

In The Matter Of:

*James Yarbrough, et al. v.
Max Quinton*

*Dennis B. Brooks, M.D.
June 7, 2002*

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[1] IN THE COURT OF COMMON PLEAS
[2] CUYAHOGA COUNTY, OHIO
[3] JAMES YARBROUGH, et al.,
[4] Plaintiffs,

JUDGE BURNSIDE
[5] -vs- CASE NO. 356193
[6] MAX QUINTON, et al.,
[7] Defendants.
[8]
[9] Videotape deposition of DENNIS B. BROOKS,
[10] M.D., taken as if upon direct examination before
[11] Dawn M. Fade, a Registered Merit Reporter and
[12] Notary Public within and for the State of Ohio,
[13] at the offices of Dennis B. Brooks, M.D., 29001
[14] Cedar Road, Lyndhurst, Ohio, at 4:45 p.m. on
[15] Friday, June 7, 2002, pursuant to notice and/or
[16] stipulations of counsel, on behalf of the
[17] Defendant Max Quinton in this cause.
[18]
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[16]
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[17]
[18]
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[20]
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[22]
[23]
[24]
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[1] MR. JEPPE: On the record. This
[2] is going to be the videotape deposition of
[3] Dr. Dennis Brooks to be taken in the, and
[4] used in the case of James Yarbrough, et
[5] al., versus Max Quinton, et al., presently
[6] pending in the Court of Common Pleas of
[7] Medina County, Ohio.
[8] MR. MESTER: Cuyahoga County.

[1] MR. JEPPE: It should be noted at
[2] this point in time that counsel for
[3] co-defendant James Ambrose has not yet
[4] arrived. Before we start the deposition I
[5] **will** give him a few more minutes, exactly
[6] three minutes, then he will be 15 minutes
[7] late, if he is not here by then we will
[8] proceed with the deposition of Dr. Dennis
[9] Brooks.

[10] In the meantime, would you swear
[11] the witness in at this time.

[12] VIDEO TECHNICIAN: We are now
[13] ready to begin the deposition. Will the
[14] court reporter please swear in the doctor.

[15] DENNIS B. BROOKS, M.D., of lawful age,
[16] called by the Defendant Max Quinton for the
[17] purpose of direct examination, as provided by the
[18] Rules of Civil Procedure, being by me first duly
[19] sworn, as hereinafter certified, deposed and said
[20] as follows:

[21] DIRECT EXAMINATION OF DENNIS B. BROOKS, M.D.
[22] BY MR. JEPPE:

[23] Q: All right. Would you please state your full name
[24] for the record.

[25] A Dennis Bruce Brooks.

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[1] Q: And what is your occupation, sir?
[2] A: I'm an orthopedic surgeon.
[3] Q: And your business address?
[4] A: 29001 Cedar Road in Lyndhurst, Ohio.
[5] Q: Doctor, would you just briefly define orthopedic
[6] surgery or orthopedic surgeon for the jury?
[7] A: Yes. Orthopedic surgery is that branch of
[8] medicine that deals with the musculoskeletal
[9] system. By that I mean as an orthopedic surgeon
[10] I treat people who have problems with their
[11] bones, the soft tissues that cover their bones,
[12] the muscles, ligaments and tendons, as well as
[13] treating patients who have problems with their
[14] spine, its contents, including the intervertebral
[15] disks.
[16] Q: Now, doctor, would you briefly outline for the
[17] jury your educational background to prepare you
[18] for your profession starting with your college
[19] experience?
[20] A: Yes. I graduated from Harvard University in 1959
[21] with a bachelor of arts degree. I then attended
[22] Western Reserve University School of Medicine and
[23] graduated from there in 1963 with a degree of
[24] doctor of medicine.
[25] I served as a rotating intern at the Mt.

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[1] Sinai Hospital of Cleveland for one year and then
[2] as a general surgery resident also at Mt. Sinai.
[3] During my third and fourth years of
[4] postgraduate training I was an orthopedic
[5] resident at the Mt. Sinai Hospital of Cleveland.
[6] During my fifth year I was a National
[7] Institute of Health research associate in the
[8] biomechanics laboratory of Case Western Reserve
[9] University.
[10] And my sixth and final year of postgraduate
[11] training was in children's orthopedics.
[12] Q: And where was that done, sir?
[13] A: Indianapolis.
[14] Q: All right. Following your internship and your
[15] residency, what did you do then, sir?
[16] A: I served in the United States Air Force from 1969
[17] to 1971.
[18] Q: And where were you stationed during that time?
[19] A: I was stationed at Davis-Monthan Air Force Base,
[20] Q: And what was your position there?
[21] A: I was a major and the second year I was chief of
[22] orthopedic services,
[23] Q: Now, doctor, you are licensed to practice
[24] orthopedic surgery in the State of Ohio?
[25] A: Yes.

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[1] Q: And when did you become so licensed?
[2] A: 1963.
[3] Q: And when did you become, when did you begin
[4] practicing here in Ohio, private practice?
[5] A: 1971.
[6] Q: Okay. Are you still practicing today, sir?
[7] A: Yes.
[8] Q: Would you outline for the jury, if you would, the
[9] hospitals that you have been affiliated with or
[10] have had admitting privileges to during your
[11] career?
[12] A: Yes. For 29 years I was on the active staff of
[13] the Mt. Sinai Medical Center of Cleveland until
[14] unfortunately it went bankrupt. I'm presently on
[15] the staff of Lutheran Hospital, the Lutheran
[16] Hospital Medical Center and University Hospitals
[17] of Cleveland. I've also been on the staffs of
[18] Hillcrest Hospital, Huron Road Hospital and what
[19] is now known as South Pointe Hospital, used to be
[20] called Suburban Hospital.
[21] Q: Now, doctor, besides practicing orthopedic
[22] surgery, have you had an opportunity to teach
[23] your profession at either any college, university
[24] or teaching hospital?
[25] A: Yes.

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[1] Q: Where has that been?
[2] A: During the years that I was affiliated with Mt.
[3] Sinai Hospital I taught orthopedic surgery
[4] residents, in fact, for a period of time I was in
[5] charge of the orthopedic surgery resident
[6] program. I presently teach at the medical school
[7] and teach medical students.
[8] Q: The medical school where, sir?
[9] A: At Case Western Reserve University here in
[10] Cleveland.
[11] Q: All right. Have you authored any publications,
[12] articles, papers with respect to your profession?
[13] A: Yes.
[14] Q: And can you briefly just explain a couple of them
[15] for the jury, if you would, and when they were
[16] authored?
[17] A: I can't tell you exactly the dates.
[18] Q: That's okay.
[19] A: But I've authored papers on bone grafting in
[20] orthopedic surgery, a paper on the biomechanics
[21] of knee injuries, one on congenital dislocation
[22] of the knee, one on, well, several on new devices
[23] for treating ankle, wrist and hip fractures, as a
[24] matter of fact. And that's all I can think of
[25] right now.

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[1] Q: All right. Doctor, are you board certified in
[2] orthopedic surgery?
[3] A: Yes.
[4] Q: And would you just briefly explain to the jury
[5] what being board certified means and how one
[6] becomes board certified?
[7] A: Well, I became board certified by completing the
[8] postgraduate training period that I outlined to
[9] you.
[10] I then had to practice orthopedic surgery in
[11] one location for one year. I submitted letters
[12] of recommendation from my peers and then I had to
[13] take the board examination, which in my case
[14] lasted, for one day it was written and a half day
[15] was oral, and having successfully completed all
[16] of those requirements, I was found to be board
[17] certified.
[18] Board certification means that I have the
[19] knowledge, skill and expertise to practice my
[20] profession of orthopedic surgery.
[21] Q: Now, doctor, have you had any other connection
[22] with the board certification program other than
[23] becoming board certified yourself?
[24] A: Yes,
[25] Q: And what is that, sir?

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[1] A: I had the privilege of being an examiner for the
[2] American Board of Orthopedic Surgery between 1986
[3] and 1996.
[4] Q: All right. Do you have any position with them at
[5] the present time, sir?
[6] A: No.
[7] Q: Okay. Now, at my request did you examine a
[8] Mr. James Yarbrough?
[9] A: I did.
[10] Q: Now, in front of you I notice that you have a
[11] file, does that file contain material with,
[12] regarding James Yarbrough?
[13] A: Yes.
[14] Q: Now, during the course of the deposition, feel
[15] free to refer to that file if you will, I know
[16] it's been about three years or over three years
[17] since the examination took place, and answer my
[18] questions, if you would, and then the questions
[19] of Mr. Mester, which he will, of course, ask you
[20] after I'm finished, all right?
[21] A: Thank you.
[22] Q: All right. Would you please tell the jury the
[23] date of the examination?
[24] A: I examined Mr. Yarbrough on March 16th, 1999.
[25] Q: And this is an orthopedic type of examination?

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[1] A: Yes.
[2] Q: What does an orthopedic examination consist of?
[3] A: It consists of taking a history from the patient
[4] and then performing a physical examination with
[5] respect to the parts of the body about which the
[6] patient is complaining and then ordering
[7] diagnostic studies such as radiographs and
[8] reviewing them.
[9] Q: All right. Do you perform a physical
[10] examination, also?
[11] A: I'm sorry, I guess I wasn't clear. Yes.
[12] Q: Oh, I'm sorry.
[13] A: Yes. I perform a physical examination with
[14] respect to the parts of the body —
[15] Q: All right.
[16] A: — about which the individual complains.
[17] Q: Did you review any records with respect to
[18] Mr. Yarbrough?
[19] A: After I examined him, yes, I reviewed numerous
[20] records.
[21] Q: All right. We will get to that in a second.
[22] Now, what is a history and why is a history
[23] important to you as a physician?
[24] A: The history can be broken down into three parts,
[25] it's really the beginning of the diagnostic

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[1] process. Without obtaining a history I really
[2] wouldn't know what happened to the patient, what
[3] his complaints or symptoms were, are when I see
[4] the patient and what had transpired prior to the
[5] event about which he tells me was the source of
[6] his problems.
[7] Q: All right. Now, you did take a history from
[8] Mr. Yarbrough on this date?
[9] A: Yes.
[10] Q: And did you take it yourself or was it taken by
[11] one of your associates?
[12] A: No, I took it myself.
[13] Q: Briefly, would you tell the jury, if you would,
[14] the history that Mr. Yarbrough gave to you on
[15] March the 16th of 1999?
[16] A: Yes. Mr. Yarbrough told me that he had been
[17] injured in an accident on March 27th, 1997.
[18] Immediately following that accident he
[19] experienced pain in his right arm —
[20] MR. JEPPE: Off the record.
[21] VIDEO TECHNICIAN: We're going off
[22] the record.
[23]
[24] (Off the record.)
[25]

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[1] VIDEO TECHNICIAN: We're now back
[2] on the record.

[3] A: So, as I mentioned, Mr. Yarbrough told me that
[4] after the accident he was aware of pain in his
[5] right arm.

[6] He then was transported to Hillcrest
[7] Hospital, he told me, and on the way to the
[8] hospital he noted that his right leg was getting
[9] numb.

[10] While he was in the hospital he was examined
[11] by physicians and an MRI of his lumbar spine was
[12] obtained, he told me, and surgery was suggested.
[13] However, he went home.

[14] He went on to tell me that after the
[15] emergency room treatment he was treated by one,
[16] two, three, four, five, six, seven, seven
[17] physicians and basically he sort of summarized
[18] the treatment that he had and he told me that
[19] this treatment was primarily with respect to his
[20] low back and right leg complaints.

[21] He never mentioned to me that any of this
[22] treatment was for an injury to his neck.

[23] Q: Doctor, did he give you a history on the date of
[24] your examination of having a neck or a cervical
[25] injury in the accident of March 29th, 1997?

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[1] A: No, he did not.

[2] Q: All right. Go on, if you would, sir.

[3] A: Well, that completed the first part of the
[4] history, -

[5] Q: I'm sorry, what's the second part?

[6] A: The second part of the history is where I ask him
[7] what's bothering him, what his complaints are.
[8] And at that time, on March 16th, 1999, he told me
[9] that his primary complaint was his low back pain,
[10] that secondarily he had pain in both legs, in the
[11] right leg the pain extended from his right
[12] buttock and then spiraled around his right leg on
[13] the front of his thigh, the front of his shin,
[14] into his foot, and that he had pain in his left
[15] leg that extended from his knee beyond that.

[16] In addition to that, he told me he had a
[17] stabbing in his right groin. And he also told me
[18] that - wait a minute. The paper work is out of
[19] order here. Well, he also told me that he had
[20] some problems with his neck as well.

[21] I asked him when his neck problems first
[22] appeared and he could not remember when they
[23] appeared.

[24] Q: All right. So as I understand it, he did
[25] complain of neck problems currently when you saw

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[1] him on the 16th, but he gave you no history of
[2] having a neck injury in the accident, is that
[3] correct?

[4] A: Right. In fact, he told me when I saw him that
[5] he had neck symptoms pretty much all of the time.

[6] Q: Did he give you any present complaints of a bowel
[7] dysfunction?

[8] A: At the time I saw him he had had it previously
[9] and now he told me that he spent 50 percent of
[10] the time in the bathroom, but he had no perianal
[11] sensory loss. So it was hard to determine
[12] exactly what the cause of this - it sounded like
[13] a primary bowel condition like colitis or
[14] something of that nature.

[15] Q: All right. Did he give you a history of having
[16] headaches following the accident on March 29th of
[17] 1997?

[18] A: No, he didn't mention that to me.

[19] Q: Did he give you a history of having any dizziness
[20] at any time following the accident of March 29th,
[21] 1997?

[22] A: No, he did not.

[23] Q: Was he complaining or did he have any complaints
[24] about injury or pain to his right wrist in the
[25] accident of March 29th, 1997?

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[1] A: At the time that I saw him, excuse me, he had no
[2] right wrist symptoms.

[3] Q: And with respect to the knees, either right or
[4] left knee, did he have any symptoms at the time
[5] that you saw him?

[6] A: No, he had no symptoms with respect to either
[7] knee.

[8] Q: And he complained about no problem with either
[9] knee?

[10] A: Correct.

[11] Q: All right. Now, did he give you any past medical
[12] history as well?

[13] A: Yes, he did. And he told me that prior to the
[14] accident he had not had any neck, low back, leg
[15] or arm symptoms. He also told me that this
[16] really was the first accident that he had been
[17] involved in.

[18] Q: All right. Did that complete the history that
[19] was taken from Mr. Yarbrough?

[20] A: Yes.

[21] Q: All right. What was the next part of this entire
[22] examination that you conducted on Mr. Yarbrough?

[23] A: The physical examination.

[24] Q: All right. Now, doctor, would you briefly, if
[25] you would, explain to the jury or tell the jury

Page 1a

[1] the parts of the body that you examined and the
[2] results of that? Let's start them one at a time.
[3] **A:** Certainly.
[4] **Q:** What parts of the body did you examine?
[5] **A:** I examined his cervical spine, I examined his mid
[6] back or his thoracic spine, I performed a
[7] neurological examination of his upper
[8] extremities, his arms, I examined his lumbar
[9] spine and then performed a neurologic examination
[10] of his lower extremities, his legs.
[11] **Q:** Did you examine the knees?
[12] **A:** He had no complaints referable to his knees.
[13] **Q:** Or the right wrist?
[14] **A:** Or the right wrist.
[15] **Q:** All right. Again, let's take these one at a
[16] time. What was the first thing that you did
[17] examine here, was that the cervical area?
[18] **A:** Yes, I examined his neck or his cervical spine.
[19] **Q:** And briefly tell the jury what you did in that
[20] examination?
[21] **A:** Well, the things that I did, first of all, I
[22] observed his neck, then I palpated various areas
[23] and then I asked him to perform an active range
[24] of motion of his neck.
[25] **Q:** Okay. And the results of your examination of the

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[1] cervical area?
[2] **A:** There was no objective evidence of any injury to
[3] his cervical spine at the time that I examined
[4] him.
[5] **Q:** Were there any subjective complaints or findings?
[6] **A:** Yes.
[7] **Q:** What were they, sir?
[8] **A:** The subjective findings were those of some
[9] limitation of cervical motion.
[10] **Q:** Again, briefly, would you discuss with the jury
[11] or explain to the jury the difference between
[12] objective evidence of injury and subjective
[13] complaints?
[14] **A:** Yes.
[15] **Q:** Or findings. Excuse me.
[16] **A:** Something that's subjective requires input from
[17] the subject or the patient, so all complaints are
[18] subjective. Subjective physical findings are
[19] those findings over which the patient has
[20] control. For example, he has control of how far
[21] he moves his neck.
[22] On the other hand, objective findings are
[23] things that I can see without his telling me
[24] about it. For example, if somebody comes in with
[25] a fractured wrist and they have a deformity,

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[1] that's an objective finding, they don't have to
[2] tell me they broke a bone in their wrist.
[3] **Q:** All right. Objectively were there any findings
[4] of injury in the cervical area at the time of
[5] your examination?
[6] **MR. MESTER:** Objection.
[7] **A:** No, there were not.
[8] **Q:** All right. What other parts of the body did you
[9] examine, the next part?
[10] **A:** I then examined his mid back, his thoracic spine.
[11] And again there were no, there was no objective
[12] evidence of injury to that area.
[13] **Q:** All right. Any other parts of the body that you
[14] examined besides that?
[15] **A:** The next thing I did was do a neurologic
[16] examination of the upper extremities and found
[17] that testing his reflexes, his muscle strength,
[18] his sensory perception, and the condition of
[19] several peripheral nerves, all those examinations
[20] were normal, there was no evidence of
[21] abnormality.
[22] **Q:** Did that conclude, then, the examination of the
[23] cervical area or upper body?
[24] **A:** Yes.
[25] **Q:** What about with respect to the lumbosacral area

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[1] or low back, did you examine that as well?
[2] **A:** Yes.
[3] **Q:** Would you briefly tell the jury your findings
[4] with respect to that examination?
[5] **A:** Yes. Again, there were no objective findings of
[6] injury at the time I examined him. For example,
[7] he had no evidence of spasm, he was able to walk
[8] on his heels and toes without difficulty and then
[9] the remaining portions of the exam really are
[10] subjective findings.
[11] **Q:** And with respect to the examination you
[12] conducted, were there anything unusual, any
[13] unusual findings with respect to his subjective
[14] complaints with respect to the objective
[15] findings?
[16] **MR. MESTER:** Objection.
[17] **A:** I'm not sure I understand the question.
[18] **Q:** All right. I'll rephrase it.
[19] You conducted certain tests, is that correct?
[20] **A:** Yes.
[21] **Q:** With respect to the low back?
[22] **A:** Yes.
[23] **Q:** Any of the results of those tests inconsistent
[24] with the complaints that he was giving you?
[25] **A:** Yes.

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[1] Q: Can you tell the jury what that might be, if any?

[2] A: Yes. Remember he was complaining of low back
[3] pain and bilateral leg pain, the pain on the
[4] right sort of spiraled down his leg and the pain
[5] on the left extended from his knee to his foot.
[6] Well, there are a number of findings on physical
[7] examination that were nonanatomic, in essence,
[8] there was no explanation for them from a body
[9] perspective or an organic perspective and these
[10] findings included when I asked him to bend
[11] forward, forward flexion, that was restricted
[12] such as his fingertips reached the end of his
[13] thighs, didn't go below his thighs, didn't go to
[14] his ankles and when he performed this maneuver he
[15] did so without reversing his normal lumbar
[16] lordosis,

[17] Also he complained of pain with many
[18] maneuvers including bilateral torso rotation.
[19] Torso rotation is performed with the patient
[20] standing upright and then asking him to turn his
[21] torso, you know, and keep his spine and
[22] everything straight. That should not cause an
[23] individual to complain of pain.

[24] Also he complained of low back pain with
[25] light axial compression, so when I merely put my

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[1] hands on his head and just pushed down lightly he
[2] complained of low back pain. Again, there is no
[3] anatomic basis for that.

[4] He demonstrated a marked discrepancy between
[5] sitting straight leg raising and supine straight
[6] leg raising.

[7] Q: What is straight leg raising?

[8] A: Straight leg raising is either the active or
[9] passive motion with the knee extended causing
[10] flexion at the hip.

[11] Q: All right. And can you tell me the significance
[12] of the finding with the straight leg raising
[13] tests?

[14] A: Yes. I did two of them, one in the sitting
[15] position and that was normal, then when he was
[16] lying down, in essence, just changing his
[17] orientation in space by 90 degrees, he had half
[18] the amount of straight leg raising on the right
[19] and half the amount of straight leg raising on
[20] the left that he had in the sitting position. So
[21] there's no anatomic basis for that.

[22] Q: All right. Did you conduct a neurological
[23] examination of the lower extremities?

[24] A: Yes.

[25] Q: Okay. And the results of that, sir?

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[1] A: The reflexes of the right knee were slightly
[2] stronger than the reflexes of the left knee and
[3] that was unusual because his Complaints were
[4] primarily in the right knee. His ankle reflexes
[5] were the same. There was a give-way type of
[6] weakness of the right extensor hallucis longus
[7] and the peroneals.

[8] Q: What is that, sir?

[9] A: The right extensor hallucis longus is the muscle
[10] that allows you to bring your toe up straight.
[11] The peroneals are the muscles that allow you to
[12] turn your foot out.

[13] A give-way type of weakness is when I asked
[14] him to straighten out his big toe against the
[15] resistance of my hand, it immediately flops down,
[16] okay, as opposed to true weakness where the
[17] muscle actually fatigues and there is a gradual
[18] return to normal. So give-way type of weakness
[19] has no anatomic explanation.

[20] Also, he had decrease in pinprick perception
[21] that extended on the front of his right lower
[22] extremity from his groin onto all of his toes.
[23] That doesn't follow a dermatome pattern. And,
[24] interestingly, in the back there was decreased
[25] perception of pinprick that extended from the

Page 25

[1] back of his shoulder to his buttocks. Again,
[2] that's impossible anatomically.

[3] And basically those were the findings that
[4] were present on physical examination.

[5] Q: All right. That then concluded the physical
[6] examination?

[7] A: Yes.

[8] Q: All right. What, if anything, was done after
[9] that?

[10] A: I obtained and reviewed radiographs of the
[11] cervical spine and of his lumbar spine.

[12] Q: Now, did you, did you personally review the
[13] radiographs?

[14] A: Yes.

[15] Q: Radiographs are what, sir?

[16] A: Radiographs are what is commonly referred to as
[17] x-rays. But, in essence, the x-ray is like the
[18] rays of the sun, okay, and the radiographs are
[19] like the film that you take and have developed
[20] after you've taken pictures.

[21] Q: All right. You did send him for radiographs or
[22] x-rays, correct?

[23] A: Yes.

[24] Q: And then you got the results of the same?

[25] A: I looked at them.

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[1] Q: Okay. You reviewed them yourself!

[2] A: Right.

[3] Q: Did you take any x-rays of the cervical or the

[4] neck area?

[5] A: Yes.

[6] Q: And you reviewed those?

[7] A: Yes.

[8] Q: What were the findings, if any, on the x-rays or

[9] radiographs?

[10] A: The radiographs of the cervical spine revealed no

[11] evidence of fracture or dislocation. There was

[12] evidence of intervertebral disk degeneration or,

[13] if you will, cervical spondylosis. There was

[14] spurring at the C4-5 interspace and considerable

[15] narrowing of the C6 interspace with associated

[16] spurring and left neural foraminal narrowing.

[17] Q: What's the cervical spondylosis?

[18] A: Cervical spondylosis is the term for conditions

[19] of the cervical spine, for example, be it

[20] arthritic changes or intervertebral disk changes.

[21] Q: What about spurring, you used the word spurring,

[22] what does that mean?

[23] A: Well, spurring is an abnormal projection that

[24] extends from the bone. Let's see if this model

[25] has any spurring on it. No, it doesn't. But

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[1] when you get a side view, for example, there

[2] would be abnormal projections extending from the

[3] bone that, and these projections are due to the

[4] arthritic process.

[5] Q: Are they trauma related or degenerative in

[6] nature?

[7] A: Those are degenerative in nature,

[8] Q: All right. Now, you said something about a left

[9] neural foraminal narrowing, is that correct?

[10] A: Yes.

[11] Q: What does all that mean?

[12] A: Well, there's the same thing in the cervical

[13] spine as in the lumbar spine. The nerve root has

[14] to pass outside the bony containment and it

[15] passes through a little window and, foramen,

[16] that's the Latin word for window, and neural

[17] foramen is the opening through which the nerves

[18] pass. So on the left side there was some

[19] narrowing of this foramen.

[20] Q: Was that causing Mr. Yarbrough any problems at

[21] the time of your examination?

[22] A: No.

[23] Q: Now, I may be getting ahead of myself here, but

[24] did you compare those x-rays with any other

Page 28

[1] neck or cervical area?

[2] A: Yes.

[3] Q: And were those taken on the day of the accident,

[4] March 29th, 1997?

[5] A: Yes, they were.

[6] Q: All right. Can you tell the jury, if you would,

[7] when you took a look at those x-rays and compared

[8] them to the x-rays that you took on March the

[9] 16th, 1999, what, if anything, did you notice?

[10] A: I noticed that during the three-year period,

[11] sorry, two-year period of time between March of

[12] '97 and March of '99 there had been no change in

[13] the configuration or degree of arthritis, if you

[14] will, in the cervical spine.

[15] Q: Did you note arthritis in the cervical spine on

[16] the date of that first radiograph of March the

[17] 29th, 1997?

[18] A: Yes.

[19] Q: There had been no changes?

[20] A: Correct.

[21] Q: What significance, if any, does that have?

[22] A: The significance of that is that the accident of

[23] March 29th, 1997 did not affect or cause any

[24] changes in the preexisting condition of the

[25] cervical spine.

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[1] Q: All right. Now, did you take any radiographs of

[2] the lumbosacral spine?

[3] A: Yes.

[4] Q: And you reviewed those?

[5] A: Yes.

[6] Q: Can you tell the jury, if you would, what, if

[7] anything, they revealed to you?

[8] A: Yes. They were, not essentially, they were

[9] normal. They revealed no evidence of fracture,

[10] dislocation or intervertebral disk narrowing.

[11] They did show a mild scoliosis, so I guess they

[12] weren't entirely normal, but the scoliosis, of

[13] course, is not trauma related.

[14] Q: Scoliosis is degenerative?

[15] A: No, scoliosis is developmental. It's a curvature

[16] of the spine.

[17] Q: Oh, I'm sorry. All right. Did you compare those

[18] x-rays or radiographs that you took of the

[19] lumbosacral area back on March the 16th of 1999

[20] with any other radiographs that were taken?

[21] A: Yes, I compared them with the radiographs that

[22] were obtained on March 29th, 1997, on the day of

[23] the accident.

[24] Q: And can you tell the jury, if you could, sir,

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[1] A: There was no change. On the day of the accident,
[2] except for minimal appearance of scoliosis, the
[3] radiographs of the lumbar spine were normal, no
[4] evidence of fracture, no evidence of acute
[5] injury. The radiographs that I also reviewed on
[6] March 16th, 1999, were also normal, so there had
[7] been no change in the degree of normalcy.
[8] Q: All right. Again, the significance of that, if
[9] anything?
[10] A: The significance of that is that the accident had
[11] no effect on his lumbar spine.
[12] Q: As I recall, I supplied you with records which I

[14] Mr. Yarbrough's counsel having given permission
[15] for me to obtain those records and I want to just
[16] briefly ask you if you had a chance to review
[17] these records, and records from Hillcrest
[18] Hospital?
[19] A: Yes.
[20] Q: Dr. Vento?
[21] A: Yes.
[22] Q: Dr. Mars?
[23] A: Yes.
[24] Q: Dr. Nickels?
[25] A: Yes.

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[1] Q: Dr. Moss?
[2] A: Yes.
[3] Q: Dr. Kriegler?
[4] A: Yes.
[5] Q: Dr. Rosenberg?
[6] A: Yes.
[7] Q: Dr. Gordon?
[8] A: Yes.
[9] Q: Dr. Carlson?
[10] A: Yes.
[11] Q: Dr. Corn?
[12] A: Yes.
[13] Q: Beachwood Orthopedics?
[14] A: Yes,
[15] Q: Also I believe you have reviewed two MRI films of
[16] the low back, is that correct?
[17] A: Yes.
[18] Q: And also three EMGs of the low back and, if I'm
[19] not mistaken, is that correct?
[20] A: Yes.
[21] Q: And any other — and an EEG also of the brain, as
[22] I recall, and a variety of x-rays, is that
[23] correct?
[24] A: Yes.
[25] Q: All right. Now, dealing just briefly with the

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[1] right wrist as Mr. Yarbrough has given the
[2] history to some physicians that he did in fact
[3] injure his right wrist in this accident, did you
[4] examine the radiographs that were taken on March
[5] 31, 1997?
[6] A: I suspect that I did. Let's see.
[7] MR. JEPPE: Off the record just a
[8] second.
[9] VIDEO TECHNICIAN: Off the record.
[10]
[11] (Off the record.)

[14] wrist.
[15] Q: Did you review the report of the radiograph of
[16] the right wrist that was contained in Dr. Mars's
[17] record on page 15?
[18] A: I reviewed the report of the radiographs of the
[19] right wrist that was obtained or that was, I
[20] guess, contained in Dr. Mars's records, yes.
[21] Q: All right. To refresh your memory, I will show
[22] you a copy of that record from Dr. Mars's
[23] records.
[24] A: Thank you. Okay. So this is a radiograph of the
[25] right wrist that was obtained at the request of

Page 33

[1] Dr. Vento.
[2] Q: And they're contained in Dr. Mars's records?
[3] A: Correct. And that was done, looks like it was
[4] March 31st of 1997.
[5] And basically they demonstrate no evidence of
[6] acute injury.
[7] Q: Now, did you take any x-rays of the right wrist
[8] back on March the 16th of 1999?
[9] A: No.
[10] Q: Why not?
[11] A: He had no complaints referable to his right
[12] wrist.
[13] Q: All right. Thank you, doctor.
[14] Now, with respect to either knee, you did not
[15] examine either the right knee or the left knee,
[16] is that correct?
[17] A: That's correct.
[18] Q: And the reason you did not do that?
[19] A: He had no complaints referable to his knees.
[20] Q: All right. Now, did you examine any radiographs
[21] of the right or left knee?
[22] A: If memory serves me, excuse me, I either
[23] reviewed, yeah, I reviewed a report. I never
[24] reviewed radiographs. And the report of the
[25] right knee, there was no evidence of acute

Page 34

[1] injury. There was a mild degree of arthritis in
[2] that knee.

[3] Q: All right.

[4] A: It's in here, but let's see, how many pages do I
[5] have to flip through. Seven, 11, 12 pages. So
[6] it's somewhere in these 12 pages.

[7] Q: *All* right. Now, doctor, going then to the
[8] cervical spine or the neck. You've already
[9] talked about the radiographs that you have
[10] reviewed. Did you review the EMG of April 22nd,
[11] 1997?

[12] A: Now I'm going to have to refer to some notes.
[13] April 22nd, 1997?

[14] Q: Uh-huh.

[15] A: Yes.

[16] Q: And can you tell the jury, *if* you would, what
[17] that reflects?

[18] A: Well, that was, had nothing to do with his neck,
[19] it was his low back and his legs.

[20] Q: Oh, I'm sorry. To your knowledge, did he ever
[21] have an EMG of the cervical area?

[22] A: No.

[23] Q: All right. Did you examine the MRI of the
[24] thoracic area done on October the 27th of 1998?

[25] A: Oh, *sorry*. I knew it was here. I did review

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[1] March 31st, 1997 radiographs.

[2] Q: All right,

[3] A: Did I review the thoracic MRI? I don't believe
[4] so.

[5] Q: All right. Let's go on to the lumbar radiographs
[6] or the lumbar MRI if we could, sir.

[7] A: Okay.

[8] Q: You did review some MRIs of the lumbar spine?

[9] A: Yes, I did.

[10] Q: And could you tell the jury the dates of those
[11] two MRIs?

[12] A: Yes. One was March 29th, 1997, the day of the
[13] accident, and one was October 27th, 199, excuse
[14] me, 1998, a year-and-a-half later.

[15] Q: Now, you reviewed also the reports of those MRIs,
[16] as well, is that correct?

[17] A: Yes.

[18] Q: But you actually reviewed the films yourself?

[19] A: Right, looked at them myself.

[20] Q: All right. Could you tell the jury, if you
[21] would, what you saw — by the way, you are able
[22] to read MRIs, you are trained in doing so?

[23] A: Yes.

[24] Q: You do it on a daily basis, is that correct?

[25] A: Certainly every time one comes along on a regular

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[1] basis.

[2] Q: All right. Can you tell the jury, then, what the
[3] MRI of March 29th, 1997 of the lumbosacral area
[4] revealed?

[5] A: Yes. The March, 29th, 1997 MRI of the lumbar
[6] spine revealed intervertebral disk degeneration
[7] at the L45 interspace with an associated disk
[8] osteophyte complex with an associated
[9] intervertebral **disk** protrusion that was
[10] asymmetric to the left and was not causing nerve
[11] root compression.

[12] Q: All right. Can you just tell the jury briefly
[13] what all that means?

[14] A: At the L45 interspace, which is the area
[15] directly above the last portion of the lumbar
[16] spine, this area demonstrated wear and tear,
[17] degeneration, as opposed, I mean, degeneration as
[18] a result of the normal aging process and as a
[19] result of that there was some narrowing of the
[20] intervertebral disk.

[21] Could I use this?

[22] Q: Sure.

[23] A: Okay. This is the intervertebral disk, okay, so
[24] this is L4, this is L5, this is L5-S1, so we're
[25] talking about this area right here.

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[1] So as a result of the degeneration of this
[2] disk there was some collapse and with the
[3] collapse, sorry, it doesn't show up very well,
[4] but with the collapse part of the remaining disk
[5] was squeezed out, if you will. Okay.

[6] Now, that was squeezed out toward the left
[7] side of the body, but it wasn't causing any
[8] compression of the nerve root at that level.

[9] Q: All right. Now — go ahead. I'm *sorry*.

[10] A: Well, there was one other level.

[11] Q: Okay. Go ahead.

[12] A: At the lowest level, the L5-S1 interspace, there
[13] were also changes much like those at the L4-5
[14] interspace, the changes of wear and tear, again
[15] with some of the disk material extending out of
[16] its normal confines to the left not causing any
[17] compression of a nerve root.

[18] Q: Would trauma from the accident of March 29th,
[19] 1997 cause that condition?

[20] A: No.

[21] Q: Why not?

[22] A: Because that's a degenerative condition as
[23] opposed to a traumatic condition.

[24] Q: The condition that you did discover when you
[25] reviewed the MRIs, would that cause any radiating

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[1] pain or numbness into either of the extremities?

[2] **A:** No.

[3] **Q:** Now, Mr. Yarbrough, I believe, was complaining of
[4] some radiating pain into at least the right
[5] extremity if not the left and some numbness. The
[6] view of the MRI of March 29th, 1997, did that
[7] confirm any type of a problem that would be
[8] causing that?

[9] **A:** No. My recollection is that Mr. Yarbrough was
[10] Complaining of right leg pain. There was nothing
[11] in this MRI that explained the right leg pain
[12] and, in fact, these protrusions were off to the
[13] left side, the opposite side of the body, and
[14] they were not causing any nerve root compression.
[15] So nothing on that MRI explained his symptoms.

[16] **Q:** Well, can a protrusion to the left cause
[17] radiating pain or problems with the right
[18] extremity?

[19] **A:** No, absolutely not.

[20] **Q:** All right. Did you review any other MRIs? The
[21] one, I believe you mentioned the October 27th,
[22] 1998 — before we get to that. Let's talk about
[23] one more thing.

[24] Did that MRI reveal anything else besides the
[25] two disk spaces that we've talked about?

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[1] **A:** The March 29th 1999?

[2] **Q:** The March 29th.

[3] **A:** Yes. It revealed what is referred to as a
[4] hypointense, some material adjacent to the spinal
[5] cord. Now, that's really a radiologist term,
[6] but, the MRI is done in a number of ways, let's
[7] just say you get a number of pictures, so
[8] hypointense means that there is less brightness
[9] to a particular area than you would expect from
[10] the images that you were taking.

[11] Now, I recall in the radiologist's report
[12] that the radiologist said that this was an
[13] accumulation of blood.

[14] **Q:** Yes.

[15] **A:** I took, I first made my own determination that it
[16] wasn't blood and then I took it to a board
[17] certified radiologist and asked him independtly
[18] what he thought and he said it was not blood
[19] either.

[20] **MR. MESTER:** Objection. Move to
[21] strike.

[22] **Q:** All right. You had formed your own opinion that
[23] it was not blood, is that correct?

[24] **A:** Correct.

[25] **Q:** And, also, can you tell the jury, if not blood,

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[1] what in fact that might have been?

[2] **A:** No, I certainly couldn't tell at that time and I
[3] felt that the only way that I really could tell
[4] would be having the opportunity to have some
[5] additional studies.

[6] **Q:** All right. Let's talk about the MRI then on
[7] March, excuse me, October 27, 1998. You did
[8] review that one, too?

[9] **A:** Yes.

[10] **Q:** Can you tell the jury what that revealed to you
[11] as you read it?

[12] **A:** Yes. This was performed a year-and-a-half later.
[13] The condition of the L4-5 interspace was the
[14] same. The condition of the L5-S1 interspace, the
[15] lowest interspace, had changed. There was still
[16] the same degree of intervertebral disk
[17] degeneration with an associated protrusion, but
[18] this protrusion was now pointing to the right
[19] side and, in fact, with a combination of other
[20] degenerative features was causing compression of
[21] the L5 nerve root.

[22] So what it was, it was at the L5-S1
[23] interspace, excuse me, and it was causing
[24] compression of the L5 nerve root.

[25] **Q:** All right. Now, you take that MRI and compare it

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[1] with the MRI of March the 29th of 1997, what is
[2] the significance of that change or the findings
[3] on those two MRIs?

[4] **A:** Well, there's a change. The first one had no
[5] evidence of nerve root compression and the
[6] protrusion was to the left, on the second one
[7] there was evidence of nerve root compression as a
[8] result of both the intervertebral nerve root and
[9] some problems with the foramen, the window, and
[10] as a result of these two factors there was
[11] compression of the L5 nerve root.

[12] **Q:** Was this the same area where the protrusion was
[13] to the left on the prior MRI?

[14] **A:** Yes,

[15] **Q:** Doctor, the significance of the change from the
[16] left side to the right side, if any?

[17] **MR. MESTER:** Objection.

[18] **A:** I have trouble answering about significance.

[19] **Q:** Allright.

[20] **A:** It's very unusual, but I don't know what the
[21] significance of the change means.

[22] **Q:** All right. Now, doctor, on your examination,
[23] your physical examination of Mr. Yarbrough of
[24] March 16th, 1997, did you find any abnormal
[25] neurological findings on that date?

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[1] A: As I recall, the only abnormal neurologic finding
[2] was a diminution or a decrease in his left knee
[3] jerk compared to the right knee jerk.
[4] Q: All right. And what does that tell you, if
[5] anything?
[6] A That tells me that there may be something that's
[7] affecting the L4 nerve root which supplies the
[8] knee jerk or there might be something that's
[9] affecting the femoral nerve that innervates the
[10] quadriceps muscle which is responsible for the
[11] knee jerk.
[12] Q: All right. Now, doctor, there were three EMGs
[13] taken, one on April 27th, 1997, one on December
[14] the 2nd, 1997, and one on March 18th, 1999, about
[15] two days after you examined Mr. Yarbrough, excuse
[16] me, 1999, March 18th, 1999, which was in fact two
[17] days after you examined Mr. Yarbrough, as I
[18] recall.
[19] A: Yes.
[20] Q: All right. Have you reviewed those reports,
[21] those EMG reports?
[22] A: Yes.
[23] Q: Can you explain to the jury what they've revealed
[24] to you?
[25] A: Okay. The first one on April 22nd, 1997 showed

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[1] some minor irritation of the muscles in the spine
[2] primarily at what the electromyographer called
[3] L4-5. And I assume she means at the L4-L5
[4] interspace, the one above, you know, that we've
[5] talked about originally.
[6] It also showed some irritation of the nerves
[7] that supply the thigh muscle, the right
[8] quadriceps and the right tibialis anterior. The
[9] quadriceps is the muscle that allows you to
[10] straighten out your knee and the tibialis
[11] anterior is the muscle that allows you to bring
[12] your ankle up. And so there was a problem with
[13] those as well.
[14] Now, the next one that was done was on
[15] December 2nd, 1997. Is that correct?
[16] Q: That's correct.
[17] A: Correct, Okay. That one showed essentially the
[18] same findings as the earlier one did.
[19] And the last one was on March 18th, 1999, two
[20] days after I examined him, and there was no
[21] longer any evidence of involvement of the
[22] quadriceps and the tibialis anterior.
[23] Q: And what does that tell you?
[24] A: What it tells me is whatever was causing the
[25] problems initially had resolved.

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[1] Q: One more thing I think I forgot to ask you and
[2] that was with respect to that second MRI, was
[3] there any indication of a fluid or a blood or
[4] anything like that in that x-ray?
[5] A: No.
[6] Q: All right. Doctor, I have a few questions to ask
[7] you with regards to your opinions in this case,
[8] and I want you to answer all of them within a
[9] reasonable degree of medical certainty, if you
[10] would, sir.
[11] A: Yes.
[12] Q: All right. Based upon, then, your training,
[13] education, your examination of Mr. Yarbrough, the
[14] history you took, the records that you've
[15] reviewed, the diagnostic tests that you have
[16] reviewed, do you have an opinion within a
[17] reasonable degree of medical certainty whether or
[18] not Mr. James Yarbrough sustained any injury from
[19] the automobile accident of March 29th of 1997?
[20] First of all, do you have an opinion?
[21] A: Yes.
[22] Q: And what is that opinion?
[23] A: My opinion is that he sustained a forehead
[24] contusion, a right knee contusion, and a lumbar
[25] spine strain.

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[1] Q: All right. Doctor, again based upon your
[2] training and experience as an orthopedic surgeon,
[3] the history that was given to you by
[4] Mr. Yarbrough, your examination of him, the
[5] diagnostic tests that you reviewed, the records
[6] that you have reviewed, do you have an opinion
[7] based upon a reasonable degree of medical
[8] certainty as to whether or not Mr. Yarbrough
[9] sustained any type of a nerve root encroachment
[10] or canal impingement as a result of the accident
[11] of March 29th of 1997?
[12] A: Yes, I have an opinion.
[13] Q: What is that, sir?
[14] A: He did not sustain any type of injury that caused
[15] nerve root irritation or nerve root compression.
[16] Q: Again, doctor, based upon your training and
[17] experience as an orthopedic surgeon, your
[18] examination of Mr. Yarbrough, the history that
[19] you took, the diagnostic tests that you examined,
[20] the records that you reviewed, do you have an
[21] opinion based upon a reasonable degree of medical
[22] certainty whether Mr. Yarbrough, at the time of
[23] your examination, had a permanent condition or
[24] injury relating to or as a result of the motor
[25] vehicle accident of March the 29th of 1997? Do

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[1] you have an opinion?
[2] **A:** Yes, I have an opinion.
[3] **Q:** And what is that, sir?
[4] **A:** At the time I examined him on March 16th, 1999,
[5] essentially two years after the accident, he had
[6] no evidence of any permanent injury. In other
[7] words, he had no evidence of an injury to his
[8] right knee, to his forehead or to his lumbar
[9] spine.
[10] **Q:** And, lastly, doctor, again based upon your
[11] training and experience as an orthopedic surgeon,
[12] your examination of Mr. Yarbrough, the history
[13] that was given to you by him, the diagnostic
[14] tests that you reviewed, the records that you
[15] reviewed, do you have an opinion based upon a
[16] reasonable degree of medical certainty as to
[17] whether or not Mr. Yarbrough had recovered from
[18] his injuries of the March 29th, 1997 accident at
[19] the time of your examination?
[20] **A:** Yes, I have an opinion.
[21] **Q:** And what is that opinion, sir?
[22] **A:** He had recovered from the injuries that I believe
[23] he sustained on March 29th, 1997.
[24] **MR. JEPPE:** Thank you. I have
[25] nothing further.

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[1] **MR. MESTER:** Can we go off the
[2] record for a second?
[3] **VIDEO TECHNICIAN:** Off the record.
[4]
[5] (Thereupon, a recess was had.)
[6]
[7] **VIDEO TECHNICIAN:** We're now back
[8] on the record.
[9]
[10] **CROSS-EXAMINATION OF DENNIS B. BROOKS, M.D.**
[11] **BY MR. MESTER:**
[12] **Q:** Doctor, good evening.
[13] **A:** Good evening.
[14] **Q:** My name is Jonathan Mester. We met before the
[15] deposition here this evening. I represent James
[16] and Linda Yarbrough, of course, in this matter.
[17] I have a few questions for you regarding the
[18] reports you've authored and your testimony on
[19] direct examination.
[20] First of all, just so the jury understands,
[21] your role in this matter is you were hired by the
[22] defendant in this lawsuit from the first
[23] accident, correct?
[24] **A:** Yes.
[25] **Q:** Okay. And you were hired to see Mr. Yarbrough on

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[1] one occasion, review some records and produce an
[2] opinion after that review, correct?
[3] **A:** Yes.
[4] **Q:** Okay. So you never treated Mr. Yarbrough in any
[5] way, shape or form, did you?
[6] **A:** No.
[7] **Q:** All right. You never prescribed him any
[8] medications or anything like that, did you?
[9] **A:** If I didn't treat him, how could I prescribe any
[10] medications? No.
[11] **Q:** Okay. The question — the answer is no, doctor?
[12] **A:** The answer is no, that's correct.
[13] **Q:** Okay. Fine. You never sent him for any tests
[14] and followed up on the results of those tests or
[15] anything like that, did you, doctor?
[16] **A:** I did send him for tests and I did follow up on
[17] those tests.
[18] **Q:** And did you see Mr. Yarbrough to discuss the
[19] results of those tests and how he might treat in
[20] the future?
[21] **A:** No, I didn't discuss the results of those tests
[22] with him.
[23] **Q:** Okay. You never sent him for, you know, therapy
[24] or for any other measures which might help
[25] Mr. Yarbrough, correct?

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[1] **A:** Correct.
[2] **Q:** All right. That simply was just not your role in
[14] automobile accident, correct?
[15] **A:** Yes.
[16] **Q:** All right. I take it you had never met
[17] Mr. Yarbrough before that time?
[18] **A:** Correct.
[19] **Q:** You didn't see him at the emergency room,
[20] correct?
[21] **A:** That's correct.
[22] **Q:** All right. And you hadn't had any chance to
[23] treat him or consult with any of the physicians
[24] who were treating him up until March 16th, 1999?
[25] **A:** That's correct.

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[1] Q: Okay. Now, a couple of questions about your
[2] actual examination of Mr. Yarbrough. Can you
[3] tell me how long you actually conducted the
[4] examination?
[5] A No, I don't keep track of time.
[6] Q: All right. Was it 15 minutes, doctor?
[7] A: As I said, Mr. Mester, I don't keep track of
[8] time. I spent enough time, whatever the amount
[9] was, to perform a comprehensive orthopedic
[10] examination.
[11] Q: Okay. This isn't the only one of those types of
[12] examinations you've done in the past, correct?
[13] A: Correct.
[14] Q: You've done many of these?
[15] A Yes.
[16] Q: Okay.
[17] A: Many orthopedic examinations.
[18] Q: Correct. And many on behalf of defendants such
[19] as you're doing in this case, correct?
[20] A. Yes.
[21] Q: Okay. And if you could just share with us your
[22] normal course and practice for these types of
[23] examinations, how long do they generally take?
[24] A: There is no average amount of time. It depends
[25] upon the complexity of the individual that I'm

[5]

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[1] examining.
[2] Q: If Mr. Jeppe were to send you another gentleman
[3] to look at tomorrow, how much time would you put
[4] in your calendar to conduct that examination?
[5] A I would block off an hour to obtain his history
[6] and perform a physical examination.
[7] Q: Okay. So we can agree that in this case you
[8] didn't see Mr. Yarbrough, in all likelihood, I
[9] understand you may not remember, it was a while
[10] ago, but in all likelihood you didn't see him for
[11] any more than an hour, correct?
[12] A: Correct.
[13] Q: All right. Now, you're aware, I think you've
[14] testified, from reviewing the records of the
[15] treating physicians in this case, Dr. Mars,
[16] Dr. Corn, the Cleveland Clinic physician doctors
[17] and everyone else that you've said you've seen
[18] the records for, that he did see a lot of other
[19] doctors in the area who actually treated him for
[20] these injuries, correct?
[21] A: Correct.
[22] Q: Okay. And in the case of some of them, I believe
[23] including Dr. Mars, am I correct, from your
[24] recollection of the records, that Dr. Mars has
[25] seen Mr. Yarbrough for, on and off for some five

[1] yourself is able to see a patient the more
[2] knowledgeable you as the physician are able to be
[3] about the patient's condition?

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[1] records of all, I think there's seven treating
[2] physicians, as well as personally review the two
[3] MRIs, all the radiographs, all the EMGs, where,
[4] from Dr. Mars's report, for example, he just read
[5] the radiologist's report, there's no indication,
[6] well, that's not true, he summarized treatment
[7] from Dr. Nickels and a few other people. But I
[8] had, you know, I had the opportunity to examine
[9] him, to do, with all due respect, a much more
[10] comprehensive examination and to review
[11] considerably more records as well as actual
[12] diagnostic studies.

[13] Q: Doctor, I think I understand what you're saying,
[14] you're actually saying that you believe your
[15] opinion perhaps carries as much weight as those
[16] of the treating physicians. My question is
[17] simple, you agreed with my proposition before
[18] that, generally speaking, the more you see the
[19] patient the more knowledgeable you are about this
[20] patient's condition, correct?

[21] A: Correct.

[22] Q: Dr. Mars, Dr. Corn and all the other treating
[23] physicians in this case, you would agree with me,
[24] saw Mr. Yarbrough more than you did?

[25] A: Correct.

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[1] Q: So I assume then you would agree with me that
[2] those other physicians would be more
[3] knowledgeable, I guess on a firsthand basis,
[4] about Mr. Yarbrough's condition than you would
[5] be; would you at least agree with me on that
[6] point?

[7] A: If you're talking about a firsthand basis, yes,
[8] they would be more knowledgeable.

[9] Q: Okay. Thank you, doctor.

[10] Now, doctor, this is not the first time that
[11] you have engaged in a defense medical examination
[12] such as you are engaging in in this case, is it?

[13] A: No.

[14] Q: In fact, doctor, I believe, if I'm not mistaken,
[15] you have been doing these types of examinations
[16] since the 1970s, am I correct on that?

[17] A: Yes.

[18] Q: All right. So, doctor, you've been, again, doing
[19] examinations such as you're doing here for some
[20] 25 years, is that about right?

[21] A: That's about right.

[22] Q: All right. And, doctor, at the time — let's
[23] take the time of Mr. Yarbrough's accident that
[24] you're talking about here today, the 1997
[25] accident. Can you tell me how many defense

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[1] medical examinations you were doing in that
[2] period, 1996, 1997?

[3] A: I have no recollection of that.

[4] Q: Can you give me an approximation?

[5] A: Well, all I can tell you is that over the years
[6] it's varied. When I was very young, at that time
[7] I think I was doing five a week, then it
[8] decreased to three a week, and so at the time I
[9] saw Mr. Yarbrough I don't know if I was doing
[10] three a week or two a week.

[11] Q: All right. So just so the jury is clear, you're
[12] saying again in your younger days you were seeing
[13] patients referred to you by defendants, insurance
[14] companies and the like five days a week?

[15] A: I would see one patient on five days in addition
[16] to my load of private patients, yes,

[17] Q: I understand that, doctor. I assume that you
[18] only have office hours Monday through Friday,
[19] that's been your practice over the years, I would
[20] imagine?

[21] A: Monday through Friday, yes, that's correct.

[22] Q: You don't work on the weekends?

[23] A: My partners told me that was foolish.

[24] Q: All right. Fine. So Monday through Friday you
[25] were seeing a patient on the defense medical

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[1] examination such as this every single day at some
[2] point in your career, correct?

[3] A: Not entirely. Let's see. We're probably talking
[4] about the late '70s, early '80s, and not every
[5] one of those people that I saw were on behalf of
[6] the defendant.

[7] Q: You would agree with me that an overwhelming
[8] majority of those patients would be?

[9] A: A majority of them would be, yes.

[10] Q: All right. And then at one point you diminished
[11] this load, I think you said, to three times a
[12] week, correct?

[13] A: Right.

[14] Q: All right. And that would have been in the
[15] 1990s, am I about right there?

[16] A: I suspect, yes.

[17] Q: So at the time of Mr. Yarbrough's accident that
[18] was the case?

[19] A: At the time of his accident?

[20] Q: I'm sorry.

[21] A: My examination?

[22] Q: Well, his accident was in '97.

[23] A: Right. So how many was I doing in '97?

[24] Q: Correct.

[25] A: Probably three a week.

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[1] Q: All right, Now, what about numbers of
 [2] depositions that, such as we're doing here today,
 [3] how many of those have you done over the years,
 [4] can you give me a number?
 [5] A: No, I don't keep track of those things.
 [6] Q: All right. About three to four times a month
 [7] sound about right?
 [8] A: I have no idea.
 [9] Q: Okay. Doctor, I saw a number I think that again
 [10] at the time of Mr. Yarbrough's accident in 1997
 [11] you, in an 18-month period from '96 to '97 you
 [12] did 342 defense medical examinations, does that
 [13] sound about right to you?
 [14] A: No. If you'd show me what you're talking about.
 [15] Q: Sure.
 [16] A: Which deposition?
 [17] Q: This is not a deposition, actually. This is a,
 [18] an accounts receivable summary that was done by
 [19] an accounting firm, Cohen & Company. Did you
 [20] ever see this before, doctor?
 [21] MR. JEPPE: I'll object and ask
 [22] this portion be stricken from the record.
 [23] MR. MESTER: Sure.
 [24] Q: And, doctor, I'm going to refer you to a little
 [25] below the middle of the page where this company

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[1] has looked at the amount of initial medical/legal
 [2] exams you did and under the count portion —
 [3] MR. JEPPE: Just for the record so
 [4] I don't have to keep on objecting to every
 [5] question, I will just continue my objection
 [6] to this line of questioning with respect to
 [7] the report. Go ahead, sir.
 [8] A: Well, first of all, this is not marked
 [9] preliminary, which most of them are marked
 [10] preliminary. The second is in the middle of the
 [11] page it says medical/legal examinations 342, so
 [12] that doesn't mean they're all defense.
 [13] Q: All right.
 [14] A: Okay. And, you know, as you well know, this
 [15] report really isn't worth anything.
 [16] Q: Okay. I'll take it back then, doctor. Thank
 [17] you.
 [18] Doctor, I understand your views on this
 [19] report, but again, that figure of 342
 [20] medical/legal exams between January 1996 and
 [21] August 1997, does that figure sound way off base
 [22] to you, doctor?
 [23] A: I don't know. As I said, I don't keep track of
 [24] things.
 [25] Q: All right. Now, doctor, in addition to doing

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[1] defense medical examinations on injury claims for
 [2] auto accidents, such as we're here for today,
 [3] over the years have you also done defense medical
 [4] examinations on workmen's compensation cases?
 [5] A: Well, if examining them for the employer is a
 [6] defense medical examination, yes, I've examined
 [7] on behalf of the employer.
 [8] Q: And just so we're clear, your role in those
 [9] situations are you're hired by an employer to
 [10] look at somebody who has been injured on the job
 [11] and assess for that employer whether or not that
 [12] actual employee was injured, is that about right?
 [13] A: Part of it, yes.
 [14] Q: Okay. And in those cases again the employer, I
 [15] suppose, would hope in the work comp proceeding
 [16] that you would essentially issue the opinion that
 [17] the person was not hurt and could come back to
 [18] work?
 [19] MR. JEPPE: Objection.
 [20] A: I think that you're impugning my integrity.
 [21] People don't write me letters and say I hope you
 [22] find that this person wasn't injured, Mr. Jeppe
 [23] didn't do that or anybody with whom I work, and I
 [24] take that as an affront to my character. I
 [25] examine these people, whatever my findings are,

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[1] that's what the employer or Mr. Jeppe or any
 [2] defense attorney or any plaintiff's attorney
 [3] would accept.
 [4] Q: All right. It just so happens, doctor, that for
 [5] the most part over your 25 years or so of doing
 [6] this it's been, the overwhelming majority of
 [7] these have been on the defense side?
 [8] A: Yes.
 [9] Q: Okay. Now, you mentioned Mr. Jeppe. You have
 [10] worked with Mr. Jeppe in the past, I take it?
 [11] A: Yes.
 [12] Q: All right. And how long have you been testifying
 [13] on cases for Mr. Jeppe?
 [14] A: Testifying?
 [15] Q: Yeah.
 [16] A: I don't know when my first time I testified for
 [17] Mr. Jeppe was.
 [18] Q: All right. Can you tell me how many times over
 [19] the years Mr. Jeppe has retained you on behalf of
 [20] a defendant or an insurance company —
 [21] MR. JEPPE: Objection.
 [22] Q: — to testify or, I'm sorry, to do a defense
 [23] medical examination?
 [24] A: No, I can't tell you that.
 [25] Q: All right. Again, doctor, the number that I've

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[1] seen in that regard is that for the period of
[2] January 1996 to August 1997, again the time when
[3] Mr. Yarbrough's accident occurred, Mr. Jeppe had
[4] enlisted your services on 38 separate occasions.
[5] MR. JEPPE: Objection.
[6] Q: Does that number sound correct, doctor?
[7] A: Well, that number is incorrect.
[8] Q: Okay. And again, if I show you this report from
[9] the accounting firm indicating that that
[10] occurred, you would simply disagree with that
[11] finding?
[12] A: Absolutely.
[13] Q: Okay.
[14] A: I'd be happy to explain it to you if you want me
[15] to.
[16] Q: That's all right.
[17] A: That's okay. You don't want to hear the truth.
[18] Q: All right, doctor, what's the explanation?
[19] A: The explanation is, as you pointed out, that was
[20] an accounts receivable, apparently, itemization,
[21] okay. Now, they took every charge that was made
[22] to Mr. Jeppe as a new encounter and that's not
[23] necessarily so. For example, in Mr. Yarbrough's
[24] case it was all the same case, but I suspect he
[25] had several charges because I issued several

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[1] reports. So that's a spurious number.
[2] Q: All right. So you wouldn't agree with that
[3] number.
[4] What is the number, I guess, over the years
[5] of times that you've reviewed cases for Mr.
[6] Jeppe?
[7] A: I don't know. I don't keep track of them.
[8] Q: Mr. Jeppe's former law firm, Meyers, Hentemann, &
[9] Rea, you also have, when they were in existence,
[10] did a lot of defense medical examinations on the
[11] behalf of Mr. Jeppe and the other lawyers there,
[12] correct?
[13] A: I did defense medicals on behalf of the members
[14] of the firm, I treated them as patients, and I
[15] also did examinations for a plaintiff attorney in
[16] their firm.
[17] Q: Okay. I saw a number, doctor, that back in 1988
[18] you did 79 examinations for the Meyers, Hentemann
[19] law firm, does that number sound correct to you?
[20] MR. JEPPE: Objection.
[21] A: 1988?
[22] Q: Correct.
[23] A: I have no idea. I don't know where that figure
[24] comes from.
[25] Q: Okay. You would agree with me, doctor, that of

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[1] the cases that were sent your way by Mr. Jeppe
[2] and the Meyers, Hentemann law firm the
[3] overwhelming majority of those would have been
[4] defense medical examinations?
[5] A: Certainly.
[6] Q: And, doctor, of course, in addition to Mr. Jeppe
[7] and the Meyers, Hentemann law firm, you have
[8] examined numerous injured people over the years
[9] for defense law firms in a defense medical
[10] examination context?
[11] A: Yes.
[12] Q: Okay. And you have also examined numerous
[13] injured persons over the years again in a defense
[14] medical context at the request of insurance
[15] companies?
[16] MR. JEPPE: Objection.
[17] A: I don't know, and I don't really recall a defense
[18] medical examination that an insurance company per
[19] se asked me to examine, a request directly from
[20] an insurance company.
[21] Q: No? Okay. Not on an uninsured motorist case or
[22] anything like that, doctor?
[23] A: I don't recall.
[24] Q: Yeah. Well, would you disagree, would you
[25] disagree with me that that has occurred in the

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[1] past?
[2] A: Well, I suspect that it has on some occasions,
[3] but the general, and I don't know what
[4] differences it makes, the general pattern has
[5] been that a law firm who is retained by the
[6] defendant asks me to examine the person.
[7] Q: Okay, doctor. Doctor, over the years, your work
[8] in this field doing defense medical examinations,
[9] that's been a relatively profitable field for
[10] you, has it not?
[11] A: I don't know what you mean by profitable.
[12] Q: You've made a lot of money off of doing defense
[13] medical examinations?
[14] A: Part of my income has come from defense medical.
[15] As an orthopedic surgeon I've made a very
[16] comfortable living, and part of my income, at
[17] least until recently I've made a comfortable
[18] living, and part of my income is from defense
[19] medical examinations, yes.
[20] Q: Doctor, the number that I have, again at the time
[21] of Mr. Yarbrough's accident in 1997, that period
[22] between January '96 and August '97, is that
[23] again for, for, in a medical/legal context for
[24] fees billed this accounting firm apparently found
[25] that you had billed \$465,855.75. And, again,

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[1] this is for medical/legal fees in their entirety.

[2] MR. JEPPE: Objection.

[3] Q: Does that number sound correct to you, doctor?

[4] A I have no idea. And I'd like you to know,
[5] perhaps it would be helpful for you, that that
[6] report has never been authenticated by any member
[7] of the firm, okay, so, you know, as far as I know
[8] it could be all something that's made up.

[9] Q: Okay. You remember giving some records up at
[10] that time, some of your ledgers and so forth?

[11] A: At the time my billing statements were
[12] subpoenaed, yes, and we gave them, actually the
[13] billing company gave them.

[14] Q: Okay. And, doctor, again, I want to leave this
[15] topic shortly here, but with respect to that
[16] number, whatever it may be, you would agree that
[17] the overwhelming majority of that came from
[18] defense medical examinations such as you
[19] performed on Mr. Yarbrough in this case?

[20] A: Yes.

[21] Q: Now, speaking of this case, can you tell me how
[22] you're being compensated in this case by
[23] Mr. Jeppe?

[24] A: I'm being compensated for my time.

[25] Q: And at what rate, doctor?

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[1] A Well, my deposition rate is \$500 an hour, report
[2] writing, review of records, examinations is \$450
[3] an hour at the present time. It was less than
[4] that when I examined Mr. Yarbrough.

[5] Q: What was it at the time you examined
[6] Mr. Yarbrough?

[7] A: It was three years ago, probably about \$400 an
[8] hour and depositions may have been \$450 an hour.

[9] Q: Okay. Doctor, turning to Mr. Yarbrough's
[10] injuries, if we could.

[11] A: I'd be happy to.

[12] Q: I'd like to start off with the low back injury
[13] that you've discussed here. Now, I'd like to
[14] hand you, if I could, and I think you've seen it,
[15] but I don't know if you have a copy *in* your file
[16] so perhaps this will be easier, I'd like to hand
[17] you a copy of the MFU impression of March 29,
[18] 1997 that was taken at Meridia Hillcrest.

[19] MR. MESTER: And for the record
[20] this is a three-page document containing
[21] the two-page actual typed impression and a
[22] one-page written note regarding that MRI
[23] exam.

[24] A: Yes.

[25] Q: And, doctor, I assume you've seen this impression

[1] before?

[2] A: Actually I've seen the report, I did not see the
[3] handwritten impression.

[4] Q: Oh, this is the first time you're seeing that?

[5] A: If I said I haven't seen it before, then
[6] obviously it's the first time I've seen it.

[7] Q: Very good. Just making sure.

[8] A: You're always making sure. Go ahead.

[9] Q: All right. Now, doctor, first of all, in this
[10] case the MRI apparently was done at the emergency
[11] room on the day of the accident, is that true,
[12] doctor?

[13] A: Yes.

[14] Q: Doctor, is that something that happens commonly?

[15] A: It's not common, it depends upon the patient's
[16] symptoms.

[17] Q: Okay. Would you agree with me, doctor, that it
[18] only occurs in situations where there's a
[19] potential emergency?

[20] A: That's why they're in the emergency room.

[21] Q: All right, doctor, So you'd agree with that
[22] statement?

[23] A: Patients are evaluated in the emergency room
[24] because the nature of their condition is
[25] emergent, yes.

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[1] Q: Okay. And in the context of a low back injury,
[2] doctor, would you agree with me that looking at
[3] the field of patients who come to the emergency
[4] room after an auto accident complaining of lower
[5] back pain the overwhelming majority of them do
[6] not have MRIs administered to them in the
[7] emergency room?

[8] A: That's correct, no patient with complaints of low
[9] back pain would have an MRI.

[10] Q: Right. So in this case why was Mr. Yarbrough
[1] given an MRI at the emergency room?

[2] A: Well, I'm not entirely sure, but the rationale
[3] may have been that he complained of low back and
[4] right leg pain.

[5] Q: Okay.

[6] A: Even though he had no abnormal neurological
[7] findings and had no other dramatic symptoms.

[8] Q: Well, we'll get to that in a minute, doctor.
[9] Doctor, do you know there's — in fact, you've
[10] reviewed the emergency room record from
[11] Hillcrest, have you not?

[12] A: Yes.

[13] Q: Okay. And there was a neurologist, a
[14] neurosurgeon actually, who I think was called
[15] upon at that time named Dr. Itani?

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[1] A: Yes.
[2] Q: Do you know Dr. Itani?
[3] A: Yes, they called Dr. Itani. Do I know Dr. Itani,
[4] I don't think I've actually ever met him before.
[5] Q: Okay. You know of him?
[6] A: I know that he's a neurosurgeon.
[7] Q: All right. And, doctor, am I correct that in
[8] looking at that record that Dr. Itani had a real
[9] concern about Mr. Yarbrough's condition and
[10] that's why the MRI was ordered?
[11] A: I suspect so. I don't recall.
[12] Q: All right. Now, doctor, looking at the findings
[13] of the radiologist with regard to that MRI at the
[14] emergency room, and I'll refer you to page 007
[15] stamped on the bottom right-hand corner, what was
[16] the impression of the radiologist with regard to
[17] the lumbar MRI on that date?
[18] A: So you don't want to know what the preliminary
[19] interpretation was?
[20] Q: Well, let's just do *the* impression now, doctor.
[21] It's getting late here and I'm going to try to
[22] move things along.
[23] A: I'm willing to stay here as long as you want.
[24] Q: I appreciate that, doctor.
[25] A: Okay.

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[1] Q: Why don't we, can you read the impression for us
[2] please?
[3] A: The typed impression was L4-5 small disk
[4] herniation **just to** the left of the midline, L5-S1
[5] small disk herniation just to the left of the
[6] midline superimposed upon mild disk bulge,
[7] probable blood within the lower lumbar canal.
[8] Q: Okay. And, doctor, as I understand the testimony
[9] you provided on direct examination, you disagree
[10] with those impressions, am I correct?
[11] A: Yes.
[12] Q: You do not find a disk herniation at L4-5?
[13] A: Correct.
[14] Q: You do not find a disk herniation at L5-S1,
[15] correct?
[16] A: Yes, correct.
[17] Q: And you did not find probable blood within the
[18] lower lumbar canal on that film as well, correct,
[19] doctor?
[20] A: Correct.
[21] Q: Doctor, do you know the radiologist that did this
[22] interpretation, David Jacobs, M.D., apparently it
[23] says?
[24] A: No, I don't know Dr. Jacobs.
[25] Q: I mean, you don't have any reason to believe that

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[1] Dr. Jacobs was unqualified as a radiologist, do
[2] you?
[3] A: That he's not qualified?
[4] Q: Correct.
[5] A: No, I have no reason to believe that he's not.
[6] Q: All right. And you would agree with me, well,
[7] first of all, you'd agree with me, doctor, that
[8] he's a radiologist, that's who reads these *films*,
[9] right?
[10] A: That's who writes the reports, yes.
[11] Q: All right.
[12] A: Radiologists.
[13] Q: And radiologists, to my understanding, are
[14] doctors that spend their days every day reading
[15] these types of films, correct?
[16] A: They spend their day every day reading all types
[17] of radiographs.
[18] Q: Exactly. That's what they've dedicated their
[19] specialty to in the field of medicine, correct?
[20] A: Correct.
[21] Q: As an orthopedic surgeon your specialty is not
[22] reading these films, am I correct on that?
[23] A: It's part of my specialty, but it's not the only
[24] **thing** that I do.
[25] Q: All right. And yet again you have found

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[1] something completely different here than
[2] Dr. Jacobs found on this MRI?
[3] A: With respect to his impression, yes.
[4] Q: With respect to his findings?
[5] A: Okay, with respect to his findings.
[6] Q: Okay.
[7] A: Wait a minute. Okay.
[8] Q: Now, did you also see on the first handwritten
[9] page that I guess you've made clear to me you
[10] just saw it for the first time here today, that
[11] there is a finding of a hematoma within the canal
[12] and associated nerve roots?
[13] A: It says, "Area of abnormal signal at level of
[14] herniation may — " underlined, " — represent
[15] hematoma within the canal and associated with
[16] nerve roots." And the word may is underlined
[17] twice.
[18] Q: I see. And, once again, doctor, you'd disagree
[19] with that assessment?
[20] A: Yes.
[21] Q: Okay. Now, doctor, what happens when a disk
[22] herniates?
[23] A: I don't understand your question.
[24] Q: Well, doctor, let's assume for the second that
[25] maybe Dr. Jacobs did get it right, okay, and

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[1] there is a disk herniation here, you'd agree with
 [2] me that in that circumstance that disk material
 [3] ruptures through the annulus fibrosis?
 [4] **A:** Yes, there is a hole in the annulus fibrosis and
 [5] when there is a true disk herniation the material
 [6] extrudes through the hole in the annulus.
 [7] **Q:** And you would agree with me, doctor, that this
 [8] can be a very painful condition for a patient who
 [9] has a herniated disk?
 [10] **A:** Depending upon the sequelae of the herniated disk
 [11] whether it's painful or not.
 [12] **Q:** And, doctor, one of the symptoms that you would
 [13] expect to see on presentation in a patient that
 [14] has a herniated disk is radiating pain down the
 [15] buttocks, down the leg, correct?
 [16] **A:** Counselor, that's not correct. As I said before,
 [17] it depends upon the condition of the herniated
 [18] disk and what other structures that it's
 [19] compressing or irritating.
 [20] **Q:** Okay. Now, doctor, how are herniated disks
 [21] treated?
 [22] **A:** Depending on the size of the herniation,
 [23] depending upon its affect on the patient, they
 [24] can be treated in a variety of ways, everything
 [25] from medication and short term bed rest to

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[1] immediate surgery when somebody has a very urgent
 [2] and immediate problem.
 [3] **Q:** Okay. Now, doctor, you've reviewed, of course,
 [4] all of the treatment records of James Yarbrough,
 [5] you saw that he's received physical therapy on
 [6] his low back as prescribed by some of his
 [7] treating physicians, correct?
 [8] **A:** Yes.
 [9] **Q:** And you would agree with me, sir, that those
 [10] physicians, if they were operating under the
 [11] impression he had a herniated disk in his low
 [12] back, that that would be an appropriate treatment
 [13] mechanism for Mr. Yarbrough?
 [14] **A:** Yes.
 [15] **Q:** In other words, you don't have a problem with
 [16] Dr. Mars or Dr. Corn or whomever sending him for
 [17] physical therapy for a herniated disk if they
 [18] felt that was the case?
 [19] **A:** That's correct.
 [20] **Q:** All right. And you've also seen, I assume, in
 [21] the records that Mr. Yarbrough had some nerve
 [22] blocks done?
 [23] **A:** I think I know what you're referring to, yes.
 [24] **Q:** All right. I believe it was one of the pain
 [25] management doctors he saw, I believe it was

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[1] Dr. Rosenberg, did a series of nerve blocks on
 [2] Mr. Yarbrough?
 [3] **A:** Didn't he do epidural, injection of epidural
 [4] steroids?
 [5] **Q:** Correct.
 [6] **A:** Are those nerves blocks?
 [7] **Q:** Well, I don't know, doctor. I apologize. That's
 [8] what I'm taking about in that regard, okay?
 [9] **A:** Right. Okay.
 [10] **Q:** Is that what he did, epidural injections?
 [11] **A:** Yes.
 [12] **Q:** Are you sure about that?
 [13] **A:** More sure than you are about whether they were
 [14] nerve blocks.
 [15] **Q:** All right. Doctor, epidural injections, you
 [16] would agree, are another appropriate treatment
 [17] for a disk herniation?
 [18] **A:** Actually I don't agree with that. There has just
 [19] been, there are several articles in the
 [20] literature that indicate over a long period of
 [21] study that they have absolutely no effect on the
 [22] symptoms that are associated with a herniated
 [23] disk.
 [24] **Q:** Okay. Now, do you know Dr. Rosenberg, Dr. Sam
 [25] Rosenberg?

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[1] **A:** I've never had the pleasure of meeting him.
 [2] **Q:** All right. I'm going to hold for you, doctor,
 [3] that he is a pain management doctor, okay? And
 [4] pain management doctors, am I correct, assist
 [5] patients in dealing with their pain?
 [6] **A:** Yes.
 [7] **Q:** Often provide epidural injections and the like?
 [8] **A:** Not necessarily often. In fact, I've never met
 [9] Dr. Rosenberg, but I did talk to him once.
 [10] **Q:** Okay.
 [11] **A:** And he made it very clear that, you know, it's
 [12] not something that he often does.
 [13] **Q:** All right. Doctor — well, over your years as an
 [14] orthopedic surgeon you have certainly seen
 [15] occasions where individuals who have herniated
 [16] disks go through epidural injections, correct?
 [17] **A:** Certainly not in my private practice I've never
 [18] referred someone with a herniated disk for
 [19] epidural injections.
 [20] **Q:** All right. That's not something you believe in?
 [21] **A:** For herniated disks, no.
 [22] **Q:** You would agree with me that that's something
 [23] that's commonly done in the practice of medicine,
 [24] though?
 [25] **A:** I don't really know how common it is done. There

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[1] is a group of pain management physicians who
[2] believe that that is something in their
[3] armamentarium, there are also pain management
[4] physicians who never would do epidural blocks.
[5] Q: You would agree with me, doctor, that it would
[6] not be inappropriate for a physician to do
[7] epidural injections on a patient with a herniated
[8] disk?
[9] A: It would not be inappropriate; yes, I believe
[10] that it would not be inappropriate for a
[11] qualified physician to do epidural blocks.
[12] Q: Thank you, doctor.
[13] A: You're welcome.
[14] Q: Now, in addition to that, herniated disks, I
[15] think you mentioned earlier, often necessitate
[16] surgical intervention, correct?
[17] A: Correct.
[18] Q: What type of surgery are we talking about there?
[19] A: Actually they don't often, but, well, the
[20] standard procedure is what's called a laminectomy
[21] and discectomy.
[22] Q: Okay. Did you have a chance, by the way, to
[23] review the deposition of Fredric **Lax** that was
[24] taken in this case?
[25] A: No, I haven't.

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[1] Q: You've never reviewed that?
[2] A: If I had reviewed it I would have told you that I
[3] reviewed it.
[4] Q: Okay.
[5] A: You're so redundant in your questions.
[6] MR. MESTER: Move to strike.
[7] Q: I'll get to that.
[8] Doctor, let's talk for a second about the
[9] blood that was found by the radiologist in the
[10] lumbar canal, okay?
[11] A: Certainly.
[12] Q: And, once again, you've told me that you didn't
[13] see any blood when you reviewed those films,
[14] correct?
[15] A: Correct.
[16] Q: All right, doctor. Let's assume for a second
[17] again here that Dr. Jacobs is just not way off
[18] the wall here in his impression, if Mr. Yarbrough
[19] did have blood in his lumbar canal, would that
[20] represent a tear in the vein?
[21] MR. JEPPE: Objection.
[22] A: I don't know. What —
[23] Q: Could it represent a tear in the vein?
[24] A: I don't know what the cause of the blood in the
[25] canal could be or is.

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[1] Q: Is it possible, doctor, that could represent a
[2] tear in the vein?
[3] MR. JEPPE: Objection.
[4] A: Yes, there are veins in the area of the dura and
[5] the nerve roots and anything is possible, I
[6] guess.
[7] Q: Okay. Doctor, could you turn, if you would, I
[8] know you said you just recently got Dr. Mars's
[9] report, could you look at page 2 at the bottom of
[10] his report, the last paragraph there at the very
[11] bottom. And he's talking about the findings of
[12] Dr. Jacobs and it reads, "Refelt this was
[13] consistent with traumatic tear of a small vein in
[14] the intrathecal lumbar area," do you see that,
[15] doctor?
[16] A: Yes.
[17] Q: And, doctor, again, is that consistent with
[18] having blood in your lower lumbar canal?
[19] A: Certainly.
[20] Q: Okay. In other words, having a traumatic tear of
[21] a small vein in the intrathecal lumbar area would
[22] produce blood in the lower lumbar canal?
[23] A: Actually if it was intrathecal that means that
[24] it's within the theca, it wouldn't manifest
[25] itself as blood in the canal.

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[1] Q: Okay. But if there's a tear in the vein you
[2] would agree with me it could certainly manifest
[3] itself as blood in the canal?
[4] A: Yes.
[5] Q: Okay. Doctor, will you acknowledge that a tear
[6] of this nature in and of itself can cause injury
[7] to the nerve root?
[8] A: A tear of a vein could cause injury to a nerve
[9] root?
[10] Q: Correct.
[11] A: No, it can't.
[12] Q: Okay. So this in and of itself, doctor, if in
[13] fact Mr. Yarbrough did have a tear and did have
[14] blood in his lower lumbar canal, as Dr. Jacobs
[15] found, in your opinion, doctor, that's not an
[16] explanation in and of itself of Mr. Yarbrough's
[17] ongoing radicular problems?
[18] A: Correct.
[19] Q: Okay. If Mr. Yarbrough did have a tear in a vein
[20] in the lumbar area, would that be a significant
[21] finding, doctor?
[22] A: Yes, it would be a significant finding.
[23] Q: That would be an uncommon finding, I assume, as
[24] well, correct, doctor?
[25] A: Very, very, very rare, yes.

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[1] Q: Thank you, doctor. Now, let's turn to the MRI of
 [2] October 27th, 1998, that you discussed earlier.
 [3] Do you have that at your disposal?

[4] **A** Well, I can get out what I said verbatim and I
 [5] also have my notes.

[6] Q: Well, let me hand you a copy of the actual
 [7] impression, that's what I want to ask you about,
 [8] doctor, to move this along. I **think** Mr. Jeppe
 [9] has handed you a copy of the MRI impression of
 [10] the lumbar spine from October 27th, 1998.

[11] **A**: Yes.

[12] Q: And, doctor, could you read, again under the
 [13] impression on page 42 at the bottom, would you
 [14] read that first paragraph under impression?

[15] **A**: "Small laterally herniated disk at the L5-S1
 [16] level on the right encroaching upon the right L5
 [17] nerve root within the neural foramen on the
 [18] right. No encroachment upon the thecal sac is
 [19] demonstrated centrally."

[20] Q: Okay. Thank you, doctor. Now, once again,
 [21] doctor — and who was this interpreted by?

[22] **A** Harris Freed

[23] Q: Okay. You'd agree with me, doctor, that's also
 [24] presumably a radiologist?

[25] **A**: Presumably.

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[1] **Q**: You don't know Dr. Freed?

[2] **A**: Correct.

[3] Q: Okay. And Dr. Freed, again, a radiologist, has
 [4] found that Mr. Yarbrough has a herniated **disk** at
 [5] the L5-S1 level encroaching upon the right L5
 [6] nerve root, again, doctor, you disagree with that
 [7] assessment of those films, correct?

[8] **A**. It's a matter of terminology.

[9] Q: Okay.

[10] **A**: I said that at the L5-S1 interspace there was a
 [11] protrusion.

[12] The term herniated disk is really what we
 [13] call a wastebasket term and with the specificity
 [14] of MRIs the majority of well-trained radiologists
 [15] will talk about bulges, protrusions, extrusions,
 [16] and sequestered disks. Rarely in 1998, his
 [17] accident was in '97, right, it's very unusual
 [18] that in '98 somebody would just use the term
 [19] herniation.

[20] So basically what I'm trying to say to you **is**
 [21] that I saw a protrusion, but really that's not
 [22] even the most important thing, the important
 [23] thing was that it was causing L5 nerve root
 [24] compression on the right.

[25] Q: Okay. You don't disagree with that part?

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[1] **A** No.

[2] Q: And you would agree, then, and again I apologize
 [3] ~~if~~ I'm being redundant here, I **just** want to make
 [4] sure I understand your testimony, you would agree
 [5] that, however you want to characterize it, there
 [6] was an encroachment upon the right L5 nerve root
 [7] on the right?

[8] **A**: Correct.

[9] Q: Okay. And, doctor, that's a painful condition,
 [10] correct?

[11] **A**: Could very well be.

[12] Q: Okay. And do you have any reason to doubt that
 [13] would be a painful condition in Mr. Yarbrough?

[14] **A**: Well, it could be painful. I'm trying to think
 [15] if it ever explained his symptoms.

[16] Q: Well, he had pain radiating down his right leg,
 [17] correct?

[18] **A**: What part of his right leg?

[19] Q: You tell me, you did the examination.

[20] **A**: Oh, when I saw him —

[21] **Q**: Yeah.

[22] **A** — his history and physical findings were totally
 [23] inconsistent with an L5 nerve root compression.

[24] **Q**: All right. You don't quarrel with the fact that
 [25] he did have a nerve root compression, though, as

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[1] seen on those films, right?

[2] **A**: Correct.

[3] Q: Okay. Doctor, let's turn to the electrical
 [4] studies that were done in this case that you
 [5] discussed with Mr. Jeppe.

[6] **A** Is this yours, please?

[7] Q: Yes. Thank you, doctor.

[8] **A**: You're welcome.

[9] Q: You'll agree with me, doctor, that the three EMGs
 [10] that were done all had positive objective
 [11] findings of nerve root irritation?

[12] **A**: Yes.

[13] Q: Okay. And again, doctor, and Mr. Jeppe went
 [14] through **this** with you, when we're talking about
 [15] objective, this isn't something that Mr.
 [16] Yarbrough was telling you, this is something that
 [17] is objectively shown through this EMG exam,
 [18] correct?

[19] **A**: Yes, it is objective **data** under the subject's
 [20] control.

[21] VIDEO TECHNICIAN: Excuse me, can
 [22] we go off the record?

[23] MR. MESTER: Yes.

[24]

[25] (Off the record.)

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[1] [2] **VIDEO TECHNICIAN:** We're now back
[3] on the record.
[4] Q: Doctor, **we** were talking about those EMGs that
[5] were done. I'm going to hand you two of them
[6] that were done, one from December 1997 and the
[7] one from March right after your examination of
[8] '99. And let's start with the one from December
[9] of '97. What was the impression of the doctor
[10] who did that examination?
[11] A: "Mild bilateral posterior tibial motor conduction
[12] velocity slowing. There is some root irritation
[13] around L4, 5 with some mild chronic neurogenic
[14] potentials in a right L4, 5 distribution
[15] peripherally."
[16] Q: So, once again, doctor, correct me if I'm wrong,
[17] this doctor on this EMG study found objective
[18] evidence of nerve root irritation at L4-5?
[19] A: Right.
[20] Q: This would further corroborate the MRI results,
[21] would it not?
[22] A: I don't understand how it would.
[23] Q: You don't believe that's the case then, doctor?
[24] A: I don't believe that your statement is correct.
[25] I don't believe that it corroborated anything.

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[1] Q: You would agree with me that we now have
[2] objective evidence on the electrical EMG study as
[3] well as on the MRI that we just discussed from
[4] October of '98 of nerve root impingement?
[5] A: Wait a minute. The MRI of October '98 was done
[6] after this study was done.
[7] Q: That's correct.
[8] A: Okay. Now, the nerve root irritation that the
[9] electromyographer is referring to is some
[10] irritation of the nerve that supplies the gluteus
[11] maximus and the quadriceps, that's on the first
[12] page of this, which in fact is an L4 innervated
[13] muscle. Actually I don't even see it. Usually
[14] when the electromyographer is talking about some
[15] irritation of a nerve root that's based on the
[16] electrodiagnostic studies of the paraspinal
[17] muscles. So, quite frankly, I read you the
[18] conclusion, but I don't know how the
[19] electromyographer arrived at that conclusion. If
[20] she had said L4 nerve root irritation that would
[21] be absolutely correct.
[22] Q: All right. So you're not sure you can agree with
[23] her with respect to L5?
[24] A: Correct.
[25] Q: All right. You'd agree with me, though, that

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[1] just looking at her impression, she has found
[2] nerve root irritation around L4-5?
[3] A: Correct.
[4] Q: And that was the same finding essentially that
[5] was found on the MRI of October 1998?
[6] A: There were findings at L4 and there were findings
[7] at L5 and I think it's important for you to
[8] understand that when she says around L4, 5, I
[9] don't know whether that's around the L4 vertebra,
[10] the L5 vertebra, whether it refers to the L4-5
[11] interspace, whether it refers to the L4 nerve,
[12] the L5 nerve.
[13] Q: Okay. Doctor, let's move on a little bit. I
[14] asked you before whether you had had an
[15] opportunity to review the deposition of Fredric
[16] Lax and you had told me that you had not. Were
[17] you aware that Dr. **Lax** has been retained by
[18] Mr. Ambrose, who was involved in the second
[19] accident in this case?
[20] A: Yes.
[21] Q: You were aware of that?
[22] A: I just read his report today.
[23] Q: You read Dr. Lax's report, okay.
[24] A: Right.
[25] Q: Fine.

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[1] A: Right.
[2] Q: But you haven't seen his deposition transcript?
[3] A: I haven't seen his deposition transcript.
[4] Q: Okay. Let's start with the report, then, since I
[5] think you said that you have seen that. Do you
[6] have a copy of it? No? All right. Fine.
[7] A: Not easily found.
[8] Q: Doctor, let me read you a portion of his report,
[9] and he's talking about the lower back, he states
[10] in his report that, "I would add to this the fact
[11] that the patient's description of his pains in
[12] his low back and legs is very realistic and I
[13] believe real." And I think Mr. Jeppe is handing
[14] you a copy of that report. I'm looking at the
[15] second paragraph on the first page, doctor.
[16] A: Yes.
[17] Q: Okay. And again, doctor, apparently that's
[18] something that to a certain extent here you would
[19] disagree with?
[20] A: Yeah, I guess, because it really wasn't very
[21] realistic.
[22] Q: Okay. You've already made that clear, doctor.
[23] So you agree with the other defense medical
[24] examiner in this case who was retained by the
[25] other defendant, you disagree with his

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<p>[1] conclusions in that regard?</p> <p>[2] A Would you repeat the question, please?</p> <p>[3] Q: Sure. I'm just confirming, doctor, you disagree</p> <p>[4] with the other defense medical examiner who was</p> <p>[5] hired by the other defendant in this case in that</p> <p>[6] regard?</p> <p>[7] A: I disagree with the fact that when I saw him his</p> <p>[8] description of his pain did not seem real to me</p> <p>[9] and was not confirmed by his physical findings.</p> <p>[10] Q: Okay.</p> <p>[11] A: In fact, I don't even see any physical findings</p> <p>[12] of any examination that Dr. Lax performed.</p> <p>[13] Q: Do you know Dr. Lax?</p> <p>[14] A I've never met him.</p> <p>[15] Q: Do you know of Dr. Lax?</p> <p>[16] A: I know of Dr. Lax.</p> <p>[17] Q: Okay. And, again, I assume, doctor, you have no</p> <p>[18] reason to believe that Dr. Lax is not a qualified</p> <p>[19] neurosurgeon?</p> <p>[20] A: I have no reason to believe that he is a</p> <p>[21] qualified neurosurgeon.</p> <p>[22] Q: Okay. You don't have an opinion one way or the</p> <p>[23] other, correct, doctor?</p> <p>[24] A: No, I guess it's all secondhand knowledge.</p> <p>[25] Q: All right. Doctor, I'm going to hand you a copy</p>	<p>[1] again, I guess you would disagree with Dr. Lax in</p> <p>[2] that regard?</p> <p>[3] A: Yes. Apparently Dr. Lax did not understand your</p> <p>[4] question because there is no evidence that a</p> <p>[5] hematoma was found in his lower lumbar disk. I</p> <p>[6] mean, the radiologist at Hillcrest didn't mention</p> <p>[7] that, I didn't mention that. You look at the</p> <p>[8] report.</p> <p>[9] Q: We just looked at that, doctor.</p> <p>[10] A: That's right. Does it say the lower lumbar disk?</p> <p>[11] Of course it doesn't. No indication that there</p> <p>[12] was bleeding in the disk. So obviously Dr. Lax</p> <p>[13] didn't understand your question because, you</p> <p>[14] know, if he's a neurosurgeon he couldn't possibly</p> <p>[15] agree with you.</p> <p>[16] Q: You're saying that the MRI findings did not find</p> <p>[17] a hematoma within the lower lumbar?</p> <p>[18] A: You're leaving a word out, Mr. Mester.</p> <p>[19] Q: What am I leaving out, doctor?</p> <p>[20] A: You asked him the question that the hematoma that</p> <p>[21] was found in his lower lumbar disk on the MRI of</p> <p>[22] March 29th was caused by the motor vehicle</p> <p>[23] accident and then he said, you know, yes, based</p> <p>[24] on a reasonable degree of medical probability.</p> <p>[25] Well, obviously he didn't understand your</p>
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<p>[1] of the deposition that was taken of Dr. Lax last</p> <p>[2] week in which Dr. Lax was asked to provide his</p> <p>[3] opinions with regard to James Yarbrough, and I'll</p> <p>[4] refer you, to begin with, to page 27 line 19.</p> <p>[5] And the question is: "Doctor, would it be your</p> <p>[6] opinion that Mr. Yarbrough did suffer a disk</p> <p>[7] herniation in his lower back as a result of the</p> <p>[8] accident in 1997?"</p> <p>[9] And Dr. Lax's answer was: "I would say that</p> <p>[10] he probably did, yes."</p> <p>[11] And I guess, doctor, again, you disagree with</p> <p>[12] Dr. Lax in that regard?</p> <p>[13] A: Yes.</p> <p>[14] Q: Okay. Doctor, let's look at page 30 of Dr. Lax's</p> <p>[15] deposition starting on line 8, my question:</p> <p>[16] "Doctor, would you agree with me that it would be</p> <p>[17] your opinion that the hematoma that was found in</p> <p>[18] his lower lumbar disk of the MRI of March 29,</p> <p>[19] 1997 was caused by the motor vehicle accident of</p> <p>[20] 1997?"</p> <p>[21] Answer: "That's my suspicion, yes."</p> <p>[22] Question: "Based upon a reasonable degree of</p> <p>[23] medical probability, doctor?"</p> <p>[24] Answer: "Yes."</p> <p>[25] And my question for you, doctor, is once</p>	<p>[1] question.</p> <p>[2] Q: Okay. So he missed the boat on that one, I</p> <p>[3] guess. All right.</p> <p>[4] Doctor, let's turn now, if we could, to page</p> <p>[5] 40 of Dr. Lax's deposition. Are you there?</p> <p>[6] A: I'm there.</p> <p>[7] Q: Okay. And looking at line 7 the question was:</p> <p>[8] "Doctor, you would agree with me then as well, I</p> <p>[9] assume, that all the medical care he has received</p> <p>[10] for his low back that you've reviewed in the</p> <p>[11] records in front of you has been reasonable and</p> <p>[12] made necessary by the accident of 1997?"</p> <p>[13] And his answer was: "Yes."</p> <p>[14] I don't think I've actually asked you this</p> <p>[15] question yet, doctor. Do you agree with</p> <p>[16] Dr. Lax's assessment in that regard?</p> <p>[17] A: That all of the care that he's received was</p> <p>[18] related to the March 29th, 1997 accident?</p> <p>[19] Q: Correct.</p> <p>[20] A: No, I don't agree with that.</p> <p>[21] Q: Would you agree in the limited context that all</p> <p>[22] of the treatment he received before the second</p> <p>[23] motor vehicle accident in July of 1999 for his</p> <p>[24] lower back was caused by the first motor vehicle</p> <p>[25] accident?</p>

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[1] A: No.
[2] Q: Okay. So, again, you would disagree with Dr. Lax
[3] on that point?
[4] Now, let's turn to page 42, if we could,
[5] doctor. And I'll refer you, again, to line 8,
[6] the question was: "I know you haven't seen
[7] Mr. Yarbrough since the year 2001, but would you
[8] agree that just based upon your review of the
[9] records and your experience in treating similar
[10] patients that Mr. Yarbrough may be in for
[11] additional treatments in the future?"
[12] Answer: "I would say that's, that that's a
[13] strong possibility."
[14] And, doctor, again, I assume from your direct
[15] testimony that you disagree with Dr. Lax that it
[16] is a strong possibility that Mr. Yarbrough will
[17] need additional treatment for his lower back in
[18] the future?
[19] A: My opinion is that Mr. Yarbrough may well need
[20] additional treatment in the future for his low
[21] back condition but this treatment will not be
[22] related to any injuries that he sustained on
[23] March 29th, 1997.
[24] Q: Okay. So if Dr. Lax holds that opinion that he
[25] does require this treatment as a result of the

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[1] accident and he's going to require future
[2] treatment as a result of the accident, you would
[3] disagree with Dr. Lax in that regard as well?
[4] A: Yes.
[5] Q: Okay. Turn, if you would now, finally, to page
[6] 46 of Dr. Lax's deposition, actually starting at
[7] the bottom of page 45 on line 24, 25, question:
[8] "Doctor, with regard to his low back, as you
[9] said, he's got a very real injury, would you
[10] expect that this type of injury to his low back
[11] is going to cause Mr. Yarbrough difficulties in
[12] doing certain things in his daily life?"
[13] Answer —
[14] A: Excuse me, I got lost. Line 25 on page 45?
[15] Q: Correct.
[16] A: That's where we're going to start?
[17] Q: That's where I started.
[18] A: Okay. "Now, doctor, with regard to his lower
[19] back," and then where do you continue?
[20] Q: Next page.
[21] A: Page 46.
[22] Q: That's correct.
[23] A: Line 1.
[24] Q: Right.
[25] A: Okay.

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[1] Q: "He's got a very real injury, would you expect
[2] that this type of injury to his low back is going
[3] to cause Mr. Yarbrough disabilities in doing
[4] certain things in his daily life?"
[5] Are you with me, doctor?
[6] A: Yes. Thank you.
[7] Q: Okay. Answer: "It's likely that certain
[8] activities of daily living will have to be
[9] adjusted."
[10] And, again, doctor, do you disagree with Dr.
[11] Lax in that regard?
[12] A: I only disagree as to the relationship between
[13] the disabilities that he may encounter and the
[14] accident as opposed to the relationship between
[15] these disabilities and his degenerative
[16] condition.
[17] Q: All right. So, doctor, again, if Dr. Lax has
[18] indicated, if he has indicated that he's going to
[19] have problems in the future with daily activities
[20] of life, and if you read on on page 46,
[21] specifically with regard to his occupation as an
[22] auto mechanic, if Dr. Lax has offered those
[23] opinions and that they're due to the first
[24] automobile accident, you would disagree with Dr.
[25] Lax in that regard?

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[1] A: Yes.
[2] Q: Okay. Doctor, are you aware that of all the
[3] orthopedic surgeons, neurologists that are
[4] testifying on this case, as well as the
[5] radiologists who have interpreted these films, to
[6] the extent you disagree with them, you are the
[7] only one in this case who does not believe that
[8] Mr. Yarbrough is going to have these problems?
[9] A: As a result of the accident.
[10] Q: Correct.
[11] A: I guess, well, if that's what you tell me I
[12] certainly am the only one. I'm not aware of all
[13] these people that you've mentioned, for example,
[14] the radiologist, what kind of disability
[15] Mr. Yarbrough will have in the future.
[16] Q: All right. But I guess my question just goes to
[17] this, you have read the reports of the treating
[18] physicians in this case, Dr. Mars, Dr. Corn?
[19] A: Yes.
[20] Q: Okay. You've also now read portions of the
[21] deposition of the other defense medical expert in
[22] this case, Dr. Lax?
[23] A: Yes.
[24] Q: And you would agree with me, doctor, that based
[25] upon your review of those materials you are the

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<p>[1] only person testifying in this case that</p> <p>[2] Mr. Yarbrough's condition is not related to this</p> <p>[3] motor vehicle accident and that he's not going to</p> <p>[4] have permanent problems as a result?</p> <p>[5] A: That's a compound question. I will agree with</p> <p>[6] the first part, that I'm the only one who</p> <p>[7] believes that this condition of his low back was</p> <p>[8] not caused by the accident. With respect to the</p> <p>[9] second part of the question, Dr. Lax said that he</p> <p>[10] will have permanent disabilities, I don't recall,</p> <p>[11] and please show me, what Dr. Corn said and —</p> <p>[12] Q: With regard to his permanent disability?</p> <p>[13] A: Yeah.</p> <p>[14] Q: Sure. I'd be happy to. Dr. Corn, by the way, is</p> <p>[15] a former partner of yours, correct?</p> <p>[16] A: Incorrect.</p> <p>[17] Q: Is he — you two did work together at one point?</p> <p>[18] A: Yes.</p> <p>[19] Q: I've got some stationery back from 1981, you</p> <p>[20] shared office space at the very least?</p> <p>[21] A: Yes.</p> <p>[22] Q: Okay.</p> <p>[23] A: We weren't partners.</p> <p>[24] Q: I understand. And I'll hand you Dr. Corn's</p> <p>[25] report of January 25, 2000. You'll have to</p>	<p>[1] the cervical injury. I believe you testified on</p> <p>[2] direct examination that there was no history of a</p> <p>[3] neck injury from the first accident, did I hear</p> <p>[4] that correctly?</p> <p>[5] A: What I said is that when Mr. Yarbrough gave me</p> <p>[6] his history he did not mention to me that he had</p> <p>[7] injured his neck.</p> <p>[8] Q: Okay. That's fine. I understand, Would you</p> <p>[9] look at Dr. Mars's report on page 2?</p> <p>[10] A: Page 2, yes.</p> <p>[11] Q: The second full paragraph it looks like beginning</p> <p>[12] with the words "there have been".</p> <p>[13] A: Right.</p> <p>[14] Q: Could you read that?</p> <p>[15] A: Certainly. "There have been frequent headaches</p> <p>[16] since the accident occurring daily. He has</p> <p>[17] occasional dizziness which is positionally</p> <p>[18] related. There has been no alteration in memory</p> <p>[19] or concentration. However, he states he is now</p> <p>[20] fearful, especially riding in cars with others."</p> <p>[21] Q: Okay, doctor. Now, why don't you turn to page 1</p> <p>[22] of his report at the bottom. And the 5th line</p> <p>[23] down, am I reading this correctly, doctor, "There</p> <p>[24] is also some stiffness and pain in the posterior</p> <p>[25] cervical area radiating to the shoulders, both</p>
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<p>[1] forgive my scribbles. Have you seen this</p> <p>[2] report before, doctor?</p> <p>[3] A: I'd like to see the stationery with his name. It</p> <p>[4] must be very old stationery, about 1970 — no,</p> <p>[5] about 1980. Okay.</p> <p>[6] Dr. Corn says his condition at this point in</p> <p>[7] town, time rather, in my opinion is permanent.</p> <p>[8] Q: Okay.</p> <p>[9] A: So that was as of January 25th, 2000.</p> <p>[10] Q: Right. Does that answer your question in that</p> <p>[11] regard, doctor?</p> <p>[12] A: Well, his condition is permanent, he didn't say</p> <p>[13] what disabilities he would have as a result of</p> <p>[14] this permanent condition.</p> <p>[15] Q: All right. Again, doctor, by the time the jury</p> <p>[16] sees this video Dr. Corn will have already</p> <p>[17] testified in this case so the jury will be able</p> <p>[18] to determine what Dr. Corn has said.</p> <p>[19] You'd agree with me, for having worked with</p> <p>[20] Dr. Corn, that he is certainly a capable</p> <p>[21] orthopedic surgeon?</p> <p>[22] A: Yes, he is a capable orthopedic surgeon.</p> <p>[23] Q: Okay. Certainly somebody you respect?</p> <p>[24] A: He's a capable orthopedic surgeon.</p> <p>[25] Q: Okay. Now, doctor, let's turn, if we could, to</p>	<p>[1] arms with numbness and tingling in the right</p> <p>[2] upper extremity"? Did I read that correctly?</p> <p>[3] A: That's in the last paragraph.</p> <p>[4] Q: Correct.</p> <p>[5] A: Right. Okay.</p> <p>[6] Q: And, doctor, as you look at this report, Dr. Mars</p> <p>[7] is giving his impressions from his initial</p> <p>[8] examination?</p> <p>[9] A: I don't understand your question.</p> <p>[10] Q: Well, my only question is this, doctor, as you</p> <p>[11] look at that report would it appear that in fact</p> <p>[12] Mr. Yarbrough did have problems with his cervical</p> <p>[13] area after this first accident in 1997?</p> <p>[14] A: He complained, I suspect that's what's happening,</p> <p>[15] he complained of some neck problems when he was</p> <p>[16] seen by Dr. Mars after the first accident, yes.</p> <p>[17] Q: Okay. And as we read on page 2 of Dr. Mars's</p> <p>[18] report, he also reported occasional dizziness</p> <p>[19] which is positionally related?</p> <p>[20] A: That's what Dr. Mars reports, yes.</p> <p>[21] Q: All right. And when you did examine</p> <p>[22] Mr. Yarbrough, I think he told you that his neck</p> <p>[23] at the time he saw you was symptomatic pretty</p> <p>[24] much all the time?</p> <p>[25] A: At the time that I examined him, yes, that's what</p>

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[1] he told me.

[2] Q: And at the time you examined him, that was in
[3] March of 1990 we've established, that would have
[4] been two years after the first accident and about
[5] five months before the second accident, is that
[6] your understanding?

[7] A: Right.

[8] Q: So within five months of the second automobile
[9] accident when you saw Mr. Yarbrough his neck was
[10] symptomatic all the time?

[11] A: That's what he told me, yes.

[12] Q: Okay. And I think he also told you that he was
[13] awakened at night by bilateral arm and hand
[14] numbness?

[15] A: Yes.

[16] Q: Okay. And he also, I think you also reported
[17] that he was experiencing problems with his
[18] balance while walking to the consultation room?

[19] A: I don't think that's what he reported. Let me
[20] just go back a minute. It's in the first report.

[21] Q: I'll refer you to page 3 of your first report,
[22] doctor, of March 1999.

[23] A: Thank you. Okay.

[24] Q: Bottom of the page, second to last paragraph
[25] beginning with initially.

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[1] A: Oh. That was an observation on my part. So
[2] initially as Mr. Yarbrough walked from the

[3] examining room to my consultation room he
[4] appeared to have some problem with balance.

[5] Q: Okay.

[6] A: He indicated — let's be fair.

[7] Q: Okay. Sure.

[8] A: He indicated that he was taking medication for
[9] his prostate and that's what he related his
[10] trouble with his balance from and then when he
[11] walked in my examining, when I examined him in
[12] the examining room he had no difficulty with his
[13] balance.

[14] Q: Okay. Thank you, doctor.

[15] Now, you've also seen the records from the
[16] Cleveland Clinic Foundation? I think that's in
[17] the pile of records that Mr. Jeppe has provided
[18] to you.

[19] A: Yes, I did see some of those.

[20] Q: All right. And you saw some records from
[21] Dr. John Oas and some other physicians within the
[22] vestibular department at the Cleveland Clinic
[23] Foundation?

[24] A: Hmm. I don't recall looking at any records about
[25] vestibular things and I certainly didn't have

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[1] those records when I wrote either of my reports.

[2] Q: Okay. So you haven't seen that in this case,
[3] doctor?

[4] A: I don't recall having seen that.

[5] Q: Have you seen the report of John Oas from the
[6] Cleveland Clinic Foundation?

[7] A: A report? I don't think I've seen a report.

[8] Q: Okay. Doctor, your specialty is orthopedic
[9] surgery, it is not vestibular disorders, correct?

[10] A: Correct.

[11] Q: All right. And, again, I'm just going to hold
[2] for you and have you assume that in fact
[3] Mr. Yarbrough did treat at the Cleveland Clinic
[4] Foundation for a vestibular disorder, I
[5] appreciate you haven't reviewed those records,
[6] you would agree with me if that is the case that
[7] you would certainly defer to the opinions of the
[8] physicians at the Cleveland Clinic with regard to
[9] his vestibular disorder, correct?

[10] A: To the vestibular disorder treating physicians,
[11] yes.

[2] Q: Okay. Fine. So if Dr. Oas has diagnosed
[3] Mr. Yarbrough with posttraumatic stress disorder
[4] with cervicogenic and posttraumatic dizziness,
[5] again, you don't have any reason, for having not

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[1] seen any records, to quarrel with those
[2] diagnoses, correct?

[3] A: Well, if I haven't seen the records I can't make
[4] a statement either way about the diagnosis.

[5] Q: Okay. Fine. And, again, if Dr. Oas testifies in
[6] this case and, as he did in his report, that
[7] Mr. Yarbrough will need aggressive chronic pain
[8] management as well as ongoing physiotherapy,
[9] psychiatry and psychotherapy interventions into
[10] the indefinite future as a result of these
[11] automobile accidents, again, having not reviewed
[2] these records, you can't quarrel with Dr. Oas in
[3] that regard, right?

[4] A: Right, I can't agree with him or disagree with
[5] him.

[6] Q: Okay. Fair enough. Doctor, finally, with regard
[7] to the knee, you said that you, I think you said
[8] you reviewed the MRI that was done on
[9] Mr. Yarbrough's right knee in October of 1998?

[10] A: Yes, that I did.

[1] Q: In the interest of time, doctor, let me read the
[2] impression from Dr., again this is Dr. Freed
[3] apparently, the radiologist who found this, and
[4] his impression, as I read it into the record is,
[5] "Degenerative changes involving the medial joint

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<p>[1] compartment with blending of the inner margin of</p> <p>[2] the medial meniscus and a small degenerative tear</p> <p>[3] present. Doctor, in your report and in your</p> <p>[4] testimony I didn't see any, I didn't hear any or</p> <p>[5] see any indication from you —</p> <p>[6] MR. JEPPE: Excuse me, what was</p> <p>[7] the date of that MRI?</p> <p>[8] MR. MESTER: Sure. October 27,</p> <p>[9] 1999.</p> <p>[10] MR. JEPPE: That was the left</p> <p>[11] knee, not the right knee.</p> <p>[12] MR. MESTER: Excuse me.</p> <p>[13] Q: Did you see that MRI, doctor?</p> <p>[14] A: Yes, I reviewed the October 27th, 1998 left knee</p> <p>[15] MRI.</p> <p>[16] Q: Okay, doctor.</p> <p>[17] MR. MESTER: Off the record for a</p> <p>[18] second.</p> <p>[19] VIDEO TECHNICIAN: We're going off</p> <p>[20] the record.</p> <p>[21]</p> <p>[22] (Off the record.)</p> <p>[23]</p> <p>[24] VIDEO TECHNICIAN: We are now back</p> <p>[25] on the record. This is the beginning of</p>	<p>[1] Q: If Mr. Yarbrough were to have surgery on a tear</p> <p>[2] of a medial meniscus such as this, what type of</p> <p>[3] surgery would that be?</p> <p>[4] A: You want me to assume something that I don't</p> <p>[5] believe.</p> <p>[6] Q: Well, again, the radiologist here has obviously</p> <p>[7] concluded that there is tear present, do you</p> <p>[8] agree with me on that much?</p> <p>[9] A: That's what he said, yes.</p> <p>[10] Q: All right. And if that's the case, doctor, what</p> <p>[11] kind of surgery could Mr. Yarbrough have to</p> <p>[12] correct that kind of condition?</p> <p>[13] A: If he needed surgery.</p> <p>[14] Q: Correct.</p> <p>[15] A: Right. He would have arthroscopic surgery.</p> <p>[16] Q: All right. And what is the cost of that type of</p> <p>[17] procedure?</p> <p>[18] MR. JEPPE: Objection.</p> <p>[19] A: I don't know what the cost of that procedure is.</p> <p>[20] Q: That's something you do in your practice,</p> <p>[21] correct?</p> <p>[22] A: Something I used to do, right.</p> <p>[23] Q: Okay. You don't do those types of surgeries any</p> <p>[24] more?</p> <p>[25] A: Correct.</p>
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<p>[1] tape number 2.</p> <p>[2] Q: Doctor, I was asking you about the MRI of the</p> <p>[3] left knee that was done in October 1998 and my</p> <p>[4] only question, doctor, is do you disagree with</p> <p>[5] the radiologist there that there was a tear of</p> <p>[6] the medial meniscus?</p> <p>[7] A: Yes, because in my review there was no evidence</p> <p>[8] of a meniscal tear.</p> <p>[9] Q: Okay. So, once again, doctor, you are</p> <p>[10] disagreeing with the opinions of the radiologist</p> <p>[11] in this case who reads these films on a daily</p> <p>[12] basis?</p> <p>[13] A: Yes. And in fact he said a small degenerative</p> <p>[14] tear, which is a different from a traumatic tear,</p> <p>[15] but I didn't see either tear, I saw the mucoid</p> <p>[16] degeneration.</p> <p>[17] Q: Okay. All right. So you disagree with that.</p> <p>[18] Now, doctor, if in fact Mr. Yarbrough does</p> <p>[19] have a torn meniscus, is that something that's</p> <p>[20] going to get better on its own?</p> <p>[21] A: Certainly.</p> <p>[22] Q: Okay. There won't be a necessity of surgery</p> <p>[23] there?</p> <p>[24] A: Not from the type of tear that the radiologist is</p> <p>[25] interpreting in his left knee.</p>	<p>[1] Q: Okay. What kind of surgeries do you presently</p> <p>[2] do?</p> <p>[3] A: I don't do any surgery any more.</p> <p>[4] Q: When's the last time you did any kind of surgery,</p> <p>[5] doctor?</p> <p>[6] A: Where does my deposition say?</p> <p>[7] Q: I don't remember?</p> <p>[8] A: Oh, okay. 1996, the last two cases I did were</p> <p>[9] knee arthroscopies.</p> <p>[10] Q: Ail right. So you haven't done any surgery in</p> <p>[1] the last six years?</p> <p>[2] A: That's just what I told you.</p> <p>[3] Q: Very good, doctor.</p> <p>[4] MR. MESTER: That's all I have.</p> <p>[5] Thank you.</p> <p>[6]</p> <p>[7] REDIRECT EXAMINATION OF DENNIS B. BROOKS, M.D.</p> <p>[8] BY MR. JEPPE:</p> <p>[9] Q: Doctor, is there any indication in the records</p> <p>[10] that Mr. Yarbrough sustained a left knee</p> <p>[11] injury —</p> <p>[12] A: No.</p> <p>[13] Q: — in the accident of March 29th, 1997?</p> <p>[14] A: No.</p> <p>[15] MR. MESTER: Could we go off the</p>

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[1] record for a second?
[2] MR. JEPPE: I will let him go
[3] next, if he wants to cross-examine, he will
[4] get his chance, okay?
[5] Q: Second thing, doctor, and that is with respect to
[6] the cervical area —
[7] A: Yes.
[8] Q: — you were asked some questions about the
[9] cervical spine. In your opinion, you didn't give
[10] any type of an opinion with respect to whether or
[11] not you believe that Mr. Yarbrough sustained an
[12] injury to his cervical spine in the accident of
[13] March the 29th of 1997, do you believe that such
[14] an injury was sustained in the accident of March
[15] 29th, 1997?
[16] A: No, I do not believe that he injured his cervical
[17] spine.
[18] Q: And can you tell the jury why?
[19] A: Yes. First, there was Mr. Yarbrough's history to
[20] me in which he never mentioned that he had
[21] injured his neck. He concentrated on his
[22] injuries, his low back, his right knee and his
[23] right wrist.
[24] With respect to the review of the records,
[25] and I'll have to refer to my notes because I've

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[1] never seen so much paper — bear with me for a
[2] minute. After the first accident he was treated
[3] by seven physicians, six of those seven
[4] physicians made no diagnosis with respect to his
[5] cervical spine.
[6] When he was in the emergency room at
[7] Hillcrest Hospital on the day of the accident he
[8] complained of neck pain. The emergency room
[9] physician who examined him found that his neck
[10] was supple and the emergency room physician did
[11] not make a diagnosis with respect to his cervical
[12] spine.
[13] Q: Why would they order a cervical x-ray?
[14] A: It is not only common practice, it is the
[15] standard of care that when an individual is
[16] involved in a motor vehicle accident or a slip
[17] and fall that's serious, whatever, when the
[18] patient is brought in their neck is immobilized
[19] and the first thing that's done is a cross table
[20] lateral of the cervical spine and then they
[21] continue with the rest of the trauma series.
[22] In the past, not a lot, but enough to be
[23] concerned about, people have come into the
[24] emergency room and not been complaining of their
[25] neck and significant neck injuries are noted

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[1] later on,
[2] Q: The last thing, doctor, is this, earlier on in
[3] the cross-examination there was some banter about
[4] blood in the disk.
[5] A: Yes.
[6] Q: Now, you said you disagreed with that. Can you
[7] elaborate on that, please?
[8] A: Certainly.
[9] Q: In the lumbar spine, by the way.
[10] A: Yeah, the lumbar spine. First of all, the
[11] intervertebral disk is avascular, it doesn't have
[12] a blood supply to it, so it's impossible for
[13] there to be blood in the disk as Dr. Lax
[14] testified to.
[15] Q: That's a medical impossibility?
[16] A: Medical impossibility.
[17] MR. JEPPE: Thank you. I have
[18] nothing further. And I'm sorry I cut you
[19] off. Please go ahead.
[20] MR. STIENECKER: That's okay.
[21]
[22] CROSS-EXAMINATION OF DENNIS B. BROOKS, M.D.
[23] BY MR. STIENECKER:
[24] Q: Dr. Brooks, my name is Andrew Stienecker and I am
[25] one of the attorneys representing co-defendant

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[1] Joseph Ambrose. I have a very short
[2] cross-examination for you.
[3] I would like to turn your attention to page 3
[4] of your report in which you indicate —
[5] MR. JEPPE: Which report?
[6] MR. STIENECKER: His first report
[7] dated March 16th, 1999.
[8] Q: — in which you indicate that "Mr. Yarbrough
[9] stated that every night he would be awakened by
[10] bilateral arm and hand numbness."
[11] A: Excuse me, page 3 of my report.
[12] Q: The 5th paragraph, doctor.
[13] A: Yes, I found it. Thank you.
[14] Q: It was your previous testimony and your opinion
[15] to a reasonable degree of medical certainty that
[16] Mr. Yarbrough suffered a lumbar spine sprain. My
[17] one question to you is whether or not it is
[18] anatomically possible to suffer bilateral arm and
[19] hand numbness with this type of injury?
[20] A: From a spinal injury?
[21] Q: Yes.
[22] A: No, it's not anatomically possible.
[23] MR. STIENECKER: Thank you,
[24] doctor. I have no further questions.
[25] A: You're welcome. Thank you.

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[1] **MR. MESTER:** Thank you.
[2] **MR. JEPPE:** Waiver of signature?
[3] **THE WITNESS:** Yes.
[4] **MR. JEPPE:** Waiver of review of
[5] the video?
[6] **THE WITNESS:** Yes.
[7] **MR. JEPPE:** Can we have the same
[8] agreement, that they can keep them, not
[9] have to file them?
[10] **MR. MESTER:** Yes. Yes. Yes.
[11] **MR. JEPPE:** Thank you. Would you
[12] have that typed, please. Thanks.
[13] **VIDEO TECHNICIAN:** This concludes
[14] the deposition.
[15]
[16] (The reading and signing of the
[17] deposition was expressly waived by the witness
[18] and by stipulation of counsel.)
[19]
[20]
[21]
[22]
[23]
[24]
[25]

[1]
[2] **CERTIFICATE**
[3]
[4] The State of Ohio,) SS:
[5] County of Cuyahoga.)
[6] I, Dawn M. Fade, a Notary Public within and
for the State of Ohio, authorized to administer
[7] oaths and to take and certify depositions, do
hereby certify that the above-named witness was
[8] by me, before the giving of their deposition,
first duly sworn to testify the truth, the whole
[9] truth, and nothing but the truth; that the
deposition as above-set forth was reduced to
[10] writing by me by means of stenotypy, and was
later transcribed into typewriting under my
[11] direction; that this is a true record of the
testimony given by the witness; that said
[12] deposition was taken at the aforementioned time,
date and place, pursuant to notice or stipulation
[13] of counsel; and that I am not a relative or
employee or attorney of any of the parties, or a
[14] relative or employee of such attorney, or
financially interested in this action; that I am
[15] not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
[16] Civil Rule 28(D).
[17] IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
[18] ____ day of ____ A.D. 20 ____.
[19]
[20]
[21] Dawn M. Fade, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
[22] My commission expires October 27, 2002
[23]
[24]
[25]