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May 10, 2000

Robert V. Housel, Esq.
1350 Illuminating Building
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Dear Bob:

Enclosed please find a copy of the transcript from the video deposition of Dr. Timothy Gordon. Knowing how you approach these matters, I am delighted to be able to provide it to supplement any files that you are maintaining on an ongoing basis.

I did want to let you know that we had the opportunity to review his appointment books while we were out there after working in conjunction with his corporate attorney as you had seen. His appointment book, in contrast to pre-October 1998 days of deliberately destroying records, does identify IME's and lawyers. Moreover, we noted that the appointment book had entire days blocked off for him to see patients in behalf of the Industrial Commission. We also noted that he blocked off entire half days for deposition and there were occasions when he would do two IME's and two depositions a week in conjunction with the Bureau work.

We did sign the confidentially agreement only with regard to divulging patient identification so as to avoid privilege violations. We have notes from our review of the appointment books should you or anybody else ever need them but we would have to omit patient identities, of course.

By copy of this letter to David Paris, I am also submitting a copy of this transcript to the Cleveland Academy as well as the information that I have just divulged in the hopes that others will have more success than I did against Dr. Gordon. You will note my embarrassment in the deposition at cross-examining him over a report which I erroneously thought was his, when it was in fact Dr. Corn's. It is difficult to sift through the mountains of information on these two fellows without getting confused at times is my excuse.

Be that as it may, David, the testimony involves the proximate cause issue of whether the impact of the left knee to the dashboard in an automobile collision could cause a Grade III complete tear of the anterior cruciate ligament.

Sincerely,

GEORGE E. LOUCAS CO., L.P.A.

George E. Loucas

GEL:pm
Enclosure
cc: David Paris, Esq.

IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

LAZO DEVIC,

Plaintiff,

vs. Case No.

JOSEPH MARCIANO, JR., 418009

et al.,

Defendants.

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Videotaped deposition of TIMOTHY L. GORDON, M.D., called for examination under the statute, taken before me, Kimberly K. Hargis, a Registered Professional Reporter and Notary Public in and for the State of Ohio, pursuant to notice and stipulations of counsel, at the offices of Dr. Gordon, 850 Brainard Road, Highland Heights, Ohio, on Monday, May 7, 2001, at 11:56 o'clock a.m.

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APPEARANCES:

On behalf of the Plaintiff:
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On behalf of the Defendants:
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by, JOSEPH R. TIRA, ESQ.
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ALSO PRESENT
Ray Glasser, Video Technician

VIDEO TECHNICIAN: It is Monday, May 7th, 2001, 12 noon. We are on the record. Will the court reporter please swear in the witness.

MR. TIRA: Before we get started, let the record reflect that this is the videotaped trial deposition of Dr. Timothy Gordon being taken by videotape and also stenographically. The videotape will be shown to the jury in this action in lieu of Dr. Gordon's personal appearance at trial. And this deposition is pursuant to notice. I'd ask for a waiver of defect in the notice and service thereof.

MR. LOUCAS: Yes. And of course at this time in return I would ask the same thing, waiver of notice or any defect with tomorrow's deposition of Dr. Lika.

MR. TIRA: Definitely. No problem. Swear the witness in please.

TIMOTHY L. GORDON, M.D., of lawful age, called for examination, as

provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF
TIMOTHY L. GORDON, M.D.

BY-MR.TIRA:

Q. Doctor, will you state your full name for the ladies and gentlemen of the jury please?

A. Timothy L. Gordon.

Q. We're here at your office this morning?

A. Yes.

Q. And your office is located where?

A. 850 Brainard Road in Highland Heights, Ohio.

Q. You are a medical doctor?

A. Yes.

Q. Okay. Will you tell us a little bit about your educational background beginning with high school please?

A. I went to high school

locally at Brush High School. I went on to do my college training at the Ohio State University. Then I did my medical school training at the Case Western Reserve University School of Medicine. And then I did my training in orthopedic surgery at the Mt. Sinai Medical Center in a five-year residency program.

Q. Okay. Doctor, are you licensed to practice medicine in the State of Ohio?

A. Yes.

Q. And when were you so licensed?

A. In 1986.

Q. Do you practice in one area of medicine?

A. Yes, I specialize in the area of orthopedic surgery.

Q. And will you define orthopedic surgery for us please?

A. All right. Orthopedic surgeons are trained in the surgical and nonsurgical treatment of diseases,

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injuries, processes that involve the musculoskeletal system, That would include the spine, the extremities, bones, joints, ligaments, nerves, muscles.

Q. Okay. Doctor, are you board certified in orthopedics?

A. Yes.

Q. What does it mean to be board certified in your area of specialization?

A. Well, board certification is above and beyond medical licensure. It means that I have gone through an extensive testing program, extensive written examination after I finished my residency and was in private practice two years, and went through an extensive oral examination, passed all of that and was elected to be board certified.

Q. Doctor, do you have privileges at any area hospitals?

A. Yes.

Q. Which ones?

A. Euclid, Hillcrest, Lake also

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University, Richmond, Bedford.

Q. Do you belong to any medical professional organizations or societies?

A. Yes.

Q. Would you list just a few for us?

A. Yes, I am a fellow of the American Academy of Orthopedic Surgeons, also member of the American Medical Association and local.

Q. Are you published in orthopedic surgery?

A. Yes.

Q. And have you held a teaching position?

A. Yes, I've instructed anatomy at the Case medical school in the past.

Q. In your practice, Doctor, do you see patients who have suffered knee injuries?

A. Yes.

Q. Would that include patients who have suffered injuries to the ligaments and menisci of their knees?

A. Yes.

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Q. Would that include the anterior cruciate ligament?

A. Yes.

Q. Would it include tears of that ligament?

A. Yes.

Q. Have you in your practice performed surgery upon patients' knees?

A. Yes.

Q. And have you in your practice performed repairs of torn anterior cruciate ligaments?

A. Yes.

Q. And other ligaments of the knee?

A. Yes.

Q. Doctor, on behalf of the defendant in this case, Mrs. Lori Marciano, you were asked to review various records of the plaintiff, Lazo Devic, were you not?

A. Yes.

Q. And when did you review those records?

A. I reviewed them in June of

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2,000.

Q. And would you tell us please what records you reviewed?

A. I reviewed records from EMS, an Ohio Traffic Crash Report, Bedford Medical Center emergency room record, records of Dr. Brian Boza, records of Dr. Vangelos, records of Dr. Lika, and reports regarding radiographic studies including an MRI study.

Q. MRI scan of what part of the body?

A. That would be the left knee.

Q. Okay. And have you also had an opportunity to review the surgical record relative to the December 1999 surgery performed by Dr. Lika at Southwest General Hospital upon the plaintiffs left knee?

A. Yes.

Q. Doctor, based upon your review of the aforementioned medical records you told us you have reviewed, have you formed an opinion based upon reasonable medical certainty as to

whether the plaintiff, Lazo Devic, tore his anterior cruciate ligament in the motor vehicle accident of September 16, 1998, which is the subject of this litigation?

MR. LOUCAS: Objection.

YOU may answer.

A. Yes, I have an opinion.

Q. And what is your opinion?

MR. LOUCAS: Objection.

You may answer.

A. It's my opinion that he did not sustain an anterior cruciate ligament tear in that motor vehicle accident.

Q. Of the left knee?

A. Yes, that is correct.

Q. And what is the basis for your opinion, Doctor?

A. The basis for my opinion is that the medical records around the time of the accident, specifically the EMS report and the emergency room records do not support that he injured his left knee in the motor vehicle accident.

Q. Based upon your review of the aforementioned records, Doctor, do you have an opinion based upon reasonable medical certainty as to whether or not the plaintiff, Lazo Devic, suffered any injury to his left knee in the September 16, 1998 accident?

A. Yes, I do.

Q. Okay. And what is the basis for that opinion, Doctor?

A. Well, it's my opinion that he did not sustain an injury to the left knee. And the reason for that is the medical records indicate that at the time of the evaluation shortly after the motor vehicle accident there were no complaints or findings regarding the left knee, and that's inconsistent with an anterior cruciate ligament tear occurring at the time of the accident.

Q. Okay. And these opinions you've just given testimony to, Doctor, are held with reasonable medical certainty?

A. Yes.

Q. Okay. Doctor, you have seen patients and treated patients with a complete tear of their anterior cruciate ligament?

A. Yes.

Q. Okay. What are the mechanics of tearing one's anterior cruciate ligament? How does it happen?

A. Most commonly the anterior cruciate ligaments get torn in injuries where the individual can be running and then suddenly cuts, changes direction and sometimes loses balance or just rotates on the knee forcefully while running, standing, bearing weight on it, and can tear the ligament that way, sports type activities. Other ways, contact, typical clipping type injury. That's one of the reasons that down field blocking isn't encouraged in sports from a clipping point of view because you can tear the anterior cruciate ligament with a hit to the knee that way. The other way --

Q. I'm sorry, Doctor.

A. The other issue is contact and typically sports type injuries.

Q. Doctor, when one suffers a complete tear of the anterior cruciate ligament in an accident or when cutting, a traumatic injury, what would you expect the individual to experience?

A. The expectation is that individual has immediate onset of pain in the knee and very importantly they have very rapid swelling because the anterior cruciate ligament does have some blood supply within it that when it's ruptured it bleeds and they get an acute hemarthrosis or very acutely swollen knee which does have blood in it.

Q. How long after a traumatic complete tear of the anterior cruciate ligament would you expect an individual who suffers this injury to realize he or she has suffered the injury?

A. My experience is that the individual is aware that they have significantly injured the knee at the

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time of the injury and then subsequently there is significant swelling of the knee in the following hour or so.
Q. Within an hour or so?
A. Yes.
Q. Doctor, when an individual is in a motor vehicle accident and strikes his or her knees on the dashboard, what type of mechanics of a collision have you seen that occur in your practice?
A. Most commonly when people have dashboard type injuries to the knee, typically a head-on collision where the individual is thrown forward with significant force and the front of their knee, typically the tibia, hits the dashboard. The classic injury is a posterior cruciate injury where the tibia is driven posteriorly relative to the femur, and the posterior cruciate ligament is injured. That's not an anterior cruciate ligament injury. It's unusual to have anterior cruciate ligament injuries in motor vehicle

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accidents.
Q. Okay. And why is it unusual?
A. Because the individual is sitting. They're not bearing weight on the leg. Usually the leg is flexed some degree. That's how we typically sit in automobiles, and it's not a usual mechanism for an anterior cruciate ligament tear.
Q. Doctor, you mentioned the posterior cruciate ligament. Where is that in relationship to the anterior cruciate ligament?
A. Well, the word cruciate ligament means crossing. If you think in the knee they kind of cross like my fingers do here. Anterior cruciate is this finger and the posterior cruciate is the one behind it meaning posterior. And they prevent motion of the tibia relative to the femur anteriorly for the anterior cruciate and posteriorly for the posterior cruciate.
Q. When one strikes one's knee

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on a dashboard in a motor vehicle accident and it's of sufficient force to suffer a posterior cruciate ligament tear, why is it -- I believe you said ordinarily it's the posterior and not anterior cruciate ligament that you see torn in that type of accident.
A. Ail right. That's because of the mechanism of injury. If you think of a person sitting in an automobile seat, hopefully they're restrained by a seat belt, and the idea is that if they're hit head on, their body goes forward. The seat belt usually restrains them, but they may slip forward a bit. And depending on how close they are to the dashboard to begin with, the issue is if they hit their -- they can hit their knees on the dashboard. But the issue is they hit their tibial tuberosity, which is that bump in front of the knee, which is the tibia. So here is the femur like this, and the tibia is down here. And they tend to hit this area, this gets

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driven posteriorly and ruptures the posterior cruciate ligament is the mechanism of how that happens. So if the individual goes forward in the seat, they tend to hit their tibia on the dash.
Q. As you said, the tibia goes backward?
A. Correct, relative to the femur.
Q. And the femur is the thigh bone?
A. Yes.
Q. What direction does the femur go?
A. The femur is going forward because the femurs get pushed forward by the body moving forward.
Q. Doctor, have you -- I believe you said you had an opportunity to review the MRI report obtained relative to Mr. Devic's left knee in October of 1998?
A. Yes.
Q. And I believe in that report

there is some mention of a contusion and edema being present?
A. Yes.
Q. Do you recall seeing that?
A. Yes.
Q. And what is the contusion and edema due to in your opinion with reasonable medical certainty?
A. There's in the MRI scan they talk about there being signal change, edema, bone contusion in the tibial plateau area, the proximal tibia. There's also an anterior cruciate ligament disruption. And the issue is in anterior cruciate deficient knees, in other words, knees who have torn anterior cruciates, there's abnormal forces in the knee and it's not unusual to see edema of the marrow or marrow changes. It can be traumatic, but it doesn't have to be. It can be on an ongoing basis. In this individual's medical records, the records don't support that the findings on the MRI scan occurred at the time of the motor

vehicle accident.
Q. Doctor, in reviewing the MRI scan report of the left knee, there is a mention of some damage to the lateral and medial menisci of the knee; is there not?
A. Yes.
Q. And you have also had an opportunity to review the actual surgical record of Dr. Lika of December 1999 when he was actually looking into that left knee?
A. Yes.
Q. Did you find in that surgical operative record any indication or mention of any meniscal damage?
A. No, there was none.
Q. What does that tell you, if anything, Doctor?
A. The notation in the report is that the medial compartment and the lateral compartment were normal, indicating that the joint surfaces and menisci would be normal. That means there was no tears.

Q. Okay. Doctor, based upon your review of the EMS run report and the Bedford Hospital emergency room record of September 16, 1998, were you able to ascertain what complaints and findings of injury there were made at that time?
A. Yes.
MR. LOUCAS: Objection, not within his medical report, but go ahead.
Q. Okay. What do the records indicate?
A. The records indicate that at that time he complained of hitting the left area of his forehead and also right knee complaints, and I believe he had indicated some neck pain also at the time.
Q. Okay. Doctor, I believe in this case that Dr. Lika will give testimony that where an individual suffers multiple injuries in a motor vehicle accident or in some other type of accident that individual may

initially overlook a torn anterior cruciate ligament because of the severity of other injuries. Is that something that can occur?
A. It can occur.
Q. And is -- what other type of injuries would you expect to have been suffered so that a patient would overlook that he or she has suffered a complete tear of their anterior cruciate ligament traumatically?
A. When we think of that kind of scenario we think of an individual who we call a multiply traumatized patients, meaning they have significant long bone fractures, they have significant multiple trauma, not just bumps and bruises and those kind of things. The individual in this situation, the records indicate he walked out of the emergency room, so it doesn't go along with having had an anterior cruciate ligament tear at that time.
Q. Doctor, based upon your

review of the Bedford Hospital emergency room record and the EMS report, do you have an opinion based upon reasonable medical certainty as to whether or not Mr. Devic, the plaintiff in this case, suffered any injury that's recorded in those records which in your opinion was significant enough so that he would not have noticed a complete traumatic tear of his left anterior cruciate ligament?

A. Based on my review of the records, there was no injury that would have prevented him from being aware that he had acutely torn his anterior cruciate ligament.

Q. Okay. Doctor, when one tears their anterior cruciate ligament traumatically, what kind of discomfort are we talking about?

A. Well, the individual is typically aware that they have injured their knee. They often feel a popping pain in the knee and go down. Then they usually are aware that they're having pain in their knee and they

develop rapid swelling in the knee.

Q. And rapid swelling being how long after the injury?

A. There's usually a noticeable effusion, meaning swelling in the knee itself, within an hour or so.

Q. Based upon what we know about this case, Doctor, the accident occurred at approximately 10:30 a.m., and I believe the Bedford emergency room record indicates a discharge at 12 -- roughly 12:45 p.m. With those time parameters known, if Mr. Devic had suffered a complete traumatic tear of his left anterior cruciate ligament in an accident at 10:30 a.m., do you have an opinion based upon reasonable medical certainty as to whether or not he would have had any complaints relative to his left knee or whether there would have been any observable signs of injury to that knee by the time of his discharge at 12:45 p.m. the same day?

A. Yes.

Q. What would you expect to see?

A. Well, I would expect to see an individual who has an acutely injured left knee. I think commonly people in the lay field who refer these knees often refer to them as blown out knees. The individual has a painful knee. It's swollen. They have difficulty bearing weight on it. And it's pretty apparent to everybody that they have an injured knee, the patient and the doctors evaluating them. The medical records are very inconsistent with that.

MR. TIRA: Thank you, Doctor. I have no further questions.

THE WITNESS: You're welcome.

EXAMINATION OF
TIMOTHY L. GORDON, M.D.
BY-MR.LOUCAS:

Q. Good afternoon, Doctor. We've just been introduced today. As you now know, my name is George Loucas. I'm here with my sister, Cathy Loucas, and we represent the interests of Lazo

Devic as you know.

How much time did you spend with Mr. Tira before we arrived?

A. I'd say on the order of a half an hour.

Q. Was it a little over or a little less than a half hour?

A. Around a half an hour. It's an estimate.

Q. So will that mean that you will bill him $450 for the half hour, or if he goes a minute over will you bill him $900 for the full hour of consult before this deposition?

MR. TIRA: Objection.

A. I would bill him for half an hour's time.

Q. Okay. But my question was if it went over a half hour, 31 minutes, you would bill for a full hour, correct, $900? Isn't that the way things work?

A. I don't usually do it that way. If it goes over significantly and is close to an hour, then yes, but I

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don't think for a minute, no.
Q. But your charge generally is $900 an hour for deposition as well as consult with the attorney, in this instance, Mr. Tira; is that fair?
A. I charge $900 an hour for deposition time. That would include conference prior to the deposition.
Q. Now, you said you're board certified. And board certification, I think you said you graduated, I did the math, it looks as though you were board certified in about 1991 or 1992?
A. No, 1993.
Q. 1993. So you've been practicing about eight years, is that fair, as a board certified orthopedic surgeon?
A. I've been practicing as an orthopedic surgeon for about ten years. You can't become board certified any faster than two years after you finished your training. It just doesn't work that way. So I became board certified as soon as I was eligible, and I've

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been board certified since '93, but practicing in private practice since '91.
Q. I understand, Doctor, but my question was very specific, and if you will listen to my question please, we'll be done a lot more quickly. My question was, you have been practicing as a board certified orthopedic surgeon since 1993? That would mean approximately eight years, fair statement? Do you agree or disagree?
A. I think that's rather obvious if I was board certified in 1993 and it's 2001, that would be around eight years, yes.
Q. Okay. Then that probably would have been the obvious way to answer the question. Let's move on.
MR. TIRA: Objection.
Q. Since that time, Doctor, have you undertaken any measures, for instance, like seminars to update your medical knowledge or clinical skills in the practice of medicine so that you

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can keep up-to-date in treating your patients?
A. Sure. Most physicians participate in continuing medical education and attend conferences, meetings, read journals, et cetera, to maintain a level of recent awareness of information, those kind of things.
Q. And what kind of journals then would you subscribe to in an effort to update yourself so that you can more adequately care for your patients?
A. Journals that I review are Journal of Bone and Joint Surgery, various throw-away journals that come in the mail. I can't remember all their names.
Q. Any others dealing with orthopedics, Clinics of North America, anything like that?
A. I have reviewed them in the past. There are many out there. There's lots of them that we use as reference material.

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Q. And those are typically more up-to-date than textbooks, aren't they, meaning more recently published?
A. They can be.
Q. And journals are kind of like subscriptions to magazines, they're published on typically a monthly basis?
A. Sometimes, sometimes not that frequently.
Q. But so the folks on the jury understand what we're talking about, these journals, there's a stringent routine that's usually followed for the physician in publishing an article, meaning it's subjected to their peers, other physicians, for review before their articles are even published; is that fair?
A. I'm sorry. I didn't hear your question. There's some other noise in the room.
Q. Peer review. There's a stringent test as to whether an article gets published in a journal by doctors, meaning typically it's submitted to an

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editorial board and they take a look at it and determine whether it's accurate enough for publication and dissemination for other doctors to learn from?

A. That depends on the journal, who is reviewing them. There's a lot of bias that are out there in articles and research. And we look at them and evaluate them at face value.

Q. That wasn't my question though. Isn't that typically the routine for most journal articles is that they're peer reviewed articles?

A. Well, I think you're getting into what is the definition of peer review. I mean, that, as I said and I answered it, is that depends on who is doing the reviewing, what article it is, and what all the issues that are made apparent for each specific situation.

Q. May we agree on the fundamental principle that there's typically a stringent test that must be followed before an article is published

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in one of those journals?

A. I'm not sure I'd call it a stringent test. They're reviewed. Some of them are accepted, some aren't. Some are delayed until later. It just depends on what's going on at the time of these reviews.

Q. That's a good word. Accepted. Meaning when somebody writes an article it could be accepted or unaccepted if they do not approve of the subject matter, true?

A. May be a lot of reasons you don't accept an article. It can be the way it's written, that there's something left out as far as content, or actual just writing, grammar kind of issues. It's not well written so they would recommend some changes in production, that kind of thing.

Q. Or something more complex as though the subject matter is not believed, for instance, by the reviewing panel or it's not documented in the medical literature, therefore not

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supportable and it won't be published, fair?

A. I'm not sure that's fair. I mean, they may have just published an article last month on the same topic, so then they wouldn't accept it for the next month or month after because they just published one. There's a lot of reasons that go into accepting an article.

Q. Do you specifically update your medical knowledge and clinical skills on things like seminars and reading journal articles and the such?

A. I've already told you, yes.

Q. And I take it generally then and yourself physicians such as yourself glow to these journal articles from time to time -- strike that.

You would agree with me then that the information published in the journal articles is useful or helpful in updating those clinical skills?

A. It depends on the article

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and what the information is. Each article you have to evaluate specifically.

Q. Generally speaking though, since it is a primary source of reference for physicians and updating their medical knowledge and clinical skills, it is a useful or helpful place to go to do that as you've just testified, correct, Doctor?

MR. TIRA: Objection.

A. What I have testified is that we review articles and journals and textbooks and various reference material, and then we evaluate each piece of information as being useful to us or not useful to us. So each physician determines that themselves.

Q. No, I'm sorry. Maybe we're miscommunicating. I'm talking about you saying that doctors in general and doctors like you use materials like seminars and journal articles for information that they go to from time to time to update their medical

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knowledge and clinical skills. Was that a fair and accurate representation of what you have already testified to today?

A. Yeah, I'm trying to answer your question. What I am telling you is yes, we look at reference information, but we evaluate each article or textbook section or whatever you were referring to that you're looking at, that we review that information to see if it's useful to us or if we think it's been helpful or, you know, reflects our practice, all those kind of factors. So we look at each one separately.

Q. And I'm asking you in a general sense, Doctor, in the bodies of medical literature that are out there, isn't journals, the form of journals, updated journals in the medical literature, a useful and helpful resource that doctors go to from time to time to update their medical knowledge and clinical skills?

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MR. TIRA: Objection.

A. What I am trying to tell you is that yes, doctors review journals and they're recent journals and that we look at the information in those journals to evaluate them for ourselves individually. So based on the individual's evaluation, that's how we're looking at them.

Q. So we can cut through this, Doctor, move quickly, it's helpful, correct? It's useful and helpful material for a doctor to learn from after they come out of medical school and graduate training, postgraduate training; is that fair?

A. I think the fairest way to answer that is some articles are more useful than others. That's what I'm trying to tell you. We evaluate each one separately.

Q. Doctor, your presence in this case is due to the fact that you were conducting what's known as an independent medical examination,

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correct?

A. Yes.

Q. So the folks on this jury understand, independent means there's no bias or motivation or slanted finding on your part as a result of your examination in this case, fair enough?

A. I would agree with that.

Q. May we agree that the court did not appoint you to be an examiner in this case independently?

A. Yes.

Q. You did not volunteer your services on behalf of Lazo to help him with a second opinion as a result of being a good samaritan; is that fair?

A. No, I was asked to evaluate the case and opinion what made the most sense.

Q. And his doctors, Boza, Vangelos, Lika, they didn't ask for your intervention and assistance; is that true?

A. That's correct.

Q. And you're not here because

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I asked you or that Lazo asked you to examine him independently for a second opinion; is that true?

A. That's correct.

Q. The truth of the matter is that although it is being called an independent medical examination, you typically are hired in these instances by defense lawyers or lawyers who routinely and predominantly represent defendants in litigation, correct?

A. The majority of the independent medical exams I perform at the request of the defense.

Q. And you also conduct these alleged independent medical examinations on behalf of insurance companies, correct?

A. Yes.

MR. TIRA: Objection.

Q. And you also conduct them on behalf of the State's Bureau of Workers' Compensation, correct?

A. Yes.

Q. And just so that the jury

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has a flavor or understanding of how truly independent these medical examinations that you conduct are, let's take a closer look at how you're paid to do one of these.

First you're paid separately for the physical examination and review of medical records, if any, true?

A. I don't understand the question.

Q. The way you routinely do this, Doctor, is that somebody contacts you and then you will review medical records and/or examine the patient. That's the first part of your conducting an independent medical exam, true?

A. It depends on the individual. In this case I didn't examine the individual because that wouldn't have made any difference. I reviewed records and prepared the report, so I would bill for the time and expertise in relationship to the record review and the report,

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evaluation.

Q. So do you charge separately, Doctor, for conducting the IME, meaning the physical examination versus writing a report?

A. Well, when I examine an individual and actually physically examine them, take a history and examine them, I charge for the evaluation which I would include the exam in and reviewing the records and generating the report in that kind of situation.

Q. So my question was, do you charge separately, Doctor? Excuse me, let me finish my question.

A. Okay.

Q. Do you charge separately for the independent medical exam and then separately for writing the report to whomever hired you to examine that patient?

A. You've asked this question different ways. I'm trying to explain it. Is that I've already told you that I charge for my time and expertise.

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And if that would mean that that includes -- I've been asked to examine the individual, actually hands on examine them and evaluate records and a report, I would charge one fee for that. And I've already said that.

Q. And then you charge separately for your deposition testimony like today, true?

A. That's correct.

Q. And the rate or the range that you charge can be anywhere between 500 to $2,000 generally at least since 1998?

A. For what?

Q. For an IME.

A. That's correct, in that general range.

Q. And of course that can be higher?

A. It's possible.

Q. It's possible. And as a matter of fact, I think I have a case here, it was very recent. Can your cases go up between 3,000 and $5,000,

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Doctor?

A. It possibly could, depending on all of the charges together or the complexity of the case.

Q. Do you recall any cases recently where you had billed 3 to $5,000 for doing an IME?

A. I don't recall specifically.

Q. How about Frank Cercek versus Joe Asadorian? As a matter of fact, I think your deposition was taken February 5, 2001. Does that case ring a bell to you?

A. It doesn't ring a bell to me, no.

Q. Would it surprise you that in that case you did bill 3 to $5,000, in that range?

A. Again, I don't know if that -- for what charges that was, all the charges, everything together, different work at different times. I don't know the factors.

Q. Now, that range was represented to be between October 1998

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through December of 2000. Does that range still applied from December 2000 to the present or has that range changed?
A. As a general range, it's in that range. I've already told you. Could be a little bit more than that, but that's the general range.
Q. Last week we were slated to go for a discovery deposition. There's a difference, isn't there, between a discovery deposition and the video deposition like we're doing here for the benefit of the people on the jury?
A. Not in what I charge for it, no.
Q. That wasn't my question. What the difference --
A. I'm not sure what your question was. Sorry.
Q. My question is, is there a difference between a discovery and a video deposition for trial, Doctor?
MR. TIRA: Objection.
A. It's a deposition where

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people ask me questions and I answer the questions, so it's a deposition in that sense.
Q. Doctor, are you telling me you don't know the difference between a discovery and a video deposition for trial?
A. Well, I only know my impression as an orthopedic surgeon. I'm not a lawyer. I'm not expert in what depositions are.
My understanding is that a discovery deposition gets performed as if it's cross-examination, I think, if I understand that right. And that in a videotape edition there's like direct and cross examination. But again, I'm not a lawyer, that's just kind of what I have perceived.
Q. You're not a lawyer, but you've had some experience in deposition testimony, haven't you? Is that a fair statement?
A. Sure.
Q. Fair to say you've done over

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100 depositions in your career?
A. Could be.
Q. Fair to say you've probably done over 100 video depositions, which is more than I've ever done. Is that a fair assessment?
A. I don't know if it's that many.
Q. My whole point being, Doctor, there's a difference between the two. And you charge $900 for the discovery deposition before it even gets started; isn't that true?
A. What I charge is $900 an hour, and that in a discovery deposition I request that that first hour be paid.
Q. In advance, meaning you don't start the deposition unless you've been given that cash in hand first, true?
A. Right, that's because in the past people have not paid the bill.
Q. Let's take a look, Doctor, first at how many IMEs or what I may call from time to time defense medical

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exams since you've testified that you do them predominantly for the defense lawyers that you've done recently. And we can calculate and do our math together. October 1998 through December 1999 -- and do you have the summary that your corporate lawyer has provided with this information, or do you want me to give you a copy?
A. A copy would be great, thank you.
MR. LOUCAS: Can we go off for a second?
VIDEO TECHNICIAN: Going off the record at 12:39 p.m.
(Discussion off record.)
VIDEO TECHNICIAN: Okay. Back on the record at 12:40 p.m.
BY MR. LOUCAS:
Q. Doctor, I had issued you a subpoena to produce documents in this case at the time of this deposition; is that true?
A. Yes.
Q. And there were many things

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that I had asked for in that deposition including your appointment books and a breakdown in the percentage income that you make from doing defense or independent medical examinations versus your own independent orthopedic practice and on and on and on; is that fair enough?

A. I don't recall exactly what was all in there.

Q. May we agree, however, that your corporate attorney intervened and provided this summary for us as to the amount of IMEs you've performed at least since October of 1998 to the present; fair statement?

A. Yes, our corporate attorney responded to that.

MR. LOUCAS: Can we stipulate to mark that as an exhibit, Joe, after the deposition or do you want me to have the court reporter now.

MR. TIRA: There's no need if you want to mark it as an exhibit to mark it now.

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MR. LOUCAS: Thank you.

BY MR. LOUCAS:

Q. Doctor, from October 1998 through December 1999, you performed?

MR. TIRA: IMEs, correct?

A. Yes.

Q. If we do the math at the low end of 500, that's minimally $12,000 income. If we do the high end of the math at $2,000, that's $248,000; true?

A. That's what was billed. That would be a range of billing according to those numbers.

Q. During that time period, which is a little over one year, 14 months, you also did 34 depositions, true?

A. Yes.

Q. So that would be at least two depositions a month, that's obvious from the math, right?

A. Around two depositions a month.

MR. TIRA: Objection.

Q. And we are approaching the

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one hour mark, and as we exceed one hour you will charge for the next hour another $900 an hour; is that a fair statement?

A. I'll basically charge for the time you guys take of my time asking questions, so that's up to you how long it takes.

Q. If it's one hour, it's $900. Two hours, $1,800, and so on?

A. Sure, but it's based on how long you want to ask me questions.

Q. So that of the 34 depositions you did during that time period, for one hour it would $30,600 in income; two hours, $61,200 in income, three hours, $91,800 in income if you want to assume my math is correct.

A. I don't have a calculator. I have to assume you're running those numbers accurately. I don't know.

Q. I'm sure if my math is incorrect Mr. Tira will hold me accountable in closing arguments, but let us move on please.

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Let's go to January of 2000 to December of 2000. That would be last calendar year. You conducted 89 of these independent medical examinations, true?

A. Correct.

Q. And on the low end that would be $44,500 at 500, or the high end at $2,000, $178,500?

A. That would be a range.

Q. And likewise you did 29 depositions, which again would be at least two a month, correct?

A. It's around two a month as an average.

Q. And even if they're just one hour, that would be $26,100 and then double or triple if they went to two or three hours, fair enough?

A. Those are guess estimates. We don't know how long they took. I don't keep track of them.

Q. That's right, you don't keep track of that information, do you?

A. No.

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Q. Nor do you keep track of the information about the breakdown of for whom you were doing these IMEs; is that accurate?
A. I personally do not tally those numbers, no.
Q. You did not keep track of your 1099 or income of your practice from these outside sources other than your practice from this work that you do as an independent medical examiner; is that true?
A. I'm not really familiar with what gets done with the 1099s. I don't do that part of the practice.
Q. Let's go to January 2001 through March 2001, Doctor. So far in this year, in the first quarter, I should say the first three months, you've done 24 IMEs for a low end of our range that we're doing of $12,000 to a high end of $2,000 range of $48,000 just in the first three months of this year; is that true?
A. That would be a range.

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Q. You've done three depositions minimally at one hour. That would be about $2,700 so far in the first three months, true?
A. Again, that's kind of a guess estimate range. I don't know what the exact numbers would be.
Q. So that if we looked at, and I'm going to ask you to assume that my addition is correct, on the low end since October of 1998 through March 1 of this year, which would be two and a half years, 28 months, you've got $310,000 income versus the high end of $651,700 of income, correct?
A. I can't say that's accurate as an income. I don't know what the income would be. That's a range based on these numbers for billing and that's all I can tell you. It's a range.
Q. I want you to assume -- strike that.
On the other hand, if as in the Cercek case you charge between 3 and $5,000 in an IME and the average is

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4,000, that would have been $948,000 in the last two and a half years; is that a fair statement?
MR. TIRA: Objection.
A. I don't think it's a fair statement at all. I don't know what those charges are based on, whether that's other accumulated bills. I don't know what those are, so I can't say that with any intelligence. You're asking a question I don't have any answers to.
Q. Well, if you have only given -- how many depositions have you given since March of this year?
A. I'd have to check. I don't know off the top of my head.
Q. What records would you check, Doctor, to find out how many IMEs -- depositions you've done for IMEs?
A. Records that I keep myself.
Q. What are those records please?
A. Just a tally of the ones

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I've done.
Q. Where do you keep these records, in what format?
A. I just jot them down as I do them.
Q. And as you jot them down, do you keep them in a central place, Doctor, or just jot them down and throw them in the garbage?
A. No, I keep track of them.
Q. And where do you keep track of them. That's my question.
A. Just various places, but I just keep track of them and tabulate them over time.
Q. In these various places, is there one file, is it on computer disk, is it a file that's kept privately in your desk?
A. No, it's something that my corporate attorney recommended that I keep track of, and so I've done that at his request and I keep it.
Q. And that's not the way it had been done before 1998, correct?

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A. No.
Q. I'm sorry, correct meaning I am correct that it wasn't?
A. You asked the question. I said no. I wasn't keeping track of them before 1998.
Q. Why weren't you keeping track of them before 1998, Doctor?
MR. TIRA: Objection. Go ahead.
A. Well, I had no real need to.
Q. No other reason?
A. All I'm telling you is the reason I keep track of them now is because I was recommended to do that by my corporate attorney so I'm doing that.
MR. TIRA: Objection. I believe we're getting into perhaps attorney-client privilege here, and in that Dr. Gordon's corporate and/or personal attorney isn't here, I believe it's not appropriate to ask him questions that would elicit responses relative to what his attorney told him.
Q. Doctor, it isn't simple pure

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circumstance that the number of IMEs and depositions that we just went over for the jury are from October 1998 through the present and that there are no records from before that, is it?
A. I can only tell you that I am keeping them now because, you know, look, I've already answered this question and it is the issue of I get a little uncomfortable when people start asking me about things my attorney has asked me to do because I don't really understand all that attorney stuff. But that's what he's asked me to do so I'm doing it.
Q. I notice here on this report you generated in this case that there are two names at the top, Robert C. Corn, M.D. and yours, Timothy L. Gordon. Are you the only two physicians practicing in this group?
A. Yes.
Q. And it says here Highland Musculoskeletal Associates, Inc., that is the corporate entity that employs you

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and Dr. Corn, true?
A. Yes.
Q. And you are both shareholders in that corporation, true?
A. Yes.
Q. You're both officers in that corporation, true?
A. Yes.
Q. Dr. Corn has testified as an employee shareholder and officer of Highland Musculoskeletal Associates, Inc., under oath at the direction of Judge Russo on September 28, 1998, that Highland Musculoskeletal Associates, Inc. does not have any appointment books prior to 1998 because we destroyed them at the end of the calendar year, and that one of the reasons those calendars and appointment books are discarded is to prevent attorneys that represent plaintiffs from establishing an interest, a financial interest, in the type of work done through defense medical exams.
Do you have any reason to

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believe that the only other employee and shareholder besides you in your corporation is not telling the truth?
MR. TIRA: Objection.
A. You know, I'm not going to testify regarding anything I haven't said. For those kind of questions you need to talk to our corporate counsel.
Q. Doctor, isn't it true that this corporation deliberately destroyed records that kept track of how many IMEs and how many -- how much money was produced from them so that they would not be subject to subpoena?
MR. TIRA: Objection.
A. Again, I'm going to have to refer you to our corporate counsel regarding those kind of questions.
Q. So if I point out to you the sworn testimony in the transcript of Dr. Corn, would that help you refresh your recollection, Doctor?
MR. TIRA: Objection.
A. I've already told you in regards to that I'm going to have to

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refer to our corporate counsel.
Q. Doctor, I'm going to refer you to the transcript of contempt hearing proceedings before Her Honor, Judge Russo, September 28, 1998, and the testimony of Dr. Corn and your corporation on page 21, line 8, isn't it true, Doctor, that one of the reasons if not the sole reason that you destroy those appointment calendars on a systematic basis is to prevent plaintiffs and plaintiffs' lawyers like me from establishing your financial interest and your bias when you conduct an IME?
Line 15, The Witness: That was part of the reason, yes.
Line 17, The Court: So you're admitting that you destroyed books deliberately so they cannot be subpoenaed?
Page 22, line 11, I'm sorry -- line 8, yes.
Do you have any knowledge of that, Doctor, whatsoever?

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MR. TIRA: Objection.
A. Again, you're asking me questions regarding things that my corporate counsel has advised me. You need to talk to them about this. And that's the way that this has to go. You need to respond to them.
Q. So you're not familiar then with the practice of the recordkeeping we just talked about prior to 1998; is that your testimony today, sir?
MR. TIRA: Objection.
A. I've already told you, in regards to the kind of questions you're asking and information you're going after and basing them on, I have to refer you to my counsel.
Q. I'm sorry, Doctor, the question was --
MR. LOUCAS: Madam Court Reporter, can you read back the question please.
(Record read.)
MR. TIRA: Objection.
A. Again, I'm going to have to

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refer you to our corporate counsel in response to those kind of questions.
Q. Now, would you please hold up the document that I have given you, Doctor, and show us what we're talking about. That table is the sole amount of information that was provided with regard to the IMEs and the number of depositions done and et cetera, correct?
MR. TIRA: Objection to the showing and questions. Go ahead.
A. This is what was provided to you at the mutual agreement my understanding is via our counsel.
Q. Incidentally, Doctor, did you charge a cancellation fee for the discovery deposition that was canceled last week?
A. Sure I did because you canceled it within 24 hours. I had to block off a significant period of time to provide a service to you, and you canceled at the last minute, so of course I charge a late cancellation fee because that wasted that big chunk of

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time for me.
Q. And how much did you charge, Doctor?
A. Would have been $900 for the first hour.
Q. So was that your cancellation fee?
A. In this case it was because you canceled so close to the deposition.
Q. And who, Doctor, paid that fee? Who did you bill for that fee?
A. Whoever asked for the time and asked me to block that time off of my schedule.
Q. Okay. So that bill has been issued then for that time?
A. I don't know if it's been issued or not, but I gave an explanation as to why I did that because my time was taken and canceled at the last minute and I was left with a large chunk of time.
Q. Doctor, would you take a look at the billing that you so kindly provided me before this deposition.

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Would you tell me how much that you have billed in this case so far?
A. This for the report was $700.
Q. And let's talk generally for a moment about how you approach conducting an exam. We started to get into it before, but usually you're contacted by defense attorneys or a defense firm to conduct the examination of a plaintiff, correct?
A. I've been contacted by both plaintiff and defense.
Q. I understand, but that wasn't my question. Usually you are contacted by the defense lawyer in conducting an independent medical examination or defense medical; is that true?
A. Well, I get contacted by lawyers to evaluate individuals, and the majority of them are defense.
Q. That was not the case here, correct? You were not contacted by Mr. Tira or any member of his firm, true?

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A. I've had contact with him at some point in the past in regards to this case. I was contacted by people representing Marciano who was involved in this case, the defendant.
Q. In the medical field, Doctor, if a doctor wants to arrive at a diagnosis or condition and what the cause of it is, he will typically go through what they call a differential diagnosis; is that true?
A. Well, we consider different options as to what a diagnosis could be based on the findings, the history, the physical exam, so forth.
Q. And that's the way a doctor arrives at a diagnosis is by obtaining first the history, then doing a physical examination, and then typically laboratory tests if necessary, correct?
A. You can do laboratory tests or some additional studies if needed, yes.
Q. But that's it, history, physical examination and laboratory

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tests are usually what's utilized by the doctor's tools to make a diagnosis, fair enough?
A. That's part of it, sure.
Q. And the history is a story a patient tells the doctor in response to the doctor's questions as to what the symptoms are for to which the patient arrives, true?
A. Right, it's usually the story the patient cares to tell the doctor.
Q. That's very important, isn't it?
A. It's one of the things we consider.
Q. Physical examination speaks for itself. That's important as well, an examination from head to toe or knee like in this case, true?
A. Physical exam findings are something else we look at.
Q. It's very important, wouldn't you say, physical examination, in trying to figure out what's wrong with a

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person and why?
A. We certainly evaluate physical exam findings as part of coming to a diagnosis or opinions.
Q. Doctor, out of the history, physical exam and laboratory tests, isn't the physical examination the benchmark or hallmark, the basis of the main thing about arriving at a diagnosis of any disease state or process?
A. I wouldn't agree with that. That's one of the things we consider and we look at.
Q. Okay. In a case like this it would minimally include an examination of the knee for Lazo, wouldn't it?
A. I don't understand your question.
Q. Do you think a physical examination -- strike that.
In a case like this the laboratory tests that would have been necessary and that were actually done for Lazo in arriving at a diagnosis

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would have been the x-rays and the MRI or magnetic resonance imaging evaluation, true?
A. They're part of the information that you would look at.
Q. And typically when you do a defense medical or independent medical exam, Doctor, you examine the patient in addition to the records, true?
A. Really depends on the situation. In this situation it wouldn't have made any difference because at the time I was asked to take a look at this information, he had already had surgery, so that really wouldn't have helped.
Q. Let's take a look at Cercek versus Asadorian, the one we talked about. Doctor, you examined the patient by doing a history, physical exam, reviewing actual MRIs and x-rays; isn't that true, sir?
A. I don't recall.
MR. TIRA: Objection.
Q. Would you please take a look

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at your sworn deposition page 10, line 18, and tell me if you disagree.
MR. TIRA: Objection.
A. What was the page again?
Q. Page 10, line 8 sir. Were you able to find it, Doctor?
A. Um-hmm.
Q. So you would agree with me in that case you examined the patient and even took a history and even looked at original films, meaning x-rays and MRIs, true?
MR. TIRA: Objection.
A. In that particular case, yes.
Q. Now I'm going to hand you David Pericki versus Ella Fields, April 1, 1999. In that case you examined the plaintiff, took a patient's history, performed the orthopedic exam, and reviewed MRI films. And here's a summary to help you, Doctor. You see the first three highlighted, four highlighted things will direct you exactly to the page and you can tell me

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if what I'm saying is accurate or not since you do not remember.
MR. TIRA: Objection.
A. Yes, I examined the individual in this case.
Q. And you reviewed the original films, true?
MR. TIRA: Objection.
A. Yes.
Q. And you took a history, correct, Doctor?
A. Yes.
MR. TIRA: Objection.
Q. That's what you customarily do when you do a defense medical examination, isn't it?
A. Well, when the individual is actually examined as a part of it, yes.
Q. Isn't the vast majority of the cases, are they not where you do exactly what I have just demonstrated through sworn testimony, conducting a history, physical examination, and reviewing original films where necessary, isn't that the vast majority

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to a reasonable degree of medical certainty what you do, sir?
MR. TIRA: Objection.
A. That's a confusing question.
Q. Let me withdraw to a reasonable degree of medical certainty. Isn't that the custom or routine or practice that you typically follow, fair enough?
MR. TIRA: Objection.
A. It depends on the individual case. They're all different. And in this case, this individual, wouldn't have made any difference because he'd already had surgery, there are history and records and exams in the records, so for this particular case it really wouldn't have made any difference.
Q. I understand, Doctor. But I want to establish here whether or not what you did here with Lazo is different from how you handle most, if not all of your other exams. Meaning first,
may we agree that you did not ever

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examine Lazo Devic, true?
A. Personally, no.
Q. Doctor, may we agree that you never obtained a history from Lazo Devic, true?
A. Not personally, no.
Q. Doctor, may we agree that you never reviewed his x-rays or his MRI films in this case; is that true?
A. I reviewed radiographic reports and other doctors' impressions of those, but I did not view the actual films myself, no.
Q. Doctor, you've never laid eyes on La20 Devic, have you?
A. That's correct.
Q. Doctor, you've never even, as you've just testified how important the history is, taken a look at his own sworn testimony in this case, have you?
MR. TIRA: Objection.
A. I don't think I've reviewed his actual testimony, no.
Q. So you have no idea what his explanation is as an independent

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investigator on your own to determine exactly what happened in that accident, true?
A. I relied on the medical records.
Q. And you would agree with me, sir, that in all of the records that had been provided to you there was no documentation of a history of an injury to that left knee for Lazo Devic, correct?
A. The records indicate he didn't tell anybody that he had injured his knee at the time of the accident.
Q. That's not the question, Doctor. The question, sir, is in all those medical records before you that you have reviewed in this case there is not one iota of written documentation of an injury to that left knee prior to this automobile collision of September 16th, 1998; is that an accurate statement, sir?
A. The records I have don't indicate that there was really an injury

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to the knee at all in the records. The records don't support an actual injury. I don't have any records I think from before the accident.
Q. Did you bother to ask for those records before the accident, sir?
A. I don't know if I asked for records from before the accident or not. I reviewed records that were made available.
Q. Did you bother to ask to have the opportunity to speak to this young man directly to see from him what happened?
A. Well, the history is in the records and I evaluated the medical records and the history he provided the various doctors that had treated him. And that's adequate.
Q. So you didn't bother to ask whether you could examine Lazo so you could take your own history, examine him, true?
A. In this case didn't need to.
Q. Likewise, sir, you did not

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ask for the films for you to review as you did in the other cases we just talked about, true?
MR. TIRA: Objection.
A. I don't know if I asked for them or not in the other cases. In this case again, the records were reviewed that were made available.
Q. Well, this isn't the first time, Doctor, that you have arrived at the opinion that an automobile collision with a complaint of a knee hitting a dashboard was not the cause of the resulting derangement or injury inside the knee; is that a fair statement?
A. Well, I think it's important to note that each situation is different. Everybody's involvement in an accident is different from somebody else's. And you have to look at the specifics to that case and that's how I evaluate these. The specifics to the case that we're talking about and what makes the most sense. And in this case the records just don't convincingly

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support that he injured his left knee in this car accident.
Q. That is because he didn't have pain, popping, or swelling or immediate complaints during transport by EMS or in the emergency room, true?
A. Yes. And the reason for that is that if he had indeed tom his anterior cruciate ligament at the time of the accident, that within a reasonable degree of medical certainty we would have expected him to have acute pain, acute swelling, and it apparent to all involved that he had torn his anterior cruciate ligament.
Q. And getting back to my question two questions ago, this is not the first case in which you've testified before a jury that an injury to a knee was not related to the automobile collision. Do you recall or not, sir?
MR. TIRA: Objection.
A. You know, I don't recall specifically, but if information in a specific case does not support that that

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scenario caused the injury, then I would opinion that way.
Q. I'm going to hand you, Doctor, a report that you authored over your signature in an effort to refresh your recollection that's dated February 27th, 1996. And, first of all, I will represent, so that we don't have to hand this back and forth and you can tell me if you object after I hand it to you, but Nancy Gravinsky with the Greater Cleveland Regional Transit Authority is the one who hired you. You did an examination of this patient. And in your history you have, there was mention of a twisting injury to his knee which popped real loud. Despite this, there was no complaint of knee pain, swelling or problems to the EMS crew that conveyed him to Deaconess Hospital. There was no mention of his left knee in the Deaconess Hospital records as well. No swelling was noted on physical examination. And you go on to say in

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your impression, alleged twisting injury to left knee, chronic anterior cruciate deficiency with long-standing meniscal and arthritic sequelae. Sir, I'll hand you this report. Would you agree with me that that is precisely the same type of a case that we have here with Lazo, that you have given --
MR. TIRA: Objection.
Q. I'm sorry, that you have given the opinion that since there was no complaints of pain or swelling immediately by the -- to the EMS or the emergency room personnel, that therefore that torn ligament in that case was not from the automobile collision?
MR. TIRA: Objection.
A. You know, I feel like I'm being blind-sided by something that I wrote what, five years ago. I can't remember what's in that report and that's not really fair.
Look, based on the actual facts in this case, the records do not support that he injured his left knee

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at the time of the motor vehicle accident and do not support that he tore his anterior cruciate ligament at the time of the motor vehicle accident.
Q. Doctor, that's not the question before you. The question is, refresh your recollection, please. Does that document refresh your recollection that that is the precise testimony that you have given in another case that the anterior cruciate ligament was not due to the automobile collision because there was no swelling and no pain reported to the EMS personnel nor to the emergency room personnel. Please, I would ask you to do that at this time, sir.
MR. TIRA: Objection.
A. Look, I don't think it's fair that you ask me to testify to something that -- a report I wrote five years ago and I don't have -- I haven't had a chance to review the records, review the report, or the salient features of that case. That's

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ridiculous.
Q. So you refuse, Doctor, you refuse to take a look at that report and see if, in fact, that has happened before? Is that what you're telling us?
MR. TIRA: Objection.
A. What I'm telling you is I don't think it's fair because that's an evaluation that was six years ago that had specific records, specific issues about it, and I don't recall those and that's not fair.
MR. LOUCAS: As an officer of the court, I'm instructing the witness to answer this question.
MR. TIRA: Objection. He has answered it.
Q. I'll tell you what, Doctor. I'll offer you the opportunity to review that record. Let's go off the record, and you can review that report. That way it's detailed and you can refresh your recollection in its entirety. Fair enough?

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MR. TIRA: Objection.
Q. Are you willing to do that, Doctor?
A. Well, I think it's important to understand that again that's not really fair because when I wrote that report, that's an overview of records that were reviewed, any studies that may have been reviewed, and I don't have those. It's just, you know, it's not really fair of you to ask me to testify to that situation when I don't have those things in front of me like I had in front of him right now for this case. So I'm happy to testify regarding this case that we're talking about now because of what I have in front of me. But it just doesn't seem to be fair to try to get me to make opinions on something I don't have the records to, I don't have any studies I may have looked at, and so forth.
Q. Doctor, you have already testified that there's no way this could have happened to Lazo because of this

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very scenario we're talking about here, and you say it's very rare that it's happened. And yet I've just put before you a report that documents that it's happened in another case, and I have here your sworn testimony in another matter that I would like for you to take a look at which actually is -- in any case, I'm going to ask you if, in fact, the same thing didn't occur.
MR. LOUCAS: First of all, I'd like to put on the record a motion to strike this witness's entire testimony for refusing to take a look at that document and answer the question after so being instructed. And actually, Madam Court Reporter, I would ask you to instruct the witness to answer the question as to whether or not this situation as he's put in his own writing over his own signature in that report of February 27th, 1996, is different than Lazo Devic.
THE REPORTER: You're instructed to answer the question.

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MR. TIRA: And I'll state an objection. The doctor has answered the question as to reasons why it is a question he cannot fairly answer, and as previously phrased it referred to your testimony in another case and you've set forth a medical report, not testimony in that particular case.
Q. I'm sorry. We're going to talk first about a medical report where the same scenario occurred and you gave the same opinion, Doctor, and then we're going to address the sworn testimony. So first so it's on the record, the report. Will you answer or not, Doctor, will you --
MR. TIRA: Objection. He has answered the question why he cannot answer it.
MR. LOUCAS: Secondly, Doctor -- move to strike testimony.
Q. First, however, Doctor, I do want to give you that option. Sir, would you like to go off the record so you can take a look at that report,

read it and refresh your recollection to see whether or not you have given testimony consistent with your opinions in the Devic case today previously in court or previously?

MR. TIRA: Objection. I'm sorry if you're not finished. Objection on the basis that again referring to testimony you've given him a report. That's one objection.

And my other objection is that this has no bearing on the issues presented and it's an improper attempt to cross-examine the witness.

BY MR. LOUCAS:

Q. Doctor, would you please just look at that document and tell me whether or not it is your report and your signature?

A. No, it's not even my signature. I didn't write this report.

Q. Doctor, this is -- I'm sorry, the opinion of Dr. Corn, the other shareholder in this --

if they think about that question, you know, I don't recall specifically testimonies in the past. What I do recall is that if the medical records and the evaluation do not support a causal relationship to a alleged injury, then I would opinion so. If the records and evaluations support that there is a causal relationship, then I would say so. So it's really based on the individual facts to each case. And that's how I perform these evaluations.

Q. Doctor, here's the deposition, your sworn testimony, and I'm going to ask you, is this your deposition of Rhonda Stover versus Nancy Figara?

A. I guess you better check here. Yes, it is.

Q. And you have testified on page 20, line 5, Any indication of any injury to either lower extremity, either leg or either knee as a result of this accident of December 12, 1995? And you said no. They were indicated to have

A. I didn't write that report. I never wrote that report.

Q. I apologize, Doctor. I was under the impression --

A. I think you should.

Q. -- that you did. But let's go to this case, then. How about Rhonda Stover versus Nancy Figara. And I will ask you again, and I move to strike -- withdraw that line of questioning as a result of that error on my part, Doctor, with my apologies; is that fair enough to you?

A. What's fair? To withdraw the questioning even though I didn't write the report?

Q. Yes, Doctor. But I'm going to put the question back on the table though. Have you ever testified in another case that knees hitting the dashboard did not cause an internal derangement to the knee because there was no pain or no swelling reported?

A. You know, that's kind of one of those -- anybody listening to this,

full range of motion subsequently also and appeared normal. This would not go along with the history of striking the knee on the dashboard.

So my question to you is, have you not testified that in another case that striking the knee on the dashboard does not cause knee injuries?

MR. TIRA: Objection.

A. Well, I think that would depend on the specifics of that case. If I said that in that case, then those records would support that the striking of the knee the dash did not cause any significant injury. We're not talking about just a mild contusion. I mean, you know, I struck my knee on the desk. I struck my knee. Doesn't mean it's going to be a significant injury.

In this own case, this individual Mr. Devic had a contusion of his right knee. Subsequently it went away and he had no treatment for it. That was his right knee. So just because you hit your knee on something

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doesn't mean it's going to end up with a significant problem. It depends on that case.
Q. In this case, Doctor, I would ask you to look at page 11, line 16. The basis, part of the basis of your opinion was that no history as to whether either knee was bruised and reported on the way to the emergency room, correct?
MR. TIRA: Objection.
A. In this particular case?
Q. Yes.
A. It indicates that no history was given.
MR. TIRA: Objection?
A. That history was not given is what the response was.
Q. What that means is the same thing as here, on her way to the emergency and in the emergency room there was no mention of knee pain as a result of it having hit the dash, correct?
MR. TIRA: Objection.

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A. I don't know if it means the same thing in this case, okay. All that means is when they asked that question that individual did not give a history of bruising or -- that was all the question was asked about was regarding bruising, I answered that specifically.
Q. I'm sorry, take a look at page 19, lines 12 through 17. Another basis for your opinion in that case was in your review of the medical records there were no complaints regarding either knee in the emergency room record, true?
MR. TIRA: Objection.
A. Again my testimony at that time indicates the records indicated there was no complaints regarding either knee.
Q. So am I right, part of the basis in your case that that knee injury was not from the accident because there was no complaints of problems by that plaintiff to the emergency medical

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personnel or emergency room personnel, true?
MR. TIRA: Objection.
A. Well, again, I have not had a chance to review the records here. You're asking me specific little pigeonholed questions out of a large transcript. And the issue is that I answered those questions honestly at the time and based on the information that I had. In regards to that case I answered those questions. Now that case isn't this case. Okay. So they're different because they're different people, different scenarios, different facts. I look at each one separately. And based in this case, the one we're talking about, the records do not support that the anterior cruciate ligament tear occurred as a result of the accident.
Q. And that was your opinion in that case, the records didn't support that she had a tear to the meniscus in the knee from her knees hitting the

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dashboard because there were no complaints like in Lazo's case, true or not, Doctor?
MR. TIRA: Objection.
A. I don't recall.
Q. I'm going to ask you to go ahead and refresh your recollection if you like.
A. I don't recall the testimony in regards to that, but again they're separate cases so each are different, okay, they're separate cases.
MR. TIRA: Objection.
Q. Doctor, in that case you did review the MRIs, did you not?
A. I don't know. I don't recall.
Q. Page 30, line 16, Doctor.
A. Yes, I did review MRI films.
MR. TIRA: Objection.
Q. And likewise you examined that patient, did you not, sir?
MR. TIRA: Objection.
A. I don't recall. I'd have to look at the -- can you tell me where

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that is?
Q. Page 9, line 21.
A. Again, this was a testimony that was in 1998, so some years ago.
Q. I'm sorry. Something more direct would be page 8, line 14.
A. All right. Thank you.
MR. TIRA: Objection.
A. Yes.
Q. And likewise you took a history from her, page 9, line 21, correct?
MR. TIRA: Objection.
A. Yes.
Q. And you have here in your own words, a history is what physicians are trained to do in part evaluating anyone. The history is the story the patient tells us, why they are here, how they feel, past medical history. It's what they choose to tell us and we usually document it, true?
MR. TIRA: Objection.
A. I indicated that in the part of treating an individual we take a

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history.
Q. Page 35, line 21, Doctor.
A. I'm sorry, repeat that please.
Q. Page 35, line 21, did you not testify in that case identical to this case, if someone had an injury as a result of their knee hitting the dashboard, I would expect there would be immediate pain in the knee area. This was not present, true?
MR. TIRA: Objection.
A. Again, you added identical. I don't know that this case is identical. They're different incidences, different types of accidents. They're different. I look at them separately and base my opinions on what the records, histones, exams from that case indicate. These are two separate cases.
Q. Thank you, Doctor.
MR. LOUCAS: Go off for a moment please.
VIDEO TECHNICIAN: Going

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off the record at 1:23 p.m..
(Recess had.)
MR. TIRA: I'll move to strike all testimony and questions pertaining to prior medical reports, prior deposition transcripts involving other cases, other individuals.
VIDEO TECHNICIAN: Back on the record at 1:29 p.m.
BY MR. LOUCAS:
Q. Doctor, you have testified on direct examination that the typical ligament that is torn in an automobile collision is the posterior cruciate ligament or PCL; is that true?
MR. TIRA: Objection.
A. I testified that when the patient is forced forward and strikes their knee on the dashboard that that is the expected ligament to be injured.
Q. I'm sorry. I thought you said when the tibia strikes the dash and there's subluxation of the thigh bone or femur bone forward, then that causes the posterior cruciate ligament

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disruption; is that true?
A. What I'm referring to is when the tibia is struck in the tibial tuberosity region and the tibia is driven posterior relative to the femur, that that's how you injure the posterior cruciate ligament.
Q. Okay. You would agree with me though that anterior or posterior cruciate ligaments can be injured in motor vehicle accidents, true?
A. It's not really very common for an anterior cruciate ligament to be injured. I suppose anything is possible, but one has to look at the specifics of that case.
Q. Doctor, I'm going to hand you a study. Are you familiar with -- this would be the American Journal of Knee Surgery. Have you ever heard of that journal?
A. Yes.
Q. This is a 1991 article entitled the Incidence of Knee Ligament Injuries in the General Population.

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This doctor said that up to 16 percent of injuries were due to automobile accidents in this general study. And it also says, Doctor, that this finding supports previous reports that the ACL is the most frequently torn ligament. You would agree with me that there exists medical literature that contradicts your opinions in this case, true?

MR. TIRA: Objection.

A. You know, without reading the article, I'm not familiar with the article. I can just say I wouldn't agree with an opinion that ACL tears are the most frequent injury for ligament tears as a result of motor vehicle accidents. I wouldn't agree with that.

MR. TIRA: Move to strike the question.

Q. But that's what it says in that study, correct?

A. I haven't read the report.

Q. Here, Doctor, I'll point it

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out to you specifically.

MR. TIRA: Objection, lack of foundation.

Q. Here it is, Doctor, page 6, this highlighted wording, portion right there.

MR. TIRA: Objection, lack of foundation, hearsay.

MR. LOUCAS: For purposes of the record this foundation was laid previously on the basis of the Fresh Water case with regard to journal articles, and based on useful and self limits for liability. Number two, this is not being used as evidence; rather merely impeachment purposes. And it is clear the doctor has just testified that he doesn't know this study exists.

MR. TIRA: Objection.

A. Well, there's some contradictions. Also notes that there's -- although the MCL is by far the most commonly injured ligament. That's not the ACL. It's the MCL. It's states that in the report or study. So

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there's a lot of information in the study, and it's to be interpreted by the orthopedic surgeon.

MR. TIRA: Objection, move to strike.

Q. Can I have that study please, Doctor. I'm sorry, Doctor, you said the MCL was the most in automobile cases?

A. No, it just refers to -- the issue is this is a article, and there's a lot of information in articles. Articles need to be interpreted by people who know what they're talking about, okay. The issue is, based on my training, my experience, is that anterior cruciate ligaments are uncommonly caused by motor vehicle accidents.

MR. TIRA: Objection, move to strike.

Q. And you also said, Doctor -- well, would you agree with me that the way an anterior cruciate ligament generally tears is that the thigh bone,

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it's the opposite of what you described for the posterior, the thigh bone typically subluxates or slips behind the tibia, meaning it moves backward, and the tibia moves forward?

A. In an automobile accident that's an unusual scenario because if an individual is moving forward and strikes the dash on their tibia, then the tibia is being pushed posteriorly, thus injuring the posterior cruciate ligament.

Q. That wasn't my question, Doctor. The question was with ACL tears, the way it happens is the femur moves back behind the tibia and the tibia comes forward, the lower leg; isn't that accurate?

A. There is usually a loading of the knee in an upright position of running, cutting while the knee is loaded while upright, not sitting. And the issue for an anterior cruciate ligament tear is there's usually a rotary component, meaning a twisting

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component, while loading, while standing or running. Again, unusual in a sitting position.

Q. Isn't it true that these types of injuries occur just before hyperextending the knee or straightening it?

A. Well, that can be one mechanism, but again that's while loading the knee, as I said, upright.

Q. And if Lazo Devic is six feet tall and driving a Toyota Tercel and trying to take his foot onto a clutch or bracing himself for an impact while striking the knee, it's your testimony it's impossible that that could never happen, true?

MR. TIRA: Objection.

A. Well, again, you know, anything is possible, but you have to look at the specifics of the case, and in this case the records don't support that the anterior cruciate ligament occurred at the time of the accident.

Q. Doctor, if instead of the

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tibia being struck on the dashboard the femur is struck on the dashboard, thus pushing it backward and the tibia forward for that subluxation that we just talked about, would you agree that would promote or increase the incidence of an ACL tear?

A. Well, in this specific type of accident it's difficult to imagine that scenario because one of the thing of being a tall individual is that his tibia is long, so his tibia is more likely to hit the dash than his femur. And the most likely scenario would be, if he were going to injure a ligament, would be the posterior cruciate ligament, not the anterior cruciate ligament.

Q. Doctor, that wasn't even the question but let's try again. I want you to assume for me, it's called a hypothetical and I think after all your experience you would know this. If his thigh hit, not the tibia, the lower leg, but the upper leg hit that dash

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and was pushed backwards in that subluxation that we talked about and the tibia came forward, that's the type of injury that's known to cause a tear of the ACL, true?

MR. LOUCAS: Objection.

A. I think that's a very unusual scenario. And again in this specific case you're the one that pointed out he was a tall individual in a small car. It's hard to imagine that happening in this case.

Q. That's not the question, Doctor. Can it happen like that or not?

A. I think it's pretty unusual because most of the force is going to be taken up by hitting the femur and the tibia. You wouldn't really expect it to slide forward with much force because the person is sliding forward in their seat and the foot is planted, and the idea is that there's not a lot of load on the knee because they're not standing.

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Q. Doctor, let's talk about something really fundamental. I don't even want to talk about impacts or biomechanics or anything like that. Isn't it true that the way an ACL is typically torn is through the subluxation, meaning the slippage of the femur posterior or behind the tibia? It's a very general principle. Do you agree or disagree with that?

A. Well, you're asking it in kind of an unusual manner. I think what we're getting at is that the tibia slips or is forced anterior relative to the femur. The femur doesn't go posterior. It's kind of the other way around. So that's why the question isn't really clear. I'm just trying to help you out with clearing up the question.

Q. I see, I see, but I was saying it -- my idea was correct, I was saying it incorrectly though. The tibia goes forward and the femur goes backward, right?

A. That can happen.

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Q. But isn't that the typical mechanism of injury for an ACL tear, the tibia going forward and the fibula -- the femur going backward, the thigh bone going backward?

A. I think in a running sports injury with the individual upright and loading their knee while running or in a contact situation while upright and loading the leg, you know, an upright sports type injury, running, cutting, that kind of thing. Not sitting in a car. I don't think that really applies to sitting in a car in a motor vehicle accident.

Q. Doctor, I'm just asking for the two mechanisms of injury of the PCL and ACL. You've already told this jury that with the posterior cruciate ligament injury the tibia goes backwards and thigh bone or femur goes over the top forwards. Now I'm asking you the simple opposite of that. Isn't it true that with the anterior cruciate ligament the exact opposite mechanism is involved

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where the tibia goes forward and femur goes backward, that's all. Simple question.

A. I've already answered that question. Then you asked me about commonly, and I'm telling you that commonly that doesn't occur in a car accident. It occurs in upright loaded sports, running, cutting type of injuries.

Q. Doctor, I never asked you about car accidents. I'm asking you about the typical way that an ACL is torn. Isn't that the way it happens, that a femur goes backwards and the tibia forward, sir?

A. You've asked me about car accidents previously in the questioning. I've already told you that, and I've answered it already, that the issue is that in an anterior cruciate ligament tear the tibia can move forward relative to the femur and it can occur that way. I've already told you that.

Q. Doctor, isn't that the

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general way that it does happen? Isn't that the most frequently recognized mechanism for it to happen, just the opposite of the mechanism you described for the PCL tear earlier?

A. But you're asking in general now. So the issue, you were just talking about purely just anatomy motion. In general, the injury occurs in a running, cutting, loaded, upright position and that's what I'm trying to answer.

Q. So you can't answer that question directly; is that right, Doctor?

A. I just did.

Q. Let's talk for a minute about the symptoms that a patient feels when this type of injury occurs. Symptoms are subjective, meaning the Complaints of the patient or what the patient is feeling as described by the patient, true?

A. Well, symptoms are typically what the patient reports. That's

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subjective.

Q. And what one individual might think are horrible symptoms another individual might report I don't have any problems, true?

A. It depends on what their situation is.

MR. LOUCAS: Off the record please.

VIDEO TECHNICIAN: Going off the record at 1:42 p.m.

(Discussion off record.)

VIDEO TECHNICIAN: Back on the record at 1:42 p.m.

BY MR. LOUCAS:

Q. Doctor, I'm going to hand you your deposition from the Rhonda Stover versus Nancy Figara case taken July 6th, 1998. I'm going to ask you to go to page 59 and go to line 4. Page 59, line 4, Doctor, I had just repeated your own testimony. What one individual might think are horrible symptoms another individual might report, I don't have any problems. Is

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that true or isn't that true?
MR. TIRA: Objection.
A. Well, in the context of the questioning it's the idea as I said, it depends on the situation they're in, depends on the individual. There are a lot of factors that are involved and that was pointed out in that testimony too.
Q. But isn't that what that says there word for word?
MR. TIRA: Objection.
A. It based on what I have already said, that it depends on the situation, depends on the individual, it can vary.
Q. It's a simple question, Doctor. Please look at that transcript. Did I not repeat verbatim your own testimony, sir?
MR. TIRA: Objection.
A. I don't recall specifically what you said. It was the issue of subjectivity of pain and I said yes, it's subjective.

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Q. Would you hand me that deposition, please, Doctor? I will refresh your recollection for you since you cannot recall what I said.
MR. TIRA: Object.
Q. What I said was page 59, line 4, your answer, I've already tried to answer that question for you. That issue of pain and symptoms is a purely subjective issue. What one individual might think are horrible symptoms another individual might report, I don't have any problems. So that's subjective.
Wasn't that your testimony, sir, directly from your sworn testimony?
MR. TIRA: Objection.
A. That's a quote from my response, but there were other questions asked before that. It's in the context of that questioning. And the issue is I've already told you, subjective is what the individuai cares to report. And as I indicate in that, is that it's

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what an individual reports. It's subjective. It's purely subjective.
Q. Doctor, some people can have knee injuries and have no complaints of pain at all; isn't that true?
A. Depends on the knee injury.
Q. Some people can have knee injuries and have slight, none to slight swelling; is that true?
A. Depends on the knee injury.
Q. And some patients will have none to slight pain even with a complete tear of the ACL; isn't that true?
A. Not patients that I have treated.
Q. Are you aware of any documentation, sir, in the medical literature which supports that theory, that complete tears can happen in the anterior cruciate ligament with none to slight pain?
A. Not that I'm aware of.
Q. Let me see if I can help you. Are you familiar -- yes, I think

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you subscribe to it, the Journal of Bone and Joint Surgery, sir?
A. I do read that journal from time to time.
Q. That study, sir, says that popping sensations as you've testified occurred at injury with ACLs, in 33 percent with normal ACLs and 36 percent with disruption, which means that two-thirds of the time, first of all, popping does not need to occur; is that true?
MR. TIRA: Objection.
Q. We'll work through them systematically.
A. I'm not sure that's what your statement implied.
MR. TIRA: Move to strike.
Q. I know I started talking, Doctor, about -- here's this study for you, Doctor, if you want to take a look at it, but I wanted to demonstrate that there is medical literature out there that's inconsistent with your opinions. And in that study, Doctor, tell me if

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I'm wrong, 33 of the patients in that study had none to slight pain.
MR. TIRA: Objection.
A. But the study is talking about traumatic swelling in the knee. Knees that were traumatically swollen. So they had, in order to be in the study, they had a traumatic swelling of the knee, so they had that. This individual didn't even have that. So it doesn't really compare. It's kind of apples and oranges.
Q. Doctor, doesn't that article also state that some patients who have an ACL tear in the knee will not hear any popping, 36 percent in that study, isn't that true?
MR. TIRA: Objection.
A. It doesn't mean that they didn't have a tear. But they had a hemarthrosis. In other words, they had that significant swelling in the knee. And that's one of the issues that I have been talking about is that this doesn't -- this study doesn't really

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apply.
Q. And, Doctor, that study also says that some patients will not have any swelling. At two hours 67 percent had no swelling, at 12 hours 83 percent -- or I'm sorry at two hours 67 percent did have swelling, meaning 33 percent or one-third did not have any swelling with a complete tear of the ACL. And likewise at 12 hours, sir, 17 percent still did not have any swelling.
Would you agree with me that patients can have a complete tear of the ACL without swelling?
MR. TIRA: Objection.
A. Well, you know, look, based on my experience and my expertise and my practice, that if an individual tears their anterior cruciate ligament acutely, as a result of an event, that they have an acute hemarthrosis meaning blood that fills up the knee. And that occurs quickly. And that's been my clinical experience.
Q. You would agree with me that

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this diagnosis isn't based just on whether there's pain or swelling of a torn ACL?
A. Are you asking in general or in this case? I'm not clear on your question.
Q. In general.
A. Well, it's based on the history, the exam, and studies.
Q. But you'd agree with me that history alone does not make the diagnosis of a knee injury like an ACL tear?
A. Well, you wouldn't make a diagnosis just based on history. You consider the history as a part of making the diagnosis, but you also consider the other factors we've talked about.
Q. May we agree that a large effusion or swelling is consistent with a more extensive derangement in the knee?
A. It depends on the injury. But we're talking specifically about

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anterior cruciate ligament injuries.
Q. Well, there's anterior cruciate, but there are many other structures involved in the knee, correct? I mean, if you're only damaging one ligament versus the entire capsule and multiple ligaments, you'd expect to have less swelling or less damage in the knee as a result of the lesser damage to the structures?
A. It depends on what structure you're talking about. If you're talking about the anterior cruciate ligament, which we're talking about in this case, if you acutely tear that, you get an acute hemarthrosis, hemarthrosis meaning blood filling up the knee. We're already talked about that.
Q. Doctor, may we agree that there's a difference between an acute versus a chronic tear in the ACL?
A. Yes, there's a difference.
Q. Acute means nothing more than the injury occurred recently versus chronic where it occurred in the remote

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past, over a longer period of time?
A. Well, an acute ACL tear means it occurs at a specific time or event. A chronic means it was there before essentially.
Q. So your testimony is, so that I understand in this case, is that Lazo's tear of his ligament was there before, true?
A. You know, I don't know for sure if it was there before, but that would make sense. What I do know is that the records don't support that he tore it at the time of the motor vehicle accident in question.
Q. Now, if he tore it before, you said that would make sense because of those records, how do you know? When did he tear it? Do you have any opinions about that after your review of these records, when he tore it?
A. I wouldn't know exactly when he tore it, but you asked the question so I'll answer it. The issue is that the records indicate that he was

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subsequently found to have an ACL tear by an MRI scan and then had a treatment with some therapy just to strengthen the knee. And he went back to very aggressive sports, cutting and running, indicating that he was very capable of a lot of aggressive sports activity even with his anterior cruciate ligament tear. So that goes along with it being having been there before just based on that information.
Q. Well, Doctor, would you tell me though, when did he tear that ligament? Give me your more likely than not, greater than 50 percent likelihood thoughts on the matter.
MR. TIRA: Objection. Objection, skipping beyond whether he can state. I think the foundation hasn't been laid to ask that question.
Q. Anyway, Doctor, do you have any opinions whatsoever as to when in time Lazo Devic tore his ACL?
A. Well, you know, as I indicated, the records would imply some

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time before this accident. I don't know exactly when that would be,
Q. And, Doctor, do you know how he would have torn that accident? Did you see any evidence or do you hold any opinions as to how he tore it?
A. Well, again, I don't think we have records from before the accident, but the issue is is that in an individual who obviously is involved in a lot of sports can tear their anterior cruciate ligament in a sports injury. And with the records we have, that he was able to return to aggressive running and cutting even with a torn ACL implies he could do it before.
Q. Doctor, if we were to believe your testimony in this case, with the significance of the injury that you would expect, when he actually did tear his ACL he should have had the very symptoms that you have talked about, that major swelling, et cetera, hemarthrosis?

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A. That's the usual expectation.
Q. Okay. So if we further assume that you do have all the records in this case and that there's never been any record of him ever reporting to any physician a knee injury or treating for a knee injury, would you agree with me more likely than not the injury occurred as a result of this collision and not prior?
MR. TIRA: Objection.
A. First off, I don't think we have all the medical records this gentleman has ever generated, okay, so I'm not sure that's really a fair question. The records we do have do not support that he acutely tore his anterior cruciate ligament at the time of the motor vehicle accident.
Q. Assuming you have his entire records in their entirety, Doctor, do you have an answer to that question?
MR. TIRA: Objection. It's an improper assumption. We know that he doesn't have all the medical

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records for time on Lazo Devic.
A. So what's the question again?
Q. Doctor, I want you to assume that in all the medical records that Joe Tira has on Lazo Devic that they represent all the medical records on Lazo and that there's no evidence of any knee injury or medical treatment for a knee injury. Would you agree with me that in light of that, the likelihood is that this tear came as a result of the impact of his knees on the dashboard in this collision and not some prior uncertain event?
MR. TIRA: Objection.
A. Kind of sounds like a loaded question. The issue is that I don't think we can fairly assume that we have all of his records because obviously the guy got treated for various medical things before this. That would be very unusual if he hadn't. We don't have any records regarding that. The records that we do have do not support that the

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anterior cruciate ligament tear occurred at the time of the motor vehicle accident.
Q. Doctor, when a patient has, and you used this word specifically on your direct, ACL deficient knee, when a patient has a chronic ACL deficient knee, meaning that the anterior cruciate ligament has been let's just go with a tear, that it's completely torn, the wear and tear would start to show over a period of time and there are studies available to confirm that?
A. It depends on the individual.
Q. Well, you would agree with me that if there's a complete rupture or tear of the ACL, it's first of awl called a Grade III tear?
A. Well a Grade III implies a fleet tear.
Q. When you have a Grade III tear with no surgery, meaning it's treated conservatively, that over a period of time the laxity or looseness

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from not having that ligament present within the knee structure starts to show on x-rays especially?
A. I wouldn't say it starts to show on x-ray first. I mean, you know, an individual can develop some instability if they have a chronic ACL tear. That's possible.
Q. That's what I'm getting at, thank you. Maybe we're miscommunicating, Doctor.
A. I think we are.
Q. I'm sorry?
A. It sounds like we are. I was trying to help you with the question.
Q. Well, what I'm trying to get at is it's better to have an ACL than not to have one at all with regard to the soundness of the knee joint, true?
A. Well, I mean, in general terms you'd rather have all your ligaments in the knee intact as opposed to having one of them torn. I think that's generally true.

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Q. Well, I know it sounds silly, but --
A. I'm not saying it's silly, it's true.
Q. Just getting to a fundamental point, and that is people with torn ACLs will have increased instability of the knee over time; isn't that true?
A. It depends on the individual. In this specific case this individual was diagnosed as having a Grade III ACL tear and went back to aggressive sports activity with that tear, indicating that that tear probably was there for some time. It's not consistent with an acute tear that occurred in the accident.
Q. Have you ever heard of a patient that had a complete tear of the ACL that went back and resumed playing sports or whatever their activities were immediately? Does that ever happen?
A. Not in my experience.
Q. Going back to the study in

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the Journal of Bone and Joint Surgery, Doctor, this says that symptoms in an acute injury to the knee, the severity of the original injury often is not appreciated initially by the patient. And that's supported by the fact that 33 percent of the patients in the study had no pain and 15 percent resumed playing the sport immediately in the study.

I take it you disagree with that; is that correct, Doctor.

MR. TIRA: Objection.

A. Doesn't sound like that is a specific reference to ACL injuries. Sounds like all knee injuries in general. As I've already told you, they're all different. Depends on the injury.

Q. Sir, would you agree with me, here's that article, that this article deals solely with anterior cruciate ligament injuries?

MR. TIRA: Objection.

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A. Well, it says Arthroscopy in Acute Traumatic hemarthrosis of the Knee, Incidence of Anterior Cruciate Tears, and Other Injuries. So no, it's not just the anterior cruciate ligament.

Q. Doctor, I don't want to lose credibility with this jury, sir. Would you please take a look at this study and look at the tables which reference the numbers I was talking about. And you will see, please confirm whether this is accurate or not for these ladies and gentlemen.

A. I'll be happy.

Q. That this is talking about anterior cruciate ligaments and other incidental injuries that are a result primarily of ACL injuries.

MR. TIRA: Objection.

Q. Isn't -- aren't those tables and all those figures solely addressing ACL injuries?

MR. TIRA: Objection.

A. The study indicates, as the title indicates, it's certainly looking

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at anterior cruciate ligament injuries to some extent, but also other injuries and the issue of you didn't get into this study unless you had an acute hemarthrosis of the knee. So you have to be careful what you're trying to pigeonhole things into.

Q. Doctor, that doesn't talk about posterior cruciate ligament injuries, that doesn't torn about torn menisci, as Mr. Tira talked about --

A. Sure it does.

Q. -- initially. Those are the incidental injuries to the ACL that study is talking about, isn't it?

MR. TIRA: Objection.

A. It talks about anterior cruciate ligament injuries and other injuries of the knee and knees that have acute hemarthrosis. That's not what this case is about. This individual did not have an acute hemarthrosis. The records all indicate he reported he didn't have any swelling. Even Dr. Lika noted in his record that

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it's amazing that a few weeks after this injury he doesn't have any swelling.

Q. I guess that's my point in reading ask you, Doctor, and I'm not trying to

that the principle subject matter of this article is not the ACL?

MR. TIRA: Objection.

is, sir, after looking at this? If you Q. Is that what your testimony

want to look at it again, go ahead.

MR. TIRA: Objection.

produced for orthopedic surgeons to A. Look, these studies are

interpret, okay. The issue in this study is that they're talking about acute hemarthrosis and the things you find when you scope the knee when people have acute hemarthrosis. Anterior cruciate ligaments can be one of those things. As I've told you, that when you tear the anterior cruciate ligament, you get an acute hemarthrosis, meaning that the blood rapidly accumulates in the knee from the tear.

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And that's one of the things that is a point about this article.

So in this case doesn't make sense to use this article as a supporting issue because it actually shows us that he didn't have a hemarthrosis. Nobody ever said he had swelling. They all talk about it's amazing he doesn't have swelling. It goes along with this tear didn't occur at the time of the accident.

MR. TIRA: Move to strike.

Q. Doctor, we had talked about somebody without an ACL having instability over time. May we agree that patients with long-term or chronic tears of the anterior will show changes in their x-rays?

A. It depends on the individual, depends on a lot of factors.

Q. Would you agree with me that long-term knee instability from anterior cruciate ligament rupture appears as arthritic changes on an x-ray more likely than not, sir?

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A. You know, I wouldn't --

MR. TIRA: Objection?

A. Wouldn't say you can say that more likely than not. Depends on the individual. We've seen that people who rehab their knee and have a relatively stable knee and have an anterior cruciate ligament tear do pretty well.

Q. So patients who have lived with a Grade III complete tear over a long period of time will or will not have chronic symptomatic instability more likely than not?

A. It depends, you know. It depends on the individual. If they have really rehabbed their knee and they really have a lot of secondary restraints, muscles that are strong around the knee, a lot of people do quite well with the anterior cruciate deficient knees.

Q. So that even over a long period of time with this instability, you don't expect to see any flattening,

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for instance, of the interior joint spaces between the knees, or you don't expect to see osteophyte formation or increased calcification on the bones; is that what you're saying, Doctor?

A. I think we're getting lost in the words. You used the word instability, and I'm using the word anterior cruciate deficient knee. Just because someone has a torn anterior cruciate doesn't mean they have to have a reconstruction. Depends if their knee is unstable or not. If somebody has an unstable knee, then they can develop those degenerative changes down the road.

Q. Doctor, I never even mentioned the words reconstruction. So does that change the way you want to answer that at all? I just talked about instability, sir, and over a long period of time whether that would cause somebody to have evidence of arthritis.

A. It's a complex issue, and I'm trying to explain it because I know

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the people listening to this are probably a little confused and I'm trying to be clear as to what we're talking about.

Q. Would you agree with me that the majority of the people that would have a Grade III tear of the ACL that goes untreated over a long period of time would have significantly reduced physical activity due to knee symptoms?

MR. TIRA: Objection.

A. That would be if they have an unstable knee, which is why I gave the explanation I just did, because it's a confusing issue. If the knee is unstable, yes.

Q. And how about post-traumatic arthritis, would you expect to see osteophyte formation?

A. It depends if the knee is unstable or not.

Q. Would you expect to see narrowing of the lateral and medial joint spaces that we just discussed in a post-traumatic arthritis knee?

MR. TIRA: Objection.
A. You're asking me, you know, post-traumatic arthritis means that somebody has arthritis. The way you ask me the question means, yeah, they have arthritis. So yeah they have arthritis if they have arthritis is kind of what we're getting at here.
Q. May we agree it's well known that a high level of muscular strength in the thigh can compensate to some degree for loss of an ACL?
A. If, as I've told you before, that if somebody has a really strongly rehabbed knee they may not have instability and have an anterior cruciate tear at the same time.
VIDEO TECHNICIAN: Going off the record at 2:05 p.m.
(Discussion off record.)
VIDEO TECHNICIAN: Back on the record at 2:06 p.m.
BY MR. LOUCAS:
Q. Doctor, you would agree with me that the MRI evaluation of an ACL

it on a chronic basis just because of loading changes within the knee itself

because of the anterior cruciate tear that's been there for a long time.
Q. Doctor, I'm going to hand you an articie from the American Journal of Sports Medicine. This one, sir, is dated 1993 from the University of Wisconsin. It says here, the title of the article is Bone Bruises on Magnetic Resonance Imaging, Evaluation of Anterior Cruciate Ligament Injuries. 71 percent of the magnetic resonance images taken within six weeks of injury demonstrated a bone bruise whereas no scans done longer than six weeks after injury showed a bruise.
My first question to you, Doctor, is 71 percent is more likely than not, isn't it, as you are familiar with our standards?
MR. TIRA: Objection.
A. Well, again, depends on a lot of study bias. The issue is I've seen plenty of people who have had MRI scans after acute ACL injuries who did not have bone bruises. So that doesn't

mean you have to have a bone bruise on an MRI scan to have a recent ACL injury. So if that's what you're asking me I wouldn't agree with that.
Q. No, Doctor. My question was real straightforward from the outset. That is would you agree with me that MRIs done within six weeks of an ACL tear more likely than not will show a bone bruise, greater than 50 percent likelihood? That was the original question.
A. And I've just answered you. I wouldn't agree with that based on my own practice and my own clinical experience. I've seen plenty of MRIs of people who had acute ACL tears who didn't have a bone bruise.
Q. But that is in contrast to that article that I have just given to you, correct?
MR. TIRA: Objection.
A. Yeah, I haven't read and interpreted the article. We've gone down this road before. What I am

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telling you is in my clinical practice, based on my experience and training as an orthopedic surgeon, that I see people who have acute ACL tears and MRI scans within six weeks who don't have bone bruises. So based on that, you don't have to have a bone bruise to support an acute ACL tear.

Q. In that study, Doctor, none, zero patients demonstrated a bone bruise on MRI after six weeks; is that right?

MR. TIRA: Objection.

A. I haven't read the study.

Q. Here it is, Doctor. I didn't mean to interrupt you, but go ahead, take a look at it.

A. Look --

MR. TIRA: Objection.

A. -- I'm telling you that based on my clinical experience, I hope I'm being clear here, is that you don't have to have a bone bruise to have an acute ACL tear. It can happen. You can have a bone bruise and have an acute ACL tear, but it doesn't have to

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be there. So that's been my clinical experience looking at real patients that I know a lot about. And that's what I'm basing my opinions on is my clinical expertise, my training, and my experience as an orthopedic surgeon.

Q. Doctor, would you agree with me that most if not all however of patients that don't show a bone bruise on MRI, that means that the injury is older than six weeks old?

A. I don't think it implies that.

Q. So out of those number of patients in this study, and none of them showed up with a bone bruise after the injury was six weeks or older, that's 98 consecutive patients, you disagree with the outcome of that study; is that accurate, Doctor?

MR. TIRA: Objection.

A. I didn't say I'm disagreeing with the outcome of the study because I really haven't evaluated that study. What I'm telling you is based on my

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clinical experience and my practice and what I see on a day-to-day basis in patients, in real people that I treat, that you don't have to have a bone bruise on an MRI scan shortly after an anterior cruciate tear, an acute one. I think that's fair.

Q. May we agree that bone bruises on MRI in acute injury represents blunt injury to joint cartilages and fractures of the subchondral bone?

A. It depends. That can be one case, but the other case can be that there's abnormal loading of a joint as in a chronic anterior cruciate ligament tear, and that the joint surface sees abnormal loading. And you can see that on an MRI scan when you know that the anterior cruciate tear has been there for a long time. So that can happen too as a long-term basis.

Q. Doctor, Lazo's MRI report showed bone bruise, didn't it?

A. It showed signal change, and

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that's interpreted as bone marrow edema. Bone marrow edema is often called bone bruising. It can be a chronic bone marrow edema with the same findings that he had on the MRI scan.

Q. I take it you have a copy in your records of the study, the MRI study?

A. Yes.

Q. Because does cancellus mean bone?

A. Well, cancellus means Underneath the joint surface is what that means in the indication of this study.

Q. That's bone, right? Cancellus in this MRI study is bone, right?

A. In general terms, yes, but it's not the joint surface bone. It's that right underneath the joint surface.

Q. It says cancellus edema slash contusion. So the jury is not confused, edema is, what, swelling?

A. It just means bone marrow

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edema. As I've already said, you can see that in someone who has had a long-term anterior cruciate tear, meaning months, years. They can have the same findings that this individual had on his MRI scan.
Q. And it says contusion. That means bruising, right?
A. Right. It's referring to the bone marrow change, the signal change on the MRI scan.
Q. It says impaction injury of the femoral chondral is seen with slight one to two millimeter cortical irregularity and flattening depression. Is that evidence of a blunt trauma, Doctor?
A. It could be. It could be something that happened a long time ago. It could also be something that's been ongoing and as a result of abnormal loading within the knee because of a chronic ACL tear that they have abnormality of the supporting structure around the joint surface. It can occur

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for that reason also.
Q. It says here also, Doctor, a small to moderate effusion is seen. There was swelling in this knee, wasn't there?
A. A small amount. And, again, that can be consistent with a chronic anterior cruciate tear. At no time in any of these records does it indicate there was an acute large effusion of the knee.
Q. It says --
A. It's not in any of the records and that really goes against this anterior cruciate ligament tearing at the time of the motor vehicle accident.
Q. It says small to moderate effusion. The next step would be large.
A. Well, anterior cruciate tears usually produce large effusions.
Q. But this says small to moderate, right?
A. Again, I said but that's not unusual. If somebody has a chronic

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anterior cruciate tear, it's not unusual for them to have periodic small effusions in their knee because of the underlying chronic injury that occurred to the anterior cruciate ligament.
Q. Doctor, you saw the history given to Dr. Boza in this case, didn't you?
A. Yes, I'd have to look at it.
Q. September 29, 1998, it says, correct me if I'm wrong, but he's taking the history directly from Lazo 13 days after the accident in his office when he writes this note, correct?
MR. TIRA: Objection. Calls for speculation.
A. Let me find the note. If you have a copy, I'd be happy to look at it.
MR. TIRA: I've got a copy here, Doctor.
THE WITNESS: Thank you.
MR. TIRA: September 29, 1998.
THE WITNESS: Thank you.

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All right. Go ahead.
Q. It says since the injury the patient states that that he's had persistent increasing left knee pain associated with some giving way when he tries to ambulate. He's been using a knee brace and this seems to help. He denies swelling, redness, bruising and locking. He has not had previous injury to that knee and states that he is very active in sports and this has limited him completely at that time.
That, what I just read, is the history that Dr. Boza is obtaining from Lazo in his office more likely than not, true?
MR. TIRA: Objection. The record speaks for itself.
A. Right. I mean, that's what the record notes. That's the history that apparently was given at the time based on this note.
Q. Also states he also states that at the time he had left knee pain, but they did not evaluate this one and

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it was not swollen at the time. And he's referring to the hospital after the motor vehicle collision, true?
MR. TIRA: Objection,
A. That's the history he gave, that it wasn't swollen at that time and the exam at that time notes no significant swelling either.
Q. But it says here that he had left knee pain at the time that he was at the hospital; isn't that what note says?
MR. TIRA: Objection.
A. All you can indicate from that, that's the story he apparently told at that time. That's not supported by the medical records from the ambulance or the emergency room.
Q. Well, Doctor, if you take a look at the emergency room record you will note, and tell me, I'm sure you looked over these records very carefully, that there was a bruise noted on the right just below the right knee by the EMS technicians at the scene.

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Is that true?
A. Yes, it was noted that he had some right knee complaints and some findings regarding the right knee. There's no complaints regarding the left knee, no findings regarding the left knee, and it's noted he walked out of the emergency room.
Q. And you'll note also that the emergency room doctor however did not note the right knee pain anywhere in his records, did he, or the bruising? Not the knee pain, the bruising?
A. I have to look at that.
MR. TIRA: Objection. The record speaks for itself.
Q. While you're looking, Doctor, you also note that the emergency room physician did not note the left bruise at the top of his head, nor did he note the cervical pain that was documented by the nurse in the emergency room and the EMS technicians; is that true, while you're going through that?

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MR. TIRA: Objection, record speaks for itself.
A. There's a reference to the complaint regarding the right knee, headache. There doesn't seem -- denies neck pain at that time.
Q. Well, the doctor doesn't mention it at all, does he, Doctor? It doesn't say he denies neck pain. Doesn't mention neck pain at all?
A. Well, it says -- yes, it does. History states patient was involved in a minor motor vehicle accident. He complains of pain in his right knee and headache. He denies loss of consciousness, neck pain, extremity pain or paresthesia, denies any chest or abdominal pain.
Q. I'm sorry, I'm looking under physical examination, Doctor. I'm looking for documentation by this doctor of first of all the bruise to the head that was noted by the EMS technician as well as the nurse, but there's no documentation of it by the doctor in

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physical examination. Is that a correct assessment by me of this record?
MR. TIRA: Objection. The part just read apparently was dictated and signed by Dr. Robert Smith, the ER physician.
Q. Specifically states, there are no marks, abrasions, bruises noted about the head, doesn't it, Doctor?
MR. TIRA: Objection.
A. That's what it notes.
Q. So it's not impossible for this physician to have overlooked a complaint by Lazo in the emergency room, is it?
MR. TIRA: Objection.
A. You know, it comes back to the issue that anything is possible, but again with reasonable certainty if he had tom the anterior cruciate ligament at the time of the motor vehicle accident, there would have been acute pain in the knee, acute swelling of the knee, and it would have been very unlikely that would have been missed at

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that time.
Q. And, Doctor, in the letter by Dr. Vangelos to whom Lazo was referred by Dr. Boza, September 30, 1998, he writes in the history --
MR. TIRA: Let him get it please.
A. What was the date again please?
Q. September 30, 1998.
A. Okay. Got it.
Q. Thank you. Under history, at that time he gave a history of being in an MVA, motor vehicle accident, on September 16, 1998, at which time he stated that he was hit from the side and his knees were hit into the dashboard and the side door. He states that his right knee is feeling somewhat better although there is still some pain on the inside. He states that his left is still bothering him quite a bit and he can't straighten it.
Again, is that documentation by a medical individual of

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the history being given by Lazo Devic?
A. It's a report of the history that he was told at that time.
Q. That he was giving. Okay, that the doctor was receiving from Lazo, correct?
A. That is what that would indicate.
Q. Now please, Doctor, on to October 14, 1998, Dr. Larry Lika's note.
A. I have to find that. Okay.
Q. Under history, this is a patient referred to us by Dr. Vangelos. He's a 25-year-old male who was involved in a motor vehicle accident on September 16, 1998. Both knees hit the dashboard. He was complaining of chronic left knee pain following the accident. That also is a history being given by Lazo, correct?
MR. TIRA: Objection.
Record speaks for itself.
A. Again, that's the history that was reported at that time apparently.

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Q. But you chose to disregard all of that in arriving at your opinions; is that an accurate statement?
A. No, I didn't disregard it. I considered it, but Dr. Lika also notes in the physical exam at this time, these are his words, surprisingly for an injury that occurred four weeks ago, he has absolutely no swelling. That's not my words, it's Dr. Lika's words. Yeah, that is surprising, doesn't make sense.
Q. Dr. Lika has gone on the record through deposition testimony that the injuries that he sustained to the ACL were as a result of the -- direct and proximate result of the motor vehicle collision. Are you aware of that?
MR. TIRA: Objection.
A. If those are his opinions, then I would disagree with them because the records do not support that the anterior cruciate ligament tear occurred acutely at the time of the motor

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vehicle accident. They don't support that.
Q. But you were relying upon the fact that he didn't have symptoms to the EMS -- strike that.
Did you note that the EMS technician documented the fact that Lazo's car was T-boned?
A. I'd have to look at that record. That sounds familiar. Let me find that record if you're going to ask me about it.
Q. While you're looking, Doctor, have you reviewed the deposition of Dr. Lika?
A. No.
Q. Are you aware of Dr. Lika's affiliation with Horizon Orthopedics, have you ever heard of that group?
A. I have.
Q. Is that the group that is the medical group that treats the Cleveland Indians?
A. They indicate that on their letterhead.

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Q. You're not aware of that?
A. I don't know Dr. Lika personally.
Q. You're not aware of his competency or reputation in this community as an orthopedic surgeon?
A. I don't know one way or the other.
Q. Do you have any criticisms of him on the work that he did in this case?
A. No. Still looking for that. You were asking regarding the EMS report?
Q. Yes, that it was T-boned. Were you aware of that?
A. It notes T-bone, yes.
Q. Okay. Incidentally, Doctor, these people that you examine have all been -- that we've talked about in conducting IMEs, they're not your patients, correct?
A. No, they can't be, because in order to form an independent medical exam, the rules indicate that they can't

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be my patients.
Q. Have you ever done an examination for Joe Tira? We're not talking about this case, but I mean prior to today, have you ever done that at his request?
A. Yes.
Q. And you have done multiple examinations for his former law firm, Quandt, Giffels, Buck & Rogers; is that true?
A. I think I have done some before for that outfit.
Q. And you've done, in fact, other examinations for the lawyers where Mr. Tira is presently employed, Jay Hanson and others, have you not, before today?
A. Yes.
Q. And you've done actually evaluations at the request of various lawyers throughout town, Denise Wurkem, is that true?
A. Yes.
Q. From a defense firm. The

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defense law firm Keller & Curtain, correct?
A. Yes.
Q. Terry Conneally?
A. I think it's been some time.
Q. Sean Pearson, true?
A. I think it's been a long time.
Q. Thomas Downs?
A. Probably a long time ago.
Q. Mr. Micelli?
A. Some time ago.
Q. Ms. Damelio?
A. Name is familiar.
Q. You've done them for the law firm of Gallagher defense law firm of Gallagher, Sharp, Fulton & Norman, correct?
MR. TIRA: Objection.
A. At some point.
Q. Weston, Hurd --
A. At some point in the past.
Q. -- Weston, Hurd, Fallon & Paisley, correct?
A. Not sure.

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Q. Reminger & Reminger?
A. Not sure.
Q. The estimate that I am aware of is that you're doing exams for more than 50 lawyers, defense lawyers in greater Cleveland. Does that sound about accurate?
MR. TIRA: Objection.
A. Not all at one time. Maybe over the years in the past, but I don't know if that's the case or not.
Q. Are you telling this jury that you know more about Lazo Devic's injury based on a simple review of medical records without ever having performed a physical examination, no history, and never looking at his x-rays or MRI and certainly never looking at his knee while doing surgery?
A. I can tell you that I think I have a very good handle on the important factors in this case because they're laid out in the medical records. They're laid out in the physicians' evaluations and physical exams. And

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I've already told you it wouldn't have mattered if I would have examined him myself. He already went under reconstructive ACL surgery. His exam would have been very different because of the surgery. And that wouldn't have helped in determining opinions regarding this motor vehicle accident.

Q. May we agree that arthritic conditions don't get better unfortunately, but they progress?

A. In general, arthritic conditions progress at some rate.

Q. And you've never had the opportunity to listen to Lazo through the course of many visits over a great period of time, to be in a position to fully evaluate his medical complaints, injuries and the treatment as it progressed over time?

A. I've seen the reports of Dr. Lika who did treat him. I reviewed the operative report, findings at that time. I reviewed the medical records that gave a lot of information in regards to his

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condition.

Q. You never had the ability to be in a position to render or give hands on care to this fellow; is that a fair statement, Doctor?

A. As I've already told you, I can't have been a treating physician for him and then performed an independent medical exam. It's against the rules.

Q. Doctor, I mean you've never even given hands on care by taking a look at this fellow to give your opinions in this case, true?

A. I've already told you, examining him, physically examining him wouldn't have made any difference because he had already undergone an ACL reconstruction. So his knee exam would have been very different because of his surgery as opposed to shortly after the accident.

MR. LOUCAS: I have no further questions.

MR. TIRA: Just a couple, Doctor.

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EXAMINATION OF
TIMOTHY L. GORDON, M.D.

BY-MR.TIRA:

Q. In your practice have you ever had occasion to serve as a medical expert for an individual pursuing a case, a plaintiff in that case?

A. Yes.

Q. Okay. Doctor, it's close to 2:30. What would you be doing now if you weren't giving this deposition?

A. I would be on my way to the hospital.

Q. So you charge for your professional time?

A. Sure.

MR. TIRA: Thank you, Doctor. No further questions.

EXAMINATION OF
TIMOTHY L. GORDON, M.D.

BY-MR.LOUCAS:

Q. Doctor, you block out entire half days on your appointment calendar for depositions, don't you?

A. It depends. We block out

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time.

Q. Generally speaking, Doctor, we've just been through your calendars this morning and what we have found is that when your office schedules you for deposition, you block out the entire afternoon; is that fair?

A. We block out a chunk of time for this. Hopefully it won't last too long. And the schedulers who make out the appointment book don't know if I have to go to the hospital or not. So whenever we're done with this, that's where I'm going to go.

Q. So, Doctor, you've made 2,700 bucks, haven't you?

A. Well, I'm going to charge for the time that you have asked me questions. As I told you from the get go, you know, I've sat here patiently and answered your questions. And yes, I'm going to charge for that. It's based on all the questions you decided to ask. My time is valuable. So, yes, I charge for my time.

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Q. And, Doctor, you won't be charging me. You'll be charging Mr. Tira, but under cross-examination I'm permitted to ask you questions as long as necessary.

Be that as it may, that means the total money you've made from this case exceeds $3,000 so far, correct?

MR. TIRA: Objection to the characterization.

A. Look, I've already told you, I sat here patiently and answered your questions. You asked a lot of questions. You took up a big chunk of this time and I answered your questions. And yes, I'm going to charge for that. That's based on all the time you took up from me.

MR. LOUCAS: Objection, move to strike. Nonresponsive.

Q. Doctor, the question was in addition to the time that you have billed today for $2,700 and the $700 that I saw as billed previously, you've

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charged so far in excess of $3,000. Can you answer that question directly?

A. Number one, I haven't --

MR. TIRA: Objection. Asked and answered.

A. I haven't charged for this time yet. The basis of my charges is the time. And I've already told you, this is direct result of how many questions you've decided to ask me, a very long period of time for questions. Of course I'm going to charge for that. I've already told you that.

Q. I'm sorry, you're still not answering. Doctor, are your charges going to be as of today in excess of $3,000? One of us will finally get an answer before we leave.

MR. TIRA: Objection, asked and answered. Objection to the characterization of the question.

A. All right. I told you already that I charge $900 an hour for deposition time. You've decided to take up a long chunk of my time. So yes, I

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will charge for that. If that was three hours, I would charge $2,700 for that. A very large chunk of that time, the majority of that time is you asking questions. So you determined how long that went. And of course I'll charge from that. You knew that from the get go. So based on what you knew my charges were, I told you that from the beginning, there's no secrets there, as long as you ask me questions, I'll answer them. And I've done that. So that would be what I would charge for three hours of time.

Q. Okay, Doctor. I'm sorry, but I'm not going to be paying these bills. Ms. Marciano's lawyer is going to pay them for you. But what I am asking is, let's say we started at 12. It's 2:35. So let's call it two and a half hours. And then you put a half hour in with Mr. Tira beforehand. So that's three hours today, fair enough?

A. .I've already told you, three hours today based on you asking two

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hours of questions. So sure I'm going to charge for that. I told you from the beginning.

Q. I'm sorry, Doctor, I just want an answer to the question.

A. I am answering the question.

Q. Sir, let me finish. 2,700 for that. And is this the only other bill that you have for 700 on this case?

A. I've already told you as far as I'm aware that's what the bill was.

Q. So that's 33. So the answer is yes, at this point in time there will have been over 3,000 in charges for your defense medical examination of Lazo Devic, true?

MR. TIRA: Objection.

A. 700 for the evaluation and report and then the rest of the balance of the charges is based on the time that I have been sitting here answering questions. And as I've indicated, you know, the big chunk of that was your asking questions. So all that together

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would equal that.
Q. Doctor, I'm sorry, I forgot the $900 cancellation fee. So that's 4,100 you've made in this case, isn't it?
MR. TIRA: Objection.
A. We've already been through this already. You scheduled a big chunk of time for me to go through, what, last week and then you cancel it at the last minute. So of course I'm going to charge you for that.
Q. Okay. You would agree with me more likely than not your charges in this case to date will be in excess of $4,000, sir?
MR. TIRA: Objection.
A. Again if you go through the numbers of what I have told you from the get go, based on decisions you've made, that I'm going to charge those amounts.
Q. Doctor, how much time have you put into it to charge that $700? Is it reflected on that statement?

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A. No.
Q. So how much time does that $700 represent?
A. I don't recall how much time it took to do the evaluation and generate that report.
Q. Well, you didn't do an examination or take a history or look at x-rays, so you charged $700 just to look at records in this case, true?
A. I charged $700 to review the records, think about the records, think about the report, dictate the report, and review the report.
Q. Without doing a physical examination, a history or reviewing real tests of his knee, Lazo's knee, true?
MR. TIRA: Objection.
A. Yeah, I don't think you can say real test. I reviewed interpretations and I reviewed the records made available and I generated a report as we've already talked about.
Q. I'm sorry, my definition of real tests are actual or copies of

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x-rays in this case or MRI films. Is that all right if I define real tests like that, Doctor, with you?
A. No I think the better way to say it would be actual studies. I reviewed the interpretations of those studies as I've already said.
Q. But you didn't review the films, correct, Doctor?
A. That's correct.
Q. Okay. So the 700 bucks you charged was just for records. That was my original question. You'd agree with me?
MR. TIRA: Objection, asked and answered.
Q. Is that yes or no, Doctor?
A. I told you it's not just reviewing the records. I review the records, I think about the records, I generate a report, I think about the report and I review the report. That's a long time.
MR. LOUCAS: I have no further questions.

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MR. TIRA: Thank you, Doctor.
VIDEO TECHNICIAN: Going *off* the record at 2:38.
MR. TIRA: Doctor, you have the right to read the transcript and view the videotape or you may waive those rights.
THE WITNESS: I'll waive it. Thank you.

TRANSACTIONS INQUIRY (UPD)

ACCOUNT: 16806 JOSEPH C GULLO ACCOUNT TOTAL: 0.00
PERS: 0.00 INS: 0.00 COLL: 0.08 w/COMP: 0.00

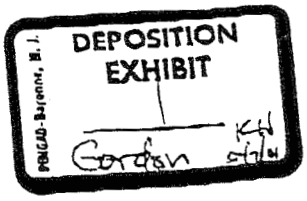
CHG-#	CTRL	PATIENT	DOC POS	TRNCODE/MO DX	DESCRIPTION SET# NAME	INS HISTORY	AMOUNT #	D
65289	100	LAZO	04 OFF1	116/NC	REVIEW OF RE 0	/PS	700.00 0	0
65289	100	"PAYMNT" "TOTAL"		COMM	COMMERCIAL I DUE FROM	/PS	700.00- 0	0

TRANSACTION TOTALS: CHGS: 700.86 PAYS: 700.00 ADJS:
INS SET 0 TOTALS; CHGS: 700.80 PAYS: 700.00 ADJS:

PROV GRP TOT: CHGS: 700.00 PAYS: 700.00 ADJS:

ENTER (M)ORE, (P)REVIOUS OR A SPECIFIC CHARGE NUMBER FOR DETAIL:
F5=BILLING F7=TRANSACTIONS F6=PATIENT F9=PATIENT NOTES F8=ANOTHER ACC F10=PRINT INQ

PRACTICE:upd OPERATOR:MARIE 04/09/01 09:16:08



Highland
Musculo-Skeletal
Associates, Inc.

Robert C. Corn, M.D., F.A.C.S.
Timothy L. Cordon, M.D.
Orthopaedic Surgeons

DEPOSITION EXHIBIT 2 Cordon 4/21/0

June 6, 2000

Mr. Joseph C. Gullo
Claims Representative
Progressive Insurance Company
5595 Transportation Blvd, Suite 210
Garfield Heights, OH 44125-5325

RE: Lazo Devic
Date of Accident: 9/16/98
Claim No. 98-1983220

Dear Mr. Gullo:

I reviewed medical records regarding Lazo Devic who was involved in a motor vehicle accident on September 16, 1998. He is a 25 year old male. An Ohio Traffic Crash report indicates Mr. Lazo was driving an automobile that was struck in the left rear corner by the front of a van in a parking lot.

EMS records indicate complaints included right knee area

Bedford Medical Center Emergency Room record of September 16, 1998 noted complaints included the right knee area. There was no indication of left knee area complaints. Exam noted localized tenderness over the medial aspect of the proximal right lower leg. X-rays of the *right* tib-fib area were negative. Diagnosis was leg contusion.

Office note of Dr. Brian Bozza September 29, 1998 noted a report of left knee pain, history of motor vehicle accident September 16, 1998. Notes he states at the time he had right knee pain and x-ray was negative. He also states that at the time, he had left knee pain but they did not evaluate this one and it was not swollen at the time. Since

the injury the patient states he has had persistent increasing left knee pain associated with some giving way when he tries to ambulate. He has been using a knee brace and it seems to help. He denies swelling. Denied previous injury of that knee.

Exam noted right knee is normal, left knee demonstrates similar decreased range of motion in flexion and extension. He cannot flex or extend. There is no gross effusion. Noted ACL is somewhat lax compared to the right side.

He was subsequently referred to Dr. Vangelos who evaluated him September 30, 1998 and ordered an MRI scan of the left knee. This war obtained October 8, 1998. He was subsequently referred to Dr. Lika, orthopaedic surgeon, who evaluated him October 14, 1998. His report notes Dr. Vangelos states that he is a 25-year-old male who was involved in a motor vehicular accident on September 16, 1998. Both knees hit the dashboard and he was complaining of chronic knee pain. Further notes MRI scan noted findings included anterior cruciate ligament tear. Dr. Lika noted since he was completely asymptomatic he would not recommend anterior cruciate ligament reconstruction.

Subsequently records of Dr. Lika indicate Mr. Lazo underwent arthroscopic surgery of the left knee December 23, 1999 for left knee Grade III anterior cruciate ligament insufficiency. He was noted to have instability of the left knee. The arthroscopic examination noted the medial and lateral compartments to be normal. Complete Grade III tear of the anterior cruciate ligament. He underwent arthroscopic assisted ACL reconstruction.

The medical records I have reviewed are not convincing of a causal relationship of the subsequently diagnosed anterior cruciate ligament tear of the left knee and the motor vehicle accident September 16, 1998. The injury described would not be a common mechanism of injury for causing a tear of the anterior cruciate ligament. It would have been expected that bad the anterior cruciate ligament tear occurred at the time of the motor vehicle accident that injury to the left knee would have been acutely apparent in the emergency room. There were no left knee complaints noted at that time. He was noted to be discharged ambulatory from the emergency room.

Anterior **cruciate** ligament **tears can commonly occur as a result of sports activities.** He **had** given **a** history of **being active in** sports.

Based on **the records** I have reviewed it **is my** opinion to within a **reasonable degree** of medical **certainty** that **the subsequent** diagnosis of anterior cruciate ligament **tear** of **the** left knee **and subsequent** reconstructive surgery was most likely not **causally related** to **the** motor **vehicle accident** of **September** 16, 1998.

Sincerely,

T. Gordon

Timothy L. Gordon, MD

TLG/bn

Cc: File

Category	Time Period	IMEs	
Number Performed	October 1998 - December 1999	124	34
	January 2000 - December 2000	89	29
	January 2001 - March 2001	24	3
Range of Charges	October 1998 - December 2000	$500 to $2,000 (approx.)	$900 per hour charged to plaintiffs and defendants irrespective of who retained the doctor

In *addition,* pursuant to the agreed protective order, we will make Dr. Gordon's appointment books (from January 1999 to present) available to you at Dr. Gordon's office. As discussed, the appointment books will *be* made available 1 hour before the deposition of Dr. Gordon on May 7, 2001. *Pursuant* to our agreement to abide by the *terms* of the agreed order, *the* appointment books will be made available prior to entry of the protective order by Judge Boyle. The agreed order is attached for your signature. Please sign the Order and return it to me so that I can sign it on behalf of Highland and have it filed with the Court.

Pursuant to our agreement the above information, in addition to the information we previously provided in our April 9, 2001 correspondence, will constitute full compliance with the referenced subpoenas. We appreciate your assistance in bringing this matter to an amicable resolution. If you have any questions, please feel free to contact me.

Sincerely yours,

Colin R. Jennings

CRJ/acb
cc: Joe Tira, Esq.
Enclosure

In response to your May 4, 2001 fax — the chart regarding Lazo Dorc maintained by Highland will be available during deposition, including Highland invoices related to Mr. Dorc. Co Dec. 10, 2001 Letter —