

COURT OF COMMON PLEAS
CUYAHOGA COUNTY

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KAREN A. DIVIS, et al.,)
)
)
 Plaintiffs,)
)
 vs.) Case No. 317137
) Judge Aurelius
 JOAN MARIE CHABEK, et al.,)
)
)
 Defendants.)

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Transcript of videotaped deposition of DENNIS B.
BROOKS, M.D., Expert Witness herein, called by the
Plaintiffs as upon cross-examination, pursuant to
Notice and Agreement of Counsel, pursuant to the Ohio
Rules of Civil Procedure, before Denise C. Winter, a
Registered Merit Reporter and Notary Public within and
for the State of Ohio on Wednesday, November 25, 1998,
at the offices of Dennis B. Brooks, M.D., 26900 Cedar
Avenue, Beachwood, Ohio, commencing at 4:05 p.m. and
concluding at 5:00 p.m.

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APPEARANCES:

Law Offices of Debra J. Dixon
Debra J. Dixon
700 West St. Clair Avenue, Suite 216
Cleveland, Ohio
(216) 621-9100

on behalf of the Plaintiffs;

Hermann, Cahn & Schneider
Kerry S. Volsky
1301 East Ninth Street, Suite 500
Cleveland, Ohio
(216) 781-5515

on behalf of the Defendant,
Joan Marie Chabek;

Law Offices of Les A. Chambers
Les A. Chambers
P.O. Box 1038
Delaware, Ohio
(740) 369-2423

on behalf of the Defendants,
Celina Mutual and National Mutual.

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Also present: Randall Buckosh, Litigaide, Inc.

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I N D E X

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PROCEEDINGS

DENNIS B. BROOKS, M.D.

Expert Witness herein, called by the Plaintiffs
as upon cross-examination, having been first duly
sworn, as hereinafter certified, was examined and
testified as follows:

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

BY MS. DIXON:

Q. Good afternoon, Dr. Brooks.

A. Good afternoon.

Q. As I informed you off the record, my name is
Debra Dixon. I'm one of the attorneys representing
Karen Divis and her family in a lawsuit styled Divis
versus Chabek in the Common Pleas Court for Cuyahoga
County, Ohio.

Can I first ask you to explain what your role is
in the context of this piece of litigation?

A. Yes. As I understood my role, it was to
determine what injuries, if any, that Miss Divis
sustained as a result of whatever accident she was in
and to determine whether she had any residuals, if any,
at the time that I examined her.

Q. And by whom have you been retained to provide
those services?

A. By Mr. Chambers.

1 Q. And is it your understanding that you represent
2 Mr. Chambers' client's interests alone or all of the
3 Defendants in this matter?

4 A. It is my understanding as of today that
5 Mr. Volsky represents a co-Defendant.

6 MR. CHAMBERS: I'm going to object
7 as to the implication or supposition that he's
8 representing anyone in this matter.

9 BY MS. DIXON:

10 Q. You have been retained by Mr. Chambers; correct?

11 A. Yes.

12 Q. Is it your understanding that Mr. Chambers
13 represents one of the Defendants in this matter?

14 A. Yes.

15 Q. Is it likewise your understanding that Mr. Volsky
16 represents one or more of the Defendants in this
17 matter?

18 A. Yes.

19 Q. And this role in litigation is generally referred
20 to either as an independent medical examiner or a
21 defense medical examination; correct?

22 A. The one that I perform?

23 Q. Yes.

24 A. Yes.

25 Q. And can you describe for me in terms of

1 percentages, if you could, what percentage of your
2 practice constitutes performing these defense medical
3 examinations?

4 A. I don't know. I don't keep track of that.

5 Q. In the course of a week, can you tell me how many
6 defense medicals you may perform?

7 A. Yes. On the average, three per week.

8 Q. And as I understood it, by virtue of reviewing
9 the report you ultimately rendered in this case, that
10 would consist of a review of past medical records;
11 correct?

12 A. I'm sorry, what the examination consists of?

13 Q. The project, if you will, of performing a defense
14 medical examination.

15 A. Some of them do become projects. No doubt about
16 it.

17 Q. I'm certain they do. My question is, I'm
18 assuming by virtue of reviewing your report that there
19 are several components to this examination; correct?

20 A. Yes.

21 Q. Part of that would be reviewing the patient's
22 past medical record; correct?

23 A. Yes.

24 Q. Potentially reviewing some x-ray films or MRIs;
25 correct?

1 A. Yes.

2 Q. Also, an interview with the patient?

3 A. Yes.

4 Q. To a greater or lesser extent depending on the
5 case; correct?

6 A. Well, we call it taking a history, but that's
7 okay.

8 Q. A physical examination; correct?

9 A. Yes.

10 Q. And at some point in time you culminate the
11 totality of that information and prepare a narrative
12 report; is that fair?

13 A. Yes.

14 Q. And when you accept an assignment to conduct a
15 defense medical examination, can you tell me how you
16 charge in the ordinary course for that? Is that a flat
17 rate fee, or is it an hourly fee?

18 MR. CHAMBERS: I'm going to object
19 at this point. The purpose of a Discovery deposition
20 is to inquire as to the opinions and conclusions he has
21 provided to me. I've given you a little bit of
22 latitude. **Now** your questions are far afield at this
23 point.

24 MS. DIXON: Your objection is
25 noted.

1 BY MS. DIXON:

2 Q. Doctor, can you answer?

3 A. How do I charge? Okay. I charge on an hourly
4 basis.

5 Q. And what is your hourly fee?

6 A. My hourly fee?

7 MR. CHAMBERS: I'm going to object
8 to this entire line of questioning.

9 MS. DIXON: It's noted.

10 A. My hourly fee at the present time is \$400 an
11 hour.

12 Q. And based on your best recollection, was the \$400
13 an hour fee that you're currently charging the same in
14 January of 1998?

15 A. No. I think I started charging \$400 an hour in
16 February of '98.

17 Q. This report was generated on April 17th, 1998
18 based on my review of the notes. Do you know what the
19 hourly rate was for the Divis examination and report
20 preparation?

21 A. I have one standard fee for the history, physical
22 exam, review of records, preparation of report, so I
23 would suspect that because the majority of this, well,
24 the initial part of it at least, was done in January,
25 it was \$350 an hour.

1 Q. Can you tell me how many hours you spent
2 reviewing Karen Divis' medical records and x-rays?

3 A. No.

4 Q. Do you keep any records that would identify the
5 number of hours you spent in conducting those tasks?

6 A. No.

7 Q. Do you have any billing records that reflect the
8 dollar value of your services charged for that task?

9 A. No.

10 Q. Have you, in fact, bills on Miss Divis' account?

11 A. Yes.

12 Q. Who prepares your billing statements?

13 A. The secretary sends a billing statement to the
14 party that's responsible at the time that the report is
15 finished.

16 Q. And who is that billing person?

17 A. Who is the billing person?

18 Q. Yes.

19 A. Her name is Sandra.

20 Q. And is Sandra an employee of yours or a
21 third-party agent?

22 A. No. She's an employee of mine.

23 Q. So is Sandra the individual who would have the
24 billing information as it relates to Miss Divis'
25 defense medical?

1 A. No, because after she sends the statement, then
2 we send a charge slip to the person who keeps track of
3 all of these things and they would really be the only
4 ones that would have that information, or Mr. Chambers
5 would have the information.

6 Q. Who is the person that keeps track of that
7 information that you have identified?

8 A. His name is William Proper and Company.

9 Q. Is that your office accountant?

10 A. Yes.

11 Q. Or the account you use personally?

12 A. Yes.

13 Q. Where is Mr. Proper's office?

14 A. It's on Chagrin and Richmond.

15 Q. And with respect to this particular deposition or
16 this matter as it relates not only to you but any
17 medical depositions that are taken in this case, the
18 court has ordered a reduction in fees?

19 MR. CHAMBERS: Objection.

20 BY MS. DIXON:

21 Q. You understand that, correct, Dr. Brooks?

22 MR. CHAMBERS: I object. That is
23 part of the record.

24 MS. DIXON: You have made your
25 objection.

1 MR. CHAMBERS: Debbie, you're far
2 afield.

3 MS. DIXON: Take it up with the
4 judge.

5 MR. CHAMBERS: You get an order to
6 compel.

7 BY MS. DIXON:

8 Q. Doctor, you have an understanding that there is a
9 reduction in your fee as well as other medical experts
10 that testify?

11 MR. CHAMBERS: That is subject to
12 a motion to reconsider and it will be addressed by the
13 Court of Appeals if necessary

14 BY MS. DIXON:

15 Q. Doctor?

16 A. Okay. I'll answer your second question because I
17 don't remember your first question. I only understand
18 that there has been a reduction in my fee with respect
19 to this Discovery deposition vis-a-vis my hourly rate.

20 Q. Have any of the attorneys for the Defense or
21 their clients reimbursed your office the difference?

22 A. No.

23 Q. Prior to the Divis matter -- and are you
24 comfortable with me referring to it as the Divis matter
25 for purposes of this deposition?

1 A. Sure.

2 Q. Have you worked for Mr. Chambers in the past?

3 A. Yes.

4 Q. On how many separate occasions, approximately?

5 A. I only recall one.

6 Q. And do you understand that Mr. Chambers is
7 Counsel for both Celina and National Mutual?

8 A. No. I only understand that Mr. Chambers is
9 counsel for Celina.

10 Q. And you have worked for Mr. Volsky in the past;
11 correct?

12 A. Yes.

13 Q. Have you also worked on behalf of Farmers
14 Insurance company in the past?

15 MR. CHAMBERS: Objection. Motion
16 to strike the reference to the insurance company.

17 MR. VOLSKY: I join in that
18 motion. They are not a party to this case. It's
19 totally improper to ask Dr. Brooks that type of
20 question.

21 A. Generally I don't know what insurance company the
22 defense attorney represents, so I don't know if I have
23 ever done any work for Farmers or not.

24 Q. Dr. Brooks, separate from any conferences you may
25 or may not have had with either of the Defense Counsel

1 in this case, can you describe the preparation you have
2 undertaken in anticipation of today's deposition?

3 A. Yes.

4 Q. Please do.

5 A. None.

6 Q. And have you had an opportunity prior to today to
7 review Dr. Leach's report? He's the psychologist that
8 was hired for a defense medical examination.

9 MR. CHAMBERS: Objection. Motion
10 to strike.

11 A. I don't have any recollection whether I did or
12 not.

13 Q. You have your file related to Karen Divis in
14 front of you; correct?

15 A. Yes.

16 Q. And based on your review of that file, would you
17 agree that your standard procedure that we talked about
18 earlier, review of the medical records, patient
19 history, a physical examination, review of x-rays, MRIs
20 and ultimately preparation of the report, is consistent
21 with what you did related to Karen Divis?

22 MR. CHAMBERS: I'm going to
23 object. He testified -- you conditioned that whole
24 question on your review of the file. He just testified
25 two minutes ago he has not reviewed the file.

1 BY MS. DIXON:

2 Q. Doctor, you can feel free to review or refer to
3 your notes if that will assist you. My question is --

4 A. I remember your question. Okay. So it looks
5 like I took a history; I performed a physical
6 examination, reviewed radiographs that were obtained at
7 the time of her examination; I reviewed medical
8 records; I reviewed an MRI, actually, several MRIs; and
9 I wrote a report; yes. **So** it was no different than my
10 standard method of doing this type of examination.

11 Q. And generally, Dr. Brooks, what disciplines do
12 you hold yourself out either as a specialist or a
13 medical expert in?

14 A. By a "discipline" you mean a specialty, for
15 example?

16 Q. Yes.

17 A. I'm an orthopedic surgeon.

18 Q. The reason I specifically used the term
19 "discipline" is it's my understanding that you have
20 more knowledge than the average bear, so to speak, on
21 biomechanical issues.

22 A. More than **the** average?

23 Q. Bear.

24 A. **So** you saw my picture on the wall. Yes; I
25 believe I do.

1 Q. Can you describe for me the training that you
2 received to bring you to the conclusion that you have a
3 certain expertise in the area of biomechanics?

4 MR. CHAMBERS: Objection.

5 Debbie --

6 MS. DIXON: First of all, my
7 name is Debra.

8 MR. CHAMBERS: I have a sister
9 named Debra. Everyone I know always calls her Debbie.
10 This never caused a problem with her, so I'm sorry if
11 it offended you.

12 Miss Dixon, Debra Dixon, your line of questioning
13 is beyond the scope of the Discovery permitted for a
14 Discovery deposition.

15 MS. DIXON: You know, Les,
16 we're in Discovery, so why don't you just note your
17 objection, stop the speaking objections and we'll move
18 on. You can take anything of that vein up with the
19 judge.

20 The doctor already testified that he has a
21 certain area of expertise in the area of biomechanics.
22 I'm asking him to expound on what education, training
23 and experience leads him to that conclusion.

24 MR. CHAMBERS: I'm simply saying
25 that initial area is beyond the scope of this Discovery

1 deposition.

2 MS. DIXON: His CV is .
3 with information about biomechanics.

4 MR. CHAMBERS: You have the CV.
5 There's no point in examining him on that line of --

6 MS. DIXON: It's my dime, Les.

7 MR. CHAMBERS: You're bound to the
8 Rules of Civil Procedure as well as I am, and I'm
9 objecting because this line of inquiry is outside the
10 scope of Discovery that's permitted at this juncture.

11 MS. DIXON: Your objection is
12 noted.

13 BY MS. DIXON:

14 Q. Doctor?

15 A. In my fifth year of post-graduate training I was
16 a National Institute of Health research associate in
17 the biomechanical laboratory of Case Western Reserve
18 and during that period, which was probably from July to
19 June, 12-month period of time, I did certain
20 independent projects that dealt with biomechanics.

21 I remember during the summertime I was tutored
22 along with another orthopedic surgeon about calculus
23 and advanced mathematics, and then during the first
24 semester, I actually attended what -- well, it was part
25 of Case Western Reserve University engineering school,

1 and after that we may even have had some lectures from
2 the other people at the lab.

3 Q. Dr. Brooks, in your practice as an orthopedic
4 surgeon, both treating and evaluating people who have
5 been injured or claim to have been injured in motor
6 vehicle accidents, has that education that you have
7 just described in the area of biomechanics assisted
8 you?

9 A. Yes; it has assisted me.

10 Q. Getting back to Karen Divis specifically, do you
11 have an independent recollection of Miss Divis, or are
12 you relying exclusively upon your notes?

13 A. I have no independent recollection of Ms. Divis.

14 Q. And in the ordinary course, are your reports that
15 you ultimately generate at the conclusion of your
16 evaluation, are those done contemporaneously with your
17 physical examination and records review, or do you wait
18 until that is specifically requested?

19 A. The answer is no. I'll be happy to explain.

20 Q. Please do.

21 A. I examined Miss Divis on June 22nd, 1998 and took
22 notes during that examination of which you have a copy.
23 On January 23rd, 1998, the next day, using those notes
24 I dictated the initial history and physical
25 examination. Sometime thereafter I began this project

1 of reviewing her records and that project was completed
2 on April 17th, 1998.

3 I have no recollection whether the review of
4 records and conclusions were all dictated on the 17th
5 or I dictated part of the record review one day, but
6 the bottom line is that it was all completed on the
7 17th.

8 Q. As I reviewed your report, one of the ultimate
9 conclusions that you came to was that Karen did, in
10 fact, sustain a cervical strain as a result of the
11 February 5, 1996 motor vehicle accident, and I believe
12 that that is on page 7 of your report?

13 A. Yes; it is.

14 Q. Can you describe for me what you consider a
15 cervical strain?

16 A. Cervical strain is a soft tissue injury that
17 involves a stretching of the muscles of the neck.

18 Q. And you consider a cervical strain a real injury;
19 correct?

20 A. Yes. Yes; I do.

21 Q. And would you agree for that injury -- are you
22 aware for that injury, a cervical strain, any test that
23 provides objective evidence of cervical strain?

24 A. I'm not sure what you mean by "test."

25 Q. Any diagnostic tool.

1 A. Well, yes, I am aware of diagnostic tools that
2 demonstrate a cervical strain.

3 Q. What tools are those?

4 A. The history that the physician obtains, the
5 physical examination that he performs.

6 Q. Other than -- let me back up. Would you agree
7 that the history that the physician obtains is
8 subjective in nature in that the physician is relying
9 upon what the patient communicates; correct?

10 A. I just wanted to understand on whose part it was
11 subjective. Certainly everything that the patient
12 tells me is subjective; that's true.

13 Q. Both in terms of what the patient communicates
14 and how you understand that; correct?

15 A. Well, that's true, too. My understanding entails
16 my input, as well, so it would be subjective on both of
17 our parts.

18 Q. Are there any diagnostic tools you're aware of
19 that would provide objective evidence? What I mean by
20 that, perhaps I'm not articulating it properly. We
21 know if somebody breaks their wrist, you can have a
22 static x-ray film done of that wrist and **if** the wrist
23 is fractured, you will see a fracture on the film. Are
24 you aware of any objective evidence for this cervical
25 strain that you concluded Karen did sustain in this

1 accident?

2 A. The only objective test that I'm aware of that
3 could be used, and it really is not used, would be an
4 MRI.

5 Q. Do you know what percentage of -- strike that.
6 Getting back to the cervical strain, can you
7 explain to me what the mechanism of injury is?

8 A. Yes. Specifically with respect to Miss Divis?

9 Q. Yes, please.

10 A. As I understood from Miss Divis, her automobile
11 was stopped and it was struck on both the rear and the
12 left side by another vehicle. She was turned to the
13 right sitting on the edge of her seat, so basically she
14 sustained an extension-flexion injury to her cervical
15 spine.

16 Q. Based on both your training as an orthopedist as
17 well as the biomechanical background you described
18 earlier, are you familiar with the type of vector
19 forces that are placed on a cervical spine during a
20 hyperflexion-hyperextension injury?

21 A. Type of vector forces? No. I'm not aware of the
22 type of vector forces that are placed on the cervical
23 spine during a hyperflexion-hyperextension injury.

24 Q. Now, as part of your report, you noted some of
25 your physical findings on physical examination. I'll

1 direct you to page 4, the second full paragraph
2 beginning, "Examination of her cervical spine."

3 A. Yes.

4 Q. The first sentence says, "Examination of her
5 cervical spine revealed normal cervical lordosis
6 without evidence of paracervical or trapezius spasm";
7 correct?

8 A. Correct.

9 Q. Is that a finding that is significant at all to
10 you as a defense medical examiner?

11 A. It's significant to me as an orthopedic surgeon.

12 MR. CHAMBERS: I'm going to object
13 to this. He's called a physician. At least call him a
14 physician. He's earned that right.

15 A. It's significant to me as an orthopedic surgeon
16 regardless whether it's my own patient, whether it's
17 your client that I'm examining on your behalf or
18 whether it's your client that I'm examining on
19 Mr. Chambers' behalf.

20 Q. And what is the significance?

21 A. The significance is that it's a normal finding.
22 She has normal curvature of her spine and she has no
23 spasm of the muscles surrounding her spine.

24 Q. You also indicated that there was tenderness with
25 the lightest of palpation of the right trapezius?

1 A. Yes.

2 Q. Is that a significant finding?

3 A. Yes.

4 Q. Can you describe for me the significance of that
5 finding?

6 A. Yes.

7 Q. Please do.

8 A. That's what is called or known as an
9 inappropriate response. It is a response for which
10 there is no anatomic explanation and does not, is not,
11 noted in people who have real injuries.

12 a. And, actually, if we can jump ahead because it
13 may deal with that issue in its totality, then if you
14 look on page 7 of your report, the third paragraph from
15 the bottom that begins, "At the time of my January
16 22nd," the final sentence of that paragraph says, "In
17 fact, the physical examination demonstrated several
18 inappropriate responses."

19 A. Yes.

20 Q. Is that one of the inappropriate responses that
21 you are referring to?

22 A. Yes.

23 Q. Just so that I understand, you're saying that
24 your definition of an inappropriate response is one
25 that there is not an organic basis for?

1 A. Yes.

2 Q. Were there other inappropriate responses you
3 noted that relate to Mrs. Divis' examination of
4 January 22, '96? I'm sorry, '98.

5 MR. CHAMBERS: Miss Dixon, would
6 you mind --

7 BY MS. DIXON:

8 Q. Do you want time to review your records at this
9 point?

10 A. Thank you very much. I'm going to answer her
11 question. I'm going to go through my report at this
12 time. It will just take me a short period of time and
13 I will try to answer the questions.

14 In addition to the tenderness with the lightest
15 of palpation, the other inappropriate responses
16 included her complaints of pain in her right clavicle
17 with horizontal flexion, her saying to me that shoulder
18 motion was, quote, aggravating my head and neck, the
19 muscles are tight and swelling when, in fact, there was
20 no muscle spasm, tightness or swelling noted at the
21 time that I examined her, the increase in her
22 complaints of numbness in her entire hand with the
23 Phalen's maneuver and her complaint of right shoulder
24 pain while using the Jamar dynamometer.

25 Q. That's the totality that you were referring to;

1 correct?

2 A. Yes.

3 Q. Can you describe for me what the purpose of a
4 range of motion test is, a range of motion examination?

5 A. No. I understand. Sometimes, and I'm sure it
6 happens to you, the things you do on a daily basis are
7 hard to explain to somebody who doesn't do them.

8 The purpose of the range of motion test, if you
9 will, is just that, to determine what her active range
10 of motion is of her cervical spine at the time I
11 examined her.

12 Q. Would you agree that there are some injuries that
13 people sustain in which they do not suffer pain in a
14 static position but they do, in fact, when they are in
15 motion?

16 A. I could only answer to that very broad question
17 that anything is possible.

18 Q. Are there any symptoms that you're aware of that
19 are the sequelae of hyperextension-hyperflexion
20 injuries that only manifest themselves or become more
21 significant with motion?

22 A. Are there any symptoms of that type of injury
23 that only become -- that only manifest themselves with
24 motion?

25 Q. Or become more significant.

1 A. Or become more significant. People who have --
2 no. People who have sustained a hyperextension
3 hyperflexion injury at the time that their injury is in
4 progress, if you will, have pain both at rest and with
5 motion.

6 Q. And it's been your experience that that pain does
7 not increase with motion?

8 A. No. It's true that the pain can increase with
9 motion.

10 Q. Might spasming increase with motion, as well?

11 A. Initially, yes.

12 Q. And when you say, "initially," are you saying
13 that that will decrease over time?

14 A. Absolutely.

15 Q. Are there any or is there any -- in the course of
16 your practice, what is the longest period you have
17 experienced a patient or observed a patient who
18 experiences pain from a hyperflexion-hyperextension
19 injury?

20 MR. CHAMBERS: Objection.
21 Relevancy, scope of inquiry.

22 A. I don't have any recollection.

23 Q. Is there a baseline you look to that you would
24 expect the patient to cease having pain, as of three
25 months after the injury, six months after the injury,

1 nine months after the injury?

2 A. Each injury is different and as a result of that,
3 the pace line will shift depending upon the actual
4 injury that patient sustains.

5 Q. So you're saying that it could vary patient to
6 patient; correct?

7 A. You said it better than I did.

8 Q. And in your practice, I'm assuming that you see
9 private patients that are not associated with
10 litigation; correct?

11 A. Absolutely.

12 Q. Do you treat patients in your standard practice
13 that suffer hyperextension-hyperflexion injuries?

14 A. Yes.

15 MR. CHAMBERS: Note an objection.

16 BY MS. DIXON:

17 Q. As a physician, at what point in time do you
18 become concerned that the patient is still experiencing
19 pain and that's from the date of injury?

20 A. Well, again, that varies upon several things.

21 MR. CHAMBERS: Just let me -- I'm
22 objecting to this entire line of inquiry.

23 MS. DIXON: Maybe there's a
24 chance you could just edit the ones out that you didn't
25 object to at the end.

1 A. So it varies upon a number of things and those
2 things really do not include the nature of the injury
3 to the vehicle in which the patient is sitting, but
4 they do depend upon the patient's complaints and
5 physical findings at the time that I examine them if
6 it's in close proximity to the accident.

7 So, in essence, what I'm saying is that I get
8 worried when somebody is still complaining of pain at a
9 point that is beyond the time I would expect the injury
10 that I believe the patient to have sustained.

11 Q. Do I understand that to mean, and this is for my
12 own clarification, that's based on your initial
13 evaluation of the severity of the injury as opposed to
14 the facts of the accident?

15 A. Yes.

16 Q. I noticed in your report you alluded to reviewing
17 Karen's -- not only Karen's radiologist reports but the
18 films, themselves.

19 A. I did; yes.

20 Q. Can you describe for me the training that you
21 have received that enables you to read x-rays and MRIs?

22 A. Yes.

23 Q. Please do.

24 MR. CHAMBERS: As you wish, but
25 I'm still objecting.

1 A. Beginning in medical school, we began our
2 education on how to read plain films. It was so long
3 ago, they didn't have MRIs. During my residency as an
4 orthopedic surgeon, I certainly had additional
5 training. In my practice, as I went into private
6 practice, I review myself every radiograph that I order
7 and on occasion if I get a report from the radiologist
8 that differs with my interpretation, I will go down and
9 talk to the radiologist to try to see why there's some
10 discrepancy. **So** it's an ongoing educational process
11 being in contact with the radiologists.

12 With respect to MRIs, I have attended several
13 courses on the interpretation of MRIs and have been
14 very fortunate that in this building there were several
15 radiologists who were specifically trained in the
16 interpretation of MRIs and whenever I had a question --
17 I had a lot of questions when I first started -- I
18 would take the films downstairs and go over them with
19 the radiologists.

20 Q. Do I understand that in your own practice you do,
21 at least on a primary level, rely upon a radiologist to
22 read these films?

23 A. **No.**

24 Q. Do they prepare reports for you?

25 A. **I do** not. They do.

1 Q. And then you read their reports in conjunction
2 with your review of the films; correct?

3 A. Not exactly. What happens is that I'll send a
4 patient down to the radiology department. They will
5 bring the films back. I will review the films. If
6 it's a private patient, I will dictate a report that
7 day. If it's an evaluation, maybe the next day.

8 Then when the radiologist's report comes several
9 days later, I will review the report and compare it
10 with my interpretation. But I do not rely on the
11 radiologists. I don't prepare my own interpretation
12 after I have seen the radiologist's interpretation.

13 Q. Are there radiographic techniques other than MRI
14 and x-ray that you feel competent to read, as well?

15 A. Yes.

16 Q. And what are those?

17 A. CT scans, myelograms, post-myelograms, CTs. What
18 other radiographic techniques are there? Bone scans.
19 I don't have any training in reading ultrasounds. I
20 can't think of any more radiographic techniques.

21 Q. In your practice, do you treat patients with
22 ligament damage?

23 A. Yes.

24 Q. Would you agree that ligament damage is
25 potentially a permanent injury?

1 A. Anything is possible.

2 Q. Would you agree that a torn ligament is a
3 permanent injury?

4 A. No.

5 Q. I'm assuming you are aware of the fact that the
6 AMA permanency guidelines provide a permanency rating
7 in the face of a ligament that is torn?

8 A. I'm not aware of that.

9 Q. In the event that you were or there was objective
10 evidence provided to you by way of a radiographic study
11 that indicated that Karen Divis had sustained an injury
12 which was permanent in nature in this motor vehicle
13 accident, would that change any of the opinions that
14 you or the conclusions that you drew at the end of your
15 examination?

16 A. I'm sorry, I don't understand your question.

17 Q. If you were provided documentation which provided
18 objective evidence that, for example, Karen Divis had
19 sustained ligament damage to her cervical spine which
20 had not properly healed, would that change or alter any
21 of the conclusions that you drew in your April of 1998
22 report?

23 MR. CHAMBERS: Objection,
24 Question assumes facts not in evidence.

25 A. I'm only smiling so that the camera knows. I was

1 going to say. assuming the facts that you just stated
 2 that I am unaware of. I should review those facts and
 3 if in fact, they were true. yes. it could alter my
 4 opinion. but I'm not aware that there are such facts
 5 Q Dr. Brooks, are you aware or are you familiar
 6 with the condition known as somatoform pain disorder
 7 associated with both psychological factors and a
 8 general medical condition chronic?

9 A Somatoform pain disorder? Read what again

10 Q Certainly. Somatoform pain disorder associated
 11 with both psychological factors and a general medical
 12 condition chronic

13 A Well, I know what a somatoform pain disorder is
 14 By definition it's associated with psychological
 15 factors. I don't understand the term being associated
 16 with a medical condition because that's very broad. and
 17 I do know what the word 'chronic' means. so about 60
 18 percent of it

19 Q If you could turn to page 7 of your report. you
 20 concluded that Karen, as we stated earlier, did sustain
 21 a cervical strain in this accident; correct?

22 A Yes

23 Q Did you do any evaluation as to the degree or
 24 severity of that cervical strain?

25 A Yes; I did

1 Q. And what were the conclusions that you drew?

2 A. Well, it's really the absence of the wording, but
3 if I thought that she had sustained a moderately severe
4 cervical strain, that's what I would have said, much if
5 I thought she had sustained a severe cervical strain,
6 that's what I would have said. If I thought that she
7 sustained a mild cervical strain, that's what I would
8 have said.

9 So the absence of all those adjectives indicates
10 that she sustained what I would define to be the
11 meaning of, I guess, an average cervical strain.

12 Q. And you did conclude that some of the more
13 immediate care and treatment she received was
14 appropriate; correct?

15 A. Absolutely.

16 Q. And conversely, you concluded that there was
17 treatment and some diagnostic intervention that was not
18 appropriate or necessary; correct?

19 A. That's correct, as well.

20 Q. Are you able to articulate for me the portion of
21 her treatment that you found was appropriate versus
22 inappropriate?

23 A. Well, certainly the initial evaluation at
24 Southwest General Hospital on the day of the accident
25 was necessary and appropriate. The evaluation at

1 Kaiser Permanente on February 7th, 1996 was necessary
2 and appropriate. I don't remember whether she had any
3 other treatment between February 7th and March 1st, but
4 certainly there was a second injury that occurred on
5 March 1st of 1996 in which she injured, re-injured, her
6 neck.

7 In between February 16th, 1996 or starting on
8 February 16th, 1996, she came under the care of
9 Dr. Kaufman, so I believe that his evaluation and
10 treatment on February 16th, which was eleven days after
11 the accident, was necessary and appropriate. I do not
12 believe that his ordering an MRI was appropriate. So I
13 can't put a definite date on it as I sit here reviewing
14 her records.

15 Q. Doctor, if I could ask for clarification, did you
16 believe that any of the physical therapy that was
17 ordered for Karen was appropriate?

18 A. I don't have any recollection of what physical
19 therapy she had. I don't believe I referred to it in
20 my records, so, I'm sorry, I can't answer your
21 question.

22 Q. Doctor, did you **come** to any conclusions at the
23 end of your examination and evaluation of Karen as to
24 whether **or** not she was answering the questions you
25 asked her honestly?

1 A. Yes. As a matter of fact, I did come to some
2 conclusions after I obtained her history and performed
3 a physical examination.

4 Q. And what was that conclusion?

5 A. My conclusion was that as she gave her history,
6 she did so in a very dramatic fashion. She tended to
7 use -- Alzheimer's is terrible when you lose words.
8 She tended to use the most extensive -- and that
9 doesn't sound right. She didn't describe things in a
10 simple manner. She dramatized. You know, everything
11 was at the far end of the scale that it could have
12 been.

13 Q. Is it fair to say that you concluded that Karen
14 was not in chronic pain?

15 A. I don't know what that means.

16 Q. Let me ask this differently. Did you come to the
17 conclusion that Karen was a malingerer?

18 A. No. I did not believe that she was consciously
19 malingering.

20 Q. Did you believe that Karen was experiencing real
21 pain during your examination?

22 A. The only thing I can say with respect to that is
23 that she complained of pain. The fact that I found no
24 objective evidence on the examination to substantiate
25 her complaints of pain is one factor, but I have no way

1 of measuring pain.

2 She certainly didn't demonstrate any behaviors or
3 appear as somebody who was in acute distress which
4 often goes with somebody who is experiencing pain. On
5 the other hand, as I said, there's no way to measure
6 pain, so if she tells me she has pain, I listen to her.
7 If there is nothing on the examination or the
8 radiographs that would explain her pain, then I have to
9 conclude that this is a non-organic type of pain.

10 Q. Are you aware of certain psychological conditions
11 that cause an individual to experience -- intensify the
12 experience of pain, or is that beyond the scope of your
13 expertise?

14 A. No; it's not beyond the scope of my expertise.
15 But before I answer the question, I'd like to know, you
16 know, what conditions you're talking about and I will
17 tell you whether I'm familiar with them or not.

18 Q. Okay. I think we addressed that earlier. Are
19 you aware of the fact that the Defense in this case has
20 requested that a psychological IME be performed on
21 Miss Divis?

22 A. Well --

23 MR. CHAMBERS: Objection.

24 A. At the beginning of this deposition, you asked me
25 if I had read a report by a Dr. Leach who had performed

1 an examination on Miss Divis at the request of the
2 Defense, so that's, I think, the first time that I was
3 aware of that.

4 Q. My telling you was the first time that you had
5 been made aware of that?

6 A. I think so. Let me just check my report.

7 Q. Separate from your report, was it brought to your
8 attention by Counsel?

9 A. No. I mean, if it's in my report, I was aware of
10 it. If it's not in my report, I'm not aware of it.

11 Q. I will represent to you the psychological report
12 was prepared after your report was completed.

13 Do you know Dr. Leach, a psychologist that
14 practices here in Beachwood?

15 A. No.

16 Q. And you are not, as you sit here today, familiar
17 with any psychological conditions that have the ability
18 or have the effect of intensifying the experience of
19 pain on an individual?

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

21 Q. Are you aware of any psychological conditions
22 that the end game or result is to intensify the pain
23 experience on the patient?

24 A. That intensifies the pain that the patient
25 experiences; right?

1 Q. For example, that person may be touched softly
2 but for them it feels like they were punched.

3 A. No; I'm not aware of that particular factor.

4 Q. And if this -- if there was a condition that was
5 identified in the DMS-IV(sic) that outlined those
6 criteria that I just described, you wouldn't have any
7 information that would cut against or discredit that
8 theory, correct, or that condition?

9 MR. CHAMBERS: Objection.

10 A. I can't really answer that question yes or no. I
11 don't know what the DMS-IV(sic) is. You know, I know
12 that it's one of the codes or diagnoses that
13 psychiatrists use and/or psychologists use, but as I
14 sit here today at 5 p.m., one hour after we started --

15 Q. Actually, we started at five past.

16 A. Right. That was still your time. At any rate, I
17 don't know what DMS-IV(sic) is.

18 Q. Doctor, I have two quick questions, then I'm
19 through.

20 The first is, in your role as a defense medical
21 examiner, would you agree that a patient you're
22 examining and interviewing **or** taking a history of is
23 entitled to the same care and respect as one **of** your
24 private patients?

25 A. Absolutely.

1 Q. And would you agree that at no time would it be
2 appropriate for a physician, whether it be you or
3 someone else conducting a defense medical examination,
4 to laugh or mock at a patient when they're taking their
5 information or performing an examination when they are
6 communicating their symptoms?

7 MR. CHAMBERS: Objection.

8 A. Yes. I would agree that it would be
9 inappropriate for any physician, be it a defense
10 examiner or a treating physician, to laugh at or mock.
11 I will also tell you that that is a subjective
12 observation on the patient's part and they may
13 misinterpret my question.

14 MS. DIXON: Okay. Thank you
15 very much.

16 THE WITNESS: It was a pleasure.
17 I'll waive the reading of the transcript and the
18 viewing of the video deposition.

19
20 - - -
21
22

23 (Thereupon the deposition was concluded
24 at 5:00 p.m. and signature was waived.)
25


State of Ohio) SS.
County of Cuyahoga)

CERTIFICATE

I, Denise C. Winter, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named witness, DENNIS B. BROOKS, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid, and that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my
hand this 28th day of December, 1998.



Denise C. Winter
Notary Public

My commission expires March 3, 2001.

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327 The Arcade
Cleveland, Ohio 44114-2402