

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

3 SHERRI CEICYS, et al.,

4 Plaintiffs,

5 - vs -

JUDGE RUSSO

CASE NO. 321,620

6 THE CINCINNATI
7 INSURANCE COMPANY,
8 et al.,

9 Defendants.

10 - - - -

11 Videotaped deposition of MALCOLM A. BRAHMS,
12 M.D., taken as if upon direct examination before
13 Colleen M. Malone, a Notary Public within and
14 for the State of Ohio, at the offices of Malcolm
15 A. Brahms, 26900 Cedar Road, Beachwood, Ohio, at
16 12:35 p.m. on Thursday, October 16, 1997,
17 pursuant to notice and/or stipulations of
18 counsel, on behalf of the Defendants in this
19 cause.

 - - - -

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1 APPEARANCES:

2 Murray D. Bilfield, Esq.
3 Bilfield & Sandel
4 1000 Erieview Tower, 10th Floor
5 1301 E. Ninth Street
6 Cleveland, Ohio 44114
7 (216) 696-5297,

8 On behalf of the Plaintiff;

9 John F. Gannon, Esq.
10 Berlon & Timmel
11 633 Leader Building
12 Cleveland, Ohio 44114
13 (216) 696-6454,

14 On behalf of the Defendant.

15 ALSO PRESENT:

16 Randy Andrews, Videographer
17
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25

1 MALCOLM A. BRAHMS, M.D., of lawful age,
2 called by the Defendants for the purpose of
3 direct examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn,
5 as hereinafter certified, deposed and said as
6 follows:

7 DIRECT EXAMINATION OF MALCOLM A. BRAHMS, M.D.
8 BY MR. GANNON:

9 MR. BILFIELD: Let's go off the
10 video, because I want to put together
11 something on the record before we start.
12 Okay. Let's go off the video.

13 VIDEOGRAPHER: Off the record.

14 - - - -

15 (Thereupon, a discussion was had off
16 the record.)

17 - - - -

18 MR. BILFIELD: You went too
19 fast before I wanted to do this.

20 The purpose of going off the record
21 at this point is for me to raise an
22 objection similar to that raised by
23 Mr. Gannon the other day. Mr. Gannon prior
24 to the trial deposition of Dr. Bilfield
25 objected to opinions, an opinion that

1 Dr. Bilfield expressed in a letter of
2 September 30th, 1997 on the basis that it
3 was in violation of Local Rule 21. While I
4 believe it is not in violation, as it was a
5 previously expressed opinion, I am likewise
6 raising the objection as to opinions here
7 in the context they are issued by
8 Dr. Brahms, which are contained in letters
9 dated September 24th, 1997 and September
10 30th, 1997 for the same reason: That it was
11 received less than 30 days before trial,
12 and also to any opinions expressed in the
13 letter of September 5th, 1997, as I never
14 even received it. So with that said --

15 MR. GANNON: Okay.

16 MR. BILFIELD: .. I'm done saying
17 it.

18 MR. GANNON: I don't want to take
19 much of the doctor's time. I just want the
20 record to reflect the objection raised by
21 Mr. Bilfield is disputed for the mere fact
22 that the delay in getting a final report
23 from Dr. Brahms was due to the fact that
24 his client had the x-rays, which could
25 never be found, and further this was all

1 brought to the Court's attention at a
2 pretrial on September 24th at which time
3 the Court said that I had to seek an order
4 and obtain an order from the Court that she
5 submit to new x-rays, which was done, I
6 believe, on September 22nd, and at the
7 pretrial on the 24th the Court recognized
8 that and said I had until September 30th.

9 So there's no prejudice to counsel
10 and the delay was due solely to the fact
11 that the records were unavailable due to
12 the fact they had been taken by his client.

13 MR. BILFIELD: Excuse me, but Local
14 Rule 21 requires counsel to expeditiously
15 get reports.

16 MR. GANNON: Right.

17 MR. BILFIELD: But anyway, we can
18 argue that at another time.

19 MR. GANNON: We don't need to take
20 the doctor's time.

21 VIDEOGRAPHER: On the record.

22 Q. Doctor, my name's John Gannon, I'm representing
23 the defendant in this action.

24 Let's begin. This is going to be shown to
25 the jury, so let me begin by asking you your

1 name and your office address.

2 A. Dr. Malcolm A. Brahms, 26900 Cedar Road,
3 Beachwood, Ohio.

4 Q. Okay. Doctor, are you licensed to practice
5 medicine?

6 A. I am.

7 Q. And how long have you been licensed to practice
8 medicine?

9 A. Since 1950.

10 Q. Okay. And in order to become licensed, could you
11 just briefly tell us your educational
12 background?

13 A. Yes. I'm a graduate of Western Reserve
14 University Medical School. I served a rotating
15 internship at Cleveland City Hospital, now known
16 as Metropolitan Health, followed by four more
17 years of orthopedic surgical training, another
18 year at Cleveland City Hospital, a year at Mt.
19 Sinai Medical Center in Cleveland, Ohio, and two
20 years at Indiana University Medical Center in
21 Indianapolis, Indiana.

22 Q. Okay. And at the present time or since 1950,
23 which I guess is 47 years you've been
24 practicing, have you limited your practice to
25 any speciality within the medical field?

1 A. Orthopedic surgery.

2 Q. All right. And are you board certified?

3 A. I am.

4 Q. And just for the sake of the jury, what does it
5 mean to be board certified?

6 A. The requirements for board certification is to
7 complete an AMA approved residency in orthopedic
8 surgery, followed by a written and an oral
9 examination, followed then by the mandatory
10 practice of orthopedic surgery for at least two
11 years, followed again by a written and an oral
12 examination, successful completion of those
13 requirements entitles one to become board
14 certified.

15 Q. Okay. And hospital privileges, do you have
16 hospital privileges?

17 A. Yes. Principally at the Mt. Sinai Medical
18 Center. I have privileges at South Pointe and
19 this office has privileges at Meridia Hospital,
20 Hillcrest Meridia Hospital.

21 Q. Okay. In your 47 years of practice have you had
22 occasion to treat fractured clavicles, such as
23 Mrs. Sherri Ceicys sustained in this incident,
24 in the case?

25 A. Yes, anywhere from young people to old people,

1 including the famous Paul Warfield with the
2 Cleveland Browns who in 1965 fractured his
3 clavicle in an All-star Game, and I treated that
4 man.

5 Q. Okay. Now, when people fracture their clavicles,
6 after the requisite period of healing, which I
7 understand can vary from patient to patient, are
8 they generally able to return to the activities
9 that they were involved in before, either work
10 or sports or household activities?

11 A. Absolutely.

12 Q. By the way, was Paul Warfield able to return?

13 A. He returned to play football that same year.

14 Q. Okay.

15 A. That is after the all-star game, the following
16 season.

17 Q. Okay. Now, did you examine Sherri Ceicys at my
18 request?

19 A. I did.

20 Q. Okay. And in addition to examining her, before I
21 ask you about your findings on exam, did you
22 have available to you medical reports and
23 records that pertained to Sherri Ceicys?

24 A. Yes.

25 Q. Okay. I sent those to you?

1 A. Yes.

2 Q. Okay. And did you conduct your exam first and
3 then review the records or review and then
4 conduct the exam, which did you do?

5 A I do not review any records until after I
6 examine the patient. I don't think it's fair to
7 complete a jigsaw puzzle knowing the answers.

8 Q Oh, okay. And the reason I ask, I think some
9 doctors do it differently, but I didn't know how
10 you did it.

11 All right. So you examined Mrs. Ceicys
12 before you looked at any records. Okay.

13 Now, when Mrs. Ceicys came in for that
14 examination, was she accompanied by anybody?

15 A. Yes, Mr. Bilfield was, accompanied her to my
16 office.

17 Q. Okay. And that's Murray Bilfield, the attorney
18 who is seated here today?

19 A. Yes, that's correct.

20 Q. Okay. And did he sit in, I don't know if your
21 exam's, examination's in two parts, where you
22 actually do a physical exam and a history
23 taking. Was he, did he sit in on the entire
24 examination?

25 A. The history portion they may sit in and at the

1 request -- many times I will ask the patient,
2 especially if it's a female, if they would like
3 for the representative of the offices to be in
4 the room with them and in many instances they
5 are obliged to have them there and Mr. Bilfield
6 was there.

7 Q. Okay. So even though he's a male and she is a
8 female, she had no objection?

9 A. After she was dressed in the appropriate manner,
10 it was okay.

11 Q. Oh, okay. I see. She has to leave his presence
12 and your presence and then change into an
13 examining gown or disrobe to a certain extent?

14 A. In most, in most instances that's true. There
15 are some woman who are not bashful.

16 Q. All right. Okay. All right. Let's not talk
17 about I guess -- again, did you have any x-rays
18 available to you to review at the time that you
19 examined her or let's say immediately thereafter
20 were there x-rays that you had?

21 A. No. None.

22 Q. Did you inquire of me as to where they were or
23 find out why you didn't have them?

24 A. Yes, that's correct.

25 Q. And what did you learn?

1 A. I learned that they were unavailable. As a
2 matter of fact, I, in view of the fact the
3 patient was treated in this facility, this
4 building by Dr. Larry Bilfield, I assumed that
5 x-rays were taken downstairs in their x-ray
6 department. I made an effort, personally, to go
7 down to find those x-rays. She was not
8 registered in the x-ray department.

9 Q. Okay. Now, I suppose I could ask you this now:
10 If a doctor, such as yourself or Dr. Bilfield,
11 who didn't see her until about three or four
12 months after the event, is it important to have,
13 to see x-rays during the healing process?

14 A. Obviously, in order to determine whether or not
15 healing is occurring.

16 Q. Okay. All right. Now, did you eventually have
17 available to you at least a few x-rays of Mrs.
18 Ceicys?

19 A. Yes.

20 Q. Okay. Did I -- where'd you get them from?

21 A. From your office.

22 Q. All right.

23 A. And I requested at a later time an x-ray which
24 was obtained the 22nd of September of this year.

25 Q. Okay. All right. Now, let's talk about your

1 examination of the Cervicys back in June. I thi
2 it was, June 12th?

3 A. That's correct.

4 Q. All right. Why don't you describe for my
5 benefit and perhaps the benefit of the jury how
6 you conduct that exam and then I'll ask you what
7 your findings were or if you want to confine it
8 your description in one, that's fine?

9 A. The physical examination was a 42 year old 135
10 pound, five foot six inch female, and this was
11 a limited examination.

12 The examination of the cervical spine
13 revealed that she had a normal range of flexion,
14 which is moving her head forward; extension,
15 which means looking up towards the ceiling,
16 turning her head to either side and tilting her
17 head to either side, and that was a normal range
18 of motion.

19 Sensory, there was no evidence of any
20 sensory loss, no motor loss or there were no
21 reflex changes in her upper extremities

22 Examination of the right clavicle revealed
23 that there was a measurement from the AC joint,
24 which is on the outer side of the, near the
25 shoulder joint to the midline, which is the

1 sternum, and on the right that measured 14
2 centimeters and on the left 15 centimeters, so
3 that there was a centimeter of shortening on
4 that side. In other words, there was local
5 tenderness to palpation, which I thought was
6 moderately severe, rated three plus, over the
7 clavicle.

8 Her biceps' measurements, measuring the
9 girth of her muscle on the right was 30
10 centimeters on the left, 31 centimeters, a very
11 insignificant difference.

12 I measured her forearms below the elbow
13 joint, 28 on the right, 29 on the left,
14 insignificant finding.

15 The examination of her shoulder motions was
16 normal, with pain at the extremes and this was
17 actively produced. By that it meant that the
18 patient performed her own range of motion, there
19 was not attempt made to passively range her
20 motion.

21 Q. Can I interrupt you and ask you: Do you normally
22 try to do passive range of motion?

23 A. Yes.

24 Q. Why didn't that occur in this case?

25 A. Because of the degree of discomfort that she

1 experienced and that was evident in this
2 particular examination.

3 Q. Doctor, let me interrupt you. One other thing:
4 When you say, so she raises her hand and then
5 she reports to you that it's painful?

6 A. Yes.

7 Q. All right. But as far as clinically discovering
8 or observing or finding pain, can you do that?
9 I mean, you can't, you have to rely on what the
10 patient reports?

11 A. Pain is subjective.

12 Q. Okay. All right. Go ahead. I didn't mean to
13 interrupt with you your findings.

14 A. I made no attempt to determine her resistance to
15 abduction, meaning with her arm out to the side
16 and then to put pressure against that to see
17 whether or not the patient could resist any
18 abduction. I made no attempt to do that.

19 Internal and external rotation, meaning the
20 arm turning outward and the arm turning across
21 the chest, was carried out to a normal range,
22 and her reflexes were also normal.

23 Q. Again, you say I made no attempt to check
24 abduction. Apparently you asked her to move her
25 shoulder and you put your hand on it to, for

1 resistance. Why did you not do that in this
2 case?

3 A. Because I felt that the amount of exaggeration
4 of her symptoms didn't permit me to carry that
5 out.

6 Q. Okay.

7 A. I was satisfied to know that her range of motion
8 was normal.

9 Q. Oh, okay. And is that -- when you're doing a
10 clinical examination and you find range of
11 motion, in this case we're talking about the
12 shoulder as being normal?

13 A. Yes.

14 Q. Is that a good finding?

15 A. It's an excellent finding.

16 Q. Oh, okay.

17 A. I examined her for carpal tunnel, which was
18 negative. Carpal tunnel meaning any problems
19 with the hands.

20 And there was no evidence for tenderness in
21 the trapezius muscle or in the scapular angles
22 bilaterally on both sides.

23 Q. Okay. Is there more to your examination?

24 A. I deferred doing a low back examination, in view
25 of the fact that there were no symptoms

1 referable to the low back. I did check her
2 reflexes, found them to be physiological.

3 I did not check her grip strength, because
4 I didn't think it was necessary.

5 Q. Okay. Now, doctor, you had some records
6 available to you, and I understand you did not
7 get a chance to see the actual x-rays that were
8 taken on the day of her accident in December of
9 '94 until this morning. Do you agree that she
10 had a fractured clavicle?

11 A. Oh, yes.

12 Q. Okay. And I'm not sure exactly how old this lady
13 was, I think she was possibly 40 years old at
14 the time of the accident?

15 A. She was 42 at the time of my examination.

16 Q. Okay. So we go back a couple years?

17 A. Yes.

18 Q. All right. Now, considering that she was 40
19 years old at the time of the accident and
20 obviously somewhere in that area around the
21 healing process, what would you expect the
22 normal time that it would take for a 40 year old
23 female to recover -- I mean, to heal, have the
24 fractured clavicle heal, and I'll ask you to
25 break it down. If there was just two, a simple

1 two part fracture or if there was a three part
2 fracture; can you explain to us?

3 MR. BILFIELD: Objection.

4 A. Yes. A simple fracture without displacement
5 would require a period somewhere in the
6 neighborhood of eight to 12 weeks. A person who
7 has a two part fracture, a fracture that
8 involves only one site, in a patient this age
9 group, should take anywhere around 12 weeks for
10 healing. If there is a, what is known as a
11 butterfly fragment or a three part fracture, the
12 time would be, would extend to as much as four
13 months, four-and-a-half months, something in
14 that neighborhood.

15 Q. Okay. Now, you mentioned before that one of yc
16 findings was there was a shortening of the
17 length of the clavicle or shoulder, whatever y
18 want to call it, in Mrs. Ceicys when you saw her
19 in '97 and you -- and what -- is that -- you
20 said it was of minimal importance; why was that
21 of minimal importance?

22 A. Well, a centimeter is in the neighborhood of a
23 quarter of an inch in length, that isn't a very
24 significant --

25 Q. Okay.

4 -- loss It, werh 03 in certain t50003 of
1 sailor0 garments, it might present an
2 overrri0ing of the material, if t00r0 was a
3 significant am0ent of shortening, ut a quarter
4 of an inch isn't a lot of shortening
5

6 Q Oh, okay Now, considering that Mrs C0icys had
7 the 5rature, add max0e you want to look at.

8 Aefore I ask you this next question, maybe you
9 could put up t0e two x-rays from the way of the
10 ascident on your view box, if you would okay

11 Doctor, could you, since this is the first
12 time you have 0ad a 5dance to see it or just
13 earlier a few minutes ago, can you tell us what,
14 how you would interpret the x-rays that were
15 taken? I mean, what does it show as far as 0ow
16 many fragments they are or what kind of fracture
17 it was?

18 A Yes, this is an x-ray that is not central.

19 Aecause obviously they were checking 0er chest
20 as much as anything else

21 MA WILFEL0: Could the doctor
22 refer to the 0x0it number, so we know
23 what we're talking about?

24 Q. Oh, yes.

25 A. Exhibit Number 0-A

1 Q. Okay.

2 A. And at the top of this x-ray one can see that
3 the right clavicle is fractured in its
4 midsection and this appears to be a two part
5 fragment, two parts to the fracture, a mild
6 degree of comminution at the end of the fracture
7 fragments.

8 Q. Okay. All right. Is the other x-ray that was
9 taken the same day of any benefit to you?
10 That's 8-B I think it is?

11 A. This is 8-B. This demonstrates that there is a
12 fracture, that there is a slight degree of
13 overriding of the proximal fragment and there is
14 a minor bit of comminution at the terminal, at
15 the fracture site.

16 Q. Okay. Comminution meaning?

17 A. Well, it's a little comminution, but it's
18 definitely not a butterfly fragment.

19 Q. Oh, okay. All right. Now, as a result of having
20 the opportunity of seeing those today, and we
21 got those through Mr. Bilfield, who I guess just
22 obtained them, and as a result of reviewing the
23 records, which we haven't talked about yet, but,
24 and I guess as a further result of your
25 examination, were you able to form an opinion

1 based upon a reasonable degree of medical
2 certainty as to what injury Mrs. Ceicys
3 sustained as a result of this accident?

4 A. Yes, I thought that she had a fractured
5 clavicle; that the fracture was related to some
6 overriding and mild degree of shortening of
7 minimal importance; that there was no evidence
8 to support a significant cosmetic deformity; and
9 principally at the time of the accident she had
10 also injured her left elbow and some of the
11 symptoms referable to her extremity were related
12 to the injury of her elbow, to account for some
13 of those symptoms as well.

14 Q. Okay. Now, doctor, let's talk about some of the
15 records that you have reviewed. Did you have an
16 opportunity to see records of, we'll take first
17 of all the first physician who treated her for a
18 few months, Dr. McCoy?

19 A. Yes.

20 Q. Okay. Was there anything about the records or
21 notations by Dr. McCoy which would be of any
22 help or significance to you in arriving at the
23 opinions that you expressed in your reports?

24 A. Oh, I think it showed that she was doing what
25 characteristically fractured clavicles do and

1 that was she was showing some evidence of
2 healing as early as March of 1995, and that he
3 recorded that she had, her range of motion in
4 her shoulder was good.

5 Q. Doctor, specifically in March of 1995
6 Dr. McCoy's records, and you have them available
7 to you and if not I can give you a copy, reflect
8 his opinion regarding when she might be able to
9 return to work, and I'll represent to you that
10 he said as of March 20th, it's in his notes.

11 A. Yes.

12 Q. Do you, would you agree or disagree with that
13 statement by Dr. McCoy that was in his notes?

14 A. Well, in her job description as a nurse
15 anesthetist's assistant, or whatever
16 specifically that is, there's no reason in the
17 world why somebody in that capacity should, she
18 should be able to return to work when healing of
19 the fracture is occurring.

20 Q. Now, you've been practicing 47 years, have you
21 been in operating rooms where nurse anesthesia
22 assistants are also present?

23 A. Yes.

24 Q. Have you had the opportunity to observe what
25 kind of physical activity their work involves?

1 A. Yes.

2 Q. Okay. Is your last answer about when she could
3 have returned to work based upon your experience
4 and observations?

5 A. Yes.

6 Q. Okay. Doctor, one thing I did want to show you
7 is a physical therapy record that we've obtained
8 regarding therapy that Mrs. Ceicys was getting
9 in March and April of 1995. Let me hand you
10 what was previously marked as Defendants'
11 Exhibit A and I'll refer you, to speed things up
12 here, to the note of April 4th I think it is
13 1995?

14 A. Okay.

15 Q. All right. Doctor, if we assume for a second
16 that the, well, the record says that there was a
17 report of an increased pain after reaching a
18 high shelf.

19 MR. BILFIELD: Objection.

20 A. Yes.

21 Q. If we assume that an incident like that
22 occurred --

23 A. Uh-huh.

24 MR. BILFIELD: Objection.

25 Q. -- involving Mrs., okay, involving Mrs. Ceicys,

1 would that be of any clinical, medical
2 significance to you as an orthopedic surgeon in
3 trying to understand the nature of her problems
4 and what the cause might be?

5 MR. BILFIELD: Excuse me.

6 Objection. Move to strike.

7 Q. Okay.

8 A. Yes. One must recall that she was immobilized
9 for a period of 12 to 14, 15, 16 weeks; that all
10 the muscles in the upper extremity were rested
11 in the sling; that when she started to get back
12 her range of motion, the pain that she
13 experienced may not have been at all related to
14 the clavicle fracture, but to the associated
15 soft tissues around the scapula, as well as the
16 clavicle.

17 Q. Okay. So if she said she was reaching a high
18 shelf, is that --

19 MR. BILFIELD: Excuse me, doctor.

20 Objection.

21 Q. That's okay.

22 A. In reaching, in the first 90 degrees of movement
23 of the shoulder joint, the clavicle is not in
24 any way active, it's above 90 degrees that the
25 scapula and the clavicle are functioning to

1 their maximum degree and, obviously, in reaching
2 over the shelf above a head means that the range
3 of motion is above 90 degrees and so the
4 discomfort could be in any of the muscles
5 associated with the elevation, the rotation of
6 the scapula, and the soft tissues about the
7 muscles in that particular area.

8 Q. Okay. And the record reflects that it was after
9 that she reported for the first time an increase
10 in pain; is that consistent with what you
11 just --

12 A. Yes.

13 MR. BILFIELD: Objection.

14 A. Yes.

15 Q. Now, doctor, you did also have an opportunity to
16 review notes of Dr. Laurence Bilfield?

17 A. Yes.

18 Q. And also I think you had 45 pages or so of
19 records from Bellvue Hospital?

20 A. Yes.

21 Q. Okay. And when you arrived at the opinions that
22 you've expressed in the letters that you've
23 written regarding your examination of Mrs.
24 Ceicys, did you take into consideration things
25 that were reflected in Dr. Bilfield's records or

1 the hospital records?

2 A. Yes.

3 Q. Okay. Now, I want to finish up here. You were
4 referring before to your findings when you
5 examined her on September, I'm sorry June 12th
6 and I think we were just about finished.

7 Let me ask you this: Did you ever get the
8 MRI film or report of an MRI?

9 A. I did get the report, yes, but not the MRI.


10 Q. Okay. And with respect to Dr. Bilfield's
11 statements in one of his letters that he found
12 subacromial impingement syndrome, did you make
13 any findings relative to that condition?

14 A. I did not.

15 Q. Okay. Well, did your examination reveal any
16 clinical evidence that she had such a condition,
17 that is impingement?

18 A. It did not.

19 Q. Okay. So is it your opinion as you testify here
20 today that that's a condition that Mrs. Ceicys
21 is suffering from as a result of this accident

22 MR. BILFIELD: Objection. 

23 A. I find no evidence to support an impingement
24 syndrome at this point in time. Whether or not
25 at some later date, not infrequently people in

1 their 40s and 50s without fractures of clavicles
2 without arduous activities and so forth may
3 develop an impingement syndrome, but that's not
4 an uncommon condition, but it certainly wasn't
5 present when I examined her.

6 Q. Okay. Can tendonitis or impingement syndrome be
7 caused by causes other than trauma?

8 A. Oh, yes, certainly, overuse.

9 Q. Okay. Now, doctor, just finishing up here.
10 Eventually you were able to review the x-ray
11 dated May 30th of 1995 that was taken at Dr.
12 McCoy's office. Did you make any determinations
13 following the review of that x-ray?

14 A. That the fracture is healing.

15 Q. Okay. That that '95 x-ray showed the fracture
16 was healing?

17 A. Right.

18 Q. Okay. And then let me ask you this: The x-rays
19 that you requested and had done, they were done
20 downstairs here in this building?

21 A. Yes, that's correct.

22 Q. Krause, Lubert or Luberd?

23 A. Yes.

24 Q. And they were done on September 22nd of 19 --

25 A. '97.

1 Q. And did you personally look at them and make a
2 review?

3 A. I did.

4 Q. And can you tell us what those x-rays revealed?

5 A. Yes, the x-ray reveals that the fracture of her
6 clavicle is healed.

7 Q. Okay. And what about the position of the,
8 because I have the report here, if you don't
9 have it.

10 A. I don't need the report, I remember
11 specifically.

12 Q. Okay.

13 A. Yes, the alignment is not anatomical. However,
14 the fracture has healed, certainly with some
15 degree of malalignment of minimal importance and
16 some degree of shortening of the clavicle, again
17 of minimal importance.

18 MR. GANNON: Okay. Doctor, those
19 are all the questions I have of you. Thank
20 you so much for your patience.

21 THE WITNESS: You're welcome.

22 - - - -

23 CROSS-EXAMINATION OF MALCOLM A. BRAHMS, M.D.

24 BY MR. BILFIELD:

25 Q Hi, doctor, my name is Murray Bilfield and I

1 have some questions I want to pose to you.

2 Before I begin, though, I'd like to go o:
3 the record and just take a look at your chart
4 for just an minute again. Thank you.

5 VIDEOGRAPHER: Off the record.

6 - - - -

7 (Thereupon, a discussion was had off
8 the record.)

9 - - - -

10 MR. BILFIELD: Back on the record.

11 VIDEOGRAPHER: On the record.

12 Q. Doctor, my name is Murray Bilfield, I represent
13 Sherri Ceicys in this case and I have a number
14 of questions for you.

15 First, so there's no confusion on the part
16 of jury I'd like to focus on your role in this
17 case. You saw Sherri Ceicys one time in your
18 office on June 12th, 1997, is that correct?

19 A. Yes, that is correct.

20 Q. And that was for the purpose of a medical/legal
21 nature, it had nothing to do with treatment?

22 A. That's correct.

23 Q. That when I say medical/legal, so we're all
24 clear, that means for litigation, this
25 litigation?

1 A. Sure.

2 Q. Okay. Mr. Gannon, nor Sherri Ceicys did not ask
3 you to treat her in any way, did they?

4 A. That's correct.

5 Q. And certainly Sherri did not ask you to treat
6 her?

7 A. That's correct.

8 Q. During the examination you rendered no
9 treatment, is that correct?

10 A. That's correct.

11 Q. And at that time you took no x-rays?

12 A. That's correct.

13 Q. Now, you've indicated that I was present, is
14 that correct?

15 A. Yes.

16 Q. Now, there was some very unnecessary suggestion
17 here that I was observing Mrs. Ceicys perhaps in
18 some inappropriately dressed manner. You
19 remember, you remember, doctor, that when she
20 changed into the gown, you and I both stepped
21 out of the room?

22 A. I didn't think anyone made that insinuation,
23 Mr. Bilfield.

24 Q. Well, that's how I took it.

25 Do you remember that we both stepped out of

1 the room?

2 A. Absolutely.

3 Q. And we did not, you and I did not return to the
4 room until she had been put into, she had
5 dressed herself a dressing gown?

6 A. That's correct.

7 Q. All right. And it's not unusual for attorneys to
8 observe the examination, and in this case it was
9 an examination of the cervical spine and the
10 clavicle, is that correct?

11 A. That's correct. That's correct.

12 Q. You didn't examine anything else?

13 A. No, I did not.

14 Q. Okay. Now, Dr. Brahms, you were requested by
15 Mr. Gannon, who just took your direct
16 examination, to review these records and examine
17 Mrs. Ceicys, because he's an attorney
18 representing the defendant in this case, is that
19 correct?

20 A. Yes, that's correct.

21 Q. I mean, you know that to be true?

22 A. Sure.

23 Q. This is not the first time you've conducted a
24 medical/legal examination for Mr. Gannon's firm,
25 is it?

1 A. No, it's not.

2 Q. In fact, in your 47 years of medical practice
3 you've conducted many of these medical/legal
4 exams, is that correct?

5 A. Yes. 42 years.

6 Q. 42 years?

7 A. 42 years. And, yes, I have done a number of
8 examinations.

9 Q. In those 42 years, the number of examinations
10 probably wouldn't be in the hundreds, it would
11 be in the thousands, would that be correct?

12 A. I'll let to you that figuring.

13 Q. Do you know?

14 A. I don't know.

15 Q. Okay. You've done these medical/legal
16 examinations for most of the major defense firms
17 in Cleveland?

18 A. Yes, that's correct.

19 Q. And in this case Mr. Gannon had you testify on
20 behalf of his client, the defendant, Cincinnati
21 Insurance Company, is that correct?

22 A. I don't know that, but I only know about the
23 fact that the patient was here, I examined her,
24 and I rendered a report to Mr. Gannon.

25 Q. All right. You're testifying on behalf of Mr.

- 1 Gannon, is that correct?
- 2 A. Yeah, that's correct.
- 3 Q. And for his client?
- 4 A. Yes.
- 5 Q. Even though you may not know who his client is?
- 6 A. That's correct.
- 7 Q. You're certainly not testifying on behalf of
- 8 Sherri Ceicys, are you?
- 9 A. No, she's not my patient.
- 10 Q. No. She's never been your patient?
- 11 A. That's correct.
- 12 Q. And she has never asked you to be a patient, is
- 13 that correct?
- 14 A. I think we've established that now on three
- 15 different occasions.
- 16 Q. Okay. Now, you charge Mr. Gannon for your work
- 17 in this case, is that correct?
- 18 A. Yes.
- 19 Q. You charged him for the review of the records?
- 20 A. That's correct.
- 21 Q. And you charged him for authoring five reports?
- 22 A. Yes, that's correct.
- 23 Q. And you charged him for examining Sherri Ceicys?
- 24 A. Yes, that's correct.
- 25 Q. And, of course, you charged him for testifying

1 here today?

2 A. Yes, that's correct.

3 Q. Have you given Mr. Gannon a total bill?

4 A. I, if he has a total bill, it's from my office
5 secretary and I don't have any part in that.

6 Q. So you don't know the total bill to this point
7 in time?

8 A. I have no idea.

9 Q. Now, earlier I took a short discovery deposition
10 of you, you recall that?

11 A. Yes.

12 Q. And I do remember I asked you what you charge
13 Mr. Gannon for your, for testifying here today
14 and you said to him, correct me if I'm wrong,
15 that it's \$500 for the first hour and 150 each
16 half hour thereafter?

17 A. Yes. We're all going to get paid, aren't we?

18 Q. Is that --

19 A. Yes, that's true. That's exactly right.

20 Q. Okay. You're certain you're going to get paid?

21 A. Certainly, because that's -- we're all being
22 paid, aren't we?

23 Q. Sure. Now, doctor, in this case *you* know that
24 Mrs. Ceicys was treated by several doctors?

25 A. Yes.

1 Q. First by Dr. McCoy, secondly by Dr. Larry
2 Bilfield?

3 A. And by the doctor in New York.

4 Q. Of course. In the emergency room?

5 A. Sure.

6 Q. Now, prior to issuing any of your opinion
7 letters or before you testified here today, did
8 you contact any of the doctors to ask them
9 anything about their experience in treating Mrs.
10 Ceicys?

11 A. There was no need to do.

12 Q. So your answer, you did not?

13 A. I did not, nor do I think there was any need to.

14 Q. All right. There were extensive notes from Dr.
15 McCoy, is that correct?

16 A. Yes, that's correct.

17 Q. And you reviewed those?

18 A. Yes.

19 Q. You're aware that Dr. McCoy is a board certified
20 orthopedic surgeon such as yourself?

21 A. Yes.

22 Q. And Laurence Bilfield is also a board certified
23 orthopedic surgeon?

24 A. Yes. I know him very well.

25 Q. And, in fact, both you and Dr. Bilfield are

1 affiliated with the same hospital, Mt. Sinai?

2 A. That's correct.

3 Q. In fact, he's in this very building?

4 A. That's correct.

5 Q. And you're aware that Dr. Bilfield is head of
6 trauma at Mt. Sinai Hospital?

7 A. Yes, I'm aware of that.

8 Q. Okay. In fact, you probably have worked with him
9 on various cases or had interaction with him?

10 A. Yes, we see each other frequently.

11 Q. Okay. You believe Dr. McCoy and Dr. Bilfield to
12 also, to be qualified orthopedic surgeons?

13 1. Absolutely.

14 Q. You have no reason to believe they are
15 unqualified in any way?

16 A. No, they're both fine gentlemen.

17 Q. And very qualified orthopedic surgeons?

18 A. Absolutely.

19 Q. Do you have any reason to suggest to this jury
20 that any medical opinions held by Dr. McCoy or
21 Dr. Bilfield are not trustworthy?

22 A. None at all.

23 Q. Okay. You disagree with those doctors, though,
24 don't you?

25 A. On certain diagnosis, yes.

1 Q. Mrs. Ceicys did appear at the appointed time for
2 examination, is that correct?

3 A. Yes. Yes.

4 Q. And I was here with her?

5 A. That's correct.

6 Q. And Mrs. Ceicys and myself went into the exam
7 room for you to take the history?

8 A. That's correct.

9 Q. Okay. And then you took a history?

10 A. Yes.

11 Q. In other words, the history is the part of the
12 exam where you talked to the individual to find
13 out what happened?

14 A. Sure.

15 Q. Okay. And how long did you spend with her asking
16 her her history?

17 A. I did write down in my note that we began at
18 4:39 and I incorrectly put down the time that I
19 ended, so I don't have that, but I would say
20 probably in the neighborhood of 15 to 20
21 minutes.

22 Q. Okay. My notes reveal that you spent exactly 15
23 minutes; would that be --

24 A. Sure.

25 Q. -- pretty close?

1 A. Yes, that's right.

2 Q. And the purpose of that would be to find out
3 from Sherri Ceicys just how the accident
4 happened?

5 A. Yes.

6 Q. And how she recovered and those pertinent facts?

7 A. That's correct.

8 Q. And did she answer your questions?

9 A. Yes, she did.

10 Q. She wasn't evasive in any way?

11 A. No.

12 Q. She was very pleasant to you?

13 A. Yes.

14 Q. And thereafter, you began the physical
15 examination after she appropriately changed into
16 a gown, is that correct?

17 A. Yes, that's correct.

18 Q. Okay. And Mrs. Ceicys followed your
19 instructions, she wasn't giving you a difficult
20 time when you examined her?

21 A. No, that's correct.

22 Q. Okay. And I certainly didn't interfere, did I?

23 A. No.

24 MR. BILFIELD: Now, off the record
25 for one second, please.

1

- - - -

2

(Thereupon, a discussion was had off
the record.)

3

4

- - - -

5

MR. BILFIELD: Back on the record.

6

VIDEOGRAPHER: We're on the record.

7

Q. Dr. Brahms, I forgot to ask you a few minutes
ago: Your current practice is primarily office
orthopedics, is that accurate?

8

9

10

A. My practice includes office, it includes
surgical procedures when indicated,
consultations when indicated.

11

12

13

Q. Okay. You told me in your discovery deposition
that you do surgery perhaps one case about every
ten days; is that about your average?

14

15

16

A. Yes. Yes. Yes. I turn most of my cases over
to my younger associates.

17

18

Q. Okay. You'd like to slow down a little bit now?

19

A. I think it's time.

20

Q. Okay. You're in the office and handle office
orthopedic matters four half days a week?

21

22

A. That's correct.

23

Q. And you told me that you see anywhere from five
to ten patients a day?

24

25

A. That's correct.

1 Q. Okay. Now, when you saw Sherri Ceicys, that was
2 on June 12th, 1997, is that correct?

3 A. Yes, that's correct.

4 Q. Your first report you wrote, you authored on
5 June 20th, 1997?

6 A. Yes, that's correct.

7 Q. And you did that after reviewing your notes and
8 the records that you had available to you?

9 A. Yes, that's correct.

10 Q. Now, when you perform the exam, essentially as I
11 understand it, your examination of Sherri Ceicys
12 involved two areas of her body?

13 A. Yes, that's correct.

14 Q. Her neck and her right clavicle?

15 A. And her shoulder.

16 Q. And her shoulder. Such that of the -- by the
17 way, I don't think I asked you: How much time
18 did you spend actually examining Mrs. Ceicys?

19 A. I don't have that. I don't time myself on
20 examinations. You may have done so.

21 Q. I did.

22 Do you have any recollection of how much
23 time you spent?

24 A. No, just as much time as it was necessary.

25 Q. Would about ten minutes be accurate?

- 1 A. That's fine. Yeah, ten minutes is a pretty good
2 length of time.
- 3 Q. Maybe a little shorter, maybe a little longer?
- 4 A. Let's put it this way: Maybe a little bit longer
5 and then maybe a little bit shorter.
- 6 Q. You don't know -- do you know how much time you
7 spent actually examining her right clavicle and
8 her right shoulder?
- 9 A. I don't dissect that part.
- 10 Q. Okay. When you took the history from Sherri
11 Ceicys, did you ask if she had ever injured
12 herself before?
- 13 4. I'm sure I did.
- 14 Q. Do you have any record that indicates that she
15 had in any way injured or had a fracture of her
16 shoulder before?
- 17 A. No, her past history was completely
18 noncontributory.
- 19 Q. What you mean by that is she had no prior
20 accidents --
- 21 A. Yes.
- 22 Q. -- or injuries?
- 23 A. Not that I knew of.
- 24 Q. Okay. Nor that you have been presented by Mr.
25 Gannon?

1 A. I have not been presented with any other
2 information.

3 Q. Okay. Did you find after speaking to Mrs. Ceicys
4 that she had been in good health, overall good
5 health, prior to this collision when the motor
6 vehicle struck her?

7 A. Obviously if the past history was
8 noncontributory, I assume she was in good
9 health.

10 Q. You have no information to the contrary?

11 A. I have no information to the contrary.

12 Q. And did you learn that she, at the time that she
13 was injured she was a mother, a housewife, and
14 she was working as an anesthesia assistant?

15 A. Yes.

16 Q. In your experience in the operating room, you've
17 worked with anesthesia assistants?

18 A. Yes.

19 Q. And you're aware that at certain times they are
20 involved in the intubation of a patient?

21 A. Yes, but that's not arduous.

22 2. I didn't ask you that question. But you see --

23 A. I think it's important that I make that point.

24 2. Well, doctor, excuse me. Let me just ask the
25 questions and --

1 A. Sure.

2 Q. -- please answer my questions.

3 A. Sure.

4 Q. Okay. You've seen anesthesia assistants intubate
5 a patient?

6 A. Yes, I have.

7 Q. Okay. Now, you've indicated some opinions about
8 healing time and you've talked about, well,
9 generalities of groups of people, is that
10 correct?

11 A. Yes, that's correct.

12 Q. Now, doctor, would you agree that in medicine
13 patients react differently to treatment?

14 A. Depending upon the patient's metabolic status,
15 yes.

16 Q. Sure. In other words, patients, would you agree
17 with the principal that patients can heal a
18 fracture in different time sequences, meaning
19 some may heal quicker than others?

20 A. Depending on circumstances.

21 Q. Sure. And factors may affect healing time?

22 A. Sure.

23 Q. One of the factors that can affect healing time
24 is one's own physiological makeup; would that be
25 accurate?

1
2 Q. And would another factor that would affect
3 healing time would be severity of the fracture?

4 A. Yes.

5 Q. Did you learn from Mrs. Ceicys how she was
6 actually injured?

7 A. Yes, she was a pedestrian and struck by a
8 vehicle while she was in New York.

9 Q. Okay. So do you take that to mean that the car
10 actually made physical contact with her?

11 A. Certainly.

12 Yeah. And did you learn that, what happened to
13 her after that contact?

14 I don't know what you mean.

15 Did you learn or have you found out whether she
16 was knocked to the ground, knocked up in the air?

17 ~~Or~~, you know, what the --

18 I'm certain the incident was violent.

19 Okay. Would you also agree that that would have
20 caused significant trauma to her body, be it the
21 shoulder or some other part of her body?

22 A. Certainly.

23 Q. Now, doctor, you indicated that during the
24 conduct of your examination Mrs. Ceicys
25 expressed pain to you?

1 A. Yes.

2 Q. And you said pain is subjective?

3 A. Yes.

4 Q. Okay. Would you have any reason to believe that
5 Mrs. Ceicys was, acted, or is an untrustworthy
6 person?

7 A. None whatsoever.

8 Q. You have no information to lead you to that
9 conclusion?

10 A. I'm not a psychiatrist, so I wouldn't even try
11 to make that determination.

12 Q. Okay. By the way, you were familiar with the
13 anesthesia firm that she was working for at the
14 time of this injury?

15 A. No, I just learned that today.

16 Q. You learned that she was employed by Cleveland
17 Anesthesia?

18 A. I just learned that today.

19 Q. Yeah. Okay.

20 A. Yes.

21 Q. You're familiar with that group?

22 A. Yes.

23 Q. I believe they work here at Mt. Sinai?

24 A. I only know the ones that work at Mt. Sinai.

25 Q. But in other words, members of that group do

1 provide anesthesia coverage here at Mt. Sinai?

2 A. Yes.

3 Q. Okay. And perhaps in your surgeries you've had
4 members of that group assist you?

5 A. Oh, yes, certainly.

6 Q. Do you know Dr. Bastulli?

7 A. Yes, I do.

8 Q. And has he worked with you?

9 A. Oh, yes.

10 Q. Okay. And you find him to be a very competent
11 anesthesiologist?

12 A. A wonderful person.

13 Q. Would you have any reasons to doubt the
14 trustworthiness of any testimony or opinions he
15 might render?

16 MR. GANNON: Objection. 

17 A. No reason to.

18 Q. Okay. Now, insofar as the healing time of Mrs.
19 Ceicys, what you had to go on is the x-ray from
20 May 1995, May 30th, 1995?

21 A. Yes, that's correct.

22 Q. And notes of Dr. McCoy?

23 A. Yes.

24 Q. Yes, of Dr. McCoy. And, thereafter, notes from
25 Dr. Bilfield?

1 A. Yes.

2 Q. Did you, during the course of your examination
3 of Mrs. Ceicys, ask her about her healing
4 process?

5 A. No reason to ask her that.

6 Q. I mean, did you ask her any kind of direct
7 question such as when she was, she felt she was
8 able to return to work or when she was able to
9 return to her normal activities?

10 A. There wasn't any reason for my asking that.

11 Q. By the way, while Mr. Gannon asked you a number
12 of questions about return to employment, would
13 you agree, doctor, that a fracture such as
14 occurred to Mrs. Ceicys would, for at least the
15 same four months as you have opined here today,
16 interfere with day-to-day activities such as
17 housework, self-care?

18 A. During the period of healing, yes. After that
19 no.

20 Q. Okay. So during the period of healing, would :
21 be fair to say and would you agree that Mrs.
22 Ceicys probably had difficulty doing housework?

23 A. Certainly.

24 Q. And daily self-care?

25 A. Certainly.

1 Q Especially when s4p's wearing a sling?

2 4 Well, there'd be no reason why a person wearing
3 a sling couldn't s4p a car and do minor things
4 about their self-car. But not housework

5 Q Now, did you know that she also was fitted with
6 what's known as a figure eight clavicle strap?

7 A That's the way we always treat fractured
8 clavicles.

9 Q. Well, you know that, right?

10 A Certainly.

11 Q What is the purpose of that figure?

12 4 Just to help, just to help immobilize the part

13 Q Okay And when they wear that, what are they
14 unable to move. So the jury understands that?

15 4 They're able to move everything except limited
16 shoulder motions and shrugging movements of that
17 particular nature.

18 Q Okay And that's how you treat your patients who
19 have had dislocated --

20 A. If we treated them --

21 Q. -- excuse me, have had fractured clavicles?

22 A If we treat them conservatively, that's the way
23 we treat them.

24 Q All right Now, Doctor you agree that there's a
25 distinction to be made between radiographically

1 healing a bone and the patient's recovery?

2 A. I don't understand what you're saying.

3 Q. Okay. Would you agree that there's a distinction
4 between healing and recovery for a patient?

5 A. Well, healing means recovery.

6 Q. Well, does it? I mean --

7 A. Absolutely.

8 Q. What you've been talking about, doctor, is
9 healing of a bone, a uniting of a bone?

10 A. Sure.

11 Q. Right? And you've referred to x-rays?

12 A. Yes.

13 Q. Does that necessarily directly translate to mean
14 that as soon as the bone is healed, the patient
15 has recovered?

16 A. It means that when the patient is healing and is
17 healed, that that factor is over, they're,
18 that's good, that's what it's all about.

19 Q. What you're saying is the bone has united, it
20 does not necessarily mean that the patient has
21 fully recovered, does it?

22 A. Well, that's a subjective factor. If the bone
23 is healed and the patient has a good range of
24 motion of the parts about that particular
25 fracture, if they don't feel like they've

1 recovered, that's, that has nothing to do with,
2 that has nothing to do with the musculoskeletal
3 problem, it has to do with a, more of a
4 psychological problem.

5 Q. Are you saying that you evaluated this from a
6 psychological standpoint?

7 A. I did not say that, I'm just answering your
8 question in a general manner.

9 Q. Okay. Now, doctor, you evaluated Sherri Ceicys
10 about two-and-a-half years after this injury?

11 A. Yes, that's correct.

12 Q. Okay. You at no time had any direct contact with
13 her during her healing process?

14 A. I think we've established that now at least
15 three times.

16 Q. Okay. And you simply, for that information,
17 relied on what you read from Dr. McCoy?

18 A. Yes, that's correct.

19 Q. Okay. Now, Dr. McCoy's testimony was taken this
20 morning, are you aware of that?

21 A. I have no idea except that it may have been said
22 here in the conference room.

23 Q. Did Mr. Gannon relay to you any of his opinions?

24 A. None whatsoever.

~~25~~ Q. Now, you, as I understand it, disagree with

1 Dr. Bilfield as to the finding of the
2 impingement syndrome?

3 Yes, that's correct.

4 Now, Dr. Bilfield is one floor below you, is
5 that correct?

6 Yes, that's right.

7 Did you ever discuss his findings with him?

8 No reason that I should.

9 So you did not?

10 I think that answers it.

11 Okay. In response to a number of questions from
12 Mr. Gannon, you've indicated that there's some
13 findings that are not, I think your words were
14 anatomically normal, but they were of minimal
15 importance. Did I characterize your testimony
16 correctly?

17 Let me state it correctly.

18 Sure.

19 I said that this fracture has healed. That it
20 is not anatomical, meaning that it wasn't in the
21 position that it was before the fracture
22 occurred; however, healing has occurred and in
23 that healing there is some malalignment and some
24 shortening of the clavicle.

25 Okay. What's malalignment?

1 A. It means that instead of the fracture being end
2 to end, it's somewhat displaced and healed in
3 that manner.

4 Q. Actually, the radiologist's report said it was
5 angulated, is that accurate?

6 A. I think that's the same thing, I'm saying the
7 same thing.

8 Q. Well, the jury I needs to know this. It's
9 angulated, is that correct?

10 A. If it's not end to end and there's a
11 displacement, then that indicates that there's
12 some angle of inclination that is there.

13 Q. Okay. In addition, there's a shortening of the
14 right clavicle, which you find to be only one
15 centimeter?

16 A. That's correct.

17 Q. And you consider that to be of minimal
18 importance?

19 A. That's correct.

20 Q. Okay. And you don't find any kind of cosmetic
21 deformity with the fracture site, is that
22 correct?

23 A. I did not think when I examined her that there
24 was any significant cosmetic abnormality.

25 Q. Okay. In one of your reports you indicated that

1 on occasion some female patients may obtain a
2 procedure where the bone, if there's been some
3 growth there and it protrudes can have it
4 removed essentially, the growth; is that
5 basically correct?

6 A. If their fracture occurs at a site where the
7 brassiere straps or the straps of a dress
8 crosses the protuberance, the little angulation,
9 then that can cosmetically be removed. This is
10 in the mid segment, it has nothing to do with a
11 brassiere strap site.

12 Q. Okay. A woman can also have it removed if it was
13 unsightly, is that correct?

14 A. Yes. Absolutely, because women wear a lot of
15 clothes off their shoulders.

16 MR. BILFIELD: Off the record for
17 just a minute.

18 VIDEOGRAPHER: Off the record.

19 - - - -

20 (Thereupon, a discussion was had off
21 the record.)

22 - - - -

23 MR. BILFIELD: Back on the record.

24 VIDEOGRAPHER: On the record.

25 Q. Now, doctor, you spoke to Mr. Gannon about some

1 incident that he raised in some physical therapy
2 notes. It was his characterization that it was
3 an incident. Do you remember that series of
4 questions?

5 A. Yes.

6 VIDEOGRAPHER: Excuse me, doctor.
7 Off the record.

8 - - - -

9 (Thereupon, a discussion was had off
10 the record.)

11 - - - -

12 VIDEOGRAPHER: On the record.

13 Q. You remember those questions?

14 A. I remember the question about the 4th of April

15 Q. Right.

16 A. Physical therapy thing, yes.

17 Q. That's, that's, that's the one.

18 Is there any information that you received
19 that Mrs. Ceicys had another injury to her right
20 shoulder?

21 A. No.

22 Q. The questions that Mr. Gannon asked of you
23 pertained to her actually doing a normal
24 movement, she reached for something over her
25 head?

1 A. Sure.

2 Q. That does not suggest to you that she had an
3 injury from a, some external force at that point
4 in time, does it?

5 A. No. I explained that because of the
6 immobilization of her fracture, that some of the
7 muscles that were at rest were now being
8 activated and might really produce some of the
9 symptoms of the soft tissues around that entire
10 upper shoulder area.

11 Q. Which one could fairly say is something which
12 flowed from the original fracture, which
13 occurred when she was hit by the automobile, is
14 that correct?

15 A. It could occur because of immobilization, not
16 because of the fractured clavicle.

17 Q. It occurred because of the treatment, is that
18 correct?

19 A. It occurred because of the rest of all of the
20 structures in the right shoulder area by use of
21 the figure of eight bandage and the sling.

22 Q. Okay. Now, Mr. Gannon asked you about the MRI
23 finding of the subacromial impingement
24 syndrome.

25 A. Yes.

1 Q. I think it's called supraspinatus tendonitis --

2 A. Sure.

3 Q. -- in the MRI report?

4 A. Yes.

5 Q. And you indicated that people in their 40s or
6 50s can develop the impingement, I guess, for no
7 particular reason; is that basically your
8 testimony?

9 A. From the use of growing up and being 40 years of
10 age and 50 years of age.

11 Q. Okay. Do you have any information, doctor, in
12 any of the records of Sherri Ceicys that she had
13 any of those symptoms that predated this
14 accident?

15 A. The answer is that she was 42 years of age when
16 I saw her and generally the impingement syndrome
17 without injury occurs somewhere between 40 and
18 60 years of age commonly, maybe even older
19 people.

20 Q. I'll move to strike that as unresponsive.

21 MR. BILFIELD: Would the court
22 reporter read back to Dr. Brahms the
23 question that I did ask.

24 - - - -

25 (Thereupon, the requested portion of

1 the record was read by the Notary.)

2 - - - -

3 A. I answered that, I stated prior to this that the
4 impingement syndrome is not an uncommon entity
5 that occurs between the ages of 40 and older.

6 MR. BILFIELD: All right. I'll
7 move to strike again, that's unresponsive.

8 Q. I'm asking you for a yes or no answer, doctor.
9 If you can't give it, just tell me.

10 MR. BILFIELD: Would the court
11 reporter read back the question again.

12 MR. GANNON: Wait a minute.
13 *W/D* Object. You didn't ask for a yes or no,
14 you asked if he had any evidence and he's
15 given you his opinion. You didn't state
16 the question yes or no.

17 MR. BILFIELD: I don't -- just
18 object and let it go.

19 Would you court reporter please
20 read back the question again.

21 - - - -

22 (Thereupon, the requested portion of
23 the record was read by the Notary.)

24 - - - -

25 A. I stated that the impingement syndrome is not an

1 uncommon entity that occurs from the age of 40
2 and older.


3 Q. Doctor, do you have any information in the
4 records provided you by Mr. Gannon, medical
5 records of Dr. McCoy or Bellvue Hospital or any
6 other source that gives you any information that
7 Mrs. Ceicys had a symptom referable to this
8 condition as diagnosed in the MRI of
9 supraspinatus tendonitis; either you did or you
10 don't, either you do or you don't?

11 A. She was treated by a doctor in New York and Dr.
12 McCoy and Dr. Bilfield after her injury, not
13 prior to it, so there is no information
14 referable to an impingement syndrome.

15 Q. Mr. Gannon got you a lot of records, is that
16 correct?

17 A. Yes, that's correct.

18 Q. And we assume that he could get you any record
19 that you requested on Mrs. Ceicys; would you
20 also agree with that?

21 MR. GANNON: Objection. 

22 A. Yes, that's correct.

23 MR. BILFIELD: Thank you, doctor.

24 MR. GANNON: You're done? Okay.

25 Thank you.

1 Thanks, doctor.

2 THE WITNESS: I'll give you back
3 your --

4 MR. GANNON: Would *you* waive
5 signature?

6 THE WITNESS: Sure, I waive
7 signature.

8 MR. GANNON: Okay.

9 VIDEOGRAPHER: Do you waive
10 viewing, too, doctor?

11 THE WITNESS: I do.

12 VIDEOGRAPHER: May we stipulate
13 that the possession of the videotape remain
14 in the custody of Mehler & Hagestrom?

15 MR. BILFIELD: Sure.

16 MR. GANNON: Yes. That's fine.

17

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MALCOLM A. BRAHMS, M.D.

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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Colleen M. Malone, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named MALCOLM A. BRAHMS; M.D., was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and was subscribed by said witness in my presence; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____, A.D. 19 ____

Colleen M. Malone, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires August 25, 2002

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