

IN THE COMMON PLEAS COURT OF BELMONT COUNTY, OHIO

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SYLVIA LAUTERBACH AND HOWARD)	
LAUTERBACH,)	
PLAINTIFFS,)	
vs.)	CASE NO. 96-CV-154
ANTHONY P. EDEN AND EDEN'S)	
AUTO RANCH,)	
DEFENDANTS.)	
_____)	

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DEPOSITION OF ROBERT J. THOMPSON, M.D., a witness herein, called by the Defendant for direct examination under the statute, taken before me, Stefanie A. Tahyi, Registered Professional Reporter and Terry L. Tahyi, Certified Legal Video Specialist, and Notaries Public in and for the State of Ohio, pursuant to the stipulations of counsel hereinafter set forth at the Neuroscience Center, 855 Bethesda Drive, Zanesville, Ohio, on Sunday, January 23, 2000, commencing at 10:24 a.m.

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1 APPEARANCES:

2
3 ON BEHALF OF THE PLAINTIFFS:

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6 & Prest
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8 P.O. Box 819
9 Steubenville, Ohio 43852

10 ON BEHALF OF THE DEFENDANTS:

11 SCOTT S. BLASS
12 Bordas, Bordas & Jividen
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STIPULATIONS

It is stipulated by and between counsel for the respective parties that the deposition of ROBERT J. THOMPSON, M.D., a witness herein, called for direct examination by the Defendant under statute, may be taken at this time by the Notary by agreement of counsel without notice or other legal formality; that said deposition may be videotaped and reduced to writing in stenotype by the Notary whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the viewing of the videotape and the reading and signature of the said witness to the transcript of said deposition are expressly waived by counsel and the witness, and said deposition to have the same force and effect as though signed by the said witness.

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1 ROBERT J. THOMPSON, M.D.,
2 being first duly sworn, as hereinafter certified,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CALABRIA:

6 Q. Dr. Thompson, good morning. For the ladies
7 and gentlemen of the jury, would you give us your full
8 name and business address.

9 A. Robert Jordan Thompson, 855 Bethesda Drive,
10 the Neuroscience Center, Zanesville, Ohio.

11 Q. And what's your occupation?

12 A. I am a neurologist.

13 Q. And you're licensed to practice medicine in
14 what states?

15 A. Ohio.

16 Q. And, Doctor, do you belong to any
17 professional societies?

18 A. Yes. I belong to the Muskingum County
19 Medical Academy, the Ohio State Medical Association,
20 and the American Academy of Neurology.

21 Q. Could you give the jury a brief review of
22 your educational background?

23 A. Yes. I graduated from the University of
24 Pittsburgh with a B.S. degree in chemistry in 1968. I
25 subsequently graduated from the University of

1 Pittsburgh School of Medicine with an M.D. degree in
2 1972. I completed a one-year medicine internship at
3 Montefiore Hospital in Pittsburgh in 1973. I
4 subsequent -- subsequently completed a three-year
5 residency in neurology at the University of Pittsburgh
6 in 1976, and I have been board certified in neurology
7 since 1976.

8 Q. Doctor, you said you're board certified.
9 What does that mean to be board certified?

10 A. Once he or she completes a certified
11 residency, one then sits for a one-day written
12 examination and a two-day oral examination. If those
13 examinations are successfully passed, one is said to
14 be board certified.

15 Q. And could you give the jury, then, a review
16 of your employment and practice as a physician?

17 A. Yes. Since 1976, I have been in the private
18 practice of neurology in Zanesville, Ohio. This
19 includes office practice, admitting and consultation
20 practice in the hospital. I've also been the medical
21 director of the rehabilitation unit in Zanesville for
22 the last 20 years, and I've been the medical director
23 of the chronic pain management program for the last
24 five years.

25 Q. Doctor, you stated you're a neurologist.

1 Can you tell the jury something about the field of
2 neurology and what a neurologist does?

3 A. Yes. Neurology is a subspecialty of
4 medicine that has to do with injuries and diseases of
5 the nervous system, including the brain, spinal cord,
6 peripheral nerves, muscles, and those supporting
7 structures including the spine.

8 Q. You -- you earlier stated that you were the
9 director for the rehabilitation program here in
10 Zanesville, and you also said you were -- had spent
11 the last five years as a chronic pain management
12 program director. In -- in that role, can you tell
13 the jury what do you do with the kinds of patients you
14 see?

15 A. In the rehabilitation program, we take care
16 of patients who have suffered from severe disabilities
17 such as paralysis from stroke or spinal cord injury or
18 patients who have had multiple orthopedic problems
19 such as multiple fractures, amputations of limbs,
20 joint -- and joint replacements.

21 In the chronic pain management program, we
22 evaluate and treat patients who suffer from chronic
23 pain due to a variety of conditions and teach them how
24 to manage that pain better in their daily lives.

25 Q. As part of your work, then, do you see

1 patients who have been in auto accidents as well as
2 other kinds of accidents?

3 A. Yes, every day.

4 Q. And if you have a patient who's been in an
5 automobile accident and they file a claim as a
6 plaintiff, would you testify for that person?

7 A. Yes.

8 Q. Have you been recognized in courts in Ohio
9 as an expert in the field of neurology?

10 A. Yes.

11 Q. And in fact, have you been recognized in --
12 here in Belmont County Court as an expert in the field
13 of neurology?

14 A. Yes.

15 Q. Now, Doctor, at the request of my law firm,
16 did you have an opportunity to examine
17 Mrs. Lauterbach?

18 A. Yes.

19 Q. And could you tell the jury when that was
20 done?

21 A. May 14th, 1997.

22 Q. It's about what, about two and a half years
23 after the accident I think --

24 A. Yes.

25 Q. -- possibly? And was anybody with her

1 during that examination?

2 A. Yes. Her husband.

3 Q. In broad terms could you tell the jury what
4 do you do when you do an examination?

5 A. First thing I do is talk to the patient
6 about the -- their symptoms, how they were injured,
7 how it affects their lives -- how their symptoms
8 affect their lives. I ask them what treatment they've
9 had and what effect that treatment has had on them. I
10 then ask them about any past medical problems they may
11 have had. After I do this, I will do a neurologic
12 examination and then review records, if any are
13 available.

14 Q. Did you take a history from Mrs. Lauterbach
15 in this case?

16 A. Yes.

17 Q. And generally, what did she tell you then
18 about the -- the accident and so forth?

19 A. She is a 65-year-old lady who was the
20 restrained driver of a vehicle that was rear-ended
21 about two and a half years before I saw her. I asked
22 her if she had any pain at the scene, and she denied
23 that she had any pain anywhere in her body at the
24 scene but described herself as, quote, shook up,
25 unquote.

1 Q. Is that -- is that significant, Doctor?

2 A. Yes. In patients who have severe
3 musculoskeletal injuries such as severe strains or
4 fractures or dislocations or severe injury to the
5 ligaments or muscles, they will experience pain
6 immediately.

7 Patients with milder type of muscle or
8 ligament injuries may have the delayed onset of pain.
9 So the fact that she did not have any pain at the
10 scene would indicate that this was a mild injury.

11 She was able to drive her own car home from
12 the scene. A few hours later she began to experience
13 some pain in her neck and back. I asked
14 Mrs. Lauterbach if she was still having pain two and a
15 half years after the injury; and she stated that she
16 was still having an aching, stiff type of discomfort
17 in her neck and back. The severity of this pain would
18 wax or wane; but overall, as time went by, she
19 actually thought the pain was getting worse.

20 At the time of the accident, she was
21 self-employed operating her own produce stand; and she
22 told me that she was never able to go back to doing
23 this because of her neck and back pain, and this was
24 mainly because she had trouble lifting.

25 I did ask her what she did with herself in a

1 typical day now. She was able to -- she is able to do
2 some washing, cooking. She does some light housework
3 as long as she goes at -- at her own pace.

4 She was unable to put on her own panty
5 hose. She had trouble getting out of the bathtub or
6 vacuuming. Some of the hobbies she engaged in
7 included reading and crocheting, and she enjoyed
8 visiting her daughter in Florida.

9 I asked her about any treatment she had had
10 for this. And she told me that the day after the
11 accident, she saw a chiropractor, Dr. Helfer, and that
12 has been treating with him on a semi-regular basis
13 since then. She also saw another chiropractor, a
14 Dr. Brown, in Martins Ferry. And when she's in
15 Florida, she has a Florida chiropractor that she goes
16 to.

17 She told me she had had some X-rays of her
18 neck but had never had any other diagnostic testing of
19 any kind, and she did take some over-the-counter
20 medications on occasion for pain.

21 I asked her if she had ever had any other
22 trouble with her neck and back in her life; and she
23 told me that when she was in her 20's, many years ago,
24 that she saw a chiropractor in Erie, Pennsylvania, for
25 diffuse back pain. But she denied that she'd ever

1 been in any other auto accidents or had any other
2 significant injuries to her neck and back. And she
3 had otherwise been in good health.

4 I did ask her about other symptoms. She
5 denied that she had any headache, memory impairment,
6 visual loss, jaw pain, or pain in her shoulders. As
7 far as her activity, she is currently retired. She
8 had been on social security for about two months when
9 I saw her.

10 MR. BLASS: I'm going to object and
11 move to strike the reference to the social security.
12 It's irrelevant.

13 A. She did not have a family physician at the
14 time I saw her, although had previously been treated
15 by a Dr. Korthals, who is now retired.

16 Q. Doctor, do you know whether she had been
17 referred by any of the chiropractors to a medical
18 physician or any other person for -- for any injuries
19 she's claiming from this?

20 A. To my knowledge, she had not been referred
21 by the chiropractors to anyone else.

22 Q. Okay. Then you -- did you then conduct a
23 physical examination, a neurological examination?

24 A. Yes.

25 Q. And could you tell the jury what that was

1 and what you did?

2 A. She was a very pleasant lady. Height was
3 5-foot-5, weight was 260 pounds. Her husband was with
4 her during the exam. I did watch her walk back and
5 forth in the exam room and her gait pattern was
6 normal.

7 The range of motion of her back was slightly
8 reduced. When I had her bend forward to try to touch
9 her toes or to bend side to side, that was slightly
10 reduced. I also checked the range of motion of her
11 neck by having her put her chin over on her right
12 shoulder and then over on her left shoulder, down on
13 her chest, and then look up at the ceiling; and that
14 was also slightly reduced in all directions.

15 She did have some mild tenderness when I
16 pushed on the muscles in her neck and low back with my
17 thumb. She reported some mild discomfort, but there
18 was no evidence of any muscle spasm or trigger point
19 tenderness.

20 Q. Is that significant, Doctor?

21 A. Yes. There are more serious conditions in
22 which patients will have evidence of muscle spasm or
23 what we call trigger points which is an exquisite area
24 of tenderness when pushing on it with the thumb that
25 may actually refer pain to other areas; but there was

1 no signs of that, just some mild, diffuse tenderness
2 in the muscles.

3 She was able to get up from a laying down to
4 a sitting position with no difficulty. The straight
5 leg raising test was negative. That's a test with the
6 person laying flat on their back. The doctor lifts
7 their leg straight up. And if they've got any type of
8 nerve injury in the back, they will lift their buttock
9 off the bed or complain of pain; and that test was
10 normal.

11 There was no evidence of any muscle
12 weakness. There was no sensory loss, and there were
13 no reflex changes. These tests are important because,
14 again, in patients who have had -- who have a pinched
15 nerve in the neck or back, we will usually be able to
16 find abnormalities in that part of the exam; but that
17 part of the exam was normal.

18 Q. Doctor, in addition to your exam, were you
19 able to review other records or materials that were
20 provided to you?

21 A. Yes. I did have the records from Dr. Helfer
22 who was the chiropractor who had seen her and also
23 some records from a Dr. David Ghaphery who had seen
24 her.

25 Q. And were I -- was I able to provide you with

1 the records also from Dr. Howells who, I believe, is a
2 chiropractor who had -- is now treating her?

3 A. Yes. You gave me those records today just
4 before this deposition.

5 Q. Regarding the -- the records and other
6 materials you reviewed, was there anything in there
7 that you thought was significant in relating to your
8 opinions and findings?

9 A. Yes. Dr. Helfer had filled out a form on
10 August 25th, 1995, concerning Mrs. Lauterbach's
11 condition; and this was almost a year after the
12 injury. In that form Dr. Helfer gave the opinion that
13 she did not have any restrictions or disability as a
14 result of the -- the injury. And he also noted that
15 she had not missed any work as a result of this
16 accident.

17 I also reviewed the records -- his office
18 notes from October of '94 to October of '95 during
19 which he had treated her over that year, and there did
20 not appear to be any significant change in her
21 symptoms over that period of time.

22 I also reviewed some records from a
23 Dr. David Ghaphery who saw her in June of 1996 after
24 she fell down and struck her left leg and left
25 shoulder. And there was no mention in Dr. Ghaphery's

1 records of any back or neck pain.

2 Q. Dr. Thompson, based on your review of the
3 medical records that have been provided and your
4 physical exam and based on your education, and your
5 training, your experience, I want to ask you some
6 questions and elicit your opinions regarding
7 Mrs. Lauterbach's medical condition.

8 First of all, do you have an opinion,
9 Doctor, to a reasonable degree of medical certainty as
10 to whether or not Mrs. Lauterbach sustained any injury
11 as a result of the auto accident that occurred with
12 Mr. Eden on October 4th, 1994?

13 A. Yes.

14 Q. And what's your opinion?

15 A. I think that Mrs. Lauterbach did suffer a
16 mild cervical and lumbar muscle strain in this
17 accident.

18 Q. And why do you hold that opinion?

19 A. Even though she did not have any symptoms at
20 the scene at all, it's not uncommon for people with
21 very mild injuries to have the delayed onset of
22 discomfort such as several hours later.

23 Also, from the very mechanism of what
24 happened, that is the fact that her car got
25 rear-ended, it's not uncommon for people to have some

1 strain of the muscles in the neck and back. So for
2 this reason -- for these reasons, I do think she
3 suffered muscle strains in this accident.

4 Q. Doctor, do you have an opinion, again, to a
5 reasonable degree of medical certainty as to whether
6 or not Mrs. Lauterbach should have recovered from
7 these injuries by the time you had seen her and
8 certainly by today at the time of this deposition?

9 A. Yes.

10 Q. And what's that opinion?

11 A. I would have expected complete recovery from
12 these mild muscle strains within six to eight weeks.

13 Q. And can you tell the jury why you hold that
14 opinion?

15 A. In my experience, the natural history from
16 recovery of these types of muscle strains is for
17 complete recovery within that period of time. Also,
18 these were very mild muscle strains. There was
19 absolutely no pain at the scene of the accident which
20 we see in more severe muscle strains or ligament
21 injuries. The pain didn't start until several hours
22 later.

23 Also, there was no -- there was no evidence
24 of more severe injury that would be expected to cause
25 pain more than six to eight weeks. That is, there was

1 no evidence of a fracture, joint dislocation, or
2 herniated disk.

3 Also, when I examined her two and a half
4 years after the accident, there were no objective
5 findings when I examined her that revealed any injury
6 that would reasonably be expected to cause persistent
7 symptoms years after the accident.

8 Q. Doctor, do you have an opinion to a
9 reasonable degree of medical certainty as to whether
10 or not the treatment that's been rendered to
11 Mrs. Lauterbach in this case was reasonable and
12 necessary?

13 A. Yes.

14 Q. And what's that opinion?

15 A. I certainly think that chiropractic
16 treatment or medical treatment rendered for a period
17 of time, such as six to eight weeks, was reasonable
18 and appropriate. But I certainly do not think that
19 treatment rendered beyond that time for mild muscle
20 strains was reasonable.

21 Also, Mrs. Lauterbach has continued with
22 this chiropractic treatment for years after the
23 accident even though she reports that her symptoms, if
24 anything, are getting worse. So it doesn't make any
25 sense to me to continue with treatment -- with any

1 type of treatment, be it medical, chiropractic, or
2 surgical, if the symptoms are worsening under this
3 treatment.

4 Q. Finally, Doctor, do you have an opinion to a
5 reasonable degree of medical certainty as to whether
6 or not Mrs. Lauterbach should continue -- or have a
7 need for continuing future medical or chiropractic
8 care?

9 A. Yes.

10 Q. And what's that opinion?

11 A. I was unable to find any findings that lead
12 me to think she needs any ongoing or future medical,
13 chiropractic, or surgical treatment related to this
14 accident.

15 MR. CALABRIA: Thank you, Doctor. I
16 have no other questions.

17 MR. BLASS: Let's go off the record.
18 I'm going to need to look at his file.

19 VIDEOGRAPHER: We're going off the
20 record at 10:42:07.

21 (OFF THE RECORD.)

22 VIDEOGRAPHER: We're going back on the
23 record at 10:44:15. Go ahead.

CROSS-EXAMINATION

BY MR. BLASS:

Q. Dr. Thompson, as you know, my name's Scott Blass. I represent Mrs. Lauterbach and her husband in this lawsuit. The jury, hopefully, will recognize my voice. At the time they see this video, they won't see me or Mr. Calabria on camera.

I'm going to ask you some questions to follow up on some things that Mr. Calabria has asked you about today. You've given me the opportunity to review the materials in your file. And I -- I noted you were looking at those quite -- at least your report when testifying on direct. First, let me ask you, is that your entire file that you have generated with respect to Mrs. Lauterbach?

A. Yes.

Q. And nothing's been removed from that file?

A. No.

Q. That's everything you've been provided or you have created yourself?

A. Yes.

Q. I did note that when you were answering Mr. Calabria's questions, you were looking at some documents in your file. Would it be fair to say that you don't have an independent recollection of your

1 exam with Ms. Lauterbach since it occurred nearly
2 three years ago now?

3 A. Yes.

4 Q. With respect to the materials you have been
5 provided, did you look at the materials before you met
6 with Ms. Lauterbach?

7 A. No.

8 Q. I want to review a few of the things that
9 you were provided. It looks like you were provided
10 with some records from Dr. Helfer. Correct?

11 A. Yes.

12 Q. Some records from St. Clairsville Clinic?

13 A. Yes.

14 Q. And some records from Dr. Ghaphery?

15 A. Yes.

16 Q. Okay. Now, the records from St. Clairsville
17 Clinic and Dr. Ghaphery don't have anything to do with
18 the injury she suffered in this collision. Correct?

19 A. Yes, that's correct.

20 Q. So the only thing that you have that you've
21 reviewed in connection with your involvement with the
22 injury she had in this wreck were the records from
23 Dr. Helfer and today you got records from Dr. Howells
24 from Missouri; is that right?

25 A. Yes.

1 Q. Ms. -- you were not provided by the defense
2 in this case a copy of Ms. Lauterbach's deposition
3 testimony?

4 A. No.

5 Q. You were not provided with a copy of the
6 accident report?

7 A. No.

8 Q. Do you even know what kind of vehicle
9 rear-ended Mrs. Lauterbach?

10 A. No.

11 Q. You don't know how much that vehicle
12 weighed?

13 A. No.

14 Q. You don't know how fast that vehicle was
15 going?

16 A. No.

17 Q. Were you provided with any photographs of
18 the vehicles in the collision?

19 A. No.

20 Q. You don't know how much property damage was
21 done out of that?

22 A. No.

23 Q. Any idea how Mrs. Lauterbach was positioned
24 in the vehicle when the impact occurred?

25 A. Yes. She told me she was turned in her seat

1 looking to the left.

2 Q. And that's based on what she told you.

3 Correct?

4 A. Yes.

5 Q. What about her -- what about

6 Mrs. Lauterbach's recorded statement? Were you
7 provided -- you weren't provided with that either or a
8 transcript of that?

9 A. No.

10 Q. How about the deposition of Mr. Eden?

11 A. No.

12 Q. How long did you spend in the same room with
13 Mrs. Lauterbach?

14 A. I -- I wrote down the time I went in and
15 went out, and I spent a little over half an hour face
16 to face with her.

17 Q. And who selected you to become involved in
18 this case?

19 A. Attorney Joe Prest.

20 Q. Have you done work for Mr. Prest or his firm
21 in the past?

22 A. Yes.

23 Q. Do -- on how many occasions? Do you know?

24 A. I don't know. I haven't -- I haven't done
25 any in about three years -- two or three years, a

1 while.

2 Q. Well, this was about three years ago. How
3 about back then?

4 A. I did some for them back then, but I
5 haven't -- I haven't done any in recent years.

6 Q. Okay. You did not develop a -- even a
7 physician-patient relationship with Mrs. Lauterbach;
8 is that right?

9 A. That's correct, yes.

10 Q. Now, this type of work where you're asked by
11 someone else other than the patient to conduct an
12 examination, how much of that type of work do you do?

13 A. I would estimate I see about three or four
14 patients a week that are referred by attorneys for
15 this type evaluation.

16 Q. And how much does it cost for that type of
17 an evaluation?

18 A. There's a range depending on how much time I
19 had to spend. In this case the charge was \$600 for
20 seeing her and reviewing the records and preparing a
21 report.

22 Q. How many pages of records actually related
23 to this wreck? Can you actually count those up?

24 A. 12 pages.

25 Q. And your report was three pages?

1 A. Yes.

2 Q. And you spent a little over half an hour
3 with Mrs. Lauterbach?

4 A. Yes.

5 Q. And the charge for that was \$600?

6 A. Yes.

7 Q. And how much -- how much is it for the time
8 you spend for depositions?

9 A. I charge \$800 for the first hour and \$400
10 for every hour after that.

11 Q. Does that include -- does that time include
12 the time that you met privately with Mr. Calabria
13 immediately before we began today?

14 A. Yes.

15 Q. And how long was that?

16 A. About 20 minutes.

17 Q. And how many depositions do you give on
18 average --

19 A. I would --

20 Q. -- in connection with this type of work?

21 A. I would average about one a month, 12 to 15
22 a year.

23 Q. Okay. In 1998, you gave, I think, 25. Do
24 you recall that?

25 A. I can't recall the exact number, but --

1 Q. Okay. Let me give you a document we'll mark
2 as Exhibit A to your deposition. Can you identify
3 that?

4 A. Yes.

5 Q. And what is that?

6 A. This is a letter that I generated for -- at
7 your request in February of 1999 in which I had
8 estimated in a deposition I had done with you that I
9 had done 17 depositions in 1998. And you asked me to
10 get an actual count. And when we did the count, I did
11 25 depositions in 1998.

12 Q. Okay. Then I think you have indicated you
13 did about approximately the same amount in 1999?

14 A. I -- I do somewhere between one to two a
15 month so maybe 20 a year.

16 Q. And so you do three to four of these types
17 of exams for attorneys per week, is it?

18 A. Yes.

19 Q. So that's between 150 and 200 a year?

20 A. I would estimate it's about \$150,000 a year
21 for doing independent medical exams, yes.

22 Q. I was simply talking about the number of
23 exams themselves was -- would be 150 to 200 a year.

24 A. I'd have to do the arithmetic, but I --

25 Q. But --

- 1 A. I think that's a fair --
- 2 Q. But you had indicated somewhere --
- 3 A. Fair estimate.
- 4 Q. -- 150 to \$200,000 a year for just this type
- 5 of work?
- 6 A. Well, if you include independent medical
- 7 evaluations and -- and depositions, I -- I think
- 8 \$150,000 a year would be a reasonable estimate, yes.
- 9 Q. And you don't give these people any advice,
- 10 any medical advice. Correct?
- 11 A. No.
- 12 Q. You don't prescribe any medication for
- 13 them?
- 14 A. No.
- 15 Q. You don't schedule any follow-up
- 16 appointments for them?
- 17 A. No.
- 18 Q. With regard to your involvement, again, with
- 19 Ms. Lauterbach's situation, you'd indicated that it
- 20 was important to you or -- I'm sorry, you didn't say
- 21 important. I think you said significant -- that
- 22 she -- or that she didn't have any pain at all at the
- 23 scene of the accident. Correct?
- 24 A. Yes.
- 25 Q. All right. And your under -- it's your

1 recollection from -- from reviewing your report that
2 that's what she told you when she saw you. Correct?

3 A. Yes.

4 Q. But you haven't seen the accident report?
5 You don't know what the accident report says about any
6 injuries at the scene?

7 A. That's correct, yes.

8 Q. And I didn't see in your records where you
9 had been provided with a copy of -- there was one
10 question there I think you testified about a copy of
11 the questionnaire that Mrs. Lauterbach completed. It
12 looks like there are actually two of them. One is
13 patient information. One's an auto accident
14 information. They're both dated October 5th, 1994.
15 I'll let you take a look at those. You've not seen
16 those before?

17 A. I don't believe so, but if you'll let me
18 just take a quick glance through here. That's
19 correct. I have not seen these before.

20 Q. Both of those documents were completed the
21 day after this wreck. Do you see that?

22 A. Yes.

23 Q. And both of those documents indicate that
24 Mrs. Lauterbach reported the day after the wreck that
25 she did have pain immediately at the scene, do they

1 not?

2 A. You'll have to help me on this one because

3 I --

4 Q. Okay.

5 A. I -- I just don't see where it's --

6 Q. Hand me -- hand me the auto accident
7 information form. I'll show you where it is on that
8 first.

9 MR. CALABRIA: Do you have a copy of
10 that, Scott?

11 BY MR. BLASS:

12 Q. On symptoms from the accident, it says:
13 Describe how you felt immediately after the accident.
14 Right here. (INDICATING.)

15 A. Yes. It says, Question: Describe how you
16 felt immediately -- immediately after the accident.
17 Felt kind of dazed. My neck and back felt kinda stiff
18 and sore.

19 Q. And then on the -- on the form described
20 patient information, current health condition, it
21 talks about -- explain how and when your problem came
22 about. And she says through the accident. Is that
23 right?

24 A. Question: Explain how and when your problem
25 came about. Through the accident.

1 Q. And again, you were not provided with copies
2 of those materials. Correct?

3 A. That's correct, yes.

4 Q. And you were not provided with a copy of her
5 deposition or the recorded statement that she gave?

6 A. Yes, that's correct.

7 Q. So you don't know if -- you don't know what
8 she said about when her problems started then.

9 Correct?

10 A. That's correct, yes.

11 Q. Now, you had talked in terms of your
12 opinions being to a reasonable degree of medical
13 certainty. Tell me what you understand that to mean.

14 A. My understanding of the legal definition of
15 that is more likely than not.

16 Q. Okay. And is it -- you had indicated that
17 to a reasonable degree of medical certainty,
18 Mrs. Lauterbach should have recovered. Correct?

19 A. Yes.

20 Q. And what is the -- and when you say should
21 have recovered, am I correct in interpreting your
22 opinion as that you recognize that she has not
23 recovered?

24 A. She still has subjective complaints of pain
25 which she attributes to the accident.

1 Q. Okay. Do you have an opinion to a
2 reasonable degree of medical certainty what those --
3 what those complaints of pain are, in fact,
4 attributable to, if not this accident?

5 A. No.

6 Q. You don't -- you haven't been provided with
7 any information by the defense that would indicate
8 that her problems that she has reported since this
9 accident preexisted her wreck of October 4th, 1994?

10 A. No, except that in her 20's she had had a
11 lot of chiropractic treatment for back problems. But
12 other than that, immediately before the accident,
13 there was no history of any neck or back problems.

14 Q. In your -- you -- you also indicated to the
15 jury, I believe, that you are involved in running a
16 chronic pain management facility here?

17 A. Yes.

18 Q. And you, in fact, yourself have treated
19 individuals that have suffered cervical and lumbar
20 strains that have developed chronic problems, have you
21 not?

22 A. Very rarely, but yes.

23 Q. And so you recognize that not all
24 individuals do recover?

25 A. No, 95 percent of the time, patients with

1 mild muscle strains recover; but there are a small
2 percentage of patients who have persistent symptoms.

3 Q. And have you ever done any -- or have you
4 ever done any studies to determine if the positioning
5 of the occupant in the vehicle makes a difference with
6 regard to whether they develop chronic problems or
7 not?

8 A. No.

9 Q. Have you ever read any studies like that?

10 A. There have been various conflicting studies
11 in the medical literature that I have read about that,
12 but it's a controversial issue.

13 Q. The individuals that you treat, these what
14 you've characterized as rare individuals that do
15 develop chronic problems, what type of treatment do
16 you render to them?

17 A. We teach them to do therapeutic exercises to
18 maintain flexibility and reduce stiffness and
19 discomfort. We teach them a technique called
20 biofeedback relaxation which is almost kind of a self-
21 hypnosis in an attempt to reduce discomfort.

22 And psychologically, we teach them to try to
23 keep a positive outlook just -- just like we would
24 with anyone who suffers from chronic pain.

25 Q. And do you recommend that they take

1 over-the-counter medication when they have flare-ups
2 of their pain?

3 A. I try -- we try to avoid medications as much
4 as possible. But certainly, I would not object to
5 taking non-narcotic, over-the-counter medications if
6 required.

7 Q. One -- one thing I forgot to ask you. Do
8 you consider yourself an expert in the field of
9 chiropractic medicine?

10 A. No.

11 Q. With respect to the patients -- these rare
12 patients that you see who don't recover from these
13 cervical strains and sprains, do you find that the age
14 of the individual who suffered this type of injury
15 makes a difference?

16 A. As -- yes, as far as the recovery period.
17 For instance, in her case I said six to eight weeks.
18 Normally, with mild muscle strains, we would expect
19 recovery in a few days or maybe two to four weeks.
20 But since she was in her 60's, I gave her the benefit
21 of the doubt and said six to eight weeks which is
22 longer than I would normally say for this type of
23 injury.

24 Q. I'm referring to the people that you see in
25 part of your -- as your duties in the chronic pain

1 management clinic, the individuals you've said that on
2 this rare occasion develop chronic problems. Do you
3 notice that there's any correlation between those --
4 the age of those persons, whether older people seem to
5 have a harder time recovering from these types of
6 injuries?

7 A. No. The older patients may have pain for a
8 few days or weeks more; but certainly, there's no
9 correlation with long-term pain in regards to age.

10 Q. Do individuals with this type of injury
11 that -- that do develop chronic problems customarily
12 have problems with lifting and bending?

13 A. Well, anyone who has chronic pain in their
14 back has trouble with lifting and bending, yes.

15 Q. And you noted that that was one of
16 Mrs. Lauterbach's complaints. Correct?

17 A. Yes.

18 Q. And you also noted on your exam that she had
19 limited range of motion when she attempted to bend at
20 her lumbar spine; is that right?

21 A. Yes.

22 Q. And she also had that limited range of
23 motion in her neck as well, did she not?

24 A. Yes.

25 Q. And those are also findings that are

1 consistent with individuals that have developed
2 chronic problems from cervical and lumbar strains; is
3 that right?

4 A. Yes. But in her case with her age, we
5 almost always see some restriction in the neck. And
6 with her -- with the mechanical limitations of her
7 waist line, in her case that would impair her range of
8 motion of her back.

9 Q. And -- but yet her age shouldn't have
10 anything to do with her developing chronic problems I
11 thought you'd indicated?

12 A. The age has a lot to do with decrease in
13 range of motion. But I had testified earlier that
14 people who are older may take a few days or weeks
15 longer to recover from muscle strains than a younger
16 person.

17 Q. How long does the actual hands-on exam last
18 with regard to a situation like Mrs. Lauterbach's?

19 A. For me to examine someone's neck and back
20 and do a neurologic exam for this type of problem, it
21 would take about 15 minutes.

22 Q. So as a result of the 15-minute exam that
23 you conducted with Ms. Lauterbach, you did conclude
24 that she was injured in this wreck on October 4, 1994;
25 is that right?

1 A. No. My opinions were based on the history I
2 obtained from her, the physical examination, and the
3 review of records, not just the examination.

4 Q. As a result of the examination and as a
5 result of reviewing the records and obtaining a
6 history from her, you did conclude that she was
7 injured in this wreck, did you not?

8 A. Yes.

9 Q. And she -- and you recognized that her
10 symptoms had been relatively consistent since the time
11 of the wreck -- correct -- lumbar pain and neck pain?

12 A. No. Actually, she told me that she was
13 getting worse as time went on; and they weren't --
14 they weren't the same.

15 Q. Okay. And did -- did she indicate to you
16 that she -- she derived no benefit from the
17 chiropractic care that she received?

18 A. She just indicated to me that she'd been
19 receiving chiropractic care; but that overall, even
20 though she had good days and bad days, her
21 conditions -- her condition was getting worse as time
22 went on.

23 Q. Did you ask her if the chiropractic care
24 helped her?

25 A. Yes.

1 Q. And what did she say?

2 A. She indicated that she had good days and bad
3 days; but overall, she was -- thought she was getting
4 worse despite getting the ongoing chiropractic care.

5 Q. And would it surprise you to learn that
6 three months before she testified under oath that the
7 chiropractic care did help her and helped her
8 function?

9 A. I -- I was not privy to that deposition. I
10 only know what she told me.

11 Q. Did -- did you happen to record your
12 interview with her?

13 A. Yes. Oh, you mean tape record?

14 Q. Yeah.

15 A. No. I took some notes, but I didn't --

16 Q. Was -- was Mr. Lauterbach in the room --

17 A. Yes.

18 Q. -- when you interviewed her?

19 A. Yes.

20 Q. So he'd also be able to -- he was actually
21 physically present, able to hear what questions were
22 asked and answers were given?

23 A. Yes.

24 Q. All right. Now, you didn't give her any
25 medical advice at all; is that correct?

1 A. That's correct, yes.

2 Q. You didn't tell Mrs. Lauterbach what she
3 should or shouldn't avoid doing?

4 A. That's correct, yes.

5 Q. You didn't prescribe any medication for her?

6 A. No.

7 Q. You didn't tell her if you thought her
8 treatment was appropriate?

9 A. No.

10 Q. You didn't tell her any additional things
11 she might do to alleviate the problems with her back
12 and neck?

13 A. No.

14 Q. In addition to the 15-minute exam and how --
15 and you -- you did review some records, how much --
16 how long did it take you to review the 12 pages of
17 records that you had?

18 A. I would estimate to review these records and
19 do a narrative report, took me about an hour or so.
20 All told, I had about an hour and 40 minutes in the --
21 in reviewing this case.

22 Q. An -- an hour and 40 minutes?

23 A. Yes. I spent 37 minutes with her face to
24 face and approximately about another hour reviewing
25 the records and preparing a report.

1 Q. And we're here today at your office in
2 Zanesville; is that right?

3 A. Yes.

4 Q. And today's date is -- it's a Sunday on
5 January 23rd?

6 A. Yes.

7 Q. Do you temporarily do this type of work on
8 weekends, Sundays?

9 A. No. Typically not Sundays.

10 Q. When's the --

11 A. Sometimes Saturday.

12 Q. Do you -- what's your schedule like February
13 the 4th of this year?

14 A. February 4th, I should be in town. I -- the
15 reason we're doing the deposition today is because I'm
16 going to be out of town next week, and this was the
17 only time I could do it. I'm just getting back on
18 February -- I believe February 4th. What day of the
19 week is that? I forget.

20 Q. The 3rd is a Thursday, and the 4th is a
21 Friday I think.

22 A. I'm getting back, I believe, Wednesday of
23 that week.

24 Q. To a reasonable degree of medical
25 certainty -- or I'm sorry. Do you have an opinion to

1 a reasonable degree of medical certainty of what is
2 presently causing -- or what was causing
3 Mrs. Lauterbach's symptoms of which she complained at
4 the time she saw -- she saw you?

5 A. No.

6 Q. And you, of course, don't have any idea what
7 her situation is now other than what's reflected in
8 Dr. Howells' records; is that right?

9 A. Yes, that's correct.

10 Q. You indicated she told you that she has good
11 days and bad days. Did you ask her whether she was
12 having a good day or a bad day on the day you examined
13 her?

14 A. No.

15 Q. You indicated you didn't find any muscle
16 spasm. Correct?

17 A. Yes.

18 Q. Is muscle spasm -- do you want to describe
19 for the jury first what that is?

20 A. Muscle spasm is literally a cramp within the
21 muscle itself. It's seen during the acute phase of
22 injuries and then gradually is replaced by muscle
23 tenderness.

24 Q. You -- you found muscle tenderness.
25 Correct?

1 A. Yes.

2 Q. Two and a half years after the wreck, you
3 found that?

4 A. Yes.

5 Q. And you don't find anything in her records
6 that were generated before this wreck to indicate that
7 she had muscle tenderness in the ten years before the
8 wreck?

9 A. No. I don't believe I had any records --
10 any of her medical records prior to the wreck.

11 Q. You had indicated that one of the records
12 you reviewed was -- or you had reviewed two sets of
13 records that didn't have anything to do with the
14 injury she suffered in this wreck, the St. Clairsville
15 records -- clinic records and Dr. Ghaphery's records.
16 Correct?

17 A. Yes.

18 Q. Dr. Ghaphery's records were generated as a
19 result of a fall she had, and she injured her -- she
20 hurt her shoulder and her leg; is that right?

21 A. Yes.

22 Q. No reflection in those records whatsoever
23 that her problems with her back and neck were
24 aggravated by that fall, is there?

25 A. Yes. In fact, there was no -- no complaints

1 of neck or back pain of any kind after that fall, no.

2 Q. So she -- there's nothing to suggest that
3 her -- the injury she suffered in this wreck were
4 aggravated by that fall?

5 A. Absolutely not.

6 Q. Now, with respect to the type of care that's
7 being provided to her presently, do you have any idea
8 what type of care Dr. Howells is rendering to her?

9 A. I -- I know he's a chiropractor, and I
10 generally know what -- what chiropractors do.

11 Q. But you don't know what he's doing?

12 A. But again, I'd have to look again to see
13 specifically what he's doing.

14 Q. Who's to say that Mrs. Lauterbach isn't just
15 one of these individuals that unfortunately doesn't
16 recover from this type of chronic -- or this type of
17 strain or sprain? What can -- I mean, she may very
18 well be one of these people; is that right?

19 A. Only Mrs. Lauterbach knows for sure if she
20 is truly having pain. My testimony is that normally
21 in the vast majority of cases after mild muscle
22 strains, people recover completely. And the jury is
23 just going to have to decide based on the testimony
24 they've heard whether she's one of these rare
25 individuals who may still be having some discomfort as

1 a result of muscle strains suffered almost six years
2 ago.

3 Q. So with -- with respect to her situation, if
4 she, in fact, is still having the symptoms of which
5 she complains, more likely than not, they -- those
6 symptoms resulted from her vehicle being rear-ended
7 back in 1994?

8 A. With that question, I think you're asking me
9 to speculate a little bit which I'm willing to do.
10 But I would think that it would be more likely due to
11 her age, advancing arthritis that's causing some of
12 the discomfort and symptoms that she has rather than
13 this mild muscle strain that should have recovered in
14 a matter of weeks.

15 Q. What evidence do you -- do you have that she
16 has arthritis?

17 A. Just her age, that everyone in their 60's --
18 when I say everyone, 98 percent of people when they
19 get into their 60's have some degree of arthritis in
20 their neck and back.

21 Q. Does arthritis generally cause muscle
22 spasms?

23 A. It can when you get acute flare-ups.

24 Q. Does it generally cause muscle spasms?

25 A. Yes, it can when you get acute flare-ups of

1 arthritis; but not -- I mean, not usually. I mean,
2 usually you just get aching and stiffness.

3 Q. Now, with -- with respect to
4 Mrs. Lauterbach's situation, the symptoms that she
5 has, of course, are subjective. She's indicating to
6 you that she has this pain in this area and you found
7 points of -- you found areas of tenderness in the
8 places where she had -- was complaining about; is that
9 right?

10 A. Yes.

11 Q. All right. And with respect to these
12 subjective complaints, those are complaints that you
13 rely on daily in diagnosing and treating people, do
14 you not?

15 A. Yes.

16 Q. You rely on those in accepting people into
17 your chronic pain clinic, do you not?

18 A. Yes. Complaints are one thing that I rely
19 on, yes.

20 Q. So how much time -- you said you had about
21 an hour and 40 minutes in the exam, and the
22 preparation of the report; and you met for about 20
23 minutes with Mr. Calabria privately immediately before
24 you came in here. And we've been in here for about an
25 hour now. So an hour and 20, an hour and 40, you're

1 about three hours total in connection with
2 Mrs. Lauterbach's case?

3 A. Yes.

4 Q. And that's going to result in charges of
5 about 1,800 to \$2,000?

6 A. Well, let's see. We've been -- it's 11:15
7 so it would be \$600 plus \$800 for the first hour.
8 That would be \$1,400. And we've got about half an
9 hour over so it would be about \$1,600, yes.

10 Q. Actually about 1,800. If you have 800, 600,
11 that's 1,400, plus \$400 for a half hour -- another
12 half hour. It's about \$1,800?

13 A. Depends on how long we go, yes.

14 Q. All right. And with -- with respect to the
15 \$1,800 in charges in connection with just this case,
16 you -- you're able to opine to a reasonable degree of
17 medical certainty that Mrs. Lauterbach was injured
18 when her vehicle was rear-ended. Correct?

19 A. I'm -- I'm sorry. Repeat that first part of
20 that question.

21 Q. With respect to the \$1,800 in charges -- I'm
22 trying to determine what conclusions have been reached
23 as a result of this work you've done.

24 A. Well, the \$1,800 doesn't have anything to do
25 with the opinions that I've reached in this case.

1 Q. Well, with -- with respect to the amount of
2 time you've put into the case, you've been able to
3 conclude that my client was injured in this wreck.
4 Correct?

5 A. Yes.

6 Q. That when you examined her, she was still
7 symptomatic. Correct?

8 A. Yes.

9 Q. Then that you don't know what's still
10 causing her symptoms?

11 A. Not within reasonable medical certainty,
12 no.

13 Q. And of course, you don't know what kind of
14 vehicle hit her?

15 A. No.

16 Q. You don't know how much that vehicle
17 weighed?

18 A. No.

19 Q. You don't know what she testified to at her
20 deposition?

21 A. That's correct, no.

22 Q. You don't know what she told the police
23 officer that investigated the accident?

24 A. No.

25 Q. Okay. I think that's all the questions I

1 have then. Let me check my notes real quick. Oh, I
2 did forget a couple of things. Would you have told
3 Mrs. Lauterbach, do you recall, if -- that she would
4 just have to learn to live with the pain she was
5 having?

6 A. No, not that I recall.

7 Q. Is that -- I -- I ask that because I ask all
8 of my clients to complete a questionnaire after they
9 get out in your parking lot when they're done. And
10 one of the things she recorded was, he said I would
11 have to live with the pain. Is it possible you may
12 have told her that?

13 A. I don't recall telling her that, no.

14 MR. BLASS: Okay. That's all the
15 questions I have.

16

17 REDIRECT EXAMINATION

18 BY MR. CALABRIA:

19 Q. Dr. Thompson, the information about the
20 accident and Mrs. Lauterbach's condition right after
21 the accident, you received that information directly
22 from Mrs. Lauterbach, not from what she told somebody
23 else; is that correct?

24 A. Yes.

25 Q. And as far as photos or weight of the

1 vehicle and kind of the vehicles and so forth, your --
2 you've been asked to assess the -- the injuries done
3 to the people in the accident, not the vehicles; is
4 that correct?

5 A. Yes.

6 Q. You were also asked about information that
7 you were -- or information you did or did not give to
8 people in -- in -- during the exam about whether you
9 told them to take certain medications or how -- so
10 forth. But she was not here as a patient, was she?

11 MR. BLASS: Objection. Leading.

12 A. Yes, that's correct. She was here for an
13 independent medical exam, not for treatment.

14 Q. Okay. So, you know, what was the purpose of
15 her visit then for you -- to you?

16 A. For me to make a diagnosis regarding her
17 condition and to evaluate her, to be able to give a
18 prognosis and necessity for future treatment, but not
19 for me to render any treatment or opinions directly to
20 her.

21 Q. Doctor, if a physician believes that there
22 was a significant neck and back injury, are there
23 other diagnostic tests that could be run other than
24 the subjective complaints of a person?

25 MR. BLASS: Objection. It calls for

1 speculation. I don't know what doctor you're
2 referring to. He's not here to testify about what
3 other doctors can or can't do.

4 A. Yes. If a doctor is suspicious of a serious
5 neck injury, he will generally get more diagnostic
6 testing other than just an X-ray, such as EMG's or an
7 MRI scan of the neck.

8 Q. Do you have any evidence that that was done
9 in this case?

10 A. No.

11 MR. CALABRIA: Thank you. I have no
12 other questions.

13

14 RE-CROSS-EXAMINATION

15 BY MR. BLASS:

16 Q. Doctor, these rare individuals that develop
17 chronic problems with cervical lumbar strains, those
18 are serious to those people that are suffering, aren't
19 they?

20 A. Anyone who has pain, is -- is serious to
21 that person, yes.

22 Q. And -- and these people suffer not only from
23 the pain itself but from the consequences of that
24 pain -- psychological effects, depression, et cetera,
25 don't they?

1 A. Patients who suffer from chronic pain can
2 also have emotional problems as a result of that,
3 yes.

4 Q. And you know there are people that can
5 develop those precise types of chronic problems from
6 this type of injury?

7 MR. CALABRIA: Objection.

8 A. Yes. It's possible but very rare.

9 MR. BLASS: That's all I have.

10 MR. CALABRIA: I have nothing else.
11 Thank you very much, Doctor.

12 VIDEOGRAPHER: Dr. Thompson, you have
13 the right to view this videotape deposition right now
14 for its accuracy. You also have the right to read the
15 typewritten transcript after it's been prepared, or
16 you can waive those rights.

17 THE WITNESS: I'll waive.

18 THE COURT: Thank you very much.

19 (THE DEPOSITION WAS CONCLUDED AT 11:21 A.M.)
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