

STATE OF OHIO)
) SS: IN THE COURT OF COMMON PLEAS
 SUMMIT COUNTY)

CASE NO. CV 94 03 0755

KEVIN M. AKERS, ET AL)	
)	
PLAINTIFFS,)	VIDEOTAPE DEPOSITION
)	
VS .)	OF
)	
MARGARET THORNSBERRY,)	<u>DR. BATTAGLIA</u>
)	
DEFENDANT.)	JUDGE MORGAN

VIDEOTAPE DEPOSITION taken before Tom Baker, a Notary Public within and for the State of Ohio, pursuant to Notice, and taken on October 19, 1994 at the office of Dr. Battaglia, 2383 South Main Street, Akron, Ohio. Said deposition taken of Dr. Battaglia is to be used as evidence on behalf of the Plaintiffs in the aforesaid cause of action, pending in the Court of Common Pleas, within and for the County of Summit, for the State of Ohio.

APPEARANCES:

MR. DEAN YOUNG,

On Behalf of the Plaintiffs,

MR. FRANK MAZGAJ,

On Behalf of the Defendant.

1 OPERATOR: We're on the record.
2 Doctor, would you raise your right
3 hand, please? Do you swear the
4 testimony you are about to give to be
5 the truth, the whole truth, and nothing
6 but the truth, so help you, God?
7 DOCTOR BATTAGLIA: Yes.
8 DURING DIRECT EXAMINATION BY MR. DEAN YOUNG:
9 Q Doctor, my name is Dean Young, You and I have
10 met previous today, because I have visited with you to
11 learn about the treatment that you provided to Judy Akers
12 and also Kevin Akers, is that correct?
13 A Yes.
14 Q Doctor, you were the chiropractic doctor that
15 treated each of those two individuals, Judy and also Kevin?
16 A That's true.
17 Q Doctor Battaglia, for the, for purposes of this
18 record, would you state your name?
19 A Anthony R. Battaglia.
20 Q And Doctor, you're licensed to practice as a
21 chiropractic doctor in the state of Ohio?
22 A Yes.
23 a Where is it that, that your practice is located?
24 A 2383 South Main Street, which is in South Akron.
25 Q And Doctor, does the, does the practice that you

1 have go by a particular name?

2 A American Chiropractic and Rehabilitation.

3 Q Is that a practice that you founded?

4 A Yes.

5 Q Doctor, how long have you been licensed as a
6 chiropractic doctor in the state of Ohio?

7 A 10 years.

8 Q For those who might not know, and I, I was not
9 familiar with all of the training that goes into becoming a
10 chiropractic doctor, could you, could you tell us a little
11 bit about the training?

12 A After meeting pre-chiropractic medical school
13 requirements at Youngstown State, which is basically a pre-
14 med degree, I attended Cleveland Chiropractic College in
15 Kansas City, Missouri, which is the name of the school
16 there- It's an additional four years of, of year round
17 training, similar to what an osteopathic physician or a
18 medical physician would go through with the basic sciences
19 of anatomies, and chemistries, and biologies, and such,
20 except that the third year we'll go into our specialty of
21 treatment which is manipulation and rehabilitative tech-
22 niques, where medical physicians or osteopaths may go into
23 more pharmacology and that type of treatment.

24 Q Similar to a medical doctor, are you required to
25 pass boards, that is examination to be licensed to practice

1 in this state?

2 A Yes.

3 Q Doctor, your specialty of practice differs some-
4 what from a medical doctor, does it not?

5 A Yes.

6 Q Could you give us a definition of what a chiro-
7 practic doctor does?

8 A A chiropractic physician, the main difference is
9 that we, we specialize in the neuromuscular skeletal system
10 I guess would be the best way to place it. We treat the
11 joints and articulations of the body as well as the, the
12 corresponding muscles and ligaments. We use specific
13 manipulative type procedures, which we call manipulation or
14 spinal adjustments. We also use other forms of rehabilita-
15 tion, such as physical modalities, such as ultrasound, and
16 electrical stimulation, and such, and then in our practice
17 we, we use a lot of exercise protocols, which, which I
18 classify as active treatment.

19 Q Doctor, what kind of injury or problem do you
20 specialize in?

21 A Well, we, you know, we probably treat mostly back
22 related injuries, so lower back pain, neck pain, headaches,
23 we do a great, we do a great deal of sports injuries also,
24 such as shoulder injuries or knee injuries, and that type.

25 Q Doctor, would it be correct that in the practice

1 as a chiropractic doctor, that you would not prescribe
2 medication, or give injections, or perform surgeries?

3 A No, we don't, we don't do any of those.

4 Q And Doctor, if you suspected that that nature, or
5 treatment of that nature might be required to one of your
6 patients, what would you do?

7 A Could you ask that again?

8 Q If one of those kinds of treatment was required,
9 or you suspected it might be required to a patient, what
10 would you do?

11 A We'd either contact that patient's family doctor
12 or make the appropriate referral to a specialist.

13 Q In that regard, have you ever heard of the
14 terminology, primary care physician?

15 A Yes.

16 Q As a chiropractic doctor, do you serve as a
17 primary care physician?

18 A Yes.

19 Q What does that mean?

20 A I believe that means that a patient can come to
21 our office first. They do not need to be referred to our
22 office. We're able to see the patient first and then make
23 decisions on what the appropriate treatment should be.

24 Q Doctor, what I'm going to do at this point is to
25 ask you some questions about each of your patients, Judy

1 Akers and Kevin Akers, and let me, let me deal with one at
2 a time.

3 A Okay.

4 Q First of all, as to, to Judy Akers, and Doctor,
5 for purposes of these questions, let me ask you, do you
6 have the records of your examination and treatment of Judy
7 Akers here present?

8 A Yes.

9 Q If you need at any point in my questions to, to
10 take a look at those records, please do that. Doctor, when
11 did you first see Judy Akers?

12 A Judy was first seen in our office on May 5th,
13 1992.

14 Q And, could you tell us a little bit about the
15 procedure that you follow when a patient first presents to
16 you with, with some kind of problem?

17 A Yes. We have a variety of forms we'll have the
18 patient fill out so we can try to get an idea of the
19 history of the condition and then the patient will be put
20 into an examination room for a consultation and, and
21 examination.

22 Q In the conduct of the examination, do you subject
23 the patient to tests, so that you can verify the existence
24 of the condition?

25 A Yes.

1 Q And, do you also rely upon the information that
2 the patient gives you to determine what's wrong?

3 A Yes.

4 Q Doctor, can you tell us what you determined upon
5 examination **of** Judy Akers when she presented for care?

6 MR. MAZGAJ: **Ob**jection.

7 MR. YOUNG: Can you tell me the basis
8 of the objection so we?

9 MR. MAZGAJ: Yeah, determine if you're
10 asking him what his observations were
11 that day, I have no problem with that.
12 If you're asking him to state a
13 diagnosis based on that day, I think
14 the question is improper.

15 Q Okay. We'll get to the diagnosis in a minute.
16 Well, would you tell me the results of your examination.
17 I'll ask you about the diagnosis here later. What was the
18 history in terms of the symptoms and what was the results
19 or observations that you made upon examination?

20 A Well, the patient presented with chief complaints
21 of lower back pain, midback pain, right shoulder pain, and
22 ankle, ankle pain. **And**, so we reviewed those conditions,
23 not only just asking questions **as** far as reviewing the
24 history with the patient, but we put her through ortho-
25 pedic/neurological examination to help us, you know, come

1 up with a working diagnosis at that point.

2 Q Doctor, can you describe for me some **of** the
3 orthopedic --

4 A Sure.

5 Q -- neurologic, and other exams that you would
6 have performed on her, that is those which ended up
7 supporting your diagnosis?

8 A Okay. Well, we put the patient through a range
9 of motion, which is planes of movement, that a patient or
10 person should normally be able to go through without any
11 pain, we did a variety of other orthopedic tests, we
12 checked the patient's reflexes for a neurological test. Do
13 you want me **to** tell --

14 Q Yes.

15 A -- you what tests were positive and were negative
16 or --?

17 Q Yes.

18 A Okay,

19 Q How about the tests that indicated to you that,
20 that she **in** fact had a problem or injury that she was
21 suffering from?

22 A Well, on the first day we put her through range
23 **of** motion. She had a reduced, reduced lumbar range **of**
24 motion, which is probably the chief complaint that we
25 treated Judy for, was for her lower back. She had some

1 reduction of movement with pain on the initial date. She
2 also had some other orthopedic tests. One was called Eli's
3 test, which is just another test that if a patient lays on
4 their stomach, we raise the leg. If it, if it exacerbates
5 or brings out the back pain it's a positive test. We did
6 some muscle testing on Judy to test strength of certain
7 muscles and how flexible she was in other areas of those
8 muscles. And, those are the tests we used to come up with
9 the diagnosis.

10 Q Doctor, based upon the testing that you performed
11 and the examination and the history taken from her on May
12 the 9th, or I'm sorry, is it May 5th?

13 A May 5th, yes.

14 Q May 5th, 1992, did you arrive at a diagnosis?

15 A Yes.

16 Q Doctor, based upon all of those things, do you
17 have an opinion within reasonable probability as a chiro-
18 practic doctor, what injuries Judy Akers had on May 5th,
19 1992 when you examined her?

20 A Yes.

21 Q Go ahead and tell us what injuries she had?

22 A Our initial diagnosis was of a lumbar
23 sprain/strain. I believe it was a dorsal sprain/strain,
24 which was for the midback, and then we just verified that
25 she had a shoulder sprain/strain of the right shoulder and

1 an ankle sprain also.

2 Q Now Doctor, you've used some terminology that I
3 want you to explain for us, so that we know exactly what
4 you mean by it. And, if in the course of this there are
5 **any** aids by way of models or diagrams that would, would
6 help you explain it, please go ahead and **do** that?

7 A Okay.

8 Q First of all, you said a cervical sprain/strain?

9 A Lumbar and dorsal sprain/strain.

10 Q Okay, I'm sorry, lumbar and dorsal
11 sprain/strain. When you're talking about lumbar, what
12 portion of the body are you referring to?

13 A We're talking about the lower back. I'll show
14 you on this chart here. We're talking about this region of
15 the back here.

16 Q Doctor, if I can stop you for a minute, you're
17 probably going to have to hold that in a way that it's
18 stable and that our videographer can, can hone in on it.
19 I'm, I was stopping you in the explanation of what a
20 lumbar, dorsal sprain/strain is?

21 A Okay. A lumbar sprain/strain is going to be
22 injury to the muscles in the lower back and to the
23 ligaments in the lower back region here. The dorsal
24 sprain/strain is going to be more through the midback and
25 sometimes it'll even go up into the lower neck region,

1 where the muscles work their way up into there. **So**, it was
2 an injury to these supporting muscles of the spine.

3 Q Now, did you do an x-ray?

4 A Yes.

5 Q Would **a** sprain or strain show up on an x-ray?

6 A No.

7 Q Doctor, can **you** explain to me exactly what a
8 sprain/strain is as it relates to these parts of the body?

9 A A strain is an injury to the muscles of the area
10 in question, and the sprain is going to be an injury to
11 the, to the ligaments of the, of the articulations of the
12 joints in that area.

13 Q You're using terms that I don't use every day, so
14 that's why I'm stopping you. Articulations?

15 A That's the joints, so say between the individual
16 vertebra **of** the spine there's going to be ligaments that
17 hold those vertebra together, okay, and those ligaments
18 have a certain amount that they'll stretch normally and,
19 you know, they're there to kind of hold everything
20 together. When an injury like this happens, those
21 ligaments are stretched further than they normally would go
22 and then that'll cause some tearing of the ligaments. With
23 the muscles, they're a bigger, the muscles will take up a
24 bigger area of the back, try to keep this in simple terms,
25 but, they'll once again attach from vertebra to vertebra,

1 A No, I don't.

2 Q Doctor, you, you indicate that most all of the
3 symptoms began within a period, a certain period after the
4 accident, and I want to ask you this question. Based on
5 your experience, specializing in this kind of injury, your
6 training, do you have an opinion within reasonable
7 probability as a chiropractic doctor, as to whether all of
8 the symptoms that she complained of should occur immediate-
9 ly at the time of the accident?

10 MR. MAZGAJ: Objection.

11 A I'll try, I think I understand what you're ask-
12 ing. In her case I believe initially she noted ankle pain
13 immediately after the accident, and I think shoulder pain,
14 and I believe the back pain started like 48 hours or 72
15 hours after the accident, so that's pretty normal
16 progression of, of a case like that. A lot of times,
17 especially in the bigger muscles, you may not notice the
18 symptoms till a day or two later. You know, many times
19 we'll treat patients who, you know, say were raking leaves
20 all weekend and didn't feel any pain in their back, but on
21 Tuesday they can't get out of bed. You know, so a lot of
22 times there's a delayed reaction with all degrees of
23 trauma.

24 Q Doctor, asking it so I'm specific, does this kind
25 of injury sometimes, or I'm sorry, within, based on your

1 training and experience, do the symptoms of this kind of
2 injury often come on gradually?

3 MR. MAZGAJ: Objection.

4 A Yes.

5 Q And, would that be you opinion within reasonable
6 probability as a chiropractic physician?

7 A Yes, it would.

8 MR. MAZGAJ: Objection. (vo)

9 a Doctor, you have mentioned raking leaves as some-
10 thing that might cause somebody to seek treatment of a
11 chiropractic physician. How was the injury that, that Judy
12 Akers suffered in this auto accident different from
13 patients who might seek treatment due to some activity like
14 raking leaves?

15 MR. MAZGAJ: Objection.

16 Q And, I ask you for, you know these matters are
17 based on your experience and training as a chiropractic
18 physician?

19 MR. MAZGAJ: Objection.

20 A Well, raking leaves would be a very mild type of
21 a strain injury. It probably wouldn't even involve the
22 ligaments really. In a car accident like that, where the
23 body would get snapped very suddenly, it, you know, it's
24 going to be more of a, a more severe, traumatic type of
25 injury, which is not only going to strain the muscles, but

1 then the ligaments would get involved. And, so there's,
2 it's a big difference in as far as level of, you know, of
3 intensity of the injury.

4 Q And Doctor, based upon your examination and
5 treatment of Judy Akers as well as your experience as a
6 chiropractic doctor, do you have an opinion within
7 probability in your profession as to whether the injury
8 suffered by Judy Akers, or injuries, would affect her
9 ability to perform activities of normal daily living?

10 MR. MAZGAJ; Objection.

11 A Yes, I believe they will affect normal.

12 Q Can you explain that?

13 MR. MAZGAJ: Objection.

14 A Well, throughout, throughout Judy's treatment and
15 probably one of the reasons her treatment was extended
16 probably further than I initially probably thought it would
17 go is because she had difficulty sitting, and it seemed
18 like sitting at work aggravated her condition quite easily.
19 Unfortunately, that's what she did on a daily basis at
20 work. Other activities, you know, general activities as
21 bending or such could, could aggravate this condition, but
22 in her case, you know, specifically, you know, mild, just
23 sitting for long periods of time, maybe doing sane chores
24 around the house. I believe a couple times she'd note some
25 increased pain.

1 Q Can you explain why that is?

2 MR. MAZGAJ: Objection.

3 A You know, once again, you know, due to the, the
4 initial injury', those muscles and ligaments heal with scar
5 tissue. There's a certain amount of deconditioning that'll
6 take place after that kind of an injury occurs, due to, due
7 to inactivity. Even though we try to get the patient
8 exercising and try to prevent that, a certain amount of de-
9 conditioning will set in. And, due to those two things,
10 the scar tissue and the deconditioning process, it's not
11 unusual to have that ongoing episodes of periodic pain.

12 Q I need to ask you to explain that a little better
13 for us if you can, based on your training and experience,
14 this subject of scar tissue. Can you explain how that
15 relates to Judy Akers?

16 MR. MAZGAJ: Objection. Coaxing. (vo)

17 A Well, it goes hand in hand with the sprain/strain
18 type of injury. You know, whenever the ligament, when the
19 ligament is stretched further than it's normally going to
20 go, it doesn't go back to that normal length. It's going
21 to stay at that stretched out length and it's going to heal
22 with scar tissue there. And then, that scar tissue is
23 going to cause certain restrictions that, you know, when
24 the patient does certain activities, could aggravate, you
25 know, those ligaments and vice versa, could aggravate those

1 muscles. **So**, the muscles, once again, could, would heal
2 with a fibrous build up of tissue that makes them more re-
3 strictive and then certain bending motions, you know --.
4 Sitting for long periods of time, what happens is the back
5 muscles fatigue faster and that achiness will set in, so.

6 Q Does, does that, that type of injury make the
7 muscles and ligaments less flexible?

8 MR. **MAZGAJ**: Objection. (vo/low)

9 A Makes, yes, makes them less flexible, yes.

10 Q Doctor, what was your plan of treatment for Judy
11 Akers, based upon your diagnosis and examination?

12 A Well, normally in a case like this we'll start
13 out with what we call relief care, which can take any where
14 from two to six weeks, and basically what we're doing at
15 that level is we're trying to reduce the, the severe, acute
16 symptoms. You know, we're trying to get it to where the
17 pain's tolerable. And, then from that point, you know,
18 **we'll** work into a therapeutic mode of care which is to con-
19 tinue to reduce the, the active symptoms, and then once we
20 feel the patient can tolerate it, we'll start working in
21 Some back exercises, in her case back and shoulder
22 exercises to try to prevent the scar tissue build up, or
23 try to reduce it as much as we can, and also to try to
24 prevent deconditioning from setting into the muscles. If,
25 if all goes well, we can treat a patient anywhere from six

1 to twelve weeks, initially, intensely, you know, to, to
2 receive the best results. Sometimes, sometimes patients,
3 you know, follow that time frame and respond right on
4 schedule, and sometimes they don't.

5 Q What happened in Judy's case?

6 A Judy responded as long as she was under care and
7 was being supervised with her exercises, and was receiving
8 the modalities and the manipulation, you know, on a regular
9 basis. I think, instead of like a six week mode of care,
10 she was more like a twelve week or even a little longer as
11 far as intense care.

12 Q What do you mean, Doctor, when you say respond to
13 the care?

14 A Well, in, in her case she had temporary relief,
15 but we weren't getting that long term relief, so we, when I
16 say respond I always kind of have a positive outlook. I'm
17 looking for long term relief and trying to get the patient,
18 you know, back as close to as they were prior to the
19 injury. In her case she would have periods of relief, and
20 we would think we were on track, and then maybe after a
21 short period of time not receiving any treatment and then
22 the daily activities would, you know, start to aggravate
23 her condition and she'd be back in for more treatment.
24 **And**, that kind of went on for, oh gosh, I think we ended up
25 over all, she may have been under my care for, I want to

1 say 10 months, does that sound right? And, I think the
2 majority of her care was given during the first four months
3 and then we saw her sporadically, you know, over maybe a
4 six month period of time, maybe a little longer.

5 Q Doctor, do you have occasion in your practice as
6 a chiropractic physician, to refer patients of yours to
7 other disciplines --

8 A Yes.

9 Q -- other health care providers?

10 A Yes, I work regularly with other health care
11 providers.

12 Q Did you, did her condition cause you to do that?

13 A Yes, I did that probably, you know, the third or
14 fourth month of care, and mainly because I wasn't happy
15 with, with her response at that time. I didn't feel she
16 had a disk problem that needed surgery, so I didn't refer
17 her out sooner. Normally if we suspect that, we would
18 refer her out for more diagnostic testing and, and opinion
19 at that point.

20 Q Doctor, I need to stop you. When you say that
21 she didn't respond as expected, do you mean --

22 A Long term relief.

23 Q But, you're not talking about her cooperation,
24 are you?

25 A Oh, no. She was following through with care. At

1 that point **I** meant that I didn't feel she was doing as well
2 as I thought she should be doing. She may not have
3 realized what I was, you know, thinking at that time. And,
4 at that point I thought an orthopedic evaluation was
5 indicated and I had her see Doctor Hunter, I believe.
6 Yeah, Doctor Hunter it was, and he did an evaluation for
7 me.

8 Q And, what was the result of that?

9 MR. MAZGAJ: Objection.

10 A I think he pretty much agreed that it was a
11 sprain/strain type **of** injury.

12 Q Doctor, let me stop you. In your, in your work
13 as a chiropractic physician, you indicated that you common-
14 ly will refer to other health care providers. Do you rely
15 upon their examination and diagnosis of the patient to make
16 decisions on continuing care of patients?

17 A Yes.

18 Q And, did you rely on Doctor Hunter's examination?

19 A Yes, yes **I** did.

20 Q And, you do that in the normal course of your
21 practice?

22 A Correct.

23 Q And, so I had stopped you in telling me what the
24 result of that was. **Go** ahead now, Sir?

25 A Okay.

1 MR. MAZGAJ: Objection.

2 A Well, Doctor Hunter, you know, pretty much felt
3 the same way I did, that we were dealing with a soft tissue
4 injury, and one of the questions to Doctor Hunter that I
5 asked him was that did he think that, you know, she would
6 respond to a more intense supervised rehab program, which
7 would be, you know, maybe at a physical therapy clinic or
8 such, and then he wrote back and agreed that he thought
9 would, that he felt that would be the next step with her.
10 And, at that point we made some recommendations and --.

11 Q Did you refer her for treatment?

12 A We referred her to treatment, and I believe there
13 was a, the way her health insurance maybe worked, she could
14 only go to certain places, and there was a little bit of a
15 slight delay, but we had to work on where she could go and
16 I believe Tallmadge, I think I had to go through her
17 medical doctor to get the referral or something.

18 MR. YOUNG: Okay. Doctor, I'm going to
19 stop you here because I need to move to
20 strike relative to that testimony and
21 I'll do that at this point so the
22 record can be dealt with, but I'm going
23 to back up and ask you the question.

24 Q How did you make a referral, or set in motion a
25 referral for physical therapy?

1 A Yes, we did.

2 Q Okay. And, can you tell me to what entity that
3 referral was made?

4 A It was Tallmadge Physical Therapy, I believe it's
5 called, Tallmadge Physical Therapy.

6 Q Okay. Doctor, I'm going to hand you what we've
7 marked in this proceeding as Exhibit 19, and to indicate to
8 you that that contains bills for treatment of Judy Akers
9 and I want to address your attention to the bills that in-
10 volve your treatment and therapy that was provided at your
11 instruction and direction?

12 A Okay.

13 Q Doctor, can you verify, that is, you want to take
14 a look at the bills and I'll ask you this question. Were
15 those fees for treatment necessitated by the accident, and
16 were they reasonable?

17 MR. MAZGAJ: I'm going to object. I
18 have no objection to him testifying to
19 his fees. If it's the document in
20 general, I object to that. If he wants
21 to address his fees for 3,074 dollars,
22 that's okay.

23 Q Would you indicate the bill that you're referring
24 to, and the amount, the total amount?

25 A Okay. Well, the bill of 3,074 dollars, which was

1 the bill in our office --

2 Q Would you, do you have an opinion as to whether
3 those fees were necessitated by the accident and were
4 reasonable?

5 A Yes, those fees were necessitated by the accident
6 and they were reasonable, yes.

7 Q I ask you the sane question with regard to the
8 therapy that you ordered?

9 MR. MAZGAJ: Objection.

10 A Okay. Well, the referral to Doctor Hunter and
11 then the therapy at Tallmadge Physical Therapy, yes, I made
12 both referrals.

13 Q Okay. And, would you indicate the amount of the
14 cost?

15 MR. MAZGAJ: Objection.

16 A There was a 75 dollar evaluation with Doctor
17 Hunter, and 524 dollars of physical therapy at Tallmadge
18 Physical Therapy.

19 Q Doctor, what was, what was Judy's condition when
20 you last treated her in 1993, that is, I should ask you,
21 you had occasion to see her some date prior to this deposi-
22 tion, did you not?

23 A Yes, yes I did.

24 Q What date was that?

25 A October 3rd '94.

1 Q OF 1994. I'm directing your attention to the
2 date prior to that. What would have been the last date
3 prior to your examination of her in 1994?

4 A It was 12-13-93.

5 Q And, was that the date that your active treatment
6 of her ceased?

7 A Yes, at that point in time we were seeing Judy
8 strictly on an as needed basis. And, on that date she was
9 still complaining of some intermittent shoulder pain,
10 intermittent low back stiffness and soreness. I think she
11 said she always had some low back amount of pain, it was
12 just worse at times than others. **And**, she definitely, she
13 stated to me, she said it was worse after sitting, and at
14 that point I recommended continuing with supportive care.
15 I wanted her to continue doing the exercises at home that
16 we prescribed, and I told her I only wanted to see her, you
17 know, on a, strictly on an as needed basis.

18 Q Doctor, are you aware of the fact that since then
19 that she has also treated with a Doctor Moats in a sports
20 specialist facility?

21 MR. MAZGAJ: Objection to the leading
22 nature of the question.

23 Q Well Doctor, let me **ask** it, are you, has Judy
24 Akers since that date, December 13th, 1993 had any other
25 care and treatment to your knowledge?

1 A Yes, I've, you know, I'm aware that she had other
2 treatment at else where, yes.

3 Q Doctor, then the last, the most recent date that
4 you saw Judy is again what?

5 A October 3rd of '94, she came in, mainly just for
6 a consultation. I did not treat her that day because she
7 was receiving, that's when I found out she was receiving
8 treatment from Doctor Moats and I, and I, she did come by
9 for a treatment that day, and I told her that I felt that
10 since she was treating with Doctor Moats, I felt it was
11 best she stuck with his treatment program and, you know, I
12 just didn't want to interfere, you know, if he could do
13 something that was going to help her, I didn't want to, you
14 know --

15 Q Okay. But did you have --

16 A But I did talk to her --

17 Q -- did you take the opportunity to talk to her
18 and examine her?

19 A Yes, yes, I did. And, she told me she was seeing
20 a physical therapist at Doctor Moats' office and they were
21 working on some new exercises, and she also stated that, I
22 think she stated she was seeing them since January of last
23 year, so for quite a while and they were doing a lot of
24 treatment on her right shoulder also.

25 Q Okay Doctor, let me ask you this. Do you have an

1 opinion within reasonable probability as a chiropractic
2 physician, based upon that examination, as to whether Judy
3 Akers continued to suffer symptoms as a result of the
4 injuries that you have testified to?

5 MR. MAZGAJ: Objection.

6 A They were the same symptoms that she had had the
7 year prior when I last saw her, so, yes.

8 Q Is it, based upon your training and your decade
9 of work in this field, is it normal that, I'm sorry, based
10 upon your training and experience in this field, do, is
11 there a reason why these injuries would still be bothering
12 Judy Akers?

13 MR. MAZGAJ: Objection.

14 A Well, I think we talked earlier about the, you
15 know, the sprain/strain soft tissue type injury with the
16 scar tissue and such that in certain cases it is, it's nor-
17 mal for it to continue to cause stiffness and soreness.

18 Q Doctor, do you have an opinion within reasonable
19 probability as a chiropractic physician as to whether or
20 not these injuries to Judy's back and shoulder are
21 permanent of nature?

22 MR. MAZGAJ: Objection.

23 A Yes.

24 Q And, what is that opinion?

25 MR. MAZGAJ: Objection.

1 A They are permanent.

2 Q Can you explain that, Doctor?

3 MR. MAZGAJ: Objection.

4 A They're permanent in the aspect that she's going
5 to continue to have episodes of stiffness and pain in her
6 lower back and obviously in her shoulder, and that she will
7 need to, on an ongoing basis, need to do stretching
8 exercises at home, and try to manage the condition, you
9 know, on her own.

10 Q Doctor, at this juncture I want to hand you what
11 we've marked as Plaintiff's Exhibit 7, and can you identify
12 that for me, Sir?

13 A Yes, it's a curriculum vitae for myself.

14 Q Does that set forth your background and
15 experience and education?

16 A Yes.

17 Q And, detail the basis upon which you render
18 opinions in this case?

19 A Yes.

20 Q Doctor, I'm going to hand you what we've marked
21 as Plaintiff's Exhibit 8 in this proceeding. Doctor, can
22 you identify that for me?

23 A These are records from my office on Mrs. Akers.

24 Q Are those true and accurate copies of your
25 records of the examination and treatment for Judy Akers?

1 A Yes.

2 Q Doctor, due to the ongoing nature of her treat-
3 ment, or I'm sorry, the ongoing nature of her injuries, can
4 you indicate to me the number of active treatments that you
5 actually provided for her prior to her release in December
6 of 1993?

7 A I believe it was 50 some.

8 Q And, would that include the therapy that you
9 provided to her?

10 A Yes.

11 Q Okay. Thank you, Doctor. Those are all the
12 questions I have for you on direct as to Judy Akers, and
13 I'll ask Mr. Mazgaj if he wishes to enquire as to Judy
14 Akers?

15 MR. MAZGAJ: No, I'm going to cross
16 examine at the conclusion of your
17 direct examination. I was noticed of
18 this deposition to be a deposition of
19 Doctor Battaglia concerning the
20 Plaintiffs in this case. If you're
21 indicating for the record that your
22 direct examination is concluded then I
23 will go ahead and cross examine,
24 however I'm not going to cross examine
25 on limited issues. There was one

1 notice of deposition of Doctor
2 Battaglia for this case. If you're
3 telling me your direct examination is
4 concluded I will cross examine. If it
5 is not, I'm going to wait until the end
6 of your direct examination.

7 Q Okay. Then I have some questions I'm going to
8 ask Doctor Battaglia as to Kevin Akers and I'm going to
9 take a 2 minute break at this point.

10 OPERATOR: We're off the record.

11 MR. MAZGAJ: I'm going to object to a
12 break. Doctor, do you need a break?

13 DR. BATTAGLIA: No, I'm okay.

14 MR. MAZGAJ: We're on the record?

15 MR. YOUNG: A hundred and twenty
16 seconds worth of break. Go off the
17 record.

18 OPERATOR: We're ~~off~~ the record.

19 OPERATOR: We're on the record.

20 Q Doctor, at this juncture I have some questions I
21 want to ask you regarding your care and treatment of Kevin
22 Akers, and Doctor, do you also today have with you your
23 file that contains all of your records of care and treat-
24 ment of Kevin Akers?

25 A Yes.

1 Q If you need at any point to refer to those
2 records, please feel free to do so.

3 A Okay.

4 Q Doctor, when did you first see Kevin Akers?

5 A May 9th, 1992.

6 Q And, can you tell me, where did that contact take
7 place?

8 A At our office here.

9 Q So, he came here because he --

10 A At our old office but, yeah.

11 Q Okay. He came to see you at your office because
12 he was experiencing problems?

13 A Yes, that's correct.

14 Q Tell me in like fashion that you did for Judy,
15 what, what you determined, I'm sorry, what the result of
16 the examination was. What you learned in history taking
17 and also what you observed upon examination?

18 A Well, Mr. Akers was in an accident on 4-24-92,
19 He presented to our office with, initially with neck pain,
20 upper back pain, left arm pain, and he had a twitch in his
21 left arm. He also had a twitch in his, I believe the left
22 side of his face. And, those were his initial chief
23 symptoms. We put him through an orthopedic/neurological
24 evaluation as we did with Judy.

25 Q Doctor, you've made reference now to this, to

1 neck pain. Can you indicate where on the **body** he was
2 experiencing pain specifically?

3 A I'll use this chart again. I *guess* that'll make
4 **it** the easiest. The neck or the cervical spine is going to
5 be up in here, in this region, so his injury was through
6 the neck region here, and then down through the upper back
7 or into the midback, through here.

8 Q Okay. And, the, the pain in the neck, did **it** go
9 up into the back of the head?

10 A Yes.

11 Q Doctor, the, the twitch that you referred to.
12 Can you tell me exactly what you mean by that?

13 A He had sort of an, just an involuntary movement
14 of a muscle in his, both his forearm and in his face, and
15 you could just see **it**, you know, twitching.

16 Q You could actually observe this?

17 A You could observe **it** twitching, yes.

18 Q And, where on his face exactly did that --?

19 A It was, **it** was just kind of in this area,
20 underneath the eye.

21 Q Now Doctor, you also conducted tests on him, that
22 *is* again in like fashion, orthopedic tests?

23 A Yes. We put him through an orthopedic/
24 neurological examination, range of motion, we did some
25 orthopedic tests on him.

1 Q Doctor, what was the date that he first
2 presented?

3 A May 9th, '92.

4 Q Did you arrive at a diagnosis for his condition?

5 A Yes, we **did**.

6 Q Doctor, do you have an opinion within a
7 reasonable degree of probability as to the condition, well,
8 let me, I need to ask it this way, Doctor. Did you, in the
9 course **of** treatment of Kevin Akers, have occasion to arrive
10 at more than one diagnosis in time?

11 A Yes.

12 Q Okay. I'm asking you only as to the diagnosis
13 early on, that is your initial diagnosis. Based upon your
14 training and experience, what was your opinion as to the
15 condition, that is what did you diagnose at that time?

16 A Our initial diagnosis or opinion was that Kevin
17 had suffered a sprain/strain injury to the cervical and
18 dorsal spine and that he had some nerve root irritation in
19 the left lower region of his neck, which was causing some
20 radiating pain into the left arm.

21 Q And, did you, because of that diagnosis, refer
22 him to treatment for this condition involving the radiating
23 pain or nervous, not nervous, but nerve injury?

24 A Yes, **I** was, I was more concerned about the
25 twitching than **I was** the arm pain, and so I made an

1 appointment for him to see a neurologist, just, just to
2 rule out any other abnormalities,

3 Q And, to whom did you refer Kevin Akers for
4 neurologic review?

5 A Doctor Lefkovitz.

6 Q Did you have occasion thereafter to make
7 additional diagnosis with regard to his condition?

8 A Well, based on, on Doctor Lefkovitz's findings, I
9 pretty much stuck with the, with the initial diagnosis I
10 had. We did add an additional diagnosis I believe in the
11 5-29-92, The facial twitch was still present and then Mr.
12 Akers made, had stated to me that he had **been** noticing some
13 clicking in his jaw and some jaw pain that had just kind of
14 gradually been coming on and, you know, and so we made a
15 note of that and we added at that point in time possible
16 **TMJ** sprain/strain or temporal mandibular joint
17 sprain/strain of the jaw.

18 Q Doctor, did you have, did you take any action
19 with regard to those symptoms and that particular injury?

20 A Well, I, you know, I just advised Mr. Akers to
21 ice, ice his jaw down and that we'd keep an eye on it, and
22 if it didn't, you know, if it didn't just get better with
23 the ice packs and I think he was taking some ibuprofen,
24 that we would, you know, I recommended that he should
25 probably see a TMJ specialist.

1 Q Doctor, did those symptoms change?

2 A No, in fact Mr. Akers responded very well to care
3 for his neck and upper back, but he continued to have the
4 jaw clicking and pain, so in fact, when I released Mr.
5 Akers from active care, you know, I re -- reiterated to him
6 that I thought he should see someone who knew a lot about
7 TMJ problems, because I just, I knew about it, but I wasn't
8 going to treat it. It wasn't something I'd treat, so.

9 Q Doctor Battaglia, did Kevin Akers complain also
10 of headaches --

11 A Yes.

12 Q -- or pain into the head?

13 A Yes. He had, he had the typical muscle spasm
14 type headaches after the accident, from the, from the neck
15 musculature, and then he also had some head pain in the,
16 you know, region of the jaw.

17 Q Where are you talking about?

18 A Well, he had headaches back here initially, just
19 from where the muscles attach to the back of the head. He
20 also had some, I guess we'd call this head pain, you know
21 in the jaw area, where the jaw was injured, you know. He
22 also had hit his head you know, somewhere in here I
23 believe --

24 Q Okay, Doctor Battaglia --

25 A -- on the windshield of the vehicle.

-- based upon your experience in this practice, what profession would you turn to for treatment of a **TM** joint injury?

4 **A** Well, somebody in the dental field, a dentist or
an orthodontist, someone who has a lot of, not just any
dentist. I would, I looked for somebody who had **TMJ**
experience. I had some other patients who had, I had not
a treated them for it, but in their history they would state
9 they have **TMJ** problems and had good success with Doctor
10 Hendricks, and that was the doctor that I recommended Kevin
11 to see.

12 **Q** Did you also know of Doctor Hendricks's reputa-
13 tion in the professional community for specializing in
14 this area?

15 **MR. MAZGAJ:** Objection.

16 **A** Well, you know, there's word of mouth amongst,
17 you know, physicians, you know, we talk about who's good
18 at certain things and his name, his name would come up.

19 **MR. MAZGAJ:** Move to strike,

20 **Q** Is that, and as to that question did you base
21 your decision to refer to Doctor Hendricks based on the
22 need to see someone who specializes in that area?

23 **MR. MAZGAJ:** Objection.

24 **A** Yes.

25 **Q** Doctor, when did you make that referral, or

1 instruction to Kevin Akers to seek an examination by Doctor
2 Hendricks?

3 A Well, we first talked about it probably when he
4 first noted the jaw pain, and then once again I think we
5 talked about when I released him from care. I know that
6 due to Mr. Akers busy schedule I think I gave him Doctor
7 Hendricks' name and number and left it up to him, you know,
8 to contact Doctor Hendricks.

9 Q Doctor Battaglia, what treatment did you provide
10 for Kevin Akers?

11 A The treatment I provided was therapeutic
12 modalities to the cervical and dorsal spine. Gentle,
13 skilled manipulation to those areas and cervical spine
14 exercises.

15 Q Do you have a final diagnosis that you provided
16 for Kevin Akers?

17 A Yes, my final diagnosis -- Final diagnosis was,
18 sustained an acute traumatic sprain/strain of the cervical
19 dorsal spine. This injury is associated with cervico-
20 brachial syndrome, resulting in brachial radiculopathy,
21 sprain/strain to the temporal mandibular joint, and
22 headaches were also found.

23 Q Doctor, as, you've given us quite an explanation
24 on sprain and strain, and we have, we'll have other
25 testimony in this case to describe the injury to the

1 temporal mandibular joint, I want to ask you specifically
2 to explain to me what this injury that you've indicated,
3 cervical brachial syndrome, brachial radiculopathy?

4 MR. MAZGAJ: Objection.

5 Q Can you do that, Sir?

6 MR. MAZGAJ: Objection.

7 A Yes. Cervicobrachial syndrome is sort of a, a
8 broad diagnosis. It takes in the fact that there was
9 injury to the cervical and dorsal spine and in his case
10 there was nerve root irritation. That's where the brachial
11 part comes. And the brachial is the brachial plexus, the
12 nerves that comes from the neck and goes into the, to the
13 arms. So due to the muscle twitch and the initial arm pain
14 that Mr. Akers had, you know, that diagnosis would indicate
15 those symptoms.

16 Q Do you have an opinion, Doctor, within reasonable
17 probability as a chiropractic physician as to whether those
18 conditions that you diagnosed were caused by the accident
19 of April 24, 1992?

20 A Yes.

21 Q What is that opinion?

22 A They were, they were a result of the accident on
23 that date.

24 Q Doctor, when did you last see Kevin in active
25 treatment?

1 A Active treatment was 4-30-93, was the last time
2 actively I saw him. And, he did, I did see him a week or
3 so ago, but I'm not sure if you mean --.

4 Q I'm, yeah, I'm talking about active treatment.
5 That date then in 1992 is that correct?

6 A 4-30-93.

7 Q 4-30-93?

8 A Was the last time I saw him.

9 Q And, what was his condition at that time?

10 A It had been several months since I had last seen
11 him, and he stated he was still having some discomfort in
12 the upper back and neck on an ongoing basis.

13 Q Doctor, did you render an opinion at that time as
14 to whether, and I, I need to ask it this way, Doctor. Did
15 you have an opinion, within reasonable probability as a
16 chiropractic doctor, as to whether Kevin would continue to
17 experience problems due to the conditions for which you had
18 provided treatment?

19 MR. MAZGAJ: Objection.

20 A You know, once again it's difficult to say, since
21 I'm not really actively treating him, but you know, my --

22 Q Well Doctor, let me stop you. I only want you to
23 give an opinion that you can give within reasonable
24 probability as a chiropractic physician?

25 A With reasonable --

1 MR. MAZGAJ: Just, for the benefit
2 of -- I'm just going to object to the
3 question. I think he indicated he
4 cannot and I'm going to object.

5 Q Can you, first Doctor, I don't, only if you can
6 render such an opinion in reasonable probability do I want
7 you to render one. So, let me ask you, do you have an
8 opinion within a reasonable degree of probability as a
9 chiropractic doctor, as to whether at the time that you
10 last saw him in April of 1993, that Kevin Akers would con-
11 tinue to experience problems or symptoms as a result of the
12 injuries for which you had treated him?

13 MR. MAZGAJ: Objection.

14 A Yes.

15 Q Okay. And, what is that opinion?

16 MR. MAZGAJ: Objection.

17 A That he would continue to suffer from periodic
18 episodes of pain and stiffness in the cervical and dorsal
19 spine.

20 Q Doctor, you last examined him, what date?

21 A Actively was 4-30-93, but then I saw Kevin
22 10-4-94 also.

23 Q Based upon your examination of 10-4-94, did Kevin
24 continue to have some problems?

25 A Kevin stated to me he was still having periodic

1 stiffness and soreness of the cervical spine. He said that
2 the stretching exercises that I had given him for the most
3 part would relieve most of the symptoms. We went ahead and
4 gave him a gentle treatment that day and pretty much left
5 it that, you know, just come and see us on an as needed
6 basis, so --.

7 Q Did your opinion of his condition and the
8 probability of any symptoms in the future change as a
9 result of your, your examination on October 4th, 1994?

10 MR. MAZGAJ: Objection.

11 A No.

12 Q Doctor, I need to make sure that I have had you
13 look at a couple other Exhibits and I'm going to hand You
14 Plaintiff's Exhibit 6 in this case. Can you identify that
15 for me?

16 A Yes, these are Kevin Akers records from my
17 office.

18 Q And, those include the records of examination and
19 treatment?

20 A Yes.

21 Q Doctor, I want to hand you what we've marked as
22 Plaintiff's Exhibit 12 in this proceeding?

23 A Okay.

24 Q Can you identify that Exhibit for me?

25 A These are medical bills for Mr. Akers.

1 Q Now, taking a look at those bills, and I ask you
2 this, Sir, can you identify for us the bills that, that you
3 can speak to the issue of necessity and reasonableness as
4 far as treatment for Kevin Akers?

5 MR. MAZGAJ: I'm just going to object
6 to anything beyond his treatment here.

7 A Treatment in our office was a 1,200 dollar charge
8 and then the direct referral to Doctor Lefkovitz for 265
9 dollars for his treatment evaluation, and then there's a,
10 an MRI fee there that Doctor Lefkovitz referred Kevin out
11 for. And then, the bills for Doctor Hendricks were --.

12 Q I'll ask Doctor Hendricks with regard to those
13 bills. Can you indicate the amount of the fee for Doctor
14 Lefkovitz's service and also for the MRI?

15 MR. MAZGAJ: Objection.

16 A There's a 265 dollar charge for Doctor Lefkovitz,
17 an 832 dollar charge for the MRI. He also had an EMG done
18 for 964 dollars, and it looks like they had more x-rays
19 taken for 196 dollars.

20 Q Okay. As to all of those bills that you have
21 just indicated, is it your opinion, Doctor, that they were
22 necessary as a result of the accident, and the fees
23 incurred for that examination and treatment were
24 reasonable?

25 MR. MAZGAJ: Objection.

1 A Yes.

2 Q I don't have any further questions on direct,
3 Doctor.

4 DURING CROSS EXAMINATION BY MR, FRANK MAZGAJ:

5 Q Doctor Battaglia, my **name's** Frank Mazgaj and **I**
6 represent Margaret Thornsberry in this case. **We** had a
7 chance to meet as we sat down today, correct?

8 A Correct.

9 Q Doctor, I have just a few questions for you.
10 First of all, Doctor, talking about Kevin Akers. He first
11 came to your office on May 9th of 1992, which was
12 approximately two and a half weeks after the accident in
13 this case, correct?

14 A Correct.

15 Q And Doctor, at that time you took a history from
16 him and you had him fill out a personal injury
17 questionnaire for your office, correct?

18 A Correct.

19 Q And Doctor, I'm going to hand you what I will
20 mark for identification purposes, and **I** will tell you I do
21 not have any stickers so I'm going to write it on here for
22 now, Defendant's Exhibit 10. Is that **a** true and accurate
23 copy of the personal injury questionnaire completed **by** Mr.
24 Akers when he first came to your office approximately two
25 and a half weeks after the accident?

1 A Yes.

2 Q And Doctor, in that initial history and
3 questionnaire completed by Mr. Akers, he did not in fact
4 represent to your office two and a half weeks after the
5 accident, that he was suffering from any type of jaw pain,
6 did he?

7 A No.

8 Q And Doctor, handing you what I will mark for
9 identification purposes as Defendant's Exhibit 11, those
10 are your, what I'll call progress notes or notes that you
11 keep as you meet with the patient at each and every visit,
12 correct?

13 A Yes.

14 Q And Doctor, on the visit, the initial visit to
15 your office two and a half weeks after the accident, Mr.
16 Akers, again, based on your personal notes, did not
17 indicate to you that he was suffering from any jaw pain, is
18 that correct?

19 A That's correct.

20 Q And Doctor, I'm also going to hand you your
21 initial report that you prepared in this case, and I'll
22 mark it as Defendant's Exhibit 11, that's a true and
23 accurate copy of this, and again two and a half weeks after
24 the accident, based upon your report, no complaint of any
25 jaw pain whatsoever, is there, Doctor?

1 A NO.

2 a That's correct what I said?

3 A Yes.

4 Q Okay. That's okay. Now Doctor, you did complete
5 and I want to make sure we're clear on the record here, you
6 have kind of an information sheet that you initially com-
7 plete --

8 A Correct.

9 Q -- when patients come to your office, correct?

10 A Yes.

11 Q And, if I could find, do you have this copy?

12 A This one here?

13 Q No, the one that, I have your original there, I
14 want to see if I can find a copy of it for you to mark for
15 me?

16 A The front of this or?

17 Q I want to get a copy of that.

18 MR. YOUNG: I think all those records
19 are in the Exhibit. All the records
20 you referred to so far, Mr. Mazgaj, are
21 in the Exhibit that we submitted.

22 Q Okay. **And**, can I see that?

23 OPERATOR: We're off the record.

24 OPERATOR: We're on the record.

25 Q Doctor, I'm handing you again Plaintiff's Exhibit

1 6, which was presented to you by Mr. Young, and on the copy
2 it's kind of hard to tell as compared to your original, but
3 Doctor, what **I'll** ask you to do is to take this pink
4 highlighter and **if** you could, highlight for us the initial
5 complaints made to you at the first visit by **Mr.** Akers?
6 **And** Doctor, below the four items that you've highlighted in
7 pink there **is** jaw pain, TM, and headaches. Those
8 complaints, although they're on a document dated 5-9-92,
9 those complaints of jaw pain were not made until, what,
10 two and a half weeks later?

11 **A** Yes, 5-29.

12 **Q** And Doctor, that's approximately six weeks after
13 the accident in this case? Would that be correct?

14 **A** Five weeks I guess, yeah.

15 **Q** **And** again, that was the first time any complaint
16 was ever made to you of any type of jaw symptomatology
17 whatsoever, correct?

18 **A** Yes.

19 **Q** That would include clicking, popping, difficulty
20 opening the mouth, anything of that nature, correct?

21 **A** Correct.

22 **Q** Now Doctor, you last saw Mr. Akers in, help me
23 out again, April of '93, would that be right?

24 **A** Yes.

25 **Q** And, you told him at that time, come back to me

1 if you, you think it's necessary and I will help you,
2 correct?

3 A Correct.

4 Q And, in fact he did not come back to your office
5 until a week or so ago, correct?

6 A Correct.

7 Q And, when he came back a **week** or so ago, that was
8 for the benefit of this deposition or this lawsuit today,
9 correct?

10 A I'm not, I'm not sure. I just know he showed up
11 for treatment that day.

12 Q Now Doctor, talking about Mrs. Akers, again so I
13 understand it, you did make a referral in January of 1993
14 to Doctor Hunter, is that right?

15 A Yes.

15 Q And Doctor, in all fairness to you, you have not
17 had the opportunity to review Doctor Hunter's personal
18 office note from that visit in January of '93? You saw a
19 letter that he wrote to you, correct?

20 A Correct.

21 Q And Doctor, can you help us out with a couple of
22 things here which I think are common to the medical field.
23 When somebody indicates that range **of** motion is full with
24 respect to the low back, what does that mean to you?

25 A That full range of motion means that the motion

1 of whatever joint they're testing is within, within its
2 normal limits.

3 Q And Doctor, with respect to the low back, when
4 you hear the term full range **of** motion, give the jury some
5 sense of what that means?

6 A That means, for instance, on, on flexion of the
7 lumbar spine, a patient should **be** able to bend it at 90
8 degrees, they'll almost touch their toes. **So**, if a patient
9 can go that full distance without any restriction, that
10 would be a full, a full range of motion.

11 Q **And** Doctor, obviously that's a hoped for finding
12 or a good finding?

13 A Yes.

14 Q Okay; **Also** the notation, no spasm. That also is
15 a good finding, correct, or hoped for finding?

16 A Yes.

17 Q Now Doctor, with respect to the examination at
18 Doctor Eunter's office, do you know whether or not Mrs.
19 Akers ever made any claim whatsoever of shoulder problems
20 at the time of her examination?

21 A With Doctor Hunter?

22 Q Yes, Sir.

23 A No, **I** don't. **I** referred her there specifically
24 for her back, so --.

25 Q Now Doctor, we talked a little bit about muscle

1 strains and sprains. Did Mrs. Akers give any history to
2 you that **she** had sprained or strained any muscle in her
3 back before this accident?

4 A No.

5 Q And Doctor, is that something that would be
6 important to you when you take a history?

7 A Yes.

8 Q Why is that?

9 A Well, it's important to find out if it's a new
10 injury or an aggravation of an old injury, so that helps me
11 differentiate between those two.

12 Q And Doctor, in talking about the types of
13 sprains, we talked about raking the leaves, you mentioned.
14 That is a strain of a muscle, but a less severe type,
15 correct?

16 A Correct.

17 Q **And** Doctor, you would agree that in our daily
18 activities, and you see it here on a daily basis, lots of
19 different things can cause a muscle strain, correct?

20 A Correct.

21 Q **If** somebody leans over at a desk in a tense
22 position for several hours, that can strain muscles,
23 correct?

24 A Correct.

25 Q And, your way to treat that, you teach them how

1 to relieve it, how to stretch it out, how to strengthen it,
2 correct?

3 A Correct.

4 Q And Doctor, stepping off of a step and missing a
5 step and jarring your back, could that cause a muscle
6 strain or sprain?

7 A Yes, it could.

8 Q And Doctor, did Mrs. Akers ever tell you that she
9 aggravated her back at any time after this accident by
10 stepping off of a step and missing it?

11 A I have to look at the records here?

12 Q Sure. Go right ahead.

13 A I've got a couple of notes written down where she
14 exacerbated her back after working in the yard and another
15 one after increased activity over the weekend,

16 Q And Doctor, was there also one in your notes with
17 respect to, I think, probably moving a Christmas tree in
18 January of '93?

19 A Yes, yes.

20 Q And Doctor, do you find people straining their
21 back sometimes when they move things or pick up things?

22 A Yes.

23 Q Isn't that common in the worker's compensation
24 field?

25 A Yes, it is.

1 Q And Doctor, in addition to that, have you had
2 chance to review **it** again, in all fairness to you, the
3 physical therapy records from, I believe **it** was Ellet
4 Family Practice?

5 A Yes.

6 Q And Doctor, again without referring to the
7 specific entry, stepping off of a step and jarring your
8 back, that's what we commonly know as a strain of a muscle,
9 correct?

10 A That could, that could, yes.

11 Q Doctor, with respect to Mrs. Akers, as far as any
12 diagnostic tests concerning nerve damage or anything of
13 that nature, that was not prescribed for her, was **it**?

14 A Could you ask that again?

15 Q Sure. For Mrs. Akers, other than x-rays, were
16 any other diagnostic tests prescribed for her that you're
17 aware of?

18 A No, well, no, not by me, no.

19 Q Doctor, do you know whether or not she ever under
20 went an MRI study?

21 A I just got a fax from Doctor Moats' office on an
22 MRI study earlier this week.

23 Q And Doctor, you indicated that there was some
24 referral to Doctor Lefkovitz and tests that he performed?

25 A Yes.

I Q Doctor, all of those tests were negative,
2 correct? For any type of nerve damage?

3 A He did not, Doctor Lefkovitz didn't see Judy
4 Akers, or are you talking about --?

5 Q I'm sorry, Mr. Akers, I'm sorry?

6 A Mr. Akers. I believe his tests were negative as
7 far **as**, I think the MRI was negative also for disk hernia-
8 tion, so.

9 Q Now Doctor, you indicated referrals to specific
10 types of physicians for TMJ problems. Are you familiar
11 with maxillofacial surgeons?

12 A Yes.

13 Q And, do they often times treat TMJ injuries?

14 A I think sometimes, sometimes if there's surgery
15 indicated, they may, they may be like the last person that
16 someone would get referred to.

17 Q Do you know whether or not they're involved in
18 the treatment at all, other than when surgery is required?

19 A I'm not aware of it, but I'm sure, I'm sure that
20 sometimes they see people on an initial visit for a TMJ
21 problem, yes.

22 Q **And**, in some situations hopefully indicate sur-
23 gery is not necessary, correct?

24 A Correct.

25 Q Now Doctor, you indicated that you're a believer

1 in active treatment for muscle strain, **is** that correct?

2 A Correct.

3 Q And, by that you mean exercise?

4 A **Yes.**

5 Q In fact, with respect to both Mr. and Mrs. Akers,
6 you would want them to undergo various types of exercises
7 to help strengthen the supporting structures of their necks
8 and backs, correct?

9 A That's correct.

10 Q And, in fact I think as was done in some of the
11 physical therapy using weight lifting equipment, stationary
12 bicycle, those are all things which can build strength and
13 endurance, correct?

14 A That's correct.

15 Q Doctor, that's all I have. Thank you.

16 A Okay.

17 DURING REDIRECT EXAMINATION BY MR. DEAN YOUNG:

18 Q Doctor, I have a few follow-up questions. If **we**
19 can go off the record so i know what Exhibits have been
20 presented to you, I'd like to do that.

21 OPERATOR: We're off the record.

22 OPERATOR: We're on the record.

23 Q Doctor, the Exhibits that Mr. Mazgaj had provided
24 to you, Exhibit 10 and two that were marked Exhibit 11,
25 were all three of those documents contained in the Exhibit

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1 to highlight jaw pain, go ahead.

2 Q Well Doctor, I'm asking, and Mr. Mazgaj can have
3 another Exhibit marked, I'm concerned with the symptom that
4 you found upon further examination of Kevin Akers. Could
5 you mark --?

6 MR. MAZGAJ: On what date?

7 Q I'm going to ask you about that.

8 A Okay.

9 Q Now, did you find symptoms at some point in time
10 reported to you of jaw pain or headache pain?

11 A Yes, as I said earlier, you know, Mr. Akers had
12 the general type of headaches that go with the neck pain in
13 the posterior region here. We call those muscle spasm
14 headaches, secondary to the cervical strain. On 5-29 he
15 reported to me that he had been noticing some gradual, you
16 know, increase of pain and clicking in his jaw, so I made a
17 note of it on that date, on 5-29.

18 Q So the first date the symptoms that he presented
19 with, his primary concern was, was injury to what?

20 A The neck and upper back. those were more severe
21 symptoms on the initial date.

22 Q Okay Doctor, the questions that were asked of you
23 by Mr. Mazgaj with regard to Judy Akers, I have a few
24 follow-up questions. When a patient is taken through
25 ranges of motion, and they have full range of motion, does

1 that indicate anything about pain which may be involved
2 going through that full range of motion?

3 A No. At that point in time, when she saw Doctor
4 Hunter, she had recovered from the initial acute symptoms,
5 and that's, you know, when I first saw her, her symptoms
6 were more active, more acute, so her limitation or range of
7 motion was much greater. She saw Doctor Hunter, I think,
8 three, four months afterwards, so her range of motion more
9 than likely would be within normal limits. In fact she had
10 some ligament laxity actually by then because of the
11 spraining of the ligaments.

12 Q What does that mean, ligament laxity?

13 A Well, they were stretched, you know so, you know,
14 if that's why we recommend the exercises, to try to
15 strengthen the muscles because of the ligament laxity, you
16 know, due to the spraining, sprain injury. Sometimes a
17 patient will become hypermobile, you know, and they need to
18 have --

19 Q What, what is hypermobile?

20 MR. MAZGAJ: Objection.

21 A It just means that the ligaments being stretched
22 further than they normally should, that heals with the scar
23 tissue, and I guess what I'm saying is it's not unusual for
24 her to have normal range of motion at that point in time.
25 It still, but it would not be unusual for her to have pain

1 with normal range of motion. And, at that point in time,
2 most of her pain was more secondary to activities or
3 sitting for long periods of time, and such.

4 Q Okay. Doctor, you used the expression that cer-
5 tain activities can exacerbate an injury, say an injury
6 that's occurred to the back and the term exacerbate isn't
7 one that I normally use and I want you to try to explain
8 that to us. What do you mean by an activity exacerbating
9 an injury?

10 MR. MAZGAJ: Objection.

11 A That means that the original condition, you know,
12 the initial symptoms can be reactivated, I guess, due to
13 simple activities that normally shouldn't cause pain.

14 Q So that raking leaves that normally would not
15 cause pain, could, could bring onset of pain given an
16 injury?

17 MR. MAZGAJ: Objection to the leading
18 nature of the question.

19 Q Well Doctor, let me --

20 MR. MAZGAJ: If he knows specific
21 activities that are involved in this
22 case, that's fine.

23 Q Doctor, the, based upon your experience and
24 training as a chiropractic physician, would the injuries
25 suffered by Judy Akers make normal daily activities more

1 difficult?

2 MR. MAZGAJ: Objection.

3 A I would word, if I can reword that

4 Q Do you have an opinion on that?

5 MR. MAZGAJ: Objection.

6 A My opinion would be that due to her, her injuries
7 she's more prone to suffer exacerbations of pain with nor-
8 mal daily activities. That would be more the case.

9 Q Okay, Doctor. I have no further questions on
10 redirect.

11 DURING RECROSS EXAMINATION BY MR. FRANK **MAZGAJ**:

12 Q Doctor, I just have one. I'm going to hand you
13 Defendant's Exhibit 12. That's a report that you prepared
14 with respect to Judy Akers back in May of 1992, correct?

15 A Correct.

16 Q And Doctor, you have down there as one of your
17 diagnosis with respect to Mrs. Akers, cervical, and I'm
18 trying to read this upside down, cervical, dorsal, oh I'm
19 sorry. Can you tell us what your diagnosis was, oh, here.
20 Cervical sprain and strain with respect to Mrs. Akers,
21 correct?

22 A That's just neck sprain/strain.

23 Q And Doctor, what complaints did she make to you
24 about a neck sprain or strain that you recall?

25 A She had general, just some general stiffness and

1 soreness in the lower neck, where the, sort of where the
2 upper back kind of comes up into the lower neck, so, sort
3 of a cervical, we call it a cervical/dorsal region.

4 Q And, by dorsal, that's the area between the --?

5 A Shoulder blades and the midback,

6 Q Shoulder blades?

7 A Yes.

8 Q And, did she tell you that was causing her prob-
9 lems?

10 A That was one of the, one of the complaints she
11 had when she first came in.

12 Q Very good. Thank you, Doctor.

13 DURING REDIRECT EXAMINATION BY MR. DEAN YOUNG:

14 Q Doctor, when Judy Akers first presented to you,
15 that date would have been May 5th?

16 A Yes.

17 Q Did she present with symptoms of injury to the
18 shoulder?

19 A Yes.

20 MR. MAZGAJ: I object to that going
21 beyond the **scope** of recross.

22 Q Doctor, the -- Well Doctor, I think I don't have
23 any further questions of you.

24 A Okay.

25 Q I thank you for your time and willingness to

1 present testimony in this particular case.

2 A Okay.

3 Q Thank you.

4 OPERATOR: Doctor, you have the right
5 to review this videotape in its entire-
6 ty, or you may wish to waive that
7 right?

8 DOCTOR BATTAGLIA: I'll waive.

9 OPERATOR: Thank you. We're off the
10 record.

11 END OF TESTIMONY AS WAS GIVEN BY ECTOR ANTHONY BATTAGLIA.

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STATE OF OHIO }
SUMMIT COUNTY)

SS: IN THE COURT OF COMMON PLEAS

KEVIN M. AKERS, ET AL

PLAINTIFFS,

VS.

MARGARET THORNSBERRY,

DEFENDANT.

) CASE NO. CV 94 03 0755

) VIDEOTAPE DEPOSITION

) OF

) DR. BATTAGLIA

) JUDGE MORGAN

C E R T I F I C A T I O N


I, Tom Baker, a Notary Public within and for the State of Ohio, do hereby certify that the within named witness, Dr. Battaglia, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid.

I further certify that the testimony then given by him was transcribed to typewritten form and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

I do further certify that I am not counsel for or related to any of the parties involved in this action nor am I interested in the outcome of this matter. Also I am an independent videotape reporter employed on an as needed basis and not in the employ on a regular or full time basis of any of the parties involved in the aforesaid litigation.

IN WITNESS WHEREOF, I hereunto set my hand and affix my seal of office to attest these facts to be true at Stow, Ohio on this 19th day of October, 1994.

My Commission Expires:
August 12, 1998


Tom Baker Notary Public
and Videotape Reporter