MR. BROWN: Off the record.

(Discussion off the record)

THE VTDEOGRAPHER We are back the record, continuing the deposition at 6:13 p.m.

Mr. Brown.

Q. Doctor, after the May 10, 2004, visit, did you recommend an MRI of Mr Magloire?

A No.

Q Have you had any discussions with Mr Magloire about having an MRI taken?

A The possibility of ordering one was discussed.

Q When was that, if you recall?

A During his early treatment period.

Q But to date, there has not been an MRI completed?

A Correct.

Q Doctor, we haven't discussed too much in detail, but if you are able to, we don't have the films here, I would like to look at them, but in the July 2, 2002, X rays, what do your notes at least reflect about what those X rays revealed?

A July 2, 2002, cervical X rays demonstrated the alignment of the cervical plate at C6-7 anteriorly and posteriorly at C6-7, with the wires to be in excellent alignment.

There was incomplete cervical fusion. The bone graft remains in line and incomplete across, at the interbody fusion site.

Q In August, did you see Mr Magloire?

A. Yes.

Q What do your notes reflect, if anything, regarding the fusion at that time?

A On August 7, 2002, there was some development of root callus formation on the bone graft.

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Q And as we talked before, what would the minimum or minor callus formations mean?

A. It represents the incorporation of bone graft across the vertebral bodies.

Q To me as the average layperson, what would that mean?

A This was the purpose of the intended procedure, in order to develop bone fusion and callus across that site

Q So that site is beginning to heal?

A It's beginning to fuse.

Q And actually you talked about how the surgery was conducted. We don't need to go through all that. And that the fusion is in the area, is fused. But when you say, "fused" -- you know what. Strike that. I'm going to go back

I do need the model. We'll go on to that one and put the X rays back up. I'm going to use the X rays at the same time.

THE VTDEOGRAPHER: Going off the record. It's now 6:16 p.m.

MR. FRANKEL: Forgive me. It's the question before it Your characterization saying the callus is healing.

MR. BROWN: He corrected me.

MR. FRANKEL: But the thing is, you are getting the statements out to your targeted audience. The fusion is healing The fusion is not healing. And the doctor will testify to that.

MR. BROWN You have your opportunity to redirect. That's not what the note said. He said, it's beginning to fuse Your objection is noted.

MR. FRANKEL: Thank you very much.

THE VTDEOGRAPHER Back on the record. It's 6-18 p.m.

Mr. Brown.

Q In August 2002, is the Plaintiff still using the bone fusion -- I'm sorry, bone stimulator to assist with the fusion?

A What date? I'm sorry.

Q August 5, 2002.

A On August 7, 2002, he is continuing to use the external bone stimulator.

Q Does he have it on the 5th, though?

A On August 5, 2002, yes, he is using an external bone stimulator

Q Do you know how long, approximately, he used that external bone stimulator? Do your records reflect that?

A. It does not reflect when it was discontinued.

Q How about does the record reflect the use of a cervical collar through this time period, let's say, the summer of 2002?

A Yes.

Q How long did Mr. Magloire use the cervical collar, as well?

A The cervical collar was utilized until July 2, 2002.

Q And just for clarification, for the record, since July 2, 2002, to today's date, has the Plaintiff used a cervical collar?

A. No.

Q Do you anticipate that there will be a need for a cervical collar in the future?

A No.

Q What about the use of a stimulator on an ongoing basis?

A No.

Q After January 22, 2003, did you see Mr. Magloire in 2003 any other period?

A No.

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Q Okay. What's your visit before January 22, 2003?

A January 8, 2003.

Q And on the January 8th visit, were any X rays taken on that date?

A No.

Q And before that you saw the patient in September 2002?

A Correct.

Q Is there any other visit from August 7, 2002, through January 2003, other than those two?

A August 7, 2002, September 19, 2002, January 8, 2003, January 22, 2003.

Q And the -

MR. BROWN: At this point off.

THE VTDEOGRAPHER Going off at 6.22 p.m.

MR. BROWN: Those are the records 1 don't have, so I just want to look at these quick

THE VTDEOGRAPHER Back on the record. Continuing the deposition, it's 25 p.m.

Mr. Brown.

Q Doctor, through the course of the treatment with Mr. Magloire, do you prescribe any sort of prescription medications?

A Yes.

Q What are those?

A Anti-inflammatories, Naprosyn and Relafen.

Q And the Naprosyn didn't work, for lack of better words, for relief and inflammation?

A Correct.

Q How about the Relafen?

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A I believe he had better relief with the Relafen.

Q How about today, do you know if Mr Magloire is still using Relafen?

A Tylenol and occasional Relafen.

Q Is Relafen a prescription medication?

A Yes.

Q If you know, would you be the one that wrote the prescription for Mr. Magloire?

A I had prescribed it one time.

Q To your knowledge, did he ever tell you any other physician was prescribing the Relafen for him?

A I'm not aware.

Q And the one time you prescribed the Relafen, do you recall which visit that was?

MR. FRANKEL: By counsel, that's January 22, 2003.

A Okay. Okay. January 22, 2003.

Q Would that sent you wrote on January 22, '03, have been enough medication to be that Mr. Magloire would still be on it in May 2004 when you saw him?

A Unlikely.

Q The Relafen, you discussed it has the ability to improve the range of motion. Is that what I heard?

Could you explain that to me.

A Indirectly by reducing inflammation and pain, range of motion could be improved.

Q We talked about the May] 0, 2004, visit and your prognosis was guarded. What indicators in the appointment or examination of Mr. Magloire led you to that prognosis?

A Based on the radiographic findings, physical examination, of the range of motion and

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neurologic exam.

Q When you say, "guarded," is that guarded as to the fusion that was performed prior, or guarded for the potential of other things in the future?

A Guarded in terms of any future clinical changes in his range of motion or neurological improvement.

Q. And in the 2004 radiologic review, what was the status of the calcium formation, if your records note that?

A That there was evidence of callus infusion.

Q What would that mean in lay terms?

A Basically, that the two vertebral beds at C6-C7 which were fused, and bone graft have now consolidated as one unit structure.

Q And is it fair to say that was the intended purpose of the surgery in 2002?

A Correct.

Q And if you could, could you show where that fusion on the model you have in front of you would occur?

A There were two fusions performed. The first fusion was performed between the C6 and C7 body. There are the bone here, and the bone here, the bone here, and bone here have now been connected together with a piece of bridging bone, and are consolidated.

The fusion was also performed in the back of the neck between the C6-C7 aforesaid joints here, and also fused here and here with bone grafts. So, it was fused in the back of the neck and it was fused in the front of the neck (indicating).

Q. What, if anything, does the May 10, 2004, report note from the patient about neck pain at that visit?

A. That he was complaining of neck pain.

Q Was it anything different from the prior visits, if you recall?

A. Similar complaints from the previous visits, intermittent neck pain which was exacerbated by the changes in weather, barometric pressure, activity level.

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Q Did he specifically note any activity that would cause problems with the pain in the neck?

A Particularly if in a vehicle, rotating the head, or if he were pushing or pulling, then he would have neck pain Or standing for extended periods of time.

Q And in the course of your treatment, you have placed restrictions as to activities I believe that Mr Magloire should not engage in. Is there anything you have told him he should not do as a result of the injuries he has?

A The current restrictions are no pushing, pulling, lifting or carrying over 30 to 40 pounds No contact sports. And avoiding any excessive rotation at the cervical spine.

Q How about general, I guess, things around the home, yard work. Would yard work have a restriction?

A There can be some general yard work, as long as there are those restrictions engaged during that time

Q What about activities, chores around the home, assisting with laundry or shopping. Would he be able to do those?

A That would be permitted.

Q And you had a discussion there about future surgery with Plaintiff's counsel. What was your medical opinion as of today, your thoughts with regard to future surgery?

A As of today, May 12, 2004, there is no surgical indication. However, the future potential for cervical surgery includes the possibility of removal of the cervical instrumentation and/or addressing any further deterioration or degeneration of the cervical spine.

Q Well, let's take that one at a time, the cervical instrumentation, the instrumentation being surgically removed, what would be the necessity of that at this time? Is there a problem in your medical opinion with the hardware in Mr. Magloire's neck?

A The current indications for removal of hardware or instrumentation in the spine are several factors. One, if it is causing any abutment of any of the neural structures, if there is soft tissue obstruction, personal indications for some patients who prefer not to have any foreign implants in their body, cold sensitivity, their sensitivity from changes in temperature related to metallic objects within the body.

Q Is there any of those points you've just discussed apparent in Mr. Magloire as of May

12,2004?

A Unable to fully comment on it as I don't know what his wishes are or what his status is of having foreign implants in his body.

Q Has he discussed with you that he would like them removed?

A No.

Q In your medical opinion, would removal of the hardware or subsequent or future surgery, would that in any way improve Mr. Magloire's medical condition?

A Removal of hardware in cases where there is cold sensitivity or cold intolerance can be of benefit.

Q But specifically in this patient's condition, do you see that there would be a benefit to removing hardware at this time as of this date?

A At this time, I have not made any recommendations for removal of hardware.

Q And what about we talked about the degenerative changes, is there any noted in the radiological films of 5/10/04, which indicate there might be the necessity for further surgery?

A On the May 10, 2004, plain X rays the cervical 6-7 level is fused However, there is a degenerative disk with changes of that C5-6 disk, which is the level which is starting to show some degeneration and some collapse.

Q Is it possible that based upon the past work history of Mr. Magloire, and Mr. Magloire's age, that that degeneration could occur regardless of the fusion?

THE VIDEOGRAPHER: Going off the record. It's 6:38 p.m

MR. FRANKEL: I object to the question, to the form. It's totally speculative.

MR. BROWN: I said, in his medical opinion. There's no speculation.

MR. FRANKEL: I object to the question. I respectfully request it be rephrased I think it's total speculation.

Are you asking him whether or not C5-6 collapsed disk is caused or related to the accident? Well, you don't want to ask that question.