STATE OF NEW YORK

SUPREME COURT **COUNTY OF FRANKLIN**

LINDA TAYLOR as Independent Co-Executor of
The Estate of THOMAS TAYLOR, Deceased,
and LINDA TAYLOR, Individually,

Plaintiffs,

-against- Index No.: 2007-777

THE POINT AT SARANAC LAKE INC., THE
GARRETT HOTEL GROUP, INC., GARY L.
BISHOP d/b/a ADIRONDACK SNOWMOBILE
RENTAL, and GARY L. BISHOP,

Defendants.
_____/

Videotaped Examination Before Trial of **DANIEL CARR, M.D.,** held on Monday, September 26, 2016, taken at the State University of New York, 101 Broad Street, Feinberg, Library 106, Plattsburgh, New York 12901, commencing at 2:05 p.m., before Silva J. Malvasi, Court Reporter and Notary Public in and for the State of New York.

APPEARANCES:

For the Plaintiffs:
GAIR, GAIR, CONASON, STEIGMAN, MACKAUF, BLOOM & RUBINOWITZ
80 Pine Street, 34th Floor
New York, New York 10005
BY: BENJAMIN RUBINOWITZ, ESQ.
BY: RICHARD STEIGMAN, ESQ.

For the Defendants, The Point at Saranac Lake and Garret Hotel Group:
HANNIGAN LAW FIRM, PLLC
388 Kenwood Avenue
Delmar, New York 12054
BY: TERENCE HANNIGAN, ESQ.

For the Defendants, Gary Bishop d/b/a Adirondack Snowmobile Rental and Gary Bishop:
INSLEY & DOUTHAT, LLP
58 Court Street
Plattsburgh, New York 12901
BY: MATTHEW DOUTHAT, ESQ.

APPEARANCES: (CONT'D.)

ALSO PRESENT:

Robert Richter, Videographer

Brandon Pimpinella, Videographer

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STIPULATIONS

IT IS HEREBY STIPULATED by and between counsel for the respective parties that this Examination Before Trial be held pursuant to the provisions of the Civil Practice Laws and Rules; that the presence of a referee is waived; that the signing and filing of the transcript is waived; that the witness may be sworn by Silva Malvasi, Court Reporter and Notary Public, and that all objections, except as to form, are reserved until the time of trial.

D.CARR, M.D.

VIDEOTAPED EXAMINATION BEFORE TRIAL OF

DANIEL CARR, M.D.

SEPTEMBER 26, 2016

THE VIDEOGRAPHER: The videotape recording has commenced, and we are now on the record. The time is approximately 2:05 p.m. My name is Brandon Pimpinella, and I'm the legal video specialist for VC Rooms, LLC. This is the deposition of Dr. Daniel Carr. Silva Malvasi is the court reporter. Will Counsel please identify yourself, stating your name, address, and who you represent.

MR. RUBINOWITZ: My name is Ben Rubinowitz. I represent the Plaintiff, the detailer. My office is 80 Pine Street, New York.

MR. STEIGMAN: I'm Richard Steigman, also from the same firm, representing the Plaintiffs.

MR. HANNIGAN: My name is Terry Hannigan, from Hannigan Law Firm in Delmar, New York, and I represent the Point at Saranac Lake and the Garrett Hotel Group. Out of view of camera is Matthew Douthat, on

behalf of Gary Bishop and Adirondack Snowmobile Rental.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

Thereupon,

DANIEL CARR, M.D.,

having been called as a witness, being duly sworn, testified as follows:

THE VIDEOGRAPHER: Counsel, you may proceed.

DIRECT EXAMINATION

BY-MR.HANNIGAN:

Q. Good afternoon, Dr. Carr.

A. Good afternoon.

Q. This testimony that you're going to be giving today is going to be played for a jury in Franklin County Supreme Court later this week, but for the record, the time is now about 2:10 on Monday, the 26th of September, and you are in Syracuse, New York; is that correct?

A. Yes, it is.

Q. Okay. Doctor, would you tell the Jury your full name and your business

address, please.

A. Daniel Lane Carr, 2200 East Genesee Street, Syracuse, New York, 13210.

Q. And Dr. Carr, what do you do for a living?

A. I'm an orthopedic surgeon.

Q. And do you have privileges at any facilities?

A. I do. I have privileges at the Syracuse hospitals, including Upstate Hospital, the Veterans' Hospital, St. Joseph's Hospital, the Community General Hospital, Auburn Memorial Hospital and the local surgery centers.

Q. Doctor, can you tell the Jury, briefly, your academic training and qualifications, please.

A. Sure. I graduated from Hamilton College with honors in 1986. I came to Syracuse and I did my medical training at the SUNY Upstate program at Syracuse. I completed my medical school training in 1991. I did one year internship in general surgery, also in Syracuse, followed by a four-year

residency in orthopedic surgery in Syracuse. And after completing that net program, I've been in private practice in Syracuse since 1996.

Q. And what's the name of your practice in Syracuse, Doctor?

A. It's CNY Orthopedic Sports Medicine, PC.

Q. And do you see patients at your practice?

A. Yes, I do.

Q. And do you also perform medical examinations when requested by people who are not your patients?

A. Yes.

Q. And at my office's request, did you do a medical examination of Linda Taylor?

A. Yes, I did.

Q. And was that - or, when was that? Can you tell the Jury, please.

A. That was August 18th of this year.

Q. Okay. And Doctor, could you tell the Jury what orthopedics or orthopedic surgery is.

A. It is the medicine of the musculoskeletal system, so it treats injuries to muscles, tendons, ligaments, bones, as well as spinal problems such as disc problems. It treats medical orthopedic conditions such as arthritis, and also traumatic orthopedic conditions such as fractures and dislocations, and we use various non-operative measures, such as therapy and medicine, and also operative treatment when necessary.

Q. And Doctor, did you perform an orthopedic examination of Linda Taylor?

A. Yes, I did.

Q. And was it focussed on her bones and her orthopedic injuries, muscles, tendons, ligaments, things of that sort?

A. Yes, it was.

Q. Doctor, are you Board certified?

A. Yes.

Q. And tell us what Board certification is.

A. For my specialty, Board certification is a three part process. The first part is

completing a residency at an accredited program. The second part is a written exam that's done right after the residency. One then goes into practice as a Board eligible surgeon, and after two years in practice, a six month series of surgical cases is collected by the American Board of Orthopedic Surgery. The candidate is brought to Chicago for an oral exam given by testers who are already Board certified, and if one passes that, then one is considered Board certified. And that's a ten year certificate that is re-done every ten years.

Q. So, is it fair to say you are currently Board certified in orthopedics?

A. Yes, I'm Board certified, and recertified twice.

Q. And Doctor, do you hold any teaching positions?

A. I do. I'm a clinical assistant instructor at the Upstate program in Syracuse, and also a preceptor for the physician's assistant program at Lemoyne College.

Q. And Doctor, I'm going to be asking you some questions about your examination of Linda Taylor, and is it fair to say you prepared a report of your findings in that regard?

A. Yes.

Q. I'm going to refer to that as the reports -- I'm sorry, the report. And if, at any time, you need to refer to that to assist in your testimony, please feel free to do so.

A. Okay.

Q. Doctor, can you tell us where it was that you performed the examination of Mrs. Taylor?

A. In my office at the address I'd already given.

Q. And is that the facility where you attend to your own patients as well?

A. Yes, it is.

Q. Do you recall anyone being with Mrs. Taylor when she presented for the examination?

A. Yes, she was with her legal

representative, Mr. Steigman.

Q. Now, Doctor, what did you do in the course of your examination of Mrs. Taylor, from the time you personally had interaction with her and going forward?

A. I took a history from her as to what the events were that caused her injuries, and also what injuries she had sustained. We also discussed the treatment that she had for those injuries, and how she was doing at the current time. And then I did a physical exam of the involved body parts. And then after that, I reviewed a number of imaging studies; also had her entire medical file to review that I reviewed some both before and more in detail after the exam, and then prepared the report after that.

Q. Would it be fair to say, Doctor, that Mrs. Taylor had a fairly extensive medical history?

A. Yes, it certainly would be fair to say.

Q. And that is primarily with respect

to the accident she was involved in on February 19, 2006; is that right?

A. Yes, it is.

Q. And Doctor, if you need to, again, refer to your report, can you tell us the history that you received from Mrs. Taylor.

A. Yes, the history was that she was in an accident while on a snowmobile that was struck by a motor vehicle, and in the process, she was thrown from the snowmobile and sustained a number of orthopedic injuries as well as some non-orthopedic injuries, of which I only evaluated her for the orthopedic injuries. That was the history of the injury. She then had received treatment acutely in Vermont, and after having a number of operations performed on various bony injuries there, she went through a rehab period. She received some treatment elsewhere as well down in New York City, and she also received some back in Texas, where she lives part of the year. And she was still symptomatic at the time that I saw her, but had completed the majority of her

treatment.

Q. Doctor, would it be fair to characterize Mrs. Taylor's orthopedic injuries as significant or severe?

A. Yes, it certainly would.

Q. And you've had the opportunity to treat -- or, withdrawn. Have you had the opportunity in the past to treat patients who were involved in either pedestrian or snowmobile accidents or motorcycle accidents with motor vehicles?

A. Sure, I have.

Q. And would you say that Mrs. Taylor's injuries were consistent with someone who had been struck by an automobile?

A. Yes.

Q. Now, Doctor, can you tell us, after you did the history, what you discerned about Mrs. Taylor's condition during the course of your examination.

A. Well, during the physical exam, I found that she was able to ambulate quite well considering her lower extremity injuries that she had. She had a number of surgical

incisions that were consistent with the operations she had. She still had some tenderness in the musculature of her left thigh where that surgery was done. But otherwise, she really did not have much in the way of tender areas. I also noted that there was some loss of motion in her left shoulder, which I've characterized as a fairly mild loss of motion from her shoulder injuries. She had mild loss of hip motion on the left side as well, where she'd had fracture of her hip. Neurologically, she was intact when I saw her. Her exam of her spine was fairly benign. She had some paresthesias by history, but did not have any abnormalities on physical examination to the neurologic testing of her lower extremities or her back.

Q. Doctor, could you tell us what paresthesia is, please.

A. Paresthesias are a painful, numb, tingly sensation, the kind of thing that happens when one hits their funny bone and they get that shock down the arm. That's a

paresthesia.

Q. And Doctor, did Mrs. Taylor relate to you anything that she had done in follow-up to the medical treatment, both the acute care that she received in 2006 and later with respect to physical therapy, Pilates, anything like that?

A. Well, yes. She's had extensive physical therapy over the years, and she was actively involved in her own rehab as well, being involved in Pilates, which she did regularly.

Q. And did you find that her involvement with physical therapy and Pilates was beneficial to her recovery and her ability to compensate for her injuries?

A. Yes, I would.

Q. Now, Doctor, I want to go back a little bit to her orthopedic injuries that you mentioned. Can you categorize them, perhaps either from top to bottom or bottom to top, the fractures that she sustained, and what your findings were with respect to those fractures or problems.

A. Okay, sure. Looking at the upper extremities, she had a fracture of her forearm, her radius bone, which she had surgery on. She had done well with that in terms of not having pain. She did have some mild weakness of grip strength on that side on my physical exam, which I would attributable probably to that injury. That was the only real finding, other than the scar from the surgery on that forearm. She'd also had some fractures around the left shoulder that did not require surgical treatment, but she did have an impaction fracture of her collar bone. She had a non-displaced fracture of the shoulder blade going into the glenoid, which is the socket part of the shoulder, and those were opted to be treated conservatively. And she did reasonably well from that, but she did have some loss of motion in her shoulder as a result, probably from those injuries. She had --

Q. Doctor, let me interrupt you there. We're talking about left sided injuries in

Mrs. Taylor; is that correct?

A. We are, yes. All of the injuries to her extremities were left sided.

Q. Doctor, with respect to the care and treatment Mrs. Taylor received for her forearm injury, did you find that care to be appropriate and proper for the injury she sustained?

A. Yes, I did.

Q. And how about with respect to the shoulder injury? I think you said it was an impacted, but non-displaced, fracture that was treated conservatively. Did you find that care to be appropriate for the injury Mrs. Taylor sustained?

A. Yes, I did.

Q. Is there anything further with respect to the clavicle and the shoulder? I didn't mean to interrupt you. Did we finish with the shoulder?

A. I was finished with the shoulder, yes.

Q. And you indicated there was some loss of motion; is that correct?

A. Yes, that's correct.

Q. Range of motion, and that, you believe -- you opine, your professional opinion is that's attributable to that shoulder injury you told us about; is that fair?

A. Yes, that's fair.

Q. Okay. And if you've concluded with the shoulder, Doctor, would you move on to the next area of inquiry.

A. Yes, she also had had several fractures of her left lower extremity. She had a tibia fracture and a fibula fracture, which the tibia fracture was treated with an intramedullary rod. She also had a fracture of the femur, both the shaft and up close to the hip joint in what we call the intertrochanteric region. That was treated with plating, and both of those fractures for the femur and the tibia did heal well. She did have some loss of motion at her left knee, however, that I would feel would be attributed to those injuries, and there was a 15-degree loss of flexion compared to the

other side, whereas extension was full. There was a mild loss of motion there.

Q. Okay. Doctor, I'd like if you could start at that high point and work down. So, if we start at her -- in the area of her greater trochanter or her acetabulum, can you describe what you've discerned about the fractures there and her recovery or limitations with respect to the left hip.

A. Okay. With the left hip, she had the dynamic hip screw plate, which is the plate and screw in the hip. She also had fractured the acetabulum on that side, so she had a plate placed in the acetabulum as well. Both of those fracture healed. They did heal with what we call some heterotopic ossification, which means some excess bone formed around the hip joint, and that resulted in a mild loss of motion on my exam with a loss of rotation in both directions. The fractures, however, did heal well.

THE VIDEOGRAPHER: The time is approximately 2:21 and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 2:32 p.m. and we are back on the record.

BY-MR.HANNIGAN:

Q. Okay. Doctor, we had a little bit of time off the record there for some technical difficulties. We're back on. Doctor, would you describe for us Linda Taylor's left hip injury and the treatment that she received for it and what findings you made on your examination of her.

A. Sure, her left hip injury was a combination of a fracture of the acetabulum, which is the socket part of the ball and socket hip joint, and also the intertrochanteric region of the femur, which is just beyond the ball part of the ball and socket joint. She had a plate put on her acetabulum to fix it, and she had what's called a dynamic hip screw, which is a screw and side plate put on the hip femur bone in order to fix that part of it. The fractures had healed well, but she did have some heterotopic ossification form, which is

exuberant bone that forms around the fracture site in the soft tissues. It didn't impede her motion enough for her surgeon to want to remove it, but it was present radiographically. And on my exam I found that she did have a loss of about ten degrees of internal rotation, and ten degrees of external rotation on that hip compared to the other hip, likely due to the heterotopic ossification that had formed, but the hip itself was without pain for her and with motion.

Q. And did you find that the treatment that Mrs. Taylor received for her acetabular and trochanter, that care and treatment was appropriate under the circumstances?

A. Yes, I did.

Q. Now, Doctor, let's move down to the femur. I'm sorry, are you finished with her hip?

A. Yes, I am.

Q. Okay. Let's move to the left femur, and tell us what injuries she sustained there and what you discerned in your examination of

her.

A. Well, that fracture in the intertrochanteric area did extend down the shaft, so it was also a femoral shaft fracture that required plating as well. She did have some residual soreness in the musculature on the lateral side of her hip. That could be due to the hip fracture; it could be due to the muscular injury of the femur fracture. But, the fracture, again, had healed well. She did have some mild loss of flexion in her left knee that's probably attributable to the combination of the muscle damage from the fracture of the femur, as well as the fracture of tibia below the knee.

Q. Did you note that she had sustained some injuries to her left quadriceps?

A. Well, by then the quadriceps was well healed, and measurably, there was no difference side-to-side when I did girth measurements, so I wouldn't be able to discern a quadriceps injury on physical exam, although it was present during the time of

surgery, and in reviewing the records, that the damage to the femur had actually caused a puncture wound to the quadriceps muscle.

Q. And Doctor, is there anything further you noted with respect to the femur?

A. No.

Q. So, would you move on to the tib-fib area, please.

A. Yes, she did have fractures of her tibia and fibula. That was treated with an intermedullary rod placed in the tibia. That fracture did heal well. The bone was healed; but again, she did have some mild loss of flexion of her knee, which could be a combination of the femur injury and the tibia injury combined.

Q. Doctor, would it be fair to say that Mrs. Taylor has had residual problems as a result of these injuries she sustained in that snowmobile accident?

A. Yes, it would.

Q. And Doctor, with respect to the recovery she's made, do you believe that Mrs. Taylor's participation in physical therapy and

her own regimen has aided her in making her recovery she made as of August 18th, 2016?

A. Yes, I do.

Q. Do you believe that she has any limitations on her functions, things she can do presently?

A. Medically speaking, there's no contraindications, meaning there's nothing that I would prohibit her from doing physically. But certainly, with the residual aches and pain that she has, she would be expected to have some discomfort if she tried to do high impact type activities such as running and jumping type activities.

Q. Did you note that Mrs. Taylor made any complaint about being able to walk or climb stairs; those types of daily activities?

A. She did. She said it was difficult for her to go on long walks, and also did have a difficult time with stair climbing; and getting herself up from a seated position, at times, was difficult for her.

Q. And did you actually observe that

when you examined her?

A. No. She moved fairly smoothly in the office when I saw her.

Q. Okay. Doctor, did you make any observations about Mrs. Taylor's gait or walking on the date that you examined her?

A. I did. When I saw her, her gait was normal at a normal walking speed. I did ask her to do heel standing and toe standing as part of the exam, and she indicated she could not do that because of balance issues, however.

Q. Would it be within the realm of orthopedics, Doctor, that Mrs. Taylor could ambulate without a discernible gait when you saw her and then have problems at other times with her walking?

A. Sure, because people's symptoms can wax and wane on any given day.

Q. Did Mrs. Taylor provide you with any advice -- or, I'm sorry. Did Mrs. Taylor provide you with any information as to her medications, and specifically medications on the date that you examined her?

A. On the date that I examined her, she had not taken any medications. She did say that, depending upon her level of symptoms, at times she would take Tylenol or Advil or Tramadol.

Q. And again, Doctor, would taking those medications on an as-needed basis be appropriate for a woman such as Mrs. Taylor who sustained the injuries she experienced?

A. Yes, it would.

Q. Now, Doctor, did you make an assessment of Mrs. Taylor's condition as a result of your examination?

A. Yes, I did.

Q. Can you tell the Jury what your assessment of her condition was after you conducted this examination of her?

A. My assessment was that she had been involved in an accident in 2006, and she did sustain multiple orthopedic injuries. I listed several of those injuries that were most significant, being the left radius fracture, the left scapula fracture, a left intertrochanteric femur fracture, a left

femoral shaft fracture, left acetabular fracture, left tibia and fibula fracture, and that she was status-post surgical treatment for all of those except the scapula. She had had some other non-operatively treated fractures as well, such as the pubic rami fractures and sacrum. So, all in all, she had significant orthopedic injuries, but she also had done a very good job rehabilitating herself, and functionally was doing quite well from an orthopedic standpoint, considering those injuries she had sustained.

Q. Doctor, were you aware that in November of 2008 Mrs. Taylor had to have a procedure done on her hip with respect to the dynamic screw?

A. I was. I knew she had developed an infection and did have to have that hardware removed.

Q. Doctor, did you have an impression as to how Mrs. Taylor was getting along or doing as of the date of your examination?

A. I felt that she was getting along quite well, all things considered, with her

injuries that she had sustained. She did have some mild residual that I expected would be permanent for her on an ongoing basis.

Q. Doctor, did you have a -- withdrawn. Did you note that the limitations she was complaining about, or limitations in activities -- long walks, I think you mentioned, stair climbing, difficultly getting out of a chair -- do you believe those will be permanent in nature?

A. They probably will be, yes.

Q. Do you believe that Mrs. Taylor's condition is going to get worse as she goes forward?

A. No, I don't have any basis to think it's going to get worse, other than the normal aging process that happens to people when they're in the middle ages. They tend to get more sore and a bit more limited as time goes on. But by now, after ten years, I expect her injuries to plateau where they're at.

Q. Now, Doctor, can you state within a reasonable degree of medical certainty in

your professional field of orthopedic surgery your opinion as to whether Mrs. Taylor's injuries are going to get any worse?

A. I can.

Q. And what is your opinion, Doctor?

A. My opinion is that within a reasonable degree of medical certainty, her opinions are not likely to get any worse as time goes on.

Q. You said her opinions; you mean her injuries?

A. Oh, her injuries. My opinion is her injuries are not likely to get worse.

Q. Okay. And as a general matter, did you find Mrs. Taylor to be a pleasant and cooperative examinee?

A. I did, yes.

Q. Doctor, in your report you make a note, or you made a note about her paresthesias.

A. Yes.

Q. And could you explain what findings you made in that regard?

A. Well, she talked about the

paresthesias going into her right thigh, and that she said really had come on over the last year. So, that was nine years after the original accident. And also, the tests that she'd had done, such as MRI, didn't show anything that would explain why she would have right sided paresthesias, so I wouldn't be able relate those complaints to the accident that happened a decade ago.

Q. Okay. And that's because of the time of the onset?

A. Yes.

Q. Doctor, did you make a determination as to Mrs. Taylor's level of disability?

A. From an occupational standpoint, I said she was not occupationally disabled.

Q. And what do you mean by that?

A. Well, she wasn't working outside the home, and there really was no job that she was disabled from since she wasn't employed outside the home.

Q. Now, Doctor, did you get retained by my office to perform this examination?

A. Yes.

Q. And you had never met Mrs. Taylor before the day that she came into your office; is that fair?

A. That's correct.

Q. And did you review a substantial amount of medical reports?

A. I did. There were well over 2000 pages of records.

Q. And did you review some x-rays as well?

A. I did.

Q. Did you review some records as recent as July of 2016?

A. Yes, I did.

Q. Now, Doctor, are the opinions and the impressions that you've conveyed here -- opinions that you have given with a reasonable degree of medical certainty in your field of orthopedic surgery?

A. Yes, they are.

Q. Okay. Doctor, did your office, or did you get compensated for performing the medical examination of Mrs. Taylor back in August?

A. Yes, I did.

Q. And do you know how much that examination cost, or how much you charged?

A. The examination fee starts at $950, and then it's $700 per hour for review of medical records. I believe the total came up to around $10,000.

Q. Now, in addition, did you charge a fee for having to provide testimony here today?

A. Yes, for pretrial preparation and for the time today, I did charge a fee, and that's $6,000.

Q. And is that essentially the sum total of your charges, approximately $16,000 as we sit here today as of September 26th?

A. Yes.

Q. Are those usual and customary charges in your practice?

A. They are.

Q. Do you do medical examinations for lawyers as a part of your practice?

A. Yes, I do.

Q. And about how many examinations of

this sort, where an attorney calls you up and asks you to examine a patient, do you do either monthly or annually?

A. Approximately 10 to 12 a month.

Q. And in addition to that, do you treat patients in your office?

A. Yes, I do.

Q. And do you also provide care for patients in facilities, hospitals, things of that sort?

A. Yes, I do.

Q. Thank you, Doctor. That's all I have.

CROSS-EXAMINATION

BY-MR.RUBINOWITZ:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. My name is Ben Rubinowitz. I'm going to ask you some questions. I ask you to do the same courtesy and answer the questions directly; fair enough?

A. Sure.

Q. Doctor, you completed your residency in approximately 1996; is that right?

A. Yes.

Q. And with respect to the work that you're doing, you mentioned that you review cases involving spinal injury, orthopedic injury, leg, femur, acetabular fractures. When was the last time you did spinal surgery?

A. The last time I performed spinal surgery would have been during my residency. I don't do that as part of my practice.

Q. So, for the last 20 years, you've done no spinal surgery at all; correct?

A. That's correct.

Q. With respect to trauma surgery, such as the type of injuries that Linda Taylor suffered, when was the last time you were involved in trauma surgery like that?

A. Of a multi-level trauma, it would have been about five years ago for something that approaches this severity.

Q. And when you say, this severity, what you're speaking about is the severity of the injuries suffered by Linda Taylor in this accident; correct?

A. That's correct.

Q. Now, one of the things that Mr. Hannigan asked you towards the end of his examination of you, he spoke about the work that you were doing, medical-legal work; correct?

A. Yes.

Q. All right. One of the things that you know, though, as an orthopedic surgeon, is that there are doctors in your field who specialize, for example, in hand surgery; true?

A. True.

Q. There are some that specialize in hip surgery; am I right?

A. Yes.

Q. There are certain orthopedic surgeons that specialize in lower extremity fractures, such as the lower legs; true?

A. True.

Q. And there are also doctors who devote a large portion of their practice to litigation, law related; right?

A. Sure.

Q. Now, with respect to you, one of the things that we know is that you got involved in the legal-medical world in around the year 2000; true?

A. That's correct.

Q. And back in 2000, one of the things that you were doing is, you were doing approximately 100 to 400 of these examinations per year related to legal work; right?

A. That's correct.

Q. And we can agree that that had nothing to do with your treatment of patients; correct?

A. Other than being in the field of orthopedics, that's correct. That's separate from my treatment of my patients.

Q. Exactly. In other words, there was no doctor-patient relationship; true?

A. That's true.

Q. And for the most part, what you were doing is, you were offering your opinions for the defense of a case; correct?

A. Predominantly, it was defense work,

sure.

Q. Now, back at that time in 2001, you were typically paid approximately $450 per exam; right?

A. That sounds about right.

Q. And if we multiply the 450 times 400 to 500 exams, that's at least $180,00 to $200,000 a year you were earning back then, just for medical-legal related work; true?

A. That sounds about right, yes.

Q. And back then, you were testifying approximately 12 times a year; correct?

A. Again, I don't recall exactly, but probably reasonable.

Q. All right. As your devotion to litigation continued, we know that, for example in 2003, you were being paid quite a bit more money to do medical-legal work; true?

A. I don't remember. Over time, sure, the rates have gone up and I've been paid more.

Q. All right. And I want to focus, for example, two years later. If we focus

for example, back on 2001, can we agree that the total percentage of your work, if we go back to when you first started, was less than 10 percent of your earnings; fair enough?

A. That's probably correct.

Q. Okay. So, you were making around $200,000 just for medical-legal, and that was about 10 percent of your work at that time; true?

A. True.

Q. All right. So, you were making over $2 million dollars a year in total; correct?

A. My practice was, yes.

Q. And you are the sole person in charge of your practice; correct?

A. That's correct.

Q. So, as 2003 came around --

THE VIDEOGRAPHER: The time is approximately 2:51 p.m., and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 2:53 and we are back on the

record.

BY-MR.RUBINOWITZ:

Q. Doctor, I understand we had some technical difficulties. Can you hear me?

A. Yes.

Q. All right. So, back in 2003, as we move forward, you're devoting a greater portion of your practice to medical-legal related work; true?

A. Yes.

Q. So then, in 2003, you're now devoting approximately 25 percent of your practice to litigation related work; right?

A. Again, I don't remember the exact timeline, but it did increase over the years.

Q. And indeed, one of the things that you've been doing is you've been testifying in many different courts throughout the state for the defense; correct?

A. I guess.

Q. And one of the things you've realized is that it's a lucrative practice and you wanted to keep the business going; true?

A. Sure. It's part of my livelihood, so yes.

Q. And Doctor, as time goes by, for example in 2005, one of the things that's happening is you're now conducting over 500 examinations of plaintiffs on behalf of the defense; true?

A. Well, that would be not just plaintiffs. That would be workers' compensation cases as well.

Q. And indeed, Doctor, can we agree that the percentage of your practice now devoted to litigation, as of 2005, has now increased to over one third of your practice; right?

A. It probably has, yes.

Q. And indeed, what that means is you've now limited the orthopedic work that you do for your own patients; true?

A. Yes.

Q. One of the things that's happened, though, as 2005 comes around, is the costs have gone up. So, instead of charging $450 per report, you're now charging over $700 for

a report, generally; true?

A. I don't remember the year that that changed, but over time it did, yes.

Q. And in fact, Doctor, what you were charging for a half day in court, which is what we're doing right now, you were charging $4,000; correct?

A. That sounds right.

Q. Back in 2001, it was $2,000; right?

A. I don't recall, but it could have been.

Q. So, that would be a 100 percent increase between 2001 and 2005; correct?

A. If those numbers are accurate, then yes.

Q. Those are your numbers; aren't they, Doctor?

A. I said I don't remember exactly what it was back then. I just know it did increase over time.

Q. You don't disagree with anything I've said, though; do you?

A. I do not.

Q. Now, as time goes by, your devotion

to litigation has been even more lucrative; hasn't it, Doctor?

A. It has.

Q. So, as we go to 2009, one of the things that's happened is you've been doing even more work for defense firms; correct?

A. That's correct.

Q. And in fact, what you're charging just for a half day in court as of 2009 is $5,000; right?

A. That sounds correct, yes.

Q. And for review of records, your usual price as of 2009 would be $900; right?

A. For a full record review, probably.

Q. And in fact, back in 2003 or so, it was $450 for that same review; right?

A. That sounds correct.

Q. So, we now have another 100 percent increase due to your devotion to litigation; true?

A. That's correct.

Q. There had been years when, due to the work you were doing as of 2009 just for defense lawyers, that you made in excess of

$500,000 as of 2009; right?

A. That wasn't just for defense lawyers. That would be also with the work-related injuries.

Q. In other words, your workers' comp work that you do on behalf of not the Claimant, but for the defense of workers' comp; correct?

A. They're the ones that were paying me, yes.

Q. And in fact, so if we take a look at your devotion to litigation alone, that as of 2009 you were earning more than half a million dollars a year; right?

A. That's correct.

Q. One of the things that you wanted to do was to keep the business going; correct?

A. Sure.

Q. And in fact, sir, we know that as of 2011, you're now devoting 40 percent of your practice to litigation related work; true?

A. That sounds correct.

Q. Also, doing the majority of the work

for the defense; am I right?

A. That's the nature of the work, so yes.

Q. In fact, sir, as of 2007, 40 percent of your gross income was derived from doing medical evaluations and testimony; right?

A. That sounds about right, yes.

Q. And in fact, as of 2011, the percentage of your practice, you've now cut down on your orthopedic work, and the litigation related work is now 50 percent of your practice; right?

A. That's correct.

Q. And in fact, we can agree that as of 2011, you had four to five thousand of office visits a year; right?

A. That's correct.

Q. And of those four to five thousand, half of them were litigation related evaluations; true?

A. Not half the number. Probably half of the total income would be litigation related.

Q. Well, Doctor, as of 2011, the total

income would be 750 to $800,000 a year just from litigation related work; right?

A. That sounds about right.

Q. And in fact, as we continue through 2013, you're now, as of 2013, we can agree that you're earning well over $800,000 a year just to do litigation related work; right?

A. That's probably true, yes.

Q. And in fact, it's gotten even more if we bring it up to date today; true?

A. That's correct.

Q. So, you're now making a little over a million dollars a year just related to litigation; true?

A. It'll probably be about that this year, yes.

Q. And in fact, Doctor, one of the things that you've had is, you've had repeat business from defense firms; correct?

A. For some firms, sure.

Q. They've hired you many, many times; am I right?

A. Some have, yes.

Q. And in fact, sir, one of the things

that you'd like to do is, you'd like to keep this business going for years to come; am I right?

A. Sure.

Q. And in fact, the reason you'd like to keep it going for years to come is, you're now making over a million dollars a year and you don't even have a doctor-patient relationship with these people that you're examining; right?

A. That's all part of it, sure.

Q. So, in fact, Doctor, what percentage of your practice today is devoted to medical-legal work?

A. I'm right on that same number: about 50/50 between my patients and medical-legal work.

Q. So, now you're making over $2 million a year, half of which, at least, is devoted to litigation; true?

A. That's correct.

Q. Would you agree, Doctor, that sometimes the opinions that you give concerning the people that you evaluate are

wrong?

A. Sure. I'm not perfect. I'm sure they are wrong at times.

Q. Doctor, in addition to that finding, or one of the things that you do is testify at depositions; am I right?

A. Yes.

Q. In fact, Doctor, isn't it true that you testify 10 to 12 times a month?

A. For workers' compensation cases, that's correct.

Q. So, if you testify 10 to 12 times a month for workers' compensation cases, that's over approximately 120 times a year that you testify; correct?

A. Yes.

Q. And in addition to the testifying that you do in the workers' compensation cases, one of the things that you do is you testify in court; correct?

A. I do.

Q. For example, you testify at least once a month approximately; right?

A. That's correct.

Q. Sometimes even more than once a month; am I right?

A. Sometimes.

Q. So, we can agree that you testify, in making the money that you make -- over a million dollars -- more than 150 times a year; correct, sir?

A. That's probably correct.

Q. And we can agree, sir, that with respect to the number of days that are actually worked, there are about 250 days in the year that you actually work; correct?

A. Yes.

Q. So, Doctor, certainly, when you take a look at the total number of days that you work, most of the time, the majority of days is spent on medical-legal work; true?

A. Of some sort, yes. I would say that's correct.

Q. Doctor, over the last 10 years, have you had any desire to go back to full -time orthopedic practice?

A. No. I consider what I do full-time orthopedic practice.

Q. In fact, Doctor, you're not doing surgery on any one of these people that you evaluate for the defense; correct?

A. That's correct.

Q. So, in fact, Doctor, half the time or more, you're not doing orthopedic surgery; right?

A. Actual surgery, that's correct.

Q. When did you last devote 100 percent of your professional life to actually treating your own patients?

A. Well, there's always some administrative side of medicine anyway, even when it's not just treatment, but if you take away the legal-medical part of the work, the last time I did just that would have been 1998, probably.

Q. More than 20 years ago, we can agree on that; right, Doctor?

A. Well, that's less than 20 years.

Q. Isn't it true that it's more than 20 years ago because you started the medical-legal work in 1998; didn't you?

A. That's not more than 20 years.

Q. In 1998, you were doing medical-legal work; correct?

A. Right.

Q. In 1996, you weren't doing medical-legal work; true?

A. Correct.

Q. So, it's 20 years, sir; true?

A. No, that's --

Q. 1998 to right now is how much; 20 years?

A. From 1996, yes.

Q. My point is, Doctor, even in 1998 you were doing medical-legal work; true?

A. Well, I wasn't Board certified until 1998, so after I became Board certified, I could do medical-legal work.

Q. So, as soon as you became Board certified, that's when you started doing your medical-legal work; right?

A. That's correct.

Q. And you understand that there are physicians within your field who devote less than one percent of their practice to medical-legal work; true?

A. Sure.

Q. Do you know a doctor by the name of Bartlett?

A. I do not.

Q. Have you ever heard of Dr. Bartlett?

A. Well, he was the treating doctor in this case. That's the only time I've heard of him.

Q. Did you ever read any article by him that he's written concerning fractures of the acetabulum?

A. No.

Q. Doctor, in doing the examination of Linda Taylor, you saw her one time; am I right?

A. That's correct.

Q. You saw her back on August 18, 2016; correct?

A. Yes.

Q. And in fact, Doctor, one of the things you've been asked over the years is this -- the question asked by many lawyers is, Doctor, did you keep your notes of the examination?

A. No.

Q. You've been asked that in the past; haven't you?

A. I have.

Q. And one of the things that you've been asked by many lawyers is, please keep your notes; haven't they, Doctor?

A. No. I've been asked if I keep them, but nobody asked me to keep them.

Q. In fact, Doctor, with respect to your notes for Linda Taylor, I take it you discarded them?

A. I did.

Q. Doctor, was there a reason -- that's wrong. Doctor, did you note anyplace the start of the exam and the end of the exam of Linda Taylor that you did?

A. No, I did not.

Q. If I told you, Doctor, that the exam started at 10:35 and it ended at 10:45, would you agree with that?

A. No. But, I don't know what you're talking about. The actual face-to-face time or physical exam, or what?

Q. The actual physical exam, Doctor. Would you agree with me it took approximately 10 minutes?

A. I didn't time it, so I have no idea.

Q. When you say you have no idea, you don't disagree that it took approximately 10 minutes; right?

A. I don't disagree because I don't know.

Q. At any rate, Doctor, one of the things that you do know is that when you do these exams, it takes approximately 10 minutes; correct?

A. To do a physical exam orthopedically, yes, it typically takes about 10 minutes.

Q. Fair enough. So, the one time, the only time that you saw her took approximately 10 minutes for your physical exam; true?

A. That's possible. Again, I don't know.

Q. All right. We know that you believe that Linda Taylor was cooperative in answering the questions that you had for her;

correct?

A. Yes.

Q. Doctor, one of the things that you know from looking at the records is that she suffered a significant head injury, also; didn't she?

A. That was in the records, yes.

Q. All right. So you knew, for example, that she had suffered a brain bleed, or multiple brain bleeds, I should say; correct?

A. I don't know any details about it, because that's not my specialty, but I know that she did have a head injury, yes.

Q. All right. So, for example, you saw that she suffered from subarachnoid hemorrhages; correct?

A. I did see that, yes.

Q. You saw that she had suffered from subdural hemorrhage; correct?

A. Again, I don't remember the specifics, because that's not my area.

Q. Did you notice that she had suffered from something called diffuse axonal injury

of the brain?

A. No, I don't know that.

Q. One of the things that you'd want to do though, in doing any assessment -- especially an orthopedic assessment -- is determine whether or not the person you're speaking to is a good historian; true?

A. To the best of your ability, sure.

Q. So, for example, when you teach residents, you tell them that in the event the patient has a brain injury, you've got to be extra careful to make sure that you're getting accurate information; true?

A. In the acute setting, the emergency room, we do discuss that.

Q. And in the event that the patient has certain impairment following the acute setting, you'd want to know that as well; wouldn't you?

A. If it was significant to allow her to not give a history that was accurate, sure.

Q. That what you did in this examination was you asked to speak with her

alone, without any involvement from Mr. Steigman, who was there as well; correct?

A. I didn't preclude him from saying anything, but I asked her for the history, sure.

Q. Isn't it a fact, Doctor, that what you said was, I want to hear from her?

A. I don't recall saying that, but I may have.

Q. Now, Doctor, one of the things that you do know is that Linda Taylor did suffer a traumatic brain injury. Without going into specifics, you understood that; correct?

A. Yes.

Q. With respect to the records that you reviewed, for example, you had an opportunity to look at the Fletcher Allen Health Care records; correct?

A. Yes.

Q. You had an opportunity to look at the Burke Rehab records; correct?

A. Yes.

Q. You had an opportunity to look at the Branch Hospital records; true?

A. Yes.

Q. You had an opportunity to look at the hospital's special surgery records; correct?

A. Yes, I did.

Q. And this was to give you a global understanding of Linda Taylor's condition; true?

A. True.

Q. And that's why, for example, you were able to charge $10,000 for this, because you poured through these records; right?

A. Correct.

Q. To get a good understanding of the nature and extent of her injuries; true?

A. That's correct.

Q. With respect to the Burke Hospital records, why was she admitted to Burke, primarily?

A. I don't recall why she was admitted to Burke primarily.

Q. Do you recall if it was orthopedic or something else?

A. I don't recall, no.

Q. How much time did you spend reviewing the Burke Hospital records?

A. I don't have any independent recollection of how much was spent on any individual records.

Q. At any rate, Doctor, would you be surprised to learn that the reason that she was admitted to Burke, primarily, was because of the traumatic brain injury?

A. No, I wouldn't be surprised.

Q. And that's because you knew that that was the injury that the doctors were focusing on at that point in time; true?

A. Again, I didn't focus on her brain injury. I was focused on her orthopedic injury.

Q. But you told us that you reviewed the record; didn't you? The Burke Hospital record?

A. I reviewed the records to pull out the orthopedic pertinent points.

Q. I see. So, how long did it take you to pull out the orthopedic pertinent points from the Burke Rehab Center?

A. I don't know.

Q. Doctor, one of the things that you did was you reviewed the radiographic studies; correct?

A. I did.

Q. Did you review the radiographic studies separate and apart from the written record? In other words, did you actually look at the films, the MRIs, the CT?

A. I did.

Q. And that's one of the ways that you were able to get an understanding of what happened; right?

A. Sure.

Q. And one of the things that you never do is you would never deliberately minimize the extent of the injuries; correct?

A. I would not.

Q. Because that would be completely improper; wouldn't it?

A. It would.

Q. So, if somebody was reviewing your report, they would be able to see exactly what the nature and extent of the orthopedic

injuries were; right?

A. The report in total? I would think so.

Q. In fact, the reason you think so is because if it didn't, it wouldn't fairly reflect the nature and extent of her injuries; true?

A. That's true.

Q. So, that's one of the reasons you can say with certainty, what I have written in the report is specific as to the orthopedic injuries suffered by Linda Taylor; true?

A. That's correct.

Q. And in fact, Doctor, with respect to your report, you did a full examination of her is what you're saying; correct?

A. Orthopedically.

Q. A fair examination; true?

A. Yes.

Q. Certainly, one that was thorough and complete; right?

A. Yes.

Q. To the extent you didn't do that,

that would be completely improper; wouldn't it?

A. I'm not sure what you're getting at, but yes, I try to do my best.

Q. And in fact, Doctor, when you write up your report, you try to do your best to write up the full extent of the injuries; am I right?

A. That's correct.

Q. Doctor, if I can direct your attention to your report, and Mr. Hannigan touched on this, the assessment portion of your report. If you could just turn to that, please.

A. Okay.

Q. All right. Doctor, there you list, for example, what the injuries were; correct?

A. I do.

Q. And Doctor, is there a term in orthopedics that you familiarize yourself with called "lesser fractures"?

A. Yes.

Q. Is that something that you teach your residents, to refer to it as lesser

fractures?

A. Not specifically, no.

Q. All right. So, when we take a look at your assessment, one of the things that you did was, you listed certain fractures; correct?

A. That's correct.

Q. And then you said, there were also some "lesser fractures"; right?

A. I did.

Q. So, in fairness to you, what you were doing when you were listing this is, you were listing what could be considered main fractures, or those that were horrific; true?

A. Yes, the most severe fractures, sure.

Q. All right. So, if we talk about the ones that you listed as far as severe, the left radius fracture suffered by Linda Taylor; correct?

A. Yes.

Q. No doubt that was suffered in the snowmobile accident; correct?

A. No doubt.

Q. The scapula fracture is one that you list; am I right?

A. Yes.

Q. You list a left intertrochanteric femur fracture; correct?

A. Yes.

Q. A left femoral shaft fracture; right?

A. Yes.

Q. A left acetabular fracture; right?

A. Yes.

Q. A left tibia and fibula fracture; right?

A. Yes.

Q. But, then you say there are also some lesser fractures that were left out of your report; correct?

A. They weren't listed in the assessment. They're elsewhere in the report.

Q. So, for example, Doctor, if we're going to take a look at your report through and through: if, for example, she suffered pubic rami fractures, you would list that in the report; right?

A. It is listed elsewhere in the

report, yes.

Q. And one of the things that you told us when Mr. Hannigan was questioning you was that all of the injuries were to the left side; correct?

A. In the extremity injuries I said were the left side. There was a right side pubic ramus fracture.

Q. Is that listed in your report?

A. Earlier in the report it is, yes.

Q. How about the fact that she was hemiplegic; is that listed in your report?

A. No.

Q. In fact, Doctor, wouldn't you agree that in treating a patient, from an orthopedic point of view you would need to know if the patient was hemiplegic?

A. At the time that you're treating her, if she's hemiplegic you'd want to know that.

Q. But, you don't mention the word hemiplegic at all in your report; do you?

A. No, I do not.

Q. And in fact, Doctor, tell us what

hemiplegia is.

A. It's when one side of the body doesn't have muscular function.

Q. And in fact, that's exactly what she had; right?

A. Early in the acute period.

Q. And in fact, you reviewed the records, so did you know that she was hemiplegic on the left side - she had no muscular function on the left side in addition to all of the orthopedic injuries; true?

A. I don't recall if she had any muscular function on that side or just limited.

Q. Did you review the record, Doctor?

A. I did. Again, hemiplegia is not an orthopedic condition, so that's not something that I was concentrating on.

Q. Did you ignore it, then, because it said hemiplegia?

A. I didn't ignore it.

Q. So, when you reviewed that record carefully and thoroughly as you've told us,

were you trying to minimize by not writing it in the record?

A. No.

Q. So, anyone looking at the report would never know that Linda Taylor was hemiplegic; correct?

A. Purely based on the report, no, they wouldn't know that.

Q. Doctor, we can agree that with respect to the injuries that Linda Taylor suffered, the ones that you were writing about are the ones that you considered to be horrific; true?

A. I wouldn't use the word horrific, but they were certainly serious.

Q. Doctor, I think you know that some of the fractures suffered by Linda Taylor were open fractures; correct?

A. Yes.

Q. And in fact, when you review them, one of the things that you do is, you put down what the major fractures were -- if I could use that term major; is that fair enough, Doctor?

A. Sure.

Q. All right. And you didn't list the lesser fractures; right?

A. Not in the assessment. Just in the body of the report.

Q. Did she suffer a synthesis pubic fracture?

A. She did.

Q. Is that listed in the assessment?

A. No.

Q. Did she suffer a sacroiliac fracture?

A. She did.

Q. Is that listed in your report?

A. Yes, but not in the assessment.

Q. In fact, Doctor, one of the things that you know is, as far as the injuries go, when you reviewed it, when you reviewed the record, you knew that she had vascular injury in the area of the fractures; didn't she?

A. Sure, she would have.

Q. Do you recall what vascular structure was injured?

A. No, I do not.

Q. And in fact, Doctor, would you have

any idea where that vascular structure was injured?

A. No, I don't know what vascular structures were injured.

Q. So, when you reviewed the record very carefully, would you say that the acetabular fracture was one of the most significant fractures she had?

A. I would.

Q. Doctor, did she suffer a pudendal artery transection?

A. I don't recall if she did or not.

Q. And of course, that's stated on your full, fair and thorough review; correct?

A. Yes.

Q. In fact, Doctor, since you don't recall it, you don't know if it was embolized, do you?

A. No, I do not.

Q. But, one of the things that you do know in embolization is, once the doctors embolize an artery, all of the flow coming from that artery forward will be stopped; correct?

A. Sure. That's the idea, yes.

Q. So that there would no longer be oxygen and nutrients to the area pre-injury; correct?

A. Well, not from that artery. There may be collateral flow from other ones.

Q. And you can agree that the collateral flow may or may not be as good as the original artery was; right?

A. Sure, I'd agree with that.

Q. But, if you don't know even where this transection was, you can't speak to that; true?

A. That's correct.

Q. By the way, Doctor, you spoke about a femoral neck fracture; right?

A. In her intertrochanteric fracture, just below the femoral neck, yes.

Q. Did it go from the greater trochanter to the lesser trochanter?

A. I don't recall exactly where the fracture lines went, but that's the area of the intertrochanteric fracture, yes.

Q. But, you looked at the films; didn't

you, Doctor?

A. I did.

Q. And you're coming into this courtroom through the video right now to tell us the nature and extent of the injuries; correct?

A. Sure, but that kind of thing doesn't really make any difference whether it extended from the intertroch from the greater to the lesser, or where. The fact is, the fracture was treated successfully and healed.

Q. Doctor, I asked you specifically if you reviewed the films; didn't I?

A. Yes.

Q. And in fact, Doctor, as you sit here now, you don't recall with specificity exactly what those films show; true?

A. No. Only that there was an intertrochanteric fracture.

Q. Doctor, was there a femoral head fracture?

A. I don't recall there being a femoral head fracture, no.

Q. So, you're stating with certainty that there was no femoral head fracture;

correct?

A. No. I'm saying I don't recall there being one.

Q. Don't you agree that you'd want to know if there was a femoral head fracture before you render opinion to this Jury?

A. No.

Q. Doctor, one of the things that you know with respect to the femoral head is that it has a vascular supply that is limited; correct?

A. It does.

Q. And in fact, one of the things you, as an orthopedic surgeon, would know is that with femoral head fracture and femoral neck fractures is that there's something called avascular necrosis; right?

A. Sure.

Q. Were the doctors concerned about that?

A. Back then, sure, they would be.

Q. Are you just guessing as to whether or not they were?

A. Of course they would be. Any time

there's a fracture of the hip, we're concerned about avascular necrosis.

Q. And in fact, if I told you the fracture was on the femoral head itself, Doctor -- you told us earlier when Mr. Hannigan examined you that there was damage to the acetabulum; correct?

A. Yes.

Q. That's sort of the socket to the ball and socket joint; right?

A. That's correct.

Q. And the ball is actually called the femoral head; right?

A. Yes.

Q. So, if there was damage to the femoral head and to the acetabulum, do you agree with me that the fracture would be significantly greater as far as damage; true?

A. Maybe, but maybe not.

THE VIDEOGRAPHER: The time is approximately 3:23 and we are off the record.

THE VIDEOGRAPHER: The time is approximately 3:24 p.m. and we are back on the record.

BY-MR.RUBINOWITZ:

Q. Doctor, can you hear me?

A. Yes, I can.

Q. All right, let's continue. I want to move away from the acetabulum and the femoral head for just a moment, Doctor. With respect to the iliac fracture, did she suffer a left iliac fracture as well?

A. She did.

Q. Where did that extend to?

A. Well, part of it extended down to the acetabulum. I'm not sure where else it extended to.

Q. And in fact, Doctor, if you read the record carefully, you would know, wouldn't you, that it extended into the sacroiliac joint?

A. It did.

Q. All right. But you didn't remember that until I just mentioned it; correct?

A. That's correct.

Q. Doctor, you realize, of course, when you come in here, this is the only opportunity that we have to question you,

because the Jury has to make a determination as to the nature and extent of the injuries; correct?

A. Sure.

Q. Do you really have familiarity with what happened to Linda Taylor?

A. To the best of my ability, sure. A lot happened to her.

Q. And in fact, Doctor, I know that a lot happened to her. But with respect to your review of the record, you understand you're coming in here offering opinions that have to have a basis in fact; correct?

A. Yes.

Q. But there are certain things you just don't remember; am I right?

A. Of course there are certain things I don't remember.

Q. In fact, Doctor, one of the things that we know is that there were open fractures; correct?

A. Yes.

Q. With respect to open fractures, Doctor, is one of the concerns that

orthopedists have, for example, that the open fractures might go through the muscles, through the fascia, through the skin, and indeed through the clothes of a patient?

A. Sure, that can happen.

Q. And one of the concerns, from an orthopedic point of view, would be in the event that the bones break through the skin, the musculature, the nerves, the peripheral nerves, the fascia, and go actually through clothes, that there could be contamination; correct?

A. That's correct.

Q. And in fact, Doctor, one of the things that you, as an orthopedic surgeon, would be concerned about is whether or not there was gross contamination; right?

A. I would be.

Q. And the reason you'd be concerned about gross contamination is because the nature and extent of infection that could develop as a result of that; right?

A. That's correct.

Q. Now, Doctor, with respect to the

injuries that she suffered concerning the open fractures, were all her open fractures grossly contaminated?

A. They were not grossly contaminated, as in, she wasn't in a field of cattle or something where they'd be grossly contaminated. But anytime a fracture is open, there's contamination to it.

Q. Now, I noticed that you said the wounds weren't grossly contaminated; correct? You just said that; right?

A. I did.

Q. And in fact, Doctor, did you really review the operative reports?

A. I reviewed --

Q. You don't have to look right now. I'm just asking, did you review it?

A. I did.

Q. In fact, Doctor, if you take a look, for example, would you agree with me that if you were to look at the Fletcher Allen Hospital for the date February 19, 2006, it says, in fact, all the wounds were grossly contaminated; did you see that?

A. I see that.

Q. And in fact, Doctor, you just told me that all the wounds were not grossly contaminated; didn't you?

A. Well, I qualified it with what I meant by grossly contaminated.

Q. I see. So, what you're doing is you're ignoring what the records said, and you're giving your own interpretation; correct?

A. I'm not ignoring it. I just told you what my interpretation was.

Q. Doctor, did they have to remove plant debris from any of the open fractures?

A. I wouldn't know without going back and looking.

Q. And in fact, Doctor, I'll read it to you to make it a little bit easier and speed it up. And it reads, and I'm quoting, "all wounds were grossly contaminated. We removed plant debris from her left femur primarily." I want you to assume that's true, and I'll show it to Counsel so he can see it so there's no issue that I'm reading it

correctly. Would you agree with me, Doctor, that when plant debris is actually attached to the bone, it means that the bone has not just gone through the muscle, not just gone through the fascia, not just gone through tissue and skin, but actually passed through her clothes; correct?

A. Sure, that's correct.

Q. And in fact, Doctor, that's one of the concerns that an orthopedic surgeon such as yourself would have; am I right?

A. At the time of treatment, sure.

Q. And in fact, Doctor, did she suffer from infection while she was at Fletcher Allen Hospital?

A. She did.

Q. And in fact, Doctor, you'd agree with me that that would be a source of pain; am I right? In addition to the fractures; right?

A. Yes, it would be.

Q. And every one of the fractures that you now know that she had back at the time of the injury, those were all

competent-producing causes of pain; right?

A. Sure, they were.

Q. They were severely painful; am I right? Based on your experience as an orthopedic surgeon; true?

A. Yes.

Q. By the way, Doctor, with respect to the femoral head, do you know if that was disrupted in any way?

A. Well, what do you mean by disrupted?

Q. Doctor, do you recall as you sit here right now, for example, having heard the questions that I've been asking you, as to whether or not the femoral head was fractured?

A. I don't recall the femoral head itself being fractured, no.

Q. You do recall the acetabulum, though; right?

A. I do.

Q. And you agree with me that the proximal end of the femur, the femoral head itself -- which would be the end of the bone closest to the hip -- that is covered with

articular surface; true?

A. True.

Q. If I may use this example: just like if you were to look at a turkey bone, the very ends of the bone have that smooth, glistening surface on it; right?

A. Yes.

Q. And that's what we call articulate surface; right?

A. Yes.

Q. It's very different from the shaft of the bone; correct?

A. Correct.

Q. So that, in fact, when there's disruption of the articular surface, that's significant from an orthopedic point of view; true?

A. It can be, sure.

Q. And in fact, Doctor, with respect to the acetabulum -- and you did study that one -- with respect to the acetabulum, how many fractures did it have?

A. I don't know how many fracture lines there were.

Q. When you read the x-rays, were you able to determine that?

A. No.

Q. Did you look at the record to see whether or not they determined that?

A. No. Whether there's one, two or three doesn't matter.

Q. By the way, Doctor, were there any butterfly fragments in any of the fractures?

A. There were.

Q. Where?

A. In the extremities. I remember --

Q. Where?

A. The femur had a butterfly fragment. I believe the tibia probably did, but I don't know that for sure.

Q. With respect to the fibula fracture, was that in multiple places?

A. It was comminuted, so it was in multiple places, yes.

Q. But was it comminuted and fractured in many different places along the length of the bone?

A. I don't recall.

Q. Doctor, did they have to place a vena cava filter?

A. I don't know if they did or not.

Q. Did they have to place a feeding tube?

A. I don't know that, either.

Q. Doctor, with respect to the fractures themselves -- and I want to focus just for a moment on the femur -- you recognize the femur was fractured in many places; correct?

A. I do.

Q. Was there a fracture that extended from the femoral head or the acetabular area downward, or was there a separate mid-shaft femur fracture?

A. I don't know if all the fracture lines communicated or not.

Q. Well, Doctor, whether they did or not, can we agree that there was significant bleeding that took place in the area of the fractures; correct?

A. Yes, there was.

Q. And indeed, when the blood continues to bleed out -- the bones actually bleed,

don't they?

A. They do.

Q. And in fact, there was continual bleeding from the soft tissues that were damaged as a result of the fractures; correct?

A. Sure, there was.

Q. Because, when we talked about fractures, you understand there were mild non-displaced fractures, moving up to displaced fractures, moving through to comminuted fractures, and then the most severe, which is an opened or compound comminuted fracture; true?

A. True.

Q. Indeed, she had the most significant fractures; didn't she? Open or compound comminuted fractures; correct?

A. That's correct.

Q. And she had that in the femur area; correct?

A. She did.

Q. That's the guideline; am I right?

A. Yes.

Q. She had fractures to the lower extremities involving the tibia; correct?

A. Yes.

Q. Was that an open fracture?

A. Yes, it was.

Q. And in fact, she had comminution to the fibula, the bone running alongside the tibia in the lower leg; correct?

A. She did.

Q. Were there other comminuted fractures that she suffered?

A. Well, the fracture in the acetabulum was comminuted.

Q. How about of the sacral fracture?

A. Yes, the sacrum was comminuted, as well.

Q. Would you agree with me that every single one of the fractures that we mentioned was a source of pain; correct?

A. Yes.

Q. Doctor, one of the things you told us was, you spoke about her gait; correct?

A. I did.

Q. And in fact, Doctor, with respect to

the gait, did you tell us that you noticed no gait abnormality?

A. I did.

Q. Doctor, you examined her on August 18, 2016; correct?

A. Yes.

Q. Are you aware that the Defense had a neurology consult, a doctor by the name of Robert Todd, who also examined her on that very same day within a matter of hours from your examination?

A. No.

Q. I want you to assume that Dr. Todd said, this is the Defense examining neurologist said, "she had an obvious pelvic tilt to the left". Assume that to be true. Assume that to be in his report, and I'm representing I'm reading it from his report.

A. Okay.

Q. And I'm showing it to Counsel, as well. Doctor, did you find that she had an obvious pelvic tilt to the left?

A. I did not.

Q. Were you trying to minimum the

extent of the injuries?

A. No.

Q. Doctor, did she have an antalgic gait?

A. No.

Q. In fact, Doctor, antalgic gait means that she's walking in a way to avoid pain while she walks; correct?

A. That's the usual reason for it, yes.

Q. That's the definition of an antalgic gait; true?

A. Antalgic gait means you spend more time on one leg than on the other, so it creates a limp.

Q. And in fact, Doctor, I want you to assume that Dr. Todd, the Defense examining neurologist said her gait was antalgic. This is within a matter of hours from when you examined her.

A. Okay.

Q. You're telling us that you found no antalgic gait, Doctor; is that it?

A. I did.

Q. How many surgical procedures did she

have?

A. Do you define - how are you defining a procedure? A trip to the operating room, or number of things --

Q. How about if we talk about surgeries to the various bones that were fractures? How many surgeries did she have? If you don't know, you can say that too.

A. Well, I don't know the number without looking at the records and adding them up.

THE VIDEOGRAPHER: The time is approximately 3:37 p.m. and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 3:41 p.m. and we are back on the record.

BY-MR.RUBINOWITZ:

Q. Doctor, can you hear me?

A. Yes, I can.

Q. Doctor, I want to focus back for a moment on the damage to the articular surface of those bones that were fractured, and I'll

start with the acetabulum. Would you agree with me, Doctor, that when we speak about arthritis, arthritis is damage to the articular surface; correct?

A. It is.

Q. And in fact, as time goes by, would you agree that arthritic conditions can become worse leading to bone on bone?

A. Yes.

Q. Doctor, given the nature of the injury to her acetabulum, isn't it true that she is suffering from arthritis?

A. She is at risk for it, but she is not suffering from it at the present time.

Q. And Doctor, with respect to the communicating bone, which would be the femoral head, in the event that that, too, was fractured, would you agree with me that that would cause damage to the articular surface?

A. It would.

Q. And in fact, Doctor, since you don't know whether or not the femoral head was even fractured, you'd have no opinion at all

as to whether or not there's arthritis in that area; correct?

A. No, I have an opinion.

Q. And you're going to say there isn't, of course; right?

A. Well, of course. She had no pain, so she wouldn't have arthritis and have no pain.

Q. How did you get the idea that she had no pain, Doctor?

A. She told me she had no pain.

Q. And did you take a look at her head injury as to whether or not she was an accurate historian, Doctor?

A. She certainly appeared to give me a very accurate history the rest of the case, so.

Q. Doctor, with respect to the records that you reviewed, did any of the records reflect the fact that there was already arthritis?

A. There were - it's called post-traumatic changes, but even her most recent note through Dr. Bartlett noted that

the joint space was still well maintained.

Q. And Doctor, Dr. Bartlett testified, and I want you to assume that he did, that that articular surface, the damage to it is only going to get worse over time; do you disagree?

A. I don't disagree, because that's part of the natural history of the aging process.

Q. Are you saying it has nothing to do with the fracture she suffered, just her age; is that it, Doctor?

A. No. She's at higher risk, I said that, because of having this articular fracture.

Q. And in fact, Doctor, you would classify this as a very major intraarticular fracture; am I right?

A. I would.

Q. Doctor, with respect to heterotopic ossification, that's bone growing where it shouldn't grow; right?

A. That's correct.

Q. And she had that; am I right?

A. She did.

Q. So, in fact, some of the muscle has actually been calcified and turned into bone; true?

A. That's right.

Q. And we can agree that that's not a good thing for a patient; is it?

A. It's not.

Q. Doctor, with respect to the review of records, did you determine whether she had any abdominal hematoma?

A. I didn't make any determination on that, no.

Q. Did you see, for example, whether or not there was pooling of blood in the abdominal cavity following the fractures?

A. I didn't, but that wouldn't surprise me at all with pelvic fractures.

Q. Doctor, knowing that you didn't and you can't say whether or not she did, did you really do a thorough review of the records, Doctor?

A. Yes, from an orthopedic standpoint.

Q. And you're saying that an orthopedist doesn't have to be concerned whether or not

there is pelvic hematoma?

A. Ten years later, no, you don't.

Q. Doctor, how about at the time when you're taking a look at the records to understand the nature and extent of the injuries? Were you concerned about it at all, or did you ignore it?

A. I wasn't concerned about it.

Q. Okay. Doctor, did she suffer from hematuria at any point in time?

A. I don't know that either.

Q. Hematuria is blood in the urine; correct?

A. Correct.

Q. And in fact, Doctor, when you reviewed the record as carefully as you say you did, did you notice that anyplace?

A. Again, I didn't look for that because, again, that's a urologic problem, not an orthopedic problem.

Q. In fact, Doctor, isn't it part of the trauma team's concern to know the nature and extent of the injuries; true?

A. As the general surgeon on a trauma

team, they would want to know that, sure.

Q. You told us that you participated in some trauma surgery as recently as five years ago; didn't you?

A. As an orthopedic surgeon, yes.

Q. So, in fact, Doctor, was Linda Taylor hemodynamically unstable at any point in time since you did this thorough review?

A. With those kind of injuries, sure she was.

Q. Do you know why?

A. There would be multiple potential reasons, but just the amount of blood she would lose from those fractures would make her hemodynamically unstable.

Q. And in addition to the amount of blood that she'd lose from the orthopedic fractures, can you state with certainly whether or not there were vascular injuries as well?

A. Well, I know there was a vascular injury, but can't state anything about it because I didn't review for vascular injury.

Q. In other words, you're saying there

was one vascular injury; is that what you're telling us?

A. No, I'm saying there were vascular injuries.

Q. What were they?

A. I don't know, but those kind of fractures cause bleeding, so they damage vessels.

Q. Can we agree that those kind of fractures also cause damage to the nerves?

A. They can, sure.

Q. In fact, Doctor, with respect to the damage, if we focus just on the area of the femur fractures, can we agree that there was a very large muscular damage as a result of those fractures?

A. Yes.

Q. How large was it? How large was it?

A. I don't know.

Q. Was it just a Peterson, or was it something more than that?

A. I don't know how much it was or how to even quantify something like that.

Q. What was the entry point for the surgeons when they did the surgery on the femur?

A. I don't recall without looking at the operative report.

Q. Doctor, do you know if the injury was so big and so gaping that the surgeon actually went in through the open wound on the femur - on the femoral area of her leg?

A. Well, I'm sure they would do that, because that's part of the I & D for cleaning out all the debris.

Q. I'm not just talking about cleaning out as far as an incision and drainage, the I & D that you refer to. I'm talking about when they actually put hardware in to stabilize the wound. Do you know if they did that?

A. If they went through that same wound, I'm not sure.

Q. So, in your careful and thorough review of the records, you have no idea about that; true?

A. You can keep pointing these things

out to try to make me look like I don't know what I'm talking about --

Q. I'm just asking you a question. If you don't know, say it. That's all I'm asking you to do; fair enough? If you know it, please say it.

A. I'm answering what is important, and what was important. No, I don't know whether they went through that same wound or created another wound.

Q. In fact, Doctor, every one of the scars that she suffered are permanent injuries; true?

A. Sure, they are.

Q. Did she lose any musculature as a result of this accident?

A. She would have lost some through her quadriceps injury, sure.

Q. How much?

A. I don't know.

Q. Did she suffer a filling defect of the internal carotid artery?

A. I don't know. That's not an orthopedic injury.

Q. What's the internal carotic artery?

A. It's an artery that goes up to the brain.

Q. Provides nourishment and oxygen to the brain; true?

A. It does.

Q. Would you agree with me that a trauma surgeon must know about that about injury to properly treat the patient?

A. Not an orthopedic trauma surgeon, but someone overall in charge of her trauma, sure.

Q. Doctor, if I were to stop my exam right now, you would have been testifying for less than three hours; correct?

A. That's correct.

Q. How much are you charging for that, Doctor?

A. The total time for preparation and time here is $6,000.

Q. And if it was a full day, Doctor, how much would you charge?

A. It would be double that.

Q. $12,000?

A. Yes.

Q. And you've charged already $10,000 for that thorough review that you claim you did of the records?

A. Yes.

Q. Thank you, Doctor. I have no further questions.

MR. HANNIGAN: Let the record note Mr. Douthat doesn't have any questions for the Doctor at the present.

REDIRECT EXAMINATION

BY-MR.HANNIGAN:

Q. Doctor, I have a few more questions for you, if you don't mind. Mr. Rubinowitz asked you a question about what would be important for the trauma physician -- the trauma team to know when they were treating a patient. Do you remember him asking a question a few moments ago about that?

A. Yes.

Q. But, you weren't on the trauma team for Linda Taylor; were you?

A. No.

Q. You did an examination of Linda

Taylor 10 years, six months from the time of her injury; is that fair?

A. Yes, that's correct.

Q. Okay. And you were doing an orthopedic examination to determine the nature and extent of her injuries at that time; is that fair enough?

A. Yes.

Q. Now, Doctor, when you saw Linda Taylor, she didn't have any plant debris in her legs, did she?

A. No.

Q. She didn't have open wounds; did she?

A. No.

Q. She didn't have any evidence of a vascular necrosis in her hip; did she?

A. No.

Q. And she didn't have any evidence of pudendal artery transection; did she?

A. No.

Q. And even if you want to assume that she has sustained those injuries and had those condition back in February of 2006, you

wouldn't expect any evidence of those unless there were some ramifications from those injuries; isn't that right?

A. That's correct.

Q. And you didn't find any ramifications of those injuries; is that right?

A. That's correct.

Q. Now, Doctor, did you -- I'd like to take up his report for a second. Did you ask Mrs. Taylor about her past medical history?

A. Yes.

Q. What, if any, information did you get?

A. Nothing.

Q. Why is that?

A. Just, she declined any questions about past history.

Q. Did you ask about her current medications?

A. Yes.

Q. And what information did you get?

A. Only that Tylenol, Tramadol or Advil would be taken as needed.

Q. Did she decline to offer you any further information?

A. Yes.

Q. Did you ask her about any allergies to medications?

A. Yes.

Q. And what did she respond, if anything?

A. No response, just declined.

Q. Did you ask about her social history?

A. Yes.

Q. Now, are those - and what was her response?

A. Nothing pertinent. She declined.

Q. She declined. She told you she wasn't going to answer those questions; is that right?

MR. RUBINOWITZ: Objection.

THE WITNESS: Just that it wasn't pertinent to my exam.

THE VIDEOGRAPHER: The time is approximately 3:53 p.m. and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 3:54 p.m. and we are back on the record.

BY-MR.HANNIGAN:

Q. And Doctor, when you were interviewing Mrs. Taylor, I think you told me that she was pleasant.

A. Yes, she was.

Q. And was she responding to your questions?

A. She was.

Q. And was Mr. Steigman in the room the entire time you questioned or asked Mrs. Taylor questions about her medical history?

A. As I recall, he was, yes.

Q. Do you think that Mrs. Taylor said anything to deliberately mislead you?

A. No, not that I could tell.

Q. Doctor, with respect to the questions that Mrs. Taylor did answer, did you find her history to be appropriate?

A. Yes.

Q. And consistent with what her injuries

were and her recovery was, based upon your review of the records?

A. I did.

Q. Doctor, that's all I have. Thank you.

RECROSS-EXAMINATION

BY-MR.RUBINOWITZ:

Q. Doctor, isn't it a fact that, at no point in time did Linda Taylor decline to answer any question that you asked?

A. Only those about past history.

Q. In fact, sir, you took notes the entire time that she was speaking; correct?

A. I did.

Q. And you don't have those notes to see what they actually showed; correct?

A. That's correct.

Q. Because you destroyed them; am I right?

A. I discarded them when I prepared my report, yes.

Q. And your report said nothing, not one single word anywhere, about her declining to answer questions; true?

A. Not beyond what's written right in my report, no.

Q. My point is, Doctor, you were just asked questions by Mr. Hannigan about all these things that she declined. There's no record reflecting that she declined to answer this, this, this and this; correct?

A. Well, under past medical history, patient declined.

Q. I see. So, in fact, Doctor, are you suggesting that the notes you have didn't reflect accurately what was written?

A. No, I'm not saying that.

Q. Doctor, isn't it true that Linda Taylor answered every one of the questions that you had?

A. Every one that I felt was pertinent, sure.

Q. Thank you, Doctor. Doctor, isn't it true, sir, that you have been faulted by the Workers' Compensation Board for minimizing injuries?

MR. HANNIGAN: Objection.

THE WITNESS: No.

BY-MR.RUBINOWITZ:

Q. Isn't it true, sir, that as recently as this year the New York State Workers' Compensation Board found that you offered frivolous opinions on the question of the extent of injuries?

MR. HANNIGAN: Objection.

THE WITNESS: I don't know what you're talking about.

BY-MR.RUBINOWITZ:

Q. Never heard a word about that; right?

A. No.

MR. HANNIGAN: Objection.

BY-MR.RUBINOWITZ:

Q. Did you submit continual reports to the Workers' Compensation Board regarding carpal tunnel syndrome injuries that in fact you were minimizing the nature and extent of the injuries?

MR. HANNIGAN: Objection.

THE WITNESS: No.

BY-MR.RUBINOWITZ:

Q. Nothing further.

MR. HANNIGAN: There's no further questions, Doctor. Thank you for your time.

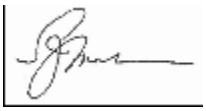
THE WITNESS: Okay.

THE VIDEOGRAPHER: The time is approximately 3:57 p.m. This concludes the deposition of Dr. Daniel Carr, and we are off the record.

(Whereupon, the videotaped examination before trial of DANIEL CARR, M.D. concluded at 3:58 p.m.)

CERTIFICATE

The foregoing is certified to be a true and correct transcript of the testimony in the within proceeding.



Silva J. Malvasi
Court Reporter
Notary Public

DATED: September 28, 2016

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VIDEOTAPED EXAMINATION BEFORE TRIAL OF DANIEL CARR, M.D., SEPTEMBER 26, 2016

STATE OF NEW YORK

SUPREME COURT COUNTY OF FRANKLIN

LINDA TAYLOR as Independent Co-Executor of The Estate of THOMAS TAYLOR, Deceased, and LINDA TAYLOR, Individually,

Plaintiffs,

-against- Index No.: 2007-777

THE POINT AT SARANAC LAKE INC., THE GARRETT HOTEL GROUP, INC., GARY L. BISHOP d/b/a ADIRONDACK SNOWMOBILE RENTAL, and GARY L. BISHOP,

Defendants.

Videotaped Examination Before Trial of DANIEL CARR, M.D., held on Monday, September 26, 2016, taken at the State University of New York, 101 Broad Street, Feinberg, Library 106, Plattsburgh, New York 12901, commencing at 2:05 p.m., before Silva J. Malvasi, Court Reporter and Notary Public in and for the State of New York.

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APPEARANCES: (CONT'D.)

ALSO PRESENT:
Robert Richter, Videographer
Brandon Pimpinella, Videographer

INDEX

STIPULATIONS

IT IS HEREBY STIPULATED by and between counsel for the respective parties that this Examination Before Trial be held pursuant to the provisions of the Civil Practice Laws and Rules; that the presence of a referee is waived; that the signing and filing of the transcript is waived; that the witness may be sworn by Silva Malvasi, Court Reporter and Notary Public, and that all objections, except as to form, are reserved until the time of trial.

VIDEOTAPED EXAMINATION BEFORE TRIAL OF
DANIEL CARR, M.D.
SEPTEMBER 26, 2016

THE VIDEOGRAPHER: The videotape recording has commenced, and we are now on the record. The time is approximately 2:05 p.m. My name is Brandon Pimpinella, and I'm the legal video specialist for VC Rooms, LLC. This is the deposition of Dr. Daniel Carr. Silva Malvasi is the court reporter. Will Counsel please identify yourself, stating your name, address, and who you represent.

MR. RUBINOWITZ: My name is Ben Rubinowitz. I represent the Plaintiff, the detailer. My office is 80 Pine Street, New York.

MR. STEIGMAN: I'm Richard Steigman, also from the same firm, representing the Plaintiffs.

MR. HANNIGAN: My name is Terry Hannigan, from Hannigan Law Firm in Delmar, New York, and I represent the Point at Saranac Lake and the Garrett Hotel Group. Out of view of camera is Matthew Douthat, on

behalf of Gary Bishop and Adirondack Snowmobile Rental.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness. Thereupon,

DANIEL CARR, M.D.,

having been called as a witness, being duly sworn, testified as follows:

THE VIDEOGRAPHER: Counsel, you may proceed.

DIRECT EXAMINATION

BY-MR.HANNIGAN:

Q. Good afternoon, Dr. Carr.

A. Good afternoon.

Q. This testimony that you're going to be giving today is going to be played for a jury in Franklin County Supreme Court later this week, but for the record, the time is now about 2:10 on Monday, the 26th of September, and you are in Syracuse, New York; is that correct?

A. Yes, it is.

Q. Okay. Doctor, would you tell the Jury your full name and your business

address, please.

A. Daniel Lane Carr, 2200 East Genesee Street, Syracuse, New York, 13210.

Q. And Dr. Carr, what do you do for a living?

A. I'm an orthopedic surgeon.

Q. And do you have privileges at any facilities?

A. I do. I have privileges at the Syracuse hospitals, including Upstate Hospital, the Veterans' Hospital, St. Joseph's Hospital, the Community General Hospital, Auburn Memorial Hospital and the local surgery centers.

Q. Doctor, can you tell the Jury, briefly, your academic training and qualifications, please.

A. Sure. I graduated from Hamilton College with honors in 1986. I came to Syracuse and I did my medical training at the SUNY Upstate program at Syracuse. I completed my medical school training in 1991. I did one year internship in general surgery, also in Syracuse, followed by a four-year

residency in orthopedic surgery in Syracuse. And after completing that net program, I've been in private practice in Syracuse since 1996.

Q. And what's the name of your practice in Syracuse, Doctor?

A. It's CNY Orthopedic Sports Medicine, PC.

Q. And do you see patients at your practice?

A. Yes, I do.

Q. And do you also perform medical examinations when requested by people who are not your patients?

A. Yes.

Q. And at my office's request, did you do a medical examination of Linda Taylor?

A. Yes, I did.

Q. And was that - or, when was that? Can you tell the Jury, please.

A. That was August 18th of this year.

Q. Okay. And Doctor, could you tell the Jury what orthopedics or orthopedic surgery is.

A. It is the medicine of the musculoskeletal system, so it treats injuries to muscles, tendons, ligaments, bones, as well as spinal problems such as disc problems. It treats medical orthopedic conditions such as arthritis, and also traumatic orthopedic conditions such as fractures and dislocations, and we use various non-operative measures, such as therapy and medicine, and also operative treatment when necessary.

Q. And Doctor, did you perform an orthopedic examination of Linda Taylor?

A. Yes, I did.

Q. And was it focussed on her bones and her orthopedic injuries, muscles, tendons, ligaments, things of that sort?

A. Yes, it was.

Q. Doctor, are you Board certified?

A. Yes.

Q. And tell us what Board certification is.

A. For my specialty, Board certification is a three part process. The first part is

completing a residency at an accredited program. The second part is a written exam that's done right after the residency. One then goes into practice as a Board eligible surgeon, and after two years in practice, a six month series of surgical cases is collected by the American Board of Orthopedic Surgery. The candidate is brought to Chicago for an oral exam given by testers who are already Board certified, and if one passes that, then one is considered Board certified. And that's a ten year certificate that is re-done every ten years.

Q. So, is it fair to say you are currently Board certified in orthopedics?

A. Yes, I'm Board certified, and recertified twice.

Q. And Doctor, do you hold any teaching positions?

A. I do. I'm a clinical assistant instructor at the Upstate program in Syracuse, and also a preceptor for the physician's assistant program at Lemoyne College.

Q. And Doctor, I'm going to be asking you some questions about your examination of Linda Taylor, and is it fair to say you prepared a report of your findings in that regard?

A. Yes.

Q. I'm going to refer to that as the reports -- I'm sorry, the report. And if, at any time, you need to refer to that to assist in your testimony, please feel free to do so.

A. Okay.

Q. Doctor, can you tell us where it was that you performed the examination of Mrs. Taylor?

A. In my office at the address I'd already given.

Q. And is that the facility where you attend to your own patients as well?

A. Yes, it is.

Q. Do you recall anyone being with Mrs. Taylor when she presented for the examination?

A. Yes, she was with her legal

representative, Mr. Steigman.

Q. Now, Doctor, what did you do in the course of your examination of Mrs. Taylor, from the time you personally had interaction with her and going forward?

A. I took a history from her as to what the events were that caused her injuries, and also what injuries she had sustained. We also discussed the treatment that she had for those injuries, and how she was doing at the current time. And then I did a physical exam of the involved body parts. And then after that, I reviewed a number of imaging studies; also had her entire medical file to review that I reviewed some both before and more in detail after the exam, and then prepared the report after that.

Q. Would it be fair to say, Doctor, that Mrs. Taylor had a fairly extensive medical history?

A. Yes, it certainly would be fair to say.

Q. And that is primarily with respect

to the accident she was involved in on February 19, 2006; is that right?

A. Yes, it is.

Q. And Doctor, if you need to, again, refer to your report, can you tell us the history that you received from Mrs. Taylor.

A. Yes, the history was that she was in an accident while on a snowmobile that was struck by a motor vehicle, and in the process, she was thrown from the snowmobile and sustained a number of orthopedic injuries as well as some non-orthopedic injuries, of which I only evaluated her for the orthopedic injuries. That was the history of the injury. She then had received treatment acutely in Vermont, and after having a number of operations performed on various bony injuries there, she went through a rehab period. She received some treatment elsewhere as well down in New York City, and she also received some back in Texas, where she lives part of the year. And she was still symptomatic at the time that I saw her, but had completed the majority of her

treatment.

Q. Doctor, would it be fair to characterize Mrs. Taylor's orthopedic injuries as significant or severe?

A. Yes, it certainly would.

Q. And you've had the opportunity to treat -- or, withdrawn. Have you had the opportunity in the past to treat patients who were involved in either pedestrian or snowmobile accidents or motorcycle accidents with motor vehicles?

A. Sure, I have.

Q. And would you say that Mrs. Taylor's injuries were consistent with someone who had been struck by an automobile?

A. Yes.

Q. Now, Doctor, can you tell us, after you did the history, what you discerned about Mrs. Taylor's condition during the course of your examination.

A. Well, during the physical exam, I found that she was able to ambulate quite well considering her lower extremity injuries that she had. She had a number of surgical

incisions that were consistent with the operations she had. She still had some tenderness in the musculature of her left thigh where that surgery was done. But otherwise, she really did not have much in the way of tender areas. I also noted that there was some loss of motion in her left shoulder, which I've characterized as a fairly mild loss of motion from her shoulder injuries. She had mild loss of hip motion on the left side as well, where she'd had fracture of her hip. Neurologically, she was intact when I saw her. Her exam of her spine was fairly benign. She had some paresthesias by history, but did not have any abnormalities on physical examination to the neurologic testing of her lower extremities or her back.

Q. Doctor, could you tell us what paresthesia is, please.

A. Paresthesias are a painful, numb, tingly sensation, the kind of thing that happens when one hits their funny bone and they get that shock down the arm. That's a

paresthesia.

Q. And Doctor, did Mrs. Taylor relate to you anything that she had done in follow-up to the medical treatment, both the acute care that she received in 2006 and later with respect to physical therapy, Pilates, anything like that?

A. Well, yes. She's had extensive physical therapy over the years, and she was actively involved in her own rehab as well, being involved in Pilates, which she did regularly.

Q. And did you find that her involvement with physical therapy and Pilates was beneficial to her recovery and her ability to compensate for her injuries?

A. Yes, I would.

Q. Now, Doctor, I want to go back a little bit to her orthopedic injuries that you mentioned. Can you categorize them, perhaps either from top to bottom or bottom to top, the fractures that she sustained, and what your findings were with respect to those fractures or problems.

A. Okay, sure. Looking at the upper extremities, she had a fracture of her forearm, her radius bone, which she had surgery on. She had done well with that in terms of not having pain. She did have some mild weakness of grip strength on that side on my physical exam, which I would attributable probably to that injury. That was the only real finding, other than the scar from the surgery on that forearm. She'd also had some fractures around the left shoulder that did not require surgical treatment, but she did have an impaction fracture of her collar bone. She had a non-displaced fracture of the shoulder blade going into the glenoid, which is the socket part of the shoulder, and those were opted to be treated conservatively. And she did reasonably well from that, but she did have some loss of motion in her shoulder as a result, probably from those injuries. She had --

Q. Doctor, let me interrupt you there. We're talking about left sided injuries in

Mrs. Taylor; is that correct?

A. We are, yes. All of the injuries to her extremities were left sided.

Q. Doctor, with respect to the care and treatment Mrs. Taylor received for her forearm injury, did you find that care to be appropriate and proper for the injury she sustained?

A. Yes, I did.

Q. And how about with respect to the shoulder injury? I think you said it was an impacted, but non-displaced, fracture that was treated conservatively. Did you find that care to be appropriate for the injury Mrs. Taylor sustained?

A. Yes, I did.

Q. Is there anything further with respect to the clavicle and the shoulder? I didn't mean to interrupt you. Did we finish with the shoulder?

A. I was finished with the shoulder, yes.

Q. And you indicated there was some loss of motion; is that correct?

A. Yes, that's correct.

Q. Range of motion, and that, you believe -- you opine, your professional opinion is that's attributable to that shoulder injury you told us about; is that fair?

A. Yes, that's fair.

Q. Okay. And if you've concluded with the shoulder, Doctor, would you move on to the next area of inquiry.

A. Yes, she also had had several fractures of her left lower extremity. She had a tibia fracture and a fibula fracture, which the tibia fracture was treated with an intramedullary rod. She also had a fracture of the femur, both the shaft and up close to the hip joint in what we call the intertrochanteric region. That was treated with plating, and both of those fractures for the femur and the tibia did heal well. She did have some loss of motion at her left knee, however, that I would feel would be attributed to those injuries, and there was a 15-degree loss of flexion compared to the

other side, whereas extension was full. There was a mild loss of motion there.

Q. Okay. Doctor, I'd like if you could start at that high point and work down. So, if we start at her -- in the area of her greater trochanter or her acetabulum, can you describe what you've discerned about the fractures there and her recovery or limitations with respect to the left hip.

A. Okay. With the left hip, she had the dynamic hip screw plate, which is the plate and screw in the hip. She also had fractured the acetabulum on that side, so she had a plate placed in the acetabulum as well. Both of those fracture healed. They did heal with what we call some heterotopic ossification, which means some excess bone formed around the hip joint, and that resulted in a mild loss of motion on my exam with a loss of rotation in both directions. The fractures, however, did heal well.

THE VIDEOGRAPHER: The time is approximately 2:21 and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 2:32 p.m. and we are back on the record.

BY-MR.HANNIGAN:

Q. Okay. Doctor, we had a little bit of time off the record there for some technical difficulties. We're back on. Doctor, would you describe for us Linda Taylor's left hip injury and the treatment that she received for it and what findings you made on your examination of her.

A. Sure, her left hip injury was a combination of a fracture of the acetabulum, which is the socket part of the ball and socket hip joint, and also the intertrochanteric region of the femur, which is just beyond the ball part of the ball and socket joint. She had a plate put on her acetabulum to fix it, and she had what's called a dynamic hip screw, which is a screw and side plate put on the hip femur bone in order to fix that part of it. The fractures had healed well, but she did have some heterotopic ossification form, which is

exuberant bone that forms around the fracture site in the soft tissues. It didn't impede her motion enough for her surgeon to want to remove it, but it was present radiographically. And on my exam I found that she did have a loss of about ten degrees of internal rotation, and ten degrees of external rotation on that hip compared to the other hip, likely due to the heterotopic ossification that had formed, but the hip itself was without pain for her and with motion.

Q. And did you find that the treatment that Mrs. Taylor received for her acetabular and trochanter, that care and treatment was appropriate under the circumstances?

A. Yes, I did.

Q. Now, Doctor, let's move down to the femur. I'm sorry, are you finished with her hip?

A. Yes, I am.

Q. Okay. Let's move to the left femur, and tell us what injuries she sustained there and what you discerned in your examination of

her.

A. Well, that fracture in the intertrochanteric area did extend down the shaft, so it was also a femoral shaft fracture that required plating as well. She did have some residual soreness in the musculature on the lateral side of her hip. That could be due to the hip fracture; it could be due to the muscular injury of the femur fracture. But, the fracture, again, had healed well. She did have some mild loss of flexion in her left knee that's probably attributable to the combination of the muscle damage from the fracture of the femur, as well as the fracture of tibia below the knee.

Q. Did you note that she had sustained some injuries to her left quadriceps?

A. Well, by then the quadriceps was well healed, and measurably, there was no difference side-to-side when I did girth measurements, so I wouldn't be able to discern a quadriceps injury on physical exam, although it was present during the time of

surgery, and in reviewing the records, that the damage to the femur had actually caused a puncture wound to the quadriceps muscle.

Q. And Doctor, is there anything further you noted with respect to the femur?

A. No.

Q. So, would you move on to the tib-fib area, please.

A. Yes, she did have fractures of her tibia and fibula. That was treated with an intermedullary rod placed in the tibia. That fracture did heal well. The bone was healed; but again, she did have some mild loss of flexion of her knee, which could be a combination of the femur injury and the tibia injury combined.

Q. Doctor, would it be fair to say that Mrs. Taylor has had residual problems as a result of these injuries she sustained in that snowmobile accident?

A. Yes, it would.

Q. And Doctor, with respect to the recovery she's made, do you believe that Mrs. Taylor's participation in physical therapy and

her own regimen has aided her in making her recovery she made as of August 18th, 2016?

A. Yes, I do.

Q. Do you believe that she has any limitations on her functions, things she can do presently?

A. Medically speaking, there's no contraindications, meaning there's nothing that I would prohibit her from doing physically. But certainly, with the residual aches and pain that she has, she would be expected to have some discomfort if she tried to do high impact type activities such as running and jumping type activities.

Q. Did you note that Mrs. Taylor made any complaint about being able to walk or climb stairs; those types of daily activities?

A. She did. She said it was difficult for her to go on long walks, and also did have a difficult time with stair climbing; and getting herself up from a seated position, at times, was difficult for her.

Q. And did you actually observe that

when you examined her?

A. No. She moved fairly smoothly in the office when I saw her.

Q. Okay. Doctor, did you make any observations about Mrs. Taylor's gait or walking on the date that you examined her?

A. I did. When I saw her, her gait was normal at a normal walking speed. I did ask her to do heel standing and toe standing as part of the exam, and she indicated she could not do that because of balance issues, however.

Q. Would it be within the realm of orthopedics, Doctor, that Mrs. Taylor could ambulate without a discernible gait when you saw her and then have problems at other times with her walking?

A. Sure, because people's symptoms can wax and wane on any given day.

Q. Did Mrs. Taylor provide you with any advice -- or, I'm sorry. Did Mrs. Taylor provide you with any information as to her medications, and specifically medications on the date that you examined her?

A. On the date that I examined her, she had not taken any medications. She did say that, depending upon her level of symptoms, at times she would take Tylenol or Advil or Tramadol.

Q. And again, Doctor, would taking those medications on an as-needed basis be appropriate for a woman such as Mrs. Taylor who sustained the injuries she experienced?

A. Yes, it would.

Q. Now, Doctor, did you make an assessment of Mrs. Taylor's condition as a result of your examination?

A. Yes, I did.

Q. Can you tell the Jury what your assessment of her condition was after you conducted this examination of her?

A. My assessment was that she had been involved in an accident in 2006, and she did sustain multiple orthopedic injuries. I listed several of those injuries that were most significant, being the left radius fracture, the left scapula fracture, a left intertrochanteric femur fracture, a left

femoral shaft fracture, left acetabular fracture, left tibia and fibula fracture, and that she was status-post surgical treatment for all of those except the scapula. She had had some other non-operatively treated fractures as well, such as the pubic rami fractures and sacrum. So, all in all, she had significant orthopedic injuries, but she also had done a very good job rehabilitating herself, and functionally was doing quite well from an orthopedic standpoint, considering those injuries she had sustained.

Q. Doctor, were you aware that in November of 2008 Mrs. Taylor had to have a procedure done on her hip with respect to the dynamic screw?

A. I was. I knew she had developed an infection and did have to have that hardware removed.

Q. Doctor, did you have an impression as to how Mrs. Taylor was getting along or doing as of the date of your examination?

A. I felt that she was getting along quite well, all things considered, with her

injuries that she had sustained. She did have some mild residual that I expected would be permanent for her on an ongoing basis.

Q. Doctor, did you have a -- withdrawn. Did you note that the limitations she was complaining about, or limitations in activities -- long walks, I think you mentioned, stair climbing, difficultly getting out of a chair -- do you believe those will be permanent in nature?

A. They probably will be, yes.

Q. Do you believe that Mrs. Taylor's condition is going to get worse as she goes forward?

A. No, I don't have any basis to think it's going to get worse, other than the normal aging process that happens to people when they're in the middle ages. They tend to get more sore and a bit more limited as time goes on. But by now, after ten years, I expect her injuries to plateau where they're at.

Q. Now, Doctor, can you state within a reasonable degree of medical certainty in

your professional field of orthopedic surgery your opinion as to whether Mrs. Taylor's injuries are going to get any worse?

A. I can.

Q. And what is your opinion, Doctor?

A. My opinion is that within a reasonable degree of medical certainty, her opinions are not likely to get any worse as time goes on.

Q. You said her opinions; you mean her injuries?

A. Oh, her injuries. My opinion is her injuries are not likely to get worse.

Q. Okay. And as a general matter, did you find Mrs. Taylor to be a pleasant and cooperative examinee?

A. I did, yes.

Q. Doctor, in your report you make a note, or you made a note about her paresthesias.

A. Yes.

Q. And could you explain what findings you made in that regard?

A. Well, she talked about the

paresthesias going into her right thigh, and that she said really had come on over the last year. So, that was nine years after the original accident. And also, the tests that she'd had done, such as MRI, didn't show anything that would explain why she would have right sided paresthesias, so I wouldn't be able relate those complaints to the accident that happened a decade ago.

Q. Okay. And that's because of the time of the onset?

A. Yes.

Q. Doctor, did you make a determination as to Mrs. Taylor's level of disability?

A. From an occupational standpoint, I said she was not occupationally disabled.

Q. And what do you mean by that?

A. Well, she wasn't working outside the home, and there really was no job that she was disabled from since she wasn't employed outside the home.

Q. Now, Doctor, did you get retained by my office to perform this examination?

A. Yes.

Q. And you had never met Mrs. Taylor before the day that she came into your office; is that fair?
A. That's correct.
Q. And did you review a substantial amount of medical reports?
A. I did. There were well over 2000 pages of records.
Q. And did you review some x-rays as well?
A. I did.
Q. Did you review some records as recent as July of 2016?
A. Yes, I did.
Q. Now, Doctor, are the opinions and the impressions that you've conveyed here -- opinions that you have given with a reasonable degree of medical certainty in your field of orthopedic surgery?
A. Yes, they are.
Q. Okay. Doctor, did your office, or did you get compensated for performing the medical examination of Mrs. Taylor back in August?

A. Yes, I did.
Q. And do you know how much that examination cost, or how much you charged?
A. The examination fee starts at $950, and then it's $700 per hour for review of medical records. I believe the total came up to around $10,000.
Q. Now, in addition, did you charge a fee for having to provide testimony here today?
A. Yes, for pretrial preparation and for the time today, I did charge a fee, and that's $6,000.
Q. And is that essentially the sum total of your charges, approximately $16,000 as we sit here today as of September 26th?
A. Yes.
Q. Are those usual and customary charges in your practice?
A. They are.
Q. Do you do medical examinations for lawyers as a part of your practice?
A. Yes, I do.
Q. And about how many examinations of

this sort, where an attorney calls you up and asks you to examine a patient, do you do either monthly or annually?
A. Approximately 10 to 12 a month.
Q. And in addition to that, do you treat patients in your office?
A. Yes, I do.
Q. And do you also provide care for patients in facilities, hospitals, things of that sort?
A. Yes, I do.
Q. Thank you, Doctor. That's all I have.

CROSS-EXAMINATION

BY-MR.RUBINOWITZ:

Q. Good afternoon, Doctor.
A. Good afternoon.
Q. My name is Ben Rubinowitz. I'm going to ask you some questions. I ask you to do the same courtesy and answer the questions directly; fair enough?
A. Sure.
Q. Doctor, you completed your residency in approximately 1996; is that right?

A. Yes.
Q. And with respect to the work that you're doing, you mentioned that you review cases involving spinal injury, orthopedic injury, leg, femur, acetabular fractures. When was the last time you did spinal surgery?
A. The last time I performed spinal surgery would have been during my residency. I don't do that as part of my practice.
Q. So, for the last 20 years, you've done no spinal surgery at all; correct?
A. That's correct.
Q. With respect to trauma surgery, such as the type of injuries that Linda Taylor suffered, when was the last time you were involved in trauma surgery like that?
A. Of a multi-level trauma, it would have been about five years ago for something that approaches this severity.
Q. And when you say, this severity, what you're speaking about is the severity of the injuries suffered by Linda Taylor in this accident; correct?

A. That's correct.

Q. Now, one of the things that Mr. Hannigan asked you towards the end of his examination of you, he spoke about the work that you were doing, medical-legal work; correct?

A. Yes.

Q. All right. One of the things that you know, though, as an orthopedic surgeon, is that there are doctors in your field who specialize, for example, in hand surgery; true?

A. True.

Q. There are some that specialize in hip surgery; am I right?

A. Yes.

Q. There are certain orthopedic surgeons that specialize in lower extremity fractures, such as the lower legs; true?

A. True.

Q. And there are also doctors who devote a large portion of their practice to litigation, law related; right?

A. Sure.

Q. Now, with respect to you, one of the things that we know is that you got involved in the legal-medical world in around the year 2000; true?

A. That's correct.

Q. And back in 2000, one of the things that you were doing is, you were doing approximately 100 to 400 of these examinations per year related to legal work; right?

A. That's correct.

Q. And we can agree that that had nothing to do with your treatment of patients; correct?

A. Other than being in the field of orthopedics, that's correct. That's separate from my treatment of my patients.

Q. Exactly. In other words, there was no doctor-patient relationship; true?

A. That's true.

Q. And for the most part, what you were doing is, you were offering your opinions for the defense of a case; correct?

A. Predominantly, it was defense work, sure.

Q. Now, back at that time in 2001, you were typically paid approximately $450 per exam; right?

A. That sounds about right.

Q. And if we multiply the 450 times 400 to 500 exams, that's at least $180,00 to $200,000 a year you were earning back then, just for medical-legal related work; true?

A. That sounds about right, yes.

Q. And back then, you were testifying approximately 12 times a year; correct?

A. Again, I don't recall exactly, but probably reasonable.

Q. All right. As your devotion to litigation continued, we know that, for example in 2003, you were being paid quite a bit more money to do medical-legal work; true?

A. I don't remember. Over time, sure, the rates have gone up and I've been paid more.

Q. All right. And I want to focus, for example, two years later. If we focus

for example, back on 2001, can we agree that the total percentage of your work, if we go back to when you first started, was less than 10 percent of your earnings; fair enough?

A. That's probably correct.

Q. Okay. So, you were making around $200,000 just for medical-legal, and that was about 10 percent of your work at that time; true?

A. True.

Q. All right. So, you were making over $2 million dollars a year in total; correct?

A. My practice was, yes.

Q. And you are the sole person in charge of your practice; correct?

A. That's correct.

Q. So, as 2003 came around --

THE VIDEOGRAPHER: The time is approximately 2:51 p.m., and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 2:53 and we are back on the

record.
BY-MR.RUBINOWITZ:
Q. Doctor, I understand we had some technical difficulties. Can you hear me?
A. Yes.
Q. All right. So, back in 2003, as we move forward, you're devoting a greater portion of your practice to medical-legal related work; true?
A. Yes.
Q. So then, in 2003, you're now devoting approximately 25 percent of your practice to litigation related work; right?
A. Again, I don't remember the exact timeline, but it did increase over the years.
Q. And indeed, one of the things that you've been doing is you've been testifying in many different courts throughout the state for the defense; correct?
A. I guess.
Q. And one of the things you've realized is that it's a lucrative practice and you wanted to keep the business going; true?

A. Sure. It's part of my livelihood, so yes.
Q. And Doctor, as time goes by, for example in 2005, one of the things that's happening is you're now conducting over 500 examinations of plaintiffs on behalf of the defense; true?
A. Well, that would be not just plaintiffs. That would be workers' compensation cases as well.
Q. And indeed, Doctor, can we agree that the percentage of your practice now devoted to litigation, as of 2005, has now increased to over one third of your practice; right?
A. It probably has, yes.
Q. And indeed, what that means is you've now limited the orthopedic work that you do for your own patients; true?
A. Yes.
Q. One of the things that's happened, though, as 2005 comes around, is the costs have gone up. So, instead of charging $450 per report, you're now charging over $700 for

a report, generally; true?
A. I don't remember the year that that changed, but over time it did, yes.
Q. And in fact, Doctor, what you were charging for a half day in court, which is what we're doing right now, you were charging $4,000; correct?
A. That sounds right.
Q. Back in 2001, it was $2,000; right?
A. I don't recall, but it could have been.
Q. So, that would be a 100 percent increase between 2001 and 2005; correct?
A. If those numbers are accurate, then yes.
Q. Those are your numbers; aren't they, Doctor?
A. I said I don't remember exactly what it was back then. I just know it did increase over time.
Q. You don't disagree with anything I've said, though; do you?
A. I do not.
Q. Now, as time goes by, your devotion

to litigation has been even more lucrative; hasn't it, Doctor?
A. It has.
Q. So, as we go to 2009, one of the things that's happened is you've been doing even more work for defense firms; correct?
A. That's correct.
Q. And in fact, what you're charging just for a half day in court as of 2009 is $5,000; right?
A. That sounds correct, yes.
Q. And for review of records, your usual price as of 2009 would be $900; right?
A. For a full record review, probably.
Q. And in fact, back in 2003 or so, it was $450 for that same review; right?
A. That sounds correct.
Q. So, we now have another 100 percent increase due to your devotion to litigation; true?
A. That's correct.
Q. There had been years when, due to the work you were doing as of 2009 just for defense lawyers, that you made in excess of

$500,000 as of 2009; right?
A. That wasn't just for defense lawyers. That would be also with the work-related injuries.
Q. In other words, your workers' comp work that you do on behalf of not the Claimant, but for the defense of workers' comp; correct?
A. They're the ones that were paying me, yes.
Q. And in fact, so if we take a look at your devotion to litigation alone, that as of 2009 you were earning more than half a million dollars a year; right?
A. That's correct.
Q. One of the things that you wanted to do was to keep the business going; correct?
A. Sure.
Q. And in fact, sir, we know that as of 2011, you're now devoting 40 percent of your practice to litigation related work; true?
A. That sounds correct.
Q. Also, doing the majority of the work

for the defense; am I right?
A. That's the nature of the work, so yes.
Q. In fact, sir, as of 2007, 40 percent of your gross income was derived from doing medical evaluations and testimony; right?
A. That sounds about right, yes.
Q. And in fact, as of 2011, the percentage of your practice, you've now cut down on your orthopedic work, and the litigation related work is now 50 percent of your practice; right?
A. That's correct.
Q. And in fact, we can agree that as of 2011, you had four to five thousand of office visits a year; right?
A. That's correct.
Q. And of those four to five thousand, half of them were litigation related evaluations; true?
A. Not half the number. Probably half of the total income would be litigation related.
Q. Well, Doctor, as of 2011, the total

income would be 750 to $800,000 a year just from litigation related work; right?
A. That sounds about right.
Q. And in fact, as we continue through 2013, you're now, as of 2013, we can agree that you're earning well over $800,000 a year just to do litigation related work; right?
A. That's probably true, yes.
Q. And in fact, it's gotten even more if we bring it up to date today; true?
A. That's correct.
Q. So, you're now making a little over a million dollars a year just related to litigation; true?
A. It'll probably be about that this year, yes.
Q. And in fact, Doctor, one of the things that you've had is, you've had repeat business from defense firms; correct?
A. For some firms, sure.
Q. They've hired you many, many times; am I right?
A. Some have, yes.
Q. And in fact, sir, one of the things

that you'd like to do is, you'd like to keep this business going for years to come; am I right?
A. Sure.
Q. And in fact, the reason you'd like to keep it going for years to come is, you're now making over a million dollars a year and you don't even have a doctor-patient relationship with these people that you're examining; right?
A. That's all part of it, sure.
Q. So, in fact, Doctor, what percentage of your practice today is devoted to medical-legal work?
A. I'm right on that same number: about 50/50 between my patients and medical-legal work.
Q. So, now you're making over $2 million a year, half of which, at least, is devoted to litigation; true?
A. That's correct.
Q. Would you agree, Doctor, that sometimes the opinions that you give concerning the people that you evaluate are

wrong?
A. Sure. I'm not perfect. I'm sure they are wrong at times.
Q. Doctor, in addition to that finding, or one of the things that you do is testify at depositions; am I right?
A. Yes.
Q. In fact, Doctor, isn't it true that you testify 10 to 12 times a month?
A. For workers' compensation cases, that's correct.
Q. So, if you testify 10 to 12 times a month for workers' compensation cases, that's over approximately 120 times a year that you testify; correct?
A. Yes.
Q. And in addition to the testifying that you do in the workers' compensation cases, one of the things that you do is you testify in court; correct?
A. I do.
Q. For example, you testify at least once a month approximately; right?
A. That's correct.

Q. Sometimes even more than once a month; am I right?
A. Sometimes.
Q. So, we can agree that you testify, in making the money that you make -- over a million dollars -- more than 150 times a year; correct, sir?
A. That's probably correct.
Q. And we can agree, sir, that with respect to the number of days that are actually worked, there are about 250 days in the year that you actually work; correct?
A. Yes.
Q. So, Doctor, certainly, when you take a look at the total number of days that you work, most of the time, the majority of days is spent on medical-legal work; true?
A. Of some sort, yes. I would say that's correct.
Q. Doctor, over the last 10 years, have you had any desire to go back to full -time orthopedic practice?
A. No. I consider what I do full-time orthopedic practice.

Q. In fact, Doctor, you're not doing surgery on any one of these people that you evaluate for the defense; correct?
A. That's correct.
Q. So, in fact, Doctor, half the time or more, you're not doing orthopedic surgery; right?
A. Actual surgery, that's correct.
Q. When did you last devote 100 percent of your professional life to actually treating your own patients?
A. Well, there's always some administrative side of medicine anyway, even when it's not just treatment, but if you take away the legal-medical part of the work, the last time I did just that would have been 1998, probably.
Q. More than 20 years ago, we can agree on that; right, Doctor?
A. Well, that's less than 20 years.
Q. Isn't it true that it's more than 20 years ago because you started the medical-legal work in 1998; didn't you?
A. That's not more than 20 years.

Q. In 1998, you were doing medical-legal work; correct?
A. Right.
Q. In 1996, you weren't doing medical-legal work; true?
A. Correct.
Q. So, it's 20 years, sir; true?
A. No, that's --
Q. 1998 to right now is how much; 20 years?
A. From 1996, yes.
Q. My point is, Doctor, even in 1998 you were doing medical-legal work; true?
A. Well, I wasn't Board certified until 1998, so after I became Board certified, I could do medical-legal work.
Q. So, as soon as you became Board certified, that's when you started doing your medical-legal work; right?
A. That's correct.
Q. And you understand that there are physicians within your field who devote less than one percent of their practice to medical-legal work; true?

A. Sure.
Q. Do you know a doctor by the name of Bartlett?
A. I do not.
Q. Have you ever heard of Dr. Bartlett?
A. Well, he was the treating doctor in this case. That's the only time I've heard of him.
Q. Did you ever read any article by him that he's written concerning fractures of the acetabulum?
A. No.
Q. Doctor, in doing the examination of Linda Taylor, you saw her one time; am I right?
A. That's correct.
Q. You saw her back on August 18, 2016; correct?
A. Yes.
Q. And in fact, Doctor, one of the things you've been asked over the years is this -- the question asked by many lawyers is, Doctor, did you keep your notes of the examination?

A. No.
Q. You've been asked that in the past; haven't you?
A. I have.
Q. And one of the things that you've been asked by many lawyers is, please keep your notes; haven't they, Doctor?
A. No. I've been asked if I keep them, but nobody asked me to keep them.
Q. In fact, Doctor, with respect to your notes for Linda Taylor, I take it you discarded them?
A. I did.
Q. Doctor, was there a reason -- that's wrong. Doctor, did you note anyplace the start of the exam and the end of the exam of Linda Taylor that you did?
A. No, I did not.
Q. If I told you, Doctor, that the exam started at 10:35 and it ended at 10:45, would you agree with that?
A. No. But, I don't know what you're talking about. The actual face-to-face time or physical exam, or what?

Q. The actual physical exam, Doctor. Would you agree with me it took approximately 10 minutes?
A. I didn't time it, so I have no idea.
Q. When you say you have no idea, you don't disagree that it took approximately 10 minutes; right?
A. I don't disagree because I don't know.
Q. At any rate, Doctor, one of the things that you do know is that when you do these exams, it takes approximately 10 minutes; correct?
A. To do a physical exam orthopedically, yes, it typically takes about 10 minutes.
Q. Fair enough. So, the one time, the only time that you saw her took approximately 10 minutes for your physical exam; true?
A. That's possible. Again, I don't know.
Q. All right. We know that you believe that Linda Taylor was cooperative in answering the questions that you had for her;

correct?
A. Yes.
Q. Doctor, one of the things that you know from looking at the records is that she suffered a significant head injury, also; didn't she?
A. That was in the records, yes.
Q. All right. So you knew, for example, that she had suffered a brain bleed, or multiple brain bleeds, I should say; correct?
A. I don't know any details about it, because that's not my specialty, but I know that she did have a head injury, yes.
Q. All right. So, for example, you saw that she suffered from subarachnoid hemorrhages; correct?
A. I did see that, yes.
Q. You saw that she had suffered from subdural hemorrhage; correct?
A. Again, I don't remember the specifics, because that's not my area.
Q. Did you notice that she had suffered from something called diffuse axonal injury

of the brain?
A. No, I don't know that.
Q. One of the things that you'd want to do though, in doing any assessment -- especially an orthopedic assessment -- is determine whether or not the person you're speaking to is a good historian; true?
A. To the best of your ability, sure.
Q. So, for example, when you teach residents, you tell them that in the event the patient has a brain injury, you've got to be extra careful to make sure that you're getting accurate information; true?
A. In the acute setting, the emergency room, we do discuss that.
Q. And in the event that the patient has certain impairment following the acute setting, you'd want to know that as well; wouldn't you?
A. If it was significant to allow her to not give a history that was accurate, sure.
Q. That what you did in this examination was you asked to speak with her

alone, without any involvement from Mr. Steigman, who was there as well; correct?
A. I didn't preclude him from saying anything, but I asked her for the history, sure.
Q. Isn't it a fact, Doctor, that what you said was, I want to hear from her?
A. I don't recall saying that, but I may have.
Q. Now, Doctor, one of the things that you do know is that Linda Taylor did suffer a traumatic brain injury. Without going into specifics, you understood that; correct?
A. Yes.
Q. With respect to the records that you reviewed, for example, you had an opportunity to look at the Fletcher Allen Health Care records; correct?
A. Yes.
Q. You had an opportunity to look at the Burke Rehab records; correct?
A. Yes.
Q. You had an opportunity to look at the Branch Hospital records; true?

A. Yes.
Q. You had an opportunity to look at the hospital's special surgery records; correct?
A. Yes, I did.
Q. And this was to give you a global understanding of Linda Taylor's condition; true?
A. True.
Q. And that's why, for example, you were able to charge $10,000 for this, because you poured through these records; right?
A. Correct.
Q. To get a good understanding of the nature and extent of her injuries; true?
A. That's correct.
Q. With respect to the Burke Hospital records, why was she admitted to Burke, primarily?
A. I don't recall why she was admitted to Burke primarily.
Q. Do you recall if it was orthopedic or something else?
A. I don't recall, no.

Q. How much time did you spend reviewing the Burke Hospital records?
A. I don't have any independent recollection of how much was spent on any individual records.
Q. At any rate, Doctor, would you be surprised to learn that the reason that she was admitted to Burke, primarily, was because of the traumatic brain injury?
A. No, I wouldn't be surprised.
Q. And that's because you knew that that was the injury that the doctors were focusing on at that point in time; true?
A. Again, I didn't focus on her brain injury. I was focused on her orthopedic injury.
Q. But you told us that you reviewed the record; didn't you? The Burke Hospital record?
A. I reviewed the records to pull out the orthopedic pertinent points.
Q. I see. So, how long did it take you to pull out the orthopedic pertinent points from the Burke Rehab Center?

A. I don't know.
Q. Doctor, one of the things that you did was you reviewed the radiographic studies; correct?
A. I did.
Q. Did you review the radiographic studies separate and apart from the written record? In other words, did you actually look at the films, the MRIs, the CT?
A. I did.
Q. And that's one of the ways that you were able to get an understanding of what happened; right?
A. Sure.
Q. And one of the things that you never do is you would never deliberately minimize the extent of the injuries; correct?
A. I would not.
Q. Because that would be completely improper; wouldn't it?
A. It would.
Q. So, if somebody was reviewing your report, they would be able to see exactly what the nature and extent of the orthopedic

injuries were; right?
A. The report in total? I would think so.
Q. In fact, the reason you think so is because if it didn't, it wouldn't fairly reflect the nature and extent of her injuries; true?
A. That's true.
Q. So, that's one of the reasons you can say with certainty, what I have written in the report is specific as to the orthopedic injuries suffered by Linda Taylor; true?
A. That's correct.
Q. And in fact, Doctor, with respect to your report, you did a full examination of her is what you're saying; correct?
A. Orthopedically.
Q. A fair examination; true?
A. Yes.
Q. Certainly, one that was thorough and complete; right?
A. Yes.
Q. To the extent you didn't do that,

that would be completely improper; wouldn't it?
A. I'm not sure what you're getting at, but yes, I try to do my best.
Q. And in fact, Doctor, when you write up your report, you try to do your best to write up the full extent of the injuries; am I right?
A. That's correct.
Q. Doctor, if I can direct your attention to your report, and Mr. Hannigan touched on this, the assessment portion of your report. If you could just turn to that, please.
A. Okay.
Q. All right. Doctor, there you list, for example, what the injuries were; correct?
A. I do.
Q. And Doctor, is there a term in orthopedics that you familiarize yourself with called "lesser fractures"?
A. Yes.
Q. Is that something that you teach your residents, to refer to it as lesser

fractures?
A. Not specifically, no.
Q. All right. So, when we take a look at your assessment, one of the things that you did was, you listed certain fractures; correct?
A. That's correct.
Q. And then you said, there were also some "lesser fractures"; right?
A. I did.
Q. So, in fairness to you, what you were doing when you were listing this is, you were listing what could be considered main fractures, or those that were horrific; true?
A. Yes, the most severe fractures, sure.
Q. All right. So, if we talk about the ones that you listed as far as severe, the left radius fracture suffered by Linda Taylor; correct?
A. Yes.
Q. No doubt that was suffered in the snowmobile accident; correct?
A. No doubt.

Q. The scapula fracture is one that you list; am I right?
A. Yes.
Q. You list a left intertrochanteric femur fracture; correct?
A. Yes.
Q. A left femoral shaft fracture; right?
A. Yes.
Q. A left acetabular fracture; right?
A. Yes.
Q. A left tibia and fibula fracture; right?
A. Yes.
Q. But, then you say there are also some lesser fractures that were left out of your report; correct?
A. They weren't listed in the assessment. They're elsewhere in the report.
Q. So, for example, Doctor, if we're going to take a look at your report through and through: if, for example, she suffered pubic rami fractures, you would list that in the report; right?
A. It is listed elsewhere in the

report, yes.
Q. And one of the things that you told us when Mr. Hannigan was questioning you was that all of the injuries were to the left side; correct?
A. In the extremity injuries I said were the left side. There was a right side pubic ramus fracture.
Q. Is that listed in your report?
A. Earlier in the report it is, yes.
Q. How about the fact that she was hemiplegic; is that listed in your report?
A. No.
Q. In fact, Doctor, wouldn't you agree that in treating a patient, from an orthopedic point of view you would need to know if the patient was hemiplegic?
A. At the time that you're treating her, if she's hemiplegic you'd want to know that.
Q. But, you don't mention the word hemiplegic at all in your report; do you?
A. No, I do not.
Q. And in fact, Doctor, tell us what

hemiplegia is.
A. It's when one side of the body doesn't have muscular function.
Q. And in fact, that's exactly what she had; right?
A. Early in the acute period.
Q. And in fact, you reviewed the records, so did you know that she was hemiplegic on the left side - she had no muscular function on the left side in addition to all of the orthopedic injuries; true?
A. I don't recall if she had any muscular function on that side or just limited.
Q. Did you review the record, Doctor?
A. I did. Again, hemiplegia is not an orthopedic condition, so that's not something that I was concentrating on.
Q. Did you ignore it, then, because it said hemiplegia?
A. I didn't ignore it.
Q. So, when you reviewed that record carefully and thoroughly as you've told us,

were you trying to minimize by not writing it in the record?
A. No.
Q. So, anyone looking at the report would never know that Linda Taylor was hemiplegic; correct?
A. Purely based on the report, no, they wouldn't know that.
Q. Doctor, we can agree that with respect to the injuries that Linda Taylor suffered, the ones that you were writing about are the ones that you considered to be horrific; true?
A. I wouldn't use the word horrific, but they were certainly serious.
Q. Doctor, I think you know that some of the fractures suffered by Linda Taylor were open fractures; correct?
A. Yes.
Q. And in fact, when you review them, one of the things that you do is, you put down what the major fractures were -- if I could use that term major; is that fair enough, Doctor?

A. Sure.
Q. All right. And you didn't list the lesser fractures; right?
A. Not in the assessment. Just in the body of the report.
Q. Did she suffer a synthesis pubic fracture?
A. She did.
Q. Is that listed in the assessment?
A. No.
Q. Did she suffer a sacroiliac fracture?
A. She did.
Q. Is that listed in your report?
A. Yes, but not in the assessment.
Q. In fact, Doctor, one of the things that you know is, as far as the injuries go, when you reviewed it, when you reviewed the record, you knew that she had vascular injury in the area of the fractures; didn't she?
A. Sure, she would have.
Q. Do you recall what vascular structure was injured?
A. No, I do not.
Q. And in fact, Doctor, would you have

any idea where that vascular structure was injured?
A. No, I don't know what vascular structures were injured.
Q. So, when you reviewed the record very carefully, would you say that the acetabular fracture was one of the most significant fractures she had?
A. I would.
Q. Doctor, did she suffer a pudendal artery transection?
A. I don't recall if she did or not.
Q. And of course, that's stated on your full, fair and thorough review; correct?
A. Yes.
Q. In fact, Doctor, since you don't recall it, you don't know if it was embolized, do you?
A. No, I do not.
Q. But, one of the things that you do know in embolization is, once the doctors embolize an artery, all of the flow coming from that artery forward will be stopped; correct?

A. Sure. That's the idea, yes.
Q. So that there would no longer be oxygen and nutrients to the area pre-injury; correct?
A. Well, not from that artery. There may be collateral flow from other ones.
Q. And you can agree that the collateral flow may or may not be as good as the original artery was; right?
A. Sure, I'd agree with that.
Q. But, if you don't know even where this transection was, you can't speak to that; true?
A. That's correct.
Q. By the way, Doctor, you spoke about a femoral neck fracture; right?
A. In her intertrochanteric fracture, just below the femoral neck, yes.
Q. Did it go from the greater trochanter to the lesser trochanter?
A. I don't recall exactly where the fracture lines went, but that's the area of the intertrochanteric fracture, yes.
Q. But, you looked at the films; didn't

you, Doctor?
A. I did.
Q. And you're coming into this courtroom through the video right now to tell us the nature and extent of the injuries; correct?
A. Sure, but that kind of thing doesn't really make any difference whether it extended from the intertroch from the greater to the lesser, or where. The fact is, the fracture was treated successfully and healed.
Q. Doctor, I asked you specifically if you reviewed the films; didn't I?
A. Yes.
Q. And in fact, Doctor, as you sit here now, you don't recall with specificity exactly what those films show; true?
A. No. Only that there was an intertrochanteric fracture.
Q. Doctor, was there a femoral head fracture?
A. I don't recall there being a femoral head fracture, no.
Q. So, you're stating with certainty that there was no femoral head fracture;

correct?

A. No. I'm saying I don't recall there being one.

Q. Don't you agree that you'd want to know if there was a femoral head fracture before you render opinion to this Jury?

A. No.

Q. Doctor, one of the things that you know with respect to the femoral head is that it has a vascular supply that is limited; correct?

A. It does.

Q. And in fact, one of the things you, as an orthopedic surgeon, would know is that with femoral head fracture and femoral neck fractures is that there's something called avascular necrosis; right?

A. Sure.

Q. Were the doctors concerned about that?

A. Back then, sure, they would be.

Q. Are you just guessing as to whether or not they were?

A. Of course they would be. Any time

there's a fracture of the hip, we're concerned about avascular necrosis.

Q. And in fact, if I told you the fracture was on the femoral head itself, Doctor -- you told us earlier when Mr. Hannigan examined you that there was damage to the acetabulum; correct?

A. Yes.

Q. That's sort of the socket to the ball and socket joint; right?

A. That's correct.

Q. And the ball is actually called the femoral head; right?

A. Yes.

Q. So, if there was damage to the femoral head and to the acetabulum, do you agree with me that the fracture would be significantly greater as far as damage; true?

A. Maybe, but maybe not.

THE VIDEOGRAPHER: The time is approximately 3:23 and we are off the record.

THE VIDEOGRAPHER: The time is approximately 3:24 p.m. and we are back on the record.

BY-MR.RUBINOWITZ:

Q. Doctor, can you hear me?

A. Yes, I can.

Q. All right, let's continue. I want to move away from the acetabulum and the femoral head for just a moment, Doctor. With respect to the iliac fracture, did she suffer a left iliac fracture as well?

A. She did.

Q. Where did that extend to?

A. Well, part of it extended down to the acetabulum. I'm not sure where else it extended to.

Q. And in fact, Doctor, if you read the record carefully, you would know, wouldn't you, that it extended into the sacroiliac joint?

A. It did.

Q. All right. But you didn't remember that until I just mentioned it; correct?

A. That's correct.

Q. Doctor, you realize, of course, when you come in here, this is the only opportunity that we have to question you,

because the Jury has to make a determination as to the nature and extent of the injuries; correct?

A. Sure.

Q. Do you really have familiarity with what happened to Linda Taylor?

A. To the best of my ability, sure. A lot happened to her.

Q. And in fact, Doctor, I know that a lot happened to her. But with respect to your review of the record, you understand you're coming in here offering opinions that have to have a basis in fact; correct?

A. Yes.

Q. But there are certain things you just don't remember; am I right?

A. Of course there are certain things I don't remember.

Q. In fact, Doctor, one of the things that we know is that there were open fractures; correct?

A. Yes.

Q. With respect to open fractures, Doctor, is one of the concerns that

orthopedists have, for example, that the open fractures might go through the muscles, through the fascia, through the skin, and indeed through the clothes of a patient?

A. Sure, that can happen.

Q. And one of the concerns, from an orthopedic point of view, would be in the event that the bones break through the skin, the musculature, the nerves, the peripheral nerves, the fascia, and go actually through clothes, that there could be contamination; correct?

A. That's correct.

Q. And in fact, Doctor, one of the things that you, as an orthopedic surgeon, would be concerned about is whether or not there was gross contamination; right?

A. I would be.

Q. And the reason you'd be concerned about gross contamination is because the nature and extent of infection that could develop as a result of that; right?

A. That's correct.

Q. Now, Doctor, with respect to the

injuries that she suffered concerning the open fractures, were all her open fractures grossly contaminated?

A. They were not grossly contaminated, as in, she wasn't in a field of cattle or something where they'd be grossly contaminated. But anytime a fracture is open, there's contamination to it.

Q. Now, I noticed that you said the wounds weren't grossly contaminated; correct? You just said that; right?

A. I did.

Q. And in fact, Doctor, did you really review the operative reports?

A. I reviewed --

Q. You don't have to look right now. I'm just asking, did you review it?

A. I did.

Q. In fact, Doctor, if you take a look, for example, would you agree with me that if you were to look at the Fletcher Allen Hospital for the date February 19, 2006, it says, in fact, all the wounds were grossly contaminated; did you see that?

A. I see that.

Q. And in fact, Doctor, you just told me that all the wounds were not grossly contaminated; didn't you?

A. Well, I qualified it with what I meant by grossly contaminated.

Q. I see. So, what you're doing is you're ignoring what the records said, and you're giving your own interpretation; correct?

A. I'm not ignoring it. I just told you what my interpretation was.

Q. Doctor, did they have to remove plant debris from any of the open fractures?

A. I wouldn't know without going back and looking.

Q. And in fact, Doctor, I'll read it to you to make it a little bit easier and speed it up. And it reads, and I'm quoting, "all wounds were grossly contaminated. We removed plant debris from her left femur primarily." I want you to assume that's true, and I'll show it to Counsel so he can see it so there's no issue that I'm reading it

correctly. Would you agree with me, Doctor, that when plant debris is actually attached to the bone, it means that the bone has not just gone through the muscle, not just gone through the fascia, not just gone through tissue and skin, but actually passed through her clothes; correct?

A. Sure, that's correct.

Q. And in fact, Doctor, that's one of the concerns that an orthopedic surgeon such as yourself would have; am I right?

A. At the time of treatment, sure.

Q. And in fact, Doctor, did she suffer from infection while she was at Fletcher Allen Hospital?

A. She did.

Q. And in fact, Doctor, you'd agree with me that that would be a source of pain; am I right? In addition to the fractures; right?

A. Yes, it would be.

Q. And every one of the fractures that you now know that she had back at the time of the injury, those were all

competent-producing causes of pain; right?
A. Sure, they were.
Q. They were severely painful; am I right? Based on your experience as an orthopedic surgeon; true?
A. Yes.
Q. By the way, Doctor, with respect to the femoral head, do you know if that was disrupted in any way?
A. Well, what do you mean by disrupted?
Q. Doctor, do you recall as you sit here right now, for example, having heard the questions that I've been asking you, as to whether or not the femoral head was fractured?
A. I don't recall the femoral head itself being fractured, no.
Q. You do recall the acetabulum, though; right?
A. I do.
Q. And you agree with me that the proximal end of the femur, the femoral head itself -- which would be the end of the bone closest to the hip -- that is covered with

articular surface; true?
A. True.
Q. If I may use this example: just like if you were to look at a turkey bone, the very ends of the bone have that smooth, glistening surface on it; right?
A. Yes.
Q. And that's what we call articulate surface; right?
A. Yes.
Q. It's very different from the shaft of the bone; correct?
A. Correct.
Q. So that, in fact, when there's disruption of the articular surface, that's significant from an orthopedic point of view; true?
A. It can be, sure.
Q. And in fact, Doctor, with respect to the acetabulum -- and you did study that one -- with respect to the acetabulum, how many fractures did it have?
A. I don't know how many fracture lines there were.

Q. When you read the x-rays, were you able to determine that?
A. No.
Q. Did you look at the record to see whether or not they determined that?
A. No. Whether there's one, two or three doesn't matter.
Q. By the way, Doctor, were there any butterfly fragments in any of the fractures?
A. There were.
Q. Where?
A. In the extremities. I remember --
Q. Where?
A. The femur had a butterfly fragment. I believe the tibia probably did, but I don't know that for sure.
Q. With respect to the fibula fracture, was that in multiple places?
A. It was comminuted, so it was in multiple places, yes.
Q. But was it comminuted and fractured in many different places along the length of the bone?
A. I don't recall.

Q. Doctor, did they have to place a vena cava filter?
A. I don't know if they did or not.
Q. Did they have to place a feeding tube?
A. I don't know that, either.
Q. Doctor, with respect to the fractures themselves -- and I want to focus just for a moment on the femur -- you recognize the femur was fractured in many places; correct?
A. I do.
Q. Was there a fracture that extended from the femoral head or the acetabular area downward, or was there a separate mid-shaft femur fracture?
A. I don't know if all the fracture lines communicated or not.
Q. Well, Doctor, whether they did or not, can we agree that there was significant bleeding that took place in the area of the fractures; correct?
A. Yes, there was.
Q. And indeed, when the blood continues to bleed out -- the bones actually bleed,

don't they?
A. They do.
Q. And in fact, there was continual bleeding from the soft tissues that were damaged as a result of the fractures; correct?
A. Sure, there was.
Q. Because, when we talked about fractures, you understand there were mild non-displaced fractures, moving up to displaced fractures, moving through to comminuted fractures, and then the most severe, which is an opened or compound comminuted fracture; true?
A. True.
Q. Indeed, she had the most significant fractures; didn't she? Open or compound comminuted fractures; correct?
A. That's correct.
Q. And she had that in the femur area; correct?
A. She did.
Q. That's the guideline; am I right?
A. Yes.

Q. She had fractures to the lower extremities involving the tibia; correct?
A. Yes.
Q. Was that an open fracture?
A. Yes, it was.
Q. And in fact, she had comminution to the fibula, the bone running alongside the tibia in the lower leg; correct?
A. She did.
Q. Were there other comminuted fractures that she suffered?
A. Well, the fracture in the acetabulum was comminuted.
Q. How about of the sacral fracture?
A. Yes, the sacrum was comminuted, as well.
Q. Would you agree with me that every single one of the fractures that we mentioned was a source of pain; correct?
A. Yes.
Q. Doctor, one of the things you told us was, you spoke about her gait; correct?
A. I did.
Q. And in fact, Doctor, with respect to

the gait, did you tell us that you noticed no gait abnormality?
A. I did.
Q. Doctor, you examined her on August 18, 2016; correct?
A. Yes.
Q. Are you aware that the Defense had a neurology consult, a doctor by the name of Robert Todd, who also examined her on that very same day within a matter of hours from your examination?
A. No.
Q. I want you to assume that Dr. Todd said, this is the Defense examining neurologist said, "she had an obvious pelvic tilt to the left". Assume that to be true. Assume that to be in his report, and I'm representing I'm reading it from his report.
A. Okay.
Q. And I'm showing it to Counsel, as well. Doctor, did you find that she had an obvious pelvic tilt to the left?
A. I did not.
Q. Were you trying to minimum the

extent of the injuries?
A. No.
Q. Doctor, did she have an antalgic gait?
A. No.
Q. In fact, Doctor, antalgic gait means that she's walking in a way to avoid pain while she walks; correct?
A. That's the usual reason for it, yes.
Q. That's the definition of an antalgic gait; true?
A. Antalgic gait means you spend more time on one leg than on the other, so it creates a limp.
Q. And in fact, Doctor, I want you to assume that Dr. Todd, the Defense examining neurologist said her gait was antalgic. This is within a matter of hours from when you examined her.
A. Okay.
Q. You're telling us that you found no antalgic gait, Doctor; is that it?
A. I did.
Q. How many surgical procedures did she

have?

A. Do you define - how are you defining a procedure? A trip to the operating room, or number of things --

Q. How about if we talk about surgeries to the various bones that were fractures? How many surgeries did she have? If you don't know, you can say that too.

A. Well, I don't know the number without looking at the records and adding them up.

THE VIDEOGRAPHER: The time is approximately 3:37 p.m. and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 3:41 p.m. and we are back on the record.

BY-MR.RUBINOWITZ:

Q. Doctor, can you hear me?

A. Yes, I can.

Q. Doctor, I want to focus back for a moment on the damage to the articular surface of those bones that were fractured, and I'll

start with the acetabulum. Would you agree with me, Doctor, that when we speak about arthritis, arthritis is damage to the articular surface; correct?

A. It is.

Q. And in fact, as time goes by, would you agree that arthritic conditions can become worse leading to bone on bone?

A. Yes.

Q. Doctor, given the nature of the injury to her acetabulum, isn't it true that she is suffering from arthritis?

A. She is at risk for it, but she is not suffering from it at the present time.

Q. And Doctor, with respect to the communicating bone, which would be the femoral head, in the event that that, too, was fractured, would you agree with me that that would cause damage to the articular surface?

A. It would.

Q. And in fact, Doctor, since you don't know whether or not the femoral head was even fractured, you'd have no opinion at all

as to whether or not there's arthritis in that area; correct?

A. No, I have an opinion.

Q. And you're going to say there isn't, of course; right?

A. Well, of course. She had no pain, so she wouldn't have arthritis and have no pain.

Q. How did you get the idea that she had no pain, Doctor?

A. She told me she had no pain.

Q. And did you take a look at her head injury as to whether or not she was an accurate historian, Doctor?

A. She certainly appeared to give me a very accurate history the rest of the case, so.

Q. Doctor, with respect to the records that you reviewed, did any of the records reflect the fact that there was already arthritis?

A. There were - it's called post-traumatic changes, but even her most recent note through Dr. Bartlett noted that

the joint space was still well maintained.

Q. And Doctor, Dr. Bartlett testified, and I want you to assume that he did, that that articular surface, the damage to it is only going to get worse over time; do you disagree?

A. I don't disagree, because that's part of the natural history of the aging process.

Q. Are you saying it has nothing to do with the fracture she suffered, just her age; is that it, Doctor?

A. No. She's at higher risk, I said that, because of having this articular fracture.

Q. And in fact, Doctor, you would classify this as a very major intraarticular fracture; am I right?

A. I would.

Q. Doctor, with respect to heterotopic ossification, that's bone growing where it shouldn't grow; right?

A. That's correct.

Q. And she had that; am I right?

A. She did.

Q. So, in fact, some of the muscle has actually been calcified and turned into bone; true?

A. That's right.

Q. And we can agree that that's not a good thing for a patient; is it?

A. It's not.

Q. Doctor, with respect to the review of records, did you determine whether she had any abdominal hematoma?

A. I didn't make any determination on that, no.

Q. Did you see, for example, whether or not there was pooling of blood in the abdominal cavity following the fractures?

A. I didn't, but that wouldn't surprise me at all with pelvic fractures.

Q. Doctor, knowing that you didn't and you can't say whether or not she did, did you really do a thorough review of the records, Doctor?

A. Yes, from an orthopedic standpoint.

Q. And you're saying that an orthopedist doesn't have to be concerned whether or not

there is pelvic hematoma?

A. Ten years later, no, you don't.

Q. Doctor, how about at the time when you're taking a look at the records to understand the nature and extent of the injuries? Were you concerned about it at all, or did you ignore it?

A. I wasn't concerned about it.

Q. Okay. Doctor, did she suffer from hematuria at any point in time?

A. I don't know that either.

Q. Hematuria is blood in the urine; correct?

A. Correct.

Q. And in fact, Doctor, when you reviewed the record as carefully as you say you did, did you notice that anyplace?

A. Again, I didn't look for that because, again, that's a urologic problem, not an orthopedic problem.

Q. In fact, Doctor, isn't it part of the trauma team's concern to know the nature and extent of the injuries; true?

A. As the general surgeon on a trauma

team, they would want to know that, sure.

Q. You told us that you participated in some trauma surgery as recently as five years ago; didn't you?

A. As an orthopedic surgeon, yes.

Q. So, in fact, Doctor, was Linda Taylor hemodynamically unstable at any point in time since you did this thorough review?

A. With those kind of injuries, sure she was.

Q. Do you know why?

A. There would be multiple potential reasons, but just the amount of blood she would lose from those fractures would make her hemodynamically unstable.

Q. And in addition to the amount of blood that she'd lose from the orthopedic fractures, can you state with certainly whether or not there were vascular injuries as well?

A. Well, I know there was a vascular injury, but can't state anything about it because I didn't review for vascular injury.

Q. In other words, you're saying there

was one vascular injury; is that what you're telling us?

A. No, I'm saying there were vascular injuries.

Q. What were they?

A. I don't know, but those kind of fractures cause bleeding, so they damage vessels.

Q. Can we agree that those kind of fractures also cause damage to the nerves?

A. They can, sure.

Q. In fact, Doctor, with respect to the damage, if we focus just on the area of the femur fractures, can we agree that there was a very large muscular damage as a result of those fractures?

A. Yes.

Q. How large was it? How large was it?

A. I don't know.

Q. Was it just a Peterson, or was it something more than that?

A. I don't know how much it was or how to even quantify something like that.

Q. What was the entry point for the surgeons when they did the surgery on the femur?

A. I don't recall without looking at the operative report.

Q. Doctor, do you know if the injury was so big and so gaping that the surgeon actually went in through the open wound on the femur - on the femoral area of her leg?

A. Well, I'm sure they would do that, because that's part of the I & D for cleaning out all the debris.

Q. I'm not just talking about cleaning out as far as an incision and drainage, the I & D that you refer to. I'm talking about when they actually put hardware in to stabilize the wound. Do you know if they did that?

A. If they went through that same wound, I'm not sure.

Q. So, in your careful and thorough review of the records, you have no idea about that; true?

A. You can keep pointing these things

out to try to make me look like I don't know what I'm talking about --

Q. I'm just asking you a question. If you don't know, say it. That's all I'm asking you to do; fair enough? If you know it, please say it.

A. I'm answering what is important, and what was important. No, I don't know whether they went through that same wound or created another wound.

Q. In fact, Doctor, every one of the scars that she suffered are permanent injuries; true?

A. Sure, they are.

Q. Did she lose any musculature as a result of this accident?

A. She would have lost some through her quadriceps injury, sure.

Q. How much?

A. I don't know.

Q. Did she suffer a filling defect of the internal carotid artery?

A. I don't know. That's not an orthopedic injury.

Q. What's the internal carotic artery?

A. It's an artery that goes up to the brain.

Q. Provides nourishment and oxygen to the brain; true?

A. It does.

Q. Would you agree with me that a trauma surgeon must know about that about injury to properly treat the patient?

A. Not an orthopedic trauma surgeon, but someone overall in charge of her trauma, sure.

Q. Doctor, if I were to stop my exam right now, you would have been testifying for less than three hours; correct?

A. That's correct.

Q. How much are you charging for that, Doctor?

A. The total time for preparation and time here is $6,000.

Q. And if it was a full day, Doctor, how much would you charge?

A. It would be double that.

Q. $12,000?

A. Yes.

Q. And you've charged already $10,000 for that thorough review that you claim you did of the records?

A. Yes.

Q. Thank you, Doctor. I have no further questions.

MR. HANNIGAN: Let the record note Mr. Douthat doesn't have any questions for the Doctor at the present.

REDIRECT EXAMINATION

BY-MR.HANNIGAN:

Q. Doctor, I have a few more questions for you, if you don't mind. Mr. Rubinowitz asked you a question about what would be important for the trauma physician -- the trauma team to know when they were treating a patient. Do you remember him asking a question a few moments ago about that?

A. Yes.

Q. But, you weren't on the trauma team for Linda Taylor; were you?

A. No.

Q. You did an examination of Linda

Taylor 10 years, six months from the time of her injury; is that fair?

A. Yes, that's correct.

Q. Okay. And you were doing an orthopedic examination to determine the nature and extent of her injuries at that time; is that fair enough?

A. Yes.

Q. Now, Doctor, when you saw Linda Taylor, she didn't have any plant debris in her legs, did she?

A. No.

Q. She didn't have open wounds; did she?

A. No.

Q. She didn't have any evidence of a vascular necrosis in her hip; did she?

A. No.

Q. And she didn't have any evidence of pudendal artery transection; did she?

A. No.

Q. And even if you want to assume that she has sustained those injuries and had those condition back in February of 2006, you

wouldn't expect any evidence of those unless there were some ramifications from those injuries; isn't that right?

A. That's correct.

Q. And you didn't find any ramifications of those injuries; is that right?

A. That's correct.

Q. Now, Doctor, did you -- I'd like to take up his report for a second. Did you ask Mrs. Taylor about her past medical history?

A. Yes.

Q. What, if any, information did you get?

A. Nothing.

Q. Why is that?

A. Just, she declined any questions about past history.

Q. Did you ask about her current medications?

A. Yes.

Q. And what information did you get?

A. Only that Tylenol, Tramadol or Advil would be taken as needed.

Q. Did she decline to offer you any further information?

A. Yes.

Q. Did you ask her about any allergies to medications?

A. Yes.

Q. And what did she respond, if anything?

A. No response, just declined.

Q. Did you ask about her social history?

A. Yes.

Q. Now, are those - and what was her response?

A. Nothing pertinent. She declined.

Q. She declined. She told you she wasn't going to answer those questions; is that right?

MR. RUBINOWITZ: Objection.

THE WITNESS: Just that it wasn't pertinent to my exam.

THE VIDEOGRAPHER: The time is approximately 3:53 p.m. and we are off the record.

(Whereupon, a short break occurred.)

THE VIDEOGRAPHER: The time is approximately 3:54 p.m. and we are back on the record.

BY-MR.HANNIGAN:

Q. And Doctor, when you were interviewing Mrs. Taylor, I think you told me that she was pleasant.

A. Yes, she was.

Q. And was she responding to your questions?

A. She was.

Q. And was Mr. Steigman in the room the entire time you questioned or asked Mrs. Taylor questions about her medical history?

A. As I recall, he was, yes.

Q. Do you think that Mrs. Taylor said anything to deliberately mislead you?

A. No, not that I could tell.

Q. Doctor, with respect to the questions that Mrs. Taylor did answer, did you find her history to be appropriate?

A. Yes.

Q. And consistent with what her injuries

were and her recovery was, based upon your review of the records?

A. I did.

Q. Doctor, that's all I have. Thank you.

RECROSS-EXAMINATION

BY-MR.RUBINOWITZ:

Q. Doctor, isn't it a fact that, at no point in time did Linda Taylor decline to answer any question that you asked?

A. Only those about past history.

Q. In fact, sir, you took notes the entire time that she was speaking; correct?

A. I did.

Q. And you don't have those notes to see what they actually showed; correct?

A. That's correct.

Q. Because you destroyed them; am I right?

A. I discarded them when I prepared my report, yes.

Q. And your report said nothing, not one single word anywhere, about her declining to answer questions; true?

A. Not beyond what's written right in my report, no.

Q. My point is, Doctor, you were just asked questions by Mr. Hannigan about all these things that she declined. There's no record reflecting that she declined to answer this, this, this and this; correct?

A. Well, under past medical history, patient declined.

Q. I see. So, in fact, Doctor, are you suggesting that the notes you have didn't reflect accurately what was written?

A. No, I'm not saying that.

Q. Doctor, isn't it true that Linda Taylor answered every one of the questions that you had?

A. Every one that I felt was pertinent, sure.

Q. Thank you, Doctor. Doctor, isn't it true, sir, that you have been faulted by the Workers' Compensation Board for minimizing injuries?

MR. HANNIGAN: Objection.

THE WITNESS: No.

BY-MR.RUBINOWITZ:

Q. Isn't it true, sir, that as recently as this year the New York State Workers' Compensation Board found that you offered frivolous opinions on the question of the extent of injuries?

MR. HANNIGAN: Objection.

THE WITNESS: I don't know what you're talking about.

BY-MR.RUBINOWITZ:

Q. Never heard a word about that; right?

A. No.

MR. HANNIGAN: Objection.

BY-MR.RUBINOWITZ:

Q. Did you submit continual reports to the Workers' Compensation Board regarding carpal tunnel syndrome injuries that in fact you were minimizing the nature and extent of the injuries?

MR. HANNIGAN: Objection.

THE WITNESS: No.

BY-MR.RUBINOWITZ:

Q. Nothing further.

MR. HANNIGAN: There's no further questions, Doctor. Thank you for your time.

THE WITNESS: Okay.

THE VIDEOGRAPHER: The time is approximately 3:57 p.m. This concludes the deposition of Dr. Daniel Carr, and we are off the record.

(Whereupon, the videotaped examination before trial of DANIEL CARR, M.D. concluded at 3:58 p.m.)

CERTIFICATE

The foregoing is certified to be a true and correct transcript of the testimony in the within proceeding.

Silva J. Malvasi
Court Reporter
Notary Public

DATED: September 28, 2016