

In The Matter Of:

*Vicki Beal, et al. v.
State Farm Ins., Co., et al.*

*Donald C. Mann, M.D.
Vol. 1, September 23, 1996*

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Lawyer's Notes

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
VICKI BEAL, et al.,
Plaintiffs,
JUDGE POKORNY
-vs- CASE NO. 278185
STATE FARM INS. CO., et al.,
Defendants.
Videotaped deposition of DONALD C. MANN,
M.D., taken as if upon direct examination before
Barbara J. Watowicz, a Registered Professional
Reporter and Notary Public within and for the
State of Ohio, at the offices of Donald C. Mann,
M.D., 1611 South Green Road, Cleveland, Ohio, at
5:30 p.m. on Monday, September 23, 1996,
pursuant to notice and/or stipulations of
counsel, on behalf of the Defendants in this
cause.
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APPEARANCES:
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On behalf of the Plaintiff;
Gerald L. Jeppe, Esq.
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On behalf of the Defendant.
ALSO PRESENT
Dan Williams, Video Technician

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[2] (Thereupon, Plaintiff's Exhibits A [3] through G
were marked for purposes of [4] identification.)
[6] MR. JEPPE: This is the videotape [7] deposition
of Dr. Donald Mann being taken [8] in his offices
on Monday, September 23, [9] 1996. It's a vid-
eotape deposition to be [10] used in the case of
Vicki Beal, plaintiff, [11] versus State Farm In-
surance Company, [12] defendant, presently pen-
ding before Judge [13] Thomas J. Pokorny and Case
Number 278185, [14] currently scheduled to begin
trial on [15] Thursday, the 26th of September, 1996
in [16] the Court of Common Pleas of Cuyahoga [17]
County, Ohio.
[18] Now, at the present time I would [19] like to ask
counsel for the plaintiff, [20] Vicki Beal, whether or
not he objects to [21] the taking of the deposition
at this time, [22] the manner in which it's being
taken or its [23] use at time of trial.
[24] MR. LINTON: Off the record.

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[1] (Off the record.)
[3] MR. LINTON: I have no objection [4] to the
notice of Dr. Mann or to the video [5] taping or the
qualifications of the court [6] reporter. I do have, I
do preserve my [7] objections to allowing his
testimony [8] pending the completion of out-
standing [9] discovery from State Farm which has
been [10] partially completed prior to the start of
[11] Dr. Mann's deposition.
[12] MR. JEPPE: What discovery do you [13] think
is yet to be completed?
[14] MR. LINTON: Specifically we had [15] sub-
poenaed from Dr. Mann 1099s. We have [16]

received some, but not all of those.

[17] Second, we have subpoenaed medical [18]
reports and depositions from other cases in [19]
which he has served as an expert for [20]
insurance companies or law firms which the [21]
court has narrowed to those matters [22] involving
State Farm or State Farm's [23] insureds. We have
made similar requests [24] from State Farm in
discovery for that [25] information, some of which
has been

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[1] complied with prior to the start of his [2]
deposition.
[3] MR. JEPPE: Let me put on the [4] record I
assume that by the time we get to [5] trial we are
not going to have or be able [6] to produce some of
the things that you have [7] requested.
[8] First of all, there was a subpoena [9] issued to Dr.
Mann for a discovery [10] deposition and that
subpoena requested [11] certain items which
included 1099s received [12] from State Farm
Insurance Company or from [13] any of the law
firms retained by State Farm [14] for income during
the years 1990 through [15] 1995. It has requested
Dr. Mann's office [16] records, I believe, notes, the
appointment [17] or scheduling books, is that
correct?

[18] MR. LINTON: Yes.

[19] MR. JEPPE: Along with any reports [20] or
depositions of medical examinations [21] per-
formed by Dr. Mann from 1990 to the [22] present
time.

[23] At the same time, there was a [24] request for
production of documents [25] submitted to State
Farm Insurance Company

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[1] at approximately the same time. And the [2]
ones that I think are applicable here are [3]
interrogatory number six and interrogatory [4]
number seven of the second request for [5]
production of documents and [6] interrogatories,
which was to number six, [7] to identify by name
and claimant, [8] claimant's counsel, date of
examination and [9] report and case caption, each
plaintiff or [10] claimant that you or your counsel
have [11] referred to Dr. Donald Mann for medical
[12] examination within the last five years.
[13] We have explained to Mr. Linton [14] that to
obtain the information requested [15] for the last
five years would be [16] impossible. However, we
did agree if the [17] court ordered, to supply
information that [18] could be obtained with
regards to this [19] material.

[20] Also, in interrogatory number [21] seven, you
state the amount of compensation [22] paid by you
or your counsel on behalf of [23] any medical
examinations referenced in the [24] previous
interrogatory.

[25] There was also a request for

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[1] production of documents which asks State [2]
Farm Insurance Company to produce any 1099s
[3] issued by them or their counsel to [4] Dr. Mann.
Also to produce any and all [5] medical reports and
depositions of Dr. Mann [6] for any medical
examinations performed by [7] him including on

behalf of any of the [8] insureds which you are defending from third [9] party claims.

[10] I filed a motion for protective [11] order in this case. And also plaintiff's [12] counsel filed a motion to compel the [13] request of that production. It is my [14] understanding that on the card which was [15] received in my office on September 19th, [16] which said the filing date of September 5, [17] 1996, that the plaintiff's motion to amend [18] the complaint is overruled. Plaintiff's [19] motion to compel is granted as to any [20] information related to State Farm Insurance [21] Company.

[22] Now, the court has ruled that the [23] defendant, State Farm Insurance Company, is [24] compelled to produce the information [25] requested of it in the interrogatories and

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[1] request for production of documents. [2] And to that end, we have produced to this [3] date and over objection and, to Mr. Linton, [4] plaintiff's counsel, those documents which [5] we have been able to produce or find with [6] regards to the information requested.

[7] We have done so also on behalf of [8] State Farm to comply with the court's order [9] to compel as I said over objection. We are [10] still objecting to the use of any of these [11] documents, especially medical reports [12] produced or its introduction as evidence at [13] time of trial or any testimony with regards [14] to these documents at time of trial.

[15] Based upon that statement, the [16] documents though have been produced [17] pursuant to court order, and they have been [18] supplied, copies of these, to Mr. Linton.

[19] Other than that, we are already to [20] proceed with the direct examination of [21] Dr. Mann.

[22] Anything you want to say?

[23] MR. LINTON: Well, I'm going to [24] again preserve my right to object to his [25] testimony to the extent that there has not

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[1] been a full compliance with the discovery [2] request. But we can take that up [3] separately with the court.

[4] VIDEOTAPE OPERATOR: Stand by.

[5] MR. JEPPE: One more thing, too. [6] And that is -

[8] (Off the record.)

[10] VIDEOTAPE OPERATOR: Stand by. [11] We're on the record.

[12] DONALD C. MANN, M.D., of lawful age, [13] called by the Defendants for the purpose of [14] direct examination, as provided by the Rules of [15] Civil Procedure, being by me first duly sworn, [16] as hereinafter certified, deposed and said as [17] follows:

[18] DIRECT EXAMINATION OF DONALD C. MANN, M.D.

[19] BY MR. JEPPE:

[20] Q: Would you please state your full name for the [21] record?

[22] A: Donald Charles Mann.

[23] Q: And what is your business address, sir?

Lawyer's Notes

[24] A: 1611 South Green Road in the University Suburban [25] Health Center Building in South Euclid.

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[1] Q: And what is your occupation or profession?

[2] A: I'm a physician.

[3] Q: And do you have a specialty, sir?

[4] A: I do.

[5] Q: And what is that?

[6] A: Neurology.

[7] Q: If you would, would you define the field of [8] neurology for the jury?

[9] A: Diagnosis, treats, manages diseases of the [10] nervous system, be they injuries, infections, [11] congenital problems or acquired by other means. [12] The everyday neurologic problems are things like [13] multiple sclerosis, headaches, epilepsy, brain [14] tumor, Alzheimer's and Parkinson's. Any part of [15] the nervous system, the brain, the nerves that [16] run the arms and legs, the spine or the [17] supporting structures are part of neurology.

[18] Q: Now, doctor, would you please, if you would, [19] outline for the jury your educational background [20] starting with college in preparation for your [21] profession.

[22] A: I went to the University of Pennsylvania then [23] attended Indiana University Medical School [24] finishing in 1968 followed by four years of [25] additional training in medicine. One, the

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[1] first, a year of medical internship and then [2] three years of specialty training in neurology.

[3] Q: Now, doctor, are you licensed to practice [4] neurology in the State of Ohio or medicine?

[5] A: I am.

[6] Q: Are you licensed in any other states besides [7] Ohio?

[8] A: I am.

[9] Q: What other states are you licensed in?

[10] A: Indiana and California.

[11] Q: Do you have admitting privileges to or are you [12] affiliated with any hospitals in the Ohio area?

[13] A: I do.

[14] Q: And would you tell the jury what hospitals those [15] might be?

[16] A: University Hospitals of Cleveland is the main [17] one. I'm also on the staff at Lake and Geauga [18] hospitals.

[19] Q: Now, other than teaching - or excuse me.

[20] Other than practicing neurology, by the [21] way, are you still in the active practice of [22] neurology?

[23] A: I am.

[24] Q: Do you have a teaching appointment or do you [25] teach at any college or university or teaching

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[1] hospital?

Lawyer's Notes

[2] A: I do.

[3] Q: And would you outline that for the jury, if [4] would?

[5] A: Well, I've had a teaching post at Case Western [6] Reserve University School of Medicine since [7] coming to Cleveland in 1974. Teaching at the [8] university or the VA or MetroHealth, on the [9] wards of the clinics, and I've taught medical [10] students in the classroom as well.

[11] Q: Now, doctor, do you belong to any professional [12] organizations or societies?

[13] A: I do.

[14] Q: Would you briefly outline a few of those for the [15] jury?

[16] A: The local medical society, the Cleveland Academy [17] of Medicine, the Ohio State Medical Association, [18] and the national organization, the American [19] Academy of Neurology.

[20] Q: Now, doctor, there is a term that we use in [21] medicine and law, too, that's called board [22] certified or being board certified. Doctor, are [23] you board certified in the field of neurology?

[24] A: I am.

[25] Q: Would you tell the jury what it means to be

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[1] board certified?

[2] A: That the individual not only has taken the [3] training necessary to practice a specialty, but [4] demonstrates capability by an examination which [5] for neurology is a two part affair, there is a [6] day long written examination and then there is a [7] live portion where the individual is literally [8] watched taking a history from a patient, doing a [9] physical examination, formulating a treatment [10] plan, by the examiners. There are four or five [11] such cases. And if one goes through that [12] process demonstrating skill and satisfies the [13] examiners, he or she is so deemed able to [14] practice a specialty at its highest levels.

[15] Q: Now, you said you were board certified, is that [16] correct, doctor?

[17] A: I am.

[18] Q: When did you become board certified?

[19] A: 1974.

[20] Q: Now, when did you take up the active practice of [21] neurology here in Ohio?

[22] A: 1974.

[23] Q: All right. You've already testified you are [24] still in the active practice as of this date, is [25] that correct?

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[1] A: Oh, yes.

[2] Q: Now, doctor, at my request did you examine a [3] Vicki Beal?

[4] A: I did.

[5] Q: And do you have a file on Vicki Beal that's [6] available to you here tonight?

[7] A: I do.

[8] Q: Now, during the course of my direct examination [9] or Mr. Linton's cross-examination, feel free to [10] refer to your file for any documents

to help you [11] refresh your memory for testimony here this [12] evening, okay?

[13] A: Yes.

[14] Q: Would you tell the jury, if you would, when you [15] did examine Vicki Beal at my request?

[16] A: That was on February 19th of this year.

[17] Q: And where did that examination take place?

[18] A: Right here in this room.

[19] Q: Now, doctor, is it your practice to take a [20] history from a patient when you do examine them?

[21] A: Yes, it is.

[22] Q: And did you take a history from Vicki Beal?

[23] A: I did.

[24] Q: Would you tell the jury what a history is and [25] why a history is taken?

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[1] A: It is the patient's telling in her own words the [2] exact condition, the malady, the suffering, the [3] pain, or whatever, that she suffers. It [4] constitutes the material upon which we base a [5] conclusion, where the problem is and by [6] extension what it might be. So the patient is [7] encouraged to talk spontaneously without being [8] prompted or clued as best as is able and tell [9] the symptoms, where they began, what's helped, [10] what's hurt, what other conditions might have [11] any bearing on it.

[12] Q: Now, doctor, over the last few years, have I had [13] an opportunity to refer other patients to you or [14] individuals to you for examination?

[15] A: You have.

[16] Q: And also my law firm over the last few years, [17] have you had occasion to examine other patients [18] or individuals for other members of my law firm?

[19] A: I have.

[20] Q: And for State Farm Insurance Company?

[21] A: Yes.

[22] Q: Now, doctor, how many patients do you see during [23] the course of a week let's say?

[24] A: Oh, I'd say anywhere between 30 and 50 [25] patients. 50 would be a lot and 30 would be on

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[1] the lower end.

[2] Q: Of those 30 or 50 patients, how many would be [3] attorneys or I should say referrals in from [4] attorneys or from State Farm Insurance Company [5] or similar companies?

[6] A: Well, I would say on the average five. We take [7] one a day, something on that order. That's a [8] rough estimate.

[9] Q: All right. And how long have you been doing [10] this, sir?

[11] A: I would say 15 years. I started ten years ago [12] as a regular thing.

[13] Q: And do you also testify as a treating physician [14] on behalf of plaintiffs as well?

[15] A: I do.

[16] Q: All right. Now, doctor, going back then to

the[17] history taken of Vicki Beal at the time. What [18] part of the examination is the history taken?

[19] A: Oh, it's the very first thing. The patient comes [20] in this room and is seated and encouraged to [21] talk freely about her symptoms.

[22] Q: All right. That was done in her case?

[23] A: Yes.

[24] Q: All right. Would you relate to the jury if you [25] would the history that was given to you by Vicki

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[1] Beal, what she told you on the day of the [2] examination and that date again was what, sir?

[3] A: February 19th of this year.

[4] Q: Of 1996?

[5] A: Yes.

[6] Q: All right. Thank you.

[7] A: She described pain in the upper part of the [8] shoulder that radiated into the neck. She would [9] have headaches and nausea sometimes along with [10] the headache. She was taking medication, [11] anti-inflammatory medication, to control the [12] symptoms. And her symptoms were aggravated by [13] everyday activities. She mentioned washing her [14] hair, doing dishes, vacuuming. Those are common [15] provoking activities and she mentioned those. [16] And lastly that she was careful with lifting and [17] avoided certain water sports.

[18] Q: Did she give you a history as to when these [19] symptoms may, what they may have related to or [20] when they related?

[21] A: She did.

[22] Q: What did she tell you?

[23] A: That the problem began in an accident, after an [24] accident, August 8th of 1992.

[25] Q: What did she then tell you about that accident,

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[1] if anything?

[2] A: That she was in a car struck from behind, her [3] head was turned at the time, and so she received [4] a jolt to her head and neck. And she had [5] immediate neck pain and headache.

[6] Q: All right. Continue on, doctor. Did she give [7] you any further history beside that?

[8] A: Yeah. She went onto Akron City Hospital [9] emergency room where she was treated and then a [10] family physician, Dr. Park. He sent her for [11] physical therapy and then she went on to see a [12] specialist, a neurologist, Dr. Jugulion.

[13] Q: All right. Any other history given to you [14] besides that, sir?

[15] A: That Dr. Jugulion was treating her for roughly [16] eight months or so, and it was at first [17] dizziness, headache, neck pain, but it was [18] pretty much, I think, neck and shoulder later. [19] He did an electric test of nerve and muscle. He [20] did an MR scan and as his notes describe it. [21] She was improving over the summer months of [22] 1993.

Lawyer's Notes

[23] Q: And that information did you get from his [24] records or from the history given to you by Ms. [25] Beal?

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[1] A: The latter part comes from his records. The [2] testing, what he described, the improvements, [3] that sort of thing, that's not her history, [4] that's documents history.

[5] Q: Did she tell you in her history given to you by [6] her as to what if any work she may have missed [7] as a result of these injuries?

[8] A: She did.

[9] Q: And what did she say?

[10] A: That she was off around three weeks.

[11] Q: And did she give you any type of a history as to [12] what her present condition was at the time that [13] she saw you?

[14] A: That she still was suffering with neck and [15] shoulder pain.

[16] Q: Did you take a past history from her as well as [17] a family history?

[18] A: I did.

[19] Q: And what were the results there, sir?

[20] A: Past history is either unremarkable or does not [21] relate to her present symptoms. Family history [22] was no, no contributing factors there.

[23] Q: When you took the history from her, did she give [24] you any history of hitting her head in this [25] accident?

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[1] A: No.

[2] Q: Did she give you any history as to whether she [3] improved, her condition improved any time [4] following the accident?

[5] A: Yeah. Some of the dizziness, some of the other [6] symptoms that she first described to [7] Dr. Jugulion had improved, but neck and shoulder [8] continued.

[9] Q: Did she give you any complaints or symptoms with [10] regards to the T-5 left trapezius area?

[11] A: Yeah. I think that, although she wouldn't call [12] it that, that's what she means by shoulder.

[13] Q: And any history of weakness in her left arm or [14] weakness in lifting that she wound up giving you [15] at the time of the history?

[16] A: No.

[17] Q: Now, doctor, during the history portion, I mean [18] the portion where you are just talking to the [19] patient and taking this information from them, [20] approximately how long does it take to do that, [21] what part of the examination is that?

[22] A: Well, that's the first, more lengthy, usually [23] roughly half an hour, maybe 20 minutes, 25, [24] something of that order. Not much more than [25] half an hour. It's a dialogue. It's an

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[1] interview. And it comes first.

[2] Q: Now, following the taking of the history what is [3] done next?

[4] A: Physical examination.

[5] Q: And did you in fact conduct a physical [6] examination of Vicki Beal on that date?

[7] A: I did.

[8] Q: If you would, you may refer to your notes, [9] kindly relate to the jury the examination you [10] conducted and the results of that examination.

[11] A: The examination is just in the next room, in the [12] examining area. The patient has a gown on, is [13] asked to do certain things, some of them direct, [14] some indirect. I watch the patient walk, sit up [15] on the examining table, lie down and sit up on [16] the examining table. I have the patient bend [17] her head and neck back and forward and to each [18] side. I test muscle strength in the hands and [19] shoulders. I test for muscle spasm in here, in [20] the neck. I test reflexes. These are the [21] nerves that carry messages down to the muscles [22] and information back. I test for feeling. I [23] test for nerves in the face that might give some [24] clue about headache or dizziness.

[25] Q: Now, during the course of your examination, do

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[1] you also test for spasm as well?

[2] A: I do.

[3] Q: And your examination, I assume that was of the [4] neck and the shoulder area of Ms. Beal, is that [5] correct?

[6] A: Yes.

[7] Q: Was there any indication of spasm at the time of [8] your examination?

[9] A: No.

[10] Q: Now, what were the results of a test that you [11] performed in your examination with regards to [12] Ms. Beal?

[13] A: Normal.

[14] Q: During the course of your neurological [15] examination or examination of her, were there [16] any abnormal results?

[17] A: No.

[18] Q: Now, doctor, during the course of the [19] examination or history, did you ever obtain any [20] type of history from her of dizziness or vertigo [21] following the accident?

[22] A: She didn't mention that, but I know it's there [23] from other sources.

[24] Q: In the history given to you by her did she [25] mention any vertigo or dizziness?

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[1] A: No.

[2] Q: All right. Now, I believe I supplied your [3] office with records as well, is that correct?

[4] A: You did.

[5] Q: To be reviewed. If you would, just outline for [6] the jury the records that you reviewed in this [7] particular case.

[8] A: The Akron City Hospital emergency room visit.

[9] Dr. Jugulion's office notes, his visiting [10] with her. And the report he issued on May [11] 16th.

[12] An electric diagnostic test, an EMG study [13] Dr. Jugulion conducted.

Lawyer's Notes

[14] The notes of Dr. Mars, another neurologist [15] who saw her in 1994.

[16] A report of a CT scan of the - I'm sorry. [17] An MR scan of the neck done for Dr. Jugulion.

[18] And some physical therapy notes.

[19] Q: Now, doctor, in the, in the, I believe there was [20] an EMG and an EEG taken back on November the [21] 10th of 1992?

[22] A: Yes. Dr. Jugulion's.

[23] Q: And the results of those were what, sir?

[24] A: Normal.

[25] Q: I believe there was also an MRI of the brain.

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[1] left shoulder and cervical or neck area taken [2] back on November the 17th of 1992.

[3] First of all, with respect to the brain, [4] was that normal?

[5] A: Yes.

[6] Q: And the left shoulder?

[7] A: I believe that was normal also.

[8] Q: Would you explain to the jury what an MRI is and [9] what it does reveal if anything?

[10] A: It's a device for looking at the anatomy of the [11] deep organs in the body. And it does that by [12] measuring their magnetic properties and it does [13] that by applying a very powerful magnet and also [14] turning it on and off or changing its [15] orientation. You can thereby study the water or [16] magnetic properties of different tissues and get [17] pictures of them. So you can see the spine, [18] spinal cord, spinal fluid. You can see joints, [19] you can see bones in three dimension.

[20] Q: Will this MRI pickup such things as soft tissue [21] injury?

[22] A: Only if there is a huge amount of swelling and [23] then you see excess tissue, but it won't pickup [24] microscopic changes in things like muscle or [25] fatty tissue like it will say a brain.

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[1] Q: Will it pickup things such as scar tissue?

[2] A: If there is a dense enough scar in a muscle or [3] another organ, yes, but ordinarily you wouldn't [4] use an MR scan for that at all.

[5] Q: All right. Now, doctor, with respect then to [6] the MRI of the cervical or the neck area, what [7] were the results there?

[8] A: That was normal.

[9] Q: Now, I note in the MRI that there did state [10] there was a three millimeter posterior broad [11] based bulging of the C-5 disc?

[12] MR. LINTON: Referring to the [13] report, sir?

[14] MR. JEPPE: The report. That's [15] what the report says.

[16] Q: What does that mean?

[17] A: That's a description of the edge of the disc as [18] it indents or sticks out or protrudes into the [19] spinal column which is just adjacent. So we are [20] here seeing a little indentation on the column. [21] Many people have bulges. They are not abnormal [22] by themselves. If every disc in your neck and [23] back bulged that would be unusual. But it's not [24] abnormal to see one or

two of those either in [25] the neck or the back.
They are seen in people

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[1] with no symptoms whatever. And they don't
mean [2] anything -

[3] MR. LINTON: Objection.

[4] A: - abnormal.

[5] MR. LINTON: Objection. Move to [6] strike.

[7] Q: Now, doctor, with respect to the three [8]
millimeter posterior bulge such as in this case [9]
here, is that an abnormal finding in a woman [10]
Vicki Beal's age?

[11] A: No.

[12] Q: With respect to the three millimeter post-
erior [13] bulge or the bulge we've been referring
to, it [14] does say that there was a, some
impingement on [15] the thecal sac, is that correct?

[16] A: Yes.

[17] Q: What affect would that have on the in-
dividual?

[18] A: Well, the, the so called sac, this is the [19]
surrounding compartment of the spinal cord
which [20] consists of a dense, hard canvas like
material. [21] And next to that is water and next to
that is [22] the spinal cord. That column may be
indented by [23] spurs or discs or whatever, and as
long as it's [24] not pushing on nerves that exit it or
the [25] indentation is not great enough or it does
not

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[1] push on the spinal cord, it does not constitute
[2] an abnormality. It's certainly something that [3]
should be described. It may have a bearing [4] later
in time. But by itself it doesn't mean [5] anything.

[6] MR. LINTON: Objection. Move to [7] strike.

[8] Q: Now, doctor, with respect to the three [9]
millimeter bulge, any symptoms that were [10]
described to you by Vicki Beal that could be [11]
related to a three millimeter bulge at that [12]
level?

[13] A: I don't think those, that those bulges cause
[14] symptoms, so there is no explanation there for
[15] her problem.

[16] MR. LINTON: Objection. Move to [17] strike.

[18] Q: Now, is that with a reasonable degree of
medical [19] certainty, doctor?

[20] A: It is.

[21] Q: Now, doctor, did you also review the
second EMG [22] I believe that was performed by
doctor, is that [23] Dr. Mars?

[24] A: Yeah. It's actually Dr. Waldron in looking
for [25] Dr. Mars. This is again essentially a normal

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[1] study. There is some changes in the nerve in [2]
the hand. It's, again, something that may bear [3]
watching. I wouldn't call it an abnormality of [4]
itself. The difference is 2.2 between the media [5]
palmar and 2.8. If particularly someone doesn't [6]
have numbness in their hands, it doesn't help us
[7] much. If there were other symptoms it might
be [8] meaningful, so I don't pay much mind to
that. [9] And there is a peculiar description of [10]
myofascitic tissue meaning I think that the [11]

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patient was not easily needled which is the way
[12] the test is done in the neck. And I don't know
[13] what to make of that. If there is fibrotic [14]
tissue in an organ you wouldn't study it with a [15]
needle, you would study it just by putting your [16]
fingers there or if it's calcified take an [17] x-ray.

[18] MR. LINTON: Objection. Move to [19] strike.

[20] Q: Doctor, what is a whiplash?

[21] A: That's a lay term for a sudden bending of
the [22] head forward and then backwards or
backwards and [23] forward as occurs in injuries
where the trunk is [24] accelerated and the head
goes later. So that [25] if, if you are in a car and it's
hit and your

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[1] head goes back and forth, that's what happens.
[2] Or if you are hit standing someplace by a
moving [3] vehicle, your head goes back and forth.

[4] Q: Is that otherwise referred to also as an [5]
extension/flexion type injury?

[6] A: Yeah. That's a much better, more clinical, [7]
scientific way of describing what goes on.

[8] Q: What is cervical myofascitis?

[9] A: That term is used to designate an irritation
or [10] an inflammation in the muscles of the neck
that [11] move the neck and support it.

[12] Q: What is a trigger point, doctor?

[13] A: That's a point in a muscle where there is [14]
tenderness on pushing or palpation. Such points
[15] can be treated with injections of various types,
[16] and may occur anywhere there is a muscle
bulk or [17] thick enough muscle to get to.

[18] Q: And what is focal myofascial syndrome?

[19] A: Well, I think, and I'm not sure, but I think [20]
that is used to describe an irritation in a [21] muscle
in one place. I would just say [22] irritation of a
muscle in one place. I would [23] not say focal
myofascial syndrome because that [24] doesn't
add anything. But I believe that's how [25] the term
is used. Again, it can occur anywhere

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[1] there is a muscle mass.

[2] Q: Doctor, when there is a soft tissue injury, do
[3] soft tissue injuries always heal?

[4] A: They do unless there is a reason not to,
mainly [5] a disruption of the integrity of the
tissue, [6] diseases that stop healing and recovery,
[7] infection of a foreign body, things of that [8]
nature.

[9] Q: Now, muscles are soft tissues, are they not?

[10] A: They are.

[11] Q: And during the course of time sometimes
they get [12] stretched or torn, do they not?

[13] A: They can.

[14] Q: Now, doctor, when muscles heal, do they
leave [15] scar tissue?

[16] A: No.

[17] Q: Will an EMG pickup a damaged muscle or
scar [18] tissue?

[19] A: It will by the following means.

[20] If there is ongoing irritation in the [21] muscle,
the muscle may fire on its own, fire [22] spon-

taneously. If the muscle is fibrotic and [23] deceased, as we see in diseases of the spinal [24] cord or even diseases of muscles, you see [25] diminished electrical potentials when the muscle

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[1] is used or contracted. So there are things that [2] happen in the muscle that will show up in [3] electric testing.

[4] Q: Was this the case in Vicki Beal's case?

[5] A: No.

[6] Q: Now, doctor, are you familiar with the term T-5 [7] trigger point?

[8] A: I am.

[9] Q: Let's put those two together and tell the jury [10] what that means.

[11] A: The trigger point is, that's a sensitive spot [12] there that would presumably get better with a [13] local injection. T-5 means the fifth thoracic [14] spine level which is just roughly below the [15] nipple. So we're sort of a third of the way [16] down the thoracic spine in the back where there [17] is a tender spot.

[18] Q: Now, doctor, did, again, did she give you a [19] history of having symptoms at that area, T-5?

[20] A: Well, I got the impression it was more [21] higher [22] than that, in the upper part of the shoulder and [23] the neck.

[23] Q: Was T-5, an injury in that area, is that [24] consistent with the symptoms that she related to [25] you?

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[1] A: Well, it's down a bit lower. Unless this thing, [2] whatever it is, moves around, it does not really [3] fit with what she told me. That's not to say [4] she doesn't have it. It's just not part of what [5] I came to appreciate about her.

[6] Q: All right. Now, doctor, based upon the history [7] that was given to you by Vicki Beal, based upon [8] the examination that you conducted, based upon [9] the records that you reviewed, and your [10] knowledge and training as a neurologist, do you [11] have an opinion based upon a reasonable degree [12] of medical certainty whether Vicki Beal [13] sustained any injury in the accident of October [14] the 8th of 1992?

[15] First of all, do you have an opinion?

[16] A: I do.

[17] Q: And what is that opinion, sir?

[18] A: That she had a soft tissue injury, that she was [19] jolted, particularly with her head turned, [20] that's sometimes especially harmful to soft [21] tissues, and then she had a slow but steady [22] recovery. And by August when Dr. Juglion [23] essentially discharged her she was recovered or [24] almost fully recovered.

[25] Q: Now, doctor, again, based upon the history given

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[1] to you by Vicki Beal, based upon your [2] examination and the records that you have [3] reviewed, and your training and knowledge as a [4] neurologist, do you have an opinion based upon a [5] reasonable degree of medical certainty

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whether [6] or not that three millimeter bulging disc that [7] was described in the MRI report is in fact [8] directly related to the accident in question?

[9] Now, first of all, do you have an opinion?

[10] A: I do.

[11] Q: What is that, sir?

[12] MR. LINTON: Objection.

[13] A: Not related.

[14] Q: All right. Now, doctor, again, based upon the [15] history that was given to you by Vicki Beal, [16] based upon your examination of her, based upon [17] the documents that you have reviewed, do you [18] have an opinion based upon a reasonable degree [19] of medical certainty whether or not Vicki Beal [20] has any residual or permanent injury or [21] condition that can in fact be related to the [22] automobile accident of October the 8th of 1992?

[23] First of all, sir, do you have an opinion?

[24] A: I do.

[25] Q: And what is that opinion, sir?

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[1] A: That she does not now have any condition, [2] malady, disease that can be related to the [3] accident of October, 1992.

[4] Q: Now, at the time of your examination she did [5] give you symptoms or complaints of pain or [6] problems, did she not?

[7] A: Yes, she did.

[8] Q: Did you or could you find anything objective to [9] support the subjective complaints given to you [10] by Vicki Beal at the time of the examination?

[11] A: I could not.

[12] Q: Thank you.

[13] MR. JEPPE: I have nothing further [14] at this time.

[15] Mr. Linton.

[17] CROSS-EXAMINATION OF DONALD C. MANN, M.D.

[18] BY MR. LINTON:

[19] Q: Doctor, forgive me if I state the obvious, but [20] you are working for State Farm Mutual Insurance [21] Company in this case?

[22] A: Well, I'm working to give information to [23] whomsoever wants it. If State Farm is the [24] agency paying for that, then I suppose you could [25] say I'm working for them. But I don't consider

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[1] myself an employee of theirs and I hardly even [2] know who they are.

[3] Q: State Farm Insurance Company is paying for your [4] services in this case?

[5] A: Well, I, if they are the people responsible for [6] defending this case, then they are the ones who [7] would be paying for it.

[8] Q: And, in fact, it was their lawyer that hired you [9] in this case back in February of this year, is [10] that correct?

[11] A: Well, Mr. Jeppe asked me to review this case, [12] yes.

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[13] Q: And he sent to you a letter dated February first [14] of 1996 when he hired you?
[15] A: He did.
[16] Q: And he stated there that he was working for [17] State Farm Insurance Company, is that correct?
[18] A: He did.
[19] Q: He stated that he was working for that company [20] in their defense of a claim brought by Vicki [21] Beal?
[22] A: Yes, he did.
[23] Q: He told you then that it was what is called in [24] uninsured motorist claim?
[25] A: He may have.

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[1] Q: If you could look at the first paragraph of your [2] letter, sir.
[3] A: Yeah. That's right. In the third line it says [4] uninsured motorist action.
[5] Q: You certainly knew back then that uninsured [6] motorist, what an uninsured motorist claim was, [7] did you not?
[8] A: I pay no attention to that. It's of no interest [9] to me whether they are insured, uninsured or [10] what. My job is to evaluate the patient and not [11] think about insurance companies or who is or who [12] isn't insured.
[13] Q: Just so I'm clear, doctor, back in February you [14] knew that if you were - if - strike that.
[15] I assume that you, yourself, have uninsured [16] motorist coverage for your car insurance?
[17] MR. JEPPE: Objection.
[18] A: I don't know. I would to have look it up. If [19] that's the sort of thing you are supposed to [20] have then I probably do.
[21] Q: All right. Well, doctor, if you are hit by a [22] driver who has no insurance, you can then bring [23] a claim against your own insurance company and [24] that's what is called an uninsured motorist [25] claim, does that make sense?

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[1] A: It does.
[2] Q: Thank you. You knew back when State Farm [3] Insurance Company's lawyer hired you that you [4] would be reviewing the medical records of Vicki [5] Beal?
[6] A: I did, yes.
[7] Q: You knew when State Farm hired you that you [8] would then interview Vicki Beal?
[9] A: I did, yes.
[10] Q: And you knew when State Farm hired you that you [11] would then examine her?
[12] A: I expected to, yes.
[13] Q: You knew when State Farm hired you that you [14] would then write a report for their lawyer?
[15] A: I anticipated that, yes.
[16] Q: You knew when State Farm hired you that [17] necessary you would give testimony as their [18] witness at trial just like you are doing here [19] today?

[20] A: Yes.
[21] Q: And the reason you were hired in this case was [22] to do just those services, is that correct?
[23] A: Well, to do the evaluation which may have [24] resulted in the things you have just described.
[25] Q: Okay. You were not to give any medical

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[1] treatment to Vicki Beal?
[2] A: No.
[3] Q: She was not coming to you voluntarily as a [4] patient seeking your services?
[5] A: She was not.
[6] Q: And you would not give her medical treatment if [7] she needed it at the time?
[8] A: Correct.
[9] Q: Now, Dr. Mann, how many, approximately, [10] neurologists are there in the Greater Cleveland [11] area?
[12] A: Oh, 20 or 30 or so. If you count everybody in [13] institutions, something of that ilk.
[14] Q: And of those 20 or 30, you obviously were the [15] neurologist hired by State Farm for this [16] particular case?
[17] A: I was, yes.
[18] Q: And as you told us earlier you had been hired to [19] work for State Farm before?
[20] A: I have.
[21] Q: As well as their attorney?
[22] A: I have.
[23] Q: As well as his law firm?
[24] A: I have.
[25] Q: All right. You were subpoenaed and you had

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[1] produced certain tax records relating to the [2] amount of income you have earned from State [3] Farm, isn't that true?
[4] A: Yes.
[5] Q: And have we marked those as Exhibit A before the [6] start of your deposition?
[7] A: We marked them. I don't know what the number of [8] the Exhibit is, but we did mark them.
[9] Q: Doctor, handing you what's been marked as [10] Exhibit A. Are those in fact the tax records [11] that we talked about?
[12] A: Indeed they are.
[13] Q: Now, doctor, at the end of the year when you [14] prepare your income taxes, you get a form or [15] forms from State Farm regarding what they paid [16] you over the course of a year?
[17] A: Well, it's a corporate form, and so these [18] individual pieces of paper are not tabulated, [19] collected or even looked at. In fact, they are [20] generated for someone other than me, namely the [21] IRS, so they can track where the money goes and [22] we don't keep individual books on specific [23] 1099s. We don't use them for the preparation of [24] any income tax forms.
[25] Q: Maybe my question was a bad one. First of all,

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(1) does Exhibit A contain what are called 1099s?

(2) A: It does.

(3) Q: And 1099s are tax forms that are provided to
(4) your corporation at the end of the year
showing (5) the amount of income earned from a
particular (6) party?

(7) A: Showing a disbursement. correct.

(8) Q: And in this particular case the person who
(9) received that money was Donald Mann, M.D.,
(10) Incorporated?

(11) A: Correct.

(12) Q: Can you tell me how many people work for
Donald (13) C. Mann, Incorporated?

(14) A: One physician.

(15) Q: And that would be yourself?

(16) A: Correct.

(17) Q: And the 1099s that you get may not be a
single (18) one for a given year, but may be several
1099s (19) for the course of a year?

(20) A: Well, there is one, but sometimes they
modify it (21) or they change it or add or subtract.
But most (22) everybody, if you get to looking at
this stuff, (23) sends one and only one.

(24) Q: But you are not sure that Exhibit A contains
the (25) only 1099s your company received for the

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(1) specific years, is that right?

(2) A: No, I'm not. But one of them - they look (3)
accurate. But, for instance, in 1994, there may (4)
have been more than one because there is a small
(5) amount there.

(6) Q: Okay. Now, when you do work like in this
case, (7) you are obviously paid by State Farm
Insurance (8) Company, is that correct?

(9) A: Well, I expect to be paid, yes.

(10) Q: And when you have done work for them in
the past (11) you likewise have been paid?

(12) A: Yes, I have.

(13) Q: In addition to that have you also been paid
by (14) State Farm to reimburse you for your
medical (15) charges that have been incurred on
behalf of (16) caring for a patient?

(17) A: I have.

(18) Q: Unrelated to serving as witness in a case, if
(19) you simply have a patient who comes to see
you (20) and that's covered by insurance by State
Farm, (21) they would obviously pay you for that
under (22) certain circumstances?

(23) A: Right. They are an insurance company like
any (24) other of some two hundred who pay for
medical (25) services.

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(1) Q: When you receive this form called a 1099,
that (2) does not distinguish how much was paid
for (3) medical care to a patient as opposed to for
(4) legal purposes such as in this case, is that (5)
correct?

(6) A: Yes, it is.

(7) Q: And you don't know how to distinguish
how much (8) is what from these records, is that

correct?

(9) A: Correct.

(10) Q: Now, doctor, if we could go to that. In 1995
it (11) shows your company received \$11,735
from State (12) Farm Mutual Auto Insurance
Company, is that (13) correct?

(14) A: Yes.

(15) Q: And the next page is for 1994?

(16) A: Right.

(17) Q: And that shows for \$880, is that correct?

(18) A: Yes.

(19) Q: And you believe that there was an ad-
ditional (20) form that was issued because that
seems low?

(21) A: Well, I don't know whether there was or
not. (22) But there could have been particularly
notable (23) because of the small size of the figure.

(24) Q: If State Farm in fact had a record showing
(25) payment to you that year, 1994, of \$14,170,

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(1) would you have reason to dispute that?

(2) A: I would not.

(3) Q: If we could then go to 1993. Does that show
(4) payment for \$17,338.36?

(5) A: It does.

(6) Q: Again, from State Farm to your company?

(7) A: Correct.

(8) Q: If State Farm had a record which showed
they had (9) in fact paid you \$20,963 for the year
1993, (10) would you, sir, have a reason to dispute
that?

(11) A: Depending on how they keep their re-
cords, no. I (12) don't know whether to agree or
disagree with (13) it. Those are fairly close. One
may be right, (14) one may be wrong.

(15) Q: And if we then go to the year 1992, sir. Does
(16) that show State Farm paying to your company
(17) \$13,747?

(18) A: It does.

(19) Q: Now, you have not produced records for
1991 or (20) 1990, is that correct?

(21) A: There are none. Those dozens of little
pieces (22) of paper have been pitched out. It's
basically (23) junk and a nuisance to me anyway, so
I don't (24) think I have any for those records.

(25) Q: The same is true for 1989 as well as 1996
since

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(1) 1996 is not yet to a completion?

(2) A: Well, '96 I'll keep because it seems a smart (3)
thing to keep the stuff for a while. But I (4) don't
have any records.

(5) Q: You have not yet received the record for
1996, (6) is that correct?

(7) A: Correct.

(8) Q: So if State Farm has a record showing they
paid (9) to your company \$6,965 for the year 1996,
would (10) you be in a position to dispute that?

(11) A: No.

(12) Q: And if they showed that in the year 1991

they [13] paid to your company \$23,888 would you have a [14] reason to dispute that?

[15] A: No. I wouldn't agree or disagree with it and it [16] sounds about right. The other figures run in [17] there. But I shouldn't put myself as an [18] authority on how much State Farm paid me in [19] 1990.

[20] Q: Would the same be true, Dr. Mann, with the year [21] 1990 if state farm's records showed payment to [22] you, your company of \$8,267, would you be in a [23] position to dispute that?

[24] A: Again, it's hard to dispute that one way or the [25] other. It could be accurate, but I would not

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1) want to assert such.

2) Q: And would the same be true, Dr. Mann, concerning [3] 1989 if State Farm's records show payment to you [4] of \$10,270, would you be in a position to [5] dispute that?

6) A: Not to confirm or refute it.

7) Q: So if all of those numbers totaled, since 1989 [8] payment to your company of over a hundred [9] thousand dollars, does that sound reasonable?

10) A: Yeah. I think at these rates we've been talking [11] about, that's over eight years, that sounds like [12] a reasonable figure.

13) Q: All right. Now, in addition to the money your [14] company has earned from State Farm, you have [15] also served as a doctor for them in other cases, [16] have you not?

17) A: In cases where I've provided medical care [18] patients whose medical bills were being paid by [19] State Farm, yes.

20) Q: I'm sorry. That's true. I may have asked my [21] question poorly. You have also served as their [22] doctor in legal cases like this one before, have [23] you not, sir?

24) A: Oh, yes.

25) Q: In fact, there are a number of cases presently

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1) pending with State Farm in which they have hired [2] you to be their doctor just as they have in his [3] case, is that true, sir?

4) A: That may be true, yes.

5) Q: Have we marked before the start of your [6] deposition, sir, as Plaintiff's Exhibit B [7] reports that were prepared by you to either [8] State Farm or lawyers working on their behalf?

9) And before you answer that, we'll go off [10] the record to give you time to review those if [11] you would, sir.

[12] VIDEOTAPE OPERATOR: We're off the [13] record.

[15] (Off the record.)

[17] VIDEOTAPE OPERATOR: Stand by. [18] We're on the record.

[19] Q: Doctor, sir, let me clarify my question. Is [20] Exhibit B a stack of reports prepared by you in [21] cases in which you have been asked to give [22] defense medical exams like you did in this case [23] involving Vicki Beal? And we'll go off the [24] record to allow you to review that Exhibit.

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[25] VIDEOTAPE OPERATOR: We're off the

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[1] record.

[3] (Off the record.)

[5] VIDEOTAPE OPERATOR: Stand by. [6] We're on the record.

[7] A: These are reports I rendered to attorneys doing [8] evaluations for patients and this is my work.

[9] Q: And those would be cases in which those lawyers [10] were defending a claim of some sort arising out [11] of an accident?

[12] A: I don't know that. When they - just from the [13] report, but I would guess that most of them are [14] defense type of situations.

[15] Q: Doctor, I have counted in there a total of eight [16] reports issued in seven different cases, is that [17] correct?

[18] A: Yes.

[19] Q: Doctor, in addition to that, I'm handing you [20] what has been marked before your deposition as [21] Exhibit C and ask you if that contains three [22] reports that you have prepared in other cases in [23] which you were asked to examine a patient for an [24] insurance company or a lawyer.

[25] And again, we'll go off the record to let

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[1] you review that.

[2] VIDEOTAPE OPERATOR: We're off the [3] record.

[5] (Off the record.)

[7] VIDEOTAPE OPERATOR: Stand by. [8] We're on the record.

[9] A: These are three more where I've done an [10] evaluation for an attorney.

[11] Q: Doctor, I'm going to hand you then what we've [12] marked as Exhibit D as in dog through G. And [13] ask you if those too are reports that you [14] prepared for an attorney and we'll go off the [15] record and let you look at that, sir, those [16] reports.

[17] VIDEOTAPE OPERATOR: We're off the [18] record.

[20] (Off the record.)

[22] VIDEOTAPE OPERATOR: Stand by. [23] We're on the record.

[24] A: These are also reports that I have issued.

[25] Q: Now, doctor, I've been through these in some

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[1] detail. I would like you to review them to [2] satisfy yourself, but, please if you would, in [3] each of these cases there was an accident [4] involved and you were on the other side of the [5] person who was asserting a claim or who had been [6] injured in an accident, isn't that correct?

[7] A: I would have to look at each one.

[8] Q: Okay. Why don't we go off the record and I'll [9] let you do that so you are satisfied in your [10] mind that that's what these reports are for.

[11] VIDEOTAPE OPERATOR: We're off the [12] record.

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[104] (Off the record.)

[106] VIDEOTAPE OPERATOR: Stand by. [107] We're on the record.

[108] A: What was the question?

[109] Q: I'll let the, read it back, doctor.

[120] Have you now had a chance to review the [21] reports that we've marked Exhibit B through [22] Exhibit G which contain 14 reports issued by you [23] in cases in which someone was hurt in an [24] accident in which you were hired by the other [25] side to give a medical exam and prepare a report

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[1] just like you did in this case with Vicki Beal?

[2] A: Yeah. I think that summarizes that I was asked [3] to evaluate these individuals presumably as a [4] resolution of their claim. Which side anybody [5] was on, I couldn't tell you. You would to have [6] talk to the people involved directly.

[7] Q: Well, doctor, I want to be entirely clear and I [8] want to be fair to you, sir, because I've had a [9] chance to review these carefully and perhaps you [10] have not yet recently. I would like to ask you [11] to please review each one of these carefully, [12] each one of these 14 reports, and tell us [13] whether any of them relate to a report that you [14] prepared on behalf of a patient, or if in each [15] of these you were retained by a lawyer who was [16] defending an injury claim presented by someone [17] else, someone else's patient.

[18] A: Okay. It's the latter situation. These are not [19] patients of mine who I'm writing a report for. [20] These are independent evaluations where I was [21] not a treating physician.

[22] Q: And, sir, you would then be hired by the people [23] who were the lawyers defending these injury [24] claims to conduct an examination and prepare a [25] report and testify if necessary just as you are

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[1] doing in this case for State Farm, is that fair?

[2] A: Yes.

[3] Q: Sir, I would like you to go through each one of [4] these, we'll go off the record again and let you [5] take as much time as you need to, and tell us, [6] sir, whether in any one of these reports whether [7] it was your opinion that there was a permanent [8] injury. Could you do that for us, sir?

[9] A: Sure.

[10] VIDEOTAPE OPERATOR: We're off the [11] record.

[13] (Off the record.)

[15] VIDEOTAPE OPERATOR: Stand by. [16] We're on the record.

[17] A: Well, there are three cases where there was an [18] injury, the quantity of which has to be measured [19] by many things including my opinion. One lady [20] ceased her activities utterly dramatically and [21] hadn't been studied with any kind of testing for [22] two years when I saw her here. So there was a [23] real question there as to whether -

[24] Q: I don't mean to interrupt. Let me just clarify [25] the question in case it got lost while you

[1] reviewed the records.

[2] In any of the 14 reports in front of you [3] marked Exhibit B through G, do you conclude as [4] the doctor hired by the lawyer who was defending [5] the claim brought by the personal injury victim, [6] do you conclude that the injury is quote, [7] "permanent"?

[8] MR. JEPPE: Objection.

[9] Q: Do you make that conclusion, doctor?

[10] MR. JEPPE: Objection. [11] Objection.

[12] A: Well, I make conclusions that can lead to that [13] sort of other conclusion as well. I sometimes [14] state the condition in clinical terms since pain [15] is involved in many of these such cases. And [16] it's a question, it's a reasonable question. [17] And if I don't say, oh, there is a permanent [18] injury here and it's going to last forever and [19] ever, that doesn't mean it isn't there. By the [20] same token, my saying there isn't doesn't mean [21] there isn't because other people decide these [22] things. There are three cases where there is a [23] legitimate injury and I recognize in my [24] conclusion that there is something that could be [25] permanent or that might be there. There are two

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[1] operations involved. There is an individual who [2] has not been studied. So there could be [3] permanency. That's implied by my report.

[4] Q: All right. Just so I'm clear. In none of those [5] reports do you specifically include that the [6] injury is permanent. You do not state that in [7] any of those reports, do you, doctor?

[8] A: That any of these people had a permanent [9] injury? I don't think that's in here, no.

[10] Q: You are saying that you will agree that in 11 [11] out of the 14 your conclusion was that the [12] injury was not permanent?

[13] A: Yes.

[14] Q: And in three of them it's open to debate as to [15] whether or not that in fact might be your [16] opinion?

[17] A: Well, it could be permanent. There, again, one [18] person has a definite disc herniation from an [19] injury. Actually, two people do. These are [20] relatively recent cases, a year or two old. [21] It's not, it's too early to tell. The other [22] patient has not been evaluated so there could be [23] an element of permanent damage.

[24] Q: Doctor, I would like to go off the record and if [25] you could please identify for me the three

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[1] reports that you are referring to.

[2] A: You don't to have go off the record. They are [3] the top three.

[4] Q: The date, please.

[5] A: April 17th, 1996. August 29th, '96. And August [6] 26th, '96.

[7] Q: Doctor, if we could begin with the report dated [8] August 29th of 1996. First of all, does that [9] report involve an accident involving a head-on

10] collision looking at the second full para-
graph?

11] A: Yes.
12] Q: And was surgery performed in that par-
ticular 13] case by the patient's treating surgeon?
14] A: It was.

15] Q: And is it your conclusion, sir, at the final 16]
page that the enduring back problems come from
17] this degenerative change rather than a prob-
lem 18] corrected by the surgeon as caused by
he 19] accident?

20] A: Yes.
21] Q: If we could go next, sir, to your report of 22]
April 17th of 1996. And I want to just clarify 23] to
you, doctor, I'm now going through Exhibit B, 24]
and Exhibit C, and those are 11 reports that 25]
were given to me by State Farm and represented

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to be your reports in active cases they have in 2]
which they have hired you to do defense medical
3] exams, okay? If we could go through the next
4] report, is that dated April 17th, 1996?

5] A: It is.
6] Q: Does that involve an accident in which the
7] person was hit from behind? I'm looking at the
8] second page, fourth paragraph.
9] A: Yes.

10] Q: And, doctor, is it your conclusion looking at
11] page three of that report that this injury 12]
victim's complaints were attributed to disc 13]
disease in her neck rather than due to the 14]
injuries in the accident?

15] A: No.
16] Q: Okay. Does your report state, sir, at page 17]
three, under impression, quote, "Mrs. Marks' 18]
cervical spine complaints can be attributed to 19]
disc disease at C-5 and C-6?"

20] A: It does.
21] Q: If we could go, sir, to the next report dated
22] January 31st, 1995.
23] A: January 31st?
24] MR. LINTON: We'll go off the 25] record.

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VIDEOTAPE OPERATOR: We're off the 2] re-
cord.
(Off the record.)

VIDEOTAPE OPERATOR: Stand by. 17] We're on
the record.

Q: Have you now found the report dated
January 31st 9] of 1995?

10] A: I have.
11] Q: And this, too, is an active report in State 12]
Farm's files and it is addressed to Mr. Jeppe, 13] is it
14] correct?
15] A: How active it is in their files, you'll have
16] to ask him.

17] Q: I will represent to you that's what's been
18] represented to me, but it's written by you by
19] Mr. Jeppe in January of last year.
20] A: It is.

21] Q: If we look at the last page, does that involve

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21] an accident in July of 1992?
22] A: It does.
23] Q: And did you conclude in there that she
quote, 24] "should have recovered in a matter of
weeks or 25] several months?"

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11] A: I did.
12] Q: And did you also conclude, quote, "I can find
no 13] permanent affects of the accident?"
14] A: I did.

15] Q: If we could go to the next report in State 16]
Farm's active files dated April 29th, 1996. Do 17]
you have that in front of you, sir?
18] A: Got it.

19] Q: Does that involve an accident that occurred
on 20] August 1, 1993 looking at the second to last
21] paragraph on page one?

22] A: It does.
23] Q: In which a person was thrust forward?
24] A: Correct.

25] Q: And the patient or the person was subject
to 16] several jolting motions?
17] A: Yes.

18] Q: If we can go to page three of that report. Do
19] you conclude that, quote, "there are no
organic, 20] medical or physical explanations for
ongoing 21] complaints?"

22] A: I do.
23] Q: Do you conclude in your final sentence
that "no 24] further injuries came from the
accident only one 25] or two months of sprain
complaints?"

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11] A: Yes.
12] Q: If we could go to the next report in State 13]
Farm's active files in which they have retained 14]
you, I'm looking at a letter dated March 2 of 15]
1995. Do you have that in front of you, sir?

16] A: Coming.
17] Got it.
18] Q: And that is another letter addressed to 19] Mr.
Jeppe in the same case in which you sent the 20]
earlier letter of January of '95, isn't that 21]
correct?

22] A: Yes.
23] Q: Again, it involved a car accident on Sep-
tember 24] 20th of 1990?
25] A: It did.

16] Q: Did you conclude, sir, in your final para-
graph 17] to Mr. Jeppe, quote, "I suspect the
accident of 18] July 29th, 1992 aggravated her
condition to some 19] degree, but returned her to
baseline state 20] leaving no permanent affects?"

21] A: I do.
22] Q: And do you also have a report that was 23]
represented to me to be in State Farm's active 24]
files dated February 29th, 1996, addressed to an
25] Attorney Kennecally?

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11] A: Got it.

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[2] Q: Does that involve a car accident where a person [3] was struck from behind, looking at the last [4] page, last paragraph of the first page?

[5] A: It does.

[6] Q: Do you conclude, sir, at the last page, I'm [7] looking at page three, the first full paragraph, [8] quote, "I would not anticipate headaches from a [9] simple neck injury and here again the problem [10] should not prove a long-term issue or one [11] requiring treatment?"

[12] A: I did.

[13] Q: Did you also conclude "no physical disorder [14] underlines his present complaints or keeping him [15] from pursuing a normal active existence?"

[16] A: Correct.

[17] Q: And do we also have a report to an Attorney Rea [18] dated November 11th, 1994, another report [19] provided from State Farm's active case files?

[20] A: I have the report.

[21] Q: And does that show a car accident involved?

[22] A: It does.

[23] Q: And the victim in that case was treating for [24] neck and back pain?

[25] A: Yes.

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[1] Q: And do you conclude that this person's complaint [2] of spine pain for three years, quote, "alludes a [3] specific diagnosis that can account for such a [4] protracted problem?"

[5] A: Correct.

[6] Q: Do you also conclude that her long-standing pain [7] arises from heretofore unidentified causes such [8] as a rheumatological disorder?

[9] A: Correct.

[10] Q: And that her present complaints cannot be [11] connected to the accident?

[12] A: Correct.

[13] Q: That no disease state or physical process has [14] been identified that can run this long period of [15] time?

[16] A: I did.

[17] Q: And that although she ties the symptoms to the [18] accident, there is no way in your opinion to [19] medically connect them?

[20] A: Right.

[21] Q: And do you have a report that was also produced [22] from State Farm's active files in which they [23] hired you dated March 2 of 1995 sent to an [24] attorney McGee?

[25] A: I have it.

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[1] Q: And does that also involve an accident, looking [2] at the second page, fourth, fifth paragraph?

[3] A: Yes.

[4] Q: Where a woman was struck from behind causing her [5] to be jolted?

[6] A: Right.

[7] Q: Do you conclude in your impression that this [8] woman suffered, quote, "no physical malady that [9] you could identify as a consequence of a minor [10] impact of August 2, 1992?"

[11] A: Yes.

[12] Q: Did you conclude that quote, "other factors must [13] be invoked to explain persistence of pain and [14] the need for treatment that followed?"

[15] A: Right.

[16] Q: Did you conclude that you saw nothing about the [17] accident or tests or treatment that identify a [18] physical problem of any substance or one that [19] would lead to symptoms today or cause any [20] permanent problems?

[21] A: Right.

[22] Q: And do you have a report addressed to an [23] Attorney Cook dated June 3rd of 1996? This is [24] now part of Exhibit C.

[25] A: What was the date again?

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[1] Q: June 3rd of 1996.

[2] A: Got it.

[3] Q: Is that addressed to an attorney named Cook?

[4] A: It is.

[5] Q: Is she a lawyer in Mr. Jeppe's law firm?

[6] A: She is.

[7] Q: Does that involve an accident?

[8] A: June 18th, 1995.

[9] Q: And do you conclude that this woman suffered a [10] cervical sprain for which she has recovered [11] almost completely?

[12] A: He.

[13] Q: Pardon me. That he has recovered?

[14] A: Yes.

[15] Q: You conclude that you found no lasting affects [16] of an accident of a year before, the majority of [17] which disappeared by August of 1995?

[18] A: Correct.

[19] Q: All right. Doctor, could we go to Exhibit D?

[20] A: Got it.

[21] Q: Does this also involve someone who was in a car [22] accident looking at the bottom of the first page [23] of that report?

[24] A: Yeah. March 9 of 1989.

[25] Q: Do you conclude in that report that there is

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[1] quote, "no lasting affect from her injury?"

[2] A: Yes.

[3] Q: Do you have Exhibit E in front of you, sir?

[4] A: Got it.

[5] Q: Does that also involve a car accident?

[6] A: It does.

[7] Q: Do you conclude in your final paragraph that [8] this person quote, "should not have a long-term [9] problem from his injury of a year ago?"

[10] A: Correct.
[11] Q: Do you have Exhibit F in front of you?
[12] A: Got it.
[13] Q: Does that also involve a car accident?
[14] A: It does.
[15] Q: Is it also your report prepared to an attorney [16] defending that car accident?
[17] A: Yes.
[18] Q: Do you conclude, I'm looking at your, page [19] three, that this woman for all practical [20] purposes has recovered?
[21] A: Yes.
[22] Q: And do you further say that the continuing [23] presence of symptoms lacking explanation should [24] not be taken to indicate a continuing problem or [25] permanent malady?

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[1] A: Correct.
[2] Q: Do you have in front of you, sir, Exhibit G?
[3] A: Yes.
[4] Q: Is that also a report involving an accident in [5] which you were hired by a lawyer defending that [6] claim?
[7] A: I believe so, yes.
[8] Q: That's dated March of 1992?
[9] A: Yes.
[10] Q: If you would look at the second page. Does that [11] involve an accident with a tractor/trailer rig?
[12] A: Yes.
[13] Q: And do you conclude, sir, the last part of that [14] report, that this woman did not, in your [15] opinion, sustain a permanent injury, looking at [16] the second to last paragraph of that report?
[17] A: Yes.
[18] Q: Did you also say at the very last paragraph that [19] her residual complaints may have to do with [20] degenerative disease of the arm, other factors [21] or heretofore undiagnosed problems, none of [22] which are related to her injury?
[23] A: Yes.
[24] Q: Now, you told us earlier, sir, that you keep [25] open roughly a slot a day to do this type of

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[1] work where you do exams at the request of [2] insurance companies, lawyers or others?
[3] A: No.
[4] Q: I'm sorry. Your direct testimony was that you [5] give approximately five a week, is that correct?
[6] A: Yeah. We don't keep a slot. Somebody calls, we [7] give them an available appointment.
[8] Q: I'm sorry. I didn't mean to misinterpret what you [9] said. On average that amounts to about five [10] a week?
[11] A: Roughly.
[12] Q: Can you tell me how many weeks a year you are [13] open for examinations, approximately?
[14] A: Oh, I'd say 40, something like this.

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[15] Q: Okay. You have been doing this kind of work, [16] doing exams at the request of lawyers and [17] insurance companies for the last ten years, is [18] that correct?
[19] A: Approximately, yes.
[20] Q: Now, you have on occasion testified for patients [21] themselves who have been involved in accidents?
[22] A: I have.
[23] Q: But that's a much smaller percentage of the [24] cases in which you testify as opposed to doing [25] it where you are asked by an insurance company

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[1] or a lawyer defending such cases, is that true?
[2] A: Correct.
[3] Q: That number has stayed about the same since 1989, [4] hasn't it?
[5] A: Roughly, yes.
[6] Q: In 1989 it was a fact and you so testified, that [7] only about ten percent of the time did you [8] testify for a personal injury victim in such a [9] case, isn't that true, sir?
[10] A: Yeah. That's an estimate. I don't keep such [11] figures. It's hard to give a number to [12] something that you never keep track of very [13] accurately. But it's a small percentage, [14] somewhere around there.
[15] Q: Okay. Now, if we could turn to the heart of [16] this case now that we have reviewed the role [17] that you played here. If I can summarize what [18] you have told us.
[19] In your opinion, you are not disputing that [20] Vicki was hurt in the accident?
[21] A: Correct.
[22] Q: You are not disputing that she was required to [23] be taken by ambulance to the hospital?
[24] A: Not at all.
[25] Q: You are not disputing the fact that she had to

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[1] get treatment in the hospital?
[2] A: No, that's the right thing to do. I would have [3] done the same thing myself.
[4] Q: Including the kind of treatment that she got [5] involving intramuscular injections for pain as [6] well as nausea?
[7] A: Correct.
[8] Q: Being prescribed pain killing narcotics, [9] Vicodin, upon release?
[10] A: I don't know that I would call Vicodin a [11] narcotic. But anyway, that's good. I would [12] have done that. That's the right way to do it. [13] No problem.
[14] Q: And instructed to ice the injured areas four [15] times a day, appropriate?
[16] A: Good treatment.
[17] Q: And then to follow up with her family physician [18] if her problems do not correct themselves?
[19] A: Good treatment.

[20] Q: Appropriate for her to follow with her family [21] doctor, Dr. Parks, eight days later when her [22] symptoms had not resolved?
[23] A: Proper measures, yes.
[24] Q: Appropriate when she was having ongoing symptoms [25] to have a CAT scan ordered to see how things

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[1] were working in her neck?
[2] A: A CAT scan is not a regular way of looking at [3] the neck. Some people like them, but it's not [4] the optimal modality.
[5] Q: You are not disputing that that treatment was [6] necessary if ordered, are you?
[7] A: No, not at all.
[8] Q: You are not disputing the fact that she required [9] physical therapy for this accident which she had [10] at Parma Hospital in the fall of 1992?
[11] A: No.
[12] Q: And you are not disputing when she had problems [13] in therapy such as a shaking arm, such as [14] numbness, such as nausea during the therapy, [15] that it was appropriate for her to stop therapy [16] and go see a neurologist, is that correct?
[17] A: Yes.
[18] Q: And it was appropriate then for Dr. Jugulion to [19] follow this woman for the time he did from [20] November of 1992 about a month after the [21] accident for about a year until December of [22] 1993?
[23] A: Correct.
[24] Q: You are not disputing that, are you, sir?
[25] A: I'm not.

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[1] Q: Okay. Your dispute is in effect with the [2] treatment that followed that, that is when she [3] saw Dr. Mars, and then when she saw Dr. Kriegler [4] at the pain management center?
[5] A: Yeah. I don't dispute seeking or the rendering [6] of treatment, certainly not here. I just [7] question it had anything to do with the [8] accident.
[9] Q: All right. Now, when you draft a report, I [10] assume you try to be careful in describing what [11] your opinions are, you try to be precise in your [12] language?
[13] A: I do.
[14] Q: And I assume that in medicine there are a lot of [15] gray areas, is that fair?
[16] A: Yes.
[17] Q: And there are some areas which are more certain [18] and there are some that are less certain?
[19] A: Correct.
[20] Q: And in this particular case, it was only your [21] suspicion that this woman's treatment with [22] Dr. Mars and Dr. Kriegler was unrelated to the [23] accident?
[24] A: It's my belief.
[25] Q: Well, in your report, sir, did you not use the

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[1] term that you suspected that her symptoms had [2] all resolved by 1993?
[3] MR. LINTON: We'll go off the [4] record.
[5] A: That's the words I used, yes.
[6] Q: All right. Now, you are not saying for certain [7] that that treatment was unrelated, are you?
[8] A: I don't believe that the later treatment was [9] related.
[10] Q: Okay. But you will agree that doctors can have [11] differences of opinions on medical matters, [12] would you not, sir?
[13] A: I would.
[14] Q: And when you do these sorts of exams when [15] someone like State Farm hires you, is it your [16] practice, sir, to ask for and to receive all [17] relevant medical records that relate or [18] potentially relate to the accident in question?
[19] A: It is.
[20] Q: And when Vicki Beal came to see you in February [21] of this year, you knew, because she told you, [22] that she had had ongoing treatment at Mt. [23] Sinai's pain management center, isn't that [24] right?
[25] A: She did.

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[1] Q: And you know Dr. Kriegler who runs that center, [2] do you not, sir?
[3] A: I do.
[4] Q: She in fact is a specialist in pain management?
[5] A: She is.
[6] Q: And you do not have that subspecialty?
[7] A: I do not.
[8] Q: You referred patients to her on a regular basis [9] when she was at University Hospital running its [10] pain management center?
[11] A: Yeah. And even after she moved to Sinai.
[12] Q: In fact, you have told us that you have sent [13] dozens of patients over to her because you think [14] she's one of the leading doctors in this area of [15] pain management?
[16] A: I do.
[17] Q: And it's not uncommon when a patient comes to [18] you and has an ongoing, what you would call a [19] chronic problem that you can not cure, that you [20] find no neurological basis for, that you have [21] tried to treat with physical therapy and tried [22] to treat with medicine, to then refer that [23] patient to a specialist like Dr. Kriegler to do [24] pain management for that patient?
[25] A: Correct.

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[1] Q: You prepared a report in this case on February [2] 20th of 1995, didn't you?
[3] A: I did.
[4] Q: And it was in that report that you concluded [5] that the treatment provided by Dr. Mars and [6] Dr. Kriegler was not related to this accident?
[7] A: Yes.

[8] Q: And you have not yet even looked at [9] Dr. Kriegler's records from the pain management [10] center, had you, sir?

[11] A: Correct.

[12] Q: Did you ask Mr. Jeppe after you wrote the report [13] to provide you with those records?

[14] A: No.

[15] Q: Did he at any time in February or March or May [16] or June or July or August provide with you those [17] records?

[18] A: No.

[19] Q: In fact, sir, the first time you even looked at [20] those records would have been Friday, as in this [21] past Friday, September 20th, when Mr. Jeppe [22] showed them to you and you looked at them for [23] about five to ten minutes?

[24] A: Correct.

[25] Q: And did you retain a copy of those records in

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1) your file for your further study and review?

2) A: I did.

3) Q: I'm sorry?

4) A: Yes.

5) Q: Could you please show us where those records [6] are?

7) MR. LINTON: We'll go off the [8] record.

9) VIDEOTAPE OPERATOR: We're off the [10] record.

12) (Off the record.)

14) VIDEOTAPE OPERATOR: Stand by. [15] We're on the record.

16) Q: Doctor, could you tell us how many pages of [17] records you have from Dr. Kriegler and the [18] Mt. Sinai pain management center?

19) A: Six.

20) Q: You don't have in your file the remaining [21] pages from those records?

22) A: In my file, no.

23) Q: Now, doctor, in your report you said, did you [24] not, sir, that you suspected that other actors [25] supervened after 1993 which required Vicki to

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1) then get the treatment she needed with Dr. Mars [2] and Dr. Kriegler?

3) A: Yes.

4) Q: Now, can you tell us with a reasonable degree of [5] medical certainty what other factor intervened [6] to cause her ongoing problems?

7) A: I can't tell you which of a number of them it might be.

9) Q: Can you tell us which specific event required [10] her to get the ongoing treatment?

11) A: No.

12) Q: Do you have any evidence, sir, that she had any [13] other injuries since October 8th of 1992?

14) A: No.

15) Q: Do you have any evidence that she was involved [16] in any other accidents since October

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8th of [17] 1992?

[18] A: No.

[19] Q: Aside from the Bell's palsy which Dr. Kriegler [20] told us about and her colitis, do you have any [21] evidence that she had any other medical [22] conditions or disease processes at work?

[23] A: No.

[24] Q: Now, you told us - I'm sorry. I was distracted [25] for a minute. Excuse me, Dr. Mann.

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[1] When she saw Dr. Mars, Vicki complained of [2] neck pain, didn't she?

[3] A: Yes.

[4] Q: And she also related that to the accident, [5] didn't she?

[6] A: Yes.

[7] Q: She had complained of neck pain throughout the [8] earlier medical treatment that she had after the [9] accident, didn't she?

[10] A: Yes.

[11] Q: And she also complained when she saw Dr. Mars [12] about pain radiating in the shoulders [13] particularly on the left, did she not?

[14] A: I believe she did, yes.

[15] Q: And she also complained of frequent headaches?

[16] A: I can look it up and tell you for sure.

[17] Yes.

[18] Q: And she had made those complaints throughout the [19] earlier medical treatment records that you [20] reviewed since the accident, did she not?

[21] A: Yes.

[22] Q: Now, when Vicki got treatment and made her [23] complaints after the accident, did she not [24] register right away a complaint to the left [25] shoulder?

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[1] A: Back in October?

[2] Q: Yes. From the accident on October 8th of 1992, [3] wasn't one of her complaints pain to the left [4] shoulder?

[5] A: I believe it was.

[6] Q: That included pain around the shoulder blade [7] area, did it not?

[8] A: I would have to look at the specific note and [9] the specific doctor's records, but it wouldn't [10] surprise me at all if it's in there.

[11] Q: Let's talk about, if we can, about what is [12] called the trapezius muscle, can we, doctor?

[13] A: Sure.

[14] Q: Is that a large triangular or actually [15] trapezoidal muscle that makes up a good portion [16] of the neck and upper back?

[17] A: Well, it covers a huge amount of space, but it's [18] a thin muscle. And it does run from the neck to [19] the wing or the scapular and down the middle of [20] the chest, spine.

[21] Q: And if one complains of pain on the shoulder [22] blade, that would be in the trapezius

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area, (23) would it not?

(24) A: Yeah, along with four or five other muscles.

(25) Q: All right. And if one looks to below the

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(1) shoulder blade, we talk, on the back we can feel
(2) it, because it's that wing that sticks out, (3) isn't
it?

(4) A: Right.

(5) Q: If we trace it along the front, that would be
(6) around the nipple line?

(7) A: If we trace around the nipple line, yeah.

(8) Q: So if we go to the bottom of the shoulder
blade (9) around to the nipple line, that's what you
told (10) Mr. Jeppe earlier that was the T-5?

(11) A: Roughly, yes.

(12) Q: And you don't have again with you the (13)
occupational therapist notes from the pain (14)
management center, is that right?

(15) A: Not in my file, no.

(16) Q: Okay. So if there was a complaint about
pain in (17) the shoulder blade radiating up to the
neck, (18) that would be consistent with the
complaints (19) that she had earlier from this
accident, would (20) it not, sir?

(21) A: Oh, absolutely. She told me the very thing
when (22) she was here in February.

(23) Q: Let's finally, doctor, talk about that. You saw
(24) this patient a single time, didn't you?

(25) A: Yes.

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(1) Q: That would have been on February 19th of
1996, (2) this year?

(3) A: Correct.

(4) Q: That would have been about three-and-a-
half (5) years after the accident?

(6) A: Right.

(7) Q: At that point in time Vicki was still (8)
complaining to you about problems, was she not?

(9) A: She was.

(10) Q: She made a complaint about left shoulder
pain?

(11) A: She did.

(12) Q: Neck pain?

(13) A: She did.

(14) Q: Headache?

(15) A: Yes.

(16) Q: And nausea?

(17) A: Yes.

(18) Q: And you found Vicki to be cooperative and
(19) helpful, didn't you?

(20) A: I did.

(21) Q: You found her to be honest?

(22) A: I did.

(23) Q: She told you she was still taking (24)
antiinflammatory medication to deal with these
(25) ongoing problems, did she not?

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(1) A: I think so. Let me look it up.

(2) Yeah. Anoprox and Tolectin. Those are (3)
antiinflammatory medications.

(4) Q: Those are customarily prescribed to deal
with (5) problems and injury to the muscle and
soft (6) tissue?

(7) A: Well, they are primarily to deal with (8)
inflammation in joints whatever it comes from.

(9) Q: Okay. And it can also be used to treat (10)
inflammation in the surrounding soft tissue and
(11) muscle?

(12) A: I don't think there is such a thing as an (13)
antiinflammatory specifically for muscle. And (14)
then sometimes it's hard to separate them, but (15)
you are really basically talking about joints (16)
with those two agents.

(17) Q: We do know that she had been prescribed
Anaprox (18) originally by Dr. Mars when she was
treating for (19) her accident back in 1992 and
1993, isn't that (20) right?

(21) A: Yeah, it could be. Yeah. I would have to
look (22) to determine that, but it makes sense.

(23) Q: All right. She was still taking that when she
(24) came to see you this year, three-and-a-half (25)
years after the accident?

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(1) A: She was taking it when she saw me if she
was (2) taking it the whole time, so be it.

(3) Q: Did you ask her how frequently she took it?

(4) A: No.

(5) Q: Did you ask her in what dosages she took it?

(6) A: No.

(7) Q: Did you ask her when she needed it or
when she (8) might not need it?

(9) A: No.

(10) Q: You do know that that sort of medicine can
(11) actually cause problems to the stomach and
bowel (12) and intestine area?

(13) A: Yeah. It's most known for irritating the (14)
stomach. You take it sort of on a sustained (15)
basis ordinarily, not on an as needed basis. (16)
That's how it can irritate your stomach.

(17) Q: You know that Vicki has a condition called
(18) colitis?

(19) A: Yes, I do.

(20) Q: That is an inflammation of the stomach and
(21) intestine?

(22) A: Colon.

(23) Q: Colon. Specifically the colon?

(24) A: Yeah, that's why it's called colitis.

(25) Q: You know that the medicine, the anti-
inflammatory

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(1) medicine, Anaprox, can cause inflammation
and (2) problems with someone that has colitis?

(3) A: I believe it can, yes.

(4) Q: It can actually lead to or increase rectal (5)
bleeding resulting from colitis if it aggravates (6)
the colitis?

(7) A: It could, yes.

(8) Q: She in fact told you that she was having (9)
problems with this medicine that she was taking

[10] three-and-a-half years later for this accident?
[11] A: She did.
[12] Q: Doctor, thank you very much.
[13] MR. JEPPE: Doctor, I have a few [14] more questions for you.
[15] REDIRECT-EXAMINATION OF DONALD C. MANN, M.D.
[16] BY MR. JEPPE:
[17] Q: Now, I believe you were handed a total of what, [18] 14 reports by plaintiff's counsel, is that [19] correct?
[20] A: Yes.
[21] Q: Would you kindly tell the jury over what period [22] of time those reports are dated, from when to [23] when?
[24] A: They go back to 1989.

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[1] Q: Up through, up until 1996?
[2] A: Correct.
[3] Q: Now, are those the only 14 reports that you have [4] generated on behalf of independent medical [5] examinations that you have been asked to give by [6] attorneys or insurance companies or whatever?
[7] A: Oh, no, that's just a small sample.
[8] Q: About how many reports would you say you would [9] generate in the period of one month, sir?
[10] A: Well, I would say ten maybe. In a busy month, [11] maybe 20. That sounds like a lot, but then, [12] something of that range.
[13] Q: Now, doctor, when you are given an assignment, [14] especially by my office, by me, what are your [15] instructions with respect to the case itself?
[16] A: Well, simply to evaluate the patient as best [17] I'm able using the patient himself or herself and a [18] physical examination and all the records that [19] have been generated on behalf of that [20] individual. I'm simply asked to evaluate, not [21] to conclude or to write or to speak or to [22] whatever. I'm given a free hand and free reign [23] as I expect to be, otherwise, I wouldn't do such [24] evaluations.
[25] Some of my conclusions are deleterious to

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[1] the people sending such patients to me, most [2] do not. But some do result in my saying this is [3] an injury, the patient should be given whatever [4] legal forces and adjudication he or she is due.
[5] So I'm simply asked to evaluate. If it [6] comes to report, I render such an item. If [7] there is a deposition, to educate the jury. [8] There is no outcome, no result discussed at [9] all. I provide my valuation without being [10] coached or anticipated and we all live with it.
[11] Q: Doctor, the opinions that you do render in these [12] cases, is that your own professional opinion [13] within a reasonable degree of medical certainty?
[14] A: It is.
[15] Q: Do you couch your opinions in any way to favor [16] one side or the other?

Lawyer's Notes

[17] A: No. My goal is to decide as best I can what is [18] wrong and so say. I don't feel obligated to say [19] anything for anybody. I simply try to find out [20] from the patient as best I can what is wrong and [21] I bend over backwards to get every lasting [22] symptom that might be there because it isn't [23] easy on all patients and to find something if [24] it's there and so inform.
[25] Q: Now, because of the nature of the business, most

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[1] of these cases do involve automobile accidents, [2] do they not?
[3] A: Yes.
[4] Q: And what type of case generally are you asked to [5] review for automobile accident cases?
[6] A: It's ordinarily somebody who has ended up with a [7] neck or back type problem. But there are other, [8] nerve injuries, head injuries, that kind of [9] thing.
[10] Q: Whiplash type problems, is that correct?
[11] A: Yeah. That would be an ordinary kind of a case.
[12] Q: Now, doctor, Excuse me. I'm starting to go a [13] little bit horse here.
[14] Going back to what plaintiff's counsel [15] calls the heart of the case.
[16] You have stated here that within a [17] reasonable degree of medical certainty that you [18] believe that Vicki Beal basically had recovered [19] from her injuries as of the time she stopped [20] seeing Dr. Jugulion, is that correct?
[21] A: Yes.
[22] Q: And other than in December, I believe that would [23] have been in August of 1993, is that correct?
[24] A: Correct.
[25] Q: Would you tell the jury upon what you base that

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[1] opinion, since she did go back for further [2] treatment to Dr. Mars and Dr. Kriegler later on?
[3] A: Well, Dr. Jugulion was seeing her through this. [4] The kind of problems she had in those eight [5] months with all the studies he had done would [6] ordinarily produce a recovery. I mean, that's [7] what you would expect.
[8] Q: Why is that?
[9] A: Well, because there are no disc problems, no [10] destruction of neck tissue, no slippage, no [11] nerve injury. So the prediction even back then [12] would, after the studies, would be recovery and [13] that's just what happened. She got better and [14] by August was ready to be released. It all made [15] quite a logical sensible sort of scenario.
[16] Q: And then in December or about four, [17] four-and-a-half months later she comes back to [18] see Dr. Jugulion again, is that correct?
[19] A: Yes.
[20] Q: Now, the symptoms that she gave to you at the [21] time of your examination were left shoulder, [22] neck pain and nausea, is that correct?

Lawyer's Notes

(124) A: Yes.
(124) Q: And those basically were the same type of
(125) symptoms that she had been giving to

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(11) Dr. Jugulion and to Dr. Mars?
(12) A: Yes.
(13) Q: Why is it your opinion then that these
symptoms (14) are in fact not related to the auto
accident of (15) October 8th of 1992?
(16) A: For symptoms to last on and on and on,
months (17) and years, there must be a reason other
than (18) just the symptom. There has to be
something (19) physically wrong. People don't
have pain for (10) 12, 24, 48 months in most all
circumstances (11) unless there is some disease,
there is a (12) dislocation, there is an arthritic
process (13) setting in place, there is an infection.
There (14) is something that can explain this. So
none of (15) that being present, I'm not willing to
say that (16) her pain has a physical basis or
anything that (17) we can relate to an injury.
(18) Q: Going back to what you had testified to
earlier, (19) that was upon your examination. Was
there (20) anything medically that you were able to
find, (21) physically able to find, that would be able
to (22) substantiate any way the symptoms or the
(23) complaints of pain that she described to you
on (24) the date of your examination?
(25) A: No.

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(1) Q: The neurological examination was normal?
(2) A: Yes.
(3) Q: Now, what about the grip strength, that was
(4) normal also?
(5) A: It was.
(6) Q: What about the strength in general, was that
(7) normal?
(8) A: Yes, it was.
(9) Q: Did she appear to have any limitations or (10)
restrictions at all at the time of your (11) ex-
amination?
(12) A: She did not.
(13) Q: Now, the fact that the records of Dr.
Kriegler (14) were not made available to you until
last week, (15) you did review them, did you not?
(16) A: I did.
(17) Q: Was there anything in Dr. Kriegler's re-
cords (18) that you reviewed or the reports that
you (19) reviewed that would in any way affect the
(20) opinion that you rendered in your report back
on (21) February the 20th of 1996?
(22) A: No. If anything, it makes my opinions even
(23) stronger because the pain that Dr. Kriegler
was (24) treating her for is in another location and
does (25) not seem to be related at all to the
accident.

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(11) Q: Now, what do you mean by another loc-
ation?
(12) A: Well, it's down in the chest or the thoracic (3)
spine. It's low down. It's not the neck. It's (4)
the shoulder. No headaches as an issue. So (5) this

seems to be still another set of complaints (6) or
complaint that has surfaced since the injury (7)
and as such I see unrelated to it.

(8) Q: The complaints that she apparently gave to
(9) Dr. Kriegler for which Dr. Kriegler is treating
(10) her for, were they consistent with the (11)
complaints that she gave to you on the date of (12)
your examination?

(13) A: If, by some stretch, she didn't point to a low
(14) area, she did not identify that. It could have (15)
been. I got the impression that things were (16)
much higher, upper shoulder and neck.

(17) Q: Now, you were unable to place an in-
tervening (18) event, is that correct?

(19) A: Well, most things don't come from events.
they (20) just sort of happen, whether it's, you
know, (21) virus, biologic change, whatever. So we
don't (22) to have find a cause for joints and discs
and so (23) forth to go bad. In fact, often we don't.
That (24) I can't find such a thing doesn't mean it is
not (25) there. It probably means it's like most such

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(1) maladies, there is going to be an event.
(2) Q: All right. Thank you, doctor.
(3) MR. JEPPE: I have nothing (4) further.
(6) RE-CROSS-EXAMINATION OF DONALD C.
MANN, M.D.
(7) BY MR. LINTON:
(8) Q: Doctor, you told us that you do perhaps ten
to (9) 20 reports on average a month?
(10) A: I'd say evaluations. I don't know that they
(11) actually end up as reports.
(12) Q: So you erred when you told us earlier it
was (13) ten to 20?
(14) A: Ten to 20 evaluations. Some are reports.
Some (15) are for the Industrial Commission which
end up (16) on standard forms.
(17) Q: Would it be fair to say that there would be
in (18) the neighborhood of at least ten a month in
the (19) way of written reports?
(20) A: That's a rough estimate. I would not want to
be (21) held to it. I don't keep such records. I mean,
(22) I have an active adult neurology practice. This
(23) is a smaller part of it. You can take that as (24) an
estimate if you have to have a figure.
(25) Q: All right. Doctor, we've shown you 14
reports,

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(1) but I in fact had subpoenaed from you all other
(2) reports that you had prepared for such (3)
examinations and the court so ordered to be (4)
produced all such reports relating to any work (5)
done for State Farm or lawyers requesting (6)
examinations for State Farm, isn't that right?

(7) A: That's my understanding, yes.

(8) Q: And you have not searched your files or
produced (9) for us any additional reports so that
the jury (10) itself could look at them and decide
how many of (11) which you conclude, yes, the
patient did have (12) these complaints or which
you concluded (13) otherwise, isn't that true?

(14) A: Well, there are two parts to this.

(15) We don't file by State Farm. So I don't (16) know

when somebody comes in if they are State (17) Farm or -

(18) Q: Doctor, in all fairness -

(19) A: - or whatever.

(20) MR. JEPPE: Let him answer the (21) question.

(22) Q: The question simply was, maybe I made it (23) unclear, doctor, but did you produce any such (24) reports?

(25) A: Well, I'm trying to answer the question. There

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(1) is no way to tap this information. You might as (2) well ask people how many upside down spare (3) tires (3) are there out in the parking lot. We don't (4) keep (4) those kinds of records. I don't ask people (5) what (5) their insurance company is. And I don't (6) even (6) know what insurance company pays, (7) what the (7) source is. So there is no way to find in (8) my (8) files State Farm.

(9) Now, to comply with your request, I did (10) look (11) for cases that had been done for Meyers, (12) Bentemann, but even then, I don't know that (13) State Farm retained them. And, furthermore, (14) those cases involve patient confidentiality and (15) I don't release that kind of information without (16) the patient's consent. So your request is (17) huge. It has ethical implications to those (18) patients who may not want you seeing their (19) confidential medical information or a court. (20) And it's unfindable.

(21) Q: Doctor, first of all, so I'm clear when (22) someone (23) who has filed a personal injury claim (24) like Vicki (25) Beal is sent to you, you are not her (26) doctor, are (27) you?

(28) A: I am not.

(29) Q: You don't have a patient/doctor relation- (30) ship

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(1) with that patient, do you?

(2) A: Correct.

(3) Q: Therefore, there is no confidential privilege (4) between you and that person sent to you for an (5) insurance exam, is there?

(6) A: There may be in the eyes of the patient, (7) particularly when they are honest and frank and (8) fair as was Vicki Beal.

(9) Q: Doctor, legally there is no privilege between (10) you and someone who is not your (11) patient, isn't (12) that correct?

(13) MR. JEPPE: Objection.

(14) A: I regard information given to me in this (15) room in (16) confidence to require the protection (17) afforded (18) such information exchanged. So if (19) there is no (20) problem, the patient is glad to (21) release it, you (22) want those kinds of releases and (23) that kind of (24) information, I will be glad to (25) provide it. But (26) I'm not going to give out (27) information about (28) patients that was provided (29) to me in confidence (30) to a stranger.

(31) Q: Doctor, just so I'm clear, have you pro- (32) duced a (33) single other report that the jury can (34) look to to (35) see what your findings were aside (36) from the ones (37) that we reviewed earlier today?

Lawyer's Notes

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(1) A: I have not.

(2) Q: And - thank you.

(3) MR. JEPPE: Nothing further.

(4) VIDEOTAPE OPERATOR: Doctor, you (5) have (6) a right to review the videotape or you (7) can (8) waive that right.

(9) THE WITNESS: I waive.

(10) VIDEOTAPE OPERATOR: Do attorneys (11) for (12) both sides waive reviewing the filing (13) of the (14) video tape?

(15) MR. JEPPE: Sure.

(16) MR. LINTON: Sure.

(17) VIDEOTAPE OPERATOR: Okay. We're (18) off (19) the record.

(20) (Signature waived.)

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CERTIFICATE

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

I, Barbara J. Watowicz, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named DONALD C. MANN, M.D. Was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____ A.D. 19 ____.

Barbara J. Watowicz
Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires March 20, 1997

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September 10, 2004

Michael Regnier, Esq.
Eastman and Smith
P.O. Box 10032
Toledo, Ohio 43699-0032

Re: Kimberly Richley
File No: N044/168257

Dear Mr. Regnier:

I conducted a neurologic examination September 9, 2004 and reviewed the following records.

- 1) Darren E. Reichenbach, D.C., December 3, 2002 and office records.
- 2) Precision Orthopedics including Amardeep Chauhan, D.O. and Robert Nishime, M.D.
- 3) MetroHealth Emergency, October 22, 2002.
- 4) MetroHealth admission, October 31 to November 2, 2002.
- 5) Matt Likavec, M.D., January 10/ 2004 and office visits.
- 6) MetroHealth Emergency, December 2, 2002.
- 7) Charles DuVall, D.C., April 16, 2004.
- 8) Parma Community Hospital emergency visits 1999 through 2004.
- 9) Deposition of Kimberly Richley, March 16, 2004.
- 10) Deposition of Darren Reichenbach, March 16, 2004.

Mrs. Richley, 41, is troubled with burning, tightness, and pain in the neck, radiating down the right arm to the fingers, and headaches originating in the neck. Muscle tension is present in the left biceps. Driving more than an hour, swimming, motorcycling more than fifteen minutes, or gardening all aggravate symptoms. She is also less able to walk and care for household dogs.

These complaints date to a manipulation October 21, 2002, which brought on a popping sensation and then intense neck and headache taking her to MetroHealth emergency the next day. Thereupon a cervical facet fracture was diagnosed along with strong recommendation for corrective surgery. The patient went to see Dr. Chauhan on the 29th, then with surgery October 31st: posterior cervical excision with laminotomy, removal of a facet, and interspinous wiring of C6 to 7 with iliac bone graft for a C6-7 fracture subluxation.

Surgery relieved unrelenting right arm pain and neck pain; the patient has had still more improvement over time, but still experiences limitation.

Treatment fell back to Dr. Chauhan who had been managing since 2001 for back pain, which in turn started in 1999, aggravated by a fall at work on August, 2002.

She uses a Durgesic patch, Percocet three per day, and Soma from Dr. Chauhan.

Mrs. Richley had undergone chiropractic treatment in the late 1990's for back pain and was seeing Dr. Reichenbach from the fall at work August 21, 2002.

She has worked in food service off and on in recent years, but has been unable to return to the workforce.

Dr. Sawhny also investigated patient's back and leg pain; the diagnosis of multiple sclerosis appears and was investigated.

The patient treats for a seizure disorder many years consisting of intestinal systems and lapse of consciousness she labels "petit mal", the last in July 2004. Seizures occurred every one to two months in 2002 and were quiet for six to eight months at a time in prior years. This diagnosis and its manifestations apparently does not interfere with driving or motorcycling.

She sustained a jaw fracture in a fall in the 1990's requiring conservative treatment and has undergone carpal tunnel surgery. She spent three weeks in the Cleveland Clinic this year for sepsis and renal failure.

Examination:

There is a longitudinal surgical incision extending throughout the cervical spine into the upper thoracic. Paraspinous muscles show mild tightness.

Neck range of motion is limited: lateral rotation moderately extension and flexion mildly.

Postural movements are normal bending, twisting, and turning.

Grip strength is normal. Biceps and shoulder strength is normal bilaterally. Heel and toe walking are normal.

Pin, touch, and vibratory sense are preserved in the fingers and lower extremities.

Kimberly Richley

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Reflexes: biceps +2, right triceps +1, left +2. Brachioradialis +2, bilaterally. Knee jerks +2-3, ankle jerks +2-3. Plantar response is flexor.

Impression:

Mrs. Richley sustained a cervical facet fracture and secondary dislocation of the 6th on 7th vertebra requiring a fusion for excessive motion. This appears to me to have been caused by the manipulation of October 21, 2002.

Surgery corrected the situation leaving the patient with reduced neck motion. Need of narcotics, and chronic pain management continues, having shifted from the lumbar region or added to it. Some part of her pain syndrome today is due the fracture. However, a great deal of the radicular complaint and neck pain occasioned by the dislocation have been mechanically repaired and should have returned the patient to a state approximating that prior to facet fracture.

Variable types of work are compatible with this clinical picture.

Upon receipt of additional records I might need to modify the opinions rendered here.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Donald C. Mann', with a long, sweeping horizontal line extending to the right.

Donald C. Mann, M.D.

DCM/pf