

THE STATE OF OHIO,)
) SS: JOHN O' DONNELL, J.
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

DEBRA LAHIFF, et al.,)
)
Plaintiffs,)
v.) Case No. CV03 502029
NED SCHAMBERGER, et al.,)
)
Defendants.)

- - -

Deposition of TIMOTHY L. GORDON, M.D., taken by
the Defendants as if upon direct examination at the
offices of Timothy L. Gordon, M.D., Chardon Office
Park, 34950 Chardon Road Blvd., Ohio, on Tuesday,
the 15th day of June, 2004.

1 APPEARANCES:

2 James W. Burke, Esq.
3 22649 Lorain Road
4 Fairview Park, Ohio 44126

5 On behalf of the Plaintiffs

6 Ritzler, Coughlin and Swansinger
7 Joe Ritzler, Esq.
8 1001 Lakeside Avenue
 1550 N. Point Tower
 Cleveland, Ohio 44114

9 On behalf of the Defendants.

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1 MR. RITZLER: Let the record reflect
2 mu name is Joe Ritzler. I'm the attorney
3 representing Ned J. Schamberger in a case
4 currently filed in the Cuyahoga County
5 Common Pleas Court captioned Debra A.
6 Lahiff versus Ned J. Schamberger, Cuyahoga
7 County Common Pleas Case No. CV 03 5020279,
8 Judge John O'Donnell.

9 Today's date is Tuesday, June 15th.
10 We are here today to videotape the
11 depositoin of Dr. Timothy Gordon, the
12 defense medical expert, for the purposes of
13 perpetuate his testimony for trial.

14 It's my understanding that any defects
15 in service and notice are waive, correct,
16 Mr. Burke?

17 MR. BURKE: That's correct.

18 MR. RITZLER: Okay. Thank you very
19 much. Swear in the witness and then go
20 into camera.

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1 TIMOTHY L. GORDON, M.D.,
2 called by the Defendants for the purpose of direct
3 examination, as provided by the Ohio Rules of Civil
4 Procedure, being by me first duly sworn, as
5 hereinafter certified, deposes and says as follows:

6 DIRECT EXAMINATION

7 BY MR. RITZLER:

8 Q. Good afternoon, Dr. Gordon. My name is Joe Ritzler.
9 I'm the attorney for Ned Schamberger and I am here
10 today to perpetuate your testimony for the ladies
11 and gentlemen of the Jury for the trial on this
12 case.

13 Initially, Doctor, could you identify yourself
14 to the ladies and gentlemen of the Jury?

15 A. Timothy L. Gordon.

16 Q. Okay. Doctor, what is your occupation?

17 A. Orthopaedic surgeon.

18 Q. Okay. What is your specialty, Doctor?

19 A. Orthopaedics.

20 Q. Okay. Where -- Where are we currently located out
21 here, Doctor?

22 A. You're located at my office, which is in Willoughby
23 Hills on Chardon Road.

24 Q. Okay. Doctor, could you briefly describe to the
25 ladies and gentlemen of the Jury what an orthopaedic

1 surgeon is?

2 A. Well, orthopaedic surgeons are trained in the
3 surgical and non-surgical treatment and management
4 of musculoskeletal problems, which would be
5 injuries, diseases, disorders of the spine, the
6 limbs, joints, nerves, those kinds of things.

7 Q. Doctor, what is your practice consist of?

8 A. Well, my practice consists of seeing patients,
9 treating my own patients, I also do second opinions
10 and do evaluations for Beauru of Workers'
11 Compensation, and I also do independent medical
12 exams.

13 Q. Doctor, could you briefly set forth for the ladies
14 and gentlemen of the Jury your educational and
15 professional background?

16 A. All right. I went to Ohio State University for
17 undergrad school and then I went to Case Western
18 Reserve University School of Medicine and then I did
19 my orthopaedic residency at Mt. Sinai Medical
20 Center.

21 Q. Okay. Doctor, you're currently board certified?

22 A. Yes, I am.

23 Q. Could you explain to the ladies and gentlemen of the
24 Jury what board certification is and what it
25 entails?

1 A. All right. Board certification is above medical
2 licensure, above and beyond that. The issue is
3 that, in my situation in orthopaedic surgery, is
4 that we have to take an extensive written
5 examination after we complete residency, once that
6 is passed, then we have to be in private practice
7 for two years, and then we have to take an extensive
8 oral examination and that has to be passed, then we
9 became -- elected to be board certified.

10 Q. Doctor, do you have hospital privilege at any area
11 hospitals?

12 A. Yes, I do.

13 Q. And what are those, Doctor?

14 A. I have privileges at Lake, also Euclid and
15 University; Richmand and Bedford.

16 Q. Have you conducted any research in any of the areas
17 in your field, Doctor?

18 A. I have.

19 Q. And what is that?

20 A. Done research in the area of MRI studies, in
21 musculoskeletal disease, imaging. I also research
22 into congenital disorders and degenerative disease.

23 Q. Doctor, in this particular case with Debra Lahiff
24 we're going to be talking about allegations of a
25 neck injury, could you briefly describe for the

1 ladies and gentlemen of the Jury your experience and
2 expertise in the neck area, Doctor?

3 A. All right. I see people commonly who have
4 complaints, injuries and problems regarding their
5 neck, cervical spine. I commonly evaluate and treat
6 them for those kind of problems.

7 Q. Now, Doctor, in this particular case you were hired
8 on behalf of the defense to conduct an independent
9 medical examination and records review relative to
10 Debra Lahiff, correct?

11 A. That is correct.

12 Q. Could you briefly describe for the ladies and
13 gentlemen of the Jury what an independent medical
14 examination is?

15 A. All right. When I evaluate someone for an
16 independent medical exam, I'm not their treating
17 doctor, I'm asked to evaluate them, and what I do is
18 -- as I did in this case, talk to them, take a
19 history, exam them, review records and basically
20 form opinions or diagnoses and then in this
21 situation I was asked to write a report, so I would
22 do that also.

23 Q. Okay. Doctor, is there any difference in the
24 examination that you perform for independent
25 medical examinations than your every-day patients?

1 A. No.

2 Q. Okay. And, Doctor, there's -- I would anticipate
3 that there's going to be some questions that
4 obviously you -- there's time spent in conducting
5 these examinations and reviewing records, correct?

6 A. Yes.

7 Q. And obviously there is a fee for your time in doing
8 that, correct, Doctor?

9 A. That's correct.

10 Q. Okay. How do you reach your decisions in any of
11 these cases, Doctor?

12 A. Well, I reach a decision based on what's in the
13 records, what's coming from the patient, a sense of
14 history, also, in this case, a physical examination.
15 I form my opinions on what I think makes the most
16 sense based on what I have, and that's how I do it.

17 Q. Okay. Do you ever form any opinions just based on
18 who's sending you the case, Doctor?

19 A. No.

20 MR. BURKE: Objection.

21 Q. (BY MR. RITZLER) Okay. Have you -- over the years
22 -- Have you ever given anything other than your true
23 honest opinion as to any independant medical
24 examination that's forwarded to you, Doctor?

25 MR. BURKE: Objection.

1 A. No, I have not.

2 Q. (BY MR. RITZLER) Okay. Now, Doctor, in this
3 particular case, if we can now focus our attention
4 to the Plaintiff in this case, a Debra Lahiff, did
5 you have the opportunity to conduct an examination
6 of Miss Lahiff at the request of the defense in this
7 case, Doctor?

8 A. Yes, I did.

9 Q. Okay. Now, in your terms of an independent medical
10 examination, what is your procedure? Do you do the
11 exam first then review the records, records first
12 then the exam, how do you go about it?

13 A. It depends. Sometimes those records are available
14 before and I may look at them briefly, sometimes
15 there's not, but what I would typically do would be
16 evaluate the individual, which would be taking a
17 history and examining them, then I would review the
18 medical records thoroughly and then I would write a
19 report if necessary.

20 Q. Okay. And that's what you did in this particular
21 case?

22 A. Yes, I did.

23 Q. So in this particular case you had the opportunity
24 to conduct an examination of Miss Lahiff and then
25 review medical records, correct?

1 A. That's correct.

2 Q. Okay. Initially, Doctor, could you list out to the
3 ladies and gentlemen of the Jury all the medical
4 records you had the opportunity to examine in this
5 particular case?

6 A. Yes. I reviewed records from St. John's West Shore
7 Hospital, also records from Dr. Matthews, I reviewed
8 MRI reports, MRI scans. I reviewed also x-ray
9 studies and also records of Dr. Eltommie (phoentic),
10 some physical therpy records, records of
11 Dr. Shahmere (phonetic). And I think that's the
12 overview.

13 Q. Okay. And, Doctor, you also had the opportunity to
14 conduct an examination of Miss Lahiff, correct?

15 A. Yes.

16 Q. Okay. Whent was that examination conducted?

17 A. May of 2002.

18 Q. Okay. Initially, if you can go over with the ladies
19 and gentlemen of the Jury the exam -- her
20 complaints, the examination that you performed and
21 your findings on that examination.

22 A. All right. When I examined her she had indicated
23 that she had been in a car accident in August of
24 1999 and that she had some neck pain after that.
25 She'd been treated by Dr. Matthews, also

1 Dr. Eltommie, Dr. Shahmere. When I saw her she
2 reported she was having neck aches, sometimes some
3 sharp pain, that her neck felt stiff. She had pain
4 with lying down. She reported she had some
5 intermittent pain going down her right arm and that
6 she'd also had some tingling in the radial aspect of
7 her right hand. That was the complaints she gave me
8 at that time.

9 Q. Based upon those complaints, Doctor, did you then
10 conduct an examination?

11 A. Yes.

12 Q. And was that examination an orthopaedic as well as a
13 neurologic examination?

14 A. Yes.

15 Q. And could you explain to the ladies and gentlemen of
16 the Jury the difference between an orthopaedic and
17 a neurological examination?

18 A. Well, there's a bit of an overlap in the sense that
19 how nerves function and operate definitely effects
20 the musculoskeletal system, so that's a big part of
21 what we do, too. But the issue is that I would
22 evaluate her neck, examine her neck then, I'd also
23 evaluate her arms and her extremities neurologically
24 and look for function and so forth, then later --
25 then I would review records and I had the

1 opportunity to review diagnostic studies, also, in
2 this case.

3 Q. Doctor, if you could now briefly describe to the
4 ladies and gentlemen of the Jury the orthopaedic and
5 neurologic examination that you performed in this
6 case?

7 A. All right. Well, I examined her neck and that one
8 of the things that I would do is I would palpate the
9 neck, meaning feel it. And I told her that if it
10 hurt anywhere when I pressed she needed to tell me
11 that, so when I was examining her neck I noticed
12 that she jumped when I was lightly palpating the
13 skin, which doesn't make any sense physiologically
14 because the skin wasn't infected, it wasn't reddened
15 or anything like that, so it doesn'tt make any sense
16 to jump when I just touch the skin and press it
17 lightly.

18 She os asked to move the neck in a range of
19 motion and I noted that she moved it in variable
20 ways. In other words, one time she rotated a
21 certain amount,t he next time she didn't rotate it
22 that much or a differant amount, so that would be
23 a variable amount of motion.

24 I examined her upper extremities.
25 Neurologically the reflexes were symmetric, intact.

1 She does report some decrease sensation in the right
2 finger tips in the median nerve distribution. She
3 had a positive tanel's of the wrist, meaning she had
4 compression of the median nerve or carpal tunnel,
5 that's a differant condition than what we're talking
6 about here. That would be unrelated to this event
7 we're talking about, but she had signes of that.

8 And then I examined the remainder of her
9 extremities, did a neurologic examine of the lower
10 extremities. There was no indication on the exam
11 that she had any neurologic impingement coming from
12 the cervical region.

13 Q. Okay. Now, Doctor, as to the neurologic exam -- I'm
14 sorry, -- the orthopaedic examination that you
15 performed of her neck, did you find any objective
16 signs of injury to corrolate to her subjective
17 complaints of pain in the neck?

18 A. No.

19 Q. Could you explain to the ladies and gentlemen of the
20 Jury the difference between an objective finding and
21 a subjective complaint?

22 A. Well, an objective finding is something that you can
23 look at and touch and say it's there, like, for
24 example, a surgical incision. Subjective complaints
25 would be pain, pain's a subjective complaint, it's

1 what the patient reports. You can't confirm it's
2 there or not there.

3 Q. Okay. For neck injuries, there are objective
4 findings of injury to corrolate to those complaints,
5 correct, Doctor?

6 A. Yes.

7 Q. Okay. What are some of those objective findings
8 that could be found on examination?

9 A. Well, something that might corrolate with pain in
10 the area could be a muscle spasm, she didn't have
11 that. Other things that might corrolate to pain
12 would be swelling or redness, other findings like
13 that. There wasn't any of that present.

14 Q. Okay. Now, what about the neurologic examination?
15 First off, why you doing a -- an examination of the
16 arms and hands for complaints of neck pain, Doctor?

17 A. Well, the reason is that through the cervical spine
18 travels the spinal cord and the nerve roots exit the
19 cervical spine and go down into the arms and so we
20 evaluate the arms and -- neurologically to look for
21 function indicating what function's going on coming
22 from the neck, and in her case there was normal
23 function from the roots coming from the neck, except
24 down at the right wrist of the carpal canal, which
25 is, again, is unrelated to the neck.

1 Q. Okay. So what were the findings of the neurologic
2 examination, Doctor?

3 A. Other than the findings regarding carpal tunnel,
4 normal.

5 Q. Okay. As a result of the orthopaedic and
6 neurologic examination conducted on Miss Lahiff in
7 this case, were you able to reach a diagnosis of any
8 kind based upon the examination?

9 A. Well, based on the examination I felt she had carpal
10 tunnel.

11 Q. Okay. After that examination, Doctor, did you then
12 have the opportunity to review the various records
13 that you had the opportunity that you've already
14 discussed with the ladies and gentlemen of the Jury?

15 A. Yes, I did.

16 Q. Okay. What did you find in reviewing those records,
17 Doctor?

18 A. What I found in reviewing the records is that she
19 had arthritis in her neck, that there had been
20 arthritis that was -- would have been present prior
21 to the accident, that she had treatment for neck
22 complaints, she had varying periods of improvement
23 and then she would have flare-ups related to
24 activities and flare-ups related to the arthritis.
25 That's what the records indicate.

1 Q. Okay. Doctor, from this point forward I'm going to
2 be asking you a serie of opinion questions, you
3 know, for the purposes of -- of the legal end of
4 this. I'm going to ask you to keep all your
5 opinions witin a reasonable degree of medical
6 certainty and probability. Fair enough, Doctor?

7 A. Fair enough.

8 Q. Okay. Doctor, as a result of your orthopaedic and
9 neurologic examination of Miss Lahiff, as a result
10 of your review of all the medical records, were you
11 able to reach an opinion within a reasonable degree
12 of medical certainty and probability as to what
13 injuries, if any, did Mois Lahiff sustain as the
14 direct and proximate result of this motor vehicle
15 accident?

16 A. Yes, I was able to come to those opinions.

17 Q. And what is that opinion? What are those opinions,
18 Doctor?

19 MR. BURKE: Objection.

20 A. Well, it's my opinion that she sustained a partial
21 aggrevation of the degenerative disease in her
22 cervical spine at C 3-4, that she also sustained
23 contusions of the right arm and that she sustained a
24 soft tissue neck area strain.

25 Q. (BY MR. RITZLER) Okay. Now, let's talk about each

1 of those very briefly, Doctor. Initially as to the
2 contusions, to the right arm you're talking some
3 bruising to the right arm correct?

4 A. That's correct.

5 Q. And that condition resolved, correct?

6 A. That is correct.

7 Q. Okay. You're talking about a soft tissue injury to
8 the neck, what is a soft tissue injury to the neck,
9 Doctor?

10 A. It's basically a soft tissue strain, a strain of the
11 soft tissues around the neck, and that also goes
12 unresolved.

13 Q. Okay. And typically how long until those conditions
14 resolve, Doctor?

15 A. Typically that would be six to eight weeks or so.

16 Q. Okay. And then you -- You've talked about an
17 aggravation of a pre-existing arthritic condition in
18 her neck correct, Doctor?

19 A. Correct.

20 Q. Okay. What was the pre-existing arthritic condition
21 in her neck?

22 A. Well, she had several pre-existing arthritic
23 conditions in her neck, the one that was aggravated
24 by the car accident was a degenerative disk
25 osteophycomplex, it was at c3-4.

1 Q. Okay. Doctor, were there any films or diagnostic
2 studies that you relied upon in reaching those
3 opinions within a reasonable degree of medical
4 certainty and probability?

5 A. Yes.

6 Q. Okay. And what diagnostic studies or -- did you rely
7 on, Doctor?

8 A. Well, I looked at the MRI films of the cervical
9 spine from two months after the accident. I had a
10 chance to review those.

11 Q. Okay. And you actually had the opportunity to
12 actually look at the films themselves?

13 A. That's correct.

14 Q. Okay. Do you review MRI films as a regular part of
15 treating and diagnosing the patients here at your
16 office?

17 A. Yes, I do.

18 Q. Okay. What did you see in reviewing -- in actually
19 reviewing the MRI films, Doctor?

20 A. Well, what I saw was she had degenerative disease at
21 multiple levels of the cervical spine --

22 UNIDENTIFIED SPEAKER: Objection.

23 A. -- meaning she had bone spurs and degenerative disk
24 changes, these were present at C 3-4, C 4-5 and
25 C5-6.

1 At the C3-4 level on the left side there were
2 -- there was a disk osteophycomplex meaning that a
3 disk was degenerating over time, well prior to the
4 time of the MRI scan and that bone spurs were
5 accompanying it and it was going the the left side at
6 C 3-4. It wasn't pushing on any nerves but it was
7 encroaching upon the neuroforamin, which is a -- a
8 tunnel where a nerve root exits.

9 At C 5 -- C5-6 and C4-5 there were also
10 degenerative changes, they were more so on the right
11 side, but there wasn't any obvious nerve
12 impingement.

13 Q. (BY MR. RITZLER) Okay.

14 MR. BURKE: Objection. Motion to
15 strike.

16 Q. (BY MR. RITZLER) Now, Doctor, you have now just
17 utilized a number of medical terms that possible
18 some members of the Jury may not be familair with.
19 Is there something here you could use to kind of
20 breifly describe in layman's terms --

21 A. Sure.

22 Q. -- all those medical terms that you just utilized?

23 A. Right. What we can use is a model of the cervical
24 spine. And what we have here is the cervical spine.
25 This represents the base of the skull, if we look

1 -- we're looking at the front of the cervical spine
2 here, this is looking at the side of the cervical
3 spine. This is looking at the -- basically if we
4 cut the cervical spine and look at it on end we can
5 see here the -- this represents spinal cord. This
6 represents vertebral body. This is spinal canal
7 that the cord lives in and we also see here if we
8 tip this up that we have nerve roots coming out
9 through these neuroforamin, now those represent the
10 yellow nerve roots. The red represent the vertebral
11 artery, which is not a nerve root.

12 So in this individual she had arthritis at
13 multiple levels, C3-4, C4-5 and C5-6.

14 Q. Doctor -- and I apologize for interrupting you.

15 A. Yeah.

16 Q. Could you point out to the ladies and gentlemen of
17 the Jury those areas --

18 A. Sure.

19 Q. -- you're talking about?

20 A. Well, this is C2 here, C3 is hear, so 3-4 is here or
21 5 here, 5-6. These are the disks in between the
22 vertebral bony levels, and in her case, the spurring
23 occurred at the disk of this level on the left side
24 so that the disk on the left side of C3-4 had bone
25 spurs accompanying the bulging disk or disk

1 osteophycomplex. The nerve root itself was not
2 being pushed on, just the tunnel that it lives in
3 was made a little more narrow because of the disk
4 osteophycomplex, at C4-5 and C5-6 was degenerative
5 disk changes and there were some bone spurs present
6 there, they were more on the right side but they
7 weren't pressing on anything.

8 Q. Doctor, can you explain to the ladies and gentlemen
9 of the Jury what is a bone spur?

10 A. Well, a bone spur is part of the degenerative
11 process that occurs in the spine and it's where
12 because of deterioration over time and the arthritis
13 process that the end plates of the vertebral bodies
14 and the adjacent supporting structures form extra
15 bone and it's typically a spur that kind of looks
16 like if you were looking at a window awning from the
17 side, kind of a triangle, and then tend to come off
18 of the vertebral bodies in the front, the sides,
19 also in the back, and in this case, as I said, they
20 were fairly prominent at the posterior lateral
21 aspect of C3-4 on the left side.

22 Q. Okay. How does this arthritic process come about,
23 Doctor?

24 A. Well, this arthritic process is something that
25 occurs over a long period of time. It just doesn't

1 happen over a period of months. And, you know, the
2 look on the MRI scan indicated that the degenerative
3 changes that she had were developing over time. At
4 some point said a normal looking spine, cervical
5 spine, but in her case this degenerative disease had
6 been deteriorating over time well prior to this
7 accident and would have continued to do for -- do so
8 regardless of the accident.

9 Q. Doctor, do you have an opinion --

10 MR. BURKE: Objection.

11 Q. (BY MR. RITZLER) -- within a reasonable degree of
12 medical certainty and probability as to whether any
13 of the findings on that MRI that was completed
14 within two months of this accident were directly and
15 proximately caused by this motor vehicle accident?

16 A. It's my opinion they were not caused by the motor
17 vehicle --

18 MR. BURKE: Objection.

19 A. -- accident.

20 Q. (BY MR. RITZLER) Okay. And what is the basis for
21 that opinion, Doctor? You're aware in this case
22 that there are other doctors, Dr. Matthew,
23 Dr. Eltommie, Dr. Shahmere who believe that the
24 finding at C3-C4, they believe it was caused by this
25 auto accident?

1 A. Well, the issue is the reason I don't think the
2 actual MRI change was caused by the accident is
3 because I looked at the film and as I explained to
4 you the disk on the left side at C3-4 was
5 accompanied by a bone spur, that means that didn't
6 just happen, that means that that had developed over
7 time, well prior to an accident that was two months
8 before the scan and that's why I'm making that
9 opinion that I don't think at C3-4 the degenerative
10 changes or the disk problem, if you want to call it
11 that, was caused by the accident, nor were the
12 degenerative changes at C4-5 and C5-6 caused by the
13 car.

14 MR. BURKE: Objection. Move to
15 strike.

16 Q. (BY MR. RITZLER) Okay. Is there any radiological
17 findings that support that position --

18 A. Sure.

19 Q. -- in this case?

20 A. Sure.

21 Q. And what are the radiological findings, if any,
22 support that position?

23 A. Well, the day of the car accident she said plane
24 x-rays taken of the cervical spine which showed
25 degenerative changes at the left side of C3-4

1 indicating that, yeah, there were degenerative
2 changes the day of the car, that means they were
3 there for a long time before, so I wasn't the only
4 person that saw those.

5 Q. Okay. Doctor, in this particular case -- I mean,
6 obviously, we can agree that trauma in auto
7 accidents can cause a disk to herniate, correct?

8 MR. BURKE: Objection.

9 A. It's possible.

10 Q. (BY MR. RITZLER) Okay. And if in fact a specific
11 trauma causes a disk to bulge out and herniate -- I
12 mean, what happens and when can we expect to see
13 symptoms and findings?

14 A. In a person who has an acute disk herniation,
15 whether it's from an accident or just an acute --
16 acutely occurs, you would have symptoms of
17 significant pain, also you would have symptoms and
18 findings consistent with the nerve root that that
19 disk has pushed out near having signs of irritation
20 and impingement, that would indicate what we call
21 radiculopathy.

22 MR. BURKE: Objection. Move to
23 strike.

24 Q. (BY MR. RITZLER) Doctor, with a reasonable degree
25 of medical certainty and probability when do you --

1 when do you expect to see those signs and symptoms
2 of radiculopathy from an acutely herniated disk?

3 A. You would expect to find those within a day or two.

4 Q. Okay. Now, Doctor, in this particular case --
5 You're aware that Miss Lahiff in this case received
6 some medical care and treatment over a period of
7 time after this accident, correct?

8 A. Yes, I'm aware of that.

9 Q. Now, you provided some testimony previously that
10 she's had some care and treatment over the time
11 related to some flair-ups, could you describe in
12 more detail and specificity to the ladies and
13 gentlemen of the Jury what you were talking about
14 there, Doctor.

15 A. Sure. It's the idea that it's very common for
16 people that we treat all the time who have
17 degenerative disease of their spine to have
18 flair-ups of it related to activities, that means
19 because of the arthritis in that area they have
20 increased symptoms because of activities they're
21 doing, that's not related to any specific injury,
22 it's just a flair-up of an underlined condition.
23 And I think when you look at the records that she's
24 had, documented in physical therapy records of
25 increased complaints with things like cleaning the

1 house, stuff like that, that's very common for
2 someone who has arthritis in their neck to have
3 increased complaints after those type of activities,
4 that's not related to any specific injury, that's
5 just related to a flare-up of the arthritis in their
6 neck.

7 Q. Thank you.

8 MR. RITZLER: Off the record.

9 THE VIDEOGRAPHER: Off the record.

10 (Short recess had.)

11 THE VIDEOGRAPHER: Back on the record.

12 MR. RITZLER: Thank you, Doctor. No
13 further questions. I'm sure the --
14 Mr. Burke will have some questions for you
15 at this time.

16 MR. BURKE: Are we back on the record?

17 THE VIDEOGRAPHER: Yeah.

18 MR. BURKE: Oh.

19 CROSS-EXAMINATION

20 BY MR. BURKE:

21 Q. Doctor, my name is Jim Burke. I represent
22 Mrs. Lahiff for the injuries she sustained in this
23 accident. May I look at your file?

24 A. Sure.

25 MR. BURKE: Can we go off the record?

1 THE VIDEOGRAPHER: Off the record.

2 (Short recess had.)

3 THE VIDEOGRAPHER: Back on the record.

4 Q. (BY MR. BURKE) Thank you allowing me to look at
5 your file.

6 Your first report indicated that you were
7 employed by Highland Musculoskeletal Associates,
8 Inc., how long were you there?

9 A. From 1991 through, let's see, 2002.

10 Q. Were you a shareholder as well?

11 A. Yes, I was for a time.

12 Q. And what percentage of the issued stock did you own?

13 A. Was never really sure of that.

14 Q. You weren't sure of how much of the stock you owned?

15 A. No.

16 Q. Were you sure when you left?

17 A. Nope.

18 Q. And currently I see by your letterhead that you are
19 now Timothy Gordon, M.D. Orthopaedics PA?

20 A. Correct.

21 Q. And how long have you been your own company?

22 A. Since the beginning of 2003.

23 Q. And you're no longer associated with Dr. Korn?

24 A. That's correct.

25 Q. Doctor, who hired you to review the records and to

1 testify in this matter?

2 A. I was asked to do an evaluation by Kelly Grigsby
3 initially.

4 Q. Did she send you -- Is she the one that sent you all
5 the medical records, reports, test results?

6 A. I think she sent some of them, some of them might
7 have been sent by Mr. Ritzler, also.

8 Q. You -- you -- You referred from to Mr. Ritzler to
9 these reviews as independent medical exams, what do
10 you mean by independent?

11 A. Well, independant means, as I said earlier, that I'm
12 not a treating physician. I can't be a treating
13 physician and do an independant medical exam. As I
14 indicated earlier, in a situation like this I would
15 evaluate the individual, take a history from them,
16 examine them, review the records, review the
17 diagnostic studies and make opinions and diagnoses
18 based on what I thought made the most sense.

19 Q. Well, you weren't selected randomly here, you were
20 selected by Mr. Ritzler, who represents the
21 Defendant, isn't that correct?

22 A. That's my understanding.

23 Q. And I didn't agree to hire you to neutrally evaluate
24 this case, did I?

25 A. I'm not aware of that.

1 Q. So the independent means that you're independently
2 representing the Defendant in this case, is that
3 correct?

4 A. No. It means I'm doing an independent medical exam
5 and I make opinions based on what I think makes the
6 most sense, if that favors the defense in a certain
7 situation, that's fine, if it favors -- if favors
8 the Plaintiff, that's fine. Is it what it is based
9 on the evaluation.

10 Q. This isn't the first time that you and Mr. Ritzler
11 have worked together on a case, is it?

12 A. No, it's not.

13 Q. You've testified on behalf of Mr. Ritzler's office
14 before?

15 A. Yes.

16 Q. Has Mr. Ritzler ever referred to you a friend or
17 co-worker as a treating patient?

18 A. Not that I can recall.

19 Q. He presents the driver whose at fault in this case,
20 that's a Ned Schamberger is the Defendant, are you
21 familair with that name?

22 A. No, other than hearing it today.

23 Q. You didn't examine Mr. Schamberger for injuries he
24 sustained in this incident, did you?

25 A. No, I didn't.

1 Q. Did Mr. Ritzler refer him to you?

2 A. I don't think so.

3 Q. How many defense requested examinations do you do
4 yearly?

5 A. Well, in independent medical exams I do about an
6 average of eight a month or so.

7 Q. Eight a month, and these are independent medical
8 exams, how much of them are for the -- how many of
9 them are asked by you to do by the Plaintiff's
10 counsel?

11 A. Some are.

12 Q. How many?

13 A. I don't know the number.

14 Q. Percentage?

15 A. I don't know a percentage, but I'll tell you that
16 the majority of requests or at the request of
17 defense.

18 Q. What percentage of your practice is devoted to a
19 single examination of a patient?

20 A. Well, the patients I see in a week I might see two
21 or so independent medical exams in a week, and I
22 would see many more patients than that.

23 Q. So it's an average of two or more a week, so that's
24 100 or so a year, is that right?

25 A. Roughly.

1 Q. Okay. You weren't hired by the Defendant to help
2 reduce Debra Lahiff's pain, were you?

3 A. No. As I indicated, I can't do an independent
4 medical exam and be a treating physician.

5 Q. And you weren't hired by the defense to help Debra
6 cope with the daily pain she's experiencing, were
7 you?

8 A. I can't do that and be an independent medical
9 examiner.

10 Q. Let me ask you a question as to whether or not you
11 agree with this statement which is contained in the
12 case of Caldryn versus Sharky, which is 1982, 70,
13 Ohio State second, 218. The statement is, When a
14 doctor determines that he can take time away from
15 treating patients and go into this separate business
16 of being a professional witness, quote, by examining
17 another doctor's patients for the purpose of
18 collecting a fee for testifying against their
19 claims, he has undertaken a side business, he is no
20 longer a healer of the sick in that venture, he has
21 become, for the time being, a businessman.

22 MR. RITZLER: Objection.

23 Q. (BY MR. BURKE) Do you agree with that statement --

24 MR. RITZLER: Objection.

25 Q. (BY MR. BURKE) -- or disagree with that statement?

1 A. I feel like you're asking me to interpretate legal
2 documentation. I'm not a lawyer.

3 Q. Well, do you think that once you undertake this
4 business of reviewing other doctors' works and being
5 paid to do so by the Defendant that this is not
6 medical -- part of the medical procedure, it's a --
7 it's a business?

8 MR. RITZLER: Objection.

9 A. Well, the point is it's certainly a part of what I
10 do. I approach it -- approach it with the same
11 intensity I do with taking care of my own patients
12 and it's the issue -- I don't know what other people
13 do when they do these evaluations, but what I do is
14 evaluate them in what I think is a very fair manner
15 and if I think something's related to an accident, I
16 indicate that, and I've done that many times,
17 usually we're in a situation like this because agree
18 -- disagree with something, that's why we're here.
19 We we won't talk about the ones I agree with, so,
20 you know, we're here because I disagree with some
21 point in the records or something like that and I'm
22 happy to explain why, but what I do is evaluate
23 these individuals and make opinions based on what I
24 think makes the most sense.

25 MR. BURKE: Okay. Move to strike.

1 Q. (BY MR. BURKE) My question was, do you degree -- or
2 do you agree or disagree with that statement, simply
3 yes or no?

4 MR. RITZLER: Objection. Asked and
5 answered.

6 A. I think that requires a legal interpretation. I'm
7 not a lawyer.

8 Q. (BY MR. BURKE) Doctor, when you review the records
9 of some other doctors' patient, is there a charge --
10 what do you charge for that?

11 A. Depends on how many records there are, what's
12 involved.

13 Q. What do you charge, do you charge by the hour, by
14 the case, by the pound, how do you do that?

15 A. No, I don't charge by the hour. I would charge --
16 Based on a situation like this I would charge based
17 on time spent, also involvement as far as
18 intellectual involvement, how complicated the case
19 was, the studies that might need to be reviewed,
20 amount of records, all those things.

21 Q. How do you -- How do you base your fee on the time
22 spent without having an hourly charge?

23 A. It's basically what I think the time and expertise
24 I have spent is valued at.

25 Q. So when you're hired by Mr. Ritzler there's an open

1 hiring, you can charge whatever you want and justify
2 it at the end, is that how you do that?

3 A. I charge what I think is fair for what I've done.

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

5 A. No, I don't, not for evaluating individuals and
6 writing records. I do not.

7 Q. In this case what did you charge for reviewing the
8 records and report that are contained in your chart?

9 A. I don't recall what I charged for reviewing these
10 and writing these reports.

11 Q. I noticed that in your chart as I readvised it the
12 bill for the services you've rendered is not in
13 there.

14 A. I don't keep those in charts.

15 Q. You know you've done this before, you've been
16 deposed before, haven't you?

17 A. Sure.

18 Q. And you've been asked before on many, many occasions
19 what you charge and how much you're charging for
20 that particular case, isn't that a fact?

21 A. I've been asked that before and I commonly say I
22 don't remember because I don't remember. I've given
23 people ranges if they've asked.

24 Q. But you do understand that I'm allowed to ask
25 whether or not there's any bias or prejudice based

1 on -- on the financial aspect of your business here,
2 do you understand the case law allows me to do that?

3 A. Again, I'm not a lawyer. I'm happy to answer
4 questions you ask me.

5 Q. I know you're not a lawyer but you're working in the
6 -- in the legal field when you do what you're doing
7 and you've been asked on numerous occasions and you
8 dance every time, don't you, about fees?

9 A. I don't remember the specific fee I charge for a
10 certain case that was back in 2002 and I think
11 anybody here can think, Hey, if you did something
12 two years ago, would you remember what you billed
13 for that? No, you wouldn't, but I can tell you a
14 range it might be in, if you want to ask that.

15 Q. Well, help me with that then, give me a range that
16 it might be in.

17 A. Sure. That typically it might be in a range from
18 anywhere from \$500 to around \$2,500 or more
19 depending on what's involved.

20 Q. Now, when you first took on this case for
21 Mr. Ritzler you knew you were going to at some point
22 be deposed, didn't you?

23 A. I didn't know that.

24 Q. On these cases how many times are you not deposed
25 when you do an independent -- independent review of

1 files and reports and stuff for the Defendant?

2 A. Many times.

3 Q. Okay. When you were -- when you were -- when it as
4 indicated to you that your deposition would be taken
5 in this case, you knew that I was going to ask you
6 how much you charge for doing these things, didn't
7 -- don't you?

8 A. Not everybody asks.

9 Q. Well, in the depositions I have that you've
10 particiapting in, in the case of Frank Eggers versus
11 Bradley Brandonburg you were asked these questions
12 and some of the other cases that I have that you
13 you've testified in you were asked these questions
14 and every time you just refuse to do so. Is there
15 some reason you don't want the Jury to know how much
16 you charge in these instances?

17 A. I told you, I can't remember specific prices, and I
18 gave you a very reasonable explanation for that.
19 It's, how can you remember something from two years
20 ago, but I told you very easily that I'd give you
21 a range, and I think that's pretty fair.

22 Q. Okay. I'm not really interested in what you think
23 is fair here, Doctor. I'm here to ask questions of
24 you.

25 A. All right.

1 Q. Once you didn't (sic) decide to do this kind of work
2 where you become a businessman, the amounts of money
3 you charge to do this are fair game for my client,
4 Debbie Lahiff, to find out why -- whether or not
5 there's any bias or prejudice here. Now, you know
6 that you had no trouble reviewing your records and
7 talking about the report you did two years ago. I
8 imagine that you keep books, you pay taxes, you keep
9 books, even when you were back with the company that
10 you were working for, you keep books and records and
11 you would know how much you charge, it would not be
12 an impossible task, would it?

13 A. I don't know. I haven't looked for it.

14 Q. And if you think you're being fair if you're telling
15 the ladies and gentlemen you're trying to be fair
16 here and anticipating that this was going to be
17 asked, fairness would have required you to have
18 those records to answer these questions, don't you
19 agree with that?

20 A. No.

21 Q. So your interpretaion of fairness is -- is whatever
22 you want to respond, is that my understanding,
23 Doctor?

24 A. I've already told you what I thought was fair.

25 Q. So you could have charged Mr. Ritzler up to \$2,500

1 for reviewing these records, is that correct?

2 A. It could have fallen within that range. It could
3 have been a little bit more depending what's
4 involved. I don't recall the exact amount.

5 Q. Well, since we don't know, I'm going -- if I want to
6 be fair, I'm going to suggest to the ladies and
7 gentlemen of the Jury that \$2,500 is the top number
8 that you could have been charging and that's what
9 you charged, is that fair, Doctor?

10 MR. RITZLER: Objection.

11 A. No, because I don't know what the exact bill was.

12 Q. (BY MR. RITZLER) And how much do you charge for a
13 deposition, Doctor?

14 A. Well, for deposition time I do charge \$900 an hour.

15 Q. And the \$900 an hour, does that -- does that take in
16 the prep time that you have with the -- with the
17 attorneyes beforehand?

18 A. Yes, it does.

19 Q. Is there also -- Other than the prep time today, for
20 instance, you did prep with Mr. Ritzler, didn't you?

21 A. Yes, I did.

22 Q. And how long did that take?

23 A. About a half an hour.

24 Q. Now, I wasn't present for that, was I?

25 A. No.

1 Q. In fact, I was sitting in your waiting room when
2 that -- when you had Mr. Ritzler come in and you
3 didn't ask me to come in, did you?

4 A. No.

5 Q. Well, if you -- if this -- you really truly an
6 independent examiner of the documents, why wouldn't
7 I be allowed to come back there? I mean, if this is
8 independent and above board and fair, why wouldn't
9 you let me come back to hear your prep with
10 Mr. Ritzler?

11 MR. RITZLER: Objection.

12 A. It wasn't my decision to have you here or not have
13 you here.

14 Q. (BY MR. BURKE) You're not intentionally trying to
15 mislead the Jury, are you, about that, are you,
16 Doctor?

17 A. No.

18 Q. So when you met with Mr. Ritzler prior to -- to your
19 testimony here, did you discuss your testimony with
20 him?

21 A. We discussed the medical records and what was in the
22 records and the reports.

23 Q. Did you discuss your testimony with him?

24 A. I told him -- We reviewed what was in the reports
25 and that my testimony would reflect what's in the

1 reports.

2 Q. Now, in addition to reviewing records and in
3 addition to testifying for the Defendant in this
4 case, in this deposition, you also prepared a report
5 -- two reports in this case, didn't you?

6 A. Yes, I did.

7 Q. And how much do you charge for those reports?

8 A. I don't recall a specific amount.

9 Q. You don't have -- You bill for it?

10 A. At some point, yes.

11 Q. And you were paid for it?

12 A. I hope I was.

13 Q. Okay. So you've already been paid for the reports,
14 and you did two of them, one was two pages and the
15 other was more than two pages, would one have cost
16 more than the other?

17 A. It could have. I don't recall, specifically.

18 Q. Do you want to give the ladies and gentlemen of the
19 Jury a range for this, too?

20 A. Well, that falls in the range I already told you.

21 Q. It could be up to \$2,500 for a report?

22 A. That, an evaluation that would include a report like
23 this could be in that range.

24 Q. And you do over 100 of these every year?

25 A. About.

1 Q. How did you come to examine Miss. Lahiff?

2 A. Kelly Grigsby asked me to evaluate her.

3 Q. And how, by telephone, by letter?

4 A. I don't recall.

5 Q. Was there a letter outlining the various problems
6 that where in this case from a medical standpoint?

7 A. I don't recall specifically.

8 Q. Now, you testified that you -- you examine the
9 patient first and then you review the records?

10 A. I may have looked at some records beforehand, I
11 don't recall. This was a long time ago.

12 Q. You keep saying this is a long time ago, it's been a
13 long time ago for Mrs. Lahiff and that's why I need
14 to ask you these questions.

15 You came into this case three years after the
16 accident, isn't that correct?

17 A. That would be about right.

18 Q. And you keep saying, Well, it's two year ago, it's a
19 long time for me to remember things, but, Doctor,
20 again, you now you testify in these cases, whyt do
21 you have these lapses of memory when you know you're
22 going to testify?

23 A. Well, I think it's kind of silly to say something
24 you can't remember from two years ago is a lapse of
25 memory for specifics. We're all human.

1 Q. We're not talking about a softball game you played
2 in two years ago, Doctor, we're talking about your
3 examination of my client in an attempt to refute the
4 things that her doctors said were happening, isn't
5 that what you were doing?

6 A. I'm here to give opinions which I think make sense.
7 I'm happy to explain them. I have my reports in
8 front of me and records in front of me, those help
9 refresh my memory.

10 Q. You use your reports and the records to refresh your
11 memory when you're testify, but you don't bring your
12 bills to refresh your recollection to tell the
13 ladies and gentlemen how much money you're mkaing by
14 doing what you're doing in this case.

15 A. We've already gone over that.

16 Q. And I'm going to keep going over it until you answer
17 the question specifically.

18 A. What question are you asking me?

19 Q. I'm asking you, why, if you have all these other
20 reports with you, why you just refuse to bring the
21 documents to show how much money you're making by
22 testifying for the Defendant in this case?

23 A. It's not something that I do with my own patients.
24 I don't know keep their bills in the chart.

25 Q. I'm not here for your own patients. I'm here for

1 for Debboe Lahiff, whose doctors have treated her
2 for five years and who you have been hired by the
3 defense to refute, and I think the ladies and
4 gentlemen of the Jury should know how much money
5 you're making to do this. And I guess you're just
6 not going to answer the ladies and gentlemen of the
7 Jury in this case.

8 A. I think you're making a statement instead of asking
9 me a question.

10 Q. Is that a legal opinion? Doctor, I thought you
11 didn't give legal opinions.

12 A. Well, you didn't ask me a question. You made a
13 statement.

14 Q. As the question before you is, why don't you have
15 those with you, is it because you don't want the
16 Jury to find out how -- the \$350,000 you're making
17 on these cases in a year?

18 A. I didn't say that number.

19 Q. Well, they can do the math.

20 Where you contacted by Mr. Ritzler after the
21 depositions of Dr. Shamere and Dr. Matthew?

22 A. No.

23 Q. Whre you furnished their testimony in those
24 depositions?

25 A. No.

1 Q. How do you know what to do with a patient who has
2 been sent to you by a lawyer when they come in, how
3 do you know what to ask them?

4 A. Well, it's very similar to an evaluation of any
5 patient I see. We take a history, we ask them what
6 happened to them, complaints, problems, past
7 treatment, treatment they've had subsequently and we
8 do that pretty routinely, so it's something that
9 comes naturally.

10 Q. Does the referring lawyer point out to you what the
11 injuries allegedly are in the case and do you go
12 from there or does that not happen?

13 A. Sometimes there may be outlines or references in
14 letters, but the issue is, I don't rely on those for
15 any kinds of medical information. I evaluate the
16 individual myself and I make my own opinions and
17 decisions.

18 Q. I noticed in your -- in your chart, in your file, it
19 had a letter from the attorney which stated the
20 various diagnoses made by the other doctors, do you
21 recall seeing that in your file?

22 A. Not specifically but sometimes that happens.

23 Q. Okay. How about in this case? I'm not worrying
24 about anybody else's case except this case.

25 A. It may have. I haven't looked at that letter for a

1 long time. I didn't --

2 Q. You didn't review your records before today, just
3 recently?

4 A. I reviewed the medical records, not the non-medical
5 records.

6 Q. Doctor, reviewing all the medical records, the
7 reports of Mrs. Lahiff, did any of those records
8 indicate that Mrs. Lahiff had experienced any pain
9 or medical treatment involving her neck prior to the
10 accident?

11 A. Not that I'm aware of.

12 Q. By history, you read the histories, you reviewed the
13 history given in the ER record, right?

14 A. Yeah.

15 Q. And you reviewed Dr. Matthew's history and his
16 reports?

17 A. Yes, I did.

18 Q. Dr. Choy's (Phonetic) history?

19 A. Right.

20 Q. Dr. Shahmere's history?

21 A. Yes.

22 Q. In any of those histories was there ever any reports
23 by Mrs. Lahiff or anybody that she had a
24 pre-existing pain reported in the cervical area?

25 A. She reported me she had intermitten stiffness. I

1 don't recall that she reported to people that she
2 had an ongoing pain problem, no.

3 Q. Okay. I asked you about the reports that you
4 reviewed, you've already testified for Mr. Ritzler
5 that you went through all of these reports, did you
6 see in any of those reports any indication that she
7 ever had a pre-existing cervical problem that she
8 complained of?

9 A. Other than what I said, no.

10 Q. Do you have any evidence whatsoever that there was
11 -- she ever suffered any trauma to the neck prior to
12 this accident?

13 A. I don't think I have all of her medical records
14 before the accident, but I'm not aware of that
15 history.

16 Q. Well, if you were suspicion of this, do you think
17 you would have done something about that?

18 A. What do you mean?

19 Q. Well, if you thought that there were some records
20 that you weren't -- you don't have that would
21 demonstrate that she had pre-existing condition.

22 A. I review the medical records that are made
23 available. I don't have ones that don't exist.

24 Q. Doctor, what do you feel is your obligation to a
25 patient when he or she comes be treated by you?

1 A. To evaluate them and make diagnoses and form
2 opinions for their treatment based on what I see and
3 what I know in my expertise.

4 Q. Do those obligations that you -- that you feel you
5 have for patients that come to you for treatment, do
6 they change when someone is sent to you by a defense
7 attorney for evaluation?

8 A. The only difference is I can't treat them. I
9 approach them with the same intention to thoroughly
10 evaluate them and make opinions that I think make
11 sense.

12 Q. How long was Mr. Lahiff in your office?

13 A. I don't recall.

14 Q. Did you meet with her at the appointed time, she had
15 a time to be here? Did you meet with her in a
16 timely fashion?

17 A. I don't recall. It was two years ago.

18 Q. Everything's two years ago. Do your records reflect
19 it, you have reports?

20 A. I don't keep track of the time I see my own
21 patients.

22 Q. You don't -- You don't keep track of the time you
23 see your own patients?

24 A. Not how long I see them, no.

25 Q. That's because you're not charging them \$900 an hour

1 to testify for them, are you?

2 A. Sometime I do if I need to become an expert for my
3 own patients, which has happened.

4 Q. You charge your own patients \$900 an hour to testify
5 for them?

6 A. That's the deposition time for anybody who asks.

7 Q. Was her husband with her on that occasion that you
8 -- when --

9 A. I don't know.

10 Q. -- you examined her? Pardon me?

11 A. I don't recall.

12 Q. Your notes -- Did you keep your notes from the
13 examination?

14 A. Yeah.

15 Q. You didn't type them up simultaneously with the
16 examination, did you?

17 A. No. I took hand-written notes regarding history
18 then I dictated the history and physical.

19 Q. Do your hand-written notes indicate that Mrs. -- Mr.
20 Lahiff was present at the time of your examination?

21 A. Let me look. No, they don't.

22 Q. They don't, they don't report that?

23 A. Nope.

24 Q. Now, if he were to testify that -- if he's to
25 testify in this case that he was in the room and

1 observed the entire examination, you wouldn't
2 disagree with that, would you?

3 A. I don't recall if he was or wasn't.

4 Q. Your -- your records -- Your notes are just not
5 complete, are they?

6 A. It wouldn't make any difference even with my own
7 patients whether their spouse or child or -- was in
8 the room. I don't note that.

9 Q. Now, this exam that you took of Debbie, you don't
10 recall -- your records don't show how long it
11 lasted?

12 A. No. I don't keep track of that with anybody I
13 evaluate.

14 Q. Okay. The first part of the exam you -- you take a
15 history from her?

16 A. Yes.

17 Q. And you ask her other questions as well as taking
18 her history?

19 A. Sure, that's part of what physicians do.

20 Q. Do you ask her about prior problems?

21 A. Sure.

22 Q. And do you ask her about prior surgeries?

23 A. Sure.

24 Q. Now, in your report you talked about -- you talked
25 about some prior conditions that she had, is that

1 correct?

2 A. Yes.

3 Q. And what were they?

4 A. There was a history of gallbladder surgery, also
5 some surgery on her finger and heart disease she had
6 a stent for, she had a heart attack in 2001,
7 vascular surgery in her leg and she had been
8 insullin dependant for 39 years.

9 Q. Of all those things you pointed to of the -- you
10 just reviewed for the Jury, how many of those pre --
11 predated the accident?

12 A. Some did. Diabetes certainly did.

13 Q. And what other ones did?

14 A. The bypass surgery.

15 Q. Did bypass surgery?

16 A. Leg bypass surgery.

17 Q. Okay. Would that -- Would the diabetes have caused
18 her any pain in her -- in her neck?

19 A. No.

20 Q. The left leg bypass surgery cause any pain in the
21 neck?

22 A. No.

23 Q. Her heart attack that she had after -- after the --
24 the accident, would that have caused pain in her
25 neck?

1 A. It can.

2 Q. How does that happen, Docotr?

3 A. Referred pain.

4 Q. That would be in the cervical area, the way she
5 complained of the pain when she was with you that
6 day?

7 A. People who have escemic heart diseasee can get
8 referred pain into their neck.

9 Q. I mean, is that common or is that just a
10 possibility?

11 A. It happens. I don't think it was the case with her.

12 Q. Okay. How about corroded artery surgery, does that
13 cause pain in the neck?

14 A. You can scarring around the surgery that's in the
15 neck. It cab happen.

16 Q. That's in the front of the neck, though, the
17 corroded artery, isn't it?

18 A. It's pretty deep. Pretty deep in the neck.

19 Q. But she reports pain is C3-4, isn't that where she
20 reports it?

21 A. She can't tell me whether it's C3-4 or not. If she
22 has neck pain when I saw her, she had neck pain that
23 was on the right and left side, she also had some
24 right-upper back area pain.

25 THE VIDEOGRAPHER: Excuse me. Could

1 we go off the record for a second?

2 MR. BURKE: Sure.

3 THE VIDEOGRAPHER: Off the record.

4 (Short recess had.)

5 THE VIDEOGRAPHER: Back on the record.

6 Q. (BY MR. BURKE) Doctor, you -- during that exam you
7 also diagnosed her carpal tunnel syndrome, didn't
8 didn't you?

9 A. Yes.

10 Q. And you discussed that with her, didn't you?

11 A. I don't recall. We may have discussed it.

12 Q. And, in fact, you touched her arm and she complained
13 of the pain when you -- when you touched her arm in
14 that examination, didn't she?

15 A. Well, it's a little more involved than that.

16 Q. Well, didn't she -- didn't she react to the pain in
17 the arm when you -- when you touched it, when you
18 palpated it?

19 A. It didn't cause pain, it caused some tingling along
20 the distribution of the median nerve, which is
21 different than that.

22 Q. Doctor, you also indicated for Mr. Ritzler that she
23 jumped when you -- when you palpated the back of her
24 neck?

25 A. Yes.

1 Q. And you said that that was inappropriate?

2 A. For the way I was palpating, yes, it was.

3 Q. So you didn't think her pain was -- her reaction was
4 real or did you think it was feigned, is that what
5 you're saying?

6 A. It's called a reaction that's out of purporion to
7 the physical exam, and it's consistant with symptom
8 augmentation.

9 Q. You just said symptom augmentation, tell the ladies
10 and gentlemen of the Jury what you mean by that.

11 A. It means the patient's trying to make the pain look
12 more than it is.

13 Q. So you're calling her a liar?

14 A. No.

15 Q. You're saying that Debra came in here and tried to
16 fool you?

17 A. No.

18 Q. Well, what other reason would you have to say that?
19 If she felt pain in the neck and reported it to you
20 as you asked her to do and then did you tell her at
21 the time, this is in inappropriate?

22 A. No.

23 Q. So you wanted to write that in the report for your
24 -- for the Defendant, is that right?

25 A. It happens with my own patients. I don't tell them

1 it's inappropriate when I'm examining them. I note
2 it in my records.

3 Q. Could you be mistaken about that, Doctor, about her
4 reaction?

5 A. No.

6 Q. You could not be mistaken?

7 A. I don't think so. Not in this case.

8 Q. And, Doctor, you reviewed Dr. Eltommie's report,
9 didn't you?

10 A. Yes.

11 Q. And in his report, and I'll handle you, it's marked
12 Exhibit 18, on the very first page he -- he examined
13 her, also, and he had findings, didn't he?

14 A. He did.

15 Q. And, in fact, in his report he was of the opinion
16 based on objective tests that Mrs. Lahiff was in
17 pain, wasn't he?

18 A. She reported pain, he notes that.

19 Q. All right. He didn't say in there that she -- that
20 it was inappropriate the way she acted, did she
21 (sic)?

22 A. It doesn't specifically say that.

23 Q. But he's not working for the Defendant, is he?

24 A. Well, I'm not working for them, either. I'm
25 evaluating her at their request.

1 Q. Well, who's paying you, Doctor?

2 A. Well, whoever asked me to testify, which I think
3 they've asked me to testify but I'm giving opinions
4 based on what I think makes the most sense and what
5 happened.

6 Q. So on another occasion with the treating physician
7 when he did the very same thing you did she
8 indicated there was generalized -- he indicated
9 tendernes over the paracervical muscles with
10 moderate paracerval spasm and he found that, right?

11 A. He notes it.

12 Q. And that was back in -- in -- in on 10/24 of '02,
13 right?

14 A. Correct.

15 Q. And when did you see her?

16 A. I saw her in May of 2002.

17 Q. So that's after you saw her, so -- right?

18 A. What was the date, again? I'm sorry.

19 Q. 10/24/02.

20 A. That would be after that time.

21 Q. So what you felt was inappropriate on the day in
22 question, could it just have been that day that that
23 something went wrong?

24 A. He may not have looked for that. Some doctors don't
25 look for that when they examine people.

1 Q. He reports, Doctor, you read it, he reports that the
2 patient was noted to avoid any neck movement and
3 keep her neck in a ridged position. There was
4 general -- generalized tender -- tenderness over the
5 paracervical muscles with moderate paracervical
6 spasm, he noted it.

7 A. On that day?

8 Q. And that was after you noted it for the Defendant,
9 rights?

10 A. Approximately eight months later.

11 Q. In fact, you spent a great deal of time in your
12 examination involved with the carpal tunnel
13 diagnosis that you made, didn't you?

14 A. I don't recall how much time I spent involved in
15 that.

16 Q. In fact, you -- you spent a total of 28 minutes from
17 start to finish for the entire exam of her,
18 including the oral and the physical, isn't that
19 correct?

20 A. I didn't keep track how long the time was.

21 Q. That's why I asked you if you remember Mr. Lahiff
22 being there because he did. Did -- Did you notice
23 him talking -- Oh, that's right, you didn't see him
24 there, did you?

25 If she reported that you sharply hit a nerve in

1 her wrist causing her pain and asked her if she felt
2 a zing down her hand, do you think that happened
3 that she felt pain?

4 A. What we're doing in that examination is testing for
5 carpal canal problems, specifically carpal tunnel,
6 she responded that she had that symptom.

7 Q. All right. She said she had -- felt pain, you said,
8 oh, she would have only felt tingling.

9 A. I didn't say that.

10 Q. When you testified before you said -- I said, When
11 you touched her arm, she felt pain, and you said,
12 She would have only found tingling.

13 A. I don't think I used the word only.

14 Q. Was she faking that, also, Doctor?

15 A. Did I say she was faking?

16 Q. Well, you -- The insinuation is that when she jumped
17 it was inappropriate and you said that some people
18 do that to report pain that doesn't exist.

19 A. People do that when they're being examined by
20 doctors sometimes.

21 Q. So in the 28 minutes that you spent in the lifetime
22 of this woman, you're branding her a liar because
23 she jumped inappropriately as far as you're
24 concerned?

25 A. I didn't say that.

1 Q. Oh, that's right. You can't -- you wouldn't be
2 mistaken about that, you've already said that, isn't
3 that correct, Doctor?

4 A. You asked me that question before and I --

5 Q. I did and I'm going to ask it -- I'm asking you
6 again, Doctor. You did not make a mistake, you
7 don't make mistakes about those things, is that
8 right?

9 A. What question are you asking me regarding?

10 Q. All right. Let me make it simple for you. Okay?
11 You said that she had pain and it was inappropriate,
12 did you say that?

13 A. What I told you is that her reaction was
14 inappropriate to what I was doing.

15 Q. And then I asked you if you could be mistaken and
16 you said no?

17 A. In regard -- In regards to in appropriateness, no.

18 Q. Okay. And you're not -- You're not trying to tell
19 these people on the Jury that -- that the carpal
20 tunnel had anything to do with this accident?

21 A. I don't think so.

22 Q. Okay. I mean, defense counsel never indicated that
23 they thought carpal tunnel was being -- was -- was
24 part of her complaint about the accident, did they?

25 A. I don't recall. It's something that came up on the

1 physical exam and evaluation when I saw her.

2 Q. Now, when you reviewed Dr. Matthew, Dr. Choy,
3 Dr. Eltommie and Dr. Shahmere's records, you agree
4 that all of whom were Debra Lahiff's treating
5 doctors, isn't that correct?

6 A. Correct.

7 Q. And that it's -- Isn't it correct that these doctors
8 treated Miss Lahiff -- Mrs. Lahiff individually and
9 collectively for the past five years?

10 A. They treated her at various times.

11 Q. During that period of time did you see any occasion
12 that they didn't continuous attempt to reduce the
13 pain that she was experiencing? Did you see
14 anything in there that didn't indicate they were
15 trying to do that?

16 A. No.

17 Q. Now, all four of these doctors concurred, did they
18 not, Doctor, that Mrs. Lahiff sustained a herniated
19 cervical disk as a result of the accident of August
20 22, 1999?

21 MR. RITZLER: Objection.

22 A. You have to ask them.

23 Q. (BY MR. BURKE) Well, you read the reports. You're
24 -- You're reading these reports, you're getting all
25 this money to read these reports, did you read the

1 reports in which each one of these doctors said that
2 the proximate causation of the herniated disk was
3 the accident?

4 MR. RITZLER: Objection.

5 A. I read their reports.

6 Q. (BY MR. BURKE) And you didn't read that in the
7 reports or was this because it was two years ago and
8 you can't recall?

9 A. Well, as far as their opinions, I think they're in
10 the reports. I'm not going to testify to their
11 opinions. You have to ask them for that.

12 Q. But your opinion is that it didn't occur then, isn't
13 it, isn't it your opinion?

14 A. My opinion is she didn't have a disk herniation.
15 It's my opinion that she had a disk osteophycomplex
16 which is degenerative and that wasn't caused by the
17 accident.

18 Q. And -- So when the MRIs -- both MIRs reported disk
19 herniation, you disagree with the MRIs, is that
20 correct?

21 A. I don't disagree with the MRI I looked at. I
22 described what I saw. Sometimes things get
23 described differantly. I told you what I saw on the
24 MRI scan.

25 Q. All right. Four doctors say that it was a disk

1 hernation, two MRIs say it was disk herniation, you
2 say it wasn't a disk herniation, right?

3 A. Correct.

4 Q. And all those people were not paid by the defense,
5 were they?

6 A. I'm not aware of that.

7 Q. Doctor, handing what was been marked as Plaintiff's
8 Exhibit 3, now can you look at that please and tell
9 the ladies and gentlemen of the Jury what that is.

10 A. It's an emergency-room record from August of 1999.

11 Q. You indicated in your report that -- that
12 Msr. Lahiff reported only neck pain, didn't you?

13 A. That's what she reported to me.

14 Q. Now, when you were talking about the ER records you
15 say that, The ER records revealed that she had
16 complaints of neck pain.

17 A. They do indicate that.

18 Q. And they also talk any shoulder pain and back pain,
19 don't they?

20 A. It depends on where you look on the ER record.

21 Q. Well, you said the ER record reported only neck pain
22 but the records if you -- if you reviewed these then
23 certainly you saw that she also reported shoulder
24 and back pain?

25 A. The physician's evaluation only notes neck pain.

1 There's a reference to some neck and back in the
2 nurses notes.

3 Q. Well, the nurses' notes don't count, is that -- is
4 tha how it goes?

5 A. I indicated she had some neck pain.

6 Q. Why did omit from your report the fact that she
7 reported neck and pain -- shoulder and back pain in
8 addition to neck, why wasn't that in your report?

9 A. It's just an overview of the records. She reported
10 to me that she had neck pain.

11 Q. Isn't it --

12 A. When I evaluated her she reported to me she had neck
13 and right-upper back pain. I'm aware of that.

14 Q. Isn't it a fact, Doctor, that in your reports, the
15 two reports, you only put in there those things
16 which you think will annerd to the benefit of the
17 Defendant, isn't that how you do this -- these
18 things?

19 A. Absolutely not.

20 Q. Then why did you omit those -- the shoulder and back
21 pain?

22 A. I didn't purposely not note it. I note where in the
23 physician's record.

24 Q. Doctor, handing you what has been marked for the
25 purpose of identification as Plaintiff's Exhibit 8,

1 would you tell the ladies and gentlemen of the Jury
2 what that is?

3 A. It's an MRI report.

4 Q. And what's the date of that MRI report?

5 A. October 9, 1999.

6 Q. Doctor, please read the impression at the end of
7 that report if you would.

8 A. The impression?

9 Q. Yes.

10 A. It says, There is a left paracentral lateral focal
11 disk herniation at C3-4 which deforms the left
12 anterior aspect of the cervical spinal cord without
13 -- without impinging upon it and results in mild
14 left neuroforamina stenosis at the level.

15 Q. They don't -- You said there was no herniation
16 there.

17 A. I wouldn't call it a herniation. I'd call it a
18 disk osteophycomplex.

19 Q. So you're disagreeing with the -- with the doctor,
20 Dr. Kraig M. Broider, M.D. who does MRIs and who
21 wrote this report and reviewed the MRI, isn't that
22 correct, you're disagreeing with him?

23 A. I disagree with describing it as a disk herniation.

24 Q. Okay.

25 MR. RITZLER: Objection.

1 Q. (BY MR. BURKE) What is your -- What is your
2 training in -- in MRIs?

3 A. I had training in MRI interpretation as a resident.
4 I did research on it. I review them very
5 frequently, regularly in my own practice.

6 Q. What is your -- What is the most recent training
7 you've had with reading an MRI?

8 A. I went to an MRI course a month ago.

9 Q. Okay. That was before -- That was after you made
10 this interpretation here, wasn't it?

11 A. You asked me what the most recent was.

12 Q. Okay. What was the most recent prior to making your
13 statement that the MRI report is incorrect?

14 A. Most recently would have probability been the
15 National Academy meeting in that year.

16 Q. Probably?

17 A. Because I review the MRI information every year.

18 Q. What -- What type of open-sided MRI modality is used
19 here? Do you know what the -- what it is, what the
20 point is?

21 A. I'd have to look at the scans. I don't have them in
22 front of me anymore.

23 Q. You didn't note that?

24 A. Nor do they in their report.

25 Q. But -- But you -- Their report says something you

1 disagreed with, are you trying to say that their
2 equipment was faulty or that he can't read a report
3 or he can't read -- He didn't just write this report
4 without -- without reviewing the films, did he?

5 A. I think he looked at the films and described them in
6 words he used.

7 Q. And then Dr. Eltommie said the same thing as well,
8 didn't he, and he reviewed the MRI reports, right,
9 you read his records?

10 A. I did.

11 Q. Doctor, in your report -- in your report, the first
12 report that you wrote for -- for Mr. Ritzler you --
13 in your report it says there was a disk -- a
14 herniation at 2-3-4 disk space, what does that mean,
15 2-3-4?

16 A. It report notes at 3-4. It's a typo.

17 Q. Pardon me?

18 A. You -- Which page are you referring first of?

19 Q. I'm talking about your report.

20 A. Where in my report?

21 Q. On Page -- on Page 3 of your report.

22 A. All right.

23 Q. In there you -- in the last paragraph you report
24 notes 2-3-4 disk space, what does that mean?

25 A. It's a typographic. It supposed to -- what I'm

1 doing is noting what was we just talked about on
2 their MRI scan report, I noted what they noted, and
3 2 supposed to be at.

4 Q. Okay. So 2 is -- If we were supposed to interpret
5 this letter the 2 means at, you're not referring to
6 disk -- the 2-3 and 4 disk space, that's what you
7 say. There is a left paracentral and lateral focal
8 disk herniation, so that was just a mistake that you
9 made?

10 A. The 2 was a type. It's supposed to say at. Report
11 notes at 3-4 disk level, disk space.

12 Q. Doctor, later on in that same report on Page 5 on
13 the second last paragraph, the last paragraph before
14 the conclusion, you write, These degenerative
15 findings at the left L3-4 level would corrolate with
16 those noted on the plane x-rays of August 22, 1999,
17 St. John West Shore ER, why was the lumbar spine
18 referenced in your report?

19 A. There's no -- There's no -- It's a typographic
20 error.

21 Q. That's another mistake you made?

22 A. I didn't make it. Unfortunately my typist put L --

23 Q. Oh.

24 A. -- instead of C3-4. It's in the records.

25 Q. Okay. And you made the same mistake again in the

1 conclusion, the left sided L3-4 disk osteophcomplex,
2 there's no L4 involved in this case, is there?

3 A. I agree. It was a typographic error as far as L
4 versus C, but it's clear we're talking about the
5 left C3-4.

6 Q. Okay. And this was some gal in your offices fault
7 this time, right, it wasn't your fault?

8 A. I --

9 Q. Is that right, Doctor?

10 A. I dictated the report. I don't proofread them for
11 typographic errors.

12 Q. And, of course, this was written a couple years go
13 so why are you expected to correct those things, is
14 that right? Is that right, Doctor?

15 A. I told you, I don't proofread them for that
16 typographic error.

17 Q. You signed the report, didn't you, is that your
18 signature on the report, Doctor, Sincerly, T.
19 Gordon?

20 A. Sure.

21 Q. Doctor, are you a surgeon?

22 A. I'm trained as a surgeon.

23 Q. Do you perform -- When was the last time you
24 performed a surgery?

25 A. September of 2002.

1 Q. Okay. You haven't performed a surgery in a couple
2 years now coming up?

3 Doctor, if you were going to purport -- if you
4 were going to perform a surgery you would take more
5 care than -- than -- you would read things so that
6 you don't mistake L3-4 with C3-4, wouldn't you?

7 A. I think that's a pretty silly question. I think
8 we're talking about --

9 Q. Excuse me?

10 A. -- very honest mistake by --

11 Q. Excuse me, Doctor?

12 A. -- somebody -- somebody typing up this report. It's
13 very clear in the context of the report that we're
14 talking about C3-4. I think that's pretty silly.

15 MR. BURKE: Move to strike.

16 Q. (BY MR. BURKE) Doctor, I will ask you questions.
17 It's not your position to tell me that my questions
18 are silly or not silly. Just answer my questions
19 and your erogenous aside, we'll get done with this
20 case. Okay?

21 MR. RITZLER: Motion to strike.

22 Q. (BY MR. BURKE) Do you think -- Do you think that
23 Debra Lahiff thinks it's silly that you make these
24 mistakes and try to say that she's faking things, do
25 you think that's silly, do you, Doctor?

1 A. The issue that we're talking about is a typographic
2 error that the dictationist made and the issue is
3 the report is clear in its context what it's talking
4 about.

5 Q. Doctor, could you be mistaken about the way you
6 read the MRIs?

7 A. No.

8 Q. Okay. Everybody else is mistake except you, is that
9 correct, Doctor? The doc -- The doctor who did the
10 MRI and wrote the report is mistaken, is that
11 correct?

12 A. It's not unusl.

13 Q. Is that correct, Doctor?

14 A. It's -- it's a question that needs an explanation.

15 Q. I want a yes or no answer, Doctor.

16 A. I can't give you a yes or no answer.

17 Q. Well, we're going to be here until you do. Is
18 Dr. Eltommie ncorrect when he reads it as a
19 herniation?

20 A. I think the word herniation to the way I define it
21 is not what's on that MRI.

22 Q. You are disagreeing with Dr. Eltommie who's a
23 neurosurgeon, aren't you, and who operates?

24 A. With the description of the word herniation in the
25 way that I define it, yes.

1 Q. All right. You don't think that Dr. Eltommie's
2 report contains some type of typos that that was a
3 mistake, do you?

4 A. There are typos in other people's reports.

5 Q. I'm askig you --

6 A. It's a pretty common --

7 Q. I'm asking you about Dr. Eltommie when he said
8 there's a herniation at C3-4?

9 A. Maybe it was. You have to ask him.

10 Q. How about when Dr. Shahmere says that there is no
11 degenerative problems at C3-4, it doesn't show
12 anywhere on the MRI, where do you see it on the MRI?

13 A. At 3-4.

14 Q. Where do you see it in the report?

15 A. It may not have been mention in the MRI report, it
16 was mentioned in the x-ray report.

17 Q. Doctor, look at the report and you tell me where it
18 says that there's some degenerative changes at C3-4.

19 A. It doesn't specifically say C3-4. It mentions
20 various levels.

21 Q. It doesn't say C3-4, does it, Doctor?

22 A. Not specifically.

23 Q. But you reached that conclusion because it fits with
24 what you want to say, that this happened prior to
25 the accident?

1 A. That's ridiculous. It's -- I said it because --

2 Q. I'm silly and ridiculous, is that right, Doctor?

3 A. I didn't say you're silly and ridiculous. It's on
4 the MRI scan, it's on the plane x-rays that a
5 radiologist notes, also.

6 Q. Doctor, handing you February 2, 2001 Lakewood Open
7 MRI Scan, show me where it says on there that there
8 was degenerative changes at C3-4?

9 A. The reference to neuroforamina stenosis is a
10 reference to degenerative disease.

11 Q. Where, Doctor? They talked about it in 5-6 -- 4-5
12 and 5-6, not in C -- not in C 3-4 It's 4-5 and 5-6,
13 C4-5, C4 -- 5-6.

14 A. There's mention of it at numerous levels. It's on
15 the MRI scan. I looked at it.

16 Q. Doctor, once again, because you looked at it doesn't
17 necessary mean that you're correct, does it?

18 A. I know what I saw.

19 Q. And everybody else saw something different, is that
20 right, Doctor? Four other doctors were fooled and
21 the two -- the two radiologists who -- who did the
22 scans they've been fooled but your the only one to
23 be believed, is that correct, Doctor?

24 A. What I'm telling you is what I saw on the MRI scans.
25 I'd be happy to tell you what I saw. You have to

1 ask them what they saw.

2 Q. We already have, Doctor, and they disagree with you,
3 and you know that, don't you?

4 A. I'm not aware that you talked to the radiologist.

5 Q. I'm talking about the four treating doctors.

6 A. I'm not sure who you've talked to.

7 Q. So you can't point out to my in either of the
8 reports, the MRIs of -- the two MRIs any place where
9 it indicated there was a degeneration at C3, C4, it
10 is not written there, this is just your
11 interpretation, is that correct?

12 A. It may not be specifically mentioned in the MRI
13 report but it's mentioned in a prior plane x-ray
14 report and it's something that I saw when I looked
15 at the MRIs.

16 Q. So you're saying that Dr. Brauner from Dr. Hill and
17 Thomas on the October 9, 1999 MRI and Dr. Burns from
18 Lakewood Open Scan and the MRI of February 2001,
19 trained and certified radiologists were unable to
20 see what you saw, that's what you say?

21 A. You have to ask them.

22 Q. Doctor, they wrote the report. We don't have to ask
23 them. The report is there. It stands for itself.
24 And you -- And you try to refute it without any --
25 without any evidence whatsoever other than your own

1 considered opinion, is that right?

2 A. I'm telling you what I saw on the MRI scans and I've
3 already what I describe. It was also described by
4 another radiologist on a plane x-ray at the C3-4 level
5 on the left side.

6 Q. In fact, Doctor, your whole basis is the plane view
7 pictures, x-rays at the ER and in that -- in those
8 x-rays you're saying that that showed degenerative
9 changes to C3, C4 on the x-ray, isn't that what
10 you're saying?

11 A. That's what the radiologist noted.

12 Q. It also in that x-ray -- handing you a copy of the
13 x-ray from Lakewood, the -- in fact, it's attached
14 to Exhibit 3.

15 A. Uh-huh.

16 Q. Now, you notice that the MRI showed degenerative
17 changes at 4-5e and 5-6, don't they, and you agree
18 that it shows those --

19 A. Yes.

20 Q. -- the MRIs?

21 A. Yes.

22 Q. And the plane x-ray of the ER, do see any mention of
23 any degenerative changes at 4-5 or 5-6?

24 A. Not specifically, no.

25 Q. In fact, it's not in there specifically or not?

1 A. Sometimes radiologists don't mention everything thats
2 on the film.

3 Q. Doctor, are you telling the ladies and gentlemen of
4 the Jury that this x-ray that you're relying on
5 which doesn't show any degeneration at 4-5 and 5-6
6 which clearly show up in the MRIs that this -- that
7 you would use this plane x-ray to rely on instead of
8 the two sophisticated MRIs taken after that, is that
9 what you're telling them?

10 A. No. I looked at the MRI scan myself and I also note
11 that the findings on the cervical spine x-ray that
12 was obtained the day of the accident that wasn't
13 read by me note degenerative change at C 3-4, so
14 that corrolates with what I saw on the MRI scan.

15 Q. But it's contradicted by the two MRIs, they don't
16 say -- they don't see any degenerative changes at
17 3-4, it wasn't there.

18 A. No, it was there.

19 Q. Doctor, did you review the x-ray films?

20 A. No, they weren't available.

21 Q. All right. So you're relying on the report there
22 but you're saying -- on the x-rays, but because you
23 read the MRIs or you looked at them, you didn't read
24 them, you looked at them, and you decided that
25 everything else is wrong, Dr. Gordon is right, is

1 that what you came -- that's your conclusion, isn't
2 it, Doctor?

3 A. Well, my conclusion after reading the MRI scans was
4 that there were pre-existing degenerative changes at
5 C3-4 on the left side that were there before car
6 accident, it included the disk osteophycomplex, that
7 wasn't caused by the car accident.

8 Q. You repeated that out in nausium, but, Doctor, the
9 fact is everybody else disagrees with you that's
10 involved in this case, including all four treating
11 doctors in this case, isn't that right, and the two
12 MRI radiologists?

13 A. I think we all agree that there's some pathology at
14 the left side at C3-4, I think it's called differant
15 things in words, but based on what I saw I'm telling
16 you what my description of it would be, and, in
17 fact, I'm happy to explain that.

18 Q. So Debbie Lahiff had degenerative -- she had -- she
19 had a herniated disk at C3, C4 and had no complaints
20 whatsoever about it, it was just -- she was
21 a-symptomatic but it was there all the time?

22 A. It wasn't a disk herniation, it was a pre-existing
23 disk osteophycomplex that was there before the car
24 accident.

25 Q. Doctor, could you be mistaken about that as well?

1 A. Not based on what I saw on the MRI scans.

2 Q. Doctor, let me ask you this. What is the hierarchy
3 for degeneration, where would it appear first, in
4 5-6, would that be the likely place where it first
5 to appear?

6 A. Depends on the person. It can present it numerous
7 places at different times.

8 Q. But isn't it true, Doctor, that usually it will
9 appear at 5-6 and then 4-5 and then 3-4 and
10 descending like that, isn't that the most likely,
11 the next likely and the least likely, isn't that
12 what the literature says?

13 A. Well, the literature says all kinds of things. Based
14 on my experience you can get various levels of
15 degenerative disease in different people, it just
16 depends on the person sometimes.

17 Q. So your answer to that is what, I don't -- I don't
18 understand. Is it true that degeneration, arthritic
19 changes, degeneration first usually occurs at 5-6
20 and then at 4-5 and then at 3-4, you're saying
21 that's not it?

22 A. I don't think you can say that.

23 Q. Okay. And you couldn't be mistaken about that,
24 could you, Doctor?

25 A. Based on my experience and what I've seen in

1 treating a lot of people with neck problems and
2 looking at their plane films and their MRI scans, I
3 wouldn't agree with that.

4 Q. You saw Debbie for 28 minutes once, isn't that
5 correct?

6 A. I've told you, I don't know how long it was.

7 Q. And you haven't seen her since that date in May of
8 2002, have you?

9 A. That's correct.

10 Q. And you don't know what has occurred in her life
11 since then as far as the pain in her neck?

12 A. I've had some subsequent records.

13 Q. Okay. Well, then if you read those records you
14 would -- do you concur with Dr. Shahmere when he
15 said thta she is in constant pain and pain all the
16 way up and she's going to be in pain the rest of her
17 life, do you concur with that?

18 A. The records indicate that she has varing levels of
19 pain by her own report.

20 Q. Doctor, I noticed thta in your report you never talk
21 about pain levels but you did note pain levels in
22 your ER -- in your examination of her, you had in
23 your chart there was something about pain levels but
24 you don't talk about that in your report, why?

25 A. Well, when I see them they tell me how their feeling

1 that day.

2 Q. All right. You did note that when you looked at the
3 PT, the physical therapy records, that her pain
4 levels were from 7 to 10, 10 to 10 constantly during
5 that period of time, you saw that didn't
6 you?

7 A. Sure. She also reported they were worse with the
8 activity she was doing like cleaning. We talked about
9 that earlier.

10 Q. Well, wouldn't you expect if you had a herniated
11 disk that activity would cause more problems?

12 A. She doesn't have a herniated disc, she has a
13 degenerative disk osteophyte complex in her neck and
14 that's commonly aggravated by activities like
15 cleaning.

16 Q. Let me ask you some -- another thing, Doctor. Can
17 -- Can you have -- If you have pre-existing
18 arthritic changes, would trauma cause those to
19 trigger?

20 A. What do you mean trigger?

21 Q. Trauma to that area. I mean, if someone's
22 asymptomatic, has no complaints whatsoever and you
23 say, Oh, well, that's been there for a long time,
24 does -- does a blow to the neck or an injury that
25 she sustained in this accident, that kind of an

1 accident, would that trigger the arthritic changes
2 so that she'd feel pain?

3 A. When you say trigger the arthritic changes, that's
4 not a phrase I think that makes sense.

5 Q. All right. All right. I'm talking as a layman.

6 A. Okay.

7 Q. Let me try it again, Doctor, because you're going
8 to talk to -- you're talking to the ladies and
9 gentlemen of the Jury and I'm sure that they're no
10 more sophisticated than me.

11 When you have a pre-existing condition, as you
12 have opined, when you have that and then you suffer
13 a blow to the neck, would that blow cause that
14 arthritic changes that never before presented
15 itself, would it cause them to present themselves?

16 A. You mean become symptomatic?

17 Q. Yes.

18 A. It's possible.

19 Q. So you're saying that the injury to the soft tissue
20 would -- would in some way make the arthritic
21 changes of the bone -- in the bones come forward --
22 forward, is that right?

23 A. I don't understand your question.

24 Q. Well, what is the chemical situation that occurs
25 when -- when you have trauma to the soft tissue

1 around the spinal column that makes the arthritic
2 changes suddenly appear? What -- Doesn't it have to
3 be some chemical happening for that to occur?

4 A. They don't suddenly appear as result -- You know,
5 arthritic changes don't suddenly appear as result of
6 a soft tissue injury.

7 Q. Doctor, I'm not saying that. You're saying that
8 they were before the soft tissue injury and you're
9 saying the soft tissue injury can -- can cause them
10 to -- to be symptomatic, is that what you're saying?

11 A. No.

12 Q. Well, she didn't have any pain there before and
13 after the accident she had pain. All right?

14 A. That's her history.

15 Q. And however before -- after the accident -- after
16 the accident the MRI showed that she had -- she had
17 three levels of degenerative change, three levels of
18 change, two of them were degenerative in 4-5 and 5-6
19 and that's from old age, the other one was at C3-4
20 and our doctors, all the doctors that examined her
21 and treated her say that was a herniation and that
22 was caused by the accident, are you saying all of
23 them were caused by -- all of them were
24 pre-existing, that's what you're saying?

25 A. What I'm saying is that degenerative changes that she

1 had in her neck which included the left side of C3-4
2 were there before the accident.

3 Q. And the herniation was there, or you're saying it's
4 not a herniation, is that it?

5 A. Well, I've already gotten through this.

6 Q. Yeah.

7 A. It's combination of the disk accompanied by bone
8 spurs, that was there before the accident.

9 Q. Doctor, isn't it a fact that you made your mind up
10 based on the x-ray report and did everything you
11 could to agree -- that the four treating doctors and
12 and the two MRI doctors were wrong, isn't that how
13 this really happened?

14 A. Absolutely not.

15 MR. BURKE: Nothing further, Doctor.

16 THE VIDEOGRAPHER: Off the record.

17 (Short recess had.)

18 THE VIDEOGRAPHER: Back on the record.

19 REDIRECT EXAMINATION

20 BY MR. RITZLER:

21 Q. Doctor, Joe Ritzler again, just very, very briefly,
22 as was my direct exam. You've now been subjected to
23 an hour's worth of questions. I've heard my name
24 mentioned probably 15, 20 different times, we've
25 heard ridiculous, silly, we've had a lot of

1 girations, Doctor, you know, I'm not here to perform
2 theatrics with you, I'm here just to stick with the
3 fact. Okay?

4 MR. BURKE: Objection.

5 Q. (BY MR. RITZLER) As a result of that hour's worth
6 of theatrics that was just provided, Doctor --

7 MR. BURKE: Objection.

8 Q. (BY MR. RITZLER) -- have any of your opinions within
9 a reasonable degree of medical certainty and
10 probability been exchanged at all?

11 A. No, they haven't.

12 Q. Okay. Doctor, all you're simply stating to the
13 ladies and gentlemen of the Jury within a reasonable
14 degree of medical certainty and probability is that
15 Miss Lahiff had arthritic conditions in her neck,
16 correct?

17 A. Correct.

18 Q. Those arthritic conditions in her neck from C3, C4,
19 from C4, C5, to C5, C6, all those arthritic
20 conditions predated the accident with my client,
21 correct, Doctor?

22 A. That's correct.

23 MR. BURKE: Objection.

24 Q. (BY MR. RITZLER) The accident with my client did
25 not cause any of those arthritic conditions to form,

1 correct, Doctor?

2 MR. BURKE: Objection.

3 A. That is correct.

4 Q. (BY MR. RITZLER) And those opinions are within a
5 reasonable degree of medical certainty and
6 probability, correct, Doctor?

7 A. Yes.

8 MR. BURKE: Objection.

9 Q. (BY MR. RITZLER) And as simply as possible and in
10 as layman's terms as possible simply describe the
11 basis of that opinion to the ladies and gentlemen of
12 the Jury.

13 A. All right. The basis for that opinion is looking at
14 the MRI scan myself and seeing what I saw on the MRI
15 scan. There's been a lot of discussion about being
16 not mentioned on a report, sometimes that happens,
17 sometimes not everything that's present on an x-ray
18 gets mentioned in a report. It was mentioned in a
19 plane x-ray that was taken two months before the MRI
20 that there were degenerative changes at the C3-4
21 level, they wouldn't disappear, so indeed they were
22 present on the MRI scan two months later, which I
23 saw and I've noted and I've told you about, so they
24 were there before, they're on the plane films,
25 they're on the MRI scan I saw.

1 Q. And, Doctor, the arthritic changes that we've just
2 talked about with the ladies and gentlemen of the
3 Jury, those arthritic changes in and of themselves
4 cannot -- can cause an individual to have the
5 identical complaints of pain that Miss Lahiff had in
6 this case, correct?

7 A. That's correct.

8 Q. Okay. And, Doctor, again, there's been a lot of
9 talk about disc herniation, in the emergency-room
10 report and the examination conduct on the
11 emergency-room report, was there any indication or
12 findings or diagnosis of a herniated disk at the
13 emergency-room report?

14 A. No.

15 Q. You're aware that after the emergency-room report
16 she went to see Dr. George Matthew on a number of
17 occasions, correct?

18 A. Correct.

19 Q. And in those initial examination performed by
20 Dr. Matthew there was no finding or diagnosis of a
21 herniated disk, correct?

22 MR. BURKE: Objection.

23 A. That's correct.

24 Q. (BY MR. RITZLER) Okay. And again you've already
25 testified to the ladies and gentlemen of the Jury if

1 in fact a specific event causes a herniated disk, a
2 doctor -- and there's going to be symptomatology and
3 findings within a day or two, correct?

4 A. That's correct.

5 Q. And any doctor worth his salt is going to find those
6 within a day or two, clearly within a week of this
7 accident --

8 MR. BURKE: Objection.

9 Q. (BY MR. RITZLER) -- if a specific event caused
10 that, correct, Doctor?

11 A. I think the symptoms that you would expect to see
12 would be fairly apparent to evaluating physicians.

13 Q. Okay.

14 MR. RITZLER: Thank you, Doctor. No
15 further questions.

16 CROSS-EXAMINATION

17 BY MR. BURKE:

18 Q. Doctor, you're asking the ladies and gentlemen of
19 the Jury to believe your opinion, even though it's
20 counterdicted -- contradicted by Dr. Eltommie, Dr.
21 Shahmere, Dr. Matthew, Dr. Choy, the two -- and
22 Dr. Runner who did the MRI on 10 -- 10/9/999 and
23 Dr. Burns your asking the ladies and gentlemen of
24 the Jury to believe that the -- that the disk
25 hernatio which they all reported was caused by this

1 accident had to be there beforehand even though all
2 of them say it didn't, isn't that correct, you're
3 asking them to believe that, correct?

4 A. I'm asking them to believe a description based on
5 medical information that I've described. And hey
6 can make their own decision.

7 Q. You're also asking them to -- to ignore the findings
8 in the MRI which show degenerative changes at 5-6 and
9 4-5 but are not on the plane x-rays, you're asking
10 them to believe the plane x-rays over the two MRIs,
11 aren't you?

12 A. It sounds like you're asking me to believe parts of
13 things and not parts of things. It doesn't make any
14 sense. The diagnostic studies indicate that she had
15 degenerative arthritis noted at at C3-4 in the
16 emergency room, that means that was way there before
17 the accident, that's pretty obviously. I didn't
18 note that, somebody else did. I looked at the MRI
19 scan, I noted degenerative changes at all the levels
20 that were noted, either by a plane film or MRI. I
21 think it's pretty clear that she had degenerative
22 disease at C3-4 on the left side, C5-6, C4-5 present
23 before this car accident based on what we've already
24 talked about, that's makes sense.

25 Q. Doctor, isn't it disingenuous for someone like you

1 to say that I'm using parts of things when in your
2 ~~report~~ you omit the things that are written plainly
3 and clearly in this MRI and in your -- and in your
4 interpretation of things you omit all those things
5 that are there. For instance, in the x-rays, there
6 is no indication of degenerative changes at 5 -- 4-5
7 and 5-6, yet you say they're ther, in the MRIs they
8 are there, so the x-rays -- contrary to the MRI as
9 it applies to 4-5 and 5-6. In the x-rays it says
10 that there's degenerative changes at 3-4, in the
11 MRIs it says there are no degenerative changes --

12 A. It doesn't say that.

13 Q. Let me finish --

14 A. It does not say that.

15 Q. Doctor, let me finish with my --

16 A. Sure.

17 Q. No.

18 A. Go ahead.

19 Q. Your report is one that you cannot be mistaken in.
20 Everybody else is wrong except you and any doctor
21 worth their salt would write the things down that
22 are found and not make stuff up and that's what you
23 did in this case, Doctor.

24 MR. BURKE: No further questions.

25 FURTHER DIRECT EXAMINATION

1 BY MR. RITZLER:

2 Q. Doctor, just to be fair, I will give you the
3 opportunity to address that last question by
4 Mr. Burke that --

5 A. Thank you.

6 Q. -- he for whatever reason does not want the Jury to
7 here your answer to.

8 A. I know.

9 Q. Please answer the question --

10 MR. BURKE: Objection.

11 Q. (BY MR. RITZLER) -- that he doesn't want to let the
12 Jury hear.

13 A. Well, No. 1, to say I'm making things up is
14 absolutely ridiculous, I am not. I am telling you
15 what I saw on the MRI scan films and it's confirmed
16 by what the radiologist who reads the plane film had
17 C3-4 in the emergency room confirmed degenerative
18 changes which clinically corrolate with degenerative
19 changes being seen on an MRI film two months later.
20 It doesn't make any sense the other wayand I think
21 people listening to this understand that.

22 Q. And, Doctor, again very briefly, obviously you can
23 hear from Mr. Burke's questioning they're trying to
24 make a very subtle distinguish in this case.
25 They're --

1 MR. BURKE: Objection.

2 Q. (BY MR. RITZLER) They're going to acknowledge to
3 the Jury that there's arthritic changes at C4-C5,
4 C5-C6 but they believe what we've shown at C3 C4 is
5 not arthritic but was somehow caused by this
6 accident.

7 MR. BURKE: Objection. Question?

8 Q. (BY MR. RITZLER) Okay. You're aware of that,
9 correct, Doctor?

10 A. I am aware of that.

11 Q. Okay. And they're -- Now, they're also attempting
12 to make the subtle distinguish to the Jury --

13 MR. BURKE: Objection.

14 Q. (BY MR. RITZLER) - that all of her problems in her
15 neck from C3, C-4 but none of the problems in her
16 neck are from C 4, C5, C5-C6, does that make any
17 sense, Doctor?

18 A. It makes no sense.

19 Q. And explain that to the ladies and gentlemen of the
20 Jury.

21 MR. BURKE: Objection.

22 A. All right. The reason is is that when you look at
23 her clinical complaints she has complaints that
24 corrolate with multi-level degenerative disk
25 disease, degenerative disease at multiple levels,

1 which is shown on the x-rays and the MRI film, it's
2 present, it's there, and she has the complaints to
3 go along with it, so it's ridiculous to say it's not
4 there, it's clearly there.

5 MR. RITZLER: Thank you, Doctor. No
6 further questions.

7 FURTHER CROSS-EXAMINATION

8 BY MR. BURKE:

9 Q. Well, since Mr. Ritzler has -- has decided to
10 interpret what I'm saying to you, I want you to read
11 to the ladies and gentlemen on both of the MRI
12 reports where it says that there was degenerative
13 changes at 3 -- C3-4, read it from those reports.
14 I'll have them blown up so they can read it
15 themselves.

16 A. It doesn't say specifically is was or --

17 Q. Doctor --

18 A. -- there wasn't.

19 Q. Doctor --

20 A. It doesn't comment on it.

21 Q. Doctor, are you -- The answer is, it isn't in there,
22 is it?

23 A. The comment regarding degenerative changes
24 specifically is not mentioned as it's there or not
25 there, it's just not commented on, but it is

1 commented on on the plane film x-ray interpreted
2 two months before by a radiologists. I didn't see
3 that x-ray, that radiologist said, Hey, at C3-4 left
4 side there's degenerative changes. He interpreted
5 that, not me, so it wouldn't make any sense if those
6 degenerative changes would go away in two months,
7 so as I said, when I looked at the MRI scan, they
8 were there. That makes complete sense. I think
9 people listening to this will understand that.

10 Q. Doctor, how about if the x-rays at the ER room were
11 wrong, just plain wrong, how about about that, and
12 two MRIs after it, two separate MRIs you will agree
13 are more sophisticated than a plane x-ray, wouldn't
14 you?

15 A. Oh, I can't speculate on what I don't have. I can
16 give on opinions on what I do have.

17 Q. No. That's exactly what you do do.

18 A. But doesn't that make sense?

19 Q. No. It doesn't make sense to me that you're going
20 to say it doesn't say there's any degenerative
21 changes at C304 so I'm going to say there are?

22 A. Because they're there, I looked at them. They're
23 there, I'm telling you that.

24 Q. You never looked at the x-rays from the emergency
25 room, you never reviewed those, you don't know if

1 their mistaken or not, isn't that correct?

2 A. They're noted.

3 Q. Isn't that correct?

4 A. I didn't look at them myself.

5 Q. And the two MRIs do not say the same thing as the
6 x-rays, do they?

7 A. They're two different studies.

8 THE VIDEOGRAPHER: Excuse me. Off the
9 record.

10 (Short recess had.)

11 THE VIDEOGRAPHER: Back on the record.

12 Q. (BY MR. BURKE) Doctor, when you did surgery, if you
13 were -- if you were going to do surgery now on -- in
14 this -- in this situation, would you believe the
15 plane view from an ER room versus two contradictory
16 MRIs, is that what you would say do?

17 A. I'd believe my own interpretation of the MRI scan.

18 MR. BURKE: Nothing further.

19 MR. RITZLER: Nothing further. Thank
20 you very much, Doctor.

21 THE WITNESS: You're welcome.

22 THE VIDEOGRAPHER: Doctor, you have a
23 right to review the videotape and the
24 transcript or do you waive that right at
25 this time?

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THE WITNESS: I'll waive it.

THE VIDEOGRAPHER: Will the attorneys
waive filing requirement?

MR. RITZLER: Yeah.

MR. BURKE: Yes.

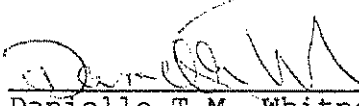
THE VIDEOGRAPHER: Off the record.

- - -

1 THE STATE OF OHIO,)
 2) SS: CERTIFICATE
 2 COUNTY OF CUYAHOGA.)

3 I, Danielle T.M. Whitney, a Stenographic
 4 Reporter and Notary Public within and for the State
 5 of Ohio, duly commissioned and qualified, do hereby
 6 certify that TIMOTHY L. GORDON was by me, before the
 7 giving of his deposition, first duly sworn to
 8 testify the truth, the whole truth and nothing but
 9 the truth; that the deposition as above set forth
 10 was reduced to writing by me by means of Stenotype
 11 and was subsequently transcribed into typewriting by
 12 means of computer-aided transcription under my
 13 direction; that the reading and signing of the
 14 deposition by the witness were expressly waived; and
 15 that I am not a relative or attorney of either party
 16 or otherwise interested in the event of this action.

17 IN WITNESS WHEREOF, I hereunto set my hand and
 18 seal of office at Cleveland, Ohio, this 18th day of
 19 June, 2004.

20 
 21 _____
 22 Danielle T.M. Whitney, Notary Public
 23 Within and for the State of Ohio

24 My Commission Expires: March 31, 2008.
 25

1 THE STATE OF OHIO,)


) SS:

CERTIFICATE

2 COUNTY OF CUYAHOGA.)

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24 My Commission Expires: March 31, 2008.
25

THE LAW OFFICE OF
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May 20, 2005

Rosemary Graf
Nurenberg, Plevin, Heller & McCarthy
1370 Ontario Street, Suite 100
Cleveland, Ohio 44113-1792

Re: Timothy Gordon, M.D.

Dear Rosemary:

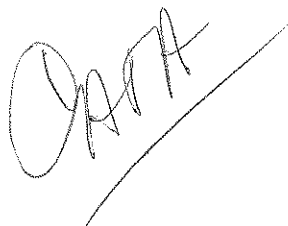
Enclosed please find pages 80-94 from Dr. Gordon's transcript.

Thank you for your time and attention to this matter.

Very truly yours,

JAMES W. BURKE, JR.

JWB/cy
Enc.



THE LAW OFFICE OF
JAMES W. BURKE, JR.

22649 LORAIN ROAD
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May 18, 2005

Rosemary Graf
Nurenberg, Plevin, Heller & McCarthy
1370 Ontario Street, Suite 100
Cleveland, Ohio 44113-1792

Re: Timothy Gordon, M.D.

Dear Rosemary:

Enclosed please find the transcript of Dr. Gordon.

Thank you for your time and attention to this matter.

Very truly yours,



JAMES W. BURKE, JR.

JWB/cy
Enc.

*Missing 80-93
pages
They'll mail to
us*