

IN THE COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

JUSTINE CLEMENTS,
et al.,

Plaintiffs,

JUDGE JANAS

-vs-

CASE NO. 03-CV-134528

FARAH SHARBEEK, et al.,

Defendants.

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Videotaped deposition of TIMOTHY L. GORDON, M.D.,
taken as if upon direct examination before
Colleen M. Malone, a Notary Public within and for
the State of Ohio, at the offices of Timothy L.
Gordon, M.D., Chagrin North Office Park,
Building II, 34950 Chardon Road, Suite 104,
Willoughby Hills, Ohio, at 4:00 p.m. on Tuesday,
May 24, 2005, pursuant to notice and/or
stipulations of counsel, on behalf of the
Defendants in this cause.

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12 On behalf of the Defendants
13 Farah Sharbek and Mohammad Sharbek.

14 ALSO PRESENT:

15 David Tackla, Videographer
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1 TIMOTHY L. GORDON, M.D., of lawful age,
2 called by the Defendants for the purpose of
3 direct examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn, as
5 hereinafter certified, deposed and said as
6 follows:

7 DIRECT EXAMINATION OF TIMOTHY L. GORDON, M.D.
8 BY MR. KENNEALLY:

9 Q. Good afternoon, Doctor.

10 A. Good afternoon.

11 Q. Would you please introduce yourself to the ladies
12 and gentlemen of our jury.

13 A. I'm Timothy L. Gordon, M.D.

14 Q. And Dr. Gordon, are you a duly licensed physician
15 in the State of Ohio?

16 A. Yes, I am.

17 Q. And when did you obtain your license?

18 A. In 1986.

19 Q. Doctor, are you specializing in any particular
20 branch of medicine?

21 A. Yes, orthopaedics.

22 Q. Would you tell the ladies and gentlemen of the
23 jury, please, what the medical specialty of
24 orthopaedics embraces?

25 A. All right. Orthopaedic surgeons are trained in

1 the surgical and non-surgical treatment of
2 musculoskeletal problems, injuries, diseases that
3 involve the spine, the extremities, nerves,
4 muscles, bones, joints. Those kind of things.

5 Q. Now, Doctor, in order to become an orthopaedic
6 physician, I assume you had to go to medical
7 school and receive additional training?

8 A. Yes.

9 Q. Where did you receive your training, your medical
10 training?

11 A. Well, I went to medical school at the Case
12 Western Reserve University School of Medicine and
13 then I did my orthopaedic surgery residency at
14 the Mt. Sinai Medical Center.

15 Q. And, Doctor, after completing your post-graduate
16 studies and training did you then engage in the
17 full-time practice of your medical specialty
18 which is orthopaedics?

19 A. Yes, I did.

20 Q. And have you been so engaged ever since?

21 A. Yes.

22 Q. Dr. Gordon, are you on the staff of any hospitals
23 in the Cuyahoga County area?

24 A. Yes.

25 Q. Which hospitals?

1 A. That would include Euclid Hospital, Richmond,
2 University, Richmond, Bedford. Also Hillcrest
3 and Lake Hospital.

4 Q. All right. Doctor, as part of your practice as
5 an orthopaedic physician, do you belong to any
6 professional societies or groups?

7 A. Yes, I am a member of the American Medical
8 Association. Also, I'm a fellow of the American
9 Academy of Orthopaedic Surgeons and I'm also a
10 member of the Sports Medicine Academy.

11 Q. Dr. Gordon, is there a board speciality in the
12 field of orthopaedics?

13 A. Yes.

14 Q. And what is it called?

15 A. It is called The American Academy of Orthopaedic
16 Surgeons.

17 Q. What are the requirements for a physician to be
18 considered board certified by that organization?

19 A. Well, the Board of Orthopaedics requires that you
20 complete an orthopaedic surgery residency. Then
21 you have to sit through an extensive written
22 examination at the end of that that has to be
23 passed. And you have to be in private practice
24 for two years. Then you have to sit through an
25 extensive oral examination that has to be passed.

1 And then you have to be approved by your peers
2 and elected by your peers to become a fellow of
3 the Academy.

4 Q. And I take it that that is something over and
5 above your license to practice medicine in Ohio?

6 A. That is correct.

7 Q. And when were you board certified, Doctor?

8 A. I was board certified in 1993 and again in 2003.

9 Q. Now, Doctor, we're sitting here in your offices
10 in Willoughby Hills, Ohio. Is this where you
11 typically see your patients?

12 A. Yes.

13 Q. Okay. Now, in addition to your own clinical
14 practice located here in Willoughby Hills, do you
15 also perform what I will call or describe as
16 independent medical examinations?

17 A. Yes.

18 Q. And was that the capacity that you were asked to
19 become involved in this case?

20 A. Yes.

21 Q. And actually, you did not examine the plaintiff
22 in this case, but you merely reviewed all of her
23 medical records. Is that correct?

24 A. That is correct.

25 Q. And those records included the x-rays and the

1 MRIs themselves?

2 A. That's correct.

3 Q. Okay. And, Doctor, have you and I worked
4 together in the past in a similar capacity?

5 A. Yes.

6 Q. And on some of the cases that you and I have
7 worked together in the past where you have
8 examined somebody or you have reviewed records,
9 have you also given testimony as you are giving
10 in this particular case today?

11 A. Yes.

12 Q. And did you charge me for reviewing the records
13 and writing the report?

14 A. Yes, I would have.

15 Q. And will you likewise be charging me for the time
16 away from your practice to give -- not only
17 prepare for but to give this videotaped
18 deposition today?

19 A. Yes.

20 Q. And is that pretty typical in this business?

21 A. Yes, it is.

22 Q. Okay. Now, Doctor, did you have an opportunity
23 to review medical records concerning the
24 plaintiff in this case, Ms. Justine Clements?

25 A. I did.

1 Q. Would you tell the ladies and gentlemen of the
2 jury what records you reviewed?

3 A. All right. I reviewed records from St. John
4 emergency room. Also records from MetroHealth
5 Medical Center. I reviewed records of Dr. George
6 Mathews. Some physical therapy records. Also
7 records of Dr. Zaas. And I reviewed x-rays from
8 MetroHealth Center the date of accident, and also
9 some MRI films that were obtained later.

10 Q. Now, just so that we're clear, you review the
11 actual films themselves; that is, the x-rays from
12 MetroHealth Medical Center and the MRIs?

13 A. Correct.

14 Q. As opposed to just reviewing the reports of the
15 radiologist who took those films?

16 A. That is correct.

17 Q. Okay. Let's start, Doctor, by telling us what
18 you learned from your review of the St. John
19 emergency room records.

20 A. Well, what I learned was that at the time of the
21 accident she was 16, and that she was a passenger
22 in a vehicle that had been in an accident where a
23 tire blew out and there was a loss of the
24 control, and, apparently, she was actually
25 ejected from the vehicle.

1 She was evaluated St. John's ER and then
2 subsequently transferred to MetroHealth Medical
3 Center where they worked her up and they
4 subsequently discharged her.

5 She followed up at the MetroHealth
6 Orthopaedic Spine Clinic three weeks after the
7 motor vehicle accident and was found to have a
8 neck strain and was told to follow up as needed.

9 She then some months later, approximately two
10 months later, saw Dr. Mathews, sought more
11 treatment. She saw Dr. Zaas. And at some point
12 there she got some MRI scans of her neck and
13 back.

14 Q. Okay. Let me go over a little bit more
15 specifically with respect to some of what you
16 just said in an overview fashion.

17 You indicated that she was seen at the
18 MetroHealth Medical Center and you, you reviewed
19 a trauma report dated 4-6-01. Is this correct?

20 A. That is correct.

21 Q. What was indicated -- what did you find in that
22 trauma report?

23 A. It was revealed that she had some tenderness of
24 the cervical thoracic area. That her neurologic
25 exam was intact. X-rays were ordered, which

1 showed no fracture. And she also had a CT scan
2 of the cervical spine which showed no fracture.
3 She subsequently followed up at the Orthopaedic
4 Spine Clinic, as I mentioned.

5 Q. You mentioned that she, that the reports
6 indicated that she had some tenderness in the
7 thoracic spine. What part of the back is that?

8 A. That would be the upper back area.

9 Q. Okay. You mentioned that x-rays were taken of
10 both the cervical thoracic and lumbar spines.
11 Would that be the entire back, the neck, the
12 mid-back and the lower back?

13 A. That is correct.

14 Q. And you actually looked at those films?

15 A. Yes.

16 Q. What did those films show?

17 A. Well, those films showed that she had no fracture
18 of the spine. They showed that she did have some
19 degenerative changes in the thoracic spine, which
20 included the levels of T8-9 and T11-12. She did
21 have a mild thoracolumbar scoliosis on those
22 x-rays. That would have been a congenital
23 developmental condition.

24 Q. Okay. Now, this thoracic curve, that's what
25 you've been referring to when you say the

1 thoracolumbar, thoracolumbar scoliosis?

2 A. Yes. There were curves on the entire spine.

3 Q. Okay. What's the significance of that finding on
4 x-ray?

5 A. Well, the significance of that spine is that that
6 -- that finding means that she had a
7 developmental curvature of her spine which some
8 people have. It's called scoliosis. And her's
9 fortunately was a mild case that she didn't
10 require correction with a brace. I mean she may
11 have. I don't know if she did, because I don't
12 have her prior records. But the point is she had
13 the condition and that it was there before the
14 accident.

15 And also, that then would explain why she had
16 some of the degenerative changes that she did
17 have in her thoracic spine, which were present at
18 the time of the accident.

19 Q. Now, normally would you, am I correct, Doctor,
20 that you would not expect to see degenerative
21 changes in the spine of a 16-year-old?

22 A. You would expect them if they have scoliosis.
23 That's not unusual. And somebody without any
24 preexisting spinal condition, they usually don't,
25 but some do, depending on what they've done in

1 the years before that.

2 Q. So you feel the degenerative changes that showed
3 up on those x-rays taken at Metro were due in
4 part, at least, to this mild thoracic curve, the
5 scoliosis in her spine?

6 A. Correct.

7 Q. Okay. Now, you also indicated the CT scan was
8 done of her cervical spine at Metro?

9 A. Yes.

10 Q. And what was that reported as?

11 A. No fracture.

12 Q. No fracture. Okay.

13 Now, you also mentioned, Doctor, that you
14 reviewed the MetroHealth Medical Center
15 Orthopaedic Spine Clinic records from April 26th
16 of '01. Is that correct?

17 A. Yes, it is.

18 Q. Tell us what, what those records revealed and the
19 significance of the records reported at that
20 time.

21 A. All right. Well, what that indicates is this is
22 an outpatient evaluation where they followed her
23 up from her visit at MetroHealth right after the
24 accident. So she was seen in the Orthopaedic
25 Spine Clinic to evaluate her spine.

1 And what they found was that her complaints
2 were of neck pain. They reviewed the x-rays and
3 felt that there was no fracture again. They did
4 do a neurologic exam and noted that that was
5 normal. They noted there was no midline
6 tenderness; meaning, there was no tenderness of
7 the spine on this exam.

8 And her diagnosis was a cervical neck sprain.
9 They recommended a soft collar and some
10 antiinflammatories, and told her to follow up as
11 needed.

12 Q. Did they make, did the Orthopaedic Spine Clinic
13 on the 26th of April make any diagnosis with
14 respect to Ms. Clements' --

15 MR. BURKE: Ob --

16 Q. -- thoracic spine or lumbar spine?

17 A. No.

18 Q. No findings at all?

19 A. No.

20 Q. Okay. Now, Doctor, you indicated that you
21 reviewed the records of Dr. Mathews.

22 A. Correct.

23 Q. And he began seeing her, I believe, in June of
24 2001?

25 A. Yes.

1 Q. About, it looks like about two months to the day
2 after the accident. Is that correct?

3 A. Approximately two months, yes.

4 Q. Okay. And you reviewed all of his records, is
5 that correct?

6 A. Yes, I did.

7 Q. Okay. Did you also review the records, the
8 physical therapy records?

9 A. Yes, I did.

10 Q. Okay. Now, you mentioned an MRI scan that was
11 done at some point in time. I think, I think the
12 date was August 5th of 2002.

13 A. That is correct.

14 Q. And that would have been about a year and four
15 months or so after the accident?

16 A. That is correct.

17 Q. And did you actually see the films again?

18 A. Yes, I did.

19 Q. All right. You have the films here?

20 A. Yes.

21 Q. Okay. What did the MRI films of her cervical,
22 her neck region, and her thoracic or the upper
23 back region reveal?

24 A. Well, what they revealed is, first starting with
25 the cervical region, which would be the neck,

1 that they were completely normal. The discs
2 looked normal. There was no problem with any
3 nerve impingement in the neck.

4 In the thoracic spine, the thoracic spine MRI
5 was consistent with what was seen on the plain
6 films; meaning the plain x-rays the day of the
7 accident at Metro, which showed some of the
8 degenerative changes in the mid and lower
9 thoracic region.

10 Specifically, that would be some disc space
11 narrowing, mild, and some mild drying out of the
12 discs in the thoracic spine on the MRI.

13 There was no disc herniation. There was some
14 degenerative disc bulging which was mild. At
15 these degenerative levels, there was no
16 impingement on the spinal cord itself or any
17 nerve roots.

18 Q. Now, when you say there was no actual herniation,
19 there is mention in one of the reports of the
20 radiologist who did the MRI of her thoracic spine
21 that there was a finding suggestive of a two
22 millimeter central subligamentous disc herniation
23 at T11-T12.

24 Did you see that noted?

25 A. Yes, I did.

1 Q. And you reviewed that particular film?

2 A. Yes, I did.

3 Q. Did you make that finding?

4 A. No.

5 Q. All right. And why not?

6 A. Well, the reason I didn't is that, number one,
7 when there's a degenerative disc bulge that is
8 not focally herniated or protruded outside the
9 annulus of that disc, that's not a disc
10 herniation.

11 And in this case, she did have the
12 degenerative disc change at the same level, which
13 would be reflected on the plain x-rays from the
14 date of the accident. So all that goes along
15 with is a mild degenerative disc problem at that
16 T11-12 level that was there before.

17 And when you look at the MRI film, it's not a
18 disc herniation. And even the description by the
19 radiologist it says, suggestive of a one to two
20 millimeter finding.

21 I mean that's important to realize that one
22 millimeter is about the thickness of my thumb
23 nail. That's not a disc herniation. A one
24 millimeter finding is not disc herniation.

25 And when we look at the actual MRI films,

1 it's not a disc herniation, it's a degenerative
2 disc bulge that was there before.

3 Q. Do you know if the radiologist who made that
4 interpretation of that thoracic MRI, whether he
5 had the benefit of the thoracic x-rays, the plain
6 x-rays that were done the day of the accident?

7 A. He did not.

8 Q. So he had nothing to compare it to with respect
9 to the findings that were done --

10 MS. VOZAR: Objection.

11 Q. -- that were done on x-ray?

12 A. That's right. Because they were done at
13 different facilities and he did not mention that
14 he'd seen any other films. They do that when
15 they compared other films.

16 Q. Okay. So the MRI report that you read that
17 showed this one to -- that showed this two
18 millimeter central subligamentous disc herniation
19 at T11 and 12, there's no reference in that
20 report of the radiologist comparing the MRI
21 findings with the plain x-rays that were done on
22 April 6, 2001?

23 A. No, there's not.

24 Q. Okay. Now, Doctor, and finally you indicated
25 that you did also review a report of an

1 evaluation done by Dr. Zaas.

2 A. Yes, I did.

3 Q. And do you know Dr. Zaas?

4 A. Yes.

5 Q. And you know Dr. Zaas to be a doctor that not
6 only examines people for plaintiff's attorney but
7 also for defense attorneys?

8 A. That's my -- it's my understanding.

9 Q. Okay. Now, Doctor, I want to ask you some
10 questions based upon the records that you
11 reviewed and some opinions that you have given in
12 a report that you authored to me dated July 28,
13 2004.

14 First of all, Doctor, based upon your review
15 of the records and your experience, obviously, as
16 an orthopaedic physician in, since the late
17 1980s, do you have an opinion to a reasonable
18 degree of medical certainty as to what injuries
19 Justine Clements suffered in the motor vehicle
20 accident of April 5, 2001?

21 A. Yes.

22 Q. And would you tell the ladies and gentlemen of
23 the jury what that opinion is?

24 A. Well, it's my opinion that she sustained
25 abrasions, contusions. She also sustained a

1 flank laceration as a result of that accident.

2 She also sustained a soft tissue neck strain as a
3 result of that accident.

4 Q. Now, the abrasions, contusions, those would be
5 objective injuries?

6 A. Yes.

7 Q. And as far as you were able to tell, those
8 things, those injuries healed without any
9 sequelae, without any problems?

10 A. That is correct.

11 Q. All right. Now, with respect to the soft tissue
12 neck strain, do you have an opinion to a
13 reasonable degree of medical certainty as to what
14 the probable duration of that particular part of
15 the injury was?

16 A. Yes. It was approximately six weeks.

17 Q. All right. Why do you say that, Doctor? What's
18 the basis for saying that?

19 A. Well, there's two reasons: Number one was that
20 she was evaluated in the Orthopaedic Spine Clinic
21 three weeks after the accident and diagnosed with
22 a neck strain. So that's three weeks later. And
23 the indication was it was improving then.

24 The other issue is that from experience we
25 know that from doing surgery that when we, say,

1 for example, do a hip surgery where we're making
2 a large incision about the hip and literally
3 ripping through soft tissue to get to the hip
4 joint itself, we're creating a significant severe
5 soft tissue injury. Those surgical injuries heal
6 in six to eight weeks consistently. So that's
7 based on physiology and in practice.

8 Q. Okay. Now, you also indicated that, Doctor, that
9 you reviewed the x-rays. Do -- and the MRI
10 films. Do you have an opinion, Doctor, again
11 based upon your experience and your actual review
12 of the films, as to whether or not
13 Justin Clements suffered any herniated disc in
14 her thoracic spine as a result of the motor
15 vehicle accident of April 5, 2001?

16 A. Yes.

17 Q. Do you have opinion?

18 A. Yes, I have an opinion.

19 Q. And what is your opinion in that regard, Doctor?

20 A. It's my opinion that she did not sustain a disc
21 herniation.

22 Q. And why do you say that, Doctor?

23 A. The reason I say that is, number one, the
24 clinical records aren't consistent with it; and,
25 number two, the diagnostic studies that I

1 reviewed are not consistent with a disc
2 herniation.

3 Q. Now, you mentioned before, Doctor, and you used
4 the term many times, degenerative, some
5 degenerative changes that were found on those
6 plain films that were substantiated by the MRI.
7 By degenerative changes, are we referring to
8 something that existed before this accident?

9 A. That is correct.

10 Q. All right. So this would have been an ongoing
11 process that had been going on for some period of
12 time?

13 A. That is correct.

14 Q. And it is your opinion that that's, that that is
15 related to this curvature in her thoracic spine?

16 A. Yes.

17 Q. Okay. Now, finally, Doctor, do you have opinion,
18 again based upon your record review and your
19 experience as an orthopaedic physician, as to
20 whether or not, other than, other than the scar,
21 whether or not Justine Clements suffered any
22 permanent injury as a result of the motor vehicle
23 accident of April 5, 2001?

24 A. It's my opinion other than the scar, she did not.

25 Q. And again, the basis for that?

1 A. The basis for that is reviewing the record,
2 reviewing the diagnostic studies, and what we
3 already talked about.

4 MR. KENNEALLY: Thank you, Doctor.

5 Those are all the questions I have.

6 Jim.

7 THE WITNESS: You're welcome.

8 - - - -

9 CROSS-EXAMINATION OF TIMOTHY L. GORDON, M.D.

10 BY MR. BURKE:

11 Q. Doctor, my name is Jim Burke. I represent
12 Justine Clements and her parents relative
13 to (inaudible).

14 My associate Donna Vozar review your
15 (inaudible.)

16 A. Yes.

17 MS. VOZAR: Could we go off the
18 record?

19 THE VIDEOGRAPHER: Off the record.

20 - - - -

21 (Thereupon, a discussion was had off
22 the record.)

23 - - - -

24 MR. BURKE: For the record, I
25 objected to all mention of the scoliosis by

1 Dr. Gordon and there was no mention of
2 scoliosis contained in either of his
3 reports that were furnished to me.

4 I also objected as to the
5 testimony recording -- the hearsay
6 testimony regarding what the MRI Doctor who
7 the, who was supposed to report what they
8 did or did not review.

9 In addition, I objected to the
10 continual leading of counsel testifying on
11 behalf of the Doctor.

12 Note these objections and motion
13 to strike as to the scoliosis issues.

14 MR. KENNEALLY: Let me just
15 address those, Jim. First of all, take a
16 look when you get back to Cleveland at the
17 depositions that you took of your three
18 doctors and then tell me if you want to
19 continue your objection about my leading
20 questions. Because all three of your
21 depositions of your doctors are replete
22 with leading question after leading
23 question on all three of them. I've
24 reviewed all three of them.

25 Secondly, with regard to the issue

1 of scoliosis. Dr. Gordon does refer in the
2 first report dated July 28, 2004, to his
3 review of the x-ray films that were done on
4 April 6, 2001, showing a mild thoracic
5 curve. He has put a name to that mild
6 thoracic curve and that name is scoliosis.
7 So certainly it was referenced in the
8 report of July 28th and it appears in the
9 x-ray films that were done of April 6th.

10 MR. BURKE: Note my objection.

11 Let's go back on the record on the video.

12 THE VIDEOGRAPHER: Back on the
13 record.

14 Q. Doctor, thank you for allowing us to review your
15 file.

16 I note in file that there was a letter to you
17 from Mr. Kenneally which outlines the testimony
18 of Justine Clements after the deposition. Is
19 that correct?

20 A. I don't recall what it was in a letter at this
21 point.

22 Q. You don't recall what was in the letter at this
23 point?

24 A. No. I haven't looked at it in a long time.

25 Q. Did you review your file prior to testimony

1 today?

2 A. I didn't look at the letter.

3 Q. But you looked at it, in fact, before you wrote
4 your report, isn't that correct?

5 A. I probably looked at it back when I was asked to
6 review these records; I would have read the
7 letter. But anything in the letter that would
8 talk about any information regarding medical
9 stuff, I would not use as a reference. I would
10 review things myself and make my own opinions.

11 Q. The letter, nevertheless, is in your file,
12 whether or not you chose to use it or at this
13 point you're saying you didn't use it, it was in
14 your file and it was a direct (inaudible)
15 Mr. Kenneally, is that correct?

16 A. I think there was a letter from him in my file.

17 Q. Can we have that letter marked as an exhibit
18 (inaudible), please.

19 - - - -

20 (Thereupon, Plaintiff's Exhibit
21 40, three-page 4/26/04 Kenneally letter to
22 Gordon, was marked for purposes of
23 identification.)

24 - - - -

25 Q. Doctor, (inaudible) that your office is, office

1 is now referred to as Timothy Gordon, M.D.,
2 Orthopaedics P.A., is that right?

3 A. That's correct.

4 Q. And how long (inaudible)?

5 A. Repeat the question, please.

6 Q. And how long has that, has it been titled that?

7 A. Since, let's see, January, I believe, of 2003.

8 Q. But one time you were with Highland
9 Musculoskeletal (inaudible), correct?

10 A. Correct.

11 Q. Doctor, who hired you to reviewed the records and
12 to testify in this case?

13 A. I was asked by Mr. Kenneally to review the
14 records.

15 Q. Is he the one that sent you all of the medical
16 records, the reports and test results?

17 A. I think some of them came from Deposition Record
18 Service that I saw.

19 Q. But he supplied you with all the medical records,
20 reports and test results, is that (inaudible)?

21 A. Well, I'm not sure how to answer the question. I
22 mean, you know, some of it, as I said, came under
23 an envelope from Deposition Record Service.

24 Q. Did you ask Deposition Record Service for any
25 information?

1 A. I did not, no.

2 Q. (Inaudible). So it's safe to say that these
3 things came at the direction of Mr. Kenneally,
4 isn't it, Doctor?

5 A. Well, I would assume that he was trying to get
6 the records together for me to review.

7 Q. When you testified for Mr. Kenneally, you
8 referred to these reviews as independent medical
9 exams. What do you mean by independent?

10 A. Well, it means that I am not a treating
11 physician, I haven't treated the individual, and
12 that my role is to review the records in this
13 case and form opinions on what I think make the
14 most sense based on the records.

15 Q. Well, you weren't selected randomly here; you
16 were selected by Mr. Kenneally, and he represents
17 the defendant, isn't that correct?

18 A. Yes.

19 Q. And I didn't agree to hire you to evaluate this
20 case, did I?

21 A. I don't know.

22 Q. Well, did I ever talk to you about this case,
23 Doctor?

24 A. Not that I know of other than now.

25 Q. And the Judge didn't hire you to second guess the

1 treating doctors, did he?

2 MR. KENNEALLY: I'm going to
3 object to the characterization of second
4 guessing, but go ahead and answer, Doctor.

5 A. I'm not aware that the Judge asked me to evaluate
6 this individual.

7 Q. Dr. Mathews, Dr. Zaas and Dr. Scarcella didn't
8 request your services, did (inaudible)?

9 A. No.

10 Q. So the word independent (inaudible) that you are
11 independently representing the defendant in this
12 case, right?

13 MR. KENNEALLY: Again, I'm going
14 to note an objection to the fact that he's
15 representing the defendant. I represent
16 the defendant.

17 If you can answer the question,
18 Doctor.

19 A. I'm not representing the defendant. I reviewed
20 the records and made opinions that I thought made
21 the most sense. If I thought she had a disc
22 herniation as a result of the accident, I'd say
23 so, but the records don't reflect that.

24 MR. BURKE: (Inaudible) not
25 responsive.

1 Q. This isn't the first time that you've indicated
2 that Mr. Kenneally and you have worked together
3 on a case before, is that (inaudible)?

4 A. No, I've -- he's asked me to review some cases
5 before.

6 Q. I mean you've testified on behalf of
7 Mr. Kenneally's office before, have (inaudible)?

8 A. I have.

9 Q. Has Mr. Kenneally ever referred a friend or a
10 coworker to you (inaudible) treating patients?

11 A. He may have, I don't recall specifically.

12 Q. Well, would you recall -- you don't recall that
13 Mr. Kenneally ever referred (inaudible) to you?

14 A. I don't recall that he did or didn't. We get
15 referred to see people by a lot of people all the
16 time.

17 Q. Mr. Kenneally represents the driver who's at
18 fault in this case, Farah Sharbek. She's a
19 defendant. Are you familiar with that name?

20 A. That seems to be part of the case heading here.

21 Q. You didn't examine Farah Sharbek for her injuries
22 in this accident, did (inaudible)?

23 MR. KENNEALLY: Objection.

24 Relevancy.

25 A. No.

1 Q. You weren't hired by the defendant to help reduce
2 (inaudible)?

3 THE NOTARY: I missed that.

4 MR. KENNEALLY: You're going to
5 have to repeat that one, Jim.

6 Q. You were not hired by the defendant to help
7 reduce Justine Clements' pain, were you?

8 A. No, I'm not a treating physician.

9 Q. And you weren't hired by the defense to help
10 Justine cope with the pain she's still
11 experiencing, were you?

12 A. I already told you I'm not a treating physician.

13 Q. Let me ask you whether or not you agree with this
14 statement which is contain in the case of
15 Calderon v. Sharkey, bounded 70 Ohio St. 2d 218.
16 A 1982 case.

17 The statement is: When a doctor determines
18 and takes time away from treating patients and go
19 into this separate business of being a
20 professional witness by examining another
21 doctor's patients for the purpose of collecting a
22 fee for testifying against their claims, he is
23 undertaking a side business and he is no longer a
24 healer of the sick in that venture, he has become
25 for the time being a businessman.

1 Do you agree or disagree with that statement?

2 MR. KENNEALLY: Note an objection

3 to the question on the basis of relevancy.

4 Go ahead and answer, Doctor.

5 A. Well, that sounds like a statement some lawyers
6 are making. I'm not a lawyer. I'm a physician,
7 and I told you that I evaluated this individual
8 to review her records and to make opinions on
9 what made the most sense based on those records.
10 And that's what I did.

11 Q. Doctor, do you think that once you undertake
12 (inaudible) doing other doctor's work and being
13 paid to do so by the defendant, that this is not
14 part of medical procedure; it's a business
15 (inaudible), isn't it?

16 MR. KENNEALLY: Jim, Colleen
17 didn't pick up that one. Would you repeat
18 that one?

19 Q. Doctor, don't you think that once you undertake
20 this business of reviewing other doctor's works
21 and being paid to do so by the defendant that
22 this is not part of the medical procedure, it's a
23 business (inaudible). Don't you believe that?

24 A. Not really. Commonly what we do is we review
25 other doctor's records and we make opinions.

1 Sometimes those opinions are for treatment.
2 Sometimes they're for things related to this.
3 Sometimes they're for second opinions. So we
4 commonly review other doctor's records, review
5 diagnostic studies and form medical opinions
6 based on that information.

7 Q. When you say "we," who are you speaking of?

8 A. We as physicians.

9 Q. All physicians do this?

10 A. A lot of orthopaedists I know do it regularly.

11 Q. How many -- I mean what's the percentage of
12 orthopaedic surgeons -- services or physicians
13 that do this type of work? Five per (inaudible)?

14 A. I'm sorry, I didn't get your question. It didn't
15 come through.

16 Q. What is the percentage in your opinion of the
17 number of orthopaedic surgeons who do what you
18 do, evaluate cases for the defense?

19 A. I know of a number of physicians that do,
20 orthopaedists and others.

21 Q. My question was and still is: Do you agree or
22 disagree with that statement? Simply yes or no.

23 A. What statement are you asking me about?

24 Q. The one about whether or not this has become a
25 business for you?

1 A. Well, I, I already told you that, you know, the
2 practice of medicine is a business for me. A
3 practice of medicine is a business for
4 physicians. That's what they do to make a
5 living. This is part of the practice of
6 medicine. I already told you that it's very
7 common for --

8 Q. I --

9 A. -- physicians, including myself --

10 Q. (Inaudible) for a yes or no whether or
11 not (inaudible).

12 A. -- to review records --

13 Q. (Inaudible) you agree (inaudible).

14 A. -- and make opinions.

15 Q. Do you have an answer, Doctor?

16 A. I don't know what your question is.

17 Q. It's the same question I asked before, Doctor,
18 whether or not you agree with the statement
19 contained in Calderon versus Sharkey?

20 A. You know, I'm not lawyer, I don't know how to
21 evaluate legal proceedings.

22 Q. Doctor, (inaudible) just say yes or no, or I
23 won't answer.

24 A. I don't know how to evaluate your question
25 because it sounds like it's a legal question.

1 Q. (Inaudible) correct?

2 THE NOTARY: Repeat, please.

3 Q. You're not going to answer my question, is that
4 correct, Doctor?

5 A. What I've already told you is you're repeating to
6 me a legal proceedings and asking me to evaluate
7 it. I'm not a lawyer.

8 Q. When you review the records of some other
9 doctor's patient, is there a charge and what is
10 that charge?

11 A. Are you referring to what here, this case?

12 Q. I'm referring to any case that you -- when you do
13 this thing that you do where you review the
14 records of doctor's patients, what do you charge
15 to do that?

16 A. Well, I depends on how much records are there.

17 Q. (Inaudible) What did you charge in this case?

18 A. I don't recall what a specific fee was charged in
19 this case, this was some time ago.

20 Q. Doctor, do you charge by the hour or by the case?

21 A. I don't charge by the hour. I would charge for
22 doing the evaluation and writing the report.

23 Q. Well, how do you calculate your fee for the time
24 spent by you without having an hourly rate?

25 A. I just based it on the involvement in the case,

1 the complexity, the amount of records, time
2 spent. Those kind of factors.

3 Q. So when you're hired by Mr. Kenneally or some
4 other defense lawyer, there's an open hiring
5 (inaudible)?

6 A. I'm sorry, you cut off.

7 Q. (Inaudible) hired by Mr. Kenneally or some other
8 defense lawyer, there's just an open hiring? Is
9 that correct?

10 A. I don't know what you mean.

11 Q. Well, do you get to charge whatever you want and
12 justify it at the end?

13 A. I charge what I think is a reasonable for fee
14 what I do, and that's how I do it.

15 Q. And you don't have an hourly rate?

16 A. Not for doing evaluations and reports.

17 Q. In this case what do your records show that you
18 charged for reviewing the records and reviewing
19 the report which are contained in your chart?

20 A. I don't have that in front of me. I don't know
21 what it is.

22 Q. Well, my associate noticed in your chart that the
23 bill for services which you rendered for
24 Mr. Kenneally is not in there. Why not?

25 A. I don't keep bills in my charts.

1 Q. Doctor, you've been deposed by me and many other
2 plaintiff's lawyers before, (inaudible)?

3 A. I've been deposed before.

4 Q. (Inaudible) deposed by me before, haven't
5 (inaudible)?

6 A. Not that I recall specifically.

7 Q. It's fair to say that on each of (inaudible)
8 occasions you've been asked what you charge and
9 how much you are charging for that particular
10 case, isn't that correct?

11 A. Sometimes it's asked.

12 Q. But you do understand that it is absolutely
13 appropriate for me to ask whether or not there's
14 any bias or prejudice on the (inaudible).

15 THE NOTARY: No.

16 MR. KENNEALLY: You broke up
17 again, Jim. Repeat that one.

18 Q. Doctor, you understand that it is absolutely
19 appropriate for me to ask whether or not there's
20 any bias or prejudice based on the financial
21 aspect of your business here? You understand
22 that, don't you, Doctor?

23 A. You can ask the questions you want to ask and
24 I'll try to answer them.

25 Q. Doctor, you understand that the jury's entitled

1 to know whether you have financial interests,
2 interest in this matter?

3 A. Again, I'm not lawyer. I'm not evaluating the
4 legal proceedings here. I'm happy to answer your
5 questions.

6 Q. Okay. Give me a range that you charge for
7 reviewing other doctor's reports to try to refute
8 their findings.

9 A. Well, I think that's kind of a loaded question.

10 Q. (Inaudible.)

11 A. I don't review other doctor's --

12 Q. (Inaudible.)

13 A. Oh, listen, I don't review other doctor's charts
14 in order to refute their findings. I review
15 records in order to make decisions and opinions
16 based on medical information. And it is what it
17 is. And I would charge a range that could be
18 anywhere from around \$500 to anywhere around
19 \$2,500 or more, depending on what's all involved.

20 Q. Doctor, in other depositions you've answered that
21 question 500 to 3,000.

22 A. Well, \$2,500 or more. Could be 3,000, if that's
23 involved. I just said \$2,500 or more.

24 Q. (Inaudible) you first took on this case for
25 Mr. Kenneally, you knew that it was likely that

1 at some point you'd be deposed, didn't you?

2 A. No.

3 Q. Doctor, how many times are you not deposed when
4 you do a review of files and reports for the
5 defense?

6 A. I would say the majority of the time.

7 Q. You don't go to deposition the majority of the
8 time?

9 A. I think so. I'm not sure of the numbers. I'm
10 not sure of a percentage or anything.

11 Q. You were, you were told that your deposition was
12 going to be taken in this case, correct?

13 A. Well, sometimes depositions are scheduled but
14 they're, they are canceled, so I don't, I don't
15 know what to make of that.

16 Q. (Inaudible) this a lot quicker if you just answer
17 my question, instead of your question.

18 When it was indicated to you that your
19 deposition would be taken in this case, you knew
20 (inaudible) was going to ask you how much you
21 charged for evaluating the treating doctor's
22 work, didn't you?

23 A. Not necessarily.

24 Q. It's been asked to you in every deposition you've
25 ever taken, hasn't it?

1 A. No.

2 Q. Doctor, I have numerous transcripts of cases in
3 which you've testified in and I'll enumerate them
4 for you, and in every one of them you were asked
5 this question and in every one of them you
6 resisted. You want me to name them?

7 A. I can't make that decision for you.

8 Q. Pardon me?

9 A. I can't make that decision for you.

10 Q. Well, in the depositions which you've -- which I
11 have conducted with you, Debra Laheaf versus Ned
12 Shamberger and Frank Edgars versus Bradley
13 Brandonberg, you were definitely asked these
14 questions by me. Do you recall that?

15 A. No, I don't.

16 Q. Is there some reason you don't want the jury to
17 know how much you charged in these instances?

18 MR. KENNEALLY: Objection to the
19 nature of that question.

20 A. I just told you a range that I charge.

21 Q. (Inaudible) to just testify what (inaudible)
22 charge for writing these reports, these reviews
23 for defense attorneys? Why don't you just tell
24 us and (inaudible) the bill in your, in your
25 file?

1 MR. KENNEALLY: Jim, first of all,
2 he's asked -- answered your question by
3 giving you a range of between 500 and
4 \$2,500 or more, which it sounds like, and I
5 don't know what you have in front of you as
6 far as other testimony's concerned, but it
7 sounds like it's consistent with that.

8 I don't know why you continue to
9 ask the questions that, that he appears to
10 have answered for you to the best of his
11 recollection.

12 He's also said that he doesn't
13 keep the bills in his files.

14 MR. BURKE: And I'm asking him why
15 he doesn't do so.

16 Q. (Inaudible) don't want the jury to know in each
17 case how much you charge?

18 A. I don't keep my bills in my own patient's files.
19 It's just not -- there's no reason for us to do
20 it.

21 Q. Doctor you're a businessman (inaudible)?

22 A. You cut out again. You have to ask the question
23 again.

24 Q. Doctor, you are a businessman, are you not? You
25 have a business there, don't you?

1 A. Well, I think I fall in the category of most
2 physicians who aren't very good businessmen. I'm
3 a physician.

4 Q. You're incorporated (inaudible)?

5 A. Well, most doctors are.

6 Q. I'm not asking you -- are you incorporated?

7 A. My -- it's a professional association.

8 Q. You pay corporate taxes, don't you?

9 A. If my accountant tells me to, I do.

10 Q. To do so you'd have to keep records reflecting
11 how much you charge for these kind of
12 evaluations, wouldn't you?

13 A. There's no reason to keep track of that to pay
14 taxes.

15 Q. You don't, you don't have to take -- you don't
16 have to take note of money you're making in this
17 business to declare it, to declare taxes?
18 (Inaudible) on, Doctor.

19 A. Not that I'm aware of.

20 Q. You're telling the ladies and gentlemen you're
21 trying to be fair here, right?

22 A. Well, I'm trying to answer your questions. I'm
23 not an accountant. I feel like you're asking me
24 accountant questions. I'm not an accountant.

25 Q. You're not a lawyer, a tinsmith. I'm asking you

1 whether or not as a man who runs his business
2 whether -- why you do not keep records reflecting
3 how much you charge?

4 A. Well, there's no reason for me to keep records
5 that I don't need, to practice the way I
6 practice.

7 Q. Okay. So the jury can assume in this case that
8 you charged \$2,500 or more for reviewing these
9 records, correct, Doctor?

10 MR. KENNEALLY: Now, I'm going to
11 object to that question. That was not how
12 he answered the question, and I don't think
13 that's an accurate assumption that can be
14 made.

15 MR. BURKE: (Inaudible.)

16 MR. KENNEALLY: He testified --
17 Jim, he testified that his range is between
18 500 and \$2,500 or more. He said it a
19 couple of times now. And it appears that
20 from whatever you're looking at in Florida,
21 that is what he's testified to in, in the
22 past.

23 So I mean, you continue with this
24 line of questioning --

25 MR. BURKE: Okay. Let me just

1 wrap this up, Terry. Thank you very much
2 for your (inaudible).

3 Q. How much do you charge for a deposition?

4 A. I charge \$900 an hour for deposition.

5 Q. And the \$900 an hour, does that include the
6 (inaudible) time you have with the attorney
7 beforehand?

8 A. You cut out again.

9 Q. Does that included the preparation time that you
10 spend with the attorney before the deposition?

11 A. If that occurs, yes.

12 Q. Prior to today's deposition did you prep with
13 Mr. Kenneally?

14 A. Yes.

15 Q. How long did that take?

16 A. Approximately a half an hour.

17 Q. Now, my associate Donna Vozar was present --
18 wasn't present for that, was she?

19 A. No.

20 Q. In fact, she was sitting in your waiting room
21 when you, when you had Mr. Kenneally come in and
22 you didn't ask her to come in?

23 A. I don't know if she was out there or not.

24 Q. So when you met with Mr. Kenneally prior to your
25 testimony, did you discuss your testimony with

1 him?

2 A. We discussed my reports and I told him what was
3 in the reports and what my opinions were.

4 Q. Did you tes, did you discuss the testimony of
5 Dr. Mathews, Dr. Zaas and Dr. Scarcella what the
6 jury (inaudible) heard?

7 A. He gave me a brief overview of those testimonies.

8 Q. So you had the advantage of knowing what they
9 said in their testimony prior to you testifying
10 here, correct?

11 A. I don't know all they said in their testimony.
12 It was a brief overview, and it wouldn't affect
13 what I'd say anyway. I'm -- I've already wrote
14 reports of what my opinions are and you had them
15 already.

16 Q. You're telling me that Mr. Kenneally, being the
17 bright attorney he is, didn't give you a complete
18 overview of what Dr., Dr. Mathews and Dr. Zaas
19 said in their testimony? Is that what you're
20 saying to me?

21 A. I already told you he gave me a brief overview.

22 Q. Now, in addition to reviewing records and in
23 addition to testifying for the defendant in this
24 deposition, you also prepared a report for
25 Mr. Kenneally to use in this case (inaudible)?

1 A. Correct.

2 Q. You charge separately for the report?

3 A. Well, I would charge separately for each report.

4 There are two reports, so I would have charged
5 for each report.

6 Q. And is -- did you submit a bill for the charge
7 for those reports?

8 A. I would have, yes.

9 Q. Were you paid for them?

10 A. I'm not sure. I expect I, I would have been.

11 Q. You're not sure whether or not you've been paid
12 in this case, is that (inaudible), Doctor?

13 A. I personally don't know that, no.

14 Q. Do you want to, do you want to give the ladies
15 and gentlemen of the jury a range for a report?
16 Is that up to \$2,500 also?

17 A. Well, I told you the, you know, for doing the
18 initial evaluation report, it would be in that
19 range. The second report would be in that range
20 also.

21 Q. So it could be up to \$5,000 for these reports,
22 right? 25 for each? 2,500 for each, is that
23 correct?

24 A. I don't think it was that much.

25 Q. Well, we don't know because you won't supply us

1 with that information, isn't that correct,
2 Doctor?

3 MR. KENNEALLY: You know, let me
4 note an objection. Jim, if you'd wanted
5 that information, you could have subpoenaed
6 it prior to the deposition. You've known
7 for a period of time that this deposition
8 was scheduled. You didn't issue a
9 subpoena. You've asked the Doctor this
10 question now over and over again. The
11 report and the review of records is part of
12 that 500 to \$2,500 or more charge that he
13 referred to, and you're going back into the
14 same subject matter.

15 MR. BURKE: (Inaudible).

16 MR. KENNEALLY: I'm going to, I'm
17 going to ask that that, that all of this
18 testimony be stricken. It's cumulative.
19 It's repetitive. And it's getting us
20 nowhere with respect to the, the
21 continuation of this deposition.

22 MR. BURKE: (Inaudible)
23 disrespect, Mr. Kenneally. He has been
24 subpoenaed (inaudible) he still has not
25 complied.

1 Q. Isn't that correct, Doctor?

2 MR. KENNEALLY: Well, again, I
3 want to note an objection. He was not
4 subpoenaed in this case. I don't know what
5 experience you've with Dr. Gordon
6 previously. It appears that you've had
7 some based on, based on those cases you
8 mentioned. But in this particular case,
9 there was no subpoena issued, Jim, and,
10 consequently, for you to keep badgering him
11 about this information is improper. It's
12 cumulative. It's repetitive. And it's
13 getting us nowhere. And I'm going to ask
14 that all of this testimony be stricken.

15 MR. BURKE: My client and the jury
16 are entitled to know the financial aspects
17 of this case and his interest in it. I
18 don't need to be reprimanded about
19 badgering. I think if he can just simply
20 answer questions, we can move on,
21 Mr. Kenneally.

22 MR. KENNEALLY: Mr. Burke, he's
23 answered the question. He's given you a
24 range --

25 Q. Doctor, how many defense medicals have you done

1 so far in 2005?

2 A. I don't recall a number off the top of my head.

3 I'd have to look it up.

4 Q. Well, how many do you a month?

5 A. Well, independent medical exams, plaintiff and
6 defense, it's been averaging over the years about
7 eight a month.

8 Q. (Inaudible) medical evaluations have you done in
9 the last -- in 2005?

10 A. I don't recall the exact number.

11 Q. Less than five, correct?

12 A. I'm sorry?

13 Q. Less than five, correct?

14 A. What question are you asking me again?

15 Q. The same question I asked you before. How many
16 plaintiff's evaluations have you done in 2005?

17 A. I've done some. I don't know how many they were.

18 Q. Isn't it a fact that you do two to three a week
19 of, of defense evaluations?

20 A. Oh, of independent medical exams, it can
21 average -- well, if it's eight a month and
22 there's four weeks in a month, I mean, it might
23 be two a week. But then again, so that's
24 averaging out over the years.

25 Q. So we're talking about at least (inaudible) a

1 month, is that right?

2 A. We lost you.

3 Q. That's at least eight a month that you do, is
4 that correct?

5 A. I already told you. I said of independent
6 medical exams that I do --

7 Q. You do eight a month?

8 A. It's been averaging about eight a month.

9 Q. Doctor? Doctor?

10 A. I'm here.

11 Q. Is it eight a month, yes (inaudible)?

12 A. Well, I can only tell you that over the years
13 it's been averaging about eight a month. I just
14 said that.

15 Q. How many depositions have you participated in in
16 2005?

17 A. I don't know the number off my head. I'd have,
18 have to look that up. I, I can't tell you a
19 specific number for that time period.

20 Q. (Inaudible) at every deposition and you never
21 bring the information, do you, Doctor?

22 A. Well, I can tell you what it's averaged over the
23 years. That's what I've told you before, I
24 think.

25 Q. And that's also eight a month?

1 A. No. Of depositions, it's been about two a month
2 or so.

3 Q. And how many evaluation examinations in 2004?
4 Would that have been the same numbers?

5 A. I don't recall those numbers.

6 Q. So (inaudible) if you do over 100 of these things
7 every year, right?

8 A. I can't say it's that amount. I don't recall the
9 exact numbers off the top of my head.

10 Q. Eight a month, right, times 12, and sometimes
11 it's more than that?

12 A. Could be less than that.

13 Q. So that would be about \$500,000 a year, is that
14 correct?

15 A. Of what?

16 Q. \$500,000. If you, if you, if you do 500 -- if
17 you do \$5,000 per case times 100 and it's
18 \$500,000, isn't it?

19 A. I can't say that's the amount.

20 Q. Doctor, how did you come to be hired to evaluate
21 (inaudible) Clements in this case? And was the
22 request made by telephone or by letter?

23 A. I don't recall specifically. There's a letter
24 that we just talked about. It may have been via
25 letter.

1 Q. Is that the initial letter that was sent to you,
2 or was the letter sent to you prior to that?

3 A. Oh, I don't recall. This was last year.

4 Q. Well, you haven't removed anything from your file
5 so that we wouldn't see it, have you, Doctor?

6 A. Not that I'm aware of.

7 Q. Now, you (inaudible) Dr. Mathews, Dr. Zaas and
8 Dr. Scarcella have already testified to the jury
9 in this case (inaudible), Doctor?

10 A. If you're asking me if the other doctors have
11 testified, I'm aware of that.

12 Q. Were you furnished with their testimony?

13 A. No.

14 Q. Do you still see patients (inaudible) you
15 examined for defense lawyers or Workers' Comp
16 reviews?

17 A. I'm sorry, repeat your question.

18 Q. You see patients on your own other than those
19 you, you examine for defense lawyers and for the
20 Workers' Comp, Comp Bureau?

21 A. Yes, I do.

22 Q. You say that those patients that you treat
23 represent a minority percentage of your practice?

24 A. Of people I see in my office in the week, the
25 majority of the people I see are my own patients.

1 Q. So what percentage of the, of the, of your
2 practice is with people you see in your office
3 that you treat?

4 A. Well, the majority of the people I see in my
5 office are my own patients. People I treat.

6 Q. Is that 51 percent?

7 A. It's a majority.

8 Q. Okay. When you do, do you routinely take a
9 history?

10 A. Yes.

11 Q. You ask them what happened to them and ask about
12 their complaints and their problems?

13 A. Correct.

14 Q. Ask about their past treatment?

15 A. Yes.

16 Q. And, and if they've had any subsequent accidents,
17 do you ask them that?

18 A. We ask relevant history.

19 Q. Do you examine them?

20 A. Yes, if they're here.

21 Q. And do you -- well, these are patients that come
22 to see you to be treated.

23 What does an orthopaedic exam consist of?

24 A. Well, it consists of an evaluation. It can be
25 orthopaedic, neurologic. Those kind of things.

1 Q. Okay. When the patient comes in, do you do a
2 neurologic examination of the body?

3 A. It depends on what their problem is. We do, you
4 know, problem-related evaluations.

5 Q. Does that included looking at the individual,
6 palpating various (inaudible)?

7 A. It includes palpating various areas, yes.

8 Q. And you do (inaudible) certain types of exams?

9 A. We do exams that are pertinent to the evaluation.

10 Q. The tests, right?

11 A. If needed, yes.

12 Q. (Inaudible) patient walk on her heels and toes?

13 A. Sometimes.

14 Q. (Inaudible) walk on her heels and toes?

15 A. Sometimes.

16 Q. The reason for that is to see if there's good
17 strength and good balance, isn't that right,
18 Doctor?

19 A. That can be a part of it.

20 Q. You palpate your patients? Tell them to tell you
21 where it hurts and then you palpate?

22 A. Yes.

23 Q. And you look for range of motion?

24 A. That's part of it.

25 Q. Do you examine for reflexes for sensation?

1 A. Yes.

2 Q. Now, do you feel the spine looking for scoliosis?

3 A. You can. You can also see it visually.

4 Q. And that's a curvature of the spine (inaudible)
5 curvature of the spine? Is that what you
6 testified for Mr. Kenneally?

7 A. It's, if it's subtle, sometimes it can only be
8 seen on x-rays.

9 Q. Now, do you have the patient bend over and touch
10 his or her ankles and you examine their lower
11 extremities, right?

12 A. It depends on what we're looking for.

13 Q. How -- do you see if their reflex, their reflexes
14 and strength are intact, don't you?

15 A. Again, it would depend on what we're evaluating
16 for.

17 Q. You're looking for maladies of the neuro, of a
18 neurological function, aren't you?

19 A. It depends again what we're evaluating the
20 individual for.

21 Q. Did you -- and you do straight leg tests?

22 A. Again, it depends on what we're evaluating the
23 individual for.

24 Q. Doctor, what color are Justin Clements'
25 (inaudible)?

1 A. What was your question again?

2 Q. What color are Justin Clements' eyes?

3 A. I can't tell you the color of my patients own
4 eyes. I don't know.

5 Q. What color is her hair?

6 A. I couldn't recall the pat -- the color of my own
7 patients hair, I don't know.

8 Q. How tall is she?

9 A. I don't know.

10 Q. How much does she weigh?

11 A. Again, I don't know the color of my own patients
12 hair. I don't know the color of her hair.

13 Q. Describe the area of lacerations and abrasions
14 Justine suffered on her right flank.

15 A. Well, they were described as being up to six
16 in --

17 Q. Describe them.

18 A. -- six in number and about three inches in
19 length.

20 Q. Can you tell us what the, the scars looked like
21 after revisionary surgery?

22 A. I didn't see them personally.

23 Q. Well, will she need additional surgery?

24 A. I think you need to ask Dr. Scarcella that.

25 Q. Will her scar be permanent?

1 A. Oh, I think the scar's permanent. I think that's
2 pretty fair to say.

3 Q. Doctor, what is the term secondary gain issues
4 mean to you?

5 A. Well --

6 Q. Secondary gain issues?

7 A. Secondary gain means typically somebody's -- your
8 partner's here having a problem with her cell
9 phone.

10 MR. BURKE: (Inaudible) strike.

11 A. Okay. We're ready now.

12 Secondary gain can be when a patient augments
13 symptoms or gives history that may not be
14 accurate in order to make things look more
15 beneficial for them.

16 Q. So if you've testified before that they don't
17 give a fully authentic effort in an effort to
18 make things look worse than they are or better
19 for them, right?

20 A. That can be possible.

21 Q. Have you testified to that before?

22 A. I don't recall specifically, no.

23 Q. If I told you that, that you, that you testified,
24 is it very well understood in the medical
25 community and in my training that when there is

1 secondary gain issues, that individuals will
2 often not give a fully authentic effort in an
3 effort to make things look worse than they are,
4 you don't recall saying that?

5 A. Not specifically. But I think is it fair that
6 it's well understood and it is taught in medical
7 school that some people do pursue issues in
8 regards to secondary, secondary gain, and that
9 does happen.

10 Q. You're not saying that Justine Clements had
11 (inaudible) secondary gain issues, are you, in
12 this case?

13 A. Well, you asked the question. It's possible.
14 Because that is one of the issues that come up
15 here, that she was evaluated by orthopaedic spine
16 specialists three weeks after the accident --

17 Q. Did you find in that report any mention of
18 secondary gain --

19 MR. KENNEALLY: Jim, let him, let
20 him finish the question that you've
21 previously asked him.

22 MR. BURKE: Well, let him answer
23 the question and (inaudible) responsive. I
24 object to the fact that he answers
25 questions with his own questions.

1 MR. KENNEALLY: Well, let him
2 finish that question, then you can put
3 another question to him.

4 You brought up the subject of
5 secondary gain. We never mentioned it.

6 Q. Did you see that in any statement or any report
7 from the Spine Clinic?

8 A. Well, I wasn't finished making my first answer to
9 your question. That it is possible that in light
10 of what the records do show, that she was
11 evaluated by the orthopaedic spine specialists
12 three weeks after the accident and diagnosed as
13 having a soft tissue neck strain. There was no
14 complaints or findings in the area of the
15 thoracic spine.

16 The issue is then later she shows up with
17 different complaints that aren't consistent with
18 that and they're variable over time. So that can
19 be consistent with secondary gain.

20 Q. Doctor, (inaudible) Justine Clements of having
21 secondary gain issues?

22 A. Repeat your question. I lost the first part.

23 Q. Doctor, are you accusing Justine Clements of
24 having secondary gain issues; yes or no?

25 MR. KENNEALLY: Well, I want to

1 note an objection because that issue was
2 never brought up in our, the direct
3 testimony. It was never addressed in any
4 report that was furnished. This is an
5 issue now that you've brought up to the
6 Doctor.

7 Go ahead and answer, Doctor.

8 A. Well, I think, you know, since you did bring up
9 the issue and the jury's listening to this, that
10 that's something the people need to realize.

11 Q. Answer the question yes or no, please, Doctor.

12 A. Well, this is a situation where it's certainly a
13 possibility because the more hurt she is, the
14 more money she gets. I think that's pretty clear
15 in this case.

16 Q. The more, the more you testify, the more money
17 you get, is that correct, Doctor?

18 MR. KENNEALLY: Objection.

19 A. Well, I am answering your questions.

20 Q. Talk to (inaudible.)

21 A. As long as you ask question, I'll answer them.

22 Q. You didn't even talk to this lady, did you?

23 A. No, I did not.

24 Q. So she -- you can't tell the ladies and gentlemen
25 of the jury that you believe that when you talked

1 to her, she had secondary gain issues? Isn't
2 that a fact, Doctor?

3 A. I didn't talk to her. What I'm talking about --

4 Q. Did you review the records of Dr. Monique
5 Richardson?

6 A. Well, let me finish the statement. What I'm
7 talking about is the records I did review.

8 Q. Doctor, you did not even talk with this girl, did
9 you?

10 A. You already asked me that question. I said no, I
11 didn't.

12 Q. Fine.

13 Did you review the records of Dr. Monique
14 Richardson?

15 A. Not that I recall.

16 Q. Do you know who she is?

17 A. No.

18 Q. You don't know that she's the doctor that, that
19 treated Justine between MetroHealth and her
20 seeing Dr. Mathews?

21 A. Which Doctor are we talking about?

22 Q. I'll do it again. You have a hearing problem.
23 Dr. --

24 MR. KENNEALLY: Now, now, let,
25 let, hold it, Jim. Let me object to that

1 question.

2 Q. (Inaudible.)

3 MR. KENNEALLY: You're, you're,
4 you're in Florida. We're here. We're
5 doing this deposition. There is problems
6 with the transmission of your voice over
7 the telephone. Repeatedly you're getting
8 cut out. I don't know the reason for it.
9 But don't accuse the Doctor of having a
10 hearing problem, because everybody in this
11 room, myself, the court reporter, the
12 videographer, probably your associate, have
13 missed things that you've said and you've
14 had to repeat them.

15 Q. Did you review the records of Dr. Monique
16 Richardson, Doctor?

17 A. I have to say I'm not aware if I did.

18 Q. Well, you didn't mention her in your report and
19 you didn't remember -- mention her in your
20 testimony, did you?

21 A. If I haven't seen the record, then I don't know
22 to mention it, so.

23 Q. (Inaudible.)

24 A. What record are you talking about? What facility
25 is this?

1 Q. It's her treating physician. Her family
2 physician. Did you review her records --

3 A. No, I didn't.

4 Q. -- or no?

5 A. I did not.

6 Q. Doctor --

7 A. I'd be happy to.

8 Q. Doctor, they weren't, they weren't furnished to
9 you by Mr. Kenneally when he gave you the other
10 stuff?

11 A. I don't see that I have them.

12 Q. Doctor, it's fair that you never laid eyes on
13 Justine Clements and you certainly never laid
14 hands on her, correct?

15 A. I didn't examine her. I already told you that.

16 Q. Tell the ladies and gentlemen of the jury what
17 subjective complaints and objective findings are.

18 A. All right. Subjective complaints are things the
19 patient tell you in a history, complaints about
20 how they're feeling. They're things you can't
21 confirm.

22 Objective findings are things that you can
23 look at, touch and feel.

24 Q. And with objective findings sometimes arise when
25 you palpate a patient's back, right?

1 A. Not really.

2 Q. It doesn't? So you can't tell they're spasm by
3 palpating?

4 A. Spasm can be a very subjective thing. Sometimes
5 normal muscle tone is interpreted as spasm. I
6 wouldn't hang my hat on spasm as a finding that
7 means much.

8 Q. Can you find spasm (inaudible) palpation?

9 A. I can.

10 Q. You can?

11 A. Yes.

12 Q. Other doctors can but you can't, is that right?

13 A. I can. Some of the doctors can if they're
14 trained properly.

15 Q. Oh, if they're as good as you, Doctor, is that
16 what you're saying?

17 A. Oh, I think there's a lot of good doctors out
18 there.

19 Q. You don't have a problem with Dr. Zaas, do you?

20 A. No, he's a good guy.

21 Q. Good doctor too, isn't he?

22 A. I think so.

23 Q. Doctor, you don't do surgery anymore, do you?

24 A. No, I don't.

25 Q. How long has it been?

1 A. Oh, it's been a couple years.

2 Q. In reviewing the records, did you learn how many
3 visits Justine had with Dr. (Inaudible)?

4 A. Lost your question again.

5 Q. In reviewing the records, did you learn how many
6 visits Justine had with Dr. Mathews?

7 A. I would have to go back and count them. I don't
8 recall off the top of my head.

9 Q. Would 18 sound correct?

10 A. I don't know. I haven't counted them recently.

11 Q. Did you, did you read his office notes, as well
12 as his report?

13 A. Yes, I reviewed them.

14 Q. Did you review the office notes?

15 A. I reviewed the office notes also.

16 Q. And you noted that he saw her from 6-7-01 to
17 5-27-04, is that correct?

18 A. I would have to look at the records to remember
19 the dates. I don't remember the dates off the
20 top of my head.

21 Q. And during that whole period of time he saw her,
22 he evaluated her every time she came in, didn't
23 he?

24 A. Yes.

25 Q. And he examines her every time she came in,

1 didn't he?

2 A. Yes, he did.

3 Q. And he took a history from her every time she
4 came in?

5 A. Yes.

6 Q. 18 occasions, is that correct?

7 A. If that's the number, that's fine.

8 THE VIDEOGRAPHER: Two minutes of
9 tape.

10 Q. Doctor, do you realize that Dr. Zaas in his
11 testimony does not agree with your assertion that
12 injury -- soft tissue -- all soft tissue injuries
13 should resolve themselves in six to eight weeks?
14 Do you know that, Doctor?

15 A. Well, if that's what he says. I'm not sure what
16 criteria he uses, but of the soft tissue injuries
17 I'm talking about in this case, I think it's fair
18 that it should have resolved in six to eight
19 weeks.

20 Q. So when Dr. Zaas said she didn't have the kinds
21 of injuries to stamp a certain time frame on
22 them, a broken side bone, for instance, we know
23 that it takes three to six months to heal. I
24 mean every broken thigh bone is about the same
25 thing. Soft tissue and spinal injuries can run a

1 very variable course that is different from
2 person to person.

3 Do you agree with that assessment of
4 Dr. Zaas?

5 A. Well, it sounds like we're talking about a bunch
6 of different conditions, all the ones, and we
7 have to separate them out.

8 Q. Do you agree with that assessment by Dr. Zaas?

9 A. Well, I'm not sure what assessment you're talking
10 about because it sounds like you're making
11 statements now.

12 Q. Is it different from person to person; yes or no?

13 A. The issue is not a soft tissue strain injury that
14 involved her neck, that it should have healed in
15 six to eight weeks; that's what we expect.

16 Q. Doctor, would you agree with Dr. Zaas when he
17 says in his testimony and that this business
18 about six weeks, we know that soft tissue
19 spraining injuries to the spine in 80 to 85
20 percent of the cases heal within six weeks. I
21 agree with that 100 percent. My problem is that
22 I have been, ever since I've been into practice,
23 which is much longer than you, what you do with
24 the other 15 to 20 percent of the people that the
25 family doctor or the general practitioner can't

1 handle and it doesn't get better, they come to
2 us. They come to orthopaedic surgeons. So what
3 do I see? I see that 15 to 20 percent of soft
4 tissue injuries that didn't heal. Now, I've seen
5 soft tissue injuries that go on for a --

6 A. Yes. In some cases these are problem cases that
7 just don't heal real well and it takes them a
8 long time. I disagree with that six weeks across
9 the board.

10 MR. KENNEALLY: I want to note an
11 objection. You were quoting from Dr. Zaas'
12 deposition testimony, Jim, with the
13 exception that Dr. Zaas didn't say "which
14 is more than you." That's an ad lib by
15 you. I'm going to move that that be
16 stricken.

17 Q. Dr. Zaas has been a Doctor longer than you have?

18 MR. KENNEALLY: The statement that
19 you included as part of that quote from Dr.
20 Zaas.

21 THE VIDEOGRAPHER: Off the record.

22 MR. KENNEALLY: We're off the
23 record. The tape is not playing. He's got
24 to change the tape.

25 - - - -

1 (Thereupon, a discussion was had off
2 the record.)

3 - - - -

4 THE VIDEOGRAPHER: Back on the
5 record.

6 Q. Doctor, you will agree that Dr. Zaas has been an
7 orthopaedic surgeon longer than you, isn't that
8 correct?

9 A. Yes, it is.

10 Q. Doctor, are soft, are soft tissue injuries
11 subject to exacerbation and remission?

12 A. No. Once they heal, they heal.

13 Q. Are you saying, Doctor, that soft tissue injuries
14 are not subject to exacerbation and remission;
15 yes or no?

16 A. I think that you can have a new injury on top of
17 a previous injury, what some people might call an
18 exacerbation, but I think it would be a new
19 injury.

20 Q. Doctor, you mean, Doctor, that when Justine
21 Clements -- when Dr. Mathews and Dr. Zaas both
22 said that she had good days and bad days, that
23 that's not exacerbation and remission?

24 A. Not of her soft tissue injury because that would
25 have resolved by the time they saw her.

1 Q. Now, Doctor, they saw her for over two
2 (inaudible) and every time when she came in and
3 made her complaints in person, with them touching
4 her hands-on, she complained of an ongoing
5 problem. Are you aware of that, Doctor?

6 A. I understand she had complaints when they saw
7 her. I don't think those complaints related to
8 this accident.

9 Q. Doctor, isn't it a fact that the first six to
10 eight weeks of a soft, a soft tissue injury is
11 acute and thereafter there are different periods,
12 extending periods?

13 A. No.

14 Q. So Dr., Dr. Zaas would be incorrect when he
15 testified in this trial that anything after six
16 months is chronic, that's, that's just a doctor's
17 medical term for it? He would be incorrect, is
18 that correct?

19 A. Well, it wouldn't be a soft tissue strain,
20 because those resolve in six to eight weeks.

21 Q. So if Dr. Zaas testified prior to you in this
22 case that this was a soft tissue injury and that
23 they didn't resolve themselves in six to eight
24 weeks and that he says that that's not always the
25 case, but you don't agree with him about that

1 either, do you?

2 A. We'll, I've told you what I think and you ask

3 Dr. Zaas, as you already did, is so --

4 Q. He's already testified to the jury and told them
5 what he thinks.

6 A. Okay. So, fine.

7 Q. Are you saying that there's no -- and you're
8 saying that the injuries suffered by

9 Justine Clements are not chronic in this case?

10 A. I don't think she sustained any permanent injury
11 as a result of the motor vehicle accident except
12 the scar.

13 Q. Dr. Zaas testified that he doesn't (inaudible)
14 but he knows that they were prolonged.

15 THE NOTARY: Broke up.

16 Q. The only way he could tell, he says, I would have
17 to meet her at least once a year for ten years.

18 But he does not say that these injuries were
19 resolved and aren't resolved when he examines her
20 on the 29th. Do you realize that, Doctor, that
21 that's his testimony?

22 A. I'm not trying to testify for Dr. Zaas. What I'm
23 trying to tell you is that she had a soft tissue
24 neck strain that was diagnosed by the orthopaedic
25 spine specialist in the MetroHealth Clinic, Spine

1 Clinic. That's an injury that should resolve in
2 six to eight weeks.

3 Q. Dr. Mathews has testified that Justine's neck and
4 back problems are chronic, and he says they're
5 permanent. But you, of course, disagree with
6 that? Is that (inaudible) Doctor?

7 A. I think the curvature and the degenerative
8 changes she has in her spine is chronic and
9 permanent but it's not related to the car
10 accident.

11 Q. Dr. Mathews has testified that Justine's injuries
12 in this accident in her neck and back, related
13 neck and back problems are chronic and permanent.
14 You do not agree with him, is that correct,
15 Doctor?

16 A. I've already told you, I do believe that she does
17 have a chronic problem in her back which consists
18 of a spinal curvature and the degenerative
19 disease that was there before the accident.
20 That's a chronic problem. It was chronic before.
21 It's chronic afterwards. It wasn't caused by the
22 accident.

23 Q. (Inaudible) prior to this in any of your reports?

24 A. We lost your question.

25 Q. Dr. Mathews examined Justine 18 times. He, in

1 fact, knows the color of her eyes and her hair.
2 He's seen the pain in them. You haven't, have
3 you?

4 MR. KENNEALLY: I'm going to
5 object to that question as being
6 argumentative.

7 The Doctor has testified on four
8 or five occasions he did not examine the
9 plaintiff in this case, he merely reviewed
10 the records.

11 Q. Dr. Zaas testified that he did a complete exam of
12 Justin prior to writing his report. You didn't,
13 isn't that correct?

14 A. I've already told you I didn't exam her, but I
15 did review Dr. Zaas' evaluation.

16 Q. Do you recall Dr. Mathews' final diagnosis and
17 prognosis?

18 A. I'd have to look at it at this point.

19 Q. Do you agree that he said it was -- she had a
20 cervical dorsal strain with headaches, acute
21 lumbosacral strain, a concussion, one to two
22 millimeter central subligamentous disc herniation
23 at T11-12, minimal disc bulging at T8 and 9, and
24 laceration scarring to the right flank? Would
25 you agree that that was the -- his diagnosis?

1 A. I lost your last statement. I couldn't hear the
2 last statement.

3 Q. Laceration and scarring to the right flank.
4 Would you agree that that was his diagnosis?

5 A. I agree that she had laceration and scarring to
6 the right flank.

7 Q. But you don't agree with anything else he says,
8 is that right, Doctor?

9 A. I've already told you what my opinions are. I
10 think she had a neck strain.

11 Q. He said the prognosis is guarded.

12 A. I already told you that by the time he saw her
13 that her symptoms from this car accident had
14 resolved.

15 Q. Doctor, do you have any documentation that the
16 disc bulging T8 and T9 and the disc herniation
17 C11-C12 were present prior to 4-6 of '01, the
18 date of the accident?

19 A. Well, I already told you that I looked at the
20 plain films that were done the day of the
21 accident and they show degenerative changes that
22 would be accompanying those discs that were there
23 then. So they would have been there beforehand.

24 Q. Dr. Zaas also looked at the plain films and the
25 MRI scan and he doesn't agree with you. Do you

1 know that, Doctor?

2 A. Well, I don't know what he said about that.

3 Q. Doctor, in the report that the defendant's
4 attorney, that you gave to the defendant's
5 attorney, you did not give an opinion to a
6 reasonable degree of medical certainty that the
7 disc herniation and disc bulging are not related
8 to the motor vehicle accident, did you? In fact,
9 you said, and I quote, they are most likely not
10 related to the MVA and to the motor vehicle
11 accident, right?

12 A. No. I sent a second report that said I thought
13 those findings are not related.

14 Q. Doctor, what's degeneration?

15 A. Degeneration can be a form of arthritis.

16 Q. That's basically arthritis?

17 A. It can be, but it can be other things, too.

18 Q. Like a natural deterioration over time?

19 A. That can be part of it.

20 Q. And how about disc dehydration?

21 A. That can be a part of degeneration.

22 Q. Is that a result of the degenerative process?

23 A. It can be.

24 Q. Is that when the intravertebral disc loses its
25 water content and becomes dehydrated?

1 A. It can as a part of degeneration.

2 Q. Doctor. Doctor, you would agree that the medical
3 literature, literature recites that it can be
4 dehydrated due, due to an acute (inaudible)
5 incident as a motor vehicle accident? You agree
6 with that, don't you?

7 A. Your last question was all broken up.

8 Q. Doctor, do you agree with the medical literature
9 which recites that a disc, that a disc can be
10 dehydrated due to an acute traumatic incident
11 such as a motor vehicle accident?

12 A. What literature are you talking about?

13 Q. Medical literature, Doctor.

14 A. What medical literature?

15 Q. Medical literature that's recited about disc
16 dehydration?

17 A. Specifically what?

18 Q. You've never heard that?

19 A. Not seen it in my practice.

20 Q. Does the MRI in this case show a loss of disc
21 height?

22 A. I don't believe there was much loss of disc
23 height. There was a little bit --

24 Q. (Inaudible) I show a loss of (inaudible) height?

25 A. There was a mild amount and that was seen on the

1 plain film also.

2 Q. Where is that stated in the report?

3 A. It's a part of the degeneration. That's -- I --

4 Q. Where is it stated that (inaudible) a loss of
5 disc height, Doctor?

6 A. Oh, I state in my report that there were
7 degenerative disc changes. That's a part of
8 degenerative disc change.

9 Q. Dr. Bright doesn't say that, does he? The
10 radiologist who read the report, who did the
11 scan, he doesn't say that?

12 A. I believe he did mention early degenerative
13 changes, didn't he?

14 Q. (Inaudible) say disc, loss of disc height?
15 That's what I'm asking you specifically, if
16 that's in there?

17 A. Well --

18 Q. Doctor, based on your training --

19 A. -- he's talks about early disc dehydrations and
20 that's part of degeneration, I would agree that.
21 There was --

22 Q. (Inaudible).

23 A. I think with all agree that there was
24 degeneration of the discs on that MRI.

25 Q. Doctor, isn't it true that you need both loss of

1 disc height and dehydration to identify or show
2 that there's a degenerate disc problem? You need
3 both of them?

4 A. No. That's not accurate.

5 Q. Was there any records of, anything in the records
6 that you reviewed that she was in a prior
7 traumatic situation, like another car accident?

8 A. I don't have any records from beforehand.

9 Q. Did you ask for any records from beforehand?

10 A. I didn't specifically ask for them, no.

11 Q. All the records you reviewed was the people who
12 actually histories from this young lady. Did you
13 see anything that said she had a prior accident
14 in the 16 years that she was on this world?

15 A. There was no mention one way or the other.

16 Q. Doctor, in your 8-16-04 report to Mr. Kenneally
17 you state your interpretation of the MRI,
18 correct?

19 A. I note I reviewed them.

20 Q. Okay. And you said that, these -- that you
21 -- first of all, there was no cervical spine
22 problems with the disc. They were normal. Is
23 that correct?

24 A. That's correct.

25 Q. And that's what the, that's what the report of

1 Dr. Bright said, isn't it?

2 A. He thought it was a normal MRI.

3 Q. Yeah.

4 And the second disc you said, in your words,
5 degenerative disc changes at the lower thoracic
6 levels with early (inaudible) disc dehydration.
7 Is that correct?

8 A. Yeah.

9 Q. You threw in the term degenerative disc changes,
10 didn't you?

11 A. Well, yeah, because that's what's there.

12 Q. But the Regional diagnosis -- Diagnostics report
13 says, early disc dehydration are presented -- are
14 present in the (inaudible) thoracic spine. He
15 doesn't say degenerative. You're saying that
16 early and degenerative are compatible, is
17 (inaudible)?

18 A. Early disc degeneration is a part of degenerative
19 disc disease.

20 Q. It says there was a slight degenerative,
21 degenerative disc bulging present, present at
22 T8-9 level and 11-12 level. Where Regional
23 Diagnostics says, there is, however, minimal disc
24 bulging present at the T8-T9 level. You say
25 degenerative. He says minimal.

1 And you're telling us that, that this girl
2 had -- because of the scoliosis, she had
3 arthritis, is that right?

4 A. What question are you asking me now? You've gone
5 through a bunch here and you're confusing me.

6 Q. Wait, Doctor. Okay? Do you have a copy of the
7 MRI report there?

8 A. Sure I do.

9 Q. You testified without having to look at that for
10 Mr. Kenneally, no problems, didn't you, Doctor?

11 Doctor, look at that report. In the report
12 your words are different than the reports of
13 Regional Diagnostics, isn't that correct?

14 A. Well, but the meaning's very similar in the sense
15 that there clearly is disc dehydration
16 describing --

17 Q. (Inaudible.)

18 A. -- are you going to let me answer the questions
19 or what?

20 MR. KENNEALLY: C'mon, Jim. You
21 know, let him -- if you're going to ask a
22 question, let him finish answering the
23 question.

24 Q. Go ahead.

25 MR. KENNEALLY: The Court's going

1 to allow him to answer the question.

2 Q. Go ahead, Doctor.

3 A. Well, thank you.

4 The issue is that clearly described in the
5 radiologist's report is disc dehydration, which
6 is degenerative disc disease. And the fact that
7 the radiologist uses a description of a one to
8 two millimeter finding for a disc, a one
9 millimeter finding is basically nothing. Two
10 millimeters is just above nothing. That's very,
11 very small.

12 In looking at the MRI myself, these are
13 degenerative disc bulges. These are not disc
14 herniations. To call them a herniation is not
15 accurate.

16 Q. Dr. Bright is incorrect when he calls it a
17 herniation; is that what you're saying?

18 A. It doesn't meet the criteria of what a herniation
19 is. It's not a --

20 Q. Is that a yes or no, Doctor?

21 A. It's not a focal herniation or protrusion of the
22 disc through its annulus. It's not. It's not on
23 the, on the study. I looked at it. It's not
24 there.

25 Q. But Dr. Bright who said there is a herniation,

1 don't you?

2 A. Once again, a one to two millimeter finding --

3 Q. Doctor, why can't you answer my question? Do you
4 agree or disagree with Dr. Bright; yes or no?

5 A. He used the word herniation, but he also really
6 described it very clearly as a one to two
7 millimeter finding. That's not a herniation. I
8 think that's pretty important.

9 Q. (Inaudible) disagree. Thank you, Doctor.

10 A. I didn't say that. I said the one to two
11 millimeter issue is what he said. That's not a
12 disc herniation. I think that's important for
13 these people to realize.

14 Q. Now, Dr. Zaas has testified that he cannot
15 determine if the bulging and the herniation did
16 or did not result due to the motor vehicle
17 accident. However, he says that it certainly,
18 the accident certainly contributed to those
19 factors. Do you disagree with him when he says
20 that?

21 A. Look, I've already told you my opinion that the
22 findings on the MRI scan, the degenerative disc
23 bulges that we've been talking about weren't
24 caused, nor were they aggravated by this motor
25 vehicle accident.

1 Q. Doctor, you, you don't disagree with
2 Dr. Scarcella that the right flank area
3 laceration was caused by the motor vehicle
4 accident, do you?

5 A. I think the records indicate that she sustained a
6 laceration of her right flank as a result of the
7 motor vehicle accident.

8 Q. Are you aware of the fact that she had surgery?

9 A. Yes. We just talked about that.

10 Q. Are you aware of the fact that she has to have a
11 subsequent surgery?

12 A. Nobody's told me that.

13 Q. I thought you said that you -- that someone has
14 told you that she had surgery?

15 A. That she had surgery. I'm not aware that she
16 needs any more surgery.

17 Q. You said that you had looked -- follow-up things.
18 Follow-up reports. Did you ask whether or not
19 before you testified whether or not she had
20 surgery and whether or not (inaudible)?

21 MR. KENNEALLY: Let me, let me
22 object to this line of questioning. Dr.
23 Gordon is an orthopaedic physician. His
24 role in this case was to --

25 MR. BURKE: (Inaudible) of what he

1 does.

2 MR. KENNEALLY: Let me, let me
3 finish my objection, please, Jim.

4 His role in this case was to
5 evaluate the case based upon his specialty.
6 The, the, the area of injury you're into
7 now, the scar and the subsequent surgery is
8 not in his area of expertise. He's offered
9 no opinions on that. He's not a plastic
10 surgeon. And so any questions with regards
11 to whether she's had surgery, whether she
12 may need surgery is not relevant with
13 respect to his role in this case from an
14 orthopaedic standpoint.

15 Q. Doctor, to sum up your testimony, you never
16 examined Justine at all, right?

17 A. You already asked me that, and I said no.

18 Q. You read all the medical records available. You
19 didn't read Dr. Richardson's report, isn't that
20 (inaudible.)

21 A. I didn't see those records. They weren't in
22 front of me to look at.

23 Q. (Inaudible) approximately \$5,000 to write a
24 report and testify as a physician?

25 A. I didn't say that.

1 MR. KENNEALLY: Objection to that
2 characterization. There was no testimony
3 that it cost \$5,000.

4 MR. BURKE: The jury can do the
5 adding and subtracting.

6 MR. KENNEALLY: Well, then, you
7 know, then accurately, accurately state
8 what the evidence was, Jim. Don't misquote
9 what wasn't in the, in the testimony.

10 MR. BURKE: Because he doesn't
11 furnish the information when asked.

12 MR. KENNEALLY: You didn't
13 subpoena those records. Had you subpoenaed
14 those records, you would have had those
15 records.

16 Q. (Inaudible) Dr. Mathews, Dr. Zaas and Regional
17 Diagnostics in their conclusions, isn't that
18 correct, Doctor?

19 A. What is your question again?

20 Q. You disagree with Dr. Mathews and Dr. Zaas and
21 Regional Diagnostics as to their diagnosis,
22 conclusions and prognosis?

23 A. I've already told you what my opinions are. They
24 speak for themselves. We can go over them again
25 if you want to.

1 Q. (Inaudible.)

2 A. But I've already gone through them with you.

3 Q. All of those are contrary to the three doctors
4 who actually treated this young (inaudible),
5 aren't they?

6 A. I don't think that's accurate.

7 Q. And you call what you do independent, don't you?

8 A. What I do is evaluate the information, look at
9 it, and make opinions based on what makes the
10 most sense.

11 Q. Doctor, do you think your opinions are more valid
12 than Dr. Mathew, who you treated Justine for 25
13 months, from the acute stage of injury all the
14 way through to May 27th of 2004, in terms of the
15 causation of the injuries are the prognosis?

16 A. I reviewed his records and I reviewed records
17 that he didn't see.

18 Q. You think your opinions are more valid, Doctor?

19 A. They could be.

20 Q. Doctor, how about Dr. Zaas? Do you think your
21 opinions are more valid than Dr. Zaas, who
22 actually examined this girl and, and offered
23 treatment, and reviewed the records as well? Do
24 you think that your opinion is (inaudible)
25 Dr. Zaas?

1 A. Well, again, I'm not sure exactly what all
2 records he saw that, as compared to what I saw.

3 Q. He saw her, didn't he, Doctor?

4 A. No, that doesn't really -- the issue here. We're
5 talking about --

6 Q. Doctor --

7 A. -- additional records that form opinions. So I
8 think my opinion is certainly at least as
9 valuable.

10 Q. Maybe more valid than doctors who actually
11 examined and treated Justine?

12 A. I have those records. I reviewed their records.

13 Q. You never saw her and you never treated her, did
14 you, Doctor?

15 A. You keep asking me the same question. It's
16 getting kind of old here. I already told you
17 that, the answer to that.

18 Q. If you don't answer the question, then I have to
19 repeat it, Doctor.

20 Doctor, aren't you (inaudible) secondary gain
21 issues?

22 A. I'm sorry?

23 Q. Aren't you really the one who's guilty
24 (inaudible) gain issues?

25 A. That doesn't make any sense.

1 Q. Well, you write reports and make evaluations
2 without giving a fully authentic effort. This is
3 an effort to refute the doctors. Isn't your
4 secondary gain worth about \$500,000 a year?

5 MR. KENNEALLY: Objection.

6 MR. BURKE: I have nothing
7 further, Doctor.

8 MR. KENNEALLY: Doctor, I have a
9 few questions on redirect.

10 - - - -

11 REDIRECT EXAMINATION OF TIMOTHY L. GORDON, M.D.

12 BY MR. KENNEALLY:

13 Q. First of all, Mr. Burke asked you about the fact
14 that you don't do surgery anymore and you haven't
15 for approximately two years, I think you said?

16 A. That's correct.

17 Q. Would you tell the ladies and gentlemen of the
18 jury why you don't?

19 A. Yes. Unfortunately, I sustained a stroke and I
20 can't perform surgery anymore. That's why I
21 don't do surgery.

22 Q. You were asked questions about Dr. Zaas.

23 MR. BURKE: Move to strike that
24 response, by the way.

25 Q. You were asked questions about Dr. Zaas with

1 respect to the type of work you do. From your
2 knowledge, isn't it true that Dr. Zaas, first of
3 all, is also an orthopaedic physician?

4 A. Yes, he is.

5 Q. He also performs independent medical
6 examinations?

7 A. Yes, he does.

8 MR. BURKE: (Inaudible.) strike.

9 Q. Also does, also does record reviews similar to
10 the record review you did in this case?

11 MR. BURKE: Objection. Move to
12 strike.

13 Q. Is that correct?

14 A. Yes, he does.

15 Q. So that one of the plaintiff's experts in this
16 case fulfills the same function in other cases
17 that you did in this particular case?

18 MR. BURKE: Objection. Move to
19 strike.

20 Q. Is that correct?

21 A. That's correct.

22 Q. You were asked questions about this degenerative
23 disc disease. Doctor, do you have an opinion to
24 a reasonable degree of medical certainty as to
25 whether or not degenerative disc disease can

1 cause pain in an individual?

2 A. Yes, I do.

3 Q. And what is that opinion?

4 MS. VOZAR: Objection.

5 A. Yes, it can cause pain.

6 Q. And Doctor, do you have an opinion to a
7 reasonable degree of medical certainty as to
8 whether or not degenerative disc disease of the
9 type found in, found on x-ray and MRI findings in
10 the case of Justine Clements, whether that can
11 cause pain regardless of whether someone's been
12 involved in a traumatic accident?

13 A. Yes.

14 MS. VOZAR: Objection.

15 Q. And what is that opinion?

16 A. It's my opinion that her back, it would be
17 expected for it to be symptomatic, regardless of
18 the accident, because of the underlying
19 degenerative disc disease that's there that
20 wasn't caused nor aggravated by the accident.

21 Q. And by, by symptomatic, you mean causing her
22 symptoms?

23 A. That's correct.

24 Q. Causing her symptoms of pain?

25 A. That's correct.

1 Q. Causing her to have to go back continually to
2 Dr. Mathews over a period of more than two years?

3 A. That's correct.

4 Q. You were asked questions about the fact that the
5 one MRI report refers to early disc hy --
6 dehydration. Do you recall those questions?

7 A. Yes.

8 Q. Is early disc dehydration a part of the
9 degenerative disc disease process?

10 MS. VOZAR: Objection.

11 A. Yes, it is.

12 Q. So when you use the terminology degenerative disc
13 disease and the radiologist who wrote that report
14 after taking the MRI used the words early disc
15 dehydration, are we in fact talking about the
16 same thing?

17 A. Yes.

18 MR. BURKE: (Inaudible.)

19 Q. All right. Is any -- are any of the questions
20 that you were asked by Mr. Burke on
21 cross-examination, did they in any way change any
22 of the opinions that you previously gave to me in
23 answer to my questions on direct examination
24 about an hour and 20 minutes ago?

25 A. No, they don't.

1 MR. BURKE: Objection to the
2 (inaudible.)

3 MR. KENNEALLY: Thank you, Doctor.
4 Thank you, Doctor. That's all the
5 questions I have.

6 THE WITNESS: You're welcome.

7 MR. BURKE: I have a couple
8 questions.

9 - - - -

10 RECROSS-EXAMINATION OF TIMOTHY L. GORDON, M.D.

11 BY MR. BURKE:

12 Q. Prior to the accident of 4-6-1 is there anything
13 in the medical records or any of the (inaudible)
14 she gave to her treating physician that showed
15 that Justine was suffering any pain to her neck
16 or her back from a degenerative condition?

17 A. I don't have the records from before the
18 accident.

19 Q. Did you -- you reviewed records, Doctor. In any
20 of the records that you reviewed, did you see any
21 indication whatsoever that Justine Clements
22 reported problems with her neck and back prior to
23 this accident; yes or no?

24 A. I don't have the records from before the accident
25 and there isn't indication one way other

1 subsequently.

2 Q. Doctor, again, did you see anything in, that you
3 reviewed saying that? Yes or no, Doctor?

4 A. I just told you I didn't have the records from
5 beforehand, so I don't know what's in those
6 records.

7 Q. (Inaudible.)

8 A. It may have been in those records. I didn't have
9 them. I just told you that.

10 Q. Doctor, you just testified for Mr. Kenneally that
11 someone who had this kind of -- a 16-year-old
12 girl who had this kind of degenerative change
13 (inaudible) would have suffered pain from it.
14 Didn't you say that?

15 A. I said it would be expected that she would
16 have --

17 Q. (Inaudible.)

18 A. -- symptoms from degenerative disc disease.
19 That's what I just said.

20 Q. And, Doctor, if the -- prior to this accident
21 Justine testified that she did not ever have any
22 problems with her back or her neck and that she
23 was unaware of degenerative problems, would you
24 agree with that?

25 A. Well, assuming she said that, which I don't have

1 any of that in the records and I don't have her
2 records from before --

3 Q. Prior to this case, before you are getting,
4 before this testimony that you (inaudible.)

5 A. I'm sorry, we lost your question.

6 Q. She has already testified to that.

7 A. All right. But I don't have any records from
8 beforehand to confirm that.

9 Q. I -- did you ask for them, Doctor?

10 A. They weren't provided. I reviewed what was
11 provided.

12 Q. You have a lawyer who gave you the records. He
13 could have subpoenaed those records, any and all
14 records, to find out whether there was a
15 condition. If he had found that, you would have
16 reported it? Isn't that correct, Doctor?

17 A. I can only tell you that the records I reviewed,
18 I can testify to what I saw in the records. I
19 can't testify to what I didn't see in records I
20 didn't review.

21 Q. Doctor, when you determined that Justine had a
22 mild case of scoliosis, that that would have been
23 the reason for her problems with her neck and
24 back, not a motor vehicle accident that threw her
25 out of a car, when you found that out, why didn't

1 you then ask to see any prior records to confirm
2 your suspicions? Because that's all it is, isn't
3 it?

4 A. No, it's not. I had the evaluation by the
5 orthopaedic spine specialist at MetroHealth
6 Center three weeks after the accident who
7 diagnosed her in regards to the accident as
8 having a cervical neck area strain.

9 Q. Doctor --

10 A. That's very important. That's very important.
11 They're specialists in the spine. They're
12 orthopaedists.

13 Q. Other doctors --

14 A. That was their diagnosis.

15 Q. And you didn't ask for the records because -- why
16 was that again, Doctor? I can't remember. You
17 didn't ask for the records because you didn't
18 think Mr. Kenneally could get them (inaudible)?
19 What was the reason, Doctor?

20 A. I didn't ask specifically for the records. I
21 just told you I didn't.

22 Q. And in fact, your report never mentioned
23 scoliosis, this has just come out now. Isn't
24 that a fact, Doctor? And that's why we've asked
25 to have that stricken.

1 Nothing further, Doctor.

2 MR. KENNEALLY: You can answer the
3 question, Doctor.

4 A. I did mention thoracic spinal curve which is
5 scoliosis. That's in the report.

6 Q. (Inaudible.)

7 MR. KENNEALLY: Nothing further.

8 THE VIDEOGRAPHER: Off the record.

9 - - - -

10 (Thereupon, a discussion was had off
11 the record.)

12 - - - -

13 (The reading and signing of the
14 deposition was expressly waived by the witness
15 and by stipulation of counsel.)

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C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Colleen M. Malone, a Notary Public within
and for the State of Ohio, authorized to
administer oaths and to take and certify
depositions, do hereby certify that the
above-named witness was by me, before the giving
of their deposition, first duly sworn to testify
the truth, the whole truth, and nothing but the
truth; that the deposition as above-set forth was
reduced to writing by me by means of stenotypy,
and was later transcribed into typewriting under
my direction; that this is a true record of the
testimony given by the witness; that said
deposition was taken at the aforementioned time,
date and place, pursuant to notice or stipulation
of counsel; and that I am not a relative or
employee or attorney of any of the parties, or a
relative or employee of such attorney, or
financially interested in this action; that I am
not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
_____ day of _____ A.D. 20 ____.

Colleen M. Malone, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires August 18, 2007