

IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

STANLEY DOMARADZKI,

Plaintiff,

vs.

Case No.

BISHBRO, INC., et al.,

313402

Defendants.

Judge Villaneuva

- - - - -

Deposition of DENNIS B. BROOKS, M.D.,
called for examination under the statute, taken
before me, Julieanne Ross, a Registered
Professional Reporter and Notary Public in and
for the State of Ohio, pursuant to notice and
stipulations of counsel, at the offices of Dennis
B. Brooks, M.D., 325 Mt. Sinai Medical Building,
26900 Cedar Road, Beachwood, Ohio, on Wednesday,
August 13th, 1997, at 4:10 o'clock p.m.

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ORIGINAL

APPEARANCES:

On behalf of the Plaintiff:

Robert V. Housel Co., L.P.A., by
ROBERT V. HOUSEL, ESQ.
1350 Illuminating Building
55 Public Square
Cleveland, Ohio 44113-1993
216-363-6038

and

Wilsman & Schoonover, by
JOHN S. WOLANIN, ESQ.
The Bond Court Office Building
1300 East Ninth Street
Suite 1920
Cleveland, Ohio 44114
216-589-9600

On behalf of the Defendants:

Kitchen, Deery & Barnhouse, by
JAMES W. BARNHOUSE, ESQ.
1100 Illuminating Building
55 Public Square
Cleveland, Ohio 44113
216-241-5614

ORIGINAL

1 DENNIS B. BROOKS, M.D., of lawful age,
2 called for examination, as provided by the Ohio
3 Rules of Civil Procedure, being by me first duly
4 sworn, as hereinafter certified, deposed and said
5 as follows:

6 EXAMINATION OF DENNIS B. BROOKS, M.D.

7 BY MR. HOUSEL:

8 Q. Dr. Brooks, this packet of material
9 that was handed to me by Mr. Barnhsuse when I
10 came here, is this **all** of the material that you
11 reviewed before you wrote your medical report on
12 Mr. Domaradzki?

13 A. No, sir.

14 Q. What else did you review?

15 A. Numerous radiographs and MRI and
16 other diagnostic studies that I referred to in my
17 report.

18 Q. Other than those things, is that
19 everything?

20 A. Yes, sir.

21 MR. HOUSEL: Would you mark that
22 entire package? I'll make a copy of that.

23 - - - -

24 (Thereupon, Plaintiff's

25 Brooks Exhibit 1 was marked for

purposes of identification.)

2

3 Q. When you received a letter from Mr,
4 Barnhouse what did he request you to do in this
5 case?

6 A. I don't have a specific recollection
7 of his letter. He asked he to examine Mr.
8 Domaradzki and to determine what injuries that he
9 sustained in the accident and what his condition
10 was.

if Q. Do you keep letters from lawyers when
12 they send you letters asking you to do that?

13 A. I keep them in my file, yes, sir.

14 Q. The letters that Mr. Barnhouse handed
15 me, are these letters that you gave to him this
16 afternoon from your file?

17 A. The ones that he asked me from my
18 file, yes.

19 Q. Take a look, would that be these
20 letters that I have here?

21 | A. Yes.

22 Q. Are those all of the letters that
23 were in your file that you received from either
24 Jim Barnhouse or his law office?

25 | A. Yes.

1 Q. I see in one of these letters,
2 specifically the one of July 10th, he did a
3 four-page summary of the accident, injuries and
4 treatment, what have you; is that correct?

5 A. Yes.

6 Q. Is that something you asked him to
7 do?

8 A. I asked him to outline the treatment
9 that Mr. Domaradzki had received in the interval
10 between the time of the accident and the time
11 that I saw him, yes.

12 Q. That's not something that you would
13 do in evaluating the records that you received?

14 a. Yes,. that is something that I would
15 do. Generally I like to receive a letter like
16 we're speaking about before I even set up an
17 appointment to get a general feeling of the
18 complexity of the case. But I don't rely on that
19 letter in any way, shape or form.

20 Q. You don't? You don't rely on it for
21 any reason whatsoever?

22 A. Correct.

23 Q. When did you see Mr. Domaradzki?

24 A, I saw Mr. Domaradzki on July 11th,
25 1997.

1 or not I had.

2 Q. Do you remember that there was a
3 request made that we record the history taking
4 process involving Mr. Domaradzki?

5 A. Yes.

6 Q. And you refused to allow that to
7 happen?

8 A, If record means tape-record, yes, I
9 do.

10 Q. Or by means of a court reporter?

11 A. Yes.

12 Q. Why would you refuse to allow us to
13 do that?

14 A. The reason that I refused to allow
15 you to do that is that I believe that my
16 examination of Mr. Domaradzki should be like my
17 examination of any other patient in that I need
18 to be able to talk to the patient, to ask them
19 certain questions, to write down certain
20 responses without worrying that I have to act as
21 a stenographer and write every single thing
22 down.

23 Q. Is that your whole answer?

24 A. Yes.

25 Q. Are you ever concerned about whether

1 or not you accurately write down what someone
2 tells you in the history taking process?

3 A That is not a concern of mine. I
4 guess my concern is whether you consider what I
5 write down is an accurate reflection of what the
6 person said

7 Q And if I consider that to be the
8 case, you would refuse my request that we
9 tape-record or have a court reporter take it down
10 for that reason; is that right?

11 A Yes, because I believe that as you
12 did, you brought along a secretary, I believe
13 that you're as capable of taking notes as I am.
14 You didn't feel that you were apparently, so you
15 brought a secretary.

16 Q What would be the problem with having
17 someone who could take it down like a court
18 reporter, have it transcribed by means of a
19 tape-recorder so we knew exactly the questions
20 you asked and exactly the answers he gave, what
21 would be the problem with that?

22 A The problem would be that we would
23 end up in a situation like we are today, either
24 during a discovery deposition or during trial,
25 where you might say now, Dr. Brooks, isn't it

1 true that Mr. Domaradzki said such and such but
2 you wrote such and such? So that we'd end up
3 discussing how accurate a recorder I was rather
4 than the medical issues.

5 Q. Well, it could become very important
6 whether he said something that's accurately
7 reflected in a transcript of a tape-recording or
8 from a court reporter, if you made a mistake in
9 what you wrote down that would reflect that,
10 wouldn't it, doctor?

11 A. I'm sorry, I didn't understand your
12 question.

13 Q. It could very well be that if you
14 wrote something down inaccurately as someone said
15 it to you, that the tape-recorder or the court
16 reporter who is taking it all down would be able
17 to show you that it was incorrect; isn't that
18 correct?

19 MR. BARNHOUSE: Let me object to that
20 line of questioning that we're getting more and
21 more into now because I think the Rules basically
22 provide that you can ask in a discovery
23 deposition, you can ask the expert what he
24 reviewed, what his opinion is and what the facts
25 are on which he relied for that opinion.

1 I think this is getting into
2 speculation as to what could or could not happen
3 and so on. And actually some of the first
4 questions may have been objectionable, but they
5 were more fact as to how the examination took
6 place. I didn't object to those. But now I
7 think we've gone beyond that.

8 You can answer.

9 THE WITNESS: Could you read that
10 back for me?

11 (Record read.)

12 A. That's correct.

13 Q. Do you remember Leonard Vanillo?

14 A. No, I don't remember Leonard Vanillo.

15 Q. You did a defense medical examination
16 on Mr. Vanillo for Attorney Ron Rollin and
17 Rosemary Gold. And we took your deposition and
18 we took a tape-recording and we demonstrated that
19 you inaccurately recorded what Mr. Vanillo told
20 you. Do you remember that? We took that
21 deposition when you used to be downstairs with
22 Drs. Fumich and Zaas.

23 A. I don't recall what year that was,
24 Mr. Housel. And again, this is a recollection.
25 I only remember meeting you on one other occasion

1 and it was not very pleasant.

2 Q. For me nor you.

3 A. And I think by the look on your face
4 I think you're trying to imply that today will
5 not be either.

6 Q. I didn't say that.

7 A. And I don't know whether this is
8 actually what happened or not, but I wonder if
9 that wasn't a hidden tape-recorder.

10 Q. Well, it may have been, But the
11 point that I asked you about, the question was
12 real simple, do you recall that the transcript of
13 the tape-recording that was taken by Mrs. Vanillo
14 showed that you in fact didn't accurately record
15 the history given to you by Mr. Vanillo?

16 A. No, I don't recall that. But I
17 remember though there are certain standards that
18 do not allow a hidden tape-recording, you did go
19 ahead and have someone do a hidden
20 tape-recording,

21 Q. Well, do you know that I had them do
22 it?

23 A. If you were the attorney I
24 would -- no, I don't know for a fact, sir, that
25 you did.

1 Q. Why did you just say that then?

2 A. Because I assume because you were the
3 one who had the tape-recording.

4 Q. Did I have the tape-recording or did
5 Mrs. Vanillo have the tape-recording or do you
6 remember?

7 MR. BARNHOUSE: I'll object, I think
8 there are several questions there.

9 Q. Go ahead,

10 A. I talk very slowly, Mr. Housel. And
11 you just tell me how you're going to let me do
12 it, either you can let me finish my answer --

13 Q. You haven't begun answering, have
14 you? You're looking at Jim to help you out now,
15 is that what you're doing?

16 A. No, Mr. Housel, I'm not looking at
17 Mr. Barnhouse. And if the only way that you
18 think that you're going to get anywhere is by
19 needling me, you might as well just stop because
20 it's not going to work.

21 Q. Well, let's just go on, we'll see
22 what works and what doesn't work, I'll ask you
23 some questions and you give me the answers.

24 Now, you asked the question about Mr.
25 Vanillo and the tape-recording. Did you think I

1 caused that to be done?

2 A. Yes, I do.

3 Q. And what evidence do you have to show
4 that?

5 A. I don't have any evidence to show
6 that.

7 Q. Who did the tape-recording in that
8 case?

9 A. You just told me that Mrs. Vanillo
10 did.

11 Q. Did you know that she did it?

12 a. Obviously I did not know that she did
13 it,

14 Q. Do you know that in fact it reflected
15 something different than what you say Mr. Vanillo
16 told you?

17 A. I have no recollection whether it did
18 or not.

19 Q. How many of these do you do a week,
20 independent medical examinations?

21 A. Three.

22 Q. Right now you do three?

23 A, Yes.

24 Q. And how is it you know that it's
25 three?

1 A. I know that it's three because I have
2 told my scheduling people to schedule only three
3 a week.

4 Q. Have you always done only three of
5 these a week, defense medicals?

6 A, Always is a long time. i don't have
7 any recollection of what I've always done.

8 Q. Well, you said in other depositions
9 that as far back as 84 you did at least three.
10 Does that refresh your recollection?

11 A. If that's what I said, then that's
12 what the truth is.

13 Q. Okay. You've never **done** more than
14 three a week; is that right?

15 A, Never is a long time. There may have
16 been one occasion or another, but on the average
17 I do three a week.

18 Q. How long have you been doing them?

19 A. Independent defense medicals?

20 Q. Yeah.

21 A. I always have to figure, Lauren
22 Rosenberg developed a brain tumor in 77, so
23 probably starting 78, 77 or 78.

24 Q. Up until now?

25 A. Up until now.

1 Q. Okay. Have you ever done more than
2 three a week?

3 A. I said anything is possible. And I
4 may well have, yes,

5 Q. Do you have any records that reflect
6 how many of them that you do?

7 A. No.

8 Q. You had -- we all know, at least we,
9 the Plaintiffs Bar, know that you had a book that
10 you kept in 1988 that reflected how many
11 examinations you did in a year, Do you recall
12 that?

13 MR. BARNHOUSE: And I will object to
14 this line of questioning. If you can answer,
15 fine, but I think this is getting far afield from
16 what a discovery deposition is supposed to be of
17 an expert.

18 Q. Sure. Okay, go ahead.

19 A. My recollection is as follows, the
20 book to which you are referring to was my
21 appointment book,

22 Q. Right.

23 A, Is that what you're referring to?

24 Q. Yeah. And I have copy of it right
25 here.

1 A. Okay. I think the record ought to
2 reflect that you have a copy to which you are not
3 entitled because Judge Green in that particular
4 case made a ruling that Mr. Housel -- excuse me,
5 I apologize, Mr. Howell, could use that only in
6 that 'trial if it were introduced into evidence.

7 The appointment book was never
8 introduced into evidence. And that appointment
9 book was circulated to Plaintiffs Bar wrongly.

10 Q. Wrongly?

11 A. Wrongly.

12 Q. You're sure that's what it was, huh?

13 A. Absolutely.

14 Q. Okay. Do you have an appointment
15 book currently that you use to schedule these?

16 A. I have an appointment book that I use
17 to schedule all of my patients.

18 Q. Similar to the one that you used in
19 1988?

20 A. That's correct.

21 Q. And you had one of those for each
22 year since 1988?

23 A. Yes.

24 Q. Okay. And those are available?

25 MK. BAKNHOUSE: Again, I'm going to

1 object to this whole line. I think it goes way
2 beyond anything that's supposed to be in a
3 discovery deposition,

4 Q. Okay. I asked if those were
5 available.

6 A. No, they are not available.

7 Q. Where are they?

8 A. Hum - -

9 MR. BARNHOUSE: I'll object to this,
10 but if you can answer the question, it's up to
11 you.

12 A. The book for last year is somewhere
13 here in my office, Before 95 I don't know where
14 the books are,

15 Q. Did you throw them away?

16 A. They were left with Dr. Zaas,

17 Q. Oh, they are downstairs in Dr. Zaas'
18 office?

19 A. If he hasn't discarded them.

20 Q. So we could subpoena Dr. Zaas and get
21 them from him, You leave your appointment books
22 with Dr. Zaas?

23 MR. BARNHOUSE: Objection as to what
24 he can or cannot do record-related to Dr. Zaas.

25 A. Right. I don't know when Dr. Zaas

1 and I went our separate ways.

2 Q. Couple years ago, wasn't it?

3 A. I'm not through answering the

4 question.

5 Q. I thought you asked me one.

6 A. Pardon me?

7 Q. I thought you asked me one. Go

8 ahead, I'm sorry.

9 A. I'm having trouble hearing you.

10 Q. I said I thought you asked me one.

11 A. Oh, no. What was the question?

12 Q. I thought you were saying when you

13 and Dr. Zaas, you didn't know when you and Dr.

14 Zaas parted company.

15 A. Parted company, I don't recall what

16 happened to those appointments books. I

17 certainly didn't take them with me.

18 Q. So you don't know whether he has them

19 or not?

20 A. That's correct.

21 Q. Okay. But you have the one for last

22 year here; correct?

23 A. Yes.

24 Q. All right, And you operate this

25 office now by yourself; right?

1 A, Yes.

2 Q. Okay. We did some calculating and it
3 showed in 1988 from that appointment book, which
4 by the way under Judge Green's court order was
5 permitted to be circulated if something happened
6 to it, which did happen to it. Otherwise, I
7 wouldn't have gotten it.

8 But be that as it may, we show that
9 in 1988 there were 386 appointments made by you
10 for independent defense medicals. Would you
11 agree with that?

12 MR. BARNHOUSE: Objection.

13 A " What was the number, 300 --

14 Q. 86. And that's just by going through
15 it and counting them up.

16 A. I wouldn't be able to agree or
17 disagree unless I sat down and went through and
18 counted them up.

19 Q. Have you ever done that?

20 A. No.

21 Q. Okay. After Mr. Pomerantz's
22 deposition of you where he asked you those
23 questions you never took that appointment book
24 and went through it and segregated out what was
25 what?

1 A. I have better things to do with my
2 time.

3 Q. I'm sure you do. So you didn't check
4 that figure; correct?

5 A. That's correct.

6 Q. And of those appointments 281 were
7 kept, Does that sound right to you?

8 A. I don't know.

9 Q. And you charged whether an
10 appointment was kept or not kept, you charged a
11 fee for that, didn't you?

12 A. Yes.

13 Q. What was your hourly rate back in 8
14 for doing independent defense medicals as you
15 call them?

16 MR. BARNHOUSE: I'll object to all of
17 this. I don't think this has -- this is well
18 beyond anything you should be inquiring about in
19 a discovery deposition.

20 Q. All right. Go ahead.

21 A. I don't recall.

22 Q. 250 an hour?

23 A. I just said I don't recall. That
24 sounds reasonable, but I don't recall.

25 Q. What do you charge nowadays?

1 A. 350 an hour.

2 Q. For the independent medical
3 examination?

4 A. Yes.

5 Q. Is that for review of records and the
6 examination itself?

7 A. Yes.

8 Q. And the writing of the report?

9 A. Yes.

10 Q. And then you charge an additional
11 \$100, 450 an hour for a lawyer like me to take
12 your deposition?

13 A. For any lawyer to take my deposition.

14 Q. How much would it be for a videotaped
15 deposition?

16 A. \$450 an hour,

17 Q. What are the insurance companies that
18 you do these for?

19 MR. BARNHOUSE: Objection. Again, 1
20 cannot see how that has anything to do with
21 discovery, but if you can answer the question,
22 it's up to you.

23 A. I don't know what insurance companies
24 I do these for. I know some of the insurance
25 companies, but I don't know all the insurance

1 companies.

2 Q Tell me the ones you remember. Maybe
3 I can help you with some of the other ones.

4 A How kind of you.

5 Q Thank you, I want to be kind to
6 you.

7 A Well, I like to be kind to you, too.
8 This ought to be on a professional level and I'm
9 trying to keep it that way.

10 MR. BARNHOUSE: And I will object to
11 this whole line.

12 MR. HOUSEL: You can make a blanket
13 objection. I will agree that you can make a
14 blanket objection to everything.

15 MR. BARNHOUSE: Okay, thank you.

16 Q Go ahead,

17 A Can I then give just one answer and
18 we'll be through?

19 Q Certainly, you know you can do that.

20 A State Farm,

21 C That's -- may I interrupt you for a
22 second? That's through Mr. Hentemann's office?

23 A Yes

24 Q You still do work for them?

25 A. Yes.

1 Q. Okay. Go ahead.

2 A. Well, I know that this is a Motorists
3 Mutual case.

4 Q. Right.

5 A. Let's see, I was involved in another
6 under-insured motorist case, so that's how I knew
7 that it was Westfield. But in general, as you
8 know, I don't know who the insurance companies
9 are because the individual law firm will ask me
10 to do the evaluations,

11 Q. Nationwide, you just did one for a
12 client of mine with Nationwide.

13 A. I may have. But again, the
14 request -- first of all, I don't know which
15 client of yours it is.

16 Q. Ann Holkowsky is her name, Laura Letz
17 is the lawyer at Nationwide. You know Nationwide
18 has house counsel here in town; right?

19 A. I didn't know that it was Nationwide
20 house counsel. I know who Laura Letz is. She's
21 in Marillyn --

22 Q. -- Pagan Damelio's office?

23 A. Yeah, Damelio's office.

24 Q. And you've done examinations for
25 other lawyers in that office, haven't you?

1 A. Yes.

2 Q. Go ahead. Other insurance companies?

3 A. That's all I can -- that's all I'm

4 able to identify,

5

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12

13 A. I wasn't aware that I did -- no, I

14 don't, that I'm aware of.

15 Q. Liberty Mutual?

16 A. Not that I'm aware of,

17 Q. Aetna?

18 A. Not that I'm aware of.

19 Q. Montgomery Mutual?

20 A. Not that I'm aware of.

21 Q. Admiral Adjusting?

22 A. Not that I'm aware of.

23 Q. Crawford & Company?

24 A. Not recently.

25 Q. Prudential?

1 A, Not that I'm aware of.

2 Q. Progressive?

3 A. Not that I'm aware of.

4 Q. You used to give lectures to
5 Progressive, didn't you?

6 A. Yes.

7 Q. What would you lecture to Progressive
8 Insurance Company people about?

9 A. I lectured to the Progressive
10 Insurance Company people about understanding the
11 medical report, the independent medical
12 examination.

13 Q. Anything else?

14 A. Not that I can recall.

15 Q. You gave lectures to Mr. Hentemann's
16 firm?

17 A. Yes.

18 Q. When did you last do that?

19 A. I'm sorry, I misspoke. I didn't
20 give -- I've never given a lecture to Mr.
21 Hentemann's firm, so that was incorrect.

22 Q. Have you given a lecture to State
23 Farm employees?

24 A. Yes.

25 Q. Okay. When did that happen or does

1 that happen every year? Sorry, that's two
2 questions.

3 A. Thank you.

4 Q. Where did that happen? I don't want
5 to be unfair to you, Where did that happen?

6 A. My recollection of the last time that
7 I did that, it may have been at Chagrin Valley
8 Country Club, but I'm not sure. I don't remember
9 exactly.

10 Q. Do you know when?

11 A. Number of years ago.

12 Q. What did you lecture them on?

13 A. Again, I talked to them about the
14 independent medical examination, the medical
15 terms that I use in an examination, what the exam
16 was all about.

17 Q. Any other lectures that you can think
18 of that you gave besides what we've talked about
19 to other insurance companies, lawyers?

20 A. Oh, yes.

21 Q. Tell me.

22 A. I meant to put this out before, but I
23 didn't (indicating). I gave a lecture to the
24 Ohio Academy of Trial Lawyers.

25 Q. Is that the one that you had hidden

1 up there backing something else that was in front
2 of it up on your shelf?

3 A. Well, I don't know that it was
4 hidden, but I thought a picture of me was a
5 little more appropriate to put in front of it.
6 So that's what was in front of it, but it wasn't
7 hiding. I gave a lecture to the Ohio Academy of
8 Trial Lawyers in 1994,

9 Q. Where did that take place?

10 A. Where did that take place, somewhere
11 in Cuyahoga County.

12 Q. Any others you can think of?

13 A. Lectures to attorneys?

14 Q. Or insurance companies.

15 A. Well, let's see, I've lectured to
16 the -- all the names sort of run together, So
17 let's just say I've lectured to the Plaintiffs
18 Bar, I've lectured to the Defense Bar. I've
19 lectured to other insurance companies.

20 Q. They all run together. Can you
21 remember any of the names of them other than what
22 you've told me?

23 A. No, in terms of running together, I
24 mean, I can't -- like your group is called the
25 Ohio Academy of Trial Lawyers. The Defense Bar

1 is the Ohio Association of Civil Trial
2 Attorneys. That's what I mean in terms of not
3 being able to keep them straight.

4 The Cleveland Bar Association,
5 Cuyahoga County Bar Association, the Cleveland
6 Academy of Trial Lawyers,

7 Q. Any others you can think of?

8 A. No.

9 Q. You were issued a subpoena concerning
10 this deposition today; correct?

11 A. No.

12 Q. You never got a subpoena duces tecum?

13 A. That's correct.

14 Q. Never got it?

15 A. Never got it.

16 Q. Was it served here on your office?

17 A. No, sir.

18 Q. Are you aware of one?

19 A. Yes, sir.

20 Q. When did you first become aware of
21 it?

22 A. Mr. Barnhouse faxed me a copy of
23 something,

24 Q. Is there something else other than
25 this file that you have here that concerns Mr.

CEFARATTI-RENNILLO

1 Domaradzki that I didn't see?

2 A. Yeah, certainly (indicating).

3 Q. Thank you.

4 A, You're welcome,

5 MR. BARNHOUSE: I faxed him a copy of
6 the notice of deposition.

7 MR. HOUSEL: I don't need you to
8 answer my questions, it's not necessary,

9 MR. BARNHOUSE: Okay.

10 Q. You what, sir, you received a fax of
11 a subpoena?

12 A. Yes, sir,

13 Q. The court reporting firm didn't
14 deliver you a subpoena here at your office?

15 A. **Mr.** Housel, I never received a
16 subpoena. The court reporting firm never served
17 me.

18 Q. When did you first become aware of
19 what the subpoena asked for?

20 A. When Mr. Barnhouse faxed it to me,

21 Q. When **did** he fax it to you?

22 A. I don't recall what date, Today is
23 Wednesday. It was the end **of** last week sometime,

24 Q. Do you have that fax in front of you
25 somewhere?

1 A. Yes, sir. Oh, here, August 7.

2 Q. August 7th. Let me see this other
3 material.

4 A. Sure (indicating).

5 Q. Thanks.

6

7

8

9 August 7th?

10 A. I called Mr. Barnhouse and said I've
11 received this fax with this information.

12 Q. Okay, And did you request he do
13 something with the court so you wouldn't have to
14 respond to it?

15 A. I asked him what he was going to do.
16 And he said he would do something with the court.

17 Q. And do you know what he did do with
18 the court?

19 A. Not specifically, no.

20 Q. Is he your lawyer?

21 A. No, sir.

22 Q. Mr. Barnhouse?

23 A. He's not my lawyer.

24 Q. Did you pay him a fee to file a
25

1 A. NO.

2 Q. Did he send you a bill for his time
3 preparing a motion?

4 A. No, he did it pro bono.

5 Q. Oh, he did it for free. Is he your
6 friend, have you worked with him before?

7 A. Have I worked with him before? I
8 think once.

9 Q. Has his firm done other independent
10 defense medicals for you before?

11 A. No.

12 Q. So you had an understanding with him
13 he was doing that for nothing; is that right?

14 A. I didn't have any kind of
15 understanding with him about what he was doing,

16 Q. You certainly wanted him to do
17 something, you wanted him to stop us from getting
18 those records in that subpoena, didn't you?

19 A. Yes.

20 Q. Okay, And similarly the Hentemann
21 law firm in the past when you've been served with
22 a subpoena for certain records has gone to battle
23 for you pro bono I guess; is that right?

24 A. When I've gotten similar subpoenas,
25 Mr. Hentemann's law firm has responded; that is

1 correct.

2 Q. And they have never billed you for
3 that! have they?

4 A. I wouldn't expect them to. I don't
5 understand. I guess I'm missing something. This
6 involves my involvement in a case where I'm
7 performing an independent medical examination on
8 behalf of Mr. Barnhouse and his client. If
9 something affects me or something is sent to me
10 with respect to that, yeah, I would expect them
11 to **do** whatever they need to do.

12 Q. To perform whatever legal service
13 they need to perform **at** no expense to you; right?

14 A. Correct.

16 really from Mr. Wolanin and myself and our client
17 asking for certain information, correct, it
18 doesn't have anything to do with Mr. Barnhouse,
19 does it?

20 A. Sure it has something to do with Mr.
21 Barnhouse.

22 Q. **How** is that?

23 A. Well, as I understand it, Mr.
24 Barnhouse is representing Bishop Brothers who are
25 the defendants in this lawsuit. I've been asked

1 to do something on behalf of the defendant. So
2 it's all part of the same defendant.

3 Q. All part of the same defendant?

4 A. Yes.

5 Q. Okay. Have you ever had your own
6 personal lawyer of your choosing file some kind
7 of response to a subpoena such as this?

8 A. No.

9 Q. Let's take a look at the subpoena.
10 Did you do anything at all to respond to this
11 subpoena other than tell Mr. Barnhouse to do
12 something for you?

13 A. I didn't tell Mr. Barnhouse to do
14 anything. I asked him to do something.

15 Q. And he of course said he would;
16 right?

17 A. Yes.

18 Q. Did he ever fax you a copy of the
19 motion that he filed with the court relative to
20 this subpoena?

21 A. No.

22 Q. All right. Did you ever do anything
23 to respond to any of the things asked for in this
24 subpoena?

25 A. No.

1 Q. And why is that?

2 A. I've --

3 MR. BARNHOUSE: By the way, let me
4 state one thing.

5 MR. HOUSEL: You don't need to say
6 anything. You can state an objection and state a
7 reason. You don't need to clarify anything. You
8 can take it up with the court in the appropriate
9 fashion,

10 MR. BARNHOUSE: Let me clarify, you
11 keep referring to it as a subpoena. What you
12 have there was the duces tecum which was attached
13 to the notice of deposition. A subpoena does
14 look different than that. That's the only thing.

15 MR. HOUSEL: He understands what it
16 is.

17 Q. You understand what it is, don't you?

18 A. Understand --

19 Q. What the duces tecum portion of the
20 subpoena that was sent to you, faxed to you by
21 Mr. Barnhouse, you know what that is, don't you?

22 A. I know what duces tecum is, yes.

23 Q. No. The question I asked you is why
24 didn't you do anything to respond to that?

25 A. Because I had never been served

1 properly with a subpoena.

2 Q. Did Mr. Barnhouse tell you that?

3 A. No, Mr. Barnhouse didn't tell me
4 that. I know that.

5 Q. So as far as you're concerned you've
6 never been served with this?

7 A. That's correct.

8 Q. Had you been served with it, and
9 we'll have to talk to the court reporting firm
10 about that, had you been served with it would you
11 have responded to it?

12 A. I don't know hypothetically what I
13 would have done in a hypothetical situation where
14 I had been served with the subpoena,

15 Q. It's not hypothetical. You didn't
16 get a notice of a deposition or the subpoena with
17 a duces tecum attached to it, is that what you're
18 saying?

19 A. Mr. Housel, I've said four times, I
20 am under oath, I did not get this subpoena. Now,
21 I'll be happy to answer the question a thousand
22 more times.

23 Q. I don't think that will be
24 necessary.

25 You have it in front of you now. You

1 still do not consider yourself properly served
2 with it? Would you like us **to** go and have
3 somebody from a court reporting firm, since you
4 say you didn't get it, come out and hand it to
5 you, would that be satisfactory then, would you
6 then respond to it?

7 A. Would **I** like -- I would like to be
8 served properly, yes,

9 Q. And if you were served properly as
10 you said, would you then respond to it?

11 A. By producing all these items that you
12 asked for?

13 Q. **Right.**

14 A. No, I would not.

15 Q. Why would you not?

16 A. The information is not either readily
17 available or is not available to me. I believe
18 that it's an undue burden and I wouldn't respond
19 to it,

20 Q. Can we go over them one by one?

21 A " I'm here between --

22 Q. I don't really care how much time it
23 takes. Let's go over them one by one, let's go
24 over number one.

25 A. Do I have a choice? I mean, you

1 said -- okay, sure. If I say no --

2 Q. Would you stop the deposition? Do
3 you want to throw us out? What do you want to
4 do, do you want to have your deposition taken or
5 not, it's your call, You've been paid for it,
6 haven't you?

7 A. Yes, you have.

8 Q. Can we go on then?

9 A. Absolutely.

10 Q. Okay, Paragraph number one, will you
11 read that, please?

12 A. Well, the header is you are commanded
13 to bring with you for inspection and duplication
14 any and all records, writings, material evidence
15 of any kind concerning, one, the number of
16 defense independent medical exams you perform per
17 week, per month, per year for the last five years
18 for defense counsel, insurance companies and
19 self-insured employers for Workers' Compensation
20 claims.

21 Q. You've read that accurately. Now,
22 can you respond to that?

23 A No, I can't tell you. I can't give
24 you the answer.

25 Q. You don't have any such records that

1 would reflect that?

2 A. That's correct.

3 Q. Your appointment book would reflect

4 that, would it not?

5 A. Yes.

6 **a.** You have that, don't you?

7 A. Not for the last five years, sir.

8 Q. Well, you have it for one year, don't

9 you?

10 A " Yes.

11 **a.** And you won't give that to me, will

12 you?

13 A. That's right, I won't give that to

14 you.

15 Q. And why is that?

16 A. Giving you my appointment book I

17 believe would be a breach of patient-physician

18 confidentiality.

19 **a.** How is it that in 88 you gave it to

20 Mr. Pomerantz?

21 A. I never gave it to Mr. Pomerantz.

22 Q. How did he get it?

23 A. You probably know better than I how

24 he got it.

25 **a.** Well, how did he get it, do you know?

1 A. Bill Howell. subpoenaed my appointment
2 book. I responded to that subpoena and let him
3 copy the appointment book. And then as we
4 discussed earlier today, at least it's my
5 understanding that Judge Green said that that
6 document could only be produced in the instant
7 case and that it was not to be circulated. But
8 before her ruling came down that copy had
9 circulated.

10 Q. Do you know that to be a fact --

11 A. Yes.

12 Q. .. that before a ruling came down it
13 got circulated?

14 A. Yes, I know that to be a fact.

15 Q. How do you know that to be a fact?

16 A. I know that to be a fact because
17 Scott Stewart who was then the president of
18 something or another, one of the -- whatever the
19 plaintiff's group is called, told me about it.

20 Q. Told you that that was the case?

21 A. Yes.

22 Q. Do you have your last year's book
23 that you'll let me copy then like you did Mr.
24 Howell?

25 A. No, I won't let you copy it.

1 Q. What do you have to hide, doctor?

2 A. I don't have anything to hide. I

3 would be happy if you want me to sit here with

4 you and tell you how many exams I did last year,

5 okay. I don't believe that --

6 Q. Will you **do** that for me?

7 A. Sure.

8 Q. All right. We'll do that then.

9 A. All right, if I can find the book.

E0 Do you want me to go do it right now?

11 Q. Sure, yeah,

12 A. Okay

13 Q. You'll let me go through it with you?

14 A. Hum, I think there's certain

15 privileged information in there with respect to

16 my private patients.

17 Q. I'm not going to disseminate the

18 names of your private patients. I have no

19 interest in your private patients in any way,

20 shape or form.

21 A. But I don't have the -- I don't want

22 to put myself in jeopardy, okay. You're either

23 going to have to take my word for it, which is

24 highly unlikely, or not. But I'll go through it

25 page by page and tell you on this day I **did** a

1 defense medical, on this day I did a defense
2 medical.

3 Q. Will you let me look at it with you?

4 A. I don't feel comfortable doing that.
5 All right, here's what I will do. Wait, no,
6 really, because of my patients.

7 Q. What do you think I'm going to do
8 with your patients' names, say something, do
9 something? I appreciate the fact that they are
10 your private patients, but I just have an
11 interest in knowing how many you did.

12 A. I hope you understand, we don't have
13 a good history together, you and I.

14 Q. That's true, we don't.

15 A. Deirdre thinks you're wonderful but,
16 you know, I've only **had** one other experience with
17 you and that was pretty disconcerting to say the
18 least, okay. So I'm not going to do anything
19 quite frankly for you, you know.

20 **a.** You're not going to do anything to
21 help me, is that what you're saying; isn't that
22 right?

23 A, No, there were a couple other
24 adjectives,

25 Q. What are the other adjectives?

1 A. I'm willing to bring the book in here
2 and I'm willing to tell you the number of defense
3 medicals I did and that's all the information
4 you'll get.

5 Q. All I'm asking you is if you do that
6 can I look over your shoulder and do you have a
7 problem with that?

8 A. I have a problem with that because
9 the other people, the patients in there.

10 Q. Well, what's the problem, do you
11 think I'm going to disseminate the names of the
12 patients to somebody? Why would I care about
13 that? If I give you my professional word that I
14 do that, is that good enough for you?

15 A. Yeah, really. Would you swear in the
16 witness, please? No, I mean, how would you -- I
17 guess the thing is how would you feel if anyone
18 in your career found out that you had seen Dr.
19 Brooks as a patient?

20 Q. Well, I never have seen you.

21 A. I know, but what I'm saying is, you
22 know, similar circumstances occurred and somehow
23 your name was in an oncologist's appointment
24 book, for example, and, you know, somebody found
25 out. Gee whiz, Mr. Housel's name is in doctor so

1 and so's oncologist's book, he's got cancer.

2 Do you want me to go get my
3 appointment book?

4 Q. If you let me look with you.

5 There may be a simpler way. What you
6 did in the one you gave in 1988 to Mr. Pomerantz
7 or Mr. Howell, however it came about, you
8 redacted patients' names from what I can see, In
9 other words, you covered them up,

10 A, Is that what that means, redacted.

11 Q. No, redacted means take it out.
12 You're the guy that knows all the words. Words
13 are so important, isn't that what you tell
14 people?

15 Do you want to do it that way, is
16 that what you're saying? You're saying you won't
17 let me see it, I can't read anything into the
18 record from it, take any recorded notes from it,
19 period?

20 A. Right. Do you want to go through
21 this book?

22 Q. No, I know what this book is. I'm
23 well aware of that book. So do you want to do
24 that for your last year's book?

25 A. I would go through my last year's

1 book and I will show you whatever information I'm
2 required to show you about independent medical
3 evaluations and that is all I will do.

4 Q. And I could look at it as you're
5 doing it, that's all I care about it. I don't
6 care about the names of anyone. I'm not going to
7 disseminate the names of anybody. I don't care
8 who you treated. It's none of my business. I
9 don't have any interest in it.

10 A. Okay, as long as I have your
11 professional word, then we'll do that.

12 Q. I said that about five minutes ago,
13 didn't I?

14 A. But I've learned that --

15 Q. You don't trust my professional word?

16 A. You've got to ask the same question
17 three or four times just to be --

18 Q. You don't trust my professional word,
19 is that what you're saying?

20 A. No, I trust your professional word, I
21 really do.

22 Q. Okay. Well, let's do that. Let's
23 move on because I know you like to get into the
24 medical. So let's do that towards the end of the
25 deposition, okay. Is that all right, is that

1 okay with you?

2 A. Whatever you want to do.

3 Q. All right. So that book we're
4 talking about, anyhow, that would reflect
5 information that we asked for in this subpoena
6 duces tecum that you say you never got under
7 heading number one; right, sir?

8 A. Yes

9 Q. And how about number two, do you have
10 any records of any kind, writings, material
11 evidence of any kind concerning the amount of
12 income you have received from the performance of
13 defense independent medical examinations,
14 including but not limited to charges for the exam
15 itself, review of records, preparation of medical
16 reports, depositions, live testimony, things that
17 are reflected there, 1099 forms, do you have any
18 of those records, doctor?

19 A. Excuse me, no, counselor, I don't
20 have any of those records.

21 Q. What's your accountant's name?

22 A. I don't believe I have to give you
23 that information, do I?

24 Q. I think you do. I mean, the case law
25 seems to suggest that your credibility is at

1 issue because of the amount of money that you
2 make from these defense medicals. And the case
3 law supports that.

4 But I'm just saying that's what my
5 review of it shows. Will you give me the name of
6 your accountant or not?

7 A. I'm sorry, will you repeat that, what
8 you said about case law?

9 Q' Seems to suggest that your
10 credibility as a witness is at issue based upon
11 the amount of money that you make from various
12 defense attorneys, insurance companies, what have
13 you, per year to do these independent medical
14 examinations, If that's the case, then paragraph
15 number two becomes relevant,

16 Now, having said that, and of course
17 you can agree or disagree with that, what is the
18 name of your accountant whom I know you have told
19 Mr. Barnhouse would have those records?

20 A. How do you know I would have told Mr.
21 Barnhouse that he would have those records?

22 Q. Just stands to reason that that's the
23 person since you've discussed it. He didn't
24 specifically tell me that himself, stands to
25 reason that you would have told him that.

1 A. Okay. I did not tell him that
2 because my accountant doesn't have those
3 records.

4 Q. Who would have those records?

5 A. Those records, I have a billing
6 service and the billing service does my billing.

7 Q. What's the name of the billing
8 service?

9 A. The billing service is Valley
10 Physicians, Inc.

11 Q. V A L L E Y?

12 A. V A L L E Y, yeah. Valley
13 Physicians, Inc., I think.

14 Q. Where are they located, doctor?

15 A. I don't even know their address. I
16 think it's on Granger Road, but I'm not sure,

17 Q. Is there some contact person that you
18 know of that you deal with?

19 A. The president of the company is Ron,
20 I think it's Crimes or Grimes. Crimes I think it
21 is.

22 Q. Primes?

23 A. No, Crimes, C R I M E S, I think
24 that's it.

25 Q. Well, if I understand you correctly,

1 when you did services like you did here for Mr.
2 Barnhouse's law firm or an insurance company for
3 an independent defense medical, do you use slips
4 that you keep to keep track of the time that you
5 spend on each case?

6 A. Yes.

7 Q. So when you saw Mr. Domaradzki on the
8 11th of July, after he left your office and you
9 were done spending your time on him did you write
10 up a time slip for the time you spent?

11 A. I'm not sure what ysu mean by a time
12 slip.

13 Q. Well, you've got to keep track, if
14 you're charging 350 an hour you have to keep
15 track of how much time you use, don't you,
16 doctor?

17 A, Yes.

18 Q. How do you do that?

19 A. How do I do that? On a little piece
20 of paper I write down after the end of the
21 history and the physical examination how much
22 time I've spent. And on that same piece of paper
23 as I go through the rest of the things I keep
24 track of time.

25 You're writing. Am I talking slowly

1 enough for you? Then I add it all up.

2 Q. Perfectly, doctor,

3 A. Add it all up and submit a bill and
4 throw it away.

5 Q. Who do you submit a bill to?

6 A. The bill is on a charge slip that
7 goes to the billing company.

8 Q. And that's Valley Physicians?

9 A. Yeah"

10 Q. And Valley Physicians then sends a
11 bill off to Mr. Barnhouse at his law office'?

12 A. Yes.

13 Q. Who has copies of those bills, Valley
14 Physicians?

15 A. Yeah, I would suspect so.

16 Q. You don't keep a copy in your file
17 anywhere; right?

18 A. Correct.

19 Q. Okay. What was your bill to Mr.
20 Barnhouse for services you rendered to his law
21 firm and Motorists Insurance Company in **this**
22 case?

23 A. I don't recall.

24 Q. No idea?

25 A. No idea.

1 Q. How much time did you spend on the
2 case?

3 A, bots, but I don't recall how many
4 hours.

5 Q. No idea?

6 A. I really don't.

7 Q. Okay. Would Valley Physicians, they
8 would have records of what your billing slips
9 were; is that correct, sir?

10 A. Valley Physicians would have record
11 of what the charge was. I would not allow them
12 to give you any **of** my records. Certainly if you
13 want me to find out the charge for this
14 particular matter, I'd be happy to do that.

15 Q. Well, how would you go about doing
16 that, calling them?

17 A, Yes. It's five after 5:00. I guess
18 we could even ask Mr. Barnhouse because maybe
19 he's got a bill.

20 Q. Do you have their phone number
21 readily available that you could give to us,
22 maybe we could call?

23 A. You go ahead and call them and find
24 out how much information. I mean, that would
25 really be a breach, don't you think?

1 Q. You really don't want to give us that
2 information?

3 A. No, I'm happy to give you the amount
4 of information,

5 Q. Do you remember it by heart, the
6 phone number, or are you going to get the
7 secretary to get it for us? Does she keep
8 records, copies of the billings you send to them?

9 (Discussion had off the record.)

10 Q. My co-counsel noticed -- did you
11 speed dial that number to Valley Physicians?

12 A. Yeah.

13 Q. Did you?

14 A. Pretty observant, aren't we?

15 Q. We are. What's the number?

16 A, Just like how did you get Laura
17 Brooks' last name?

18 Q. What's the number?

19 A. I don't know what the number is.

20 Q. You have it on your speed dial over
21 there.

22 A. Here, look at my phone. That's what
23 it says, valley.

24 Q. Okay.

25 A. Okay.

1 Q. All right,
2 A. Valley, that's what it says, okay.
3 Q. Do you keep copies of the --
4 A. No.
5 Q. I haven't finished my question.
6 A. No, but you asked me a minute ago
7 does any secretary keep copies. So, no, she
8 doesn't keep copies..
9 Q. When you finish your billings you
10 throw them away; right?
11 A. When I determine what the bill is
12 going to be for a particular service, I fill out
13 our charge ticket. That charge ticket then goes
14 up front and is taken by courier with all the
15 other charges to -- actually they answered the
16 phone Physician Billing, so maybe it's not Valley
17 Physicians.
18 Q. Why don't you give us then if you
19 can, can you give us the exact name of the
20 company so we don't spin our wheels? It's
21 Physician Billing. Give us a name and address so
22 we **don't** spin our wheels.
23 A. Sure.
24 Q. Okay.
25 A. I'm trying to think of --

1 Q. Do you have one of those billing
2 slips that you write up that I could have? I
3 asked him if he had one of, the billing slips that
4 he made reference to that he writes up when he --

5 (Recess.)

6 MR. HOUSEL: Back on the record.

 Q. Thanks, doctor.

 A. You're welcome, sir,

- - -

 (Thereupon, Plaintiff's
11 Brooks Exhibits 2 thru 7
12 were marked for
13 purposes of identification,)

14 - - - - -

15 MR. HOUSEL: Back on the record.

16 Q. I've had it marked as Plaintiff's
17 Exhibit 2, doctor. Do you have a copy of it in
18 front of you?

19 A. Yes, I do,

20 Q. The section of this document you gave
21 me dealing with independent defense medical exams
22 would be under the top column on the right side
23 under service where it says initial exam and
24 report, then finance and continues on down.
25 Would that be correct?

A " Yes.

Q. Nowhere else -- are there any other areas on this that would pertain to something like this case, Domaradzki?

A. No.

Q. How about medical report?

7 A, You said like this case. If the
8 thing was checked medical report, that would be
9 for a plaintiff's medical report because that's a
10 CPT code.

11 Q. So initial exam and report would be
12 on the other side there?

13 A. I'm sorry, I don't understand the
14 question.

15 Q. On the right column --

16 A. Yeah.

17 Q. .. initial exam and report, those are
18 for defense medicals; right?

19 A. Defense medicals, plaintiff's
20 medicals, any kind of one-time evaluation.

21 Q. Okay. By the way, you referred to --
22 Mr. Domaradzki is by no means a patient, is he?

23 A. No.

24 Q. All right. If I understand you
25 correctly, after you take a history and evaluate

1 Mr. Domaradzki with a physical examination, you
2 enter a price on this form and then forward it on
3 to Valley Physicians, Inc., or how did that work?

4 A. I forward it -- after I've completed
5 the entire task, the history, physical, the
6 review of records, the dictation of the report.

7 Q. And that's all 350 an hour?

8 A. Yes.

9 Q. And after you do that you then
10 forward it over to this billing service?

11 A. Yes.

12 Q. And they cause a bill to be issued to
13 the insurance company or the defense firm like
14 Mr. Barnhouse; is that right?

15 A. They cause a bill to be issued to the
16 responsible party, whoever that may be,

17 Q. Whoever that may be.

18 A. Right.

19 Q. And do you get a copy of that bill?

20 A. No.

21 Q. They don't send you a copy of it?

22 A. Do you get a copy of that bill, no.
23 They don't send you a copy that of that bill,
24 yes.

25 Q. So you don't maintain copies of those

1 for your income tax purposes, doctor; is that
2 correct?

3 A. That's correct.

4 Q. Are you a corporation?

5 A. Yes.

6 Q. So that would be income to your
7 corporation; correct?

8 A. Correct.

9 Q. And you don't have any -- your
10 accountant doesn't get copies of bills that are
11 sent **and** monies paid for your professional
12 corporation for these services, is that what
13 you're telling me?

14 A. No, my accountant only gets the sum
15 total of my income as it's reported to me by
16 Valley Physicians,

17 Q. What's your accountant's name?

18 A. I didn't give you my accountant's
19 name.

20 Q. Would you give it to me? If you
21 don't want to give it to me, just tell me you
22 don't want to give it to me.

23 A. Okay, I don't want to give you my
24 accountant's name. I'm not a party to this and I
25 don't think you should harass any people that are

1 in my employ,

2 Q. Is it going to be harassing you?

3 A. Yes.

4 Q. Is he in your employ, your
5 accountant?

6 A. He doesn't do it pro bono, so --

7 Q. Unlike Mr. Barnhouse?

8 A. That's right, Mr. Barnhouse.

9 Q. So you won't give me his name?

10 A. Correct, I won't give you his name,

11 Q. All right, How much income **do** you
12 receive a year from these defense independent
13 medical examinations?

14 A. I don't know.

15 Q. You have no idea?

16 A. No, I don't,

17 Q. No guess, you can't give me an
18 estimate?

19 A. No.

20 Q. How much did you make last year
21 total?

22 A. My professional income?

23 Q. Yes.

24 A. I don't know.

25 Q. How much income did your professional

corporation receive in the year 1996?

1

2

A. I don't know.

3

Q. You don't have any idea?

4

A. I don't have any idea.

5

Q. How about 97?

6

A. I don't know.

7

Q. Okay, Do you get 1099 forms ever
sent to you?

9

A. Yes.

10

Q. What are they for or do you
understand what they are for?

11

12

A. I understand what they are for, yes.

13

Q. What are they for?

14

A. Those are forms that various payors,
people for whom I have provided service, indicate
the amount of money that they have paid my
corporation -- well, I don't even know that it's
my corporation or me -- during a calendar year.

19

Q. Well, you don't get paid directly
individually the monies, like for performing a
defense medical like this, do you, sir?

22

A. No, I don't. I don't get paid
individually, the corporation gets paid.

24

Q. The corporation gets paid?

25

A. Yes.

1 Q. All right. And your accountant would
2 have records of how much the corporation gets
3 paid per year; right, sir?

4 A. Yes.

5 Q. All right, And Valley Physicians
6 would also have those records; is that right?

7 A. Yes.

8 Q. Anytime you've performed a service
9 you send one of these billing forms that you've
10 been kind enough to give me a copy of off to this
11 Valley Physicians?

12 A. Yes.

13 Q. Whatever the service might be?

14 A. Yes.

15 Q. All right. And you write the name
16 of -- what do you write on this? Do you write
17 the name of the patient or do you write the
18 company that you're doing the work for, I mean,
19 how do you do that?

20 A. Well, for example, Mr. Domaradzki's
21 chart it says 1833, okay. So that's Mr.
22 Domaradzki's account number. And I would write
23 down Stanley Domaradzki, the account number.

24 Just like, so I don't offend anybody,
25 since we haven't given you an account yet, whose

1 name do I put on this so that I can send this
2 over, you know, to Valley? I have to post a
3 charge for today's depo. I haven't done that
4 yet, okay.

5 Q. You've already been paid for it. I
6 don't know that you have to send them anything.
7 I mean, do you? You have the check right there
8 made out to you, or is it to your corporation by
9 the way?

10 A. You were nice enough to make it out
11 to me, but I'm just an employee of the
12 corporation.

13 Q. Right, You didn't ask us to make it
14 out to the corporation though, did you?

15 A. I didn't ask you to make it out to
16 anybody in particular,

17 Q. All right, If I came in off the
18 street and made an appointment to see you for an
19 orthopedic consult, what would you charge me?

20 A. Depends upon really the nature, the
21 nature and extent of your problem.

22 Q. Let's assume I **had** a sprained ankle
23 from playing tennis and I came to see you, made
24 an appointment, came in to see you for an office
25 visit, you talked to me, you examined me. What

1 would you charge me?

2 A. If it took me about a half hour, I
3 would charge you \$175.

4 Q. What if I took you an hour?

5 A. Roughly 300, \$350.

6 Q. That's what your hourly charge is
7 whether you do this kind of work or whether you
8 see a patient?

9 A. Yes, that's -- yes.

10 Q. How come it's a hundred more for
11 somebody to take your deposition?

12 A. Because I try to be fair. During the
13 period of time that we're doing a deposition
14 that's all I'm doing.

15 When I'm reviewing records, when I'm
16 dictating a report, there could be a million
17 interruptions for short periods of time. Well,
18 rather than keeping a stopwatch, turning it on
19 and off, on and off, on and off, okay, I've been
20 doing this thing for an hour, maybe I only spent
21 53 minutes of that hour, that's the reason.

22 Q. That's the reason it's more
23 expensive?

24 A. Correct.

25 Q. Can you get me a complete list of

1 charge that you performed for Mr. Barnhouse in
2 this case?

3 A. Sure.

4 Q. And who paid the bill, Motorists or
5 Mr. Barnhouse's law firm?

6 A. I don't even know that it's been
7 paid.

8 Q. How does the bill get paid, the money
9 gets sent to Valley Physicians or sent here to
10 your office?

11 A. No, the money gets sent to Valley,
12 should get sent to Valley.

13 Q. And then they log it in somehow?

14 A. I'm a terrible businessman, but I
15 assume they log it in somehow and that's it.

16 Q. Do you have any sign-in sheets that
17 you keep at the front desk reflecting daily
18 appointments, doctor?

19 A. I'll just write a note you want the
20 total charges that have billed.

21 Q. That was item four in the subpoena
22 that you say you never got

23 A. Are you implying that I'm lying?

24 Q. No.

25 A. Yes or no?

1 Q. No.

2 A. No, okay. So why these snide
3 remarks? You're trying to get my goat, yes.

4 Q. Seems I'm succeeding, too, doesn't
5 it?

6 A. No, because I can play the game just
7 as well as you can play the game.

8 Q. You like playing the game. So that's
9 what you consider this whole event to be, don't
10 you, it's a fencing match between you and a
11 plaintiff's lawyer; isn't that right?

12 A. No. What I consider to be a game is
13 your snide, sarcastic remarks.

14 Q. Well, look, you had this for some
15 time now and you did absolutely nothing to comply
16 with it at all; isn't that right?

17 A. That is correct.

18 Q. Okay. Kind of speaks for itself,
19 doesn't it?

20 Now, do you have any sign-in sheets,
21 records **of** any kind that you keep at the front
22 desk reflecting daily appointments with people
23 that you see?

24 A. I have an appointment book.

25 Q. That's the only thing you have? **If**

1 somebody calls in your secretary doesn't write
2 down a time and a day for an appointment; is that

3

4 A

5 Q

6 A. Yes.

7 Q

8 appointment book?

9 A No

10 Q

11 it's all about in the appointment book; is that
12 right?

13 A Yes

14 Q

15 kind used to reflect scheduling of appointments
16 for you; is that right, sir?

17 A. Correct.

18 Q. Item six, the computer printout, if
19 there were such items they would be with Valley
20 Physicians, Incorporated; is that right?

21 A. Yes.

22 Q. And you can't remember the names of
23 any other insurance companies or law firms that
24 you performed independent medical examinations
25 for other than those you've given me?

1 A. We didn't discuss law firms. We only
2 discussed --

3 Q. Well, Hentemann is a law firm, isn't
4 it? I mean, isn't it, doctor, or am I wrong
5 about that?

6 A. Yeah, Hentemann is a law firm.

7 Q. Okay, fine, His haw firm is a law
8 firm, Barnhouse, isn't it?

9 A. Right.

10 Q. Gallagher Sharp, done any for them?

11 A. Yes.

12 Q. That's a defense law firm, isn't it,
13 sir?

14 A. Yes.

15 Q. All right. How about Weston Hurd
16 where your friend and mine Deirdre Henry works?

17 A. Yes.

18 Q. You do defense medicals for them?

19 A. Yes.

20 Q. Any others besides those, if that
21 makes it easier for you, other than those that
22 you do defense medicals for?

23 A. McNeal Schick, I just drew a blank.
24 Whatever Ron Rollins --

25 Q. Roy Fallon?

1 A. Yeah, whatever his law firm used to
2 be.

3 Q. Nationwide, we talked about their
4 house counsel, Marillyn Fagan Damelio?

5 A. Right.

 Q. Do you do Allstate at all, doctor?

7 A, I don't know, counsel. I honestly
8 don't know whom these people represent. Reminger
9 and Reminger.

10 Q. Okay, that's a defense firm; right?

11 A. Yes, Are you asking me all law firms
12 or just defense firms?

13 Q. Defense firms.

14 A. That's what I thought.

15 Q. All the ones you mentioned have been
16 defense.

17 A. Right. But I'll mention plaintiff's
18 firms if you want, but I didn't think that was
19 your question. That's all I can think of right
20 now.

21 Q. Okay. Making a note to yourself for
22 something?

23 A. Just doodling.

24 Q. Can you give me the history that you
25 took from Mr. Domaradzki?

1 A. The written history?

2 Q. Yeah.

3 A. I thought that's what you meant.

4 It's just a matter of semantics.

5 Q. It's in that stack right there.

6 A. Right. I'm going to give you the
7 whole thing.

8 Q. I appreciate it, I didn't think
9 you'd give me anything less than the whole
10 thing.

11 A. You asked me for the history. The
12 physical is in there, too, that's why I said I'm
13 going to give --

14 Q. Could *you* make me a copy?

15 A, Absolutely,

16 Q. I'm going to have it copied and then
17 have you read it into the record,

18 MR. BARNMOUSE: Can I get a copy of
19 that?

20 A. Would you like a copy, too, in case I
21 talk too fast? Off the record.

22 (Recess.)

23 - - - -

24 (Thereupon, Plaintiff's

25 Brooks Exhibit 8 was marked for

1 purposes of identification.)

2 - - - - -

3 MR. HOUSEL: Back on the record.

4 Q. I'll ask the doctor to read from what
5 he took as a history from Mr. Domaradzki in the
6 document marked Exhibit 8.

7 Go ahead, doctor, would you read that
8 into the record?

9 A, I just need some clarification,
10 please. Do you want me to read verbatim, which
11 means, you know, all my abbreviations, or do you
12 want me to read my interpretation of what my
13 abbreviations and everything are as if I were --
14 or as if I were dictating it? Tell me how you
15 want it.

16 Q. Read exactly what it says on there.

17 A. Okay, all right.

18 7-11-97, Domaradzki, House1 -- I
19 apologize it's misspelled -- Seidell, 57,
20 8-24-94. DVR, moving dump truck, quote, hit me
21 three times.

22 Q. Let me stop you for a second, I
23 apologize. DVR means?

24 A. Driving.

25 Q. Sure.

1 A. Do you want me to interpret it?

2 Q. Please.

3 A. All right. That's what I was
4 asking. Driving, moving dump truck, hit me three
5 times, quote. In quotes, on the back, he pushed
6 me and got hit by electric pole on trunk of
7 passenger side on the left side on my door, dash,
8 rest. I don't recall that, what that means.

9 Then in parentheses, began crying,
10 quote. He always acts this way, H, meaning Mr.
11 Housel, close parenthesis.

12 Hit my head on neck support on seat.
13 I don't know, he dragged me 600 feet, separated
14 from truck. Went 560 feet and stopped on grass.
15 I was shaky. I was scared, Ambulance to St.
16 Alexis overnight for observation.

17 Head, neck, upper back, bottom,
18 parentheses, buttocks, both legs. Didn't go
19 right away because my car was totalled out.
20 Bellingham, chiropractor, **My** first choice
21 because was closer. Tingling, machine, heat, two
22 times a week, approximately three months.
23 Reexamined two times.

24 Approximately December 1994 Parma
25 Hospital, quote, I wasn't feeling good so I go to

1 PT, close quotes. Same way, approximately three
2 months.

Approximately 19 -- or approximately
95, 1995, Mann, question mark. That was in
response to who referred him to Dr. Mann. I
can't remember, His special -- he's specialist.
Dr. Mann referred Mr. Domaradzki to Dr.
Rodriguez, a psychiatrist. Few times and she
gave me medicine for, quote, my stress, unquote,
several Limes.

11 Nemunaitus, can't remember. Quote,
12 specialist in that area. Did physical therapy in
13 his office for, quote, couple of months,
14 unquote, April 95, ironworker. Quote,
15 everything, unquote. Quote, in field, in the
16 shop, on crane, cherry picker, on floor, on the
17 roof, worked approximately three months.

18 Poor historian, soft spoken. Poor
19 recall of details. Doesn't answer questions.
20 Nonspecific. Question mark when. Broke my rib,
21 right side. Standing on ground, pulled heavy
22 chain, loading material. When looked up, got
23 dizzy, fell on heavy, I don't know, pile maybe,
24 something.

25 Q. You don't know what that says?

1 **a.** No, today I don't,

2 **Q.** All right.

3 **a.** Laying on floor. Hit sharp edge and
4 chest. Taken to St. Vincent, x-rays, broken rib,
5 home. Did not injure anything else. Quote,
6 there is no treatment for this. Take it easy and
7 use elastic belt, unquote,

8 Went back Dr. Mann. Quote, I wasn't
9 feeling good so I couldn't return to work.
10 Everything was bad, Won't answer regarding
11 treatment, Nemunaitus, re, quote, referred me to
12 doctor who performed surgery, parenthesis, H, Mr.
13 Housel, dash, Itani, close parenthesis.

14 August 28th, 1996 or 1995, quote, a
15 lot of times. I forget my phone number. Because
16 of the accident I'm stressed inside, sometimes I
17 forget things. I'm in pain all the time. Itani,
18 Euclid, took two disks out. They drill out. **Go**
19 from the front, parenthesis, points to his neck,
20 close parenthesis.

21 In hospital, quote, not very long,
22 dash, overnight. I was in intensive care, close
23 quotes.

24 MRI, other tests, I can't remember.
25 X-ray, too. Before surgery, quote, I don't feel

1 good. I had pain all over, close quotes. Quote,
2 neck, head, both arms, both legs, close quotes.

3 Continued with Itani. Quote, right
4 after the surgery I don't feel pain. Day by day
5 it got worse and worse, close quotes. Quote, got
6 sharp, shooting, pinching, tearing, squeezing in
7 my neck, go to my head, my arms, my legs, my
8 seat, close quotes.

9 What did he do, quote, what can be
10 done. Last saw Itani, quote, last year sometime,
11 close quote. No additional surgery, no
12 hospitalization, no other doctors. Itani to
13 Kriegler, Mr. Housel, Can't remember. Pain
14 management. Prescribed me swimming, pulling,
15 stretching, lifting, stuff like this to get
16 better couple months ago. No other doctors,

17 Now, the main problem is in my neck,
18 that's a quote. Quote, I got all kinds of pain,
19 very bad, close quotes. Quote, getting worse.
20 It's more now. Parenthesis, same type, asked,
21 close parenthesis. Quote, on the back of my
22 neck, unquote. Quote, constantly, unquote.
23 Increase, quote, I can't do anything. Even when
24 I read the paper, close quotes. Decreases,
25 nothing.

1 Head, quote, sharp, shooting,
2 pinching, cutting, you name it, close quotes.
3 Quote, all over, unquote. Points to several
4 areas. Quote, every day, 'day in, day out, close
5 quotes. Decreases, quote, when I go to sleep I
6 sleep maybe four hours. When I get up sometimes
7 I feel better, sometimes not, close quotes.

8 I don't know, it says H asked
9 question. I don't have a recollection what that
10 means. No, medicine, quote, pain killer,
11 unquote. Eased a little. Don't remember.
12 Increases, quote, I can't do anything, close
13 quotes. To my butt, both, quote, burning pain,
14 unquote. Quote, I got pinched nerve, soft tissue
15 problem. It's shooting going here, going there,
16 arms, legs, close quotes.

17 I got tingling, numbness, not the
18 same, they all the time, Could be one finger,
19 all the fingers, the other arm. Quote, sometimes
20 like a razor cut or pinching like a needle, dash,
21 both legs. It says V negative, Valsalva's
22 negative. Urine, no bowel or bladder.

23 Quote, when I walk, drag one leg or
24 the other or both. Almost every day. Sometimes
25 sharp pains behind my knees. Quote, no -- knee,

1 regarding the knee injury. Quote, lately,
2 unquote, walking in house after getting out of
3 bed approximately 8 feet fell, because had no
4 feeling, no injury, Go back to bed. Quote,
5 suddenly I lose power in my legs, close quotes.
6 Was sitting on edge of bed, couldn't straighten
a knee, used hands.

8 Past history, neck, no symptoms.
9 Back, I have pain sometimes because we have all
10 kinds of jobs, sometimes too hard, unquote.
11 Maybe one year before had PT, hot pillow and
12 massage, the same chiropractor.

13 Quote, I don't have a back problem
14 now, unquote. At the time of the accident,
15 **quote**, I was okay, unquote. I had finished, Arm
16 symptoms, head, quote, upper back pain, unquote.
17 And had treatment, quote, everything was okay,
18 unquote, from the chiropractor. No leg
19 symptoms.

20 Approximately a year before driving a
21 truck, quote, scratched my car. That's why I go
22 to chiropractor, January of 1997 driver stopped,
23 hit from behind, Quote, no damage on the car. I
24 didn't get injured, unquote. But went to Parma
25 Hospital for, quote, x-ray, unquote. Don't show

1 nothing. Just make sure, close quote.

2 No other prior on or off, no
3 subsequent on or off. Working December 31st,
4 1996, retired. Quote, because I can't work,
5 unquote.

6 Past medical history, high blood
7 pressure, medication, high blood pressure.
8 Stress, Prozac once a day, period. At night pain
9 killer. Had not taken any on the date of this
10 examination. Operations, gallbladder, no
11 others.

12 Protuberant abdomen. Five foot four,
13 195 pounds. Up without a step stool, down
14 without a step stool. You look at me, inside I
15 have pain. Neck, transverse right scar. When I
16 swallow something in the way. Tenderness to the
17 lightest of palpation. The right side of the
18 neck, tenderness the lightest of palpation.
19 Posteriorly, EMG on the left, both trapezii,
20 right and left, Lateral rotation, 50/50, right
21 and left lateral bending 50/50. All six
22 painful.

23 Abduction, 140 degrees, forward
24 flexion, 160 degrees, external rotation, 60
25 degrees. Internal rotation to T12, horizontal

1 flexion complete. Abduction and forward flexion,
2 has pain in his neck and trapezius, impingement
3 signs are negative. Shoulder girdle strength is
4 normal, Thoracic spine, nontender. Lumbosacral
5 spine, nontender, full range of motion. Heel and
6 toe walking, normal.

7 Phaleus, pain in his neck and
8 shoulders, Tinel's at the elbow, negative,
9 slash, negative. Tenil's at the wrist, electric
10 like feeling, four fingers bilaterally. Muscle
11 strength in reflexes are normal. Half man's,
12 negative bilaterally. Decreased perception,
13 light touch, nondermatomal pattern. Right arm,
14 increased perception, pin prick, right arm
15 nondermatomal pattern, but hardly feel right
16 little and left little.

17 Quads, hams, four/five, others
18 five/five without difficulty. Sitting straight
19 leg raising, 90/90. Tripod negative. Pin prick,
20 decrease, nondermatomal pattern on the right.
21 Reflexes okay. The Babinski reflexor, supine,
22 straight leg raising, 80/80. Complaints of neck,
23 shoulder, actually trapezius, buttock pain, also
24 on the right hamstring pain, the left, negative.

25 Q. Thank you.

1 A. You're welcome.

2 Q. You indicated in your medical report
3 that Mr. Domaradzki in general was a poor
4 historian, What do you mean by that, page five?

5 A. Thank you. I tried to explain that.
6 He had a poor recall of the events that had
7 occurred between the time of the accident and the
8 time of my examination. On some occasions he
9 would not answer the questions that I asked and
10 on other occasions gave me nonspecific replies.

11 Q. That's not really a criticism, is it,
12 doctor? You really don't know why he was as you
13 characterize a relatively poor historian?

14 A. No, sir. It was not a criticism, it
15 was an observation,

16 Q. You don't know why he had this poor
17 recall?

18 A. Well, he explained to me, as I
19 indicated a minute ago, that he had a lot of
20 stress, that that was one of his explanations,

21 Q. So he explained he had problem with
22 memory, **did** he?

23 A, Yes, because of his stress he said.

24 Q. Some of the records reflected he had
25 problems with memory since this accident; isn't

1 that true?

2 A. Yes.

3 Q. In fact, in the accident itself he
4 said he struck his head on part of the inside of
5 his vehicle; isn't that correct?

6 A. In some of the records, there is an
7 occasion in some of the records I believe, May I
8 just interject something, please?

9 Q. Sure, sure.

10 A, And I apologize, because I noticed a
11 typographical error and I want you to believe
12 that it's a typographical error,

13 On the first page, oh, in the last
14 full paragraph it says he dragged me 60 feet.
15 Mr. Domaradzki told me 600 feet, okay. And
16 another typographical error, and I didn't read
17 this thing, you know, all the way through today,
18 but let me find this one.

19 Okay. On page eight, in the last
20 full paragraph, the second sentence, very
21 critical -- no, I'm sorry, third sentence, it
22 says there were no abnormal findings **on** physical
23 exam. That's incorrect. There were no abnormal
24 neurological findings on physical exam.

25 Q. That is pretty significant.

1 A. Right. And I apologize. And it was
2 a typographical error.

3 Q. Did you use that, was that one of the
4 things that you used in formulating your opinion
5 in this case?

6 A. One of -- now, I want to be very
7 specific in my answer. One of the things that I
8 used in formulating my opinion in this case was
9 that there were no abnormal neurological
10 findings, not that there were no abnormal
11 findings. There were lots of abnormal findings.

12 Q. There were abnormal neurological
13 findings in this case, too, were there not?

14 A. At certain points in time, I'm
15 referring to the first time Dr. Yosowitz examined
16 Mr. Dornaradzki,

17 Q. On that page where you made the other
18 corrections, the first page --

19 A. Yeah.

20 Q. -- he told you that he hit his head
21 on the neck support of the seat, right? Last
22 paragraph, first sentence.

23 A. Yes.

24 Q. And he also said he didn't know
25 whether he was rendered unconscious, didn't he?

1 A. Yes.

2 Q. And in fact the records don't reflect
3 one way or the other whether he was rendered
4 unconscious in this accident, do they?

5 A, I can't -- I don't have a
6 recollection. It's been over a month since I saw
7 him. I'd have -- I mean, I'd be happy to sit
8 here and go through some of the records. I just
9 can't answer it.

10 Q. You don't know?

11 A. I don't recall. I could find it in
12 the records but --

13 Q. Well, I looked through them all
14 carefully. I've got a big, I don't know, you
15 probably don't want to trust my recollection to
16 review, because I reviewed them all a couple
17 times, It's unclear whether or not he sustained
18 a loss of consciousness. That's what I see. No
19 one says he did, no one says he doesn't. And he
20 told you he didn't know; correct?

21 A. Correct, that's what he told me.

22 Q. Is that your recollection, if you
23 have one, that there isn't anything definitive in
24 the records that say whether he did or did not
25 sustain a loss of consciousness?

1 A, No, my recollection is that there is
2 something, an indication somewhere that there was
3 no loss of consciousness. Now, I can try to find
4 that for you.

5 Q. Yeah, if you can do it without a
6 great degree of difficulty, why don't you do
7 that?

8 A. Okay. And if I can't, I'm not going
9 to spend a lot of time, as you suggested., But
10 I'm looking at the discharge summary from St.
11 Alexis.

12 Q. That's what I was looking at.

13 A. It says he did not recall hitting his
14 head and he was not quite sure if he sustained a
15 loss of consciousness. I do know that one of my
16 opinions is that he had a cerebral concussion
17 without loss of consciousness.

18 Q. That's why I asked you the question.

19 A. I wouldn't have made that without
20 some substantiation,

21 Q. Well, find it then, if there is some
22 substantiation that would allow you to say that I
23 would like you to find it. I didn't find it
24 anywhere, any medical record. I've got a lot
25 more than you do on this gentleman, so --

1 A. Okay, all right. It's now 6:00
2 o'clock and I just want to have an understanding
3 of what we're going to do from here on in terms
4 of my discovery deposition. and my charges for the
5 record.

6 Q. You will be paid whatever your fee
7 is. We're not going to -- I mean, anytime I've
8 ever taken your deposition whatever your fee is
9 you've been paid it, have you not?

10 A. I don't recall you taking my
11 deposition other than, you know --

12 Q. You don't recall Leonard Vanillo
13 obviously, but I took the deposition for
14 somewhere around four hours and you were paid for
15 all your time. We intend to pay you, doctor,
16 rest assured you will be paid for your time. Is
17 that okay with you?

18 A. Yes.

19 Q. Okay, then go ahead.

20 A. Thank you.

21 Q. You're welcome.

22 A. Okay.

23 Q. Did you find it?

24 A. I found it.

25 Q. What did you find?

1 A. St. Alexis Hospital Medical Center.

2 Q. I got it,

3 A. Okay. Emergency room sheet. Time
4 in, 7:20. 54-year-old white male, restrained,
5 truck driver in motor vehicle accident, negative
6 loss of consciousness.

7 Q. Okay, is that where you found it that
8 allows you to put in without loss of
9 consciousness in your medical report?

10 A. That's the only one that I can find
11 at the present time. Sorry, Just found another
12 one, okay. Next page, St. Alexis Hospital
13 Medical Center, it says nursing assessment,
14 triage, admission transfer, nurse's notes, okay.
15 Patient denies loss of consciousness. But in the
16 middle of the nurse's notes thing, about the
17 middle of the nurse's notes thing, do you see
18 it?

19 Q. You would agree with me that those
20 are different. And you don't know what caused a
21 person to write on the first page there where
22 there is a minus LOC, you don't know what caused
23 that person to write that in there, correct,
24 whether that's an observation or whether they
25 were actually told that by Mr. Domaradzki?

1 A. I wasn't there, I don't know that
2 But my familiarity with working in a hospital,
3 that's history that somebody received. That was
4 prepared after the accident. Obviously they
5 weren't at the scene, so somebody took a
6 history. That's the emergency room physician's
7 history, it says negative loss of consciousness.

8 There is one more reference, too, Mr.
9 Housel, on the next page that I have, which is
10 St. Alexis Hospital Medical Center, it says
11 medical history on the top, denies loss of
12 consciousness.

13 Q. Well, what else does it say, but not
14 sure of entire sequence of events?

15 A, Correct, **but** it says denies loss of
16 consciousness.

17 Q. So there is conflicting evidence as
18 to whether or not he had loss of consciousness;
19 isn't that correct?

20 A. Yes.

21 Q. Even though it's conflicting you
22 concluded that he didn't lose consciousness;
23 correct?

24 A. Yes.

25 Q. When you get a history -- strike

1 that. The history that Mr. Domaradzki gave you
2 that you read into the record a few minutes ago,
3 do you have any reason to disbelieve any of the
4 things that he told you?

5 A. No, I don't have any reason to
6 disbelieve anything that Mr. Domaradzki told me,

7 Q. Doctor, what do you know about how
8 this accident happened?

9 A. I don't know anything about it other
10 than what Mr. Domaradzki told me and there are
11 references to the accident, you know, in the
12 records. But --

13 Q. Did you ever see a police report in
14 this case?

15 A. No.

16 Q. Would it be important for you to know
17 before you do your evaluation of Mr. Domaradzki
18 what kind of trauma his body sustained in this
19 accident?

20 A. No, not before I do my evaluation.
21 I'm sorry, what do you mean **by** the word
22 evaluation?

23 Q. Well, before you review medical
24 records, take a history, perform a physical
25 examination and write a medical report arriving

1 at certain conclusions and opinions.

2 A. I'm not trying to be wise.

3 Q. No, I understand, you're not being.

4 A. I'm just trying to understand.

5 a. I understand. I know words are the
6 important thing, you and I have had that
7 discussion before.

8 A, That's all we have to deal with,
9 right?

10 Q. Right, right.

11 A, No, it's not important to know
12 beforehand. I mean, I think that my approach has
13 always been take the history from the individual,
14 do the physical examination and then review the
15 records.

16 Q. My question was really at any point
17 in time either beforehand or after, isn't it
18 important **for** you to know how the accident
19 happened so you can discern what kind of trauma
20 his body underwent in the vehicle at the time the
21 accident occurred?

22 A. It is important to some extent. As I
23 see my role, that's why I say to some extent, is
24 to determine what injuries he sustained and
25 certainly having some understanding of the

1 mechanism. But also the records explained what
2 happened subsequently. And that's to me what's
3 important.

4 Q. And why is it important to know that
5 information?

6 A. Oh, because I wasn't there.

7 Q. Right. And it would be important to
8 you to know what part of his body struck what
9 object or what portion of the interior of his
10 vehicle, would it not?

11 A. No, because let's say his right knee
12 struck, I don't know, the gear shift lever, but
13 if he has no complaints or no injuries it's
14 really not important to know that,

15 Q. But, right, but you need to know what
16 portion of the body struck what items, whatever
17 they may be, in order to help you in determining
18 whether he sustained injury to that portion of
19 his body as a result of a trauma from the
20 accident; isn't that right, doctor?

21 A. No, it's not right, because the
22 records that describe his treatment afterwards
23 will describe what injuries he sustained
24 regardless of what portion of his body struck
25 what parts of the vehicle.

1 Q. Is that always the case? **If** someone,
2 let me give you an example, if someone strikes a
3 portion of their body in a motor vehicle accident
4 and doesn't immediately have a problem with it,
5 then all of a sudden a day or two or week later
6 they have a problem with it, wouldn't that become
7 important for the doctor to know what happened in
8 the accident so he could use that information to
9 give an opinion as to what injuries were
10 sustained?

11 She'll read it back for you if it got
12 too convoluted.

13 A. Yes, would you?

14 (Record read.)

15 A. The doctor being the treating
16 physician?

17 Q. Yeah.

18 A. Yeah, he needs to know from the
19 patient, yes, if the part that he is complaining
20 about contacted some other part, something in the
21 vehicle; correct.

22 Q. You would need to know that, too,
23 would you not, in this case?

24 A. I would need to know that, yeah, if
25 it were relevant.

1 Q. Was it important and relevant to you
2 that he hit his head on the neck support on the
3 seat?

4 A. It was something that he told me so
5 I, therefore, recorded it. And it is a very
6 common occurrence in automobile accidents.

7 Q. Well, I guess the question was really
8 would that be something that would be important
9 to you in your evaluation of Mr. Domaradzki?

10 A, I would take it into consideration.

11 Q. Did you in this case?

12 A. Yes.

13 Q. All right. Did you know how fast his
14 vehicle was going?

15 A. No.

16 Q. Do you know how fast the dump truck
17 that ran into the rear end of him was going?

18 A. No.

19 Q. Do you know how many items his
20 vehicle struck before finally it came to rest?

21 A. He told me the electric pole, then
22 his car was hit by the truck again, I think. So
23 there were at least -- at least three impacts
24 from what I understand,

25 Q. Okay. And isn't there a direct

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A. No.

Q. Well, you were never provided with a police report or any photographs of this accident by Mr. Barnhouse, were you?

A. That's correct.

1 Q. All right. Before this accident ever
2 occurred you've stated in your medical report
3 that Mr. Domaradzki had no problems with his
4 neck; isn't that correct?

5 A. No, sir, what I stated in my medical
6 report was that Mr. Domaradzki told me that he
7 had no problems with his neck before the
8 accident. That was --

9 Q. Okay. And you told me that you had
10 no reason to disbelieve that; correct?

11 A. At the time that I took or at the
12 time Mr. Domaradzki gave me his history, I had no
13 reason to disbelieve him.

14 Q. Do you now have a reason to
15 disbelieve him?

16 A. Yes.

17 Q. Tell me what that is.

18 A. The reason that I have to disbelieve
19 him is page seven.

20 Q. Of your report?

21 A. Of my report on August 9th, 1994,
22 three weeks before the accident Mr. Domaradzki
23 complained of chest pain, bilateral upper
24 extremity numbness and left leg numbness.

25 Dr. Cutarelli indicated the patient

1 was concerned, quote, that he might have a brain
2 tumor or arthritis in the neck causing the
3 symptoms. Then radiographs of his neck were
4 obtained and they showed a preexisting problem
5 that he had.

6 a. Anything else that you have that
7 would tell you that Mr. Domaradzki wasn't giving
8 you -- I'm sorry, that you had any other
9 information relative to the neck other than what
10 you've told me before the accident other than
11 that segment you read that supposedly he said to
12 Dr. Cutarelli?

13 A, Yes, that was the only indication in
14 the records of neck complaints and subsequent
15 evaluation of neck complaints before the
16 accident.

17 Q. No other evidence of the neck problem
18 other than that; correct?

19 A. Right.

20 Q. All right. And you're saying that a
21 complaint of bilateral upper extremity numbness
22 is a complaint of neck pain?

23 A. I'm sorry if I misspoke. I'm saying
24 that the complaint of bilateral upper extremity
25 numbness comes from a condition in the neck.

1 Q. I'm sorry, comes from a condition
2 what?

3 A. Cervical spine conditions can cause
4 bilateral upper extremity numbness,

5 Q. Other things can cause that, too,
6 can't they?

7 A. Several other things.

8 Q. You don't really know what led him to
9 make that complaint on August 9, 1994, do you?

10 A. No, I really don't know,

11 Q. Okay. And the left leg numbness
12 would have nothing to do with a problem in the
13 neck, would it?

14 A, In general, no,

15 Q- Okay. And the fact that the way I
16 read your medical report here at page seven, Dr.
17 Cutarelli indicated that the patient was
18 concerned that he might have a brain tumor or
19 arthritis in the neck causing these symptoms.

20 That's really of no value to you, is
21 it, your evaluation in this case, what he might
22 think he has?

23 A, Yeah, it's -- it's important in my
24 evaluation. If Mr. Domaradzki was concerned that
25 he had arthritis in his neck that was causing his

1 symptoms then, of course, that would be
2 important.

3 Q. Yeah, but he's not a doctor. No one
4 made that diagnosis in any of the records that
5 you received, did they, Dr. Brooks?

6 A. Arthritis in his neck, yeah, I
7 believe they did. The radiographs obtained on
8 August 9th, 1994 certainly showed arthritis,

9 Q. There is no question he had arthritis
10 or problems with his neck preexisting the
11 accident. The question is do you have any -- I
12 guess the ultimate question is do you have any
13 evidence other than what you just told me to
14 suggest that he was in any way symptomatic
15 relative to his neck prior to this automobile
16 accident?

17 A. No. The only evidence that I have
18 that I believe he was symptomatic with respect to
19 his neck was the bilateral upper extremity
20 numbness that he had complained about three weeks
21 before the accident and his own concern about,
22 and these were apparently his words, arthritis in
23 the neck.

24 Q. You don't really know for sure they
25 were his words, do you?

1 A. Well, may I just check something?

2 Q. Sure.

3 A, If I can find it. I believe your
4 question was do I know if these were Mr.
5 Domaradzki -- I'm sorry, would you repeat the
6 question back, please?

7 (Record read.)

8 A. The answer is, no, I don't know for
9 sure that those were his words.

10 Q. That's just your interpretation of
11 the 8-9-94 office note of his visit with Dr.
12 Cutarelli; correct?

13 A. Correct.

14 Q. Did you ever call Dr. Cutarelli to
15 ask him about what he may have Learned when he
16 met with Mr. Domaradzki on that date?

17 A. No.

18 Q. Any particular reason why you
19 wouldn't do that?

20 A. Yes. That's not anything that I've
21 ever done. There is no reason to do that.

22 Q. Okay. Well, the reason to do it
23 might be to verify whether or not in fact he had
24 a legitimate complaint of pain in his neck based
25 on what your opinions are in this case, wouldn't

1 that be correct?

2 A. I believe that the records speak for
3 themselves. There is an indication that he had
4 complaints that his treating physician felt were
5 related to the cervical spine. He ordered
6 cervical spine films.

7 Q. And they showed degenerative changes;
8 correct?

9 A. Correct.

10 Q. He was working full-time before this
11 accident, wasn't he?

12 A " Yes.

13 Q. You don't have any evidence to
14 suggest he was having the kind of problems that
15 would lead him to be either unable to work or
16 unable to conduct his normal daily business?

17 A. I don't have any evidence about his
18 employment record. I don't know how much time he
19 missed work before the accident. He certainly
20 had a myriad of complaints that he was being
21 treated for before the accident.

22 Q. No, the question was, maybe you
23 misunderstood me, do you have any evidence to
24 suggest that Mr. Domaradzki was unable to work
25 prior to the accident of August 28th of 1994

1 because of problems with his neck?

2 A. No.

3 Q. Do you have any evidence to suggest
4 that the degenerative changes or the arthritis in
5 his neck that we just talked about in any way
6 prevented him from living a normal life including
7 working and doing things we all normally do prior
8 to this accident?

9 A. I don't have any evidence, no.

10 Q. Okay. So you will agree with me,
11 would you not, that the radiographic, which is
12 the term you used, evidence that you reviewed
13 prior to the accident showed degenerative changes
14 in various disks in his neck?

15 A. Yes.

16 Q. All right. Which is not unusual for
17 a man of age 55; correct?

18 A. Not unusual, men age 55 have those
19 changes, I don't know what percentage.

20 Q. A lot of people have those changes at
21 age 55 and they are totally asymptomatic;
22 correct?

23 A. In my experience somebody with as
24 much narrowing of the C5-6 interspace that was
25 demonstrated on the radiographs is generally not

1 asymptomatic.

3 show that he was anything other than
4 asymptomatic, do you?

a A. The Cutarelli report; correct.

8 Q. And that really according to Dr.
9 Cutarelli could have been attributed to a number
10 of different factors; correct?

11 A. I don't believe Dr. Cutarelli made a
E2 diagnosis or attributed it to anything. He did
13 some investigation,

14 Q. Well, it says under the comment in
15 the 8-9-94 office visit that Mr. Domaradzki is
16 concerned about the possibility of a stroke and
17 would like to have tests to exclude that his
18 arteries are blocked. He is also concerned that
19 he might have a brain tumor or arthritis in the
20 neck that is causing him that pain. Did I read
21 that accurately?

22 A. Yes.

23 Q. So Mr. Domaradzki doesn't really seem
24 to know what it is, does he, brain tumor,
25 arthritis, number of different possibilities,

1 stroke; correct?

2 A. Mr. Domaradzki?

3 Q. Correct.

4 A. Correct.

5 Q. The doctor is just repeating what Mr.
6 Domaradzki's guesses are as to what his medical
7 problems are; isn't that right?

8 A. Correct.

9 Q. And there is nothing in that note
10 that gives you any medical diagnosis that says
11 that he has a problem with his neck, is there?

12 A. There is no medical diagnosis;
13 correct.

14 Q. All there is is what you have
15 construed to be what Mr. Domaradzki told Dr.
16 Cutarelli in that August 9th, 1994 office visit;
17 correct?

18 A. Correct.

19 Q. Okay. And I think that they wanted
20 to do some additional testing, but before it got
21 done they did a C-spine film and it showed some
22 degenerative changes, correct, on 8-22-94?

23 A. On August 9th of 94 the cervical
24 spine films were performed.

25 Q. And they were reviewed in a telephone

1 conversation on 8-22-94; is that right?

2 A. Yes.

3 Q. Okay. And it says that the review of

4 the chart reveals no evidence of focal

5 neurological deficit; correct?

6 A. Correct.

7 Q. Felt to be some muscle tension in the

8 nuchal region?

9 A. Yes, that's what it says.

10 Q. What's the nuchal region?

11 A. That's where the nuchs are all

12 located. In the nuchal. region, the back of your

13 neck.

14 Q. The back of your neck?

15 A. Right.

16 Q. So the doctor felt as a result of the

17 visits, Dr. Cutarelli and/or Dr. Zaas here felt

18 as a result of the 1994 office visit with Mr.

19 Domaradzki and their ordering of the scan, the

20 C-spine film that the results of that that they

21 advised him of in a telephone conversation on

22 8-22-94 that there was muscle tension in the

23 nuchal region and no focal neurological deficit;

24 correct?

25 A. And it also says, sir --

2 So that's correct. I didn't think I
3 asked you what it also says. Hold on a second,
4 would you agree with my statement?

5 A. Yes.

6 Q. That was their diagnosis; correct?

7 A. No, their diagnosis goes further,
8 it's the part we haven't read yet.

9 Q. It's part of their diagnosis?

10 A. It's part of their diagnosis.

11 Q. It most likely represents
12 degenerative arthritis with some muscle spasm?

13 A. Correct.

14 Q. And they told him to take Tylenol for
15 that; right?

16 A. No, how about Advil.

17 Q. Well, either one. You would have
18 told him the same thing, wouldn't you, Dr.
19 Brooks?

20 A. I would have put him on some
21 antiinflammatories, yes, probably started him on
22 some physical therapy-

23 Q. And he wouldn't -- **and** he would have
24 been able to perform and do the things that he
25 had been doing in his life without any problems
26 with that medication; isn't that right, doctor?

1 A. Hard to know.

2 Q. You can't say?

3 A. I can't say.

4 Q. All right. So that's not unusual, is
5 it, for somebody to have arthritis and complain
6 of some pain in the neck to take Advil or Tylenol
7 or an antiinflammatory that you might prescribe
8 for them and to Just go about their daily ways
9 and take that medication and not have any
10 problems?

11 A. That's correct.

12 Q. You've seen that in your orthopedic
13 practice many times, haven't you, doctor --

14 A. Yes.

15 Q. -- for people 54, 57 years old?

16 A. Yes.

17 Q. Just so we're clear, you have no
18 other evidence of any kind, and I apologize if
19 I'm repeating myself, but now that we're getting
20 along all right, let's continue.

21 A. Okay.

22 Q. We don't have any other evidence of
23 any kind that there is -- that's been provided to
24 you of any kind either from your observation of
25 Mr. Domaradzki or any evidence Mr. Barnhouse gave

1 you to show that there are any other problems he
2 complained of with his neck before the motor
3 vehicle accident of 8-28-94?

4 A. That's correct.

5 Q' All right.

6 Q. So then he has this accident on
7 8-28-94 and immediately thereafter he begins
8 complaining of neck problems; correct?

9 A. Correct.

10 Q. He complains at the St. Alexis
11 Hospital where he's taken and kept overnight for
12 observation; correct?

13 A, Correct.

14 Q. Then if you can recall, and look,
15 what's the course of treatment 'chat you
16 understand that he underwent after this accident,
17 doctor, as far as his problems with his neck
18 immediately up to the surgery?

19 A. He was hospitalized at St. Alexis
20 overnight for observation, okay. He then saw Dr.
21 Zaas two days later on October 30th.

22 Q. And he complained about what on that
23 day?

24 A. He had complaints referable to his
25 neck, left knee and he also had increase in his

blood pressure.

Q. He complained of sharp pain behind his neck, did he not?

A. Yes.

Q. Okay. And the doctor's impression, that being Dr. Zaas, on August 30th, 1994, was cervical strain and normal blood pressure; correct?

A. Correct.

Q. Now, up to that point in time there is no evidence in the records of any kind concerning Mr. Domaradzki that anyone had ever performed an MRI of his cervical spine; correct?

A. That's correct.

Q. An MRI is generally a much more perceptive -- strike that. An MRI is generally a much more revealing x-ray of the spine than is just a regular cervical spine film, would that be correct?

A. Correct,

Q. Maybe I didn't express that correctly. If I didn't, you tell me.

A. No, no, no, you helped me before with that word, to block out. I'm going to write that down.

1 MR. BARNHOUSE: Redact.

2 Q. I can't believe you didn't know that,
3 R E D A C T.

4 A. I really didn't. R E D A C T, all
5 right. The word you're looking for is extensive.

6 Q. Thank you,

7 A. An MRI is a much more sensitive test
8 than routine radiographs,

9 Q. Okay, And it's more sensitive in
10 that it would be more likely to show a bulging
11 disk or herniated disk?

12 A. Yes.

13 **a.** Correct?

14 A. Yes.

15 Q. Or a disk osteophyte complex that
16 would be in some way effacing or pressing upon
17 the spinal cord?

18 A. Yes.

19 Q. Certainly easier to see it on an MRI
20 study than it would be on a regular cervical
21 spine film?

22 A. Correct.

23 Q. Okay- And we didn't have any of that
24 kind of an MRI study prior to this accident;
25 correct?

1 A. Correct.

2 Q. All we had was a gentleman who other
3 than what you've told me about in the records of
4 Drs. Cutarelli and Zaas had no complaints of any
5 kind with his neck?

6 A. Oops, the only evidence that I have
7 is what we discussed.

8 Q. Right.

9 A. I don't know whether he had
P0 complaints and they weren't recorded.

11 Q. We can only deal with what's in
12 evidence.

13 A, Correct.

14 Q. He told you he had no problems with
15 his neck before this accident?

16 A. That's exactly -- but remember, his
1% memory was bad,

18 Q. Make sure you get that down there
19 accurately, okay. But --

20 A. Right.

21 Q. And you think his memory was bad?

22 A, No, he told me, you know, because --

23 Q. Well, that's not an unusual
24 situation, would it be, for his memory to be bad,
25 because we know for a fact off the records, and

1 you've reviewed them, from Drs. Mann and Heller
2 that this man sustained a head injury in this
3 accident, didn't he?

4 A. Right.

5 Q. And when one sustains a head injury
6 one's brain, if your head is thrown forward and
7 strikes something immoveable inside the car, the
8 brains which sits on top of the spinal cord in
9 essentially fluid is thrown forward and crashes
10 in the front of the skull and sometimes is thrown
11 backwards and hits the back of the skull. That's
12 how brain injuries occur, don't they, doctor?

13 A. Some of them do, yes.

14 MR. HOUSEL: Off the record,

15 (Discussion had off the record.)

16 Q. After his visit on 8-30-94, when do
17 you understand his next treatment was for his
18 neck problem or any problems related to the
19 trauma from this accident?

20 A. Right. He was at Parma Community
21 General Hospital on September 1st, 1994.

22 Q. What was he there for?

23 A. That's on page eight. He was there
24 for physical therapy as a result of the injuries
25 that he sustained in the accident.

1 Q. And who recommended he go and have
2 that?

3 A. I believe that was Dr. Eltomey.

4 Q. And Dr. Eltomey is the doctor that
5 treated him at St. Alexis after the accident and
6 wrote the discharge summary?

7 A. Yeah, right, correct.

8 Q. So he recommended that he go and have
9 some physical therapy?

10 A. Correct.

11 Q. And he did that; right?

12 A. Correct.

13 Q. On September 1st of 94. And he
14 complained of sharp pain in his head, neck,
15 shoulder blades to low back, I'm reading from
16 the physical therapy patient evaluation form. Do
17 you have that?

18 A. Yeah, I mean, I summarized it by
19 saying he had back, bilateral upper extremity and
20 bilateral lower extremity.

21 Q. How long did he undergo that physical
22 therapy, if you know, doctor?

23 A. I don't recall, but I could check if
24 that's important.

25 Q. All right.

1 A. Off the record,

2 (Discussion had off the record,)

3 Q. The question was how long he treated
4 him.

5 A. You know, for the sake of time, I in
6 all sincerity will believe what you tell me.

7 Q. I think it was like a couple weeks,
8 doctor.

9 A. Okay.

10 Q. Let's move on. So the physical
11 therapy, just so the record reflects this was as
12 a result of a recommendation from Dr. Eltomey who
13 treated him immediately after his arrival at St.
14 Alexis Hospital for the motor vehicle accident
15 injuries; correct?

16 A. Yes.

17 Q. All right. Do you know Dr. Eltomey?

18 A. No.

19 Q. You don't know him at all, sir? Do
20 you know what kind of doctor he is?

21 A. He's a neurosurgeon,

22 Q. And who did he next see after he went
23 for the physical therapy at Parma?

24 A. Looks like it was a chiropractor.

25 Q. Bellingham?

1 A. Bellingham.

2 Q. Let me back up for a second. The
3 8-30-94 office note from Dr. Zaas indicates, I'll
4 read it to save time, Under plan, the patient
5 was encouraged to follow through with physical
6 therapy as directed by his doctor at St. Alexis.

7 So apparently he did what his doctor
8 told him to do, right, Dr. Brooks?

9 A. Yes.

10 a. When do *you* show that he first went
11 to see Bellingham, what section are you on?

12 A. Okay, Dr. Bellingham began on
13 September 14th, 1994,

14 Q. Do you have his medical report of
15 June 19th, 1995, doctor?

16 A. Yes.

17 Q. Okay. Then under current chief
18 complaints it indicates headaches, dizziness,
19 pain and stiffness in neck, right, and lower back
20 pain and discomfort with pain in right leg.

21 A. Correct.

22 Q. So, again, there is a complaint there
23 of problems with his neck; right?

24 A. Correct.

25 Q. Okay. And the doctor's diagnostic

1 impression was cervical and lumbar strain/sprain
2 as a result of a hyperflexion, hyperextension
3 reaction to an acceleration/deceleration injury.
4 The strain/sprain injuries are accompanied by
5 myositis and tension-related headaches,

6 Did I read that accurately? I'm
7 sorry, are you with me on page two of his report?

8 A. I haven't found it, but, I believe you
9 read it accurately.

10 Q. All right. Do you know how many
11 times you saw Bellingham, doctor?

12 A. I don't recall.

13 Q. Do you place any value whatsoever in
14 chiropractic treatment by the way?

15 A. There are a variety of forms of
16 chiropractic treatment. I place no value in the
17 manipulative form of chiropractic treatment.
18 Certainly if someone suspected that a patient had
19 a herniated disk they wouldn't be manipulating
20 their neck.

21 Chiropractors also treat people with
22 modalities, heat, things of that nature. And I
23 believe for a short period of time people can
24 derive benefit from those modalities.

25 Q. Do you know what kind of treatment

1 was administered to Mr. Domaradzki by
2 Chiropractor Bellingham?

3 A. No, but I suspect we could find out.
4 Well, so many people have been through these
5 records, Are there some records you would like
6 me to look at from Bellingham?

7 Q. Yeah, We happen to have a nice, neat
8 book. I tell you what, John, give him yours for
9 a minute. You can give him the whole thing so I
10 can look at it. You've got these records
11 somewhere in your stack?

12 A. Yeah, they are in here. I don't know
13 where they are,

14 Q. Just to save some time, go ahead,

15 A. Sure. You said what kind of care?

16 Q. Yeah. I can't really decipher or
17 interpret, you know, the chiropractic notations.
18 Let's see if maybe from reading his report --
19 look at the comments on page three.

20 A. Thanks. Oh, okay, he treated him
21 with specific spinal manipulation.

22 Q. To assist in the restoration of
23 normal joint dynamics plus adjunctive therapy to
24 facilitate the healing process?

25 A. That's what he said.

1 Q. Do you take issue with that treatment
2 at all?

3 A. Yes, I take issue with that
4 treatment,

5 Q. Why is that?

6 A. I think it's dangerous to manipulate
7 somebody's spine who, one, has preexisting
8 cervical degenerative disk disease or
9 intervertebral disease, I'm sorry, who has
10 preexisting intervertebral disk degeneration. I
11 think it's dangerous to do that.

12 I think it's dangerous to manipulate
13 somebody's neck who has had an accident in which
14 he sustained a cervical strain that was, I can't
15 think of a better word, superimposed on this
16 preexisting condition,

17 Q. It never said that he did his neck,
18 it says his spine, It's not more specific, is
19 it?

20 A, Correct, it says spine, But we Just
21 put --

22 Q. We **don't** know what part of the spine,
23 do we?

24 A. But there is no reason to believe
25 that he didn't. I mean, he said that the guy --

1 his impression is cervical and lumbar sprain. So
2 he's not going to treat one and not the other.

3 Q. You don't know what he did, do you?

4 A. Well, we don't know. We ought to
5 just ask him.

6 Q. All right. And after he saw
7 Bellingham for a period of time where did he go
8 next? By the way, up to this date do you take
9 issue with any of the medical treatment he
10 received to the point where we are now?

11 A. I think it was appropriate to
12 hospitalize him.

13 Q. I'm talking about related to the
14 accident obviously,

15 A. No, absolutely, right. We're on the
16 same page.

17 Q. That has to reflect that though
18 (indicating).

19 A. Oh, sorry. Okay. I think as a
20 result of the accident the hospitalization was
21 necessary. I think that the visit, the
22 examination that Dr. Zaas performed two days
23 later was necessitated by the accident.

24 Q. Including the x-rays?

25 A. Zaas took x-rays two days later.

1 Q. No, he didn't.

2 A. Okay. I think the physical therapy
3 that he got at Parma for a couple weeks was
4 appropriate and necessitated by the accident, I
5 don't think the chiropractic treatment was
6 appropriate. I'm hesitating because, this is not
7 in response to your question, but it struck me,
8 too, that remember in his history Mr. Domaradzki
9 told me that Bellingham was the first person that
10 he went to?

11 Q. Mr. Domaradzki is the guy with the
12 memory problem.

13 A. Yeah, that's what I wanted to point
14 out.

15 Q. So you really can't --

16 A. Right.

17 Q. You can't really base a lot on what
18 he says?

19 A. Exactly, which is what I did not do,
20 okay.

21 a. You don't know a lot about what
22 Bellingham did, we already established that;
23 correct?

24 A. That's true.

25 Q. And we know that Mr. Domaradzki at

1 least placed some value in Bellingham because he
2 had seen him before; correct?

3 ^ Interestingly that's what he told
4 me. But nowhere in Bellingham's record does it
5 reflect that.

6 O I know you mentioned that, but would
7 it have to?

8 A Sure, sure it would. I took a past
9 history. You know, wouldn't it be important -- I
10 mean, wouldn't it be important if it turns out
11 that Bellingham treated Domaradzki for neck
12 problems before this accident?

13 Q Well, it would be. But if that was
14 the case this lawyer would have issued -- would
15 have gotten a release from Mr. Domaradzki and you
16 would have had those records, right? I mean,
17 that always happens. does it not?

18 A Yeah, like the sun shines every day,
19 right.

20 Q Like there is some preexisting
21 problems that wouldn't have a medical record
22 for. Right, come on, doctor.

23 ' I've only worked with Mr. Barnhouse
24 once before, I don't know what his --

25 Q. All right. In any event, we can only

1 deal with what we have,,

2 A. Exactly.

3 Q. And we don't have anything except for
4 the fact that Mr. Domaradzki told you he had seen
5 Bellingham before; correct?

6 A, Correct.

7 Q. All right. So I guess the point I'm
8 trying to make with that question is if he placed
9 some value in Bellingham's treatment it's
10 certainly not inappropriate to go back to him
11 having all these problems to see if Bellingham
12 can help him?

13 A. That's correct.

14 Q. But you would not feel that. that was
15 -- the care was either appropriate by Bellingham
16 or necessitated by the injuries from the motor
17 vehicle accident even though Mr. Domaradzki chose
18 to **go** see him because he thought it was?

19 A. Can we dissect the question in half?

20 Q. Sure, go ahead. Go right ahead,

21 A. Inappropriate, but necessitated,
22 okay. Mr. Domaradzki was hurting after this
23 accident. He was trying to get some help.

24 Q. Right.

25 A. Off the record.

1 (Discussion had off the record.)

2 A. Back on the record.

3 Mr. Domaradzki was hurting after the
4 accident. He went to somebody that he thought
5 could help him. I don't agree with the kind of
6 treatment that the chiropractor provided him. Is
7 that okay?

8 Q. Oh, sure, you made that clear. I
9 understand.

10 Where did he go next after he saw
11 Bellingham for a period of time, who did he treat
12 with next?

13 A. Going from my report, and I think I
14 took things -- well, no, I apologize, Okay, the
15 next person he saw was Dr. Yosowitz.

16 Q. Right, And he sees Bellingham on the
17 14th. And a week later, week and a day, the
18 22nd, he sees Dr. Yosowitz; correct?

19 A. While he's still treating with
20 Bellingham; right.

21 Q. Maybe he thought Bellingham wasn't
22 helping him. You would agree with him, would you
23 not?

24 A, That Bellingham wasn't helping him;
25 correct.

1 Q. Now, he goes to see Dr. Yosowitz.
2 You know Dr. Yosowitz, don't you, sir?

3 A. Yes.

4 Q. You know him professionally,
5 personally?

6 A. I know him personally and I don't
7 know him as well professionally as I used to.

8 Q. What does that mean?

9 A. Well, what it means is that Dr.
10 Yosowitz, I was trying -- he was either a
11 resident of mine or he came -- he came back and
12 started practice at about the same time I did.
13 And in the early days of both of our practices we
14 practiced at similar hospitals. We don't
15 practice at the same hospitals anymore.

16 So, you know, Pet me put it this way,
17 I have no reason not to believe that Dr. Yosowitz
18 -- strike that. There are going to be too many
19 negatives. Dr. Yosowitz is a good orthopedist.

20 Q. Board certified?

21 A. Board certified.

22 Q. As are you?

23 A. Yes.

24 Q. Okay, He complains to Yosowitz about
25 pain in his neck; correct?

1 A. Correct.

2 Q. Doctor, you have his report, do you
3 not, doctor?

4 A. Yes, sir. I'll find it. Here it
5 is. You're talking about the September 14th,
6 1995. Got it.

7 Q. On the first page you would agree
8 with me that the complaints that Mr. Domaradzki
9 complained of exhibiting or complained of to Dr.
10 Yosowitz were that the headaches have become
11 worse and the pain is sharp, constant and
12 variable in degree, that it's aggravated by
13 prolonged use of eyes, noise, nervousness. And
14 constant neck pain and relieved by rest and
15 analgesics,

16 And also associated central nervous
17 system, symptoms of dizziness, neck pain has
18 become worse. And he goes on to say all the
19 things that he learned in the history taking of
20 Mr. Domaradzki; is that right?

21 A. He goes on to say all the things that
22 somebody obtained when they helped Mr. Domaradzki
23 fill out the form.

24 Q. Are you suggesting that what's
25 contained in his medical report of September

1 14th, 1995 sent to my co-counsel, Mr. Wolanin, is
2 not at least on the first page, the last two
3 paragraphs and up on the second page is not a
4 history that was given to him?

5 A. No.

6 Q. What do you think that that is then?

7 A. No, no, I'm not,

8 Q. You think it is?

9 A. Yes, I think it is,

10 Q. Okay, all right.

11 A. Somebody in Dr. Yosowitz's office
12 obtained from Mr. Domaradzki.

13 Q. You don't know that it wasn't Dr.
14 Yosowitz himself?

15 A. I don't know that it wasn't. I know
16 that it was.

17 Q. You alluded to some questionnaire.
18 You're not aware of the process they had at Dr.
19 Yosowitz's aver there when they take a history?

20 A. Right.

21 Q. But you don't know in this case
22 whether that's how it was obtained or whether Dr.
23 Yosowitz personally obtained that from him?

24 A. Correct, I don't know,

25 Q. Okay. Now, so the record is clear,

1 neck pain has become worse, located on the left,
2 constant and variable in degree, the pain is made
3 worse with turning head from side to side,
4 activity and flexion/extension, is relieved by
5 rest and analgesics. Radiation of neck pain into
6 left shoulder, right greater than left and
7 scapula"

8 Patient has experienced intermittent
9 tingling of the right and left middle and ring
10 finger. Then he goes on to complain of back
11 pain. Did I read that accurately?

12 A. Yes.

13 Q. You would agree with me that this is
14 the first orthopedic surgeon that reviewed or
15 that in any way examined and treated Mr.
16 Domaradzki after the accident of September -- I'm
17 sorry, August 28th of 1994?

18 A. Yes.

19 Q. And those complaints that I have just
20 read are pretty serious, aren't they, doctor?

21 A. They are significant.

22 Q. All right. And the impression of Dr.
23 Yosowitz was cervical and lumbosacral myofascitis
24 and radiculitis, semicolon, headaches; correct?

25 A. Correct.

1 Q. Now, what is radiculitis?

2 A. It's inflammation of a radical.

3 That's what radiculitis means, Now,
4 unfortunately as physicians we're not always
5 precise in the words that we choose. I believe
6 that what Dr. Yosowitz is saying is that Mr.
7 Domaradzki has symptoms going down his arms and
8 his legs that are coming from his neck and low
9 back.

10 Q. Well, on page two of his report it
11 says there is radiation of the neck pain to the
12 right and left shoulder, right greater than left,
13 and scapula.

14 A. Wight.

15 Q. That's radiculitis, isn't it?

16 A. That's radiculitis, right.

17 Q. And that comes about, does it not --
18 maybe I can put it into simple terms for the --
19 this is not necessarily for a Jury, but you're
20 the doctor, I'm just the lawyer,

21 But isn't a simple way of explaining
22 it is that it's a radiating pain that comes from
23 a site and radiates to another portion of the
24 body through the nerves?

25 A. Radiculitis refers to radiating pain;

1 correct.

2 Q. And radiating pain comes about
3 because isn't there a network of nerves and nerve
4 endings that really is throughout our body and
5 all kinds of nerves come out from the spinal cord
6 and go to all areas of our body?

7 A. Yes.

8 Q. And if there is an injury to a
9 certain area of the body where one of these
10 nerves is compressed in some fashion, meaning
11 some tissue that's not supposed to or some bone
12 complex that's not supposed to press upon that,
13 that causes the pain to radiate down the length
14 of that nerve into other areas of the body?

15 A. Yes.

16 Q. Such as would happen with a herniated
17 disk that's compressing nerve roots, would that
18 be a fair statement, doctor?

19 A. **If** somebody had a herniated disk that
20 was compressing a nerve root, the person would
21 feel pain radiating in the distribution of that
22 nerve. May I get a glass of water?

23 Q. Sure, absolutely. Anybody need to
24 take a break?

25 (Recess.)

1 MR. HOUSEL: Back on the record.

2 Q. On Dr. Yosowitz's report -- I'm
3 sorry, are you with me? I'm on page two.

4 A, Yeah, right,

5 Q. Summarize his physical examination if
6 you would, please, rather than me just reading
7 it.

8 A. There were a number of subjective
9 findings including, you know, restriction of
10 motion, voluntary guarding, restriction of --
11 that's cervical, Restriction of lumbar motion,
12 There was tenderness in his trapezius muscles.
13 There was no spasm. He had no neurologic changes
14 in the upper extremities and he had no neurologic
15 changes in the lower extremities.

16 Q. He indicates that the neck was held
17 in the midline position. What's that mean, Dr.
18 Brooks?

19 A. Just that it's straight. It wasn't
20 tipped from one side to the other.

21 Q. Does that mean that's the way the
22 patient carries his neck so to speak, that's
23 because when he observes him he doesn't ask him
24 to move it one way or the other, that's the way
25 he's looking at it?

1 A. What he's saying is his head is not
2 tipped or tilted from side to side.

3 Q. And moderate restriction of all
4 motion due to pain and voluntary guarding, I
5 presume what he means by that is restriction of
6 the motion of the neck because of those two
7 factors, pain and voluntary guarding?

8 A. Yes.

9 Q. Voluntary guarding, isn't it really
10 when someone knows that if I move my neck a
11 certain way it's going to cause me pain so I'm
12 not going to **do** it?

13 A. Yes.

14 Q. Where are the trapezius muscles?

15 A. It's big -- if you think of a shawl
16 that covers your shoulders. So the trapezius
17 starts with the side of your neck, goes over the
18 top of your shoulders. I think as you remember
19 when I was taking his history he was talking
20 about his shoulders and I kept saying where do
21 you mean. And he kept pointing to the top of his
22 shoulders.

23 Q. Trapezius muscles?

24 A. Yes. And there was moderate
25 tenderness noted.

1 Q. Was that an objective or subjective
2 finding?

3 A. It's a subjective finding.

4 Q. Now, after this examination, he also
5 did an examination of the lumbar spine and found
6 moderate restriction of motion due to pain and
7 voluntary guarding in that area as well; correct?

8 A, Yes.

9 Q. So then Dr. Yosowitz made some
10 recommendation. He referred him back to the
11 chiropractor and he ordered an MRI?

12 A. Correct.

13 Q. And he also told him to go see Dr.
14 Heller for his headaches?

15 A. Correct.

16 Q. Up to this point in time we have no
17 evidence of any kind to show that there was an
18 MRI done **of** the neck --

19 A. Correct.

20 Q. -- at any time in his life up until
21 now?

22 A. Correct.

23 Q. He saw him a couple other times I
24 note, Dr. Yosowitz?

25 A. Yeah.

Q. And again, the other times that he saw him he still complained of problems with his neck, headaches and radiculitis; is that correct?

A. On January 5th he complained of headaches, pain in his neck and back with radiculitis, correct.

Q. Okay. And he said that he had
8 radiation to his upper extremities and numbness
9 in the upper extremities and also complained of
10 continued numbness in the right lower extremity;
11 correct?

A. He also complained of numbness in the
12 right lower extremity; correct,
13

Q. What does that indicate to you,
14 doctor? That's a radiculitis symptom, is it not,
15 what I just read there?
16

A. Yes.
17

Q. Does that indicate to you that there
18 is somewhere in his body a problem that is
19 causing that radiculitis? That pain that is
20 referred on down through the nervous system to
21 another area of the body, something is causing
22 that, is it not, doctor?
23

A, Something is causing that; correct.
24

Q. What do you think was causing it when
25

1 he complained of it to Dr. Yosowitz?

2 A. I can't tell specifically because Dr.
3 Yosowitz's description is not very specific.

4 Q. His description of the radiculopathy?

5 A. Right.

6 Q. Pain in his neck and back, has
7 radiation to his upper extremities and numbness
8 in the upper extremities. What do you understand
9 the upper extremities to mean?

10 A. His arms. But he's not saying what
11 part of the arm. Is it radiating to his thumb,
12 is it radiating into his long finger, is it
13 radiating. -- no, it's just sort of -- he's just
14 saying that it's radiating into his arms and he's
15 got numbness somewhere in his arms.

16 Q. Now, if you look at page two, the
17 first time he saw him at the top of the page,
18 there is radiation of the neck pain to the right
19 and left shoulder, That's pretty specific, isn't
20 it?

21 A. Yes.

22 Q. Right greater than left and scapula.
23 Where is the scapula?

24 A. Your shoulder blade,

25 Q. All right. Trapezius muscles?

1 A. What?

2 Q. Is that where the scapula is, where

3 the trapezius muscles are?

4 A. The trapezius covers the scapula.

5 Q. Okay. All right. And then he goes

6 on to say the patient has experienced

7 intermittent tingling of the right and left

8 middle and ring fingers,

9 A. Right, on the first visit. But we

10 were talking about the January 15th visit where

11 he is just not being specific. January 5th, I'm

12 sorry.

13 Q. Well, does someone -- in order for

14 you to give a diagnosis that is consistent with

15 what other doctors say, does somebody have to

16 complain of the same thing every time they see

17 you?

18 A. They don't have to complain of the

19 same thing, but the distribution of the

20 complaints should be specified.

21 Q. The distribution can change from time

22 to time, can't it, doctor, this radiating?

23 A. Wait, wait.

24 Q. I'm sorry.

25 A. Yeah, absolutely.

1 Q. Go ahead, I'm sorry.

2 A. Yeah, it can change from time to
3 time. The only point I'm trying to make is, is
4 that where Dr. Yosowitz was very specific the
5 first time he saw him, things sort of got
6 global. And maybe that's what Mr. Domaradzki was
7 complaining of.

8 Q. Do you think Dr. Yosowitz's
9 evaluation of Mr. Domaradzki was incorrect?

10 A. Incorrect, no. I think that he
11 recorded what was there.

12 Q. Do you think his diagnosis of Mr.
13 Domaradzki's problem was incorrect?

14 A. At what time, at what point?

15 Q. At any time.

16 A. Yes, I believe that his diagnosis was
17 incorrect at a certain point in time,

18 Q. At what point in time?

19 A. On page four.

20 Q. Of his report?

21 A. Yes, He says in summary Mr.
22 Domaradzki was involved in a vehicular accident
23 on August 28th, 1994. I believe that was
24 correct. He sustained injuries to his neck and
25 lower back, I believe that's correct. Resulting

1 in cervical and lumbosacral myofascitis. Well --

2 Q. What's myofascitis with radiculitis?

3 A, No, I stopped because I don't like
4 the term myofascitis.

5 Q. You mean soft tissue injury?

6 A. Soft tissue.

7 Q. You disagree with that?

8 A. No, I believe as I said in my report
9 that he did sustain a cervical and lumbosacral
10 strain. I just was being a little more
11 specific. And he says with radiculitis, okay,
12 those are his symptoms. So I would agree that
13 those are his symptoms.

14 Posttraumatic headaches, yes, I
15 believe the accident caused posttraumatic
16 headaches,

17 Q" Let's stop for a second. You say
18 those are his symptoms, but you were telling me
19 -- apparently you were telling me that you
20 didn't agree with that portion of Dr. Yosowitz's
21 report where that was his opinion, that you
22 disagree with --

23 A. No, up to that point. I agree with
24 the first sentence. The second sentence I'm just
25 having some problems with terminology. But I

1 agree that he sustained soft tissue injuries to
2 his cervical and lumbar spine,

3 Q. With radiculitis?

4 A. And that he had complaints of
5 radiculitis after that, yes.

6 Q. So you would agree with the doctor's
7 opinion that that is something -- that the
8 radiculitis was caused **by** the motor vehicle
9 accident?

10 A. Yes.

11 Q. All right. And the posttraumatic
12 headaches were caused by the motor vehicle
13 accident?

14 A. Yes.

15 Q. Now, you can get headaches from an
16 injury to your skull and you can also get them or
17 at least maybe it's masked by an injury to the
18 muscles in your neck, correct, or shoulder blades
19 for that matter?

20 A. Oops, wait a minute. You can get
21 headaches from a variety of causes. You can get
22 a headache from a direct blow to your head. You
23 can get a headache from just getting your head,
24 you know, whipped around without even hitting
25 anything. That's sort of the contrecoup that you

1 were describing earlier.

2 You can have occipital or nuchal
3 headaches because of neck pain, okay. Scapular
4 pain doesn't give you headaches.

5 Q. Trapezius muscle pain, does that give
6 you headaches?

7 A. If it's the portion of the trapezius
8 that's on the side of your neck, sure.

9 Q. In other words, if you injure the
10 soft tissues and that's the muscles in the neck
11 and the shoulders, that can result in a headache,
12 can it not?

13 A. People that have neck injuries do
14 experience headaches, yes.

15 Q. Now, we know that an MRI was
16 performed by Yosowitz; correct?

17 A. Yes.

18 Q. And do you have a copy of that MRI
19 there?

20 A. I don't have the films any longer.
21 Did you get the films back?

22 MR. WOLANIN: Yes, I did.

23 A. So I don't have the films any
24 longer. I mean, I'm sorry I asked you the
25 question, Jesus. Do I have a copy of the

1 report?

2 Q. Yes, sir. 1-12-95.

3 A. Yeah, I'm just looking. 1-12-95,
4 okay.

5 Q. You got it, sir?

6 A. I have it, sir.

7 Q. Now, you interpret MRIs yourself all
8 the time, don't you?

9 A. Yes.

10 Q. And a lot of times you have different
11 opinions as to what an MRI shows than the
12 radiologist who did the interpretation; is that
13 correct?

14 A. Yes.

15 Q. Do you have any specialized training
16 in radiology?

17 A. I am not a board certified
18 radiologist, Do I have specialized training in
19 radiology, yes. Going to seminars on
20 interpretation of MRIs, spent time with
21 the -- there is a super neuro/radiologist who is
22 here in the building, And when it's important or
23 when I have a question, I go down and talk to
24 him.

25 Q. Did you do that in this case?

1 A. I didn't feel it was necessary.

2 Q. You have a different opinion as to
3 what the MRI taken by J. Michael Kennedy
4 (phonetic) says it shows and what you say it
5 shows; is that right?

6 A. Well, let's see. I mean, we all can
7 read what my opinion is,

8 Q. Well, let's read what your opinion
9 is. What do you say it shows?

10 A. The C5.

11 Q. Let me stop you. Let me apologize.
12 Before you read what you say, do you agree with
13 what you say it says is different than what the
14 person who read it over at Dr. Yosowitz's office
15 says that it says?

16 A. No, I'm not so sure. That's why, you
17 know, maybe I wasn't as robust as he was, which
18 is unusual. So maybe if you could help me and I
19 could explain where there are some apparent
20 differences.

21 Q. What do you find different than what
22 he finds, maybe that's the simplest way to ask
23 the question?

24 A. Well, let's see, what did he say?
25 Okay, I said in my report at the C5-6 interspace

1 there was intervertebral disk degeneration and a
2 disk osteophyte complex with associated central
3 spinal canal stenosis.

4 I believe that that is the same thing
5 as he says in impression one. If you believe
6 that not to be true, I'd be glad to discuss it
7 with you.

8 Q. Go ahead. Well, the thing that I
9 think that it says is different, is it says there
10 is spinal cord compression,

11 A. And I implied that **by** saying
12 associate spinal canal stenosis.

13 Q. Does that mean the same thing?

14 A. In the purest **of** senses, no.
15 Stenosis is a narrowing of the canal.

16 Q. Right.

17 A. And I did not say, did not
18 specifically use the words spinal cord
19 compression,

20 Q. Yeah. Isn't it really what he's
21 saying there in simple layman's language, it's
22 easy for us to all understand in impression one
23 there is a disk osteophyte complex. Doesn't that
24 mean that portion of the disk coupled with an
25 osteophyte, which is a bone, portion of the bone,

1 osteophyte that has grown for some period of
2
3 complex which in combination with what he calls a
4 1 ligamenta flava hypertrophy -- and I have no clue
5 what ligamenta flava means, you can help me with
6 that -- what that results in is a moderate
7 central canal stenosis and narrowing of the
spinal cord measuring 8 millimeters. And all
9 those things together result in a compression in
10 the cervical. spinal. cord?

11 A. For the most part, yes. Okay,

12 Q. Tell me why you say for the most
13 part. What part didn't I say? I mean, break it
14 into simple Language.

15

16

17

18 Q. If you want to show it on the model,
19 that would be okay.

20 A. All right.

21 Q. The disk space, the disk has
22 herniated through the annulus and together with a
23 complex or together with a piece of bone known as
24 an osteophyte --

25 A. No, no, no, not at the C5-6 level.

1 Q. -- that's the kind of thing that
2 causes pain that radiates into other parts of the
3 body, is that right, like the arms and fingers?
4 A. No, no, no, it doesn't.
5 Q. Doesn't?
6 A. No.
7 Q. Does it ever cause that?
8 A. No. Spinal cord compression per se
9 doesn't cause radiculitis, radiculopathy or
10 radiating pain,
11 Q. Can it?
12 A " No.
13 Q. Never?
14 A. I don't believe so.
15 Q. Well, aren't there literally
16 thousands of nerve endings and nerves that come
17 out from the spinal cord itself and go out into
18 the body?
19 A. Well, I don't know that there are
20 thousands. But the key point is that to have
21 radiating pain, radiculitis or radiculopathy, you
22 need roots -- that's where radical comes from --
23 you need root compression.
24 Q. Let me stop you. Where is the root?
25 A. The root up in the cervical spine

1 That's the important thing, And I wish we had
2 the MRI, I could show it to you right here.

3 But the important thing is that the
4 C5-6 level, and I can't even show it to you on
5 this model, but he's got a spur. This posterior
6 spur, that's the osteophyte.

7 When there is a disk osteophyte
8 complex it doesn't mean the disk is herniated, it
9 just means that the disk is in combination with
10 this spur, that in addition to hypertrophy of the
11 ligamenta flava -- the ligamenta flava is the
12 yellow ligament that runs -- well, the yellow
13 ligament goes all the way around.

14 There is the anterior longitudinal
15 ligament, this is the posterior longitudinal
16 ligament. And the yellow ligament sort of goes
17 all the way around. And in essence what he's
18 saying is it's a combination of factors, disk
19 osteophyte complex, the hypertrophy of this
20 ligament. And it's narrowing the canal so that
21 he's getting some spinal cord compression.
22 Doesn't say anything about a herniated disk.

23 Q. Okay. When he gets spinal cord
24 compression --

25 A. Yes.

1 leaves the spinal cord, okay, and traverses out,
2 okay. This shows, here's the spinal cord
3 (indicating.)

4 Q. Right.

5 A. All right. These are the nerve
6 roots, okay, And it's these little fellows that
7 when they get compressed that you get radicular
8 pain in a specific dermatome, specific area
9 (indicating).

10 Q. Do you know from reading that
11 impression, the one we've just been talking
12 about, whether that spinal cord compression in
13 fact caused those nerve roots to be compressed or
14 to be pressured upon so that they caused pain?

15 A. Yes, I know.

16 Q. **How** do you know that?

17 A, Because I know, one, **I** looked at the
18 **MRI** myself. And I know that spinal -- central
19 spinal cord compression, which is what was here,
20 does not cause radicular pain.

21 Q. Would the radicular pain be caused by
22 the next impression in the MRI report?

23 A. Okay., There is a midline herniation,
24 midline of the C6-7 intervertebral disk, which is
25 of the narrow based transligamentous extrusion

1 type with secondary effacement of the anterior
2 spinal cord.

3 Q. What's effacement mean?

4 A. Okay. So what I said in simpler
5 terms was at the C6-7 interspace there is an
6 intervertebral disk extrusion. There is no
7 evidence of nerve root compression at either the
8 C5-6 or C6-7 interspace.

9 Q. What does secondary effacement of the
10 anterior spinal cord mean? Before I forget,
11 these nerve roots are all in very close proximity
12 to these other structures we're talking about in
13 the spinal cord **and** the neck, are they not?

14 A, Yes.

15 Q. Go ahead, What's -- what does that
16 mean, secondary effacement, what do you
17 understand the term effacement to mean?

18 A, I'm going to try to explain it to
19 you.

20 Q. I'm sorry, go ahead.

21 A. The first thing that comes to mind is
22 when you talk about effacement you're talking
23 about actually dilation of a woman's cervix when
24 she begins to efface right prior to delivery.

25 But in this area what he's talking

1 about is that there is -- it's like in your face,
2 I guess that's the best way to explain it. It's
3 touching, effacement, that's what it means,
4 touching of the anterior spinal cord.

5 Q. What's inside the spinal cord?

6 A. Inside the spinal cord, whole lots of
7 stuff.

8 Q. Nerves?

9 A. Well, the elements that make up the
10 nerves, okay, not the nerves per se.

11 Q. Are you saying that the only way that
12 this radicular pain can come about is if one of
13 those nerves *you* showed me on the little model.
14 there was compressed?

15 A. Yes.

16 Q. And you don't think that happened at
17 all in this situation?

18 A. At this particular juncture looking
19 at this MRI, there was no evidence of nerve root
20 compression; correct.

21 Q. Well, then I take it you would say
22 that Dr. Itani's surgery that he performed was
23 not necessitated because **of** injuries from this
24 accident; correct?

25 A. Yes, that's correct.

Q. What necessitated it, or are you
2 saying he should have never done it in the first
3 place?

4 A. I'm not here to pass judgment on Dr.
5 Itani.

6 Q. I know you're not, but your opinions
7 are certainly different than his. And you know
8 you do that all the time anyhow.

9 A, Do what?

10 Q. Pass judgment in situations like
11 this. I mean, that's what you've done in your
12 report, is it not?

13 A, No. I made no judgment about whether
14 Dr. Itani's surgery was necessary or indicated.
15 It is my opinion that whatever the reasons that
16 Dr. Itani performed the surgery were not reasons
17 that were caused by the accident. That doesn't
18 make any sense, but I know you know what I'm
19 saying.

20 Q. Well, what were the reasons then?

21 A. I mean, you need to ask Dr. Itani.
22 Mr. Domaradzki had certain symptoms, Mr.
23 Domaradzki had certain MRI findings. And Dr.
24 Itani I believe thought he could help Mr.
25 Domaradzki by operating on him.

1 Q. And do you feel that the treatment
2 administered to Mr. Dornaradzki by Dr. Itani was
3 not medically necessary from the trauma from this
4 automobile accident?

5 A. If I understand your question
6 correctly, yes, I believe that the surgery that
7 Dr. Itani performed was not related to any
8 injuries that I believe Mr. Domaradzki sustained
9 in this accident.

10 Q. And do you think that what Dr. Itani
11 did was below the standard of care?

12 A. No.

13 Q. No?

14 A. No.

15 Q. Why do you think he did it then?

16 A. As I said, I think that he did it
17 because Mr. Domaradzki had certain symptoms,
18 certain physical findings, certainly had MRI
19 findings. And he believed that by performing the
20 surgery that he did, he would help Mr.
21 Domaradzki.

22 Q. What would you have done in a similar
23 circumstance? If Mr. Domaradzki was your patient
24 and he came to you repeatedly complaining of all
25 these problems and all the symptomatology that we

1 discussed here, what would you have recommended?

2 A. I need to look at Itani's records and
3 find out --

4 Q. Do you have them?

5 A. Yeah, I do.

6 Q. Go ahead.

7 A. I just want to refresh my
8 recollection.

9 Q. Sure.

10 A. September 13th I believe is the first
11 time that he saw him.

12 Q. Of what year?

13 A. Of 95,

14 Q. Okay. Well, go ahead, take your time
15 to look through there. And if you recollect my
16 question, please answer it.

17 A. Fine. Okay, the only thing that's
18 not clear to me from Dr. Itani's September 14th,
19 1995 letter is which MRI he reviewed.

20 Q. I've got a June 18th, 1996 letter.
21 Do you have that, sir, September 14th?

22 A, The first visit?

23 Q. With Itani.

24 MR. WOLANIN: No, he was in the
25 office on September 13th, 95?

1 A. Right, And I'm referring to, it's
2 dated September 14th, 95.

3 Q. I got *you*.

4 A. With respect to the September 13th,
5 1995 visit, okay. And the question was what
6 would I have done at that time. And the only
7 thing I don't know is he says he looked at an
8 MR. The only MR that we've talked about is the
9 one Dr. Yosowitz did in January of 95.

10 a. Well, let's just say that one.

11 A. Let's say that the second one showed
12 the same thing as Dr. Yosowitz, okay.

13 Q. Let's say you knew all of the
14 complaints and the medical history that we've
15 gone over for the **last** hour in this deposition
16 and you're Dr. Yosowitz and you do an MRI. And
17 we just talked about the results of that MRI and
18 you don't think surgery is necessitated.

19 How would you have treated **Mr.**
20 Domaradzki at that point in time if you were his
21 treating orthopedic surgeon?

22 A. Oh, wow, all right, Now, I'm back to
23 Yosowitz, that's what you said,

24 Q. Okay.

25 A. Now you want me to put myself in Dr.

Yosowitz's --

1
2 Q. No, I want to know what you would
3 have done as a board certified orthopedic surgeon
4 that has treated people like this for years, what
5 would you have done with Mr. Domaradzki?

6 A. All right. Given the symptoms, given
7 the physical findings as Dr. Yosowitz had them
8 and given the MRI and given Mr. Domaradzki's
9 psychological makeup, I would have recommended
10 continuing nonoperative treatment as Dr. Yosowitz
11 did.

12 Q. For how long?

13 A. Until he demonstrated some physical
14 reason, some physical findings that indicated
15 surgery was appropriate,

16 Q. Do you think that eventually would
17 have happened?

18 A. Well, it did happen,

19 Q. But you take issue with that; right?

20 A. No. The only thing I take issue with
21 is -- okay, you know, you kid me about saying
22 words are all we have to deal with. Yeah, I
23 agree with you. But, I don't take issue with the
24 surgery that Dr. Itani performed.

25 I just read over this September 14th

1 -- excuse me, September 13th office visit, 95,
2 okay. Mr, Domaradzki for the first time in my
3 recollection had -- as a matter of fact, that's
4 what I said on my report, one year after the
5 accident had physical findings, okay, of nerve
6 root compression. Prior to that time he had had
7 some symptoms. Dr. Yosowitz always found his
8 neurologic exam 'to be normal.

9 Q. Wasn't the whole thing verified in
10 the operation by Itani?

11 A, All right. I remember, let me get --
12 I'll answer that in just a second, okay.

13 Therefore, I believe that the
14 operation that Itani performed was indicated by
15 Mr. Domaradzki's symptoms and physical findings.

16 Q. So in other words, it was a necessary
17 medical operation?

18 A. Necessary is a tough word. The guy,
19 you know, he didn't have a life threatening
20 condition, It was appropriate. It was not
21 unnecessary.

22 Q. Okay.

23 A. Now, the only place that we obviously
24 have a disagreement is at the time of surgery he
25 found an extruded disk at the L -- the L -- at

1 the C6-7 interspace.

2 Q. Right.

3 A. Okay. The same extruded disk that
4 was identified on the MRI --

5 Q. Right.

6 A -- in January, right.

7 Q Under impression one or two?

8 A Under impression two.

9 Q. Okay.

10 A I don't believe the accident caused
11 that.

12 Q What do you think caused that?

13 A The extruded disk,

14 Q What do you think caused that?

15 A I think it was part of the -- the
16 normal -- not normal, but the part of the
17 degenerative process that was going on in Mr.
18 Domaradzki's neck,

19 Q But he had no complaints about it
20 before the accident, right, doctor?

21 A. Before the accident we just know of
22 one time.

23 Q. The Cutarelli dialogue?

24 A. Yeah.

25 Q. That's the only one?

1 A. That's the only one.

2 Q. But after the accident the complaints
3 were severe and on a regular basis, weren't they?

4 A. Yes.

5 Q. And after the accident he couldn't
6 work; correct?

7 A. He went back to work.

8 Q. Eventually.

9 A. Right, but he did go back to work.

10 Q. Right, but then he stopped after
11 awhile.

12 A. Well, he had an injury at work.

13 Q. A rib injury.

14 A. Rib injury.

15 Q. But before that as far as you know he
16 was asymptomatic as far as his neck was concerned
17 and didn't have any problems?

18 A. Except for three weeks before.

19 Q. Yeah.

20 A. But otherwise, right.

21 Q. All right. What's a free fragment?

22 A. Free fragment is a free fragment.

23 Q. It's a piece of bone, an osteophyte,
24 that's broken free, isn't it?

25 A. No, no, sorry about that. Bad tone

1 of voice, I apologize.

2 Q That's all right.

3 A Let's get -- here, let's look at --

4 O It says in your report -- first of
5 all, the question is what is a free fragment?

6 A Okay, It depends what we're talking
7 about, okay. And a free fragment of disk
8 material, not bone.

9 Q How do you know which it is?

10 A Because I read the freaking operative
11 report. And I will show you, you know,

12 Q Does it really matter which it is?

13 A Well, it seems to matter to you.
14 And, you know, it's not bone, it's disk
15 material.

16 Q Well, the word free, I have the
17 operation record in front of me. The word
18 free --

19 A. Okay.

20 Q. means not attached to anything?

21 I Correct.

22 C All right. So if it's a disk
23 material --

24 A. Right.

25 Q. or an osteophyte that's broken

1 off, it's something, it's got to be one of those
2 two things, doesn't it?

3 A, All right, it's got to be one of
4 those two things.

5 Q. In this case it's one of those two
6 things; right?

7 A. Okay, in this case it's one of those
8 two things.

9 Q. And if it's free, that means that in
10 the space that it resides in so to speak it moves
11 around depending on how the patient moves his
12 neck or how he goes about doing whatever he does?

13 A. No, not necessarily. You know,
14 you'll have the opportunity to talk to Dr. Itani
15 about things, As an orthopedic surgeon when we
16 talk about, a free fragment, we mean that the
17 fragment is separate, is sequestered from the
18 remaining portion of the disk.

19 Doesn't mean that it's free to throw
20 around, doesn't mean it's going to bang on
21 something on one side one day and on another side
22 on the other.

23 Q. Does it mean it might expand the
24 spinal cord?

25 A. No.

1 Q. That's what he says in his operation
2 note.

3 A. Can I see the operation note?
4 Expand.

5 O. Give him the record.

6 MR. WOLANIN: Sure.

7 A Tell me where you are, please.

8 Q Go about almost three quarters of the
9 way down. In the posterior longitudinal ligament
10 there was a rent at C6-7 with a free fragment
11 that extends around the cord on the right side.
12 This was retrieved. Subsequently the ligament
13 was undermined and excised completely. This was
14 done under the light and magnification of a
15 microscope producing expansion of the spinal
16 cord.

17 " Right, And now do you want to know
18 what that means?

19 Q Yeah.

20 A What he says is basically the
21 posterior longitudinal ligament, I showed you
22 that, there was a hole, there was a rent.

23 Q Rent means a hole?

24 A Rent is a hole.

25 Q Is that supposed to be there?

1 better position to do that?

2 A. Dr. Itani obviously was there. I
3 wasn't there. If Dr. Itani is adequately
4 reporting what he saw, then I can read this,
5 unless we're having some trouble with
6 interpretation. So the answer to your question
7 is since we're having some trouble with
8 interpretation, he would be in a better
9 position.

10 But let's go on. This was retrieved
11 and subsequently the ligament was undermined,
12 This was done producing expansion of the spinal
13 cord. What he means is that prior to this time
14 this free fragment, which was effacing the spinal
15 cord, was compressing the spinal cord. And now
16 that he removed the fragment the spinal cord
17 expanded, resumed -- rather returned back to its
18 normal shape,

19 So that's what he means by this. The
20 fragment is not making the cord larger. In fact,
21 it was making it a little bit smaller until it
22 was removed,

23 Q. All right.

24 A. Okay.

25 Q. And you don't know what that free

1 A. No, bad thing, not supposed to be
2 there.

3 Q. Could that be caused by trauma?

4 A. Anything is possible.

5 Q. Good. Let me stop you, I apologize.
6 The free fragment is generally not supposed to be
7 there either, is it?

8 A. Correct, not supposed to be there

9 Q. Caused **by** trauma?

10 A. Possible.

11 Q. Go ahead.

12 A. Okay. With a free fragment that
13 extended around the cord on the right side, right
14 side.

15 Q. Around the cord?

16 A. Yeah.

17 Q. You mean that it encompasses a whole
18 portion of the cord?

19 A. Well, sort of hard to understand, I
20 don't think that it, you know, encircled the
21 cord. I think that that free fragment was not in
22 the midline anymore but was off to the side.

23 Q. Now, would you be better qualified to
24 tell us where it was or would Dr. Itani who did
25 the surgery and looked at this be the one in the

1 fragment was from reading that operation record,
2 whether it was bone or disk material?

3 A. Oh, it was disk material.

4 Q. How do you know that from reading
5 that?

6 A. All right, I'll tell you. Okay, he
7 says superior/posterior margin of C7 was also
8 drilled and the osteophyte was removed
9 completely. So first he removed the osteophyte.
10 Then he went to the posterior longitudinal
11 ligament, which is posterior to the osteophyte.
12 He found the rent.

13 Q. The rent is the hole?

14 A. The rent is the hole,

15 Q. The hole is in the posterior
16 longitudinal ligament?

17 A. Yes.

18 Q. So you actually have a hole in the
19 ligament itself?

20 A. That's what he says.

21 Q. What could cause that?

22 A. What could cause that?

23 Q. Yeah.

24 A. You have degeneration of the long
25 ligament. It develops rents. It develops first

a microscopic tear and then macroscopic or a consolidated tear. And then through that little rent went this piece of disk material.

Q. Is that the free fragment?

A. Right, the free fragment. And he had to pay rent for the free fragment, right. The free fragment wasn't, you know --

8 Q. Would you have eventually if you
9 continued to treat Mr. Domaradzki in my example
15 of about 20 minutes ago conservatively and he
11 didn't get any better, would you have eventually
12 recommended surgery like what was performed by
13 Dr. Itani?

14 A. I would have recommended surgery like
15 Dr. Itani recommended if Mr. Domaradzki had
16 developed the physical findings that he did when
17 Dr. Itani saw him, okay.

18 I don't know how to say it any
19 differently. As long as -- even though Mr.
20 Dornaradzki, you know, had neck pain and had arm
21 pain, he had no localizing findings. According
22 to Itani on September 13th, 1995, he had a lot of
23 right-sided findings. That's why surgery was
24 indicated.

25 Q. If he continued to have problems,

1 would you have eventually recommended he have
2 surgery?

3 A. No.

4 Q. You would have had him just continue
5 to treat in what fashion?

6 A. As long as he didn't show a
7 progressive neurologic deficit, okay.

8 Q. What's that?

9 A. Oh, progress -- I'm sorry,
10 progressive neurologic deficit is -- it's
11 actually what it says, that somebody at one point
12 in time has no neurological abnormalities,
13 everything, reflexes are okay, motor is okay,
14 sensory is okay. And then over a period of time
15 he loses a reflex.

16 Itani said, **well**, he gets motor
17 weakness, he's got weakness **of** his right biceps,
18 of the right sensorialis cummunis, he also has
19 finger flexion bilaterally. This guy is
20 developing neurological problems, okay.

21 Q. And if you would have seen him you
22 would have recommended a surgery?

23 A. Right.

24 Q. At that point?

25 A. Exactly.

1 Q. This same kind of surgery?

2 A. Let's see, he did two levels. He did
3 a carpectomy, yes.

4 Q. Incidentally, do you do surgery
5 anymore?

6 A. No.

7 Q. When was the last time you did one?

8 A. This is what?

9 Q. It's 97?

10 A. 97. In 96.

11 Q. What did you do?

12 A. Last surgery I performed was
13 arthroscopy of the knee,

14 Q. Ever do a neck surgery like the one
15 Dr. Itani did here?

16 A. No.

17 Q. He's a neurosurgeon; right?

18 A. Right.

19 Q. A little different than your
20 specialty?

21 A. In some respects, yes.

22 Q. You don't know Dr. Itani?

23 A. No.

24 Q. You don't know him at all?

25 A. No.

1 Q. Okay, we went through that before.
2 All right, So you don't think, just so the
3 record is clear, you don't think that his surgery
4 was medically necessitated from the trauma
5 received by this motor vehicle accident on August
6 28th, 1994?

7 A. Correct.

8 Q. But eventually if you would have been
9 treating him and his symptomatology he complained
10 of would have continued, you would have
11 recommended this surgery?

12 A. If I had been treating him and he
13 presented to me with the picture that he
14 presented to Dr. Itani, I would have recommended
15 surgery.

16 Q. Okay. The same one he recommended or
17 something different?

18 A. No.

19 Q. Same one?

20 A. Given the total, the MRI, the
21 findings and everything, yes.

22 Q. When you got a rent and a free
23 fragment in there and you've got a herniation and
24 osteophyte complex, isn't it true that sooner or
25 later that could cause a more serious problem if

1 the surgery isn't performed on someone like Mr.
2 Domaradzki?

A. More serious problem than what?

4 Q. Than just treating conservatively. I
5 mean, isn't it like a bomb ready to explode?

7 understand your question.

8 Q. The condition in his neck is noted in
9 that MRI. It's a serious condition, isn't it?

10 A. in January?

Q. Yeah.

12 A. Okay. It's certainly significant.
13 He's got two level disease. And at one level
14 he's got a central disk extrusion from the MRI.

15 Q What's extrusion mean?

16 A You know, like take a tube of
17 toothpaste and squeeze on it, okay. You have an
18 extruded disk when you have a rent or a tear in
19 either the posterior longitudinal ligament or the
20 annulus. But the disk is still attached to a
21 portion of the disk, the intervertebral disk. So
22 it's like squeezing on toothpaste and it extrudes
23 out.

24 Q And the more that extrudes out the
25 more likely there is to be a problem?

A. Sure.

2 Q. And how far out was it extruded in
3 this case, 7 millimeters did you say?

4 A. Well, you know -- wait. No, the 7
5 millimeters was at another level and it was
6 referring to something else, He didn't measure
7 the extrusion.

8 Q. Well, what is your opinion as to his
9 complaining after the surgery of a new
10 constellation of symptoms?

11 A. What did -- I'm sorry, why did I say
12 that?

13 Q. No, I know why you said it, because
14 obviously you read it from the records.. But --

15 A. Why did that happen?

15 Q. Yeah, if you know,

17 A. Well --

18 Q. Did it happen because of the surgery?

19 A. No.

20 Q. All right,

21 A. That's Mr. Domaradzki's makeup,
22 okay. Mr. Domaradzki will always have symptoms.
23 When you read Dr. ~~Zaas~~ ^{AMR} records before the
24 accident he had 'a multitude of symptoms.

25 Q. Are these somatic complaints, doctor?

1 A. Yes.

2 Q. Do you think that -- you don't think
3 -- I'm pretty sure you're going to give me the
4 answer I expect on this question -- you don't
5 think that Mr. Domaradzki is a malingerer, do
6 you?

7 A. No.

8 Q. You don't think he's lying about the
9 symptoms, do you?

10 A, No, no, I don't believe that he's
11 lying about them. I believe that Mr. Domaradzki
12 has a lot of emotional problems. And, let me
13 just --

14 Q. I'm sorry, I wasn't going to say
15 anything.

16 A " And that he tends to express his
17 emotional turmoil with physical symptoms.

18 Q. Can one express emotional turmoil
19 with physical symptoms because of the fact that
20 they have been involved in a horrible accident
21 that has a tremendous effect on their life?

22 A. Sure.

23 Q. It's not unusual for people who have
24 been involved in an accident like Mr. Domaradzki
25 was involved in to be very depressed, is it?

1 A. I haven't seen -- despite all the
2 independent medical exams that I've done over the
3 years, I haven't seen very many people who have
4 been in an accident of the magnitude that Mr.
5 Domaradzki explained to me, okay, So I haven't
6 seen a lot of depressed people, but it's
7 certainly possible.

8 Q. And you know that he had -- do you
9 think it was inappropriate for him to be referred
10 to Dr. Jennifer Kriegler for the pain management
11 clinic treatment?

12 A. After Itani operated on him?

13 Q. Yeah.

14 A. No, I don't think it was
15 inappropriate.

16 Q. Was that medically necessary as a
17 result of the injuries from this automobile
18 accident?

19 A. Yes, I think it was. But I want to
20 try to explain something --

21 Q. Certainly.

22 A. -- if I may.

23 Q. You certainly may.

24 A. Even if Dr. Itani had not operated on
25 Mr. Domaradzki, I think somebody would have

1 referred him for pain management,

2 Q. If pain management hadn't worked
3 eventually somebody would have referred him for
4 the operation?

5 A. And that wouldn't have worked, so
6 they would have referred him back for pain
7 management.

8 Q. But your answer to that is, yes, is
9 it not, if pain management hadn't worked
10 eventually he would have been referred in for
11 this operation?

12 A, No, my answer is -- well, there is
13 always that somebody out there who will operate
14 on somebody, okay,

15 Q. You don't know that that might be
16 Itani though, you don't really know that?

17 A. I believe, as I've said several
18 times, given Domaradzki's physical findings that
19 it was appropriate to operate on him.

20 Q. Okay. All right. There certainly is
21 a psychological component here in this case with
22 Mr. Domaradzki, isn't there?

23 A. Yes.

24 Q. And that psychological component
25 comes as a result of the injuries from this

1 accident; correct?

2 A. No, sir, he had it before the
3 accident.

4 Q. Well, you don't know that he **had** it
5 before, these complaints that he made to Dr.
6 Zaas' and Cutarelli, right?

7 A. No, when I read Dr. Zaas' report --

8 Q. That's what I said, Zaas and
9 Cutarelli.

10 A. I'm sorry, I thought you were talking
11 about that one neck thing, No, you're right. My
12 opinion that he had preexisting or that he had
13 emotional problems before the accident is based
14 solely on -- I'd better be careful -- is based at
15 least in part on my review of Dr. Zaas' records,
16 that's where I got that information.

17 Q. That's the only evidence you have to
18 substantiate that, right, the psychological
19 component before the accident?

20 A. Right. I'm just trying to think.
21 You're doing a good job, you're wearing me out.
22 I don't know, I don't have all his records in my
23 mind right now whether there is any reference to
24 post-accident treating doctors to pre-accident
25 emotional problems.

1 Q. You've got all -- do you have any
2 recollection of seeing any in the files that you
3 have?

4 A. Right now I don't have any
5 recollection of anything, okay.

6 Q. Do you believe your opinion is that
7 as a result of this accident he sustained a
8 concussion; right?

9 A. Yes.

10 Q. You don't know whether he lost
11 consciousness or not, the evidence is conflicting
12 in that regard; correct?

13 A. The evidence is conflicting in that
14 regard, yes.

15 Q. And a cervical and lumbar strain;
16 correct?

17 A. Yes.

18 Q. How long does that last in your
19 opinion, the cervical and lumbar strain? I mean,
20 does it last up until the time you saw him in
21 your office here last month?

22 A. No, I don't know how long it lasts.
23 I really don't know how long it lasts.

24 Q. It may be going on right now as far
25 as you know?

1 A. No, no, he didn't have any evidence
2 of that when I saw him.

3 Q. He didn't have any tenderness, didn't
4 complain of pain when you saw him?

5 A. He complained. of pain,

6 Q. You don't have any reason to
7 disbelieve him, do you?

8 A. No.

9 Q. Okay. A transient left C7
10 radiculopathy?

11 A. Right.

12 Q. What's transient?

13 A. It means it doesn't last a whole Long
14 time.

15 Q. Sometimes it's there, sometimes it's
16 not?

17 A. No, no, no, no, no, no, no, no, no,
18 no. Very important, when **he** was at St. Alexis --
19 is that the hospital -- okay, when he was at St.
20 Alexis Hospital he had a C7 radiculopathy on the
21 left side. It was transient. It wasn't there
22 two days later when he went to see Dr, Zaas.

23 Q. Well, it may have been, but just it
24 wasn't in Zaas' records; right? I mean, you
25 can't say conclusively it wasn't there?

1 A. I can say conclusively. My opinion
2 of Dr. Zaas is he's a good doctor. He works very
3 hard. He records positive things. If Domaradzki
4 had continued arm complaints, he would have had
5 it in his records.

6 Q. You know so?

7 A. No.

8 Q. Then how do you know how good a
9 doctor he is or how good a historian he is or
10 anything that you just said?

11 A. Just based on my record, that's my
12 opinion.

13 Q. The left lumbar radiculopathy?

14 A. Right.

15 Q. And these injuries you agree
16 necessitated his hospitalization at St. Alexis
17 for all the time he was there?

18 A. Yes.

19 Q. Which was only one day?

20 A. Right.

21 Q. And the only treatment you don't
22 agree that he received that you agree would be
23 caused by the accident would be the surgery by
24 Dr. Itani I think you said?

25 A. I said that the surgery by Dr. Itani

1 was not caused by the accident; correct.

2 Q. You make reference on page eleven of
3 your report of February 1st, 1995 no complaints
4 of upper extremity radicular symptoms?

5 A. Right.

6 Q. Where did you see that?

7 A. Okay, let's go back to Dr. Yosowitz,
8 wherever he may be. Okay, page three of Dr.
9 Yosowitz's report, what did I say he said? Okay,
10 for example, on February 1st, 1995 Mr. Dornaradzki
11 had no upper extremity radicular symptoms
12 although his MRI demonstrated those findings.

13 Now, if you look on page three of Dr.
14 Yosowitz's report, okay, last full paragraph,
15 third or fourth sentence, the patient had no
16 specific radicular symptoms related to the upper
17 extremities.

18 Q. That has, of course, nothing to do
19 with the neck, right, upper extremities, you told
20 me that a few minutes ago, awhile ago; right?

21 A. Mr. Housel, no, you are absolutely
22 100 percent wrong. We've been talking for an
23 hour about how neck symptoms cause neck problems,
24 cause arm symptoms.

25 Q. The next sentence is he was still

1 having aching in his neck and back; right?

2 A. Fine. That's right. That's what it
3 says, But he has no radicular symptoms, okay.

4 Q. Prior to the accident, this is your
5 report, of August 28th, 1994 Mr. Domaradzki often
6 complained of physical symptoms for which no
organic cause could be found.

7 And those are the ones that you say
8 where Dr. Zaas and Cutarelli --

9 A. From their records, yes.

10 Q. It's not unusual for someone to
11 complain of pain someplace when you can't find
12 any medical reason for it, that's not unusual, is
13 it, doctor?

14 A. It happens occasionally, but not a
15 whole variety of symptoms that involve different
16 organ systems. And once you chase down one set
17 of complaints, a patient develops another set of
18 complaints.

19 Q. And you think there were quite a few
20 of these; right?

21 A. In Dr. Zaas' records, yes, I believe
22 that to be true.

23 Q. Is it unusual for you to have someone
24 that you examine complain of problems for which
25

1 you say there was no anatomic basis?

2 A. Is that 'unusual? No, I see that from
3 time to time.

4 Q. Do you think he's completely
5 recovered from any injuries he sustained in this
6 accident?

7 A. Yes.

8 Q. Including any injuries to his skull?

9 A. No, no. I said I believe that he is
10 recovered from the musculoskeletal.

11 Q. You really don't have any opinion one
12 way or the other on the injury to his skull,
13 correct, because you're not a neurologist or a
14 neurosurgeon, you'd better leave it to %hem?

15 A. Wait, there are three questions
16 there.

17 Q. You're right.

18 A. I'm trying to think of what injury to
19 his skull. We don't know whether he hit his head
20 or --

21 Q. Let me ask it this way, it would be
22 better. You're not prepared to give any kind of
23 an opinion with reasonable medical probability as
24 to the kind of injuries sustained to his skull;
25 correct?

1 A' Correct.

2 Q. That's better left to Dr. Mann, Dr.
3 Heller and people such as that to make that, to
4 give that opinion; correct?

5 A. Better left to Dr. Mann.
6
7
8
9

10

 Q. Other than that you know he had a
12 concussion?

13 A. I know that he had -- well, I know
14 that he had a concussion, yes.

15 Q. And you don't know how long that has
16 lasted or whether it's still lasting to this day;
17 correct?

18 A. That's correct, I didn't evaluate him
19 for that.

20 Q. All right. I don't have anything
21 else. Hold on a second.

22 (Discussion had off the record.)

23 MR. HOUSEL: That's all.

24 THE WITNESS: I will waive signature
25 with the understanding that if on sub quent

1 cross-examination there is anything in the
2 deposition that is indicative of misspeaking on
3 my part or inaccurate transcription, that is to
4 say I'm not going to change my opinion, I just
5 may have misspoken. And that's all I'm talking
6 about.

7 MR. HOUSEL: Well, really you've been
8 through this enough times, just so you know the
9 way it works is if you don't waive we're going to
10 order her to type this up. When she types this
11 up she's going to send you a letter pretty quick
12 saying she typed it up and you have an
13 opportunity to review it, and correct me if I'm
14 wrong, Julie, but he is going to have to come to
15 your office to read it and make any corrections
16 he deems important and note those corrections on
17 the correction page of the transcript.

18 MR. BARNHOUSE: He has seven days to
19 do that and trial is less than seven days, so
20 it's less than seven days no matter how we do
21 it. It's a mish-mash.

22 THE WITNESS: Right. Most court
23 reporters mail them to me, okay. You know, I'll
24 waive signature with the understanding that we
25 don't -- that if we get into a semantic argument

1 at the time of my trial deposition, we can
2 resolve it at that time.

3 MR. HOUSEL: I don't have -- I don't
4 know how we can do that. The only thing I can
5 say is whether or not she took it down
6 accurately, If you think she may have not taken
7 it down accurately, then don't waive and we'll
8 order it. And she can do whatever she has to do
9 as a court reporter,

10 THE WITNESS: Then I won't waive, I
11 ask that you mail it to me and I will read it and
12 do the corrections page if I have to and send it
13 back to you.

14 (Discussion had off the record.)

15 Q. We talked about one other thing here,
16 we got sidetracked from it. You were going to go
17 through your little calender dairy. It's 8:00
18 o'clock. If you don't want to do it now, if
19 you've got -- I'm going to issue a subpoena to
20 you for it. If you want to go through it and use
21 that word so if you want to cover up the patient
22 name and give me a copy with that, that's fine.

23 I'm not interested in anything to do
24 with your patients. It's none of my business. I
25 don't think it's protected by anything, but I'm

1 not interested in knowing who your patients are
2 in any way, shape or form, I just need the
3 calender.

4 A. What's the most expedient way to do
5 this then, to look at the appointment book for
6 this year? Okay.

7 Q. Let me look at it,

8 MR. BARNHOUSE: Which originally you
9 said last year.

10 Q. This year and Past year, what you
11 have. What you don't have left downstairs at
12 Zaas' office.

13 A. This is August, so let's take this
14 year as a representative year. We'll go through
15 the eight months. I will point out to you the
16 IMEs that I've had, Fair enough?

17 Q. Yes.

18 A. Okay.

19 Q. Do you want to do that now?

20 A. Sure, we might as well do it now.
21 Well, I'll bring it in here, all right.

22 Q. All right.

23 A. Off the record,

24 (Recess.)

25 MR. HOUSEL: Back on the record.

A. January 6th I did one for Kirk Roman

Q. And Kirk Roman was Meyers Hentemann
at that time I believe.

9 A. Either they were scheduled or I did

11 Kirk Roman. There is one on January 7th for
12 Jerry Jeppe, that's cancelled.

13 Q. How about Lisa Reid on the 6th?

14 A. Virginia Hurdman, I don't know who.
15 It failed, so I never did it. I don't know who
16 Lisa Reid is. It might have been an IC
17 evaluation.

18 Q. There is another one Felder, another
19 one -- or is that a patient?

20 A. Do you know her, that's a patient.

21 Q. There is an Aetna one.

22 A. Ester Daterno is a private patient.
23 For whatever reason they put her insurance in
24 there, okay,

25 Q. Okay.

1 A. Erica Caldaris is an attorney. Oh, I
2 know who that is, okay. Hahn Loeser, okay.
3 Marianne Hartsung. These are private patients.
4 David McGee is with --

5 Q. Is he with Carrabine?

6 A. Yeah, Carrabine in Chardon, sure,
7 that would be, yeah. David Williams, that's on
8 the 13th.

9 Q. Is there another one on that group,
10 Michael Williams?

11 A. Michael Williams, that's most
12 probably an IC evaluation.

13 Q. When you say an IC, what is that,
14 doctor?

15 A. Oh, industrial, work-related injury.

16 Q. So it's a defense or an IME for the
17 Workers' Compensation?

18 A. Right.

19 Q. That's done at whose request?

20 A. Generally the employer, Well, done
21 at the request of an attorney on behalf of an
22 employer.

23 Q. Here you got Marty Murphy, my good
24 friend, that you did one, And that's Davis &
25 Young law firm?

1 A. Right, January 14th, right. Off the
2 record a minute.

3 (Discussion had off the record.)

4 Q. Is that a person he sent you by the
5 name of Nickola?

6 A. Cevetic.

7 Q. That's an independent medical?

8 A. Right.

9 Q. And Andy?

10 A, Andrew Hoffman.

11 Q. So two on January 14th alone?

12 A, Right.

13 MR. BARNHOUSE: Andy Hoffman does a
14 lot of plaintiff's work, doesn't he?

15 A. Yeah. I don't have a recollection of
16 what all that was about.

17 Q. Bill Neubert, that's a defense
18 lawyer. That's a friend of mine.

19 A. Right.

20 Q. You did one for Victor Casalano?

21 A. Right, Bob Dame, that was an
22 Industrial Commission, that's on January 16th.

23 Q. Monday the 20th?

24 A. Monday the 20th, see, that lady is
25 back again.

1 Q. Frank Leonetti, Lisa Reid, Virginia
2 Hurdman.

3 A. Right, scheduled and cancelled
4 again. Here is one for Kirk Roman on the 21st.
5 That's an Industrial Commission, Chrisman, Jan
6 Roller,

7 Q. You don't work Wednesdays, right,
8 doctor, normally?

9 A. I don't see patients on Wednesday,
10 that's right.

11 Q. Jan Roller, that's with Marty
12 Murphy's firm, Davis & Young.

13 A. Right.

14 Q. So you did one on January 23rd?

15 A. January 23rd, right. Lisa McComas,
16 Chessler, that's probably an IC evaluation,
17 That's a plaintiff's medical malpractice case.

18 Q. Unbelievable.

19 A. Unbelievable,

20 Q. All right. We're going to -- were
21 you off a few days that week I see?

22 A, Well, let's see, Friday, didn't see
23 patients, Saturday didn't see patients, Sunday
24 didn't see patients.

25 Q. You never do on Sunday; right?

1 A. Right, unless it's a personal friend
2 who has been injured. Okay, well, let's see, it
3 says Erica -- we're on January 27th. Erica
4 called, case settled.

5 Q. So that was scheduled with Tim
6 Cleary, a defense lawyer?

7 A. But that got cancelled as well.

8 Q. Because it was settled?

9 A. Yeah.

10 Q. Another one?

11 A. Nuzzi was cancelled. And so I did
12 one industrial one for Cathy Ensign.

13 Q. You didn't see any patient that day
14 at all, you just had those two examinations,
15 January 27th, right?

16 A. I didn't see any private patients. I
17 did those two, okay. Clark Rice,

18 Q. Defense lawyer?

19 A. Defense lawyer. Don Lambert, IC
20 evaluation.

21 Q. On Tuesday 28th you did two?

22 A. Two on the 28th, right. My goodness,
23 look at this. January 30.

24 Q. Harry Sigmier is a defense lawyer
25 with Weston Hurd.

1 A. But that ease settled, okay.

2 Q. So you did do that one?

3 A. No, no, that one is cancelled, And
4 then there was another one, I don't even know
5 who -- I can't tell whether it's David Cress or
6 Pauline Adkins. But anyhow, that was rescheduled
7 so we didn't do it.

8 Q. Did you do one for Mary Kaye Bozza?

9 A. Right, that was Industrial
10 Commission. That was not in addition to all the
11 other patients I saw that day. Friday, these are
12 private patients, Okay.

13 Q. Two of them schedule on February
14 3rd.

15 A. Bill Neubert, that one **fail**, And I
16 have no idea who Simon Spelling or Josh
17 Allen -- I can't honestly tell you right now.

18 Q. John Calandra?

19 A. John Calandra on the 4th, right.

20 Q. Sharon Miller?

21 A. That's Workers' Comp.

22 Q. Okay, but you did one for John
23 Calandra?

24 A. Right.

25 Q. Wednesday the 5th you didn't work, or

1 you didn't see patients, I'm sorry.

2 A. I didn't see patients. I did one for
3 Jerry Jeppe on Thursday the 6th of February.

4 Q. What's the one above that, Robert?

5 A. Dane, that's Industrial Commission.

6 Q. Industrial Commission?

7 A. Right.

8 Q. Marianne Kasperek?

9 A. Now, that's a private patient.
10 That's Tim Kasperek's wife.

11 Q. Tim Kasperek the lawyer for Reminger
12 & Reminger?

13 A, Right, And she was a plaintiff in an
14 automobile accident and I took care of her.
15 Unbelievable. And I even saw Sister Marie
16 Folmire from the Cleveland Diocese when she got
17 hurt. Okay. Tom Wilson is a defense attorney.

18 Q. From Warren, Ohio?

19 A. Yeah, Youngstown.

20 Q. Sure, I know Tom. And that was on --

21 A. February 10th. And the rest of these
22 were private patients.

23 Q. Tom Wilson again?

24 A. Tom Wilson, no, different one.

25 Q. Another one on Tuesday the 11th of

1 February?

2 A. Right. These are all private
3 patients.

4 Q. And the rest of the week you
5 apparently weren't in there, out on Wednesday
6 12th?

7 A. Well, yeah. Oh, I know, that's
8 right. I was at the American Academy of
9 Orthopedic Surgeons meeting in San Francisco,

10 Q. Nice place **to** go. That was from when
11 to when then, from the 12th?

12 A. Well, I mean, we're out of the office
13 from the 12th until the 23rd, right. Took a
14 little vacation time,

15 Q. Then on the 24th you have marked no
16 evaluation?

17 A. Right.

18 Q. Appointment?

19 A. But the first day came back, okay.
20 So saw a couple private patients. Okay, February
21 25th, saw one for David Nuzzi, okay,

22 Q. That's independent medical
23 examination, defense lawyer?

24 A. Right.

25 Q. Tina Wexler?

1 A. Shame on you.

2 Q. I know Tina.

3 A. Right, private patient. Attorney,

4 all right.

5 Q. That's fine.

6 A. See, now we've got to recant those

7 names from the record.

8 Q. Like I'm going to say something to

9 her.

10 A. No, but this may be part of the

11 public record.

12 Q. You did one for Jerry Jeppe on

13 February 27th?

14 A. Right, That's all we did that day.

15 Okay, Monday, March 3rd, ah, okay, Christine

16 Bucci, yeah., it's a defense medical.

17 Q. How about the next one?

18 A. This one is, oh, okay, I know what

19 that is. CRA is CRA Managed Care is an

20 organization that helps workers get, you know,

21 injured workers get rehabilitated. So I was

22 helping doing an evaluation for them in terms of

23 what these injuries were on that person.

24 Q. Tuesday 4th?

25 A. Tuesday the 4th, case settled. I

1 would assume that was an IME that got settled.

2 Q. The appointment was scheduled but it
3 got settled?

4 A. Right.

5 Q. And you bill for that time normally?

6 A. If it -- if the person does not
7 appear for the exam or if there is a cancellation
8 within one week, okay,,

9 Q. Then you don't bill?

10 A, Then I don't bill.

11 Q. Tracy, is that one here, doctor,
12 2:30?

13 A. Tracy is another CRA Managed Care
14 thing.

15 A. Okay, Marlene Shirley.

16 Q. Thursday the 6th you did one for
17 Jeppe and one for Tim Cleary?

18 A. Do you know Tim Cleary?

19 Q. Sure do.

20 A. Is he a defense attorney?

21 Q. Sure is,

22 A. With whom?

23 MR. BARNMOUSE: I'm not sure he is.

24 A" No, I don't think so,

25 MR. BARNHOUSE: The last couple cases

1 I've had Tim has been representing plaintiffs.

2 A. Right.

3 MR. BARNHOUSE: Now that he left --

4 A. Rarely do I do two a day. So that's
5 why I, you know, take -- I pull a chart. Another
6 one for Jeppe.

7 Q. Monday, March 10th?

8 A. That's industrial. Tom Wilson
9 obviously. Look here, I did two on the same day.

10 Q. Yeah, March 11th.

11 A. 1:30 and one at 2:30.

12 A. Yeah, two IMEs.

13 Q. What happened to Wednesday?

14 A. Wednesday, that was a patient who had
15 an emergency problem and I saw him,

16 Q. Most usually most doctors take
17 Wednesday afternoons off, doctor?

18 A. I don't see patients on Wednesday.
19 I'm in the office working however. Here is one
20 for David McGee.

21 Q. On March 13th?

22 A. On March 13th. And here is Lisa
23 Reid, that's the third time she showed up. Do
24 you think I saw her three times or --

25 Q. Well, it's Virginia Hurdman and Lisa

1 Reid is the lawyer.

2 A. Okay, so it was probably Workers'

3 Compensation. Those are the private patients.

4 Q. Monday, March 17th, you see people on

5 St. Patrick's Bay?

6 A. Good Irish boy, that's why my name is

7 Dennis. Mark Preston, I don't know,

8 Q. It's a Columbus phone number.

9 A. Okay, I don't know, because this

10 one --

11 Q. There is a Crawford.

12 A. Crawford Company, that's definitely

13 Workers' Comp,

14 Q. They are an adjusting firm, aren't

15 they, doctor?

16 A. Yeah, But, I mean, I remember

17 Hartman very well. Hartman worked for an

18 elevator company and hurt his back or something,

19 so this was industrial, believe me.

20 Q. All right,

21 A. Tuesday, the 18th, okay, private.

22 Q. Cleary again.

23 A. Here's one for Tim Cleary.

24 Q. George Zucco, he does Ohio Casualty

25 work.

1 A. I don't know.

2 MR. WOLANIN: That's correct.

3 Q. So that's two on that day, the 18th.

4 A, Wait a minute, one of these was an IC
5 and one was Workers' Compensation. So Zucco was
6 the IME rather.

7 Q. You don't know what Cleary was?

8 A. No. All right,

9 Q. Thursday?

10 A. Thursday the 20th, Doug Cress, it
If must have been a Workers' Compensation because
1% here's Newberg,

13 Q. Phil Newberg.

14 A, Although it was cancelled, And I
15 don't know when it was cancelled, so --

16 Q. That's on Thursday?

1% A. That's on the 20th, right.

18 Q. You didn't work on Friday the way it
19 appears?

20 A. I didn't see patients.

21 Q. Is that normal or are you out of
22 town?

23 A. I'm out of town, right. Okay. Where
24 the devil are we in March.

25 Q. Were you back on the 25th?

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Apparently even though it says out of town, you
do one for Jerry Jeppe again.

A. No, it's crossed off, so I didn't do
it.

Q. Sorry.

A. Okay, that's private patient.

Q. Back in town on the 27th?

A. 27th, **did** this one for Jerry, okay.

Q. Jerry Jeppe, you did one on the 27th?

A. Right. That's Workers' Compensation.

Q. How about Kenneth Meyers for Kenneth
Rodemyer?

A. Petrs Rodemyer,

Q. I'm sorry, what was that, Monday,
March 31st. Another Jerry Jeppe.

A. Jerry Jeppe.

Q. Ruth McGee?

A. Oh, okay, it's work related, I just
can't remember who that is.

Q. Tuesday, April 1st.

A. Another failed Newberg,

Q. Phil Newberg didn't come?

A. They just never show up for whatever
reason. That's Workers' Compensation.

MR. WOLANIN: Farmers likes to settle

1 cases.

2 A. Which insurance company is it?

3 MR. WOLANIN: Farmers likes to settle
4 cases.

5 A' Farmers, okay. Because I don't even
6 honestly know. Here's one for Jeppe on April
7 3rd. This is IC,

8 Q. When you say IC --

9 A. Industrial Commission, Workers'
10 Compensation.

11 Q. And you generally examine them for
12 the employer?

13 A' Yeah.

14 Q. So you write a report contrary to the
15 plaintiff's report for the employer, the IC
16 you're talking about? You don't always, but you
17 write a report?

18 A. No, no, no, no, I don't mean that.
19 The majority of Workers' Compensation things that
20 I do, there are a variety of things that I do.
21 One is issues of additional allowance, okay. One
22 is present status and maximum medical
23 improvement. One other thing is as a treating
24 physician and, you know, initial determination of
25 injury. I don't do permanent partial impairments

1 and that kind of stuff.

2 Q. You do all the Workers' Compensation
3 evaluations for the employer- though; is that
4 right?

5 A. The evaluations are predominantly for
6 the employer. I have as -- you go through the
7 book we could pick out my own patients who have
8 had Workers' Compensation injuries, but the
9 evaluations are for the employer.

10 Q. Friday April 4th, you didn't see
11 anyone.

12 A. Yeah, right. Monday.

13 Q. Jerry Jeppe.

14 A. Failed.

15 Q. Didn't come?

16 A. Yeah.

17 Q. Jerry Keagan or John Reagan?

18 A. Right, okay, interesting case, yeah.
19 Made an exception, did a second defense medical.
20 A guy cut his finger on a sign that was on a
21 construction site that was blowing in the
22 breeze. And that led to a lawsuit,

23 Q. This guy's --

24 A. Good guy. Buy your clothes out
25 there?

1 Q. Yeah.

2 A. So do I. See, we finally found
3 something in common, right.

4 Q. Jack O'Donnell, John O'Donnell, he's
5 with Meyers Hentemann, April 8th, defense
6 attorney. Mary Kaye Bozza, you did an Industrial
7 Commission. You've done her a number of times.

8 A. Would you repeat exactly what: he
9 said, please?

10 (Record read.)

11 Q. An IC medical?

12 A. Yeah, I've done ICs for her a number
13 of times,

14 Q. Who is she with?

15 A, Right now she's with Porter Wright.

16 Q. You got Judd Hawkins on April 10th?

17 A. Okay, I did not examine this guy,
18 okay. I mean, how do I remember? This case is
19 many, many years old. I had examined this guy a
20 number of years ago. Trial was coming up. I
21 actually had the deposition, gave the deposition
22 on this case before I was scheduled to examine
23 the guy the second time, okay.

24 Q. What's the one there?

25 A. That cancelled, it was an IC

1 evaluation, IC evaluation, right.

2 Q. I see most the time on Friday you
3 don't do anything.

4 A. Exactly. I mean, bottom line, we
5 could have saved 25 minutes, I see patients
6 Mondays, Tuesdays and Thursdays, okay. And on
7 the average, there will be exceptions like
8 anything else, I do one IME, one defense medical
9 Mondays, Tuesdays, Thursdays, And one IC
10 evaluation, Mondays, Tuesdays and Thursdays.

11 Q. What would you say if you could give
12 me this figure, what would be an average bill for
13 an IME? Can you give such a thing?

14 A. Yeah. For a defense medical?

15 Q. Yeah.

16 A. Okay. I don't know that there is an
17 average, but fortunately not everybody is like
18 Mr. Domaradzki or I wouldn't have enough hours of
19 the day. You know, you're going to try to
20 estimate my annual income, okay (laughter).
21 Right, I mean, you're not --

22 Q. Say for IMEs.

23 A. Say 700 bucks, two hours.

24 Q. Two hours?

25 A. Yeah.

1 Q. All right.

2 A. And then given that information,
3 okay, and given the fact that I'm not -- say that
4 I was not in the office eight weeks -- no, that's
5 too much -- six weeks this year so far, why don't
6 you just do the math and we don't have to go
7 through every page,

8 Q. We're almost done.

9 a. We're in April.

10 Q. We'll go quickly. We're almost
11 done. We don't have much further to go.

12 A. John McCaffrey, probably --

13 Q. Defense medical?

14 A. Yeah.

15 Q. Liz Crosby,

16 A. No, same lady, you know, Industrial
17 Commission. IC Jeffrey Jerga, do you know him?

18 Q. No.

19 A. So I don't know.

20 Q. Elizabeth Crosby again.

21 A. Yeah, still IC evaluation.

22 Q. Kirk Roman.

23 A. Thursday, look what happened, it was
24 cancelled. And new patient was in there so I'm
25 sure -- oops, here's Mr. Newberg, so the day

wasn't wasted, maybe even showed up.

David McGee, Monday April 21st, this is IC, These are private patients.

Q. Tom Green, he's a friend of mine.

A. Yeah, that's IC,

Q. That's an IC for the employer?

A. Right.

Q. Okay- Was there another one on the
9 bottom of that page?

10 A. Private patient,

11 Q. Okay, sorry, Go ahead.

12 A. Oh, plaintiff, automobile accident.
13 Took care of him,

14 Q. I bet you did.

15 A. Right, Well, actually found
16 something wrong with him. Fractured his
17 clavicle, automobile accident. And his wife,
18 they had his and hers fractured clavicles,
19 really. One had a right one, one had a left
20 one.

21 Plaintiff James Jordan, automobile
22 accident for rotator, April 22nd, stellar day.

23 Q. Scott Smith on that day,

24 A. Scott Smith, who the heck is Scott
25 Smith? I don't know, probably didn't show up

1 anyhow. But probably a defense medical. Here's
2 CRA, I had to help get a worker back to work kind
3 of thing.

4 Q. Pat Roach from Davis & Young.

5 A. Yeah, right. This is April 24th.

6 Q. Another IC by Mary Kaye Bozza, same
7 day.

8 A. Right. Moving right along. Oh, I
9 was out of town April. I know where I was. I
10 was at the American Academy of Orthopedic
11 Surgeons, committee on professional liability.

12 Q. Tuesday, the 29th you did one for
13 Jerry Jeppe.

14 A. Did one for Jerry Jeppe.

15 Q. Dan Balmert, IC?

16 A, Yeah., The other four or five are
17 private patients,

18 Q. Another Frank Leonetti on May 1st?

19 A. Yeah, cancelled, case settled. I
20 don't know if there was a charge.

21 Q. Mary Kaye.

22 A. Okay. Oh, injured guy referred to me
23 by the employer for treatment.

24 Q. Okay.

25 A. Monday, May 5th.

1 Q. Forrest Norman from Gallagher Sharp.

2 A. Wait a minute, it was cancelled and
3 so we don't know if there was a charge, Mary
4 Kaye was cancelled.

5 MR. BARNHOUSE: That's not Gallagher
6 Sharp's number.

7 A. Oh, you know.

8 MR. WOLANSN: Kohrman.

9 A. It's Forrest Norman, Jr., who is no
10 longer --

11 MR. WOLANIN: At Gallagher Sharp.

12 A. No, wait a minute. He's no longer at
13 Kohrman.

14 MR. BARNHOUSE: He's at Weston Hurd,

15 A. Okay.

16 Q. Another one for Mary Kaye?

17 MR. WOLANIN: I went to college with
18 Forrest, that's how I know.

19 A. It was cancelled.

20 Q. That was May 5th?

21 A, So what happened on May 5th,
22 nothing. Bottom line is I didn't do any defense
23 medicals on May 5th since we're keeping track.

24 Okay, May 6th, no wonder my book is
25 -- oh, look who is here (indicating.)

1 Q. Yeah, Ann Holskowsky.

2 A. Yeah, so what happened on that day,
3 May 6th, Tim Sweeney, that got cancelled. And
4 Holskowsky, she didn't even show up that day.

5 Q. There was a reason for it.

6 A. I can imagine. IC evaluation.
7 Okay. No evaluations. Okay, saw them on
8 plaintiff's -- oh, okay, that's when my mom died,
9 okay.

P0 Q. I'm sorry.

11 A. Yeah, this was --

12 Q. So you were off from May 9th for a
13 couple days?

14 A. Yeah, you're right. It was very -- I
15 was scheduled to go to the Ohio Orthopedic
16 meeting and was absolutely bombed, decided not to
17 go, She died on that night. So all this is, you
18 know, this has all got wiped out for a week in
19 there through here.

20 Q. The ones here (indicating.)

21 A. These, see, they all got rescheduled,
22 okay (indicating.)

23 Q. So you had one scheduled with
24 Newberg?

25 A. Right, this is an IC evaluation.

1 Q. Okay.

2 A, Private patient. Were is a patent
3 Roach, but it got, you know, rescheduled. That's
4 an IC.

5 Q. That's on the 12th and 13th?

6 A. Yeah, not a happy time. The 14th.
7 Now, this is, wait a minute, the 14th is this
8 one, okay. So that's the one from the 12th you
9 saw on the 14th.

10 Q. Newberg?

11 A. A Newberg, a defense one.

12 Q. Right"

13 A, Okay. This one was an IC but didn't
14 even show up. The 15th.

15 Q. Rosemary Gold, Frank Buckley's
16 office. She's a defense lawyer, She's a
17 friend. She's the one we had on Leonard Vanillo
18 years ago,

19 A. What year was that?

20 Q. Probably 94, 93 or 94.

21 A. So I don't remember any of these
22 people. So I don't even know if on the 15th I
23 saw someone.

24 Q. And Frank Buckley and Rosemary Gold
25 are defense lawyers with Buckley King.

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1 A. Yeah, but there looks like there are
2 two names in there and this is rescheduled and
3 this is cancelled. So the best that I can
4 determine is that this person was scheduled on
5 the 15th but that was cancelled on the 12th. And
6 then somebody else was scheduled for that day but
7 that got rescheduled,
8 Q. Okay.
9 A. So that's an IC evaluation.
10 Q. It was an IC on that day?
11 A. That's right, And that is an IC
12 treatment,
13 Q. Okay, on the 15th.
14 A. Friday, oh, my goodness, broke the
15 rules, Friday.
16 Q. It's probably the one that
17 cancelled.
18 A. Yeah, right.
19 Q. Friday, May 16th.
20 A. Yeah, okay. All right.
21 Q. Monday 19th?
22 A. Lou Skelton, who is Lou Skelton?
23 This is RTA for treatment or evaluation.
24 Q. Denise Strap, you still do a lot of
25 RTA stuff?

1 A. No, I don't know why, but I don't,
2 Julie Meyer, probably -- that's probably a
3 defense medical on May 20th. I'm sorry, we
4 haven't been keeping you up, these are private
5 patients.

6 Q. How about Don Lampert?

7 A. Not the same Don Lampert that we've
8 been talking about. Don Lampert is an attorney.
9 He does stuff with Alan Shapiro, Shapiro, Kendis
10 & Petro. Then he also does stuff on his own, so
11 it could be either way, It could be for the
12 Plaintiff -- I mean for the claimant or for the
13 employer.

14 Q. Okay.

15 A. But it's -- okay, attorney's wife,
16 patient. We weren't going to mention names of
17 patients on the record. I just pointed it out to
18 you. I was just showing you.

19 Q. Les Coolen on May 22nd.

20 A. No, wait a minute, Les Coolen is the
21 human resources fellow at the diocese, the
22 Catholic Diocese. This is someone he referred to
23 me for treatment, back pain, okay. Moving right
24 along, May, May 27th.

25 Q. Saw nobody on Monday, May 26th?

1 A. No. Must have been a reason,
2 Memorial Day, okay.

3 Q. Jerry Jeppe on Tuesday May 27th.

4 A, Right, Two people scheduled, nobody
5 showed up, so we didn't do either one. This is
6 an IC evaluation,

7 Q. Sandra Sommers, IC evaluation.

8 A. Right. Wednesday, so John Gallagher,
9 Henry Marchetta, I don't know, must have been a
10 defense medical,

11 Q. That's on May 28th.

12 A, Right, This trap pain (indicating.)
13 The 29th, defense medical for Scott Fowler.

14 Q. Charles Royer?

15 A. No, that's IC evaluation. George
16 Brooks, I don't remember him. That's
17 interesting. Private patient. June 2nd, okay,
18 so there was one scheduled for Zulandt, but that
19 got cancelled.

20 Q. Bob Zulandt.

21 A. That was an IC and that didn't show
22 up. Moving right along, June 3rd.

23 Q. Gene O'Donnell.

24 A. Must be from Meyers Hentemann.

25 Q. He is.

1 A. These are, okay, that's Workers'
2 Compensation I know, but didn't show up. And
3 that's Workers' Comp and didn't, you know, got
4 cancelled.

5 Q. Okay.

6 A. And there are my two plaintiffs. I
7 can't seem to get them better with their
8 fractured clavicles, Here's another Zulandt, but
9 again it got cancelled. I wonder if it's the
10 same one, Amber, Andrew, I think they were in the
11 same accident. But the case was settled,

12 Q. Reschedule on June 5th but the case
13 got settled.

14 A. The case got settled, right, Nothing
15 else. June 9th.

16 Q. Buckley, defense medical?

17 A. Yeah, I assume,

18 Q. Sandra Sommers is an IC?

19 A. Right.

20 Q. John --

21 A. John Reagan, defense medical.

22 Q. But the one on the page, Steve?

23 A. No, private patient, He didn't show
24 up. He's a private patient. You know,
25 everything is slotted, too. No evaluations. Oh,

1 I know why, day before my birthday.

2 Q Out of the office on your birthday?

3 A Yeah.

4 Q Why not?

5 A That's right. Actually took off
6 Monday, too. How do you like that?

7 Q Tuesday, June 17th.

8 A June 17th, Scott Smith, never showed
9 up. I don't know who Scott Smith is. This is
10 CRA, helped him get back to work kind of thing.

11 Q You saw Mary Kaye Bozza on Wednesday
12 there.

13 A, We weren't going to talk about
14 private patients.

15 Q I'm sorry, she's a lawyer that was
16 mentioned, I apologize.

17 A Yeah, but she's there as a patient.
18 Off the record,

19 (Discussion had off the record.)

20 Q Wednesday, June 19th, Tim Sweeney.

21 A Must have been defense medical.

22 Q Mary Kaye Bozza.

23 A Right, that's an IC evaluation. Poor
24 kid was really -- okay, John Hanna, it says
25 failed. It was probably scheduled as a defense

1 medical.

2 Q. Denise Strap?

3 A. No, that's RTA. So somebody for RTA,
4 Steve Redding is with RTA.

5 Q. All of a sudden they started
6 (inaudible.) Kind of falls by the wayside and
7 comes back to you.

8 A. Do you think that's what it is?

9 Q. Sure, that's what we hear anyway.

10 A. Did you ever ask him what he
11 charges?

12 Q. Well, I can tell you what he
13 charges.

14 A. What's that?

15 Q. I had him six times by judges.
16 You're reasonable at least. Henratty.

17 A. Make sure **that** gets transcribed and
18 we blow it up. Whose handwriting, I don't know.
19 Well, 330 is Warren, Youngstown so, you know,
20 probably defense. And this is an IC evaluation.

21 Q. All right. That's on the 26th.

22 A. On the 26th of June, I hope you will.
23 share these statistics with me in all seriousness
24 to see how close we were.

25 Q. Heidloff, she's a defense lawyer,

1 A. Yeah, but it says Valerie Heidloff,
2 it's Virginia Heidloff and she's with Gallagher
3 Sharp, It never -- it got cancelled.

4 Q. Pete Elliott.

5 A. That's --

 MR. WOLANIN: He's a defense lawyer,
7 too.

8 A. Right. Oh, yes, okay, I know. Yeah,
9 this is a guy who got hurt at work and he's third
10 party somebody. So I guess it's a defense
11 medical.

12 Q. Laura Letz. There is Ann Holkowsky.

13 A. Yeah.

14 Q. Just got a report today as a matter
15 of fact.

16 A. Right.

17 Q. What about Terrence O'Brien, did we
18 miss one?

19 A. No, that's an IC.

20 Q. IC, all right. That was on July 1st?

21 A. Right. George Lucas,

22 Q. George Lucas?

23 A. George Lucas is a plaintiff's
24 attorney.

25 Q. I know George.

1 A. And he asked me to evaluate his
2 client, to do an independent medical of his
3 client, okay. So we found one for the
4 Plaintiff. That's IC,

5 Q. Another Jeppe on July 7th?

6 A. It's the same guy, Christopher
7 Warns. Royer is IC evaluation. That one got
8 cancelled. In fact, that's an IC evaluation. I
9 just saw him the other day. Okay, Gary Solsky.

10 Q. He is a defense lawyer. Lou Licata.

11 A. No, IC evaluation.

12 Q. Okay,

13 A. John Travis,

14 Q. Defense lawyer.

15 A. Okay.

16 MR, BARNHOUSE: Gallagher Sharp.

17 A. Okay, This is IC evaluation,

18 Q. That's on Thursday 10th of July?

19 A. 10th of July, right, Oh, that's
20 right, you can see having gone through since
21 January what a mistake I made. I mean, I did
22 this special thing for Barnhouse on Friday.
23 Okay. No favor for anybody ever again, okay.

24 MR. BARNHOUSE: You notice, by the
25 way, how often our firm has shown up.

Q. Bob Warner from Reminger & Reminger on July 14th.

A. Right, that was a medical malpractice case interestingly enough.

a. Nuzzi.

A. Nuzzi was IME, failed. July 15th, oh, okay, well, there is the answer. Defense medical, it says Chub Insurance. This is an IC evaluation. I never even saw that person. Oh, yeah.

Q. You were out of the office,

A. Yeah, okay.

Q. Jerry Jeppe on Monday, July 28th.

A. July 28th, right. One person, that's this fellow Weirsman that we counted four different times, I don't know if we get credit or subtract it,

Q. Jerry Jeppe on the 29th.

A. No, Kirk Roman. This day I did two defense medicals as a favor because these people are elderly, They both live in Akron.

Q. Kirk is with Nationwide in Akron now.

A. Yes, He used to be with Meyers Hentemann. So I did those two,

I Q. Jeppe on July 31st.

2 A. Oh, my goodness, two Jeppes. Jeppe

3 9:30 and 10:30.

4 A. Yeah, okay- Scheduled but, you know,

5 cancelled. That's an IC evaluation. That's --

6 okay, this was another person who was injured at

7 work and that's what that was about. These are

8 private patients. Tuesday, August 5th,

9 cancelled.

10 Q. Jeppe, but cancelled.

11 A. Cancelled, yeah. These are IC, This

12 is the one that I did and that was an IC

13 evaluation. There is a Jeppe on August 7th, a

14 defense medical,

15 Q. Jeppe on the 11th?

16 A. On the 11th, right.

17 Q. Jerry doesn't use anybody but you.

18 A. Nobody uses me, I work with a lot of

19 people.

20 Q. Two different Jeppes, two that day?

21 A. One failed.

22 Q. But two were scheduled, Monday,

23 August 11th?

24 A. Yeah, right.

25 Q. Private patient, There is another

1 one, this person never showed up. No, wait a
2 minute, that was just yesterday as a matter of
3 fact. So I saw this guy yesterday.

4 Q. For Jerry Jeppe?

5 A. For Jerry Jeppe, Lou Henderson. And
6 this **was** a.n IC evaluation. And that brings us up
7 to this red letter day, okay. Let me know if it
8 was accurate.

9 MR. HOUSEL: Okay, thank you.

10 THE WITNESS: You're welcome. So we
11 started this at 4:00, it is now quarter till
12 9:00. You're going to round it off to five
13 hours?

14 MR. HOUSEL: It's all right with me.

15 (Deposition concluded at 8:50 p.m.)

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1 CERTIFICATE

2 The State of Ohio,)

3 SS:

4 County of Summit.)

5
6 I, Julieanne Ross, a Notary Public
7 within and for the State of Ohio, duly
8 commissioned and qualified, do hereby certify
9 that the within named witness, DENNIS B. BROOKS,
10 M.D., was by me first duly sworn to testify the
11 truth, the whole truth and nothing but the truth
12 in the cause aforesaid; that the testimony then
13 given by the above-referenced witness was by me
14 reduced to stenotypy in the presence of said
15 witness; afterwards transcribed, and that the
16 foregoing is a true and correct transcription of
17 the testimony so given by the above-referenced
18 witness.

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

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

5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Akron, Ohio, on this 15th day of August,
8 1997.

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Julieanne Ross

Julieanne Ross, Notary Public
within and for the State of Ohio

My commission expires July 25, 1999.

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Lawyer's Notes
