IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

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JEFFREY W. ENLOW,)

Plaintiff,)

vs.) Case No. CV2002-01-0456

PAUL L. STEPHENS, JR.,)

Defendant.)

- - -

Videotaped deposition of DONALD C. MA", M.D., a Witness herein, called by the Plaintiff for direct examination pursuant to the Ohio Rules of Civil Procedure, taken before me, the undersigned, Eric G. Smead, an RPR and Notary Public in and for the State of Ohio, at the University Suburban Health Center, 1611 South Green Road, South Euclid, Ohio, on Wednesday, the 8th day of January, 2003, at 4:15 o'clock p.m.

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On Behalf of the Defendant:

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By: Paul R. Garlock, Attorney at Law
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Canton, Ohio 44718

ALSO PRESENT:
James Torok, Video Technician

- - -

I N D E X

- - -

Witness	DX	CX	RDX	RCX
Donald C. Mann, M.D.	4	34	72	76

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(Off the video record:)

MR. CLAPP: Just to avoid a lot of interruptions and a lot of objections, I take it you will avoid any reference to Workers' Comp throughout your examination and caution the doctor to do the same thing?

MR. GARLOCK: Yeah. Which reminds me, when I ask you what records you looked at, that is just when you get to that, just skip that one. I think that's the only place that that would have --

MR. CLAPP: That way we can have a cleaner record, and I will try not to object too much.

(On the video record:)

DONALD C. MA", M.D.

of lawful age, a Witness herein, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION

BY MR. GARLOCK:

Q. Would you state your name for the record, please?

A. Donald Charles Mann.
Q. And what's your business address?
A. 1611 South Green Road, South Euclid, 44121.
Q. And is that the building that we're in today?
A. Yes, that's the address of the University Suburban Health Center.
Q. What's your occupation?
A. I'm a physician.
Q. And what's your specialty?
A. Neurology.
Q. Are you licensed to practice medicine in Ohio?
A. I am.
Q. When did you become licensed?
A. 1974.
Q. Where and when did you go to medical school?
A. Indiana University graduating with an M.D. degree in 1968.
Q. After medical school what did you do in terms of internship, residency, that sort of thing?
A. A year of residency -- I'm sorry,

internship at Indiana University, then three years of specialty training in neurology.

Q. Are you board certified?

A. I am.

Q. Okay. When did you become board certified?

A. In 1974.

Q. Could you briefly explain to the jury what it means to be board certified?

A. An individual has not only completed the training in a certain specialty but has passed an examination run by the senior people in the specialty.

It's a national undertaking. There is a day-long written is examination and then a live examination where you're actually watched, observed in the practice in diagnosing as is done in medicine.

Q. Are you familiar with another doctor who is going to be testifying in this case, Norman Lefkovitz?

A. I am.

Q. Do you remember approximately when you first met Dr. Lefkovitz?

A. He was a resident at University

Hospitals of Cleveland, and that's when I would have known him. Those dates I'm not sure of.

Q. Okay. During the course of your practice have you had occasion to examine and treat people who complained of neck and low back pain as a result of automobile accidents?

A. I do.

Q. During the course of your practice have you had occasion to examine and treat people who complained of neck and low back pain that resulted from causes other than automobile accidents?

A. Yes.

Q. Doctor, did you examine Jeffrey Enlow at my request?

A. Yes.

Q. Do you remember when you did that?

A. November 11th of 2002.

Q. Okay. Did you review any medical records at my request?

A. I did.

Q. Could you tell the jury what records you reviewed?

A. Sure. The date of the accident,

February 14th, 2000, there is a traffic crash report, a fire department EMS run, an emergency room visit.

After that there are records from his family physician, Dr. Crombie. There are consultations with Dr. Blanda and Donich, and then there are a series of records from Dr. Lefkovitz including his treatments, therapy and all the prescriptions he was providing for Mr. Enlow.

There is a consultation from the Cleveland Clinic from a Dr. Whitfield, an orthopedist Dr. Deppisch and Dr. Reilley looking mostly at his hand, an ENG, electrical study done by Dr. Lefkovitz, an MR scan report -- or I should say reports from November 28th, 2000. There is one study, as I understand it, and four separate reports of those images.

There is also a report of an MRI scan of the neck. This is in April of 2000. There is physical therapy at Edwin Shaw and Allied Health. There is a series of medical expenses, and then there are a number of x-rays and whatnot dealing with his hand including an arthrogram and consultations.

Q. Doctor, did you do a report as a result of your examination and review of the records?

A. Yes.

Q. And what date was that report done?

A. November 12th.

Q. Okay. As needed you can refer to that report throughout the questioning.

I want to ask you a number of questions about various records that you have mentioned that you have reviewed. If you have them, take a look at them. If you don't find them, I'll hand you what I'm talking about and try and save some time.

The first record is, I believe, an EMT radio report from the date of the accident. Is that what the EMT comes with the ambulance calls into the hospital?

A. Yes.

Q. All right. Do you have a copy of that?

A. I do.

Q. On that, I believe in the upper left-hand quadrant of the page, it talks about whether or not there were complaints of neck

and back pain.

What does that establish in terms of whether the Plaintiff complained of neck and back pain at the scene?

A. The statement is no neck or back pain.

Q. Okay. Next I want to ask you a few questions about the emergency room records.

Do the records indicate or did the Plaintiff himself tell you that he went from the scene to the emergency room by ambulance?

A. Yes.

Q. Okay. Do the emergency room records indicate whether he was treated and released or was he actually admitted to the hospital overnight?

A. Released.

Q. Under history, do you have that part in front of you, the emergency room where they give history and he gives complaints?

A. Yes.

Q. Okay. What complaints did he give them then when he actually got to the emergency room?

A. Head, neck, both hands and right knee

discomfort and an abrasion of the hand and nausea.

Q. Okay. Is there any mention in the emergency room record of low back pain?

A. No.

Q. If we're looking at the same page, toward the bottom *of* that page under disposition, what does it say in terms of his being discharged?

A. Home in stable condition, use Ibuprofen or Tylenol. The patient will feel worse tomorrow, and he is to be off until 2/17/2000.

Q. The medication that it mentions, is that something that's prescription or would that be over the counter?

A. Over the counter.

Q. Okay. Does it reference in that part of the report anything about seeing his family doctor?

A. It does. The suggestion is two or three days.

Q. Were there x-rays or CAT scans done while he was at the hospital on February 14th of 2000?

A. Yes.
Q. Was there an x-ray of the cervical spine, the neck?
A. Yes.
Q. What was the impression on that?
A. Normal.
Q. Was there a CAT scan of the head?
A. Yes.
Q. What was the impression on that?
A. Normal.
Q. I want to ask you a few questions about records from what I believe is his family doctor, Dr. Crombie. There is a record from the day following the accident, February 15th of 2000.

Do you have that or do you want to take at look at what I have?

A. Got it.
Q. Okay. If we're on the same page, the right-hand side probably about two-thirds of the way down it lists what his complaints were? Do you see where I --
A. Yes. That he is complaining of his left ear, neck, left hand, ribs and one other thing I can't read.

MR. CLAPP: Objection. You know, Doctor, are you telling us what's -- you're not -- you're reading about a third of what's there.

THE WITNESS: Lower sternum is part.

MR. CLAPP: And back?

THE WITNESS: If that's what that is.

BY MR. GARLOCK:

Q. Well, I'm sure Mr. Clap will have some questions for you on cross-examination.

Are there any other complaints then other than the left ear, neck and you said lower sternum, left hand, if, in fact, that says back, and then ribs, anything else that -- that you can see in that visit that he complained of?

A. No.

Q. When it says -- if it, in fact, that says back, does that say upper, lower or middle?

A. It doesn't.

Q. All right. I want you to look at a telephone call a couple of days -- well, a few

days later of -- it appears to be February 21st. It appears to be a call from Mr. Enlow to the doctor's office. Do you have that?

A. Yes.

Q. And under number one on the right side what -- what does it say there?

A. Continues to have pain in back and neck. Should he have PT?

Q. I want to jump for a minute to a physical therapy record four days after that, Allied Physical Therapy from February 25th of 2000.

Do you have that or do you want to take a look at what I have?

A. Let's look at yours maybe.

Q. Okay. What I'm asking is under present symptoms could you tell the jury what they put under present symptoms four days after that phone call?

A. Neck pain and upper back.

Q. Okay. It specifies upper back at that point?

A. Yes.

Q. Is there any mention of lower back that you see?

A. No.

Q. Going back to Dr. Crombie's records there is a report dated March 1st of 2000. It's a one page typed. Do you have that?

A. Yes.

Q. Okay. You found yours before I found mine. On that is there a recommendation by the doctor regarding Mr. Enlow and whether or not he could work?

A. Yes. The doctor says my recommendation that Jeff may work part-time, but he will be able to leave work when his discomfort level increases or he is unable to perform his duties appropriately.

Q. And the last thing I want to look at with Dr. Crombie is a note from March 31st -- and actually this looks again, I think, like a telephone message.

What I'm looking at is at the bottom of the page. It's a page that seems to have three separate --

A. Let's see.

MR. GARLOCK: Okay. Do you guys see where I'm at?

MR. CLAPP: Yeah.

MR. GARLOCK: Okay. It's page that has -- what appears to have three separate telephone calls.

MR. CLAPP: Which one are you looking at?

MR. GARLOCK: The bottom one 3/31.

BY MR. GARLOCK:

Q. Is there anything on that note regarding an MRI of the lower back?

A. Yes.

Q. And what does it say?

A. Well, there is a question mark MRI, and then it says not warranted for lower end and something about spoke with BC, which I assume is Blue Cross.

Q. Okay. Thank you.

MR. CLAPP: Can I see that?

MR. GARLOCK: Sure. Let's go off the record for a moment.

VIDEO TECHNICIAN: We're off the record.

(Discussion had off the record.)

VIDEO TECHNICIAN: We're back on the record.

BY MR. GARLOCK:

Q. Doctor, I want to go back to the Allied Physical Therapy records. Do you have the record from March 6th of 2000?

Each page seems to have a couple of different visits on it. The top of that page actually starts March 3rd, and the bottom one is March 6th?

A. Oh, yeah, I got it.

Q. Okay. Under subjective what does the record indicate there?

A. The neck feels much improved and back feels better.

Q. If you know, is that something that the patient would be telling the therapist or is that something that the therapist would say on his or her own?

A. Oh, I think that's a result of interviewing -- asking the patient how are things, what still bothers you, and how much and so on as part of the assessment.

Q. A couple pages after that there is a visit -- and just for the record I'm certainly not going through every visit, but I'm specifying certain visits.

There is a visit of March 15th of

2000, do you see that --

A. Yes.

Q. -- I think it's two pages? Under assessment is there anything there regarding the low back?

A. Not low back. It just says that he's improved strength neck and back and decrease pain.

Q. Okay. Anything to the right -- it has after EX. Would that be -- well, what does EX refer to, if you know?

A. I think that -- that group of letters means tolerated exercise well.

Q. Okay. And the second line right under that, does that indicate no pain?

A. Oh, I see. Yeah, assessment here is no pain to -- to or low back after exercise.

Q. And how is low back designated there?

A. Just LB.

Q. Is that a common way of designating low back in medical records?

A. Yes.

Q. I want to go to the discharge summary of May 12th of 2000. Do you have that?

A. I do.

Q. Okay. In the first section does it say when the patient was there and how many times? Does it say from when to when?

A. It does, The -- he is there from February 25th through April 19th for 22 visits.

Q. And under subjective what does it indicate in that?

A. Back and neck feels good.

Q. The section below that under objective under strength what does it say?

A. Trunk -- trunk stretch five of five, meaning normal in all plains, and then the flexibility question it says trunk range of motion is without limitation. I think that just means the guy can move around with no trouble.

Q. What does functional mean there? What -- first of all what does it mean and second what does it say?

A. Well, function means what is he doing with all this stuff that we just got done talking about and looking at and does it make any difference in the world, and it says there working and exercising with minimal

discomfort.

Q. Page two of the discharge under assessment there is a sentence checked. What does that sentence say?

A. Patient has made good progress in physical therapy and is returning to full activity.

Q. And under other can you read what that says?

A. Patient did not keep final visit €or last recheck.

Q. Okay. I want to ask you one or two questions about Dr. Blanda's visit. I think that was one of the records that you said you had.

The records indicates, I believe, the date was March 3rd of 2000, do you have that?

A. Yes.

Q. Okay. Under -- do the records indicate whether that was the only visit or whether there were multiple visits?

A. It looks from this that there is just one.

Q. Okay. Under impression what was the

impression that -- that they write?

A. Cervical sprain and right knee sprain.

Q. Up toward the top of that there is a line that's titled capital M.O.I. that lists -- are those complaints?

A. That's what is -- is entered there after that --

Q. Okay.

A. -- heading.

Q. Why don't you go ahead and read what it says there for complaints. That's broader than -- I mean, there are more complaints than under the impression, correct?

A. Yes.

Q. Why don't you read then what it says under complaints?

A. Pain in the back of the neck between the shoulder blades, lower lumbar areas -- area, numbness in both legs off and on and headaches.

Q. Okay. Thank you. I want to ask you one or two questions about Dr. Donich's records.

What I have indicates, if I'm

reading it correctly, April 10th of 2000?

A. Yes.

Q. Do you have that? Under exam, I think he talks about on examination today, what does it indicate that the exam showed?

A. No objective neurologic deficits, meaning there are no abnormalities in the neurologic examination.

Q. Okay. You had mentioned that there was a cervical MRI. Does that report, I guess from Dr. Donich, reference that MRI?

A. Yeah, that study appears in this note. The doctor says the MR scan of the neck, no significant neural compression.

Q. Was there any -- any indication in Dr. Donich's records that you saw that would have suggested the need for surgery?

A. No, quite the contrary, this looks pretty normal.

Q. I want to ask you one or two questions about Dr. Whitfield's records. Do you have that?

A. I do.

Q. Okay. Where is Dr. Whitfield located? Does it indicate what hospital?

A. Oh, Cleveland Clinic.

Q. Okay. Does this indicate whether this was a one visit consultation or multiple visits?

A. One visit.

Q. Okay. On the second page of his report under his impression what does it say?

A. Patient has a traumatic right meralgia paresthetica secondary to trauma to his right lateral femoral cutaneous nerve.

Q. What does that mean?

A. That's -- that nerve a little twig that runs up over the hip and provides innervation to the skin in the upper leg. It rides close to the surface, and fractures of the pelvis and compression of the pelvis can sometimes damage it.

So he is saying that this looks like injury to that nerve twig, and that's his conclusion about the picture.

Q. Okay. Does anything affecting that nerve have a functional -- is there a functional effect of that? Does it keep people from doing anything?

A. Well, only in the sense that it

bothers them. There is a tingling and burning and numbness and those kinds of things, but it doesn't cause weakness. Walking, climbing steps, sitting, standing are all normal, so it's kind of an aggravating syndrome, but, again, this is a rather small nerve.

It doesn't do a whole lot. It's important to recognize it, but it's not a nerve that you really even need.

Q. Last thing with Dr. Whitfield's record, is there any indication in that record that Mr. Enlow needed surgery?

A. No, the contrary. He says try to avoid surgery.

Q. I want to ask you about the -- you mentioned the MRI that was done November 28th, 2000 to the lumbar area which is the low back.

I think you mentioned that there was one -- one study done?

A. That's -- my interpretation of these four reports, that they all concern a single set of x-ray films -- that or he had two sets of films on the same day or as many as four, which seems absurd. There was probably only one.

Q. There is -- I'm going to regret this. I can't pronounce the doctor's name. There is -- there is one that says open MRI of America up in the upper left and it's a Dr. Donald -- is it Jakaris, looking at this one (indicating)? I don't know if that is how you pronounce that.

A. Oh, yeah, that's -- I would -- that's what I would do.

Q. Okay. What -- what -- what was the finding from the MRI study done of the low back?

A. Disk degeneration at L5-S1. The right neural foramen there is a disk protrusion which is far lateral.

Q. Would the degenerative problem shown there be something that would have come from this auto accident or predated it?

A. That kind of change is a long term one that takes place over months and years, and things like what is being described here probably antedated the accident.

The study is nine months later, so in theory it could have been different earlier, because nine months is enough time

for things to change, but that type of thing in general is a chronic issue and not one that surfaces or appears overnight or over weeks. It's months and years.

Q. Okay.

MR. CLAPP: Note an objection, move to strike.

BY MR. GARLOCK:

Q. Doctor, when you say "antedated," as I heard you say, would that be before or after the accident?

A. Likely the -- the degenerative process was -- has been there for, like I said, years and so it would have been -- some of that would have been there before the accident occurred in February.

Q. Okay.

MR. CLAPP: Note an objection, move to strike.

BY MR. GARLOCK:

Q. Doctor, when you -- when Mr. Enlow was in to your office did you take a history?

A. I did.

Q. Would you briefly explain to the jury what a history is?

A. It's an asking of the patient in his own words to describe those complaints, symptoms, pains that he has in every bit of detail that the patient can bring forward concerning it, like how long, how bad, what helps, what hurts. So the history is basically an interview conducted on the patient's terms.

Q. And without getting into detail would you briefly tell the jury what the kind of outline of the history was that he gave you?

A. Well, in general he has pain in his back and his arm and his neck and his shoulders and he has headaches.

Q. And did he tell you about the automobile accident that we're dealing with here?

A. He did.

Q. Okay. Did you do an examination following the history?

A. I did.

Q. Would you explain to the jury what your examination consisted of, what you did, and then what your findings were?

A. Well, the examination is narrowed to

the parts involved, namely the spine, the nerves that exit the spine and go to the arms and legs and their functions like their strength, the muscles they go to, the feeling that is conveyed back, and then the examination €or his headaches, which is at least apparently a part of this process which is basically structures in and around the head.

Q. Okay. What -- what findings were there then or did you have from your examination?

A. Well, the impressive finding was his very protective movements. He -- he would only take rather short steps. He moved with great limitation, took time to do so. His general posture was forward bent.

As he laid down on the examining table, which is a part of the procedure, it took him quite a while and he looked to be quite uncomfortable in execution of that, and in likewise getting up he took time and went very slowly.

So the very impressive thing was the fact that he couldn'tmove around with any

ease or fluidity whether it was standing, turning, walking or lying down or sitting up.

There were other things. The leg raising test, which is designed to stretch the sciatic nerve, was greatly limited on the right side. The lower back muscles were tight.

The other things in the examination were normal within the limits *of* testing. Because *of* his discomfort he couldn't squeeze as tight as he might have been able to or wanted to, but anyway, I believe his strength was normal.

His reflexes were normal. His sense of feeling was normal as well. So it's basically the way he moved around and his trunk movements, his spine movements.

Q. Were there any objective findings to explain his limited movement?

A. No.

Q. The leg raise test that -- that you mentioned, would you -- would you explain to the jury how that's done and what's it's for?

A. A patient lies down flat on his back on the examining table, and the examiner

raises the leg without the patient participated. The patient is passive. And the leg is raised to a point where it causes discomfort. The patient says that hurts or winces, and that's the end of the test.

Many people can raise their leg up 90 degrees, depending on a lot of things. 70, 80 *is* usual. If there are no other limitations like hip or disease or obesity, you can usually find that in most people.

Not being able to lift the leg more than 30 degrees off the table is synonymous with not being able to bend forward much further than that either which we saw on him -- or I saw on him as he was walking around. So that -- that's a finding of rather great limitation.

Q. Is that something that is objective or subjective?

A. Well, that particular finding is pretty much under the control of the patient. It is not something that is involuntary like, say, a reflex, so patient says this is where it hurts, and that's, of course, where the test is defined and so it is a subjective test

in that sense.

Q. Okay. Doctor, did you find anything regarding the muscles in the legs, whether there was any atrophy?

A. There wasn't.

Q. Okay. I want to ask you to end this a series of questions in which I would like you to give me your opinion, if you can. I want you to give your opinion within a reasonable degree of medical certainty or probability. If you cannot give it within that degree, then I don't want you to give me that opinion.

Based upon your education, training and experience as well as your review of the records and your examination of the Plaintiff, do you have an opinion based upon a reasonable degree of medical probability whether the Plaintiff was injured in the automobile accident of February 14th, 2000?

A. I have an opinion.

Q. And what is that opinion?

A. He was injured.

Q. Okay. Based upon those same factors and within a reasonable degree of medical

probability do you have an opinion what those injuries would have been that he received from the accident?

A. I do.

Q. And what would that be?

A. Sprain to his back, his neck, certainly to his wrist. The soreness and the soft tissue kinds of things that happen to people who fall or get thrown about for any reason at all, these are not structural or substantial injuries to bone, joint, the nervous system.

These are injuries to parts of the body that take being pushed around and recover on their own pretty much no matter what you do. So I see this as a sprain/strain issue and -- and nothing more.

Q. Doctor, based upon the same factors, your education, training, examination, review of the records and so on, do you have an opinion within a reasonable degree of medical probability as to whether there is any nerve compression in the lumbar area?

A. I believe there is none.

Q. Okay. Based upon the same factors do

you have an opinion within a reasonable degree of medical probability whether there was any significant finding regarding the Plaintiff's neck complaints?

A. In my opinion there is -- there are no significant findings nor significant pathology or any disorder of the neck nor anything that can be attributed to an injury in the neck.

Q. Based upon same factors do you have an opinion within a reasonable degree of medical probability as to whether the Plaintiff's complaints of headaches were caused by the automobile accident of February 14th, 2000?

A. I have an opinion.

Q. And what is that opinion?

A. I think not. I don't believe that headaches that he's describing would be blamed on the accident. That's not to say he doesn't have headaches, but that kind of phenomena persisting all this long time and resistant in a funny way to -- or not being treated in a certain way suggest to me that this is not the type of injury migraine that I would

recognize, and I don't think that this is a phenomenon from the injury.

Q. Okay. Doctor, my last question is based upon those same factors do you have an opinion based upon a reasonable degree of medical probability whether the Plaintiff needed to be off work more than a short time, if at all, after this accident due to injuries caused by this accident?

A. I have an opinion.

Q. And what is that opinion?

A. That these injuries would take Mr. Enlow out of the workforce for days, maybe weeks, perhaps a month or two but not much more and certainly not a year or two.

MR. GARLOCK: Thank you, Doctor. I don't have any other questions.

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

VIDEO TECHNICIAN: We're off the record.

(Discussion had off the record.)

VIDEO TECHNICIAN: We're back on the record.

CROSS-EXAMINATION

BY MR. CLAPP:

Q. Good afternoon, Doctor. My name is Jack Clapp, and I'm here on behalf of the patient in this case -- not really patient but the injured party, Jeff Enlow. I have some follow-up questions to those of Mr. Garlock.

Doctor, I noticed that throughout your testimony you made little or no mention of the wrist. You were aware that he has a wrist injury that resulted from this accident as well, correct?

A. Yes.

Q. And that's really not your area of expertise but nonetheless you reviewed the medical records and you saw what the other doctors wrote about that, did you not?

A. Yes.

Q. You're aware that at the time of the accident that his hand actually broke the steering wheel, were you not? It's in the medical records.

A. I -- I couldn't tell you where that is. If it's in the records, I certainly would accept that as a fact in the records.

Q. And, Doctor, just divergent for a

second, you'll agree with me you reviewed the automobile accident, the accident record, report, correct, that was part -- I think part of your listings?

A. If you're talking about the Ohio Traffic Crash Report, yes.

Q. Yes. And, Doctor, this was a significant accident and there was an impact speed of between 80 to 90 miles per hour according to the accident report, correct?

A. I knew it was a high speed accident. The exact numbers, if that's what it says, that's what it is.

MR. GARLOCK: I'm going to object to that just as I think being inaccurate.

MR. CLAPP: Well, we can go through it

BY MR. CLAPP:

Q. Doctor, do you have the accident report there?

A. Yes

Q. And there were some witness statements to the accident, correct?

A. Yes

Q. If you look at the second witness

statement, a Shawn Harris, he says on 2/14 about 9:30 a.m. I was driving southbound on State Road near Myers -- near whatever road. Traffic was moderate, rainy and wet.

My speed was approximately 45. A man in front of me was hit head-on. I had looked up and seen the actual accident. The south -- the Toyota was southbound at approximately 45 miles an hour.

So, Doctor, your knowledge would tell you that if he was going 45 and the vehicle that hit him head on was going 45, that there would be an approximate impact speed of about 90 miles per hour, correct?

MR. GARLOCK: I'm going to object and --

MR. CLAPP: Well, you can object.

MR. GARLOCK: -- and move to strike. I think it calls for an expert opinion. That is not a medical opinion. Also I think it's hearsay. Okay. Go ahead.

BY MR. CLAPP:

Q. Doctor, would you agree with me from based upon your knowledge?

A. Well, all one can do is restate what

is here. How accurate these estimates are is quite another matter, but 45 and 45 is 90 in anyone's book. Now, whether that was 90 or 100 or 80 or what, I don't -- I can't say.

Q. And, Doctor, from your perspective as a -- both as an examiner and as a treating physician there is a correlation generally between the seriousness of the motor vehicle accident and the injury sustained by the parties involved therein; is that correct?

A. There is a very rough correlation with lots of exceptions, but yes, the more the -- the physical forces, the more the capacity for injury.

Q. Now, Mr. Garlock asked you about the EMS report. I don't think you told us about the loss of consciousness and the blow to the head.

You'll agree with me that the EMS report notes that the -- that Jeff -- that Jeff had a seat belt on with a shoulder harness and that, in fact, the air bag deployed, you see that, correct, looking at the EMS report that Mr. Garlock referred you to?

A. It's somewhere. Oh --
Q. I have an extra copy.
A. I've actually got it. I see steering wheel, may have had a brief loss of consciousness.
Q. When he was found by the EMS he was awake but slow and confused. Do you see that?
A. No. Are we looking at different things?
Q. Here. I have it highlighted there for you, Doctor (indicating).
A. Yes, that is correct.
Q. That he doesn't remember the accident?
A. Correct.
Q. Again, consistent with -- with a head injury, correct?
A. That is true.
Q. And, in fact, he had a laceration on the left side of the head which the bleeding had stopped by -- when the EMS was there, correct?
A. Yes.
Q. You don't have any reason to doubt that there was some loss of consciousness as a

result of this impact, do you?

A. Yeah, I think there is a period of loss of consciousness, the exact length of which is -- is hard to determine, but this -- that record, other records tell us that that's a real issue here.

Q. And again, when he gets to the emergency room among other things he reports feeling nauseated, were you aware of that?

A. Yes.

Q. And again, that's consistent with a head injury?

A. Well, it's consistent with so many things that you really wouldn't want to say that has a connection with head injury because it's a symptom of hundreds of maladies. It's not a good or reliable symptom of head injury, but it is one of many such symptoms.

Q. Okay. Now, Doctor, they note in the emergency room chart that there is no past medical history, no medications, no allergies, and that's consistent with the examination you did in your review of the doctors, Dr. Crombie's records, his family physician's records, that Jeff was not someone who had had

prior difficulties with any of these areas that he was now complaining of; is that correct?

A. Yes, that's my impression as well.

Q. He had been gainfully employed, had not had prior neck, back, headaches, et cetera, correct?

A. Yes.

Q. Now, they also note there are some objective findings in the emergency room. They notice that there is mild swelling to the back of the head, correct?

A. Yes.

Q. That's an objective finding, correct?

A. Yes.

Q. And he notes obviously pain in the left and right hand, the right knee, and the neck also being -- displaying tenderness, correct?

A. The tenderness and the pain complaints, yes, those are in there. The -- and the knee which shows lack of range of motion, those are all findings.

Q. And, Doctor, those are all consistent with what you would expect from someone who's

experienced a trauma such as he just experienced, correct?

A. Yes.

Q. And, Doctor, you'll agree that the need to go to the hospital by ambulance was appropriate under this circumstance?

A. Oh, yes.

Q. And that the emergency room treatment, the treatment at Cuyahoga Falls General Hospital was appropriate, correct?

A. Yes.

Q. And that when the emergency room doctor told him he is going to feel worse tomorrow, you would agree with that as well, correct?

A. I would.

Q. Now, Doctor, he followed up the next day with his family physician, Dr. Crombie. You'll agree that that was the appropriate thing to do, correct?

A. I do.

Q. And, in fact, consistent with what the emergency room physician told him, he did feel worse the next day, did he not, according to Dr. Crombie's note?

He now experience -- he now complains of pain in the left ear, the neck, the lower sternum, back pain -- I'm sorry, left hand pain, back and ribs?

A. That's all -- those are all things that were there on Crombie's visit. They may have been eclipsed by other things in the emergency room, but those are certainly a part of the picture that we wouldn't want to ignore.

Q. Right. And that's I think a very good point that you just raised. When you say they're "eclipsed by other things," what you're saying, Doctor, is that frequently when someone has experienced a trauma such as this that some symptoms or problems will predominate so as to even cause them not to recognize that something else is wrong; they'll have something that's overbearing that they'll be paying attention to and it may be a day or two or three until they say, hey, and by the way, this hurts, also, that's fairly consistent, would you not say, Doctor?

A. Yeah, I don't know that emergency

room physicians would be flattered by that account, but basically they're treating things that are most obvious and needy and -- and -- and might require urgent intervention then. It is by no means an exhaustive and an absolute evaluation of the patient.

So as you said, things do appear a day to three days later that were present before but overshadowed by bigger, apparent injuries at the time.

Q. And, Doctor, Dr. Crombie, who again was his family physician, noted -- determined that he had multiple muscle strain, correct?

A. That sounds like a term he might have used. I don't know -- yeah, here it is. Muscle strain in neck and back, trapezius, those are back muscles, yes.

Q. And that was secondary to a motor vehicle accident?

A. Oh, yes.

Q. And he prescribed -- he did a couple of prescriptions. He prescribed Vicodin which is a prescribed pain killer, correct?

A. It is.

Q. And Flexeril which is a prescribed

muscle relaxant, correct?

A. Yes.

Q. Now -- and then he said come back and see me in whatever period of time, I guess it was a week. He said come back and see me in a week, and we'll see how you're doing, correct?

A. I don't know that he said that because I don't see in the paper, but it makes sense as to what you would say to such a patient, so probably something of that ilk transferred between the two of them, come back, you know, and let me look at you again.

Q. And he did, in fact, come back in a week on the 22nd, and the doctor first notes he's still in pain, neck and back, numbness in the buttocks area, and he says seven out of ten on a scale of one to ten, the pain is a seven out of ten?

A. I don't have the exact page, but if that's what's in there, it surely makes sense with what I know about him and the records I have looked at.

Q. And, Doctor, again, this is all I think based upon your direct testimony what -- what you would expect for someone who's

experienced this type of trauma, this is fairly -- a fairly normal course so far?

A. Yes.

Q. And he comes back again on the 29th of February similarly still having neck and back pain and headaches and unable to work, and I think you told us that even in your opinion that certainly a period of weeks or a month or two, I think is what you said, of being off work would be expected?

A. Well, it's a part of the range of limitations people with this sort of thing experience. What is expected is something quite different. The expectation is that it would be short. In this case it wasn't, but the range of limitations and impairments that people have can last up to a couple months.

Q. And at this point or about this point Dr. Crombie refers Jeff for physical therapy to Allied Heath Rehab, and you think that was appropriate, correct?

A. Yes.

Q. Some -- the way you would treat a similar patient to send them out to try and increase their range of motion and try to

loosen up those muscles, correct?

A. Yes, I think that's a proper undertaking.

Q. And, Doctor, simply because someone doesn't have a fracture or an objectively verifiable injury, that doesn't mean they weren't injured, does it?

A. No.

Q. In fact, a good many of the patients you see you rely upon their subjective reporting to you of what the problem is, correct?

A. I do.

Q. Now, you talked about the exam you did, and one of the things you do as a physician as an examiner is you try to reproduce things such as the leg raising test; you raise the leg and then you come back and do it again and you measure whether or not it's consistent, correct?

A. Well, one of the operational issues of an examination is the reproduceability of the finding, so you might do something once, twice or thrice like the sensory testing with a tuning fork to make sure that you got it

straight and the patient understands and that this thing looks the same way each time. That -- that's one of the cannons of a good physical examination.

Q. And similarly you observe the patient, particularly in a setting like this, and **I** think you told us that his limited leg rise -- raise was synonymous with his inability to bend forward that you were also able to observe?

A. Yeah, those two would make sense, that a patient who couldn't straight leg raise would have trouble bending forward, since it's the same maneuver with the patient standing that we're talking about doing with the patient lying supine.

Q. And Jeff demonstrated independently to you, without you asking him, really demonstrated both of these characteristics so as to -- so as to show to you as the examiner there was at least consistency in his finding, was there not?

A. Yeah -- yeah, that's a sort of a side phenomena. I mean, that wasn't what I was terribly interested in, but yeah, those two

make sense put that somewhat jaded way, yes.

Q. All right. Without belaboring it, Dr. Crombie continued to -- to see Jeff and continued to report the findings that -- that he made, and here in March we start to see some numbness appearing for the first time, correct?

A. Yes.

Q. As a consequence, on April 11th Dr. Crombie decides to do a referral to Dr. Lefkovitz. You'll agree that that was an appropriate thing to do under the circumstances?

A. Yeah, such a referral is a proper course of action.

Q. Just so we're clear, to this point you have no criticism or no objection to the medical treatment that he has received from Dr. Crombie, the emergency room and the ambulance, the physical therapy that he has received through the Allied Health System, and now referral to Dr. Lefkovitz, all these things from your perspective as someone who has been hired by the Defendant were appropriate?

A. Well, they're more than appropriate. Those were necessities. Those are the things I think any physician would do. That -- that's kind of the -- the way one would manage such a case.

Q. And it's reasonable, that's what you -- that's how you would do it, not only as you've said, it's almost mandated, I mean, under these circumstances?

A. Well, it's the proper course of action to manage such a patient under these circumstances for any physician.

Q. And you were asked if you were familiar with Dr. Lefkovitz, and you said that you and he or you had had some experience with him while he was doing a residency at University Hospitals in Cleveland; is that correct?

A. Yes.

Q. Do you know him to have anything other than a fine reputation within the medical community?

A. No.

Q. He's held in high esteem or considered to be certainly a reasonable and

competent physician by his peers?

A. Well, I -- I don't know about his peers, but that's my opinion of him, and I would assume that that's the opinion others have of him.

Q. Now, I want come back to this, but we got sidetracked. **I** wanted to ask you about the wrist injury. You didn't really comment about that at all.

You'll agree that there is a -- he has been examined by two orthopedic surgeons who have both felt that he had an injury to his wrist, traumatic injury to his wrist from this automobile accident that ultimately should be corrected by surgery?

MR. GARLOCK: Objection

THE WITNESS: Okay.

BY MR. CLAPP:

Q. Are you aware of that, Doctor?

A. I am.

MR. GARLOCK: Objection, move to strike.

MR. CLAPP: Basis for your objection?

MR. GARLOCK: Well, you're trying

to get somebody else's opinion about surgery from somebody who's not qualified in that area.

BY MR. CLAPP:

Q. Well, Doctor, you reviewed the records, correct?

A. Yes.

Q. And based upon your review of the records there was a recommendation made that Jeff undergo surgery on that wrist, correct?

A. Yes. There has been one such recommendation in this case.

MR. GARLOCK: Objection.

BY MR. CLAPP:

Q. And, Doctor, that's based upon a series of objective findings and determinations, correct?

A. Well, you better ask the person who made the suggestion what he based it on since this is something far afield from what I do and know about. The reasons for surgery or not having surgery are something **I** -- I really can't tell you much about.

Q. Well, let me just make sure. You don't -- you don't have any issue with the --

as an independent medical examiner hired by the Defendant here, you're not -- you have no criticism to offer nor do you take any issue with the necessity for the treatment of his wrist and the recommendations that are made by the orthopedic surgeons in furtherance of that, do you?

A. No.

Q. And again, relative to their care and treatment, you'll agree that that was both reasonable and necessary under the circumstances here?

A. The parts I've seen about his wrist, that was the kinds of things you should have done for your wrist in this case.

Q. *So* at a minimum we know that Jeff Enlow here in January of 2003 still continues to suffer from that ongoing wrist injury which still has not been corrected surgically, correct?

A. Correct.

Q. And to the best of your knowledge he'll continue to experience those symptoms into the indefinite future, correct?

A. Well, not unless he does something

about it or gets some other treatment.

Q. Now, similarly you talked to us a little bit about the neurologist who did the examination at the Cleveland Clinic, and that -- that was a referral; he had been referred there to be seen on a -- on a basically what appears to be a one-time basis by this neurologist at the Clinic, Dr. Whitfield, correct?

A. Yeah, this looks to me like a one-time visit with Dr. Lefkovitz playing some part in this, but who sent him there and how it happened, I couldn't tell you.

Q. You know Dr. Whitfield?

A. I don't.

Q. You don't. He is a neurologist here in the greater Cleveland area as well practicing at the Clinic, correct?

A. I'm not even sure he's a neurologist. He might be, but I don't know what his specialty is.

Q. I'm sorry, he's a neurosurgeon?

A. That could be.

Q. Well, if you look at the first sentence it says I was happy to see Mr. Enlow

in a neurosurgical consultation.

A. Yes, oh, indeed he is a neurosurgeon.

Q. And his opinion was that he had a traumatic right -- can you pronounce that for me on the second page? It's my impression the patient has a traumatic right --

A. Oh, that's a meralgia paresthetica.

Q. And that secondary to trauma to his right lateral femoral cutaneous nerve. He says this may be a seat belt injury or direct compression from the steering wheel.

So again, this problem that he is having was a direct consequence of the motor vehicle accident he was in, correct?

A. Well, if you're talking about the meralgia paresthetica, I'm not so certain that that's a consequence of the accident.

Q. So you disagree with Dr. Whitfield's conclusions at the Cleveland Clinic, the neurosurgeon, when he says that it was, quote, secondary to trauma and a seat belt injury or direct compression from the steering wheel?

A. I -- I don't find for sure that he has meralgia paresthetica. Even if he does, I don't think it came from the accident.

Q. Okay. Where do you think it came from?

A. Well, there are many other reasons people get this: Compression over the pelvis, tight garments, other injuries, and there are some people who get it for no apparent reason at all.

Q. In this case, though, you have a person who's experienced a substantial trauma, was a restrained passenger in a vehicle, restrained by the seat belt, and you're telling the ladies and gentlemen of the jury that it's your opinion that that had nothing to do with it, but some other extraneous cause that we have no idea of is what brought this on, is that what you're trying to tell us?

A. What I would tell you on that subject is if he injured his lateral femoral cutaneous nerve in a trauma, he would tell you about it right then and there, and the emergency room wouldn't be fussing over his wrists and other things. They would be talking to him about the nerve which hurts a great deal when you compress it or bother it.

So if he had this kind of nerve

syndrome, it would have surfaced immediately and early. The abscess of meralgia paresthetica symptoms and lateral femoral cutaneous nerve symptoms at the time of the accident and the immediate aftermath argues strongly against it being caused from an injury.

Q. And what kind of symptoms would you have expected to see, Doctor?

A. Lots of pain.

Q. Where?

A. Right in the anterior -- front part of the right leg. It's a very peculiar tingling, burning, crawling, very distracting symptom.

The nerve is -- largely conveys information to and from the skin, so it's like an information system, and it tingles a lot, and people are annoyed greatly about it to the point of distraction.

Q. So when you say "tingling," your tingling could easily be someone's description of numbness, correct, that's what tingling is often described as is a numbness tingling off and on like when your arm goes to sleep?

A. Yeah, although meralgia paresthetica patients add a lot more adjectives than just that because of the exquisite and very peculiar nature of the discomfort.

Q. So -- and you're aware, Doctor, that within a week of the accident he was, in fact, complaining of numbness in the thigh area, numbness in the, buttocks area?

A. Buttocks wouldn't count. The nerve doesn't go there, and that's not the kind of description that sounds to me like a direct nerve injury. Could be but I don't think so.

Q. Oh, okay. So in your opinion it could be, but you don't think it is.

And, Doctor, you'll agree with me that you saw this patient on one occasion more than two years after the accident and that the folks who were seeing him on a daily basis and contemporaneous with the injury sustained would be in a better position to really evaluate what was going on then you're trying to do so two years later, would you not?

A. I would not.

Q. So you don't think the doctor sees somebody shortly afterwards, has hands on the

patient is able do an evaluation is in a better position to determine an issue than someone who reviews records two years later and sees the patient long after the event?

A. Well, depends on the issue that you're talking about evaluated. If it's something that disappears like the swelling and the laceration, surely the -- the individual who saw it when it was there has got something that people who look at him when it's gone don't have.

As to whether someone looking at an individual long after the events took place, he has no more or less wisdom other than his diagnostic skills and what the records bring out, so just seeing somebody after an injury doesn't mean you have missed the best part or you're missing anything at all. In fact, you may have a better perspective than people seeing him at the beginning.

Q. Doctor, while we're on that thought, we're obviously here today because you have been hired by -- by the Defendant in this case, Mr. Garlock.

You've done work for Mr. Garlock or other members of his firm in the past, have you not?

A. Yes.

Q. And it's my understanding you've done this kind of work now for a little over 20 years?

A. That's correct.

Q. And that you do maybe not five a week but on average you kind of do about one -- one of these defense medicals a day?

A. That's a little high. I do anywhere between one and 200 such exams for Plaintiffs or Defendants or people who turn into Plaintiffs and Defendants later down the road every year.

Q. Well, let's break that out. When you say you do them for Plaintiffs, you're obviously providing services for people who get referred to you for treatment, correct, and they could potentially become Plaintiffs?

A. That's one version, yes.

Q. And in this case you were hired by the Defendant not to provide any treatment at all to Jeff Enlow, correct --

A. Correct.
Q. -- simply to examine him and provide a report?
A. Correct.
Q. Now, when a patient normally comes in to see you for an examination or -- or is a referral to you from another physician or calls you out of the phone book, you have a certain charge for that, correct?
A. Yes.
Q. And you have a charge for these defense medical exams that you do, correct?
A. Yes.
Q. And in this case it's my understanding that your charge for the exam was $1100?
A. I believe that's correct.
Q. And in addition you're obviously charging to be here today for your deposition?
A. Yes.
Q. And how much do you charge for that, Doctor?
A. It depends on the length of the deposition.
Q. Well, why don't you break that out

for us, if it's how much an hour or a minimum charge or what.

A. $500 an hour.

Q. So you're charging -- and is there a minimum?

A. No.

Q. So it's $500 and we've been at -- been here a little over -- about an hour and a half, so we're at about a thousand dollars plus the $1100 for the exam, so it's about $2100 to date for your involvement with this patient for whom you provided no treatment whatsoever, correct?

A. That is correct.

Q. You don't charge patients coming in off the street $1100 to examine them, do you?

A. On a single examination, no. The charge for any examination is the same whether it's a patient or a Defendant or a Plaintiff.

The charges you're talking about are not medical services. Those are reviewing of records, looking at x-rays, that kind of thing, and that's a whole separate set of fees and charges.

Q. Well, Doctor, these exams that you do

which you've said are between 100 and 200 a year, the overwhelming majority of those are on behalf of Defendants or insurance companies, are they not?

A. No. Over the years I have gravitated to doing more Plaintiff'swork, and it's getting close to being 50/50. It's probably more like 60/40, but I do more Plaintiff's work every year.

Q. So you're doing 60 percent defense and 40 percent you're seeing Plaintiffs?

A. Very roughly, because it's hard to keep track of who's who and which side you're on in some of these deals, but the majority are people who turn out to be in a defense situation, but it's not a big majority. It's a small majority.

Q. How many -- in the last five years how many people have you seen on behalf of Mr. Garlock or other members of his firm, that includes Mr. Hanson, Mr. Isakoff?

A. I can give you an estimate. A handful. I don't know, three, four, five. Isakoff I don't know. I don't know Gillis or Walsh, if they're still there. So there have

been a few, but not very many.

Q. And, Doctor, as I understand it your opinions in this case relate to the long-term disability of Jeff Enlow as they relate to neurological problems, not orthopedic problems, correct?

A. Well, where orthopedic and neurologic overlap, like in the spine, my opinion is as good as an orthopedist's. In areas where they don't, like joints of the wrist, I don't have an opinion.

Q. You -- you talked briefly about the MRI. Doctor, you'll agree that under the circumstances that the cervical MRI on April 4th was an appropriate exam to do to determine if there was any underlying process causing the problems, correct?

A. I do.

Q. And similarly when he continued to have problems with his lumbar spine that it was appropriate to have an MRI of the lumbar spine, correct?

A. I think it was more than appropriate. I think it was a necessity.

Q. Now, Doctor, you suggested that you

felt that the disk problem that's described in the MRI report predated this accident, correct?

A. No, I've said that the phenomena that showed up in that report is a long term one and probably began many months and perhaps years before the accident.

Q. Well, Doctor, you'll agree with me that when there is an ongoing degeneration of the lumbar disk over a period of time one of the phenomena that you see is a loss of vertebral disk height space, in other words, as the disks degenerate and they start to dry out some, there is a lessening of the height between the disks, correct?

A. Yes.

Q. And usually you see that -- anywhere after six months to a year you'll start to see some loss of disk height space, correct?

A. Six months or a year of what?

Q. Of ongoing desiccation, ongoing degeneration?

A. Oh, who knows. I mean, these are vague measures of spine function. You look at spines of people who have no symptoms at all

and they have variable disk height.

You look at MRI scans of people without spine complaints and they have desiccation. So when you start to lose height as to the relationship between symptoms and changes in water content desiccation, I don't think anybody knows that.

Q. Well, Doctor, you'll agree with me that relative to Jeff there was no loss of disk space -- disk space height, correct?

A. Yeah, I believe that's correct.

Q. So there is at least no indication that this had been a long-term, ongoing process such as to cause the disk to dry out or desiccate?

A. Well, desiccation, as I said, is a long-term process. It goes on like long, long, you're talking years, months -- many months, and it's happening to us while we're sitting here.

How fast it's going and -- and how you measure it is -- is another issue altogether, but when you see that you're looking at something that's been there a long time.

Q. Doctor, I'd like to take and hand you a copy of what I'm going to mark as Plaintiff's Exhibit **1** Dr. Mann.

(Plaintiff'sExhibit No. 1 marked for identification.)

BY MR. CLAPP:

Q. Doctor, this is simply a recapitulation of the medical charges that have been incurred -- that were incurred by Jeff Enlow since the date of this accident and many of which we've talked about and talked about the need for them.

And what I would like you to do is take a moment and look at this and tell me if you're critical of any of these charges, if you feel they weren't reasonable or necessary under the circumstances here, and I think we've covered a good bit of them.

We've talked about the MRIs. We've talked about the need for physical therapy, the referrals, the emergency room, but I simply want you to tell the ladies and gentlemen of the jury if there is any charge in particular that you feel is unreasonable?

A. Well, the charges which I will direct

my attention to are those that I think are connected with the accident. Whether they're reasonable or not, depending on who allows such thing, is quite another question, but those things I exclude from the injury are the following: The -- Lefkovitz's $8,000 charge for -- that's got to be some kind of therapy and treatment.

That seems like a huge amount to me beginning in the time when the patient should have been getting better. So a couple consultations and office visits sounds fine but not $8,000 worth.

If there are multiple charges for this scan reading -- because I see Nydic and Hill & Thomas and American Imaging coming up to a couple grand, that doesn't make sense to me.

Now, there may be more than one scan, but you don't render charges for reading the same scan over and over again or you don't pay them and no insurance company would. Cuyahoga Falls General Hospital June 4th of '01, I'm -- I don't know what that's about.

Q. I think that's the -- I think in all

fairness I think that's the emergency rooms, there is no other emergency room on there?

A. Well, Summa Health on 2/14 --

Q. That's true.

A. -- so I don't know what that is about. I will say that Summit Hand Center, I mean, that doesn't sound like enough for what this guy was getting with an arthrogram, so something is missing there.

Edwin Shaw Rehab, again, we're talking about lots of treatment, $5,000 worth on top other physical therapy, very confusing to me. It doesn't look to me like something you'd stick to the accident. So I find excessive treatment related to the accident in those three arenas. Everything else looks fine and maybe like not enough.

Q. Okay. So you have some criticism of the overall charge perhaps, and we're at $25,000 here, and from your mind if we knocked off something for Dr. Lefkovitz and knocked off the rehab, we'd be down closer to 17, 18,000 would be what you would expect to be reasonable considering that there isn't enough for the hand surgery?

A. Well, criticism is not what I'm doing. I'm just saying how much of this is from the accident. I would say in the range of 10 -- 15 tops. You throw in a couple MR scans at a thousand dollars a piece, emergency room is a couple thousand, so on, physical therapy, but that's -- that's about where I would draw the line for this type injury.

Q. So 15,000 in your opinion?

A. Yes, roughly speaking.

Q. Okay. And perhaps give or take a little bit, and we can do the math, but I know you would -- you would give Dr. Lefkovitz some amount of charge for having seen him at least a few times, correct?

A. As relates to the accident, absolutely, a consultation fee, office visits, some therapy. He did an ENG, nerve conduction study, maybe that's in there, too. That's -- can be a thousand dollar expense, so -- so yes, some of that but not all of it.

Q. Okay. That's fair enough. Doctor, you'll agree with me that headaches can certainly result from tightness in the paraspinal muscles?

A. Headaches of a certain type, yes.

Q. Doctor, you talked about atrophy of the muscles. Did you measure the circumference of his -- of his calf muscles?

A. I did not.

Q. You just eyeballed it?

A. Yeah, in most patients, certainly patients who aren't overweight, you can assess muscle size and can -- the shape of the muscle counts, too, because sometimes they're different shapes on different sizes, but you can get a rough idea of what the size of the muscle is just by looking at it and comparing it to the opposite member.

Q. And, Doctor, you told us that -- that from your perspective at least anywhere from several weeks to a couple months would have been reasonable to have -- have been off work?

A. For the type of job that I understand him to have, which is basically in an office, yes.

Q. Doctor, in terms of your examination of Jeffrey Enlow, did you find him to be cooperative?

A. Yes.

Q. As best you could tell was he being honest with you?

A. Yes.

Q. There wasn't anything that jumped out at you that he was making up or that was dishonest in what he told you?

A. No. I think he's forthright and open about his symptoms.

MR. CLAPP: Doctor, I don't have anything further at this time. Thank you.

REDIRECT EXAMINATION

BY MR. GARLOCK:

Q. Doctor, I'll try to make this brief since we're getting charged by the hour.

The -- you were asked about the EMS record and the loss of consciousness. Does that indicate whether it appeared to be a long loss of consciousness or short?

A. Short is -- is the way people characterize this. These things are notoriously difficult to pin down to seconds and minutes. Nobody is sitting there with a stopwatch, but this is one of the shorter ones as these things go. A long one would **be** hours, kind of thing.

Q. And on the ER records you were asked a number of questions relating to a head injury.

Under the impression on the ER records does it say anything about a head injury?

A. I don't think so. I think they just diagnosed his neck and hand. Yeah, that's all they did.

Q. And the CAT scan of the head, was that normal or not?

A. It was normal.

Q. And that was done at the emergency room?

A. Yes.

Q. You mentioned that -- you were asked questions about the first visit I think to Dr. Crombie. You mentioned the trapezius area apparently being mentioned in the records.

Is that part of the upper back, middle back, lower back, what -- what is that?

A. It's really lower neck and upper thoracic region. It's a muscle that stretches to the shoulders from the neck.

Q. And the visit about a week after the

accident of February 22nd you were asked about a couple of things. That one dealt with the fact that it says back pain. Does it specify upper, middle or lower or does it simply say back?

A. It just says back and doesn't say which part.

Q. And the -- you were asked questions about numbness that came up a week after and specified that -- that visit.

In relation to the nerve that Dr. Whitfield was talking about do you see any mention of numbness there other than into the buttocks?

A. That's all I see.

Q. And would that have anything to do with the nerve that Dr. Whitfield was talking about?

A. No, that's far distant. It's another nerve altogether. It's around behind, and the one we're talking about is out in front, so they're different territories.

Q. You were asked whether or not you would be in a position to make comments on Mr. Enlow and his complaints as well as somebody

who saw him early on. The records indicate that Dr. Whitfield apparently saw him February 22nd of 2001, about a year after the accident

Is it common or uncommon to have second opinions a year or two years or even more after an accident or an injury?

A. No, that's the common practice in the way we practice medicine in North America whether -- even if it's not an injury, people go around looking for answers to their questions. That's perfectly normal.

Q. Is there any standardization of the way medical records are kept and, if so, does it relate to people getting second opinions?

A. Only that it's sometimes stated as a second opinion, but the process is the same. You look at the patient and start from scratch: What's wrong, where do you hurt, do a full physical examination.

Whether it's a second opinion, a third or a first, you do the same evaluation. It's the same thing I did when he came in. He got the same kind of examination that anybody would with that sort of problem.

Q. Okay. Doctor, you were asked a few

questions about your having testified for me other people in my office.

Do you remember last time you testified for me?

A. It must have been a long time ago. I don't know whether I have ever testified for you. If so, it's way beyond my memory.

Q. Do you charge -- when you testify on behalf of Plaintiffs and take your time to testify to a Plaintiff, is the charge different than what you charge Defendants?

A. No, it's the same fee structure. It's the same work.

Q. Do you know anybody that testifies for free?

A. No.

MR. GARLOCK: I don't have any other questions.

RECROSS-EXAMINATION

BY MR. CLAPP:

Q. Doctor, just a quick follow-up. This case is -- is pending in Summit County in Akron. We're here today at your offices and they're on the east side of Cleveland, correct --

A. Yes.
Q. -- South Euclid? Are there a number of good neurologists in the Akron area?
A. Yes.
Q. Do you have any -- any idea why they chose to send Jeff up here to Cleveland to have him examined by you rather than having him examined by a physician in the Summit County or Akron area?
A. I don't.
Q. And just one final question: Just so we're clear, when the EMS showed up Jeff's chief complaint was head and knee -- head and knee pain, correct?
A. I believe that's correct.
Q. And the emergency room chart clearly indicates that there was swelling on the back -- on the back side of his head and a laceration, correct?
A. Yes.
Q. Doctor, generally speaking a blow to the rear of the head is more serious than a blow to the forehead, correct?
A. Never heard that before.
Q. You don't have any opinion on that?

A. I do have an opinion. The location of the blow doesn't count so much as the speed and whether the recipient skull is moving at the time. So -- I mean, the skull is like an egg shell. Where you hit it doesn't matter so much as how you hit and what it is doing when the impact occurs.

Q. And in this case to have a blow to the back of the head it would appear that the skull impacted the back of the truck, he was in a pickup truck, rather than something impacting him?

A. Oh, yeah, there must be some source of this, a window, a flying object, door post, yeah, there's got to be something to do that.

MR. CLAPP: Doctor, I thank you. I don't have any further.

MR. GARLOCK: I don't have any other questions.

VIDEO TECHNICIAN: Doctor, you have the right to review this videotape or you may waive that right.

THE WITNESS: I wish to waive.

VIDEO TECHNICIAN: Thank you. Will counsel waive the filing of the

videotape, please?

MR. GARLOCK: Yes.

MR. CLAPP: It's okay with me.

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(Deposition concluded at 5:46 o'clock p.m.)

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C E R T I F I C A T E

STATE OF OHIO,)
) SS:
SUMMIT COUNTY.)

I, Eric G. Smead, an RPR and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DONALD C. MANN, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to Stenotypy in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee of or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney of any of the parties in the above-captioned action; I am not financially interested in the action; and 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 HEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 13th day of January, 2003.

Eric G. Smead, an RPR and Notary Public in and for the State of Ohio.

My Commission expires January 10, 2005.