Doc. 255

STATE OF OHIO )
) SS:
MEDINA COUNTY )

IN THE COURT OF COMMON PLEAS

CASE NO. 54717

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| DENNIS A. BAUGHMAN, | ) | |
| PLAINTIFF, | ) | VIDEOTAPE DEPOSITION |
| VS. | ) | OF |
| RAYMOND C. PIERCE, | ) | DR. JENIFER KRIEGLER |
| DEFENDANT. | ) | JUDGE |

VIDEOTAPE DEPOSITION taken before Tim Palcho, a Notary Public within and for the State of Ohio, pursuant to Notice and as taken on May 14, 1993 at the office of Dr. Jenifer Kriegler, University Hospitals of Cleveland, 2074 Abbington Road, Cleveland, Ohio. Said deposition taken of Dr. Kriegler is to be used as evidence on behalf of the Plaintiff in the aforesaid cause of action, pending in the Court of Common Pleas, within and for the County of Medina, for the State of Ohio.

APPEARANCES:

MR. MICHAEL KUBE,

On Behalf of the Plaintiff,

MR. GEORGE LUTJEN,

On Behalf of the Defendant,

OPERATOR: We're on the record. Doctor, raise your right hand please. Do you swear the testimony you are about to give to be the truth, the whole truth and nothing but the truth, so help you God.

DR. KRIEGLER: Yes it is.

MR. KUBE: Let the record show that the deposition of Dr. Kriegler is being taken for use in the trial of the case of Dennis Baughman versus Raymond Pierce in the Medina County Common Pleas Court. That it has been done pursuant to all of the required formalities as far as Notice are concerned, I believe. But just in the event that I missed one there is a waiver of any of those

MR. LUTJEN: We waive anything... Michael.

DR. KRIEGLER: The battery was flashing. The red light.

OPERATOR: Yeah, that means it went off, it's on now.

MR. KUBE: I'm going to start.

OPERATOR: Stand by, We're on the record.

DURING DIRECT EXAMINATION BY MR. MICHAEL KUBE:

Q Doctor, for the members of the jury who will be seeing and hearing your testimony in this case would you please introduce yourself and give us the address at which we are taking your testimony please,

A Jenifer Kriegler. And this is University Hospitals of Cleveland, 2074 Abbington Road, Cleveland, Ohio.

Q And your occupation is a physician, is it?

A Yes.

Q When were you licensed to practice medicine in the State of Ohio?

A 1981.

Q Can you tell us just a little bit about your medical training? That is, where you went to undergraduate first, and then medical school and then the required education you've had after that.

A I graduated from Skidmore College in Saratoga Springs, New York in 1972. I graduated then from the State University of New York at Buffalo School of Medicine in 1976. I did an internship at Newark Fillmore Hospital in Buffalo, New York in the year 1976 to 77. Following that I did a neurology residency at Case Western Reserve

University here at University Hospitals. And in the year 1980, was chief resident in neurology. From 1980 to 81, I did a fellowship in the Department of Neuroanatomy at Case Western Reserve University. And in 1981, I came on the staff at University Hospitals and the faculty at Case Western Reserve University,

Q Now you used the term repeated, "neurology", are you a neurologist?

A Yes I am.

Q And what particular field or area of medicine does the field of neurology and does a neurologist deal with?

A The brain, the nerves, the spinal cord, and everything that they innervate, including muscles.

Q And by innervate, you mean make work?

A Right.

Q Now, what is your current position here at University Hospitals?

A I am an associate professor of neurology at Case Western Reserve University. I'm the director of the Pain Center and the neurology residency program director here at University Hospitals.

Q Now, as an instructor at the medical school...

...Mmm-hum...

...do you teach people who want to become doctors?

A Yes.

Q And what courses do you teach?

A I teach neurophysiology, neurology, neuroanatomy.

Q And then you mentioned you were the director of the Pain Center here at University Hospitals?

A Yes.

Q Give us an idea, for those people on the jury, because we're trying this case in Medina and they may not be familiar with University Hospitals...about University Hospitals size a little bit. Can you tell me...how many bed facility is this place?

A A nine-hundred and fifty bed facility.

Q Okay. And they have a specific department known as the Pain Center here?

A Yes. The Pain Center is within the Department of Neurology.

Q How many. ..how long has the Pain Center, that you are the director of, been in existence?

A I developed the Pain Center in 1983, when it was first opened.

Q So its been about ten years now..

A Correct.

Q Do you have any idea or approximation how many patients you've had an opportunity to see as Director of the Pain Center over those ten year period?

A Thousands.

Q What medical services are available and given to people here at the Pain Center Department?

A Okay. People who are referred to the Pain Center have a chronic pain problem. It is pain that persists longer than three to six months despite what appears to be appropriate medical treatment. And they are referred here for management of their problem.

Q So, I take it from that answer, you had occasion to see patients that had been treating with other physicians for a period of time. And have not, despite that treatment, had relief of their problems or their pain?

A That is correct.

Q And did Denny Baughman fit into that category, so to speak?

A Yes he did,

Q Why do you think that is, that you have patients that come here because they haven't been able to get relief despite treatment by other, presumably competent, physicians?

A There are many reasons for that. First and foremost, just because you fix something, even if you do a surgery on something that's apparent...doesn't necessarily mean that the pain that it produces is going to go away, You may correct the structural abnormality, but it may not

correct the underlying pain that it causes. And that can.,.

10:50:08 - MR. LUTJEN: Excuse me doctor, I just...the Judge will decide that. I object to the general question. I wasn't going to, but now were into surgery, and this case we're dealing with what the doctor calls a whiplash injury in the reports. I think it's prejudicial to my client to be talking about surgery at this stage. This is not...

...I wasn't talking about surgery in regard to your...to this individual, I was just talking about..,

...I appreciate that..,

...generic...

...I understand that, but...

...things...

...sometimes that flops over a little bit...

...Okay...

...The Judge will tell us...

Q Why don't you finish your answer and then I'm going to ask you another more specific question.

A There are many causes of pain. And there are things that can be fixed surgically, that can be fixed

medically. The pain may or may not improve despite the improvement in other parts of someone's disability. They may have a foot-drop for example, and the foot-drop gets better, but the pain in the foot doesn't go away. And there are many different mechanisms for pain, it is a very complicated neurophysiologic process. And because a lot of it is not quite understood, we cannot tell you why it is that some people do well and some people don't do well. But it is clear that abnormality in the pain system persists despite what appears to be appropriate and adequate treatment.

Q Now, we know, because we have Dennis Baughman's medical records, all of us, both myself and the other attorney and I know you have it. That Dennis Baughman didn't have to have any surgery. That he didn't break any bones. That he had injuries to the soft tissue parts of his body. Why is it that after treatment, such as therapy and some other things, that probably Dennis had, he still has pain?

A I don't think anybody can give you a specific reason. Pain is produced in a variety of ways. It is perceived in a variety of ways by us in a neurophysiologic way. In other words, when we sense pain, we sense pain because of certain pathways that bring that abnormal sensation to our brain. We can impact on how we relate to

the pain in a variety of ways, either with medicine or with therapy or even with psychological techniques. And that can allow us to either cope with the pain or not cope with it depending upon a certain set of circumstances. I will give you an example of somebody, and it's a very common example, of somebody who's injured in a battle. And they're fighting and they may have their arm shot off, but yet they continue to fight and not even be aware that they've been terribly injured until it's all over with. And then they stop and realize what has happened, and that's when their pain begins. So we have a remarkable ability to be able to use a variety of pathways in our body to cope with pain. In Denny's case, he had a whiplash injury. He had... and that is an acute extension/flexion injury of the spine, usually at the neck, but it can involve the low back. And what happens is that muscle fibers are pulled and torn. There's lots of soft tissue damage and swelling. And as that repairs itself, those muscle fibers scar-down the way anything else scars. They don't heal themselves quite normally. And they don't...the muscle then doesn't work normally. It develops what are called trigger areas where there is focal areas of muscle spasm. That also can entrap nerves as it comes through and supplies the muscle and the skin. And that can cause pain which radiates. So there are a whole variety of reasons why pain will develop

after an injury like Dennis had.

Q Let's talk specifically about Dennis. And I see you have your notes in front of you. Can you tell the members of the jury please, when you first had the opportunity to see Dennis Baughman?

A On November 26, 1990.

Q And when you first saw him, I assume you did what most doctors do and asked him to tell you about his problems, and what happened to him and when his problems began. I guess you call it a history, Did you take one of those?

A Yes I did. And I will tell you that I saw Dennis initially with my fellow at the time, who is Marlene Bednar, who is no longer here.

Q And a fellow, that's a medical student or... already a doctor.

A Actually she is somebody who completed a neurology residency and was doing an additional year of training in pain management. So she spent a year. She was already... was licensed to practice medicine. She had completed her neurology training and was board eligible in neurology. And she was spending additional time learning about pain problems.

Q How you treat them...you primarily.

A That's correct.

Q All right. So go ahead then you saw Dennis for the first time on November 26, 1990.

A Mmm-hum.

Q What history did you take of significance at that time?

A Okay. He, at the time, was 31-years-old. He stated that he was injured in a motor vehicle accident in March 1989. He said that while driving his motor vehicle he was struck from the rear at about 60-miles-an-hour by another motor vehicle. And subsequently his car was pushed into a semi-tractor trailor rig head-on. He recalled his neck snapping forward and backwards and being thrown against the side of the car, but he did not lose consciousness. He was taken to the local emergency room where he received x-rays showing no fractures of dislocations. He was diagnosed with a whiplash injury and had multiple strains and sprains involving his neck and low back.

Q Now, just let me stop you a minute. Is that the type of injury that you've been...you told us about just a little bit ago, about when the soft tissues are torn...

...Right...

and then they heal with scar?

A Right.

Q Okay, Go ahead.

A Ahh...

...I'm sorry to interrupt you.

...Okay. That's okay, I'm just looking to see where I was He said since the accident he developed severe persistent constant aching pain alternating with stabbing right shoulder pain. The pain would increase with movement, especially rotational movements. He works as a janitor and found himself unable to tolerate activity required for work because **of** his shoulder pain. His pain did not improve since the time of the accident. He would also get bilateral, what we call, occipital or back of the head headaches associated with pressure sensation. The headaches would last all day long. And he relates the headaches to the onset when he had his whiplash injury. He also discussed with us bilateral hip pain, which would increase in activity...with active movement. There was tightness and tenderness over the mid to low back, especially with twisting movements at the waist. He reported that his lower extremities would give out on him because of the pain. It would oftentimes radiate from the low back into both hips down the back of both legs and into the calves. He stated that because of the problem he had been going to physical therapy and he received heat and ultrasound in therapy. And then he also saw a chiropractoa none of which seemed to help.

**Q** Let me stop you there doctor. **I'm** going to show

you what will be introduced in the trial of this matter. And they are the hospital record from Lodi Community Hospital which relate to his initial emergency room treatment. A subsequent visit about a week after his accident, just for further x-rays. And then two periods of time which relate to the physical therapy which you just mentioned that he had received. I just want you to take a brief look through them so you're completely familiar with them for purposes of my questions. Can you get us off?

OPERATOR: We're off the record.

OPERATOR: We're on the record.

...Okay doctor, you've had an opportunity for a brief period of time off the record to look at what I've had marked as Exhibit A, B, C, and D, which relate to the Lodi Hospital records that I made reference to. I just have a couple of things, I want to make sure these are clear. You...it's indicated on the initial emergency room report that the diagnosis is myofascial strain. And then...well let me limit it to that right now.

A Okay.

Q How does that term, Myofascial strain, compare with what you were talking about earlier relative to Dennis' injuries? Is it the same thing?

A That's the same thing, compatible with it.

Q Okay. And then, obviously, you've seen briefly

that the very therapy records which relate to the prior therapy reference to which you made in your testimony.

A Right.

Q Okay. Now, were you aware also that Dennis had received various diagnostic studies, including an MRI of the cervical spine, an EMG study, a right shoulder arthrogram, and an EMG study. Were you aware of all of that?

A Yes.

Q He told you that?

A He told me that.

Q And were you aware of what the results of those studies were?

a Right. They apparently were all normal except the EMG showed a right carpal tunnel syndrome,

Q Okay. Why would it be that those studies would be normal and yet you relate that Dennis had suffered some sort of injury to the neck and back and shoulder area of his body?

A Because these studies are all looking at the bones and the joints, they're not looking at the soft tissue.

Q Okay. You mention in here, I'm just looking at the same report that you are because we...both attorneys have a copy of it. That he had received a Xylocaine injection in his right shoulder.

A Mmm-hum.

Q I want to tell you that Dennis has told us and told Mr. Lutjen that that Xylocaine injection was performed by a Dr. Brims. And then he was asked to do a push-up and he did it. And he subsequently didn't go back to Dr. Brims because he got the impression they didn't believe he was having any shoulder pain.

A Mmm-hum.

Q Let me ask you about...are you familiar with that technique of giving him Xylocaine...

...Sure...

...injection in somebody's shoulder.

A Right.

Q Why is that done3

A Xylocaine is a local anesthetic. It will. numb up the joint, so that if you have anything wrong with the joint, then, basically, you're going to block the pain from the joint and you should not have pain, All that that tells us is that there is nothing wrong with the joint. And there is nothing wrong with the attachments of muscles, like the rotator cuff. Those are the things that you can tell from a shoulder injection. It doesn't tell you whether there is anything wrong with the soft tissue.

Q Okay. So the fact that the Xylocaine injection was given and he was still able to do a push up does not disprove the fact, if I understand your testimony correctly,

that he had injuries to the soft tissue structures in that area?

A That's corret. And, in fact, the injection was a diagnostic value because then you don't have to worry that there is a problem with the joint that may change how you're going to deal with the situation.

Q Okay. I think I understand you. Now, go on then with anything relevant in the history you took. For instance, did...had he been taking any type of medication which had been prescribed to him...

...Yes...

...for his pain?

A He had been taking a variety of medications, some of it what we call the non-steroidal anti-inflammatory drugs, which...like Motrin or Naprosyn. He took some narcotic medication like Talwin, Darvocet, Tylenol #3, Demerol. None of them particularly helped his pain.

Q And when he came to you and you saw him in November, did you ask him to tell you in any way about the severity of his pain, and perhaps what aggravated it, what made it better?

A Basically with pain problems, since the way I experience pain is different from the way you experience pain. All I'm interested in is how you as an individual experience pain and what kinds of things make it better

and worse. And so that I can understand what you're talking about, I will ask you to rate your pain as 0 being none; and 10 being the wrost pain that you've ever experienced. And on that scale, give me an idea right now of how much pain you're having. When I saw him he rated his pain as a 6.

Q That's exactly at the time he was talking with you?

A That's correct.

Q November 26, 1990?

A That's correct...

...Okay...

...Okay. Then with rest he said the pain would improve. And with activity and exertion it might go up to a 10. So he had a variety of ranges of pain that he personally would experience.

Q Now, did you then proceed to conduct a physical examination of him?

A Yes.

Q Okay. Just briefly, did you, during the course of your physical examination, find anything that supported his complaints of pain in the areas that he said he was experiencing pain in?

A Yes.

Q What did you find?

A He had tenderness over the shoulder, and over the muscles in the shoulder. He had increase, which was.., this was a subjective thing, he had some increase in pain when we asked him to actively move his shoulder. In other words, asked him to do it as opposed to me taking it through what we call range of motion. There was what we call crepitus or sort of...it's a crinkling like if you were to roll up a ball of paper, you'd hear that noise. Well there was that sort of noise when you would palpate the shoulder and ask to move the shoulder. He had trapezius, which are these muscles, spasm. And he had pain with the moderate...he has moderate spasm over the shoulders.

Q What is...I'm sorry to interrupt you, but you showed that he had spasm and you indicated along the top of his shoulders and the lower part of his neck. What is spasm? What does that mean?

A It's an abnormal contraction of a muscle. So that...simply stated, it...at rest, this is the easiest muscle to show it in.

Q Your bicep?

A Your Bicep muscle.. .

...Okay...

...Okay. At rest, the muscle is like this. If you make a fist, you contract the muscle...

...Okay...

...Okay. What he did and what's happening in his shoulder is that those muscles are contracted all the time.

Q Okay. He's not doing it?

A No. It's produced and that is a response to an injury that's pain...that produces pain.

Q All right. Is that something you can feel when you put your hands on him?

A You can feel it and you can see it...

...Okay.,.

...Okay, He also had tenderness to palpation over the mid thoracic spine, which is the middle of his back. And at that time there was no muscle spasm of those muscles.

Q Okay. Now, you had his history and you had the results of your examination and you had information as to his prior test results. With all of that...and then you had your examination. With all of that, did you come to some type of impression or conclusion or, as I think doctors call it, a diagnosis of his physical problem?

A Yes.

Q And what was that?

A Well there were seven initial impressions that he had. A chronic pain syndrome involving his right shoulder. Because of the crepitus, he had probable traumatic arthri-

tis nd bursitis. He h d post-traumatic muscular contraction headaches. He had lumbosacral, and that's the low back, muscle strain as well as cervical, which is the neck, and thoracic, which is the mid back, muscular strain.

Q Now, doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not those conditions that you just related to us were directly and proximately caused by his automobile accident of March 1989; specifically March 9, 1989?

A Yes.

Q And what is that opinion?

A That they were caused by the accident.

Q Did you make further recommendations then, for his further care?

A Yes.

Q And what recommendations did you make and why?

A I felt that at that time he was appropriate to participate in a pain management program from a medical standpoint. I wanted him to see Dr. Ashenberg, who is our psychologist in the pain center, to see if he was psychologically appropriate for this type of treatment. We changed around his medications and I started him on two different medicines. One an anti-inflammatory agent, and the other Pamelor, which is an anti-depressant which is used in pain management. It's used in pain management

because it increases your body's production of endorphines, which are your own natural pain relieving substance. They have an analgesic affect because they work on the opiate receptors. They help with sleep maintenance and allowing somebody who has chronic pain to sleep because they're sedating without interfering with the normal sleep cycles. And they do have a mild anti-depressant effect which we thought might be helpful. So we wanted him to start on the two medications and to see Dr. Ashenberg to see whether he was psychologically appropriate for this type of treatment. And then we would go from there.

Q Okay. Now before I ask you about how he's done during- the course of your treatment and...is he still a patient of yours here?

A Yes.

Q Okay. Let me tell you that Dennis has related to us, both lawyers in the case, that he has seen physicians before this automobile collision in March of 89, occasionally for back and neck complaints. And I want to relate those to you as I understand them. He had been seen by a Dr. Funk, who's a chiropractor, I think even when he was a sophomore or junior in high school. He was a wrestler and he had some complaints with his neck and right shoulder way back in 76 or 78. And then he had some problems with his back when he was riding an ATV and it turned over.

And he went back to see Dr. Funk in 1985. And then he even had some achiness in his low back one morning when he woke up in 1989. And then, of course, you know he had this automobile accident in 19...March of 1989.

A Mmm-hum.

Q Now, with that understanding and taking, obviously, into consideration the accident and the medical records that I've shown you as well as all the information which you've Obtained from treating him over a 2-1/2 year period. Do you have an opinion based upon a reasonable degree of medical certainty as to whether or not this auto collision of March of 1989, is the cause of his present physical problems?

A Yes.

Q And what is that opinion?

A That it is the cause of it.

Q Let's talk about your treatment of Dennis here at the Pain Center for the last several years. What then did you proceed to do for him and how has he done as a result of it?

A Okay. He was initially followed, probably for nine months or so, as an outpatient without entering into a pain management program. And the reason for that is that he was working...he continued to work despite his problem, And it would have been quite difficult for him

financially to take the needed time off...it would be three weeks that he would need to participate in a pain management program. During a pain management program we request, unless there is some really significant other problems, that somebody does not work because they will need to devote their time to the kinds of things that we're going to be teaching them. So it did take him some time to be able to decide that he had to take the time off because, otherwise, he was just not going to do any better.

Q And did he ultimately do that?

A Yes, he ultimately took the time off and participated in a three week outpatient pain management program.

Q And when was that? Do you have a month and a year?

A I believe his pain management program was in October of 91. That's when he started.

Q And you say that's a three week program. What did...just briefly, give the jury and myself an idea of what that involved.

A Okay. At pain management program...we have an interdisciplinary pain management program at University Hospitals.

Q What does that mean?

A It means that we have people from a variety of medical specialties who see and work with an individual.

It is not modality driven. There are many different types of pain centers. There are biofeedback clinics where that s all they do. There are anesthesia pain clinics where they stick somebody with a needle and do blocks on them.

Q When you say...I'm sorry to interrupt you. But when you say here it's an interdisciplinary...

...Right...

...what types of physicians are involved other than neurologists, like yourself?

A We have psychologists. We have an anesthesiologist who is available to do blocks and things if we need them, We have a physical therapist. An occupational therapist. We have a nurse clinician. And we have physicians from every specialty area that we have in the hospital to see and give input to these individuals. So that we look at somebody's pain problem in its totality and how it affects somebody as an individual. That it does not just...it's not just the pain. And so medicine is only one part of it...

...Okay...

...I mean you give somebody all the medicine in the world you want, they're not going to get better. But that is just one little piece of it. You can teach somebody proper body mechanics and ways of sitting standing, walking, bending, lifting, getting in and out of the car, doing

their job. We do an ergonomic evaluation which is how somebody has to move their body and use their body to work. So we look at how...the kinds of things that they need to do in their every day life. We teach them how to do that so that they don't stress the painful area and it doesn't increase their pain. We teach them pain and stress management techniques, biofeedback, relaxation techniques, other types of alternative ways of managing their pain. And we try and get them to a point where their pain is at a reasonable level. This is a pain treatment and pain management program, not a pain cure program. So, the premise is that they're not going to come out pain-free. In fact, they're still going to have pain. Function increases far quicker and faster than pain will decrease. And many of these people will never be pain-free. So that what we do is we teach somebody, if somebody can rate their pain to me on a scale of 0 to 10. And on a good day can be at a 3. And on a bad day is a 10. That range becomes intolerable to live with. But if you can keep your pain between a 3 and 5 by doing everything correctly, you can actually manage pretty well. So we teach people techniques and ways of keeping their pain at a low level. We may use non-addicting medications. We may use blocks which are helpful to help maintain their pain level at a low level. And then we teach them how to go

about and live their life despite the fact that they have pain. It is no different from any other medical problem that somebody might have. It is no different than if somebody develops diabetes and needed to take insulin every day and change their diet and get on an exercise program, lose weight and do all those things. They have a problem, they live with it every day. But it's manageable. And that's what we do with pain.

Q And did you do those things during the course of your care of Denny Baughman, including that intensive three week period of time?

A Yes.

Q You applied those principles to his particular problem.

A That is correct.

Q And did they help him?

A Yes.

Q Now, you've seen him periodically since November of 1989.

A That's right.

Q In order to have us understand then how they helped him, when did you see him last, for example?

A The last time I saw Denny was on March 15, 1993.

Q And what about the time before that?

A The time before that was on September 17, 1992.

Q Okay. Both of these visits are obviously after he went through this intensive three week program.

A Right.

Q And you continued to see him, and you have, right up until the present time?

A That's correct.

Q Okay. Give us an idea how was he doing when you saw him, let's say, in September of 1992?

A At that particular office visit he wasn't doing well, He complained of increased shoulder, arm and hip pain after work. He wasn't able to maintain lower pain levels while.. .after he was done working. He also complained of increased pain in his hand, The time before that he had some problems which were related to his carpal tunnel injury and I injected his wrist. And he told me that that got better after I injected it. His exam was really not much different from what it had been. And I told him that this was just part and parcel of his medical problems. That people who have what Denny has, and I...I mean you can classify this as a myofascial pain syndrome or fibromyalgia or fibrositis or whatever you want to call it, those are all interchangeable terms. That they are very much...and for patients to understand, I tell them they are very much like people who have arthritis. In that they have the problem, it can be quiescent

for a period of time...

Q Quiescent means?

A Quiet...

...Okay...

...it can do quite well for a period of time. And for whatever reason...whether, you know, something that stirred it up either by doing something wrong or whatever. It's sometimes even, at this point, a viral illness where you get a lot of aches and pains and chills can actually make them feel worse for a period of time. It's a pain flare. Eventually it will die back down. And the way to keep it from dying back down is to continue to do everything to contin...especially *to* continue exercising. The worse thing in the world for somebody like this is to stop exercising, because that will just make them worse. ***So,*** the old thing about rest is wrong. You want to keep active.

Q Had he been on some sort of exercise program?

A He has been on an exercise program that he followed on a daily basis.

Q Prescribed by you?

A Yes.

Q Had you prescribed for him, for example, membership, and I have a bill that Denny has given me, a membership in a fitness center.

A Yes.

Q Had you prescribed that for him?

A Yes.

Q And he has an aerodyne bike apparently he bought and uses. Had you prescribed that for him.

A Yes, And that's all part of his maintenance program to keep his problem under reasonable control. So I told him he just needed to go back and do those things and he would get better. And it might take a week or two or three weeks, but, you know, eventually it would settle back down again. And he'd get better and he'd do better.

Q And so then you next saw him on March 15, 93, did he get better or did he get worse?

A Yeah, he got better actually,..

...Okay...

...He was doing better with that except he had told me that about five weeks before that he abruptly developed a headache., And he was seen at the internist and they did a CT scan. And he saw an ophthalmologist. And he saw a variety of other doctors and he wasn't getting better. And when I took a history from him it was obvious he had developed migraine headaches. And so I gave him an injection of dihydroergotamine which will abort a migrain headache and he got better. And that was the end of that.

Q Did the migraine have, in your opinion, did the migraine have anything to do with the auto accident...was it caused by the auto accident?

A No. It has nothing to do with the auto accident...

...Okay...

...It was just an incidental.

Q Okay. I'm almost done. I wanted to ask you about something that I kind of passed over as we summarized his treatment. In my records there is a period of time in which...and he may still use it, I don't know. But, it's mentioned...a TENS, T-E-N-S.,.

...Right...

...unit.

A Yes.

Q Was one of those prescribed for Dennis?

A Yeah, early on, one was.

Q Tell us what a TENS unit is.

A It stands for transcutaneous, in other words, through the skin, electrical nerve stimulator. It is used in a variety of painful conditions to help alleviate pain.

Q What does it do? What is it? Describe it for us,

A Basically...okay. Basically there are four little electrodes that look like EKG electrodes that you put on your skin when you have a cardiogram taken. And there is

a little box which looks...it's about the size of my beeper.

Q And you wear it on your belt or something?

A You wear it on your belt. What this does is to put a variety of low-level electrical inputs into the skin. And there is a variety of wave forms, wave lengths and intensities of the signal that's inputted, that's transmitted through the skin, through the nerves and into the spinal cord and up to the brain. And it blocks out... basically blocks out pain. What tends to happen is that there are different types of nerves in your body. There are what are called the larger motor nerves which don't really transmit pain fibers. And then there are the painful fibers which...the small fibers...which transmit pain predominently. When somebody has pain, and there's normally a nice balance if you think of a scale. When somebody has a lot of pain those smaller fibers which transmit pain really start letting off and it tips the scale...okay, in their favor. What you do is you put in another artificial stimulus and you stimulate the other nerve so that it re-establishes..,

Balances it out...

...that balance. The other theory behind why it works is it increases your body's production of endorphines, which are your own nature pain relieving substance.

Q At any rate, the TENS unit was prescribed for

Dennis and apparently he was using it.

A He was using it, and it helped to some degree.

Q Okay. I didn't want to miss that because I know it might come up. Let me ask you just a couple more questions about Dennis' current condition. And, perhaps, what you can tell us, if anything, about what the future might hold in store for him. Presently now, what affect, if any, has his injuries that he got in this car wreck, what affect did they have on him?

A Oh, I mean a total affect. First of all, he has pain all the time. That pain affects his ability to interact with his wife, with his friends. To do all the kinds of things that he likes to do for leasure time activities. It affects his ability to work and to maintain his job, so that it has a complete affect on his life. That's part of why a pain management program is so necessary. Because, you know, you can have pain and some people it just doesn't...they deal with it and they go on and it's unclear why they can do that. There are other people who develop a pain syndrome which is what Denny developed. And that impacts on every aspect of his life. On your social, your vocational aspects, your marital relationships, on your ability to work. And so it is something that is quite devastating and can have impacted on him greatly, and will continue to impact upon him.

Q And just so I make sure I understand. Is this something that's just in his head, or is there a physical basis for his pain?

A Oh, there's a physical basis for his pain, of course there is.

Q What is it?

A He has a myofascial pain syndrome. He has injury to the soft tissues and to the muscles.

Q Now, as far as the future is concerned, to a reasonable degree of medical certainty, will he continue to experience problems into the future as a result of the injuries which he suffered in this auto crash of March 9, 1989? In your opinion.

A Yes.

Q And what problems will he, in all probability, suffer in the future?

A He will have intermittent Pain and flares of his pain. He will have intermittent periods where he may not be able to work for a period of time because of that pain.

Q Will he need medication in the future?

A I'm hoping that in the future his medication use will be intermittent as opposed to continuous, which it is now,

Q He's still on medication?

A He is still on medication now.

Q What is he taking?

A He is still on...let's see...he's on Anaprox, which is an anti-inflammatory agent. And Pamelor, which is an anti-depressant used for pain management...

...Okay...

...Both of which are expensive medications and he is on them on a regular basis.

Q You mentioned in the past this therapy program, Will he need to continue with that type of thing into the future indefinitely?

A Yes. This is the condition that gets worse if you do not exercise and you do not do specific exercises for those areas.

Q So, for instance, what therapy programs do you have him on, just in a general way?

A He is...in a general way, he is on an aerobic program which means that he rides a bike or, you know, uses a treadmill. There are a whole host of aerobic exercises which are exercises made to get your heart rate up, keep it up. And what those kinds of exercises do is they release endorphines which are your natural pain relieving substances. He's on a stretching program where he keeps his muscles stretched. And he's on active resistive weight machines to strengthen those muscles as well.

Doctor, I want to thank you for taking the time with us, some 45 minutes now, to tell us about Denny Baughman. I have no further questions for you. And perhaps Mr. Lutjen has a few.

DURING CROSS EXAMINATION BY MR. GEORGE LUTJEN:

Q Hi doctor.

A Hi.

Q George Lutjen, I represent Mr. Pierce against whom Mr. Baughman has filed a lawsuit. When he first came to you doctor, did he tell you he had been involved in a lawsuit seeking money for this accident?

A Yes, I did ask him that.

Q Okay. Is it anywhere in your reports at all that.

A I don't think it's in my report, I typically don't put that in. It might be in Dr. Ashtenberg's...Oh yeah, it's in Dr. Ashtenberg's report.

Q All right. Do you find a difference between a pure patient and a patient litigant?

A I don't think I understand your question.

Q Well someone who comes without a lawsuit for help. And someone who comes to you knowing there's a lawsuit and knowing your testimony is going to be required to have him be successful in securing money?

A It depends.

Q There is a difference.

A It depends, actually. We in the...when we first started the pain center we thought that we...that the literature at that time, and there was a whole body of literature. Said that you shouldn't take people into a pain management program if they're involved in litigation because it will skew their case. Subsequent to that time, the literature has borne out and it has been our experience in the pain center here after treating many many of these patients, that if somebody has litigation pending within the next six months, we won't see them, We tell them we will wait until after their litigation is done to do a pain management program. And the reason for that is several. One, is that I think that they're much to concerned about what's going to happen in their lawsuit and they can't really pay attention to what we're doing. They have significant stresses, and so I think it's inappropriate. Those people, in fact, don't do well. However, as you and I know, that the way the legal system is that if somebody files a lawsuit today, it will probably be seen in court in five years or so.

Q Well did you ask him...this lawsuit was scheduled for trial a year ago. And his attorney continued it. Did you ask him that doctor?

A When we saw him we asked him if he was in litigation and he said, "yes." We told him that we would not

treat him if his litigation was going to be completed within six months. So that is a given.

Q All right. Doctor, going back to your first report when you answered Mike Kube's first questions you essentially read from your November 26, 1990, report. Is that correct?

A Right.

Q I notice as I go down, and maybe the jury didn't pick it up, but you first indicate he was diagnosed with a whiplash injury.,.

...Let me get my chart...

,..It's November 26, doctor, I think it's the first one. He was diagnosed with a whiplash injury.

A Mmm-hum.

Q And where did you get that information from?

A That is what he told us.

Q Okay, Did you communicate with his doctors at all?

A Not with the one that treated him here...

...Did you ever...

,..Jim Kessler, who referred him I spoke with him on the phone and he sent me his records.

Q Okay. That was Dr. Kessler?

A Mmm-hum.

Q Now, from that point on, the balance of the

report it states: and I'll read them out, "He relates." "He refers." "He reports." "He reports."

A That's correct.

Q So, essentially, what we're saying here is that the information you were getting is purely based upon what he is telling you.

A That is correct.

Q And if anyway there is a deviation from the facts and what he's told you, these are incorrect.

A When somebody comes to see me as a physician, I must accept that what they tell me is correct,

Q And I as a lawyer, likewise, I understand that, And I didn't mean to suggest you shouldn't. What I'm saying that if, in fact, it isn't in any particular correct, it skewers the diagnosis.

A That would distort it some...yeah, I think that would distort it to some degree,

Q Okay. We also, in reviewing this first initial office visit which you did with your fellow. You indicate, and I think Mike Kube brought this out, that there were a whole series of objective tests taken.

A Mmm-hum.

Q MRI, and CAT scans, an arthrogram, EEGs...

...Right...

...EMGs. Not one of these sophisticated tests showed any

physical problem of any kind or nature.

A That's correct. Except the EMG, which showed a carpal tunnel.

Q Right. That's correct, I'm sorry, that's true, Now, you indicated also that soft tissue problems can't be determined with some of these tests...or all these tests.

A That's correct.

Q Are you suggesting doctor, that an MRI does not show soft tissue problems?

A There is no...one does not do an MRI of the muscles, no. It will show, for example, a tumor within a muscle. But it cannot really show abnormalities of the muscle itself.

Q Well we're not talking about abnormalities, you're talking about scarring, Have you ever seen anything... have you ever seen an MRI that showed calcification deposits that come from scarring that show up on an MRI?

A Calcification is not always part of scarring. I mean that is...that can be part of a scar, but is not necessarily so.

Q If we were to go to the MRI textbooks.

A Mmm-hum.

Q Can't we, in many instances, find where MRIs will show scarring if it, in fact, exists?

A It will show scarring of nerve roots, but not of muscle.

Q Okay. That's positive and clear?

A Mmm-hum.

Q Okay. Now, we come to page 2 of your report here and I see you've got down here "past medical history."

A Mmm-hum.

Q And again with the understanding that the history is really the...well, not even the most important thing, probably the only thing you have to begin your diagnosis and treatment.

A m-hum.

Q Did he tell you about these prior problems that Mr.. Kube told you he had before?

A I didn't write it down.

Q Bo you have any record of any time that he honestly told you about any prior problems?

A I don't remember. No, I don't have it written down, so I can't say yes, or no.

Q If you, as a doctor, particularly in a pain clinic where everything so often is subjective. Would you not, in fairness to him and to yourself under past medical history have noted that?

A I would have written it down.

Q Okay. And it is not written down, clearly.

A That's correct.

Q And we can assume from the type of practice and diligence you have with your patients that had you been told, you would have written down.

A Right.

Q Let me show you doctor...

MR. KUBE: Excuse me one minute... just before you start on this line of questioning. For the record, these are Dr. Funk's records?

...Aballaro's I believe.

...Aballaro's, Okay.

...They were subpoenad by medical records.,

...Well okay, just so they're Aballaros

...Well I believe they are. I do not believe they're...

...Okay...

...We'll resolve that if it's a problem, it's a problem. Doctor, I showed you what, on behalf of Mr. Pierce, my client, the Defendant, we subpoenad some records. And I refer you to a 5/31/85, notation.

A Mmm-hum.

Q We have an indication of burning sensations down the back of both legs.

A Mmm-hum.

Q Is that...am I reading that correct?

A That's what it says.

Q Apparently the patient also indicated his elbow is always sore?

A Left elbow is sore, yes...mmm-hum.

Q Left elbow is always sore. And what is that, tenderness runs across the neck? Is that the way I read it?

A Where are you looking?

Q Right underneath, "burning pain down the back of his legs."

A No. "A tender 1-1/2 cm mass on the right neck."

Q How about right above that?

A "Burning pain back legs on and off."

Q And this is May 31, 1985.

A Mmm-hum.

Q Okay. Let me show you what's been marked as Defendants Exhibit A. Oh, I gather the information contained in there, to the extent it is significant, was not given to you before.

A No I have not seen this.

Q Okay. The same notes, I believe they were Dr. Aballaro.

11:37:26 - MR. KUBE: Well just for the record george, I'm going to object to these...

...Sure...

for the basis of we don't know who they're from for sure. Unless you know.

...I believe they are, I just was selective about bringing them with me, Mike.

...Okay...

...Here is now **11/6/85**.

A Mmm-hum.

Q What does CC normal mean? History?

A Where are you looking? Chief complaint.

Q "Chief complaint: Was seen by chiropractor a chiropractor a week ago, Told to stay on his back. Had an accident on a four wheeler. Four wheeler turned on top of him and then rolled down a hill."

A Right.

Q "Complained of pain in the lumbar area, right thigh area. Tingling sensation."

MR. KUBE: Well wait, are you just.,. I mean I don't want to be obstructive here, but you're just selectively reading certain things and then omitting other things.

...That's what you certainly have a right to do to review any part **of** it you want Michael.

...Okay...

...."Seeing a chiropractor again." He indicates.

A Mmm-hum.

Q "Manipulation and cracking of his neck."

A Mmm-hum.

Q Okay, "Muscle strain, lumbar." This information was not given to you, I gather, when you took the history from Mr. Baughman?

A Hmm-cum.

Q Nor did any other doctor tell you that?

A Not that I recall.

Q Okay. What's muscle strain? Isn't that what you've been talking about?

A Muscle pull, muscle strain. He...what I'm talking about is something more than what he has.

Q But we don't know if know if that...what we've just read, caused the scarring; do we?

A Oh I don't...that should not. I mean everybody does that to themselves.

Q Rolls down...a four wheeler rolling on top of them?

A Not a four wheeler rolling on top of them. However, I mean muscle strain is something that all of us do every now and then depending upon activities that we do.

Q Well at any rate, this information wasn't imparted to you. Although we see now complaints before our...this accident. We see complaints of the neck, of the back, of the tingling down the legs and all that sort of thing. But that information was not imparted to you. Right?

A No.

Q By Mr. Baughman. Let me show you whats been marked as Defendant's Exhibit F, doctor please.

11:39:46 - MR. KUBE: Okay. Show an objection to this.

...Sure. And this, of course,. is brought up because Mr. Kube questioned you on it before. This is a letter from a neurologist, Everett Hurtoe (phonic).

A Mmm-hum.

Q Are you familiar with Dr. Hurtoe?

A No.

Q And it's addressed to Thomas Funk a chiropractor.

A Mmm-hum.

Q This goes back to 1978. Were you advised of any problem in 1978, by Mr. Baughman?

A No

Q "He awakened with numbness of the right hand."

A Mmm-hum.

Q Dorsal, that's what?

A He had a radial nerve palsy.

Q Okay. What is a radial nerve palsy?

The radial nerve supplies the extensors of the wrist. And he had weakness of that, with some sensory loss over his hand in a radial nerve distribution. Most commonly caused by resting on it for a prolonged period of time, The radial nerve comes right through this groove here. And if you do this for any length of time, you'll end up injuring the radial nerve and cause those problems,

Q Okay. Did Mr. Baughman tell you that Dr. Funk had treated him for upper cervical and trapezius muscle inflammation for the past ten years, from 1979, to 1989?

11:41:24 - MR. KUBE: Objection.

A NO.

Q Just so I'm clear, did Mr. Baughman tell you...

...No.'.

..,Did he tell you that he had muscle inflammation for the past ten years. That is from 1979, to 1989.

A No.

11:41:38 - MR. KUBE: 'Objection.

Q Did he tell you that he was a patient of Thomas L. Funk, chiropractor, in 1979...actually from 1976, to 1989?

A No.

Q Are you familiar with any objective tests taken

by Dr. Funk with regard to the neck, trapezius muscle inflammation for ten years?

A No.

Q You testified about these doctor, but let's let the jury see them. Referring to what is Defendant's Exhibit B, can you tell me what that is?

A These are spine films from the Lodi Community Hospital. The lumbosacral spine, the dorsal or thoracic spine and the pelvis.

Q These are taken 3/9/89, correct doctor?

A Yes.

Q And that's the date of the accident?

A Yes.

Q And the finding with regard to the lumbosacral spine x-rays was what?

A Normal.

Q No problems of any kind, is that what that means?

A Yes, a normal spine films, right.

Q Dorsal spine, that's I gather the part from what we call the neck down to the part where we call the beginning of our butt area, lumbar area?

A Right.

Q And what was the findings there?

A Normal.

Q Now they also did a pelvic x-ray. And what was

the finding of the pelvic x-ray by the radi logist at Lodi Community Hospital?

A It was normal.

Q Thank you doctor. I'm showing you doctor what has been marked for indentification for the jury's view, Defendant's Exhibit C. These are apparently the follow up x-rays taken on 3/20/89.

A Mmm-hum.

Q That is...we know the accident occurred **on** 3/9. This is what doctor?

A Cervical spine, or neck.

Q And they've got AP, lateral, right and left oblique views, What does that mean?

A AP is you shoot from anterior to posterior,

Q Front to back for us?

A Front to back, right. Lateral is you shoot from the side. And oblique is you're turned at an angle,

Q ***So*** they did the complete check of the cervical spine as far as x-rays or radiographs are concerned? Is that correct?

A Well they didn't do flexion/extension, but it doesn't matter.

Q Flexion/extension, that's back and. forward?

A Right.

Q All right. And what was the conclusion by the

radiologist with regard to that series of cervical spine x-rays?

A They were normal.

Q By the way, have you ever seen any time you've been with him or any information you've gathered that there was ever an abnormal x-ray of any kind or nature?

A No.

Q Doctor I'm showing you what has been marked for identification again, for the jury's benefit so they can take a look at these, Defendant's Exhibit D. These are records from the radiology department of Wooster Community Hospital?

A Yes.

Q And I see the one on top is dated...what is that... February 23, 1990?

A Yes.

Q And what is that?

A That's an arthrogram.

Q Right shoulder arthrogram?

A Yes.

Q Is that the area that he's complained to you a little bit about?

A He's complained about what he calls the shoulder. This is specifically looking at the joint.

Q What is that...what is an arthrogram?

A You inject dye into a joint and then you take a radiographic picture so you can see the joint structures. You can see the structure inside the joint. If you were to take a plain film or an x-ray, for example...

Q You can't see inside the joint?

A You just see the bone. You can't see inside.

Q Now, in a right shoulder arthrogram, do they do any soft tissue testing?

A No. They just looked at the joint.

Q When we talk about football players and baseball players having arthrograms and coming up with ligamentous damages or collateral ligaments in the knee,.,

...Right...right...

...and all that sort of stuff. Those are soft tissues aren't they? Aren't ligaments...everything but bone, aren't they soft tissues?

A Yeah, I guess you could call it...consider it,

Q You can consider soft tissue?

A Mmm-hum.

Q When a doctor is doing an arthrogram, and as a matter of fact the one I quess we'd all be familiar. with is the baseball and football players because we pick it up every day in the paper?

A Mmm-hum.

Q They're checking for a tear of a soft tissue.

END OF TAPE ONE

A They're checking to see whether. ..what they're checking for is whether, in this instance of the right arthrogram, they're looking at the joint and they're looking to see if any of the tendons of the rotator cuff, in other words, the muscle attachments to the joint itself, whether there is any tears of the muscle attachment.

Q At any rate, this was totally negative. Is that correct?

A Yes.

Q And they indicate, "fail to demonstrate any evidence of tear."

A Right. Of the rotator cuff, that's what they're looking for,

Q Now then we have on, apparently March 1, of 1990, again, at Wooster Community Hospital, an MRI of the cervical. spine.

A Yes.

Q And that was negative except to showed some bulging...minimal bulges.

A Oh, the impression was "Minimal disc bulge C5-6, C6-7."

Q That's not a problem with which you're dealing, is it?

A I would not be concerned about that if I saw it.

Q When they say a bulge,. there's no relationship to

the cord or compression of the cord or the nerves or anything of that nature.

A Right. There is no pressure on the spinal cord, no pressure on the nerve root.

Q So that a bulge which probably most of us have after 35 or 40.

A You're right. I would consider this to be a finding that although not normal, is not of any consequense.

Q It's certainly not something that you've been discussing?

A Hmm-cum.

Q So other than that then, we have a normal MRI of the cervical spine,

A Right.

Q Okay. Let me show you doctor, if I many, what's been marked as Exhibit E. And again, you've discussed with attorney Kube about about the various objective tests.

11:48:27 - MR. KUBE: George, just before you ask that...

...Sure...

,..Objection to Exhibit E.

...Sure. Well Dr. Kessler is the doctor that referred.

A That's right.

Q Mr. Baughman to you. Correct?

A Yes...mmm-hum.

Q And you conversed with Dr. Kessler.
A Mmm-hum.
Q And you asked him information that he has received, is that correct?
A Right.
Q And aiding you in your diagnosis and treatment of Mr. Baughman is information that you received from Dr. Kessler.
A That's right.
Q And do you feel that Dr. Kessler has been open with you?
A Oh yes.
Q In giving you all the information he felt was necessary, and you did?
A Yes.
Q Okay, Well Dr. Xessler apparently sent Mr. Baughman to a Dr. James McClelland.
A Mmm-hum.
Q A neurologist in Mansfield.
A Mmm-hum.
Q And you can refer to the second two pages doctor, if you wish, and maybe you don't even have to. I guess the second two pages attached to Exhibit E related to the actual studies...those are the results of the studies.
A Mmm-hum.

Q This was an electrodiagnostic consultation as I see it.

A Mmm-hum.

Q What does that mean?

A Well he did an EMG on him.

Q What is an EMG?

A It's an electromyogram where they test whether the muscles and the nerves work properly together.

Q In what area of the body did this particular EMG, which is used to see if the muscles and the ligaments work together, what part of the body did this test?

A It was specifically looking for what we call a cervical radiculopathy.

Q And that means the nerves as they exit...or the cord in the area of the neck which services the muscles and nerves in our arms.

A Mmm-hum.

Q That they were checking to see...

A Whether there was any compression on it. I mean I would anticipate it would be normal, since he had a normal MRI.

Q Okay. And this, in any event, was normal?

A Yes.

Q Now, I see that the letter from your...or to your referring doctor, Dr. Kessler, says, "At that time

he was seen with a question of carpal tunnel syndrome."

A Mmm-hum.

11:50:38 - MR. KUBE: George, just so there is no...continuing objection to this whole...

Q Absolutely...you can take the whole thing out...

...Continuing objection to any exhibits that have it.

...Okay...

...And any questions as to substance or form.

...So apparently this test focused on the carpal tunnel syndrome and the cervical radiculopathy?

A Mmm-hum.

Q The carpal tunnel syndrome is what you spoke about before.

A The median neuropathy of the wrist.

Q The median nerve in the wrist where it gets entrapped.

A Mmm-hum.

Q Okay. Now, as I read this letter to your referring physician, Dr, Kessler, it was completely negative with regard to the carpal tunnel syndrome?

A Wait, ahh...

Q Read the second sentence.

A Of what?

Q The letter.

A Which letter?

Q The letter that's marked E,. Exhibit E, in the lower right hand corner.

A Oh, this one.

Q And has two pages of it there.

A "At that time he was seen with a question of carpal tunnel syndrome or cervical radiculopathy,"

...Right...

...Okay. It says, "I enclose a copy of our work sheets for your records. As you can see, the study is completely normal." I will tell you that looking at this study it's not complete.

Q Is it not complete, or just don't I have all the pages for you?

A No, it's not complete. He didn't...I mean. The major muscle that is innervated by the median nerve at the wrist is what we call the abductor pollicis brevis muscle. And he didn't even test it.

Q Okay. How about the test for the cervical radiculopathy which is on the first page?

A Well no. Basically, this is two separate things. This first page are the nerve conduction studies. The second page is the needle exam.

...Right...

...Okay. They give you two different.. .

Q Where you stick the needle in?

A Right. They give you two different information... two different sets of information...

...Mmm-hum..,

...Okay. Basically what he did here is he looked at the major nerves of the upper...right upper extremity,

Q Which is the right upper arm?

A Right arm, mmm-hum, He...

Q Okay. What did he find with regard to those?

A Well, first of all, and I can't really tell here, I don't know whether this is right and left. He just says right, But then he's got several different...I see what he did. Okay. He just studies the right arm, he didn't study it and compare it to the left arm, which is something...

Q The right arm is where the complaints were, right?

A Right. But you always compare the right to left.

...Okay...

...I mean you can't say anything unless you compare right to left. And secondly, the...what I find unusual is if he was looking for carpal tunnel, he didn't stick the muscle that would be innervated by the median nerve.

Q Are you suggesting to me doctor, that if I had a ...which is not the case here, as you said before. But if

I had a disc at C6 or C3 let's say...on the right.

A Mmm-hum. Well don't use C3, because there are no good C3 muscles to test in the arm. C6 is a good one.

Q C6.

A Okay.

Q And on the right...impingement on the right... the nerves going on the right side.

A You might have a normal EMG.

Q I might have a normal EMG.

A Absolutely. And your MRI might be grossly abnormal. And your EMG might be totally normal. And why is that? Because when the nerve exits from the spinal cord in the neck, they're split very widely. There's the anterior, or the motor route, and there's the dorsal, or what we call the sensory route. Most disc rupture posteriorly and press on the sensory route. That is totally, purely involving the sensory route. The EMG is a study of the motor route, period.

Q Not the sensory?

A Not the sensory route. So, it could be completely normal and you could have a huge disc on the MRI. That's why people do these things in conjunction with, to look at one or the other. Nonetheless, he didn't have a disc, and we knew that from his MRI. So it didn't much matter.

...That's right...

...Right. This is not a...this is a study had I received I would have asked our electromyographers here to redo, because it's an incomplete study.

Q Have you done them by the way?

A EMGs?

Q Yes.

A yeah, I spent six months doing them.

Q No, no, I mean with Mr. Baughman.

A There was no reason to because I...

Q Did you work with Basil Oborne (phonic), Dr. Oborne?

A I spent six months with him.

Q You didn't do any EMG studies for Mr. Baughman?

A There was no reason to do an EMG test.

Q Okay. Fine. So even though the one here in front of you you felt should have been...more should have been done...is insignificant.

A It wasn't complete, it was incidental. I don't care. You know the thing is, I don't care that this EMG is normal. I don't care that his x-rays are normal. Because those are not...those are important up to the point that he saw me. Because what his physicians were doing is they were looking for abnormalities and things that could be fixed with a specific treatment, like surgery. When that is negative, and there is nothing

left to do surgically, and somebody isn't getting better. That is when a referral to a pain center is appropriate. So in my mind, all the negative tests are great because that means that I don't have to then do that before I enter somebody into a pain management program. If he would have come to me and not had specific studies done and I found certain things on his exam, I probably would have asked for those studies to be done. Because I'm not about to ask somebody to do a pain management program which would involve a very aggressive exercise program, when, in fact, that might be contraproductive in somebody who has a disc. That might make them worse...

...Sure...

...I mean I wouldn't bother to belabor...it's sort of inconsequential to me.

Q Okay. Early on your testimony, Mr. Kube asked YOU about Dr. Brims.

A Mmm-hum.

Q Dr. Brims is an orthopedic surgeon at the Cleveland Clinic?

A Yes.

Q Competent orthopedic surgeon?

A From what I understand, yes.

Q Did you have any contact with him with regard to this case?

A No. I think I have some of his records though.

Q You did get his records?

A Yeah, from Dr. Kessler, Dr. Kessler had sent me...

Q May I see what records you have?

A Mmm-hum...certainly.

Q You got his records from Dr. Brims through Dr. Kessler.

A Let me see what I have...

OPERATOR: We're off the record.

OPERATOR: We're on the record.

Q Doctor, you've been kind enough to show me your file with regard to Dr. Brims, the orthopedic surgeon at the Cleveland Clinic Foundation. And Dr. Brims apparently wrote to Dr. Kessler, your referring physician, and this information was imparted to you for whatever help it could be to you.

A Right.

Q And I think you said before that it's insignificant to what you do as a pain clinician. But Dr. Brims did say on examination today, that is July of 1990: "There were no objective findings to help support any diagnosis."

A I know but that was...

...A diagnosis...a diagnosis, I'm sorry.

...Yes, that's what he says...mmm-hum.

Q And of course, as you suggested before in your

colloquy, that that's the point when you step in and you do what your thing is.

A Right.

Q He had...Dr. Brims said, "He had normal motion without evidence of ACSC joint tenderness." What does that mean?

A Acromioclavicular joint.

Q That's the shoulder joint?

A Right.

Q So, he had total normal motion...I shouldn't say total, that's not his word. He had normal motion without evidence of any joint tenderness.

A Mmm-hum.

Q Tenderness is subjective. Tenderness is when you say...you touch him and he says, "ow."

A Subjective and objective in the same case because, I mean, if I touch you and it hurts, you're going to give me a response so that it's pretty clear that it hurts,

Q Not if the pain would be a 2 on a scale of 10, maybe...I could fake it.

A Oh yeah, probably...if it were significant enough.

Q "He had full range of motion of the shoulders with symmetrical strength throughout.''

A Mmm-hum.

Q "No evidence of weaknessor dysfunction of the shoulder. But he did have focal subjective complaints of pain." Is that correct?

A That's what it said...

...Okay...

...I just got it, I can't read it.

Q Would you...

MR. KUBE: Well other than the fact that you're just selectively taking things out of context...

...Well you'll have the opportunity to tell the ladies and gentlemen of the jury.

...Sure...

...And read the balance of it. And I'll pleased to listen.

...Sure...sure.

...Thank you. "Even examining it after the injection test which you spoke of before, there was no reflex muscle guarding in any fashion. Although the patient still complained of subjective pain." I mean that would make sense to you given your diagnosis?

A What would make sense to me?

Q That there would be no reflex muscle guarding in any fashion, even though the patient still complained of pain after injection.

A I don't even know what that means.

Q Okay. It was after he gave him the injection. The doctor says, he could clearly detect no instability signs or subluxation, which was his initial diagnosis based upon treatment. Do you agree with that, by the way?

A Do I agree with what?

Q His findings.

A He never had any evidence of subluxation of the joint or an abnormal joint. And that was never the issue, as far as I was concerned.

Q Now in this presentation, this report to you which is part of your file, would you explain this to me: It says, quote, "Certainly it is difficult to know in these types of patients whether there is secondary gain. Especially when the subjective complaints are not supported by objective date." Is secondary gain such as the results of a lawsuit. Isn't that one of the things that we call secondary gain?

A There are many causes...there are many things that one can.. .

Q Is that one of them?

A Sure.

Q Financial secondary gain.

A Mmm-hum.

On the record.

Q Michael, in the event that it may be some benefit to the jury out here in Medina County, I'd appreciate having a copy of this made in its entirety certified as being a complete copy of the record. In case there is anything we want to mark as an exhibit to which she has testified.. .

MR. KUBE: Sure.

...Fair enough? Doctor, you...going back to your first report back in November 26, you indicated there were seven impressions that you had.

A Mmm-hum.

Q Bo you know what I'm talking about?

A Yes.

Q Probable right shoulder bursitis. Did you ever determine whether or not he, in fact, did have bursitis?

A Well after going through the...obviously, no, I mean I never pursued any of that.

Q Okay. As of today, as far as your concerned medically speaking, you can't say that he has bursitis?

A As far as today, my diagnosis would be that he has a fibromyalgia or myofascial pain syndrome and right carpal tunnel syndrome.

Q Right carpal tunnel syndrome relating to this incident?

A I believe so.

Q How? When were you first notified about it?

A Well he came with the problem of carpal tunnel. I mean that's one of the things that he talked to me about.

Q Well then when was it first...when did he make his first complaint to anybody about carpal tunnel?

A Well, I mean, the first complaint he made to me of carpal tunnel was the first day I saw him.

Q And how long was that after the accident?

A Well, it was November 26, 1990, is when I saw him.

Q So is that a year and one-half after the accident?

A Yes.

Q Okay. How about...something about right shoulder traumatic arthritis. Now we've heard what Dr. Brims of the Cleveland Clinic has said.

A Right. Okay. That wasn't...I mean...you don't need to. I mean as far as I'm concerned the initial impressions were those of speculation and one that...one makes a differential diagnosis and goes through and treats. The only thing that is clear right now is that he has a myofascial pain syndrome. And he has a carpal tunnel syndrome.

Q Syndrome, that means a bunch of symptoms and objective...subjective statements?

A No.

Q That we grab and put a name on?

A No. He has trigger points that can be palpated and felt with resulting radiating pain from it. And he has a chronic pain syndrome resulting from that. And he has carpal tunnel syndrome.

Q Now, let's go down the list here.

a Mmm-hum,

Q You just stated he's got right shoulder chronic pain syndrome.

A Mmm-hum. That was the initial...in the initial history.

Q Is that, in fact, your position today?

A He has a chronic pain syndrome...

...Okay. .

...number one. He has a myofascial pain syndrome...fibromyalgia or fibrositis. Any one of those three were...

...Soft tissue whiplash type injury...

...are used. And he has a right carpal tunnel syndrome.

Q Okay. Have...did you rule out traumatic arthritis?

A I never studied him further for that.

Q Okay. So as far as you're concerned you're not making a medical diagnosis that he has traumatic...

A No.. .

...Okay. ..

...I told you my three diagnoses that he has.

Q Okay. Well this was read before that's why...or will be in evidence and I want to make sure...

...Okay...Sure...

if it stands it stands.

A Okay.

Q If it doesn't it doesn't. Right shoulder bursitis.

A No.

Q He doesn't have that, does he?

A No.

Q Post-traumatic muscular contraction headache.

A He has that, but it's pretty much resolved.

Q That's resolved. Lumbosacral, that's the low back, paraspinal, that means across both sides, muscular strain. Is that resolved?

A No, I think he still has it., But I...if these, the last three, the lumbosacral, the cervical and the thoracic paraspinal muscular strain are now part and parcel...have become part of this myofascial pain syndrome

I have nothing further doctor. Thank you for your time, I appreciate it.

DURING REDIRECT EXAMINATION BY MR. MICHAEL XUBE:

Q Doctor, I just have a couple minutes of questions Okay?

A Okay.

Q First of all, I want to make sure I understand this. Basically, after having seen him for some two years now. You're...if I understood your just prior answers correctly...

...Mmm-hum...

..,Your diagnosis of his current problems is Myofascial pain syndrome. And right carpal tunnel,

A And chronic pain syndrome.

Q Okay. And chronic pain syndrome. Now, the myofascial pain syndrome, so I can make sure I understand.

A Mmm-hum.

Q Is caused physically by what injury that he suffered as a result of this automobile wreck?

A The acute extension/flexion injury or the whiplash injury.

Q And what happened to the soft tissue and what soft tissues of his body that now causes this diagnosis?

A Okay. There is a shirring effect of the muscles with the acute trauma. As the muscles heal they tend to scar and cause what we call trigger points and trigger areas. And that's what's causing his problem.

Q So I can put all of these tests that George Lutjen has marked here, and I'm just going to go through them, into proper perspective. The x-rays, for instance. The x-rays are negative. If I understand x-rays correctly,

they are designed to show whether or not there is any damage to the hard tissue, not the soft tissue. Correct?

A X-rays look at bone.

Q And bone is hard tissue.

A Right. I was not concerned about a bone injury...

...Okay.,.

...I don't care if they're negative. I would assume that they'd be negative.

Q Okay. And in fact their being negative is consistent with your diagnosis.

A That is correct.

Q Then...and that deals with, really, Exhibit C, Exhibit B. Then there is a...the diagnostic studies which you made reference to these EMG or nerve studies. Incidentally, did you do any nerve studies?

A Yeah, and I forgot that I did. But in February 92 he had some increased problems with his hand, and he did do an EMG and nerve conduction study. And it was abnormal.

Q Okay. So you mentioned that the nerve studies, which Mr. Lutjen made reference to, marked as part as Exhibit E were somewhat incomplete.

A They were very incomplete.

Q What did your nerve studies show and when did you take them?

A These were done on February 24, 1992. And he had evidence of...the study is consistent with the presence of both C8 and C7 radiculopathies without active denervation.

Q So, they were abnormal and did they...let me ask you this way. Did they support your diagnosis of his condition?

A Ahh...you know, the reason I asked him to have that done was at that visit he had some new complaints of his hand. And so the issue was was there something new going on or was it something old that hadn't been picked up. And frankly, that's the reason to have had them done.

Q Okay. Fair enough. The MRI was also mentioned, and that was negative. And so I can understand you specifically. Does the MRI, the one that was taken in this case, show abnormalities caused by scarring of the muscle that you talked about happened here?

A That wasn't the area that was studied. He had a neck MRI which was looking at the cervical spine or the bones in the neck, and the nerve roots to see whether there was a disc or something putting pressure on the nerve root. Nobody was looking at any of the areas that were involved. These were to rule out other things.

Q Now, you mentioned, and Mr. Lutjen mentioned to

some extent Dr. Brims and read parts of his report. But one of the things he didn't read was...he said, and I want to see if it's consistent with what you've done for him. "I told the patient that if he continued to have pain despite a Marcaine injection, that I would refer him to a chronic benign pain program. I did discuss this with both the patient and his wife and they seemed agreeable to this course, including the benign pain evaluation." Is that consistent with the type of treatment that he has had here?

A That's what we did.

Q Lastly, this...I guess one of the issues here is basically, as simply as I can understand it, is in your opinion, based upon your treatment and evaluation of Dennis Baughman. Are his complaints basically something he's faking for purposes of getting money in this lawsuit? Or, have you found, based upon your examinations and testing and finding and treatment, that his pain is being produced by damage which was caused to those parts of his body in this car wreck of March 1989?

A Frankly, his pain is caused by the accident. When we admit somebody to the pain center, they have a medical evaluation with me to assume their medical appropriateness. They also have a psychological evaluatior which includes psychological testing as well as an inter-

view and all sorts of things,

Q That was done for Dennis Baughman.

A That was done to try and rule out and to get rid of malingerers and people who are just after money.

Q Have you, in your seeing patients, and I know its been a long time and we're almost done. Have you in seeing patients here at the pain center declined not to treat people who have come here who the psychological evaluation has shown are in it for purposes of secondary gain or malingering? Has that ever happened?

A Oh yes, absolutely. And these are people who we will not treat.

Q Okay. You did those types of psychological tests on Dennis Baughman, did you not?

A That is right.

Q Okay. And what did they show?

A He was medically and psychologically appropriate for this type of treatment.

Q Okay. I have no further questions.

MR. LUTJEN: Let's go off the record.

OPERATOR: We're off the record.

OPERATOR: We're on the record.

DURING RECROSS EXAMINATION BY MR. GEORGE LUTJEN:

Q Doctor, in reviewing your file I noticed something that I missed and it may or may not be of interest

to the jury. But I'm going to impose upon their time and yours to see that they hear it anyway. I'm referring to evaluation of 9/11/91.

A Which evaluation?

MR. KUBE: Is that in her records, George?

Q Yes. Do you have those doctors?

A Which one is that? There are lots of evaluations.

Q It's dated 3/28 ...

A I think maybe I can see which one you're referring to...

...Sure...

...This is a physical therapist. Okay.,

Q Is this information contained in your file?

A Mmm-hum.

Q Brought back to you to review?

A Yes.

Q Of his treatment. Look at the one dated 9/11/91, if you will please.

A Mmm-hum.

Q And we have on top...and this will be before the jury, so why don't we go through the whole thing. Subjective. And we've talked about subjective, objective, we don't have to get into that. Then we've got objective,

A Okay.

Q By objective, what do you mean?

A What you can see.

Q What you can see. Now under ROM, that means range of motion?

A Yeah...

12:18:06 - MR. KUBE: George, I'm sorry, excuse me one minute, This is ..,these are the opinions and findings of...do I have the right page, Robert Sullivan, physical therapist?.,.. ...Right, the physical therapist.

...Physical therapist.

...Okay. Show an objection. Go ahead..

Q Reporting to you for use in your treatment of Mr. Baughman.

A Mmm-hum.

...Okay. Show an objecton.

Q Okay. Range of motion is ROM, correct?

A mmm-hum.

Q Lumbar, that's the low back?

A Right.

Q WNL within normal limits.

A Right.

Q All planes.

A Except extension.

Q Whith wasn't tested?

A Right.

Q I guess if there was a suspicion there would be a problem they would have tested it.

A I don't know why he didn't test it...I don't.

Q Okay, But other than that, it's within normal limits?

A Right.

Q Upper extremities, arms, lower extremities, legs, both sides, within normal limits with the following exception.

A Right.

Q What are the real exceptions? Everything is within normal limits, aren't they?

A Well these are limited. I mean they're not quite what they should be.

Q They're not like one...

A There's a range. I mean there's a normal range.

Q These are within the normal range though?

A Right. But they're not what the rest of them were.

Q WNL means within normal limits,. right?

A Right.

Q Okay. Now we go under motor. Upper extremities,

lower extremities.

A Mmm-hum.

Q 5/5 strength bilaterally. What does that mean?

A It's normal strength.

Q Of all major muscle groups.

A Tested, yes.

Q That were tested.

A Right.

Q Okay. Now interestingly, the finding is, quote, "No pain reproduction with MMT of right shoulder. ER/IR." would you tell me in my language, doctor please, what that means? It states, "No pain reproduction with MMT." What's MMT?

A MMT, manual muscle...I believe it's manual muscle tension...

...Okay...

...Internal and external rotation.

Q Okay. That's where they are...the physical therapist is internally and externally rotating the shoulder.

A Mmm-hum.

Q And no pain was produced?

A Right. Not in the joint.

Q And what does ER/IR mean?

A External rotation, internal rotation.

Q Okay. So his functional is concerned, on the bottom, "The patient is independent in all mobility skills."

A Mmm-hum.

Q What's ADLs?

A Activities of daily living.

Q Okay. And there is a complaint of pain with functional use of the upper extremity.

A Mmm-hum.

Q Going to page 2, we got special tests. Wpper extremities and lower extremities were tested...this is for reflexes.

A Mmm-hum.

Q Two plus and symmetrical. That's no problem there, right?

A No.

Q Sensation not formally tested.

A Mmm-hum.

Q However, patient is intact to light deep touch and denies paresthesia. No problem there, right?

A I mean I don't know what the point of this is.

Q It looks to me like we're dealing with a pretty healthy, sound, solid physical individual according to your physical therapist. The jury may disagree with that position. I'd like to see what your physical therapist found, that's the point there.

A Okay.

Q Palpation: no significant tenderness was noted along the right upper border of the upper trapezius, the right acromioclavicular joint, and scapular regions.

A Mmm-hum.

Q What is negative impingement sign on the right shoulder?

A You press on the joint. It's a sign for rotator cuff tear which he did not have,

Q Okay. What's the second negative apprehension test?

A I don't know what he did there.

Q Okay. Now, interestingly under assessment, quote...

A You also missed that he had positive crepitus of his right shoulder.

Q The jury is going to have the entire thing. I'm only concerned about this particular side. They can read the whole thing. And we spent a long time with Michael and yourself bringing out the other side. I just think it's fair to show the other side now.

A Okay.

Q Assessment: Quote, "The patient presents with a diagnosis of right shoulder myofascitis." And you've told us that over and over again.

A Right.

Q Semicolon: "However, chronic pain symptoms may be due to degenerative changes of the shoulder joint and periarticular structures." What's degenerative changes, doctor? Arthritis?

A Deterioration...that's what that...I mean it's kind of ridiculous that he said that since there is no evidence on any x-ray that he had arthritis shown, or degenerative changes. I mean it was never, and you know that and I know that. So for a physical therapist to speculate, is obviously just speculation.

Q Okay. Can you have degenerative changes of any part of your body, soft tissue-wise?

A Anything can degenerate. That means just to.. it means to deteriorate.

Q That's right, Well that's right, so you have... you can...muscles and ligaments and attachments and soft tissue injuries we have frequent findings of degenerative soft tissues changes, don't we?

A I don't think I understand your question.

Q You can have degeneration of the soft tissue, such as a ligament?

A Sure.

Q Muscle?

A Sure.

Q Sure. Okay. Do they show up on MRIs?

A It depends on what you're looking for.

Q Okay. And that can.. .when you say myofascial, what do you mean by fascial?

A The fascia is the covering of the muscle.

Q Right. And have you, in your experience, seen degeneration of the fascia?

A Yes.

Q Okay. So you can have degenerated fascia, And his diagnosis is myofascial pain syndrome.

A Right.

Q Thank you. And that's 9/11/91.

A Mmm-hum.

Q I will be done if you will kindly look, so we can explain to the jury, the one on 11/11/91.

A Ahh, physical therapy?

Q Robert Sullivan.

A Mmm-hum.

Q Musculoskeletal unit,\,University Hospitals, 11/11/91.

A Unless you show it...let me look at that, I can't find mine.

Q Doctor, I've just gone over it, and as I see it you have testified and given us what we need, such as WNL, and ROM, so I can translate that for the jury. We don't have to go through all this thing. We don't have to

go through it because you've already indicated to us the things that I would need to know for the jury.

A Okay, okay. All right.

Thank you doctor.

Are you done?

...I hope so.

DURING FURTHER REDIRECT EXAMINATION BY MR. MICHAEL KUBE:

Q I just have one question.

A Sure.

Q In coming to your diagnosis and the opinions which you rendered in this case. Did you take into consideration all of the interdisciplinary reports, such as the one that Mr. Lutjen just spent a long time reading to you, of the physical therapist?

A Yes.

Q Did you consider that?

A Oh, absolutely.

I have no further question.

OPERATOR: Doctor, you have the right to review this tape or you may waive it.

DR. KRIEGLER: Don't want to.

OPERATOR: And will counsel waive filing of the tape?

COUNSEL: Yea.

OPERATOR: We're off the record.

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|---|---|---|
| STATE OF OHIO )<br>) SS:<br>MEDINA COUNTY ) | | IN THE COURT OF COMMON PLEAS |
| DENNIS A. BAUGHMAN,<br><br>PLAINTIFF, | ) | CASE NO. 54717<br><br>VIDEOTAPE DEPOSITION |
| VS. | ) | OF |
| RAYMOND C. PIERCE,<br><br>DEFENDANT. | ) | DR. JENIFER KRIEGLER<br><br>JUDGE |

## CERTIFICATION

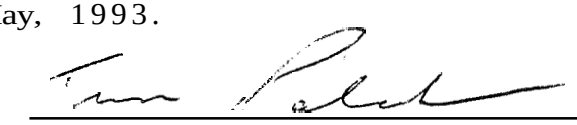
I, Tim Palcho, a Notary Public within and for the State of Ohio, do hereby certify that the within named witness, Dr. Jenifer Kriegler, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid.

I further certify that the testimony then given by her was transcribed to typewritten form and that the foregoing is a true and correct transcription of the testimony so given by her as aforesaid.

I do further certify that I am not of counsel for or related to any of the parties involved in this action nor am I interested in the outcome of this matter., Also I am an independent videotape reporter employed on an as needed basis and not in the employ onaregular or full time basis of any of the parties involved in the aforesaid litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office to attest these facts to be true at Kent, Ohio on this 20th day of May, 1993.

My Commission Expires:
August 24, 1995.



Tim Palcho, Notary Public and
Videotape Reporter