ORIGINAL



[redacted] * IN THE

Plaintiff * CIRCUIT COURT

vs. * FOR

ALLSTATE INSURANCE CO. * PRINCE GEORGE'S

Defendant * CAL-05-15526

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De bene esse deposition of [redacted], was taken via videotape on Friday, August 4, 2006, commencing at 6:09 P.M., at [redacted] before Susan Farrell Smith, Notary Public.

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APPEARANCES:

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REPORTED BY: Susan Farrell Smith

THE VIDEOGRAPHER: Nolan Church

ALSO PRESENT: [redacted]

EXAMINATION INDEX



EXHIBIT INDEX



(Ex. 1 retained by Mr. Miller. Ex. 2 retained by Mr. Seal.)

P R O C E E D I N G S

THE VIDEOGRAPHER: We're now on the record in the matter of [redacted] versus Allstate Insurance Company, et al. Today's date is August 4th, 2006. The time is approximately 6:08 P.M. This is the video recorded deposition of [redacted], M.D. being taken at [redacted].

I'm the camera operator. My name is Nolan Church. I work for Art Miller & Associates. The Court Reporter is Sue Smith from Art Miller & Associates.

Will the attorneys please identify themselves, anyone with them and the parties they represent?

MR. MILLER: Ronald V. Miller, Jr. I represent the Plaintiff [redacted] who is also here with us tonight.

MR. SEAL: Good afternoon. My name is Jeffrey Seal for Allstate Insurance Company.

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HAMPTON J. JACKSON, M.D.,

the Witness, called for Direct Examination by counsel for the Plaintiff, having declared and affirmed under the penalties of perjury to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. Good evening, Doctor.

A. Good evening.

Q. Doctor, will you please state your full name and business address for the record?

A. [redacted]r. You're currently at one of my offices at 6[redacted]d, [redacted].

Q. Where did you go to medical school, Doctor [redacted]

A. I'm a local graduate from the Howard University College, and that's in the District of Columbia.

Q. You did your undergrad there as well, sir?

A. Yes.

Q. Okay. And did you specialize in any particular field of medicine?

A. Yes, sir. Upon completion of medical school, I trained in orthopedic surgery, and now I am a practicing orthopedic surgeon.

Q. Can you tell the jury, Doctor, what a residency training is?

A. Residency training is a training period that a doctor goes through to specialize in a particular area.

Q. And where did you do your residency training, Doctor?

A. I did my resident training at Howard University Hospital, affiliated hospitals in the area.

Q. Okay. Can you also tell the jury what a fellowship is?

A. A fellowship is advanced training over residency in another area. Usually a subspecialized area of the area that you did your residency training in.

Q. And did you do a fellowship, sir?

A. Yes.

Q. And where did you do your fellowship?

A. My fellowship was done in Baltimore at Johns Hopkins Hospital.

Q. Johns Hopkins Hospital?

A. That's correct.

Q. And what did you study in your fellowship?

A. I studied orthopedic surgery, primarily diagnosis and treatment of conditions of children, what's called pediatric orthopedic surgery.

Q. Do you have -- well, first can you tell the jury what hospital privileges are?

A. Well, if a doctor practices in what we call private practice, in other words they have their own office and they're seeing patients through various means, then -- and if it's a surgeon and some medical doctors practice at the hospitals, patients have conditions that sometimes have to be treated in the hospital such as surgeries and in such certain medical conditions.

In orthopedic surgery, most of our treatment

is done in the office. We do have -- do some surgeries on some conditions. And we have -- usually have a hospital that's convenient to your patients. At least I do, that are convenient to where most of my patients are.

Q. Do you have hospital privileges in the area?

A. Yes. I'm -- my practice is based in Prince George's County. So, I see patients at Doctor's Community Hospital in Lanham, Greater Southeast Hospital, which is right across the District line, and at Southern Maryland Hospital.

Q. A few more background things for the jury's understanding. What does it mean to be Board-certified?

A. Board-certified certification is just a level of expertise in whatever field you've chosen. Usually doctors that do residencies and finish their residencies, they will take a board certification, which is simply a way to determine how much they've learned in their residency.

And then there's certain levels and usually

an examination is given by a board in that particular specialty. And that's the American Board of Orthopedic Surgery. And that's the one that gives the examination for competency in orthopedic surgery.

Q. Are you Board-certified in orthopedics?

A. Yes. I've been Board-certified in orthopedics since 1978.

Q. Thank you. Can you describe your practice generally?

A. My practice basically is general orthopedic surgery, and I subspecialize in orthopedic spine surgery. But I see -- most of the patients I see -- well, it's about 50/50 between general orthopedic surgery and spine surgery patients. I just happen to get referred a lot of spine surgery patients as well as general orthopedic surgery patients.

Q. What portion of your practice involves treating patients who have been injured in motor vehicle accidents?

A. Oh, I have no idea. I don't really know. I would say probably a fair percentage. 10, 15 percent

maybe.

Q. Okay. Have you treated patients for injuries similar to the one suffered by Ms. [redacted] in this case?

A. Oh, yes. Over the last 30 years, yeah, many.

Q. How often?

A. All the time. 10, 15 percent.

Q. Doctor, have you been qualified to testify as an expert in the past?

A. Yes.

MR. MILLER: I would offer Doctor [redacted] as a medical expert in the field of orthopedics and orthopedic surgery.

MR. SEAL: No objection.

BY MR. MILLER:

Q. Let's do a little more education if we can, Doctor. I want you to talk first about what some of the diagnostic testing that you do as a doctor shows, and I want to start with an X-ray. What does an X-ray show?

A. An X-ray basically shows hard calcified structures in the body. We image them, and especially in orthopedics where we treat a lot of broken bones. And so, an X-ray is a mainline tool for seeing broken bones or dislocation of joints. Basically -- well, obviously you can read a chest X-ray, but it's a different technique, it's not a bone technique. But basic for us it's the diagnosis and treatment of broken bones, dislocated joints and arthritis.

Q. And can you contrast that with what an MRI shows?

A. An MRI is a -- is an image study that can shows us other tissues that X-rays can't show. It can show us even bones in a different level of sophistication. And it shows us -- it can show us blood vessels and nerves and the other portions of a joint such as the synovium on the inside of a joint or the ligaments around the joint. So, it gives us a better soft tissue picture. And for bones, it gives us a better picture of the internal structure of the bone.

And it's primarily because -- a MRI is somewhat like a CAT scan. When you take an X-ray through an object such as this cup, what's reflected on the film is the confluence of a total object. But with an MRI, it's done by computer. So, it can project whatever its imaging source is. With MRI, it happens to be radio waves. It can project it to a point and stop it and the computer can reconstruct. So, you can actually look inside structures as opposed to where X-rays you only see a confluence of the whole structure.

Q. 3-D as opposed to 2-D?

A. It's more like, it's more like an internal evaluation, an internal examination of the structure, what's inside it rather than the whole structure on the outside.

Q. Okay. What is -- can you tell the jury what a fracture of the fifth metatarsal base is?

A. A fracture of the fifth metatarsal base is what we call an avulsion injury. On the outside of your foot is a little -- around mid level of your foot

there's a bony prominence, and to that prominence is attached tendons, your peroneal tendons.

When either your foot is -- the front part of your foot is twisted, then the tendon will violently contract and actually pull off that boney prominence. That's what mean avulsion. So, it's not due to hitting it. It's due to the foot being rotated, internally rotated, slightly inverted, and then the tendon in the leg actually pulls it off.

Q. What is the appropriate treatment for such an injury?

A. Immobilization. And depending on the exact position of the fracture, sometime we can get away with very small immobilization such as -- what we call an ankle walker. Most times we treat it with a cast for a period of time. And it usually heals in two -- in about two months. That's the usual type.

There's another type of injury to the fifth metatarsal base that's a little bit more distal in the bone, and that's due to direct trauma. That's not due to the pulling off. That one sometimes takes six

months to heal.

Q. I'm going to ask you -- I'm going to mangle this I'm sure, Doctor, but I'm going to ask you what a focal bone contusion involving the medial side of the talus with a peripheral fracture line of the talus along with subcutaneous -- edema?

A. Edema.

Q. -- edema.

A. That's an MRI being able to look inside this bone. The talus is the name of a bone, and it's on the inside of the ankle. The fifth metatarsal is not in the ankle at all; it's in the foot.

Now, the MRI can tell us if there's been damage or -- and the type of damage to that bone. A bone bruise is a traumatic -- an area of trauma to that particular bone.

And it almost also reflects the fact that the cartilage on top of the bone has also been damaged. And that you cannot see on X-ray. That you can only see with an MRI.

So, it's an area of damage to the cartilage

with the bone beneath it. We call it an osteochondral injury and -- and a thinning as it sit on the other side, it just shows you the position of where the fracture line went through, a little crack line went through.

So, it's a nondisplaced fracture through the bone and cartilage. That is called a bone bruise as opposed to a fracture. But it's actually an osteochondral injury. Osteo meaning bone, chondral being the cartilage.

All your joints are nothing but the ends of bones. Your wrist joint is the end of one bone meeting the end of other bone. Now, to make this bone -- this joint work, the ends of the bones are covered with cartilage as in -- when you have a chicken leg, the joint, that's what makes it move and not hurt because of that cartilage.

Now, when you damage the cartilage, then when it moves it's going to hurt.

Q. Let's turn now to this case in particular, Ms. [redacted]

A. Yes.

Q. Before testifying today, did you have the opportunity to review the medical records for Ms. [redacted]

A. Yes, thoroughly.

Q. What records did you review?

A. I reviewed the records from her first day coming to see us. And then I reviewed very carefully the records from her treating physician who referred her to me, Doctor Washington.

And I reviewed some physical therapy notes from the Physical Therapy and Sports Assessment Center. I also reviewed a note of a Doctor Robert Smith. And her MRI of her left ankle dated 12/24/2003, as well as some of her what we call chart notes, which would include her -- copies of her prescriptions, copies of her disability statements, and various signed authorization forms and some of her referral forms from her treating doctor. Her -- what we call her primary care physician.

Q. Did you also have occasion to see her

Southern Maryland Hospital records as well?

A. Yes. I'm pretty sure I did. Let me find it. Yes.

Q. Okay. Did you rely on those records in forming your opinions here today?

A. Yes. The records and my memory of examining and treating this patient for a while.

Q. Taking you to the emergency room visit Ms. [redacted] had on March 8th, 2003 --

A. Yes.

Q. -- can you tell the jury what Ms. [redacted] symptoms are in the emergency room?

A. Let me get there. They're out of order. Wait a minute. I've gotten this out of order.

Q. Let me hand you another copy, Doctor.

A. Yeah. I put this somewhere else. Okay. This is the one from 6/5/03. That's the visit you're talking about?

Q. I'm sorry, I didn't want to start you off there. I apologize. Doctor, I think I confused you. I'm sorry. Yeah. I want to ask you about the 6/5

visit. What did I say?

A. You said, I think, March.

Q. I'm sorry. That's not correct. I apologize. That's my fault, Doctor. I'm talking about the 6/5 visit at Southern Maryland Hospital.

A. Yes, yes, yes.

Q. What were her symptoms when she presented there?

A. She complained of a left foot injury.

Q. And what was the treatment she was given there?

A. She was evaluated, X-rayed and asked to see, go back to see her private doctor.

Q. When did you first see Ms. [redacted]?

A. On the 6th, the next day.

Q. Do you often see patients from Southern Maryland Hospital?

A. All the time.

Q. What was your original diagnosis when you first saw Ms. [redacted] on June 6th, 2003?

A. That she had what we call a nondisplaced

fracture of the fifth metatarsal base.

Q. What was the treatment plan you prescribed for Ms. [redacted]?

A. We casted her.

Q. Can you take me through the course of her treatment?

A. Yes. She was seen on 6/6. I dictated a note. I also sent a letter to Doctor Washington who I've known for many years. And told him about the treatment options, casting versus noncasting and the decision to go ahead and put her in a cast which would allow her to be a little more mobile than if we didn't.

And then I saw her in follow-up from that. When she came back on 6/20, I was able to get more history from her as to what led up to the injury, and twisting of her foot.

She indicated that her leg had given out on 6/5, and had been giving out as a result of an injury to her knee that -- and ankle which was injured on March 8th, 2003 as a result of an automobile

accident.

She indicated her leg had been giving out intermittently between 3/5/2003 up until 6/5/2003, and with several falls, but she hadn't experienced any injury from the giving out to the degree of that she sustained on 6/5/2003 which we were treating her for.

We talked to her and we estimated her to be about six to eight weeks that she would be treated in a cast. We continued to treat her until her fracture healed, which was about six weeks, we felt.

She still complained about her foot though. And we treated her afterward in a type of immobilization called an air cast. And we continued to treat her for her foot.

But as time went on, we noticed that it was more going on than just her foot condition, that there was an ankle condition that was also a part of this picture. At which time we --

Q. Doctor, if I could interrupt you for just a second. How did you learn that the ankle was now a part of the picture?

A. Well, because after the time the fracture healed, there was still findings in the ankle more so than the foot. And if it was just a simple foot fracture, you wouldn't expect to have these findings in the ankle if you've got a simple metatarsal, fifth metatarsal base fracture.

Those symptoms persisted. That's why we sent her eventually for the MRI of her ankle, which was done in December, some six months later after she came to see us when she had persistent findings, ankle complaints more than foot, and we sent her for the ankle MRI. And that was done on 12/24/2003, which explained why --

Q. What did that MRI show, Doctor?

A. It showed that this patient had a focal bone contusion involving the medial side of the talus, what appeared to be a very thin peripheral fracture line as well as medial subcutaneous edema. Medial means on the inside of the ankle. I remember she had a fracture of her foot, but that's on the outside of the ankle.

So, the fracture itself should not give these type of findings. It would be not connected. The fracture is on the outside. So, there shouldn't be findings on the inside of the ankle. That's what led us to get the MRI. And then after we got that, that explained why there was still findings in the ankle.

At which time I then referred her to our associate at the time who was a -- what we call a sports medicine specialist, specialized in treating joint conditions. And she basically -- Doctor Yadao, Yadao basically evaluated her. I saw her again on 3/16/04 and treatment continued for her ankle condition until she last saw Doctor Yadao in November of 2004, at which time Doctor Yadao felt she had posttraumatic arthritis of the ankle.

Because whatever this osteochondral fracture -- osteochondral injury such as indicated with the MRI, there is really no healing for that. In other words, the circulation is interrupted. When the circulation is interrupted, then there's no way that

can heal in a manner that's going to be back to normal.

This type of injury always ends up with some degree of what we call posttraumatic arthritis where it's mild, moderate or severe. Doctor Yadao indicated on 11/7/2004 she felt was a mild posttraumatic arthritis in the left ankle.

Q. Do you have an opinion to a reasonable degree of medical probability as to the cause of Ms. [redacted] ankle and foot injury?

A. Yes, I do. It's my opinion that the ankle injury occurred as a result of her automobile accident. When we saw her for over a period of time, then I went back and reviewed the history. And as a matter of fact, I asked her to bring those records to me, and I saw them back in 2003 when she brought them to me.

I asked her to bring to me Doctor -- her medical records prior to me seeing her. And she brought me Doctor Washington's records.

And in September of 2003, which was three

days before I sent her -- three months before I sent her for an MRI. And in reviewing Doctor Washington's records, it was clear that she had left ankle injury when he first started seeing her as evidenced by his initial two notes.

And it was my opinion that that's when this ankle injury started. It's my opinion also that this ankle injury in addition to her knee injury is what was responsible for her left leg keep giving way. And the falls that she had. And then eventually with the injury that she sustained with the fracture of the foot.

In addition, the mechanism of injury for a foot fracture does not cause this type of damage to the talus. In other words, an internal rotation, eversion injury of the foot to produce this fracture is not the same mechanism to cause a bone contusion of the talus. In fact, it would be the opposite. It would be -- I'm not saying -- internal rotation inversion. It would be an eversion external rotation injury with flexion of the foot.

In other words, the foot would have to be jammed and twisted at the same time, which is the reverse to being almost distracted. In other words, when your foot is turned and inverted and rotated, you're actually distracting your ankle joint rather than -- so, you can't get damage to the talus that way. You have to have a jamming type injury or maybe some rotation.

So, the mechanism causing the fracture could not be the mechanism causing this bone bruise that we see. And that explains why the symptoms were so different. And why after the heal of a fracture, basically she still had some of the same complaints that she had before she fractured her foot.

According to Doctor -- her own history and my review of Doctor Washington's note and the notes of the therapist who also indicated that she had been complaining of her ankle since her injury --

Q. So --

A. -- in March.

Q. So we all understand, is what you're saying

then that the ankle injury that you found on the MRI is not consistent with a falling injury?

A. Yes. The ankle injury that she sustained is not consistent with the injury to the fifth metatarsal base which was a nondisplaced evulsion type fracture. So, the mechanism of injury would be different.

That's -- otherwise we -- I see hundreds of fifth metatarsal fractures. I don't see associated talus injuries with them. With sprained ankles, yes, that's a different mechanism with tearing of the medial and lateral ligaments, yes. But not from a fifth metatarsal fracture.

Q. Is that kind of injury to the talus consistent with trauma from an automobile accident?

A. It's consistent with the fact that -- yes. Yes, I'll put it this way. It could be. From my review of the doctor's report, they didn't specifically explain what happened to her foot. All I seen in her records is that she did -- for the ankle rather. All I seen in the records is that she did complain of her ankle and it was swollen.

So -- but not knowing exactly the mechanism that her foot was injured, her ankle was injured, I can only surmise that because her ankle was swollen after the car accident.

Q. Doctor Smith has already testified in this case and -- I want to bring your attention to Page 44.

A. Yes.

MR. SEAL: Thank you.

Q. Can you read the question and answer on Page 44 starting at Line 11?

A. Question: So to you, if it does not show up on a medical record, it didn't happen? 13, it says right.

The question is -- the next question is: In a sense. Question: In your review of the records, did it appear to you that Doctor [redacted] had an opinion as to whether her subsequent fall was caused by the automobile accident?

And the answer is: He subsequently did make that opinion.

Then it says: Do you know the basis for that opinion?

MR. SEAL: I want to point out I noted an objection at that time.

Q. Okay. Let me have it back, Doctor. We can actually move past that point, I believe. Let me ask you first as with respect to the first question, he says, if it doesn't show up in the medical record, it didn't happen. Do you agree with that statement?

A. I don't understand it. I don't know how you can say that. If a medical record, I don't understand it. I don't understand the relevance of relating it to, if it didn't show up in the medical record, that doesn't make sense.

Q. Let me ask you this. Did you see a notation in the medical records that her knee gave out before she fell on June 5, 2003?

A. Yes. She complained it gave out while walking. That's how she sustained an injury to her foot. That's the history she gave the hospital. And I still don't understand the question how you can

relate --

Q. Okay. And I'm not sure I do either, Doctor, but let me ask you another question. Talking about whether or not the issue on Page 48 on Line 7 it says, do you know whether or not he, referring to you, reviewed her medical records before rendering those opinions? And the answer is: It's not in his notes that he did. Is that a true statement?

A. No. I just explained to you that I had her bring her records to me, what she could. And I made a note of that in September.

Q. Do you have the date of that, Doctor, in September?

A. September the 11th, I believe. Actually September 16th, 2003.

MR. MILLER: We've having a few technical difficulties with the video. Are we okay, sir?

THE VIDEOGRAPHER: The mike's not working. Can you grab that one off the table and bring it closer to you?

MR. MILLER: Can you hear me now, sir?

THE VIDEOGRAPHER: Yes.

BY MR. MILLER:

Q. A few more questions, Doctor, using some legal terminology if I may. Do you have an opinion within a reasonable degree of medical certainty what injuries Ms. [redacted] suffered as a result of the March 8th, 2003 car accident?

A. Yes. I so indicated that over two years ago in my note of 9/16/2003, indicated that it's my opinion that the ankle condition for which she currently suffers was initiated by the accident of 3/8/2003.

And I explained why -- what that's based on. It's based on the fact that she had a swollen ankle after that. Based on also the fact that as we see with -- it's a mild traumatic arthritis. It's just enough for the injury to cause continued inflammation which would cause swelling. Easily masked by medications that Doctor Washington put her on, Domanex and Robaxin. But it's still there when she comes to see me.

Q. Can you explain that a little further? I'm sorry, Doctor, to interrupt you. What do you mean by masking?

A. Okay. The injury to her ankle was enough to cause a problem. Now, she's got other complaints elsewhere. The doctor is putting her on medicine for pain and swelling and muscle relaxation. These medicines not just affect the area that they're shooting at, but it affects all the areas that are injured.

So, even in his first note he didn't really say much -- anything about her ankle. But in his second note, he indicates that the ankle is swollen. And he says it's swollen since 3/8/2003, which means he really wasn't impressed with it so much the first time he saw her.

And here she comes to my office three months later, I'm not terribly impressed with it. I'm more impressed with her fractured foot. When I get foot fracture to heal while the ankle is still swollen, it's still hurting. And after I'm seeing her for

like -- I don't get the MRI for another six months after I see her.

So, it's a condition that's annoying, that's painful, but liveable in response to medication. And it's permanent. Now, how bad it is, time will tell, but it is a permanent type of injury.

MR. MILLER: Off the record for one second.

(Discussion off the record.)

MR. MILLER: Mark this as Exhibit 1.

(Whereupon [redacted] Deposition Exhibit No. 1 was marked.)

MR. MILLER: Back on the record.

THE VIDEOGRAPHER: Back on the video record at 6:46.

BY MR. MILLER:

Q. We've talked about the question of Ms. [redacted] leg giving way. Would you expect with the injury that Ms. [redacted] had that we've spoke about earlier that a person's leg might give way suffering from that type of injury?

MR. SEAL: Objection.

A. Yes.

Q. Can you tell the jury why?

A. Yes. She obviously sustained an injury to her ankle and her knee which will cause what we call a distorted gait. It's an interruption in a normal pattern of walking. The foot touching the ground, the brain feeling the foot on the ground and the walking that ensues from that.

So, any disruption with swelling and painful ankle and/or knee will cause a walking disturbance, what we call a gait disturbance. So, that will not be surprising. It happens all the time.

Q. And I believe you already answered this question, but I'm going to ask it again if I may. Do you have an opinion with a reasonable degree of medical certainty as to whether or not [redacted] sustained a permanent injury as a result of the March 8th, 2003 car accident?

A. The answer is yes. The reason is, the MRI was taken in December of 2003, which is a period of greater than six months. Actually it's more than nine

months after her injury. By the mere fact that there is still a finding at that stage means that that is a permanent injury. If this was a temporary type of condition, the MRI would not be present, not be positive some nine months later. Or even six months later.

Q. I'm handing you now what I need to sort of re-mark again if I can pull this tag off. I'm handing you now a collection of documents I've marked as Exhibit A (sic). Can you identify those for the record, please?

A. A first is a bill --

Q. Okay.

A. -- from Southern Maryland Hospital.

Q. Can you sort of look through and see whether the Southern Maryland Hospital bills end because I want to ask you some questions about the Southern Maryland Hospital bills?

A. Okay. One is billed -- well, the bill is dated 6/10/2003. The amount is $229.21.

Q. Are you familiar with local charges for

hospitals, physical therapists, prescriptions, other sorts of treatment for related injuries like Ms. [redacted]?

A. I am, yes.

MR. MILLER: And I'm going to ask Jeff, can I -- do you mind if I skip the reasonable degree of medical probability and ask these questions as we did with Doctor Smith?

MR. SEAL: Well, I don't mind if you maybe ask the first question and see if it applies to each one.

Q. Is it your opinion to a reasonable degree of medical certainty, Doctor, that the bills incurred as a result of the treatment rendered by Southern Maryland Hospital were fair, reasonable and necessary and causally related to Ms. [redacted] accident on March 8th, 2003?

A. Yes. The answer is yes.

Q. I take you now to Doctor Washington's bills on 3/03 through 11/19/04. Does that come up next for you? Please tell me yes.

A. Yes. 3/13/03, 4/2/03, 4/16/03, 6/11/03,

11/9/04. And then -- yes.

Q. And I'll ask the same question again, do you believe --

MR. MILLER: Do you want me to go through -- shortcut it now, Jeff, or go through it the long way?

MR. SEAL: You can shortcut it. Let me just hear what the shortcut is.

MR. MILLER: Fair enough. If you have a problem, let me know.

Q. Are these bills fair and reasonable and causally -- fair and reasonable and causally related to Ms. [redacted] accident on March 8th, 2003?

A. Yes. You mean the PT and Sports Medicine?

Q. Yes.

A. Yes.

Q. And Doctor Washington's office and the PT?

A. Yes. First referred by Doctor Washington. And then again once we got a good feel of the ankle condition in 2004.

Q. Doctor Washington's bills are $875 and the PT assessment was about $4,000. Does that -- it's

actually $4,071. Does that look right to you, Doctor?

A. Yes, it does.

Q. Let's turn now to Doctor [redacted], M.D. Are you familiar with him?

A. I know him.

Q. Good guy?

A. His bill is straight.

Q. Are his bills fair, reasonable and necessary and causally related to Ms. [redacted] accident on March 8th, 2003?

A. Yes.

Q. Turning now to the diagnostic imaging tests --

A. Yes.

Q. -- do you see those bills for $375?

A. First one is $375. Yes, that is the -- yes, this is -- yes, this is a reading of X-rays that we bill separately.

Q. Looking at those bills, are they fair, reasonable and necessary and causally related to Ms. [redacted] accident on March 8th, 2003?

A. Standard and reasonable.

Q. Turning now to MRI of Maryland.

A. Yes.

Q. Last bill was $375. This bill is $1,279.

A. That's right.

Q. Is this the MRI we spoke about?

A. That's the standard fee.

Q. Christmas Eve MRI; is that when it was?

A. That's right.

Q. Is that charge fair, reasonable and necessary and causally related to Ms. [redacted] accident --

A. Yes.

Q. -- on March 8th, 2003?

A. In my opinion, yes.

Q. Finally we have some prescriptions and medical supplies for $138.82, some prescriptions --

A. Yes.

Q. -- and there's a brace in there as well.

A. Yes. They were either prescribed by one of my associates or myself.

Q. And looking at finally -- that's it. That's it for the bills.

A. Okay.

Q. The treatment that was rendered by these providers that we just went through, Southern Maryland Hospital, Doctor Washington, Doctor Washington's PT folks, [redacted]on, WMOA Diagnostic Imaging, MRI of Maryland, the prescriptions and medical supplies, were these medical services causally related to Ms. [redacted] March 8th, 2003 accident?

A. Yes. In my opinion, yes.

Q. I want to ask you now if may --

MR. MILLER: Let's go off the record for one second.

(Discussion off the record.)

MR. MILLER: Back on the record.

Q. I also want to talk to you --

THE VIDEOGRAPHER: We are back on the record.

MR. MILLER: Thank you, sir.

-- 00--

BY MR. MILLER:

Q. We were talking about Ms. [redacted] lost wages as a result of the accident.

A. Okay.

Q. Do you believe it was reasonable for Ms. [redacted] to miss work for her therapy appointments over the course of her treatment after her March 8th, 2003 accident?

A. Yes.

Q. When you began to treat her on March 8th -- I'm sorry.

A. 6/6/2003.

Q. 6/6/2003. Thank you, sir. Did you have any instructions to her as to whether or not she could continue working?

A. Yes. We initially -- for the initial healing portion of the treatment, we recommended that she not work. And when we felt that she could walk some fairly comfortably, we'd allow her to do light duties. And increased her hours slowly until we released her to full duties.

Q. Okay. If Ms. [redacted] employer had wanted to send her to Iraq during the time you were treating her, would that have been something she could have done?

A. It would depend on what she was doing in Iraq. If she was sitting down doing nothing, yes. I note on 3/16/04 we already cleared her for regular work. She said she's to work no more than one hour of walking in a six-hour workday. And she was to be limited to a six-hour workday with no bending as of 3/16/04.

So, it was still restrictions on her through seeing her. And on 4/8/04, I said no excessive walking. So, she would not be able to tolerate a lot of standing and walking as she cannot do now, I'm sure.

Q. And you're saying that continues to this day?

A. Well, that continued through 11/17/04 when we last saw her. And considering the fact that the type of injury she has, there's no reason to expect

that to improve. It will only worsen. Hopefully stay still. But it may worsen more than -- there's a high chance it will worsen than it will improve.

Q. And when did you release Ms. [redacted] to go back to work full-time without restriction?

A. Well, my last visit where I said no excessive walking was on 4/8/2004. But she did see Doctor Yadao for that, and I can't tell from the slip whether any restrictions other than full duty. She did say full duty as I did, but I said no excessive walking. So, I don't know if that was continued or not.

Q. Between 6/5/2003 and that last note you just mentioned on --

A. 4/8/2004.

Q. -- 4/8/2004, would it be reasonable for Ms. Gray not to work full-time because of her injuries?

A. Yes.

MR. MILLER: Let's go off the record for one minute.

(Discussion off the record.)

MR. MILLER: Back on the record.

THE VIDEOGRAPHER: We're back on the record.

BY MR. MILLER:

Q. Thank you, Doctor. I have just one last question. I'll give Mr. Seal the opportunity to ask you a few questions.

Have you -- have all the opinions you've offered today been to a reasonable degree of medical certainty?

A. Yes.

MR. MILLER: Thank you, Doctor.

A. I appreciate it.

CROSS EXAMINATION

BY MR. SEAL:

Q. Doctor --

A. Yes, sir.

Q. -- how many patients do you see a day?

A. It varies from day-to-day. I probably average about, anywhere between 40 and 60. That's if I'm in the office all day. Some days I'm in surgery.

So, we usually run half-day sessions. I may 20 in a half day. Sometimes 40 a full day, or 60 on Fridays.

Q. Well, let me ask you this, on a full day and I think you initially indicated between 40 and 60, of that number, how many are sent to you by lawyers?

A. I don't know. Very few sent to me.

Q. Or to the practice.

A. I wouldn't know for the practice, but most of my patients come from doctor referrals. Patient-to-patient referrals. Lawyers maybe -- I think around the automobile accident rate, 10, 15 percent maybe. Not a great deal.

Q. Doctor, had you ever seen the Plaintiff before June 6th, 2003?

A. Not according to my records, I haven't.

Q. Now, Doctor, how many times a year do you testify in depositions or in court?

A. This year already, this is probably the fourth or fifth time.

Q. And what is this? August?

A. August 4th. Yes.

Q. You're in deposition or in court more than most lawyers; isn't that true, sir?

A. Oh, I wouldn't have any idea. I mean, I hope not.

Q. Doctor, how much are you being paid for this deposition?

A. Nothing. I receive nothing. However, this is a corporation.

Q. Well, let me pursue that then.

A. I'd like to change that by the way, but I can't.

Q. The practice you're in is a corporation?

A. Yes.

Q. Well, how much does the corporation charge for your attending this deposition?

A. I have a slip here indicates that the deposition for today, the charge would be approximately $1,350. If -- that's the estimated charge and based on the time that we spend.

Q. Now, Doctor [redacted] the Plaintiff's first visit to your office was on June 6th, 2003?

A. That's correct.

Q. Doctor, I refer you to your orthopedic consultation report dated June 6th of '03 --

A. Yes.

Q. -- concerning [redacted]y.

A. Yes.

Q. Now, Doctor, isn't it true that the chief complaint section of your report states, and I quote, this patient presents today, she twisted her left ankle yesterday right in front of her house, closed quote?

A. Yes.

Q. Is that right?

A. Yes. That's the typed part. There's a written part where chief complaint is left foot.

Q. Okay. All right. So, she's indicating that she had injured the left foot and ankle on June 5, 2003; correct?

A. Yes.

Q. There's no reference in your report of June 6th, 2003 to her having had injured her ankle or

foot in the March 8th, 2003 accident; is that correct?

A. That's correct. Except there's one note here I have 3/8/03, but I don't know when that date was put. Because as you see, there's -- a patient has what we call an intake sheet.

Q. Okay.

A. Where we write things down -- where the patient writes things down, and I will make handwritten notes on it. And then there's the typed form which is typed when I see the patient, I'm treating her for the condition.

There's only one reference to 3/8/03, but I cannot in all -- I can't remember when that was written, but it was written that day or later.

Q. But there's no question that on the typed report of June 6th, '03, there is no reference to the March 24, 2003 auto accident?

A. That's correct.

Q. Now, Doctor, I refer you to your letter to Doctor Herbert Washington, the Plaintiff's primary care doctor, which is also dated June 6th, 2003.

A. That's correct.

Q. And your letter to Doctor Washington of June 6th, '03 states, I have just seen and examined the patient. She twisted her left ankle yesterday right in front of her house.

A. That's correct.

Q. There's no reference in this June 6th letter to Doctor Washington to the accident of March 8th 2003; is that correct?

A. That's correct.

Q. Doctor, I refer you to your report dated 7/15/03. Doctor, that -- in the first paragraph it states, quote, the patient returns today; correct?

A. Yes.

Q. She's now six weeks after, there's a period, but I assume that means six weeks after the -- her falling in June, early June; right?

A. Yes.

Q. Okay. And it goes on to say in your 7/15/03 report, the pain is gone?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And I would like to refer you to your X-ray report of 7/15/03.

A. Yes.

Q. And that report states, X-ray showed that the fracture is healed; is that correct?

A. That's correct.

Q. Doctor, the Plaintiff received physical therapy at PT and Sports Assessment Center in Oxon Hill; is that correct?

A. Yes.

Q. Doctor, doesn't this corporation here with Doctor Azer, doesn't that -- and you're a part of, doesn't that corporation also own an interest in PT and Sports Physical Assessment Center?

A. No.

Q. It doesn't?

A. No.

Q. Do you?

A. No. No.

MR. MILLER: Do you want to buy some stock?

A. No.

Q. Doctor, do you know how the March 8th, 2003 accident happened?

A. The only references I have are the reports that are written. I'm sure I asked the patient, but I didn't record those. I only have Doctor -- from memory the reports that [redacted]on gave about the car being struck by a stolen car, her car being struck by a stolen car.

Q. Doctor, when you took the history from the patient about the accident, did you ask about the speed of the vehicles at the time of impact?

A. No. I would have asked if she remembered the position of her foot and what actually happened to her foot and leg. It wouldn't have mattered at that time.

Q. Did you ask about the nature and extent of the property damage to the vehicles?

A. No, I did not. I'm sure I would not have asked about that.

Q. Did you ask if the Plaintiff was wearing a seatbelt?

MR. MILLER: Objection.

A. I'm sure sometime around June we talked about this 3/8/2003 injury. I asked her about the conditions of her foot, but I didn't record that. And I would have only asked questions concerning how the foot was positioned and what happened to it.

Q. Well, let me ask you this, Doctor, did you ask about the motion of the Plaintiff's body in the interior of the car?

A. That would have been part of her foot position, her foot and leg position.

Q. Well, I'm looking at your report dated 6/20/03, which I believe is the first time there's a reference in your reports to the March 8th, 2003 accident.

A. Yes.

Q. Is there any reference to any questions there about the position of her leg or the motion of her leg in the auto accident?

A. No. It was only note -- no. The answer to your question is no.

Q. Is there any indication in that report of June 20, '03 about whether the Plaintiff's body or her legs struck any part of the interior of the vehicle?

A. No.

Q. Doctor, you did not have the benefit of seeing photographs of the vehicles that were involved in this case; did you?

A. No.

Q. Sir, you would agree that a big crash is more likely to cause an injury than a fender bender?

A. No, I disagree.

Q. Doctor, wouldn't you agree that it's an important area of inquiry to ask about how the Plaintiff's body was moved in the car, if at all, in order to determine how the Plaintiff's body became injured?

A. No. It depends on the body part. If there's a specific area, then you would be considered about that particular area if that's the area you're

treating. But for something that is healed and gone, I mean, it would not be important if a patient's healed in that area.