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a. Hausknecht

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CIVIL TERM: PART 5

-----X
MARIE STIVEN,

Plaintiff,

Index No.
20844/03

-against-

BERNARD JOSEPH,

Defendant.

EXCERPT
TESTIMONY OF
DR. ARIC HAUSKNECHT

-----X

Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
January 9, 2006

B E F O R E :

HONORABLE PETER J. O'DONOGHUE, Justice

A P P E A R A N C E S :

For the Plaintiff:

SANDERS, SANDERS, BLOCK, WOYCIK, VIENER & GROSSMAN, P.C.
100 Herricks Road
Mineola, New York 11501
BY: BARBARA E. MANES, ESQ.

For the Defendant:

JEROME D. PATTERSON, ESQ.
40 Wall Street
New York, New York 10005-1304

NANETTE DOTTIN
Senior Court Reporter

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 MS. MANES: Thank you, your Honor. If it
2 please the Court, I call Dr. Aric Hausknecht to the
3 witness stand.

4 D R. A R I C H A U S K N E C H T, called as a witness by
5 and on behalf of the Plaintiff, having been first duly
6 sworn, testified as follows:

7 THE CLERK: Be seated. State your name.

8 THE WITNESS: Aric, A-R-I-C, Hausknecht,
9 H-A-U-S-K-N-E-C-H-T.

10 THE CLERK: Business address.

11 THE WITNESS: Place of business, 6915 Austin
12 Street, Forest Hills, New York 11357.

13 THE CLERK: Thank you.

14 THE COURT: You may inquire, Miss Manes.

15 MS. MANES: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MS. MANES:

18 Q Good morning, Dr. Hausknecht.

19 A Good morning.

20 Q Dr. Hausknecht, are you a physician duly licensed
21 to practice medicine in the State of New York?

22 A I am. I received my license to practice medicine
23 and surgery in New York State in 1992.

24 Q And could you tell the jury something about your
25 educational background?

Dr. Hausknecht - Plaintiff - Direct

1 A Certainly. I graduated from Duke University in
2 1987 majoring in physical anthropology. I graduated from Mt.
3 Sinai Medical School in 1991 with a medical degree. I
4 completed one year of medical internship training at Beth
5 Israel Medical Center in 1992, and I completed my neurology
6 residency training program at New York Hospital of Cornell
7 Medical Center, and Memorial Sloan Cancer Center in 1995, and
8 I have been in private practice since '95.

9 Q Do you have one or more medical expertise that you
10 practice, doctor?

11 A I practice neurologist and I practice pain
12 management. Neurology is the field of medicine that deals
13 with the treatment and evaluation of the disorders of the
14 nervous system. The nervous system includes the brain, the
15 spinal cord, and the nerve roots. Pain management is the
16 field of medicine that deals with the treatment and
17 evaluation of pain and the consequences of that that pain has
18 on an individual and their everyday life. As a neurologist
19 and a pain management specialist, I see a lot of people with
20 neck pain and back pain, numbness and weakness. It is my job
21 to figure out what is causing their problem and what I can do
22 to help alleviate their problem and improve their ability to
23 function on a day to day basis.

24 Q Now are you board certified in either or both of
25 these medical specialities?

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 A I'm currently double board certified. I am board
2 certified in neurology by the American Board of Psychiatry
3 and Neurology, and I'm board certified in pain management by
4 the American Academy of Pain Management.

5 Q And what does it involve to become a board
6 certified doctor?

7 A Board certification is basically the highest level
8 of qualification that a physician can achieve in their chosen
9 field of practice. So, for example, in neurology, once a
10 doctor completes an accredited neurology residency training
11 program and successfully passes a series of written
12 examinations, a neurologist is then granted the privilege to
13 sit for the board exam or the final exam. In neurology there
14 was a full day multiple choice test and there was a full day
15 question and answer session with a panel of experts.

16 Q Now have you been qualified as an expert in
17 neurology and pain management in the courts of the State of
18 New York prior to today, Dr. Hausknecht?

19 A I have.

20 Q And by the way you've testified in court before;
21 correct?

22 A I generally testify approximately once or twice a
23 month usually on behalf of a patient that I have treated in
24 my office that was involved in some type of accident and on
25 occasion as an expert.

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 Q Now did there come a time you were requested by my
2 office to evaluate a patient by the name of Marie Stiven?

3 A Yes.

4 Q And when for the first time did you see her?

5 A I brought my medical chart with me for the sake of
6 accuracy, so I am going to refer to the report, and it was
7 December 17 of 2004.

8 Q And did you take a history at that time, doctor?

9 A I did.

10 Q And what is a history?

11 A A history is basically what a person tells you. It
12 would include any details surrounding the person's problem.
13 It would include any treatment that the patient had received
14 to date. So if a history consists of subjective complaints
15 or symptoms that is to say what a person is telling the
16 doctor as opposed to a physical examination which consists of
17 objective findings or signs. So, for example, if a person
18 comes into my office and says I'm having neck pain, this is a
19 subjective complaint, or symptom, it is part of the history,
20 that is what they are telling me, I as an outside observer,
21 without examining them I don't know whether or not they are
22 having neck pain. If I now perform a physical exam using my
23 senses, vision, touch, and I find there is a spasm and
24 tenderness in the neck, this would be an objective finding or
25 sign that confirms that patient's subjective complaint.

Dr. Hausknecht - Plaintiff - Direct

1 Q So you don't merely go by what the patient tells
2 you?

3 A A doctor, is kind of like a detective, they take
4 all of the clues that are available to them, what the patient
5 tells them, what they find on the physical exam, what other
6 doctors have found, the results--

7 THE COURT: Wait. Wait. Wait. The question
8 is you don't only go by what the patient tells you;
9 correct?

10 THE WITNESS: Correct.

11 THE COURT: Next question.

12 Q And in this case what is the history the patient
13 gave you, doctor?

14 A The patient indicated to me that she had been
15 involved in a motor vehicle accident on October 13 of 2000,
16 she was a restrained driver and was involved in a rear
17 collision, and she had received medical attention at Franklin
18 Hospital Medical Center and subsequently had gone to a clinic
19 and received six months of therapy. Despite the treatment
20 that she had received, she was still having problems,
21 specifically neck pain and back pain. The neck pain was
22 radiating into her right arm; the back pain was radiating
23 into her right leg. Her right arm and both legs have been
24 feeling numb, and her right arm had been feeling weak. The
25 patient was having problems with her activities of daily

Dr. Hausknecht - Plaintiff - Direct

1 living and specifically reported difficulty sitting,
2 standing, bending, lifting, and driving. She had been
3 involved in a prior accident approximately in 1992 and
4 received a course of treatment and made a full recovery and
5 she was not having any problem or with her neck or back
6 before this accident. Miss Stiven indicated she was a
7 registered nurse and that due to the accident she had missed
8 six months of work.

9 Q Now, doctor, you used the term "radiating," that
10 she complained she had pain radiating from her neck into her
11 arm from her lower back into her leg, could you define what
12 that term means medically speaking?

13 A A radiating pain is also known as a shooting pain
14 or referred pain, if a person has pain, that again in a part
15 of the body such as the neck or the back and it shoots down
16 into the arm or shooting down into the leg that is known as a
17 radiating pain and the clinical experience is a radiating
18 pain often occurs from a slipped disc or from a pinch nerve.

19 MR. PATTERSON: Objection, your Honor, as to
20 what it could be from your Honor.

21 THE COURT: Overruled.

22 MS. MANES: Your Honor, subject to connection.

23 THE COURT: Go ahead.

24 Q So it could be the sign of a disc problem?

25 A Radiating pain is a common symptom of a slip disc

Dr. Hausknecht - Plaintiff - Direct

1 or pinched nerve.

2 Q Now, doctor, did you review any medical records in
3 connection with the patient?

4 A I did.

5 MS. MANES: And may I have the exhibits 1 and 2
6 please?

7 THE COURT: 1 and 2.

8 MS. MANES: Yes. All right.

9 Q I'm going to show you what has been marked
10 Plaintiff's 1 in evidence, the emergency room record of
11 Franklin General Hospital Medical Center of October 13, 2000,
12 doctor, did you have an opportunity to review that medical
13 record in conjunction with your evaluation of Miss Stiven?

14 A Yes, I did.

15 Q And could you point out what significant findings
16 there were in the hospital record?

17 A Certainly. The triage nurse would be the first
18 health care provider that an individual sees in the emergency
19 room, they are basically the one that takes a brief history
20 and determines the level of medical attention that a person
21 needs. The patient indicated to the triage nurse that she
22 was having pain in her neck and both shoulders severely and
23 that was at 10 or 7 p.m. At 10:40 p.m. She indicated that she
24 was having both neck as well as lower back pain. The
25 emergency room physician noted that the patient was having

Dr. Hausknecht - Plaintiff - Direct

1 tenderness in the right trapezius region, that would be the
2 right side of the neck, and that there was limited ROM, which
3 is range of motion, on the left side. She was having
4 difficulty moving her neck on the left side. He prescribed
5 for herself medications including Motrin, which is a mild
6 antiinflammatory, Vicodin, which is an a strong narcotic for
7 pain and a muscle relaxant, Methocarbamol. He advised the
8 patient to follow-up with her private doctor and to return to
9 the emergency room in three to five days if she had any
10 further symptoms.

11 Q Now Methocarbamol is a mouth full is that
12 prescription medication?

13 A Yes, it is.

14 Q And what is the indication for prescribing that?

15 MR. PATTERSON: Objection.

16 THE COURT: It is leading but I will allow it.

17 A Methocarbamol is an antispasmodic medication. If a
18 person is having muscle spasm that you want to treat and
19 relieve you will prescribe a medication like Methocarbamol.

20 Q Doctor, would an emergency room doctor prescribe an
21 antispasmodic if there were not signs of spasm in the
22 emergency room?

23 MR. PATTERSON: Objection, your Honor.

24 THE COURT: Don't answer that; sustained.

25 Q Now, doctor, did they perform any x-rays on Miss

Dr. Hausknecht - Plaintiff - Direct

1 Stiven?

2 A No, they did not.

3 Q And is there any significance to their not
4 performing x-rays on this patient?

5 A No, not really. X-rays show fractured bones, in
6 this case, they weren't concerned that she had any fractured
7 bones so x-rays were not performed.

8 Q Now, I'd like to show you what has been marked as
9 Plaintiff's Exhibit 2 in evidence which are the records of
10 Valley Physical Medicine, did you have an opportunity in
11 conjunction with your evaluation of Miss Stiven to examine
12 the records of Valley Physical Medicine?

13 A Yes, I did.

14 Q Okay. And for purposes of further questioning you
15 can assume there has been testimony that Miss Stiven attended
16 Valley Physical Medicine for approximately five months
17 following this accident, now do you know who was supervising
18 her treatment at Valley Physical Medicine?

19 A I do based upon the records, her treatment was
20 supervised by a physiatrist, Dr. Pirneni, P-I-R-N-E-N-I.

21 Q And could you explain to the jury what a
22 physiatrist is?

23 A A physiatrist is a medical doctor that does their
24 training in physical medicine and rehabilitation. So
25 basically a physiatrist is a doctor that prescribes and

Dr. Hausknecht - Plaintiff - Direct

1 supervises physical therapy.

2 Q Now did you have an opportunity to review Dr.
3 Pirneni's initial examinations of this patient?

4 A I did.

5 Q And could you indicate to the jury what the
6 positive physical findings, if any, were as contained in
7 those records?

8 MR. PATTERSON: Objection.

9 THE COURT: Let me have that, Nanette.

10 (Whereupon, the last question is read back by
11 the court reporter.)

12 THE COURT: Overruled, you may answer.

13 A Dr. Pirneni indicated that he first saw the patient
14 on 10-18-00, which was five days after the accident, the
15 patient was having neck pain radiating into the right arm and
16 back pain radiating into the right leg. On physical
17 examination, there was tenderness in the cervical and lumbar
18 paraspinals. The cervical is the neck, the lumbar is the
19 lower back, the paraspinals are the muscles around the
20 spine. There was loss of motion in the cervical and lumbar
21 spine. There was a positive Spurling maneuver and positive
22 straight leg raising at 45 degrees on the right side.

23 The Spurling maneuver is performed as part of
24 the physical exam by taking a person's head in your hand
25 bending its side back, bending it backwards, and putting

Dr. Hausknecht - Plaintiff - Direct

1 pressure down on top, if there is an injury to the spine
2 underneath such as a slip disc or pinch nerve, this test
3 would be positive. The straight leg raising test is
4 performed by slowly raising a person's leg upward. Normally
5 a person should be able to get to about 90 degrees without
6 having any problems, in this case, at 45 degrees on the right
7 it reproduced the patient's clinical symptoms, and this is a
8 positive test similar to the Spurling maneuver. If there is
9 a problem in the lower back such as a slipped disc or pinched
10 nerve, this test will stress that part of the spine and cause
11 a problem.

12 Q Now, doctor, if the normal is 90 degrees of range
13 of motion in the lower back, and Miss Stiven could only raise
14 her leg to 45 degrees, what percentage of her full range of
15 motion was she missing at that examination.

16 MR. PATTERSON: Objection, your Honor, she is
17 offering evidence that is not from the doctor. Normal
18 range of motion I believe is offered by the plaintiff's
19 counsel and therefore--

20 THE COURT: Rephrase your question.

21 Q All right. Doctor, what is the normal range of
22 motion of the lower back?

23 A Normally a person should be able to bend forward at
24 the waist to almost 90 degrees coming within an inch of
25 touching their toes.

Dr. Hausknecht - Plaintiff - Direct

1 Q In this particular case as reflected in Dr.
2 Pirneni's records, how much of a loss of range of motion in
3 her lower back did Miss Stiven have on her initial
4 examination?

5 A Specifically in the range of motion section, Dr.
6 Pirneni indicated cervical and lumbar region revealing a
7 whole person impairment of 50 percent.

8 Q So she was missing 50 percent?

9 A That's correct.

10 MR. PATTERSON: Objection, your Honor, that a
11 whole person, I believe that is a no-fault term, it is
12 not a measurement with regard to plaintiff's question,
13 it is not a range of motion, it is a no-fault term.

14 THE COURT: I will allow you to on
15 cross-examination, next question.

16 Q Now, doctor, you mentioned that Dr. Pirneni found
17 spasm, could you define spasm for the jury please?

18 A Spasm is a reflex tightening of the muscles due to
19 an underlying injury. So if you have a slipped disc or
20 pinched nerve in your neck the muscle would go into spasm
21 that is to say they will involuntarily contract or tighten
22 up, and this is a response to an underlying injury. It an
23 objective finding on the physical exam this is what a doctor
24 feels when they are touching the paraspinal muscles.

25 Q Can spasm be fake, doctor?

Dr. Hausknecht - Plaintiff - Direct

1 A No.

2 Q Did you review any diagnostic testing in connection
3 with your evaluation of Miss Stiven?

4 A I did.

5 Q And what diagnostic testing did you review.

6 A Specifically I reviewed the MRI report and films of
7 the neck and back, and NCV, EMG, nerve tests of the neck and
8 back, and computerized range of motion testing of the neck
9 and back.

10 Q Well, I'm going to take the NCV, EMG test first.

11 MR. PATTERSON: Objection, your Honor, that is
12 not in evidence and I have to object.

13 THE COURT: Say it again.

14 MR. PATTERSON: It is not in evidence, the
15 doctor didn't do the test, it is clearly hearsay and I
16 have to object to it.

17 THE COURT: Sustained.

18 Q Doctor, could you just define what an NCV, EMG test
19 is?

20 MR. PATTERSON: Objection, your Honor.

21 THE COURT: He can define it, overruled.

22 A NCV stands for nerve conduction velocity, EMG
23 stands for electromyography, this is an objective
24 electrodiagnostic tests that is performed by a doctor using a
25 computer to determine if there is any nerve damage, if so, at

Dr. Hausknecht - Plaintiff - Direct

1 what level that nerve damage is coming from and how severe it
2 is. The NCV portion is performed by shocking a nerve and
3 measuring how quickly and forcefully that shock is
4 transmitted down the nerve. The EMG portion is performed by
5 sticking a needle into a muscle and recording the electrical
6 activity of a muscle. The nerve system functions by
7 transmitting electrical impulses for sample.

8 MR. PATTERSON: To be for example--

9 THE COURT: That is enough, that is fine next.

10 Q Can you explain what computerized range of motion
11 testing is?

12 A Certainly. Range of motion testing is basically an
13 evaluation to determine how far a certain part of the body
14 can go in various directions. This can be done either by an
15 examiner, or it can be done using a computer. Computerized
16 range of motion testing is performed by absolutely sitting
17 down in a chair that is attached with wires to a computer
18 that moves in different directions, and the computer measures
19 how far. For example, you can bend your head to the side,
20 lateral flexion.

21 Q And are those results recorded?

22 A They are.

23 Q And based on the computerized range of motion
24 testing that Dr. Pirneni performed what did they reveal?

25 MR. PATTERSON: Objection.

Dr. Hausknecht - Plaintiff - Direct

1 MS. MANES: That is part of her record.

2 MR. PATTERSON: Objection, your Honor, these
3 tests are not in evidence. She got the film in
4 evidence, she could have gotten the records.

5 THE COURT: Hold it, that is enough. Come
6 inside for a minute.

7 (Whereupon, a discussion is held in the robing
8 room off the record.)

9 THE COURT: Next question, Miss Manes.

10 MS. MANES: Yes, your Honor.

11 Q Now, doctor, you mentioned you also reviewed MRI
12 reports?

13 A Yes, I did.

14 Q Did you have an opportunity at a further date to
15 review the actual MRI films?

16 A Yes, I did.

17 MS. MANES: If I may, your Honor?

18 THE COURT: You may. We have a shadow box.

19 MS. MANES: Yes.

20 THE COURT: Mr. Patterson, if you wish you can
21 step over.

22 MR. PATTERSON: Thank you, your Honor. Also,
23 note my continuing objection to these medical films in
24 evidence.

25 THE COURT: It has been noted on the record.

Dr. Hausknecht - Plaintiff - Direct

1 THE OFFICER: Counsel, we are referring to
2 Plaintiff's Exhibit 3?

3 MS. MANES: Yes.

4 Q Now, doctor, could you describe what MRIs are?

5 A Sure. MRI stand for magnetic resonance imaging,
6 it's a radiological technology that has been around for about
7 30 years, it uses strong magnetic fields and computers to
8 image the soft tissue structure in the human body such as the
9 brain, the spinal cord, the nerve roots, the disc, the
10 ligament, and the tendons, and the muscles. It is different
11 than conventional radiology in that it doesn't show
12 mineralized tissue such as bone. Clearly, x-rays show bones,
13 MRI shows the soft tissue very well. Additionally,
14 traditional x-rays really are only effective going front to
15 back and side to side, whereas an MRI can give different
16 slices of a portion of the body in different directions. So
17 a doctor can pick a point in the body such as a disc and look
18 at it side to side, top to bottom, front to back. So MRIs
19 are basically tools that a doctor uses that allow them to get
20 a three dimensional picture of a specific portion of the
21 human body.

22 Q Now have you yourself, doctor, undergone training
23 in interpreting MRI films?

24 A Yes. MRIs are something that I use in my office
25 everyday, it was part of my residency training program, it

Dr. Hausknecht - Plaintiff - Direct

1 was part of my board certification. I've read thousands of
2 MRIs in my career.

3 Q And, doctor, if you will, can we now-- can you
4 discuss the MRI films taken of Miss Stiven?

5 A Certainly. Your Honor, may I step down?

6 THE COURT: You may step down.

7 (Witness steps down.)

8 THE WITNESS: Your Honor, there are six pages,
9 how should I refer to them?

10 THE COURT: Are there letters or numbers at
11 the bottom?

12 MS. MANES: They haven't been marked as yet,
13 shall we do that? Maybe we can use 3A, B, C, D, would
14 that help you, doctor?

15 THE WITNESS: It will help the Court to make it
16 clear.

17 THE OFFICER: Put them all in as Exhibit 3?

18 THE COURT: Let's mark them each separately,
19 there are six of them, so we will do A through F.

20 (Exhibits so marked.)

21 THE OFFICER: That is 3A.

22 Q 3A is what is known as sagittal MRI of the cervical
23 spine, it is photographically described with a name, Marie
24 Stiven, a date of birth, [REDACTED], and date of the study,
25 October 30 of 2000. In order to understand what we are

Dr. Hausknecht - Plaintiff - Direct

1 looking at, the MRI, I brought a small model of the human
2 spinal column and I need to describe some of the anatomy so
3 we can understand what we are looking at. Basically the
4 human spinal column is made up of separate bones known as the
5 vertebra, they stack up on top of each other, in between is a
6 piece of soft cartilage known as a disc, and the cervical
7 spine, the neck. There are seven vertebra, and the
8 lumbosacral spine or lower back. There are five vertebra,
9 the discs are numbered according to their position between
10 the bones. So the C5-6 disc is in the base of the neck just
11 above where it connects to the shoulders, the L5 S1 disc is
12 in the lower back just above the buttocks. Within the human
13 spinal column there are a number of options, in the center
14 running from top to bottom is the spinal canal, and the
15 spinal cord begins at the base of the brain and runs down to
16 the lower back. On each level adjacent to the disc is what
17 is known as the neuroforamen, and the nerve roots exit the
18 neuroforamen on both its sides, and the neck and the nerve
19 roots go down to the arm and hand and the lower back, the
20 nerve roots go down into the legs and feet.

21 This would be looking straight on at the
22 spine. This would be the front. This would be the back.
23 This would be the right side. This would be the left side.
24 If you can imagine now we are going to turn the spine 90
25 degrees, and we are going to cut it long ward and look at

Dr. Hausknecht - Plaintiff - Direct

1 each one of those slices, that is what we are seeing on the
2 MRI. So this is the top, this is the bottom, this is the
3 front, this is the back. Up here is the base of the brain
4 and the brain system. This dark strip going down is the
5 esophagus. Each one of these square structures, the white
6 squares, is the front portion of the vertebral body, and each
7 one of these oblong shapes within the squares is the disc
8 itself.

9 This gray strip going down is the spinal cord,
10 and the spinal canal, and coming out at each level are the
11 nerve roots in the neuroforamen. When we look at this
12 cervical spine what we see is that at certain levels there
13 are abnormalities of the disc. If you were to draw a line
14 between the edge of the bone and you look right through, see,
15 there is something sticking out from between that bone, and
16 what that is is a disc herniation at C6, C5-C6, right at the
17 tip of my pen. If you look at the spinal cord itself, you
18 can see that it is being slightly dented by that disc
19 herniation at C5-6. So this disc material slipped out of the
20 space and is pressing on the spinal cord. At the level above
21 it, C4-5, and the level above that C3-4 as well as the level
22 below it, C6-7, there is a disc bulge which is different than
23 a disc herniation. These discs are kept in place by a series
24 of tough connective fibrous tissue known as ligament. If
25 that ligament is stretched that piece of jelly-like substance

Dr. Hausknecht - Plaintiff - Direct

1 will push out against it and that is a disc bulge. If that
2 ligament is torn, some of that jelly will leak out of place
3 and that is what is known as a disc herniation. If you go
4 down a little bit lower you will see these are also sagittal
5 imagines, they are different magnetic fields. If you see all
6 of this white bright signal surrounding the spinal cord and
7 the nerve roots, they represents cerebral spinal fluid, CSF,
8 this is the fluid that surrounds the spinal cord, and the
9 nerve root supplies nutrition and support to the nervous
10 system. Down here at the level of most notably C5-6 but as
11 well as at the level above C4-5, this cerebrospinal fluid is
12 being compressed and displaced, it is being moved out of
13 its normal position by these discs which have slipped
14 backwards at C4-5, the bulge at C5-6, the herniation.

15 Looking now at 3B, this is the neck in an
16 axial view, so now if you imagine that a person is lying flat
17 on the table, this is the back, this is the front, so here is
18 the top, here is the bottom, here is the left, here is the
19 right, this circular area right here is the cerebral body.
20 This heart shape structure behind it is the spinal cord,
21 within the spinal canal surrounded by that CSF coming this
22 way, and this way by the transverse processes, and coming
23 backwards is the lamina process. So, if you take a spine and
24 imagine salami and slice it the short way and look at each
25 slice, this is what we are seeing, when you come down to this

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 level over here at C5-6, you see that there is something that
2 is extending from behind the vertebral body into the spinal
3 canal and that is that disc herniation at C5-6 right there.
4 Something is pressing out from behind the vertebra and
5 pressing on the spinal cord. If you look up high at the
6 level of C2-3, you see how there is a nice even symmetric rim
7 of white surrounding the spinal cord and surrounding the
8 nerve roots, down here something is squashing the spinal cord
9 and is pushing all of that normal spinal fluid out of the
10 way.

11 Q Doctor, could you just circle the area on the MRI
12 please?

13 A My pen won't write, if you give me a sticky or
14 something else (indicating), right over here, this circular
15 portion, is this vertebral body. This heart shape structure
16 behind it is the spinal cord with the CSF, something is
17 extending from within this vertebral body into the spinal
18 canal and that something is the disc which has pushed
19 backward and is pressing on the spinal cord.

20 Q Doctor, if-- if you can just turn back to 3A, and
21 if I can ask you to put a sticky on the imagine that shows
22 the disc herniation please--

23 A Sure, but I am unprepared with the sticky.

24 MS. MANES: I have another sticky makeshift, it
25 will be okay.

Dr. Hausknecht - Plaintiff - Direct

1 A Okay, (Indicating), I'm-- and this shows the four
2 discs looking at 3A. This shows the fourth disc inside the
3 neck that are abnormal over here, disc bulge at C3-4, over
4 here disc bulge at C4-5, over here becomes herniation. Here
5 is C5-6 dent on the spinal cord and this bulge C6-7 and seen
6 on here, and C5-6 disc causing a dent on the spinal cord and
7 displaying the spinal fluid (Indicating), and those are the
8 positive findings on the neck MRI or the cervical spine.

9 3D is the similar study but this is the lumbar
10 sacral spinal of the lower back. Once again it has the
11 patient's name, her date of birth, as well the date of this
12 study, November 6 of 2000. It has a similar appearance as
13 the other one except for the bones, and the discs are much
14 longer that is because the lower back it is a larger portion
15 of the spine because it has to support more weight and more
16 stress.

17 Each one of these square shapes is the
18 vertebral body. Each one of these oval shpe is the disc.
19 This is actually the tail bone on the bottom. So this is the
20 bottom, here the top is, the front, here's the back. If you
21 look at the disc at the level of L5 S1, which is the lowest
22 level in the back, the L4-5, you see that some of that disc
23 material is pushing out beyond the margin of the vertebral
24 body and that is what is known as a disc bulge. And, if you
25 look at it down here, in them T2 where the imagine you see

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 that it is causing a slight indentation on the fecal sac, it
2 is pushing away the spinal fluid that is normally behind the
3 disc supporting the nerve roots in the spinal cord.

4 Q Now, doctor, based upon the presenting complaints
5 Miss Stiven made to you is there any correlation between
6 those complaints and these MRI finding?

7 MR. PATTERSON: Objection, your Honor.

8 THE COURT: Overruled. You may answer.

9 A I believe that they are the clinical symptoms that
10 she had, the radiating pain, the numbness and the weakness,
11 are the common findings with slip disc, disc bulge, and disc
12 herniation.

13 Q If I may I have some stickies, if you can mark on
14 3C the pertinent cuts that show the condition. (Indicating)
15 is?

16 A That does it for the MRI films.

17 Q Now, doctor, are MRI considered an objective test?

18 A These are objective, that is to say they are not
19 dependent on what a person situations or does, it is a black
20 and white picture, a person cannot influence the outcome of
21 this picture.

22 (Witness resumes the stand.)

23 Q Doctor, is a disc herniation a normal finding in a
24 healthy person?

25 A It is not, it is possible for a person to have a

Dr. Hausknecht - Plaintiff - Direct

1 the disc herniation or more possible for a person to have a
2 disc bulge as a normal part of the aging process, it is not a
3 normal finding.

4 Q And if a patient had undergone MRI testing prior to
5 a physician examining him or her would you consider the
6 report of that physician to be complete without reviewing the
7 results of those MRI?

8 MR. PATTERSON: Objection.

9 THE COURT: I'm not sure I understand that
10 question, rephrase it please.

11 Q Doctor, in performing a full and complete
12 examination on a patient would it be helpful for a doctor to
13 know that they had undergone MRI testing?

14 A I believe it would be yes.

15 Q And if in fact a doctor, did not review MRI testing
16 that had been done on a patient prior to their examining him
17 would you consider that report to be based on a proper
18 foundation?

19 MR. PATTERSON: Objection.

20 THE COURT: Sustained.

21 Q Is an MRI an important tool diagnostically speaking
22 in evaluating a person's injury?

23 A I believe it is an MRI.

24 MR. PATTERSON: Objection, I believe he
25 answered the question, your Honor.

Dr. Hausknecht - Plaintiff - Direct

1 THE COURT: Sustained.

2 Q And, doctor, will you explain why you feel that it
3 is an important part of a full evaluation?

4 A The MRI provides objective information about
5 structure or anatomy so a doctor that is treating a patient
6 who uses an MRI can determine whether or not there is
7 anything anatomically going on such as a disc herniation,
8 such as an infectious collection or such as a neoplasms
9 tumor, an MRI is crucial to a doctor in terms of determining
10 what is wrong with that person and in terms of determining
11 what the cause and treatment of that problem is.

12 Q Now, doctor, turning to your examination on
13 December 17, 2004, did you conduct a physical examination?

14 A I did.

15 Q And could you please discuss your physical
16 examination?

17 A Certainly. I performed a detailed physical
18 examination as well as a neurologic examination with special
19 attention to the neck and back, arms and legs because this is
20 where the patient was having complaints. Specifically my
21 findings on the physical exam revealed a five minus equation
22 on the biceps of both sides. The biceps is the muscle up
23 here (Indicating), pardon me, that bends the elbow. Motor
24 strength is rated on a scale of zero to five with zero being
25 paralysis, and five being full strength, five minus would be

Dr. Hausknecht - Plaintiff - Direct

1 one grade below the full strength. So she, Miss Stiven, was
2 far from paralyzed in her arm but certainly did not have
3 full motor in the biceps muscles. The patient demonstrated a
4 five minus weakness of the intrinsic muscles of the
5 right-hand. Intrinsic muscles of the hand are those that
6 allow you to make a fist and spread your fingers apart
7 likewise in her right-hand. She had lost one grade of power.
8 The patient demonstrated five minus weakness of both hip
9 flexors. The hip flexors are the muscles in the thigh that
10 bring the knee up to the chest. So in both of her legs she
11 that had lost strength.

12 Q Now turning to the motor examination how do you
13 perform that?

14 A Traditionally motor testing is performed by the
15 resistance technique, so if a patient is asked to perform a
16 certain maneuver such as squeeze my hand as tight as you can,
17 this is done repeatedly to get a consistent response and then
18 it is graded based upon published standardized tables.

19 Q Now you found that her reflexes were symmetrical
20 depressed what was the clinical significance of this finding?

21 A The reflex examination is performed by tapping a
22 tendon with a reflex hammer which causes a reflex contraction
23 or tightening of the muscle and movement of the joint. In
24 Miss Stiven's case both of her knees and both of her ankle
25 reflexes were depressed, that is to say the reaction after

Dr. Hausknecht - Plaintiff - Direct

1 tapping with a hammer was diminished, and the clinical
2 significance of this finding is that it's an indication of a
3 pinched nerve in the lower back. On sensory examination
4 there were no abnormal findings. She was able to properly
5 feel, and I've different touches in her arms and legs. The
6 mechanical examination revealed cervical and lumbar
7 paravertebral muscular spasm so when I felt the muscles in
8 her neck and back there was with a reflex tightening of those
9 muscles. The Spurling maneuver was positive bilaterally.
10 Once again the Spurling maneuver is performed by compressing
11 the neck down, side ways, and backwards. The seated straight
12 leg raising test was positive bilaterally at 50 degrees. So
13 as I raised her leg upwards at 50 degrees, she began
14 experiencing that shooting pain with the numbness and that is
15 a positive test.

16 Q Doctor, let me just stop you right there, you have
17 now described three tests, three mechanical tests that you
18 performed, looking back to Dr. Pirneni's initial examination,
19 which you have already discussed, comparing that examination
20 with yours what conclusions did you have?

21 A The exam was similar to Dr. Pirneni's exam, she had
22 shown some slight improvement in the straight leg raising
23 test whereas initially Dr. Pirneni found the straight leg
24 raising test positive at 45 degrees. I found it positive at
25 50 degrees, so it was not significantly different but

Dr. Hausknecht - Plaintiff - Direct

1 slightly improved.

2 Q I am sorry to interrupt, can you continue?

3 A Certainly. Range of motion was tested both
4 actively and passively using an arthrodial protractor. An
5 arthrodial protractor, which is known as a gonameter, is
6 basically two rulers that are connected in the center with a
7 hinge, and there is a scale in between that measures angles,
8 so with this tool a doctor can measure, for example, how far
9 a person can bend their head to the side or turn it from side
10 to side, or bend it forwards or backwards. The range of
11 motion can be tested either actively or passively. In this
12 case, I did it both ways, active range of motion depends on
13 the activity of the person. So, for example, if I say to a
14 person bend forward at your waist as far as you can go it
15 depends on the effort and the activity of the person.
16 Passive range of motion is performed manually by the
17 examiner. If I now take somebody at the waist, put my hands
18 on their back and push them forward until there is a
19 mechanical obstruction it won't go any further, that is
20 passive range of motion. In this case, both the active and
21 passive range of motion was the same. When I asked her to
22 bend at the waist, and then when I forcibly bent her at the
23 waist, there was no difference between the angles measured.
24 In this case, the patient demonstrated a 25 percent loss of
25 lateral flexion in the cervical spine on both sides. Lateral

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 flexion is the ability to bend your head side ways and touch
2 your ear to your shoulder. In this case, she had lost 25
3 percent of movement in both direction.

4 Q Would you consider that a significant loss of
5 movement in lateral flexion?

6 A In my opinion this is a clinically significant loss
7 of movement. Any activity that requires you moving your head
8 from side to side, using a computer, driving a car is going
9 to be impaired, that is to say a person is not going to be
10 able to do that as well if they don't have the full motion in
11 their neck, if they try to do it, they are going to
12 experience pain and discomfort. The patient also
13 demonstrated a 33 percent loss of forward flexion in the
14 lumbar spine. So normally a person should be able to bend at
15 the waist to about 90 degrees. In this case, she could only
16 get to about 60, she had loss that final third of movement,
17 33 percent loss of motion.

18 Q And again, doctor, would you consider that a
19 significant loss of motion in the lumbar spine?

20 A I do consider this to be clinically significant.
21 The ability to flex at the waist is important for lifting,
22 bending, such as cleaning the bathtub, emptying the dish
23 washer, these types of activities are going to be impaired by
24 the inability to move fully in the lower back.

25 Q Does that conclude your discussion of your physical

Dr. Hausknecht - Plaintiff - Direct

1 exam, doctor?

2 A These were the pertinent positive findings, the
3 loss of strength in the arms and legs, loss of reflexes in
4 the legs, spasm, tenderness, and loss of mobility in the neck
5 and back as well as the positive Spurling maneuver, and
6 positive straight leg raising test.

7 Q Were these all objective test findings as opposed
8 to subjective complaints?

9 A These were objective. This is what I found when I
10 examined her not what she was saying or doing.

11 Q And, doctor, did you come to a diagnosis with
12 respect to this patient?

13 A I did.

14 Q And could you tell us what your diagnosis was?

15 A My diagnosis was--

16 MR. PATTERSON: Note my objection, your Honor,
17 he is talking about in the future, your Honor.

18 THE COURT: He is talking about as December'04
19 what is your diagnosis as of December'04?

20 A On December 17 of 2004, my diagnosis was a cervical
21 derangement with C5-6 disc herniation compressing the spinal
22 cord, C3-4, C4-5, and C6-7 disc bulge with associated
23 cervical radiculopathy. Cervical derangement is basically an
24 abnormal function of the spine, radiculopathy is a pinched
25 nerve, as well as a lumbosacral derangement with L4-5 and

Dr. Hausknecht - Plaintiff - Direct

1 L5-S1 disc bulge.

2 Q Now, doctor, did there come a time that you
3 reexamined Miss Stiven?

4 A Yes.

5 Q And when was that?

6 A That was on December 13 of 2005.

7 Q And what were her complaints at that visit?

8 THE COURT: Let's save sometime, were there any
9 differences between the two examinations?

10 THE WITNESS: For the most part the exams were
11 similar, there were some slight changes but not
12 clinically significant.

13 THE COURT: Tell us about the slight changes.

14 A The patient had developed some further weakness
15 there in her arms. At this point, it was graded at four
16 plus, it would be two grades below the full strength. In her
17 lower back she had some better movement whereas the year
18 before I found that 33 percent loss of mobility when I saw
19 her December of '05. There was a 25 percent of loss of
20 mobility likewise in the neck, whereas in December '04, there
21 was a 25 percent loss of mobility, in December '05, there is a
22 20 percent loss of mobility, so there was a slight
23 improvement over that year time period.

24 Q And, doctor, would you consider a 25 percent loss
25 of mobility in the neck, I am sorry, in the back a

Dr. Hausknecht - Plaintiff - Direct

1 significant finding?

2 A I do.

3 Q Would that indicate significant loss of range of
4 motion of the back?

5 A It does.

6 Q What about the same question with regard to your
7 findings of 20 percent loss of range of motion in the neck?

8 A Likewise I find it to be clinically significant.
9 It is not uncommon for a person to have a good day or bad day
10 depending on the level of spasm changes in the weather level
11 of activity, type of activity, overall her exam was not
12 significantly changed, she still had loss of movement in the
13 neck and back.

14 Q Now having reviewed her records from the Franklin
15 General Hospital and from Valley Physical Medicine and in
16 conjunction with your two examinations and your findings, do
17 you see any significant improvement in the plaintiff's
18 condition between the day of the accident and the date of
19 your last examination, doctor?

20 MR. PATTERSON: Objection.

21 THE COURT: Overruled. You may answer.

22 A No. In my opinion she was clinically stable, that
23 is to say she hadn't gotten any better, she had not gotten
24 any worse.

25 Q And having reviewed the kinds of treatment she

Dr. Hausknecht - Plaintiff - Direct

1 received at Valley Physical Medicine over the course of five
2 months can you define the term "maximum medical improvement"?

3 A Maximum medical improvement would refer to the
4 process whereby a person responds to a certain treatment.
5 Once that person reaches a plateau, that is to say they are
6 not getting any better or getting any worse from that
7 treatment, they have reached MMI, maximum medical
8 improvement, that is to say that treatment is not going to
9 provide any further benefit to the patient.

10 Q So would you consider more of the same type of
11 treatment that she received at Valley Physical Medicine to
12 have assisted her?

13 A No. She had received five or six months of therapy
14 including physical therapy, chiropractic acupuncture, she had
15 had a partial response to that treatment but beyond that
16 six-month period it is unlikely that any further treatment of
17 that nature was going to help her.

18 Q In medical parlance what is the difference between
19 acute and chronic?

20 A Acute and chronic refer to the duration of a
21 condition or the symptoms. So typically acute would refer to
22 days or weeks whereas chronic would refer to months or years.

23 Q At the point in time when Miss Stiven stopped
24 treating actively would you consider her condition acute or
25 chronic?

Nanette Dottin, SCR

Dr. Hausknecht - Plaintiff - Direct

1 A I would consider it chronic.

2 Q And at the time you examined her would it still be
3 chronic?

4 A Yes, it would.

5 Q Now, doctor, I want you to assume there has been
6 testimony in this case that the plaintiff was stopped at a
7 red light in a Toyota Forerunner weighing 8500 pounds, and
8 that her vehicle was struck in the rear, that the impact was
9 heavy enough to move her vehicle seven to eight feet forward,
10 and that her vehicle sustained \$2,700.00 in property damage
11 to the rear bumper trunk and interior trunk; now, based on
12 the history of the accident the plaintiff's prior medical
13 history, your review of her medical records from the
14 accident, your review of her MRI films, and your two
15 examinations of the plaintiff do you have an opinion with a
16 reasonable degree of medical certainty as to whether the
17 injuries that you diagnosed were causally related to the
18 motor vehicle accident of October 13, 2000?

19 MR. PATTERSON: Note my objection, your Honor.

20 THE COURT: Overruled, you may answer.

21 A I do have an opinion.

22 Q And could you state that opinion?

23 MR. PATTERSON: Note my objection again.

24 THE COURT: Overruled, you may answer.

25 A In my opinion, the patient's injuries, those disc

Dr. Hausknecht - Plaintiff - Direct

1 bulges and herniations were caused by that rear end
2 collision. The forces that come to bear on the spine, the
3 biomechanical forces of flexion, extension, and rotation that
4 are sustained in a car accident are great enough to tear and
5 stretch those ligaments that keep the disc in place, and when
6 that happens the disc bulges out or herniates as what
7 happened in this case.

8 Q Now, doctor, do you have an opinion with a
9 reasonable degree of medical certainty as to whether the
10 injuries you diagnosed to her neck and back constitute a
11 significant limitation of use of a body function or system?

12 MR. PATTERSON: Note my objection.

13 THE COURT: Overruled, you may answer.

14 A I do.

15 Q And can you please explain your opinion?

16 A The neck and back are body systems, her neck and
17 back will never function properly again. They will never be
18 normal. They will never be 100 percent. Once a disc slips
19 out of place it can never go back into its normal healthy
20 state. Once a nerve is damaged that nerve damage is
21 irreversible, it is permanent. She can use her neck and back,
22 she cannot use it as well as she could before the accident.
23 Anything that requires full strength in the arms, full
24 strength in the legs, full movement of the neck and back is
25 going to be impaired. That is not to say she can't sit, or

Dr. Hausknecht - Plaintiff - Cross

1 she can't drive, she just can't do it as well, if she does it
2 she is going to experience discomfort and pain.

3 Q And, doctor, do you have an opinion with a
4 reasonable degree of medical certainty as to whether the
5 injuries you diagnosed in Miss Stiven's neck and back
6 constitute a permanent consequential limitation of use of a
7 body organ or member?

8 A I do.

9 Q And could you please state your opinion?

10 MR. PATTERSON: Note my objection.

11 THE COURT: Overruled. You may answer.

12 A Once again, the neck and back are body organs, they
13 are part of the neurologic and muscular skeletal systems,
14 these parts of her body have been irreversibly damaged.

15 Q And what is your prognosis on this patient, doctor?

16 A The prognosis refers to what can be expected in the
17 future, in this case, she can expect more of the same. She
18 is going to have good days, she is going to have bad days,
19 that is typical, she is always going to have loss of motion,
20 loss of strength, loss of mobility, and spasm in her neck and
21 back.

22 MS. MANES: Thank you, your Honor, I have
23 nothing further.

24 THE COURT: I may inquire, Mr. Patterson.

25 CROSS-EXAMINATION

Dr. Hausknecht - Plaintiff - Cross

1 BY MR. PATTERSON:

2 Q Doctor, very simply, you are saying that this
3 patient is going to have a loss of strength, and loss of
4 movement, and loss of mobility, right?

5 A Correct.

6 Q Well, I have got a question, did you ever ask her
7 what she did before the accident? Did you ever ask about her
8 being a nurse?

9 A Sure.

10 Q Did you ever ask her about lifting patients?

11 A Yes.

12 Q That is all strenuous jobs?

13 A Sure.

14 Q As a matter of fact, she did two jobs?

15 A Correct.

16 Q It is your testimony she will never do those jobs
17 the same way after the accident because of the injuries in
18 this accident?

19 A That is correct.

20 Q Well, doctor, are you-- hypothetically, if she
21 testified, hypothetically, that she did return to her jobs,
22 and she did them the same way, not one of her jobs but two of
23 the jobs the same way, doctor, would it be fair so say you
24 would be wrong about those limitations?

25 MS. MANES: Objection, he is mischaracterizing.

Dr. Hausknecht - Plaintiff - Cross

1 THE COURT: Sustained as to the form of the
2 question, rephrase it.

3 Q Hypothetically, doctor, if I told you that in sworn
4 testimony she said she returned to her jobs, both jobs, six
5 months after the accident and did them the same way she did
6 her strenuous nursing job lifting patient doing things like
7 that the same way as before the accident, doctor, would that
8 refute your findings of the limitation, doctor; yes or no?

9 MS. MANES: Objection, your Honor.

10 THE COURT: Overruled.

11 Q Would that would it not?

12 A I didn't say she can't lift, I said if she lifts
13 she will have pain. Moreover it is my understanding she
14 essentially administers medication now. Her job is not
15 physically demanding like it was before the accident.

16 Q Doctor, would it be fair to say that if she said
17 she lifted patients before the accident, and she returned to
18 the job the same way that she would be lifting patients after
19 the accident; would that be fair to say, doctor?

20 MS. MANES: Objection.

21 THE COURT: Overruled.

22 A I don't know if it would be fair to say, you have
23 to ask her. She can lift, she cannot do it as well as she did
24 before.

25 Q Doctor, you talk about objective findings, doctor,

Dr. Hausknecht - Plaintiff - Cross

1 now range of motion are subjective findings, doctor; isn't it
2 true?

3 A Not true.

4 Q Isn't it true that the person who is actually doing
5 the movement; right, doctor?

6 A No, obviously you weren't paying attention to my
7 testimony.

8 THE COURT: Doctor, that is an uncalled for
9 statement, answer the question if you can.

10 A No.

11 Q You are saying you move them and you make the
12 finding; right, doctor?

13 A In part active and passive.

14 Q But between you and her, doctor, if there a
15 subjective component as to her physical movement and your
16 interpretation of that; isn't that true, doctor?

17 A No.

18 Q No?

19 A No.

20 Q Doctor, it is only you and her, you and her, her
21 making the movement and you interpreting the movement, is
22 there no other aspect of that, doctor?

23 A I don't understand the question.

24 Q There is only two people there, are you making the
25 movement, and are you interpreting the movement, and her

Dr. Hausknecht - Plaintiff - Cross

1 making the movement, doctor? There is nobody else in this
2 picture; right?

3 A Correct.

4 Q And your findings could be influenced by various
5 things; isn't that right, doctor?

6 A It is an objective measurement guess, a gonameter.

7 Q What you are saying, doctor, is that, if you had
8 the same patient and a year later you did the same movement,
9 you would have the same findings; isn't that true?

10 A No, it depends on their clinical status the day
11 that I see them, if they are having a good day or bad day
12 like happened in this case. There might be a slight
13 difference in the range of motion.

14 Q Doctor, so it is fair to say, if it is a good day,
15 maybe you had her on the bad day, maybe the rest of the time
16 she is fine?

17 A It wouldn't be fair to say because the record
18 clearly shows many other doctors on multiple dates had
19 similar findings.

20 Q Doctor, wouldn't it be fair to say she wouldn't get
21 anymore treatment in four and a half years after this
22 accident, there weren't many doctors with the findings, you
23 are the only doctor who saw this, doctor, I guess five years
24 since this accident; isn't that true, doctor?

25 A As far as I know yes.

Dr. Hausknecht - Plaintiff - Cross

1 Q And would it be fair to say, if a person had
2 problems, limitation, loss of use that they would continue to
3 get various treatment on occasion, maybe they won't
4 continuously treat in five years, doctor, won't it be fair to
5 say this, a person who has significant loss of use and pain
6 and limitation problems wouldn't they go to a doctor or
7 chiropractor for treatment would that be fair to say, doctor?

8 A No, not necessarily.

9 Q And, doctor, with regard to the objective finding,
10 the MRI is an objective test, doctor; isn't that true?

11 A True.

12 Q So, if I look at this film I could say that this is
13 a finding, doctor; isn't that true?

14 A I'm not sure I understand the question.

15 Q Doctor, this is an objective test, that means if I
16 look at this film, right, that I should see the same thing
17 you see; is that correct, doctor?

18 A If you are adequately trained.

19 Q Right. But doctor, with regard to the subjective
20 component, isn't it true that, if I show this film to 10
21 different radiologists, some of them are going to say it is a
22 herniation, some are going to say bulge, some are going to
23 determine it is different, some are going to say there is
24 nothing wrong?

25 A Not true.

Dr. Hausknecht - Plaintiff - Cross

1 Q It is not; true?

2 A Not true.

3 Q You are saying all--

4 A In my opinion, all radiologists that look at this
5 will have the same findings that I have.

6 Q And none of them-- well, doctor, would it be fair
7 to say that there is a loss of signal? Do you know what a
8 loss of signal is when reviewing an MRI film?

9 A Sure.

10 Q Doctor, would a loss of signal show that there is
11 in essence a drying out of the disc; isn't that correct,
12 doctor?

13 A Yes.

14 Q And a drying out of the disc is a degenerative
15 symptom?

16 A No, it can occur from trauma or degeneration.

17 Q Doctor, it could come from either, right?

18 A Correct.

19 Q Doctor, are you aware of a loss of signal at her
20 cervical spine at C5-C6; did you find that, doctor?

21 A No.

22 Q You didn't find that at all?

23 A No.

24 Q With regard to the MRI films the doctor reviewing
25 the film didn't he find that? Did you review your record?

Dr. Hausknecht - Plaintiff - Cross

1 A Sure.

2 Q Doctor, are you aware that they made that finding?

3 A He asked me to read the report of the radiologist.

4 Q Are you aware that the doctor that read these films
5 found a different finding from you?

6 A He found the same finding.

7 Q He didn't find a loss of signal at C5-C6, doctor,
8 could you check?

9 A You want me to read the report?

10 Q If you can look at it.

11 MS. MANES: Your Honor, is it in evidence? Are
12 you asking it to be put in evidence?

13 THE COURT: He wants the doctor to look at the
14 film, look at the film.

15 Q Doctor, C5-C6, there is a mild disc space
16 narrowing; is that true?

17 MS. MANES: The doctor, he is reading from
18 material that is not evidence.

19 THE COURT: Put the report down, Mr. Patterson,
20 and ask your question.

21 Q Doctor, did the doctor who reviewed the film find
22 disc space narrowing at the location of C5-6?

23 A Yes.

24 MR. PATTERSON: That is all I am asking.

25 THE COURT: Don't answer that question.

Dr. Hausknecht - Plaintiff - Cross

1 Q Doctor, did the doctor who reviewed the film--

2 THE COURT: You can't ask about that doctor's
3 report unless it is in evidence and you know it is not
4 in evidence.

5 MR. PATTERSON: All right, your Honor, I have
6 nothing further with regard to that line of questioning.

7 Q Doctor, with regard to your previous findings,
8 doctor, are you aware that there was a patient who came to
9 see you in 2003, I am not going to use the name, doctor, but
10 did you exam that patient hypothetically as Jane Doe, did you
11 examine her in 2003 on behalf of defendant and found in
12 essence that there was nothing wrong with her, and she had no
13 limitation, and then examine her again as a plaintiff, a year
14 later, and found that she was partially disabled, and she did
15 have limitations; are you aware of that patient, doctor? We
16 will call her Jane Doe since I don't want to go into your
17 patients? Are you aware that that occurred?

18 MS. MANES: Note my objection.

19 THE COURT: Overruled. You may answer that
20 question.

21 A I can't answer that yes or no, I see thousands of
22 patients a year, some get better, some get worse, some stay
23 the same.

24 Q Doctor, I have a redacted report, I actually have
25 your report, and a copy of your redacted report for this

Dr. Hausknecht - Plaintiff - Cross

1 patient I would like to give you.

2 THE COURT: We will mark them Defendant's A for
3 ID. Defendant's A and B. The original report is A, the
4 redacted report is B.

5 MR. PATTERSON: And I guess C and D, your,
6 Honor, I have two others, two different examinations,
7 and two different reports.

8 (Exhibits so marked.)

9 MS. MANES: Your Honor, may I have an
10 opportunity to look at this report?

11 THE COURT: Let's take 10 minutes everybody,
12 when we come back we will work until about 10 to 1, 5 to
13 1 and then break for lunch. Everybody take 10 minutes,
14 please don't discuss the case. Doctor, you can step
15 down, don't talk to anybody about your testimony.

16 THE OFFICER: Okay jurors.

17 (Whereupon, the jury exits the courtroom.)

18 (Witness steps down.)

19 (At this time, a brief recess is taken.)

20 THE OFFICER: Jury entering.

21 THE CLERK: Come to order, case on trial, jury
22 is all present.

23 THE COURT: Please be seated, you may inquire,
24 Mr. Patterson.

25 CROSS-EXAMINATION (CONTINUES)

Dr. Hausknecht - Plaintiff - Cross

1 BY MR. PATTERSON:

2 Q Doctor, did you create a report with regard to this
3 case?

4 A This case, yes.

5 Q And, doctor, on the top of the report is the
6 letterhead of your business?

7 A Yes.

8 Q And what does it say, Complete Medical Care?

9 A Complete Care, Complete Medical Care Service of New
10 York, PC.

11 Q On the bottom does it list three offices on the
12 bottom of the first page?

13 A It does.

14 Q And, doctor, is there a second page with the name
15 of the patient, and the date, and the third page with the
16 name of the patient, and the date, and a fourth page with the
17 name of the patient, and the date, on the bottom your
18 signature, and a square with regard it to?

19 A Affirmation.

20 Q And these are your reports, doctor? You do work
21 for both plaintiff and defendant; is that correct?

22 A Correct.

23 Q And when you do work for a plaintiff would it be
24 fair to say you are treating the person or examining the
25 person and you could write a narrative report; is that fair

Dr. Hausknecht - Plaintiff - Cross

1 to say, doctor?

2 A Sure.

3 Q In this case you wrote a narrative report--

4 A Correct.

5 Q --when you wrote the office; is that correct?

6 A Correct.

7 Q And is it fair to say in the regular course of your
8 business when you treat a patient you create a similar report
9 to this; is that correct?

10 A Yes.

11 Q And is it your business to keep these reports in
12 the regular course of business?

13 A Yes.

14 Q Is this report that you prepared for plaintiff
15 Marie Stiven created in and kept in the regular course of
16 business?

17 A Yes.

18 Q And, doctor, with regard to the report that I
19 showed you, I showed you a report, we will call this person
20 Jane Doe, this is a report similar to this similar to the one
21 you created in this case, doctor, with your letterhead; is
22 that correct?

23 MS. MANES: Objection, I don't think he was
24 shown the report, I think we broke when we were
25 labelling.

Dr. Hausknecht - Plaintiff - Cross

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THE COURT: Show him the report.

MS. MANES: Okay.

MR. PATTERSON: Okay. I will show you what is marked as Exhibit A and B.

MR. MANES: Are we going to use the redacted?

MR. PATTERSON: They are A and B.

THE COURT: They are not in evidence.

Q Doctor--

A Okay.

Q And, doctor, with regard to the report that I showed you, doctor, is it also your letterhead, Complete Care Complete Medical Services, the letterhead, and the stationery of your business similar to this report?

A It is.

Q At the bottom there are three offices?

A Correct.

Q Small letters, and I believe there's the name and dates on page two and page three; is that correct, doctor, of that report?

A Yes.

Q And I believe the last page, Dr. Aric, A-R-I-C, Hausknecht being duly licensed to practice medicine State of New York, pursuant to the sub-applicable provisions of the CPLR affirms under the penalties of perjury the statement contained here are true and accurate; is that correct?

Dr. Hausknecht - Plaintiff - Cross

1 A Correct.

2 Q Doctor, would it be fair to say this report is
3 created by your office; would that be fair to say, doctor?

4 A Looks like my report sure.

5 MR. PATTERSON: And I would like to offer that
6 in evidence, your Honor.

7 MR. MANES: Objection, your Honor.

8 MR. PATTERSON: As a business record, your
9 Honor.

10 MS. MANES: Objection, your Honor.

11 THE COURT: I will reserve on that. I will
12 make a decision on that as we go through it.

13 Q Okay. Doctor, did you examine this patient on June
14 12 of 2002?

15 A I did.

16 Q And, doctor, would it be fair to say with regard to
17 your findings, and I believe you examined this patient for an
18 independent medical evaluation according to the first page;
19 is that correct?

20 A Correct.

21 Q And is that correct that you found with regard to
22 your mechanical evaluation that there was no tenderness,
23 doctor?

24 A Correct.

25 Q And that you found straight leg raising as

Dr. Hausknecht - Plaintiff - Cross

1 negative?

2 A Correct.

3 Q And the range of motion is full and in all joints;
4 is that fair to say?

5 A Sure.

6 Q Doctor, is it fair to say at the end in your
7 impression you wrote "resolved soft tissue injuries," is that
8 correct?

9 A Yes.

10 Q And that you put down, further down, the patient is
11 not disabled and working on a full-time basis you wrote that,
12 doctor?

13 A Yes.

14 Q And, doctor, I'll show you what not marked, two
15 more reports, doctor--

16 MR. MANES: Can we have a reference to the
17 marking?

18 Q I believe there are no exhibit tabs, so, doctor,
19 with regard to this report, doctor, is this also your
20 letterhead, doctor?

21 MS. MANES: Your Honor, I am going to object to
22 showing anything unless we have some kind of marking.

23 THE COURT: Are these C and D?

24 MR. PATTERSON: Are they?

25 THE COURT: Are these C and D?

Dr. Hausknecht - Plaintiff - Cross

1 MR. PATTERSON: I don't have exhibit tabs, can
2 we mark them C and D, I apologize?

3 (Exhibits so marked.)

4 THE COURT: Show them to the doctor.

5 Q Doctor, is this your letterhead, doctor?

6 A Yes, these look like my report.

7 Q And, doctor, with regard to this report is this the
8 name, Jane Doe, that is the prior report that I just showed
9 you, doctor, the same person?

10 A It seems to be.

11 Q Doctor, is it the same accident, the date of
12 accident 3-19, 1999?

13 A It is.

14 Q And, doctor, is it not that this is listed as a--
15 is this an independent medical examination?

16 A Yes.

17 Q And, doctor, this was taken a year before, doctor;
18 is that correct?

19 A Year after.

20 Q A year after okay. The independent medical
21 examination is a year 2002, doctor; isn't that correct?

22 A The report you just put in my hand is dated June 6,
23 2003.

24 Q And that is the narrative report?

25 A Correct.

Dr. Hausknecht - Plaintiff - Cross

1 Q And, well, doctor, do you have the 2002 report?

2 A The one you previously gave me?

3 Q Okay. And, doctor, with regard to this 2003 report,
4 doctor, on the examination, doctor, would it be fair to say
5 on this report the mechanical examination you found that
6 there is lumbar paraspinal tenderness and associated muscle
7 spasm; would that be fair to say?

8 A Yes.

9 Q Would it be fair to say you found seated leg raise
10 testing is positive bilaterally at 60 degrees?

11 A Yes.

12 Q And that there is passive 20 degree loss of forward
13 flexion in the lumbar spine?

14 A Yes.

15 Q And, doctor, did you find that on this case the
16 impression that you found lumbar derangement; is that
17 correct?

18 A Yes.

19 Q And, doctor, that you found that she's partially
20 disabled; is it fair to say?

21 A Correct.

22 Q And, doctor, would it be fair to say this is the
23 same patient, doctor?

24 A I believe it is sure.

25 Q And, doctor, would it be fair to say that in the

Dr. Hausknecht - Plaintiff - Cross

1 2002 exam you found she wasn't disabled and no limitation,
2 and on the 2003 exam for the same person you found
3 limitations and that she was disabled, yes or no, doctor, is
4 that the findings of these two reports?

5 A Yes.

6 MR. PATTERSON: I would like to offer them in
7 evidence.

8 THE COURT: Again, I will reserve on it for
9 arguments outside the presence of the jury.

10 MS. MANES: Thank you, your Honor.

11 Q Doctor, would it be fair to say that a person can
12 have a limitation of leg raising on one day and be totally
13 fine the next day; is that fair to say, doctor?

14 A It is possible, sure.

15 Q Doctor, is it fair to say that Miss Stiven when you
16 examined her had limitations that day, the rest of the time
17 she was fine?

18 A That is not fair to say, that is not what the
19 record indicates, that is not what other doctors found, and
20 both times I saw her she had a positive test.

21 Q But on the two occasions that you saw her, doctor,
22 they are the same findings; is that correct?

23 A Correct.

24 Q But, doctor, with regard to prognosis would it be
25 fair to say, if a person could have no problems, no

Dr. Hausknecht - Plaintiff - Cross

1 limitations, and no permanency another time is it possible
2 this woman could have been fine on a good day? Isn't that
3 true, doctor, that Marie Stiven here could be fine?

4 A Could be. If there was a day that she could be
5 fine I don't know about it because none of the doctors that
6 ever saw her in treatment found her to be fine. A person can
7 certainly get better, a person could get worse like this
8 person, or a person would stay the same. In this case, Miss
9 Stiven stayed about the same.

10 Q And, doctor, with regard to herniated disc, doctor,
11 are you aware that herniated discs can in essence resolve
12 themselves?

13 A They cannot resolve themselves.

14 Q Are you aware of any literature? You are aware of
15 the literature, doctor? Are you aware of that?

16 A Sure. Sure.

17 Q Are you aware of any cases where a herniated disc
18 resolved itself?

19 A No.

20 Q Doctor, I would like to show you some literature I
21 found.

22 MS. MANES: Your Honor, may we approach? May
23 we have a sidebar please?

24 THE COURT: Yes.

25 (Whereupon, a sidebar discussion is held off

Dr. Hausknecht - Plaintiff - Cross

1 the record.)

2 THE COURT: You may proceed, Mr. Patterson.

3 Q Doctor, are you aware that the medical profession
4 has one website called MedLine that is used with regard to
5 medical journals and medical literature; is that correct?

6 A That is one resource for medical journals sure.

7 Q Are you aware of the journal called the Journal of
8 the Spine?

9 A No.

10 Q You are not aware of it?

11 A I think it is a chiropractic publication, I am not
12 aware of it.

13 Q Doctor, I would like to show you an abstract, we
14 can mark it as A?

15 THE COURT: B. You can show him, see if he
16 recognize it.

17 MR. PATTERSON: Can we mark it, your Honor?

18 THE COURT: Defendant's B for identification.

19 Q Doctor, let me ask you this, are you aware of an
20 article published in the Journal of the Spine from the
21 Department of Neurosurgery at Showa University School of
22 Medicine in Tokyo Metropolitan Ebara Hospital with Dr.
23 Kobayashi N. Asamoto, with regard to a 27 year old
24 spontaneous regeneration of a herniated cervical disc?

25 MS. MANES: Objection.

Dr. Hausknecht - Plaintiff - Cross

1 THE COURT: Do you recognize an article by
2 those doctors?

3 THE WITNESS: I don't read Japanese, and I am
4 not familiar with this article.

5 Q Doctor, are you saying this is not an authority,
6 this journal, and these doctors that found this spontaneous
7 regression are not an authority?

8 MS. MANES: Objection.

9 THE COURT: Sustained, don't answer the
10 question.

11 Q Doctor, I would like to mark this, are you aware of
12 the Journal of Neurosurgery, doctor? Are you aware of that
13 journal?

14 A Yes.

15 Q Doctor, with regard to the Division of Neurological
16 Surgery at Barrow Neurological Institute, St. Joseph's
17 Hospital Medical Center, Phoenix, in Arizona, are you aware
18 of--

19 THE COURT: No. No. No.

20 MS. MANES: Objection.

21 THE COURT: Do you recognize that journal,
22 doctor?

23 THE WITNESS: I've heard of that journal.

24 THE COURT: Do you recognize that is an
25 authority in the field of neurology?

Dr. Hausknecht - Plaintiff - Cross

1 THE WITNESS: No.

2 Q Well, do you know Dr. Westmark, RM, Westmark KD,
3 Sonntag VK, doctor? Never heard of them? They are not an
4 authority?

5 A No.

6 Q Doctor, what about Louisiana State University
7 Health Sciences Center, Department of Neurosurgery,
8 Shreveport, Dr. PK Reddy, Dr. S. Sathyanarayana, and Dr. A.
9 Nanda; are you aware of another case?

10 MS. MANES: Objection.

11 THE COURT: Don't go into the recitation of
12 the case; do you recognize that publication?

13 A No, I don't recognize that is an authority, I don't
14 subscribe to the Louisiana State Medical Societies
15 publication.

16 Q Doctor, are you aware to say with a reasonable
17 degree of medical certainty that if-- if a patient--

18 MS. MANES: Objection, I think I know where
19 this is going.

20 THE COURT: I don't know what the question is,
21 let me hear the question.

22 Q Doctor, with a reasonable, degree of medical
23 certainty, doctor, if a patient comes to you with a herniated
24 disc, right, and they are asymptomatic, doctor, is that
25 possible?

Dr. Hausknecht - Plaintiff - Cross

1 A It is possible sure.

2 Q And, doctor, if a person comes to you with a
3 symptomatic herniated disc would they be sent to-- for
4 another MRI, doctor?

5 A I don't understand the question.

6 Q Well, if a person comes to you and they have a
7 herniated disc confirmed by an MRI, right--

8 A Understood.

9 Q --well, is it fair to say that later on, if they are
10 fine, and they have no problems, they wouldn't go for another
11 MRI, doctor; isn't that true?

12 A Probably sure.

13 Q So, doctor, if you did send them, if these studies
14 do start sending people for MRIs when they are fine and
15 resolved and they have no pain and no problem, is it possible
16 to find out that these doctors have found that these
17 herniated discs are resolved?

18 MS. MANES: Objection.

19 THE COURT: Sustained, don't answer the
20 question.

21 Q Is that possible, doctor?

22 MS. MANES: Objection.

23 THE COURT: No, no, sustained, don't answer
24 that question.

25 Q And, doctor--

Dr. Hausknecht - Plaintiff - Cross

1 THE COURT: Mr. Patterson, do not refer to any
2 of those doctors or any of those articles.

3 Q Doctor, with regard to a patient neurologically, a
4 nerve is two parts, right, doctor?

5 A I don't understand the question.

6 Q Well, a nerve is two components, there is a sensory
7 part so that your fingers if you touch something the nerves
8 tell you what you touched, you stick your finger in a fire,
9 and also a motor component that actually moves the fingers
10 for you; is that fair to say?

11 A In part yes.

12 Q Doctor, there are two parts?

13 A There are many parts to the nerve, those are two of
14 the parts.

15 Q Doctor, would it be fair to say the nerves could be
16 impaired with regard to sensation or impaired with regard to
17 movement?

18 A It is possible sure.

19 Q And, doctor, with regard to this case, is it fair
20 to say with regard to the patient, if she had tingling or
21 numbness would it be fair to say she in essence had an
22 impairment with regard to the sensation part of the nerves;
23 is that correct?

24 A Yes.

25 Q And, doctor, would it be fair to say there are

Dr. Hausknecht - Plaintiff - Cross

1 cases where a person has impingement, numbness, and tingling
2 yet full motor strength; is that fair to say?

3 A If it is possible sure.

4 MR. PATTERSON: I have nothing further.

5 THE COURT: Anything else of the doctor?

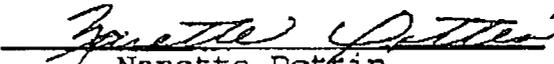
6 MS. MANES: No redirect.

7 THE COURT: Thank you, doctor, for coming
8 today, you may step down.

9 (Witness steps down.)

10 oOo

11 I hereby certify the foregoing to be a true and accurate
12 transcript of the original stenographic record in the
13 above proceedings.

14 
15 Nanette Dottin
16 Senior Court Reporter

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