

1                    I N T H E C O U R T O F C O M M O N P L E A S

2                    C U Y A H O G A C O U N T Y , O H I O

3                    . . .

4     J O H N M . S E E L I E , e t a l . , )

5                    P l a i n t i f f s , )

6                    v s . )     C A S E N O . 4 1 5 2 0 4

7     C N A I N S U R A N C E C O M P A N Y , )     J U D G E J O H N D . S U T U L A

8                    D e f e n d a n t . )

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10                  V i d e o t a p e d d e p o s i t i o n o f D U R E T S T A N F O R D

11     S M I T H , M . D . , a n e x p e r t w i t n e s s h e r e i n , c a l l e d b y

12     t h e D e f e n d a n t f o r C r o s s - E x a m i n a t i o n p u r s u a n t t o

13     t h e O h i o R u l e s o f C i v i l P r o c e d u r e , t a k e n b e f o r e

14     m e , t h e u n d e r s i g n e d , A n i k a W . P a t r i c k , a

15     R e g i s t e r e d P r o f e s s i o n a l R e p o r t e r a n d N o t a r y

16     P u b l i c i n a n d f o r t h e S t a t e o f O h i o , a t t h e

17     o f f i c e s o f O r t h o p a e d i c A s s o c i a t e s , I n c o r p o r a t e d ,

18     1 4 6 0 1 D e t r o i t A v e n u e , S u i t e 7 0 0 , L a k e w o o d , O h i o ,

19     o n W e d n e s d a y , t h e 1 7 t h d a y o f O c t o b e r , 2 0 0 1 ,

20     c o m m e n c i n g a t 8 : 4 2 o ' c l o c k a . m .

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<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On Behalf of the Plaintiffs</p> <p>4 ROBERT V HOUSEL CO ,LPA</p> <p>5 BY Robert V Housel, Attorney at Law</p> <p>6 The Illuminating Building, Suite 1310</p> <p>7 55 Public Square</p> <p>8 Cleveland, Ohio 44113-1993</p> <p>9</p> <p>10 On Behalf of the Defendant</p> <p>11 ALLSTATE INSURANCE COMPANY ENCOMPASS</p> <p>12 INSURANCE STAFF COUNSEL</p> <p>13 BY Perrin I Sah, Attorney at Law</p> <p>14 113 St Clair Avenue, Suite 525</p> <p>15 Cleveland, Ohio 44114</p> <p>16</p> <p>17 ALSO PRESENT</p> <p>18 John M Seelie</p> <p>19 Keith E McGregor - Videographer</p> <p>20</p> <p>21 ---</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 THE VIDEOGRAPHER: We're on the record.</p> <p>2 DURET STANFORD SMITH, M.D.,</p> <p>3 of lawful age, an expert witness herein, having</p> <p>4 been first duly sworn, as hereinafter certified,</p> <p>5 deposed and said as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. SAH:</p> <p>8 Q. Please state your full name.</p> <p>9 A. Duret Stanford, S-t-a-n-f-o-r-d, Smith.</p> <p>10 Q. And what is your occupation?</p> <p>11 A. Orthopaedic surgeon.</p> <p>12 Q. Dr. Smith, where are we located today?</p> <p>13 A. 14601 Detroit Ave., Lakewood, Ohio 44107.</p> <p>14 Q. And what is this address?</p> <p>15 A. This is my office.</p> <p>16 Q. Okay. Are you licensed to practice medicine</p> <p>17 in the State of Ohio?</p> <p>18 A. I am.</p> <p>19 Q. And when were you so licensed?</p> <p>20 A. I believe in '82.</p> <p>21 Q. Okay. Are you licensed in any other states</p> <p>22 to practice medicine?</p> <p>23 A. I don't have active licenses. I hold</p> <p>24 licenses in Arizona and New York State, and I</p> <p>25 take there on a caretaker status.</p>
<p style="text-align: right;">3</p> <p>1 INDEX</p> <p>2</p> <p>3 DIRECT EXAMINATION (By Mr. Sah).....4</p> <p>4 CROSS-EXAMINATION (By Mr. Housel).....17</p> <p>5 REDIRECT EXAMINATION (By Mr. Sah).....121</p> <p>6 RECROSS-EXAMINATION (By Mr. Housel)..... 125</p> <p>7</p> <p>8 Plaintiffs Exhibit A..... 52</p> <p>9 Plaintiffs Exhibit C..... 80</p> <p>10 Plaintiff's Exhibit D..... 95</p> <p>11</p> <p>12 Objections</p> <p>13 By Mr. Housel..... 8:25, 9:20, 10:4, 11:14,</p> <p>14 14:11, 15:14, 16:24, 123:2, 124:18</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">5</p> <p>1 Q. Where did you receive your undergraduate</p> <p>2 training?</p> <p>3 A. Syracuse University.</p> <p>4 Q. Okay. And what year did you graduate?</p> <p>5 A. 1973.</p> <p>6 Q. Where did you attend medical school?</p> <p>7 A. State University of New York, Medical School</p> <p>8 of Buffalo.</p> <p>9 Q. And when did you graduate from medical</p> <p>10 school?</p> <p>11 A. '77.</p> <p>12 Q. Can you tell the ladies and gentlemen of the</p> <p>13 jury what is an "internship"?</p> <p>14 A. An "internship" is your first year after you</p> <p>15 graduate from medical school. It's also called</p> <p>16 your PG1 year, post-graduate one, PGY1,</p> <p>17 post-graduate year one.</p> <p>18 Q. And where did you do your internship?</p> <p>19 A. State University of New York Health Science</p> <p>20 Center, Syracuse.</p> <p>21 Q. Any particular field?</p> <p>22 A. General surgery.</p> <p>23 Q. Can you tell the jury, what is a</p> <p>24 "residency"?</p> <p>25 A. A "residency" comes after an internship, and</p>

1 it's for a specialized training within one area  
2 of medicine, mine was orthopaedics. There is  
3 internal medicine, general surgery, ear, nose and  
4 throat, urology, things like that.

5 Q. Where did you do your residency?

6 A. At the same place, State University of New  
7 York Health Science Center, Syracuse.

8 Q. And I'm sorry, did you tell us what  
9 particular area you did your residency in?

10 A. Orthopaedic surgery.

11 Q. Okay. Could you tell us what does it mean  
12 to be "board certified"?

13 A. "Board certification" means several things.  
14 You've graduated from an accredited medical  
15 school, and you've completed a residency that's  
16 been accredited, and you're recommended by your  
17 residency chairman to take your test. And then  
18 you take a written and an oral test for your  
19 board certification. And once you pass that,  
20 you're considered board certified.

21 Q. Are you board certified?

22 A. Yes.

23 Q. In what area?

24 A. Orthopaedic surgery.

25 Q. Do you know -- do you remember when you were

1 surgery. We -- it's basically a referral type of  
2 practice. Now, patients see their primary care  
3 physician for pretty much everything first, and  
4 then if it's an orthopaedic problem that they  
5 don't feel comfortable with, then they're  
6 referred to our office, or an orthopaedic  
7 surgeon.

8 Q. Has your experience and your practice  
9 included cases in which injury or alleged injury  
10 was to the low back?

11 A. Yes.

12 Q. Now, Dr. Smith, did you examine a John  
13 Seelie, the Plaintiff in this case?

14 A. I did.

15 Q. Doctor, are you being reimbursed for your  
16 time in testifying today?

17 A. I believe so.

18 Q. Okay. And what is your fee?

19 A. For a deposition, \$750 an hour.

20 Q. Okay. Now, Doctor, given your  
21 qualifications and experience, what, if any,  
22 difficulty is presented in assessing or  
23 evaluating a Plaintiff's medical condition based  
24 upon a review of medical records and upon exam?

25 MR. HOUSEL: Objection.

1 board certified?

2 A. I believe it was '86, and then  
3 recertification in '96.

4 Q. Are you on the staff of, or do you have any  
5 privileges at any area hospitals?

6 A. I do.

7 Q. And which hospitals?

8 A. Lakewood Hospital, Fairview General,  
9 Westshore and Metro General, Metro Health Center.

10 Q. What are "hospital privileges"?

11 A. They're -- when you're privileged, you're  
12 allowed to practice certain things in the  
13 hospital limited to your scope of training.

14 Q. And in your case, that would be?

15 A. Orthopaedic surgery.

16 Q. Okay. Do you hold any teaching positions?

17 A. I'm on the teaching faculty at Case Western  
18 Reserve University and the University -- Uniform  
19 School of the Health Sciences in Bethesda,  
20 Maryland.

21 Q. In addition to your teaching positions, are  
22 you engaged in the private practice of medicine?

23 A. I am.

24 Q. And what does your practice consist of?

25 A. Orthopaedic surgery. I specialize in hand

1 THE WITNESS: The medical records  
2 generally will give you the history and the  
3 specifics of, many times, the injury and the care  
4 given to the patient following the injury. And  
5 that goes -- helps generate what we call the  
6 history of the patient and the medical care up to  
7 a certain point.

8 MR. HOUSEL: Move to strike as  
9 non-responsive to the question that I objected to  
10 that was just asked.

11 BY MR. SAH:

12 Q. Doctor, prior to examining the pa -- the  
13 Plaintiff, had you been furnished with his  
14 medical records?

15 A. I was furnished with a series of medical  
16 records, yes.

17 Q. Okay. Could you tell the ladies and  
18 gentlemen of the jury what Plaintiff's treatment  
19 history was according to his records?

20 MR. HOUSEL: Objection.

21 THE WITNESS: He was seen by  
22 Dr. Kim Sterns -- I'll try and get you those  
23 dates -- following the accident. According to  
24 Dr. Sterns, he was seen originally 7/15, and the  
25 motor vehicle accident was 7/11.

<p style="text-align: right;">10</p> <p>1 BY MR. SAH:</p> <p>2 <b>Q. Doctor, when did the Plaintiff last see</b></p> <p>3 <b>Dr. Sterns?</b></p> <p>4 MR. HOUSEL: Objection.</p> <p>5 THE WITNESS: I believe in July</p> <p>6 of '99.</p> <p>7 BY MR. SAH:</p> <p>8 <b>Q. Okay. What was the date of your examination</b></p> <p>9 <b>of the Plaintiff?</b></p> <p>10 A. April 11, 2001.</p> <p>11 <b>Q. At that examination in April, did the</b></p> <p>12 <b>Plaintiff give you a history?</b></p> <p>13 A. Yes, he did.</p> <p>14 <b>Q. And what was that history that you obtained</b></p> <p>15 <b>from Plaintiff?</b></p> <p>16 A. According to my notes, at that point,</p> <p>17 Mr. Seelie was a 42-year-old salesperson who does</p> <p>18 a lot of traveling. On or about 7/1/99, he was</p> <p>19 the driver of a motor vehicle, who was seat</p> <p>20 belted. Apparently it was a misty day, around</p> <p>21 5:30 to 6:00 p.m. He was stopped because a car</p> <p>22 in front of him was turning. He saw a car coming</p> <p>23 at him in the rearview mirror and was hit in the</p> <p>24 rear end and it pushed him into the car in front</p> <p>25 of him.</p>	<p style="text-align: right;">12</p> <p>1 <b>Q. Okay. Doctor, did you perform a physical</b></p> <p>2 <b>examination of the Plaintiff?</b></p> <p>3 A. I did</p> <p>4 <b>Q. And what were your findings upon that</b></p> <p>5 <b>physical examination?</b></p> <p>6 A. He was tender on the left more so than the</p> <p>7 right Sacroiliac joint area, mainly tender in</p> <p>8 the sciatic notch on the left more so than the</p> <p>9 right</p> <p>10 <b>Q. Doctor, let me interrupt you. You mentioned</b></p> <p>11 <b>that the Plaintiff was tender in the sacroiliac</b></p> <p>12 <b>area. What is the "sacroiliac"?</b></p> <p>13 A. That's a part of the pelvis where the</p> <p>14 sacrum, which is the very last portion of the</p> <p>15 spine, connects to the hip. The pelvic bones, so</p> <p>16 to speak. And that's where the spine and the</p> <p>17 pelvis come together in the -- in the back</p> <p>18 <b>Q. And you noted there was tenderness. What is</b></p> <p>19 <b>that?</b></p> <p>20 A. When we palpate, or touch that area, we ask</p> <p>21 them, "Is this painful, or where is the most</p> <p>22 pain," and they will show you. And then you</p> <p>23 palpate or touch that area, and they will tell</p> <p>24 you if that is tender</p> <p>25 <b>Q. Okay. Please continue with what your</b></p>
<p style="text-align: right;">11</p> <p>1 He denied any head trauma, but states he may</p> <p>2 have had some chest trauma. He developed low</p> <p>3 back pain when he got out of the car, but had no</p> <p>4 radicular symptomatology. He sought no medical</p> <p>5 attention until a few days later. He was not</p> <p>6 very specific on when this was. He came under</p> <p>7 the care of Dr. Kim Sterns complaining of low</p> <p>8 back pain, and right more so than left leg pain.</p> <p>9 He did not know when the onset of left leg pain</p> <p>10 was, or the tingling to the heel actually</p> <p>11 started. He had a workup which included an MRI</p> <p>12 dated 7/20/99, and we go to the findings on</p> <p>13 there --</p> <p>14 MR. HOUSEL: Objection. That's</p> <p>15 no longer responsive to the question about what</p> <p>16 the patient's history was -- what the Plaintiff's</p> <p>17 history was.</p> <p>18 THE WITNESS: It's part of the</p> <p>19 workup.</p> <p>20 BY MR. SAH:</p> <p>21 <b>Q. Continue, please, Doctor.</b></p> <p>22 A. He was placed on Vicodin, currently</p> <p>23 undergoing no physical therapy formally, but is</p> <p>24 doing some home exercise. And he denied any</p> <p>25 previous injury to his back.</p>	<p style="text-align: right;">13</p> <p>1 <b>findings were.</b></p> <p>2 A. Okay. He had no significant tenderness in</p> <p>3 the lumbosacral junction or the paraspinal</p> <p>4 structures. That's the muscles of his back. He</p> <p>5 had normal lateral bending and hyperextension of</p> <p>6 the lumbosacral spine, and lacked only 12 inches</p> <p>7 of touching his fingertips to the floor when he</p> <p>8 flexed forward. He had negative straight leg</p> <p>9 raising, both legs, no sensory or motor deficits</p> <p>10 to either lower extremity, and his degenerative</p> <p>11 reflexes were two plus and equal for knees and</p> <p>12 ankles, toes were down going. He had good</p> <p>13 peripheral pulses. He had no atrophy, skin</p> <p>14 changes noted to either lower extremity or his</p> <p>15 back.</p> <p>16 <b>Q. Doctor, based upon your review of the</b></p> <p>17 <b>Plaintiff's history, his medical records and your</b></p> <p>18 <b>examination and applying your recent training and</b></p> <p>19 <b>experience in the field of orthopaedic medicine,</b></p> <p>20 <b>did you reach a conclusion to a reasonable degree</b></p> <p>21 <b>of medical certainty as to whether or not the</b></p> <p>22 <b>Plaintiff sustained any injury as a result of the</b></p> <p>23 <b>car accident of July 1, 1999?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And what is that opinion?</b></p>

1 A. I believe he suffered a lumbosacral strain  
2 or sprain.  
3 Q. Now, the Plaintiff is alleging that he  
4 sustained a traumatic spondylolysis with early  
5 grade one spondylolisthesis as a result of this  
6 accident. Do you have an opinion, based upon a  
7 reasonable degree of medical certainty, as to  
8 whether or not the Plaintiff sustained a  
9 traumatic spondylolysis with early grade one  
10 spondylolisthesis as a result of this accident?  
11 MR. HOUSEL: Objection. It  
12 wasn't addressed in his medical report, which was  
13 provided to me, and was never updated. We are  
14 now within 30 days of trial. Medical report had  
15 to be updated according to Local Rule. It wasn't  
16 done, so this opinion is improper.  
17 BY MR. SAH:  
18 Q. Go ahead, Doctor.  
19 A. Yes, I do.  
20 Q. And what is that opinion?  
21 A. My opinion is that he did not suffer a  
22 traumatic spondylolisthesis grade one, L5 and S1  
23 from the motor vehicle accident.  
24 MR. HOUSEL: Move to strike the  
25 opinion testimony for the reason I earlier gave.

1 BY MR. SAH:  
2 Q. Why is that?  
3 A. The natural history of a spondylolisthesis  
4 is generally nontraumatic, and his MRI failed to  
5 reveal any obvious fracture line in the area  
6 where you get the grade one spondylolisthesis.  
7 Q. Now, Doctor, Plaintiff is also alleging that  
8 he sustained disk herniations at the L4-L5, and  
9 L5-S1 levels. Do you have an opinion, based upon  
10 a reasonable degree of medical certainty, as to  
11 whether or not the Plaintiff, in fact, sustained  
12 disk herniations at the L4-L5, L5-S1 levels as a  
13 result of this accident?  
14 MR. HOUSEL: Objection. Again,  
15 it was not addressed in his medical report  
16 provided in this case. The medical report was  
17 never updated within 30 days of trial pursuant to  
18 Rule 35 of the Ohio Rules of Procedure, so it's  
19 improper for him to express an opinion at this  
20 time.  
21 THE WITNESS: I -- I do.  
22 BY MR. SAH:  
23 Q. And what is that opinion?  
24 MR. HOUSEL: I'll just move to  
25 strike his opinion just to simplify things, for

1 the same reason I just stated.  
2 THE WITNESS: I do not feel he  
3 suffered a herniated disk at those two levels due  
4 to the motor vehicle accident. I found no  
5 evidence of a disk herniation on examination on  
6 April 11, 2001.  
7 BY MR. SAH:  
8 Q. Now, Doctor, do you have an opinion, based  
9 upon a reasonable degree of medical certainty, as  
10 to what, if any, additional treatment the  
11 Plaintiff currently requires?  
12 A. As of April 11, 2001, he does not require  
13 any active medical treatment.  
14 Q. Do you recommend that he have any kind of  
15 treatment whatsoever?  
16 A. I would recommend a home exercise program  
17 for back strengthening and flexibility.  
18 Q. Now, Doctor, do you have an opinion, based  
19 upon a reasonable degree of medical certainty, as  
20 to whether or not the Plaintiff has sustained a  
21 permanent disability or impairment as a result of  
22 this accident?  
23 A. I do.  
24 MR. HOUSEL: Objection.  
25 BY MR. SAH:

1 Q. And what is that opinion?  
2 A. My opinion is that he has not sustained any  
3 permanent impairment from this motor vehicle  
4 accident.  
5 MR. SAH: Thank you, Doctor.  
6 CROSS-EXAMINATION  
7 BY MR. HOUSEL:  
8 Q. Could I see your file, please? I'm -- for  
9 the record, I'm Robert Housel, Doctor. I  
10 represent Mr. Seelie, who is here with me this  
11 morning, correct, sir?  
12 A. You -- you represent Mr. Seelie, that's  
13 correct.  
14 Q. And he is here with me this morning, is he  
15 not?  
16 A. I do not know Mr. Seelie. I would not  
17 recognize him. If you say that's Mr. Seelie, I  
18 believe you.  
19 Q. Okay. Thank you.  
20 MR. HOUSEL: Let's go off the  
21 record.  
22 THE VIDEOGRAPHER: Off the record.  
23 (Thereupon, a discussion was  
24 held off the record.)  
25 THE VIDEOGRAPHER: We're on the record.

1 BY MR. KOUSEL:  
 2 Q. Doctor, do you do surgery as an orthopaedic  
 3 surgeon?  
 4 A. I do.  
 5 Q. What kind of surgery do you do?  
 6 A. Everything except necks, backs and some foot  
 7 surgery.  
 8 Q. You haven't done a back surgery since the  
 9 '80s. Isn't that correct?  
 10 A. Probably.  
 11 Q. I think that's what you told me at your  
 12 deposition.  
 13 A. That's probably correct, yeah.  
 14 Q. Do you remember when I took your deposition  
 15 over here in your office?  
 16 A. Yes.  
 17 Q. Okay. That was a similar setting. You were  
 18 under oath, same as you are today?  
 19 A. That's correct.  
 20 Q. Okay. You primarily are a hand surgeon.  
 21 Isn't that right, sir?  
 22 A. I specialize in hand surgery, yeah.  
 23 Q. How long have you done these independent  
 24 medical examinations?  
 25 A. Probably five to seven years.

1 Q. Last five to seven years?  
 2 A. Probably.  
 3 Q. How did you get involved in doing these  
 4 independent medical examinations for insurance  
 5 companies and defense lawyers?  
 6 A. Well, I don't separate them, insurance  
 7 companies, defense lawyers, plaintiffs or  
 8 Workmen's Comp or the State --  
 9 Q. Well, let's stop. An independent medical  
 10 examination, what does that mean to you?  
 11 A. It's an examnation to evaluate someone and  
 12 render an opinion.  
 13 Q. Well, if it's somebody that you're treating,  
 14 it's different than an independent medical  
 15 examination, isn't it?  
 16 A. If you're treating someone, that's treatment  
 17 as a patient.  
 18 Q. Right. You don't -- you didn't treat  
 19 Mr. Seelie as a patient in this case, did you?  
 20 A. I've not treated Mr. Seelie.  
 21 Q. He's not your patient, sir?  
 22 A. That's correct, he's not.  
 23 Q. You examined him at the request of the  
 24 Defendant CNA Insurance Company and their  
 25 attorney, Mr. Sah. Isn't that right?

1 A. That's correct.  
 2 Q. That's an independent medical examination  
 3 under the Rules of Civil Procedure of Cuyahoga  
 4 County. Do you understand that to be the case?  
 5 A. I don't understand what the second part of  
 6 your statement was, but it was an independent  
 7 medical examnation, yes.  
 8 Q. What does it mean to do an independent  
 9 medical examination to you?  
 10 A. I see a patient or a person, take a history,  
 11 physical and give an independent opinion as to  
 12 what is asked of me.  
 13 Q. And that opinion isn't supposed to be  
 14 colored in one favor or another, is it, Doctor?  
 15 A. That's correct.  
 16 Q. All right. And you did that in this case --  
 17 A. That's correct.  
 18 Q. -- right? You've been doing these for five  
 19 to seven years, I think you said?  
 20 A. I believe so  
 21 Q. And you were kind enough to send me some  
 22 records relative to those, and I looked through  
 23 those records and those records seem to indicate  
 24 that you do about four of these a week on a  
 25 Wednesday. Does that sound about right?

1 A. Four is maximum. Sometimes I don't do any.  
 2 Q. But usually, at least according to the  
 3 records that I got for the last two years, which  
 4 you were kind enough to send to me, I totaled  
 5 them up. It came to about an average of four a  
 6 week. Would you argue -- would you dispute that  
 7 at all?  
 8 A. Yeah. Four is my maximum. There is a lot  
 9 of times that I don't do four, so I don't know  
 10 how the average could be four.  
 11 Q. Well --  
 12 A. Because that would mean there would have to  
 13 be more than four, and I don't do more than four.  
 14 Q. Some days I think there were more than four.  
 15 Some days were other than Wednesdays, too.  
 16 A. They shouldn't be.  
 17 Q. I'm just telling you what I --  
 18 A. That's possible.  
 19 Q. Okay. And what you do is, you see somebody  
 20 like a Mr. Seelie at the request of somebody like  
 21 Mr. Sah who represents an insurance company,  
 22 correct?  
 23 A. Or yourself, or a plaintiff.  
 24 Q. Well, I looked at every one of those that  
 25 you sent me, and I called the phone numbers on

1 the ones that you sent me. None of them were for  
2 plaintiffs lawyers, Doctor. They were all for  
3 defense firms, Bureau of Workers' Compensation or  
4 insurance companies. Do you trust that's  
5 accurate?

6 A How far back did they go?

7 Q About a year and a half.

8 A I believe I've seen some plaintiff cases

9 Q Majority of them are for defense firms and  
10 insurance --

11 A That's not what you said You said all of  
12 them

13 Q Well, the majority of them then, right?

14 A They may be I don't categorize them

15 Q All of the ones that you sent to me were for  
16 insurance companies, Bureau of Workmen's  
17 Compensation, employers' or defense law firms.

18 A I think there were some plaintiffs in there  
19 as well

20 Q Well, do you want to go over that, or do you  
21 trust that that's accurate? I mean, I can go  
22 over it with you if you like. I have them here?

23 A It's up to you I don't recognize the names  
24 of law firms as one or another

25 Q How did you first get involved in the

1 A. I hope so. No, I hope this is a phone  
2 number.

3 Q. Okay.

4 A. Yeah.

5 Q. I took those and I made a bunch of calls on  
6 some of those, and I made a list here I would  
7 like to go over with you of all of the ones you  
8 sent me for about, I think, almost the last two  
9 years of the Wednesdays and other days that you  
10 had these independent medical examinations  
11 scheduled. They were for Weston Hurd, which is a  
12 major insurance defense law firm in Cleveland.  
13 You ever heard of them?

14 A. I don't know what the law firms do or what  
15 they don't do. I mean, I --

16 Q. You have no idea?

17 A. No.

18 Q. You talk to these people on the phone, don't  
19 you?

20 A. No.

21 Q. Oh, your secretary schedules it?

22 A. Yes, yes.

23 Q. Okay. Terry Kenneally, he does insurance  
24 defense work. Do you know him?

25 A. I don't know if I ever met him.

1 business of doing these independent medical  
2 examinations?

3 A. The Bureau of Workers' Compensation sent a  
4 representative to our group saying that, "We have  
5 these IMEs to be done, is anyone interested?" I  
6 also got a call around the same time from a  
7 lawyer that I knew from the Marine Corps Reserve,  
8 asked me if I would take a look at some cases.  
9 And I guess word of mouth spread, and more people  
10 sent me cases The state sends me cases.

11 Q. Okay. And you sent me at my request,  
12 because I issued a subpoena for it before, and  
13 you didn't provide it until we got here and I  
14 took your deposition. Remember, we had to go  
15 through that, and you said you didn't want to  
16 provide it and etc., etc.?

17 A. No, no, no I said I couldn't provide it as  
18 quickly as you wanted it.

19 Q. But you did provide what you had, right?

20 A. I believe so.

21 Q. And what you sent me, I think, was what your  
22 secretary got together, which was the Wednesday  
23 appointments, who the appointment was for and  
24 there was a phone number on all of them. I can  
25 go over --

1 Q. Jim Carrabine, he's a friend of mine. He  
2 does insurance defense work. Do you know him?

3 A. I don't. If they walked in the room, I  
4 would not know them.

5 Q. Okay. There was the Progressive Insurance  
6 Company, which is a major automobile insurance  
7 company here in the Greater Cleveland area,  
8 correct?

9 A. That, I know.

10 Q. You've done independent medical  
11 examinations --

12 A. I don't know. I know that Progressive is --

13 Q. Let me finish the question. You've done  
14 independent medical exams for them, haven't you,  
15 sir?

16 A. I have no idea.

17 Q. Okay. Allstate Insurance Company and CNA,  
18 which we have in this case, you have done  
19 independent medical exams for them, haven't you?

20 A. I believe so.

21 Q. Nationwide Insurance Company out of Akron.  
22 Their offices in Akron have scheduled independent  
23 medical exams with you, haven't they?

24 A. If you say so and that's what the number,  
25 you know, the phone number came out to be, then I



1 trust you.  
 2 Q. Yeah. That was a number of times. You  
 3 trust it's accurate, or not?  
 4 A. No, I trust you.  
 5 Q. You have no reason to believe that I would  
 6 lie about that, do you. Doctor?  
 7 A. I don't know you. I hope you would not.  
 8 Q. Do you have any reason to think I would lie  
 9 about it, Doctor?  
 10 A. I would hope not.  
 11 Q. Joe Wantz, who's an insurance defense lawyer  
 12 in Cleveland for a long time, do you know him?  
 13 A. No.  
 14 Q. Mike Farrell, do you know Mike?  
 15 A. No.  
 16 Q. There were a lot of listings for the Bureau  
 17 of Workmen's Compensation. You do a lot of  
 18 those, don't you?  
 19 A. What's "a lot"? You know, I do some.  
 20 Q. Okay. And you don't do backs for the Bureau  
 21 of Workers' Compensation, you told me at your  
 22 deposition --  
 23 A. That's correct.  
 24 Q. -- remember that?  
 25 A. Yeah.

1 Q. But you did a back case here, though, right?  
 2 A. That's correct  
 3 Q. Okay. Do you know a Diane Kunz? I called  
 4 and she's an insurance adjustor. Do you know  
 5 her?  
 6 A. I have no idea who that is  
 7 Q. How do all these people get your name as  
 8 somebody to send plaintiffs to for independent  
 9 medical exams?  
 10 A. I don't know. I don't advertise. They call  
 11 up, we schedule them, I see them  
 12 Q. Okay. But you don't know how they come to  
 13 learn that you're someone that does these?  
 14 A. I -- like I say, I don't advertise, I have  
 15 no idea how they find out  
 16 Q. All right, Doctor. Williams, Sennett &  
 17 Scully, an insurance defense firm in town. Do  
 18 you know them? They do State Farm defense work,  
 19 Allstate defense work, all kinds of defense work.  
 20 Do you know them?  
 21 A. No  
 22 Q. Davis & Young, one of the major insurance  
 23 defense firms in town. Do you know a lawyer  
 24 named Ron Ziehm from that firm?  
 25 A. Yes. Yes, I do.

1 Q. You know Ron?  
 2 A. Yes.  
 3 Q. Ron sends plaintiffs over to you to examine  
 4 them, right?  
 5 A. I don't think Ron's with them.  
 6 Q. He's not anymore, you're right.  
 7 A. That's correct.  
 8 Q. But he has sent people over to you to be  
 9 examined on behalf of an insurance company,  
 10 correct?  
 11 A. He's sent me patients, I don't know on whose  
 12 behalf.  
 13 Q. Well --  
 14 A. I haven't seen one from him for a while, I  
 15 don't think.  
 16 Q. Okay.  
 17 A. So I don't know.  
 18 Q. Corky O'Sullivan, do you know him?  
 19 A. I've met him. I've -- yeah.  
 20 Q. Where did you meet him?  
 21 A. In deposition.  
 22 Q. Okay. He's an insurance defense lawyer that  
 23 sends people over to you for evaluation, right?  
 24 A. I don't know what his firm does.  
 25 Q. Okay.

1 A. Like I say, I don't know what any firm does.  
 2 Q. Have you ever gone to cocktail parties where  
 3 these lawyers get together and talk to you about  
 4 these --  
 5 A. No.  
 6 Q. No? I thought you told me that you learned  
 7 from a lawyer at a cocktail party how much to  
 8 charge for these things?  
 9 A. It was a -- I believe it was a Navy cocktail  
 10 party, not a lawyer cocktail party.  
 11 Q. A Navy cocktail party?  
 12 A. That's correct.  
 13 Q. And there was a lawyer there and he engaged  
 14 you in conversation about independent medical  
 15 exams, or how did that happen?  
 16 A. I don't know -- I don't know how it came up.  
 17 That was a long time ago, and I don't go to  
 18 lawyer functions, per se. I don't think I've  
 19 ever been to a lawyer function.  
 20 Q. Have you ever given speeches to lawyers  
 21 about independent medical exams?  
 22 A. I don't think so.  
 23 Q. Well, do you know, or you don't know?  
 24 A. Well, I've been doing this for seven years.  
 25 I don't recollect ever giving a speech to lawyers

1 on anything  
 2 Q. You told me at your deposition that a lawyer  
 3 told you how much you were supposed to charge for  
 4 these things. You remember that?  
 5 A. No, no. A lawyer told me we were not  
 6 charging enough.  
 7 Q. Who was that lawyer?  
 8 A. I have no idea who it was.  
 9 Q. When did that happen?  
 10 A. I don't know.  
 11 Q. Where did that happen?  
 12 A. Like I say, I don't remember that.  
 13 Q. No recollection?  
 14 A. No.  
 15 Q. Okay.  
 16 A. And to bolster that, one of my partners  
 17 mentioned that --  
 18 Q. I didn't ask you anything about one of your  
 19 partners, I asked you if you knew.  
 20 A. No, no. I'm trying to get to where the fee  
 21 came from. And he came back with the same thing,  
 22 said that, "I talked to a lawyer and he said our  
 23 fees are too low."  
 24 Q. What were your fees before?  
 25 A. I don't know.

1 Q. What are your fees now?  
 2 A. 750 an hour for a deposition, or quarterly  
 3 hour.  
 4 Q. And you charge **350** to **375** an hour to do the  
 5 examination and review the records, right?  
 6 A. That's correct.  
 7 Q. How come it's twice that for a deposition?  
 8 A. That's what they told us to do. I mean --  
 9 Q. But you don't know who it was that told you  
 10 to do that?  
 11 A. No. My impression was that the price for  
 12 depositions is always more than --  
 13 Q. Why?  
 14 A. I don't know. I don't make the rules or do  
 15 whatever.  
 16 Q. Well, you're the one who decides how much to  
 17 charge, don't you?  
 18 A. Well, based on a recommendation, yeah.  
 19 Q. Well, the recommendation comes usually from  
 20 a defense lawyer, doesn't it?  
 21 A. I don't know who these people were.  
 22 Q. All right. Did the court ever reduce your  
 23 fee for a deposition?  
 24 A. I believe so.  
 25 Q. To, like, **350** an hour, right?

1 A. I have no idea.  
 2 Q. Okay. According to the material that you  
 3 were kind enough to send me, you've done, at  
 4 least, work for the Gallagher Sharp firm. That's  
 5 a major insurance defense firm in town. Do you  
 6 know them?  
 7 A. I know the name Gallagher Sharp.  
 8 Q. Okay. State Farm Insurance Company, you've  
 9 done ones for State Farm?  
 10 A. Yes.  
 11 Q. Keller & Curtin, that's a -- they do nothing  
 12 but insurance defense work in town.  
 13 A. I don't recognize that name.  
 14 Q. Don't recognize that name?  
 15 A. No.  
 16 Q. Maryann Savarta, who is she?  
 17 A. She is a -- I believe she's a paralegal for  
 18 Squires, Sanders & Dempsey.  
 19 Q. And you did examinations of injured  
 20 employees in that situation, didn't you?  
 21 A. I don't know.  
 22 Q. For employers?  
 23 A. I don't know who they were.  
 24 Q. How do you know who Maryann Savarta is?  
 25 A. I've talked to her, and she became a patient

1 of mine.  
 2 Q. Okay. You do a lot of them, according to  
 3 the phone calls I made from the material you've  
 4 provided me for the Bureau of Workmen's  
 5 Compensation, a Connie, and a somebody at the  
 6 C-92 scheduling department. That's people who  
 7 have been injured on the job that are claiming an  
 8 injury, and you do an evaluation for the employer  
 9 in a situation like that. Isn't that right?  
 10 A. No. That's -- I do it for the Bureau.  
 11 Q. Oh, you do it for the Bureau.  
 12 A. Yes.  
 13 Q. So they can make a determination whether the  
 14 doctor that's treating the person is right in his  
 15 diagnosis versus what you say, right?  
 16 A. No. There are several types. One is a  
 17 90-day exam. My impression is that now with the  
 18 new Workmen's Comp setup in Ohio, when an injured  
 19 worker has been out 90 days, they have an IME to  
 20 see whether or not their treatment is proper,  
 21 whether they can go back to work, whether they've  
 22 reached maximum medical improvement, or if there  
 23 are any suggestions to -- for further  
 24 consultations or further treatment for that  
 25 patient.

<p style="text-align: right;">34</p> <p>1 Q. Okay. But these people have all been 2 treated by doctors other than you. Isn't that 3 right? 4 A. That's correct. 5 Q. Okay. So you're doing it for the Bureau? 6 A. That's correct. 7 Q. All right. And you do them for Crawford &amp; 8 Company, which is a major insurance adjusting 9 firm, correct? 10 A. I don't know who they are. 11 Q. Well -- 12 A. I mean, I trust you. 13 Q. Okay. Well, does your secretary tell you 14 who these people are that are calling in? 15 A. No. 16 Q. Are you curious to know who you're doing all 17 these for? 18 A. No. 19 Q. Okay. Grange Insurance Company claims. I 20 called there, at the number that was on there. 21 You obviously do them for the Grange, another 22 major insurance company here in Ohio. You do it 23 for their claims office, correct? 24 A. I recognize the Grange name. 25 Q. All right, sir. You do it for Bureau of</p>	<p style="text-align: right;">36</p> <p>1 A. That's correct. 2 Q. They're sent up from Pittsburgh to see you, 3 right? 4 A. I believe they have. 5 Q. Uhlinger &amp; Keis, another insurance defense 6 firm here in town? 7 A. I have no idea. 8 Q. Okay. Careworks Company. They manage 9 injured workers' claims is what they told me. 10 A. Careworks, right. 11 Q. You do work for them, too? 12 A. They're an MCO. 13 Q. You do work for them, too, right? 14 A. I believe I have. 15 Q. All right. Westfield Insurance Company, the 16 Middleburg Heights service office, you do 17 independent medical exams for them, right? 18 A. I recognize that name. 19 Q. So you do them as well? 20 A. I have done. 21 Q. Okay. Doug Fifner, who is a defense lawyer 22 in town, you do work for him, Fifner &amp; 23 Associates? 24 A. I have. 25 Q. And Squires, Sanders &amp; Dempsey, you do work</p>
<p style="text-align: right;">35</p> <p>1 Workmen's Compensation, Mansfield, Ohio, Service 2 Office, right, sir? 3 A. I recognize that 4 Q. They send them all the way up here from 5 Mansfield for you to see, don't they? 6 A. They do? Well, I believe they do if 7 that's -- 8 Q. Well, it was on the sheet you gave me. 9 A. No, I know 10 Q. All right. 11 A. I've sent reports to the Mansfield service 12 office, but the patient may not live there 13 Q. Okay. 14 A. Whether they do or not, I don't know 15 Q. You do it for the Marriott Claims Services, 16 correct? 17 A. I don't know 18 Q. Marriott is a major hotel chain, right? 19 A. I believe-- 20 Q. I mean, that's one of the listings I got. 21 A. No, I believe you 22 Q. Okay. Pittsburgh and Conneaut Company. 23 That's a railroad; is that right? 24 A. I believe it is 25 Q. Out of Pittsburgh, Pennsylvania?</p>	<p style="text-align: right;">37</p> <p>1 for them? 2 A. Yes. 3 Q. Okay. That's the list that I compiled from 4 the material you sent me. In each of these 5 instances, Doctor, you would see somebody for one 6 of these companies or insurance companies or 7 defense law firm, etc., much as you saw my 8 client, John Seelie, correct? 9 A. That's correct. 10 Q. And what you would do, sir, is you would 11 look at the records that the lawyer provides to 12 you and you do the examination and then you'd 13 write a report? 14 A. Yeah. One correction. They're not all 15 lawyers. The Bureau of Workers' Compensation -- 16 Q. Okay. 17 A. -- and the state sends me those. 18 Q. Thanks. All right. Let's -- well, then 19 anybody who's -- anybody who I just read off that 20 list from the material you provided to me who 21 would send you an individual to evaluate, like 22 Mr. Seelie was sent to you to be evaluated by the 23 Defendant CNA Insurance Company here. Okay? 24 A. Well, there was no question there. You tell 25 me.</p>

1 Q. All right. Well, let's just agree that  
 2 that's what those records reflect, and these  
 3 would be people who would be sent to you to be  
 4 evaluated. You would look at their records and  
 5 conduct an examination and write a report?  
 6 A. And do x-rays if needed.  
 7 Q. Right.  
 8 A. And interpret the x-rays.  
 9 Q. Okay.  
 10 A. That's correct.  
 11 Q. Is there an average time that that takes to  
 12 do that, Dr. Smith?  
 13 A. Average time to do what?  
 14 Q. All of the things you just told me you do in  
 15 these instances.  
 16 A. A lot of it depends on how much material  
 17 comes with the --  
 18 Q. Sure.  
 19 A. -- the medical records. We'll call them  
 20 medical records.  
 21 Q. Right. Sometimes there is a lot of material  
 22 that comes in?  
 23 A. Right.  
 24 Q. And you've got to read it all, right?  
 25 A. Yes.

1 Q. And you do that, right?  
 2 A. Yes.  
 3 Q. Again, is there an average amount of time  
 4 that you spend doing this?  
 5 A. I don't know. I've never timed it.  
 6 Q. Well, you keep track of your time, don't  
 7 you?  
 8 A. Yeah, but I've never averaged to see what my  
 9 average time is.  
 10 Q. Well, do you keep records of how many hours  
 11 you spend on each one of these cases?  
 12 A. No.  
 13 Q. How do you know how much to bill them for?  
 14 A. Well, the time spent, the complexity of the  
 15 particular case, if we'll call it a case.  
 16 Q. If it's time spent, you've got to keep some  
 17 records so you know how much time is spent, don't  
 18 you? I mean, at 375 bucks an hour, you'd think  
 19 you'd keep the records, wouldn't you?  
 20 A. The record is the bill.  
 21 Q. I know. But in order to prepare the bill,  
 22 don't you have to know how much time you spent  
 23 working on that file?  
 24 A. I generally bill them when I dictate it, and  
 25 I've known how much time I've put in there when I

1 dictate it  
 2 Q. Do you keep -- how do you know if you don't  
 3 keep records relative to that time? Do you just  
 4 estimate it?  
 5 A. I guess you would call it an estimate, yeah  
 6 Q. All right. Would you agree with me that you  
 7 probably spend at least a couple hours on most of  
 8 these cases?  
 9 A. I think all total, probably, that's probably  
 10 a good average -- I don't want to say average  
 11 That would not be unusual. Let me say that  
 12 Q. Okay. All right. So at least two, and  
 13 sometimes -- sometimes, depending upon the amount  
 14 of records you get, you spend a lot more than  
 15 that. Am I right, Doctor?  
 16 A. That's right  
 17 Q. All right, sir. The average examination  
 18 might take what, a half an hour, a history taking  
 19 and exam?  
 20 A. Probably less  
 21 Q. What did it take in Mr. Seelie's case? Do  
 22 you have any idea?  
 23 A. I don't -- I don't time them  
 24 Q. All right. You don't time them. You don't  
 25 time how much time you spend reading the records,

1 either?  
 2 A. No.  
 3 Q. Okay. You don't time -- you don't keep  
 4 track of how much time you spend writing the  
 5 report?  
 6 A. No.  
 7 Q. All right. Well, whatever that time is, you  
 8 bill it out at 275 bucks an hour, right?  
 9 A. Yes.  
 10 Q. And they if you --  
 11 A. 350 to 375, yes.  
 12 Q. How do you determine which of the two of  
 13 those to use?  
 14 A. Sometimes if it's a fairly straightforward  
 15 thing, sometimes if it's just a review of  
 16 records, there is -- that's another thing I do is  
 17 review the records. There is no patient visit,  
 18 review the records. Someone will say, "Is there  
 19 a case here, yes, no." They may not want a  
 20 report.  
 21 Q. Okay. So you talk to some of these people  
 22 on the phone that you deal with then, right?  
 23 A. That's correct.  
 24 Q. All right. Did you talk to Mr. Sah in this  
 25 case?

1 A. I have, yes.  
 2 Q. When did you talk to him? Because at your  
 3 deposition, you told me that you didn't talk to  
 4 him.  
 5 A. No, I've talked to him on the phone.  
 6 Q. Have you?  
 7 A. Yeah.  
 8 Q. What have you talked to him about on the  
 9 phone?  
 10 A. I can't remember. I don't have a log of  
 11 phone calls.  
 12 Q. You don't have any idea?  
 13 A. My impression is that I had talked to him on  
 14 the phone.  
 15 Q. About what? Because at your deposition I  
 16 took --  
 17 A. No. I believe I called him about the -- I  
 18 don't pronounce it the right way, the thing  
 19 you --  
 20 Q. The subpoena?  
 21 A. Well, no, it was something else. Duces  
 22 something.  
 23 Q. "Duces tecum"?  
 24 A. Yes.  
 25 Q. That's part of the subpoena.

1 A. Okay.  
 2 Q. Okay. You did talk to him about that?  
 3 A. I believe so.  
 4 Q. Okay. Doctor, you called him about that  
 5 when it got served on you by that court reporting  
 6 firm, correct?  
 7 A. I don't know who served it on me.  
 8 Q. Let's keep on the other track we were going  
 9 on. So you do these and you send bills out, and  
 10 I assume you keep track of how much money you  
 11 make doing these independent medical  
 12 examinations, don't you?  
 13 A. The W-2s come in, yes.  
 14 Q. Okay, And I'm just curious, if you charge  
 15 375 an hour for a review of the records or  
 16 anything else having to do with the case, how  
 17 come you double that when a lawyer like me wants  
 18 to take your deposition to find out what you have  
 19 to say before a trial?  
 20 A. That's our -- like I say, the group came up  
 21 with that number based on recommendations from  
 22 lawyers. It's the best way I can put it to you.  
 23 Q. Don't you think that's a little unusual that  
 24 you charge twice that amount? Why should it be  
 25 any different if I take your deposition than if

1 you review records?  
 2 A. Part of it is we don't charge for -- well, I  
 3 don't, anyway, to review, to prepare for a  
 4 deposition.  
 5 Q. You don't ever do that?  
 6 A. I don't think so. We charge to meet with  
 7 the lawyer prior to the deposition, but --  
 8 Q. At 750 an hour.  
 9 A. But I don't charge for going through the  
 10 case a day or two prior, or whatever, to get  
 11 ready for the case.  
 12 Q. How come?  
 13 A. I just don't.  
 14 Q. That's some of your time that you spend that  
 15 you don't charge for?  
 16 A. Yes.  
 17 Q. Would --you charged Mr. Sah in this case  
 18 for a pre-deposition meeting with him, didn't  
 19 you?  
 20 A. I charge for a pre-deposition meeting, but I  
 21 don't charge for prepanng for the deposition  
 22 prior to the -- meeting the attorney.  
 23 Q. How much money do you make a year doing  
 24 these independent medical examinations?  
 25 A. I don't know.

1 Q. You're part of a group here in this office,  
 2 aren't you, sir?  
 3 A. Yes.  
 4 Q. What's the name of the group?  
 5 A. Orthopaedic Associates.  
 6 Q. How many doctors in that group?  
 7 A. Nine.  
 8 Q. And they're all practicing orthopaedic  
 9 surgeons?  
 10 A. Yeah. Well, one is an orthopaedic surgeon  
 11 that doesn't operate.  
 12 Q. Okay. And you don't operate?  
 13 A. I operate.  
 14 Q. On hands?  
 15 A. I operate on what I said: hands, knees,  
 16 shoulders, some feet.  
 17 Q. Nobacks?  
 18 A. Nobacks.  
 19 Q. Do any of your other doctors in your  
 20 practice do these independent medical  
 21 examinations?  
 22 A. Yes.  
 23 Q. Who?  
 24 A. I know that Dr. Martinez does. I know that  
 25 Dr. Ritz does, and some of the other ones may or

1 may not.  
 2 Q. And when you guys, in your practice, make a  
 3 fee, it all goes into one pot, Orthopaedic  
 4 Associates, Incorporated, right?  
 5 A. When we make a fee from surgery?  
 6 Q. Anything. Surgery, seeing a patient, doing  
 7 an independent medical exam, any of those.  
 8 A. No; IMEs don't.  
 9 Q. IMEs are separate?  
 10 A. Yes.  
 11 Q. You get that money personally?  
 12 A. Yes.  
 13 Q. It's not part of the practice, right?  
 14 A. That's correct.  
 15 Q. Do you ever make 375 bucks an hour seeing  
 16 patients?  
 17 A. I may; I don't know.  
 18 Q. Well, you told me at your deposition that  
 19 it's set by usually the insurance company how  
 20 much you can make, right?  
 21 A. That's correct.  
 22 Q. Any insurance company ever pay you \$375 an  
 23 hour to have a patient come in and see them and  
 24 talk to them and look at records?  
 25 A. Well, you see more than one patient an hour.

1 We can see a patient and do a reduction of a  
 2 fracture, and the fee is more than that  
 3 Q. Well, other than for surgery, I meant.  
 4 A. That's not surgery  
 5 Q. That's not surgery, reduction of a fracture?  
 6 A. We do it in the office  
 7 Q. Oh, okay.  
 8 A. Yeah  
 9 Q. But the average patient that comes in -- if  
 10 I came in off the street as a new patient to see  
 11 you, and you spend an hour taking a history from  
 12 me and doing a physical examination and it took  
 13 an hour, what would your fee be for that?  
 14 A. I don't know what the fee for that is  
 15 Q. You don't know what your fee would be for  
 16 that?  
 17 A. No, I don't know what the fees are  
 18 Q. Oh.  
 19 A. We have --  
 20 Q. Okay.  
 21 A. Our fee sheet is level 1, 2, 3, 4 I don't  
 22 know what the numbers translate into  
 23 Q. But all of the money that you make  
 24 conducting independent medical examinations, from  
 25 examining patients to writing reports to doing

1 depositions, that all gets sent to you at your  
 2 home address, doesn't it?  
 3 A. It's supposed to. A lot of times it ends up  
 4 at the office.  
 5 Q. Well, the bill says that's where they're  
 6 supposed to send it to?  
 7 A. I know.  
 8 Q. Well, it says right on the bottom of the  
 9 bills --  
 10 A. Do not send, absolutely.  
 11 Q. Let me finish my question.  
 12 A. Okay.  
 13 Q. Yeah. It says, "Please remit to Duret S.  
 14 Smith," and it has your home address in Bay  
 15 Village?  
 16 A. That's correct.  
 17 Q. It says, "Please do not send check to  
 18 Orthopaedic Associates, and do not send a check  
 19 to Orthopaedic Associates' address," in bold  
 20 print on these bills, doesn't it?  
 21 A. That's right.  
 22 Q. And the bills are -- don't even have the  
 23 Orthopaedic Associates information on them, do  
 24 they?  
 25 A. That's correct. But not many times,

1 occasionally, they end up sending them to the  
 2 office.  
 3 Q. Okay. And you get W-2s from these, right?  
 4 A. Yes.  
 5 Q. Okay. And those W-2's, you give to your  
 6 accountant?  
 7 A. Yes.  
 8 Q. Okay. And he knows presumably how much  
 9 money you make a year doing these?  
 10 A. Yes.  
 11 Q. Okay. Do you have any idea how much money  
 12 you made last year doing these independent  
 13 medical examinations?  
 14 A. No.  
 15 Q. No idea at all?  
 16 A. No.  
 17 Q. Okay. You had -- you were kind enough to  
 18 have your accounting firm, Lynch, Anselmo, Ott,  
 19 Bryan & Company, forward to me a letter where  
 20 they indicated a summary of the income received  
 21 from law firms over the past five years.  
 22 A. That's what you asked for.  
 23 Q. Okay. Is that what I asked for?  
 24 A. I believe so.  
 25 Q. Take a look at that subpoena there and see

<p style="text-align: right;">50</p> <p>1 if that's what I asked for.</p> <p>2 A. That's what you asked me after the</p> <p>3 deposition to forward to you.</p> <p>4 Q. I asked you to look at the subpoena and tell</p> <p>5 me what the subpoena asked you for, the one that</p> <p>6 you didn't comply with.</p> <p>7 A. Can I just ask, is this the --</p> <p>8 Q. Yes, sir, it is.</p> <p>9 A. Okay. "Any and all documents listing every</p> <p>10 insurance company retaining him to do defense</p> <p>11 examinations, please provide at deposition past</p> <p>12 10 years, the following, plus any and all</p> <p>13 examinations performed for each insurance</p> <p>14 company, any and all lists of defense law firms</p> <p>15 that have retained him, any and all documents</p> <p>16 that lists the number of exams performed for each</p> <p>17 law firm, any and all documents that list the</p> <p>18 amount of money he has earned each year, any and</p> <p>19 all documents that lists the entities that issue</p> <p>20 his checks, any and all copies of all appointment</p> <p>21 books that reflect scheduling of independent</p> <p>22 medical examinations for the past 10 years."</p> <p>23 Q. Okay. Have you read it all, sir?</p> <p>24 A. I believe so.</p> <p>25 Q. Okay. Did you provide me with that</p>	<p style="text-align: right;">52</p> <p>1 A. Those should -- no, those should be there.</p> <p>2 Q. It says here, "income received from law</p> <p>3 firms." It doesn't say anything about insurance</p> <p>4 companies, it doesn't say anything about Bureau</p> <p>5 of Workers' Comp, does it? Do you want to look</p> <p>6 at it? Maybe I should show it to you.</p> <p>7 A. Yeah.</p> <p>8 Q. Let's mark it.</p> <p>9 A. Okay.</p> <p>10 (Thereupon, Plaintiffs Exhibit A</p> <p>11 of the D. S. Smith, M.D., deposition</p> <p>12 was marked for purposes of</p> <p>13 identification.)</p> <p>14 MR. HOUSEL: Would you like to</p> <p>15 see this, Mr. Sah?</p> <p>16 MR. SAH: Thank you.</p> <p>17 MR. HOUSEL: You're welcome, sir.</p> <p>18 Thank you, sir.</p> <p>19 BY MR. HOUSEL:</p> <p>20 Q. Doctor, let me hand you what I just had</p> <p>21 marked as Plaintiff's Exhibit A. Take a look at</p> <p>22 that, if you would, please. See if you can</p> <p>23 identify that for me?</p> <p>24 A. This appears to be the letter that was sent</p> <p>25 from Lynch, Anselmo &amp; Ott.</p>
<p style="text-align: right;">51</p> <p>1 information, ever?</p> <p>2 A. No.</p> <p>3 Q. Okay. Your accounting firm did send me -- I</p> <p>4 can read it to you. Did you receive a copy of</p> <p>5 the letter that they sent me?</p> <p>6 A. I don't believe so.</p> <p>7 Q. All right. It says: "Mr. Housel, At the</p> <p>8 request of Dr. Duret Smith, I have summarized the</p> <p>9 income received from law firms over the past five</p> <p>10 years. The following income was reported as part</p> <p>11 of Federal Form gross C" -- I'm sorry, "Form</p> <p>12 Schedule C, gross income. Please note this is</p> <p>13 only the income received from law firms. Please</p> <p>14 have Dr. Smith notify me if any other information</p> <p>15 is warranted."</p> <p>16 I think we've established here this morning</p> <p>17 that you get a lot of money for independent</p> <p>18 medical exams or from other than law firms, don't</p> <p>19 you? You get them from insurance companies --</p> <p>20 A. Oh, I see what you're saying.</p> <p>21 Q. -- you get them from Bureau of Workers'</p> <p>22 Comp, you get them from claims companies, right?</p> <p>23 A. Yes.</p> <p>24 Q. You didn't give me that information, did</p> <p>25 you?</p>	<p style="text-align: right;">53</p> <p>1 Q. And I'm correct, am I not, in stating that</p> <p>2 you caused them to send that to me?</p> <p>3 A. That's correct.</p> <p>4 Q. All right. Let me get my copy out here.</p> <p>5 And you contacted that accounting firm, you asked</p> <p>6 them to send me that information, correct?</p> <p>7 A. Yes.</p> <p>8 Q. There is no information on there about</p> <p>9 anything other than income you received for the</p> <p>10 last five years from law firms, right? That's</p> <p>11 all it covers, correct?</p> <p>12 A. Could you repeat that? I missed the first</p> <p>13 part.</p> <p>14 Q. Sure. The only information contained in</p> <p>15 Plaintiffs Exhibit A is income that you</p> <p>16 personally received for independent medical</p> <p>17 examinations from law firms?</p> <p>18 A. I believe so.</p> <p>19 Q. All right. And that would be --</p> <p>20 A. I believe that's what you asked for at the</p> <p>21 deposition.</p> <p>22 Q. Well, I believe the subpoena asks for</p> <p>23 information --</p> <p>24 A. That's correct.</p> <p>25 Q. -- other than that?</p>

1 A. That's correct.  
 2 Q. Okay.  
 3 A. But I remember when we ended the deposition,  
 4 I said, "What do you want me to provide to you,"  
 5 and you wanted a Xerox of an article, the Xerox  
 6 of the pages from the AMA --  
 7 Q. You didn't even give me the full article in  
 8 that situation, did you? You sent me the  
 9 abstract after you sent it to Mr. Sah.  
 10 A. That's all I got.  
 11 Q. That's all you got?  
 12 A. That's all I got.  
 13 Q. You never got the whole article. I got the  
 14 whole article and we'll cover that.  
 15 A. Okay.  
 16 Q. All right. Let me have that back, if I  
 17 could. You didn't comply with the subpoena that  
 18 you have in front of you, there, though, did you?  
 19 A. That's correct.  
 20 Q. All right. Now --  
 21 A. However, you wanted the records that my  
 22 secretary could produce.  
 23 Q. Yeah, and you sent me those, I understand.  
 24 A. I sent you those.  
 25 Q. Right.

1 A. That was my understanding that was all you  
 2 wanted and that's all you requested at the  
 3 deposition.  
 4 Q. Well, when you get a subpoena served on  
 5 you -- I mean, you finally did realize what that  
 6 was. We covered that at your deposition, right,  
 7 because you called Mr. Sah about it, right?  
 8 A. Yes.  
 9 Q. You knew that that was an order from the  
 10 court to provide that information, correct?  
 11 A. Right.  
 12 Q. And you never provided it, did you?  
 13 A. I told him that it would be an impossible  
 14 task to provide that. We discussed that. And as  
 15 I said before, I asked you what you wanted and I  
 16 gave you what you asked for, with the exception  
 17 of that right theie, which my impression was you  
 18 wanted the money from the law firms.  
 19 Q. Okay. I understand. Well, that wasn't my  
 20 impression, but that's fine.  
 21 A. Okay.  
 22 Q. We've established that -- we've gone over  
 23 some law firms here, so obviously, Weston Hurd,  
 24 Mr. Carrabine, Kenneally & Associates, Gallagher  
 25 & Sharp, Keller & Curtin, Davis & Young, those

1 are all some of the law firms we talked about  
 2 earlier, right, sir?  
 3 A. That's correct, yeah  
 4 Q. None of this income listed on this report  
 5 from your accountant covers any money you  
 6 received from insurance companies, covers any  
 7 money that you received from adjusting companies,  
 8 covers any money received from Bureau of Workers'  
 9 Compensation, Crawford & Company, Grange  
 10 Insurance, State Farm, Allstate, Marriott claims,  
 11 Pittsburgh and Conneaut Company, Careworks  
 12 Company, Westfield Insurance Company, Navisource,  
 13 none of those are listed in this stream of income  
 14 given to me by your accountant; is that correct?  
 15 A I believe you're correct  
 16 Q. All right. So from law firms in 2000,  
 17 according to this Plaintiffs Exhibit, A, you  
 18 made \$33,156 doing these independent medical  
 19 exam, right?  
 20 A I trust you  
 21 Q. And certainly, you made a lot more than that  
 22 from all these other ones that you did them for,  
 23 right?  
 24 A That list goes back five years, right'  
 25 Q. Yeah. Well, it lists it year by year.

1 2000 --  
 2 A No, no That list you've got there'  
 3 Q. Yeah.  
 4 A No That list of lawyers was not all 2000,  
 5 was it?  
 6 Q. No. No, it goes back about two years,  
 7 total.  
 8 A Okay  
 9 Q. You've got 33,156 in 2000, 27,693 in '99,  
 10 24,873 in '98, 20,166 in '97 and in '96, \$10,423.  
 11 It seems as your income from law firms for doing  
 12 independent medical examinations has gone up each  
 13 year. That would be a fair statement, wouldn't  
 14 it?  
 15 A That's the way it sounds, yes  
 16 Q. Okay, sir. Did you want to look at it  
 17 again?  
 18 A No  
 19 Q. Okay. Do you have any idea, since obviously  
 20 your accountant keeps those records, what the  
 21 total amount of money you made, say last year  
 22 doing independent medical exams was?  
 23 A No  
 24 Q. No idea?  
 25 A No



1 Q. How much of your time do you spend doing  
2 these?  
3 A Wednesdays Wednesday afternoon, I do up to  
4 four a day, four in an afternoon  
5 Q. And you do depositions in the mornings on  
6 Wednesdays, because we're here Wednesday at 8:30?  
7 A No  
8 Q. Well, how many depositions do you do?  
9 A That, I don't know  
10 Q. Okay. And no records that reflect that?  
11 A Just the, I guess you would call scheduling  
12 book  
13 Q. Okay. When do you spend the time to review  
14 the records that you get in?  
15 A During the deposition, sometimes on a  
16 Saturday, sometimes if I have extra time between  
17 patients and surgery, if a surgery is cancelled,  
18 something like that  
19 Q. But you don't keep any records of this time,  
20 do you?  
21 A No  
22 Q. All right. How many -- you've done a lot of  
23 these independent medical examinations for  
24 Mr. Sah's office, have you not, sir?  
25 A I don't know how many

1 Q. You billed Mr. Sah in this case, initially  
2 there was a bill for \$870. Remember that?  
3 Plaintiffs Exhibit 3, that was marked from your  
4 deposition.  
5 A. Right.  
6 Q. Okay. What -- and that was for what, sir?  
7 A. For the IME, for the radiographs and the  
8 IME, review of medical documents, review of  
9 outside radiographs, IME, preparation of medical  
10 report and then the other was for the radiograph.  
11 Q. Okay. When you do one of these independent  
12 medical examinations, Dr. Smith, isn't it  
13 important for you to know everything you can  
14 about what treatment has been administered to the  
15 person you're going to examine?  
16 A. That would be nice.  
17 Q. I mean, you'd like to have all of his  
18 medical records that have anything to do with the  
19 accident, wouldn't you, sir?  
20 A. I would think so, yeah.  
21 Q. Okay. Did you get all of them in this case?  
22 A. I got what was sent to me.  
23 Q. Did you get all of them, is my question. I  
24 know that you got what was sent to you.  
25 A. If there are other medical documents, I'm

1 unaware of them.  
2 Q. Well, remember when we talked at your  
3 deposition, you didn't ever see the copy of the  
4 medical report issued by his treating physician,  
5 Dr. Kim Sterns?  
6 A. I have that.  
7 Q. You didn't have it when I took your  
8 deposition. You remember that?  
9 A. Well, I don't remember --  
10 Q. Do you want to go through it, or do you  
11 trust --  
12 A. No, I trust you. If I had it, I had it, if  
13 I didn't, I didn't.  
14 Q. So for some reason, Dr. Sah didn't send that  
15 to you, did he?  
16 A. I don't know.  
17 Q. He didn't send you a copy of the accident  
18 report in this case either, did he?  
19 A. Is that the police report?  
20 Q. Yeah.  
21 A. I don't believe so.  
22 Q. Never saw that, did you?  
23 A. I don't believe so.  
24 Q. Would it be important for you to know how  
25 this accident happened and make a determination

1 what parts of Mr. Seelie's body were injured?  
2 A. His history was fairly straightforward and  
3 pretty thorough on that.  
4 Q. Did he tell you how fast the car that hit  
5 him was going?  
6 A. He did not.  
7 Q. Did you ask him?  
8 A. I don't believe so. It's difficult for, my  
9 impression, someone who's not trained to do that  
10 to estimate.  
11 Q. Well, certainly one could conclude that if  
12 somebody got hit from behind by another car at a  
13 significant speed, they would be more likely to  
14 be injured than if they were just tapped at four  
15 or five miles an hour. You'd agree with that,  
16 wouldn't you?  
17 A. Right.  
18 Q. But you never asked him about that did you,  
19 the mechanics of the accident itself?  
20 A. Yeah. He was hit from behind. He was  
21 pushed into the car in front of him.  
22 Q. You didn't ask him how fast the car behind  
23 him was going, you didn't ask him what he did in  
24 the car, whether he grabbed the steering wheel?  
25 A. No. I don't ask him how fast they were

1 going. Patients usually are not experts at that  
 2 kind of thing.  
 3 Q. Well, you didn't ask him, so you really  
 4 don't know, do you?  
 5 A. I really don't how -- I don't know how fast  
 6 the car was going, that's nght, and I've not  
 7 seen the police report.  
 8 Q. Do other lawyers send you the police report  
 9 when they send you the records to review?  
 10 A. Some do.  
 11 Q. Okay. Is it helpful?  
 12 A. Sometimes. Sometimes it's confusing.  
 13 Q. Okay. And then one of the other things that  
 14 was sent to you by Mr. Sah was a letter that was  
 15 faxed to me that indicated that when we came over  
 16 here for this independent medical examination,  
 17 that we were going to tape record what took  
 18 place. Remember that?  
 19 A. I saw that.  
 20 Q. All right. And you saw that before the  
 21 examination, right?  
 22 A. That, I don't know.  
 23 Q. Well --  
 24 A. The fax would have gone to my Westlake  
 25 office, I believe.

1 **Q. Do you want me to read it from your prior**  
 2 **deposition?**  
 3 A. Yeah, please, yeah.  
 4 **Q. Okay. On page 13-- I brought a copy of**  
 5 **your depo so you can follow along if you would**  
 6 **like. Okay?**  
 7 A. Yeah. Allright. Page 13?  
 8 **Q. Yes, sir. Actually, it's on page 12,**  
 9 **Doctor. Let me know when you've gotten there.**  
 10 A. Okay.  
 11 **Q. I marked it as Plaintiff's Exhibit 2.**  
 12 **That's at line 4, Doctor.**  
 13 A. "Thanks, Doctor, use Plaintiffs Exhibit 2."  
 14 **Q. "For the record, can you identify that," and**  
 15 **you said, "That's a letter dated April 10, 2001,**  
 16 **from Perrin Sah to you regarding John Seelie,"**  
 17 **and I said, "So you got a copy of that letter,"**  
 18 **and you said, "I have this letter," right?**  
 19 A. That means I have it in my hand.  
 20 **Q. I'm just asking you to follow along with me**  
 21 **and agree that I'm reading accurately what you**  
 22 **said at your deposition. Will you do that for**  
 23 **me?**  
 24 A. Yes.  
 25 **Q. Okay, sir. "And it was in your file when**

1 you handed it to me this morning, correct?" And  
 2 you said, "That's correct." All right? And then  
 3 at line 21 I said, "Did you read this letter when  
 4 you got it"? And you said, "I'm assuming I did."  
 5 Then I said, "Okay. And I presume you then stuck  
 6 it in the file, correct?" You said, "Yes, I  
 7 believe so. That's the usual course."  
 8 A. Yeah.  
 9 Q. That's what you said at your deposition  
 10 under oath when I took your deposition here in  
 11 your office on --  
 12 A. Right. But I--  
 13 Q. On August -- can I finish, please?  
 14 A. Sure, sure.  
 15 Q. On August 8, 2001. That's what you said,  
 16 right?  
 17 A. That's correct.  
 18 Q. Okay. Now, the letter indicated that --  
 19 A. Can I explain something, or no?  
 20 Q. It's not necessary, Doctor. ~~111~~just ask  
 21 the question.  
 22 A. No, I think it is necessary.  
 23 Q. Well --  
 24 A. It means that I -- when I got the letter, I  
 25 read it. I may not have gotten the letter before

1 I did the examination.  
 2 Q. That's a little different than what you said  
 3 there, though, isn't it?  
 4 A. No, it isn't. I read this letter, yes, I  
 5 did. I didn't say when I got it.  
 6 Q. Are you done now?  
 7 A. Yes.  
 8 Q. Do you want to explain any further?  
 9 A. No.  
 10 Q. Okay. When we got over here for the  
 11 independent medical examination, you told me that  
 12 we could not tape record it, and that you weren't  
 13 even going to do it if we insisted that that  
 14 happened. Isn't that right?  
 15 A. That's correct.  
 16 Q. Okay. And you told me that -- the comment I  
 17 think you made to me was that we would alter the  
 18 tape, words to that effect?  
 19 A. No, no. Where are you?  
 20 Q. I wasn't necessarily referring to something  
 21 in your --  
 22 A. Oh, no. I said that anyone could alter the  
 23 tape. I didn't accuse you of altering the tape.  
 24 I said anyone can alter a tape.  
 25 Q. Well, I wrote down what you said, and what

<p style="text-align: right;">66</p> <p>1 you said was -- and if you want to follow it in  2 the deposition, if that makes you feel more  3 comfortable, turn to page 17. It says, "I wrote  4 down what you said just as you said it, and you  5 said, 'Do you think I was born yesterday? You  6 guys could alter the tape.'" and then I said to  7 you, "Do you remember saying that to me?" And  8 you said, "I would have said that, yes." That's  9 what you said at your --  10 A. I said you could alter the tape.  11 Q. The question is, that's what you said at  12 your deposition on August 8th under oath, right?  13 A. Right.  14 Q. Thank you, sir.  15 A. But I didn't say you did alter the tape.  16 That's what you just said.  17 Q. Do you want me to read it again?  18 A. No, no, no. Initially, when we were  19 starting -- talking about the tape, you said that  20 you would alter that tape. I said, no, I never  21 said that. I said you could alter the tape.  22 Q. Do you think I would do that?  23 A. I don't know you. I don't -- I would hope  24 not.  25 Q. Well, do you think I would -- do you have</p>	<p style="text-align: right;">68</p> <p>1 A. That -- I would not pay for it.  2 Q. Well, we wouldn't expect you to. We would  3 pay for that.  4 A. Yeah.  5 Q. Would you now -- would you now change your  6 opinion and let that happen?  7 A. Well, I wouldn't -- that's -- I wouldn't  8 have a problem with that.  9 Q. Okay. When you got that letter, did you  10 call Mr. Sah and say, "I'm not going to allow  11 anybody to tape record an independent medical  12 exam"? Did you do that?  13 A. No.  14 Q. All right. You've answered the question.  15 A. No, let me go back. I didn't answer the  16 question. I don't believe I saw that letter at  17 the time prior to the deposition -- prior to the  18 IME.  19 Q. Well, that's not what you said in your  20 deposition I took on August 8th, but that's okay.  21 A. No, it is what I said. I said I read the  22 letter when I got it.  23 Q. Okay.  24 A. I don't know when I got it.  25 Q. All right. Now, you don't have any -- you</p>
<p style="text-align: right;">67</p> <p>1 any reason to believe I would do that?  2 A. I don't.  3 Q. Well, you know, there's been some  4 discrepancies -- you know that, if from your  5 deposition, between what you said Mr. Seelie said  6 when you took the history from him versus what I  7 heard him say and what he knows he said. You  8 know that's the case, don't you, Doctor?  9 A. That's correct.  10 Q. And you know I'm going to testify at this  11 trial as to those discrepancies, correct, Doctor.  12 A. I don't know if you are.  13 Q. You don't know that. But I can tell you  14 that will happen. Okay?  15 A. Sure.  16 Q. All right. And wouldn't it have been easier  17 if we would have had a tape recorder or a court  18 reporter who would have come and taken down  19 exactly what was said? Wouldn't that have been  20 easier? Then there would be no argument about  21 what was said?  22 A. You know, I never thought about the  23 tape -- or the court reporter, but you're right,  24 that would be.  25 Q. Would you now let that happen in the future?</p>	<p style="text-align: right;">69</p> <p>1 told me at your deposition, I think your words  2 were "the lawyer that you're working with." Do  3 you remember saying that at your deposition?  4 A. The lawyer that you're working with?  5 Q. The lawyer that you're working with?  6 A. The lawyer that I'm working with.  7 Q. Yeah. And I asked you a series of questions  8 about the paperwork that was prepared for nothing  9 by Dr. Sah's law firm for you. Remember those  10 questions?  11 A. Yes, vaguely.  12 Q. Okay. And you had made a comment to the  13 effect of you had him do that because he was the  14 lawyer you were working with on this case, right?  15 A. I was working with Mr. Sah, yes.  16 Q. Yeah. I mean, is that the way an  17 independent medical examination is supposed to  18 happen, you're working with the lawyer that hires  19 you?  20 A. No, I'm not working with the lawyer.  21 Q. Those were your words.  22 A. I understand that.  23 Q. All right.  24 A. That can be interpreted several ways.  25 Q. You got a subpoena that we already talked</p>

1 about served to you, correct?  
 2 **A.** Yes.  
 3 **Q.** And rather than search your records and see  
 4 if you could respond to it or call me to discuss  
 5 it with me, you called Mr. Sah, didn't you?  
 6 **A.** I called Mr. Sah to find out what that  
 7 meant. If I called you --  
 8 **Q.** Did he tell you what it meant?  
 9 **A.** I believe so.  
 10 **Q.** Okay. What did he tell you?  
 11 **A.** He said, "You have a subpoena and" -- I  
 12 don't remember the exact conversation, but  
 13 basically he told me what the subpoena was. I  
 14 told him there was no way I could get that stuff,  
 15 and I believe it was: "We can file something to  
 16 delay this until you can get this."  
 17 **Q.** So he did that for you?  
 18 **A.** I believe so.  
 19 **Q.** He didn't charge you a fee for that, did he?  
 20 **A.** Not that I'm aware of.  
 21 **Q.** You didn't get a bill from him, did you?  
 22 **A.** Not that I'm aware of.  
 23 **Q.** Okay. So he performed some legal work for  
 24 you, but he never fetched you a bill for it.  
 25 Isn't that right?

1 **A.** I've not seen a bill, let's put it that way.  
 2 **Q.** Well, he's not going to send you one, is he?  
 3 **A.** I don't know.  
 4 **Q.** Okay.  
 5 **A.** I can't answer for him.  
 6 **Q.** What's Plaintiff's Exhibit's 6 --  
 7 **MR. HOUSEL:** Let's mark it. Can  
 8 you make it Exhibit B for me, please?  
 9 (Thereupon, Plaintiffs Exhibit B  
 10 of the D. S. Smith, M.D., deposition  
 11 was marked for purposes of  
 12 identification.)  
 13 **MR. HOUSEL:** Perrin, you want to  
 14 see this again?  
 15 **MR. SAH:** Go ahead.  
 16 **BY MR. HOUSEL:**  
 17 **Q.** Okay. Let me hand you what I've marked as  
 18 Plaintiff's Exhibit B, Doctor. Would you take a  
 19 look at that document, please, sir, and when  
 20 you're done looking at it, I'd like to ask you a  
 21 few questions about it.  
 22 **A.** Goahead.  
 23 **Q.** What is that?  
 24 **A.** I guess it says, "The Court of Common Pleas,  
 25 Cuyahoga County," case number, Judge--

1 **Q.** Well, I don't want you to read it. I want  
 2 you to look at it, and when you're done looking  
 3 at it, tell me if you know what it is. If you  
 4 don't, that's all right.  
 5 **A.** I don't know what it is.  
 6 **Q.** All right, sir. You ever seen it before?  
 7 **A.** I believe I have.  
 8 **Q.** You saw it on August 8th when I took your  
 9 deposition. You remember that?  
 10 **A.** Yes.  
 11 **Q.** Okay. We had some discussion about it. You  
 12 remember that?  
 13 **A.** Yes.  
 14 **Q.** Did you read your deposition that I took of  
 15 you on August 8th?  
 16 **A.** No.  
 17 **Q.** Okay. It says it's a "Physician's objection  
 18 to subpoena for the production of documents,"  
 19 correct?  
 20 **A.** That's correct.  
 21 **Q.** All right. And it's on legal heading in the  
 22 Court of Common Pleas Cuyahoga County, and it  
 23 lists this case number and who the plaintiff and  
 24 defendant are, correct?  
 25 **A.** Yes.

1 **Q.** It's a legal pleading. You've seen one of  
 2 those in your life before, haven't you?  
 3 **A.** A legal what?  
 4 **Q.** Pleading.  
 5 **A.** If you say it's a legal pleading, I trust  
 6 you.  
 7 **Q.** Okay. Have you ever seen a document like  
 8 this before in your life?  
 9 **A.** Not that I'm aware of.  
 10 **Q.** All right. You signed it though, didn't  
 11 you?  
 12 **A.** Yes.  
 13 **Q.** But you never --  
 14 **A.** I believe I did. There is no signature on  
 15 this one.  
 16 **Q.** On this one, but you told me at your  
 17 deposition you did sign it, right?  
 18 **A.** I believe I did.  
 19 **Q.** You signed it without even reading it,  
 20 didn't you?  
 21 **A.** That's correct.  
 22 **Q.** Do you usually sign legal documents without  
 23 reading them?  
 24 **A.** Yes.  
 25 **Q.** Do you?

1 A. Yes.  
 2 Q. Okay. What this really says is that: "The  
 3 physician does not intend to comply with the  
 4 subpoena until the physician receives an order  
 5 directly from the court." That's on the second  
 6 page. Did I read that accurately?  
 7 A. Oh, I'm sorry. I read the wrong thing.  
 8 Q. Sure. Want me to show it to you, or --  
 9 A. No, no. I was reading down below. Sorry.  
 10 Q. Okay, Doctor. Go to the second page, if you  
 11 would.  
 12 A. No, I ani. I was reading certificate of  
 13 service, not at the top.  
 14 Q. At the top it says: "In accordance with  
 15 this rule, this physician does not intend to  
 16 comply with the subpoena until the physician  
 17 receives an order directly from the court"?  
 18 A. That's what it says.  
 19 Q. And you signed your name underneath that,  
 20 didn't you?  
 21 A. Yes.  
 22 Q. And you're the physician we're talking about  
 23 here, right?  
 24 A. That's correct.  
 25 Q. So you didn't intend to comply with the

1 subpoena lawfully issued by the Cuyahoga County  
 2 Common Pleas Court until the judge ordered you to  
 3 do so, right?  
 4 A. My impression was that this would give me  
 5 time to get the documents that you asked for  
 6 Q. How would you know that if you didn't read  
 7 it?  
 8 A. I can't understand any of this legal stuff  
 9 That's what Mr. Sah said. He said, "This will  
 10 delay things, but it won't get you out of  
 11 producing it." I said, "Fine, and I can't  
 12 produce it this quickly." And I can't understand  
 13 any of this legal stuff  
 14 Q. Okay. Anybody else in all these independent  
 15 medical examinations you do ever issue a subpoena  
 16 for you for records?  
 17 A. For the charts, for my office notes  
 18 Q. How about a subpoena like the one I issued?  
 19 Am I the only one that's ever done that?  
 20 A. I think so  
 21 Q. Oh, okay. This document doesn't have a law  
 22 firm name on it anywhere, does it, like who  
 23 prepared it?  
 24 A. I don't see any  
 25 Q. It says, as a matter of fact, that: "Now

1 comes Duret Smith, M.D., in propria persona." Is  
 2 that what it says?  
 3 A. Yes.  
 4 Q. Do you know what that means?  
 5 A. No.  
 6 Q. Well, if you read it -- and I had asked you  
 7 earlier to read it, and if you want to take a few  
 8 minutes, we can go off the record and you can  
 9 read it. It would appear that this document was  
 10 as if you had prepared it yourself, isn't it?  
 11 A. I have no idea how to interpret this  
 12 document, I'll be honest with you.  
 13 Q. Do you have a lawyer that you deal with in  
 14 your personal life?  
 15 A. No.  
 16 Q. In your professional life --  
 17 A. Yes.  
 18 Q. -- do you have a lawyer you deal with?  
 19 A. Yes.  
 20 Q. Did you ever call that lawyer and ask him  
 21 about this, since you're supposed to be an  
 22 independent medical examiner?  
 23 A. Did I call him, no.  
 24 Q. No?  
 25 A. No.

1 Q. All right. So Mr. Sah did this for you, but  
 2 nowhere on this document is there an indication  
 3 that Mr. Sah did it for you, is there?  
 4 A. I don't see any.  
 5 Q. Okay.  
 6 MR. HOUSEL: Let's go off the  
 7 record for a minute.  
 8 THE VIDEOGRAPHER: Off the record.  
 9 (Thereupon, a discussion was  
 10 held off the record.)  
 11 THE VIDEOGRAPHER: We're on the record.  
 12 BY MR. HOUSEL:  
 13 Q. I asked you at your deposition I took in  
 14 August if you had ever gotten a subpoena like  
 15 this before, and you told me on page 29 that you  
 16 had.  
 17 A. I don't remember.  
 18 Q. Do you want to look?  
 19 A. No, I don't remember getting one.  
 20 Q. Do you trust that's what it says?  
 21 A. Yeah, I believe, sure.  
 22 Q. Okay.  
 23 A. Something like that. I don't -- if I did, I  
 24 can't remember.  
 25 Q. Okay.

1 A Where is it? What line?  
 2 Q. Oh, it's on page 29, Doctor.  
 3 A Yeah Line?  
 4 Q. Twenty-three. I showed you the subpoena at  
 5 line 17, "What's Plaintiffs Exhibit 5?" "Notary  
 6 subpoena." "Do you know what a subpoena is?" "I  
 7 think it's something issued by the court."  
 8 A Yeah I've had subpoenas for -- for my  
 9 office notes, yeah  
 10 Q. So you knew what it was?  
 11 A I'm not hiding anything Well, I know what  
 12 a subpoena is, I don't know what this duces,  
 13 whatever that stuff is  
 14 Q. Okay. Well, it pretty much says to bring  
 15 with you, or to provide the information?  
 16 A Yeah  
 17 Q. I mean, that's not -- you're an intelligent  
 18 man. It's not hard for you to understand that,  
 19 is it?  
 20 A Sometimes  
 21 Q. On page 34, just after you told me Mr. Sah  
 22 wasn't your lawyer, I said you never --  
 23 A What line are you on?  
 24 Q. I'm on line 9. "But you never thought of  
 25 getting one either?" And you said, "Of getting

1 an attorney? In the past when I have had things  
 2 that have been sent to me regarding a case, I  
 3 call the lawyer that I'm working with on that  
 4 case and they generally take care of whatever it  
 5 was."  
 6 A. Correct.  
 7 Q. I said, "Are you working with a lawyer on  
 8 this case? Is that what this is all about? An  
 9 independent medical exam, you're working with a  
 10 lawyer. Is that the idea?" And you said, "No,  
 11 that's not the idea." Did I read that  
 12 accurately?  
 13 A. "Are you working with a lawyer on this  
 14 case -- "you're working with a lawyer. Is that  
 15 the idea?" "No, that's not the idea."  
 16 Q. Did I read that accurately?  
 17 A. That's correct.  
 18 Q. Thank you. Actually, you told me that you  
 19 didn't even read the subpoena in totality when  
 20 you got it, did you?  
 21 A. I don't remember reading it in totality. I  
 22 can't understand any of those legal documents.  
 23 Q. Let me have the copy of the subpoena. We'll  
 24 mark it then so the jury can take a look at it.  
 25 Do you have it in your file there?

1 A. Yeah, I think it's been marked.  
 2 MR. HOUSEL: Here. We have  
 3 Plaintiff's Exhibit 4. I'll do it here. Thank  
 4 you, Mr. Sah.  
 5 (Thereupon, Plaintiffs Exhibit C  
 6 of the D. S. Smith, M.D., deposition  
 7 was marked for purposes of  
 8 identification.)  
 9 BY MR. HOUSEL:  
 10 Q. Okay. You've got Plaintiff's Exhibit --  
 11 what is that, C?  
 12 A. C.  
 13 Q. What is that, for the record?  
 14 A. This is, I guess what we're calling the  
 15 subpoena. I don't -- I mean, does it say  
 16 "subpoena" on here? I mean, I'm assuming this is  
 17 the subpoena.  
 18 Q. It sure does say "subpoena" on there. Let's  
 19 just simplify matters. Do you know what it is?  
 20 A. I'm trusting you when you tell me this is a  
 21 subpoena  
 22 Q. Well, we talked about that pretty  
 23 extensively --  
 24 A. Right. But I'm looking for something that  
 25 says "subpoena" on here and I don't see it.

1 Q. You've gotten something like that before you  
 2 told me?  
 3 A. I've had subpoenas for office records and  
 4 I've had subpoenas to say, "We're taking your  
 5 deposition on such-and-such a date."  
 6 Q. Okay. All right. And that's the one that  
 7 you got, and you never really totally read it.  
 8 You just called Mr. Sah so he could deal with it  
 9 for you, right?  
 10 A. Well, I called Mr. Sah to find out what  
 11 was -- what it meant.  
 12 Q. Okay.  
 13 A. Do you need this back?  
 14 Q. No. You can give it to the court reporter.  
 15 Thanks, Doctor.  
 16 Now, you expressed some opinions here, and  
 17 you expressed opinions with what's called  
 18 reasonable medical certainty.  
 19 A. (Witness nodding head up and down.)  
 20 Q. What do those words mean?  
 21 A. Reasonable medical certainty is 51 over 49,  
 22 at least.  
 23 Q. And you know that because some lawyer told  
 24 you that?  
 25 A. That's correct.

1 Q. You never knew that before, right?  
 2 A. Well, I knew that it meant with a -- that  
 3 you're certain. I didn't know that it meant  
 4 49 -- 51 over 49.  
 5 Q. Before you began doing these independent  
 6 medical examinations, did you look at all into  
 7 any records that doctors have, or any  
 8 publications relative to what you're supposed to  
 9 do as an independent medical examiner?  
 10 A. I believe the Workmen's Comp sends you a, I  
 11 guess you can call it a brochure, as to what's  
 12 expected in their -- in their reports.  
 13 Q. Did you charge Mr. Sah for the 15 minutes or  
 14 so that you met with him before the deposition on  
 15 August 8th?  
 16 A. I don't know. I think that was for -- I  
 17 don't think I broke that down.  
 18 Q. You said no when I asked you the exact same  
 19 question at your deposition.  
 20 A. Yeah, that could be.  
 21 Q. But since then, you've prepared a new bill  
 22 where you did charge him, haven't you?  
 23 A. No.  
 24 Q. Do you want me to show it to you?  
 25 A. Yeah -- no, I know the bill. It's two and a

1 half hours at 750 is whatever that comes out to  
 2 be.  
 3 Q. Part of it is for the prep meeting before  
 4 the deposition, right?  
 5 A. No. The deposition went two and a half  
 6 hours.  
 7 Q. It says: "Pre-deposition meeting,  
 8 deposition in the case of John Seelie."  
 9 A. Okay. The deposition went two and a half  
 10 hours.  
 11 Q. Right.  
 12 A. It was charged at two and a half hours  
 13 for --  
 14 Q. Pre-deposition meeting and the deposition.  
 15 So you did charge him for it, didn't you?  
 16 A. No, I didn't. That was free.  
 17 Q. I'm sorry?  
 18 A. Two and a half hours times 750 is --  
 19 Q. Why is it on your bill then?  
 20 A. I don't know.  
 21 Q. You trust me it's on your bill?  
 22 A. No, I know it's on the bill.  
 23 Q. Okay. Allright. Okay?  
 24 A. But two and a half hours at 750 is what that  
 25 figure represents.

1 Q. I understand.  
 2 A. That was the deposition.  
 3 Q. Okay. In order to testify in court, as you  
 4 are here this morning, you have to express  
 5 opinions with a reasonable degree of medical  
 6 certainty or probability, correct?  
 7 A. I believe so.  
 8 Q. All right. Did you use those words anywhere  
 9 in the report that you prepared in this case?  
 10 A. Are you talking about the April 11, 2001 --  
 11 Q. That's the only report that you prepared in  
 12 this case, isn't it?  
 13 A. That's correct.  
 14 Q. Did you use those words anywhere in that  
 15 report?  
 16 A. Yeah. "I can state within a reasonable  
 17 degree of medical certainty as expert and  
 18 orthopaedic surgeon the conditions of the  
 19 musculoskeletal system."  
 20 Q. What does it say?  
 21 A. After that?  
 22 Q. Yeah.  
 23 A. Oh. "That the grade one spondylolisthesis  
 24 predated the motor vehicle accident of 7/1/99."  
 25 Q. Are there any other opinions expressed in

1 there with reasonable medical certainty?  
 2 A. "I can also state within a reasonable degree  
 3 of medical certainty and based on the examination  
 4 in the office today that his tenderness is in the  
 5 area of the sacroiliac joints, and is nowhere  
 6 near the powers defect and grade one  
 7 spondylolisthesis. I can also state based on a  
 8 reasonable degree of medical certainty that  
 9 according to the American Medical Association  
 10 Guides to the Evaluation of Permanent Impairment,  
 11 fourth edition, that Mr. Seelie has no permanent  
 12 impairment or disability related to the motor  
 13 vehicle accident of 7/1/99."  
 14 Q. Any other opinions besides those?  
 15 A. I don't see any.  
 16 Q. Okay. Now, you didn't express any kind of  
 17 an opinion in there one way or another as to the  
 18 cause of the herniated disks, did you?  
 19 A. That's correct.  
 20 Q. But today you've got an opinion relative to  
 21 that?  
 22 A. Yes.  
 23 Q. How come you didn't put it in that April  
 24 letter?  
 25 A. I don't think I was asked to address the

1 disks

2 Q. Well, you said when I asked you that  
3 question that you didn't have any idea why you  
4 didn't do that when I took your deposition.

5 A That could be I don't --

6 Q. Will you trust me that's what you said?

7 A Yeah But I'm not sure I was asked to  
8 address the disks

9 Q. What were you asked to address? The letter  
10 from Mr. Smith -- or from Mr. Sah asked you about  
11 that, didn't he?

12 A The disks -- "what injuries" -- "what, if  
13 any, injuries were suffered from the motor  
14 vehicle accident?"

15 Q. What else does he ask you for there?

16 A "Preexisting" -- "Whether any such injuries  
17 suffered in the accident constitute a new and  
18 distinct injury, or aggravation of preexisting,  
19 whether this individual suffers from any injuries  
20 allegedly sustained from the motor vehicle  
21 accident, permanent impairment and restrictions"  
22 I don't believe, based on the reasonable degree  
23 of medical certainty, that his disks were caused  
24 from the accident, and they weren't mentioned I  
25 was not asked to address the disks.

1 A. I'm not sure what you're asking me now.

2 Q. Is the rest of that your opinion to a  
3 reasonable medical certainty as to what injuries  
4 he sustained?

5 A. Is the rest of that --

6 Q. The impression.

7 A. -- you mean the impression section?

8 Q. Yeah.

9 A. No. It's what he has now.

10 Q. Well --

11 A. Let me explain.

12 Q. Go ahead.

13 A. Impression is what he has now and what  
14 happened. Now he has pain in the sacroiliac  
15 joint with occasioiial leg pain No evidence of  
16 neurologic deficit on examination, and a pars  
17 defect which was present on the x-rays and the  
18 MRI before.

19 Q. Okay.

20 A. So my impression is what the patient has and  
21 what was related to the accident.

22 Q. So everything contained in your report in  
23 the impression level was what you felt were the  
24 injuries sustained by John --

25 A. No.

1 Q. The impression section of your report reads  
2 that: "A motor vehicle accident on or about  
3 7/1/99 with low back pain, which at this point is  
4 mostly in the sacroiliac junctions, and  
5 occasional right leg pain with no evidence of  
6 neurological deficits whatsoever on examination,  
7 pars defect with grade one spondylolisthesis  
8 L4-L5." And I said, "Did I read that  
9 accurately" -- did I just read that accurately?

10 A Yes, you did.

11 Q. Okay. The spondylolisthesis is at L4-L5?

12 A. I believe so.

13 Q. Isn't that where the herniated disk is?

14 A. L5-S1. And that's a mistake.

15 Q. Well, what's a mistake, the report?

16 A. No, The L4-L5, the last sentence of  
17 impressions should be L5-S1.

18 Q. Okay. Is that your opinion of the injuries  
19 sustained by my client in this motor vehicle  
20 accident?

21 A. He had low back pain, sprain, strain, yes.

22 Q. Is the rest of that your opinion to a  
23 reasonable medical certainty as to what injuries  
24 he sustained? That's the rest of that  
25 impression.

1 Q. I'm asking you a question.

2 A. Okay.

3 Q. Wait until I ask the question.

4 A. Okay.

5 Q. Everything contained in your report in the  
6 impression level is what you felt were the  
7 injuries sustained by John Seelie in the motor  
8 vehicle accident of July 1, 1999, correct?

9 A. No.

10 Q. All right. When I asked you that exact same  
11 question when I took your deposition under oath  
12 on August 8th, your answer was, "Within a  
13 reasonable medical certainty, that's correct."  
14 Do you want me to show you what page?

15 A. No. I believe -- then that's a  
16 misstatement.

17 Q. Well, let me stop you. Then you made a  
18 misstatement when I took your deposition; is that  
19 right?

20 A. In that incident, yes.

21 Q. All right.

22 A. Sure.

23 Q. Well let me go on then. Okay?

24 A. No, no. Don't I get to exchange -- explain  
25 my misstatement to the jury, or whoever?



1 Q. Well, if Mr. Sah wants to get you on  
2 redirect?  
3 A. Okay.  
4 Q. On cross-examination --  
5 A. Okay. I understand.  
6 Q. Okay?  
7 A. No, you're right.  
8 Q. You've been through this before, haven't  
9 you? This isn't the first time you've had your  
10 deposition taken, is it?  
11 A. Like this -- no, once before, with you.  
12 Q. Other than that?  
13 A. That's correct.  
14 Q. Okay. And then I said, "He didn't sustain  
15 any herniated disk, right?" And you said -- I'm  
16 going to read exactly what you said. "I don't  
17 know for sure that the herniated disks came at  
18 that time or before." That's what you said on  
19 August 8th, wasn't it?  
20 A. Do I get a --  
21 Q. Is that what you said on August 8th?  
22 A. I don't know. I'd like to see where you're  
23 reading from.  
24 Q. Turn to page 68 just so there is no mistake.  
25 A. Sixty-eight?

1 Q. Actually, let's do it this way. Let's go to  
2 page 67. Are you with me?  
3 A. Uh-huh.  
4 Q. Go to line 6. I'm just going to read it as  
5 I asked you the question and you gave the answer  
6 when I took your deposition under oath here on  
7 August 8th. Okay?  
8 A. Yup.  
9 Q. All right. "Now, the first thing that  
10 Plaintiff's Exhibit 7 requests that you do in  
11 Mr. Sah's letter says, 'What injuries, if any,  
12 were sustained in the motor vehicle accident of  
13 7/1/1999?' Did I read that correctly?" And you  
14 said "Yes." "Where in your medical report is  
15 that information contained, if anywhere?" Your  
16 answer was, "It says impression low back pain."  
17 I said, "So that's where that opinion's  
18 contained?" And you said, "Yes."  
19 And then I read, "Impression: Motor vehicle  
20 accident on or about 7/1/99 with low back pain,  
21 which at this point is mostly in the sacroiliac  
22 junctions, and occasional right leg pain with no  
23 evidence of neurological deficits whatsoever on  
24 examination, pars defect with grade one  
25 spondylolisthesis, L4-L5." And then I said, "Did

1 I read that accurately," and you said, "Yes, you  
2 did." And I said, "Is that your opinion of the  
3 injuries sustained by my client in the motor  
4 vehicle accident?" And you said, "He suffered  
5 low back pain. That is correct." And then I  
6 said, "Is the rest of that your opinion to a  
7 reasonable medical certainty as to what injuries  
8 he sustained?" And you said, "Is the rest of  
9 that impression?" And I said, "Yeah," and you  
10 said, "Yes."  
11 Then I said, "Okay. So everything contained  
12 in your report in the impression level is what  
13 you felt were the injuries sustained by John  
14 Seelie in the motor vehicle accident of July 1st  
15 of 1999, correct?" And you said, "Within a  
16 reasonable medical certainty, that's correct."  
17 And I said, "He didn't sustain any herniated  
18 disk, right?" And you said, "I don't know for  
19 sure that the herniated disks came at that time,  
20 or before." Did I read all that accurately?  
21 A. That's correct.  
22 Q. Thank you. Then later on, you told me that  
23 he couldn't have sustained herniated disks from  
24 the accident because of some study that you were  
25 aware of, right?

1 A. Right  
2 Q. But you couldn't locate the study, but  
3 eventually you had the abstract from the study  
4 sent to me by Mr. Sah. You didn't send it to me  
5 yourself, you sent it to him so he could send it  
6 to me, correct?  
7 A. Correct  
8 Q. And that was a study that examined or did  
9 imaging studies on 100 people of different ages,  
10 some of whom were symptomatic for back problems  
11 and some of whom were not, right?  
12 A. I believe so  
13 Q. But did you ever read the whole study?  
14 A. No  
15 Q. Because I've got the whole study.  
16 A. Okay  
17 Q. Do you have the whole study?  
18 A. I don't  
19 Q. All you have is the abstract?  
20 A. That's right  
21 Q. Wouldn't that be important, since that's one  
22 of the bases for your opinion here this morning,  
23 that you have the whole study?  
24 A. Not necessarily. The abstract is a summary  
25 of the study

1 Q. Really?

2 A That's what they're supposed to be

3 Q. The study's about five pages long, Doctor.

4 Have you ever read it?

5 A No I read the --

6 Q. The summary?

7 A Thesummary

8 Q. What year is the study from?

9 A Can I refer to this?

10 Q. You sure -- you can refer to whatever you

11 need to refer to. Maybe I can help you. 1990 is

12 when it's from.

13 A Okay

14 Q. Trust me that that's what it --

15 A Sure

16 Q. And the study from 1990, a certain

17 percentage of the 100 people that were evaluated

18 there already had -- or should I say, were

19 symptomatic of back problems. Did you know that?

20 A Let me --

21 Q. No. I've got your abstract right here.

22 A Oh, you have it No wonder I can't --

23 Q. No wonder you can't find that. Okay. Let's

24 mark that. Can you give that to her, and she'll

25 mark it Plaintiff's Exhibit D and then I'll ask

1 you some questions about that.

2 (Thereupon, Plaintiff's Exhibit D

3 of the D. S. Smith, M.D., deposition

4 was marked for purposes of

5 identification.)

6 BY MR. HOUSEL:

7 Q. You got it?

8 A. Yes.

9 Q. I want you to identify it for the record,

10 sir.

11 A. This is an abstract from the Journal Board

12 of Joint Surgery, Volume 72, pages 403 to 408.

13 "Abnormal magnetic resonance scan of the lumbar

14 spine in asymptomatic subjects, a prospective

15 investigation."

16 Q. Okay. And that was one of the things you

17 based your opinion with reasonable medical

18 certainty that my client didn't sustain two

19 herniated disks in this automobile accident,

20 right?

21 A. Yes.

22 Q. Now, you would agree with me that he has two

23 herniated disks in his lumbar spine, correct?

24 A. I agree with you at the time the MRI was

25 taken, he had two herniated disks according to

1 the MRI.

2 Q. And, sir, when was the MRI taken?

3 A. 7/27/99.

4 Q. Twenty-six days after the accident?

5 A. I trust yourmath.

6 Q. Yeah. When was the date of the accident?

7 A. 7/1.

8 Q. Okay. So 26 days after the accident, he had

9 two herniated disks, right?

10 A. Right.

11 Q. And you have no arguments with that, do you?

12 A. No.

13 Q. Okay. And before the accident took place,

14 you have no argument in any way, shape or form in

15 the fact that he had no problems with his back at

16 all, right?

17 A. I've seen no medical documents or records

18 that show he had low back pain prior to --

19 Q. So you had no evidence that you could base a

20 conclusion on your part that he had any problem

21 with his back before this accident, right?

22 A. That's correct.

23 Q. He told you he had no problem with his back

24 before this accident, right?

25 A. That's correct.

1 Q. You **believe him, don't you?**

2 A. I do.

3 Q. **You were a little hesitant there. Do you**

4 **have some reason not to believe him?**

5 A. I don't know the man. It's not uncommon for

6 patients to come a doctor and not tell them the

7 truth.

8 Q. You **think that's what Mr. Seelie was doing**

9 **here?**

10 A. No, I --

11 Q. **Do you?**

12 A. Yeah. I mean, I --

13 Q. Do you **think he was lying?**

14 A. Do I think he's lying? I don't think so.

15 Q. **Okay.**

16 A. Could he be? Yes, he could be.

17 Q. **Well, we don't want to deal in speculation**

18 **here, do we, Doctor?**

19 A. No. I'm trying to be accurate. Could he be

20 lying? Yes, he could. Do I think so? Probably

21 not.

22 Q. **Well, did you ask Mr. Sah to get all of his**

23 **medical records his entire life so you could see**

24 **if he ever had a back problem before?**

25 A. I did not.

1 Q. Okay. So you have no evidence that you  
2 could base an opinion of --  
3 A. That's correct.  
4 Q. --that he had any problems with his back  
5 before?  
6 A. That's correct.  
7 Q. So he would be somebody who, prior to this  
8 accident, would be classified as asymptomatic?  
9 A. Right.  
10 Q. Okay. So if he's asymptomatic, after the  
11 accident and up until the time he had the MRI's  
12 done, he was symptomatic, wasn't he? The records  
13 reflect that.  
14 A. He had symptoms of a lumbar sprain and  
15 strain, that's correct.  
16 Q. Well, you read Dr. Sterns's records, didn't  
17 you?  
18 A. Yes. I read his two pages, summary and a --  
19 Q. Well, you got his office chart, too, didn't  
20 you?  
21 A. I'm not done yet.  
22 Q. I'm sorry.  
23 A. And his office records. That's all I have.  
24 Q. And those reflect that Mr. Seelie was  
25 complaining about problems with his low back,

1 don't they?  
2 A. That's correct.  
3 Q. So he's now symptomatic, right?  
4 A. Of a lumbar strain.  
5 Q. Well, that's not what Dr. Sterns says it is,  
6 does he?  
7 A. That's Dr. Sterns's opinion, that's correct.  
8 Q. But he doesn't say it's a strain like you  
9 do, does he?  
10 A. I don't believe so.  
11 Q. Do you know of any intervening causal factor  
12 between the first day of July, 1999, and the 27th  
13 day of July, 1999, when the MRI showed the  
14 herniated disks that could have caused them?  
15 A. That could have caused?  
16 Q. The herniated disks.  
17 A. Oh, an intervening trauma that could have  
18 caused them?  
19 Q. Right.  
20 A. I'm unaware of any intervening trauma.  
21 Q. So that couldn't be part of your opinion,  
22 could it?  
23 A. That there was intervening trauma?  
24 Q. Yeah.  
25 A. There was not my -- there could have been.

1 I don't think so.  
2 Q. We don't want you to guess here now.  
3 A. No. I'm trying to be accurate, there could  
4 have been. I don't think so  
5 Q. Okay. That's fair. All right. So this  
6 study that you -- tell me about -- what you know  
7 about the study? How many people were involved  
8 in this study?  
9 A. Study -- "We performed magnetic resonance  
10 image on 67 individuals who had never had low  
11 back pain, sciatica or neurogenic claudication."  
12 Q. Okay.  
13 A. "The scans were interpreted by independent,  
14 three neuroradiologists who had no knowledge  
15 about the presence or absence of clinical  
16 symptoms in the subjects. About one-third of the  
17 subjects were found to have substantial  
18 abnormality. Of those who were less than 60  
19 years old, 20 percent had herniated nucleus  
20 pulposus, which is a herniated disk, and one  
21 had spinal stenosis. In that group that was 60  
22 years old or older, the findings were abnormal in  
23 about 57 percent of the scans --"  
24 Q. Let's look at the findings as far as -- how  
25 old is Mr. Seelie?

1 A. In April, he was 42. I don't know what  
2 his --  
3 Q. How old was he when the accident happened?  
4 A. I'm assuming -- 40, maybe  
5 Q. So --  
6 A. Maybe. Maybe. I don't know when his  
7 birthday is  
8 Q. Okay. Thirty-nine, 40. You put him in  
9 which of these categories from this study?  
10 A. Well, he's under 60.  
11 Q. Well, there's another -- isn't there another  
12 category?  
13 A. Less than 60  
14 Q. Well, let me read you the report part of it.  
15 Maybe that will help you, since you only have the  
16 abstract part.  
17 A. Right  
18 Q. It says: "Magnetic resonance imaging of the  
19 lumbar spine was performed on 67 volunteers who  
20 ranged in age from 20 to 80 years, with the  
21 average 42 years. Thirty men and 37 women, and  
22 they were of various ages." And do you know what  
23 the percentage in Mr. Seelie's age range was for  
24 people who were totally asymptomatic and had  
25 problems with their back that showed up on these

1 imaging studies? Do you know that?  
 2 A. Wait a minute. You said totally  
 3 asymptomatic and had problems with their back.  
 4 Q. Yeah.  
 5 A. That can't be.  
 6 Q. Had no problems with their back.  
 7 A. No. But you said had problems with their  
 8 backs.  
 9 Q. I'm sorry.  
 10 A. You meant no problems.  
 11 Q. I did. You're right. Thanks, Doctor.  
 12 A. Now, the question was, do I know what  
 13 percentage on the people of --  
 14 Q. Mr. Seelie's age?  
 15 A. -- Mr. Seelie's age that had --  
 16 Q. Right.  
 17 A. -- no symptoms and had herniated disks?  
 18 Q. Right. Or not herniated disks, some kind  
 19 of --  
 20 A. Abnormality.  
 21 Q. It wasn't just a herniated disk. It was  
 22 some other kind -- it was a bulging -- there were  
 23 a lot of abnormalities the study covered besides  
 24 herniated disks, weren't there?  
 25 A. Yes.

1 Q. All right. Go ahead.  
 2 A. Of those less than 60, 20 percent had  
 3 herniated nucleus pulposuses, one had spinal  
 4 stenosis.  
 5 Q. How about less than 40? You won't find it  
 6 in there, because it's not in the abstract.  
 7 A. Yeah, I believe it. Yeah. No, I didn't see  
 8 it.  
 9 Q. You made reference in your prior deposition  
 10 to this abstract that it was a significant  
 11 number. Those were your words, remember that?  
 12 A. Twenty percent herniated and other problems  
 13 is a significant thing  
 14 Q. Oh, yeah?  
 15 A. Yeah.  
 16 Q. Out of 100 percent, 20 percent is  
 17 significant?  
 18 A. Walking around with significant defects,  
 19 yes.  
 20 Q. But if you don't have a problem from a  
 21 defect, why is it an issue? He had no problems.  
 22 If he had the herniated disk before the accident,  
 23 that wasn't causing him any problems. So why is  
 24 that significant to you in your opinion?  
 25 A. I don't understand what you're saying

1 Q. Let her read it to you, again.  
 2 A. It's significant that people that have  
 3 herniated disks can be asymptomatic.  
 4 Q. Okay. If it's what your opinion is --  
 5 A. Wait a minute.  
 6 Q. Let me stop you.  
 7 A. Okay.  
 8 Q. If your opinion is that you think the  
 9 herniated disks predated the accident, right?  
 10 A. Yeah.  
 11 Q. And you base that on this study, right?  
 12 A. In part, yes.  
 13 Q. Okay. Well, the other part **you** base it on  
 14 is the history you took from him in the  
 15 examination, right?  
 16 A. That's correct.  
 17 Q. Okay. If you base it on this study, why is  
 18 this study important at all in your opinion **if**  
 19 Mr. Seelie, before this accident, has no problems  
 20 with his back? Even if the herniated disks are  
 21 there?  
 22 A. Can I -- do I get to answer now?  
 23 Q. You sure do.  
 24 A. Okay. The problems Mr. Seelie has, in my  
 25 opinion, based on a reasonable degree of medical

1 certainty had at that time was a lumbosacral  
 2 strain. I'm not saying he had no injury. He had  
 3 a lumbar strain, lumbosacral strain. There is  
 4 pain associated with that. That is different  
 5 symptoms than you get with a disk.  
 6 Q. I don't think we understand each other here.  
 7 MR. HOUSEL: Would you read him  
 8 the question again.  
 9 (Thereupon, the Reporter read  
 10 the record as requested.)  
 11 BY MR. HOUSEL:  
 12 Q. You don't understand that?  
 13 A. Yeah.  
 14 Q. Answer it.  
 15 A. He did have an injury to his back. It was a  
 16 lumbar strain. He did not have herniated disks  
 17 from the motor vehicle accident. I believe he  
 18 had the herniated disks and was asymptomatic. He  
 19 falls into this category of people that have  
 20 asymptomatic herniated disks.  
 21 Q. Of course, you have no evidence to support  
 22 that, do you?  
 23 A. Well, I think the study is pretty good  
 24 evidence.  
 25 Q. This study that you're talking about?

<p style="text-align: right;">106</p> <p>1 A. Yes, yes.</p> <p>2 Q. That's pretty good evidence?</p> <p>3 A. Twenty percent -- 20 percent is significant.</p> <p>4 Q. Did you know that they mixed in 33 people</p> <p>5 who had problems with their back with the 67 that</p> <p>6 didn't? Did you know that?</p> <p>7 A. Well, they may have, but what they're</p> <p>8 saying --</p> <p>9 Q. Did you know that?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. But what they're saying is 67 percent of</p> <p>13 individuals who never had low back pain had 20</p> <p>14 percent who had herniated disks.</p> <p>15 Q. So you're just choosing -- in what age</p> <p>16 range, do you know? In what age range?</p> <p>17 A. Yeah, under 60.</p> <p>18 Q. Well, did you know they broke it down into</p> <p>19 age ranges, 0 to 20, 20 to 40 and above? Did you</p> <p>20 know that?</p> <p>21 A. No, I did not know that.</p> <p>22 Q. Well, shouldn't you know those things before</p> <p>23 you use a document like that to form an opinion</p> <p>24 with reasonable medical certainty?</p> <p>25 A. No.</p>	<p style="text-align: right;">108</p> <p>1 you have from 1990.</p> <p>2 MR. HOUSEL: Let's go off the</p> <p>3 record for a second.</p> <p>4 THE VIDEOGRAPHER: Off the record.</p> <p>5 (Thereupon, a discussion was</p> <p>6 held off the record.)</p> <p>7 THE VIDEOGRAPHER: We're on the record.</p> <p>8 BY MR. HOUSEL:</p> <p>9 Q. Okay. Doctor, the <b>MRI</b> findings relative to</p> <p>10 Mr. Seelie showed something a little different</p> <p>11 than just a herniated disk. They showed nerve</p> <p>12 root compression, didn't they?</p> <p>13 A. The one said there may be impingement on the</p> <p>14 existing L5 nerve root.</p> <p>15 Q. That's nerve root compression, isn't it?</p> <p>16 A. Well, it says there may be. That is nerve</p> <p>17 root compression, but there may be. It says,</p> <p>18 "may be."</p> <p>19 Q. Did you ever look at those <b>MRI</b> films?</p> <p>20 A. I believe I did. I'm not --</p> <p>21 Q. No, you didn't.</p> <p>22 A. Well, then I didn't.</p> <p>23 Q. Well, if you did, it's news to me.</p> <p>24 A. I saw -- I saw outside films, correct.</p> <p>25 Q. You saw some plain x-rays, correct?</p>
<p style="text-align: right;">107</p> <p>1 Q. Okay. All right.</p> <p>2 A. No.</p> <p>3 Q. Did you know that there was another -- well,</p> <p>4 do you actually review material like this to help</p> <p>5 you arrive at opinions in your independent</p> <p>6 medical examination work?</p> <p>7 A. I knew of this study, and I know of another</p> <p>8 study in the AMA that had the same conclusion.</p> <p>9 Q. Oh, you didn't tell me about that one. Tell</p> <p>10 me about that one. Is that a new one you've come</p> <p>11 up with since I last took your deposition?</p> <p>12 A. No, it's not anew one. No, it's not.</p> <p>13 Q. Okay. Tell me about that one.</p> <p>14 A. There was a study in the Journal of the</p> <p>15 American Medical Association that came to very</p> <p>16 similar conclusions that asymptomatic patients</p> <p>17 have herniated disks on MRIs, and I don't know</p> <p>18 the -- I don't know the date of the article.</p> <p>19 Q. Did you send that to me like that other</p> <p>20 material that you voluntarily sent to me?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 A. I could not find that.</p> <p>24 Q. All right. I came up with a study myself</p> <p>25 from 1998, about a little newer than the one that</p>	<p style="text-align: right;">109</p> <p>1 A. That's correct.</p> <p>2 Q. You never looked at the <b>MRI</b> films, correct?</p> <p>3 A. I don't believe I did.</p> <p>4 Q. You just looked at the reports, right?</p> <p>5 A. That's correct.</p> <p>6 Q. I got a report here from 1998 called "MR</p> <p>7 imaging of the lumbar spine, prevalence of</p> <p>8 intravertebral disk extrusion and sequestration,</p> <p>9 nerve root compression, end plate abnormalities</p> <p>10 and osteoarthritis of the facet joints in</p> <p>11 asymptomatic volunteers." Did you ever hear of</p> <p>12 such a report?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 A. I'm familiar -- unfamiliar with that report.</p> <p>16 What journal was it in?</p> <p>17 Q. I'll show it to you in a minute and you can</p> <p>18 look at it.</p> <p>19 The conclusion that this came up with in</p> <p>20 1998 was -- and it says: "The clinical</p> <p>21 importance with disk bulging and protrusion in</p> <p>22 high signal intensity zones are common findings</p> <p>23 in asymptomatic individuals younger than 50</p> <p>24 years. However, disk extrusions and</p> <p>25 sequestration, nerve root compression, end plate</p>

<p style="text-align: right;">110</p> <p>1 abnormalities and osteoarthritis of the facet  2 joints are rare, and therefore appear to be  3 predictive of low back pain in symptomatic  4 patients."  5 MR. HOUSEL: Why don't we mark it  6 and we can show it to the Doctor.  7 THE WITNESS: And your  8 interpretation is what?  9 BY MR. HOUSEL:  10 Q. I'm not making an interpretation. I'm going  11 to have it marked. Let me have it marked.  12 A. Okay.  13 Q. I'm not --I'm just reading what it says.  14 I'm not interpreting anything.  15 A. I don't think that applies at all. He  16 doesn't have end plate abnormality.  17 Q. He has nerve root compression?  18 A. That was part of it. They're talking about  19 all those other things, none of which he has.  20 Q. Okay. All right.  21 A So that --  22 Q. We don't need to go any further with that.  23 A. Yeah, you're right. That's an irrelevant  24 study.  25 MR. SAH: Aren't you marking</p>	<p style="text-align: right;">112</p> <p>1 your report, did you?" And you said, "No,"  2 right?  3 A. That's correct.  4 Q. And then I said, "If it was one of your  5 bases for your conclusions and your opinions, how  6 come you didn't list it in your report," and you  7 said, "I didn't think it important."  8 A. Correct.  9 Q. That's what you said on August 8th under  10 oath, right, Doctor?  11 A. Correct.  12 Q. Okay. And the first time you ever saw the  13 medical report of Mr. Seelie's treating  14 physician, Dr. Kim Sterns, was the day of the  15 deposition on August 8th of this year. Isn't  16 that right?  17 A. That's possible.  18 Q. Well, you trust me that's what you said?  19 A. Yeah. No, I -- I don't have a recollection  20 independently, but if that's what I said in the  21 deposition, then that's when I saw it.  22 Q. You said you didn't even know that he did a  23 medical report on page 80.  24 A. Well, then I didn't.  25 Q. Okay.</p>
<p style="text-align: right;">111</p> <p>1 that?  2 MR. HOUSEL: No. Doctor says  3 it's irrelevant.  4 Let's go off the record again.  5 THE VIDEOGRAPHER: Off the record.  6 (Thereupon, a discussion was  7 held off the record.)  8 THE VIDEOCRAPHER: We're on the record.  9 BY MR. HOUSEL:  10 Q. Doctor, I asked you some questions at your  11 deposition in August about this Journal of  12 American Medicine report that you just have the  13 abstract from. Do you remember those, sir?  14 A. I remember you asking me. I don't remember  15 the specific ones.  16 Q. Okay.  17 A. If you can tell me where you are?  18 Q. Yeah, sure. Page 79. We were talking about  19 the article, and you told me that it was -- "I  20 can't quote the name of the article or the date.  21 JAMA comes out every week." I said, "When was  22 the article written? Do you have any idea?"  23 This is top of page 79, right?  24 A. Uh-huh.  25 Q. And I said, "You didn't list it anywhere in</p>	<p style="text-align: right;">113</p> <p>1 A I mean, whatever it says here  2 Q. Wouldn't you have wanted Mr. Sah to send you  3 the medical report?  4 A Not necessarily  5 Q. So the medical report of the treating  6 physician isn't important to you in doing an  7 evaluation?  8 A The medical report, I believe, is written to  9 you; is that correct'  10 Q. Right.  11 A Okay You asked for a report to you  12 Q. Right.  13 A Okay  14 Q. Wouldn't it be important for you to have  15 that?  16 A Not necessarily  17 Q. Well, if you're going to independent medical  18 examiner --  19 A That's right Independent medical  20 examination That's correct  21 Q. Wouldn't you like to have all of the medical  22 relevance to the injuries before you came up with  23 your evaluations?  24 A It would be nice, but it is my independent  25 medical evaluation, not what Dr. Sterns says</p>

1 Q. Since Dr. Sterns's opinions were certainly  
2 different than yours, did you ever think to call  
3 him on the phone and ask him how he arrived at a  
4 different conclusion than you?  
5 A. No.  
6 Q. Who would be in a better position to do an  
7 evaluation of Mr. Seelie's injuries from this  
8 motor vehicle accident? Dr. Sterns, who's been  
9 treating him for a number of years, or you, who  
10 saw him last?  
11 A. I believe Dr. Sterns saw him twice. I'm not  
12 sure he saw him any more than that, and --  
13 Q. Did you understand my question?  
14 A. I'm trying to answer it. Maybe I didn't.  
15 Q. Let me make it easier for you. Who would be  
16 in a better position to evaluate the injuries  
17 sustained by Mr. Seelie in the July 1, '99  
18 automobile accident? Dr. Sterns or you?  
19 A. I'm not sure there is a right or wrong  
20 answer there. My impression is that Dr. Sterns  
21 saw him a couple times only, and hasn't seen him  
22 in over two years. I saw him in April, and  
23 that's a more recent examination.  
24 MR. HOUSEL: Off the record.  
25 THE VIDEOGRAPHER: Off the record.

1 (Thereupon, a discussion was  
2 held off the record.)  
3 THE VIDEOGRAPHER: We're on the record.  
4 BY MR. HOUSEL:  
5 Q. Doctor, can somebody not exhibit a problem  
6 on a physical examination but later have the  
7 problem, depending on how you conduct your  
8 physical examination?  
9 A. I don't think conducting the physical  
10 examination has anything to do with it. I think  
11 you can have a problem -- I'm not sure I  
12 understand it, but you can examine someone and  
13 there may not be a problem there and a problem  
14 can arise. Is that what you're -- I don't  
15 understand the question.  
16 Q. Let me read it to you again. It's exactly  
17 the same question I asked you at your deposition.  
18 A. Okay. What page are you on, please?  
19 Q. Ninety-two. "Can somebody not exhibit the  
20 problem on a physical examination but later have  
21 the problem depending on how you conduct the  
22 physical examination?"  
23 A. What line are you on, now?  
24 Q. Twelve. And your answer at 15 was, "Could  
25 the sun not come up tomorrow? Yes, the sun could

1 not come up tomorrow." That's how you answered  
2 that question.  
3 A. That's correct.  
4 Q. Now, Mr. Seelie told you at his examination  
5 that he had radiating pain, did he not?  
6 A. To be accurate, let me --  
7 Q. Sure. Take your time.  
8 A. Radiating to the legs, yes.  
9 Q. Okay. That's a neurological indication,  
10 isn't it?  
11 A. No.  
12 Q. It can be, can it not?  
13 A. Can be, yes. It is not.  
14 Q. It can also be an indication of a herniated  
15 disk pressing on a nerve root, can it not?  
16 A. No.  
17 Q. It can't be that?  
18 A. You tell me when I can speak and I'll speak.  
19 Q. You can speak.  
20 A. Okay.  
21 Q. That's a pretty simple question.  
22 A. No, it's not a pretty simple question.  
23 Q. Well, let me ask it this way --  
24 A. Okay. I answered it, I said --  
25 Q. Can it not be an indication of a herniated

1 disk?  
2 A. Can -- please restate the whole.  
3 Q. Radiating pain down into a leg?  
4 A. It can be.  
5 Q. Thankyou.  
6 A. But --  
7 Q. I didn't ask you for an explanation, I asked  
8 you if it could be.  
9 A. No. I'm answering the question completely.  
10 Q. Go right ahead.  
11 A. But it can be many other things  
12 Q. Okay. Did Mr. Seelie tell you that he had  
13 low voltage shock feeling, numbness and tingling  
14 and his foot goes to sleep?  
15 A. Yes. He had tinge -- pain going to the  
16 nght and left leg, doesn't know when the  
17 onset -- he had some -- went to the heels with  
18 some tingling.  
19 Q. Oh, so you -- now you tell me that he did  
20 tell you that. At your deposition, you said, "I  
21 don't have that down."  
22 A. Well, it is here. It's not here.  
23 Q. So it is here?  
24 A. It is in my office notes.  
25 Q. Okay.

1 A. My -- I'm sorry. Handwritten notes.  
 2 Q. Low voltage shock feeling, numbness and  
 3 tingling and his foot goes to sleep.  
 4 A. Well, I've got that he had tingling to his  
 5 heel. So that's part of the foot.  
 6 Q. You don't have that his foot went to sleep?  
 7 A. No.  
 8 Q. You don't have low voltage shock feeling?  
 9 A. No.  
 10 Q. Okay. And --  
 11 A. That's tingling. I mean, I didn't write  
 12 down his word-for-word, because I can't write  
 13 that fast.  
 14 Q. Well, that's --  
 15 A. I got tingling.  
 16 Q. Yeah. As a matter of fact, what I saw  
 17 happen and what my client saw happen was you  
 18 wouldn't let him answer the question before you  
 19 started asking another one. You take -- you  
 20 write the notes down as he tells you those  
 21 things, don't you, Doctor?  
 22 A. You write -- you try to, yes.  
 23 Q. Okay. You don't always get them all down,  
 24 though, do you?  
 25 A. Don't always get --

1 Q. Everything the patient -- everything the  
 2 individual --  
 3 A. Not word-for-word, that's correct.  
 4 Q. Yeah. So you might miss some of it, right?  
 5 A. The sun might not come up tomorrow, yes.  
 6 Q. If it was tape recorded though, that  
 7 wouldn't happen, would it?  
 8 A. If the tape were working, that's correct.  
 9 Q. Okay.  
 10 A. But I like your idea of the court reporter.  
 11 Q. Good. Well, next time if we ever come  
 12 across each other's paths, we'll do it that way.  
 13 A. That's a deal.  
 14 Q. Okay. Did he tell you that the left leg  
 15 bothers him more than the right?  
 16 A. I've got right leg more than left.  
 17 Q. No, I've got it down differently in the  
 18 notes I took.  
 19 A. This was a few days later after the  
 20 accident. And his chief complaint, right more  
 21 than left.  
 22 Q. And you told me it is possible he may have  
 23 recited the Gettysburg Address, and you don't  
 24 remember. Do you remember telling me that?  
 25 That's on page 114, if you want to take a look at

1 it, or do you just trust that's what you said?  
 2 A. Sure, I trust you.  
 3 Q. Okay. All right. Did he tell you that he  
 4 was in pain when he tried to bend over and touch  
 5 the floor?  
 6 A. When I was doing the examination, you mean?  
 7 Q. Yeah, right. Yeah.  
 8 A. I don't remember that  
 9 Q. Well, you told me at your deposition he  
 10 didn't have to. He lacked 12 inches of  
 11 touching --  
 12 A. Oh, I see what you're saying. Yeah, yeah.  
 13 Q. -- his fingertips to the floor?  
 14 A. That's right.  
 15 Q. That would mean when he bent over and tried  
 16 to touch the floor, since he couldn't do it, he  
 17 must have had the pain in his back. You would  
 18 agree with that, would you?  
 19 A. Yeah. Pain is usually the limiting factor  
 20 of when they can't reach, unless they have --  
 21 Q. What was causing that pain?  
 22 A. Oh, I suspect tight ligaments and tight  
 23 hamstrings from not doing his exercises.  
 24 Q. Well, how do you know he was not doing his  
 25 exercises or not? Are you just guessing at that?

1 Did you ask him?  
 2 A. I don't believe he -- yes, I did. "He's not  
 3 undergoing physical therapy or home exercise  
 4 program." That's written down there.  
 5 Q. Do you think that's what caused the pain  
 6 when he bent over?  
 7 A. I think his tightness did, yes.  
 8 Q. Would the pain when you bend over like that  
 9 and try to touch the floor, would pain also  
 10 potentially come from two herniated disks in  
 11 one's lumbar spine?  
 12 A. It could.  
 13 Q. Thank you.  
 14 A. But you would have straight leg raising,  
 15 which he did not have.  
 16 Q. You say he didn't have that, right?  
 17 A. No, no. He did not have straight leg  
 18 raising. It was negative.  
 19 Q. Doctor, thanks a lot for your time. I don't  
 20 have any other questions.  
 21 MR. SAH: Let's go off for a  
 22 second.  
 23 THE VIDEOGRAPHER: Off the record.  
 24 (Thereupon, a discussion was  
 25 held off the record.)



<p style="text-align: right;">122</p> <p>1 THE VIDEOGRAPHER We're on the record</p> <p>2 REDIRECT EXAMINATION</p> <p>3 BY MR. SAH</p> <p>4 Q. Doctor, remember when Mr. Housel referred to</p> <p>5 some 1998 study? He was making some reference to</p> <p>6 it?</p> <p>7 A Yes</p> <p>8 Q. Okay. And you had mentioned that that was</p> <p>9 not applicable to Mr. Seelie's case?</p> <p>10 A Correct.</p> <p>11 Q. Can you tell us why that wouldn't have been</p> <p>12 applicable?</p> <p>13 A The conditions that were referenced in the</p> <p>14 study Mr Seelie does not have</p> <p>15 Q. Okay. Do you remember what some of the</p> <p>16 conditions in that study were?</p> <p>17 A Facet hypertrophy, bulging disks, end plate</p> <p>18 abnormalities</p> <p>19 Q. Okay. Now, that study was, I believe you</p> <p>20 said, in 1998?</p> <p>21 A I have not seen it I trust Mr Housel</p> <p>22 Q. Okay. And the study on which you relied, at</p> <p>23 least in part, was written in 1990?</p> <p>24 A That's correct</p> <p>25 Q. Human body hasn't changed in eight years,</p>	<p style="text-align: right;">124</p> <p>1 A. Thirty-nine.</p> <p>2 Q. Okay. Is that a significant percentage?</p> <p>3 A. Yes.</p> <p>4 Q. Thirty-five percent?</p> <p>5 A. Sure.</p> <p>6 Q. Now, earlier, Mr. Housel asked you about the</p> <p>7 work you do for the Bureau of Workers' Comp.</p> <p>8 A. Yes.</p> <p>9 Q. And you no longer do any workups on the</p> <p>10 back?</p> <p>11 A. That's correct.</p> <p>12 Q. Why is that?</p> <p>13 A. They're very long and involved, and</p> <p>14 basically unpleasant to do.</p> <p>15 Q. Okay.</p> <p>16 A. That's a good way to put it.</p> <p>17 Q. In what way are they long and involved?</p> <p>18 MR. HOUSEL: I'll object to this.</p> <p>19 THE WITNESS: They -- many times,</p> <p>20 it's a lot of material to read --</p> <p>21 BY MR. SAH:</p> <p>22 Q. You mean records?</p> <p>23 A. Records, sorry. Records to read. And when</p> <p>24 I would write the report, they would ask for</p> <p>25 supplementals, and, you know, it was just</p>
<p style="text-align: right;">123</p> <p>1 has it?</p> <p>2 MR. HOUSEL: Objection.</p> <p>3 THE WITNESS: I don't think so.</p> <p>4 Mine has.</p> <p>5 MR. HOUSEL: Whose human body are</p> <p>6 we talking about here?</p> <p>7 BY MR. SAH:</p> <p>8 Q. In that abstract -- do you have that in</p> <p>9 front of you?</p> <p>10 A. Yes, I do. Exhibit D.</p> <p>11 Q. Exhibit D. Did that abstract cover the age</p> <p>12 group between 20 and 39?</p> <p>13 A. Yes.</p> <p>14 Q. And what did it say about the age group</p> <p>15 between 20 and 39?</p> <p>16 A. Of those that were less than 60, 20 percent</p> <p>17 had herniated nucleus pulposuses, which is a</p> <p>18 herniated disk, and one had spinal stenosis.</p> <p>19 Q. If you continue on two lines below that,</p> <p>20 does it cover the age group between 20 and 39?</p> <p>21 A. It says there were degeneration or bulging</p> <p>22 disks at at least one level in 35 percent of the</p> <p>23 subjects between 20 and 39 years of age.</p> <p>24 Q. And at the time of the accident, Mr. Seelie</p> <p>25 was approximately 39?</p>	<p style="text-align: right;">125</p> <p>1 unpleasant. And for sure, they've got a</p> <p>2 significant backlog that they could overload me</p> <p>3 with those things, which, like I say, are</p> <p>4 unpleasant.</p> <p>5 Q. Were there -- in our case, in examining</p> <p>6 Mr. Seelie, was there a big stack of records you</p> <p>7 had to review?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 MR. SAH: Thank you, Doctor.</p> <p>11 I have nothing more.</p> <p>12 RECROSS-EXAMINATION</p> <p>13 BY MR. HOUSEL:</p> <p>14 Q. Doctor, just a few follow-up questions.</p> <p>15 Since you didn't have that full report to read,</p> <p>16 and I have it, the one you just made reference to</p> <p>17 and just had the abstract, that report dealt with</p> <p>18 things other than herniated disks, didn't it?</p> <p>19 A. Yes.</p> <p>20 Q. It dealt with bulging disks, didn't it?</p> <p>21 A. Yes.</p> <p>22 Q. Degenerative disks, didn't it?</p> <p>23 A. Yes.</p> <p>24 Q. So it wasn't just herniated disks like</p> <p>25 Mr. Seelie had, right?</p>

1 A. That's correct.  
 2 Q. In fact, there were bulging disks in **54**  
 3 percent of **35** subjects who were less than 60.  
 4 Did you know that? You won't find it in the  
 5 abstract.  
 6 A. If it's not in the abstract --  
 7 Q. It isn't. Trust me. And there was at least  
 8 one degenerated disk noted in **34** percent of **35**  
 9 subjects in the youngest group, and in all but  
 10 one of the subjects in the oldest group. Did you  
 11 know that?  
 12 A. No, but I trust you.  
 13 Q. Okay. Did you know that there were men and  
 14 women involved in the study?  
 15 A. I would assume so.  
 16 Q. Do you know that there were 100 people  
 17 involved in this study, **33** of whom were known to  
 18 have back problems that caused them pain?  
 19 A. You mentioned that.  
 20 Q. But that's not the abstract, is it?  
 21 A. That's correct.  
 22 Q. So again, now, wouldn't it be the proper  
 23 thing to do as a physician like you who is  
 24 expressing opinions with reasonable medical  
 25 certainty that before you use one of these

1 (Thereupon, the D. S. Smith, M.D.,  
 2 deposition was concluded  
 3 at 10:40 o'clock a.m.)  
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1 studies as a basis for your opinion, to have the  
 2 whole thing to read?  
 3 A. No.  
 4 Q. Okay. I don't have any other questions.  
 5 Thank you, sir.  
 6 A. Okay. Let me finish, please.  
 7 MR. HOUSEL: No, that's all.  
 8 That's all I have, Doctor. Thanks. Your answer  
 9 was no. That's significant. That's all I have.  
 10 Thanks, Doctor.  
 11 THE WITNESS: Thank you.  
 12 MR. HOUSEL: You're welcome.  
 13 THE WITNESS: Now, do you need  
 14 those things or --  
 15 MR. HOUSEL: Yeah, for the  
 16 record, Ms. Court Reporter, we have --  
 17 Shut that off, now.  
 18 THE VIDEOGRAPHER: Off the record.  
 19 (Thereupon, a discussion was  
 20 held off the record.)  
 21 MR. HOUSEL: For purposes of the  
 22 record, I'll offer Exhibits A, B and C. That's  
 23 all. I'll withdraw D.  
 24  
 25

## 1 CERTIFICATE

2  
 3 STATE OF OHIO, )  
 4 ) SS:  
 5 SUMMIT COUNTY, )

6 I, Anika W. Patrick, a Registered  
 7 Professional Reporter and Notary Public within  
 8 and for the State of Ohio, duly commissioned and  
 9 qualified, do hereby certify that the within  
 10 named witness, DURET STANFORD SMITH, M.D., was by  
 11 me first duly sworn to testify the truth, the  
 12 whole truth and nothing but the truth in the  
 13 cause aforesaid that the testimony then given by  
 14 him was by me reduced to Stenotypy in the  
 15 presence of said witness, afterwards prepared and  
 16 produced by means of Computer-Aided Transcription  
 17 and that the foregoing is a true and correct  
 18 transcription of the testimony so given by him as  
 19 aforesaid.

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

14 I do further certify that I am not a  
 15 relative, counsel or attorney of either party, or  
 16 otherwise interested in the event of this action.

17 IN WITNESS WHEREOF, I have hereunto set my  
 18 hand and affixed my seal of office at Akron, Ohio  
 19 on this 22nd day of October, 2001.

20  
 21  
 22 Anika W. Patrick, Registered  
 23 Professional Reporter and  
 24 Notary Public in and for the  
 25 State of Ohio.

My commission expires March 15, 2005.

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A				
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