

1
2
3
4
5
6
7
8

11
12
13
14
15
16
17
18

20
21
22

IN THE COURT OF COMMON FLEAS
MAHONING COUNTY, OHIO

SYLVIA LEWIS)	CASE NO. 97-CV-377
)	JUDGE JAMES C. EVANS
)	
Plaintiff)	DEPOSITION OF
vs.)	
)	JAMES D. BRODELL, M.D.
BRUCE EMERY, ET AL.)	
)	
)	
Defendants)	

Deposition taken before me, Kathleen Skowron,
Notary Public within and for the State of Ohio, on
the 19th day of September, 2001, at 8:30 AM,
pursuant to agreement between counsel, taken at the
offices of to be used in accordance with the Ohio
Rules of Civil Procedure or the agreement of the
parties in the aforesaid cause of action pending in
the Court of Common Pleas within and for the County
of Mahoning and State of Ohio.

A P P E A R A N C E S

On Behalf of the Plaintiff:

William C. H. Ramage, III, Attorney at Law
HARSHMAN, BERNARD & RAMAGE

On Behalf of the Defendants:

Stephen T. Bolton, Attorney at Law
MANCHESTER, BENNETT, POWERS & ULLMAN

John C. Pfau, Attorney at Law
PFAU, PFAU & MARANDO

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DEPONENT -- JAMES D. BRODELL, M.D.

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E X A M I N A T O N S

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DIRECT CROSS REDIRECT RECROSS

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By Mr. Bolton:

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54

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By Mr. Ramage:

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57

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9

1

E X H I B I T S

1:

Exhibit Number

Page Number

12

13

14

Defendant's Exhibit 1

30

15

16

17

18

19

20

21

22

INDEX OF OBJ ECTIONS

	Attorney	Page Number
1		
2	Attorney	
3	Mr. Ramage	17
4	Mr. Ramage	17
5	Mr. Ramage	18
6	Mr. Ramage	20
7	Mr. Ramage	20
8	Mr. Ramage	20
9	Mr. Ramage	25
10	Mr. Ramage	26
11	Mr. Ramage	29
12	Mr. Ramage	29
13	Mr. Ramage	33
14	Mr. Bolton	41
15	Mr. Bolton	42
16	Mr. Bolton	42
17	Mr. Bolton	43
18	Mr. Bolton	46
19	Mr. Bolton	47
20	Mr. Bolton	47
21	Mr. Bolton	48
22	Mr. Bolton	52

1	Mr. Ramage	5
2	Mr. Rarnage	54
3	Mr. Ramage	55
4	Mr Ramage	55
5	Mr. Bolton	56
6		58
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		

P R O C E E D I N G S

JAMES D. BRODELL, M.D.

having been duly sworn according to law,
oath, testified as follows:.

DIRECT EXAMINATION

BY MR. BOLTON:

Q. Good morning, Doctor. Will you state your
name, please?

A. James David Brodell.

Q. And what is your professional address?

A.

Q. 2614 East Market Street, Warren, Ohio.

A. Yes.

Q. All right. Are you licensed to practice
medicine in the State of Ohio?

A. Yes.

Q. And how long have you been so licensed?

A. Since the second half of 1982.

Q. All right. And where were you
educated, where
did you receive your medical degree?

A. I went to medical school in Cleveland at Case
Western Reserve University, and I

graduated in 1978 with my M.D. degree.

Q. Okay. Where did you receive your undergraduate degree?

Washington and Jeffers College which is a small liberal arts school near Pittsburgh and I graduated in 1974 with a bachelor's degree.

Q. All right. After graduating from medical school did you take an internship and residency?

A. Yes.

Q. And where -- where were those?

A. Rochester, New York, the University of

Q. All right. And that was your internship --

A. And residency.

Q. -- and residency?

A. Correct.

Q. And what was your internship -- what specialty did you pursue in your internship and

A. Orthopedics.

1 Q. Okay. And what is orthopedics?

2 A. A specialty in medicine that involves the
3 diagnosis, treatment, and rehabilitation
4 of problems related to the musculoskeletal
5 system. In other words, we take care of
6 the neck, back, arms and legs as it
7 relates to a host of difficulty --
8 difficult disease entities. For example,,
9 congenital abnormalities, developmental
10 problems, arthritis, trauma, cancer,
11 infection, and metabolic disease.

12 Q. Okay. Does your practice include doing surgery
13 on patients, for example?

14 A. Yes.

15 Q. All right. Are you a member of any
16 professional societies?

17 A. Yes.

18 Q. You don't need to list them all, but could you
19 give us a sampling?

20 A. As it relates to my specialty, I belong to most
21 of the important ones. For example, I'm a
22 fellow of the American Academy of

1 Orthopedic Surgeons. I belong to the
2 Cleveland Orthopedic Club and the Ohio
3 Orthopedic Society. From a sociopolitical
4 standpoint, I belong to most of those
5 also. For example, the AMA and the
6 Trumbull County Medical Society and the
7 Ohio State Medical Association.

8 Q. All right. Are you board certified in your
9 specialty of orthopedics?

10 A. Yes.

11 Q. How long have you been board certified?

12 A. Since 1985.

13 Q. All right. And what does it mean to be board
14 certified?

15 A. That one has graduated from an accredited
16 training program with appropriate letters
17 of recommendation from the professors,
18 that you practice in a given location for
19 a couple of years with additional
20 recommendations from the community
21 orthopedists, and then you have the high
22 honor of sitting for a one or two-day

1 examination that has both a written and an
2 oral part. And if you pass all of that,
3 then you get a little certificate that
4 says you are qualified to practice in the
5 specialty.

6 Q. All right. How long have you been practicing
7 orthopedic medicine?

8 A. Since 1983.

9 Q. Okay. And is that here in Warren, Ohio?

10 A. Yes.

11 Q. Do you have hospital privileges?

12 A. Yes.

13 Q. Where?

14 A. I spend almost all of my time at Trumbull
15 Memorial Hospital, which is the largest of
16 our community hospitals.

17 Q. All right. In the course of your practice, did
18 you have occasion to examine one Sylvia
19 Lewis on or about October 5, 1998?

20 A. Yes.

21 Q. All right. Prior to examining Miss Lewis, did
22 you have an opportunity to review records

1 concerning her treatment for -- which
2 apparently resulted from an automobile
3 accident which occurred on May 15, 1996?

4 A. Yes.

5 Okay. What records in general did you review?
6 Are they listed in your letter that you wrote
7 me, do you know?

8 Q. Yes, I believe they are, and I believe they
9 consist of the records of Dr. Paris and
10 Dr. Abba.

11 A. Yes, I reviewed those -- reviewed those.

12 Q. All right. And I also sent you some X-ray and
13 MRI films to review.

14 A. Yes.

15 Q. All right. And then when you saw Miss Lewis on
16 October 5, did you perform an exam?

17 A. Yes.

18 Q. What did your examination consist of?

19 A. Talking to the patient, evaluating and
20 examining the involved areas, and then
21 looking at X-rays that were obtained at my
22 office.

1 Q. Okay. Did you take a history from Miss --
2 Mrs. Lewis?

3 A. Yes.

4 Q. And what was her history?

5 A. She described a motor vehicle accident on
6 May 16 of 1996 in which she was driving,
7 belted, and then rear ended by another
8 vehicle. Do you want me to go into the --
9 some additional details?

10 Q. Yes. If you could, tell us what she told you
11 about what was bothering her or what she
12 said was bothering her at the time.

13 A. Her difficulty was persistent aching and
14 stiffness in her neck, and then the
15 history evolved from that. And what I
16 would tell you is a combination of what
17 she told me and what I gleaned from the
18 medical records.

19 Q. All right. Well, then go -- why don't you tell
20 us -- as a part of your exam, you took a
21 history and you talked with her and
22 reviewed the medical records. What did

1 you find?

2 A. Do you want an overview or detail?

3 Q. Let's start with the overview.

4 A. Okay. She was initially evaluated by
5 Dr. Paris, who is a physician at the
6 Midlothian Medical Center, the day
7 following her accident and had some
8 treatment. And her diagnostic workup
9 included regular X-rays and an MRI. She
10 was eventually referred and treated by a
11 physiatrist named Dr. Pannozzo. After
12 that, there were neurosurgical evaluations
13 by a Dr. Ablu and Dr. Carlson. Along the
14 way, she had physical therapy and other
15 treatments.

16 Q. Okay. Did she -- to your knowledge, did she
17 eventually have surgery?

18 A. Yes.

19 Q. And where -- to what part of her body?

20 A. Neck.

21 Q. All right. And who performed that, if you
22 know?

1 A. She had an operation at University Hospitals of
2 Cleveland, performed by Dr. Greg Carlson.

3 Q. All right. All right, now, as to the detail,
4 as far as you could tell from the records
5 and from what -- and from the history that
6 Mrs. Lewis gave you, what did Dr. Paris do
7 for her?

8 A. Well, first of all, he got X-rays of her head
9 and thoracic area, as well -- and then
10 also her neck. And multi-level
11 degenerative disk disease was identified.
12 So he made the diagnosis cervical and
13 dorsal sprain/strain, fascial trauma to
14 the right orbital area, and then he
15 initiated a series of what I would refer
16 to as modality-based treatments. In other
17 words, things like heat, massage and
18 ultrasound were applied to the involved
19 areas. He also eventually prescribed
20 what's called a TENS unit.

21 Q. Okay. These modality-based units, were they
22 repetitive treatments over a period of

1 time?

2 A. Yes.

3 Q. Did the patient say that -- Ms. Lewis say that
4 those treatments helped her in any way?

5 A. Not enough to solve her difficulty, thus
6 requiring referral to additional
7 physicians.

8 Q. All right. And what about the TENS unit --
9 what is a TENS unit?

10 A. Well, that's a good question. It's a little
11 bit of a controversial item, but it has
12 little pads that are placed around an
13 affected area, and then there's a little
14 machine that has a battery in it, and
15 electrical current goes through the wires,
16 to the pads, and some patients report pain
17 relief. The exact mechanism by which that
18 works, no one knows.

19 Q. All right. In this case, you said that she
20 had -- she was diagnosed with degenerative
21 disk disease. Was that based on an X-ray
22 or --

1 A. Yes.

2 Q. And was that X-ray taken right after the
3 accident -- or the day after the accident?

4 A. I believe so, yes.

5 Q. All right. Now, what significance to you is
6 the finding of degenerative disk disease
7 or -- and spondylosis and arthritis?

8 A. Spondylosis, arthritis, degenerative disk and
9 joint disease are all synonymous terms
10 referring to arthritis in the neck. And
11 the significance is that she was in her
12 early 50s and had what is commonly
13 visualized in people in that age group,
14 and that is a deterioration of the
15 vertebrae and the little jelly disk spaces
16 in the neck.

17 Q. All right. It's my understanding that
18 eventually Dr. Paris sent her for an MRI,
19 which took place on June 23, 1996. Do
20 you -- were you aware of that or --

21 A. Yes.

22 Q. And did you have an opportunity to review the

1 films of that MRI?

2 A. Yes

3 Q. Okay. We'll get to that in a moment.

4 According to Dr. Paris' testimony, that
5 MRI showed a bulging disk at C5-C6.
6 Apparently that same MRI series also
7 showed a bulging disk down her lower back
8 at L5-S1?

9 MR. RAMAGE: Objection.

10 A. Okay. Well, number one, my interpretation of
11 the records was that the disk problem at
12 C5-C6 was a large right-sided disk
13 herniation, not a -- not just a bulging --

14 Q. Okay.

15 A. -- or a bulging. And I don't -- I don't see
16 that she had an MRI of her lower back
17 until Dr. Abla saw her the following year.

18 Q. All right. Fair enough. All right. So, the
19 MRI, some five weeks after the accident,
20 indicated that she had a bulging disk --

21 MR. RAMAGE: Objection.

22 Q. - at C5-C6, or a large bulging disk?

1 A. Or a right-sided herniated disk.

2 Q. Fair enough. Now, of what significance was
3 that to you in terms of what -- the other
4 things that you had seen, the arthritis in
5 her neck and such?

6 MR. RAMAGE: Objection.

7 A. As I reviewed her medical records?

8 Q. Yes.

9 A. The disk herniation or bulging or protrusion
10 would be consistent with her underlying
11 degenerative disk.

12 Q. All right. Did you -- did you obtain further
13 history about Dr. Ablat's examination of
14 her?

15 A. Yes.

16 Q. And what about Dr. Pannozzo's examination?

17 A. Dr. Pannozzo provided shots into her neck, but
18 the patient did not feel that those shots
19 were beneficial, and thus, in October of
20 1996 she sought a neurosurgical
21 consultation with Dr. Ablat in Pittsburgh,
22 Pennsylvania.

1 Q. What was the result of that consultation?

2 A. He recommended surgical correction of her disk
3 problem at C5-C6. The patient was
4 apprehensive, she returned to Dr. Abla in
5 January of 97, that's several months
6 later, and at that time MRI's of the neck
7 and lower back were obtained.

8 Q. Okay. And what did those MRI's show, if you
9 know?

10 A. The disk herniation at C5-C6 was again
11 visualized, but there was also a disk
12 herniation visualized at L5-S1 level.
13 That's the lowest disk in the lower back.

14 Q. Okay. And again, what -- assuming that that --
15 MR. BOLTON: Do we have that MRI
16 here? You didn't bring it or is it still --

17 MR. RAMAGE: Nobody asked me to bring
18 any MRI's to the deposition.

19 MR. BOLTON: Okay.

20 Q. Assuming that that MRI -- that there was, in
21 fact, an MRI that Dr. Abla had taken of
22 the low back, and it showed a herniated

2 disk at L5-S1, what does that indicate to
3 you?

4 MR. RAMAGE: Objection.

5 A. Well --

6 Q. Based on your examination of her.

7 MR. RAMAGE: Objection.

8 A. Well, I don't -- based on my review of my
9 report, I don't recall her complaining
10 much of her lower back, and there was not
11 much in the medical records regarding
12 complaints of low back pain --

13 Q. Uh huh.

14 A. -- either from the accident or from any other
15 cause. So I would just consider it to be
16 a -- a non-specific MRI finding, absent
17 clarification of her clinical symptoms,
18 physical findings, so on and so forth.

19 Q. Would the finding of a herniated disk at L5-S1
20 be consistent with a diagnosis of
21 degenerative disk disease in her spine?

22 MR. RAMAGE: Objection.

A. Yes,, or it might be consistent with no

1 diagnosis. There are a lot of people with
2 herniated disks that live with them their
3 entire life and never have any difficulty
4 with them whatsoever.

5 Q. All right. You also apparently were able to --
6 she -- by the time Mrs. Lewis had seen
7 you, she'd had the operation by
8 Dr. Carlson?

9 A. Yes.

10 Q. Was she still symptomatic from -- after that
11 operation in some way?

12 A. There had been resolution of neurological
13 symptoms in her arms and legs, but she was
14 still reporting a considerable amount of
15 aching and stiffness in her neck.

16 Q. All right. Now, when she saw you, was she
17 working with any kind of physician or was
18 she working with a massotherapist?

19 A. She told me that she was seeing a
20 massotherapist twice a week to work out
21 some of her residual neck difficulty.

22 Q. All right. When you examined her, did she

1 have any limitation in her range of
2 motion --

3 A. No.

4 Q. -- for any part of her body?

5 A. No.

6 Q. Did you put her through range of motion
7 studies?

8 A. Yes.

9 Q. Okay. Did she show any a weakness in her body,
10 or any positive neurological signs at all?

11 A. The only abnormality visualized on my physical
12 exam was an incisional scar over the neck,
13 and this was on the left side, right in
14 through this region. But the rest of her
15 physical examination was normal. There
16 were no abnormal neurological findings,
17 and musculoskeletal examination was
18 normal.

19 Q. Okay. And that scar was from the surgery?

20 A. Yes.

21 Q. Okay. All right. Now, the first question I
22 have to ask you is with regard to the

1 accident of May 15, 1996. And my first
2 question is -- with regard to that
3 accident, is, Doctor, do you have an
4 opinion based on reasonable medical
5 certainty as to whether Sylvia Lewis
6 suffered any injury in that accident,
7 based on your examination of her, the fact
8 that you got a history from her, and your
9 examination of her records? First, do
10 you --

11 A. Yes, I have -- yes, I have an opinion.

12 Q. Okay. What is your opinion?

13 A. The injury that she sustained was a stretching
14 of the muscles and ligaments about the
15 spine of her neck. And that type of an
16 injury is known as a sprain or a strain.

17 Q. And what do you base that opinion on?

18 A. The medical records describing her difficulty
19 in that area, physical exam, so on and so
20 forth, mainly from Dr. Paris' office.

21 Q. Okay. And, Doctor, do you have an opinion
22 based upon reasonable medical certainty as

1 to whether the herniated disk at --
2 between the 5th and 6th cervical vertebra,
3 which was visualized in the MRI of
4 June 23, 1996, do you have an opinion as
5 to whether that herniated disk was caused
6 by the accident -- proximately caused by
7 the accident of May 15, 1996?

8 A. Yes, I have an opinion.

9 Q. And what is your opinion?

10 A. The herniated disk was not caused by the
11 accident.

12 Q. Will you tell the jury why you feel that way?

13 A. Because there's no evidence that the disk
14 herniation was caused by the accident.

15 Q. Could you amplify on your answer and explain
16 it, please?

17 A. The patient didn't have symptoms or physical
18 findings consistent with a disk herniation
19 after the accident. And also, the MRI
20 finding is a ubiquitous finding on a
21 patient with underlying degenerative disk
22 and joint disease.

1 Q. What do you mean by ubiquitous finding?

2 A. It's commonly seen, even in the absence of
3 trauma.

4 Q. All right. So is what you are saying is that
5 people who have degenerative disk disease
6 commonly have herniated disks?

7 MR. RAMAGE: Objection.

8 A. Number one, I'm saying that people who have an
9 injury and an acute or fresh disk
10 herniation have symptoms consistent with a
11 disk herniation. Severe pain in the neck,
12 and, at this level, the medial border of
13 the scapula; pain going down the lateral
14 aspect of the arm; and numbness and
15 tingling in a particular distribution,
16 specifically the top of the hand,
17 especially in through this area here. She
18 didn't have any of those complaints when
19 she went to see Dr. Paris. Secondly,
20 patients who herniate a disk at C5-C6
21 acutely will have a lack of either a
22 biceps or a brachioradialis reflex,

1 decreased sensation in a particular
2 distribution, and weakness in a particular
3 distribution, especially the biceps. None
4 of that was documented in this particular
5 case. So she simply does not -- did not
6 have symptoms or any documentation on
7 physical examination from her evaluating
8 physicians of an acute disk herniation at
9 that level.

10 Q. And had she herniated the disk in the accident,
11 those symptoms would have been present --
12 or should have been present?

13 MR. RAMAGE: Objection.

14 A. More likely than not, she would have had those
15 symptoms and also abnormal physical
16 findings consistent with the diagnosis.

17 Q. Okay. You said that was the first reason you
18 believe that the disk was not -- the disk
19 problem was not related to the accident.

20 A. Yes.

21 Q. Is there another reason?

22 A. The other reason is that if you got an MRI of,

1 let's say, a hundred consecutive patients
2 with multi-level degenerative disk
3 disease, meaning arthritis of the neck, a
4 huge percentage of them would have either
5 disk bulging, herniation, or protrusion
6 even in the absence of trauma. So you
7 can't -- you can't draw the correlation
8 that just because it's there that the
9 accident caused it. It was probably there
10 regardless of whether she was in an
11 accident.

12 Q. All right. And is that opinion based upon
13 reasonable medical certainty?

14 A. Yes.

15 Q. Okay. Doctor, what treatment that Mrs. Lewis
16 received do you believe, with reasonable
17 medical certainty, is proximately related
18 to the accident?

19 A. Her initial treatment provided by Dr. Paris,
20 also diagnostic studies, including her
21 head, neck and upper back, those are the
22 regular X-rays. I would also relate the

1 MRI performed on 6-23-96 and, being
2 generous, perhaps some of the shots
3 provided by Dr. Pannozzo. But after that
4 point, starting with Dr. Abl's evaluation
5 and recommendations, all of those
6 recommendations were directed toward
7 underlying degenerative disk disease in
8 this woman's neck.

9 Q. All right. Do you think that it -- that all of
10 Dr. Paris' treatments, continuing through
11 the summer of 1996 and into the fall, were
12 proximately related to the accident?

13 A. Yes.

14 Q. All right. We were told by Dr. Abl in his
15 deposition that the radiologist who took
16 her MRI's in January of 1997 was of the
17 view that her -- that the herniated disk
18 in her neck got smaller. Between the MRI
19 of June 23, 1996, and January 1997,
20 that the disk got smaller. Do you have
21 any explanation for that or do you have
22 any --

1 MR. RAMAGE: Objection.

2 Q. -- opinion on why that -- that finding -- why
3 he might have --

4 A. Yes, I have an opinion.

5 MR. RAMAGE: Objection.

6 Q. What is it?

7 A. Number one, I think that it's not reliable to
8 necessarily draw a conclusion regarding
9 disk size, especially if the study was
10 done in two different settings, two
11 different MRI machines, so on and so
12 forth. If you do a series of MRI's over
13 an extended period of time, a disk may
14 look bigger or smaller, but I don't think
15 that that necessarily means that the disk
16 is smaller or larger. And then secondly,
17 the natural -- some physicians believe
18 that the natural history of a herniated or
19 bulging disk is one in which it may
20 retract or decrease slightly in size over
21 time.

22 Q. All right. Doctor, if you could, I would like

1 to -- you to review for us the MRI film --

2 A. Okay.

3 Q. -- of June 23. So I guess we'll go off the
4 record so you can go to see that.

5 (OFF THE RECORD)

6 (DEFENDANT'S EXHIBIT 1 MARKED FOR IDENTIFICATION)

7 Q. All right. Doctor, showing you what's been
8 marked as Defendant's Deposition
9 Exhibit 1, is that the MRI film of
10 June 23, 1996?

11 A. Yes, this is one lateral view showing multiple
12 MR projections. The patient is Sylvia
13 Lewis and the date of the MRI study is
14 June 23, 1996.

15 Q. Okay. And will you tell the jury what findings
16 you see in that MRI film?

17 A. Okay. This is the patient's brain up here, the
18 spinal cord coming down in the spinal. In
19 the front are the bony blocks stacked one
20 on top of another that are known as the
21 vertebra. In between each one is a little
22 jelly disk. And at each level it's a

1 little bit dark, which is altered signal
2 consistent with multi-level degenerative
3 disk disease. But most significantly, at
4 the C5-C6 level, the disk is narrowed,
5 irregular, there are bone spurs on the
6 front and back, and there is disk material
7 that is bulging out the back and slightly
8 compressing what is referred to as the
9 thecal sac of the spinal cord.

10 Q. All right. So -- so is that the herniated disk
11 which you referred to earlier?

12 A. Yes.

13 Q. All right. Is there -- are there other -- is
14 there other symptomology in the MRI of
15 Mrs. Lewis' neck taken on June 23, 1996?

16 A. It wouldn't be symptoms, it would be findings.

17 Q. Findings, I'm sorry.

18 A. No, the findings that I mentioned, multi-level
19 degenerative disk disease, worse at C5-C6,
20 with associated disk bulging or herniation
21 is the diagnosis.

22 Q. Are some of her other disks in her neck narrow

i or more narrow than they would be without
2 the arthritis?

3 A. Yes.

4 Q. Could you point to some of the ones that are?

5 A. All of them have some altered signal intensity
6 consistent with disk desiccation, meaning
7 that you are losing some water content.
8 But the worst area is C5-C6, and then the
9 level lower, C6-C7 is also somewhat
10 affected.

11 Q. Okay. Now, is this -- in your opinion, based
12 on reasonable medical certainty, are the
13 findings which you see on the -- on the
14 MRI, are they something that are -- was
15 caused by the accident of June 15?

16 A. No.

17 Q. Okay. Are these findings problems which
18 came -- which occurred over a long period
19 of time?

20 A. Yes. Her spondylosis, also known as
21 degenerative disk and joint disease, is a
22 gradual deterioration of the spine that

1 has occurred over many years.

2 ^ Okay. And can you visualize arthritis on those
3 MRI films?

4 A. Yes.

5 Q. And how -- where do you see it?

6 A. At the same level where there's the disk
7 bulging or herniation at C5-C6, if you
8 look carefully at the corners of the
9 vertebrae, you see little bone spurs
10 sticking out.

11 Q. Okay. And that's a significant finding to you?

12 MR. RAMAGE: Objection.

13 A. It is to the extent that it confirms or is
14 another piece of evidence supporting the
15 diagnosis of degenerative disk and joint
16 disease. A generalized deterioration of
17 the spine.

18 Q All right. And the film that we have been
19 talking about, Defendant's Deposition
20 Exhibit 1, you say that's a lateral view
21 of -- of Mrs. Lewis' neck?

22 A A series of lateral projections, which would

also be known as, I believe, sagittal projections at multiple levels through the area, yes.

Q. So that's taken from the side, is that --

A. Yes. It cuts right down, right through the center of the spine.

Q. Okay.

A. As if you went right down this way.

Q. Doctor, the last question I have to ask you, with regard to Mrs. Lewis, do you have an opinion based on reasonable medical certainty as to whether Mrs. Lewis sustained any permanent injury as a result of the accident of May 15, 1996?

A. Yes, I have an opinion.

Q. What is the opinion?

A. Based on what she told me and on my physical examination, and also a review of her records, there's no evidence that she sustained a permanent injury in the accident.

Q. All right. And I should ask you as well,

1 Doctor, what was your charge for this
2 deposition today?

3 A. To meet with you ahead of time I charge \$250
4 and for the deposition \$750.

5 MR. BOLTON: Thank you very much. I
6 have no other questions. Counsel?

7 (OFF THE RECORD)

8 MR. RAMAGE: Doctor, I'm Attorney
9 Bill Ramage, we've met numerous times before. I
10 represent Sylvia Lewis in this case, and I have just
11 a few questions for you.

12 CROSS EXAMINATION

13 BY MR. RAMAGE:

14 Q. First of all, you were asked on direct
15 examination what documents you reviewed,
16 and you indicated you saw some records
17 from Dr. Paris and some -- some records
18 from Dr. Abila, correct?

19 A. Yes.

20 Q. Is it my understanding you have not seen any
21 records or reports of any kind from
22 Dr. Carlson?

1 A. i don't recall.

2 Q. Do you have any reports or records from
3 Dr. Carlson in your file?

4 A. No.

5 Q. So as far as Dr. Carlson's -- he's the one that
6 did the surgery, correct, Doctor?

7 A. Yes.

8 Q. You have no idea what his opinions are
9 concerning the nature of her condition,
10 the cause of her condition, or anything
11 else as far as what Dr. Carlson believes?

12 A. Correct.

13 Q. All right. incidentally, Doctor, do you do
14 cervical disk surgery?

15 A. No longer.

16 Q. Okay. Now, so the jury has some understanding
17 of your role in this case, we're clear
18 that you at no time undertook to treat
19 Mrs. Lewis, you're not one of her treating
20 physicians?

21 A. Correct.

22 Q. You saw her approximately two and a half years

1 after the accident and approximately one
2 year after her surgery?

3 Yes. Yes.

4 Q. And the you saw her is you were
5 requested by an attorney representing the
6 Defendant in this case to examine
7 Mrs. Lewis?

8 A. Yes:

9 Q. With the idea that you would prepare a report

10

1

1 And, if necessary, give testimony for the
1 Defendant in this case?

1 Yes.

1 All right. Now, for your examination and your
1 report on Mrs. Lewis, how much did you
17 charge for that?

18 The report would have been a thousand dollars,
19 and then it would have been somewhat extra
20 for the neck not sure how
21 much.

22 Q. All right. And then you said you charge \$25

1 to meet with Mr. Bolton this morning --

2 A. Yes.

3 Q. -- and discuss this -- discuss your testimony?

4 A. Yes.

5 Q. And then \$750 for the deposition?

6 A. Yes.

7 Q. Now, Doctor, over the course of a month, how

8 many of these reports would you generate?

9 A. Four to eight.

10 Q. And how many depositions would you give -- do

11 you give more than one a month?

12 A. Probably I average one or two a month.

13 Q. Okay. Okay. Now, you said you talked to

14 Mrs. Lewis for the purpose of, among other

15 things, getting a history from her,

16 correct?

17 A. Yes.

18 Q. And you also reviewed Dr. Paris' records?

19 A. Yes.

20 Q. And some information from Dr. Ablar?

21 A. Yes.

22 Q. Was it your understanding from your review of

1 Dr. Paris' records or from talking to
2 Mrs. Lewis, that she initially saw
3 Dr. Paris about one day after the
4 accident?

5 A. Yes.

6 Q. And he documents in his -- his medical
7 information, what her complaints were the
8 day after the accident?

9 A. Yes.

10 Q. All right. Is it your understanding that in
11 early June, approximately two to three
12 weeks after the accident, she had
13 sufficient radicular symptoms that
14 Dr. Paris recommended she get an MRI of
15 her cervical spine?

16 A. I don't recall that.

17 Q. If that were true, would that be something
18 significant that you would want to know
19 about?

20 A. Yes.

21 Q. All right. She finally got the MRI in June of
22 1996, toward the end, and you've looked a

1 that MRI?

2 A. Yes.

3 Q. Dr. Ablu has testified he also reviewed the
4 MRI. And so -- you understand Dr. Ablu's
5 a board certified neurosurgeon?

6 A. Okay.

7 Q. Did you understand that before?

8 A. I do now, yes.

9 Q. Okay. He reviewed the MRI and his review of
10 the MRI, in his opinion, showed a frank
11 herniated disk at C5-C6 with significant
12 spinal cord compression. Do you agree
13 with that?

14 A. Yes.

15 Q. Now, as I understand it, when you have a disk
16 that, as Mr. Bolton calls it, bulges, it
17 can be or may not be symptomatic,
18 depending on whether it's impinging on
19 anything when it bulges, is that fair?

20 A. The disk material can cause neurological
21 symptoms from pressure, but also the basi
22 fact that the disk area itself is abnormal

1 is potentially a pain-causing situation.

2 Q. Okay. But you can have a bulging disk, which
3 is not the same as a frank herniated disk,
4 is it, Doctor?

5 A. They are different, correct.

6 Q. Okay. But you can have a bulging disk with no
7 symptoms?

8 A. Yes.

9 Q. All right. And is it your understanding that
10 Mrs. Lewis, prior to this accident, had no
11 neck complaints of pain of any kind?

12 A. To the best of my knowledge, she had no
13 symptoms prior to the accident.

14 Q. All right. Now, if you get significant spinal
15 cord compression as a result of a frank
16 herniated disk, isn't it likely you are
17 going to have pain?

18 A. Not necessarily.

19 Q. Well, maybe not necessarily, but isn't it more
20 likely than not you're going to have pain?

21 MR. BOLTON: Objection.

22 A. Yes.

1 Q. All right. So at least from the disk that was
2 seen on the MRI in October -- I'm sorry,
3 in June of 1996, it's more likely than not
4 that that condition was causing Mrs. Lewis
5 some pain in her neck?

6 MR. BOLTON: Objection.

7 A. Not necessarily.

8 Q. I know not necessarily, but more likely than
9 not, it was?

10 A. Can you rephrase the question or read it back
11 to me?

12 Q. I'll rephrase it. Isn't it -- when you have a
13 condition which we've agreed Mrs. Lewis
14 had, which was a frank herniated disk with
15 significant spinal cord compression in
16 June of 1996, isn't it more likely than
17 not that she would have pain from that
18 condition?

19 MR. BOLTON: Objection.

20 A. Yes.

21 Q. Okay. And Dr. Abla recommended at that time,
22 as I'm sure you understand, that she have

i surgery?

2 MR. BOLTON: Objection.

3 A. Yes.

4 MR. BOLTON: He did not.

5 MR. RAMAGE: Certainly he did. And
6 he testified to that.

7 MR. BOLTON: Not on June 23.

8 MR. RAMAGE: When he saw her in
9 October.

10 MR. BOLTON: Your question referenced
11 June 23.

12 MR. RAMAGE: I'm sorry.

13 MR. BOLTON: I'm not trying to argue
14 with you.

15 MR. RAMAGE: I'm sorry.

16 Q. I'm sorry, Doctor, I misspoke myself. When
17 Dr. Abila saw her in October of 1996, he
18 recommended surgery?

19 A. Correct.

20 Q. Are you -- do you agree with that
21 recommendation?

22 A. No opinion.

- 1 Q. Okay. Fair enough. Now, do you understand
2 that she saw Dr. Ablar for follow up in
3 January of 1997?
- 4 A. Yes.
- 5 Q. And he did another MRI of her cervical spine?
- 6 A. Yes.
- 7 Q. Which you haven't seen?
- 8 A. Correct.
- 9 Q. And his testimony is that at that time she
10 still -- he still felt she needed surgery,
11 and I assume you have no opinion?
- 12 A. Correct on both counts.
- 13 Q. Okay. In October of 1997, she went to
14 Dr. Carlson, who is also a board certified
15 neurosurgeon?
- 16 A. He's an orthopedist.
- 17 Q. He is?
- 18 A. Yes.
- 19 Q. Okay. You're right, he was at University
20 Orthopedic Associates. He's a board
21 certified orthopedist that does disk
22 surgery?

1 A. I don't recall whether he was board certified
2 at the time, but he is a
3 fellowship-trained spine surgeon, correct.

4 Q. What do you mean by a fellowship-trained spine
5 surgeon?

6 A. It means that he had special training in
7 surgery on the spine and that he was
8 practicing for University Hospital
9 Associates in '97.

10 Q. And you went to Case Western Reserve Medical
11 School, didn't you?

12 A. Yes.

13 Q. And there's an affiliation between Case Western
14 Reserve and University Hospital, isn't
15 there?

16 A. They are a closely knit group, correct.

17 Q. And their orthopedic department, University
18 Orthopedics, is a very highly regarded
19 orthopedic department, isn't it?

20 A. Many rank it as number one in the country,
21 correct.

22 Q. Okay. Were you aware that he also diagnosed a

1 herniated disk with significant spinal
2 cord compression?

3 A. That may -- I don't recall having seen any
4 records from his office, but I believe
5 that that's probably correct.

6 Q. And he also recommended surgery?

7 A. I'm not -- eventually he did operate on her,
8 but exactly what the sequence of
9 recommendations was, I don't know.

10 Q. All right. And he will testify and reported
11 that after his surgery she had quite
12 excellent relief of her arm pain?

13 MR. BOLTON: Objection.

14 A. I believe that's true, correct.

15 Q. Doctor, we have a woman who had some arthritic
16 changes in her neck, as most people that
17 age would have, correct?

18 A. Yes.

19 Q. But she wasn't having any symptoms from
20 those -- from that problem?

21 A. Correct.

22 Q. She's involved in an automobile accident, and

1 about two to three weeks after that she
2 has an MRI recommended, and then about a
3 month after, she has an MRI done which
4 shows this disk herniation and some
5 substantial spinal cord compression,
6 correct?

7 MR. BOLTON: Object.

8 A. Correct.

9 Q. And right after the accident she was having
10 neck complaints?

11 A. That's true.

12 Q. All right. Is it fair to say that this disk
13 that you say existed prior to the accident^t
14 was not causing any problems prior to the
15 accident?

16 MR. BOLTON: Object. He would have
17 no way of knowing.

18 A. That's true. I have no way of knowing.

19 Q. Well, you've already been asked to assume by
20 Mr. Bolton and by me that she had no neck
21 problems prior to this accident.

22 MR. BOLTON: But he hasn't --

1 A. I don't recall Attorney Bolton asking me to
2 assume that, but I'm willing to assume it
3 if you ask me to.

4 Q. Well, if you look at the letter that he sent to
5 you, you will see in the letter that he
6 refers to the fact that she had no neck
7 complaints prior to the accident.

8 A. Okay.

9 Q. All right.

10 MR. BOLTON: That we know about.

11 Q. That's what he says in the letter, correct?

12 A. That may very well be true, correct.

13 Q. All right. Now, right after the accident she
14 has neck complaints and she has a disk
15 that now causes significant spinal cord
16 compression. Is it fair to say that the
17 accident, at least made the disk
18 symptomatic?

19 MR. BOLTON: Objection.

20 A. No.

21 Q. Okay. You've agreed that probably the disk, as
22 described in the MRI of June 1996, would

1 cause pain -- probably?

2 A. Yes.

3 Q. And prior to the accident, she was not having
4 any pain from this disk that you say
5 pre-existed the accident?

6 A. Yes.

7 Q. So isn't it fair to say that the accident
8 affected the disk in such a way that it
9 began to cause -- have her cause -- have
10 her experience pain?

11 A. No.

12 Q. Okay. As her condition existed prior to the
13 accident, you claim she had this -- are
14 you saying that this disk, the C5-C6 disk
15 that Mrs. Lewis had prior to the accident,
16 was nevertheless causing significant
17 spinal cord compression before the
18 accident?

19 A. Well, there's a difference between significant
20 spinal cord compression as seen on an MRI
21 and symptoms being caused by that
22 compression. In other words, there's the

1 subjective aspect of it and the objective
2 aspect of it.

3 Q. Are you saying that her C5-C6 disk prior to th
4 accident was exactly the same condition a
5 it was on the MRI?

6 A. That is probably true, yes.

7 Q. Okay. But it wasn't causing her any symptoms?

8 A. Correct.

9 Q. And then after the --

10 A. If, in fact, it's true that she was not having
11 neck symptoms prior to the accident.

12 Q. Okay. You don't have any -- any evidence that
13 she was, do you?

14 A. No.

15 Q. Okay. Then after the accident she now starts
16 getting symptoms from this disk?

17 A. Well, I don't necessarily agree that she's
18 having symptoms from the disk.

19 Q. Okay. So are you saying that -- that
20 Dr. Carlson, who recommended and performe
21 surgery on the disk, was doing so to a
22 disk that was not causing this woman any

1 symptoms?

2 A. Well, there are other things going on at that

3 level, other than the disk. For example,

4 there are bone spurs from arthritis,

5 there's disk space narrowing from the

6 chronic loss of water content of that

7 disk, and the operation is designed to not

8 just address the bulging or herniated

9 portion of the disk, but to also correct

10 the height in the area, to remove bone

11 spurs, so on and so forth. So it's an

12 operation directed toward a degenerative

13 process, not just the herniated disk.

14 Q. Do you know what the operation was that he did,

15 since you haven't seen any of his records

16 or read his report?

17 A. I do. i do, based on my look at X-rays that

18 were obtained in my office.

19 Q. So the surgery was necessary?

20 A. Yes.

21 Q. No question about that?

22 A. Yes.

1 Q. And it was necessary to correct Mrs. Lewis'
2 complaints of pain in her neck?

3 A. No.

4 Q. What was the purpose of the surgery?

5 A. To correct an anatomical problem related to
6 degeneration at that level, and then
7 hopefully as a byproduct of that, the
8 patient's symptoms would improve.

9 Q. She wasn't having any problems prior to the
10 automobile accident that would have
11 required surgery in that area?

12 MR. BOLTON: Asked and answered.

13 Q. Do you know, Doctor?

14 A. Generally we don't operate on people who aren't
15 complaining of symptoms, that would be
16 correct.

17 Q. All right. So that after the accident, she had
18 such symptoms that required her to have
19 this neck surgery?

20 A. No.

21 Q. Okay. But you're saying the neck surgery was
22 necessary?

1 A. Yes.

2 Q. And it did alleviate some of the radicular --
3 or all of the radicular complaints that
4 she had?

5 A. Some of her symptoms in the arms and legs were
6 improved, correct.

7 Q. Well, Dr. Carlson said she had quite excellent
8 relief of arm pain, which would be the
9 radicular symptoms.

10 A. Correct.

11 Q. All right. Mrs. Lewis has testified that it
12 affected almost complete -- a complete
13 recovery of all of her symptoms in the
14 neck.

15 A. Great.

16 Q. And the medical records indicate that the
17 masseuse you are talking about was
18 treating her for her low back.

19 A. Could be.

20 Q. Not her neck.

21 A. Could be. I don't recall having reviewed any
22 actual records, but that's not what the

1 the patient's symptoms will improve.

2 Q. Okay. And evidently, after this surgery,
3 according to Dr. Carlson, they improved
4 completely -- or according to Dr. Carlson
5 and Mrs. Lewis?

6 A. A significant amount of improvement was
7 experienced, correct.

8 Q. Okay. And according to the history which you
9 were able to obtain, Mrs. Lewis had a
10 similar herniated disk at L5-S1, which
11 gave her no symptoms at all?

12 MR. RAMAGE: Objection.

13 A. Well, I'm not sure exactly what type of
14 symptoms she was having at that level, if
15 any, but it wasn't an important feature of
16 this overall case, if you will. The neck
17 seemed to be much more of a problem than
18 her lower back ever was.

19 Q. Okay. Certainly she didn't claim to you that
20 the herniated disk in her low back came
21 from the accident, did she?

22 A. That was not discussed during our examination.

1 Q. All right. And is it possible to have a
2 herniated disk with compression, such as
3 the one we see here, and have no symptoms?

4 MR. RAMAGE: Objection.

5 A. Yes.

6 Q. And when you say that you do not necessarily
7 have pain from a herniated disk, why do
8 you say that? Why do you have that
9 opinion?

10 A. Because hundreds, if not hundreds of thousands
11 of people, possibly some of us sitting
12 here in the room, have disk herniations
13 that just sit there quiescently. They
14 just don't seem to cause difficulty.

15 MR. BOLTON: All right. No other
16 questions.

17 RECROSS EXAMINATION

18 BY MR. RAMAGE:

19 Q. Doctor, it's your testimony, although you
20 haven't read anything from Dr. Carlson,
21 that Dr. Carlson did this surgery to
22 correct an anatomical problem?

1 A. Correct.

2 Q. Dr. Carlson will testify that, "Due to the
3 significant cord compression I felt that
4 her symptoms would recur and I discussed
5 the risks and benefits of a surgical
6 anterior diskectomy with an autologous
7 iliac crest bone grafting." Dr. Carlson
8 is going to testify that he performed this
9 surgery because of the herniated disk and
10 spinal cord compression.

11 MR. BOLTON: Objection.

12 A. Well, I don't believe that that's going to be
13 the case.

14 Q. Okay. If it is the case, then what's that do
15 to your opinions here today?

16 A. It won't affect my opinion.

17 MR. RAMAGE: Okay. Thank you.

18 That's all, Doctor.

19 THE WITNESS: I have the right to
20 waive viewing, reading and that sort of thing, which
21 I accept.

22 MR. BOLTON: Thank you. Thank you,

1 **Doctor.**

2 (WHEREUPON THE DEPOSITION OF JAMES D. BRODELL, M.D.
3 WAS CONCLUDED AT 9:25 AM AND SIGNATURE WAIVED)

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