

ORIGINAL

Page 1

[REDACTED] * IN THE
Plaintiff * CIRCUIT COURT
vs. * FOR
ALLSTATE INSURANCE CO. * PRINCE GEORGE'S
Defendant * CAL-05-15526

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

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9
10 REPORTED BY: Susan Farrell Smith

11 THE VIDEOGRAPHER: Nolan Church

12 ALSO PRESENT: [REDACTED]

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

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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.

-- 00--



1 HAMPTON J. JACKSON, M.D.,
2 the Witness, called for Direct Examination by counsel
3 for the Plaintiff, having declared and affirmed under
4 the penalties of perjury to tell the truth, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MILLER:

8 Q. Good evening, Doctor.

9 A. Good evening.

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

12 A. I [REDACTED] r. You're
13 currently at one of my offices at 6 [REDACTED] d,
14 [REDACTED] d.

15 Q. Where did you go to medical school, Doctor

16 [REDACTED]

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

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

21 A. Yes.

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

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

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

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

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

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

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

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

21 Q. And did you do a fellowship, sir?

1 A. Yes.

2 Q. And where did you do your fellowship?

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

5 Q. Johns Hopkins Hospital?

6 A. That's correct.

7 Q. And what did you study in your fellowship?

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

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

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

21 In orthopedic surgery, most of our treatment



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

6 Q. Do you have hospital privileges in the area?

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

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

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

21 And then there's certain levels and usually

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

5 Q. Are you Board-certified in orthopedics?

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

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

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

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

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

1 maybe.

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

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

7 Q. How often?

8 A. All the time. 10, 15 percent.

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

11 A. Yes.

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

15 MR. SEAL: No objection.

16 BY MR. MILLER:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

1 months to heal.

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

7 A. Edema.

8 Q. -- edema.

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

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

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

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

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

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

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

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

20 Q. Let's turn now to this case in particular,

21 Ms. [REDACTED]



1 A. Yes.

2 Q. Before testifying today, did you have the
3 opportunity to review the medical records for
4 Ms. [REDACTED]

5 A. Yes, thoroughly.

6 Q. What records did you review?

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

11 And I reviewed some physical therapy notes
12 from the Physical Therapy and Sports Assessment
13 Center. I also reviewed a note of a Doctor Robert
14 Smith. And her MRI of her left ankle dated
15 12/24/2003, as well as some of her what we call chart
16 notes, which would include her -- copies of her
17 prescriptions, copies of her disability statements,
18 and various signed authorization forms and some of her
19 referral forms from her treating doctor. Her -- what
20 we call her primary care physician.

21 Q. Did you also have occasion to see her

1 Southern Maryland Hospital records as well?

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

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

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

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

10 A. Yes.

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

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

15 Q. Let me hand you another copy, Doctor.

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

19 Q. I'm sorry, I didn't want to start you off
20 there. I apologize. Doctor, I think I confused you.

21 I'm sorry. Yeah. I want to ask you about the 6/5

1 visit. What did I say?

2 A. You said, I think, March.

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

6 A. Yes, yes, yes.

7 Q. What were her symptoms when she presented
8 there?

9 A. She complained of a left foot injury.

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

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

14 Q. When did you first see Ms. [REDACTED]?

15 A. On the 6th, the next day.

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

18 A. All the time.

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

21 A. That she had what we call a nondisplaced

1 fracture of the fifth metatarsal base.

2 Q. What was the treatment plan you prescribed
3 for Ms. [REDACTED]?

4 A. We casted her.

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

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

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

18 She indicated that her leg had given out on
19 6/5, and had been giving out as a result of an injury
20 to her knee that -- and ankle which was injured on
21 March 8th, 2003 as a result of an automobile

1 accident.

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

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

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

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

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

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

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

14 Q. What did that MRI show, Doctor?

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

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

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

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

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

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

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

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

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

21 And in September of 2003, which was three

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

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

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

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

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

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

19 Q. So --

20 A. -- in March.

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

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

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

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

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

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

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

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

8 A. Yes.

9 MR. SEAL: Thank you.

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

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

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

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

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

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

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

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

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

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

1 relate --

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

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

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

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

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

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

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

1 THE VIDEOGRAPHER: Yes.

2 BY MR. MILLER:

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

8 A. Yes. I so indicated that over two years ago
9 in my note of 9/16/2003, indicated that it's my
10 opinion that the ankle condition for which she
11 currently suffers was initiated by the accident of
12 3/8/2003.

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

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

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

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

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

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

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

7 MR. MILLER: Off the record for one second.

8 (Discussion off the record.)

9 MR. MILLER: Mark this as Exhibit 1.

10 (Whereupon [REDACTED] Deposition Exhibit No. 1
11 was marked.)

12 MR. MILLER: Back on the record.

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

15 BY MR. MILLER:

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

21 MR. SEAL: Objection.

1 A. Yes.

2 Q. Can you tell the jury why?

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

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

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

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

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

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

12 A. A first is a bill --

13 Q. Okay.

14 A. -- from Southern Maryland Hospital.

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

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

21 Q. Are you familiar with local charges for

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

3 A. I am, yes.

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

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

11 Q. Is it your opinion to a reasonable degree of
12 medical certainty, Doctor, that the bills incurred as
13 a result of the treatment rendered by Southern
14 Maryland Hospital were fair, reasonable and necessary
15 and causally related to Ms. [REDACTED] accident on March
16 8th, 2003?

17 A. Yes. The answer is yes.

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

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

1 11/9/04. And then -- yes.

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

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

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

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

10 Q. Are these bills fair and reasonable and
11 causally -- fair and reasonable and causally related
12 to Ms. ██████ accident on March 8th, 2003?

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

14 Q. Yes.

15 A. Yes.

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

17 A. Yes. First referred by Doctor Washington.

18 And then again once we got a good feel of the ankle
19 condition in 2004.

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



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

2 A. Yes, it does.

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

5 A. I know him.

6 Q. Good guy?

7 A. His bill is straight.

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

11 A. Yes.

12 Q. Turning now to the diagnostic imaging
13 tests --

14 A. Yes.

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

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

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

1 A. Standard and reasonable.

2 Q. Turning now to MRI of Maryland.

3 A. Yes.

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

5 A. That's right.

6 Q. Is this the MRI we spoke about?

7 A. That's the standard fee.

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

9 A. That's right.

10 Q. Is that charge fair, reasonable and

11 necessary and causally related to Ms. [REDACTED] accident

12 --

13 A. Yes.

14 Q. -- on March 8th, 2003?

15 A. In my opinion, yes.

16 Q. Finally we have some prescriptions and

17 medical supplies for \$138.82, some prescriptions --

18 A. Yes.

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

20 A. Yes. They were either prescribed by one of

21 my associates or myself.

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

3 A. Okay.

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

11 A. Yes. In my opinion, yes.

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

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

15 (Discussion off the record.)

16 MR. MILLER: Back on the record.

17 Q. I also want to talk to you --

18 THE VIDEOGRAPHER: We are back on the
19 record.

20 MR. MILLER: Thank you, sir.

21 -- 00--

1 BY MR. MILLER:

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

4 A. Okay.

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

9 A. Yes.

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

12 A. 6/6/2003.

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

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



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

5 A. It would depend on what she was doing in
6 Iraq. If she was sitting down doing nothing, yes. I
7 note on 3/16/04 we already cleared her for regular
8 work. She said she's to work no more than one hour of
9 walking in a six-hour workday. And she was to be
10 limited to a six-hour workday with no bending as of
11 3/16/04.

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

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

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

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

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

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

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

15 A. 4/8/2004.

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

19 A. Yes.

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

1 (Discussion off the record.)

2 MR. MILLER: Back on the record.

3 THE VIDEOGRAPHER: We're back on the record.

4 BY MR. MILLER:

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

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

11 A. Yes.

12 MR. MILLER: Thank you, Doctor.

13 A. I appreciate it.

14 CROSS EXAMINATION

15 BY MR. SEAL:

16 Q. Doctor --

17 A. Yes, sir.

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

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

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

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

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

7 Q. Or to the practice.

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

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

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

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

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

20 Q. And what is this? August?

21 A. August 4th. Yes.

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

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

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

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

9 Q. Well, let me pursue that then.

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

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

13 A. Yes.

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

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

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

1 A. That's correct.

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

4 A. Yes.

5 Q. -- concerning [REDACTED] ay.

6 A. Yes.

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

12 A. Yes.

13 Q. Is that right?

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

16 Q. Okay. All right. So, she's indicating that
17 she had injured the left foot and ankle on June 5,
18 2003; correct?

19 A. Yes.

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

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

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

6 Q. Okay.

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

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

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

18 A. That's correct.

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

1 A. That's correct.

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

6 A. That's correct.

7 Q. There's no reference in this June 6th letter
8 to Doctor Washington to the accident of March 8th
9 2003; is that correct?

10 A. That's correct.

11 Q. Doctor, I refer you to your report dated
12 7/15/03. Doctor, that -- in the first paragraph it
13 states, quote, the patient returns today; correct?

14 A. Yes.

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

18 A. Yes.

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

21 A. Yes.

1 Q. Is that correct?

2 A. Yes.

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

5 A. Yes.

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

8 A. That's correct.

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

12 A. Yes.

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

17 A. No.

18 Q. It doesn't?

19 A. No.

20 Q. Do you?

21 A. No. No.

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

2 A. No.

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

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

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

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

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

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

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

3 MR. MILLER: Objection.

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

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

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

14 Q. Well, I'm looking at your report dated
15 6/20/03, which I believe is the first time there's a
16 reference in your reports to the March 8th, 2003
17 accident.

18 A. Yes.

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

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

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

6 A. No.

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

10 A. No.

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

13 A. No, I disagree.

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

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

[REDACTED]

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

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]