

**TIMOTHY L. GORDON, M.D.**

**Raymond Zywica, et al. v. Safelite Glass Corp., et al.**

1817193  
JULY 2, 2001

Page 1

1           **IN THE COURT OF COMMON PLEAS**  
2           **OF CUYAHOGA COUNTY, OHIO**  
3           \*\*\*\*\*  
4   **RAYMOND ZYWICA, et al.,**  
5       Plaintiffs,  
6       vs                   Case No. **419545**  
7   **SAFELITE GLASS CORP., et al.,**  
8       Defendants.  
9  
10       \*\*\*\*\*  
11       **DEPOSITION OF TIMOTHY L. GORDON, M.D.**  
12       **MONDAY, JULY 2, 2001**  
13       \*\*\*\*\*  
14       Deposition of **TIMOTHY L. GORDON, M.D.,** a  
15   Witness herein, called by counsel on behalf of  
16   the Plaintiff for examination under the statute,  
17   taken before me, Vivian L. Gordon, a Registered  
18   Diplomate Reporter and Notary Public in and for  
19   the State of Ohio, pursuant to issuance of  
20   subpoena and agreement of counsel, at the  
21   offices of Highland Musculo-Skeletal Associates,  
22   Cleveland, Ohio, commencing at 9:40 o'clock a.m.  
23   on the day and date above set forth.  
24  
25

Page 3

1   **TIMOTHY L. GORDON, M.D.,** a witness herein,  
2   called for examination, as provided by the Ohio  
3   Rules of Civil Procedure, being by me first duly  
4   sworn, as hereinafter certified, was deposed and  
5   said as follows:  
6   **EXAMINATION OF TIMOTHY L. GORDON, M.D.**  
7   **BY MR. MISHKIND:**  
8   Q. Would you please state your name for  
9   the record.  
10   A. Timothy L. Gordon.  
11   Q. Dr. Gordon, my name is Howard  
12   Mishkind. I don't believe I have had the  
13   opportunity to take your deposition in the past,  
14   although I know that you have given deposition  
15   testimony before. That's correct, is it not --  
16   A. Yes.  
17   Q. -- that you have given deposition  
18   testimony?  
19   A. Yes.  
20   Q. And that we have not met in this  
21   formal setting of a deposition before?  
22   A. Not that I recall.  
23   Q. Fair enough.  
24       Even though you have given your  
25   deposition before, let me give you a couple

Page 2

1   **APPEARANCES:**  
2   On behalf of the Plaintiffs  
3       Kicker & Mishkind Co., LPA  
4       **HOWARD D. MISHKIND, ESQ.**  
5       660 Skylight Office Tower  
6       Cleveland, Ohio 44113  
7       **216-241-2600**  
8  
9   On behalf of the Defendants  
10       Law Offices of Jan A. Saurman  
11       **MICHAEL W. SLATER, ESQ.**  
12       14650 Detroit Avenue  
13       Cleveland, Ohio 44107-4210  
14       **216-228-7259**  
15  
16  
17       \*\*\*\*\*  
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Page 4

1   ground rules.  
2       Today is a discovery deposition. I'm  
3   going to be asking you some questions. Make  
4   sure before you start answering the question  
5   that you understand my question before you  
6   venture an answer. Fair enough?  
7   A. Fair enough.  
8   Q. I'm not intending to trick you, I  
9   assure you on the record. I want to understand  
10   the basis for the opinions and a little bit of  
11   information about you.  
12   A. All right.  
13   Q. Now, it is my understanding that you  
14   have personal counsel, Pat McLaughlin; true?  
15   A. Correct. He is our corporate  
16   counsel.  
17   Q. I had issued a subpoena to you to  
18   produce five categories of documents and that  
19   subpoena was received by your office; true?  
20   A. Yes.  
21   Q. I have received a letter and had a  
22   conversation with Mr. McLaughlin. I believe you  
23   have the original or a copy of the letter that  
24   was faxed to me on Friday -- it looks like you  
25   may have the original of the letter -- where

1 (Pages 1 to 4)

Page 5

1 Mr. McLaughlin is, essentially, on your behalf  
2 objecting to the production of those documents  
3 and indicating that while you will answer  
4 questions today, you are not producing any of  
5 the documents that I have requested. Is that a  
6 fair summary?

7 A. Essentially he has responded to the  
8 issues of the subpoena, and my understanding is  
9 that that's correct, we won't be providing any  
10 of the 1099 forms.

11 Q. Have you personally -- not your  
12 partner, but you personally -- ever had  
13 subpoenas issued on you for the production of  
14 information relative to payments that you have  
15 received from defense counsel or insurance  
16 companies for purposes of your defense medical  
17 examinations?

18 MR. SLATER: Objection.

19 A. I have, you know, subpoenas served on  
20 various issues -- I don't remember exactly what  
21 they were -- in the past.

22 Q. Tell me what some of those issues  
23 were that you had subpoenas issued to you.

24 A. Well, again, I recall the 1099 issue  
25 similar to this.

Page 7

1 A. Not that I'm aware of.

2 Q. Just so I don't have to spend a lot  
3 of time on the issues, you have received the  
4 subpoena and you know what I have asked you to  
5 bring; true?

6 A. All I can respond to that is that is  
7 something my corporate attorney would really  
8 handle.

9 Q. That wasn't my question. You have  
10 received the subpoena and you have seen the  
11 items that I requested that you bring with you  
12 today; correct?

13 MR. SLATER: Objection to form.

14 Q. You have the subpoena; true?

15 A. I have seen the subpoena.

16 Q. Just so that we can sort of lump it  
17 altogether, the five items requested to date for  
18 purposes of the deposition, you are not going to  
19 hand me any information relative to or  
20 responsive to any of those requests pursuant to  
21 instructions of your attorney; true?

22 A. Well, yes. As outlined in his  
23 response, that's what I'm going to go along with  
24 is what he advised me to do.

25 Q. That's all I want to know. In

Page 6

1 Q. Okay. So this isn't the first time  
2 that this issue has come up? In other words,  
3 Howard Mishkind didn't come up with the unique  
4 concept with regard to Tim Gordon as it relates  
5 to requesting certain information from you;  
6 true?

7 A. This is not the first time I have  
8 seen something along these lines. Whether it's  
9 exactly the same or not, I don't know.

10 Q. Has it been on more than one other  
11 occasion that you have had a subpoena issued to  
12 you for 1099 information, to the best of your  
13 recollection?

14 A. In the past, in general, I think it's  
15 been more than once.

16 Q. To your knowledge, have you  
17 voluntarily ever produced any of the 1099  
18 information as it relates to payments received  
19 for defense medical examinations?

20 A. Not that I'm aware of.

21 Q. To your knowledge, have you, pursuant  
22 to any orders by any court, issued or produced  
23 documents reflective of the payments that you  
24 have received for this defense medical  
25 examination business?

Page 8

1 fairness to Pat, you are standing on the  
2 instructions of your attorney and you will not  
3 be producing any documents unless some higher  
4 source so orders you to do so; correct?

5 A. I'm not sure how to answer the  
6 question. I can only tell you that you have the  
7 response from Mr. McLaughlin, and that's what  
8 I'm going to go with today.

9 Q. And you are not going to produce any  
10 documents; true?

11 A. Based on his recommendations, no.

12 Q. Fair enough.

13 You issued a report on April 30, 2001  
14 to Mr. Slater based upon your examination of  
15 Mr. Zywicki for March 13, 2001.

16 A. Yes.

17 Q. Is that the only report that you have  
18 issued in this case?

19 A. Yes.

20 Q. I had a chance to look at your file  
21 before the deposition and I thank you for that  
22 opportunity.

23 You have various documents that you  
24 produced by way of notes, a questionnaire that  
25 the patient filled out, as well as your report,

Page 9

1 and then you have documents that were provided  
 2 to you by Mr. Slater; true?  
 3 A. Yes.  
 4 Q. Has there been anything removed from  
 5 your file during the predeposition meeting with  
 6 Mr. Slater?  
 7 A. No.  
 8 Q. Nothing that you took out or that  
 9 Mr. Slater took out for whatever reason?  
 10 A. No.  
 11 Q. So everything that you had in the  
 12 file before you met with Mr. Slater this morning  
 13 is in front of you today?  
 14 A. Yes.  
 15 Q. And did you feel that you had  
 16 sufficient information -- strike that.  
 17 The information that was in the file  
 18 and is in the file in front of you today, is  
 19 that the totality of all of the information  
 20 that's been provided to you on Mr. Zywicki?  
 21 A. Yes.  
 22 Q. In other words, at some point in  
 23 time, were you provided something that you, for  
 24 whatever reason, returned to Mr. Slater or threw  
 25 out, or disposed of in some way?

Page 11

1 A. Just a half hour.  
 2 I haven't charged him yet, but I  
 3 would charge him for a half.  
 4 Q. So he will be billed for \$450 an hour  
 5 for his half hour and I will be billed on the  
 6 basis of \$900 per hour for the deposition today?  
 7 A. Correct.  
 8 Q. How long have you been charging \$900  
 9 for depositions?  
 10 A. A number of years.  
 11 Q. Tell me how many years.  
 12 A. I'm not sure.  
 13 Q. Well, how long have you been giving  
 14 depositions?  
 15 A. Oh, I have been in practice about ten  
 16 years. I mean, during the course of that time,  
 17 about that period of time, you know, plus or  
 18 minus a few years. I'm not sure exactly when  
 19 the first one I did was, but over that course of  
 20 time.  
 21 Q. For the better part of the ten years,  
 22 you have been --  
 23 A. At some point in time, yeah.  
 24 Q. Doctor, I am not trying to be  
 25 difficult. It's just that since you have

Page 10

1 A. Not that I recall.  
 2 Q. So everything that you have reviewed  
 3 is in front of you as we sit here right now?  
 4 A. Yes, as far as I know.  
 5 Q. Do you feel as if you had enough  
 6 information provided to you in order to form  
 7 opinions in connection with this case?  
 8 A. Yes.  
 9 Q. Let's talk about the fee for your  
 10 deposition. I learned from Mr. McLaughlin at  
 11 about 4:00 o'clock on Friday that your fee for  
 12 the deposition is \$900 per hour; is that  
 13 correct?  
 14 A. Yes.  
 15 Q. And I take it that you met with  
 16 Mr. Slater before the deposition; true?  
 17 A. Yes.  
 18 Q. You met with him for about a half  
 19 hour, did you?  
 20 A. Correct.  
 21 Q. And you charged Mr. Slater on the  
 22 basis of \$900 per hour, as well; correct?  
 23 A. Correct.  
 24 Q. Now, did you charge Mr. Slater for a  
 25 full hour or only for a half hour?

Page 12

1 testified on a number of occasions, again,  
 2 Howard Mishkind hasn't come up with a unique  
 3 question, and I'm sure you have been asked that  
 4 repeatedly by attorneys in terms of how long you  
 5 have been giving depositions, so having been  
 6 asked that before, I'm sure you have thought  
 7 about how long you have been testifying; true?  
 8 A. Well, it's the same response. I  
 9 mean, I don't remember when I started, when my  
 10 first one was. Sometime in the early part of my  
 11 practice. I don't exactly remember when that  
 12 was. But over the course of the years since I  
 13 have been in private practice, I have given  
 14 expert testimony.  
 15 Q. You said you have been in the  
 16 practice for ten years?  
 17 A. In private practice, yes.  
 18 Q. In a moment I want to talk to you a  
 19 little bit about your educational background,  
 20 but let me finish this area first.  
 21 In terms of the Fee For \$900, has it  
 22 always been \$900 per hour for the deposition?  
 23 A. No. I think at some point in the  
 24 initial -- I think the initial charge was about  
 25 \$800 an hour, and then that increased to \$900 at

Page 13

1 some point over the period of time. I don't  
 2 remember exactly when.  
 3 Q. And again, we are in the year 2001.  
 4 Has it been \$900, would it be fair to say, at  
 5 least for the last four to five years?  
 6 A. I'm not sure. I think it's been that  
 7 for the last couple. I'm not sure if it's been  
 8 that long or not.  
 9 Q. Does Tim Gordon make the  
 10 determination as to when to up the amount or is  
 11 that a decision made by someone else?  
 12 A. That's a decision I make.  
 13 Q. So at some time within at least the  
 14 last couple years, if not longer, you decided to  
 15 increase it from in the \$800s to \$900?  
 16 A. Yes.  
 17 Q. Would you have a record that you  
 18 would keep as to when it was that you made the  
 19 change from the previous rate to the current  
 20 rate?  
 21 A. No.  
 22 Q. For purposes of your testimony at  
 23 trial, will you also be charging \$900 per hour?  
 24 A. Yes.  
 25 Q. And any prep time with Mr. Slater

Page 15

1 Q. Do you appear in court or do you make  
 2 it a rule to insist upon being videotaped?  
 3 A. I have appeared in court on a few  
 4 occasions, but most of the time it would be  
 5 video, on a video basis.  
 6 Q. If we looked back -- and again, this  
 7 is an estimate, but over the course of the  
 8 calendar year 2000, we would be looking at  
 9 approximately 24 depositions during the calendar  
 10 year 2000?  
 11 A. Roughly.  
 12 Q. Again, all of those are billed at the  
 13 rate we already talked about, true?  
 14 A. Right, depending how long they last  
 15 and so forth.  
 16 Q. But, again, it's \$900?  
 17 A. Yes, it is.  
 18 Q. How did you determine that rate of  
 19 \$900 per hour?  
 20 A. I felt it was appropriate based on my  
 21 time, expertise, training, time away from my  
 22 practice, those kinds of things.  
 23 Q. Did you get any input from any of  
 24 your colleagues as to whether \$900 was a  
 25 reasonable per hour, reasonable or an

Page 14

1 before trial will be charged on the basis of  
 2 \$900 per hour, as well, correct?  
 3 A. Correct.  
 4 Q. So whether you spend a half hour or  
 5 an hour with him before the deposition and an  
 6 hour or two hours in trial testimony, it will be  
 7 billed at \$900 per hour?  
 8 A. Right. It depends how many questions  
 9 you are asking and so forth. It's the same  
 10 rate.  
 11 Q. How verbose the lawyers are?  
 12 A. In general, yes.  
 13 Q. I want to ask you about -- again,  
 14 this is a question that I know you have been  
 15 asked before, so hopefully you will be able to give  
 16 me a fairly accurate estimate. Let's talk about  
 17 on average, on a yearly basis, how many times  
 18 are you asked to give deposition testimony?  
 19 A. It's been averaging about twice a  
 20 month.  
 21 Q. Now, would that be the discovery type  
 22 of deposition that we are here today for as  
 23 opposed to trial depositions?  
 24 A. It just includes both. Depositions,  
 25 period.

Page 16

1 unreasonable rate to be charging?  
 2 A. I think over the years, it's been  
 3 discussed in general terms with people  
 4 informally that doctors, orthopedic surgeons,  
 5 charge that area ballpark for expert testimony.  
 6 Q. Do you know of other orthopedic  
 7 surgeons that charge \$900 per hour for their  
 8 testimony in the Cleveland area?  
 9 A. Well, let's see. I know that Crystal  
 10 Clinic, they charge actually more for expert  
 11 testimony.  
 12 Q. What do they charge?  
 13 A. I think it's in the area of \$1,000.  
 14 I'm not sure. That's kind of a memory guess,  
 15 but I remember it was more. There are other  
 16 physicians around here that charge flat fees for  
 17 a deposition, let's say, \$2,000, and that's what  
 18 the deposition is going to cost you.  
 19 Q. How much does your partner, Dr. Corn,  
 20 charge?  
 21 MR. SLATER: Objection.  
 22 A. I'm not sure at this point. He may  
 23 be charging \$900 an hour, but that's something  
 24 you would have to ask him.  
 25 Q. Well, you guys are partners, you both

Page 17

1 do this kind of work. Are you telling me on the  
2 record that you don't know how much he charges  
3 an hour?

4 A. I think he would charge \$900 an hour,  
5 that's my understanding at this point. I'm not  
6 sure if he has changed that or not.

7 Q. When was the last time you were aware  
8 of the fact that he was charging \$900 an hour?

9 A. Maybe last year.

10 Q. When were you last deposed? We are  
11 now at July, happy July 2nd. When was the last  
12 time you were deposed?

13 A. A couple weeks ago.

14 Q. And how many depositions do you have  
15 scheduled this week?

16 A. I think this may be it.

17 Q. When is the next time you are  
18 scheduled to give testimony, either by way of  
19 deposition, discovery deposition, or where you  
20 are made a movie star and put on videotape?

21 A. I'm not sure. I don't think it's  
22 this week, but I'm not sure beyond that.

23 Q. Is it possible that it may be next  
24 week?

25 A. It's possible, but I don't know for

Page 19

1 I'm not sure just how accurate that is of what  
2 has or hasn't gone on because of just the  
3 clerical issue.

4 Q. There is a calendar maintained that  
5 does have that information whether it's accurate  
6 or totally inaccurate; true?

7 A. Well, we have a scheduling calendar  
8 for patients and what we are doing in the course  
9 of a day, and that's what it is kept on.

10 Q. So it's kept on the patient's  
11 schedule, as well? There is no separate  
12 calendar reflective of medical/legal work?

13 A. That's correct.

14 Q. And whether that calendar is accurate  
15 or not, in terms of things being noted on the  
16 calendar, or perhaps things being deleted when  
17 they are cancelled, that would be the best  
18 source of information, would it not, to reflect  
19 the number of depositions that have been  
20 scheduled, say, for the year 2001?

21 A. Well, for what's scheduled, again,  
22 it's the issue of just because something is  
23 scheduled doesn't mean it's going to happen.

24 Q. Doctor, don't misunderstand me. I  
25 acknowledge that something may get cancelled. I

Page 18

1 sure.

2 Q. Who handles your scheduling on these  
3 items?

4 A. My office staff.

5 Q. So you would have a calendar that  
6 would reflect, for example, when was the last  
7 time that you met with a fellow like Michael  
8 Slater and Howard Mishkind for a deposition, and  
9 when is the next time you have something like  
10 this scheduled?

11 A. I think the schedule reflects a rough  
12 thing, but things get cancelled. Things are on  
13 the schedule and get cancelled and don't get  
14 done and sometimes that's not reflected on the  
15 schedule because of clerical issues, somebody  
16 forgot to erase it or whatever. So I'm not sure  
17 if that is really reflective of what has or has  
18 not happened.

19 Q. More or less, your calendar, whether  
20 it has redactions or deletions for cancelled  
21 depositions, would reflect scheduled  
22 depositions; true?

23 A. Again, I'm not sure it's real  
24 accurate. It depends on who is doing what,  
25 whether they are keeping track of it or not, so

Page 20

1 also acknowledge that there may be a deposition  
2 that takes place that for whatever reason isn't  
3 marked on a calendar that you are aware of, but  
4 that document, not perfect, is the best source  
5 in terms of an overall statement as to the  
6 number of depositions that have been scheduled  
7 in the year 2001; true?

8 A. I'm not sure. I keep track of what I  
9 have done.

10 Q. Where do you keep track of it?

11 A. My corporate counsel advised me to do  
12 that.

13 Q. My question is, where do you keep  
14 track of it? Do you have your own personal  
15 calendar?

16 A. I note them off as I do them.

17 Q. Where do you note them?

18 A. On a piece of paper.

19 Q. Just a little scrap piece of paper or  
20 your own personal calendar?

21 A. It's not a calendar. It's a pad that  
22 I keep track to document them.

23 Q. So you have your own record, perhaps  
24 not a formal business document, but you have  
25 some notation that you record for your own

Page 21

1 purposes the depositions?  
 2 A. That's correct. Those are ones that  
 3 have been done.  
 4 Q. And where would that document be  
 5 currently?  
 6 A. It's in my possession.  
 7 Q. Are you in a position to provide me  
 8 with that?  
 9 A. No. Because it's attorney work  
 10 product. He has advised me to do this and it's  
 11 something we have done together, so I can't show  
 12 that to you.  
 13 Q. That document does reflect the number  
 14 of depositions, for example, in the year 2001  
 15 that you have done?  
 16 A. So far.  
 17 Q. And in the year 2001, what is your  
 18 best estimate as to the number of depositions?  
 19 We are now into July, so we finished six months.  
 20 A. It would be in the area of 12.  
 21 Q. In terms of your defense medical  
 22 examinations, again, this falls in the category  
 23 of Mishkind hasn't created this question on his  
 24 own, and Gordon has been asked it before, but  
 25 Mishkind will ask it of Gordon for the first

Page 23

1 communicate with your personal attorney?  
 2 A. To let him know how many I have done.  
 3 Q. In addition to personal injury type  
 4 of cases where you are called to do medical  
 5 examinations of the type that we are here to  
 6 talk about, have you ever served as an expert  
 7 witness in a medical malpractice case?  
 8 A. I have never testified.  
 9 Q. Have you ever written a report in  
 10 connection with a medical malpractice case?  
 11 A. Yes.  
 12 Q. How many?  
 13 A. A few.  
 14 Q. What's a few?  
 15 A. Two or three. Not many, a few.  
 16 Q. Are you currently serving in any  
 17 capacity as an expert in a medical malpractice  
 18 case?  
 19 A. No.  
 20 Q. When is the last time you wrote one  
 21 of those reports?  
 22 A. A year or two ago.  
 23 Q. Have you ever given a deposition as  
 24 an expert in a medical malpractice case?  
 25 A. No.

Page 22

1 time, personally.  
 2 How many defense medical examinations  
 3 do you do, on average, during any given week?  
 4 A. It's been averaging about eight a  
 5 month, so you can break that down to about two a  
 6 week.  
 7 Q. Do you have any medical exams  
 8 scheduled this week?  
 9 A. I don't know off the top of my head.  
 10 Q. Would we have to check that calendar?  
 11 A. Yes. Because I don't know. I'm not  
 12 sure if I do or don't at this point.  
 13 Q. Do you have a document similar to the  
 14 document you keep track of your depositions on  
 15 that you mark down the examinations that you've  
 16 performed?  
 17 A. Yes.  
 18 Q. And for the same reason that you deem  
 19 that to be, quote, attorney work product?  
 20 A. Client-attorney.  
 21 Q. You are not going to produce that  
 22 document?  
 23 A. Right. He advised me I don't need to  
 24 because it's between him and us.  
 25 Q. You maintain that document solely to

Page 24

1 Q. The two or three cases, were they all  
 2 on behalf of physicians?  
 3 A. Yes.  
 4 Q. Are you currently a party to any  
 5 litigation, yourself, Dr. Gordon?  
 6 A. No.  
 7 Q. Have you ever been sued?  
 8 A. Yes.  
 9 Q. Have you ever gone to trial?  
 10 A. No.  
 11 Q. How many times have you had the  
 12 misfortune of being sued?  
 13 A. Once.  
 14 Q. Was it here in Cleveland? Did the  
 15 case arise out of treatment here in Cleveland?  
 16 A. Yes.  
 17 Q. What was the result of that case?  
 18 A. Oh, what did they say? It was  
 19 withdrawn.  
 20 Q. Dismissed?  
 21 A. It just --  
 22 Q. Went away?  
 23 A. They didn't have a case. It was  
 24 withdrawn.  
 25 Q. Fair enough.

Page 25

1 You didn't have to see the inside of  
2 a courtroom?  
3 A. No.  
4 Q. Falrenough.  
5 Your practice is with Dr. Corn at  
6 this office; true?  
7 A. Yes.  
8 Q. You also have hospital privileges?  
9 A. Yes.  
10 Q. What hospitals?  
11 A. Euclid, Hillcrest, Lake University,  
12 Bedford, and Richmond.  
13 Q. Where did you go to medical school?  
14 A. Case Western Reserve.  
15 Q. Do you have a CV?  
16 A. Yes.  
17 Q. Can you make that available for me  
18 before, perhaps -- do you have it right here in  
19 the office?  
20 A. I don't have it with me, no.  
21 Q. It's probably up front?  
22 A. Correct.  
23 Q. Before we leave, do you think you  
24 could ask one of the girls to print it up?  
25 A. That would be fine.

Page 27

1 A. No.  
2 Q. How long has it been, doctor?  
3 A. Probably five to ten years.  
4 Q. Are you board certified?  
5 A. Yes.  
6 Q. What board are you certified by?  
7 A. American Board of Orthopedic Surgery.  
8 Q. When did you become board certified?  
9 A. '93.  
10 Q. Successful in your first attempt?  
11 A. Yes.  
12 Q. Have you reviewed any medical  
13 literature at all in connection with this case?  
14 A. No.  
15 Q. Do you own any orthopedic texts?  
16 A. Sure.  
17 Q. Do you own Campbell's?  
18 A. Sure.  
19 Q. Do you consider Campbell's to be a  
20 reliable orthopedic text?  
21 A. I think it's a good reference text.  
22 Q. One from time to time you look to?  
23 A. From time to time, but it's a  
24 reference source.  
25 Q. But one that you own; true?

Page 26

1 Q. Have you published anything?  
2 A. Yes.  
3 Q. How many articles have you published?  
4 A. A few.  
5 Q. Define a few.  
6 A. You know, two or three.  
7 Q. On what topics?  
8 A. Let's see. Developmental variations  
9 in extremity development. Also, imaging,  
10 regarding MRI, ultrasound, x-ray and  
11 musculoskeletal.  
12 Q. Have you participated in any  
13 authorship of any chapters in any orthopedic  
14 texts?  
15 A. No.  
16 Q. The journals, the articles that you  
17 published have been written and published in  
18 peer review journals?  
19 A. Yes.  
20 Q. How long has it been since you  
21 published something?  
22 A. Probably ten years.  
23 Q. Do you do any teaching?  
24 A. I have.  
25 Q. Are you currently doing any teaching?

Page 28

1 A. Yes.  
2 Q. And that you consider to be a  
3 reliable reference in the area of orthopedics;  
4 true?  
5 A. Well, I think it's a reference. It's  
6 open to, you know, our interpretation with  
7 expertise, experience, so forth.  
8 Q. Do you deem it to be a reliable  
9 source; you, personally?  
10 A. It's something that I would look at  
11 from time to time, but again, it's a reference  
12 source.  
13 Q. Fair enough. I'm not suggesting it's  
14 the final word. But you consider it to be a  
15 reliable reference source; true?  
16 A. It's a reference source, that's all I  
17 can tell you.  
18 Q. What journals do you subscribe to?  
19 A. Journal of Bone and Joint Surgery,  
20 various other musculoskeletal journals, some  
21 throw away journals, things like that.  
22 Q. The gentleman seated to my right,  
23 this young man here, Mr. Slater, have you ever  
24 met him before?  
25 A. I'm not sure I actually met him

Page 29

1 before.  
 2 Q. Have you done any cases at his  
 3 request before?  
 4 A. I think so.  
 5 Q. How many?  
 6 A. A few, I think, not a lot.  
 7 Q. It probably comes as no surprise that  
 8 I am going to ask you what you mean by a few.  
 9 A. As best I recall, maybe a couple or  
 10 so.  
 11 Q. Are you currently working with  
 12 Mr. Slater on any cases besides the Zywlca  
 13 matter?  
 14 MR. SLATER: Objection.  
 15 A. Not that I recall.  
 16 Q. Have you ever testified at deposition  
 17 for Mr. Slater before?  
 18 A. I don't think so.  
 19 Q. What about the law office of Jan  
 20 Saurman that Mr. Slater is associated with? You  
 21 have done cases for lawyers in that firm before,  
 22 have you not?  
 23 A. Yes.  
 24 Q. And give me, again, your best  
 25 estimate as to the number of cases that you have

Page 31

1 that Wausau is not a party to this litigation.  
 2 Q. Go ahead, doctor, you can answer.  
 3 A. I don't know.  
 4 Q. Have you done other cases that were  
 5 Wausau?  
 6 A. Yes.  
 7 Q. How many Wausau cases?  
 8 A. I don't know.  
 9 Q. Have you done more than just this one  
 10 case?  
 11 A. I really don't know. That doesn't  
 12 ring, register as something I have looked at,  
 13 Q. A couple questions with some obvious  
 14 answers.  
 15 I didn't ask you to examine  
 16 Mr. Zywlca; true?  
 17 A. Correct.  
 18 Q. You were asked by Mr. Slater to  
 19 examine Mr. Zywlca and to review records; true?  
 20 A. Yes.  
 21 Q. And then to report your findings in a  
 22 letter to him; true?  
 23 A. Correct.  
 24 Q. And as necessary, to testify relative  
 25 to the opinions that you arrived at at the time

Page 30

1 done with the law offices of Jan Saurman.  
 2 A. You mean over the years I have been  
 3 In practice, you know, I don't know exactly how  
 4 many, because I haven't kept track of them, but  
 5 I would say, you know, more than ten.  
 6 Q. Okay. Besides Mr. Slater, are you  
 7 working with any of the other attorneys at the  
 8 law offices of Jan Saurman, currently?  
 9 A. Not that I recall.  
 10 Q. You have worked with a number of law  
 11 firms in the City of Cleveland that I, from the  
 12 plaintiff's side, refer to as defense firms;  
 13 ones that are hired to defend, that ask you to  
 14 do defense exams. You have worked for other  
 15 firms besides Mr. Saurman's, the law offices of  
 16 Jan Saurman; true?  
 17 A. Yes.  
 18 Q. You have worked with a number of  
 19 lawyers that represent various insurance  
 20 companies; correct?  
 21 A. Yes.  
 22 Q. This insurance company is Wausau,  
 23 How many cases have you done at the behest of an  
 24 attorney defending a Wausau insured?  
 25 MR. SLATER: Objection, to the extent

Page 32

1 this matter goes to trial; true?  
 2 A. If necessary, yes.  
 3 Q. You weren't asked to provide any type  
 4 of treatment to Mr. Zywlca; true?  
 5 A. No.  
 6 Q. And, in fact, since I was present at  
 7 the time of the examination -- I know the  
 8 answer, but I will ask it anyway -- you didn't  
 9 make any recommendations or suggestions to  
 10 Mr. Zywlca during the course of your exam, did  
 11 you?  
 12 A. No.  
 13 Q. We can certainly agree that you met  
 14 Mr. Zywlca approximately two and a half years  
 15 after this auto collision; true?  
 16 A. Right.  
 17 Q. Actually, it's been two and a quarter  
 18 years, but I will take away a couple months.  
 19 A. Okay.  
 20 Q. Mr. Zywlca was injured as a result of  
 21 the automobile collision; true?  
 22 A. Yes.  
 23 Q. Mr. Zywlca had how many MRIs  
 24 performed?  
 25 A. Two.



Page 33

1 Q. You actually never viewed the MRI  
2 films themselves, did you?  
3 A. That's correct.  
4 Q. Never asked Mr. Slater to provide  
5 them to you; me?  
6 A. I think we have talked about getting  
7 them provided at some point.  
8 Q. Well, as we sit here now, when I reread  
9 your discovery deposition, is it fair to say  
10 that at the time that the exam was scheduled, at  
11 the time the exam was conducted, as well as at  
12 the time that you wrote your report back in  
13 April, you had not seen nor requested the MRI  
14 films themselves; true?  
15 A. Well, I can't remember if I asked to  
16 see them or not, I don't remember that. But the  
17 issue is, I have not seen them.  
18 Q. Has there been anything that you have  
19 requested of Mr. Slater that he hasn't provided  
20 to you?  
21 A. Other than the issue of talking about  
22 the MRI films, no.  
23 Q. Did you inspect the physical therapy  
24 records for Mr. Zywicki, as well?  
25 A. I went through the records that were

Page 35

1 was he not?  
2 A. I thought he was cordial.  
3 Q. Pleasant?  
4 A. Pleasant enough,  
5 Q. You didn't get the sense during the  
6 course of your examination that he was trying to  
7 fool you or exaggerate his symptoms, did you?  
8 A. Well, during the course of his exam,  
9 I found a lot of inconsistency and I was  
10 concerned about his authenticity and effort.  
11 Q. His authenticity and effort. What do  
12 you mean by that?  
13 A. Well, he reported various complaints  
14 regarding his left leg, at times weakness and so  
15 forth, and then during his exam, he gave a real  
16 variable effort at the strength testing. And I  
17 could tell from the physical exam that he wasn't  
18 giving me full effort; that he was changing his  
19 effort while we were doing it.  
20 Q. So it's your testimony that you felt  
21 as if he was intentionally doing things to,  
22 perhaps, exaggerate his injury?  
23 A. He was not giving me a good effort on  
24 the strength exams. He was showing signs of not  
25 giving maximum effort; in other words, making it

Page 34

1 provided to me.  
2 Q. And did they have all of the physical  
3 therapy records in there?  
4 A. I went through the records that were  
5 available.  
6 Q. To your knowledge, were you provided  
7 with all of the physical therapy records?  
8 A. You know, I don't know if there are  
9 other records that weren't provided. I can only  
10 review what are provided.  
11 Q. Have you been advised that there is  
12 information relative to Mr. Zywicki, other than  
13 the MRIs which we just talked about, that for  
14 whatever reason hasn't been provided to you?  
15 A. Not that I recall.  
16 Q. Do you remember Mr. Zywicki  
17 independently?  
18 A. I remember aspects of his exam, I  
19 remember him, and you, for that matter.  
20 Q. I'm a memorable kind of guy?  
21 A. It was a very pleasant experience.  
22 Q. Meeting me or Mr. Zywicki?  
23 A. You first. But I remember his exam  
24 more than anything.  
25 Q. Mr. Zywicki was a cordial individual,

Page 36

1 look like he had some weakness when he didn't,  
2 and that was a concern for me.  
3 Q. In what areas did you feel as if he  
4 was not giving maximum effort with regard to  
5 strength testing?  
6 A. Specifically, in the area of strength  
7 testing on the dorsum plantar flexion of the  
8 left foot. Page three of the physical exam,  
9 sir.  
10 Q. Where are you referring in your  
11 report? Where you state he demonstrated  
12 variable effort on resistive strength testing on  
13 dorsum plantar flexion, that is one of the  
14 areas?  
15 A. Yes.  
16 Q. When you say variable effort, what  
17 specifically was he doing that you defined as  
18 not giving maximum effort?  
19 A. Well, when I was examining his leg --  
20 and we are looking for strength and we are  
21 looking for muscle contraction of specific  
22 muscle units in the lower extremity, in this  
23 case the left leg -- that I could detect that he  
24 was not trying with a consistent effort to show  
25 me the strength in that lower extremity.

Page 37

1 And that there was cogwheels. And  
2 cogwheels is relating to breaking effort. It's  
3 not relating to any nerve injury or any atrophy  
4 or any physiologic issue, it's a lack of effort.  
5 I am trying now, I am not trying, and that's  
6 pretty well understood in people that examine  
7 the musculoskeletal system.  
8 In this case, it was just apparent to  
9 me that he wasn't giving me a consistent effort.  
10 Q. During the examination, the strength  
11 testing on the dorsum plantar flexion, do you  
12 recall whether or not Mr. Zywlca was  
13 experiencing any discomfort or pain?  
14 A. No, he wasn't.  
15 Q. By the way, doctor, I note Justas an  
16 aside, you have a sheet in your file, one page,  
17 front, that contains your notes; correct?  
18 A. Yes.  
19 Q. You also have a questionnaire that  
20 you had had Mr. Zywlca fill out when he arrived  
21 before your exam; true?  
22 A. Yes.  
23 Q. Is there anything else besides the  
24 one page and then the questionnaire that was  
25 filled out by you before or during the

Page 39

1 Mr. Zywlca; true?  
2 A. Well, this is just a notation of the  
3 outline of the history.  
4 Q. Are there any other notes that you  
5 made during the examination?  
6 A. Well, I dictated the history and  
7 physical immediately after the examination and  
8 that's in the report.  
9 Q. That's in the typed report?  
10 A. Correct.  
11 Q. Is there anything else that you wrote  
12 out other than what's on Exhibit 1?  
13 A. No.  
14 Q. By the way, the report was prepared  
15 April 30th, and your examination was on March  
16 13th. When did you dictate the history and  
17 physical?  
18 A. Immediately after the history --  
19 well, the history and physical, immediately  
20 after the evaluation.  
21 Q. How do we know that?  
22 A. Because I dictated it on my dictating  
23 device and then would go on with the report at  
24 some point.  
25 Q. Why wasn't the report then prepared

Page 38

1 examination?  
2 A. Well, the questionnaire was not  
3 filled out by me.  
4 Q. I stand corrected. The questionnaire  
5 was filled out by Mr. Zywlca before the exam.  
6 Your note was filled out during the exam.  
7 Was there anything else that was  
8 created, if you will, during the course of the  
9 visit to your office?  
10 A. As far as handwritten, no.  
11 Q. Doctor, what I am going to have  
12 Vivian do is mark these as exhibits. I will let  
13 you retain the original, but before we leave, we  
14 will just make a xerox of this and then with  
15 Mr. Slater's permission, we will substitute  
16 xeroxes of the exhibits to the deposition, okay?  
17 A. Sure.  
18 -----  
19 (Thereupon, CORDON Deposition  
20 Exhibits 1 thru 4 were marked for  
21 purposes of identification.)  
22 - - -  
23 Q. Just as an aside, Exhibit 1 is a copy  
24 or the original of your notes that you took  
25 during the course of the examination of

Page 40

1 until April 30th?  
2 A. There may have been scheduling  
3 delays, you know, typing delays, so forth.  
4 Q. What did you do with the history and  
5 physical that you dictated on March 13th before  
6 you finished the report of April 30th?  
7 A. Well, I would either leave the tape  
8 on the chart and continue on with it later or  
9 sometimes they will type it up, just a history  
10 and physical, with nothing else -- I don't think  
11 that was the case with this one -- and then I  
12 would continue on with it at some point later.  
13 Q. You have a fairly common format that  
14 you use for purposes of your reports, don't you?  
15 A. Well, as far as dictating the history  
16 and physical, that's what I do with everybody I  
17 see, including my own patients. I dictate the  
18 history and physical right after seeing them.  
19 Q. But in terms of the reports that you  
20 disseminate from these defense medical exams,  
21 you have a fairly common format that you use in  
22 reporting your findings to attorneys, do you  
23 not?  
24 A. Well, I'm not sure what you mean by  
25 format. I have already told you that my routine

Page 41

1 is to dictate the history and physical right  
 2 after I saw the person.  
 3 Q. And you normally have your reports  
 4 prepared at or near the time of the exam, don't  
 5 you?  
 6 A. Well, that's variable. It just  
 7 depends what is going on and the dictation and  
 8 so forth.  
 9 Q. Well, doctor, in fairness to you, I  
 10 have seen a number of your reports. It probably  
 11 comes as no surprise.  
 12 Can we agree that most of the time  
 13 when you do an exam, your report is generated  
 14 much sooner than a month and a half after the  
 15 examination?  
 16 A. It just depends on the situation. It  
 17 depends on the situation of each one, as I  
 18 already told you,  
 19 Q. More often than not, don't you  
 20 prepare the reports close in time to the exam?  
 21 A. It depends if all the records are  
 22 there at that point, if everything I need is  
 23 there at that point, or I'm not running out to  
 24 the hospital, or something. I mean, there is a  
 25 lot of factors that can go into it.

Page 42

1 Q. I understand that, but on average,  
 2 would you agree that you more often than not  
 3 prepare your report within days or weeks, not a  
 4 month and a half after the examination?  
 5 A. Again, I don't really keep track of  
 6 that. There are cases where not all the records  
 7 are coming, there are more records to come in  
 8 and I will wait until I have the records. That  
 9 does happen fairly frequently, so I don't really  
 10 keep track of that one way or the other.  
 11 Q. I guess you can't answer. You are  
 12 the one that prepares the reports. You are the  
 13 one that does this business, and if you just  
 14 can't answer that question, which I think is a  
 15 pretty simple question, I will move on to  
 16 another one.  
 17 Fortunately, my understanding is that  
 18 more often than not when you do a defense  
 19 medical exam, you prepare the report within  
 20 days, if not a week or so after the exam as  
 21 opposed to, in this case, a month and a half.  
 22 AH I'm asking you is whether or not  
 23 that's an accurate statement in terms of your  
 24 normal practice or not?  
 25 A. The issue, and what I am trying to

Page 43

1 tell you, it's not something I keep track of.  
 2 Q. So you can't answer the question?  
 3 A. When you are saying more likely than  
 4 not this frequency, I don't know if it's more  
 5 likely than not. I tried to explain it to you.  
 6 Q. That's all right, doctor, I will  
 7 accept the answer. I am here to get your sworn  
 8 testimony to understand what you are going to  
 9 say.  
 10 Exhibit 2 is the one-page  
 11 questionnaire that Mr. Zywlca would have filled  
 12 out, true?  
 13 A. Yes.  
 14 Q. And Exhibit 3 is the pain pattern  
 15 drawing that he would have filled out?  
 16 A. Yes.  
 17 Q. And finally Exhibit 4 is just general  
 18 patient information, part of which he is asked  
 19 to fill out, the balance of which he is told by  
 20 your office personnel not to bother with, true?  
 21 A. I'm not sure what they told him and  
 22 didn't tell him.  
 23 Q. They do what you tell them to do, do  
 24 they not?  
 25 A. As far as this form, I'm not sure

Page 44

1 what they told them or didn't tell them. I  
 2 wasn't there for that.  
 3 Q. That's not my question. This form is  
 4 something that you use with all of your  
 5 examinations, true?  
 6 A. Yes.  
 7 Q. And you know the people that work for  
 8 you tell patients, whether they appear with or  
 9 without a representative, as to what portion  
 10 needs to be filled out and what portion not to  
 11 fill out, true?  
 12 A. You know, that's not something -- I  
 13 don't think I have sat down and discussed that  
 14 with them.  
 15 Q. So they do it on their own? They  
 16 decide what they tell the patient to fill out  
 17 and what they can leave blank?  
 18 A. My understanding is what they are  
 19 trying to get is just the general information  
 20 and then just a signature on it that they can  
 21 say this indeed is the person being examined and  
 22 that's the extent of what I know they are doing  
 23 with that particular page.  
 24 Q. There is nothing on that particular  
 25 document that Mr. Zywlca withheld or in any way

Page 45

1 provided in a false light to you for purposes of  
 2 background information; true?  
 3 A. I don't know.  
 4 Q. Well, as you sit here now, can you  
 5 tell me whether there is anything that he  
 6 presented in those documents that was in any way  
 7 false or misleading?  
 8 A. I feel you are asking me a question I  
 9 don't know the answer to.  
 10 Q. These are documents you had in front  
 11 of you at the time you prepared the report. Is  
 12 there anything in those documents false or  
 13 misleading on behalf of the patient that you  
 14 reported in this case?  
 15 MR. SLATER: Objection.  
 16 A. There is patient questionnaire issues  
 17 where he responded to things. For example, you  
 18 know, what do you drink and how frequently. I  
 19 don't know if that answer is accurate or not, I  
 20 don't know. So that's why I am answering that  
 21 way, because I don't know.  
 22 Q. Is there anything that is material in  
 23 those exhibits that in any way you believe he  
 24 was misleading to you?  
 25 MR. SLATER: Objection.

Page 47

1 testifying under oath that in your opinion that  
 2 he indicated on that document in March of 2001  
 3 that he had pain in those areas? And I think  
 4 there is also a level. And that he was being  
 5 less than honest with you in terms of what he  
 6 indicated on that patient pattern drawing?  
 7 MR. SLATER: Objection.  
 8 A. Well, the issue is, this is something  
 9 subjective that he can basically tell me  
 10 whatever he wants to.  
 11 Q. I am just asking. I know that there  
 12 are issues of subjective complaints and  
 13 objective findings. I'm asking you, can you say  
 14 under oath that Mr. Zywlca did not, in fact,  
 15 have pain where he demonstrated on that patient  
 16 pattern drawing he was having complaints?  
 17 A. Well, what I can tell you is that  
 18 during the exam itself, there was no indication  
 19 that when I was checking his strength in his  
 20 lower extremity that was causing any pain. So I  
 21 know that for sure. I can state that under  
 22 oath.  
 23 Q. But with regard to the patient  
 24 pattern-- and again, we can go through every  
 25 X -- I'm asking you, can you state based upon

Page 46

1 A. Well, you know, I don't know what you  
 2 mean by misleading. The issue of past medical  
 3 history, there is an issue regarding another  
 4 broken jaw, another low back injury. That's not  
 5 in what he wrote down in the questionnaire.  
 6 It's not there. I don't know if he is trying to  
 7 mislead me or not. I can just say, it's not  
 8 there.  
 9 Q. Okay. Anything else?  
 10 A. Well, there is the issue of the pain  
 11 pattern drawing, that's a subjective issue.  
 12 That's something he filled out and he has filled  
 13 it out and I can look at it, but I don't know if  
 14 that's really the case or not, the issue of  
 15 subjective.  
 16 Q. But you have no basis to say when you  
 17 saw him in March of 2001 that the areas where he  
 18 had complaints of pain were not real?  
 19 A. Well, when I saw him, as we indicated  
 20 earlier, in the actual exam, there was a concern  
 21 about the authenticity of his effort in the  
 22 exam. We already talked about that.  
 23 Q. But I'm asking you specifically with  
 24 regard to the pain pattern or the areas he  
 25 indicated that he was experiencing pain, are you

Page 48

1 where he is describing that he has pain on that  
 2 exhibit, can you state under oath that my  
 3 opinion is that Mr. Zywlca did not have pain  
 4 where he indicated on the drawing he was having  
 5 pain?  
 6 A. I'm not really sure that's a fair  
 7 question, because it's the issue of what pain  
 8 is. Pain is purely subjective.  
 9 Q. I understand that, doctor. That's  
 10 why I am asking.  
 11 A. By the nature of that, I cannot say  
 12 he is not having pain there, because he can tell  
 13 me he is if he isn't and sometimes it's  
 14 difficult to tell. There was nothing in the  
 15 exam that supported it.  
 16 Q. Frequently, doctor, from time to time  
 17 you see patients on your own that have injuries;  
 18 correct?  
 19 A. Yes.  
 20 Q. You don't spend your entire career  
 21 doing defense medical examinations; correct?  
 22 A. Correct.  
 23 Q. In fact, why don't you tell me -- can  
 24 you tell me the percentage of your practice that  
 25 is dedicated to doing this type of work versus

Page 49

1 actually treating your own patients?  
2 A. I can't tell you a percentage.  
3 Q. Well, whatever percentage of your  
4 practice is treating your own patients, you have  
5 patients who present after an injury where they  
6 have subjective complaints of pain, where you  
7 are unable to elicit on your examination any  
8 objective evidence to correlate with those  
9 subjective symptoms; true?  
10 A. Well, that situation in general can  
11 come up and it can come up in a lot of different  
12 settings.  
13 Q. And it happens when you see your own  
14 patients; correct?  
15 A. It can. Under specific settings and  
16 we look for objective things to support that.  
17 Q. But you don't always find in  
18 orthopedics objective findings to correlate with  
19 the patient's subjective complaints; true?  
20 A. Sometimes that can be the case, but  
21 it really depends on the specifics of the  
22 situation, and they are all a little different.  
23 You look for the overall situation of what is  
24 going on.  
25 Q. Okay. Let's talk about your

Page 51

1 Q. Would you have any basis to dispute  
2 that then if I told you it started at 11:20?  
3 A. I don't remember if it did or didn't.  
4 I just don't remember.  
5 Q. Would you have any basis to dispute  
6 that, doctor, yes or no?  
7 A. I don't know when it started.  
8 Q. Would you have any basis to dispute  
9 that if I told you it started at 11:20? Would  
10 you have any basis to dispute that, yes or no?  
11 A. No.  
12 Q. Do you know how long your history  
13 took to obtain?  
14 A. No.  
15 Q. If I told you it took from 11:20 to  
16 11:37, 17 minutes, would that surprise you?  
17 A. Again, I didn't keep track of it.  
18 Q. Would you have any basis then to  
19 dispute the statement that it was a 17 minute  
20 history?  
21 A. I told you, I didn't keep track of  
22 it, so I don't know how long it took.  
23 Q. Would you have any basis to dispute  
24 that if I told you it was 17 minutes; yes or no?  
25 A. I can't tell you it was longer or

Page 50

1 examination. I looked at your note and I could  
2 not detect whether you had indicated any time  
3 for the examination.  
4 A. You mean the actual physical exam?  
5 Q. Well, starting with the history.  
6 What time was the examination scheduled for?  
7 A. I don't recall.  
8 Q. Would it surprise you to know that  
9 the exam was scheduled to start at 11:00  
10 o'clock?  
11 A. You know, I don't recall when it was  
12 scheduled to start.  
13 Q. You wouldn't take issue with me when  
14 I say it was scheduled for 11:00 o'clock on the  
15 date of March 13th, 2001?  
16 A. Well, I can't confirm or say it was  
17 or wasn't, I don't remember.  
18 Q. You don't have it marked down, do  
19 you?  
20 A. No, I don't mark it down.  
21 Q. Okay. And if I told you the exam  
22 didn't start until 11:20 a.m., would you have  
23 any reason to dispute that?  
24 A. Again, I don't recall when the exam  
25 started.

Page 52

1 less. So, no. In essence, no, I don't know how  
2 long it took.  
3 Q. My question again -- It's not as  
4 complicated as you are making it. You don't  
5 have any basis to dispute my statement that it  
6 started at 11:20 and ended at 11:37; true?  
7 A. No. I told you, I didn't keep track  
8 of it.  
9 Q. That you have told me, but that  
10 wasn't my question.  
11 I'm asking you, what about the exam  
12 itself, do you know when that started?  
13 MR. SLATER: Objection.  
14 A. No.  
15 Q. If I told you it started at 11:45 and  
16 was over at 11:51, six minutes, would you have  
17 any reason or basis to dispute that?  
18 A. Again, I didn't keep track of it. I  
19 don't keep track of the time of exams, so I  
20 don't know one way or the other.  
21 Q. Do you have any basis to dispute that  
22 it was six minutes to do the physical  
23 examination; yes or no?  
24 A. No.  
25 Q. Okay. How much did you charge for

Page 53

1 the exam, the defense medical exam in this case?  
 2 A. I don't recall what I charged for it.  
 3 Q. Do you have a standard rate that you  
 4 charge for the exams?  
 5 A. No.  
 6 Q. How do you base the charge?  
 7 A. I just base it on time, expertise,  
 8 involvement, that kind of thing. They are all  
 9 different.  
 10 Q. Well, do you charge extra if you have  
 11 to review extra records?  
 12 A. After I have already prepared a  
 13 report, yes.  
 14 Q. Do you have any record as to how much  
 15 you charged in this case?  
 16 A. I don't, no.  
 17 Q. How would we go about checking that?  
 18 A. I'm not sure if that information is  
 19 available, if it's already been sent out. I  
 20 don't know if we have it or not.  
 21 Q. Let me ask you this, doctor.  
 22 A. I'm not sure it's been paid yet, I  
 23 don't know.  
 24 Q. You are responsible for issuing the  
 25 bill, correct, or at least telling someone at

Page 55

1 submit a bill to recreate in your mind, based  
 2 upon your experience, your time, the complexity  
 3 of the case, how much would you likely submit  
 4 for the charge for this case?  
 5 A. Well, I think that's kind of tough to  
 6 do to make that decision after I actually do it.  
 7 That was some time ago. I can give you a range  
 8 of what I might charge.  
 9 Q. Please.  
 10 A. It would be anywhere from \$500 or so  
 11 to \$2,000 or so, in that rough range.  
 12 Q. In your file, you don't have a copy  
 13 of the billing record for the charge for your  
 14 medical exam for Mr. Zywicki; true?  
 15 A. No.  
 16 Q. Can you tell me in this case whether  
 17 or not you charged for additional review of  
 18 records?  
 19 A. I don't recall.  
 20 Q. Would it be unusual for you in a case  
 21 of this nature to bill as much as \$2,700 for the  
 22 medical exam and the preparation of the report?  
 23 A. It's possible. It could be in that  
 24 range, \$2,000 or so. I don't recall exactly  
 25 what I did on this one.

Page 54

1 this office how much to charge for the defense  
 2 medical exam; true?  
 3 A. True.  
 4 Q. And is it your testimony that each  
 5 exam varies in terms of how much you charge?  
 6 A. I don't have a flat fee.  
 7 Q. For example, the deposition, you say,  
 8 you charge \$900 per hour. Do you base your exam  
 9 on the basis of \$900 per hour?  
 10 A. No.  
 11 Q. Is it more than \$900 per hour or less  
 12 than \$900 per hour?  
 13 A. It's not done on an hourly basis.  
 14 Q. So you just decide how much you want  
 15 to charge this particular lawyer or this  
 16 particular insurance company for this particular  
 17 case?  
 18 A. Based on the time spent, the  
 19 expertise involved, thinking about it, what  
 20 preparing the exam is worth, that's what I  
 21 charge.  
 22 Q. Given the fact that Mr. Zywicki from  
 23 start to finish was with you for 31 minutes, and  
 24 given the fact that you have records here that  
 25 you reviewed, if you were to sit down now and

Page 56

1 Q. You don't recall billing \$2,700 in  
 2 this case, do you?  
 3 A. Not specifically, no.  
 4 Q. Was this a complex or simple case, in  
 5 your opinion?  
 6 A. Very complex.  
 7 Q. In terms of the preparation, the  
 8 report and the preparation of the arrival of the  
 9 opinions, would this be at the high end or the  
 10 low end of what you would charge?  
 11 A. Again, that's hard to say, because I  
 12 decide what I'm going to charge right after I do  
 13 it. And that was some time ago. But it would  
 14 be in the middle to upper range.  
 15 Q. Again, doctor, this was only in  
 16 March, so it's not -- April, May, June, we are  
 17 only three to four months afterwards. If you  
 18 wanted to go back and check how much you billed  
 19 for this exam, is that something that you could  
 20 do?  
 21 A. I don't know if the billing is still  
 22 available. It probably already got sent out, so  
 23 I don't know the answer to that.  
 24 Q. Just so I can move past this, each  
 25 case when you do an exam and prepare the report,

Page 57

1 you decide at that point how much you are going  
2 to bill the attorney as opposed to telling the  
3 attorney ahead of time what you are going to  
4 charge?

5 A. That's correct.

6 . . . . .

7 (Thereupon, CORDON Deposition  
8 Exhibit 5 was marked for  
9 purposes of identification.)

10 . . . . .

11 Q. Doctor, when you do an independent  
12 medical exam for the defense -- I'm sorry, you  
13 said a range before, but the lowest that you  
14 will charge to do an exam and to prepare a  
15 report is how much?

16 A. It ranges in an area \$500 or so. It  
17 doesn't mean it's exactly \$500. It's in that  
18 area.

19 Q. Doctor, is it fair to say that in  
20 this case, Plaintiff's Exhibit 5 indicates that  
21 you billed \$2,700 in this case?

22 Does that refresh your memory now?

23 A. Sure it does. You asked me like a  
24 memory test, what I can remember. Now I have  
25 this before me. Sure, this refreshes my memory.

Page 59

1 A. It's where the amount of slippage is  
2 in the range from 0 to 25 percent.

3 Q. Is second degree or third degree more  
4 significant than first degree?

5 A. It's a continuum of percentages.

6 Grade one is zero to 25, 25 to 50, 50  
7 to 75, 75 to 100 is the continuum.

8 Q. Can spondylolisthesis, first degree  
9 spondylolisthesis or any degree of  
10 spondylolisthesis be aggravated by trauma?

11 A. It's possible, but unlikely.

12 Q. Are you aware of the fact that it's  
13 recognized in medical literature and in  
14 orthopedic texts as being subject to aggravation  
15 or acceleration by trauma?

16 A. Oh, I said it's possible. Certainly  
17 in this case, it's not the case.

18 Q. That's your opinion?

19 A. That is my opinion.

20 Q. Degenerative disk disease, what is  
21 that?

22 A. It's where there is a degeneration of  
23 the disk from a combination of aging, wear and  
24 tear, deterioration over time, and it's  
25 something that is fairly common,

Page 58

1 The exam itself was \$2,200 and the review and  
2 the report, and then I reviewed some additional  
3 records for \$500.

4 Q. What additional records did you  
5 review on May 1?

6 A. Some additional records that were  
7 made available. I don't remember exactly what  
8 they were,

9 Q. The reason I ask you that is your  
10 report is dated April 30th. So what additional  
11 records did you review on May 1?

12 A. I don't recall at this point. It  
13 didn't change any of the opinions I had in the  
14 initial report.

15 Q. But you charged an extra \$500  
16 nonetheless?

17 A. For my time and expertise, you bet.

18 Q. How much time did you spend reviewing  
19 those additional records?

20 A. I don't recall the amount of time.

21 Q. What is spondylolisthesis?

22 A. Spondylolisthesis is a slippage of a  
23 vertebral body on top of another one.

24 Q. What is a first degree  
25 spondylolisthesis?

Page 60

1 Q. Can degenerative disk disease be  
2 aggravated or accelerated by trauma?

3 A. It's possible.

4 Q. And that's certainly well recognized  
5 in the orthopedic community and orthopedic  
6 literature, is it not?

7 A. I think the possibility is  
8 recognized, but each case has to be looked at  
9 specifically.

10 Q. I take it your opinion is that that's  
11 not the case in Mr. Zywicki's situation?

12 A. There is no indication that it is.

13 Q. What about epidural hematoma, what is  
14 that?

15 A. An epidural hematoma is a collection  
16 of blood within the epidural space,

17 Q. Can this condition be caused by  
18 trauma?

19 A. It can.

20 Q. And disk herniation, what is that  
21 term?

22 A. A disk herniation is somewhat of a  
23 term open to semantics, but my definition of a  
24 disk herniation is a focal extrusion of disk  
25 material through the wall of the disk.

Page 61

1 Q. Doctor, I want to refer to your  
2 report and ask you a couple questions.  
3 On page three of your report, the  
4 physical exam, it says, on heel and toe walk he  
5 demonstrated a variable gait.  
6 What does that mean?  
7 A. Well, this goes back to the issue  
8 that when I asked him and had him walk, that  
9 there was normal function of his extremities and  
10 he had normal push off and foot dorsiflexion  
11 during gait and then on heel and toe walk he  
12 demonstrated a gait that wasn't consistent. And  
13 that would go along with what we found later in  
14 the variation efforts.  
15 Q. So you think he was not being honest  
16 with you in his effort?  
17 A. I think he was giving a less than  
18 authentic effort in showing strength.  
19 Q. Less than authentic. He wasn't being  
20 fully honest with you, in your opinion?  
21 A. You know, that gets into semantics.  
22 He is just not showing me the full extent of  
23 what his physiology can do.  
24 MR. SLATER: Objection.  
25 Q. Why do you think that was?

Page 63

1 will often not give a fully authentic effort in  
2 an effort to make things look worse than they  
3 are.  
4 Q. Do you know Dr. Viscomi?  
5 A. No.  
6 Q. Do you know anything about his  
7 reputation?  
8 A. No.  
9 Q. What about Dr. Vernon Patterson?  
10 A. I don't know.  
11 Q. Do you know anything about his  
12 reputation?  
13 A. No.  
14 Q. What about Dr. Curley?  
15 A. I know of him a little bit.  
16 Q. Do you know anything about his  
17 reputation?  
18 A. My understanding, he has a good  
19 reputation.  
20 Q. How do you know him?  
21 A. Through the orthopedic community.  
22 Q. Do you know how many times  
23 Dr. Patterson saw Mr. Zywica?  
24 A. Not off the top of my head, no.  
25 Q. If I told you he saw him 14 times

Page 62

1 A. Because based on the exam, he wasn't  
2 trying.  
3 Q. Why do you think based upon this exam  
4 he wasn't trying, doctor?  
5 A. Well, the issue there is, a common  
6 thing that we do see in individuals is an effort  
7 to make things look worse than they are.  
8 Q. And you think he was trying to make  
9 things look worse than they were?  
10 A. As far as the strength test in his  
11 lower extremities, I think that's fair.  
12 Q. Why do you think that is?  
13 A. Based on examining him.  
14 Q. Why do you think that was when you  
15 examined him? Why do you think he was doing  
16 that?  
17 A. Very likely an issue of secondary  
18 gain.  
19 Q. So you think he was trying to put on  
20 his best performance for you knowing that you  
21 worked for the other side?  
22 A. I don't know if that's the case or  
23 not. It's just very well understood in the  
24 medical community and in my training that when  
25 there is secondary gain issues, that individuals

Page 64

1 over a two-year period, would that in any way  
2 surprise you?  
3 A. No.  
4 Q. Would you agree that Dr. Patterson is  
5 in a much better position than you to comment on  
6 the cause of Mr. Zywica's injuries?  
7 A. No.  
8 Q. Why?  
9 A. I have had the opportunity to review  
10 the records, go over his records, Dr. Gurley's  
11 records, the people that have seen him and form  
12 opinions also.  
13 Q. Do you think your opinions are more  
14 valid than Dr. Patterson's who treated him over  
15 14 different periods from the acute phase of the  
16 injury to the time that he released him from  
17 treatment in terms of the causation of the  
18 injuries, as well as his prognosis?  
19 A. I think they are at least as valid.  
20 Q. At least. So you think your opinions  
21 might even be more valid than the person that  
22 treated him for that length of time?  
23 A. Again, I told you, they are at least  
24 as valid.  
25 Q. When you say at least, what I want



Page 65

1 the record to reflect that Dr. Gordon is  
2 saying that his opinions may even be more valid  
3 than the doctor that treated him 14 times over  
4 extended periods of time as opposed to someone  
5 that saw him for 21 minutes and reviewed  
6 records.

7 MR. SLATER: Objection. Asked and  
8 answered.

9 Q. Is that correct?

10 A. Well, again, I am not sure he has  
11 reviewed everything I have taken a look at. I  
12 don't know exactly what he has seen and not  
13 seen. So that's a tough one to answer.

14 Q. Mr. Zywicki lost time from work;  
15 true?

16 A. Yes.

17 Q. I think it's ten weeks, according to  
18 the information?

19 A. That's what I am aware of.

20 Q. Based upon the injuries he suffered,  
21 would you agree that would have been a  
22 reasonable period of time for him to be out of  
23 work while recuperating?

24 A. Yes, I think that's reasonable.

25 Q. Dr. Patterson diagnosed him with

Page 67

1 Q. And agree also it was reasonable and  
2 necessary to order the MRI in March of that year  
3 of '99, as well, to evaluate the nature of the  
4 injuries caused by the collision?

5 A. I agree with that.

6 Q. Also, there was an EMG and a nerve  
7 conduction study ordered to evaluate the  
8 injuries caused by the collision, and would you  
9 agree that was reasonable and necessary to order  
10 those tests to evaluate the injuries that were  
11 caused by the collision in this case?

12 A. Yes.

13 Q. You've seen the records for the  
14 physical therapy, you have seen the records for  
15 the treatment that he had. Can we agree that  
16 the treatment ordered in this case, by  
17 Dr. Vixomi, Dr. Patterson, Dr. Curley, as well  
18 as the epidural blocks that he received, that  
19 those were all treatments that were reasonable  
20 and necessary to treat the injuries caused by  
21 the auto collision of December 19, 1998?

22 A. I think the epidural blocks were  
23 reasonable.

24 I think the records indicate that he  
25 was really significantly improved after about

Page 66

1 lumbar pain syndrome with left sciatica; do you  
2 recall that?

3 A. Yes.

4 Q. And would you agree with that  
5 diagnosis?

6 A. I wouldn't call it sciatica, I would  
7 call it more of a nerve irritation.

8 Q. Radiculopathy?

9 A. Radiculitis.

10 Q. Secondary to injuries to the lumbar  
11 spine?

12 A. Secondary to the epidural hematoma.

13 Q. Which was caused by this collision?

14 A. I would agree with that.

15 Q. He also diagnosed him with a cervical  
16 thoracic pain and strain.

17 Agreed that was caused by the auto  
18 collision?

19 A. Yes.

20 Q. Agreed it was reasonable for  
21 Dr. Patterson to have ordered the MRI in January  
22 as a diagnostic procedure to evaluate the  
23 injuries that were caused by the December '98  
24 collision?

25 A. I agree with that.

Page 68

1 three months after the event, two to three  
2 months. I think treatment beyond that probably  
3 is unrelated.

4 Q. What treatment do you believe was  
5 unrelated to the collision?

6 A. Well, as I said, by the time we got  
7 into -- let me look at the dates here.

8 I think by the time we get past mid  
9 March of '99, I think basically it's wrapped up  
10 by the time Dr. Gurley saw him.

11 Q. So there is some additional physical  
12 therapy that takes place at The Cleveland Clinic  
13 from July to September, I take it, that you feel  
14 was not necessary to treat injuries caused by  
15 the collision?

16 A. I don't think that's causally related  
17 to the accident.

18 Q. Dr. Patterson continued to see  
19 Mr. Zywicki through 1999 and into 2000 where he  
20 returned with complaints of low back pain after  
21 that period of time that you are referring to in  
22 March of '99. Is it your opinion that those  
23 visits were not causally related to the auto  
24 collision?

25 A. Yes, it is.

Page 69

1 Q. But all of the other treatment up  
2 through March, including the MRIs, the epidural  
3 blocks, the consultation with Dr. Joshi, which  
4 is the epidural block, Dr. Gurley, were all  
5 causally related to the injuries suffered as a  
6 result of the auto collision; true?

7 A. Yes.

8 Q. Dr. Patterson's opinions include a  
9 statement that Mr. Zywica sustained a left  
10 paracentral disk herniation at L5-S1 and that  
11 the body reabsorbed the majority of the  
12 contained disk herniation as evidenced by the  
13 decrease of the MRI of five millimeters to the  
14 MRI of three millimeters, from January to March.  
15 Do you agree or disagree with that opinion?

16 A. Well, I don't really agree with that  
17 opinion.

18 Q. Why?

19 A. Well, when you look at the comparison  
20 of two MRIs, the evaluation by Dr. Gurley, what  
21 it appears to indicate is that he had an  
22 epidural hematoma that was in that area that  
23 resorbed over time, as you would expect it to,  
24 and resolved, and this left him with what he  
25 probably had there beforehand, which is a small

Page 71

1 a disk injury, it's two different entities or  
2 two different spaces, and that you can get an  
3 epidural injury, which is vascular, and it can  
4 bleed a little bit, and that can happen. It  
5 doesn't mean you are going to have a disk injury  
6 with it.

7 Q. Well, the epidural hematoma, was it  
8 at or near the area where the L5-S1 disk was?

9 A. It was in that area, yes.

10 Q. And certainly, that's where he had  
11 the hematoma and that's where he had the five  
12 millimeter disk at L5-S1; true?

13 A. You may be getting confused. The  
14 five millimeter issue included the hematoma. So  
15 the hematoma went away and then he is left with  
16 the small disk bulge at L5-S1, which is not  
17 unexpected at all.

18 Q. Can we agree that the epidural  
19 hematoma caused the acute radicular symptoms  
20 more?

21 A. Yes.

22 Q. And that was causally related to the  
23 auto collision injury?

24 A. Yes.

25 Q. Any evidence of radiculitis prior to

Page 70

1 degenerative disk bulge that was not related to  
2 the collision

3 Q. You have no evidence at all in this  
4 world to point to to say that prior to December  
5 of 1998 Mr. Zywica had a bulge in the disk space  
6 at L5-S1 based upon any history or examinations  
7 or diagnostic studies; true?

8 A. Well, I don't have, I think, all the  
9 records from the treatment he has had in the  
10 past, so I don't know if I have all the records  
11 or not, but I didn't see a specific diagnosis  
12 made regarding a disk bulge.

13 Q. Would you agree that in order to  
14 sustain an epidural hematoma, that requires  
15 significant injury to the involved disk?

16 A. No.

17 Q. Would you agree you can sustain a  
18 hematoma to the epidural space without a  
19 significant injury to the involved disk?

20 A. Sure. It's possible.

21 Q. Is it more likely than not that when  
22 someone has an epidural hematoma that there has  
23 been significant injury to the involved disk?

24 A. Well, you have to decide what you are  
25 talking about here. An epidural hematoma is not

Page 72

1 the auto collision of December 1998?

2 A. Not that I'm aware of.

3 Q. And the history that he had had back  
4 in July of 1997 of crawling on the ground -- do  
5 you recall that -- playing with his daughter --

6 A. Yes.

7 Q. -- that was not an ongoing problem  
8 for Mr. Zywica, according to the history that  
9 you obtained from Mr. Zywica; true?

10 A. According to his history.

11 Q. According to the records that you  
12 have seen from Dr. Visconti, as well as the  
13 records from the hospital, you would agree that  
14 there is no evidence to suggest that he had  
15 ongoing symptoms in his back after July of 1997  
16 up to the time that he was in this collision in  
17 December of '98?

18 A. Well, the records indicate that he  
19 did seek treatment at that time period. There  
20 aren't any records in the interim that he sought  
21 treatment for his symptoms.

22 Q. Well, you have the records from  
23 Dr. Visconti where he was seen one time in July  
24 of 1997; true?

25 A. Yes.

Page 73

1 Q. And there is no indication from  
2 Dr. Viscomi's records that between July of '97  
3 and when he is involved in this collision that  
4 he is seen again until December of '98 when he  
5 has the symptoms caused by this auto collision;  
6 true?

7 A. That's correct.

8 Q. So is it fair to say that based upon  
9 the records that you have been provided, there  
10 is no indication that the condition that he  
11 experienced in July of 1997 continued to cause  
12 him symptoms such that he required any medical  
13 treatment after July of '97?

14 A. I can only tell you on the records I  
15 have. I don't know if he went somewhere else or  
16 not. That's the obvious, we don't know. But I  
17 already told you based on the records I have,  
18 there is no indication that he sought treatment  
19 with those people.

20 Q. Are you suggesting on the record that  
21 you think that this gentleman did see someone  
22 else that he hasn't told us about? I want to  
23 understand what you mean.

24 A. I don't know if he has or hasn't. I  
25 can only answer the question based on what I

Page 75

1 not symptomatic. You are not suggesting by that  
2 that he wasn't providing you with subjective  
3 complaints; true?

4 A. What that means --

5 Q. Doctor--

6 A. It's a tough question to answer the  
7 way you asked it.

8 Q. Let me give it in a simpler manner.  
9 I don't like to ask tough questions. I like to  
10 give it to you simple.

11 He had subjective complaints; true?

12 A. He had some subjective complaints,  
13 yes.

14 Q. And those subjective complaints were  
15 relative to the low back area, true?

16 A. He had made some reported complaints  
17 in that area, yes.

18 Q. His low back symptoms he admitted had  
19 resolved, true, by the time you saw him in March  
20 of 2001?

21 A. Repeat the question.

22 Q. His upper back, his neck symptoms had  
23 resolved by 2001; correct?

24 A. Yes.

25 Q. And he readily admitted that to you?

Page 74

1 have seen.

2 Q. Are you inferring that there might be  
3 some additional treatment that hasn't been  
4 brought forward?

5 A. I'm not saying that. You are just  
6 asking me kind of a broad question. I'm telling  
7 you I can only answer it based on what I have  
8 seen. And based on what I have seen, as I  
9 already told you, that there is no indication  
10 that he went to see Viscomi for low back  
11 complaints in that interim.

12 Q. And there is no indication when  
13 Viscomi receives him in December of '98 for the  
14 injuries caused by this collision that there was  
15 any history of any ongoing symptoms from July of  
16 '97 up to the time of this auto collision; true?

17 A. That's correct.

18 Q. In your report, doctor, you indicate  
19 that -- and this is on page ten, just to help  
20 you along here -- that based upon recent  
21 evaluation, there is a lack of objective  
22 residuals with regard to the motor vehicle  
23 accident in question. Do you see that?

24 A. Yes.

25 Q. That doesn't mean that Mr. Zywicki was

Page 76

1 A. Yes.

2 Q. But he indicated that he was  
3 continuing to have flare-ups and symptoms in his  
4 low back?

5 A. He had told me about having  
6 intermittent flare-ups.

7 Q. You found no objective residuals to  
8 support that his flare-ups were related to the  
9 auto collision; true?

10 A. That's correct.

11 Q. Why do you say that the auto  
12 collision of December -- strike that.

13 Did the auto collision of December  
14 '98 aggravate Mr. Zywicki's spondylolisthesis?

15 A. No.

16 Q. Why do you say that?

17 A. Because based on the MRI studies,  
18 this was a finding that we would expect of some  
19 degenerative disk bulging at a grade of L5-S1  
20 spondylolistheses. It wasn't caused by the  
21 accident, no indication that it was aggravated.

22 Q. Would you detect soft tissue  
23 inflammation that causes symptoms around the  
24 area where the spondylolisthesis is on MRI?

25 A. Well, what was detected was the

Page 77

1 hematoma, which we already talked about. That  
2 went away. So that resolved.

3 Q. But your testimony is that there was  
4 absolutely no aggravation of the  
5 spondylolisthesis as a result of the collision;  
6 true?

7 A. That's correct.

8 Q. And your opinion is that there was  
9 absolutely no aggravation of any degenerative  
10 disk disease caused by the collision?

11 A. That's correct.

12 Q. Dr. Gurley in his report indicates  
13 that Mr. Zywicki did not require surgery, true?

14 A. Yes.

15 Q. And Dr. Gurley saw the residual disk  
16 that had reduced from five millimeters down to  
17 three millimeters; true?

18 A. If you are going to ask me about his  
19 report, I would like to have it in front of me.

20 Thank you.

21 So you are asking me about a specific  
22 evaluation?

23 Q. Dr. Gurley indicated that based upon  
24 the resolution of his symptoms or resolution of  
25 the herniation from five millimeters to three

Page 79

1 you think Dr. Gurley is saying in his note from  
2 Horizon Orthopedics?

3 A. Well, maybe I should rephrase that.  
4 I don't know exactly what Dr. Gurley is thinking  
5 because I can't read his mind. But based on the  
6 review of the records, what I have looked at,  
7 what he is referring to here is that he is  
8 referring to what we commonly see in someone  
9 that has an L5-S1 spondylolisthesis and  
10 degenerative disk bulge, he does not think it's  
11 contributing to the gentleman's clinical  
12 picture.

13 Q. You said spondylolisthesis and disk  
14 bulge. Those are two different conditions,  
15 aren't they?

16 A. Yes, but they often go together.

17 Q. Is there any reference by Dr. Gurley  
18 to the spondylolisthesis in his March 3, 1999  
19 note?

20 A. Not specifically in that note. There  
21 is references to that in other x-ray reports and  
22 elsewhere in the records.

23 Q. The small contained focal protrusion  
24 at L5-S1, that was never referenced in any x-ray  
25 findings prior to December of 1998, was it?

Page 78

1 millimeters that Mr. Zywicki did not require  
2 surgical intervention; true?

3 A. You know, I don't see that specific  
4 statement in what I have from Dr. Gurley. If  
5 you have something different, please show me.

6 Q. Let me ask you this, doctor, just to  
7 try to move things along.

8 On March 3, '99, would you agree that  
9 Dr. Gurley states that he has a small contained  
10 focal protrusion at L5-S1 level? Do you see  
11 that?

12 A. I see more. Yes, and more,

13 Q. I am reading --

14 A. I see that, yes.

15 Q. And he says, but I do not feel that  
16 this is contributory.

17 A. Yes, I see that.

18 Q. Do you know what Dr. Gurley means by  
19 that?

20 A. Yes.

21 Q. You do. Have you talked to  
22 Dr. Gurley?

23 A. No, but this is something that we see  
24 in practice. I am familiar with this scenario.

25 Q. What is your interpretation of what

Page 80

1 A. I am not aware that he had an MRI  
2 scan before this, so I don't know if he did or  
3 didn't, but I'm not aware that he did.

4 Q. Is it shown on any diagnostic studies  
5 that were done?

6 A. That's something you would see on an  
7 MRI scan.

8 Q. Would you not see a protrusion at  
9 L5-S1 on plain film?

10 A. No, that is something you would see  
11 on an MRI scan.

12 Q. You would never see it on a plain  
13 film?

14 A. When someone has an L5-S1 slip, by  
15 definition of the anatomy we have what is called  
16 a mandatory bulge, because the top vertebrae has  
17 move forward over the bottom vertebrae, and so  
18 the disk bulges because of the movement. And  
19 that's very well understood, so you can expect  
20 it to be there.

21 You can't, per se, see it on a plain  
22 film, but because of the bony anatomy, you would  
23 expect it to be there.

24 Q. Let me try to tie this up because I  
25 want to finish the deposition.

Page 81

1 it's your opinion that the  
2 spondylolisthesis that he had before the  
3 collision is what is causing the findings on the  
4 MRI of the disk protrusion?

5 A. Yes.

6 Q. And the explanation for why there was  
7 a five millimeter protrusion versus a three  
8 millimeter protrusion, January to March, is that  
9 due solely to the epidural hematoma or is that  
10 due to an aggravation of the spondylolisthesis  
11 as a result of the collision?

12 A. Well, it would be my opinion that the  
13 three millimeter bulge or protrusion -- it's an  
14 issue of semantics -- was there before. And  
15 that the extra two millimeters came from the  
16 hematoma that resolved.

17 Q. And specifically from an anatomical  
18 standpoint, what caused the hematoma to develop  
19 in that area that you have acknowledged to be  
20 causally related to the auto collision?

21 A. Well, it's difficult to say exactly  
22 what caused it. The issue as we know that, the  
23 epidural, the dura, has a vascular supply. And  
24 that if it, gets injured or if something above  
25 the dura, the epidural space, where there is

Page 83

1 or what you believe he means by contributory.  
2 You have told me what injuries you believe were  
3 causally related to the collision, and you told  
4 me which injuries you believe were not caused.  
5 You have also told me that other than the  
6 physical therapy in September of '99 and the  
7 follow-up visits after March of '99 to  
8 Dr. Patterson that all of the other treatment  
9 was causally related to the collision of  
10 December 1998.

11 Are there any other opinions that you  
12 hold?

13 MR. SLATER: Objection.

14 A. I have been asked specific questions  
15 and I have tried to answer those with opinions.

16 It doesn't mean if I am asked  
17 specific questions in the future that I haven't  
18 been asked today that I don't have opinions  
19 regarding those,

20 Q. I am here to find out, because I have  
21 looked at your report and covered the opinions  
22 that you expressed in your report.

23 Are there any other opinions that you  
24 hold as to the causal relationship to the auto  
25 collision of December 1998, and that which is

Page 82

1 vascular supply gets injured, it might bleed a  
2 little bit, and that's apparently what happened.  
3 But there is no indication that he had a disk  
4 injury as a result of the car accident.

5 Q. Dr. Patterson's opinion is that his  
6 prognosis, even though his symptoms improved  
7 over time, his prognosis is guarded. I take it  
8 you take issue with Dr. Patterson's opinion?

9 A. In regard to the motor vehicle  
10 accident?

11 Q. Yes,

12 A. Yes, I do.

13 Q. And you believe that all of the  
14 flare-ups that he has had since March of 1999  
15 would not be causally related to the auto  
16 collision of December '98?

17 A. That's correct.

18 Q. Doctor, is there any other opinions  
19 that you hold in this case other than those that  
20 we have talked about?

21 A. Not that I can think of off the top  
22 of my head.

23 Q. I have given you an opportunity to  
24 talk about the opinions, I have given you an  
25 opportunity to talk about what Dr. Curley means

Page 84

1 not related?

2 A. Again, you know, the best I can  
3 answer that, I tried to answer what I told you  
4 today and I told you my opinions.

5 Q. As you sit here right now, do you  
6 believe that you have any other opinions  
7 concerning the cause and effect of the injuries  
8 and the cause and effect of the symptoms that  
9 Mr. Zywica has other than what we have talked  
10 about?

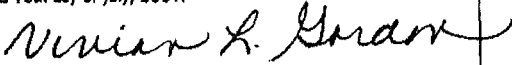
11 A. Not that I can think of right now.

12 MR. MISHKIND: Okay. Fair enough.  
13 Thank you for your time.

14 You had mentioned that conversation  
15 with your lawyer on Friday for the very first  
16 time I was notified of this \$900 fee, and  
17 obviously because I was not notified of the \$900  
18 fee per hour for the deposition that I could not  
19 bring a check with me.

20 Whether or not I have an objection  
21 ultimately with the court concerning whether or  
22 not that is considered a reasonable fee for the  
23 discovery deposition or not, I did indicate to  
24 your attorney that -- actually, I indicated to  
25 Mr. Slater, not to your attorney. But I would

**JULY 2, 2001**

<p style="text-align: right;">Page 85</p> <p>1 go on the record and indicate that subject to 2 any objection that I would have to the court in 3 terms of the reasonableness of the fee, that I 4 will certainly submit payment accordingly. 5 THE WITNESS: So we have been here a 6 little over an hour and a half. 7 MR. MISHKIND: Actually, it's an hour 8 and half, because we didn't get underway -- you 9 were with Mr. Slater until close to twenty of. 10 MR. SLATER: The record will reflect 11 when we started. 12 THE WITNESS: He was looking at 13 records before we started. That estimate is 14 reasonable. 15 ----- 16 (Deposition concluded at 11:10 a.m.) 17 ----- 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 87</p> <p>1 INDEX 2 EXAMINATION OF TIMOTHY GORDON, M.D. 3 4 BY MR. MISHKIND:,,, ..... 3:7 5 6 Exhibits 1 thru 4 were marked ..... 38:20 7 Exhibit 5 was marked ..... 57:8 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 86</p> <p>1 CERTIFICATE 2 3 State of Ohio, 4 SS: 5 County of Cuyahoga. 6 7 8 I, Vivian L. Gordon, a Notary Public within 9 and for the State of Ohio, duly commissioned and 10 qualified, do hereby certify that the within 11 named TIMOTHY L. GORDON, M.D. was by me first 12 duly sworn to testify to the truth, the whole 13 truth and nothing but the truth in the cause 14 aforesaid; that the testimony as above set forth 15 was by me reduced to stenotypy, afterwards 16 transcribed, and that the foregoing is a true 17 and correct transcription of the testimony. 18 19 I do further certify that this deposition 20 was taken at the time and place specified and 21 was completed without adjournment; that I am not 22 a relative or attorney for either party or 23 otherwise interested in the event of this 24 action. 25 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 16th day of July, 2001.  Vivian L. Gordon, Notary Public Within and for the State of Ohio My commission expires June 8, 2004.</p>	

22 (Pages 85 to 87)

<p><b>A</b></p> <p>able 14:15</p> <p>about 4:11 10:9,11 10:18 11:15,17 12:7,19,24 14:13 14:16,19 15:13 22:4,5 23:6 29:19 33:6,21 34:13 35:10 46:21,22 49:25 52:1 153:17 54:19 60:13 63:6 63:9,11,14,16 67:25 70:25 73:22 76:5 77:1,18,21 82:20,24,25 84:10</p> <p>sbove 1:23 81:24 86:11</p> <p>absolutely 77:4,9</p> <p>accelerated 60:2</p> <p>acceleration 59:15</p> <p>accept 43:7</p> <p>accident 68:17 74:23 76:21 82:4 82:10</p> <p>according 65:17 72:8,10,11</p> <p>accordingly 85:4</p> <p>accurate 14:16 18:24 19:1,5,14 42:23 45:19</p> <p>acknowledge 19:25 20:1</p> <p>acknowledged 81:19</p> <p>action 86:16</p> <p>actual 46:20 50:4</p> <p>actually 16:10 28:25 32:17 33:1 49:1 55:6 84:24 85:7</p> <p>acute 64:15 71:19</p> <p>addition 23:3</p> <p>additional 55:17 58:2,4,6,10,19 68:11 74:3</p> <p>adjournment 86:14</p> <p>admitted 75:18,25</p> <p>advised 7:24 20:11 21:10 22:23 34:11</p> <p>affixed 86:17</p> <p>aforesaid 86:11</p> <p>after 32:15 39:7,18 39:20 40:18 41:2 41:14 42:4,20</p>	<p>49:5 53:12 55:6 56:12 67:25 68:1 68:20 72:15 73:13 83:7</p> <p>afterwards 56:17 86:11</p> <p>again 5:24 12:1 13:3 14:13 15:6 15:12,16 18:23 19:21 21:22 28:11 29:24 42:5 47:24 50:24 51:17 52:3 52:18 56:11,15 64:23 65:10 73:4 84:2</p> <p>aggravate 76:14</p> <p>aggravated 59:10 60:2 76:21</p> <p>aggravation 59:14 77:4,9 81:10</p> <p>aging 59:23</p> <p>ago 17:13 23:22 55:7 56:13</p> <p>agree 32:13 41:12 42:2 64:4 65:21 66:4,14,25 67:1,5 67:9,15 69:15,16 70:13,17 71:18 72:13 78:8</p> <p>Agreed 66:17,20</p> <p>agreement 1:20</p> <p>ahead 31:2 57:3</p> <p>al 1:4,7</p> <p>along 6:8 7:23 61:13 74:20 78:7</p> <p>already 15:13 40:25 41:18 46:22 53:12 53:19 56:22 73:17 74:9 77:1</p> <p>although 3:14</p> <p>altogether 7:17</p> <p>always 12:22 49:17</p> <p>American 27:7</p> <p>amount 13:10 58:20 59:1</p> <p>anatomical 81:17</p> <p>anatomy 80:15,22</p> <p>another 42:16 46:3 46:4 58:23</p> <p>answer 4:6 5:3 8:5 31:2 32:8 42:11 42:14 43:2,7 45:9 45:19 56:23 65:13 73:25 74:7 75:6</p>	<p>83:15 84:3,3</p> <p>answered 65:8</p> <p>answering 4:4 45:20</p> <p>answers 31:14</p> <p>anything 9:4 26:1 33:18 34:24 37:23 38:7 39:11 45:5 45:12,22 46:9 63:6,11,16</p> <p>anyway 32:8</p> <p>anywhere 55:10</p> <p>apparent 37:8</p> <p>apparently 82:2</p> <p>appear 15:1 44:8</p> <p><b>APPEARANCES</b> 2:1</p> <p>appeared 15:3</p> <p>appears 69:21</p> <p>appropriate 15:20</p> <p>approximately 15:9 32:14</p> <p>April 8:13 33:13 39:15 40:1,6 56:16 58:10</p> <p>area 12:20 16:5,8 16:13 21:20 28:3 36:6 57:16,18 69:22 71:8,9 75:15,17 76:24 81:19</p> <p>areas 36:3,14 46:17 46:24 47:3</p> <p>arise 24:15</p> <p>around 16:16 76:23</p> <p>arrival 56:8</p> <p>arrived 31:25 37:20</p> <p>articles 26:3,16</p> <p>aside 37:16 38:23</p> <p>asked 7:4 12:3,6 14:15,18 21:24 31:18 32:3 33:4 33:15 43:18 57:23 61:8 65:7 75:7 83:14,16,18</p> <p>asking 4:3 14:9 42:22 45:8 46:23 47:11,13,25 48:10 52:11 74:6 77:21</p> <p>aspects 34:18</p> <p>associated 29:20</p> <p>Associates 1:21</p> <p>assure 4:9</p> <p>at trophy 37:3</p>	<p>attempt 27:10</p> <p>attorney 7:7,21 8:2 21:9 22:19 23:1 30:24 57:2,3 84:24,25 86:15</p> <p>attorneys 12:4 30:7 40:22</p> <p>authentic 61:18,19 63:1</p> <p>authenticity 35:10 35:11 46:21</p> <p>authorship 26:13</p> <p>auto 32:15 66:17 67:21 68:23 69:6 71:23 72:1 73:5 74:16 76:9,11,13 81:20 82:15 83:24</p> <p>automobile 32:21</p> <p>available 25:17 34:5 53:19 56:22 58:7</p> <p>Avenue 2:12</p> <p>average 14:17 22:3 42:1</p> <p>averaging 14:19 22:4</p> <p>aware 6:20 7:1 17:7 20:3 59:12 65:19 72:2 80:1,3</p> <p>away 15:21 24:22 28:21 32:18 71:15 77:2</p> <p>a.m. 1:22 50:22 85:16</p>	<p>11:6 14:1,17 15:5 46:16 51:1,5,8,10 51:18,23 52:5,17 52:21 54:9,13</p> <p>Becker 2:3</p> <p>become 27:8</p> <p>Bedford 25:12</p> <p>before 1:17 3:15,21 3:25 4:4,5 8:21 9:12 10:16 12:6 14:1,5,15 21:24 25:18,23 28:24 29:1,3,17,21 37:21,25 38:5,13 40:5 57:13,25 80:2 81:2,14 85:13</p> <p>beforehand 69:25</p> <p>behalf 1:15 2:2,9 5:1 24:2 45:13</p> <p>behest 30:23</p> <p>being 3:3 15:2 19:15,16 24:12 44:21 47:4 59:14 61:15,19</p> <p>believe 3:12 4:22 45:23 68:4 82:13 83:1,2,4 84:6</p> <p>besides 29:12 30:6 30:15 37:23</p> <p>best 6:12 19:17 20:4 21:18 29:9 29:24 62:20 84:2</p> <p>bet 58:17</p> <p>better 11:21 64:5</p> <p>between 22:24 73:2</p> <p>beyond 17:22 68:2</p> <p>bill 53:25 55:1,21 57:2</p> <p>billed 11:4,5 14:7 15:12 56:18 57:21</p> <p>billing 55:13 56:1 56:21</p> <p>bit 4:10 12:19 63:15 71:4 82:2</p> <p>blank 44:17</p> <p>bleed 71:4 82:1</p> <p>block 69:4</p> <p>blocks 67:18,22 69:3</p> <p>blood 60:16</p> <p>board 27:4,6,7,8</p> <p>body 58:23 69:11</p> <p>Bone 28:19</p>
<p><b>B</b></p> <p>back 15:6 33:12 46:4 56:18 61:7 68:20 72:3,15 74:10 75:15,18,22 76:4</p> <p>background 12:19 45:2</p> <p>balance 43:19</p> <p>ballpark 16:5</p> <p>base 53:6,7 54:8</p> <p>based 8:11,14 15:20 47:25 54:18 55:1 62:1,3,13 65:20 70:6 73:8,17,25 74:7,8,20 76:17 77:23 79:5</p> <p>Basically 47:9 68:9</p> <p>basis 4:10 10:22</p>				

<p>bony 80:22  both 14:24 16:25  bother 43:20  bottom 80:17  break 22:5  breaking 37:2  bring 7:5,11 84: 19  broad 74:6  broken 46:4  brought 74:4  bulge 70:1,5,12  71:16 79:10,14  80:16 81:13  bulges 80: 18  bulging 76: 19  business 6:25 20:24  42: 13</p> <p style="text-align: center;"><b>C</b></p> <p>calendar 15:8,9  18:5,19 19:4,7,12  19:14,16 20:3,15  20:20,21 22:10  call 66:6,7  called 1:15 3:2 23:4  80:15  came 81:15  Campbell's 27:17  27:19  cancelled 18:12,13  18:20 19:17,25  capacity 23: 17  car 82:4  career 48:20  case 1:6 8:18 10:7  23:7,10,18,24  24:15,17,23 25:14  27:13 31:10 36:23  37:8 40:11 42:21  45:14 46:14 49:20  53:1,15 54:17  55:3,4,16,20 56:2  56:4,25 57:20,21  59:17,17 60:8,11  62:22 67:11,16  82:19  cases 23:4 24:1 29:2  29:12,21,25 30:23  31:4,7 42:6  categories 4: 18  category 21:22  causal 83:24  causally 68:16,23  69:5 71:22 81:20</p>	<p>82:15 83:3,9  causation 64:17  cause 64:6 73:11  84:7,8 86:10  caused 60:17 66:13  66:17,23 67:4,8  67:11,20 68:14  71:19 73:5 74:14  76:20 77:10 81:18  81:22 83:4  causes 76:23  causing 47:20 81:3  certain 6:5  certainly 32:13  59:16 60:4 71:10  85:4  <b>CERTIFICATE</b>  86: 1  certified 3:4 27:4,6  27:8  certify 86:9,13  cervical 66: 15  chance 8:20  change 13:19 58:13  changed 17:6  changing 35: 18  chapters 26: 13  charge 10:24 11:3  12:24 16:5,7,10  16:12,16,20 17:4  52:25 53:4,6,10  54:1,5,8,15,21  55:4,8,13 56:10  56:12 57:4,14  charged 10:21 11:2  14:1 53:2,15  55:17 58:15  charges 17:2  charging 11:8  13:23 16:1,23  17:8  chart 40:8  check 22:10 56: 18  84:19  checking 47:19  53:17  City 30:11  Civil 3:3  clerical 18:15 19:3  Cleveland 1:22 2:6  2:13 16:8 24:14  24:15 30:11 68:12  86: 17  <b>Client-attorney</b></p>	<p>22:20  Clinic 16:10 68:12  clinical 79:11  close 41:20 85:9  Co 2:3  cogwheels 37:1,2  colleagues 15:24  collection 60:15  collision 32:15,21  66:13,18,24 67:4  67:8,11,21 68:5  68:15,24 69:6  70:2 71:23 72:1  72:16 73:3,5  74:14,16 76:9,12  76:13 77:5,10  81:3,11,20 82:16  83:3,9,25  combination 59:23  come 6:2,3 12:2  42:7 49:11,11  comes 29:7 41:11  coming 42:7  commencing 1:22  comment 64:5  commission 86:23  commissioned 86:8  common 1:1 40:13  40:21 59:25 62:5  commonly 79:8  communicate 23: 1  community 60:5  62:24 63:21  companies 5: 16  30:20  company 30:22  54: 16  comparison 69:19  complaints 35:13  46:18 47:12,16  49:6,19 68:20  74:11 75:3,11,12  75:14,16  completed 86: 14  complex 56:4,6  complexity 55:2  complicated 52:4  concept 6:4  concern 36:2 46:20  concerned 35: 10  concerning 84:7,21  concluded 85:16  conclusion 60: 17  73:10</p>	<p>conditions 79:14  conducted 33:11  conduction 67:7  confirm 50:16  confused 71: 13  connection 10:7  23:10 27:13  consider 27:19 28:2  28:14  considered 84:22  consistent 36:24  37:9 61:12  consultation 69:3  contained 49: 12  78:9 79:23  contains 37: 17  continue 40:8,12  continued 68: 18  73:11  continuing 76:3  continuum 59:5,7  contraction 36:21  contributing 79:11  contributory 78:16  83:1  conversation 4:22  84: 14  copy 4:23 38:23  55:12  cordial 34:25 35:2  Corn 16:19 25:5  <b>CORP</b> 1:7  corporate 4:15 7:7  20:11  correct 3:15 4: 15  5:9 7:12 8:4 10:13  10:20,22,23 11:7  14:2,3 19:13 21:2  25:22 30:20 31:17  31:23 33:3 37:17  39:10 48:18,21,22  49:14 53:25 57:5  65:9 73:7 74:17  75:23 76:10 77:7  77:11 82:17 86:12  corrected 38:4  correlate 49:8,18  cost 16:18  counsel 1:15,20  4:14,16 5:15  20:11  county 1:2 86:5  couple 3:25 13:7,14  17:13 29:9 31:13</p>	<p>32:18 61:2  course 11:16,19  12:12 15:7 19:8  32:10 35:6,8 38:8  38:25  court 1:1 6:22 15:1  15:3 84:21 85:2  courtroom 25:2  covered 83:21  crawling 72:4  created 21:23 38:8  Crystal 16:9  current 13:19  currently 21:5  23:16 24:4 26:25  29:11 30:8  cuyahoga 1:2 86:5  CV 25:15</p> <p style="text-align: center;"><b>D</b></p> <p>D 2:4  date 1:23 7:17  50:15  dated 58: 10  dates 68:7  daughter 72:5  day 1:23 19:9 86:18  days 42:3,20  December 66:23  67:21 70:4 72:1  72:17 73:4 74:13  76:12,13 79:25  82:16 83:10,25  decide 44:16 54:14  56:12 57:1 70:24  decided 13:14  decision 13:11,12  55:6  decrease 69: 13  dedicated 48:25  deem 22:18 28:8  defend 30: 13  Defendants 1:8 2:9  defending 30:24  defense 5:15,16  6:19,24 21:21  22:2 30:12,14  40:20 42:18 48:21  53:1 54:1 57:12  Define 26:5  defined 36:17  definition 60:23  80: 15  degeneration 59:22</p>
--	--	---	--	--



degenerative 59:20 60:1 70:1 76:19 77:9 79:10 degree 58:24 59:3,3 59:4,8,9 delays 40:3,3 deleted 19:16 deletions 18:20 demonstrated 36:11 47:15 61:5 61:12 depending 15:14 depends 14:8 18:24 41:7,16,17,21 49:21 deposed 3:4 17:10 17:12 deposition 1:11,14 3:13,14,17,21,25 4 2 7:18 8:21 10:10,12,16 11:6 12:22 14:5,18,22 16:17,18 17:19,19 18:8 20:1 23:23 29:16 33:9 38:16 38:19 54:7 57:7 80:25 84:18,23 85:16 86:13 depositions 11:9,14 12:5 14:23,24 15:9 17:14 18:21 18:22 19:19 20:6 21:1,14,18 22:14 describing 48:1 detect 36:23 50:2 76:22 detected 76:25 deterioration 59:24 determination 13:10 determine 15:18 Detroit 2: 12 develop 81:18 development 26:9 Developmental 26:8 device 39:23 diagnosed 65:25 66:15 diagnosis 66:5 70:11 diagnostic 66:22 70:7 80:4 dictate 39:16 40:17	41:1 dictated 39:6,22 40:5 dictating 39:22 40:15 dictation 41:7 different 49: 11,22 53:9 64:15 71:1,2 78:5 79:14 difficult 11:25 48:14 81:21 Diplomate 1:18 disagree 69:15 discomfort 37:13 discovery 4:2 14:21 17:19 33:9 84:23 discussed 16:3 44: 13 disease 59:20 60:1 77:10 disk 59:20,23 60:1 60:20,22,24,24,25 69:10,12 70:1,5 70:12,15,19,23 71:1,5,8,12,16 76:19 77:10,15 79:10,13 80:18 81:4 82:3 Dismissed 24:20 disposed 9:25 dispute 50:23 51:1 51:5,8,10,19,23 52:5,17,21 disseminate 40:20 doctor 11:24 19:24 27:2 31:2 37:15 38:11 41:9 43:6 48:9,16 51:6 53:21 56:15 57:11 57:19 61:1 62:4 65:3 74:18 75:5 78:6 82:18 doctors 16:4 document 20:4,22 20:24 21:4,13 22:13,14,22,25 44:25 47:2 documents 4:18 5:2 5:5 6:23 8:3,10,23 9:1 45:6,10,12 doing 18:24 19:8 26:25 35:19,21 36:17 44:22 48:21 48:25 62:15	done 18:14 20:9 21:3,11,15 23:2 29:2,21 30:1,23 31:4,9 54:13 80:5 dorsiflexion 61:10 dorsum 36:7,13 37:11 down 22:5,15 44:13 46:5 50:18,20 54:25 77: 16 Dr 3:11 16:19 24:5 25:5 63:4,9,14,23 64:4,10,14 65:1 65:25 66:21 67:17 67:17,17 68:10,18 69:3,4,8,20 72:12 72:23 73:2 77:12 77:15,23 78:4,9 78:18,22 79:1,4 79:17 82:5,8,25 83:8 drawing 43: 15 46:11 47:6,16 48:4 drink 45: 18 due 81:9,10 duly 3:3 86:8,10 dura 81:23,25 during 9:5 11:16 15:9 22:3 32:10 35:5,8,15 37:10 37:25 38:6,8,25 39:5 47:18 61:11	end 56:9,10 ended 52:6 enough 3:23 4:6,7 8:12 10:5 24:25 25:4 28:13 35:4 84:12 entire 48:20 entities 71:1 epidural 60:13,15 60:16 66:12 67:18 67:22 69:2,4,22 70:14,18,22,25 71:3,7,18 81:9,23 81:25 erase 18:16 ESQ 2:4,11 essence 52:1 essentially 5:1,7 estimate 14:16 15:7 21:18 29:25 85:13 et 1:4,7 Euclid 25: 11 evaluate 66:22 67:3 67:7,10 evaluation 39:20 69:20 74:21 77:22 even 3:24 64:21 65:2 82:6 event 68:1 86:15 ever 5:12 6:17 23:6 23:9,23 24:7,9 28:23 29:16 every 47:24 everybody 40:16 everything 9:11 10:2 41:22 65:11 evidence 49:8 70:3 71:25 72:14 evidenced 69:12 exactly 5:20 6:9 11:18 12:11 13:2 30:3 55:24 57:17 58:7 65:12 79:4 81:21 exaggerate 35:7,22 exam 32:10 33:10 33:11 34:18,23 35:8,15,17 36:8 37:21 38:5,6 41:4 41:13,20 42:19,20 46:20,22 47:18 48:15 50:4,9,21 50:24 52:11 53:1 53:1 54:2,5,8,20	55:14,22 56:19,25 57:12,14 58:1 61:4 62:1,3 examination 1:16 3:2,6 6:25 8:14 32:7 35:6 37:10 38:1,25 39:5,7,15 41:15 42:4 49:7 50:1,3,6 52:23 87:2 examinations 5:17 6:19 21:22 22:2 22:15 23:5 44:5 48:21 70:6 examine 31:15,19 37:6 examined 44:21 62: 15 examining 36:19 62:13 example 18:6 21:14 45:17 54:7 exams 22:7 30:14 35:24 40:20 52:19 53:4 exhibit 38:23 39:12 43:10,14,17 48:2 57:8,20 87:7 exhibits 38:12,16 38:20 45:23 87:6 expect 69:23 76:18 80:19,23 experience 28:7 34:21 55:2 experienced 73:11 experiencing 37:13 46:25 expert 12:14 16:5 16:10 23:6,17,24 expertise 15:21 28:7 53:7 54:19 58:17 expires 86:23 explain 43:5 explanation 81:6 expressed 83:22 extended 65:4 extent 30:25 44:22 61:22 extra 53:10,11 58:15 81:15 extremities 61:9 62:11 extremity 26:9
---	---	--	--	--

36:22,25 47:20 <b>extrusion</b> 60:24 <hr/> <b>F</b> <b>fact</b> 17:8 32:6 47:14 48:23 54:22,24 59:12 <b>factors</b> 41:25 <b>fair</b> 3:23 4:6,7 5:6 8:12 13:4 24:25 25:4 28:13 33:9 48:6 57:19 62:11 73:8 84:12 <b>fairly</b> 14:16 40:13 40:21 42:9 59:25 <b>fairness</b> 8:1 41:9 <b>falls</b> 21:22 <b>false</b> 45:1,7,12 <b>familiar</b> 78:24 <b>far</b> 10:4 21:16 38:10 40:15 43:25 62:10 <b>faxed</b> 4:24 <b>fee</b> 10:9,11 12:21 54:6 84:16,18,22 85:3 <b>feel</b> 9:15 10:5 36:3 45:8 68:13 78:15 <b>fees</b> 16:16 <b>fellow</b> 18:7 <b>felt</b> 15:20 35:20 <b>few</b> 11:18 15:3 23:13,14,15 26:4 26:5 29:6,8 <b>file</b> 8:20 9:5,12,17 9:18 37:16 55:12 <b>fill</b> 37:20 43:19 44:11,16 <b>filled</b> 8:25 37:25 38:3,5,6 43:11,15 44:10 46:12,12 <b>film</b> 80:9,13,22 <b>films</b> 33:2,14,22 <b>final</b> 28:14 <b>finally</b> 43:17 <b>find</b> 49:17 83:20 <b>finding</b> 76:18 <b>findings</b> 31:21 40:22 47:13 49:18 79:25 81:3 <b>fine</b> 25:25 <b>finish</b> 12:20 54:23 80:25 <b>finished</b> 21:19 40:6	<b>firm</b> 29:21 <b>firms</b> 30:11,12,15 <b>first</b> 3:3 6:1,7 11:19 12:10,20 21:25 27:10 34:23 58:24 59:4,8 84:15 86:9 <b>five</b> 4:18 7:17 13:5 27:3 69:13 71:11 71:14 77:16,25 81:7 <b>flare-ups</b> 76:3,6,8 82:14 <b>flat</b> 16:16 54:6 <b>flexion</b> 36:7,13 37:11 <b>focal</b> 60:24 78:10 79:23 <b>follows</b> 3:5 <b>follow-up</b> 83:7 <b>fool</b> 35:7 <b>foot</b> 36:8 61:10 <b>foregoing</b> 86:12 <b>forgot</b> 18:16 <b>form</b> 7:13 10:6 43:25 44:3 64:11 <b>formal</b> 3:21 20:24 <b>format</b> 40:13,21,25 <b>forms</b> 5:10 <b>forth</b> 1:23 14:9 15:15 28:7 35:15 40:3 41:8 86:11 <b>Fortunately</b> 42:17 <b>forward</b> 74:4 80:17 <b>found</b> 35:9 61:13 76:7 <b>four</b> 13:5 56:17 <b>frequency</b> 43:4 <b>frequently</b> 42:9 45:18 48:16 <b>Friday</b> 4:24 10:11 84:15 <b>from</b> 5:15 6:5 8:7 9:4 10:10 13:15 13:19 15:21,23 27:22,23 28:11 30:11 35:17 40:20 48:16 51:15 54:22 55:10 59:2,23 64:15,16 65:14 68:13 69:14 70:9 72:9,12,13,22 73:1 74:15 77:16 77:25 78:4 79:1 81:15,17	<b>front</b> 9:13,18 10:3 25:21 37:17 45:10 77:19 <b>full</b> 10:25 35:18 61:22 <b>fully</b> 61:20 63:1 <b>function</b> 61:9 <b>further</b> 86:13 <b>future</b> 83:17 <hr/> <b>G</b> <b>gain</b> 62:18,25 <b>galt</b> 61:5,11,12 <b>gave</b> 35:15 <b>general</b> 6:14 14:12 16:3 43:17 44:19 49:10 <b>generated</b> 41:13 <b>gentleman</b> 28:22 73:21 <b>gentleman's</b> 79:11 <b>gets</b> 61:21 81:24 82:1 <b>getting</b> 33:6 71:13 <b>girls</b> 25:24 <b>give</b> 3:25 14:15,18 17:18 29:24 55:7 63:1 75:8,10 <b>given</b> 3:14,17,24 12:13 22:3 23:23 54:22,24 82:23,24 <b>giving</b> 11:13 12:5 35:18,23,25 36:4 36:18 37:9 61:17 <b>GLASS</b> 1:7 <b>go</b> 7:23 8:8 25:13 31:2 39:23 41:25 47:24 53:17 56:18 61:13 64:10 79:16 85:1 <b>goes</b> 32:1 61:7 <b>going</b> 4:3 7:18,23 8:8,9 16:18 19:23 22:21 29:8 38:11 41:7 43:8 49:24 56:12 57:1,3 71:5 77:18 <b>gone</b> 19:2 24:9 <b>good</b> 27:21 35:23 63:18 <b>gordon</b> 1:11,14,17 3:1,6,10,11 6:4 13:9 21:24,25 24:5 38:19 57:7	65:1 86:8,9,21 87:2 <b>grade</b> 59:6 76:19 <b>ground</b> 4:1 72:4 <b>guarded</b> 82:7 <b>guess</b> 16:14 42:11 <b>Gurley</b> 63:14 67:17 68:10 69:4,20 77:12,15,23 78:4 78:9,18,22 79:1,4 79:17 82:25 <b>Gurley's</b> 64:10 <b>guy</b> 34:20 <b>guys</b> 16:25 <hr/> <b>H</b> <b>half</b> 10:18,25 11:1,3 11:5 14:4 32:14 41:14 42:4,21 85:6,8 <b>hand</b> 7:19 86:17 <b>handle</b> 7:8 <b>handles</b> 18:2 <b>handwritten</b> 38:10 <b>happen</b> 19:23 42:9 71:4 <b>happened</b> 18:18 82:2 <b>happens</b> 49:13 <b>happy</b> 17:11 <b>hard</b> 56:11 <b>having</b> 12:5 47:16 48:4,12 76:5 <b>head</b> 22:9 63:24 82:22 <b>heal</b> 61:4,11 <b>help</b> 74:19 <b>hematoma</b> 60:13,15 66:12 69:22 70:14 70:18,22,25 71:7 71:11,14,15,19 77:1 81:9,16,18 <b>hereinafter</b> 3:4 <b>hereunto</b> 86:17 <b>herniation</b> 60:20,22 60:24 69:10,12 77:25 <b>high</b> 56:9 <b>higher</b> 8:3 <b>Highland</b> 1:21 <b>Hillcrest</b> 25:11 <b>him</b> 10:18 11:2,3 14:5 16:24 22:24 23:2 28:24,25	31:22 34:19 43:21 43:22 46:17,19 61:8,8 62:13,15 63:15,20,25 64:11 64:14,16,22 65:3 65:5,22,25 66:15 68:10 69:24 73:12 74:13 75:19 <b>hired</b> 30:13 <b>history</b> 39:3,6,16,18 39:19 40:4,9,15 40:18 41:1 46:3 50:5 51:12,20 70:6 72:3,8,10 74:15 <b>hold</b> 82:19 83:12,24 <b>honest</b> 47:5 61:15 61:20 <b>hopefully</b> 14:15 <b>Horizon</b> 79:2 <b>hospital</b> 25:8 41:24 72:13 <b>hospitals</b> 25:10 <b>hour</b> 10:12,19,22 10:25,25 11:1,4,5 11:6 12:22,25 13:23 14:2,4,5,6,7 15:19,25 16:7,23 17:3,4,8 54:8,9,11 54:12 84:18 85:6 85:7 <b>hourly</b> 54:13 <b>hours</b> 146 <b>howard</b> 2:4 3:11 6:3 12:2 18:8 <hr/> <b>I</b> <b>identification</b> 38:21 57:9 <b>imaging</b> 26:9 <b>immediately</b> 39:7 39:18,19 <b>improved</b> 67:25 82:6 <b>inaccurate</b> 19:6 <b>include</b> 69:8 <b>included</b> 71:14 <b>includes</b> 14:24 <b>including</b> 40:17 69:2 <b>inconsistency</b> 35:9 <b>increase</b> 13:15 <b>increased</b> 12:25 <b>Indeed</b> 44:21
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<p><b>independent</b> 57:11 <b>independently</b> 34:17 <b>INDEX</b> 87:1 <b>indicate</b> 67:24 69:21 72:18 74:18 84:23 85:1 <b>indicated</b> 46:19,25 47:2,6 48:4 50:2 76:2 77:23 84:24 <b>indicates</b> 57:20 77:12 <b>indicating</b> 5:3 <b>indication</b> 47:18 60:12 73:1,10,18 74:9,12 76:21 82:3 <b>individual</b> 34:25 <b>individuals</b> 62:6,25 <b>inferring</b> 74:2 <b>inflammation</b> 76:23 <b>informally</b> 16:4 <b>information</b> 4:11 5:14 6:5,12,18 7:19 9:16,17,19 10:6 19:5,18 34:12 43:18 44:19 45:2 53:18 65:18 <b>Initial</b> 12:24,24 58:14 <b>Injured</b> 32:20 81:24 82:1 <b>injuries</b> 48:17 64:6 64:18 65:20 66:10 66:23 67:4,8,10 67:20 68:14 69:5 74:14 83:2,4 84:7 <b>injury</b> 23:3 35:22 37:3 46:4 49:5 64:16 70:15,19,23 71:1,3,5,23 82:4 <b>input</b> 15:23 <b>inside</b> 25:1 <b>insist</b> 15:2 <b>Inspect</b> 33:23 <b>instructions</b> 7:21 8:2 <b>insurance</b> 5:15 30:19,22 54:16 <b>insured</b> 30:24 <b>intending</b> 4:8 <b>intentionally</b> 35:21 <b>interested</b> 86:15 <b>interim</b> 72:20 74:11</p>	<p><b>intermittent</b> 76:6 <b>interpretation</b> 28:6 78:25 <b>intervention</b> 78:2 <b>involved</b> 54:19 70:15,19,23 73:3 <b>involvement</b> 53:8 <b>irritation</b> 66:7 <b>issuance</b> 1:19 <b>issue</b> 5:24 6:2 19:3 19:22 33:17,21 37:4 42:25 46:2,3 46:10,11,14 47:8 48:7 50:13 61:7 62:5,17 71:14 81:14,22 82:8 <b>issued</b> 4:17 5:13,23 6:11,22 8:13,18 <b>issues</b> 5:8,20,22 7:3 18:15 45:16 47:12 62:25 <b>issuing</b> 53:24 <b>items</b> 7:11,17 18:3</p> <p style="text-align: center;"><b>J</b></p> <p><b>Jan</b> 2:10 29:19 30:1 30:8,16 <b>January</b> 66:21 69:14 81:8 <b>jaw</b> 46:4 <b>Joint</b> 28:19 <b>Joshi</b> 69:3 <b>Journal</b> 28:19 <b>journals</b> 26:16,18 28:18,20,21 <b>july</b> 1:12 17:11,11 21:19 68:13 72:4 72:15,23 73:2,11 73:13 74:15 86:18 <b>June</b> 56:16 86:23 <b>just</b> 7:2,16 11:1,25 14:24 19:1,2,22 20:19 24:21 31:9 34:13 37:8,15 38:14,23 39:2 40:9 41:6,16 42:13 43:17 44:19 44:20 46:7 47:11 51:4 53:7 54:14 56:24 60:16 61:22 62:23 74:5,19 78:6</p> <p style="text-align: center;"><b>K</b></p>	<p><b>keep</b> 13:18 20:8,10 20:13,22 22:14 42:5,10 43:1 51:17,21 52:7,18 52:19 <b>keeping</b> 18:25 <b>kept</b> 19:9,10 30:4 <b>kind</b> 16:14 17:1 34:20 53:8 55:5 74:6 <b>kinds</b> 15:22 <b>know</b> 3:14 5:19 6:9 7:4,25 10:4 11:17 14:14 16:6,9 17:2 17:25 22:9,11 23:2 26:6 28:6 30:3,3,5 31:3,8,11 32:7 34:8,8 39:21 40:3 43:4 44:7,12 44:22 45:3,9,18 45:19,20,21 46:1 46:1,6,13 47:11 47:21 50:8,11 51:7,12,22 52:1 52:12,20 53:20,23 56:21,23 61:21 62:22 63:4,6,10 63:11,15,16,20,22 65:12 70:10 73:15 73:16,24 78:3,18 79:4 80:2 81:22 84:2 knowing 62:20 <b>knowledge</b> 6:16,21 34:6</p> <p style="text-align: center;"><b>L</b></p> <p><b>L</b> 1:11,14,17 3:1,6 3:10 86:8,9,21 <b>lack</b> 37:4 74:21 <b>Lake</b> 25:11 <b>last</b> 13:5,7,14 15:14 17:7,9,10,11 18:6 23:20 <b>later</b> 40:8,12 61:13 <b>law</b> 2:10 29:19 30:1 30:8,10,15 <b>lawyer</b> 54:15 84:15 <b>lawyers</b> 14:11 29:21 30:19 <b>learned</b> 10:10 <b>least</b> 13:5,13 53:25 64:19,20,23,25 <b>leave</b> 25:23 38:13</p>	<p>40:7 44:17 <b>left</b> 35:14 36:8,23 66:1 69:9,24 71:15 <b>leg</b> 35:14 36:19,23 <b>length</b> 64:22 <b>less</b> 18:19 47:5 52:1 54:11 61:17,19 <b>let</b> 3:25 12:20 23:2 38:12 53:21 68:7 75:8 78:6 80:24 <b>letter</b> 4:21,23,25 31:22 <b>let's</b> 10:9 14:16 16:9,17 26:8 49:25 <b>level</b> 47:4 78:10 <b>light</b> 45:1 <b>like</b> 4:24 18:7,9 28:21 36:1 57:23 75:9,9 77:19 <b>likely</b> 43:3,5 55:3 62:17 70:21 <b>lines</b> 6:8 <b>literature</b> 27:13 59:13 60:6 <b>litigation</b> 24:5 31:1 <b>little</b> 4:10 12:19 20:19 49:22 63:15 71:4 82:2 85:6 <b>long</b> 11:8,13 12:4,7 13:8 15:14 26:20 27:2 51:12,22 52:2 <b>longer</b> 13:14 51:25 <b>look</b> 8:20 27:22 28:10 36:1 46:13 49:16,23 62:7,9 63:2 65:11 68:7 69:19 <b>looked</b> 15:6 31:12 50:1 60:8 79:6 83:21 <b>looking</b> 15:8 36:20 36:21 85:12 <b>looks</b> 4:24 <b>lost</b> 65:14 <b>lot</b> 7:2 29:6 35:9 41:25 49:11 <b>low</b> 46:4 56:10 68:20 74:10 75:15 75:18 76:4 <b>lower</b> 36:22,25 47:20 62:11</p>	<p><b>lowest</b> 57:13 <b>LPA</b> 2:3 <b>lumbar</b> 66:1,10 <b>lump</b> 7:16 <b>L5-S1</b> 69:10 70:6 71:8,12,16 76:19 78:10 79:9,24 80:9,14</p> <p style="text-align: center;"><b>M</b></p> <p><b>made</b> 13:11,18 17:20 39:5 58:7 70:12 75:16 <b>maintain</b> 22:25 <b>maintained</b> 19:4 <b>majority</b> 69:11 <b>make</b> 4:3 13:9,12 15:1 25:17 32:9 38:14 55:6 62:7,8 63:2 <b>making</b> 35:25 52:4 <b>malpractice</b> 23:7 23:10,17,24 <b>man</b> 28:23 <b>mandatory</b> 80:16 <b>manner</b> 75:8 <b>many</b> 11:11 14:8,17 17:14 22:2 23:2 23:12,15 24:11 26:3 29:5 30:4,23 31:7 32:23 63:22 <b>March</b> 3:15 39:15 40:5 46:17 47:2 50:15 56:16 67:2 68:9,22 69:2,14 75:19 78:8 79:18 81:8 82:14 83:7 <b>mark</b> 22:15 38:12 50:20 <b>marked</b> 20:3 38:20 50:18 57:8 87:6,7 <b>material</b> 45:22 60:25 <b>matter</b> 29:13 32:1 34:19 <b>maximum</b> 35:25 36:4,18 <b>may</b> 4:25 16:22 17:16,23 19:25 20:1 40:2 56:16 58:5,11 65:2 71:13 <b>maybe</b> 17:9 29:9 79:3</p>
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McLaughlin 4:14 4:22 5:1 8:7 10:10 mean 11:16 12:9 19:23 29:8 30:2 35:12 40:24 41:24 46:2 50:4 57:17 61:6 71:5 73:23 74:25 83:16 means 75:4 78:18 82:25 83:1 medical 5:16 6:19 6:24 21:21 22:2,7 23:4,7,10,17,24 25:13 27:12 40:20 42:19 46:2 48:21 53:1 54:2 55:14 55:22 57:12 59:13 62:24 73:12 medical/legal 19:12 meeting 9:5 34:22 memorable 34:20 memory 16:14 57:22,24,25 mentioned 84:14 met 3:20 9:12 10:15 10:18 18:7 28:24 28:25 32:13 michael 2:11 18:7 mid 68:8 middle 56:14 might 55:8 64:21 74:2 82:1 millimeter 71:12,14 81:7,8,13 millimeters 69:13 69:14 77:16,17,25 78:1 81:15 mind 55:1 79:5 minus 11:18 minute 51:19 minutes 51:16,24 52:16,22 54:23 65:5 misfortune 24:12 mishkind 2:3,4 3:7 3:12 6:3 12:2 18:8 21:23,25 84:12 85:7 87:4 mislead 46:7 misleading 45:7,13 45:24 46:2 misunderstand 19:24 moment 12:18	MONDAY 1:12 month 14:20 22:5 41:14 42:4,21 months 21:19 32:18 56:17 68:1,2 more 6:10,15 16:10 16:15 18:19 30:5 31:9 34:24 41:19 42:2,7,18 43:3,4 54:11 59:3 64:13 64:21 65:2 66:7 70:21 71:20 78:12 78:12 morning 9:12 most 15:4 41:12 motor 74:22 82:9 move 42:15 56:24 78:7 80:17 movement 8 0 18 movie 17:20 MRI 26:10 33:1,13 33:22 66:21 67:2 69:13,14 76:17,24 80:1,7,11 81:4 MRIs 32:23 34:13 69:2,20 much 16:19 17:2 41:14 52:25 53:14 54:1,5,14 55:3,21 56:18 57:1,15 58:18 64:5 muscle 36:21,22 musculoskeletal 26:11 28:20 37:7 Musculo-Skeletal 1:21 MD 1:11,14 3:1,6 86:9 87:2	79:24 80:12 next 17:17,23 18:9 nonetheless 58:16 normal 42:24 61:9 61:10 normally 41:3 Notary 1:18 86:8 86:21 notation 20:25 39:2 note 20:16,17 37:15 38:6 50:1 79:1,19 79:20 noted 19:15 notes 8:24 37:17 38:24 39:4 nothing 9:8 40:10 44:24 48:14 86:10 notified 84:16,17 number 11:10 12:1 19:19 20:6 21:13 21:18 29:25 30:10 30:18 41:10	ohio 1:2,19,22 2:6 2:13 3:2 86:3,8,18 86:22 okay 6:1 30:6 32:19 38:16 46:9 49:25 50:21 52:25 84:12 once 6:15 24:13 one 6:10 11:19 12:10 23:20 25:24 27:22,25 31:9 36:13 37:16,24 40:11 41:17 42:10 42:12,13,16 52:20 55:25 58:23 59:6 65:13 72:23 ones 21:2 30:13 one-page 43:10 ongoing 72:7,15 74:15 only 8:6,17 10:25 34:9 56:15,17 73:14,25 74:7 open 28:6 60:23 opinion 47:1 48:3 56:5 59:18,19 60:10 61:20 68:22 69:15,17 77:8 81:1,12 82:5,8 opinions 4:10 10:7 31:25 56:9 58:13 64:12,13,20 65:2 69:8 82:18,24 83:11,15,18,21,23 84:4,6 opportunity 3:13 8:22 64:9 82:23 82:25 opposed 14:23 42:21 57:2 65:4 order 10:6 67:2,9 70:13 ordered 66:21 67:7 67:16 orders 6:22 8:4 original 4:23,25 38:13,24 orthopedic 16:4,6 26:13 27:7,15,20 59:14 60:5,5 63:21 orthopedics 28:3 49:18 79:2 other 6:2,10 9:22 16:6,15 28:20	30:7,14 31:4 33:21 34:9,12 35:25 39:4,12 42:10 52:20 62:21 69:1 79:21 82:18 82:19 83:5,8,11 83:23 84:6,9 otherwise 86:15 out 8:25 9:8,9,25 24:15 37:20,25 38:3,5,6 39:12 41:23 43:12,15,19 44:10,11,16 46:12 46:13 53:19 56:22 65:22 83:20 outline 39:3 outlined 7:22 over 11:19 12:12 13:1 15:7 16:2 30:2 52:16 59:24 64:1,10,14 65:3 69:23 80:17 82:7 85:6 overall 20:5 49:23 own 20:14,20,23,25 21:24 27:15,17,25 40:17 44:15 48:17 49:1,4,13 o'clock 1:22 10:11 50:10,14
	<b>N</b> name 3:8,11 named 86:9 nature 48:11 55:21 67:3 near 41:4 71:8 necessary 31:24 32:2 67:2,9,20 68:14 neck 75:22 need 22:23 41:22 needs 44:10 nerve 37:3 66:7 67:6 never 23:8 33:1,4	<b>O</b> oath 47:1,14,22 48:2 objecting 5:2 objection 5:18 7:13 16:21 29:14 30:25 45:15,25 47:7 52:13 61:24 65:7 83:13 84:20 85:2 objective 47:13 49:8,16,18 74:21 76:7 obtain 51:13 obtained 72:9 obvious 31:13 73:16 obviously 84:17 occasion 6:11 occasions 12:1 15:4 off 20:16 22:9 61:10 63:24 82:21 office 2:5 4:19 18:4 25:6,19 29:19 38:9 43:20 54:1 86:17 offices 1:21 2:10 30:1,8,15 often 41:19 42:2,18 63:1 79:16 Oh 11:15 24:18 59:16	<b>P</b> pad 20 21 page 36:8 37:16,24 44:23 61:3 74:19 paid 53:22 pain 37:13 43:14 46:10,18,24,25 47:3,15,20 48:1,3 48:5,7,8,12 49:6 66:1,16 68:20 paper 20:18,19 paracentral 69:10 part 11:21 12:10 43:18 participated 26:12 particular 44:23,24 54:15,16,16 partner 5:12 16:19 partners 16:25 party 24:4 31:1 86:15 past 3:13 5:21 6:14 46:2 56:24 68:8	

70:10 Pat 4:14 8:1 patient 8:25 43:18 44:16 45:13,16 47:6,15,23 patients 19:8 40:17 44:8 48:17 49:1,4 49:5,14 patient's 19:10 49: 19 pattern 43: 14 46:11 46:24 47:6,16,24 Patterson 63:9,23 64:4 65:25 66:21 67:17 68:18 83:8 Patterson's 64:14 69:8 82:5,8 payment 85:4 payments 5: 14 6:18 6:23 peer 26: 18 people 16:3 37:6 44:7 6 41 11 73:19 per 10:12,22 11:6 12:22 13:23 14:2 14:7 15:19,25 16:7 54:8,9,11,12 80:21 84:18 percent 59:2 percentage 48:24 49:2,3 percentages 59:5 perfect 204 performance 62:20 performed 22:16 32:24 perhaps 19:16 20:23 25:18 35:22 period 11:17 13:1 14:25 64:1 65:22 68:21 72:19 periods 64:15 65:4 permission 38:15 person 41:2 44:21 64:21 personal 4: 14 20:14 20:20 23:1,3 personally 5:11,12 22:1 28:9 personnel 43:20 phase 64:15 physical 33:23 34:2 34:7 35:17 36:8 39:7,17,19 40:5	40:10,16,18 41:1 50:4 52:22 61:4 67:14 68:11 83:6 physicians 16:16 24:2 physiologic 37:4 physiology 61:23 picture 79:12 piece 20:18,19 place 20:2 68:12 86:14 plain 80:9,12,21 Plaintiff 1:16 Plaintiffs 1:5 2:2 plaintiff's 30:12 57:20 plantar 36:7,13 37:11 playing 72:5 PLEAS 1:1 pleasant 34:21 35:3 35:4 please 3:8 55:9 78:5 plus 11:17 point 9:22 11:23 12:23 13:1 16:22 17:5 22:12 33:7 39:24 40:12 41:22 41:23 57:1 58:12 70:4 portion 44:9,10 position 2:1 7 64:5 possession 21:6 possibility 60:7 possible 17:23,25 55:23 59:11,16 60:3 70:20 practice 11:15 12:11,13,16,17 15:22 25:5 30:3 42:24 48:24 49:4 78:24 predeposition 9:5 prep 13:25 preparation 55:22 56:7,8 prepare 41:20 42:3 42:19 56:25 57:14 prepared 39:14,25 41:4 45:11 53:12 prepares 42:12 preparing 54:20 present 32:6 49:5 presented 45:6	pretty 37:6 42:15 previous 13:19 print 25:24 prior 70:4 71:25 79:25 private 12:13,17 privileges 25:8 probably 25:21 26:22 27:3 29:7 41:10 56:22 68:2 69:25 problem 72:7 procedure 3:3 66:22 produce 4: 18 8:9 22:21 produced 6:17,22 8:24 producing 5:4 8:3 product 21:10 22:19 production 5:2,13 prognosis 6 4 18 82:6,7 protrusion 78:10 79:23 80:8 81:4,7 81:8,13 provide 21:7 32:3 33:4 provided 3:2 9:1,20 9:23 10:6 33:7,19 34:1,6,9,10,14 45:1 73:9 providing 5:9 75:2 Public 1:18 86:8,21 published 26:1,3,17 26:17,21 purely 48:8 purposes 5:16 7:18 13:22 21:1 38:21 40:14 45:1 57:9 pursuant 1:19 6:21 7:20 push 61:10 put 17:20 62:19	73:25 74:6,23 75:6,21 questionnaire 8:24 37:19,24 38:2,4 43:11 45:16 46:5 questions 4:3 5:4 14:8 31:13 61:2 75:9 83:14,17 quote 22:19  <b>R</b> radicular 71:19 radiculitis 66:9 71:25 Radiculopathy 66:8 range 55:7,11,24 56:14 57:13 59:2 ranges 57:16 rate 13:19,20 14:10 15:13,18 16:1 53:3 RAYMOND 14 reabsorbed 69:11 read 79:5 readily 75:25 reading 78:13 real 18:23 35:15 46:18 really 7:7 18:17 31:11 42:5,9 46:14 48:6 49:21 67:25 69:16 reason 9:9,24 20:2 22:18 34:14 50:23 52:17 58:9 reasonable 15:25 15:25 65:22,24 66:20 67:1,9,19 67:23 84:22 85:14 reasonableness 85:3 recall 3:22 5:24 10:1 29:9,15 30:9 34:15 37:12 50:7 50:11,24 53:2 55:19,24 56:1 58:12,20 66:2 72:5 received 4:19,21 5:15 6:18,24 7:3 7:10 67:18 receives 74:13 recent 74:20 recognized 59:13	60:4,8 recollection 6:13 recommendations 8:11 32:9 record 3:9 4:9 13:17 17:2 20:23 20:25 53:14 55:13 65:1 73:20 85:1 85:10 records 31:19 33:24 33:25 34:3,4,7,9 41:21 42:6,7,8 53:11 54:24 55:18 58:3,4,6,11,19 64:10,10,11 65:6 67:13,14,24 70:9 70:10 72:11,13,18 72:20,22 73:2,9 73:14,17 79:6,22 85:13 recreate 55:1 recuperating 65:23 redactions 18:20 reduced 77:16 8611 refer 30:12 61:1 reference 27:21,24 28:3,5,11,15,16 79:17 referenced 79:24 references 79:21 referring 36:10 68:21 79:7,8 reflect 18:6,21 19:18 21:13 65:1 85:10 reflected 18:14 reflective 6:23 18:17 19:12 reflects 18:11 refresh 57:22 refreshes 57:25 regard 6:4 36:4 46:24 47:23 74:22 82:9 regarding 26:10 35:14 46:3 70:12 83:19 register 31:12 Registered 1:17 related 68:16,23 69:5 70:1 71:22 76:8 81:20 82:15 83:3,9 84:1
--	---	---	---	--

<p>relates 6:4,18  relating 37:2,3  relationship 83:24  relative 5:14 7:19  31:24 34:12 75:15  86:15  released 64:16  reliable 27:20 28:3  28:8,15  remember 5:20  12:9,11 13:2  16:15 33:15,16  34:16,18,19,23  50:17 51:3,4  57:24 58:7  removed 9:4  Repeat 75:21  repeatedly 12:4  rephrase 79:3  report 8:13,17,25  23:9 31:21 33:12  36:11 39:8,9,14  39:23,25 40:6  41:13 42:3,19  45:11 53:13 55:22  56:8,25 57:15  58:2,10,14 61:2,3  74:18 77:12,19  83:21,22  reported 35:13  45:14 75:16  Reporter 1:18  reporting 40:22  reports 23:21 40:14  40:19 41:3,10,20  42:12 79:21  represent 30:19  representative 44:9  reputation 63:7,12  63:17,19  request 29:3  requested 5:5 7:11  7:17 33:13,19  requesting 6:5  requests 7:20  require 77:13 78:1  required 73:12  requires 70:14  Reserve 25:14  residual 77:15  residuals 74:22  76:7  resistive 36:12  resolution 77:24,24</p>	<p>resolved 69:24  75:19,23 77:2  81:16  resorbed 69:23  respond 7:6  responded 5:7  45:17  response 7:23 8:7  12:8  responsible 53:24  responsive 7:20  result 24:17 32:20  69:6 77:5 81:11  82:4  retain 38:13  returned 9:24  68:20  review 26:18 31:19  34:10 53:11 55:17  58:1,5,11 64:9  79:6  reviewed 10:2  27:12 54:25 58:2  65:5,11  reviewing 58:18  Richmond 25:12  right 4:12 10:3 14:8  15:14 22:23 25:18  28:22 32:16 40:18  41:1 43:6 56:12  84:5,11  ring 31:12  rough 18:11 55:11  Roughly 15:11  routine 40:25  rule 15:2  rules 3:3 4:1  running 41:23</p> <hr/> <p>S</p> <p>SAFELITE 1:7  same 6:9 12:8 14:9  22:18  sat 44:13  Saurman 2:10  29:20 30:1,8,16  Saurman's 30:15  saw 41:2 46:17,19  63:23,25 65:5  68:10 75:19 77:15  saying 43:3 65:2  74:5 79:1  says 61:4 78:15  scan 80:2,7,11</p>	<p>scenario 78:24  schedule 18:11,13  18:15 19:11  scheduled 17:15,18  18:10,21 19:20,21  19:23 20:6 22:8  33:10 50:6,9,12  50:14  scheduling 18:2  19:7 40:2  school 25:13  sciatica 66:1,6  scrap 20:19  se 80:21  seal 86:17  seated 28:22  second 59:3  secondary 62:17,25  66:10,12  see 16:9 25:1 26:8  33:16 40:17 48:17  49:13 62:6 68:18  70:11 73:21 74:10  74:23 78:3,10,12  78:14,17,23 79:8  80:6,8,10,12,21  seeing 40:18  seek 72:19  seen 6:8 7:10,15  33:13,17 41:10  64:11 65:12,13  67:13,14 72:12,23  73:4 74:1,8,8  semantics 60:23  61:21 81:14  sense 35:5  sent 53:19 56:22  separate 19:11  September 68:13  83:6  served 5:19 23:6  serving 23:16  set 1:23 86:11,17  setting 3:21  settings 49:12,15  sheet 37:16  show 21:11 36:24  78:5  showing 35:24  61:18,22  shown 80:4  side 30:12 62:21  signature 44:20  significant 59:4</p>	<p>70:15,19,23  significantly 67:25  signs 35:24  similar 5:25 22:13  simple 42:15 56:4  75:10  simpler 75:8  since 11:25 12:12  26:20 32:6 82:14  sir 36:9  sit 10:3 33:8 45:4  54:25 84:5  situation 41:16,17  49:10,22,23 60:11  six 21:19 52:16,22  Skylight 2:5  slater 2:11 5:18  7:13 8:14 9:2,6,9  9:12,24 10:16,21  10:24 13:25 16:21  18:8 28:23 29:12  29:14,17,20 30:6  30:25 31:18 33:4  33:19 45:15,25  47:7 52:13 61:24  65:7 83:13 84:25  85:9,10  Slater's 38:15  slip 80:14  slippage 58:22 59:1  small 69:25 71:16  78:9 79:23  soft 76:22  solely 22:25 81:9  some 4:3 5:22 8:3  9:22,25 11:23  12:23 13:1,13  20:25 28:20 31:13  33:7 36:1 39:24  40:12 55:7 56:13  58:2,6 68:11 74:3  75:12,16 76:18  somebody 18:15  someone 13:11  53:25 65:4 70:22  73:21 79:8 80:14  someplace 73:15  something 6:8 7:7  9:23 16:23 18:9  19:22,25 21:11  26:21 28:10 31:12  41:24 43:1 44:4  44:12 46:12 47:8  56:19 59:25 78:5</p>	<p>78:23 80:6,10  81:24  Sometime 12:10  sometimes 18:14  40:9 48:13 49:20  somewhat 60:22  sooner 41:14  sorry 57:12  sort 7:16  sought 72:20 73:18  source 8:4 19:18  20:4 27:24 28:9  28:12,15,16  space 60:16 70:5,18  81:25  spaces 71:2  specific 36:21 49:15  70:11 77:21 78:3  83:14,17  specifically 36:6,17  46:23 56:3 60:9  79:20 81:17  specifics 49:21  specified 86:14  spend 7:2 14:4  48:20 58:18  spent 54:18  spine 66:11  spondylolisthesis  58:21,22,25 59:8  59:9,10 76:14,20  76:24 77:5 79:9  79:13,18 81:2,10  SS 86:4  staff 18:4  stand 38:4  standard 53:3  standing 8:1  standpoint 81:18  star 17:20  start 4:4 50:9,12,22  54:23  started 12:9 50:25  51:2,7,9 52:6,12  52:15 85:11,13  starting 50:5  state 1:19 3:8 36:11  47:21,25 48:2  86:3,8,22  statement 20:5  42:23 51:19 52:5  69:9 78:4  states 78:9  statute 1:16</p>
--	--	--	--	--

stenotypy 86:11 still 56:21 strain 66: 16 strength 35:16,24 36:5,6,12,20,25 37:10 47:19 61:18 62: 10 strike 9:16 76:12 studies 70:7 76:17 80:4 study 67:7 subject 59:14 85:1 subjective 46: 11,15 47:9,12 48:8 49:6 49:9,19 75:2,11 75:12,14 submit 55:1,3 85:4 subpoena 1:20 4:17 4:19 5:8 6:11 7:4 7:10,14,15 subpoenas 5:13,19 5:23 subscribe 28: 18 substitute 38:15 Successful 27:10 sued 24:7,12 suffered 65:20 69:5 sufficient 9: 16 suggest 72: 14 suggesting 28: 13 73:20 75:1 suggestions 32:9 summary 5:6 supply 81:23 82:1 support 49: 16 76:8 supported 48: 15 sure 4:4 8:5 11:12 11:18 12:3,6 13:6 13:7 16:14,22 17:6,21,22 18:1 18:16,23 19:1 20:8 22:12 27:16 27:18 28:25 38:17 40:24 43:21,25 47:21 48:6 53:18 53:22 57:23,25 65:10 70:20 surgeons 16:4,7 surgery 27:7 28: 19 77: 13 surgical 78:2 surprise 29:7 41:11 50:8 51:16 64:2 sustain 70:14,17	sustained 69:9 sworn 3:4 43:7 86:10 symptomatic 75: 1 symptoms 35:7 49:9 71:19 72:15 72:21 73:5,12 74:15 75:18,22 76:3,23 77:24 82:6 84:8 syndrome 66:1 system 37:7  - - - T - - - take 3:13 10:15 32:18 33:8 50:13 60:10 68:13 82:7 82:8 taken 1:17 65:11 86: 14 takes 20:2 68: 12 talk 10:9 12:18 14:16 23:6 49:25 82:24,25 talked 15:13 33:6 34: 13 46:22 77:1 78:21 82:20 84:9 talking 33:21 70:25 tape 40:7 teaching 26:23,25 tear 59:24 tell 5:22 8:6 11:11 28:17 35:17 43:1 43:22,23 44:1,8 44:16 45:5 47:9 47:17 48:12,14,23 48:24 49:2 51:25 55:16 73:14 telling 17:1 53:25 57:2 74:6 ten 11:15,21 12:16 26:22 27:3 30:5 65:17 74:19 term 60:21,23 terms 12:4,21 16:3 19:15 20:5 21:21 40:19 42:23 47:5 54:5 56:7 64:17 85:3 test 57:24 62:10 testified 12:1 23:8 29: 16 testify 31:24 86:10 testifying 12:7 47:1	testimony 3:15,18 12:14 13:22 14:6 14:18 16:5,8,11 17:18 35:20 43:8 54:4 77:3 86:11 86:12 testing 35:16 36:5,7 36:12 37:11 tests 67: 10 text 27:20,21 texts 26:14 27:15 59: 14 thank 8:21 77:20 84:13 their 16:7 44:15 themselves 33:2,14 therapy 33:23 34:3 34:7 67:14 68:12 83:6 thing 18:12 53:8 62:6 things 15:22 18:12 18:12 19:15,16 28:21 35:21 45:17 49:16 62:7,9 63:2 78:7 think 6: 14 12:23,24 13:6 16:2,13 17:4 17:16,21 18:11 25:23 27:21 28:5 29:4,6,18 33:6 40:10 42:14 44:13 47:3 55:5 60:7 61:15,17,25 62:3 62:8,11,12,14,15 62:19 64:13,19,20 65:17,24 67:22,24 68:2,8,9,16 70:8 73:21 79:1,10 82:21 84:11 thinking 54:19 79:4 third 59:3 thoracic 66:16 though 3:24 82:6 thought 12:6 35:2 three 23: 15 24:1 26:6 36:8 56:17 61:3 68:1,1 69:14 77:17,25 81:7,13 threw 9:24 through 33:25 34:4 47:24 60:25 63:21 68:19 69:2 throw 28:21	thru 38:20 87:6 tie 80:24 Tim 6:4 13:9 time 6: 1,7 7:3 9:23 11:16,17,20,23 13:1,13,25 15:4 15:21,21 17:7,12 17:17 18:7,9 22:1 23:20 27:22,22,23 27:23 28: 11,11 31:25 32:7 33:10 33:11,12 41:4,12 41:20 45:11 48:16 48:16 50:2,6 52:19 53:7 54:18 55:2,7 56:13 57:3 58:17,18,20 59:24 64:16,22 65:4,14 65:22 68:6,8,10 68:21 69:23 72:16 72:19,23 74:16 75:19 82:7 84:13 84:16 86:14 times 14:17 24:11 35:14 63:22,25 65:3 timothy 1:11,14 3:1 3:6,10 86:9 87:2 tissue 76:22 today 4:2 5:4 7:12 8:8 9:13,18 11:6 14:22 83:18 84:4 toe 61:4,11 together 21:11 79: 16 told 40:25 41:18 43:19,21 44:1 50:21 51:2,9,15 51:21,24 52:7,9 52:15 63:25 64:23 73:17,22 74:9 76:5 83:2,3,5 84:3 84:4 top 22:9 58:23 63:24 80:16 82:21 topics 26:7 totality 9:19 totally 19:6 tough 55:5 65:13 75:6,9 Tower 2:5 track 18:25 20:8,10 20:14,22 22:14 30:4 42:5,10 43:1	51:17,21 52:7,18 52:19 training 15:21 62:24 transcribed 86:12 transcription 86:12 trauma 59:10,15 60:2,18 treat 67:20 68: 14 treated 64:14,22 65:3 treating 49: 1,4 treatment 24:15 32:4 64:17 67: 15 67:16 68:2,4 69:1 70:9 72:19,21 73:13,18 74:3 83:8 treatments 67: 19 trial 13:23 14:1,6 14:23 24:9 32:1 trick 4:8 tried 43:5 83:15 84:3 true 4:14,19 6:6 7:5 7:14,21 8:10 9:2 10:16 12:7 15:13 18:22 19:6 20:7 25:6 27:25 28:4 28:15 30:16 31:16 31:19,22 32:1,4 32:15,21 33:5,14 37:21 39:1 43:12 43:20 44:5,11 45:2 49:9,19 52:6 54:2,3 55:14 65:15 69:6 70:7 71:12 72:9,24 73:6 74:16 75:3 75:11,15,19 76:9 77:6,13,17 78:2 86: 12 truth 86:10,10,10 try 78:7 80:24 trying 11:24 35:6 36:24 37:5,5 42:25 44: 19 46:6 62:2,4,8,19 twenty 85:9 twice 14:19 two 14:6 22:5 23:15 23:22 24:1 26:6 32:14,17,25 68:1 69:20 71:1,2
---	---	---	--	--



79:14 81:15 two-year 64:1 type 14:21 23:3,5 32:3 40:9 48:25 typed 39:9 typing 40:3  — — — <b>U</b> — — — ultimately 84:21 ultrasound 26:10 unable 49:7 under 1:16 47:1,14 47:21 48:2 49:15 understand 4:5,9 42:1 43:8 48:9 73:23 understanding 4:13 5:8 17:5 42:17 44:18 63:18 understood 37:6 62:23 80:19 underway 85:8 unexpected 71:17 unique 6:3 12:2 units 36:22 University 25:11 unless 8:3 unlikely 59:11 unreasonable 16:1 unrelated 68:3,5 until 40:1 42:8 50:22 73:4 85:9 unusual 55:20 upper 56:14 75:22 use 40:14,21 44:4  — — — <b>V</b> — — — valid 64:14,19,21 64:24 65:2 variable 35:16 36:12,16 41:6 61:5 variation 61:14 variations 26:8 varies 54:5 various 5:20 8:23 28:20 30:19 35:13 vascular 71:3 81:23 82:1 vehicle 74:22 82:9 venture 4:6 verbose 14:11 Vernon 63:9 versus 48:25 81:7	vertebrae 80:16,17 vertebral 58:23 very 34:21 56:6 62:17,23 80:19 84:15 video 15:5,5 videotape 17:20 videotaped 15:2 viewed 33:1 Viscomi 63:4 67:17 72:12,23 74:10,13 Viscomi's 73:2 visit 38:9 visits 68:23 83:7 Vivian 1:17 38:12 86:8,21 voluntarily 6:17 vs 1:6  — — — <b>W</b> — — — W 2:11 wait 42:8 walk 61:4,8,11 wall 60:25 want 4:9 7:25 12:18 14:13 54:14 61:1 64:25 73:22 80:25 wanted 56:18 wants 47:10 wasn't 7:9 35:17 37:9,14 39:25 44:2 50:17 52:10 61:12,19 62:1,4 75:2 76:20 Wausau 30:22,24 31:1,5,7 way 8:24 9:25 17:18 37:15 39:14 42:10 44:25 45:6 45:21,23 52:20 64:1 75:7 weakness 35:14 36:1 wear 59:23 week 17:15,22,24 22:3,6,8 42:20 weeks 17:13 42:3 65:17 well 5:24 7:22 8:25 10:22 11:13 12:8 14:2 16:9,25 19:7 19:11,21 28:5 33:8,11,15,24 35:8,13 36:19	37:6 38:2 39:2,6 39:19 40:7,15,24 41:6,9 45:4 46:1 46:10,19 47:8,17 49:3,10 50:5,16 53:10 55:5 60:4 61:7 62:5,23 64:18 65:10 67:3 67:17 68:6 69:16 69:19 70:8,24 71:7 72:12,18,22 76:25 79:3 80:19 81:12,21 went 24:22 33:25 34:4 71:15 73:15 74:10 77:2 were 5:21,23 9:1,23 17:7,10,12 24:1 31:4,18 33:25 34:4,6 35:19 38:20 46:18 54:25 58:6,8 62:9 66:23 67:10,19,19,22 68:23 69:4 75:14 76:8 80:5 83:2,4 85:9 87:6 weren't 32:3 34:9 Western 25:14 WHEREOF 86:17 while 5:3 35:19 65:23 whole 86:10 withdrawn 24:19 24:24 withheld 44:25 witness 1:15 3:1 23:7 85:5,12 86:17 word 28:14 words 6:2 9:22 35:25 work 17:1 19:12 21:9 22:19 44:7 48:25 65:14,23 worked 30:10,14,18 62:21 working 29:11 30:7 world 70:4 worse 62:7,9 63:2 worth 54:20 wouldn't 50:13 66:6 wrapped 68:9 written 23:9 26:17	wrote 23:20 33:12 39:11 46:5  — — — <b>X</b> — — — X 47:25 xerox 38:14 xeroxes 38:16 x-ray 26:10 79:21 79:24  — — — <b>Y</b> — — — yeah 11:23 year 13:3 15:8,10 17:9 19:20 20:7 21:14,17 23:22 67:2 yearly 14:17 years 11:10,11,16 11:18,21 12:12,16 13:5,14 16:2 26:22 27:3 30:2 32:14,18 young 28:23  — — — <b>Z</b> — — — zero 59:6 zywica 1:4 8:15 9:20 29:12 31:16 31:19 32:4,10,14 32:20,23 33:24 34:12,16,22,25 37:12,20 38:5 39:1 43:11 44:25 47:14 48:3 54:22 55:14 63:23 65:14 68:19 69:9 70:5 72:8,9 74:25 77:13 78:1 84:9 Zywica's 60:11 64:6 76:14  — — — <b>\$</b> — — — \$1,000 16:13 \$2,000 16:17 55:11 55:24 \$2,200 58:1 \$2,700 55:21 56:1 57:21 \$450 11:4 \$500 55:10 57:16 57:17 58:3,15 \$800 12:25 \$800s 13:15 \$900 10:12,22 11:6	11:8 12:21,22,25 13:4,15,23 14:2,7 15:16,19,24 16:7 16:23 17:4,8 54:8 54:9,11,12 84:16 84:17  — — — <b>0</b> — — — 0 59:2  — — — <b>1</b> — — — 1 38:20,23 39:12 58:5,11 87:6 100 59:7 10995:10,24 6:12 6:17 11:00 50:9,14 11:10 85:16 11:20 50:22 51:2,9 51:15 52:6 11:37 51:16 52:6 11:45 52:15 11:51 52:16 1221:20 138:15 13th 39:16 40:5 50:15 1463:25 64:15 65:3 14650 2:12 16th 86:18 1751:16,19,24 1967:21 1997 72:4,15,24 73:11 1998 67:21 70:5 72:179:25 83:10 83:25 1999 68:19 79:18 82:14  — — — <b>2</b> — — — 2 1:12 43:10 2nd 17:11 2000 15:8,10 68:19 2001 1:12 8:13,15 13:3 19:20 20:7 21:14,17 46:17 47:2 50:15 75:20 75:23 86:18 2004 86:23 21 65:5 216-228-7259 2:14 216-241-2600 2:7 24 15:9
---	--	--	---	---



<b>25 59:2,6,6</b> <hr/> <b>3</b> 343:14 78:8 79:18 <b>3:7 87:4</b> 308:13 30th 39:15 40: 1,6 <b>58:10</b> <b>31 54:23</b> <b>38:20 87:6</b> <hr/> <b>4</b> 4 38:20 43:17 87:6 <b>4:00 10:11</b> <b>419545 1:6</b> <b>44107-4210 2:13</b> <b>44113 2:6</b> <hr/> <b>5</b> 5 57:8,20 87:7 <b>50 59:6,6</b> 57:8 87:7 <hr/> <b>6</b> <b>660 2:5</b> <hr/> <b>7</b> 75 59:7,7 <hr/> <b>8</b> 8 86:23 <hr/> <b>9</b> 9:40 1:22 93 27:9 97 73:2,13 74:16 98 66:23 72: 1773:4 74:13 76:14 82:16 99 67:3 68:9,22 78:8 83:6,7				
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