 try to stay on track here.
 17 Was she better than average, in
 18 your view, as a service manager?
 19 A. I don't know how you define "average."
 20 Q. Well, sir, average would be better than most, but
 21 not as good as some.
 22 A. I'd say at best probably -- I would say average,
 23 but had the potential to be more.
 24 Q. Okay. Were you aware -- excuse me -- that my

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1 client was promoted to service manager in 2001 at the
 2 Mitsubishi store?
 3 A. I don't remember the date.
 4 Q. Okay. That was seven years before she was
 5 terminated, nearly seven years. So for seven years she
 6 was a service manager?
 7 A. I don't like the term "terminated." We eliminated
 8 the position. We eliminated every position we could in
 9 order to survive as a company.
 10 Q. I know you may not like the term, but my client
 11 never had a job after that elimination that you are
 12 referring to, so she was terminated.
 13 A. How hard --
 14 ---
 15 MS. WALKER: Objection to the form.
 16 ---
 17 BY MR. KIMMEL:
 18 Q. She was terminated, sir. You terminated her.
 19 A. Okay.
 20 ---
 21 MS. WALKER: Objection to the form.
 22 ---
 23 BY MR. KIMMEL:
 24 Q. As she --

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1 ---
 2 MS. WALKER: She wasn't --
 3 "termination" would mean end of one's life. She was --
 4 her life was not ended.
 5 MR. KIMMEL: So you're telling me
 6 the word "termination," Counsel, means ending one's
 7 life?
 8 MS. WALKER: Her employment was
 9 terminated; that is true.
 10 MR. KIMMEL: That's what I'm
 11 referring to. That's what this case is about.
 12 MS. WALKER: She was not
 13 terminated.
 14 MR. KIMMEL: She was terminated as
 15 an employee of this company. Would you like me to say I
 16 it in a complete sentence every time I refer to it?
 17 That's why we are here today. She was terminated. She
 18 was no longer retained --
 19 MS. WALKER: Objection to the form.
 20 MR. KIMMEL: -- correct?
 21 MS. WALKER: Objection to the form.
 22 MR. KIMMEL: Well, you don't object
 23 to the form when there is no question before you.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. So December 2001 she was a service manager of Fred
 3 Beans Mitsubishi, and for seven years she was a service
 4 manager for your organization; isn't that correct, sir?
 5 A. Yes.
 6 Q. Okay. And at no time between December of 2001 and
 7 October of 2008 was she asked to leave the company for
 8 any reason; isn't that correct?
 9 A. That's correct.
 10 Q. Okay. Would that be because she was doing an
 11 adequate job?
 12 A. That would be a safe assumption.
 13 Q. And if she was transferred from one store to
 14 another store and given an increase in pay, would it be
 15 fair to assume that means she was being promoted?
 16 A. Given additional opportunity to grow.
 17 Q. Do you give opportunities to grow to people who you
 18 don't think can do the job?
 19 A. I hope not, but I probably have.
 20 Q. Do you agree with the concept that past performance
 21 is a fair indicator of future performance?
 22 A. Yes.
 23 Q. Would you say that that rule applied here when Miss
 24 Santai was promoted from service manager at Fred Beans

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1 Mitsubishi over to the Hyundai store?
 2 A. I think at the time that was probably a natural
 3 progression. We tried to get people an opportunity to
 4 move from one store to the other, especially if they're
 5 small stores.
 6 Q. How do you discipline employees with problems at a
 7 dealership where you have to bring something to their
 8 attention?
 9 A. How do we discipline them?
 10 Q. Yes, sir. I don't mean "discipline," there is a
 11 physical confrontation. I mean, somebody is not doing
 12 their job and you want to let them know that there is an
 13 issue there.
 14 A. Counsel with them. Sometimes ask them to go to
 15 EAP.
 16 Q. What's that?
 17 A. Employee Assistance Program, because they may have
 18 personal problems that are interfering with their
 19 activity or their job.
 20 Q. Okay. Anything else?
 21 A. We -- once Rob Szpanka came with us, we started to
 22 meet generally, at least monthly, with each department
 23 head as an Operations Group and discuss performance.
 24 Q. Okay. Is there anything else?

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1 A. We certainly would counsel with people if they were
 2 doing something wrong. I don't think we are necessarily
 3 lax, I don't believe. I don't think we are lax on
 4 discipline. We can't discipline what we don't know
 5 about either.
 6 Q. Okay. So let's go back a second. You said you are
 7 not lax on discipline. What do you mean by that?
 8 A. Well, I think if we know there is something wrong,
 9 we'll discuss it. If you want to call that
 10 "discipline," I guess I would say it's bringing it to
 11 their attention.
 12 Q. Are you aware of any time, prior to October 2008,
 13 that Cherie Santai was disciplined in any way by the
 14 company?
 15 A. No. I think that she was well aware of her level
 16 of performance and how it stood up with other people.
 17 Q. And why do you say that?
 18 A. She was aware of our customer satisfaction level.
 19 That report comes out every month.
 20 Q. That's objective criteria, but did you personally
 21 or anybody on your behalf speak to anybody about this?
 22 ---
 23 MS. WALKER: Objection to the form.
 24 THE WITNESS: About customer

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1 satisfaction?
 2 ---
 3 BY MR. KIMMEL:
 4 Q. About her performance in her job.
 5 A. Certainly reviewed the figures.
 6 Q. Right. You reviewed the figures, but did you speak
 7 to her that -- tell her that her performance was lacking
 8 in any way?
 9 A. I don't think we use that term very often,
 10 "lacking." I think we say there are opportunities here
 11 that were not taken advantage of.
 12 Q. When you use the phrase there are opportunities
 13 here that you are not taking advantage of, does that
 14 translate to you as letting the employee know that they
 15 are not doing their job well?
 16 A. We point out what those areas were.
 17 Q. Did you do that with Miss Santai?
 18 A. If we were not productive in our customer
 19 satisfaction we try to come up with a cure for it.
 20 Q. Did you bring these issues up to Miss Santai
 21 directly?
 22 A. About customer satisfaction levels?
 23 Q. About her job performance.
 24 A. Well, that's job performance. Customer

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1 satisfaction to me is job performance, yes. We brought
 2 that up.
 3 Q. You did bring it up. Did you verbally bring it up
 4 or just let her review the information that you were
 5 reviewing?
 6 A. We review that in person.
 7 Q. Okay.
 8 A. We looked at it literally monthly.
 9 Q. Did you ever say, or anybody on your behalf, to
 10 your knowledge, say, "Cherie, you better bring the
 11 numbers up or you are going to have to be terminated"?
 12 ---
 13 MS. WALKER: Objection to the form.
 14 THE WITNESS: We were never at that
 15 kind of point. We want to improve. Our goal was to be
 16 number one in every market we serve in customer
 17 satisfaction, in the top 10 percent. Anyplace we do
 18 business, we want to be in the top 10 percent in
 19 customer satisfaction.
 20 ---
 21 BY MR. KIMMEL:
 22 Q. Did you read the complaint in this case that was
 23 filed?
 24 A. It's been a long time ago.

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1 Q. Okay.
 2 A. But go ahead.
 3 Q. But did you read it?
 4 A. I can't remember if I read it thoroughly or not.
 5 Q. Okay. Would you say that a service manager who had
 6 the type of months that were the best months in terms of
 7 adjusted gross income in the history of a store was
 8 somebody who's performing well in their job?
 9 ---
 10 MS. WALKER: Objection to the form.
 11 THE WITNESS: Would I say that?
 12 ---
 13 BY MR. KIMMEL:
 14 Q. If somebody who had months of adjusted gross income
 15 that was among the best in the history of the store --
 16 A. What store?
 17 Q. The Hyundai store.
 18 A. I don't think we ever had that. Or as a start-up
 19 company, every month would generally be better than the
 20 previous month. So could I have said that in the
 21 history of the store? Our second month is better than
 22 our first month, but --
 23 Q. Are you aware that during my client's employment --
 24 her last year of employment when she was let go,

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1 terminated, called off, whatever way you want to refer
 2 to it, that she had had one of the best months in the
 3 history of the Fred Beans service at the Hyundai store?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: I don't think we did.
 7 I can look that up.
 8 ---
 9 BY MR. KIMMEL:
 10 Q. Are you aware that there was a meeting that that
 11 announcement was made?
 12 A. By who?
 13 Q. By one of the people who was in charge of making
 14 the announcement. One of the operation personnel, I
 15 believe.
 16 A. I'm not aware of that, no.
 17 ---
 18 MS. WALKER: Objection to the form.
 19 ---
 20 BY MR. KIMMEL:
 21 Q. You're not aware of that?
 22 A. No. I don't believe that's accurate. I can look.
 23 I don't know. If you want me to look, I'll look. You
 24 have those figures from Szpanka.

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1 Q. Right. Do you --
 2 A. What did those figures say?
 3 Q. Well, I'm just going by what the announcement was
 4 at that meeting.
 5 A. Who made that announcement?
 6 Q. You're not aware of who made that announcement?
 7 ---
 8 MS. WALKER: Objection to the form.
 9 THE WITNESS: No.
 10 ---
 11 BY MR. KIMMEL:
 12 Q. Okay. Did you have conversations with my client
 13 that were non-professional --
 14 ---
 15 MS. WALKER: Objection to the form.
 16 ---
 17 BY MR. KIMMEL:
 18 Q. -- that did not involve work or her job?
 19 A. No.
 20 ---
 21 MS. WALKER: Objection to the form.
 22 ---
 23 BY MR. KIMMEL:
 24 Q. Never?

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1 A. No.
 2 Q. You never would refer to my client and say, "You
 3 look like you have a glow"?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: No.
 7 ---
 8 BY MR. KIMMEL:
 9 Q. No. Did you ever meet with my client after finding
 10 out that she was pregnant and tell her she could not
 11 work as a service manager at the Hyundai store as a
 12 pregnant person?
 13 A. I would never say that.
 14 Q. So you're saying you did not say that?
 15 A. I would never say that.
 16 Q. Are you saying you did not say that?
 17 A. Yes.
 18 Q. Okay. And did you enlist my client to hire Bob
 19 Engle and to train Bob Engle to take over the role of
 20 service manager --
 21 A. No.
 22 Q. -- while she was out on pregnancy leave?
 23 A. No.
 24 Q. No. Okay. And did you ever tell my client that

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1 having an additional child would affect her hours?
 2 A. Her hours were already affected, so the answer is
 3 no.
 4 Q. So you would not have reiterated that, her hours?
 5 A. No.
 6 Q. No?
 7 A. It's not my job to decide that or to say that.
 8 Q. Who's job would that have been?
 9 A. Nobody's job. I think we have better sense than
 10 that.
 11 Q. Okay. When did you first become aware that my
 12 client was pregnant with the last pregnancy?
 13 A. I'm not sure of the exact date.
 14 Q. Can you estimate?
 15 A. I would only guess.
 16 Q. Do you have any recollection of the facts of the
 17 spring of 2008, without referring back to some kind of
 18 material to help you remember?
 19 A. I guess I'd have to have some kind of help.
 20 Q. What is your recollection of the first time you can
 21 recall knowing that Cherie Santai was pregnant with her
 22 last pregnancy?
 23 A. I don't -- I don't really know, because I don't
 24 really follow that.

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1 Q. Do you know when it was that you -- or where you
 2 were when you found out?
 3 A. I knew when she was terminated that she was
 4 pregnant. I knew it before she was terminated, but I
 5 don't know when.
 6 Q. Okay. Do you remember ever having any conversation
 7 with her directly about her pregnancy?
 8 A. I remember her telling me she was pregnant.
 9 Q. What was your reaction to that?
 10 A. I think I was -- I think I said "Congratulations."
 11 I believe I was there with Beth Gilbert and Matt Tucker
 12 in the Hyundai store.
 13 Q. So you believe the three of you were present with
 14 my client when she told you?
 15 A. I believe that's correct. I believe we were -- I
 16 believe we were in the office doing a review. It was in
 17 a glass office we used to call -- I don't know what we
 18 called it, but it was a glass office in the Hyundai
 19 store.
 20 Q. How did you feel when you heard that she was
 21 pregnant?
 22 ---
 23 MS. WALKER: Objection to the form.
 24 THE WITNESS: How did I feel?

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1 ---

2 BY MR. KIMMEL:

3 Q. How did you feel?

4 A. Not good or bad.

5 Q. Not good or bad?

6 A. No.

7 Q. What would you describe your reaction as being?

8 Looking at your attorney probably is not the best way to

9 respond.

10 A. Well, I think you're asking for a personal thing

11 here and that's kind of subjective, isn't it, as to

12 one's feelings?

13 Q. Well, sir, you are a defendant in this case. And

14 so therefore --

15 ---

16 MS. WALKER: To the extent you had

17 a feeling, then you can share with it. He didn't say

18 good or bad.

19 THE WITNESS: I'm a father of three

20 daughters; right? It's very simple. I'm a father of

21 three daughters.

22 ---

23 BY MR. KIMMEL:

24 Q. Right. And what does that mean?

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1 A. From that standpoint, I felt bad for her.

2 Q. Okay. Why did you feel bad for her?

3 A. Because of the hours that that job takes to work

4 there. The hours, the commitment. The fact that maybe

5 I felt that what I have heard on here, say that her

6 husband wasn't a ball of wax, ball of fire. I felt bad

7 for her as an individual, but that's a personal issue.

8 I felt bad as a father. Only because I've heard in the

9 past that her husband didn't pull his own load, and as a

10 man I pulled my load and I felt bad for her personally.

11 Okay? That has nothing to do with this. If you want to

12 use that against me, please do so. I'll leave the room

13 because I'm a little emotional. I felt bad.

14 Q. Do you need a break?

15 A. No. I thought that the girl -- I felt bad for her.

16 I've heard nothing but other than that her husband was

17 lazy and didn't work and was a bum. And I felt bad

18 because I thought -- you know, I think about my own

19 three daughters. Okay? I think about my own wife. If

20 I'm wrong on that, God forgive me, but I happen to care

21 about people. And I have enough people that can say

22 that. But I know this is subjective, so let's go.

23 Q. Well, you are a defendant in the case and your

24 perceptions are a part of this case, because I believe

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1 you have been identified as the person who delivered the

2 news that my client was no longer going to be employed

3 by Fred Beans; is that correct?

4 A. That's absolutely correct. I wouldn't ask anybody

5 else to deliver that news. The day we went through and

6 terminated people, laid them off, whatever you want to

7 call it, it was a very bleak day for me. I didn't sleep

8 well. I didn't do very well over this period of time

9 saying good-bye to people. It's not what I wanted to

10 do. But you know what? As a gentleman, as a man, I

11 wanted to do it myself.

12 Q. But you still had a job at the end of the day and

13 my client did not; correct?

14 ---

15 MS. WALKER: Objection.

16 THE WITNESS: You know what? 16

17 other people wouldn't have if we went bankrupt. And I

18 think I could get all the witnesses in the world from

19 several good banks to tell you that possibility existed.

20 ---

21 BY MR. KIMMEL:

22 Q. I understand the business was tough, sir. I

23 certainly understand. But my client was not the reason

24 why your company was failing, was it? It was the

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1 economy.

2 ---

3 MS. WALKER: Objection to the form.

4 ---

5 BY MR. KIMMEL:

6 Q. It was the economy, wasn't it?

7 A. Yes.

8 Q. Okay. That's the point.

9 ---

10 MS. WALKER: Objection to the form.

11 Argumentative. And I don't know what "the point" is.

12 It's not a question.

13 THE WITNESS: Excuse me.

14 MR. KIMMEL: Do you need a break,

15 sir?

16 THE WITNESS: No.

17 MR. KIMMEL: Beth, do you need a

18 break?

19 MS. WALKER: No, but if you need a

20 break, you can have one.

21 MR. KIMMEL: No. I'm just trying

22 to work.

23 THE WITNESS: Go ahead.

24 ---

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1 BY MR. KIMMEL:
 2 Q. Sure. Do you know who Bob Engle is?
 3 A. I do.
 4 Q. Who's Bob Engle?
 5 A. He is a service advisor.
 6 Q. At what store?
 7 A. Fred Beans Hyundai.
 8 Q. Is Mr. Engle a service manager?
 9 A. No, sir.
 10 Q. Has he ever been a service manager --
 11 A. Not to the best of my knowledge.
 12 Q. -- for your company?
 13 A. No, sir.
 14 Q. I'm sure you are aware of this, sir, but there were
 15 some messages left by Mr. Engle on my client's answering
 16 machine as a customer of Fred Beans. Are you aware --
 17 A. Yes, sir.
 18 Q. Can you tell me how Mr. Engle, a service advisor,
 19 came to be known as "Bob Engle, service manager of Fred
 20 Beans Hyundai" --
 21 ---
 22 MS. WALKER: Objection to the form.
 23 ---
 24 BY MR. KIMMEL

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1 Q. -- on those messages?
 2 ---
 3 MR. KIMMEL: Let me finish the
 4 question.
 5 MS. WALKER: I thought you finished
 6 the question.
 7 MR. KIMMEL: I, actually, had three
 8 or four words after you objected.
 9 THE WITNESS: Go ahead.
 10 MR. KIMMEL: This is what we do.
 11 Could you read it back, please?
 12 ---
 13 (The court reporter read back as
 14 follows:
 15 "QUESTION: Can you tell me how
 16 Mr. Engle, a service advisor, came to be known as "Bob
 17 Engle, service manager of Fred Beans Hyundai" --
 18 ---
 19 MS. WALKER: Objection to the form.
 20 ---
 21 BY MR. KIMMEL: -- on those
 22 messages?")
 23 ---
 24 THE WITNESS: Probably read a

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1 script put in front of him by a company called Auto
 2 Point that has prerecorded calls and does mass call-outs
 3 to people who haven't been in to service, to try to
 4 stimulate our business.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. Do you know that Mr. Engle was also identified as
 8 Fred Beans service manager of Fred Beans Hyundai in
 9 little postcard mailers that were sent out?
 10 A. By the same company, but certainly not by us or not
 11 anybody in our company.
 12 Q. But your company had retained them at the time?
 13 A. Absolutely. I'm well aware of it.
 14 Q. Do you understand --
 15 A. I know it's important to you to hang your hat on.
 16 ---
 17 MS. WALKER: Let him finish his
 18 question.
 19 ---
 20 BY MR. KIMMEL:
 21 Q. Do you understand how somebody who received that
 22 message would think that Bob Engle, service manager of
 23 Fred Beans Hyundai, was calling them?
 24 ---

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1 MS. WALKER: Objection to the form.
 2 THE WITNESS: I don't know the
 3 relevance of that.
 4 ---
 5 BY MR. KIMMEL:
 6 Q. Well, unfortunately, you're not counsel. You're a
 7 witness, so you should answer the question.
 8 A. Okay. Do I understand -- say that again.
 9 Q. Do you understand how somebody might perceive the
 10 message, "Hi, this is Bob Engle, service manager of Fred
 11 Beans Hyundai" --
 12 A. What's Bob --
 13 ---
 14 MS. WALKER: Objection to the form.
 15 He hasn't finished the question. He hasn't finished the
 16 question.
 17 MR. KIMMEL: Why are you objecting
 18 if I hadn't finished the question?
 19 MS. WALKER: Well, my client
 20 started to answer because --
 21 MR. KIMMEL: Let's approach it this
 22 way.
 23 ---
 24 BY MR. KIMMEL:

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1 Q. Mr. Beans, if somebody called you and said, "Hi,
 2 I'm Craig Kimmel, service manager of Fred Beans
 3 Hyundai," what would you think I was? Who would you
 4 think I was? You, who would you think I was? "Craig
 5 Kimmel, service manager of Fred Beans Hyundai"; right?
 6 A. I probably would be smart enough to know it was a
 7 pre-recorded call.
 8 Q. So you think your customers can differentiate
 9 between a pre-recorded call that's false and facts?
 10 ---
 11 MS. WALKER: Objection to the form.
 12 THE WITNESS: No. No. I think I
 13 know when I get a pre-recorded call.
 14 ---
 15 BY MR. KIMMEL:
 16 Q. Okay. So if somebody called you and said, "Hi, I'm
 17 Craig Kimmel, service manager of Keenan Mercedes" --
 18 A. He, obviously, was not service manager.
 19 Q. That's not my question. I know that's the
 20 direction you'd like to take these questions.
 21 A. No. It's not the direction I'd like to take it.
 22 How would I feel about it? I'd feel he misrepresented
 23 himself.
 24 Q. So if I called you and said, "Mr. Beans, my name is

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1 Craig Kimmel, service manager of Norman Braman Cadillac
 2 in Boca Raton Florida" --
 3 A. I don't think he would be calling me, but go ahead.
 4 Q. Okay. I get you on that. If I had called you and
 5 made that representation, you would be fair in assuming
 6 that I was who I said I was; right?
 7 A. Yes.
 8 Q. Okay. And the average customer who received a
 9 phone call from somebody that says that they are the
 10 service manager of Fred Beans Hyundai, that would mean
 11 what?
 12 ---
 13 MS. WALKER: Objection to the form.
 14 ---
 15 BY MR. KIMMEL:
 16 Q. The content of what is being left on the machine
 17 should be taken as true; right? You want to disperse
 18 true information to your customers?
 19 ---
 20 MS. WALKER: Objection to the form.
 21 THE WITNESS: Certainly done
 22 without my knowledge. And, no, I don't want to give our
 23 customers false information and never have wanted to.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. Did you ever place any messages on people's
 3 machines after learning of this mistake, telling them,
 4 "Wait a second. Mr. Engle who called you is not our
 5 service manager"?
 6 A. I didn't learn of it until I heard it from you.
 7 Q. Okay.
 8 A. Not from you, but hearsay. Okay?
 9 Q. Okay. Did you ever investigate how that happened
 10 at the dealership and to verify it?
 11 A. I know he read a script, yes.
 12 Q. Did you talk to him about it?
 13 A. No. I talked to whoever gave him the script.
 14 Q. Did they ask him to read that over the phone or in
 15 person?
 16 A. I think -- again, I believe you call in to an
 17 800-number to pre-record those calls.
 18 Q. Okay. So somebody from Auto Point it was called?
 19 A. Yeah. We would call in to a company like Auto
 20 Point if you wanted to send out a mass call. A mass
 21 call or a reminder you haven't been in for service. I
 22 subsequently don't use them anymore. Okay? Boom.
 23 Q. So what was wrong with saying, "Hi, this is Bob
 24 Engle from Fred Beans Hyundai"?

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1 A. Damned if I know. It wasn't my intent to do that,
 2 believe me.
 3 Q. Okay. So that was a mistake?
 4 A. Absolutely.
 5 Q. And how about the mailer that identified him --
 6 A. Absolutely.
 7 Q. -- that was a mistake too?
 8 A. I had never any intentions of making him service
 9 manager. The man is a good employee, but he's not
 10 capable of that job in our company.
 11 Q. Okay. So what I'm asking you is --
 12 A. He was capable -- he is capable of coming to work
 13 at 7:00 and working until 6:00, and he treats our
 14 customers well.
 15 Q. Okay. So what I'm asking you is if the postcard
 16 that was sent identifying him as service manager for
 17 Fred Beans Hyundai, that was a mistake too?
 18 A. That was a mistake.
 19 Q. Do you know how many hundreds of thousands of
 20 customers received that phone call mistake?
 21 A. I don't have thousands. I can tell you that.
 22 Q. Well, you have \$800 million of revenue across the
 23 company. How many customers would you have from Fred
 24 Beans Hyundai?

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1 ---
 2 MS. WALKER: Objection.
 3 THE WITNESS: I'll tell you this:
 4 We probably have -- probably in that dealership that
 5 would receive something like that, based on service
 6 reminders, because we write about 400 customer pay
 7 repair orders a month. That store has a very small base
 8 of customers, very small base.
 9 ---
 10 BY MR. KIMMEL:
 11 Q. Okay. So how many would you expect to have
 12 received that message, how many people?
 13 A. I don't remember what the first call said.
 14 Q. Let me play it for you.
 15 ---
 16 (Audio: This is Bob Engle, service
 17 manager at Fred Beans Hyundai. I'm calling as part of
 18 our customer care program in our efforts to verify --)
 19 MS. WALKER: Let's hear it again.
 20 (Audio: -- you missed your
 21 regularly scheduled maintenance specified for your
 22 vehicle by Hyundai --)
 23 THE WITNESS: We can turn it off.
 24 (Audio: -- has shown that

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1 neglecting this maintenance can reduce the life safety
 2 and enjoyment of your vehicle.)
 3 MR. KIMMEL: Keep listening.
 4 (Audio: If you have any questions
 5 regarding your vehicle give me a call --
 6 THE WITNESS: I know he's going to
 7 say Bob Engle, service manager.
 8 (Audio: -- at 800-827-2619. I can
 9 be reached any time during our service hours of 7:30 to
 10 6:00 Monday through Friday. Again, this is Bob Engle
 11 with Fred Beans Hyundai and you can call me directly at
 12 800-827-2619. Have a great day.)
 13 MR. KIMMEL: Okay. He does say
 14 Fred Beans, service manager.
 15 MS. WALKER: Could you play it
 16 again, Counsel? Because, I mean, the transcription of
 17 it in the deposition --
 18 MR. KIMMEL: I'd be glad to play it
 19 again for you. Absolutely delighted to play it again.
 20 ---
 21 (Audio: This is Bob Engle, service
 22 manager at Fred Beans Hyundai.)
 23 MS. WALKER: Manager.
 24 (Audio: I'm calling --)

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1 MR. KIMMEL: No, it's not what he
 2 says. What are you listening to?
 3 THE WITNESS: I didn't hear a
 4 word --
 5 MS. WALKER: Me either.
 6 ---
 7 (Audio: This is Bob Engle, service
 8 manager at Fred Beans Hyundai.)
 9 MR. KIMMEL: You don't hear
 10 "service manager"?
 11 THE WITNESS: No. I heard
 12 "manager."
 13 MR. KIMMEL: Let's get an audio
 14 expert.
 15 THE WITNESS: Restart it over
 16 slowly.
 17 ---
 18 BY MR. KIMMEL:
 19 Q. You would not agree that that gentleman said he was
 20 Bob Engle, service manager at Fred Beans Hyundai?
 21 ---
 22 MS. WALKER: What I heard was,
 23 "This is Bob Engle, manager at Fred Beans Hyundai."
 24 MR. KIMMEL: I'm not asking you,

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1 Counsel. I'm not asking you to tell your client. I'm
 2 asking your client the question.
 3 THE WITNESS: Can we calm down
 4 here?
 5 ---
 6 BY MR. KIMMEL:
 7 Q. No, not on this issue, because everybody in this
 8 room heard what was said, and I'm not going to sit here
 9 and listen to your attorney answer the question.
 10 A. I did not hear the word "service" myself.
 11 Q. If you did not hear the person answer "service
 12 manager," I suggest you get a head phone and I'll send
 13 you a copy of the recording.
 14 Now, sir, you say that -- how many
 15 people received that voice mail?
 16 A. I would imagine that we would do campaigns on a
 17 basis -- on a monthly basis. How many times that was
 18 done, I have no idea. So I would make an assumption
 19 that maybe people had missed that service for that
 20 period of time. Could be 400, but I don't know that.
 21 Q. Okay. How about the cards that went out? Have you
 22 seen the cards that went out?
 23 A. I haven't seen that particular card.
 24 Q. Okay. I'll provide you a copy.

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1 A. But those cards would go out based on the fact that
 2 you missed your appointment.
 3 Q. Did you ever send cards out that would say anything
 4 other than the name of the person and "service manager"
 5 underneath it?
 6 A. Example?
 7 Q. Well, when a card goes out, it goes out from the
 8 service manager typically; right?
 9 ---
 10 MS. WALKER: Objection to the form.
 11 ---
 12 BY MR. KIMMEL:
 13 Q. Is it signed a certain way? Does it vary? Is the
 14 postcard standardized? I'm trying to understand.
 15 A. Auto Point used their own format. Okay? It was a
 16 service that we signed up for. Many of these
 17 manufacturers have services similar to that. In our own
 18 case, we generally don't identify -- we identify the
 19 service if it's for a particular group to an assistant
 20 service manager. We usually identify them. If we want
 21 to send out something from our service manager, we
 22 probably would, but I don't think most of our mail
 23 identifies a particular person.
 24 Q. If the card --

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1 A. It identifies the dealership.
 2 Q. If the card went out signed, "Bob Engle, service
 3 manager Fred Beans Hyundai," would that card be mistaken
 4 in its description of Mr. Engle?
 5 ---
 6 MS. WALKER: Asked and answered.
 7 THE WITNESS: Yes, sir, it would
 8 be.
 9 ---
 10 BY MR. KIMMEL:
 11 Q. Okay.
 12 A. He never was a service manager.
 13 Q. Okay.
 14 A. Isn't today.
 15 Q. Do you know if those cards ever went out with that
 16 identifier under Bob Engle's name?
 17 A. Only through hearsay. I don't remember seeing it.
 18 Q. You never investigated it after finding out that
 19 that --
 20 A. I was told they did.
 21 Q. Okay.
 22 A. What can I do if they did?
 23 Q. I'm just asking.
 24 A. I don't feel they -- do I think it was wrong? Yes.

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1 Do I think it was anything materially done wrong to harm
 2 a customer or maliciously done? Absolutely not.
 3 Q. How about the person who's a customer who gets the
 4 message on the postcard, and who happens to have been
 5 fired from Fred Beans because they were told their
 6 position was eliminated, and now they are reading that
 7 somebody who holds that position is the person that
 8 holds the position that was allegedly eliminated?
 9 A. I assume you are referring to Cherie?
 10 Q. Yeah.
 11 A. And I believe if you got your client in a room and
 12 money wasn't involved, your client would say that she
 13 absolutely understood.
 14 Q. So you think that upon receiving that my client
 15 would understand that that was a mistake?
 16 A. Your client knows that we didn't replace that
 17 position with Bob Engle.
 18 Q. So you're saying that despite the call and despite
 19 the card, she would know that he was not that person?
 20 A. Absolutely. There was no announcement made by our
 21 company to that effect. She certainly knew enough
 22 people. She's certainly friends with people in our
 23 company. Cherie knows in her heart what is right and
 24 what is wrong.

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1 Q. You referred to earlier being concerned about my
 2 client as a father of three daughters. Is that a fair
 3 characterization of your testimony?
 4 A. Yes.
 5 Q. Would you say that when you were told about my
 6 client's condition being pregnant, that your reaction
 7 might have had a physical manifestation that was visible
 8 to her?
 9 A. No.
 10 Q. Okay. You think you kept those feelings to
 11 yourself?
 12 A. Yes.
 13 Q. You don't think you had a look of disgust on your
 14 face?
 15 A. I wouldn't be disgusted about it.
 16 Q. Okay. Do you think you might have had a look of
 17 concern on your face?
 18 A. I would doubt it.
 19 Q. Isn't it true that neither you nor your daughter,
 20 Miss Gilbert, every cited any negative performance on
 21 the part of my client from the time she announced her
 22 pregnancy until the time she was let go?
 23 A. Any negative performance? No, I don't think we
 24 did. I don't know. I didn't, that I know of.

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1 Q. So to be clear, you would agree with the statement
 2 that my client was never told from May of 2008 until the
 3 date that she was let go --
 4 A. I don't know what date she became pregnant.
 5 Q. Okay.
 6 A. I don't know what date I was made aware of that.
 7 As far as your client knowing the performance of the
 8 store, she had the performance in front of her every
 9 day. You don't always have to tell somebody that we are
 10 not performing. All you have to do is look at the
 11 report card.
 12 Q. And the customer satisfaction?
 13 A. Customer satisfaction, financial statements,
 14 selling gross, adding or going backwards in --
 15 Q. Which of those is the report card?
 16 A. Ha? All of those things are report cards on your
 17 life, aren't they?
 18 Q. So you're saying each of those individually is a
 19 report card or all together?
 20 A. I look at my report card.
 21 Q. I'm asking you to look at hers for a second.
 22 A. No. I'm looking at ours.
 23 Q. I'm looking --
 24 A. I don't think of hers.

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1 Q. Sir --
 2 A. Our service satisfaction.
 3 Q. -- would you ever fire yourself?
 4 A. Would I ever fire myself? I'd stop taking my pay
 5 if I didn't think I was doing a good job.
 6 Q. But you still have a job to go to?
 7 A. I don't know if I have options, Craig. Do you know
 8 what the options are?
 9 Q. I'd love to answer that question.
 10 A. I wonder if you have options. You have a family.
 11 You have young children. What are your options?
 12 Q. I'd love to talk to you about it sometime, other
 13 than in this --
 14 A. I understand.
 15 Q. -- scenario.
 16 A. Probably would too. I don't mean that in any
 17 sarcastic way.
 18 Q. No. I think we understand each other.
 19 A. I have obligations. I don't have a choice today to
 20 leave. I have to get up and come to work tomorrow.
 21 Q. And do you think Miss Santai had a choice in paying
 22 her bills?
 23 A. Do I?
 24 Q. Do you think she was doing the best she could do?

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1 ---
 2 MS. WALKER: Objection to the form.
 3 ---
 4 BY MR. KIMMEL:
 5 Q. You can answer the first part of the question.
 6 A. I can't measure whether she was doing the best she
 7 could do.
 8 Q. Let's answer the first part again.
 9 A. No, I don't.
 10 Q. You characterized my client's husband as somebody
 11 who you had heard was lazy or a bum; is that correct?
 12 A. I don't know her husband.
 13 Q. I understand, but you say that's what you heard;
 14 isn't that correct? That was your testimony?
 15 A. I always heard that she had to be the primary bread
 16 winner.
 17 Q. Okay. With that extra pressure on her shoulders,
 18 do you think that when she was not performing to what
 19 you considered to be appropriate standards that made
 20 life easier on her by terminating her?
 21 ---
 22 MS. WALKER: Objection to the form.
 23 THE WITNESS: No. No. I don't
 24 think so.

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1 ---
 2 BY MR. KIMMEL:
 3 Q. Do you think that eight months pregnant and four
 4 weeks from going on maternity leave that that made her
 5 job in life easier, losing her employment?
 6 ---
 7 MS. WALKER: Objection to the form.
 8 THE WITNESS: You know, we
 9 terminated her because of economic decisions for our
 10 company.
 11 ---
 12 BY MR. KIMMEL:
 13 Q. I'm just speaking to what you told me.
 14 A. I think we took all those things into
 15 consideration. I don't think that anybody was naive
 16 that she wasn't pregnant or non-pregnant. Had she been
 17 pregnant or non-pregnant, male or female, she would have
 18 been gone that day. Because this was about survival.
 19 This was about how can we survive in this dealership.
 20 How can we turn it around. What expenses can be
 21 eliminated.
 22 Q. Well, why --
 23 A. And we probably eliminated \$200,000 that day.
 24 Q. Why didn't you ask Mr. Engle, who was last hired,

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1 to leave and ask my client to take less and work as
 2 Mr. Engle in his position?
 3 ---
 4 MS. WALKER: Objection to the form.
 5 THE WITNESS: I think that -- I
 6 don't think that was discussed.
 7 ---
 8 BY MR. KIMMEL:
 9 Q. Why?
 10 A. I don't know why. I can only make an assumption to
 11 why.
 12 Q. Do you think it would have been easier for an
 13 employee to hear they were getting a reduction in pay in
 14 those economic times as opposed to being let go?
 15 ---
 16 MS. WALKER: Objection to the form.
 17 ---
 18 BY MR. KIMMEL:
 19 Q. You can answer.
 20 A. In the past we have never been very successful, in
 21 35 years, reducing people's pay.
 22 Q. What do you mean "successful"? How do you define
 23 "success"?
 24 A. We never wound up -- where it was beneficial to us.

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1 We never wound up where it was the right thing to do.
 2 Just didn't work. Our experience is that it doesn't
 3 work out. When you reduce somebody's pay, it usually
 4 causes a lot of anxiety and a lot of bad feelings.
 5 Q. So let me ask you this: Mr. Engle couldn't do my
 6 client's job back when my client was doing her job;
 7 correct?
 8 A. What Mr. Engle could do?
 9 Q. Please just answer the question. Could Mr. Engle
 10 do the job that my client did when she was terminated?
 11 A. No.
 12 Q. Could Mr. Engle do the job that my client did, can
 13 he do it now?
 14 A. No.
 15 Q. Okay.
 16 A. Let me stop there. I don't know that today. I
 17 don't know how much he's grown and matured. What I can
 18 tell you is that Mr. Engle does come to work at 7:00 and
 19 he is there until 6:00 at night, and we have to staff
 20 that place.
 21 Q. Are you saying my client was let go because she
 22 came in late?
 23 A. No. But you asked me --
 24 Q. How does that --

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1 A. You asked me if she could do -- if she could do
 2 Mr. Engle's job.
 3 Q. She had been with you for --
 4 A. She couldn't do Mr. Engle's job because she
 5 couldn't come to work in time.
 6 Q. So you're saying that my client could do the job of
 7 Mr. Engle's superior, the position that was eliminated?
 8 A. That's right.
 9 Q. But she could not do the position beneath her which
 10 was Mr. Engle's position which you hired him for and
 11 trained him for?
 12 A. I think you're trying to lead me into something and
 13 I'm not sure I'm comfortable with it.
 14 Q. That's my, job, sir to prove my case, and that's
 15 why the question --
 16 A. You could be proving something that's not the right
 17 thing to prove. Cherie could do a good job. She's a
 18 service manager. She has service know how; correct? We
 19 run a business that requires service do how.
 20 Q. What is "service do how"? Never heard the term.
 21 A. "Do" means we have to come to work at 7:00 and
 22 unlock the door in the morning, and we have to be there
 23 at 6:00 at night. And if we are going to run on a
 24 minimal staff and have the service -- have the general

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1 manager step up and assume all the responsibilities that
 2 she handled -- okay -- which he could which he had to
 3 do, Tucker had to do, and I want to say he probably
 4 worked 70 hours a week during that time -- okay -- and a
 5 very smart young man. Okay? Not only devoted but a
 6 smart young man. Okay? We needed somebody to come in
 7 and unlock the door at 7:00 in the morning.
 8 Q. So you're saying my client would not be able to
 9 unlock the door?
 10 ---
 11 MS. WALKER: Objection to the form.
 12 ---
 13 BY MR. KIMMEL:
 14 Q. Is that what you're saying?
 15 A. I can't say wasn't able to. Hadn't been able to in
 16 the past.
 17 Q. Did you ever discipline my client in 2008 for not
 18 arriving to work on time?
 19 A. We accepted the fact that she couldn't arrive two
 20 days a week until 8:30 in that position. Okay? In that
 21 position.
 22 Q. Did you ever discipline her for not arriving on
 23 time in the hours you said?
 24 A. I think there is a better way to rephrase it.

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1 Q. I appreciate that. Maybe you are correct, but this
 2 is all I've got to work with. This is who I am.
 3 A. I think you have a lot to work with. You're not
 4 brain dead.
 5 Q. This is who I am and I'll ask the questions to the
 6 best I can, even if it's not the questions to the
 7 standard that you hope.
 8 A. Okay.
 9 Q. And I would acknowledge on occasion I will not ask
 10 a good question.
 11 A. Okay.
 12 Q. Understand that?
 13 A. Okay.
 14 Q. Thank you. Would you agree with me that at no time
 15 in 2008 or during her pregnancy my client was ever
 16 disciplined for not keeping the hours that your company
 17 gave to her as an employee?
 18 A. We gave her those hours to accommodate her.
 19 Q. That's not my question. That's a different answer.
 20 My question was, would you agree with me that she was
 21 never disciplined in 2008 for that purpose?
 22 ---
 23 MR. KIMMEL: You can shrug your
 24 shoulders, Counsel, but I wish your client would answer

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1 the question.
 2 THE WITNESS: Was she disciplined
 3 for not coming to work on time?
 4 ---
 5 BY MR. KIMMEL:
 6 Q. On the time and the hours that you gave her.
 7 A. We were willing to accept the fact that in her
 8 position that we could live with those hours.
 9 Q. So is that a, "Yes, Mr. Kimmel, we never
 10 disciplined her in 2008"?
 11 A. Yes.
 12 Q. Okay. Thank you. You can always explain yourself.
 13 I just need to know your answer first.
 14 A. Okay.
 15 Q. That's the rules. Maybe that's what I should have
 16 gone into in the beginning of this deposition. You can
 17 always answer the question however you like, but you
 18 have to respond to the question first. Do you
 19 understand?
 20 A. Okay.
 21 Q. Okay. I apologize if that was my shortcoming in
 22 not explaining that to you.
 23 Are you aware that my client
 24 trained Mr. Engle in the job that he currently holds --

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1 ---
 2 MS. WALKER: Objection to form.
 3 ---
 4 BY MR. KIMMEL:
 5 Q. -- that he held in 2008?
 6 ---
 7 MS. WALKER: Objection to the form.
 8 THE WITNESS: You have to define
 9 "training" to me.
 10 ---
 11 BY MR. KIMMEL:
 12 Q. How did Mr. Engle learn how to do his job, do you
 13 know, at your company? Because your company is
 14 different than other companies; right?
 15 ---
 16 MS. WALKER: Objection to the form.
 17 ---
 18 BY MR. KIMMEL:
 19 Q. Yes?
 20 A. I think every company is a little bit different.
 21 Q. Okay. And Fred Beans likes its employees to be
 22 trained the Fred Beans way; right?
 23 A. We have a service quality process manual.
 24 Q. Okay.

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1 A. We have an outside person that will train people.
 2 Q. Okay. Are you aware that Mr. Engle was trained by
 3 my client?
 4 A. I don't like -- I could answer that question, I'm
 5 aware that he worked for your client and I'm aware that
 6 your client probably trained him in some things.
 7 Mr. Engle came to us trained as a service advisor.
 8 Q. I understand that.
 9 A. Okay.
 10 Q. I understand that.
 11 A. But trained to what extent by your client versus
 12 anybody else? I don't want anybody to get misconstrued
 13 what the hell "training" means here.
 14 Q. Okay.
 15 A. "Training" to you might mean something different
 16 than to whoever reads this document.
 17 Q. I don't want to get off track. For seven years my
 18 client was service manager for your group of
 19 dealerships. And Mr. Engle came along in the summer of
 20 2008 and worked for my client. Can we agree on that?
 21 A. Yes, I can.
 22 Q. And that she would teach him the procedures that
 23 your company liked to follow to execute the
 24 responsibilities that needed Mr. Engle to execute?

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1 A. Mr. Engle had also a service quality process manual
 2 to read and learn.
 3 Q. Okay.
 4 A. So he could learn that by reading it, or he could
 5 learn that by her mentoring him.
 6 Q. Or both?
 7 A. Both.
 8 Q. Okay. Are you aware that your daughter met with my
 9 client and told her that another position would need to
 10 be found for her because there was potential that she
 11 would be unable to work due to her pregnancy?
 12 ---
 13 MS. WALKER: Objection to the form.
 14 THE WITNESS: Only through hearsay
 15 since this has happened.
 16 ---
 17 BY MR. KIMMEL:
 18 Q. Where did you hear it?
 19 A. I don't know.
 20 Q. Did your daughter tell you that?
 21 A. I don't know. I just heard it.
 22 Q. Did you and your daughter discuss her deposition a
 23 few weeks ago?
 24 A. Very little.

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1 Q. What did you discuss?
 2 A. Just the fact that she was here, it lasted a long
 3 time, and that she thought that Matt Tucker handled
 4 himself well.
 5 Q. Did she tell you how she thought she did?
 6 A. No.
 7 Q. Did she make any statements about Miss Santai or
 8 anything else having to do with the case?
 9 A. Contrary to popular belief, no. I don't spend a
 10 lot of time with my daughter. I don't have that time.
 11 We're still rebuilding this company financially.
 12 Q. I understand. Do you know if my client's job
 13 responsibilities were changed at any time during her
 14 pregnancy before she was let go?
 15 A. No.
 16 Q. Are you aware that a number of employees holding
 17 the positions with the company let go in October of 2008
 18 were far less essential to the operation of the --
 19 A. Far less what?
 20 Q. Let me strike that. I'll rephrase it since you
 21 can't hear me.
 22 Are you aware whether any other
 23 service managers were let go in October of 2008?
 24 ---

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1 MS. WALKER: Other than what he's
 2 testified to already?
 3 MR. KIMMEL: It's a general
 4 question.
 5 MS. WALKER: I guess -- objection.
 6 Asked and answered.
 7 THE WITNESS: No.
 8 ---
 9 BY MR. KIMMEL:
 10 Q. When my client was let go, her responsibilities
 11 were divided among Mr. Tucker and Mr. Engle?
 12 A. I would say her responsibilities -- her basic
 13 responsibilities were given to Matt Tucker and some to
 14 our service director, Greg Thrasher, at the time.
 15 Q. Were any given to Mr. Engle?
 16 A. Not to the best of my knowledge.
 17 Q. Before she was let go, did your marketing company
 18 ever send voice mail messages or service cards out with
 19 my client's voice or name identifying her as a service
 20 manager at Fred Beans Hyundai?
 21 A. I don't know. I don't know.
 22 Q. Okay. You indicated earlier that my client was
 23 offered to return to the dealership; is that correct?
 24 A. Yes, sir.

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1 Q. Why would you want somebody who couldn't keep her
 2 hours returning to your dealership?
 3 ---
 4 MS. WALKER: Objection to the form.
 5 THE WITNESS: We thought that we
 6 were strong enough in regaining some momentum that we
 7 should offer her the job back.
 8 ---
 9 BY MR. KIMMEL:
 10 Q. What changed that caused to you believe you were
 11 strong enough?
 12 A. Recovery in the business.
 13 Q. At the Hyundai store?
 14 A. In our -- yes, at our Hyundai store.
 15 Q. How is it "recovery"?
 16 A. We picked up about \$100,000 in swing in the back
 17 end between 2008 and 2009.
 18 Q. You're going to have to explain to a bunch of
 19 laymen what that means.
 20 A. We -- it was explained to you today. I saw you and
 21 Mr. Szpanka going through the figures.
 22 Q. You said something about the "back end." I don't
 23 know if the average person --
 24 A. The service department.

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1 Q. Okay.

2 A. The service department had about \$100,000

3 improvement in profitability and the retail business

4 climate was coming back. General Motors had been

5 through its bankruptcy. Ford had been -- Ford did not

6 go bankrupt. Chrysler went through its bankruptcy. We

7 lost two Saturn stores. We lost a Pontiac Buick GMC

8 store all by Federal Express truck. We lost Pontiac and

9 we lost Saab, and we lost all those in a single day in

10 2009.

11 Q. Okay. I'm still trying to understand what made you

12 want to bring my client back. If things were going

13 better without her, why would you ask her to come back

14 if she couldn't keep her hours?

15 ---

16 MS. WALKER: Objection to the form.

17 THE WITNESS: Business was picking

18 up and we thought she had the skills set.

19 ---

20 BY MR. KIMMEL:

21 Q. So --

22 A. And we didn't terminate her because we were mad or

23 because we were hurt. We terminated that -- eliminated

24 that job strictly as financially. We had no choice. We

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1 looked at every job in that dealership we could

2 eliminate. We eliminated the sales manager. We

3 eliminated her job. We eliminated the lot men. Reduced

4 our advertising. And we paid a premium to get a floor

5 plan line from six percent. We paid six percent when

6 everybody else was paying under three percent.

7 Q. Why not relocate my client to another dealership as

8 a service manager if she had seniority over other

9 service managers?

10 ---

11 MS. WALKER: Objection to the form.

12 THE WITNESS: We didn't have that

13 opportunity.

14 ---

15 BY MR. KIMMEL:

16 Q. Why not?

17 A. We looked at each dealership. When we looked at

18 expense reduction, we looked at each dealership where we

19 could reduce expenses. And certainly Mr. Szpanka shared

20 with you the anxiety and work that we went through to do

21 that.

22 Q. I understand your business was suffering. I

23 understand that, sir. I guess what my question is, what

24 broad-base question is, you have people moving from one

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1 dealership to the next in promotions and laterals in

2 doing the same tasks.

3 A. That's not a -- that's not a big thing in our

4 company, to move people around.

5 Q. Well, my --

6 A. It's not the Sloan organization.

7 Q. Well, my client did move in 2001 from Mitsubishi

8 service to Hyundai service; right? Is that correct?

9 A. That's correct.

10 Q. So that is a lateral -- in fact, she earned more

11 money, so it's probably a promotion; isn't that right?

12 A. Yes.

13 Q. Okay. So do you know of any other service managers

14 who had more seniority at the company than my client

15 when she was let go?

16 ---

17 MS. WALKER: Objection to the form.

18 THE WITNESS: I think we did have

19 service managers that had more seniority at that time,

20 but I'd have to go back. Now you're going back to 2001

21 and I can't remember that.

22 ---

23 BY MR. KIMMEL:

24 Q. My next question would be then, did you know that

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1 there were other service managers that had less

2 seniority within your company --

3 A. Yes.

4 Q. -- than my client?

5 A. Yes.

6 Q. Why not ask my client to take somebody else's

7 position because of her seniority --

8 ---

9 MS. WALKER: Objection to the form.

10 ---

11 BY MR. KIMMEL:

12 Q. -- considering she was pregnant, had been with you

13 for a number of years?

14 A. You know, the ability to run a shop with 30

15 mechanics in it, and you want to run one with eight

16 mechanics or six mechanics is a lot different.

17 Q. So somebody with less experience would have a

18 greater opportunity to do the job?

19 ---

20 MS. WALKER: Objection to the form.

21 THE WITNESS: Is it experience or

22 is it ability?

23 ---

24 BY MR. KIMMEL:

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1 Q. So did you feel that my client was unable to manage
 2 a larger shop?
 3 ---
 4 MR. KIMMEL: And, Counsel, if you
 5 nod one more time I'm going to put it on the record in a
 6 stronger fashion.
 7 ---
 8 BY MR. KIMMEL:
 9 Q. Sir?
 10 A. Do I feel that your client could run a shop with 30
 11 technicians?
 12 Q. Do you feel that my client could run a larger shop
 13 than the one that she was running at the Hyundai store
 14 at the time that she was let go?
 15 A. Maybe 10 percent. Maybe 20 percent.
 16 Q. Do you --
 17 A. We didn't have many dealerships that fell in that
 18 category.
 19 Q. Well, my client was a service manager of the
 20 Mitsubishi store for some period of time.
 21 A. Very few technicians.
 22 Q. And then she was a service manager of the Hyundai
 23 store for seven years.
 24 A. We had about eight technicians. That was the

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1 smallest shop we had at the time.
 2 Q. And how big is it now?
 3 A. How big is it? Eleven.
 4 Q. So it's grown in a bad economy?
 5 A. Well --
 6 ---
 7 MS. WALKER: Objection to the form.
 8 THE WITNESS: I would say -- this
 9 is a hell of a lot different than 2008 and 2011.
 10 ---
 11 BY MR. KIMMEL:
 12 Q. I guess what I'm trying to say, sir, is if my
 13 client remained in that position -- let me finish my
 14 question.
 15 A. Hyundai is probably up 40 percent since 2000, if
 16 not a 50 percent or more. I bet 70 percent.
 17 Q. The question I'm trying to ask you, sir, now is, if
 18 my client had not been terminated, let go, whatever word
 19 you want to use for it, in 2008 and maintained her
 20 position there, she would be having a larger number of
 21 mechanics working under her at this time, wouldn't she?
 22 A. Hopefully.
 23 Q. Okay. Well, that would be 11 instead of 8; right?
 24 A. If she was capable of growing it. I don't know

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1 that.
 2 Q. If your business thrives, there are going to be
 3 needs for more people, more sales, more service techs?
 4 A. That's true.
 5 Q. Okay. So that's a time factor as well as an
 6 ability factor. People have to either rise to the
 7 occasion or not. Would you agree with that?
 8 A. Yes.
 9 Q. Did you ever give my client a chance to rise to the
 10 occasion in these bad economic times to be a service
 11 manager at a larger facility within your dealership
 12 group?
 13 A. We didn't have that opportunity.
 14 Q. You didn't have that opportunity or didn't consider
 15 that opportunity?
 16 A. We didn't have that opportunity. We didn't have
 17 somebody else we wanted to terminate to move her.
 18 Q. You said --
 19 A. We look at the individual job in that store. That
 20 store needed to reduce its expenses to survive. We
 21 didn't have any other service department where we needed
 22 or had a need for service manager. If we had a need for
 23 a service manager, we most likely would have promoted
 24 her or asked her to go take that job. We didn't at that

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1 time.
 2 Q. So some -- didn't have anything to do with the fact
 3 that the other service managers were not pregnant?
 4 A. No. Absolutely not. I have a daughter. Three
 5 daughters.
 6 Q. All right.
 7 A. I have 10 grandchildren.
 8 Q. I'm sorry. I don't understand how that makes a
 9 difference.
 10 A. Well, I think you probably better know me why I
 11 like to see women survive in our business. I like to
 12 see them be promoted in our business. We have done a
 13 lot as a company to promote women.
 14 Q. How many female service managers did you have in
 15 2008?
 16 A. Did I have in 2008? One.
 17 Q. And that was Cherie?
 18 A. That's right.
 19 Q. And you still adhere to the notion that you want
 20 women to succeed in the workplace at your business?
 21 A. I think I could demonstrate that to you.
 22 Q. But you only had one service manager who was a
 23 woman out of 20 dealerships?
 24 A. We didn't have 20 rooftops that had service

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1 managers in them at that time.
 2 Q. 17?
 3 A. Probably.
 4 Q. Okay. 17 rooftops; one female service manager.
 5 A. How many service -- female service managers do you
 6 know?
 7 Q. Well, I know you had one and now you have none.
 8 A. I don't think that's our fault. I think we'd hire
 9 one quickly if we found one that's qualified.
 10 Q. So you don't think there is a female service
 11 manager that's applied for a job in 2008?
 12 A. We haven't had a female application. We used a
 13 head hunter called Frank Rosso. If you were to call
 14 him, see how many female applicants he's placed in that
 15 job.
 16 Q. Are you familiar with the name "Jacqueline Ruche"
 17 (ph)?
 18 A. Yes.
 19 Q. Wasn't she a female service manager?
 20 ---
 21 MS. WALKER: Objection to the form.
 22 THE WITNESS: Service advisor, I
 23 believe.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. Do you think she could have been a service manager?
 3 A. Do I think she could have been a service manager?
 4 I didn't work directly with her, so I don't know.
 5 Q. Okay. Did you ever receive any information that
 6 made you believe she wasn't capable of being a service
 7 manager?
 8 A. I never received any either way.
 9 Q. Okay. Fair enough. How many other people did you
 10 let go in October 2008 did you offer to re-employ at a
 11 later date?
 12 A. I can't answer that.
 13 Q. Why is that, sir?
 14 A. Because I don't know that answer.
 15 Q. What would you need to look at to be able to answer
 16 that question?
 17 A. Probably look at each one of them.
 18 Q. Okay. Did any --
 19 A. I think some of those positions -- we did.
 20 Q. Who was that?
 21 A. We re-employed -- I can't think. We re-employed
 22 the service sales manager at the Hyundai store.
 23 Q. And that's the gentleman's name you don't call?
 24 A. Paul Zolnierz, I believe. I can't spell his last

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1 name.
 2 Q. And he came back in the same capacity?
 3 A. He did.
 4 Q. Anybody else?
 5 A. We had salespeople leave, but they left the
 6 business. A lot of people left -- let's see what else.
 7 I can't answer if any others came back.
 8 Q. Okay.
 9 A. I think most of them -- most of them got jobs. We
 10 may have helped some of them try to relocate.
 11 Q. Were you aware that my client received as
 12 compensation payments from the Hyundai factory for
 13 reaching certain milestones in-service?
 14 A. No.
 15 Q. Okay. Are you aware how a service manager at the
 16 Hyundai store was compensated?
 17 A. Based on customer satisfaction, a salary, and based
 18 on productivity and selling gross.
 19 Q. And are you aware that there was more than one
 20 source of income, it was your company plus the factory
 21 if they met certain standards?
 22 A. Let me say this to you: That was never disclosed
 23 to me. Part of our company policy is to disclose that
 24 information.

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1 Q. I don't understand your answer. Could you explain
 2 it, please?
 3 A. If she received money from -- directly from the
 4 factory and didn't tell us, I think it was in violation
 5 of our confidentiality. I believe that --
 6 Q. What confidentiality?
 7 A. I believe that she's -- all our employees know when
 8 they come to work for us, if they are going to receive
 9 any money from a third party, we want to know about it.
 10 Q. I think Mr. Tucker knew about it. He testified to
 11 it previously.
 12 A. Did Mr. Tucker know how much?
 13 Q. We talked about it at length.
 14 A. How much?
 15 Q. You should ask Mr. Tucker. We discussed it at
 16 length.
 17 ---
 18 MS. WALKER: Objection to the form.
 19 MR. KIMMEL: It wasn't a question.
 20 She's right.
 21 ---
 22 BY MR. KIMMEL:
 23 Q. Would you agree with me --
 24 A. I'd like to ask you how much it was.

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1 Q. You can ask me off the record. This is a
 2 deposition. You don't ask me questions, unfortunately.
 3 A. Why don't we go off the record?
 4 Q. Let's do it at a later time. We'll do it before we
 5 leave today.
 6 A. Okay. I'd like to confirm it off the record before
 7 we leave today.
 8 Q. Fine.
 9 A. Because it may not be the amount that you think it
 10 is.
 11 Q. Okay. Sir, would you agree with me that if there
 12 are incentives to do more sales in the service
 13 department, that it was in the best financial interest
 14 of the employee to see those sales increase?
 15 A. Is the question if we improved our profitability
 16 the employee should improve their W-2? Is that the
 17 question?
 18 Q. If the employee was paid by you and the factory --
 19 A. Right.
 20 Q. -- for hitting performance incentives, wouldn't it
 21 be in their best interest to continue to try to make
 22 those incentives?
 23 A. I sort of object to being paid by the factory,
 24 because I didn't know about that.

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1 Q. You need to ask your own people about that.
 2 A. Okay.
 3 Q. I don't own your company. I'm just telling you
 4 what I know.
 5 A. Okay.
 6 Q. That's up to you and your people to discuss.
 7 But my question is, you would agree
 8 with me, just like a car salesman, the more cars they
 9 sell the more money they make. So it stands to reason
 10 that a good car salesman is going to want to sell more
 11 cars than they did the last month --
 12 A. Right.
 13 Q. -- because they want to continue to get paid --
 14 A. Right.
 15 Q. -- and paid more hopefully.
 16 A. Right.
 17 Q. So --
 18 A. I agree with that.
 19 Q. -- if my client was making a substantial amount of
 20 money hitting incentives, there was no reason to believe
 21 that she wouldn't be trying to do her very best to hit
 22 those incentives; right?
 23 A. Right.
 24 Q. Okay. And we know we were going through the worst

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1 economy in 50 years at that time; correct?
 2 A. Right.
 3 Q. Okay. So with that in mind, were you concerned
 4 that when my client went on maternity leave there
 5 wouldn't be somebody in her position to see to it that
 6 those numbers were being met?
 7 ---
 8 MS. WALKER: Objection to the form.
 9 THE WITNESS: I don't know what
 10 your objection means as to the answer.
 11 ---
 12 BY MR. KIMMEL:
 13 Q. It means you should answer, but she and I will
 14 fight about it later.
 15 A. When we eliminated that position, we eliminated it
 16 from an economic standpoint purely.
 17 Q. I understand your answer to that.
 18 A. I had no other choice but to do that, to eliminate
 19 every expense that we could in order to be profitable
 20 and turn our place around. We had to answer to the
 21 bank. Okay?
 22 Q. Did the bank tell you to lay my client off?
 23 A. The bank asked us for a plan, and every bank we
 24 went to wanted to see a going forward plan.

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1 Q. Okay.
 2 A. Okay?
 3 Q. And you felt my client should be part of that plan?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: We looked at each
 7 individual dealership, as I said earlier, as to what
 8 expenses could be eliminated and how we can pick up and
 9 take forth and get the job done without that person or
 10 some other person. We felt that Tucker was able to fill
 11 in and do that job, primarily included doing the
 12 payroll, any hiring and firing, taking care of customer
 13 complaints or customer satisfaction, and Matt Tucker did
 14 step up to the plate. He had a good skills set. He's
 15 an accountant and a good general manager. He had the
 16 skills set to be able to step up and fill in.
 17 Q. If Mr. Tucker were eight months pregnant and a
 18 woman, would you have laid him off?
 19 ---
 20 MS. WALKER: Objection to the form.
 21 Argumentative.
 22 THE WITNESS: I can't visualize it,
 23 so I don't know how to answer that question.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. If he was a woman at eight months pregnant, would
 3 you have laid him off?
 4 A. Well, I wouldn't have laid him off if he was a
 5 woman? I would have laid she off or her; right? I
 6 don't know -- I can't visualize that so --
 7 Q. Okay. Do you know if Mr. Tucker met the same
 8 service goals that my client had achieved in 2008
 9 following her departure?
 10 A. Obviously, we improved our profitability.
 11 Q. At what point did your profitability improve?
 12 A. Almost immediately, because we eliminated expense.
 13 Q. So you're saying by removing the expense
 14 profitability went up?
 15 A. Yes, sir.
 16 Q. Did you look at the other side of it, whether or
 17 not the goals that were being set for the service
 18 department were being met on a revenue basis?
 19 A. We have the goals. You saw the numbers this
 20 morning. In 2009 we improved our revenue and we
 21 improved our retention of gross profit.
 22 Q. Do you know when that occurred, began to occur?
 23 A. It started to occur the day we eliminated the
 24 expenses.

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1 Q. Okay. But, again, that's expense-based. I'm
 2 talking about revenue-based.
 3 A. We were in a position where -- there's two things
 4 you have to do in business, increase revenue or reduce
 5 expenses. You'd like to do both. We were in a position
 6 where it's pretty difficult to grow revenue, almost
 7 impossible. So we had no other choices but to reduce
 8 our expenses, and we reduced expenses in every area we
 9 could, in every one of our places.
 10 Q. But now you have two people doing the job that one
 11 person that was doing before. Mr. Tucker was doing my
 12 client's job and Mr. Engle was now hired -- when he was
 13 not hired before my client announced her pregnancy?
 14 ---
 15 MS. WALKER: Objection.
 16 THE WITNESS: Mr. Engle was hired
 17 as a service advisor. He replaced the service advisor.
 18 ---
 19 BY MR. KIMMEL:
 20 Q. Is there any reason why you used him, why you were
 21 hiring him only months before you fired my client when
 22 the economy is so bad?
 23 A. We had to have two service advisors.
 24 Q. Why is that?

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1 A. Because -- to take care of our technicians and our
 2 customers.
 3 Q. Well, in the summer of 2008 you hired Mr. Engle.
 4 The economy didn't go bad overnight; right? It
 5 continued to decline from 2006 onward; right?
 6 A. It really started to decline severely about August
 7 of 2008, when things in October -- August, September,
 8 October, when it became apparent probably to the public
 9 and the banking industry started -- I guess that was
 10 around -- really started to fall apart around August and
 11 September of 2008. Then it looked like the
 12 manufacturers were going to go into bankruptcy or there
 13 was talk about it in December of 2008, and finally took
 14 place around June, I guess, of 2009.
 15 Q. Right. So in the spring of 2008 there was no
 16 Mr. Engle, and Mr. Tucker was general manager doing his
 17 own tasks. In October of 2008 Mr. Engle --
 18 A. We had someone else in Mr. Engle's position.
 19 Q. Okay.
 20 A. We had two service advisors. We lost a service
 21 advisor. We re-hired a service advisor.
 22 Q. Why not ask Miss Santai to take over --
 23 A. You asked me that question before.
 24 Q. I was going to ask you a different question.

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1 A. Okay.
 2 Q. That's the problem in anticipating what's being
 3 asked.
 4 A. That it? Okay.
 5 Q. In the summer of 2008, when you hired this
 6 gentleman, Mr. Engle, instead of hiring him why didn't
 7 you ask Miss Santai to take over that position in
 8 addition to her own responsibilities?
 9 A. Because we took the bigger expense in eliminating
 10 it. We took the biggest expenses that we could
 11 eliminate and what we could operate without.
 12 Q. I see. How many dealerships other than yours do
 13 you know that eliminated their service manager position
 14 in 2008?
 15 A. Other than ours?
 16 Q. Other than yours.
 17 A. Our own company you mean?
 18 Q. Uh-huh.
 19 A. I don't have a lot of dealings with outside
 20 companies, especially during that period of time, and I
 21 don't today.
 22 Q. You're not involved in any dealer groups?
 23 A. Yes, we are.
 24 Q. Do you have any peers that you talk to about these

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1 types of things?
 2 A. I talked to no one about those things during that
 3 period of time.
 4 Q. Okay.
 5 A. All dealers were the same. We are in similar
 6 positions. There wasn't a lot of time to talk or a lot
 7 of time to visit.
 8 Q. Understood. Okay. Did you participate in any way
 9 in the discovery that was produced in this case by your
 10 attorney?
 11 ---
 12 MS. WALKER: Objection to the form.
 13 ---
 14 BY MR. KIMMEL:
 15 Q. By "discovery" I mean the documents you provided --
 16 ---
 17 MS. WALKER: He's not an attorney.
 18 ---
 19 BY MR. KIMMEL:
 20 Q. -- answers to interrogatories?
 21 ---
 22 MR. KIMMEL: I understand that.
 23 I'm asking him a factual question.
 24 THE WITNESS: No.

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1 ---
 2 BY MR. KIMMEL:
 3 Q. You did not. Were you asked to?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: I don't believe so.
 7 MS. WALKER: I believe he certified
 8 the answers to the interrogatories.
 9 MR. KIMMEL: He just answered
 10 contradictory.
 11 MS. WALKER: Well, I don't think he
 12 knew what -- knows what you mean, so --
 13 MR. KIMMEL: Well, why doesn't
 14 he --
 15 THE WITNESS: Go ahead. Tell me
 16 what you mean.
 17 MS. WALKER: He did say.
 18 ---
 19 BY MR. KIMMEL:
 20 Q. Do you know not know what I mean?
 21 A. If you were asking for certain documents, I would
 22 assume those documents were given to you by HR or by --
 23 Q. Let's back up.
 24 A. Go ahead.

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1 Q. You're a defendant in this case; right?
 2 A. Right.
 3 Q. You understand you're being sued?
 4 A. Uh-huh.
 5 Q. Okay. Along with others. Yes?
 6 A. I don't agree with it.
 7 Q. You understand you're being sued; right?
 8 A. I do.
 9 Q. Okay. There were --
 10 A. Don't know why.
 11 Q. There were requests made of your attorney for
 12 certain information which is called "discovery."
 13 A. Right.
 14 Q. Were you ever consulted about the responses for
 15 that discovery?
 16 ---
 17 MS. WALKER: Wait. First of all,
 18 there is not one document that's called "discovery."
 19 There are interrogatories and there is requests for
 20 production of documents.
 21 MR. KIMMEL: Counsel, if you wish
 22 to interject --
 23 MS. WALKER: No, but you're
 24 confusing and misleading a layperson as to things you

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1 might know.
 2 MR. KIMMEL: Layperson with an \$800
 3 million revenue business.
 4 MS. WALKER: I'm sorry. Counsel,
 5 that's completely absurd.
 6 MR. KIMMEL: \$800 million is a lot
 7 of money.
 8 MS. WALKER: Your analogy is
 9 completely absurd. He's not a lawyer and he's not in
 10 litigation --
 11 MR. KIMMEL: He knows how to say "I
 12 don't understand the question," doesn't he? He does
 13 have to answer the question.
 14 MS. WALKER: You are telling him
 15 that there is this thing called "discovery" and I sent
 16 discovery, and I'm objecting to the form because you
 17 didn't send --
 18 MR. KIMMEL: Objection to the form.
 19 You should be sitting down which you're not. And you
 20 should lower your voice which you aren't. And you
 21 should let your client answer the question.
 22 MS. WALKER: I've been sitting here
 23 all day. I'm allowed to stand. There's no rule that
 24 says I can't stand.

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1 MR. KIMMEL: You're standing up as
 2 some kind of challenge.
 3 MS. WALKER: Do you feel
 4 challenged?
 5 MR. KIMMEL: I do, when you're
 6 raising your voice and standing up and trying to make a
 7 stand literally.
 8 MS. WALKER: You know what? I
 9 don't like you trying to mislead and confuse my client.
 10 I really don't.
 11 MR. KIMMEL: I understand you don't
 12 like me.
 13 MS. WALKER: It has nothing to do
 14 with like or dislike. I don't like what you are doing
 15 in terms of using words to confuse a person. I don't
 16 like that.
 17 MR. KIMMEL: Did you ever hear --
 18 oh, forget it. The weaker argument the defeater the
 19 stronger, ha?
 20 ---
 21 BY MR. KIMMEL:
 22 Q. So, sir, my question is, were you ever asked to
 23 respond to interrogatories in this case?
 24 ---

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1 MS. WALKER: Objection to the form.
 2 THE WITNESS: I don't remember.
 3 ---
 4 BY MR. KIMMEL:
 5 Q. Did you ever review any interrogatory responses in
 6 this case?
 7 A. I don't remember.
 8 Q. You don't remember?
 9 A. No.
 10 ---
 11 MS. WALKER: If you show him a
 12 document, you might be able to refresh his recollection.
 13 MR. KIMMEL: Thanks, Counsel. If I
 14 need help, I'll let you know.
 15 MS. WALKER: Okay.
 16 ---
 17 BY MR. KIMMEL:
 18 Q. Were you ever asked to review a request for
 19 production of documents in this case?
 20 A. I don't remember.
 21 Q. Did you ever meet with anybody to review requests
 22 that were made in this case for information, anybody?
 23 A. I don't remember.
 24 Q. Do you have a good memory?

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1 A. Not when it comes to this case, I guess.
 2 Q. How much money did you make when you were 13-years
 3 or 12-years-old working on cars did you say --
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: I know what I did.
 7 ---
 8 BY MR. KIMMEL:
 9 Q. -- or cut loans? You have a pretty good memory;
 10 right? You didn't sign documents that you reviewed?
 11 A. I have an HR department.
 12 Q. Uh-huh.
 13 A. I have a CFO. And I am in the dealership everyday
 14 at 7:00 in the morning, and I am very involved with
 15 customers, hands-on with employees, hands-on with
 16 customers.
 17 Q. You are a remarkable person, I agree. I'm not
 18 being facetious. I'm not being facetious. You are a
 19 remarkable person. My question is whether you remember
 20 signing these documents?
 21 A. I think I'm dedicated. Do I rely on what happens
 22 over here on Mr. Szpanka and Miss Morton? My job is to
 23 go out there and be with our customers and be on the
 24 showroom floor and be in the service departments. I try

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1 to be visible to as many customers. My home phone
 2 number sits on everybody's desks. Okay? I probably
 3 receive 10 phone calls at home a week with customers not
 4 completely satisfied. We work hard for customer
 5 satisfaction.
 6 Q. I don't doubt that.
 7 A. I'm not a Jack of all and master of none. Okay?
 8 Q. But you're a defendant in this case and I have to
 9 ask you certain questions.
 10 A. Right. I don't remember. If you show me the
 11 document, I could tell you.
 12 Q. Okay.
 13 A. I know things were discussed. I heard the case
 14 that -- and probably, frankly, looked at it as, I can't
 15 believe it. I made it clear to Cherie the day she was
 16 terminated like a gentleman, like I would want my own
 17 daughter treated. I didn't expect this to happen. I
 18 can't even believe it's happening. I think she knows
 19 that it's not right and she's looking for a damn
 20 windfall and I don't like it. I understand that's part
 21 of the record. Talking about survival of a business.
 22 1,600 other employees incidentally, Craig.
 23 ---
 24 THE WITNESS: Excuse me a second.

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1 MR. KIMMEL: Sure.
 2 ---
 3 (Recessed 3:00 p.m.)
 4 (Reconvened 3:03 p.m.)
 5 ---
 6 BY MR. KIMMEL:
 7 Q. Sir, did you ever have any concerns in 2008 that my
 8 client as a result of her pregnancy might not be able to
 9 perform the task of a service manager?
 10 A. Ever have any concerns that she wouldn't be able
 11 to? No.
 12 Q. When did you first come to the point where you were
 13 willing to consider my client being let go? Can you
 14 place a date on that or an approximate date?
 15 A. Probably in -- probably starting to think about
 16 every expense reduction we could make in our company,
 17 probably around August of 2008. In looking at all
 18 expenses, all the payables, from cell phones to
 19 electricity to taking bulbs out, to changing our light
 20 lighting.
 21 Q. Do you think an employee had the duty to the
 22 company they worked for to be loyal to that company?
 23 A. I would hope so.
 24 Q. Why is that?

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1 A. You said "do they have a duty"?
 2 Q. Do you think they have a duty?
 3 A. Do I think -- I would hope they do.
 4 Q. Why do you say that?
 5 A. Well, I think any employer would hope that they
 6 have a duty. We would hope that that was part of their
 7 parenting, how they were brought up, I would hope.
 8 Q. Do you think a company has a duty of loyalty to the
 9 employee?
 10 A. I do.
 11 Q. And why do you say that?
 12 A. Because I believe that we do have a loyalty to our
 13 employees. I believe we have an obligation to do the
 14 best we can to provide good leadership, good facilities,
 15 good benefits as long as we are profitable. We have to
 16 make a profit.
 17 Q. Do you believe that your company exhibited loyalty
 18 to my client when she was terminated?
 19 A. Yes.
 20 Q. Can you tell me why you feel that way?
 21 A. I think we hung on as long as we could with every
 22 position that we had to eliminate that day. I think we
 23 waited too long to eliminate positions. That's probably
 24 typical of any company. Probably wait until it's too

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1 late.
 2 Q. Do you think --
 3 A. I've seen that happen as director in a bank, I
 4 have -- businesses get in trouble because they waited
 5 too long. And I think we waited a little bit long.
 6 Q. Do you believe that pregnant people are entitled to
 7 different rights or treatment than non-pregnant people?
 8 A. Do I believe --
 9 ---
 10 MS. WALKER: Objection to the form.
 11 THE WITNESS: Do I believe they are
 12 entitled to different rights?
 13 ---
 14 BY MR. KIMMEL:
 15 Q. Do you believe --
 16 A. She wasn't terminated because she was pregnant.
 17 Q. I understand that that's been your testimony.
 18 A. Do I believe they have different rights? I believe
 19 that -- I don't know what "rights" are. Different
 20 levels of respect. Different levels of treatment.
 21 Respect for one's ability to do something. Heavy
 22 lifting versus not lifting. Yeah, I do. I think that
 23 my dealings with Cherie, I was always a gentleman.
 24 Q. Were there ever any other reductions in staffing

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1 prior to October of 2008?
 2 ---
 3 MS. WALKER: Objection to the form.
 4 THE WITNESS: Very little.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. When was --
 8 A. I think we waited too long.
 9 Q. I understand. But prior to October of 2008, had
 10 you had other layoffs?
 11 A. I'd have to go back and look.
 12 Q. You don't remember any?
 13 A. I don't remember any in particular. I think we
 14 tried to do most of that -- it was my plan to try to do
 15 most of it at once so it was clear and clean and people
 16 could come to work and understand that the -- that it
 17 wasn't going to be who's next, who's next, who's next.
 18 I think all our employees were very concerned.
 19 ---
 20 MR. KIMMEL: Off the record for a
 21 second.
 22 ---
 23 (Discussion off the record.)
 24 ---

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1 BY MR. KIMMEL:
 2 Q. Were there any performance evaluations, written or
 3 otherwise, in 2008 for my client that you are aware?
 4 A. No.
 5 Q. When you determined what expenses to cut, did you
 6 review any performance evaluations of the employees that
 7 you were letting go?
 8 A. We reviewed the departments and departmental
 9 profitability.
 10 Q. Okay. Did you review whether or not the persons
 11 that you were letting go were entitled to a different
 12 type of protection by law by virtue of any class that
 13 they might have occupied? For example, race, age, sex?
 14 A. Yes.
 15 ---
 16 MS. WALKER: Objection to the form.
 17 ---
 18 BY MR. KIMMEL:
 19 Q. You did?
 20 A. I think so.
 21 Q. Who did you review that with?
 22 A. I think that -- I'm aware that women would probably
 23 be given by law preferential treatment. I believe
 24 that -- I believe we fully understand that older people

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1 may have rights or assumed rights that younger people
 2 don't have. We looked at each job. And I don't -- we
 3 looked at each job and each position as to whether we
 4 could eliminate it. There were people older than Cherie
 5 that left here and people younger than Cherie that left
 6 here.
 7 Q. Just no other service managers who were female?
 8 A. That service department was probably the smallest
 9 that we operated.
 10 Q. But I mean in your entire Fred Beans organization.
 11 If you reduce expense for a store, you are reducing
 12 expense for the entire organization; right?
 13 A. We reduced expenses in service departments by
 14 letting people go, and most of our stores we had service
 15 departments with over 15 technicians and we didn't need
 16 to let any service manager go. We didn't need to
 17 eliminate that expense. We had other -- we had more
 18 profitability coming out of there. I think you -- I
 19 think that that store had only had about 55 percent or
 20 60 percent service absorption. It simply didn't have
 21 enough business. It not only didn't produce enough
 22 gross profit, but it didn't produce enough contribution
 23 to toward fixed expenses.
 24 Q. And it sounds like you really didn't make any money

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1 on that store?
 2 A. Well, I think you saw that today, didn't you?
 3 Q. Well, why did you keep it?
 4 A. What are your choices when you have a mortgage on
 5 it?
 6 Q. Well --
 7 A. What are your choices?
 8 Q. Well, each one of your companies is organized as a
 9 corporation?
 10 A. Wasn't very saleable.
 11 Q. Well --
 12 A. There's always hope in the future.
 13 Q. Did you eliminate your Pontiac store because
 14 Pontiac was no longer making cars?
 15 A. Did I eliminate my Pontiac -- I didn't have to.
 16 They eliminated it for me.
 17 Q. And Saturn the same thing?
 18 A. That's correct.
 19 Q. And Saab, the same thing?
 20 A. That's right.
 21 Q. And then you gave a newspaper interview over the
 22 whole situation, talking about survival; right?
 23 A. We still have an empty facility today.
 24 Q. I understand. Why didn't you close the Hyundai

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1 store if it wasn't profitable? You could just close the
 2 corporate entity, file whatever papers you needed to
 3 file, and move on.
 4 A. How would we service the mortgage?
 5 Q. You're not separately incorporated?
 6 A. How would we close it?
 7 Q. How are you --
 8 A. File bankruptcy?
 9 Q. How are you handling that now with the empty
 10 building?
 11 A. How are we handling what?
 12 Q. With the empty building you have now.
 13 A. We're paying the rent on it.
 14 Q. You're paying the rent than as you were paying as
 15 an operation that was a not profitable organization;
 16 right?
 17 ---
 18 MS. WALKER: Objection to the form.
 19 THE WITNESS: On an empty building.
 20 MS. WALKER: This is argumentative.
 21 MR. KIMMEL: Your client is arguing
 22 with me. I'm asking the questions.
 23 THE WITNESS: I'm not arguing with
 24 you. Please. We're paying the rent on an empty

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1 building now.
 2 ---
 3 BY MR. KIMMEL:
 4 Q. And that's --
 5 A. Servicing the mortgage on an empty building.
 6 Q. And that's quite small in comparison to what it
 7 costs to operate it when it was a full-fledge business;
 8 right?
 9 A. Rent and taxes --
 10 ---
 11 MS. WALKER: Objection to form.
 12 THE WITNESS: Rent and taxes, where
 13 we were heading with that store, where would we fund it
 14 if we had no income at all.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. Okay. So you could sell the property?
 18 A. I could.
 19 ---
 20 MS. WALKER: Objection to the form.
 21 ---
 22 BY MR. KIMMEL:
 23 Q. You could sell the property, couldn't you? What
 24 causes you to have to hang onto the property that you're

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1 not using?
 2 A. It would have to be saleable. We'd have to have on
 3 offer on it.
 4 Q. It would have to be for sale first, wouldn't it?
 5 A. I think that there's plenty of people that know
 6 that we have properties that would be out there looking
 7 at them. I can take you and show you numerous
 8 properties around here right now that are sitting empty.
 9 Q. Okay.
 10 A. They are right up and down on 611.
 11 Q. I'm talking about the dealership properties that
 12 are independent.
 13 A. The dealership property there's one of them empty
 14 right now because of termination. There was almost
 15 another one. I'm going to say this to you: We had a
 16 Pontiac Buick GMC store where we received a FedEx truck
 17 letter.
 18 Q. I understand all this.
 19 A. We had \$5 million worth of debt on that place.
 20 Okay?
 21 Q. I understand.
 22 A. You just can't walk away. You go bankrupt. I've
 23 never been bankrupt. I don't want to go bankrupt. I'd
 24 rather had somebody just take the key.

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1 Q. So you made a decision to hang onto the property
 2 rather than file for bankruptcy?
 3 A. I made a decision to do everything I could to
 4 survive and not file bankruptcy, that is correct.
 5 Q. And even though with bankruptcy you might have
 6 merged as a healthier company?
 7 A. That's correct.
 8 Q. Okay. So that was a decision you made?
 9 A. It's a decision I made ethically because I didn't
 10 want to do that.
 11 Q. I understand --
 12 A. I didn't believe it was the right thing to do.
 13 Q. I understand, but that was your choice. Everything
 14 carries within it a choice.
 15 A. Everything is a choice in your book.
 16 Q. Okay. I understand that. I'm just trying to make
 17 that known. You decided to do things a certain way
 18 because you didn't want to file for bankruptcy. You
 19 didn't want to sell the property. You didn't want to
 20 let somebody else go. You decided to let my client go.
 21 ---
 22 MS. WALKER: Objection to the form.
 23 THE WITNESS: A lot of people left
 24 that day.

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1 ---
 2 BY MR. KIMMEL:
 3 Q. But nobody at her level?
 4 A. Some making more money. Some doing bigger jobs.
 5 Okay? Every job that we could eliminate that we didn't
 6 need to replace that we could do without we eliminated.
 7 Roughly \$6,800,000 in expenses cut in less than a month.
 8 Q. Did you cut your daughter?
 9 A. Did I cut -- my daughter certainly got a cut.
 10 Q. Did your controller get a cut?
 11 A. My controller certainly did.
 12 Q. He testified that he didn't.
 13 A. Did he --
 14 ---
 15 MS. WALKER: Objection to the form.
 16 THE WITNESS: He virtually had no
 17 bonus. He got a salary. He had no bonus during that
 18 period of time that we can substantiate.
 19 ---
 20 BY MR. KIMMEL:
 21 Q. Do you think you can stay in business without your
 22 daughter?
 23 A. Could I stay in business without my daughter?
 24 Today?

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1 Q. No, in 2008.
 2 A. Pretty difficult, because she has a hell -- she
 3 does lot of things for this dealership.
 4 Q. So your answer would be, no, you couldn't do
 5 without her?
 6 A. Well, I think you're a smart man and I am too. I'd
 7 like to give myself credit that that's a hell of a
 8 statement to make. I mean, can a world go on without
 9 President Obama, President Ford? It will. What state
 10 it will be in is another issue.
 11 Q. I guess the question is closer to can the world go
 12 on without a vice president?
 13 A. Can the world -- can this place survive without my
 14 daughter?
 15 Q. Yeah.
 16 A. Yes.
 17 Q. Okay. Did you ever consider her for termination?
 18 A. Did I ever consider my daughter for termination?
 19 No.
 20 Q. How much money would you have saved if you had
 21 terminated your daughter of the \$800,000 that you
 22 ultimately did save?
 23 ---
 24 MS. WALKER: Objection.

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1 THE WITNESS: \$6,800,000.
 2 ---
 3 BY MR. KIMMEL:
 4 Q. Oh, I thought you said \$800,000.
 5 A. \$6,800,000 on that spreadsheet.
 6 Q. How much of that money did you save?
 7 A. I'm smiling, because I think you know it's \$6
 8 million. I saw you two guys looking at that spreadsheet
 9 like you were students at a business today. I'm sorry.
 10 Excuse my sense of humor. Okay. Go ahead. How much
 11 would I have saved if my daughter -- probably \$200,000.
 12 But what would have I lost? I would have lost a key
 13 support person. I would have lost a person of
 14 integrity. I would have lost a person that took our
 15 vision forth in the community and represented us.
 16 Q. Okay. Let me stop you there.
 17 A. I'd have lost an employee that would had to have
 18 been replaced by somebody else.
 19 Q. Stop right there. Did my client have integrity?
 20 ---
 21 MS. WALKER: Are you telling him to
 22 stop his answer, Counsel?
 23 MR. KIMMEL: Yes.
 24 MS. WALKER: You're telling him you

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1 don't --
 2 ---
 3 BY MR. KIMMEL:
 4 Q. Are you finished your answer?
 5 ---
 6 MS. WALKER: You know what?
 7 ---
 8 BY MR. KIMMEL:
 9 Q. Are you finished your answer?
 10 A. You asked me a question as to whether Cherie had
 11 integrity.
 12 Q. Yes.
 13 A. I would hope so.
 14 Q. Okay. Do you think that she presented well for the
 15 company, the same way you referred to your daughter a
 16 moment ago?
 17 A. In the same level?
 18 Q. No. Just in general, in her own way?
 19 A. In her contribution, yes.
 20 Q. Okay.
 21 A. But not the same level.
 22 Q. Are there any other qualities that you named in
 23 your daughter a moment ago that you feel my client did
 24 not have?

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1 ---
 2 MS. WALKER: Do you want to read
 3 back his answer to him?
 4 THE WITNESS: That would be like
 5 asking you what qualities does your second wife have
 6 that your first wife didn't have.
 7 MR. KIMMEL: Off the record.
 8 ---
 9 (Discussion off the record.)
 10 ---
 11 (The court reporter read back as
 12 follows:
 13 "ANSWER: How much would I have
 14 saved if my daughter -- probably \$200,000. But what
 15 would have I lost? I would have lost a key support
 16 person. I would have lost a person of integrity. I
 17 would have lost a person that took our vision forth in
 18 the community and represented us."
 19 ---
 20 BY MR. KIMMEL:
 21 Q. Okay. Do you believe that Cherie Santai was a
 22 support person for the dealership while she was working
 23 for you?
 24 A. Say that -- I didn't hear the second word there.

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1 Q. I was trying to use your words. Do you believe
 2 that my client was a good support person for the company
 3 while she was working for the dealership?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: To the best of her
 7 ability.
 8 ---
 9 BY MR. KIMMEL:
 10 Q. Okay. And we talked about integrity a moment ago;
 11 right?
 12 A. I think your client treated people nicely.
 13 Q. Okay. Did she treat you nicely?
 14 A. Yes.
 15 Q. Okay.
 16 A. Did I treat her nicely? You should ask her that.
 17 I think so. Did my daughter? I think so. Now we have
 18 this.
 19 Q. What is the message of the company that you were
 20 referring to when you said your daughter takes the
 21 message of the company, the vision of the company and
 22 takes it to the community? What did you mean by that?
 23 ---
 24 MS. WALKER: The vision.

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1 MR. KIMMEL: The vision.
 2 THE WITNESS: I think our vision is
 3 about our standards, about how we want to treat a
 4 customer, how we want to answer a phone, how we want to
 5 fix a car, how we want to be a company that has
 6 integrity to return money to the community. We have
 7 done a lot of things in this community that ties to it.
 8 I'm a believer in all our companies when we were making
 9 money. We put money into a charitable foundation. We
 10 don't have any money in that charitable foundation
 11 because we give every cent back. Okay? We have given a
 12 lot of money back to the community. I happen to believe
 13 that I have been a blessed man by having this
 14 opportunity, and I believe in returning it. When we
 15 don't make money, we can't.
 16 Q. So if your daughter is taking that vision that
 17 you're talking about to the community --
 18 A. My daughter has been a good community support
 19 person for us. She's been the president of the Chamber
 20 of Commerce. She's a director in the Michener Art
 21 Museum. I think she's done a lot of things to forward
 22 our name in the community, to get customers to want to
 23 come here. To build a family reputation as a family
 24 business.

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1 Q. Do you believe that my client, to the extent she
 2 was able, had done the same thing while she was here?
 3 A. I believe --
 4 ---
 5 MS. WALKER: Objection to the form.
 6 Go ahead.
 7 THE WITNESS: -- your client could
 8 work very well with my daughter and I believe that my
 9 daughter worked well with her.
 10 ---
 11 BY MR. KIMMEL:
 12 Q. Do you feel that there is any difference in how my
 13 client went about taking the vision of the company to
 14 the community from what you wanted it to be?
 15 A. I don't think she had that level of intensity or
 16 that education.
 17 Q. She didn't do anything to hurt the company, did
 18 she?
 19 A. I think your client under those circumstances did a
 20 good job.
 21 Q. Okay. Now, you referred to hours earlier. Does
 22 your daughter have set hours?
 23 A. My daughter does have set hours, yes.
 24 Q. Has she ever not been able to meet those set hours?

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1 A. She had a maternity leave four times.
 2 Q. Was she paid while she was out on leave?
 3 A. Reduced salary, I believe.
 4 Q. Okay.
 5 A. I have two other daughters who work in this
 6 company.
 7 Q. So -- but she did receive -- Beth Gilbert received
 8 compensation while she was out on maternity leave?
 9 A. Beth was a stockholder at one time in the Saturn
 10 and Mitsubishi dealership and received income. That's
 11 where her income was -- came from. This goes back a
 12 while.
 13 Q. She didn't receive wages?
 14 A. As a stockholder she did receive wages, and I can't
 15 honestly remember that amount of money. I don't know.
 16 Q. Okay. You don't typically offer wages to your
 17 employees who are out on maternity leave, do you?
 18 A. No.
 19 Q. When your daughter was out on maternity leave, did
 20 you tell her she'd have to re-apply for her job --
 21 ---
 22 MS. WALKER: Objection to the form.
 23 ---
 24 BY MR. KIMMEL:

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1 Q. -- when she came back?
 2 A. No.
 3 Q. Is there a reason?
 4 A. No. Maybe I should have had a boy.
 5 Q. Why would you say that?
 6 A. You ask kind of question. I guess there are
 7 benefits to being a sperm donor, right, or sperm
 8 recipient. I didn't have that opportunity. But go
 9 ahead. Interesting.
 10 Q. Okay.
 11 A. I think you should have a beer with my daughter.
 12 Q. As soon as your counsel allows us, I promise you
 13 that's the intent.
 14 A. Explain to her that she's overly compensated for
 15 doing nothing. I'm sure that will go over like a lead
 16 bullet. Go ahead.
 17 ---
 18 MR. KIMMEL: I need a moment to
 19 collect my thoughts for just a second.
 20 ---
 21 (Pause.)
 22 ---
 23 BY MR. KIMMEL:
 24 Q. Your daughter testified previously that she may

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1 have spoken to Cherie about making contingency plans in
 2 the event that she might need to take leave during her
 3 pregnancy. Do you recall that at all? Not the
 4 testimony, but do you recall those events?
 5 ---
 6 MS. WALKER: Objection to the form.
 7 THE WITNESS: No, I don't. Do I
 8 think my daughter would say something like that because
 9 she's a woman, yes. Pretty compassionate person, so I
 10 think she might say something like it, but I would not
 11 have been present during any discussions like that.
 12 ---
 13 BY MR. KIMMEL:
 14 Q. You have an HR department for the company; correct?
 15 A. That's correct.
 16 Q. Do you run the decisions that you make about hiring
 17 and terminating, firing, whatever way you want to refer
 18 to it, do you make those decisions known to the HR
 19 department, ask those decisions to be reviewed before
 20 you act on them?
 21 A. We do.
 22 Q. Did you do so in this case with regard to Cherie?
 23 A. Yes.
 24 Q. Can you tell me what you asked them to do in

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1 connection with that review? And by "them" I mean the
 2 HR department.
 3 A. We discussed with our HR department which is not an
 4 attorney, but the names and reasons that we were going
 5 to terminate people.
 6 Q. Did you consult with legal counsel before the
 7 termination?
 8 A. No, we did not.
 9 Q. Is there a reason why you did not?
 10 ---
 11 MS. WALKER: Objection to the form.
 12 THE WITNESS: We didn't think that
 13 everything we had to do had to be consulted with an
 14 attorney. We felt at the time we were doing the right
 15 thing. We still feel like we did right thing.
 16 ---
 17 BY MR. KIMMEL:
 18 Q. And that was because you needed to cut expenses to
 19 make profitability rise?
 20 A. Reduce expenses in order to offset our losses.
 21 Q. Is there a reason why you didn't ask everybody in
 22 the company to take a reduction at that time?
 23 A. You know, we cut our 401K. We cut our personal
 24 days. And a lot of these things didn't go over very

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1 well. Didn't go over very well at all.
 2 Q. And so from that what did you decide from knowing
 3 that information?
 4 ---
 5 MS. WALKER: Objection to the form.
 6 THE WITNESS: Does that mean I
 7 answer the question?
 8 MS. WALKER: If you understand the
 9 question. I believe you answered his question
 10 explaining how. So if you understand the question you
 11 can answer it, but --
 12 THE WITNESS: I'm not sure I
 13 understand the question, Craig, after that --
 14 ---
 15 BY MR. KIMMEL:
 16 Q. Okay. Let me move on to another question.
 17 Can HR supercede your decisions to
 18 terminate, layoff? Do they have that power?
 19 A. I have never been in that position.
 20 Q. And why --
 21 A. Never laid people off before. Okay?
 22 Q. Uh-huh.
 23 A. Really, in all my years of business, we've grown.
 24 I never went through a period like this. Okay?

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1 Q. Well, you have HR in place to perform a function?
 2 A. HR to help us hire people. HR to help us with
 3 payroll. HR to help us with new employee orientation,
 4 yes.
 5 Q. So you don't use HR in connection with documenting
 6 a personnel file for purposes of ongoing employment
 7 relations or even for termination?
 8 A. Yes, but we haven't had to terminate people --
 9 anybody in the past because of lack of income. This is
 10 the first time we have ever went through, to the best of
 11 my knowledge, and really laid anybody off. Have we
 12 terminated people in the past for non-performance? Have
 13 we terminated them for theft? Yes, we have. Have we
 14 terminated them for drug abuse or drug usage? Yes. But
 15 this is really the first time that we in our company
 16 history -- that I kind of prided myself that I never
 17 laid people off.
 18 Q. Now, you say that you terminated for theft. Let's
 19 just use that as an example. If there was a belief that
 20 an employee had committed theft against the company,
 21 how, if at all, would you involve HR in terminating?
 22 A. We'd involve them in the investigation of it.
 23 Wouldn't fire somebody if we thought they stole. We'd
 24 fire somebody if they told us they stole --

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1 Q. Why would --
 2 A. -- or we have proof of it.
 3 Q. Why would you consult with HR first?
 4 ---
 5 MR. KIMMEL: Do you need to take
 6 that call?
 7 MS. WALKER: I am going to need to
 8 in two minutes.
 9 MR. KIMMEL: Let's go off the
 10 record.
 11 MS. WALKER: I have two minutes.
 12 Go ahead. We can get done in two minutes. It's a
 13 conference call.
 14 MR. KIMMEL: Okay.
 15 THE WITNESS: Why would we do what
 16 now?
 17 ---
 18 BY MR. KIMMEL:
 19 Q. Why would you consult with HR? Why not just fire
 20 the person if you suspected they were stealing?
 21 A. I'd probably tell Linda Bell that we had a
 22 situation where somebody stole money from us. We had
 23 somebody that maybe got hooked on OxyContin -- I guess I
 24 should rephrase that. That became dependent upon

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1 OxyContin and stole from us. I guess I said that, you
 2 know, we are going to terminate this person. We've got
 3 some people that we had driver license reviews that had
 4 DUIs that we didn't know about. We've asked her how we
 5 should handle that.
 6 Q. So she's a consultant for purposes of compliance
 7 with legal requirements? Is that your understanding?
 8 ---
 9 MS. WALKER: Objection to the form.
 10 THE WITNESS: No. I don't think
 11 it's a consultant for legal requirements. I think it's
 12 a sounding board for what's the right thing to do.
 13 ---
 14 BY MR. KIMMEL:
 15 Q. Does --
 16 A. Do we want to recommend this person submit to
 17 random drug testing? Do we want to ask them if they can
 18 rehab, if they can be rehabbed?
 19 Q. Do you know if Miss Bell has any training?
 20 A. Yes.
 21 ---
 22 MS. WALKER: Objection to the form.
 23 THE WITNESS: Do I know the limit
 24 of that training, no, but my daughter Beth does. I

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1 don't know.
 2 ---
 3 BY MR. KIMMEL:
 4 Q. Do you know what qualifies her to be the HR
 5 department director of your company?
 6 A. Well, I know that she had previous HR experience.
 7 Q. Okay.
 8 A. I know she's attended several schools since she's
 9 been here.
 10 Q. Schools on?
 11 A. HR.
 12 Q. Meaning issues in HR?
 13 A. HR training. I know that we have had -- that she's
 14 attended different seminars. I know that we have had
 15 labor relations. The labor relations attorney runs a
 16 three-day class.
 17 ---
 18 MR. KIMMEL: Do you need to take
 19 your call now?
 20 MS. WALKER: Yeah.
 21 MR. KIMMEL: Okay. Off the record.
 22 ---
 23 (Recessed 3:32 p.m.)
 24 (Reconvened 4:01 p.m.)

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1 ---
 2 BY MR. KIMMEL:
 3 Q. In your personal dealings with my client, sir, if
 4 any, did you find her to be friendly?
 5 A. Yes.
 6 Q. Did you find her in a professional capacity to act
 7 like a professional?
 8 A. Yes.
 9 Q. Did you ever socialize with my client in any way
 10 out of work?
 11 A. No.
 12 Q. Did you ever take her on any flights to any other
 13 locations by plane?
 14 A. I know that question was asked before, and I don't
 15 remember.
 16 Q. Okay. Fair enough.
 17 A. If it was, I'd like to be reminded of it so I do
 18 know.
 19 Q. Did you have -- other than the problem that you
 20 referred to with regard to her occasionally not being
 21 able to make her time here, I think it was two days a
 22 week that you thought was an issue, did you have any
 23 other difficulties with my client in a working
 24 relationship?

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1 ---
 2 MS. WALKER: Objection to the form.
 3 THE WITNESS: No. I think I dealt
 4 with her on a professional level.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. Do you remember what you told my client when you
 8 met with her the last time that she worked for the
 9 dealership, on the last day?
 10 A. When she was terminated?
 11 Q. Yes, sir. We're not supposed to say "terminated."
 12 A. When she was -- her job was eliminated.
 13 Q. Okay. There.
 14 A. I told her she should go see Linda Bell --
 15 Q. Okay.
 16 A. -- HR person.
 17 Q. Did you have any conversation with her after that?
 18 A. No.
 19 Q. Okay. Is it fair to say you haven't spoke to
 20 Cherie Santai since that day?
 21 A. Yes. No, I have not.
 22 Q. Are you aware of any violations of company policies
 23 Cherie Santai had engaged in during her employment at
 24 the company?

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1 A. No.
 2 Q. And you say you can't recall how much seniority
 3 Cherie Santai had as compared to other service managers
 4 at the time that she was let go?
 5 A. No.
 6 Q. Do you recall my client's reaction to the being let
 7 go, if you were able to observe it?
 8 A. There were a lot of people let go that day --
 9 Q. If you have any recollection.
 10 A. -- all in my office, so I don't, no.
 11 Q. Okay. Do you remember any words that were
 12 exchanged between the two of you at that time?
 13 A. No unkind words.
 14 Q. Okay. Do you remember any kind words?
 15 A. I was sorry we had to do that. We had no other
 16 choice.
 17 Q. Okay. Do you remember anything else?
 18 A. No.
 19 Q. Did you ask anybody in the company to speak to my
 20 client after termination?
 21 A. Yeah. Linda Bell was available.
 22 Q. Okay. And that was the person who you directed my
 23 client to speak with; correct?
 24 A. Yes.

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1 Q. Beyond that, after my client was given the news,
 2 did you ask anybody from the company to talk to her?
 3 A. No.
 4 Q. Have you ever terminated any other pregnant person
 5 from the Fred Beans group, Fred Beans Holdings or Fred
 6 Beans dealerships that you can recall?
 7 A. I don't know.
 8 Q. Okay. In the complaint there is an allegation that
 9 my client had spoken to you and you had spoken to her on
 10 occasion, and that you made a remark and then told her,
 11 "Don't sue me for saying that. We just got one of those
 12 last week." Do you know if that statement was made?
 13 A. What last week?
 14 Q. A complaint against the company. Would you like me
 15 to show you the complaint that I'm referring to?
 16 A. Yeah. At least I don't remember.
 17 ---
 18 MR. KIMMEL: Give me a moment.
 19 ---
 20 (Pause.)
 21 ---
 22 BY MR. KIMMEL:
 23 Q. In paragraph 37, sir, I'm going to read it to you,
 24 and if you need to see it for yourself I'll be glad to

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1 show it to you.
 2 It says, "Defendant Beans stated to
 3 plaintiff that he was shifting her to a lesser position
 4 because of her pregnancy and told her, quote, Don't sue
 5 me for saying that. We already were served with one of
 6 those claims this week."
 7 A. Can I look at that?
 8 Q. Sure. Paragraph 37.
 9 A. (Witness reviewing document.) Me or my daughter?
 10 I don't see this. "Defendant Gilbert repeatedly told
 11 plaintiff that a pregnant" --
 12 Q. 37, sir. Paragraph 37.
 13 A. "Defendant Beans stated to plaintiff that they were
 14 shifting her to a lesser" --
 15 ---
 16 MS. WALKER: "He was shifting."
 17 THE WITNESS: Cherie?
 18 MS. WALKER: Yeah. "Defendant
 19 Beans" would be you.
 20 THE WITNESS: Right. Shifting her
 21 to a lesser position.
 22 ---
 23 BY MR. KIMMEL:
 24 Q. Did you say that?

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1 A. No. We eliminated her position. I don't know any
 2 reason to say that.
 3 Q. I'm not talking about in October of 2008. I'm
 4 talking after my client indicated to you that she was
 5 pregnant but well before she was let go.
 6 A. No.
 7 Q. "No," meaning you never made that statement?
 8 A. No.
 9 Q. Did you ever speak to my client in terms of giving
 10 her a lesser position because of her pregnancy?
 11 A. A lesser position? I don't know if my daughter --
 12 I don't have any knowledge of that, any remembrance.
 13 Q. Do you know if my client's job responsibilities had
 14 changed while she was pregnant?
 15 ---
 16 MS. WALKER: Asked and answered.
 17 THE WITNESS: Her job
 18 responsibilities as service manager?
 19 ---
 20 BY MR. KIMMEL:
 21 Q. In any way for the Beans organization.
 22 A. No.
 23 Q. No, you don't know?
 24 A. We didn't change any responsibilities.

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1 Q. Okay. Who made the decision to terminate?
 2 A. Who made the decision to terminate ultimately?
 3 Q. Ultimately.
 4 A. I guess, ultimately, I did.
 5 Q. Did you make it with anybody's consent or was it
 6 something that you decided on your own?
 7 A. I sat with Rob and I would think probably Valerie.
 8 I know we went through names and job responsibilities
 9 and what general managers of everything that could be
 10 eliminated. That's how we came up with a total of
 11 \$6.8 million. We went through everything we could go
 12 through, every payable. We looked at janitorial
 13 services. We cut those back. In some cases we
 14 eliminated them. In New Holland we eliminated the
 15 janitorial service all together and did it ourselves.
 16 Q. Are you familiar with an Employee Exit Report used
 17 by your company?
 18 A. Yes.
 19 Q. Can you tell me what that report is used for?
 20 A. It's used when somebody leaves our company. Make
 21 sure we got our uniforms, our books, our manuals --
 22 Q. Okay.
 23 A. -- what they were entitled to.
 24 Q. Okay. I'm going to show you what was attached to

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1 the complaint and marked as Exhibit C in the complaint.
 2 Do you see that document?
 3 A. (Witness reviewing document.) Yes.
 4 Q. Take a minute and review that document and the next
 5 page of that document, and let me know when you are
 6 ready to talk about it.
 7 A. It says that she was re-hirable in the same
 8 capacity. Her service was satisfactory.
 9 Q. Are you ready to talk about it?
 10 ---
 11 MS. WALKER: Look at the second
 12 page.
 13 THE WITNESS: It's pretty hard to
 14 look at.
 15 Okay. It says, "Position was
 16 discontinued, reorganization." Yes. Okay. I can't
 17 read the box above that.
 18 MR. KIMMEL: Your attorney has been
 19 kind enough to provide a clearer copy. Thank you, Beth.
 20 MS. WALKER: As clear as I got.
 21 ---
 22 BY MR. KIMMEL:
 23 Q. Just review, say nothing, and tell me when you are
 24 ready to talk about it.

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1 A. (Witness reviewing document.) Go ahead.
 2 Q. Okay. Are you familiar with that document?
 3 A. I am.
 4 Q. Have you ever reviewed that document as it relates
 5 to my specific client, Cherie Santai?
 6 A. Signed it on 10/21/2008.
 7 Q. Okay. Do you remember it?
 8 A. Yes.
 9 Q. Are you able to answer questions about it?
 10 A. Yes.
 11 Q. Okay. Do you see how that document refers to the
 12 position being eliminated?
 13 A. Yes.
 14 Q. And do you see on that document as well it says my
 15 client is eligible to be rehired?
 16 A. Yes.
 17 Q. Can you tell me how could my client be eligible to
 18 be rehired for a position that was eliminated?
 19 A. In another position when that opportunity availed
 20 itself.
 21 Q. Is that --
 22 A. If she came back and applied for a job.
 23 Q. Is that stated on the form?
 24 A. No, it's not stated on the form. But if she came

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1 back and applied for the job -- a job, we certainly
 2 would consider it.
 3 Q. Did you see on that document that it states that my
 4 client -- that the position -- the exact words here --
 5 did you see on the form that it says on the exit report,
 6 "The lack of work was permanent"?
 7 A. Is lack of work permanent?
 8 Q. Yes.
 9 A. "Did the employee receive vacation pay."
 10 ---
 11 MS. WALKER: Objection.
 12 THE WITNESS: Yes, I see it. It
 13 says it was "permanent." "Permanent" for the time
 14 being.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. Can you tell me --
 18 A. "Permanent" forever? I don't know that, Craig.
 19 Q. Does it say, "Permanent for the time being"?
 20 A. It says, "Lack of work permanent."
 21 Q. Okay.
 22 A. I take that per lack of work.
 23 Q. Okay. So my client's eligible to be rehired, her
 24 position was being eliminated, and the lack of work is

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1 permanent. And can you tell me what meaning you
 2 intended to convey in that document that you signed?
 3 A. That the employee was re-hirable, that her work was
 4 satisfactory, and that she would be re- hirable in the
 5 same capacity.
 6 Q. Okay. Now, being re-hirable -- may I have that
 7 please?
 8 ---
 9 MR. KIMMEL: Beth, do you need this
 10 back or can we make a copy?
 11 THE WITNESS: We can make a copy.
 12 MR. KIMMEL: All right. Let's put
 13 this aside and call it Beans-1 and just not mark it yet.
 14 We'll mark the copy.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. You said that my client was eligible to be rehired
 18 in that capacity. I think that was your words; correct?
 19 A. Yes.
 20 Q. Earlier you had testified that my client performed
 21 adequately, but you felt that given the -- I think you
 22 said principles that you follow, that you felt that she
 23 had the capacity to do more. Is that a fair
 24 characterization --

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1 A. Do more?
 2 Q. -- of your testimony? To do better was I think
 3 your testimony.
 4 A. I think that she could -- I think that she had the
 5 ability to advance herself. I think she's a smart young
 6 lady.
 7 Q. Okay. Do you know what the conditions were at the
 8 time that you terminated her, as far as the job market
 9 for service managers looking for work?
 10 A. I would assume that there is a job market for
 11 service managers that are good all the time.
 12 Q. Okay. Would you have expected my client to be able
 13 to have secured another position as a service manager at
 14 that time?
 15 A. If she wanted one, yes.
 16 Q. Were you aware of any jobs that were available at
 17 that time in the area for a service manager?
 18 A. Personally, I'm not aware of any.
 19 Q. Did you ever ask anybody to look for you to
 20 determine if there were jobs at that time that were
 21 available?
 22 A. No, I did not.
 23 Q. Did you -- were you ever aware that my client had
 24 decided not to attend college because she had decided to

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1 pursue a career path with Fred Beans?
 2 A. No. We would encourage her to go to school. We
 3 have encouraged a lot of our employees to go to school.
 4 Q. Do you know if you ever encouraged her to go to
 5 school?
 6 A. If anybody asked us, we would definitely encourage
 7 them.
 8 Q. Do you know if you encouraged my client to go to
 9 school?
 10 A. I'm certain, say, "Hey, Cherie, go to school," or
 11 our environment, foster an environment that would
 12 encourage somebody. I think everything we do fosters
 13 education.
 14 Q. I understand. My question is different though.
 15 Listen carefully, please. My question is, did you
 16 recall -- or do you recall encouraging my client to go
 17 to college?
 18 A. I was never asked by your client for an opinion to
 19 go to college. If asked, I would have encouraged her.
 20 Q. I understand. Do you recall if you ever did
 21 encourage her to go to school?
 22 A. No.
 23 Q. No, you don't recall or no --
 24 A. I don't recall that.

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1 Q. Okay. At the time my client was let go, you were
 2 aware of her pregnancy; correct?
 3 A. Yes.
 4 Q. And you said she was qualified to do the job?
 5 A. Yes.
 6 Q. And your main concern, as I think you've indicated,
 7 as to any problem with her performance would have been
 8 that a couple days a week she didn't always make it in
 9 on time, so you altered her hours; is that correct?
 10 A. I think -- what was said to her is we would rather
 11 know the hours you are going to come in and not have to
 12 lie to us, or not have to cover up, and these are the
 13 days -- you know, what days do you need to come in and
 14 these are the days I need to come in at 8:30. And I
 15 believe what we said is, we'd rather know when you are
 16 coming than put you in a position where you have to lie
 17 to us or anything else. I don't want to put an employee
 18 in that position.
 19 Q. So you changed her hours to 8:30?
 20 A. Two days a week, I believe. Two or three days a
 21 week.
 22 Q. Okay. And do you know if this change was made
 23 prior to her announcing that she was pregnant?
 24 A. I don't know whether it was made prior to, after.

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1 I know that she had tremendous problems coming to work
 2 on time all the time.
 3 Q. So --
 4 A. Babysitters, sick children, and all that. With the
 5 business we were able to live with that. As long as we
 6 knew it, we could plan accordingly.
 7 Q. So you didn't consider it to be so important that
 8 she should be terminated as a result?
 9 A. No.
 10 Q. Did you ever fill the service manager position once
 11 you determined that the Hyundai store should have one?
 12 A. We did.
 13 Q. And who filled that position?
 14 A. Steve Zdunczyk.
 15 Q. Am I correct in assuming that Steve Zdunczyk -- I
 16 don't know how to spell that --
 17 A. Right.
 18 Q. -- that he is a male?
 19 A. He is.
 20 Q. Okay. Do you know anything about him or his job
 21 experience?
 22 A. He was our previous service manager at our Saturn
 23 store.
 24 Q. And Saturn closed; right?

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1 A. Saturn closed.
 2 Q. Due to economic reasons you got a letter from
 3 Federal Express --
 4 A. Say that again. Yeah.
 5 Q. When you got the Federal Express, General Motors
 6 was shutting down Saturn?
 7 A. Rights.
 8 Q. So you moved him from one closing dealership that
 9 could no longer be profitable to another dealership?
 10 A. We moved him to our Chevrolet dealership where we
 11 moved all our Saturn personnel.
 12 Q. Okay.
 13 A. Left him in place as the Saturn service manager.
 14 Created the place, left him in the position there.
 15 Q. And that was to service Saturns?
 16 A. That's correct.
 17 Q. Even though Saturn was no longer going to be
 18 marketing new cars?
 19 A. Well, we had a very good service -- Saturn service
 20 business. Excellent Saturn service business.
 21 Q. So because it was profitable, you kept that part of
 22 the business open?
 23 A. And we certainly wanted to maintain those
 24 customers.

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1 Q. Now that those -- strike that.
 2 Did the Saturn business eventually
 3 close as far as service goes?
 4 A. We closed the Saturn business and we moved the
 5 Saturn technicians to the Chevrolet dealership and
 6 opened up Saturn service.
 7 Q. Is that still in effect?
 8 A. Still in service. Still in effect.
 9 Q. Steve --
 10 A. Zdunczyk.
 11 Q. -- Zdunczyk is no longer there; correct?
 12 A. No.
 13 Q. Why did you move him to the Hyundai store?
 14 A. Because we were growing Hyundai business. Okay.
 15 Growing the Hyundai business. We thought it was time to
 16 get a service manager and we went back and offered the
 17 job to Cherie. She didn't come back. We moved Steve
 18 there because now we felt that we could pick up the
 19 business or maintain the business in the Chevrolet
 20 dealership under the two service advisors we moved
 21 there. And, in fact, that business is dwindling because
 22 there is no new car sales. So that Saturn business is
 23 disappearing as we speak slowly.
 24 Q. How many years has Steve Zdunczyk been with the

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1 firm?
 2 A. I'd have to look, but I believe probably six or
 3 seven.
 4 Q. Six or seven years?
 5 A. I think so. Maybe longer.
 6 Q. Was he ever laid off?
 7 A. No.
 8 Q. How many technicians worked for him in the Saturn
 9 facility?
 10 A. Probably at one time 14.
 11 Q. And how many worked for him in his last job with
 12 the Saturn service department?
 13 A. When we moved?
 14 Q. Yes.
 15 A. I would believe about eight.
 16 Q. Okay. So roughly the size of the Hyundai store
 17 where my client left in 2008?
 18 A. Bigger than the Hyundai store.
 19 Q. Didn't you say there were eight technicians in the
 20 Hyundai store?
 21 A. Bigger sales in the Saturn store than the Hyundai
 22 store.
 23 Q. I might have been unclear. I'm speaking about
 24 service.

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1 A. Bigger service sales at Saturn. We had a bigger
 2 service business.
 3 Q. Right. Let's go back. A moment ago I thought you
 4 had said --
 5 A. When Saturn went out of business, Saturn's service
 6 department was better than Hyundai's service department
 7 as far as dollar value goes.
 8 Q. I understand. I'm just -- I'm asking, I think, a
 9 different question than what you believe I might be
 10 asking. Steve Zdunczyk's last position with your Saturn
 11 company, you indicated that he had eight technicians
 12 working for him; correct?
 13 ---
 14 MS. WALKER: Objection to the form.
 15 THE WITNESS: Before Saturn went
 16 out of -- terminated, when they stopped doing business,
 17 and that, again, was in a crunch, we were down to about
 18 eight technicians.
 19 ---
 20 BY MR. KIMMEL:
 21 Q. Okay.
 22 A. We had been up as high as 14 technicians.
 23 Q. Okay.
 24 A. We increased the size of the building at one time.

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1 Q. Okay. And the Hyundai store where my client was
 2 let go also was also eight technicians; right?
 3 A. I'd have to go back and look. Either six, seven,
 4 or eight. I'm not sure.
 5 Q. Okay. And now it's 11?
 6 A. It's 11.
 7 Q. Okay. So Mr. Zdunczyk pretty much maintains
 8 somewhere between 8 and 14 technicians between Saturn
 9 and Hyundai at this time at the company?
 10 A. 14 technicians at Saturn at one time.
 11 Q. 14, then 8. And now --
 12 A. Well, as Saturn started to dissipate its sales it
 13 certainly went backwards.
 14 Q. No, I understand. But at its height it was 14.
 15 Then at its low was eight. Then he moved to the Hyundai
 16 store which is now 11; correct?
 17 A. Hyundai store has grown to 11.
 18 Q. Okay.
 19 A. The thing you didn't ask me is the Hyundai
 20 satisfaction level has increased 100 basis points which
 21 is pretty large.
 22 Q. In the last three years?
 23 A. In the last -- in 2009, 2010.
 24 Q. Okay. So it doesn't count 2011 so far?

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1 A. 2011, it's a 100 basis points better than it was in
 2 2008.
 3 Q. And Hyundai has also become known for making a
 4 better product in those last couple years; isn't that
 5 true?
 6 A. I think that those basis points are rated on how we
 7 service a customer. Would a better product help it?
 8 Possibly. But really, it's a level of service we
 9 provide the customer, from what I can see, from one
 10 dealership to the other.
 11 Q. Do you remember when car sales were so bad in 2008
 12 that Hyundai came out with an advertising campaign that
 13 gained it a lot of sales, where they guaranteed to buy
 14 cars back at a certain price you if you lost your job?
 15 A. I do.
 16 Q. Did that help sales?
 17 A. No, not for us it didn't.
 18 Q. Okay.
 19 A. I don't think anybody was thinking about losing
 20 their job would buy a car because they'd buy it back. I
 21 don't think that was a real motivator.
 22 Q. Really?
 23 A. I think 100,000 mile warranty was a real motivator.
 24 I think what they might be doing right now, guaranteeing

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1 the value of the trade in.
 2 Q. Right.
 3 A. Resale is pretty good, but I don't think people are
 4 going to -- in doubt of losing their job are going to
 5 buy a car.
 6 Q. Didn't you also move the facility from one building
 7 to another?
 8 A. Not until last year.
 9 Q. Is your new facility better equipped than your
 10 older facility was?
 11 A. It's certainly nicer.
 12 Q. Okay. Is it more comfortable for the consumer to
 13 sit and wait, if they have to wait for repairs?
 14 A. Yes.
 15 Q. Is it --
 16 A. But that happened -- that happened last -- in 2010.
 17 Q. Okay. But you're saying that the 100 points
 18 improvement occurred since my client was laid off?
 19 A. We have gotten -- I don't say this is your client.
 20 We have gotten substantially better. Now, when I add
 21 that Mr. Zdunczyk had always had good customer
 22 satisfaction. At one time at our Saturn dealership was
 23 probably in the top five in the country.
 24 Q. That's excellent. Do you feel that all your

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1 service departments perform at the same level as
 2 Mr. Zdunczyk's?
 3 A. No.
 4 Q. Which dealerships would you say a car is the
 5 poorest performing of your dealerships, when it comes to
 6 satisfaction of the type you just referred to?
 7 A. I know which ones are the best.
 8 Q. Well, I also know as a businessman, sir, you
 9 probably pay attention to the ones you don't feel are
 10 the best. Is that true?
 11 A. Well, I know the ones that I don't feel are
 12 performing to the level. McCafferty Ford in Langhorne.
 13 Q. Uh-huh?
 14 A. Okay. I believe it's on the way up. And,
 15 unfortunately, I don't think my footprint is at
 16 McCafferty Ford of Langhorne. My partner lives in
 17 Florida. I live in Doylestown. I don't go home on the
 18 weekends. Okay? All right. That, I'm not happy about.
 19 It's not what I thought it was all about. So that is
 20 not performing well in customer satisfaction.
 21 Q. Would you say all your Doylestown dealerships are
 22 performing to the same level of satisfaction?
 23 A. You know, the Cadillac dealership next door to the
 24 Chevrolet dealership, it's like performing at the same

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1 level.
 2 Q. Are you considering a replacement of the service
 3 manager?
 4 A. At Cadillac? We did probably about 15 months ago,
 5 and we just moved the general manager to another
 6 dealership.
 7 Q. The general manager, not the service manager?
 8 A. The service manager is relatively new there.
 9 Q. Why did you let go the service manager 15 months
 10 ago at the Cadillac dealership?
 11 A. Probably because of customer satisfaction.
 12 Q. Okay.
 13 A. And I'd have to go back and look at that. I'm not
 14 sure. I know that our customer satisfaction is not
 15 performing well there and is performing -- we're number
 16 five out of 73 at Chevrolet. Okay? I have a hard job
 17 understanding that, too, when they're next door to each
 18 other; right? One's got a better building. One
 19 performs in a poor building better. Okay? It's about
 20 people and treatment; right? So a great building
 21 doesn't always mean great customer satisfaction.
 22 Q. What is the name of the person you let go 15 months
 23 ago from the Cadillac store?
 24 A. I don't remember.

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1 Q. Do you know if that person was --
 2 A. Gary Pio (ph).
 3 Q. Fair enough. Was Mr. Pio with you for a long
 4 period of time or short period of time?
 5 A. Probably about four years.
 6 Q. How many years?
 7 A. Probably four.
 8 Q. Four. I thought I heard you say "40." Four. So
 9 he came along approximately 2006, 2007?
 10 A. I'd have to go back to the year we opened that, but
 11 probably around that time frame.
 12 Q. Okay. Did you ever consider that job for
 13 termination or layoffs in October of 2008?
 14 ---
 15 MS. WALKER: Objection to the form.
 16 THE WITNESS: I don't think he was
 17 here then. I think he was gone.
 18 ---
 19 BY MR. KIMMEL:
 20 Q. You think he was gone in October of 2008?
 21 A. I'd have to go back and look at those records. I
 22 know that the poor CSI was, and we had poor -- what I
 23 consider poor CSI at Chevrolet at Limerick.
 24 Q. Who was the person who replaced Mr. Pio?

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1 A. Mr. Michael Lanzetta.
 2 Q. Is that person still there?
 3 A. Yes, he is.
 4 Q. At the time that you replaced Mr. Pio, do you
 5 recall if my client had already been let go or not?
 6 A. Your client was still with us.
 7 Q. Okay. And when Mr. Lanzetta came along, how long
 8 had he been with the dealership when he assumed the role
 9 of service manager at the Cadillac store?
 10 A. He came from another Cadillac dealership when he
 11 came with us.
 12 Q. So how long had he -- was that -- when he came
 13 along for the Cadillac service, was that the first time
 14 that he had worked for the Fred Beans group?
 15 A. Yes, sir.
 16 Q. So he had no seniority when he took over for
 17 Mr. Pio?
 18 ---
 19 MS. WALKER: Objection to the form.
 20 THE WITNESS: Not with our company,
 21 no.
 22 ---
 23 BY MR. KIMMEL:
 24 Q. Okay.

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1 A. A good track record and a lot of General Motors
 2 experience.
 3 Q. Where did he come from?
 4 A. He came from KC Pontiac GMC Cadillac.
 5 Q. Okay. At the time my client was laid off, were you
 6 aware that she put in for maternity leave?
 7 A. No.
 8 Q. Did you ask HR for her personnel file in
 9 considering whether or not to let her go?
 10 A. Never discussed maternity leave.
 11 Q. Did you ever discuss with your HR department her
 12 circumstances prior to her departure? In other words,
 13 that she was pregnant and that she was going to be going
 14 on maternity leave and when?
 15 ---
 16 MS. WALKER: Objection to the form.
 17 THE WITNESS: We knew she was
 18 pregnant. We never discussed maternity leave. I have
 19 no idea how far along the pregnancy she was. I have no
 20 idea.
 21 ---
 22 BY MR. KIMMEL:
 23 Q. Is there any reason why you didn't ask my client to
 24 take an earlier maternity leave?

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1 A. A what?
 2 Q. An earlier maternity leave --
 3 ---
 4 MS. WALKER: Objection to the form.
 5 ---
 6 BY MR. KIMMEL:
 7 Q. -- instead of letting her go?
 8 ---
 9 MS. WALKER: Objection to the form.
 10 THE WITNESS: We eliminated your
 11 client's position, and I think that gave her the
 12 opportunity to collect unemployment. And we did offer
 13 her her job back when we were ready to put a service
 14 manager in.
 15 ---
 16 BY MR. KIMMEL:
 17 Q. I understand. My question, though, was did you
 18 ever ask her to take an early leave for maternity?
 19 ---
 20 MS. WALKER: Objection to the form.
 21 THE WITNESS: No. We didn't ask
 22 anybody when we eliminated those jobs that day to take
 23 an early leave.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. My client --
 3 A. We didn't treat your client any different because
 4 she was pregnant or not pregnant. We made a decision to
 5 do everything we could to save our business.
 6 Q. I understand that.
 7 A. Okay.
 8 Q. I understand that's your position. But you're not
 9 aware of anybody else who was pregnant that you let go
 10 in October of 2008; correct?
 11 A. I wouldn't have any way of knowing that somebody is
 12 pregnant.
 13 Q. But you weren't aware of anybody else, but you were
 14 aware of my client --
 15 A. No.
 16 Q. You were aware of my client being pregnant; right?
 17 A. I was.
 18 Q. How did you indicate to my client interest in
 19 rehiring her?
 20 A. We sent her a letter.
 21 Q. Who was the person or who were the people who made
 22 that decision, to send her a letter?
 23 A. Who made that decision?
 24 Q. Yes, sir.

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1 A. I think we talked about the opportunity of bringing
 2 her back.
 3 Q. How did that come about?
 4 A. We knew we wanted to hire a service manager, and I
 5 thought the right thing to do was offer her the position
 6 back.
 7 Q. You already knew my client had submitted a claim
 8 with PHRC at that time; correct?
 9 A. I'm not sure I knew that. If you say I did, but I
 10 don't remember.
 11 Q. Okay. You don't remember. That's fine.
 12 A. I think the people would know about that would be
 13 my daughter which handles those things, and Miss Bell.
 14 Q. Do you know when this decision to rehire my client
 15 was made?
 16 A. I believe it was made in 2009, and I think it might
 17 have been somewhere between May and July.
 18 Q. So you believe it was approximately six months
 19 after she was let go?
 20 A. Well, she was let go May or July of 2009.
 21 Q. She was let go in October of 2008.
 22 A. Okay. So that's about eight months. Seven months.
 23 Q. Okay. So it's your testimony you believe it was
 24 seven months between the time she was let go and the

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1 time --
 2 A. I thought about eight months.
 3 Q. Okay. So it's your testimony that approximately
 4 eight months went by from the time she was let go until
 5 the time she was re-offered employment; is that correct?
 6 A. Do I know that?
 7 Q. Is that your testimony, your recollection?
 8 ---
 9 MS. WALKER: Objection to the form.
 10 THE WITNESS: Based on -- an
 11 estimate, I know that sometime in summer or early --
 12 late summer -- or late spring rather that we decided to
 13 reinstate the position and she was offered her job back.
 14 ---
 15 BY MR. KIMMEL:
 16 Q. Can you tell me, are you familiar with how the
 17 classifications of your dealership are characterized in
 18 a performance review?
 19 ---
 20 MS. WALKER: Objection to the form.
 21 THE WITNESS: Explain to me --
 22 rephrase that question so I can understand it.
 23 ---
 24 BY MR. KIMMEL:

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1 Q. Do you know what a 60-day performance review is?
 2 A. 60 days -- we review everybody 60 days after they
 3 are hired.
 4 Q. Okay. Can you tell me, have you ever participated
 5 in a 60-day performance review?
 6 A. Not very often. Most of the time it would be left
 7 up to the general manager of the dealership or the
 8 department head.
 9 ---
 10 MR. KIMMEL: Just a moment, please.
 11 ---
 12 (Pause.)
 13 ---
 14 BY MR. KIMMEL:
 15 Q. Were there any open positions in the company at the
 16 time that my client was terminated?
 17 A. We -- not to the best of my knowledge, because we
 18 had a hiring freeze. When anybody left us, we tried
 19 like hell not to replace -- not to bring anybody back in
 20 a position.
 21 Q. Are you aware, sir, how many people were laid off
 22 from the Hyundai store from January 1st of 2008 to
 23 December 31, 2008?
 24 A. We had Paul step down to become a salesman. We had

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1 Cherie leave. I believe we lost a couple lot people. I
 2 don't know the total number. Probably could look at
 3 that spreadsheet that Mr. Szpanka had this morning.
 4 Q. Okay. Would it refresh your recollection -- strike
 5 that.
 6 Would you agree that you laid off
 7 eight employees from the Hyundai location, seven of whom
 8 worked in the body shop in 2008?
 9 A. The body shop is not part of the Hyundai location.
 10 It's part of the body shop.
 11 Q. So you're saying they are two different entities?
 12 A. Well, it's all -- that's part of Fred Beans Ford
 13 d/b/a Fred Beans Hyundai, but the body shop is not
 14 operated out of the Hyundai facility.
 15 Q. Well, for accounting purposes is it operated out of
 16 the same corporate entity?
 17 A. Yes.
 18 Q. Okay. So with that in mind, would you agree with
 19 the statement that from January 1st of 2008 to December
 20 31, 2008, eight employees from that corporate entity
 21 were let go, seven of whom were from the body shop?
 22 A. Yes.
 23 Q. Would you agree with the statement that during that
 24 same period of time my client was the only one who was

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1 pregnant and held a supervisory position?
 2 A. I'd have to go back and look at the individual
 3 people who worked in the body shop. I don't know their
 4 names. I don't know any males or females who were let
 5 go at that time.
 6 Q. I assume from your testimony, correct me if I'm
 7 wrong, that Mr. Engle was, in your opinion, not promoted
 8 to service writing manager on October 21, 2008?
 9 ---
 10 MS. WALKER: Objection to the form.
 11 THE WITNESS: Was not promoted?
 12 ---
 13 BY MR. KIMMEL:
 14 Q. Right.
 15 ---
 16 MS. WALKER: To "service writing
 17 manager"?
 18 MR. KIMMEL: "Service writing
 19 manager."
 20 MS. WALKER: Are you saying
 21 "service and writing manager" or "service writing
 22 manager."
 23 MR. KIMMEL: "Service writing
 24 manager."

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1 THE WITNESS: We refer to Mr. Engle
 2 as assistant service manager --
 3 ---
 4 BY MR. KIMMEL:
 5 Q. What is --
 6 A. -- like we do every other writer.
 7 Q. What is a "service writing manager"?
 8 A. Never heard that term before.
 9 Q. Have you ever spoken to Mr. Tucker about how he
 10 operates the Hyundai store?
 11 A. Yes.
 12 Q. Have you reviewed his testimony in this case prior
 13 to coming here today?
 14 A. No.
 15 Q. Is it your testimony that there is -- you have
 16 never heard the term "service writing manager"?
 17 A. No.
 18 Q. You have never heard that term; correct?
 19 A. No. But if I have heard -- I don't know why we
 20 would use it, not in that term or any other. I never
 21 heard that term before. If I did, it went in one ear
 22 and out the other. We have service managers and
 23 assistant service managers. And in some stores a
 24 service drive manager and a warranty clerk.

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1 Q. When you made the offer to rehire my client, did it
 2 come in a letter form?
 3 A. Yes.
 4 Q. Do you recall seeing the letter recently?
 5 A. No.
 6 Q. When was the last time you recall seeing the
 7 letter?
 8 A. I don't remember.
 9 Q. Did you write the letter?
 10 A. I believe that would have been constructed by Linda
 11 Bell --
 12 Q. Okay.
 13 A. -- or Matt Tucker.
 14 Q. Did you approve the letter before it went out?
 15 A. I'm sure I was told about it.
 16 Q. Did you --
 17 A. I don't recall if I signed it or not.
 18 Q. Okay. In the letter, did you offer my client to
 19 become employed again at the same rate of pay that she
 20 had occupied back in 2008?
 21 A. I don't know. Do you have a copy of the letter?
 22 Q. I'm just asking you if you recall.
 23 A. I don't know. I don't know.
 24 Q. Okay. Do you recall ever offering my client to

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1 return to the same seniority position?
 2 A. I'm sure.
 3 ---
 4 MS. WALKER: Objection to the form.
 5 THE WITNESS: I'm sure we would
 6 have.
 7 ---
 8 BY MR. KIMMEL:
 9 Q. Do you know if your letter said that you would
 10 have?
 11 A. I certainly believe it would be our intent.
 12 Q. Do you know if you sent it in the letter?
 13 A. No, I don't.
 14 ---
 15 MR. KIMMEL: Counsel, you can laugh
 16 all you want. And your laughter --
 17 THE WITNESS: No, I don't.
 18 MR. KIMMEL: Excuse me. Stop for a
 19 second. We're on the record.
 20 Counsel, you have been laughing at
 21 my question.
 22 MS. WALKER: I'm sorry.
 23 MR. KIMMEL: Wait a second. This
 24 is not a funny day. This is a serious matter. And the

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1 fact that you are laughing at my question is really
 2 disrespectful and I don't appreciate it.
 3 MS. WALKER: I'm not laughing at
 4 your question. I'm laughing at the fact that the
 5 questions are all asked, he said, "I don't remember what
 6 was in the letter," and so you are going to continue to
 7 ask him about things he doesn't remember. I just think
 8 that it's a waste of time, to ask questions about a
 9 subject he's already said "I'd have to see the letter.
 10 I don't remember what was in it." To keep asking him,
 11 "Was this in the letter? Was that in the letter," is a
 12 waste of time.
 13 MR. KIMMEL: Have you ever in your
 14 career, Counsel, refreshed the recollection of a witness
 15 at a deposition?
 16 MS. WALKER: Yeah, with a document
 17 that he's asked to see.
 18 MR. KIMMEL: Have you ever done it
 19 any other way?
 20 MS. WALKER: No.
 21 MR. KIMMEL: Okay. Well I have, so
 22 watch and learn.
 23 MS. WALKER: Okay.
 24 ---

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1 BY MR. KIMMEL:
 2 Q. Sir, do you recall in that letter if you described
 3 that my client's pension and other employee benefits
 4 would be reinstated if she took the position back?
 5 A. I don't know. May I see the letter?
 6 Q. Did you ever -- if you recall, state --
 7 ---
 8 THE WITNESS: Do you have the
 9 letter, Beth?
 10 MS. WALKER: I'm not allowed to
 11 show it to you.
 12 ---
 13 BY MR. KIMMEL:
 14 Q. Did you ever state in the letter, if you recall,
 15 that my client will be treated as if she was employed at
 16 the dealership as a full-time employee at all times
 17 subsequent to October 21, 2008?
 18 A. Craig, I don't remember.
 19 Q. Okay. That's fine.
 20 A. I certainly assume if we asked her back, and I know
 21 we asked her back, that we'd certainly treat her right.
 22 Q. I understand. I'm just asking --
 23 A. Okay.
 24 Q. If I can refresh your recollection, I'm asking

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1 these questions. I may not be able to refresh your
 2 recollection.
 3 A. Okay.
 4 Q. I'm trying --
 5 A. You can't. I can't remember.
 6 Q. Okay. Fair enough.
 7 A. Listen, you're going through a pretty bleak time.
 8 I was down in Washington, D.C. trying to defend our
 9 business, trying to get our dealership reinstated,
 10 losing three franchises, no bank line of credit.
 11 Listen, it's a pretty tough time.
 12 Q. I think a lot of people went through tough times,
 13 sir, and I think my client who had a newborn baby --
 14 A. Your client went through --
 15 Q. -- and a husband who you said was not very
 16 industrious, probably didn't go through good times
 17 herself.
 18 A. I don't know that.
 19 ---
 20 MS. WALKER: Objection to the form.
 21 THE WITNESS: I don't know that. I
 22 just want to reiterate to you that during that period of
 23 time I was doing everything I could to protect as many
 24 people here and myself for the people that still had

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1 jobs here. My job was to protect them.
 2 MR. KIMMEL: One second. I may be
 3 finished. I just want to take a look.
 4 ---
 5 (Pause.)
 6 ---
 7 BY MR. KIMMEL:
 8 Q. Have you ever reviewed any materials such as the
 9 expert report that was provided to your counsel in this
 10 case on behalf of my client?
 11 A. Expert report?
 12 Q. The expert report.
 13 A. No.
 14 ---
 15 MS. WALKER: Objection to the form.
 16 THE WITNESS: Unless I saw it, I
 17 don't know.
 18 ---
 19 BY MR. KIMMEL:
 20 Q. Do you remember seeing it?
 21 A. No.
 22 Q. Have you ever arbitrated any claims of any
 23 employees who have asserted some type of wrongful
 24 termination against the company?

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1 A. I don't remember.
 2 Q. Are you aware of any arbitration disputes by any
 3 former employee that you have been asked to participate
 4 in or to respond to personally?
 5 A. I don't remember.
 6 Q. Do you remember any on behalf of the company that
 7 you --
 8 A. No. My daughter may have, but I don't think I
 9 have.
 10 Q. Would your daughter typically be the person to
 11 handle those, if there were any?
 12 A. If she's involved with HR.
 13 Q. Okay. In your employee handbook on page 36 it's a
 14 policy that you have called the Integrity Policy. Are
 15 you familiar with that?
 16 ---
 17 MS. WALKER: Objection to form.
 18 THE WITNESS: I'd have to see it.
 19 ---
 20 BY MR. KIMMEL:
 21 Q. I'm going to show you the handbook that's been
 22 provided by your counsel, page 36. Take a moment and
 23 tell me when you are ready to answer some questions
 24 about that.

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1 A. (Witness reviewing document.) Go ahead.
 2 Q. You've had a chance to review the Integrity Policy?
 3 A. I have.
 4 Q. Did you implement the Integrity Policy into the
 5 handbook or did somebody else?
 6 A. Did I --
 7 Q. Yes.
 8 A. -- personally?
 9 Q. Yes.
 10 A. No.
 11 Q. Do you know who did?
 12 A. My daughter's been responsible, with my review.
 13 Q. Okay.
 14 A. And Linda Bell. And a long period of time it took
 15 to develop this. This integrity -- this whole document
 16 was not done in one day. This has been a
 17 work-in-progress since we have been in business.
 18 Q. Okay. Would you agree with what the Integrity
 19 Policy states?
 20 A. Yes.
 21 Q. So it says, "The Fred Beans Family of Dealerships
 22 has an excellent reputation for conducting its business
 23 activities with integrity, fairness, and with the
 24 highest ethical standards." Do you see that?

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1 A. Yes, sir.
 2 Q. And it says, "As an employee you not only enjoy the
 3 benefits of that reputation but are also obligated to
 4 apply that in every business activity."
 5 A. Uh-huh. Yes.
 6 Q. Can you tell me what benefit my client enjoyed as
 7 part of the Integrity Policy in October of 2008?
 8 ---
 9 MS. WALKER: Objection to the form.
 10 THE WITNESS: I don't think
 11 eliminating a job has anything to do with integrity at
 12 all.
 13 ---
 14 BY MR. KIMMEL:
 15 Q. Okay.
 16 A. We eliminated a job out of -- because of the
 17 economic conditions that we were faced with at the time.
 18 I don't think that has anything to do with our ethical
 19 reputation at all.
 20 Q. Okay. What is your understanding -- your
 21 understanding of "ethics" as business?
 22 A. Honesty.
 23 Q. Honesty.
 24 A. Honesty. Integrity. Telling somebody what you are

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1 going to do and do it.
 2 Q. Okay. You said, I believe, earlier that you were
 3 starting to consider cutbacks in August of 2008;
 4 correct?
 5 A. Yes.
 6 Q. Did you ever exercise your Integrity Policy and
 7 tell your employees about what you were thinking
 8 honestly in August of 2008?
 9 A. I think we had communicated with employees in
 10 circle meetings and we were concerned about what was
 11 going on in the economy, the things we were doing to
 12 reduce our expenses. I think that we communicated that
 13 fairly, while there may even be several letters sent to
 14 employees homes telling them about what we felt that
 15 would lie ahead of us.
 16 Q. I understand. I think I have reviewed some of
 17 those letters.
 18 A. Okay.
 19 Q. Do you know --
 20 A. So I believe we acted in a -- I believe it's no
 21 question in my mind that we didn't do the right thing.
 22 I don't know where this is going.
 23 Q. Okay. Is there any reason why you didn't tell my
 24 client who was pregnant and out on leave in a few months

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1 that she might be somebody who's let go later in the
 2 year?
 3 ---
 4 MS. WALKER: Objection to the form.
 5 THE WITNESS: I don't know who's
 6 pregnant and who isn't, and I don't know exactly when I
 7 learned that she was pregnant.
 8 ---
 9 BY MR. KIMMEL:
 10 Q. Okay. All right.
 11 A. I don't think that I -- I don't think I knew she
 12 was pregnant when our banks were winding down and
 13 closing.
 14 Q. Did you give her a chance to improve her
 15 performance so that you could allow her to be productive
 16 in a way that you felt the service department --
 17 A. I think she had complete autonomy to perform her
 18 performance. She was never held back in any level. She
 19 was given every opportunity -- and I don't know if we
 20 talked about performance level today. But we never held
 21 her back in any way. She was given every opportunity to
 22 improve her performance.
 23 Q. I'm not saying --
 24 A. We eliminated the position. This is not about

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1 performance. This is about economics. This is about
 2 taking money off the table and surviving. This is about
 3 re-assigning duties. It's not about her level of
 4 integrity or re-assigning duties. We re-assigned duties
 5 to Matt Tucker. We eliminated the position. We reduced
 6 the expense. We reduced a lot of expenses in that
 7 dealership.
 8 Q. Okay.
 9 A. And we're still here.
 10 Q. Right.
 11 A. And now we are creating jobs again.
 12 Q. Right. But you did say earlier in your testimony
 13 that her profitability in the service department was not
 14 what you would want -- would have wanted it to be and
 15 you looked at that in making your decision to let her
 16 go.
 17 A. We're talking about -- we're using her as a let go.
 18 We're looking at the profitability in the department and
 19 what can be done in that department to make it more
 20 profitable, to make it contributory to operations, and
 21 the best place we could cut was eliminate that job.
 22 Q. Well, I'm sorry, sir --
 23 A. I understand that she's a female. And I understand
 24 today she's pregnant. And I understand that's why I'm

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1 here. But I'm also here today sitting here -- we
 2 wouldn't be sitting here if we didn't make some of those
 3 moves. So I had full understanding that she was
 4 pregnant. What kind of respect would you have for me if
 5 I said because she's pregnant she's going to be
 6 protected, she's going to have a job. Did I take a
 7 risk? I don't think I took a risk. I think I did what
 8 I believe was right for our company in order for it to
 9 survive.
 10 Q. Okay. So I appreciate --
 11 A. You said to me, "Freddie, she's a woman. Please,
 12 you know, be careful. She's a protected class." They
 13 wouldn't be the right reasons to do this. The right
 14 reasons are the right reasons. They are about her own
 15 integrity. Her own credibility. About keeping 1,600
 16 people that are here today.
 17 Q. And if you didn't let go of my client, those 1,600
 18 people wouldn't be here today --
 19 ---
 20 MS. WALKER: Objection to the form.
 21 ---
 22 BY MR. KIMMEL:
 23 Q. -- is that what you're saying?
 24 A. We didn't let go of your client -- and many other

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1 things that were taking place that day. \$6,800,000 in
 2 expenses cut. We wouldn't be here today.
 3 Q. Are you telling me, your testimony, because of my
 4 client --
 5 A. No.
 6 Q. -- you were having a problem with your \$6,800,000
 7 expense problem?
 8 ---
 9 MS. WALKER: Objection to form.
 10 THE WITNESS: We went through each
 11 dealership. If we didn't make painful decisions that
 12 were very painful --
 13 MS. WALKER: Objection to form.
 14 ---
 15 BY MR. KIMMEL:
 16 Q. How painful would it have been to keep Cherie
 17 Santai on?
 18 ---
 19 MS. WALKER: Objection to the form.
 20 THE WITNESS: For that dealership,
 21 it think it would have been extremely painful.
 22 ---
 23 BY MR. KIMMEL:
 24 Q. Didn't you say earlier in your testimony, there's

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1 two ways a businessman looks at business. One is to cut
 2 expenses and another is to add revenue?
 3 A. We couldn't add revenue at that time.
 4 Q. Didn't you say that?
 5 A. I said that two ways to improve business is to
 6 reduce expenses and increase revenue. We had no way to
 7 increase revenue.
 8 Q. Did you, in August of 2008, meet with your service
 9 managers, including my client, and say, "Hey, look, I
 10 need you to improve your revenue because we're going to
 11 have to do that or cut expenses because I can't do
 12 both"?
 13 A. Absolutely.
 14 ---
 15 MS. WALKER: Objection.
 16 THE WITNESS: Every one of our
 17 service managers knew that.
 18 ---
 19 BY MR. KIMMEL:
 20 Q. Was that ever written down? Was that ever conveyed
 21 in a writing? Was that ever said in a meeting?
 22 A. I think that you heard Mr. Szpanka say here today
 23 that we as an operational group meet with these people
 24 at least once a month and review the figures. So, yes,

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1 would that have been clearly stated that we have to
 2 either reduce expenses or increase our revenue, but
 3 we're going nowhere fast, she certainly knew that. She
 4 knew that her salary gross was 36 percent. She knew
 5 that our goal was 50 percent.
 6 Q. In a good economy?
 7 ---
 8 MS. WALKER: Objection to the form.
 9 THE WITNESS: We had dealerships
 10 before -- close to those levels or those levels in a bad
 11 economy because we had our expenses in line.
 12 ---
 13 BY MR. KIMMEL:
 14 Q. You seem to have a good recall of that information.
 15 A. I have a good recall of expenses and what the
 16 percentages should be.
 17 Q. Okay.
 18 A. And service -- total service salaries should be 25
 19 percent, not 40 percent. And you have the figures
 20 there. Can I recall expense control figures?
 21 Absolutely.
 22 Q. How many of those service departments met your 50
 23 percent criteria at the time that you made these
 24 decisions to cut?

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1 A. Probably -- probably 30 percent.
 2 Q. So why didn't you cut everybody who wasn't doing
 3 what my client wasn't doing?
 4 A. Because they were smaller -- the larger departments
 5 and you couldn't eliminate that position.
 6 Q. I see.
 7 A. Six mechanics, seven mechanics can run without a
 8 manager. 30 cannot run without a manager.
 9 Q. Right.
 10 A. And a general manager that has 100 people for him
 11 to employ on a daily basis is a lot different than maybe
 12 35 that Mr. Tucker had, or 30.
 13 Q. Were your mechanics fully -- fully engaged in work
 14 during the downside in the economy; in other words, were
 15 your mechanics fully utilized at this time, your
 16 technicians?
 17 A. I don't think our technicians went backwards,
 18 because if we lost a technician they picked up the work
 19 that was there.
 20 Q. Okay.
 21 A. I think technicians, other than being eliminated,
 22 are eliminating themselves because they couldn't make a
 23 living. The technicians pay stayed pretty constant.
 24 Q. Did your reimbursement period from the manufacturer

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1 become longer during the economic --
 2 A. "Reimbursement"? What do you mean?
 3 Q. Warranty reimbursement.
 4 A. Did the manufacturer slow down paying our bills?
 5 Q. Yes.
 6 A. Not a lot. General Motors did for a while.
 7 Q. Did Hyundai?
 8 A. Not to the best of my knowledge.
 9 Q. So the faster you could submit the warranty and the
 10 customer paying claims --
 11 A. Warranties are fairly an insignificant amount of
 12 our business with the Hyundai today.
 13 Q. So the retail work is the big ticket item for the
 14 service department?
 15 A. Within Hyundai there is no big ticket work or very
 16 little. Hyundai is maintenance work. Not much repair.
 17 Q. Okay.
 18 A. I think last month we did about 200, dot, hours of
 19 maintenance work. That's really one-and-a-half --
 20 service, service, repairs. All the rest today is
 21 maintenance. These cars don't break down now.
 22 Q. So did you need eight technicians in 2008?
 23 A. I don't remember whether we crossed the end of 2008
 24 with eight technicians or not.

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1 Q. Okay.
 2 A. I could look that up. I don't know that. I think
 3 it may have been less than that.
 4 Q. Going back to Szpanka-1 for a moment that we
 5 discussed this morning. Are you familiar with this
 6 document?
 7 A. I am.
 8 Q. Okay. And you heard Mr. Szpanka testified about
 9 it?
 10 A. Yes, I did.
 11 Q. Do you know if these projections for 2009 were met
 12 in the calendar year 2009?
 13 A. I would say the -- 2009 these expenses -- most of
 14 these expenses were made, because we made them -- we
 15 eliminated a lot of people, and we did it in a really
 16 quick fashion, and then we started to pick at these
 17 other expenses to 401K reduction, the other personnel,
 18 the layoffs in New Holland.
 19 Q. Okay.
 20 A. I believe that we did a good job executing on this
 21 document.
 22 Q. Specifically --
 23 A. I believe we did.
 24 Q. Specifically as to the Hyundai store, do you see

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1 the expected reduction in service department listed
 2 there?
 3 A. I do.
 4 Q. Do you know if that number was met?
 5 A. I think about \$60,000 of that number was met.
 6 Q. Out of how much?
 7 A. Out of -- I'm sorry, on -- I'm sorry. I looked at
 8 the wrong -- service personnel, \$61,000 was the
 9 estimate. I believe it was close to \$60,000.
 10 Q. Okay.
 11 A. I have those numbers.
 12 ---
 13 MR. KIMMEL: Okay. Thank you, sir.
 14 I have nothing further.
 15 MS. WALKER: I have no questions.
 16 ---
 17 (Two-page Employee Exit Report
 18 marked Beans-1 for identification.)
 19 ---
 20 (Oral deposition was concluded at
 21 4:58 p.m.)
 22 ---
 23
 24

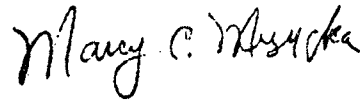
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1
 2 CERTIFICATION
 3
 4
 5
 6 I HEREBY CERTIFY that the
 7 proceedings and evidence are contained fully and
 8 accurately in the stenographic notes taken by me upon
 9 the foregoing matter and that this is a correct
 10 transcript of same.
 11
 12
 13
 14 MARCY C. MUZYCZKA, RPR, CCR
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C E R T I F I C A T I O N

I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter and that this is a correct transcript of same.



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