

1 UNDERINSURED MOTORIST ARBITRATION

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4 NICHOLAS E. OPENCAR and)
5 CARMEL OPENCAR,)
6 Claimants,)

7 vs.)

8 GRANGE MUTUAL CASUALTY)
9 COMPANY,)
Respondent.)
- - -10
11 Deposition of HARVEY FRIEDMAN, MD, a witness herein,
12 called by the Respondent for direct examination pursuant
13 to the Rules of Civil Procedure, taken before me, the
14 undersigned, Regina Salloum, a Stenographic Reporter and
15 Notary Public in and for the State of Ohio, at the
16 offices of Harvey Friedman, MD, 224 West Exchange Street
17 at 1:30 p.m., on Friday, the 21st day of April, 1997.18 - - -
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STOLL, PEISER & SNIDER, INC.

1 APPEARANCES:

2
3 On behalf of the Claimant:

4 Alan J. Matavich, Attorney at Law

5 950 Windham Court

6 Youngstown, Ohio 44512
7

8 On behalf of the Respondent:

9 Pfau, Pfau & Marando

10 By: John C. Pfau, Attorney at Law

11 6715 Tippecanoe Road

12 Building D, Suite 201

13 Canfield, OH 44406
1415 - - -
16

17 HARVEY FRIEDMAN, MD

18 of lawful age, a witness herein, having been first duly
19 sworn as hereinafter certified, deposed and testified as
20 follows:

21 DIRECT EXAMINATION

22 MR. PFAU: We're here for the deposition of
23 Dr. Friedman that will be presented to the
24 arbitration panel at the uninsured motorist
25 arbitration on this matter.

STOLL, PEISER & SNIDER, INC.

1 MR. MATAVICH: Off the record.

2 (Thereupon, a discussion was held off the
3 record.)

4 By Mr. Pfau:

5 Q Dr. Friedman, would you tell us your name and
6 business address, please,

7 A Dr. Harvey M. Friedman, 400 Wabash Avenue, Akron
8 44307.

9 Q You are a medical doctor, correct?

10 A Correct.

11 Q What area of specialty are you?

12 A Neurology.

13 Q Give us a brief summary of your educational
14 background starting with college, if you would.

15 A I graduated from Kent State in 1954; went to the
16 College of Medicine at Ohio State and graduated there in
17 1958, I then had a rotating internship at the Cleveland
18 Clinic from '58 to '59, and then I spent two years up in
19 Michigan as a good old country doctor.

20 In 1961 I came back to the Clinic and have a year of
21 ophthalmology and from '62 to '65 I spent three years at
22 the University in Cleveland in neurology.

23 In 1965 I went back to Ohio State on the faculty as
24 a neurologist until 1969 when I came to Akron and I have
25 been practicing neurology in Akron ever since.

1 Q Are you licensed to practice medicine in any state?

2 A Ohio.

3 Q When did you become licensed?

4 A 1958.

5 Q Are you Board certified in any areas of specialty?

6 A Yes, in neurology.

7 Q You have been Board certified how long?

8 A Since 1967.

9 Q Are you affiliated with any hospitals presently?

10 A' Yes, I'm affiliated with Akron General Medical
11 Center and Akron Children's Hospital.

12 Q Have you ever held any positions, administrative
13 positions or other positions at either of those
14 facilities?

15 A Yes, I was chairman of the department of medicine
16 from 1970 through 1992 at Akron General, 22 years, and I
17 was also program director of the training program in
18 medicine from 1970 through 1988.

19 Q Have you done any teaching or anything of that
20 nature at the NEOUCOM medical school?

21 A Yes, I teach neurology to medical students,
22 residents, and attending physicians. I might teach out
23 there at NEOUCOM or wherever, but all three are
24 involved.

25 Q Now, in relationship to this matter, at my request

1 you reviewed certain medical records, MRI films, and
2 examined a Camel Opencar; is that correct?

3 A That's correct.

4 Q Would you first tell us what medical records you
5 reviewed in conjunction with this matter?

6 A First of all, there was a summary that you put
7 together for me. Then there was the emergency department
8 records from Saint Elizabeth Hospital on December 3,
9 1992; the records of Dr. Nader Afrooz, who is a medical
10 neurologist; the MR of the cervical spine interpreted by
11 Dr. Bleggi.

12 Q Did you also review the films of the MR?

13 A Yes.

14 And then the records of Dr. Kalfas, a neurosurgeon
15 from the Cleveland Clinic; the records of Dr. Gilliland,
16 the neurologist from Youngstown; records of a Dr. James
17 Leone, a chiropractor from Boardman; and the records of
18 -- Sarancopoulos who is an orthopaedist in Youngstown;
19 and the records of the family physician, Dr. Gregori; and
20 the Ohio traffic crash report,

21 Q And that would be the Ohio traffic crash report from
22 the December 3, 1992 accident, I believe?

23 A Yes, yes.

24 Q And you mentioned you also reviewed the MRI films
25 that you have a report on?

A Yes.

Q Did you also meet Mrs. Opencar here in your office and take a history from her and then perform an examination of her?

A Yes.

Q First of all, would you tell us the date of that meeting with Mrs. Opencar?

A February 26, 1996.

Q On that date did you take a history from her?

A Yes.

Q What history did you take from her?

A She stated to me as a 54 year old right-handed lady that she was in a motor vehicle accident December of 1992 and she was the belted driver of a van that was struck on the left front side by another car, a Ford Escort, and pushed up onto a sidewalk.

She struck her head and then went backwards. She did remember the accident, but stated to me that she suffered from a loss of consciousness. She remembered somebody knocking on the window. Her knees were bruised also. She went to Saint Elizabeth -- I believe it was -- Hospital and then was evaluated and discharged and saw her personal physician the next day because of pain in the left side of her neck, headache, pain in her legs, and just generally being sore.

1 She **was** treated for pain; evaluated by orthopedics;
2 physical therapy; chiropractors; and her' personal
3 physician over the subsequent years. She **also saw a**
4 neurosurgeon, Dr. Ralfas, at the Cleveland Clinic.

5 When **I saw** her, she had the following complaints:
6 Pain in her neck radiating to both shoulders; numbness in
7 both hands, worse at the end of a day after work. She
8 had headaches that begin at the **base** of the **skull** on the
9 left radiating to the left temporal and left frontal area
10 Lasting one to two hours and could occur several times a
11 day. And lastly, she complained of pain in her left leg
12 in the medial aspect of her calf.

13 Q In your review of the emergency department notes
14 from the Saint Elizabeth Hospital emergency room record,
15 did you find anything in regard to whether or not **it**
16 referenced her losing consciousness or not?

17 A Yes .

18 Q What **was** that?

19 A In those records, which is the dictated summary by
20 Dr. McKee: "There's been **a direct blow to** the head with
21 no **loss** of consciousness."

22 Q This contradicted what she had told you about **loss**
23 of consciousness, correct?

24 A Yes, yes .

25 Q **Following** your review of the records, the MR films

1 and taking a history from Mrs. Opencar, did you then
2 perform an examination of her?

3 A Yes.

4 Q What examination did **you** perform and what were your
5 findings, Doctor?

6 A I started with a normal mental status. I didn't
7 think there was any evidence of any psychiatric or
8 dementing illness. There is no evidence of any residual
9 from the head trauma. The cranial. nerves were normal..
10 That is the nerves around the face that move your mouth
11 and enable you to talk, things like that.

12 I checked the pulses in her neck, which is a routine
13 part of neurological examination, and they were normal.
14 I also did maneuver for thoracic outlet syndrome that can
15 occur after trauma, and that was normal.

16 Because she's a computer operator particularly, I
17 examined her wrists to see if she had any evidence of
18 carpal tunnel syndrome. And there are two signs **you** use.

19 One is Tunnel's sign, where you tap the wrist and if
20 it's positive you get an electric shock down certain
21 parts of the hand. That was negative.

22 **You** also **do** what's called Phalen's, P-h-a-l-e-n, in
23 which you compress the carpal tunnel. And that was a
24 very strange test because on the right side it produced
25 tingling in all five fingers, which it should not do

1 because the last finger and part of the second to last
2 finger are not enervated by that nerve. On the left side
3 it produced numbness, which again as I pointed out was
4 nonphysiologic. It just can't occur.

5 Q What was the significance of your findings from
6 those tests, if any?

7 A I think the significance is that even if she has
8 electrical evidence of a carpal tunnel syndrome, it's
9 really of no consequence clinically.

10 Q Please continue with your examination and findings.

11 A I checked the reflexes in her **arms** and legs, looked
12 for abnormal reflexes; checked her coordination, which is
13 cerebellum. Checked her power, bulk, and tone of muscle
14 groups, and the only abnormality was a letting go
15 weakness, where you have somebody do this and they just
16 kind of Pet go. (Demonstrating.) And that was pretty
17 diffuse.

18 Q Now, you mean when you grab their hand --

19 A When somebody -- say you ask them to pull the arm **up**
20 like that and they will go like this. It's a ratchety
21 kind of movement.

22 Q Was that a significant finding?

23 A Yes, it's significant because it is not a real
24 finding.

25 Now, it can occur if the patient is having pain, you

1 know. I can't see pain, okay? But there is no weakness.

2 Q Please continue.

3 A I checked the range of motion of her neck and hips.
4 That was normal. I couldn't see any atrophy or specific
5 weakness in the distribution of any nerve or root.

6 I did straight-leg raising because of her complaints
7 of leg pain and it was normal with the right leg. With
8 the left leg, she stopped me at about 30 degrees,
9 complaining of pain.

10 That would be like this, in which she is lying flat
11 and her leg comes up and stops there. (Indicating.)

12 Then I had her sit up on the table, and now she is
13 at a right angle, and it is perfectly normal.

14 Q This second test you performed, having her sit up,
15 did that lead you to a conclusion about that particular
16 test and her ability to do it?

17 A It leads me to the conclusion that there is nothing
18 wrong physically, okay? I don't know how one could have
19 pain like this. (Indicating.)

20 Q That is lifting the leg up?

21 A Right, the one leg, but then when you do
22 this -- (Indicating.)

23 Q That's when you sit **up** at a right angle?

24 A Yes, sit at a right angle. It's the same motion
25 that you're going through.

1 I tested her sensory system, and again she had
2 increased pin and cold in her entire left leg, which was
3 really nonphysiologic. I wouldn't know how to explain
4 that.

5 Q When you say nonphysiologic, what do you mean by
6 that?

7 A I mean nonorganic, in this case.

8 Q Please continue.

9 A That was the extent of my examination.

10 Q Now, in regard to your review of records and films,
11 what were the findings of the cervical x-rays taken
12 12/3/92?

13 And I think that I have a copy of that report for
14 YOU.

15 What were the significant findings in the x-rays?

16 MR. PFAU: Off the record.

17 (Thereupon, a discussion was held off the
18 record.)

19 MR. PFAU: Would you like to have the question
20 read?

21 THE WITNESS: Yes.

22 (Thereupon, the court reporter read the
23 previous question.)

24 THE WITNESS: Basically, what you see are two
25 things. There is clear evidence of degeneration,

1 particularly at C5, C6; that's one. You know, no
2 fracture, nothing like that. But two, a
3 straightening of the normal cervical curvature **was**
4 noted, which is very typical with **patients** who have
5 neck strain.

6 By Mr. Pfau:

7 Q Now, the degenerative changes, would those have been
8 changes that were present prior to this automobile
9 accident on December 3, 1992 in Mrs. Opencar's neck?

10 A Yes.

11 Q Now, in regard to the MRI studies that were done --
12 and I will hand you a copy of the report just **for** ease.
13 I know you looked at the actual films as well as the
14 report.

15 What were your findings from reviewing the films and
16 reviewing the report in regard to **the** cervical. MRI,
17 Doctor?

18 A I'm using the report by Dr. Bleggi as a reminder,
19 since I no longer have those films.

20 But she had fairly diffuse bulging of discs. She
21 had a lot of degeneration **also** in the neck. Bulging of
22 discs is a normal finding. Probably everybody in this
23 room has a bulging.

24 He uses the term subligamentous herniation. That's
25 all that means, **is** bulging.

1 Q So the terminology subligamentous herniation means a
2 bulging disc?

3 A Yes .

4 Q Now, there was also evidence of scattered boney
5 hypertrophic spur formation; what would that be?

6 A That's degeneration with extra bone formation over a
7 long, long period of time.

8 Q Dr. Friedman, based on a reasonable degree of
9 medical certainty from your review of the records, films,
10 and examination of Mrs. Opencar, were you able to come to
11 a conclusion and formulate an opinion as to whether or
12 not the disc bulges or -- as Dr. Bleggi calls them,
13 subligamentous herniation in the cervical spine were
14 related and caused by the automobile accident of December
15 3, 1992?

16 A I don't believe at all that these were related to
17 the accident. I think that's degenerative changes,

18 Q Would it be unusual to have multiple discs bulging
19 from an accident such as this?

20 A Yes .

21 Q Is that more likely something caused by degenerative
22 changes?

23 A Absolutely.

24 Q Now, again, I'm going to show you what's dated
25 January 19, 1995 and it's a cervical spine x-ray that

1 would have been taken a couple years after the December
2 '92 x-ray. Would you take a look at that, Dr. Friedman,
3 and tell us what if anything is significant about that?

4 A Nothing. Basically it's compared to a previous
5 study done three years previously without any significant
6 change.

7 a Dr. Friedman, again based upon a reasonable degree
8 of medical certainty, your review of the records and
9 films here, and your examination of Mrs. Opencar, did you
10 formulate an opinion as to what her condition was at the
11 time you examined her on February 26, 1996?

12 A Yes.

13 Q What was that opinion?

14 A At the time that I saw her, she had a perfectly
15 normal examination. I didn't think she had any residual
16 from this accident.

17 Q Now, in regard to the particular accident of
18 December 3, 1992, did you formulate an opinion based upon
19 your review of the records, examination, and history
20 taken from Mrs. Opencar what if any injuries she
21 sustained from that accident?

22 A Yes.

23 Q Would you tell us what that opinion is, please.

24 A I felt, number one, that she had a mild closed-head
25 injury and possibly had a transient concussion which had

1 cleared completely by the time I saw her, and in that
2 setting shouldn't be of any consequence.

3 I think that she undoubtedly suffered muscle and
4 soft tissue injury from being slung around in the car.

5 Again, I believe that's cleared. Other than those
6 two things, I didn't think there **was** anything **else** that
7 happened to this lady other than the head injury, mild
8 concussion probably or possibly, and the soft tissue
9 injuries.

10 Q Again, Dr. Friedman, based upon the review of
11 records and examination of Mrs. Opencar, did you
12 formulate an opinion based upon a reasonable degree of
13 medical certainty whether or not Mrs. Opencar suffered
14 any permanent injuries as a result of the motor vehicle
15 accident of December 3, 1992?

16 A I could find nothing that I thought **was** permanent.

17 Q Now, assume if you will that approximately a month
18 thereafter from the date you examined her, that she was
19 involved in a second motor vehicle accident that actually
20 occurred on March 29, 1996 and went to the emergency room
21 at Saint Elizabeth Hospital, and assume that I'm handing
22 you what would be the emergency room record and the x-ray
23 report taken on that date,

24 Would you review that document and tell us what the
25 findings were in the x-ray report.

1 A There are two sets of x-rays. The first one is the
2 lumbar spine; that is the lower back. And, first of all,
3 is indicative of degeneration at two areas, between L3
4 and 4 and L4 and 5; and at L4 and 5 states that
5 degeneration has caused a first degree slippage. Other
6 than that degeneration, there is nothing else.

7 In the neck or cervical spine, again they notice
8 moderately advanced degeneration at C5 -- I'm sorry, of
9 the fifth and sixth disc and again hypertrophic spurring
10 is noted on here; a slight subluxation of C4 on C5, and
11 this means simply again a little slippage.

12 Q Now, in regard to the findings in that x-ray report,
13 would any of those degenerative findings or any findings
14 you delineated be related in any regard to the accident
15 of December 3, 1992?

16 A I don't believe so.

17 Q Now, as part of your review, you reviewed the
18 Cleveland Clinic Foundation records specifically of
19 Dr. Kalfas, a neurosurgeon, and I do have copy of his
20 report for your ease.

21 Dr. Kalfas found that the discs showing on the MRIs
22 were of no significant consequence; was that your reading
23 of his report?

24 A Yes.

25 Q Do you generally agree with that, that

1 these -- as you have categorized them -- bulging discs
2 are of no significant consequence to Mrs. Opencar?

3 A Yes, I agree exactly with him.

4 Q Would those bulging discs cause any **symptomatology**
5 in Mrs. Opencar?

6 A It's always possible, but very unlikely.

7 Q Based upon a reasonable degree of medical certainty,
8 it would be unlikely that they **would**, correct?

9 A **Yes.**

10 Q Dr. Friedman, assume if you will that
11 Dr. Afrooz charged Mrs. Opencar in excess of \$6,000 to do
12 the neurological testing he had done; would that be an
13 excessive amount rather than a reasonable amount for
14 those particular studies?

15 A I looked at all those studies. I think a lot of
16 them were not necessary; and even if those were
17 eliminated, I think those charges are extraordinary.

18 MR. PFAU: Dr. Friedman, those are all the
19 questions I have., At this point, Mr. Matavich
20 likely will have a few questions.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Matavich:

24 Q Doctor, one of the **things** you said you looked at was
25 the traffic crash report?

1 A Yes.

2 Q Was it important to you to see that?

3 A Yes.

4 Q Why is that?

5 A Number one was she told me she was driving the van
6 and she was struck in a certain way by another car, and
7 frequently people do not remember what kind of car, In
8 this case, it **was** a Ford Escort.

9 So now we have a small car hitting a big van. That
10 doesn't mean you can't get injured, but it has to do with
11 pure and simple physics of velocity and mass.

12 Q Did you do any kinds of velocity and mass
13 calculations in reference to your exam?

14 A Absolutely not. I'm not competent to do that.

15 Q That police report showed how many feet of skid
16 marks left by the vehicle that struck Camel Opencar?

17 A I'm not sure I have that.

18 Q If you look at the drawing, Doctor --

19 A 57.

20 Q 57 feet 8 inches. **And** Camel Opencar was stopped
21 **when** this little Ford Escort hit her, wasn't **she**?

22 A Yes.

23 Q Did that little Ford move that big van she **was** in?

24 A Yes, it moved it up onto the sidewalk. That's what
25 she told me.

1 Q How far did the van move?

2 A I don't really know that, I don't think she told me
3 that.

4 Q How fast was the Escort going when it hit her,
5 Doctor?

6 A The only thing that I have is I think she told
7 me -- no, I don't know.

8 Q How much damage was there sustained by her van,
9 Doctor?

10 A It was disabled,

11 Q And it had to be towed away as a matter of fact,
12 correct?

13 A Yes.

14 Q Bow about the Ford Escort that hit her? How much
15 damage was done to that?

16 A It was disabled and had to be towed also,

17 Q Would *you* conclude from that it was a pretty
18 significant impact?

19 A Certainly.

20 Q Doctor, do you make any correlation between the
21 amount of damage to the vehicles and the severity of the
22 injuries to the occupants of the vehicles?

23 A I try to, but admittedly it's just a very vague kind
24 of analysis. All I can do is take a look at this and say
25 it was skidded and pushed and all that, and a little car

1 kits a big car.

2 Q Well, my question is: Does the damage to the
3 vehicles correlate to the severity of the injuries of the
4 occupants of the vehicles?

5 A Not always, not always.

6 Q Why do you say that?

7 A Well, you know, if you are in a car and you have a
8 seat belt on, I mean -- I was in a head-on collision
9 wearing a seat belt and had zero trauma. Both cars were
10 destroyed, okay?

11 By your line of reasoning, then, I should have had a
12 bunch of injuries.

13 Q Well, Doctor, Camel Opencar was struck from the
14 side, wasn't she?

15 A Yes.

16 a And the seat belt is designed to keep one from
17 flying forward and backward, correct?

18 A Yes.

19 Q And she got knocked to the side in this collision,
20 didn't she?

21 A She got knocked against the window.

22 Q The window of the driver's door?

23 A Right.

24 Q So, how much protection did the seat belt offer her?

25 A I think probably the seat belt offered her a lot of

1 protection. I don't see people who have been in
2 accidents who weren't wearing seat belts, because they're
3 all dead.

4 Q All of them?

5 A Well, maybe not all of them,

6 Q How many of them are dead?

7 A Most of them.

8 Of the cases referred to me -- I should put it this
9 way -- of the cases referred to me, most of the people
10 that I have seen that have been in accidents were wearing
11 seat belts, okay?

12 Q Have you ever had a patient of your own who was in a
13 minimal impact collision and had some significant
14 long-lasting soft tissue injuries?

15 A Yes, up to two years,

16 Q Did you ask Carmel Opencar what sorts of activities
17 she participated in before December 3 of '92?

18 A Let me check my notes.

19 I don't have any notes to that effect.

20 Q Can we conclude from that that you didn't --

21 A Yes, yes,

22 Q You didn't ask her what she participated in?

23 A I asked her simply what her problems were now,

24 Q Do you know whether she had to give up any
25 activities she participated in since this accident?

1 A I presume **she** didn't, because she didn't tell me as
2 part of her complaints.

3 Q Well, did you ask her?

4 A No, I didn't, but she didn't volunteer.

5 Q But **you** didn't ask her to -- disregard the question.

6 Do you expect the patients to volunteer all the
7 information when they come in?

8 A Yes, yes.

9 Q You do?

10 A Yes. I don't read minds.

11 Q Do you know how many of these examinations you
12 conducted on Camel Opencar she has been subjected to?

13 A I don't follow that.

14 Q Well, you didn't examine her for the purpose of
15 treatment, did you?

16 A No.

17 Q Do you know if there were any other doctors she saw
18 in connection with this accident that examined her not
19 for the purpose of treatment?

20 A I don't believe so. I don't believe there were any.

21 Q Did **you** tell her then, "Tell me everything and all
22 the ways that this accident has affected your life"?

23 A **Yes.**

24 Q You did?

25 A In essence this is what I do. Not in those words,

1 but the patient comes in and I take the history. Then I
2 do the examination, and when that is done I always ask
3 them, "Is there anything else I should know?"

4 Q Well, Doctor, how is the patient supposed to know
5 what you should know?

6 A Well, I think any patient tells the doctor what the
7 problems are.

8 Q Carmel Opencar wasn't your patient, was she?

9 A Oh, yes.

10 Q How so?

11 A When that lady stepped in my office, I did a history
12 and physical as a patient; and if I had seen anything
13 that I felt could be appropriately treated, I would have
14 made that recommendation in my letter.

15 Q Did you tell Carmel Opencar after that examination
16 that you were going to make recommendations in your
17 letter?

18 A I don't think so.

19 Q You don't think so?

20 A I don't remember that specifically.

21 Q Now, this emergency room report that you referred to
22 saying that it reflects she did not lose consciousness?

23 A Yes.

24 Q Do you know if that's accurate?

25 A Of course not. All I can do is read what is in that

1 report.

2 Q Doctor, I have seen hospital records where my client
3 lost a finger on the right hand and the hospital record
4 reflects that the finger on the left hand is missing.

5 A Probably 50 percent of lefts and rights in hospital
6 records are incorrect.

7 Q So, the fact that's not reflected in the emergency
8 room record doesn't mean that she didn't lose
9 consciousness during the accident, correct?

10 A Of course not.

11 Q The review of other doctors' records, do any of them
12 show that she gave a history of losing consciousness to
13 them?

14 A I just don't recall and -- you know, I just don't
15 know. Let's see.

16 Dr. Afrooz says that she lost consciousness for
17 several minutes. Dr. Kalfas' letter doesn't mention it.
18 Dr. Gilliland doesn't mention it.

19 Q Her complaints to all of the doctors are consistent,
20 aren't they?

21 A I think so, yes.

22 Q Do you know whether she had similar complaints
23 before the accident of December of '92?

24 A There is comment from her family physician, I think,
25 that she did not have these complaints prior to this

1 By Mr. Matavich:

2 Q Okay.

3 Now, Doctor, what was your diagnosis of Carmel's
4 injuries?

5 A As I said previously, I think that she did have a
6 head injury and possibly a concussion. The sine qua nons
7 of a concussion is to be knocked out. If you know
8 somebody was knocked out, that's a concussion. But you
9 do not have to be knocked out to have a concussion, you
10 see?

11 So I said she had a head trauma and possibly a
12 concussion, and I say that because she hit her head **and**
13 nobody can tell you to what degree she struck her head.

14 **a** There was a hematoma found on the left side of her
15 head, wasn't there, Doctor?

16 A There certainly was.

17 Q And that would be indicative of the force of the
18 impact, wouldn't it?

19 A It would be indicative of the force of the impact.

20 But, it's remarkable. You would think that every
21 boxer in the world would have a concussion every time he
22 got hit, but just the fact of trauma alone doesn't prove
23 a concussion.

24 If that patient is knocked out, yes, that's a
25 concussion. When you have a patient give you a story of

1 possible loss of consciousness and someplace else says
2 no, I'm willing to concede that she may have had a
3 concussion.

4 Q Boxers use padded gloves, don't they?

5 A Oh, come on. Those things hit hard.

6 Q Were you a boxer?

7 A Yes, I was stupid when I **was** young.

8 Q Any residual effects of that?

9 A I was knocked out three times.

10 Q The emergency room chart shows she was nauseous,
11 correct?

12 A Let me find that again.

13 **Yes.**

14 Q Is that indicative of a concussion?

15 A It could be, yes. It wouldn't be diagnostic, but
16 certainly could be indicative.

17 Q What were the other injuries that you diagnosed on
18 Camel?

19 A I felt that she had basically soft tissue injuries.
20 That is, she undoubtedly had muscle strains, sprain,
21 probably had some microscopic bleeding in the muscles. I
22 don't know, because you can't go in there and look and
23 see. That's generally thought to be the case in things
24 like this.

25 Q What about the ligaments?

1 A That's possible, but again, there is no evidence
2 like with President Clinton who tore a specific
3 ligament. In this kind of injury, you can't really see
4 anything.

5 We do know from the MR scan that the ligaments are
6 intact in her neck, so I don't think there was any
7 specific ligamentous injury in her neck, I think this
8 was all **muscle**, soft tissue injury.

9 Q What were you looking for in your examination of
10 Carmel?

11 A I don't think that you go in an **exam** like this and
12 look for something. I think you do the same examination
13 with every patient, and basically what you find is what
14 you find.

15 Q What findings would have been significant had you
16 found them?

17 A Okay. If this lady had come in and didn't know
18 where she was or when it was or who she was, I would have
19 — said that's a pretty darn significant head injury, okay?

20 Or if she came in and had specific weakness with
21 abnormal reflexes that were physiologic in nature, I
22 would have said, "Yes, this lady probably has a
23 radiculopathy," that is, a nerve root problem, pinched
24 nerve. Those are two things.

25 Q During your exam, did you palpate her neck?

1 A Yes, and I rotated her neck.

2 Q And what was the purpose of palpating her neck?

3 A You just -- when patients complain about pain, you
4 palpate the muscles to see if you can feel anything
5 abnormal.

6 Q Like what?

7 a Well, like a trigger point, a knot, anything like
8 that.

9 Q A muscle spasm, perhaps?

10 A Muscle spasm.

11 Q What is a muscle spasm?

12 A A muscle spasm is exactly what it says, in that for
13 some reason, just like a cramp in your leg, a muscle goes
14 into a sudden sustained contraction. Why? Usually
15 irritation for some reason.

16 Q What kind of irritation?

17 A Well, it could be inflammatory or it could just be
18 idiopathic, which is the most common cause. Idiopathic
19 means "I don't know."

20 Q Well, had you found muscle spasm in Camel's neck
21 when you palpated it, would you have concluded from that
22 that she was still injured?

23 A Yes.

24 Q That's an objective finding?

25 A I think so.

1 Q Now, you agree she sustained a neck injury, correct?

2 A I think that she suffered a soft tissue injury
3 around her neck.

4 Q Is that a neck injury? Maybe I'm using the term
5 loosely.

6 A Loosely, very loosely.

7 When I'm talking about a neck injury, frankly, I'm
8 referring more to the spinal cord or the vertebrae,
9 things like that; but if you want to use it in those
10 loose terms, that's okay, yes.

11 Q Let's do it that way, okay?

12 A Fine, fine.

13 Q Would you agree with the diagnosis at the emergency
14 room that she had a neck sprain?

15 A Yes.

16 Q Now, when she was subjected to the physical exam at
17 the emergency room right after the accident, there's no
18 finding of muscle spasm in her neck, is there?

19 A Nothing's listed, no.

20 Q Wouldn't that be something you would expect the
21 emergency room physician to put in?

22 A He does describe her neck as being stiff. He says
23 no spasm.

24 Q Well, he says without spasm, correct?

25 A Yes.

1 Q All right.

2 A But he contradicts himself when he says it's stiff,
3 which many people would describe spasm as being stiff.
4 And secondly, range of motion was limited. And thirdly,
5 in referring to her x-rays, she had an abnormality of the
6 curvature, which is typically seen after accidents in
7 people with sprained necks,

8 Q Let's take them one at a time.

9 A Okay.

10 Q Muscle spasm is something that's ^{objective} ~~subjective~~,
11 correct?

12 A Yes.

13 Q The patient can't fake it, right?

14 A I don't know that, okay? I would doubt it.

15 Q And the doctor at the emergency room specifically
16 pointed out that she didn't have spasm, correct?

17 A Yes,

18 Q Well, how can she have that neck injury without the
19 spasm?

20 A Because if she had a neck sprain, she doesn't have
21 to have spasm that you can feel.

22 Q All right.

23 Doctor, if you will, take a look at the letter of
24 Johnson Physical Therapy dated January 29 of 1993.

25 A I don't know that I have a letter from Johnson

1 Physical Therapy.

2 Q I'll show you mine.

3 The first sentence, Doctor, of that letter of
4 January 28 of '93 of Johnson Physical Therapy says this:
5 "I completed my initial evaluation today on Camel
6 Opencar. Patient presents with a diagnosis of cervical
7 spasm with radiation into the left posterior chest
8 secondary to a motor vehicle accident on December 3 of
9 '92 a."

10 A That's correct.

11 Q Do you have any reason to think that the physical
12 therapist would not find muscle spasm on that exam?

13 A I have no reason at all to think that she would or
14 wouldn't.

15 Q Why would there be muscle spasm roughly eight weeks
16 after the accident?

17 A You can get muscle spasm frequently up to two years
18 after the accident.

19 Q And, if you will, look at the report of
20 Dr. Gregori dated February 1 of '94.

21 A Okay.

22 Q The March 5 visit.

23 A March 5? Of what year?

24 Q The March 5, '93 reference.

25 I'm referring to his letter as opposed to the

1 records. Let me find it and I will point it out to you.

2 Dr. Gregori examines her and she still has spasm in
3 the neck, correct?

4 A Yes.

5 Q Is that unusual?

6 A No, not at all. That's only two months after the
7 accident. That would not be unusual at all.

8 Q Now, what's the difference between a chronic
9 condition and an acute injury?

10 A Well, that's an awfully broad question, and could
11 you narrow it down? For example --

12 Q Generally speaking, Doctor, doesn't an acute injury,
13 a neck sprain for instance, typically last about six to
14 eight weeks?

15 A We're going to talk about neck sprains, acute and
16 chronic; and, yes, generally a neck sprain in this kind
17 of thing or a sprain anywhere if you turn your ankle or
18 whatever, is usually over by two months.

19 But there are those that become chronic, okay, and
20 can occur for up to two years; but by two years, in my
21 experience, I have never seen one as a result of any kind
22 of trauma.

23 Q Have people come to you after two years?

24 A Of course.

25 Q When did Camel Opencar's soft tissue injuries

1 resolve?

2 A I can tell you this, that I don't think she has any
3 soft tissue injuries now. I can tell you at the time I
4 saw her I could not find any evidence of soft tissue
5 injury. So, when before that it cleared, I don't know.

6 Now, remember, I can't see pain or feel it or touch
7 it.

8 Q Doctor, if you will, take a look at Dr. Leone's
9 report, the exam of March 16 of '94.

10 A Date of service March 18?

11 Q The report date is March 18, the first consult date
12 is March 16 of 1994.

13 A Okay. I'm not sure where that is -- yes, first
14 consult date, March 16th.

15 Q Did Dr. Leone find muscle spasm in Carmel's neck.

16 Page 4 under digital and motion palpation of the
17 cervical spine.

18 A Yes.

19 Q And he also found severe edema, didn't he?

20 A That's what he states.

21 Q What is severe edema?

22 A Swelling.

23 Q And his diagnosis was a chronic sprain and strain to
24 the neck, low back and mid back, wasn't it?

25 A Yes.

1 Q Now, would you look at Dr. Gilliland's report that
2 reflects his examination of July the 5th?

3 A This one here?

4 Q Yes .

5 A Okay.

6 Q By the way, do you know Dr. Gilliland?

7 A Yes .

8 Q He's a professor at NEOUCOM also, isn't he?

9 A No, he's an associate professor.

10 Q He's an associate professor of **medicine** at NEOUCOM?

11 A Yes .

12 Q Isn't that what you are?

13 A No.

14 Q What are you?

15 A Professor of medicine.

16 Q I see. Well, is Dr. Gilliland competent?

17 A I have no comment.

18 Q Okay .

19 Dr. Gilliland finds muscle spasm, doesn't he?

20 A Yes .

21 Q And he finds it in the low back as well, doesn't he?

22 A Yes.

23 Q And now we're getting up to about a year and-a-half
24 after the collision, aren't we?

25 A This is '95? Two and-a-half years, I think.

1 Q Shouldn't the muscle spasm **have** been gone?

2 A Yes .

3 Q **Now**, would you take a **look** at Dr. Gregori's report
4 which shows an examination that he conducted of Carmel
5 Opencar on February the 16th of '96. The report is dated
6 March 8, 1996.

7 A I don't have that letter,

8 Q Here it is.

9 What did Dr. Gregori find when he examined Carmel on
10 February 16 of '96?

11 A There **was** painful numbness of the hands and arms.
12 She had pins and needles in her left arm and hand;
13 tenderness in the left shoulder and upper **arm**; spasm in
14 the left shoulder and upper **arm**; reflexes were increased
15 in the arms, left graded and right; noticeable decrease
16 in grasp in her left hand.

17 Q **So** he found spasm February 16 of '96. That's over
18 three years after the accident?

19 A — What kind of doctor is **Dr.** Gregori?

20 Q He's a family doctor; does **it** make a difference?

21 A Certainly.

22 Q Are you telling me that **Dr.** Gregori can't detect
23 muscle spasm?

24 A I'm not saying that at all. I'm saying that I
25 question the report, the accuracy of the report.

1 Q I see.

2 A I believe that he is recording what he found, but I
3 don't believe it.

4 Q You don't believe it?

5 A No.

6 Q Why not?

7 A Because I didn't find it.

8 Q Well, there are other examinations that Carmel had
9 from the time of the accident up until your examination
10 where muscle spasm wasn't found, wasn't there?

11 A Wasn't found?

12 Q Yes.

13 A Kalfas, the neurosurgeon from the Cleveland Clinic
14 doesn't mention it, and I'm not sure about the
15 orthopaedist.

16 Q Okay.

17 A Who would be two people that I would trust.

18 Q Well, muscle spasm is an intermittent thing, isn't
19 it

20 A It certainly can be.

21 Q And it wasn't found at the emergency room right
22 after the accident, was it?

23 A That's not necessarily true. He said her neck was
24 stiff, and there was a reversal of the normal lordotic
25 curvature which indicated to me, muscle spasm.

1 If you go back to the beginning of this deposition,
2 that's what I said.

3 Q We'll talk about that in a minute.

4 Camel saw you ten days after Dr. Gregori?

5 A I don't know.

6 Q Well, he found weakness in her left hand like you
7 did, didn't he?

8 A No. I found letting go weakness, weakness that is
9 not real.

10 Q Perhaps he wasn't as specific as you were, do you
11 think?

12 A I don't know that.

13 Q Well, is Dr. Gregori a competent doctor?

14 A I have no idea. I don't even know the man.

15 Q What were you looking for in the range of motion
16 tests?

17 A Just to see if there was any limitation of range of
18 motion.

19 Q Can a person have full range of motion but pain at
20 the end points?

21 A Yes.

22 Q Do you know if Camel had pain at the end points?

23 A She didn't complain of any pain. Remember, pain
24 again is subjective.

25 Q Did you ask her, "Do you feel any pain when you move

1 your neck?"

2 A I don't recall that specifically.

3 Q Wouldn't that be something you would be interested
4 in knowing?

5 A It would be, but I'd be much more interested in the
6 objective movement of her neck.

7 a I see. How does one move their neck objectively?

8 A Well, you ask them to look to the left, to the
9 right, to bend forward and backwards.

10 Q Okay.

11 If you will, look at the Johnson Physical Therapy
12 letter of March 3 of '93.

13 A I don't have that one,

14 Q I will give you mine.

15 It shows that the range of motion of the cervical
16 spine is within normal limits, but pain on the end range,
17 doesn't it, Doctor?

18 A Hold on, I'm trying to find where you're talking
19 about.

20 Range of motion of the neck -- yes.

21 Q Cervical spine, with pain on the end range?

22 A Yes. That wouldn't surprise me, March of '93.

23 Q How about in March of '94?

24 A Wouldn't surprise me.

25 Q Because I believe Dr. Leone's exam of March 16 of

1 '94 shows pain at the end range of motion; wouldn't
2 surprise you?

3 A NO.

4 Q And if you take a look at Dr. Gregori's report of
5 July 5 of '95 -- I'm sorry, not Dr. Gregori's report. I
6 believe it's Dr. Gilliland's report,

7 A Okay.

8 Q He finds limited range of motion, doesn't he?

9 A Yes.

10 Q Is Dr. Gilliland capable of making that finding?

11 A I would hope so.

12 Q How would you account for the fact that in July of
13 '95, about a year and-a-half after the
14 accident -- no, over two years after the accident, she
15 still has limited range of motion of the neck?

16 A Look, all I can say is that when I saw her she had
17 normal range of motion of her neck.

18 Q Okay,

19 A -- I don't know what Gilliland found.

20 Q Let's talk about the lordotic curve. You said the
21 x-rays at the emergency room showed that to be
22 straightened?

23 A Yes.

24 Q That's an abnormal radiologic finding, isn't it?

25 A Yes.

1 Q That's indicative of a neck injury, isn't it?

2 A It's indicative of muscle strain, ordinarily.

3 Q Okay.

4 The x-rays that Dr. Leone took on March the 18th of
5 '94, what did they show?

6 A What was the date?

7 Q His report date is March 18 of '94; the exam was
8 March 16th of '94.

9 It's on Page 5 of Dr. Leone's report.

10 A He states a reverse curve formation.

11 Q That's indicative of the neck injury that you were
12 talking about, correct?

13 A Yes.

14 Q Why would she still have that in March of '94, which
15 is about a year and-a-half after the accident?

16 A That's possible.

17 Q Take a look, if you will, Doctor, at the MRI report
18 of February 14 of '95.

19 A Yes.

20 Q Now we're over two years after the accident,
21 correct?

22 A Yes.

23 Q Two and-a-half, maybe. Still shows a straightening
24 of the lordotic curve, doesn't it?

25 A Yes.

1 Q Why would that be if the injury is resolved?

2 A It could be due to the severe degenerative disease
3 that she has in her neck.

4 Q I see.

5 A This lady has marked degenerative disease. I really
6 could not say that this is due to the accident or the
7 degenerative disease. There's no way to sort that out.

8 Q Her clinical examinations which show muscle spasm
9 correlate to that loss of the lordotic curve that's shown
10 radiographically in those three studies, don't they?

11 A No. My clinical examination did not show any muscle
12 spasm at all.

13 Now, it's clear -- I think she had muscle spasm to
14 begin with as a result of this accident, and people found
15 it.

16 All I'm saying is when I saw her there was none.
17 She had normal range of movement. So I believe that as
18 of February 1995 -- that would be three years after the
19 accident -- that what you are seeing on the MR scan is
20 due to degenerative disease much more likely.

21 Q You don't say that your report, do you?

22 A No.

23 Q Did you take any x-rays of Carmel's neck?

24 A No.

25 Q Did you send her out for any?

1 A No.

2 Q You don't know what x-rays of her neck would have
3 shown had you taken them, do you?

4 A No.

5 Q Now, the MRI; did you talk to Dr. Bleggi about that?

6 A NO.

7 Q And he specifically says herniated discs, doesn't
8 he?

9 A He said subligamentous disc herniation, not
10 herniated discs. There is a marked difference.

11 Q Doctor, I have seen a lot of CAT scans and MRI
12 reports and myelogram reports, and I have seen a lot of
13 those that make reference to a bulging disc.

14 A Yes.

15 Q And when it's a disc that bulges, that's usually
16 what the radiologist says, bulging disc?

17 A Right.

18 Q Here Bleggi says herniated disc, doesn't he?

19 A I think that's his terminology.

20 Q Well, you didn't talk to Rim about it?

21 A No.

22 Q But do you know Dr. Beleki?

23 A NO.

24 Q Have you seen other interpretations of MRI films
25 that he's prepared?

1 A Not that I can remember.

2 Q Okay.

3 There's a moderate sized disc herniation at C3 and 4
4 that's causing thecal sac compression, isn't there?

5 A There's a moderate size subligamentous disc
6 herniation, which is a bulge.

7 Q Herniation means that the nucleus pulposus is out,
8 correct?

9 A It means that, plus it means for herniation that it
10 has to go through the ligament and then it's herniated
11 out; but nobody uses the word herniation. This is the
12 first time I have ever seen this for this kind of
13 problem.

34 I also looked at those films, and I'm telling you
15 there is no herniation there.

16 Q Is that a **normal** condition, a subligamentous
17 herniated disc?

18 A I think a bulge of a disc is a normal finding. It's
19 a usual finding. I shouldn't say normal, a usual finding
20 of people over a long -- your age

21 Q Thanks, but I'm not sure that was my question. Is
22 it a normal condition?

23 A Yes, it is.

24 Q It's normal?

25 A Yes.

1 Q Then she has smaller disc herniations,
2 subligamentous, at C5-6 and C6-7?

3 A Yes.

4 Q And Dr. Bleggi says those are causing mild thecal
5 sac compression centrally?

6 A Yes.

7 Q What's thecal sac compression?

8 A It's the membranes that surround the spinal cord.

9 Q That's not a normal condition, is it?

10 A It can be, depending upon how you were put together
11 at the factory.

12 Q If something is compressing your thecal sac, that's
13 something you ought to be concerned about, isn't it?

14 A Of course, of course.

15 Q And why would that be, Doctor?

16 A Because it means that you could have a spinal cord
17 compression, which is close to the theca.

18 But Kalfas looked at these, too, and I looked at
19 them, and I was very unimpressed other than bulging.

20 Q Well, Kalfas talks about conservative therapy,
21 correct?

22 A Yeah.

23 Q He doesn't say, "Carmel, you don't need any kind of
24 treatment, go on home and forget about it," does he?

25 A Right.

1 Q And, as a matter of fact, what Kalfas is saying is
2 that he doesn't recommend any surgical intervention as of
3 the date of Carmel's exam, correct?

4 A That's true.

5 Q Does that mean she's not going to need surgery in
6 the future?

7 A I think if she continues to degenerate the way she
8 already has, that's a possibility. She is not going to
9 need any surgery as a result of this accident.

10 Q Kalfas told her to try some epidural or cervical
11 epidural blocks, correct?

12 A Yes.

13 Q And what are those?

14 A They are a form of treatment which I never use and
15 do not approve of and think are grossly overused and
16 abused, and they are used to try to limit the pain that
17 patients complain of.

18 Q Do you think Dr. Kalfas is competent?

19 A I have no idea. I don't know the man.

20 Q And if the cervical epidural blocks don't alleviate
21 Camel's pain, then Dr. Kalfas recommends a myelogram
22 with a CAT scan, correct?

23 A Yes.

24 Q Tell us what that is.

25 A A myelogram is a spinal tap wherein you're placed on

1 the table in radiology under fluoroscopy, a needle is
2 inserted down low in the back. Spinal fluid comes out
3 and you then inject into that area a dye that is visible
4 under x-ray and you rotate the patients up and down to
5 make the dye flow to where you want it; in this case, up
6 to the neck.

7 Today, you're able to just take the needle out and
8 leave the dye in. Then you can take the patient from
9 that part of the x-ray department to the CAT scanner
P0 where the CAT scanner will visualize things much, much
11 better.

12 Q Doctor, if she's already had the MRI, why would she
13 need the myelogram and a CAT scan?

14 A I think that would be quite rare, quite rare.

15 Q That's what Ralfas says, to get a better picture of
16 her cervical spine, correct?

17 A He's entitled to his opinion. If I were that lady
18 and anybody recommended that to me, I would tell them to
19 go fly a kite.

20 Q My question is: Would it give you a better view
21 than the MRI?

22 A No, no. It would give you a different view.

23 Q Can a cervical disc which is herniated centrally
24 cause paraesthesia to either arm?

25 A Yes.

1 Q And can a disc herniation that's herniated centrally
2 cause weakness?

3 A Yes.

4 Q Dr. Gregori's report of March 8 of '96 says that
5 Carmel's disc is causing spinal nerve compression,
6 correct?

7 A If you say so. I'd have to look through the records
8 again.

9 Q It's his report of March 8.

10 A March 8?

11 Q Of '96. Let me move on.

12 If you will hold onto the March 8, '96 report,
13 Dr. Gregori says she has definite cervical herniated disc
14 plus continued sprain and strain in the cervical spine
15 and upper back area, correct?

16 A That's what he says.

17 Q And she has signs of nerve deficiencies, especially
18 in the left upper arm?

19 A Yes.

20 Q And he says that her prognosis is worsening,
21 correct?

22 A That's what he says.

23 Q You don't agree with that opinion, do you?

24 A I think it's total nonsense,

25 Q Now, Dr. Afrooz's EMG of 7/27/93 shows left C6-7

1 nerve root expression?

2 A Let me find it. His EMG of what date?

3 Q July 23, '93.

4 MR. PFAU: That says July 27.

5 By Mr. Matavich:

6 Q Okay, July 27 of '93.

7 A Yes.

8 Q What effect will that have?

9 A What he describes?

10 Q Yes.

11 A He describes two things.

12 Q I'm asking -- Doctor, excuse me. I'm asking about
13 the left C6-7 nerve root compression. That would affect
14 the left hand, correct?

15 A Yes.

16 Q What effect will it have on the left hand?

17 MR. PFAU: On Mrs. Opencar or in general?

18 By Mr. Matavich:

19 Q In general.

20 A In general you would have -- if you had nerve root
21 involvement that was serious, you would ordinarily get
22 pain down the specific distribution, down the arm.

23 Q Well, she complained of pain down her arm, didn't
24 she?

25 A Not in the root distribution.

1 This is C6; this is C7; and this is C8.

2 (Indicating.) So, with pain in this distribution, she
3 should have had an aching kind of pain radiating from her
4 neck down into a specific physiologic distribution, and
5 she had none of that.

6 Furthermore, her reflexes were all normal and her
7 strength was normal. You know, if you have a
8 radiculopathy that is significant, you should have one of
9 the three deficiencies.

10 Q Afrooz made this finding by way of EMG, correct?

11 A Yes.

12 Q And that's an objective test, isn't it?

13 A Yes.

14 Q Are you saying Afrooz is incorrect?

15 A I have no idea as to Dr. Afrooz's competence.

16 Q My question is: Are you saying he is incorrect?

17 A I don't know if he is correct or incorrect.

18 Q Dr. Gilliland examined Carmel on July 7 of '95 and
19 you have his report, correct?

20 A Yes.

21 Q And the history that Carmel gave to
22 Dr. Gilliland is that she frequently drops objects,
23 correct?

24 A July 5, 1995?

25 Q Yes.

1 A Yes.

2 Q And that's indicative of weakness, isn't it?

3 A It certainly could be.

4 Q And weakness is a sign of a herniated disc, isn't
5 it?

6 A Certainly could be.

7 Q Cleveland Clinic exam of Dr. Kalfas, he indicates
8 that Camel was unable to toe walk on the left,

9 A To toe walk?

10 Q Yes.

11 A What do you mean? I don't see that.

12 Q Right here, "unable to toe walk on the left,"

13 A Okay, unable to toe walk.

14 Q What's that mean?

15 A He also says, "Gait within normal limits, unable to
16 toe walk on the left."

17 Q What's that mean?

18 A That means that you would have somebody walk rising
19 **up** upon their toes -- and let's assume my fingers are
20 toes -- and that person would go like this.

21 (Indicating.)

22 Q Why would a doctor ask the patient to do that?

23 A Because with herniated disc, you would have not
24 weakness of toe walking, but you would have weakness of
25 dorsiflexion of the ankles.

1 Frankly there is no way that she would have
2 difficulty with toe walking, because those muscles are
3 much stronger than for you to do heel walking.

4 Q Well, Dr. Kalfas wrote that down in his report,
5 didn't he?

6 A Yes.

7 Q Did you have her do that?

8 A I'm sure I had tested the strength of those muscles.

9 Q My question was: Did you have her do that?

10 A That's exactly the same thing, but I did not have
11 her specifically try to walk on her toes.

12 Q Dr. Kalfas' report shows that her left grip was
13 decreased, correct?

14 A Left grip?

15 Q Yes. They have somewhere left grip, 4 minus.

16 MR. PFAU: His report or his records?

17 MR. MATAVICH: The records.

18 By Mr. Matavich:

19 Q Right here, grip on the left, 4 minus.

20 A Yes.

21 Q You found that too, didn't you?

22 A You have to understand that he uses a different
23 classification mechanism than I do.

24 Q How do you know that? You don't even know him.

25 A I don't use this classification, so I don't know

1 what he uses; but I can tell you that, **yes**, I found give
2 way weakness just like he did.

3 Q And he found also decreased sensation of **the left**
4 leg, knee to foot, correct -- disregard that **question**.

5 The left grip weakness that Dr. Kalfas found **and**
6 that **you** found, did she have that before the accident of
7 December of '92?

8 A I don't know that, and I don't think it was real the
9 day I saw her.

10 Q I see. Now, you had talked about arthritis; that's
11 degeneration, isn't it?

12 A Yes. I think I just mentioned arthritis **in** relation
13 to the neck,

14 **a** And that's part of the aging process, isn't it?

15 A Yes.

16 Q When you **saw** Camel she was what, 54 years old?

17 A 54 .

18 Q And when she was x-rayed at the hospital she was 51?

19 A Yes,

20 Q How many 51 year old women would you say would have
21 similar x-ray findings to Camel Opencar?

22 A Most of them.

23 Q Would all of those have the same complaints that
24 Camel has?

25 A Of course not, Some of them might have complaints,

1 some of them might not.

2 It would be so variable, that's a question I don't
3 think I can really give you an accurate answer.

4 Q Doctor, do you have any indication from any records
5 or any history that Carmel Opencar had these complaints
6 before the accident of December of '92?

7 A I think there is plenty of evidence that she had
8 degenerative disease in her neck.

9 I have no evidence that she had these complaints.

10 Q What effect does trauma like that Camel Opencar
11 sustained in December of '92 have on degenerative
12 arthritis?

13 A Ordinarily, not much. It has an effect mainly on
14 soft tissues; but it is possible that, you know, you
15 could wind up like Superman and be paralyzed if the
16 trauma was so severe as to rupture the spinal cord.

17 Q Did Superman have arthritis?

18 A I have no idea.

19 Q Okay. I wondered why you made the statement.

20 Dr. Leone gives Camel a guarded prognosis because
21 of the trauma superimposed on the degenerative arthritis,
22 doesn't he?

23 A I believe so.

24 Q Do you have any evidence that Camel ever had one
25 moment of pain or problem with her neck at any time in

1 her entire 51 years before this accident in December of
2 '92?

3 A I have no history at all of any kind of preexisting
4 illness.

5 Q When you describe the straight leg raising test,
6 that's where you actually physically grab the person's --
7 or hold the person's leg and move it up, correct?

8 A That's correct.

9 Q When she sat up herself, did you assist her in any
10 way?

11 A NO.

12 Q You had control over her leg in the straight leg
13 raising, didn't you?

14 A Yes.

15 Q When she sat up, she had control over how she did
16 it, correct?

17 A Certainly.

18 Q How fast she sat up, correct?

19 A Yes.

20 Q In what manner she sat up, correct?

21 A Yes.

22 Q The soft tissue injuries that you say she sustained
23 and that resolved, how do they heal?

24 A Nobody really knows because you don't go in there
25 and look at that. It is presumed that there are

1 microscopic hemorrhages and damage to the muscle, and all
2 healing occurs when there is reabsorption of the damaged
3 tissue and formation of scar tissue.

4 Q And what is scar tissue?

5 a Scar tissue is -- for example when you cut your
6 hand, and say deeply, and your hand heals you can see
7 that thin line of connective tissue that is scar tissue.

8 Q And the soft tissue that heals with scar tissue,
9 does that touch the nerves at all that enervate the area?

10 A No, not really. It doesn't touch the nerve roots
11 around the spinal cord. Yes, it may touch the nerve --

12 Q It may touch the nerve endings?

13 A Yes.

14 Q And the scar tissue coming in contact with the nerve
15 endings, what would happen?

16 A I don't know.

17 Q Won't it cause pain?

18 A It could, I suppose, but you're talking at a
19 microscopic level that I just can't define.

20 Q In medicine there are lots of things that are
21 microscopic, correct?

22 A Tell me about it.

23 Q I've got to ask you this: What would your charges
24 have been for what Dr. Afrooz did?

25 Let's assume that you did perform the same

1 procedures that Dr. Afrooz did; what you would have
2 charged Carmel?

3 MR. PFAU: Is this today or back in 19
4 whatever.

5 MR. MATAVICH: Back when they were done.

6 By Mr. Matavich:

7 Q This would be back in '93 when he did them, July of
8 '93?

9 A I don't know the costs of audiometry, since I would
10 not do that personally, EMG, I wouldn't do.

11 If I were doing all these, it would be less than 50
12 percent of what he charged and with the caveat that I
13 would never have done all these things.

14 Q What tests would you not have done?

15 A The carotid doppler; the somatosensory evoked
16 response of the right posttibial nerve; visual evoked
17 responses; brain stem auditory evoked response;
18 audiometry; an EMG for neck and back pain.

19 Q Doctor, would you agree that a doctor who follows a
20 patient over an extended period of time is in a better
21 position to assess that patient's condition and prognosis
22 than a doctor who only sees the patient on one occasion?

23 A If that physician is competent in the area we're
24 discussing, yes.

25 Q Dr. Gregori saw her after the accident, correct?

1 A Yes.

2 Q And he saw her during the years after the accident?

3 A Yes.

4 Q Even past when you saw her, correct?

5 A I think so.

6 Q He saw no improvement after two years, correct?

7 A Correct*

8 Q And he -- in fact, his letters say that her
9 prognosis was worsening, correct?

10 A I think so.

11 Q You disagree with that, correct?

12 A Yes.

13 Q And you disagree with Dr. Gilliland?

14 A Yes.

15 Q And you disagree with Dr. Afrooz?

16 A Yes .

17 Q And you disagree with Dr. Leone?

18 A Yes.

19 Q Now, Dr. Gregori followed her treatment throughout,
20 correct?

21 A I believe so, yes.

22 Q Are you suggesting that any medical opinions that
23 Dr. Gregori has are not trustworthy?

24 A No.

25 Q And the opinions that you have expressed are based

1 upon the exam and the condition which you believe existed
2 on that one day at that time that you examined Carmel,
3 correct?

4 A That's correct.

5 Q Thanks, Doctor,

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Pfau:

9 **8** Dr. Friedman, just as Mr. Matavich says, **you** saw
10 **this** patient one time; you were also able to review MRI
11 studies and records. Part of your business as a
12 physician is to be able to **look** at a patient's records,
13 examine that patient, review the films, and determine a
14 diagnosis, prognosis and the condition of that person in
15 the areas of your specialty, correct?

16 A Yes, yes.

17 **8** That's something you do very frequently, **I** believe,
18 correct?

19 A Every day.

20 Q **Now**, assume **as** well that to date Mrs. Opencar has
21 not had a myelogram or the CT as was referenced in
22 Dr. Kalfas' report. That would follow your
23 recommendation that she doesn't need that, correct?

24 A That's correct.

25 Q Now, Dr. **Afrooz** did an EMG study in July of 1993

1 that we went through that discussed she had some nerve
2 root compression. Dr. Gilliland also did two sets of EMG
3 studies -- I believe one set you have -- that discusses
4 right median nerve entrapment in the carpal tunnel, and a
5 second set that I don't know that you have seen following
6 a second accident that Mrs. Opencar had in March of
7 1996.

8 Go ahead and take a look at that and tell us what it
9 appears his findings are there.

10 A The EMG study in April of '96 was perfectly normal.

11 Q So, Dr. Gilliland's EMG studies would be in direct
12 conflict with what Dr. Afrooz's study says; is that
13 correct?

14 A Apparently so, Now, his nerve conduction says right
15 carpal tunnel,

16 Q I see. His EMG study says perfectly normal,
17 correct?

18 A Perfectly normal.

19 Q If Mrs. Opencar had an ongoing nerve root
20 compression that was causing tremendous pain in her arm
21 and neck area, you would assume that on these follow-up
22 EMG studies Dr. Gilliland did, one in '95 and '96, would
23 show some abnormality, wouldn't they?

24 A You would hope so, yes.

25 Q Now, there is reference that Mrs. Opencar was

1 dropping things. Could somebody drop things from a
2 carpal tunnel problem?

3 A Of course.

4 Q Did you believe that she suffered from a carpal
5 tunnel problem when you examined her?

6 A I couldn't clinically make that diagnosis. I think
7 it's certainly possible because of her occupation.

8 Q And she gave you a history of working as a computer
9 operator typing in an office setting?

10 A Yes.

11 Q Would that be consistent with doing that for years?
12 Would that be a consistent history that could lead to a
13 carpal tunnel?

14 A Certainly would.

15 Q Mr. Matavich went through various diagnoses of the
16 chiropractor, Leone, and the family physician, Gregori.

17 Leone also talks about in his x-rays that
E8 Mrs. Opencar suffered advanced hypertrophic degenerative
19 spondylarthritis in the intravertebral disc space of
20 C5-C6; that would be a preexisting condition prior to the
21 accident, correct?

22 A Yes. That's degeneration.

23 Q Dr. Gregori, in his original report of
24 February 1, 1994, says her prognosis is fair to good and
25 he says she suffered a radiculitis involving the left

1 cervical nerves radiating to the shoulder; and you didn't
2 find that, did you?

3 A No.

4 Q And that would be inconsistent with the EMG studies
5 of Dr. Gilliland also, wouldn't it?

6 A Yes.

7 Q would you have anything to add about the
8 radiculitis?

9 A I don't know how he made that diagnosis. Nobody
10 really uses the term radiculitis, so I don't really know
11 what he means even.

12 Q When you examined Mrs. **Opencar** in February
13 of '96 you did not find any evidence of muscle spasm, did
14 you?

15 A That's correct.

16 Q That would be something, though, you would look for
17 in the course of your examination?

18 A Yes.

19 Q And that would be something if she had, through your
20 training and experience in many years as acting as a
21 neurologist *you* would have seen, correct?

22 A Yes.

23 Q Doctor, there was a lot of discussion with
24 Mr. Matavich about the MRI and the Dr. Bleggi's --
25 B-l-e-g-g-i -- terminology, Putting all of his

1 terminology aside, your review of the MRI films showed
2 there to be bulging discs and nothing that would be a
3 herniation, correct?

4 A No herniation.

5 Q And your interpretation of Dr. Bleggi's report is
6 the subligamentous disc herniation he's referring to is
7 actually a bulging disc?

8 A I believe so.

9 Q During the course of your acting as a neurologist
10 over the years, studying and reviewing MR studies for
11 purposes of treating patients, would that be a rather
12 large part of your practice?

13 A On every patient I see I go down to radiology and 1
14 review the MR scan myself. In addition, in the huge
15 majority, I go in and review with one of the two
16 neuroradiologists.

17 I don't know what Dr. Bleggi is, but we have two
18 radiologists who specialize in neuroradiology. I have
19 been doing that since 1989.

20 Q To summarize, Dr. Friedman, is it your opinion that
21 Mrs. Opencar suffered mainly a soft tissue injury with a
22 potential concussion, both of which healed following this
23 accident?

24 A Yes.

25 Q And is it also your opinion that she suffered no

1 permanent injury as a result of the accident of the
2 December of '92?

3 A That's correct.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Matavich:

7 Q Doctor, I have just a couple more questions.

8 Do EMG studies change over time?

9 A Yes.

10 Q- So you can have a positive finding one day and then
11 later on, on a subsequent test, have a negative finding?

12 A You can have a normal finding, then an abnormal,
13 then a normal.

14 Q The myelogram -- Camel can't have that, can she?
15 Isn't she allergic to the dyes?

16 A No. You have to understand, there are several kinds
17 of dyes, and the dye that she is allergic to is the kind
18 that you get intravenously, high opaque or whatever you
19 want to call it.

20 The dye that they put into the spinal canal is
21 totally different. They are basically -- when you start
22 talking about these things, you're talking about three
23 different dyes. The old one was pantopaque. It was an
24 oil-based dye that they put in the spinal canal.

25 If you had your kidneys x-rayed, there is another

1 kind of dye, and that's what she is allergic to. She
2 doesn't know if she is allergic to that spinal dye.

3 Q How would she find out?

4 A You would have you undergo a reaction.

5 Q Which is not -- that's not a very pleasant prospect,
6 is it?

7 A I would point out that I have never heard of such a
8 thing. It's possible, but I have never heard of anybody
9 being allergic to that dye. It's made our lives a lot
10 easier in patients who have to have myleograms.

11 Q Now, Dr. Gregori was monitoring the patient Camel
12 while she was seeing other doctors, correct?

13 A I believe so, yes.

14 Q And the other doctors, in fact, were writing to
15 Dr. Gregori, weren't they?

16 A Yes, yes.

17 Q So that when Carmel came back to him, he had the
18 benefit of the other doctors' expertise in addition to
19 his own clinical findings, correct?

20 A Yes.

21 Q Now, she went to Dr. Gregori, then she saw
22 Dr. Leone -- and this isn't necessarily in chronological
23 order -- Dr. Afrooz, Dr. Gilliland, and then Dr. Bleggi,
24 who did the MRI and interpreted it.

25 Do you think that by mere chance that she would have

3 A I didn't say they don't know what they're doing. I
4 said I don't really know how competent they are. That's
5 what I said.

6 Q No other questions.

7

- - -

8

FURTHER DIRECT EXAMINATION

9 By Mr. Pfau:

10 Q The dye you're referring to that you are not aware
11 of people having allergic reactions to is the one used in
12 the myelogram, not the one Mrs. Opencar said she is
13 allergic to?

14 A That's right.

15 Q Mrs. Opencar's had two normal EMGs in the **past**
16 taken, one in '95 and one in '96. That would lead one to
17 believe that she's not having a cervical nerve root
18 compression that is causing problems in her arm and neck,
19 correct?

20 A Yes, it would support that conclusion, **yes**.

21

- - -

22

FURTHER RECROSS-EXAMINATION

23 By Mr. Matavich:

24 Q Doctor, if you did an EMG of Camel today, you don't
25 know whether the results would be negative or positive,

1 do you?

2 A No, and if she let me do an EMG on her today, I
3 think she would be -- that really would be cruel.

4 Sticking needles in, somebody's muscles is not a nice
5 thing to do.

6

7 FURTHER REDIRECT EXAMINATION

8 By Mr. Pfau:

9 Q Why would it be cruel?

10 A It's painful.

11 Q And it's not needed; is that why?

12 A I don't think it's needed.

13 Q You found nothing in her symptomology that would
14 lead you to believe she would have an abnormal finding,
15 did you?

16 A That's correct.

17

18 (Thereupon, the deposition was concluded

19 at 3:30 o'clock, p.m.)

20

21

22

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24

25

C E R T I F I C A T E


STATE OF OHIO,))
SS:
SUMMIT COUNTY.)

I, Regina Salloum, a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, HARVEY FRIEDMAN, MD, 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 recorded in stenotype in the presence of said witness, afterwards transcribed using computer-assisted transcription; and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 25TH day of March, 1997.


REGINA SALLIUM, Stenographic Reporter and
Notary Public in and for the State Ohio.

My commission expires March 24, 1998.

STOLL, PEISER & SNIDER, INC.