

In The Matter Of:

[REDACTED] vs.

DONNA TURNER

BARRY F. JEFFRIES, M.D.

March 18, 2016



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IN THE SUPERIOR COURT OF MERIWETHER COUNTY
STATE OF GEORGIA

██████████

Plaintiff,

vs.

DONNA TURNER,

Defendant.

CIVIL ACTION

FILE NO.

2014-CV-0243

VIDEOTAPE DEPOSITION OF

BARRY F. JEFFRIES, M.D.

Friday, March 18, 2016
10:00 a.m.

2964 Peachtree Road, N.W.
Suite 440
Atlanta, Georgia

Lisa A. Messina, RMR, CRR, CCR-A-421

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Videographer:




Allen Miegel

- - -

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Plaintiff's Exhibit	Description	Page
		
<u>Exhibit B</u>	Emergency room record from West Georgia Medical Center dated 9/17/12	58
<u>Exhibit C</u>	Office record from Southern Orthopedics dated 12/30/10	59

(Original Exhibits A through C have been attached
to the original transcript.)

1 (Reporter disclosure made pursuant to
2 Article 10.B of the Rules and Regulations of the
3 Board of Court Reporting of the Judicial Council
4 of Georgia.)

5 THE VIDEOGRAPHER: On the record.

6 MS. FISHEL: If you'll please swear the
7 witness.

8 BARRY F. JEFFRIES, M.D.,
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. FISHEL:

13 Q. Good morning, Dr. Jeffries. My name is
14 Brandi Fishel. I represent the Defendant in this
15 action, Ms. Donna Turner.

16 For the record, will you please state your
17 full name.

18 A. Barry Frederick Jeffries.

19 Q. Okay. And what is your profession?

20 A. I'm a diagnostic radiologist.

21 Q. Okay. And what is your professional
22 address?

23 A. The building address?

24 Q. Uh-huh.

25 A. 6000 Lake Forrest Drive, with two r's in

1 Forrest, Suite 425, Atlanta, Georgia, 30328.

2 Q. Okay. And how long have you been a
3 medical doctor?

4 A. Since 1975.

5 Q. Okay. In what year did you receive your
6 medical degree?

7 A. 1975.

8 Q. Okay. And from what university?

9 A. University of Kansas.

10 Q. Okay. And are you licensed to practice
11 medicine in the state of Georgia?

12 A. Yes.

13 Q. And how long have you been licensed in
14 Georgia?

15 A. Since 1981. I guess that's, what,
16 35 years; 34, 35.

17 Q. And are you Board certified?

18 A. Yes.

19 Q. Okay. Are you Board certified in more
20 than one area?

21 A. It depends. I'm Board certified in
22 diagnostic radiology with certificates of additional
23 qualifications in neuroradiology and interventional
24 radiology, but that's still all within radiology so I
25 guess just the one.

1 Q. Okay. And how long have you been Board
2 certified in radiology?

3 A. Since 1979 when I finished my residency.

4 Q. Okay. And do you have to take a test
5 every year or every couple of years to keep your
6 certification?

7 A. I do not. My certificate is lifetime.
8 Younger, newer people going into radiology, they have
9 to take it every ten years. My certificates of
10 additional qualifications, those are time limited and
11 I have retaken them and passed them twice.

12 Q. Okay.

13 A. I probably won't take them again because
14 I'm getting close to retirement but...

15 Q. Okay. And do you have privileges at
16 certain hospitals in the Atlanta area?

17 A. I do, yes.

18 Q. Which hospitals?

19 A. Atlanta Medical Center and Rockdale
20 Medical Center.

21 Q. Okay. And at one point in your career
22 were you chief of staff at Atlanta Medical Center?

23 A. Not chief of staff. I was president of
24 the medical staff.

25 Q. Okay. President of medical staff. All

1 right. And Atlanta Medical Center, is that designated
2 as a trauma center in the city of Atlanta?

3 A. Yes. We're a Level 1 trauma center.

4 Q. Okay. And for the benefit of the jury,
5 will you just explain what your practice as a
6 diagnostic radiologist involves?

7 A. Well, my practice is basically two parts.
8 On one day -- on some days I do what we call a spine
9 rotation. On other days I do what we call an
10 interventional rotation.

11 On the spine rotation I will do
12 injections, epidural steroid injections, facet
13 injections, things like that, as well as reading
14 x-rays, CT scans, MR scans, and so forth. On my
15 interventional days I'm actually doing procedures on
16 patients and also reading MR scans, CT scans, and so
17 forth.

18 All the times when I'm on call or I'm
19 covering an imaging center I'm also reading studies,
20 MR scans and CT scans. The vast majority of my work
21 is obviously reading the studies and then I do the
22 procedures on the side.

23 Q. Okay. And do you regularly read x-rays
24 and MRIs of patients who've received injuries as a
25 result of some sort of trauma in a car accident?

1 A. Either injuries or claims of injuries,
2 yes. I mean, that's what I do, that's where -- at the
3 trauma center. The majority of our cases will be
4 related one way or the another to some form of trauma.

5 Q. Okay. And do you regularly read x-rays
6 and MRIs of patients who suffer from chronic pain or
7 degenerative issues in their spine as well?

8 A. Yes. I mean, the vast majority of people
9 are going to have arthritis of the spine.

10 Q. Okay. And would you say the same for a
11 knee or knees?

12 A. We do -- we see a lot of knees. There's
13 several surgeons that do knee replacements, partial
14 knee replacements, and arthroscopy at the hospital so,
15 yes, we see a lot of chronic knee problems.

16 MS. FISHEL: All right. At this time I'd
17 like to tender Dr. Jeffries as a medical expert
18 in the field of diagnostic radiology. Do you
19 have any objection?

20 MR. BUTLER: I don't have any comment
21 right at this time. We may object at trial.

22 MS. FISHEL: Okay.

23 Q. (By Ms. Fishel) Dr. Jeffries, due to the
24 nature of your medical practice, would it be a
25 hardship for you to appear as a witness live in trial

1 in a case that's pending in Greenville, Georgia?

2 A. Well, it's very difficult. I mean, I
3 don't have an office that I can just shut down, so if
4 I get called I have to shut down the hospital which
5 obviously can't happen. So it's very difficult for me
6 to get away without a whole lot of advance notice and
7 preparation.

8 Q. Okay. As a part of your work in the
9 medical field, do you often review medical records and
10 diagnostic studies to provide medical consulting for
11 attorneys in cases either in litigation or proceeding
12 to litigation?

13 A. It's not part of my regular job. I do it
14 after hours, on weekends, and if I get a day off, so I
15 do it routinely but I don't do it as part of my
16 regular job. I work a full regular shift as a
17 radiologist.

18 Q. Okay. And how long have you been
19 consulting with attorneys on their cases?

20 A. I've been willing to do it about 28 years.

21 Q. Okay. And do you also testify sometimes
22 live or, like we are today, on video as an expert
23 witness in cases?

24 A. Yes. I think about a third of the cases I
25 will be asked to review ultimately end up in some form

1 of testimony.

2 Q. Okay. Dr. Jeffries, do you charge a fee
3 for your time in reviewing medical records and
4 providing deposition testimony in litigation cases?

5 A. Yes.

6 Q. And how much do you typically charge?

7 A. \$450 an hour.

8 Q. Dr. Jeffries, at my request you've
9 reviewed some x-rays, MRIs, records, and other
10 documents related to the medical treatment of a
11 patient named [REDACTED]; is that correct?

12 A. Yes.

13 Q. And would the fact that you're being
14 compensated for your time to review her medical
15 records and testify here today, does that effect your
16 opinion or findings with regard to the medical
17 treatment of [REDACTED]?

18 A. Well, they won't effect my findings in
19 terms of the studies. I don't have any real opinion
20 on the medical treatment per se.

21 Q. Okay.

22 A. I mean, there's a difference between what
23 the surgeons did and what I find on the film.

24 Q. Okay. Have you ever had an occasion to
25 personally treat [REDACTED]?

1 A. Not that I'm aware of, no.

2 Q. Okay. Is it important as a radiologist or
3 is it necessary for you to personally meet or examine
4 the patient when reviewing the MRI or x-ray studies?

5 A. No. I mean, what the public has to
6 understand is that I deal with what's going on inside
7 the patient because that's where I'm looking. What
8 they look like on the outside doesn't really matter to
9 me.

10 Q. Okay. Specifically some of the records
11 that I gave you were records from her treating
12 physician, Dr. Bruce, at Southern Orthopedics. Did
13 you review those records?

14 A. I did, yes.

15 MS. FISHEL: Can we go off the record for
16 one second?

17 MR. BUTLER: Sure.

18 THE VIDEOGRAPHER: Off the record.

19 (Off the record.)

20 THE VIDEOGRAPHER: Back on the record.

21 Q. (By Ms. Fishel) Okay. Back on the
22 record. All right. Dr. Jeffries, before we went off
23 the record I asked you if you had reviewed the records
24 from the treating physician and eventually surgeon,
25 Dr. Bruce, at Southern Orthopedics.

1 A. Yes.

2 Q. I have given you a stack of those records
3 in front of you. If you will please tell me the first
4 date on the first record that you have there.

5 A. The first record, the date is
6 December 30th, 2010.

7 Q. Okay. And what was her chief complaint on
8 the first visit in December of 2010?

9 A. She had bilateral knee pain, worse on the
10 left.

11 Q. Okay. And bilateral, that means pain in
12 both knees?

13 A. Yes.

14 Q. Okay. And if you'll kind of flip through
15 that record, did the doctor provide an impression or a
16 diagnosis on that visit?

17 A. His assessment was osteoarthritis of the
18 knees.

19 Q. Okay. And what is osteoarthritis of the
20 knees?

21 A. Well, osteoarthritis is a degenerative
22 process. It encompasses multiple different things
23 that are happening but basically you're wearing out
24 the cartilage and the bone is beginning to grind on
25 the bone and over time this can become painful and

1 debilitating, but that's the primary definition of
2 osteoarthritis. It's a wear-and-tear phenomenon.

3 Q. Okay. In those records that you have in
4 front of you you have various visit dates. I think
5 the next -- if you'll give me the date on the next
6 one.

7 A. Next was January of 2011.

8 Q. Okay. And the next one?

9 A. Was March of 2011.

10 Q. Okay. And --

11 A. You want me to keep going?

12 Q. Yes, just keep going for us.

13 A. Then there's one April 6th, 2011;
14 May 19th, 2011; June 2011, and all of these have been
15 for bilateral knee pain. Then on June 30th, 2011,
16 she's going and this time it's for preoperative
17 evaluation for left knee surgery.

18 Q. Okay. And what knee surgery is that that
19 they're --

20 A. The left knee.

21 Q. The left knee. What kind of surgery was
22 it?

23 A. A left total knee arthroplasty. That's
24 where they remove all of the arthritic part of the
25 bone and replace it with metal and plastic or nylon;

1 whatever it's made of.

2 Q. Okay. And based on the review of the
3 records in front of you from Dr. Bruce at Southern
4 Orthopedics, does it appear to you that [REDACTED] had
5 a long history of pain in both knees?

6 A. Yes. I mean, she's had it since at least
7 2010, probably before that, but that's when she went
8 to the doctor.

9 Q. Okay. And she also had a long history of
10 arthritis in both knees?

11 A. Yes. That was their belief that was the
12 cause of the pain.

13 Q. All right. I think we're done with those
14 records for just a minute.

15 Based on your experience and training and
16 reading all of these MRI scans over the years, do you
17 have any opinions about how trouble or pain in one
18 knee would eventually effect the other knee?

19 A. Yes. I mean, there's two things that
20 happen. First of all, whatever process is involving
21 the one knee is also going to be involving the other
22 knee. This is why you'll very often see arthritis in
23 both shoulders or both knees or both hands and so
24 forth.

25 The second thing is, of course, that once

1 you develop a lot of pain in one area, you tend to
2 favor that area and so you put more weight onto the
3 other area. So the body tries to balance things out
4 but ultimately all it does it hasten the degeneration
5 on the other side as well.

6 Q. Okay.

7 A. In other words, you'll be limping
8 supporting more weight on the other leg so it's
9 undergoing more stress than it would have.

10 Q. And that would be for people who either
11 haven't been in an accident or some sort of trauma and
12 then people who just develop knee pain over time as
13 well?

14 A. Sure. I mean, you can see it any time
15 you've had a sore muscle, anybody. If they've had a
16 sore muscle or a bruise or something, they tend to
17 leave that area alone until it heals. So, I mean,
18 this happens all the time.

19 Q. Do you have any opinion about whether or
20 not a person who had a left knee replacement would
21 eventually have to have surgery or replacement on
22 their right knee?

23 A. I do, yes.

24 Q. Can you explain?

25 A. Well, my experience has been that when

1 they have arthritis bad enough to need the knee
2 replacement on one side, they usually will end up
3 getting it on the other side. Now, the only time that
4 doesn't apply is if the reason they have the arthritis
5 is due to a major trauma or they've had a bunch of
6 fractures and everything was torn apart in that knee
7 or they've had a bad, say, ski injury or something
8 like that. But for the vast majority of people, the
9 conditions that cause the arthritis in the one knee
10 are there for the other knee. It's just a matter of
11 time before it gets bad enough they need the surgery
12 there.

13 Q. As a part of your review of the records I
14 gave you and the review of the medical records and
15 films for this case, they were given to you in
16 relation to an auto accident that took place on
17 September of 2012. Are you familiar with that
18 accident?

19 A. The original accident. No, that's a --
20 wait a minute. That's the original one, yes.

21 Q. Okay. And did I also give you photos of
22 the accident that happened in September of 2012?

23 A. Yes.

24 Q. Okay. Did you also review the accident
25 report from the September 2012 accident?

1 A. I did, yes.

2 Q. Okay. Did you also review the films and
3 reports of the MRIs that were taken in January of 2013
4 at the CDC on Comer in LaGrange, Georgia?

5 A. Yes.

6 Q. And just for the benefit of my
7 understanding and the benefit of the jury's
8 understanding, can you explain to the jury what
9 exactly an MRI scan is and what it can show?

10 A. Well, MR stands for magnetic resonance and
11 what we're basically looking at is the concentration
12 of water in the body and how it's been bound up by the
13 other chemicals. Without going into too much
14 complication, a patient is put into a very strong
15 magnetic field and all the little atoms in the body
16 which act like little magnets, they line up north and
17 south in the magnetic field.

18 We then apply a radiofrequency pulse to
19 the body to give energy to those atoms and they flip
20 on their side. If anybody's ever had an MR, that's
21 that pounding noise they hear. Once we turn off the
22 radiofrequency the atoms go back to the way they were
23 and they give us back that energy they received and
24 based upon how it's received and how it interrelates
25 with the other energies, we can reconstruct a

1 computerized picture of the inside of the body.

2 And so what MR is is it is extremely good
3 at looking at anything that has liquid in it, soft
4 tissues of the body, whereas the other modalities we
5 have, x-ray, are relatively less sensitive. MR is the
6 most sensitive thing we have to look at the structures
7 of the body. It's so sensitive, for example, that if
8 you go out and jog, I can pick up the edema in your
9 muscles after you've run for about 15 minutes.

10 Q. Okay. Thank you. And the MRI films and
11 reviews that you -- from January of 2013, what part of
12 [REDACTED] body was the MRI taken of?

13 A. She had an MR scan of her cervical spine,
14 she had an MR scan of her knee, the right knee.

15 Q. Okay. And, again, for my benefit and the
16 benefit of our jury, will you please explain what the
17 cervical region of the -- where that is on the body,
18 the cervical region is on the body?

19 A. Well, the cervical region would be the
20 neck.

21 Q. Okay. And based on your review of the
22 diagnostic films taken of [REDACTED], have you
23 formed some opinions about whether or not [REDACTED]
24 sustained any injuries to her cervical spine resulting
25 from an accident in September of 2012?

1 A. Yes.

2 Q. Okay. All right. If you will please
3 describe for the jury what your opinion is as to her
4 cervical spine based on the MRIs that you reviewed.

5 A. Okay. In her neck she had degenerative --
6 what we call degenerative desiccation. Degenerative
7 desiccation means that the disk on the MR scan would
8 appear dark and inside the -- the disk has two parts.
9 It has an outer very strong fibrocartilage ring that
10 holds the bones together, so it allows your neck to
11 move without falling apart. Inside that ring,
12 contained by the ring and the bone is a structure
13 called the nucleus pulposus and that is the structure
14 that starts to degenerate over time. It loses its
15 water content.

16 Desiccation means to dry out. It's not
17 exactly the way a sponge dries out when it loses its
18 water and gets hard, but what happens is the water
19 content in a chemical in the disk goes away over time.
20 If it is accelerated, we call it degenerative
21 desiccation.

22 Everybody loses a little bit of water as
23 they get older, but cervical disks will lose it much
24 faster than the others. So she had degenerative
25 desiccation at all of the disk levels in her neck as

1 well as down into the upper part of her thoracic
2 spine. So when I see that, I know that process has
3 been there at least a year because it takes a year for
4 that to show up.

5 At the same time she had osteophytes.
6 Laymen would call them bone spurs. Osteophytes can
7 form only after a disk begins to bulge or herniates
8 and she had osteophytes at C3-4, C4-5, C5-6, and C6-7
9 and those take at least a couple of years before I'm
10 going to be able to see them.

11 So the MR of the neck was done on 1/21/13.
12 That's about five months after the date of the motor
13 vehicle collision, so all of those changes had to have
14 been there before the date of the motor vehicle
15 collision.

16 And what she has in her neck is simply
17 arthritis of the spine. The technical term is
18 intervertebral osteochondrosis, but that's really a
19 mouthful so doctors call it spondylosis and laymen
20 call it arthritis.

21 Q. Okay. In your description you used the
22 word degenerative. Would you define that word?

23 A. Well, degenerative means it's age related
24 and/or wear and tear. I guess the actual term is it
25 should be a wearing, it's an age-related phenomenon,

1 but in this case it's an actual pathologic process.
2 It's intervertebral osteochondrosis. Some people will
3 develop this even if they haven't really worked their
4 spine very hard.

5 Q. Okay. And a degenerative injury is
6 something that develops over time and is not caused by
7 a specific action or trauma?

8 A. Yes. In other words, she's looked this
9 way for years and she'll probably look this way,
10 hopefully no worse, for many years after.

11 Q. Okay. And I believe you said it could
12 take over a year to form?

13 A. Well, the degenerative desiccation I
14 talked about, it's a chemical change in the disks.
15 They did studies. They deliberately damaged the disks
16 and then they saw how long it took before degenerative
17 desiccation would show up and that took at least a
18 year. It may actually take two, three, four years for
19 her to get to this extent, but all I can say is at
20 least a year.

21 Q. And, like you said, as this accident
22 occurred on September 17th of 2012, it would then be
23 your medical opinion that these processes would have
24 begun forming long before the accident?

25 A. Yes, they had to. If she had enough

1 trauma to damage all of these disks, she would have
2 had lots of other findings. I mean, it takes a lot of
3 trauma to injure a disk and all of the disks are
4 abnormal. So there would have been some broken bones,
5 some torn muscles, ligaments if she'd actually injured
6 something.

7 Q. Okay. And can you tell based on looking
8 at an MRI scan whether or not the degenerative process
9 or arthritis can be aggravated by a traumatic injury
10 or event?

11 A. It depends on what you mean by aggravated.
12 Now, the term that -- the way it's usually used in
13 medicolegal cases is they say that they had no pain
14 before and then they have pain afterwards and,
15 therefore, it's aggravated. In that sense, I have no
16 way to evaluate. That's simply a subjective complaint
17 of pain.

18 But in terms of aggravated in the sense
19 made worse, yes, I can see that. There should be
20 something to make it worse, some bleeding, some edema,
21 a new fracture, a torn ligament. Something should
22 show up to show me that it's been made worse.

23 Q. Okay. And her MRI of her cervical spine
24 had no evidence of bleeding, bruising, fracture, any
25 other type of traumatic injury?

1 A. Correct. It looked as if she'd never been
2 in an accident at all.

3 Q. And you looked at the photos of the
4 accident?

5 A. Yes.

6 Q. And the accident report?

7 A. Yes.

8 Q. Okay. I'm going to hand you --

9 MS. FISHEL: There's a copy of the photos
10 for you.

11 MR. BUTLER: Thank you.

12 MS. FISHEL: And an accident report for
13 you.

14 THE WITNESS: Okay.

15 Q. (By Ms. Fishel) If you'll just briefly
16 look at those photos again to refresh your
17 recollection.

18 A. All right.

19 Q. Okay. And based on your review of those
20 photos and the police report, have you formed an
21 opinion as to whether or not the physical findings of
22 the MRI of her cervical spine could have been caused
23 by an accident with the referenced photos and police
24 report?

25 A. Yes.

1 Q. Okay. And what is that opinion?

2 A. My opinion is that the MR shows no
3 evidence of an injury caused by this accident or
4 actually any type of accident. She has arthritis of
5 the spine.

6 Q. Okay.

7 A. I mean, there's just no injury there.

8 Q. All right. And let's shift gears a little
9 bit and talk about her right knee injury at this time.

10 A. Okay.

11 MS. FISHEL: There's some more records for
12 you.

13 Q. (By Ms. Fishel) Dr. Jeffries, again, I
14 provided this to you before then, but just to refresh
15 your recollection I just gave you the ER records that
16 were taken from [REDACTED] treatment in the
17 emergency room on the day of the accident in September
18 of 2012.

19 A. Okay.

20 Q. If you'll take a look at I believe it's
21 the second page called the Physician Documentation
22 Report --

23 A. All right.

24 Q. -- and do you see any indication on that
25 page of what kind of injury she was being treated for

1 in the emergency room that day?

2 A. Well, her chief complaint was upper back
3 pain and that's actually the only complaint she's
4 making that I see in the report.

5 Q. Okay. And do you see in that report any
6 kind of x-rays or radiology reports?

7 A. They did take an x-ray of her chest.

8 Q. Okay. They took an x-ray of her chest?

9 A. Yes.

10 Q. Did they take an x-ray of her right knee?

11 A. No.

12 Q. In your experience as a physician who
13 works in a hospital that's a trauma center, would you
14 expect an ER physician to take an x-ray of the right
15 knee if the patient was complaining of right knee pain
16 in the emergency room?

17 MR. BUTLER: Objection; calls for
18 speculation.

19 THE WITNESS: Yes. I mean, emergency room
20 physicians are spring-loaded. If a patient comes
21 in after a motor vehicle collision and complains
22 of pain, that area will be evaluated one way or
23 the other. At our hospital they usually will get
24 a CT scan or something like that, but for an
25 extremity they will often just get an x-ray.

1 Q. (By Ms. Fishel) And based on your review
2 of the diagnostic films taken of [REDACTED], have you
3 formed some opinions about whether or not [REDACTED]
4 sustained any injuries to her right knee resulting
5 from the accident on September of 2012?

6 A. Yes.

7 MS. FISHEL: Okay. Let's go off the
8 record.

9 THE VIDEOGRAPHER: Off the record.
10 (Off the video record.)

11 MR. BUTLER: Let me speak before you go
12 on. I don't know what medical records the
13 defense intends to show right now. To the extent
14 they weren't subject to a proper notice of intent
15 to introduce, we'll object to them. I notice
16 that the records on the screen are not the ones
17 in my hand. I'm not sure where they came from.

18 Also, to the extent it matters, again, I
19 don't know what is going to be showed, I object
20 to the admission or display to the jury of any
21 records that contain collateral source
22 information. I see that the paper I have in my
23 hand that Ms. Fishel has just handed me says
24 Medicaid of Georgia right there on the first
25 page, so at least this has not been redacted.

1 MS. FISHEL: That wasn't admitted. It was
2 just used for his recollection. I don't plan on
3 admitting the ER information and, if I did, I
4 would take the insurance information off.

5 This is the MR report. This is all from
6 your discovery, from Chris's discovery where we
7 got from his records. This is the MR images from
8 the MRI report. They were provided on a disc
9 from Chris that were provided in discovery
10 responses and that's where we got them. We will
11 proceed.

12 THE VIDEOGRAPHER: Back on the record.

13 Q. (By Ms. Fishel) Using the pictures of the
14 MRI scan, before we get started can you tell me what
15 patient's images are on the screen? Whose images are
16 those?

17 A. All right. So for the jury's benefit, I'm
18 going to use the arrow marker and up here I'm pointing
19 to "Patient's Name," it says [REDACTED]. Over on
20 the other side it says "CDC on Comer" and the date of
21 the examination is January 21st, 2013.

22 Q. Okay. And that is an MRI of what part of
23 her body?

24 A. This would be an MR scan of her right
25 knee.

1 Q. Okay. And using the films, if you'll just
2 give your opinion as to what those films show you and
3 what you interpreted.

4 A. All right. I'm going to move the picture
5 here for a minute and go over to this picture here.
6 I'm now using the arrow to outline a triangular-shaped
7 structure which is dark. This is what a normal
8 meniscus would look like. We're looking at the front
9 part of the meniscus on the medial or inside part of
10 her knee.

11 As we move the pictures and follow the
12 arrow, you now see the back part of this meniscus and
13 you see a little bit of signal in the middle of it, a
14 little bit -- it's not a nice sharp point here, it's a
15 little irregular. This is consistent with
16 degeneration, myxoid degeneration or a small tear.

17 Then we go to the other side of her knee.
18 We're now going to the outside part of her knee and
19 you can see a dramatic difference. Remember how in
20 this area there was a nice little triangle. Now it's
21 all irregular. There's a white line in the middle.
22 It looks like there's fragments. This would be a
23 tear.

24 And as we go to the back side, this is
25 where the arrow is on the back side of her knee, you

1 can see this meniscus is also irregular. They don't
2 have that nice triangular shape.

3 As we go out to the extreme outer part of
4 the meniscus -- remember, it's shaped like a C -- you
5 can see how this tear goes all the way through the
6 meniscus. This is the same appearance that she had
7 back on the MR a year or so later.

8 This study shows that the ligaments of the
9 knee -- this structure here would be the anterior
10 cruciate ligament, this would be the posterior
11 cruciate ligament -- they're intact. And then it also
12 shows the fact that you have basically bare bone here.
13 There's no cartilage here. You have bare bone here.
14 The cartilage is all eroded from her bone here and
15 we're seeing -- you can see how the bone, instead of
16 it being nice and smooth it's all kind of irregular
17 and you have some edema underneath it.

18 All of this is reactive changes to
19 osteoarthritis of the knee. If you look behind it,
20 you also have the same changes on the back of the
21 knee. She has fluid, that's this white material here,
22 and that's related to the meniscal tears, the
23 arthritis of the knee and so forth.

24 Another view -- let's see if I can get
25 this here. We're now looking at what is called a

1 T1 weighted image. You can clearly see the meniscus
2 has lost its normal triangular dark shape. This is a
3 chronic tear. The same thing would apply.

4 Here you can very clearly see how all the
5 bone is just irregular. There's just no cartilage
6 here on top of this bone. This should normally be --
7 see this little thin area of gray. That thin layer of
8 gray should be all around knee but it's not present.

9 So this patient just has a lot of
10 arthritis involving the knee, she has arthritis
11 involving the patella -- actually, it's
12 osteochondritis involving the patella, she has torn
13 menisci, and this is all part and parcel of
14 osteoarthritis.

15 Then this picture here, this shows the
16 hallmark findings of osteoarthritis and that would be
17 this -- you can see this piece of bone coming out
18 here, this is called an osteophyte, little bone
19 beaking out over here, it should be nice and rounded,
20 and these are the findings of osteoarthritis.

21 Q. Okay. All right.

22 MS. FISHEL: Back off the record.

23 THE VIDEOGRAPHER: Off the record.

24 (Off the record.)

25 THE VIDEOGRAPHER: Back on the record.

1 Q. (By Ms. Fishel) Based on your review of
2 the MRI films of [REDACTED] knee, can you please
3 describe your opinion for the jury as to what the
4 results of the MRI were on her knee?

5 A. Well, the MR scan of her knee demonstrates
6 or it demonstrated that she had tears of the lateral
7 meniscus. They were quite extensive. They went from
8 the front all the way to the back. She also had a
9 subtle tear involving the posterior horn or the back
10 side of the medial meniscus which would be on the
11 inside of the knee.

12 The menisci or two little C-shaped
13 cartilage that sit on the inside and the outside of
14 the bone, that allows the femur to sit on top of the
15 tibia and have a place to articulate. It helps
16 distribute weight.

17 At the same time, the MR scan showed
18 erosion of the cartilage, primarily in the area of the
19 trochlear, which is the cartilage in the center of the
20 thighbone, the tibia, which is where the patella
21 slides up and down, as well as erosion of the
22 cartilage of the patella itself. There was also some
23 cartilage erosion overlying the medial and lateral
24 condyles of the knee but not as severe. Then she had
25 bone spurs arising primarily from the medial femoral

1 condyle and all of these things represent
2 osteoarthritis of the knee with the related associated
3 changes of osteochondritis, meaning bone and cartilage
4 involvement of the patella and the trochlear groove.

5 The meniscal tear is just part of the
6 degenerative process. It may have predated the
7 osteoarthritis, it may be related to it. I think it's
8 just part and parcel with it.

9 Q. Okay. Thank you. And you mentioned
10 osteophytes and bone spurs. What are those?

11 A. Well, the osteophyte is where the bone
12 actually -- I showed a picture of it, although the
13 jury may not see it. The bone spur is a piece of bone
14 that sticks out from where it normally would be.

15 If you've ever driven a car in the snow
16 and you see how you get that -- the white ice mushes
17 up behind your bumper, that irregular-shaped thing
18 that sort of clumps behind your wheel, you may not see
19 it that much in the South, I could be wrong, but when
20 you see that clumped-up ice like that, that's very
21 much what an osteophyte looks like. It's just an
22 abnormal growth of bone that grows out from where
23 there would normally not be bone present.

24 Q. Okay. And is that a symptom of arthritis?

25 A. It's not a symptom, it's a sign of it. In

1 other words, we can see it and it means arthritis.

2 Q. Okay. And arthritis, could that be caused
3 by a trauma or an auto accident?

4 A. Well, if you damage -- if you tear the
5 cartilage, if you damage the cartilage or you fracture
6 the bone, ultimately you can get posttraumatic
7 arthritis, but the vast majority of arthritis is going
8 to be related to age, what you've done for a living,
9 what you've done for fun, weight-related factors,
10 congenital, your genetic predisposition to get it. In
11 a patient like this where she's also had the same
12 problems in the other knee, it's almost 100 percent
13 it's going to be related to arthritis.

14 Q. And you mentioned that there was a
15 horizontal tear in the lateral meniscus?

16 A. Yes.

17 Q. Describe for me what part of the knee the
18 meniscus is in.

19 A. Okay. Well, if you have the tibia, which
20 is a bone that comes up and it's flat, and then you
21 have the femur which comes down and it has kind of a
22 rounded surface and the reason it's rounded is so you
23 can -- your leg can bend. The round part just pivots.
24 But if you just had the round part sitting on top of
25 the bone, it would be a very small surface area

1 pushing on the bone. That wouldn't be good. You'd
2 wear the bone out very quickly.

3 So what nature does is they put in these
4 little menisci in between and the menisci being
5 triangular shaped, they fill in the spaces and it
6 helps distribute the weight of the femur and so this
7 is why if you weigh a lot more, you're putting more
8 pressure on the bone than you are engineered to have.
9 The end result is you start to get osteoarthritis.

10 If you bend too much, the meniscus in the
11 back begins to deform and that's where you get the
12 tears and that's where you most often will see the
13 tears, in the back of the meniscus from bending and
14 lifting. That's why it's an age-related thing. The
15 more you lift and bend, the more likely you are to
16 have a tear.

17 Q. Okay. And a meniscus tear, that can
18 happen over time with degeneration?

19 A. Yes. The vast majority is going to be age
20 related over time.

21 MR. BUTLER: Objection; leading.

22 Q. (By Ms. Fishel) And would you be able to
23 tell the difference on an MRI whether the meniscus
24 tear was from degeneration or a traumatic injury?

25 A. Probably not directly. You would have to

1 look for the secondary signs. In other words, a
2 meniscus tear is simply a tear. It's really a
3 descriptive term. It doesn't mean it's been torn by
4 anything. It's just what we see as the cleft, it
5 looks like a tear.

6 To tell that it's traumatic you'd want to
7 see something else. You'd have to obviously have
8 history of trauma and then you'd want to see the more
9 likely things to happen along with it. You'd want to
10 see torn ligaments, you'd want to see fractures, a big
11 joint effusion. Those are the things that happen in
12 trauma.

13 For example, when you see a skier rip out
14 their knee skiing, they never tear the meniscus. They
15 rip out their ligaments because these are the rigid
16 structures. When you see a football player injured
17 and carried off the field, he's always torn a
18 ligament, he's not torn his meniscus.

19 The meniscus is relatively insensitive to
20 a single isolated trauma. It's more of a chronic
21 thing. It's possible to tear a meniscus, but you're
22 going to have to have a lot of other things going on
23 with it.

24 Q. Okay. And what is your opinion from the
25 MRI scan of January 2013 as to the cause of the tear

1 in [REDACTED] meniscus?

2 A. I think it's age-related arthritic. I
3 mean, she had the same problem in the other knee.

4 Q. Okay. And about how long would you
5 estimate that the degenerative process for her knee
6 took to get to where it was on the day of the MRI?

7 A. Well, I don't have any good indicators
8 like degenerative desiccation to go on. She's had
9 this for years. She's had it at least as long as the
10 other knee and the other knee, it had probably been
11 present for years before that. She'd probably had it
12 15 to 20 years, but the actual number I just don't
13 know.

14 Q. And as the accident in this case occurred
15 on September 17th, 2012, is it your opinion that these
16 processes had to have started forming sometime before
17 that?

18 A. Yes. I mean, she had complaints of knee
19 pain long before that.

20 Q. And the same question I asked with the
21 cervical spine, can the degenerative process and
22 arthritis in the knee be aggravated by some sort of
23 traumatic event or accident?

24 A. Theoretically, in terms of if they had
25 complaints of pain they can say, yes, it hurts more.

1 I have no way to assess whether that's accurate or
2 not. I would look for the same things -- in other
3 words, this is her baseline. It's like my gray hair.
4 If I get in an accident, the fact that I have gray
5 hair doesn't matter. You're going to look for trauma
6 on top of that, blood in my hair, something like that.

7 Same thing for the knee. She's got
8 arthritis of the knee. That's her baseline. So for
9 her to have a traumatic injury, I'd have to see
10 something on top of that that tells me it's traumatic.

11 Q. And did you see any evidence of a
12 traumatic injury on those MRI films of her knee?

13 A. No, I did not.

14 Q. And can you state with a reasonable degree
15 of medical certainty that any pain [REDACTED] would
16 have been having in her right knee would be caused by
17 degenerative changes?

18 A. That would be my opinion. She was
19 complaining of it before and she's still complaining
20 of it.

21 Q. And is it your opinion with a reasonable
22 degree of medical certainty that [REDACTED] suffered
23 no acute or traumatic injury to her right knee as a
24 result of the auto accident that took place on
25 September of 2012?

1 MR. BUTLER: Objection; leading.

2 THE WITNESS: Based upon the imaging study
3 I see no evidence of an acute injury. Whether or
4 not she had a skin bruise or something, I don't
5 know.

6 MS. FISHEL: That's all I have at this
7 time.

8 MR. BUTLER: All right. Give me a second
9 to get organized and then I'll ask you a few
10 questions.

11 THE VIDEOGRAPHER: Off the record.

12 (Off the record.)

13 THE VIDEOGRAPHER: Back on the record.

14 CROSS-EXAMINATION

15 BY MR. BUTLER:

16 Q. Good morning. My name is Jeb Butler. I
17 represent [REDACTED] --

18 A. Good morning.

19 Q. -- in this case and I have a few questions
20 for you.

21 When did you examine [REDACTED]?

22 A. You mean reviewing the images? The
23 initial time I looked at it would have been --

24 Q. No, no, no, that's not what I mean. What
25 I mean is when did you sit down with the patient in

1 this case, [REDACTED]?

2 A. I never -- radiologists don't ever examine
3 a patient.

4 Q. Did you ever talk to her on the phone?

5 A. No, not that I'm aware of.

6 Q. Did you ever talk to her friends and
7 family about what happened to her and how she was
8 acting before and after this wreck?

9 A. No, I did not.

10 Q. Well, did you ever speak to her to get her
11 history, like what she thought about what happened
12 here?

13 A. No.

14 Q. Did you ever ask her how she was feeling,
15 how her knee felt before versus how it felt after this
16 wreck?

17 A. No.

18 Q. Did you ever talk to her about the pain
19 she experienced as a result of this wreck?

20 A. No.

21 Q. All you did in this case, as I take it,
22 was to review someone else's medical records; is that
23 right?

24 A. I reviewed them, yes. What I also did was
25 reviewed the images which is what I do.

1 Q. So you reviewed the images, the records
2 from West Georgia, which was the ER, I think, and from
3 Dr. Bruce maybe among other things; is that right?

4 A. Correct.

5 Q. But never actually saw [REDACTED] or
6 talked to her?

7 A. I saw her through her films. That's how I
8 would normally see a patient.

9 Q. Did you ever put your hands on her knee
10 like doctors do?

11 A. That wouldn't do me any good.

12 Q. You didn't do that, did you?

13 A. That's correct.

14 Q. I take it that you will not be coming to
15 court in Greenville, Georgia. Is that right?

16 A. Most likely not. It would be very
17 difficult.

18 Q. Okay. I'll ask you all my questions now
19 since it doesn't appear from what you've said likely
20 that you'll be in court.

21 We're here in Atlanta taking this
22 deposition, right?

23 A. Yes.

24 Q. Now, you have a plane for when you have to
25 leave Atlanta, right?

1 A. I have a small plane I use, yes.

2 Q. And you use that to travel to cases?

3 A. I use it for a lot of things. I use it
4 for Angel Flights, I use it to fly on vacation, I use
5 it just to fly around for fun. I usually don't charge
6 when I fly somewhere.

7 Q. And you use it to travel for cases, don't
8 you?

9 A. Sure, rather than drive. I mean, I fly
10 for fun. I don't charge for my time when I fly.

11 Q. I'll ask you more about charging for your
12 time a little bit later. Well, let's get to it now.

13 You have done a whole lot of these legal
14 reviews, haven't you?

15 A. Yes.

16 Q. You've made a whole lot of money doing
17 these legal reviews for defense lawyers and insurance
18 companies; isn't that right?

19 A. It depends on your definition of a lot. I
20 think it's a lot, yes.

21 Q. And they keep hiring you because you keep
22 telling them what they want to hear; isn't that true?

23 A. Sometimes I don't tell them what they want
24 to hear, but they do keep hiring me, yes.

25 Q. The insurance companies keep sending

1 business to you; isn't that right?

2 MS. FISHEL: Objection.

3 THE WITNESS: They do send cases, yes.

4 Q. (By Mr. Butler) And that's business to
5 you, right?

6 A. It's business, yes.

7 Q. They've hired you over and over again?

8 A. Sometimes. Sometimes they only hire me
9 one time.

10 Q. Well, isn't it true that you've conducted
11 over 2,000 of these legal reviews?

12 A. I think that's probably fair, yes.

13 Q. And isn't it also true that 98 percent of
14 the time your legal reviews have been done for an
15 insurance company, a lawyer working for an insurance
16 company, or a defendant in a personal injury case?

17 MS. FISHEL: Same objection.

18 THE WITNESS: In terms of the number of
19 cases, that would be correct.

20 Q. (By Mr. Butler) I'm going to ask it a
21 different way because of the objection.

22 Isn't it true that 98 percent of the time
23 your legal reviews have been done on behalf of a
24 defendant in a personal injury case?

25 A. Well, what I usually say is greater than

1 95 percent has been at their request. In terms of
2 actual testimony, it's maybe 99 percent of the times
3 I've been asked to testify. I usually don't get asked
4 to testify when I find an injury.

5 Q. Well, let me show you a transcript and
6 this will be from a case called Curtis against
7 Whitney. I've only got two copies so I'm going to
8 have to review it before I hand it to you. I've given
9 one to your lawyer.

10 MS. FISHEL: I'm going to object to
11 relevance.

12 MR. BUTLER: Okay.

13 Q. (By Mr. Butler) The first thing I'll ask
14 you is, isn't this transcript from the State Court of
15 Cobb County here in Georgia?

16 A. That's what it says, yes.

17 Q. And, in fact, if you open it up, you'll
18 see that it's your testimony?

19 A. Well, I'll take your word for it, sure.

20 Q. All right. Go to Page 30, please.

21 A. Okay.

22 Q. Look at Page 30, Line 17, and please read
23 for us Page 30, Line 17, to 31, Line 3.

24 MS. FISHEL: Again, I'm going to object to
25 relevance. This is a different case, has nothing

1 to do with the facts at issue in this case. It's
2 a completely different accident, a completely
3 different injury.

4 THE WITNESS: Line 17?

5 Q. (By Mr. Butler) Page 30, Line 17, to
6 Page 31, Line 3.

7 A. Okay. So this is a question. "Well, in
8 fact, of the 2,300 reviews you've done over your
9 career, 98 percent of them have been for a defendant
10 in a personal injury case or an insurance company or a
11 lawyer for an insurance company; isn't that correct."
12 And then my answer was, "You guys always ask me
13 questions differently. I have to think a minute.
14 You're talking about personal injury?" "Yes." I go,
15 "Okay. Yes."

16 And then the question was, "I want to make
17 sure I ask it right. Yeah." And I go, "Yes, in gross
18 numbers of cases that would be correct."

19 Q. All right, thank you. Now, you actually
20 read a little snippet in there I was going to ask you
21 about anyway.

22 At that time you estimated you'd done
23 2,300 of these legal reviews; is that right?

24 A. Right.

25 Q. And that was when, I think December of

1 2013 maybe?

2 A. Correct.

3 Q. All right. How many have you done since
4 then?

5 A. No way of knowing. The number I recently
6 gave was maybe 2,500. I mean, the number I don't
7 know, it's just a guess, 2,500, so I'll say 2,500 now.

8 Q. You said a minute ago when the defense
9 lawyer was asking you questions that about one-third
10 of the time these things went to testimony. Do you
11 recall saying that?

12 A. I think so. I think so on average, yeah.

13 Q. So if you've done 2,500 of these legal
14 reviews, that would mean you've testified something
15 like 833 times?

16 A. It's probably not that high. I think it's
17 more like maybe around 600. That's a number I put
18 out. It may be higher. Again, I don't know.

19 Q. Well, 2,500 divided by three would be a
20 little over 833. Do you agree?

21 A. You're trying to put precise numbers to
22 something that is based upon an estimate, so anything
23 I say may be wrong. I'll say -- I'll agree to
24 whatever you want. It doesn't really matter to me.
25 If you want to say a third, then 800, fine, it's 800,

1) but I don't know that and I'm going to say in front of
2) the jury I don't know if that's true or not.

3) Q. One-third of 2,500 is 833. That was the
4) question I asked you. Do you agree?

5) A. Well, I'll agree with the math, yes. It's
6) actually 833-1/3.

7) Q. We talked about money earlier and I think
8) you agreed that you've made a bunch of money doing the
9) legal reviews; is that right?

10) A. I've made quite a bit, yes.

11) Q. What do you charge per hour?

12) A. I think I said earlier \$450 an hour.

13) Q. Isn't it true you've charged as much as
14) \$1,000 per hour?

15) A. Yes, when I get called to trial and
16) another radiologist has to cover. Remember, I can't
17) just close an office like many of the clinicians can,
18) so when I get called in trial I have to pay another
19) radiologist to cover me, so you're really paying two
20) people. You're only paying me the \$500 an hour.

21) Q. So that's when you charge a thousand
22) dollars an hour?

23) A. Well, my group charges it. You're paying
24) my group for that time.

25) Q. Isn't it true that you've made over

1 \$2 million doing these legal reviews like you're doing
2 here today?

3 A. Over 28 years, yeah.

4 Q. Actually, it was \$2 million as of 2011;
5 isn't that right?

6 A. If that's what the numbers add up to. I
7 mean, I don't keep track of that.

8 Q. Well, if I tell you that's what you
9 testified --

10 A. Then I'll agree to it if I testified to
11 it. I don't know what it's based on, I don't recall,
12 but if I said that, fine.

13 Q. Okay. How much money have you made doing
14 these legal reviews for defense lawyers since 2011?

15 A. Maybe -- since 2011 maybe \$800,000 or
16 \$900,000 maybe.

17 Q. Okay.

18 A. You have to understand those numbers
19 include everything. It includes medical malpractice
20 when I do plaintiff's cases, cases where I do Medicare
21 fraud for the federal government, and cases for the
22 state, so it's not just personal injury, the dollar
23 amounts.

24 Q. We talked about that 98 percent earlier,
25 right?

1 A. No. You talked about 98 percent of
2 personal injury cases. Now you're talking about the
3 money. The money also includes testimony I do for the
4 federal government, the state, and personal -- and
5 medical malpractice cases. The money is not separated
6 out.

7 Q. All right. Well, let me ask you this.
8 Do you have any reason to disagree with
9 the personal injury legal reviews netting in 2012
10 approximately \$164,000?

11 A. Probably. If that number is my yearly
12 amount, there's all sorts of other stuff in there. I
13 don't break it down.

14 Q. Do you have any reason to disagree with
15 \$288,000 in 2013?

16 A. If you're saying it's based on personal
17 injury, yes.

18 Q. Do you any reason to disagree with
19 \$297,000 in 2014?

20 A. If you're saying it's based upon personal
21 injury alone, yes, because it includes everything.

22 Q. Did it keep going up after 2014? I don't
23 have your figures for 2015.

24 A. It went down 2015, I think. I think the
25 final tax return will be less than it was for the year

1 before. It goes up and down.

2 Q. Well, while we're talking about money,
3 isn't it true that your job here and the reason you've
4 been hired in this case is to keep [REDACTED] from
5 getting much money?

6 A. I have no idea what the basis of the case
7 is. My job -- the American College of Radiology is
8 very specific about the purpose of an expert witness.
9 My job is to educate the jury as to what the films
10 show and then they will make the decision if that's
11 relevant or not. I'm just telling them this is what
12 the x-ray shows.

13 Q. Well, now, you just spent a lot of time
14 talking with the defense lawyer about how this wreck
15 didn't cause the injury. You remember that, right?

16 A. That's the same thing I'd tell the ER
17 doctor. If I saw these films I'd say there's no
18 injury on this film. The exact same thing I'm telling
19 the jury I'd tell the ER.

20 Q. You do remember saying that the wreck
21 didn't cause the knee injury. You remember that,
22 right?

23 A. Well, there's no injury there. That's the
24 whole point.

25 Q. You do remember saying that?

1 A. Yes.

2 Q. And the point of that -- you've testified,
3 I think we've said, 800-something times, somewhere in
4 that neighborhood?

5 A. Probably. I mean, it's the best guess we
6 can give, sure.

7 Q. You know why the defense lawyer wants you
8 to say that, don't you?

9 A. I know what they want me to say. That
10 doesn't mean I'm going to say it.

11 Q. You know the reason is so the jury won't
12 award much money to [REDACTED]. You know that's the
13 whole goal here, don't you?

14 A. Well, I also know that you want to say
15 what you're saying so they'll award money. I mean,
16 it's a silly question. I mean, I understand that,
17 sure.

18 Q. And those are the folks who keep hiring
19 you, right?

20 A. They ask me to review the cases, yes.

21 Q. Over and over again, right?

22 A. Yes.

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[illegible]

[illegible]

1|

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[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

1 Q. You said when the defense lawyer was
2 asking you questions that you had -- and I think I
3 made this exact quotation, I may have written it down
4 wrong -- "no opinion on the medical treatment per se"?

5 A. Correct. I'm not a surgeon.

6 Q. What does that mean? What did you mean
7 when you said that?

8 A. Exactly what it is. If the surgeon says
9 he feels he should operate for this and it will help
10 her, then that's his decision. I have no opinion upon
11 that.

12 Q. So you have no quarrel with Dr. Bruce's
13 decision to conduct a surgery in this case, in other
14 words?

15 A. No. She's already had a knee replacement
16 on one side which worked quite well. It makes perfect
17 sense she'll have one on the other side. She opted to
18 go for an arthroscopy instead, which I found
19 interesting, but that was her choice.

20 Q. Now, you know Dr. Bruce is the doctor who
21 has tried to help [REDACTED], don't you?

22 A. Yes.

23 Q. I mean he's the doctor who put his hands
24 on her and talked with her and provided the treatment
25 that he thought was best, right?

1 A. Correct. That's his job. He's the
2 treating physician.

3 Q. Now, do you know -- did you know that
4 Dr. Bruce has said that in 2011, that is, before this
5 2012 car crash, [REDACTED] did not have a torn
6 meniscus?

7 A. Well, he didn't do an MR scan before that
8 date so he had no way of knowing. He can say that --

9 Q. That's wasn't my question.
10 Did you know that Dr. Bruce said that in
11 2011 before this car crash [REDACTED] did not have a
12 torn meniscus?

13 A. I was not aware of that, but, as I said,
14 he has no way of knowing that. He never did an MR.
15 He didn't look.

16 Q. Did you know that Dr. Bruce said that
17 before this wreck injections were sufficient to handle
18 [REDACTED] right knee problems?

19 A. I remember reading she was getting
20 injections.

21 Q. Did you know that Dr. Bruce has said that
22 after this wreck injections were no longer sufficient
23 to handle [REDACTED] right knee problems on an
24 ongoing basis?

25 A. I think he said that after the second

1 wreck, not the first wreck.

2 Q. Did you know he said that about the first
3 wreck, the September wreck that we're here about
4 today?

5 A. I'm not aware of that, no.

6 Q. Did you ever call up to ask him?

7 A. No. There would be all sorts of HIPAA
8 violations if I did.

9 Q. You reviewed all the medical records,
10 right?

11 A. Because they're given to me with the HIPAA
12 clearance, but for me to call Dr. Bruce and ask him to
13 talk about his patient, he wouldn't be allowed to do
14 that so I don't waste my time.

15 Q. Did you ask for a HIPAA clearance to talk
16 to Dr. Bruce?

17 A. In terms of reading the films I don't need
18 it, sir.

19 Q. Did you ask?

20 A. No, I did not.

21 Q. You talked about the emergency room when
22 the defense lawyer was asking questions -- asking you
23 questions, right?

24 A. Yes.

25 Q. Now, you talked about what happened in the

1 emergency room. Do you remember talking about that?

2 A. I only read the part from the report. I
3 didn't really talk much about what happened.

4 Q. Well, you said that there was no x-ray
5 done of the right knee in the emergency room and for
6 that reason there must not have been any right knee
7 injury. Do you remember saying that?

8 A. I said most likely that's correct.

9 Q. In fact, you said you knew that because
10 the doctors in that emergency room were
11 "spring-loaded"?

12 A. Yes.

13 Q. Who were the doctors in that emergency
14 room?

15 A. Doctors in the emergency room, that's the
16 way they are. Now, I don't know that personal doctor;
17 of course not.

18 Q. You don't know -- you don't have any idea
19 who those doctors were, do you?

20 A. That's correct.

21 Q. In fact, you suggested to the jury when
22 the defense lawyer was asking you questions that
23 [REDACTED] did not report right knee pain when she
24 was at West Georgia Health. Do you remember saying
25 that?

1 A. To the doctor, yes.

2 Q. Well, let me show you a record here. This
3 is one that the defense lawyer did not go over with
4 you but it's in the stack that she handed me and I'm
5 going to mark it as Plaintiff's Exhibit B.

6 (Patient's Exhibit B was marked.)

7 Q. (By Mr. Butler) Now, this record is from,
8 and I've highlighted it here, September 17, 2012. Is
9 that right?

10 A. Yes.

11 Q. And then it goes on to say, doesn't it, on
12 the other side -- I've highlighted this, too --
13 "Patient reports right shoulder and right knee pain
14 post MVC that occurred approx three hours ago."

15 Did I read that correctly?

16 A. Yes. I think that's a nursing note.

17 Q. Yeah. And MVC, that stands for motor
18 vehicle collision, doesn't it?

19 A. Correct, yes.

20 Q. Now, we'll rip that page out. I've marked
21 it as Plaintiff's Exhibit B for the record and I'll
22 put it in the court reporter's stack here.

23 I want to show you some other records that
24 the defense lawyer went over with you and we'll do
25 these pretty fast. I'm going to keep the highlighting

1 that was already in the documents.

2 The first record I'm going to show you is
3 from December 30 of 2010. I've circled that here,
4 right?

5 A. Okay.

6 Q. That would be before this car wreck
7 obviously?

8 A. Yes.

9 Q. And it says here, "The patient is here
10 today with complaints of bilateral knee pain, worse on
11 the left than on the right."

12 A. Yes.

13 Q. Did I read that correctly?

14 A. Yes.

15 Q. Okay. Bilateral means both knees, right?

16 A. Yes.

17 MR. BUTLER: That's going to be
18 Plaintiff's [Exhibit](#) C.

19 (PPlaintiff's [Exhibit](#) C was marked.)

20 Q. (By Mr. Butler) All right. I'm going to
21 show you another record. This is from August 8th,
22 2013, right? I've circled that. Do you see that?

23 A. Okay.

24 Q. That would be after this wreck, of course,
25 correct?

1 A. Yes.

2 Q. And here it says that [REDACTED]
3 "presents complaining of right knee pain of about a
4 month duration. She was in an MVA on September 9,
5 2013" --

6 MS. FISHEL: I have to correct you. I
7 believe that record says July 9th of 2013.

8 MR. BUTLER: You are correct. Well,
9 strike that.

10 Q. (By Mr. Butler) You talked with the
11 defense lawyer about the police report. Do you
12 remember that?

13 A. Yes.

14 Q. What are you doing with the police report?

15 A. The police report gives me the mechanism
16 of injury, whether airbags went off, which gives me
17 some idea of force if they do go off, and whether
18 there's a complaint of injury at the time.

19 Q. You mentioned mechanism of injury. Tell
20 us what you know about the mechanism of injury in this
21 case.

22 A. Well, it was an impact to the right rear
23 quarter panel which means that she was subjected to a
24 slight rotational force -- I'm not sure how to
25 describe it -- in a clockwise manner.

1 Q. Where was her right leg when this
2 collision occurred?

3 A. Probably attached to her pelvis. I have
4 no idea. I'm assuming it was placed over the
5 accelerator pedal.

6 Q. Why do you assume it was placed over the
7 accelerator pedal?

8 A. If she's driving the vehicle I don't know
9 where else that leg would be. Now, if she's a
10 passenger, it was probably in the foot well. She may
11 have had it raised. I mean, I have no idea.

12 Q. Do you know whether she was the driver or
13 the passenger?

14 A. Not that I recall. I'd have to look at --

15 Q. So you don't know whether her foot was on
16 the accelerator, on the floorboard, hanging loose, or
17 on the brake pedal?

18 A. That's correct.

19 Q. Now, if [REDACTED] says that she had pain
20 in her right knee after this 2012 wreck that she did
21 not have before this 2012 wreck, are you telling the
22 jury that she's lying?

23 A. I have no way to assess that.

24 Q. In fact, you said a few times you have no
25 way to evaluate the pain at all?

1 A. That's correct.

2 Q. Now, pain's important, isn't it?

3 A. Can be, sure.

4 Q. It's not pleasant to live with pain, is

5 it?

6 A. No, it's not.

7 Q. That's a part of this law case, isn't it?

8 A. I had assumed we're looking for injuries

9 but pain is part of that, yes.

10 Q. Pain is something people don't like to

11 have to endure; isn't that correct?

12 A. There are exceptions, but you are correct.

13 The vast majority of normal people do not like pain.

14 Q. Do you have any reason to suggest that

15 [REDACTED] likes the pain in her right knee?

16 A. Clearly not. She's having a lawsuit.

17 MR. BUTLER: Thank you. No further

18 questions.

19 MS. FISHEL: Give me just a minute. I

20 have a couple. Off the record.

21 THE VIDEOGRAPHER: Off the record.

22 (Off the record.)

23 THE VIDEOGRAPHER: Book the record.

24 ///

25 ///

1 REDIRECT EXAMINATION

2 BY MS. FISHEL:

3 Q. All right, Dr. Jeffries. These again are
4 the records from Dr. Bruce at Southern Orthopedics. I
5 have just handed you a stack of them. I believe it
6 is -- you can go through and look -- it's the records
7 from 2010 all the way until 2011.

8 A. They keep moving the dates around on me.
9 Hold on just a minute. Actually -- well, where is the
10 date on this thing. Yes, 8/9/11.

11 Q. And is there any --

12 A. I'm sorry. I have one that goes to
13 9/30/11 as well.

14 Q. Okay. And all those records that you have
15 there, do they reference -- do they reference
16 bilateral knee pain?

17 A. They mainly reference left -- right knee
18 pain. The earlier one is bilateral. Then after the
19 surgery mainly it's the right knee.

20 Q. The left knee or the right knee?

21 A. Well, before surgery -- let's see. Worse
22 on the left. So before -- she had surgery on the left
23 knee but she had pain in both knees. Then after she
24 had the surgery on the left knee, she then had mainly
25 right knee pain.

1 Q. Okay.

2 A. And the records state she was doing well
3 with the right knee and had some left knee -- I get
4 confused; the other knee pain.

5 Q. Okay. And if this accident was in
6 September of 2012, all of those records that you have
7 right now, they predate that accident?

8 A. Except for the ones in -- yes, they all
9 predate.

10 Q. Okay. I'm going to hand you another part
11 of those medical records that is dated April 30th of
12 2013.

13 A. Okay.

14 Q. And, again, as the accident in this case
15 happened in September of 2012, that record right there
16 would be from a visit after the accident in September
17 of 2012?

18 A. Yes. It's dated April 30th.

19 Q. If you could please tell me what the chief
20 complaint and the present impression of the patient
21 says on that report.

22 A. The chief complaint is just a follow-up of
23 her left knee surgery so it's really not a complaint.
24 It's just a follow-up.

25 Q. Does that record indicate that she's

1 having any right knee problems?

2 A. No. They mention that "The patient
3 reports she was doing well. She denied any pain in
4 her knee. She's doing normal activities and using a
5 cane for ambulation."

6 Q. Okay.

7 A. Then under the "Impression" they said,
8 "Osteoarthritis of the left knee status post total
9 knee replacement." There's no mention of anything
10 relative to the right knee.

11 Q. And the date of that record was again?

12 A. April 30th, 2013.

13 Q. Okay. And I'm going to hand you a couple
14 of records now. Again, these are from the same
15 records from the same orthopedic, Dr. Bruce.

16 What is the date on that first one?

17 A. This would be August 8th, 2013.

18 Q. Okay. If you'll please read for me what
19 it says there in the chief complaint or the impression
20 of the patient.

21 A. Well, the chief complaint would be right
22 knee pain. Then the description was, "She presents
23 complaining of right knee pain of about a month
24 duration. She was in an MVA on 7/9/13. X-rays were
25 taken in the ER. Complains of persistent anterior

1 knee pain. The pain is worse with weight-bearing."

2 Q. And the next date of visit there, what is
3 the date of that one?

4 A. This one is dated September 10th, 2013.

5 Q. Okay. And, again, if you'll just read for
6 me the chief complaint and the doctor's impressions of
7 why she's there.

8 A. The chief complaint is still right knee
9 pain. "She was seen initially a month ago after an
10 MVA on 7/9/13. X-rays from the ER demonstrated no
11 fracture but she did have moderate degenerative
12 changes present."

13 Q. Okay. And the next date of the record?

14 A. This is September 13th, 2013.

15 Q. Okay. And if you'll again tell me what
16 she's presenting to Dr. Bruce that day for.

17 A. Apparently it's to evaluate MRI results.
18 "She has persistent right knee pain since a motor
19 vehicle accident on 7/9/13. Her x-rays demonstrate no
20 fracture but or some degenerative changes." I guess
21 that's a typo. "Pain is not improved with
22 conservative measures including Depo-Medrol and
23 exercises."

24 Then under his impression -- well, he then
25 goes on to, "MR films and report are reviewed.

1 There's a tear of the lateral meniscus and possible
2 medial meniscus tear. Degenerative changes to the
3 medial and lateral compartments, worse in the
4 trochlear groove." And his impression was lateral
5 meniscus tear and osteoarthritis of the knee.

6 Q. Okay. And all of the records that you
7 have there are from either before the accident in 2012
8 and then after a subsequent accident in 2013. Do any
9 of those records, if you'll -- again, if you need to
10 flip through them, please do -- do any of those
11 reference an accident in September of 2012?

12 A. No, they do not.

13 Q. Does it appear to you based on the review
14 of Dr. Bruce's records that he treated her at all for
15 any injury resulting from an accident in 2012?

16 A. Not based on his reports, no -- on his
17 records, no.

18 Q. Okay. Thank you. I'm going to hand
19 you -- again, these were already placed in evidence
20 when Dr. Bruce testified. This is the operative
21 report from a surgery he subsequently performed on --
22 I believe it's Defendant's Exhibit 2 already. If
23 you'll just tell me what he describes as the cause or
24 the reason that she needed surgery.

25 MR. BUTLER: Hang on just a second. Do I

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But only in the modern era where we've had CT and MR have we been able to look inside a patient to see what's really going on and, as a result, there are many times physical examination, clinical history is totally irrelevant.

I find things that are totally unexpected. The example I usually give is the situation of a guy who was involved in a motor vehicle collision and clinical history, physical examination, everybody was saying it was related to the accident. The guy had a fracture, et cetera, et cetera.

They gave me the films an hour -- I'm sorry, a year and a half after all of this had been going on, asked me to look at it and say would I settle once and for all was there a fracture and my -- after looking at the film it didn't take me long to call the guy up and say, look, we've got a real problem here. First of

1 all, the guy does have a fracture but the problem
2 is the reason he has a fracture, he has a cancer
3 that everybody's missed and that's what caused
4 the fracture.

5 So what I'm saying is in spite of all that
6 history and all the physical exam and all the
7 stuff these people did, the imaging study showed
8 what was really wrong with him and so I see this
9 all the time. Every patient that comes in the
10 emergency room complains of an injury. It's my
11 job to say whether they do or don't have an
12 injury. I'm actually looking at them.

13 What they tell me is irrelevant. If they
14 say I have no pain and I see a fracture, I'm
15 going to say there's a fracture. If they say I
16 have pain and I don't see a fracture, I'm going
17 to say there's no fracture. I mean, that's my
18 job.

19 Q. (By Ms. Fishel) Okay. Plaintiff's
20 counsel asked you a couple of questions about
21 testifying on behalf of the defense and presenting
22 testimony at trial. Do you also testify for other
23 people? Do other people besides defense attorneys
24 hire you?

25 A. Yes.

1 Q. And you mentioned the state, the federal
2 government?

3 A. And some plaintiff's cases as well.

4 Q. Okay. And even though you're testifying
5 on behalf of the defendant today, as you just stated,
6 you do have -- you have testified on behalf of a
7 plaintiff before?

8 A. At their request, yes.

9 Q. Okay. And do you ever have occasion when
10 you are asked to review evidence on behalf of a
11 defendant and you come to a conclusion that is
12 unfavorable to the defendant?

13 A. Yes.

14 Q. And in those situations are you still paid
15 by the defense for your time?

16 A. Yes. I mean, whether I get paid is
17 irrelevant upon my findings. I mean, that's a
18 condition of me doing the review. I mean, I don't do
19 a lien, I don't do a -- obviously I don't do a
20 contingency fee. I just charge by the hour.

21 Q. Okay. And have I ever taken your
22 deposition before?

23 A. No. This is the first time we've met.

24 Q. And has my co-counsel, Michael Moore, ever
25 taken your deposition before?

1 A. No.

2 Q. All right. Just a couple of more
3 questions. I want to get back to the medical reason
4 that we're here today, the important stuff.

5 Based on your experience and the review of
6 the records and films, do you have an opinion as to
7 the reasonable degree -- with a -- excuse me. Let me
8 rephrase that.

9 Based on your experience and your review
10 of these records and films, do you have an opinion to
11 a reasonable degree of medical certainty as to the
12 cause of [REDACTED] cervical spine pain or her neck
13 pain?

14 A. Yes.

15 Q. And what is that opinion?

16 A. She has arthritis of the neck and that can
17 cause pain.

18 Q. Okay. And based on your experience and
19 your review of the records and films in this case, do
20 you have an opinion to a reasonable degree of medical
21 certainty as to the cause of [REDACTED] right knee
22 pain?

23 A. Yes.

24 Q. What is that opinion?

25 A. She has arthritis of the knee and that can

1 cause pain.

2 Q. Okay. And, Dr. Jeffries, do you have an
3 opinion as to whether the accident that occurred on
4 September 12th -- September 17th, 2012, caused any of
5 the problems you observed when you looked at the MRIs
6 of [REDACTED] neck and right knee?

7 A. I do have an opinion, yes.

8 Q. And what is that opinion?

9 A. There are no findings on the film to
10 suggest they were related to a trauma.

11 Q. Okay. And having reviewed the medical
12 records and films of [REDACTED], are the opinions and
13 findings that you have given today, are they based on
14 a reasonable degree of medical certainty?

15 A. Yes. That's how I would have read the
16 studies if they were presented to me without a history
17 of an accident.

18 MS. FISHEL: Okay. Thank you. That's all
19 I have.

20 RE CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. The defense lawyer asked you some
23 questions about a collision that occurred on July 9,
24 2013. Do you remember those questions?

25 A. Yes.

1 Q. And then went through a bunch of records
2 that she specified were from either before the 2012
3 collision that we're here about today or from after
4 the 2013 collision from July of that year, right?

5 A. Yes.

6 Q. Now, there is a record from between those
7 times, right?

8 A. I guess.

9 Q. That's all right. I'll show it to you.
10 There was an MRI taken in January of 2013, right?

11 A. Yes.

12 Q. And that MRI concluded that there was a
13 tear in [REDACTED] meniscus; isn't that right?

14 A. Yes.

15 Q. Now, the defense lawyer asked you some
16 questions about working for plaintiffs. Do you
17 remember those questions?

18 A. Yes.

19 Q. Isn't it true that in 25 years of
20 testifying only twice have you said an injury was
21 caused by the collision?

22 A. When I've testified. It's actually
23 probably about four times now. But in terms of -- in
24 the times when I have found an injury usually they
25 settle the case so I didn't testify.

1 Q. I'm going to ask you --

2 A. The cases that I'm referring to, I'm
3 talking about that's when I was retained by the
4 plaintiff when they asked me to testify about that.

5 Q. Well, we'll just read the testimony. I'll
6 go back to that Crisp against Whitney case where you
7 testified in front of that jury up in Cobb County.

8 MS. FISHEL: Again, same objection; that
9 it's a different case, it's different facts,
10 different injury, has nothing to do with the
11 reason we're here today. Relevance.

12 Q. (By Mr. Butler) Now, I'll ask you to read
13 with me as I read this. I'm going to read Page 30,
14 Line 9, to Page 30, Line 12.

15 Question: "In over 25 years you have
16 testified that an injury" -- strike that.

17 Question: "In over 25 years, two times
18 you have testified that an injury was related to a
19 collision?"

20 Answer: "They usually don't send me the
21 films when they know there's been injury, that's
22 correct."

23 Did I read that correctly?

24 A. Yes. I'll stand by that. The answer is
25 actually about four now.

1 MR. BUTLER: Still no further questions.

2 MS. FISHEL: I just have one follow-up
3 question. If you'll hand me that MRI report
4 there that you just referred to.

5 FURTHER DIRECT EXAMINATION

6 BY MS. FISHEL:

7 Q. That's the MRI report that he referred to
8 just a few minutes ago that happened after the
9 accident in September of 2012. The MRI was taken in
10 January of 2013; is that correct?

11 A. Yes.

12 Q. Okay. And as you just indicated, it does
13 show that there is a meniscus tear; is that correct?

14 A. Yes.

15 Q. Okay. And do you have an opinion as to
16 whether that tear was caused by trauma or was it
17 caused by degenerative arthritis?

18 A. It's usually degenerative arthritis. I
19 mean, meniscal tears are almost always going to be
20 related to arthritis.

21 MS. FISHEL: Okay. That's it. No further
22 questions.

23 MR. BUTLER: Nothing further.

24 THE VIDEOGRAPHER: Off the record.

25 (Deposition concluded at 11:45 a.m.)

1 (Pursuant to Rule 30(e) of the Federal
2 Rules of Civil Procedure and/or O.C.G.A. 9-11-30(e),
3 signature of the witness has been waived.)

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1 CERTIFICATE OF COURT REPORTER

2

3 STATE OF GEORGIA:

4 COUNTY OF FULTON:

5

6 I hereby certify that the foregoing
7 transcript was reported as stated in the caption and
8 the questions and answers thereto were reduced to
9 writing by me; that the foregoing 78 pages represent a
true, correct, and complete transcript of the evidence
given on Friday, March 18, 2016, by the witness, Barry
F. Jeffries, M.D., who was first duly sworn by me.

9

10 I certify that I am not disqualified
11 for a relationship of interest under
12 O.C.G.A. 9-11-28(c); I am a Georgia Certified Court
13 Reporter here as an independent contractor of
14 JPA Reporting, LLC who was contacted by
15 Brandi E. Fishel to provide court reporting services
16 for the proceedings; I will not be taking these
17 proceedings under any contract that is prohibited by
O.C.G.A. 15-14-37(a) and (b) or Article 7.C. of the
Rules and Regulations of the Board; and by the
attached disclosure form I confirm that neither I nor
JPA Reporting, LLC are a party to a contract
prohibited by O.C.G.A. 15-14-37(a) and (b) or
Article 7.C. of the Rules and Regulations of the
Board.

17

18 This 18th day of March, 2016.

19

20

21

LISA A. MESSINA
CERTIFIED COURT REPORTER
GEORGIA CERTIFICATE NO. CCR-A-421

23

24

25

1 DISCLOSURE OF NO CONTRACT

2

3 I, Lynn Pyles, do hereby disclose pursuant
4 to Article 10.B of the Rules and Regulations of the
5 Board of Court Reporting of the Judicial Council of
6 Georgia that JPA Reporting, LLC was contacted by the
7 party taking the proceedings to provide court
8 reporting services for these proceedings and there is
9 no contract that is prohibited by O.C.G.A. 15-14-37(a)
10 and (b) or Article 7.C. of the Rules and Regulations
11 of the Board for the taking of these proceedings.

12 There is no contract to provide reporting
13 services between JPA Reporting, LLC or any person with
14 whom JPA Reporting, LLC has a principal and agency
15 relationship nor any attorney at law in this action,
16 party to this action, party having a financial interest
17 in this action, or agent for an attorney at law in
18 this action, party to this action, or party having a
19 financial interest in this action. Any and all
20 financial arrangements beyond our usual and customary
21 rates have been disclosed and offered to all parties.

22 This 18th day of March, 2016.

23

24

25

LYNN PYLES, FIRM REPRESENTATIVE
JPA REPORTING, LLC

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