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Re: Robert J. Thompson Depo

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IN THE COMMON PLEAS COURT OF BELMONT COUNTY, OHIO

ANTHONY A. MATYJA,  
PLAINTIFF,  
vs. CASE NO. 06-CV-148  
WILLIAM E. GOFF, II,  
DEFENDANT.

VIDEOTAPE DEPOSITION OF ROBERT J. THOMPSON,  
M.D., a witness herein, called by the Defendant for  
direct examination under the statute, taken before me,  
Stefanie Tahyi May, Registered Merit 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 945 Bethesda Drive, Suite 230, Zanesville, Ohio, on  
Tuesday, June 12, 2007, commencing at 4:27 p.m.

TAHYI VIDEO & COURT REPORTING, LTD.  
334 Main Street  
P.O. Box 935  
Zanesville, Ohio 43702-0935

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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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

DONALD J. TENNANT, JR.  
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ON BEHALF OF THE DEFENDANT:

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1 ROBERT J. THOMPSON, M.D.,  
2 being by me first duly sworn, as hereinafter  
3 certified, testified as follows:  
4 DIRECT EXAMINATION  
5 BY MR. GURBACH:  
6 Q. Doctor, would you please introduce yourself  
7 to the jury?  
8 A. My name is Robert Jorden Thompson.  
9 Q. What do you do for a living?  
10 A. I am a neurologist.  
11 Q. And Doctor, where do you practice?  
12 A. Zanesville, Ohio.  
13 Q. Tell the jury a little bit about your  
14 educational background.  
15 A. I graduated from the Univeristy of  
16 Pittsburgh in 1968 with a B.S. degree in chemistry. I  
17 subsequently graduated from the Univeristy of  
18 Pittsburgh School of Medicine in 1972 with an M.D.  
19 degree.  
20 I then completed a medical internship at  
21 Montefiore Hospital in 1973 in Pittsburgh. I then  
22 completed a three-year residency in neurology at the  
23 Univeristy of Pittsburgh in 1976, and I have been  
24 board certified in neurology since 1977.  
25 Q. What is neurology?

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1 A. Neurology is a subspecialty of medicine that  
2 deals with injuries and diseases of the nervous system  
3 including the brain, spinal cord, nerves, muscles, and  
4 those supporting structures including the -- the bones  
5 and joints.  
6 Q. And you said you were board certified. What  
7 does that mean?  
8 A. Once he or she completes a residency  
9 program, one then sits for a one-day written  
10 examination and a two-day oral examination. If those  
11 examinations are successfully passed, one is said to  
12 be board certified.  
13 Q. And when were you board certified again?  
14 What year?  
15 A. 1977.  
16 Q. And what states are you licensed to practice  
17 medicine in?  
18 A. Ohio.  
19 Q. And do you have any privileges at any  
20 hospitals?  
21 A. Yes. I have privileges at Bethesda Hospital  
22 and Good Samaritan Hospital in Zanesville, Ohio.  
23 Q. Tell the jury a little bit about what you do  
24 in the hospitals, rounds, patients that you would see  
25 there.

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1 A. In the hospital, I am the medical director  
2 of the inpatient rehabilitation unit in which we see  
3 people who are recovering from severe injuries and  
4 diseases, including strokes, amputations, paralysis  
5 from spinal cord injuries and complicated orthopedic  
6 injuries such as multiple fractures, joint  
7 replacements, things of that nature.  
8 I also have a very busy office practice.  
9 I'm also the medical director of the chronic pain  
10 management program at the hospital here in Zanesville.  
11 Q. And you said you were the director of the  
12 inpatient rehabilitation unit at the hospital?  
13 A. Yes.  
14 Q. And do you have any physicians working under  
15 you?  
16 A. Yes. Dr. Michael Somple, who's another  
17 neurologist in Zanesville, also works with me and  
18 covers for me when I'm not -- out of town or not  
19 available.  
20 Q. How many patients would you say you see on  
21 a -- on a weekly or yearly basis?  
22 A. That's difficult to say. I have a very busy  
23 practice. I would estimate I see between 150 and 200  
24 patients a week, and I probably work about 40 weeks a  
25 year at this stage in my career so --

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1 Q. Okay. Are you a member of any professional  
2 organizations?  
3 A. I'm a member of the Muskingum County Medical  
4 Academy, the Ohio State Medical Association, and the  
5 American Academy of Neurology.  
6 Q. Are you -- do you participate in any other  
7 professional activities?  
8 A. I also do perform EMG's, which are  
9 diagnostic testing for nerve or muscle problems. I  
10 have had privileges to interpret MRI scans and CAT  
11 scans of the brain and spine in the hospital for  
12 years.  
13 Q. Have you ever held any medical staff  
14 positions?  
15 A. Yes. I'm a former president of the medical  
16 staff at Bethesda Hospital. I'm a former president of  
17 the American -- of the county medical academy. I've  
18 been on various hospital committees and been the head  
19 of several hospital committees through the years.  
20 Q. Now, do you review cases or examine patients  
21 affiliated with lawsuits at all as part of your job?  
22 A. Yes. In addition to my medical practice, I  
23 see about three or four patients a week that are  
24 referred to me by attorneys specifically for  
25 medical/legal evaluations.

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1 Q. Do you do plaintiffs and defense or how  
2 does -- how does that work?  
3 A. Yes. I would estimate about 80 percent of  
4 the patients that are referred to me by lawyers are  
5 from defense attorneys and about 20 percent from  
6 plaintiff attorneys.  
7 Q. And are you compensated for your time?  
8 A. Yes.  
9 Q. And how much are you compensated for your  
10 time?  
11 A. It depends how much time that I spend. For  
12 instance, in this case I spent about half an hour face  
13 to face with the plaintiff and about two -- two, two  
14 and a half hours reviewing records, so about three  
15 hours altogether; and for that, I charged \$1,100.  
16 Q. Could you tell the jury a little bit about  
17 why you charge for your time?  
18 A. Well, on -- in medical/legal cases  
19 they're -- we're looking at causation, and so we have  
20 to go through all the medical records. I typically  
21 spend about half an hour face to face with every new  
22 patient I see; and in the case of this gentleman, I  
23 spent about half an hour face to face with him.  
24 But then it's much more time consuming to  
25 sit down and review the records and prepare a

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1 medical/legal report which would -- takes a lot more  
2 time than a typical report.  
3 Q. Do you have to take time away from your --  
4 your -- your practice or your other patients?  
5 A. Yes.  
6 Q. Okay. And does that factor in at all?  
7 A. Yes, to some extent.  
8 Q. Okay. Doctor, I'm going to hand you what  
9 has been marked as Exhibit 9. Is that a copy of  
10 your -- a current copy of your resume or your CV?  
11 A. Yes.  
12 Q. Okay. Now, you testified just a couple  
13 minutes ago that you had an opportunity to meet and  
14 examine Mr. Matyja; is that correct?  
15 A. Yes.  
16 Q. All right. Tell the jury a little bit about  
17 the history that Mr. Matyja gave you when you met with  
18 him.  
19 A. Mr. Matyja is an 83-year-old man who was  
20 walking across the street on April 6th of 2005 when he  
21 was struck by a car. He was hit by the fender and  
22 knocked down. The incident occurred about a block  
23 from his home, and he was able to walk home from the  
24 scene.  
25 I did ask Mr. Matyja if he was still having

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1 any symptoms which he believed were due to this  
2 accident, and he stated that the only problem he has  
3 now is some stiffness and discomfort in his right  
4 shoulder. He stated that his right ring finger was  
5 somewhat stiff. He did tell me that he had some  
6 transient pain in his ankle and in his hip after the  
7 accident, but this had gone away.  
8 Q. Now, Doctor, in your practice and in your --  
9 in your experience, have you treated plaintiffs -- or  
10 excuse me -- treated patients who have been involved  
11 in -- in automobile accidents such as this?  
12 A. Yes, literally every day.  
13 Q. Okay. You can continue, Doctor.  
14 A. Mr. Matyja told me that he was not working  
15 at the time of the accident and had retired in 1985 at  
16 the age of 62. He was a very vigorous man for someone  
17 in his 80s. He was currently living in a house by  
18 himself.  
19 He was independent with dressing, grooming,  
20 feeding, and showering. He was able to clean the  
21 house. He stated that he did hire someone to do his  
22 yard work however. He was able to do the cooking and  
23 shopping. He did his own laundry. He was able to  
24 drive, although his attorney did drive him to the exam  
25 on the day that I saw him.

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1 He reported to me that he had resumed all of  
2 his regular activities except that he was -- had  
3 difficulty getting in and out of his bathtub and now  
4 took a shower instead of a bath but, otherwise, had  
5 resumed all of his regular activities.  
6 Q. Did Mr. Matyja share with you at all what  
7 types of medical interventions he had after the  
8 accident?  
9 A. Yes. He did tell me that he did not go to  
10 the emergency room the day of the accident, but the  
11 next day his daughter insisted that he go to the  
12 emergency room and be checked. So he was treated,  
13 examined, and released from the emergency room.  
14 He subsequently had about ten sessions of  
15 physical therapy. His family doctor gave him some  
16 injections into his right shoulder which seemed to  
17 help. He was still taking a medicine on occasion  
18 called Mobic, which is an anti-inflammatory drug  
19 commonly used to treat arthritis; but he wasn't taking  
20 that on a regular basis, just if he needed it.  
21 At the time I saw him, the only treatment  
22 he -- he actually was not getting any treatment. He  
23 said he was just doing exercises at home to maintain  
24 flexibility and reduce discomfort in his shoulder.  
25 Q. When -- when you met with Mr. Matyja -- or

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1 examined Mr. Matyja, did he talk at all about his  
2 symptoms -- or excuse me -- did he talk at all about  
3 any -- any other symptoms such as headache, memory  
4 loss, jaw pain, neck pain, anything like that?

5 A. Yes. I did ask him whether he had any other  
6 symptoms related to the accident other than the  
7 discomfort in the shoulder and his finger. And he  
8 specifically denied headache, memory loss, jaw pain,  
9 neck pain, or any type of back pain whatsoever.

10 Q. As a physician, why do you conduct a  
11 physical examination? What does that tell you?

12 A. We try to look for certain objective  
13 findings that might be indicative of an injury or  
14 other underlying medical problems.

15 Q. Okay. And did you conduct a physical  
16 examination of Mr. Matyja?

17 A. Yes.

18 Q. Tell the jury a little bit about that, if  
19 you would, please.

20 A. He was 6-foot-2, weighed 165 pounds. He was  
21 examined in a disrobed state with an examination gown  
22 on. He was very pleasant. He appeared very well  
23 preserved for someone his age. There was no evidence  
24 of any memory or language problems.

25 I did -- I did observe him walking and his

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1 walking was excellent. He was able to walk on his  
2 toes and on his heels well. The reason we do that is  
3 in people who have had any type of significant injury  
4 to the spine or nerves or the lower -- the legs, they  
5 may have difficulty walking on their toes or heels.  
6 But that was perfectly normal.

7 I checked the range of motion of his neck  
8 and back by having him put his chin over onto each  
9 shoulder and down on his chest and look up and also  
10 have him bend forward as far as he can, and that was  
11 excellent. He was able to get up from a laying to a  
12 sitting position with no difficulty.

13 There was no evidence of any muscle  
14 weakness, muscle atrophy, or muscle fasciculations.  
15 Fasciculations are little twitches in muscle that we  
16 can see in someone who has had a nerve injury, but I  
17 did not see any signs of that.

18 I did check his biceps circumference or his  
19 upper arm circumference, which was 28 centimeters, on  
20 the left was 27 centimeters. And again, in someone  
21 who's had a significant shoulder injury, they will  
22 develop some atrophy or the muscles in the arm will  
23 get smaller as a result of disuse from pain. But  
24 actually his right biceps circumference was larger  
25 than the left, which is what we would expect in a

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1 right-handed person.

2 There was no loss of any sensation. Again,  
3 in someone who has an injury where there's any type of  
4 nerve injury, they may have some loss of sensation;  
5 but that was normal in him. All of his reflexes were  
6 normal. That is, with the reflex hammer when we tap  
7 over the tendons in the arm, they were all present,  
8 again, indicating no significant nerve injury or  
9 ligament or tendon injury around the joints.

10 Q. What about range of motion in his right  
11 shoulder?

12 A. I did check the range of motion in his right  
13 shoulder, and that was very slightly reduced to about  
14 90 percent of normal in all directions. When we do  
15 that, we have people raise their hand above their head  
16 as far as they can, reach back as far as they can, out  
17 to the side; and again, most 83 year olds will have  
18 some decrease in range of motion due to age. And his  
19 was very slightly reduced to about 90 percent of  
20 normal.

21 He did have a little bit of stiffness in his  
22 right ring finger, but I didn't see any deformity of  
23 the finger. He had good range of motion of the joints  
24 in his finger, and his ability to grasp with his hand  
25 was perfectly -- perfectly normal. I did not see any

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1 signs of any muscle tenderness or spasm. And that  
2 completed my examination of him.

3 Q. That range of motion with the shoulder, is  
4 that on par with what you would expect to see in an  
5 83-year-old man?

6 A. Oh, yes, absolutely.

7 Q. Okay. What records did you review either  
8 prior to or after meeting or examining Mr. Matyja?

9 A. After examining Mr. Matyja, I reviewed some  
10 legal interrogatories or questions that he had  
11 answered regarding his injuries, the police report,  
12 the emergency room records, some X-ray reports,  
13 reports of his family doctor, Dr. Georges, after the  
14 accident, physical therapy records after the accident,  
15 and some additional radiologic testing including a  
16 brain scan.

17 Q. Doctor, I'm going to hand you what I've  
18 marked as Exhibit 1. Are these the interrogatories  
19 that you reviewed?

20 A. Yes.

21 Q. And what did these interrogatories tell you?

22 A. Mr. Matyja reported that he suffered several  
23 injuries including a broken ring finger on his right  
24 hand, a right shoulder injury, a contusion or bruise  
25 of his right hip and upper leg, and difficulty

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1 sleeping for a month after the accident.  
2 Q. Now, did you take into account Mr. -- what  
3 Mr. Matyja was saying in the interrogatories into both  
4 your report, your opinions today, and your examination  
5 of him?  
6 A. Yes.  
7 Q. Okay. Doctor, I'm going to hand you what  
8 has been marked as Exhibit 3. That is -- is that the  
9 ER record that you -- that you reviewed?  
10 A. Yes.  
11 Q. Okay. Doctor, I'd like to call your  
12 attention to some of the radiology reports that appear  
13 at the end, I believe. They're marked here on Pages  
14 9, 10, 11 and 12, I believe.  
15 A. Yes.  
16 Q. Could you walk the jury through these  
17 radiology reports?  
18 A. Yes. These were X-rays that were taken in  
19 the emergency room on the -- of the day after the  
20 injury, and this included an X-ray of his right  
21 shoulder which was reported as normal.  
22 Q. When -- when a radiology report writes  
23 normal on -- on it, what does that mean?  
24 A. That means there's no evidence of fracture  
25 or dislocation, no evidence of any soft tissue

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1 swelling which can be seen in severe soft tissue  
2 swelling on an X-ray.  
3 Q. If there had been a fracture in the -- in  
4 the right shoulder in the accident, would you have  
5 expected to see it in -- in a X-ray the next day?  
6 A. Yes.  
7 Q. Okay. I'm sorry, Doctor. You can continue.  
8 A. An X-ray of the right elbow was obtained  
9 which was normal. An X-ray of the right hand was  
10 taken in which they reported a deformity of the tuft  
11 of the tip of the right index finger. The tuft is the  
12 very -- the very end or the tip of the finger, but the  
13 radiologist went on to say that there was no  
14 fracture --  
15 Q. Okay.  
16 A. -- there. Also, an X-ray of the right hip  
17 was taken. The hip itself was normal, although some  
18 arthritis was noted in the low back.  
19 Q. Again, is that common or uncommon in a man  
20 of Mr. Matyja's age?  
21 A. I would venture to say almost every 83 year  
22 old would have some evidence of arthritis in their --  
23 in their back on an X-ray.  
24 Q. Now, when you were examining Mr. Matyja and  
25 when you were preparing your report and preparing for

1 your testimony, did you rely upon those radiology  
2 reports?  
3 A. Yes.  
4 Q. Did you notice anything else of note from  
5 the emergency room records?  
6 A. Yes. The final diagnosis in the emergency  
7 room was tuft fracture of the right ring finger, or  
8 the tip of the finger, multiple contusions and  
9 abrasions, and no other -- no evidence of any serious  
10 injuries noted in the emergency room records.  
11 Q. Okay. Doctor, I'm going to take these a  
12 little bit out of order as to how you testified. I'm  
13 going to hand you what I have marked as Exhibit 5.  
14 Are these the records that you reviewed from  
15 Dr. Georges?  
16 A. Yes.  
17 Q. Okay. I'm going to draw your attention  
18 specifically, Doctor, to -- on the first page, an  
19 entry from April 11th, 2005. It's my understanding  
20 that was about five days after the accident?  
21 A. Yes.  
22 Q. What -- what does the entry there say?  
23 A. Was hit -- April 11th, 2005, was hit by car  
24 last week, is a little sore but doing okay, scheduled  
25 to see doctor next Monday, seen in ER last week.

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1 Q. Okay. Doctor, did you rely upon  
2 Dr. Georges' -- Dr. Georges' records when you were  
3 preparing for your testimony and preparing to examine  
4 Mr. Matyja?  
5 A. Yes.  
6 Q. What else did you note about Mr. -- or  
7 Dr. Georges' records?  
8 A. Dr. Georges examined him on April 18th of  
9 2005, twelve days after the injury, at which time  
10 Mr. Matyja was complaining of pain in the right hand,  
11 fingers, right shoulder, right hip and ankle.  
12 Dr. Georges did not report any objective findings on  
13 exam.  
14 Q. What are objective findings, Doctor?  
15 A. Objective findings are findings that are not  
16 under the control of the patient, such as a broken  
17 bone on an X-ray -- the patient has no control of  
18 that -- or -- or bruising or a deformity of a joint,  
19 such as a dislocation, which the -- we can -- we can  
20 see an obvious deformity.  
21 Q. When you're diagnosing a patient or  
22 evaluating a patient, how do you use objective versus  
23 subjective?  
24 A. Well, certainly we, you know, pay attention  
25 to someone's subjective complaints; but we -- like, if

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1 we can -- we like to substantiate with that some  
2 objective findings that's not under the patient's  
3 control.

4 Q. What else stood out to you in Dr. Georges'  
5 records, Doctor?

6 A. By May 31st of 2005, he was still  
7 experiencing some shoulder pain; but by June 20th,  
8 Dr. Georges noted that, quote, feeling okay, doing  
9 much better, Tony has gotten over his trauma. He is  
10 doing well in physical therapy, unquote. So it  
11 appeared he had recovered. On exam, no abnormalities  
12 were described of any kind in his extremities.

13 He actually did not see Dr. Georges again,  
14 although there was a phone call on July 8th of '02 in  
15 which he had some pain in his right hand. And on  
16 August 5th of '05, was given some Mobic for pain.

17 There was a note on September 12th of '05  
18 that he was in the emergency room after passing out at  
19 church and hitting his head.

20 But the next visit with Dr. Georges was  
21 December 20th of '05, about six months later, in which  
22 Dr. Georges noted that Mr. Matyja was still having  
23 pain in his right shoulder and his arm, his right  
24 forefinger -- the forefinger is the index finger --  
25 that's not the one that was reportedly injured in the

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1 accident -- that his right forefinger was contracted  
2 and he had to pull it back.

3 But again, no abnormalities were noted on  
4 exam. And the last record I had from Dr. Georges was  
5 December 20th of 2005.

6 Q. I'm going to refer you to Dr. Georges'  
7 records, if I could. That's the September 12th, 2005,  
8 entry which, I believe, is at the bottom of the third  
9 page.

10 A. September?

11 Q. September.

12 A. Yes.

13 Q. Yeah, September 12th.

14 A. Okay.

15 Q. Does it say whether or not an appointment  
16 had been made?

17 A. Let's see, September 12th, 2005, an  
18 emergency -- in the emergency room yesterday, at  
19 church passed out, hit his head on the seat or pew,  
20 X-rays negative, given appointment for Tuesday at  
21 4 p.m.

22 Q. And then what does the entry on 9-13-05 say?

23 A. No show.

24 Q. Okay. Doctor, I'm going to hand you what I  
25 have marked as Exhibit 4 which are some of the

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1 outpatient records from Wheeling Hospital. What are  
2 these?

3 A. These are physical therapy records from  
4 April of 2005 through July of 2005.

5 Q. Did you review these physical therapy  
6 records?

7 A. Yes.

8 Q. Okay. Did you rely upon them in formulating  
9 your opinions?

10 A. Yes.

11 Q. Okay. Tell the jury a little bit about what  
12 stood out to you from these.

13 A. Again, in reviewing these records in the  
14 months after the accident, it would appear that  
15 Mr. Matyja steadily improved as far as his shoulder.  
16 And by the time he completed physical therapy on June  
17 20th, 2005, quote, patient states that the shoulder is  
18 feeling fairly close to the normal left shoulder,  
19 unquote.

20 By July 1st of '05, he was washing his car,  
21 although did have some increased shoulder discomfort;  
22 July 12th of '05, full range of motion and strength in  
23 both shoulders, non-tender with palpation, manages all  
24 A.D.L. activities at home including cutting grass.  
25 Quote, at this point in time, he feels he has

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1 recuperated from his injury with respect to the  
2 shoulder unquote.

3 Q. I'm sorry, Doctor. What date was that?

4 A. That was July 12th of 2005.

5 Q. Okay.

6 A. Some additional physical therapy records  
7 from July 2nd of '05, quote, patient demonstrates full  
8 range of motion, strength within normal limits in both  
9 glenohumeral joints. That's just a fancy way of  
10 saying the shoulder. He is non-tender with palpation.  
11 He has resumed all activities at home including  
12 cutting grass, and he feels comfortable with a home  
13 exercise program. And he was subsequently dismissed  
14 from physical therapy.

15 Q. Doctor, I'm going to -- you -- I believe  
16 you've already referenced some of them, but I'm going  
17 to hand you what's been marked as 6 -- Exhibit 6.  
18 What are these?

19 A. These are Medical Rehab Services reports.

20 Q. And -- and did you review these as well?

21 A. Yes.

22 Q. And did you rely upon them when you were  
23 formulating your opinions?

24 A. Yes.

25 Q. Now, Doctor, over the course of your career

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1 and over the course of your practice, have you had  
2 occasion to treat patients with shoulder injuries and  
3 with hand injuries?

4 A. Yes. In my rehabilitation practice, about  
5 25 percent of the patients that are admitted to that  
6 service are orthopedic patients. Also, patients with  
7 neurologic problems, such as stroke or spinal cord  
8 injury, develop secondary orthopedic complications  
9 such as frozen shoulder or adhesive capsulitis of the  
10 shoulder which I frequently treat.

11 Q. Now, Doctor, have you formulated an opinion  
12 to a reasonable degree of medical probability as to  
13 what, if any, injuries were caused in this accident?

14 A. Yes.

15 Q. And what would that opinion be?

16 A. In my opinion, Mr. Matyja did suffer some  
17 contusions or bruising to the right shoulder, right  
18 ankle, and right hip.

19 Q. Anything else?

20 A. No.

21 Q. And why do you -- why do you say that?

22 A. The mechanism of injury and his subsequent  
23 findings and complaints are consistent with this  
24 diagnosis. The emergency room records indicate that  
25 he did have symptoms in these areas of his body.

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1 Q. How do the -- how do the X-rays factor  
2 into -- into your opinion?

3 A. Well, the X-rays of his shoulder, elbow,  
4 hips, and even his hand were all perfectly normal.  
5 That does not mean he did not injure those parts of  
6 his body, but it simply indicates that there was no  
7 evidence of severe injury to that part of the body  
8 such as a fracture, a dislocation, or even a severe  
9 soft tissue injury in which we can see swelling in the  
10 soft tissues on a plain X-ray with a severe soft  
11 tissue injury.

12 Q. What about -- what about the tuft that you  
13 were talking about earlier in the finger?

14 A. Well, Mr. Matyja was under the impression  
15 that he had fractured his ring finger, but this really  
16 did not appear to be the case since X-rays of his  
17 right hand did not show any evidence of a -- of a  
18 fracture.

19 Q. Okay. Did you diagnose Mr. Matyja with  
20 anything that would have been unrelated to the  
21 accident?

22 A. Yes. He did have some arthritis in his back  
23 which was seen on X-rays, and he did have some -- an  
24 episode of passing out at church in -- on September  
25 12th of '05 in which he hit his head; and it seemed,

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1 from the records anyway, that the pain in his shoulder  
2 and arm seemed to come back after this incident  
3 because the physical therapy records indicated he had  
4 recovered. Dr. Georges said he had recovered. But  
5 then after this passing out episode in September, he,  
6 again, began to complain of some pain in his shoulder.

7 Q. Did you see anything either in your  
8 examination of Mr. Matyja, your conversation with him,  
9 or your review of his medical records with regard to  
10 any problems with his right ankle?

11 A. No. Mr. Matyja indicated to me that he had  
12 recovered from that, and I did not see anything on my  
13 exam or in the records to indicate anything less than  
14 a full recovery.

15 Q. Have you formulated -- based upon your  
16 training, education, experience, review of the medical  
17 records, examination, have you formulated an opinion  
18 to a reasonable degree of medical probability as to  
19 what Mr. Matyja's prognosis, what his outlook is?

20 A. Yes.

21 Q. And what is that opinion?

22 A. As far as these confusions to his right  
23 shoulder, right ankle, and right hip, I would expect  
24 complete recovery within six weeks.

25 Q. Why?

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1 A. The natural history of recovery from  
2 contusions of this nature is for complete recovery  
3 within six weeks. Also, these were fairly mild  
4 injuries. He was actually able to walk home from the  
5 scene of the accident, and actually did not even seek  
6 any medical attention until the next day.

7 Q. What does that tell you as a -- as a  
8 physician?

9 A. With mild injury, it -- with severe  
10 injuries, people will generally seek medical attention  
11 immediately; but with milder injuries, they may -- may  
12 not.

13 Q. Okay.

14 A. Mr. Matyja himself reports to me that the  
15 pain in his ankle and hip have totally gone away.  
16 Mr. Matyja tells me that he has resumed all of his  
17 regular activities except for being able to get -- get  
18 in and out of his bath. Also, the only treatment that  
19 he is receiving now is some therapeutic exercises at  
20 home. He does not take any pain medications.

21 Also, my exam of Mr. Matyja on January 25th  
22 of '07 revealed no objective abnormalities. In his  
23 interrogatories, Mr. Matyja reported that he had  
24 difficulty sleeping for about a month after the  
25 accident. Again, this would be consistent with



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1 recovery in six weeks.

2 Also, X-rays did not reveal any evidence of  
3 fracture, dislocation, or any injury that would be  
4 expected to cause symptoms beyond six weeks. Also, in  
5 reviewing Dr. Georges' records, he indicated that by  
6 five days after the accident, he was, quote, a little  
7 sore but doing okay, unquote.

8 By June 20th, six weeks after the accident,  
9 Dr. Georges indicated that he was, quote, feeling  
10 okay, doing much better, Tony has gotten over his  
11 trauma, unquote. Also, physical therapy records  
12 indicate steady improvement. By June 20th of '05,  
13 about six weeks after the accident, Mr. Matyja  
14 reported to his therapist that his right shoulder was  
15 feeling fairly close to his normal left shoulder.

16 By July 1st of '05, he was washing his car.  
17 By July 12th of '05, he had resumed all of his  
18 activities including cutting grass. The therapist  
19 actually indicated that Mr. Matyja reported that he  
20 had, quote, recuperated from his injury with respect  
21 to the shoulder, unquote. Also, the therapist noted  
22 by July 12th of '05 that he had demonstrated full  
23 range of motion with good strength and that his  
24 shoulder was non-tender, again, consistent with full  
25 recovery.

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1 So for these reasons, I feel that Mr. Matyja  
2 recovered from these injuries within six weeks.

3 Q. Do you have an opinion, again, based upon  
4 your training, your review, your -- your examination  
5 of Mr. Matyja as to how long medical treatment would  
6 or would not have been necessitated following the  
7 accident?

8 A. Yes. There are no objective findings on  
9 examination or diagnostic studies of any injury  
10 related to this accident that would require any type  
11 of medical, chiropractic, or surgical treatment beyond  
12 six weeks for the reasons I've already stated.

13 MR. GURBACH: Okay. Thank you, Doctor.

14 CROSS-EXAMINATION

15 BY MR. TENNANT:

16 Q. Doctor, my name is Don Tennant; and I  
17 represent Mr. Matyja in this matter, and I have a few  
18 questions for you.

19 You have here in Zanesville, Ohio, a  
20 business named Neurological Associates of Southeast  
21 Ohio, Inc.; is that correct?

22 A. Yes.

23 Q. And are you the sole owner of that business?

24 A. Yes.

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1 Q. Okay. And in that business, including the  
2 treatment that you described of various individual  
3 patients that you have that come through your practice  
4 where you actually treat the patient, either at your  
5 facility here in Zanesville -- your office facility or  
6 at the two hospitals here in Zanesville that you have  
7 privileges at, you also have the business of  
8 conducting these forensic examinations for purposes of  
9 litigation; is that correct?

10 A. Yes.

11 Q. Okay. And just roughly on an annual basis,  
12 on an average -- a ballpark average, how much  
13 compensation in dollars do you derive from the  
14 business of examinations for purposes of litigation?

15 MR. GURBACH: Objection.

16 A. I would estimate for examinations and -- and  
17 depositions, we have charges of approximately \$200,000  
18 a year which represents about 10 percent of our  
19 charges in our corporation.

20 Q. Okay. Doctor, with respect to this  
21 particular matter, you're giving a trial deposition  
22 here for Mr. Matthew Gurbach. And how much is this  
23 session here costing Mr. Gurbach?

24 A. A thousand dollars for the first one hour  
25 and \$600 for every hour after that.

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1 Q. Okay. And is it accurate that these  
2 approximate four examinations per week, that that has  
3 remained consistent in your business here back to,  
4 say, 1996 or so?

5 A. Yes.

6 Q. Okay. So each of the years that you've been  
7 in the business of medical practice including the  
8 forensic examinations back from 1996 for almost ten  
9 years up till today, you have had a relatively  
10 consistent earnings basis for the forensic  
11 examinations roughly?

12 A. Yes.

13 Q. Now, in this particular matter, is it  
14 accurate that you want to try to review all pieces of  
15 evidence that might be relevant to your opinions?

16 A. Well, I'm under the limitation of whatever's  
17 sent to me. I certainly will review everything that's  
18 sent to me.

19 Q. Okay. And as I recall your testimony, with  
20 respect to your examination of Mr. Matyja, that you  
21 have before you all the items that you have reviewed  
22 for the purpose of giving your opinion testimony here  
23 today?

24 A. The only thing I don't have in front of me  
25 is that I did review the actual X-rays that he had had

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1 in addition to the reports.  
2 Q. Okay. And is it accurate that other than  
3 the reduced range of motion in the right shoulder,  
4 that you found no -- you had before you no other  
5 objective evidence of injury?  
6 A. Do you mean on the -- on the examination of  
7 the day I saw him?  
8 Q. Yes.  
9 A. Yes, that's correct.  
10 Q. Did Mr. Gurbach provide to you photographs  
11 of Mr. Matyja's bruising of his right upper leg and  
12 hip?  
13 A. Excuse me one second. I'll just -- no. I  
14 am not in possession of actual photographs.  
15 Q. Okay. It is in the records that Mr. Matyja  
16 did suffer bruising of his right hip and upper leg.  
17 Correct?  
18 A. Yes. And I agree that that was one of the  
19 injuries that he suffered.  
20 Q. Okay. Can you describe the nature of that  
21 bruising of his upper right leg and hip?  
22 A. Just based on the emergency room records, he  
23 did have bruising in that area when the doctor  
24 examined him; but that's as far as I can describe it  
25 because I didn't examine him at that time.

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1 Q. Okay. Your examination occurred some year  
2 and three-quarters after the accident in this case  
3 which occurred on April 6 of 2005; is that correct?  
4 A. Yes.  
5 Q. Okay. And it's your testimony here today  
6 that you spent approximately -- because you did use  
7 the term about -- one half hour of time face to face  
8 with Mr. Matyja?  
9 A. Well, actually, I spent -- I write down the  
10 time that I spent with him. Just give me one second  
11 here. I spent 40 minutes. I saw him at 11:37 to  
12 12:17, I spent with him face to face. So if my math  
13 is correct, that would be about 40 minutes.  
14 Q. Okay. Now, in this particular matter, based  
15 upon all the work that you did including the review of  
16 the records and your examination in person with  
17 Mr. Matyja, you agree that he suffered an injury that  
18 was proximately caused by this knock-down injury  
19 event?  
20 A. Yes.  
21 Q. Okay. And the only -- so you have and hold  
22 the opinion to a reasonable degree of medical  
23 probability that the right shoulder injury, the right  
24 ankle injury, and the right hip injury was proximately  
25 caused by this vehicle knocking him to the ground?

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1 MR. GURBACH: Objection as to  
2 characterization.  
3 A. Yes.  
4 Q. Okay. Because you did say the mechanism of  
5 injury, you understood that this was an incident where  
6 a vehicle hit and -- and knocked Mr. Matyja to the  
7 ground?  
8 A. That's correct, yes.  
9 Q. And those types of injuries, particularly  
10 given that they were all right sided injuries, are  
11 consistent with that type of mechanism of injury?  
12 A. Yes.  
13 Q. Okay. And the only dispute that we have is  
14 the length of time that it would take these injuries  
15 to heal; is that correct?  
16 MR. GURBACH: Objection.  
17 A. I -- I -- I don't know what your position  
18 is.  
19 Q. Well, let me ask you --  
20 A. My position is that it should have recovered  
21 within six weeks.  
22 Q. Well, I understand.  
23 A. If you disagree with that, then yes, it's a  
24 dispute.  
25 Q. Well, the reason I said that is did not

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1 Mr. Matyja explain to you that he still has some right  
2 shoulder stiffness and some right fourth finger, ring  
3 finger stiffness --  
4 A. Yes.  
5 Q. -- on -- on the date that you completed the  
6 examination, which was January 25 of 2007?  
7 A. Yes.  
8 Q. Okay. And do you have any explanation as to  
9 why he would have stiffness in his right shoulder, his  
10 right fourth ring finger some year and three-quarters  
11 after the -- the -- the injury event?  
12 A. Well, he is 83 years old. I would expect an  
13 83 year old to have joint stiffness. I don't see  
14 anything related to this accident that I would expect  
15 to cause persistent joint stiffness, you know, for  
16 more than about six weeks.  
17 Q. Okay. And you're saying about six weeks.  
18 So can it be a little more than six weeks or a little  
19 less than six weeks given your opinion?  
20 A. Generally, with this type of injury, I would  
21 have said four weeks, but in an 83 year old, I gave  
22 him the benefit of the doubt and --  
23 Q. Okay.  
24 A. -- put it out to about six weeks.  
25 Q. So you don't know to a reasonable degree of

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1 medical probability based upon your examination and  
2 evaluation as to why Mr. Matyja has some right  
3 shoulder stiffness and discomfort and some right  
4 fourth finger stiffness?  
5 A. The only other explanation that I could  
6 possibly see was that when he passed out in church and  
7 hit his head on the pew and then began to experience  
8 some complaint of some shoulder pain after that when  
9 he went in to see his family doctor, because prior to  
10 that from reviewing the records, it would appear that  
11 all of his treating -- his treating physician and his  
12 therapist states that he'd recovered.  
13 Q. Okay. Is it accurate that your opinion  
14 given here today is that Mr. Matyja did not injure  
15 his right-handed fourth ring finger?  
16 A. You know what, I did not put that in my  
17 report; but he did injure his right middle finger in  
18 this accident. He did report that in the emergency  
19 room.  
20 Q. Okay. So you would --  
21 A. And -- and --  
22 Q. -- include that --  
23 A. Yes.  
24 Q. -- within your opinion?  
25 A. Yes. I should have put that in my report as

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1 one of the -- as one of the injuries. I did put it as  
2 a possible fracture of the right fourth finger.  
3 Q. Yeah.  
4 A. But there was no fracture. And so I put it  
5 in my report. So I do think that he injured his  
6 finger, but that there was no fracture.  
7 Q. Okay. Well, look at Exhibit 3 for a moment,  
8 which is a Wheeling Hospital Emergency Room record  
9 report. Do you have that before you, Exhibit 3?  
10 A. Yes.  
11 Q. Okay. And under the diagnosis section which  
12 is in the middle of the page, does it not read tuft  
13 FX, which is a short for fracture, right ring finger?  
14 A. It says that under the diagnosis on that  
15 page, yes.  
16 Q. Okay. And the -- and the dispute that you  
17 have is that the X-rays, the radiology report taken,  
18 and the interpretation of those X-ray report -- those  
19 diagnostic films is that they found no hard evidence  
20 of a fracture of the ring finger?  
21 A. That's correct. The radiologist said there  
22 was no fracture.  
23 Q. Okay. So do you have the belief that there  
24 could have been a little bit of confusion with  
25 Mr. Matyja in the sense that someone at the hospital

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1 put the diagnosis of tuft fracture of the right ring  
2 finger and the radiologist said that there was no  
3 fracture?  
4 A. Well, again, you'd have to ask the  
5 radiologist that question.  
6 Q. Well, I know, but you're a medical doctor;  
7 and you've done this for how many years?  
8 A. Too many to count. 30.  
9 Q. Okay. I mean, is there not some  
10 interpretation issues between looking at an X-ray and  
11 relating that to the clinical picture shown by a  
12 patient --  
13 A. Well --  
14 Q. -- from time to time?  
15 A. Well, in this case, the radiologist stated  
16 there was no fracture. He said there was a, quote,  
17 deformity, unquote, of the tuft of the ring finger.  
18 And in a medical/legal case, I would go with what the  
19 radiologist interpreted.  
20 Q. Well, I understand that. But don't you see  
21 patients all the time have from time to time a  
22 misunderstanding of exactly what the doctor has told  
23 them and what their actual injury is?  
24 A. Well, I'm not in a position in this case  
25 to -- yes, medical mistakes are made and

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1 misinterpretations are made; but I can't assume -- I  
2 can't assume that the radiologist made a mistake in  
3 his interpretation.  
4 Q. Well, I'm not asking that question. But  
5 what I'm asking you, sir, is Mr. Matyja believed when  
6 he came home from the emergency room that he had a  
7 fracture of his right fourth finger to which he  
8 answered his interrogatories that that's what he was  
9 told at the hospital?  
10 A. I --  
11 Q. Do -- do you believe that Mr. Matyja is  
12 faking that injury?  
13 A. No.  
14 MR. GURBACH: Objection.  
15 A. No. I do -- the emergency room doctor wrote  
16 tuft fracture of the right ring finger. And so I  
17 would every -- I would have every reason to believe  
18 that that's what the emergency room doctor told  
19 Mr. Matyja he had. And in fact, that's what  
20 Mr. Matyja told me --  
21 Q. Okay.  
22 A. -- that he had. I do not think Mr. Matyja  
23 was lying.  
24 Q. Okay.  
25 A. I think that's what he was told, but the

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1 official X-ray report indicated that there was no  
2 fracture.

3 Q. Okay. But that's not saying -- and you're  
4 not saying as part of your opinion that his right  
5 fourth finger, the ring finger was uninjured?

6 A. No. I believe it was injured, but I -- but  
7 from reviewing the records, it does not appear that it  
8 was a fracture.

9 Q. Okay. So when you say that it was injured,  
10 then if it wasn't a fracture, then you would have to  
11 classify that as a soft tissue type injury?

12 A. Yes.

13 Q. Okay.

14 A. And in my report, I wrote possible fracture  
15 of the right fourth finger as one of my diagnoses.

16 Q. Okay. In -- in this case, you know from the  
17 medical records that Mr. Matyja completed his physical  
18 therapy sessions as prescribed by the physicians on  
19 July 12 of 2005. Are you saying that any treatment or  
20 bill incurred after a six-week period from the date of  
21 the accident was not necessary, nor reasonable, for  
22 the completion of medical treatment of Mr. Matyja?

23 A. That's correct. In this case, there's no  
24 evidence that he required any type of physical therapy  
25 or treatment beyond six weeks. And in fact, by June

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1 20th, he stated that his shoulder was feeling fairly  
2 close to normal and he was given a shoulder pulley kit  
3 to do exercises at home. And that was approximately  
4 six weeks after the accident.

5 Q. Okay. Well, if -- if a doctor gave him --  
6 or a physical therapist gave him some sort of home  
7 exercises to complete with some sort of strengthening  
8 exercises or devices, is that indicative of the fact  
9 that the shoulder still needs some form of  
10 rehabilitation to at least increase muscle tone and --  
11 and muscle strength to match his prior to the injury  
12 condition?

13 A. Well, certainly, yes. I would think he  
14 would need to continue to do exercises to prevent a  
15 re-injury. But from reviewing the records, it  
16 certainly appeared that he had recovered from the  
17 injury that had occurred.

18 Q. Yeah. So anything after six weeks -- you  
19 keep mentioning June 20th of 2005. Do you buy and  
20 agree that medical treatment that was prescribed and  
21 undertaken to June 20th, 2005, was reasonable and  
22 necessary and proximately related to this injury?

23 A. Yes.

24 Q. Okay. So with all due respect, that's  
25 outside of six weeks; but you're -- you're going to

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1 extend your opinions to June 20th of 2005?

2 A. Well, he was -- he was discharged from  
3 therapy on May 27th of 2005. And then he went back in  
4 and I -- I believe was just given a shoulder pulley.  
5 I do not think that he needed extensive physical  
6 therapy from May 27th on that or after -- after May  
7 27th.

8 But certainly, I don't object if he went in  
9 one more time for one more treatment with the physical  
10 therapist on June 20th and was given some exercise  
11 instruction. I think that's fine.

12 Q. Yeah. Did you notice that Mr. Matyja  
13 actually went to two different providers for physical  
14 therapy for his post accident care?

15 A. Yes. I believe he went to Medical Rehab  
16 Services and then physical therapy at Wheeling  
17 Hospital.

18 Q. Uh-huh. Did you ask him any questions about  
19 why he went to two different providers?

20 A. No.

21 Q. With respect to this injury of these various  
22 parts of his body, the right shoulder, right ankle,  
23 right hip, and fourth ring finger on the right hand,  
24 that you've agreed should have been healed after six  
25 weeks which means that he had an injury that he

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1 incurred for a six week period of time. Correct?

2 A. Excuse me. Yes.

3 Q. And you would agree with me that during that  
4 six-week period of time, that he would naturally have  
5 suffered some physical pain and suffering during the  
6 healing and rehabilitation process?

7 A. Yes.

8 Q. And during that six-week period of time, he  
9 would have also necessarily suffered some emotional  
10 distress based upon the fact that he was injured and  
11 he was going through a period of rehabilitation to get  
12 himself back to normal?

13 MR. GURBACH: Objection.

14 A. I don't plan to render any opinions  
15 regarding the emotional state of Mr. Matyja.

16 Q. Do you not have the capacity based upon the  
17 fact that you've treated thousands and thousands of  
18 patients over the years you've been in practice, to  
19 understand that when someone is hurt, particularly an  
20 older person, that it will cause emotional distress to  
21 them?

22 MR. GURBACH: Objection.

23 A. That's extremely variable from person to  
24 person. Some people will have an emotional reaction  
25 to an injury, and other people are very stoic and

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1 don't seem to have any emotional distress at all.  
2 Q. But in particular to Mr. Matyja, you don't  
3 intend to offer any opinions as to whether he did or  
4 did not suffer any emotional distress during the  
5 six-week period that you believe he was injured?  
6 A. Only as a matter of fact, I could state that  
7 there was nothing in the medical records that appeared  
8 that his doctors thought he was suffering any  
9 emotional problems or prescribed any medications for  
10 emotional upset. But I am not going to offer any  
11 opinions from my point of view whether -- what -- what  
12 the nature or extent of any emotional problems were  
13 permanent or temporary as a result of this accident.  
14 Q. Do you believe that during the six-week  
15 period of time that you believe Mr. Matyja was injured  
16 that it did affect his ability on a daily basis to  
17 complete the normal and routine and usual activities  
18 of daily living?  
19 A. Yes.  
20 Q. Okay. And you do agree that Mr. Matyja's  
21 announced effect on his ability to sleep for one month  
22 after the injury event, that he had difficulty getting  
23 to sleep and staying to sleep, that that was  
24 consistent with the injury that he incurred?  
25 A. Yes.

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1 Q. And that that inability to sleep and  
2 difficulty to sleep was, in fact, proximately related  
3 to his injury event?  
4 A. Yes.  
5 MR. TENNANT: That's all I have. Thank  
6 you very much.  
7  
8 REDIRECT EXAMINATION  
9 BY MR. GURBACH:  
10 Q. Doctor, does the fact that you're being  
11 compensated for your time in any way shape your  
12 opinions?  
13 A. Absolutely not. I just charge for time.  
14 Q. You call them like you see them?  
15 A. Yes.  
16 Q. Okay. Mr. Tennant talked a little bit about  
17 emotional -- emotional issues. Have you treated --  
18 have you treated patients throughout your practice  
19 that you've had to refer to doctors for emotional  
20 problems?  
21 A. Yes. I have treated people for minor --  
22 minor depression or anxiety, but if it gets much more  
23 beyond that, I'll refer them to a psychiatrist.  
24 Q. And if somebody to you in your practice  
25 expresses emotional difficulty, will you note that in

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1 your charts?  
2 A. Yes.  
3 Q. Was that noted in any of the records that  
4 you reviewed of Mr. Matyja?  
5 A. No.  
6 Q. Was Mr. Matyja ever referred to a  
7 psychologist, a therapist, or anybody trained to -- to  
8 handle emotional -- emotional issues?  
9 A. No.  
10 Q. Mr. Tennant talked to you a little bit about  
11 photographs of -- of bruises. Do -- are photographs a  
12 diagnostic tool that you use to diagnose fractures?  
13 A. Not fractures, no.  
14 Q. Okay. You've diagnosed Mr. Matyja with --  
15 with bruises. Correct?  
16 A. Yes. Contusions is a fancy way of saying  
17 bruises.  
18 Q. Would the -- would the -- would photographs  
19 have helped your -- helped your review in this case  
20 or --  
21 A. No, because I already -- I already -- you  
22 know, from the nature of the accident and from  
23 reviewing the medical records, I diagnosed bruises or  
24 contusions. I didn't need photographs to confirm  
25 that.

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1 Q. Okay. When you met with Mr. Matyja -- and  
2 Mr. Tennant was talking a little bit about this -- and  
3 I'm going to get back into objective versus  
4 subjective. When you met with Mr. Matyja, you -- or  
5 you noted that he had a limited range of motion in  
6 his -- in his arm. Correct?  
7 A. Very --  
8 Q. In his shoulder?  
9 A. Yeah, very slightly, yes.  
10 Q. Was there any objective evidence that you  
11 had before you from the medical records or anything  
12 else, your examination, that would in any way causally  
13 relate that limited range of motion to this automobile  
14 accident?  
15 A. No.  
16 Q. What do you mean? Why not?  
17 A. Well, there was no evidence of a fracture,  
18 dislocation, or any type of serious injury that would  
19 cause any permanent decrease in range of motion.  
20 Also, in reviewing the records from after the  
21 accident, Dr. Georges did not report any limitation of  
22 range of motion on his exam.  
23 The physical therapist actually indicated  
24 that by July 12th of 2005, he had full range of motion  
25 and strength in both shoulders. Also, another exam by

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<p>1 the physical therapist on July 2nd of '05, indicated</p> <p>2 full range of motion. So certainly, if he would have</p> <p>3 had any injury related to that accident, he would have</p> <p>4 had limitation and range of motion at that time.</p> <p>5 Q. But for how long would that range of motion</p> <p>6 limitation have lasted?</p> <p>7 A. Well, there was no limitation. He had full</p> <p>8 range of motion.</p> <p>9 Q. Okay. Okay.</p> <p>10 A. So --</p> <p>11 Q. And again, is that something that you would</p> <p>12 expect to see in an 83 year-old-fella?</p> <p>13 A. No. Normally, an 83 year old -- 83 year old</p> <p>14 would have some decrease in range of motion normally.</p> <p>15 He actually had full range of motion according to the</p> <p>16 exams of the physical therapist.</p> <p>17 Q. Okay. And the decreased range of motion</p> <p>18 that you noted, the 90 percent range, is that on par</p> <p>19 again with what you would expect from an 83 year old</p> <p>20 gentleman?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. I -- yes.</p> <p>24 Q. Okay. What about -- what about the hand?</p> <p>25 Have you had any objective evidence before you that</p>	<p>1 diagnosed Mr. Matyja with osteoarthritis of the lumbar</p> <p>2 spine; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Is that arthritis in the lower back?</p> <p>5 A. Yes.</p> <p>6 Q. And over the course of your -- your history</p> <p>7 as a -- as a physician, have you treated individuals</p> <p>8 with arthritis in their lower back?</p> <p>9 A. Yes. Many, many, many times.</p> <p>10 Q. What impact does that typically have on</p> <p>11 one's life or their ability to do or not do certain</p> <p>12 things?</p> <p>13 A. It's extremely variable. Some people have</p> <p>14 minimal limitations, and some people can be totally</p> <p>15 disabled so it's a -- it's a wide spectrum.</p> <p>16 Q. Can it -- can it inhibit people from being</p> <p>17 able to get up, sit down, stand up?</p> <p>18 A. It can. But again, it's -- as I mentioned,</p> <p>19 it's very variable from person to person.</p> <p>20 Q. Sure. I'm going to hand you, Doctor, what</p> <p>21 I've marked as Exhibit 7. Do you recognize that?</p> <p>22 A. Yes. This is a report that I authored after</p> <p>23 examining Mr. Matyja and reviewing his medical</p> <p>24 records.</p> <p>25 Q. Was that report kept in the ordinary course</p>
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<p>1 would explain why Mr. Matyja would have any problems</p> <p>2 with any of his fingers or his hand when you examined</p> <p>3 him that would be related to the accident?</p> <p>4 A. No. When I examined him, there was no</p> <p>5 evidence of any decrease in range of motion, swelling,</p> <p>6 deformities, weakness. I didn't see anything in the</p> <p>7 medical records from his family doctor, the therapist</p> <p>8 of any objective findings in the hand. His -- his</p> <p>9 family doctor did not refer him to any hand specialist</p> <p>10 or order -- or order any additional testing or</p> <p>11 treatment for his hand.</p> <p>12 Q. And how does that lack of objective evidence</p> <p>13 factor into your conclusions? How do you use it?</p> <p>14 A. Well, again, I only saw Mr. Matyja on one</p> <p>15 occasion over a year after the accident so I do rely</p> <p>16 on my exam at that time. But again, that's a year</p> <p>17 after the accident. That's why I like to very</p> <p>18 carefully go through his records, see what he -- was</p> <p>19 found on the day of the injury, see what his therapist</p> <p>20 found when they examined him, and see what his family</p> <p>21 doctor saw when they examined him on numerous</p> <p>22 occasions after the accident.</p> <p>23 And there was certainly no evidence in those</p> <p>24 records of any type of significant injury to the hand.</p> <p>25 Q. It's my understanding, Doctor, that you also</p>	<p>1 and scope of your business?</p> <p>2 A. Yes.</p> <p>3 Q. And does that report incorporate your --</p> <p>4 your conclusions and the records that you reviewed?</p> <p>5 A. Yes.</p> <p>6 MR. GURBACH: Thank you very much. I</p> <p>7 have nothing further.</p> <p>8</p> <p>9 RECROSS-EXAMINATION</p> <p>10 BY MR. TENNANT:</p> <p>11 Q. Okay. Doctor, Exhibit 7, that report</p> <p>12 necessarily needs to be amended pursuant to your</p> <p>13 testimony here today that you do believe that</p> <p>14 Mr. Matyja did incur an injury to his right fourth</p> <p>15 ring finger. Correct?</p> <p>16 A. You know --</p> <p>17 Q. Even though it was not classified as a</p> <p>18 fracture by radiology?</p> <p>19 A. You know -- you know, I did include his</p> <p>20 right fourth finger as an injury. But I -- the way I</p> <p>21 worded it, I admit, is confusing. I wrote -- I</p> <p>22 wrote -- I wrote that he did suffer contusions of the</p> <p>23 right shoulder, right ankle, and right hip as the</p> <p>24 first diagnosis.</p> <p>25 Then the second diagnosis, I wrote possible</p>

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fracture of the right fourth finger. I meant that to say that, yes, he did suffer a -- an injury to the finger but it was not a fracture. But the way I -- the way I reported it I think was a little confusing.

Yes. My testimony is I think he did suffer an injury to his right fourth finger in this accident.

MR. TENNANT: Okay. Thank you. That's all.

FURTHER REDIRECT EXAMINATION

BY MR. GURBACH:

**Q. Doctor, has anything that Mr. Tennant has talked to you about moved you off your opinion in your report or changed your opinion whatsoever?**

A. No.

**Q. And explain to the jury very, very briefly, if you could, how you came up with that -- that notion of six weeks that you were testifying about.**

A. Again, I think I outlined it in detail; but basically, soft tissue injuries, bruises, contusions, strains recover within six weeks; and for the reasons that I've already mentioned, the fact that Mr. Matyja walked home after the accident, the fact that his records from his doctor and therapist indicate that he had basically recovered, that there was -- he was

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washing his car, cutting his grass by less than -- you know, within a few months after the accident, all indicate to me that he had recovered from his injuries within six weeks.

MR. GURBACH: Thank you.

MR. TENNANT: Thank you. On the record, we have a stipulation to admission of all the exhibits that were put before the doctor, Exhibits 1 through 8. Is that correct?

MR. GURBACH: Uh-huh. Yep. That's correct.

MR. TENNANT: Thank you.

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

THE WITNESS: I'll waive.

VIDEOGRAPHER: Thank you very much.

(THE DEPOSITION WAS CONCLUDED AT 5:28 P.M.)

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CERTIFICATE

STATE OF OHIO }  
COUNTY OF MUSKINGUM } ss:

I, Stefanie Tahyi May, a Registered Merit Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named ROBERT J. THOMPSON, M.D., was first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotype in the presence of said witness; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid, transcribed from my stenographic notes; and that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee, or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in this action. I am not, nor is the court reporting firm with which I am affiliated, under contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have set my hand and affixed my seal of office at Zanesville, Ohio, on this 25th day of June, 2007.

Stefanie Tahyi May, RMR  
Notary Public in and  
for the State of Ohio

My commission expires on April 4, 2012.

# MEMORY TRANSMISSION REPORT

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