

4 over everything, your Honor.

5 A I think the first time we found a note I
6 wrote was March 6, 2006.

7 Q About nine or ten months post-surgery?

8 A I think that's around correct, yes.

9 Q And sometime in 2007 in Mr. Klein's visits
10 to you, you discussed cervical revision of the C-5-C-6
11 fusion, correct?

12 A I think the first time we noticed that was a
13 notation on October 25, 2006 which said, we will then
14 come to make a decision about possible reoperation. So
15 later in 2006 was the first time I, at least, wrote it
16 down on a report.

17 Q And that would have been some fifteen months
18 post-surgery, correct?

19 A I will trust your math.

20 Q Okay. I wouldn't, but thank you.

21 The site that in your opinion you would do
22 the revision surgery on, that's at the C-5-C-6 level
23 and that is the level that you are unable to medically
24 attribute to the accident of May 20, 2003; is that
25 correct?

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DIGIACINTO - CROSS - TUMBARELLO

1 A That's correct. The level at which the
2 radiographic studies shows preexisting pathology, I am
3 not unable to attribute to the accident. It may have
4 become symptomatic because of the accident.
5 Radiographically there were signs of preexisting
6 pathology.

7 Q I understand that. You testified that there

Klein Trial Transcript, Dr. DiGiacinto.txt
8 were x-rays taken at the hospital the evening of the
9 accident, correct?
10 A Correct.
11 Q And those x-rays included Mr. Klein's neck
12 being in the neutral position, the flexed position and
13 the extended position, correct?
14 A Correct.
15 Q And those x-rays were found to be normal,
16 correct?
17 A Yes.
18 Q And you've reviewed those x-rays yourself,
19 correct?
20 A Yes.
21 Q And it is your medical opinion that the
22 x-rays taken on the night of the accident showed a
23 normal neck, correct?
24 A Essentially, yes.
25 Q You are not just basing it on somebody

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DIGIACINTO - CROSS - TUMBARELLO

1 else's report, this is based on your review of the
2 films of the night of the accident, that in those three
3 positions, the x-rays, it was normal?
4 A Correct.
5 Q That was confirmed because the cervical
6 collar was discontinued?
7 A The cervical collar was discontinued, yes.
8 Q At any time in your treatment of Mr. Klein
9 did you ever prescribe Mr. Klein to wear a cervical
10 collar?
11 A I don't recall if I did or didn't. I don't
12 think so.

13 Q Would it be in your chart?
14 A I didn't see it any place.
15 Q So you didn't see it in your chart. Okay.
16 I am trying to rush.
17 we have films of the night of the surgery
18 and then less than a month later.
19 A Films the night of the?
20 Q The accident, thank you. And then less than
21 a month later an MRI study was done on Mr. Klein's
22 cervical spine, correct?
23 A Correct.
24 Q And you reviewed those films, correct?
25 A Correct.

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DIGIACINTO - CROSS - TUMBARELLO

1 Q And did you review those films before your
2 surgery on Mr. Klein?
3 A Yes.
4 Q And you reviewed the films from the night of
5 the accident before your surgery?
6 A I don't recall when I first saw those. I
7 believe I saw them before the surgery.
8 Q Okay. Just tell us, Doctor, if you would,
9 what films you reviewed of Mr. Klein before your
10 surgery on Mr. Klein?
11 A I am sure I reviewed the two MRI scans that
12 we have taken a look at. I believe at some point, but
13 now I can't state with certainty, that I saw plain
14 x-rays of his neck as well.
15 Q Okay. Now, the MRI films that were taken in
16 June of 2006, that showed osteophytic growth at several

klein Trial Transcript, Dr. DiGiacinto.txt
17 levels throughout the cervical spine, correct?
18 A I would have to see either the films or the
19 reports, sir. That's postoperative, correct?
20 MR. O'TOOLE: What is the date, again?
21 MR. TUMBARELLO: The MRI of June 18,
22 2003.
23 A Oh, you said '06, sir.
24 Q You know, it is late here for all of us and
25 I apologize.

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DIGIACINTO - CROSS - TUMBARELLO

1 Did the MRI study of June 2003 show
2 osteoarthritic changes at several levels in this
3 plaintiff's neck?
4 A Yes.
5 Q All right. Would you tell us what levels in
6 this plaintiff's neck reflected osteoarthritic changes
7 in June of 2003?
8 A It's mentioned at C-4-5 and C-5-6.
9 Q All right. And are herniations reflected
10 with respect to the arthritic changes at C-4-5?
11 MR. O'TOOLE: Are we referring to the
12 doctor's review of the films itself or a
13 document created by a different doctor?
14 Can we have a clarification?
15 MR. TUMBARELLO: I will reask the
16 question. Thank you, your Honor.
17 Q With respect to the reports, the MRI which
18 you are looking at right now, is there a herniation
19 reflected at the C-4-5 level relative to the --
20 MR. O'TOOLE: Objection to reading
21 from documents that the creator of which is
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22 not coming here to give an opinion.
23 THE COURT: Overruled. He has had an
24 opportunity to review the records.
25 You may answer. Why don't you restate

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DIGIACINTO - CROSS - TUMBARELLO

1 the question.
2 Q The MRI report for the June 2003 MRI, did it
3 reflect a herniation in the area of the C-4-5 space
4 relative to the osteoarthritic changes that are
5 reflected at the C-4-5 space?
6 A There is a statement, quote, there may be
7 associated disk herniation at this level. There is
8 extension to the left more than the right with
9 impingement of the intervertebral foramina.
10 Q May be a herniation, what does that mean?
11 A It's the reader's interpretation that it may
12 be a herniation. I can't redefine that.
13 Q You yourself had an opportunity to see those
14 actual films from June of 2003?
15 A Yes.
16 Q Is it your testimony --
17 A Are we talking about June 2003 or August
18 '04?
19 Q First, June '03. We will move to August
20 2004 later.
21 A Yes.
22 Q And in your review of June '03, did you find
23 osteoarthritic changes at C-4-5?
24 A Yes.
25 Q All right. Did you find a herniation

DIGIACINTO - CROSS - TUMBARELLO

1 relative to those osteoarthritic changes at C-4-5?

2 A Yes.

3 Q And with respect to C-5-6, did you find a
4 herniation at that level?

5 A I felt in conjunction with the osteophytes
6 there was a disk herniation, yes.

7 Q And the osteophytes, when we are talking
8 about osteophytes -- withdrawn.

9 when you are talking about osteophytes, are
10 you talking about osteoarthritic changes?

11 A Correct.

12 Q And is it also when we are talking about
13 degeneration of disk material?

14 A That doesn't necessarily mean osteophytes,
15 sir, no.

16 Q Osteophytes is bony growth, correct?

17 A Correct.

18 Q And you visualize that or you were able to
19 see it on the MRIs of June 2003 with respect to both
20 C-4-5 and C-5-6, correct?

21 A Correct.

22 Q And it's your testimony that this osteophyte
23 or the osteoarthritic changes had to have been there
24 longer than the three or four-week interval between the
25 accident and when that study was done, correct?

DIGIACINTO - CROSS - TUMBARELLO

1 A Correct.

2 Q And are you able to opine, Doctor, how long
3 the osteoarthritic changes that you saw on the June

4 2003 MRI were present?

5 A Beyond stating greater than several months,
6 no. It could have been there for years.

7 Q Could have been there for years. Could have
8 developed in the previous months?

9 A You know, it is a very hard number. Several
10 months might be six months at least.

11 Q At least. Certainly more than one month,
12 correct?

13 A Definitely.

14 Q Now, Doctor, when MRIs are reviewed, Doctor,
15 there would be indicia on that MRI. You got a trained
16 radiologist and possibly even a neurosurgeon. They
17 would be able to determine if that would reflect recent
18 trauma?

19 MR. O'TOOLE: Objection, your Honor.

20 A I didn't -- there was a word I didn't
21 understand, sir.

22 Q I will reask the question. You studied
23 thousands of MRIs. You have reviewed thousands of
24 MRIs, correct?

25 A Yes.

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DIGIACINTO - CROSS - TUMBARELLO

1 Q While an MRI machine may post-date your time
2 in medical school.

3 A Correct.

4 Q Over the years, during your profession,
5 you've learned enough about reading MRI films that you
6 are very comfortable reading them?

7 A Correct.

8 Q And you've read thousands of them?
9 A Correct.
10 Q And in looking at MRI films, Doctor, you
11 were certainly able to tell from Mr. Klein's June MRI
12 films about this more than one-month old osteoarthritic
13 change at C-4-5 and C-5-6?
14 A Correct.
15 Q Correct?
16 A Correct.
17 Q And you are able to do that, as you
18 explained to the jury when you had a shadow box up, by
19 looking at the different shadings, the colors, and the
20 grays and the whites, correct?
21 A Correct.
22 Q Simplifying it. Are there also artifacts or
23 markings that a trained radiologist or even a
24 neurosurgeon would see on an MRI film that would be
25 evidence of recent trauma?

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DIGIACINTO - CROSS - TUMBARELLO

1 A I have to make you reask the question
2 because the use of the term artifacts has a specific
3 meaning in radiology.
4 Q It started to catch in my throat, and I
5 apologize. I understand what you mean, I think.
6 Markings, findings on an MRI film, are there
7 findings on an MRI film that would show the evidence of
8 edema?
9 A Are there findings of edema on the film?
10 Q No.
11 A That's half a question, that's why I am
12 having trouble. Let's start over with the question.

13 Q Let's start again.
14 A Thank you.
15 Q Ignore Mr. Klein, all right? If you were
16 looking at an MRI would you be able to tell if there
17 was edema present on that MRI film?
18 A If I were able to observe edema, I would
19 observe it. So edema can show on an MRI.
20 Q What is edema?
21 A Edema is evidence of inflammation of a
22 tissue spontaneously from trauma, from infection,
23 multiple causes.
24 Q That's something that would be evident to
25 you if you were to review that?

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DIGIACINTO - CROSS - TUMBARELLO

1 A If it was there and I saw it, yes.
2 Q If it was there and you saw it?
3 A Correct.
4 Q Now, did you see any edema with respect to
5 C-5-C-6?
6 A Not that I recall, no.
7 Q With respect to C-4-5?
8 A Not that I recall, no.
9 Q The evidence, the presence of edema on an
10 MRI taken less than a month after this accident, would
11 that be evidence of recent trauma to that area?
12 A If there were edema there it would
13 strengthen the issue of recent trauma, yes.
14 Q Edema would be indicia of recent trauma,
15 correct?
16 A Yes.

17 Q And you note from your review of Mr. Klein's
18 films that there was no evidence of edema?
19 A None that I could see.
20 Q And you looked for it?
21 A Automatically.
22 Q Automatically. Okay.
23 And, now, if there was trauma to the C-4-C-5
24 vertebral area less than a month before that MRI was
25 taken, would that have been reflected by the presence

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DIGIACINTO - CROSS - TUMBARELLO

1 of edema on that MRI study?
2 A Not with any degree of probability at all.
3 Q Okay.
4 A No.
5 Q Now, you saw Mr. Klein for the first time in
6 April of 2005, correct?
7 A Correct.
8 Q Approximately two years after the accident,
9 correct?
10 A Yes.
11 Q Doctor, I am not going to go through all of
12 the issues of this accident, but based on your
13 understanding of how this accident happened, could
14 someone have been in an accident like this without
15 sustaining any injuries?
16 MR. O'TOOLE: Objection, your Honor.
17 THE COURT: Sustained, calls for
18 speculation.
19 Q Now, Doctor, you told us that it is
20 important for a doctor to take a history and it is
21 important for the doctor to rely on the truthfulness of

22 the history given to you by the patient; is that
23 correct?

24 A Correct.

25 Q And you've also had an opportunity to look

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DIGIACINTO - CROSS - TUMBARELLO

1 at the original records from the night of the
2 surgery -- the night of the accident, correct?

3 A Correct.

4 Q And I think in your initial report for Mr.
5 Klein you were advised by Mr. Klein that she sustained
6 multiple abrasions and glass in her head?

7 A Correct.

8 Q Did you see any notation to that effect in
9 the records from Staten Island University Hospital from
10 their initial treatment that night?

11 A No.

12 Q So if the record people at Staten Island
13 Hospital who reflected their physical examination of
14 the plaintiff on the night of the accident did not note
15 the presence of glass in her head or multiple
16 abrasions, but when Mr. Klein comes to see you for
17 consultation about his injuries he tells you that she
18 sustained multiple abrasions and glass in her head,
19 would this be a truthful statement as you received it
20 from Mr. Klein, or would you rely on the truthfulness
21 of the medical records of Staten Island University
22 Hospital from that night?

23 MR. O'TOOLE: Objection.

24 THE COURT: Sustained.

25 Q Doctor, do you see a discrepancy between the

DIGIACINTO - CROSS - TUMBARELLO

1 records from Staten Island University Hospital taken
2 the night of the accident and the history that Mr.
3 Klein gave you?

4 MR. O'TOOLE: Objection.

5 THE COURT: Sustained. That's for the
6 finder of fact to determine. Could you
7 point it out?

8 Q Doctor, why did you ask her about the
9 injuries that she sustained on the night of the
10 accident?

11 A That was the event that led her to come and
12 see me -- led him to come and see me, excuse me.

13 Q You indicate that one of the items that was
14 reported to you by Mr. Klein was -- I am sorry, she
15 thinks --

16 MR. O'TOOLE: Objection, your Honor.
17 she, Mrs. Klein? He handled this case for
18 five years.

19 THE COURT: Let's keep it straight,
20 please.

21 MR. TUMBARELLO: I need to change the
22 words in the report.

23 MR. O'TOOLE: Objection to speeches,
24 Judge.

25 Q Doctor, did the plaintiff in this lawsuit,

DIGIACINTO - CROSS - TUMBARELLO

1 when the plaintiff came to see you for the first time,
2 advise you that the plaintiff may have had a loss of
3 consciousness?

4 A Yes.

5 Q And having reviewed the medical records from
6 the night of the accident, is there any notation in
7 those records that the plaintiff sustained a loss of
8 consciousness?

9 A No, there is not.

10 Q Now, Doctor, when you first took your
11 history of Mr. Klein, were you advised whether or not
12 Mr. Klein had ever had a nose surgery, surgery on the
13 nose?

14 MR. O'TOOLE: Objection, Judge,
15 relevance.

16 THE COURT: Overruled.

17 A No.

18 Q As part of taking a history, would you like
19 to have been advised whether or not your patient had
20 had nose surgery?

21 A It wouldn't have had any impact on any of my
22 treatment of the patient for the problems that we were
23 speaking about.

24 Q But you did ask about surgeries; is that
25 correct?

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DIGIACINTO - CROSS - TUMBARELLO

1 A I think we have gone over that.

2 Q This is the first time I am mentioning the
3 nose surgery, that anyone is mentioning the nose
4 surgery.

5 You have gone over in limited detail the
6 double mastectomy and the nipple --

7 MR. O'TOOLE: Objection. Is this

klein Trial Transcript, Dr. DiGiacinto.txt
necessary?

8

9

THE COURT: Let's move it on.

10

11

12

Q With respect to your own records, Doctor, I
have gone through your chart, and at any point --
withdrawn.

13

14

15

Up until the time of the surgery in June, do
any of your records reflect a finding on your part that
Mr. Klein had had prior surgery?

16

A No.

17

18

Q Now, when was the first time that you became
aware that Mr. Klein had had prior surgery?

19

20

A At the time of the surgery that I performed.

21

22

Q Okay. And how did you learn that?

23

24

A I noticed scarring.

Q Now, when you examined Mr. Klein -- you only
examined Mr. Klein one time prior to the date of the
surgery, correct?

25

A Correct.

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DIGIACINTO - CROSS - TUMBARELLO

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Q And that examination was in April; is that
correct?

3

A Correct.

4

5

Q And at that time what did you examine? What
did you do?

6

7

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A I would examine the patient, essentially
fully clothed, and examine their neck and their lower
extremities, lower back, but with the patient clothed.

9

10

11

Q Okay. So at that time was there anything
about your examination to indicate to you that this
plaintiff was transitioning genders?

12

MR. O'TOOLE: Objection, relevance.
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13 THE COURT: Overruled.
14 A No.
15 Q When you examined this patient in April of
16 2005, did the patient tell you that prior to that
17 examination, in addition to the surgery, that the --
18 MR. O'TOOLE: Objection, your Honor.
19 MR. TUMBARELLO: Withdrawn.
20 THE COURT: Why ask it then? Move on.
21 Q As part of taking the history of Mr. Klein,
22 you asked the patient what medications he was taking,
23 correct?
24 MR. O'TOOLE: Objection, your Honor.
25 THE COURT: Overruled.

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DIGIACINTO - CROSS - TUMBARELLO

1 A Correct.
2 Q All right. What were you told by the
3 patient?
4 A I believe we discussed pain medications. I
5 think I was told the patient was taking Percocet, if I
6 remember properly.
7 Q Now, was there any indication that the
8 patient was taking any form of steroids or any form of
9 hormones?
10 A No.
11 Q From your examination did you see any
12 indicia that this patient had been on a hormone
13 regiment prior to the time of your examination in 2005?
14 A No.
15 Q Okay. When you next saw Mr. Klein, it was
16 in the operating room?

Klein Trial Transcript, Dr. DiGiacinto.txt

17

A That's correct.

18

Q So you never examined Mr. Klein at all or even met with Mr. Klein once between the time you met with him in April and the time you were scrubbed and ready to do the surgery, correct?

21

22

A Oh, no, I met the patient in the holding area prior to surgery.

23

24

25

Q Okay. And when you met the patient in the holding area, had anesthesia been commenced?

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DIGIACINTO - CROSS - TUMBARELLO

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A No. The holding area is outside the operating room.

2

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4

Q Okay. And did you examine the patient at that time?

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Q What did you do with the patient when you met the patient in the holding area prior to surgery?

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Q Was it during this meeting that you went over the issues on the consent form?

A Usually I do that in the office, prior to describing the surgery, potential complications, et cetera, et cetera. I have really done the consent prior to the date of surgery.

Q So you don't have a recollection of going through the consent form issues, the risks of surgery, et cetera, when you met with this patient in the

22 staging area --

23 A Correct.

24 Q -- prior to the surgery on the day of the
25 surgery?

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DIGIACINTO - CROSS - TUMBARELLO

1 A Correct.

2 Q All right. And when you first met with the
3 patient in April of 2005, three months before the
4 surgery, did, at that time, you go over the consent
5 forms with this patient?

6 A I go over the procedure and the potential
7 complications, indications. I don't take out a consent
8 form and say, hey, read it because I am going to ask
9 you to sign it later. No, I don't go over the consent
10 form.

11 Q You didn't go over it with the patient at
12 that time. And would you agree with me, Doctor, that
13 the only other contact of any kind that you had with
14 this patient between your April visit and when you saw
15 the patient at the hospital immediately prior to
16 surgery was one telephone conversation on or about July
17 21st of 2005?

18 A That is the only one I have documented. I
19 cannot recall whether I did or did not have other
20 conversations.

21 Q Well, is it your normal practice when
22 talking to a patient about potential surgery, potential
23 major surgery, that you would document your
24 communications with the patient?

25 A Only if I was in the office and had the

DIGIACINTO - CROSS - TUMBARELLO

1 patient's chart with me.

2 Q Do you know where you were when you had this
3 conversation with the patient?

4 A I wrote a note on my office record
5 indicating I was in the office when I had that
6 discussion on July 19th.

7 Q Excuse me?

8 A July 19th, just so we are clear on the date.

9 Q Okay. And how long was that telephone call?

10 A I have no way of remembering.

11 Q During the telephone call did you review the
12 risks of this procedure with the patient?

13 A What I said in my note is, discussed
14 surgical procedure again, goal, risk, and said would
15 speak on day of operation.

16 So the answer is I documented that I did
17 discuss the surgery, the goals and the risks and said
18 to the patient, I will talk to you again on the day of
19 the surgery.

20 Q What were the goals of the surgery?

21 A To relieve pain by establishing a fusion at
22 C-4-5 and C-5-6.

23 Q And when you had your first meeting, when
24 you did your examination of Mr. Klein previously, did
25 you discuss the goals of the surgery with Mr. Klein?

DIGIACINTO - CROSS - TUMBARELLO

1 A I believe we did discuss surgery at that
2 time, yes.

3 Q And at that time you recommended a follow-up
Page 145

4 orthopedic evaluation, correct?

5 A Yes.

6 Q Do you know if that was ever done?

7 A I believe the patient informed me that he
8 was seen by an orthopedic surgeon who did not feel that
9 the shoulder was a problem. I don't know if I have an
10 in-chart record of that or not.

11 Q Now, you said you would very much like a
12 follow-up orthopedic evaluation, but do you have any
13 recollection of consulting with the orthopedist who did
14 this evaluation with respect to your concerns that this
15 evaluation take place before you did the fusion
16 surgery?

17 A I am pretty certain that I did not consult
18 with the orthopedic surgeon.

19 Q Okay. It was just basically Mr. Klein
20 saying, I saw an orthopedist and he says I don't need
21 surgery on my shoulder?

22 A I don't recall the specifics of the
23 conversation. I just recall that the orthopedic
24 surgeon felt that the origin of the pain was not likely
25 from the shoulder.

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DIGIACINTO - CROSS - TUMBARELLO

1 Q Okay. And, Doctor, that was reported to you
2 by the patient, right?

3 A Correct.

4 Q Now, the concern that you had regarding her
5 shoulder --

6 MR. O'TOOLE: Objection, form.

7 THE COURT: Sustained.

Klein Trial Transcript, Dr. DiGiacinto.txt
Q Which shoulder was of concern to you?

8

9

A The left shoulder.

10

11

12

Q Okay. Now, pain in a shoulder, Doctor, that could be caused by problems in the shoulder itself, correct?

13

14

15

16

A Correct.

17

18

19

20

21

Q And it could also be caused by radiation coming from the nerves that pass through the cervical area, correct?

22

23

24

25

A Correct.

Q And after your surgery was complete of Mr. Klein, did the complaints of pain and the other complaints relative to Mr. Klein's left shoulder, did they abate?

A Yes.

Q And therefore, do you have an opinion as to whether or not the prior complaints of pain in the shoulder were related to cervical issues?

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DIGIACINTO - CROSS - TUMBARELLO

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A I felt that at least they were significant. I do have an opinion, yes.

Q The nerves, Doctor -- and if you need to go through any of the material here or even the model to help explain it, please do -- the nerves that go through the cervical area, do some of them go through the shoulder and arms to the hands?

A Yes.

Q Do any of the nerves that go through the areas we are talking about, the C-4-5 and C-5-6 vertebrae, do they go to the arms and hands?

A Yes.

13 Q And is it important to you in making your
14 diagnosis, among other things, to know whether or not
15 there had been prior complaints relative to pain or
16 numbness or tingling in the hands?

17 A I mean I would want to hear the information.
18 I am not sure if it would impact on any conclusion I
19 made in this situation.

20 Q Now, this patient was referred to you by Dr.
21 Giannone, correct?

22 A Yes.

23 Q And was it reported to you that prior to
24 this automobile accident on May 1st, 2003, about three
25 weeks prior to the accident that this plaintiff visited

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DIGIACINTO - CROSS - TUMBARELLO

1 with a Dr. Giannone and complained of complaints of
2 hand pain with bilateral finger pain and stiffness?
3 And, Doctor, it was reported to the doctor at that time
4 that as a child the plaintiff reported that, would
5 frequently punch walls, and that he ordered a
6 radiographic examination of the left hand at that time,
7 three weeks prior to the automobile accident?

8 A I don't recall being aware of that history,
9 sir.

10 Q Would you have wanted to know if she had
11 gone to --

12 MR. O'TOOLE: Objection to the form,
13 your Honor.

14 Q Would it have been important to you in
15 making your diagnosis and reaching the conclusions that
16 you did regarding causation, would you have wanted to

Klein Trial Transcript, Dr. DiGiacinto.txt
17 know if three weeks prior to the accident this
18 plaintiff had gone to a doctor who ordered studies done
19 bilaterally -- that's both hands -- for complaints of
20 pain, finger pain and stiffness, and that they said an
21 MRI might yield information -- no MRI was done -- in
22 reaching the conclusion you reached that you gave to
23 Mr. O'Toole regarding causation?
24 would you have wanted to know from the
25 doctor that sent Mr. Klein to you for treatment that

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DIGIACINTO - CROSS - TUMBARELLO

1 three weeks prior to the accident there was pain,
2 numbness, tingling in the extremities of the hands?
3 A That would not have had any impact on my
4 conclusions so....
5 Q On causation?
6 A On any causation or treatment.
7 Q All right. Okay. Do the nerves that go
8 through the C-4-5, C-5-6 vertebrae area go down to the
9 hands?
10 A C-4-5, no. C-5-6, to the thumb.
11 Q Okay.
12 THE COURT: We are going to take a
13 ten-minute break.
14 (Whereupon, a ten-minute recess is
15 taken.)
16 THE COURT: We are ready. Get the
17 jury, please.
18 THE COURT OFFICER: Jury entering.
19 (Whereupon, the jury enters the
20 courtroom.)
21 THE COURT: Let's wrap it up.

22 Q I want to apologize, Doctor.
23 MR. O'TOOLE: Objection, form.
24 MR. TUMBARELLO: Judge?
25 THE COURT: No. Go ahead.

DIGIACINTO - CROSS - TUMBARELLO

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1 MR. O'TOOLE: Watch what he is going
2 to do.

3 Q When I was referring to the May 1st, 2003
4 records from Dr. Giannone, he mentions pain in her
5 hands, bilateral index finger, pain and stiffness.
6 There was nothing in here -- I think I mentioned
7 numbness and tingling. I am not an expert and I
8 apologize if I used those words, and I apologize.

9 MR. O'TOOLE: That was my form
10 objection.

11 THE COURT: Move on.

12 Q Now, Doctor, you also looked at an MRI study
13 from August of 2004?

14 A Yes.

15 Q All right. And did you compare the August
16 2004 study with the June 2003 study?

17 A Yes.

18 Q Okay. And to your knowledge, Doctor, were
19 these the only MRI studies that were done prior to the
20 surgery that you did?

21 A To my knowledge, yes.

22 Q Okay. And did you find differences between
23 2003 study and the August 2004 study?

24 MR. O'TOOLE: Objection. Asked and
25 answered.

DIGIACINTO - CROSS - TUMBARELLO

1 THE COURT: Overruled.

2 A Yes, I think we have discussed that earlier.

3 Q And in the 2004 study was there more
4 evidence of herniation than was found in the 2003
5 study?

6 A It appeared that the pathology in C-4-5
7 progressed in several ways with change in neck position
8 and increased narrowing of the foramen on the left side
9 by herniation.

10 Q Left side herniation at C-4-5, correct?

11 A Yes.

12 Q No changes in C-5-6?

13 A I couldn't state any change that I could
14 state in C-5-6.

15 Q There was a change in C-4-5 and that
16 condition in her neck had gotten worse from the MRI
17 that was taken a month after the accident to these MRIs
18 that were taken a year-and-a-half or so after the
19 accident?

20 A I will trust your dates, but yes.

21 Q Okay. And did you attribute that to
22 anything, Doctor?

23 A I think it was progression of the disease
24 process that was begun at the time of the accident.

25 Q Now, Doctor, what is a developmentally

DIGIACINTO - CROSS - TUMBARELLO

1 borderline spinal canal?

2 A It means that the diameter of the canal, the
3 measurement on the chart says that's a little smaller

4 than most but still within normal range.
5 Q What is stenosis?
6 A Narrowing of the spine.
7 Q Borderline spinal canal and stenosis, what
8 is the difference?
9 A Borderline normal means it is not stenotic.
10 Q Stenotic means when it is less than
11 borderline?
12 A Again, you are talking about the spinal
13 canal, and then congenitally that's talking about bony
14 pathology. There could be stenosis from other things
15 but primarily if it measures borderline normal that
16 means it is not stenotic.
17 Q Now, what is lordosis?
18 A A curvature of the spine.
19 Q And what is reversed lordosis?
20 A Reversal of the normal curvature of the
21 spine.
22 Q Would you show them to us on the model,
23 please?
24 A If you look from the side of the neck in a
25 normal setting, this is the front, this is the back.

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DIGIACINTO - CROSS - TUMBARELLO

1 There is a gentle backwards curve. That's the lordotic
2 curve of the cervical spine. A reversal of that
3 lordosis means at some point there is a reversal of
4 that curve.
5 So, for example, here I have left the normal
6 curve in the lower portion but starting at about C-4 it
7 is aiming in a different direction. That's reversal of

Klein Trial Transcript, Dr. DiGiacinto.txt
8 normal lordosis. Normal lordosis and reversal of the
9 normal lordosis.

10 Q Doctor, what is spondylosis?

11 A Spondylosis is another term for
12 osteoarthritic degeneration, overgrowth of bony
13 osteophytes.

14 Q In the MRI of August 2004, was overgrowth of
15 osteophytes reflected at at least three levels?

16 A Yes.

17 Q Was there progression or an increase in the
18 osteophytic growth, this bony growth that was impinging
19 or that was growing?

20 Was there an increase in the growth of that
21 bony mass from the June '03 MRI to the August '04 MRI?

22 A I felt at C-4-5 there was a very mild or
23 modest increase in that.

24 Q Okay. And would that increase -- again,
25 this osteophytic growth or osteoarthritis, that's a

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DIGIACINTO - CROSS - TUMBARELLO

1 naturally occurring aspect of Mr. Klein's spine?

2 A It can be naturally or it could be
3 traumatically induced, either one.

4 Q In the case of Alex Klein the osteoarthritic
5 findings that were made on both MRIs, the June '03 and
6 the August '04, those were naturally occurring
7 osteophyte growths, correct?

8 A I can agree with the June '03 because we
9 have agreed that change predated the injury. The
10 change seen in the August '04 may well be traumatically
11 induced.

12 Q There is nothing you were able to tell

13 within a reasonable degree of medical certainty from
14 your review to state one way or the other?

15 A No. I just made the statement that covers
16 what I think is the slight change from June '03 to
17 August '04.

18 Q Okay. Now, Doctor, Mr. O'Toole asked you
19 about Mr. Klein's taking hormones.

20 MR. O'TOOLE: Objection. I did not.

21 THE COURT: Sustained.

22 Q Doctor, when you first took a history from
23 Alex Klein, were you advised that Mr. Klein was taking
24 hormones?

25 MR. O'TOOLE: Asked and answered by

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DIGIACINTO - CROSS - TUMBARELLO

1 this attorney. Objection.

2 THE COURT: Yeah, we heard this
3 earlier. You may answer it again, so we can
4 move on.

5 A No, I was not informed.

6 Q When you did your surgery on Mr. Klein, the
7 second time you met Mr. Klein in July of 2005, did you
8 observe anything about Mr. Klein that would indicate to
9 you that Mr. Klein was taking hormones?

10 MR. O'TOOLE: Objection. Asked and
11 answered?

12 THE COURT: Overruled. Answer it.

13 A No.

14 Q When you met with Mr. Klein for the second
15 time immediately prior to the surgery, were you advised
16 at that time that Mr. Klein was taking hormones?

Klein Trial Transcript, Dr. DiGiacinto.txt
MR. O'TOOLE: Objection.

17

THE COURT: Overruled.

18

19 A No.

20 Q Have you learned subsequent to the time of
21 the surgery that prior to the time of Mr. Klein's
22 surgery and continuing, that Mr. Klein has been
23 receiving hormone treatment with testosterone?

24 MR. O'TOOLE: Objection.

25 THE COURT: Overruled.

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DIGIACINTO - CROSS - TUMBARELLO

1 A Yes.

2 Q When did you learn that?

3 A I can't give you a specific date. Somewhere
4 in the course of treatment of the patient in the
5 post-op period.

6 Q Mr. Klein told you that?

7 A I believe so, yes.

8 Q Sometime during the post-op period?

9 A Yes.

10 Q Was that communicated to you with respect to
11 your conversations with Mr. Klein regarding the
12 potential for revision surgery?

13 MR. O'TOOLE: Judge, I have a
14 continuing objection to this line of
15 questioning. I don't want to interrupt the
16 Court.

17 THE COURT: Overruled.

18 A No.

19 Q Doctor, we have your testimony regarding
20 revision surgery, correct?

21 A Yes.

22 Q And among other things, if you do the
23 revision surgery and you find when you go in there, as
24 you expect to find, that the fusion that you did at the
25 C-4-5 level was successful, you leave that alone,

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DIGIACINTO - CROSS - TUMBARELLO

1 right?

2 A Correct.

3 Q And you'll take out this plate that is
4 reflected on Plaintiff's Exhibit 27, correct?

5 A Correct.

6 Q And if you at that time find that you must
7 revise the fusion surgery at C-5-C-6, you'll also
8 install another plate, correct?

9 A Correct.

10 Q But it will be a smaller one?

11 A More than likely, yes.

12 Q And this is a plate that goes through three
13 levels, correct?

14 A Three vertebral bodies.

15 Q Three vertebral bodies covering two
16 vertebrae spaces?

17 A Two disk space, correct.

18 Q Two disk space, thank you.

19 And if you go in and do this surgery, is
20 there also a possibility that the fusion surgery that
21 you did in 2005 does not need to be revised?

22 A It's possible, yes.

23 Q All right. But you can't tell anymore than
24 you have been able to testify to based on your
25 examination and the radiographic studies; is that

DIGIACINTO - CROSS - TUMBARELLO

1 correct?

2 A Correct.

3 Q And to make a full and final diagnosis as to
4 whether or not fusion was successful at the C-5-6
5 level, you will have to actually go in and look?

6 A Correct.

7 Q And if it is successful would the medical
8 treatment you would provide be to leave that fused bone
9 in place?

10 A Yes.

11 Q And if it is loose or not properly fused,
12 you'll remove it?

13 A Well, basically I couldn't remove that piece
14 of bone. I could no longer see the piece of bone that
15 I put in there. I would have to drill out the space
16 and put a new piece of bone in.

17 If I find some residual of the piece of
18 bone, I would take that out.

19 Q So anything that is loose comes out,
20 correct?

21 A Yeah.

22 Q And then you build a space for the insertion
23 of new bone, correct?

24 A Correct.

25 Q And basically this plate and the screws,

DIGIACINTO - CROSS - TUMBARELLO

1 that's sort of an internal fixation device; is that
2 correct?

3 A That's exactly that.

4 Q That's exactly that. And even though Mr.
5 Klein has it in his neck right now, it has already
6 served the purpose for which it was originally
7 installed, correct?

8 Let me withdraw the question. I don't like
9 it. It's in bad form.

10 The metal, the titanium, if you will, that
11 you installed, is a fixation device, correct?

12 A Correct.

13 Q In your field, a fixation device could be a
14 cast, under certain circumstances, correct?

15 A It's entirely different.

16 Q Different, that's ortho.

17 A Yes.

18 Q But a fixation device is to hold the
19 surgically repaired area in place until the bone fuses,
20 correct?

21 A Correct.

22 Q Is there a particular time span that it
23 usually takes for this bone to fuse?

24 A We usually say that within three months it's
25 pretty sticky and partially fused. It's stronger in

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DIGIACINTO - CROSS - TUMBARELLO

1 six months and it very often takes a full year to fully
2 fuse.

3 Q The first three visits that you saw Mr.
4 Klein after the accident, you did a clinical exam in
5 the middle of August and you examined him again in
6 September and in October he had an x-ray done; is that
7 correct?

8 A I can't remember if there was an x-ray done
9 in October. If you show it to me I wouldn't argue with
10 you, I just don't recall the specific date.

11 Q Certainly you would agree with me, Doctor,
12 based on your treatment of Alex Klein through August,
13 September, October, that it looked like the surgery was
14 a success in all respects, correct?

15 A Correct.

16 Q All right. And after October Mr. Klein did
17 not come for a further visit until January, correct?

18 A That's correct.

19 Q And that would be approximately six months,
20 correct?

21 A Yes.

22 Q And in that January visit, what were your
23 findings in that January visit?

24 A My findings were basically that the patient
25 had resolved a good deal of the pain on the left side

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DIGIACINTO - CROSS - TUMBARELLO

1 but was developing pain on the right side and was still
2 having enough symptomology to make me uncertain that we
3 had achieved what we wanted to, which was a significant
4 reduction of pain.

5 Q Now, Doctor, Mr. O'Toole asked you a couple
6 of questions about smoking, correct?

7 A Yes.

8 Q What does smoking do to a person's bones?

9 MR. O'TOOLE: Objection to form.

10 Q I will reask that, Doctor. Could you tell
11 me what would happen to the bones of someone who has
12 been a pack-a-day smoker for 20 years, as it would

13 impact that person going for fusion surgery?

14 MR. O'TOOLE: Objection on multiple
15 grounds.

16 THE COURT: Rephrase it and break it
17 down.

18 Q Doctor, as a neurosurgeon who does fusion
19 surgeries, do you advise your patients about the
20 effects of smoking on a possible fusion surgery?

21 A Yes.

22 Q Why?

23 A Patients who are actively smoking or have
24 just stopped very recently have a higher incidence of
25 pseudoarthrosis. It is low but higher than patients

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DIGIACINTO - CROSS - TUMBARELLO

1 who don't smoke.

2 Q why is that?

3 A I think it's believed to be something to do
4 with the development of neovascularity, the growth of
5 new blood vessels, which are part of the process of
6 healing and forming the fusion. They are not as
7 proliferative in a patient who smokes versus a patient
8 who does not.

9 Q what is osteoporosis?

10 A Thinning of the bone, loss of calcium in the
11 bone.

12 Q Is a history of smoking consistent with
13 osteoporosis?

14 A Not that I am aware of.

15 Q If someone has been a smoker for 20 years,
16 does that have any long-term effect on their bones?

Klein Trial Transcript, Dr. DiGiacinto.txt
MR. O'TOOLE: Objection. Foundation,

17

18

grounds.

19

THE COURT: Sustained as to

20

foundation.

21

22

23

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25

Q Doctor, you've explained to us why if
someone is coming in for fusion surgery it's
contraindicated for them to be a tobacco smoker,
correct?

A It is better if they are not. I don't think

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DIGIACINTO - CROSS - TUMBARELLO

1

the word contraindicated is correct.

2

3

4

Q If they can't quit, kick the habit, bite off
the butts, you will tell them that the likelihood for
the surgery to be successful is decreased, correct?

5

MR. O'TOOLE: Objection, foundation.

6

7

THE COURT: Rephrase it but he could
answer this question.

8

9

Q What do you tell your patients who come to
you for possible fusion surgery about smoking?

10

MR. O'TOOLE: Objection.

11

12

THE COURT: He answered that. He
tells them, don't smoke.

13

14

15

Q Now, Doctor, prior to the surgery that you
did on Mr. Klein, had you reviewed the Staten Island
University Hospital records?

16

A I am not certain that I had, sir.

17

18

19

Q Had you reviewed, prior to the surgery that
you did on Mr. Klein, the records of the neurologist,
Dr. Perel?

20

A I'm not certain that I had, sir.

21

Q Prior to the surgery that you did on Mr.

22 Klein, did you review the records of the orthopedic
23 surgeon, Jeffrey Klein?

24 A I am not certain that I did, sir.

25 Q Have you seen them since then?

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DIGIACINTO - CROSS - TUMBARELLO

1 A Yes. Yes, I have.

2 Q And they were provided to you by Mr. Klein
3 or by her lawyers, his lawyers?

4 A By Mr. O'Toole.

5 Q Mr. O'Toole?

6 A Yes.

7 Q And prior to the surgery that you did on Mr.
8 Klein, did you review the records of Dr. Bitan,
9 B-I-T-A-N?

10 A Not to my recollection, no.

11 Q But those were also provided to you at a
12 later date by Mr. O'Toole?

13 A Correct.

14 Q And, Doctor, prior to the surgery had you
15 reviewed the records of the neurosurgeon, Dr. Shiau,
16 S-H-I-A-U?

17 A No.

18 Q And those records were also provided to you
19 subsequent to the surgery by Mr. O'Toole?

20 A Yes.

21 Q In making your decision with respect to the
22 surgery that you did on Mr. Klein, would you have liked
23 to have seen the records that you have now seen as
24 provided to you by Mr. O'Toole, of Drs. Perel, Klein,
25 Bitan, and Shiau?

DIGIACINTO - CROSS - TUMBARELLO

1 A wouldn't have had any impact.

2 Q wouldn't have made a difference. Okay.

3 Now, Doctor, among the records that Mr.
4 O'Toole provided to you, did he provide to you records
5 from the Callene-Lorde medical facility?

6 A I just don't recall, sir.

7 Q Would it make a difference to you, in your
8 future treatment of Mr. Klein, if there were medical
9 records as of September --

10 MR. O'TOOLE: Objection.
11 Clarification as to whether or note we are
12 reading a document to the witness that is
13 not in evidence.

14 THE COURT: You can't do that.

15 Q Do you know if Mr. Klein reported to any
16 other medical providers that Mr. Klein continued to
17 smoke throughout the remainder --

18 MR. O'TOOLE: Objection, foundation,
19 offer of proof.

20 THE COURT: Overruled. You may ask
21 the question.

22 Q Doctor, do you know if it was reported to
23 any other medical providers that Mr. Klein continued to
24 smoke up until 8/10ths of a year prior to September of
25 2006?

DIGIACINTO - CROSS - TUMBARELLO

1 MR. O'TOOLE: Could we hear the
2 question again? 8/10ths of a year?

3 MR. TUMBARELLO: 8/10ths of a year
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4 prior to September of '06.
5 A No. I am not aware of any such notation.
6 Q Do you know if in September of '06 any
7 medical providers discussed with Mr. Klein the benefits
8 of avoiding smoking in conjunction with hormone
9 therapy?
10 MR. O'TOOLE: Objection.
11 THE COURT: Let's talk about what he
12 knows. Come on.
13 Q Doctor, with respect to any of the other
14 medical records that you reviewed, were there any other
15 indications about Mr. Klein's use of tobacco?
16 A No.
17 Q Doctor, Mr. O'Toole asked you about a bone
18 stimulator?
19 A Yes.
20 Q All right. Did you prescribe a bone
21 stimulator for Mr. Klein?
22 A Yes.
23 Q When did you do that?
24 A When we heightened our concern that there
25 was a pseudoarthrosis. I don't remember the exact

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DIGIACINTO - CROSS - TUMBARELLO

1 date.
2 Q Would there be a record reflective of your
3 prescription of the bone stimulator?
4 Would your prescription of that be reflected
5 in your chart?
6 A It might or might not be. It normally would
7 be.

8 Q I ask you to look in your chart to see if
9 there is any record in your chart of you prescribing
10 this bone stimulator.
11 A Okay.
12 Q I think I only have one other question and
13 it is related to that.
14 Do you know when Mr. Klein first started
15 using the bone stimulator and when he stopped using the
16 bone stimulator?
17 A No, sir.
18 Q You don't know?
19 A No.
20 Q And there is nothing in your chart
21 indicating when he first started using it and stopped
22 using it?
23 A No.
24 Q And you don't know how many hours a day he
25 used it for?

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DIGIACINTO - REDIRECT - O'TOOLE

1 A No.
2 Q And you don't know how many days a week he
3 used it for?
4 A No, sir.
5 MR. TUMBARELLO: Thank you.
6 REDIRECT EXAMINATION
7 BY MR. O'TOOLE:
8 Q Mr. Tumbarello asked you some questions
9 about depotestosterone.
10 Do you have an opinion whether
11 depotestosterone would have affected the healing of Mr.
12 Klein's fusion?

13 A It would not impede the healing of the
14 patient's fusion and, if anything, it might enhance it.

15 THE COURT: Enhance it?

16 THE WITNESS: Yes.

17 Q It might help the healing?

18 A Improve the healing, yes.

19 MR. O'TOOLE: May I have the Exhibit
20 No. 13, the one that had the numbness and
21 tingling in it.

22 MR. TUMBARELLO: It is over there.

23 Q Doctor, when you were presented with Dr.
24 Giannone's chart by Mr. Tumbarello on cross and he drew
25 your attention to a note dated 5/1/03, he told you that

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DIGIACINTO - REDIRECT - O'TOOLE

1 the note said that there was numbness and tingling in
2 the hands and fingers, didn't he?

3 A Yes.

4 Q And, Doctor, I am going to show you that.
5 It's in evidence. This is from 5/1/03, 19 days before
6 the accident.

7 MR. O'TOOLE: May I approach the
8 witness, please?

9 THE COURT: Sure.

10 Q Can you read this, sir, if you can read it?
11 Tell me if you see the word numbness and
12 tingling anywhere right there or anywhere on that page.
13 Tell me where it says numbness and tingling in the
14 hands and fingers.

15 A No, I do not.

16 Q When Mr. Tumbarello told you that the record

Klein Trial Transcript, Dr. DiGiacinto.txt
17 said, Doc, there is numbness and tingling in this
18 report 19 days before the accident, that was a lie,
19 wasn't it?

20 A It was a misstatement.

21 Q Now, sir, let's go back to this. You said
22 that the C-5-6 osteophytic disk complex from a
23 radiological standpoint preexisted this accident,
24 right?

25 A Correct.

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DIGIACINTO - REDIRECT - O'TOOLE

1 Q That means what we see in the film was there
2 before?

3 A Correct.

4 Q Your opinion was the accident caused that to
5 become symptomatic, correct?

6 A Yes.

7 Q And you were basing that on an assumption
8 that the plaintiff told you the truth about his history
9 of pain at the neck?

10 A Correct.

11 Q The history in terms of no pain in the neck
12 was important to you, correct?

13 A Yes.

14 Q Yes?

15 A Yes.

16 Q Let's take a look at this snapshot of Al
17 Klein 19 days before the accident when he goes to the
18 doctor about pain in a finger, and let's look to see if
19 there is any complaint whatsoever about the neck.

20 A I do not see any.

21 Q Could you share with the jury what impact,
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22 if any, this negative complaint, that there is no
23 complaint of pain in the neck whatsoever at the time of
24 the doctor's appointment 19 days before the accident,
25 what, if any, impact does that have on your opinion

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DIGIACINTO - REDIRECT - O'TOOLE

1 about the C-5-6 level being clinically activated by
2 this accident?

3 A It sustains it and, if anything, strengthens
4 the opinion.

5 MR. O'TOOLE: Can I see the exhibit
6 you said there was no loss of consciousness
7 in?

8 MR. TUMBARELLO: That's the Staten
9 Island Hospital record. It is in the pile.

10 Q Doctor, do you remember when Mr. Tumbarello
11 approached you with the Staten Island University
12 Hospital record? That's Plaintiff's Exhibit Number 9
13 in evidence.

14 He told you, would it shock you, Doctor, to
15 find out that there is no loss of consciousness in
16 their chart. You remember when he asked you about
17 that?

18 MR. TUMBARELLO: Objection to form.

19 THE COURT: Overruled. Let's move
20 along.

21 A I believe he asked me about that one entry,
22 sir.

23 Q There was one entry?

24 A We read one entry.

25 Q In your experience in treating trauma

DIGIACINTO - REDIRECT - O'TOOLE

1 patients over the last 30 years, can a major car
2 accident involving --

3 MR. TUMBARELLO: This goes beyond the
4 scope of cross. Objection.

5 MR. O'TOOLE: It's loss of
6 consciousness. He said there was none. I
7 want to talk to him about it.

8 Q Doctor, are patients always the best
9 historians about loss of consciousness, in your
10 experience?

11 A No, they are not.

12 Q Why is that, Doctor?

13 A Because when a patient loses consciousness,
14 they also more often, much more often than not, develop
15 amnesia to the events surrounding the injury both
16 before and after.

17 Q I will read to you from three notations that
18 weren't read to you that are in Number 9 in evidence,
19 and they are in the Staten Island University Hospital
20 record after this accident.

21 One that says, questionable LOC.

22 A Question as to whether or not there was loss
23 of consciousness.

24 Q Another one says, LOC question mark. She
25 does not recall all the events, headache. What does

DIGIACINTO - REDIRECT - O'TOOLE

1 that mean?

2 A I think as stated, there may have been, may
3 not have been.

4 Q There is a third notation, also, question
5 mark LOC, complain of headache. Is that consistent
6 with there possibly being a loss of consciousness?

7 A Yes.

8 Q So when Mr. Tumbarello said that there was
9 no loss of consciousness or any indication of a loss of
10 consciousness in this exhibit, that wasn't the truth,
11 correct?

12 A That's correct.

13 (whereupon, Susan Maydan relieves
14 Stephanie Doran as the official court
15 reporter.)
16
17
18
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22
23
24
25

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DiGiacinto - Redirect

1 Q Does numbness and tingling mean the same
2 thing as pain in the finger?

3 A No.

4 Q Numbness and tingling, that doesn't mean
5 pain, does it?

6 A No.

7 Q What does numbness mean?

Klein Trial Transcript, Dr. DiGiacinto.txt
8 A That you have the sense that you are not

9 feeling normally.

10 Q What does tingling mean?

11 A You feel -- people describe it as pins and
12 needles or pain sensations in the fingers.

13 Q You were asked some questions about the
14 absence of edema on an MRI film and Mr. Tumbarello
15 said, yes, the absence of edema on this June '03 film,
16 does that mean that there was no trauma involved in
17 this accident. And I believe you said it doesn't mean
18 that with any degree of probability at all.

19 Is that correct?

20 A Correct.

21 Q Can you share with us what you meant by that?

22 A The majority of times when you see a
23 traumatic injury, unless there is a major fracture of a
24 bone or cervical crushed vertebra, you will not see
25 evidence of edema on the scan.

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DiGiacinto - Redirect

1 THE COURT: Edema being swelling.

2 THE WITNESS: Swelling.

3 Q Doctor, we have in evidence the x-ray films
4 from Staten Island University Hospital of the C-spine.

5 A Correct.

6 Q You have seen these, right, before?

7 A Yes.

8 Q We didn't show them to the jury but you have
9 seen them; correct?

10 A Yes.

11 Q Sir, just because an x-ray is read normal for

Klein Trial Transcript, Dr. DiGiacinto.txt

12 fracture, does that mean that the patient wasn't hurt?

13 A No.

14 Q X-ray shows bone only; correct?

15 A For the most part, yes.

16 Q So is it reasonable to conclude from what the

17 defense is suggesting that because Al Klein was able to

18 get out of his car, that means he wasn't hurt?

19 MR. TUMBARELLO: Objection to form.

20 THE COURT: Overruled.

21 A No, it did not.

22 Q Is it reasonable to conclude that because Al

23 Klein was discharged from the hospital and they took a

24 cervical collar off him and let him go home that his

25 neck wasn't hurt in this accident?

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DiGiacinto - Redirect - Recross/Tumbarello

1 A No.

2 Q Indeed, we talk about indicia of trauma.

3 Sir, is there any indicia of trauma in the x-ray films

4 taken at the Staten Island Hospital after this

5 accident?

6 A We do see straightening of the normal

7 cervical lordosis, which can be a sign of trauma.

8 MR. O'TOOLE: Thank you. I have nothing

9 further, Doctor.

10 THE COURT: Anybody else?

11 MR. WILSON: Nothing, your Honor.

12 MR. FARANDA: Nothing, your Honor.

13 MR. TUMBARELLO: Briefly.

14 RE CROSS-EXAMINATION

15 BY MR. TUMBARELLO:

Klein Trial Transcript, Dr. DiGiacinto.txt
16 Q Would you accept my apology for that before?

17 MR. O'TOOLE: Objection.

18 THE COURT: Overruled.

19 Q Thank you. I appreciate that, your Honor.

20 A Yes.

21 Q Doctor, rather.

22 Mr. O'Toole asked you about the effect
23 of testosterone on bone growth.

24 A Yes.

25 Q With respect to adolescent males, will you

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DiGiacinto - Recross/Tumbarello

1 agree with me, Doctor --

2 MR. O'TOOLE: Objection; beyond the
3 scope.

4 THE COURT: Yes.

5 MR. TUMBARELLO: It is right on point,
6 Judge.

7 THE COURT: On adolescent males?

8 Q Doctor --

9 THE COURT: No, no.

10 MR. TUMBARELLO: Let me rephrase the
11 question.

12 THE COURT: No discussion about
13 adolescent males.

14 Q Doctor, is it your opinion based on your
15 studies that testosterone --

16 MR. O'TOOLE: Objection; beyond the
17 scope.

18 Q -- is a signal --

19 THE COURT: Sustained.

Klein Trial Transcript, Dr. DiGiacinto.txt
20 Q Doctor, is the production of testosterone --
21 MR. O'TOOLE: Objection; beyond the
22 scope.
23 Q -- a signal for bones to stop growing?
24 MR. O'TOOLE: Objection; beyond the
25 scope.

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DiGiacinto - Recross/Tumbarello - Re-Redirect

1 THE COURT: No, I am going to let him
2 answer that.
3 A The effect...
4 Q I will ask it so...
5 Does the production of testosterone
6 serve as an instruction to the bones to stop growing?
7 A It has the impact of what we call premature
8 closure of the growth plate, and in that sense it stops
9 bones from growing (Indicating).

10 Q Doctor, if you do --

11 MR. TUMBARELLO: Thank you, Doctor.

12 RE-REDIRECT EXAMINATION

13 BY MR. O'TOOLE:

14 Q Does that interruption of the growth plate
15 have anything in the world to do with the C-4-6 fusion
16 performed upon Mr. Klein?

17 A No, sir.

18 MR. O'TOOLE: Thank you. Nothing
19 further.

20 THE COURT: Thank you, gentlemen.
21 Doctor, you may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Let me see lawyers up here

24 Klein Trial Transcript, Dr. DiGiacinto.txt
quickly.

25 MR. O'TOOLE: Is the doctor free to go?

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Proceedings

1 THE COURT: Yes.

2 (Witness excused.)

3 (Bench conference.)

4 THE COURT: Okay, jurors, it is ten
5 after 5:00. We are going to call it a day. Thank
6 you for your attention. We will see you tomorrow.

7 Now, tomorrow we are having an emergency
8 drill here. The Office of Emergency Management is
9 going to have us all file out of here at
10 10:00 o'clock and then we are going to loiter
11 about the military recreation center for a
12 half-hour. So to obviate that we are going to
13 bring you in at 10:30, okay, so you can miss all
14 the excitement.

15 You might see some police blocking when
16 you first come in. We may be a tad delayed. But
17 come in at 10:30. We hopefully we will be
18 finished with this drill that the City is running
19 and we can't adjourn.

20 So we will see you tomorrow at 10:30.
21 Have a good evening. Thank you.

22 (Jury leaves courtroom.)

23 (Continued on next page.)

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Proceedings

Klein Trial Transcript, Dr. DiGiacinto.txt

1 (Whereupon, court was recessed and this
2 matter adjourned to Thursday, June 12, 2008 at
3 10:30 a.m.)

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6 Certified to be a true and accurate
7 transcription of the above-captioned
8 proceedings.

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Susan Maydan
Official Court Reporter

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