





TUESDAY AFTERNOON SESSION

AUGUST 26. 1997

PROCEEDINGS

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(Thereupon, the jury entered the courtroom)

THE COURT: Just be seated,  
everybody and be comfortable.

Proceed at this time, Mr. Housel.

MR. HOUSEL: Thanks, judge.  
Can you tell the jury that I'm calling Dr.  
Brooks?

THE COURT: I am, right at  
this time.

You will recall, ladies and gentlemen, that  
the plaintiff presents the claims of the  
plaintiff and the evidence in support of those  
claims first. The plaintiff presented witnesses  
right up through the plaintiff himself who  
testified. At that time, I indicated that  
further plaintiff's witnesses were not available  
and we interrupted the plaintiff's presentation

1 to permit defendant to proceed.

2 At this time, the defendant has not rested,  
3 but the plaintiff is going to call a witness,  
4 Dr. Brooks, whose videotaped deposition you saw  
5 this morning, and when we recessed, plaintiff's  
6 counsel, Mr. Housel, was cross-examining Dr.  
7 Brooks. This is a further or continuation of  
8 that cross-examination, except that now Dr.  
9 Brooks is here personally. You may call your  
10 witness, Mr. Housel.

11 MR. HOUSEL: Dr. Brooks.

12 MR. BARNHOUSE: Your Honor, may we  
13 approach the bench for a minute?

14

15 (Thereupon, a discussion was held between the  
16 Court and counsel off the record at the bench, after  
17 which the following proceedings were held in open  
18 court:)

19

20 Thereupon, the Plaintiff, to further maintain  
21 the issues on his part to be maintained, called as a  
22 witness, DENNIS BROOKS, M.D., who, having been first  
23 duly sworn, was examined and testified as follows:

24

25

1                    CONTINUED CROSS-EXAMINATION OF

2                    DENNIS BROOKS. M.D.

3           BY MR. HOUSEL:

4           Q        Dr. Brooks, remember when we took your  
5 videotaped deposition?

6           A        Yes, sir.

7           Q        All right. Do you remember that we had, my  
8 colleague and I, Mr. Wolanin, had subpoenaed certain  
9 records from your billing service, Valley Physicians  
10 Services, Inc.?

11          A        Yes.

12          Q        And that no one from Valley Physicians Services  
13 showed up at your videotaped deposition?

14          A        Yes.

15          Q        Do you remember that Mr. Wolanin called Valley  
16 Physician Services from your office? You were kind  
17 enough to let us use your phone?

18          A        Yes.

19          Q        And we got a hold of a young lady named Kelli  
20 Kutsko from that organization?

21          A        Yes.

22          Q        And that you took the phone away from Mr.  
23 Wolanin and told Kelli Kutsko not to answer any  
24 questions Mr. Wolanin asked her about why they didn't  
25 bring the records?

3 A No, sir, that's not my recollection and that's  
2 not true.

3 Q That didn't happen?

4 A Not as you described it, sir.

5 Q How did it happen? Did you take the phone away  
6 from Mr. Wolanin?

7 A No, sir. Mr. Wolanin gave --

8 MR. BARNHOUSE: Objection, Your  
9 Honor.

10 THE COURT: Overruled.

11 Q Go ahead.

12 A I was sitting at my desk. I gave Mr. Wolanin my  
13 telephone. He was speaking to Kelli. I put the  
14 telephone on speaker phone so that I could hear her  
15 responses. I did not take the phone away from Mr.  
16 Wolanin. He gave it to me. I did say to Kelli that  
17 I felt that she need not answer his questions over  
18 the telephone. I didn't explain my reasoning, but my  
19 reasoning was she claims she had never gotten a  
20 subpoena. These were my private records. She really  
21 had no real knowledge of who Mr. Wolanin was, other  
22 than the fact that he said who he was, so she's  
23 divulging some personal information over a  
24 telephone. I did not take the phone away. He gave  
25 it to me.

3 Q Did you -- you didn't want Mr. Wolanin or I to  
4 get the records of your billings that were prepared  
5 by Valley Physicians for medical-legal defense .  
6 medicals that you do; isn't that a fact?

7 A The fact is that I didn't want you to get any of  
8 my billings for any of the things that I do.

9 Q You don't want us to know how much money you  
10 make a year doing defense medicals for insurance  
11 companies and defense firms, do you?

12 A I don't want you to know how much money I make  
13 in my medical practice. I don't believe it's any of  
14 your business.

15 Q Apparently it is part of our business or you  
16 wouldn't be here, right, Doctor?

17 A Apparently Judge McAllister has indicated that I  
18 come down from the office and so I'm here today.

19 Q You were subpoenaed, weren't you?

20 A I'm not quite sure I understand. I know that --

21 Q Did a process server hand you a subpoena  
22 yesterday?

23 A Yes, sir, the process server did hand me a  
24 subpoena.

25 Q That's fine.

A At 11 o'clock yesterday for an appearance at 1  
o'clock yesterday. And prior to that time --

1 Q I just asked if she handed it to you. That's  
2 all.

3 A I don't believe that just answering your  
4 questions yes or no is fair to me, okay?

5 MR. HOUSEL: Judge, would you  
6 just ask the witness just to answer my  
7 question? It's a simple question whether she  
8 served you or not.

9 THE COURT: I must ask you,  
10 Doctor, simply to answer the question. If it  
11 calls for a yes or no answer, just answer yes or  
12 no.

13 THE WITNESS: Yes, Your Honor.

14 Q Thank you. So she did serve you, correct?

15 A Yes.

16 Q I'm going to hand you what I have just had  
17 marked as Plaintiff's Exhibit 56 and ask you if you  
18 know what that is.

19 A I have never seen these records before,

20 Q Did you look at them over the lunch hour when I  
21 handed them to you and Mr. Barnhouse here in this  
22 courtroom?

23 A No, sir, I did not.

24 Q You never looked at them?

25 THE WITNESS: Your Honor --



1 THE COURT: Yes, sir.

2 THE WITNESS: I don't get a  
3 chance to answer?

4 THE COURT: I'll see that you  
5 do. Just wait for the answer, Mr. Housel.

6 MR. HOUSEL: I'm sorry.

7 Q Did you ever look at them over the lunch hour?

8 A No, sir, I did not.

9 Q Never got a chance to?

10 A I was told that I was not to look at those, that  
11 this was confidential information that only the  
12 judge, you, and Mr. Barnhouse were to see. I will be  
13 happy to look at them.

14 Q Who told you that?

15 A Mr. Barnhouse.

16 Q Oh, he instructed you not to look at those?

17 A Yes, sir.

18 Q Do you know what those are?

19 A I would be happy to take a moment now and look  
20 at them.

21 Q Okay.

22 A I don't know how many pages are here and I'm not  
23 going to take everybody's time by going through each  
24 page, but having never seen these before, but what  
25 they look like to me is -- I'm not even sure -- they

1 look like, some of them at least, they look like a  
2 statement -- no, that's not even the right word.  
3 It's all the billing activity that was generated on  
4 the basis of an individual account. I can see the  
5 account number and then I can see the dates where  
6 certain items were entered, okay?

7 Q Are they from your office?

8 MR. BARNHOUSE: I'll object to all  
9 this, Your Honor.

10 THE COURT: Overruled.

11 A Yes.

12 Q Your answer is yes?

13 A Yes. The pages have my name on them.

14 Q All right, sir. And they say medical-legal on  
15 them where they have the M-L listed on them?

16 A Well, that's what I was looking at because --

17 Q Well, let me do this. Let me withdraw the  
18 question for a second.

19 If I represented to you that Kelli Kutsko from  
20 Valley Physicians Services, in response to a motion  
21 to quash us getting any of those records that you had  
22 a lawyer file for you, says that those are all the  
23 medical-legal billings for you for defense medicals  
24 performed by you for the years 1967 and 19 -- I'm  
25 sorry, 1996 and 1997, up until the current date,

1 would you have any reason to disagree with that?

2 A Yes, sir, I would.

3 MR. BARNHOUSE: Objection.

4 THE COURT: Overruled.

5 Q And what would that reason be?

6 A The reason that I would disagree with that is  
7 that there is a category, an account type called  
8 medical-legal. That account type contains every kind  
9 of account that is not billed to a private insurance  
10 carrier, to Medicare, and it is not just for defense  
11 work. It's plaintiffs' work. It's any kind of non  
12 -- I won't even say private patients because there  
13 are private patients in there,

14 Q Well, hold it, I told you that she had  
15 segregated them out per instructions from Judge  
16 McAllister to exclude any of your private patients  
17 because you were concerned about that, Do you know  
18 that to be a fact?

19 A Yes, sir, but I haven't finished my explanation  
20 with response to your last question and I believe  
21 that's very important. I have patients that I treat  
22 who are involved in accidents that are plaintiffs in  
23 litigation. I take care of them, They are --

24 Q All right. They are in there, too, then, you're  
25 saying?

3     A     They are in there, too, as well.

2     Q     Do you know? You've never looked at them. Do  
3     you know they're in there?

4     A     I know they are an account type, M-L, because  
5     there's a specific reason why that account type was  
6     generated.

7     Q     Do you know what Plaintiff's Exhibit 57 is?

8     A     Never seen this either.

9     Q     Didn't see this over the lunch hour when I gave  
10    it to Mr. Barnhouse and you were here in the  
11    courtroom?

12    A     No, sir, I didn't.

13    Q     Do you know what it is, sir?

14    A     It says Member 80 Names and I believe I know  
15    what this is, yes.

16    Q     What is that?

17    A     Okay.

18    Q     Who is it from, first of all? There's a front  
19    page that you have it on the bottom here.

20    A     Which question would you like me to answer?

21    Q     That one.

22    A     The second one?

23    Q     The one: Who is it from?

24    A     Kelli Kutsko.

25    Q     Who is she?

1 A Kelli works for Valley Physicians.

2 Q And she provided it by fax to who?

3 A To you.

4 Q Okay. Now tell us what it is.

5 A Okay. It says Member 80 Names. Okay? And it's  
6 a rather complicated computer software package that  
7 they have, but basically when a patient has a member  
8 80 name on it, it means don't bill the patient. They  
9 are not responsible for the bill.

10 And as a result, there's somewhere in this  
11 software, there are these names now that she's pulled  
12 out that say addresses one. So these are the people  
13 that are responsible for paying the bill for the  
14 people that I have seen for whatever kind of  
15 medical-legal involvement, even my own patients that  
16 I treat.

17 Q Would you have any dispute if I told you that  
18 Kelli Kutsko told me when she faxed those documents  
19 to me that the listing of insurance companies and  
20 defense law firms that appears on those sheets  
21 correlates with or corresponds with all of the  
22 listings in Plaintiff's Exhibit 56?

23 MR. BARNHOUSE: Objection.

24 THE COURT: Overruled.

25 A I would have no way of -- I would have no way of

1 knowing that or comparing that or maybe you could  
2 explain to me what she explained to you and then I  
3 can try to answer your question.

4 Q Let me try it again.

5 A Okay.

6 Q What she told me was that after she brought  
7 down, pursuant to a subpoena, to court here  
8 Plaintiff's Exhibit 56, which you've looked at, she  
9 purported to me that all of the medical-legal  
10 examinations that you did were done for the parties  
11 listed in Plaintiff's Exhibit 57. Would you have any  
12 reason to dispute that that's the case?

13 A If she's doing her job right, then that's the  
14 case. I mean I don't understand how, you know, how  
15 it's done.

16 Q Sure. She **also** told me that you originate how  
17 you create these bills from your own computer  
18 operation at your office.

19 A You will have to explain that. I mean I don't  
20 know that there's a question before me.

21 Q You don't know how your computer operation works  
22 at your office? See, she says that you provide them  
23 with the information from your computer to their  
24 computer so they can prepare these billings as are  
25 contained here. Is that true?

1 A No, that's not true.

2 Q How much money do you make a year from doing  
3 these medical-legal defense medicals?

4 MR. BARNHOUSE: Objection.

5 A I don't know.

6 THE COURT: Overruled.

7 Q You don't have any idea?

8 A Pardon me?

9 Q You don't have any idea?

10 A No, I don't have any idea.

11 Q How many do you do a year?

12 A How many defense medicals do I do a year?

13 Q Yeah.

14 A I don't know. I don't keep track. I guess  
15 that's why I'm down here, because I don't keep track.

16 Q We kept track for you.

17 A Well, that was kind of you.

18 Q When you do a defense medical like you did with  
19 Mr. Domaradzki, you do it at the request of an  
20 insurance company, a claims adjusting service, an  
21 employer, or a defense firm like Mr. Barnhouse's;  
22 isn't that right, sir?

23 MR. BARNHOUSE: Objection.

24 A Yeah.

25 THE COURT: Overruled.

1 Q And you initially examine a patient and then  
2 review some records and then write a medical report  
3 like you did in this case; is that right, sir?

4 A Yes.

5 Q And then you may or may not give a deposition at  
6 your office, right, sir?

7 A Yes.

8 Q And there are times that you have conferences  
9 with the attorneys that have asked you to do this  
10 examination; isn't that correct?

11 A Yes.

12 Q And you bill for all of those things, correct?

13 A Yes.

14 Q And the way that you bill for all of those  
15 things is that you somehow create the billing  
16 information and it goes to Valley Physicians Services  
17 and they send the bill out to the insurance company,  
18 claims adjusting service, or defense firm to pay,  
19 right?

20 A Yes.

21 Q And you have been doing that kind of practice  
22 since the early '70s, haven't you?

23 MR. BARNHOUSE: Objection.

24 THE COURT: Overruled.

25 A Wrong.



1 Q I think you told me **it** was sometime when -- you  
2 related **it** to somebody that had an operation in maybe  
3 '78 or --

4 A Is that the early '70s, '78? That's the late  
5 70s.

6 Q I'm sorry. I apologize,

7 A Your apology is accepted.

8 Q When did you start doing it?

9 A As I indicated to you, that **it** was in about 1978  
10 when my senior associate developed a brain tumor and  
11 I started doing that part of the practice that he was  
12 doing,

13 Q And we had a calendar that we talked about. Do  
14 you remember the calendar of appointments that you  
15 kept in 1988 that showed that you booked 386 of these  
16 defense medicals during that year? Remember the  
17 discussion about that at your discovery deposition?

18 THE WITNESS: Your Honor, may I  
19 speak to you please before I answer that  
20 question?

21 THE COURT: Yes.

22 THE WITNESS: Okay.

23 MR. HOUSEL: Well, you can do  
24 **it** out of the --

25 THE WITNESS: I'll be happy to

1 do it in open court, but I think that --

2 THE COURT: All right.

3 THE WITNESS: The calendar that  
4 Mr. Housel is --

5 MR. HOUSEL: I think I just  
6 asked you if we discussed that at your discovery  
7 deposition.

8 THE WITNESS: I'm not going to  
9 answer that question without --

10 THE COURT: Just hold it.  
11 I'll be glad to hear you.

12 MR. HOUSEL: You're not going  
13 to answer that question? Fine.

14 THE COURT: Counsel, hold it.

15 MR. HOUSEL: Sorry.

16 THE WITNESS: The calendar that  
17 Mr. Housel is referring to was a calendar that  
18 was subpoenaed in the case and I can't even  
19 remember the case name and the judge was Judge  
20 Lillian Greene and the judge ruled in that case  
21 that the calendar should only be used in that  
22 case, and it became part of the record.

23 Prior to Judge Greene's ruling, certain  
24 members of plaintiffs' bar obtained copies of  
25 that and disseminated this calendar and they

3 were never recovered as instructed by the  
2 judge's order. Therefore, I feel that that  
3 calendar and that information was, you know,  
4 sort of privileged and was not something that we  
5 need to discuss at this time, based on Judge  
6 Greene's order.

7 THE COURT: Well, that doesn't  
8 really follow. Apparently it has been  
9 disseminated, and if it has been, it's out in  
10 the public domain.

11 THE WITNESS: But improperly  
12 disseminated.

13 THE COURT: But you don't know  
14 how it was improperly disseminated.

15 THE WITNESS: Yes, sir, I do.

16 THE COURT: Do you simply  
17 surmise that?

18 THE WITNESS: No, sir. I know  
19 for a fact that Bill Howell, who subpoenaed this  
20 calendar, disseminated it to the certain members  
21 of the plaintiffs' bar before the judge ruled  
22 that it was not to be disseminated and that all  
23 copies should be returned.

24 THE COURT: I must say that  
25 since that time, the Supreme Court of Ohio has

1           made a ruling influencing the decision that I  
2           made here.

3       Q     Is there some reason that you don't want these  
4       folks on this jury to know how many of these you do a  
5       year, how much money you make from them?

6       A     No.

7                               THE COURT:                       Mr. Housel, if you  
8       just ask those two questions:   how many, how  
9       much.

10      Q     Well, I'll do it this way.   Let me show you  
11      Plaintiff's Exhibit 58, Doctor.   Now, I know you  
12      looked at that over the lunch hour because I saw you  
13      do that; is that right?

14      A     Yes, sir, I did.

15      Q     What is that?

16      A     This is a report addressed to you dated August  
17      25th, 1997, signed by Cohen & Company.   So I don't  
18      know who the individual is.

19      Q     Does it say who Cohen & Company is on the  
20      letterhead there?

21      A     It says they are certified public accountants.  
22      It doesn't say -- it doesn't have any names like your  
23      letterhead has or my letterhead has.   So there's this  
24      entity out here called Cohen & Company.

25      Q     Well, they are an accounting firm, right?

1 A They are an accounting firm.

2 Q Do you know what that is?

3 A Do I know what this document is?

4 Q Yeah.

5 A I know what it says that it is. It's an  
6 analysis of the accounts receivable ledger for Dennis  
7 B. Brooks, M.D., Inc. That's a corporation.

8 Q As prepared by Valley Physicians Services,  
9 correct?

10 A As prepared by Valley Physicians for the period  
11 between January 1st, 1996 through approximately  
12 August 15th, 1997.

13 Q And it says that based upon their analysis and  
14 supporting documents, they determined the following,  
15 and then it tells us what they determined; am I  
16 right, sir?

17 A That's what it says, yes.

18 Q And it says that the medical-legal fees billed  
19 by you in 1996 was --

20 MR. BARNHOUSE: Objection, Your  
21 Honor.

22 THE COURT: Overruled.

23 Q Was \$286,338.50, correct?

24 A That's what it says.

25 Q And it says in 1997, through August 15th, that

1     you billed \$179,467.25, correct?

2     A     Correct.

3     Q     For a total of \$465,855.75, correct?

4     A     Correct.

5     Q     And that your weekly average of medical-legal  
6     exams and reports was five, correct?

7     A     That's item number three, right?

8     Q     Yeah. Is it right?

9     A     Well, that's what it says. I don't know that.

10    Q     I'm just asking you if that's what it says.

11    A     I don't know if the basis is correct, but that's  
12    what it says.

13    Q     Well, you understand that this document that you  
14    have in your hand was prepared from these two  
15    documents, 56 and 57, right, Doctor?

16    A     No, sir, I don't, and I would like to explain  
17    why, if I may.

18    Q     My question was whether you understand that  
19    Cohen & Company prepared that document from these  
20    two. I you don't, just say so.

21    A     Cohen & Company did not, as indicated in their  
22    report, prepare it from those documents.

23    Q     Well, we'll bring them in and they can tell us  
24    what they prepared it from. So you dispute the fact  
25    that this report you have in your hand was prepared

1 from 56 and 57?

2 A I dispute the fact that this report was based on  
3 the entirety of those documents based on what Cohen  
4 said. Now, I may have misinterpreted because I'm not  
5 an accountant what Cohen said. So that's all I'm  
6 saying to you.

7 Q Would you turn to the second page of that  
8 exhibit please, Doctor?

9 A Sure.

10 Q Thanks. It shows that you were hired for 483  
11 assignments as reported on the listing provided under  
12 listing of clients. Is that correct? Is that what  
13 it says?

14 A That's what it says.

15 Q So for a year and-a-half from January 1st of  
16 1996 up to August 15, you had 483 requests to do  
17 defense medicals. Is that what that says?

18 A No, sir, that's not what it says, and that's the  
19 point I would like to make clear and maybe it would  
20 help you understand.

21 Q I don't need you to help me understand.

22 A Then why are you asking me questions if you  
23 don't need me to help you understand? If you  
24 understood all this, I wouldn't be down here this  
25 afternoon.

1 Q I'm asking you the questions to see if you  
2 understand.

3 A Okay. I understand.

4 THE COURT: Doctor, if I may,  
5 at depositions, there's no judge present.

6 THE WITNESS: Right.

7 THE COURT: And the deponent  
8 and counsel can engage in a little repartee as  
9 they go along. We had some blank spaces in your  
10 videotape this morning because of that reason.  
11 However, we can't engage in that in the  
12 courtroom here.

13 So your role here is simply answering the  
14 questions, not asking any. Simply answer the  
15 question to the best of your knowledge. If you  
16 know, answer it. If you don't know, say you  
17 don't know.

18 THE WITNESS: I do apologize

19 THE COURT: No need for that.

20 THE WITNESS: When Mr. Housel  
21 mischaracterizes something that's in there, what  
22 do I do, just say I can't answer his question,  
23 in other words?

24 Q The second line says that, "Dr. Brooks was hired  
25 by at least 253 different individuals and attorneys,"



3 right, sir?

2 A Yes, sir.

3 Q Again, you understand this to be Cohen &  
4 Company's compilation of what they find in the 80  
5 different names they find on Plaintiff's Exhibit 57,  
6 correct?

7 A Yes, sir.

8 Q And it shows that you were hired by at least 179  
9 different entities, primarily defense law firms,  
10 correct?

11 A That's what it says.

12 Q All right. And under the listing that it goes  
13 into on that second page, it lists Meyers-Hentemann.  
14 Now, that's a defense firm here in town, isn't it?

15 A Yes, sir.

16 Q And Jerry Jeppe --

17 MR. BARNHOUSE: Your Honor, I  
18 would object.

19 THE COURT: Sustained.

20 Q The accounts receivable ledger summary that  
21 you've got there, Doctor, can we look at that for a  
22 second? It's attached to the letter. It shows that  
23 there were a total in January of 1996 of 35 different  
24 things that you did of a medical-legal nature. Would  
25 you agree with that? It says January, 1996 count.

1 A I would agree that that's what it said. This is  
2 the first time that --

3 Q In February, it says that you did 43, correct?

4 MR. BARNHOUSE: I would like to  
5 object to all this, Your Honor.

6 THE COURT: Sustained as to  
7 all these individual. Simply arrive at the  
8 totals, counsel.

9 MR. HOUSEL: All right, judge.

10 Q When somebody makes an appointment for you to do  
11 a defense medical and it gets canceled, you bill them  
12 175 bucks for that, don't you?

13 A I can't answer that question yes or no.

14 Q You don't know?

15 A I know, but it's not a yes or no answer, sir.

16 Q Well, answer it any way you like then.

17 A Thank you.

18 Q You're welcome.

19 A If somebody has made an appointment for a  
20 defense medical and they cancel within a week of that  
21 time, there is a charge of \$175. If the cancellation  
22 is longer than a week, there is no charge.

23 Q And when a plaintiff's lawyer desires to take  
24 your deposition, that money that you make from the  
25 depositions, like I took your deposition, they

1 wouldn't appear in these billing records anywhere,  
2 would they?

3 A That's incorrect. They would appear in those  
4 billing records.

5 Q Would they?

6 A Yes, sir.

7 Q So the money we paid you for your deposition  
8 would be in these billing records?

9 A I can't answer that yes or no. There's a cutoff  
10 as to what the date was and if the check hadn't been  
11 deposited and if an account hadn't been set up for  
12 you, then obviously it's not going to appear in that.

13 Q Well, don't you require that a plaintiff's  
14 lawyer, when he comes to take your deposition, bring  
15 900 bucks with him before he gets a chance to take  
16 your deposition, like you did with me?

17 A Yes.

18 Q And we brought you a check and handed it to you,  
19 didn't we?

20 A Yes.

21 Q And we didn't get a bill from Valley Physicians  
22 Services, did we?

23 A Your balance was zero at that point.

24 Q Are we any different than any other plaintiff's  
25 lawyer? Do you not require some plaintiff's lawyers

1 to bring you two hours worth of deposition money at  
2 that point or not?

3 MR. BARNHOUSE: Objection.

4 THE COURT: Overruled.

5 A There are two questions.

6 Q I'll just ask this: Does any lawyer who desires  
7 to take your discovery deposition have to pay for two  
8 hours up front before he walks in your office?

9 A Yes.

10 Q And that means they come in and they give you a  
11 check like we did, right?

12 A No. Most of them send it in advance because I  
13 have a two-week requirement to save the time.

14 You folks, because of the shortness of the time  
15 between the time that you requested the deposition  
16 and the time that it was taken, I said, you know,  
17 I'll waive that rule and I was assured that you would  
18 bring the money and I said fine, but generally, the  
19 check comes in two weeks before. An account is set  
20 up and therefore there is something in the billing  
21 record.

22 Q Thank you.

23 A You're welcome.

24 Q But what you do is you get a check when the  
25 lawyer arrives and there's no reason for Valley

3 Physicians to send out a bill, correct, unless it  
2 goes beyond the two hours?

3 A There is no reason, but it is in the accounting  
4 package. I don't keep the money. It goes into the  
5 corporation. It's reported as income.

6 Q So you charge \$350 an hour to review records and  
7 write a report, correct?

8 A Correct.

9 Q But if a lawyer like me wants to come in and ask  
10 you some questions about a report you write about a  
11 client of mine, it costs me \$450 an hour for your  
12 time; is that right?

13 A Just like it cost Mr. Barnhouse \$450 an hour.

14 Q Is that responsive to the question that I asked?

15 A Yes, I believe it is because the implication is  
16 I'm picking on you, Mr. Housel.

17 Q Oh, you're not picking on me. It's \$450 an hour  
18 for any plaintiff's lawyer that takes your  
19 deposition, isn't it, Doctor?

20 A Any plaintiff's lawyer, any defense lawyer,  
21 that's correct.

22 Q Why is it a hundred bucks more expensive to take  
23 your deposition than the time that it is for you to  
24 review your records and write a report?

25 A As I explained to you when you last answered

1     that question --

2     Q     When I answered that question?

3     A     I'm sorry.  You're absolutely right.  When you  
4     asked that question.  When I'm reviewing records and  
5     I'm writing a report, I'm sitting in my office.  If  
6     the phone rings, if I have to go to the bathroom, if  
7     a patient calls, I don't stop the clock and then  
8     restart the clock.  I just have a general feeling for  
9     how long I've spent.  So I feel that it's fair to  
10    charge \$350 an hour for this entire time, including  
11    interruptions.

12           When I give a deposition, that's the only thing  
13    that I'm doing.  There are no interruptions, and  
14    therefore, I feel that it's a fair charge.  To put it  
15    differently, I believe it would be unfair to charge  
16    \$450 an hour for review of records and writing a  
17    report because not a hundred percent of my time is  
18    spent doing that.

19    Q     Well, we stopped a couple of times during your  
20    deposition.  I didn't see that anybody got any credit  
21    for the time we took to go to the bathroom and take a  
22    break when we took your deposition, did we?

23                   THE COURT:                   Counsel, move on  
24           to another subject.

25    A     I don't recall.

3 MR. HOUSEL: I don't have any  
2 other questions, judge.

3 THE COURT: Mr. Barnhouse.

4

5 REDIRECT EXAMINATION OF DENNIS BROOKS, M.D.

6 BY MR. BARNHOUSE:

7 Q Dr. Brooks, there's been a lot of references to  
8 defense medicals, defense examinations in Mr.  
9 Housel's questions. Can you explain to the jury if a  
10 defense examination automatically means that you find  
11 something about a plaintiff or not about a plaintiff?

12 A Yes, I can explain that to the jury. When I do  
13 an examination on behalf of the defense, I see my  
14 role as trying to answer two questions: Basically,  
15 what injuries, if any, did the individual sustain in  
16 the accident; and what permanent or residual problems  
17 do they have at the time that I see them, which is  
18 generally a couple years after the accident.

19 And so I first see the patient, like I do with  
20 all my patients, and I take down as complete a  
21 history, as I did in Mr. Domaradzki's case, and I  
22 perform an examination as extensive as I can and then  
23 I review the records.

24 I've obviously been thinking about this during  
25 the last 10 days since this has been going on and I

1 have been doing this about 20 years now and I can  
2 only remember one situation --

3 MR. HOUSEL: I'm going to,  
4 object, judge. This is no longer responsive to  
5 any question asked by defense counsel.

6 THE COURT: Overruled.

7 A I can only remember one situation, and it  
8 happened recently, where I did not find that somebody  
9 was injured in an accident. That is to say, 99.9  
10 percent of the time, somebody that I see in a defense  
11 medical, I believe they were involved in an accident  
12 and they were injured. Now, I don't know what the  
13 breakdown is, but many of these people recover from  
14 those injuries, but often times --

15 MR. HOUSEL: Judge, again, I'll  
16 have to object. This is not responsive to any  
17 question.

18 THE COURT: That will be for  
19 the counsel who asked the question to  
20 determine.

21 MR. HOUSEL: He's not asking  
22 the question. He's just letting him ramble on.

23 MR. BARNHOUSE: My question is  
24 what a defense medical involves, basically  
25 because that term has been used quite frequently



1           in counsel's questions and I think I asked that  
2           and I think he's explaining what he means by the  
3           term defense medical and how it works for me or  
4           any other lawyer.

5                       THE COURT:                       Go ahead.

6       A     For example -- and believe me, this wasn't  
7       planned, but it just happened.

8                       MR. HOUSEL:                     Move to strike the  
9       nonresponsive comments.

10                      THE COURT:                     Overruled.

11       A     Last week, I saw three individuals. I do three  
12       defense medicals a week.

13                      MR. HOUSEL:                     Objection, judge.

14                      THE COURT:                     Overruled. You  
15       may have a continuous objection.

16       A     And these three individuals were in a very  
17       serious automobile accident and I examined them and I  
18       reviewed their records and I described their injuries  
19       and many of those injuries were permanent in nature.  
20       They didn't recover from the multiple fractures that  
21       they had sustained.

22               And when I do a defense medical, I really  
23       approach it the same way as when I do a plaintiff's  
24       medical. Plaintiffs' attorneys ask me to evaluate  
25       their clients and determine what happened. I just

1 see my role as saying what it is, how it is, and if  
2 somebody has got a problem at the time that I see  
3 them, I will tell whoever asked me to examine them  
4 they have still got a problem and their injuries are  
5 permanent, or they have been involved in this  
6 accident and they had some injuries at the time of  
7 the accident, but they have recovered.

8 Q In fact, that's what happened in Mr.  
9 Domaradzki's case; is it not?

10 A That's correct.

11 MR. BARNHOUSE: That's all I have,  
12 Your Honor.

13 THE COURT: Anything further,  
14 Mr. Housel?

15

16 RECROSS-EXAMINATION OF DENNIS BROOKS, M.D.

17 BY MR. HOUSEL:

18 Q You may always find somebody who is injured, but  
19 you always disagree with the extent of the injury as  
20 expressed by the treating physicians that the person  
21 is seeing; isn't that right?

22 A No, that's not right.

23 MR. HOUSEL: Okay. No other  
24 questions.

25 MR. BARNHOUSE: Nothing further,

1           Your Honor.

2                       THE COURT:                       Thank you,

3           Doctor.   You may step down.

4                       THE WITNESS:                    Thank you, sir.

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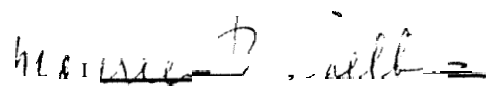
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C E R T I F I C A T E

I, Maureen Povinelli, RMR-CRR, an Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that I am employed as an Official Court Reporter, and I took down in stenotypy all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed an excerpt from said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript contains an excerpt from the proceedings had in the said cause, and constitutes a true and correct excerpt from the proceedings had therein.

  
Maureen Povinelli, RMR-CRR  
Official Court Reporter  
Cuyahoga County, Ohio