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IN THE CIRCUIT COURT

FOR PRINCE GEORGE'S COUNTY, MARYLAND

[REDACTED]

*

Plaintiff

*

vs.

*

Case Number

ALLSTATE INSURANCE CO.

*

#CAL05-15526

Defendant

*

* * * * *

Pursuant to Notice, the videotape deposition of [REDACTED], M.D., was taken on Wednesday, June 14, 2006, commencing at 8:50 a.m., at 14999 Health Center Drive, Suite 201, Bowie, Maryland, before Janice A. Flack, a Notary Public.

Reported By: Janice A. Flack

Page 2

1 APPEARANCES:

2

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ON BEHALF OF THE PLAINTIFF

4

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ON BEHALF OF THE DEFENDANT

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13

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6411 Ivy Lane, Suite 320

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Greenbelt, MD 20770-1405

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Telephone: 301-489-8022

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20 Julie Souza, Videographer

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I N D E X

WITNESS:

PAGE

[REDACTED]

EXAMINATION:

By Mr. Seal..... 6

By Mr. Miller..... 35

1 office of Dr. [REDACTED], located at 14999
2 Health Center Drive, Bowie, Maryland.

3 My name is Julie Souza,
4 videographer, from the firm of Gore Reporting
5 Company, located at 107 Ridgely Avenue, Suite
6 13-A, Annapolis, Maryland.

7 The court reporter's name is Janice
8 Flack, in association with Gore Reporting
9 Company.

10 Would counsel please introduce
11 themselves.

12 MR. MILLER: Ron Miller on behalf
13 of the Plaintiff, [REDACTED].

14 MR. SEAL: Good morning. Jeffrey
15 Seal on behalf of Allstate Insurance Company.

16 THE VIDEOGRAPHER: Will the court
17 reporter please swear in the witness.

18 [REDACTED], M.D.,
19 called for examination, having been duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified as follows:

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1 EXAMINATION BY ATTORNEY FOR THE DEFENDANT

2 BY MR. SEAL:

3 Q. Good morning, Doctor.

4 A. Good morning.

5 Q. Please state your full name.

6 A. [REDACTED]

7 Q. Where is your office?

8 A. Here at 14999 Health Center Drive
9 in Bowie, Maryland.

10 Q. What is your occupation?

11 A. I'm an orthopedic surgeon.

12 Q. Are you licensed to practice
13 medicine in the State of Maryland?

14 A. Yes.

15 Q. When were you so licensed?

16 A. 1985, I believe.

17 Q. Sir, where did you receive your
18 undergraduate education?

19 A. University of Miami in Florida.

20 Q. What medical school did you attend?

21 A. Georgetown.

1 Q. Did you receive a degree from that
2 school?

3 A. Yes, I did.

4 Q. Doctor, what is an internship?

5 A. It's usually the first year of
6 training after you've graduated medical school.

7 Q. What year did you graduate, sir?

8 A. 1981.

9 Q. And did you receive an M.D. degree?

10 A. Yes, I did.

11 Q. Doctor, where did you do your
12 internship?

13 A. At the Washington Hospital Center,
14 which is an affiliated hospital with the
15 Georgetown University.

16 Q. Did you afterwards specialize in
17 any particular field of medicine?

18 A. Orthopedic surgery.

19 Q. Doctor, what is residency training?

20 A. Those are the years of training
21 after your internship and depending on what

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1 specialty you want to practice, it can be
2 anywhere from an additional two to five years
3 after the internship.

4 Q. How long did your residency last?

5 A. Four years.

6 Q. Did you do residency training in
7 orthopedic surgery?

8 A. Yes, I did.

9 Q. Where did you do the residency
10 training?

11 A. Georgetown University Hospital.

12 Q. What did the residency program
13 consist of?

14 A. Well, basically as a resident you
15 are the house doctor for - in a case of
16 orthopedics, you take care of all of the
17 orthopedic patients in the wards and in the
18 emergency room and you also assist attending
19 doctors doing surgery at the hospitals.

20 Q. Doctor, are you board certified in
21 the field of orthopedic surgery?

1 A. Yes.

2 Q. What are the requirements for
3 becoming board certified?

4 A. You have to complete approved
5 training in your specialty and you have to have
6 an unrestricted medical license to practice and
7 then you're allowed to take the examination and,
8 if you pass, you are board certified.

9 Q. Did you complete those
10 requirements?

11 A. Yes, I did.

12 Q. And by what board are your
13 certified?

14 A. The American Board of Orthopedic
15 Surgeons.

16 Q. When was it that you were board
17 certified?

18 A. 1989.

19 Q. Have you been re-certified?

20 A. Yes, you have to re-certify every
21 ten years, so I did re-certify in 1998.

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1 Q. Doctor, are you on the staff or do
2 you have any privileges or have you held any
3 privileges at any hospitals?

4 A. Currently I have privileges at the
5 Dimension Surgery Center, which is in this
6 building.

7 Q. Doctor, what are hospital
8 privileges?

9 A. It's basically a membership on a
10 hospital staff so that if you are so inclined,
11 you can practice your specialty at that facility.

12 Q. Do you hold or have you held any
13 teaching positions or administrative
14 responsibilities in your specialty?

15 A. I was on the faculty at Georgetown
16 University in the Department of Orthopedics from
17 1986 to about 1992, I believe, teaching
18 orthopedic surgery. And I was also the medical
19 director of the Dimensions Surgery Center here
20 for about seven years.

21 Q. Are you a member of any medical

1 associations?

2 A. Yes. I hold a membership in the
3 American Academy of Orthopedic Surgeons, which is
4 an educational group for orthopedists.

5 Q. Are you engaged in the private
6 practice of medicine?

7 A. Yes.

8 Q. What kind of practice, again, do
9 you have?

10 A. General orthopedics.

11 Q. Doctor, what do you mean by the
12 term orthopedic surgery?

13 A. That's the specialty that deals
14 with conditions and injuries to the bones, the
15 joints, and the soft tissue - soft tissues of the
16 spine and of the extremities.

17 Q. Does your practice center on any
18 particular aspects of orthopedics?

19 A. No, I'm a general orthopedist.

20 Q. Has your experience in your
21 practice included cases in which the injury or

Page 12

1 alleged injury was to the neck, back, arm, leg,
2 ankle or foot?

3 A. Yes.

4 Q. About how many patients have you
5 treated during the course of your professional
6 experience in which the medical condition related
7 to these parts of the body?

8 A. Probably several thousand, I would
9 guess, in 20 years.

10 Q. Have you had occasion to perform
11 surgery during the course of your practice?

12 A. Yes.

13 Q. Approximately how many surgeries
14 have you done in the course of your career?

15 A. Probably a couple thousand I would
16 guess.

17 Q. Dr. [REDACTED], on December 5, 2003, did
18 you review the medical records of the Plaintiff
19 in this case whose name is [REDACTED]?

20 A. Yes, I did.

21 Q. Now, Doctor, before getting into

1 the details, do you testify both at depositions
2 and trials on behalf of people who have been
3 sued? Have you done that in the past?

4 A. I have.

5 Q. Doctor, you're being reimbursed for
6 your time here in this deposition today. What is
7 your fee?

8 A. \$1,200.

9 Q. And why - how do you arrive at a
10 fee of that nature?

11 A. Well, it's based on I charge an
12 hourly fee of \$600. So there was a prep time and
13 this deposition probably will take the better
14 part of an hour, so.

15 Q. Would it be fair to say, Doctor,
16 that if you weren't prepping for today's
17 deposition/attending today's deposition, that you
18 would be either treating patients, examining
19 patients, things of that nature?

20 A. That's correct.

21 Q. So, in other words, you charge for

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1 the time one way or the other, right?

2 A. Correct.

3 Q. Doctor, what portion of your income
4 or fees do you derive from examining people who
5 claim to have been injured?

6 A. I assume you're talking about a
7 one-time examine, where I'm not treating the
8 individual?

9 Q. Yes, sir.

10 A. It's probably about 50 percent.

11 MR. SEAL: At this time I offer Dr.
12 [REDACTED] as an expert witness in the field of
13 orthopedic surgery, subject to any questions by
14 Plaintiff's counsel.

15 MR. MILLER: I have no questions at
16 this time.

17 BY MR. SEAL:

18 Q. Doctor, what, if any, personal
19 interest do you have in the outcome of this case?

20 A. I have no personal interest, no
21 professional interest and no economic interest in

1 this case.

2 Q. Doctor, given your qualifications
3 and experience what, if any, difficulty is
4 presented in assessing or evaluating the
5 Plaintiff's medical condition based upon a review
6 of medical records?

7 A. Well, that process is actually done
8 all the time and I don't see any difficulty in
9 evaluating a case on that basis. For example,
10 audits are done all the time in hospitals where
11 you never examine the patient, but simply look at
12 the records. And, for example, in the legal
13 arena, you can testify in cases either for a
14 plaintiff or a defendant. For example, in a
15 wrongful death case where the patient is already
16 dead -

17 Q. I see.

18 A. - and you simply go by the records
19 and those testimonies are accepted by the court.

20 Often times in malpractice cases,
21 you never examine the individual who is suing.

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1 You just go based on the records.

2 So it's really a process that's
3 done all the time and the records really speak
4 for themselves and you can get all of the
5 information you need about the particular case
6 and form well-reasoned judgments and opinions on
7 that.

8 Q. Now, Doctor, you testified I
9 believe that you reviewed the Plaintiff's medical
10 records in this case; is that correct?

11 A. Correct, I never examined Ms. [REDACTED].

12 Q. But with regard to the records,
13 were they provided to you?

14 A. They were provided.

15 Q. And did you review those records
16 before you prepared the report in this case?

17 A. Yes, I did.

18 Q. Doctor, would you please relate to
19 the court and members of the jury the history
20 that you obtained from the Plaintiff's medical
21 records which you reviewed?

1 A. It appears that Ms. [REDACTED] who was
2 32 years old at the time was involved in a motor
3 vehicle accident on March 8, 2003. And,
4 according to the records, there was no
5 requirement for any emergency treatment. But
6 about five days later, on March 13, 2003, she
7 went to her primary doctor, Dr. Washington, and
8 according to his records she had complaints about
9 acute pain or pain arising in the recent past
10 associated with some swelling in her left arm and
11 her left knee.

12 On his initial note there appeared
13 to be no evidence of any complaints of pain with
14 regard to her neck, or back, or her ankle; or any
15 sensation that her left knee was giving way.

16 Q. Let me interject for a moment, if I
17 may, Doctor. You said that there was evidence of
18 acute and I think you went onto pain, you went on
19 to explain what that means. But just so it's
20 clear to the members of the jury, does acute
21 mean, in this context, does that mean extreme

Page 18

1 pain?

2 A. No, acute has to do with the timing
3 of the onset of the symptoms. So this was, she
4 told Dr. Washington that she had these symptoms
5 from the accident and it happened five days
6 before.

7 Q. Thank you very much, Doctor. Can
8 you please continue with regard to the history?

9 A. Well, Dr. Washington performed an
10 examination and according to his record, he noted
11 that there was full range of motion in the neck
12 and he didn't document any abnormal findings like
13 muscle spasm, which is something you would expect
14 to see if the neck had been injured.

15 He did note some tenderness in the
16 left arm, but he didn't document any bruising or
17 swelling of the arm. He did note some swelling
18 about the knee. He indicated this was minimal.
19 It was not associated with any warmth, redness or
20 any finding of internal derangement that he could
21 find or document.

1 He assessed - or his diagnosis or
2 assessment was a contusion of the arm and knee.

3 Q. What does contusion mean, Doctor?

4 A. Contusion simple means a blunt
5 injury. Like if you hit your thumb with a
6 hammer, that's a contusion.

7 Q. Or if you even bump knee into a
8 door or a desk or -

9 A. Right, any blunt, non-penetrating
10 trauma is a contusion.

11 Q. Thank you very much. Please
12 continue, Doctor.

13 A. He recommended typical treatment,
14 which was physical therapy and some medication.
15 And according to the therapy notes, Ms. [REDACTED] did
16 have some physical therapy. It started on
17 March 18th, 2003. The notes indicated they were
18 treating her neck, left arm and left knee.

19 Q. Was there any treatment to the left
20 ankle or foot?

21 A. No.

Page 20

1 Q. Please continue, Doctor.

2 A. It appears that on March 28th Ms.
3 Gray did complain for the first time of some left
4 ankle pain. There didn't appear to be any
5 documented gross physical findings of injury
6 about the joint. And that it appears that the
7 therapy was completed around this time in April.

8 Ms. Washington - I'm sorry, Ms.
9 Gray saw Dr. Washington one further time on
10 April 2nd, 2003. He noted some swelling and
11 tenderness about her left ankle at that time but
12 there were no other abnormal findings.

13 As I said, she completed her
14 physical therapy treatments by April 4, 2003.
15 The report -

16 Q. Did she indicate how she was
17 feeling at that time, please?

18 A. Well, the reports indicate that she
19 told the therapist she was feeling much better
20 and there was, as all therapists do, they
21 documented their exam and noted full range of

1 motion, normal strength and there was no mention
2 of any on-going swelling or atrophy in any of the
3 areas that they treated.

4 She then she saw Dr. Washington on
5 April 16, 2003. She related that she had
6 finished her therapy. She told him she had no
7 further pain, was feeling much better and she was
8 back to work full time.

9 Q. What, if any, significance does Dr.
10 Washington's April 16, 2003, report have to you,
11 Doctor?

12 A. Well, it's significant to me in the
13 fact that Ms. [REDACTED] had no further symptoms
14 related to the accident that we're talking about
15 that happened on March 8. According to his
16 examination done at that time, there was no on-
17 going physical findings of on-going injury and
18 she was already back to work in a full-duty
19 capacity.

20 So that tells me that she had
21 recovered from the soft-tissue injuries that she

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1 had sustained in this accident by April 16 of
2 2003.

3 Q. Thank you very much, Doctor. Can
4 you please continue with the history that your
5 review of the medical records showed?

6 A. Well, it appears that in early June
7 of 2003 Ms. [REDACTED] went to Southern Maryland
8 Hospital complaining of pain in her left ankle
9 and foot. And she reported that her ankle had
10 given out when she was at home. And she reported
11 having a history of prior ankle sprains.

12 In looking at those records there
13 didn't appear to be any mention of the auto
14 accident from March of 2003. They did examine
15 her ankle and they noted some swelling but there
16 was no instability of the joint, meaning the
17 joint didn't wobble. And all of the ligaments
18 were intact.

19 But they did take an x-ray and they
20 discovered a non - what's called a non-displaced
21 fracture of a bone in her foot, the fifth

1 metatarsal, which is the little - on the little
2 toe side of the foot. It's really not in the
3 ankle joint, per se. It's in the foot.

4 Apparently they referred her to Dr.
5 Jackson who is an orthopedist who practices in
6 that area and she went to him, saw him the next
7 day on June 6, 2003. And according to his note,
8 she told him that she had twisted her ankle in
9 the front of her house and again there appeared
10 to be no mention in that note of the motor
11 vehicle accident that had occurred in March of
12 '03.

13 He placed her in a cast, which was
14 an appropriate treatment for that type of injury,
15 a non-displaced fracture of the foot.

16 She continued to see Dr. Jackson.
17 Since she was in a cast, he had to change the
18 cast a couple times. There came a point where
19 she told him that she felt her leg had buckled
20 and that had caused her to twist her foot.

21 Q. Did she make any reference or what

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1 was the date of that note, please?

2 A. That was June 11, 2003.

3 Q. Did she make any reference to the
4 March, 2003, accident in that June 11th note?

5 A. No.

6 Q. Okay. Please continue, Doctor?

7 A. As I said, she had to have her cast
8 changed because, as casts often do, they became
9 loose. She saw Dr. Jackson on June 20, 2003. At
10 that time she appears to be talking about her
11 right foot.

12 Q. Not the left?

13 A. Not the left. That may have been a
14 typographical error or I don't know what that -
15 where that - but that just came totally out of
16 the blue. It was obvious that the left foot was
17 the one she had twisted. But she did tell or at
18 least Dr. Jackson wrote in his note that she felt
19 her leg had given way as a result of the motor
20 vehicle accident.

21 Q. Is this the first reference to the

1 motor vehicle accident with regard to the left
2 ankle or foot?

3 A. Yes, that appeared to be the first
4 reference in the record that she had some inkling
5 that her leg gave way because of the accident.

6 He changed her cast and, as
7 fractures often do, they went on - it went on to
8 heal uneventfully and eventually she was taken
9 out of the cast and put in a splint.

10 And basically that was the extent
11 of the treatment for her broken bone that I'm
12 aware of.

13 Q. Let me ask you this, Doctor, does
14 your report make any indication of Dr. Washington
15 preparing a letter on August 6, 2003?

16 A. Yes, there was a subsequent letter
17 that's in the record prepared by Dr. Washington
18 of that date and in that letter he indicated that
19 in his opinion, Ms. [REDACTED] had sustained injuries
20 to her neck, shoulder and left arm, as well as a
21 contusion to the left arm and the left knee from

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1 this accident. He also mentioned the subsequent
2 fracture of the fifth metatarsal of her left
3 foot, but he didn't mention her left ankle at all
4 in that letter.

5 Q. No reference to the left ankle?

6 A. No.

7 MR. MILLER: Objection.

8 Q. Now, Doctor, what again is the date
9 of your report?

10 A. December 5, 2003.

11 Q. Subsequent to that time have you
12 come to learn that the Plaintiff has received
13 additional treatment?

14 A. Yes, apparently she did continue to
15 treat with Dr. Jackson after that.

16 Q. And have you had an opportunity to
17 review subsequent reports, subsequent to the date
18 of your report of December 5, '03?

19 A. Yes.

20 Q. This might be sort of jumping out
21 of turn, but let me just ask the question so I

1 don't forget. When I ask you about opinions that
2 you have in this case, which I will soon, your
3 report - your review of the reports subsequent to
4 December 5, 2003, would that change any of the
5 opinions that you're going to be giving here
6 today?

7 A. No.

8 Q. Apparently an MRI was done I
9 believe the day before Christmas of 2003?

10 A. Yes.

11 Q. And can you tell us what that MRI
12 indicated?

13 A. Well, an MRI is a study that's a
14 little more sensitive than a plain x-ray. So it
15 can show soft-tissue structures as well as bony
16 structures. And according to at least Dr.
17 Jackson's interpretation of the MRI, he found
18 that there was a bruise or possibly a hidden
19 fracture within the talus, which is the bone at
20 the ankle.

21 Q. Do you have an opinion to a

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1 reasonable degree of medical certainty as to
2 whether that injury that you just indicated is
3 causally related to the accident of March 8th,
4 2003?

5 A. Well, my opinion would be that it
6 would not be related.

7 Q. And what is the basis for that
8 opinion, Doctor?

9 A. The basis of that opinion is
10 basically Dr. Washington's note of April 16,
11 2003, in which Ms. [REDACTED] indicated that she no
12 longer had any symptoms from the accident in
13 question; she had completed her physical therapy
14 treatments; and, according to those notes, had
15 done well, had normal ranges of motion and
16 strength. And she had already been back to work
17 in her regular-duty capacity.

18 I think those findings at least in
19 my opinion those findings from the MRI scan would
20 be related to her subsequent injury when she
21 slipped and fell at home and be more consistent

1 with that rather than the actual accident,
2 itself.

3 Q. The accident of March, '03?

4 A. Correct.

5 Q. Doctor, based upon your review of
6 the Plaintiff's history, your review of her
7 medical records, did you reach a conclusion based
8 upon reasonable medical certainty as to whether
9 or not the Plaintiff sustained any injury in the
10 accident of March 8, 2003?

11 A. Yes, I have an opinion.

12 Q. Would you please give us your
13 opinion?

14 A. Well, based on the records from Dr.
15 Washington, where she was seen initially, in my
16 opinion she - that is, Ms. [REDACTED] sustained
17 soft-tissue sprains, strains and contusions of
18 her left arm and left knee in the March 8th,
19 2003, accident.

20 Q. You've used that term soft tissue a
21 couple of times. Can you please tell the members

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1 of the jury what you mean by that term?

2 A. Well, your body has hard tissues,
3 the bones and the teeth, and everything else is
4 soft. The muscles, ligaments, nerves, blood
5 vessels, tendons, things like that. So soft-
6 tissue - a soft-tissue sprain or strain, those
7 words are kind of used interchangeably. What
8 that basically means is that you stretch - you
9 stretched the soft tissue.

10 It's a muscle - you get a muscle
11 strain from playing too much basketball or too
12 much golf or too much gardening. You can feel
13 tightness, sometimes you get some spasm. It's an
14 uncomfortable feeling, but I think most people
15 have experienced these things. It's a pretty
16 common injury.

17 Q. Doctor, based upon your review of
18 the Plaintiff's history, of her medical records,
19 did you reach a conclusion based upon reasonable
20 medical certainty as to whether or not the
21 Plaintiff has any permanent injury, impairment or

1 disability as a result of the March 8th, 2003,
2 accident?

3 A. Based on a review - my review of
4 the records I would conclude that she does not
5 have any evidence of permanent injury from this
6 case. And I would go right back to Dr.
7 Washington's note from April 16th of 2003 in
8 which she reported she felt better, had no pain,
9 she had a normal exam and she was back to work.

10 So at that point I would conclude
11 that she had recovered and reached the end point
12 of any necessary treatment for this accident.

13 Q. And, Doctor, I have a couple more
14 questions and all of these questions ask for your
15 opinion to a reasonable degree of medical
16 certainty, okay.

17 MR. MILLER: Is that a question?

18 MR. SEAL: No, no. I just wanted
19 to preface it rather than having to keep
20 repeating the same question over and over or,
21 alternatively, I can do it the other way.

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1 MR. MILLER: No, okay. Very well.

2 I just didn't understand the question.

3 BY MR. SEAL:

4 Q. Okay. And, Doctor, did you reach a
5 conclusion based upon reasonable medical
6 certainty as to whether or not the Plaintiff will
7 require any future treatment or surgery as a
8 result of the March 8, 2003, accident?

9 A. In my opinion, and again based on
10 the notes from Dr. Washington, which he had
11 clearly stated that she had recovered by
12 April 16th, 2003, in my opinion there would be no
13 requirement for any further treatment related to
14 this accident; that is, the March 8, 2003, auto
15 accident.

16 Q. Doctor, do you have an opinion to a
17 reasonable degree of medical certainty as to
18 whether the Plaintiff's - the fracture to the
19 fifth metatarsal; is that correct?

20 A. Correct.

21 Q. Or the possible fracture to the

1 talus was causally related to the March 8, 2003,
2 accident?

3 A. In my opinion they are not related.

4 Q. And the basis for your opinion,
5 please?

6 A. Again, it would go back to the
7 treatment notes from Dr. Washington and the
8 physical therapist in March and April of 2003.
9 There was nothing in those notes that I could
10 find that would indicate Ms. [REDACTED] had any
11 internal derangement or instability in either her
12 knee or ankle from the auto accident in March of
13 2003 that would lead her leg to buckle on a
14 regular basis.

15 I think like unfortunately some -
16 even myself, that some people when they slip and
17 fall and has an accident and she had such an
18 incident subsequently and broke a bone in her
19 foot and maybe contused her ankle bone. But in
20 my opinion that would not be related to the auto
21 accident in March.

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1 Q. Doctor, do you have an opinion to a
2 reasonable degree of medical certainty as to
3 whether any of the treatment rendered to the
4 Plaintiff after April 16, 2003, was medically
5 necessary due to the injuries sustained in the
6 accident of March 8, 2003?

7 A. No. None of those - none of the
8 treatment after that date would be related to
9 this accident in my opinion.

10 Q. And one more time, what is the
11 basis for that opinion?

12 A. Again, it's clear from the
13 treatment record that she had been to therapy,
14 the therapist indicated recovery. She documented
15 her findings. He or she documented the findings
16 and when she saw Dr. Washington on April 16th,
17 2003, there was resolution of symptoms. There
18 were no on-going documented objective
19 abnormalities on his examine to indicate she had
20 on-going problems from this accident. And she is
21 already - she was already back to work full time.

1 MR. SEAL: Thank you, Doctor. I
2 have no further questions.

3 EXAMINATION BY ATTORNEY FOR THE PLAINTIFF
4 BY MR. MILLER:

5 Q. Good morning, Dr. [REDACTED].

6 A. Good morning.

7 Q. I have a few questions for you.

8 Let's start with what we agree on. We agree that
9 Ms. [REDACTED] was injured in the automobile accident
10 on March 18, 2003, correct?

11 A. That is right.

12 Q. We agree she presented with
13 objective injuries from that accident?

14 A. Yes.

15 Q. She had some swelling in her left
16 knee?

17 A. Yes, she did.

18 Q. She had some arm tenderness as
19 well?

20 A. Yes, she did.

21 Q. In fact, and you agree that all of

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1 Ms. [REDACTED] treatment at least prior to her fall
2 on June 5, 2003, was fair, reasonable, and
3 medically necessary and causally related to the
4 automobile accident on March 18, 2003?

5 A. That's right.

6 Q. Is that an opinion you hold to a
7 reasonable degree of medical probability?

8 A. Yes.

9 Q. You were hired and paid - in fact,
10 taking a step back, Dr. [REDACTED], do you agree with
11 me that all of the treatment rendered in this
12 case was fair, reasonable and medically
13 necessary?

14 MR. SEAL: Objection. Relevancy.

15 A. Well, I mean, there's no doubt she
16 broke a bone in her foot subsequently. The
17 question is causation and I think it was
18 reasonable to treat that and it appears that the
19 treatment that she received was fair and
20 reasonable.

21 Q. For her ankle and her foot?

1 A. Right, regardless of causation.

2 Q. Right. That's why I left it at
3 fair, reasonable and medically necessary?

4 A. Sure.

5 Q. Do you agree with that?

6 A. Yes.

7 Q. To a reasonable degree of medical
8 probability?

9 A. Yes.

10 Q. You were hired and paid by Allstate
11 to render opinions in this case, correct?

12 A. I was.

13 Q. And you told Mr. Seal you were paid
14 \$1,200 for your testimony here today?

15 A. For my time.

16 MR. SEAL: Objection to the form of
17 the question. You can answer.

18 A. For my time.

19 Q. Sure, \$1,200?

20 A. Correct.

21 Q. How much were you paid to evaluate

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1 the medical records in this case?

2 A. I think at that time I was charging
3 \$250 for these type of reviews.

4 Q. So you spent an hour on this case?

5 A. About an hour.

6 Q. So to reach your opinion in this
7 case you spent an hour looking at the medical
8 records?

9 A. Correct.

10 Q. You never examined my client,
11 correct?

12 A. I never examined her; that's
13 correct.

14 Q. You never spoke to her?

15 A. No.

16 Q. If she walked in here right now you
17 would not know who she was?

18 A. I would not recognize her.

19 Q. The court reporter could be Ms.
20 [REDACTED], correct?

21 MR. SEAL: Objection.

1 Q. Correct?

2 A. Correct.

3 Q. Did you ask to speak to Ms. [REDACTED]?

4 A. No, that would not be appropriate.

5 It's not necessary based on the fact that I had

6 all of the treatment records.

7 Q. Okay. We'll come back to that.

8 Did you ask to speak to any of her doctors?

9 A. Again, that's not necessary or
10 appropriate for doing these type of reviews.

11 Q. Did you look at her actual x-rays
12 or films?

13 A. No. I took the reports from the
14 radiologist as being correct.

15 Q. In principle, do you agree with the
16 idea that a person can sustain a fall as a result
17 of a previous injury?

18 A. That can happen, yes.

19 Q. And you agree with me then that a
20 person who sustains such a fall and then receives
21 a new injury, could relate the new injury to the

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1 old injury?

2 A. That can happen.

3 Q. You - I'll cut to the chase on this
4 now. You talked a lot about I think you said at
5 least five or six times, I was marking it down,
6 you were referring to Dr. Washington's report on
7 April 16th, 2003?

8 A. Correct.

9 Q. What did the records show you about
10 Ms. [REDACTED] condition between April 16, 2003, and
11 June 5th, 2003?

12 A. It's mute. There wasn't anything
13 because - I would assume because she had gotten
14 better. There was no problem -

15 Q. She kept - she kept -

16 A. - otherwise she would have come
17 back.

18 Q. She kept going, though, right? She
19 continued to live her life. And would you have
20 liked to have known how she was doing during that
21 time period?

1 MR. SEAL: Objection to the form of
2 the question.

3 A. I don't think it was -

4 MR. SEAL: You can answer.

5 A. I don't think it would be relevant
6 to the analysis of the case. I was just asked to
7 review medical records. Since there's no medical
8 records during that time, it's not part of the
9 review.

10 Q. I understand. I agree with you.
11 But would you have liked to have known whether
12 she was having problems with her knee during that
13 time period?

14 A. Not particularly, no, because if
15 she were, you would assume that she would go to
16 the doctor and that would be documented. I can
17 only go on what is documented. I can't, you
18 know, try to get into her head or anything like
19 that.

20 Q. Not get into her head, but let's
21 say she could not go to a doctor during that time

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1 period for whatever reason and she had reported -
2 this is a hypothetical now, but she had reported
3 to her friends and family that her knee had been
4 buckling and she was loosing her ability to just
5 sustain herself while she was walking or
6 standing, would that have been important to you?

7 A. Well, it's not documented, so I
8 really can't give you an answer.

9 Q. I agree with you it's not
10 documented.

11 A. Right.

12 Q. But what I'm asking you is, would
13 it have been important to your opinion?

14 A. Not really.

15 Q. So that would not have - if you
16 heard that report it wouldn't make any difference
17 in terms of the opinions you rendered in this
18 case?

19 A. After the fact of a litigation
20 case, those types of reports would not mean much
21 to me.

1 Q. Why?

2 A. Because we're in the middle of a
3 litigation case and there's money at stake, so, I
4 mean, people will say any number of the things -

5 Q. For money?

6 A. - in those situations. Right.
7 But, I mean, you know if she had gone back to the
8 doctor and said, look, I could not have got here
9 because I had this, that or the other going on, I
10 mean, doctors write these things down. I've
11 written such things down myself in order to help
12 the patient. But none of that appears in the
13 records.

14 So just because now it comes to
15 light that someone may have said that, it really
16 can't be taken or given much credence, in my
17 opinion.

18 Q. Because you would not believe in
19 the voracity of those statements?

20 A. It's not that. It's just I'm not -
21 my job is not to determine whether somebody is

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1 telling the truth or not. That's for the finders
2 of fact. My job is just to -

3 Q. Right.

4 A. Is just to evaluate these records,
5 and given their face value, I assume that the
6 doctors put down there everything they wanted to
7 put down there at the time. And on review of
8 those records, I can't find anything in there
9 that would indicate she had any medical problems
10 of any kind between April 16th and June 5th.

11 Q. So to you if it does not show up on
12 a medical record, it didn't happen -

13 A. Right.

14 Q. - in a sense? In your review of
15 the records, did it appear to you that Dr.
16 Jackson had an opinion as to whether her
17 subsequent fall was caused by the automobile
18 accident?

19 A. He subsequently did make that
20 opinion.

21 Q. Do you know the basis for that

1 opinion?

2 MR. SEAL: Objection. Calls for
3 spec -

4 Q. Do you know what the basis for that
5 opinion was?

6 MR. SEAL: Objection. Calls for
7 speculation. You can answer, Doctor.

8 A. Well, based on the notes it was her
9 report to him. I don't think he ever documented
10 any objective abnormality in her knee or her
11 ankle that would account for those joints to
12 buckle on her in relation to this auto accident,
13 plus he never addressed anywhere in his notes he
14 never addressed Dr. Washington's April 16th,
15 2003, note indicating that she had recovered from
16 all of these soft-tissue injuries.

17 So I think it was basically her
18 report to him that lead to that opinion.

19 Q. Do you think it was a mistake for
20 him to rely on whatever she told him?

21 A. Was it a mistake? I wouldn't

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1 characterize it as a mistake. I'm just - you
2 asked me what his basis of his opinion was and
3 that appeared to be the basis. So I do that,
4 too. If someone tells me something, I put it in
5 the record.

6 Q. Did Dr. Jackson have - or let's do
7 the reverse, actually, did Dr.- did you have any
8 information or facts that would not have been
9 available to Dr. Jackson?

10 A. Yes, it appears that I looked at
11 all of the records and he didn't, because he
12 never mentioned Dr. Washington's notes at all or
13 having reviewed them.

14 Q. Would that be important for him to
15 do in the context of a medical record, to discuss
16 the details of why he had an opinion as to
17 causation?

18 A. Yes, I think if he wants to try to
19 stick the Defendant with the cost of this
20 subsequent fracture and treatment, I think it was
21 incumbent upon him to find out if, indeed, she

1 had any on-going problems from this accident that
2 could possibly caused her knee or ankle to
3 buckle.

4 Q. So you think he had an obligation
5 to - I am trying to understand what you are
6 saying, Doctor.

7 A. An obligation to whom?

8 Q. To the Defendant, apparently, in a
9 medical record?

10 A. Well, I don't think he has any
11 obligation to the Defendant. He's Ms. [REDACTED]
12 treating doctor.

13 Q. Right. Right. And you're not,
14 correct?

15 A. I'm not, no. But I said I was not
16 right from the beginning.

17 Q. Absolutely.

18 A. But his obligation is to treat her
19 obviously because this has evolved into a
20 litigation case, he may have some obligation to,
21 you know, maybe to testify like I'm testifying.

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1 Q. Sure.

2 A. But I think if he is prudent when
3 he makes an opinion, he's going to have all of
4 the facts available to him. Otherwise, you know,
5 he can look kind of silly if you say something
6 that later obviously can't be supported.

7 Q. Do you know whether or not he
8 reviewed her medical records before rendering
9 those opinions?

10 A. It's not in his notes that he did.

11 Q. Would it necessarily be in his
12 notes that he reviewed the prior medical records
13 of the patient?

14 A. If he was prudent, he would put it
15 in the notes.

16 Q. Doctor, what is an independent
17 medical exam?

18 A. That's usually a one-time exam done
19 by someone who is not the treating doctor. It
20 can be done for a second opinion, for some type
21 of treatment like a surgery. It could be done in

1 a legal sense. Just an example, Ms. [REDACTED] could
2 have been sent for an examination to determine
3 whether she had any permanent problem with her
4 knee or ankle after the fact. It's done often in
5 Workers' Compensation matters to determine
6 causation and necessary treatment and whether
7 it's work related.

8 So it's just basically a one- time
9 exam.

10 Q. How many independent medical exams
11 have you done in your career?

12 MR. SEAL: Objection. Relevancy.

13 A. Probably several thousand for, I
14 mean, I do exams for plaintiffs, as you know, and
15 for defendants. I work for the federal
16 government, through the labor department; I work
17 for the Maryland State Retirement Board. I have
18 done independent exams for the State of Delaware,
19 the State of Pennsylvania, so -

20 Q. Okay. I won't ask you about that.

21 If Mr. Seal had said to you, Dr. [REDACTED], would you

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1 see this woman and do an independent medical exam
2 of her, would you have done so?

3 A. Sure.

4 Q. Do you think it would have been
5 superfluous do to so?

6 A. It probably would have been
7 superfluous due to the fact that the record is so
8 clear that she recovered from this auto accident
9 in a fairly brief period of time. That there was
10 no - that I'm aware of, there is no claim for
11 permanency, so usually independent exams are done
12 for that reason.

13 Q. Okay. You testified to Dr. Seal -

14 MR. SEAL: Objection.

15 MR. MILLER: I gave you a
16 promotion, Jeff.

17 BY MR. MILLER:

18 Q. You testified to Mr. Seal that half
19 of your work is medical/legal related?

20 A. Correct.

21 Q. Is that correct?

1 A. That's correct.

2 Q. Have you previously testified that
3 75 percent of your work is medical/legal related?

4 A. I think there was a point early on
5 in my career when I was doing mostly plaintiff
6 work and I think at that time it probably was up
7 in the 75, 80 percent for plaintiff.

8 Q. What is PPG, Doctor?

9 A. PPG is a medical practice. It's a
10 group of orthopedists. I work as an independent
11 contractor for them.

12 Q. And what do you do for them?

13 A. Just like any orthopedic practice,
14 we see patients and we do examinations for the
15 federal government, a large number, and also for
16 entities in the State of Pennsylvania and
17 Delaware.

18 Q. If Dr. Hanley, Kevin Hanley, is he
19 a partner of yours in that practice?

20 A. He owns the practice. He's not a
21 partner of mine. I have nothing to do with the

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1 practice, other than being an independent
2 contractor. But he owns that practice.

3 Q. How are you paid by Dr. Hanley,
4 then?

5 MR. SEAL: Objection. Relevancy.
6 You can answer. You can answer.

7 A. Well, for whatever work I do, they
8 cut me a check.

9 Q. Okay. Dr. Hanley describes PPG as
10 a match-making service?

11 A. As a what?

12 Q. As a match-making service, if you
13 will, which links up people who are looking for
14 independent medical exams, lawyers or, you know,
15 whoever is involved in a legal or sudo-legal
16 process; Workers' Compensation or whatever it
17 might be, and doctors; is that a fair
18 characterization?

19 MR. SEAL: Objection.

20 A. That maybe his experience through
21 that practice.

1 Q. He's the owner, right?

2 A. Right. But I don't know. He
3 doesn't - he doesn't see patients any longer or
4 do surgery, so I think that maybe his experience.
5 I, myself, have seen patients through that
6 practice. I have done surgery on patients
7 through that practice. But they also do these
8 evaluations for both plaintiff and defense.

9 Q. If Dr. Hanley testified that he no
10 longer know if you even see patients, would that
11 surprise you in light of the fact that you're
12 saying you were seeing patients through his
13 practice?

14 A. No, that would not surprise me.
15 Again, he does not have anything to do with any
16 of my schedule or anything like that.

17 Q. How much do you charge for an
18 independent medical exam?

19 MR. SEAL: Objection. Relevancy.
20 You can answer.

21 A. If it - if it involves - obviously

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1 there is an examination; I charge for that. If
2 it involves a review of substantial records, it's
3 about \$600.

4 Q. Have you done as many as 18 medical
5 examinations in a single day?

6 MR. SEAL: Objection. Relevancy.

7 A. As many as 18?

8 Q. 18? And given your deposition
9 later that day, at 4:12 p.m.?

10 A. Not that I can remember. I don't
11 think I can see that many in a day. It's
12 impossible.

13 MR. MILLER: Can we go off the
14 record for a second.

15 THE VIDEOGRAPHER: Sure. Off the
16 record at 9:33.

17 (Discussion off record.)

18 THE VIDEOGRAPHER: On the record at
19 9:34.

20 BY MR. MILLER:

21 Q. Doctor, I'm handing you now what is

1 a videotape deposition of you on October 10,
2 2005. The cross-examining attorney was shown as
3 Albert Lechter and he talks about this particular
4 case. And -

5 MR. SEAL: He talks about what?

6 Q. This particular case, that on
7 July 16, 2004, in a case called Gromley, it's a
8 Workers' Compensation case in Pennsylvania. Do
9 you recall that?

10 A. No.

11 Q. Do you recall testifying in that
12 case; that your deposition in that case started
13 at 4:12 in the afternoon. That's a question.
14 And your answer is, "I don't recall".

15 And the next question was, "Do you
16 recall that on that particular date you had done
17 18 examinations at the request of the Workers'
18 Comp insurance company before your deposition
19 began the 4:12". Your answer, "That may have
20 been true."

21 Do you want me to show you the

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1 transcript?

2 A. Right, no, I'll take your word for
3 it. I mean -

4 Q. So then maybe you did do 18 of them
5 in one day then, correct?

6 A. Workers' Comp exams. I mean,
7 that's a lot different than these.

8 Q. It's still an independent medical
9 exam, isn't it?

10 A. Right, but you just can't use that
11 term to cover all of those things. A Workers'
12 Compensation examination often are very brief,
13 like a fitness-to-work exam takes a few minutes.
14 I mean, so it's a lot different than your talking
15 about doing in a case for example litigation with
16 an IME, where there are a lot of records. It
17 takes - for example, this amount of records took
18 an hour to review. You could not do 18 of those
19 in one day.

20 But a simple fitness-to-work exam,
21 you could do 18 of those. You could see 18

1 patients in a day. I've done that before.

2 Q. Okay. Doctor, have you ever
3 advertised your legal/medical services?

4 A. I have.

5 Q. Where do you advertise?

6 A. I have a -

7 MR. SEAL: Objection. Relevancy.

8 A. I have a - I used to advertise
9 through the Yellow Pages. There is also an
10 internet cite called Seek; I used to advertise on
11 that.

12 MR. MILLER: That's all of the
13 questions I have. Thank you very much.

14 MR. SEAL: Nothing further.

15 THE VIDEOGRAPHER: This concludes
16 the video deposition. Off the record at 9:36.
17 One tape.

18 THE REPORTER: Do you want a copy?

19 MR. MILLER: Yes, ma'am.

20 (Deposition concluded.)

21

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1 STATE OF MARYLAND COUNTY OF ANNE ARUNDEL

2 I, Janice A. Flack, a Notary Public
3 in and for the State of Maryland, County of Anne
4 Arundel, do hereby certify that [REDACTED],
5 M.D., personally appeared before me, having been
6 duly sworn, was interrogated by counsel.

7 I further certify that the
8 examination was recorded stenographically by me
9 and then transcribed to the within typed matter
10 in a true and accurate manner. I further certify
11 that the stipulations contained herein were
12 entered into by counsel in my presence. I
13 further certify that I am not of counsel to any
14 of the parties, nor an employee of counsel, nor
15 related to any of the parties, nor in any way
16 interested in the outcome of this action.

17 AS WITNESS my hand and notarial
18 seal, June 20, 2006, Annapolis, Maryland.

19
20
21

Janice A. Flack, Notary Public

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