

A. Hausknecht

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THE PEOPLE OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CIVIL TERM: PART 16

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MARK HAMILTON,

Index#  
: 112/2003

-against-

ERNESTINE ROUSE,

Defendant.

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February 24, 2006  
360 Adams Street  
Brooklyn, New York 11201

B E F O R E: HONORABLE LEON RUCHELSMAN  
Supreme Court Justice and a Jury

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

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New York, New York 10007  
BY: ERICA B. SATTLER  
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BY: ROBERT M. SMITH  
Counsel to Defendant

TANYA MILO-SMITH  
Senior Court Reporter

1 THE COURT: Defense counsel has indicated  
2 he'd like to further put on the record his objection --  
3 I believe you put it on the record yesterday but the  
4 Court will allow him to reiterate it before the jury  
5 comes in.

6 MR. SMITH: Thank you. I'm going to renew my  
7 objection to the introduction of the films. As we  
8 discussed yesterday the plaintiff was unable to obtain  
9 the services of Dr. Zin (ph) and was unable to get a  
10 records keeper from where the films are being stored.  
11 They brought in films from plaintiff's attorneys  
12 office. There is a chain of custody and there is no  
13 identification of these films and it's our contention  
14 that the films are improper. We haven't had an  
15 opportunity to review the films being used at trial  
16 today.

17 THE COURT: Didn't you indicate -- you're not  
18 saying you never received them.

19 MR. SMITH: Your Honor, what I'm saying is  
20 we're not saying we never received films from the  
21 facility. What I'm saying the films going into  
22 evidence today are not the films which were sent to us  
23 and there is a custody problem with regard to these  
24 particular films.

25 THE COURT: What films were sent to you?

1 MR. SMITH: Copies -- presumably films that  
2 were the same films. What I'm saying I don't know  
3 these particular films were sent to us by the  
4 particular company.

5 THE COURT: Okay but you're not saying you  
6 have not received these films you're not saying that  
7 are you?

8 MR. SMITH: I'm not saying we didn't receive  
9 copies of films for Mr. Hamilton from the facility  
10 which took the films.

11 THE COURT: Did you have any doctor or any  
12 specialists look at the films you did receive?

13 MR. SMITH: I don't know, Your Honor. We did  
14 not disclose any film reviews or anything like that.

15 THE COURT: I don't understand. You're  
16 saying you got films but you're saying you never looked  
17 at the films.

18 MR. SMITH: No, Your Honor, I'm not saying  
19 the -- what I'm saying these particular films may or  
20 may not be copies of the films that were sent.

21 THE COURT: But why didn't you look at the  
22 films that were sent in order to tell us whether or not  
23 they're the same copies of the films here in court?

24 MR. SMITH: Your Honor what I would like is I  
25 guess the opportunity to have any doctor look at the

1 films as well as the ones on Monday.

2 THE COURT: Of course you can. Your problem  
3 could have been greatly alleviated if your doctor could  
4 have looked at the films beforehand and you would know  
5 right away are the same films which presumably they are  
6 which are the films there that are being admitted.

7 MR. SMITH: I'm trying to obtain the  
8 opportunity for the doctor I have Monday to look --

9 THE COURT: They can look at it Monday and  
10 they can look at it today. Any time you want.

11 MR. SMITH: Thank you, Judge.

12 MS SATTLER: Your Honor, their doctor and  
13 their expert's disclosure did not disclose any  
14 information concerning opinions on the actual films  
15 because they never reviewed them. I would object to  
16 them expressing any opinions that are not contained in  
17 the expert disclosure in their reports.

18 THE COURT: Well, like I said to both counsel  
19 at sidebar once the films are in evidence they can  
20 testify to whatever they want to testify to in regard  
21 to those films just like your doctor witness, we admit  
22 him into evidence is going to tell us what he sees on  
23 the films or saw on the film. Same thing their doctor  
24 is going to have the same opportunity.

25 MR. SMITH: Thank you, Your Honor.

1 MS SATTLER: Thank you, Judge. Judge one  
2 sheduling issue. Tuesday morning I have a doctor's  
3 appointment that would be difficult for me to miss.

4 THE COURT: What time?

5 MS SATTLER: It's at 10:30 at New York  
6 Hospital.

7 THE COURT: And what time do you think you'll  
8 be back?

9 MS SATTLER: I can probably be here by 12:30.

10 THE COURT: Okay I'll tell the jury to come  
11 back at 12 if you're a little late you're a little  
12 late, we'll wait. Try maybe to call them to be taken  
13 right away at 10:30.

14 MS SATTLER: Yes, I will.

15 MR. SMITH: Your Honor, wont it be easier to  
16 start after lunch? I'm agreeable to that.

17 THE COURT: You know what Monday we'll see  
18 how it goes. I don't have to tell them until Monday  
19 anyway.

20 Maybe we'll tell them to come back at 12,  
21 maybe -- we'll see how it goes Monday.

22 MS SATTLER: Judge, would you want to do the  
23 charge conference after his doctor on Monday afternoon?

24 THE COURT: Yes we can do it on Monday.  
25 Please have your requests to charge on Monday.

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COURT OFFICER: Jury entering.

(Whereupon the jurors entered the courtroom.)

Be seated, jurors.

THE COURT: Good morning, ladies and gentlemen. Want to thank you again for your cooperation and we have a witness here we're ready to go. Counsel.

MS SATTLER: Thank you. I'm going to call Dr. Aric Hausknecht.

THE COURT: Dr. Hausknecht step up here and step around.

DOCTOR ARIC HAUSKNECHT,  
called as a witness on behalf of the Plaintiff, after being  
duly sworn testified as follows:

THE CLERK: Please be seated. Please state your name and your business address for the record.

THE WITNESS: My name is Aric, A-R-I-C; Hausknecht, H-A-U-S-K-N-E-C-H-T. My place of business is 19 East 37th Street, New York, New York 10016.

THE CLERK: Thank you.

THE COURT: Okay.

BY MS SATTLER:

Q Good morning, Dr. Hausknecht.

A Good morning, counsel.

Q Dr. Hausknecht, are you a physician duly licensed

1 to practice in New York State?

2 A Yes, I am. I received my license to practice  
3 medicine and surgery in New York State in 1992.

4 Q Dr. Hausknecht can you tell us a little about your  
5 medical training and background?

6 A Sure. I graduated from Duke University in 1987  
7 majoring in physical anthropology. I graduated from Mt.  
8 Sinai Medical School in 1991 with a medical degree. I  
9 completed my medical internship training at Beth Israel  
10 Medical Center and I completed my neurology residency  
11 training program at New York Hospital Cornell Medical Center  
12 and Memorial Sloan Kettering Cancer Center.

13 Q Dr. Hausknecht, are you board certified?

14 A I am. I am currently double board certified.  
15 Board certified in neurology by the American Board of  
16 Psychiatry and Neurology and Board Certified in pain  
17 management by the American Academy of Pain Management.

18 Q What does that mean to be board certified?

19 A Board certified is the highest level of  
20 qualification that a physician can achieve in their chosen  
21 field of practice. So for example in neurology after  
22 completing an accredited residency training program and  
23 successfully passing a series of written examinations, a  
24 neurologist is then granted the privilege to sit for the  
25 board exam or the final exam.

1 In neurology there is a full day question and  
2 answer session, multiple choice and then there is a full day  
3 question and answer session with a panel of board examiners.

4 Q And doctor are you a member of any professional  
5 society and organizations?

6 A I am an active member of the American Academy of  
7 Neurology and American Academy of Pain Management.

8 Q Dr. Hausknecht, do you currently practice  
9 medicine?

10 A I do.

11 Q Can you describe that for the jury?

12 A Sure. I'm a neurologist and a pain management  
13 specialist. I have been in private practice since 1995. I  
14 have an office in New York City in Forest Hills, Queens and  
15 in the Bronx. I am affiliated with several different  
16 hospitals including Beth Israel Medical Center, Peninsula  
17 General Hospital and Long Beach Hospital.

18 Neurology is the field of medicine that deals with  
19 the treatment and evaluation of disorders of the nervous  
20 system. Nervous system includes the brain, spinal cord and  
21 nerve roots.

22 Pain management is the field of medicine that  
23 deals with the treatment and evaluation of pain and the  
24 consequences that that pain has on a person in their  
25 everyday life. So as a neurologist and pain management

1 specialist I see a lot of people with neck pain and back  
2 pain. I see a lot of people with numbness and weakness.  
3 It's my job to figure out what's causing their problems and  
4 what I can do to help alleviate their pain and suffering and  
5 improve their ability to function on a day to day basis.

6 Q Okay. Have you ever been -- Dr. Hausknecht, have  
7 you been qualified as an expert in court before?

8 A I have.

9 MS SATTLER: At this time, Your Honor, I'm  
10 going to submit Dr. Hausknecht as an expert in the  
11 field of neurology and pain management.

12 THE COURT: Any objection?

13 MR. SMITH: No objection.

14 THE COURT: Qualified as an expert.

15 THE WITNESS: Thank you, Your Honor.

16 BY MS SATTLER:

17 Q If you could describe the anatomy and function of  
18 the cervical and lumbar spine to the jury.

19 A Sure. I brought a small plastic model with me  
20 which I think will help to illustrate some of the normal  
21 anatomy. With Your Honor's permission, may I step down?

22 THE COURT: Sure.

23 A This is a portion of the human spinal column.  
24 This is -- this is a plastic model, the type of model used  
25 in medical school. Type of model I use in the hospitals

1 when I'm teaching residents about the spine.

2           The human spinal column is basically made up of  
3 separate bones known as the vertebrae. Each one of these  
4 round bones with the protuberances going backwards and  
5 sideways is the vertebrae. These are vertebrae standing up  
6 on top of each other. In the cervical spine or neck there  
7 are seven vertebrae. In the thoracic spine or middle back  
8 there are 12 vertebrae and in the lumbosacral spine or lower  
9 back there are five vertebrae. They are numbered according  
10 to their position.

11           In between each of those vertebrae is a piece of  
12 soft, cartilaginous tissue known as the disc. This clear  
13 structure is the disc. It's a jelly like substance that sit  
14 between the bones and these bones are kept together by a  
15 series of tough connective fibrous tissues known as  
16 ligaments. So the ligaments connect one bone to the next  
17 and it keeps that disc in place and this provides the basic  
18 structure of the spine.

19           These vertebrae and disc form true joints so the  
20 spine is a mobile structure. It allows a person to bend  
21 forward, bend backward, bend sideways and twist from side to  
22 side.

23           Within the human spinal column there are a number  
24 of openings. In the center running from the top to the  
25 bottom is what's known as the spinal canal and that yellow

1 structure is the spinal cord. It starts at the base of the  
2 brain and runs down into the lower back. On both sides  
3 right next to the disc are what's known as the neural  
4 foramen and the nerve roots come out next to the disc and  
5 those nerve roots go down into the arms and hands. And the  
6 lower back those nerve roots go down to the legs and feet.  
7 They provide information to the muscles to either contract  
8 or relax and they provide information back to the brain such  
9 as pain or temperature or position. The human spinal column  
10 basically has two essential functions one is support.  
11 Because of the structure of the spine a human being can  
12 stand upright, have an attachment for the arms and legs yet  
13 be flexible enough to perform the activities needed to  
14 survive on a day to day basis.

15           The second essential function of the spinal column  
16 is to protect the spinal cord and protect the nerve roots.  
17 Nerve tissue is not like other tissue in the human body. If  
18 a nerve is damaged that damage is irreversible. Nerves  
19 cannot repair themselves like other tissue in the body. If  
20 you cut your skin and scar tissue comes back it will  
21 function reasonably well as skin. If you damage a nerve and  
22 scar tissue grows back, it doesn't function like a nerve.  
23 It won't transmit electrocal impulses or neuro transmitters.

24           The discs themselves can sometimes slip out of  
25 place. If that ligaments that normally keeps that disc in

1 place is stretched, that jelly like substance will bulge out  
2 against that stretched ligament and that's known as a disc  
3 bulge. If the ligament is torn, some of the jelly will leak  
4 through that tear. That's a disc herniation.

5 Q Doctor, while you have the model in your hand,  
6 what is a sprain or a strain?

7 A A sprain or a strain would refer to a stretching  
8 of some of the supporting structures around the spine.  
9 There are a number of muscles, the paraspinal muscles and  
10 these muscles are attached to the bone by tendons. If you  
11 stretch a muscle or stretch a tendon that's known as a  
12 sprain or strain. It's different than a slipped disc or a  
13 pinched nerve.

14 Q How would a strain or sprain differ in terms of --  
15 terms of clinical symptoms from a disc herniation or disc  
16 bulge?

17 A The most common symptoms of a strain or sprain is  
18 a tightening that lasts for a couple of days or weeks. A  
19 slipped disc or pinched nerve has a much longer effect pain  
20 for months or years and nerve damage is loss of power or  
21 sensation.

22 Q Can a sprain or strain look different than a bulge  
23 or herniation on an MRI film?

24 A Yes. A stretching of a muscle or ligament doesn't  
25 show up on an MRI. It's a limited condition. It's going to

1 get better with a sprain or strain. Slipped disc or pinched  
2 nerve is permanent. That's not going to go away.

3 Q Okay doctor --

4 A May I sit?

5 Q Yes.

6 Did you ever examine the plaintiff, Mr. Hamilton,  
7 in this case?

8 A I did. I had the opportunity to see him on two  
9 occasions and I brought my office notes with me for the sake  
10 of accuracy.

11 Q Doctor, when you examined Mr. Hamilton was it at  
12 the request of Harmon and Linder, the lawfirm I'm  
13 representing today?

14 A It was.

15 Q By the way, doctor, were you compensated for  
16 seeing him at your office when you examined him and wrote  
17 your report?

18 A I was. The first time I saw him the fee was \$250.  
19 and the second time I saw him it was \$150.

20 Q And by the way, doctor, what would you be doing if  
21 you were not here in court today?

22 A I would be seeing patients in my office.

23 Q Are you being compensated for your time away from  
24 your office?

25 A I am. My fee for time away from the office is

1 \$500 per hour and that's in payment for services that I  
2 would not normally be able to render because I'm here today.

3 Q Did you review any records before coming here  
4 today?

5 A I did.

6 Q Can you describe the records or any films that you  
7 reviewed before coming here today?

8 A I had the opportunity to review some of his  
9 treatment records pertaining to this car accident  
10 specifically reports by Dr. Sterling (ph), reports by Dr.  
11 Sluzinsky (ph).

12 MR. SMITH: Objection.

13 THE COURT: Tell us what he reviewed without  
14 going into them.

15 THE WITNESS: I had the opportunity to review  
16 MRI films of the neck and back as well as the  
17 radiologists report of those films. I had the  
18 opportunity to review an NCV, Nerve Conduction Velocity  
19 study as well as an EMG, Electromyography study.  
20 That's basically all the records I had.

21 Q Let's start with the EMG and NCV. Can you explain  
22 to the jury what that is?

23 A Sure. The NCV stands for Nerve Conduction  
24 Velocity and EMG stands for Electromyography. These are  
25 electro diagnostic studies that are performed using a

1 computer that can determine if there is any nerve damage  
2 occurring in the body and at what level that nerve damage  
3 occurs. The NCV study is performed by shocking a nerve and  
4 then using a computer to measure how quickly and how  
5 strongly that electrical impulse is transmitted down the  
6 nerve.

7           The EMG is performed by sticking a needle into a  
8 muscle and recording the electrical activity with a  
9 computer. The nervous system functions by transmitting  
10 minute electrical impulses. For example if you decide you  
11 want to make a fist in your right hand it requires the  
12 simultaneous contraction of the muscles on the bottom of  
13 your hand and the relaxation of the muscles on the top of  
14 your hand. Somewhere in the left front portion of your  
15 brain a nerve cell fires off and that neuron transmits that  
16 electrical impulse in the neighboring nerve cell and goes  
17 down the spinal cord, down the nerve root into the  
18 neuromuscular junction causing one set of muscles to  
19 contract and the other set of muscles to relax and this  
20 happens within tenths of a second and the impulses are a  
21 thousandths of a volt.

22           NCV, EMG study can determine if there is nerve  
23 damage and what level that nerve damage is occurring in.  
24 For example, if you look in this courtroom and there are six  
25 recessed lights and this light over here is not working and

1 there are three switches in the back of the courtroom you  
2 turn on all three switches and only five of those six lights  
3 goes on it means that there is either a problem with the  
4 switch --

5 MR. SMITH: Objection, Your Honor.

6 THE COURT: Let him just finish up.

7 THE WITNESS: -- there is a problem with the  
8 switch, the brain, there is a problem with the wiring,  
9 spinal cord and nerve root or there is a problem with  
10 the neuromuscular junction or the muscle, the fixture.  
11 The NCV, EMG can determine whether or not there is  
12 nerve damage, at what level that damage is occurring  
13 and how severe that nerve damage is.

14 Q And what is an MRI film?

15 A MRI stands for Magnetic Resonance Imaging. This  
16 is a radiological technique that's been around for about 30  
17 years. It's different than conventional X-rays because it  
18 doesn't use radiation. It uses strong magnetic fields.  
19 MRI's are very valuable tools for looking at the soft tissue  
20 structures in the human body such as the brain, spinal cord,  
21 the nerve roots and discs. X-rays and CAT scans are better  
22 for looking at the mineralized tissue like bone. MRI gives  
23 us a clear picture of some of the soft tissue structures in  
24 the body. MRI is also better than conventional radiology  
25 because it gives us a three dimensional picture.

1           Typically X-rays are front to back and side to  
2 side. With an MRI because it's computer generated we can  
3 pick a point in the human body and look at it from any  
4 direction that we choose so it gives an examiner a three  
5 dimensional picture of a single point in space.

6           Q       What is clinical correlation?

7           A       Clinical correlation is a term that's used to  
8 describe the significance of findings. So for example if a  
9 radiologist sees something on an MRI he would ask the  
10 neurologist to clinically correlate.

11                   If there is a problem with the disc and the  
12 patient is having shooting pain then the clinical  
13 correlation would be that's a radiculopathy.

14           Q       Doctor, can you please summarize the pertinent  
15 records that are in evidence -- actually let me show you  
16 Plaintiff's One.

17           A       According to Dr. Sterling the patient had come to  
18 his office the day after the accident and was complaining --

19                   MR. SMITH: Objection, Your Honor. He can't  
20 testify as to what the other doctor was told.

21                   THE COURT: Just tell us the symptoms when  
22 you examined him not what he told the doctor at that  
23 time, doctor.

24                   MS SATTLER: Your Honor --

25                   THE COURT: I'm sorry?

1 MS SATTLER: We had discussed this before.  
2 He's reading straight from Dr. Sterling's records.

3 THE COURT: I know. Let him not read what  
4 the patient told Dr. Sterling at that time, okay.

5 BY MS SATTLER:

6 Q When the patient presented to Dr. Sterling's  
7 office the day after the accident what were the symptoms he  
8 presented with at that time?

9 A Neck and back pain and stiffness.

10 Q And at that time, the day after the accident, did  
11 Dr. Sterling perform an examination of him?

12 A He did.

13 Q Can you describe that examination?

14 A Dr. Sterling found tenderness and spasm in the  
15 neck and back with loss of motion.

16 Q And did Dr. Sterling send -- did Dr. Sterling  
17 recommend a course of therapy for the patient?

18 A Yes.

19 Q What type of therapy was recommended for the  
20 patient?

21 A He sent him for physical therapy.

22 Q And would that include hot packs, massage  
23 electrical stimulation, exercise?

24 A It would.

25 Q Did Dr. Sterling refer the patient for any tests?

1 A Yes.

2 Q What tests did he refer the patient for?

3 A He sent him for an MRI of the neck, back and NCV,  
4 EMG of the neck and back.

5 Q Dr. Hausknecht, I'm going to show you what's been  
6 marked Plaintiff's 2A, B, C and D, E and F in evidence. I'm  
7 going to ask you to review these films.

8 Doctor before I ask you specific questions --

9 MR. SMITH: Note my objection of the films,  
10 Your Honor.

11 THE COURT: Yes.

12 MR. SMITH: Can we approach, Your Honor on  
13 the films?

14 (Whereupon an off the record discussion was  
15 held between the Court and counsel out of the presence  
16 of the jury.)

17 BY MS SATTLER:

18 Q Doctor before I ask you specific questions about  
19 the films have you ever reviewed an MRI film before?

20 A I have. MRI's are part of my training as a  
21 resident. We had MRI rounds every single day.

22 As a physician in private practice I've read  
23 thousands of MRI's. As part of my board certification.  
24 Oftentimes in the hospitals I'm called upon to review an MRI  
25 and make a treatment decision without radiologists being

1 involved and many times radiologists call upon me about what  
2 an MRI shows.

3 Q Doctor, if you could there is some information  
4 photographically inscribed in the MRI film. If you could  
5 read the information that's photographically inscribed on  
6 the MRI films to the jury.

7 A There is two separate films. There are films of  
8 the neck and films of the back. The neck films the date is  
9 5/24/02. It has the name, Mark Hamilton. There is a  
10 medical record number. There is, I believe, a date of birth  
11 [REDACTED] and there is an indication M. which I believe is  
12 standard for male. Name of MRI facility and the name of the  
13 referring doctor, Dr. Sterling and the lumbar spine there is  
14 a date of 5/24/02. There is a medical records number.  
15 There is a name, Mark Hamilton. There is a date of birth  
16 [REDACTED]. Indication M. for male. The name of the MRI  
17 facility and the referring doctor, Dr. Sterling.

18 Q With MRI films, Dr. Hausknecht, if you were  
19 looking at a film and you didn't like what it showed could  
20 you erase it and pencil in a different result?

21 MR. SMITH: Objection, Your Honor.

22 THE COURT: You can answer that question.

23 A No it's like a black and white picture. It is  
24 what it is. You can't change it.

25 Q Now, doctor, these films that you are looking at

1 right now are they a fair and accurate representation of  
2 what you reviewed when you reviewed the films at the time of  
3 your examination of the plaintiff?

4 A Yes.

5 Q Doctor, can you tell me what these MRI's show?

6 A Sure. You want me to put them up?

7 Q Please do.

8 THE COURT: I'm admitting them into evidence  
9 that's why the doctor can go and show it to them. You  
10 didn't ask for it to be admitted. You want them to be  
11 admitted?

12 MS SATTLER: Yes, I want them to be admitted.

13 MR. SMITH: Note my objection to the films.

14 THE COURT: You have it.

15 MR. SMITH: Thank you.

16 A Two C is what's known as the sagittal, T-1  
17 weighted image of the cervical spine. So now as a point of  
18 reference each one of these is a different slice of the  
19 spine. This is the top, this is the bottom. This is the  
20 front, this is the back. Each one of these squares is the  
21 front portion of the vertebral body. The gray spike coming  
22 down is the spinal cord and each of those oblong shapes in  
23 between is the disc itself so if you imagine the spine is a  
24 long salami and you take long slices and look at each slice  
25 that's what we're seeing. When you come over here and look

24

1 at this disc at the level of C-4, 5, this is C-2, 3, this is  
2 C-3, 4. This is C-4, 5 and this is C-5, 6 you see that  
3 something is sticking out beyond those vertebral bodies at  
4 C-4, 5 and that something is a piece of the disc which is  
5 slipped backwards. That's a slipped disc or herniated disc  
6 at C-4, 5 right over there.

7 The square is the vertebral body. The oblong  
8 shape is the disc right over here something is slipped  
9 backwards between those bones. That's a slipped disc. C-4,  
10 5 disc herniation right over there.

11 Two E is the lower back. Each one of these  
12 squares is the vertebral body. Each one of these oblong  
13 shapes is the disc. Down at L-5, S-1 something looks a  
14 little bit funny but you don't get a really very clear  
15 picture of it on this image. MRI's are great. You take a  
16 picture, look at a different image.

17 When you look at the axial image, 2B, it helps  
18 clarify what's going on at L-5, S-1 and now this is the same  
19 person it's just a -- it's just a different orientation.  
20 This on the bottom left hand corner of the film, each one of  
21 these lines is actually one of the cuts through the spine so  
22 this is what's known as the axial image. If you can imagine  
23 somebody now is lying flat on their back, the kidney bean  
24 shaped portion on top is the vertebral body and the triangle  
25 shape in the back is the spinal canal and here is the

1 transverse processes and the lateral process. So the spinal  
2 cord is right here and the nerve roots are coming out from  
3 side to side. When we look down here at the level of L-5,  
4 S-1 you see that something is pressing from the vertebral  
5 body into the spinal canal and that something right there is  
6 the disc bulge at L-5, S-1, the ligament has been stretched  
7 and that piece of cartilage is pushing backwards into the  
8 spinal canal. This round portion is the vertebral body.  
9 This circular shape in there is the spinal canal with the  
10 spinal cord. Something is pressing out right into the  
11 spinal canal and that something is that disc which is  
12 pressed down. The ligament that normally keeps that disc in  
13 place has been stretched and it's bulging out against that  
14 stretched ligament.

15 Q Doctor, getting back to your examination of the  
16 patient, can you describe that for the jury? I'm sorry your  
17 examination and findings on examination?

18 A Well first I took a history from the patient. I  
19 asked him what was still bothering him. I asked him what  
20 type of treatments he had received and whether or not the  
21 treatment had worked and what else he had done since  
22 stopping the treatment then I performed a physical  
23 examination with special attention to the neck and back.

24 Q Can you describe that examination for the jury?

25 A Sure. I saw him two times. I'll start with

1 April 15th of 2005. On that date the patient indicated to  
2 me that he had received rehabilitation for approximately two  
3 months after the accident. He found it to be helpful but he  
4 had never fully recovered from his injuries. He was still  
5 experiencing lower back pain. This was radiating down the  
6 posterior aspect of both of his thighs so the back pain was  
7 shooting down the back of his legs. He was having problems  
8 with his activities of daily living and he was especially  
9 having problems sitting. He indicated to me that his neck  
10 really wasn't bothering him that much when I saw him

11 April 15th of 2005. The patient denied any other history of  
12 neck or back problems and had been working as a locksmith.  
13 On physical examination there was a five minus over five  
14 weakness of the hip flexors. The hip flexors are the  
15 muscles in the thigh that raise the knee up to the chest.  
16 Motor strength is graded on a scale of zero to five with  
17 five being full strength and zero being paralysis. He was  
18 far from paralyzed but lost one grade of strength in both of  
19 his thighs.

20 The examination of the neck revealed hypertonicity  
21 of the paracervical muscles. That means that the tone of  
22 the muscles have increased so his neck basically was tight  
23 but it wasn't in spasm. In the lower back there was  
24 paraspinal tenderness and spasm. The muscle had gone into a  
25 locked position. There was a 20 percent loss of right

1 rotation in the cervical spine. Rotation is the ability to  
2 turn your head towards the right. So he had a mild loss of  
3 movement in the neck when moving his head towards the right  
4 but otherwise the range of motion in his neck and lower back  
5 was normal. These were the pertinent findings on the  
6 history and physical exam.

7 Q Okay. That was April 15th?

8 A On April 15th, yes and now on October 20th the  
9 patient -- October 20th, 2005 I saw him again. He said he  
10 was still having lower back pain. He had good days and bad  
11 days but at times the pain was severe. It was radiating  
12 down into his left leg and was associated with numbness and  
13 tingling. Once again he still was not having any  
14 significant problems with his neck. The patient had been  
15 doing some stretching exercises at home since our last visit  
16 together and was having problems with his activities of  
17 daily living specifically he reported difficulty sitting,  
18 standing, bending and lifting. Physical examination on this  
19 day revealed five minus weakness of the hip flexors so he  
20 still had that loss of strength in the legs. There was  
21 hypertonicity in the cervical paraspinal muscles. There was  
22 hypertonicity in the lumbosacral paraspinal muscles. The  
23 patient had a ten degree loss of right rotation in the neck  
24 so nothing much different and he had a ten degree loss of  
25 forward flexion in the lower back. Forward flexion is the

1 ability to bend forward at the waist. Normally a person  
2 gets to 90 degrees. In this case he was able to get to 80.  
3 Not a big deal. Mild loss of motion. He had good movement  
4 in the neck and back despite the fact that he had these disc  
5 problems.

6 Q And you said that on both occasions I believe you  
7 said the problem -- withdrawn.

8 Based on your examination do you have an opinion  
9 whether with this particular occasion, the problem was more  
10 with his back than with his neck?

11 A In my opinion his back was a more significant  
12 problem for him. He had evidence of nerve damage in the  
13 lower back.

14 Q And the problems that he was having in his neck is  
15 that something that is constant, can it come occasionally or  
16 can you describe that for the jury?

17 A The types of symptoms that occur after a slipped  
18 disc or pinched nerve wax and wane in severity. A person  
19 will have good days and bad days. It will depend on change  
20 in the weather. It will depend on their level of activity  
21 and type of activity. In this case his lower back problem  
22 was certainly more significant than his neck. His lower  
23 back problem persisted. It was interfering with his ability  
24 to function on a day to day basis.

25 Q The fact that you had mentioned that the range of

1 motion on both occasions was relatively mild loss of range  
2 of motion, would that be consistent with someone who had a  
3 slipped disc injury or a bulging disc injury?

4 A Sure, sometimes people with a slipped disc will  
5 have a loss of motion and sometimes they won't. In this  
6 case he was a pretty healthy guy and had been stretching and  
7 really didn't show any significant loss of movement.

8 Q Okay. Did your examination reveal that the  
9 patient continued to suffer from numbness, weakness and  
10 spasm as of your last examination?

11 A Yes.

12 Q And are those symptoms consistent with somebody  
13 who has a herniated disc or bulging disc injury?

14 A They're consistent with a slipped disc and pinched  
15 nerve, yes.

16 Q Now we talked about what the MRI showed. You also  
17 reviewed the NCV, EMG studies and are those important  
18 diagnostic tools?

19 A Yes.

20 Q What did the EMG, NCV study show?

21 A These studies showed the patient had a pinched  
22 nerve at the level of L-5, S-1. So the nerve roots that  
23 were exiting right next to that disc that was bulging in the  
24 lower back was either being pressed by the disc or being  
25 irritated by the disc and it was resulting in what's known

1 as a radiculopathy or a pinched nerve.

2           Radiculopathy is a syndrome marked by pain  
3 oftentimes that pain will be shooting down the legs like  
4 Mr. Hamilton was experiencing. The radiculopathy will be  
5 marked by loss of power and in this case he had lost  
6 strength in his legs. It may be accompanied by changes in  
7 the reflexes. I didn't find any reflection changes. It may  
8 be accompanied with loss of feeling or funny feelings and in  
9 this case he was experiencing numbness and tingling. Based  
10 upon the patient's clinical presentation, his symptoms the  
11 findings on the physical examination and based upon the MRI  
12 which showed the disc bulge; based upon NCV, EMG which  
13 objectively confirmed there was nerve damage I was impressed  
14 that he had an L-5, S-1 disc bulge with associated L-5, S-1  
15 radiculopathy.

16           Q       And we talked about before about the MRI films and  
17 MRI findings in the neck in the cervical spine. The fact  
18 that the patient on the two occasions that you examined him  
19 didn't express significant pain in his neck on those two  
20 occasions, would his findings still be consistent with the  
21 MRI findings --

22                   MR. SMITH: Objection.

23                   MS SATTLER: -- of herniated disc?

24                   THE COURT: He can answer.

25                   THE WITNESS: Yes. In my opinion the

1 findings on exam is he has the cervical hypertonicity,  
2 the mild loss of motion in the neck consistent with the  
3 disc herniation at C-4, 5.

4 Q Okay, doctor, was there any indication that the  
5 patient ever suffered problems or trauma to his neck or  
6 lower back before this accident?

7 MR. SMITH: Objection.

8 THE COURT: He can answer based upon his  
9 examination.

10 MR. SMITH: He didn't examine the plaintiff  
11 until three years later.

12 THE COURT: Well based on his examination if  
13 he can answer that question.

14 THE WITNESS: Based on my examination there  
15 was no evidence of any prior neck or back problems. He  
16 was a young, healthy man. There was no evidence of any  
17 preexisting condition like arthritis or something like  
18 that.

19 Q Dr. Hausknecht I want you to assume that there's  
20 been testimony that at the time of the accident the  
21 defendant crashed into the side of the plaintiff's car --

22 MR. SMITH: Objection, Your Honor.

23 MS SATTLER: There has been testimony to  
24 that.

25 THE COURT: Let's hear the question.

1           Q     That the impact was a heavy impact or hard impact  
2 to the right side of his car that it shook up his car, his  
3 body was jolted. His left shoulder hit the side of the car.  
4 Immediately after the accident the plaintiff was in shock  
5 and he declined medical treatment at that time. He went  
6 home to rest but that the next morning he was in a  
7 tremendous amount of pain. He went to the doctor's office  
8 he complained of pain to his neck and lower back at that  
9 time, that he was started on a course of physical therapy,  
10 that he was sent for MRI's that the MRI showed a disc  
11 herniation at C-4, 5 and a lumbar bulge at L-5, S-1 started  
12 on a course of therapy he underwent for approximately two  
13 months. He continued with home exercises until the present  
14 time but that he could not afford any further medical  
15 treatment. That he continues to suffer pain on and off in  
16 his neck and pain on and off in his back and continues to  
17 have difficulty with daily activities including sitting for  
18 long periods of time, standing for long periods of time,  
19 lifting and bending, do you have an opinion within a  
20 reasonable degree of medical certainty whether the accident  
21 of April 16th, 2002 was a substantial factor in causing the  
22 neck and back injury suffered by the plaintiff?

23                   MR. SMITH: Objection, Your Honor.

24                   THE COURT: To what the length of the  
25 question?

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MR. SMITH: Testifying as opposed to asking a question.

MS SATTLER: It's a hypothetical.

THE COURT: Did you get the question?

THE WITNESS: I did.

THE COURT: Do you have an answer that's a little shorter than the question?

THE WITNESS: I do.

Q What is your opinion?

A In my opinion, the biological mechanical forces that came to bear upon the spine, specifically, flexion, extension and rotation were great enough to cause stretching and tearing of those ligaments resulting in the slipped disc and the pinched nerve. The patient never had any neck or back pain before. He was involved in a traumatic incident that is known to result in these types of problems. He began experiencing neck and back pain immediately following the accident and that's persistent to date. Based upon this information it's my opinion it is the car accident and nothing else that caused his problem.

Q Doctor, I also want you to assume that there is evidence that following the accident of April 16th, 2002 Mr. Hamilton suffered and still suffers difficulty standing and sitting for long periods of time, bending, lifting, playing with his kid, do you have an opinion within a

1 reasonable degree of medical certainty whether the accident  
2 of April 16th, 2002 caused Mr. Hamilton to -- to suffer a  
3 limitation of use of a body function or system?

4 A I do.

5 MR. SMITH: Objection.

6 Q What is your answer?

7 A In my opinion he sustained significant limitation  
8 of a his lower back. His lower back is never going to  
9 function as it did before because this disc is out of place  
10 and there is nerve damage. He's going to have pain and  
11 tightness of the muscles. He's going to have weakness in  
12 the legs. Anything that requires full use of his back like  
13 sitting, standing, lifting, bending, playing with your  
14 children is going to be impaired. That's not to say that he  
15 can't do it he just won't be able to do it well. If he does  
16 it he's going to experience pain and suffering.

17 Q Based upon the facts that I just questioned you  
18 about did you have an opinion within a reasonable degree of  
19 medical certainty whether the plaintiff suffered a permanent  
20 consequential loss of a body function or organ?

21 A Yes.

22 Q What is your opinion?

23 A The lower back is a body organ. It's part of the  
24 neurological and musculoskeletal system. This part of his  
25 body will never function normally again. He has permanent

1 irreversible damage specifically disc bulge.

2 Q Is that damage due to the car accident of  
3 April 16th, 2002?

4 A In my opinion with the reasonable degree of  
5 medical certainty this condition is directly related to the  
6 accident that occurred on 4/16/02.

7 Q And, Dr. Hausknecht, do you have an opinion within  
8 a reasonable degree of medical certainty as to what's going  
9 to happen to plaintiff's lower back injury and neck injury  
10 in the future and how it might progress.

11 A I do.

12 Q And please tell me your opinion.

13 A Once a disc slips out of place it can never go  
14 back to its normal healthy state. It becomes dried out and  
15 forms the basis for arthritis in the future. So the  
16 prognosis or what can be expected in this case is basically  
17 more of the same. He's going to have good days. He's going  
18 to have bad days. He's always going to have this problem.  
19 He's never going to wake up one day and be cured.

20 Q Doctor Hausknecht, I want to refer you to  
21 Dr. Sterling's physical therapy notes. Do you have an -- if  
22 you could look at the first day of physical therapy and the  
23 last day of physical therapy which I believe is June 13th,  
24 2002. Just referring to the physical therapy notes. Do you  
25 have an opinion within a reasonable degree of medical

1 certainty on the last -- as of the last date of treatment  
2 whether there was any improvement in the patient's  
3 condition? You can refer to Dr. Sterling's report.

4 A Looking at the patient's treatment notes, physical  
5 therapy notes on 4/20/02 he had neck and back pain. There  
6 was muscle spasm, weakness, tenderness and swelling and  
7 going to the last date of service 6/13/02 the patient had  
8 neck and back pain and there was tenderness, swelling, spasm  
9 and weakness so it doesn't show any significant improvement  
10 in the physical therapy notes and referring to Dr.

11 Sterling's report, 6/17/02 Dr. Sterling indicated that the  
12 patient was slightly improved compared to his initial visit.

13 Q Dr. Hausknecht, assume there was testimony that  
14 the plaintiff received therapy for his neck and back for  
15 approximately two months and further assume that the  
16 plaintiff testified that he stopped this treatment because  
17 he couldn't afford to go any more, that he had to get back  
18 to work in order to support his wife and three children --

19 MR. SMITH: Objection, Your Honor.

20 THE COURT: Do you want to approach a second?

21 (Whereupon an off the record discussion was held  
22 between the Court and counsel.)

23 BY MS SATTLER:

24 Q Dr. Hausknecht, do you have an opinion within a  
25 reasonable degree of medical certainty whether any further

1 treatment beyond the two months of physical therapy would  
2 have been beneficial for this patient?

3 A My opinion I don't think he would have derived any  
4 further benefit above and beyond the two months of therapy.  
5 Any improvement he was going to make would have been made  
6 within that two month period.

7 MS SATTLER: Thank you, Dr. Hausknecht.

8 THE COURT: Ladies and gentlemen, we're going  
9 to take a short break then we'll come back and do the  
10 cross examination. Please don't discuss the case among  
11 yourselves until you've heard all the testimony. See  
12 you in a few minutes. Step out that door. Thank you.

13 (Whereupon the jurors were excused.)

14 Doctor you can step down please. Don't  
15 discuss your testimony with anybody.

16 (Whereupon a recess was taken and the trial  
17 resumed.)

18 THE COURT: Thanks again for your  
19 cooperation. We're ready for cross examination.

20 BY MR. SMITH:

21 Q Good morning, doctor.

22 A Good morning, counsel.

23 Q Do you have an independent recollection of seeing  
24 Mr. Hamilton because he has no recollection of seeing you?

25 A Independent, no not independent.

1 Q You have no independent recollection of seeing  
2 this person?

3 A I have my records. I don't need an independent  
4 recollection.

5 Q But do you remember seeing him?

6 MS SATTLER: Objection, it's asked and  
7 answered.

8 THE COURT: You don't remember independently  
9 without your notes?

10 THE WITNESS: No, with my notes. I took a  
11 copy of I.D., he signed forms. There is no question he  
12 was in my office.

13 THE COURT: He doesn't remember  
14 independently.

15 Q I'd like to speak to you about your report of  
16 April 15th, 2005, okay?

17 A Sure.

18 Q And the first visit by Mr. Hamilton to your office  
19 took place on April 15th, 2005, correct?

20 A Correct.

21 Q And the accident date that you're aware of  
22 April 16th, 2002, right?

23 A Correct.

24 Q So his first day -- his first visit to your office  
25 is one day shy of the three year anniversary date of the

1 accident?

2 A Correct.

3 Q You didn't see him until nearly three years after  
4 the accident?

5 MS SATTLER: Objection, Judge.

6 THE COURT: He can answer.

7 THE WITNESS: Yes:

8 BY MR. SMITH:

9 Q And when the plaintiff came to your office you did  
10 an examination?

11 A Yes.

12 Q You prepared a report in connection and that's  
13 this report of April 15th of '05, correct?

14 A Correct.

15 Q And in your report you put in the information that  
16 you believe was relevant to your examination, your diagnosis  
17 and your opinions, correct?

18 A Yes.

19 Q And the report that you prepared was thorough?

20 A I hope so.

21 Q Comprehensive?

22 A I believe so.

23 Q It was accurate?

24 A Yes.

25 Q In fact, the report was prepared so the reader of

1 the report or perhaps yourself could rely on it, correct?

2 A Yes.

3 Q And when you prepared that narrative report you  
4 understood it was possible you would be going to trial,  
5 correct?

6 A Sure.

7 Q Now, the record you reviewed included a report by  
8 Dr. Sterling dated 4/17/02, correct?

9 A Correct.

10 Q And you also reviewed a report by a Dr. Slovinsky  
11 (ph)?

12 A Correct.

13 Q And rehabilitation for two months?

14 A Correct.

15 Q I'd like to turn your attention to the second  
16 page.

17 MS SATTLER: Which date are you talking  
18 about?

19 MR. SMITH: 4/15/05, page two.

20 Q Turning your attention to the social history. You  
21 wrote that the plaintiff missed one month of work, correct?

22 A Yes.

23 Q And that was based on something he told you,  
24 correct?

25 A Yes.

1 Q You conducted a neurological exam?

2 MS SATTLER: Judge, if I may he didn't read  
3 the entire portion.

4 MR. SMITH: That wasn't the question.

5 THE COURT: Counsel, he could read what he  
6 wants to read and then you can follow up.

7 MS SATTLER: That's fine. Thank you, Your  
8 Honor.

9 Q And you conducted a neurological exam?

10 A Yes.

11 Q And you conducted range of motion testing at that  
12 time. As you said range of motion?

13 A Correct.

14 Q And you did a lumbar exam, is that correct?

15 A Yes.

16 Q You did range of motion of lumbar spine?

17 A Yes.

18 Q And there is nothing in this report about what the  
19 findings were with regard to the range of motion of the  
20 lumbar spine, is there?

21 A It doesn't specifically say anything so I believe  
22 it was normal.

23 Q Normal range of motion lumbar spine, do you agree  
24 with that doctor?

25 A Yes.

1 Q Did you do a straight leg raising test?

2 A I don't recall.

3 Q Is that an objective test?

4 A Yes.

5 Q So you didn't do that objective test on the  
6 plaintiff?

7 A I'm not sure. It's not documented. It may or may  
8 not have been done.

9 Q If it had been done you would have documented it?

10 A Probably.

11 Q Something you in your thorough, comprehensive  
12 report you would have put in there?

13 A Yes.

14 Q You did a cervical range of motion exam?

15 A Sorry, say again?

16 Q You did a cervical range of motion testing?

17 A Yes.

18 Q And can you tell me what a Sperling test is? Is  
19 that the same test as a straight leg raising test?

20 A Similar. Sperling test is performed in the neck  
21 by taking a person's head in your hand and pushing it  
22 sideways and downwards. Straight leg raise test is lifting  
23 a person's leg upwards.

24 Q Is there any indication in your report that you  
25 conducted the Sperling test on the neck?

1 A No.

2 Q So again that would indicate it was probably not  
3 done or it was negative, correct?

4 A Correct.

5 Q And in this case you did -- you found 20 percent  
6 loss of motion on right rotation in the neck, correct?

7 A Correct.

8 Q Now, there is no other range of motion testing  
9 listed in your report, is there on the cervical spine?

10 A No.

11 Q And, in fact, you prepared an addendum to this  
12 report dated April 28th, 2005, correct?

13 A Correct.

14 Q And there you noted again that the range of motion  
15 was 66 degrees out of 80 degrees for approximately  
16 20 percent that you claimed loss of motion, correct?

17 A Correct.

18 Q And there is no other mention of other testing in  
19 the report for range of motion on the cervical spine,  
20 correct?

21 A Nothing else mentioned. I believe all the other  
22 ranges were normal.

23 Q That mean you didn't do it or the range of motion  
24 was normal, correct?

25 A Correct.

1 Q So you checked full lateral flexion, is that  
2 correct?

3 A Yes.

4 Q So what is full lateral flexion?

5 A Lateral flexion is the ability to move your head  
6 from side to side.

7 Q That was either not in the report or read normal?

8 A I believe it was normal.

9 Q There was also full flexion and extension?

10 A Yes.

11 Q What is flexion and extension?

12 A Flexion is chin to chest. Extension was up and  
13 back.

14 Q Full left rotation?

15 A Yes.

16 Q The only restriction you found was to the right  
17 rotation?

18 A Yes.

19 Q And 20 percent restriction. Sixty-six degrees out  
20 of 80-degree approximately how far would that be doctor?  
21 Turn your head to the right.

22 MS SATTLER: I object to that.

23 THE COURT: He can answer that.

24 A I don't need to approximate. It's about  
25 20 percent loss. If a person turns their head 80 degrees,

1 he can do it 66 degrees.

2 Q I believe you indicated on your direct exam it was  
3 a mild loss of range of motion?

4 A Yes I don't think loss of motion in his neck and  
5 back is really a problem for him.

6 Q Now, at the time of your exam on April 15th, 2005,  
7 Mr. Hamilton told you that he had no specific complaints of  
8 pain regarding his neck, correct?

9 A That's true.

10 Q So now at the time that you saw Mr. Hamilton on  
11 April 15th, 2005 he had no specific complaints of pain to  
12 his neck, correct?

13 A You just asked me that question, yes.

14 Q In fact he had no -- he had no restrictive range  
15 of motion in the lumbar spine?

16 A That's true.

17 Q Now I'd like to speak to you about the films you  
18 talked about here today.

19 A Sure.

20 Q Those films were not taken by your office, were  
21 they?

22 A No they were ordered by Dr. Sterling.

23 Q And the films that are here, do you know where  
24 those films are from?

25 MS SATTLER: I'm going to object to that,

1 Your Honor. It's clear where they were taken. It was  
2 testified to where they were taken at.

3 THE COURT: Counsel, just make the objection  
4 and sit down, please.

5 Were those films sent to you, doctor, you saw  
6 them before?

7 THE WITNESS: Yes I saw them on April 15th  
8 when the patient came into my office. I looked at them  
9 and wrote down in my report my findings.

10 BY MR. SMITH:

11 Q Of these films here in court today?

12 A The same films, sure.

13 Q A copy of the same films?

14 MS SATTLER: Objection, Your Honor.

15 THE COURT: Okay, counsel.

16 THE WITNESS: Of the films of the MRI and  
17 neck that had his name, those dates, his date of birth,  
18 his sex and his medical report number on it. Whether  
19 it was those actual films or an identical copy of these  
20 films I couldn't say for sure.

21 BY MR. SMITH:

22 Q And the films were initially I think you said  
23 today interpreted by a radiologist, correct?

24 A Correct.

25 Q You're not a radiologist, are you?

1 A No.

2 Q You're not board certified in radiology, are you?

3 A No.

4 Q Would you agree with me an interpretation of an  
5 MRI is a subjective art?

6 A I don't understand the question.

7 Q Reading the film is subjective.

8 MS SATTLER: I'm going to object to that.

9 THE COURT: I think the question is when  
10 people -- when doctors look at films could a

11 radiologist interpret it one way and somebody not  
12 trained in radiology interpret it another way?

13 THE WITNESS: I'm not -- I'm not sure I  
14 understand that question. Maybe I can explain the film  
15 itself. The black and white picture is objective.  
16 Nothing changes that. The interpretation what a person  
17 believes that they see can be subjective meaning that  
18 two different doctors could see two different things  
19 possibly.

20 Q So two different doctors could see two different  
21 things and two different doctors could see the same thing,  
22 right?

23 A Right.

24 Q When you reviewed these particular films you had  
25 in your possession a copy of the radiologist's report didn't

1 you?

2 A Right.

3 Q And in Mr. Hamilton's case the films were  
4 initially interpreted by that radiologist and you had the  
5 reports in your possession when you reviewed these films, is  
6 that correct?

7 A Right my review of the films was identical to the  
8 radiologist's review of the films.

9 Q And when you reviewed the films in your report you  
10 noted what the findings were in the original radiologist's  
11 report and that you agreed with those findings, correct?

12 A Right we both found the same thing.

13 Q So you merely reviewed the film to either agree or  
14 disagree with the radiologist?

15 MS SATTLER: Objection, objection, Your  
16 Honor.

17 THE COURT: Overruled. He'll answer the  
18 question.

19 THE WITNESS: I reviewed the films so I could  
20 see what was going on there for myself so I can  
21 determine what's wrong with the patient and whether or  
22 not I agreed with the radiologist. In this case both I  
23 and the radiologist found the same thing and explained  
24 what was going on with the patient.

25 Q What I'm asking you is when you reviewed those

1 films did you not review them merely to either agree or  
2 disagree with the radiologist?

3 MS SATTLER: Objection, Your Honor.

4 THE COURT: Sustained. I think he answered  
5 the question, counsel.

6 MR. SMITH: Well, Your Honor -- okay.

7 Q Did you put in your report then of April 28th,  
8 2005, "The MRI of the cervical spine as interpreted by Dr.  
9 Zin (ph) reveals C-4, 5 disc herniation. I agree with this  
10 interpretation as stated in your report"?

11 A Yes, of course.

12 Q It was initially reviewed by Dr. Zin?

13 A Right he saw it when it was initially done and I  
14 saw it in 2005.

15 Q You agreed with the findings without any further  
16 comment?

17 MS SATTLER: Objection, Your Honor.

18 THE COURT: He can just answer it yes or no.  
19 You agreed with the findings?

20 THE WITNESS: I agreed with the  
21 findings, sure.

22 Q These films that you relied upon are taken in  
23 2002, correct?

24 A Correct.

25 Q And you relied upon those studies when you did

1 your review?

2 A In part, you mean --

3 Q Yeah you reviewed these films. You relied on the  
4 films?

5 A I looked at the films.

6 Q They're three years old?

7 A Of course.

8 Q Did you have any other films done?

9 A There never were any films as far as I know.

10 Q Did you have any films done?

11 A Did I have any films?

12 Q Yes.

13 A No.

14 Q Did you study any other films?

15 A No.

16 Q Send him for any other films?

17 A No.

18 Q Send him for further testing?

19 A No.

20 Q You didn't do any new studies or testing?

21 A There was no need to. It was crystal clear what  
22 was going on. He had the definitive studies done.

23 Q That's not what I asked.

24 A I think it was.

25 Q I said did you send him for further testing or new

1 studies?

2 A I said no..

3 MS SATTLER: Objection, Your Honor.

4 THE COURT: He answered no. Move on.

5 BY MR. SMITH:

6 Q Would you agree with me you said earlier on direct  
7 the spinal canal contains the nerve roots, spinal cord and  
8 thecal sac, correct?

9 A I didn't say that but I agree with that.

10 Q You do agree with that?

11 A Yes.

12 Q The thecal sac is a bag of fluid which surrounds  
13 the spinal cord and nerve roots and contains spinal fluid  
14 which provides nutrition and conditioning to the nerves  
15 right, correct?

16 A Yes.

17 Q Basically the thecal sac surrounds and protects  
18 the spinal cord, would you agree with that?

19 A Yes.

20 Q And a disc herniation occurs you said when there  
21 is a tear in the ligament and a piece of cartilage protrudes  
22 through that tear, correct?

23 A Yes.

24 Q A bulge is merely a stretching or an outward  
25 circumferential type of movement?

1           A     I wouldn't qualify it as merely. A bulge occurs  
2 when there is a stretching of the ligament.

3           Q     And what produces pain in an individual is  
4 compression of the spinal cord by the ligaments protruding  
5 through the tear or bulge?

6           A     No.

7           Q     That's not what's causing pain?

8           A     Pain is caused by activation of pain receptors.  
9 If the nerve ending, the pain receptors are activated it  
10 causes pain. There are nerve receptors on the discs, on the  
11 ligaments, on the bones, on the thecal sac, on the spinal  
12 cord on the nerve routes and the blood vessels. Anything  
13 that causes activation of those pain receptors will result  
14 in the feeling of pain.

15          Q     But in order for that to happen there would have  
16 to be some impingement or compression by the material that's  
17 either bulging or herniated, correct?

18          A     No you obviously didn't pay attention to the  
19 answer of the question. You asked me --

20          Q     The question is -- my question to you was in order  
21 for there to be some pain there would have to be something  
22 impinging on the thecal sac, spinal canal, the nerve roots  
23 or something else, correct?

24                   MS SATTLER: Objection. Its been asked  
25 twice.

1 THE COURT: Let him answer.

2 THE WITNESS: I'll clarify. There are a  
3 number of different pain sensitive structures in the  
4 spine. Pain sensitive structures is something that has  
5 pain receptors on it. The ligaments that surround the  
6 discs have pain receptors. If that ligament is torn or  
7 stretched it causes pain. The thecal sac, the sac has  
8 pain receptors. If the thecal sac is irritated or  
9 impinged it results in pain.

10 A The nerve roots, spinal cord, these all have pain  
11 receptors. If they're impinged or irritated it causes pain.  
12 The periosteum, the tissue that surrounds the bone, has pain  
13 receptors. If this is damaged or inflamed it results in  
14 pain. You can have pain either from impingement on a number  
15 of different structures or inflammation on a number of  
16 different structures.

17 Q So there has to be inflammation or compression by  
18 the material on something -- within the disc on something  
19 else inside this --

20 A No the disc itself has pain receptors. If a disc  
21 is injured even if it's not pressing on anything it will  
22 cause pain.

23 Q In this case when you reviewed the films did you  
24 find any compression on the thecal sac or the spinal cord in  
25 the lumbar spine?

1 A Not that I saw, no.

2 Q Did you find any impingement on the thecal sac or  
3 spinal cord and lumbar spine?

4 A No.

5 Q Did you find compression on the thecal sac or  
6 spinal cord of the cervical spine?

7 A No.

8 Q Did you find impingement of the thecal sac or  
9 spinal cord in the cervical spine?

10 A No.

11 Q Now would you agree with me that the herniation is  
12 more significant of a finding than a bulge?

13 A No not in this case. The bulging in his lower  
14 back is causing him a lot more problems than the herniation  
15 in his neck.

16 Q Pathologically a bulge is more significant than a  
17 herniation?

18 A Clinically in this case the bulging is more.

19 Q In general a herniation, doctor, is of more  
20 clinical significance than a bulge?

21 A In general, yes.

22 Q In this case Mr. Hamilton has no specific  
23 complaints in his neck, the area of the herniation at the  
24 time that you saw him?

25 A Correct.

51:

1 Q Now you're saying that in this case he's more  
2 symptomatic on lumbar spine or back, correct?

3 A Yes.

4 Q But he has full range of motion?

5 A Yes, he does.

6 Q Now I'd like to speak to you about the impression  
7 section of your report from April 15th, 2005, okay?

8 A Sure.

9 Q You indicated that he was symptomatic for the past  
10 three years, correct?

11 A Yes.

12 Q Yet he hasn't gone for any treatment in those  
13 three years to your knowledge?

14 A Other than stretching he had been doing at home,  
15 that's correct.

16 Q And, in fact, you stated that he reached maximum  
17 medical improvement in your report?

18 A That's correct.

19 Q And that phrase maximum medical improvement, that  
20 refers to a scenario where a patient is not going to benefit  
21 from further treatment and after a course of six months of  
22 chiropractic or physical therapy treatment the individual  
23 will plateau and not get better?

24 MS SATTLER: Objection to the form.

25 THE COURT: Do you agree with that statement?

1 Fine if not.

2 A No I don't agree with that statement.

3 Q You don't agree with that statement.

4 MR. SMITH: Your Honor, may I approach the  
5 witness?

6 THE COURT: Okay.

7 MS SATTLER: Can I see what you're going to  
8 show?

9 MR. SMITH: Sure.

10 Q Dr. Hausknecht, did you testify in a case called  
11 Davalar (ph) versus Nicoli (ph)?

12 A I don't recall but I'll take your word for it.

13 Q See the part where the court reporter swears you  
14 in at page five?

15 A Okay.

16 Q Would you agree with me that you testified in that  
17 case of Davalar (ph) versus Nicoli (ph)?

18 A Looks like I did, sure.

19 Q And if I told you that that was a case that was  
20 represented by Harmon and Linder, would you have any reason  
21 to dispute that?

22 A No.

23 Q In fact, the young lady sitting here earlier if  
24 that was Ms Patel the attorney on the case would you  
25 disagree with that?

1 A I don't understand the question.

2 Q You see a woman that was in here earlier?

3 MS SATTLER: Objection, Judge.

4 THE COURT: Okay I'll sustain the objection.

5 Let's get going.

6 BY MR. SMITH:

7 Q I'd like to turn your attention --

8 THE COURT: Counsel, before you turn his  
9 attention to anything ask him the question. If he  
10 doesn't remember refresh his recollection. If he does  
11 remember there is no need for him to look at anything.

12 Q Doctor, did you give testimony at that trial that  
13 you indicated that the phrase 'maximum medical improvement'  
14 refers to a scenario where a patient is not going to benefit  
15 from further treatment and after a course of six months of  
16 chiropractic or physical therapy treatment the individual  
17 will plateau and will not get any better from further  
18 medical treatment?

19 A I don't recall what my answer was but in this case  
20 if she got six months of chiropractic and physical therapy  
21 and didn't get better she reached maximum improvement after  
22 six months.

23 Q How about in general?

24 A No not in general.

25 Q Not with regard --

1 A Not in general.

2 Q Not in general?

3 A Each person is different. Each case is different.  
4 Each injury is different. Each condition is unique.

5 Q Can you turn to page 36 please?

6 A Sure.

7 Q At the bottom of the page, line 24. Question --  
8 did you give this answer? "Question: Can you tell us what  
9 maximum medical improvement is? Answer: Maximum medical  
10 improvement would refer to the fact that the patient is not  
11 going to benefit from any further treatment so after six  
12 months of chiropractic treatment or physical therapy an  
13 individual will have reached a plateau. They are not going  
14 to get any better from further treatment. That's what's  
15 known as MMI or maximum medical improvement." Did you give  
16 that answer, doctor?

17 A Yes in this case after six months --

18 Q Doctor in this --

19 MS SATTLER: Objection.

20 THE WITNESS: Stop interrupting me, counsel.

21 THE COURT: Take it easy.

22 Q I didn't ask if you gave that answer.

23 THE COURT: Counsel let him finish his  
24 answer.

25 A This case this patient had reached maximum medical

1 improvement after six months of chiropractic and physical  
2 therapy.

3 Q This particular claim you read from, Davalar (ph)?

4 A Correct.

5 Q So you're saying though with that term an  
6 individual they are not going to get any better?

7 A It was specific --

8 Q Don't refer to general terms.

9 A Specific to this case, each person is different.

10 Q And you said an individual in that particular case

11 --

12 MS SATTLER: Objection, Judge.

13 THE COURT: Don't get excited.

14 THE WITNESS: That's not a question.

15 Q In this case with Mr. Hamilton you found that the  
16 plaintiff had reached maximum medical improvement in only  
17 two months of physical therapy, is that correct?

18 A Correct counsel.

19 Q Now, you also concluded in your report of  
20 April 15th, 2005 that the plaintiff had significant  
21 limitation of function of the cervical and lumbar spine,  
22 correct?

23 A Correct.

24 Q But I think earlier you claimed that there was a  
25 mild restriction of the cervical and lumbar spine?

1 A Function.

2 Q In terms of range of motion?

3 A Motion and -- motion and function are not the  
4 same.

5 Q But you did find that the plaintiff had no  
6 complaints of pain in the neck at the time of your exam?

7 A Correct.

8 Q And you also found the only limit was of right  
9 rotation with 66 out of 80 degrees, correct?

10 A Correct.

11 Q You next included or you next conclude that the  
12 plaintiff had a significant impact on daily activities of  
13 living, correct?

14 A The patient's injuries had a significant impact on  
15 his daily living, yes.

16 Q At that time, April 15th, 2005 you hadn't treated  
17 plaintiff within the first 180 days of the accident, had  
18 you?

19 A I don't understand the question.

20 Q Did you treat the plaintiff in the first six  
21 months of the accident?

22 A I saw him on April 15th that was three years after  
23 the accident.

24 Q Three years. So what I'm asking is did you treat  
25 him at any time in the first 180 days following the

1 accident?

2 A It's like a trick question. I saw him three years  
3 after the accident.

4 Q The answer is no, right?

5 MS SATTLER: Objection.

6 THE COURT: The answer is no.

7 Q Is that correct, you agree that you didn't treat  
8 him in 180 days?

9 MS SATTLER: Objection.

10 THE COURT: Counsel, we have your objections.

11 Please take it easy.

12 He said he treated him three years after.

13 MR. SMITH: I understand, Your Honor, my  
14 question I want a simple no.

15 THE COURT: Doctor did you treat him --

16 MR. SMITH: I don't see what's so hard.

17 THE COURT: -- did you treat him a few months  
18 after the incident?

19 THE WITNESS: No.

20 MS SATTLER: He is badgering the witness.

21 THE COURT: That's it. Next question. Let's  
22 go.

23 Q In fact, you indicated with regard to the  
24 significant impact of daily activity and living that he had  
25 missed only one month of work, correct?

1 A That's what he told me, yes.

2 Q Now, the next section you stated that he had a  
3 permanent partial disability in the neck and back, correct?  
4 End of that paragraph.

5 A He has a permanent partial disability.

6 Q And you came to that conclusion based upon the  
7 fact that he had missed a month of work, correct?

8 A No based upon the fact that he injured his neck  
9 and back and had a slipped disc and pinched nerves.

10 Q Did you take into account he had no complaints of  
11 pain in his neck and no restrictive motion in his back?

12 A Of course.

13 Q I'd like to get back to the issue of maximum  
14 medical improvement?

15 A Sure.

16 Q You indicated that he had reached maximum medical  
17 improvement in your report of April 15th, 2005?

18 A Right.

19 Q Despite the fact that you found he had reached  
20 maximum medical improvement. I'd like to turn your  
21 attention to the last paragraph before your signature line.

22 A Sure.

23 Q The second sentence says he is in need of further  
24 medical attention, correct?

25 A Yes.

1 Q So despite the fact that he had reached maximum  
2 medical improvement now you're saying he needs further  
3 treatment?

4 A Right.

5 Q So he hasn't reached maximum medical improvement  
6 from his treatment?

7 A He reached maximum medical improvement meaning he  
8 wasn't getting any better from his therapy. The only thing  
9 I thought was an epidural injection of Cortisone through the  
10 spine around the disc. That's what I recommended.

11 Q If he had taken that further medical attention you  
12 would have provided it to him?

13 A If he could have afforded it, sure.

14 Q I'd like to turn your attention to your  
15 October 20th, 2005 report. That's the second visit you saw  
16 him on, correct?

17 A Correct.

18 Q Now again in April you said he needed further  
19 medical care, correct?

20 A Needs the same thing.

21 Q And in this report, first paragraph -- first  
22 sentence of your second paragraph you stated the patient has  
23 not received any further medical attention since our last  
24 visit together, April 15th, 2005?

25 A Correct.

1 Q So now he didn't treat for three years after the  
2 accident and after you told him he should go for treatment  
3 he still didn't go for further treatment did he?

4 MS SATTLER: Objection, Your Honor.

5 THE COURT: He could answer that.

6 THE WITNESS: I told him to do the stretching  
7 at home which he did. I told him the only thing I  
8 thought would help him was the injection. He didn't do  
9 that.

10 Q He didn't?

11 A No.

12 Q He didn't treat for three years and then after you  
13 gave him advice to go for further treatment, he still didn't  
14 go for treatment, correct?

15 A I recommended the injection. There are certain  
16 risks associated with the injection. There are certain  
17 costs associated with the injection. He did not consent to  
18 the injection.

19 Q So, doctor, very simply he didn't treat with you  
20 until three years after the accident and then after you gave  
21 him certain advice he didn't follow that advice, correct?

22 MS SATTLER: Objection, Your Honor. He  
23 testified --

24 THE COURT: Counsel, I think he's answered  
25 the question.

1 MR. SMITH: I don't think so, Your Honor.

2 BY MR. SMITH:

3 Q On October 20th, I think you indicated again that  
4 the first paragraph now he has not been experiencing any  
5 significant neck pain?

6 A Correct.

7 Q He still only had neck pain?

8 A Neck?

9 Q He still only had back pain, sorry.

10 A Yes.

11 Q You did a range of motion exam on his neck,  
12 correct?

13 A Correct.

14 Q And at that time with regard to the right rotation  
15 that was the only restriction you had found in April. In  
16 October when you checked his right rotation, he had 75  
17 degrees out of 80 degrees ability to turn right rotation,  
18 correct?

19 A Correct.

20 Q That's an improvement of nine degrees, right?

21 A It is.

22 Q And you concluded in your report if you take a  
23 look at the third page, "The patient has shown no  
24 significant clinical improvement since our last visit  
25 together"?

1 A Yes.

2 Q Did you come to that conclusion?

3 A Yes.

4 Q Nine degrees. From 66 degrees to 75 degrees out  
5 of a potential of 80 degrees is not a significant  
6 improvement?

7 A You conveniently omitted his right lateral flexion  
8 which was normal is now 40 out of 50. He showed an  
9 improvement to turn his head. He had lost ability to bend  
10 his head. Range of motion is not his problem. He has not  
11 lost a lot of motion in his neck or back. That's not his  
12 main problem.

13 Q Are you indicating to the jury that his range of  
14 motion changes during his visits to the doctor?

15 MS SATTLER: Objection, Your Honor.

16 THE COURT: Explain your last answer, doctor.

17 THE WITNESS: Sure. Depending on the amount  
18 of tightness of the muscle or spasm depending on the  
19 amount of pain, depending on types of activities,  
20 changes in the weather there may be some fluctuation in  
21 the range of motion in the neck and back. For example  
22 the first time I saw him he had 20 percent loss of  
23 rotation in the neck. The second time I saw him his  
24 rotation was improved but the lateral flexion was  
25 slightly worse. The first time I saw him he had full

1 range of motion in the back. The second time I saw him  
2 he had a mild loss of forward flexion in the lower  
3 back.

4 Q Does a patient control their range of motion in  
5 the neck?

6 A No.

7 Q Who controls that?

8 A The doctor takes their head in their hands, moves  
9 it from side to side.

10 Q When do you stop?

11 A When there is mechanical obstruction. When the  
12 spine wont move any more.

13 Q How about when the patient complains of pain, do  
14 you stop?

15 A If a patient complains of pain I'm going to stop.  
16 I'm not going to subject him to pain. I'll record in my  
17 report that the range of motion was limited by pain. That  
18 wasn't the case here.

19 Q Now, you indicated the next sentence in your  
20 report that he continues to demonstrate exacerbation and  
21 remission and this is typical for injuries of this nature,  
22 is that correct?

23 A That's correct.

24 Q Would you agree though that where the plaintiff  
25 fails to go for the treatment the doctor recommends that's

1 what demonstrates the exacerbation and remission?

2 A No.

3 Q In other words if he had --

4 A He's got --

5 Q If he went to the doctor he would have gotten  
6 better?

7 A He has a disc herniation in his neck and bulge and  
8 pinched nerve in the lower back. The injections will, I  
9 believe, help to relieve some pain temporarily. He's going  
10 to have exacerbation and remission for the rest of his life.

11 Q You're indicating he would have felt better had he  
12 gone for the treatment?

13 A If he had assumed the risks of infection and  
14 bleeding and the anesthesia and medications. If he could  
15 have afforded the treatment I believe it probably would have  
16 provided him with temporary, symptomatic relief. It's not  
17 going to fix the disc or nerve. That's permanent.

18 Q Maybe he didn't have any pain for those four  
19 months between visits, right doctor?

20 MS SATTLE: Objection.

21 THE COURT: Sustain the objection.

22 Q Now, you indicated later on in the report, the  
23 next paragraph, his condition is impairing his ability to  
24 function on a daily basis. Did you put any activities in  
25 there?

1           A       Yes if you look on the first page, second  
2 paragraph, he has problems with activities of daily living,  
3 sitting, standing, bending and lifting.

4           Q       If I indicated to you that he testified that he  
5 was able to do his activities, he was able to go to work, he  
6 was able to cook, he was able to clean, he was able to  
7 function, his normal daily activities would that change your  
8 opinion?

9                   MS SATTLER:  Objection, that's a  
10                   mischaracterization of his testimony.

11                   THE COURT:  Overruled.

12                   THE WITNESS:  No he can sit.  I mean he's  
13 sitting there.  He can't do it well.  When he does it  
14 he has pain.  He is not a paraplegic.  He's not in a  
15 wheelchair.  I commend him for going to work and not  
16 overly complaining but he's got serious injuries to his  
17 neck and back and nothing you can say will change that.

18           Q       And nothing that you can say is going to alter the  
19 fact that you're going to say he has an injury?

20           A       I don't understand the question.

21                   MS SATTLER:  Objection.

22                   THE COURT:  Let's not get argumentative.  Any  
23 more questions, counsel?

24           Q       You indicated on your direct exam you're a  
25 surgeon, correct?

1 A No that's not what I said.

2 Q You're not a surgeon?

3 A No.

4 Q Would you have done the epidural injections?

5 A Yes.

6 Q Something you're qualified to do?

7 A Yes.

8 Q And have you ever testified on behalf of Harmon  
9 and Linder before?

10 A I have.

11 Q How many times?

12 A Maybe a dozen times.

13 MR. SMITH: Thank you. Nothing further.

14 THE COURT: Redirect.

15 BY MS SATTLER:

16 Q Dr. Hausknecht, you were asked a lots of questions  
17 on cross examination about the Cortisone injections,  
18 epidural injections. Can you describe the risks and the  
19 costs associated with these injections?

20 A An epidural injection is a procedure that I  
21 perform in my office similar to the epidural anesthesia a  
22 woman undergoes when she's giving birth. Basically a three  
23 and half inch needle is passed through the skin through the  
24 subcutaneous tissue, through the muscles in between the  
25 bones and into the epidural space. Then a solution of

1 Cortisone, which is a steroid and lidocaine, is injected and  
2 helps to block the pain receptors. It helps to break up  
3 scar tissue. It helps to reduce inflammation. It can't fix  
4 the disc or nerve but it helps improve the symptoms that the  
5 disc and nerve are causing.

6 Any time you get a needle like that put through  
7 your back there is always a risk of bleeding. There is a  
8 risk of infection. There is a risk that needle might hit  
9 the spinal cord or nerve root.

10 Any time you take a medication there is a risk of  
11 a side affect or allergic reaction. Specifically with  
12 steroids can cause diabetes, hypertension and brittle bones.

13 The injections are done in a series of three and  
14 usual customary cost is \$500 per injection. Series of three  
15 injections, costs \$1,500, is done.

16 Q Is there a guarantee these injections will work?

17 A There is no guarantee in general. I would say  
18 approximately two-thirds of my patients have a positive  
19 response to the injections and one-third doesn't have any  
20 response.

21 In this case I feel pretty confident that he would  
22 respond to the injections if he was willing to take the risk  
23 and if he was able to afford the procedure.

24 Q How long would the medication or the alleviation  
25 from the symptoms last?

1           A     Typically after a series of three injections the  
2 benefits last six months to a year. We do these injections  
3 every year.

4           Q     Then he would have to undergo the treatment again?

5           A     Every year.

6           Q     Now, doctor, if the injections did not work what  
7 would be the next step for this patient?

8           A     The other option would be surgical, that is to  
9 say.

10                   MR. SMITH: Objection, Your Honor. Outside  
11 the scope.

12                   THE COURT: I'm going to let him answer the  
13 question.

14                   THE WITNESS: Basically some type of invasive  
15 procedure to remove the disc that's slipped out of  
16 place.

17           Q     Doctor, on cross examination you were asked  
18 several questions about loss of range of motion for this  
19 particular patient. The fact that his loss of range of  
20 motion was mild, in the neck and he did not have a loss of  
21 range of motion in the lower back but he still had spasm and  
22 pain and weakness and loss of strength in the lower back,  
23 can you describe the significance of the loss of range of  
24 motion that the defense counsel keeps asking about?

25           A     The lumbosacral spine has several different

1 functions. One of them is motion or mobility. Another is  
2 providing denervation to the legs, strength, sensation.

3 In this case he has lost function in his spine,  
4 lower back because of the nerve damage, because of the  
5 weakness that it's causing, because of the pain that it's  
6 causing.

7 He has not lost function in the lower back because  
8 of loss of mobility. His motion is essentially normal.  
9 That's not his problem. His problem is the nerve damage  
10 that's causing pain that's causing weakness in his legs.

11 Q Also doctor, on cross examination defendant's  
12 attorney compared a herniation to a disc bulge. Can you  
13 explain why in this case a disc bulge with a positive EMG is  
14 more significant, clinically, than the herniation?

15 A In general disc herniations tend to be more  
16 significant than disc bulges. People with disc herniations  
17 usually have more symptoms. In this particular case the  
18 disc bulge is more significant because it's causing nerve  
19 damage. It's the nerve damage causing his problem in the  
20 lower back. That's why he's not having problems in his  
21 neck.

22 This is not a guy who comes in and does a lot of  
23 complaining. He's got a disc herniation in his neck. It's  
24 not bothering him. He has a pinched nerve in his lower back  
25 he can't ignore it. It's affecting him every single day.

1 Q Now, doctor, we talked about the MRI films. The  
2 fact that you're not a radiologist does that affect your  
3 ability to read and interpret MRI films?

4 A No. In other words to be a radiologist you have  
5 to do a radiology residency. I did not want to be a  
6 radiologist. I wanted to be a doctor that actually treats  
7 patients.

8 I have extensive experience and credentials for  
9 reading MRI's and reading X-rays and CAT scans and  
10 particularly in this case the radiologist that read the MRIs  
11 came up with the same exact conclusion that I did.

12 Q Now you indicated in your report that you  
13 agreed -- that you were in agreement with the radiologist's  
14 interpretation of the films. If you didn't agree with the  
15 radiologist's interpretation you would have stated it in  
16 your report?

17 A Sure. I would have said I reviewed the films and  
18 I think there is X, Y, Z or whatever.

19 Q In this case you were in agreement with the  
20 radiologist?

21 A There is no question, yes.

22 Q The fact when we discussed loss of range of motion  
23 on the cross examination, the fact that he still had pain  
24 and spasm and weakness and loss of strength in his lower  
25 back, is that still consistent with the lumbar bulging disc

1 with the positive EMG?

2 A It is.

3 Q And is that a permanent injury like you said  
4 before on cross examination that cannot be fixed with  
5 therapy or epidural injections?

6 A It's a permanent condition. It's never going to  
7 get better. The fact that he had it three years after the  
8 accident when I saw him is proof of that. The injections  
9 may provide some symptomatic relief but they can't fix that  
10 nerve damage. That nerve damage is permanent.

11 Q Assuming that the plaintiff testified that he had  
12 gone back to work after a month and then returned back to  
13 work part time for a few months but he continued to  
14 experience pain and difficulties with his daily activities  
15 that we talked about, standing and sitting, is it  
16 significant at all that he had returned to work after a  
17 month?

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

19 Q In other words, the fact that he returned to work  
20 after a month, does that discount the fact that he continued  
21 to have pain?

22 A No. I don't think he's totally disabled. He's  
23 still capable of working. He just can't do it well and he's  
24 going to experience pain when he does it.

25 MS SATTLE: Thank you, doctor.

1 BY MR. SMITH:

2 Q Doctor, is it possible to have a herniation or a  
3 bulge and be asymptomatic?

4 A It's possible but that's not the case.

5 Q He had no complaints of pain in his neck, right?

6 A He's not complaining of neck pain, no.

7 Q So it's possible to have a herniation and be  
8 asymptomatic, correct?

9 A Correct.

10 Q It's possible to have a bulging and be  
11 asymptomatic?

12 A Could be but that's not the case here.

13 Q Is there any indication to you that the plaintiff  
14 complained to any other doctor and went for any other  
15 treatments before he went to you, would that be an  
16 indication that perhaps it's asymptomatic?

17 MS SATTLE: Objection.

18 THE COURT: He can answer that.

19 THE WITNESS: I don't understand the  
20 question. He's not asymptomatic. I don't understand  
21 what you're asking.

22 Q I think it's clear what I'm trying to ask.

23 MS SATTLE: Objection.

24 THE COURT: Let's not get into argument.

25 Q Doctor you indicated earlier that there is no

1 guarantee with regard to the epidural injections but  
2 two-thirds of your patients have positive response and  
3 one-third have a negative response?

4 A Negative or no response.

5 Q One-third. What is the percentage of people with  
6 negative response versus no response?

7 A How many people get worse, is that the question?

8 Q Yes.

9 A Very few.

10 Q How many?

11 A Less than one percent.

12 Q So, with regard to the risks associated with the  
13 procedure you described on direct examination, it is less  
14 than one percent?

15 A No.

16 Q It's not less than one percent?

17 A The risk is about two percent of a side affect or  
18 adverse reaction.

19 Q So it's one percent when you do it but two percent  
20 when other people do it, is that what you're trying to say?

21 MS SATTLER: Objection.

22 THE COURT: Sustained. He's talking about  
23 the risks and getting better.

24 Q I asked what's the percentage of adverse response  
25 in connection to what you're describing for the epidural

1 responses.

2 MS SATTLER: Objection.

3 THE COURT: What do you mean by adverse  
4 affects?

5 MR. SMITH: Negative response. You said the  
6 percentage of risk is two percent, is that correct?

7 A Correct.

8 Q So two percent that you explain to Mr. Hamilton.

9 There was a two percent risk of adverse affects?

10 A Yes. The risks associated with this procedure of  
11 an adverse reaction are approximately two percent. That's  
12 different than the probability that he's going to respond to  
13 the injection which is about two-thirds.. Those are two  
14 different things.

15 MR. SMITH: Thank you.

16 THE COURT: Is that it?

17 MS SATTLER: Yes.

18 THE COURT: Thank you.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: That's it for the witnesses  
21 today. Do you rest?

22 MS SATTLER: (Nodding.)

23 THE COURT: Plaintiff is now rested and like  
24 I said to you yesterday I hope on Monday to complete  
25 all the testimony including any additional witnesses on

1 Monday. See you Monday same time quarter to ten.

2 Have a pleasant weekend and don't discuss the  
3 case until you heard all the evidence and my charge.

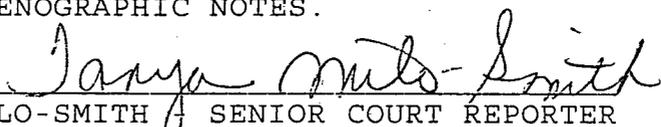
4 See you Monday.

5 (Whereupon the jurors were excused.)

6 If there is nothing else I'll see you Monday.

7 (Continued on following page.)

8 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPTION  
9 OF MY STENOGRAPHIC NOTES.

10   
TANYA MILO-SMITH SENIOR COURT REPORTER

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