SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU: CIVIL TERM, PART 22

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ROSA ASHLEY,

Plaintiff,

-against-

Index No.
002658/00

AARON J. GINDEA,

Defendant.

TRIAL EXCERPT
DR. LATTUGA

----------X

December 2, 2002

Nassau Supreme Court
Mineola, New York 11501

B E F O R E :

THE HONORABLE ANTHONY L. PARGA,
Justice, Supreme Court

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

Attorney for the Plaintiff:
WILLIAM F. LEVINE, ESQ.
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Mineola, New York 11501

Attorney for the Defendant:
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BY: MARY K. WHITE, ESQ., of Counsel

Lillian Weidlein
Official Court Reporter

(Whereupon, following untranscribed proceedings, the following ensued:)

S E B A S T I A N L A T T U G A, a witness called on behalf of the plaintiff, after having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: Complete name, spelling your last name, and professional address.

THE WITNESS: Sebastian L-A-T-T-U-G-A, 36 Lincoln Avenue, Rockville Centre, New York, 11572.

THE COURT: Sir, you are about to undergo direct examination by the plaintiff's attorney, Mr. Levine. During the course of the questioning there may be objections by the defense counsel, Ms. White. If there is an objection, please don't respond to the question until I rule on the objection. If I say overruled, you may respond. If I say sustained, you may not. Do you understand?

THE WITNESS: Yes.

THE COURT: All right. I'm going to ask you to keep your voice up, so that all the members of the jury can hear your testimony.

Let's go, Mr. Levine.

DIRECT EXAMINATION

BY MR. LEVINE:

Q Good morning, Doctor.

A Morning.

Q Have we ever met before today?

A No.

Q Have we ever talked before today?

A No.

Q Had you, on the other hand, sent reports about what you found with this patient to my predecessor attorney; is that correct?

A Yes.

Q Doctor, what is your age, sir?

A Thirty-nine.

Q And what do you do?

A I'm an orthopedic surgeon, specialize in spinal surgery.

Q And, sir, could you tell me, what is an orthopedic surgeon?

A Orthopedics is the division or the specialty of medicine where you're a specialist in bone and joint disorders; it includes generally fractures, diseases of bones, injuries to bones, the spine, generally and

specifically as part of my sub-specialty, spinal surgery.

Q And have you done spinal surgery to the neck and lower back in your life, sir?

A Yes.

Q How many operative procedures would you estimate you've done in your lifetime as a doctor?

A Five thousand.

Q Now, sir, where did you go to college, sir?

A St. John's University.

Q When did you graduate?

A 1985.

Q And after that, did you attend medical school?

A Yes.

Q Could you tell me where?

A Stonybrook Medical School.

Q Out here on the island, right?

A That's correct.

Q And when did you graduate from Stonybrook, sir?

A I'm sorry, that's 1985. I graduated medical school in 1989. '85, 89. I have a lot of graduations, you'll see I have a lot of them.

Q After you graduated Stonybrook, the medical school, what did you do thereafter, sir?

A I did a residency in orthopedic surgery, which is

five years of specialty training in discipline of orthopedics.

Q Did you also intern, sir?

A Yes, that's part of the residency, yes.

Q I see. And where did you do this residency intern program?

A The internship at the Mt. Sinai Medical Center in New York City. And then -- that was the first year. And then for four years that followed it was orthopedic surgery at Stonybrook, also.

Q And after you -- what happened thereafter, sir?

A After I completed my orthopedic residency, which included a chief resident year which is, which means you were in charge of the program from a resident standpoint, I went on to do sub-specialty training in spinal surgery. I attended the University of Miami, Jackson Memorial Medical Center, for a two-year program in -- it's advanced studies, as well as the practice of spinal surgery on adults and pediatric patients.

Q Pediatric, meaning kids?

A Yes.

Q And what did you do after that?

A Then I came back to Long Island and I went into private practice on Long Island. And I've been in the same

office with the same practice for the past six years or so.

Q Is that Orlin & Cohen?

A Yes.

Q Is that an organization that has a lot of different doctors in it?

A Yes, it's an orthopedic group with many sub-specialists in orthopedics. I'm the --

Q What are some of the sub-specialties?

A We have hand surgeons, joint replacement surgeons, sports medicine doctor, we have rehabilitation specialists, we have myself, a spinal surgeon.

Q I see. And how many spinal surgeons are there in that group?

A Now we have two. We recently hired one in the last three months but before that we only had me.

Q And, sir, as part of your duties, do you attend at any hospitals where you admit patients and operate on them?

A Yes.

Q Where, sir?

A My primary hospital is Mercy Medical Center. There I've been appointed the chief of spinal surgery for adult and pediatric surgery. I've been on staff at -- I'm currently on staff at Winthrop and South Nassau Community

Hospital. Been on staff at North Shore. But I've been too busy with -- my practice at Mercy has grown really large.

Q North Shore is a long way, right?

A Plus it's a long way, yeah.

Q And, sir, do you teach?

A Yes, I've been involved in several. When I was involved at the University of Miami I was the co-director of the Miami Project to Cure Paralysis. I was in charge of, co-responsibility for that department, as well as teaching the residents and the fellows. I was involved in some publishing at that time, also, several --

Q You wrote articles?

A I wrote a chapter in a text book on spinal surgery.

Q As part of the your duties as an orthopedic surgeon, you see private, patients; is that correct?

A Yes.

Q Do you from time to time have to respond to their requests for reports concerning accidents they have been in?

A Yes.

Q And do you -- have you from time to time testified in court for patients?

A Yes.

Q And so this is not your first time in the

courtroom, is that a fair statement?

A No, it's not my first time.

Q How many times do you think you've testified for various patients that were involved in accidents?

A I think this is my fourth time.

Q Now, sir, did you come to treat Rosa Ashley?

A Yes.

Q Now, you have your office records there; is that correct?

A Yes.

Q And I'm going to hand up to you also subpoenaed records that your office supplied (handing.) And you can use anything to refresh your recollection.

Do you have an independent recollection of this patient?

A Generally, yes, I do.

Q Would it be fair to say you have seen thousands of patients in the last five years?

A Yes.

Q However, has this patient seen you more than once?

A Yes.

Q Indeed, she had her accident back in 1997, December. When was the last time you saw her, or your

office saw her?

A 10/14/02.

Q So, a couple -- 10/14? That's last month; is that correct?

A Last month.

Q A month and a week ago or something, two weeks now; is that correct, sir?

A Yes.

Q Now, sir, could you tell us under the circumstances that you first saw her?

A Yes. Her initial visit to my office was on 12/31/97.

Q And do you, did you make a record of that, sir?

A Yes.

Q And could you tell us, what were her complaints at that time?

A She was a 41-year-old female involved in a motor vehicle accident several days prior to the visit. She was complaining specifically of neck pain, pain radiating between her shoulder blades, upper extremity radiation -- upper extremities being the arms. And the word I use is dysesthesia, which means strange sensations, numbness in the hands. She also complained of low back pain with extension into the right lower extremity --

Q What would that be, the right leg, sir?

A The right leg, yes.

Q Go ahead, sir.

A Extending to the outside aspect. So down the right leg on the outside part of the leg, specifically. It was a sharp pain. She stated it was made worse with activities, bending, lifting and carrying, and somewhat improved with resting.

Again I restated in my note that she had some altered sensation or dysesthesia in her upper right extremity and --

Q What?

A Dysesthesia is like a -- I just said, means an altered sensation, when the patient describes, I have a funny feeling in my hand. Perhaps they use the word numb, I have a numb feeling in my hand.

Q Go ahead, sir.

A That's essentially what her complaint was on that date.

Q Now, did she relate to you any past medical history involving that part of her body?

A She denied.

Q And, sir, what medications had she received at the hospital. Did you see any medications she was on? I

think it's the first page, says "Medications."

A She was given codeine.

Q What's codeine?

A It's a pain killer.

Q Now, sir, did you thereupon take an examination of this woman?

A Yes.

Q Could you tell us, could you synthesize it since there is a lot of material there, what you found?

A Essentially with respect to her spine, her examination, her neck, her range of motion was limited and decreased. I listed the degrees. Zero to 40 degrees of flexion. Normally it's between 60 and 80 degrees of flexion. So she had about a 50 percent decrease in range of motion on flexion, which is bending your neck forward like that (indicating.) Extension is about 30 degrees normally. Hers was about ten degrees. And the left and right turn I listed at 30 degrees, which again is reduced; at least 50 percent of normal.

Q And, Doctor, were these objective findings you made of this patient?

A Yes.

Q What does objective mean?

A Well, an objective finding is something a doctor

sees or determines by his examination. And a subjective finding is something that a patient tells you. So if they say they have pain but you can't really sometimes --

Q So her complaints of pain was subjective; your finding of limitation of motion was objective. Is that a fair statement?

A Yes.

Q Did you form an impression about your patient as a result of this meeting with her that first time in December of 1997?

A Yes.

Q Could you tell us what your impression was?

A My impression was cervical radiculopathy, moderate to severe; and lumbar radiculopathy, moderate to severe.

Q What is radiculopathy?

A Radiculopathy is the medical word to describe pain in the nerve distribution. So, if a nerve which controls three different functions, it controls sensation, it controls motor function, it controls reflex. And actually through sensation can cause pain. So, if any one of those presenting complaints, either numbness, loss of motion or weakness, loss of reflex or pain, if the patient has any one of those complaints in the limb, upper or lower

extremity, you can call that a radiculopathy. So that's what the patient is complaining of, a radiculopathy.

Q Now, Doctor, did you know at that time that she had been taken by ambulance on 12/25/97 to South Communities -- Nassau County Communities (sic) following an automobile accident, did you learn that?

A The specific details, no, I wasn't aware of. I know she ended up in a hospital emergency room, but not specifically which one.

Q Now, I'm going to read to you from that report. They took x-rays there. Okay, I'm going to read to you of the --

THE COURT: Counsel, hold on a second.

Is that Exhibit E-2?

MR. LEVINE: I'm not sure of the exhibit.

THE COURT: I just want to make sure you're reading from something that's in evidence.

MR. LEVINE: It is in evidence, your Honor.

THE COURT: Okay. Fine, then. What is it?

MR. LEVINE: I'll read from that, rather than my notes, if you prefer, sir.

THE COURT: It's all right. I want to make sure you're reading --

MR. LEVINE: Okay.

It says "Cervical spine --"

THE COURT OFFICER: E-2, Judge.

Q "Cervical spine. There are mild osteophytes seen at" -- sorry. I didn't have enough coffee this morning, I apologize. Let me repeat that.

"There are mild osteophytes seen at C-5/6, and C-6/7 interspaces. There is proper alignment. The pervertebral" (sic) "soft tissues are normal. There are no fractures. The remainder of the study is unremarkable. Impression: Mild osteophytes."

Sir I'm going to ask you some questions about that, okay. What is an osteophyte?

A An osteophyte is a bone spur. It's a bone spur that appears on an x-ray. It can appear on any part, any part of any bone in the body. Usually you may see them as a result of age-related changes. They may or may not be symptomatic.

Q When you say they may or may not be symptomatic, what do you mean by that, sir?

A You can -- you frequently will take x-rays on patients with osteophytes in the knee or the hip or the spine, and they will have no complaints with respect to that area.

Q Do all of us as we get older develop arthritic

changes in our body, most of us?

A Most people develop age-related changes, the same way on the outside we appear different at the age of 60 than the age of 20. Our x-rays look different at the age of 60.

Q And this woman was in her early 40's. Would you expect someone in their early 40's if they took an x-ray of their neck or spine to find some osteophytes?

A You frequently will find osteophytes in that age group.

Q Does the fact that someone has an osteophyte mean that there is a herniated disk compatible with it?

A No, they are two separate things.

Q What is a herniated disk?

A To make a little brief outline of the anatomy of the spine, the spine is a stack of bones, vertebrae, one stacked directly over the other. And in between there is a thing called an intervertebral disk. And the purpose of the disk is to act as a shock absorber and a stabilizer. It allows for motion so the two bones can tilt, but it also stabilizes the two vertebrae together. Normally the disk has a certain shape and contour. A healthy disk has a certain shape. If through the mechanism of an injury, either bending over to lift something heavy, being pushed or falling down the stairs or being involved in a car accident

the disk itself can become injured, and part of the cover of the disk can rip, for example, and tear, and the material on the inside of the disk can protrude out. When it protrudes out that's when you begin to get changes that are described as bulges, protrusions, herniations, or extrusions. Those are all different degrees of disk injury. But it basically, a herniation refers to a change in what someone would see on an MRI, for example, in the shape of the disk itself.

Q Is that painful, Doctor?

A Generally disk injuries are painful, yes.

Q Now, Doctor, the stuff inside the disk is called nucleus pulposus; is that correct?

A Yes.

Q It's like a gel-like material, Doctor?

A Yes.

Q Now, if that is extruded out of the disk, that's a herniated disk, correct?

A That's an extruded disk. Yes, that's in the category of disk herniation.

Q How is that productive if there is pain that follows, pain? What happens physiologically to cause the pain?

A There is two reasons why people get pain with disk herniations; one is the obvious one that the lawyers

and the medical-legal system picks up, the protrusion sticks out and it pinches a nerve and if you pinch a nerve you have pain that goes into an arm. That's the obvious classic symptom and it's true and that's what generally people complain of.

But any degree of that disk itself, that cover of the disk, once it rips, there are nerve endings there. Once the rip or the tear occurs, that's a painful scenario. And motion above and below, normal physiological motion (indicating,) will open and close that little tear and that causes pain, also.

So there is two mechanisms, two different ways a disk herniation can hurt; by either pinching a nerve and causes pain that goes right down the arm or the disk itself being broken as you can imagine like even a disk or the meniscus of the cartilage in the knee, gets a little tear. Just using it every day can cause pain in the neck or the knee.

So, that's the second mechanism.

Q Now, Doctor, my adversary has subpoenaed into this court records from Dr. Friedman. Do you know who Dr. Friedman is?

A Not personally, no.

Q Do you know that he'd -- he was this woman's

doctor, general physician?

A Yes.

Q For years, correct?

A Yes, yes.

Q I'm going to hand up to you a physical examination he did of this woman on November 18 of 1997, which was a month before her accident. I want you to look at that.

MS. WHITE: I'm going to object. I don't believe it's in evidence.

MR. LEVINE: I'm just going to ask him to look at it.

THE COURT: He's just asking him to look at it, counsel. It is not proffered yet.

Just look at it to yourself, please. Just read it to yourself.

(Whereupon, the witness complied.)

Q Doctor, if I may, I specifically would like you to look at the last two pages which has to do with her complaints as to parts of her body that were bothering her and what he checked off.

A Okay.

(Whereupon, the witness complied.)

THE COURT: Are you done? All right.

Q Did you see it?

A Yes.

Q Did he look at her body?

MS. WHITE: Objection.

MR. LEVINE: I didn't ask --

THE COURT: Sustained.

MR. LEVINE: I offer the record that you subpoenaed into court, this -- may I have that back -- the physical examination of this woman taken a month before her accident by Dr. Friedman, Carl Friedman, of Ceharhurst, New York, including examination of her neck and back. I offer it.

MS. WHITE: I'm going to object, your Honor. And I don't believe that's correct.

THE COURT: Sustained. Thank you

Q Doctor, in any event, you were telling us about what a herniated disk is. Now, the x-ray report, to bring you back, said "mild osteophytes." What does "mild" mean, medically.

A Things are frequently graded in any endeavor, in any science, as mild, moderate, severe. It doesn't mean anything different in medicine than it might mean in anything else. Mild would be from the person reading the

x-ray for example, in his estimation that it was not -- it wasn't moderate in size or large in size; it was mild in size.

Q So, mild would indicate, would it not --

A Something small.

Q Small. And it says "at C-5/6 and C-6/7." What does that mean? C-5, what does C-5/6 and what is that area?

A Well, that's how they are numbered. Each vertebrae from the skull down to the tail bone is numbered. Starting at cervical --

Q Could you on your own body show us C-5/6 and C-6/7?

A The cervical vertebrae are between the rib cage and the head, the occiput. So it's one, two, three, four, five. That's about as close as you can get in terms of your (indicating.)

Q Now, Doctor, did you next see this woman -- you first saw her you told us about, what was the date of that first visit?

A 12/31.

Q Did you then see her a couple of weeks later in January?

A 1/19/98.

Q Could you tell us what her complaints were at

that time and what the history of the illness was that you recorded?

A On 1/19/98 she complained, present complaining with the similar complaints she had a few weeks before; neck pain radiating in between her shoulder blades, called interscapular area. Upper extremity radiation, into the arms, which was pain, pain radiating into the arms, as well as dysesthesia, which is the numbness. Low back pain, pain extending into the lower extremities, the outside of the leg, sharp pain again. Made worse with activities. So her complaints were essentially the same as the prior visit.

Q Did you put, sir, that the patient was a 41-year-old female who was involved in a motor vehicle accident on 12/25/97?

A Yes.

Q Now, sir, going back to cervical spine, could you tell us what the range of motion you found there, in the first page, bottom?

A On 1/19/98, which is the second visit, she continued to show similar physical findings as she did prior. Loss of range of motion to the cervical spine. My notation on the day is zero to 40 degrees of flexion, zero to ten degrees of extension. And left and right turn, zero to 30 degrees. Again --

Q Did you make a preliminary diagnosis as to what might be causing these limitations of motion on 1/19/98?

A Yes.

Q What was that, sir?

A That she had a herniated disk in her neck.

Q In fact, sir, on the second page under MRI, what is an MRI?

A An MRI is a very fancy radiologic test like an x-ray but it's a different class all together in which we're able to image parts of the spine. How it works is very complicated. It works with magnets but basically gives you a very vivid, real image of not only the bone which we can see on x-ray but also the soft tissue so you can see heart, lung, kidney, and specifically the spine, disks, nerves, spinal cord, et cetera.

Q Which you can't see on an x-ray, right?

A Which you can't see on a x-ray.

Q That's why they put you in a tube and press you through under the tube, correct?

A Right.

Q That's a very intimidating experience, Doctor.

In any event, did you have an MRI done of this woman's back and neck?

A As of that visit, the 1/19, I only had one of her

neck and I reviewed that with her.

Q Did you ultimately have one done of her back as well?

A Yes. And we were still waiting for her to get her lumbar, low back MRI as of that visit.

Q Now, could you tell me what did the MRI that you ordered for her neck reveal?

A One moment, please.

Q Second page of 1/19, Doctor.

A Okay. 1998, MRI of her cervical spine, showed C-5/6 and C-6/7 disk herniations, with associated spondylitic ridges extending to the right anterolateral aspect of the canal.

Q What are -- what was that term --

A Spondylitic ridge.

Q What's a spondylitic ridge?

A Bone spur.

Q That's what was revealed in the x-ray in the hospital, correct?

A Yes.

Q Doctor, did you put in that 1/19/98 report, MRI obtained of the cervical spine, "... shows a two-level disk herniation"?

A Yes.

Q What do you mean by two-level disk herniation?

A It was two disks, not just one, but two disks were herniated.

Q Is that a serious condition, sir?

A Yes.

Q Why?

A A disk herniation, even one is a serious condition. It can pause pain, weakness, loss of sensation on a chronic basis.

Q Was she complaining of those very things when you saw her originally?

A Yes.

Q Now, sir, did you have a plan that you put into place on 1/19/98?

A Yes.

Q Could you --

A In addition -- I wanted her to get her lumbar MRI because she was also still having complaints and I was suspicious she might have something there. I discussed the different treatment options including physical therapy, anti-inflammatories, narcotics which are painkillers, and as well as I touched upon, although I was not recommending, surgical interventions. And I gave her the follow-up visit.

Q You told her surgery might be an option for her,

sir?

A It's -- again, in an overview of what her disease which is what -- it's my custom and practice to go over the disease, what the implications are and that's -- what does it mean, doctor, I have a herniated disk? I say well, this is how we generally treat people. Most people feel a certain way. But some percentage of people need to have surgery for this and they need to be informed of that right from the beginning.

Q Now, sir, do you know how she came to you originally? She said that the hospital recommended her; is that --

MS. WHITE: Objection, your Honor.

MR. LEVINE: Withdrawn.

THE COURT: Overruled.

Q I want you to assume that my client has testified that she came to you because she was recommended by the people at South Nassau Communities Hospital. Is that how she came to you or did she come to you a different way?

A You know, I don't know how she came -- I don't keep a tab on how a patient gets referred to me.

Q Do you get from time to time referrals from local hospitals for people who have spinal injuries?

A Yes.

Q In any event, sir, did you next see this woman on January 23 of 1998?

Now, you may not have this because this was a physical therapy evaluation done by a -- name of the man John McGee (ph.). Who is John McGee?

MS. WHITE: Objection.

THE COURT: Overruled.

Q Who is John McGee?

A When I discussed with you that our practice having multi specialties, multiple physicians of multiple specialties, one of the physicans which is employed in our practice was a physical medicine and rehabilitation specialist. That note you are referring to, I didn't see her on that day; Dr. McGee saw her on that day and that was his note.

Q Does he keep a record of that and issue a report in the --

A Yes.

Q -- in the regular course of business of Orlin and Cohen, Orthopedic Associates?

A Yes.

MR. LEVINE: I'm going to hand this up, officer (handing).

Q I would just like you to tell me what he did on

that day and what he found.

A He did a musculoskeletal physical examination.

Q And can you report to us what he essentially found, sir?

A With respect to the neck, she has obvious limitations in cervical range of motion, with palpable tender points in the cervical paraspinous," which means the muscle on the side of the neck. "Positive Spurling's maneuver," which is a fancy medical expression for when you push down on the head it hurts. But it's suggestive of a disease of a disk.

Back exam, her low back was along the same lines; she had limitation of motion with palpable tender areas. It goes on to list specifically range of motion of the cervical lumbar being substantially affected. He lists the ranges both for the cervical spine, approximately 50 percent decline in overall motion of her neck. The lumbar spine there was some restriction but not as severe as the cervical spine.

Q Is 50 percent restriction a serious finding this long after an accident --

MS. WHITE: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q Why?

A It's an objective finding that patient continues to have pain.

MR. LEVINE: May I have that back, Officer.

Q Now, Doctor, did this woman receive physical therapy at the hands of your office?

A Yes.

Q Who is N-A-D-J-A S-W-E-D-E-N?

A She's also another physical medicine rehabilitation specialist under the employ of our facility.

Q And is she part of the physical therapy?

A Yes.

Q Does she administer physical therapy, oversee that operation?

A Yes.

Q And did she undertake to see this woman or did the department of physical therapy see her over a long period of time, nearly a year?

A Yes.

Q Did she make reports about what she found?

A Yes.

Q Now, Doctor, when did you next see this woman?

A 11/24/98.

Q Now, we're nearly a year past the date of the

accident, correct, we're 11 months past the date of the accident, correct?

A Yes.

Q Could you tell me what her complaints were and what the history of the illness that you recorded?

A She came in complaining of continued neck and arm pain. I notated she had a two-level disk herniation, that she described in my estimation intractable symptoms of neck pain with radiation into the upper extremities, associated with headaches. She had difficulty with lifting, carrying, bending and twisting. She had been in physical therapy for the past year, she'd only had mild to moderate relief. And that was essentially her complaint on that visit.

Q Now, did you do a musculoskeletal examination?

A Yes.

Q Could you read that to us, sir?

A Again, dedicated to her cervical spine she had continued to have loss of motion, zero to 30 degrees of flexion, zero to ten degrees of extension, left and right turn of approximately 45 degrees, which is consistent with the previous examination. She also had point tenderness to percussion and palpation, which like Dr. McGee noted on palpating or pressing on the areas around the spine, it was also very painful for her.

Q Did you have an impression that you recorded?

A Cervical disk herniation, two-level.

Q And what was your plan at this point?

A It's my custom and practice to review, again, all the treatment options including medicine, continued therapy, other alternative treatments, and includes a generic discussion on surgery as an option.

Q Doctor, what is the significance, what would be the medical significance of a woman who had two herniated disks occurring after an accident still having pain, limitation of motion, and all sorts of problems 11 months after the event?

A My impression is she was failing conservative management and we should try doing all of the conservative non-surgical treatments for her condition. And that she still had symptoms and that this was a serious problem.

Q Now, she has stated in court, I want you to assume, that until today, certainly as of the year following the accident, that she could not follow any of her normal activities, exercise, physical activities. Simple tasks around the house caused her great pain and disposition (sic). Do you have an opinion based upon a reasonable degree of medical care that what she described was as a result of the underlying automobile accident of 1997?

A Yes.

Q What is your opinion?

A That it's causily related to the motor vehicle accident.

Q And, Doctor, what significance in terms of permanency is there in that she still had these complaints, in fact, worsening complaints in her neck a year after, nearly a year after the happening of the occurrence?

A Could you repeat the question.

Q Yeah. What's the significance of her having these complaints nearly a year after the accident in terms of permanency?

A That she was not going to get better in my estimation with continued physical therapy and that she had a permanent condition. And that she really should make a decision, either to try to treat it with the definitive treatment, which in my opinion would have been surgery, or to learn to live with the chronic pain that the disks were giving her.

Q Now, Doctor, did she also have pain in her lower back during this first year?

A Yes.

Q What was causing that? Did you have an MRI done of the lower back?

A Yes.

Q What did that show, if you can pull that out.

A This was done March 10 to 1998, and it showed a central pseudo protrusional disk bulge.

Q What is that?

A So again in that scheme of injury of disks that I told you, you can have a small protrusion, a large protrusion, herniation, extrusion. A bulge is the lowest level of amount that the disk is protruding out.

Q Would it be responsible for the complaint she was making?

A Yes.

Q And is that a healthy condition or a normal condition to have a disk bulging, as you presented it, in the lower back?

A It's not healthy, nor is it normal, and it's often associated with the pain.

Q Do you have an opinion based upon a reasonable degree of medical certainty whether this injury to her lower back was caused by the underlying automobile accident --

A Yes.

Q -- of 1997?

A Yes.

Q What is that opinion?

A It was causily related.

Q Now, this woman has testified in court and I want you to assume that she still from time to time gets low back pain but it's far less now and it's easily controlled by taking medication. Would you agree that that's what you found medically as you continued to see her through the years?

A Certainly most of her -- after the initial period, most of her symptoms were in the area of her neck and her back pain and symptoms diminished with time.

Q And did -- they responded, did they not, to physical therapy?

A That's correct.

Q Did her neck ever respond to physical therapy --

A Not really.

Q -- to this date?

A She still continues to have pain.

Q Now, sir, when was the next time you saw this woman?

A 1/12/99.

Q And what date was that, sir?

A 1/12/99.

Q And tell me what happened then at that date.

A She continued to have complaints referable to her

neck and her upper extremities. High grade symptoms, as I noted in my note: "Difficulty lifting, carrying, bending and twisting." She didn't have a particular complaint of weakness on that day. But difficulty, inability to perform her day-to-day functions.

Q Did you discuss with her at that date or any other time prior to that the surgical option?

A Yes, I had discussed it with her previous to her -- on my previous visits. But it's clear it's been -- generally, if people come back and they continue to have complaints, that at some point they really need to begin to seriously entertain what the next treatment option was. And she specifically wanted to have more information about the surgery itself and so I went into detail.

Q Tell us what you told her about -- describe that surgery.

A I told her she had a problem with her neck. She had disk herniations. And generally the treatment at this point would be something called an anterior cervical diskectomy and fusion, okay. And what it was is a relatively new technique. Been around for a long time but a lot of the technology has advanced substantially so it's a lot less painful, a lot less -- recovery time is shorter.

Q Less risky?

A Less risky. Generally less risky. Still risks with surgery per se, but it's a lot less to go through than it used to be. But the specific details that there would be an incision made in the front of her neck and then microscopically, right here in the front of the neck (indicating) and microscopically I would go down and remove those portions of the disk that were --

Q You could go through her neck to the back?

A Yes. That's the way -- that's the approach.

Q They don't go from the back in, correct?

A Not really anymore. You can go from the back also. The spine, the disk is actually right in the middle of the neck. It's not in the back; it's not in the front. It's right in the middle. And the least painful way to have it done is through the neck. But there is really no cutting involved. If you look you can just push everything out with your fingers. So once you get through the skin --

Q You get to the disk?

A You're right there. You don't have to cut anything. It's right there and it doesn't hurt.

Q Then what do you do when you get to the disk from the front?

A You remove all of the disk material, you know, under direct visualization.

Q What do you call --

A We use a combination of microscopic instruments to remove the disk fragments under direct visualization. That's what makes it safe; you're actually seeing everything that's going on.

Q Do you have to illuminate it artificially?

A Yes.

Q What do you use to illuminate?

A In addition to the microscopic imaging, we use a Xenon headlight and Xenon lamps to illuminate the area.

Q You put that right into the wound area; is that correct, Doctor?

A Yes.

Q And then when you take the disk material out, what do you do then? What do you do referable to the nerve?

A Well, as you -- take all the disk down right down to the back of the spinal cord. Part of the operation you're looking at the spinal cord. It may sound scary but if that's what you do for a living it's actually pretty safe. It's important that you visualize the spinal cord and remove anything pinching it, and then you actually can follow from the spinal cord you can follow the nerves tracking out. It's all done with a microscope, you can look out in both directions to ensure, and the operation is not

over until you've taken all the pressure off the nerve.

Q I see. And then you leave the nerve where you find them?

A Yeah. You have to -- it's being pressed on by something. So by removing that disk that's pinching the nerve you relieve the symptoms of the pinched nerve.

Q You hope that will effect relief?

A Generally it makes it -- over 94, 95 percent of patients feel substantially better as a result of that.

Q But not all 94 percent feel totally better?

A That's what that five percent is.

Q Okay. In any event, Doctor, then what do you do, you said that the diskectomy and --

A And fusion. Because once you remove that portion, that disk was not functional. Once it extrudes and moves back and pinches the nerve it's not between the vertebrae anymore. So what's there? And that's part of why patients have pain. So, by once the disk moves out, the vertebrae collapse down. That's what you'll see. So part of the surgery is jacking open the space and recreating normal space there, cleaning out the nerves and putting a spacer in that area. Over the years that spacer has changed from your hipbone to your leg bone to transplant bone, and even now we have synthetic material that's coming out on the

market now. But basically the premise is you got to put something in that space to keep the vertebrae from collapsing. Otherwise when it collapses, it causes pain again.

Q Of course the patient's being anesthetized throughout the proceeding?

A Yes, general anesthesia.

Q And after you put in that -- after you take bone out of the hip or wherever you get the bone from and you put it there, to keep, to keep to, maintain that space, right, because if you don't maintain the space you'll have a disaster on your hands?

A It will collapse down and then the fact that there is no bushing between, you can imagine the two vertebrae would be floppy, would go back and forth and that constant motion will cause pain. That's why you need to open the space up, put something there, stabilize it; that's what the fusion part is. Whatever you put in that space will go across the two vertebrae and prevent the motion across that vertebrae, those two vertebrae, and the patient's pain is relieved.

Q After you've done that, what do you do next in that surgical procedure that you told her about?

A We use a titanium clip, it's a little clip that

will clip the two vertebrae above and below the space. So they are clipped together. So that provides immediate stabilization. So the day after surgery a patient can get up and move their head all around and you don't have to wear collars anymore, you don't have to worry about that piece of bone coming out. You don't have to because it's clipped together, it stabilizes it and then provides immediate pain relief. So part of the problem is when the disk collapsed it was pinching the nerve and that caused the arm pain. But also because the space is collapsed, every time you move your head it moves back and forth. So, by jacking it open and clipping it together, the day after surgery they move their head and say they feel much better because the bones are not moving anymore.

Q What do you do, tell us about the end of the operation?

A Sew the skin closed and --

Q How long is that operation under general anesthesia?

A It's about two hours.

Q Now, did you tell your patient when you discussed this with her and you said she was interested in it, did you tell her any of the risks?

MS. WHITE: Your Honor --

THE COURT: Overruled.

Q Did you tell her, tell her of any of the risks of the procedure?

A Yes.

Q What risks are there in the procedure?

A The main risk of the surgery is what I suggested before, is that 95 or 94 percent of patients get complete relief but five percent of patients continue to have pain. Why? That's the most important question. Because once a nerve has been injured, there is no guarantee that that nerve will recover. The example I like to give is Christopher Reeves was paralyzed. You can go in operate and take the pressure off the spinal cord but he's still paralyzed two years later. That's because nerve tissue unlike other tissues does not have the ability to regenerate. Having said that, 95 percent of people that have the surgery feel better. So they do get recovery. But it's not 100 percent. So if you look at, you know, if you look at hundreds of people, and I do at least 200 of this particular operation a year, 95 percent of the people feel better but five percent of people continue to have symptoms. So that's the most common complication, they --

Q What other complications?

A The other thing would be like an infection.

Infections can happen anywhere with any type of surgery, okay. It's not different in the neck. If you have surgery in the neck it's about one percent. Other types of risks associated with the surgery specific to spinal surgery include things like nerve damage or paralysis or trouble breathing. Those things have never happened to me. And I'll knock on wood, I'll say that. I'm very careful so it doesn't happen. It's a theoretical risk of surgery. For doctors experienced it doesn't happen.

Q It's theoretical --

A But doctors that are experienced, it does not really happen. But naturally it's reported several times a year these things could happen.

Q And deaths can happen?

A Yes, death from anesthesia.

Q You explained all this to the patient?

A Yes.

Q Why didn't she have it?

A I don't know.

Q Did she evince to you fear of the operation?

A Yes, generally it's -- she did. She said she was afraid about having surgery, and I said that's normal. If a patient is not afraid to have surgery then I'm worried, because they should be cautious.

Q You agree there is a percentage of patients that choose not to have surgery because of fear of surgery; would you agree with that?

A That's correct.

Q You don't force anybody to do anything?

A No.

Q Now, Doctor, when you last saw this woman, did she indicate to you now that she's finally coming around to thinking seriously about having the surgery?

MS. WHITE: Objection, your Honor.

THE COURT: I'll allow this question.

MR. LEVINE: Withdrawn. I'm going to withdraw the question. I'll get to it a different way.

Q Have you discussed with her recently having the surgery, Doctor?

A On each visit we see each other she continues to bring up the issue of surgery and she is seeking reassurance from me, is it the right thing to do, and generally those are the conversations we have. Should I have surgery, should I not. But I don't tell patients to have surgery.

Q I understand. I want you to assume she's testified that she's -- that the condition is so bad that in spite of her fear of surgery she's seriously considering it.

Would that come as a surprise to you, Doctor?

A No.

Q Now, Doctor, when did you next see this woman?

A I forget where we left of. Are we on 8/28?

Q No, we have not got gotten there, yes. 8/28/00?

A Right. That's the next time.

Q Could you tell me what her complaints were, sir.

A She came in complaining of neck pain, arm pain and shoulder pain and pain radiating in between her shoulder blades. Difficulty lifting carrying, bending, prolonged standing, walking, sitting, going up and down stairs, all were curtailed or reduced because of the amount (sic) she was having.

Q This is three years after the accident, correct, Doctor?

A That's correct.

Q By the way, did you do a lumbar spine examination on 8/28/00?

A Yes.

Q Could you tell us what that revealed?

A She also had some physical findings in her low back which were positive paraspinal muscle spasms. Spasms are when the muscle gets hard, like a charlie horse, but in the low back. When you touched it, when you percuss it,

which means you hit it, some gentle tapping over that area, you would be able to elicit that as a sign. She had diminished range of motion, diminished flexion, diminished extension and turning from left to right. So on that day she was symptomatic with respect to her back.

Q Did you believe that her problems in her neck and her low back that you found in the year 2000, three years after this accident, were related to the underlying automobile accident, Doctor?

A Yes.

Q And, sir, what did you -- what was your plan with her?

A Continue physical therapy, we switched her over to anti -- a new anti-inflammatory, Vioxx.

Q What is Vioxx. How does it work?

A It's an anti-inflammatory, like Advil or Motrin, but it's a new generation. It's more powerful and has lower GI or gastrointestinal side effects.

Q Doctor, this woman was taking lots of different kinds of medication trying to help herself; is that true?

A Yes.

Q They were recommended by you or your associates who saw her?

A Yes.

Q Could you tell me some of the other medications, if you can find them?

A She was on codeine, which is a narcotic pain killer, right from the beginning. She was on Neurocet, which is a --

Q What's that?

A Neurocet?

Q Yes.

A It's another narcotic pain killer, genre, actually has caffeine in it. Lodein, which is an anti-inflammatory, in the same class as somewhere between Advil and Vioxx. She had Relafen which is a different type of anti-inflammatory. Motrin. She had Ultram, which is a non-narcotic pain killer which is generally well-tolerated by patients. It's a pain killer predominantly. What's good about it is it's not very addictive. You can take it without falling asleep. Those are the type of medications.

Q Doctor, based upon your considered medical opinion, would anybody undergo this unless they had pain?

MS. WHITE: Objection, your Honor.

THE COURT: Overruled.

A I mean, it's clear that from her physical findings and all her follow-up visits and her medication records and her physical therapy record, that this was

someone who had severe chronic pain.

Q Now, Doctor, did you see this woman or someone from your office see this woman on May 17 of 2002, now nearly five years after this accident?

A Yes.

Q And was a report made signed by you and dictated by Michael Duffy?

A That's correct.

Q Who is Michael Duffy?

A Michael Duffy is my physician's assistant. He works with me with all my patients. He sees all my patients with me. He knows all my patients.

Q Is he a doctor?

A No, he's a physician's assistant.

Q I see. In any event, could you go over this with me, could you tell me what her chief complaint was now five years post-accident, nearly four and a half years?

A Severe pain in her neck, radiating into her upper extremities. Severe neck pain, radiation in both upper extremities. Her pain is made worse with lifting, carrying, bending. Prolonged sitting, prolonged standing, going up and down stairs. And she had been in a home physical therapy and taking medications for the last several months --

Q Did you write in the history of present illness, quote, "Patient was in a motor vehicle accident several years ago which is the cause of this pain"?

A Yes.

Q And, Doctor, did you do a physical examination of the spine?

A Yes.

Q Could you tell us nearly five years after the accident what that examination revealed.

A Her cervical spine exam was essentially the same as it was all the previous visits, which was severe restriction of motion, zero to 30 degrees of flexion, zero to ten degrees of extension, left and right turning approximately 45 degrees. Tenderness to percussion and palpation around the spine.

Q And did you have x-rays taken?

A Yes.

Q What did they show nearly five years after this accident?

A It showed disk space narrowing, what's called -- once the vertebrae begin to collapse down, okay, after a disk injury, over the years they collapse down. And what's manifest that -- what you see as disk space narrowing, what you would document as degenerative disk disease was the

consequence --

Q Under radiographs you wrote "X-rays taken show severe degenerative disk disease at C-4/5, C-5/6, C-6/7." Correct?

A Yes.

Q So now there was a third disk area involved, correct?

A Yes.

Q Why?

A It just happened.

Q It happened because of the problems she'd had?

A I think --

MS. WHITE: Objection, your Honor.

MR. LEVINE: I'll withdraw it.

THE COURT: All right. Counsel, at this juncture I'm going to give the jury a little break, all right. We've been at it about an hour. Unless you are --

MR. LEVINE: I'm nearly done, Judge, if you give me another ten minutes or five minutes I'll be done.

THE COURT: All right.

Q Now, sir, your impression at this time was what?

A Continued to be cervical radiculopathy, cervical

sprain, referring to she had neck pain, and cervical degenerative disk disease.

Q And, sir, did you send her for x-rays in both September of 2000 and later, June of 2002?

A You mean x-ray or MRI?

Q MRI, I apologize.

A Yes.

Q What did they reveal?

A The MRI of, most recent MRI of her neck continued to show herniated disk at C-5/6, on the right-hand side and read (sic) it as asymmetrical disk bulge at C-6/7 to the right. And these findings were unchanged to the prior MRI she had of her neck, September 15, '00.

Q Is it not true June 25 of 2000, as well as another time in 2000, August of 2000, you sent her for additional physical therapy to Mercy Medical Center, sir?

A Yes.

Q And they reported back to you and you got a report of what their examination showed; is that correct?

A Yes.

Q And their examination agreed with what you found, is that a fair statement?

A Yes.

Q And when did you last see this woman?

A I believe the last visit was October 14, '02.

Q Anything different?

A No. It was the same.

Q Now, Doctor, just a few more questions and then I'll be done.

What's this woman's prognosis without surgery?

A Poor.

Q What's this woman's prognosis in your considered opinion if she undertakes to have the surgery she fears to have?

A Fair to good.

Q Do you have an opinion based upon a reasonable degree of medical certainty that the automobile -- whether or not the automobile accident of November (sic) 25, 1997, was a competent producing cause of the disk herniations you've talked about today?

A Yes.

Q What is that opinion?

A My opinion is that all of her complaints are directly and causily related to the motor vehicle accident she sustained.

Q Do you believe that the pain she has, the increasing pain in her neck and the pain in her back which still occurs but less prominently, were competently produced

by this underlying automobile accident?

A Yes.

Q You do have an opinion. What is the opinion?

A My opinion is that they are directly and causily related.

Q Do you have an opinion based upon a reasonable degree of medical certainty whether these disk herniations you've described today were the competent cause of plaintiff's continued and worsening condition of the cervical spine. Do you have an opinion?

A Yes.

Q And what is that opinion?

A That they are causily related.

Q And, sir, do you have an opinion based upon a reasonable degree of medical certainty whether there is a serious impairment of the use of a bodily function here as a result of this accident?

A Yes.

Q What is your opinion?

A She has a serious impairment in her neck and upper extremities as a result of the car accident.

Q Do you believe based upon a reasonable degree of medical certainty that this woman has a permanent loss of use of function of a bodily -- of any bodily organ?

A Yes.

Q What is that opinion?

A That she does have a permanent loss of use of her neck and upper extremities.

Q What does the future hold for her if she continues like this and does not choose to undergo surgery?

A I think she has a very poor prognosis. I think she's going to continue to have the same pain she's had, if not worsening pain, over the next several years.

MR. LEVINE: I'm through.

THE COURT: All right. Ladies and gentlemen, at this time before we start cross-examination we're going to have a brief recess. It will be about ten or 15 minutes.

Please, do not discuss the case among yourselves.

(Whereupon, the sworn jury exited the courtroom.)

(Whereupon, there was a brief recess taken.)

(Whereupon, the sworn jury entered the courtroom.)

THE COURT: All right, Ms. White.

CROSS EXAMINATION

BY MS. WHITE:

Q Doctor, you are getting paid to be here today?

A Yes.

Q How much are you getting paid?

A I get paid for my time. So it depends how long I'm here.

Q How much are you charging?

A Generally it's about 5,000 for the morning.

Q 5,000?

A 5,000.

Q Okay. Now, Doctor, when you see your patients, do you take office notes?

A Yes.

Q Co you have any office notes with you today?

A Yes, I have the chart.

Q Okay. Do you handwrite them or you dictate them?

A Dictate them.

Q Do you dictate them then and there?

A Yes.

Q So you have office notes that are typed up; is that correct?

A Yes.

Q Nothing handwritten?

A That's correct.

Q Now, when you first saw the plaintiff when she came in on December 31 of 1997, did she bring the hospital records with her?

A She might. I don't recall.

Q Would your notes reflect that?

A They didn't reflect that. But I wouldn't generally make a notation of that.

Q When you saw her on December 31 of 1997, did you take any x-rays?

A Yes.

Q And?

A Took an x-ray of her neck.

Q And can you tell me what the x-ray of the neck showed?

A Showed disk space narrowing of the mid cervical levels.

Q Would that be basically degenerative disk disease?

A No. Not necessarily. It's just, I didn't mention osteophyte there, but it could either be disk space narrowing like I described earlier to the jury once a disk is herniated, or from another process the space between each vertebrae declines (indicating.)

Q What other process other than herniation or an

accident?

A Degeneration could be one reason, yeah.

Q Degeneration. Okay. And now, done at the hospital, there is an x-ray done of the spine and that was normal. You were aware of that or no?

A I didn't have the records of the hospital. And I didn't review the x-rays.

Q And didn't you do x-rays also of the back?

A Yes.

Q Okay. And what were your findings about the x-rays of the back?

A No fracture, dislocation or osteopathology.

Q So you found everything okay with the back, and with the neck you found disk space narrowing; is that correct?

A I thought the x-rays were negative for fracture disk location or osteopathology (sic).

Q What about for the lumbar?

A Of the lumbar.

Q I'm sorry. For the cervical?

A Disk space narrowing at the mid cervical level.

Q Okay. And would that be at the C-5/6 and C-6/7?

A Yes.

Q Yes. Okay.

Now, the hospital x-ray that was taken right after this accident found mild osteophytes, seen at C-5/6, and C-6/7, interspace. Now, osteophytes you said were bone spurs?

A Yes.

Q Now, these obviously preexisted this accident, would that be correct?

A Yes.

Q They don't grow up just like that?

A Yes.

Q Something over time?

A Yes.

Q The soft tissues were found normal at the hospital. Can you tell the jury what that means?

A Well, soft tissue x-ray on a -- for -- when you get an x-ray of a bone and your examination of the soft tissues, are, general, it's really an x-ray for bone. So, a what they didn't see, I guess what you are asking me is what they didn't see, things like free air things like a tumor, a calcified tumor or something that was not related to the spine.

Q They did not find any edema that would come from swelling?

A You couldn't see that on an x-ray.

Q But sometimes if there is an injury it would show up other than a fracture, right, like the soft tissue might be different in some way?

A That's why we get MRIs. You don't see soft tissue injuries on x-rays.

Q Now, were you aware that the hospital doctor did an exam and he found the back was non-tender and no visible bruises, were you aware of that?

A Again I can't speak to what the exam was at the hospital.

Q And that the neck was also non-tender, were you aware of that?

A Again, I can't speak to what the other doctor saw at the other hospital.

Q When you saw the plaintiff, you didn't see any kind of bruising on the neck or back, right?

A I didn't make a notation I saw bruises, no.

Q That would be something that you would have noted, wouldn't it?

A I mean if she had obvious bruising I would have dictated that yes.

Q Now, you talked before about objective and subjective. Objective is something that you can't lie about, or exaggerate about, it's hard evidence, would that

be correct?

A An objective.

Q Objective finding?

A An objective finding is a finding that a physician sees or feels with his own hands, not what a patient says.

Q And subjective would be something that the patient says; would that be correct?

A Yes.

Q Now, an x-ray would be objective?

A Yes.

Q An MRI would be objective?

A Yes.

Q A EMG or nerve conduction study would be objective?

A Yes.

Q Yes? Okay.

Now, the x-ray at the hospital found mild osteophytes. You did an x-ray of the cervical area, found disk narrowing, yes?

A Yes.

Q Would that be from an age-related complaint?

A Well, I don't know what it was from. That's why I sent her for an MRI. Disk narrowing could be a herniated

disk or degenerative disk disease or tumor or infection or anything like that.

Q Can you tell me what stenosis is?

A Cervical stenosis -- in general it just means narrowing. You can have stenosis of your coronary artery, your prosthetic urethra. You can have stenosis in the spine. It relates specifically to a narrowing of some part of the spine. You have to be more specific.

Q And this narrowing comes with age, right, with -- and degeneration?

A Again, depends on the type. If you have a large extruded disk fragment, that's stenosis of the spinal canal. That's an acute stenosis. If you have stenosis, depending on where it is, foramenal, that's from acute disk herniations can cause collapsing and get foramenal stenosis. If you have that stenosis from ligament and hypertrophy and osteophyte formation, then that could be an age-related degenerative finding.

Q In this particular case, you did have spondylitic ridges, is that correct, on the MRI?

A Yes. The MRI she took showed some spondylitic bone ridges, yes, in addition to the disk herniation.

Q That's not traumatically related; that's something she would have through age or whatever?

A It's a finding that you generally see on x-rays or MRIs.

Q You didn't actually look at the film yourself?

A I always look at the films myself.

Q Did you look at these?

A If I dictated -- I mean I don't have a recollection, but if I dictated MRI -- unless I said MRI report.

Q Now, the MRI dated January 9 of 1998 of the cervical area, it found narrowing of the C-4/5, C-5/6, and C-6/7 disks, is that your --

A I'm sorry, repeat the question.

Q The MRI found narrowing of the C-4/5, C-5/6 and C-6/7 disk. Did you find that also?

A Which MRI?

Q The one dated January 9, 1998.

A Repeat the question.

Q Did you find narrowing of those areas when you looked at the MRI?

A Well, my review of the MRI showed that I -- you're asking me what the report shows or what I said when I saw it?

Q What did you say when you saw it?

A Okay. "MRI of cervical spine shows two-level

disk herniation."

Q Did it also find narrowing?

A I -- the report states in the body of the report that there is a narrowing of the C-4/5, C-5/6, and C-6/7 space.

Q Okay. And it also found osteophyte formation noted at C-4/5 and C-5/6; is that correct also?

A Anterior osteophyte formation is noted at C-4/5 and C-5/6.

Q And also there were disk herniations at C-5/6 and C-6/7 associated with end plate osteophytic ridges. Did you find that also?

A Yes.

Q And those osteophytic ridges didn't come from the accident. That was something she had before; isn't that correct?

A Yes.

Q Because something like that doesn't show up in a matter of days or weeks or -- would that be correct?

A Like I said before, that bone spurs are findings that you may generally see on a x-ray, yes, or an MRI.

Q And these findings were found at the same level as the disk herniations?

A Yes.

Q Okay. Now, the report also states that there was no impingement upon the cord at either level. Can you tell the jury the significance of that?

A That's what I was describing earlier, there is, when you have a disk herniation or impingement or bone spur, it can cause symptoms in different ways, one by direct compression on the nerve and other because of the collapse of the space. And so what they are specifically referring to is it is not pinching the spinal cord. That's all it's saying.

Q And because there is the impingement -- if there is no impingement then you don't have those radiculopathy symptoms, the symptoms where they radiate down the arms or legs?

A Well, you're not correct. Because it says the anterolateral aspect of the canal and encroaches upon, which means it touches the orifice of the right C-5/C-6 foramen. So it doesn't impinge the cord. Remember I told you how when I go in I'd look through the microscope and look at the spinal cord and if you take the pressure off the spinal cord you have to follow the nerves out because it can push the spinal cord or it can push the nerve. Pushes the right nerve, goes down the right arm; the left nerve, it goes down the left side. Can be both sides. So, depending where the

disk is -- or the bone spur is pressing on, the symptoms will be in any of those areas.

Q The bone spur, the bone spur pressing can cause pain?

A It can cause pain, sure it can.

Q And it can cause the symptoms that the plaintiff is complaining about; isn't that correct?

A Well, obviously.

Q Could it?

MR. LEVINE: Wait. Objection.

THE COURT: Counsel, objection is overruled. Just answer her question.

A I'm sorry, repeat the question.

Q The plaintiff had bone spurs, yes?

A Yes.

Q And that's not from this accident?

A That's correct.

Q That's correct. And bone spurs can cause the complaints that the plaintiff has; isn't that correct?

A Yes.

Q And as a matter of fact, you don't know what plaintiff's physical condition was before this accident or before she came to see on you December 31 of 1997; isn't that correct?

A Well, she said she had no neck pain.

Q She said. But you never saw her before that accident?

A That's correct.

Q That would be correct?

A Yes.

Q Okay. And you never got any medical records before you saw her on December 31 of 1997?

A I wouldn't get medical records from before I see her.

Q You sometimes don't get --

A I would never do that.

Q From the primary care doctors?

A I wouldn't bother.

Q So everything you know about what she had or what she didn't have is from what she told you; is that correct?

A And her objective findings, physical exam, MRI findings and physical therapy findings, yes.

Q So, what she told you and your objective, the x-rays, the MRI -- and in this particular case, there were also nerve conduction studies, right?

A Yes.

Q And in that it was normal; isn't that correct?

A I don't know. Should I review that? There is a

nerve conduction study, April 23, 1998.

Q And that was --

A Is that what you are talking about?

Q Yes. Normal for bilateral extremities.

A Well, should I read the conclusion? You want me to interpret what the report is or read the conclusion that was on the paper?

Q Doesn't the page say that it was normal?

A It says two things: "Normal motor conduction testing of the upper extremities." Says "Unable to rule out specific cervical radiculopathy due to limited testing." So it's a non-diagnostic -- so I would interpret this as a non-diagnostic test. It doesn't help you to make a diagnosis, it doesn't detract from your diagnosis.

Q Some test was done, a nerve conduction study was done on that date, isn't that April 28th by a doctor in your office?

A Yes, we just read the report of that date.

Q And she found it was normal for bilateral upper extremities; is that correct?

A I read the conclusion. All I can do is read the conclusion. I didn't do the test myself. I'm sorry. "Normal motor nerve conduction testing of bilateral upper extremities." Do you understand the whole test? I mean I

don't think from your question you understand it. Should I continue to read what you asked me to read?

Q No. I understand she did not continue with part of the test --

A Because there is two --

Q -- is that correct?

A Yes.

Q Okay. But the part of the test that was done, the doctor found it was normal for both the arms; would that be correct?

A Yes.

Q Okay. Now, regarding the history, when the plaintiff came to see you, did she ever tell you that she had had problems with her hands or her legs or her shoulders or have severe pain 24 hours a day before this accident?

A She told me she had no symptoms prior to the accident.

Q Okay. Did she ever tell you that she had an EMG done before this accident?

A I wasn't aware of it, no.

Q So she never told you any of that stuff?

A Essentially if you are asking me about my first interaction with the patient that day, we had a discussion about what her complaints were and what the history was,

whether she had a prior history. And so we never had a -- I was never told of such a thing.

Q And she basically told you nothing, right?

A No, she told me everything that I've testified to so far.

Q About the car accident. But she didn't tell you anything else?

A Well, as part of my inquiry, I said did you ever have neck surgery before, ever have back surgery, neck problem before, and she said no.

Q Okay. Because if she had told you anything, you would have put it in your report?

A That's right.

Q And she didn't tell you anything about that she had been suffering from pain in her legs or her arms or her hands or her shoulders, she didn't tell you that and you know that because it's not in your report?

A That's right.

Q Is that correct?

A Yes.

Q Now, your conclusion that the symptoms that she has are from this car accident are based upon what she told you, is that correct, at least in part?

A Part of what my conclusion is based on that --

yes.

Q So if she was not truthful to you about what complaints she didn't have or did have before this car accident; you wouldn't know that?

A I'm sorry, repeat the question.

Q If she failed to tell you --

MS. WHITE: Strike that.

Q If she had told you that there had been a past history, would that have changed your conclusion about that everything that she has wrong with her is from this car accident?

A Yes.

Q Now, in this particular case, you saw her about five or six times?

A Approximately.

Q Over a five-year period, right. Now, when you first saw her on December 31 of 1997, your notes indicate you told her to come back in a week?

A Yes.

Q And she came back about three weeks later to see you?

A Yes.

Q And when you saw her on January 12th -- excuse me. January 19th of 1998, did you tell her to come back

again in three weeks?

A Yes.

Q But she didn't come back again until November 24 of 1998?

A Yes.

Q And then on November 24th of 1998, did you tell her to come back again in three weeks?

A On the 11/24 you're asking me?

Q Yes.

A I said to come back in several weeks.

Q Okay. And she came back about three months later, yes?

A Yes.

Q And then on January 12th of 1999, you told her to come back again in several weeks. And she didn't come back again to you until August 28th of 2000; would that be correct?

A Yes.

Q Okay. And then you didn't see her again until shortly before this trial, within a few months of this trial; would that be correct?

A And next time I saw her was in May.

Q May of 2002?

A Yes.

Q This year, right?

A Yes.

Q At that time did she tell you her case was coming up for trial?

A No.

Q You referred her for physical therapy?

A Yes.

Q You thought the physical therapy would help?

A She had been in therapy. She was continuing to complain of pain, so she didn't have much in the way of options. I said keep going to therapy.

Q You prescribed physical therapy?

A Yes.

Q You prescribed the physical therapy because you thought it would help her? Yes?

A Yes.

Q Because it usually helps people?

A Yes.

Q And you told her to go three times a week?

A I gave her a prescription for three times a week, yes.

Q Were you aware of the fact she didn't go three times a week?

A No.

Q That she didn't even go two times a week?

A No.

Q Now, Dr. Sweden also saw the plaintiff. Now, were you aware of the fact that Dr. Sweden told her to go see a neurologist and that she didn't go?

A No.

Q And it's been five years since this accident and the plaintiff has not had surgery?

A That's correct.

Q And you don't have a date for surgery?

A Not that I'm aware of, no.

Q Now, with your examinations of the plaintiff on December 31 of 1997, you did neurological testing?

A Yes.

Q Can you tell the jury what you tested and what you found?

A I tested her motor strength, her sensory and her reflexes, and it was essentially normal.

Q And you tested the reflexes?

A Yes.

Q Yes. And that would be objective, right, whether someone's reflexes changed?

A That's also an objective test, yes.

Q And they were all normal?

A Yes.

Q You had no positive findings?

A Not on this exam, no.

Q You did another exam on January 19th of 1998, other neurological testing?

A Same as last time.

Q Normal?

A Normal.

Q No findings?

A That's correct.

Q And on the 24th (sic) of 1998?

A It was the same; normal.

Q Normal. And January 12th of 1999, skipping back, did you check neurological testing?

A Continued to be the same.

Q And August 28th of 2000, the neurological exam, was it also negative?

A It was the same.

Q So, any neurological testing of the plaintiff always came back normal?

A It was normal, yes.

Q And you tested that every time you saw her?

A Yes.

Q Now, herniations themselves may be asymptomatic;

isn't that correct?

A Occasionally they can be asymptomatic, yes.

Q A lot of people who have herniations don't even know about until they have an MRI done?

A Most people that have herniations have symptoms. But some people can have herniations and not have any feeling.

Q And herniations can be caused by degeneration?

A No. A herniation --

Q Not every herniation comes from an accident?

MR. LEVINE: Objection.

THE COURT: Overruled.

A All disk injuries are a result of some traumatic event, whether it be picking up a piece of tissue on the floor, bending or twisting, or getting involved in a high speed motor vehicle accident. So there is a spectrum of energy that can go into causing an injury like that. So, wear and tear would more likely be the result of, would cause something like a bone spur, like we were discussing earlier. A herniation is the result of some type, generally the result of some type of traumatic event that occurs.

Q So, is it your testimony that every herniation is caused by a traumatic event?

A Yeah, if you would include picking up, bending

and twisting the wrong way, that's a traumatic event. Energy that goes into it.

Q Okay. So, if somebody had an arthritic condition in the neck or their back, they could do something very simple and it will herniate; would that be correct?

A Even a tiny amount of energy can cause a herniation, so, yeah.

Q So it's not necessarily from accidents, it could be just from going like that (indicating,) yes?

A A little bit more than that. But generally, yes, you can herniate a disk from relatively minor trauma.

Q Now, in terms of your motor exam of the plaintiff, in terms of the range of motion, you do a range of motion test by telling the plaintiff or the patient to go like this, like this (indicating?)

A I have my hand on the patient when it happens. I'm actually physically guiding their body through the motion.

Q When they tell you it hurts or stiffen up, do you keep on doing it?

A I tell every person exactly the same thing. Keep going even if it hurts. Let it stop when it stops.

Q So if they say ow, that hurts, you don't stop?

A Well, I mean, I try not to torture the patient.

But, you know, some patients don't even want to be touched. And other patients -- you still have to examine a patient. And I know a physiological, just gently bringing them through a normal range of motion, is not going to further injure them if they don't have a fracture or dislocation. There are certain times when you can't range (sic) the spine.

Q So the only thing you do in terms of a motor exam, in terms of limitation of motion, is ask the plaintiff and you put your hands on her head and neck, would that be correct?

A That's correct.

Q The plaintiff could use her neck after the accident, is that correct? She didn't lose the use of her neck, right?

A Well, she was complaining of pain when she used her neck.

Q Okay. But she didn't lose the use of her neck?

A She could turn her head; it's still attached.

Q She could do that, right?

A I don't understand the question.

Q Well, she didn't completely lose all use of her neck, would that be fair to say?

A Yes.

Q And she could turn her head (indicating,) but she complained about pain when she turned her head; would that be correct to say?

A And she was limited in her ability to turn, as I testified to.

Q You're basing that limitation on --

A My physical exam.

Q By going like this to her (indicating,) would that be correct?

A A little more sophisticated than that, yes, but turning her head.

Q I mean that it would be fair to say you go like this (indicating)?

A It's a physical exam, right. That's correct.

Q But that's basically the exam, right (indicating?)

A Yes.

Q You don't know what her range of motion was before you saw her on December 31, 1997; would that be correct?

A That's correct.

Q Now, range of motion with an athlete or, you know, of a gymnast, you might have greater range of motion than someone who is 95 years old; would that be correct?

A Again?

Q If you were an athlete on one hand or a gymnast, and someone that's 95 years old, their range of motion might be different in the neck and back; would that be correct?

A Generally speaking, yes.

Q So there is a range of what's normal --

A Yes.

Q -- for an age and somebody's athletic ability?

A Mostly age.

Q Mostly age?

A It's age-related.

Q And someone's range of motion might be affected if they had bone spurs, right?

A It might be.

Q Now, when you did your referral for the physical therapy, did you fill out a prescription?

A Yes.

Q Okay.

MS. WHITE: I'd like to get these marked, your Honor, and shown to --

MR. LEVINE: It's already marked.

MS. WHITE: I don't believe they are marked.

MR. LEVINE: It's part of Mercy Hospital, isn't it?

THE COURT: Do you want them marked as one exhibit?

MS. WHITE: The problem is that this is also part of Mercy.

THE COURT: What are those you handed up to be marked?

MS. WHITE: Those are physical therapy prescriptions.

THE COURT: Okay. They are prescriptions?

MS. WHITE: Yes.

THE COURT: Are they for different entities or just a prescription for the plaintiff?

MS. WHITE: To the plaintiff.

THE COURT: All right. So they are not any entity?

MS. WHITE: I don't believe it has the name of the facility on there, where they are referred to.

THE COURT: I'm just asking if we can mark it as one exhibit, that's all.

MS. WHITE: Yes, your Honor, I believe you can.

THE COURT: Then staple them together, then.

Are they PT prescriptions, counsel?

MS. WHITE: Yes.

(Whereupon, PT prescriptions were marked for identification as Defendant's Exhibit L by the Court Reporter.)

Q Doctor, when you do a referral for physical therapy, you give a diagnosis?

A Mm-hmm.

Q And can you tell me what diagnosis you put when you gave physical therapy prescription dated 12/31/97?

A This is written by my nurse by the way, this prescription, okay. It's a diagnosis.

Q That's not your signature, Dr. Lattuga --

A That's my --

Q -- on the bottom right-hand corner?

A That's my signature but this was written out by my nurse. Okay.

Q Well, did she write it out after you signed it or before you signed it?

A She writes it out and then I sign it.

Q Okay. And I assume you --

A It says: "Diagnosis, lumbar sprain."

Q And on April, I believe 15, 1998, did you also fill out another one?

A Yes.

Q And what diagnosis did you give at that time?

A Lumbar sprain.

Q And in August of 2000?

A Cervical radiculopathy.

MR. LEVINE: What was that?

THE WITNESS: Cervical radiculopathy.

Q And I'll show you one more dated June 25 of 2002.

THE COURT: Has that been marked?

MS. WHITE: You know what? It's part of the Mercy Medical, I believe.

MR. LEVINE: It's in evidence already.

THE COURT: Is the Mercy Medical in evidence?

MR. LEVINE: Yes, sir.

THE COURT: What exhibit is it?

THE COURT OFFICER: Number 1, Judge.

THE COURT: 1 is -- you have not moved 1 into evidence. Is 1 the Mercy Hospital report?

MS. WHITE: I think we agreed to that, your Honor.

THE COURT: You agreed to it but nobody proffered it into evidence. Where is 1?

THE COURT OFFICER: Right here. It actually says it's in evidence, Judge.

THE COURT: Mercy Hospital record.

MR. LEVINE: Yes, sir.

MS. WHITE: Well, it's the physical therapy, your Honor.

THE COURT: Counsel, nothing goes into evidence until I say it does.

MR. LEVINE: That --

MS. WHITE: That was plaintiff's.

THE COURT: You can agree to what you want.

MR. LEVINE: May I be heard, sir?

THE COURT: Counsel, let's continue with the cross-examination. I gave you this warning before.

Q What diagnosis did you write on June 25 of 2000?

A "Cervical sprain. DDD," which stands for degenerative disk disease, and "radiculopathy."

Q So none of these did you give a diagnosis of herniations; is that correct?

A We never wrote the word "herniation."

MS. WHITE: No further questions.

Thank you.

MR. LEVINE: May I?

THE COURT: Please.

MS. WHITE: I'm sorry, your Honor. If I may. May I admit them into evidence?

THE COURT: Plaintiffs 1 in evidence? Is there a problem with that, Mr. Levine?

MR. LEVINE: No.

THE COURT: All right, then.

MS. WHITE: And your Honor, the other exhibits, those three pages.

THE COURT: That would be Defendant's L. Any objection?

MR. LEVINE: No, I have no objection to them.

THE COURT: Exhibit L is also in evidence.

(Whereupon, Plaintiff's Exhibit 1 previously entered in evidence.)

(Whereupon, PT prescriptions were marked in evidence as Defendant's Exhibit L by the Court Reporter.)

REDIRECT EXAMINATION

BY MR. LEVINE:

Q Doctor, is there any doubt in your mind that this woman as a result of this accident had two herniated disks in the cervical spine?

A There is no doubt in my mind.

Q Are your records replete with your reference to herniated disks caused by this accident?

MS. WHITE: Objection, your Honor.

THE COURT: Overruled.

A Yes, my --

Q The fact that you signed, you signed a notice for physical therapy, a prescription. In order to get -- in order to get it you need a prescription blank. The fact that you said cervical radiculopathy, or lumbar sprain, or whatever, does that take away from the fact that this woman had and continues to have two cervical herniated disks?

A It doesn't take away from the fact at all, no.

Q Now, Doctor, would you agree that a spine, cervical spine can have some, I think it was, what was the term, small or minor osteophytes, and could have -- there could be a stenosis, a narrowing in the normal course of events unrelated to an accident, could there not?

A That's correct.

Q And then a car gets hit in the rear, and the woman's body in the car reverberates back and forth and there is a snapping and she has pain and there is herniations, she might be more amenable to that than a young person with no osteophytes in their spine; is that correct?

A That's possible, yes.

Q I mean you can walk around for 100 years on this earth with osteophytes in your neck or --

MS. WHITE: Objection.

MR. LEVINE: Excuse me.

THE COURT: Finish with your question, with the theatrics or whatever.

Q Doctor, is it true that a human being can walk through this earth, live 100 years, and have osteophytes and narrowing and never have a herniated disk?

A That's correct.

Q If every human being in this courtroom were x-rayed today, you might well find that all of us, even the young officer over there, all of us, might have osteophytes or narrowing of our canal, correct?

A That's possible, yes.

Q What is the significance that this woman had no pain and disposition or problems in her neck, she gets hit in the rear in this accident that caused her to be taken to the hospital and since that day has not had a day without pain in her neck?

MS. WHITE: Objection, your Honor.

THE COURT: Sustained.

Q What is the significance of the fact that she was asymptomatic before September -- December of 1997 and since an automobile accident that occurred on that date she has had diagnosis of two herniated disks and has not had a day without pain and inter -- disposition (sic) since?

A The significance, I believe, is that as a result of the motor vehicle accident she sustained those herniated disks which have caused her all these symptoms for the past five years.

Q Would you expect to find in someone who sustains herniated disks in an automobile accident where they are in a car that's hit in the rear and they get thrown around in the car and then they feel pain, would you expect to see any bruising on the neck?

A Generally not.

Q I mean you'd expect -- if I hit you, Doctor, God forbid, if I hit you in the neck, you might have a bruise in the neck, correct?

A That's correct.

Q Or if you fell down some stairs and you hit your head, you might have a bruise on the neck, correct?

A Yes.

MS. WHITE: Objection, your Honor.

THE COURT: Overruled.

Q Do you believe that these osteophytes in her neck caused her to have these herniated disks?

A I do not believe that, no.

Q Did you believe her when she said to you that she had no pain in her neck before this accident and since the

accident she has pain in her neck?

MS. WHITE: Objection, your Honor.

THE COURT: Objection is overruled.

Q Did you believe her?

A Yes.

Q Did you find evidence that she was telling you the truth?

A Yes.

Q We were talking about nerve conduction studies. You were going to tell us about it and then counsel did not continue. What are nerve conduction studies and what do they mean in this case?

A It's a blanket statement, nerve conduction studies. There is two different sets of nerves you would test. You would test the peripheral nerve which is like the median nerve at the carpal tunnel. That's a nerve that generally you would test in a nerve conduction study. But it's not the one that you would be looking for to be injured as a result of a herniated disk. What you'd be looking for, the way the anatomy works, all the nerves come out and then they fuse in parts of the arm to become specific nerves. And the part that really would relate to her radiculopathy was the part she couldn't tolerate, because that would require, you have to look at the individual nerve with

needles and that's the --

Q What do you mean she couldn't tolerate?

A Well, it says unable to rule out specific cervical radiculopathy due to limited testing. So, this limited testing implies she was not able to follow out --

MS. WHITE: Objection; speculation.

THE COURT: Overruled.

Q And, Doctor, these tests that counsel says were normal, the test involving her neck and cervical spine were never tested so they didn't come out normal, correct, Doctor?

A That's correct. They are not normal.

Q Now, Doctor, did you ever learn that this lady once had pain in her lower extremities and her hands and they thought she had lupus or some systemic disease such as multiple sclerosis and she ended up having a year-long problem and then had a hysterectomy which relieved the symptoms, did you ever find out about that?

A Not specifically, no.

Q If I told you that, and assume that to be true, what if anything does that have to do with two cervical herniated disks; does it have anything to do with it?

A No.

MR. LEVINE: Just a few more, Judge.

Q Now, you saw her five or six times. But others in your office saw her besides you; is that correct?

A That's correct.

Q And she went countless times for physical therapy, your office and at other places, correct?

A Yes.

Q You would not see her whether that happened; other people would see her; is that a fair statement?

A Yes.

Q She continued to be a patient of your office through the years until today; is that true?

A Yes.

Q You know she lives in New Jersey now, don't you, Doctor?

A I don't know that --

Q I want you to assume she now lives in New Jersey and finds it difficult to come three days a week for physical therapy.

MS. WHITE: Objection, your Honor.

THE COURT: Sustained.

Q If this woman testified that she now lives in New Jersey and it's difficult for her to come as frequently as she'd like for physical therapy, would that come as a surprise to you, Doctor?

A No, that would not surprise me.

Q Now, Doctor, you did, did you not, in your office gave her instructions in home care; is that correct?

A Yes.

MS. WHITE: Objection; beyond the scope.

THE COURT: Overruled.

Q I want you to assume this woman testified that she does physical therapy to herself every day as she learned at your office. Would that come as a surprise to you, Doctor?

A That's not a surprise, no.

Q Now, you did certain neurological tests that were normal. What significance if any do they play in this case?

A I mean, it goes to the magnitude of the injury. Certain disk herniations do cause a complete paralysis of the arm or weakness. Those might be treated more aggressively surgically earlier on. In the absence of neurological findings then it's okay to say to patients, surgery is your option, you know. You can wait to have surgery.

Q I mean she has use of her arms and her neck. You found 50 percent limitation. But that still means she has movement, correct? She can still do things, can still drive a car and do some activities of the day without pain; isn't

that true, Doctor?

A Yes.

Q Does that lessen or take away from the fact that she's disabled as you told us?

A No, it doesn't diminish that.

Q Now, you said to counsel that herniation in your opinion always is a result of some trauma; correct?

A Yes.

Q Do you have an opinion based upon a reasonable degree of medical certainty that if this woman hadn't had the accident and been hit in the rear on December of 1997, do you have an opinion whether or not she'd have herniated disks at this time?

A I believe that the car accident caused the herniations.

Q Any doubt in your mind, Doctor?

A No.

MR. LEVINE: No further questions.

THE COURT: Ms. White.

RECROSS EXAMINATION

BY MS. WHITE:

Q Doctor, to the best of your knowledge do they have physical therapists in New Jersey?

A I believe they do, yes.

Q Now, did you about five or six reports regarding this?

A Well, yes --

Q Well, not reports. But office notes?

A Yes.

Q And in your office notes you give an impression?

A Yes.

Q That's basically a diagnosis?

A Yes.

Q Okay. Can you go back to December 31 of 1997 and tell the jury, did you at that time diagnose a herniation from this accident?

A Well, you can only diagnose a herniation from an MRI or a CT myelogram. All I can say is that I think she has the symptoms of a pinched nerve. So my position that date was cervical radiculopathy.

Q You didn't say anything about herniations, right?

A I am recommending an MRI for the above to rule out HMP, which is herniated nucleus pulposus.

Q And also stenosis, you also wrote that to rule out stenosis, right?

A I don't see that on this. No. I'm recommending an MRI -- I don't say stenosis in this note, at all. Unless you see it.

Q Going to January 19 of 1998, at that point in time, the MRI was done and you had the results, right?

A Yes.

Q Okay. And at that time you had the same impression, cervical and lumbar radiculopathy; is that correct?

A That's correct.

Q You didn't say anything about herniation.

A In the line right above it says "Cervical spine shows two-level disk herniation."

Q Under your impression, though, your diagnosis, after you had the MRI, you did not write herniation; is that correct?

A That's right. Yes.

Q On November 28, you did write herniation. But then on January 12 of 1998, "impression, cervical radiculopathy"; is that correct?

A On what date, I'm sorry?

Q January 12 of 1999.

A Cervical radiculopathy.

Q And on August 28 of 2000, your impression or diagnosis of the plaintiff was?

A Cervical radiculopathy.

Q And on your last exam, May 17 of 2002, the

diagnosis for this plaintiff was?

A On which date? I'm sorry?

Q May 17 of 2002.

A "Cervical sprain, cervical radiculopathy, cervical degenerative disk disease."

Q Okay. And your diagnosis is what you found wrong with the plaintiff; is that correct? Yes?

A No.

Q Okay. When you give a diagnosis, isn't that basically saying what you think is wrong with the plaintiff, it might not be everything but you are definitely not going to leave out the biggest injury; is that correct?

A No, that's not correct.

Q But when you gave the diagnosis in your impression in five of your -- excuse me. Four of your five reports, you don't even mention anything about herniation. You say cervical spine, cervical radiculopathy and in 2002 you also mentioned degenerative disk disease.

A I do make a mention of the disks in every reports, the herniated disk.

MS. WHITE: No further questions. Thank you.

MR. LEVINE: Judge --

THE COURT: Thank you. That will be it, counsel. You each gets two bites of the apple,

and that's it.

MR. LEVINE: She covered new stuff.

THE COURT: Thank you.

MR. LEVINE: Let me just put my exception on the record.

THE COURT: Your exception is so noted.

MR. LEVINE: Thank you.

THE COURT: You may step down. You are excused.

(Witness excused.)

(End of excerpt.)

and that's it.

MR. LEVINE: She covered new stuff.

THE COURT: Thank you.

MR. LEVINE: Let me just put my exception on the record.

THE COURT: Your exception is so noted.

MR. LEVINE: Thank you.

THE COURT: You may step down. You are excused.

(Witness excused.)

(End of excerpt.)

* * *

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.

LILLIAN WEIDLEIN
Official Court Reporter