IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

KIMBERLY RICHLEY,

Plaintiff,

-vs-

JUDGE CAROLYN B. FRIEDLAND
CASE NO. CV 03511510

REICHENBACH FAMILY CHIROPRACTIC PROFESSIONAL COMPANY, et al.,

Defendants.

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Video deposition of MATT J. LIKAVEC, M.D., taken as if upon direct examination before Kelli Rae Page, a Notary Public within and for the State of Ohio, at MetroHealth Medical Center, 2500 MetroHealth Drive, Cleveland, Ohio, at 2:01 p.m. on Tuesday, October 12, 2004, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiff in this cause.

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On behalf of the Defendants.

ALSO PRESENT:
Dan Edmondson, Videographer

MATT J. LIKAVEC, M.D., of lawful age, called by the Plaintiff for the purpose of direct examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION OF MATT J. LIKAVEC, M.D.

BY MR. RUF:

Q. Could you please introduce yourself to the jury?

A. My name is Dr. Matt J. Likavec.

Q. What is your profession?

A. I'm a physician.

Q. Are you licensed to practice medicine in any states?

A. I am licensed to practice medicine in the State of Ohio.

Q. And how long have you been licensed to practice medicine?

A. I have been licensed to practice medicine in the State of Ohio since 1975.

Q. So how many years have you been practicing?

A. Twenty-nine.

Q. Do you have a specialty in medicine?

A. I have the specialty of neurological surgery in medicine.

Q. And what is neurological surgery?
A. Neurological surgery is the diagnosis, care and treatment of problems of the nervous system including surgery which encompasses the brain, the spinal cord, the peripheral nerves and their covering. So I'm basically a brain and spine surgeon.
Q. Are you board certified in neurosurgery?
A. Yes, I am board certified in neurological surgery.
Q. And what does it mean to be board certified in neurological surgery?
A. In neurological surgery to be board certified you first have to complete an approved residency. There are approximately -- when I went through approximately a hundred candidates per year that are taken into approved programs. After you complete an approved program which was anywhere from six to seven years when I went through you got to take an all day written examination. If you passed the all day written examination you then went on into practice for two years in a status called board eligible. In those two years you kept track of all the patients you operated on and were consulted on more than twice. At the

end of those two years you submitted your list to the American Board of Neurological Surgery. If the board felt you had a sufficient depth of experience you got to sit for an all day oral examination and if you passed all three parts of that you became board certified.

Q. Do you practice at a hospital?

A. Yes, sir.

Q. What hospital do you practice at?

A. I practice at MetroHealth Medical Center.

Q. And what type of hospital is that?

A. MetroHealth Medical Center is a general hospital which is also the largest trauma center in the State of Ohio and it is Cuyahoga County's safety net hospital in that we take care of everyone no matter race, color, creed or financial status if they're residents of Cuyahoga County.

Q. And what is trauma?

A. Trauma is the violence that can occur to the human body encompassing things like blows, gunshots, auto accidents, burning, fires, et cetera, and we're the area specialists in taking care of those type of people.

Q. So how many traumatic injuries do you see at this facility as compared with other hospitals in

Cleveland?

A. We see more -- we see more traumatic injuries than any other hospital in the State of Ohio and so obviously more than any other hospital in the Cleveland area and, in fact, all the hospitals in the Cleveland area will send some of their more severely injured patients here for our specialized care and expertise.

Q. What is the cervical spine? Can you explain that to the jury using one of these models?

A. For the jury's sake the cervical spine s if you all remember the Ernie Ford song "The Head Bone Connected to the Neck Bone," but it's where the head is attached to the neck and the cervical spine refers to the bones of the neck. There are seven bones in the neck and then twelve bones below that that correspond to your ribs.

Q. Could you point out where C6-C7 is?

A. The way the doctors decided to do this is you would start at the top and count down so on this model of the cervical spine with the skull attached there is spine 1, 2, 3, 4, 5, 6, 7 so 6-7 are these two largest vertebrae. And vertebrae is the fancy medical term for neck bones.

Q. Are there nerves that run out of the cervical spine?
A. As this model has nicely demonstrated there are not only nerves that run out of the cervical spine but blood vessels that run through part of it and in front of it. These yellow tags correspond to the nerves. They're not color coded or yellow in real life, but for this model they point out how the nerves run out between each bone of the cervical spine so between the 6th and 7th vertebrae the 7th nerve root comes out, between the 5th and 6th vertebrae the 6th nerve room comes out, and the nerve roots are numbered just like the bones from the top coming down.
Q. And where do those nerves run to from C6-7?
A. The nerve that runs between C6 and C7 is the C7th nerve root and that runs down from your neck, down the back of your shoulder, down the back of your arm to the triceps muscle and then it goes continues down your arm to your hand muscles and supplies some of the muscles that have to do with grip and opening your hand.
Q. So can an injury at C6-7 affect your arm?
A. Yes, sir.

Q. Or both arms?
A. It can affect both arms.
Q. During your 29 years have you regularly been involved with treating patients that have sustained traumatic injuries to the cervical spine?
A. Yes, sir.
Q. Could you tell the jury what percentage of your time you spend in the active clinical practice of medicine?
A. In the active clinical practice of medicine I spend approximately 85 to 90 percent of my time.
Q. Okay. Let me show you what's been marked as Plaintiff's Exhibit 15, could you identify that, please?
A. It says curriculum vitae of Matt J. Likavec, M.D.
Q. And what's curriculum vitae mean, curriculum vitae?
A. That's a fancy term for a resume. That shows where I went to -- my name, my children, where my practice is.
Q. Does Plaintiff's Exhibit 15 accurately state your list of credentials?
A. Yes, with the corrections we made at the deposition.

Q. Okay. In this deposition I'm going to ask you a number of opinions and I am going to ask that you render those opinions based upon reasonable medical certainty. If at any time you cannot render an opinion based on reasonable medical certainty will you tell us?
A. Yes, sir.
Q. How many facet fractures have you seen during your career?
A. As I stated in deposition, well over a hundred.
Q. And what about subluxations?
A. Well over a hundred.
Q. Could you explain to the jury where the facet is in the cervical spine?
A. Yes. I'm going to use this model because it's a little simpler and I can move it. If here's -- as we looked at this model before and you saw the bones here's everything else subtracted. And these are just the bones. The nerve roots are taken out of the way. If you look at the front of the cervical spine is here, this is the body and then this is the back and these are called the spinous processes. These are the bones you feel when you run your fingers down your kids or your grandchildren's back. And then the bones

shingle out and these are called the lamina. And the facets are a fancy term for joints. These are -- the joints are where the two bones come together just like your joints of your finger where two bones come together, so the facets are where the two bones come together in the back here.

And a facet fracture refers to this is part of the superior facet, this -- I'm actually working at 6-7 on this model. This is part of the superior part of the facet at 6-7 and this is part of the inferior part, and you can see it shingles just like the shingle on a roof with one bone overlapping another, and that's how the spine normally moves, you usually slide one bone on top of each other normally.

Q. What's the purpose of a facet?

A. It's to hold the neck on straight so it doesn't go too far because if it went too far you could -- easy way to think about it for the jury, if the bone -- if the spinal cord is in the middle of two bones like this if one bone slid too far from the other you could pinch the spinal cord. So the facets are just like the facets of a knee, you don't want the knee to move too far. When

you see a football player moves too far they tear all the ligaments and end up on the disabled list. If you do too far in the neck you end up like poor Christopher Reeve did.

Q. So is one of the purposes of the facet to stabilize the vertebral bodies in the neck?

A. Yes. That's a fancy term for saying not let the bones move too much.

Q. What is a subluxation?

A. Subluxation refers to the fact that one bone can slip forward on another, so an example would be on this model of the spine if you broke the bones then one bone could slide forward on another, or if you rotated one bone this is a subluxation the way this bone is slipped forward on the bone below.

I hope they can make that out. Okay?

Q. And how many subluxations have you seen during your career?

A. Well over a hundred.

Q. Is a subluxation any different than a dislocation?

A. It's a fancier term for a dislocation.

Q. What amount of force does it take to fracture a facet in the cervical spine?

A. I am unable to say how many foot-pounds or anything like that because I'm not an expert at that, but it's a significant amount of force meaning a blow that will cause a bone to be broken because the jury knows you move your neck all the time you don't fracture bones in your neck.

Q. Is a facet fracture usually caused by a certain type of motion?

A. Yes, it is.

Q. And what type of motion is that?

A. The classic way a facet fracture occurs is what's called flexion and rotation so for the jury's sake --

Q. Could you explain it with the model what flexion is?

A. Flexion, if this is the model and this is the front and this is the back, flexion means bending forward.

Q. So you move your neck down to your chin?

A. Right. So that's flexion is your head down. It doesn't have to be all the way down on your chin just off -- on my neck just moving it forward that's flexion. That's a flexion movement.

And then rotation is just what the jury

would assume, it's one bone rotating on another, so an example if you look at my neck this would be rotation and this would be a flexion extension injury. My neck is going down and it's rotating and obviously I didn't fracture a facet with that. That's just -- it's -- it's how do I put it, a nonphysiological progression of that movement.

Q. Was Kimberly Richley a patient of yours?

A. Yes, sir.

Q. On what date did you see her?

A. I first saw Miss Richley on October 22nd, 2002.

Q. Do you know how she came into the Metro facility?

A. Yes, I do. She was seen at -- by the records I had available to me she gave a -- she was seen at an outside hospital with neck pain, had an X-ray, was referred to MetroHealth Medical Center because of the abnormality on the X-ray and her pain and was seen in our emergency room and admitted to the trauma service here at MetroHealth.

Q. Okay, I'm handing you what's been marked as Exhibit 12-I, is that a report from the emergency room?

A. This is a copy of the report from the emergency

room on Kimberly Richley dated 10/22/2002 at 1:45 p.m.

Q. Is there a history recorded in the emergency room report?

A. Yes.

MR. REGNIER: Objection.

Go ahead, Doctor.

Q. What was the history that was taken?

A. It starts off with history of present illness. It says in big bold letters neck pain. It says location, diffuse. Quality, achy and sharp. Severity, moderate. Radiation, none. Okay yesterday. Duration, constant. Frequency, unpredictable.

And then it says additional history 39-year-old status -- there is a commonly used abbreviation called status post means this happened status post manipulation by report in the patient's chiropractor's office yesterday with exquisite pain, sharp and shooting down right arm per patient. Her pain is eight to ten out of ten at this time. It waned overnight but increased this morning with weakness to extension on the right. Numbness C7-C8 distribution. No other NT, I don't know what that abbreviation, no

other trauma fall per patient. No -- there is no known other trauma, just the manipulation.

Q. Did you take your own history from Kim Richley?

A. Yes, I did.

Q. And what was the history that you obtained?

A. I had a history from Kim Richley that she was in her chiropractor's office, she had a manipulation and at the point of manipulation she got a sharp pain in her neck and the description she used to me on at least two occasions was she heard the sound of shattering glass. And she went home -- she complained about it. She went home. The pain got worse during the night, then got a little better, then got worse the next morning and then she was seen at the outside hospital because of that pain.

Q. Based upon your experience is that a fairly typical presentation for a facet fracture?

A. Based on my experience that is not a fairly typical presentation for a facet fracture.

Q. All right. Why isn't it not?

A. Out of the hundreds of facet fractures I have seen I have never seen one from a chiropractic manipulation. The classic history and where I've seen most of them has been in motor vehicle

accidents, motorcycles accident, all terrain vehicle accidents, falls, pedestrian versus car accidents. That probably accommodates 95 percent of them.

Q. Was a physical examination conducted here at Metro Hospital?

A. Physical examination was conducted here at Metro Hospital both in the emergency room, by the emergency physician, the -- my resident on neurological surgery and I conducted one on the 22nd.

Q. Okay. Let me show you what's been marked as Plaintiff's Exhibits 12-G and H along with other sections in the Metro chart, do those contain the physical examination that was done at Metro?

MR. REGNIER: Objection as to testimony other than his examination.

A. These appear to be copies of the physical examination part of the trauma admission note from MetroHealth and the trauma attending's note at MetroHealth and my note at MetroHealth.

Q. Did you rely on the physical examinations that were conducted in deciding how to treat Kim Richley in addition to your own physical examination?

A. Yes, sir. I found them all confirmatory.
Q. Okay. Could you go over the findings, the abnormal findings in the physical examinations?
MR. REGNIER: Objection.
A. Yes, I can. The abnormal findings on the physical examinations were -- well, first is when all of us saw Miss Richley she was already in a cervical collar, so this is a woman who's got a collar on.

Number two, when I saw her at least she was holding her right arm close to her body and obviously found it uncomfortable to move it.

Number three, I didn't move her neck because by that time I was aware and the other doctors, obviously, were aware that there was evidence of a fracture.

Number four, she had -- we tested sensation, she had some decreased sensation going down the back of her arm to the middle part of her hand and these two last fingers. That means it felt numb.

Number four, she had some weakness of the whole arm because the whole arm hurt, but what was most marked was weakness of what's called triceps function or what is also qualified as

elbow extension which, for the jury's sake, is your ability to straighten your arm out like this and some weakness of grip, your ability to squeeze. Those were the most marked points of weakness. And those were the positive physical findings. There may have been -- let me check that. No, that was it.

Q. Okay, Doctor, I want to go back in time before Kim Richley saw a chiropractor, Dr. Reichenbach, have you reviewed Plaintiff's Exhibit 1 which is a report from a cervical X-ray of 1/21/99?

A. Yes, I have.

Q. And based upon that report what was the condition of Kim Richley's neck back on 1/21/1999?

MR. REGNIER: Objection.

A. The report states from an X-ray at Parma Community Hospital on 1/21/99 it says cervical spine with obliques. There is normal alignment and curvature, no fracture or dislocation is seen. No degenerative changes are seen. And it's signed by a Dr. Bradford.

Q. So how would you characterize the condition of her neck?

MR. REGNIER: Objection.

A. It's a normal X-ray.

Q. Were any abnormalities noted in the X-ray --

MR. REGNIER: Objection.

Q. -- of her cervical spine?

A. Not that I could see in the medical record -- in the record I had available.

Q. S part of your job as a neurosurgeon to read films?

A. It's part of my job, yes, sir.

Q. And how often do you review films?

A. Every day I practice neurosurgery.

Q. Okay. I would like you to take a look at Plaintiff's Exhibits 2 through 5, they are X-rays dated 10/17/2002 which were taken at Dr. Reichenbach's office. Let's take a look at those at the X-ray box.

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

VIDEOGRAPHER: We're off the record.

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

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VIDEOGRAPHER: Back on the record.

Q. Okay. Doctor, what do you have up on the X-ray box?

A. I have the first of Kim Richley's X-rays marked Plaintiff's Exhibit 2 which is dated October 17th, 2002 and has Kim Richley's name on it.

For the jury's sake, this is what's called an AP picture meaning it's an X-ray taken from the front. In here you can see the collar bones and here's part of the top of her chest and here's her neck and this is part of her jaw and her skull in the way and these are the bones of the neck, and these are just pictures from the front. And by my reading these X-rays are absolutely -- this X-ray is absolutely normal. There is no sign of any fracture or break or increased soft tissue density or any other funny thing. This would fulfill my criteria for a normal AP X-ray.

Q. Okay. And could you put up the other view.

A. The other view is what's called a lateral view of Kim Richley's spine and here -- so the jury can tell, here's the jaw, you're looking at the side. Here's the back of the head. She's obviously wearing her glasses. These are the bones of the neck and you count the bones as I stated earlier from the top down, 1, 2, 3, 4, 5, 6, 7.

And these X-rays would by my reading be normal. In fact, there would be a 90 percent chance you could tell it's a woman X-rays by the size of the bone and their shape, but this is normal. This is a nice gentle curve. There is no crack through here. One bone isn't slipped on another. And for the jury's sake, you can tell that the -- this is 6-7, the bones line up. The front of the bone lines up with the back of the bone.

Q. Is there any evidence of subluxation or fracture in either of those X-rays of 10/17/2002?

A. No, sir.

Q. Do you have an opinion based upon reasonable medical certainty as to whether Kim Richley had a facet fracture at C6-7 on 10/17/02 when Dr. Reichenbach took those X-rays?

A. Yes, I do have an opinion.

Q. And what is your opinion?

A. My opinion is based on a reasonable degree of medical certainty that there was no evidence of Miss Richley having a facet fracture on these X-rays of 10/17/02.

Q. Is there any evidence in those X-rays that she had a facet fracture years earlier which healed

over?
A. Based on a reasonable degree of medical certainty I have no evidence that there is a facet fracture that's healed from years before.
MR. RUF: Let's go off the record.
VIDEOGRAPHER: We're off the record.
- - - -
(Thereupon, a discussion was had off the record.)
- - - -
VIDEOGRAPHER: We're back on the record.
Q. Doctor, have you reviewed Exhibits 4 through 8?
A. Yes, sir.
Q. And what are those Exhibits?
A. Those Exhibits are X-rays done on Kimberly Richley at MetroHealth Medical Center on October 22nd, 2002 which were done at approximately 9:50 in the morning of 10/22. And --
Q. So those are five days after Dr. Reichenbach's X-rays?
A. Yes, sir.
Q. Do you notice anything significant in the X-rays marked as Exhibits 4 through 8?

A. Yes, I do. I will start with Exhibit 7 and go back. Well, let's start with Exhibit 6 so it's fresh in the jury's mind.

This is Exhibit Number 6. This is a lateral X-ray, same X-ray that I just showed you with the bones, 1, 2, 3, 4, 5, 6, 7. And as I drew on Kimberly this bone is suppose to line up with this bone and what you see is these six bones are forward of this 7th bone.

MR. RUF: Okay. Let's go off the record for one minute.

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

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VIDEOGRAPHER: We're back on the record.

A. For the jury's sake I put up the X-ray from 10/17 and the X-ray from 10/22 and the major difference is is number one, Kimberly is not wearing her glasses on the X-ray of 10/22 and, number two, if you look -- this is the X-ray done at Metro. The way the bones line up are the front's here, the back's here, but at this level 6-7 they're not lined up. One bone has slipped forward of

another and you get the hint that there may be possibly a fracture right in here and if you look back at this X-ray that was done on 10/17, a lateral X-ray with the glasses on, you can see that same area of those bones were lined up perfectly.

Q. Okay. Anything else that you found significant in Exhibits 4 through 8, the X-rays taken at Metro?

A. Yes. Yes, I did. In looking back at the -- if the jury thinks back to the previous film, this is the same X-ray that we took -- kind of X-ray we took with Kimberly looking at the front and you can see her neck is a little crooked this time. On the previous X-ray it was absolutely straight, and a crooked neck can be a sign that, A, she's holding her neck crooked or, B, that it's painful and you're holding it in that particular position because that decreases the amount of pain.

Q. Okay. Doctor, were some other films taken at Metro?

A. Yes, sir.

Q. And what kind of films were those?

A. She had what's called a CAT scan and it doesn't

refer to the --

Q. What about an MRI?

A. And an MRI.

Q. Okay. I'm handing you what's been marked Plaintiff's Exhibit -- Exhibits 9 through 11. Would you identify those?

A. Yes, sir. These are the CAT scan reproductions on Kimberly Richley done on the 22nd of 2004. And for the --

Q. Do those show the facet fracture?

A. Yes, sir, and they also show the subluxation. I need you to hone in on this picture. This is slicing the person from the side ride down the middle and here the bones line up and then there is this little jump. Here the bones line up and then there is this little jump, and that's a sign that there is the subluxation.

The other thing they did was that they also show the facet fracture, and now for the jury's sake we're going to -- it's like taking Kimberly's head and chopping it in slices from the top going down. For the jury's sake if you look down here this is a more normal vertebrae. See how it lines up here and the spinal cord actually sits in the middle here and here's that

bone off the back and this is altogether, and here this is marked from before, but you can see this -- there is not suppose to be a lucent line that goes through this bone on the left side. This is a crack that goes through that facet.

Q. And what level is that at?

A. That's at 6-7 and here's part of the facet here and then here's a little crack in what's called the spinous process out of the side.

Q. Okay. Is anything else shown on the last film?

A. No, that's just another slice of the spinous process.

Q. Do you have an opinion based on a reasonable medical certainty as to whether the fracture was continuous?

A. Yes, I do have an opinion. My opinion is based on a reasonable degree of medical certainty that the fracture was one continuous fracture going through the facet joint out to the transverse process.

Q. And do you have an opinion based on reasonable medical certainty as to where the fracture started and where it finished?

A. I have an opinion. Yes, I do have an opinion, and my opinion based on a reasonable degree of

medical certainty was that the fracture started at the facet and went out to the transverse process.

Q. So this was one continuous fracture, it was not two separate fractures?

A. Yes, sir, part of the same insult.

Q. If you could take your seat again I have some other questions.

VIDEOGRAPHER: We're off the record.

- - - -

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

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VIDEOGRAPHER: We're back on the record.

Q. Doctor, could you please go through the materials you have reviewed?

A. The materials I reviewed were, number one, the medical records available to me from MetroHealth and including my office notes all of which are in her medical record.

Number two, it includes the deposition of Dr. Reichenbach.

Number three, it was the deposition of --

Q. A portion of Kim Richley's deposition?
A. A portion of Kim Richley's deposition. Number four, the X-rays available to me to MetroHealth, the X-ray report from Parma Hospital and the X-rays that Dr. Reichenbach did.

And number five, follow-up note by a Dr. Chauhan including EMG's and nerve conduction study results and the-- an evaluation.

Q. Did you review the actual EMG results?
A. I think I just reviewed the report. Oh, yeah, I read the whole lab note and the result -- and the impression.
Q. Did you also review a physical therapy note in Dr. Chauhan's records?
A. Yes, sir.
Q. And what's the date of that note?
A. Date of that note is January 26th, 2004.
Q. Did you review Dr. Chauhan's report?

MR. REGNIER: Objection.

A. As far as I recall I did, yeah.

Did I? That one?

Q. Do you want to take a second and look through your file?
A. Yeah.

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

VIDEOGRAPHER: We're off the record.

- - - -

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

- - - -

VIDEOGRAPHER: We're back on the record.

A. I did review Dr. Chauhan's report.

Q. Have you also reviewed Plaintiff's Exhibit 16 which is an audit of medical expenses?

MR. REGNIER: Objection.

A. Yes, I have reviewed that.

Q. Doctor, do you have an opinion based upon reasonable medical certainty as to the cause of Kim Richley's facet fracture?

A. Yes, I do have an opinion.

Q. And what is your opinion, Doctor?

A. My opinion is based on a reasonable degree of medical certainty the facet fracture was proximately caused by the manipulation of 10/21/2002.

Q. Are you aware of any other trauma or force to Kim Richley's neck between 10/17 and 10/22/02 other than the chiropractic manipulation?

MR. REGNIER: Objection.

A. I'm aware of no other trauma to Kim Richley's neck in that time period.

Q. Is there any reference in the MetroHealth medical records to any other force or trauma to Kim Richley's neck other than the chiropractic manipulation?

A. There is no evidence in the MetroHealth record of any other trauma to Kim Richley's neck between 10/17 and 10/22/2002 besides the chiropractic manipulation.

Q. Do you note in your records whether or not Kim Richley had a history of seizures?

A. I know she had a history of seizures.

Q. Do you have an opinion based on reasonable medical certainty as to whether a seizure caused Kim Richley's facet fracture?

A. I do have an opinion based on a reasonable degree of medical certainty.

Q. And what is your opinion?

A. My opinion is based on a reasonable degree of medical certainty the seizure did not cause a facet fracture.

Q. And why is that?

A. A number of reasons. Number one, I've seen at

least 500 people with terrible grand mal seizures that were difficult to control and needed paralyzation and intensive care treatment and I have never seen a facet fracture with it.

Number two, Kim, by my recollection and the history I have available to me, never had a terrible fall down, shake seizure like that. Her seizures were more mild and more controlled and she knew they were coming. So for those major two reasons I have never seen it -- never seen it described, never seen it reported, have 20 some years' experience doing this, I just find it extremely -- I find it extremely, extremely, extremely unlikely.

Q. Is there any medical evidence to support that a seizure caused Kim Richley's facet fracture?

A. I have no evidence that Kim Richley had a seizure that caused her facet fracture.

Q. Do you have an opinion as to what type of movement caused her facet fracture?

A. Yes, I do have an opinion as to what type of movement caused her facet fracture.

Q. And what is your opinion?

A. My opinion is that with a reasonable degree of medical certainty it would be rotation flexion

injury as we've discussed, the most common cause of a fracture like this.

Q. What type of subluxation did Kim Richley had -- have at C6-7?

A. Kim Richley had a Grade I subluxation which means it was less than one quarter of the vertebral body. So for English for the jury, if here's a whole vertebral body if it slipped one quarter that's one degree, if it slips a half so a whole half the body slipped forward like this that's a second degree, third degree is three-quarters and fourth degree is your head is falling off.

Q. Did the one vertebral body slip directly over the other vertebral body?

A. It slipped and it rotated at 6-7. Because of the fracture it not only slipped forward it did, for the jury, like this so that you can see with one body floating forward on another and you can see how if one body rotates on another if you look at the lateral film you can see how part of the body overhangs the one below, and that's exactly what we saw in Kim Richley.

Q. Does that give us any insight into the mechanism of injury for the subluxation?

A. Most common mechanism for that is a primary --

actually the most common reason for a primary -- a -- first degree traumatic subluxation. You can have some subluxations from degeneration and arthritis after years or rheumatoid arthritis, but the most common cause for degenerative or for an acute subluxation is a rotation flexion injury. Most sometimes associated with a fracture, sometimes what's just called a jump facet where one bone jumps on the other and it's not associated with a crack.

MR. RUF: Okay. Let's go off the record for a minute.

VIDEOGRAPHER: We're off the record.

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

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VIDEOGRAPHER: We're back on the record.

Q. Doctor, I've handed you what's been marked as Plaintiff's Exhibit 19, it's a model of the cervical spine and the head. Could you draw on that model where the fracture was in Kim Richley.

A. Okay. This is the model we looked at previously. Here's the front. Here's the back. We're going to go to the right side. This is the 6-7 vertebral body, so this is the 6th one. This is the 7th one. And the fracture actually came across this underneath, under this body here and out through this transverse process. Here's this transverse process, so the fracture went like this and broke off this bone right here, the top of this bone here which was driven in and pushed on that nerve root.

Q. So did a piece of bone actually break off?

A. Yes, sir.

Q. Do you have an opinion based on reasonable medical certainty as to whether Kim Richley's neck was pushed beyond it's pathophysiological limits?

MR. REGNIER: Objection.

A. Yes, I do have an opinion.

Q. And what's your opinion?

A. My opinion is it was pushed past its pathophysiologic limits, which for the jury's sake in English means it went -- it was pushed too far.

Q. It was pushed beyond its normal range of motion?

A. Yes, sir.
Q. Did you perform surgery on Kim Richley?
A. Yes, sir.
Q. What date did you perform surgery on her?
A. I performed surgery on Kim Richley on October 31st, 2002.
Q. Okay. I'm handing you what's been marked as Plaintiff's Exhibit 12, are those the records at Metro Hospital including the records from your surgery?

MR. REGNIER: Objection.

A. These are copies of the records from Metro Hospital including copies of my surgical note and my notes.
Q. Why was surgery necessary for Kim Richley?
A. Surgery was necessary for two reasons. Number one, Kim was in terrible pain and had weakness of that arm and it was to take care of the pain and weakness. And number two because one bone was slipping forward on another it was to fuse her spine to prevent further motion with the possibility of further damage to her nervous system. So in fancy medical terms the term is decompression and the stabilization. For the jury's sake it's take the pressure off and

prevent it from moving too much.

Q. Okay. Could you describe in detail the surgery that you performed on Kim Richley and first could you talk about how you actually get down to the cervical spine?

A. Okay. On this model I'll start off with, if this is looking at the back, except on people like me you have a nice head of hair up here, and then it comes down and it stops and you start at the neck. And this neck is covered by skin and muscle and the tissue comes all the way out to here so all these bones are covered.

Well, the fracture is down here, you have to open up the skin, go down to where the muscles are starting to attach and scrape the muscles off to get all the way down to the bone here where the crack was.

And Mr. Ruf was kind enough to have this color atlas of anatomy and this is a cadaver and so the jury knows the skin has been taken off and this is down to the first layer of muscle and this is called the midline. That's right in the middle where those bones come, and all these muscles that are attached here, they're called the capitis and the trapezius and they're

actually seven sets of muscles, all that has to be peeled off so you're getting down on something like this.

Q. Try and hold it a little more vertical, please.

A. On the next page right down to the bones, or easier for the jury to understand, you scrape off all those muscles so you come and dock right down on these bones right here. So these muscles that are attached in different layers like this, they are all open in the middle and pulled back.

An idea for what the jury might understand, it's like I took your biceps muscle and moved it out to here and then put it back so I could get at the upper arm. And it's a lot of movement. And then you dock here and then you have that piece of bone that's pushed in on the nerve root as we pointed out.

Q. Can the dissection of that tissue away from the cervical spine cause any residual problems?

A. Yes, it can. I mean, it's not -- we do surgery from the front and in back. If you operate from the back we tell everyone they're going to have a sore neck, they're going to have burning between their shoulder blades, if they move too much it's going to ache and pull and there tends to be

quite a bit of that from moving -- just moving those muscles back and putting them back again.

Q. What was the amount of time that Kim Richley's surgery took?

A. It was approximately two and a half hours.

Q. What was the condition that you found intraoperatively?

A. The condition that I found intraoperatively was, number one, I found that there was no evidence of an old fracture or anything like that, anything healing, an abnormality like a cyst or a tumor.

Number two, I found the cracked bone which was that bone that I described on here that was cracked off that body and pushed forward into this space where the nerve was. So easy way of thinking about it for the jury it's as if somebody -- you hit your crazy bone it hurts, well here there is something always rubbing on that crazy bone, always rubbing on that nerve.

Number three, it looked like an acute fracture meaning it didn't look like something that had occurred six months or five months before, it was something within the last couple of days.

And number four, her spine was a little

softer than I would have given her credit for for a 39-year-old woman, perhaps on the order of somebody 50 some. And as we all get older our bones get softer, woman more commonly than men. So those were the four findings.

Q. What was the significance of the piece of bone that was pushing on the nerve?

A. I felt real good about getting it out because I was sure that was the fracture and that was most of the cause of her pain.

Q. What types of problems did that cause in Kim Richley?

A. It caused pain and weakness.

Q. And did it cause any problems with her arms?

A. It caused pain -- I'm sorry, it caused pain and weakness of her right arm. I mean, it's exquisite pain and you have weakness. You can't -- as I stated earlier, the fact that she couldn't grip and she couldn't move her arm with the normal strength was caused by that pressure on that nerve.

Q. If she had had a fracture of the facet more than a year before you did your surgery what type of changes would you see in the bone, if any?

A. Well, you'd see one of two changes. Assuming the

fracture was a year old and healed you would see evidence of a healed fracture. That looks different on CAT scan and MRI scan than this looked and I can say that with certainty because I just somebody today in my office who has an old fracture of 5-6 but it has certain characteristics, and Kim had none of those.

Number two, if it had not healed it would not look -- the piece of bone would have looked different. It would have been smooth. It wouldn't have looked, as I said earlier, acute, meaning something that had happened recently. The edges would have been rounded off because some of the bone would have been reabsorbed.

Q. So based on your findings was there any evidence that she had a preexisting fracture that was refractured on October 21st or October 22nd?

A. Based on my findings I have no evidence that there was any sign of preexisting fracture that had healed or not healed.

Q. Could you explain to the jury exactly what you did in this surgery using the models?

A. Sure. You want to use the models?

Q. Sure. Why don't we use this board first and then also use the models.

A. Okay. Let me put this aside here.

Okay. Let's start with down here. Already?

I'm starting with down here because we use artificial devices to hold the bone when we're trying to get it to heal. An example that the jury might understand is that they hear about these athletes who have pins and screws put into fractures. We can use those same kind of things in the spine. We sometimes use wires, but all these things will break with time unless the bone heals. So in Kimberly's case we started what's called an iliac crest bone graft, meaning we take a little bone from your hip, not from where you walk but from where your bikini underwear is held up and in here they show the model of -- we cut down on the back of somebody's butt, this is from behind, split some of the muscle, come down and take slivers of bone that are shown here.

And so first they start off with an incision on their -- just above their butt, and a sore posterior hip because we took -- split some bone off from there. And this is closed up and we go up to the neck. And that's up here. And then saving the bone we got from the hip we open the

spine, come down and dissect all those muscles off as I showed in the anatomy book, and come down to the bone from here and back. And then when that bone is there and back, so the jury understands, it comes to something like this, here's that bone in the back called the spinous process. Here's the lamina. Here's the facets. Here's the facet on one side, here's the facet on the other side. And if we were looking at this the crack in the facet would be the crack through here and would go out to this spinous process in the back. Here's a -- here's a better view. This is -- well, this is the left side. The crack would go -- this bone is shingled underneath as I showed you on the model. A crack went like this crack, crack, crack, crack, crack, crack, right through this transverse process here.

So first we put a hole in the base of the spinous process here. A hole -- in her case I put a hole in the base of the spinous process there and got them ready for the future. Then you have to get -- this piece of bone is broken off and is pushing forward on the nerve which is coming out here. So I first make a little

opening in the bone here and then take off a little of this bone, and what I'm doing is making a window to take off the piece of bone that's broken forward, having taken off the piece of bone here and was able to take out the fractured bone that was pushing on the nerve which is lying underneath here.

After doing that put this wire in here, put it around here, tied the two bones together and pulled them tight with a special surgical cable and then tightened them down. We use a little more advanced system, a little more newer system than this just twisting the wire, and then the bone we've taken from the hip down and back to get this to fuse forward so one bone fuses on top of another.

Q. Do you replace the piece of bone that you took out so that you can get the piece of bone that was broken off?

MR. REGNIER: Objection. Leading.

A. No, you have to take out the piece of bone and it's done in very small pieces so the bone is chewed up and actually some of the bone we bite off here we use to help the fusion so, no, that bone is missing.

Q. So what is the purpose of this surgery? What are you trying to accomplish?
A. As I stated earlier the fancy medical terms are decompression and stabilization. In English for the jury it's, one, take the pressure off the nerve which is coming out here, number two, prevent the bones from sliding forward one on another.
Q. Okay. I'm handing you what's been marked as Plaintiff's Exhibit 20, what is that?
A. This is a real live version of the surgical cable that we used to put into Kim Richley's neck. And for the jury's sake, if I can sit down and maybe use the white background so they can see. This is a very fine cable and it's actually a twisted -- it's a set of twisted titanium wires, and what you do is on this model we drilled the hole through here, goes through here, a hole through here, wrapped it around and then the -- the fancy medical term for this is called a crimper. The easy way to think about it is like a top hat. It's a little thing that goes through like this and the cable gets threaded through that and then you tighten it with a special tightening device so that one bone is snugged up against the other

and doesn't move, and then with a special surgical device you crimp this top and it holds the wire in that exact position and then you cut it and take out the extra wire.

Q. Does the wire permanently remain in Kim Richley's spine?

A. Yes, it does.

Q. Okay.

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

VIDEOGRAPHER: We're off the record.

- - - -

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

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VIDEOGRAPHER: We're back on the record.

Q. Okay. Doctor, what Exhibits do you have there?

A. These are Exhibits, Plaintiff's Exhibits 17 and 18.

Q. Okay. What are the dates of those films?

A. Well, one film is marked 11 -- November 11, 2002 and the other actually is June 17th, 2004.

Q. Okay. Can we see the cable that was inserted in Kim Richley's neck?

A. Yes. This is, again for the jury, we're looking at in front and you see Kim's collar bones. Here's her neck. Here's her jaw. Her head's up here. Here's the cable. And you can see her neck is straight again.

And then here's a lateral X-ray done even later than this and this is from 2004.

MR. REGNIER: Pardon me, Doctor, objection as to the 6/17/04 X-ray.

Go ahead.

A. Yes, 6/17/04. This is looking at the side. This is her jaw. This is the back of her head. You can see the bones here 1, 2, 3, 4, 5, 6, 7. And here it's lined up. Here it's lined up, and here it's lined up again.

Q. And where is the wire?

A. The wire is right here.

Q. So that wire is going to permanently remain in her spine?

A. Yes, sir.

Q. Thank you, Doctor.

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

VIDEOGRAPHER: We're off record.

- - - -

(Thereupon, a discussion was had off

the record.)

- - - -

VIDEOGRAPHER: Back on the record.

Q. Doctor, based on your experience over what time period does healing occur in the cervical spine?

A. Usually years. Six months to a year, but you get a -- it starts a week after your surgery.

Q. Has it been your experience that conditions which persist longer than a year are permanent?

A. Yes, sir.

Q. Do you have an opinion upon on a reasonable medical certainty as to whether Kim Richley's current condition is permanent?

MR. REGNIER: Objection.

A. Yes, I do have an opinion.

Q. What is your opinion?

MR. REGNIER: Objection.

A. My opinion based on a reasonable degree of medical certainty is that with the assumption that nothing else happened to Kim Richley that her condition now would be permanent.

Q. Okay, Doctor, I want you to assume the following, that Kim Richley's current physical abilities are as follows, she is only able to lift a maximum of 2.5 pounds on an occasional basis. She is only

able to carry a maximum of 2.5 pounds on an occasional basis, that she is only able to push up to a maximum of 75 pounds on an occasional basis, she is only able to pull up to a maximum of 80 pounds on an occasional basis, she can stand on an occasional basis, she can walk on an occasional basis, she cannot perform any overhead activities, she can reach forward on an occasional basis, she can perform light and firm grip on an occasional basis, and that she can perform pinching and fine motor activities on an occasional basis. Do you have an opinion based on reasonable medical certainty as to whether those conditions are permanent?

MR. REGNIER: Objection.

A. With those assumptions I have an opinion based on a reasonable degree of medical certainty that those conditions would be permanent.

Q. Okay, Doctor, I want you to assume that Dr. Mann, an expert for the defense, conducted a neurological examination September 9th, 2004 which documented that Kim Richley was troubled with burning, tightness and pain in the neck radiating down the right arm to the fingers and headaches originating in the neck. Do you have

an opinion based on a reasonable medical certainty as to whether those conditions are permanent?

A. Yes, I do have an opinion.

Q. And what is your opinion?

A. My opinion is based on a reasonable degree of medical certainty that the -- that the -- as described in the September 9th of 2004 findings these conditions -- the condition would be permanent.

Q. If Dr. Mann found that the paraspinous muscles showed mild tightness what's the significance of that?

A. It means the significance -- my assumption would be the significance for Kimberly Richley was that her neck hurt.

Q. Okay. Where are the paraspinous muscles?

A. Paraspinous were part of those muscles that we split on opening up to get down to the bone and they're the muscles that are covered right over the back of the neck. And para means around, spinous means they're attached to the spinous processes which is what we took the muscles off of to do the surgery.

Q. Okay. Could you look at the physical therapy

note of 1/26/2004?
A. Okay. This one, yes.
Q. Okay. Let's look at the second paragraph. Is there a notation about range of motion?
A. Yes. It's listed under O meaning objective meaning objective findings.
Q. Could you read into the record what it states about range of motion? First of all, what's the date of this note?
A. January 26th, 2004.
Q. Okay.
A. It says --

MR. REGNIER: Objection.

Go ahead, Doctor.

A. -- range of motion was assessed actively. She was found to be lacking 50 percent of forward bending of the cervical spine. Backward bending was within normal limits. That's WNL, that's an accepted abbreviation, and pain free. Side bending to the right was limited by 50 percent and reproduced her typical right-sided cervical pains. Side bending to the left was limited by 25 percent and produced a stretch to the upper trap, it means the trapezius muscle, the muscle that attaches the shoulder to the neck. Rotation

was -- to the left was limited by 25 percent and reproduced some upper cervical trap pain, and rotation to the right was limited by 75 percent and caused severe pain through the right upper extremity.

Q. Okay. Doctor, do you have an opinion upon on reasonable medical certainty as to whether those limitations on the range of motion in Kim Richley's cervical spine are permanent?

MR. REGNIER: Objection.

A. Yes, I do have an opinion.

Q. And what is your opinion?

A. My opinion is based on a reasonable degree of medical certainty the conditions of Kim Richley's cervical spine rotation is permanent.

Q. Did you review the EMG findings?

A. Yes, I did review --

MR. RUF: Let's stop one second, Doctor.

VIDEOGRAPHER: We're off the record.

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

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VIDEOGRAPHER: Back on the record.
Q. Doctor, did you review the EMG findings?
A. Yes, I did review the EMG findings.
Q. What's an EMG?
A. EMG is a fancy term for electromyogram. What it does is it's usually done -- it's actually -- EMG is sort of the generic term, it usually refers to EMG and nerve conduction studies meaning you attach little electrodes to the nerves that run through whatever you're measuring, the arms or the legs, referring pain to the back or the neck. But let's take an example. You're going to do it on the arm and they attach little electrodes to see that the nerves conduct the electricity that we normally use normally and then it tests the muscles that are innervated by the nerve, so where a member of the jury might have seen or heard about it as you're testing for a carpal tunnel. They'll do EMG's and see that the way the blockage and the way the nerve works is in the wrist and they'll test the muscles in which the nerve involved in carpal tunnel goes to the hand, the muscles that are affected when that nerve isn't working, and that gives you an idea of there is classically a nerve injury or there

is something wrong with the muscles.
Q. What was the date of the EMG?
A. Date of the EMG was March 2nd, 2004.
Q. And were there any significant findings with the EMG?
MR. REGNIER: Objection.
A. Yes, there were some significant findings.
Q. Okay. What were those?
MR. REGNIER: Objection.
A. The significant findings were as it says it's summarized under impression, some ongoing evidence of chronic nerve damage but reinnervation is now noted. Findings are consistent with some motor recovery from the previous injuries and no signs of ongoing acute deinnervation. In English she has a nerve that's regenerating and trying to heal itself. She also had bilateral carpal tunnel syndrome which is part two of that. And for the record that has nothing to do with her neck injury.
Q. Was that the nerve that the bone was pushing on that you removed?
A. Yes, sir, that was the right C7th nerve.
Q. In your experience based on the conditions that we went over would those limit Kim Richley's

ability to work and perform normal activities of daily living?
A. Yes.
Q. Do you have an opinion based upon a reasonable medical certainty if her condition limits her ability to work and perform normal activities of daily living whether those limitations are permanent?
MR. REGNIER: Objection.
A. Yes, I do have an opinion.
Q. And what is your opinion?
A. My opinion is that this type of injury would preclude her from regular employment and curtail some of her activities of daily living.
Q. Are you aware of any medical condition in Kim Richley which would shorten her life expectancy?
A. I am not aware of any condition -- medical condition in Kim Richley that would shorten her life expectancy.
Q. Are you familiar with medical treatments to the cervical spine?
A. Yes, I am.
Q. Is there any medical basis for performing a cervical manipulation for a wrist sprain strain?
MR. REGNIER: Objection.

A. I know of no indication for performing a cervical manipulation for a wrist sprain strain.
Q. Is an indication the same as medical basis?
A. Yes, sir. It's -- you don't -- for the jury's sake, an indication is if your left ankle hurts you don't -- a bad indication would be you don't X-ray the right ankle, you X-ray the ankle that hurts. The indication is you're doing something to deal with the symptom and the complaint.
Q. Do you have an opinion based on reasonable medical certainty as to whether the acceptable standard of practice in treating the cervical spine requires an indication for the treatment?
MR. REGNIER: Objection.
A. Yes, I do have an opinion.
Q. And what's your opinion?
MR. REGNIER: Objection.
A. My opinion is any medical therapy including one for the cervical spine needs an indication.
Q. Do you have an opinion based on a reasonable medical certainty as to whether the Chiropractor Daren Reichenbach deviated from acceptable medical practice in treating the spine?
MR. REGNIER: Objection.
A. Yes, I do have an opinion.

Q. And what is that opinion?
MR. REGNIER: Objection.
A. My opinion is based on a reasonable degree of medical certainty that Dr. Reichenbach's treatment exceeded the normal care.
Q. And why is that?
MR. REGNIER: Objection.
A. It's my opinion because I see dozens if not hundreds of patients who have been seen by a chiropractor, I have sent some of my own patients to chiropractors, I have never -- and I have never seen a spine fracture.
Q. Do you have an opinion as to whether Dr. Reichenbach used too much force in manipulating Kim Richley's neck?
MR. REGNIER: Objection.
A. Yes, I do have an opinion.
Q. And what's that opinion?
MR. REGNIER: Objection.
A. My opinion based on reasonable medical certainty is that he exceeded the normal force. You have a fracture.
Q. Do you have an opinion as to whether Dr. Reichenbach deviated from acceptable practice for a physician or doctor treating the spine by

not having an indication for performing a manipulation?

MR. REGNIER: Objection.

A. Yes, I do have an opinion.

Q. And what is the opinion?

MR. REGNIER: Objection.

A. My opinion is you have to have an indication for your treatment and cervical spine, leg, doesn't matter. You treat the cervical spine you must have an indication related to the cervical spine.

Q. Do you have an opinion based on reasonable medical certainty as to whether Dr. Reichenbach's deviations from acceptable practice in treating the cervical spine proximately resulted in Kim Richley's facet fracture?

MR. REGNIER: Objection.

A. Yes, I do have an opinion.

Q. And what's your opinion?

MR. REGNIER: Objection.

A. My opinion is is that the nonindicated manipulation proximately caused the facet fracture.

Q. Have you reviewed Plaintiff's Exhibit 16?

A. Yes, I have.

Q. What is Plaintiff's Exhibit 16?
A. Plaintiff's Exhibit 16 is an audit of medical expenses on Kimberly J. Richley which this updated version is dated October 4th, 2004.
Q. And what's the total amount of medical bills?
A. $33,287.51.
Q. Do you have an opinion based on reasonable medical certainty as to whether the expenses of $33,287.51 were the proximate result of the fracture in Kim Richley's cervical spine?
A. Yes, I do have an opinion.
Q. And what is your opinion?
A. My opinion is based on a reasonable degree of medical certainty the expenses of $33,000 plus are proximately related to the fracture of Kim Richley's spine.
Q. Are those fair and reasonable expenses for the surgery that Kim Richley went through and subsequent medical treatment?
A. It is fair and reasonable practice -- fair and reasonable expenses for what it costs to take care of this in 2002 or 2003 or 2004.
Q. Approximately what range is there?
A. As I stated in deposition previously, a ball-park figure for this type of injury would be 25 to

$40,000.

Q. If Kim Richley felt a shattering sensation, as you described, at the time of the chiropractic manipulation on 10/21/02 would that be consistent or inconsistent with a facet fracture occurring at that point?

A. It would be consistent.

Q. What about a soreness described as a toothache type pain?

A. It would be consistent.

Q. What about an increase in pain over time which resulted in incapacitating pain and weakness the next morning on the 22nd?

A. It would be consistent.

Q. Has it been your experience that when somebody sustains a facet fracture they have immediate intense pain?

A. They have immediate pain. They often times tells me the pain gets worse afterwards.

Q. Is there a medical explanation for why the pain would get worse over time?

A. There is a fancy medical explanation called acute phase reactance that would confuse the jury. The easy way for them to think about it is there is the release of chemicals from the injured tissue

that cause inflammation, pain and swelling. So an example the jury might know is years ago Bernie Kosar fractured his ankle and played the whole second half on it and threw two touchdown passes and they almost pulled out a game against Miami. He was out for the next six weeks, but it occurs and it's not unusual for people to have injuries and deal with them and then it gets worse as time -- over the next hours and days.

Q. So why does it get worse?

A. The fancy term is acute phase reactance. What it is in English you get swelling. You sprain an ankle at 3:00 in the afternoon, it doesn't hurt until -- it hurts a little bit. You get up in the morning and it feels like you can't walk on it. There is injured tissue sets off certain chemicals. There is breakdown of the tissue around it. There is swelling. There is inflammation. And there is literally pain chemicals that are released to prevent you from moving that injured area.

Q. I'm showing you what's been marked as Plaintiff's Exhibit 14, could you identify that document?

A. Plaintiff's Exhibit 14 is my letter to you, Mark Ruf, concerning a medical opinion about Kimberly

Richley dated January 10th, 2004.
Q. Was that prepared in the regular course of your medical practice?
MR. REGNIER: Objection.
A. Yes, sir.
Q. Do you consider that document to be part of your medical chart?
A. It is kept in my medical chart, yes, sir.
Q. What do you charge for a deposition?
A. A thousand bucks and some an hour.
Q. And what do you do with the money?
A. All money I make in medical deposition and in filling out medical reports is donated to charity every year for the last 20 years.
Q. Doctor, I want to go over a few more of your credentials.
Where did you go to medical school?
A. I went to Harvard Medical School in Boston, Massachusetts. Graduated in June of 1974.
Q. What is your position here at Metro with respect to the department of neurosurgery?
A. I'm the director of neurosurgery at MetroHealth Medical Center.
Q. What's the director? Are you head of the neurosurgery division?

A. Yes, sir.
Q. Have you been chief of neurosurgery at a hospital in Cincinnati?
A. I was chief of neurosurgery at Cincinnati Veterans Hospital for a short time in 1982.
Q. Have you been a professor of neurosurgery?
A. I'm an associate professor of neurosurgery at Case Western Reserve Medical School.
Q. And how long have you been doing that?
A. I have been -- I was an assistant professor at the University of Cincinnati from 1980 to 1982. I was an assistant professor at Case from 1982 to 1989 or '90, and then in 1989 or '90 I became associate professor of neurological surgery at Case Western Reserve and have been so since then.
Q. Are you the member of any professional societies?
A. I belong to multiple professional societies including the American Association of Neurological Surgeons, the Congress of Neurological Surgeons, the American Association for the Surgery of Trauma, the AMA, the Ohio State Medical Society. When you get to my advanced stage of decline you belong to many of them.
Q. Have you been on hospital committees?

A. Yes, sir. I have been on the OR committee, the quality care committee, the trauma committee, the trauma quality assurance committee, the tissue committee, the laser committee, et cetera, et cetera.
Q. Have you received any awards as a physician?
A. Well, I was fortunate enough to get a -- a scholarship to Harvard Medical School and I was fortunate enough to be nominated for a Rhodes scholarship out of college. I didn't get it. And I was fortunate enough to be named St. Ignatius High School alumnus of the year in 1989 or '88, '98, '98, I'm sorry.
Q. Have you published medical publications and chapters in medical books?
A. Yes, sir.
Q. Have you published on the subject of pain management?
A. Yes, sir.
Q. Have you published on the subject of spinal trauma?
A. Yes, sir.
Q. Have you published on the subject of fractures?
A. Of spinal fractures, yes, sir.
Q. And do you have a publication that specifically

relates to cervical fractures and subluxation?
A. Yes, sir.
Q. Which publication number is that?
A. It's publication number 10 with Harrington, Dr. Fred Harrington, Dr. Allison Smith and myself which was disk herniation and cervical fracture subluxation which was published in neurosurgery in 1991.

MR. RUF: Let's go off the record for one minute.

VIDEOGRAPHER: We're off the record.

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

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VIDEOGRAPHER: We're back on the record.

Q. Doctor, I'm handing you what's been marked as Plaintiff's Exhibit 12, is that part of the Metro chart?
A. This is a copy of --
Q. I'm sorry, it's 12-A?
A. 12-A, this is a copy of the trauma discharge orders progress note on Kimberly Richley dated

10/23/2002.

Q. Could you read into the record the section about cause?

MR. REGNIER: Objection.

Go ahead, Doctor.

A. Cause of injury, I think it's blank -- it's typical medical scribble, year old female with sharp pain, paresthesias after manipulation.

Q. Okay. I'm handing you what's been marked as 12-B, is that part of the Metro chart?

A. Yes, it is. This is dated 10/22/02 and this is the trauma flow sheet. This is part of the medical record that is kept in the -- started in the emergency department when anybody with a trauma arrives.

Q. Okay. And could you read the highlighted portion?

MR. REGNIER: Objection.

A. It says prehospital summary, 39-year-old female, 6-7 disk location with numbness in right upper extremity after chiropractic manipulation yesterday.

Q. Okay. Let me hand you what's been marked as 12-C, is that part of the Metro chart?

A. Yes, it is. This is a note 12-C from 10/22/02

and it's part of the -- this is the attending note on -- in the emergency room on Kimberly Richley.

Q. Could you read the highlighted portion, please?

MR. REGNIER: Objection.

A. It says patient with chiropractic yesterday felt pain post manipulation, paresthesias continued and went to bed, woke up with severe neck pain, no -- and numbness and tingling to right second to fourth fingers. Alert, comfortable. Head with -- I can't read -- head ET at (inaudible).

Q. Okay. I'm handing you what's been marked as 12-F, is that part of the Metro chart?

A. Yes, it is.

Q. And what's that document?

A. It says -- it's a copy of the X-ray report generated as to the official reading of the CT of the cervical spine without contrast, so those were the pictures we looked at previously.

Q. Could you read the highlighted portion?

MR. REGNIER: Objection.

A. It says history, C6-7 dislocation and with numbness and upper extremities, chiropractic -- excuse me.

It says, to repeat before my two sneezes,

history C6-7 dislocation with numbness in upper extremities, chiropractor dislocation.

Q. Is it your understanding that it was the consensus of the physicians at Metro that this injury was caused by the chiropractic manipulation?

MR. REGNIER: Objection.

A. It is my understanding that the physicians at Metro thought the fracture was caused by the chiropractic manipulation.

Q. Are you aware of any note in the Metro chart that relates Kim Richley's fracture to a seizure?

A. I know of no note in the Metro chart that relates Kim Richley's fracture to a seizure.

MR. RUF: Okay. Thank you, Doctor. That's all I have. I'm sure Mr. Regnier has some questions for you.

VIDEOGRAPHER: We're off the record.

- - - -

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

- - - -

VIDEOGRAPHER: We're back on the record.

CROSS-EXAMINATION OF MATT J. LIKAVEC, M.D.

BY MR. REGNIER:

Q. Good afternoon, Doctor.

You've treated over a hundred facet fractures, correct?

A. Correct.

Q. And in that time you have never seen a facet fracture caused by chiropractic manipulation, correct?

A. Yes.

Q. In fact, you have never heard of a chiropractor manipulation causing a facet fracture, correct?

A. Correct.

Q. If -- in fact, you've described it, you said if a manipulation -- chiropractic manipulation caused a fracture it would be distinctly unusual, wouldn't it?

A. Yes, sir.

Q. In fact, you said you would find it to be a very, very unusual circumstance, wouldn't you?

A. Yes, sir.

Q. The most common cause of the facet fractures you see are motor vehicle accidents, aren't they?

A. Correct.

Q. And it happens when the person -- the patient's

head is rapidly decelerated, is that correct?
A. Yes, sir.
Q. Now transverse process fractures can be caused differently, can't they?
A. Yes, sir.
Q. They're usually caused by direct blows, aren't they?
A. Yes, sir.
Q. The most common way that you have described seeing a transverse process fracture is somebody getting hit with a pipe, that's one way, correct?
A. Yes, sir.
Q. Another is a blow to the chest, is that right?
A. Yes, sir.
Q. And another is an acute deceleration when they're thrown out of a car and smacked their back, is that correct?
A. Yes, sir.
Q. Or when someone lands severely on their back, is that right?
A. Yes, sir.
Q. Significant force is required to cause either of those sorts of injuries, correct?
A. Yes, sir.
Q. The model you have, Doctor, that you have been

showing to the jury, the one in your hands, that's looser than a normal spine is, isn't it?
A. Oh, yes, so you can -- I can demonstrate.
Q. That's right. The jury shouldn't assume that the spine moves that easily as that model does, correct?
A. That's absolutely correct.
Q. Okay. For that reason because it's difficult to move the spine you've never seen a facet fracture subluxation with what you call more minor trauma like a cough or a sneeze, correct?
A. Correct.
Q. And that's assuming that there is no underlining pathology that softens someone's bones, correct?
A. Correct.
Q. You have said it's always something like a fall or an auto accident or a motorcycle accident correct?
A. That's my experience, yes, sir.
Q. Okay. And the most common -- the reason that's the most common mechanism is because it requires something violent like an auto accident because the force is so big that your muscles and ligaments can't protect your neck, correct?
A. Yes, sir.

Q. In your experience as a physician people subjected to a violent force like that normally cry out, don't they, if they're conscious?
A. Well, I'm never there and I don't know.
Q. Well, wouldn't you assume they'd at least have a change in facial expression if they were subjected to violent force like that, Doctor?
A. I would expect that they would have a change of facial expression.
Q. And you would expect that they would complain and they would say ouch, correct?
A. I would expect so, yes, sir.
Q. In fact, Doctor, it's your opinion that you can't have an acute fracture of the facet without pain, correct?
A. Yes, sir.
Q. And you would expect it to be painful at the time the fracture happened, wouldn't you?
A. Yes, sir.
Q. And, Doctor, you have seen falls caused facet fractures, correct?
A. Yes, sir.
Q. And it is your opinion that you have heard of intense clenching of muscles causing transverse process fractures, haven't you?

A. Yes, sir.
Q. And you have testified that it's been reported that a seizure can cause a transverse process fracture, hasn't it?
A. Yes, sir.
Q. Now, Doctor, you are not a chiropractor, are you?
A. No, sir.
Q. You did not graduate from chiropractic school, did you?
A. No, sir.
Q. You did not pass a chiropractic licensing examination, did you?
A. That is correct.
Q. You have not taken any courses in chiropractic, is that correct?
A. That is correct.
Q. Spinal manipulation is not part of your practice as a neurosurgeon, is it?
A. That is correct.
Q. Neurosurgeons do not in general perform spinal manipulations, do they?
A. Not to my knowledge, sir.
Q. Neurosurgeons are not trained in spinal manipulations, correct?
A. Not from any of the residencies I know of, sir.

Q. Okay. Doctor, you have never even seen a cervical manipulation in your professional life, is that correct?
A. That's correct.
Q. The only time you have said you have ever seen a cervical manipulation is in the movies, correct?
A. Correct.
Q. And you said you maybe saw it in a Billy Crystal movie or something like that?
A. Yes.
Q. Correct?
A. Yes, sir.
Q. You have no way of knowing whether a Billy Crystal movie accurately portrays a chiropractic manipulation, do you?
A. I would assume it didn't.
Q. Doctor, you don't know how Dr. Reichenbach manipulated Kimberly Richley, do you?
A. No, sir.
Q. You do not know the name of the chiropractic technique he used, do you?
A. I think I read it in his deposition, but I don't remember what the fancy term was.
Q. Well, Doctor, you weren't given all of Dr. Reichenbach's --

A. No, I was not.
Q. -- deposition, were you?
A. I was not. But the part I read I thought it was referred to, but I may be mistaken.
Q. You do not recall the name of that technique?
A. I don't recall the name of that technique, sir.
Q. You do not know how that technique is performed, do you?
A. No, I do not.
Q. You do not know how to do that technique properly, correct?
A. You're absolutely correct.
Q. And you are not telling the jury that you know how to perform that chiropractic technique, correct?
A. No, sir, I am not telling the jury that.
Q. You have not reviewed Dr. Reichenbach's records, have you?
A. No, sir.
Q. You have not reviewed all of his deposition, have you?
A. I have reviewed part of his deposition, sir.
Q. But you have not reviewed all of it?
A. Yes, that's correct.
Q. You have not reviewed all of Kimberly Richley's

deposition, have you?
A. No, I don't think so.
Q. Okay. Now although you have no chiropractic experience you mentioned you have sent patients to chiropractors before, haven't you?
A. Yes, sir, and I get patients from chiropractors.
Q. And you have testified that their treatment seems to help some of your patients, is that correct?
A. Yes, sir.
Q. Chiropractic has an accepted place in the medical pantheon, doesn't it?
A. Depending on which member of the union you talk to, yes.
Q. Okay. In your opinion?
A. Yes, sir.
Q. Okay. Doctor, your opinion that Dr. Reichenbach's chiropractic adjustment caused Kim Richley's fractures is based in large part on the history that Kimberly Richley gave you, correct?
A. Correct.
Q. And it is based on an assumption that the history she gave you is accurate, correct?
A. Correct.
Q. Doctor, just so the jury is clear, I want to make

clear the injuries Kim Richley does not have. She did not have an injury to her spinal cord, correct?

A. That is correct.

Q. People hear of broken necks, she did not -- was not paralyzed in any way, correct?

A. No, she was not paralyzed. She had some weakness of that right arm.

Q. Of her right, correct arm?

A. Correct.

Q. And that stemmed from the C7 nerve root not the spinal cord itself, correct?

A. That's correct.

Q. She did not have an injury to her blood vessels, correct?

A. Correct.

Q. She did not have a herniated disk, correct?

A. Correct.

Q. You've shown the jury she had a broken facet on C7, correct?

A. Correct.

Q. And the model's a little confusing. You drew a line on C6 but there was no fracture on C6, was there?

A. No. I drew the line on C6 because the part of C7

is covered up and like this is too loose, that's too tight.

Q. Okay. It was just to show the level at which C7 was fractured, is that right?

A. Yes, sir. Yes, sir.

Q. Okay. You also mentioned that she had a fracture of the transverse process, is that correct?

A. Correct.

Q. Now when I deposed you a couple weeks ago, Doctor, you had that model in front of you at that deposition, correct?

A. No, I had a different one. I had a whiter one that was a little stiffer.

Q. Is it your testimony that those lines that are drawn on that model aren't the ones you drew three weeks ago?

A. I thought I used the other one by memory. I don't know. I got about seven of these, so in all honesty, Mr. Regnier, I mean, it may be, but there is a white one in my office and there is two others, but it may be -- it may be the same one.

Q. Well let me ask you, this, Doctor --

A. I'm not trying --

Q. That's okay. On the left side of that model

there are lines that indicate where you attempted to put a plate in Kim Richley, correct?

A. It may have been in Kim, it may have been in somebody else.

Q. Okay. You always have lines here that indicate where the metal guide wire was placed, correct?

A. I believe you. By my memory, and I don't have it in front of me and we didn't do a visual deposition, I thought it was the other one, but I may be wrong.

Q. I'm just asking because you don't remember, Doctor --

A. Right.

Q. -- I'm asking whether the marks there are consistent with the procedure and things that happened?

A. Oh, yes. Yes, sir.

Q. And right here on the right there is a square that shows where you would have cut out the bone for Kim Richley, is that correct?

A. Right here, yes.

Q. Yes, sir. Right there?

A. No, it starts here to get at this area just so we're all -- I'd start here because you need a hole and then this crack goes like this.

Q. Well, Doctor, if you will stop just a second. The other things we've talked about were consistent with the procedure for Kim Richley, correct?
A. Correct.
Q. Now, Doctor, before you drew that line across there there was also a line here and a line there on the transverse process, correct?
A. Correct.
Q. And those two lines don't touch each other, do they?
A. They don't touch on the way I drew them then, no.
Q. Okay. Thanks.

Doctor, as a -- you're not concerned with a transverse process fracture as a neurosurgeon, correct?
A. Correct.
Q. A transverse process fracture does not cause a nerve root injury, is that right?
A. It can happen but it's very, very, very, very, very, very rare and it didn't happen in Kimberly.
Q. You mentioned what happens with a transverse process fracture is that all that happens is somebody has got a sore back and it goes away in

two to three weeks?
A. If it's done on the back. If it's in the neck, it's a sore neck. If it's in the rib cage, it's sore ribs and it goes away over two to three weeks.
Q. And you mentioned Kim Richley had a Grade I subluxation, is that right?
A. Correct.
Q. And there are four levels of subluxations, correct?
A. Correct.
Q. And that goes from Grade I to Grade IV, right?
A. Correct.
Q. And in Grade I is the least severe and Grade IV is the most severe, is that accurate?
A. That is accurate.
Q. And, Doctor, once two vertebrae are subluxed or there is a subluxation it normally in most cases stays that way, doesn't it?
A. Yes, sir.
Q. It requires your surgical intervention to fix it, correct?
A. My surgical intervention or as I stated on record sometimes with traction you can pull it back.
Q. Now, Doctor, in this case you said that the

fractured part of the facet was pushing on the C7 nerve root, correct?
A. That's what I visualized, yes, sir.
Q. Okay. And as you mentioned that's the nerve that goes in the upper right part of your arm, correct?
A. It goes upper right part -- well, on the right side it goes to the right upper part of the arm and all the way down the arm to the fingers.
Q. Okay. Forgive me, it goes on either side but with Kim we're talking about the right side, correct?
A. Correct.
Q. Now you saw Kim Richley for this injury on October 23rd, 2002, correct?
A. I saw her on October 22nd for the first time.
Q. Okay.
A. I saw her on October 23rd and then once in between and then on the day of surgery.
Q. Okay. You recommended to Mrs. Richley that she have surgery right away, didn't you?
A. Yes, sir.
Q. That would have been on October 22nd or 23rd, is that right?
A. I talked to her on the 22nd so it would have been

-- we would have done it on the 23rd or 24th normally.

Q. And you advised her to have that surgery right away because there was a bone pressing on her C7 nerve, correct?

A. Correct.

Q. And you explained in great detail the delay may lead to further neurological injury, correct?

A. Correct.

Q. But she insisted on going home against your advice, correct?

A. Correct.

Q. And you explained to her that you didn't think that was the wisest decision, didn't you?

A. Yes, sir.

Q. But she told you that she didn't care, didn't she?

A. That's what she told.

Q. And so she did not have surgery until October 31st, 2002, correct?

A. Correct.

Q. So the bone fragment that you found at surgery pressed on her C7 nerve for an additional eight days due to her refusal to have the surgery, correct?

A. Correct.
Q. And having a bone fragment press on your nerve for eight days can cause additional injury to that nerve, can't it?
A. Yes, sir.
Q. And in this case it may have contributed to some of her arm pain after the operation, couldn't it?
A. Yes, sir.
Q. Doctor, on October 22nd and 23rd you've mentioned you used several films to diagnose Kimberly Richley's injury, correct?
A. Yes, sir.
Q. The fractures were diagnosed at the hospital with the CT scan, correct?
A. Correct.
Q. The X-rays taken at the hospital on October 22nd did not show the fracture, did they?
A. As I said, there is a suggestion of it, but you need special views which were not done to demonstrate the fracture.
Q. So the answer is they did not demonstrate the fracture, correct?
A. Not clearly.
Q. And the report didn't say that there was a fracture, right?

A. That's correct. Correct. That's correct.
Q. Doctor, after Mrs. Richley left the hospital on October 23rd against your advice she returned to your office on October 25 for an appointment, correct?
A. That's correct.
Q. And at that time you took a history from her, did you not?
A. Yes, sir.
Q. And at that time she clearly told you that she was pretty good until Tuesday morning, didn't she?
A. Yes.
Q. And she told you, Doctor, that she woke up with stabbing pain in her right arm or shoulder that morning on Tuesday, October 22nd, didn't she?
A. Yes, sir.
Q. And you asked her about an inciting episode, didn't you?
A. Yes, sir.
Q. And all she could think of was that she fell at work on August 21, 2002, correct?
A. I need to look at my note.
MR. RUF: Objection.
Q. Doctor, if you would like to look at your October

25, 2002 note.

A. Yes. Okay. Got it.

Q. Do you have it?

Okay, Doctor, if you look at the third paragraph it first says the patient clearly tells me that she was pretty good until Tuesday morning and at that time she woke up with stabbing pain going into her right arm or shoulder. And then your note says when asked about any inciting episode the only thing she could think of was that she fell at work on August 21st landing on her buttocks and her hands. Did she tell you that that day, Doctor?

A. Yes, sir.

Q. Doctor, she also told you that day that she had some tightness in her neck, did she not?

A. Yes, sir.

Q. And she told you that the tightness in her neck went all the way back to when she hurt her jaw, correct?

A. Yes, sir.

Q. And that was in the late '90s, wasn't it?

A. Yes, sir.

Q. And, Doctor, she specifically told you, if you look at the bottom of that paragraph, she told

you that the patient tells me she had nothing near like this until this Tuesday morning, didn't she?

A. Yes, sir.

Q. Now, Doctor, you performed the operation on Kimberly Richley on October 31st, 2002, correct?

A. Correct.

Q. In the history of your operative note she told you or your resident that she has had soreness in her neck for the last few weeks, didn't she?

A. Yes.

Q. Doctor, you ran into a small complication during the operative procedure, didn't you?

A. Yes, sir.

Q. You attempted to put a plate on the left side of her vertebrae, correct?

A. Yes, sir.

Q. But when you did that the screw stripped out, correct?

A. Yes, sir.

Q. And a second screw kicked back, correct?

A. Yes, sir.

Q. And you were unable to place that plate, weren't you?

A. Unable to place it safely, yes, sir.

Q. Yes, sir.

And in your operative note at that time you stated that one reason was that Kim Richley was a heavy smoker and her bone was soft, correct?

A. I comment that it is -- yes. She's a heavy smoker and her bone was soft.

Q. That comment appears in your operative note, correct?

A. Yes, sir.

Q. And that was the finding that you had when you were performing the operation, correct?

A. Yes, sir.

Q. So you decided not to try a bigger screw to attach the plate, correct?

A. Yes, sir.

Q. But nonetheless in your view the operation was successful, correct?

A. Yes, sir.

Q. The joint was stable when you were done, right?

A. Yes, sir.

Q. And you were satisfied with the stability of the joint, correct?

A. Yes, sir.

Q. Now, Doctor, it's important that when there is a fracture that it be immobilized, correct?

A. Yes, sir.
Q. If it is not immobilized healing will be very difficult, won't it?
A. Yes, sir.
Q. Now, Doctor, after the surgery over the next few months in November and December of 2002 in your opinion Kim Richley had a typical recovery from this sort of operation, didn't she?
A. Yes.
Q. You last saw her and examined her on January 29, 2003, is that correct?
A. That's correct.
Q. At that time, Doctor, she told you that her hands are better, didn't she?
A. Yes, sir.
Q. Would you like to look at your note, Doctor?
A. Yes, sir.

For the jury's sake, this is typical doctor's chart. Okay. Where is it, genius?

MR. RUF: Do you want to go off the record?

A. I know it's here.

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

MR. REGNIER: You can leave it on the record.

A. October 25th. I know we saw it. Oh, come on.
Q. Doctor, let me assist you. Here's what I will represent to you is your January 29, 2003 treatment note, if you would like to look at that and confirm that that is, in fact, the case?
A. That's mine. Oh, you said 22, I got it right here in front of me. I'm sorry.
Q. Do you have it, Doctor?
A. Yes, I'm sorry, I heard you wrong. I have it. I have the same note, the exact same note.
Q. Doctor, the last time you saw and examined Kimberly -- Mrs. Richley was on January 29, 2003, correct?
A. Correct.
Q. And at that time it had been about three months since her operation, right?
A. Correct.
Q. She told you on January 29, 2003 that her hands are better, didn't she?
A. Yes.
Q. She told you that her strength was back to normal, didn't she?
A. Yes, sir.
Q. She stated she was very happy, didn't she?
A. Yes, sir.

Q. Doctor, when you examined her you found that the strength in her upper extremities is excellent, didn't you?
A. Yes, sir.
Q. You, Doctor, could not appreciate any weakness of her biceps, triceps or grip on January 29, 2003, could you?
A. That's correct.
Q. You discharged her on that day, correct?
A. Yes, sir.
Q. And you told her that she could return on an as needed basis, correct?
A. That's correct.
Q. And since that time you have not had an appointment with Kimberly Richley, correct?
A. That's correct. I believe I had one phone call from her.
Q. That's right. And if she had wanted to come and see you you would have been more than happy to do so, correct?
A. Yes, sir.
Q. Doctor, with a C6-C7 fusion, and that's the surgery you performed, right?
A. Yes, sir, decompression and fusion.
Q. Thank you, sir.

You -- you fuse and make it so that C6 and C7 cannot move anymore, correct?

A. They move as a unit.

Q. Okay. Doctor, with a C6-C7 fusion you lose very little movement in your neck, correct?

A. Yes, sir.

Q. It's correct that you don't lose any movement?

A. It's correct that you lose very little movement.

Q. Thank you.

Typically you might lose three to five degrees of range of motion, correct?

A. That's my experience, yes, sir.

Q. And one way you've explained that so the jury can understand it is if you could normally touch your chin to your chest you can almost touch your chin to your chest after the fusion, is that correct?

A. That's correct.

Q. Doctor, when you testify you rarely testify for defendant physicians, is that correct?

A. No, I have testified for defendant physicians.

Q. I said rarely, Doctor.

A. Out of all my -- well, defendant physicians implies malpractice cases?

Q. Yes.

A. I have testified for defendant physicians, yes,

sir.

Q. Right, but what I asked is whether that's rare, Doctor?

A. For malpractice is rare for my most of my depositions. Most of mine are personal injury because of where I work.

Q. Doctor, when I deposed you several weeks ago I asked you if you testified primarily as a treating physician --

MR. RUF: Can we have a page and line number, please.

MR. REGNIER: Sure can. It's Page 86, Line 25 going into Page 87, Lines 1 and 2.

Q. And you testified that you testified primarily as to treating physician and I have testified for the defendant but that's rare, is that accurate?

A. Well, I think we're doing semantics. That's an accurate statement.

Q. Okay. That's all I wondered.

A. When I said defendant I was making a distinction between physician malpractice cases and the defendant in a personal injury which is mostly somebody gets hit by a car and they're driving the car. My reading of that and my understanding

at the time was we were just talking about plaintiff and defendant, we weren't separating it into just malpractice.

Q. Okay. And, Doctor, though you are one of Mrs. Richley's treating physicians you are paid for your testimony today, correct?

A. Correct.

Q. Doctor, when you reviewed the medical audit expenses did you review all the expenses in there?

A. I looked at them. I didn't line item them and say -- it's sort of like reading the box score of a baseball game. I know they had so many hits and it seemed reasonable, but I --

Q. You didn't look at it item by item, is that correct?

A. I didn't line item it, no, sir.

Q. Okay. So if before you know I've got at report from you in this case, right?

A. Yes, sir.

Q. And it was the report that Mr. Ruf just entered as an Exhibit a little bit ago, correct?

A. It may be slightly different.

Q. The letter -- that's okay, but it's the letter, correct?

A. Yes, sir.
Q. And at that time you said that 35,000 in medical expenses was roughly accurate, correct?
A. Yes, sir. Yes, sir.
Q. And at that time there was a surgery on her elbow that was included that has since been removed?
A. I didn't -- well, obviously didn't pick that up.
Q. So you didn't review at it closely when you received it, is that accurate?
A. I didn't review it that closely, that's accurate.
Q. Okay. And, Doctor, when you testified as to the 33,000 that's currently being claimed you stated that that's the usual inflated doctor and hospital charges that nobody really pays, correct?

MR. RUF: Objection.

A. I think I made that comment to the 35.
Q. You made that comment as to the 35,000?
A. Right. I don't think it was the 33.
Q. Okay.

MR. RUF: Objection.

Q. Doctor, as to permanency, so the jury understands, you haven't seen Kimberly Richley since January 29, 2003, correct?

A. Yes, we're on record as that.
Q. Correct. You have no opinion as to what her current condition is, correct?
A. I have -- the only opinion I have is based on the assumptions I was given.
Q. Okay. Okay, Doctor, do you agree with me that it's necessary to exercise muscles to recover fully from an operation such as this?
A. Yes, sir.
Q. Doctor, would you agree with me that someone who uses narcotics for years for pain control develops a tolerance to those drugs?
A. Yes, sir.
Q. Doctor, you were asked about your report of January 10, 2004 by Mr. Ruf, whether that's done in the usual course and scope of your practice. You do not send reports to your attorneys as part of your medical practice, do you?
A. Yes and no. I mean, I don't know what you mean by medical practice.
Q. Well, Doctor, an attorney can't render medical treatment to a patient, can he?
A. Not to my knowledge.
Q. A letter that goes to an attorney has no impact on the patient's medical care, does it?

A. It can.
Q. The attorney doesn't provide medical treatment?
A. No, no, the attorney doesn't.
Q. You're saying it could impact their getting paid for the medical treatment, or what's your suggestion?
A. There are some letters I write to attorneys that make it -- a Bureau Workers' Compensation injury so that patients get their hospital bills paid for. Some people don't get treatment for certain things I take care of unless the Bureau Workers Compensation or some insurance company is going to pay for it, and I do medical reports for that, too.
Q. That wasn't the case with this letter to Mr. Ruf, was it?
A. No, it wasn't. This was a request for medical information.
Q. And, Doctor, you were also taken through a series of reports and Exhibits from Exhibit 12 that had to do with Metro here, you did not author any of those Exhibits, did you?
A. A number of them flashed by me, one of them may have been my note from the hospital from the 22nd, but, no, I didn't author 99 percent of

them, and I honestly don't remember because I mean I looked at five or six of them.

Q. That's all right. Unless your name appeared at the bottom of it you didn't author it, right?

A. No, that's absolutely correct.

MR. REGNIER: That's all I have.

DIRECT EXAMINATION OF MATT J. LIKAVEC, M.D.

BY MR. RUF:

Q. Doctor, I have a few follow-up questions.

At your deposition did Mr. Regnier ask your opinion as to whether or not this was a continuous fracture from the facet to the transverse process?

MR. REGNIER: Objection.

A. I believe he did, yes, sir.

Q. And what opinion did you give him at that time?

A. That it was part of the same fracture.

Q. So would it be dishonest or misleading to try and suggest that this was two fractures instead of one?

MR. REGNIER: Objection.

A. I don't know if he tried to do that. We were talking about lines on a model. I mean, in my opinion based on a reasonable degree of medical probability it was one continuous fracture.

Q. And you told Mr. Regnier that?
A. Yes, sir.
Q. Would Kim Richley ever have had compression on the C6 nerve if Dr. Reichenbach had not manipulated her spine?
MR. REGNIER: Objection.
A. Not to be an attorney, I think it was the C7 nerve.
Q. I'm sorry, C7 nerve?
A. I have no evidence of -- that there would be any other mechanism that Kim Richley would have pressure on the C7 nerve without that manipulation.
Q. So without this fracture she wouldn't have had to make the decision whether or not to have surgery, correct?
A. That's correct.
Q. Are there some significant risks to performing this surgery?
A. Yes, sir.
Q. What kind of significant risks?
A. As I tell people I'm not a happy doctor where you come in and you get a bouncing, nine pound bundle of joy. When you come to see me the major risks are paralysis, stroke and death. It's unusual,

but I have to tell everyone that. The major risks with this are continuous pain or paralysis.

Q. Given the risks do you think it's reasonable to get a second opinion on this surgery?

A. Unless it's a matter of life and death I never tell anyone it's a bad idea to get a second opinion.

Q. And did Kim Richley want a second opinion?

A. She told me she did, yes.

Q. And did she get one?

A. I assume so. I never got a report that said she had a second opinion. I know she said she wanted one. She came back to me and I examined her again with her husband and then she said, yes, go ahead and do the surgery.

Q. Do you use a written consent form to describe the risks?

A. I use a written consent form to sign. The description is verbal and in my record and office notes, and I put it in my operative report because I dictate all of my own operative reports.

Q. Do you feel qualified to comment on whether or not Dr. Reichenbach met the standard of care for

a doctor treating the cervical spine?

MR. REGNIER: Objection.

A. Yes, I feel -- with the caveat that I'm not a chiropractor, it is my opinion that he exceeded the standard of care for the cervical spine because she got a spine fracture.

Q. And why do you think you're qualified to comment --

MR. REGNIER: Objection.

Q. -- on whether or not he deviated from acceptable practice as a doctor treating the cervical spine?

MR. REGNIER: Sorry, objection.

A. As I said, I see a lot of people with cervical spine injuries. I see -- send and get people from chiropractors. They help a lot of people. I have never seen this.

It's a distinctly unusual condition and Miss Richley was not a 92-year-old grandma with putty bones and rheumatoid arthritis and 13 other medical conditions that could cause very soft bones.

MR. RUF: Okay. Thank you, Doctor.

VIDEOGRAPHER: Doctor, you have a right to review this videotape and the written transcript to check for the

accuracy, or you can waive this right.

THE WITNESS: I will waive that right.

VIDEOGRAPHER: Would counsel like to waive the filing of the videotape?

MR. RUF: You waive it?

MR. REGNIER: Yeah, that's fine.

VIDEOGRAPHER: We're off the record.

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(Whereupon, the deposition was concluded at 4:00 p.m.)

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(Signature waived.)

C E R T I F I C A T E

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 18th day of October, A.D. 20 04.

Kelli Rae Page

Kelli Rae Page, Notary Public, State of Ohio
My commission expires October 30, 2005.

W I T N E S S I N D E X

O B J E C T I O N I N D E X