#486

IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

RUTH TREXLER,

Plaintiff,

vs. Case No.

JOHN P. O'BRIEN, 119633

Defendant.

- - - - -

Videotaped deposition of MALCOLM BRAHMS, M.D., the Witness herein, called by the Defendant for examination under the statute, taken before me, Vivian L. Gordon, a Registered Professional Reporter and Notary Public in and for the State of Ohio, pursuant to notice and stipulations of counsel, at the offices of Malcolm Brahms, M.D., 26900 Cedar Road, Beachwood, Ohio, on Tuesday, June 7, 1988, at 5:30 o'clock p.m.

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PG LN ]612 TREXLER-BRAHMS 6-7-88 vg ---COMPUTER INDEX



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| PG | LN | [Ngl]612 TREXLER-BRAHMS 6-7-88 vg OBJECT! |
|---|---|---|
| 3 | 9 | O'Brien. Is there any objection to going |
| 24 | 1 | MR. SHANE: Objection. A. It was |
| 24 | 3 | outweighed any of the objective findings. I |
| 24 | 8 | I withdraw that objection. Q. Doctor, |
| 31 | 25 | DJORDJEVIC: I will object. And move to |
| 34 | 15 | dates. A. I have no objections to that. Go |
| 37 | 18 | supports the objective findings of no |
| 47 | 5 | A. But there is no objective findings. Q. |
| 53 | 22 | I am sure it will be objected to. Q. |
| 54 | 7 | I am going to object. MR. SHANE: You |
| 54 | 8 | MR. SHANE: You can object as much as you |
| 55 | 14 | I am going to note an objection €or |
| 55 | 25 | that I would find any objection to Dr. Zaas' |
| 56 | 25 | Asked and answered. Objection. Move to |
| 57 | 4 | MR. DJORDJEVIC: Same objection. A. Mr. |
| 57 | 25 | you will withdraw your objection, I will not |
| 58 | 4 | I am going to object to you -- MR. |
| 65 | 20 | MR. DJORDJEVIC: Objection. Move to |
| 69 | 22 | it again? I have no objection either way. |
| 71 | 1 | MR. SHANE: I have to object to coulds. If he |
| 71 | 23 | SHANE: Then I have to object and ask the |
| 72 | 9 | not have any sign, any objective evidence to |
| 72 | 20 | MR. SHANE: Objection. Oh, let him |
| 74 | 9 | SHANE: You know, I am objecting and I still |
| 74 | 11 | I have to make my objection, but I don't |
| 74 | 13 | Off the record, my objection stands. A. |
| 74 | 19 | MR. SHANE: Objection. A. A |
| 74 | 23 | MR. SHANE: Objection as being |

APPEARANCES:

On behalf of the Plaintiff:

Shane & Shane, by

LOUIS G. HENDERSON, ESQ.

MICHAEL SHANE, ESQ.

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On behalf of the Defendant:

Jacobson, Maynard, Tuschman & Kalur,

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621-5400

ALSO PRESENT:

Steven Henschel, Video Technician

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MR. HENSCHEL: We are on the record at 5:47.

MR. DJORDJEVIC: Let the record reflect that we are here pursuant to notice and agreement of counsel to take the perpetuation deposition of Dr. Malcolm Brahms, witness for the defense in the case of Trexler versus O'Brien.

Is there any objection to going forward with the deposition at this time?

MR. SHANE: No. And I hope it is not just to perpetuate the testimony because Dr. Brahms is one of my favorites and I hope he is here another 50 years.

MR. DJORDJEVIC: Good. With that in mind, would we swear the witness.

**MALCOLM** BRAHMS, M.D., of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF MALCOLM BRAHMS, M.D.

BY-MR. DJORDJEVIC:

Q. Dr. Brahms, would you be so kind as to state your name and spell your last name for

the members of the jury.
A. Dr. Malcolm A. Brahms, B R A H M S.
Q. And Dr. Brahms, would you tell the members of the jury what you do by way of profession, sir?
A. I'm a physician, orthopedic surgeon.
Q. And how long have you been a physician?
A. Since 1950.
Q. I wonder if you could tell us a little bit about your training and education in order to become first, a physician, and secondly, an orthopedic surgeon?
A. Yes. I graduated from Western Reserve University in 1950 and served a year of internship at Cleveland City Hospital, now known as Cleveland Metropolitan General Hospital.
Q. What was that internship training in, doctor?
A. Rotating internship in medicine.
Q. All right.
A. I followed that by year of general surgical training at that same institution, followed by three years of orthopedic surgical training, one at Mount Sinai Medical Center in

Cleveland Ohio and two at Indiana University Medical Center in Indianapolis, Indiana.

Q. Doctor, some of the members of the jury may not be familiar with the term orthopedics or orthopedic surgery. Can you explain to us very simply what those terms mean?

A. Orthopedic surgery is that branch of medicine that deals with the investigation, preservation and restoration of the form and function of the musculoskeletal system by medical, surgical and rehabilitative means.

Q. And would I be correct in stating then that an orthopedic surgeon is a medical doctor who specializes in the musculoskeletal system?

A. That is correct.

Q. Doctor, in order to become an orthopedic surgeon, is it necessary for a doctor to become certified as an orthopedic surgeon or is that a beneficial thing to do?

A. That's a beneficial thing to do. It's not a requirement, but is something that one, if he has trained and has completed an orthopedic residency and if he is capable should attempt to be certified.

Q. And does the certification of a doctor,

as an orthopedic surgeon, involve that physician being tested in some way to make sure that he has the minimal requirements for that specialty area?

A. Yes, that's correct. After successfully completing an AMA approved residency, a written and an oral examination is taken, a mandatory two years of practice is required, followed by a repeat written and oral examination. Successful completion of all of those requirements entitles one to become certified.

Q. And doctor, did you comply with those requirements?

A. Yes, that's correct.

Q. And you are board certified?

A. I am.

Q. Doctor, are you on the staffs of any area hospitals?

A. I am.

Q. Would you tell us which hospitals you presently practice at?

A. Mount Sinai Medical Center and I have privileges at Suburban Community Hospital.

Q. Doctor, are you a member of any professional organizations or associations?

A. I am.
Q. Would you tell us just briefly which associations you are involved with?
A. Sure. I am a member of the Cleveland Academy of Medicine, the Ohio State Medical Association, the American Medical Association, I'm a Fellow of the American College of Surgeons, I'm a Diplomat of the American Academy of Orthopedic Surgeons, I am a member of the American Academy of Orthopedic Surgeons for Sports Medicine, I'm one of the founding members of the American Academy of Orthopedic Surgery for the foot and the ankle. I belong to the Cleveland Orthopedic Club, to the Ohio State Orthopedic Association, to the Clinical Orthopedic Association, to the International Society of Orthopedists and Traumatologists and the Mid America Association and some other minor groups as well.
Q. Doctor, have you had occasion to be involved in teaching other physicians relative to the subspecialty area of orthopedic surgery?
A. Yes. And am still actively engaged in as a member of the faculty of the American Academy of Orthopedic Surgeons for teaching on CME

courses throughout the year.
Q. Okay. And would you just give us a flavor of what that type of teaching involves, briefly?
A. Yes, principally it is foot surgery.
Q. All right. Finally, doctor, have you had occasion have published any of your work, either in scholarly journals or in books that are used by other physicians?
A. I have articles in all the major and the minor journals in orthopedic surgery and am the author of a chapter in two of the most recent textbooks on the market.
Q. Doctor, focusing now on the case at issue, did I ask you several months ago if you would be so kind as to conduct an examination of the plaintiff in this case, Ruth Trexler?
A. Yes.
Q. And would you tell me, did you have occasion to conduct an examination?
A. I did.
Q. Of Mrs. Trexler. And when did that take place?
A. I saw her on the 5th of May of 1988.
Q. All right. Doctor, at the time of that

examination, had you been given the opportunity to review any materials relative to her history?

A. Yes. I saw reports of other doctors. I saw reports of X-rays, CT scans, et cetera.

Q. All right. And those materials were all reviewed by you prior to your actual examination of this patient?

A. No. I usually examine the patient and then review those reports. Since I don't like to be, I don't like my information colored by anybody else's impression until after I have examined the patient.

Q. All right. Would you tell us, doctor, what would have been the first thing that you would have done when you saw Ms. Trexler on the 5th of May, 1988?

A. I took a history from this patient.

Q. All right. What exactly did her history reveal in this case?

A. She told me that on the 22nd of December of 1984 she was involved in a motor vehicle accident. This occurred in Richmond heights near the freeway and near Route Number 6. She said that she was a driver of her automobile

and was wearing a seat belt.

She said that she was stopped at a traffic light and was hit from the rear. She said that she struck the left side of her face against the headrest and twisted initially to the right and then backward to the left. She was not certain whether or not she was rendered unconscious. She did believe, however, that she was not aware of her surroundings for a short period of time.

Q. All right.

A. She said that when she was able to comprehend what was going on that there was someone standing at the side of her car banging on the window and it was the occupant of the other car. She said that initially she was unable to roll down the window but eventually she was able to do so. She was asked by the police whether she wanted to go to the hospital. She refused. She drove herself home and the next day was seen at the Mentor Emergicenter. She was examined there, X-rays were taken and X-rays were taken of her neck and her back.

Q. At the Emergicenter?

A. That's right.
Q. Continue, doctor. Was there any other history?
A. She was given a prescription. She was told that she was, "bruised by the seat belt.'' She was not provided with a cervical collar. She was referred to a doctor of her own choice. She is uncertain what doctors she saw, but does recall that she was seen by a Dr. Walker who is a chiropractor. And he treated her for several weeks.

She said, "His treatment hurt more after the treatment." He initially examined her on the 25th of February of 1985.

She also was seen by a Dr. Moshkovich who saw her on the 10th of January of 1985. He gave her a prescription and also suggested some excises. She told me that, "he gave me no answers."

Q. Any other history?
A. Yes
Q. Continue, please.
A. She said that she looked for the name of a osteopath in the yellow pages and she was seen by Dr. Hurwitz. His treatment included

osteopathic manipulations, massage and physical therapy.

She reported, "I went to him for quite awhile and wasn't getting any better."

She stated that she wanted to find a doctor who would tell her what was wrong with her and why. She said that she sought treatment from a Dr. Nemunaitis whom she knew because she was once employed at the Euclid Clinic. He obtained some more X-rays. The patient stated that she didn't want anymore X-rays; that she had a number of X-rays.

She sought treatment from Dr. Cudnik. Dr. Cudnik she told me was a hand surgeon and thought that he was experienced with shoulder pain. She reported that he could not tell her anything except, "Your hands are connected to your neck."

She said that she was getting, "desperate" and then went to the Cleveland Clinic whereas she was seen by Dr. Wilke. He examined her on the 18th of August of **1986**. She reported that his examinations included that from her blood and some more X-rays. He provided her with some sleeping pills and

Plaquenil and told her she had, "a rheumatoid factor".

She reported that she saw him on three or four occasions without any improvement. She was later told that she did not have a rheumatoid arthritis but did have fibrositis.

She said that a CT scan was performed at the Euclid Clinic in December of 1987 and stated that Dr. Wilke did not see that scan and she had discontinued all her rheumatoid medications.

She then returned to seek further treatment from Dr. Nemunaitis. She reported also that she was seen by a Hematologist, a Dr. Rosensweig, who wanted to do more hemotological investigation. Patient stated that she feared, "I thought I had some dreaded disease" and wanted to find out and get a direct answer from anybody.

She reported that she wasn't satisfied with the management and the treatment that she was receiving. She was also seen by a Dr. Howard Tucker who is a neurologist. He examined her on the 25th of October of 1985. The patient reported that she obtained,"A whole

menagerie of muscle relaxants and pain pills."

When I examined her, she reported that she had neck pain, which was manifested by a feeling of "uncomfortable". She said that she had a burning sensation in the back of her next which radiated between her shoulder blades. All physical activities she reported aggravated her symptoms. Cold weather also aggravated her symptoms.

She said that prior to her motor vehicle accident she was active in bowling and even attempted bowling after the injury.

Q. Let me stop you for just a moment, doctor.

By the way, when you were obtaining this history from the patient, was there anyone else present at that time?

A. Yes. A Mr. Dave Meyerson was an attorney was present.

Q. All right. Continue, doctor. Did you obtain any other history at that time?

A. Yes. At the time she said that she was employed at the Lake Toyota Company. She said that she lost no time from work because the injury occurred around Christmas time and

accordingly she was able to take some rest periods during that season. She was unable to take time away from her work because she is the sole support of herself and her child.

She no longer does any lifting on her job. She reports that her household duties no longer include the ability to rake leaves, to shovel snow, to move furniture or to mow the lawn.

She told me that she was able to reach overhead to comb her hair, carry out all the activities of daily living which included dressing herself, and she experienced no trouble using her fingers such as buttoning her blouses, et cetera.

She said that she had a tingling sensation in her left arm which was intermittent.

Insofar as her back is concerned, she reports that this is no longer as troublesome as her neck. The patient stated that after her injuries, "My entire spine was treated."

That was the history that she gave me.

Q. All right. Doctor, after you obtained the history from the patient, what would be the

next thing that you would do relative to conducting your examination in this case?

A. To take a past history to find out whether or not the patient has had any previous injuries, operations, et cetera.

Q. All right. And is that what you did specifically with Mrs. Trexler?

A. Yes, that's correct.

Q. And would you tell us what that past history revealed, if anything, doctor?

A. Well, she told me she was involved in a minor accident in 1976, sustained "a pulled muscle in her right arm."

She also said she had an operation on her foot which she described as, "a tumor on the blood vessel." Which I presume was what is known as a Morton's neuroma.

Q. After you obtained the history, the complaints and the previous medical history, what would be your next step, doctor?

A. Physical examination.

Q. And did you proceed to conduct a physical examination of this particular patient?

A. I did.

Q. Would you tell us how you conducted the

examination, firstly, doctor?
A. Sure. We asked the patient to disrobe, all except removing her brassiere and her panties, and then do a complete orthopedic examination.
Q. All right. Would you tell us what would be involved in doing a complete orthopedic examination and specifically what you did for Mrs. Trexler?
A. Sure. We found that this is a 36 year old 135 pound five foot eight inch female. We examined her cervical spine. We checked the notions of the cervical spine, flexion meaning bringing her head forward, extension meaning Looking up toward the ceiling, turning her head to the other side and rotating her head to either side. All of these movements were within normal limits.
Q. Does that have any particular significance to you as an orthopedic surgeon, ioctor?
A. Certainly. We like to find out whether or not a patient has any limitation of movements of their neck and to find out if :here are any specific limitations which would

be of concern.

Q. All right. Continue, doctor.

A. She demonstrated no evidence of any muscle spasm. We checked the motion of her shoulders and this included internal and external rotation. All the movements of her shoulders were within normal limits. She was able to move both of her shoulders in all the ranges.

Q. Very good. What else did your examination consist of?

A. We checked her reflexes. We found those to be physiological. We checked her grip strength using what is known as a Vigorimeter which is a dinometer and on the right she was able to compress on two different occasions two pounds and three pounds per square inch and on the left four pounds per square inch on two occasions.

Q. And what is the purpose of that test, doctor?

A. This is an examination to determine the strength of the grip of the individual. It's a motor test.

We also checked her sensation with a pin

prick and found that to be within normal limits. We found that the pulses in her upper extremities were palpable, meaning that circulation in the upper extremities was normal.

She demonstrated no evidence of any trapezius muscle soreness. A trapezius muscle is that muscle which goes from the nape of the neck towards the shoulder and that was absent as far as soreness was concerned.

She demonstrated no evidence of any scapular angle tenderness. This is a point of reference of pain frequently in people who have neck and shoulder pain.

We checked the Adson's sign and we found that to be absent, meaning that it is a normal examination.

Q. What is the Adson's sign indicative of if it is present, doctor?

A. The Adson's sign is a specific test done with the neck and the unper extremity to determine whether or not there is any evidences for compression of the nerves or the blood vessels in the pathway from the region of the neck to the upper extremities. It is a sign

that is used to determine whether or not the patient has, for example, what is known as a thoracic outlet syndrome.

Q. Very good. Would you continue with what else you did in your examination?

A. We did a hyper abduction test of her upper extremities and we found that test also to be within normal limits.

We then did what is known as a low back examination and we found that the patient was able to stand on her heals and toes and she was able to bend forward 90 degrees. That means that she is able to reach the ground with her finger tips and both of those are normal ranges.

The straight leg raising sign is a test done with the patient lying on the examining table, raising the leg up without bending the knee, and we found that she was able to reach 75 degrees of straight leg raising, which is a normal range. She demonstrated no muscle spasm in the lumbar region, no loss of sensation by virtue of the pin prick and we found her reflexes to be physiological as well.

We were not able to measure any muscle

loss or atrophy and we found that her pulses in her lower extremity were palpable. We found that her leg lengths were on the right 88 centimeters, on the left 89 centimeters, which is an insignificant amount of difference in the leg lengths.

We found that her hip joints motions were totally within normal limits as well. That was the physical examination.

Q. All right, doctor. Relative to your evaluation of this particular patient, what would you have done after concluding your physical examination?

A. We would normally like to see some X-rays and review any records which would indicate specific sophisticated tests which are sometimes done prior to the time that I examine the patient.

Q. And did you have occasion to review the results or interpretations of any X-rays for specific tests as they related to Ruth Trexler?

A. Yes, I reviewed the X-rays that were reported, the regular X-rays which demonstrated some degenerative changes, arthritic changes in the lower portion of her cervical spine. It

revealed that she had a reversal of her lordotic curve indicative of that at that point in time of some muscle spasm.

We reviewed the report of the CT scan, which was taken in December of 1987.

Q. What is a CT scan, doctor?

A. CT scan is the computerized tomography examination. It's a special X-ray done in what we call cutting through segments of three to five millimeter levels. It gives one a three dimensional picture of the vertebra, the soft tissues, the spinal cord, the nerve roots, the disks in the cervical region and similarly in the lumbar region when one is obtained in that part.

Q. And upon your interpretation of the findings of the CT, what did you note?

A. The CT report suggested that the patient had some arthritic changes in the lower cervical spine. It also suggested that she had a two millimeter bulge at one of the disk levels. A two millimeter bulge in a 36 year old person in the mid line has no significance whatsoever.

Q. All right. Did you find anything

abnormal other than the degenerative changes that you have discussed in the review of the CT scan, doctor?

A. Nothing else.

Q. All right. Doctor, at this point, after your examination, your history, your review of the other pertinent documents, were you able to reach some conclusions or some impressions relative to what you thought the problem was with Ms. Trexler?

A. Yes, I thought that at the time of her accident she had some soft tissue injuries, that she aggravated the preexisting arthritic changes in her cervical spine, and I thought that given the treatment and her relative young age that she was able to return to a normal homeostatic state within a reasonable period of time.

Q. Doctor, were you able to conclude to a reasonable degree of medical probability as to whether or not the condition which Mrs. Trexler was complaining of, that being of constant pain, was compatible with the finding that you made on your examination and the documents that you reviewed?

MR. SHANE: Objection.

A. It was my opinion that her subjective symptoms far outweighed any of the objective findings. I could not find any significant residual manifestations of injury to the cervical or of the lumbar spine.

MR. SHANE: I withdraw that objection.

Q. Doctor, did you have an opinion or were you able to find an opinion to a reasonable degree of medical certainty as to whether or not Ms. Trexler presented with a thoracic outlet syndrome?

A. I have an opinion.

Q. Would you tell us what that opinion is, doctor?

A. There is absolutesly no evidence to support a thoracic outlet syndrome.

Q. All right. And doctor, do you have an opinion based upon a reasonable degree of medical probability as to whether or not there is any justification in reaching a diagnosis of the cervical or lumbar thoracic disk problem in Mrs. Trexler's case?

A. I have an opinion.

Q. And what is that opinion, doctor?
A. There is no evidence certainly by the sophisticated CT scan to support any concept of a cervical disk problem. There is no question that she has some arthritic changes which are seen not only on the CT scan but the plain X-rays as well, and I think that that can account for her early symptoms.
Q. All right. Doctor, finally, do you have an opinion based upon a reasonable degree of medical probability as to what injuries, if any, were sustained by Mrs. Trexler proximately caused by the automobile accident which she was involved in?
A. I think she had soft tissue injury in her cervical spine. I think she had an aggravation of her preexisting arthritis.
Q. And do you have an opinion as to the reasonable duration of those symptoms?
A. I think in a person of this age group that a period of three to six weeks, perhaps even as much as eight weeks in one who has some arthritic changes, and one might even stretch that to as far as ten weeks on the outer limits, should be the period of recouperation

necessary to resolve those symptoms.

MR. DJORDJEVIC: Doctor, thank you very much. I have no further questions. I am sure Mr. Shane will.

EXAMINATION OF MALCOLM BRAHMS, M.D.

BY-MR. SHANE:

Q. Okay. This is Mike Shane. Doctor, I have met you before. We have been at odds a number of times over the last 30 years and together on a number of occasions as well.

A. That's correct.

Q. A couple of things I have to ask you, doctor, to start with.

Now Dave Meyerson came to your office. And every time we send somebody up here for a defense exam somebody comes from my office, and as you know, we time the examinations, we time the treatments.

Now, you're a professional. I know it doesn't take you all day to do an exam. How long would you say that your examination and history in this case, your complete examination, complete history took in time?

A Sure. We began at 3:35 and we ended at 4:15, and there is a period between the history

and the physical where we permit the patient to get undressed, and occasionally I will see somebody while that's happening, so that period of time can be subtracted from that.

Q. All right. Now, doctor, you're a professional. We have been through this before. A good orthopedic examination can be done within 20 minutes, with a history, within 20 minutes to half hour, is that fair?

A. Well, a good one, I doubt it can be done in 20 minutes. At least, I don't think I can do one in 20 minutes. Perhaps other people can.

But I think sometimes a history such as was taken from this patient alone would take at least 20 minutes.

Q. Okay. So at any rate, we know that from the time she came in until it was over was 40 minutes.

A. Sure.

Q. During which time you may have done something else. That's why I am saying a half hour.

A. Sure.

Q. The other question I ask and I think the

jury should know is that this accident happened, do you recall the date, it was December 8, 1984.

A. Right.

Q. And you didn't see her for three and a half years.

A. That's correct.

Q. And that's the only time you ever saw her and that time was roughly a half hour, 35 minutes you saw her and took the history; is that fair?

A. That's correct.

Q. Okay. Do you have any reason or know why you never had occasion to do a defense exam on this patient before the three and a half years?

A. There is no reason. I just never was asked to see this patient.

Q. And by whom were you asked to see this patient?

A. By --

Q. Mr. Djordjevic?

A. Right. Exactly.

Q. Now, how many of these -- let me ask this, doctor. All doctors are entitled to a reasonable charge for the time away from their

practice. I have to ask this as all doctors are asked. What is your cost for a defense examination and a medical report such as this, sir?

A. Yes, $125 for the examination and $150 for the report.

Q. Okay. And when you're called to testify, as you are here -- and usually this is the purpose you're called in to a case for, am I correct, sir?

A. Yes, that's right.

Q. What is your charge -- now we are near your office taking this deposition today on Tuesday, three days before the trial. What is your charge to be here and give your testimony?

A. $500 for the first hour and $150 for every half hour thereafter.

Q. All right, sir.

So if I get this straight, you charge $120 for a defense exam, $150 for the report, $500 for the first hour of testimony, if it is on videotape, and $150 for each half hour thereafter?

A. Yes, that's correct.

Q. Okay. Now, how many of these defense

exams do you do say a month, sir?

A. Well, I really can't answer that with any degree of certainty, but I would say that in the average month anywhere from two to maybe as many as six a month.

Q. All right.

A. And it might be as many as eight a month.

Q. Okay.

A. It depends upon the time that I am in the city.

Q. All right, sir.

Now, you may do as many as eight of these defense exams such as this in a month.

A. Sure.

Q. Is your opinion. I'm really curious then snd this is a puzzle to me and I don't know what, how to pose it so that the jury can understand it. But in the past two months, from April, pardon me, from March 24 until the present -- March 24 is the last week in March, so from March 24 to April 24, to May 24 and another two weeks to now, that's like March to April to May, that's like two months and a week -- and in that period of time, sir, I see that defense medical exams where our office

represented the plaintiff, you have done a defense exam, one, two, three, four, five, six, seven, eight, nine times that we have a record of.

I happen to have the names, Eve Duncan, Ruth Trexler, Geraldine Hatina, Linda Ofasa, Meg Miller, John Scelerno, Robert Taylor, Gerald Tressler and Elizabeth Taylor. I have the dates April 25, May 5, May 12, June 9, March 24, June 9, April 6, April 6 and April 10.

And to me that is one, two, three, four, five, six, seven, eight, nine, nine defense medicals in two months and two weeks.

Now, there happens to be about five thousand lawyers in this county and it must be that when they see my name they automatically send them to you for a defense medical, otherwise this doesn't make sense.

All of these defense exams were done in a two month period this year 1988 from March 24 to June 9.

A. What are you saying?

MR. DJORDJEVIG: I will object. And move to strike.

MR. SHANE: You can move to strike.

MR. DJORDJEVIC: I am going to do that, Mike, for the record.

A. I want to know what are we talking about?

Q. Well, I want to know --

A. What did you ask --let me go back.

Q. I will restate --

A. What did you ask me when you asked me the first question?

Q. All right. Doctor, did you do nine defense --

A. That's not what you asked me. You asked me how many, you asked me how many defense medicals and I assumed you're talking about depositions. Of those people that you mention, this is the first and the only defense medical in that period of time.

Q. All right, doctor.

A. Now, if you are asking about how many examinations I do --

Q. Yeah.

A. -- in my office, that's a different story. I thought you were talking about

depositions.
Q. That's why I am asking.
A. Well, let's clarify the whole matter. If you are asking about how many defense medicals I do that's one thing.
Q. All right.
A. If you are asking about how many depositions I do, we are talking about a different things.
Q. Okay. How many defense medicals do you do?
A. I see on an average -- I am here in my office sometimes four a weeks and sometimes five times a week and I may see at least one or two of these every day.
Q. Okay.
A. That I am here in the office. Depositions are not a frequent occurrence. I thought that that's what you were asking before.
Q. So what I gather is you do about 30 defense medicals a month roughly.
A. Oh, I would say without question, that's right, yes.
Q. And I would still like to understand and

it is a puzzle to me maybe you can answer it. Do you know how come you have done nine defense medicals and you have been hired by Walter Machinga in the Tressler case for a defense medical, do you remember that one?

A. Sure.

Q. Thomas Brunn in the Scelerno case, you did a defense medical?

A. Yes.

Q. Ruth Taylor, Roger Taylor, do you recall that?

A. I will take your word for it. I don't remember that but that's all right.

Q. I will give you the dates.

A. I have no objections to that. Go ahead.

Q. Roger Taylor.

A. I don't remember everybody's name.

Q. I am trying to figure out why you have examined -- and I don't know if you have the answer, why you have been called upon to do a defense exam on nine of my clients in the last two months. Do you have any idea?

A. Certainly. Obviously the attorneys like to have a good, honest report from a good, honest doctor and that's why they send them to

me.
Q. I see. And out of 30 a month --
A. Yes.
Q. And that's a two month period?
A. Now we are going to figure out how much money I make.
Q. No, not how much money you make. Just how come with 5000 lawyers I have one fourth of your entire defense practice.
A. What did you have before that, Mr. Shane? Did you have all the numbers in three months periods prior to that three month period that you're talking about?
Q. I am asking you why have you appeared nine times in two months on defense exams?
A. I don't have any answer to that question.
Q. Okay. Well, neither do I, doctor, that's why I am curious why all these defense lawyers are using you. Okay.

Doctor, let's go on.

In this particular case, at any rate, let's get to this one here. You were called to testify three and a half years later after an accident about this particular woman. And there is a couple things I would like to

clarify that you have been asked. I'm not going to take a long time.

Now, you said, and I want to make this very clear, that in your opinion there was an injury at the time of the accident to this woman?

A. Yes, that's right.

Q. You said that you reviewed her X-rays at the time of the accident?

A. I did not say that.

Q. You didn't?

A. I said that I reviewed the reports of the X-rays.

Q. All right. Doctor, are you basing -- is it possible for you to form your opinion that you have testified to in this case without basing your opinion on the opinions stated in those X-ray reports?

A. I didn't -- the X-ray reports, I said that the X-ray report did reveal that the patient had a reversal lordotic curve and also some degenerative changes in her cervical spine.

Q. Well, that wasn't exactly the question I asked. Doctor, the question I asked in all

fairness to you is you are being brought into this case three and a half years later.

Would it be possible for you to form an opinion as, that you have testified to here if you hadn't been able to review the X-rays, reports, not the X-rays, the reports that were given to you to review, reports of X-rays she had had taken?

A. Certainly.

Q. Okay. In part, is your testimony based upon those X-ray reports you read?

A. No.

Q. Okay.

A. Only --

Q. Go ahead.

A. Only on the basis that the CT scan which is a very, very sophisticated examination supports the objective findings of no evidence for a herniated disk.

Q. Did you interpret the CAT scan or CT scan yourself, doctor?

A. No, I read the report.

Q. Well, that's what I am saying.

A. Yes.

Q. In effect, then, part of your testimony

here that you're giving today is based upon the report that you read from the CAT scan, and isn't it true, if I am correct in what you're saying that that is a parcel and part of the basis of your entire testimony?

A. Oh, no, no.

Q. You mean it has no significance?

A. No, no, no, Mr. Shane, Mr. Shane, let's put things in proper perspective.

Q. I am happy to, sir.

A. So that the judge and the jury and everybody else knows what we are talking about.

Q. Uh-huh.

A. A CT scan is a specialized examination. Not all radiologists, board certified radiologists are qualified to read a CT scan, and those who are render a report. All orthopedic surgeons and neurosurgeons and neurologists, very few are qualified to read CT scans or MRI's, and if one treats a patient in whom he requests a CT scan, and one is obtained and he receives a report from that radiologist, it's fair then if I am the treating or the operating surgeon to review the actual scan with that doctor.

I trust the fact that the man who read this is a qualified board certified radiologist who specializes in CT scan interpretations and certainly I would agree with his interpretation.

Q. I have no quarrel with that, doctor. The only thing I am asking you and it's a simple question. I think it can be answered. Is his interpretation, the report you read?

A. Absolutely.

Q. Is that part of your testimony? Do you base part of your testimony upon his interpretation?

A. No. It supports the fact that I have found nothing wrong with this patient's cervical spine and supports the fact that this patient in reality does not have anything other than the preexisting arthritis and a central two millimeter bulge which I said is of no significance.

Q. All right. Well, doctor, then I just want to clear this up so I get this up, because I have a conflict here that I can't bring together.

You've said that there was no disk

herniation here.
A. That's correct.
Q. And of that you're sure?
A. Yes.
Q. All right, then, doctor, I'm handing you from Sachs, Ross and Associates, are you familiar with their firm?
A. Yes.
Q. Are they radiologists like you're telling us?
A. Yes.
Q. Are they guys you would trust their interpretation?
A. I certainly would.
Q. Okay, doctor, I am handing you a report which was taken at the request of Dr. Nemunaitis and it was taken on December 29, 1987 and I would like you to read the impression.

MR. DJORDJEVIC: May I see it first?

MR. SHANE: Sure, you can both see it.

MR. DJORDJEVIC: Doctor --

THE WITNESS: I just want to

get out the CT scan that I have.

MR. DJORDJEVIC: All right.

MR. SHANE: Take your time, doctor, as much time as you need.

THE WITNESS: This is the same exam that I have. I don't need your copy. I have the same exam in front of me.

Q. All right, doctor, would you read what it says on the third last line that I have underlined, the fourth last line?

A. Well, I don't have your underlining, I am sorry.

Q. Okay, sir. There you are.

A. Well, I would rather read the whole.

Q. Read the whole thing.

A. Sure. I would rather read the impression.

Q. Go ahead, sir.

A. The impression by the radiologist is that the inner spaces at the levels of the C5 and 6 and C6 and 7 are severely narrowed. Up to two millimeters of central and bilateral osteophytic ridging is present at each of these levels causing slight left foramenal encroachment at the levels of C5 and 6 and

moderate bilateral foramenal encroachment at the levels of C6-7. At the levels **C5-6** there also appears to be up to, up to two millimeters of irregular central and left lateral diskal herniation as demonstrated on life size axle images **15** to **16** and life size sagital reconstructive images nine. No other abnormalities are noted.

Q. Okay. Now, just tell me if I am reading the words correctly.

At the level of five and six cervical, that means your lower neck just above the one bone that protrudes, right?

A. Correct.

Q. At the level of five and six, there appears to be up to two millimeters of irregular central and left lateral diskal herniation.

A. Uh-huh.

Q. Now, those were taken on life size axial images. But it says that left lateral diskal herniation, does it not?

A. Right.

Q. Would you dispute what Dr. Ross has written where he says there is disk herniation?

A. I'm not going to dispute it at all. I can explain what he is saying but I'm not disputing a thing he says.

Q. Did you see this CAT scan or are you relying on what Dr. Ross will say?

A. Absolutely.

Q. Okay. You will accept what Dr. Ross will say?

A. I certainly will.

Q. Thank you.

Now, let's get back to this particular patient.

You heard that she was seen at Cleveland Clinic?

A. Yes.

Q. And that the doctor there, Dr. Wilke, made a diagnosis of rheumatoid arthritis and muscular fibrositis. Then she told you that they had not found anything, but that's his diagnosis, am I correct, sir?

A. That's correct.

Q. You have had a chance to review that?

A. Yes.

Q. Now you said there was no rheumatoid arthritis?

A. I didn't say that, that she said that. It was under quotations. It was what the patient said, not what I said.
Q. I see. Okay. You don't dispute what the doctors from Cleveland Clinic say?
A. Absolutely not.
Q. Thank you.
NOW, you have had a chance to read over Dr. Nemunaitis' report, have you not, sir?
A. Yes.
Q. And you and he both talk about foramenal encroachment?
A. Yes.
Q. All right. As I understand it, doctor -- and I'm not a doctor so I have to ask your guidance and help -- from our spinal cord come out nerves through spaces between the bones in the spine, am I correct?
A. Yes, that's correct.
Q. Those spaces are known as I think you told me once before as foramen, and from the spinal cord which is your central nerve going down your back come out these various nerves through these holes?
A. Uh-huh.

Q. The thing that keep these bones and the spine separate are the disks which are -- again I am quoting you and I remember your testimony in another case -- which is like a fibro cartilage or tissue with a soft inside, palposis you described it as.

A. Sure.

Q. That the difference is that in the full disk herniation, the inside of that disk somehow or other leaks out like a jelly doughnut, I think it was described, and the disk flattens, am I correct?

A. Uh-huh.

Q. When the disk flattens, the vertebra come closer together.

A. That's right.

Q. When the vertebra come closer together, we have often times what is called a pinched nerve or nerve root irritation, am I correct?

A. No, you are not correct.

Q. Then please correct me, sir.

A. Sure, I will be glad to.

Q. I will be quiet and I will let you answer.

A. Good. You described accurately in

'tautological terms that when the disks become degenerated they lose height. And as they lose height, the vertebra come closer together. As the disks degenerate, it doesn't mean that the disk are being pushed out, that means that they disappear, allowing the vertebra to come closer together. Foramenal encroachment is not a problem unless two things happen: One, arthritic changes, or B, the disk herniates into and againsts the nerve roots which exit the spinal cord as I intimated.

The fact that there is lateral disk diskal herniation without nerve root impingement doesn't mean one iota of clinical significance. Disk herniation with nerve root impingement is diagnostic. Nowhere in this report does Dr Thompson, not Dr. Ross, who made this diagnosis, nowhere in this does Dr Thompson make any reference to the proximity of the hernia, herniation of disk material and the nerve root. So lateral or axial bulging of the disk may or may not be of any significance at all. Generally in a 36 year old person not of major consequence.

Q. Doctor, have you ever seen somebody 30

years old with a herniated disk?
A. Oh, absolutely.
Q. With pain down their arms and down their legs?
A. But there is no objective findings.
Q. Wait, I am asking you doctor, have you ever seen this?
A. I have, without question.
Q. Sure. And doctor, what we are saying now is you said that she had degenerative arthritis, but you found no evidence of disk herniation at the time of the accident, am I correct?
A. No, I didn't say that at all.
Q. You did not say that?
A. I did not say that.
Q. All right. Then let me --
A. I didn't say a thing about herniation of disk material at any point in time. I said that the CT scan does not support any evidences for a herniated disk in this particular patient.
Q. Doctor, I am sorry, I thought and I'll have a chance to review it, I thought you said that the material you read or the reports you

read at the time of the accident did not reveal any disk herniation.

A. Nowhere in my testimony -- if you scrutinize what has been -- the court reporter has, nowhere in my testimony will you find that statement.

Q. Well, I hope not, doctor.

A. I do too.

Q. But, doctor, you do not dispute what's written there by the Rosses by the firm of Ross, Sachs or Sachs, Ross?

A. I don't dispute anything about the CT scan.

Q. All right, now doctor, do you dispute then what Dr. Nemunaitis says about this patient's diagnosis?

A. I do dispute his diagnosis. I don't agree with it at all.

Q. Okay. Now, that's in this case you dispute what he said. He has talked about the background this woman has. He has talked about foramenal encroachment. You you have agreed that she does have that?

A. Yes, that's correct, but that's not his diagnosis,

Q. It is in his report.
A. It is not his diagnosis. You asked if I agree with his diagnosis and I said I do not.
Q. What is his diagnosis, then, doctor?
A. He points to a thoracic outlet syndrome or brachial plexus radiculopathy which I don't agree with.
Q. Would you tell us what a brachial plexus is?
A. Sure.
Q. Or a thoracic outlet syndrome and how it is caused?
A. Sure. The brachial plexus is a combination, a union of the nerves which come out of the neck, the cervical spine. It's a combination of C5, 6, 7, 8 and T-1 nerve roots which make up divisions, which make up cords and finally nerve roots and they ultimately end up in the arm as three major nerves.

The thoracic outlet syndrome is a condition that may occur as a result of impingement of the brachial plexus in its exit from the, after it leaves the neck, getting between two very important muscles in the neck called the scalene muscles. It can result in

an impingement of the brachial artery of the major vein in the neck or of the sympathetic nervous system.

Q. Okay. What parts of the body do those things involve themselves in?

A. The neck. The neck and shoulders.

Q. Fine. And is it due to a compression?

A. No. It is not due to a compression.

Q. Okay.

A. It's--

Q. Pardon me, go ahead if you want to answer.

A. If we are talking about a compression in the cervical spine, we are talking about a different entity. If we talk about a compression in the region of the thoracic outlet, that's soft tissue and that's in the neighborhood of low down in the neck near the shoulder.

Q. All right. Do you know Dr. Howard Tucker?

A. I do, very well.

Q. Do you send him patients?

A. Infrequently.

Q. Does he send you patients?

A. Very infrequently.
Q. Do you know that he is board certified?
A. I know Dr. Tucker very well.
Q. Would you say he is a good neurologist?
A. I think that of the neurologists that I know, Dr. Tucker is among the good ones, yes.
Q. Are you on the staff of the same hospitals?
A. Yes.
Q. Do you know if he is board certified?
A. I think he probably is. I think he probably also is going to be board certified as an attorney one of these days.
Q. Ne would like to.
I don't know if you want to come along for the program. I don't know which one has more experience in this stuff, frankly, more than we do.
Do you know what Dr. Tucker wrote?
A. Dr. Tucker agreed with the diagnosis of a thoracic outlet syndrome and he also suggested, and I agree with the diagnosis, of cervical myofascitis.
Q. All right.
A. Now, if I left something out, I'm not

reading it.
Q. Do you agree then with what Dr. Tucker said?
A. Not with the thoracic outlet syndrome, obviously, but I do agree with the cervical myofascitis at the time that she was injured.
Q. Okay. So so far we have here two doctors who you disagree with who have treated this patient?
A. Two doctors who made the same diagnosis of thoracic outlet syndrome. I'm not disputing the doctors, I'm disputing their diagnosis.
Q. Well, that's all I am saying.
A. I'm --
Q. You disagree with them that's all I am saying.
A. I disagree with their diagnosis. I don't disagree with them as doctors.
Q. Oh, no, no, no. I am sure you have respect for them of doctors. You are just saying you have a different opinion?
A. Exactly.
Q. Whatever basis that is, you have a different opinion. I have no quarrel with that.

Now, doctor, of the only thing I finds then is in these other cases, in all these cases that I have talked to you about, are you familiar with Dr. Kaufman?

A. Yes, I know Dr. Kaufman.

Q. Is he an orthopedic surgeon?

A. Yes, Dr. Kaufman is an orthopedic surgeon and he is a good orthopedic surgeon.

Q. Are you familiar with the Roger Taylor and Elizabeth Taylor case that you did an exam on?

A. I don't have that in front of me.

Q. I don't want to hide it.

THE WITNESS: We are not talking about that case now, are we?

MR. DJORDJEVIC: No, we are not.

THE WITNESS: Do we have to discuss a different case?

MR. DJORDJEVIC: I want to here what the question is, doctor, but I am sure it will be objected to.

Q. Doctor, did you disagree with their finding in that case?

A. I don't have that information in front of

me.

Q. That's why I am going to offer it to you. And if it has anything to do with this case I would be glad to review it. I don't believe that I should.

MR. DJORDJEVIC: I am going to object.

MR. SHANE: You can object as much as you wish.

MR. DJORDJEVIC: I understand that, Mike, and I am going to.

Q. Doctor, all I am saying is in that case, do you recall, is this your medical report? I am going to give it to you.

MR. DJORDJEVIC: May I see it first?

MR. SHANE: Sure, I will give you that one and I will give you this one and I will give you all that I can find there, this one and I will give you this one.

MR. DJORDJEVIC: We might as well go off the record if we are going to read these.

MR. SHANE: Well, take your time. If he wants to go off the record, let

him go off the record.

MR. HENSCHEL: We are off the record.

(Discussion off the record.)

MR. SHANE: This is still cross-examination. I just to want show I have negative findings on all these cases and I am telling you that's what it is.

MR. DJORDJEVIC: What is good for the goose is good for the gander.

MR. SHANE: You can do anything you want.

MR. DJORDJEVIC: I am going to note an objection for cross-examination of this witness with prior medical reports provided to Mr. Shane. I don't see any relevancy in this case, but go ahead.

Q. Doctor, I am back on the record now. If you want to read the reports, I have seen reports here where Dr. Zaas, who is also an orthopedic surgeon right down the hall here?

A. Yes, and I will absolutely find that you're out of order in telling me that I have disagreed with Dr. Zaas. It would be very, very infrequent that I would find any objection

to Dr. Zaas' reports or his examinations.

Q. Well, would you like to compare them, doctor? I would be happy --

A. No. If we want to talk about doctors whom I will disagree with on the basis of diagnoses, fine, but Dr. Zaas is one doctor that I would find very, very infrequently a difference between mine or his opinion.

Q. How about Dr. Raufman?

A. Dr. Kaufman is a good orthopedic surgeon and I would say that in the most part I may disagree with his treatments, but not probably his diagnosis.

Q. Okay. Well, doctor, I have mentioned these cases by name and in all these cases, all I want to ask is one thing so we can conclude this.

Do you recall seeing -- these were all within the last two months. Eve Ducan, Ruth Trexler, Geraldine Hatina, Linda Ofasa, Meg Miller, John Scelerno, Robert Taylor, Elizabeth Taylor and Gerald Tressler. These are all defense exams you did.

MR. DJORDJEVIC: Asked and answered. Objection. Move to strike.

Q. Are these defense exams you have done in the last two months?

MR. DJORDJEVIC: Same objection.

A. Mr. Shane, if you were to tell me that you could recall everything that you have done in the last three months on different cases and can recall all the incidents without reviewing your notes, I would have to say that you're a genius, and I cannot recall without reviewing those records, and even if I did that a week ago, I probably would have to review my notes in order to recall everything that I wrote about those particular patients.

Q. Well, doctor, I am willing to go off the record and let you review your notes on those files. I will just pick those four.

A. Mr. Shane I am going to say it again. If it has anything to do with this particular case, I am glad to do that. If it has nothing to do with this particular case, I think we are wasting our time.

Q. I don't think so, doctor, but I am not --

MR. SHANE: If you will withdraw your objection, I will not ask further

questions or ask him to review the notes, otherwise I will ask him to review the notes.

**MR. DJORDJEVIC:** I am going to object to you --

**MR. SHANE:** Well then, I am going to ask him to review the notes.

**MR. DJORDJEVIC:** You can ask him. I don't know if he is going to review the notes for you.

A. I will not review any case other than what we are discussing tonight.

Q. Well, under the circumstances I can't see that we can conclude this deposition because I would want to be able to fulfill my opportunity to cross-examine extensively here and I think the relationship of the doctor to his examinations are a very important facet of this thing.

**MR. DJORDJEVIC:** He has told you that he has no recollection of these individuals, I don't think he is under --

**MR. SHANE:** He has examined them and I certainly am allowed to go into what his practice consists of and what --

**THE WITNESS:** May I make a--

MR. DJORDJEVIC: I don't think you are allowed to do that at this point in the juncture. Had you obtained a discovery deposition from the doctor. Clearly--

MR. SHANE: This is your deposition, not mine.

MR. DJORDJEVIC: That's exactly the point that I am making. If you had taken a discovery deposition you can go into anything that is reasonably calculated to lead to reasonable evidence.

MR. SHANE: I am not going to bother a doctor twice. First of all, I am cross-examining here on the basis of you are going to bring him into trial. On that basis I think I have every right to extensive cross-examination.

MR. DJORDJEVIC: You have the right to an extensive cross-examination but it still has to be germane to the issues at bar and this correction examination is not.

MR. SHANE: Well, you may not think so, sir. I reserve that right to recall the doctor if the court does allow that in.

MR. DJORDJEVIC: Well, we will let the court make the determination.

MR. SHANE: Okay.

MR. DJORDJEVIC: And then I am satisfied to do that.

MR. SHANE: Then on that basis we will then determine whether it is necessary to continue it. Rather than take more of the doctor's time at this time, I will now go on with my questioning subject to that one caveat, that if the court allows me to get those answers relating to other cases where he has done defense exams, I will be allowed to do that before this trial is concluded.

MR. DJORDJEVIC: So that the record is clear, then the ruling that you want from the court will be relative to whether or not you can examine this doctor at perpetuation testimony relative to previous cases in which he has done defense medicals; is that it?

MR. SHANE: And his findings and opinions since they are all public record and they are all with my office.

MR. DJORDJEVIC: Fine.

MR. SHANE: Okay?

THE WITNESS: May I make a statement?

MR. SHANE: Well--

THE WITNESS: I would like to make a statement. I would like to make a statement. I would be willing to appear in court if the judge determines that his, that calling in cases other than the one that we are discussing tonight is relevant.

MR. DJORDJEVIC: Very good, doctor.

MR. SHANE: Well, that's all we are asking about, here, all right.

I would like now to clarify and get back on the record, keeping that as a separate aside for the benefit of the court and would you please mark the pages accordingly.

Q. Now, doctor, have you seen anything else in this case besides Dr. Tucker's report which you disagree with on thoracic outlet syndrome, Dr. Nemunaitis' report where he says thoracic outlet syndrome, and was there any other medical report, X-ray or CAT scan that you viewed?

A. Are you asking me?

Q. Yes. Was there anything beyond Dr. Tucker's report?

A. All the reports, all the reports that I have reviewed are right here in my folder and I will --

MR. SHANE: Let's go off the record and let me look at the folder. That's fastest.

MR. HENSCHEL: We are off the record.

(Pause.)

MR. SHANE: Back on the record.

MR. HENSCHEL: We are back on the record.

Q All right, doctor, I see that there is only two pages here that I see writing on. Are these, these are from your personal notes?

MR. DJORDJEVIC: Well, let him answer the other question before you go on

MR. SHANE: Please do. Well, they are from his notes.

THE WITNESS: These are my notes, both sides of the history and physical

examination.

Q. Okay. Now, is that your -- here is your whole file, sir. Because I do want to ask it, so keep these separate, if you would. Are these your total notes for the case?

A. May I have mine?

Q. Here they are, sir. Your own personal notes and notations?

A. These are my own total personal notes.

Q. Okay.

A. Yes.

Q. And that is the only part in your writing those two sheets over there, am I correct? The green one?

A. Yes, that is correct.

Q. Do you mind if we have a photostat made and mark them as an exhibit?

A. No, I would be glad to give it to you. I will photostat it for you.

Q. Fine. If you will do that and give it to Mr. Djordjevic.

MR. DJORDJEVIC: Djordjevic.

MR. SHANE: Djordjevic. I would be happen to accept copies of it. May I have it back.

Q. The other thing I would like to ask refers to Dr. Moshkovich's findings which were very early in this accident,

A. Yes.

Q. And Dr. Hurwitz' findings.

A. Yes.

Q. And I think essentially from what I have gotten you don't dispute that this woman had injuries to her head, her neck, her back, her chest and --

A I have no, I have no qualms about the injuries that were reported by those doctors.

Q Okay. And do you have there, also, the hospital records, sir?

A The emergency room record; is that what you're talking about?

Q Yes, sir.

A Yes. Yes, I do.

Q All right. Would you -- do you have any quarrel with the findings there or the diagnosis made in the emergency room, sir?

A No, none whatsoever.

Q Would you read the lower right-hand corner of the diagnosis there?

A Sure. Generalized myositis and cervical

strain, myalgia, contusion of the left breast.
Q. Myalgia is what?
A. Muscle pain.
Q. Okay. Now, was medication given at the hospital?
A. Norgesic Forte she was given 30 tablets and I would think that this is probably -- I don't know what this is. If you can read it.
Q. Well, no, I won't argue, doctor.
A. I don't know what that is.
Q. By the time we get those photostats, who can read them, nobody.
A. Well, it is something that she is to take every five hours for pain only. And that could be something like Percodan or Percocet, something of that nature. I can't read it.
Q. All right. Now, doctor, I have two more questions. I don't want to run up this tab any more.
MR. DJORDJEVIC: Objection. Move to strike.
Q. All right, doctor, for obvious reasons, I'm not going to stretch this on endlessly. There is no argument with the left lateral diskal herniation found by Sachs, Ross? You

don't dispute that. I just want that word --
A. Mr. Shane, I explained before that this is an interpretation of a radiologist who examined her cervical spine and pointed out that she has diskal herniation but no evidence whatsoever of nerve root impingement.
Q. Thank you.
A. That's the difference.
Q. Does it say -- will you tell me here and I am reading it with you, you see?
A. Yeah.
Q. Where we are saying, I don't see where you say, see no evidence of nerve root impingement?
A. I said, I said that the man is describing that there is a bulging aspect of the disk. He makes no mention whether or not this is in proximity of the nerve root at all. That's the critical point.
Q. How far, doctor, is the disk from the foramen that the nerve exits from?
A. Well, Mr. Shane, the disk is a 360 degree circle and the foramen are two little tiny things on each side.
Q. That the nerves come out of?

A. That the nerves come out of, right.
Q. So how far away is the hole that the nerve comes out from the edge of the disk right at that point, sir?
A. I can't tell you that accuractly, but I would say that -- if you will permit me.
Q. Go ahead, sir. Go on.
A. I will say in the upper cervical spine, as much as ten to 12 millimeters of distance between the nerve root and the side of the disk. In the lower cervical region probably anywhere in the neighborhood of maybe six to eight millimeters. It's a little bit bigger at the top than at the bottom.
Q. All right, doctor, in inches, can you translate six to eight millimeters in inches?
A. Why translate it in inches?
Q. How many millimeters in an inch?
A. Ten, 25 millimeters to an inch but --
Q. So it was what, about an eighth of an inch away? I am just asking.
A. You are making a mimic mockery of this whole thing.
Q. No, I am not, doctor. I am trying to figure out--

A. Yes, you are. You are because all you are trying--
Q. I am trying to make a mockery?
A. I am making it quite simple that in the upper -- that if there was any evidences on this report of any impingement of the nerve roots, it would be significant. That is the critical issue.
Q. Again, you were relying then without any question on this report, am I correct, Sachs, Ross, you don't dispute it?
A. I do not dispute it.
Q. That's the question I asked, doctor.
A. I do not dispute it.
Q. Isn't that the question I asked you before?
A. No, it is not.
Q. I said did you dispute those words?
A. You did not ask me that. I do not dispute the interpretation of the radiologist who is adequately and perfectly trained to read CT scans and I explained before not all radiologists are capable of reading CT scans and not all doctors who treat cervical problems are capable of interpreting CT scans.

Q. Excellent defense for the position, doctor.

MR. SHANE: I have no further questions.

THE WITNESS: Thank you.

EXAMINATION OF MALCOLM BRAHMS, M.D.

BY-MR. DJKORDJEVIC:

Q. Doctor, if I might I am going to have a couple questions and I hope I can clarify a couple things here.

First of all you used some terms in response to questions posed to you by Mr. Shane. We have talked about and thrown about the expression thoracic outlet syndrome.

Will you take a few minutes and explain what that means to the jury, number one and number two, would you explain how that syndrome is diagnosed if it exists?

A. Sure.

MR. SHANE: Doctor, in all fairness, have you explained that before or do you want to do it again? I have no objection either way.

THE WITNESS: At this point in time I would like to take the opportunity to

explain it.

MR. SHANE: Go right ahead, sir.

A. A thoracic outlet syndrome is a group of subjective symptoms which manifest themselves in the patient in one of several ways. If there is, if the thoracic outlet diagnosis is made, if it impinges, if it causes compression of a major vein in the neck going into the arm, that patient would end up with a big swollen edematous arm.

Q. I see.

A. If the patient, if that thoracic syndrome caused compression of the artery coming from, into the neck into the arm, it would cause vascular changes, which would mean that the cold, the hand would be white, cold, devoid of sweating and the muscles would atrophy. The muscles would get smaller.

If it had to do with impingement of a sympathetic chain, that patient could not stand even the air crossing her hand. She would have a white, thin hand without the ability to move her fingers with ease without pain. The patient could have --

MR. SHANE: I have to object to coulds. If he is going to describe it, let him describe it as graphically if he wishes but let's talk about medical certainty.

THE WITNESS: I am talking about the thoracic outlet syndrome.

MR. SHANE: This is not responsive. If you want to give us that fine, but let's have it in medical probabilities. Your lawyer, the man that hired you, knows better and I think you should be limited.

MR. DJORDJEVIC: I am asking for a diagnosis in the exclusion, so that is not limited by medical probabilities. I am asking the doctor --

MR. SHANE: Are you asking him possibility? What are you talking about?

MR. DJORDJEVIC: No. I am asking the doctor what the signs of a thoracic outlet are and he is telling us what the signs of the thoracic outlet are.

MR. SHANE: Then I have to object and ask the doctor tell us what he found

Q. Doctor, would you continue with what the

signs of the thoracic outlet are, please.

MR. SHANE: I don't care what he does.

A. If there is no vascular problem, meaning veins or arteries involved, and if there is no nerve involvement meaning the sympathetic or the peripheral nerves, then there cannot be a thoracic outlet syndrome. This patient does not have any sign, any objective evidence to support any of those findings, edema, loss of arterial supply, trophic changes, atrophy, loss of sweating, none of those findings are here in this patient. So the diagnosis of thoracic outlet syndrome is a figment of somebody's imagination.

Q. Doctor, are there any medical tests of an electrical nature that can be done to either rule in or rule out a diagnosis of the thoracic outlet syndrome if it is suspected?

MR. SHANE: Objection. Oh, let him answer. Let him say whatever he wants.

A. Thoracic outlet syndrome is not something that can be clarified only by an EMG examination. It would be applicable only if

there was a peripheral nerve involvement, then the EMG would be abnormal. But not likely to be abnormal unless there was a peripheral, of those four components that I mentioned, the artery, the vein, the peripheral nerve or the sympathetic chain.

If the peripheral nerve were involved the EMG would add something to that but it would not in any other way.

Q. All right. Now doctor, you have also used the expression myofascitis. Am I saying that correctly?

A. Yes.

Q. And you agree in it particular case of Mrs. Trexler had myofascitis; is that correct?

A. Yes, that's correct.

Q. Tell the jury what that condition is and tell the jury what problems it causes?

A. Myofascitis is a wastebasket diagnosis that is used in trauma in the neck and in the low back region. It indicates that the patient has had some injury to the soft tissues, to the bone, to the ligaments, to the tendons, to the muscles about the area of the neck or the low back region.

It only indicates that, as I said early this patient did have soft tissue injuries. The diagnosis of myofascitis accordingly can be made early and in a treatment of a patient of this nature.

Q. Is that what is sometimes known by layman as a whiplash type injury?

MR. SHANE: You know, I am objecting and I still don't care what you ask, but this is so improper, I don't care. I have to make my objection, but I don't care if he answers.

Off the record, my objection stands.

A. The term whiplash is one that I do not like to use, because I don't think it is anything except a descriptive term, but in so-called whiplash injuries, these are principally soft tissue injuries.

MR. SHANE: Objection.

A. A severe sprain may involve tearing of ligaments as well.

Q. Doctor, other than --

MR. SHANE: Objection as being improper questioning. On redirect.

Q. Other than your finding of myofascitis in

this case, were there any other positive findings that you made here at all?

A. I didn't think that there was any residual manifestations of injury to the musculoskeletal system which involved the neck or the low back region at the time that I examined her.

MR. DJORDJEVIC: I have nothing further. Thank you very much.

EXAMINATION OF MALCOLM BRAHMS, M.D.

BY-MR. SHANE:

MR. SHANE: I just have a few questions, doctor.

Q. You said that the thoracic outlet syndrome is a figment of the imagination of Dr. Tucker and Dr. Nemunaitis who said it was there.

A. That's exactly what I said and I believe it.

Q. Fine, you will stand on that?

A. I will.

Q. Okay. And so we clarify this, you're paid by Mr. Djordjevic no matter what the outcome of this, right?

A. That is correct. And I think all of us

are being paid except the members of the jury.

Q. Oh, they are being paid but it's totally insufficient for the work they do.

A. Exactly.

MR. DJORDJEVIC: I couldn't agree more.

MR. SHANE: Well, I am sure you join with me on something, sir. Thank you very much. No further questions.

MR. DJORDJEVIC: Thank you very much, doctor.

MR. HENSCHEL: Off the record at 7:07.

(Discussion off the record.)

MR. DJORDJEVIC: Doctor, why don't you waive.

THE WITNESS: I waive.

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CERTIFICATE

The State of Ohio, )

SS:

County of Cuyahoga. )

I, Vivian L. Gordon, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, MALCOLM **BRAHMS**, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 9th day of June, 1988.

Vivian L. Gordon

Vivian L. Gordon, Notary Public
within and for the State of Ohio

My commission expires May 22, 1989.