

From the side, this represents a metallic plate on the front of the neck. And there are a series of screws which are placed into the cervical bone, five, and another set -- I'm sorry, into the number 6 body and into the number 7 vertebra] body.

The screws, a set of four screws, are attached to the plate in the front of the neck. In addition now to these constructed in the back of the neck, there are another series of two screws placed and another two screws placed in the C6-C7 set joints which are, basically, the bony structures in the back of the neck Attached to another series of two plates. These are metallic plates, two that are placed with a set of four screws in the back of the neck.

In addition, you will see this small loop that's appearing in white. This is an additional metallic wire which is placed between the back of the bone of C6 connected to C7.

Lastly, I would like to make a comparison. You could see the space here as black, but between here it's white. The reason that it's white, there was a piece of bone graft placed between this bone and this bone (indicating) to fuse this cervical vertebra together. This is the bone graft, what was placed and incorporated into the neck.

Q Are you aware where that bone graft came from?

A The bone graft is a piece of iliac crest pelvic bone graft.

Q And how do they obtain the pelvic bone graft?

A I would have to review the record, if I may, to obtain that information.

Q Without reviewing the record, in general, how do you obtain a piece of bone from the pelvis?

A. The bone graft is obtained by making a separate incision in the area of the pelvis, in order to harvest a piece of bone graft The other way is by obtaining the bone graft from the bone bank.

Q And, Doctor, referring to Plaintiff's Exhibit 5, would you kindly explain to the jury what that is?

A Exhibit 5 is labeled "Guy Magloire, date of service, May 10th."

THE VIDEOGRAPHER: Going off the record.

(Discussion off the record.)

A May 10, 2004, again, I'm going to refer to the neck model. These X rays are obtained by

taking a view from the front to the back So in contrast to this radiograph, this is looking at the neck from the front view.

Looking at it from the front view, this is the skull, this is the bottom of the neck, these are the ribs coming off of the upper torso. We can see the bony structures which appear white. And again, we see these white metallic objects This H-shaped object with four points in it represents the plate that was placed in the front of the neck with four attached screws in between here.

This is a piece of bone graft, The other view shows two additional round objects which represent two screws, along with the plates on the left side and on the right side.

Q Thank you, Doctor.

Doctor, from looking at Plaintiff's Exhibits 4 and 5, can you make a determination as to whether or not there is any sort of degenerative condition that has - is there any sort of degenerative condition since the initial set of X rays were taken by your office in June of 2002?

A Going back to Exhibit Number 4, on the lateral or side view of the neck, one can observe that the space between the disk at the C5-C6 level is starting to diminish in height, resulting the degenerative changes into -- in the level, the area where the surgery was performed.

Q Can you explain what that means, the degenerative changes, and the impact on Mr Magloire's life?

A The degenerative changes are a process which are being accelerated by a place where there has been a fusion, causing acceleration of the degenerative changes. It is a progressive deteriorative process which appears over the extent of a lifetime.

Q Can you also determine whether or not there is any arthritic condition from looking at the X rays?

A There is slight arthritic condition up at the C3 level, with an osteophyte.

Q Is mat arthritic condition related to the January 25, 2002, motor vehicle accident, in your opinion?

A Anyplace, no. Not at the C3 level.

Q Okay.

THE VIDEOGRAPHER: Going off the record, it's 4:38 p.m.

(Discussion off the record)

THE VIDEOGRAPHER: Back on the record. Continuing the deposition of Dr Rafiy. It is now 4:52 p.m.

Mr. Frankel, please continue.

Q Thank you.

Dr Rafiy, when you examined Mr. Magloire on May 10, 2004, you conducted a physical examination; correct?

A Yes.

Q Would you kindly tell the jury the condition of Mr Magloire's bone graft on May 10, 2004?

A There was evidence of callus infusion at the C6-7 level

Q Could you again kindly explain to the jury what that means?

A At that point, the two vertebral bones of the neck at C6 and C7 were connected and fused together.

Q What impact, if any, does that have on Mr Magloire?

A The impact is that there is the two vertebral segments which normally bend and extend on each other, and rotate from side to side, are now unified as one unit Therefore, there is no associated motion between those two segments of bone.

Q At this time, do you recommend any surgery for Mr. Magloire?

A At the present time, no surgical procedure is currently recommended.

Q What, if any, surgical procedure could be recommended in the future, and when would it be recommended?

A The potential for a future cervical surgery includes the subsequent removal of the hardware, and the associated degenerative changes that develop at the level requiring subsequent treatment.

Q Could you explain to the jury whether or not Mr. Magloire suffers any pain or discomfort as a result of those degenerative changes?

A Yes. As a result of the resulting cervical fusion and degenerative changes, the patient will experience neck pain and restricted range of motion.

Q And over time, Dr. Rafiy, will that condition continue progressively to get worse?

A. That condition is a degenerative and deteriorative process which worsens over an extended period of time.

Q Dr Rafiy, what treatment do you recommend for Mr. Magloire in the future?

A. The treatment recommendations in the future include continued strengthening exercises for the upper extremities, chiropractor treatments and adjustments, continued use of anti-inflammatory medications, and analgesic medicines, and periodic follow-up with his treating orthopedic surgeon.

Q. Dr. Rafiy, would you also recommend X rays and MRIS in the future?

A The follow-up studies include with the treating physician diagnostic X rays and MRIS.

Q Would you recommend physical therapy for Mr Magloire on any specific basis?

A The recommendation is for physical therapy at two to three times per week.

Q. And, Doctor, what would be the approximate cost for each physical therapy visit?

A Physical therapy visits on average is \$75 per visit.

Q And as far as an orthopedic surgeon, approximately how often should Mr. Magloire consult your type of specialty in the future?

A In the future, once every three to four months.

Q. What's the approximate cost for that examination?

A Examination, a visit, a hundred and fifty dollars.

Q Not including any diagnostic tests; correct?

A Correct.

Q That would include X rays?

A Correct.

Q And what's the approximate cost of a series of X rays?

A Approximately \$90.

Q And for the MRI of the cervical spine?

A \$900.

Q How often would you recommend chiropractic care in the future?

A Chiropractic care recommended at approximately two times per week.

Q What's the approximate cost for each chiropractic visit, approximately?

A Approximately \$50 for evaluation.

Q Doctor, at this time do you have any opinion as to whether the scarring on Mr. Magloire's body from the surgical intervention in January 2002 is permanent or not?

A Yes.

Q Is Mr. Magloire's scarring permanent?

A. Yes, it is.

Q Do you have any opinion with regard to whether Mr. Magloire will suffer pain and discomfort in the future?

A. Yes.

Q What is your opinion, sir, and explain why?

A My opinion is that Mr. Magloire will continue to experience neck pain, which will be exacerbated and aggravated depending on the activity level, represented by the amount of activity, lifting, pulling that is performed.

It will also -- the neck pain will be aggravated and worsen depending on the changes in the temperature. If it's a cold damp day, with changes in the barometric pressure, the neck pain will be worsened and aggravated. Also affected by the amount of pain medication that is utilized or

not utilized during that time.

Q In your professional opinion, will Mr Magloire have to restrict his activities in the future as a result of his injuries?

A Yes.

Q For example, would you recommend Mr Magloire play football?

A No.

Q Would you recommend Mr. Magloire play soccer?

A No.

Q What restrictions would you have for Mr Magloire in general?

A. The current restrictions for Mr. Magloire include his ability to push, pull, lift or carry over 40 pounds, 30 to 40 pounds.

He is restricted in the type of sporting activities, including any type of contact or sports that require excessive rotation of the cervical spine would be restricted.

Q In your professional opinion, Dr. Rafiy, within a reasonable degree of medical certainty, will Mr. Magloire continue to suffer pain and discomfort for the balance of his life expectancy?

A Yes.

Q And specifically, will Mr Magloire suffer permanent pain and suffering in his neck?

A Yes.

Q Will he suffer pain and suffering in any other parts of his body due to the injuries he sustained in his cervical spine?

A Yes.

Q What other parts of his body would be affected by him sustaining the cervical spine injury?

A He has sustained motor and sensory abnormality in the left upper arm.

Q. In your professional opinion, Doctor, with a reasonable degree of medical certainty, does Mr.

Magloire have a permanent impairment you can rate as a percentage according to the American Medical Association guidelines on permanent impairment?

A. Yes.

Q What percentage of permanent impairment can you attribute to Mr. Magloire?

A. The percentage of permanent impairment for Mr. Magloire would be 60 percent.

Q And. Doctor, why 60 percent? Can you explain to the jury?

THE VIDEOGRAPHER: Going off the record It's 5:01 p.m.

MR. BROWN: I want a noted objection to that based upon the 26 F disclosure. At this time, there's been no associated rating. We can fight about it later, whether you supplement it or not. If this was at trial, I would not allow it.

But, we are not at trial, and on the line of questions of his permanency, that I will object to at this tune. If it's resolved in the future, so be it.

MR. FRANKEL: Obviously, we respectfully disagree with your objection. We are taking Dr. Rafiy's deposition. He saw Mr. Magloire on May 10, 2004, and I'm asking him based upon his May 10, 2004, evaluation as a treating physician, whether or not he has an impairment rating that he arrived at. And he is saying he has.

Your objection is noted, but there is absolutely no prejudice. You are entitled to have your doctor opine. Obviously, I mean, your doctor may have opined. I don't have the records in front of me.

Your objection is noted for the record.

MR. BROWN: As to Saying that's related to his visit of May 10, 2004, I don't know what the question was specific to that. Second, it seems rudimentary that we sit here only two days from that visit.

But, what would occur between this and the time of trial and adding discovery to the claimant, I have to preserve the objection. And your continued duty to disclose to the Defendants the permanent injury.

THE VTDEOGRAPHER We are back on the record. Continuing the deposition. It's 5:03 p.m.

Q Once again, Dr. Rafiy, would you kindly explain to the jury what your 60 percent impairment