#534

STATE OF OHIO)
) SS
SUMMIT COUNTY)

IN THE COURT OF COMMON PLEAS

CASE NO. CV94:02:0541

NANCY L. BROOKS,	)	
	)	
PLAINTIFF,	)	VIDEOTAPE DEPOSITION
	)	
VS.	)	OF
	)	
ELIZABETH BLANAR,	)	DR. DENNIS BROOKS
	)	
DEFENDANT.	)	JUDGE BOND

VIDEOTAPE DEPOSITION taken before Jon Jastromb, a Notary Public within and for the State of Ohio, pursuant to Notice, and as taken on November 28, 1994 at the office of Dr. Dennis Brooks, 26900 Cedar Road, Beachwood, Ohio. Said deposition taken of Dr. Dennis Brooks is to be used as evidence on behalf of the Defendant in the aforesaid cause of action, pending in the Court of Common Pleas, within and for the County of Summit, for the State of Ohio.

APPEARANCES:

MR. THOMAS HENRETTA,
On Behalf of the Plaintiff,

MR. PAT ROCHE,
On Behalf of the Defendant,

The witness, Dr Dennis Brooks, after first being sworn to testify to the truth, the whole truth, and nothing but the truth did say as follows:

Direct Examination by Mr Roche:

Q. Good afternoon, Sir. Would you state your full name.

A. Good afternoon, Sir. My name is Dennis Bruce Brooks.

Q. What is your occupation?

A. I'm a doctor of medicine with a specialty in orthopedic Surgery.

Q. Doctor Brooks, I'm going to ask you some questions about your background, your education, your examination, and then I'll ask you some questions about whether or not you have any opinions in the matter of Nancy L. Brooks. Before we get into that I would like to ask you where did you attend medical school?

A. Western Reserve University.

Q. In what year did you graduate?

A. 1963.

Q. Following medical school, could you describe for the jury the training you received in the medical profession.

A. Yes. I served as a rotating intern at the Mt Sinai Hospital of Cleveland for one year and then

served as a general surgery resident, also at Mt Sinai Hospital for one year.

My third and fourth year of post graduate training was in orthopedic surgery residence at Mt Sinai. During my fifth year I was a National Institute of Health Research Associate in the biomechanics laboratory of Case western Reserve University. And my sixth and final year of post graduate training was in children's orthopedics at Indiana University Medical Center.

Q. Doctor, I understand you currently specialize in the field of orthopedic surgery.

A. Yes.

Q. What is orthopedic surgery?

A. Orthopedic surgery is that branch of medicine that threats patients who have problems with their musculo-skeletal system. By that I mean I take care of patients who have problems with their bones, joints, the soft tissues that cover those areas, the muscles, ligaments, and tendons, as well as taking care of patients who have problems with their spine and its contents, the intervertebral disks and nerve roots.

I treat a variety of patient problems from those that are apparent at birth that are called congenital, kind of problems that develop during adolescents and puberty that are referred to as developmental, the

injuries that arise from sports activities, work related activities, vehicular accidents. Those problems are called traumatic. And then there's a large class of patient problems that we all encounter as we grow older and those are referred to as degenerative.

As an orthopedic surgeon I treat patients both with surgery and without surgery depending on their needs.

Q. Doctor, following the medical training you've described to this point did you enter the private practice of medicine?

A. No.

Q. What did you do following the training you described so far?

A. I served two years in the United States Air Force, then I entered private practice.

Q. Okay, and in what year did you enter private practice?

A. 1971.

Q. We are now at your office on Cedar Avenue in Beachwood, Ohio. How long have you had an office at this location?

A. Fourteen years.

Q. Now in your medical practice, Doctor, do you treat patients who have been injured by traumatic

events such as car accidents?
A. Yes.
Q. And when called on, when proper to do so, do you perform surgery on those patients?
A. Yes.
Q. And do you also treat them by non invasive means like physical therapy , and medicines, and whatever else you think is appropriate?
A. Yes.
Q. Do you treat patients who have problems with the rotator cuff?
A. Yes.
Q. Do you perform surgeries **on** patients, where its necessary and appropriate, who have problems with rotator cuffs?
A. Yes.
Q. Could you tell the court and jury, Sir, whether or not you are Board Certified in your field.
A. I am Board Certified.
Q. When were you Board Certified?
A. I was initially Board certified in 1971 and then was recertified this year in 1994.
Q. What does it mean to be Board certified in orthopedic surgery?
A. Board certification is an indication that I

have the knowledge, skill, and expertise to practice my specialty. In orthopedic surgery it means that I completed a postgraduate training program much like I outlined, that I practiced orthopedic surgery to the exclusion of other branches of medicine for one year, I believe it was, in one location, that I submitted letters of recommendation from my peers, and then I passed an examination which in my case was a full day written examination and a half day oral examination.

Q. Doctor, in addition to being Board Certified are you a Board Examiner?

A. Yes.

Q. What does it mean to be a Board examiner?

A. The examination for the American Board of Orthopedic Surgery is made up of two parts. There is the written examination and the oral examination. I have the privilege of being an oral examiner. During the Board Examinations another examiner and I sit and discuss with a candidate his or her orthopedic practice to determine whether they're capable of continuing on in the practice of orthopedic surgery.

Q. So you are involved in the testing of other physicians to determine whether or not they will be Board Certified in orthopedic surgery.

A. Yes.

Q. Doctor, you currently have privileges at any of the hospitals here in the area.

A. Yes I do.

Q. At what hospitals do you have privileges?

A. The Mt Sinai Medical Center.

Q. Now Doctor, did I ask you to meet with and examine a young lady by the name of Nancy Brooks?

A. Yes.

Q. And did you do so?

A. I did.

Q. Following your meeting with her did you prepare a written report of your findings in this case?

A. Yes.

Q. Doctor, I'm going to ask you some questions about your examination and your findings, and if it would help you to do so, I know it would help me, I'd like to follow your October 19,1994 report and invite you to refer to it if it helps you. Okay Sir?

A. Thank you.

Q. The first question I have regarding Miss Brooks is could you tell us please when it was you met with her?

A. I examined her on October 18,1994,

Q. And before examining her did you take a history from her?

A. Yes.

Q. What history did she give you, Doctor ?

A. She told me that she had been injured in August of 1992 when she was driving an automobile which was moving when it was involved in an accident with another automobile. She told me that the front end of her vehicle was damaged.

She was restrained at the time of the accident and as she indicated, " pushed myself back into the seat with both hands." She told me that following the accident she was shook up.

The next day she phoned her family physician, Dr Coleman. She told me that within a week of the accident she was examined by him. She recalled that at that time she had pain in the superior aspect of her right shoulder. And she indicated, "kind of like down through your neck." She also had pain in her upper back and her lower back. She told me that her left thigh was kind of going numb.

Dr Coleman referred her to physical therapy, she told me. And she received treatment three times a week over what she referred to as a long extended period of time, more than one year. She went on to tell me that sometime after the initial examination she was reexamined by Dr Coleman. He then referred her to Dr

Kennedy. Dr Kennedy advised her to continue with physical therapy and injected her shoulder with cortisone shots on approximately four occasions. She told me that Dr Kennedy did not order any special diagnostic tests with respect to her right shoulder.

In February of 1993 she was admitted to Barberton Hospital for three days. She underwent surgery at which time Dr Kennedy repaired what she referred to as the rotator cuff and also fixed a torn tendon. She recalled that at the time she was unable to lift her right arm and had continual pain .

Following her surgery she continued under Dr Kennedy's care. She told me that she wore a sling for approximately two weeks and then went to physical therapy. She continued to treat with Dr Kennedy until approximately June...July rather ..of 1993.

She recalled that in June or July of 1993 Dr Kennedy referred her for pain management at Barberton Hospital. At that time she had symptoms referable to her right shoulder, upper back, and neck. She recalled that the surgery, as she put it, "didn't completely solve the problem."

She went for therapy two times a week for two months and she received what she described as nerve blocks. She told me that after the first one it made

the pain worse. She indicated that she received these blocks around her entire shoulder girdle.

She told me that Dr Lew referred her back to Dr Kennedy who indicated there was nothing else he could do. Dr Kennedy referred her to Dr Wilcox and she told me that Dr Wilcox also indicated there was nothing else he could do. In November of 1993 she came under the care of chiropractor Leone at the recommendation of a friend. she received treatment three times a week for approximately a month. She recalled the treatment wasn't helping. It wasn't curing the pain. She told me that she last received chiropractic treatment in March of 1994.

She also told me that in approximately February of 1994 she underwent a CT scan. She told me, "they did my back instead of my shoulder. There was nothing wrong."

So that completed the first part of her history. What she told me had occurred between the time of the accident in August of 1992 and the time that I examined her in October of 1994.

Q. Alright Doctor, I wonder if I could ask you a question or two about the history to this point.

A. Sure,

Q. Sou indicated that when she first saw Dr Coleman she had pain in the superior aspect of her

right shoulder.

A. Yes.

Q. Could you indicate for the court and jury where that is, the superior aspect of the right shoulder?

A. Superior means top and so the superior aspect of you right shoulder is this area right in here in the area of the trapezius muscle.

Q. She indicated that when she saw Dr kennedy she told you that he did not order any specialized diagnostic tests of the right shoulder, and you noted that in your report. What tests are available that could have been done by Dr Kennedy regarding the right shoulder?

A. Well specifically with respect to Mrs Brooks if Dr Kennedy was concerned about a rotator cuff injury or rotator cuff problem the two best diagnostic tests that are presently being done are an ultrasound of the shoulder or an MRI of the shoulder. There's a third test that is not done quite as frequently as had been done in the past and that's an arthrogram of the shoulder where dye is injected into the subacromial space.

Q. Doctor, do you have a model on which you could show the court and jury where the rotator cuff is

located and then I'd ask you some questions about its function, how it helps, what it does, that sort of thing?

A. Yes. This is a model of the right shoulder. This is the side that's furthest away from the center of the body. Its called the lateral aspect. So the center of the body would be over here. This is the collar bone or the clavicle. This is the humerus or upper arm. This is the ball and socket that actually makes up the shoulder joint. This structure right here is the acromium which is a portion of the shoulder blade or the scapula.

Now the rotator cuff is made up of a number of muscles. In the front there's one muscle that's called the subscapularis. The major muscles of the rotator cuff are the supraspinatus which is this muscle. The infraspinatus which is this muscle and the teres minor which is this muscle hack here. So those are the components of the rotator cuff.

Q. Doctor, is it of any significance in your review of this case that when Mrs Brooks went to Dr Coleman she complained of pain in the superior aspect of her right shoulder?

A. Yes.

Q. And why is that significant to you?

A. Those are not the kind of complaints that somebody has when they've had an injury to their rotator cuff. In the superior aspect of the shoulder, right here, when you have an injury that causes, or you have an accident rather that causes an injury to the rotator cuff, people complain of pain either in their shoulder, per se, down here. Occasionally they'll complain of pain in the back in the area of the supraspinatus, but you don't complain of pain in the trapezius.

Q. Doctor, on the model, where is the superior aspect of the right shoulder?

A. Well the superior aspect of the right shoulder would be superficial or on top of the collar bone, the clavical, and the acromia.

Q. Now I'd like to ask you more about the history. Before I do I want to ask you two questions that I failed to ask you at the outset that I should have. Number one, its certainly true that you are no relation to Nancy L. Brooks, is that correct?

A. That's correct.

Q. And the other thing I should have asked you and I did not. You are licensed to practice medicine in the state of Ohio?

A. Yes.

Q. And when were you so licensed?

A. 1963.

Q. Thank you. I would like, Doctor, to continue with the history. Could you please tell us what she told you about her current condition when you interviewed her?

A. Yes. She said, " its still my arm." She was referring to her right arm and indicated that, "it depends on use. It will go numb." She indicated that her entire arm became numb and that she also experienced numbness in her right thumb and index finger.

She experienced pain i.n the anterior and posterior aspect of her right shoulder as well as she said, "down my arm to my hand. The pain occurred quite often.'' Her symptoms were increased by anything I try to do, she said. They would decrease by taking Tylenol, "although nothing makes it feel better." And those were the only symptoms she had with respect to the accident.

Q. Did you discuss with her her past history?

A. I did.

Q. What did she tell you about that,Doctor?

A. She told me that she did not have any symptoms with respect to her neck, right shoulder, or right arm before the accident. She had not been

involved in any prior accidents...vehicular accidents, rather. She had sustained an injury to her right knee at work and she had not been involved in any accidents since the accident in 1992.

She went on to tell me that at the time of her accident she was working as a waitress. Following the accident she missed two days from work and then worked until the time of her surgery.

She indicated that Dr Kennedy informed her that," work was agitating my arm." And that completed her history.

Q. After you obtained that history, Dr Brooks, did you then conduct a physical examination of Nancy Brooks?

A. Yes.

Q. Could you describe for the court and jury what you did and what your findings were?

A. Yes. The physical examination revealed a female of approximately her stated age who was of short stature and somewhat overweight. I noted that she got out of a chair without difficulty, that she walked without limping, and that. she was able to climb onto and off of the examining table in a normal fashion.

I examined her cervical spine and noted that she had normal cervical lordosis without evidence of

paracervical or trapezius spasm.

Q. Could I ask you to clarify for me and the jury what those terms mean, please?

A. Certainly.

Q. Thank you.

A. Cervical refers to the neck. Lordosis is the configuration of the cervical spine. If you look at somebody from the side they have a gentle C shaped configuration to their neck. And trapezius is the muscle we're talking about. Spasm is a sustained contraction of a muscle, much like a charlie horse.

Q. And you did riot find spasm when you examined her.

A. That's correct.

Q. Would you continue with your findings on examination, please?

A. Yes. There were no areas of localized tenderness with palpation of the spinous processes, paracervical muscles, or trapezia. There was a full range of cervical flexion, extension, lateral rotation, and lateral bending. I examined her thoracic spine, or her mid back , and noted that there was an increase in the upper thoracic kyphosis. There was no evidence of spasm or localized tenderness and the peripheral pulses were palpable in all three positions.

Q. Can you explain those terms for us, please, Doctor?

A. Sure. Thoracic spine refers to the midback. Kyphosis is a term that describes the configuration of the middle back. Its just the opposite of lordosis. That is to say, you have a C shaped configuration of your cervical spine, then you have a C shaped configuration pointing the other way of your thoracic spine. She had prominence of her thoracic kyphosis which is the way she was built.

The peripheral pulses were palpable in all three positions. One of her complaints was that her right arm became numb. Her entire arm became numb.

Q. Yes Sir.

A. I'm hesitating because I'm going to say something and then you'll ask me to explain it so....

Q. Not necessarily, Doctor.

A. Oh, Okay. At any rate. one of the things that I wanted to rule out was whether she had a thoracic outlet syndrome. Now a thoracic outlet syndrome is a condition where there's compression on the vessels that go from the root of your neck down your arm.

And some people who have this condition experience numbness in their arm depending upon what position their arm is in. In order to determine that she did not

have that condition, or to determine whether she had the condition, I checked her radial pulse in various positions,

Q. Does that mean palpate, Doctor, when you feel for things?

A. Right. Apply pressure, palpate. Simply stated, everything was normal. So she didn't have a thoracic outlet syndrome as a cause for the numbness in her arm.

Q. Alright. I think your examination then moved on to the right shoulder. Is that correct, Sir?

A. Yes.

Q. Could you describe your findings, please.

A. Yes. I noted that there was no evidence of atrophy or deformity. There was a well healed scar extending from the coracoid over the lateral aspect of the acromium. She indicated that she was," uncomfortable with the lightest of palpation in the area above and below the scar,"

Q. Palpation being a touching?

A. Yes.

Q. Okay. And atrophy is a term that's been used ...what is atrophy, Dr. Brooks?

A. Atrophy is a wasting away of a muscle. When somebody has an atrophic muscle, the muscle mass is

smaller than it normally is.

Q. Okay, and you did not find atrophy in the right shoulder of Mrs Brooks?

A. Correct, (Voice Over)

Mr Eenretta: Objection.

Q. Can you continue with your findings then, please?

A. Yes. The active range of motion in degrees of the right shoulder was abduction, 180, froward flexion, 180, external rotation, 45, internal rotation, 2tl2, horizonal flexion complete.

She complained of pain with abduction beyond a 160 degrees and forward flexion beyond 160 degrees. The apprehension and the impingement signs were negative and there was no evidence of glenal humeral laxity. On the left side she could internally rotate to T-8.

Q. Perhaps you could describe for the jury ... as I understand it,Doctor, during this phase of the examination you were having her move her arm os move her shoulder. Is that correct?

A, Yes. I was asking her actively to move her arms so that I could test the range of motion of her shoulder joint.

Q. Okay, you refried to abduction,forward flexion, and a few other terms. Could you describe what

was being done in the course of your examination when you were using those terms?

A. Yes.

Q. A terrible question. I'm sorry, but I think you know what I'm asking. Thank you.

A. I asked her to bring her arms away from the side of her body. That's abduction. So she was able to do that normally to a 180 degrees. I asked her to perform forward flexion, which is raising her arm up this way, She was able to do that to a 180 degrees. I asked her to externally rotate and that was 45 degrees, which is normal. And she could do that. Asked her to internally rotate, reach behind her back and she had some limitation when she did that.

She could only reach as far as the twelfth thoracic vertebrae where on the other side she could reach to the eighth thoracic vertebrae. So she lacked maybe two inches on the right side as opposed to the left side, And the last thing I asked her to do was horizontal flexion, which is bringing her arm across in front of her body and she was able to do that normally.

Q. Were any of the findings...in summary, were any of those findings abnormal?

A. Yes, she lacked a slight bit of internal rotation, the ability to reach behind her back.

Q. According to the report, Doctor, you then conducted a neurological examination.

A. Yes.

Q. Could you describe your findings in that regard?

A. Yes. I noted that she had symmetrical deep tendon reflexes, normal motor power, and normal sensory perception.

Phalen sign was negative bilaterally. Tinel Sign was positive over the right cubital tunnel and the right carpal tunnel.

When I noted those findings I asked whether she had undergone EMG and nerve conduction studies. She indicated that Chiropractor Leone had, "nerve tests performed in his office by another individual." She told me they demonstrated carpal tunnel in my wrist. She also told me she wore a brace for a period of time.

Q. Doctor Srooks, I'd like to ask you if you could summarize the terms that were used in this part of the examination ; deep tendon reflexes, phalen sign, Tinel Sign, and the other terms that you used?

A. Yes. The deep tendon reflexes are the things that I test with the little red rubber hammer. You know, your ref1exes.

Normal motor power refers to the fact that her

muscle strength was normal. And her sensory perception, she had the ability to perceive or feel normally. Phalen's sign is a sign that we attempt to determine to see whether somebody has carpal tunnel syndrome. Its performed by asking the individual to acutely flex their wrist, hold them in this position for a period of time. Carpal tunnel is right under here, so that if you bring your wrist down in this position you're compressing or making narrower the carpal tunnel.

If you have a problem with the median nerve in the carpal tunnel a patient will experience the same symptoms about which they complained, which wasn't a very good way of saying it. But when she gave her history she told me that she had numbness down her entire arm as well as in her thumb and her index finger. The thumb and index finger are supplied by the median nerve which is the nerve that runs through the carpal tunnel.

Phalen sign which is really the most sensitive sign for a carpal tunnel syndrome was normal. On the other hand, Tinel Sign, which is a tapping over the nerve, was positive in that she complained of an electric like shock into her thurnb and index finger and it was also positive over the cubital tunnel which is at your elbow. Sort of like when you twang your funny

bone, if you will, and you get that feeling going down, not your thumb and index finger, but your little and ring finger.

Q. Alright. Did that complete your neurological examination of the patient?

A. Yes.

Q. And neurological relates to nerves, is that correct?

A. Correct.

Q. Did you then examine radiographs of Mrs Brooks?

A. Yes.

Q. And I think on radiographs...are they the films that are generated when x-rays are taken? Would that be right?

A. Exactly. Its the hard copy.

Q. Did you obtain new radiographs at the time of your examination, Doctor?

A. Yes,

Q. And did you also review radiographs that had been taken in the past by other physicians and hospitals?

A. Yes.

Q. What were the findings on the radiographs of the cervical spine that you reviewed?

A. There was no evidence of fracture or dislocation. There was a congenital, that is present since birth, fusion of the C-2, C-3 elements, the second and third vertebral elements in the cervical spine.

Q. Which is in the neck?

A. In the neck, yes.

Q. Did you examine radiographs of the right shoulder?

A. Yes.

Q. And what were your findings when you reviewed those, Doctor?

A. There was evidence of fracture, dislocation, or degenerative change.

Q. Now in addition to reviewing these radiographs and interviewing Mrs Brooks, did you also examine medical records from other doctors?

A. Yes.

Q. Could you tell us what records you reviewed and what of significance you found?

A. Yes. I reviewed Dr Coleman's office records for the period between May 30,1991 and September 22,1992, physical therapist Richardson's record for August 31,1992. I reviewed the actual radiographs of the cervical spine in the right shoulder obtained on

September 23,1992, Dr Kennedy's records for the period between October 7,1992 and February 14,1994, the records froin Barberton Citizen's Hospital for the surgery that was performed on February 11,1993, Dr Kennedy's letter of December 2,1993, his letter of March 2,1994, a record from Barberton Citizen's Hospital for June 1,1993, Dr Reich's office record for the period between December 27,1993 and February 1,1994,Chiropractor Leone's records for the period between August 26,1993 and October 26,1993. And those were the records that I reviewed.

Q. Regarding Dr Coleman's office record, Doctor, what of significance did you find there?

A. Several things. I noted that he first. examined Mrs Brooks on October 25,1882, ten days after the accident. And he noted among other things that she had some tenderness in her- low back, that she had tenderness in her right trapezius muscle, that her cervical spine was okay, and that she had pain when standing on her left leg.

He made the diagnosis, neck strain, lumbo sacral strain. i noted. that when he reexamined her on September 22,1992 she had occasional pain in her right arm and she had tenderness in the right trapezius. And it was important or significant to me that during this

period of time there was nothing to indicate that she had actual right shoulder pain or limitation of right shoulder motion.

Q. Doctor, i think you indicated that Mrs Brooks saw Dr Coleman on August 25,1992, about ten days after the accident. Correct Sir?

A. Yes.

Q. And why is it significant that she had no actual right shoulder pain or limitation ten days after this car accident?

A. One of the areas we're trying to determine is whether or not Mrs Brooks sustained a tear of her rotator cuff as a result of the accident of October 15,1992. If she had sustained an injury or a tear of her rotator cuff as a result of that accident...

Q. The one in August of 1992?

A. I'm sorry, August of 1992. August 15th of 1992.

Q. Correct Sir. Thank you.

A. My error. If she had sustained a tear of her rotator cuff as a result of the accident of August 15th, 1.992 then she would have had symptoms referable to her right shoulder and limitation of right shoulder motion right after the accident. And those symptoms and physical findings would certainly have been present

when she went to see Dr Coleman ten days after the accident..

Q. You noted some findings from the records of therapist Richardson. Can you relate what you found that was in his records that you thought to be significant?

A. Yes. Again, when she was examined by the therapist he noted that she had pain in the right cervical and dorsal area and that she was tender in the right trapezius and the left trapezius. And again, he was somebody who made a differentiation between the trapezius area as opposed to the shoulder area. And that of course is important when we're trying to determine where her injuries were.

Q. Doctor, your report indicates that you reviewed radiographs that were obtained on September 23,1992. That would he about five weeks after this August 15,1992 car accident and you compared them with those obtained at the time that you examined Mrs Brooks. You note there was no change.

A. Yes.

Q. Is that significant at all in this case?

A. Yes.

Q. Why.

A. If she had sustained, for example, a

significant injury to her cervical spine then over a period of time, which was approximately two years, the injury if it had been, for example, a significant disk injury would have been manifest by changes in the radiographs.

Certainly, if she had sustained a significant injury to her right shoulder in terms of any kind of bony injury that would have showed up. But there was no change in the x-rays.

Q. Regarding Dr Kennedy's records, Dr Brooks, what of significance did you find there?

A. He first examined her two months after the accident. At that time she had, what he said is," localized the shoulder pain to the trapezius and the deltoid." The deltoid is the muscle that does now cover over the shoulder joint. He states that the whole arm goes numb, particularly when she is getting ultrasound. Describes this in a stocking glove type fashion. That's a significant finding because a stocking glove type fashion is a kind of numbness that is circumferential and it is not the kind of numbness that goes along with an injury to any particular nerve or an injury to any particular nerve root in the neck.

Q. Thank you. Doctor, I see in your report from Dr Kennedy's record that on January 25,1993 Dr Kennedy

noted that there was, "no sign of a cuff tear clinically." What does that mean, Sir?

A. Well that means that, and I assume Dr Kennedy is an orthopedic surgeon, that putting Mrs Brooks through various maneuvers he felt that there was no clinical evidence of a rotator cuff tear in January of 1993, five months after the accident.

Q. Okay. Regarding Barberton Citizen's Hospital records and additional records from Dr Kennedy, did you note anything significant there that we have not yet talked about?

Mr Henretta: Objection.

A. Yes. I noted that he operated on her on February 11,1993 and at that time he did a procedure which he described. as decompression right shoulder with acromialplasty and repair of right rotator cuff. And at the time of surgery he, "discovered a three centimeter is linear tear between the rotator cuff interval."

Q. Doctor, where on your model would that be located, this rotator cuff tear that Dr Kennedy discussed?

A. Well I believe from what he was describing as the rotator cuff interval, it occurred between the subscapularis and the superspinatus. Now its possible that he was referring to the interval between the

superspinatcs and the inferspinatus. That would have been a little bit more difficult but that's the best that I can determine. But it was a linear tear which is of importance that it extended in a line away from the edge of the shoulder.

Q. Did you find anything significant, Dr Brooks, in the record you reviewed from Dr Leone, the chiropractic physician?

A. Well he began treating her in August of 1993, which was approximately a year after the accident. Although in his letter he indicated he began treating her on September 26,1993 so I'm not quite sure why there was that discrepancy.

One thing his records did contain is that there were some studies performed by Dr Saltis which indicated there were no indicators of significant ulnar neuropathy. The patient has evidence of mild bilateral carpal tunnel syndrome and there were no signs of a root lesion. That's important...I'm sorry.

Q. Root lesion being what,Doctor?

A. A lesion that begins in your neck.

Q. And why was that finding significant?

A. Well all these findings...remember she complained that her whole arm went numb and that she had some numbness in her hand. When I examined her and

did a Tinel's test over her cubital tunnel she had complaints into the ulnar side of her hand. He found that there was no evidence of significant problems with the ulnar nerve, the nerve that supplies these two fingers.

He also found that she had a mild bilateral carpal tunnel syndrome which meant it was on both sides, okay. And when something occurs on both sides you can't relate it to an accident or an injury that theoretically involves only one side. I didn't say that very well.

Mr Henretta: Move to strike.

Dr Brooks: I would too.

Q. Meaning bilateral means the carpal tunnel, at least according to these findings, was in both the right and left wrist. Is that correct?

A. Correct. That's right.

Q. And the surgery in this case was performed to the right shoulder. Is that correct?

A. Yes.

Q. Alright, so let me ask you this. Do you have an opinion to a reasonable degree of medical certainty as to whether or not and abnormal findings that. indicated a bilateral carpal tunnel were proximately

caused by any injury she sustained in the motor vehicle accident of August 15, 1992?

Mr Henretta: Object.

A. Yes, I have an opinion.

Q. What is your opinion?

Mr Henretta: Object

A. My opinion is that the bilateral carpal tunnel syndrome was not caused by the automobile accident.

Q. Doctor, I would like to ask you whether or not you have any opinions in this case. The first question I would like to ask you is, Dr Brooks, do you have an opinion as to whether or not Nancy Brooks sustained injury in the motor vehicle accident in which she was involved on August 15,1992?

A. Yes, I have an opinion.

Q. What is your opinion, Sir?

A. I believe that she sustained a mild cervical and lumbosacral strain.

Q. Do you have an opinion, Dr Brooks, to a reasonable degree of medical certainty as to whether or not Mrs Brooks sustained a tear of her rotator cuff in the right shoulder as a result of the motor vehicle accident on August 15,1992?

A. Yes, I have an opinion.

Q. What is your opinion?

A. i believe that she did not sustain a tear of her rotator cuff as a result of the automobile accident.

Q. Could you explain to the jury, please, the basis of that opinion?

A. Yes. Sort of a summary of what we've been talking about. if she had sustained a tear of her rotator cuff as a result of the accident of August 15,1992 she would have had symptoms and physical findings of that injury immediately following the injury, She sought no medical care for ten days after the injury. Ten days after the injury when she was examined she did not have any symptoms or physical findings that were indicative of a rotator cuff tear, They were indicative of a cervical strain. She was seen by a physical therapist who found the same findings, tenderness in her trapezia, nothing in her shoulder, no limitation of shoulder motion.

She came under the care of Dr Kennedy approximately two months after the accident. At that time she did have some shoulder symptoms. She had been working as a waitress during that period of time. Ultimately, in February of 1993, five months after the accident, he operated on her, not for a rotator cuff

tear but for an impingement syndrome.. He did a decompression of her shoulder, discovered a rotator cuff tear and repaired that. The kind of rotator cuff tear that he discovered is riot the kind that you get from a single isolated traumatic event.

Q. Okay, let me ask you. this first. of all. You have reviewed the records of Dr Kennedy and do you agree with him that he did find a rotator cuff tear when he operated?

A. Yes.

Q. What is there about that tear, that type of tear, the location of the tear which supports your opinion that it was not caused by this motor vehicle accident?

A. This was a linear tear either in the interval between the subscapularis and the superspinatus or between the superspinatus and the inferspinatus. That's what we refer to as a degenerative type of tear.

When you sustain a traumatic tear or a tear that's as a result of a single isolated event you usually tear it right here from the...its insertion on the greater tuberosity. So its a different plane, different location, different angle.

Q. Are there things other than car accidents that cause rotator cuff tears?

Mr Henretta: Objection

A. Sure.

Q. And when you say that degeneration can cause a rotator cuff tear, is that correct, Sir?

A. Yes.

Q. Okay, what do you mean by that?

A. Well with the activities of daily living and with some activities more than others there's chronic impingement on the rotator cuff. And over a period of time that impingement causes degeneration or a wearing out of. When something in the body wears out it tears.

Q. Doctor, do you know from review of these records that Dr Kennedy performed surgery in February of 1993 on Mrs Brooks. Do you have an opinion to a reasonable degree of medical certainty as to whether or not that surgery was proximately caused by this motor vehicle accident occurring August 15, 19927

A. Yes, I have an opinion.

Q. What is your opinion, Sir?

A. I believe that the surgery was not proximately caused by the automobile accident.

Q. And the basis of that opinion? Would you be repeating what you've already said to this point,

Mr Henretta: Objection.

Asked that a couple

of times.

Mr Roche: Alright. Fine, then I'll move along.

Q. Doctor, I want you to assume that there has been testimony from Chiropractic Physician Leone, that he began to treat Mrs Brooks on August 26,1993 and thereafter for what he diagnosed as cervical, dorsa!, and lumbar sprain. Have you reviewed Dr Leone's records?

A. Yes.

Q. Do you have an opinion to a reasonable degree of medical certainty as whether or riot the treatment provided by Chiropractic Physician Leone was proximately caused by the motor vehicle accident on August 15th of 1992?

Mr Henretta: Objection.

A. *Yes*, I have an opinion.

Q. What is your opinion?

Mr Henretta: Objection.

A. I believe that the treatment which Chiropractic Physician Leone provided was not proximately caused by the automobile accident of August 15,1992.

Q. I want you to assume that Dr Leone has testified that he has billed approximately $1,700.00

for the services he's provided. Do you have an opinion to a reasonable degree of medical certainty as to whether or not that cost is reasonable and necessary and proximately caused by the motor vehicle accident of August 15,1992?

Mr Henretta: Objection.

A. I have an opinion.

Q. What is your opinion?

Mr Kenretta: Objection.

A. My opinion is that those costs are not proximately related to the automobile accident and were not necessitated by the automobile accident.

Q. Could you explain to the jury the basis for your opinion regarding Dr Leone's treatment and Dr Leone's costs?

Mr Kenretta: Objection.

A. Yes. I believe that Mrs Brooks was injured in the automobile accident. I believe that she sustained a mild cervical and lumbosacral strain. That kind of injury does not last a year and therefore, any treatment that she received from the chiropractor a year after the accident was unrelated to the injuries that she sustained in the accident.

Q. Doctor Brooks, do you have an opinion as to whether or not the injuries that Mrs Brooks did receive

in this motor vehicle accident are permanent?

Mr Henretta: Objection.

A. I have an opinion, yes.

Q. What is your opinion?

Mr Henretta: Objection.

A. Her injuries are not permanent.

Q. Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether or riot Mrs Brooks was disabled as a result of the injuries that she did sustain in the motor vehicle accident of August 15, 1992?

Mr Henretta: Objection.

A. Yes, I have an opinion.

Q. What is your opinion?

Mr Henretta: Objection.

A. She told me that she was off work for two days, I believe, after the accident and that sounds like a reasonable time period of time for the injuries that she sustained.

Q. I want you to assume, Dr Brooks, that Mrs Brooks is no longer doing the type of work that she was doing at the time of this motor vehicle accident. Do you have an opinion to a reasonable degree of medical certainty as to whether or riot ,if that's' true, her inability to do her job is proximately caused by the

motor vehicle accident of August 15,1992?

Mr Henretta: Objection.

A. Yes, i have an opinion.

Q. what is your opinion, Doctor Brooks?

Mr Henretta: Objection.

A. My opinion is that the injuries that i believe she sustained in the automobile accident were not of the kind or the magnitude to have caused her to have any change in her employment. That is to say, because she sustained a mild cervical and lumbosacral strain I do not believe that she would have had to change her employment.

Q. Doctor Srooks, those are all the questions I have. Thank you very much.

A. Your welcome,

Cross Examination by Mr Henretta:

Q. Doctor, we're still in your office, aren't we?

A. Yes Sir.

Q. We've Seen off the record for about ten minutes during which time I looked at your file. Is that correct?

A. You looked at my file. Yes Sir.

Q. As soon as we went off the record you told a little joke about chiropractors. I wonder if you could

share that with the jury?

Mr Roche: I'll object.

A. Sure. I'd be happy to. I said ...I asked how many chircpractors it takes to change a light bulb.

Q. And was there an answer to that question?

A. The answer was, "I don't know."

Q. Did you provide an answer to that question?

A. Yes.

Q. What was the answer you provided?

A. It takes one to change the light bulb and thirty-nine to keep readjusting it.

Q. Thank you. What time did Mr Roche arrive today to tal!.: to you before your testimony today?

A. 3:30.

Q. And did you talk to him for a half hour?

A. Approxımate1y.

Q. What did you discuss with him?

A. Whether he Lad a nice Thanksgiving, whether I had a nice Thanksgiving. Who was at the Thanksgiving. How his practice was in Akron and Nancy Brooks.

Q. How much time did you spend on Nancy Brooks?

A. I don't know, Sir.

Q. The file that you showed me today, is that the entire file you maintain here in your office on Nancy Brooks.

A. I'm sorry. I don't understand your question.
Q. Well you have a file that I've just reviewed. Is that all of the documentation that you maintain here in the office on Nancy Brooks? Or are there some other papers?
A. I've returned to Mr Roche the records that I reviewed.
Q. Okay. That's what I'm saying. All you have retained is what is here today.
A. Yes.
Q. You don't have any documents at home?
A. No.
Q. Now you saw Nancy Brooks on one occasion. Is that right, Doctor?
A. Yes Sir.
Q. And for how much time? 30 you recall?
A. No Sir.
Q. A couple *of* hours, you think?
A. I don't recall how long it took me to take a history and perform the physical examination.
Q. 30 you have an idea of how much time you normally spend on what we call a defense medical examinatson? What I mean by defense medical is when you've been asked to give an opinion on a particular case by a defense lawyer such as Mr Roche. By the way,

his office paid you for your time in this case or will pay you?

A. That's correct.

Q. Now isn't it true that you spend maybe a couple of hours on each case. And what I mean, I don't mean in interviewing the patient. I mean by the time you get the referral from the defense firm, or the company, or the insurance company, whatever the case may be....

Mr Roche: I'll object

Q. ..,.you spend approximately two hours in taking a history, conducting a physical examination, taking x-rays, and reviewing the x-rays or any other diagnostic tests, reviewing all of the materials , and providing a written report. Wouldn't you say that's normally about two hours on an average?

A. I would say that it varies from case to case,that I don't keep track of those things, and so I don't know what the average is.

Q. Now you've beer, asked that question before, I believe, haven't you,Doctor? Sound familiar, the :.question I just asked you about time?

A. All you plaintiff attorneys ask the same questions.

Q. But you've been asked that question before,

haven't you?

A. That's what I just said. I mean nobody's original. They all ask the same questions.

Q. Let. me refer you to a case. This Is an old one. this is back in 1989. You remember Mr Hawal, Bill Hawal?

A. I know who Mr Hawal is, yes.

Q. You and he were in a trial together hack in December 13,1989. At that time the Plaintiff's name was Elizabeth M. Volpin and the Defendant's name was Robert T. Balata. Do you recall that case?

A. Yes, I recall that case.

Q. Mr Hawal asked you this question. Of course he was referring to the particular patient. "How long do you think it took you if you were to estimate to review all of the records that you had in this case and examined the patient at that time and prepared your reports, your best estimate?'' "Best estimate", your answer," probably took me somewhere between a half hour and forty-five minutes to obtain her history and examine her. The records took a couple of hours, perhaps somewhere between a total of three hours, hut that's really just an estimate." Do you recall making that statement?

Mr Roche: Well I'll

object. As counsel pointed out that's a different patient, a different set of records, different circumstances.

A. And no, I don't recall making that statement.

Q. How many such examinations...let's get to it...do you perform in a week? Now you know which ones I'm talking about. I'm not talking about your patients. Nancy Brooks was not one of your patients, correct?

A. How about if you ask me one question at a time and I'll be happy to answer one question.

Q. Was Nancy Brooks a patient of yours?

A. No,

Q. Now how many examinations do you perform in a week on individuals who are not your patients?

A. On behalf of the defense.

Q. On behalf of defense or on behalf of the Industrial Commission, Bureau of Worker's Compensation, or on behalf of an employer, or on behalf of an insurance company?

A. I examine in an average week three patients on behalf of a defendant. At the present time I'm probably examining one to two patients a week on behalf of an employer.

Q. Do you have a standard, you know, hourly rate for those examinations?

Mr Roche: Objection

(No audible response from Dr Brooks)

Q. And what is it?

Mr Roche: Object.

A. $ 350,00 an hour.

Q. Do you know what your rate was in 1988?

Mr Roche: A continuing objection to the amounts that the Doctor charges. I won't interrupt you on the subject again.

Q. Do I know what it was in 1988? I don't recall what it is in 1988.

A. Would it be fair to say it was about $ 225.00 an hour or $ 250.00 an hour?

A. I don't know but you can probably look it up in the transcript of the trial and tell me what I said in 1988.

Q. That's what you *said.* That's what you said. I mean, have your rates gone up since 1988?

A. Yes, so has my rent, my malpractice, my food Sill, and everything else.

Q. So currently your charging how much an hour?

A. $ 350.00 an hour like I do for all medical services.

Q. Now does that include the time spent today? Is it the same hourly rate for giving testimony as it is for writing a report and examining people?

A. No, depositions time is more...is a larger charge for deposition time.

Q. And what is that,Doctor?

Mr Roche: Objection.

A. $ 450.00 an hour.

Q. Do you know how many depositions that you give in a week?

a. No.

Q. Month?

A. No.

Q. In a year?

A. No.

Q. You have given a number of depositions in...since 1977 or 78, however long you've been doing these. You've testified a number of times have you not?

A. Yes.

Q. More than ten times?

A. Since 1977?

Q. *Yes.*

A. Almost twenty years, yes.

Q. Do you have an estimate of how many you do in a particular year?

A. You just asked me that. I said I don't.

Q. Do you have a minimum charge for your testimony?

Mr Roche: Object.

A, Yes, I reserve two hours of time. So the minimum charge for my testimony would be $ 900.00 for the first two hours or any part thereof.

Q. Doctor, you'll agree that Nancy Brooks complained of right shoulder pain.

A. When?

Q. 1992, 1993, 1994.

A. I will agree that she complained of shoulder pain when she went to see Dr Kennedy in 1992, yes.

Q. Well did she complain of shoulder pain when she went to see Dr Coleman?

A. No.

Q. Didn't Dr Coleman's notes indicate complaints of right trapezius?

A. Yes, and I explained earlier why that's not shoulder pain.

Q. Well for me and for those of us that don't understand anatomy as well as you do, isn't right trapezius a large muscle which moves the shoulder in

different directions?

A. No.

Q. What does it do as far as a muscle?

A. The trapezius covers the scapula, the shoulder blade. It has nothing to do with moving the shoulder joint, per se.

Q. Okay, the definition I read is incorrect? I read a definition that said that said the right trapezius is a large muscle which moves the shoulder in various ways. Now it was not a medical definition in a medical dictionary. It was in Studman's. it was written for people like me that don't understand anatomy. So I guess that would be a wrong definition.

A. The definition, Sir, that you just gave me is not a correct medical definition.

Q. Does the trapezius muscle move any part of the shoulder?

A. It may move a portion of the scapula, okay, but it doesn't move the shoulder joint, per se.

Q. Per se. What's that mean, per se?

A. What does that mean, per se. I mean in actuality....

Q. Does it move it at all?

A. ...in actuality. Right, in actuality.

Q. Do you know Dr Kennedy?

are certain risks that are associated with a surgery such as the one Dr Kennedy performed?

A. You've referred to me as Doc about five times.

Q. I'm sorry. I'm not meaning to do that, Doctor. I'm sorry.

A. And you know you took offense about my joke about the chiropractor. Well you must not think very much about doctors.

Q. Doctor, I think I'm speaking fast. I don't mean to be calling you Doc and I'm sorry if that's what you're hearing. You do agree that there are certain risks associated with surgery like the acromialplasty. I think I'm pronouncing it right, that Nancy Erooks had performed by Dr Kennedy?

A. Yes.

Q. And what would those risks be?

A. They're the risks of any surgery that's performed under general anesthetic, death, lung collapse. They're the risks that are associated with any surgery which are infection and there are the particular risks that are associated with shoulder surgery which would he not curing the problem, cot relieving the problem. And there are the risks of nerve injury, vessel injury.

Q. Is it normal procedure for the physician to explain those to the patient?

A. Yes Sir. Its normal and if he doesn't you probably would have a lot more clients.

Q. I don't do medical malpractice if that's what you're suggesting.

A. Right. Well that's what this sounds like, an inquiry into medical malpractice.

Q. I mean, if Dr Kennedy was doing his job he would have explained to her the risks, or an anesthesiologist, or somebody would have done that; correct?

A. I believe so.

Q. Okay. In the history that she gave you, Doctor, she indicated that she pushed both herself back in the seat with both hands at the time of the crash.

A. Yes.

Q. And then you'll agree, I think you said this, that within one week of the crash she saw Dr Coleman and complained of pain in the upper aspect of her right shoulder.

A. Ten days.

Q. You don't know whether or not she was suffering shoulder pain during that ten day period, do you?

A No.

Q And also you would agree she went to Dr Kennedy and received cortisone shots on four separate occasions

A. What's what she told me, yes

Q. What's meant by and I saw it in your report, doctor What's meant by the term pain management? I believe you wrote it in your report I just wanted you to tell us, if you could, what you meant by that? If I could draw your attention to it, its on the second page.

A Its on the second page in the second paragraph and its not what I called it. Its what she called it. That's why its in quotation marks

Q. Yea, I saw that.

A. So its her term and pain management means to me exactly what the words say. An attempt to manage somebody's pain, somebody who has had pain that has lasted for a long period of time and helps them learn how to deal with it.

Q You also indicated in your report to Mr Roche that you upon your physical examination noted a scar .

A. Yes.

Q. Where was that?

A. The scar, as I indicated, was on the

anterior front of her shoulder extending from the clavicle to the outer aspect of the achromia.

Q. And how long was the scar, Doctor?

A. I don't know. I didn't measure it.

Q. Was it visible from we call a conversational distance?

A. I'm not trying *to* give you a hard time. I only looked at it as an orthopedic surgeon. Okay. When I was taking her history it wasn't visible because she was dressed.

Q. I understand.

A. Okay, so I don't know. You know, it depends what she would be wearing during this conversation, I guess.

Q. Your report doesn't mention anything about thoracic outlet Syndrome. At least I didn't see it in reviewing it. And today you spent a little bit of time in your testimony discussing thoracic outlet syndrome. And as I understand that in a very, again this is my nonanatomical way of expressing it is the thoracic outlet syndrome is a compression of, I've been told, the subclavian artery and the first rib. Is that a fair statement?

A. Yes.

Q. You mentioned it today. Is there any reason

why it wasn't included in your report? There's no reference to it in your report.

A. Well there is a reference to it, you see. Its just you have to dig deep to get it there. The reason we discussed it today was that Mrs Brooks had a certain set of symptoms. As a physician I felt that it incumbent upon me to try to determine why she still had the symptoms that she had even having undergone surgery for a certain condition.

One of the things that her history was suggestive but not diagnostic of was thoracic outlet syndrome. I did the appropriate tests for thoracic outlet syndrome. It was right there in black and white. It said her peripheral pulses were palpable in all three positions.

Q. Thank you Doctor. The limitation, I believe in your report indicated she complained of pain with abduction. Now abduction is a term...is that moving away from the body?

A. Yes.

Q. Alright, and there was some limitation in that. Is that correct?

A. No.

Q. Oh, ckay. You said she complained of pain with abduction beyond 150 degrees.

A. Yes.

Q. Is that a normal finding?

A NO.

Q. Okay. The area that we're talking about, is this in and about her right shoulder?

A. Yes.

Q. Do you agree,Doctor, that in the history that she gave you and the records that you saw that she showed no symptoms to her right shoulder clinically, or within the records, or through history prior to the crash of August 15,1992?

A. Yes.

Q. And that she indicated and there was nothing contrary to indicate that she was involved in any prior motor vehicle crashes?

A. That's correct.

Q. And also its fair that she, from the information that you saw, that she was involved in no subsequent car crashes. In other words, after August 15, 1992 and before you saw her?

A. Correct.

Q. Doctor, I want to show you what has been marked as Plaintiff's Exhibit One and ask you if you could ...I'll show it to your counsel first.,.if you could identify that.

A. Thank you counselor.

Mr Roche: I'm not the Doctor's counsel. I think that's obvious, but I've handed him the piece of paper.

Mr Henretta: Thank you.

A. I have it. Yes Sir.

Q. In fact you referred to that in your summary report that you provided Mr Roche dated October 19,1994.

A. Yes,

Q. Now were there other records of, I guess his name is Richardson, the physical therapist. Were there other records from physical therapy progress notes that you reviewed or is that the only document you reviewed regarding physical therapy?

A. I don't have any recollection of all the physical therapy records that I reviewed.

Q. Okay, I want to show you what's been marked as Plaintiff's Exhibit Number Three and ask you if you can identify that?

A. Yes, this is what I refer to as an intake sheet. When I get a request from a plaintiff's attorney, defense attorney to perform an examination I look at their letter and then determine what records

that I need from that individual, what x-rays, in order to perform an adequate assessment of the individual.

Q. I noticed your report refers to your reviewing physical therapy records but I don't see it on there. Is there an indication that you reviewed the physical therapy records on that document that you have right in front of you.

A. This document doesn't say what I reviewed. Its what I would like to review. Sometimes people send me additional stuff and apparently the physical therapy records were there. They were the additional records.

Q. Well you don't recall if you reviewed all of the physical therzpy records, do you, as you sit here today?

A. You asked me that five minutes ago and I said I don't recall what physical therapy records I reviewed.

Q. But you recall reviewing the type written one that I showed you as Plaintiff's Exhibit Number One don't you ?

A. Yes, I referred to that.

Q. Okay. I want to show you what's been marked as Plaintiff's Exhibit Number Two, I ask you whether you can identify that or tell us whether or not you've seen those records before?

A. It says, " Physical therapy progress notes, Barberton Citizen Hospital , August 31,1992 through November 20,1992."

Q. Have you seen those before?

A. Its been highlighted by someone. I don't believe those are my highlights and I don't honestly recall whether I've seen these before or not. I don't have any independent recollection.

Q. Okay, I'd like to go over some of those items on there if we could, Doctor.

A. I'd be happy to.

Q. On 9/9/92, now that may be the second sheet that you have there.

A. Yes.

Q. Well, Doctor, excuse me. Let me go back to the first page. 9/1/92, that would be September 1,1992. On that note there is a complaint of ...is there not? "Right upper trap region", it says? It would be toward the middle of the page.

A. Its not a complaint.

Q. There's a reference on that document, is there not, that...

A. Yes.

Q. it says, " most sensitive to left hip region and right upper trap region." I guess that means

trapezius.

A. That's correct.

Q. Then the next page on September 9th there's a reference to shoulder...to "right shoulder-scapula-upper trap region", is there not?

A. Yes.

Q. And on the bottom of that page on October 19,1992 there's a...and its in different handwriting. Are you with me on that one,Doctor?

A. Yes Sir.

Q. Its says, " Dr Kennedy" I think...I read that as, " feels". I don't know. Maybe you can tell me what you think it says. " Dr Kennedy feels that the patient was experiencing right rotator cuff tendinitis." Is that how you read that, Doctor?

A. "Dr Kennedy", something.."the patient was experiencing right rotator cuff tendinitis."

Q. Now the next page, Doctor, on the top note which is I guess 11/11/92. There's a reference to right shoulder region cr shoulder region.

A. 11/11/92.

Q. Yes, about half way down where it says " I.E.S."

A. Yes.

Q. And then also on 11/20/92 the note says, and

I guess this is probably from the patient because there's quotes around it. " Its hurting today. I've been moving."

A. Closed quotes.

Q. Right, closed quotes. Then it says," reporting pain to both L-S" and that would be low back or lumbosacral area,low back and right shoulder region.Is that correct?

A. Yes Sir. That's what it says.

Q. Also on...you have a note there for October 21st,Doctor?

A. October 21st of 1992?

Q. Yes.

A. Yes.

Q. Okay, is there a complaint there about numbness and tingling and pain to the right shoulder?

A. yes.

Q. Thank you Doctor.

A. You're welcome.

Q. Could you explain for us the procedure that's involved in an acromialplasty?

A. Yes. Plasty,like a plastic surgeon. With an acromialplasty...

Q. Does that mean repair,Doctor, in general...plasty?

A. No. It means...I really don't know what the Latin definition of plasty is, but its not a repair. That's the key thing. When you do an acromialplasty you remove a portion of the acromium.

Q. What is the acromium?

A. The acromium is this part of the scapula that extends in this area and joins with the collar bone or the clavicle.

Q. Is that surgery normally done under some type of anesthetic?

A. Yes, as we discussed earlier.

Q. Did the surgical notes you saw reflect the type of anesthesia that was used in this case by Dr Kennedy?

A. I don't have any independent recollection. I'd be happy to look at the operative record if you want me to.

(Off Record and Return)

Q. Have you performed this procedure, Doctor?

A. Yes.

Q. What are the types of anesthesia that are available to a patient?

A. General anesthetic. Occasionally its done under what's referred to as a super clavicular or scalene block.

Q. Is that up to the patient or is there one you usually recommend?

A. Well it a combined assessment by the physician, the patient, and the anesthesiologist.

Q. In Nancy Brooks' case, do you believe that her condition was painful, that which necessitated the surgery?

A. Yes.

Q. It was a painful condition. What is meant by this term? In your note to...or your letter to Mr Roche, the October 19, 1994 letter, your report, you stated this. "Mrs Brooks continued to have right shoulder symptoms and on May 24,93 Dr Kennedy's impression was S-P acromial decompression, rotator cuff repair, chronic pain, reflex sympathetic dystrophy." What is meant by that abbreviation,"S-P"?

A. Status Post. Its already happened.

Q. Already happened, okay. Do you disagree with his particular finding in that sentence?

A. I don't have enough information to agree or disagree whether she had reflex sympathetic dystrophy.

Q. Doctor, the diagnostic tests that you performed when you saw Nancy Brooks, was that limited to x-ray?

A. Yes.

Q. And I guess the x-rays, from what I could read from your report, revealed no objective findings. Or your conclusion was from reading the x-rays that there were no objective findings on physical or radiographic examination to substantiate her complaint. I believe that was your..

A. That's correct.

Q. Now you're not suggesting that just because an x-ray didn't give you an objective sign that a patient couldn't be in pain, are you?

A. No.

Q. I mean, one could be in pain and an x-ray would be negative, right?

A. Correct.

Q. You didn't perform an arthrogram bid you, Doctor?

A. Did I?

Q. An arthrogram.

A. No Sir.

Q. You were, again, hired by Mr Roche's office to make a determination in your opinion whether or not her injuries were caused by the car crash, among other things,

A. Among other things.

Q. Would you say most of the work that you do in

this area would be for defense firms rather than for plaintiffs, over half?

A. Over half? Yea, I would say over half. I don't know that its most,however.

Q. You're a physician, Doc. You also went to law school, didn't you, Doctor?

A. I'm a physician Doc. You also went to law school. Yes I went to law school for one year couns.

Q. You read Dr kennedy's report, Doctor.

A. Yes Sir, I did.

Q. Now often you're called upon, are you not, in your practice of medicine to ..how should I say it...look over the shoulder of another doctor, one who treated a patient for her complaints, scheduled.. First of all discussed, then scheduled, then performed surgery, followed up with her, a doctor who had a hands on opportunity, if you will, to observe and feel the patient, correct?

Mr Roche: Objection

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

Q. Alright. Let me phrase it this way. You're often asked, as you were in this case, to examine, a patient and give a report of your findings, and review the records, and the findings, and the conclusions of that patient's treating physician. Correct?

A. Yes.
Q. And again, a treating physician, as it is in your case with your patients, you spend more time with them than let's say one who is called upon to render and to give a defense medical. Wouldn't you say that Dr Kennedy spent more time with Nancy Brooks than you did?
A. Yes.
Q. Now given that, do you believe that you're in a better position to comment on whether or not Nancy Brooks sustained the type of injury that she complained of, that you're in a better position to report on that and give conclusions than her treating physician, Dr Kennedy? You think you're in a better position?
A. Yes, I do.
Q. Now also in your practice, Doctor, do you make a judgement as to how truthful a patient is, how honest a patient is, how reliable they are in terms of the history that they give you? I mean, does that enter into your assessment?
A. I'm sorry. I think very slowly and I notice that if I take a deep breath you've already asked me six questions.
Q. Okay. I'm sorry.
A. Yes. I believe that as a physician in my normal practice, given the number of years that I've

been in practice, I probably do it unconsciously. .But that's right. I do make that assessment.

Q. Well did you have enough time, you think, to formulate an opinion based on assessment of Nancy Erooks?

A. Yes.

Q. Do you think she was truthful when she talked to you ?

A. Yes.

Q. In your file...who has the file? You have your file. May I just see it for a second, Doctor?

How many letters, Dr Brooks, have you received from Attorney Roche?

A. Let's count them.

Q. Okay. Thank you.

A. Probably more than I sent to him, but let's count them. One,two, three, four, five, six, seven...six letters and one copy of a letter to somebody else.

Q. That's all I have right now, Doctor. Thank you.

A. You're welcome.

Redirect examination by Mr Roche:

Q. Doctor, I have a few questions for you. You were asked about testimony that you've given in other

cases. Is it true to say, Doctor, that you have given testimony not only when requested to do so by defendants in cases like this, but also you've testified on behalf of plaintiffs. Is that correct?

A. Yes.

Q. And when you have given testimony on these other occasions have your qualifications as a medical expert witness been recognized by the courts in which you have testified?

A. Yes.

Q. You were asked about your position to give an opinion in this case versus the position of Dr kennedy and you indicated that you felt you were in a better position to give opinions about those things that you have testified. I'm saying that awkwardly, but why is that? Would you explain that to us?

A. Yes. I had the opportunity to examine Mrs Brooks. I had the opportunity to review Dr Coleman's records, Dr Kennedy's records, the physical therapy records. Chiropractor Leone's records, and the hospital records, as well as performing my own independent examination. And therefore, I believe that I had more information available to me than Dr Kennedy did.

Q. Okay.

A. And...I'm sorry. I took a deep breath again.

I also believe that if Dr Kennedy is an accurate observer and an accurate recorder of his observations I have as much information about his patient as he had. And then I had all of the additional information that I have.

Q. Okay, thank you. Doctor, you had indicated that ...in response to some questions regarding Dr Coleman's records, I think. No, Dr Kennedy's records, that in May of 1933, after this surgery was performed on Mrs Brooks' shoulder, she continued to have problems with that shoulder. Is that finding significant in any way, that she still had problems even after this surgery was done?

A. Yes.

Mr Henretta: Objection V/O

Q. Why is that significant? You were asked about it. Explain why its significant.

A. I believe its significant because it indicates to me that the surgery did not...or was not performed for all the problems that Mrs Brooks had about her shoulder. That is to say, from my review of the records it appeared that the procedure that Dr Kennedy did was done in a standard fashion and that what he did he did properly. When you do *a* proper operation for the proper indication the patient is

relieved of their symptoms In this case she continued to have symptoms after this operation so there mu t have been other reasons why he was having symptoms besides those for which he operated

Q. Meaning other than the rotator cuff that he repaired

A. Yes.

Q I see Doctor you were asked several questions about physical therapy records that refer to the upper trapezius region, and some reference to the right shoulder Do you recall that series of questions?

A. Yes.

Q. Do you find those notes in this physical therapy record to be inconsistent with your findings or opinions in this case?

A. No.

Q. Why not?

A. One of the distinctions that you and I made earlier was that initially and early on her symptoms were not related to her shoulder They were related to her trapezius Those were reflected in the physical therapy notes The references to the shoulder occurr d later on and they were also made by a physical therapy assistant as opposed to a licensed physical therapist.

Q Doctor I'm a little concerned about the fact

that counsel took you through a series of letters. I think you counted seven of them that appear in your file that were from me. In any of those records did I indicate to you in any way, shape, or form what I would like to see done by way of your opinions in this case? Do I make any suggestions to you as to what findings you should make, that sort of thing?

A. You didn't and with all due respect I would have ignored it anyhow.

Q. Regarding the letters that I did send you, on December 14 I sent you one saying enclosed are medical records regarding Mrs Brooks. Correct, Sir?

A. Yes.

Q. Alright, there's a letter July 13 in which I send records from Dr Kennedy, Leone, more records froin Dr Kennedy. These are all cover letters €or medical records I provided to you, right?

A. Yes.

Q. And as I provided you more medical records I put another cover letter on it, right?

A. Correct.

Q. And in this case I apparently provided you on seven occasions seven sets or seven sets of medical records. Correct, Sir?

A. Yes.

Q. Dr Brooks, in this case, do you feel that you have received all of the medical records, all the radiographs that you do need in order to form your opinion in the case?

A. Yes.

Q. Is there anything else that you feel that I should have provided to you that I did not?

Mr Henretta: Objection

A. No.

Q. Okay. I have nothing else to ask you, Doctor. Thank you.

Recross Examination by Mr Eenretta:

Q. You've worked in connection with Mr Roche and members of his firm in the past, haven't you, Doctor?

A. Yes.

Q. Do you know how many times?

A. KO.

Q. For how long? You know, what period of time?

A. I don't even know when I first met Mr Roche or when I first started working with members of the firm with which he is now associated.

Q. He was with another firm before Davis and Young?

A. Yes.

Q. Do you know which one?

\A. Yes.
Q. Which one?
A. Eyers, Hentemann.
Q. They do defense work as well?
A. Defense work, plaintiffs work.
Q. Mostly defense?
A. I'm not privy to their bookkeeping.
Q. Okay. Alright. Davis and Young do mostly defense, as far as you know?
A. Again, they also do plaintiffs work and again...
Q. Do you recall having been called as a witness in a plaintiff's case for Mr Roche?
A. Yes.
Q. Okay, on how many occasions?
A. Well I'm at the present time involved in treating one of his clients in a plaintiff's case.
Q. Its safe to say you've done more defense work for them than you have plaintiff's work though. Its safe to say that you've done more defense work, you know, served as an expert in a defense case than you have in a plaintiff's case.
A. For Mr Roche?
Q. And his firm.
A. I don't know what's safe to say about his

firm but with respect to him I think I've served as his expert in a defense capacity maybe on three occasions.

Q. Okay. And you're aware of one plaintiff's case?

A. Yes.

Q. Okay. That's all. Thank you, Doctor.

A. You're welcome.

Mr Roche: Nothing further.

The witness waived viewing of the videotape and counsel waived filing of the videotape.