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

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IN THE COURT OF COMMON PLEAS

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MARILYN PECKINPAUGH,)
Plaintiff,)
vs.) No. 279833
BEATRICE TABOR, et al.,)
Defendants.)

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Videotape deposition of DR. SUSAN STEPHENS, called as a witness by the Defendant Tabor as if upon direct examination, taken before Thomas M. McGann, a Notary Public within and for the State of Ohio and via videotape, taken at the offices of Dr. Susan Stephens, 5 Severance Circle, Cleveland Heights, Ohio, on Tuesday, the 27th day of February, 1996, commencing at 9:45 a.m., pursuant to agreement.

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APPEARANCES:

NURENBERG PLEVIN HELLER & McCARTHY, by Mr. William S. Jacobson,

On behalf of the Plaintiff;

McNEAL SCHICK ARCHIBALD & BIRO, by Ms. Barbara Moser,

On behalf of the Defendant Tabor;

Mr. Robert A. Ruggeri,

On behalf of Defendant Westlake Cab, et al.

ALSO PRESENT:

Mr. Richard Headley

DR. SUSAN E. STEPHENS

of lawful age, called as a witness by the Defendant Tabor as if upon direct examination, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION

BY MS. MOSER:

Q Good morning. We are here in the case of Peckinpaugh vs. Tabor pending in the Common Pleas Court of Cuyahoga County.

My name is Barbara Moser. I am here on behalf of the Defendant Bernice Tabor. Robert Ruggeri is also here on behalf of the co-Defendants Barry Yow and Westlake Cab Company. And William Jacobson on behalf of the Plaintiff Marilyn Peckinpaugh.

We are here to take the deposition this morning of Dr. Susan Stephens in this matter.

Would you please state your full name for the record?

A Susan Ellen Stephens.

Q And your professional address?

A Where am I now? 5 Severance Circle, Number

304, Cleveland Heights, Ohio, 44118.

Q And your occupation?

A I am an orthopedic surgeon.

Q Dr. Stephens, could you please explain for the ladies and gentlemen of the jury what an orthopedic surgeon is?

A An orthopedic is a doctor who specializes in disease of the bones, the joints, the muscles. They can perform surgery on joints. They can perform neck surgery, back surgery, basically just any joint in the body, any muscle, any nerves, tendons, things like that.

Q And I trust, Doctor, that in order to practice orthopedic surgery you had education and training in that field?

A Oh, definitely.

Q Could you describe a little bit about that training for the ladies and gentlemen of the jury?

A Well, I went to high school in Cleveland. I went to Hawkins. I went to Princeton for college. I went to the University of Pennsylvania for Medical School. I did five years' residency at the busiest hospital in

the country, LA County Hospital, USC. And I did a one-year spine Fellowship at the Cleveland Clinic and I have been in practice here for five years.

Q And I trust that you are licensed to practice in the State of Ohio?

A I am licensed in the State of Ohio and State of California.

Q What years did you receive those licensures?

A Boy. Ohio was '87 and I think California was '87, too.

Q And you have an office here in Cleveland Heights. Do you have offices elsewhere?

A Yeah. One office at St. Luke's medical building next door to the hospital.

Q What hospitals are you affiliated?

A I am affiliated with about seven hospitals. St. Luke's, St. Vincent, the Meridia system, Mount Sinai, University Hospital. That's seven because two of them are Meridia hospitals.

Q And you limit your practice exclusively to orthopedic surgery?

A Exactly.

Q In the course of practicing orthopedic

surgery, Doctor, do you have occasion to examine and treat patients who have been injured in automobile car accidents?

A Yes, I do.

Q Do you also have occasion to examine and treat patients who suffer from chronic orthopedic injuries resulting from either arthritis or osteoarthritis?

A Yes, I do.

Q At the request of a colleague of mine Sherry Croyle, were you asked to examine a Marilyn Peckinpaugh the Plaintiff in this case?

A Yes.

Q Doctor, could you explain briefly what your procedure is when you first see an individual in your office for the first time?

A When I first see an individual in my office whether it's for an independent medical exam or whether it's just a new patient, I try to observe the patient without their really knowing walk from the waiting room into the examining room. And then the patient gets undressed. I go in and I spend time examining the patient from head to toe,

talking to the patient, obtaining their past medical history, their past surgical history, any med's or anything that they may be taking. And then I will get the appropriate X-rays. The patient will get dressed. I'll come back in with the X-rays and discuss the patient's problems and make some recommendations.

Q Now, on the occasion when you saw Marilyn Peckinpaugh the Plaintiff, did you take a history from Miss Peckinpaugh?

A Yes, I did. A rather long history.

Q Could you go through that history that she gave you that day? Could you tell, I don't believe you told us which day it is that you actually saw her?

A I examined her on October 27th, 1995. I stated -- excuse me -- a long history just because she was very depressed during the exam and was crying and I had to spend a lot of time trying to calm her down. She related being in a taxi accident in the back seat and she wasn't quite clear as to how the accident happened but she stated she injured her left shoulder and her chest.

She was initially seen -- stated she was initially seen in the emergency room, X-rays were taken and then she was discharged with some nonsteroidal anti-inflammatory.

Q Doctor, can I interrupt you there briefly?

A Sure.

Q Now you say she was treated in the emergency room. That was at Lakewood Hospital?

A Yes.

Q Did you have an occasion to review the information from Lakewood Hospital?

A Yes. I have the emergency room records and they state in the ER record that she was -- that she had X-rays. She had a chest X-ray and she had a left shoulder X-ray. The shoulder X-ray showed grade 3 AC which is a acromioclavicular joint separation of the shoulder. And that's it. The chest X-ray was negative.

Q Could you describe and explain for all of us, Doctor, what an AC joint separation is?

A Okay. The acromioclavicular joint is a joint in your shoulder. And if you feel where your clavicle meets your shoulder, there is a joint right here (indicating).

And this joint is held together by ligaments. If you got an injury where the ligaments are torn, this clavicle will sit up a little. And so if it just sits up one or two millimeters, it's a grade 1. If it's three or four, it's a grade 2. If it's four or more, then it's a grade 3.

Q Now, you stated the Plaintiff had this condition upon examination and by X-ray in the emergency room?

A Yes.

Q What normally would be the treatment for such an injury?

A Well, AC separations are treated nonoperatively. They are treated conservatively with a sling just to support the shoulder so that there is no pressure on the AC joint. They are usually treated with nonsteroidal anti-inflammatories. Although the deformity may persist, meaning you may be able to see the clavicle raised up a little bit at the joint, usually this condition is painless. Although you can still see the deformity, people still move their shoulders and do their regular jobs

and housework and stuff like that with this condition. The only time you would do surgery for this condition is in high performance athletes.

Q You also mentioned that there were -- was there any other complaints by the Plaintiff at the emergency room other than her shoulder?

A She complained of left chest pain. And so that's why they took the chest X-ray. And they read it as negative.

Q What would be the purpose of taking a chest X-ray if there were left-sided complaints?

A Well, they gave her a diagnosis of left rib contusions. So any time you have a rib -- you made the diagnosis by exam that there is a rib contusion, there is tenderness over the rib. Maybe there is some swelling. Once you get the X-ray, you want to look at the rib to make sure there are no fractures.

Q The X-ray -- an X-ray was taken?

A Yeah.

Q What were the findings on that X-ray?

A No fractures were seen and it was read as a normal exam. No evidence of acute chest

disease.

Q What about relative to any fractures of the rib?

A No fractures were mentioned.

Q Is there an affirmative statement that they appeared intact? On the X-ray report, I believe it is.

A The underlying ribs appear intact. Yes, there is. On 10\8\93 this X-ray was taken in the ER.

Q Did the Plaintiff tell you she had any treatment then after the emergency room?

A Yes. She went to her private medical physician, Dr. Charles Bartley on October 11th, '93 complaining of just left shoulder pain. He treated her with anti-inflammatories and a sling but he -- when I reviewed his office notes, he was more concerned with her right hip joint. Apparently she has longstanding arthritis and he had been trying to get her to go and get some help for her right hip arthritis and wanted her to get hip replacement.

Q Did the Plaintiff then have any further treatment that she told you about?

A She was then sent to a specialist, an orthopedic surgeon Dr. Morris for her left shoulder and her AC joint. He recommended continued conservative treatment consisting of physical therapy and nonsteroidal anti-inflammatories.

Q Doctor, if I could just interrupt you briefly. Before the Plaintiff saw Dr. Morris did she also have an occasion to see Dr. Patel?

A She did see a Dr. Patel. From the notes I had, I believe Dr. Patel just saw her for some physical therapy.

Q Do you recall if Dr. Patel ordered any special X-rays films or any other tests?

A Yeah. I think on October 28th, 1993. This was after the accident and also after the chest X-ray that was taken in the emergency room, she performed a chest X-ray which showed rib fractures.

Q Now, this was the 28th which would have been 20 days after the accident, roughly?

A Right. And 20 days after the initial chest X-ray and ER which did not show rib fractures.

Q And then you stated that Dr. Patel continued with the conservative treatment?
A With the physical therapy.
Q And then, please continue, Doctor. I believe you were telling us about Dr. Morris?
A Dr. Morris wanted Miss Peckinpaugh to have physical therapy, more of an active program to exercise her shoulder and keep the range of motion going but he noted in his note that she wasn't compliant with the physical therapy and was not making her appointments the way that he would have liked her to.
Q Doctor, could you, I think you explained a little bit, what is the purpose of a physical therapy or the type that Dr. Morris prescribed?
A Okay. Any time you injure a joint you get some information. And although the anti-inflammatories help with the inflammation and the pain, you need to keep the joint active. You need to keep it mobile. So physical therapy is usually prescribed for about five weeks to three times per week where you just do gentle range of motion

exercises on particularly the shoulder because it has a tendency to get stiff with really minimal trauma. So you really need to have physical therapy and do the physical therapy and be compliant with the physical therapy to keep up your range of motion. If you don't do this, then you stand the chance of having a stiff shoulder.

Q Okay. Thank you.

Now, I believe you stated that Dr. Morris noted in his records, which you also had an opportunity to review, the Plaintiff was not attending physical therapy as he had hoped?

A Right.

Q Doctor, did the Plaintiff to your knowledge continue to treat with Dr. Morris?

A Yes.

Q Was there any difference in the course of treatment?

A No. Actually there is a note here from Dr. Morris from November 4th, 1995 and he talks about her having minimal therapy after reevaluation and he again stresses that it's imperative that she return for a full course

of physical therapy.

Q Doctor, I am going to hand you a note which is dated from Dr. Morris' chart dated July 10th, 1995. I don't believe you had an opportunity to before today to take a look at that. If you just take a moment to review it again.

A Okay.

Q Now, on July 10th, 1995 apparently the Plaintiff had been in to see Dr. Morris?

A Uh-huh.

Q What were the complaints and findings at that time?

A She was complaining of left shoulder pain and numbness which is paresthesus in her right upper extremity.

Q Had there been complaints to the right arm before this note which is now nearly two years after the accident?

A No.

Q What did Dr. Morris suggest at that time?

A He suggested and I find this very -- as an orthopedic surgeon, I find this hard to believe that he said he considered possible manipulation under anesthesia of the

cervical spine which nobody -- that's not done.

Q What does that mean?

A It means that you would put her to sleep and then you would bend her neck and turn it all around and try to stretch out whatever restricted range of motion she had. And the danger is that when you are awake and you are alert, your body is smarter than you are. It's not going to let you do anything to hurt yourself. So if -- let's say if you bent this much (indicating), it was okay. Your body knows that if you bend 10 degrees more, maybe you will pinch a nerve or something like that, your body is not going to go 10 degrees more. So when you are asleep -- when the patient is asleep, you stand the chance of injuring something. The patient can't say, "Hey, wait a minute. When you bend my neck like that, I have tingling going down my arms or I can't move my arm." That is very dangerous.

Q What did Dr. Morris do -- did he do the cervical range of motion under anesthesia, to your knowledge?

A No. He luckily ordered an MRI. And the MRI was performed, it says here, May 27th, 1995 and showed a large disc osteophyte complex.

Q Had you had an opportunity to review either the report of the MRI films?

A No. I'm not surprised, given the level of her arthritis that I saw on her X-rays when she was in the office. I mean, here he says she has a disc osteophyte complex. And what an osteophyte is is a bony spur from arthritis. And as the bony spur forms, the disc just goes along with it. This is pathology secondary to chronic arthritis.

Q It's not something that occurred following this car accident in 1993?

A No.

Q It's something that she had long before that?

A (Nodding affirmatively.)

Q And continued -- is it a progressive-type condition?

A Yes.

Q Were any additional tests done by Dr. Morris to your knowledge or at his request?

A He said that he was arranging to have an EMG

and nerve conduction study of the right upper extremity.

Q What are those?

A An EMG tests the muscles and a nerve conduction study tests the nerve. And what that tells is if there is any problem with the nerves coming out of the neck or when the nerves come out of the neck, they come out of canals. And if you have osteophytes or any -- osteophytes are arthritic spurs -- pressing on the canal, the canal gets smaller and presses on the nerve. So if you do tests on the nerves, you can assess whether or not there is some compression in the neck or compression in the arm or compression elsewhere.

Q The nerves that come from your neck area, they help you move and feel in your arms, is that correct?

A Right.

Q So if you had a problem with one of these nerves coming out of the neck, your arms would be affected?

A Right.

Q Do you have any information about the

results of those tests if in fact they were done?

A She mentioned in my exam that she had an EMG nerve conduction study which were normal but that's just what the patient said. I don't know.

Q Do you know whether or not Dr. Morris' updated report in November after you saw the Plaintiff mentions those tests? I think that's the report to the left of your chart, the one that you had an opportunity to look at today.

A It shows carpal tunnel syndrome. And what carpal tunnel syndrome is is indeed compression of a nerve but it's at the level of the wrist. This is the carpal tunnel and that's where it's compressed.

Q It doesn't have anything to do with the nerves in your neck?

A No.

Q There is no indication that any of these conditions were somehow related to this accident two or three years before?

A No.

Q Are you aware that the Plaintiff -- did she

tell you she was involved in any other accidents before the one that we are here about today in 1993?

A Yes. She said she was involved in an accident in 1988 and also I believe one of the -- I think Dr. Bartley or Morris, some other physician that examined her also stated she was also in an accident in '88. And in that accident she had trauma to her chest and low back.

When I saw her in the office she stated that this accident in 1988 started her quote-unquote on the road to her arthritis. That's what she said.

Q After you took the history from the Plaintiff, did you then conduct a physical examination?

A Yes, I did.

Q Could you describe that for all of us, please?

A Briefly in terms of permanent positives, in terms of her physical exam, she really didn't have any tenderness about her neck. She had restricted range of motion just to right and left rotation but it's not unusual

for someone her age with her degree of arthritis to have restricted motion.

In regards to her left shoulder, her range of motion was actually very good. She did lack the last 20 degrees of extension and abduction.

Q What does that mean, Doctor?

A It means that instead of being able to raise her arm like this (indicating), she can raise her arm like that (indicating).

There was a notable AC separation but there was really minimal tenderness appreciated over the AC joint. Crepitus was appreciated --

Q What is crepitus?

A -- with range of motion.

People say I hear creaking. When you have arthritis and you move your knee or hip or anything, you hear like creaking. And that's called -- the medical term is crepitus. So she had crepitus or creaking when she moved her left shoulder but she also had it when she moved her right shoulder. She had it when she moved her knees, her hips, everything, because she has

arthritis all over the place.

Her neuro exam of her upper extremities was completely within normal -- was completely normal.

Q What does that exactly mean? I mean, what is a neurologic exam?

A A neurologic exam. Her motor strength was five over five. It was completely normal. Her sensation was intact. Her deep tendon reflexes, you know, when you hit with the hammer and you jump, that was all intact. And you would expect that if someone had some problems in their neck with some radiation into their arms, that their neurologic exam would not be normal in the upper extremities.

In terms of her right hip which was the arthritic hip that Dr. Bartley mentioned, she had a frozen right hip. She had no range of motion in that hip. It was locked in 30 degrees of external rotation and flexion.

Q What does that mean?

A It means that normally when you stand up, you can stand up completely straight. But

her hip is locked in a flexed position. So she can't -- this is the only position she can keep her hip in. So when she sits down, it will be difficult because you kind of have to lean to support the leg when you walk. You will walk more stooped over. You will need an ambulatory aid. She uses a cane in her left hand which aggravates her shoulder and everything else. So she has a very bad right hip.

She also has as I mentioned before crepitus in her knee with range of motion. Her left knee had a flexion contracture, meaning just like the right hip is stuck in a 30-degree flexed position, the left knee is stuck in a 15-degree flexed position. So she has a lot of deformity, chronic deformity on the basis of her arthritis.

Q What about -- after you did the actual physical examination, did you do any additional X-rays or other tests?

A I X-rayed her left shoulder, her neck, her ribs, her chest, her low back, her pelvis, her hips and both of her knees.

Q What did you find as far as the chest films

or the areas in the rib?

A The chest film revealed old healed fractures on the left side, second through the eighth rib. Also noted on the chest X-ray was signs of chronic osteoarthritis of both the right and left joints, shoulder joints.

Q The chest film that you ordered here in the office, those were done at your request?

A Yes. Right here.

Q Was that a similar-type film that would have been done in the emergency room?

A Yes.

Q And on your chest film you were able to see the old healed fractures of 2 through 8?

A Yes.

Q Now, you also I believe stated you took X-rays of the shoulders?

A Right.

Q And can you describe the findings in those X-rays?

A The left and right shoulder revealed osteoarthritis of the shoulder joint on both the right and left side. The left side showed the AC separation. It showed the clavicle raised from the joint.

Q Now, without any type of an accident involved, would a condition such as you saw in that X-ray be one that would be painful or limiting?

A Yes. Arthritis is always painful.

Let me take that back. Arthritis isn't always painful but her degree of arthritis is severe and it would be painful and it would cause symptoms such as those that she complains of.

Q And her right shoulder which was not injured in this accident showed equally severe arthritis?

A Right. Correct.

Q It did not show the separation obviously or deformity?

A Right.

Q Is this type of a condition, the arthritis that you saw on her X-rays a couple of years after the accident, something that occurred within those two years?

A No.

Q It occurred prior to the accident?

A Yes.

Q It was present prior to the accident?

A Yes.

Q What about the neck films, I know you said you took some neck X-rays?

A Her cervical spine films, her neck films revealed severe osteoarthritis. She had decreased disc space. There are seven bones in your neck and between each bone there is a disc space to keep the bone from rubbing on bone and also help with flexion extension. At each of her disc spaces she has decreased disc height, meaning there is bone on bone. She has severe arthritis, so she had bony spurs anteriorly in front of the spine and also posteriorly. Also when you take what are called oblique, different X-rays from both sides of the spine, you can see the canals or the little seven foramen that the nerves come out of and she has bony spurs in each of the canals. So if a canal that is supposed to be this big (indicating) is that big (indicating) and would impinge the nerve or squeeze the nerves that comes out of each of those levels.

Q So what would be the effect of these bones impacting with the nerves?

A It can -- it can range from a spectrum of neck pain to shoulder pain to arm pain to numbness, tingling, weakness, all those things usually happen when you have a nerve root impingement in the cervical spine.

Q In your opinion when you look at these X-rays, this is being caused by the deterioration of her neck due to arthritis?

A Right. Due to longstanding chronic arthritis of years and years.

Q The two years in between the accident in this case did not cause the arthritis --

A No, it did not.

Q -- that you saw?

A No.

Q I believe you took X-rays of the knees and hips?

A Right.

Q Again, briefly, what were your findings relative to those?

A As I stated before, her pelvis, both her hips, her right hip has severe osteoarthritis. The femoral head or the head of the hip is a ball and socket joint, is usually just like a ball but her ball is

flat. It's against the bone. There is no space. There is no joint space like they are supposed to be and the hip is deformed. Instead of being a ball, it looks like a big T and it's pushed up superiorly. And there are cysts, bony cysts and sclerosis which comes from severe osteoarthritis.

On the other side, the left side, is not as severe as the right but she does have decreased joint space. She has osteoarthritic spurs. She has cysts and sclerosis.

Q Again, these are longstanding arthritis conditions?

A Longstanding.

Her knees also showed tricompartmental osteoarthritis. There are three different compartments in the knee and each of these compartments was affected on both sides.

Q You mentioned that her right hip is flexed and locked, basically?

A Right.

Q Her left knee has the same problem and you indicated that she couldn't walk without a

cane?

A Uh-huh. And she had difficulty walking with that.

Q So it was difficult for her to get around?

A Yes.

Q You also mentioned that she had an emotional -- I mean she was very emotional when she was here in the office?

A Yes.

Q Did she describe for you in any way the reason for the fact that she was so emotional?

A She lives in Cleveland Heights. She actually lives around here someplace. She has a house but recently -- not recently but over I think within the past five or 10 years she has gotten divorced from her husband. He wanted her to lose the house but she is determined to keep the house. Her kids want her to move on the west side because they live on the west side but she wants to stay on the east side because her friends are on the east side but she is lonely. She has -- this woman has a lot of medical problems. She knows she needs join

replacements but she is afraid to have them. She hasn't found a surgeon that she felt confident with. She spent a lot of time -- I almost spent two hours with her. My X-ray tech spent time with her, too. We were looking around the office for Kleenex for her. So, I mean, she just -- she has got a lot of problems.

Q The history and physical examination which you just described for us, is this the same type of history and physical examination you would have done on any individual who came to your office --

A Absolutely.

Q -- for treatment?

A Absolutely.

Q Of course you did not treat the Plaintiff?

A No.

Q Based on your history, physical examination and the review of the medical charts that were provided to you, do you have an opinion to a reasonable degree of medical certainty as to what if any injury the Plaintiff Marilyn Peckinpaugh suffered in the accident in October of 1993?

A Yes, I do.
Q What is that opinion, Doctor?
A I believe that she, according to the ER records, that she suffered the left AC joint separation. I do not think that she fractured her ribs because the X-ray report doesn't show that. And although she may have, and according to the record she complained of neck pain, suffered a strain, I believe that her current complaints are significantly out of proportion to her objective findings on physical exam.
Q As far as any of the arthritic conditions, would any of those be related to this accident in October of 1993, the conditions that you saw on X-ray and examination, her limitations of motion in her neck and her knees?
A They could be related to her complaint, yes. Her arthritic condition could and most likely cause her to have the complaint she is having. I mean, normally in AC separations two years out with that good range of motion is not painful. Because she has the underlying shoulder arthritis,

that's why it's painful for her.

Q And, again, to a reasonable degree of medical certainty, it's your opinion that the arthritis was not related or caused by the car accident in 1993?

A No. Certainly not. Because she has it in the uninjured shoulder and also because she has it all over her body.

MS. MOSER: Thank you, Doctor, I don't have any other questions.

THE WITNESS: Yes.

MR. JACOBSON: Good morning, Doctor. Do you want to take a break?

THE WITNESS: Yeah. I had ice tea for breakfast.

(A short break was had).

CROSS-EXAMINATION

BY MR. JACOBSON:

Q Good morning, Doctor. My name is Bill Jacobson and I am one of the attorneys representing the Plaintiff Marilyn Peckinpaugh.

First of all, I have some questions

for you about the rib fractures. Now, the emergency room records that you reviewed at least clinically were consistent with rib fractures, is that correct?

A No. It was consistent with rib contusions. A lot of times you can hit your chest and hit your rib but that doesn't -- I mean, it's just like if you hit your arm and you get a big bruise and it hurts, it doesn't mean the bone is broken.

Q I understand.

A So, no.

Q They weren't inconsistent with rib fractures, were they? In other words, they were consistent with contusions and fractures and they did an X-ray to do further work, is that a fair --

A I think they were inconsistent with rib fractures because usually with rib fractures particularly if you are going to have 2 through 8, that's 2, 3, 4, 5, 6, 7, 8, that's seven rib fractures broken, that person would have difficulty breathing and would be complaining of some respiratory problems and her respiratory rate was

normal. It was 20. And they never documented that she was complaining of any pain with inspiration and expiration. So I believe that this ER exam was consistent with a contusion.

Q Doctor, as a matter of fact, if you have fractured ribs and at that point none of them were displaced, you might be able to breathe normally except for coughing and sneezing, isn't that true?

A I would say that would be true if you broke one rib but if you broke -- how many ribs? I forgot already.

Q 2 through 8.

A Yeah. Okay. But if that seven, seven ribs? You would feel that.

Q So, Doctor, in your medical legal report that you directed to Miss Tabor's report, what you do is that you hypothecate that perhaps there was an accident in between October 8th, 1993 and October 28th, 1993, you indicate such as a fall causing these rib fractures, correct?

A Exactly.

Q Doctor, are occult rib fractures common?

A Occult rib fractures?
Q Yes. In other words, fractures that don't show up on an X-ray.
A I wouldn't say they are common but they are not uncommon.
Q Doctor, would the nature and the quality of the X-ray, would that be a factor in determining whether initially these factors were occult or hidden rib fractures?
A Hidden rib fractures? Usually with occult fractures or fractures that show up weeks later, it's usually one or two. It's never seven. That would be highly, highly, highly unusual.
Q Once again, Doctor, in response to my question, would the manner in which the X-ray was taken and the nature of the X-ray, would that be a determining factor in whether these perhaps were occult fractures, initially?
A I don't think so because they not only did a shoulder film which showed the ribs, they also did a chest X-ray which showed the ribs. So I have the report, so that's what I have to go on.

Q Doctor, the X-ray report says ER satellite. Now, what does that mean? Does that mean it's a portable X-ray?

A No. It means -- usually an ER satellite, it just means if my main office is here and I have another office over at St. Luke's, St. Luke's is my satellite office. It doesn't mean that my equipment is bad or it's less or it's not as good as my equipment here. It makes it sound better. It's a satellite office.

Q Do you know if these were portable films, Doctor?

A I can look. Where is my little marker? Usually if it's a portable, it will say so. I really can't speak on that but, again, just because it's a portable film doesn't mean that it's a bad film. I mean --

Q But a portable film, Doctor, would not be as good as the nonportable or permanent film, is that a generally true statement?

A No.

Q Doctor, what about the views that were taken here? There was an AP view taken --

A Right.

Q -- only, correct?
A AP of the left shoulder and an AP of the chest.
Q Now, in determining whether or not there was a rib fracture, wouldn't you rather -- wouldn't you also like to have lateral views and other views?
A To further elucidate the configuration of the fractures, you can get more views but oftentimes it's not -- usually in the emergency room setting or in any setting, particularly with managed care, you can't order 50 million X-rays. The first thing you do is you get the AP. You know, the patient comes in, you get the chest AP. If you don't see any rib fractures, you are not going to order 50 more rib X-rays when you don't see it.
Q Doctor, I understand that and I am not being critical of the emergency room. The point I am trying to make here is there was only one view done. It would be -- it would better demonstrate the existence or nonexistence of fractures if other views were done, correct? Is that a correct statement,

Doctor?

A No. I would have to disagree. I mean, I think if you have fractures, seven fractures in ribs 2 through 8 which are clearly seen, you know, these are the upper ribs, there is no block or anything else shadowing those -- you know, the heart is not there at 2 through 8, I would think that you would be able to see that on an AP chest.

Q So what you are telling this jury, Doctor, under oath --

A Under oath, yeah.

Q -- is that additional views from different angles of the chest would not any more likely show or demonstrate the existence of rib fractures than show the AP view, is that what you are saying, Doctor?

A I think that's what I am saying in this case, yes.

Q Doctor, prior to making a statement such as perhaps a fall caused these rib fractures, did you ask at any time the attorneys that represented you to view the films yourself, Doctor?

A Did I call them up and say, "I need more

information"?

Q Yes.

A Yes. I always do that.

Q Were you supplied, by the attorneys who retained you, with these emergency room films?

A No. Do you have them?

Q I do not have them for you. That's not my responsibility.

A But I have the X-ray reports and just like you go on all this other report, that's what you have to go on, the written record.

Q Doctor, in the treatment and care of your own patients, do you always rely on the radiologist or do you often view the films yourself?

A It depends who the radiologist is. It depends what the patient's problem is. Something like rib fractures that usually aren't life threatening, that you wouldn't treat operatively anyway, I would go by what the radiologist said. I mean, a medical student can pick out a rib fracture.

Q Doctor, are there some views sometimes that you find in your own practice are inadequate

because of the -- you get a poor shot of the area?

A Of course.

Q Are you in a position to comment to this jury whether or not these films were adequately done?

A Whether the ER films were adequately done? No. But they accepted them. So I would think that in the ER trauma situation where somebody complains of chest pain and you are diagnosing a rib contusion, you are going to pay special attention to the chest X-ray. So I am sure they paid special attention to the chest X-ray.

Q But once again, Doctor, if the quality of the films are poor which they sometimes are, you might have fractures and not see them, correct?

A And also if the patient falls after the accident, she might have had a rib fracture. I mean, if, if, if.

Q Is there any evidence or suggestion, Doctor, that you have that there was a fall between October 8th and October 28th?

A I am of the opinion that this poor woman

probably falls every day of her life. Her right hip is fixed in flexion and her left knee is fixed in flexion. I mean, have you seen her walk?

Q Doctor, between October 8th, 1993 and October 28th, 1993 was there any evidence on this woman of new trauma other than the fact that now we see diagnosed rib fractures? Were there any bruises that had not been there on October 8th, any contusions, anything?

A No. But that doesn't mean she didn't fall. I mean, I really, when I picked that up in the record, I really didn't think it was a big deal.

Q So what you are hypothecating here, Doctor, she comes in, she has got left-sided chest pain, you are hypothecating she had no rib fractures, she had a fall and the only additional trauma that she probably had in that fall was new rib fractures and no other trauma?

A Number one, I am not hypothecating anything or hypothesizing anything. She didn't even complain of chest pain when she came to me.

That was just something that I picked up in the record. She complained of left shoulder pain.

Q But in the emergency room record she complained of chest pain, correct?

A Exactly. So I am just saying that you can fall and you can not have bruises and you cannot have contusions and you can just have all over pain.

Q Doctor, I don't want to dwell on this but in retrospect, Doctor, before you made this statement that this woman perhaps fell causing these rib fractures, shouldn't you perhaps, Doctor, have requested to see the films, the initial films themselves to see if they were adequate, would you have preferred to have done that?

A No. Because I trust the ER record.

Q You don't always trust them in your own patients but you trusted in this patient?

A As I said before, it depends on the situation. Most of the time, I would say 90 percent of the time I do trust the ER record.

Q Do you know this radiologist, Doctor, is

this somebody that you know and trust?

A No. Probably not. But I do trust the emergency room there. I have had lots of patients out of that emergency room and I haven't had a problem. So, you know, in any profession there is a certain level of trust that you have until you get burned and I guess I just haven't been burned yet and I still don't think I have been burned.

Q Doctor, if you have a fracture that is missed and it's not set or bound or wrapped, it will tend to become displaced over time?

A No. Not necessarily.

Q Doctor --

A No. No. Okay?

Q Does it on occasion?

A On occasion, yes.

Q And then when, when it becomes displaced, is it then easier to view on X-ray?

A Yes.

Q Thank you.

Doctor, you had indicated and what I would like to do now is turn to the area of the shoulder separation, if you would. You indicated on your direct examination that

she had a grade 3 AC separation, correct?
A Uh-huh.
Q That's the worst separation, correct?
A Uh-huh.
Q You also indicated that no surgery is done on these unless you are some sort of an athlete, correct?
A Usually unless you are a high performance athlete or you have significant limitation of motion and she doesn't have either one of those things.
Q Now, do you know Dr. Bartley, you quoted from his rccords in your report, Dr. Bartley, the orthopedic surgeon, that she saw him before?
A Do I know him? No.
Q But you had quoted from his records and discussed the significant problem she had at her right hip joint, correct?
A Yes, I did.
Q His records also indicate that he was considering the possibility of a ligamentous reconstruction for the AC separation, correct?
A Which is ridiculous.

Q So Dr. Bartley, Board Certified orthopedic surgeon who has been in practice for 30-some years, he is making a ridiculous suggestion that she would have surgery on her shoulder, correct?

A That she would have a ligament reconstruction of her AC joint? Yes. In a 60-year-old woman with osteoarthritis all over her body using a cane, yes, that is totally ridiculous.

Q But suggesting, Doctor, forgetting about this patient, a ligamentous reconstruction is done for anybody with a shoulder separation other than a high performance athlete is absurd?

A No. No. If someone has a significant limitation of motion, if someone has significant pain coming only from that joint, then you can do a ligamentous repair which just holds the clavicle down. But in someone of her age where if she had problems and if you were to recommend surgery in that joint, it wouldn't be a reconstruction, it would be just cutting out the distal part of the clavicle so it wasn't raised up. I

mean, that would be like, you know, doing a knee ACL reconstruction, you know, on a 65-year-old tennis player who does it recreationally. It is just not -- you just don't do that kind of marginal surgery on someone who is that age with that amount of other problems. Actually, if you have osteoarthritis in your shoulder, it's contraindicated to do ligament repair in an AC joint like that.

Q I understand that, Doctor, but I just wanted -- I just wanted to qualify the statement that you made to Miss Moser on direct exam where you indicated that nobody has this unless they are a high performance athlete. That's not entirely true, is it, in other words, what you said?

A Okay. Well, let me say this then: No one has it done unless they are a high performance athlete. We are talking about ligament reconstruction?

Q Yes.

A Or they are young without signs of osteoarthritis with significant pain at that joint and significant limitation of

motion which she doesn't have.

And getting back to your saying that I disagree with Dr. Bartley who is Board Certified, you know, I'm Board Certified too. So what? Supreme Court Judges disagree with each other and they are all smart. So I just disagree. That would be the wrong treatment. And if you looked at the books, ligamentous reconstruction in that situation would be contraindicated.

Q Doctor, once again, the point I am making here is that some persons who are not high performance athletes and who have a grade 3 separation of the AC joint, some people are appropriate candidates for surgery, correct?

A If they don't have osteoarthritis. If they are not using a cane every day.

Q Doctor, I wasn't entirely sure what exactly you were saying to Miss Moser on your direct examination. Are you saying now that she has no problem from the shoulder separation in her left shoulder or that she does have problems, a stiff shoulder, because she was not compliant with the therapy? What are

you telling us, Doctor?

A I think it's difficult to say, you know, what came first, the chicken or the egg. I mean, she has left shoulder osteoarthritis. She had the AC -- the joint separation. And then now she complains of shoulder pain and she had some restricted range of motion, the last 20 degrees of her shoulder motion. This could all be from her AC separation but most likely it's a combination. It's a combination of her having the arthritis, using the cane, having the tremendous, tremendous forces across that shoulder because her whole body is -- I mean, she is a basket case.

Q So, Doctor, just so I understand what you are telling the jury, is that the combination of problems, the pain and disability in her left shoulder are indeed a combination of her arthritis and the AC separation, correct?

A Exactly.

Q Doctor, those are permanent problems for this woman at this point, correct?

A I would say so.

Q Doctor, certainly -- and, by the way, you saw this patient one time, is that correct?
A One time for two hours. She could be in a crowd of 50 million people and I would pick her out. Believe me.
Q Doctor, I appreciate the time that you spent with her.

Certainly appears as if you gained her trust because she told you her life story.

A And she wanted me to do her joints for her, okay, I think I did. I felt very bad for her.
Q Doctor, you were critical of her for missing physical therapy but she does have some severe family problems and I imagine that you see that in your practice from time to time?
A Uh-huh.
Q That's a fact of life. People miss appointments and miss therapy because they have other things in their life that on that particular day are more important?
A But when you miss something like that, you can't blame somebody else for your problems.

Q I understand our consequences.
A Exactly.
Q But that is a fact of life, Doctor, correct?
A (Nodding affirmatively).
Q Doctor, can trauma in the shoulder or trauma to the shoulder cause arthritis and be a cause of arthritis?
A Yes, it can. But in this case I would expect not to see it in the right side then. You know, this patient has generalized arthritis. She has it in the left shoulder, she has it in the right shoulder.
Q Of course, Doctor, she doesn't really have any right shoulder symptoms to speak of, does she?
A She may but she is not speaking of them.
Q She told you her right --
A To speak of, no.
Q She told you her right shoulder was okay?
A Did she say her right shoulder was okay? I'm looking at my notes. She did -- all I can say she didn't complain of right shoulder pain.
Q Okay. Doctor, being that shoulder trauma can cause arthritis and being that we know

that she has some severe shoulder trauma in this accident, can we say that this accident at least contributed to the development of the shoulder arthritis?

A No.

Q Doctor, if you look at the emergency room records for the shoulder, the records that were done on the date of the accident, there is no mention of arthritis, is there? As of the date of this accident, there is no mention of left shoulder arthritis on these emergency room records?

A So now you trust this radiologist?

Q Or do you now distrust this radiologist, Doctor?

A No. I just think he didn't mention it.

Q Doctor, my question to you with all due respect is: Is there any evidence or any mention in the emergency room records in this woman's left shoulder of arthritis?

A In --

Q On the date of the accident, 10-8-93?

A No.

Q Certainly, Doctor, if this woman had severe and chronic arthritis on 10\8\93, it would

be visible on left shoulder X-ray, correct?

A I would think so. But my X-rays in this office shows that she has it on both the right side and left side, she has it in both hips, both knees, both shoulders, so.

Q Well, Doctor, getting back to my question. On 10\8\93, the date of the accident, there is no evidence or mention of left shoulder arthritis on the X-ray?

A There is no mention of shoulder arthritis. I can't say that there is no evidence, okay, because they didn't --

Q There is no evidence in front of us right now that she had, Doctor, okay?

A It's not stated, so I don't think you can say either way.

Just like you tried to make your point about nondisplaced fractures, I think that if we give you that, you have to give me this.

Q You want to give me that?

A I think you took it, so I'm going to take mine.

Q Doctor, the point I am making here is that there is no mention in these 10\8\93 X-rays

of arthritis. As you mentioned, you took X-rays recently and she did have left shoulder arthritis. Being that's the case, Doctor, can't we at least say that this severe shoulder trauma contributed to the development of arthritis in the left shoulder, isn't that --

A No. No. I mean, I think when you have posttraumatic arthritis and it does exist, it doesn't look like this. You don't see arthritis in the other, in the other, the opposite extremity. I mean, I'd love to give it to you but she doesn't have it.

Q The opposite extremity is not as bad as this extremity, even on --

A No. No. No.

Q -- on clinical exam?

A The X-ray findings for the left shoulder and right shoulder are the same in terms of arthritic finding. The only difference is the AC separation on the left which you know is part of the shoulder complex but not part of the shoulder joint. I mean, when people -- the shoulder joint is my arm moving in the socket. The shoulder complex

is the clavicle sitting in front of it. Okay?

Q Doctor, you mentioned in your report that this woman has some problems ambulating and she is required to use a cane. And that in your opinion probably doesn't help the left shoulder, either, correct?

A Correct.

Q And the problems that she has in her left shoulder, Doctor, conversely, in other words, the problems in her left shoulder we know are a combination of the shoulder separation and arthritis also are going to make it more difficult for her to ambulate because it's going to be painful to use that cane, correct? That's a fair statement, isn't it, Doctor?

A Not exactly. Is that a fair statement?

Q For the most part, Doctor, is that a fair statement?

A You know --

Q In other words, if she's got a bad --

A Can I show you her pelvic films? Do you want to see her hip?

Q Doctor, we can all agree that she's got some

arthritis, some severe arthritis in the lower extremities.

A She's got the worst hip I've seen in my long five-year career in orthopedic surgery.

Q Doctor, people who have those sorts of problems in their lower extremities have to utilize their upper extremities to help them ambulate, correct?

A Exactly.

Q And the fact that she has a bad left shoulder from the combination of factors that we discussed is going to make it more difficult for her to ambulate, that's a fair statement, isn't it, Doctor?

A I mean, what is more difficult than difficult? I mean --

Q Not as easy if she had a perfect left shoulder.

A Come on? This woman can't walk. I don't care if she has the left shoulder of Arnold Schwarzenager, she couldn't walk.

Q Well, Doctor, she is able to walk from the parking lot to your office, correct?

A I mean but I'm saying that she would have difficulty. She has -- you are trying -- I

don't think you can grade the amount of difficulty because I think she is at the end stage of having difficulty walking the way she is now. Do you want me to say instead of being, you know, 90, if you want to give it a hundred points, okay, she has 101 points. Okay?

Q So there is a little bit at least for whatever minute degree more difficult for her to ambulate because of the problems in her left shoulder, correct?

A If you want it to be.

Q In other words, that is your opinion, Doctor?

A Not necessarily. I tried to give you my opinion. You didn't want it.

Q Doctor, I mean, is your answer no? If your answer is no, I'll accept that. I don't agree with it.

A No.

MR. JACOBSON: Pardon me, Doctor.

Can we go off the record for a minute?

(A short break was had.)

Q Just a few more questions, Doctor.

Doctor, your clinical exam of Mrs. Peckinpaugh's neck demonstrated a normal exam, neurologic exam and physical exam, correct?

A She had limited -- let me find that paragraph but I believe she had limited rotation to the right and the left.

Yes. She lacked about, I would say, about 10 degrees of lateral rotation going right and left which isn't unusual for someone with her degree or arthritis.

Q Neurologically the exam was normal, Doctor?

A Uh-huh.

Q Doctor, would your exam be inconsistent with the MRI finding which showed a large C5-C6 disc extrusion to the right side of the foramen in the neck?

A No. Because that MRI showed a disc osteophyte complex and actually there are lots of studies now coming out in all the spine journals where 90 percent of people over the age 30 have disc herniation which are asymptomatic. So just because you have a disc herniation doesn't mean that

something is going to hurt.

Q Doctor, the MRI also demonstrated pressure on the thecal sac as well as the CS --

A That doesn't mean that you are going to have some neurologic findings.

Q So your statement here, Doctor, that your normal neurological findings is consistent with these MRI findings?

A Absolutely. And you can find literature, chapters, everything to back that up.

Q Can you quote me one or two, Doctor?

A Sure. I can quote you a chapter that I wrote in a book.

Q Please.

A On Hardy's book.

What is it? Okay. The epidemiology of low back pain. Scott Bodin. Weizel, Sam Weizel did a study in CT myograms, MRI's and X-rays regarding disc herniation in asymptomatic people. I mean, my specialty is spine. I know this backwards and forwards and this is not unusual.

Q Do you do any shoulder work or arthroscopic work on shoulders, Doctor?

A Do I do arthroscopic work on shoulders? No.

But I do do reconstructive work on shoulders.

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

A I charge more than probably anybody in the City of Cleveland for depositions. I charge $2,000 and I do this because I don't like to do them all that much. So if I am high, I don't get that many. I do one or two IME's a month.

Q Doctor, do you have a separate charge for your report and examination?

A For my report? Oh, yes. Definitely.

Q How much is that?

A It depends on how much time I put into it.

Q How much was your charge for this?

A I am sure I charged a lot because I spent a lot of time with her but I think I did a good job, so that's why I charge a lot.

If you want, I can go ask my secretary if you want me to find out?

Q Please.

Can we go off the record.

(Discussion had off the record).

Q Back on the record.

Doctor, have you determined what your charges were for the report?

A Yes. I charged her $800.

Do I get to ask you how much you charge or what percentage you get of the settlement?

MR. JACOBSON: Doctor, pardon me, I'll move to strike that.

A Or how many new clients you have a month or a day or a week?

MR. JACOBSON: Move to strike that.

Q Doctor, do you do a fair amount of these defense exams?

A No. That's why I charge so much, so that I don't get a lot of lawyers such as yourself calling me up and bogging down my office. IME's, I can enjoy it if I do one or two a month. If I do more than one or two a month, it just becomes a hassle and I can't do a good job.

Q Doctor, is that one or two depositions a

month or one or two IME's?

A IME's.

Q You have done other work for the office that has retained you in this case, is that correct?

A Yes.

Q You do work with them from time to time?

A From time to time.

MR. JACOBSON: I have no further questions.

REDIRECT EXAMINATION

BY MS. MOSER:

Q Doctor, I just have a very few brief follow-up questions.

Mr. Jacobson pressed you repeatedly as to whether or not the complaints the Plaintiff was having or is having or was having when you saw her in '95 with her left shoulder was a combination of the separation and the arthritis. Do you recall those questions?

A Yes, I do.

Q I think you said that it was a combination. On your previous testimony what did you say normally happens with an AC separation?

A Usually with an AC separation, even in older people you usually become painless. I mean, you can see the deformity but you can still, you know, move your shoulder completely and it's not painful.

Q And there was also a considerable amount of discussion about the arthritis in the shoulder?

A Uh-huh.

Q Again, we are speaking about the left shoulder. What was the degree of the arthritis in that shoulder when you examined the Plaintiff in '95?

A Based on X-rays, you mean?

Q Yes.

A I would just say mild to moderate. It's not the worst I've ever seen but it's not the best I have seen, either.

Q She wasn't going to have her shoulder replaced if they do in fact do that kind of surgery?

A No. You do but she doesn't need that.

Q As far as the --

A If her shoulder is being treated correctly, benign neglect, I mean, some physical

therapy, some nonsteroidal inflammatories and you see that no one has dived in there to do surgery, arthroscopy, ligament reconstruction, joint replacement, I mean, her shoulder is being managed appropriately.

Q Now, the rib X-rays, the rib fractures that we discussed, what type of an X-ray unit do you have here, Doctor, that these films would have been done on?

A A normal in-house freestanding X-ray machine.

Q Would that be --

A It's not a portable, no.

Q Would it be comparable to what would be in an emergency room or would those be more sophisticated in the emergency room?

A You know, it's so hard to say. Portable machines vary. I would assume that, you know, it's Lakewood, it's a satellite, it's a new place. I'm assuming that it's an adequate portable machine.

Q Now, the X-rays that you took of the Plaintiff's chest, those were taken two years after the accident?

A Right.
Q Those showed the healed fractures from 2 through 8?
A Right.
Q And that was the same type of chest film that would have been taken in the emergency room immediately after the accident?
A Yes.

MS. MOSER: Thank you. I don't have anything further.

RECROSS-EXAMINATION

BY MR. JACOBSON:

Q Doctor, just a follow-up.

You feel that the treatment, the nonsurgical treatment given to this patient by Dr. Patel and Dr. Morris, the physical therapy for the neck and the left shoulder, that was appropriate and reasonable under the circumstances?

A I said that her nonoperative treatment has been appropriate. The only thing I would say about the physical therapy is that a lot of that PT was just what we call shake and bake. This woman needs active range of motion. And of the notes that I had when I

went through her physical therapy sessions, she had one, two, three, four, five, six, seven physical therapy sessions from November, '93 to April, '94 and only three of those involved active range of motion exercises. The rest was just garbage. It was heat and ultrasound and all that stuff that hasn't been proven to do anything.

Q Do you ever utilize that, Doctor?

A Heat and ultrasound? Absolutely not.

Q Do you ever recommend your patients to use a heating pad?

A At home it's free.

Q So it does have some benefit?

A I think in my hands, in my opinion I think it's more placebo

Q Are we talking now for the neck, Doctor, or shoulder?

A Anyplace.

Q So you don't think ultrasound and the ultrasound --

A It hasn't been proven to help anything. They have done studies and I'm surprised the insurance companies haven't caught on yet. It hasn't been proven to help anything.

MR. JACOBSON: No further questions.

MS. MOSER: Nothing else.

THE VIDEO TECHNICIAN: Doctor, you have the right to view the videotape as well as read the transcript when it's transcribed. Do you waive that right?

THE WITNESS: No, I don't want to torture myself.

THE VIDEO TECHNICIAN: Waiver of filing of the tape?

MR. JACOBSON: Sure.

THE COURT REPORTER: Mr. Jacobson, do you waive the filing of the transcript?

MR. JACOBSON: Yes.

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

I, Thomas M. McGann, a Notary Public within and for the State of Ohio, do hereby certify that the within named witness, SUSAN E. STEPHENS, 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 was reduced by me to stenotypy in the presence of said witness, subsequently transcribed into typewriting under my direction, and that the foregoing is a true and correct transcript of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place as specified in the foregoing caption, and that I am not a relative, counsel or attorney of either party or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, this 1st day of March, 1996.

Thomas M. McGann

Thomas M. McGann, Holland & Associates, Inc.
608 TransOhio Tower, 2000 East 9th Street
Cleveland, Ohio 44115
My commission expires 1\23\98.