THE STATE OF OHIO,)
) SS: THOMAS MATIA, 3.
COUNTY OF CUYAHOGA.)

Doc. 472

IN THE COURT OF COMMON PLEAS

RENEE STASO BROWN, et al.,)
)
Plaintiffs,)
)
v.) Case No. 233915
)
JESSE BILICIK, et al.,)
)
Defendants.)

- - -

Videotaped deposition of DONALD CHARLES MA--, M.D., taken by the Defendants as if upon direct examination before Lisa Hrovat, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of University Suburban Health Center, 1611 South Green Road, Suite 203, South Euclid, Ohio, on Tuesday, the 6th day of July, 1993, commencing at 3:45 p.m., pursuant to notice and agreement of counsel.

- - -

APPEARANCES:

Friedman, Domiano & Smith Co., L.P.A.,
By: Lisa M. Gerlack, Esq.,

On behalf of the Plaintiffs.

John F. Gannon, Esq.,

On behalf of the Defendants.

ALSO PRESENT:

Michael Kearns

- - -

STIPULATIONS

It is stipulated by and between counsel for the respective parties that this deposition may be taken in stenotypy by Lisa Hrovat; that her stenotype notes may be subsequently transcribed in the absence of the witness; and that all requirements of the Ohio Rules of Civil Procedure with regard to notice of time and place of taking this deposition are waived.

- - -

I N D E X

OBJECTIONS:

By Ms. Gerlack Pages 4, 10, 12, 13, 15, 20, 21, 22, 23, 25, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 83, 84, 86, 87.

By Mr. Gannon Pages 30, 31, 33, 35, 38, 45, 51, 54, 55, 58, 61, 64, 85.

- - -

MS. GERLACK: I just want to protect the motion in limine that we'll be filing relative to the prior and subseqtient unrelated medical histot-y of the plaintiff on the grounds of irrelevancy and remoteness in time, and the reasons will be more fully set forth. But let the record reflect we're making a continuing objection to any reference to those events,

MR. GANNON: Okay.

MS. GERLACK: Also with respect to the prior and subsequent medical history of the plaintiff, the incidents surrounding any events of domestic violence, specifically abuse by her father, we're going to make a continuing objection to that on the grounds of undue prejudice to the plaintiff and irrelevancy, and we'll make that a continuing objection.

DONALD CHARLES MANN, M.D.,

Called by the Defendants for the purpose of direct examination, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

BY MR. GANNON:

Q. Dr. Mann, before I ask you any questions let me just introduce you to the jury, this tape is going to be played to the jury, introduce myself, and counsel for the plaintiff. First of all, would you state your name for the benefit of the jury?

A. Donald Charles Mann.

Q. Okay. I mentioned I called you Dr. Mann. I'm John Gannon and I represent the defendant in this case, and I'm going to be asking you some questions, and Ms. Gerlack who is one of the attorneys representing the plaintiff is seated here in the room and she's going to be asking you some questions after I'm done. Since I called you Doctor, let me ask you, are you licensed to practice medicine in the State of Ohio?

A. I am.

Q. And when did you first -- When did you become licensed?

A. 1974.

Q. Okay. Would you tell the jury what education you had to acquire before you became licensed to practice medicine in the State of Ohio?

A. Four years of medical school which I did at Indiana

University, and then a year of medical internship.

Q. Was that in Bloomington or IU in Indianapolis?

A. In Indianapolis.

Q. Okay. then you do a year of internship?

A. Yes.

Q. And you maintain an office where you actually practice and see patients?

A. I do.

Q. And where is that located?

A. In the University Suburban Health Center Building on Green Road in the Cleveland suburb of South Euclid.

Q. Okay. I imagine -- Or let me ask you this. Do you have privileges at area hospitals where you can have some of your patients admitted or treated?

A. Yes.

Q. And would you tell the jury which hospitals those are?

A. The main one is University Hospitals of Cleveland, I'm also on the staff at Metro Health and Geauga Hospitals.

Q. I didn't ask you this already, but do you limit your practice of medicine as opposed to being a general old-fashion family doctor to a specialty?

a. I do.

Q. Okay. And what is that specialty?

A. Neurology.

Q. Okay. Maybe it might be helpful to understand what the specialty of neurology concerns itself with.

A. Sure. Diseases of the nervous systems, the nervous system being the brain and the spinal cord and the nerves that run out in the arms and legs to the muscles and the skin, all the connections and supporting structures thereof like the spine and the skull. More familiar, perhaps, are those diseases we treat, migraine, epilepsy, Alzheimer's, Parkinson's, brain tumors, stroke, nerve injury, things of that nature,

Q. Okay. You say we treat. And I think I asked you before if you have your own office. Can I take it from that that you actually -- I mean, in addition to examining a person as you are in this case for myself and my client, you actually have a practice where you either have patients come to you directly or that are referred by some other physician?

A. Yes.

Q. Have you been doing that since basically since '74?

A. Correct.

Q. This case involves an automobile accident in which the plaintiff Renee Staso Brown indicates she was injured as a result of that accident. In your

practice have you had occasion to treat people who were injured in car accidents?

A. Oh, yes.

Q. Okay. And how would that be? I mean over the years could you give me an approximate number?

A. It's a couple times a week at least, and we're talking a hundred patients a year, something of that order, accidents, car accidents in particular, but sports injuries and falls at home and so forth constitute a significant part of any neurology practice.

Q. Okay, In this case Ms. Brown is indicating that she had an injury to her neck and her arm and shoulder and perhaps low back. I'm not certain about that. Would you again have had occasion in your practice to treat people who claimed or indicated they had those types of injuries?

A. Every day.

Q. Okay. There's a concept known as board certification. That does apply to your specialty or sub --

A. Yes, it does.

Q. Okay. Within the specialty of neurology are you board certified?

A. I am.

Q. OKay. For the sake of the jury what does it mean to be board certified or, briefly, how do you become board certified?

A. A physician demonstrates by testing that he or she is able to practice this profession at its highest levels and the test you do to prove that *is* a two-part thing. The second is a live examination where you actually take histories and do physical examinations in front of the senior people and the discipline. They watch you do this, and you present the case to them and you do four or five such cases. That's after you passed a day-long written examination which. covers everything in the specialty from treatment and biochemistry to the mechanism of disease and the causes of disease.

Q. Okay. So it's really a two-part thing you mentioned a day long written exam and then you have to do an exam in front of -- actual live examinations in front of the senior people in your specialty.

A. Yes.

Q. And, obviously, you did that and you're certified if I understand correctly?

A. Yes.

Q. Okay. I think we're at the point now where we can talk about your examination of Mrs. Brown in this

case. And I've already mentioned that it was done at my request. That is correct, isn't it?

A. Yes.

Q. Might as well start with the date that you saw Mrs. Brown. If you can tell us when that exam was done?

A. That was May 11th of this year.

Q. Okay. Did it occur in the offices here on South Green Road?

A. Right in this very place.

Q. Okay. Now, in addition to examining Mrs. Brown did you have any opportunity to review any medical records that relate either to her treatment following this July 25, 1990 accident or relating to her general medical history? That is, things that may have occurred prior to that? Did you have an opportunity to see records?

MS. GERLACK: Objection.

WITHDRAWN

A. I did.

Q. (BY MR. GANNON) Okay. Now, when you examined Mrs. Brown on, I think you said it was May 11th of this year, did you take a history from Mrs. Brown?

A. I did.

Q. Okay. Maybe that term needs a little explanation. What is a history that a patient — I'm sorry, that

a physician tries to obtain from a patient?

A. It's the retelling in the patient's own words of exactly where and what it is that's wrong, and this is a critical piece in the inquiry as to what the patient might suffer from. So ordinarily one asks the patient to simply in her own words tell where it is and what it is and how long it's been there and what has helped and what has hurt the problem, and this kind of descriptive exercise in telling in any detail that's possible what the problem is. And that's sort of the road map for the figuring out what the problem is and, of course, what you might do about it.

Q. Hypothetically -- I don't know if it has to be hypothetical, but in this particular case you seem to mention that you asked the patient these questions and to illicit this information. Can you obtain a history from another source other than simply what the patient tells you?

A. Yes.

Q. And did you have to do it in this case or did you do it in this case?

A. I did.

Q. Okay. With respect to Mrs. Brown, and we haven't gotten into your examination yet but just the

history portion of your exam, I understand that's part of the exam generally, did you find Mrs. Brown to be a good historian or not?

MS. GERLACK: Objection. Objection. LEADING

A. I would characterize her as a poor historian.

Q. And how did you make that determination or what caused you to do so?

MS. GERLACK: Same objection.

A. Great pieces of information were forgotten, no fault of hers, but just lacking in her recall so that she just didn't know or didn't recall certain items that I would consider to be of importance.

Q. Okay. Before we get on to your exam you say she didn't recall certain items that you considered to be of importance. What were those items or what types of items are you talking about?

MS. GERLACK: Objection.

A. There were a couple of injuries in 1986, there was a car accident or two in 1989 or '90, there were trips to the doctor for headaches, which those were one-time time events easy to forget, but in the record nonetheless, there's a description of her exercising on a bicycle which either isn't correct or she didn't recall but, again, there's some gap between what I think or what was recorded and what

really took place. So these are bits and pieces of the story that are important and simply not recalled by the patient.

Q. Okay. Well, obviously, though, you've been discussing them so that suggests to me that you got this information from some other source. Can we make it clear to the jury where you learned of these other incidents or events?

MS. GERLACK: Objection.

A. Sure. It comes from a reading of the records covering her treatment back to around 1985 or so, the Kaiser Permanente, files where she's gone for most of her care the bulk of which, of course, has nothing to do with what we're talking about today but just general medical care, but also in there are treatments for injuries and other medical problems.

Q. Doctor, let me ask you this. As a physician who's examining a patient as you were in this case or even if this was your patient who was came in to you for treatment, why is it important to know about other events such as the ones you've just described? Is it helpful to you or clinically or medically significant?

A. It's significant in several ways. One, the apparent

cause for her problems may be injury as would appear but it could be more than one injury or other injuries, so that's one part of the inquiry. Another is what sort of medical data was generated on those occasions. Was it the neck thing, which might be germane, was it an arm or a leg or a back, which wouldn't be, so that the type of treatment she had or type of injury she had would be significant, and in a general way how she attends to such things or even to remember them. Because when a patient can't remember lots of things then I know I have to dig harder and longer because there may be other things that were forgotten as well.

Q. Okay. You mentioned something before. You say what kind of documents were generated following an incident. Well, if we assume for a second, let's say, that a person had an accident and went to a medical facility wherein an emergency room record was created or there were some documents, if there were to the same body part as you were examining for, and if they were relatively close in time, let's say within a period of six months, would you be interested in trying to obtain a copy of that record to review it? Would that be helpful to you in reaching your diagnosis and --

MS. GERLACK: Objection.

Q. -- opinions as to causation or that type thing?

A. Well, I'd certainly want to see those records and then, of course, make a determination how germane they were --

Q. Sure.

A. — but one would have to look at the primary documents themselves.

Q. I take it would be good medica? practice to at least try to get those records, and you generally do that in your own practices. Would I be correct in stating that?

A. Oh, yes, We get as much material as we can. The more the better. There's never too much. And often you don't get records and you have to use whatever material is available, but we certainly prefer more information.

Q. Okay. I think I interrupted you before where we stopped at the point where you were telling us the date that Mrs. Brown came to your office, and you told us where you did the exam, and we talked about the history. Now why don't you go ahead and tell the jury about your examination, that is how you examined Mrs. Brown and what your findings were?

A. Sure. We'll go into the physician examination.

That's the directed part after the history taking. Here I'm interested in how mobile she is, what kind of strength and feeling she has, what kind of reflexes were present, and any other things I discovered watching the patient in the course of examination or the interview that might be critical, Things like scars for surgeries that were forgotten, that type of thing.

So I first did her -- tested her range of motion of the neck and I had her bend her head forward and backward and go to each side, and that was okay. I looked at the neck musculature to see if it was tight or tense, and it was normal. I tested strength in her arms. Here I'm looking for signs of a nerve loss or nerve root loss. I tested the same extremities for sensation, because the same nerves that go to the muscles also go to skin and carry information about numbness and temperature, and that was okay. I then testified her reflexes, namely the knee jerk one that we all know about, but there are three reflexes in the arms and another one in the leg, and those were all okay. And I watched her bend and turn and twist as just she walk around in the examining room and got on to the table and off, and that was okay. Then I checked the cranial

nerves, and they were all right.

Q. All right. Doctor, I was looking at a report that you had previously provided to me that was sent to Ms. Brown's attorney and there is a statement in the first page of your report, first sentence -- I'm sorry, first sentence of the third paragraph, She has no sensory symptoms in her hand radiating pain into her arms or left upper extremity or lower extremity symptoms.

What's the significance of that statement or those findings?

A. The absence of symptoms in the arms or in another case for the legs would put down any idea of a pinched nerve or significant pinched never. These nerves are long cables that carry information basically down to the hand from the neck, and when they go awry for any reason, disc herniation or irritation or whatever you get arm symptoms using numbness, weakness or pain or any combination thereof. So not having those means we're just talking about a neck structural process, joints, bones, joints, disc, cartilage, that kind of thing, and not a pinched nerve.

Q. Okay. Are you finished now with your description of what your examination consisted of? If so, I will

ask you another question. I think you were telling us your findings, and I was going to ask you then if after obtaining a history of Mrs. Brown and doing the exam and making some findings I know there was another element of your evaluation, wasn't there?

A. Well, the review of the record, yes.

Q. Okay. Let's say now just if we talk for a second here of your opinions following your examination were you able to reach an opinion as to what, if any, condition or problems Mrs. Brown was suffering on the day that you examined her on May 11, 1993?

A. I did form an opinion.

Q. Okay. Would that opinion be to a reasonable degree medical probability?

A. Yes.

Q. Okay. Well, then, why don't you tell us then what was the opinion that YOU were able to form?

A. That Ms. Brown has -- although the symptoms continue she really has no physical basis for them. There is no disc problem, we know that from the MR scan, there's no pinched nerve, we know that from her history and her examination, there's nothing else that's discoverable like rheumatoid arthritis or some other disease entity that could do this, or it's not going to be found for a long time to come,

in other words no physical explanation for all of this trouble these three years. So we are left then with somebody with pain without any organic basis.

Q. Okay. And the pain -- Now when you say you're left with somebody with pain, and I could be way off base here, but it's my understanding if a patient tells you they have pain that's -- you have to rely on what the patient says. I mean, it's not something that you can objectively for the most part see, is it?

A. Correct.

Q. All right. Now talking specifically about the records that I think you referred to generally before, records were made available to you either before your examination or at the time of your examination regarding Mrs. Brown; would I be correct?

A. Yes. Before actually.

Q. And if I'm not mistaken it consisted of approximately 200-some pages from Kaiser, and then records from Drs. Robie, Spittler & Quinn who I believe are her OB/GYN doctors, and then doctors -- I'm sorry, records from Dr. Nemunaitis who saw her following the accident involving my client, and I think also there were 6

pages of records from Euclid Meridia Hospital. Is that a fair summary of the records that were available to you?

A. Yes.

Q. Okay. And you indicated that it's important to review those. And I wonder if you could just tell us what were the significant items of those records that you reviewed that were important to you in your evaluation in this case?

MS. GERLACK: Objection.

A. Well, there were entries about injuries in particular, and I can tell you specifically what they were, going all the way back into the '80s. In April 1986 she was injured and had to seek treatment for her head. In July of 1986 there was some type of physical injury, and she had a blow to the head and sought treatment again. In 1988 she described migraines to the practitioners at Kaiser, and in -- May 31, 1989 she was in an automobile accident. Her car was struck from behind. On March 26, 1990 she fell down some steps and had treatment at Kaiser, and then on May 10th of 1991, and I believe she did recall this one, but not the others, there was injury to her head on the door. But the other five injuries she did not remember.

Q. Okay. The incident where she fell down the steps on March 25th of 1990, of course the accident involving my client occurred on July 25th of '90, so it'd be approximately four months earlier. That was reflected in the Kaiser records, Doctor?

A. Yes?

MS. GERLACK: Objection.

Q. (BY MR. GANNON) And my understanding is, at least from my review of the Kaiser records, that the physician noted she injured her head, her neck, it says yesterday, apparently he saw her the day after, and she complained of -- or c.c., does that mean chief complaint --

A Yes.

Q -- in medical shorthand I guess you'd call it?

A Right,

Q Okay. Chief complaint of pain in the head and neck on the left side and that she was nauseous and had vomited. Okay. At that time he said the exam showed tenderness of her left side of her neck, and then he goes on to talk about ears, nose and throat but I'm not sure exactly what he's saying.

Now, Doctor, since that occurred maybe four months prior to accident and it involves the same part of the body, the head and the neck, that she

feels she hurt in this accident, is that a significant -- I mean, is that something you would want to look at to see if it would help you in your evaluation?

A. Yes.

MS. GERLACK: Objection to form.

Q. (BY MR. GANNON) And did you do that in this case?

A. I did.

Q. Okay. And I think that's one of the events that Mrs. Brown either had difficulty or just could not recall when you were getting the history from her?

A. Correct,

Q. Okay, In the Kaiser records -- Now, Doctor, let me ask you this. We're going to talk about following this accident we know she went to Euclid Meridia Hospital for essentially emergency room treatment and then followed up with Dr. Nemunaitis about five or six days after the accident, then went to Kaiser on August 6th or August 7th of '90, about two weeks after the accident, you had a chance to review all of those records of the three people that I mentioned or three facilities that I mentioned?

A. Yes.

Q. Okay. In the Kaiser records there's a description of the findings of that doctor, and he mentions

sensory exam not reliable in this patient.

First of all, I want to ask you, what is the sensory exam?

A. That's the part with testing for feeling of pin and touch and vibration in the extremities. Again, we're looking for a nerve or a pinched nerve type of problem.

Q. The statement that it wasn't reliable, is that consistent with what your evaluation or opinions were when you were attempting to get a history from Mrs. Brown?

MS. GERLACK: Objection.

A. Well, it's the same kind of thing. Something is missing or it doesn't fit, and it sort of subtracts from the body of information that we would have available to us to evaluate this patient, so it sort of takes a piece of the puzzle away and I think it is the same kind of thing that I was talking about earlier.

Q. Okay. Now you had described for us your examination and your findings and you expressed your opinion. I guess what I was going to ask you is, as a result of your background and your training and your experience, the records that you reviewed pertaining to Mrs. Brown, your examination of Mrs. Brown, were

you able to perform -- I'm sorry, were you able to form an opinion based on a reasonable degree of medical probability as to what, if any, illness or condition Mrs. Brown was suffering from as a result of this accident?

A. I was.

Q. Now, would you tell the jury then what that opinion is?

A. That she has no physical or medical condition as a result of the July 1990 accident, and she certainly has nothing today that could be related to that. And I believe she was recovered from that accident in a relatively short period of time, and the things we see today come from other sources.

Q. One final question I think, Doctor, is there was a discussion at some point in this case, I guess it would be an injury or illness called nerve root irritation. Let me specifically ask you as a result of your examination of Mrs. Brown, the records that you reviewed and, again, based upon your training, background and experience, if you were able to perform an opinion -- I'm sorry, I keep saying perform -- if you were able to form an opinion based on a reasonable degree of medical probability as to whether or not Ms. Brown suffered from nerve root

irritation?

A. I am able to form that opinion, yes.

Q. And could you tell us what your opinion is?

A. That she bas no nerve root injury or damage from that at all or let alone from that accident.

Q. Okay. I would be correct in understanding there is a diagnosis or can be a diagnosis in a given patient of nerve root irritation. Is that something thst is transitory, resolves itself in a short period of time, or is it something different?

A. Generally speaking those conditions do go away, they come from injury and disc herniations and they also come from infections and viral invasions and sometimes nobody knows where they come from. But, generally speaking, they recover in time. Sometimes it is weeks or months. But the rule is recovery. And most people do quite nicely.

Q. Okay. But in any event, unless I just didn't understand you correctly, your opinion was that she did not suffer nerve root irritation? Mrs. Brown didn't suffer --

MS. GERLACK: Objection.

Q. -- was that your opinion?

A. Correct.

MR. GANNON: Doctor, I believe those

are all the questions that I have for you at this time. Perhaps I may have a few more for you after Mrs. Gerlack is through asking you some. Thank you very much for your time and patience.

CROSS-EXAMINATION

BY MS. GERLACK:

Q. Doctor, we've been introduced. My name is Lisa Gerlack and I'm one of the attorneys who's representing Renee Brown and her husband in a lawsuit that she has filed.

Doctor, during the course of your direct examination you had raised the fact that you had reviewed various materials prior to your examination of Renee Brown in this case; is that true?

A. Yes, that is correct,

Q. And may I assume fairly that you relied on those documents in forming your opinions in this matter?

A. I did.

MS. GERLACK: May we go off the record for a moment so I may take a look at those documents?

MR. GANNON: Sure.

(Discussion was had off the record.)

Q. (BY MS. GERLACK) Doctor just so the ladies and

gentlemen of the jury understand your role in this case you are, as to Renee Brown in this case, what's referred to as an examining physician?

A. That *is* correct.

Q. And your purpose — You had no intent or purpose of treating Mrs. Brown when she came to you; is that correct?

A. Correct.

Q. In fact, you were hired by defense counsel to examine her and render an opinion in defense of this lawsuit and the injuries that are claimed in this lawsuit?

A. That is correct.

Q. And if Mrs. Brown required further treatment for the injuries that are at issue in this lawsuit you would not be expected to be consulted to give her any treatment, would you?

A. That's right. She would be going to somebody else or referred to somebody else.

Q. And part of your purpose in examining Ms. Brown was to determine what the nature and extent of her injuries were and, if necessary, to give testimony in this case?

A. That is correct,

Q. And the purpose -- One the primary purposes of your

examination was geared to enable you to testify under oath as to what conditions you found when you examined her in May of 1993?

A. Correct.

Q. Have you rendered, Doctor, medical expert opinions for Mr. Gannon's law firm in the past?

A. I have.

Q. If so, how many times in the last six months have you given -- rendered an opinion in defense of a personal injury lawsuit?

A. Not many. I could give you a guess, if you wish. A handful, four, five, something of that nature, perhaps maybe three. Maybe two. Something of that nature.

Q. In the last six months?

A. Sometimes they run on forever and a day, and maybe something happened in the last six months that started a year or two ago, but I would say we're talking about less than a handful in the past six months.

Q. And in general terms can you give me a rough estimate as to how many medical examinations and opinions you rendered on behalf of Mr. Gannon's law firm in the last year?

A. Well, again, it's a guesstimate. Small number,

four, five, six, something of that nature. I don't know that I've seen him more than once before, so it's a small number and I'd have to look it up to tell you exactly.

Q. Do you maintain records of how many cases you review for Mr. Gannon's law firm?

A. I do not.

Q. How many years have you been reviewing cases and rendering medical opinions for in defense of medical lawsuit?

A. I'd say about 15 or 16.

Q. Within those 15 to 16 years, how many times have you — you can give me an estimate as to how many times you've rendered an opinion in defense of a case on behalf of Mr. Gannon's law firm?

A. Total number of since like the beginning of time? Ten, maybe fifteen, maybe eight, seven, something like that. I'm not even sure who's in his law firm or who was in his law firm if we have to count everybody that was at one time or another. So, again, it's a small number but I can't give you exact numbers.

Q. And, Doctor, you've been in private practice of neurology since 1974. Since 1974 can you give the jury an estimate as to how many times you've

rendered a medical expert opinion in defense of a person injury lawsuit?

A. I'd have to estimate that. If it's, you know, 30 times a year for 20 years that's 600. So maybe 500, a thousand, something of that range for 20 years, something, roughly in that -- or 15 years, something in that range, guessing.

Q. And it's your custom, of course, Doctor, to charge for the services that you render in defense of these lawsuits?

A. It is.

Q. And would you be kind enough to tell the jury at what rate you're being paid for writing a report which sets forth your medical opinion conducting an examination and giving testimony if it comes to that?

MR. GANNON: Objection. Go ahead.

A. It doesn't break down quite like that. Usually there's a charge for looking at records and writing a report and doing an interview and a physical examination, and the fee range there is 400 to $600 for the usual kind of case. This is probably such a case, although there were a lot of documents. Something in that neighborhood.

Q. Have you generated a bill for your services that

you've rendered in this case?

A. I have.

Q. Do you recall the rate that you charged for your examination on May 11, 1993 of Renee Brown?

A. I do not.

Q. Do you have those record available available today?

A. I do.

MS. GERLACK: Can we go off the record for a minute?

MR. GANNON: I'm going to object. I'm going to object. I think it's irrelevant. But you can certainly go ahead and do it. Obviously I'll make it subject to a motion tomorrow when we start trial.

MS. GERLACK: Okay.

Q. (BY MS. GERLACK) Doctor, did you have an opportunity to review your records?

A. I did.

Q. And what is the rate that you charged for your examination of Renee Brown?

A. For the review of records and the report and the history and physical it was $800.

Q. And what is the rate you are charging for your testimony today?

A. Depends on how long it goes. It's roughly between

three and $500 an hour.

Q. Doctor, you testified earlier that it's approximately, and I hope I have these numbers correct, between about six or so cases that you testified in in the last six months in defensive of personal injury case?

A. It wouldn't be testimony it would be -- Are you talking from Mr. Gannon's firm?

Q. Yes. In rendering -- Just strictly in defense of personal injury claims not exclusive to Mr. Gannon's law firm.

A. Oh, anybody. In the past six months how many times have I done an independent medical exam? Give me a minute. Oh, I would say maybe a hundred such times -- events I have done a examination with the idea of appraising whether there's an injury or not, and what it is, and what the outlook *is* both for defense or for plaintiff. And usually it's just that, a report, or a history and physical.

Q. Are you able to distinguish today if you render medical opinions more for the defense than for plaintiffs?

A. I am.

Q. And what is that?

A. It usually turns out to be defense.

Q. Okay. And within the last year in the hundred or so times that you have made an evaluation of an individual whose claiming an injury, and it's in litigation, of those hundred or so individuals that you see a year what number in 1992 were for the defense?

A. I would say the majority were for the defense.

Q. And you testified that in your review of Renee Brown's situation and the examination, that that was what you would categorize as a typical examination, is that correct, at the rate of $800?

A. No, I think that's more expensive. This is a more complicated case, there are more records, harder to find stuff. So that would be more elaborate than the usual.

Q. Doctor, how much income do you generate in a year for the medical opinions that you generate in defense of personal injury lawsuits?

MR. GANNON: I would object.

A. I don't know. I have no idea.

Q. Do you maintain separate records with that information?

A. No.

Q. Doctor, stretching the hundred or so patients that you see for evaluating an injury, of those hundred

can you tell me in 1992 approximately how many of those 100 patients where you were evaluating for the defense in a personal injury lawsuit?

A. Most of them were for the defense.

Q. Can you give me a number? 50? 95? 80? 85?

A. I couldn't give you a percentages.

Q. More or less than 50?

A. Well, it's majority so it's more than 50.

Q. And if there's 52 weeks a year you're averaging an evaluation of about two patients per week for purposes of medical opinion?

A. Some weeks it's three or four, some weeks it's none. It really varies all over the board. Reducing this to a set of statistics or numbers is very hard to do and fraught with inaccuracies.

Q. Doctor, the first time that you ever laid eyes on Renee Brown was on May 11, 1993, correct?

A. Yes; that's correct.

Q. And this was nearly three years after the July 25, 1990 accident that she was involved with, correct?

A. Correct.

Q. Doctor, so the jury is clear you never treated Mrs. Brown for any of the injuries or symptoms that Dr. Nemunaitis and Dr. Winer relate to the July 25, 1990

accident, did you?

MR. GANNON: Objection. Objection to any reference to Dr. Winer. He hasn't related anything, so I object.

Q. Doctor, just so the record is clear you testified about a lot of medical records that you reviewed in order to give your opinion in this case; isn't that true?

A. Yes.

Q. In fact, I have them right here, and if you need to look at them let me know. Doctor, you reviewed the findings and the treatment history that Dr. Nemunaitis rendered to Renee Brown, didn't you?

A. Yes.

Q. And you were aware based on your review of those records that Dr. Nemunaitis referred Renee Brown to a neurologist who is in the same field as you, Dr. Winer, correct?

A. Yes.

Q. And you address his findings in your report; do you not?

A. Yes.

Q. And, in fact, he conducted various neurological exams on Ms. Brown, correct?

A. Yes.

Q. Now, the examination that you conducted for Ms. Brown is known as what's called an independent medical examination or an IME?

A. That's one way it's defined, yes.

Q. And as a physician you're not required to conduct independent medical examinations, are you?

A. I am not.

Q. In fact, there's no mandate from the medical association or State of Ohio for licensing purposes that you conduct these, correct?

A. Right. You don't even have to conduct any examination. It's all voluntary.

Q. And just so the jury understands the Court didn't request you to get involved in this case you were hired by defense counsel, correct?

A. I was asked by Mr. Gannon to do this evaluation, yes.

Q. As we have addressed earlier, Doctor, your opinion, of course, is not gratuitous; isn't that true?

A. Correct.

Q. And the purpose of your examination is not to benefit the patient Renee Brown medically in any way, is it?

A. Sometimes, it does. I don't think it will in this case.

Q. Now, Doctor, I have your report that's dated May 13, 1993 which relates to your findings relative to the examination of Renee Brown in this case and this report you sent to Mr. Gannon, and it has your signature on it, correct?

A. Right.

Q. And, Doctor, it's your belief in writing this report, sending it to Mr. Gannon with your findings, that the information contained in this is accurate, correct?

A. Yes.

Q. Now, when Ms. Brown came to you you're not disputing the fact that she had complaints of pain which you specifically mention in your report, true?

A. No, I do not dispute that. She has them.

Q. And, specifically, the complaints were of neck pain, right shoulder pain, and scapular ache and soreness daily, correct?

A. Yes.

Q. And based upon your review of the records that you testified during your direct examination and, specifically, the records of treatment from Dr. Nemunaitis, those complaints were consistent from the day of the accident, July 25, 1990, up until the time you saw her, correct?

A. Yes.

MR. GANNON: Objection. OC

Q. (BY MS. GERLACK) And Ms. Brown complained to you that her pain was so dysfunctional that it interrupted such mundane things as writing, bathing her children, and participating in sports activities; isn't that true?

A. She did.

Q. And you have no reason to disbelieve that she wasn't being anything but truthful with you when she told you that; isn't that true?

A. That's correct,

Q. And, Doctor, just so the jury understands, when you were discussing Mrs. Brown's recall of events from medical records that went back as far as 1986 you weren't suggesting that she was untruthful, were you?

A. No. Where this comes from others will have to decide. I just know that we cannot rely on her to give the whole story. We need records and other documents to fill out the picture.

Q. And, Doctor, isn't it true, and based upon your practice and experience, that people do have problems remembering events if they're not significant and that's why medical records are sometimes important for a doctor to review?

A. Right. People forget for a whole host of reasons Gut that's, yes, one of the reasons why we keep such elaborate records.

Q. And, Doctor, just to so the jury is clear, you didn't request these records, did you?

A. I did not.

Q. They were supplied to you by defense counsel; were they not?

A. There'd be no way for me to obtain these without her consent or other means. So, no, they were sent to me.

Q. And did defense counsel send you these records with any indication that you consider certain portions of the records or did you review them in their entirety?

A. Oh, I review them in their entirety.

Q. When Mrs. Brown came to see you she also complained of migraine headaches, didn't she?

A. She did.

Q. And she expressed to you her way of relieving some of these symptoms were using a heating pad at home, refraining from exertion, sports activities, and to alleviate her head pain to lie down in a dark room, correct?

A. Yes.

Q. Now, Doctor, you're not disputing based on what's in your report nearly three years after this July 25, 1990 accident that Mrs. Brown is still complaining of chronic daily pain?

A. I am not disputing that, no. I think she is, as it says, having pain every day.

Q. Now, you learned of these complaints through what you have described in your direct testimony as the patient history. That's one portion of a patient history, correct?

A. Yes.

Q. Now, Doctor, I believe you referred to a patient history as -- I'm paraphrasing -- but a retelling by the patient as to where and what is wrong.

Now, Doctor, wouldn't it be more fair to say a history is often elicited by a question and answer type session that's initiated by the doctor?

A. It depends on the situation. I much prefer the patient describe as much as possible in her own words without being guided, coaxed, or otherwise taken through this. So there is a question and answer, but at least the way I do it I encourage the patient to talk as much and as freely as possible about the symptoms.

Q. In this particular instance, because you were going

back in Mrs. Brown's medical history as far back as almost ten years — or ten years, you had to pose a lot of the qtiestions to her, didn't you?

A. Most of the information came from her. I must have asked her lots of questions on the part of the examination where I do such things, but then I do that with most patients.

Q. And when Ms. Brown was in your office she was cooperative with you in relaying what she could recall about her medical history, wasn't she?

A. Yes.

Q. Now, Doctor, in your report — First of all, you would agree with me as was discussed during your direct testimony that the history that a doctor obtains is often a very critical part of the diagnosis that's rendered; is that true?

A. It can be very important, yes.

Q. And in your report, Doctor, you note in the -- Doctor, you note in the fifth — sixth paragraph of page one of your report you gave a history of the July 25, 1990 accident, and you give that history as being that Ms. Brown's car was struck from behind?

A. Correct.

Q. Is that information that you elicited from Mrs. Brown on the day of her examination with you?

A. Yes.
Q. Is that all of the information that you obtained from Ms. Brown concerning this accident?
A. Well, also that she had a seat belt, she hit the window — windshield, she had recall of the impact and going to the emergency room thereafter.
Q. Doctor, did you review a police report or any other information regarding -- in regards to the dynainics of how this accident occurred?
A. The physics and that type of thing, I don't believe so.
Q. Doctor, do you know what type of vehicles were involved in this accident?
A. I do not.
Q. Did you ask Mrs. Brown what type of vehicles were involved in the accident?
A. I did not.
Q. Did you ask Mrs. Brown how many times her vehicle was struck in this accident?
A. I did not.
Q. Do you know what type of vehicle Mrs. Brown was driving at the time of the accident?
A. I do not.
Q. Do you know the speed at which her vehicle was traveling at the time of the accident?

A. No.
Q. Do you know the type of vehicle that was struck — that struck Mrs. Brown's vehicle?
A. No.
Q. Do you know if it was a car or a truck?
A. No. I couldn't tell you if it was a motorcycle, helicopter, or any other thing about the mechanics, who was going which direction, how fast, how slow, what other things were involved, the weather that day, or any of those details.
Q. Now, Doctor, in evaluating an acceleration-type injury wouldn't you think it would be important information to find out as much as you could if you didn't see the patient within a few days after the accident to gain as much information as possible about the dynamics of the accident and what happened to the occupant at the time of the impact?
A. If you're a physicist, yes, because those are the things that are important to you. If you're doing this from the medical standpoint, it is the effects of such impacts, whether they're up, down, sideways, Fords or Chevys, or whatever, it's the effects that injury produces on the individual that are important to us not how they were delivered or by whom or what speed,

Q. Doctor, is it my understanding that it would make no difference to you in terms of your medical evaluation of Renee Brown if she was struck one time or ten times in this accident?

A. Well, within rough range those are important things to know but they're so often unknowable and so often are not related to the physical injuries to the nervous system. Yet knowing them is nice, but not essential, and there's such a much larger body of information about the nervous system, the anatomy, and the physiology that is much more direct and much more important in determining what is wrong with the patient that the other material is really quite secondary.

Q. Doctor, the defense counsel went to great pains to supply you with a host of documents that relate back as far as 1986 concerning Mrs. Brown's medical history. Defense counsel did not give you any records that would tell you how this accident occurred, did he?

A. It might be in one of the emergency room reports or something such as that. I'd have to look in there to tell you.

Q. Doctor, would it make any difference to you in your medical opinion in evaluation of Mrs. Brown if she

was struck by a truck that probably weighed 14 to 15,000 pounds on a freeway?

MR. GANNON: Objection. That's not what happened.

A. Well, it's hard to know because what if that truck was moving along at a mile an hour or even if that's an accurate account. So I consider myself in a very poor pcsition to decide how big, how fast, which direction all of these things were taking place since it's hard enough for me just to evaluate the patient 1et alone the ballistics and mechanics of such events.

Q. Now, Doctor, would it make any difference to you if the accident involved here was a 4 to ***5,000*** -- two 4 to 5,000-pound cars versus a truck? Would that make any difference in your evaluation of the history in this case and its importance?

A. Well, I think it might be interesting to know but I don't see how that could change my opinion if they were 4 or 5,000, or four or five tons, or four or five cars, or four or five people because it's the same Renee Brown no matter how all of this took place.

Q. With the type of injuries that Renee Brown was treated for by Dr. Nemunaitis, which consisted of

acceleration injury or whiplash-type injury to the neck with nerve root damage, that was his diagnosis, would it make any difference to you as to happened to her body upon impact in this accident with that type of an injury? Would that history play any significance in your evaluation in this case?

A. Well, again, it would be interesting to know. It's almost unknowable unless you've got a camera in there recording all of this as it take place because people are in a very poor position to determine which way they went and how fast. I ask the patient and get such things as did you have a seat belt on, and did it work, and that sort of thing. That kind of information is rarely of much help but it's interesting to know.

Q. Doctor, did you ask Renee Brown, when you were discussing this accident with her, did you ask her which way her body moved upon impact in this manner?

A. Well, eventually it went forward because she said her head hit the windshield. So whether it went back first and then backward, or forward first and something else, I couldn't tell you. But I know eventually she hit the windshield, and that would seem to me to be probably the greater of the excursions that her head and body made.

Q. Doctor, the bulk of your opinion in this case has manifested itself in reliance on Mrs. Brown's prior medical history; isn't that true?

A. No, the bulk of it comes from her history that she gave as to her symptoms, examination there, and also the records.

Q. And if I'm understanding you correctly, you are placing more importance on events that occurred in 1986 as opposed to the dynamics of what happened to Renee's body when this accident occurred; is that true?

A. No.

Q. Well, Doctor, just so the jury is clear you relied upon records of isolated complaints of a headache here or a fall down the stairs, and yet you don't know how this accident happened or how many times her car was struck in this accident; isn't that true?

A. Well, the one set of information about headaches and so forth, those I can determine, as a matter of fact, because they're written down and written down by medical personnel. Now, they don't add up to very much but at least that's reliable and reproduceable and something that I can look at it because it's medical information. The other

material I'm in a very poor position to evaluate. I don't know that much about the physics of car and truck crashes, and whether there was a headrest on the seat, and how big the compartment of the car was and this kind of thing. People often forget or don't know what's happened. So that kind of material is less available to me, less reliable, and less helpful whereas the medica? stuff, with which I'm familiar, is very helpful to me.

Now, not all medical data is helpful. There's stuff historically in there that isn't all that great but, still, that's the kind of material that I work with as opposed to physics and ballistics and that kind of business.

Q. Doctor, did you have an opportunity to review the medica? reports of Drs. Nemunaitis and Winer?

A. Yes.

Q. Did you have the occasion to review Dr. Nemunaitis's trial testimony before today?

A. No.

Q. Now, Doctor, you testified earlier that you're aware of various nerve studies, diagnostic tests, that were conducted on Renee Brown by Dr. Winer at the suggestion and referral of Dr. Nemunaitis, correct?

A. Yes.

Q. And, Doctor, based upon your review of those records there were findings by Dr. Winer that concurred with Dr. Nemunaitis's diagnosis that Renee Brown had nerve root damage as a result of the July 25, 1990 accident, correct?

A. He found things in the second nerve test that might correspond to her earlier symptoms, yes.

Q. And, in fact, it wasn't only in the second nerve conduction study test but in November of 1990 there were also some abnormal findings noted in her biceps; isn't that true?

A. Well, let's look at that before I hazard anymore.

MS. GERLACK: We can go off the record.

(Discussion was had off the record.)

Q. (BY MS. GERLACK) Doctor, do you have before you the nerve conduction study results that were taken by Dr. Winer?

A. I do.

Q. Referring you to the November 1990 EMGs would you agree that there is a showing of increased insertional activity in the right biceps for Renee Brown?

A. Yes, that's the conclusion.

Q. And, Doctor, you're a neurologist. Would you agree

that those findings would be consistent with the same nerve roots of which — they would correspond with the same nerve roots where Renee Brown was making subjective complaints of pain?

MR. GANNON: Excuse me. Are he talking about November of '90?

MS. GERLACK: Yeah.

A. Well, I'm not sure where her nerve root ccnplaint was back then, but I would say about this study of insertional activity in the right biceps is the most trivial of all findings. I regard that as normal. You see that in people who have nothing else. So although it merits mentioning this is, in essence, a normal study and it tells us nothing about her nerve roots except that they're normal.

Q. So you don't agree with Dr. Winer's finding, correct?

A. I agree with them. My interpretation of those kinds of findings is they're minimal if anything and what they tell us is how normal everything else is. That insertional activity in the biceps is extremely minor.

Q. Doctor, if I understand you correctly you were unaware, based on the history that you took and the records you reviewed, if Renee Brown, back in

November of '90, had nerve root complaints of pain along the nerve roots that would correlate with this finding in the EMG; is that correct?

MR. GANNON: Objection.

A. She had, I think, arm and neck pain and other things more pronounced as we were closer to the injury in '90, and she may well have had right arm radiating pains Sack then. I can look it up if you wish.

Q. Doctor, you, I think, referred, and I'm paraphrasing, but you referred to these findings of mild significance; is that accurate?

A. The biceps thing is minimal if any.

Q. Would you agree with me that a damaged nerve may be very symptomatic, that is causing pain, even though there might be normal or mildly significant neurological findings such as in these tests?

A. Yes. You can have pain and it won't be found on this test because it is, after all, just a sampling, and if it samples the wrong place and so forth you'll miss it. So there's not a hundred percent correlation between this test and symptoms. Not by a long shot.

Q. Now, Doctor, during your direct testimony you testified to four or five events that you feel are — excuse me, you felt were items of importance

in reviewing and obtaining a complete history from Mrs. Brown; is that correct?

A. Yes.

Q. And of those events one -- two of them related to 1986, which were head injuries, and why don't you look through your records there and find --

A. Got it.

Q. Those incidents were in 1986, correct?

A. Yes.

Q. And there were also complaints to which you -- about which you testified, complaints of migraine headaches that were made to Mrs. Brown's obstetrician; is that correct?

A. No, I think it's in the Kaiser records that she talked about migraines.

Q. Would you agree with me that you were given records from her obstetrician and gynecologist?

A. Yes, I was.

Q. Doctor, when you took Mrs. Brown's history did you ask Mrs. Brown any questions about whether she was taking any birth control at the time she complained of these headaches in the past?

A. Back in 1988 I don't think I asked her in 1993 if she were taking birth control pills at the time of the 1988 report.

Q. So you can't sit here today and tell us what caused Renee Brown's complaints of a migraine headache in 1988, can you?

A. Well, I can tell you it wasn't birth control pills and 1 can also tell you that migraine has no cause. It just comes. I mean, if there's cause it's inheritance. That's just known about migraine.

Q. Based upon your review of Mrs. Brown's medical records she'd never consulted with a neurologist about her migraines, did she?

A. I don't think so. I don't think she's been to a neurologist before this.

Q. In fact, Doctor, those are just isolated complaints that are noted in her medical history when she went for a routine physical exam to her doctor; isn't that true?

A. They are isolated, yes.

Q. Now, Doctor, when you were taking your history from Mrs. Brown you didn't ask her if she was taking birth control pills at or near the time that she was complaining about these migraine headaches. Did you inquire into the nature and extent of her headaches in the past to try and differentiate them from the headaches from which she suffers now?

A. Yes.

Q. Okay. Tell me what you noted about her history.
A. That she'd not had headaches like this before and these headaches actual1y began in November, which is sort *of* four months after the car accident, or car-truck accident, or whatever it was. And this was the first she could recall of such disabling headaches.
a. Doctor, you're aware that Mrs. Brown was diagnosed with a concussion after this, aren't you?
MR. GANNON: Objection.
A. She might well have been.
MR. GANNON: Objection.
Q. (BY MS. GERLACK) Would you agree with me as a neurologist that it is possible and probable that somehow that sustains severe head trauma may redevelop a residual effect of chronic headaches as a result of the head trauma or concussion?
A. Chronic headaches from a head injury, just from an injury alone, unless there's damage to the brain, or the spinal fluid pathways, or the cavities in the brain, or the upper part of the neck, or some other mechanism, or to the psyche, or the emotional stability, no.
Q. Okay, So if I understand you correctly, are you in agreement that head trauma can cause migraine

headaches?

A. Short term.

Q. Now, another event about which you testified and upon which you rely in reaching your opinion in this case is that May 1990 motor vehicle accident; is that correct?

A. Yes.

Q. And another incident in March of '90 — and I don't know if I'm leaving anything out. Doctor, we're aware of what your direct testimony was and what you're relying on for your opinions in this case. What I would like you to tell me is you cannot show -- you cannot find a pattern of treatment in those records for any of the symptoms that you're claiming existed prior to the July 25, 1990 accident, can you?

MR. GANNON: Objection. That assumes these are the only records. These are the only ones we can discover, but that doesn't mean there aren't other records. So I would object.

Q. (BY MS. GERLACK) I'm relating this question strictly to the documents upon -- records upon which you relied for your opinion in this case.

A. The pattern of treatment for those earlier events

was different than the pattern of treatment for the accident.

Q. Doctor, just so the jury is clear these isolated events upon which you rely and discuss in your report, there are only single entries in there for the dates in which she went in to get checked -- or raised these complaints; isn't that true?

A. There are five such that I know about; that is correct.

Q. And there is no history in those records and no history that you obtained from Renee Brown that she received any ongoing treatment whatsoever for any of these complaints that you noted in her records; isn't that true?

A. None in the records and certainly she didn't remember the events so she wouldn't remember any ongoing treatment. If there was any, it's lost to me.

Q. And, Doctor, none of those medical treatment show three-plus muscle spasm in her neck, do they?

A. Not to my knowledge.

Q. None of those records show any severe restraints of motion in her neck, do they?

A. Well, I'd have to look it up to say that. She may have had that, We'd have to look at those in detail

to determine it.

Q. Please feel free to take a moment if you want to look through the records.

A. Okay. I got.

Q. Doctor, did you want to refer to what record you're looking at?

A. Yeah. I'm looking at the records from her treatments. The only neck description that I can find on the March 25, 1990 where it says tender left side of the neck on the examination. This is March 26, 1990, it's No. 98 in the numbered Kaiser records. That's all I can find.

Q. And, Doctor, the diagnosis that was -- is noted on that record is a contusion to the scalp and a strain of the left trapezius, correct?

A. Yes.

Q. And the complaints of Renee Brown in this matter relate to the right side of her neck; do they not?

A. They do.

Q. So, Doctor, just so we're clear, in all of the records that you reviewed there is absolutely no history of any ongoing treatment or noted disability or residual injury from any of these events that you can find in those records?

A. Correct.

Q. And, Doctor, you can't state to a reasonable degree of medical certainty today that the conditions that are noted in those records caused Ms. Brown's current condition, can you?

A. I don't think they caused her current condition, no.

Q. Now, Doctor, referring back to your medical report you note and you testified that Mrs. Brown's complaints of pain derive from no physical process. Can you state to a reasonable degree of medical certainty any other processes that might explain why she continues to manifest the pain -- same pain symptoms that she exhibited from the time that this July 1990 accident happened?

WD

MR. GANNON: Objection.

A. I can only give you a list of consideration. I can't give you any specific one.

Q. Doctor, the bottom line is you cannot state to a reasonable degree of medical certainty any other causes or explanations for why she continues to manifest the same pain symptomology that she exhibited at the time she was in this accident, can you?

WD

MR. GANNON: Objection.

A. Right. I cannot say specifically what it is with certainty.

Q. Now, Doctor, you conclude in your report that Mrs. Brown's discomfort, and 1'11 use some of your language, is due to humanalities. Is it your testimony that it's normal for a 23-year-old woman to experience such pain dysfunction that she's not able to participate in daily activities on a pain-free basis or participate in sports activities?

A. It's not unusual to interview young people who tell you a long list of things they can't do because of pains and aches in various locations. Sometimes this is an accurate description of the situation, sometimes it's just things they don't want to do because they hurt and, yet, they seem to do other things. I think it's unusual to have anybody talk about this kind of pain for so long and be so normal on every test imaginable and have anything physically wrong. That is not a rare occurrence at all. Infrequent, yes.

Q. Doctor, are you aware of Dr. Nemunaitis's reputation in the medical community?

A. I am not.

Q. Have you heard of Dr. Nemunaitis before?

A. Yes, I have.

Q. Doctor, you only saw Mrs. Brown on one occasion, correct?

A. That is correct.
Q. You only examined her on one occasion, correct?
A. Only once.
Q. How long did you take in obtaining the history from Mrs. Brown before you examined her?
A. Approximately a half an hour.
Q. How long was your physical examinaticn of Mrs. Brown?
A. I would say another 20 minutes or so, approximately.
Q. And her children with her at the time of the examination, weren't they?
A. Yes, She had two children and somebody else with her.
Q. Doctor, sometimes a patient's pain comes and goes; isn't that true?
A. Yes, many pains wax and wane.
Q. Patients can have good days and bad days in terms of pain; isn't that true?
A. They can.
Q. And it depends on the amount of their activity, sometimes weather conditions, and things like that?
A. Yes.
Q. Doctor, would you agree with me that a doctor who sees a patient over a period of two years is in a much better position to know what a patient's

problem is than a physician who sees a patient on only one occasion almost three years after the event in question?

MR. GANNON: Objection. The records will indicate that Dr. Nemunaitis saw her slightly more than one year, so I object to the gross misstatement of the facts in this case. He saw her from 7-31-90 to September 3, '91 and that's slightly more than one year so I object.

Q. (BY MS. GERLACK) I'll rephrase it, Do you agree with me that a doctor who sees a patient on an ongoing basis for a period of time, for a period of months, is in a much better position to know of a patient's problem than a physician who sees the patient on only one occasion, almost two and a half, three years after the event in question that is supposedly the cause of the injuries?

A. No.

Q. Okay. You don't agree with that?

A. No.

Q. Doctor. Would you prefer to be evaluated for a medical condition by a doctor who has seen you over a period of 12 months as opposed to being evaluated by a doctor who has seen you for a matter

of 20 minutes?

A. Depends on the problem, depends on the nature of the problem, it's complexity, depends on what kind of issues are at stake. The person who sees the patient the most gets to know the patient and his or her personality and their ways, there's no question about that, but that person doesn't have special knowledge of disease, the relationship between physical symptoms and physical processes arid how things have gone on to be this long and so forth.

So, yes, you get insight when you keep looking at the same problem and the same person over and over again, particularly as to that person's nature, but that doesn't give you any special knowledge of anatomy or physiology or the mechanism of disease.

Q. Doctor, other than the hundred or so patients that you see at the request of attorneys for litigation purposes you see patients in your private practice too, correct?

A. Yeah. The bulk of my practice is everyday patients with everyday problems.

Q. Doctor, is it routine for you to examine your patients within 20 minutes on one occasion only?

A. Depends on the problem. If it's a complex problem, that wouldn't be enough. If it's a simple problem,

that might be too much.

Q. Doctor, referring back to your report you note that that your opinion, I take it, that headaches -- Mrs. Brown's headaches began after the accident and you state you suspect that they preceded this motor vehicle accident and have no relationship causally to the July 1390 accident or injury; is that true?

A. That is true.

Q. Doctor, can you stste to a reasonable degree of medical certainty that Mrs. Brown's complaints of headaches preceded this motor vehicle accident?

A. I cannot.

Q. Doctor, would you agree with me as a neurologist that the timing and diagnosing a concussion and the residual effects from a concussion are -- the timing of the examination is critical?

A. No, I wouldn't agree with that.

Q. Would you agree with me, Doctor, that the adequacy of a history that's taken concerning complaints of a headache, the number of times the patient suffers, and the frequency and duration of the headaches are all critical in diagnosing whether someone is suffering from chronic headaches and migraines?

A. Yes.

Q. And, Doctor, based upon your review of Dr.

Nemunaitis's records, Dr. Winer's, and the medical records from Kaiser that relate to the July 1990 accident you agree with me, don't you, that Mrs. Brown's complaints have been consistent throughout this -- up until the present? She's been complaining of the same symptoms?

MR. GANNON: Objection.

A. The meager records I have, yes. As best I can tell they're fairly stable over that period of time assuming there was some activity in there where there are no records that I have. And I can't say anything about the records I don't have, the Lake County and that sort of stuff but, yeah, as best as I can tell they all ring fairly consistently.

Q. And, Doctor, a normal neurological exam doesn't mean that an individual is pain free and doesn't suffer from migraine or chronic headaches, does it?

A. Correct.

Q. Doctor, during your direct testimony you were questioned and the medical records from Kaiser following this accident were summarized by Mr. Gannon, and he read during your direct testimony that the findings from one the doctors at Kaiser was that they did not feel that nerve conduction study tests were warranted at this time, and these are

medical records that are dated August 7, 1990 -- pardon the delay there. it says the finding was that there was no justification for EMGs and MRIs. An just for the sake clarity and so the jury understands, the doctor that evaluated Mrs. Brown at Kaiser on this date also noted in the records that she could get another opinion by either Dr. Colum --

A. Columbi.

Q. Columbi, or Doctor Shafron; is that true?

A. Yes, he did.

Q. And are you aware of those doctors?

A. Neurosurgeons,

Q. Neurosurgeons.

MS. GERLACK: I have no further questions at this time.

MR. GANNON: Doctor, a couple things I think should be asked by way of fairness to yourself and your reputation I guess.

REDIRECT EXAMINATION

BY MR. GANNON:

Q. Is your compensation that you're going to receive for testifying here today is any way related or dependent upon the outcome of this case?

A. Not at all.

Q. Okay, Ms. Gerlack I think inadvertently

introduced what I consider a little confusion in this case by talking about a consistent litany of complaints by Ms. Brown to -- apparently I guess she was referring to Dr. Nemunaitis. The reason I think there's a confusion is in reality if you look at Dr. Nemunaitis's bill, and I will relate to you that he testified to this a couple weeks ago when he testified by way of videotape, that he saw her from 7-31, I believe it was of '90, which was about six days after the accident, he then saw her last time for examination and treatment on September 31st -- I'm sorry, September 3rd of '91. So as I indicated during one of my objections, that's a period of a little more than a year. And, Doctor, he then apparently examined her one time in May of '93, but this was no testimony regarding that. But if you take between September 3rd of '91 and May of '93 you have approximately 20 months.

Now, Doctor, my question to you is you as a physician treating a patient or, in this case, examining somebody at the request of a defense, if there's no examination of a patient for 20 months by any doctor, so there would be no records of anything because the patient just didn't see a doctor for a 20-month period, could you express an opinion as to

how that patient -- what her condition was or how she was during that period of time?

MS. GERLACK: Objection.

A. Yes.

Q. You could?

A. I could.

Q. If you don't have firsthand knowledge and there's nothing to review, you could express an opinion then?

A. Well, I can tell you what that implies in terms of symptoms, nameiy they're not troublesome to people. The pattern, the behavior that symptoms produce usually gets people to doctors, and if they're not seeing doctors that suggests no problem. So either there's no problem or it isn't worth pursuing.

Q. Okay.

A. So there's this huge gap suggesting nothing is wrong.

Q. And, Doctor, within that little over one-year period that I was taking about before, from July 31st to September 3rd there were other gaps of five months, four months -- I mean five months, three months, two and a half months. In any event, let me ask you this. Ms. Gerlack seemed to ask you a couple questions about manifesting pain. In reality, if I

understand correctly, all we have in this case as we sit here today are Renee Brown's complaints of pain both to you and Dr. Nemunaitis? There's no other manifestation of pain, is there --

MS. GERLACK: Objection.

Q. -- or am I missing something?

MS. GERLACK: Objection.

A. That's all there is.

Q. Okay. That's the only source of this alleged pain is what Ms. Brown says, if I understand correctly; am I right on that?

A. That's it.

Q. Okay. There were some questions about whether you would feel better having someone examine you on one occasion, such as you did here, or whether it would be better to rely upon Dr. Nemunaitis in this case.

In your experience now, almost the last 20 years, is it significant a patient, in this case Mrs. Brown, only went to Dr. Nemunaitis on a referral from her attorney?

MS. GERLACK: Objection.

Q. Is that sometimes significant?

MS. GERLACK: Objection. Move to strike answer and question.

Q. (BY MR. GANNON) I mean, could that be a significant

factor that you would consider if you're talking about what to rely upon?

MS. GERLACK: Continuing objection to this line of questioning.

A. Could be.

Q. In fact, in the Kaiser records of the same initial visit on August 7th it says patient said her attorney sent her to Dr. Nemunaitis because he does depositions.

MS. GERLACK: Objection. Move to strike.

Q. Again, I want to ask you something. Maybe I misheard you. But there was -- the question by Ms. Brown -- I'm sorry, Ms. Gerlack, something about her current condition. If I recall or understand correctly when you examined her on May 11th of '93 would you say that she has a current condition? She has any condition that you could find medically?

MS. GERLACK: Objection. Asked and answered.

A. Nothing other than her continuous complaint of neck discomfort,

Q. You were also asked a question by Ms. Gerlack about a diagnosis of concussion shortly following this accident. I don't think she told you where that

came from, but I could hand you all of the records that I got from Euclid Meridia Hospital relating to her report there, the day of the accident, some 12 hours after the accident. I know you have a copy of these.

Doctor, I don't find anything in here under diagnosis of concussion. All I see is cervical strain. Am I missing something?

A. I don't think she had a concussion. I don't see anything in these records that says otherwise.

Q. Another question here that I think should be put in perspective out of fairness to everybody is about what you could find in these records that you reviewed by way of continuing or ongoing treatment.

Doctor, when you have a -- You've already testified as to what your -- I think if I can characterize it this way, and I don't want to be unfair, that you had some difficulty with Miss Brown as far as getting a complete history? Is that a fair characterization?

A. Yes.

MS. GERLACK: Objection.

Q. Now in this situation if that same patient, Miss Brown, as she did with me when I asked her in her deposition of January of '93, I said -- I was asking

about when she went to Kaiser in the two years preceding the accident what types of things did you complain of, then she said, You mean before or after the accident? I said before. And I asked her, So you never injured your neck prior to this? That was the question. And Miss Brown told me no, that she had not injured her neck prior to this. And then I went on and said, And you never injured your right shoulder or your left shoulder or your head or anything prior to this except what you told me about the age 15 accident, and she said, no, never.

Now, Doctor, that's what she told me. And we have been able to get some records, and you did review those records. Those records of the other incidents -- I know Ms. Gerlack calls them isolated incidents, but they are the types of things, if I am not correct, and you tell me if I'm wrong, that an examiner would like to know about and like to try to review so you can express an opinion not only what the problem is but what the causation is; is that correct?

MS. GERLACK: Objection. I'm going to move to strike this question as being narrative. I object to the form of the question. This witness is not qualified to

testify about the credibility of Renee Brown in her deposition, That's for the fact finder. He's qualified to testify only to the events that he knows based on his examination and the history taken of her. So I object to the question and move to strike the answer if there is one.

MR. GANNON: I think you can answer, Doctor, and if not I'll rephrase it real quickly?

A. There are two elements in this history. One is the so-called isolated events and the other is the fact she doesn't remember any of them. Now, it's an unusual patient that forgets five out of six such events meaning that she's either forgetful or she blocked on them or whatever. So this throws into question her usefulness as a historian about such things. If she forgets those episodes she may forget symptoms that followed thereupon, whether she sought treatment or not, and it raises my attention to prior events, So I'm interested in the fact that she forgets almost everything before this and the content of those injuries and episodes.

Q. All right, Doctor. Thank you very much. The complaints that were referred to by Ms. Gerlack came

in the history; that is, what she tells you -- what bothered her when you examined her. Would I be correct in understanding that those would be dependent almost 100 percent on the truthfulness, the accuracy, and the completeness of the patient; is that correct?

MS. GERLACK: Objection.

A. Heavily dependent on the patient's ability to bring this stuff up in accuracy.

Q. Okay. Heavily dependent, and I think that implies there are sometimes some tests that you can do which you did in this case?

A. Yes.

Q. And you didn't find any -- As a result of those tests there were no findings that verified the pain if I understand your previous testimony?

A. Correct.

Q. Final thing here. You were asked by Mrs. -- I'm sorry, Ms. Gerlack about the EMG. In fact, we went off the record while we found them. And there were two sets. There was an EMG in November of '90, and you've discussed that, you didn't think there was a very significant finding, and I don't know if she followed up with a reference to the EMG of 7-2-91. I know Dr. Nemunaitis did in his testimony.

My question would be to you did it come to your attention that there was an event or an accident which intervened between the accident involving my client on 7-25-90 and this EMG test on 7-2-91?

A. Yes.

MS. GERLACK: Objection.

Q. And what was the history? First of all, I'll represent to you it was May 10th of '91, and I know it's in the records. What was the history that you obtained regarding that event?

MS. GERLACK: I'm going to object. Beyond the scope of cross-examination.

A. There's another injury, and here is the episode where she falls down the steps or hit her head --

Q. Hit her head on the door.

A. I'm sorry, hit her head on the door before the second study.

Q. Did she tell you how that happened? ~~I think it's significant. We ought to know the whole story.~~

MS. GERLACK: Objection to what you think is significant.

~~Q. Well, I'd like to know the whole story. What do your notes reflect as she tells you how it happened?~~

~~MS. GERLACK: Objection.~~

A. Some sort of business with her husband. She said he

did it. And I don't know whether he dropped the door or she got pushed into it or whatever, but somehow he seemed to be involved.

Q. Okay. Now, the fact that this thing happened on May 10th of '91, which is after the first study and before the second study, does it have any relationship of significance to what the second study might have shown?

A. Well, this may be the explanation for --

MS. GERLACK: Objection. Speculative.

A. -- things that come down road. Maybe not a very good one. But, again, in trying to put the pieces together to figure out how all this happened, there's more going on between those two studies than she's aware of and she's reporting so here is another potential cause for the EMG abnormalities.

Q. Finally, one other thing, Doctor. There was reference to an MRI study. And if I'm not mistaken, you have that handy, do you not, Doctor?

A. Yeah. Here it is.

Q. Okay.

A. The MRI is for Dr. Nemunaitis on July 12, 1991.

Q. What's the significance in this case of the findings or the results of the MRI where it says vertebral bodies are normal height and alignment? What's the

significance of that?

A. That there's no dislocation, no slippage, and that things are where they should be.

Q. Okay. And what about the significance of the rest of the description of the findings; that is, that the disc spaces are well maintained with no herniation, no extradural or intradural abnormalities are noted, and the visualized cervical cord being unremarkable and the visualized vertebral and paravertebral structures being unremarkable? What is the significance of the findings in this case as far as how they explain what's going on with Mrs. Brown?

A. We cannot look to any disc or bone abnormality of the neck to explain her pain. After a year of symptoms something should show up on the study so, again, there are no physical explanations for this problem.

Q. Just one final thing. These questions that were asked I think Ms. Gerlack liked to characterize as being isolated incidents, would I be correct in concluding that there's some significance to the fact the ones we were talking about, the five or six, all relate to the same body part as is the subject of the complaint in this case? Is that

significant?

MS. GERLACK: Objection. Mischaracterization of the records.

A. I think we're talking about head and neck in this process --

Q. Right,

A. -- all the way back.

Q. So if there's a diagnosis as a result of that fall down the stairs, which occurred only four months prior to my client's accident, and that diagnosis is a the cervical strain, that is the same body part at least, and if I'm not mistaken is it somewhat helpful for an examiner to even know about that?

A. Yes.

MR. GANNON: All right. Doctor, I've taken enough of your time and I thank you very much for your patience. Thank you.

MS. GERLACK: I have a few more questions on recross.

RECROSS-EXAMINATION

BY MS. GERLACK:

Q. Doctor, just out of fairness Mr. Gannon had read from records suggesting that Renee Brown was -- her motive for going to Dr. Nemunaitis was because he testified in personal injury cases. And I'd like

you to take a look at what's marked -- these are her emergency room records from Meridia Euclid Hospital on the day of the accident in question and they're dated July 25, 1990.

Doctor, at the bottom of that record it says something to the effect of follow-up physician and Dr. Nemunaitis is the physician that was recommended on that record; is that true?

A. Yeah. His name is written in there.

Q. Now, Doctor, just so we're clear, you're not disputing the fact that the five or so incidents upon which you rely and attach significance to in Mrs. Brown's medical history are indeed isolated events?

A. They are isolated events as you take them individually. If you take the totality of them, they are not so isolated.

Q. Doctor, as you sit here today you can't say to a reasonable degree of medical certainty that any of those incidents or complaints of injury about which you testified are resulted in a residual or lasting injury in Mrs. Brown, can you?

A. I'll go even further and say that no injury she's said accounts for her problem today including the automobile accident of July '90 or these other

events.

Q. Doctor, that's not my questions. My question to you is you are attaching significance to five or so events about which you testified in direct examination and redirect examination, and my question to you is you can't sit here and say today to a reasonable degree of medical certainty that any of those events caused or contributed to the symptoms about which Mrs. Brown complains today, can you?

A. I cannot.

Q. Doctor, just so the jury is clear there's a difference between what we're looking for in an MRI with disc herniation and the diagnosis that Dr. Nemunaitis rendered as to cervical nerve root irritation, isn't there? They're not the same thing, correct?

A. No, but you can see nerve root spaces and you can see actually nerves in an MRI scan so you get that picture as well as the discs in the usual MR scan of the neck.

Q. And, Doctor, you're not disputing as you sit here today that Mrs. Brown's nerve conduction studies that were conducted the same month that this MRI scan was conducted in July of 1990 — or, excuse

me, '91, show that there was cervical nnrve root involvement, correct?

A. They show changes that may be attributable to a cervical nerve root disorder, yes.

Q. And, Doctor, we've talked a lot about, and I believe quite unfairly, about -- inferences have been drawn about the truthfulness about Ms. Brown. And I just want to make it clear you're not testifying here today that Mrs. Brown is lacking of credibility, are you?

A. No. I think -- I wouldn't consider her credible on her history because there's too much that's forgotten. That's not her fault, it's just we can't look to her for things that have gone on in the past, we have to look to other source.

Q. And you had those sources, and those are the medical records about which you testified today, correct?

A. Some of the sources I have, yes.

Q. And, Doctor, when someone -- You're a neurologist. You testified in your direct testimony that you have treated patients that have had nerve root problems; isn't that true?

A. Yes.

Q. And some nerve root problems can result in permanent injuries to someone; that is, they can't be restored

and they can't be repaired; isn't that true?

A. The exceptional avulsion, blunt trauma, horrendous nerve injury and other violent afflictions, yes. The usual picture is that of recovery.

Q. Doctor, in treating the patients that you have since your practice started in 1974, and I'll restrict my question to nerve root injuries, have you had patients that have had nerve root damage that because the damage has been permanent have not continued treatment for years on end because the condition is permanent and they need to incorporate things into their daily life to help deal with the symptoms that go with the injury?

A. There are such patients, yes.

Q. And, Doctor, just as medical records are sometimes important in being a road map, I think as you described it, to a diagnosis a patient's subjective complaints about what hurts is a very critical part to rendering a diagnosis too?

A. Absolutely.

Q. And the patient is the best person to describe those events, correct?

A. Yes.

MS. GERLACK: I have nothing further. Thank you.

MR. GANNON: Doctor, I hate to come back and ask you a few more questions but apparently it's necessary,

FURTHER **REDIRECT EXAMINATION**

BY MR. GANNON:

Q. 7-25-90, the accident involving my client, would *it* be fair to put that in the same category as these other events that Mrs. Gerlack was asking you? That is, it's an isolated event, isn't it?

A. Yeah. It falls in that group --

Q. Sure.

A. -- in terms of the types of things that went on and whatever went on back then. I see this as No. 6 or 7 or whatever.

Q. Yeah, 6 or 7. It's common sense an accident, unless you plan it, is always an isolated event. It doesn't happen everyday, it happens unexpectedly; is that correct?

A. Yes.

Q. Okay. And, Doctor, have you ever, in your course of treating patients, had difficulty obtaining evidence of other -- well, prior history, let's say, finding out that the patient was involved or did hurt that same body part before or finding out where there might be a record? Have you ever had problems like

that?

MS. GERLACK: Objection.

A. Oh, yes.

Q. When you have a problem like that do you try to become like a detective and to do your best to investigate and find out where that might be?

A. That's what you have to do. You've got to send away for records, have a family member come in, this type of thing.

Q. Is your problem made more difficult when the patients tells you that they never injured that part before as I related to you she told me?

MS. GERLACK: Objection.

Q. Does that make it a little harder to find this stuff?

MS. GERLACK: Same objection. Move to strike.

A. Yeah, it makes the work a little harder. That's not so unusual, but you got to do more spade work and detective work and x-rays and this whole kind of exercise.

Q. Okay. So when I related what she said in her deposition when I asked her about prior accidents and she told me on two occasions that she never injured the same parts of her body that were

injured, if that was related to you by a patient that would slow down or make your investigation process more difficult; is that fair?

MS. GERLACK: Objection.

A. Yes.

MR. GANNON: Okay. I have nothing further. Thank you very much.

MS. GERLACK: I have two more questions.

FURTHER RECROSS-EXAMINATION

BY MS. GERLACK:

Q. Doctor, do you feel that you had sufficient information to render the opinion that you gave in this case?

A. I do.

Q. So it doesn't matter if Renee Brown couldn't remember events that occurred almost seven, eight years ago because you had the medical records that contained the information that you felt was significant, correct?

A. That's helpful, yes.

Q. Isn't that true?

A. Those are helpful, yes.

Q. And, Doctor, the difference between the July 25, 1990 accident, as opposed to all the other events

that you rely on for your opinion and attach significance to in her medical records, is that following this July of 1990 accident there's a history of consistent complaints and a pattern of tt-eatment and symptomology that continue up until the time that you examined her in '93; isn't that true?

MR. GANNON: Objection. You mean except for the 20-month gap where there was no complaint or examination by any physician. We have to be fair in the characterization of the facts here.

Q. Based upon what you reviewed?

A. There's more doings after the July '90 accident of a staccato nature but definitely she did more after that one, for what reasons are not clear to me, but, yeah, there was quite a bit more,

Q. And, Doctor, the events about which you attach significance to in her medical history, there is no history, no indication, no reference of any prolonged treatment except for the complaints that were raised on individual days in the entries about which you testified earlier; isn't that true?

A. None that I know of.

MS. GERLACK: Thank you. Nothing

further.

SUSTAINED

FURTHER REDIRECT EXAMINATION

BY MR. GANNON:

Q. One final thing, Doctor. You mentioned the Lake County West Hospital records following the May 31, 1989 accident. Now, Doctor, those have not been made available to myself as of yet. They've been subpoenaed for trial tomorrow. If such a record -- now, that follows the car accident a year prior to this. That would have been helpful to you and to Dr. Nemunaitis to review in evaluating and forming opinions; am I correct in that?

MS. GERLACK: Objection. The facts are not in evidence and he didn't rely on this information for any of his opinions. Move to strike.

Q. Well, since you were asked questions about what you relied about by plaintiffs' counsel on cross-examination, I think it's fair to go into it.

MS. GERLACK: Same objection. They haven't been referred to, he hasn't relied on any of this information, it's not revealed in his office notes, and I object because it's not in evidence. He hasn't based his opinion on it. So I move to

strike any answer responsive to this question.

Q. (BY MR. GANNON) I think my question was would those records have been helpful to you or to Dr. Nemunaitis or any physician in trying to find out what's wrong with this patient's neck to see the hospital records relating to a car accident which is very similar in causation by history to what happened here you would like to be able to see those records see if they were significant or not; is that a fair statement?

A. I'd like to see them.

MR. GANNON: Okay. We'll try to get them by tomorrow. Thank you, Doctor.

MS. GERLACK: Thank you.

- - -

(Deposition concluded at 5:35 p.m.)

- - -

I have read the foregoing transcript of my videotaped deposition taken on Tuesday, July 6, 1993 from page 1 to page 87 and note the following corrections:

PAGE:	LINE:	CORRECTION:	REASON:

_____

DONALD CHARLES MANN, M.D.

_____

Date

THE STATE OF OHIO,)
) SS: CERTIFICATE
COUNTY OF CUYAHOGA.)

I, Lisa Hrovat, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that DONALD CHARLES MANN, M.D. was by me, before the giving of his videotaped deposition, first duly sworn to testify the truth, the whole truth and nothing but the truth; that the videotaped deposition as above set forth was reduced to writing by me by means of Stenotype and was subsequently transcribed into typewriting by means of computer-aided transcription under my direction; that said videotaped deposition was taken at the time and place aforesaid pursuant to notice and agreement of counsel; and that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I hereunto set my hand and seal of office at Cleveland, Ohio, this 8th day of July, 1993.

Lisa Hrovat

Lisa Hrovat, RPR, Notary Public
Within and for the State of Ohio
444 Terminal Tower
Cleveland, Ohio 44113

My Commission Expires: January 17, 1997.