

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

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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.

D.CARR, M.D.

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APPEARANCES: (CONT'D.)

ALSO PRESENT:

Robert Richter, Videographer

Brandon Pimpinella, Videographer

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WITNESS

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DANIEL CARR, M.D.

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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

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

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

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

17 MR. HANNIGAN: My name is Terry
18 Hannigan, from Hannigan Law Firm in Delmar,
19 New York, and I represent the Point at
20 Saranac Lake and the Garrett Hotel Group.
21 Out of view of camera is Matthew Douthat, on
22
23
24
25

D.CARR, M.D.

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

D.CARR, M.D.

1 address, please.

2
3 A. Daniel Lane Carr, 2200 East Genesee
4 Street, Syracuse, New York, 13210.

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

7 A. I'm an orthopedic surgeon.

8 Q. And do you have privileges at any
9 facilities?

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

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

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

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2 residency in orthopedic surgery in Syracuse.
3 And after completing that net program, I've
4 been in private practice in Syracuse since
5 1996.

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

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

10 Q. And do you see patients at your
11 practice?

12 A. Yes, I do.

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

16 A. Yes.

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

19 A. Yes, I did.

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

22 A. That was August 18th of this year.

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

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1 A. It is the medicine of the
2 musculoskeletal system, so it treats injuries
3 to muscles, tendons, ligaments, bones, as
4 well as spinal problems such as disc
5 problems. It treats medical orthopedic
6 conditions such as arthritis, and also
7 traumatic orthopedic conditions such as
8 fractures and dislocations, and we use
9 various non-operative measures, such as
10 therapy and medicine, and also operative
11 treatment when necessary.
12

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

15 A. Yes, I did.

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

19 A. Yes, it was.

20 Q. Doctor, are you Board certified?

21 A. Yes.

22 Q. And tell us what Board certification
23 is.

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

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1
2 completing a residency at an accredited
3 program. The second part is a written exam
4 that's done right after the residency. One
5 then goes into practice as a Board eligible
6 surgeon, and after two years in practice, a
7 six month series of surgical cases is
8 collected by the American Board of Orthopedic
9 Surgery. The candidate is brought to Chicago
10 for an oral exam given by testers who are
11 already Board certified, and if one passes
12 that, then one is considered Board certified.
13 And that's a ten year certificate that is
14 re-done every ten years.

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

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

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

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

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1
2 Q. And Doctor, I'm going to be asking
3 you some questions about your examination of
4 Linda Taylor, and is it fair to say you
5 prepared a report of your findings in that
6 regard?

7 A. Yes.

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

13 A. Okay.

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

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

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

21 A. Yes, it is.

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

25 A. Yes, she was with her legal

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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

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

3
4 A. Yes, it is.

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

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

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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

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

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

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

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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.

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

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

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2 Mrs. Taylor; is that correct?

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

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

10 A. Yes, I did.

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

17 A. Yes, I did.

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

22 A. I was finished with the shoulder,
23 yes.

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

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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

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1 other side, whereas extension was full.

2 There was a mild loss of motion there.

3
4 Q. Okay. Doctor, I'd like if you could
5 start at that high point and work down. So,
6 if we start at her -- in the area of her
7 greater trochanter or her acetabulum, can you
8 describe what you've discerned about the
9 fractures there and her recovery or
10 limitations with respect to the left hip.

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

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

25 **(Whereupon, a short break occurred.)**

D.CARR, M.D.

1
2 THE VIDEOGRAPHER: The time is
3 approximately 2:32 p.m. and we are back on
4 the record.

5 **BY-MR. HANNIGAN:**

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

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

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

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

18 A. Yes, I did.

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

22 A. Yes, I am.

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

1
2 her.

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

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

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

D.CARR, M.D.

1 surgery, and in reviewing the records, that
2 the damage to the femur had actually caused
3 a puncture wound to the quadriceps muscle.
4

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

7 A. No.

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

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

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

22 A. Yes, it would.

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

D.CARR, M.D.

1
2 her own regimen has aided her in making her
3 recovery she made as of August 18th, 2016?

4 A. Yes, I do.

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

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

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

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

25 Q. And did you actually observe that

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2 when you examined her?

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

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

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

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

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

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

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1
2 A. On the date that I examined her, she
3 had not taken any medications. She did say
4 that, depending upon her level of symptoms,
5 at times she would take Tylenol or Advil or
6 Tramadol.

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

11 A. Yes, it would.

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

15 A. Yes, I did.

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

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

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

13
14 Q. Doctor, were you aware that in
15 November of 2008 Mrs. Taylor had to have a
16 procedure done on her hip with respect to
17 the dynamic screw?

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

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

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

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1 injuries that she had sustained. She did
2 have some mild residual that I expected would
3 be permanent for her on an ongoing basis.
4

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

12 A. They probably will be, yes.

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

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

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

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1
2 your professional field of orthopedic surgery
3 your opinion as to whether Mrs. Taylor's
4 injuries are going to get any worse?

5 A. I can.

6 Q. And what is your opinion, Doctor?

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

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

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

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

18 A. I did, yes.

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

22 A. Yes.

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

25 A. Well, she talked about the

D.CARR, M.D.

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

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

13 A. Yes.

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

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

18 Q. And what do you mean by that?

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

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

25 A. Yes.

D.CARR, M.D.

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

5 A. That's correct.

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

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

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

12 A. I did.

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

15 A. Yes, I did.

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

21 A. Yes, they are.

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

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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

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

5 A. Approximately 10 to 12 a month.

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

8 A. Yes, I do.

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

12 A. Yes, I do.

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

15 **CROSS-EXAMINATION**

16 **BY-MR.RUBINOWITZ:**

17 Q. Good afternoon, Doctor.

18 A. Good afternoon.

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

23 A. Sure.

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

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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?

D.CARR, M.D.

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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.

D.CARR, M.D.

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2 Q. Now, with respect to you, one of the
3 things that we know is that you got involved
4 in the legal-medical world in around the year
5 2000; true?

6 A. That's correct.

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

12 A. That's correct.

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

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

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

21 A. That's true.

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

25 A. Predominantly, it was defense work,

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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

D.CARR, M.D.

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

7 A. That's probably correct.

8 Q. Okay. So, you were making around
9 \$200,000 just for medical-legal, and that was
10 about 10 percent of your work at that time;
11 true?

12 A. True.

13 Q. All right. So, you were making over
14 \$2 million dollars a year in total; correct?

15 A. My practice was, yes.

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

18 A. That's correct.

19 Q. So, as 2003 came around --

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

23 **(Whereupon, a short break occurred.)**

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

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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?

D.CARR, M.D.

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

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

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

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

17 A. It probably has, yes.

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

21 A. Yes.

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

D.CARR, M.D.

1 a report, generally; true?
2

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

5 Q. And in fact, Doctor, what you were
6 charging for a half day in court, which is
7 what we're doing right now, you were charging
8 \$4,000; correct?

9 A. That sounds right.

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

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

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

15 A. If those numbers are accurate, then
16 yes.

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

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

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

24 A. I do not.

25 Q. Now, as time goes by, your devotion

D.CARR, M.D.

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

4 A. It has.

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

8 A. That's correct.

9 Q. And in fact, what you're charging
10 just for a half day in court as of 2009 is
11 \$5,000; right?

12 A. That sounds correct, yes.

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

15 A. For a full record review, probably.

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

18 A. That sounds correct.

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

22 A. That's correct.

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

D.CARR, M.D.

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2 \$500,000 as of 2009; right?

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

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

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

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

16 A. That's correct.

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

19 A. Sure.

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

24 A. That sounds correct.

25 Q. Also, doing the majority of the work

D.CARR, M.D.

1 for the defense; am I right?

2
3 A. That's the nature of the work, so
4 yes.

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

8 A. That sounds about right, yes.

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

14 A. That's correct.

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

18 A. That's correct.

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

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

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

D.CARR, M.D.

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

4 A. That sounds about right.

5 Q. And in fact, as we continue through
6 2013, you're now, as of 2013, we can agree
7 that you're earning well over \$800,000 a year
8 just to do litigation related work; right?

9 A. That's probably true, yes.

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

12 A. That's correct.

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

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

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

21 A. For some firms, sure.

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

24 A. Some have, yes.

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

D.CARR, M.D.

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

5 A. Sure.

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

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

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

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

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

22 A. That's correct.

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

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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.

D.CARR, M.D.

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

4 A. Sometimes.

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

9 A. That's probably correct.

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

14 A. Yes.

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

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

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

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

D.CARR, M.D.

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

5 A. That's correct.

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

9 A. Actual surgery, that's correct.

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

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

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

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

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

25 A. That's not more than 20 years.

D.CARR, M.D.

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

4 A. Right.

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

7 A. Correct.

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

9 A. No, that's --

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

12 A. From 1996, yes.

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

15 A. Well, I wasn't Board certified until
16 1998, so after I became Board certified, I
17 could do medical-legal work.

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

21 A. That's correct.

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

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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?

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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?

D.CARR, M.D.

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2 Q. The actual physical exam, Doctor.
3 Would you agree with me it took approximately
4 10 minutes?

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

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

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

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

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

18 Q. Fair enough. So, the one time, the
19 only time that you saw her took approximately
20 10 minutes for your physical exam; true?

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

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

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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

D.CARR, M.D.

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2 of the brain?

3 A. No, I don't know that.

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

9 A. To the best of your ability, sure.

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

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

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

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

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

D.CARR, M.D.

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

3
4 A. I didn't preclude him from saying
5 anything, but I asked her for the history,
6 sure.

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

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

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

15 A. Yes.

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

20 A. Yes.

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

23 A. Yes.

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

D.CARR, M.D.

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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.

D.CARR, M.D.

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

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

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

11 A. No, I wouldn't be surprised.

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

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

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

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

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

D.CARR, M.D.

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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

D.CARR, M.D.

1 injuries were; right?

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

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

8 A. That's true.

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

14 A. That's correct.

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

18 A. Orthopedically.

19 Q. A fair examination; true?

20 A. Yes.

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

23 A. Yes.

24 Q. To the extent you didn't do that,
25

D.CARR, M.D.

1
2 that would be completely improper; wouldn't
3 it?

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

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

10 A. That's correct.

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

16 A. Okay.

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

19 A. I do.

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

23 A. Yes.

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

1
2 fractures?

3 A. Not specifically, no.

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

8 A. That's correct.

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

11 A. I did.

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

17 A. Yes, the most severe fractures, sure.

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

22 A. Yes.

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

25 A. No doubt.

D.CARR, M.D.

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

4 A. Yes.

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

7 A. Yes.

8 Q. A left femoral shaft fracture; right?

9 A. Yes.

10 Q. A left acetabular fracture; right?

11 A. Yes.

12 Q. A left tibia and fibula fracture;
13 right?

14 A. Yes.

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

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

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

25 A. It is listed elsewhere in the

1
2 report, yes.

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

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

10 Q. Is that listed in your report?

11 A. Earlier in the report it is, yes.

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

14 A. No.

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

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

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

24 A. No, I do not.

25 Q. And in fact, Doctor, tell us what

D.CARR, M.D.

1
2 hemiplegia is.

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

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

7 A. Early in the acute period.

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

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

17 Q. Did you review the record, Doctor?

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

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

23 A. I didn't ignore it.

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

D.CARR, M.D.

1
2 were you trying to minimize by not writing
3 it in the record?

4 A. No.

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

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

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

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

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

20 A. Yes.

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

D.CARR, M.D.

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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

D.CARR, M.D.

1
2 any idea where that vascular structure was
3 injured?

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

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

10 A. I would.

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

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

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

16 A. Yes.

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

20 A. No, I do not.

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

D.CARR, M.D.

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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

1
2 you, Doctor?

3 A. I did.

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

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

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

14 A. Yes.

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

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

20 Q. Doctor, was there a femoral head
21 fracture?

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

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

1
2 correct?

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

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

8 A. No.

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

13 A. It does.

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

19 A. Sure.

20 Q. Were the doctors concerned about
21 that?

22 A. Back then, sure, they would be.

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

25 A. Of course they would be. Any time

D.CARR, M.D.

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

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

8 A. Yes.

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

11 A. That's correct.

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

14 A. Yes.

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

19 A. Maybe, but maybe not.

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

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

D.CARR, M.D.

1
2 because the Jury has to make a determination
3 as to the nature and extent of the injuries;
4 correct?

5 A. Sure.

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

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

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

15 A. Yes.

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

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

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

23 A. Yes.

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

D.CARR, M.D.

1
2 orthopedists have, for example, that the open
3 fractures might go through the muscles,
4 through the fascia, through the skin, and
5 indeed through the clothes of a patient?

6 A. Sure, that can happen.

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

14 A. That's correct.

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

19 A. I would be.

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

24 A. That's correct.

25 Q. Now, Doctor, with respect to the

D.CARR, M.D.

1 injuries that she suffered concerning the
2 open fractures, were all her open fractures
3 grossly contaminated?
4

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

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

13 A. I did.

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

16 A. I reviewed --

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

19 A. I did.

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

D.CARR, M.D.

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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

D.CARR, M.D.

1
2 correctly. Would you agree with me, Doctor,
3 that when plant debris is actually attached
4 to the bone, it means that the bone has not
5 just gone through the muscle, not just gone
6 through the fascia, not just gone through
7 tissue and skin, but actually passed through
8 her clothes; correct?

9 A. Sure, that's correct.

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

13 A. At the time of treatment, sure.

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

17 A. She did.

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

22 A. Yes, it would be.

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

D.CARR, M.D.

1
2 competent-producing causes of pain; right?

3 A. Sure, they were.

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

7 A. Yes.

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

11 A. Well, what do you mean by disrupted?

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

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

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

21 A. I do.

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

D.CARR, M.D.

1 articular surface; true?

2 A. True.

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

7 A. Yes.

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

10 A. Yes.

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

13 A. Correct.

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

18 A. It can be, sure.

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

23 A. I don't know how many fracture lines
24 there were.
25

D.CARR, M.D.

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

4 A. No.

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

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

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

11 A. There were.

12 Q. Where?

13 A. In the extremities. I remember --

14 Q. Where?

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

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

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

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

25 A. I don't recall.

D.CARR, M.D.

1
2 Q. Doctor, did they have to place a
3 vena cava filter?

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

5 Q. Did they have to place a feeding
6 tube?

7 A. I don't know that, either.

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

12 A. I do.

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

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

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

23 A. Yes, there was.

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

1
2 don't they?

3 A. They do.

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

8 A. Sure, there was.

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

16 A. True.

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

20 A. That's correct.

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

23 A. She did.

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

25 A. Yes.

1
2 Q. She had fractures to the lower
3 extremities involving the tibia; correct?

4 A. Yes.

5 Q. Was that an open fracture?

6 A. Yes, it was.

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

10 A. She did.

11 Q. Were there other comminuted fractures
12 that she suffered?

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

15 Q. How about of the sacral fracture?

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

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

21 A. Yes.

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

24 A. I did.

25 Q. And in fact, Doctor, with respect to

D.CARR, M.D.

1
2 the gait, did you tell us that you noticed
3 no gait abnormality?

4 A. I did.

5 Q. Doctor, you examined her on August
6 18, 2016; correct?

7 A. Yes.

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

13 A. No.

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

20 A. Okay.

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

24 A. I did not.

25 Q. Were you trying to minimum the

D.CARR, M.D.

1 extent of the injuries?

2
3 A. No.

4 Q. Doctor, did she have an antalgic
5 gait?

6 A. No.

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

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

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

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

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

21 A. Okay.

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

24 A. I did.

25 Q. How many surgical procedures did she

D.CARR, M.D.

1
2 have?

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

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

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

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

16 **(Whereupon, a short break occurred.)**

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

20 **BY-MR. RUBINOWITZ:**

21 Q. Doctor, can you hear me?

22 A. Yes, I can.

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

D.CARR, M.D.

1 start with the acetabulum. Would you agree
2 with me, Doctor, that when we speak about
3 arthritis, arthritis is damage to the
4 articular surface; correct?
5

6 A. It is.

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

10 A. Yes.

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

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

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

22 A. It would.

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

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1
2 as to whether or not there's arthritis in
3 that area; correct?

4 A. No, I have an opinion.

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

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

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

12 A. She told me she had no pain.

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

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

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

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

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1 the joint space was still well maintained.

2
3 Q. And Doctor, Dr. Bartlett testified,
4 and I want you to assume that he did, that
5 that articular surface, the damage to it is
6 only going to get worse over time; do you
7 disagree?

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

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

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

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

19 A. I would.

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

23 A. That's correct.

24 Q. And she had that; am I right?

25 A. She did.

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1
2 Q. So, in fact, some of the muscle has
3 actually been calcified and turned into bone;
4 true?

5 A. That's right.

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

8 A. It's not.

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

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

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

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

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

23 A. Yes, from an orthopedic standpoint.

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

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1 there is pelvic hematoma?

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

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

8 A. I wasn't concerned about it.

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

11 A. I don't know that either.

12 Q. Hematuria is blood in the urine;
13 correct?

14 A. Correct.

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

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

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

24 A. As the general surgeon on a trauma
25

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1
2 team, they would want to know that, sure.

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

6 A. As an orthopedic surgeon, yes.

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

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

12 Q. Do you know why?

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

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

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

25 Q. In other words, you're saying there

D.CARR, M.D.

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

3
4 A. No, I'm saying there were vascular
5 injuries.

6 Q. What were they?

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

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

12 A. They can, sure.

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

18 A. Yes.

19 Q. How large was it? How large was
20 it?

21 A. I don't know.

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

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

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

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

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

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

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

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

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

25 A. You can keep pointing these things

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

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

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

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

14 A. Sure, they are.

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

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

19 Q. How much?

20 A. I don't know.

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

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

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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

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

3 A. Yes, that's correct.

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

8 A. Yes.

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

12 A. No.

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

15 A. No.

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

18 A. No.

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

21 A. No.

22 Q. And even if you want to assume that
23 she has sustained those injuries and had
24 those condition back in February of 2006, you
25

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1
2 wouldn't expect any evidence of those unless
3 there were some ramifications from those
4 injuries; isn't that right?

5 A. That's correct.

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

8 A. That's correct.

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

13 A. Yes.

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

16 A. Nothing.

17 Q. Why is that?

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

20 Q. Did you ask about her current
21 medications?

22 A. Yes.

23 Q. And what information did you get?

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

1
2 Q. Did she decline to offer you any
3 further information?

4 A. Yes.

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

7 A. Yes.

8 Q. And what did she respond, if
9 anything?

10 A. No response, just declined.

11 Q. Did you ask about her social
12 history?

13 A. Yes.

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

16 A. Nothing pertinent. She declined.

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

20 MR. RUBINOWITZ: Objection.

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

23 THE VIDEOGRAPHER: The time is
24 approximately 3:53 p.m. and we are off the
25 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

D.CARR, M.D.

1
2 were and her recovery was, based upon your
3 review of the records?

4 A. I did.

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

7 **RE CROSS-EXAMINATION**

8 **BY-MR. RUBINOWITZ:**

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

12 A. Only those about past history.

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

15 A. I did.

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

18 A. That's correct.

19 Q. Because you destroyed them; am I
20 right?

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

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

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

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

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

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

14 A. No, I'm not saying that.

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

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

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

24 MR. HANNIGAN: Objection.

25 THE WITNESS: No.

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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.

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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.)

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D.CARR, M.D.

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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1
2 STATE OF NEW YORK
3
4 SUPREME COURT COUNTY OF FRANKLIN
5
6 LINDA TAYLOR as Independent Co-Executor of
7 The Estate of THOMAS TAYLOR, Deceased,
8 and LINDA TAYLOR, Individually,
9
10 Plaintiffs,
11
12 -against- Index No.: 2007-777
13
14 THE POINT AT SARANAC LAKE INC., THE
15 GARRETT HOTEL GROUP, INC., GARY L.
16 BISHOP d/b/a ADIRONDACK SNOWMOBILE
17 RENTAL, and GARY L. BISHOP,
18
19 Defendants.
20
21 Videotaped Examination Before Trial of
22 DANIEL CARR, M.D., held on Monday, September 26, 2016,
23 taken at the State University of New York, 101 Broad
24 Street, Feinberg, Library 106, Plattsburgh, New York
25 12901, commencing at 2:05 p.m., before Silva J. Malvasi,
Court Reporter and Notary Public in and for the State of
New York.

Page 2

1
2 APPEARANCES:
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4 For the Plaintiffs:
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22 58 Court Street
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25

Page 3

1
2 APPEARANCES: (CONT'D.)
3
4 ALSO PRESENT:
5 Robert Richter, Videographer
6 Brandon Pimpinella, Videographer
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Page 5

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2
3 STIPULATIONS
4 IT IS HEREBY STIPULATED by and
5 between counsel for the respective parties
6 that this Examination Before Trial be held
7 pursuant to the provisions of the Civil
8 Practice Laws and Rules; that the presence of
9 a referee is waived; that the signing and
10 filing of the transcript is waived; that the
11 witness may be sworn by Silva Malvasi, Court
12 Reporter and Notary Public, and that all
13 objections, except as to form, are reserved
14 until the time of trial.
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Page 6

1
2 VIDEOTAPED EXAMINATION BEFORE TRIAL OF
3 DANIEL CARR, M.D.
4 SEPTEMBER 26, 2016
5 THE VIDEOGRAPHER: The videotape
6 recording has commenced, and we are now on
7 the record. The time is approximately 2:05
8 p.m. My name is Brandon Pimpinella, and I'm
9 the legal video specialist for VC Rooms, LLC.
10 This is the deposition of Dr. Daniel Carr.
11 Silva Malvasi is the court reporter. Will
12 Counsel please identify yourself, stating your
13 name, address, and who you represent.
14 MR. RUBINOWITZ: My name is Ben
15 Rubinowitz. I represent the Plaintiff, the
16 detailer. My office is 80 Pine Street, New
17 York.
18 MR. STEIGMAN: I'm Richard Steigman,
19 also from the same firm, representing the
20 Plaintiffs.
21 MR. HANNIGAN: My name is Terry
22 Hannigan, from Hannigan Law Firm in Delmar,
23 New York, and I represent the Point at
24 Saranac Lake and the Garrett Hotel Group.
25 Out of view of camera is Matthew Douthat, on

Page 7

1
2 behalf of Gary Bishop and Adirondack
3 Snowmobile Rental.
4 THE VIDEOGRAPHER: Will the court
5 reporter please swear in the witness.
6 Thereupon,
7 DANIEL CARR, M.D.,
8 having been called as a witness, being duly
9 sworn, testified as follows:
10 THE VIDEOGRAPHER: Counsel, you may
11 proceed.
12 DIRECT EXAMINATION
13 BY-MR.HANNIGAN:
14 Q. Good afternoon, Dr. Carr.
15 A. Good afternoon.
16 Q. This testimony that you're going to
17 be giving today is going to be played for a
18 jury in Franklin County Supreme Court later
19 this week, but for the record, the time is
20 now about 2:10 on Monday, the 26th of
21 September, and you are in Syracuse, New York;
22 is that correct?
23 A. Yes, it is.
24 Q. Okay. Doctor, would you tell the
25 Jury your full name and your business

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1
2 address, please.
3 A. Daniel Lane Carr, 2200 East Genesee
4 Street, Syracuse, New York, 13210.
5 Q. And Dr. Carr, what do you do for a
6 living?
7 A. I'm an orthopedic surgeon.
8 Q. And do you have privileges at any
9 facilities?
10 A. I do. I have privileges at the
11 Syracuse hospitals, including Upstate Hospital,
12 the Veterans' Hospital, St. Joseph's Hospital,
13 the Community General Hospital, Auburn
14 Memorial Hospital and the local surgery
15 centers.
16 Q. Doctor, can you tell the Jury,
17 briefly, your academic training and
18 qualifications, please.
19 A. Sure. I graduated from Hamilton
20 College with honors in 1986. I came to
21 Syracuse and I did my medical training at
22 the SUNY Upstate program at Syracuse. I
23 completed my medical school training in 1991.
24 I did one year internship in general surgery,
25 also in Syracuse, followed by a four-year



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1
2 residency in orthopedic surgery in Syracuse.
3 And after completing that net program, I've
4 been in private practice in Syracuse since
5 1996.
6 Q. And what's the name of your practice
7 in Syracuse, Doctor?
8 A. It's CNY Orthopedic Sports Medicine,
9 PC.
10 Q. And do you see patients at your
11 practice?
12 A. Yes, I do.
13 Q. And do you also perform medical
14 examinations when requested by people who are
15 not your patients?
16 A. Yes.
17 Q. And at my office's request, did you
18 do a medical examination of Linda Taylor?
19 A. Yes, I did.
20 Q. And was that - or, when was that?
21 Can you tell the Jury, please.
22 A. That was August 18th of this year.
23 Q. Okay. And Doctor, could you tell
24 the Jury what orthopedics or orthopedic
25 surgery is.

Page 10

1
2 A. It is the medicine of the
3 musculoskeletal system, so it treats injuries
4 to muscles, tendons, ligaments, bones, as
5 well as spinal problems such as disc
6 problems. It treats medical orthopedic
7 conditions such as arthritis, and also
8 traumatic orthopedic conditions such as
9 fractures and dislocations, and we use
10 various non-operative measures, such as
11 therapy and medicine, and also operative
12 treatment when necessary.
13 Q. And Doctor, did you perform an
14 orthopedic examination of Linda Taylor?
15 A. Yes, I did.
16 Q. And was it focussed on her bones and
17 her orthopedic injuries, muscles, tendons,
18 ligaments, things of that sort?
19 A. Yes, it was.
20 Q. Doctor, are you Board certified?
21 A. Yes.
22 Q. And tell us what Board certification
23 is.
24 A. For my specialty, Board certification
25 is a three part process. The first part is

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1
2 completing a residency at an accredited
3 program. The second part is a written exam
4 that's done right after the residency. One
5 then goes into practice as a Board eligible
6 surgeon, and after two years in practice, a
7 six month series of surgical cases is
8 collected by the American Board of Orthopedic
9 Surgery. The candidate is brought to Chicago
10 for an oral exam given by testers who are
11 already Board certified, and if one passes
12 that, then one is considered Board certified.
13 And that's a ten year certificate that is
14 re-done every ten years.
15 Q. So, is it fair to say you are
16 currently Board certified in orthopedics?
17 A. Yes, I'm Board certified, and
18 recertified twice.
19 Q. And Doctor, do you hold any teaching
20 positions?
21 A. I do. I'm a clinical assistant
22 instructor at the Upstate program in
23 Syracuse, and also a preceptor for the
24 physician's assistant program at Lemoyne
25 College.

Page 12

1
2 Q. And Doctor, I'm going to be asking
3 you some questions about your examination of
4 Linda Taylor, and is it fair to say you
5 prepared a report of your findings in that
6 regard?
7 A. Yes.
8 Q. I'm going to refer to that as the
9 reports -- I'm sorry, the report. And if,
10 at any time, you need to refer to that to
11 assist in your testimony, please feel free to
12 do so.
13 A. Okay.
14 Q. Doctor, can you tell us where it was
15 that you performed the examination of Mrs.
16 Taylor?
17 A. In my office at the address I'd
18 already given.
19 Q. And is that the facility where you
20 attend to your own patients as well?
21 A. Yes, it is.
22 Q. Do you recall anyone being with Mrs.
23 Taylor when she presented for the
24 examination?
25 A. Yes, she was with her legal

Page 13

1
2 representative, Mr. Steigman.
3 **Q. Now, Doctor, what did you do in the**
4 **course of your examination of Mrs. Taylor,**
5 **from the time you personally had interaction**
6 **with her and going forward?**
7 A. I took a history from her as to
8 what the events were that caused her
9 injuries, and also what injuries she had
10 sustained. We also discussed the treatment
11 that she had for those injuries, and how she
12 was doing at the current time. And then I
13 did a physical exam of the involved body
14 parts. And then after that, I reviewed a
15 number of imaging studies; also had her
16 entire medical file to review that I reviewed
17 some both before and more in detail after
18 the exam, and then prepared the report after
19 that.
20 **Q. Would it be fair to say, Doctor,**
21 **that Mrs. Taylor had a fairly extensive**
22 **medical history?**
23 A. Yes, it certainly would be fair to
24 say.
25 **Q. And that is primarily with respect**

Page 14

1
2 to the accident she was involved in on
3 February 19, 2006; is that right?
4 A. Yes, it is.
5 **Q. And Doctor, if you need to, again,**
6 **refer to your report, can you tell us the**
7 **history that you received from Mrs. Taylor.**
8 A. Yes, the history was that she was in
9 an accident while on a snowmobile that was
10 struck by a motor vehicle, and in the
11 process, she was thrown from the snowmobile
12 and sustained a number of orthopedic injuries
13 as well as some non-orthopedic injuries, of
14 which I only evaluated her for the orthopedic
15 injuries. That was the history of the
16 injury. She then had received treatment
17 acutely in Vermont, and after having a number
18 of operations performed on various bony
19 injuries there, she went through a rehab
20 period. She received some treatment
21 elsewhere as well down in New York City, and
22 she also received some back in Texas, where
23 she lives part of the year. And she was
24 still symptomatic at the time that I saw
25 her, but had completed the majority of her

Page 15

1
2 treatment.
3 **Q. Doctor, would it be fair to**
4 **characterize Mrs. Taylor's orthopedic injuries**
5 **as significant or severe?**
6 A. Yes, it certainly would.
7 **Q. And you've had the opportunity to**
8 **treat -- or, withdrawn. Have you had the**
9 **opportunity in the past to treat patients who**
10 **were involved in either pedestrian or**
11 **snowmobile accidents or motorcycle accidents**
12 **with motor vehicles?**
13 A. Sure, I have.
14 **Q. And would you say that Mrs. Taylor's**
15 **injuries were consistent with someone who had**
16 **been struck by an automobile?**
17 A. Yes.
18 **Q. Now, Doctor, can you tell us, after**
19 **you did the history, what you discerned about**
20 **Mrs. Taylor's condition during the course of**
21 **your examination.**
22 A. Well, during the physical exam, I
23 found that she was able to ambulate quite
24 well considering her lower extremity injuries
25 that she had. She had a number of surgical

Page 16

1
2 incisions that were consistent with the
3 operations she had. She still had some
4 tenderness in the musculature of her left
5 thigh where that surgery was done. But
6 otherwise, she really did not have much in
7 the way of tender areas. I also noted that
8 there was some loss of motion in her left
9 shoulder, which I've characterized as a
10 fairly mild loss of motion from her shoulder
11 injuries. She had mild loss of hip motion
12 on the left side as well, where she'd had
13 fracture of her hip. Neurologically, she was
14 intact when I saw her. Her exam of her
15 spine was fairly benign. She had some
16 paresthesias by history, but did not have any
17 abnormalities on physical examination to the
18 neurologic testing of her lower extremities
19 or her back.
20 **Q. Doctor, could you tell us what**
21 **paresthesia is, please.**
22 A. Paresthesias are a painful, numb,
23 tingly sensation, the kind of thing that
24 happens when one hits their funny bone and
25 they get that shock down the arm. That's a

Page 17

1
2 paresthesia.

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

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

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

18 A. Yes, I would.

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

Page 18

1
2 A. Okay, sure. Looking at the upper
3 extremities, she had a fracture of her
4 forearm, her radius bone, which she had
5 surgery on. She had done well with that in
6 terms of not having pain. She did have some
7 mild weakness of grip strength on that side
8 on my physical exam, which I would
9 attribute probably to that injury. That
10 was the only real finding, other than the
11 scar from the surgery on that forearm.
12 She'd also had some fractures around the left
13 shoulder that did not require surgical
14 treatment, but she did have an impaction
15 fracture of her collar bone. She had a
16 non-displaced fracture of the shoulder blade
17 going into the glenoid, which is the socket
18 part of the shoulder, and those were opted
19 to be treated conservatively. And she did
20 reasonably well from that, but she did have
21 some loss of motion in her shoulder as a
22 result, probably from those injuries. She
23 had --

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

Page 19

1
2 Mrs. Taylor; is that correct?

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

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

10 A. Yes, I did.

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

17 A. Yes, I did.

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

22 A. I was finished with the shoulder,
23 yes.

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

Page 20

1
2 A. Yes, that's correct.

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

8 A. Yes, that's fair.

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

12 A. Yes, she also had had several
13 fractures of her left lower extremity. She
14 had a tibia fracture and a fibula fracture,
15 which the tibia fracture was treated with an
16 intramedullary rod. She also had a fracture
17 of the femur, both the shaft and up close to
18 the hip joint in what we call the
19 intertrochanteric region. That was treated
20 with plating, and both of those fractures for
21 the femur and the tibia did heal well. She
22 did have some loss of motion at her left
23 knee, however, that I would feel would be
24 attributed to those injuries, and there was a
25 15-degree loss of flexion compared to the

Page 21

1
2 other side, whereas extension was full.
3 There was a mild loss of motion there.
4 Q. Okay. Doctor, I'd like if you could
5 start at that high point and work down. So,
6 if we start at her -- in the area of her
7 greater trochanter or her acetabulum, can you
8 describe what you've discerned about the
9 fractures there and her recovery or
10 limitations with respect to the left hip.
11 A. Okay. With the left hip, she had
12 the dynamic hip screw plate, which is the
13 plate and screw in the hip. She also had
14 fractured the acetabulum on that side, so she
15 had a plate placed in the acetabulum as
16 well. Both of those fracture healed. They
17 did heal with what we call some heterotopic
18 ossification, which means some excess bone
19 formed around the hip joint, and that
20 resulted in a mild loss of motion on my exam
21 with a loss of rotation in both directions.
22 The fractures, however, did heal well.
23 THE VIDEOGRAPHER: The time is
24 approximately 2:21 and we are off the record.
25 (Whereupon, a short break occurred.)

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1
2 THE VIDEOGRAPHER: The time is
3 approximately 2:32 p.m. and we are back on
4 the record.
5 BY-MR.HANNIGAN:
6 Q. Okay. Doctor, we had a little bit
7 of time off the record there for some
8 technical difficulties. We're back on.
9 Doctor, would you describe for us Linda
10 Taylor's left hip injury and the treatment
11 that she received for it and what findings
12 you made on your examination of her.
13 A. Sure, her left hip injury was a
14 combination of a fracture of the acetabulum,
15 which is the socket part of the ball and
16 socket hip joint, and also the
17 intertrochanteric region of the femur, which
18 is just beyond the ball part of the ball and
19 socket joint. She had a plate put on her
20 acetabulum to fix it, and she had what's
21 called a dynamic hip screw, which is a screw
22 and side plate put on the hip femur bone in
23 order to fix that part of it. The fractures
24 had healed well, but she did have some
25 heterotopic ossification form, which is

Page 23

1
2 exuberant bone that forms around the fracture
3 site in the soft tissues. It didn't impede
4 her motion enough for her surgeon to want to
5 remove it, but it was present
6 radiographically. And on my exam I found
7 that she did have a loss of about ten
8 degrees of internal rotation, and ten degrees
9 of external rotation on that hip compared to
10 the other hip, likely due to the heterotopic
11 ossification that had formed, but the hip
12 itself was without pain for her and with
13 motion.
14 Q. And did you find that the treatment
15 that Mrs. Taylor received for her acetabular
16 and trochanter, that care and treatment was
17 appropriate under the circumstances?
18 A. Yes, I did.
19 Q. Now, Doctor, let's move down to the
20 femur. I'm sorry, are you finished with her
21 hip?
22 A. Yes, I am.
23 Q. Okay. Let's move to the left femur,
24 and tell us what injuries she sustained there
25 and what you discerned in your examination of

Page 24

1
2 her.
3 A. Well, that fracture in the
4 intertrochanteric area did extend down the
5 shaft, so it was also a femoral shaft
6 fracture that required plating as well. She
7 did have some residual soreness in the
8 musculature on the lateral side of her hip.
9 That could be due to the hip fracture; it
10 could be due to the muscular injury of the
11 femur fracture. But, the fracture, again,
12 had healed well. She did have some mild
13 loss of flexion in her left knee that's
14 probably attributable to the combination of
15 the muscle damage from the fracture of the
16 femur, as well as the fracture of tibia
17 below the knee.
18 Q. Did you note that she had sustained
19 some injuries to her left quadriceps?
20 A. Well, by then the quadriceps was
21 well healed, and measurably, there was no
22 difference side-to-side when I did girth
23 measurements, so I wouldn't be able to
24 discern a quadriceps injury on physical exam,
25 although it was present during the time of

Page 25

1
2 surgery, and in reviewing the records, that
3 the damage to the femur had actually caused
4 a puncture wound to the quadriceps muscle.
5 Q. And Doctor, is there anything further
6 you noted with respect to the femur?
7 A. No.
8 Q. So, would you move on to the tib-fib
9 area, please.
10 A. Yes, she did have fractures of her
11 tibia and fibula. That was treated with an
12 intermedullary rod placed in the tibia. That
13 fracture did heal well. The bone was
14 healed; but again, she did have some mild
15 loss of flexion of her knee, which could be
16 a combination of the femur injury and the
17 tibia injury combined.
18 Q. Doctor, would it be fair to say that
19 Mrs. Taylor has had residual problems as a
20 result of these injuries she sustained in
21 that snowmobile accident?
22 A. Yes, it would.
23 Q. And Doctor, with respect to the
24 recovery she's made, do you believe that Mrs.
25 Taylor's participation in physical therapy and

Page 26

1
2 her own regimen has aided her in making her
3 recovery she made as of August 18th, 2016?
4 A. Yes, I do.
5 Q. Do you believe that she has any
6 limitations on her functions, things she can
7 do presently?
8 A. Medically speaking, there's no
9 contraindications, meaning there's nothing that
10 I would prohibit her from doing physically.
11 But certainly, with the residual aches and
12 pain that she has, she would be expected to
13 have some discomfort if she tried to do high
14 impact type activities such as running and
15 jumping type activities.
16 Q. Did you note that Mrs. Taylor made
17 any complaint about being able to walk or
18 climb stairs; those types of daily
19 activities?
20 A. She did. She said it was difficult
21 for her to go on long walks, and also did
22 have a difficult time with stair climbing;
23 and getting herself up from a seated
24 position, at times, was difficult for her.
25 Q. And did you actually observe that

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1
2 when you examined her?
3 A. No. She moved fairly smoothly in
4 the office when I saw her.
5 Q. Okay. Doctor, did you make any
6 observations about Mrs. Taylor's gait or
7 walking on the date that you examined her?
8 A. I did. When I saw her, her gait
9 was normal at a normal walking speed. I did
10 ask her to do heel standing and toe standing
11 as part of the exam, and she indicated she
12 could not do that because of balance issues,
13 however.
14 Q. Would it be within the realm of
15 orthopedics, Doctor, that Mrs. Taylor could
16 ambulate without a discernible gait when you
17 saw her and then have problems at other
18 times with her walking?
19 A. Sure, because people's symptoms can
20 wax and wane on any given day.
21 Q. Did Mrs. Taylor provide you with any
22 advice -- or, I'm sorry. Did Mrs. Taylor
23 provide you with any information as to her
24 medications, and specifically medications on
25 the date that you examined her?

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1
2 A. On the date that I examined her, she
3 had not taken any medications. She did say
4 that, depending upon her level of symptoms,
5 at times she would take Tylenol or Advil or
6 Tramadol.
7 Q. And again, Doctor, would taking those
8 medications on an as-needed basis be
9 appropriate for a woman such as Mrs. Taylor
10 who sustained the injuries she experienced?
11 A. Yes, it would.
12 Q. Now, Doctor, did you make an
13 assessment of Mrs. Taylor's condition as a
14 result of your examination?
15 A. Yes, I did.
16 Q. Can you tell the Jury what your
17 assessment of her condition was after you
18 conducted this examination of her?
19 A. My assessment was that she had been
20 involved in an accident in 2006, and she did
21 sustain multiple orthopedic injuries. I
22 listed several of those injuries that were
23 most significant, being the left radius
24 fracture, the left scapula fracture, a left
25 intertrochanteric femur fracture, a left

Page 29

1
2 femoral shaft fracture, left acetabular
3 fracture, left tibia and fibula fracture, and
4 that she was status-post surgical treatment
5 for all of those except the scapula. She
6 had had some other non-operatively treated
7 fractures as well, such as the pubic rami
8 fractures and sacrum. So, all in all, she
9 had significant orthopedic injuries, but she
10 also had done a very good job rehabilitating
11 herself, and functionally was doing quite
12 well from an orthopedic standpoint,
13 considering those injuries she had sustained.
14 Q. Doctor, were you aware that in
15 November of 2008 Mrs. Taylor had to have a
16 procedure done on her hip with respect to
17 the dynamic screw?
18 A. I was. I knew she had developed an
19 infection and did have to have that hardware
20 removed.
21 Q. Doctor, did you have an impression
22 as to how Mrs. Taylor was getting along or
23 doing as of the date of your examination?
24 A. I felt that she was getting along
25 quite well, all things considered, with her

Page 30

1
2 injuries that she had sustained. She did
3 have some mild residual that I expected would
4 be permanent for her on an ongoing basis.
5 Q. Doctor, did you have a -- withdrawn.
6 Did you note that the limitations she was
7 complaining about, or limitations in
8 activities -- long walks, I think you
9 mentioned, stair climbing, difficultly getting
10 out of a chair -- do you believe those will
11 be permanent in nature?
12 A. They probably will be, yes.
13 Q. Do you believe that Mrs. Taylor's
14 condition is going to get worse as she goes
15 forward?
16 A. No, I don't have any basis to think
17 it's going to get worse, other than the
18 normal aging process that happens to people
19 when they're in the middle ages. They tend
20 to get more sore and a bit more limited as
21 time goes on. But by now, after ten years,
22 I expect her injuries to plateau where
23 they're at.
24 Q. Now, Doctor, can you state within a
25 reasonable degree of medical certainty in

Page 31

1
2 your professional field of orthopedic surgery
3 your opinion as to whether Mrs. Taylor's
4 injuries are going to get any worse?
5 A. I can.
6 Q. And what is your opinion, Doctor?
7 A. My opinion is that within a
8 reasonable degree of medical certainty, her
9 opinions are not likely to get any worse as
10 time goes on.
11 Q. You said her opinions; you mean her
12 injuries?
13 A. Oh, her injuries. My opinion is her
14 injuries are not likely to get worse.
15 Q. Okay. And as a general matter, did
16 you find Mrs. Taylor to be a pleasant and
17 cooperative examinee?
18 A. I did, yes.
19 Q. Doctor, in your report you make a
20 note, or you made a note about her
21 paresthesias.
22 A. Yes.
23 Q. And could you explain what findings
24 you made in that regard?
25 A. Well, she talked about the

Page 32

1
2 paresthesias going into her right thigh, and
3 that she said really had come on over the
4 last year. So, that was nine years after
5 the original accident. And also, the tests
6 that she'd had done, such as MRI, didn't
7 show anything that would explain why she
8 would have right sided paresthesias, so I
9 wouldn't be able relate those complaints to
10 the accident that happened a decade ago.
11 Q. Okay. And that's because of the
12 time of the onset?
13 A. Yes.
14 Q. Doctor, did you make a determination
15 as to Mrs. Taylor's level of disability?
16 A. From an occupational standpoint, I
17 said she was not occupationally disabled.
18 Q. And what do you mean by that?
19 A. Well, she wasn't working outside the
20 home, and there really was no job that she
21 was disabled from since she wasn't employed
22 outside the home.
23 Q. Now, Doctor, did you get retained by
24 my office to perform this examination?
25 A. Yes.

Page 33

1
2 Q. And you had never met Mrs. Taylor
3 before the day that she came into your
4 office; is that fair?
5 A. That's correct.
6 Q. And did you review a substantial
7 amount of medical reports?
8 A. I did. There were well over 2000
9 pages of records.
10 Q. And did you review some x-rays as
11 well?
12 A. I did.
13 Q. Did you review some records as
14 recent as July of 2016?
15 A. Yes, I did.
16 Q. Now, Doctor, are the opinions and
17 the impressions that you've conveyed here --
18 opinions that you have given with a
19 reasonable degree of medical certainty in
20 your field of orthopedic surgery?
21 A. Yes, they are.
22 Q. Okay. Doctor, did your office, or
23 did you get compensated for performing the
24 medical examination of Mrs. Taylor back in
25 August?

Page 34

1
2 A. Yes, I did.
3 Q. And do you know how much that
4 examination cost, or how much you charged?
5 A. The examination fee starts at \$950,
6 and then it's \$700 per hour for review of
7 medical records. I believe the total came
8 up to around \$10,000.
9 Q. Now, in addition, did you charge a
10 fee for having to provide testimony here
11 today?
12 A. Yes, for pretrial preparation and for
13 the time today, I did charge a fee, and
14 that's \$6,000.
15 Q. And is that essentially the sum
16 total of your charges, approximately \$16,000
17 as we sit here today as of September 26th?
18 A. Yes.
19 Q. Are those usual and customary charges
20 in your practice?
21 A. They are.
22 Q. Do you do medical examinations for
23 lawyers as a part of your practice?
24 A. Yes, I do.
25 Q. And about how many examinations of

Page 35

1
2 this sort, where an attorney calls you up
3 and asks you to examine a patient, do you do
4 either monthly or annually?
5 A. Approximately 10 to 12 a month.
6 Q. And in addition to that, do you
7 treat patients in your office?
8 A. Yes, I do.
9 Q. And do you also provide care for
10 patients in facilities, hospitals, things of
11 that sort?
12 A. Yes, I do.
13 Q. Thank you, Doctor. That's all I
14 have.
15 CROSS-EXAMINATION
16 BY-MR.RUBINOWITZ:
17 Q. Good afternoon, Doctor.
18 A. Good afternoon.
19 Q. My name is Ben Rubinstein. I'm
20 going to ask you some questions. I ask you
21 to do the same courtesy and answer the
22 questions directly; fair enough?
23 A. Sure.
24 Q. Doctor, you completed your residency
25 in approximately 1996; is that right?

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1
2 A. Yes.
3 Q. And with respect to the work that
4 you're doing, you mentioned that you review
5 cases involving spinal injury, orthopedic
6 injury, leg, femur, acetabular fractures.
7 When was the last time you did spinal
8 surgery?
9 A. The last time I performed spinal
10 surgery would have been during my residency.
11 I don't do that as part of my practice.
12 Q. So, for the last 20 years, you've
13 done no spinal surgery at all; correct?
14 A. That's correct.
15 Q. With respect to trauma surgery, such
16 as the type of injuries that Linda Taylor
17 suffered, when was the last time you were
18 involved in trauma surgery like that?
19 A. Of a multi-level trauma, it would
20 have been about five years ago for something
21 that approaches this severity.
22 Q. And when you say, this severity,
23 what you're speaking about is the severity of
24 the injuries suffered by Linda Taylor in this
25 accident; correct?

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1
2 A. That's correct.
3 Q. Now, one of the things that Mr.
4 Hannigan asked you towards the end of his
5 examination of you, he spoke about the work
6 that you were doing, medical-legal work;
7 correct?
8 A. Yes.
9 Q. All right. One of the things that
10 you know, though, as an orthopedic surgeon,
11 is that there are doctors in your field who
12 specialize, for example, in hand surgery;
13 true?
14 A. True.
15 Q. There are some that specialize in
16 hip surgery; am I right?
17 A. Yes.
18 Q. There are certain orthopedic surgeons
19 that specialize in lower extremity fractures,
20 such as the lower legs; true?
21 A. True.
22 Q. And there are also doctors who
23 devote a large portion of their practice to
24 litigation, law related; right?
25 A. Sure.

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1
2 Q. Now, with respect to you, one of the
3 things that we know is that you got involved
4 in the legal-medical world in around the year
5 2000; true?
6 A. That's correct.
7 Q. And back in 2000, one of the things
8 that you were doing is, you were doing
9 approximately 100 to 400 of these
10 examinations per year related to legal work;
11 right?
12 A. That's correct.
13 Q. And we can agree that that had
14 nothing to do with your treatment of
15 patients; correct?
16 A. Other than being in the field of
17 orthopedics, that's correct. That's separate
18 from my treatment of my patients.
19 Q. Exactly. In other words, there was
20 no doctor-patient relationship; true?
21 A. That's true.
22 Q. And for the most part, what you were
23 doing is, you were offering your opinions for
24 the defense of a case; correct?
25 A. Predominantly, it was defense work,

Page 39

1
2 sure.
3 Q. Now, back at that time in 2001, you
4 were typically paid approximately \$450 per
5 exam; right?
6 A. That sounds about right.
7 Q. And if we multiply the 450 times 400
8 to 500 exams, that's at least \$180,00 to
9 \$200,000 a year you were earning back then,
10 just for medical-legal related work; true?
11 A. That sounds about right, yes.
12 Q. And back then, you were testifying
13 approximately 12 times a year; correct?
14 A. Again, I don't recall exactly, but
15 probably reasonable.
16 Q. All right. As your devotion to
17 litigation continued, we know that, for
18 example in 2003, you were being paid quite a
19 bit more money to do medical-legal work;
20 true?
21 A. I don't remember. Over time, sure,
22 the rates have gone up and I've been paid
23 more.
24 Q. All right. And I want to focus,
25 for example, two years later. If we focus

Page 40

1
2 for example, back on 2001, can we agree that
3 the total percentage of your work, if we go
4 back to when you first started, was less
5 than 10 percent of your earnings; fair
6 enough?
7 A. That's probably correct.
8 Q. Okay. So, you were making around
9 \$200,000 just for medical-legal, and that was
10 about 10 percent of your work at that time;
11 true?
12 A. True.
13 Q. All right. So, you were making over
14 \$2 million dollars a year in total; correct?
15 A. My practice was, yes.
16 Q. And you are the sole person in
17 charge of your practice; correct?
18 A. That's correct.
19 Q. So, as 2003 came around --
20 THE VIDEOGRAPHER: The time is
21 approximately 2:51 p.m., and we are off the
22 record.
23 (Whereupon, a short break occurred.)
24 THE VIDEOGRAPHER: The time is
25 approximately 2:53 and we are back on the

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1
2 record.
3 BY-MR.RUBINOWITZ:
4 Q. Doctor, I understand we had some
5 technical difficulties. Can you hear me?
6 A. Yes.
7 Q. All right. So, back in 2003, as we
8 move forward, you're devoting a greater
9 portion of your practice to medical-legal
10 related work; true?
11 A. Yes.
12 Q. So then, in 2003, you're now
13 devoting approximately 25 percent of your
14 practice to litigation related work; right?
15 A. Again, I don't remember the exact
16 timeline, but it did increase over the years.
17 Q. And indeed, one of the things that
18 you've been doing is you've been testifying
19 in many different courts throughout the state
20 for the defense; correct?
21 A. I guess.
22 Q. And one of the things you've
23 realized is that it's a lucrative practice
24 and you wanted to keep the business going;
25 true?

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1
2 A. Sure. It's part of my livelihood,
3 so yes.
4 Q. And Doctor, as time goes by, for
5 example in 2005, one of the things that's
6 happening is you're now conducting over 500
7 examinations of plaintiffs on behalf of the
8 defense; true?
9 A. Well, that would be not just
10 plaintiffs. That would be workers'
11 compensation cases as well.
12 Q. And indeed, Doctor, can we agree
13 that the percentage of your practice now
14 devoted to litigation, as of 2005, has now
15 increased to over one third of your practice;
16 right?
17 A. It probably has, yes.
18 Q. And indeed, what that means is
19 you've now limited the orthopedic work that
20 you do for your own patients; true?
21 A. Yes.
22 Q. One of the things that's happened,
23 though, as 2005 comes around, is the costs
24 have gone up. So, instead of charging \$450
25 per report, you're now charging over \$700 for

Page 43

1
2 a report, generally; true?
3 A. I don't remember the year that that
4 changed, but over time it did, yes.
5 Q. And in fact, Doctor, what you were
6 charging for a half day in court, which is
7 what we're doing right now, you were charging
8 \$4,000; correct?
9 A. That sounds right.
10 Q. Back in 2001, it was \$2,000; right?
11 A. I don't recall, but it could have
12 been.
13 Q. So, that would be a 100 percent
14 increase between 2001 and 2005; correct?
15 A. If those numbers are accurate, then
16 yes.
17 Q. Those are your numbers; aren't they,
18 Doctor?
19 A. I said I don't remember exactly what
20 it was back then. I just know it did
21 increase over time.
22 Q. You don't disagree with anything I've
23 said, though; do you?
24 A. I do not.
25 Q. Now, as time goes by, your devotion

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1
2 to litigation has been even more lucrative;
3 hasn't it, Doctor?
4 A. It has.
5 Q. So, as we go to 2009, one of the
6 things that's happened is you've been doing
7 even more work for defense firms; correct?
8 A. That's correct.
9 Q. And in fact, what you're charging
10 just for a half day in court as of 2009 is
11 \$5,000; right?
12 A. That sounds correct, yes.
13 Q. And for review of records, your
14 usual price as of 2009 would be \$900; right?
15 A. For a full record review, probably.
16 Q. And in fact, back in 2003 or so, it
17 was \$450 for that same review; right?
18 A. That sounds correct.
19 Q. So, we now have another 100 percent
20 increase due to your devotion to litigation;
21 true?
22 A. That's correct.
23 Q. There had been years when, due to
24 the work you were doing as of 2009 just for
25 defense lawyers, that you made in excess of

Page 45

1
2 \$500,000 as of 2009; right?
3 A. That wasn't just for defense lawyers.
4 That would be also with the work-related
5 injuries.
6 Q. In other words, your workers' comp
7 work that you do on behalf of not the
8 Claimant, but for the defense of workers'
9 comp; correct?
10 A. They're the ones that were paying
11 me, yes.
12 Q. And in fact, so if we take a look
13 at your devotion to litigation alone, that as
14 of 2009 you were earning more than half a
15 million dollars a year; right?
16 A. That's correct.
17 Q. One of the things that you wanted to
18 do was to keep the business going; correct?
19 A. Sure.
20 Q. And in fact, sir, we know that as
21 of 2011, you're now devoting 40 percent of
22 your practice to litigation related work;
23 true?
24 A. That sounds correct.
25 Q. Also, doing the majority of the work

Page 46

1
2 for the defense; am I right?
3 A. That's the nature of the work, so
4 yes.
5 Q. In fact, sir, as of 2007, 40 percent
6 of your gross income was derived from doing
7 medical evaluations and testimony; right?
8 A. That sounds about right, yes.
9 Q. And in fact, as of 2011, the
10 percentage of your practice, you've now cut
11 down on your orthopedic work, and the
12 litigation related work is now 50 percent of
13 your practice; right?
14 A. That's correct.
15 Q. And in fact, we can agree that as
16 of 2011, you had four to five thousand of
17 office visits a year; right?
18 A. That's correct.
19 Q. And of those four to five thousand,
20 half of them were litigation related
21 evaluations; true?
22 A. Not half the number. Probably half
23 of the total income would be litigation
24 related.
25 Q. Well, Doctor, as of 2011, the total

Page 47

1
2 income would be 750 to \$800,000 a year just
3 from litigation related work; right?
4 A. That sounds about right.
5 Q. And in fact, as we continue through
6 2013, you're now, as of 2013, we can agree
7 that you're earning well over \$800,000 a year
8 just to do litigation related work; right?
9 A. That's probably true, yes.
10 Q. And in fact, it's gotten even more
11 if we bring it up to date today; true?
12 A. That's correct.
13 Q. So, you're now making a little over
14 a million dollars a year just related to
15 litigation; true?
16 A. It'll probably be about that this
17 year, yes.
18 Q. And in fact, Doctor, one of the
19 things that you've had is, you've had repeat
20 business from defense firms; correct?
21 A. For some firms, sure.
22 Q. They've hired you many, many times;
23 am I right?
24 A. Some have, yes.
25 Q. And in fact, sir, one of the things

Page 48

1
2 that you'd like to do is, you'd like to keep
3 this business going for years to come; am I
4 right?
5 A. Sure.
6 Q. And in fact, the reason you'd like
7 to keep it going for years to come is,
8 you're now making over a million dollars a
9 year and you don't even have a doctor-patient
10 relationship with these people that you're
11 examining; right?
12 A. That's all part of it, sure.
13 Q. So, in fact, Doctor, what percentage
14 of your practice today is devoted to
15 medical-legal work?
16 A. I'm right on that same number:
17 about 50/50 between my patients and
18 medical-legal work.
19 Q. So, now you're making over \$2
20 million a year, half of which, at least, is
21 devoted to litigation; true?
22 A. That's correct.
23 Q. Would you agree, Doctor, that
24 sometimes the opinions that you give
25 concerning the people that you evaluate are

Page 49

1
2 wrong?
3 A. Sure. I'm not perfect. I'm sure
4 they are wrong at times.
5 Q. Doctor, in addition to that finding,
6 or one of the things that you do is testify
7 at depositions; am I right?
8 A. Yes.
9 Q. In fact, Doctor, isn't it true that
10 you testify 10 to 12 times a month?
11 A. For workers' compensation cases,
12 that's correct.
13 Q. So, if you testify 10 to 12 times a
14 month for workers' compensation cases, that's
15 over approximately 120 times a year that you
16 testify; correct?
17 A. Yes.
18 Q. And in addition to the testifying
19 that you do in the workers' compensation
20 cases, one of the things that you do is you
21 testify in court; correct?
22 A. I do.
23 Q. For example, you testify at least
24 once a month approximately; right?
25 A. That's correct.

Page 50

1
2 Q. Sometimes even more than once a
3 month; am I right?
4 A. Sometimes.
5 Q. So, we can agree that you testify,
6 in making the money that you make -- over a
7 million dollars -- more than 150 times a
8 year; correct, sir?
9 A. That's probably correct.
10 Q. And we can agree, sir, that with
11 respect to the number of days that are
12 actually worked, there are about 250 days in
13 the year that you actually work; correct?
14 A. Yes.
15 Q. So, Doctor, certainly, when you take
16 a look at the total number of days that you
17 work, most of the time, the majority of days
18 is spent on medical-legal work; true?
19 A. Of some sort, yes. I would say
20 that's correct.
21 Q. Doctor, over the last 10 years, have
22 you had any desire to go back to full-time
23 orthopedic practice?
24 A. No. I consider what I do full-time
25 orthopedic practice.

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1
2 Q. In fact, Doctor, you're not doing
3 surgery on any one of these people that you
4 evaluate for the defense; correct?
5 A. That's correct.
6 Q. So, in fact, Doctor, half the time
7 or more, you're not doing orthopedic surgery;
8 right?
9 A. Actual surgery, that's correct.
10 Q. When did you last devote 100 percent
11 of your professional life to actually
12 treating your own patients?
13 A. Well, there's always some
14 administrative side of medicine anyway, even
15 when it's not just treatment, but if you
16 take away the legal-medical part of the work,
17 the last time I did just that would have
18 been 1998, probably.
19 Q. More than 20 years ago, we can agree
20 on that; right, Doctor?
21 A. Well, that's less than 20 years.
22 Q. Isn't it true that it's more than 20
23 years ago because you started the
24 medical-legal work in 1998; didn't you?
25 A. That's not more than 20 years.

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1
2 Q. In 1998, you were doing medical-legal
3 work; correct?
4 A. Right.
5 Q. In 1996, you weren't doing
6 medical-legal work; true?
7 A. Correct.
8 Q. So, it's 20 years, sir; true?
9 A. No, that's --
10 Q. 1998 to right now is how much; 20
11 years?
12 A. From 1996, yes.
13 Q. My point is, Doctor, even in 1998
14 you were doing medical-legal work; true?
15 A. Well, I wasn't Board certified until
16 1998, so after I became Board certified, I
17 could do medical-legal work.
18 Q. So, as soon as you became Board
19 certified, that's when you started doing your
20 medical-legal work; right?
21 A. That's correct.
22 Q. And you understand that there are
23 physicians within your field who devote less
24 than one percent of their practice to
25 medical-legal work; true?

Page 53

1
2 A. Sure.
3 Q. Do you know a doctor by the name of
4 Bartlett?
5 A. I do not.
6 Q. Have you ever heard of Dr. Bartlett?
7 A. Well, he was the treating doctor in
8 this case. That's the only time I've heard
9 of him.
10 Q. Did you ever read any article by him
11 that he's written concerning fractures of the
12 acetabulum?
13 A. No.
14 Q. Doctor, in doing the examination of
15 Linda Taylor, you saw her one time; am I
16 right?
17 A. That's correct.
18 Q. You saw her back on August 18, 2016;
19 correct?
20 A. Yes.
21 Q. And in fact, Doctor, one of the
22 things you've been asked over the years is
23 this -- the question asked by many lawyers
24 is, Doctor, did you keep your notes of the
25 examination?

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1
2 A. No.
3 Q. You've been asked that in the past;
4 haven't you?
5 A. I have.
6 Q. And one of the things that you've
7 been asked by many lawyers is, please keep
8 your notes; haven't they, Doctor?
9 A. No. I've been asked if I keep
10 them, but nobody asked me to keep them.
11 Q. In fact, Doctor, with respect to
12 your notes for Linda Taylor, I take it you
13 discarded them?
14 A. I did.
15 Q. Doctor, was there a reason -- that's
16 wrong. Doctor, did you note anyplace the
17 start of the exam and the end of the exam
18 of Linda Taylor that you did?
19 A. No, I did not.
20 Q. If I told you, Doctor, that the exam
21 started at 10:35 and it ended at 10:45,
22 would you agree with that?
23 A. No. But, I don't know what you're
24 talking about. The actual face-to-face time
25 or physical exam, or what?

Page 55

1
2 Q. The actual physical exam, Doctor.
3 Would you agree with me it took approximately
4 10 minutes?
5 A. I didn't time it, so I have no
6 idea.
7 Q. When you say you have no idea, you
8 don't disagree that it took approximately 10
9 minutes; right?
10 A. I don't disagree because I don't
11 know.
12 Q. At any rate, Doctor, one of the
13 things that you do know is that when you do
14 these exams, it takes approximately 10
15 minutes; correct?
16 A. To do a physical exam orthopedically,
17 yes, it typically takes about 10 minutes.
18 Q. Fair enough. So, the one time, the
19 only time that you saw her took approximately
20 10 minutes for your physical exam; true?
21 A. That's possible. Again, I don't
22 know.
23 Q. All right. We know that you believe
24 that Linda Taylor was cooperative in
25 answering the questions that you had for her;

Page 56

1
2 correct?
3 A. Yes.
4 Q. Doctor, one of the things that you
5 know from looking at the records is that she
6 suffered a significant head injury, also;
7 didn't she?
8 A. That was in the records, yes.
9 Q. All right. So you knew, for
10 example, that she had suffered a brain bleed,
11 or multiple brain bleeds, I should say;
12 correct?
13 A. I don't know any details about it,
14 because that's not my specialty, but I know
15 that she did have a head injury, yes.
16 Q. All right. So, for example, you saw
17 that she suffered from subarachnoid
18 hemorrhages; correct?
19 A. I did see that, yes.
20 Q. You saw that she had suffered from
21 subdural hemorrhage; correct?
22 A. Again, I don't remember the
23 specifics, because that's not my area.
24 Q. Did you notice that she had suffered
25 from something called diffuse axonal injury

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1
2 of the brain?
3 A. No, I don't know that.
4 Q. One of the things that you'd want to
5 do though, in doing any assessment --
6 especially an orthopedic assessment -- is
7 determine whether or not the person you're
8 speaking to is a good historian; true?
9 A. To the best of your ability, sure.
10 Q. So, for example, when you teach
11 residents, you tell them that in the event
12 the patient has a brain injury, you've got
13 to be extra careful to make sure that you're
14 getting accurate information; true?
15 A. In the acute setting, the emergency
16 room, we do discuss that.
17 Q. And in the event that the patient
18 has certain impairment following the acute
19 setting, you'd want to know that as well;
20 wouldn't you?
21 A. If it was significant to allow her
22 to not give a history that was accurate,
23 sure.
24 Q. That what you did in this
25 examination was you asked to speak with her

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1
2 alone, without any involvement from Mr.
3 Steigman, who was there as well; correct?
4 A. I didn't preclude him from saying
5 anything, but I asked her for the history,
6 sure.
7 Q. Isn't it a fact, Doctor, that what
8 you said was, I want to hear from her?
9 A. I don't recall saying that, but I
10 may have.
11 Q. Now, Doctor, one of the things that
12 you do know is that Linda Taylor did suffer
13 a traumatic brain injury. Without going into
14 specifics, you understood that; correct?
15 A. Yes.
16 Q. With respect to the records that you
17 reviewed, for example, you had an opportunity
18 to look at the Fletcher Allen Health Care
19 records; correct?
20 A. Yes.
21 Q. You had an opportunity to look at
22 the Burke Rehab records; correct?
23 A. Yes.
24 Q. You had an opportunity to look at
25 the Branch Hospital records; true?

Page 59

1
2 A. Yes.
3 Q. You had an opportunity to look at
4 the hospital's special surgery records;
5 correct?
6 A. Yes, I did.
7 Q. And this was to give you a global
8 understanding of Linda Taylor's condition;
9 true?
10 A. True.
11 Q. And that's why, for example, you
12 were able to charge \$10,000 for this, because
13 you poured through these records; right?
14 A. Correct.
15 Q. To get a good understanding of the
16 nature and extent of her injuries; true?
17 A. That's correct.
18 Q. With respect to the Burke Hospital
19 records, why was she admitted to Burke,
20 primarily?
21 A. I don't recall why she was admitted
22 to Burke primarily.
23 Q. Do you recall if it was orthopedic
24 or something else?
25 A. I don't recall, no.

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1
2 Q. How much time did you spend
3 reviewing the Burke Hospital records?
4 A. I don't have any independent
5 recollection of how much was spent on any
6 individual records.
7 Q. At any rate, Doctor, would you be
8 surprised to learn that the reason that she
9 was admitted to Burke, primarily, was because
10 of the traumatic brain injury?
11 A. No, I wouldn't be surprised.
12 Q. And that's because you knew that
13 that was the injury that the doctors were
14 focusing on at that point in time; true?
15 A. Again, I didn't focus on her brain
16 injury. I was focused on her orthopedic
17 injury.
18 Q. But you told us that you reviewed
19 the record; didn't you? The Burke Hospital
20 record?
21 A. I reviewed the records to pull out
22 the orthopedic pertinent points.
23 Q. I see. So, how long did it take
24 you to pull out the orthopedic pertinent
25 points from the Burke Rehab Center?

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1
2 A. I don't know.
3 Q. Doctor, one of the things that you
4 did was you reviewed the radiographic
5 studies; correct?
6 A. I did.
7 Q. Did you review the radiographic
8 studies separate and apart from the written
9 record? In other words, did you actually
10 look at the films, the MRIs, the CT?
11 A. I did.
12 Q. And that's one of the ways that you
13 were able to get an understanding of what
14 happened; right?
15 A. Sure.
16 Q. And one of the things that you never
17 do is you would never deliberately minimize
18 the extent of the injuries; correct?
19 A. I would not.
20 Q. Because that would be completely
21 improper; wouldn't it?
22 A. It would.
23 Q. So, if somebody was reviewing your
24 report, they would be able to see exactly
25 what the nature and extent of the orthopedic

Page 62

1
2 injuries were; right?
3 A. The report in total? I would think
4 so.
5 Q. In fact, the reason you think so is
6 because if it didn't, it wouldn't fairly
7 reflect the nature and extent of her
8 injuries; true?
9 A. That's true.
10 Q. So, that's one of the reasons you
11 can say with certainty, what I have written
12 in the report is specific as to the
13 orthopedic injuries suffered by Linda Taylor;
14 true?
15 A. That's correct.
16 Q. And in fact, Doctor, with respect to
17 your report, you did a full examination of
18 her is what you're saying; correct?
19 A. Orthopedically.
20 Q. A fair examination; true?
21 A. Yes.
22 Q. Certainly, one that was thorough and
23 complete; right?
24 A. Yes.
25 Q. To the extent you didn't do that,

Page 63

1
2 that would be completely improper; wouldn't
3 it?
4 A. I'm not sure what you're getting at,
5 but yes, I try to do my best.
6 Q. And in fact, Doctor, when you write
7 up your report, you try to do your best to
8 write up the full extent of the injuries; am
9 I right?
10 A. That's correct.
11 Q. Doctor, if I can direct your
12 attention to your report, and Mr. Hannigan
13 touched on this, the assessment portion of
14 your report. If you could just turn to
15 that, please.
16 A. Okay.
17 Q. All right. Doctor, there you list,
18 for example, what the injuries were; correct?
19 A. I do.
20 Q. And Doctor, is there a term in
21 orthopedics that you familiarize yourself with
22 called "lesser fractures"?
23 A. Yes.
24 Q. Is that something that you teach
25 your residents, to refer to it as lesser

Page 64

1
2 fractures?
3 A. Not specifically, no.
4 Q. All right. So, when we take a look
5 at your assessment, one of the things that
6 you did was, you listed certain fractures;
7 correct?
8 A. That's correct.
9 Q. And then you said, there were also
10 some "lesser fractures"; right?
11 A. I did.
12 Q. So, in fairness to you, what you
13 were doing when you were listing this is,
14 you were listing what could be considered
15 main fractures, or those that were horrific;
16 true?
17 A. Yes, the most severe fractures, sure.
18 Q. All right. So, if we talk about
19 the ones that you listed as far as severe,
20 the left radius fracture suffered by Linda
21 Taylor; correct?
22 A. Yes.
23 Q. No doubt that was suffered in the
24 snowmobile accident; correct?
25 A. No doubt.

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1
2 Q. The scapula fracture is one that you
3 list; am I right?
4 A. Yes.
5 Q. You list a left intertrochanteric
6 femur fracture; correct?
7 A. Yes.
8 Q. A left femoral shaft fracture; right?
9 A. Yes.
10 Q. A left acetabular fracture; right?
11 A. Yes.
12 Q. A left tibia and fibula fracture;
13 right?
14 A. Yes.
15 Q. But, then you say there are also
16 some lesser fractures that were left out of
17 your report; correct?
18 A. They weren't listed in the
19 assessment. They're elsewhere in the report.
20 Q. So, for example, Doctor, if we're
21 going to take a look at your report through
22 and through: if, for example, she suffered
23 pubic rami fractures, you would list that in
24 the report; right?
25 A. It is listed elsewhere in the

Page 66

1
2 report, yes.
3 Q. And one of the things that you told
4 us when Mr. Hannigan was questioning you was
5 that all of the injuries were to the left
6 side; correct?
7 A. In the extremity injuries I said
8 were the left side. There was a right side
9 pubic ramus fracture.
10 Q. Is that listed in your report?
11 A. Earlier in the report it is, yes.
12 Q. How about the fact that she was
13 hemiplegic; is that listed in your report?
14 A. No.
15 Q. In fact, Doctor, wouldn't you agree
16 that in treating a patient, from an
17 orthopedic point of view you would need to
18 know if the patient was hemiplegic?
19 A. At the time that you're treating
20 her, if she's hemiplegic you'd want to know
21 that.
22 Q. But, you don't mention the word
23 hemiplegic at all in your report; do you?
24 A. No, I do not.
25 Q. And in fact, Doctor, tell us what

Page 67

1
2 hemiplegia is.
3 A. It's when one side of the body
4 doesn't have muscular function.
5 Q. And in fact, that's exactly what she
6 had; right?
7 A. Early in the acute period.
8 Q. And in fact, you reviewed the
9 records, so did you know that she was
10 hemiplegic on the left side - she had no
11 muscular function on the left side in
12 addition to all of the orthopedic injuries;
13 true?
14 A. I don't recall if she had any
15 muscular function on that side or just
16 limited.
17 Q. Did you review the record, Doctor?
18 A. I did. Again, hemiplegia is not an
19 orthopedic condition, so that's not something
20 that I was concentrating on.
21 Q. Did you ignore it, then, because it
22 said hemiplegia?
23 A. I didn't ignore it.
24 Q. So, when you reviewed that record
25 carefully and thoroughly as you've told us,

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1
2 were you trying to minimize by not writing
3 it in the record?
4 A. No.
5 Q. So, anyone looking at the report
6 would never know that Linda Taylor was
7 hemiplegic; correct?
8 A. Purely based on the report, no, they
9 wouldn't know that.
10 Q. Doctor, we can agree that with
11 respect to the injuries that Linda Taylor
12 suffered, the ones that you were writing
13 about are the ones that you considered to be
14 horrific; true?
15 A. I wouldn't use the word horrific,
16 but they were certainly serious.
17 Q. Doctor, I think you know that some
18 of the fractures suffered by Linda Taylor
19 were open fractures; correct?
20 A. Yes.
21 Q. And in fact, when you review them,
22 one of the things that you do is, you put
23 down what the major fractures were -- if I
24 could use that term major; is that fair
25 enough, Doctor?

Page 69

1
2 A. Sure.
3 Q. All right. And you didn't list the
4 lesser fractures; right?
5 A. Not in the assessment. Just in the
6 body of the report.
7 Q. Did she suffer a synthesis pubic
8 fracture?
9 A. She did.
10 Q. Is that listed in the assessment?
11 A. No.
12 Q. Did she suffer a sacroiliac fracture?
13 A. She did.
14 Q. Is that listed in your report?
15 A. Yes, but not in the assessment.
16 Q. In fact, Doctor, one of the things
17 that you know is, as far as the injuries go,
18 when you reviewed it, when you reviewed the
19 record, you knew that she had vascular injury
20 in the area of the fractures; didn't she?
21 A. Sure, she would have.
22 Q. Do you recall what vascular structure
23 was injured?
24 A. No, I do not.
25 Q. And in fact, Doctor, would you have

Page 70

1
2 any idea where that vascular structure was
3 injured?
4 A. No, I don't know what vascular
5 structures were injured.
6 Q. So, when you reviewed the record
7 very carefully, would you say that the
8 acetabular fracture was one of the most
9 significant fractures she had?
10 A. I would.
11 Q. Doctor, did she suffer a pudendal
12 artery transection?
13 A. I don't recall if she did or not.
14 Q. And of course, that's stated on your
15 full, fair and thorough review; correct?
16 A. Yes.
17 Q. In fact, Doctor, since you don't
18 recall it, you don't know if it was
19 embolized, do you?
20 A. No, I do not.
21 Q. But, one of the things that you do
22 know in embolization is, once the doctors
23 embolize an artery, all of the flow coming
24 from that artery forward will be stopped;
25 correct?

Page 71

1
2 A. Sure. That's the idea, yes.
3 Q. So that there would no longer be
4 oxygen and nutrients to the area pre-injury;
5 correct?
6 A. Well, not from that artery. There
7 may be collateral flow from other ones.
8 Q. And you can agree that the
9 collateral flow may or may not be as good as
10 the original artery was; right?
11 A. Sure, I'd agree with that.
12 Q. But, if you don't know even where
13 this transection was, you can't speak to
14 that; true?
15 A. That's correct.
16 Q. By the way, Doctor, you spoke about
17 a femoral neck fracture; right?
18 A. In her intertrochanteric fracture,
19 just below the femoral neck, yes.
20 Q. Did it go from the greater
21 trochanter to the lesser trochanter?
22 A. I don't recall exactly where the
23 fracture lines went, but that's the area of
24 the intertrochanteric fracture, yes.
25 Q. But, you looked at the films; didn't

Page 72

1
2 you, Doctor?
3 A. I did.
4 Q. And you're coming into this courtroom
5 through the video right now to tell us the
6 nature and extent of the injuries; correct?
7 A. Sure, but that kind of thing doesn't
8 really make any difference whether it
9 extended from the intertroch from the greater
10 to the lesser, or where. The fact is, the
11 fracture was treated successfully and healed.
12 Q. Doctor, I asked you specifically if
13 you reviewed the films; didn't I?
14 A. Yes.
15 Q. And in fact, Doctor, as you sit here
16 now, you don't recall with specificity
17 exactly what those films show; true?
18 A. No. Only that there was an
19 intertrochanteric fracture.
20 Q. Doctor, was there a femoral head
21 fracture?
22 A. I don't recall there being a femoral
23 head fracture, no.
24 Q. So, you're stating with certainty
25 that there was no femoral head fracture;

Page 73

1
2 correct?

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

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

8 A. No.

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

13 A. It does.

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

19 A. Sure.

20 Q. Were the doctors concerned about
21 that?

22 A. Back then, sure, they would be.

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

25 A. Of course they would be. Any time

Page 74

1
2 there's a fracture of the hip, we're
3 concerned about avascular necrosis.

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

9 A. Yes.

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

12 A. That's correct.

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

15 A. Yes.

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

20 A. Maybe, but maybe not.

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

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

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1
2 BY-MR.RUBINOWITZ:

3 Q. Doctor, can you hear me?

4 A. Yes, I can.

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

10 A. She did.

11 Q. Where did that extend to?

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

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

19 A. It did.

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

22 A. That's correct.

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

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1
2 because the Jury has to make a determination
3 as to the nature and extent of the injuries;
4 correct?

5 A. Sure.

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

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

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

15 A. Yes.

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

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

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

23 A. Yes.

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

Page 77

1
2 orthopedists have, for example, that the open
3 fractures might go through the muscles,
4 through the fascia, through the skin, and
5 indeed through the clothes of a patient?
6 A. Sure, that can happen.
7 Q. And one of the concerns, from an
8 orthopedic point of view, would be in the
9 event that the bones break through the skin,
10 the musculature, the nerves, the peripheral
11 nerves, the fascia, and go actually through
12 clothes, that there could be contamination;
13 correct?
14 A. That's correct.
15 Q. And in fact, Doctor, one of the
16 things that you, as an orthopedic surgeon,
17 would be concerned about is whether or not
18 there was gross contamination; right?
19 A. I would be.
20 Q. And the reason you'd be concerned
21 about gross contamination is because the
22 nature and extent of infection that could
23 develop as a result of that; right?
24 A. That's correct.
25 Q. Now, Doctor, with respect to the

Page 78

1
2 injuries that she suffered concerning the
3 open fractures, were all her open fractures
4 grossly contaminated?
5 A. They were not grossly contaminated,
6 as in, she wasn't in a field of cattle or
7 something where they'd be grossly
8 contaminated. But anytime a fracture is
9 open, there's contamination to it.
10 Q. Now, I noticed that you said the
11 wounds weren't grossly contaminated; correct?
12 You just said that; right?
13 A. I did.
14 Q. And in fact, Doctor, did you really
15 review the operative reports?
16 A. I reviewed --
17 Q. You don't have to look right now.
18 I'm just asking, did you review it?
19 A. I did.
20 Q. In fact, Doctor, if you take a look,
21 for example, would you agree with me that if
22 you were to look at the Fletcher Allen
23 Hospital for the date February 19, 2006, it
24 says, in fact, all the wounds were grossly
25 contaminated; did you see that?

Page 79

1
2 A. I see that.
3 Q. And in fact, Doctor, you just told
4 me that all the wounds were not grossly
5 contaminated; didn't you?
6 A. Well, I qualified it with what I
7 meant by grossly contaminated.
8 Q. I see. So, what you're doing is
9 you're ignoring what the records said, and
10 you're giving your own interpretation;
11 correct?
12 A. I'm not ignoring it. I just told
13 you what my interpretation was.
14 Q. Doctor, did they have to remove
15 plant debris from any of the open fractures?
16 A. I wouldn't know without going back
17 and looking.
18 Q. And in fact, Doctor, I'll read it to
19 you to make it a little bit easier and speed
20 it up. And it reads, and I'm quoting, "all
21 wounds were grossly contaminated. We removed
22 plant debris from her left femur primarily."
23 I want you to assume that's true, and I'll
24 show it to Counsel so he can see it so
25 there's no issue that I'm reading it

Page 80

1
2 correctly. Would you agree with me, Doctor,
3 that when plant debris is actually attached
4 to the bone, it means that the bone has not
5 just gone through the muscle, not just gone
6 through the fascia, not just gone through
7 tissue and skin, but actually passed through
8 her clothes; correct?
9 A. Sure, that's correct.
10 Q. And in fact, Doctor, that's one of
11 the concerns that an orthopedic surgeon such
12 as yourself would have; am I right?
13 A. At the time of treatment, sure.
14 Q. And in fact, Doctor, did she suffer
15 from infection while she was at Fletcher
16 Allen Hospital?
17 A. She did.
18 Q. And in fact, Doctor, you'd agree
19 with me that that would be a source of pain;
20 am I right? In addition to the fractures;
21 right?
22 A. Yes, it would be.
23 Q. And every one of the fractures that
24 you now know that she had back at the time
25 of the injury, those were all

Page 81

1
2 competent-producing causes of pain; right?
3 A. Sure, they were.
4 Q. They were severely painful; am I
5 right? Based on your experience as an
6 orthopedic surgeon; true?
7 A. Yes.
8 Q. By the way, Doctor, with respect to
9 the femoral head, do you know if that was
10 disrupted in any way?
11 A. Well, what do you mean by disrupted?
12 Q. Doctor, do you recall as you sit
13 here right now, for example, having heard the
14 questions that I've been asking you, as to
15 whether or not the femoral head was
16 fractured?
17 A. I don't recall the femoral head
18 itself being fractured, no.
19 Q. You do recall the acetabulum, though;
20 right?
21 A. I do.
22 Q. And you agree with me that the
23 proximal end of the femur, the femoral head
24 itself -- which would be the end of the bone
25 closest to the hip -- that is covered with

Page 82

1
2 articular surface; true?
3 A. True.
4 Q. If I may use this example: just
5 like if you were to look at a turkey bone,
6 the very ends of the bone have that smooth,
7 glistening surface on it; right?
8 A. Yes.
9 Q. And that's what we call articulate
10 surface; right?
11 A. Yes.
12 Q. It's very different from the shaft
13 of the bone; correct?
14 A. Correct.
15 Q. So that, in fact, when there's
16 disruption of the articular surface, that's
17 significant from an orthopedic point of view;
18 true?
19 A. It can be, sure.
20 Q. And in fact, Doctor, with respect to
21 the acetabulum -- and you did study that one
22 -- with respect to the acetabulum, how many
23 fractures did it have?
24 A. I don't know how many fracture lines
25 there were.

Page 83

1
2 Q. When you read the x-rays, were you
3 able to determine that?
4 A. No.
5 Q. Did you look at the record to see
6 whether or not they determined that?
7 A. No. Whether there's one, two or
8 three doesn't matter.
9 Q. By the way, Doctor, were there any
10 butterfly fragments in any of the fractures?
11 A. There were.
12 Q. Where?
13 A. In the extremities. I remember --
14 Q. Where?
15 A. The femur had a butterfly fragment.
16 I believe the tibia probably did, but I
17 don't know that for sure.
18 Q. With respect to the fibula fracture,
19 was that in multiple places?
20 A. It was comminuted, so it was in
21 multiple places, yes.
22 Q. But was it comminuted and fractured
23 in many different places along the length of
24 the bone?
25 A. I don't recall.

Page 84

1
2 Q. Doctor, did they have to place a
3 vena cava filter?
4 A. I don't know if they did or not.
5 Q. Did they have to place a feeding
6 tube?
7 A. I don't know that, either.
8 Q. Doctor, with respect to the fractures
9 themselves -- and I want to focus just for a
10 moment on the femur -- you recognize the
11 femur was fractured in many places; correct?
12 A. I do.
13 Q. Was there a fracture that extended
14 from the femoral head or the acetabular area
15 downward, or was there a separate mid-shaft
16 femur fracture?
17 A. I don't know if all the fracture
18 lines communicated or not.
19 Q. Well, Doctor, whether they did or
20 not, can we agree that there was significant
21 bleeding that took place in the area of the
22 fractures; correct?
23 A. Yes, there was.
24 Q. And indeed, when the blood continues
25 to bleed out -- the bones actually bleed,

Page 85

1
2 don't they?
3 A. They do.
4 Q. And in fact, there was continual
5 bleeding from the soft tissues that were
6 damaged as a result of the fractures;
7 correct?
8 A. Sure, there was.
9 Q. Because, when we talked about
10 fractures, you understand there were mild
11 non-displaced fractures, moving up to
12 displaced fractures, moving through to
13 comminuted fractures, and then the most
14 severe, which is an opened or compound
15 comminuted fracture; true?
16 A. True.
17 Q. Indeed, she had the most significant
18 fractures; didn't she? Open or compound
19 comminuted fractures; correct?
20 A. That's correct.
21 Q. And she had that in the femur area;
22 correct?
23 A. She did.
24 Q. That's the guideline; am I right?
25 A. Yes.

Page 86

1
2 Q. She had fractures to the lower
3 extremities involving the tibia; correct?
4 A. Yes.
5 Q. Was that an open fracture?
6 A. Yes, it was.
7 Q. And in fact, she had comminution to
8 the fibula, the bone running alongside the
9 tibia in the lower leg; correct?
10 A. She did.
11 Q. Were there other comminuted fractures
12 that she suffered?
13 A. Well, the fracture in the acetabulum
14 was comminuted.
15 Q. How about of the sacral fracture?
16 A. Yes, the sacrum was comminuted, as
17 well.
18 Q. Would you agree with me that every
19 single one of the fractures that we mentioned
20 was a source of pain; correct?
21 A. Yes.
22 Q. Doctor, one of the things you told
23 us was, you spoke about her gait; correct?
24 A. I did.
25 Q. And in fact, Doctor, with respect to

Page 87

1
2 the gait, did you tell us that you noticed
3 no gait abnormality?
4 A. I did.
5 Q. Doctor, you examined her on August
6 18, 2016; correct?
7 A. Yes.
8 Q. Are you aware that the Defense had a
9 neurology consult, a doctor by the name of
10 Robert Todd, who also examined her on that
11 very same day within a matter of hours from
12 your examination?
13 A. No.
14 Q. I want you to assume that Dr. Todd
15 said, this is the Defense examining
16 neurologist said, "she had an obvious pelvic
17 tilt to the left". Assume that to be true.
18 Assume that to be in his report, and I'm
19 representing I'm reading it from his report.
20 A. Okay.
21 Q. And I'm showing it to Counsel, as
22 well. Doctor, did you find that she had an
23 obvious pelvic tilt to the left?
24 A. I did not.
25 Q. Were you trying to minimum the

Page 88

1
2 extent of the injuries?
3 A. No.
4 Q. Doctor, did she have an antalgic
5 gait?
6 A. No.
7 Q. In fact, Doctor, antalgic gait means
8 that she's walking in a way to avoid pain
9 while she walks; correct?
10 A. That's the usual reason for it, yes.
11 Q. That's the definition of an antalgic
12 gait; true?
13 A. Antalgic gait means you spend more
14 time on one leg than on the other, so it
15 creates a limp.
16 Q. And in fact, Doctor, I want you to
17 assume that Dr. Todd, the Defense examining
18 neurologist said her gait was antalgic. This
19 is within a matter of hours from when you
20 examined her.
21 A. Okay.
22 Q. You're telling us that you found no
23 antalgic gait, Doctor; is that it?
24 A. I did.
25 Q. How many surgical procedures did she

Page 89

1
2 have?
3 A. Do you define - how are you defining
4 a procedure? A trip to the operating room,
5 or number of things --
6 Q. How about if we talk about surgeries
7 to the various bones that were fractures?
8 How many surgeries did she have? If you
9 don't know, you can say that too.
10 A. Well, I don't know the number
11 without looking at the records and adding
12 them up.
13 THE VIDEOGRAPHER: The time is
14 approximately 3:37 p.m. and we are off the
15 record.
16 (Whereupon, a short break occurred.)
17 THE VIDEOGRAPHER: The time is
18 approximately 3:41 p.m. and we are back on
19 the record.
20 BY-MR.RUBINOWITZ:
21 Q. Doctor, can you hear me?
22 A. Yes, I can.
23 Q. Doctor, I want to focus back for a
24 moment on the damage to the articular surface
25 of those bones that were fractured, and I'll

Page 90

1
2 start with the acetabulum. Would you agree
3 with me, Doctor, that when we speak about
4 arthritis, arthritis is damage to the
5 articular surface; correct?
6 A. It is.
7 Q. And in fact, as time goes by, would
8 you agree that arthritic conditions can
9 become worse leading to bone on bone?
10 A. Yes.
11 Q. Doctor, given the nature of the
12 injury to her acetabulum, isn't it true that
13 she is suffering from arthritis?
14 A. She is at risk for it, but she is
15 not suffering from it at the present time.
16 Q. And Doctor, with respect to the
17 communicating bone, which would be the
18 femoral head, in the event that that, too,
19 was fractured, would you agree with me that
20 that would cause damage to the articular
21 surface?
22 A. It would.
23 Q. And in fact, Doctor, since you don't
24 know whether or not the femoral head was
25 even fractured, you'd have no opinion at all

Page 91

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2 as to whether or not there's arthritis in
3 that area; correct?
4 A. No, I have an opinion.
5 Q. And you're going to say there isn't,
6 of course; right?
7 A. Well, of course. She had no pain,
8 so she wouldn't have arthritis and have no
9 pain.
10 Q. How did you get the idea that she
11 had no pain, Doctor?
12 A. She told me she had no pain.
13 Q. And did you take a look at her head
14 injury as to whether or not she was an
15 accurate historian, Doctor?
16 A. She certainly appeared to give me a
17 very accurate history the rest of the case,
18 so.
19 Q. Doctor, with respect to the records
20 that you reviewed, did any of the records
21 reflect the fact that there was already
22 arthritis?
23 A. There were - it's called
24 post-traumatic changes, but even her most
25 recent note through Dr. Bartlett noted that

Page 92

1
2 the joint space was still well maintained.
3 Q. And Doctor, Dr. Bartlett testified,
4 and I want you to assume that he did, that
5 that articular surface, the damage to it is
6 only going to get worse over time; do you
7 disagree?
8 A. I don't disagree, because that's part
9 of the natural history of the aging process.
10 Q. Are you saying it has nothing to do
11 with the fracture she suffered, just her age;
12 is that it, Doctor?
13 A. No. She's at higher risk, I said
14 that, because of having this articular
15 fracture.
16 Q. And in fact, Doctor, you would
17 classify this as a very major intraarticular
18 fracture; am I right?
19 A. I would.
20 Q. Doctor, with respect to heterotopic
21 ossification, that's bone growing where it
22 shouldn't grow; right?
23 A. That's correct.
24 Q. And she had that; am I right?
25 A. She did.

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1
2 Q. So, in fact, some of the muscle has
3 actually been calcified and turned into bone;
4 true?
5 A. That's right.
6 Q. And we can agree that that's not a
7 good thing for a patient; is it?
8 A. It's not.
9 Q. Doctor, with respect to the review
10 of records, did you determine whether she had
11 any abdominal hematoma?
12 A. I didn't make any determination on
13 that, no.
14 Q. Did you see, for example, whether or
15 not there was pooling of blood in the
16 abdominal cavity following the fractures?
17 A. I didn't, but that wouldn't surprise
18 me at all with pelvic fractures.
19 Q. Doctor, knowing that you didn't and
20 you can't say whether or not she did, did
21 you really do a thorough review of the
22 records, Doctor?
23 A. Yes, from an orthopedic standpoint.
24 Q. And you're saying that an orthopedist
25 doesn't have to be concerned whether or not

Page 94

1
2 there is pelvic hematoma?
3 A. Ten years later, no, you don't.
4 Q. Doctor, how about at the time when
5 you're taking a look at the records to
6 understand the nature and extent of the
7 injuries? Were you concerned about it at
8 all, or did you ignore it?
9 A. I wasn't concerned about it.
10 Q. Okay. Doctor, did she suffer from
11 hematuria at any point in time?
12 A. I don't know that either.
13 Q. Hematuria is blood in the urine;
14 correct?
15 A. Correct.
16 Q. And in fact, Doctor, when you
17 reviewed the record as carefully as you say
18 you did, did you notice that anyplace?
19 A. Again, I didn't look for that
20 because, again, that's a urologic problem,
21 not an orthopedic problem.
22 Q. In fact, Doctor, isn't it part of
23 the trauma team's concern to know the nature
24 and extent of the injuries; true?
25 A. As the general surgeon on a trauma

Page 95

1
2 team, they would want to know that, sure.
3 Q. You told us that you participated in
4 some trauma surgery as recently as five years
5 ago; didn't you?
6 A. As an orthopedic surgeon, yes.
7 Q. So, in fact, Doctor, was Linda
8 Taylor hemodynamically unstable at any point
9 in time since you did this thorough review?
10 A. With those kind of injuries, sure
11 she was.
12 Q. Do you know why?
13 A. There would be multiple potential
14 reasons, but just the amount of blood she
15 would lose from those fractures would make
16 her hemodynamically unstable.
17 Q. And in addition to the amount of
18 blood that she'd lose from the orthopedic
19 fractures, can you state with certainty
20 whether or not there were vascular injuries
21 as well?
22 A. Well, I know there was a vascular
23 injury, but can't state anything about it
24 because I didn't review for vascular injury.
25 Q. In other words, you're saying there

Page 96

1
2 was one vascular injury; is that what you're
3 telling us?
4 A. No, I'm saying there were vascular
5 injuries.
6 Q. What were they?
7 A. I don't know, but those kind of
8 fractures cause bleeding, so they damage
9 vessels.
10 Q. Can we agree that those kind of
11 fractures also cause damage to the nerves?
12 A. They can, sure.
13 Q. In fact, Doctor, with respect to the
14 damage, if we focus just on the area of the
15 femur fractures, can we agree that there was
16 a very large muscular damage as a result of
17 those fractures?
18 A. Yes.
19 Q. How large was it? How large was
20 it?
21 A. I don't know.
22 Q. Was it just a Peterson, or was it
23 something more than that?
24 A. I don't know how much it was or how
25 to even quantify something like that.

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2 Q. What was the entry point for the

3 surgeons when they did the surgery on the

4 femur?

5 A. I don't recall without looking at

6 the operative report.

7 Q. Doctor, do you know if the injury

8 was so big and so gaping that the surgeon

9 actually went in through the open wound on

10 the femur - on the femoral area of her leg?

11 A. Well, I'm sure they would do that,

12 because that's part of the I & D for

13 cleaning out all the debris.

14 Q. I'm not just talking about cleaning

15 out as far as an incision and drainage, the

16 I & D that you refer to. I'm talking about

17 when they actually put hardware in to

18 stabilize the wound. Do you know if they

19 did that?

20 A. If they went through that same

21 wound, I'm not sure.

22 Q. So, in your careful and thorough

23 review of the records, you have no idea

24 about that; true?

25 A. You can keep pointing these things

Page 98

1

2 out to try to make me look like I don't

3 know what I'm talking about --

4 Q. I'm just asking you a question. If

5 you don't know, say it. That's all I'm

6 asking you to do; fair enough? If you know

7 it, please say it.

8 A. I'm answering what is important, and

9 what was important. No, I don't know

10 whether they went through that same wound or

11 created another wound.

12 Q. In fact, Doctor, every one of the

13 scars that she suffered are permanent

14 injuries; true?

15 A. Sure, they are.

16 Q. Did she lose any musculature as a

17 result of this accident?

18 A. She would have lost some through her

19 quadriceps injury, sure.

20 Q. How much?

21 A. I don't know.

22 Q. Did she suffer a filling defect of

23 the internal carotid artery?

24 A. I don't know. That's not an

25 orthopedic injury.

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2 Q. What's the internal carotid artery?

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

4 brain.

5 Q. Provides nourishment and oxygen to

6 the brain; true?

7 A. It does.

8 Q. Would you agree with me that a

9 trauma surgeon must know about that about

10 injury to properly treat the patient?

11 A. Not an orthopedic trauma surgeon, but

12 someone overall in charge of her trauma,

13 sure.

14 Q. Doctor, if I were to stop my exam

15 right now, you would have been testifying for

16 less than three hours; correct?

17 A. That's correct.

18 Q. How much are you charging for that,

19 Doctor?

20 A. The total time for preparation and

21 time here is \$6,000.

22 Q. And if it was a full day, Doctor,

23 how much would you charge?

24 A. It would be double that.

25 Q. \$12,000?

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2 A. Yes.

3 Q. And you've charged already \$10,000

4 for that thorough review that you claim you

5 did of the records?

6 A. Yes.

7 Q. Thank you, Doctor. I have no

8 further questions.

9 MR. HANNIGAN: Let the record note

10 Mr. Douthat doesn't have any questions for

11 the Doctor at the present.

12 REDIRECT EXAMINATION

13 BY-MR.HANNIGAN:

14 Q. Doctor, I have a few more questions

15 for you, if you don't mind. Mr. Rubinowitz

16 asked you a question about what would be

17 important for the trauma physician -- the

18 trauma team to know when they were treating

19 a patient. Do you remember him asking a

20 question a few moments ago about that?

21 A. Yes.

22 Q. But, you weren't on the trauma team

23 for Linda Taylor; were you?

24 A. No.

25 Q. You did an examination of Linda

Page 101

1
2 Taylor 10 years, six months from the time of
3 her injury; is that fair?
4 A. Yes, that's correct.
5 Q. Okay. And you were doing an
6 orthopedic examination to determine the nature
7 and extent of her injuries at that time; is
8 that fair enough?
9 A. Yes.
10 Q. Now, Doctor, when you saw Linda
11 Taylor, she didn't have any plant debris in
12 her legs, did she?
13 A. No.
14 Q. She didn't have open wounds; did
15 she?
16 A. No.
17 Q. She didn't have any evidence of a
18 vascular necrosis in her hip; did she?
19 A. No.
20 Q. And she didn't have any evidence of
21 pudental artery transection; did she?
22 A. No.
23 Q. And even if you want to assume that
24 she has sustained those injuries and had
25 those condition back in February of 2006, you

Page 102

1
2 wouldn't expect any evidence of those unless
3 there were some ramifications from those
4 injuries; isn't that right?
5 A. That's correct.
6 Q. And you didn't find any ramifications
7 of those injuries; is that right?
8 A. That's correct.
9 Q. Now, Doctor, did you -- I'd like to
10 take up his report for a second. Did you
11 ask Mrs. Taylor about her past medical
12 history?
13 A. Yes.
14 Q. What, if any, information did you
15 get?
16 A. Nothing.
17 Q. Why is that?
18 A. Just, she declined any questions
19 about past history.
20 Q. Did you ask about her current
21 medications?
22 A. Yes.
23 Q. And what information did you get?
24 A. Only that Tylenol, Tramadol or Advil
25 would be taken as needed.

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2 Q. Did she decline to offer you any
3 further information?
4 A. Yes.
5 Q. Did you ask her about any allergies
6 to medications?
7 A. Yes.
8 Q. And what did she respond, if
9 anything?
10 A. No response, just declined.
11 Q. Did you ask about her social
12 history?
13 A. Yes.
14 Q. Now, are those - and what was her
15 response?
16 A. Nothing pertinent. She declined.
17 Q. She declined. She told you she
18 wasn't going to answer those questions; is
19 that right?
20 MR. RUBINOWITZ: Objection.
21 THE WITNESS: Just that it wasn't
22 pertinent to my exam.
23 THE VIDEOGRAPHER: The time is
24 approximately 3:53 p.m. and we are off the
25 record.

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2 (Whereupon, a short break occurred.)
3 THE VIDEOGRAPHER: The time is
4 approximately 3:54 p.m. and we are back on
5 the record.
6 BY-MR.HANNIGAN:
7 Q. And Doctor, when you were
8 interviewing Mrs. Taylor, I think you told me
9 that she was pleasant.
10 A. Yes, she was.
11 Q. And was she responding to your
12 questions?
13 A. She was.
14 Q. And was Mr. Steigman in the room the
15 entire time you questioned or asked Mrs.
16 Taylor questions about her medical history?
17 A. As I recall, he was, yes.
18 Q. Do you think that Mrs. Taylor said
19 anything to deliberately mislead you?
20 A. No, not that I could tell.
21 Q. Doctor, with respect to the questions
22 that Mrs. Taylor did answer, did you find
23 her history to be appropriate?
24 A. Yes.
25 Q. And consistent with what her injuries

Page 105

1
2 were and her recovery was, based upon your
3 review of the records?
4 A. I did.
5 Q. Doctor, that's all I have. Thank
6 you.
7 **REXCROSS-EXAMINATION**
8 **BY-MR.RUBINOWITZ:**
9 Q. Doctor, isn't it a fact that, at no
10 point in time did Linda Taylor decline to
11 answer any question that you asked?
12 A. Only those about past history.
13 Q. In fact, sir, you took notes the
14 entire time that she was speaking; correct?
15 A. I did.
16 Q. And you don't have those notes to
17 see what they actually showed; correct?
18 A. That's correct.
19 Q. Because you destroyed them; am I
20 right?
21 A. I discarded them when I prepared my
22 report, yes.
23 Q. And your report said nothing, not
24 one single word anywhere, about her declining
25 to answer questions; true?

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1
2 A. Not beyond what's written right in
3 my report, no.
4 Q. My point is, Doctor, you were just
5 asked questions by Mr. Hannigan about all
6 these things that she declined. There's no
7 record reflecting that she declined to answer
8 this, this, this and this; correct?
9 A. Well, under past medical history,
10 patient declined.
11 Q. I see. So, in fact, Doctor, are
12 you suggesting that the notes you have didn't
13 reflect accurately what was written?
14 A. No, I'm not saying that.
15 Q. Doctor, isn't it true that Linda
16 Taylor answered every one of the questions
17 that you had?
18 A. Every one that I felt was pertinent,
19 sure.
20 Q. Thank you, Doctor. Doctor, isn't it
21 true, sir, that you have been faulted by the
22 Workers' Compensation Board for minimizing
23 injuries?
24 MR. HANNIGAN: Objection.
25 THE WITNESS: No.

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1
2 BY-MR.RUBINOWITZ:
3 Q. Isn't it true, sir, that as recently
4 as this year the New York State Workers'
5 Compensation Board found that you offered
6 frivolous opinions on the question of the
7 extent of injuries?
8 MR. HANNIGAN: Objection.
9 THE WITNESS: I don't know what
10 you're talking about.
11 BY-MR.RUBINOWITZ:
12 Q. Never heard a word about that;
13 right?
14 A. No.
15 MR. HANNIGAN: Objection.
16 BY-MR.RUBINOWITZ:
17 Q. Did you submit continual reports to
18 the Workers' Compensation Board regarding
19 carpal tunnel syndrome injuries that in fact
20 you were minimizing the nature and extent of
21 the injuries?
22 MR. HANNIGAN: Objection.
23 THE WITNESS: No.
24 BY-MR.RUBINOWITZ:
25 Q. Nothing further.

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2 MR. HANNIGAN: There's no further
3 questions, Doctor. Thank you for your time.
4 THE WITNESS: Okay.
5 THE VIDEOGRAPHER: The time is
6 approximately 3:57 p.m. This concludes the
7 deposition of Dr. Daniel Carr, and we are
8 off the record.
9 (Whereupon, the videotaped examination
10 before trial of DANIEL CARR, M.D. concluded
11 at 3:58 p.m.)
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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