

IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

VIRGINIA B. SESSIN, et al.,

Plaintiffs,

vs.

Case No.

NIKOLAUS TYSIAK, et al.,

299010

Defendants.

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Videotape deposition of SUSAN E.
STEPHENS, M.D., called for examination under the
statute, taken before me, Denise M. Munguia, a
Registered Professional Reporter and Notary
Public in and for the State of Ohio, at the
offices of Associate Orthopedics, 5 Severance
Circle, Cleveland Heights, Ohio, on Tuesday,
December 17, 1996, at 4:03 o'clock p.m.

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COPY

1 APPEARANCES:

2 On behalf of the Plaintiffs:

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16 On behalf of the Defendant Robert W. Hunt:

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24 ALSO PRESENT:

25 Norman C. Hadad

1 MR. HADAD: Today's date is December
2 17th, 1996. On the record at 12:03 -- I'm sorry,
3 4:03 p.m. Will the reporter please swear in the
4 witness?

5 SUSAN E. STEPHENS, M.D., of lawful age,
6 called for examination, as provided by the Ohio
7 Rules of Civil Procedure, being by me first duly
8 sworn, as hereinafter certified, deposed and said
9 as follows:

10 EXAMINATION OF SUSAN E. STEPHENS, M.D.

11 BY MR. PEARSON:

12 Q. Good afternoon, Doctor.

13 A. Hi.

14 Q. How are you today?

15 A. Good.

16 Q. I understand you're pregnant and
17 you've already instructed us that if you need to
18 take a break, we're all okay with that. Okay?

19 A. Okay.

20 Q. All right. So just let me know if at
21 any time during this deposition you need a
22 break.

23 A. All right.

24 Q. Would you please introduce yourself
25 to the jury?

1 A. I am Dr. Susan Stephens.

2 Q. And, Dr. Stephens, are you a duly
3 licensed physician in the State of Ohio?

4 A. Yes, I am.

5 Q. And when was that license obtained?

6 A. Oh, boy. 1986 or 7.

7 Q. Okay.

8 A. I have to look. 1987.

9 Q. Okay. And do you maintain an office
10 in the Cleveland area?

11 A. Yes, I do, two offices, one at the
12 St. Luke's Medical Building and one at the
13 Severance Medical Arts Building.

14 Q. Okay. And you've been a practicing
15 physician since 1986 -- 87? I'm sorry.

16 A. Yes.

17 Q. Where did you receive your medical
18 training?

19 A. I went to medical school at
20 University of Pennsylvania for four years and I
21 did five years orthopedic residency at LA County
22 Hospital-University of Southern California, and
23 then I did one year spine fellowship training at
24 the Cleveland Clinic.

25 Q. Okay. And do you currently

1 specialize in any particular branch of medicine?

2 A. I specialize in spine.

3 Q. Spine? Okay. Explain to me and the
4 jury what your specialty means?

5 A. Spine specialty means that you
6 specialize in disorders of the neck and the low
7 back, or really anyplace along the spinal cord,
8 the cervical region, the thoracic region, or the
9 low back or lumbar region, and this can involve
10 trauma, it can involve arthritis, it can involve
11 muscle strains, it can involve all kinds of
12 things, but just any kind of difficulty that
13 people have with back and neck injuries.

14 Q. Okay. Is there a name that's given
15 to that particular branch of medicine?

16 A. Just spine surgery or cervical spine
17 surgery, lumbar spine surgery.

18 Q. After completing your postgraduate
19 studies and training, did you engage in the
20 full-time practice of spine surgery?

21 A. Yes, I've been in this practice of
22 Associates in Orthopedics for five years.

23 Q. Okay. Are you currently on the staff
24 of any hospitals?

25 A. Yes, I'm on the staff I think of

1 seven hospitals. Let's see. St. Vincent
2 Charity, University, Mount Sinai, Bedford, the
3 Meridia System. Did I say St. Luke's?

4 Q. I'm not sure.

5 A. Okay. I think that, that covers it.

6 Q. Okay. Are you a member of any
7 professional societies or groups?

8 A. Yes, I'm a member of the American
9 Academy of Orthopedic Surgeons, I'm a member of
10 the Ruth Jackson Orthopedic Society, I'm a member
11 of the Cleveland Orthopedic Society, I'm a member
12 of the American Medical Association, the
13 Cleveland Medical Association. I think that just
14 about covers it.

15 Q. Okay. Are you board certified,
16 Doctor?

17 A. Yes, I am.

18 Q. And what does it mean to be board
19 certified?

20 A. Well, in orthopedic surgery, after
21 you do your training, you have the option of
22 taking what's called your boards, it's a written
23 test and also an oral test. You take the written
24 test two -- you take the written test right when
25 you graduate from your residency, and the pass

1 rate is around sixty percent, and then two years
2 after you have been in practice you take the oral
3 exam, and that's when you go through your
4 practice and you list for one year all the
5 surgeries that you have done, you send that in to
6 the board, and then they pick thirty cases, they
7 send those back to you and you bring all your
8 x-rays and your charts and everything on those
9 cases, you schlep it all to Chicago, and then you
10 go through a whole day of oral testing where they
11 go through your cases.

12 Q. Okay. And that's something done on a
13 national basis, correct?

14 A. It's done on a national basis.

15 Q. And that's something over and above
16 your license to practice?

17 A. Uh-huh.

18 Q. When were you board certified? When
19 did you become board certified?

20 A. I was board certified in I think 94.
21 My memory's really, of these dates -- I think
22 it's 94.

23 Q. Okay. Do you want to take a moment
24 and look at your CV there?

25 A. Sure.

1 MR. PEARSON: We can go off the
2 record for this.

3 MR. HADAD: Okay?

4 A. 94. That's fine.

5 MR. HADAD: Sorry.

6 Q. Okay. Doctor, are you published?

7 A. Yes, I am.

8 Q. Tell the jury what you have
9 published.

10 A. I have published a chapter in a
11 neurosurgery book on the natural history and
12 epidemiology of lumbar disc degeneration, I've
13 published on children's tumors in the upper
14 extremity, I've published on a newly discovered
15 type of fracture in the hand, and I also
16 published when I was in college on, my major was
17 neuropsychology and I dissected a bunch of rat
18 brains and I published on that.

19 Q. Okay. Dr. Stephens, during the
20 course of your practice as a spine surgeon, have
21 you had the opportunity to observe and study and
22 surgically treat injuries and deformities of the
23 neck, back and head?

24 A. Yes.

25 Q. Okay. And at my request did you have

1 an occasion to examine the plaintiff in this
2 case, Virginia Sessin?

3 A. Yes, I did.

4 Q. And when was that examination done?

5 A. It was done on October 25th, 1996.

6 Q. Okay. And do you remember at this
7 time the details of that examination?

8 A. Yes, I do.

9 Q. Okay. Doctor, if at any time during
10 the course of this examination you do not recall,
11 you have made a record, I believe?

12 A. Uh-huh.

13 Q. Okay. And you do have that with
14 you? And if it would refresh your recollection
15 to refer to that record, you may look at that.
16 Okay?

17 A. Okay.

18 Q. Dr. Stephens, are you being paid for
19 your time today?

20 A. Yes, I am.

21 Q. What are you being paid?

22 A. I charge \$2,000 for depositions.

23 Q. Okay. And did you also prepare a
24 report --

25 A. Yes, I did.

1 Q. -- in connection with this, this
2 case?

3 A. Uh-huh. I did.

4 Q. And did you charge us for that
5 report?

6 A. Yes, I did.

7 Q. Do you remember what you charged for
8 that report?

9 A. I believe it was a thousand dollars.

10 Q. Okay.

11 A. I had my secretary write it on a
12 piece of paper, but I don't think she gave it to
13 me.

14 Q. Okay. Doctor, when you examined Mrs.
15 Sessin, did you obtain a history?

16 A. Yes, I did.

17 Q. Would you explain to me and the jury
18 what you mean, what's meant by a history?

19 A. A history is when the patient first
20 comes in to the office and you sit down, you
21 introduce yourself, and then you talk about why
22 they're there. A patient comes in and says,
23 well, I have back pain, and then you take a
24 history of the back pain, when did it start, was
25 there a traumatic event, was there some inciting

1 event, when does the pain come, what brings on
2 the pain, how is the pain relieved, what
3 treatment they have had to date, what treatment
4 they're to receive, who's treated them, you just
5 really try to get a handle on what caused the
6 problem and how the problem's affecting the
7 patient.

8 Q. Okay. And what history was given
9 with respect to Mrs. Sessin?

10 A. Ms. Sessin stated that she was in a
11 motor vehicle accident, actually two, first her
12 car was hit from the front, and then her car was
13 rear ended.

14 Q. Okay. In conjunction with this
15 examination, did you review records that were
16 provided to you by me?

17 A. Yes, I did.

18 Q. And those records were from doctors
19 who have treated or examined Mrs. Sessin in
20 connection with the December 25th, 1993 accident,
21 correct?

22 A. Yes, and they're all right here.

23 Q. Okay. Why don't you tell the jury
24 what those records show, what you have there in
25 your report?

1 A. Her records basically start off in
2 the emergency room where she was initially
3 taken. She was treated for a superficial
4 laceration to the skull initially and, in the
5 emergency room, it was closed and then she was
6 sent home. She came back to the emergency room
7 the next day complaining of neck and low back
8 pain.

9 She then was referred to an
10 orthopedic surgeon who also specializes in spine
11 diseases, a Dr. Wilbur. He saw her and basically
12 found that she had a pretty normal exam except
13 for tenderness along the cervical spine and the
14 low back. She didn't have any signs of
15 neurologic damage or any signs consistent with a
16 disc herniation, although she complained of low
17 back pain occasionally radiating or going down
18 into the right leg. So -- is this too detailed?

19 Q. No, go right ahead.

20 A. Okay. So he sent her for an MRI and
21 the MRI showed disc degeneration and also showed
22 two areas of lumbar disc herniation. This was
23 the reading by the radiologist. Dr. Wilbur in
24 his notes stated that he observed disc
25 degeneration at these levels and slight

1 herniations. She was treated with months and
2 months and months of physical therapy, always
3 still complaining of mainly low back pain to Dr.
4 Wilbur. He always recommended conservative care,
5 meaning nonoperative care. Surgery was never
6 recommended. And she basically just complained
7 of what he called mechanical low back pain. She
8 was then, seven full months after the accident,
9 she went to her doctor, a Dr. Konfala --

10 Q. Doctor, I'm going to interrupt you
11 quickly.

12 A. Okay. Sorry.

13 Q. Just to back up a bit. You said
14 mechanical pain. Can you explain to the jury
15 what you mean by mechanical pain?

16 A. There are a couple different kinds of
17 back pain. There's back pain that comes from a
18 disc degeneration, which is what this patient
19 has, meaning your discs get arthritis and the
20 water goes out of them and they're kind of
21 smushed and they can cause back pain. There's
22 also back and leg pain, when we say radiating
23 pain or pain going down your leg, that's from a
24 disc herniation where there's a big piece of disc
25 pressing on the nerve going down the leg. That's

1 not the kind of pain she had. She complained of
2 low back pain, and that, and mechanical low back
3 pain means that when you sit or stand or move or
4 bend or do anything mechanical with your back
5 that you get the back pain.

6 Q. And why is that caused? How is that
7 caused?

8 A. Well, studies have shown that disc
9 degeneration causes back pain.

10 Q. Okay.

11 A. And back pain can also come from body
12 habitus. If you are obese, this patient's obese,
13 you have, you can have back pain. If you smoke,
14 this patient smokes, it's been shown by
15 epidemiology studies by Kelsey and others that if
16 you smoke you have increased risk of low back
17 pain. If you perform a job that involves bending
18 and stooping and twisting and turning, you can
19 have low back pain. And those are all mechanical
20 actions that can cause low back pain.

21 Q. Okay. I'm sorry, you can continue.

22 A. Where was I? Okay. Dr. Konfala,
23 seven months after the injury she started
24 complaining of headaches which the patient stated
25 was from the accident, Dr. Konfala saw her and

1 thought that her headaches were from
2 hypertension. This patient had a long history of
3 hypertension and had been seen in the past by Dr.
4 Konfala. They also entertained the notion that
5 these were post-traumatic headaches. In my
6 report I don't really agree with that because
7 these headaches started seven months later.

8 What's interesting about this patient
9 is that she really has a difficult social
10 situation in that she works at night and then
11 comes home and has toddlers and young children to
12 deal with all day, so Dr. Konfala, as well as the
13 neurologists that she went to see, indicated that
14 her headaches were related to her insomnia, her
15 job, and also her difficult social situation.
16 She was treated with antihypertensives and also
17 she was treated with antidepressants, she was
18 treated with Prozac.

19 Q. And what are those, the
20 antihypertensives and the antidepressants?

21 A. She took Calan --

22 Q. Okay.

23 A. -- which is a antihypertensive, and
24 she took Prozac which is an antidepressant.

25 Q. What is hypertensive? What do you

1 mean by hypertensive?

2 A. Hypertensive, I'm sorry, is high
3 blood pressure.

4 Q. Okay.

5 A. So if they call somebody a
6 hypertensive or they have hypertension, that just
7 is a fancy medical word for high blood pressure.

8 Q. And Dr. Konfala found that Mrs.
9 Sessin had high blood pressure?

10 A. That she had mild hypertension, that
11 she had mild high blood pressure, but she also
12 stated this patient had been seen prior to her
13 motor vehicle accident and in the past and she
14 also had high blood pressure.

15 Q. Okay.

16 A. So this wasn't a new finding.

17 Q. Okay.

18 A. Subsequently, because of her
19 headaches, she was sent for MRI of her head and a
20 CT scan of her head, which were both negative.

21 Let's see. What else? So over the
22 period of time, she had years and years, she had
23 two years' worth of physical therapy, which is
24 ridiculous. She was seen by two neurologists,
25 the last one was a Thomas Gretter who recommended

1 a psychiatric consultation for stress factors.
2 So that basically is a review of the records.

3 Q. Okay, Doctor. And you also performed
4 an examination; is that correct?

5 A. Yes, I did.

6 Q. Look at your report again and I want
7 you to discuss for the jury what your examination
8 found.

9 A. Well, my physical exam basically was
10 completely normal except her, the patient's
11 physical examination was completely normal,
12 except for the fact that she complained of
13 tenderness when I touched or palpated posteriorly
14 back here along her neck muscles and her low back
15 muscles, but she had completely normal range of
16 motion, her motor strength, her muscle strength
17 was normal, her sensation was normal, her
18 reflexes were normal, everything was normal, as
19 was when her physicians examined her, Dr. Wilbur
20 and the neurologists and other people examined
21 her. I found in my exam that her complaints were
22 out of proportion to her objective actual
23 physical findings.

24 Q. What do you mean by objective?

25 A. Objective physical findings are if I

1 move the pen from here to there, objectively
2 everybody agrees that I moved the pen from here
3 to there. It's not subject to opinion.

4 Q. Something that you can see?

5 A. Yeah, something that you can see and
6 something that you can proof. Subjective is my
7 saying this pen is purple and your saying it's
8 light purple or, you know, mauve or something
9 like that. So an objective physical finding is
10 to say, okay, this patient's spine range of
11 motion is normal, it's from zero to 90, this
12 patient doesn't show nerve tension signs, meaning
13 when I straighten the patient's leg out she
14 doesn't complain of pain which is indicative of a
15 disc herniation. Objective findings are
16 something that anybody can, any other doctor can
17 substantiate, there are tests that don't involve
18 my using my opinion.

19 Q. Okay.

20 A. Okay?

21 Q. And an example of subjective would be
22 pain?

23 A. Would be pain --

24 MR. ALKIRE: Objection.

25 Q. Okay. Let me ask you like this,

1 Doctor: What would be an example of subjective,
2 of a subjective problem or a subjective finding?

3 A. A subjective, what we call in
4 medicine subjective complaints, excuse my little
5 cough thing, if the patient complains of back
6 pain, if I have a patient that comes in and says
7 I have back pain going down my leg, that's a
8 subjective complaint, so it's my job to see when
9 I examine them if I can find objective proof to
10 come up with a diagnosis that's causing the back
11 and leg pain. So if a patient comes in and says
12 I have back and leg pain and I do a straight leg
13 raise, which is a particular maneuver, and that's
14 positive, meaning it causes them pain, I can say,
15 okay, she has a subjective complaint of leg pain
16 and an objective finding of a positive straight
17 leg raise to substantiate her diagnosis which is
18 a disc herniation.

19 Q. Okay.

20 A. Is that confusing?

21 Q. It's clear to me.

22 A. Okay.

23 Q. What were your findings with regard
24 to the post-traumatic headaches?

25 A. I'm not a neurologist and I didn't --

1 you know, in terms of her overall gross motor
2 exam, her exam was normal. In terms of her
3 headaches, all I can go by is what I have read by
4 her neurologists which have consistently pointed
5 to stress, consistently recommended psychological
6 evaluations, and also I can point to objective
7 findings like an MRI of the brain and a CT scan
8 of the brain, those are objective tests, those
9 are tests that are performed by radiologists
10 which were both found to be normal. So there's
11 nothing causing the headaches, there's no blood,
12 there's no tumor, there's no abnormality.

13 Q. Okay. And you also mentioned
14 hypertension?

15 A. Right.

16 Q. And I believe that there was some
17 mention by the, according to your records, some
18 mention by the plaintiff of hypertension? Or
19 that she was suffering from hypertension?

20 MR. ALKIRE: Objection to the leading
21 nature of the questions. I think you ought to
22 ask the doctor direct questions.

23 A. Well, actually I can answer that.
24 That's no problem. The patient didn't say that
25 she had a history of hypertension. Her doctor in

1 her report says that she was familiar with the
2 patient and had treated her in the past for
3 borderline hypertension, and that was Dr.
4 Konfala.

5 Q. Okay. And you reviewed those
6 records?

7 A. Yes, I did.

8 Q. And what were your findings with
9 respect to the hypertension?

10 A. My findings were that she has a
11 history of hypertension, she's mildly obese, and
12 that can contribute to continued high blood
13 pressure. And I think her high blood pressure
14 continued as it does in many people throughout
15 their lives and worsens as they get older and/or
16 fatter or both.

17 Q. Okay. Doctor, I'm going to take you
18 back just a little bit. You refer to an MRI that
19 was done of Mrs. Sessin in January of 1994.

20 A. Correct.

21 Q. And you reviewed the records relating
22 to that MRI; is that correct?

23 A. Yes, I did.

24 Q. And I just want to ask you a little
25 more in detail about that MRI.

1 A. Okay.

2 Q. There were several findings from that
3 MRI; is that correct?

4 A. Yes.

5 Q. Would you explain to the jury what
6 those findings were?

7 A. I looked at the radiology report done
8 by the radiologist, I also looked at the report
9 of the MRI done by her spine doctor, which was
10 Dr. Wilbur, and I also had the opportunity
11 luckily to see the actual MRI, and Dr. Wilbur and
12 my reading of the MRI are both different than
13 what the radiologists came up with.

14 Nevertheless, what the radiology
15 report came up with was that there was disc
16 degeneration at every level in the low back, at
17 the L3 level, at the L4 level, and at the L5
18 level. Also at the L4 level there was a
19 left-sided disc herniation and at the L5 level
20 the radiologist's report read a right-sided disc
21 herniation.

22 However, when I reviewed the actual
23 MRI myself, I agreed with the lumbar disc
24 degeneration at those levels; however, the left-
25 and the right-sided disc herniations were very

1 small and did not entrap the nerve or touch the
2 nerve or cause any compression of the nerve, and
3 this corresponds to Dr. Wilbur's reading when in
4 his report he says that he found disc
5 degeneration and slight, and quote, unquote, he
6 used the word "slight," herniation at the L4 and
7 the L5 level.

8 And he also made a point to say that
9 these herniations did not correspond to any
10 physical findings for the patient and also didn't
11 correspond to any of her complaints, therefore he
12 did not recommend any surgical treatment or
13 further treatment of these, quote, unquote,
14 slight disc herniations.

15 Q. Okay. Doctor, did you find anything
16 in your exam or review of the records of the
17 doctors that treated Mrs. Sessin to medically
18 support the complaints of Mrs. Sessin?

19 A. No, I did not.

20 Q. Okay. Doctor, do you have an opinion
21 within a reasonable degree of medical certainty
22 whether Mrs. Sessin sustain injuries to her back
23 in the December 25th, 1993 automobile accident?

24 A. I think that Mrs. Sessin initially
25 could have sustained a low back strain, but this

1 would have resolved clearly within four to six
2 weeks and, at the most, two months. I do not
3 believe that the complaints that she has now are
4 a direct and proximate, are directly or
5 proximately caused by the initial injury. I also
6 do not believe that her headaches are caused by
7 the accident as she began complaining of them
8 seven months ago and I believe that a lot of this
9 patient's problems are stress related, related to
10 her night hours, related to insomnia, related to
11 her body habitus, her large size, and related to
12 stress factors.

13 Q. Okay. Doctor, I'm going to continue,
14 I'm going to conclude here very shortly, but do
15 you have an opinion within a reasonable degree of
16 medical certainty whether Mrs. Sessin sustained
17 injuries to, well, whether she -- whether
18 anything occurred in the accident to cause the
19 hypertension that she's now suffering from?

20 A. No, I don't think anything happened
21 to cause the hypertension or to cause the
22 findings on her MRI or to cause the disc
23 degenerations or the herniations that were seen
24 in the MRI. Those are all normal findings in 90
25 percent of people over the age of 30.

1 Q. Okay. And you mentioned that there
2 may have been an injury, a strain of the back, as
3 a result of this automobile accident. If there
4 had been a injury to the back from the December
5 25th, 1993 accident, do you have an opinion
6 within a reasonable degree of medical certainty
7 whether that injury should have healed?

8 A. Oh, that injury definitely should
9 have resolved and I also in -- when looking
10 through her records, I think that her treatment
11 was inappropriate. I don't think that she should
12 have had physical therapy over a period of two
13 years. It's been shown time and time again in
14 the literature that physical therapy past four to
15 six weeks initially is of no therapeutic benefit.

16 MR. ALKIRE: Objection. Move that
17 that be stricken.

18 THE WITNESS: Why? It's in the
19 literature.

20 MR. PEARSON: That's just, that's
21 just for the record.

22 Doctor, I thank you for your time. I
23 don't have any further questions at this time.

24 MR. ALKIRE: Doctor --

25 THE WITNESS: Can I take a break?

1 MR. ALKIRE: Sure. May I see your
2 file while you take your break?

3 MR. PEARSON: Off the record.

4 MR. HADAD: Off the record at 4:26
5 p.m.

6 THE WITNESS: Can he see my file?

7 MR. PEARSON: Sure.

8 (Recess taken.)

9 MR. HADAD: Back on the record at
10 4:29 p.m.

11 EXAMINATION OF SUSAN E. STEPHENS, M.D.
12 BY MR. ALKIRE:

13 Q. Doctor, hi, my name is Rick Alkire
14 and I have the privilege of representing the
15 Sessins, both Virginia and Anthony, and during
16 the course of my questioning of you this
17 afternoon, if you don't understand one of my
18 questions --

19 A. Sorry. Okay.

20 Q. -- would you please let me know so
21 that I can rephrase the question and make it
22 understandable to you?

23 A. (Nodding affirmatively.)

24 Q. Is that yes?

25 A. Yes. I'm sorry.

1 Q. It's important that you speak out
2 loud --

3 A. That's right.

4 Q. -- even though we have a videotape
5 going.

6 Doctor, as you took a break, I had an
7 opportunity of review the records that are in the
8 chart that are right in front of you. Are all
9 those records the only records that you reviewed
10 in connection with this case?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes.

14 Q. Are there any more records that you
15 reviewed?

16 A. I reviewed her MRIs and her regular
17 plain films, but she had those, she brought them
18 with her and then she took them away.

19 Q. That was your request and she
20 complied with your request, correct?

21 A. Yes, absolutely.

22 Q. All right. And I take it you found
23 her to be a cooperative individual when she was
24 here?

25 A. She was your average cooperative

1 patient, yes.

2 Q. All right. And do you remember how
3 long you spent with her?

4 A. Oh, I spent a pretty significant
5 amount of time. I would say at least an hour,
6 talking to her, examining her, talking to her
7 again.

8 Q. So you would disagree with her if
9 it's her testimony that you spent 16 minutes with
10 her in two separate sessions, eight minutes each
11 session?

12 A. I absolutely would agree because, as
13 I have done these before and I know that if you
14 don't spend a significant amount of time with the
15 patient and a significant amount of time taking
16 the history, that people like you will bring it
17 up in a deposition and say you only spent eight
18 minutes twice. No, it was not that short.

19 Q. All right. So if she timed you the
20 two separate times you were with her, you would
21 disagree with her timing?

22 A. I would totally disagree.

23 Q. All right. You didn't record the
24 time, did you?

25 A. Absolutely not.

1 Q. All right.

2 A. But I also take off between 2 and 3
3 o'clock every Friday, so it's usually an hour
4 that I spend doing a medical report.

5 Q. And is that what you're doing now
6 every Friday, doing a medical report?

7 A. No, not every Friday, but when I have
8 them, I only schedule them on Friday because
9 that's the only time I can really devote a full
10 hour to a physical exam.

11 Q. How many are you doing a month now?

12 A. I would say maybe two.

13 Q. Two medical reports a month?

14 A. Two independent medical exams, yeah.

15 Q. And are you doing still about two
16 depositions a month as well?

17 A. No, not as many depositions.

18 Q. When did that change?

19 A. It never changed. It was never that
20 many depositions.

21 Q. So you were never doing two
22 depositions a month; is that correct, Doctor?

23 A. Correct. Absolutely.

24 Q. All right. Would it be fairer to
25 characterize it as one or two a month?

- 1 A. One or two what?
- 2 Q. Depositions a month.
- 3 A. No. There are many months where I
- 4 don't do any depositions.
- 5 Q. Do you do one or two IMEs a month?
- 6 A. Yes.
- 7 Q. How many depositions did you do this
- 8 month?
- 9 A. This is my first.
- 10 Q. How many --
- 11 A. I haven't done a deposition in, I
- 12 don't know when the last one was, maybe four
- 13 months, five months ago.
- 14 Q. Okay. Have you reviewed cases for
- 15 Mr. Pearson before?
- 16 A. No, I haven't.
- 17 Q. Have you ever reviewed any cases for
- 18 his office before?
- 19 A. Yes, I have.
- 20 Q. Do you know how many?
- 21 A. Total?
- 22 Q. Yeah. Your best estimate.
- 23 A. I don't -- maybe eight or ten over
- 24 the past couple of years maybe.
- 25 Q. And would those have been situations

1 where you were reviewing, like in this case, the
2 claim that a plaintiff was making in a lawsuit
3 for personal injury sustained by that person?

4 A. Yes.

5 Q. Each of those times; is that correct?

6 A. Each of those times, I would say so,
7 yes.

8 Q. For Mr. Pearson's office.

9 A. For the office.

10 Q. Have you ever done any examinations
11 for Mr. Greer's office here? Mr. Greer's from
12 Gallagher Sharp.

13 A. You would have to ask him. I
14 don't -- I kind of don't keep track of the exact
15 office where they come from. So you would have
16 to ask him.

17 Q. How much time did you spend on the
18 report in this case; do you remember?

19 A. I spent a considerable amount of
20 time. As you can see, they're underlined,
21 they're highlighted, they're written, I have my
22 little sticky notes, I also make other notes on
23 the chart, so I spend a considerable amount of
24 time doing the medical reports, and I also like
25 to quote literature, I look up literature, I --

1 Q. You studied those records very
2 carefully?

3 A. Absolutely.

4 Q. And I take it you did your very best
5 to be fair in characterizing those records in
6 your report?

7 A. Always. Always.

8 Q. And you did your very best to be fair
9 in characterizing what's in those records today
10 before the jury here?

11 A. Always.

12 Q. Is that correct? Did Virginia claim
13 that she had headaches when she saw you?

14 A. At the time, yes, she did.

15 Q. Yeah. And in fact you write in your
16 report that you believe the headaches she is
17 having are due to stress, not the automobile
18 accident at all, correct?

19 A. Based on the information that I
20 received, yes, her headaches started seven months
21 after the accident. If you usually have
22 headaches -- if you have headaches secondary to
23 an accident, you have headaches right away.

24 Q. Is it your opinion that that's what
25 she told Dr. Konfala, that she only started

1 having them seven months after the accident?

2 A. That's the only, that's the only
3 indication that I have.

4 Q. That's the indication that you
5 believe is in these records?

6 A. Absolutely.

7 Q. Well, when we get to that, we'll
8 discuss that specifically, Doctor.

9 A. That's fine.

10 Q. If she began having the headaches
11 right after the accident, would that have any
12 effect on your opinion about the relationship
13 between the accident and her headaches?

14 A. I think it might have, I would
15 definitely say that the headaches could be
16 because of the accident, but again, after
17 negative MRIs and negative CT scans, I would
18 expect there to be some kind of pathologic reason
19 or some kind of damage that would cause continued
20 headaches, which haven't been found by myself or
21 the neurologist or Dr. Konfala.

22 Q. In the several years of your active
23 practice two years since you have been board
24 certified, have you --

25 A. Well, I practiced five years.

1 Q. -- have you treated, Doctor,
2 individuals who were in automobile accidents and
3 who also complained of headaches due to the
4 automobile accidents?

5 A. Yes, I have.

6 Q. And have you treated people that
7 continued to complain of the headaches even after
8 the physical therapy was over?

9 A. They usually complain of the
10 headaches for about the first four to six weeks,
11 and then they resolve.

12 Q. And have all of your patients who
13 have complained of headaches had headaches that
14 resolved?

15 A. Absolutely.

16 Q. Have you ever referred patients to
17 neurologists or other specialists --

18 A. Absolutely, I have --

19 Q. -- who complained of headaches?

20 A. Yes. I refer them within -- if you
21 come in and you have an injury and you're
22 complaining of a headache, that's the first thing
23 I do. I send you to a neurologist to make sure
24 there's no organic cause, meaning that you didn't
25 bump your head and you have some blood or your

1 brain shifted or something like that. So usually
2 you send them right away to a neurologist, they
3 get the MRI, they get the CT scan, and then you
4 can make sure there's nothing wrong. She had an
5 MRI and a CT scan and nothing was wrong.

6 Q. And is it your testimony here that
7 people who complain of intransient chronic
8 headaches always have MRI findings that would
9 provide the reason for those complaints? Is that
10 your testimony?

11 A. It is my testimony that if you are
12 still complaining of headaches four years, or
13 three years after an accident, that there has to
14 be some kind of cause, and what you have to do is
15 you have to look at the patient and look at
16 everything that's going on and try to rule out
17 the cause. Is it from the accident, is it from
18 stress, is it from sleep deprivation, or is it
19 from an organic reason? So you look at all of
20 these things and to my, to my best estimation,
21 and to my best opinion, it's because of stress,
22 and also the psychologist that saw her as well as
23 the neurologist came up with the same, the same
24 thing.

25 Q. What psychologist was that?

1 A. Not the psychologist, the
2 neurologist, I'm sorry.

3 Q. Actually both the neurologist and her
4 internist both called these headaches
5 post-traumatic, didn't they?

6 A. They called them post-traumatic, but
7 also put a disclaimer in all their notes saying
8 that they believe that they were stress related.

9 Q. Well, we'll go through those notes
10 carefully so that --

11 A. That's fine.

12 Q. -- nothing's mischaracterized here,
13 Doctor, but the truth is every single diagnosis
14 attributable to headaches by the internist called
15 them post-traumatic --

16 A. No, the truth is --

17 Q. -- in the diagnosis section of her --

18 A. The truth is if you just want to look
19 at one line and say it only said post-traumatic,
20 that's fine, but throughout every single note,
21 the first thing they talk about is the incredible
22 amount of stress and stress that this patient's
23 under and her work habits and her insomnia.

24 Q. By the way, Doctor, what stress is
25 different since this accident that didn't exist

1 before this accident, as far as you know?

2 A. What stress is different?

3 Q. Yeah.

4 A. I don't think there are any -- I
5 don't think there's any different stress.

6 Q. So why isn't there a history of her
7 complaining of headaches before this accident, in
8 your opinion, Doctor? Given the fact that you're
9 aware of no different stressors.

10 A. I think that maybe there are no
11 headaches.

12 Q. Okay. So you don't believe she's
13 having headaches; is that your opinion in this
14 case?

15 A. I have found no objective findings to
16 support her claim that she had headaches.

17 Q. All right. Doctor, let me ask you
18 this, point-blank: Do you have an opinion as to
19 whether this woman has headaches today?

20 A. Yes.

21 Q. And what is your opinion?

22 A. I think that if she does have
23 headaches, they're related to her job, they're
24 related to working all night, taking care of kids
25 all day, and not sleeping. That would give me a

1 headache.

2 Q. What is her job?

3 A. Her job is a secretary, a
4 receptionist, in the emergency room.

5 Q. All right. And would headaches
6 interfere with one's ability to perform that
7 role?

8 A. I would say so, as well as lack of
9 sleep. And stress.

10 Q. And would back pain interfere with
11 one's ability to perform that role?

12 A. I would say, yes.

13 Q. And again, just so that I am clear
14 here, what home situation or what social factors
15 were different after December the 25th, 1993 than
16 had existed before that date when she was still
17 employed and going to work on a regular basis at
18 that same location, at Metro?

19 A. I think there was no different social
20 situation, but there was also nothing to blame it
21 on before the motor vehicle accident, whereas
22 after the motor vehicle accident you have
23 something to blame whatever is going on in your
24 life, you know, I'm stressed out, the motor
25 vehicle accident did it; I have a headache, the

1 motor vehicle accident did it; I can't sleep, the
2 motor vehicle accident did it.

3 Q. What do you know about that motor
4 vehicle accident, Doctor, in terms of precisely
5 what my client's body parts hit within the
6 vehicle?

7 A. She was initially hit head-on, or
8 from the side, she said, and she had a laceration
9 to the front of her forehead, then she put her
10 foot up on the dashboard and braced herself as
11 she was hit from behind.

12 Q. Yeah. And do you have any idea about
13 the speeds of the vehicles when the various
14 collisions occurred?

15 A. She didn't, when I asked her about
16 it, she didn't exactly know the speeds, but I
17 don't remember if I saw speeds in these notes --

18 Q. Well, did you ask --

19 A. -- so I can't --

20 Q. I'm sorry, go ahead, Doctor.

21 A. So from what I remember, I don't
22 think that either one of the, either one of the
23 cars were high speed. Meaning --

24 Q. Did you know where the accident
25 happened?

1 A. It happened on, she was, it was
2 around Christmas and she was getting on or off a
3 highway exit or something. A ramp.

4 Q. Would it surprise you that she was in
5 a vehicle as a passenger --

6 A. No, she was a passenger.

7 Q. -- on Interstate 480, she wasn't
8 getting on or off, and she was going about
9 forty-five miles an hour; would that surprise
10 you?

11 A. No, that wouldn't surprise me,
12 because she was on a highway.

13 Q. Yeah. Now, it was Mr. Greer's client
14 that was entering that highway on that date and
15 his vehicle went in front of Ms. Sessin's, the
16 vehicle in which Ms. Sessin was situated, and
17 there was a collision. Do you have any idea
18 about the amount of property damage that was
19 sustained by either of the vehicles due to that
20 first collision?

21 MR. PEARSON: Objection.

22 A. I don't think it's my place to know
23 the amount of property damage, it's my place to
24 know the amount of bodily damage, and I can say
25 that she was taken to the hospital and she had a

1 superficial laceration. This laceration did not
2 probe to bone, so it was my opinion that this
3 wasn't great force, it was a laceration that only
4 went through skin. If it was a deep laceration
5 that went through bone or caused fractures, then
6 you could say, oh, my God, the car was traveling
7 at excessive speeds and, you know, her head went
8 through the windshield and things like that, but
9 it was more like a paper cut than a real
10 laceration down to bone.

11 Q. Doctor, do you agree that forces that
12 occur when vehicles come into contact with one
13 another become translated into the bodies that
14 are contained within those vehicles?

15 A. Uh-huh.

16 Q. Do you agree with that?

17 A. Absolutely.

18 Q. And do you agree that when a person's
19 head hits a windshield and stars it, causes a
20 star pattern to occur, that great force is
21 involved in that?

22 A. Not necessarily.

23 Q. Well, do you know how much force
24 would be necessary to produce a star in a
25 windshield?

1 A. Do you?

2 Q. I'm asking you, Doctor, you're the
3 expert witness --

4 A. No, I don't.

5 Q. -- that's charging \$2,000 for this
6 deposition, not me.

7 A. But that's not unreasonable. I would
8 like to know. Maybe you could inform me.

9 Q. Do you know, Doctor?

10 A. I know that if a person is in a car
11 and they get hit, that the forces are transmitted
12 throughout the body. It's just not one part.

13 Q. And do you know whether the
14 windshield in this vehicle was caused to be
15 starred because of the contact between Ms.
16 Sessin's head and that windshield at the time of
17 impact?

18 A. No, I don't.

19 Q. All right. You didn't see that in
20 the records?

21 A. No, I did not.

22 Q. All right. Let me show you the
23 record that verifies that, the North Olmsted Fire
24 Department EMS run report marked Plaintiffs'
25 Exhibit 3, Doctor, and would you please read for

1 the jury the history of present illness section
2 of that report?

3 MR. ALKIRE: Mr. Pearson, let me hand
4 you a copy of that so you'll see what I've handed
5 your witness.

6 A. Patient was passenger in motor
7 vehicle struck from behind, patient then struck
8 windshield with forehead creating star in
9 windshield and one centimeter laceration to the
10 right eyebrow and forehead. Hematoma developed
11 enroute and patient complained of nausea.

12 Q. And by the way, Doctor, is nausea a
13 finding that -- strike that.

14 Is nausea a complaint one frequently
15 receives in connection with a head injury?

16 A. Yep. Yes.

17 Q. So that would be consistent with a
18 head injury, correct?

19 A. Well, she had a head injury.

20 Q. Yeah. Now, I want you to let the
21 jury know whether you've ever seen any
22 photographs of my client's injury --

23 A. No, I haven't.

24 Q. -- before you rendered any of the
25 opinions here and before you characterized this

1 incident as insignificant.

2 A. I didn't --

3 Q. And superficial.

4 A. Just because you have a very large
5 hematoma, as documented very well in this, in
6 this record, that does not mean that you
7 sustained a significant injury.

8 Q. All right. And by the way, just so
9 that the jury understands, Doctor, on page 4 of
10 your report you make the statement that there is
11 no evidence that significant trauma was caused by
12 the accident, as demonstrated by the lack of
13 depth of the laceration which she sustained in
14 that accident.

15 A. That's right.

16 Q. I read that correctly, didn't I?

17 A. Yes, you absolutely did.

18 Q. Please show the jury what has been
19 marked Plaintiffs' Exhibit 20C and what you have
20 characterized as a trauma which is not
21 significant?

22 A. It's a large hematoma.

23 Q. Would you please show that to the
24 jury?

25 MR. ALKIRE: And would the video

1 operator please focus on that photograph,
2 please?

3 A. It's -- this is no big deal.

4 Q. Yeah, I understand in your opinion
5 that that's no big deal, Doctor. You've made
6 that clear.

7 THE WITNESS: Do you have it?

8 MR. HADAD: Yes, I do.

9 THE WITNESS: Should I hold it
10 still?

11 Q. And, Doctor, let me hand and put the
12 other one up, the frontal view, have you ever
13 seen that photograph?

14 A. No.

15 Q. All right. And likewise, Doctor,
16 upon your review of that photograph, that's
17 insignificant as well, correct?

18 A. I don't think, and I think that most
19 doctors would say this, is that you can't tell
20 the degree of trauma from somebody developing a
21 bruise or a hematoma because some people bruise
22 more easily than others.

23 Q. All right. Doctor, see if you can
24 answer my question, please.

25 A. You have to go by the depth of the

1 laceration. I did answer your question.

2 Q. Yeah. Yeah. See if you can,
3 please.

4 A. That is the answer.

5 Q. The Exhibit 20B, please hold it up.

6 A. You hold it up.

7 Q. Okay, Doctor. Exhibit 20B, can you
8 see it?

9 MR. HADAD: Did you want me to focus
10 in on it?

11 MR. ALKIRE: Yeah, I wish you would,
12 please.

13 MR. HADAD: Okay.

14 Q. You would adhere to your testimony,
15 Doctor, that the photograph -- and could you do
16 me the courtesy of telling me what Exhibit Number
17 that is?

18 A. 20B.

19 Q. Yeah, 20B shows an injury which you
20 term insignificant, correct?

21 A. The injury shows -- that picture
22 shows a large hematoma. There is no way to go by
23 the basis of the size of the bruise or the
24 hematoma based on what kind of injury it is.
25 What you have to go by is the laceration. She

1 had a cut which was superficial. It did not go
2 to bone. This area bruises very easily. Some
3 people bruise more significantly than others. I
4 think you would have to use other information.

5 Q. All right. So, Doctor, just see if
6 you can answer my question.

7 A. Like fractures.

8 Q. The injury shown in this photograph
9 is something that you term not significant
10 trauma, correct?

11 A. And I could not answer that question
12 based on just that photo.

13 Q. All right.

14 A. That's why I just gave the answer I
15 did. You have to go on other information. You
16 have to use all the information together.

17 Q. Let me hand you Exhibit 20A, Doctor.

18 A. You have it, you can hold it for the
19 camera just like I can.

20 Q. All right. Thank you, Doctor, for
21 your cooperation.

22 A. You're welcome, and it's Exhibit 20A.

23 Q. Likewise Exhibit 20A also depicts an
24 injury which you have decided is not significant,
25 correct?

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1 A. Based on the information I have.

2 Q. Yeah. Now, and by the way, you
3 didn't have these photographs before you wrote
4 your report?

5 A. I didn't need the photographs.

6 Q. All right.

7 A. In the chart, in the ER record it's
8 documented very well that she had a large
9 hematoma. In the clinic record when she followed
10 up with plastic surgery it also documents that
11 she had a large hematoma. I have seen those
12 before. I don't need a picture of it. I can
13 read the record.

14 Q. All right. And by the way, Doctor,
15 do you need any pictures of the automobiles to
16 understand the forces?

17 A. I can talk to the patient. I mean I
18 have seen patients who have been significantly
19 injured in automobile accidents. Yes.

20 Q. All right. So you really don't need
21 to see the vehicles and the way they came into
22 contact with one another to at all understand the
23 forces that were visited upon the person --

24 A. You see --

25 Q. -- inside the vehicle; is that

1 correct, Doctor?

2 A. Yes, that is correct.

3 Q. And please give me the courtesy --

4 A. That is, that is correct.

5 Q. Please give me the courtesy of
6 finishing my question before you interrupt me --

7 A. That's fine. That's fine.

8 Q. -- and I will afford you the same
9 courtesy.

10 A. I thought you were finished.

11 Q. Well, I wasn't.

12 A. Well, I didn't know. That's why I
13 started my answer.

14 Q. Well, please listen.

15 A. You see all the time on TV cars that
16 are smushed and the person walks away.

17 Q. All right.

18 A. So I mean just because the car's all
19 banged up and messed up, that doesn't mean
20 anything in terms of the injury.

21 Q. And Mrs. Sessin didn't walk away from
22 this collision, did she?

23 A. She was brought in by a stretcher on
24 the basis of a laceration to the forehead, which
25 is typical protocol for EMS, if you have a head

1 lac or a head injury, they bring you in on a
2 stretcher on a back board to make sure you don't
3 have neck injuries.

4 Q. And how many sutures were involved in
5 repairing the injury to her head?

6 A. I don't know exactly how many
7 sutures.

8 Q. Well, were any of them deep sutures?

9 A. All that was said in the plastic
10 surgeon's note was that the superficial skin was
11 closed and that the wound did not probe to bone.

12 Q. Well, perhaps we could look at the
13 Fairview Hospital emergency room record that was
14 generated right after this accident to determine
15 the number of sutures, Doctor.

16 A. No problem.

17 Q. And the fact is that there were three
18 4-ought visceral deep sutures and fifteen 6-ought
19 Ethilon simple sutures layered in a layered
20 closure, correct?

21 A. That's fine.

22 Q. Well, is that correct or not?

23 A. I don't -- I'm looking for the
24 record.

25 Q. I would appreciate if you would find

1 that.

2 A. Okay. I'm looking for it.

3 Q. I'd be happy to show you because --

4 A. That's fine.

5 Q. -- I went through your chart before
6 and you do have it tabbed.

7 A. I have it tabbed for something else,
8 though. So you want my comments on how the wound
9 was closed?

10 Q. No, I want you to state to the jury
11 the facts that have to do with the depth of this
12 wound.

13 A. Deep sutures don't indicate how deep
14 a wound is. All deep sutures mean is that it's
15 below the skin. So if you have a laceration and
16 it separates, you know, sometimes you cut
17 yourself and you can see the white fleshy or
18 fatty part below, so you put a couple sutures in
19 to bring that fat together and then, in typical
20 plastic surgeon style, it's not unusual to have
21 30 sutures in something that, that, in a cut
22 that's that small just so that you get a
23 beautiful repair. She has a beautiful repair.
24 You can hardly see the scar.

25 Q. Does she have a loss of sensation in

1 the area of that scar?

2 A. Most people do.

3 Q. Does she?

4 A. I didn't test it.

5 Q. Did you ask her?

6 A. Nope, and I didn't ask her either.

7 Q. All right. So you weren't concerned
8 with that aspect of her injury?

9 A. Well, I palpated the scar, I looked
10 at it and she didn't complain and I palpated her
11 cranium or I mean her whole head to see if I
12 could feel any old fractures or any divots in her
13 head and she didn't complain and I didn't feel
14 anything.

15 Q. And if she had a lack of sensation
16 she wouldn't complain, would she?

17 A. Well, she would say "I have a lack of
18 sensation."

19 Q. Oh, really? Is that how you would
20 elicit that subjective --

21 A. That's one of the ways.

22 Q. -- piece of --

23 A. That's one of the ways.

24 Q. Please let me finish the questions.
25 I will do the same for you.

1 A. I thought you were finished.

2 Q. Well, if you would quit interrupting

3 me.

4 A. I don't feel that I am interrupting

5 you.

6 Q. All right. Now, Doctor, you have

7 mentioned twice that she went to the emergency

8 room the next day?

9 A. Yes.

10 Q. Please show me that record. And tell

11 me what emergency room it is.

12 A. You have to give me a minute because

13 these dates are --

14 Q. You could take all the time you need,

15 Doctor.

16 A. Great.

17 Q. I sure would.

18 A. It was in one of Dr. Wilbur's notes,

19 it says the next day she had increasing back pain

20 and neck pain and then one of these notes --

21 Q. Well, what --

22 A. I'm looking for it. I know I saw

23 it. It was in here.

24 Q. Yeah, I want to see the emergency

25 room record that you're referring to, Doctor. Or

1 Dr. Wilbur's note, if it says such a thing, which
2 I don't believe it does.

3 A. Says such a thing like what?

4 Q. Like there was an emergency room
5 visit the next day.

6 A. Well, I thought there was.

7 Q. As you have said so in your report.

8 A. Did I say that in my report?

9 Q. Well, let's make that clear, Doctor.

10 A. Let's make it clear.

11 Q. Let me refer you to page 1 of your
12 report. Would you like a copy of your report?

13 A. No, I have a copy.

14 Well, I'm not -- tell me if I'm
15 looking for something that doesn't exist.

16 Q. Well, you're looking for something
17 that doesn't exist.

18 A. Okay.

19 Q. And I want to make sure that the jury
20 understands that you claimed it did. So would
21 you please go to your report, paragraph 3?

22 A. Okay. Hold on one second. Date. I
23 have --

24 Q. Have you found paragraph 3 of your
25 report, Doctor?

1 A. Yeah, I did.

2 Q. And let's read to the jury what you
3 said in paragraph 3 of your report.

4 A. Let me, let me finish looking through
5 my stuff.

6 Q. Well, see if you can answer my
7 question, please. Would you please read to the
8 jury what's in paragraph 3?

9 A. I said let me finish looking through
10 my records.

11 Q. I must advise you, Doctor, that if
12 the judge were here you wouldn't be able to treat
13 me that way. And I object to the tone and I
14 object to the lack of respect that you show.

15 MR. PEARSON: And I'm going to object
16 for the record at this time and ask that that be
17 stricken from the record.

18 MR. ALKIRE: And I move that it
19 remain.

20 MR. GREER: I join in that
21 objection.

22 THE WITNESS: Is it in here?

23 MR. PEARSON: Don't say anything.

24 A. Because I remember seeing x-ray
25 reports from the next day.

1 Q. You saw x-ray reports that were
2 transcribed the next day, not taken. But I shall
3 hand you your report so you can look at it.

4 A. I have a copy of my report.

5 Q. Well, you can't look at it and also
6 look through your records, can you?

7 A. Well, and I -- right. So how could I
8 look at your report and my record at the same
9 time? I don't need it. I'm still looking
10 through my records.

11 Q. Doctor, in paragraph 3 of your report
12 you stated the patient was treated in the
13 emergency room with closure of the laceration.
14 Now, we found that record, correct?

15 A. Right. Right.

16 Q. The patient reported to the emergency
17 room the next day complaining of neck and low
18 back pain. She denied any radiation of neck pain
19 into the arms or numbness and tingling. She did
20 complain of low back pain radiating into the
21 right leg.

22 You haven't been able to find a
23 record that substantiates that, have you?

24 A. That she went to the ER the next
25 day?

1 Q. Yeah, and did all those things.

2 A. Well, you know what I think? Well, I
3 think what I did was in my notes I have ER close
4 laceration, orbital x-ray, next day neck and low
5 back pain constant pain. And I think that that
6 is, if it's not in here under ER, under any ER
7 records, and I believe that you say it's not
8 there, I got it from my notes which says that she
9 was in the ER. So --

10 Q. So your notes are incorrect, aren't
11 they?

12 A. I guess they are.

13 Q. All right.

14 A. That particular note right there.

15 Q. All right. Now, let's go on to the
16 next claim that you make factually that's not
17 supported by the records.

18 A. Okay.

19 Q. Let's go to Dr. Wilbur's records, and
20 in particular Dr. Wilbur's record that interprets
21 the January 15th, 1994 MRIs.

22 A. Okay.

23 Q. Because you've characterized them one
24 way and I want to make sure the jury understands
25 how Dr. Wilbur characterized them.

1 A. Okay.

2 Q. First of all, do you know Dr. Wilbur?

3 A. Yes, I do, but he's dead.

4 Q. Yeah. And was he a board certified
5 orthopedic surgeon?

6 A. I have no way of knowing that. You
7 probably know.

8 Q. Do you know how many years of
9 experience he had before he died?

10 A. Many years of experience.

11 Q. Yeah. Many more years of experience
12 than you, correct?

13 A. That doesn't mean anything.

14 Q. Is that correct?

15 A. You have to -- how many, how many
16 years did he have?

17 Q. Is that correct, Doctor?

18 A. I don't know. How many years of
19 experience did he have?

20 Q. That's fine. Good enough. That's
21 fine, Doctor. I'm not under oath, you'll not
22 question me today.

23 Now, let's move on to Dr. Wilbur's
24 note that you referred to to make the claim that
25 he characterized both the L4-L5 and L5-S1

1 herniations as slight.

2 A. Okay.

3 Q. And perhaps I can expedite it for
4 you. I believe he wrote a note on January the
5 27th, 1994.

6 A. Yes.

7 Q. Now, let's read paragraph 2 to the
8 jury, please.

9 A. Review --

10 MR. PEARSON: Counsel, what are you
11 referring to?

12 THE WITNESS: This.

13 MR. ALKIRE: Paragraph 2 of the
14 1-27-94 note --

15 THE WITNESS: January 27, 1994.

16 MR. ALKIRE: -- of Dr. Wilbur.

17 A. Review of the MRI showed disc
18 degeneration at the 3, 4, 5, 1 levels. There
19 is --

20 Q. Woah, woah, woah, woah, woah. You've
21 misread that. And I want you to go back and read
22 it.

23 A. Disc degeneration at the 3-4, 4-5 and
24 5-1 levels. There is central --

25 MR. ALKIRE: 5-S1 levels.

1 A. 5-S1 levels. There is central disc
2 bulge with some upward tracking, slight, that's
3 where I got slight from, slight herniation at the
4 4-5 and right-sided herniation at the 5-S1.

5 Q. He did not say slight herniation at
6 the 5-S1 level at all in that note, did he,
7 Doctor?

8 A. Yes, he did. There is no comma to
9 separate that.

10 Q. Doctor.

11 A. Slight herniation at 4-5 and
12 right-sided herniation at L5-S1.

13 Q. All right.

14 A. That's how I read it.

15 Q. In all fairness, Doctor, as you
16 review these records fairly, your interpretation
17 of that sentence is that the word "slight" not
18 only applies to the 4-5 level, but also the 5-S1
19 level; is that right?

20 A. And also because I reviewed the MRI
21 myself and I also know Dr. Wilbur, or knew Dr.
22 Wilbur, and I know that if there was a problem,
23 he would have operated on it.

24 Q. Now, let's talk about the MRI that
25 you reviewed and that you felt was overread.

1 Doctor, did you know Daniel Feneli or Anthony
2 Minotti?

3 A. (Nodding negatively.)

4 Q. Did you know that both of them are
5 board certified radiologists?

6 A. That doesn't mean anything.

7 Q. Did you know that?

8 A. There's a difference of opinion.

9 Q. Did you know that?

10 A. I assumed it.

11 Q. All right. They were specialists in
12 administering this test and interpreting the
13 results, correct? Is that correct, Doctor?

14 A. That is correct.

15 Q. All right. Now, let's read what they
16 said about the test that they administered and
17 interpreted and then supplied to Dr. Wilbur.
18 Please read what they said in connection with the
19 L4-5 level and the L5-S1 level.

20 THE WITNESS: Do I have to read all
21 this stuff?

22 MR. PEARSON: Yes.

23 THE WITNESS: I mean why can't he
24 read it?

25 A. You want me to read the last three

1 paragraphs?

2 Q. I'd like you to read their impression
3 of those two levels.

4 A. At the L4-5 level decreased signal
5 intensity within the intervertebral disc on the
6 T2 weighted images as noted. Consistent with
7 degenerative disc disease. Left lateral disc
8 herniation of the L4-5 intervertebral disc is
9 noted on the left L4 foramen causing moderate
10 stenosis. Also a mild central disc bulge is
11 noted at this level. However, there is no
12 evidence of central canal stenosis.

13 Q. All right. Fine. Now please read
14 the same paragraph that would apply to L5-S1.

15 A. At the L5-S1 level a moderate sized
16 focal right parasagittal disc herniation is
17 identified which contacts the thecal sac and
18 right S1 nerve root and results in mild central
19 canal stenosis. No significant foraminal
20 narrowing is noted.

21 Q. Now, please explain to the jury what
22 the thecal sac is and what the right S1 nerve
23 root is.

24 THE WITNESS: Can I get a model?

25 MR. PEARSON: Sure. Could we go off

1 the record?

2 MR. HADAD: Off the record at 5:02
3 p.m.

4 (Recess taken.)

5 MR. HADAD: Back on the record at
6 5:03 p.m.

7 A. This is a model of a spine.. These
8 are the bones in between the discs, these are the
9 discs right here. And each disc acts like a
10 cushion between the bones. Each disc is like a
11 jelly doughnut, it's got a soft center. So
12 anytime people talk about a disc herniation, it's
13 like if you squeeze a jelly doughnut, the soft,
14 the soft jelly pops out the back. Now, when the
15 jelly pops out the back, you get a big piece of
16 disc pressing on this nerve root.

17 So this, what the thecal sac is, this
18 is like taking a salami and cutting it in half,
19 you take the x-rays or the MRI images and you can
20 cut the person in half and you can see, you can
21 see their spine just like this. So the thecal
22 sac is the surrounding of the nerves, and what
23 that is, it's like you take Saran Wrap and cover
24 the nerves and you have spinal fluid beneath the
25 Saran Wrap coating the nerves, and that whole

1 part, the Saran Wrap, the fluid and the nerves
2 within is called the thecal sac, and at different
3 points down the, down the spine, the nerves come
4 out at different levels.

5 Q. And can contact with that sac produce
6 radiating pain into the buttock or the right leg,
7 if it's on the right?

8 A. If it's on the right, yes, and if
9 it's on the left, on the left.

10 Q. All right. So a complaint of pain in
11 the buttock or the right leg would be consistent
12 with a right-sided herniation where there was
13 contact with the thecal sac and the S1 nerve
14 root, correct?

15 A. Only if you took into -- you have to
16 -- the danger in medicine is just looking at one
17 piece of information and trying to make a
18 conclusion from that. You have to look at the
19 physical exam together with this. So if there is
20 an MRI finding of a right-sided disc herniation
21 and the patient complains of right-sided leg
22 pain, but on physical exam you don't have the
23 straight leg raise or the tension signs that go
24 along with the findings, then that herniation is
25 not symptomatic, it can just be it was there,

1 it's an aside, it's something that happened.

2 Q. Now, there is no, there is in Dr.
3 Wilbur's notes no doubt expressed by him that she
4 was having low back pain or, for that matter,
5 radiating pain in her buttock, her right hip or
6 her right leg, correct?

7 A. But --

8 Q. Is that correct?

9 A. Incorrect. Because he states that
10 she has mechanical low back pain, throughout his
11 notes his diagnosis is mechanical low back pain,
12 not herniated disc, not radiating pain, not she
13 has a right-sided disc herniation that's causing
14 problems and we need to do surgery. It was
15 always mechanical low back pain.

16 Q. And he calls it mechanical low back
17 pain throughout his notes, doesn't he, Doctor?

18 A. Yes, he does.

19 Q. He's not challenging the fact that
20 she's coming to him because she's in pain, is he,
21 in his notes?

22 A. When you said --

23 Q. Is he, Doctor?

24 A. -- the patient returns with
25 mechanical back pain. It doesn't say the patient

1 returns with symptoms of a disc herniation. She
2 comes in complaining of back pain, not leg pain.

3 Q. I understand that, Doctor. And the
4 point is she's having pain, isn't she?

5 A. In her back.

6 Q. There's no question about that, is
7 there?

8 A. No, there is no question.

9 Q. And there's no question that that was
10 due to the automobile accident, is there?

11 A. I think there is a question of that.

12 Q. All right. So do you think it was
13 purely coincidental that the pain she started
14 having after December 25th, 1993 was because of
15 the car accident? Do you think that's
16 coincidental?

17 A. I don't -- what I think is that she
18 suffered a lumbosacral strain in the accident.
19 She had the MRI shortly thereafter and it showed
20 diffuse disc degeneration, which was there before
21 the accident. And I think that her pain is
22 mechanical in nature, on the basis of her disc
23 degeneration, on the basis of her work, on the
24 basis of the work she does, sitting, bending,
25 twisting, lifting heavy charts, and, I'm sorry to

1 have to get back to this, on the basis of her
2 lifestyle and the stresses in her lifestyle and
3 smoking and all other kind of factors that go
4 into continued low back pain.

5 Q. Doctor, is there any evidence at all
6 that this woman ever saw a doctor before she saw
7 Dr. Wilbur for low back pain?

8 A. No, there is no evidence.

9 Q. And is there --

10 A. That I have.

11 Q. And is there any evidence at all that
12 she ever missed a day of work due to low back
13 pain before this automobile accident?

14 A. The only evidence that I saw,
15 actually I have to take back what I said before,
16 is in Dr. Gordon's report, do you have Dr.
17 Gordon's report?

18 Q. Sure, I do.

19 A. And it says that she was in a motor
20 vehicle accident twenty years ago, but I don't
21 remember --

22 Q. Where she hurt her knees, Doctor?

23 A. Did she hurt her knees?

24 Q. Well, do you know that, the detail on
25 that?

1 A. All I said was that she was in a
2 motor vehicle accident. I didn't say what she
3 said or whatever. I'm just --

4 Q. See if you could answer my question.

5 A. -- proposing.

6 Q. Are you aware of any evidence at all
7 that this woman ever saw a doctor for low back
8 pain before this car accident?

9 A. Me? No, I'm not. I don't have any
10 of that information.

11 Q. All right. I understand that. Now,
12 you made the statement that she had two years of
13 physical therapy due to this accident, Doctor,
14 and I want you to look at your records and show
15 me what substantiates that statement.

16 A. When I said two years, I didn't mean
17 two solid years of physical therapy. She had
18 interrupted treatment.

19 Q. Doctor, she had physical therapy that
20 ended April the 1st, 1994; isn't that correct?

21 A. And she said that, when she was here,
22 she said that she had recently been back. And
23 that she does exercises at home.

24 Q. Doctor, the only physical therapy she
25 had due to this automobile accident began as a

1 result of Dr. Wilbur's prescription and continued
2 through April the 1st --

3 A. And was interrupted.

4 Q. -- 1994, correct?

5 A. And she told me that she had
6 continued physical therapy.

7 Q. Doctor, is there any record that
8 indicates she had any more physical therapy
9 beyond April the 1st, 1994?

10 A. The record that she told me.

11 Q. Doctor, are there any records in
12 front of you, you've been provided them all, that
13 indicate --

14 A. In here?

15 Q. -- that this woman had physical
16 therapy after April the 1st, 1994?

17 A. No. Other than her telling me in the
18 office that she had continued physical therapy.

19 Q. All right. Well --

20 A. She works in the hospital.

21 Q. Well, I understand that that's what
22 you're saying, Doctor. There is not one record
23 to substantiate physical therapy after April the
24 1st, 1994, correct?

25 A. In here? I don't, I don't know. I

1 would have to look through it again.

2 Q. Well, look through it again, then.
3 Please.

4 THE WITNESS: Is there?

5 MR. PEARSON: Can we go off the
6 record for this?

7 MR. ALKIRE: No, we can't.

8 THE WITNESS: I'm going to take a
9 break. Okay?

10 MR. HADAD: Off the record at 5:10
11 p.m.

12 (Recess taken.)

13 MR. HADAD: Back on the record at
14 5:14 p.m.

15 A. She had physical therapy over a
16 period of four months, not two years. But also I
17 did not document that in my medical record.

18 Q. Actually, Doctor, the physical
19 therapy began on January the 24th and it ended on
20 March the 28th.

21 A. Here in the bill it said she received
22 physical therapy on April 15th.

23 Q. Did you read the physical therapy
24 records, Doctor?

25 A. Yeah, I did.

1 Q. And how many times did you notice
2 that there were spasms that she was having?

3 A. Most of the time she had spasm.

4 Q. She had moderate to severe muscle
5 spasm, didn't she?

6 A. That's not unusual.

7 Q. And is that at least due to the
8 automobile accident, Doctor? Or do you think
9 that's coincidental?

10 A. I would say that if you have
11 paraspinal muscle spasm, it's an acute finding,
12 meaning within the first four to six weeks. So
13 if there's continued muscle spasm after six
14 weeks, I think it's based on something else.
15 Position, sitting, job, some other activity.

16 Q. Well, are you telling us that the
17 muscle spasm she experienced during physical
18 therapy were due to the automobile accident or
19 not?

20 A. It depends when the spasm was. If it
21 was in, if it was in the first four to six weeks,
22 I would say yes. If it was after that, I would
23 say no. Muscle spasm is something that happens
24 acutely.

25 Q. Doctor, what is the physiology that

1 accounts for a muscle spasm in an automobile
2 accident, as a result of an automobile accident.

3 A. Muscle spasm occurs usually in a
4 automobile accident mainly in the neck and the
5 low back because of flexion/extension injury.
6 What happens is, even with a seat belt, if you're
7 hit from behind, your body goes forward and your
8 body goes backwards, and then sometime during
9 that episode your muscles tighten and so your
10 muscles are tightening going against a force
11 that's going forward and backwards.

12 Q. Do the muscles also overstretch?

13 A. They can.

14 Q. And when they overstretch, do small
15 hemorrhages occur within them microscopically?

16 A. You know, I know lawyers like to hang
17 their hat on that, but it's not documented in the
18 literature. I mean you can have, if you're
19 talking about ligamentous strains and ligamentous
20 hemorrhages, yeah; the ligaments can tear, but it
21 hasn't been documented that you have hemorrhages
22 in the muscle.

23 Q. Spasms are objective findings, aren't
24 they?

25 A. Definitely.

1 Q. And there were objective spasms
2 throughout her physical therapy, correct?

3 A. That's fine.

4 Q. Is that correct?

5 A. If it's in the note, then it must be
6 correct.

7 Q. Well, see, now, Doctor, you reviewed
8 the notes and all of these records and I'm just
9 trying to test whether you have made any notes
10 and given any significance to what's actually in
11 those physical therapy records.

12 A. In the first six weeks, yes, there
13 was spasm, even after six weeks there was spasm.
14 But on my exam and on Dr. Wilbur's exam --

15 Q. Well, when was the first muscle spasm
16 that was more than six weeks after the accident?

17 A. When was the first muscle spasm?

18 Q. Yeah, more than six weeks after the
19 accident.

20 A. I would have to look through the
21 records.

22 Q. Well, I ask that you do that. If
23 you're going to make that statement.

24 A. Okay. Why don't I refer to Dr.
25 Wilbur's.

1 Q. Well, Dr. Wilbur didn't administer
2 the physical therapy, did he?

3 A. No, but he can -- when you examine
4 somebody and you prescribe physical therapy, you
5 should be able to note spasm. Right? That's one
6 of the reasons why you send somebody for physical
7 therapy.

8 Q. And do you think, Doctor, that the
9 physical therapists who are administering the
10 physical therapy would note spasms?

11 A. Yes.

12 Q. All right. And my question to you,
13 Doctor, is what's the first muscle spasm that's
14 noted that's more than six weeks after this
15 accident? By the physical therapists, the
16 records that you reviewed.

17 A. She has spasm all along.

18 Q. Well, I want you to tell me the first
19 spasm that's more than six weeks old, if that's
20 your testimony, that she had spasm all along.
21 Because the last spasm I see is February the 11th
22 when a statement is made that spasms are less
23 painful, and I don't see another objective
24 finding of spasm after that, Doctor. Maybe you
25 do.

1 A. When did you say your last note is on
2 spasm?

3 Q. February 11th. And that's a report,
4 that spasms are less painful.

5 A. I don't see any after that.

6 Q. All right. Thank you, Doctor.

7 Now, let's turn to your
8 characterization of Dr. Konfala's notes that you
9 have reviewed very carefully. First of all, Ms.
10 Sessin saw Dr. Konfala for the first time after
11 this accident on July the 19th, 1994; is that
12 correct?

13 A. I hate to say yes. I have to look at
14 the note. This is an urgent visit and it's from
15 July 19th, 94.

16 Q. Right. And would you -- and this is
17 the record you were talking about of the Dr.
18 Konfala records that you had reviewed in
19 connection with your testimony today, correct?

20 A. Right.

21 Q. And, Doctor --

22 A. One of several records from Dr.
23 Konfala.

24 Q. Right. We're going to go through
25 them.

1 A. This is the first one.

2 Q. Okay. And this is the first one; I
3 have characterized that correctly, haven't I?

4 A. Yes.

5 Q. And you know from reviewing Dr.
6 Konfala's records that Ms. Sessin had been a
7 patient of Dr. Konfala, correct? Is that
8 correct?

9 A. Yes.

10 Q. And you understand, having read this
11 accident -- having read this record that Dr.
12 Konfala disagrees with you in terms of the
13 characterization of this trauma, correct? She
14 calls it significant, doesn't she?

15 A. She calls it significant? Can you
16 point out where she says it's significant?

17 Q. Yeah. Sure. Sure. Third sentence,
18 patient involved in MVA on 12-19-93 with
19 significant trauma --

20 A. Okay.

21 Q. -- to the forehead and right eye. I
22 read that correctly, didn't I?

23 A. Yes, you did.

24 Q. So at least with that opinion of
25 yours Dr. Konfala has some disagreement

1 apparently?

2 A. She does disagree.

3 Q. Okay. Now, she also indicates in the
4 next sentence that since the time of the car
5 accident she has had persistent right posterior
6 occipital pain, correct?

7 A. Yes.

8 Q. Not pain that just began seven months
9 later, correct?

10 A. She says since the time of the car
11 accident.

12 Q. And where is the location that those
13 words describe?

14 A. The posterior occipital pain --

15 Q. Right.

16 A. -- is right back here.

17 Q. Right posterior?

18 A. The posterior occiput, this is your
19 posterior occiput back here.

20 Q. All right.

21 A. And this is the right side. So this
22 would be the right side.

23 Q. Thank you. And that's in the
24 vicinity of the area where Ms. Sessin complains
25 of neck pain, correct?

1 A. Yeah. I would say yes.

2 Q. And by the way, are you familiar with
3 the term "contracoup"?

4 A. Yes.

5 Q. And what is meant by contracoup as it
6 relates to the movement of the brain?

7 A. Contra means opposite, and so what
8 they feel happens, and it's usually not a front
9 to back type of injury, it's a side to side, is
10 that if you hit yourself on one side, instead of
11 having damage on the same side that you hit, you
12 would have damage on the opposite side, and the
13 hypothesis behind that is that you hit on this
14 side, the brain pulls to the right side and
15 causes some bleeding or some other kind of injury
16 on the opposite side.

17 Q. Now, Doctor, when Ms. Sessin's head
18 struck the windshield, creating a star pattern,
19 did her brain move?

20 A. I don't know.

21 Q. Well, what do you think about that?
22 Would you expect it to have moved? Given the
23 physiology --

24 A. No.

25 Q. -- that would apply?

1 A. Given that she had a negative MRI and
2 a negative CT scan which showed no evidence of
3 blood or hematoma or old blood, if it had moved,
4 if her brain had moved at all, you would see
5 blood. You would see old blood on the MRI or you
6 would see old blood on the CT scan.

7 Q. Well, what would prevent the brain
8 from moving when the head abruptly stopped at the
9 windshield?

10 A. Not having a significant enough
11 force.

12 Q. Okay. So you feel that when her head
13 hit the windshield, her brain didn't move at
14 all? Is that correct?

15 A. I feel that way based on the CT and
16 the MRI, which was normal. Which were normal.

17 Q. Now, did the doctor in this note list
18 impressions or plans that she had?

19 A. Yes.

20 Q. And did she list two of them?

21 A. Yes.

22 Q. Did she list post-traumatic head pain
23 for one?

24 A. And she also listed doubt any
25 intracranial process occurring.

1 Q. All right. Did she list
2 post-traumatic head pain?

3 A. Yes.

4 Q. And does that imply head pain after
5 the traumatic --

6 A. Trauma.

7 Q. -- event which is described which
8 would be the motor vehicle accident?

9 A. Yes, it does imply that.

10 Q. All right. And the hypertension, she
11 lists that also, right?

12 A. Yes, she does.

13 Q. Now, she doesn't say that's causing
14 the post-traumatic head pain, in fact she says it
15 may be secondary to the present pain, correct?

16 A. Right.

17 Q. And that's far different than cause,
18 correct?

19 A. Right.

20 Q. All right. And --

21 A. She also says that she suspects the
22 patient has underlying hypertension, given her
23 obesity.

24 Q. All right. And in fact she believes
25 she was hypertensive before this accident,

1 correct?

2 A. Yes.

3 Q. And before this accident she wasn't
4 having post-traumatic head pain, as far as this
5 doctor documents, correct?

6 A. Correct.

7 Q. And you see no records among all
8 those that you have carefully reviewed that would
9 indicate that this lady ever went to a doctor
10 complaining of head pain before this accident,
11 correct?

12 A. Correct.

13 Q. And let's go to the next visit that
14 is documented by Dr. Konfala and that would be
15 August the 3rd, 1994? Do you have that visit,
16 Doctor?

17 A. I go -- August the 3rd. 94?

18 Q. Yes. The next one chronologically.

19 A. 7-19. Yes.

20 Q. And does she continue to list as
21 impression or plan post-traumatic headaches?

22 A. Yes, she does.

23 Q. And does she indicate that the
24 hypertension was much improved?

25 A. Yes. She also says her headaches

1 seem to occur when she has been working,
2 especially when she does not sleep well after
3 working.

4 Q. All right. And again, just so that
5 we're clear on this, these are headaches she's
6 describing that she never described to anyone
7 before December the 25th of 1993, correct?

8 A. That we know of, yes.

9 Q. Yeah. Well, do you doubt that she's
10 been --

11 A. That I know of.

12 Q. Do you doubt that she's been candid,
13 Doctor? Is that what you mean to imply?

14 A. I don't know. I can only go on the
15 information that I have.

16 Q. All right. And do you doubt that a
17 thorough search of records has been made in this
18 case to make sure that you were supplied with all
19 the medical records that have any significance?

20 A. No. No.

21 Q. You don't doubt that?

22 A. I don't doubt her prior complaints, I
23 doubt her present complaints.

24 Q. All right. Now, September the 28th,
25 1994.

1 A. September 28th.

2 Q. Does Dr. Konfala once again provide
3 the impression of post-traumatic headaches?

4 A. Yes, she does. She also says she has
5 been having problems with insomnia related to her
6 job, also related to her headaches.

7 Q. Does she indicate that the headaches
8 are very intense and occurring daily?

9 A. Very intense and occur daily.

10 Q. And does she start out this note by
11 saying that this is an urgent visit for this 39
12 year old white female with a history of post
13 motor vehicle accident head pain times nine
14 months?

15 A. Yes, she does.

16 Q. And would that imply that she's been
17 having that pain for nine months?

18 A. Yes, head pain for nine months.

19 Q. So that's far different than your
20 statement earlier that she was only having the
21 pain beginning seven months after this accident,
22 correct?

23 A. Very different.

24 Q. All right. And that's not what Dr.
25 Konfala said at all; what she said is exactly

1 what we just read in this note, that she had been
2 having head pain for nine months, correct?

3 A. Which is highly unusual.

4 Q. But nonetheless that's the what's
5 been noted, correct?

6 A. Particularly given a normal MRI, a
7 normal CT scan, a normal neurologic exam, which
8 recommends a psych consult.

9 Q. On October the 12th, 1994 Ms. Sessin
10 again saw Dr. Konfala for her headaches, correct?

11 A. Uh-huh.

12 Q. And Dr. Konfala characterizes them as
13 a history of intractable headaches as of December
14 1993, correct?

15 A. Yes.

16 Q. And again she calls them
17 post-traumatic headaches, correct, in her
18 impression?

19 A. Yep. And she discussed significant
20 social and work factors which are making things
21 more stressful.

22 Q. All right. And once again, these
23 social and work factors, Doctor, you're not aware
24 of any difference between them at this point in
25 time, in October of 1994, and the same factors

1 that applied in December of 1993, before this
2 accident, are you?

3 A. No, other than there's something to
4 blame them on.

5 Q. Well, you didn't ask Ms. Sessin, when
6 you had an opportunity to question her, what
7 differences there were in social, in her social
8 circumstance before and after the accident, did
9 you?

10 A. There were no differences.

11 Q. The only difference is the
12 intervening automobile accident, as far as you
13 could see, correct?

14 A. Correct.

15 Q. And did Dr. Konfala call these
16 headaches chronic in her October the 12th, 1994
17 note under post-traumatic headache impression?

18 A. Yes, a chronic problem.

19 Q. And what does that mean?

20 A. It means, chronic, unlike acute,
21 means right away, within, within an hour, within
22 four to six weeks. Chronic usually means, in the
23 medical literature, greater than six weeks.

24 Q. Of duration?

25 A. Right.

1 Q. Longstanding duration is what we're
2 talking about, correct?

3 A. Yes.

4 Q. And she went on to characterize this
5 as it may take months to years to find adequate
6 treatment, correct?

7 A. Right.

8 Q. And to this day, as of the time you
9 saw Ms. Sessin, she was taking medication and
10 participating in treatment for her headaches,
11 correct?

12 A. Yes, she was taking Calan for her
13 hypertension and Motrin.

14 Q. And by the way, you alleged in your
15 report that in addition to the Prozac that she
16 was also taking Elavil. Is there any evidence in
17 these records that she was ever taking Elavil?

18 A. Amitriptyline.

19 Q. Well, that's not what you said in
20 your report, Doctor.

21 A. Well, that's just another name. But
22 there are often more than one name for a drug.
23 Elavil is Amitriptyline.

24 Q. All right. And do you know Dr.
25 Konfala, by the way?

1 A. No, I don't.

2 Q. Do you know Dr. Rorick, the
3 neurologist that Dr. Konfala referred Ms. Sessin
4 to?

5 A. No, I don't.

6 Q. And did you see his December 8th,
7 1994 report among the records that we obtained
8 from Dr. Konfala?

9 A. His -- what date?

10 Q. That he wrote a letter.

11 A. It's October 12th, 94?

12 Q. No, he wrote a letter December the
13 8th in addition to that. It's among Dr.
14 Konfala's notes.

15 A. Okay. Yes.

16 Q. And did he indicate -- and that was
17 one of the records you reviewed in connection
18 with your opinions, correct?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. And he indicated under the impression
23 that it was his impression that she is continuing
24 to have chronic daily headaches and I cannot
25 characterize them other than to say that they

1 seem to be post-traumatic and may be the muscle
2 contraction or tension variety. Do you see that?

3 A. Yes, I do.

4 Q. All right. So he adhered to their
5 origin as post-traumatic, correct?

6 A. Yes.

7 Q. And he didn't seem to doubt that she
8 was having them, correct?

9 A. Yes. But then he prescribed Prozac
10 which is an antidepressant.

11 Q. And by the way, do you understand the
12 pharmacological workings of Prozac, what it's
13 meant to do?

14 A. It's a feel-good drug, yeah.

15 Q. But what does it do specifically?

16 A. It acts centrally to build up
17 serotonin. In the brain there are receptors that
18 take up certain substances and serotonin is
19 something that's found in things like chocolate,
20 that's supposedly why women like chocolate so
21 much, and other kinds of things that make your --
22 that make you feel good. And it's just like the
23 new drug that came out to keep you from eating,
24 to make you lose weight, is it blocks serotonin
25 uptake so that serotonin stays around longer.

1 Q. Right.

2 A. And that's what Prozac does.

3 Q. Right. And that's the theory for its
4 use to inhibit the absorption of serotonin and
5 make it available for whatever else may be
6 happening in this patient --

7 A. Exactly.

8 Q. -- so the patient could benefit from
9 the serotonin?

10 A. Exactly.

11 Q. And there's no doubt in your mind
12 that this Prozac was prescribed in connection
13 with this sequelae of headaches?

14 A. I think it might have been prescribed
15 for her anxiety and depression and stress related
16 to her job.

17 Q. Well, you used it --

18 A. It says it may, look, in this thing
19 it says it may take her two hours to fall asleep
20 after going to bed at midnight. I mean why would
21 he --

22 Q. And if one is having intractable
23 headaches, that isn't an unlikely scenario, is
24 it?

25 A. It's also not an unlikely scenario if

1 your circadian rhythm or your sleep rhythms are
2 off.

3 Q. Do you know how long she had been
4 working night shift at Metro?

5 A. Years.

6 Q. Yeah. And years before the accident,
7 too, correct?

8 A. Yes.

9 Q. Now, in addition to that, Doctor --

10 A. But she hadn't had a three year old
11 son for years either.

12 Q. Well, for three years she did, right?

13 A. That's enough to --

14 Q. Do you know how many sons she had?

15 A. That's enough to disrupt her. I know
16 that she has three children.

17 Q. All right. Do you know how old the
18 other two are?

19 A. I think one's ten and I forget how
20 old the other one is.

21 Q. Is it your testimony, Doctor, that
22 the forces that were generated in this accident
23 were not sufficient to produce a herniation in a
24 back that was already compromised by degenerative
25 arthritis?

1 A. Yes. Studies have been done to show
2 that degenerative arthritis does not predispose
3 you to having disc herniations.

4 Q. All right. So you don't believe that
5 the degenerative arthritis finding has anything
6 to do with one's capacity to have one's discs
7 herniated due to a trauma?

8 A. Studies have proven that not to be
9 the case.

10 Q. And be that as it may, are you
11 telling us that the forces in this accident with
12 her right leg up against the dashboard at the
13 time of the second hit wasn't sufficient to
14 produce a herniated disc in the back?

15 A. I think it was significant enough to
16 produce a strain, but given her physical exam at
17 the time of her complaints and being seen by Dr.
18 Wilbur, I have concluded that it was not
19 significant enough to cause a disc herniation.

20 Q. Whether it did in her or not, were
21 the forces sufficient to produce a herniation in
22 someone, in this accident?

23 MR. PEARSON: Objection.

24 A. I mean I don't know what the forces
25 were other than what you have to go by is the

1 physical exam.

2 Q. Well, Doctor --

3 A. If someone has a disc herniation,
4 they have a positive straight leg raise, they
5 have positive nerve tension signs, if they have a
6 symptomatic disc herniation. She didn't have
7 those kind of things, so I would have to say no,
8 I do not believe the forces were significant
9 enough to cause a disc herniation.

10 Q. The reason you don't know whether the
11 forces were enough to cause a disc herniation is
12 because you haven't explored the facts that would
13 give you the information necessary to define the
14 forces; isn't that correct?

15 A. I don't think so, no.

16 Q. Well, Doctor, how far did the car
17 that she was in move after it was struck the
18 second time?

19 A. I don't think that's -- I really,
20 truly, in my mind and in my heart, do not think
21 that that is indicative of what kind of injury
22 people sustain, just like I said before, you have
23 cars that are crushed to little bits all the time
24 that are shown on the news and people get up out
25 of the car and walk away. So I really think you

1 have to go by the physical exam. And we have to
2 go by Dr. Wilbur's physical exam. Which was not
3 indicative of a disc herniation, it was
4 indicative of mechanical low back pain.

5 Q. Okay. So just so that I'm clear on
6 what you don't know in terms of the facts of this
7 case, you don't know the extent of property
8 damage to any of the vehicles involved, correct?

9 A. Correct.

10 Q. You haven't seen any of the
11 photographs that we all have and that were taken
12 and are available to document that property
13 damage, correct?

14 A. Because --

15 Q. Is that correct, Doctor?

16 A. -- property damage is not necessarily
17 related or directly related to how much injury
18 there is.

19 Q. I understand that's how you feel,
20 Doctor. Other doctors might disagree with you.
21 You don't know that, do you?

22 A. I don't know what?

23 Q. You don't know what the extent of the
24 property damage is, do you?

25 A. No, I don't.

1 Q. You haven't seen the pictures, have
2 you?

3 A. I have not seen the pictures.

4 Q. Before you wrote this report, you
5 didn't even see the pictures of my client,
6 correct?

7 A. I knew she had a large hematoma, if
8 that's what you're trying to say, that I had no
9 idea she had a big hematoma, it was in the
10 record.

11 Q. No, what I'm trying to say is what I
12 said.

13 A. When they say there is a large
14 hematoma, there is a large hematoma. I don't
15 need a picture. I can visualize that because
16 I've seen it before.

17 Q. What I'm trying to say is what I
18 said, you didn't see the photographs of her
19 before you --

20 A. No, I did not.

21 Q. -- wrote the report or examined her?

22 A. But I don't need to, just like I
23 don't need to see the pictures of the damaged
24 car, because it's not necessarily indicative of
25 how much injury the patient sustained.

1 Q. You didn't see the police report,
2 correct?
3 A. I didn't see the police report.
4 Q. You don't know the speeds that the
5 vehicles were traveling when --
6 A. No.
7 Q. -- when the collisions occurred,
8 correct?
9 A. I don't know that either.
10 Q. All right.
11 A. Don't need to know that stuff.
12 Q. You don't need to know that stuff if
13 you're predisposed to opine in this case that
14 this accident caused --
15 A. Wait. Predisposed to --
16 Q. Predisposed to opine.
17 A. What's opine?
18 Q. Give an opinion.
19 A. Okay.
20 Q. That there is no relationship between
21 the accident and the current complaints of my
22 client, correct?
23 MR. PEARSON: Objection.
24 A. I don't think that I'm predisposed.
25 I do independent medical exams all the time and I

1 am not a gun for hire, I come up with what I
2 think is an independent and very accurate
3 assessment and opinion and I oftentime give
4 opinions to my clients that they don't like. So
5 I just did that two days ago, I can show you the
6 report.

7 Q. All right. What did Dr. Catana do by
8 way of care and treatment of this insignificant
9 superficial laceration?

10 A. Dr. Catana the plastic surgeon?

11 Q. Yes.

12 A. She had the large hematoma and I
13 believe that she was seen in the office and she
14 irrigated out the hematoma.

15 Q. Was it evacuated?

16 A. She evacuated, same thing, evacuated,
17 irrigated.

18 Q. What's that mean?

19 A. That means that, when you saw the
20 picture, she had that big lump underneath the
21 laceration, so what she probably did was just
22 take out a couple of the sutures and either
23 squeeze out the clotted blood and then probably
24 just put a little bit of fluid in there to wash
25 it out a little bit.

1 Q. How many times did Dr. Catana see
2 her?

3 A. I don't remember. Two or three.

4 Q. How about four?

5 A. Okay. Four.

6 Q. Over what period of time?

7 A. I don't know. Edema hematoma.

8 Healing well. The last office visit I have is
9 from 2-22-94.

10 Q. All right. So Dr. Catana saw Ms.
11 Sessin, Ms. Sessin on the 4th, on the 6th, on the
12 11th --

13 A. And on the 22nd.

14 Q. -- and on the 22nd, correct?

15 A. Yes.

16 Q. And the first three dates were in
17 January, correct?

18 A. Uh-huh.

19 Q. While the last one was in February,
20 correct?

21 A. Correct.

22 Q. You mentioned that, in your direct
23 testimony, that the amount of physical therapy in
24 this case was ridiculous. Do you adhere to that?

25 A. I think that any physical therapy

1 above and beyond four to six weeks is not
2 indicated. I believe -- what did you tell me the
3 last date was? February something.

4 Q. Well, what the records indicate,
5 which you have carefully reviewed --

6 A. Yeah, but I don't remember.

7 Q. -- is that physical therapy began on
8 January the 24th and the plan was two times a
9 week for three weeks and it was extended through
10 3-28-94, although there was no therapy given that
11 day, and there was an aerobic screening on 3-17,
12 so that the last therapy was really March 14th.
13 That's not ridiculous, is it, Doctor?

14 A. I think it's ridiculous in that what
15 they were doing for her was usually ultrasound,
16 massage, and modalities that aren't proven.

17 Q. So you think Dr. Wilbur
18 inappropriately prescribed the physical therapy
19 that you see in these records; is that correct?

20 A. I don't think it's inappropriate to
21 prescribe physical therapy. I just think as a
22 physician, particularly with back injuries, you
23 have to be more on top of the physical therapist
24 because I think that it's more recent literature
25 has shown that the typical modalities of

1 ultrasound and heat and ice and massage aren't
2 modalities that provide any benefit, it's more
3 the exercise, range of motion and things like
4 that, and it was towards the end that they
5 started doing the aerobic stuff.

6 Q. All right. So is it your opinion
7 that it was inappropriate for this physical
8 therapy to have been provided?

9 A. I don't think it was inappropriate to
10 be provided, I don't think they were doing any
11 modalities that were of any use.

12 Q. So you don't think the patient
13 benefited from it?

14 A. Well, she obviously didn't. She's
15 still complaining of back pain, right?

16 Q. Well, did you ask her?

17 A. Yes.

18 Q. And what did she tell you when you
19 asked her if she benefited from the physical
20 therapy?

21 A. She said that she had benefit, just
22 like most people when they say they're there,
23 they feel great, when you leave, it's the same.

24 Q. And is that what she told you?

25 A. Yeah.

1 Q. And, Doctor, lastly, you have gone on
2 record indicating that you charge more than
3 probably anybody in the City of Cleveland for
4 depositions?

5 MR. PEARSON: Objection.

6 MR. GREER: Objection.

7 Q. Isn't that correct?

8 MR. PEARSON: Objection.

9 A. Gone on record?

10 Q. Yeah, you have said that in
11 deposition, haven't you?

12 A. I think I might have, sure. Is that
13 true? Is that true?

14 Q. Well, is that what you said?

15 A. I think when I first started doing
16 depositions I charged \$2,000 and most people were
17 charging 1,700. I think that it's up to, most
18 people are probably up now to 2,000.

19 Q. All right.

20 A. But I don't keep track of what other
21 people do. I can only keep track of what I do.

22 Q. Just so that we're clear and so that
23 there's no question about this, on page 59 of a
24 deposition you gave in a case called Marilyn
25 Peckinpugh versus Beatrice Tabor, at page 59,

1 lines 3 through 13, the following exchange took
2 place:

3 "Question: Doctor, just a little
4 legal housekeeping that I have to do here to wrap
5 up. You were retained by the defense in this
6 case. Can you tell us what your charge is for
7 the deposition?"

8 And your answer at that time was "I
9 charge more than probably anybody in the City of
10 Cleveland for depositions. I charge \$2,000 and I
11 do this because I don't like to do them all that
12 much. So if I am high, I don't get that many. I
13 do one or two IMEs a month."

14 I read that correctly, didn't I?

15 MR. PEARSON: I'm going to object and
16 move to strike at this time.

17 Q. I read that correctly, didn't I,
18 Doctor?

19 A. Absolutely.

20 MR. ALKIRE: Thank you. I have
21 nothing else.

22 MR. PEARSON: Also move to strike.

23 EXAMINATION OF SUSAN E. STEPHENS, M.D.

24 BY MR. GREER:

25 Q. Okay, Doctor, my name is Mark Greer

1 and I represent the other defendant in this
2 matter, Nikolaus Tysiak. And I have a few
3 questions for you. I want to clarify a few
4 things.

5 You have been licensed as a physician
6 in Ohio since 1987?

7 A. Yes.

8 Q. So nearly ten years now?

9 A. Yes.

10 Q. Before you were licensed in Ohio, you
11 did an orthopedic residency?

12 A. Yes.

13 Q. How long was that?

14 A. Five years.

15 Q. Then you mentioned something about
16 doing a fellowship at the Cleveland Clinic?

17 A. Yeah, I did a year of extra spine
18 training and spine surgery and spine study and
19 research at the Cleveland Clinic for a year.

20 Q. Okay. Then you also mentioned that
21 you became board certified in 1994?

22 A. Yes.

23 Q. Are all physicians board certified?

24 A. No, not all physicians pass the test.

25 Q. Okay. Do you know what percent of

1 orthopedic surgeons are board certified?

2 A. You know, I don't know what
3 percentage actually are, but I know that the pass
4 rates are between 60 and 70 percent.

5 Q. Okay. Is it true that some
6 physicians don't even attempt to become board
7 certified?

8 A. Some physicians don't attempt to be
9 board certified and some physicians take the test
10 ten to millions of times and never pass.

11 Q. Okay. Now, Doctor, I want to follow
12 up on a couple items that plaintiffs' counsel
13 asked you. He asked you about your testimony
14 concerning physical therapy that the plaintiff
15 underwent, and I want to make sure I understand
16 something. On October 25th of 1996 when you
17 performed your independent medical examination,
18 did the plaintiff report to you that she had
19 recently gone back to physical therapy?

20 A. She mentioned it. But I don't, I
21 don't have any record of it, so --

22 Q. Okay. But that's the history that
23 she gave you, correct?

24 A. Yes.

25 Q. Okay. Is it fair to state, Doctor,

1 that you must rely, that any physician must rely
2 on their patients to give correct information in
3 terms of history and during an examination?

4 A. Exactly.

5 Q. Okay.

6 A. Yes.

7 Q. You were also asked a question by
8 plaintiffs' counsel concerning spasms and whether
9 there were any spasms which were found more than
10 six weeks after the accident, and plaintiffs'
11 counsel referenced you to a February 11, 1994
12 physical therapy record. Was February 11, 1994
13 more than six weeks after the December 25th, 1996
14 accident?

15 A. February?

16 Q. 11th.

17 A. I think it's just on the border,
18 isn't it? December, January? It's just on the
19 border.

20 Q. Okay.

21 A. Just a little bit outside of six
22 weeks.

23 Q. So it was beyond six weeks? Okay.

24 Now, Doctor, you were asked a lot of
25 questions by plaintiffs' counsel concerning

1 whether you ever saw any photographs of the cars
2 involved, or of the plaintiff. When you were
3 provided with the records of Dr. Wilbur, were
4 there any photocopies of photographs of the cars
5 in Dr. Wilbur's records?

6 A. No.

7 Q. Were there any photocopies of
8 photographs of the plaintiff in Dr. Wilbur's
9 records?

10 A. No.

11 Q. Is there any indication whatsoever
12 that Dr. Wilbur was ever given photographs of the
13 cars or the plaintiff?

14 A. No.

15 Q. Similarly, Doctor, you were asked
16 whether you had ever seen the police report. Is
17 there any indication that Dr. Wilbur was ever
18 given the police report?

19 A. No.

20 Q. Okay. Now, Doctor, I'd like to talk
21 to you about, and this is on page 1 of your four
22 page report, at the bottom, you talk about Dr.
23 Wilbur's examination.

24 A. Uh-huh.

25 Q. Am I correct that he first saw the

1 plaintiff on January 14th of 1994?

2 A. Yes.

3 Q. What was his conclusion, according to
4 his notes, as to the plaintiff's physical
5 examination?

6 A. His conclusion, you mean what he
7 found on his --

8 Q. What he found on a physical
9 examination.

10 A. She had completely normal range of
11 motion and negative nerve tension signs, and he
12 treated her conservatively, meaning with some
13 medicine and followup.

14 Q. Okay. Did he find any objective
15 abnormalities during that examination, Doctor?

16 A. Any abnormalities? The only thing he
17 states is that she complained of pain on range of
18 motion.

19 Q. Okay. Did he find any objective?

20 A. No, he didn't. There was no atrophy,
21 her motor exam was 5 out of 5, which is normal,
22 her sensory exam was normal, and no abnormal or
23 pathologic reflex was seen.

24 Q. Okay. So the only finding he had was
25 a subjective complaint that the plaintiff made?

1 A. Right.

2 Q. Now, Doctor, plaintiffs' counsel
3 asked you some questions concerning the
4 radiologist interpretation of the MRI.

5 A. Okay.

6 Q. And there was some discourse about
7 the word mild or moderate in terms of describing
8 herniations.

9 A. Okay.

10 Q. Do you recall that?

11 A. Yes.

12 Q. From your review of Dr. Wilbur's
13 records, how do you believe that Dr. Wilbur
14 characterized those findings?

15 MR. ALKIRE: Objection.

16 Q. Himself.

17 MR. ALKIRE: Objection.

18 A. Well, I know by, by his record, he
19 was not impressed. He said that she had a slight
20 herniation at the L4-5 level and the S1 level.
21 He --

22 MR. ALKIRE: Objection. That's a
23 misreading of that record.

24 THE WITNESS: It is not.

25 MR. ALKIRE: That's not what he

1 said.

2 THE WITNESS: There's no comma
3 there. I know my grammar. Maybe you should look
4 it up.

5 MR. ALKIRE: It's a slight herniation
6 at 4-5 and right-sided herniation at 5-S1. If
7 you're going to read a record of a dead person,
8 read it correctly.

9 MR. PEARSON: Objection. Move to
10 strike.

11 MR. GREER: I'm going to object and
12 move to strike.

13 THE WITNESS: Just because he's dead
14 doesn't affect this.

15 MR. ALKIRE: Sure, it does.

16 THE WITNESS: No, it doesn't.

17 MR. ALKIRE: He can't come in here
18 and defend this record.

19 THE WITNESS: He wouldn't come in and
20 defend it anyway right now.

21 MR. ALKIRE: Of course he would.

22 THE WITNESS: You're just trying to
23 use that. That's horrible. Using a dead person
24 like that.

25 MR. ALKIRE: I think what you're

1 doing is horrible, Doctor.

2 THE WITNESS: I think what you're
3 doing is horrible.

4 MR. GREER: I'm going to object and
5 move to strike the comments from Mr. Alkire.

6 Now, Doctor --

7 MR. ALKIRE: I move that they
8 remain.

9 THE WITNESS: That's horrible.

10 Q. Again, would you indicate what you
11 believe Dr. Wilbur's notes state concerning his
12 findings --

13 A. Okay.

14 Q. -- as to the nature of the
15 herniations?

16 A. He discusses the MRI.

17 MR. ALKIRE: I object to that.

18 A. And he says in his note 1-27-94
19 review of the MRI showed disc degeneration at the
20 3-4, 4-5 and 5-S1 levels. There is central
21 bulge, upward tracking, slight herniation at
22 4-5 --

23 MR. ALKIRE: You're not reading every
24 word, Doctor.

25 THE WITNESS: Yes, I am.

1 MR. ALKIRE: I object to that.

2 THE WITNESS: I am. There is central
3 disc bulge with upward tracking, slight
4 herniation --

5 MR. ALKIRE: Now you are.

6 THE WITNESS: I was before, too. I'm
7 sure if you read the record you'll see that.
8 Slight herniation at 4-5 and right-sided
9 herniation at 5-1. I recommend further --

10 MR. ALKIRE: 5-S1.

11 A. I recommend further conservative
12 care.

13 So it is my opinion that as a spine
14 surgeon, if I see somebody and their MRI is so
15 remarkable and they're having all these
16 complaints that correspond with the MRI, I'm not
17 going to recommend further conservative care. I
18 mean it is ob-- he says the patient is slowly
19 getting better with time.

20 Q. Okay. Thank you, Doctor. Now,
21 Doctor --

22 A. She is, wait, even she is to continue
23 Motrin, of all of the things he could give her,
24 you know, he's not giving her narcotics for pain,
25 -he's not recommending epidural blocks, he's

1 not -- he's giving her Motrin, which is like, you
2 know, aspirin, it's the least, it's, you know,
3 when I start somebody on pain meds, there's a
4 pyramid, you go Motrin, then you go the stronger
5 ansaids like Lodine and Relafen and things like
6 that, then if that doesn't hold the pain, you go
7 to Tylenol Number 3, then, you know, all kinds of
8 other things for pain. But he gave her Motrin,
9 so it's obvious, it's only obvious that he was
10 not impressed.

11 Q. Okay. Now, Doctor --

12 MR. ALKIRE: Objection. Move that
13 that be stricken.

14 Q. Now, Doctor, you personally had a
15 chance to review the MRI films, correct?

16 A. Yes, I did.

17 Q. What did you feel the MRI films
18 demonstrated?

19 A. I --

20 MR. ALKIRE: Objection.

21 A. As a independent medical exam and
22 looking at her MRI, I agree that she had disc
23 degeneration at the same levels that the
24 radiologist talked about. However, at the 4-5
25 level, as said, as stated by Dr. Wilbur, I was

1 not impressed with the size of the disc
2 herniation. I also was not impressed with the
3 size of the disc herniation at the 5-1 level.

4 Q. Okay.

5 A. 5-S1 level.

6 Q. Now, in terms of the disc
7 degeneration, Doctor, you discussed that on page
8 3 of your report. Do you have an opinion to a
9 reasonable degree of medical certainty as to what
10 caused that degeneration that was noted?

11 A. Well, many studies have been done, I
12 wrote a chapter in Hardy's book, who is a
13 neurosurgeon, about lumbar disc degeneration.
14 Ninety percent of the people over age 30 have
15 evidence of disc degeneration. It's just a
16 natural aging process where as you walk around
17 and as you live, you're always weight bearing and
18 so the disc just gets squished more and more and
19 they lose some of the water. And so as they lose
20 some of the water, the signal changes on the MRI
21 or the CAT scan and it shows up as disc
22 degeneration.

23 Q. Okay. Now, Doctor, did the accident
24 cause the disc degeneration?

25 A. No, it did not.

1 Q. Okay.

2 A. And the MRI was taken a little bit
3 more than two weeks after the motor vehicle
4 accident and disc degeneration doesn't happen in
5 two weeks.

6 Q. Okay. How long does it take for disc
7 degeneration like what you saw --

8 A. Takes years.

9 Q. -- to occur?

10 A. Years.

11 Q. Okay. Now, Doctor, continuing on in
12 your report, you talk about Dr. Konfala next.
13 And you note that the plaintiff first saw Dr.
14 Konfala on July 19th of 1994; is that correct?

15 A. Yes.

16 Q. That's seven months after the
17 accident?

18 A. Yes.

19 Q. Correct? And that's the first time
20 that the plaintiff went to Dr. Konfala concerning
21 headaches?

22 A. It's the first documented episode of,
23 it's the first documented page or anything,
24 history, of her complaining of headaches.

25 Q. Okay.

1 A. So I don't know if she had headaches
2 for seven months and didn't go to see somebody or
3 they just started at seven months.

4 Q. Okay. That's the first time she saw
5 Dr. Konfala?

6 A. Yes.

7 Q. And she had seen Dr. Konfala before
8 the accident?

9 A. Yes.

10 Q. Okay. Dr. Konfala was her physician?

11 A. Yes.

12 Q. Okay. Now, in your review of Dr.
13 Konfala's records, are there any photographs of
14 the property damage as to the vehicles?

15 A. No, there are no photographs at all.

16 Q. Any photographs of the plaintiff?

17 A. No.

18 Q. Is there a police report?

19 A. No.

20 Q. Is there any indication that Dr.
21 Konfala was ever given photographs of the cars,
22 the plaintiff or the police report before she was
23 able to issue a report?

24 A. No indication whatsoever.

25 Q. Okay. Now, you talked about Dr.

1 Konfala's notations about the plaintiff's lack of
2 a regular sleep pattern and that she also noted
3 on August 3rd of 1994 particular occasions when
4 the headaches seemed to have occurred.

5 A. Uh-huh.

6 Q. What did Dr. Konfala indicate
7 concerning those headaches and when they
8 occurred?

9 A. Well, she indicated that she felt
10 that her sleep pattern was causing this as well
11 as the stresses at work. Her headaches in one
12 note, 8-3-94, her headaches do seem to occur when
13 she has been working, especially when she does
14 not sleep well after working.

15 Q. Okay. Now, Doctor, is that what the
16 plaintiff reported to Dr. Konfala?

17 MR. ALKIRE: Objection.

18 A. Pardon?

19 Q. Is that what the plaintiff reported
20 to Dr. Konfala on that visit?

21 A. It's in the history of present
22 illness and that's where you put what the patient
23 states.

24 Q. Okay. Now, Doctor, on page 3 of your
25 report you discussed Dr. Rorick, who the

1 plaintiff was referred to for a neurologic
2 consultation.

3 A. Okay.

4 Q. What significance, what, if anything,
5 did you note of significance concerning Dr.
6 Rorick's consultation or treatment of the
7 plaintiff, with regards to her headaches?

8 A. What I noted the most is that
9 although everybody, not everybody, but Dr.
10 Konfala and Dr. Rorick are always talking about
11 post-traumatic headaches, they always put in
12 their notes her sleeping patterns, her stress
13 level, all of these other things, even though
14 they keep saying post-traumatic. In his
15 impression it says it is my impression that she
16 is having post-traumatic headaches, but then in
17 the following session -- sentence he says in a
18 situation like this it is difficult to separate
19 psychological from organic factors.

20 Q. Okay.

21 A. It says she would undoubtedly benefit
22 from having a more regular routine with regular
23 sleep hours. However, due to economic factors,
24 she needs to work at night.

25 Q. Doctor, during your examination of

1 the plaintiff, did you find any objective
2 abnormalities?

3 A. No, I didn't. Her exam was
4 completely normal.

5 Q. Okay. Doctor, in your opinion, based
6 upon a reasonable degree of medical certainty, do
7 you believe that the accident in December of 1993
8 had any cause or relationship to the plaintiff's
9 leave of absence two years later?

10 A. No.

11 MR. ALKIRE: Objection.

12 MR. GREER: Okay. I have no further
13 questions, Doctor. Thank you.

14 EXAMINATION OF SUSAN E. STEPHENS, M.D.

15 BY MR. PEARSON:

16 Q. Doctor, I just have one followup
17 question to everything that you've been
18 testifying about for the last two hours.
19 Plaintiffs' counsel presented you with a document
20 marked Plaintiffs' Exhibit 3, which is a EMS run
21 report form, and he asked you to read from the
22 chief complaint section of that document. Do you
23 remember that earlier?

24 A. Yes.

25 Q. There is another section on that

1 document, if you look down at the comments
2 section at the bottom of that document, there's
3 also some notes made there. You see that?

4 A. Uh-huh.

5 Q. Why don't you read for the jury what
6 that says?

7 A. It says changes, comments, patient
8 denies neck or back pain, denies any other
9 injury, patient was wearing seat belt, no change
10 in status and wrapped.

11 Q. Okay. And that document is from the
12 day of the accident, right?

13 A. Exactly.

14 Q. Okay. And that's the document that
15 you testified to earlier, correct?

16 A. Yes.

17 MR. PEARSON: Okay. I have no
18 further questions. Thank you, Doctor.

19 EXAMINATION OF SUSAN E. STEPHENS, M.D.

20 BY MR. ALKIRE:

21 Q. And, Doctor, it's not uncommon for a
22 person involved in an automobile accident to deny
23 pain in the back or neck at the scene and within
24 48 hours begin experiencing pain?

25 A. No.

1 Q. Isn't that correct?

2 A. That's correct.

3 Q. All right. So that's not a
4 significant finding to dismiss potential neck or
5 back pain due to the automobile accident,
6 correct?

7 A. I don't think it's significant, but
8 it's also not insignificant.

9 Q. All right. And what also is not
10 insignificant, Doctor, is the fact that nowhere
11 in your report do you indicate that Ms. Sessin
12 told you that she started physical therapy again,
13 correct?

14 A. That -- there is nowhere in my
15 report, no.

16 Q. Right. And there's --

17 A. I don't think I even mentioned
18 physical therapy in my report.

19 Q. The fact of the matter is you didn't
20 mention in this report that Ms. Sessin told you
21 that she went back to physical therapy after
22 this --

23 A. I remember everything Ms. Sessin
24 said. I spent a long time with her. She gave me
25 - a long speech about how Dr. Wilbur's wife was

1 doing and how the wife was moving to Colorado,
2 and all of this couldn't have taken place in two
3 eight-minute sessions about how the wife was
4 copying with the death. I mean we had a very --
5 we spent a long period of time together. This
6 was not that long ago. I remember everything.

7 Q. And it's not in your report?

8 A. No, it's not in my report.

9 Q. All right. And the sentence you
10 skipped when you reading Dr. Rorick's report
11 under impression is that however, I am prepared
12 to treat her as I would any patient who has had
13 an accident with subsequent headaches, correct?

14 A. I didn't skip that sentence.

15 Q. Well, did you --

16 A. I didn't read it.

17 Q. All right.

18 A. I stopped at the sentence before.

19 Q. Well, then you read the one after it,
20 didn't you?

21 A. I guess I did.

22 Q. I have no further questions.

23 A. However, I am prepared to treat her
24 as I would. But you have to look at the
25 "however. I mean however. He has nothing else to

1 hang his hat on, he's going to say post-traumatic
2 despite the fact that he goes through all her
3 social issues.

4 Q. And not only did he say it in that
5 report, but the final report that he wrote dated
6 December the 8th, 1994, he went on to say, "It is
7 my impression that she is continuing to have
8 chronic daily headaches."

9 A. Yes.

10 Q. "I cannot characterize them other
11 than to say that they seem to be post-traumatic
12 and may be the muscle contraction or tension
13 variety," correct?

14 A. Correct.

15 MR. GREER: I have nothing further.

16 MR. PEARSON: Let's go off the
17 record.

18 MR. HADAD: Off the record at 8 --
19 I'm sorry, excuse me, 6:03 p.m.

20 MR. PEARSON: I don't know if Mark
21 has anything else. He seems to be having a
22 problem.

23 MR. GREER: No.

24 (Discussion had off the record.)

25 MR. HADAD: On the record at 6:04

1 p.m. This concludes the deposition on 12-17-96
2 at 80 -- excuse me, 1804 p.m., 6:04 p.m. Thank
3 you.

4 MR. PEARSON: As you know, you have
5 the right to review the transcript. You have to
6 tell her whether you want to reserve or waive
7 it.

8 THE WITNESS: (Nodding negatively.)

9 MR. PEARSON: You waive?

10 THE WITNESS: Waive. Definitely.

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Denise M. Munguia, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, SUSAN E. STEPHENS, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

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

CEFARATTI-RENNILLO

CLEVELAND (216) 687-1161

AKRON (216) 253-8119

1 I do further certify that I am not a
2 relative, counsel or attorney for either party,
3 or otherwise interested in the event of this
4 action.

5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 30 day of
8 December, 1996.

9
10
11
12
13 Denise M. Munguia

14 Denise M. Munguia, Notary Public
15 within and for the State of Ohio
16

17 My commission expires May 23, 2000.
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