IN THE COMMON PLEAS COURT OF JEFFERSON COUNTY, OHIO

EDWARD D. MONROE AND DONNA R. MONROE,	)	
PLAINTIFFS,	)	
-vs-	)	CASE NO. 01-CV-70
DEAN A. DOUGHERTY AND JACK A. ALLEN, INC.,	)	
DEFENDANTS.	)	

DEPOSITION of ROBERT J. THOMPSON, M.D., a witness herein, called by the Plaintiffs for examination under the statute, taken before me, Kathy J. McGlaughlin, Professional Reporter, and Notary Public in and for the State of Ohio, pursuant to the stipulations of counsel hereinafter set forth at the offices of Neurological Associates of Southeastern Ohio, 945 Bethesda Drive, Zanesville, Ohio, on Wednesday, April 3, 2002, scheduled for 4:00 p.m.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFFS

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ON BEHALF OF THE DEFENDANTS

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S T I P U L A T I O N S

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 examination by the Plaintiffs under the 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 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 reading and the signature of the said witness to the transcript of his deposition are expressly waived by counsel and the witness; said deposition to have the same force and effect as though signed by the said witness.

4:25 p.m., Wednesday,
April 3, 2002.

ROBERT J. THOMPSON, M.D.,
being by me first duly sworn, as hereinafter certified, deposes and says as follows:

E X A M I N A T I O N

BY MR. BLASS:

Q. Dr. Thompson, we've met before. My name is Scott Blass. I am here to take your deposition today in the case of Ed and Donna Monroe versus Dean Dougherty and Jack Allen, Inc., pending in the Court of Common Pleas of Jefferson County, Ohio.

I will let you know up front, if I ask you a question that is not clear to you, if I use a term or phrase you are unfamiliar with, or if you're just uncomfortable with my question for any reason, you let me know and I'll be happy to rephrase or restate the question so it is in a form that you understand and you are comfortable answering. Okay?

A. Yes.

Q. Many of my questions will be of a yes or no variety. If you can respond yes or no to those questions before you provide any explanation you feel is necessary, that will obviate any need for me to go

back and ask the question again. I will, of course, allow you to offer any explanation you need to offer and would, likewise, invite you to tell me up front, if it's a yes or no question, that you just can't answer yes or no. That will obviate the need for me to go back and ask the question again. All right?

A. Yes.

Q. Can you tell me, the documents that you have before you today, do these documents constitute all the material that you have either generated or been provided in connection with your involvement in this case?

A. Yes, to my knowledge.

Q. All right. Nothing has been removed from your file before today as far as you know?

A. Not that I'm aware of, no.

Q. If I can just take a quick look through what you have. I trust I have pretty much everything in your file.

Do you have a separate file for your billing for the work you have done in the case so far?

A. Yes, it's in a computer.

Q. Can you get a computer printout of the billing so far?

A. Yes. Yes.

MR. BLASS: If you can get that for me, make three copies of that. And I would like to get a copy of the summary you were provided. I --

THE WITNESS: Let him do that.

MR. BLASS: I don't need that now. They could mail it to me.

THE WITNESS: Can his office just do it?

MR. BLASS: I really need what you were provided, so I need to get it from you. I am sure it's the same thing he has, but -- I don't need it today.

THE WITNESS: I can't do it today. I am going to charge you.

MR. BLASS: That's fine.

THE WITNESS: I'll get the billing chart.

(A brief recess was taken.)

MR. BLASS: Let's go back on the record.

BY MR. BLASS:

Q. While we're waiting on those copies, let's cover some preliminary matters. You are a practicing neurologist here in Zanesville; is that correct?

A. Yes.

Q. And you are affiliated with a company called Neurological Associates of Southeastern Ohio, Inc., correct?

A. Yes.

Q. Do you have any associates today?

A. Just myself. I am the only physician.

Q. The date that you saw Mr. Monroe was on March 6th, 2002; correct?

A. Yes.

Q. And what was Mr. Monroe's primary symptoms on the date of your examination?

A. Neck pain, back pain, and knee pain.

Q. Which knee?

A. I believe it was both knees.

Q. Was one symptom of more concern than another to him?

A. I can't recall.

Q. Based upon your review of the records and your examination of Mr. Monroe, did you reach an opinion to a reasonable degree of medical probability as to the cause of Mr. Monroe's neck pain?

A. Yes.

Q. And what was your opinion as to the cause of the neck pain that he was exhibiting on March 6th, 2002?

A. Cervical osteoarthritis and degenerative disk disease.

Q. And did you reach an opinion to a reasonable degree of medical probability as to the cause of the back pain that he had when you examined him on March 6th, 2002?

THE WITNESS: Can we go off a minute?

MR. BLASS: Yeah, we can go off.

(A brief discussion was held off the record.)

BY MR. BLASS:

Q. I think my last question was: Did you reach an opinion to a reasonable degree of medical probability as to the cause of the back pain Mr. Newman had when you saw him on March 6th, 2002?

MR. NEWMAN: Mr. Monroe, you mean?

Q. I am sorry, Mr. Monroe. You weren't here, too; were you?

MR. NEWMAN: I have back pain. I didn't see the doctor yet.

A. Yes.

Q. What was that opinion?

A. Lumbar degenerative disk disease and osteoarthritis.

Q. And did you reach an opinion to a

reasonable degree of medical probability as to the cause of his knee pain?

A. Yes.

Q. And what was that opinion?

A. Osteoarthritis in both knees.

Q. Did you do a trigger-point examination in connection with your physical exam of Mr. Monroe?

A. Yes.

Q. And can you direct me to the area of your report where there is reference to that exam?

A. I did not document that I did it in the report, but on cases of this nature I always -- medical/legal cases of this nature, I always do it.

Q. Did you document it in your handwritten notes?

A. No.

Q. Do you have an independent recollection of doing a trigger-point examination?

A. No, but I would always do it in this particular case, this type of case.

Q. And what does a trigger-point examination involve?

A. The examiner takes his thumb and pushes on certain areas on the body, especially the neck, thoracic region, lumbar region, hips and knees and

tries to feel for either focal spasm and/or to elicit complaints of pain from the patient.

Q. So, if you followed your customary practice, Mr. Monroe should remember being pushed upon by you in those various areas of his body with your thumb?

A. I can't say what Mr. Monroe would remember or would not remember.

Q. I am saying that because you don't remember if you did, you don't have an independent recollection, but that's how you would have done it, pressing on him with your thumb in different areas; right?

A. Okay, I think that was two questions. I don't have an independent recollection in this case, no, but I always do trigger-point examinations on medical/legal exams of the neck and back.

And I forget what the second question was.

Q. What are the most common symptoms associated with osteoarthritis of the neck?

A. Pain and stiffness in the neck.

Q. What type of pain?

A. Generally an aching type of discomfort which is worsened -- worse with movement.

Q. And what about degenerative disk disease;

what are the common symptoms associated with that in the cervical region?

A. It's variable. If -- there can be pressure on the nerve due to the narrowing of the neural foramen which could cause numbness into the upper extremities, and there could also be aching type discomfort in the neck.

Q. Does osteoarthritis generally cause muscle spasms?

A. It can -- no, the arthritis itself doesn't, but certainly patients with arthritis can have associated muscle spasms.

Q. But osteoarthritis does not generally cause muscle spasms?

A. The arthritis itself generally does not cause muscle spasms, no.

Q. And what about degenerative disk disease? Does that generally cause muscle spasms?

A. It can; but generally does not, no.

Q. What about trigger points? Does osteoarthritis cause trigger points?

A. Well, many people -- even normal people without symptoms can have trigger points, so certainly patients with osteoarthritis can also have trigger points.

Q. Does it generally cause trigger-point tenderness, osteoarthritis?

A. Not typically, no.

Q. Okay. And what about degenerative disk disease; does it generally cause trigger-point tenderness?

A. The disease itself does not, no.

Q. Did you find any reference, in all the records that you reviewed, that Mr. Monroe had a finding of positive trigger points at any time prior to this collision of June 11, 1999?

A. Not that I recorded in my report, no.

Q. Is that something you think, if you had seen it in the medical records, would have been significant enough to record in your report?

A. Probably -- probably not.

Q. Can a -- does a -- strike that.

Can trigger-point tenderness be caused by cervical strain?

A. Yes.

Q. Can a cervical strain develop into a chronic pain condition?

A. Yes, but extremely rarely.

Q. You have, yourself, seen and treated people who have fallen into that rare category; have you not?

A. On rare occasions, especially in patients that are plaintiffs in accidents, we will see strains develop into chronic subjective pain; but otherwise, it's very rare.

Q. And, in fact, you are the director of a chronic pain clinic where you have treated individuals that have developed chronic pain problems as a result of cervical strains; have you not?

A. Again, as we sit here today, I don't recall such a patient who's had a mild strain who had chronic pain for long periods of time; but I imagine that we have had patients come through there that have -- have had subjective complaints of pain long after a cervical muscle strain, yes.

Q. In your report, you indicate that arthritis is never permanently aggravated by trauma unless there is a significant injury to a joint such as a fracture or dislocation, which was not the case here. Item 2B under "Diagnoses," you see that?

A. Yes.

Q. Can you cite me to some literature that would support that conclusion?

A. Not as we sit here today, but it's certainly been my personal experience that I have never seen arthritis be permanently aggravated by

injury unless there was some type of significant injury to the joint itself.

Q. Has it been your clinical experience that individuals with preexisting degenerative arthritis have a more difficult time recovering from cervical strains?

A. They may take a little bit more -- longer to recover. Instead of a few days or a week or two, they may take up to four to six weeks, yes.

Q. And individuals who are elderly, 55 or older, will they, likewise, take a little longer to recover in your clinical experience?

A. If they have arthritis and degenerative disk disease, yes.

Q. Did you review any X-ray films?

A. No.

(Deposition Exhibit 1 was marked for purposes of identification.)

BY MR. BLASS:

Q. I have marked, as Exhibit 1, a document that you were kind enough to copy from your file for me. For the record, is that a true and accurate copy of a letter that was contained in your file dated February 14th, 2002, from Mr. Newman to yourself?

A. Yes.

Q. And this letter, was this the first contact -- written contact that you had had with Mr. Newman with respect to the Monroe case?

A. I don't know.

Q. Is there anything in your file that predates February 14th, 2002?

A. No.

Q. Were you ever provided with any photographs of the vehicles that were involved in the accident?

A. No.

Q. Do you have any idea how heavy the truck was that rear-ended Mr. Monroe?

A. Just that Mr. Monroe told me it was a large truck.

Q. You don't know if it was loaded, not loaded?

A. I don't know.

Q. Eighteen-wheeler, box truck; no idea?

A. I had the impression it was an 18-wheeler type truck from what Mr. Monroe told me.

Q. In the letter you received from Mr. Newman, the first paragraph where there is a dot by it, it says: Mr. Monroe has been treating for severe neck pain, including radiating pain into his arms, since 1991. You see that?

A. Yes.

Q. In the records, when was the last time you saw that Mr. Monroe had treated for severe neck pain prior to his vehicle being rear-ended by the tractor/trailer in June of 1999?

A. I would have to look back at Dr. Grubbs' records.

Q. Okay.

A. I have a patient drawing filled out by Mr. Monroe dated January 26th of '98, which would have been about 18 months prior to the accident, in which he marks burning and aching and throbbing pain in the neck down into the right arm.

There are a lot of records here, but the -- it looks like about 18 months prior.

Q. Okay. So, the last time that you find any reference to what you consider to be severe neck pain is on the January 26th, 1998 patient diagram; is that correct?

A. Yes.

Q. And that, to you, suggests that he was having severe neck pain on that day?

A. Well, he's got it -- the way he's got it drawn, he's got burning, aching, throbbing pain with numbness and burning into the right arm and hand.

Q. So, I am correct that this drawing suggests to you that Mr. Monroe was having severe neck pain on January 26th, 1998?

A. Yes.

Q. All right. You consider the marks that he made on the back diagram with the X's to be his neck? Is that correct?

A. Yes, neck and upper thoracic region.

Now, there are a lot of other records, but there --

Q. That was the most recent?

A. I mean, today, that's the most recent I can find.

Q. Okay. How do you make a diagnosis of osteoarthritis? What criteria do you need in order to make that diagnosis?

A. The typical symptoms of osteoarthritis are aching, dull discomfort in the joints involved of variable severity. It's more common in older people. On exam, we can frequently, but not always, find some decrease in range of motion of the involved joint. The patients will frequently complain of crunching or cracking of joints when they move them. And after someone has had osteoarthritis for a while, it will show up on X-rays.

Q. Can you make the diagnosis of osteoarthritis without radiological exam?

A. You can make the diagnosis, yes, because very early -- early on, there may not be any X-ray findings; the X-rays may be normal.

Q. Did Mr. Monroe have decreased range of motion in his cervical spine?

A. He had slightly decreased range of motion of the cervical spine.

Q. Did he have crunching or cracking in the joints in his neck?

A. Yes, he reported cracking in his neck.

Q. Did you find that during your examination?

A. That's a subjective complaint of the patient.

Q. Is the slight decrease in range of motion in the cervical spine and the subjective cracking sufficient to definitively diagnose the osteoarthritis?

A. Well, you would like to see X-ray -- when you say definitively, if you want to prove it, you would like to be able to see it on X-ray also, yes. His range of motion and subjective cracking are subjective complaints.

Q. And his range of motion was only slightly

decreased in the cervical spine in any event; correct?

A. Yes.

Q. Is that -- is that consistent with severe cervical osteoarthritis?

A. Yes. Range of motion of the cervical spine in osteoarthritis may only became severely reduced when the joints fuse.

Q. Well, you diagnosed Mr. Monroe as having severe cervical osteoarthritis; correct?

A. Yes.

Q. Based on slightly decreased range of motion and his subjective complaints of -- of cracking and crunching?

A. No. While he did have those complaints, the X-rays of the neck he had as far as back as 1992 show severe osteoarthritis and degenerative disk disease with narrowing of the neural foramina consistent with severe osteoarthritis.

Q. That's how the X-rays were interpreted by someone else, not by you?

A. That's how I interpreted those records. I didn't see the actual X-rays, no, but I did base my opinions on the radiologists' -- some of my opinions were based upon my review of the radiologists' interpretations of those X-rays and MRI scan films,

but I did not see the films myself.

Q. You relied on the interpretation of someone else?

A. Yes.

Q. Did -- in your opinion, to a reasonable degree of medical probability, did the injury that Mr. Monroe suffered on January 30, 1992, when he was loading pipe on a truck on his job in Pittsburgh -- does that injury continue to cause any of his current symptoms?

A. I don't have an opinion as to whether that particular injury did it. He did have preexisting conditions, including severe degenerative disk disease, osteoarthritis, and a herniated disk which preexisted the accident, but I do not have an opinion as to whether those preexisting conditions were due to the 1992 accident. His treating doctors had opinions on those lines, but I did not.

Q. So, is it fair to say that you have not formed an opinion to a reasonable degree of medical probability or certainty as to what relationship, if any, the work injury of January 30, 1992, has with respect to his current symptoms? Is that fair to say?

A. That's correct. But he did have preexisting conditions that I -- that I feel are

related to his present symptoms, regardless of the cause.

Q. When you say he had a preexisting condition, are you talking about an existing -- a condition that existed prior to January of 1992? I am not sure what you are referring to.

A. I reviewed medical records dating back to 1991 and there were references in those 1991 records to symptoms that had occurred as far back as ten years before that.

Q. All right.

A. And he had the conditions of degenerative disk disease, osteoarthritis, and a herniated disk prior to this auto accident of June 11th, 1999.

Q. All right. So, leaving the underlying disease processes out for the time being -- and I understand your opinions with regard to those processes and how they contribute to his current condition. I am trying to determine -- to make sure that you don't hold the opinion that the injury that he suffered on January 30, 1992, while at work is continuing to cause him any symptoms?

A. I do not have an opinion regarding the relationship of that injury to his current symptoms.

Q. And the same question, then, for the

Workers' Compensation injury which came about as a result of an accident of October 3rd, 1992. Do you have any opinion as to whether that injury continues to cause any of his current symptoms?

A. No.

Q. In the document we have marked as Exhibit 1, in the first paragraph, you're advised by Mr. Newman that he, in fact, represents the Defendants in this litigation; correct?

A. Yes.

Q. And in the last paragraph you are asked to contact him prior to the examination to discuss the case in further detail; correct?

A. Yes.

Q. Did you do that?

A. Yes.

Q. Do you recall what was discussed then?

A. Yes. I told Mr. Newman that I never review medical records until after I examine the patients, so I really didn't have anything to discuss with him at that time.

Q. Did he tell you anything about the collision at that time?

A. I can't recall.

Q. Did he tell you anything about the

depositions of the parties that had been taken, anything of that nature?

A. Not that I -- as I recall, it was a very short phone conversation where I just told him that I didn't really particularly want to review the records until after I had seen the patient.

Q. Did you contact him after the examination, before preparation of your report?

A. Yes. Oh, I'm sorry, before the preparation of my report?

Q. Yes.

A. Not that I recall.

I may have called him after I prepared the report, but I don't recall calling him before I prepared the report.

(Deposition 2 was marked for purposes of identification.)

BY MR. BLASS:

Q. I am going to hand you a document we have marked as Exhibit 2 just to confirm that that's a copy of the -- some of the handwritten notes contained in the file that you were -- or that you have with respect to Mr. Monroe. Is that right?

A. Yes.

Q. Just, if you could for the record, read

those handwritten notes into the record.

A. 3-6-02, Edward Monroe, electrician, working, union, understanding foreman, missed five weeks, working now. ADL's -- you want me to explain them or just read them literally?

Q. Yes, go ahead and explain them while you're reading them.

A. ADL's is activities of daily living. Independent in dressing, grooming, feeding, bathing. Lives in a house with his wife. He does not do any yard work and his wife does that. He is able to do light housecleaning. He is able to drive and did drive to the exam today. Hobbies include golf and bowling and he does participate in leagues in those sports. He plays golf two times on the weekends but he must use a cart. He's not able to play golf as well as he used to and he's not able to carry his bag, and his handicap has gone from 11 to 18. He has difficulty working overhead. He has difficulty carrying loads. His bowling average dropped from 170 to 154, and he is in a league and he bowls one to two times a week.

MR. BLASS: Let's mark these -- is the top of this one cut off? The original is there.

THE WITNESS: Yes. Yeah -- oh, no,

here it is, records before -- yeah, it is cut off a little bit, isn't it. Just the very top line, looks like.

MR. BLASS: We can clear it up on the record.

Let's mark this as Exhibit -- where are we -- 3.

(Deposition Exhibit 3 was marked for purposes of identification.)

BY MR. BLASS:

Q. I hand you a document that the court reporter has marked Exhibit 3. Would you just confirm for me that that is a true and accurate copy of the handwritten notes contained in your file with the exception of the fact that our copy has cut off, at the very top, a little bit of the writing that you had in your notes that we can actually read into the record or -- might be easier if you just write it on the exhibit, if you would, rather than making us another copy.

Is that correct?

A. Yes.

Q. And if you could just write in what we did have cut off there, we can use that as an exhibit without bothering your staff again.

A. (Witness complies with request.)

Q. On Exhibit No. 3 that you have now added the part that was cut off at the top, is this your handwritten notes taken when you reviewed the pre-collision records generated as a result of treatment Mr. Monroe received before his vehicle was rear-ended by a tractor/trailer?

A. Yes.

Q. All right. Did you try to mark -- make notes of the things that you felt were most noteworthy when you reviewed the records?

A. I rely both on my memory of the notes and some of -- I relied both on my memory of reviewing the records and on some of the handwritten notes; correct.

Q. But you made those notes contemporaneously with the review of the records, I take it. As you go through the records, you make the notes?

A. That's correct, and I dictated the final report right after I reviewed all the records.

Q. My question is: As you go through the records and are making notes, I trust you are writing down the things you felt most noteworthy?

A. To some extent I relied on my memory or -- if it was too much to write down.

Q. So, there are noteworthy things in the

records that you didn't take note of in your handwritten notes; is that what you are telling me?

A. Possibly.

Q. All right.

A. Possibly, yes.

Q. Do you know what those were at this point?

A. No.

Q. In your handwritten notes -- and I don't need you to read them all into the record, there's just a couple of the abbreviations I want to examine. For instance, 1999, you have two X's. Is that two treatments?

A. That's two times; two times, two treatments, yes.

Q. Two times. 3-12-99, low back pain; is that right?

A. Yes.

Q. 1998, you have nine treatments; is that right?

A. Yes.

Q. You have 4-14-98, lifting, low back pain; correct?

A. Yes.

Q. All right.

MR. BLASS: And let's mark this as

Exhibit 4.

(Deposition Exhibit 4 was marked for purposes of identification.)

BY MR. BLASS:

Q. I hand you a document that we have marked as Exhibit 4. Just confirm for me, if you would, please, that that is a true and accurate copy of your handwritten notes that are contained in your file?

A. Yes, except for one date that was cut off at the top.

Q. All right. You want to hand write that in on our copy like you did with the last exhibit? That would be fine.

A. (Witness complies with request.)

Q. Now it's a true and accurate copy of what's in your file; is that correct?

A. Yes.

Q. And these are notes that you took contemporaneously with your review of the records generated after Mr. Monroe's vehicle was rear-ended by the truck; is that correct?

A. Yes.

Q. And, likewise with these notes, did you want to make note of those things you felt were noteworthy while you were reviewing the post-collision

records?

A. Yes. But, again, there may be some things I thought noteworthy that aren't in these notes.

(Deposition Exhibit 5 was marked for purposes of identification.)

BY MR. BLASS:

Q. I hand you a copy of what we have marked as Exhibit 5. Is that a true and accurate copy of a document that's a form from your office that includes your handwritten notes?

A. Yes.

Q. And it's a front and back; is that correct?

A. Yes.

Q. Under where it says "ST," it has attorney -- does that say Attorney Blass?

A. Yes.

Q. And what's underneath that, 1500?

A. That's how much I charged for the examination, review of records, and preparation of the report.

Q. Where did you get the information that the attorney -- it was Attorney Blass?

A. Either Mr. -- Mr. Monroe must have volunteered it or I asked him who his attorney was.

Q. What relevance did that have to the

purposes of your involvement in the case?

A. Sometimes we're asked to do discovery depositions, like today, and it helps to know who the patient's attorney is.

Q. Why does it help to know who the patient's attorney is when you are doing the examination?

A. Well, it doesn't help to know while we're doing the examination, but I may ask the patient during the examination who their attorney is in case their attorney calls or -- or needs any information or wants to do a discovery deposition after the patient's left the office and I can no longer get that information easily without making a phone call.

Q. Is this form filled out from top to bottom? As you go through the exam, you fill it out from top to bottom, Exhibit 5?

A. Well, my assistant fills in the date, the patient's name, gender, age, height and weight, blood pressure, what medications they are on, whether they're married or -- or whether they abuse alcohol or cigarettes, whether they are left-handed or right-handed, and then the rest of the handwriting is mine.

Those are just -- it's just a rough outline I use to try to cover all bases of pertinent

information I need to get from the patient.

Q. The handwriting that is yours, do you fill that out from top to bottom as you go through the --

A. Well, I fill it out there -- the places where you see where my handwriting is.

Q. But you start out, there's no handwriting on it, do you fill it out from top to bottom?

A. Usually I start with the -- usually I ask the patient about the accident and -- I start there and then I ask them what type of symptoms they are having now as a result of the accident and I fill that in below it. I ask them what kind of treatment they've had and then I ask them if they have had any past problems, and that's under past history. And then where it says "ROS," review of systems, I ask them if they have any other symptoms related to the accident that they didn't mention to me.

So, they -- all those little categories on this sheet are just to remind me to ask the patient these questions while they are here.

Q. I understand that, but do you fill it out from top to bottom? Do you start by filling out -- if I were to look at your handwriting, would I be able to say: Well, okay, this side is filled out and then this side is filled out?

A. Oh, no. No, some patients give a history -- patients give a history in different manners. Some people, you know, you ask them about what happened to them and they'll start talking about what happened 20 years ago; in which case I don't interrupt them, I will just fill it out under their past medical history.

Q. All right.

A. But since it's organized this way, I know it's past medical history, I put it under that section.

Q. Under treatment, under "RX", this mentions Dr. Grubbs, Dr. Woods, no surgery, no PT; correct?

A. Yes.

Q. And it says "Would see --" see something for a tune-up?

A. Yes.

Q. What is that?

A. Would see occasionally for a tune-up.

Q. You have an arrow to Dr. Grubbs?

A. Yes. Yes.

Q. I see. On this other side, what's that -- this word above items 1, 2, and 3?

A. That says "worse." I always ask patients: As time goes on, are your symptoms getting better,

getting worse, or just staying about the same overall. And Mr. Monroe said his symptoms were getting worse as time went by.

Q. Does that mean his knees?

A. Everything. His knees --

Q. Neck pain?

A. Knees, neck and numbness in his arms.

Q. Was getting worse?

A. They were all getting worse.

Q. Where do you write down the symptoms that he is experiencing on the day of the visit?

A. Right there, (indicating).

Q. So, on the day of the visit, his knees, and he had neck pain, and his upper extremities are numb?

A. Well, I ask them what type of problems they are having as a result of the accident whether they are having it day that or not. That's where I write down the symptoms that they are having -- I write down what symptoms they think is the result of the accident whether they are having it that day or not.

Q. But you didn't write down low back pain?

A. No, I did not.

Q. He didn't tell you he felt he had low back pain after the accident?

A. Well, he must not have thought it was due

to the accident. I believe he did have some low back pain, because further down in my notes he said he had some low back pain as a result of a Workman's Comp injury in '92.

Q. Well, right up above that, you put "low back pain Monday," after the accident. You have "Neck, next day. Low back pain, Monday."

A. Okay, these are the symptoms that I asked him that he's having now as -- as a result of the accident in -- not the second I see them, but what long-term symptoms are you having as a result of this accident, and he told me: Knees, neck, and arms are numb. And then I ask them: Well, when did all these symptoms start. Well, the low back pain started Monday, several days after the accident.

Q. So, as of the --

A. And then I have the neck the next day, neck started the next day.

Q. And that's not unusual for this type of an injury, for the symptoms to surface the day following the accident collision itself; is it?

A. With mild cervical strains, with mild muscle strains, the symptoms may be delayed for hours or days, yes.

Q. And you had --

A. An hour or a day.

Q. And you had on the -- so, the symptoms that he indicated he was currently experiencing, maybe not that precise moment, but within that time frame, how are you doing now, for instance, he says: Well, I still have problems with my knees; my neck still hurts; I take medication -- is that meds or -- no, cracks -- I have neck pain and it cracks. Is that what that says?

A. That's "cracks," yes.

Q. And "upper extremities numb," that's what he told you he was still experiencing?

A. Yes.

Q. All right. Did you find Mr. Monroe to be a cooperative individual?

A. As far as giving a history and allowing me to examine him, yes.

Q. Did he give you any reason to believe that he was being less than forthright with you?

A. Well, I would have no idea about that. As far as whether he's still having pain or not, only Mr. Monroe knows that.

Q. In his past history, he indicated that he had had neck problems in the past, but he was okay at the time of the auto accident. And, of course, based

on the records you reviewed, he hadn't at least had any symptoms since -- what you said was 1998?

A. Yes, that's what he told me.

Q. Is there a place on this form where you will indicate the results of your trigger-point examination?

A. Only if they are positive.

Q. And where would that be?

A. I have another form that -- that is not in here where it's a picture of a person and I may put it on there or I may just -- if it's -- if there's a lot of trigger points. If there's one or two trigger points, I will just write it on the -- on the sheet.

Q. Does the presence of trigger points generally indicate a more severe strain of the muscle or muscle groups where the trigger points are present?

A. No, because trigger points, number one, are present in many normal people. Trigger points may or may not be present in people that have cervical strain. Sometimes the whole muscle may be tender, but they don't particularly have one little point that's tender. So, I don't particularly hold it of any significance as far as severity.

Q. You were aware that Mr. Newman -- I did it again -- Mr. Monroe was off work for five weeks after

the collision; is that correct?

A. Yes, that's what he told me.

Q. And based upon the nature of his injuries and his symptoms, was that a reasonable amount of time to be off work for him?

A. No.

Q. You believe he should have only been off four weeks?

A. Yes, at the most.

Q. Even though he was elderly, over 50, and had preexisting underlying degenerative disk disease and osteoarthritis?

A. Well, yes. I already calculated those underlying conditions when I rendered that opinion.

Q. Do you have a listing of the depositions that you have given in 2001 generated yet?

A. No.

Q. This is still 1996 to 2000, is all you've -- the one that I got previously.

A. Yes.

Q. You haven't had to do one for 2001 yet?

A. No one has asked yet.

Q. Haven't been in federal court since 2000, I guess.

A. No.

Q. The reason I ask about the weeks is because -- you probably don't recall the Lauterbauch case I was involved in and that you were involved in. She was a 60-year-old woman and you indicated -- who had a cervical strain. You had indicated because she was in her 60s you felt six to eight weeks was a normal period of recovery for her. I wonder where -- what the date of the cutoff is, agewise, to go from four to six to eight weeks?

A. Well, as far as recovery, I believe I was talking about symptoms.

Q. Um-hmm.

A. And when you were asking me the question about Mr. Monroe, you were asking me about returning to work. Certainly someone can still have persistent symptoms and go back to work.

Q. Well, you had also indicated that his -- I asked that because you also indicated that his -- he should have had complete recovery in four weeks. I thought maybe those were -- do you understand what I am saying? You also said in your report that Mr. Monroe should have completely recovered in four weeks.

A. Yes. I would normally expect complete recovery within -- within four weeks. Now, I mean, that's an average. I mean, he could have had some

milder -- some symptoms beyond that time or less than that time. Most muscle strains get better in a few days or a week or two.

In the case of Mr. Monroe, he is older, he does have some arthritis and degenerative disk disease and a preexisting history of neck problems, so I gave him the benefit of the doubt and said four weeks.

Q. He just didn't get as big a benefit as Mrs. Lauterbauch, because she was 60?

A. It's a range. I mean, it's a range. I would certainly expect him to be better within four weeks. And, again, that's -- I mean, that's an average.

Q. Is the one additional week off work really unreasonable?

A. Well, I think he actually -- I think it would have taken four weeks to recover. I think he probably could have gone back to work before that.

Q. You didn't see him at that time to know how severe his symptoms were or weren't; correct?

A. That's correct.

Q. And am I correct that you were asked to opine on the appropriateness of the treatment rendered? Correct?

A. Yes.

Q. And you indicated that the treatment rendered within the first four weeks was reasonable, but anything after that was unreasonable; is that correct?

A. Yes.

Q. Did he have much treatment after the first four weeks?

A. No, not that I -- at least in my notes I don't -- I don't have down that he did, but I would have to go through the records to see exactly how much more.

Q. For those --

A. I mean, he may have had a lot more, I just didn't write it down. I just don't recall.

Q. For those unfortunate people who are in that rare category, who develop the chronic symptoms as an result of the cervical strains, is it reasonable for those people to receive symptomatic therapeutic treatments when they have acute flare-ups?

A. It -- yes, if it's related to this injury. And certainly if Mr. Monroe is having pain, from whatever reason he's having pain, he's certainly entitled to receive treatment.

Q. How do we know that Mr. Monroe is not one of those unfortunate few who simply didn't recover

completely from the cervical strain that he suffered when his vehicle was rear-ended three times by a tractor/trailer?

A. We don't know. Only Mr. Monroe knows if he's still having pain. But even Mr. Monroe doesn't know if that pain is related to the accident or some other underlying cause.

Q. He would know if the pain is different in severity and type; correct?

A. Again, pain is a subjective complaint. He's the only one that would know that, yes.

Q. And he is the one that would know if the pain were different in location?

A. Yes.

MR. BLASS: Let's mark this as Exhibit 6.

(Deposition Exhibit 6 was marked for purposes of identification.)

BY MR. BLASS:

Q. I hand you a document marked as Exhibit 6. That's a printout of your billing to date with respect to your involvement in Mr. Monroe's case; is that correct?

A. Yes.

Q. And your charges for the review of the

records and the examination and the preparation of your report were about $1500; correct?

A. Yes.

Q. And your charges for deposition today are -- are $900 for the first hour and $400 for every hour thereafter; correct?

A. Yes.

Q. Has your deposition schedule this year been essentially consistent with what it's been in the past four, five years?

A. As I recall, yes. I don't think it's much different. I do about 25 to 30 a year.

Q. Pretty similar in 2001 as well?

A. As I recall, yes.

Q. When did the price go to $900 an hour? Or $900 for the first hour, excuse me.

A. I used to charge $800 an hour. I believe it was about two years ago I increased it.

Q. And you've been involved in doing this type of medical/legal work for a number of years; correct?

A. Yes.

Q. About 20 years now?

A. Yes.

Q. And the income you derive just from that portion of your practice is in the area of $200,000 a

year; is that correct?

A. Well, that's before expenses and taxes, yes.

Q. How much expense do you have to -- to examine someone for 30 minutes and type a report?

A. Well, I have never broken it down per exam, but our overall office expenses are about 40 percent of what we bring in.

Q. These individuals who you are involved with in medical/legal cases such as Mr. Monroe's, you don't develop a physician/patient relationship with; correct?

A. Yes, that's correct.

Q. You don't give them any advice?

A. Yes, that's correct.

Q. Don't prescribe any treatment for them?

A. That's correct.

Q. Are you aware of literature that has been published in peer review journals that concludes that individuals who are elderly and have preexisting degenerative arthritis are much more likely to develop chronic pain problems as a result of cervical strain?

A. Not off the top of my head, but there's a lot of literature on this subject.

Q. What is a taught band?

A. A taught band is tissue that can be palpated in a trigger point that feels like a linear taught band, like a rubber band.

Q. Is that indicative of a more severe strain of the muscle or muscle group?

A. Not necessarily, because, again, taught bands and trigger points can be found in the normal population.

Q. When you say the normal population, you are talking about people who are asymptomatic?

A. Yes.

Q. Why would you be examining someone for taught bands if they were asymptomatic?

A. It's a known clinical fact that trigger points and taught bands can be found in perfectly asymptomatic people just when you're examining them for something else.

Q. Are you aware of any studies or literature that you could point me to that would support the -- that statement that taught bands are found in the general -- asymptomatic general public?

A. Not off the top of my head, no. But it's been my clinical experience, and talking to others, that -- that those findings can be present in asymptomatic people.

Q. And those symptoms can certainly be present in people who develop chronic pain problems as a result of cervical strain as well?

A. Usually not so much with cervical strain. There are other conditions that you can find trigger points and taught bands, but usually not cervical strain, although they can be present.

Q. What type of limitations do people who have chronic pain problems as a result of a cervical strain generally have?

A. Generally, none. I mean, people with chronic muscle strains, even if they do have some symptoms, have absolutely no limitations at all.

Q. The primary component of the chronic nature of their symptoms is their pain?

A. Yes.

Q. Does the -- isn't it true, also, that the unfortunate person who doesn't recover from the cervical strain, who develops chronic pain, is likely to experience psychological and emotional problems going along with that chronic pain?

A. Well, chronic pain from any cause can cause that, yes.

Q. What about working overhead and with your arms above your head and lifting overhead with respect

to the chronic cervical strain patient?

A. Normally, even if someone with a chronic strain has some discomfort, I would not expect any limitations in working over their head.

Q. While you wouldn't expect any limitations, wouldn't you expect that to be an exacerbating factor with respect to their symptoms?

A. No. Patients with muscle strains that are chronic are usually fully functional.

Q. There's no particular things that cause their symptoms to became worse? That's been your clinical experience?

A. Well, it's so rare to see a patient with a chronic cervical strain like that. I don't have a lot of experience with it. But, again, with muscle strains, even if patients have long-term subjective complaints, they are generally fully functional.

Q. According to your -- according to Exhibit 5, it has "Time in: 2:14." Is that when your nurse began taking the blood pressure, the height, the weight?

A. No, that's when I went into the room.

Q. So, you were in the room with him for 33 minutes?

A. Yes. Face to face, yes.

Q. And how much of that time was spent taking his history?

A. Well, I would spend the entire time taking his history while I was examining him.

Q. And how long did it take you to do the physical exam?

A. To examine the neck and -- and arms and knees would take me about 15 minutes.

Q. You did not examine his back?

A. Yes.

Q. Where's the result of that exam?

A. (Indicating.) Under extremities, that's full range of motion of the lumbar spine. And then under motor strength, we examined for -- if someone has a pinched nerve in the back, they have weakness in their legs. Under sensory, they may have a loss of sensation. And under reflex, they may have reflex changes.

Q. And you did not give Mr. Monroe any indication as to what you thought might help him with the symptoms that he had? Did you tell him anything about -- you might try this, you might try that?

A. No.

Q. Give him any indication as to what you thought was causing him symptoms?

A. No.
Q. How long did it take you to review the records?
A. About six hours.
Q. Where is that recorded?
A. It's not. It's not recorded. That's an estimate.
Q. How much do you charge per hour to review records?
A. I don't have an hourly charge. For this case, I -- I looked at the records and I saw that it was a lot and a lot of past records, so I charged $1500, but it's not based on an hourly rate.
Q. But you do charge the hourly rate for deposition time?
A. Yes.
Q. How much do you charge to appear live in court?
A. $500 an hour.
Q. Not a minimum? Is that -- does that start from when you leave Zanesville?
A. Yes.
Q. Until the time you get back to Zanesville?
A. Yes.
Q. Is there a minimum, half-day charge,

full-day charge; anything like that?

A. No.

Q. Will you be in Zanesville on May 9th and 10th?

A. I have to go look at my calendar.

Yes.

Q. Have you ever testified live in Jefferson County, Ohio?

A. Where is Jefferson County?

Q. You don't know where Jefferson County is?

A. Is that Steubenville?

Q. That is Steubenville.

A. Not that I can recall, no.

MR. BLASS: All right, that's all the questions I have, Dr. Thompson. Thank you very much for your time today.

MR. NEWMAN: I have no questions.

(The witness was advised of his right to read and sign his deposition.)

THE WITNESS: No, I'll waive.

(Signature Waived)

THEREUPON, THE DEPOSITION CONCLUDED AT 5:50 P.M.
