

1                   IN THE COURT OF COMMON PLEAS

2                   LORAIN COUNTY, OHIO

3           LEONA TOWNSEND, et al.,

4                   Plaintiffs,

5           - vs -

JUDGE GLAVAS

CASE NO. 94CV111758

6           RICHARD F. LOGUE, III,

7                   Defendant.

8                   - - - -

9           Deposition of DENNIS B. BROOKS, M.D., taken  
10           as if upon direct examination before Margaret  
11           Morrow, a Notary Public within and for the State  
12           of Ohio, at the offices of Dennis B. Brooks,  
13           M.D., 26900 Cedar Road, Beachwood, Ohio, at 5:00  
14           p.m. on Wednesday, January 11, 1995, pursuant to  
15           notice and/or stipulations of counsel, on behalf  
16           of the Defendant in this cause.

17                   - - - -

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1        APPEARANCES:

2            Howard D. Mishkind, Esq.  
3            1660 West Second Street  
4            Cleveland, Ohio 44113  
5            (216) 241-2600,

6            On behalf of the Plaintiffs;

7            Gerald L. Jeppe, Esq.  
8            Meyers, Hentemann, Schneider & Rea  
9            2121 The Superior Building  
10           Cleveland, Ohio 44114  
11           (216) 241-3435,

12           On behalf of the Defendant.

13        ALSO PRESENT:

14           Tim Palcho, Videotape Operator  
15  
16  
17  
18  
19  
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22  
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24  
25

1 MR. JEPPE: Let the record  
2 reflect that this is going to be the  
3 videotape deposition of Dr. Dennis Brooks  
4 being taken in his offices on Wednesday,  
5 January 11th, 1995. The videotape  
6 deposition is being taken pursuant to the  
7 Rules of Civil Procedure of the State of  
8 Ohio and the rules of superintendents for  
9 the State of Ohio and it's my intention to  
10 use this videotape deposition at the trial  
11 of Leona Townsend, et al. versus Richard F.  
12 Logue, III presently pending in the Court  
13 of Common Pleas of Lorain County Ohio, Case  
14 Number 94CV111758 before the Honorable  
15 Judge Kosma Glavas.

16 Now the case is scheduled to begin  
17 at the present time I believe on January  
18 the 25th of 1995. At this time I would  
19 like to ask Mr. Mishkind, the attorney for  
20 the plaintiffs, whether he objects to the  
21 taking of the deposition at this time, the  
22 matter in which it's being taken or its use  
23 at time of the trial?

24 MR. MISHKIND: No, no, and no.

25 MR. JEPPE: Thank you.

1                    DENNIS B. BROOKS, M.D., of lawful age,  
2                    called by the Defendant 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 DENNIS B. BROOKS, M.D.  
8                    BY MR. JEPPE:

9                    Q.    Would you please state your full name for the  
10                    record.

11                    A.    Dennis Bruce Brooks.

12                    Q.    And what is your business address?

13                    A.    26900 Cedar Road, Beachwood, Ohio.

14                    Q.    What is your occupation, sir?

15                    A.    I'm a doctor of medicine with a specialty in  
16                    orthopedic surgery.

17                    Q.    Would you please define the specialty of  
18                    orthopedic surgery for the jury.

19                    A.    Yes.    Orthopedic surgery is that branch of  
20                    medicine that treats patients who have problems  
21                    with their musculoskeletal system.    By that I  
22                    mean I take care of patients who have problems  
23                    with their bones, joints, the soft tissues that  
24                    cover those areas, the muscles, ligaments and  
25                    tendons as well as taking care of patients who

1 have problems with their spine and its contents,  
2 the intervertebral disks and the nerve roots.

3 As an orthopedic surgeon I take care of a  
4 variety of patient problems. There are those  
5 that are apparent at birth that are referred to  
6 as congenital. There are the problems that  
7 become apparent during adolescence and puberty  
8 and they're referred to as developmental. There  
9 are the injuries that arise from vehicular  
10 accidents, from work-related accidents, from  
11 sport activities and those are referred to as  
12 traumatic. And then there's the large class of  
13 patient problems that we all essentially  
14 encounter as we grow older and those are  
15 referred to as degenerative. As an orthopedic  
16 surgeon, I take care of patients both with  
17 surgery and without surgery depending on their  
18 needs.

19 Q. Would you please outline for the jury your  
20 educational background and preparation for your  
21 profession.

22 A. Yes. I graduated from Harvard University in  
23 1959 with a Bachelor of Arts degree. I then  
24 attended Western Reserve University School of  
25 Medicine and graduated from there in 1963 with a

1 degree of Doctor of Medicine. Following that I  
2 served as a rotating intern at the Mt. Sinai  
3 Hospital of Cleveland for one year and then as a  
4 general surgery resident at Mt. Sinai for one  
5 year.

6 During my third and fourth years of  
7 postgraduate training I was an orthopedic  
8 surgery resident also at Mt. Sinai. During my  
9 fifth year of postgraduate training I was a  
10 National Institute of Health Research associate  
11 in the biomechanics laboratory of Case Western  
12 Reserve University. And my sixth and final year  
13 of postgraduate training was in Children's  
14 Orthopedics at the Indiana University Medical  
15 Center.

16 Q. Would you please explain to the jury what that  
17 fifth year of residency in the biomechanics  
18 laboratory at Case Western Reserve University  
19 was all about.

20 A. Yes. Biomechanics is the application of  
21 engineering principals to biological systems.  
22 As an orthopedic surgeon it is important to have  
23 an understanding of biomechanics because it  
24 helps us to understand the mechanism of injury  
25 and thus the best way to treat certain injuries,

1 helps us to design, test, utilize various  
2 internal fixation devices that we use for the  
3 treatment of fractures, has certainly helped us  
4 to design, test and utilize artificial joints.

5 Q. All right. Now, doctor are you licensed to  
6 practice orthopedic surgery in the State of  
7 Ohio?

8 A. Yes.

9 Q. And how long have you been so licensed?

10 A. I have been licensed to practice medicine in the  
11 State of Ohio for thirty-one years.

12 Q. Now, doctor, have you also had any experience in  
13 the United States military service?

14 A. Yes.

15 Q. Would you outline that for the jury.

16 A. Served in the United States Air Force between  
17 1969 and 1971 with the rank of major.

18 Q. And could you tell the jury, if you would, any  
19 positions that you held with any hospitals or  
20 with the Air Force itself while you were in the  
21 Air Force, sir.

22 A. Yes. During my last year of service in the Air  
23 Force I was chief of orthopedics at Davis Mount  
24 Air Force Base.

25 Q. Doctor, following your Air Force experience, is

1       that when you came back to Ohio?

2   A.   Yes.

3   Q.   And have you been actively in the practice of  
4       orthopedic surgery since that date?

5   A.   Yes.

6   Q.   Are you still actively engaged in the practice  
7       of orthopedic surgery as of this date?

a   A.   Yes.

9   Q.   Would you outline for the jury, if you would,  
10       the hospitals that you have admitting privileges  
11       to or are affiliated with.

12   A.   I limit my practice to the Mt. Sinai Medical  
13       Center of Cleveland.

14   Q.   Now, doctor, have you also had an opportunity to  
15       teach orthopedic surgery or a part of orthopedic  
16       surgery at any medical school, medical teaching  
17       hospital in this area or any other area?

18   A.   Yes.

19   Q.   Would you outline that for the jury, if you  
20       would, please.

21   A.   Yes.   It's interesting that you asked any other  
22       area.   When I was in the Air Force, as a matter  
23       of fact, we were associated with the University  
24       of Arizona and we had medical students rotating  
25       through the Air Force, so I guess that's when I

1 began my teaching career.

2 Presently, I am an assistant clinical  
3 professor of orthopedic surgery at Case Western  
4 Reserve University School of Medicine. I'm on  
5 the orthopedic residency teaching faculty at the  
6 Mt. Sinai Medical Center and I lecture in the  
7 field of biomechanics.

8 Q. Doctor, have you authored any articles, chapters  
9 of books or any type of papers at all in your  
10 profession?

11 A. Yes.

12 Q. And can you tell the jury, if you could, some of  
13 the articles or material that you have published  
14 and where they've appeared?

15 A. Yes. I've authored or co-authored articles on  
16 bone transplantation in orthopedic surgery,  
17 congenital dislocations of the knee, the  
18 biomechanics of knee injuries, the biomechanics  
19 of tibial fractures, articles about new devices  
20 for the treatment of hip, wrist and ankle  
21 fractures.

22 Q. And where have these articles appeared, sir?

23 A. The majority of them have appeared in the  
24 Journal of Bone and Joint Surgery.

25 Q. **Now**, do you belong to any professional

1 organizations or associations?

2 A. Yes.

3 Q. Would you outline a few of those for the jury.

4 A. Certainly. I'm am a member of the American  
5 Academy of Orthopedic Surgeons, the  
6 International Society of Orthopedics and  
7 Traumatology, the Clinical Orthopedic Society,  
8 and the State and Local Orthopedic Societies.

9 Q. Now, doctor, there is a term that we use both in  
10 law and in medicine that's called board  
11 certified or board certification. Are you board  
12 certified in your specialty of orthopedic  
13 surgery?

14 A. Yes.

15 Q. Would you explain to the jury what it means to  
16 be board certified and how one becomes board  
17 certified.

18 A. Yes. One becomes board certified with a lot of  
19 hard work. You have to complete medical school,  
20 have to take a postgraduate training program  
21 like I outlined. I had to practice only  
22 orthopedic surgery to the exclusion of other  
23 branches of medicine for a specified period of  
24 time in one location, had to submit letters of  
25 recommendation from my peers and then had to

1 take an examination which in my case was a full  
2 day written examination and a half day oral  
3 examination. Having successfully completed all  
4 those requirements, I am considered to be board  
5 certified, which means that I have the  
6 knowledge, skill and expertise to practice my  
7 specialty.

8 Q. When did you become board certified, doctor?

9 A. I was first certified in 1971.

10 Q. Do you have any connection with the board of  
11 examiners for the board certification program in  
12 orthopedic surgery?

13 A. Yes.

14 Q. What connection do you have, sir?

15 A. I have the privilege of being an examiner for  
16 the American Board of Orthopedic Surgery and I  
17 help to conduct the oral portion of the board  
18 examination.

19 Q. And how long have you been doing this, sir?

20 A. Since 1986.

21 Q. All right. Now, Dr. Brooks, at my request did  
22 you have an opportunity to examine a Leona  
23 Townsend?

24 A. Yes.

25 Q. And can you tell me, sir, when that examination

1 would have taken place?

2 A. That examination took place in August of 1994.

3 Q. Do you have a file or a chart on Leona Townsend?

4 A. Yes.

5 Q. Is that the file that's in front of you at the  
6 present time?

7 A. Yes, it is.

8 Q. All right. During the course of my examination  
9 or Mr. Mishkind's examination please feel free  
10 to refer to that file or any materials that you  
11 my desire. Okay?

12 A. Thank you.

13 Q. All right. Now, doctor, I have referred other  
14 patients to you for examinations, have I not?

15 A. Yes.

16 Q. Now, where did this examination take place?

17 A. In my offices.

18 Q. And when did it take place again?

19 A. The actual examination took place on August  
20 16th, 1994.

21 Q. And who if anyone --

22 A. I am sorry, August 15th, 1994.

23 Q. All right. And who if anyone was present at the  
24 time of that examination?

25 A. Mrs. Townsend and Mr. Mishkind.

1 Q. Now, doctor, would you explain to the jury  
2 before we get into the actual examination itself  
3 the various parts of the examination and what  
4 you go through briefly before you get to the  
5 specifics.

6 A. Certainly. The examination itself can be broken  
7 into three parts. The first part of the  
8 examination is the history. The second part of  
9 the examination is the physical examination.  
10 The third part of the examination is the review  
11 of any diagnostic studies that I order at the  
12 time that I examine Mrs. Townsend.

13 And then each of these parts can be further  
14 subdivided. For example, the history can be  
15 broken down into three parts. The first part  
16 is what the patient tells me has occurred  
17 between the onset of her symptoms or her  
18 problem, in this case Mrs. Townsend's accident  
19 of February 14th, 1992 and the time that I  
20 examined her on August 15th, 1994.

21 The second part of the history is what is  
22 referred to as her present symptoms or her  
23 complaints at the time that I examine her. And  
24 the third part of the history is her past  
25 history, what symptoms if any she had prior to

1       the accident, what other medical conditions or  
2       what surgical conditions she may have had in the  
3       past.

4   Q.   All right.  Now doctor, is the history then the  
5       first portion of the examination process?

6   A.   Yes.

7   Q.   Now, did you take a history from Leona Townsend  
8       on that date?

9   A.   I did.

10  Q.   Do you take the history yourself or does someone  
11       in the office take it for you?

12  A.   No.  I take it myself.

13  Q.   All right.  Doctor, if you would then would you  
14       kindly relate to the jury the history that was  
15       given to you by Leona Townsend on the date of  
16       your examination which I believe was August the  
17       15th of 1994.

18  A.   Certainly.  She told me that she had been  
19       injured on February 14th, 1992 when she was  
20       driving an automobile that was stopped when it  
21       was struck from behind by a second car.  She  
22       told me that her vehicle was, quote, 75 percent  
23       totaled.  She was restrained at the time of the  
24       accident and indicated that her head went down  
25       and the seat belt stopped me.  My right leg was

1 on the brake pedal and I went back in my seat  
2 she said.

3 Following the accident she told me that she  
4 had pain in her neck and both arms. Later she  
5 was taken to Elyria Memorial Hospital by her  
6 husband. She was examined, treated and released  
7 with the a cervical collar and medication.

8 She told me that on February 16th, 1992 she  
9 returned to the hospital for evaluation of her  
10 right leg symptoms. She indicated, quote, I  
11 could barely walk. She told me that she had  
12 pain along the entire anterior aspect of her  
13 right leg extending from her ankle to her  
14 thigh. She was again examined, treated and  
15 released.

16 The following day she came under the care  
17 of Dr. Kolczun who indicated that, quote, both  
18 legs were swollen. It would take six weeks for  
19 the swelling to go down. I should come back in  
20 six weeks. Mrs. Townsend told me that she then  
21 used ice on her legs.

22 She returned to **Dr.** Kolczun, quote, a  
23 little sooner, unquote, than the six weeks and  
24 he referred her to physical therapy. She  
25 received treatment two times a week for

1 approximately two months. The therapist, as she  
2 indicated, treated my legs. She then returned  
3 to Dr. Kolczun who in turn referred her to  
4 Dr. Maher a neurologist, for Dr. Kolczun, quote,  
5 thought it was a neurological problem in my  
6 legs.

7 Mrs. Townsend went on to tell me that in  
8 June of 1992 she did come under the care of  
9 Dr. Maher who performed a series of tests.  
10 These included an MRI of her low back which  
11 revealed, according to Mrs. Townsend, a bulging  
12 disc and a damaged nerve root in my right leg.  
13 She also underwent EMG and nerve conduction  
14 tests but did not know the results of those  
15 studies.

16 She told me that Dr. Maher prescribed  
17 Desyrel and indicated, quote, it puts you asleep  
18 so you have no pain. She underwent evaluation  
19 at Elyria Memorial Hospital because she had what  
20 she referred to as bowel problems and rectal  
21 bleeding.

22 During 1993 she continued under Dr. Maher's  
23 care and was referred to Dr. McQuinin, a  
24 cardiologist. In December of 1992 Dr. Esch  
25 performed a sigmoidoscopy. She told me that,

1 quote, I had a badly bruised bowel. This was  
2 treated with medication.

3 She continued and indicated that in the  
4 early part of 1993 she was evaluated by  
5 Dr. Maher, quote, for my neck. She also had  
6 pain which radiated into the dorsal aspects of  
7 her forearm and ulnar two or three fingers.

8 Q. Doctor, just a second. What is the dorsal  
9 aspect of the forearm and the ulnar two or three  
10 fingers?

11 A. Dorsal refers to the back, so it's the back of  
12 the forearm. And the ulnar two or three fingers  
13 referred to the little, ring and long fingers.

14 Q. All right. Thank you.

15 A. She told me that she had what she called  
16 tingling in her left arm on the day of the  
17 accident. She did not mention her neck or arm  
18 symptoms to Dr. Maher until the early part of  
19 1993 she told me. At that time, quote, the  
20 whole thing was pounding. And she was  
21 experiencing neck pain which radiated into her  
22 left arm. Dr. Maher ordered an MRI which  
23 revealed, quote, a whole lot of things were  
24 going on in my neck. One opening had come  
25 down.

1           In the early part of 1993 she was referred  
2           to Dr. Sertich a surgeon. He suggested that she  
3           wear a cervical collar for several weeks, but  
4           this was not helpful. She also went to the  
5           emergency room of Lorain Community Hospital for  
6           treatment of her neck pain.

7           She went on to tell me that on June 21st,  
8           1993 she was admitted to Elyria Memorial  
9           Hospital for three days. Dr. Sertich performed  
10          surgery and, quote, widened that opening and  
11          worked on a couple of disks according to my  
12          medical records, unquote.

13          Mrs. Townsend did not remember her symptoms  
14          at the time of her discharge from the hospital.  
15          She did recall that following her discharge she  
16          wore a, quote, soft collar for a long time. She  
17          was reevaluated by Dr. Sertich at varying  
18          intervals. She told me that she was last  
19          examined by him in 1993. At that time she  
20          inquired about lower back symptoms and he  
21          ordered what she referred to as flexible x-rays  
22          at Elyria Memorial Hospital. He indicated that  
23          he would, quote, keep my file in the basement.

24          She told me that she's continued under the  
25          care of Dr. Esch who has performed, quote,

1 another test on my bowel. He has not treated  
2 her for her neck or low back symptoms. She  
3 indicated that she had not been treated by other  
4 physicians nor had she been hospitalized again.  
5 So that completed the first part of her history,  
6 what happened between February 14th, 1992 and  
7 the time that I examined her in '94.

8 Q. All right. Now, what's the second part of the  
9 history that was taken?

10 A. The second part of the history was asking her  
11 about her symptoms or her complaints when I  
12 examined her in August of 1994.

13 Q. Would you please relate those to the jury if you  
14 would, please.

15 A. Yes. She told me that she was, quote, still  
16 having tingling on occasion, again on the dorsal  
17 aspect of her left forearm. This was present  
18 every day although it was not constant. Her  
19 neck was, quote, still sore. She experienced  
20 pain when she turned, quote, too far to the  
21 left, unquote. When she looked down too long  
22 she would develop tingling in my arm for a  
23 period of time, she said. Her symptoms were  
24 decreased by getting up and moving around, lying  
25 in bed and sleeping.

1           She also told me that her lower back,  
2           quote, hurt a lot. There was nothing special  
3           which increased this symptom. Her symptoms were  
4           decreased by using heat and taking Motrin at  
5           least two each day she said.

6           The number of Motrin she took depends on  
7           how I'm feeling. She experienced what she  
8           referred to as a toothache sensation in her  
9           right leg from just above her patella to just  
10          below her groin. This sensation involved a very  
11          thin area. In fact, she indicated to me that it  
12          was, quote, like a line which she could draw on  
13          her thigh. This symptom was present most of the  
14          time and was not decreased with heat. Coughing,  
15          sneezing and bowel movements did not cause any  
16          leg radiation.

17          I inquired about other medications that she  
18          was taking and she told me that she was taking  
19          Mevacor and a water pill. In addition to her  
20          bowel problems she had an increase in her  
21          cholesterol level. She did not have diabetes.

22   Q.   Okay. Doctor --

23   A.   And then I inquired into her past medical  
24          history and she told me that she hadn't had any  
25          symptoms referable to her neck, left arm, low

1 back or right leg prior to the accident. She  
2 had been involved in a prior accident, but had  
3 not had any medical treatment after that  
4 accident. She had not been involved in any  
5 subsequent accidents or sustained any new  
6 injuries since February 14th, 1992.

7 And as a last part of her history I learned  
8 that at the time of the accident she was working  
9 as an accountant. She recalled that she missed  
10 the Monday after the accident, missed four weeks  
11 after her surgery and missed time for her  
12 diagnostic tests and doctors' appointments. And  
13 that concluded her history.

14 Q. Now, doctor, after taking the history from Leona  
15 Townsend, what was the next thing that was done?

16 A. I performed a physical examination.

17 Q. All right. Doctor, if you would, would you  
18 please relate to the jury, first of all, the  
19 parts of the body you examined on Leona  
20 Townsend.

21 A. Her cervical spine or her neck, her lumbosacral  
22 spine on her low back, her upper extremities and  
23 her lower extremities, her arms and her legs.

24 Q. All right. And again, doctor, why were these  
25 the areas of the body that you limited your

1 examination to?

2 A. These were the areas of the body about which she  
3 had complaints. I also examined her hips I  
4 recall now as well because she talked about pain  
5 in the anterior aspect or the front of her right  
6 thigh.

7 Q. Now, doctor, if you would please, would you  
8 relate to the jury the examination that you  
9 conducted and the results of that examination.

10 A. Certainly. The examination revealed a female of  
11 approximately her stated age which was of short  
12 statute. She indicated to me that her height  
13 was approximately five foot two inches, and her  
14 weight approximately 125 pounds. I noted that  
15 she got out of the chair without difficulty and  
16 she walked without limping and that she was able  
17 to climb onto and off of the examining table in  
18 a normal fashion.

19 Q. Now, doctor, this appears to be nothing more  
20 than observation of her the first part of the  
21 examination. Why if it is, is it important to  
22 you, the results that you have just noted for  
23 the jury.

24 A. Well, any observation is something to consider,  
25 so I guess that's why it's important. In this

1 particular situation there's several things that  
2 are of interest. She complained of pain in the  
3 front of her right thigh which went right down  
4 her thigh. She didn't limp when she walked.

5 She had some complaints referable to her  
6 low back as well as her right thigh. She was  
7 able to climb on to and off of the examining  
8 table without difficulty. I'm tall. I'm six  
9 feet two inches tall. My examining tables are  
10 higher than most others so that I don't get back  
11 pain. In order to get on to the examining table  
12 the patient has to use one if not two foot  
13 stools and in an ascending manner. She was able  
14 to climb these steps without any difficulty.  
15 These were all normal findings.

16 Q. All right. Doctor, would you continue with your  
17 examination, please.

18 A. Certainly. When I examined her cervical spine  
19 or her neck I noted that it had normal  
20 configuration or normal cervical lordosis.  
21 There was no evidence of paracervical or  
22 trapezius spasms. There was a well-healed  
23 non-tender midline posterior cervical scar.  
24 There was tenderness -- there was no tenderness  
25 rather with palpation of the paracervical or

1       trapezius muscles. There was normal cervical  
2       flexion and approximately 50 percent of normal  
3       extension. She indicated, quote, I have a  
4       problem with extension. There was approximately  
5       75 percent of right lateral rotation, 25 percent  
6       of left lateral rotation, 75 percent of right  
7       lateral bending and 50 percent of left lateral  
8       bending. **All** maneuvers were performed in a  
9       ratchet like fashion.

10    Q. Now, doctor, if we could, would you please go  
11       back and put your last comments into laymen's  
12       terms so we understand what you are talking  
13       about here.

14    A. I'll try.

15    Q. Okay.

16    A. When **I** looked at Mrs. Townsend's neck she had a  
17       normal configuration, normal cervical lordosis.  
18       There was a scar from her previous surgery on  
19       the back of her neck. There was no evidence of  
20       muscle spasm. She had limitation of extension,  
21       rotation and bending. And when she performed  
22       these maneuvers she did not perform them just  
23       like I did in a rather fluid fashion. She  
24       performed them in a jerky or ratchet like  
25       fashion.

1 Q. What if any significance does all of that have?

2 A. That's an inappropriate response. When an  
3 individual has limitation of cervical motion as  
4 a result of arthritis, for example, or what's  
5 called cervical spondylosis, they can only move  
6 their neck so far because their joints are stiff  
7 and arthritic, but they move their neck as far  
8 as they can in a fluid fashion. They don't move  
9 it in a ratchet like fashion like that. That's  
10 an inappropriate response. There's no anatomic  
11 basis for that. It's an indication that she is  
12 not moving her neck to the degree that she  
13 really can.

14 Q. Doctor, would you continue with your  
15 examination, please.

16 A. Certainly. I checked her pulses and noted that  
17 they were normal. I checked her deep tendon  
18 reflexes and noted that the biceps reflex on the  
19 left was slightly less than the biceps reflex on  
20 the right. The other reflexes were the same.  
21 She had decreased perception of pin prick along  
22 the lateral aspect of the left arm and forearm  
23 as well as decreased perception of pin prick in  
24 the right hand. Muscle strength was normal.

25 Q. All right. Anything significant about those

1 findings as far as this individual's concerned?

2 A. Yes.

3 Q. What is that?

4 A. The decreased perception of pin prick along the  
5 lateral aspect, well, the lateral aspect of the  
6 left arm and forearm -- I'm hesitating because  
7 I'm am going to say that it does not follow a  
8 dermatomal pattern and you will probably want to  
9 know what a dermatome is -- but the nerves which  
10 begin up in the cervical spine and join down in  
11 the axilla to supply the skin of the arm as well  
12 as the muscles follow a specific pattern. This  
13 is called the dermatome. When an individual has  
14 a problem with one particular nerve they may  
15 have loss of sensation in the dermatome, but the  
16 area that she told me had less sensation is not  
17 a specific dermatome. In fact, it covers  
18 several levels and is not in the normal  
19 dermatomal pattern. She also complained of  
20 decreased sensation of pin prick in the right  
21 hand in a rather diffuse fashion and again there  
22 was no basis for that.

23 Q. All right. Muscle strength was normal?

24 A. Yes.

25 Q. In both extremities?

1 A. Yes.

2 Q. All right. Would you continue with your  
3 examination, please.

4 A. Yes. I then examined her low back, her  
5 lumbosacral spine, and noted that she had normal  
6 configuration, normal lumbar lordosis without  
7 evidence of muscle spasm. There was no  
8 tenderness with palpation of the lumbosacral  
9 spine, sacroiliac joints or sciatic notches.

10 Forward flexion could be accomplished such  
11 that her fingertips reached her toes, a normal  
12 finding. Extension and lateral bending were  
13 performed normally. She was able to walk on her  
14 heels and toes without evidence of weakness or  
15 of pain.

16 Sitting straight leg raising could be  
17 accomplished to 90 degrees bilaterally. The  
18 tripod sign was negative. Supine straight leg  
19 raising was restricted to 60 degrees on the  
20 right and could be accomplished to ninety  
21 degrees on the left. On the right it was  
22 accompanied by anterior thigh pain. Lasegue's  
23 maneuver was negative. The deep tendon reflexes  
24 were symmetrical. Muscle strength was normal.  
25 There was decreased perception of pin prick in

1 the left leg in a nonanatomic or nondermatomal  
2 pattern.

3 Q. All right. Doctor, let's stop there again.  
4 Would you again go back for the jury and put in  
5 laymen's terms that which you have just  
6 testified to with respect to the low back, the  
7 findings that is.

8 A. Yes. The shape of her spine was normal. She  
9 had no sustained contraction or spasm of any  
10 muscle groups. There was no tenderness when I  
11 touched or palpated various areas. She was able  
12 to bend forward and touch her toes normally.  
13 She could bend back normally. She could bend  
14 from side to side normally.

15 The findings that were abnormal were  
16 several. One of which was that when she was  
17 lying on her back and I assisted her in raising  
18 her leg on the right side she only did this so  
19 that there was a 60 degree angle between the  
20 table top and her leg as opposed to the opposite  
21 side where she could form a 90 degree angle.  
22 When she was in the sitting position she could  
23 form the 90 degree angle on both sides.

24 Q. What's the significance of that? I'm sorry.

25 A. That's okay. That's an inappropriate response.

1       When you are sitting up and when you are lying  
2       down you ought to be able to perform straight  
3       leg raising to the same extent.  Equally  
4       important was that she complained of pain in the  
5       anterior aspect of her thigh during this  
6       maneuver.  Now, if anything, this maneuver  
7       causes tension or stretching of the muscles that  
8       go from your back down the back of your leg, so  
9       elevating your leg should relax the muscles on  
10      the front of your thigh and not cause any  
11      tension or cause any pain, so that was another  
12      inappropriate response.

13   Q.  Anterior being front?

14   A.  Front.

15   Q.  Okay.  And posterior being the rear?

16   A.  Correct.

17   Q.  Okay.  I am sorry.  Go ahead, sir.

18   A.  Last thing was that as there was in the upper  
19      extremity there was decreased perception of pin  
20      prick in the left leg in a nondermatomal  
21      pattern.  Again another finding for which there  
22      is no anatomic or no physical explanation.

23   Q.  All right.  Now, doctor, would you continue then  
24      with the physical examination.

25   A.  Yes.  The last thing that I did was that I

1        examined her hips. She had no tenderness with  
2        palpation. She complained of pain in the right  
3        thigh with any movement of her right hip. And  
4        again, even if she had an underlying joint  
5        problem, right hip joint problem, she wouldn't  
6        have complaints of pain with any movement of her  
7        hip. And certainly if she had a muscle problem  
8        in her thigh, that would not cause complaints of  
9        pain with any movement of the thigh.

10    Q. All right. Did that complete the physical  
11        examination?

12    A. Yes.

13    Q. All right. Did you have any radiographs or  
14        x-rays ordered of this individual?

15    A. Yes.

16    Q. Would you tell the jury, if you would, the areas  
17        of the body that you did request and obtain  
18        radiographs.

19    A. Certainly. Cervical spine, the neck, the  
20        lumbosacral spine, the low back, and the hips.

21    Q. Now, doctor, did you in fact review those  
22        radiographs yourself?

23    A. Yes.

24    Q. And as a part of your profession do you in fact  
25        review radiographs on a regular basis?

1 A. Yes.

2 Q. Or are able to interpret them?

3 A. Yes.

4 Q. Would you please then tell the jury whether or  
5 not you did personally review the radiographs of  
6 Leona Townsend?

7 A. I did.

8 Q. Would you tell the jury what they revealed?

9 A. Certainly. The radiographs of her cervical  
10 spine or her neck revealed no evidence of  
11 fracture or dislocation. There was considerable  
12 narrowing of the C5-6 and C6-7 interspaces and  
13 moderate narrowing of the C3-4 and C4-5  
14 interspaces. There was anterior and posterior  
15 spurring at all levels. In addition there was  
16 encroachment on the neural foramen on the right  
17 at C4-5 and on the left at C5-6 and C6-7.

18 Q. Doctor, is there any way you can explain or  
19 illustrate to the jury what all this means.

20 A. Would a model help?

21 Q. A model might help.

22 A. This is a model of the cervical spine. This is  
23 the front part of the cervical spine and this is  
24 the back part of the cervical spine. If we  
25 count the cervical vertebra, there are one, two,

1       three, four, five, six, seven. So when we talk  
2       about various areas of the cervical spine, for  
3       example, I said there was considerable narrowing  
4       at the C5-6 and C6-7 interspace, what I'm  
5       referring to is that there is narrowing between  
6       C6 and 7, C5 and 6, that these interspaces or  
7       the space between the vertebra where the  
8       intervertebral disc sits has collapsed down.

9               Similarly we talked about narrowing at the  
10       areas above. I mentioned that there was  
11       anterior and posterior spurring. Anterior is in  
12       the front, so that when I looked at the  
13       radiographs you could see projections of bone or  
14       spurs in both the front and, it's hard to show  
15       in the model, but the -- I'm not going to be  
16       able to demonstrate it, but the back of the  
17       vertebral body.

18              Now, okay, the other thing that the  
19       radiographs revealed was that there was  
20       narrowing of the foramen. These little yellow  
21       structures that are demonstrated on the model  
22       are nerve roots that -- the whole thing is  
23       falling apart. This is the spinal cord and from  
24       each level of the spinal cord a little nerve  
25       root originates and these nerve roots then pass

1 out through little bony areas that are called  
2 foramen or windows. They then join and form the  
3 various nerve roots that go down into the arm.  
4 So we mentioned that on the oblique views or  
5 looking at the model this way and you look right  
6 down into the window they were narrowed by  
7 spurring.

8 Q. Doctor, what is spurring?

9 A. Spurring is an extra production of bone as a  
10 result of the arthritic or degenerative process.

11 Q. And the narrowing of the disc spaces that you  
12 have talked about, what causes that? What is  
13 that?

14 A. That's an indication of degenerative disc  
15 disease. Degenerative disc disease is part of  
16 the generative process which is very -- that  
17 wasn't a very good explanation is what it  
18 wasn't.

19 It's part of the aging process. As we all  
20 grow older, things tend to wear out. And so  
21 when we say that something is as a result of  
22 degeneration or is part of the degenerative  
23 process, then that's what we -- what I am  
24 referring to when I am talking about  
25 degenerative disc disease.

1 Q. All right. Doctor, if you would go on with your  
2 radiographs, please.

3 A. I then reviewed radiographs of the low back or  
4 lumbosacral spine. They revealed no evidence of  
5 fracture or dislocation. There was some  
6 calcification, again another indicator of the  
7 aging process, at the L5 S1 interspace. The  
8 radiographs of her hips were normal. There was  
9 no evidence of fracture, dislocation or  
10 degenerative change.

11 Q. Doctor, did that then complete the radiographs  
12 that you had taken and reviewed?

13 A. Yes.

14 Q. All right. Did you have an opportunity to  
15 review any medical records and other radiographs  
16 or diagnostic studies with regard to this  
17 individual?

18 A. Yes.

19 Q. First of all, would you just enumerate for the  
20 jury the records that you had available for  
21 review.

22 A. Yes. Number one was the emergency room of  
23 Elyria Memorial Hospital for February 14th,  
24 1992. Included were the actual radiographs that  
25 were obtained on that date. Number two were the

1 records from Elyria Memorial Hospital for  
2 February 16th, 1992. Number 3 were Dr.  
3 Kolczun's records for the care between February  
4 17th, 1992 and June 3rd, 1992. There was some  
5 records which I believe were from an internist  
6 of Mrs. Townsend's for the period between March  
7 2nd, 1992 and December 11th, 1992.

8 They were Dr. Maher's records for the  
9 period between June 18th, 1992 and February  
10 11th, 1993. There were routine radiographs and  
11 an MRI of the lumbar spine on June 26th, 1992.  
12 There were the records from July 21st, 1992 for  
13 the EMG and nerve conduction studies. Dr.  
14 Sertich's records covered the period between  
15 September 3rd, 1992 and December 16th, 1993.  
16 And lastly, there were the records from Elyria  
17 Memorial Hospital for the treatment on January  
18 26th, 1993 and the inpatient treatment between  
19 June 21st, 1993 and June 23rd, 1993.

20 Q. All right. Now, doctor, I don't want you to go  
21 through and relate to the jury all that was in  
22 those records.

23 A. Thank you.

24 Q. What I would like you to do though is if you  
25 would go through those records and point out

1 anything that you believe has any significance  
2 on Mrs. Townsend's complaints.

3 A. I'm not sure I understand your question.

4 Q. Well, doctor, let's take the records one by  
5 one. First of all, if you would take the  
6 emergency room record of February the 14th of  
7 1992.

8 A. Right.

9 Q. With respect to that record and the following  
10 record that you have reviewed, what of  
11 significance did you respond with respect to  
12 Mrs. Townsend?

13 A. I understand. My understanding. You said with  
14 respect to her complaints, and I was thinking  
15 about the complaints that she had at the time.

16 Q. I am sorry. That was bad terminology.

17 A. No. That's okay. Now I understand. Okay.

18 Q. All right.

19 A. Okay. On February 14th, 1992 she was seen in  
20 the emergency room at Elyria Memorial Hospital  
21 and she did have some complaints. Following an  
22 examination which revealed some neck stiffness,  
23 a full range of motion of her cervical spine,  
24 the emergency room physician made the diagnoses  
25 muscle strain, upper cervical spine.

1           I had the opportunity, as I mentioned, to  
2       review the radiographs of the cervical spine  
3       that were obtained on the day of the accident.  
4       Those radiographs showed the same degree of  
5       cervical spondylosis or cervical arthritis or  
6       cervical degenerative disk disease, the terms  
7       are all synonymous, on February 14th, 1992 as  
8       did the radiographs that I reviewed when I  
9       examined her two and a half years later.

10   Q.   Let's stop there for a second. Now, I believe,  
11       and correct me if I'm wrong here because these  
12       terms are not exactly the terms I use every day,  
13       but cervical spondylosis was seen on the  
14       radiographs of February the 14th of 1992; is  
15       that correct?

16   A.   Yes.

17   Q.   Again, cervical spondylosis is what?

18   A.   Arthritis of the neck.

19   Q.   That was present at the time the x-rays were  
20       taken?

21   A.   Yes, and for a long time before they were taken.

22   Q.   Well, how do you know that?

23   A.   Based on my training, education, practicing  
24       orthopedic surgery for 30 -- almost 30 years  
25       now. That's a degenerative process. It doesn't

1        occur overnight. It takes years to develop, so  
2        I know that it was present before the accident.

3    Q. All right. Now, then, you took x-rays of the  
4        cervical area then at the time of your  
5        examination on August the 15th of '94; is that  
6        correct?

7    A. Right.

8    Q. What then did those x-rays reveal?

9    A. The latter x-rays demonstrated the same degree  
10       of cervical arthritis as was present on the  
11       earlier x-rays. There had been no change. The  
12       condition had not gotten any worse.

13   Q. What does that indicate?

14   A. It indicates to me that the accident of February  
15       14th, 1992 had no effect on this preexisting  
16       condition.

17   Q. Doctor, if you would go on then with any other  
18       records that you reviewed and their significance  
19       to this case.

20   A. Certainly. Two days after the accident on  
21       February 16th, 1992 she came back to the  
22       emergency room, the diagnoses of a right  
23       knee/leg strain was made. The next set of  
24       records that are important to me are Dr.  
25       Kolczun's records for the treatment which he

1 provided between February 17th, 1992 and June  
2 3rd, 1992. He examined her on three occasions.  
3 She did have symptoms referable to her right  
4 knee initially, later her left leg, but she had  
5 no symptoms referable to either her neck or her  
6 low back during that four-month period of time.

7 Q. The significance of that to you as an orthopedic  
8 surgeon?

9 A. That's significant because it indicates to me  
10 that the accident of February 14th, 1992 did not  
11 cause any injury to her low back. If it had she  
12 would have had complaints while she was under  
13 the care of Dr. Kolczun, an orthopedic surgeon,  
14 and it also indicates that although she had  
15 complaints referable to her neck on the day of  
16 the accident that whatever injuries she  
17 sustained to her neck recovered or was a mild  
18 injury and that she recovered from that very  
19 quickly because she had no complaints with  
20 respect to her neck while she was under the care  
21 of the orthopedic surgeon.

22 Q. All right. Doctor, would you go through your  
23 other records and again list for the jury or  
24 tell the jury what other records you consider to  
25 be important in this case.

1 A. There are the internist records again for the  
2 period between March 2nd, 1992 now going out to  
3 December 11th, 1992, no complaints referable to  
4 her neck or low back. I would have thought she  
5 would have mentioned complaints to that  
6 individual.

7 Dr. Maher's records indicate that she first  
8 examined Mrs. Townsend on June 18th, 1992, four  
9 months after the accident. At that time patient  
10 indicated that she had, quote, back pain when  
11 she sits, neck pain slowly improved. Between  
12 June 18th, 1992 and September 17th, 1992 she  
13 continued to have complaints with respect to her  
14 back and her thigh. On September 17th, 1992  
15 Dr. Maher suggested that the patient return PRN,  
16 which means as needed or if needed.

17 On December 23rd, 1992 Mrs. Townsend  
18 complained of low back pain. And then on  
19 January 27th, 1993, eleven months after the  
20 accident for the first time she complained to  
21 Dr. Maher, quote, ever since accident she notes  
22 at times severe pain left cervical radiating  
23 into the left arm and forearm. She hadn't made  
24 those complaints before even though she had been  
25 under the care of Dr. Maher.

1           We talked about the MRI and the lumbar --  
2           and the radiographs of the lumbar spine,

3           On July 21st, 1992 she had  
4           electrodiagnostic studies which revealed, quote,  
5           no electrodiagnostic evidence of bilateral  
6           lumbosacral motor radiculopathy or bilateral  
7           cervical motor radiculopathy, no evidence of  
8           myelopathy.

9   Q.   What does all that mean?

10  A.   What that means is that five months after the  
11       accident these electrodiagnostic studies  
12       indicated that there was no evidence of any  
13       pressure on the nerves in either the neck or in  
14       the low back to explain the symptoms that  
15       Mrs. Townsend had.

16  Q.   All right. Doctor, if you would continue.

17  A.   Next set of records are Dr. Sertich's records.  
18       He first examined Mrs. Townsend seven months  
19       after the accident. At that time she had  
20       symptoms referable to her back and both legs.  
21       She did not have any symptoms referable to her  
22       neck as she did not as reflected in Dr. Maher's  
23       records as well.

24           He examined her and felt that there was no  
25       indication for surgery with respect to her low

1 back complaints. On June 1st, 1993, sixteen  
2 months after the accident, Dr. Sertich indicated  
3 the last time I saw her she stated the arm pain  
4 had improved which apparently persists. He  
5 noted that her exam was fairly nonspecific. And  
6 then he began to discuss cervical spine surgery  
7 with her. He then followed her after surgery  
8 and his last office record seemed to be a  
9 summary.

10 Since the time I reviewed those records  
11 I've also received a July 5th, 1994 letter from  
12 Dr. Sertich which indicates that the  
13 electrodiagnostic studies, the EMG done in July  
14 of 199 was negative, which I had mentioned. But  
15 he also mentions that repeat EMGs in March of  
16 1993, a year after the accident, showed a left  
17 cervical radiculopathy.

18 Q. All right.

19 A. Okay. His actual office records however contain  
20 the statement that it was a questionable  
21 cervical radiculopathy. But the bottom line is  
22 that five months after the accident they were  
23 negative and a year later they may or may not  
24 have been positive.

25 Q. Any significance to those findings?

1 A. Yes.

2 Q. And what are those, sir?

3 A. If the accident of February 14th, 1992 had  
4 caused an injury which resulted in  
5 Mrs. Townsend's complaints of left arm pain, and  
6 if those complaints of left arm pain were as a  
7 result of pressure or injury to the nerves in  
8 her neck, that injury would have been apparent  
9 on the electrodiagnostic studies that were done  
10 in July of 1992. Those studies were normal.

11 Q. All right. Doctor, a couple more things and  
12 then we'll be through. All right.

13 A. The records from Elyria Memorial Hospital again  
14 indicate that Mrs. Townsend was in the emergency  
15 room approximately a year after the accident on  
16 January 26, 1993 when she indicated, quote,  
17 today has developed left neck, left arm and left  
18 shoulder pain and left leg numbness. So again  
19 there's an indicator that her symptoms with  
20 respect to her neck and left arm appeared long  
21 after the accident.

22 The last record is of course the record for  
23 her surgery which Dr. Sertich describes  
24 performing the foraminotomy. He specifically  
25 said that there was no evidence of disk rupture

1 at either of the two spaces that he operated on.

2 Q. What's a foraminotomy?

3 A. The foramen is that little window through which  
4 the nerve root passes. An otomy is an opening.  
5 So a foraminotomy, if you will, is opening up  
6 the window, enlarging it or in this case it was  
7 stenotic or narrowed trying to restore it to its  
8 normal size.

9 Q. And you said there were no ruptured disks. What  
10 are they referring to there, sir?

11 A. They are referring to these little, referring to  
12 the little -- not so little, the intervertebral  
13 disks that sit between the vertebrae that can  
14 sometimes cause nerve root compression.

15 Q. All right. Doctor, I have a couple of opinion  
16 questions for you. Before I ask these I have to  
17 lay the proper foundation in order to get these  
18 into evidence, so bear with me if you would,  
19 please.

20 Now, doctor, based upon the history given  
21 to you by Leona Townsend, your physical  
22 examination, your review of the medical records,  
23 the x-rays, et cetera, your training and  
24 experience as an orthopedic surgeon, do you have  
25 an opinion based upon a reasonable degree of

1       certainty, first of all, whether Leona Townsend  
2       sustained an injury in the automobile accident  
3       of February the 14th of 1992? First of all, do  
4       you have an opinion, sir?

5   A.   Yes, I have an opinion, sir.

6   Q.   And what is that opinion?

7   A.   I believe that she sustained a mild cervical  
8       strain.

9   Q.   And the basis for that opinion?

10   A.   All the things we've been talking about for the  
11       last hour or so, but bottom line is that she was  
12       examined in the emergency room on the day of the  
13       accident, she had complaints and some physical  
14       findings with respect to her neck. Thereafter  
15       she had no symptoms or physical findings with  
16       respect to her neck for at least four months.  
17       And during that period of time she was under the  
18       care of an orthopedic surgeon and had she had  
19       complaints with respect to her neck she would  
20       have evidenced or complained of those symptoms.

21   Q.   All right. Now, doctor, again based upon the  
22       history given to you by Leona Townsend, your  
23       physical examination, your review of the medical  
24       records, your training and experience as an  
25       orthopedic surgeon, do you have an opinion based

1       upon a reasonable degree of medical certainty  
2       whether Leona Townsend sustained any injury to  
3       her low back as a result of this accident?

4   A.   Yes, I have an opinion.

5   Q.   And what is that, sir?

6   A.   I believe that she did not sustain any injury to  
7       her low back as a result of this accident.

8   Q.   And the reason for that again?

9   A.   The first indication of complaints with respect  
10       to her low back occurred approximately four  
11       months after the accident.

12   Q.   Within a reasonable degree of medical certainty  
13       would a low back injury not manifest itself  
14       until four months after the accident?

15   A.   Within a reasonable degree of medical certainty  
16       when an individual sustains a low back injury  
17       that injury manifests itself within two to three  
18       days after the accident, not three to four  
19       months after the accident.

20   Q.   All right.   Again, doctor, based upon the  
21       history given to you by Leona Townsend, based  
22       upon the physical examination, your review of  
23       the medical records and your training and  
24       experience as an orthopedic surgeon, do you have  
25       an opinion based upon a reasonable degree of

1        medical certainty whether the accident of  
2        February the 14th, 1992 aggravated or  
3        accelerated the preexisting cervical  
4        spondylosis, arthritis or foraminal stenosis  
5        that she had in her neck?

6    A.    I have an opinion.

7    Q.    And what is that, sir?

8    A.    I believe that the accident of February 14th,  
9        1992 did not affect, aggravate or accelerate the  
10       preexisting condition of cervical spondylosis,  
11       arthritis or foraminal stenosis.

12   Q.    I know we have gone over this before, but you  
13        must give a basis for that opinion at this time,  
14        sir.

15   A.    Certainly.    The first complaint other than those  
16        on the day of the accident of symptoms with  
17        respect to her neck and/or her arm occurred  
18        approximately a year later in January of 1993.  
19        Electrodiagnostic studies obtained four months  
20        after the accident were normal.    A comparison of  
21        the radiographs taken on the day of the accident  
22        with those taken two and a half years after the  
23        accident showed no increase in the preexisting  
24        condition.    The accident had affected the  
25        preexisting condition, had caused it to become

1 worse in a shorter period of time than it  
2 normally would have gotten worse. The  
3 radiographs would have been different. Her  
4 electrodiagnostic studies would have been  
5 different and certainly she would have had  
6 complaints earlier than she did.

7 Q. Doctor, then based on the history given to you  
8 by Leona Townsend, your physical examination,  
9 your review of the medical records, your  
10 training and experience as an orthopedic  
11 surgeon, do you have an opinion based on a  
12 reasonable degree of medical certainty whether  
13 the surgery performed on June the 21st, 1993 was  
14 necessitated in any way by the automobile  
15 accident of February the 14th of 1992? First of  
16 all, do you have an opinion?

17 A. Yes, I have an opinion.

18 Q. And what is that opinion, sir?

19 A. My opinion is that the surgery that was  
20 performed in June of 1993 was not related in any  
21 way or necessitated in any way by the accident  
22 which occurred in February of 1992.

23 Q. Now, again, the basis of your opinion?

24 A. The surgery was performed for the preexisting  
25 cervical spondylosis. The preexisting cervical

1 spondylosis was not affected by the accident,  
2 therefore, the surgery which was performed to  
3 treat the preexisting condition was unrelated to  
4 the accident because the accident didn't affect  
5 the preexisting condition.

6 Q. One more question, sir.

7 A. Promise?

8 Q. Yes.

9 A. Okay.

10 Q. Now, doctor, based upon the history given to you  
11 by Leona Townsend, the examination you  
12 performed, the medical records that you reviewed  
13 and your experience and training as an  
14 orthopedic surgeon, do you have an opinion based  
15 upon a reasonable degree of medical certainty  
16 whether Leona Townsend has any permanent or  
17 residual condition which can be directly related  
18 to the automobile accident of February the 14th  
19 of 1992? First of all, do you have an opinion?

20 A. I have an opinion.

21 Q. And what is that, sir?

22 A. She has no permanent condition or residual  
23 problem which can be related to that accident.

24 MR. JEPPE: Thank you, doctor. I  
25 have nothing further.

1 THE WITNESS: You are well,  
2 we take a break?

3 MR. JEPPE: Sure.

4 - - - -

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

7 - - - -

8 CROSS-EXAMINATION OF DENNIS B. BROOKS, M.D.

9 BY MR. MISHKIND:

10 Q. Good evening, Dr. Brooks.

11 A. Good evening, Mr. Mishkind.

12 Q. Dr. Brooks, I want to clarify a couple of things  
13 on the record just so that the jury fully  
14 understands and appreciates the role that you  
15 play in this case. You examined Mrs. Townsend  
16 one time and one time only; correct?

17 A. Yes.

18 Q. And your exam was two and a half years after the  
19 date of the auto collision; correct?

20 A. Yes.

21 Q. You never saw Mrs. Townsend prior to August 15,  
22 1994; correct?

23 A. No.

24 Q. You have not seen her since August 15, 1994;  
25 correct?

1 A. Correct.

2 Q. And obviously you had never seen her before  
3 February 14th, 1992, the date of the auto  
4 collision?

5 A. That seems reasonable. That's correct.

6 Q. Do you have any knowledge as you sit here today  
7 as to what her current complaints and symptoms  
8 are referable to her neck and her low back or  
9 her legs other than what you have told us on  
10 direct examination and you've derived from the  
11 various reports?

12 A. No.

13 Q. Okay. And you were asked to examine  
14 Mrs. Townsend by Mr. Jeppe; correct?

15 A. Yes.

16 Q. And Mr. Jeppe indicated that you have examined  
17 patients that he has referred to you previously;  
18 correct?

19 A. Yes.

20 Q. Okay. The patients that he's referred to you  
21 previously to examine were for purposes of  
22 reporting to him the findings and not for  
23 purposes of treating the patient; correct?

24 A. Well, with all due respect, Mr. Jeppe has also  
25 referred patients for treatment as well.

1 Q. Okay. The majority of the patients that  
2 Mr. Jeppe has referred to you in fairness have  
3 been primarily for purposes of what's known as a  
4 defense medical examination; correct?

5 A. Well, if I may, I have evaluated patients that  
6 Mr. Jeppe has -- or I've evaluated people that  
7 Mr. Jeppe has asked me to evaluate. I have  
8 treated patients that Mr. Jeppe has referred to  
9 me and I suspect that there are probably more  
10 evaluations than there were more treatments.

11 Q. Okay. So to answer the question that I put to  
12 you, the majority of Mr. Jeppe's clients that he  
13 has referred to you have been for purposes of  
14 reporting as opposed to for purposes of  
15 treating; correct, doctor?

16 A. All of the clients were for evaluating and  
17 reporting.

18 Q. Okay.

19 A. Okay.

20 Q. All of the clients. Okay.

21 A. Right.

22 Q. Okay.

23 A. What else could I say?

24 Q. You have worked with Mr. Jeppe over the years on  
25 a number of occasions; correct?

1 A. Yes.

2 Q. And Mr. Jeppe is with the law firm of Meyers,  
3 Hentemann, Schneider and Rea or some derivative  
4 of that and you have worked with a number of the  
5 attorneys from that firm over the years;  
6 correct?

7 A. Yes.

8 Q. You have been doing this type of work since  
9 about 1977; correct?

10 A. Correct.

11 Q. So we're talking now, the type of work that  
12 brought Mrs. Townsend to you you have been doing  
13 for roughly eighteen years now; correct?

14 A. Correct.

15 Q. And that's separate and apart from your medical  
16 practice as an orthopedic surgeon; correct?

17 A. I don't separate it from my orthopedic practice  
18 or from my practice as an orthopedic surgeon.  
19 Only an orthopedic surgeon can do those things  
20 that I have done and have talked about today, so  
21 it is a part of my practice as an orthopedic  
22 surgeon.

23 Q. Okay. Just to be clear and so that the jury has  
24 a complete and accurate picture of your position  
25 in this case that which you have done for

- 1       seventeen or eighteen years for Mr. Jeppe and  
2       others has been a separate aspect of your  
3       orthopedic practice, in other words, those  
4       referrals have not been for purposes of treating  
5       the patients, it's been for purposes of  
6       reporting back to the defense lawyer about the  
7       particular client; is that correct, doctor?
- 8   A.   That's correct, when we talk about those  
9       evaluations reporting back to the defense  
10      attorney or the plaintiff's attorney,  
11      absolutely.
- 12   Q.   Right. I'm just talking about defense attorneys  
13      at this particular point. I understand that you  
14      do plaintiffs' work from time to time as well;  
15      correct?
- 16   A.   Yes.
- 17   Q.   Okay. Now, when you saw Mrs. Townsend, you did  
18      not treat her or offer her any suggestions  
19      relative to her symptoms, did you, doctor?
- 20   A.   That's correct.
- 21   Q.   Okay. How long was the history and the  
22      physical examination that you took?
- 23   A.   I don't know.
- 24   Q.   Okay. I looked through your notes. You have a  
25      thin file in front of you. During the direct

1 examination you were reading from the report  
2 which you sent to Mr. Jeppe; correct?

3 A. Yes.

4 Q. And you have some small legal pad, like three by  
5 five notes which you used to take notes during  
6 the history and the physical; correct?

7 A. Yes.

8 Q. And they are in the file?

9 A. Yes.

10 Q. Can we agree that from the time that  
11 Mrs. Townsend arrived until the time that you  
12 sent her for x-rays on the date that the  
13 examination was done, that that period of time  
14 did not take any more than one hour?

15 A. I have no independent recollection. You were  
16 there. You had a watch. It seems reasonable  
17 that it did not take longer than an hour.

18 Q. Okay. Now, naturally you were paid to conduct  
19 an examination and then ultimately to prepare a  
20 report relative to your examination and findings  
21 on Mrs. Townsend; correct?

22 A. I know that I charged. I hope that I've been  
23 paid, yes.

24 Q. Okay. Now, what I'd like you to do is to tell  
25 the jury, **if** you would, what currently you

1 charge, whether it be on an hourly basis or by  
2 the patient or the client?

3 A. \$350 an hour.

4 Q. \$350 an hour?

5 A. Yes.

6 Q. Okay. Now, if the examination took one hour,  
7 the review of the records and the preparation of  
8 the report would have taken additional time;  
9 right?

10 A. Correct.

11 Q. With the volume of records that you reviewed in  
12 this case would you estimate that the time that  
13 it took for you to review the records and to  
14 prepare a report would have taken at least an  
15 additional hour?

16 A. I would suspect, but I have no again independent  
17 recollection.

18 Q. Okay.

19 A. You can ask Mr. Jeppe what my bill was and that  
20 would resolve the whole thing.

21 Q. I understand that, doctor, but in fairness I'm  
22 here to talk to you and for you to explain  
23 things to the jury, so I can't do that right  
24 now.

25 A. Oh, okay.

1 Q. And that review would have been \$350 an hour as  
2 well?

3 A. Correct.

4 Q. Okay. Now, Mr. Jeppe is ultimately to pay you  
5 for the time that you've taken today to meet  
6 with him and to provide your testimony that's  
7 been recorded and please tell the jury what your  
8 charge is for your video deposition.

9 A. \$450 an hour.

10 Q. On the average, doctor, are you still performing  
11 approximately three defense medical examinations  
12 a week?

13 A. Yes.

14 Q. And do the defense medical examinations take  
15 approximately an hour, give or take a little bit  
16 more time depending upon the complexity of the  
17 records that need to be reviewed?

18 A. Yes.

19 Q. Okay. Is there an average time that you can  
20 say, Mr. Mishkind, from the time I meet with the  
21 client to the time that I finish the report it  
22 normally takes me X time to finalize things?

23 A. No. I'm sorry. There isn't.

24 Q. Okay.

25 A. As you pointed out it depends on the complexity.

1 Q. All right. Which days do you do your defense  
2 medical examinations?

3 A. Mondays, Tuesdays and Thursdays, every Montag  
4 and Donnerstag, and Tuesdays as well.

5 Q. I'm sorry.

6 A. Every Montag and Donnerstag, Mondays and  
7 Thursdays, and Tuesdays as well.

8 Q. Okay. I am not familiar with the language you  
9 were using.

10 A. A Mishkind isn't familiar.

11 Q. No. I'm sorry, doctor. On the average how many  
12 times a month are you providing testimony either  
13 in court or by deposition?

14 A. I don't know.

15 Q. Doctor, have you ever given testimony where  
16 you've indicated the frequency within which you  
17 testify either by deposition or in court?

18 A. I don't recall, but I'm certain that you are  
19 going to refresh my recollection.

20 Q. Well, let me just ask you to try to save some  
21 time. I'd be happy to refresh your  
22 recollection. Do you testify more than once a  
23 month either by deposition or in court?

24 A. I don't keep track of that. I don't have any  
25 independent recollection of that. It may vary

1 from year to year, so I don't know.

2 Q. Can you tell me on the average on a yearly basis  
3 how many times you have occasion to testify?

4 A. No. I'm really sorry. I can't tell you anymore  
5 on how many times I've testified than I can tell  
6 you how many patients I see or how many patients  
7 I operate on. I mean, you know, I do my thing  
8 and I don't keep track of all those things.

9 Q. Okay. Doctor, do you recall testifying in 1989  
10 in the case of Volpin versus Ballotta?

11 A. Yes.

12 Q. The answer to the question is you remember  
13 testifying in that case?

14 A. Yes. I remember sitting in the courtroom and I  
15 remember that every plaintiffs' attorney has a  
16 transcript of that deposition five years ago.

17 Q. Okay. In that deposition, doctor, or in that  
18 trial testimony do you recall being asked how  
19 many times you testify a month?

20 A. I have no independent recollection of the  
21 question that was asked.

22 Q. Okay. And I will give you specifically the  
23 question and the answer at Page 85 of that  
24 transcript. When you were asked how many times  
25 do I testify a month, and your answer was three

1 times a month in a bad month, four times a month  
2 in a good month. Do you recall that testimony?

3 A. No, sir, I don't recall that testimony.

4 Q. Okay. Have you in the past perhaps back in 1989  
5 had occasion to testify on the average two to  
6 three times, whether it be by deposition or  
7 actually in court in connection with the defense  
8 medical examinations that you do?

9 A. Mr. Mishkind, I don't recall. I am under oath.  
10 If that's what I said in 1989, that was my best  
11 guesstimate, obviously, with trying to be a  
12 little humorous. I don't keep track of those  
13 things. You can sit here and ask me until the  
14 sun rises. I don't know.

15 Q. Doctor, I appreciate your candor. Let me ask  
16 you whether the frequency that you are  
17 testifying today as of 1994 and 1995, is it any  
18 more or any less than what you were testifying  
19 to back in the late eighties or early nineties?

20 A. If I don't keep records, I can't make  
21 comparisons. I don't know.

22 Q. Okay. So that you wouldn't be able to dispute a  
23 contention that you're testifying in  
24 approximately the same frequency at this point?

25 A. I would neither dispute nor agree with that. I

1 mean, it's a nonanswerable question.

2 Q. Okay. In addition to the defense medical  
3 examinations that you do, you also do  
4 examinations on behalf of employers in worker's  
5 compensation cases; correct?

6 A. Yes.

7 Q. And on the average how many examinations do you  
8 do on a weekly basis for employers in worker's  
9 compensation cases?

10 A. At the present time it's one to two a week.

11 Q. And do you charge the same, \$350 an hour?

12 A. Yes.

13 Q. And that's for not only the examination, but the  
14 preparation of the report?

15 A. Yes.

16 Q. Now, doctor, the history that you obtained from  
17 Mrs. Townsend, that revealed that she had no  
18 history of neck, low back or leg problems before  
19 the auto collision which is the subject of this  
20 lawsuit; correct?

21 A. Yes.

22 Q. And in terms of looking through the records that  
23 you were provided by Mr. Jeppe, was there any  
24 evidence at all that Mrs. Townsend had  
25 complained of neck, low back or leg problems

1 before February of 1992, sir?

2 A. No.

3 Q. Okay. Can we then agree that certainly prior to  
4 February 14, 1992 that no matter what status of  
5 her back was in terms of this arthritic  
6 condition that she was what is known as  
7 asymptomatic or not experiencing any symptoms in  
8 the neck, the low back or in the legs?

9 A. No, we can't agree on that.

10 Q. Okay. Why is that, doctor?

11 A. Because she gave me the history that she had no  
12 symptoms. The records which I reviewed as you  
13 just pointed out contained no reference to any  
14 of those symptoms, but all those records were  
15 made after the accident. I never saw any  
16 records before the accident, so I can't say with  
17 certainty that she did not have any complaints.

18 Q. Okay. As you sit here and in fairness to you  
19 you may be subject to a limitation in terms of  
20 information that was provided to you, but from  
21 the information that was provided to you do you  
22 have any information that would permit you to  
23 say, Mr. Mishkind, and ladies and gentlemen of  
24 the jury, Mrs. Townsend did have problems with  
25 her neck or her low back before the collision?

1 A. The word problems is very dangerous. There's no  
2 question she had problems. She had no  
3 symptoms.

4 Q. Okay.

5 A. She had problems.

6 Q. No complaints of pain?

7 A. Right.

8 Q. By the way, is the speed at which the impact  
9 occurred or the collision occurred, is that of  
10 any significance to you as a biomechanical  
11 individual relative to the dynamics of the  
12 impact and how it relates to the injury?

13 A. It's a factor to consider, yes.

14 Q. And are you aware of the speed by which  
15 Mr. Logue collided with the rear of the vehicle  
16 that Leona Townsend was driving?

17 A. No.

18 Q. You were not advised that the impact to the  
19 automobile was at approximately thirty-five  
20 miles per hour?

21 A. I just answered your question.

22 Q. Okay.

23 A. No.

24 Q. All right. Now, were you advised that at the  
25 time of the impact that the glove box was

1       ejected, that there was such force that the  
2       glove box flew out from the dashboard area and  
3       that there was a split in the seat, a crack in  
4       the seat?

5   A.   Mrs. Townsend did not tell me that.

6   Q.   Okay. And you are not aware of that  
7       information. You didn't ask her the specifics  
8       of what happened?

9   A.   Yes, I did ask her what happened. I related to  
10       you what she told.

11   Q.   Okay. Certainly an impact at thirty-five miles  
12       an hour, doctor, with that kind of force where  
13       the glove box is ejected and the seat splits,  
14       that's a significant impact, is it not?

15   A.   I am sorry. I need to understand what you mean  
16       about the seat splitting.

17   Q.   The actual bucket or the actual seat itself  
18       coming apart from the frame which it's contained  
19       on, that's a significant impact, is it not?

20   A.   Cars are designed to do that and they do that  
21       following a certain impact. Each car is  
22       standardized depending upon the speed, so, you  
23       know, if this was a car that -- I honestly can't  
24       tell you whether it was significant or not. It  
25       sounds like there was obviously some degree of

1       -- she told me her car was 75 percent totaled.  
2       Okay. That indicates that there was damage to  
3       her car. It doesn't tell us what the damage was  
4       to the occupant.

5   Q.   Sure.

6   A.   But it tells us that there was damage to the  
7       car.

8   Q.   This is not just a little fender bender in other  
9       words?

10  A.   Not if it was 75 percent totaled.

11  Q.   Okay. Now, the x-rays that you reviewed, they  
12       showed degenerative arthritis at various levels  
13       in the cervical spine; right?

14  A.   Yes.

15  Q.   And this is an aging process as we've talked  
16       about?

17  A.   Yes.

18  Q.   By the way, you use spondylosis and arthritis,  
19       are those, in fact, interchangeable terms?

20  A.   Yes. Spondylo or spondyl is the Latin word for  
21       vertebra. Osis means condition of. Arthritis  
22       is a condition of the vertebra. So when we talk  
23       about cervical arthritis we also use this high  
24       falutin term cervical spondylosis.

25  Q.   I want to just back up for one moment, doctor.

1 In 1994 can you tell me how many occasions you  
2 had to go down to the court room and testify  
3 either in Cleveland or elsewhere?

4 A. That was last year?

5 Q. Right.

6 A. The only time that I can remember vividly is one  
7 time where I testified on behalf of the  
8 plaintiff that I testified live in court.

9 Q. Okay. That would be in 1994?

10 A. Last year, yes.

11 Q. Okay. In 1994, since it's not going that far  
12 back in time, on how many occasions did you have  
13 your deposition taken where it was videotaped in  
14 the same manner that we are here today for?

15 A. I don't know how I can explain any easier or any  
16 better than I did. I don't keep track of those  
17 things, so I don't know.

18 Q. Doctor, all I'm asking you is for 1994 which is  
19 just this past year.

20 A. I understand.

21 Q. Can you give me an estimate of the number of  
22 times?

23 A. No, I can't give you an estimate. I don't know.

24 Q. All right, doctor. Would you have any records  
25 that would reflect that?

1 A. No.

2 Q. Going back to the degenerative arthritis, does  
3 the degenerative process make an area more  
4 susceptible to injury from trauma than in a  
5 healthy nondegenerative spine?

6 A. Yes.

7 Q. And would you agree that there are a lot of  
8 people that have moderate degenerative arthritis  
9 and experience little, if any, symptoms?

10 A. Moderate, no. I would not if you use that  
11 adjective.

12 Q. Okay. Would you agree that there are a lot of  
13 people that have degenerative arthritis and  
14 experience little, if any, symptoms?

15 A. Yes.

16 Q. And would you agree that persons with arthritis  
17 are more susceptible to injury from trauma?

18 A. That's the same question you just asked me.  
19 Yes.

20 Q. Okay. We've already established that her  
21 arthritis was asymptomatic before the collision  
22 at least based upon the information that you  
23 have to consider and to testify to?

24 A. That's correct.

25 Q. Now, doctor, you're not a neurologist by

1 training, are you?

2 A. Neurology is part of my training as is  
3 neurosurgery part of my training. I'm a board  
4 certified orthopedic surgeon.

5 Q. You don't hold yourself out as an expert in the  
6 area of neurology, do you?

7 A. It depends what part of the nervous system that  
8 we're talking about. In other words, I don't  
9 hold myself out as an expert about seizures,  
10 okay. But I do hold myself out as an expert  
11 about conditions of the cervical spine to the  
12 peripheral nervous system.

13 Q. You do not hold yourself out though as a  
14 neurologist, we can agree about that; correct?

15 A. My shingle doesn't say neurologist, no. It says  
16 orthopedic surgeon.

17 Q. And, doctor, I'm not trying to have a word fight  
18 with you. I'm just asking you what I believe to  
19 be simple questions. You're not a neurosurgeon  
20 either, are you?

21 A. No.

22 Q. Okay. And certainly you are not a board  
23 certified internist, are you?

24 A. No. I'm not that smart.

25 Q. Okay. Now, in your report you make no mention

1 at all about Mrs. Townsend's irritable bowel  
2 system or her spastic colitis. Do you recall  
3 obtaining information from Mrs. Townsend  
4 relative to certain bowel problems that she had  
5 following the auto collision for which Dr. Esch  
6 was treating?

7 A. Yes.

8 Q. And the opinions that you have opined in this  
9 case do not in any way relate to that particular  
10 condition; correct?

11 A. Correct.

12 Q. Now, Dr. Sertich, who is the neurosurgeon that  
13 operated on Mrs. Townsend in June of 1993,  
14 you've had a chance to review his records and  
15 his report and in his report in December of  
16 1993, do you recall seeing the doctor's  
17 reference to the patient's final diagnoses?

18 A. What is the date, please?

19 Q. December 16, 1993.

20 A. Okay. I'd be happy to look at it again. My  
21 notes indicate that it was an office note and it  
22 appeared to be a summary regarding, okay.

23 Q. Okay. If you could --

24 A. I don't have it, so I would be happy to look at  
25 your copy or Mr. Jeppe's.

1 MR. JEPPE: Off the record.

2 - - - -

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

5 - - - -

6 Q. Doctor, while we were off the record I handed  
7 you a copy of Dr. Sertich's records or at least  
8 the December 16, 1993 record. You had a copy of  
9 that to review in the course of your evaluation  
10 in this case, did you not?

11 A. Yes.

12 Q. And toward the end of that note, the second last  
13 sentence, could you read what that says  
14 beginning with the patient's final diagnosis?

15 A. Quote, the patient's final diagnoses thus is  
16 that she had cervical spondylosis and arthritis  
17 which was aggravated by her accident.

18 Q. Okay. And I take it that you do not agree with  
19 Dr. Sertich's conclusion or final diagnoses in  
20 this case; correct?

21 A. I agree with his final diagnosis cervical  
22 spondylosis. I don't agree with his conclusion  
23 that it was aggravated by the accident.

24 Q. Okay. And, doctor, you would certainly agree,  
25 would you not, that Dr. Sertich as the attending

1        neurosurgeon, the doctor that operated on  
2        Mrs. Townsend, treated her, ordered certain  
3        tests to be performed on her, that he is in a  
4        better position to make an accurate diagnoses on  
5        what caused her symptoms and whether or not the  
6        accident aggravated the arthritis than you, an  
7        individual who saw her on one occasion, two and  
8        a half years later not for the purpose of  
9        treating?

10    A.    No, I would not agree that he's in a better  
11        position.

12    Q.    Do you feel that you are in a better position  
13        than Dr. Sertich to make that evaluation?

14    A.    I absolutely do.

15    Q.    Okay. Fine. I just want the jury to understand  
16        that.

17    A.    All right. I would be happy to explain it.

18    Q.    Could I have the notes back. Thank you.

19    A.    Certainly. And I wasn't waving my hand in a  
20        nasty manner. I was just mirroring what you  
21        were doing, but the jury can't see that.

22    Q.    Certainly you agree that Dr. Sertich's surgery  
23        was necessary?

24    A.    Yes.

25    Q.    And that as a consequence of the surgery

1 Mrs. Townsend has a permanent scar?

2 A. Yes.

3 Q. Okay. And you would certainly agree, would you  
4 not, that the MRI and the CT scans that were  
5 done preparatory to performing the surgery, that  
6 they were necessary in order to evaluate whether  
7 or not Mrs. Townsend was an appropriate  
8 candidate for this surgery?

9 A. Help me. I'm only aware that she had an MRI of  
10 her cervical spine. Did she also have a CT scan  
11 of her cervical spine? If in fact she had a CT  
12 scan of her cervical spine, yes, it was  
13 indicated to help him plan the surgery, but I  
14 was just aware that she had an MRI.

15 Q. Well, the records will speak for it. If it was  
16 just the MRI, certainly I stand corrected, but  
17 you would certainly indicate that they were  
18 necessary in order to evaluate whether or not  
19 she was a proper candidate for surgery?

20 A. Yes.

21 Q. Okay. What do you attribute Mrs. Townsend's  
22 complaints relative to her right leg and then  
23 the complaints relative to her left leg? What  
24 do you attribute those complaints that she had  
25 early on when she was treating with Dr. Kolczun

1 and when she was being treated by the physical  
2 therapist?

3 A. Oh, she told me that at the time of the accident  
4 -- I have to try and remember. Her right leg  
5 was on the brake pedal, so that I believe that  
6 her complaints that she had when she went to see  
7 Dr. Kolczun were on the basis of a strain of her  
8 quadriceps which as a matter of fact I think was  
9 the same diagnoses that was made when she came  
10 to the emergency room two days later.

11 Q. So that the complaints that the patient had  
12 relative to the right leg you would certainly  
13 agree would be causally related to the  
14 automobile collision?

15 A. The complaints in the immediate post-accident  
16 period, yes.

17 Q. Relative to the right leg?

18 A. Correct.

19 Q. What do you attribute her complaints relative to  
20 her left leg to?

21 A. I don't attribute them to anything. I don't  
22 have an explanation for them.

23 Q. You are not suggesting that she made these  
24 symptoms up, are you?

25 A. No.

1 Q. Okay. Now, you ultimately diagnosed her or  
2 agree that she suffered what you define as a  
3 mild cervical strain?

4 A. Yes.

5 Q. As a consequence of this auto collision?

6 A. Right.

7 Q. Now, when you are -- when you have a strain or  
8 you are referring to a cervical strain, are you  
9 referring to the soft tissues in the neck area?

10 A. Yes.

11 Q. And when you have a strain of the soft tissues  
12 can you also have a tearing of the soft tissues?

13 A. An extreme strain would include a tearing of the  
14 soft tissues, yes.

15 Q. Okay. And if there is a tearing of the soft  
16 tissues may that be associated with a degree of  
17 bleeding as well?

18 A. Certainly.

19 Q. And when there is tearing of the soft tissues  
20 the healing that takes place is scar formation?

21 A. Right.

22 Q. And scar isn't as elastic or as moveable as  
23 normal tissue; correct?

24 A. Correct.

25 Q. Doctor, I want to ask you a few questions

1 relative to your report and then I should be  
2 finishing up very shortly. You indicate in your  
3 report, and feel free to refer to it, at Page 6  
4 you are referring to the EMG and the nerve  
5 conduction studies that were performed by a  
6 Dr. Lawrence?

7 A. Yes.

8 Q. And in your report you quote certain statements  
9 from that report. You do not indicate in that  
10 note any complaints by the patient of bilateral  
11 neck or shoulder problems, do you?

12 A. In my report I did not mention the terms  
13 bilateral neck or shoulder problems, no.

14 Q. And in your statement in the report you are in  
15 essence interpreting what was noted in the  
16 records that were provided to you concerning  
17 that July 21, 1992 EMG; correct?

18 A. I'm sorry. I don't understand your question.

19 Q. After I said I realized it was poorly worded.  
20 Because the jury doesn't have your report, we  
21 are referring to a specific section in your  
22 report and you were referring to July 21, '92  
23 EMG and nerve conduction studies were performed  
24 at Lorain Community Hospital, and then you  
25 reference Dr. Lawrence noted at that time five

1 months after the accident the patient denied any  
2 numbness or tingling, and then you go on to read  
3 certain excerpts from that written document.

4 A. Right.

5 Q. Okay. And I believe that -- bear with me for  
6 one second, doctor.

7 One of the things that you pointed out to  
8 the jury is that the patient did not complain to  
9 Dr. Maher during the time that she was treating  
10 the patient between June of '92 and December of  
11 '92 of any symptoms referable to her neck;  
12 correct?

13 A. Yes. That's what I said.

14 Q. Okay. And you would expect that if the problem  
15 that ultimately led to her surgery was somehow  
16 causally related to the automobile collision,  
17 and that being an aggravation of her arthritis,  
18 that you would expect in the records for this  
19 patient some substantial statement that the  
20 patient had had neck pain emanating from the  
21 date of the automobile collision; correct?

22 A. That's a fair summary of what I said, yes.

23 Q. Okay. Now, what I'd like you to do is I'd like  
24 you to refer to the actual report on the EMG  
25 that you paraphrased from Dr. Lawrence.

1 A. Excerpted.

2 Q. Excerpted, okay. Again, I didn't mean anything  
3 by that, paraphrased, excerpted, but I'm going  
4 to hand you a copy of the interpreted result and  
5 first ask you whether that appears to be the  
6 report that you were excerpting?

7 A. Yes, it is.

8 Q. Okay. Would you read into the record under the  
9 impression what Dr. Lawrence has noted as of  
10 July 21, 1992, please.

11 A. I don't want the jury to think that I'm trying  
12 to give you a hard time, but I want the jury to  
13 understand that this report is not signed. The  
14 only thing that it says on here, it says to be  
15 read by Dr. Lawrence.

16 Q. Doctor, excuse me. Let me interrupt you for a  
17 second.

18 A. Yes.

19 Q. Because you are the one that referenced  
20 Dr. Lawrence. You are the one that quoted  
21 Dr. Lawrence in your report. I am only using  
22 the same document from Lorain Community  
23 Hospital, July 21, 1992 that you reference and  
24 that you quote certain sections in your report  
25 on. So again --

1 A. Okay.

2 Q. -- what I ask you to do is please read the  
3 impression section on this EMG result into the  
4 record.

5 A. And I will do that, and I appreciate your  
6 pointing out, and it's an error on my part  
7 because I don't know who made this statement,  
8 but the impression -- okay. The impression  
9 which is only part of this report says, This is  
10 a 55 year old white female who complains of  
11 bilateral neck and shoulder pain and low back  
12 pain radiating down the bilateral thighs for  
13 about six months' duration since she was  
14 involved in a motor vehicle accident. She  
15 denies any numbness or tingling. She denies  
16 any apparent weakness. There is borderline  
17 right perineal neuropathy without any evidence  
18 of axonal loss. There was no electrodiagnostic  
19 evidence of bilateral lumbosacral motor  
20 radiculopathy or bilateral cervical motor  
21 radiculopathy. There is also no evidence of  
22 myelopathy on needle examination.

23 Q. Okay. And again, going back to the question  
24 that I had to you, if you look to your report on  
25 Page 6 and your reference to the July 21, 1992

- 1       EMG and nerve conduction studies, you did not  
2       when you excerpted this note, you did not  
3       indicate that someone, whether it be Dr.  
4       Lawrence who you indicated or someone else had a  
5       history or an impression that the patient's --  
6       the patient had bilateral neck and shoulder pain  
7       and low back pain that dated back to the time of  
8       this motor vehicle accident; is that correct?
- 9   A.   I didn't say that she had bilateral neck pain,  
10       bilateral shoulder pain, low back pain or thigh  
11       pain any more than I said that the admitting  
12       complaint was rule out muscle disorder.
- 13   Q.   Okay. And again, doctor, just so that we are  
14       very clear, you excerpted language that said the  
15       patient denied any numbness or tingling, but you  
16       didn't put in the complaints of bilateral neck  
17       or shoulder pain; right?
- 18   A.   Correct.
- 19   Q.   Okay. Thank you.
- 20   A.   Bottom line, I didn't put in a lot of things  
21       that were in this report.
- 22   Q.   Okay.
- 23   A.   Why not read the whole report into the record.
- 24   Q.   Doctor, could I have the report. Thank you.
- 25   A.   Sure.

1 Q. Okay. Actually, I need that, I think that  
2 whole -- is that your report that you have  
3 there? I'm sorry. I just handed you the one  
4 page.

5 A. Right.

6 Q. Excuse me. You also mention in your report that  
7 Dr. Maher made no reference to the patient  
8 having, during again the period from June of '92  
9 to December of '92 any complaints referable to  
10 the neck area; correct?

11 A. Right. We just talked about that.

12 Q. Okay. Now, so that if in fact Dr. Maher has a  
13 notation in her office records when she first  
14 saw Mrs. Townsend in June of 1992 referencing  
15 cervical and lumbosacral strain would cervical  
16 strain be consistent with a patient that is  
17 either complaining of a neck problem or a  
18 physician who is diagnosing some type of a neck  
19 problem?

20 A. The answer to the second part of your question  
21 is that if there is a reference to a cervical  
22 strain the physician is making that diagnoses,  
23 yes.

24 Q. Okay.

25 A. I don't recall what the record said as I sit

1       here.

2   Q.   Okay.   In your review of the records you also  
3       looked at the emergency room records from Lorain  
4       Community Hospital that were gathered in  
5       approximately February of 1993 for about a year  
6       after the auto collision; correct?

7   A.   Right.

8   Q.   And do you recall reading the emergency room  
9       record on February 3, 1993?

10   A.   I recall reading it.   I don't recall after two  
11       hours of testimony what it said however.   I  
12       would be happy to look at it again.   Are you  
13       talking about Lorain Community?

14   Q.   Lorain Community Hospital.

15   A.   Ask me a question, please, and maybe it will  
16       help jog my memory.

17   Q.   At Lorain Community Hospital, according to the  
18       records which are in evidence or will be in  
19       evidence, Mrs. Townsend presented to the  
20       emergency room and the history that was given at  
21       that time was a 56-year old white female who  
22       comes in complaining of left neck and arm pain.  
23       The patient states that she was in a motor  
24       vehicle accident one year ago and has had pain  
25       in her left upper extremity ever since.   She

1 states that the last couple of weeks the pain  
2 had been much worse.

3 Now, is that history of any significance to  
4 you, doctor, in correlating just how long Leona  
5 Townsend has been complaining of pain in her  
6 left upper extremity?

7 A. It really isn't because that record was made a  
8 year after the accident. The records that are  
9 more contemporaneous to the accident should  
10 better reflect what her symptoms were at the  
11 time. As I pointed out earlier, there's nothing  
12 in Dr. Kolczun's records to indicate that she  
13 had neck or back complaints. So if she tells  
14 somebody a year later, oh, I've had pain for a  
15 year, I don't put as much reliance on that as I  
16 do on the records that were prepared earlier  
17 when she could have complained had she had the  
18 complaints.

19 Q. Okay. Doctor, you talked about inappropriate  
20 responses. Is the jury to conclude based upon  
21 what you testified to that Mrs. Townsend was  
22 trying to pull one over on you during your  
23 examination?

24 A. Yes.

25 Q. That's your conclusion?

1 A. You asked me a question. I answered it  
2 honestly, yes. I think that she was not  
3 performing to the degree that she was capable  
4 of, ergo, she was trying to pull one over on me.

5 Q. Okay.

6 MR. MISHKIND: Doctor, I don't  
7 believe I have any further questions for  
8 you. Thank you very much.

9 THE WITNESS: You are welcome.

10 MR. JEPPE: Off the record for just  
11 a second.

12 - - - -

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

15 - - - -

16 RE-DIRECT EXAMINATION OF DENNIS B. BROOKS,

17 M.D. BY MR. JEPPE:

18 Q. Doctor, just a couple of questions and I do mean  
19 a couple of questions. You made a statement in  
20 your cross-examination that you thought that you  
21 were in a better position to make an evaluation  
22 in this case than Dr. Sertich?

23 A. Yes.

24 Q. All right. And would you tell the jury why you  
25 believe that you are in a better position?

1 A. Yes. I had the opportunity to examine  
2 Mrs. Townsend, to take her history, to perform a  
3 physical examination, which obviously  
4 Dr. Sertich did, but I also had the opportunity  
5 to do a number of other things which I do not  
6 believe that he did. I had the opportunity to  
7 review her records which included the records  
8 that were prepared as I have enumerated several  
9 times today throughout the course of her  
10 treatment before he came under her care. I had  
11 the opportunity to review the radiographs in  
12 particular that were taken on the day of the  
13 accident, to compare them with those that were  
14 taken at the time of my examination, which I  
15 believe was subsequent to the time of his care  
16 was completed, so I had the added opportunity of  
17 doing many things he didn't have the opportunity  
18 to do.

19 Q. One more thing too, doctor. That EMG that was  
20 handed to you on cross-examination, you still  
21 have a copy of that in front of you?

22 A. Yes.

23 Q. You made a comment read the whole thing in the  
24 record. You need not read the whole thing in  
25 the record. Would you please comment on

1 anything else in that report that you believe is  
2 important.

3 A. Yes. What I believe is important is that this  
4 EMG -- let me go back for a second. First of  
5 all, the reason that I excerpted this EMG and  
6 nerve conduction study report and mentioned the  
7 fact that she denied any numbness or tingling  
8 was because it was important to point out that  
9 there was -- that symptom was not present at  
10 that particular time. That was the symptom for  
11 which she was operated on almost a year later.

12 Now, the other thing that was important is  
13 that why did the referring physician Dr. Maher  
14 order this study. She ordered it to rule out a  
15 muscle disorder, okay. She did not order it to  
16 rule out a cervical herniated disk or cervical  
17 nerve root compression or lumbar nerve root  
18 compression and this lady had a constellation of  
19 muscle symptoms.

20 She had bilateral neck and shoulder pain.  
21 She had low back pain and bilateral thigh pain  
22 for about six months' duration since she was  
23 involved in a motor vehicle accident. I wasn't  
24 trying to hide anything. I was focusing on what  
25 I felt was the important thing, that there was

1           lack of radiating symptoms at that time.

2                       MR. JEPPE: All right. Thank you,  
3           doctor. I have nothing further.

4                       -   -   -   -

5                       RECROSS-EXAMINATION OF DENNIS B. BROOKS,  
6           M.D. BY MR. MISHKIND:

7   **a.**   You don't know what Dr. Maher means by muscle  
8           disorder, do you?

9   A.   No, but I sure can look at her records and try  
10       to find out.

11   Q.   Okay.

12                      MR. MISHKIND: I have no further  
13       questions.

14                      MR. JEPPE: Thank you. Nothing  
15       further, doctor.

16                      VIDEOTAPE OPERATOR: Doctor, you  
17       have the right to review this tape or you  
18       may waive that right.

19                      THE WITNESS: I will waive that  
20       right.

21                      MR. JEPPE: Also, will you waive  
22       the reading of the transcript?

23                      THE WITNESS: I also waive  
24       reviewing of the transcript.

25                      (Signature waived.)

C E R T I F I C A T E

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

I, Margaret Morrow, 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 DENNIS B. BROOKS, 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 the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and 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 17<sup>th</sup> day of July A.D. 19 95.



Margaret Morrow, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires May 9, 1995

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June 10, 1998

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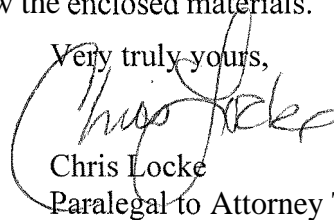
**RE: Deposition transcripts of Dr. Brooks**

Dear Rose:

Enclosed, please find the deposition transcripts of Dennis Brooks, M. D.. Also enclosed are copies of the deposition transcripts of Paul Shin, M. D. and Patricia Gannon, M. D..

Thank you for allowing us to view the enclosed materials.

Very truly yours,



Chris Locke

Paralegal to Attorney Timothy H. Hanna

Enclosures

cc: file