

Supreme Court of New York.
DOTSON,
v.
CITY OF NY.
No. 18670/97.
2001.

(Transcript of Aric Hausknecht, M.D.)

Name of Expert: Aric Hausknecht, M.D.

Area of Expertise: Health Care-Physicians & Health Professionals >> Pain Management/Neuroanesthesiologist

Area of Expertise: Health Care-Physicians & Health Professionals >> Neurologist

Area of Expertise: Health Care-Physicians & Health Professionals >> Psychiatrist

Case Type: Vehicle Negligence >> Motor Vehicle v. Motor Vehicle

Jurisdiction: New York

Representing: Defendant

DR. ARIC HAUSKNECHT

THE WITNESS: A-r-i-c, H-a-u-a-k-n-e-c-h-t.

COURT CLERK: Your address, sir?

THE WITNESS: 57 West 57th Street, Mew York, Mew York.

COURT CLERK: Thank you.

THE COURT: Good morning, doctor.

THE WITNESS: Good morning.

THE COURT: All right. Doctor, have you testified in court before?

THE WITNESS: Yes, I have.

THE COURT: Just keep your voice up loud. If there is an objection, do not answer the question until I have given a ruling.

THE WITNESS: I understand.

THE COURT: Your witness.

DIRECT EXAMINATION

BY MR. REDDY:

Q I'm going to stand back here; and if I don't hear you, that means the jurors are not hearing you, so keep your voice up in a loud, clear voice.

I have one initial preliminary question I want to ask you, Dr. Hausknecht. I want you to assume Howard Dotson said during his testimony that on the wall of one of the doctors who did an independent medical examination, there was a sign that stated: Do not talk to the doctor. Do not tell the doctor about your injuries.

At the time that you did your investigation of Howard and Sean, Doctor, did you ever have such a sign on the wall of your office?

A Absolutely not.

MR. COHEN: Objection, your Honor.

THE COURT: Overruled.

Q At any time while you have been a physician in any state of this union, have you ever had a sign of that nature on the wall of your office?

MR. COHEN: Objection, your Honor.

THE COURT: Overruled.

A I have not, and I don't know of any doctor that does.

MR. COHEN: Objection.

THE COURT: Overruled ... -.

Q Now, Doctor, are you a physician licensed to practice medicine in the State of New York?

A Yes.

Q Please tell the jury a little bit about your academic background.

A Certainly. I graduated with a bachelor of arts and physical anthropology from Duke University in 1987. I went directly to The Maryland medical school and received my degree in 1991. I did one year of medical internship at Beth Israel Medical Center, one year of neurology residency training at Mt. Sinai Medical Center, completed that training at New York Hospital Cornell Medical Center and at Sloane Kettering Memorial Cancer Center. In my final year, I was the chief resident.

Q And, subsequent to your medical education, did you receive any types of degrees or certifications?

A Yes, I did.

Q And would you explain to the jury what types of further degrees and certifications you have received?

A I am double board certified. I am board certified by the American Board of Neurology and Psychiatry, and I am board certified in pain* management by the American Academy of Pain Management.

Q Could you please, Doctor, explain to the jury what it means to be board certified?

A Board certification is basically the highest level of qualification that a physician can receive in the United States. After you have completed an approved residency program, you are then granted the privilege to sit for the examination after completing an application. For the neurology boards there are two parts to the examination. The first part was a written exam, and the second part was an oral exam in front of a board of examiners.

Q And you completed that examination?

A Yes, I completed it.

Q And you are board certified in neurology?

A Yes.

Q And what was the board certification process like for the pain management certification?

A Likewise, there is an application. The board must deem that you are clinically appropriate, then you sit for an examination.

Q And did that examination also consist of an oral examination and a written examination?

A That was only a written examination.

Q And you passed that examination?

A Yes, I did.

Q And, Doctor, how, I believe you also mentioned that you have board certifications in neurology, pain management and psychiatry. Is that psychiatry more than a double certification? Explain to the jury the nature of that

A Neurology is the practice of medicine which specializes in the nerves of the brain, the spinal cord, the peripheral nerve roots. Psychiatry and neurology are very closely related because all psychiatric disorders emanate from the brain itself. So the board consists of both psychiatrists and neurologists. With the American Board of Psychiatry and Neurology I am certified in neurology and psychiatry because a neurology evaluation consists of approximately 20 percent of psychiatric types of considerations, and likewise a psychiatric evaluation consists of approximately 20 percent of neurological types of disorders.

Q Now, upon completion of the examinations to be qualified and you were qualified as having passed that examination, are you considered to be a diplomate?

A Yes.

Q Could you explain to the jury of significance of that title?

A Basically, diplomate and board certified are equivalent terms. It indicates that the physician has reached the highest level of certification, has taken many tests and passed those tests successfully.

Q Are you a member of any professional associations?

A Yes, I am.

Q And would you explain to the jury the affiliations you have?

A I am a member of the American Academy of Neurology; a member of the American Academy of Pain Management; a member of the Society of Clinical Neurophysiology.

Q Okay.

Have you ever published at all?

A In medical school I did publish. Since medical school I have been in private practice.

Q Okay. And your publications, do any of them relate to any of the injuries sustained by the plaintiffs, including but not limited to shoulder injury, rotator cuff or tendon injury, disk bulges, herniations, anything along those lines?

MR. COHEN: Objection.

THE COURT: Overruled.

A One of my publications was for the National Institutes of Health that sponsored the research for carpal tunnel syndrome impairment and amyloidosis.

Q What was the type of research you did?

A Amyloidosis is a systemic disorder which results in basically the laying down of scar tissue; and carpal tunnel syndrome is a type of disorder that can occur from scar tissue being laid down within the carpal tunnel or repetitive stress, repetitive use of the hands. The study that I performed was to determine if there was a higher level of carpal tunnel syndrome impairment and amyloidosis, and in fact there was.

Q Has that a study you conducted for the National Institutes of Health?

A Yes, it was.

Q Okay.

Do you have any teaching positions?

A Yes, I do.

Q Explain to the jury those types of -

A A teaching position is one where a doctor will be responsible for teaching medical students or residents, who are basically doctors in training. I'm an attending physician at St. Johns Hospital. Part of my responsibilities there is to teach the residents in different areas of neurology and pain management.

Q Do you have any admitting privileges on the staff of any hospitals?

A Yes, I do

Q What admitting privileges do you have?

A I'm on staff of several different hospitals, the Beth Israel Medical Center, St. Johns Episcopal Medical Center, Long Beach Medical Center and Peninsula General hospital.

Q And before I move to the substance of the trial, did you have an opportunity to talk about the treatment, the medical treatment of Howard Dotson?

A Yes, we did.

Q And, when did we speak?

A I believe it was Tuesday.

Q And you testified in court before, you told the judge.

A Yes, I have.

Q An on how many occasions have you testified in court before, approximately?

A I testify approximately once or twice a month.

Q Okay. And when you testify, do you testify at the request of plaintiffs' attorneys and at the request of defense attorneys?

A Yes, I do.

Q Are you able to give an approximation of how often you have been asked to testify for plaintiffs and how often you have been asked to testify on behalf of defense attorneys?

A It's probably about 20 percent for defense attorneys and 80 percent for plaintiffs' attorneys. Since I am in active practice, oftentimes I am asked to testify for patients that I am actually treating.

Q Do you have an arrangement with the city with respect to being compensated for your time today?

A Yes, I do.

Q What is it?

A Five hundred dollars an hour for the time away from my office.

Q Okay. And what percentage of your total practice - withdrawn.

You also maintain a private practice. Correct

A Yes, I do.

Q And in your private practice, do you see patients for various other neurological conditions?

A Yes.

Q And what percentage of your practice, your professional responsibilities, is dedicated to private practice as opposed to rendering testimony in court?

A Over 90 percent of my time is spent in the practice itself Less than ten percent.

Q We are going to review some general medical terms to lay a foundation to the jury as to what we have been discussing this morning.

Would you tell the jury what neurology is?

A Neurology is the practice of medicine that specializes in the treatment and evaluation of neurologic disorders. The nervous system includes the brain, the spinal cord and the peripheral nerves. So those types of neurologic disorders like stroke or seizures coming from the brain, or pinched nerves coming from the neck or back.

Q And what is pain management?

A Pain management is the field of medicine which specialises in the treatment and evaluation of pain. Pain can come from various different sources. As a pain management specialist, it's your responsibility to find out what's causing the pain, and what the most effective way to treat that pain is.

Q And in your practice, do you treat patients with neurological conditions?

A Yes, I do.

Q In your practice, do you treat patients with pain conditions?

A Yes. I do.

Q In your practice, do you treat patients with chronic pain condition*?

A Yes, I do.

Q All right. And for how many years have you been treating patients with these types of injuries?

A Since I finished my training in 1995 I have been practicing in this type of situation.

Q In your practice, have you seen occasions where patients suffer from degenerative conditions or changes?

A Yes, I have.

Q Can you describe for the jury what a degenerative condition or change is?

A Degeneration, or osteoarthritis, is the process of the wearing down of the joints. Degenerative joint?? is something that is present in everybody. It starts in early adulthood, in the 20s, and progresses throughout your lifetime, in some peopl it becomes symptomatic, meaning it causes problems. In other people it's asymptomatic and they never know about it.

Q Okay.

Now, hypertrophic changes, what is that?

Explain to the jury what that is.

A A hypertrophic change refers to the process of growth. The body responds to injury by laying down scar tissue, so if you have a cut of your skin, the body will heal it by laying down scar tissue. With the bone, the way that the body heals injury is to lay down bone itself. So if you have hypertrophic joint, that means that there has been a rubbing of those joints. And in response, the body lays down bone at the site of the rubbing, and it results in hypertrophic changes, or the laying down of bone, which are also known as osteophytes, or bone spurs.

Q A couple other terms. Desiccation, what is that?

A Desiccation is the process of drying out. In neurology, what desiccation refers to is the way in which the disks are referred to. The disk is a jelly fluid-like substance. If there is injury to the disk, water dries out of the disk, and this causes desiccation. That is a process that occurs slowly over the course of months.

Q Now, desiccation, hypertrophic changes, degenerative changes, these are all changes that occur over a long period of time?

A Yes. These changes typically occur over the court of six months or more.

Q Mow, at the request of my office, you conducted a physical examination of both Howard and Sean Dotson.

A Correct.

Q Okay. Let's first just talk about Howard Dotson. Did you prepare a report of your examination of Howard Dotson?

A Yes, I did.

Q Now, when was that examination conducted?

A The examination was on December 1st of '97.

Q Where did you conduct that examination?

A At my office in Brooklyn, 9201 4th Avenue

Q Prior to your examination of Mr. Howard Dotson on December 1, 1997, did you review any records?

A Yes, I did.

Q Could you tell me and the jurors the records you reviewed before or at the time of the examination?

A The records I reviewed included diagnostic

MR. COHEN: Judge, objection.

THE COURT: Overruled.

A The diagnostic test results of an MRI of the cervical spine, MRI of the lumbar spine, MRI of the left shoulder, and an NCVBMG study, as well as treatment records from a physiatrist, Dr. Batash, another doctor, Dr. Bellposky, an orthopedist, Dr. Bhansali, and a neurologist. Dr. Shields, and Dr. Bellposky.

Q And when you saw Mr. Howard Dotson, did you take a history?

A Yea.

MR. COHEN: Objection, your Honor.

THE COURT: Hold it.

Q When you saw Mr. Dotson, did you take a history?

THE COURT: Overruled.

A Yea, I did.

Q Can you explain to the jury what a history and a physical is?

A A history is basically a discussion that occurs with a patient. There are?? and there are signs. Symptoms are suggestive complaints. That is something that cannot be verified by an outside observer. If a patient comes into my office and says I'm having headaches, that is a symptom. By looking at that patient, I can't tell whether or not they are having headaches or not. The history includes a discussion regarding all the different symptoms that an individual has, as well as any contributing factors or conditions that might be impacting on the condition in question.

Q As a result of your history and physical, your history of Mr. Howard Dotson, did you determine there were any significant parts of the history?

A Yes.

Q What significance - what was significant about the history that he provided you?

MR. COHEN: May we approach, your Honor?

THE COURT: Yes. Come up.

(Whereupon, a bench conference was held off the record.)

(Whereupon, the proceedings continued in open court.)

THE COURT: Objection overruled.

MR. COHEN: I will get an opportunity to make a record?

THE COURT: Before you do that, can you come up back up here a second?

(Whereupon, a bench conference was held off the record.)

(Whereupon, the proceedings continued in open court.)

MR. COHEN: Your Honor, a continuing objection.

THE COURT: Your objection is - all right. It's overruled.

MR. COHEN: I don't need to continue -

THE COURT: No. Exactly.

MR. RBDDY: Can we have the reporter read it back, Judge?

THE COURT: Yes.

Read it back.

(whereupon, the requested testimony was read back by the court reporter.)

A I brought my records with me just to refresh my memory -

THE COURT: You may look at it.

A - for the sake of accuracy.

THE COURT: You may look at your records to refresh your memory.

A The patient indicated to me that he was involved in a motor vehicle accident on 12/14/96. Howard Dotson was the front seat passenger and was involved in a rear end collision while wearing his seat belt. He indicated that he went by ambulance to Caledonia Hospital Emergency Room, and x-rays were negative for any fractures. He had been seen by all of these different doctors; by Dr. Bellpolsky, by Dr. Batash, by Dr. Bhansali, and had surgery on his left shoulder performed at Victory Memorial Hospital by Dr. Bhansali.

Mr. Dotson had several complaints on this date. Specifically, he was complaining of neck pain, back pain and left shoulder pain. He was complaining of spasm in his lower back. He was complaining of numbness and tingling in his left hand. He said that the neck pain was better and that his lower back pain was waxing and waning. He said that his left shoulder pain had improved since the accident but that he was still having snapping sensations.

He had a past medical history for seizures, and I asked him if he had ever been hurt in any other accidents car accidents, slip and fall, and he said no. I asked him if he had had any problem with his neck and back or shoulder before, and he replied that he had not.

Mr. Dotson also indicated that prior to the accident he was employed as a custodian, and his job required a great deal of bending and lifting and pushing around machinery, such as floor waxers, and that he had not been able to return to work since the accident.

Q Okay.

Following the taking of a history from Mr. Howard Dotson, did you conduct a physical examination?

A Yes, I did.

Q What did your examination consist of?

A The physical examination is the objective part of the patient encounter to determine if there are any objective findings, ones which could be verified by an outside observer. The neurologic examination includes mental status, which is the ability to think and speak; the cranial nerves the nerve functions of the face, vision, hearing, sensation on the face; the motor examination for power, the arms and legs; the reflex examination, checking the knee jerks and the biceps jerks; sensory examination, determining whether there is any abnormal perception of sensation; a mechanical examination, examining the different joints, such as the neck and back, to determine if there are any impairments in function, and also examining the ability to walk, sit stand, those types of activities.

Q Now, the history and physical - before we move on, the history you took from the plaintiff and the examination itself were all done in the presence of the plaintiff. Correct?

A Correct.

Q How long did the examination typically take you?

A To finish the major portion of it, the history and the physical examination, it takes about 15 or 20 minutes.

Q Were there any significant findings during your examination of Mr. Howard Dotson?

A Yes, there were.

Q What were those findings?

A The significant findings on the physical examination were that there were no objective physical findings. The findings, that is, for strength were intact. The reflexes were intact. Sensation was intact. Mechanically, everything was functioning well. And on the functional exam, this patient was asked to perform jumping jacks. The patient was asked to hop independently on either foot. He was asked to stand on his toes. He was asked to stand on his heels. He was asked to bend forward and touch his toes. He was asked to do deep knee or squats. He was able to do all these things without any difficulty or any observable pain.

Q Okay.

Jumping jacks, that's a motion of - could you demonstrate to the jury what a jumping jack is?

A Certainly.

THE COURT: You can open up your jacket Jumping jacket or jumping jack?

THE WITNESS: Jumping jack.

THE COURT: You are going to demonstrate what that is?

THE WITNESS: Yes.

(The witness stepped down to the well of the court.)

A When you stand straight up and you have to - one;. motion is like this and the second motion is like that. (Demonstrating.) So the test shows the strength of the shoulder mobility, the neck and back mobility, and arm and leg strength.

Q And Mr. Howard Dotson was able to perform that test, correct?

A Absolutely.

Q There was no observable pain to him during that test?

MR. COHEN: Objection.

THE COURT; Overruled.

MR. COHEN: Leading.

THE COURT: Sustained as to form. Leading, right.

Q Now, were there any objective findings of any type of injury during your examination?

THE COURT: Before the doctor answers that, can you explain to us what you mean by objective findings, please?

Q Doctor, can you explain what an objective finding is for the judge?

A And objective finding or sign is one which can be verified by an outside observer. So if a patient is absent a reflex, one observer would find the same thing as another observer would with a similar clinical background and who did an examination of a similar type. So objective means it's not emanating from the patient himself, it's something that's there that others can see.

Q If a patient said to you I feel hot, that can be objectively verified by taking the temperature. Is that an example of an objective finding?

A Correct.

Q If a patient says to you I feel pain, is there any way that you can objectively identify whether or not that patient feels pain?

A The only way to objectively identify it is to do a physical examination to determine if there are any findings that are consistent with pain, such as spasm, retractibility tenderness or restriction of mobility, or a positive or immediate or provocative maneuver like a straight leg raising test.

Q Okay.

Now, did you test his range of motion at all?

A Yes, I did.

Q Did you perform active or passive range of motion tests?

A Active range of motions. When you perform active range of motion, you would actually be taking an individual's joint through the range of motion with your hands, as opposed to passive range of motion, which is just asking an individual to move in a certain direction.

Q Okay. And is there an objective-subjective component to a range of motion test?

A No. This is, if performed actively, this is an objective examination.

Q And if performed passively?

A There is a - there is some subjectivity to passive range of motion. For example, if I am - take a* reduction of the shoulder. If X ask an individual to raise their shoulder as far as they can, they may not be able to go all way because they are having some pain; whereas actively, if you put them through it, that removes that subjective component.

Q And would there been other reasons that you are familiar with where a patient would not be able to raise their arms any higher?

A An individual might not be able to raise their arm due to weakness, due to pain or due to restriction of mobility in the joint itself, or just not wanting to do it.

Q Okay.

Following your history and physical and your complete examination, did you make an impression concerning this patient?

A Yes, I did.

Q What was your impression or opinion regarding this patient's condition?

A That there really was no objective findings to verify his suggestive complaints. His neurological exam was completely within normal limits. The examination of his neck, back and shoulder was normal.

Q Now, following your examination, did you subsequently, or later on, review additional medical records?

A Yes, I did.

Q Now, are you aware of any conditions, conditions or events, other than the plaintiff's accident which he testified about, which could be the cause of the plaintiff's medical complaints?

MR. COHEN: Objection to the form, your Honor.

THE COURT: Sustained to the form.

Try again.

Q Dr. Hausknecht, are you aware of any other subsequent events or conditions that may have caused the plaintiff's complaints?

A Yes.

Q What are those conditions that you became aware of?

A Well, specifically, that I believe his subjective, complaints are coming from arthritis, degenerative joint disease. That was evident in the diagnostic tests that were done. Also he has had other injuries, specifically a car accident a week before he came to see me.

Q And when did you learn for the first time that the plaintiff had a car accident the week before you saw him?

A On Tuesday when I spoke with you.

Q At the time that you saw plaintiff, did he mention, to you that he had been in a car accident the week before?

A To the contrary. He specify denied it. It's a standard question that I ask: Have you ever been involved in any other accident, car accident, accident on the job, slip and fall, have you ever had any other problems with the neck back and shoulder. And Mr. Dotson denied it.

Q Okay.

MR. COHEN: Same objection as before, your Honor.

THE COURT: Overruled.

Q So you never - I want you to assume that plaintiff testified, Mr. Howard Dotson, that is, testified that he sustained injury to his hand in which he had embedded glass in it that had to be surgically removed. Were you ever made aware of that injury?

A No, I was not.

Q Now, Dr. Hausknecht, I want you to assume there was testimony given during the course of the trial. First, I want you to assume that Sean Dotson testified that at the time of the accident his car was rolling forward at one mile per hour. I also want you to assume that Sean Dotson testified that at the time of contact, his car moved very slightly. Doctor, I also want you to assume that he testified both of them were wearing a seat belt. I want you to assume that he testified that no portion of their bodies came into contact with any portion of the car except for the headrest. I also want you to assume that Sean Dotson testified that the damage to his vehicle was limited to a cracked taillight and a small dent in the bumper. Now, further, I want you to assume that Howard Dotson testified that at the time of impact, the car moved forward about a foot.

Do you have an opinion within a reasonable degree of medical certainty as to whether an automobile accident with that type of velocity caused all the plaintiff's. Howard Dotson's, injuries?

A Yes, I do.

Q Would you tell the jury what that opinion is?

A I don't believe that his condition came from a car accident. I believe that his condition is, his complaints come from degenerative joint disease in his neck, back and shoulder.

Q What is the basis of your medical opinion that there were other causes of his condition?

A It's based on the history, the physical examination, the review of the records and review of diagnostic tests. Specifically the diagnostic tests. The MRIs show desiccation and hypertrophic changes, bone spurs in the neck back and shoulder. These are long-standing conditions. These are conditions that had to have been there at least six months prior to. That those MRIs were done a month or two after the accident is a clear indication that they were there before - the accident.

Q Okay.

I also want you to assume that Dr. Bhansali, plaintiff's orthopedic surgeon who performed the orthoacopic surgery upon plaintiff's left shoulder, he testified that the need for that surgery was caused by a degenerative bone spur and a degenerative tear of the left shoulder. And he also testified, I want you to assume, that the degenerative tear and bone spurs were not caused by the automobile accident. He also testified, I want you to assume, that - Dr. Bhansali said the surgery was necessitated or caused by a degenerative condition and not the car accident.

Do you have an opinion within a reasonable neurological certainty as to whether his shoulder condition was caused by the -car accident?

A Yes, I do.

Q What is that opinion?

MR. COHBN: Objection, your Honor.

THE COURT: Overruled.

MR. COHEN: As to the qualification.

THE COURT: Overruled. answer.

A My opinion is that his shoulder condition is due to degenerative changes, or arthritis. Basically the bone,spurrubs against the rotator cuff tendons over the course of time, repetitively, over and over again, and this resulted in the condition that 1m had, an impingement syndrome.

Q Row, I'm going to switch gears a little bit. I want to talk about flean Dotson.

Dr. Hauskneht, to step back on moment, the injury to Howard Dotson's lower baok, X believe you testified, were limited to desiccation.

A Correct. The MRI revealed desiccation of the L4 and L5-S1 disks.

Q Was that a condition that was caused by the car accident?

A Mo. Once again, this is a degenerative condition.-It's due to the constant repetitive pounding of the bones on the disk over and over. Through the course of time it wears the disk out and that disk gets dry. Once again, this desiccation occurs - at least the desiccation had to be there for at least six months in order for it to show up on the MRZ to that extent. And the MRI was performed on February 11th, which was approximately three months after the accident, so it's a clear indication that that desiccation was there before. It's a very common finding in individuals. that have physically demanding jobs.

Q And let's talk about the cervical spine very briefly. Z believe there was and MRZ which found a 3-4 - and correct me if I'm wrong - herniation.

A The MRI revealed what's called a disk ridge complex at the level of C3-4.

Q And what is the medical significance of that, if any?

A The ridge is the same thing as a bone spur, or arthritis or hypertrophic degeneration. That is a slowly chronic progressive, process. In order for there to be a bone ridge, that had to be there at least six months before the; NRZ was done. It could have been there for a year, it could have been there for five years, but it had to be at least six months.

Q You have treated patients with chronic pain conditions in the past. Correct?

A Correct.

Q Are there-certain symptoms or conditions that you? would expect to see in a patient who experienced chronixpect to see in patients experiencing chronic pain over a -h long period of time?

A I don't understand the question. The findings that you -

Q Yeah.

A The typical findings in chronic pain, for example, in the cervical spine, would be restriction of mobility, which would include a positive or provocative manipulation of the spine in a certain position, you may have been able to reproduce that pain if there was nerve involvement in the pin or nerve roots. You would expect to see symptoms or signs of a radieulopathy. Radieulopathy refers to the impingement or dysfunction of the nerve roots. You would expect to aee weakness, reflex changea and sensory changes. These were not present in Mr. Dotson on examination.

Q Are you familiar with the medical term atrophy?

A Yes.

Q Is that a finding you would expect to see with an acute pain condition?

A Atrophy is a long-standing type of condition. With amage to a nerve or to a muscle, that muscle will shrink up or atrophy.

Q And did you see.any type of atrophy with Mr. Howard Dotson?

A No, his mucle tone was normal.

Q All right.

Now we move over to Sean. You conducted a hiatory on Sean.

A Yea, I did.

MR. REDDY: Withdraw the question, pleaae.

Q Your examination of Sean, when did that take place?

A On the Bane day.

Q And at the aame office, correct?

A Correct.

Q You did a physical examination and you took a hiatory. Correct?-

A Correct.

Q What did that history consist of?

A The history that Sean gave was that he was the driver of a vehicle and was restrained. He reported that he injured his neck, back and left jaw at the time of the accident. On the day that I saw him, he said that his neck pain had improved slightly but he was still having discomfort in his lower back, the pain persisted. He was having pain sporadically on the left side of his jaw.

Mr. Dotson, Sean Dotson, did tell me he was involved in a prior motor vehicle accident at the age of six or seven and sustained facial trauma which required surgical repair. He was employed in a stock room and was working full time. His job was physically demanding and required a great deal of lifting and driving.

Q You examined Sean Dotson?

A Yes, I did.

Q Would you tell the jury about the findings of your physical examination?

A The physical examination, the cranial nerve portion, indicated that there was some subluxation at the right TMJ, that's the temporal mandibular joint. What I mean by subluxation, that's a clicking type of sensation that occurs in the jaw. The remainder of the examination was completely normal. The motor strength was intact, the reflexes were intact, sensation was normal, there was full movement of neck and back. And on the functional examination, he was able to walk on his toes, he was able to walk on his heels, he was able to do deep knee bends, he was able to hop independently on either foot, he was able to do the jumping jacks. This is a standard examination that I do in my office. He was able to do all these things without any difficulty or pain.

Q What is the significance, if any, of the subluxation, the clicking of the TMJ joint?

A It depends on the individual. Sometimes it's normal. People can, some people have clicking of their jaw which doesn't cause any problem, they go throughout life with it. Some people have clicking of the jaw which results in TMJ syndrome. TMJ syndrome is painful, consists of pain and difficulty chewing and eating..

Q Now, with the exception of that finding, was Sean Dotson's physical examination essentially normal?

A It was completely normal.

Q Okay. And following your examination, did you come to an opinion concerning Sean Dotson?

A Yes, I did.

Q What was that opinion?

A That he may have had some injuries in the past, but that he had made a full recovery, though, from those injuries. There is no evidence of any long-term neurologic sequela as a consequence of this accident. There was no nerve damage.

Q I want you to assume again, Doctor, that there was testimony from Sean Dotson himself concerning the accident, and his testimony was that the car moved very slightly upon impact. His testimony was that his vehicle was moving about, was rolling forward about one mile per hour. At the time of this accident they were both wearing seat belts in the car. At the time of the impact, no portion of their bodies hit any portion of the car except the headrest at the time of the impact.

Sean Dotson also testified as to a small - cracked chip in the taillight and a small dent in the bumper. Howard Dotson testified that the car moved forward maybe foot, foot and a half. Both Howard Dotson and Sean Dotson testified there was no damage to the other vehicle.-

Doctor, do you have an opinion within a reasonable degree of medical certainty as to whether the velocity of that accident caused Sean Dotson's injury?

MR. COHEN: Objection, both to the entry of prior testimony and to the qualification to opine on the effect -

THE COURT: You are overruled.

You can answer that.

A Yes, I do.

Q Could you tell the jury what that medical opinion is?

A I don't believe that Sean Dotson's injuries were caused by this accident. I don't believe that there is anything wrong with him, but the MRIs show some degenerative changes as well.

Q Do you have an opinion within a reasonable degree of medical certainty that Sean Dotson's injuries are degenerative in nature?

A Yes, I do.

Q And what is that opinion, and what is the basis of that opinion?

A It's based upon the history, the physical examination, the review of medical records and diagnostic testing, but especially on the diagnostic testing. Specifically, the MRI of the lumbar spine which was performed on February 7th of '97, approximately three months later. It showed widespread degenerative changes from the levels of L1 all the way to L5-S1. Five different levels showed hypertrophic changes of the articulating joints, or bone spurs, between all the vertebrae of the lower back.

Q Do you have an opinion - withdrawn.

Let's discuss the lower back injury. Do you have an opinion within a reasonable degree of medical -certainty with respect to the TMJ condition, as to whether that is degenerative in nature, or whether that was caused by an auto accident?

A Yes, I do.

Q What is that opinion, Doctor?

A My opinion is that that TMJ syndrome was related to his prior motor vehicle accident at the age six or seven. At that time there was a history that his facial trauma required surgery. There was no facial trauma in this second accident in 1996. I don't believe it caused the TMJ syndrome.

Q A history of a prior accident involving trauma was something that Sean Dotson told you. Right?

A Correct.

Q Now, do you have an opinion within a reasonable degree of medical certainty as to whether Mr. Howard Dotson sustained any permanent injury as a result of the automobile accident on December 14, 1996?

A Yes, I do.

Q What is that opinion?

A I don't believe that he has any permanent injury from that motor vehicle accident.

Q And as a result of that automobile accident, did Mr. Howard Dotson sustain any significant impairment, within a reasonable degree of medical certainty?

A I'm sorry.

Q I'll repeat the question.

As a result of an automobile accident that Mr. Howard Dotson was in on December 14, 1996, did he sustain any significant impairment?

A No, he did not.

Q Now let's move on to Mr. Sean Dotson.

Did Mr. Sean Dotson, within a reasonable degree of medical certainty, Doctor, sustain a permanent injury as a result of that accident, automobile accident of December 14, 1997?

A With a reasonable degree of medical certainty, I don't believe that Sean Dotson sustained any permanent injury. As to any neurological damage, both Sean and Howard have some underlying joint disease, but that was not caused by the accident and is not causing any impairment.

Q And, finally, did Sean Dotson suffer significant impairment as a result - as a result of the accident on December 14, 1996?

A No, he did not. And, in fact, he's still working full time in a very physically demanding position. If he in fact had any neurological damage, he would not be able to perform those activities.

Q Thank you.

THE COURT: Jurors, step down and- stretch your legs. Don't talk about the case. Thank you, very much.

(Whereupon, the sworn jurors exited the courtroom.)

(Whereupon, a brief recess was held.)

(Whereupon, the proceedings continued in open court.)

COURT OFFICER: Jury entering.

(Whereupon, the sworn jurors entered the courtroom and took their respective seats.)

THE COURT: All right. Be seated, please.

All right, Mr. Cohen, your turn to cross-examine.

CROSS EXAMINATION

BY MR. COHEN:

Q Good morning, Doctor.

A Good morning.

Q You brought your entire file with you with respect to each of these patients?

A Yes, I did.

Q And may I see those?

A Certainly.

COURT OFFICER: (Handing.)

Q Doctor, as I look through these files, are there any handwritten notes written in these files?

A No, not of mine.

Q At any time, did you make handwritten notes?

A I may have scratched some things down, but I dictate my reports.

Q You dictate them from your handwritten notes?

A No, from memory.

Q Okay. What do you make of the things you write down by hand?

A Sometimes I will record certain information, like a date of an accident or a patient's age.

Q Okay.

Now, is there correspondence in this file that you received from the city's law department?

A No.

Q Okay. But you did receive correspondence in the course of this work from the City's law department, correct?1

A No, not to the best of my knowledge.

Q Were your communications, were they all by telephone?

A I believe so, yes.

Q Okay. And you wrote one or two letters to them, like a cover letter including your reports?

MR. REDDY: Objection, your Honor.

THE COURT: Sustained.

Q Now, you testified that - to back up, just to make absolutely certain, does your office give these patients coming in for independent exams any type of written instructions, or are there any posted in any way at all?

A Absolutely not.

Q Now, how many offices do you have?

A Currently I'm working in Manhattan and Queens.

Q So the 57 West 57th Street, that's your Manhattan office?

A Correct.

Q Okay. And have you ever had a Brooklyn office?

A Yes. At the time I saw the patients there was an office in Brooklyn.

Q In Brooklyn?

A Correct.

Q That was your office that you saw them in?

A Correct.

Q Now, you mentioned you teach at St. Johns Hospital. There are many St. Johns hospitals. Which one were you referring to?

A St. Johns Episcopal Hospital in South Shore.

Q Where is that located?

A In Far Rockaway, Queens.

Q And likewise Peninsula Hospital, that's out in Rockaway. Correct?

A Correct.

Q Now, did I understand you correctly to say that degenerative joint disease is present in anyone?

A What I stated is that degenerative joint disease is a process that occurs in everybody. It starts in early adulthood and progresses through the course of a lifetime. In some individuals it's more advanced than in others. In some individuals it causes problems and in others it doesn't.

Q All right. But you would agree with me, would you not, that, notwithstanding the degeneration, the patient does not become more vulnerable to trauma on account of that degeneration. Correct?

A I'm not sure I understand the question.

Q The degeneration does not make any patient more vulnerable to trauma.

A No, I would not agree with that statement.

Q Would you not agree with that? So then degeneration can make a patient more vulnerable to trauma. Yes or no, Doctor?

A Trauma has nothing to do with degeneration? Then I can't answer that yes or no.

Q X didn't say it had anything to do with it. I said if there is degeneration present, can it make that person more vulnerable to trauma?

THE COURT: Sustained to form.

Do you understand?

THE WITNESS: No. Trauma and degeneration, no.

Q All right.

I want you to assume that there was degeneration in the patients you examined, as you have indicated. Correct?

A Correct.

Q I'm asking you whether you agree with my proposition that that degeneration, no matter how much if there was, did; not make them more vulnerable to trauma?

A I still don't understand the question. More vulnerable to getting into a car accident?

Q No, more vulnerable to having a tissue tear because the degeneration was present.

A Degeneration can render an individual more susceptible to an injury.

Q All right. Thank you.

Now, desiccation, would you also agree that no matter how much desiccation there is, it's not going to make a patient more vulnerable to trauma?

THE COURT: Well, trauma -

MR. COHEN: I'll rephrase the question.

THE COURT: No, no. Let's proceed.

Q X want you assume the presence of the desiccation that you testified to earlier. Isn't it true that that desiccation can make, a desiccation let's say, specifically in an intervertebral disk, that can make that disk more vulnerable to injury given a trauma?

A No, I don't agree with it.

Q Now, when did you review the records that you say you reviewed?

A Some of them were reviewed on the date that the report was rendered, some of them were reviewed on Tuesday when I met with Mr. Reddy, and I also reviewed some records as well.

Q Some records were reviewed before you wrote your report?

A Yes.

Q Neither of your reports state that you reviewed those records. Correct?

A It states that the patient had been treating with the doctors whose records I have.

Q I didn't hear.

A It states that the patient had been treating with the doctors whose reports I had reviewed.

Q Can you show me where it says that?

MR. REDDY: Objection. Which patient?

THE COURT: Which patient?

MR. COMEN: Either patient.

A For Mr. Sean Dotson, it says that the patient was seen by Dr. Bellpolsky, that he began physical therapy with Dr. Batash, those two records.

Q It doesn't say that you reviewed their records, does it?

A As I stated, it says that the patient treated subsequently. He saw Dr. Bellpolsky, and later he began physical therapy under the supervision of Dr. Batash.

Q May I have an answer to my question? It does not say that you reviewed those records.

A It's implied in the report.

Q In other words, it doesn't say?

A As I stated, I reviewed these records, and it is implied in report that the patient was treating with these doctors. Those records were reviewed.

Q Thank you.

What were you reviewing earlier when I saw you conferring out in the hall with counsel?

THE COURT: Sustained to form.

Q What records did you review with counsel out in the hall?

THE COURT: Sustained to form.

Q Before you testified, immediately before you testified, what records did you review?

A All the records.

Q Okay. I mean - immediately, moments before you testified when you were sitting in the hall, what records did you review?

THE COURT Mr. Cohen, I don't care about what your observation was. Don't give it in the form of a question. Sustained.

Q What reports did you review within minutes of the commencement of your testimony?

THE COURT: Did you review any records within a few minutes of your testimony?

THE WITNESS: Yes.

Q What reports were they?

A All the records that are in these files.

Q So that's certainly different. It was a re-review.

A If that's what you want to say, yeah.

Q Now, in your testimony, were there any parts of your physical exam that you did not describe on the questioning by

A I believe that I discussed all the pertinent findings. I didn't go through every single thing.

Q Now, you didn't - with respect to the alleged the claim of carpal tunnel syndrome, you did not perform a test for Tinel sign, did you?

MR. REDDY: Objection, your Honor. I would ask that counsel specify which patient he's talking about.

MB COURT: Yes. There are two patients.

MR. COHEN: With respect to Howard Dotson. You are absolutely right.

Q With respect to Howard Dotson did you - you did not perform a test for Tinel syndrome, did you?

A I don't remember. It's not documented in the report.

Q Could you explain to the jury what the definition for Tinel syndrome is?

A A Tinel is a test performed by tapping over the median nerve.

Q And what is it that you look for when you do it?

A You look for paresthesia, or tingling in the hands That would be consistent with nerve distribution.

Q You percuss the forearm with your fingertips, correct?

A Correct.

THE COURT: It's a big word, percuss.

MR. COHEN: I don't believe I said -

Q And that is intended to elicit or not elicit some findings from the patient. Correct?

A Correct.

Q And it's easily performed; wouldn't you agree?

A Sure. After four years of college four years of medical school and four years of medicine and board certification, then you are qualified to perform that.

Q I did not mean to take away the training that was required.

Now, you did perform a straight leg raising test. Correct?

A Correct.

Q And I believe you said that was done passively - actively.

A Actively.

Q Actively. All right. A straight leg raising test performed actively is an objective test, isn't it?

A Correct.

Q All right.

You were questioned by my adversary whether or not there is a way to test for pain. Isn't it true that there are many neurologists who test for pain by performing thermograms?

MR. REDDY: Objection, your Honor.

THE COURT: Sustained.

Q Is a thermogram a test for pain?

A In my opinion, a thermogram is not a useful diagnostic test.

Q All right. Those who use it, use it to test for pain. Correct?

THE COURT: Sustained.

MR. COHEN: Objection, your Honor.

Q Have you ever performed a thermogram?

A No. As I stated, I don't think the information that comes from a thermogram is useful. It's not something that I use, and it's not something that is widely accepted as a standard of care in the practice of neurology or pain management.

Q Have you ever received any training to perform thermograms?

THE COURT: Sustained. He doesn't use it, so let's move on from there.

Q Now, you spoke about arthritic changes at length in the course of your examination, correct, Doctor, with respect to both patients.

MR. REDDY: Objection.

THE COURT: Sustained. He spoke about them.

Q Trauma is one of the recognized causes of arthritic changes, isn't it?

A After trauma, chronic arthritic degenerative changes can occur, yes.

Q So that's a yes answer?

A Yes.

Q All right.

Now, I would ask you to direct your attention to the very last sentence of your report regarding Howard Dotson.

A Okay.

Q That sentence reads: Furthermore, the activities - .

MR. REDDY: Objection, your Honor.

THE COURT: May I see the report, please? Come up. Bench, please.

(Whereupon, a bench conference was held off the record.)

(Whereupon, the proceedings continued in open court.)

THE COURT: Sustained.

Q You would agree, Doctor, would you not -

MR. REDDY: Objection, your Honor.

THE COURT: Overruled.

MR. REDDY: He is reading from -

THE COURT: Overruled.

Q That being, the activities performed on the functional exam by you clearly demonstrate that Mr. Dotson has made a full recovery from any injuries that may have been sustained. Correct?

MR. REDDY: Note my objection.

THE COURT: Overruled.

A Correct.

Q That's true?

A That's my opinion, yes.

Q Okay. And with respect to Sean Dotson, you would agree that the activities performed on the functional exam you performed upon him demonstrates that he has made a full recovery from any injuries he may have sustained. Correct?

A Correct.

Q Okay.

Now, you also indicated that, you testified - forgive me if I'm inaccurate - that you testify 80 percent for plaintiffs.

A More or less, yes.)

Q But much more for plaintiffs than for defendants.

A Correct.

Q Okay. Do all of the plaintiffs you testified for have degenerative joint disease?

A Do all of the plaintiffs I testified for - I don't know. You have to - tell me exactly which person you're talking about.

Q Well, didn't you testify under questioning by me. just a little while ago that, yes, all people from a certain age have degenerative joint disease present?

A Yes. All adults have degenerative joint disease which progresses through the course of their lifetime. To a certain extent, some of these people are symptomatic and some of them are asymptomatic from it, but everybody's got it.

THE COURT: Is it a disease, Doctor, or is it just a condition that develops?

THE WITNESS: It would be considered a disease if in fact it was causing problems; otherwise, it would just be a condition.

Q So again, Doctor, the plaintiffs that you testify for, the adult plaintiffs that you testify for, have some degenerative joint disease present. Correct?

A I don't know who you're talking about specifically, but as I stated, everybody has degenerative joint disease to a certain extent, adults. That doesn't mean it causes physical problems. It doesn't mean that the condition was coming from the degenerative joint disease.

Q That's right.

Now, the plaintiffs that you testified for, however, are making claims of traumatic injuries so they can be compensated for actual injury. Correct.

MR. REDDY: Objection.

THE COURT: Would you read that back?

(Whereupon, the requested question was read back by the court reporter.)

THE COURT: Sustained.

Q Do you testify for any patients who are seeking to be compensated for degenerative joint disease?

A Can't answer that question.

Q Now, you saw each of these patients one time -

A Correct.

Q - correct? So each of them a maximum of 20 minutes. Correct?

A Correct.

Q And you did not see them the day before, you didn't see them the day after. Correct?

A Correct.

Q You, Doctor, have no degree in physics. Correct?

A NO degree, correct.

Q Okay. And in medical school, you did not study the effects of various velocities in relationship to traumatic injury. Correct?

A Well, not that is not correct.

Q You have no degree in engineering. That's correct, isn't it?

A Correct.

Q Okay. And you have no experience in the automotive industry administering tests that relate to the effects of velocity. Isn't that correct?

A Correct.

Q You see Howard Dotson here in the courtroom today?

A I see one of defendants. I'm not sure which one it is. One of the plaintiffs, rather.

Q Now, Doctor, you don't perform any surgery in your practice, do you?

A No.

Q You haven't the whole time that you have had a practice of your own. Correct?

A No, I don't perform surgery.

Q Okay. And in all of your training and experience going back all the way through medical school, have you ever performed a surgery on a rotator cuff?

A Yes, I have.

Q How many of those have you done?

A I don't remember the exact number, but a few.,

Q Less than ten?

A Yes.

Q You have training in reading MRIs.

A Yes, I do.

Q And you consider yourself capable of independently interpreting an MRI film.

A Absolutely.

Q You would agree, would you not, that an MRI of a shoulder is infinitely more reliable in ruling out a rotator., cuff tear than an intraoperative photograph, wouldn't you?

MR. REDDY: Objection, your Honor.

THE COURT: Overruled.

A Intraoperative is the gold standard. It's a direct visualization. The gold standard, or direct visualization intraoperatively, is preferable to the MRI.

THE COURT: Just tell us what that is. Explain that to the jury.

A Gold standard would refer to the mark that other tests would have to live up to.

THE COURT: You mean the optimum?

THE WITNESS: It would be the best available.

Q All right.

THE CODRT: Thank you.

Q So, then I want you to assume that you receive an MRI report that you have requested that says there is no rotator cuff tear present.

A Correct.

Q Then intraoperative photographs are taken that show, a rotator cuff tear. You would then conclude that there was rotator cuff tear, would you not?

MR. REDDY: Objection, your Honor. No such evidence.

THE COURT: Mr. Cohen, you want to repeat that for me again?

MR. COHEN: It's hypothetical. I'm asking him to -

Q Assume that you requested and received an MRI report preoperatively of a shoulder, and it says no evidence of a rotator to cuff tear. You then assist in the surgery, and intraoperative photos are taken which show a rotator cuff tear. You would conclude, would you not, that the MRI was incorrect, would you not?

THE COURT: Overruled. A No, I would not. I would assume if it was done on that mm day, yes But if an MRI was done on December 26th and you have a surgery that's done on March 19th, you would assume that the tear occurred in between that period of time between, December 19th, from the bone spur rubbing, up against the rotator cuff.

Q Okay.

THE COURT: Let's proceed Mr. Cohen.

Q Doctor, among the reasons that you stated that you have qualifications in reading and interpreting MRIs is the fact that in medical school you actually received some radiological training. Correct?

A Correct.

Q okay.

You would agree, would you not, that an MRI of a shoulder taken two years after the repair of a rotator cuff tear would be read as showing a postsurgical or healed rotator cuff rather than be read merely as normal.

MR. RBDDY: Objection, your Honor. THE COURT: Overruled.

A If you're talking about an MRI that was done on Howard Dotson and the subsequent MRI was read as normal, the surgery healed, you wouldn't see any sign of a postoperative tear, all that means is that if they take a piece of bone and sew the tear together, there won't be anything there to see.

Q So then you're saying it would be read as normal?

A If the radiologist's clinical was information that the patient had been in surgery two years ago, then they would read it as normal, no evidence of surgical changes. If they didn't have that information, they would just read it as normal.

Q So, then normal does not mean there never was a rotator cuff tear. Correct?

MR. RBDDY: Objection, your Honor.

THE COURT: Overruled.

A It means that the tear has healed up.

Q Thank you. V

Now, you testified that you are getting paid \$500.00 per hour for your time away from the office. When did the clock start to tick on that charge?

A Nine o'clock this morning?

Q Nine o'clock this morning. And at what time will it cease ticking?

A When - we stop talking, I guess.

Q Okay. It wouldn't continue until you get back to your office?

A No.

MR. COHBNI Just about finished, Your Honor.

Q Now, for both of these patients you made a notation, no medications. What did you mean by that?

A The patients were not taking any medications at the time that they saw as.

Q At the time that they -

A Saw me on December 1st of '97.

Q I want you to assume that, notwithstanding that information that you say you received, Howard Dotson in fact took the drug Iodine the evening before he was seen by you. Would that have any effect whatsoever on the findings you elicited?

A No, I don't believe so.

Q Did you take x-rays of either of these persons?

A No. I did not. They had already been. Extensive diagnostic tests were done.

Q You didn't take MRIs either, correct?

A I'm not the treating physician. I was early asked to do an evaluation to try and figure out what was going on.

Q What was your charge for the reports that you wrote. on each of these patients?

A I don't recall, but it was probably about \$250.00.

MR. ???: No further questions, your Honor.

THE COURT: Any redirect, Mr. Reddy?

MR. REDDY: No.

THE COURT: Doctor, thank you, very much.

THE WITNEES: Thank you.