

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

Doc. 420

IN THE COURT OF COMMON PLEAS

VIRGINIA LEWIS,)

Plaintiff,)

vs.)

Case No. 72845

ST. LUKE'S HOSPITAL,)

Defendant.)

- - -

Deposition of DR. CURTIS W. SMITH, taken
by the Plaintiff as if upon cross-examination before
James M. Mizanin, a Registered Professional Reporter and
Notary Public within and for the State of Ohio, at the
offices of Kampinski, White & Cohn, 1530 Standard Building,
Cleveland, Ohio, on Wednesday, the 5th day of September,
1984, commencing at 1:30 p.m., pursuant to notice and
agreement of counsel.

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1 APPEARANCES:

2 KAMPINSKI, WHITE & COHN, by
3 CHARLES KAMPINSKI, ESQ.,
4 On behalf of the Plaintiff.

5 ARTER & HADDEN, by
6 WAYNE J. BELOCK, ESQ.,
7 On behalf of Defendant St. Luke's Hospital.

8 NURENBERG, PLEVIN, JACOBSON, HELLER & MCCARTHY, by
9 JOAN A. TOMUSKO, ESQ.,
10 On behalf of Dr. E. L. Friedley.

11 REMINGER & REMINGER CO., LPA, by
12 ROBERT D. WARNER, ESQ.,
13 On behalf of Dr. Curtis W. Smith.

14 - - -

15 STIPULATIONS

16 It is stipulated by and between counsel
17 for the respective parties that this deposition may
18 be taken in stenotypy by James M. Mizanin; that his
19 stenotype notes may be subsequently transcribed in
20 the absence of the witness; and that all
21 requirements of the Ohio Rules of Civil Procedure
22 with regard to notice of time and place of taking
23 this deposition are waived.
24
25

26 - - -

1 DR. CURTIS W. SMITH,
2 called by the Plaintiff for the purpose of
3 cross-examination, as provided by the Ohio Rules of
4 Civil Procedure, being by me first duly sworn, as
5 hereinafter certified, deposes and says as follows:

6 CROSS-EXAMINATION OF DR. CURTIS W. SMITH

7 BY MR. KAMPINSKI:

8 Q. Would you state your full name, please?

9 A. Curtis Wes Smith.

10 Q. And where do you reside, Doctor?

11 A. 29550 South Woodland Road, Pepper Pike,
12 Ohio.

13 Q. I'm going to ask you a number of
14 questions this afternoon. If you don't understand
15 any of them, please tell me and I'll be happy to
16 rephrase my questions. When you respond to my
17 questions, you have to do so verbally.

18 The court reporter is going to be taking
19 down everything we say. He can't take down a nod
20 of your head, okay?

21 A. Sure.

22 Q. How long have you resided at this
23 residence?

24 A. Approximately one year.

25 Q. And prior to that time?

1 A. 1010 Quarry, Q-u-a-r-r-y, Drive,
2 Cleveland Heights.

3 Q. And how long did you reside there?

4 A. Five years, six years.

5 Q. Prior to that?

6 A. 2653 Euclid Heights Boulevard, Cleveland
7 Heights, for a year.

8 Q. And before that time?

9 A. I think it was 36 Mt. Vernon in Detroit,
10 Michigan, for two years.

11 Q. And before that?

12 A. In college, but my permanent address was
13 1342 Fairmount Avenue, Jackson, Mississippi.

14 Q. You are saying that was your permanent
15 address, aside from college?

16 A. Aside from college, right. In college,
17 you know, you sort of shift from dorm to dorm and
18 that sort of thing.

19 Q. Okay. I don't want to be confused.
20 Fairmount Avenue is where, Jackson, Mississippi?

21 A. Jackson, Mississippi.

22 Q. Is that where you were born and raised?

23 A. I was raised in Jackson, Mississippi. I
24 was born in a place called Bolton, Mississippi,
25 which is about 15 miles south of -- outside of

1 Jackson.

2 Q. How old are you, sir?

3 A. 36.

4 Q. And your date of birth?

5 A. April 7, 1948.

6 Q. If you would, run me through your
7 educational background starting with high school.

8 A. High school, Jim Hill High School,
9 Jackson, Mississippi, from eighth grade through
10 eleventh grade, and that would have been 1963, May
11 of '63 that I finished. And I took a test that I
12 did not go through my senior year. I went to
13 college in '63 at a place called Tougaloo College.

14 Q. Let's back up for just a second. You
15 left high school after eleventh grade?

16 A. Right, as there is a test that you can
17 take.

18 Q. GED?

19 A. No. It was called an accelerated test.

20 Q. In other words --

21 A. An achievement test.

22 Q. You tell me, did you leave high school
23 because you passed this test or for some other
24 reason?

25 A. Because I passed the test.

1 Q. Thereby allowing you to leave school
2 early without taking the twelfth grade?

3 A. Right.

4 Q. This is called an accelerated test?

5 A. It was called -- I've forgotten the exact
6 name of the test, but it was called the accelerated
7 test.

8 Q. Okay. And this was given to you by the
9 school board?

10 A. It was given by -- I'm not sure whom it
11 was given by. It was certainly given by the
12 college, Tougaloo College, but I'm not sure they
13 administered -- they were in charge of giving it,
14 but by passing that test, Tougaloo was one of the
15 colleges that would accept you on an early
16 graduation basis.

17 Q. And is that what you did then?

18 A. Yes.

19 Q. You went to Tougaloo College starting
20 when?

21 A. In September of 1963.

22 Q. Where is Tougaloo College?

23 A. It's in Mississippi, as well. It's a
24 suburb of Jackson, Mississippi.

25 Q. And did you receive a degree from

1 Tougaloo College?

2 A. Yes, I did.

3 Q. And when was that?

4 A. That was May of 1967, Bachelor of Science
5 and Mathematics.

6 Q. And what educational training did you
7 receive after that?

8 A. From 1968, August of '68, I guess, until
9 August of 1980 I was at Wayne State University
10 where I received a Master's in mathematics.

11 Q. 12 years. '68 to '80?

12 A. '68 to '70, sorry.

13 Q. Okay.

14 A. And then August of '70 I came to Case
15 Western Reserve University to the School of
16 Management and to their Operations Research Program,
17 received a Master's in operations research in
18 January of 1972.

19 Q. What is a Master's in operations research?
20 What is operations research?

21 A. Operations research is applied math,
22 essentially. It's a management science curriculum.

23 Q. And you received a Master's in that when,
24 I'm sorry?

25 A. January of 1972. And I entered medical

1 school -- there were some courses that were taken
2 in the year between the time I finished the
3 operations research degree and before I went to
4 medical school, which was -- do you want those?
5 That really didn't lead to any degree.

6 Q. All right. Where did you take them?

7 A. I took them at Cleveland State.

8 Q. What kind of courses are we talking about?

9 A. Chemistry.

10 Q. Are these courses just preliminary
11 courses to entering medical school or to --

12 A. Yes. My college was a liberal arts
13 school and I had all the requirements except
14 organic chemistry, so I had to take that.

15 Q. So you took courses at Cleveland State to
16 allow you to --

17 A. To go to medical school.

18 Q. All right. Pre-med courses?

19 A. I guess you could call them that, yes.

20 Q. When then did you go to medical school?

21 A. September of 1973.

22 Q. From January of '72 to September of '73
23 what did you do?

24 A. January to the rest of that -- the rest
25 of the winter and spring I was in the management --

1 in the MBA program at Case and at that time I
2 stopped the MBA program, went to Case and worked
3 part time as a mathematics instructor at Tri-C
4 until I finished the organic chemistry course and
5 at that time I went to Case, to medical school.

6 So I worked and took the pre-med courses
7 in that year.

8 Q. And you started medical school September
9 of 1973 at Case Western?

10 A. That's correct.

11 Q. And when did you complete your medical
12 school?

13 A. June -- I think it was June 1 of '77.

14 Q. Any additional schooling after that?

15 A. No additional schooling. Residency
16 training.

17 Q. Residency, internship?

18 A. Internship in general surgery at
19 University Hospitals of Cleveland from July 1, 1977
20 to June 30, 1978, orthopedic surgery, residency
21 from July 1, 1978 to June 30, 1982, at University
22 Hospitals.

23 Q. After June 30, 1982 --

24 A. July 1 I began work in private practice.

25 Q. Of 1982?

1 A. 1982.

2 Q. And where did that work begin?

3 A. At -- it's called Associates in
4 Orthopaedics at 11201 Shaker Boulevard, Cleveland,
5 Ohio.

6 Q. I'm sorry. What was the address?

7 A. 11201 Shaker Boulevard, Suite 328,
8 Cleveland, Ohio.

9 Q. Has that been the address --

10 A. Yes.

11 Q. -- ever since you started in private
12 practice?

13 A. That's correct.

14 Q. And the name of the organization was what?
15 I'm sorry.

16 A. Associates in Orthopaedics.

17 Q. And or in?

18 A. In.

19 Q. What is the nature of that organization?
20 Is it a corporation?

21 A. It's incorporated, yes. The practice of
22 general orthopedic surgery.

23 Q. But it is a corporation?

24 A. Yes, it is.

25 Q. And who are the shareholders of the

1, corporation?

2 A. Dr. Timothy Stephens and I guess he is --
3 probably Dr. Consuelo Sousa.

4 Q. Do you know how to spell that?

5 A. S-o-u-s-a.

6 Q. Has that been true since you commenced
7 with them in July of 1982?

8 A. That's correct.

9 Q. All right. And I take it you are not
10 then a shareholder of that corporation?

11 A. No, I'm not.

12 Q. You are an employee of the corporation?

13 A. Yes, I am.

14 Q. Do you have an employee contract with the
15 corporation?

16 A. Yes, I do.

17 Q. And that corporation undertakes to
18 provide orthopedic services?

19 A. Yes.

20 Q. Do you know if the corporation has any
21 agreement or contractual relationship with St.
22 Luke's Hospital?

23 A. To my knowledge it does not.

24 Q. Are you employed by any other entities or
25 organizations?

1 A. No.

2 Q. Have you been since July of 1982?

3 A. No.

4 Q. Are you Board certified, Doctor?

5 A. No, I'm not.

6 Q. Have you taken any of the tests?

7 A. No, I've not.

8 Q. Do you plan to?

9 A. Yes, I do.

10 Q. Is the reason you haven't because you
11 haven't fulfilled the requirements to do so?

12 A. No. At the time of my graduation, a new
13 ruling by the governing body of orthopedics
14 extended the period of time that you could take the
15 certifying exam. It used to be within a year. Now
16 it's two years. And this past year I didn't take
17 it for some personal reasons, or my marriage, and
18 that sort of thing. So I'm taking it this coming
19 year. But I am qualified to take it, yes.

20 Q. Within two years of what, graduation?

21 A. Two years of your completion of your
22 residency training.

23 Q. Well, that would have been this year,
24 wouldn't it, of '84?

25 A. As I just said, I did not take it this

1 past year for some personal reasons. I was
2 eligible to take it.

3 Q. I understand what you are saying. My
4 question is will you be eligible to take it --

5 A. There is a minimum, not a maximum time.

6 Q. All right. What organizations, medical
7 organizations, do you belong to, Doctor?

8 A. The Cleveland Medical Association, the
9 Cleveland Academy of Medicine, the Ohio State
10 Medical Association, the Cleveland Orthopedic Club,
11 the American Medical Association. I think that's
12 it.

13 Q. Are you licensed to practice in Ohio?

14 A. Yes, I am.

15 Q. And when were you licensed?

16 A. In 1982. The exact date I really can't
17 give you.

18 Q. All right. Any other states?

19 A. No.

20 Q. Do you have privileges at any hospitals?

21 A. Sure. St. Luke's Hospital.

22 Q. What others?

23 A. St. Vincent Charity Hospital, Huron Road
24 Hospital, Suburban Hospital, Suburban Community
25 Hospital. Those are the four.

1 Q. Have you authored any publications or
2 texts?

3 A. You are speaking since graduation or any
4 time?

5 Q. Any time.

6 A. Yes. Do you want mathematics or just
7 orthopedics?

8 Q. Let's deal with medicine.

9 A. Okay. It's a paper published in the
10 Journal of Pediatric Orthopedics in, it must have
11 been January of this year -- I'm sorry. In March
12 of 1984, entitled Tibia Vera, T-i-b-i-a V-e-r-a.

13 Q. Any others?

14 A. That's the only one.

15 Q. Do you have any specialty, subspecialty
16 within the field of orthopedics?

17 A. Not that I have been trained to perform.
18 I don't have a fellowship in any of the specialties.

19 Q. Do you perceive yourself as being a
20 specialist in any particular subspecialty of
21 orthopedics?

22 A. Sports medicine.

23 Q. Orthopedics is, to your understanding,
24 the field of medicine dealing with what?

25 A. With the diagnosis and treatment of

1 abnormalities of the musculoskeletal system
2 including bones, joints, the spine, muscles.

3 Q. And I take it there are numerous
4 diagnostic aids which assist you in both the
5 diagnosis and treatment of these portions of the
6 body?

7 A. Sure.

8 Q. One of them being x-rays?

9 A. Correct.

10 Q. And did you receive any specialized
11 training in -- let's deal with them one at a time --
12 either the taking of x-rays or the reading of
13 x-rays?

14 A. The taking of x-rays, no.

15 Q. Okay.

16 A. The reading of x-rays, the whole training
17 in orthopedics is a continuum of correctly learning
18 how to read and assess the various impressions as
19 seen on an x-ray.

20 Q. I take it as an orthopedic specialist,
21 x-rays are an invaluable tool with respect to
22 diagnosis of injuries?

23 A. That's correct.

24 Q. Is there any standard, Doctor, with
25 respect to someone complaining of pain in an area

1 that has bones in it, which I take it is a lot of
2 areas of the body, in terms of taking x-rays of
3 that portion of the body to determine whether or
4 not there are any fractures?

5 A. I don't understand your question.

6 Q. Are there any standards with respect to
7 taking x-rays of someone complaining of pain?

8 A. If you are asking me who determines what
9 x-rays are taken, then the answer to that is the
10 physician who actually sees the complainant at that
11 time. If you are asking me which views are taken
12 and how they are interpreted, that would probably
13 be at the discretion of the person who requested
14 the x-rays, because the x-rays not only depend on
15 the area, but the physical examination at the time.

16 Q. My question even went one step beyond
17 that, and that is whether or not they should be
18 taken?

19 A. That strictly depends on the examining
20 physician and the symptom complex that's presented.

21 Q. So all three of those areas is determined
22 by the physician?

23 A. By the initial treating physician,
24 correct.

25 Q. He determines whether to take them,

1 number one?

2 A. Absolutely.

3 Q. Number two, when to take them; and number
4 three, what views should be taken?

5 A. Right.

6 Q. We are just speaking generally now. Is
7 the determination by the treating physician as to
8 whether or not to take x-rays affected by whether
9 x-rays have already been taken?

10 A. Surely.

11 Q. In other words, you don't have a standard
12 where you would order your own x-rays on a person
13 coming to see you regardless of whether or not
14 x-rays were taken?

15 A. No, I would not.

16 Q. How about a situation where x-rays were
17 taken? Would you, if you didn't order your own,
18 look at the ones that had been taken?

19 A. Not if they had been read by a competent
20 radiologist.

21 Q. So that you rely on radiologists, is that
22 correct?

23 A. If I don't have the films in front of me,
24 yes.

25 Q. You won't go look at them?

1 A. If I don't see anything on the
2 examination that would make me suspicious that
3 something was missed, no.

4 Q. When is the first time you saw Virginia
5 Lewis, Doctor?

6 A. On -- I'll have to look at my records. I
7 saw her on April 8, 1983.

8 Q. Had you ever met or known or seen
9 Virginia Lewis prior to that time?

10 A. I saw her in the halls at St. Luke's
11 Hospital.

12 Q. So you knew her as someone who what,
13 worked there?

14 A. Who worked there. Who apparently worked
15 there. She wore white and she was there a number
16 of days.

17 Q. You didn't know her on a social basis?

18 A. No, I did not.

19 Q. On a professional basis having worked
20 with her?

21 A. I did not -- I rather had not worked with
22 her specifically. I knew she was -- or thought she
23 was an employee at the hospital.

24 Q. How is it that she first came to you,
25 Doctor?

1 A. I think she knew that I was an orthopedic
2 surgeon and she had been seen in the emergency room
3 on the 31st, and I don't have the emergency room
4 sheet in front of me. I don't know whether she was
5 referred directly to me or whether she elected to
6 come to me, but my initial knowledge of her was
7 when she appeared at the office. I really couldn't
8 say at this time. I could look in my records, if
9 you like.

10 Q. Yes. Why don't you.

11 A. She was apparently referred by the
12 hospital.

13 Q. All right. Do you know if she was
14 referred to you or to Dr. Stephens?

15 A. I have no idea.

16 Q. Is there any difference -- In other words,
17 does your office operate where any one of the
18 physicians, whether they be shareholders or
19 employees, can see an individual depending upon the
20 availability of the doctor?

21 A. Absolutely.

22 Q. So you don't know if she was referred to
23 you, Dr. Stephens, or to your group?

24 A. I have no idea.

25 Q. You are the doctor who did see her on

1 April 8th?

2 A. That's correct.

3 Q. Why don't you tell me what her complaints
4 were, what you did, what your findings were, what
5 your diagnosis was?

6 A. She complained of right wrist pain.

7 Q. And this was one week after she had been
8 seen in the hospital?

9 A. She was seen on the 31st. I saw her on
10 the 8th. That's about one week.

11 Q. All right.

12 A. Her complaint in her words was that she
13 had pain in her right wrist and in answer to the
14 question of how were you hurt, she said, "Helping a
15 patient out of bed." She gave the date of her
16 injury as 3-31-83, and indicated it was at work.

17 Q. Okay.

18 A. And relaying her story to me, she said
19 she injured her wrist while lifting a patient, that
20 she had pain, was seen in the emergency room, and
21 that she continued to have pain at this time.

22 Q. And what did you do at that point after
23 you obtained a history of Miss Lewis?

24 A. As all patients that have been seen in
25 the emergency room, the secretary calls whichever

1 hospital, the x-ray department, and sees whether
2 that patient in fact did have x-rays on that date.
3 St. Luke's Hospital was called. She had x-rays in
4 the emergency room on the 31st and the x-ray report,
5 which was read by a radiologist, was given as being
6 negative for fracture.

7 Q. And that was satisfactory to you?

8 A. Yes, it was.

9 Q. Do orthopods read their own x-rays in
10 addition to having radiologists read them for them?

11 A. It depends on the setting. If the x-rays
12 are taken, brought by the patient, or taken in the
13 x-ray suite that's in the medical building and they
14 bring them up, then yes.

15 Q. Then yes, what?

16 A. Then yes, in answer to your question, the
17 orthopedic will read his own x-rays.

18 Q. You, as a matter of course, don't read
19 them yourself?

20 A. If I have some question about the x-rays
21 that were taken at another facility or that were
22 not brought by the patient, then I will read them
23 myself. Otherwise, if a competent radiologist has
24 read them, then I generally do not read them.

25 Q. How do you know if a radiologist is

1 competent or not?

2 MS. TOMUSKO: Objection.

3 Q. (By Mr. Kampinski) Go ahead.

4 A. Would you like me to finish the report?

5 Q. I would like you to answer the question,
6 how do you know if a radiologist is competent or
7 not?

8 MR. WARNER: You are asking in
9 this particular instance?

10 Q. (By Mr. Kampinski) No. Your response to
11 my earlier question, Doctor, was if a competent
12 radiologist reads them.

13 A. Sure. Competency, as it is in most
14 fields, is based on the acceptance by a group that
15 has deemed a person to have passed a minimal
16 standard to be accepted onto a staff. This is a
17 person or in general the people who are qualified
18 to read x-rays and enter a report onto the
19 permanent record have been so qualified. So
20 anytime we receive a report from a hospital with
21 which we are associated, with which we see patients,
22 we are aware of the standards that they usually
23 have for their radiologists, so I assume that this
24 person met those standards, as well. I did not
25 peruse his CV.

1 Q. Did you even know who the person was?

2 A. It didn't make any difference. I knew
3 who the people are who are qualified to read them
4 and of that group, those people are qualified.

5 Q. So you had your secretary call the
6 emergency room --

7 A. No, sir. She calls the x-ray department.

8 Q. Okay. And she received a verbal report
9 over the phone as to what the x-ray report
10 reflected?

11 A. Absolutely.

12 Q. And you accepted that at face value, I
13 take it?

14 A. Yes.

15 Q. Did you conduct an examination of Miss
16 Lewis at that time?

17 A. Yes, I did.

18 Q. And what did that consist of?

19 A. It consisted of examining her right
20 forearm and hand, but in particular her right wrist
21 Would you like to know the results of the
22 examination?

23 Q. Yes, please.

24 A. The results of her examination showed
25 that she had some tenderness and swelling over the

1 dorsum, over the back part of her wrist, and
2 especially toward the ulnar side, the ulnum order,
3 and particularly over one of the tendons called the
4 extensor carpi ulnaris tendon.

5 Q. Any other findings?

6 A. No. She really did not have any findings
7 other than that, other than swelling in the tendons.

8 Q. What was your diagnosis and what was your
9 treatment?

10 A. My diagnosis was strain of the right,
11 wrist, in particular the extensor carpi ulnaris.
12 My treatment was that she was given a prescription
13 for pain medication, and she was given a follow-up
14 appointment and she was given additional time to be
15 off work since her work involved lifting, with an
16 expected return to work date of the 18th of April.

17 Q. Did you provide any type of appliance?

18 A. She came with an appliance already.

19 Q. What was that appliance?

20 A. I don't have it listed here. As I
21 remember, it was a splint. I don't have it listed.
22 She did come with an appliance.

23 Q. Well, do you know if it was an Ace
24 bandage or whether it was a wrist restraint?

25 A. As I said, I don't remember what she had

1 on.

2 Q. Did you prescribe anything different than
3 what she had on?

4 A. I did not prescribe anything different,
5 no.

6 Q. Told her to just continue to where
7 whatever it was that she had on at the time?

8 A. Whatever she had on at that time. And it
9 was my opinion that it was mostly an inflammatory
10 process that would take care of itself.

11 Q. Did you indicate to her that there was
12 any involvement with any cartilages, torn
13 cartilages?

14 A. I indicated -- I did not list that in my
15 note. Now, at that side of the wrist, my general
16 statement, however, does involve cartilage between
17 the distal end of the bones, the two ends of the
18 bone. My exact statement to her I do not know.

19 Q. So you may or may not have said that, but
20 that doesn't change what you put in your report?

21 A. That doesn't change anything.

22 Q. Did you at all suspect that there may
23 have been a fracture?

24 A. No, I did not.

25 Q. Would your treatment have been any

1 different at that time had there been a fracture?

2 MR. WARNER: Objection. Answer it.

3 A. If there had been documentation of a
4 fracture, then I would have treated it as a
5 fracture, yes.

6 Q. (By Mr. Kampinski) What would have been
7 different about your treatment?

8 A. Well, initially I would have expected my
9 examination to have been different. My treatment
10 would have included a thumb spica cast or a form of
11 immobilization if there had been a fracture.

12 Q. You said your examination would have been
13 different. How would that have been different?

14 A. There are very, very few instances where
15 a fracture does not elicit pain in the area of the
16 fracture.

17 Q. I'm not sure I understand that.

18 A. Palpation of a fractured bone will
19 generally yield tenderness at the site of the
20 palpation.

21 Q. Okay.

22 A. And not in a place different from that,
23 usually.

24 Q. Are you saying that -- Well, what are you
25 saying in regards to that?

1 A. I'm saying my standard examination of a
2 wrist includes examination of all areas of the
3 wrist.

4 Q. Okay.

5 A. My notes indicate that she had tenderness
6 on the dorsal, ulnar side of her wrist which, by my
7 notes and the way I write them, indicates she did
8 not have any significant tenderness anywhere else.

9 Q. I'm still -- I'm not trying to be
10 difficult. I'm trying to understand what you are
11 saying in terms of how your examination would have
12 been different if there would have been some
13 documentation of a fracture.

14 A. No. Maybe I --

15 MR. WARNER: He didn't say his
16 findings would have been different.

17 MR. KAMPINSKI: Well, that I
18 understood.

19 MR. WARNER: All right.

20 A. Well, maybe I've not answered the
21 question correctly as you asked it.

22 Q. (By Mr. Kampinski) Okay. I don't want
23 you to be confused and I don't want to be confused.

24 A. My understanding of your question was how
25 would this episode have been different if there had

1 been a fracture.

2 Q. That's correct.

3 A. And I was trying to tell you how it would
4 have been different.

5 Q. Okay. Your examination then I take it
6 would have been similar or the same as your
7 examination was in any event?

8 A. No. My giving the examination, my
9 findings would have been different.

10 Q. The finding obviously would have been a
11 fracture?

12 A. No. The findings -- We don't mean an
13 x-ray interpretation. By findings I mean the
14 things that show up on physical examination;
15 tenderness, swelling, that sort of thing.

16 Q. Well, she had tenderness and swelling,
17 didn't she?

18 A. She had it at a site different.

19 Q. Than what?

20 A. Than where later on it appeared that she
21 may have had a fracture.

22 Q. I see. Okay. The difference then, if
23 there had been a fracture, would have been in the
24 treatment that you would have provided. I think
25 you said a thumb spica cast, or something else?

1 A. If it had been a fracture of the
2 navicular -- I don't know if we are jumping ahead
3 or not, or if I may have led you into that -- but
4 for a fracture along the thumb axis, it's called,
5 that immobilization usually requires a thumb spica
6 cast. For a fracture of the wrist, a cast is
7 usually needed but not necessarily a thumb spica
8 cast.

9 Q. What's the difference between a thumb
10 spica cast and the other cast?

11 A. An extension that immobilizes the thumb.

12 Q. That's a thumb spica cast?

13 A. That's a thumb spica cast.

14 Q. The other cast you are talking about I
15 take it would have had more involvement over the
16 wrist?

17 A. No. The only difference between a short
18 arm cast and a thumb spica short arm cast is that
19 the main body of the cast has an extension out over
20 the thumb.

21 Q. Okay.

22 A. So if I cut the thumb part off, it would
23 look just like a short arm cast.

24 Q. All right. And the purpose for treating
25 a fracture with a cast as opposed to let's say

1 either an Ace bandage or some type of wrist
2 restraint, what's the reason for that distinction,
3 Doctor?

4 A. For a wrist fracture or for a navicular
5 fracture?

6 Q. Well, let's take them one at a time.

7 A. For a wrist fracture -- Let me back up
8 one step.

9 Q. Okay.

10 A. For a fracture that's not displaced,
11 that's in an area of safety, if you want to call it
12 that, where it's locked in with several other bones
13 around it, for instance, then the likelihood of a
14 non-displaced fracture in that area displacing is
15 very small.

16 Q. Okay.

17 A. So the treatment can correspondingly be
18 tailored to the particular problem. So, for
19 instance, a fracture of one of the metacarpals of
20 the wrist, as they extend to the wrist, rather,
21 could be treated safely with a short arm cast,
22 whereas if you broke both of the bones in the
23 forearm, you would need a long arm cast in many
24 cases. The thumb spica part of this whole setup is
25 usually only applicable if there is a fracture of

1 the thumb itself or one of the bones that directly
2 or indirectly articulates with the thumb or
3 involves its motion with the thumb.

4 Q. Okay. My question, though, I think was
5 what's the difference between the treatment with a
6 cast for a fracture as opposed to a wrist restraint
7 or an Ace bandage for, let's say, a sprain?

8 A. Okay. If you have documented a fracture,
9 you would not treat it with an Ace wrap other than
10 for a period where the swelling would go down or
11 where a cast would be applied.

12 Q. Okay.

13 A. If it's documented. If the fracture --

14 Q. My question is, though, the reason you
15 treat it differently.

16 A. Again, it's primarily for pain.

17 Q. Well, is it for immobilization also?

18 A. Immobilization, but it's the immobility
19 that leads to non-movement of the fracture
20 fragments which reduces the pain, so you are really
21 doing it primarily for healing purposes and for
22 pain purposes, but for non-displaced fractures, to
23 answer the different part of your question.

24 Q. Well, the healing purpose I take it is to
25 allow the bone to heal itself, right, and you don't

1 want it moved, which is why you immobilize it?

2 A. I'm trying to give you the answers that
3 you asked me. There are many fractures that we see
4 secondarily that have healed without any
5 immobilization.

6 Q. Sure.

7 A. So if you are asking me is it necessary
8 for immobilization to heal a fracture, then it's
9 not necessary.

10 Q. It depends on the fracture and the person?

11 A. Absolutely -- Well, it depends more on
12 the fracture.

13 Q. Okay. But I take it the optimum way in
14 which to treat one is to immobilize it?

15 A. The usual way is to immobilize it.

16 Q. By casting, correct?

17 A. By casting, if it's not along an axis
18 that readily moves. For instance, some people will
19 treat wrist fractures with a splint.

20 Q. Do you?

21 A. Depending on the fracture. There is
22 something called a coaptation splint that we
23 commonly treat a fracture called a Colles fracture
24 for, and I use it very often.

25 Q. Well, let's jump ahead just a second so

E we don't have to speak in the abstract. Ultimately
2 you did prescribe or apply an immobilization to
3 Miss Lewis, did you not?

4 A. Yes, I did.

5 Q. And what kind did you apply?

6 A. I applied a thumb spica cast.

7 Q. And what was the reason for that?

8 A. Because she continued to complain of pain.
9
10 She had now shifted her area of symptomatology from
11 the ulnar side of her wrist to the radial side of
12 her wrist, in particular the snuff box. She now
13 had tenderness at that point. Another set of
14 x-rays were ordered. They were reviewed and a
15 suspicion of a fracture was there, and in
16 conjunction with her symptoms, it was presumed to
17 be a fracture of the navicular.

18 Q. Are you saying that you are not sure it
19 was or wasn't?

20 A. Well, it depends on how far you want to
21 jump ahead.

22 Q. Well, let's deal with at the time you put
23 the cast on.

24 A. At the time I put the cast on, I treated
25 it as a fracture.

Q. Did you review the x-rays at that time?

1 A. Yes, I did.

2 Q. And did you see a fracture?

3 A. I saw what was apparently a fracture.

4 Q. Otherwise you wouldn't have put the cast
5 on?

6 A. Right.

7 Q. Is there something now that causes you
8 not to believe was a fracture what you thought was
9 and what you believed was a fracture then?

10 A. There have been a number of studies
11 performed which were not the usual but which have
12 been performed and a more than usual review of the
13 x-rays using techniques that are not commonly
14 employed which showed that it probably was not a
15 fracture.

16 Q. All right. What has been done by whom,
17 and when, which leads you to say that, Doctor?

18 A. The dates I'm not quite sure of. I know
19 that a bone scan of the affected area has been done,
20 which is normal, which shows no increased uptake of
21 the radioactive dye that's given to the patient.
22 Anytime you have a fracture, whether it's displaced
23 or not, within a period of months after that
24 fracture is healed or healing, then the uptake will
25 be positive in that area.

1 There have been subsequent plain x-rays
2 taken of the wrist on numerous occasions with no
3 evidence of a fracture in its healing phase or in
4 any phase actually being seen.

5 Q. How is it that you ordered additional
6 x-rays, Doctor?

7 A. The main reason is that she continued to
8 complain of pain. She was at the hospital. She
9 was very accessible to get x-rays. She said the
10 pain had increased, so I ordered x-rays on it.

11 Q. Did she say the pain was different?

12 A. She did not say the pain was different.
13 Her examination gave a different location for her
14 tenderness.

15 Q. Did you examine her while she was in the
16 hospital?

17 A. I examined her when I ordered the x-rays,
18 yes.

19 Q. Well, she was in the hospital for an
20 unrelated reason, was she not?

21 A. She called my office, yes.

22 Q. Did she have Dr. Roberts call your office?

23 A. That is not in my notes. That may have
24 been true. I do not know.

25 Q. Had you seen --

1 A. My recollection is that she called me.

2 Q. Had you seen her between April 8 and May
3 16?

4 A. Sure. I saw her on April 18th where she
5 still -- Do you want me to --

6 Q. Sure, please.

7 A. She still had tenderness at the, again at
8 the ulnar side of her wrist, and the examination
9 was otherwise negative. My impression was
10 unchanged. I did order a wrist splint for her at
11 that time. I renewed her pain medication.

12 Q. Why did you order a splint for her?

13 A. Because she had continued to use her
14 wrist, continued to have pain, so a device that
15 would let her use her fingers, yet minimize the
16 motion at her wrist was needed at this time, I
17 thought.

18 Q. That was April 18th?

19 A. April 18th, yes. I also wrote a letter
20 for her to return to work, but under the
21 specification that she wear her wrist splint at all
22 times.

23 Q. By the way, had you been under the
24 impression that there had been a fracture at that
25 time, would you have released her to work at that

1 time?

2 A. If I had been under the impression that
3 she had a fracture, I would not.

4 Q. I'm sorry. Go ahead. Was there anything
5 additional done on the April 18th visitation?

6 A. She was given a follow-up appointment.

7 Q. And when is the next time you saw her?

8 A. The next time I saw her was May 6. At
9 that time she noted that she had some lessening of
10 her pain, that her motion without pain was
11 improving. She still had findings as on the
12 original two visits.

13 Q. Such as?

14 A. Such as pain on the ulnar side of the
15 wrist. Something that happened -- Maybe I should
16 fill in a blank for you. They would not let her
17 return to work with the splint, so she was still
18 off duty at this time.

19 Q. Okay. And did you continue to maintain
20 her with the split at that time?

21 A. Yes. She was -- Although it's not in my
22 records, she said -- I mean, the usual thing that I
23 tell my patients is that they wear the splints at
24 time of activity, and at times of no activity or
25 non-strenuous activity they go without the splint

1 because of lessening the chance of stiffening and
2 that sort of thing.

3 Q. Okay. Did you make another follow-up
4 appointment for her?

5 A. Yes. She had an appointment for the 20th
6 of May.

7 Q. In the meantime, you received a call,
8 whether it was from her or from Dr. Roberts, and is
9 there anything in your record pertaining to that
10 particular call as to why you received the call?

11 A. Not to the call itself.

12 Q. Do you have any independent recollection
13 as to what it was that was discussed in the call?

14 A. Other than the patient -- I don't have a
15 specific recollection, no.

16 Q. All right. But as a result of that call,
17 I take it you ordered x-rays conducted on her right
18 wrist?

19 A. Right.

20 Q. While she was in the hospital?

21 A. Right.

22 Q. Is that correct?

23 A. That's correct.

24 Q. And those, according to the records, were
25 conducted on May 16?

1 A. That's correct.

2 Q. Do you have those reports in front of you

3 there, Doctor, the x-ray reports?

4 A. From May 16th?

5 Q. Yes.

6 A. I don't have that particular report.

7 Q. Well, there was a report and an addendum,

8 was there not?

9 A. Yes, there was.

10 Q. All right.

11 A. I do recall what that report says. That

12 report is a part of --

13 MR. WARNER: Do you want me to get

14 my copies?

15 A. Yes, he has it in his copies.

16 MR. WARNER: These are from the

17 deposition last time of Dr. Friedley.

18 MR. KAMPINSKI: Why don't you give

19 him all the x-ray reports.

20 MR. WARNER: These are the

21 documents that were produced last time, the packet.

22 Q. (By Mr. Kampinski) Before we get to that,

23 the March 31st x-ray interpretation, had you ever

24 seen that prior to the May 16 --

25 A. Had I seen the x-rays or the

1 interpretation?

2 Q. Either one.

3 A. I saw the interpretation.

4 Q. How was it that you saw those?

5 A. I'm sorry. I had seen the impression.

6 The impression is what my secretary calls on the
7 phone. No, I had not seen her hospital record
8 which included her x-rays.

9 Q. But were you provided with the
10 interpretation for your file as a result of the
11 call by your secretary, or was it just a verbal
12 thing between your secretary and the Radiology
13 Department?

14 A. It's verbal between my secretary and the
15 Radiology Department.

16 Q. So you had neither seen the x-rays nor
17 the piece of paper depicting the interpretation by
18 the radiologist?

19 A. That's correct.

20 Q. You received a call May 16th from someone,
21 whether it be Miss Lewis or the doctor. You
22 ordered x-rays. My question, Doctor, is why did
23 you order x-rays? What, as best you can recall,
24 prompted you to order x-rays on her wrist?

25 A. Somehow it was conveyed to me that she

1 was continuing to have a fair amount of pain and I
2 don't really recall any of the other specifics. I
3 would assume that that's why I ordered the x-rays.

4 Q. And was it described to you whether the
5 pain was still on the ulnar side of the wrist or
6 whether it was anywhere else?

7 A. Whether it was described to me or not, I
8 can't recall.

9 Q. Okay.

10 A. I can just recall the examination.

11 Q. All right. Those were done on May 16th,
12 were they not, and you can look at those?

13 A. The x-rays were done on May 16th.

14 Q. Did you specify what x-rays you wanted
15 taken, what views, how many?

16 A. The x-rays were of the right wrist. They
17 have a standard series of x-rays that are taken.

18 Q. Was that the standard series that had
19 been done on March 31st, the same?

20 MR. WARNER: If you know.

21 A. I don't really recall.

22 Q. (By Mr. Kampinski) Wouldn't that have
23 been important for you to determine in your --

24 A. I'm sorry?

25 Q. Wouldn't that have been important for you

1 to determine in your original conversation with the
2 Radiology Department?

3 A. Only if I was looking specifically for a
4 navicular fracture. If that is not a question,
5 then the standards -- even with a navicular
6 fracture, the standard set of wrist x-rays is
7 sufficient to delineate most of these problems. If
8 the examination shows otherwise, you order
9 additional views, but the initial x-rays are almost
10 a package.

11 Q. What did you do after you ordered the May
12 16th x-rays? Did you yourself go to the Radiology
13 Department to look at the x-rays?

14 A. Yes, I did.

15 Q. And did you view them with anybody in the
16 Radiology Department?

17 A. I viewed them myself. I viewed them with
18 my associate, Dr. Stephens. I viewed them with a
19 radiologist, Dr. Virginia Lampert.

20 Q. Now, Dr. Lampert is not the one who
21 originally read those x-rays, is that correct?

22 A. Which x-rays?

23 Q. The May 16th x-rays.

24 A. Dr. Chrenka.

25 Q. Is he the one that read the x-rays of

1 March 31st, or was that Dr. Friedley?

2 A. That was Dr. Friedley.

3 Q. I take it you know all these people?

4 A. Yes, I do.

5 Q. Why is it that you viewed the x-rays of
6 Dr. Lampert as opposed to Dr. --

7 A. As I explained to you originally, I was
8 in the hospital. I was down there, and I saw Mrs.
9 Lewis at the time the x-rays were taken. This is
10 the time I examined her. This is when she -- I saw
11 her in the x-ray suite, as a matter of fact, or in
12 the hospital. I'm not sure if it was in the x-ray
13 suite, but I saw her prior to the x-rays being
14 taken.

15 Q. So you viewed the films themselves with
16 Dr. Stephens and --

17 A. I viewed the films originally by myself,
18 saw something that I thought may have been somewhat
19 abnormal. I showed them to Dr. Stephens who agreed
20 with my finding. We then took them to Dr. Lampert.

21 Q. And she agreed also?

22 A. She agreed also.

23 Q. And by that time Dr. Chrenka had already
24 written a report pertaining to those x-rays, is
25 that correct?

1 saw, "a faint sclerotic line at the mid portion of
2 the navicular"?

3 A. That's correct.

4 Q. And then on review of the previous exam,
5 March 31, 1983, a narrow transverse radiolucent
6 line can be identified at the site on one view.
7 Findings are consistent with the previous
8 non-displaced fracture of the mid portion of the
9 navicular, now with some healing, is that correct?

10 A. That's what he says.

11 Q. So that I take it you also looked at the
12 March 31st x-rays at that time?

13 A. That's correct.

14 Q. And did you also see this narrow
15 transverse radiolucent line?

16 MR. WARNER: Objection. Answer.

17 A. As I told you originally, I saw this
18 whole set of x-rays first, including the March 31st
19 x-rays. It was after I reviewed them that this
20 whole other process was initiated or the other
21 people looked at the x-rays.

22 Q. So you were able, apparently, to identify
23 something on the March 31st x-ray as well?

24 A. That's correct.

25 Q. And Dr. Stephens was, too?

1 A. I'm sure they dictated within 24 hours or
2 so. I did not even see that report.

3 Q. And that said there was no change in the
4 finding since the examination of March 31st, is
5 that correct?

6 A. It says negative -- there is no change in
7 the findings since the examination of March 31st.

8 Q. And if you look at the March 31st x-ray,
9 at least the typed portion reflects negative for
10 fracture?

11 A. That's right.

12 Q. By Dr. Friedley?

13 A. That's correct.

14 Q. Does your copy also reflect that in
15 writing there it says, "Re-typed, sent to medical
16 records 3-26-84"?

17 MR. WARNER: These are the copies
18 I received from you, so they should.

19 Q. (By Mr. Kampinski) I'm sorry?

20 A. That's what it says here.

21 Q. And then the next record apparently is by
22 Dr. Lampert, which is an addendum to the
23 interpretation of the x-rays by Dr. Chrenka, right?

24 A. That's correct.

25 Q. So you, Dr. Stephens, and Dr. Lampert all

1 A. That's correct.

2 Q. And Dr. Lampert was, too?

3 A. That's correct.

4 Q. Did you have any discussions with Dr.

5 Chrenka at that time?

6 A. Dr. Chrenka was not in at that time.

7 Q. How about with Dr. Friedley?

8 A. I did not discuss it with him, no.

9 Q. Have you at any time discussed it with

10 Dr. Friedley or Chrenka?

11 A. No, I have not.

12 Q. How about with Dr. Lampert?

13 A. You mean subsequent to that?

14 Q. Sure.

15 A. No, I haven't.

16 Q. How about with any other radiologist?

17 A. Yes, I have.

18 Q. Who have you discussed it with?

19 MR. WARNER: Objection.

20 MS. TOMUSKO: Objection.

21 A. Dr. Boultoch.

22 Q. Dr. --

23 A. B-o-u-l-t-o-c-h, I believe. He is the

24 Chief of Radiology.

25 Q. In that same group?

1 A. The same group. At the time he was not
2 chief, I don't believe. He is within the same
3 group.

4 Q. Have you had discussions with him since
5 the lawsuit?

6 A. Actually that is the time that I have had
7 the discussions with him.

8 Q. And what was the nature of those
9 discussions?

10 MS. TOMUSKO: Objection.

11 Q. (By Mr. Kampinski) I take it the
12 discussions related to these x-rays?

13 A. Yes, they did.

14 Q. And did you review those x-rays again
15 with him?

16 A. Yes, I did.

17 Q. And what was discussed at that time?

18 MR. WARNER: Objection.

19 MS. TOMUSKO: Objection.

20 MR. WARNER: Answer the question.

21 A. Whether or not this was a fracture.

22 Q. (By Mr. Kampinski) And his conclusion
23 was what?

24 MR. WARNER: Objection.

25 MS. TOMUSKO: Objection.

1 MR. WARNER: Answer the question.

2 A. That it was not.

3 Q. (By Mr. Kampinski) And did you agree
4 with him at that time?

5 A. Based on the findings that he had had
6 since that time, then I would have to agree.

7 Q. Did you, subsequent to conferring with
8 Dr. Stephens and Dr. Lampert who confirmed your
9 findings pertaining to the May 16 x-ray, go and
10 speak to Miss Lewis?

11 A. I'm sure that I must have.

12 Q. What did you tell her?

13 A. I told her that it looks like she had a
14 navicular fracture, that she would need a cast.

15 Q. Did you tell her that you were sorry?

16 A. No.

17 Q. And did you in fact apply a cast?

18 A. Yes, I did.

19 Q. What's the difference between a navicular
20 fracture and a Colles fracture?

21 A. It's not involving the same bone.

22 Q. Why don't you describe to me what bones
23 we are talking about?

24 A. In the forearm there are two large bones,
25 one called the radius, one called the navicular.

1 The Colles fracture refers to a fracture of the end
2 of the radius that's closest to the wrist joint,
3 and possibly with some fracture of the distal end
4 of the ulna as well, the smaller bone in the wrist.
5 The navicular fracture --

6 Q. The ulnar area being the area there was
7 complaints of originally?

8 A. Yes.

9 Q. Go ahead.

10 A. The navicular fracture is a fracture of
11 the bone that's in a group called the carpus,
12 c-a-r-p-u-s, or the carpal bones that are like
13 separate little kneecaps almost.

14 Q. Why don't you show me on your own wrist?

15 A. You can't really see them. They are
16 between -- you can feel on your own wrist where the
17 long bones in your hand, the metacarpals, stop, and
18 feel at the end of your forearm where the larger
19 bone, the radius, stops. That area in between
20 contains eight small bones, one of which is the
21 navicular.

22 Q. And the Colles would be the end of the
23 radius closest to the wrist?

24 A. End of the radius. Similar area.

25 Q. Both in the same area?

1 A. Close, yes.

2 Q. And the ulna is what?

3 A. Is a smaller bone in the forearm on the
4 side opposite the navicular and the wrist.

5 Q. Was a cast applied to Miss Lewis while
6 she was in the hospital?

7 A. I'm pretty certain that it was. I'm sure
8 it was, yes. It was applied on the 17th.

9 Q. And she wore that for how long?

10 A. She wore it from the 17th until July 1.

11 Q. All right. Now, am I correct, Doctor, in
12 understanding that what you, Dr. Stephens, and Dr.
13 Lampert agreed she had was a fracture of the
14 navicular?

15 A. That's correct.

16 Q. When is the next time you saw her, sir?

17 A. You mean subsequent to the July 1st visit?

18 Q. No. To the May 16th or 17th application
19 of the wrist?

20 A. I saw her on June 13th.

21 Q. Did you order additional x-rays?

22 A. Yes, I did.

23 Q. Did you view those?

24 A. Yes, I did.

25 Q. Did you read the report by Dr. Friedley?

1 A. No.

2 Q. Did you care what Dr. Friedley wrote?

3 MR. WARNER: Objection.

4 MS. TOMUSKO: Objection.

5 MR. WARNER: Answer.

6 A. Since I viewed the x-rays on my own, I
7 relied on my interpretation. If I had not viewed
8 the x-rays, I would have relied on his
9 interpretation. I think either interpretation
10 would have been acceptable.

11 Q. (By Mr. Kampinski) What was her
12 interpretation of the June 13th x-rays?

13 A. That there was no gross alteration in the
14 structure of the navicular. You have to realize
15 these are taken through the cast, so fine detail
16 can be obliterated, but there was certainly no
17 large displacement.

18 Q. Did you make a notation to that effect in
19 your record?

20 A. If I write nothing, it means that I
21 didn't think that the x-rays were displaced. I
22 wrote x-ray, and then colon, and then didn't write
23 anything after that. If I had thought there was
24 some displacement, I would have written it in there.

25 Q. Have you seen Dr. Friedley's

1 interpretation of those x-rays since that time?

2 A. No, I've not.

3 Q. You have them in your hand, do you not,
4 June 13th?

5 A. June 13.

6 Q. And it indicates, does it not, examined
7 for Dr. C.W. Smith?

8 A. That's correct.

9 Q. Did he ever send you that?

10 A. I'm sure it comes through the mail, yes.
11 I'm sure it's probably in the chart. You asked me
12 if I specifically had read it.

13 Q. Well, why don't you look through your
14 record and see if it is in there. Look through
15 your record which is in front of you and see if Dr.
16 Friedley's interpretation is --

17 A. In answer to your question, have I read
18 it, I have not read it.

19 Q. And now my question is, is it in your
20 records, sir?

21 A. Yes, it is.

22 Q. What I would like you to do at this point
23 is hand your entire file to the court reporter.

24 MR. KAMPINSKI: Mark that Smith
25 Deposition 1.

1 (Smith Deposition Exhibit No. 1
2 was marked for identification)

3 Q. (By Mr. Kampinski) Doctor, prior to
4 coming here today, have any documents or materials
5 been removed from your -- I take it this is your
6 office file?

7 A. Yes.

8 MR. WARNER: I will state for the
9 record that any letters to Dr. Smith from our
10 office have been removed as work product. Anything
11 else you can ask the doctor about.

12 Q. (By Mr. Kampinski) My question, Doctor,
13 is has anything been removed from your file prior
14 to coming here today?

15 A. Nothing other than the letters from the
16 attorneys.

17 Q. Okay. Letters from them to you?

18 A. And I assume they were to me, yes. They
19 were concerning Mrs. Lewis.

20 Q. And did you have any letters responding
21 to those letters that were removed?

22 A. No.

23 Q. Anything else?

24 A. No.

25 Q. So that what I have here in front of me

1 marked as Smith Deposition Exhibit 1, which you
2 just handed to the court reporter for marking, is
3 your entire record, is that correct?

4 A. Minus the letters from the attorneys.

5 Q. What I would like to do before I go any
6 further, Doctor, is just go through the materials
7 with you in here to identify them, all right?

8 A. Sure.

9 Q. And I would like to do that together with
10 you so that we know what's in here.

11 The first sheet, the top of it is labeled
12 Associates In Orthopaedics, Inc. What is that,
13 Doctor?

14 A. That is the corporation that I work for.

15 Q. I mean, what is the letter? What would
16 you call this record?

17 A. That is the initial patient information
18 and examination sheet.

19 Q. And I take it the writing on there is
20 yours?

21 A. The writing is mine.

22 Q. What I would like to do is just have you
23 go through and read exactly what it is you wrote so
24 that at some later point I can decipher this.

25 A. Okay. May I preference this before we

1 start?

2 Q. Sure.

3 A. I also, by this time, have a copy of a
4 sheet that she fills out that supplements the
5 records.

6 Q. Is that in here someplace?

7 A. Yes, it is.

8 Q. All right. Let's deal with one sheet at
9 a time. We will get to that. Go ahead.

10 A. "Injured right wrist at work lifting
11 patient. See x-ray report," meaning this sheet.

12 Q. This yellow sheet of paper?

13 A. That is the information from my secretary,
14 the X-ray Department at St. Luke's.

15 Q. And this was filled out at the time?

16 A. At the time of her appearance at the
17 hospital.

18 Q. By your secretary?

19 A. By my secretary.

20 Q. Who is your secretary?

21 A. We have four secretaries.

22 Q. Who was the one that wrote this?

23 A. I can't tell you. I would have to look
24 at the -- I mean, I would have to get them to
25 evaluate the handwriting. I assume it was Miss

1 Morris. She is usually the one who does that. But
2 all are trained to do it.

3 Q. Is this all written by one person, sir?

4 MR. WARNER: If you know.

5 A. I don't know.

6 Q. (By Mr. Kampinski) I'm sorry. Going
7 back to the first page, if you would continue?

8 A. "Examination: tender, swelling, dorsally
9 over ECU." That stands for extensor carpi ulnaris.
10 "Diagnosis: strain, right wrist - extensor carpi
11 ulnaris. RX," meaning what I'm going to do. Wrote
12 a letter, expected return to work 4-18-83, disabled,
13 DIS, starting 3-31 to 4-19, I believe, recheck 4-18.
14 Percoset is the medication I ordered.

15 Q. And there is some writing here --

16 A. That's by whoever the secretary was to
17 reference the next appointment.

18 Q. And it says, "Next appointment, 4-10-83,"
19 right?

20 A. Yes.

21 Q. Now, on the back is what, the next
22 visitation -- I'm sorry. That probably is 4-18,
23 right?

24 A. I would assume.

25 Q. Okay. Next visit was in fact 4-18-83?

1 A. Right.

2 Q. If you would.

3 A. "Still tender at distal radial ulnar
4 joint." That is the same area as before.

5 Otherwise negative. Diagnosis is the same.

6 Q. That's the same?

7 A. Same.

8 Q. Okay.

9 A. Treatment was wrist splint, another
10 prescription for Percoset. A letter was rewritten
11 to return to work 4-19-83 with the proviso that she
12 must wear right wrist splint. Given follow-up
13 appointment for two weeks. Recheck, two weeks.

14 Q. And then someone wrote this, "Patient
15 will call for next appointment."

16 A. Yes. The patient is given an option of
17 setting the appointment specifically or calling it
18 in.

19 Q. All right. Below that under the same
20 date, what does that say, Doctor?

21 A. It says, "Off duty. Expected return to
22 work 5-15-83."

23 Q. And then the next one?

24 A. Why is it x'd?

25 Q. Yes.

1 A. Because when they were going through the
2 files to make sure they had made this entry onto
3 the billing system, they will cross out the entry
4 so at the end of the day she can look at the chart
5 and see what entries were on it.

6 Q. And that was May 6, 1983?

7 A. Yes. "Slow improvement. Tender as above.
8 Diagnosis, same." Given a letter again for
9 expected return to work, 6-1-83, and two-week
10 appointment.

11 Q. And then once again it's got the nurse's
12 or secretary's writing, "Next appointment, 5-20-83."

13 A. Yes.

14 Q. This yellow piece of paper?

15 A. Was the original visit.

16 Q. And this was handed to you then by one of
17 the secretaries?

18 A. It was in the chart at the time I see the
19 patient.

20 Q. I see. So when she came in to see you --

21 A. When they come into the office, they are
22 asked whether they have had x-rays. If they have
23 had x-rays and they did not bring them with them,
24 then the secretaries will call for the x-ray report.
25 If they have brought the x-rays with them, then

1 they will not call.

2 Q. Where is your office in relation to St.
3 Luke's Hospital?

4 A. It's adjacent.

5 Q. Is the X-ray Department in the hospital?

6 A. It's in the hospital complex, yes.

7 Q. Is it far away from your office?

8 A. You mean is it accessible to walking?

9 Q. Sure.

10 A. Sure.

11 Q. And when you put in your original
12 visitation, "See x-ray report," once again you are
13 referring to this yellow piece of paper?

14 A. Correct.

15 Q. Okay. And the next sheet in your office
16 record is what, your billing?

17 A. Yes, it is.

18 Q. And that billing commenced what, April 8,
19 1983?

20 A. Yes, it did.

21 Q. And continued until when?

22 A. Looks like 12-16-83.

23 Q. Just so I understand, the CWS, that's
24 your initials?

25 A. That's correct.

1 Q. So that would reflect what doctor it is
2 within the group?

3 A. That saw her that day.

4 Q. Is there anything on the billing that
5 reflects what the bill is for?

6 A. Not really, other than the entries for --
7 Yes, I'm sorry. This really is an OV.

8 Q. All right.

9 A. That's an office visit, and it's for
10 surgery --

11 Q. Let's go through it. We have got OV the
12 first three?

13 A. Yes.

14 Q. What's that one, the May 16th one?

15 A. That's a payment. Something from St.
16 Luke's.

17 Q. All right. And then CA would be what?

18 A. A cast. The coating is changed from time
19 to time but that probably means cast.

20 Q. That corresponds with when the cast was
21 put on, sure. And then OV, OV, OV, right?

22 A. Yes.

23 Q. And it appears that the next sheet from
24 July of '83 through November of '83, they are all
25 OVs?

1 A. Apparently so.

2 Q. And then the -- I guess the last one for --
3 Can you make out that date? December 16th?

4 A. Looks like December 16th.

5 Q. That would be an office visit also?

6 A. Yes.

7 Q. The next sheet in your file is a
8 physician's copy of an x-ray report dated October
9 27, 1983, correct?

10 A. That's correct.

11 Q. The next one is a report by Dr. Friedley
12 pertaining to what, his view of the x-ray dated
13 June 13, 1983?

14 A. That's correct.

15 Q. Is there a reason why one of them is a
16 pink form and this is like a letter form?

17 A. This comes from the hospital itself.
18 This comes from the medical building, generally.
19 Even though they are the same group, they have
20 x-rays in different locations. They have
21 different -- That's just the way it is. I'm sure
22 this was taken at the medical building, why it's
23 pink, why it's white.

24 Q. The next one is a form that has at the
25 top of it, Progress Notes?

1 A. Yes.

2 Q. It appears that there is something whited
3 out on there. Right at the top, Doctor, the
4 printed portion, under May 9, 1983, it's got,
5 "Billed St. Luke's Hospital and completed C-84
6 form/ds." Then it goes down to "St. Luke's Cast
7 Room, 5/17/83." Then it's got, "DX:" for diagnosis,
8 then, "Fracture of," and then the next three words
9 there are, "Right carpal navicular?"

10 A. Yes.

11 Q. Those three words appear to have been
12 whited out and re-typed. Do you know what was in
13 there before, Doctor?

14 A. No idea.

15 Q. Are there going to be more office notes
16 that we are going to deal with?

17 A. That's it.

18 Q. We are going to pick up with these other
19 sheets for subsequent --

20 A. May 6th, right to the time when the cast
21 was put on, May 9th. I mean -- May 17th.

22 Q. All right. Why don't we start then with
23 the writing portion so that I can understand these
24 at some future time. Just pick up wherever there
25 is writing and indicate the date of the entry and

1 what's written?

2 A. The next entry is May 26. That's Dr.
3 Stephens' handwriting. Evidently the patient
4 called complaining of pain because he has a number
5 that I would assume would be her home telephone
6 number and he has, "Ty #3," which is Tylenol number
7 3, and he wrote a prescription for 24 of those, it
8 appears.

9 Q. The next entry, June 13, 1983?

10 A. That's my writing. It's "Cast is okay.
11 Still painfull at wrist. Sprained her right ankle
12 last P.M. X-rays: there is no entry. Diagnosis,
13 same." She was given a three week appointment and
14 at that time she would have x-rays OOP, out of
15 plaster, and a letter that said her expected return
16 to work was 7-15-83.

17 Q. Would you just continue?

18 A. The first entry is OOP, meaning that she
19 was taken out of the cast, out of plaster, she was
20 still tender, x-rays, it was apparently healed,
21 written in, and I have scratched over it.

22 Q. Why would you do that?

23 A. I have no idea.

24 Q. Did you change your mind once you had
25 seen the x-rays, or was it based on your

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23 letter, expected return to work, 8-1-83.

24 Q. If you would just continue, Doctor. You

25 have got, I think, two more sheets here reflecting

1 office visits, and if you would just keep going.

2 A. July 29, 1983. The entry is still snuff
3 box tenderness, three plus, meaning acute. Unable
4 to work without brace. X-rays okay. Diagnosis,
5 same. Treatment, return appointment for two weeks.
6 Expected return to work letter given for 9-1-83.

7 The entry of August 12, 1983, swelling
8 down, tenderness down. Diagnosis, same.
9 Appointment for two weeks.

10 Entry of August 26, 1983, still has
11 stiffness, right wrist, no snuff box tenderness,
12 mild swelling, right hand radially.

13 Q. Radially would be the opposite of
14 distally?

15 A. Would be the opposite of ulnarly.

16 Q. Ulnarly. Which would be the same as
17 distally?

18 A. No. Radially means on the side of the
19 arm as the radius.

20 Q. Okay.

21 A. So it can be anywhere along the entire
22 length of the arm, as long as it is on that side.

23 Q. And ulnar?

24 A. Is on the other side where the long bone
25 in the forearm is.

1 Q. Okay. Go ahead.

2 A. Diagnosis, same. A letter for return to
3 work on 9-6-83, again with the proviso, must wear
4 right wrist brace as needed. Three week follow up.

5 The next entry is September 12, 1983.
6 Exam unchanged, no tenderness. Diagnosis, same.
7 Letter for return to work 9-19-83, a three-week
8 appointment.

9 October 17, 1983 entry. Still has
10 occasional pain, but back at work. Tender first
11 dorsal compartment, which is again on the radial
12 side of the wrist.

13 Q. Okay.

14 A. Diagnosis, same, plus DeQuervain's
15 syndrome.

16 Q. What does that mean?

17 A. It just means the tenderness can be
18 localized to one tendon area.

19 Q. All right.

20 A. She was given a prescription for Tylenol
21 #3 and a follow-up appointment for four weeks.

22 The entry of November 21, 1983,
23 examination unchanged. Diagnosis, same.
24 Prescription for Tylenol #3, a four-week
25 appointment, and an authorization request to the

1 Bureau of Workers' Compensation for independent
2 examination by Dr. Stanley Nahigian.

3 Q. Did you refer her, Doctor?

4 A. Yes, I did.

5 Q. For what reason?

6 A. I wanted him to evaluate her wrist and
7 specifically the tenderness over the radial area
8 that she had been exhibiting lately.

9 Q. Okay. Did you receive a consult report
10 back from Dr. Nahigian?

11 A. I'm not really sure whether there is one
12 in the chart. I verbally talked with Dr. Nahigian
13 on several occasions.

14 Q. What did he tell you?

15 A. He said that it appeared that she did
16 have a tenosynovitis in that area.

17 Q. What is a tenosynovitis?

18 A. Irritation of the lining of the covering
19 of the tendon sheath.

20 Q. Are there various etiologies for that?

21 A. Sure.

22 Q. Do any of them relate to fractures?

23 A. Sure.

24 Q. Are they consistent or is it a condition
25 consistent with a fracture of the kind that you

1 suspected Mrs. Lewis had as of your reading of the
2 March, 1983 x-ray?

3 MR. WARNER: Objection.

4 MS. TOMUSKO: Objection.

5 Q. (By Mr. Kampinski) Go ahead. I'm sorry.
6 Did I say March? I meant May.

7 A. This is not a usual sequela of any
8 fracture, but it can sometimes occur.

9 Q. Well, when you say a usual sequela, are
10 you assuming a usual sequela of a treated fracture?

11 A. Of any fracture. We see a number of
12 these.

13 Q. Go ahead, Doctor.

14 A. Do you want me to go to the next page?

15 Q. Yes.

16 A. December 16, 1983 entry, still complains
17 of wrist pain with exertion, still complains of
18 tenderness, dorsal right wrist. Diagnosis is the
19 same, and there is no entry under treatment.

20 Q. Okay. That is the last time you saw her?

21 A. To my recollection, yes.

22 Q. And was her treatment undertaken from
23 that time on by Dr. Friedley?

24 A. Yes.

25 Q. And are you aware of what treatment he

provided?

2 A. Yes, I am.

Q. What did he do?

4 A. He did a release of the first dorsal
5 compartment, I believe.

6 Q. And the purpose of that was for what?

7 A. To hopefully relieve the symptoms that
8 she was having of pain.

9 Q. Do you have an opinion to a reasonable
10 degree of medical certainty, Doctor, as to whether
11 or not the -- and I'm going to ask you to assume,
12 for the sake of answering this question, the fact
13 that she did in fact have a fracture as of March of
14 1983 -- do you have an opinion to a reasonable
15 degree of medical certainty as to whether or not
16 the failure to treat the fracture in March of 1983
17 and May of 1983 in any way causally resulted in her
18 release of her compartment by Dr. Nahigian?

19 MR. WARNER: Objection.

MS. TOMUSKO: Objection.

Q. (By Mr. Kampinski) Do you have an
opinion?

A. My opinion is it did not.

24 Q. Why is that?

A. Mainly because there is no indication on

1 subsequent x-rays or studies that the fracture was
2 initially -- if it indeed was a fracture -- that it
3 was initially displaced enough which gives you an
4 idea about the amount of energy that's imparted
5 into the area of injury at that time, or any
6 indication from the rest of the examination that
7 her symptom complex was made worse by treatment or
8 non-treatment.

9 It just did not appear from all the
10 evidence and all the x-rays that I could see that
11 there was any indication of severe trauma being
12 imparted.

13 Q. Well, correct me if I'm wrong, but x-rays
14 are certainly not the sine qua non of injury to
15 soft tissues, as opposed to the bony structures
16 within the body, is that correct?

17 A. That is correct.

18 Q. All right. And a fracture does, however,
19 or can affect the soft tissues connected to the
20 bones, can it not?

21 A. Yes, it can.

22 Q. And so the x-rays themselves wouldn't
23 necessarily assist us in terms of determining what,
24 if any, tendon, ligament, cartilage damage was done,
25 if any, to Mrs. Lewis in March of 1983, would it?

1 A. That's not correct.

2 Q. Okay. Why is that?

3 A. Because the extent of damage done to the
4 bone gives you a direct correlation to the extent
5 of the damage done to the surrounding tissues.

6 Q. Always?

7 A. You asked me would it ever. Always is
8 not -- It's not always. But it certainly gives you
9 an indication in most cases.

10 Q. So you can look at the damage, the
11 fracture to the bone, and make some conclusions as
12 to what damage, if any, was done to the surrounding
13 tissues?

14 A. Correct.

15 Q. It won't always tell you that, will it?

16 A. No, it will not.

17 Q. As a matter of fact, if you don't treat
18 the fracture, you can place increased stress on the
19 surrounding tissues connected to the bone?

20 A. Sure you can.

21 Q. Because the bone itself is not being
22 taken care of, that is immobilized, putting
23 additional stress, additional wear and tear on the
24 tissues connected to the bone, isn't that correct,
25 Doctor?

1 A. That's possible.

2 Q. And that won't show up on x-ray also,
3 will it?

4 A. What won't show up?

5 Q. Any additional wear and tear or stress to
6 the tissues?

7 A. Only indirectly by the damage done by the
8 shifting of the bone, that still gives a direct
9 correlation to the shift. You can't move one
10 without the other.

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1 Q. So that's your opinion?

2 A. That is my opinion.

3 Q. All right. Now, certainly we are going
4 to be dealing with opinions in this case, but we
5 also have to deal with some facts, and do you have
6 any knowledge whatsoever, Doctor, of any prior
7 history of any injury to Miss Lewis's right wrist?

8 A. None that I can specifically recall.

9 Q. Any problems whatsoever that she had at
10 any prior time to her right wrist?

11 A. None that I can recall.

12 Q. So that factually we know the first time
13 she exhibited any problem with her right wrist was
14 the March 31st, 1983 incident for which she saw you
15 one week later?

16 MR. WARNER: As you related to him.
17 Maybe. He didn't know about it.

18 MR. KAMPINSKI: He can only tell me
19 what he knows about.

20 Q. (By Mr. Kampinski) Am I correct so far,
21 Doctor?

22 A. You are correct I didn't know about it.

23 Q. So from that point on, we know factually,
24 and it's documented in your record, of a continuous
25 problem with that right wrist, is that correct?

1 A. Yes.

2 Q. Up until the time she leaves your
3 treatment, correct?

4 A. That's correct.

5 Q. And in fact she undergoes surgery shortly
6 after she leaves your treatment to the right wrist,
7 is that correct, sir?

8 A. Yes.

9 Q. Do you have an opinion to a reasonable
10 degree of medical certainty what caused her to
11 undergo the surgery that Dr. Nahigian performed on
12 her, if it was in fact not the failure to treat the
13 fracture?

14 A. It was the sprain to the wrist and the
15 injury to the tendon that ostensibly, very
16 minimally involved the navicular. So whether she
17 had a fracture or not, the same insult to the
18 tendon could have been imparted.

19 Q. Okay. Did you treat any insult to the
20 tendon or is that something that Dr. Nahigian first
21 saw and treated with --

22 A. As you can appreciate by the notes, she
23 complained of different things at different times.
24 She had no symptoms of significance on the radial
25 side of her wrist at the time of initial

1 examination, nor at the time of subsequent follow
2 ups, up until her treatment in the Cast Room at St.
3 Luke's Hospital.

4 After that time she was in a cast and
5 after coming out, she did have some radial
6 tenderness, but that has developed as you have seen
7 from the notes.

8 Q. That is the extent of your office records
9 then in terms of your writing, Doctor, that we have
10 gone through?

11 A. I think so.

12 Q. Okay. The next record, sir, is the form
13 you were referring to before that Miss Lewis filled
14 out?

15 A. Yes. Filled out on entry to the office.

16 Q. And in terms of her chief complaint as it
17 relates to what she filled on this form, it's pain
18 in right wrist?

19 A. Pain in right wrist.

20 Q. The next form is report of Dr. Friedley,
21 July 1, 1983?

22 A. Yes, it is.

23 Q. The next one being Dr. Friedley's report
24 of July 29, 1983?

25 A. Yes, it is.

1 Q. In this report of July 29, he refers to,
2 "In the films of July 1, 1983, a little
3 demineralization was noted, and there is what
4 appears to be a healed transverse fracture of the
5 styloid process of the radius, and the carpal
6 navicular appears to be intact." Do you agree with
7 that?

8 MS. TOMUSKO: Objection.

9 A. I would have to see the films.

10 Q. (By Mr. Kampinski) Well, did you see
11 them at the time?

12 A. Of these films here. Whether I agreed
13 with him or not, I told you before that if I see
14 the films -- even if I read that note, that would
15 have little bearing on what my interpretation of
16 the films were unless they were grossly different.
17 I must have agreed that there was nothing
18 significant on the films.

19 Q. Well, what he says is that there is what
20 appears to be a healed transverse fracture of the
21 styloid process of the radius. Did you agree or
22 disagree with that, sir?

23 MR. WARNER: At that time or this
24 time?

25 Q. (By Mr. Kampinski) At that time.

1 A. At that time I don't recall.

 Q. At this time do you agree with that?

3 A. I have seen nothing on a film that would
4 show me she had a styloid fracture, no.

5 Q. And you, of course, saw the films of June
13, 1983 that Dr. Friedley indicates, "A Colles
7 fracture of the right wrist is immobilized in a
8 plaster splint, the position of the fracture
9 through the styloid process of the radius is quite
10 satisfactory, and radial length is good, and there
11 is no reverse of the radial carpal angle."

12 Did you at that time agree or disagree
13 with his conclusion that there was a Colles
14 fracture of the right wrist?

15 MS. TOMUSKO: Objection.

16 MR. WARNER: Objection.

17 A. As I tried to explain to you many times,
18 if I take the x-rays in the office, I look at the
19 x-rays. I don't necessarily look at that report.

20 Q. Okay.

21 A. So I have no comment even to make on the
22 fact that there was a Colles fracture. I did not
23 think she had a Colles fracture. She does in fact
24 not have a Colles fracture.

25 Q. Well, I think you just told me if you

1 disagreed strenuously with any finding, you would
2 have so noted.

3 A. Any finding that had come to me as an
4 x-ray report. I mean, this is a report that I
5 probably just initialed and put in the chart
6 because to my satisfaction, what I was treating the
7 patient for was being taken care of satisfactorily.

8 Q. I don't want to get confused. I don't
9 want you to get confused, but if we go back to your
10 initial visitation with respect to Virginia Lewis,
11 you had your secretary call and get a verbal report
12 with respect to what it is that the competent
13 doctors saw and they read your secretary the x-ray
14 report and that's what it is you relied upon, is
15 that correct, sir?

16 A. That is correct.

17 Q. All right. You are now telling me that
18 with respect to the June 13, July 1, and July 29
19 reports of Dr. Friedley, which you initialed, which
20 are in your file, you paid them no significance
21 because you yourself saw the films and disagreed
22 with them, correct?

23 A. If you will recall, in the interim I also
24 said if one of the two of us, either the
25 radiologist or myself, had looked at the films,

1 then I would consider either of those to be
2 satisfactory.

3 I have looked at these films because they
4 were taken in my office. I did not have reason to
5 look at anything else.

6 Q. Dr. Smith, I don't want to have semantics
between us, but --

8 A. That is what I said, sir. I'm sure that --
9 You asked me before and I said if I had seen the
10 films, then a report, a written report, was not
11 necessary because I have made my own interpretation.
12 If I have not seen the films and the patient is in
13 the office, a report is called for.

14 Q. All right. My question, though, is when
15 your interpretation differs from that of the
16 radiologist, whose is it that you accept?

17 A. It's my interpretation.

18 Q. So that to the extent that now a
19 radiologist is differing with your interpretation
20 of the May, 1983 films, you are now accepting the
21 radiologist as opposed to yours?

22 A. I'm telling you that I probably never
23 even read this report because I didn't see anything
24 on x-ray to make me want to read it. I saw nothing
25 there out of the ordinary from what I was treating.

1 Q. There are a series of onion skin copies
2 here, Doctor. What are these?

3 A. Probably to assist the girls in entries
4 into the charts. It has the billing for the April
5 8 entry, the April 18 entry, the diagnosis,
6 persistent symptoms. That's usually on one of the
7 Workers' Compensation --

8 Q. These are copies of what, really is my
9 question?

10 A. These are just various Ohio Workers'
11 Compensation forms that these entries were put in
12 the box that would correspond to where the onion
13 skinning took place on a previously printed sheet.
14 They would probably be in the same place.

15 Q. And one of the copies that reflects the
16 diagnosis apparently as of May 17th was fracture of
17 right carpal navicular. That was your diagnosis at
18 the time?

19 A. That is correct.

20 Q. And once again, June 14, your diagnosis
21 was fracture of right carpal navicular, persistent
22 symptoms?

23 A. That's what it says.

24 Q. And then again July 15, 1983, your
25 diagnosis, fracture of right carpal navicular?

1 A. That's correct.

2 Q. As a matter of fact, all the way up until
3 the time that you referred her to Dr. Nahigian,
4 that was your impression, was it not, that is a
5 fracture of the right carpal navicular?

6 MR. WARNER: Objection. You may
7 answer.

8 A. Subsequent to the May 17th visit.

9 Q. Up until the time that she left your
10 treatment?

11 A. That is the diagnosis that's entered, yes.
12 It is not easy to change diagnoses when you are
13 dealing with Workers' Compensation, and it's much
14 simpler to just maintain the same diagnosis which
15 is why on many of the sheets the entry will be the
16 same.

17 Q. How about dealing with the patient?

18 A. Dealing with the patient, you have my
19 entries in the chart which will reflect many
20 changes that I suspect are happening at the time.

21 Q. Well, the only change in your chart,
22 Doctor, was from the non-existence of a fracture to
23 the existence of a fracture, is that not true, sir?

24 A. There was never any mention of a fracture,
25 so whether it was existent or non-existent until

1 y 17th entry, then the apparent fracture was
2 yes.

3 . All right. So I'm correct --

4 . It's a difference to deny a fracture and
5 have one there, and my records indicate how
6 ght about that.

7 . Did you sign this form to the Ohio Bureau
8 xers' Compensation?

9 . That is my signature.

10 . Would you indicate, please, for the
11 what it is that form reflects in terms of an
12 ?

13 . I really don't see an injury for
14 sis. I'm sorry. Fracture, right carpal
15 lar.

16 . Right carpal navicular?

17 . Yes.

18 . What's the date of that form?

19 . 26th of September, 1983.

20 . And when do you indicate on there that
21 fracture occurred, sir?

22 . The only date that I see is March 31st.

23 . I think they really asked for the date. They

24 for the date first seen. Maybe I'm

25 asking it but I don't see where they ask me to

1 say what the date of the entry is. They asked me
2 the dates that she has been off work.

3 Q. Well, okay.

4 A. Disabled from employment, and they asked
5 me the dates.

6 Q. And you have got opinion as to causal
7 relationship between history of injury and
8 diagnosis. Did you fill that out?

9 A. Yes, I did.

10 Q. And would you indicate what that says,
11 sir?

12 A. It says directly caused by industrial
13 injury since no prior disability existed.

14 Q. And it adds, was claimant disabled from
15 employment, yes. If so, indicate dates, and it's
16 March 31st, 1983 to October 1, 1983?

17 A. Correct.

18 Q. And it's got objective physical findings,
19 tenderness and right radial wrist with swelling?

20 A. Right.

21 Q. And diagnosis, fracture of right carpal
22 navicular, correct?

23 A. Correct.

24 Q. And there is a form filled out and signed
25 by you, sir?

1 A. Right.

2 Q. Also there is another form from the
3 Bureau of Disability. Would you indicate please,
4 for the record, what the date of fracture is
5 reflected on that form, sir?

6 A. 3-31.

7 Q. And it's signed by who, sir?

8 A. By me.

9 Q. And the fracture is what, type and set
10 fracture?

11 A. Right carpal navicular.

12 Q. On March 31st, 1983?

13 A. Right.

14 Q. And the extent of impairment in inability
15 to grasp or manipulate in either hand is from what?

16 A. Weakness in right hand secondary to pain.

17 Q. And above, this is a form apparently
18 filled out by what, the Bureau, and sent to you for
19 signature, do you know?

20 A. That's a form from the Bureau, yes,
21 asking me to fill it out.

22 Q. And what it's got right at the top, the
23 very first sentence is reported that this patient
24 has been disabled since March of '83 due to
25 fracture of right hand and tenolysis. What is

1 tenolysis?

2 A. That really doesn't apply. Tenolysis
3 means disruption of, and the tenolysis that she has
4 is really called an epitenolysis. It's the tissue
5 that's released from the covering of the tendon.
6 Tenolysis in that circumstance means nothing. She
7 probably intended to write tendonitis.

8 Q. Is that related to the fracture in your
9 opinion, Doctor?

10 A. I don't think she had a fracture.

11 Q. Even though you put that down in these
12 forms?

13 MR. WARNER: He has already told
14 you.

15 A. In the subsequent reports, in all the
16 studies that I have that have been done since I've
17 been privy to those reports, it's my opinion she
18 did not have a fracture.

19 Q. However, at the time did you believe that
20 the tendonitis was related to the fracture?

21 A. At the time I believed it was related to
22 her wrist injury.

23 Q. Which you believed was a fracture?

24 A. At the time, yes, at the time of 5-17.

25 Q. And just so I clearly understand, your

1 understanding or your belief now that there was no
2 fracture has come about since your involvement as a
3 defendant in this lawsuit, right?

4 MR. WARNER: Objection.

5 MS. TOMUSKO: Objection.

6 A. Since additional studies were done.

7 Q. (By Mr. Kampinski) Well, studies were
8 done before the lawsuit, weren't they, Doctor?

9 A. The studies were not --

10 MR. WARNER: Look at the reports
11 to verify. Don't guess.

12 A. Well, I didn't see the reports until
13 afterwards, so whether they were done or not until
14 I saw the studies really had no significance.

15 MR. WARNER: Are you through with
16 the file?

17 MR. KAMPINSKI: I'm going to want to
18 copy them, if that's all right with you.

19 MR. BELOCK: All right.

20 Q. (By Mr. Kampinski) Is it the bone scan,
21 Doctor, that you are basing your opinion now that
22 there was no fracture?

23 A. On the repeated x-rays and on the bone
24 scan. I understand that another study has been
25 done as well that I have not seen, but I know the

1 results on.

2 Q. Doctor, if we are talking about x-rays,
3 would it be fair for me to state that depending
4 upon what x-ray report you looked at --

5 A. We're not talking about reports. We're
6 talking about x-rays.

7 Q. Well, different people are interpreting
8 those x-rays.

9 A. You have asked for my opinion --

10 Q. If you would listen to my question, we
11 could probably move along a little bit quicker.
12 Would I be correct in stating that the different
13 x-ray reports as read by different radiologists and
14 sometimes concurred in by you and sometimes not
15 concurred in by you, reflect different findings as
16 to what it was that existed in Virginia Lewis's
17 right wrist?

18 A. Correct.

19 Q. So that are you telling me now, sir, that
20 you are basing your opinion on some other x-ray
21 interpretations?

22 A. No. Other x-rays that I have seen and
23 the bone scan which I have seen, and the NMR which
24 I have not seen but I'm aware of the report.

25 Q. The bone scan itself, is it your

1 testimony that the bone scan reflects there was no
2 fracture?

3 A. Yes, it is.

4 Q. Is there a difference -- What do you
5 believe the wording of "A recent fracture," refers
6 to?

7 MR. WARNER: Objection.

8 MS. TOMUSKO: Objection.

9 MR. WARNER: What are you reading
10 from?

11 MR. KAMPINSKI: The report of the
12 bone scan.

13 MR. WARNER: Do you have that in
14 front of you, Doctor, that he's talking about?

15 MR. KAMPINSKI: Well, if it's in the
16 documents that were provided to me --

17 MR. WARNER: Could I see the
18 document that you are talking about?

19 MR. KAMPINSKI: It's on the last page.

20 MR. WARNER: Now, you are asking
21 him to interpret someone's interpretation. I
22 object to that and instruct you not to guess or to
23 interpret other people's interpretations and
24 instruct him to respond.

25 MR. KAMPINSKI: That's fair.

1 Q. (By Mr. Kampinski) Did you interpret the
2 bone scan?

3 A. Yes, I did.

4 Q. And what did it reflect to you, sir?

5 A. It reflected a bone which did not have
6 any recent evidence of trauma.

7 Q. All right.

8 A. Recent meaning any time within the last
9 year, probably.

10 Q. Probably? All right, Doctor. Why don't
11 you interpret the bone scans for me while we are
12 here.

13 A. Are you going to provide a view box for
14 me?

15 Q. Well, let's see if we can do it with the
16 light up here.

17 MR. WARNER: Doctor, can you
18 interpret it under these circumstances or would you
19 prefer to --

20 Q. (By Mr. Kampinski) Why don't you first
21 take a look to see if you can as opposed to saying
22 you can't before taking a look at them.

23 A. I have seen the films. I will take a
24 look at them for you.

25 Q. Thank you.

1 MR. WARNER: First, Doctor, in
2 your opinion, are these the films?

3 A. I have no idea. I know it's a film of a
4 wrist and forearm.

5 Q. (By Mr. Kampinski) Well, let me state to
6 you for the record that these have been provided to
7 me as being the films of Virginia Lewis, so I'll
8 ask you to assume what I've been asked to assume
9 and that is that they are. Okay?

10 A. Sure.

11 MR. WARNER: For the purposes of
12 this deposition only, and under that assumption
13 that you are saying these are, then you can, Doctor.

14 MR. KAMPINSKI: Well, they are not
15 mine.

16 MR. WARNER: I'm just trying to
17 clarify. You are going to lock him in on this and
18 come down six months or a year from now and say you
19 said this, and low and behold there was a mistake.
20 I don't know.

21 MR. KAMPINSKI: Well, I don't either.

22 MR. WARNER: That's all we can do.

23 Q. (By Mr. Kampinski) These have been
24 asserted as being the x-rays.

25 A. What would you like to know?

1 Q. I would like to know what there is on
2 that?

3 A. From poor visualization because of
4 inadequate view box, I can say there are areas of
5 radio density, meaning black as opposed to grays in
6 several spots, none out of relationship to a normal
7 set.

8 Q. Densities mean what, Doctor?

9 A. It means that, in radiology it's a
10 relative term. It means it's essentially darker
11 appearing on the x-ray than something else.

12 Q. And that's what you are looking for,
13 isn't it, in this type of step?

14 A. I'm sorry?

15 Q. That's what you are looking to determine,
16 if there are areas darker than other areas, to
17 determine if there is any abnormality existing in
18 the site that you are studying?

19 A. If you can determine that from the
20 surrounding ostensibly normal tissues, yes.

21 Q. And can you determine whether or not
22 there is any x-ray fracture depicted on that film?

23 A. I know that there are other x-rays which
24 have what's called a cone down view which highlight
25 that area better.

1 Q. Are these the ones you are referring to,
2 sir?

3 A. Or ones similar to this. This is a bone
4 scan of the wrist which have no abnormal areas
5 indicated.

6 Q. Would you please indicate for the record
7 what wrist we're talking about?

8 A. Here's a left wrist.

9 Q. That's not the one that was involved, was
10 it?

11 A. No. And here's the right wrist.

12 Q. And the right wrist involves what, sir?

13 A. A normal appearing bone scan. It has an
14 even distribution of the radioactive particles.

15 Q. And that's what you based your opinion on,
16 correct, sir?

17 A. For interpretation of the scan?

18 Q. Sure.

19 A. These along with all the other sections
20 of bone scan that you have shown me, that I can
21 tell you that that particular area with the
22 labeling that that is the right wrist is a normal
23 study.

24 Q. Okay. Could you explain for me, please,
25 why it is that the one that says left wrist has a

1 notation directed to it saying, INJ, period, site,
2 presumably injury site?

3 A. No. It says injection site. The site of
4 the injection of the radio --

5 Q. Into the left wrist?

6 A. It's an intravenous injection, yes.

7 Q. And does that appear to be normal, also?

8 A. You get a blur like that at the site of
9 the injection because the material is more
10 concentrated at that area.

11 Q. Where is the injection site on the right
12 wrist?

13 A. This is through the blood stream. You
14 don't inject to each site. You inject it in the
15 blood stream. It's taken up by some of the cells,
16 which travel throughout the body. You take the
17 film at some time later. If the areas are noted to
18 have taken up any increase, as opposed to other
19 related areas, then you can sometimes make
20 suppositions about it.

21 Q. What was the purpose for this bone scan,
22 do you know, sir?

23 A. I have no idea.

24 Q. Was that done by Dr. Nahigian, or do you
25 know?

1 A. I have no idea.

2 Q. It wasn't done at your request?

3 A. No, it was not.

4 Q. Have you discussed with Dr. Nahigian
5 whether or not he believes there was a fracture?

6 MS. TOMUSKO: Objection.

7 MR. WARNER: Objection. You may
8 answer.

9 A. Dr. Nahigian saw the original films and
10 he thought there was a fracture.

11 Q. (By Mr. Kampinski) How about since that
12 time?

13 A. I have not discussed it with him.

14 MR. KAMPINSKI: I don't have any
15 further questions. You have a right to read your
16 testimony -- The other attorneys may have some
17 questions.

18 MR. WARNER: Do you have any
19 questions?

20 MS. TOMUSKO: Dr. Smith, my name is
21 Joan Tomusko. I represent Dr. Friedley. I would
22 like to reserve my right to recall you for
23 questions at this time.

24 MR. BELOCK: My name is Wayne
25 Belock and we would reserve our right also on

1 behalf of St. Luke's

2 MR. KAMPINSKI: All right. I'm going
3 to want a copy of the Doctor's record. That's all
4 I have, Doctor. You are free to leave if you want,
5 and we will provide the originals to your attorney
6 before he leaves here, or you can wait, if you want.

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1 I have read the foregoing transcript from page
2 1 to page 95 and note the following corrections:

3
4 PAGE: LINE: CORRECTION: REASON:

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DR. CURTIS W. SMITH
Subscribed and sworn to before me
this day of , 1984.

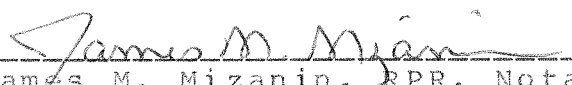
Notary Public

My Commission Expires:

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

4 I, James M. Mizanin, a Notary Public within
5 and for the State of Ohio, duly commissioned and
6 qualified, do hereby certify that DR. CURTIS W.
7 SMITH was by me, before the giving of his
8 deposition, first duly sworn to testify the truth,
9 the whole truth, and nothing but the truth; that
10 the deposition as above set forth was reduced to
11 writing by me by means of Stenotypy and was
12 subsequently transcribed into typewriting by means
13 of computer aided transcription under my direction;
14 that said deposition was taken at the time and
15 place aforesaid pursuant to notice and agreement of
16 counsel; and that I am not a relative or attorney
17 of either party or otherwise interested in the
18 event of this action.

19 IN WITNESS WHEREOF, I hereunto set my hand and
20 seal of office at Cleveland, Ohio, this 10th day of
21 October, 1984.

22 
23 James M. Mizanin, RPR, Notary Public
24 Within and for the State of Ohio
25 540 Terminal Tower
Cleveland, Ohio 44113

26 My Commission Expires: January 13, 1988.

LAWYER'S NOTES

[illegible]