06-563 CD Carlson vs Alajaji

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2006-563-CD

Issue No.

MOTION TO STRIKE CERTAIN PORTIONS OF THE TRIAL DEPOSITION OF MARK A. PIASIO, M.D.

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for This Party:

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FILED No cc
m/11:40cm
JAN 24 2008
William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO STRIKE CERTAIN PORTIONS OF THE TRIAL DEPOSITION OF MARK A. PIASIO, M.D.

NOW COMES DuBois Regional Medical Center, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion to strike certain portions of the trial deposition of Mark A. Piasio, M.D.

1. The deposition of Mark A. Piasio, M.D. was taken for use at trial on January 22, 2008. Dr. Piasio is a specialist in orthopedic surgery. After a complete examination of the patient, Dr. Piasio reached a differential diagnosis which included giant cell carcinoma and referred the patient for further care by Kenneth Yaw, M.D., an oncological surgeon. Prior to his deposition, Dr. Piasio's office notes were available to all counsel, as well as a brief letter which he had written to plaintiffs' attorneys. Dr. Piasio noted in the letter that he was no longer involved in the patient's care. During Dr. Piasio's deposition, there were several inappropriate areas of questioning or testimony, which should be stricken from the transcript, as set forth below.

2. The deposition transcript is filled with many questions which went unanswered because of objections. These questions should be stricken from the transcript. Similarly, the colloquy between counsel should be stricken from the transcript.

3. Sometime ago, plaintiffs' attorney had sent to Dr. Piasio certain of the expert reports in this case. Near the time of Dr. Piasio's deposition, he had been provided with additional expert reports by Dr. Alajaji's counsel. Dr. Piasio had rendered no reports expressing any opinions concerning either the patient's care subsequent to his involvement, or any opinions about the experts being proffered by either side.

45. During the deposition, Dr. Piasio was questioned extensively about the expert reports that he had received and, most importantly, he was then asked to render opinions concerning the appropriateness of the surgical procedures performed by Dr. Yaw.

5. None of the questioning concerning the reports which Dr. Piasio received bears any relevance to the issues in this case.

6. Dr. Piasio testified repeatedly throughout his deposition that he referred the patient to Dr. Yaw because Dr. Yaw was one of only two oncological orthopedic surgeons in the area. He made it plain that he, Dr. Piasio, does not perform surgery on orthopedic tumors and that oncological surgical referrals are required. He also testified that in all of his years of practice, he had never before encountered a person with a giant cell tumor on their wrist. Prior to the deposition, Dr. Piasio had authored no report commenting in any way on the treatment or care provided by Dr. Yaw.

7. Therefore, any testimony by Dr. Piasio concerning the treatment and care of Dr. Yaw, and whether or not it was appropriate, should be stricken from the transcript. Such testimony is beyond Dr. Piasio's qualifications and, also, exceeds the scope of his report.

8. Dr. Piasio was then asked several questions to which there were answers and no objections, so these questions should be stricken from the transcript. However, the following substantive testimony on the same subject should also be stricken:

> "Q: Okay. And is Dr. Yaw in a better position than you would be to determine her current disability?
>
> [Objections]
>
> A: Yes I believe so."

(Transcript at 31). Thereafter, Dr. Piasio was questioned at length about the procedure performed by Dr. Yaw. A number of the questions beginning at Page 40 were not answered and, therefore, should be stricken from the transcript. Those questions and answers which should be stricken include the following:

> "Q: What I'm asking you is we have got this guy Schmidt saying Yaw did the wrong surgery, he's accusing him of malpractice –
>
> [Objections]
>
> A: I can answer the question to the level of my training. It is my understanding that both of those procedures are surgical alternatives for the tumor at hand. I cannot tell you which is the preferable procedure in the literature or which is better in any one particular surgeon's hands. Generally the best procedure is the one you do best and – but I do know that both are accepted procedures for that tumor."

[Additional objections]

9. All of the unanswered questions and the colloquy between counsel should be stricken from the record.

10. Similarly, Dr. Piasio was asked to render his opinion on whether or not Dr. Yaw was in a better position to determine the patient's present status or to describe her disability. Such testimony was solicited at Pages 29 and 30 of Dr. Piasio's deposition. Such testimony should be stricken because:

(a) There is no proper foundation for it insofar as Dr. Piasio has no first hand knowledge of Dr. Yaw's knowledge concerning the patient's present status or disability.

(b) The opinions of Dr. Piasio on this issue or whether he is "comfortable" with having Dr. Yaw answer these questions is irrelevant.

(c) Implicitly, the questions were an effort to have Dr. Piasio vouch for the credibility of Dr. Yaw, without any proper foundation for doing so.

11. Another area in which Dr. Piasio's testimony should be precluded is with regard to his "discomfort" at being involved in this case and his "opinion" that the case "should settle." Such testimony was elicited at Page 145 of his deposition, and should be stricken. These matters are not relevant nor probative of any issue. In fact, the questions were posed by plaintiffs' attorney, who proffered Dr. Piasio as his witness. Plaintiffs' attorney, therefore, should be able to seek to discredit Dr. Piasio. Finally, Dr. Piasio's opinions regarding whether or not the case "should settle" lack foundation – insofar as he is not aware of the dynamics of settlement, including the fact that a substantial settlement

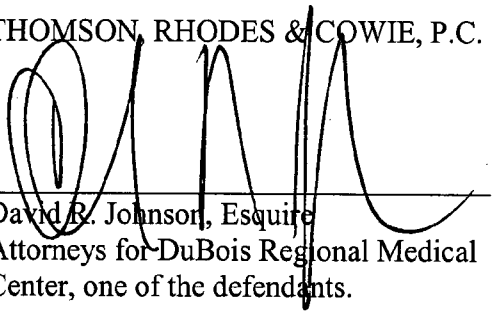
offer has already been made. Dr. Piasio's opinion on the subject of settlement is irrelevant, and the testimony of Dr. Piasio with regard to this issue would be unduly and unfairly prejudicial to the defense.

12. During the deposition, plaintiffs' attorney sought to introduce into evidence certain of the exhibits which had been marked. Counsel objected on the grounds that even though certain medical records are considered by witnesses and displayed during the trial, they may not be appropriate as "exhibits" which would be submitted to the jury. Plaintiffs' counsel agreed that defense counsel had a continuing objection with regard to this issue. Further, even though the deposition was noticed as a deposition "for use at trial," the time and place for anything, including exhibits, to be moved into evidence is at the trial itself and not during the deposition.

WHEREFORE, defendant respectfully requests that the court grant the foregoing motion so as to strike portions of the testimony of Dr. Piasio.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within MOTION TO STRIKE CERTAIN PORTIONS OF THE TRIAL DEPOSITION OF MARK A. PIASIO, M.D. has been served upon the following counsel of record and same placed in the U.S. Mails on this 23rd day of Jan., 2008:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,	)	CIVIL DIVISION
	)	
	)	No. 2006-563-CD
Plaintiffs,	)	
	)	
vs.	)	
	)	
JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,	)	
	)	
	)	
Defendants.	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, DuBois Regional Medical Center's motion to strike portions of the deposition of Dr. Piasio is granted.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,	)	CIVIL DIVISION
	)	
	)	No. 2006-563-CD
Plaintiffs,	)	
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vs.	)	
	)	
JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,	)	
	)	
	)	
Defendants.	)	

ORDER OF COURT

AND NOW on this _____ day of _____, 2008, it is hereby ORDERED, that oral argument on DuBois Regional Medical Center's motion to strike certain portions of the trial deposition of Mark A. Piasio, M.D. is scheduled for the _____ day of _____, 20_____, at _____ a.m./p.m. before Judge _____ in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

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CIVIL DIVISION

No. 2006-563-CD

Issue No.

OBJECTIONS TO VIDEOTAPE DEPOSITION TRANSCRIPT OF JAMES KENKEL, PH.D. AND RESPONSE TO CERTAIN OBJECTIONS OF THE PLAINTIFF

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for This Party:

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FILED No cc
m/ 11:40 am
JAN 24 2008
William A. Shaw
Prothonotary/Clerk of Courts

OBJECTIONS TO VIDEOTAPE DEPOSITION TRANSCRIPT OF JAMES KENKEL, PH.D. AND RESPONSE TO CERTAIN OBJECTIONS OF THE PLAINTIFF

NOW COMES DuBois Regional Medical Center, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following objections to videotape deposition transcript of James Kenkel, Ph.D. and response to certain objections of the plaintiff.

OBJECTIONS TO TESTIMONY

1. The videotape deposition for use at trial has been taken of James Kenkel, Ph.D., plaintiffs' economic expert.

2. Although there were many objections during the deposition, the areas of particular concern to this defendant can be categorized rather simply, as set forth in the paragraphs which follow.

3. The deposition transcript is filled with many questions which went unanswered because of objections. These questions should be eliminated from the video before it is played to the jury. Similarly, the colloquy between counsel should be excised from the video.

4. Plaintiffs' economist did not include a claim for medical benefits in his report, because such benefits are being received by the plaintiff from her husband's

employer. Plaintiff's husband suffers from multiple sclerosis. Plaintiffs' attorney sought to heighten the jury's awareness of this issue during Dr. Kenkel's deposition. Also, through his questioning, he suggested that the economic projection would be deficient in the event that the husband's medical benefits ceased. There is no foundation, in the first place, that the benefits would cease if the husband became disabled. With some state employees benefits continue even if employees become disabled. Moreover, there is nothing in Dr. Kenkel's report to support any testimony on his behalf on this subject. Accordingly, the questioning between Page 44, Line 18 and Page 46, Line 3 concerning this subject should be stricken.

5. Dr. Kenkel was asked about the generic value of health insurance, a subject which is irrelevant since the cost of health insurance was not included in his economic projections for the plaintiff. Thus, all of the questioning on this subject between Page 46, Line 5 and Page 48, Line 7 should be stricken from the transcript.

6. Counsel asked several inappropriate questions concerning the patient's relationship with the hospital, the hospital's reaction to the lawsuit, and employment law. First, counsel suggested that the hospital should be obliged to accept the plaintiff back as an employee even if she declined to perform appropriate tasks. The following question was entirely inappropriate, outside of the scope of any appropriate testimony of plaintiffs' expert, beyond the scope of the expert's report, leading, and prejudicial:

Page 54

"Q: So is it accurate that if the hospital is willing to take her back at the same salary and increase that salary and give her a job as a glorified clerk and let her hold that job for 27 years or 33 years would your calculations then be wrong?

[Objections]

A: If the hospital would re-hire her at some future date and match the salary that she would have earned as a radiation therapist, at that stage, the economic loss would stop provided that they continued to employer her for the remainder of her work life if – you know, if they hire her back and then the hospital goes out of business, well – or if they, say, renege on the deal or whatever, then we would revert back to the situation I have here."

[Objections]

Similar questions, which were objectionable for the same reasons, were asked later in the deposition and, likewise, these questions and answers should be stricken:

Page 125

"Q: Okay. Do you know is there data on how employers feel about employees when they are sued in third party cases? Are they – do they look less favorably on employees when they're sued?

[Objection]

A: I haven't seen any studies discussing that issue. I mean, it's pretty reasonable to assume that an employer would frown on any employee that sued them."

[Objection]

Page 126

"Q: Do you know what the hospital's reaction has been to this lawsuit?

[Objection]

A: No, sir."

Pages 126-127

"Q: Do you know who Ray Graeca is?

A: No, sir.

Q: Do you know who Ray Graeca's son is?

A: No, sir.

Q: Do you know if Ray Graeca is the head of the hospital, and he was afraid that his son might be sued so he directed that this offer be made to Paula Carlson?

[Objection]

A: No, sir.

[Question withdrawn]

Q: Doctor, what is an employee at will.

[Objection]

A: As I understand it, that's an employee that can be terminated at the wish of the employer.

[Objection]

Q: For any reason.

[Objection]

Q: Do you know what –

[Objection]

Q: Do you know what an employee at will is.

[Objection]

A: As I understand it it's an employee who can be terminated at the wishes of the employer."

WHEREFORE, defendant moves to preclude the above-referenced testimony.

JOINDER IN MOTIONS

7. Defendant joins in any other motions to strike filed by co-defendants, unless defendant specifically opts out on such motions.

CROSS EXAMINATION ON INCLUDING THE CLAIM OF LOSS OF HOUSEHOLD SERVICES SHOULD BE ALLOWED

8. Prior to preparing his economic report, Dr. Kenkel had in his possession and reviewed both a questionnaire from the plaintiff and her lawyer and plaintiff's deposition transcript. Thereafter, Dr. Kenkel prepared a report which included a very substantial claim for loss of household services. Immediately prior to his deposition, it was disclosed that he would not be presenting evidence of a claim for loss of household services. Nevertheless, during Dr. Kenkel's direct examination, he specifically made reference to the claim of loss of household services and contended that his report was conservative because that claim had not been included:

> "So we basically calculate income and fringe benefits that could have been earned without the injury and subtract income and fringe benefits that could be earned with the injury. And in a typical case, people when they suffer an injury lose the ability to do certain things around the house, which I call lost household services. In this case, in order to be conservative, I have been asked to omit any discussion or calculation of lost household services. But in most of my cases that is part."

(Deposition at 29). As it turned out, however, this self-serving explanation was false, and the specific reason that loss of household services was not testified to at the time of the

trial deposition was because there were discrepancies between the plaintiff's questionnaire and the deposition testimony of the plaintiff. (In her deposition, plaintiff described in great detail a plethora of daily household services she performs). According to Dr. Kenkel, plaintiff's attorney advised him "that the information in the deposition conflicted with the information in the information form. So in order to simplify the situation and be conservative, just omit any discussion of lost household services." (Transcript at 113). Dr. Kenkel then added: "There was a discrepancy between some of the information that I was provided within two different forms." (Id. at 114). Nevertheless, Dr. Kenkel prepared a report which, even though he had received the conflicting information, contained a claim for loss of household services. (Id. at 111). Thus, the fact that he asserted in his written report a claim for loss of household services on behalf of the plaintiff, even in the face of conflicting information is an issue that goes to his credibility. (Id.) To further support this point, Dr. Kenkel first testified on cross examination, falsely, that he had not reviewed plaintiff's deposition transcript. (Page 104). As cross examination was pursued, however, he admitted that he had. (Page 105). In fairness, therefore, the cross examination of Dr. Kenkel to the effect that he included a claim for loss of household services, even though there was conflicting evidence in the materials provided to him which he reviewed, is entirely an appropriate area for questioning and bears greatly upon his credibility.

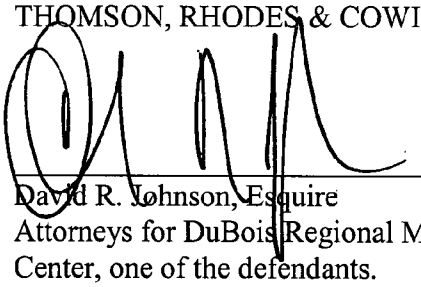
9. In addition, Dr. Kenkel's suggestion that the claim was not included for purposes of being "conservative" opened the door to cross examination and to establishing that the real reason for not including the claim was that the actual evidence

(from plaintiff's deposition) did not support that which had been set forth in Dr. Kenkel's report.

10. For these reasons, plaintiffs' objections to questions about the fact that a claim for household services was originally included in Dr. Kenkel's report should be overruled.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within OBJECTIONS TO VIDEOTAPE DEPOSITION TRANSCRIPT OF JAMES KENKEL, PH.D. AND RESPONSE TO CERTAIN OBJECTIONS OF THE PLAINTIFF has been served upon the following counsel of record and same placed in the U.S. Mails on this 23rd day of Jan, 2008:

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PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2006-563-CD

Issue No.

MOTION IN LIMINE

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for This Party:

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FILED No CC.
m/11:40 cm
JAN 24 2006
William A. Shaw
Prothonotary/Clerk of Courts

MOTION IN LIMINE

NOW COMES DuBois Regional Medical Center, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion in limine.

1. The plaintiff in this case, Paula Carlson, was employed as a radiation therapist at the time that she contracted the disease process which is the subject of this lawsuit.

2. After plaintiff's surgery, the hospital was prepared to return Mrs. Carlson as an employee, by making necessary accommodations. However, Mrs. Carlson told her supervisor that if she were to be confronted with a falling patient, she would let the patient fall. This interrupted the process of returning Mrs. Carlson back to work and Mrs. Carlson thereafter evidenced an absence of interest in returning to work.

3. A background factor in this motion is that plaintiff's primary care physician at the time was Dr. Stephen Graeca. Dr. Graeca's father, Raymond Graeca, is the CEO of the hospital.

4. At various junctures throughout the case, plaintiff's attorney has attempted through depositions or off hand comments to introduce several subjects into this case which are entirely inappropriate. These include each of the following:

(a) That employers look unfavorably upon employees who have sued them and that that is a factor that should be considered with respect to Mrs. Carlson.

(b) That Mrs. Carlson was an employee at will and, therefore, the hospital could have brought her back to work and then just fired her for any reason.

(c) That disabled employees earn less than employees who are not disabled.

(d) That special considerations or accommodations were offered to Mrs. Carlson because of the involvement of Dr. Graeca (the son of the hospital's CEO) as her primary care physician.

5. None of the foregoing subjects are in any manner relevant or likely to lead to any relevant evidence. At the same time, however, their introduction would be unduly prejudicial to the hospital as a defendant.

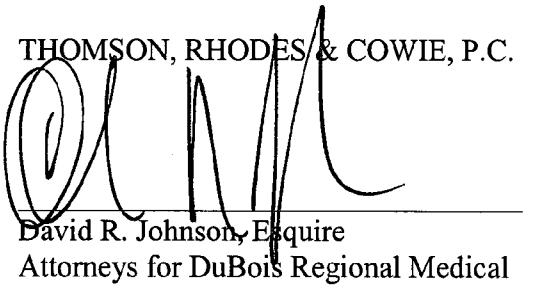
6. It is, of course, relevant whether or not the plaintiff was capable of returning to work, whether there was a position available for her, and the circumstances by which plaintiff is not presently employed by DRMC. However, it is not proper to imply or suggest that (a) the hospital intended to or likely would have returned Mrs. Carlson to work then terminated her for any reason; (b) the hospital would have eventually discriminated against her on the basis of her disability; (c) or that she received special accommodations or invitations to become re-employed because the hospital CEO was the father of her PCP. Introduction of these subjects would be highly unfair and potentially misleading. To introduce them blindly, without a full explanation of both the scope and limitations of the law of employment at will would be misleading and any such discussion, itself, would not be relevant or pertinent to the issues to be decided by this jury. Similarly, any discussion of how an employer must deal with a disabled employee

under federal or state law is far beyond the appropriate scope of testimony in this case. With regard to the issues raised by the plaintiffs' attorney concerning Mr. Graeca, they are entirely irrelevant and potentially prejudicial to the defendant.

WHEREFORE, defendant moves in limine to preclude any argument, questioning or testimony on any of the foregoing subjects.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within MOTION IN LIMINE has been served upon the following counsel of record and same placed in the U.S. Mails on this 23rd day of Jan., 2008:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,	)	CIVIL DIVISION
	)	
	)	No. 2006-563-CD
Plaintiffs,	)	
	)	
vs.	)	
	)	
JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,	)	
	)	
	)	
Defendants.	)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, it is hereby ordered that all questioning, testimony, or argument, concerning the following subjects is precluded at time of trial:

(1) Plaintiff's status as an at will employee and the meaning or ramifications of such status.

(2) Any involvement, impressions or directives of Raymond Graeca, the CEO of DuBois Regional Medical Center.

(3) How an employer (or DRMC) may or might respond to an employee with a disability.

(4) Any reference to the Americans with Disabilities Act or any similar Pennsylvania law.

(5) How an employer (or DRMC) may or might react to an employee who has filed suit against it.

(6) Any reference to "employment at will."

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,	)	CIVIL DIVISION
	)	
	)	No. 2006-563-CD
Plaintiffs,	)	
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vs.	)	
	)	
JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,	)	
	)	
	)	
Defendants.	)	

ORDER OF COURT

AND NOW on this _____ day of _____, 2008, it is hereby ORDERED, that oral argument on DuBois Regional Medical Center's motion in limine is scheduled for the _____ day of _____, 20_____, at _____ a.m./p.m. before Judge _____ in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

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COUNSEL FOR DUBOIS RADIOLOGISTS, INC.:
Walter F. Wall, Esquire
10 Sheraton Drive
Altoona, PA 16601

FILED NOCC
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JAN 24 2008
William A. Shaw
Prothonotary/Clerk of Courts

JOINDER IN MOTIONS IN LIMINE

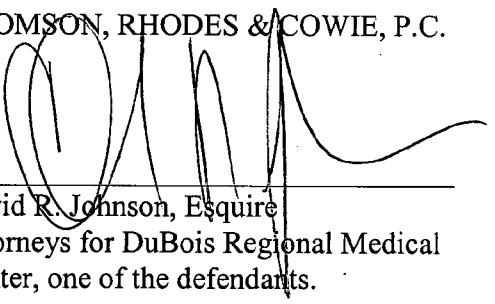
NOW COMES DuBois Regional Medical Center, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following joinder in motions in limine filed by co-defendants.

1. Defendant hereby joins in all motions in limine filed by co-defendants, except to the extent that defendant has filed or articulates in oral argument that it does not wish to be included as a moving party with respect to one or more motions. As to all other motions, however, defendant hereby incorporates said motions by reference.

2. With regard to co-defendant's motion concerning Dr. Mastropietro, defendant DRMC opts out of Paragraphs 20-22 of the motion, but joins in the remainder of the motion.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within JOINDER IN MOTIONS IN LIMINE has been served upon the following counsel of record and same placed in the U.S. Mails on this 23rd day of Jan., 2008:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222

Darryl R. Slimak, Esquire
McQuaide, Blasko, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

Walter F. Wall, Esquire
10 Sheraton Drive
Altoona, PA 16601

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE TO MOTION IN LIMINE REGARDING DR. GHAZANFAR SHAH

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED NO CC
01:11:01 GK
JAN 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE TO MOTION IN LIMINE REGARDING DR. GHAZANFAR SHAH

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Response to Motion in Limine Regarding Dr. Ghazanfar Shah:

1. DuBois Radiologists, Inc. objects to Dr. Shah being called as an expert witness by Plaintiffs. Plaintiffs do not intend to use Dr. Shah as an expert.

2. Dr. Shah has not submitted any expert report. His testimony for either party should be limited to facts. Dr. Shah should not be permitted to offer expert opinions for either party.

3. He was not permitted by defense counsel to give an opinion on the standard of care regarding the April 12, 2005 image reviewed by his employee Dr. Alajaji.

4. He did not file a report regarding same.

5. He should not be permitted to give expert or standard of care testimony on any matter in this case.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court enter an Order barring Dr. Shah from offering opinions as an expert for any party or give expert or standard of care testimony on any matter in this case.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____

Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1-23-08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, a Motion in Limine Regarding Dr. Ghazanfar Shah having come before the Court, upon consideration thereof and Plaintiffs' response, IT IS HEREBY ORDERED that Dr. Shah may not give expert testimony of any type including standard of care testimony for any party at trial.

BY THE COURT

_____J.

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO MOTION IN LIMINE REGARDING DR. GHAZANFAR SHAH** was served by First Class Mail, postage prepaid on the 23rd day of January, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Walter Fredrick Wall, Esquire
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE TO DEFENDANT, DUBOIS RADIOLOGISTS, INC.'S MOTION IN LIMINE PROHIBITING REFERENCE TO DR. ALAJAJI'S TERMINATION FROM DUBOIS RADIOLOGISTS, INC.

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
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JURY TRIAL DEMANDED

FILED NO CC
m/11:01/BY
JAN 25 2008
(GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE TO DEFENDANT, DUBOIS RADIOLOGISTS, INC.'S MOTION IN LIMINE PROHIBITING REFERENCE TO DR. ALAJAJI'S TERMINATION FROM DUBOIS RADIOLOGISTS, INC.

AND NOW, comes the Plaintiffs, Paula and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the within Motion in Limine Regarding Evidence of Defendant Jerjis T. Alajaji, M.D.'s Character and in support thereof avers as follows:

1. Defendant DuBois Radiologists, Inc. has filed a Motion in Limine seeking to prohibiting parties from making any reference to or evidence of Dr. Alajaji's termination from DuBois Radiologists, Inc. and his lawsuit arising therefrom.

2. As Defendants admit in their motion, Dr. Alajaji was terminated for alleged violations of DuBois Regional Medical Center's internet usage policy. Specifically, Dr. Alajaji was terminated for accessing websites containing offensive and hateful speech based on religion and ethnicity. Attached hereto is a copy of the Complaint in Dr. Alajaji's lawsuit against DuBois Regional Medical Center and DuBois Radiologists, Inc.

3. During the jury selection process, counsel for Dr. Alajaji repeatedly made references to Dr. Alajaji's good character. By doing so, counsel for Dr. Alajaji has made character an issue in this case.

4. Accordingly, Plaintiffs should be allowed to introduce evidence and question Dr. Alajaji regarding the circumstances of his termination.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny Defendant's Motion in Limine and permit evidence of Dr. Alajaji's termination and questioning regarding his termination.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By_____
Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1-22-08

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Plaintiffs' Response to Defendant, DuBois Radiologists, Inc.'s Motion in Limine Prohibiting Reference to Dr. Alajaji's Termination from DuBois Radiologists, Inc. was served by Hand Delivery on the 22nd day of January, 2008 as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Walter Fredrick Wall, Esquire
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Motion/ Brief for Rulings on Objections to Plaintiffs' Trial Deposition of Plaintiffs' Expert Orthopedic Surgeon, Dr. Mark Piasio

Filed on Behalf of Defendant
Jerjis T. Alajaji, M.D.

Counsel of Record for This Party
Darryl R. Slimak, Esquire
Pa. Supreme Court I.D. #41695

McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
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Counsel for Adverse Party
Thomas E. Crenney, Esquire

FILED NO CC
01/30/01
JAN 25 2001
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S MOTION/BRIEF FOR RULINGS ON OBJECTIONS TO PLAINTIFFS' TRIAL DEPOSITION OF PLAINTIFFS' EXPERT ORTHOPEDIC SURGEON, DR. MARK PIASIO

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and respectfully requests this Honorable Court to rule on the following deposition objections, on the bases indicated:

1. **Defense Objection/Legal Discussion: STRIKE Page 11, line 25 to page 12, line 4**

The objection should be GRANTED that Exhibits identified in testimony should not necessarily go out to the jury in deliberations. Pa. R.C.P. No. 223.1(c)(3).

MR. CRENNEY:
I'm going to mark that as Plaintiffs' 3 and move it into evidence.
Any objection?

MR. JOHNSON:
I object to the extent that **I'm not sure that medical records should be moved into evidence to go out with the jury, so I would object on that basis.**

MR. SLIMAK:
I join in that.

2. **Defense Objection/Discussion: STRIKE Page 12, line 23**

The objection is WITHDRAWN.

3. **Defense Objection/Discussion: STRIKE Page 23, line 25 to page 24, line 10**

The objection should be GRANTED. The witness did not answer the improper leading/ misleading question.

BY MR. CRENNEY:

Q: Thank you, Doctor. Doctor, I'm going to show you the report of April 12th , which I marked as Exhibit 8, and this is the film of April 12th that you had access to when Paula first came in on June 9th.

MR. SLIMAK:
Objection, leading. And he's holding a report, not a film.

4. **Defense Objection/Discussion: STRIKE Page 24, line 17 to page 25, line 17**

The objections related to the form of the misleading question that improperly and wrongly assumed an x-ray report was sent to the Doctor when in fact the information was only relayed by Mrs. Carlson as to what she thought the report said. The Doctor's answer then admitted that he had never seen the actual written report, thus further substantiating the basis of the defense objections to the questions.

5. **Defense Objection/Discussion: STRIKE Page 26, line 11 to page 27, line 4**

Q: What does the Exhibit 8 - - you're holding Exhibit 8, what does it say under impression? (Exhibit 8 is Dr. Alajaji's x-ray interpretation report that Dr. Piasio admitted he had never seen or considered in his own care.)

MR. SLIMAK:
I'm going to object because this Doctor hasn't indicated that he had a foundation for having reviewed the course of his treatment. That seems to me that at this point in time you're going beyond in having or developing testimony as a fact witness with regard to Dr. Piasio's care of this particular patient, now you're trying to introduce or have the Doctor expound and give expert opinions and there's certainly been no special report prepared in that regard to have his comment on physicians reporting or have him criticize it or comment on it or support it or whatever.

The objection should be GRANTED. In fact, the question was never answered, such that same should be STRICKEN.

Moreover, Dr. Piasio was supposed to be a treating fact witness physician. He did not author any special report indicating that he would testify as an expert witness regarding Dr. Alajaji's x-ray interpretation report.

6. **Defense Objection/Discussion: STRIKE Page 29, line 16 to page 32, line 2**

Defense counsel's objections to the following questions posed by Plaintiffs' counsel to Dr. Piasio should be GRANTED.

Q: And are you comfortable with Dr. Yaw determining her current situation in the nature of her disability?

Q: Is it accurate that Dr. Yaw is in a better position to comment on her disability?

Q: Doctor, are you still comfortable with the paragraph that you just read?

Q: Okay. And is Dr. Yaw in a better position than you would be to determine her current disability?

Defense counsel objected on the basis of no proper foundation and also on the basis of relevance.

Dr. Piasio had no foundation to assess whether Dr. Yaw could better assess Mrs. Carlson's disability than he, and Dr. Piasio's opinions on these questions of legal admissibility of Dr. Yaw's opinions are not for Dr. Piasio to address and are irrelevant as they do not make a material fact in issue more or less probable. *See* Pa. Rules of Evidence 401, 402, 403, 703, and 705; Kozak v. Struth, 531 A.2d 420, 423 (Pa. Supreme Court 1987) (an expert must state the foundation for his opinions). There is no relevance to whether Dr. Piasio is "comfortable" with any possible ability of Dr. Yaw to offer opinions on Mrs. Carlson's disability status.

7. **Defense Objection/Discussion: STRIKE Page 37, lines 4-7**

Q: **And again** you're under subpoena for this deposition, correct?

MR. SLIMAK:
Asked and answered.

The defense objection should be GRANTED. The question was previously asked at page 29, line 4.
Repeatedly asking a question previously answered is improper, cumulative and becomes legally argumentative in that counsel is overly emphasizing a point that he feels is significant. (Pa. Rule of Evidence 611).

8. **Defense Objection/Discussion - Page 37, line 20 to page 38, line 18**

Q: And did it say that Mr. Slimak represented Dr. Alajaji and Paula Carlson was represented by a Pittsburgh attorney, Tom Crenney, is that right?

Q: . . . Is that what this sentence says?

MR. JOHNSON:
I'm going to object to any questions concerning this letter.

MR. WALL:
Join in.

The objections should be DENIED.
There was no specified basis for the objections. This waives the objection. (Pa. Rule of Evidence 103). Dr. Alajaji's counsel, Mr. Slimak, has no objection to Plaintiffs' questioning the witness regarding the letter.

9. **Defense Objection/Discussion: STRIKE Page 41, lines 9-24**

Q: Are you familiar with the procedure that Dr. Yaw did in late June of 2005?

The objection should be GRANTED as the question was never answered.

10. **Defense Objection/Discussion - Page 42, lines 5-6 and page 44, line 4**

Other defense counsel objected on the basis of relevance to the list of and any questions based on the case's expert reports Dr. Piasio had received prior to his deposition.

The objections should be DENIED. *See* discussion at objection No. 8, *supra*.

11. **Defense Objection/Discussion: STRIKE Page 44, line 7 to page 45, line 10**

Q: Do you know the operation that Dr. Schmidt recommended, the allograph, the articular allograph?

A: Yeah.

MR. SLIMAK:
Same objection as before, no qualifications or foundation.

(The witness was then questioned by Plaintiffs' counsel in an attempt to lay a foundation, which failed.)

The objections should be GRANTED. While Dr. Piasio stated he was "familiar with" the operation in question, he went on to clarify that he was **not** qualified to and had never performed or provided follow-up on care for bone tumor operations. Also, he had not provided any expert reports indicating that he would so testify. *See* deposition testimony at pp. 44-45; 51-52; and 67-68.

12. Defense Objection/Discussion - Page 45, line 12 to page 47, line 14

Q: Do you have an opinion as to whether both of those procedures would have been constituted reasonable courses of action for Paula Carlson in June of 2005?

Objections were raised that this witness had not produced a report to put any of the defense counsel on notice of Plaintiffs' intended use of him as an expert offering these opinions. This would violate Pa. R.C.P. No. 4003.5. Also, this physician was called as a treating physician and defense counsel were certainly not prepared to cross examine or deal with this line of questioning.

The question was also objected to on the basis of an admitted lack of qualifications established for giving an opinion with regard to the type of surgical issue raised. *See* discussion of the similar objection to the question at page 44 (Objection No. 11).

13. Objection/Legal Discussion - Page 47, line 19

Q: Did we talk about those reports, the reports I gave you in the time that we were preparing, Doctor, the two that you found I gave you?

MR. JOHNSON:
Objection relevance.

The objection by other defense counsel should be DENIED.
It is relevant that Plaintiffs' attorney sent expert reports to Dr. Piasio in advance of his deposition. Bias is implicated.

14. Defense Objection/Legal Discussion: STRIKE Page 48, line 18 to page 51, line 10

Q: Mr. Slimak has accused me of being a sandbagger - -

The defense objection should be GRANTED.
Plaintiffs' counsel launched into a legal argument while on the videotape that has no place being presented to the jury. Plaintiffs' Attorney Crenney eventually abandoned his inappropriate question and line of inquiry. This is on the videotape and constitutes inappropriate arguing which should be STRICKEN.

15. **Defense <u>Objections/Legal Discussion: STRIKE Page 52, line 6 to page 56, line 18</u>**

Q: Well, Doctor, you read Schmidt's report and you know he said that Yaw's surgery was the wrong surgery to do and that the allograph would have been the right surgery. And my question to you, do you feel comfortable in your - - do you feel comfortable in answering the question, were both reasonable options, that's all I'm asking you.

Defense counsel's objections should be GRANTED.
Dr. Piasio was a fact witness as to his care and treatment, and had provided no expert report that he would be asked opinions as to which of the two competing Plaintiffs' and Defense expert orthopedic bone tumor specialists proposed the proper surgical treatment for Mrs. Carlson. Dr. Piasio previously admitted his lack of qualifications as to bone tumor surgery. (*See* discussion of objection No. 11). Plaintiffs went so far as to try and get the Doctor to opine whether he was "comfortable" in providing such expert opinions, which is not even the legal admissibility standard. The attorneys then argued on the record whether or not what nonparty treater/Plaintiffs' expert Dr. Yaw did surgically was malpractice or just error in judgment. Even the Doctor's eventual answer indicated that he could not say which surgical option is preferable or better.

16. **<u>Objection/Legal Discussion: STRIKE Page 67, lines 7-18</u>**

Other defense counsel objected to questions regarding Dr. Piasio's review of letters from the parties' attorneys regarding expert reports.

The objection should be DENIED. **Only the attorneys' discussion/objections should be STRICKEN.**

17. **<u>Plaintiffs' Objection/Legal Discussion: STRIKE Page 83, lines 12-23</u>**

Q: You wanted to get some additional films; correct?

A: I wasn't sure what I was looking at on the film of April was real or artifact.

The following objection by Plaintiffs should be DENIED. **Only the attorneys' objections and argument should be STRICKEN.**

MR. CRENNEY:
I'd object to the form of the question in that it suggests he had other x-rays when he diagnosed the April 12th film. That was not his testimony, nor is that consistent with this record.

MR. SLIMAK:
I don't think that's my question, Mr. Crenney.

Discussion: Objecting counsel for Plaintiffs (Mr. Crenney) was incorrect. The question asked at this point was in follow-up to the immediately preceding questions and answers in which Dr. Piasio had indicated that he had repeated x-rays on June 9th, of the same area x-rays on April 12th. The objected to question logically followed to seek clarification. Once Attorney Crenney heard an answer he did not like, he belatedly objected and made a misleading argument on meritless grounds.

18. <u>Defense Objection/Legal Discussion: STRIKE Page 90, lines 1-7</u>

The questions and answers pertinent to this objection originated as follows starting at page 89, line 20:

BY THE WITNESS:

A: Although if my care is going to be on trial here, then I may need representation, which I don't have.

BY MR. SLIMAK:

Q: I'm not suggesting that in any way.

A: I just want to make sure if we're going to get to that. I'm just trying to - -

Q: Now - - (answer interrupted by Plaintiffs' Attorney Crenney)

MR. CRENNEY:
It's Dr. Graeca and Dr. Yaw.

MR. SLIMAK:
I don't know what that was for sure, but let me continue with my questions.

MR. CRENNEY:
That's a fact.

Plaintiffs' Attorney Crenney's interjection and testimony trying to prompt the witness' answer and/or to make argument to the jury is blatantly inappropriate and should be STRICKEN.

19. **Plaintiffs' Objection/Legal Discussion - Page 94, lines 10-20**

Plaintiffs' objections to yellow highlighting of an enlargement of portions of the witnesses' medical records should be DENIED.
The highlighting merely directs the witnesses' testimony to the portion of the record he is being questioned about and is routinely done.

Q: And in your chart in front of you, do you have this form in that?

MR. CRENNEY:
I'd just like to make a general - -

A: Yes.

MR. CRENNEY:
Excuse me, an objection to what you got on the video because it is highlighted.

MR. SLIMAK:
Well, I want to draw his attention to certain aspects of the record and we're entitled to do that. So your objection is noted, sir.

20. **Plaintiffs' Objection/Legal Discussion - Page 95, lines 21-22**

Plaintiffs' objections to a cross examination question on grounds of "relevance" should be DENIED.

Q: Yes. And you through this form have specific questions, such as, for instance, does the family members relatives, has any blood relative ever had cancer, correct?

A: Correct.

The question is relevant as it elicited the patient's personal and family medical history that the witness indicated in his testimony he solicited from his patient/Mrs. Carlson when he saw her for her complaints at issue, in an effort to diagnose her condition.

21. **Plaintiffs' Objection/Legal Discussion - Page 98, lines 9-17**

Plaintiffs' objection should be DENIED. *See* discussion of objections No. 5, No. 19, and No. 20.

Q: Whether she's had blood in - - any blood in the urine, the indication was yes; correct?

MR. CRENNEY:
Objection to relevance. Objection as to the highlighting.

MR. SLIMAK:
Well, we're showing this evidence to indicate the thoroughness of the background information that the Doctor's standardized forms of processing of orthopedic patients develops and then we're going to ask some specific questions related to this as we go through the patient's care.

22. Plaintiffs' Objection/Legal Discussion - Page 104, lines 16-17

Plaintiffs' boilerplate objection to the "form of the question" should be DENIED.

Q: Have there been patients in the past of Dr. Graeca or physician's assistant Natoli that they were having trouble diagnosing and they would make the referral to you because it was an orthopedic issue within your specialty?

The question was adequately clear and the Doctor witness had no difficulty in answering same. Dr. Piasio responded that Dr. Graeca and PA-Natoli have referred lots of patients to him when they could not make the diagnosis.

23. Plaintiffs' Objection/Legal Discussion - Page 105, lines 11-12

Plaintiffs' objection should be DENIED.

Q: Those are right up your alley; correct?

A: That's what I do.

MR. CRENNEY:
Objection as to reference. [sic]

The questions at this point had properly inquired whether herniated discs like the patient/Mrs. Carlson has are within his area of medical specialty. The Doctor testified at other points that he had to consider such conditions and rule them out to make his diagnosis.

24. Plaintiffs' Objection/Legal Discussion: STRIKE Page 108, lines 12-17

Plaintiffs' objection to the "form" of the question should be DENIED and **only the attorneys' discussion STRICKEN**.

Q: Now, I was looking at your records and report and Attorney Crenney read you certain portions of them, but there were

other portions he had not read to you and so let me ask you about some aspects of that.

MR. CRENNEY:
Object to the form of the question.

MR. SLIMAK:
Do you disagree with that?

MR. CRENNEY
Object to the form of the question.

The next questions provided specific reference to Dr. Piasio's records that were then reviewed with the witness. The "form" of the cross examination question was appropriate. Moreover, the question appropriately redirected the witness to records and reports the witness had partially discussed in prior testimony elicited by Plaintiffs' counsel previously.

25. <u>Plaintiffs' Objection/Legal Discussion: STRIKE Page 109, lines 7-22</u>

Plaintiffs' counsel again objected to highlighting of an exhibit - medical note.

The objection should be DENIED. *See* prior discussion at objection No. 19. Highlighting exhibits is commonly done to direct the witnesses' attention to specific portions. The attorney's arguments should be STRICKEN.

26. <u>Plaintiffs' Objection/Legal Discussion: STRIKE Page 121, lines 8-14</u>

Plaintiffs' attorney's objection should be STRICKEN and his objection DENIED. The cross examination question was clearly relevant as regards what history the physician would consider to rule out tendonitis which helps to diagnose a bone tumor. The question was not repetitious.

Q: With regard to tendonitis, is that something that would usually come on in a patient that has had some type of acute trauma or injury or some repetitive stress activity to the wrist or hand?

A: There are - -

MR. CRENNEY:
You know, I'm afraid I'm going to have to object, asked and answered, relevance. My objection would be mercy, mercy on all of us. So I would like to add that objection. No, I'm just kidding. My objection is as to it's repetitious and not relevant.

27. **Plaintiffs' Objection/Legal Discussion - Page 123, line 9 and page 123, line 20**

Plaintiffs' "relevance" objections should be DENIED.

It is proper and relevant to ask the witness if his workup of the patient's problem would have proceeded in the same fashion if he had seen her two months earlier. This relates to the issue of causation — that is, whether the delay in diagnosis was significant or immaterial.

28. **Plaintiffs' Objection/Legal Discussion: STRIKE OBJECTION AT Page 133, lines 11-16**

Plaintiffs' objection was withdrawn and should be STRICKEN.

Q: If we assume for the moment that the facts show that you made your referral to Dr. Yaw by letter of June 13, 2005 and he did not perform his surgery that we talked about earlier on her wrist until June 27, 2005, okay, is that a typical period of time that would transpire in your practice from when you would see a patient and make a diagnosis until your patients would undergo surgery by the bone tumor specialist?

MR. CRENNEY:
Objection.

A: I would tell you that that's a very short period of time to get someone on for that kind of procedure. It was about a week.

MR. CRENNEY:
Withdraw the objection.

29. **Plaintiffs' Objection/Legal Discussion - Page 135, lines 2-4**

Plaintiffs' unspecified "objection" was waived under Pa. Rule of Evidence 103,, had no merit anyway, and should be DENIED.

Q: With regard to the suspicion of a giant cell tumor on the basis of which you made a referral to a physician in Pittsburgh, if you had had that suspicion back in April of 2005, would you have expected that it would be two weeks or greater for your patient to undergo surgery indicated?

30. **Plaintiffs' Objection/Legal Discussion: STRIKE Page 135, lines 14-16**

Q: Let me try to clarify:

MR. CRENNEY then interjected:

"Please let him answer the question. He was beginning to answer your question. You have a question on the board."

Plaintiffs' Attorney Crenney's argument/objection should be STRICKEN. The Doctor had just indicated that he had not understood a prior question (line 11). Defense counsel was going to restate the question to clarify, when interrupted by Plaintiffs' counsel's inappropriate and incorrect comment.

31. **Plaintiffs' Objection/Legal Discussion: STRIKE Page 136, lines 6-7**

Q: So you may have taken longer than you took when you saw her in June to get all of that done if you had seen her in April?

MR. CRENNEY:

Objection. He said exactly how long.

The attorney's objection should be DENIED and STRICKEN from the record. The question was appropriate cross examination. Plaintiffs' counsel was attempting to direct the witness' response. The witness went on to explain the length of time it would have taken to work up the patient's condition if she had been seen earlier, as well as the considerations involved.

32. **Plaintiffs' Objection/Legal Discussion - Page 141, line 1**

Q: Did you have or do you have a policy as to a patient coming in with a new complaint, how many office visits will pass when only a physician's assistant sees that patient?

The Plaintiffs' objection to the cross examination question should be DENIED. Plaintiffs' attorney objected without specifying the basis for same. This waives the objection. Pa. Rule of Evidence 103(a). The question was clear and in proper form.

33. **Plaintiffs' Objection/Legal Discussion - Page 142, line 25**

Q: Would you have occasion thereafter to review her chart entries?

A: I rarely - -

MR. CRENNEY:
Objection.

A. We work close enough that I would usually see the patient at the time and anything unusual, she would always bring it up to me. We had a close relationship.

The Plaintiffs' objection to this cross examination should be DENIED. Plaintiffs' attorney objected without specifying the basis for same in violation of Pa. Rule of Evidence 103. The question was clear and in proper form.

34. **Defense Objection/Legal Discussion: STRIKE Page 144, line 21 to page 145, line 1**

Q: Do you recall when I called you about that report, I said if you will write a report and clarify your record, maybe you won't have to testify at all, do you recall that?

Defense counsel's objection as to improper leading question should be GRANTED. Pa. Rule of Evidence 611. Also, the witness did not give a substantive answer to this improper question, but simply evidenced his confusion and he asked if he should answer or not.

35. **Defense Objection/Legal Discussion: STRIKE Page 145, lines 13 to page 146, line 9**

Defense counsel's objection to Plaintiffs' now repeated, leading and irrelevant question should be GRANTED.
The witness' opinion as to whether a case should be **settled** is not only irrelevant to the issues to be decided, but also highly prejudicial and improper. Pa. Rules of Evidence 701 (Opinions of lay witnesses must be rationally based on the evidence); 702 (expert opinions must come from qualified experts); and 703 (be based on a proper foundation); 705; 408 (settlement discussions are not admissible); 403 (unduly prejudicial). The witness had admitted he was not qualified nor did he intend to testify as to a radiologist's standard of care. (*See* deposition testimony at p. 51-52 and 67-68). He had not provided an expert report and was not called as an expert as required by Pa. R.C.P. No. 4003.5. His opinions in such respects are irrelevant. And, the witness blurted out his answer before the question was even fully asked, at page 145:

Q: Do you recall - -

A: I recall that in our conversation, I believe I was relatively clear of the difficult circumstance that I was in as a treating physician with knowledge of the case and a differing opinion within the facility within I work, that that was a very sensitive circumstance **and expressed I believe in multiple times to please settle this** without me having to be here today.

Also, the witness was re-asked the question and at page 145, line 17, his response that time (also objected to) did not contain an opinion on settlement.

BY MR. CRENNEY:

Q: Doctor, would you be kind enough to tell me if you were reluctant to testify in this case and, if so, would you tell me why?

The answer to follow this question was objected to as not relevant. (p. 145, lines 20-22). The fact that a subpoenaed nonparty witness is reluctant to testify is irrelevant to the medical issues in the case and the care the physician provided and testified to as a fact witness. Also, the witness had previously indicated that he was testifying because he had been subpoenaed (p. 29), which he explained was because his wife had suggested that he request a subpoena. (p. 58).

36. <u>Defense Objection/Legal Discussion: STRIKE Page 147, line 1 to page 150, line 19</u>

The defense objections should be GRANTED. Objections were stated based on a lack of expert report and lack of foundation for opinions, of whether Dr. Piasio was critical of family physician Dr. Graeca or Dr. Graeca's staff, or Dr. Yaw, in their care of Plaintiff Paula Carlson. He had never even reviewed their records! **Plaintiffs' attorney eventually conceded the objections were appropriate and stated he withdrew his questions at page 148, line 13.** He **also** eventually **withdrew** the pages of questions and answers that followed per his comment at page 150, lines 10-19.

37. <u>Plaintiffs' Objection/Legal Discussion - Page 151, line 19 to page 152, line 1</u>

Plaintiffs' objections as "beyond the scope of my redirect" should be DENIED. Defense counsel simply asked the Doctor to confirm the pronunciation and spelling of a word he had used in his earlier testimony in his prior direct examination and cross examination. ("Artifact") Moreover, the objection was **wrong**. On redirect, at page 146, lines 18-25, Attorney Crenney **had specifically** asked Dr. Piasio about the "lytic lesion" and Dr. Piasio stated at line 25 that same "was clear to me." Thus, it was appropriate to recross Dr. Piasio briefly to confirm the word that he had previously said (inconsistent statement), that he had thought what he saw was only "artifact," which he had said at that point was **not** a "clear," "lytic lesion" abnormality, but rather, "artifact" which is "something that would cause you to see something that is not there," which "is not actually a disease condition itself." *See* Piasio deposition testimony at pp. 28; 83-85.

BY MR. SLIMAK:

Q: Now, just one other thing, you had used this word artifact previously, correct - -

A: Correct.

Q: - - when you talked about this case?

MR. CRENNEY:
Objection. Beyond the scope of my redirect.

BY MR. SLIMAK:

Q: Is this the word artifact you're talking about? (showing exhibit with the word's spelling)

A: Yes.

MR. CRENNEY:
Objection. Move to strike. Very funny but move to strike.

38. **Objection/Legal Discussion: STRIKE Page 152, lines 5-22**

BY MR. WALL:

Q: Doctor, Mr. Crenney asked you a question over my objection, but you didn't answer it - -

A: I'm sorry.

Q: - - and that was, do you have any criticism of PA Natoli from whatever it is you know about the treatment Mrs. Carlson received before she saw you?

A: No, I don't.

MR. SLIMAK:
I have an objection, the same as before that were objected to in Mr. Crenney's questions in that regard.

MR. WALL:
That's all I have. We're done.

Attorney Wall's question and the answer regarding whether Dr. Piasio was critical of the physician's assistant who cared for Mrs. Carlson should be STRICKEN on the same bases discussed previously herein. There was no expert report proffered on this issue of the physician's assistant's care, and Dr. Piasio had previously stated that he had **never** received or even reviewed her records. (Deposition testimony at p. 80). The question/ answer was also irrelevant, and the Doctor was never qualified to give such an expert opinion.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

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Dated: January 25, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Dr. Alajaji's Motion/Brief for Rulings on Objections to Plaintiffs' Trial Deposition of Plaintiffs' Expert Orthopedic Surgeon, Dr. Mark Piasio in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25th day of January, 2008, to the attorney(s) of record:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Motion/Brief for Rulings on Objections to Plaintiffs' Trial Deposition of Plaintiffs' Expert Economist, James Kenkel

Filed on Behalf of Defendant
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FILED NO CC
01:30 BY
JAN 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
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vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S MOTION/BRIEF FOR RULINGS ON OBJECTIONS TO PLAINTIFFS' TRIAL DEPOSITION OF PLAINTIFFS' EXPERT ECONOMIST, JAMES KENKEL

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and respectfully requests this Honorable Court to rule on the following deposition objections, on the bases indicated:

1. **Plaintiffs' Objection: Page 23, line 23**

Plaintiffs' counsel objects to defense qualifications cross examination question as supposedly beyond the scope of qualifications.

The objection should be DENIED. In the witness' prior answer, the witness had answered questions regarding the template report he uses in testifying to economic losses. There had been no objection to this line of questioning. The objected to question merely asked for a clarification of the prior answer. The questions then ended.

2. **Defense Objection/Legal Discussion: STRIKE Page 26, lines 20-25 and Page 27, lines 3 to 6**

Defense counsel objected as to Plaintiff's leading question.

Q: And you depended on other data like W-2s for instance,

not just what I told you to determine that information, correct?

Mr. Crenney refused defense counsel's request for a continuing objection and Mr. Slimak then indicated he then would have to object every time.

This objection should be SUSTAINED because the question was improperly formed and suggested the answer. Leading questions should not be used on direct or redirect examination. *See* Pa.R.E. 611(c). A leading question has been defined as one which indicates or suggests the answer desired by the examiner. *See* Com. v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991).

3. **Defense Objection/Legal Discussion: STRIKE Page 28, lines 4-13**

Q: You have been around courtrooms a while, and do most of the experts get paid?

Defense counsel objected as beyond the scope of cross. Mr. Crenney "disagreed" with the objection. Defense counsel had only asked what **Mr. Kenkel** charged to testify. He had **not** been asked about other witnesses' charges.

4. **Defense Objection/Legal Discussion: STRIKE Page 29, line 25 to page 30, line 6**

Q: So, you're not going to calculate in any way, shape, or form a number for household services?

Defense counsel objected to leading.

The objection should be SUSTAINED because Plaintiffs' counsel suggested the answer. Leading questions should not be used on direct or redirect examination. *See* Pa.R.E. 611(c). A leading question has been defined as one which indicates or suggests the answer desired by the examiner. *See* Com. v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991). Indeed, this leading question was doubly improper as it had an "argumentative" tenor, which is a leading question that really does not care about the witnesses' answer and is making arguments to the jury. In addition, the witness had previously testified that he was not testifying as to household services losses (p. 29, lines 20-24), which Plaintiffs' counsel was then improperly trying to overemphasize.

5. **Defense Objection/Legal Discussion: STRIKE Page 30, lines 10-16**

Q: Is that normally done?

Defense Objection. Irrelevant. The question was then **conceded to be improper** by Plaintiff's counsel and **withdrawn**.

This question should be STRICKEN because counsel agreed to withdraw the question.

6. **Defense Objection/Legal Discussion: STRIKE Page 34, lines 11-19**

> Q: May I stop you there? Are you saying that for Paula Carlson she can't get her Social Security under current regulations until she's 67 years old?

Objection. Leading.

This objection should be SUSTAINED because it is in improper, leading form. Leading questions should not be used on direct or redirect examination. *See* Pa.R.E. 611(c). A leading question has been defined as one which indicates or suggests the answer desired by the examiner. *See* Com. v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991). **Moreover, Plaintiffs' counsel re-asked the question at page 34, lines 19-23 in non-leading form.** The question also had an argumentative tenor, in that Plaintiffs' counsel was arguing a point he wanted to make and was not as concerned with the witness' answer.

7. **Defense Objection/Legal Discussion: STRIKE Page 38, line 20 to page 39, line 11**

> A: . . . Then I had the wage rate data which shows that in 2006 her hourly wage would have increased to $32.87. So if she worked the same amount in 2006 as we projected in 2005, her income in 2006 would have been $61,532. So during your half year of 2005 and the entire year of 2006, the loss would be $90,792.

Defense counsel objected to this answer on the basis that there was no foundation for what the witness was testifying to because he had not specified what he was claiming is "the injury" was that the economist was basing his calculations on.

This objection should be SUSTAINED because the witness is offering an opinion without proper foundation for same. A witness cannot give a conclusory opinion without specifying the facts, in this case "the injury," that was contemplated. In Commonwealth v. Rounds, 528 Pa. 204, 542 A.2d 997, 999-1000 (1988), it was held that an expert's opinion was improper, where the salient facts relied upon were not specified:

> "As with all expert opinion, however, it is essential that the salient facts relied upon as the basis for the opinion be in the record. (If not), the jury could not know upon what facts the expert had based his opinion. The evidence, therefore, was properly excluded... To hold otherwise would result in a total and complete usurpation of the jury's function in our system of justice... How could a jury evaluate the expert opinion without even knowing the facts upon which it was based."

See also Kozak v. Struth, 515 Pa. 54, 560, 531 A.2d 420, 423 (1987)(held that the proponent of an expert's testimony bears the burden of disclosing the facts used by the expert in forming an opinion, on the record, for the jury to evaluate. Pennsylvania law rejects the contention that the cross-examiner bears the burden of probing the basis of the opinion); Hansen v. Wyeth, Inc., 2005 WL 3068256 at * 2(Phila Co. 2005)("the case specific factual basis upon which that opinion is based must be presented to the jury on direct examination") *citing* Kozak, supra and Pa.R.E. 703 and 705.

8. **Defense Objection/Legal Discussion: STRIKE Page 44, line 23 to page 45, line 6**

Q: But for now he has medical benefits and the family chooses to be on his plan; is that correct?

Defense attorney Mr. Johnson: Objection.

Plaintiff attorney Mr. Crenney: To the form?

Mr. Johnson: I object to the form of the question. I also object on the basis of relevance.

Mr. Slimak: I join.

This question is leading. Also, this objection should be SUSTAINED because such evidence is irrelevant. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence more or less probable than it would be without the evidence. Pa.R.E. 401-402. Mr. Carlson's having medical benefits coverages has nothing to do with any issue in this case that deals with claimed injuries as to Mrs. Carlson.

9. **Defense Objection/Legal Discussion: STRIKE Page 45, lines 17-24**

Q: Did you know he had multiple sclerosis? Is that part of the information you gathered?

Defense counsel objected on the basis that this question had already been asked and answered. Its improper repetition was simply to try and generate undue sympathy for the Plaintiffs because of **Mr.** Carlson's medical problems unrelated to the issues in this case, which relate to **Mrs.** Carlson's bone tumor. The objection should be SUSTAINED.

10. **Defense Objection/Legal Discussion: STRIKE Pages 45, line 25 to page 46, line 3**

Q: Do you know what his prognosis is?

The objection should be SUSTAINED. Defense counsel objected to the form of the question and the lack of relevance. This was an **economist's** deposition regarding calculation of **Mrs.** Carlson's wage loss claim, and has nothing to do with **Mr.** Carlson's

unrelated medical diagnosis. The witness did not know the answer, which further confirms the lack of relevance of the question which simply sought to elicit sympathy.

11. **Defense Objection/Legal Discussion: STRIKE Page 46, line 5 to page 47, line 9**

Q: Okay. Doctor, what is the generic value, if you can give one, of health care benefits vis-à-vis pay for someone who is in the marketplace, working in the marketplace?

Q: Doctor, are you saying this information is in your report, correct?

The objection should be SUSTAINED. Defense counsel objected that the first question was beyond the scope of the economist's report. The second question was also objected to as improperly leading. Mr. Kenkel's report indicated that he was **not** going to attribute loss to health care benefits.

See page 32 of Kenkel's report: "Paula Carlson opted out of the health care coverage program because she received coverage through her husband's employment. In this report, the only fringe benefits which are considered are the value of the employer's contributions to social security and . . . the 401(K) plan."

Pursuant to Pa.R.C.P. 4003.5(c), an expert's trial testimony must, of course, be within the fair scope of his expert report. The purpose of the rule is to avoid surprise and prejudice to the opposing party. An expert's testimony is within the fair scope of his report if the report sufficiently apprises the opposing party of the expert's theory such that there is no prejudice and the opponent can prepare a meaningful response. Schaaf v. Kaufman, 850 A.2d 65 (Pa. Super. 2004)(citations omitted).

12. **Defense Objection/Legal Discussion: STRIKE Page 47, lines 5-12**

Q: Doctor, are you saying this information is in your report, correct?

Defense counsel objected to leading.

This question should be STRICKEN because Plaintiffs' counsel re-asked a proper question at page 47, line 13.

13. **Defense Objection/Legal Discussion: STRIKE Page 47, line 21 to page 49, line 25**

Defense counsel renewed a previous objection on the same basis of the issue of the "generic value of health care benefits" (p. 46) was beyond the scope of the expert's report. Mr. Carlson did not lose any such benefits due to Dr. Alajaji's negligence, nor did Mrs. Carlson. She had never accepted such benefits from her employer. (P. Carlson depo. p. 45). The objection should be SUSTAINED.

THE FOLLOWING OBJECTIONS ALL RELATE TO OBJECTIONS BASED UPON LACK OF FOUNDATION FOR THE WITNESS' OPINION IN THAT THE WITNESS IMPROPERLY FAILED TO IDENTIFY WHAT THE "INJURY" WAS THAT HE CONSIDERED WHEN RENDERING HIS PROJECTIONS AND OPINIONS ON ECONOMIC LOSSES.

14. (a) Defense Objection/Legal Discussion - Page 48, lines 4-7

A: . . . So if we add together the income and the fringe benefits in present value terms, the net income without **the injury** would be $1,604,441.

Lack of foundation.

(b) Defense Objection/Legal Discussion - Page 49, line 5

A: . . . So the present value of her income with **the injury** would be $137,800. For fringe benefits - -

Lack of foundation.

(c) Defense Objection/Legal Discussion - Page 49, line 15

A: . . . So her future earning capacity with **the injury**, including income and fringe benefits, all in present value terms, is $148,341.

Lack of foundation.

(d) Defense Objection/Legal Discussion - Page 49, line 22

A: So if we take into account her potential income and fringe benefits without the injury and subtract the value of the fringe benefits and income with **the injury**, the net economic loss becomes $1,456,099.

Lack of foundation.

(e) Defense Objection/Legal Discussion - Page 50, line 17

A: . . . That would be $194,786. So the net income absent **the injury** is $1,866,769.

Lack of foundation.

(f) Defense Objection/Legal Discussion - Page 51, line 5

A: . . . So her net income with **the injury** would be $174,231.

Lack of foundation.

(g) Defense Objection/Legal Discussion - Page 51, line 10

A: If we subtract her income with **the injury** from her income without the injury, the net economic loss is $1,692,538.

STRIKE: Page 47, line 22 to age 51, line 12.

All of the above objections, 13(a)-13(g) should be SUSTAINED and counsel's questions and the witness' answers to same should be STRICKEN because of a **lack of foundation** for the opinions. A witness cannot give a conclusory opinion without specifying the facts, in this case "**the injury**," that was contemplated. In Commonwealth v. Rounds, 528 Pa. 204, 542 A.2d 997, 999-1000 (1988), it was held that an expert's opinion was improper, where the salient facts relied upon were not specified:

> "As with all expert opinion, however, it is essential that the salient facts relied upon as the basis for the opinion be in the record. (If not), the jury could not know upon what facts the expert had based his opinion. The evidence, therefore, was properly excluded... To hold otherwise would result in a total and complete usurpation of the jury's function in our system of justice... How could a jury evaluate the expert opinion without even knowing the facts upon which it was based."

See also Kozak v. Struth, 515 Pa. 54, 560, 531 A.2d 420, 423 (1987)(held that the proponent of an expert's testimony bears the burden of disclosing the facts used by the expert in forming an opinion, on the record, for the jury to evaluate. Pennsylvania law rejects the contention that the cross-examiner bears the burden of probing the basis of the opinion); Hansen v. Wyeth, Inc., 2005 WL 3068256 at * 2(Phila Co. 2005)("the case specific factual basis upon which that opinion is based must be presented to the jury on direct examination") *citing* Kozak, supra and Pa.R.E. 703 and 705.

15. Defense Objection/Legal Discussion: STRIKE Page 52, lines 10-17

Q: All right. And you assume that something happened on April 12th that we are calling the injury, correct?

Defense Objection: Leading.

These questions and answers at this point should be STRICKEN because Plaintiffs' counsel re-asked the question in non-leading form at page 52, lines 19-20.

16. **Defense Objection/Legal Discussion: STRIKE Page 52, line 24 to page 53, line 12**

Q: Okay. And you made certain assumptions about when she could have gone back to work if that something that didn't happen, that thing we are calling an injury, correct?

Defense counsel objected to the form of the question and because "the injury" was not specified - i.e., a lack of foundation.

This question should be STRICKEN because **Plaintiffs' counsel withdrew the question** at 53, lines 10-12.

17. **Defense Objection/Legal Discussion: STRIKE Page 54, line 18 to page 55, line 15**

Q: So is it accurate that if the hospital is willing to take her back at the same salary and increase that salary and give her a job as a glorified clerk and let her hold that job for 27 years or 33 years would your calculations then be wrong?

Defense counsel objected to the form of the question and lack of foundation.

This question should be STRICKEN because **Plaintiffs' counsel agreed that the objections were appropriate and the question was not answered.** *See* page 55, line 2. Also, the question is leading and argumentative. *See* Com. v. Hoss, 469 Pa. 195, 364 A.2d. 1335 (1976) and Pascone v. Thomas Jefferson Univ., 357 Pa. Super. 524, 516 A.2d. 384 (1986)(argumentative questions that assume as true matters that are unsupported by evidence of fact, or that are intended to argue with the witness or suggest lack of credibility are improper and should be excluded).

18. **Defense Objection/Legal Discussion: STRIKE Page 55, line 17 to page 56, line 8**

Q: Would it also be true if the Red Lobster decided to pay her $64,000 a year 3 percent every year for what she's doing now then there wouldn't be any wage loss, would there?

Defense Objection: Argumentative.

This objection should be SUSTAINED and the question and answer STRICKEN because it is in improper form. Questions must be effectively composed for the ascertainment of the truth. *See* Pa.R.E. 611(a); Com. v. Hoss, 469 Pa. 195, 364 A.2d 1335 (1976) and Pascone v. Thomas Jefferson Univ., 357 Pa. Super. 524, 516 A.2d 384(1986) (argumentative questions that assume as true matters that are unsupported by evidence of facts asserted are improper and should be excluded). They are often sarcastic leading questions as this one was.

19. **Plaintiffs' Objection: Page 59, line 1**

Plaintiffs' counsel objects to the form of the question (no specification stated of what was supposedly improper).

The objection should be DENIED.
The question was a proper and clear question for cross examination. (It should be noted that the transcription contains a typographical error. The word "or" in the first line should be "of.") Moreover, an objection without providing a proper legal basis is improper and deemed waived. *See* Pa. R. Evid. 103(a)(1); Com. v. Brown, 701 A.2d 252 (Pa. Super. 1997).

20. **Plaintiffs' Objection: Page 59, line 22**

Plaintiffs' counsel objects to the form of the question as supposedly unclear and ambiguous.

The objection should be DENIED.

> Q: Do you agree that if certain assumptions of the facts that you made are incorrect, then your calculations do not reflect the proper measure of what you're calling a loss resulting from injuries?

The witness understood and readily responded to the clearly worded question that simply asked the witness to acknowledge that if assumptions the witness made were incorrect, the ultimate loss projections are not accurate.

21. **Plaintiffs' Objection: Page 60, lines 13 and 21; Page 61, line 8; Page 62, lines 1 and 13; Page 63, lines 4 and 23; Page 64, lines 4 and 21; Page 67, line 15; Page 69, lines 9 and 23; Page 70, line 3; Page 72, lines 12 and 24; Page 73, lines 13, 15, and 25; Page 74, line 4; Page 75, lines 2 and 8; Page 77, line 11**

The objections should be DENIED.

Plaintiffs objected to questions as supposedly "irrelevant" and "beyond the scope," asking whether the economist calculating work losses in the case, took into account the effects of the Americans With Disabilities Act return to work provisions and/or obtained information from Mrs. Carlson's employer regarding whether the hospital would make accommodations to return Mrs. Carlson to work despite her medical problems.

The assumptions of fact and information sources available and relied upon or ignored are critically important and relevant to whether the economist's work loss calculations are credible and accurate or not. Indeed, in his answer, the witness **specifically admitted** that such considerations **are "in the background of any projection I make . . . ,"** then

indicated that in this case, he was not provided with such available information by Plaintiffs' attorney. And, he admitted that if such evidence changes the factual assumptions he made, then his projections of economic loss are wrong. Case law holds that available information that the expert witness did **not** consider **is** a proper subject of cross examination. *See*, Boucher v. Pennsylvania Hosp., 831 A.2d 623 (Pa. Super. 2003) (the scope of cross examination includes reports or records which have not been admitted into evidence but which tend to refute that expert's assertions); *see also*, Rafter v. Raymark Industries, Inc., 429 Pa. Super. 360, 632 A.2d 897 (1993) (right to cross examine includes right to examine the witness on any facts tending to refute his direct testimony).

Plaintiffs' arguments that such evidence is only appropriate to cross examine Plaintiffs' vocational expert is belied by the witness' own answers, common sense, and the law.

Moreover, Plaintiffs' objections were so obstructive so as to warrant precluding the whole of the deposition as the obvious intent and effect was to break up the cross examination so as to make it hard for the jury to follow when same is played back.

See, City of Pittsburgh v. Jodzis, 147 Pa. Cmwlth. 234, 607 A.2d 39 (1992) (motion for sanctions relief given when counsel repeatedly and disruptively objected during depositions).

22. Plaintiffs' Objections: Page 75, lines 2, 8, and 10-13

Plaintiffs objected, asserting objections without specifying the basis and that one question was supposedly "misleading."

The objection should be DENIED.
The questions were simple and straightforward, and certainly not misleading:

Q: Do you agree that it's best to have complete information rather than incomplete information when you are making important forensic economic decisions and trying to write a proper report?

A: Yes

Q: Do you agree it is better to have correct information than incorrect information when you're trying to write your report?

A: "Yes."

The witness obviously agreed with these straightforward propositions posed to him on cross examination. Plaintiffs' counsel was simply objecting to the questions because he

knew he would not like the witness' answers. Also, the one objection was waived for not specifying the basis. Pa. Rule of Evid. 103(a)(1).

23. Plaintiffs' Objection: Page 76, line 5

Plaintiffs' counsel objected to the "form" of the question.

The objection should be DENIED.
The question was appropriate for cross examination, and there was no problem with the form of the understandable question.

Q: Do you agree, Mr. Kenkel, that it would be best to have presented a fair and balanced approach to the calculation of economic loss and let the jury decide the truth rather than having a one-sided approach?
A: I have no information indicating that anything that was provided to me is incorrect. So as far as I know my projections are perfectly reasonable.

24. Plaintiffs' Objection: Page 79, line 23

Plaintiffs "objected" without specifying the grounds for same.

The objection should be DENIED, and was waived in any event. Pa. R. Ed. 103.
The question simply asked to specify what medical information the witness had in the medical record that he had disclosed in his direct examination that he had been provided with by Plaintiffs' counsel.

25. Plaintiffs' Objection: Page 80, line 22; Page 81, lines 3 and 11

It is not possible to tell what the objection was about as same as not specified. This waives same. Pa. R. Evid. 103.

The objection should be DENIED.
It appears that Plaintiffs' counsel simply did not like the witness' expected answers. The questions asked whether this witness, who had admittedly been provided medical information about the Plaintiff's case and care (by Plaintiffs' counsel), and which witness has access to and uses statistics in his projections of economic loses, was aware of whether there were statistics or literature regarding the effect of degenerative disc disease of the back on the work life expectancy the witness had projected. This question was based on the witness' earlier testimony that Mrs. Carlson was assumed to have a statistically average, normal work-life expectancy and survival life expectancy. Similarly, one of the questions asked if the expert was aware of what the risk of recurrence of the tumor would be (which could affect work-life expectancy).

26. **Plaintiffs' Objections: Page 83, lines 9, 13, and 16; Page 84, lines 7 and 20**

Once again, the objections did not specify the grounds for same and should be DENIED. (Rule 103). Moreover, the cross examination questions were appropriate to ask regarding whether the expert economist was aware of what effect, if any, it would have on his economic work loss projections if the facts showed that Mrs. Carlson would have needed the same debilitating surgery even if the diagnosis of giant cell tumor would have been made in April, rather than in June.

It is inappropriate to object just because the opposing party anticipates he will not like his witness' answer. Such objections are obstructionist.

27. **Plaintiffs' Objection: Page 87, line 16; Page 88, line 2**

Plaintiffs objected as supposedly "irrelevant," to questions that pointed out the inconsistency in the witness' expert report in which he used the $7.15 per hour legally mandated minimum wage to project loss of household services (which claims have since been abandoned) yet he used a projected earnings ability of only $6.25 per hour to calculate Mrs. Carlson's earnings ability after her tumor surgery (*i.e.*, less than the minimum wage per law).

The objection should be DENIED.
The questions were an appropriate challenge to the witness' credibility to point out the inconsistency and lack of logic of his methods of calculating Plaintiff's income loss, and it is of no consequence that Plaintiffs have abandoned one element of such claims (lost of household services) since generating the report containing the inconsistent information. The questions pointed out the inconsistency in his methodology of calculating economic losses within the witness' report, and did not get into the substance of income loss claims that had been abandoned.

28. **Plaintiffs' Objection: Page 89, line 23**

Plaintiffs objected to the "form of the question" without specifying what was supposedly improper.

Defense counsel WITHDREW the question.

29. **Plaintiffs' Objection: Page 92, lines 7 and 13**

Plaintiffs "objected" without specifying the basis.

The objection should be DENIED. (Rule of Evid. 103).
The cross examination questions properly asked the witness if the data intake sheets the Plaintiffs had provided the witness to base his opinions on in projecting his purported economic losses, had indicated whether there was a period of time that Mrs. Carlson had

elected not to return to work after her tumor surgery because she had other sources of income.

30. **Plaintiffs' Objection: Page 93, line 4**

Plaintiffs objected, without specifying the "same objection" basis, to a question that asked whether the expert witness had assessed whether Mrs. Carlson's activities could translate into employment opportunities in that she is currently only working part time.

The objection should be DENIED. (Pa. R. Evid. 103).
The question was appropriate cross examination inquiring into what assumptions/ assessments the expert did or did not make in projecting economic loss, especially since he had previously indicated he had assumed she could not work at all except for her current part time job. (pp. 34-35; 38; 43; 48-50).

31. **Plaintiffs' Objection: Page 95, line 20**

Plaintiffs stated "same objection" without specifying the basis, to a question asking whether evidence of factors that might affect Mrs. Carlson's work life expectancy should be taken into account to reduce the expert's work loss projections.

The objection should be DENIED. (Rule of Evid. 103).
The question was appropriate cross examination.

32. **Objections: Page 109, line 24: STRIKE Page 109, line 20 to page 110, line 5**

All parties objected to the **witness** asking questions that were actually sarcastic arguments, not testimony.

A: If that's the case, why wouldn't she do that.

Q: Well, I don't know the answer to that, Doctor, but that's why I'm asking the questions.

All counsel objected to counsel's comment and the preceding answer of the witness which acknowledged that neither the witness nor the questioning attorney had any basis to ask the questions or give an answer.

This question, as well as the witness' testimony at page 109, lines 20-21, should be STRICKEN as **all counsel agreed to same**. *See* page 110, lines 2-5.

33. **Plaintiffs' Objections: Page 111, lines 15 and 21; Page 112, line 3; Page 113, line 7; and Page 131, line 17**

Plaintiffs objected to cross examination questions as supposedly "irrelevant," which inquired as to the basis for the economist having written a report projecting a loss of household services, which he abandoned and now declined to claim were legitimate losses in his testimony.

The objections should be DENIED.
The questions were appropriate cross examination. The answers to the questions eventually revealed that the witness was trying to shield the Plaintiffs from the fact that the witness had determined that Plaintiff Paula Carlson had given him supposedly factual information which was "**inconsistent with**" or pointed to a "**discrepancy between**," the information she had provided him on his form questionnaire when compared to her sworn deposition testimony. (*See* answers at page 113, line 13 to page 114, line 2; page 131, lines 21-24; and page 132, lines 1-7). This affects both the witness' and Plaintiff Paula Carlson's credibility.

34. **Plaintiffs' Objections: Page 116, line 24; Page 117, line 10**

Plaintiffs objected to questions on cross examination exploring the basis for the expert's claim of a loss of social security contributions by her employer based on Mrs. Carlson's shortened work life.

The objections should be DENIED.
The witness was appropriately cross examined to clarify the basis for his opinions of a claimed loss of employer contributions to social security, which are based on the employee's income rather than the employer's social security contributions as the witness seemed to be claiming.

35. (a) **Defense Objection/Legal Discussion: STRIKE Page 117, line 23 to page 118, line 8**

> A: . . . I would expect that if you had an income of $64,000 you're far above average, and there aren't too many jobs that are going to pay something like that in Clearfield County.

Defense Objection: Not qualified to give that opinion. This expert was an economist who performs mathematical calculations of projected economic loss. He was not qualified as a vocational or labor market survey expert nor did he have any qualifications or provide a foundation to give opinions as to job availability. Plaintiffs have a different expert, Donal Kirwan, to testify to issues of earnings potentials in the local labor market.

The objection should be SUSTAINED.

(b) **Defense Objection/Legal Discussion: STRIKE Page 118, line 18 to page 119, line 4**

Q: Do you have an opinion as to whether it would be easy or difficult, likely or unlikely for Paula Carlson to be able to find another job in Clearfield County that pays $64,000 a year?

Same defense objections. Lack of qualifications and lack of foundation.

The above noted question and testimony that followed should be STRICKEN because the witness was not properly qualified to render a vocational opinion. In fact, the witness, himself, admitted that he is "not a vocational rehabilitation person." *See* page 117, lines 21-25.

36. **Defense Objection/Legal Discussion: STRIKE Page 120, lines 10-13**

BY MR. CRENNEY:

Q: Okay. And so in that sense that is fairly exact as to the general population, correct?

Defense Objection. Argumentative and leading. Also, the question was never answered as it was then reformulated.

The objection should be SUSTAINED. Leading questions should not be used on direct or redirect examination. *See* Pa.R.E. 611(c). A leading question has been defined as one which indicates or suggests the answer desired by the examiner. *See* Com. v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991). Questions must be effectively composed for the ascertainment of the truth. *See* Pa.R.E. 611(a); Com. v. Hoss, 469 Pa. 195, 364 A.2d 1335 (1976) and Pascone v. Thomas Jefferson Univ., 357 Pa. Super. 524, 516 A.2d 384 (1986)(argumentative questions that assume as true matters that are unsupported by evidence are improper and should be excluded).

37. **Defense Objection/Legal Discussion: STRIKE Page 121, line 25 to page 123, line 4**

Q. And in fact, it -- in fact -- and we've talked a lot about these lawyers want to talk about the individual Paula. Between 2001 and 2006 she had an 11 percent increase, correct?

A: 11 percent per year.

Q: Per year?

Defense Counsel Objected to leading. Plaintiffs' counsel admitted his questions were leading and needed "reformed." (p. 122, lines 13-15).

These questions and answers should be STRICKEN because of the improper form. Leading questions should not be used on direct or redirect examination. *See* Pa.R.E. 611(c). A leading question has been defined as one which indicates or suggests the answer desired by the examiner. *See* Com. v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991).

38. **Defense Objection/Legal Discussion - Strike: Page 122, lines 9-12, line 7 to page 123, line 4**

The witness went on to testify that:

Q: Per year?

A: Her income went up 69 percent, which amounts to about 11 percent per year

Defense counsel then re-objected to continuing leading as well as now Plaintiffs' counsel was rehashing ongoing direct examination, after cross examination had occurred, trying to get in the last word. The objection should be SUSTAINED.

The court shall exercise reasonable control over the interrogation of witnesses and presentation of evidence to avoid needless consumption of time. *See* Pa.R.E. 611(a). On re-direct examination, the practice is uniform that the party's examination is limited to answering only such matters as were drawn out in the immediately preceding examination of the adversary. *See* Catina v. Maree, 498 Pa. 443, 447 A.2d 228 (1982).

39. **Defense Objection/Legal Discussion: STRIKE Page 123, line 16 to page 124, line 7**

Defense counsel objected to the form of Plaintiffs' question and in that it was blatantly argumentative and sarcastic. The objection should be SUSTAINED and the question and answer should be STRICKEN.

Q. Counsel has pointed out that you deal with lots of lawyers and testify in lots of cases. Do some lawyers try to squeeze every penny that's possible if you can find any foundation for it? Do they try that?

40. **Defense Objection/Legal Discussion: STRIKE Page 124, line 8 to page 125, line 3**

Q: Did I instruct you to be extremely conservative in the approach you took and the numbers you gave to the jury?

Defense Objection: Leading.
This question should be STRICKEN because it is leading and **Plaintiffs' counsel re-asked a similar questioned at page 125, lines 5-6 in proper form**.

41. **Defense Objection/Legal Discussion: STRIKE Page 125, line 15 to page 126, line 6**

Defense counsel objected to questions and answers without foundation, to which the witness could only speculate in response, regarding what employer's reactions to lawsuits are and/or what DuBois Regional Medical Center's reaction was.

42. **Defense Objection/Legal Discussion: STRIKE Page 126, line 21 to page 128, line 5**

The questions were leading and beyond the scope of the earlier cross examination and asked for a legal opinion of the witness as to whether the witness knew "what an employee at will is."

Q: Do you know what an employee at will is?

Defense Objection: Beyond the scope of the cross examination. It is also a legal question.
The objections should be GRANTED.

43. **Plaintiffs' Objection: Page 129, lines 1, 9, 20, and 22**

Plaintiffs' objections to the "form" of perfectly proper questions should be DENIED. The questions asked whether the witness was told to change his testimony from what he "had planned to testify to."

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

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Dated: January 25, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Dr. Alajaji's Motion/Brief for Rulings on Objections to Plaintiffs' Trial Deposition of Plaintiffs' Expert Economist, James Kenkel in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25th day of January, 2008, to the attorney(s) of record:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Motion in Limine and Brief to Preclude Various Expert Opinions of Plaintiffs' Orthopedic Surgeon, Dr. Kenneth Yaw

Filed on Behalf of Defendant
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03:30 BK
JAN 25 2008
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

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	:	Docket No: 2006 - 563 - C.D.
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vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

PROPOSED ORDER

AND NOW this _____ day of _____, 2008, upon consideration of Dr. Alajaji's Motion in Limine and Brief to Preclude Various Expert Opinions of Plaintiffs' Orthopedic Surgeon, Dr. Kenneth Yaw, said Motion is hereby GRANTED in all respects.

Orthopedic surgeon, Dr. Yaw, can not testify as to the standards of care or breach thereof by Defendant Radiologist, Dr. Alajaji.

Dr. Yaw can not accuse Defense expert, Dr. Schmidt, of being unethical or in violation of any Rules of Ethics of an expert witness.

BY THE COURT

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S MOTION IN LIMINE AND BRIEF TO PRECLUDE VARIOUS OPINIONS OF PLAINTIFFS' ORTHOPEDIC SURGEON, DR. KENNETH YAW

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and files the following Motion in Limine:

A. Motion to Strike Orthopedic Surgeon Dr. Yaw's Opinions as to the Radiologic Standards of Care of Defendant Radiologist, Dr. Alajaji

1. The instant medical malpractice action concerns allegations that Board Certified General Radiologist, Dr. Jerjis Alajaji, M.D., purportedly should have but failed to discern an early giant cell tumor of the radius bone of the forearm at the wrist, while interpreting x-rays obtained at DuBois Regional Medical Center on April 12, 2005.

2. Plaintiffs have proffered several experts to testify against Dr. Alajaji, including a Board Certified Radiologist, Dr. Cooperstein. However, Plaintiffs have also procured reports from treating orthopedic surgeon, Dr Kenneth Yaw, who has gone beyond his role as a treating physician and authored reports purporting to criticize Radiologist Dr. Alajaji for purportedly

violating the standards of care as a radiologist in not detecting a rare giant cell bone tumor of the radius when he interpreted the April 12, 2005 films. A copy of Dr. Yaw's report of March 7, 2006, is attached hereto as Exhibit "A." It should be noted that Dr. Yaw has issued various other reports, and medical records, testifying to opinions pertaining to causation of injuries, and his care and treatment of the patient, to which no specific objection is being raised at this time. This Motion in Limine pertains specifically to his attempt to criticize Dr. Alajaji for his purportedly violating the standards of care of a Board Certified Radiologist, which Dr. Yaw certainly is not.

3. As reflected in the extensive curriculum vitae of Plaintiffs' orthopedic bone tumor specialist, Dr. Yaw, attached hereto as Exhibit "B," he has advanced training in surgery, orthopedic surgery, and orthopedic oncology (bone or muscle tumors), which is the focus of his medical subspecialty practice. He has never been trained nor practiced as a radiologist, or Board Certified Radiologist, and did not undergo the same training as has Board Certified Radiologist Defendant Dr. Alajaji, as reflected in his deposition testimony attached hereto as Exhibit "C." As reflected in Dr. Yaw's curriculum vitae regarding his teaching activities, his teaching activities over the years have focused on orthopedic residents in training regarding issues within Dr. Yaw's super subspecialty of orthopedic oncology tumors. None of the teaching activities would indicate that he is or has been actively involved in teaching recognition or diagnosis of giant cell tumors to physicians in training in the field of radiology, or that he would have a basis for knowing a radiologist's standards of care.

4. It is submitted that Dr. Yaw is not qualified to testify as to the standards of care or alleged breach thereof, of a Board Certified Radiologist such as Dr. Alajaji with respect to the issue of rare giant cell tumor diagnosis on x-rays.

Under common law principles, the courts of this Commonwealth have limited the degree to which a physician of a given specialty may render opinions upon another distinct medical specialty. *See, e.g.*, Gottlob v. Hillegas, 195 Pa.Super. 453, 461, 171 A.2d 868, 872 (1961). In Gottlob, an expert in peripheral vascular disease who treated the patient for blood clots in the legs, was **not qualified** to render an opinion as to the heart and, therefore, his testimony as to causation, i.e. that an automobile accident caused a serious heart condition, was properly stricken. Id.

The Superior Court undertook an in-depth analysis of the subject of cross-specialty testimony in Dambacher by Dambacher v. Mallis, 336 Pa.Super. 22, 485 A.2d 408 (1984). In **precluding** testimony of experts who sought to proffer opinions that went too far, the court began by acknowledging that:

> "Sometimes it may appear that the scope of the witness's experience and education embraces the subject in question in a logical, or fundamental, sense. In such a case, the witness is qualified to testify even though he has no particularized knowledge of the subject as such; for he will be able to reason from the knowledge he does have."

Dambacher, 336 Pa. Super. at 42, 485 A.2d at 418. The court then went on to survey opinions from numerous jurisdictions wherein physicians of one specialty were held **incompetent** to testify on the subject of another specialty, as follows:

> "Other times it may appear that the scope of the witness's experience and education may embrace the subject in question in a general way, **but** the subject may be so specialized that even so, the witness will not be qualified to testify. **Thus, every doctor has a general knowledge of the human body. But an ophthalmologist, for example, is not qualified to testify concerning the causes and treatment of heart disease.** See Arnold v. Loose, 352 F.2d 959 (3rd Cir. 1965) (striking testimony of orthopedic surgeon that in his opinion defendant's decedent had lapsed into diabetic coma, which was cause of automobile-truck

> collision, held not beyond trial court' s discretion where witness admitted he had never read any text on diabetes or diabetic comas, did not know who was leading authority on diabetes or which was leading treatise, and revealed no other special knowledge in field of diabetes); Hunt v. Bradshaw, 251 F.2d 103 (4th Cir. 1958) (radiologist **not qualified** to testify as to proper surgical procedure in chest operation); Wesley v. State, 32 Ala. App. 383, 26 So.2d 413 (1946) (toxicologist **not qualified** to testify wound inflicted with screwdriver or similar instrument); Harris v. Campbell, 2 Ariz. App. 351, 409 P.2d 67 (1965) (discretionary **exclusion** of general practitioner in malpractice action against gynecologist who performed vaginal hysterectomy); Huffman v. Lindquist, 37 Cal.2d 465, 234 P.2d 34 (1951) (autopsy surgeon **not qualified** as to treatment for brain injury); Moore v. Belt, 34 Cal.2d 525, 212 P.2d 509 (1950) (autopsy surgeon **not qualified** as to existing standards in practice or urology); Pearce v. Linde, 113 Cal. App.2d 627, 248 P.2d 506 (1952) (specialist in internal medicine **not qualified** as to orthopedics) Dolan v. Galluzzo, 77 Ill.2d 279, 32 Ill.Dec. 900, 396 N.E.2d 13 (1979) (physician unlicensed in podiatry **not qualified** to testify in malpractice action against podiatrist); Swanson v. Chatterton, 281 Minn. 129, 160 N.W.2d 662 (1968) (internist **not qualified** as to orthopedic surgery); State v. Askin, 90 Mont. 394, 3 P.2d 654 (1931) (general practitioner **not qualified** to testify as to brain injury); Whitehurst v. Boehm, 41 N.C.App. 670, 255 S.E.2d 761 (1979) (orthopedic surgeon unfamiliar with practice of podiatry **not qualified** to testify as to standard of care required of podiatrist); Capan v. Divine Providence Hospital, 270 Pa. Super. 127, 410, A.2d 1282 (1980) (anesthesiologist **not qualified** as to autopsy report)".
> Id. at 43-44, 485 A.2d at 419 (emphasis supplied).

The law with regard to the requisite qualifications for an expert to testify concerning the standard of care in a medical malpractice action is, however, considerably **more stringent** than the common law standards, so as to prevent witnesses from testifying beyond their area of true competence. Specifically, the law with regard to the requisite qualifications has been significantly changed with the enactment of the MCARE Act, 40 P.S. §§ 1303.101 - 1303.910. The MCARE Act imposes specific requirements that a medical expert must meet prior to

offering expert medical opinions at trial concerning the care and treatment at issue. *See* Section 512, 40 P.S. § 1303.512, titled "Expert Qualifications."

Section 512 of the MCARE Act precludes Dr. Yaw from testifying as to the standard of care applicable to Dr. Alajaji in this matter because Dr. Yaw is not a Board Certified Radiologist, like Defendant Dr. Alajaji. Section 512(c) of the MCARE Act (40 P.S. § 1303.512(c)), regarding "**Standard of Care**" states that, an expert testifying as to a physician's standard of care also must meet **all** of the following qualifications:

> Standard of care. - - In addition to the requirements set forth in subsections (a) and (b), an expert testifying as to a physician's standard of care **also must meet the following qualifications**:
>
> > (1) Be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care.
> >
> > (2) **Practice in the same subspecialty as the defendant physician, or in a subspecialty which has a substantially similar standard of care for the specific care at issue**, except as provided in subsection (d) or (e).
> >
> > (3) In the event the defendant physician is certified by an approved board, **be board certified by the same or similar approved board**, except as provided in subsection (e).
>
> (d) Care outside specialty. . . .
>
> (e) Otherwise adequate training, experience and knowledge -- A court may waive the same specialty and board certification requirements for an expert testifying as to a standard of care **if** the court determines that the expert possesses **sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine** within the previous five-year time period.

40 P.S. §1303.512(c). (emphasis supplied)

The significance of MCARE's enactment, as opposed to the common law standards of expertise, is profound. While under the old Pennsylvania standards, a doctor had a good deal of leeway in testifying, MCARE was enacted to strictly control that overly liberal practice. The applicable provisions of the MCARE Act are a **major change** from the previously "wide open" standard for expert qualification, which allowed testimony merely based on "any reasonable pretension to specialized knowledge on the subject under investigation." *See* Corrado v. Thomas Jefferson University Hosp., 790 A.2d 1022, 1027 (Pa.Super. 2001). As Judge Cullen remarked in Spotts v. Small, 61 Pa. D. & C. 4th 225 (Lancaster Co. 2003):

> The MCARE Act does not set forth explicitly the legislature's intention in enacting §512, and the available legislative history does not provide reliable guidance. Based upon the language employed, the purpose of §512 of the MCARE Act is to establish a **more stringent standard for the admission of expert medical testimony in medical malpractice actions.**

Spotts, 61 Pa. D&C 4th at 228 (emphasis added).

Indeed, the Pennsylvania Supreme Court subsequently recognized this new **higher burden** on Plaintiffs' experts' qualifications and testimony in medical malpractice cases:

> Subsection (1) provides that the expert must, first, have "sufficient education, training, knowledge and experience to provide credible, competent testimony" **and** second, **fulfill the additional qualifications set out in § 1303.512**. In our view, the first part of subsection (1) restates the common law standards for rendering an expert medical opinion. **The Act then adds new requirements in addition to the common law requirements**, in subsections (b) through (d)."

See Wexler v. Hecht, 928 A.2d 973 (Pa. 2007). As such, this Court must prohibit Plaintiffs from offering radiologic standard of care evidence at the trial of this matter where Dr. Yaw is not adequately qualified pursuant to the provisions of §512 of the MCARE Act. Not only is Dr. Yaw

not a radiologist, Dr. Yaw is not Board Certified in Radiology as is Dr. Alajaji, certainly does not teach radiology, and "orthopedic surgery" medicine is **not** "related to" radiology, but rather, is a differently trained specialty which is a far cry from the focused practice of a radiologist, who has to offer opinions based only on x-rays, without the patient information, examination, or background training that an orthopedic surgeon has at his disposal.

5. The **impropriety** of Plaintiffs' attempt to have orthopedic surgeon Dr. Yaw testify as to the standards of care of a radiologist, and alleged breach thereof by Dr. Alajaji with respect to whether he should have been able to diagnose this rare giant cell tumor in the Plaintiff herein, has been established of record and reconfirmed in the deposition that **Plaintiffs** have taken for trial of **orthopedic surgeon** and treating physician, Dr. Mark Piasio, M.D., who also happens to be President of the Pennsylvania Medical Society. A copy of pertinent portions of Dr. Piasio's deposition testimony are attached hereto as Exhibit "D."

6. The attached pages of Dr. Piasio's deposition testimony **taken by Plaintiffs' counsel** on January 22, 2008, indicate as follows:

> A. Dr. Piasio is an orthopedic surgeon at DuBois Regional Medical Center which specializes in diseases of the bones and joints. (pp. 5-7)
>
> B. Dr. Piasio, like Dr. Yaw, but different than Dr. Alajaji, has undergone extensive training in orthopedic specialty residency programs. (pp. 5-7, 10, 67-68). He also had a specific interest in, and received specialized advanced training and conducted research during his orthopedic residency program on, evaluation and diagnosis of giant cell tumors. (pp. 72-73).

7. Plaintiffs' counsel sought to qualify and have orthopedic surgeon Dr. Piasio, who was able to diagnose the April 12, 2005 x-ray as possibly showing a giant cell tumor, testify as an expert against Dr. Alajaji. (*See, e.g.*, p. 51). However, Dr. Piasio clearly and unequivocally

confirmed and stated that **as an orthopedic surgeon, he is not qualified to comment on the standard of care of a radiologist.** Id.

8. Specifically, he indicated as follows:

MR. CRENNEY:

Q: Doctor, you specifically do not wish to give an opinion in this case on standards of care; correct?

A: The two standards upon which I would be asked, one radiology, **I am not a radiologist. I'm an orthopedic surgeon, and so I cannot comment on the standard of care of a radiologist.** Two, I am a general orthopedic surgeon, I am trained in tumor and have to answer questions in tumor, but I don't specifically treat tumor, nor did I have subspecialty training in musculoskeletal management, although it is not foreign to me. I can testify as a generalist that understands and knows treatment of tumor, but not as a subspecialist in that regard. So I would want everyone to understand what the level of - - the level of my - - my level of expertise is. (Id. at page 51-52.)

9. In his testimony, Dr. Piasio also confirmed distinctions in the practice of orthopedic surgeons and radiologists. The distinctions include the fact that it is helpful to an orthopedic surgeon such as himself "in an attempt to reach a diagnosis, to have the ability to personally examine the patient, take a history of the patient's condition from the patient, ask the patient questions, and to order and obtain and review the various studies and tests. . . ." (pp. 69-71).

10. Dr. Piasio also stated that a giant cell tumor is quite rare (p. 71), and Dr. Piasio had never seen one of the radius bone of the wrist in 20 years of practice but in his subspecialty training, he had been trained specifically on giant cell tumors and actually underwent a tumor modeling research focused specifically on giant cell tumors which trained him to diagnose and recognize them. (pp. 72-73).

11. Dr. Piasio also testified that as an orthopedic specialist with such training in giant cell tumor diagnosis, the practice of his profession is quite different than what a radiologist does because "a radiologist generally doesn't have an opportunity to see a patient." (pp. 69-70). When asked regarding plain x-rays, he indicated, "They (a radiologist) would not see a patient." (p. 70). Also, he reconfirmed that as an orthopedic surgeon, he gets to personally see the patient, take a history from the patient, examine the patient, order and pull up and review x-rays or MRI's or other imaging studies, make a diagnosis and treat the patient, which a radiologist does not. (pp. 69-70).

12. The ability to do these things in an attempt to reach a diagnosis is something that he finds "helpful," as an orthopedic surgeon. (pp. 70-71).

13. Dr. Piasio also testified that as between even Board Certified Orthopedic Surgeons, they can have differences of opinion as to what an x-ray film does or does not show. (p. 88). In addition, he was asked:

> Q: Is that the way that it is with these standard basic x-rays, that sometimes you are not certain of what you are seeing with that particular study, it can be interpreted different ways?
>
> A: We may disagree on readings, yes. We don't always - -

14. Dr. Piasio also testified as follows:

> Q: And in between specialties, they can have differences of opinion: correct?
>
> A: I would venture to say that we may disagree on things, yes.
>
> Q: And does that happen to you over time in your practice?
>
> A: Yes.

Q: Over the years here at DuBois Regional Medical Center as well as in your training?

A: Absolutely.

Q: And your training was at these other institutions that you have talked about earlier; correct.

A: That's right.

Q: Were you still trying to do a good job even though someone else disagreed with you?

A: On?

Q: Interpretation.

A: You mean in life or - -

Q: Interpretation of films, I'm sorry.

A: I was doing my job.

Q: Thank you.

A: Although if my care is going to be on trial here, then I may need representation, which I don't have. (Id. at pp. 88-89).

15. As demonstrated in Dr. Piasio's deposition taken by Plaintiffs for trial, even Board Certified Orthopedic Surgeon Dr. Piasio, who is also head of the Pennsylvania Medical Society, has unequivocally indicated in his testimony given for Plaintiffs' case in chief that **orthopedic surgeons are not qualified to testify as to the standards of care of a Board Certified Radiologist, they undergo different training, have different experiences and qualifications, and the nature of their practices and how they go about same and what information they are or are not given in an attempt to make a diagnosis based on x-ray films is vastly different.**

16. As such, it is well established in this record that Plaintiffs' other orthopedic surgeon and bone tumor subspecialist, Dr. Kenneth Yaw, should likewise not be permitted to venture opinions and criticize radiologist Dr. Alajaji, as to whether he should or should not have been able to make the diagnosis as a radiologist of this rare giant cell tumor which as Dr. Piasio added, did **not** have classic findings. (Piasio deposition at pp. 73,74; 76; 105-106.) Rather, Plaintiffs' radiology expert, Dr. Cooperstein, can address the radiologist's standard of care. *See also*, Pa. Rule of Evidence 403 (cumulative evidence).

WHEREFORE, it is respectfully requested that this Honorable Court grant Dr. Alajaji's Motion in Limine and preclude Dr. Kenneth Yaw's attempts to contend that Dr. Alajaji breached the standards of care of a Board Certified Radiology physician.

B. Motion to Strike Dr. Yaw's Personal Attack on the Ethics of Expert Witnesses, Which Leads into Collateral Issues and Will Confuse and Mislead the Jury

17. In Plaintiffs' orthopedic bone tumor surgeon subspecialist Dr. Kenneth Yaw's report for Plaintiffs' attorney, Thomas Crenney, dated July 19, 2007, copy attached hereto as Exhibit "E," he attempts to interject collateral issues and disputes not relevant to the medical legal issues in the instant case, when he launches into personal attacks and accusations in the first full paragraph of page 2 of his report contending that defense orthopedic bone tumor specialist surgeon, Dr. Richard Schmidt's criticism of the surgery performed by Dr. Yaw is purportedly a "violation of the American Academy of Orthopedic Surgeons' Standards of Professionalism which were adopted on April 18, 2005."

18. In Exhibit "F", attached hereto, Dr. Schmidt responded in his report of July 30, 2007, to Dr. Yaw's collateral and inappropriate contention, which does not relate to the real issue which these two opposing experts are debating as to what the appropriate surgical treatment

should have been for the tumor in question. Dr. Schmidt disagrees with Dr. Yaw's contentions as to whether anyone violated the American Academy of Orthopedic Surgeons' Standards of Professionalism pertaining to orthopedic expert witness testimony, which in subparagraph 4 thereof indicates that "**an orthopedic expert witness shall neither condemn performance that falls within generally accepted practice standards nor endorse or condone performance that falls outside of these standards.**"

19. Obviously, Dr. Yaw and Dr. Schmidt differ with regard to the interpretation and application of the Standards of Professionalism of orthopedic expert witnesses, with Dr. Yaw contending that the surgery he performed falls within the generally accepted practice standards, while Dr. Schmidt contends that he is complying with the Code of Professional Ethics in testifying to his opinion that Dr. Yaw's surgery does not fall within generally accepted practice standards and thus has criticized same in accordance with the AAOS Code of Medical Ethics and Professionalism for Orthopedic Surgeons which provides that expert witnesses shall not "endorse or condone performance that falls outside these standards (of generally accepted practice)."

20. Dr. Yaw's attempts to cause the trial of the case to launch into a collateral debate over what the American Academy of Orthopedic Surgeons' Guidelines for Expert Witness Testimony mean and/or how and if they apply as to the facts of this case, is a totally irrelevant, collateral, immaterial sideshow and personal attack on Dr. Schmidt that will only serve to mislead and confuse the jury, which is obviously Dr. Yaw's and Plaintiffs' intent. Such a sideshow also has the potential to prejudice Dr. Schmidt's testimony and Dr. Alajaji's defense by reason of same. Both of these experts are highly qualified to testify as to what they believe the medical standards of care are with regard to the appropriate procedure to be performed for this type of bone tumor, and can provide their rationale and justifications from a medical perspective

for the jury's consideration to determine which one of them is right or wrong. However, it is grossly inappropriate for Dr. Yaw to launch into "name calling" personal attacks on Dr. Schmidt's credibility by asserting that Dr. Schmidt is supposedly unethical, to which Dr. Schmidt would have to respond that Dr. Yaw is unethical. *See* Com. v. Crawford, 553 Pa. 195, 718 A.2d 768 (1998)("It is an encroachment upon the province of the jury to permit admission of expert testimony on the issue of credibility of a witness"); *See also* Com. v. Constant, 925 A.2d 810 (2007)(whether the expert's opinion is offered to attack or to enhance, it assumes the same impact; an unwarranted appearance of authority in the subject of credibility which is within the facility of the ordinary juror to assess); Kozak v. Struth, 515 Pa. 554, 531 A.2d 420 (1987)(issues of ultimate fact, especially those of credibility, are for the jury, not the expert).

WHEREFORE, Defendant Dr. Alajaji requests that this Honorable Court preclude Dr. Yaw from questioning Dr. Schmidt's ethics and claiming that Dr. Schmidt's opinions violate the Code of Professionalism for Orthopedic Surgeon Expert Witnesses. This case should be tried on the medical issues in the case, not personal attacks between experts.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
Darryl R. Slimak
Attorneys for Defendant
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(814) 238-4926
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Dated: January 25, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant Dr. Alajaji's Motion in Limine and Brief to Preclude Various Expert Opinions of Plaintiffs' Orthopedic Surgeon, Dr. Kenneth Yaw in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25th day of January, 2008, to the attorney(s) of record:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
One Gateway Center 18th Floor West
Pittsburgh, PA 15222

Walter F. Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck, LLC
120 Lakemont Park Boulevard
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FLEMING & FAULKNER, INC.

By: _____
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Attorneys for Defendant
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EXHIBIT A

Mercy Orth[redacted]dic Associates

Mercy Health Center
1350 Locust Street, Suite 220
Pittsburgh, PA 15219-5166

412.232.5800 *telephone*
412.232.7351 *facsimile*

Jory D. Richman, MD
Mitchell H. Rothenberg, MD
Kenneth M. Yaw, MD
Gregory F. Habib, DO
Eric McCoy, PA-C
Robert T. Modrak, PA-C
Holly Dignan, PA-C
Jennifer Houlihan, PA-C

March 7, 2006

Mr. Thomas E. Crenney
Crenney & Associates, LLC
One Gateway Center
18th Floor – West
Pittsburgh, PA 15222

Mercy

RE: Paula Carlson
DOB = 4/26/1971
Your File No. 2895.01

Dear Mr. Crenney:

I am writing this letter pursuant to our conversation and under the medical information release authorization signed and dated by Paula Carlson 8/4/05. The tumor in Mrs. Carlson's right distal radius was sufficiently clear and conspicuous on her initial radiographs performed 4/12/2005 that it should have been detected and reported by any radiologist who reviewed those films. I express this opinion within a reasonable degree of medical certainty.

I hope this information is of use to you. Please contact me if I can provide further assistance in this matter.

Sincerely,

Kenneth M. Yaw, MD

EXHIBIT B

BIOGRAPHICAL

Name: Kenneth M. Yaw, M.D.

Birth Date: 1953

Home Address: 139 Old Mill Road
Pittsburgh, PA 15238

Birth Place: England

Home Phone: (412) 963-1564

Citizenship: U.S.A.

Business Address:

E-Mail: orthoyaw@comcast.net

Business Phone: (412) 952-2627 (leave msg)

EDUCATION AND TRAINING

UNDERGRADUATE:

1971-1975 — Montana State University
Bozeman, Montana
BS, 1975
Chemical Engineering

GRADUATE:

1975-1979 — University of Chicago Pritzker School of Medicine
Chicago, Illinois
MD, 1979

POST GRADUATE:

1979-1980 — Categorical Surgery Internship
Virginia Mason Medical Center
Seattle, Washington
Program Director: James Coatesworth, M.D.

1980 — Aerospace Medicine Primary Course
U.S. Air Force School of Aerospace Medicine
San Antonio, Texas

1983-1987 — Residency in Orthopaedic Surgery
Wilford Hall U.S. Air Force Medical Center
San Antonio, Texas
Program Director: Thomas Shepler, M.D.

1987-1988 — Fellowship, Orthopaedic Oncology
Massachusetts General Hospital and Boston Children's Hospital
Boston, Massachusetts
Program Director: Henry J. Mankin, M.D.

APPOINTMENTS AND POSITIONS

ACADEMIC:

1987-1988	Assistant in Orthopaedic Surgery Harvard University Boston, Massachusetts
1988-1990	Clinical Instructor in Orthopaedics University of Texas Health Science Center San Antonio, Texas
1990-1999	Assistant Professor of Orthopaedic Surgery University of Pittsburgh School of Medicine Pittsburgh, Pennsylvania
1990-2003	Chief, Division of Musculoskeletal Oncology Department of Orthopaedic Surgery University of Pittsburgh School of Medicine Pittsburgh, Pennsylvania
1997-2003	Residency Program Director Department of Orthopaedic Surgery University of Pittsburgh School of Medicine Pittsburgh, Pennsylvania
2000-2003	Associate Professor of Orthopaedic Surgery University of Pittsburgh School of Medicine Pittsburgh, Pennsylvania

NON-ACADEMIC POSITIONS:

1980-1983	Chief of Aerospace Medicine USAF Regional Hospital Minot, North Dakota
1988-1990	Chief of Orthopaedic Oncology Wilford Hall USAF Medical Center San Antonio, Texas
1990-Present	Associate Member Pittsburgh Cancer Institute Pittsburgh, Pennsylvania
1991-1995	Assistant Chief, Orthopaedic Surgery Section Veterans Administration Medical Center (University Drive) Pittsburgh, Pennsylvania

NON-ACADEMIC POSITIONS (Continued):

1995 – 3/99	Chief, Orthopaedic Surgery Section VA Pittsburgh Healthcare System Pittsburgh, Pennsylvania
3/99 - Present	Assistant Chief, Orthopaedic Surgery Section VA Pittsburgh Healthcare System Pittsburgh, Pennsylvania

CERTIFICATION AND LICENSURE

SPECIALTY CERTIFICATION:

1990	American Board of Orthopaedic Surgery (Recertified 01/2001)

MEDICAL OR OTHER PROFESSIONAL LICENSURE

Pennsylvania	-	MD-042924-L	Arizona	-	32079
Washington	-	MD-00018827	Michigan	-	(Expired 1990)
Massachusetts	-	57353			
Montana	-	10271			

MEMBERSHIPS IN PROFESSIONAL AND SCIENTIFIC SOCIETIES

2000-Present	Academic Orthopaedic Society
1986-Present	American Medical Association
1986-Present	American Academy of Orthopaedic Surgeons
1986-Present	Society of Military Orthopaedic Surgeons
1991-Present	Pennsylvania Orthopaedic Society
1990-Present	Allegheny County Medical Society
1990-Present	Interstate Orthopaedic Society
1990-Present	Pennsylvania Medical Society
1994-Present	Musculoskeletal Tumor Society
1993-Present	International Society of Limb Salvage

PUBLICATIONS (Continued)
Non-Peer Reviewed (Continued)

3. **Yaw KM**, Doyle JS. "Surgical Treatment of Bone Metastases of the Axial Skeleton and Extremities" in Regional Therapy of Cancer (Lotze MT, Rubin JT, eds) Lippincott-Raven Publishers, Philadelphia, PA., 1997.

4. Hasselman CT, Anderson GB, **Yaw, KM**, Jaffe R. Rosai-Dorfman Disease: An Unusual Cause of a Lytic Bone Lesion in a Child. Pittsburgh Orthopaedic Journal 5:49-53(1994).

5. Sotereanos NG, Sotereanos DG, Rubash HE, Berger RA, Schoedel KE, Charron M, Morrell MK, **Yaw KM**. Vascularized Orthotopic Osteochondral Transplantation of the Canine Proximal Femur. Transaction of the Orthopaedic Research Society, page 550, Feb 1994.

6. **Yaw KM**, Dolecki M. "Tumor and Related Conditions" in Knee Surgery, pp 457 - 481, (Fu FH, Harner CD, and Vince K, eds), published by Williams and Wilkins, Baltimore, MD, 1994.

7. Sotereanos NG, Berger RA, Sotereanos DG, Rubash HE, **Yaw KM**, Schoedel KE, Thompson WH, Silvaggio VJ, Todo S, Herndon JH. Vascularized Orthotopic Osteochondral Transplantation of the Canine Proximal Femur. Pittsburgh Orthopaedic Journal 4:19-22(1993).

8. Regan M, **Yaw KM**, Herndon JH, Crossett LS. Hemophilic Pseudotumor of the Femur: Treatment with an Allograft/Prosthetic Composite Total Femoral Replacement. Pittsburgh Orthopaedic Journal 4:33-35, 1993.

9. **Yaw KM**. "Orthopaedic Pathology" in Review of Orthopaedics, pp. 167 - 211(Miller MD eds) published by W. B. Saunders Company, 1992.

10. **Yaw KM**, Gebhardt MC, Mankin HJ. "Chemotherapy Effect on the Clinical Results of Allograft Transplantation in the Treatment of Malignant Bone Tumors" in Limb Salvage - Major Reconstructions in Oncologic and Nontumoral Conditions. Springer-Verlag, Berlin & Heidelberg, pp107-115, 1991.

11. **Yaw KM**, Wurtz LD. Resection and Reconstruction for Bone Tumors in the Proximal Tibia. Orthopaedic Clinics of North America, 22:133-148(1991).

PROFESSIONAL ACTIVITIES

TEACHING:

Musculoskeletal Organ Block – PBL- Sessions I & II, Introduction and Resolution, University of Pittsburgh. May 10, 16, 24, 29, 2001.

"Cartilage Tumors", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, January 20, 2001.

TEACHING:

"Ewing's sarcoma", presented to Orthopaedic Surgeons and Residents, West Penn Allegheny Health System, December 19, 2000.

"Ewing's sarcoma", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, December 5, 2000.

"Oncology Review", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, October 18, 2000

"Osteosarcoma", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, October 11, 2000.

"Osteosarcoma", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, September 26, 2000.

"Staging Musculoskeletal Tumors", Instructional Course presented at De Ortopedia Y Traumatologia 26th Annual Meeting in Quito, Ecuador, August 16 – 17, 2000.

Musculoskeletal Organ Block – PBL- Sessions I & II, Introduction and Resolution, University of Pittsburgh. May 22, 23, 25, and 30, 2000.

Congressional Meetings regarding Musculoskeletal Research invited through AAOS, Washington, DC April 5 – 6, 2000.

Neoplasia Section Coordinator, Musculoskeletal Organ Block Course, Pittsburgh, PA 1994 – Present

Ambulatory Sub-specialties Course Co-Director, University of Pittsburgh School of Medicine, 1994 – Present.

"Current Concepts in Joint Reconstruction After Tumor Resection", presented at the Pennsylvania Orthopaedic Society Fall Meeting, October 21, 1999 at Nemicolin Woodlands.

"Clinical Outcomes in Bone Tumor Resections", presented with Molly Vogt, Ph.D. to Orthopaedic Residents, University of Pittsburgh Medical Center, September 22, 1999.

"Osteosarcoma", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, August 11, 1999.

"Pathophysiology of Musculoskeletal Neoplasms," Ambulatory Sub-specialties Course, University of Pittsburgh School of Medicine, June 1, 1999.

"Pathology of Mesenchymal Tumors and Bone Forming Lesions", Ambulatory Sub-specialties Course, University of Pittsburgh School of Medicine, June 1, 1999.

PROFESSIONAL ACTIVITIES (Continued)

TEACHING:

Staging and Treatment of Musculoskeletal Neoplasms", Ambulatory Sub-specialties Course, University of Pittsburgh School of Medicine, June 2, 1999.

Musculoskeletal Organ Block, Anatomy Lab for 1st Year Medical Students, "Upper Extremity", University of Pittsburgh School of Medicine, May 13, 1999.

"Cartilage Tumors", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, April 20, 1999.

"Ewing's Sarcoma", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, October 20, 1998.

"Basic Science Overview", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 23, 1998.

Musculoskeletal Neoplasia – Evaluation & Treatment Algorithms", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 16, 1998.

"Osteosarcoma", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, July 21, 1998.

"Limb Salvage Surgery", University of Pittsburgh School of Medicine, Musculoskeletal Organ Block Course, Pittsburgh, PA, June 4, 1998.

"Staging and Treatment of Musculoskeletal Neoplasms", University of Pittsburgh School of Medicine, Musculoskeletal Organ Block Course, Pittsburgh, PA, June 3, 1998.

"Pathophysiology of Musculoskeletal Neoplasms", University of Pittsburgh School of Medicine, Musculoskeletal Organ Block Course, Pittsburgh, PA, June 2, 1998.

"Osteosarcoma", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, May 27, 1998.

"Management of Musculoskeletal Tumors", Armstrong Memorial Hospital, Kittanning, PA, May 5, 1998

"Cartilage Tumors", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, April 21, 1998.

AAOS 1998 Instruction Course #104, "Malignant Bone Tumors", New Orleans, LA, February, 1998.

"Soft Tissue Sarcoma", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, December 10, 1997.

PROFESSIONAL ACTIVITIES (Continued)

TEACHING:

"Management of Skeletal Metastases", Visiting Professor in Orthopaedic Surgery at Shriner's Hospital, Erie, Pennsylvania, December 4, 1997.

"Oncology Indications", presented at The Salvage Knee conference, Pittsburgh, Pennsylvania, November 6, 1997.

"Management of Skeletal Metastases" Orthopaedic Grand Rounds, Washington University, St. Louis, Missouri, October 8, 1997.

"Prophylactic Fixation for Pathologic Fractures in Metastatic Cancer" Presented to the Medical Staff at United Community Hospital, Grove City, Pennsylvania, September 25, 1997.
"Skeletal Muscle" presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 24, 1997.

"Ligament, Tendon, and Meniscus" presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 17, 1997.

"Bone" presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 10, 1997.

"Hyaline Cartilage" presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 3, 1997.

"Pediatric Bone Tumors", Visiting Professor in Orthopaedic Surgery at Shriners Hospital, Erie, Pennsylvania, July 15, 1997.

"Lower Extremity Prosthetics", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, January 15, 1997.

"Sarcomas", Latrobe Area Hospital Oncology Rounds, Latrobe, Pennsylvania, September 26, 1996.

"Treatment of Musculoskeletal Neoplasms", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 25, 1996.

"Fibrous Tumors & Cysts", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 18, 1996.

"Round Cell Tumors & Reticuloendothelioses", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 11, 1996.

"Imaging & Staging of Musculoskeletal Neoplasms", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, September 4, 1996.

PROFESSIONAL ACTIVITIES (Continued)

TEACHING:

"Soft Tissue Sarcomas", Connemaugh Memorial Hospital Oncology Conference, Johnstown, Pennsylvania, June 7, 1996.

"Staging of Soft Tissue Tumors", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, May 8, 1996.

"Bone Forming Lesions", presented to Orthopaedic Residents, University of Pittsburgh Medical Center, March 6, 1996.

"Radiolucent Lesions of the Extremities", Audiotaped lecture, EPOK Studios, Pittsburgh, Pennsylvania, January 24, 1996.

"Surgical Management of Bone and Soft Tissue Sarcomas", Westmoreland Regional Hospital, Greensburg, Pennsylvania, January 9, 1996.

"Ewing's Sarcoma 1995", Visiting Professor, Department of Orthopaedic Surgery, Wilford Hall USAF Medical Center, San Antonio, Texas, November 1995.

Segal R, Towers J, Mulvihill JJ, **Yaw KM**, Martinez J, Comey C, Kirkwood JM. Malignant Degeneration of Nerve Sheath Tumors in Neurobibromatosis 1 (NF-1) Patients. Poster presentation at Congress of Neurological Surgeons Annual Meeting, San Francisco, CA, Oct.14-19, 1995.

Yaw KM. "Limb Sparing Surgery for Primary Bone Malignancies", Eleventh Annual George Tolstoi Hematology/Oncology Symposium, The Uniontown Hospital, Nemacolin Woodlands, Farmington, Pennsylvania, April 23, 1994.

Yaw KM. "Surgical Management of Bone Sarcomas", Mini-Course on Management of Sarcomas, University of Pittsburgh Medical Center, Pittsburgh, Pennsylvania, March 6, 1993.

"Prospective Randomized Trial of the Gamma Nail Versus the Compressive Hip Screw Fixation for the Treatment of Intertrochanteric Fractures of the Proximal Femur", Doyle JS, Crossett LS, **Yaw KM**, Gruen GS, Rubash HE, Poster Exhibit, American Academy of Orthopaedic Surgeons Annual Meeting, San Francisco, California, February 1993.

Donaldson WFIII, Peppelman WC Jr., **Yaw KM**. "Symptomatic Metastatic Malignant Melanoma to the Spine", Presented at Western Orthopaedic Association Meeting, Monterey, California, October 11-14, 1992.

Course Co-Director, "Diagnosis and Treatment of Sarcomas of Bone and Soft Tissue", Shadyside Hospital, Pittsburgh, Pennsylvania, May 16, 1992.

"Tibia Fractures", Presented at AO/ORP Course, Pittsburgh, Pennsylvania, October 25-26, 1991.

PROFESSIONAL ACTIVITIES (Continued)

TEACHING:

"Management of Fractures in the Osteoporotic Patient", Presented at "Osteoporosis: A Multidisciplinary Update", Pittsburgh, Pennsylvania, October 1, 1991.

Orthopaedic Surgery I and II, Osler Institute General Surgery Review Course, Pittsburgh, Pennsylvania, September 18, 1991.

"Limb Salvage for Pediatric Tumors", Invited Speaker, Medical Alumni Association of Children's Hospital, Pittsburgh, Pennsylvania, November 1990.

Yaw KM, Mankin HJ, McGinty JB. "Caveat Arthroscopos (Revisited)", presented to the Society of Air Force Clinical Surgeons, Bethesda, Maryland, April 1990.

Miller MD, **Yaw KM**, Foley HT. "Malpractice Maladies in the Management of Musculoskeletal Malignancies", presented at the Society of Air Force Clinical Surgeons, Bethesda, Maryland, April 1990.

"Bone Tumors", Invited Speaker, National Association of Orthopaedic Nurses, San Antonio, Texas, March 1990.

"Limb Salvage Surgery", Poster Exhibit, Cancer Update 1990, Baptist Medical Center, San Antonio, Texas, February 1990.

Program Director, Society of Military Orthopaedic Surgeons 31st Annual Meeting, San Antonio, Texas, December 1989.

K.M. Yaw, H.J. Mankin, M.C. Gebhardt: "Chemotherapy Effect on the Use of Allografts in the Treatment of Malignant Bone Tumors", presented at the Fifth International Symposium on Limb Salvage, Saint Malo, France, September 1989.

Yaw KM, Mankin HJ, McGinty JB. "Caveat Arthroscopos (Revisited)", presented to the Arthroscopy Association of North America, Seattle, Washington, March 1989.

"Musculoskeletal Neoplasms". Orthopaedic Grand Rounds. University of Texas Health Science Center at San Antonio, Texas, February 1989.

K.M. Yaw, H.J. Mankin, M.C. Gebhardt: "Chemotherapy Effect on the Use of Allografts in the Treatment of Malignant Bone Tumors", presented to the American Academy of Orthopaedic Surgeons, Las Vegas, Nevada, February 1989.

Yaw KM, Amendt WC, Eady JL. "Extraskeletal Rhabdomyosarcoma - Case Report", presented to the Society of Military Orthopaedic Surgeons, Oakland, California, November 1984.

EXHIBIT C

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA
CIVIL DIVISION

* * * * * *

PAULA CARLSON and JAMIE CARLSON, her Husband,
Plaintiffs
VS.
JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. And DUBOIS REGIONAL MEDICAL CENTER,
Defendants

No. 2006-563-CD

COPY

* * * * * *

DEPOSITION OF
JERJIS T. ALAJAJI, M.D.
December 8, 2006

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P R O C E E D I N G S

JERJIS T. ALAJAJI, M.D., HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION ON QUALIFICATIONS

BY ATTORNEY CRENNEY:

Q. Could you state your name please?

A. Jerjis Alajaji.

Q. And Doctor, where did you go to medical school?

A. American University of Beruit.

Q. Where were you born?

A. Beruit, Lebanon.

Q. How about that Bush, huh? He's the worst; isn't he? Would you agree with that?

A. I don't know.

ATTORNEY SLIMAK:

You don't answer those questions.

ATTORNEY CRENNEY:

I'm so sorry about what's happening in Lebanon.

It's a shame.

BY ATTORNEY CRENNEY:

Q. Did you go to college there in Beruit?

A. Yes.

Q. Okay. What year did you graduate?

A. I graduated from medical school in 1986.

Q. And did you further your education, your training after that?

A. Yes, I did.

Q. And could you tell me about that, sir?

A. After graduating from medical school I came to the United States and did one year of research in nuclear medicine. And then after that, I did two years of residency in nuclear medicine at Harvard in Boston. And before that, actually I did one year of internal medicine residency in Baltimore. Then did nuclear medicine in Boston and then I did that after that four years of radiology in

Hershey, Penn State University.

Q. Do you have a CV, a Curriculum Vitae?

ATTORNEY SLIMAK:

I may or may not have it with me. I know I have one somewhere.

ATTORNEY MAIERHOFER:

Is that coming up, Doctor?

ATTORNEY SLIMAK:

I do not have one with me. I have the job study analysis and job description documents and other things. No, I do not. And they have the records.

ATTORNEY CRENNEY:

Okay.

ATTORNEY SLIMAK:

Was it requested for today?

ATTORNEY CRENNEY:

No, I don't think it's included in the notice, no.

BY ATTORNEY CRENNEY:

Q. You came to the United States what year? I need to go over this again. I'm sorry.

A. 1986.

Q. And you trained in nuclear medicine when you got here?

A. First year I did research in nuclear medicine.

Q. Yes. And that was where?

A. In Tampa, Florida.

Q. Okay. What college?

A. University of South Florida.

Q. And then what did you do?

A. Then I did one year of internal medicine in Baltimore.

Q. And do you mean was it an internship, or residency?

A. Internship.

Q. Internship. And what hospital was that?

A. Good Samaritan Hospital.

Q. Go ahead, sir.

A. Following that, two years of residency in nuclear medicine in

Boston with Harvard Medical School.

Q. Now what hospital?

A. Brigham and Women's Hospital.

Q. And what association did you have with Harvard?

A. It was a residency program created by Harvard and conducted by Harvard Medical School.

Q. At Brigham and Women's Hospital?

A. Yes.

Q. Okay. Go ahead, sir.

A. Following that I did four years of residency in radiology at Hershey Medical Center.

Q. So that was about what 1994 that you finished that residency?

A. That's correct.

Q. Okay. And are you Board Certified?

A. Yes, I'm Board Certified in both radiology and nuclear medicine.

Q. When did you get Board Certified in radiology?

A. In 1994.

Q. And when were you Board Certified in nuclear medicine?

A. 1991.

Q. Okay. Have you been re-certified?

A. No. There's no need for re-certification.

Q. Did you pass the radiology boards the first time?

A. Yes.

Q. Have you ever been deposed before?

A. Yes.

Q. Have you ever been a Defendant in a medical malpractice case before?

A. Yes.

Q. Was it a radiology case?

A. Yes.

ATTORNEY SLIMAK:

Just to let you know for discovery purposes, I'll, of course, allow a few of these questions.

ATTORNEY CRENNEY:

Okay.

EXHIBIT D

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

- vs -

JERJIS T. ALAJAJI, M.D., DuBOIS RADIOLOGISTS, INC., and DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

VIDEOTAPE
DEPOSITION OF:
MARK A. PIASIO, M.D.

DEPOSITION TAKEN:
January 22, 2008
Tuesday, 4:16 p.m.

CERTIFIED TRANSCRIPT

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY:
Thomas E. Crenney, Esq.
LAW OFFICES OF THOMAS
One Gateway Center
18th Floor
Pittsburgh, PA 15222
412-644-5545

REPORTED BY:
Tammie Elias, RPR
Notary Public
AKF Ref. No. TE04821

AKF Court Reporting & VideoTech Services
Aul, Karlovits & Fulesday, Inc.
Pittsburgh, PA (412) 261-2323
Erie, PA (814) 453-5700
Greensburg, PA (724) 853-7700

proceed.

- - - -

MARK A. PIASIO, M.D.,

having been duly sworn,

was examined and testified as follows

- - - -

EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, could you state your name?

A. Mark A. Piasio.

Q. And what is your profession?

A. I am an orthopedic surgeon at DuBois Regional Medical Center.

Q. And what is your office address?

A. 145 Hospital avenue, Suite 311, DuBois, Pennsylvania.

Q. Where did you go to college?

A. Johns Hopkins.

Q. And where did you go to medical school?

A. Georgetown University.

Q. And could you just tell us about your medical training after you got out of medical school?

A. I spent two years at the Washington Hospital Center in general surgery, four years at Tufts University in orthopedic surgery and six

months at the New England Baptist Hospital in spine surgery.

Q. What's orthopedics generally?

A. Bone and joint.

Q. Are you a surgeon, are you an orthopedic surgeon?

A. Yes.

Q. Could you tell us about your average week? I realize probably there's no average week, but generally how you spend your time in terms of clinical, administrative, teaching, things that you do?

A. My job is a little bit more unique. At least over the past couple of years, I have had more administrative work, but generally speaking I would probably as chief of surgery here spend maybe ten percent of my time in administrative duties. When I occasionally have students, five to ten percent of my time in that and about 80 percent of my time in clinical duties. Of that time, I would put in maybe now about eight or nine, maybe eight hours of surgery a week and 30, 40 hours of clinical, of office based orthopedics.

Q. When you say here, what hospital are you

referring to?

A. At DuBois, at DuBois Regional Medical Center.

Q. And are you chief of surgery at DuBois Regional Medical Center?

A. Yes, I am.

Q. How long have you held that position?

A. I believe it's seven or eight years.

Q. Did you also at least for a time work at Clearfield Hospital?

A. I worked at Clearfield from 1989 through 1997.

Q. And what did you do over there?

A. Was an orthopedic surgeon and I was the chairman of the quality assurance committee.

Q. Are you board certified?

A. Yes.

Q. What's board certification and how do you become board certified?

A. I can only speak from the prospective of the M.D.s. The D.O.s have their own certification process of which I'm not familiar. On the M.D. process in the specialty of orthopedic surgery, which I'm familiar, when you finish your orthopedic residency, if it's accredited and you complete it and you're given accreditation from your training program, you

Q. Doctor, have you written learned articles or have you published in your field?

A. I have, but not extensively. It's not been the thrust of my professional career.

Q. And do you commonly treat patients for orthopedic problems, problems involving their bones and joints?

A. Yes, I do. I would consider myself, although subspecialty trained, I'm a general orthopedic surgeon.

Q. What's your subspecialty training in?

A. I was trained in spine.

MR. CRENNEY: Are there questions on qualifications?

MR. SLIMAK: I reserve my questions until later.

- - - -

CONTINUED EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, when did you first see Paula Carlson?

A. For accuracy I'm going to go to the chart because I don't know off the top of my head. In my chart I have here that I saw her first June 9th, 2005.

you have done --

MR. CRENNEY: I'm going to move on.

MR. SLIMAK: Does not make it disingenuous for you to deny it.

MR. CRENNEY: I'm going to move on and talk to you maybe after the deposition about what I think is the appropriate action in this case. These other guys don't want to listen to this, I'm sure the judge won't want to listen to it either.

BY MR. CRENNEY:

Q. Doctor, you specifically do not wish to give an opinion in this case on standard of care; correct?

A. The two standards upon which I would be asked, one radiology, I am not a radiologist. I'm an orthopedic surgeon, and so I cannot comment on the standard of care of a radiologist. Two, I am a general orthopedic surgeon, I am trained in tumor and have to answer questions in tumor, but I don't specifically treat tumor, nor did I have subspecialty training in musculoskeletal management, although it is not foreign to me.

I can testify as a generalist that

understands and knows treatment of tumor, but not as a subspecialist in that regard. So I would want everyone to understand what the level of -- the level of my -- my level of expertise is.

Q. Well, Doctor, you read Schmidt's report and you know he said that Yaw's surgery was the wrong surgery to do and that the allograph would have been the right surgery. And my question to you, do you feel comfortable in your -- do you feel comfortable in answering the question, were both reasonable options, that's all I'm asking you?

MR. WALL: I'm going to object for the record. Can we have a continuing objection to every opinion you're seeking of him regards any other doctor's report?

MR. CRENNEY: In regards to these reports he has received, sure, Mr. Wall, absolutely.

MR. SLIMAK: I want to renew my objections on the same basis as previously stated.

MR. JOHNSON: I object on the basis that it's not an issue of whether the Doctor

Q. Did I indicate in my letter that was not read out into the record previously, that I sent them to you in the interest of fairness and understanding, that I included the reports of both parties experts; correct?

A. Correct.

MR. JOHNSON: So that I may preserve my objections, I object to any questioning at this time regarding those letters as well.

MR. SLIMAK: I'm only asking those questions because right now we have a videotape record that Mr. Crenney has asked questions about that were duly objected to.

MR. JOHNSON: I understand. I just didn't want there to be any inference of a waiver.

MR. SLIMAK: I understand. There is none.

BY MR. SLIMAK:

Q. Now, let me ask you some questions about Paula Carlson's care that you were involved with, okay, plus I want to ask you some questions about your background, experience in this area. I think you indicated previously in your testimony that you're not qualified to

give testimony as to the standard of care of a radiologist; correct?

A. I believe that's correct.

Q. Yes. And your training in board certification and medical practice is as an orthopedic surgeon; correct?

A. Correct.

Q. And I think you went through aspects of your qualifications as I take it you have some very extensive specialized training as an orthopedic surgeon; correct?

A. Yes.

Q. And then you went onto specialize in fellowship training in the area of orthopedic surgery or orthopedics; correct?

A. Yes.

Q. And what was that area again?

A. Spine.

Q. The spine. And then since your practice, you focused in on general orthopedic surgery I think you testified to; correct?

A. That's correct.

Q. Am I correct that you do not hold yourself out as an orthopedic subspecialist in bone tumors?

A. Correct.

Q. In fact, if one of those would develop or be seen or thought to be there in your practice, you would make a referral out to someone else; correct?

A. I would make a referral for definitive treatment, yes.

Q. Yes. And because you're in Clearfield, do you typically refer toward the Pittsburgh area rather than the Philadelphia area?

A. That's closer, yes.

Q. Closer for your patients; correct?

A. Right.

Q. And so that's the usual direction you would send them; correct?

A. Usual and I'm very comfortable with the care they receive.

Q. I understand. Now, with regard to your practice, do you get to personally see the patient and take a history from the patient, examine the patient, order and pull up a review x-rays or MRIs or other imaging studies, make a diagnosis and treat the patient, is that how you go about your practice?

A. Pretty much, right.

Q. And based on your experience, is that different than what a radiologist does?
A. A radiologist generally doesn't have an opportunity to see a patient.
Q. Okay.
A. Unless they are doing invasive procedure or something of that nature.
Q. But a plain x-ray is not an invasive procedure; correct?
A. Correct. They would not see a patient.
Q. Have there been any times in your practice over the years where you could not make a diagnosis based on standard x-rays alone and had to either repeat the x-ray sometime later to compare and see if anything had changed or order other imaging studies, such as an MRI, CT scan in order to help you diagnose your patient?
A. Certainly.
Q. Do you agree that is helpful to an orthopedic surgeon such as yourself in an attempt to reach a diagnosis, to have the ability to personally examine the patient, take a history of the patient's condition from the patient, ask the patient questions, and to order and

obtain and review the various studies and tests, do you find that helpful?

A. Yes, sure.

Q. Now, do you agree giant cell tumor is a rare condition?

A. Yes.

Q. Prior to Mrs. Carlson's situation, had you ever personally seen and diagnosed a giant cell tumor of the radius bone in your practice at DuBois Regional Medical Center?

A. Not of the radius bone.

Q. How many patients have you seen over the years with some types of wrist pain?

A. Wrist pain?

Q. Yes.

A. Hundreds, thousands.

Q. How many years have you been in practice here?

A. 20 years.

Q. And over all of that time, there have never been a giant cell tumor of the wrist?

A. Of the wrist?

Q. Yes.

A. No.

Q. I'm correct? I just want to clarify what your answer is? I believe that's what you were

saying earlier.

A. I would have to surmise a response because I can't say for sure what I did over 20 years. I can't recall anyone specifically, but I can't say for a fact that I have never seen a giant cell of the wrist in my practice.

Q. In your training, had you been trained on giant cell tumors specifically?

A. Yes.

Q. And had you seen them in your residency training as an orthopedic surgeon with the advanced training that you underwent?

A. Yes.

Q. Had you seen them in advanced stages?

A. Advanced stages?

Q. Yes.

A. No.

Q. Had you seen them --

A. Well, I really don't recall. That's quite awhile back. I can't remember all the cases I had as a resident.

Q. Do you recall in your training, and you trained at where, Johns Hopkins, where else?

A. I went undergrad at Johns Hopkins.

Q. Where else?

A. I trained at the Washington Hospital Center in general surgery, Tufts University in orthopedics and the New England Baptist Hospital in spine.

Q. At some of those facilities, had you been introduced in some fashion to giant cell tumors that a patient had happened to come in?

A. I have seen them at some point in my residency training and actually did some tumor modeling research at IH when I was in Washington on giant cells.

Q. So at some point in your past career, you had some specific interest in giant cell tumors to whatever degree you have just been talking about?

A. I was certainly trained to diagnose and recognize them.

Q. Specifically giant cell tumors; correct?

A. Yes. Well, yeah, most tumors. I had a complete residency.

Q. Are there some classic characteristics of a giant cell tumor that you had received specific training in looking for?

A. There are some characteristics of them that would make one think of one.

over that isn't quite all the way eaten, which is why I believe I said may.

Q. I know you didn't say may, but you did say there appears to be?

A. Appears to be, okay.

Q. So I can take that as a may, okay?

A. Okay.

Q. Is that the way that it is with these standard basic x-rays, that sometimes you're not certain of what you're seeing with that particular study, it can be interpreted different ways?

A. We may disagree on readings, yes. We don't always --

Q. You don't mean you and I, you mean professionals in your field?

A. Sure.

Q. Even between board certified orthopedic surgeons, they can have differences of opinions of what a film does or doesn't show; correct?

A. Correct.

Q. And in between specialties they can have differences of opinion; correct?

A. I would venture to say that we may disagree on

things, yes.

Q. And does that happen to you over time in your practice?

A. Yes.

Q. Over the years here at DuBois Regional Medical Center as well as in your training?

A. Absolutely.

Q. And your training was at these other institutions that you have talked about earlier; correct?

A. That's right.

Q. Were you still trying to do a good job even though someone else disagreed with you?

A. On?

Q. Interpretation?

A. You mean in life or --

Q. Interpretation of films, I'm sorry?

A. I was doing my job.

Q. Thank you.

A. Although if my care is going to be on trial here, then I may need representation, which I don't have.

Q. I'm not suggesting that in any way.

A. I just want to make sure if we're going to get to that. I'm just trying to --

EXHIBIT E

Kenneth M. Yaw, M.D.
1293 Mission Nuevo Drive, Unit B
Las Cruces, NM 88011
Cell 412-952-3819 orthoyaw@comcast.net Fax 412-291-1526

July 19, 2007

Mr. Thomas E. Crenney
One Gateway Center, 18th Floor West
Pittsburgh, PA 15222

RE: Paula Carlson (DOB 4/26/1971)

Dear Mr. Crenney:

At your request I have reviewed the defense expert witness report from Dr. Richard G. Schmidt dated 6/28/2007. This letter is to report my observations and opinions on the content of that report.

Dr. Schmidt opines that the radiolucency clearly visible on the 4/12/2005 plain radiograph is "compatible with a pseudotumor of bone"; however there are several aspects of that opinion that he conspicuously avoids clarifying. The term "pseudotumor" is used to refer both to non-neoplastic bone lesions that mimic tumors in their appearance as well as to areas of bone which are normal but appear less dense in certain projections thereby creating the appearance of a lesion where there actually is none. Usage under the first explanation of "pseudotumor" really does not at all fit Mrs. Carlson' s clinical presentation, but would warrant clear and immediate diagnostic evaluation even if it did fit. Usage under the second explanation is completely inconsistent with the anatomic site of the distal radius and does not give the radiographic appearance that her presenting films showed. Furthermore, Dr. Schmidt's characterization of the radiograph as "compatible with" is physician-speak for clouding the issues with information that might be technically correct but is not useful. There are actually a great many diagnoses that Mrs. Carlson's presenting radiographs are "compatible with", nearly all of which are so unlikely as to reasonably exclude them from the initial differential diagnosis. In addition, no diagnosis regardless of how unlikely can justify the failure to recognize and further evaluate the unequivocal destructive bone lesion which clearly correlated anatomically with the site of her pain.

Dr. Schmidt proceeds to opine that in his hands the treatment would have been osteoarticular allograft replacement of the distal radius even at the point in time that the lesion was completely contained within bone by intact cortex and periosteum. Such treatment when the lesion was entirely intra-compartmental (i.e., contained entirely within the confines of the radius) and not involving the subchondral bone is not at all mainstream in the sub-specialty of orthopaedic oncology. Most experienced orthopaedic oncologists at that point in time would have performed an intra-lesional excision preserving the patient's own radius. Once the tumor eroded through the cortex into muscle and also extended up to the

sub-chondral bone, then osteoarticular allograft replacement of the distal radius is a very reasonable option, as are the various wrist fusion operations such as the one Mrs. Carlson underwent.

The pre-operative counseling of Mrs. Carlson and her husband covered an extensive discussion of options including osteoarticular allograft replacement of the distal radius. While Dr. Schmidt reports he has performed that operation in "many patients" who have "all been successfully treated" and "have regained normal function", in a search of the orthopaedic literature I was unable to find his report of his outcomes in a peer review publication. What is easily found in the orthopaedic literature are reports that mirror my own personal experience with this operation. The outcome of osteoarticular allograft replacement of the distal radius generally leaves a frail and unstable wrist with predisposition to osteoarthritis and mechanical problems. It is an operation that I favor for the wrist that is likely to be subject to low-demand use. For the dominant hand in a young high-demand patient such as Mrs. Carlson I recommended a wrist fusion. The technique of creating a single bone forearm using her own ulna is very standard, and the method of preserving her supination and pronation by transposing that distal ulna onto the radius is also a very standard accepted technique in orthopaedic oncology. Other techniques that are all equally standard and accepted are fusion to the ulna without transposing it to the radius, fusion with intercalary allograft, fusion with autogenous fibular graft (vascularized or not), and osteoarticular autogenous graft reconstruction using the patients own proximal fibula. All of those techniques including the one performed and the one suggested by Dr. Schmidt are within generally accepted standards of care. The condemnation by Dr. Schmidt of an accepted technique falling within the generally accepted standards is a violation of the American Academy of Orthopaedic Surgeons Standards of Professionalism which were adopted April 18, 2005.

Finally, Dr. Schmidt makes some miscellaneous observations on which I should comment. His note that reference to resection of the "humerus" is a typographical error is indeed correct. His reference to the ulna being "sacrificed' is blatantly incorrect. The ulna was used as part of the reconstruction. Regarding the use of the word "radical" in reference to the resection, Dr. Schmidt is correct in the technical meaning of that word in medical circles. However, in the domain of medical billing the Current Procedural Terminology codes do not recognize any resections other than intralesional or radical, and the appropriate code for Mrs. Carlson's resection is 25170 ("Radical resection for tumor, radius or ulna"). I am quite confident that Dr. Schmidt would use the same code for his proposed resection even though he also would not have done a truly "radical" resection.

I appreciate the opportunity to review and comment on Dr. Schmidt's report. My opinions expressed in this letter are stated with a reasonable degree of medical certainty.

Sincerely,

Kenneth M. Yaw, M.D.

EXHIBIT F

THE MUSCULOSKELETAL TUMOR & LIMB RECONSTRUCTION CENTER

RICHARD G. SCHMIDT, M.D., P.C.
Board Certified Orthopaedic Surgeon
Chief, Orthopaedic Surgery Lankenau Hospital

15 N. Presidential Blvd., Suite 300
Bala Cynwyd, PA 19004
610-667-BONE (2663)
Fax: 610-667-4235

July 30, 2007

Darryl R. Slimak
811 University Dr.
State College, PA 16801-6699

RE: Carlson, Paula

Dear Mr. Slimak:

I wanted to make some additional comments regarding Dr.Yaw's report of 7/19/07.

It is interesting to note that Dr.Yaw, in his third paragraph, literally sticks words in my mouth.

He says in paragraph 3, that Dr. Schmidt proceeds to opine that in his hands, the treatment would have been osteoarticular allograft replacement of the distal radius, even at the point in time that the lesion was completely contained within bone by intact cortex and periosteum.

I would be curious to know how Dr. Yaw was able to determine that the lesion was completely contained within bone by intact cortex and periosteum, at the time of the initial x-ray. Even Dr.Yaw, in some of his reports, indicates that the soft tissue extension of the lesion cannot be determined without an MRI study.

Therefore, I would like to know how Dr. Yaw opines that at the time of the initial x-ray the lesion was completely contained within bone by intact cortex and periosteum.

Dr. Yaw has annealed his own interpretation into my report.

He then goes on to say, interestingly enough, that most experienced orthopedic oncologists at this point in time would have performed an intralesional excision preserving the patient's own radius. Once again. Dr. Yaw proposes that the periosteum and cortex were intact without the benefit of an MRI study.

Dr. Yaw then goes on to say that "once the tumor eroded through the cortex into muscle and also extended up to the subchondral bone, the osteoarticular allograft replacement of the distal radius is a very reasonable option, as are the various wrist fusion operations such as the one that he performed".

Once again, I am glad to understand and hear that Dr. Yaw thinks that my option of osteoarticular allograft replacement is a very reasonable option. That option was obviously not pursued by Dr. Yaw.

Furthermore, in the next paragraph, he goes on to say that the technique of creating a single bone forearm using her own ulna is very standard, and the method of preserving her supination and pronation by transposing the distal ulna on the radius. In fact, the opposite occurred in this case. By fusing the wrist and removing the ulna, pronation and supination was decreased. If in fact the patient had undergone a distal radial fusion by placing a new radius in the wrist, and then doing a fusion, supination and pronation would not have been adversely affected. Supination and pronation occurs between the proximal radius and the distal humerus and the distal radial ulnar joint. This is where pronation and supination exist.

Once again, it is my opinion that in the setting of a distal radius giant cell tumor where the distal radial joint is intact, and not penetrated, the radial and ulnar joint is not violated, the ulna is not violated, and the subchondral plate is intact. There is not an indication for the type of operation that was performed.

Dr. Yaw then goes on to say that I have violated the American Academy of Orthopedic Surgeons standards of professionalism which were adopted 2/18/2005. Somehow Dr. Yaw does not feel that those standards apply to him.

Once again, I remain adamant that the type of operative procedure that was conducted in this case was excessive and not indicated.

Richard G. Schmidt, MD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PAULA CARLSON and JAMIE CARLSON, her husband	:	
vs.	:	No. 06-563-CD
JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER	:	

ORDER

AND NOW, this 25th day of January, 2008, argument on all outstanding Motions and Responses in the above captioned matter shall be and are hereby scheduled for the **12th day of February, 2008 at 10:00 A.M.** in Hearing Room No. 3 of the Clearfield County Courthouse, Clearfield, Pennsylvania, before the Honorable Charles C. Brown, Jr., Senior Judge, specially presiding.

BY THE COURT:

HONORABLE FREDRIC J. AMMERMAN
President Judge

FILED
01:59/61
JAN 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

1CC C/A (without memo)
1CC Attys: Creney
Slimak
Wall
D. Johnson

FILED

JAN 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/25/08

___ You are responsible for serving all appropriate parties.

_X_ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) _X_ Plaintiff(s) Attorney ___ Other

___ Defendant(s) _X_ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF RONALD S. KUSHNER

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

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JURY TRIAL DEMANDED

FILED NO CC
10:18 BK
JAN 28 2008
William A. Shaw
Prothonotary/Clerk of Courts
6P

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF RONALD S. KUSHNER

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion in Limine to Preclude Testimony of Ronald S. Kushner:

1. This is a medical malpractice case arising out of Dr. Alajaji's failure to read properly an April 12, 2005 x-ray in Ms. Carlson's right wrist.

2. Defendants have submitted the expert report of Ronald S. Kushner. Mr. Kushner is a vocational consultant.

3. Mr. Kushner should be limited to testifying regarding Ms. Carlson's ability to perform the job duties of a Radiation Therapist, not whether Ms. Carlson can perform the job duties of some position that DuBois Regional Medical Center claims to be willing to create for Ms. Carlson.

4. Mr. Kushner relies on Rose Campbell's explanation that modifications can be made to Ms. Carlson's job duties that essentially eliminate any physical requirement and that

based on such a job position, she can return to her position as a Radiation Therapist and thereby has no wage loss.

5. Whether DuBois Regional Medical Center will create such a position for Ms. Carlson for the next 30 years is not an issue for expert opinion but an issue of fact and credibility for the jury.

6. Mr. Kushner also states that he spoke with a Mr. Hanwell, who is a Radiation Therapist at Hann Regional Cancer Center, and relies on information provided to him from Mr. Hanwell. Mr. Hanwell can testify about his experiences as a Radiation Therapist at Hann Regional Cancer Center. This is not expert testimony.

7. Mr. Kushner should be precluded from offering opinions based on claimed job offers or modifications to Paula's job. He should be limited to testifying about his opinion as to whether Paula Carlson can perform her former job as a Radiation Therapist based on her present physical abilities.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court issue an Order precluding Ronald Kushner from offering opinions based on modifications to Paula Carlson's job or testifying about modifications or accommodations that Rose Campbell or any other representative of DuBois Regional Medical Center claims to be willing to make, and should be limited to testifying about his opinion as to whether Paula Carlson can perform her former job as a Radiation Therapist based on her present physical abilities.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____
Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/2008

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF RONALD S. KUSHNER** was served by First Class Mail, postage prepaid on the 25 day of JANUARY, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Walter Fredrick Wall, Esquire
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

FILED
JAN 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, a Motion in Limine to Preclude Testimony of Ronald S. Kushner having come before the Court, upon consideration thereof, Motion is GRANTED and it is ORDERED, ADJUDGED and DECREED that Ronald Kushner is precluded from offering any opinions based modifications to Paula Carlson's job or testifying about modifications or accommodations that Rose Campbell or any other representative of DuBois Regional Medical Center claims to be willing to make, and is limited to testifying about his opinion as to whether Paula Carlson can perform her former job as a Radiation Therapist based on her present physical abilities.

BY THE COURT

_____ J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE "SMALL TOWN" DEFENSE

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

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JURY TRIAL DEMANDED

FILED NO CC
m/10:18/01
JAN 28 2008
GK
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE "SMALL TOWN" DEFENSE

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion in Limine to Preclude "Small Town" Defense:

1. This is a medical malpractice case arising out of Dr. Jerjis Alajaji's failure to read properly the April 12, 2005 x-ray and report a tumor in Ms. Carlson's right wrist. Dr. Alajaji is board certified in both radiology and nuclear medicine.

2. Ross A. Horsley has submitted an expert report on behalf of Dr. Alajaji. Dr. Horsley is a general radiologist.

3. In his report, Dr. Horsley makes reference to Dr. Alajaji's practicing in a "small town" and that Dr. Horsley himself has personal experience with such "small town" practices. Dr. Horsley also states "In addition to geography and proximity, Dr. Alajaji and I share practice patterns in that we both practice general radiology and have similar patient population."

4. It is expected that Dr. Horsley will make such statements at trial in an effort, either explicitly or implicitly, to lower the standard of care applied to Dr. Alajaji.

5. Under Pennsylvania law, the standard of care for a specialist, such as a radiologist is the same regardless of where he practices, i.e. Pittsburgh, State College or Clearfield County. See Winschel v. Jain, 925 A.2d 782, 797 (Pa. Super. 2007). A specialist "is expected to exercise that degree of skill, learning and care normally possessed and exercised by the average physician who devotes special study and attention to the diagnosis and treatment of diseases within the specialty." Id.

6. Dr. Horsley should not be allowed to state or suggest that Dr. Alajaji should be held to a lower or different standard of care.

7. Likewise, defense counsel should not be allowed to argue or suggest to the jury that such a lower or different standard of care applies to Dr. Alajaji.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court issue an Order prohibiting Defendants and Defendants' experts, including but not limited to Dr. Ross Horsley, from stating, arguing or suggesting that a lower or different standard of care applies to Dr. Alajaji based on where Dr. Alajaji practiced.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By_____
Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/2008

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE "SMALL TOWN" DEFENSE** was served by First Class Mail, postage prepaid on the 25th day of JANUARY, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
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(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

FILED
JAN 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, a Motion in Limine to Preclude Evidence of or Reference to Paula Carlson's Unrelated Health History having come before the Court, upon consideration thereof, Motion is GRANTED and it is ORDERED, ADJUDGED and DECREED that Defendants and Defendants' experts, including but not limited to Dr. Ross Horsley, are prohibited from stating, arguing or suggesting in any manner that a lower or different standard of care applies to Dr. Alajaji based on where Dr. Alajaji practiced.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE REFERENCE TO PLAINTIFFS' RECEIPT OF SOCIAL SECURITY BENEFITS

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

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JURY TRIAL DEMANDED

FILED NO CC
m/10:18 BH
JAN 28 2008 (6R)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and JAMIE CARLSON, her husband, Plaintiffs, vs. JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER, Defendants.	No. 2006-563-CD Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE REFERENCE TO PLAINTIFFS' RECEIPT OF SOCIAL SECURITY BENEFITS

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion In Limine To Preclude Reference to Plaintiffs' Receipt of Social Security Benefits:

1. Plaintiff Paula Carlson has been awarded Social Security Disability benefits as a result of the injuries she sustained in this case.

2. The introduction of evidence regarding the receipt of social security benefits is precluded by proper application of the collateral source rule. Boudwin v. Yellow Cab Co., 410 Pa. 31, 188 A.2d 259 (1963); Nigra v. Walsh, 797 A.2d 353, 356 (2002).

3. Any information with regard to Plaintiff's receipt of social security is not relevant to the issues in this case, and does not in any manner tend to establish some fact material to the case, or tend to make a fact at issue more or less probable. To the contrary, the only conceivable purpose for eliciting such evidence would be to

minimize the amount of damages or divert and confuse the attention of the jury, which is clearly improper and irrelevant. Moreover, even it could be concluded that such evidence had some possible probative value, such is clearly outweighed by the potential prejudice to Plaintiff, and would unfairly and improperly divert the attention of the jury from the primary issues in the case. Greg v. Fisher, 377 Pa. 445, 105 A.2d 105 (1954); Commonwealth v. Sullivan, 372 Pa. Super. 88, 538 A.2d 1363 (1988), allocatur denied, ___ Pa. ___, 557 A.2d 343 (1989); Commonwealth v. Emge, 381 Pa. Super. 139, 553 A.2d 74 (1988); Lewis v. Coffing Hoist Division, Duff-Norton Co., Inc., 515 Pa. 334, 528 A.2d 590 (1987); Commonwealth v. Hickman, 453 Pa. 427, 309 A.2d 564 (1973).

WHEREFORE, Plaintiffs Paula and Jamie Carlson respectfully request that this Honorable Court issue an Order of Court prohibiting Defendants from mentioning in opening and closing statements, argument, cross-examination, testimonial evidence or evidence of any type whatsoever, Plaintiff Paula Carlson's receipt of social security benefits, and requiring all such references to be redacted from all documents prior to submission to the jury.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES,LLC

By _____

Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/2008

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE REFERENCE TO PLAINTIFFS' RECEIPT OF SOCIAL SECURITY BENEFITS** was served by First Class Mail, postage prepaid on the 25th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

Thomas E. Crehney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and JAMIE CARLSON, her husband, Plaintiffs, vs. JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER, Defendants.	No. 2006-563-CD Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, upon consideration of Plaintiffs' Motion In Limine To Preclude Reference of Plaintiff's Receipt of Social Security Disability Benefits, it is hereby ORDERED that said Motion is GRANTED and the Defendants are prohibited from mentioning in opening and closing statements, argument, cross-examination, testimonial evidence or evidence of any type whatsoever, Plaintiff Paula Carlson's receipt of social security benefits, and requiring all such references to be redacted from all documents prior to submission to the jury.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY BY DEFENDANTS' GENERAL RADIOLOGIST ROSS HORSLEY REGARDING STANDARD OF CARE FOR PCP STEPHEN GRAECA AND PHYSICIAN ASSISTANT LORIE NATOLI

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
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Telephone: (412) 644-5545
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JURY TRIAL DEMANDED

FILED NO CC
m/10:18/61
JAN 28 2008
(GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY BY DEFENDANTS' GENERAL RADIOLOGIST ROSS HORSLEY REGARDING STANDARD OF CARE FOR PCP STEPHEN GRAECA AND PHYSICIAN ASSISTANT LORIE NATOLI

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion In Limine To Preclude Testimony by Defendants' General Radiologist Ross Horsley Regarding Standard of Care for PCP Stephen Graeca and Physician Assistant Lorie Natoli:

1. Under the Pennsylvania Rules of Evidence and Section 512 of the MCARE Act, an expert in order to testify as to standard of care must "practice in the same subspecialty as the defendant physician or in a subspecialty which has a substantially similar standard of care for the specific care at issue." See 40 Pa. C.S. §1303.512(c).

2. Dr. Horsley, a general radiologist, has prepared an 11 page report which is attached to this motion as Exhibit "A".

3. In that report, Dr. Horsley, the defenses' general radiologist, broadly criticizes the care provided by Plaintiff's family physician, Dr. Stephen Graeca, and his physician assistant,

Lorie Natoli. Please note that neither are parties. Dr. Horsley is clearly not qualified to give these opinions and this testimony under Pennsylvania law.

4. The pertinent history of this case as to the professional relationship between Paula Carlson's family physician, Dr. Stephen Graeca, and the defendant radiologist, Dr. Jerjis Alajaji, is as follows.

5. Plaintiff, Paula Carlson, presented to her PCP, Dr. Stephen Graeca, on or about April 12, 2005 complaining of wrist pain.

6. An x-ray was ordered promptly by Dr. Graeca specifically through his physician assistant, Lorie Natoli, and was taken within 24 hours on April 12th and interpreted by Dr. Alajaji on April 13th.

7. Alajaji interpreted the x-ray of April 12 as normal. The x-ray report signed by Dr. Alajaji is attached as Exhibit "B".

8. This was an error by Dr. Alajaji. Every physician, expert and subsequent treater in the case, except for Dr. Horsley, agree that this was an error. Dr. Graeca did not read the x-ray but relied on the radiologist Alajaji and assumed that his normal interpretation was correct.

9. Nonetheless, Dr. Horsley spends much of his 11 page report criticizing, implicitly and explicitly, the care provided by Dr. Gracea and his staff between April 13th when Graeca received this erroneous x-ray report from Alajaji and June 9, 2005 when the proper diagnosis was made by Dr. Mark Piasio, an orthopedist to whom Dr. Graeca referred Paula Carlson.

10. It is respectfully noted that Dr. Piasio reviewed the x-ray of April 12th, the one Dr. Alajaji had said was normal, and identified a lytic lesion. His report in that regard is attached as Exhibit "C". Dr. Piasio is a treating doctor and was not specially retained or sought out by Plaintiffs or Plaintiffs' counsel in this case.

11. The heart of this criticism comes in paragraphs which begin on page 6 and end on page 7 of his report. It reads as follows:

> "In my opinion, the symptoms were not suggestive of carpal tunnel syndrome or tendonitis and the diversion into those and other diagnoses by Mrs. Carlson's clinicians delayed further evaluation which should have occurred more promptly in the case of persistent pain in the wrist joint with an April 12, 2005 "negative" x-rays report. A "negative" initial x-ray report does not categorically exclude the presence of a cause of symptoms that other studies may detect, if ordered. The clinicians, but not the radiologist, knew there was no accident, trauma or repetitive stress mechanism leading to the onset of symptomatology, yet did not bring this to the attention of the radiologist or promptly order more definitive studies that are well known to clinicians to be more sensitive to such pathology, and in my opinion would have allowed the radiologist to discern the early tumor. In particular, an MRI should have been obtained sooner in this case. A radiologist may recommend a further study if the initial study revealed a condition that needed better analysis.
>
> Updated cervical studies, EMG/NCV, and referral to physiatry and orthopaedic specialists was delayed despite uncertainty of the cause. The onset of swelling reported by the patient on April 20, 2005, and the clinical suspicion of tendonitis should have prompted requesting an MRI study by the clinician. It is the responsibility of the clinician, not the radiologist, to put all the clues together and determine what other studies and plan of action to pursue. The radiologist is not responsible for the lack of a proper plan and diligence or supervision of the clinicians. Radiology is a focused and limited science, and also an art. The reality of radiology and indeed medicine in general, is that it is not always possible to make a diagnosis that is clearer in hindsight, or that subspecialties or other specialties might make. The radiologist provides an interpretation based on his judgment. He does not undertake the patient's care from the clinicians. The treating clinicians know well the numerous types of imaging and other studies available and their advantages, and do not need to be told by the radiologist. The cause of any material delay in diagnosis was not the radiologist's report."

12. It is respectfully submitted that if Defendants had wished to criticize the conduct of this non-party family doctor in order to defend this case they should have found a PCP or family doctor who was qualified to do so. They did not.

13. While not specifically on point, it is also noted that Dr. Horsley's ramblings regarding Dr. Graeca are completely without merit and apparently offered only to create confusion or diversion for the jury.

14. It is respectfully submitted that Dr. Horsley's testimony should be limited to the only issue that he is qualified to testify about and that is the issue of whether Dr. Alajaji deviated from the standard of care in his interpretation of the x-ray of April 12, 2005.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court issue an Order directing that Defendants' General Radiologist Ross Horsley may only testify as to whether Dr. Alajaji deviated from the standard of care in his interpretation of the x-ray and/or computer image of April 12, 2005.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____
Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/2008

EXHIBIT A

Received DRJ

JUL 2 X 2007

Diary Note Copy to DRJ

OLEAN OPEN MRI & CT
The Diagnostic Edge

May 24, 2007

Darryl R. Slimak, Esquire
McQuaide Blasko Law Offices
811 University Drive
State College, PA 16801-6699

In re: Paula and Jamie Carlson vs. Jerjis T. Alajaji, M.D., DuBois Radiologists, Inc. and DuBois Regional Medical Center

Dear Mr. Slimak:

I have reviewed the medical records of Paula Carlson including the office records of Drs. Graeca, Yaw, Piasio, Summit Rehabilitation, and DRMC Employee Health. In addition, I have reviewed the depositions of Paula Carlson and Dr. Jerjis Alajaji. I have also reviewed the radiology films in the case.

I am a general radiologist who has practiced in small town settings very similar to Dr. Alajaji. I have practiced at Olean General Hospital, Bradford Regional Medical Center, and currently at Cuba Memorial Hospital and Olean Open MRI. In addition to geography and proximity, Dr. Alajaji and I share practice patterns in that we both practice general radiology and have similar patient population. I am a board certified radiologist who has seen and followed a wide variety of cases over the past 25 years including a number of giant cell tumors.

In preparation for this review, as I would in my own cases of rare diseases, I have reviewed articles and other publications in Resnick and Kronsdorf, Bone and Joint Imaging, 3rd Ed.; the European Radiology Journal on giant cell tumors, published 5-3-05; Journal of Hand Clinic, #20, published in 2004 on "Aneursymal Bone Cyst and Giant Cell Tumor of the Hand and Distal Radius"; Chapter 21, "Benign (Occasionally Aggressive) Tumors of Bone," Campbell's Operative Orthopedics, published 2003; Current Therapy in Plastic Surgery, published 2006; American Journal of Clinical Oncology, Vol. 29, No. 1, February 2006, Giant Cell Tumor of Bone; and the American Academy of Orthopedic Surgeons, Orthopedic Information on Giant Cell Tumor of Bone.

434 North 9th Street • Olean, NY 14760 • (716) 806-0350 • (866) 806-1350 • Fax (716) 806-0365
www.oleanopenmri.com

My opinion as to this case is to the best of my medical judgment, and based on reasonable medical certainty.

The records document that Mrs. Carlson underwent evaluation at DRMC Employee Health before starting her radiation therapist position in 1992, with significantly low results on strength testing.

Paula Carlson presented originally to Dr. Graeca on September 3, 2002, to establish herself as his patient. At that time, she was 31 years of age and was complaining of several months of low back pain. The pain was aggravated by her work as a radiation therapist. Curling up in a fetal position seemed to help. She had also had chronic urinary tract infections and had a herniated disc in her cervical spine confirmed by MRI, also caused or aggravated by her work as a radiation therapist. She had a history of mood swings requiring medication, and occasional headaches, which she attributed to stress at work and at home caring for her husband and two children. She was to undergo physical therapy, daily Motrin, wear a back brace and use good lifting techniques. A plan was stated of follow-up studies such as "x-ray and then onto MRI" was contemplated "if she is not better." She was subsequently seen for anemia and skin biopsies, shoulder, back and neck pain, and gastroesophageal reflux disease.

Problems developed in her right shoulder in January 2003, that had become a constant and throbbing pain, severe at 10/10. Icy Hot, ice packs, heat packs, and Aleve were all not helpful. She was having tingling sensation into her arm and fingers, and neck discomfort to the right. There was no recent injury reported. Physician's Assistant Natoli conducted a physical examination and diagnosed musculoskeletal strain of the right shoulder and neck area. Multiple medications were prescribed. The plan was for physical therapy and x-rays if the discomfort did not improve in two weeks.

She was followed for recurrent right sided neck pain in March 2004 which felt similar to her pain suffered from the previous disc herniation. She again needed physical therapy, Lodine, and now Skelaxin was added.

Mrs. Carlson was seen and treated at Summit Rehabilitation in February 2003 for neck and right arm pain, cervical radiculopathy/C_{5-6} disc herniation, dysesthesias, decreased reflexes and sensation in the right arm, and decreased strength with elbow flexion and extension of the right wrist. Restricted work duty, physical therapy modalities including traction and Lodine medications were instituted.

At discharge several months later (May 20, 2003), she was improved but occasionally experiencing problems. Her neck pain was "about nonexistent," but not completely gone. It was noted she had been seen and treated by Dr. Meyers for a herniated disc found by MRI that Dr. Meyers had ordered. That MRI found a cause of the symptoms that plain x-rays ordered by Dr. Graeca's Physician's Assistant Lori Fenton (Natoli) had not. Mrs. Carlson was to continue on a home exercise program, and was still taking Lodine two or three times a week.

Plain films cervical x-rays ordered and obtained on January 15, 2003 by Dr. Graeca's office suggested possible muscle spasm but no bony abnormalities. An MRI had to be performed February 18, 2003 per Dr. Meyer's order, which revealed a herniated C_{5-6} disc, to the right side, that the x-rays could not detect. By April 26, 2005, cervical spine x-rays showed expected progression with mild degenerative narrowing and small marginal spurs now evident.

On April 11, 2005, Mrs. Carlson called into Dr. Graeca's office and the telephone log relates that she complained of pain in her right wrist and had worn a brace for approximately one week. Other records reflect the symptoms may have been occurring for as long as three weeks. There was no swelling yet. "Hurts at joint." The following day she saw Lori Natoli, a PA who works with Dr. Graeca. Right wrist only x-ray imaging was ordered and interpreted by Dr. Alajaji on the April 13th. There were no right and/or left wrist comparison x-rays ordered. Even before the x-ray report was returned, Ms. Carlson was assessed by her clinician as having carpal tunnel or tendinitis and Mrs. Carlson's Lodine prescription was "refilled." There was a plan stated to send Mrs. Carlson back to Dr Meyers for evaluation and treatment, and additional tests, but this did not occur for nearly a month until May 5, 2005. PA-Natoli's note indicates that she ordered the x-ray "because of the acute nature of her wrist pain," noting that Mrs. Carlson "does not recall injury but she states that she could have done something at work and did not realize it." PA-Natoli considered Mrs. Carlson's history of herniated cervical disc a "possible" explanation. Physical examination indicated no Tinel's sign but carpal tunnel syndrome was being considered, although Ms. Natoli admitted the "exam does not really point to that." Her supervisor, Dr. Graeca, was not consulted despite the physician's assistant's uncertainty, and he was not scheduled to see Mrs. Carlson until May 31, 2005. No bone scan, MRI or cervical spine x-rays were ordered at that time.

None of this history or uncertainty was communicated to the radiologist who was to interpret the wrist images. The only information provided on Mrs. Carlson was age 33, "pain."

While being off work initially seemed to lessen Mrs. Carlson's symptomatology somewhat, the physical therapy initiated on May 9th did not resolve the complaints and the physical therapy progress notes at times documented that even Mrs. Carlson questioned the propriety of exercises. In an April 20, 2005 telephone log to Dr. Graeca's office, the patient reported that she now felt there was a new onset of swelling in her wrist, and Lodine was not taking the pain away. The EMG/NCV that had not yet been done was then to be scheduled.

She was seen again by Lori Natoli on April 26, 2005, two weeks after the first evaluation, and given an appointment with Dr. Meyers for May 5, 2005. There is no indication in the records or testimony that Dr. Meyers was advised by PA-Natoli that an initial x-ray of the wrist was reported as normal, even though from the beginning Mrs. Carlson's work up and care was largely deferred to him. It thus did not influence his treatment. PA-Natoli pursued work up of the neck, despite palpatory findings at the wrist and no presenting complaints in the neck area. A cervical spine x-ray was also ordered. No repeat wrist x-rays, MRI, CT scans or bone scans were ordered, however. EMGs and nerve conduction studies were eventually ordered. There was degenerative narrowing of the C_{5-6} disc space evident on the cervical spine x-ray, however, the EMGs and nerve conduction studies were reported as normal into the right extremity. The cause of the wrist symptoms was obviously elsewhere. PA-Natoli lists no working diagnosis. She notes an orthopedic referral may be needed, but it was not pursued at that time. Mrs. Carlson's appointment with Dr. Graeca remained scheduled over a month out, for May 31, 2005 and was not moved up.

Dr. Meyers saw Mrs. Carlson on May 5th and read the EMG/NCV as normal for the right upper extremity, with no cervical mediated problem at that time. Prednisone taper and physical therapy were recommended, as was a wrist splint, with steroid injection to be considered in approximately two weeks if not significantly improved.

On the progress report in PA-Natoli's and Dr. Graeca's records for May 31, 2005, the records indicate a diagnosis of chronic tendinitis in the wrist. Physical therapy and Prednisone taper had not been helpful. It was noted that an injection was still planned and had not been tried yet. Dr. Graeca suggests "significant tendonitis of the flexor at the right wrist," that eight days later orthopaedic surgeon, Dr. Piasio, indicates was not present. A June 6th note records the injection did not work and now Mrs. Carlson was "in horrible pain."

A thyroid function test was normal. Mrs. Carlson "refused" a further appointment with PA-Natoli. Dr. Graeca then finally referred her to orthopaedic surgeon Dr. Piasio. After that, the patient never saw PA-Natoli again and Dr. Graeca's notes through June of 2006 review the failed course of care orchestrated to date via his office, the prompt diagnosis and institution of proper care by Dr. Piasio and referral to Dr. Yaw, and Dr. Graeca's concerns of being sued for what he documents was a "very rare" giant cell tumor.

On June 9, 2005, Dr. Piasio documented a history of "no injury." He notes that the EMG/NCV of May 5, 2005 were normal. Dr. Piasio documented that there was no wrist synovitis or tenosynovitis even by then. New, very appropriate studies were timely obtained, and showed a classic tumor. Dr. Mark Piasio ordered a bone scan of both wrists and hands with total body scan. This was done on June 10, 2005 and showed findings consistent with a giant cell tumor. Repeat x-rays, wrist MRI and a CT of the chest were obtained and an approximately 2.0 cm expansile lesion in the distal radius with extension beyond the bone into the volar soft tissues was identified. Dr. Piasio's records explicitly confirm my assessment that this was an "aggressive" and "rapid growing" tumor. The diagnosis by a specialist was easier as the history was more extensive and physical examination focused on the distal radial aspect of the wrist.

She was referred to Dr. Yaw in Pittsburgh, PA, who did not proceed to immediate surgery due to the potential for cancer, and initially did a biopsy on June 20, 2005 which showed a giant cell tumor. On June 27, 2005, he then resected the distal radius and transposed the ulna onto the radius and fused the ulna to the wrist. This was nearly three weeks after the tumor was identified. Obviously, the work-up was likely to have been somewhat less aggressive had a nondescript lucency of unknown but recent origin, in an seemingly early, nonclassic stage, been identified on April 13th.

On hindsight review of the radiographs obtained April 12, 2005 of the right wrist, there is a subtle 1.0 cm in diameter lucency involving the distal radius. This is just over 1/3 of an inch. The lucency is only present on two of the four views that were obtained. There were no corresponding views of the left wrist ordered for comparison. This lucency shows very discrete margins and is not expanding the cortex. The small lucency is the only aspect of the images suggestive of some abnormality. This type of lucency does not have an appearance characteristic of giant cell tumor and most likely would represent an interosseous ganglion, a simple bone cyst, or an interosseous lipoma. The cyst on initial x-ray shows no evidence of typical cortical expansion (the cortex is preserved), and does not involve the most distal radius.

There is no evidence of cortical thinning, soft tissue extension, loculation, fracture, tribeculations, sclerotic changes or calcifications, or other findings classic for giant cell tumor or malignant etiology. It would not have warranted an expedited workup. The report does not mention the small cyst but is accurate in indicating that there is no fracture, joint abnormality or soft tissue abnormality of acute or chronic duration.

A giant cell tumor of the wrist is quite rare occurring in approximately 1 in 10 million population for one year. In my experience, it is most often located about the knee either in the distal femur or the proximal tibia. The literature reports only 10% occurrence in the radius. Almost always there is a long (approximately 6 months) period of symptoms before diagnosis. In the distal radius and ulna, 92% of these tumors are not diagnosed until Stage II or later. Stage I lesions are found only 8% of the time; State II 2-72%; and Stage III 20%. Based on my experience and also after review of the literature, the symptoms related to giant cell tumors are usually present for six months in duration prior to the initial diagnosis. The radiographic appearance of the tumor when diagnosed is typically highly characteristic. Here it was not on April 12th. My review of the literature indicates that 93% of the cases show radiographic evidence of bony expansion and 65% show cortical destruction when first diagnosed. Soft tissue extension is detected in as many as 50% of initial diagnosed cases. Trabeculations are often present. Fractures are the first indication of the abnormality in 10-30% of cases. Sclerotic margins may or may not be seen. Nevertheless, one can not say that this was a very early tumor in the low stage on April 12, 2005. Standard radiographs have limitations. An MRI at that time may have shown a more advanced stage and there could well have been at least microscopic penetration of the cortex that would not have been discernable even on MRI.

In my opinion, the symptoms were not suggestive of carpal tunnel syndrome or tendinitis and the diversion into those and other diagnoses by Mrs. Carlson's clinicians delayed further evaluation which should have occurred more promptly in the case of persistent pain in the wrist joint with an April 12, 2005 "negative" x-ray report. A "negative" initial x-ray report does not categorically exclude the presence of a cause of symptoms that other studies may detect, if ordered. The clinicians, but not the radiologist, knew there was no accident, trauma or repetitive stress mechanism leading to the onset of symptomatology, yet did not bring this to the attention of the radiologist or promptly order more definitive studies that are well known to clinicians to be more sensitive to such pathology, and in my opinion would have allowed the radiologist to discern the early tumor. In particular, an MRI should have been obtained sooner in this case. A radiologist may recommend a further study if the initial study revealed a condition that needed better analysis.

Updated cervical studies, EMG/NCV, and referral to physiatry and orthopaedic specialists was delayed despite uncertainty of the cause. The onset of swelling reported by the patient on April 20, 2005, and the clinical suspicion of tendinitis should have prompted requesting an MRI study by the clinician. It is the responsibility of the clinician, not the radiologist, to put all the clues together and determine what other studies and plan of action to pursue. The radiologist is not responsible for the lack of a proper plan and diligence or supervision of the clinicians. Radiology is a focused and limited science, and also an art. The reality of radiology and indeed medicine in general, is that it is not always possible to make a diagnosis that is clearer in hindsight, or that subspecialties or other specialties might make. The radiologist provides an interpretation based on his judgment. He does not undertake the patient's care from the clinicians. The treating clinicians know well the numerous types of imaging and other studies available and their advantages, and do not need to be told by the radiologist. The cause of any material delay in diagnosis was not the radiologist's report.

On the CT scan of the wrist obtained June 14, 2005, there is marked enlargement of the cyst with extension of the cortex and erosion through the cortex with extension of the lesion into the volar soft tissues. The margin of the distal radius is intact and there is a permeative erosion of bone at the margins of the lesion which is typical for giant cell tumor, and is also seen on the repeat plain film x-rays which are now classic in appearance at only 2½ months. In my opinion, this eight week course from a tiny cyst that even in hindsight could only be seen on two of four views, without classic giant cell characteristics, to a very aggressive appearing expansile lesion with soft tissue extension is clearly a case of a highly aggressive lesion. The progression of this lesion, in this patient, is very rapid and unusually aggressive, even for a giant cell tumor. Dr. Piasio likewise documents such.

In such rare diseases, the clinicians and surgeons often consult with me as a radiologist, to discuss the extent, indicated course of the disease, and treatment plans, and I have followed such cases over time. Radiation is sometimes utilized as treatment, but is itself problematic. While the incidence of recurrence reportedly varies, in my training and experience, giant cell tumors have an approximately 70% recurrence rate when treated with intralesional curettage where the cyst is scooped out and wide excision is not performed. If this type of treatment had been attempted on the lesion in April 2005, there would have been an approximately 70% chance of local recurrence. Local implantation of the tumor in adjacent soft tissues has been reported with mere curettage and grafting. The literature documents that even with adjuvant therapies, usual recurrence rates have not been reliably obtained where the tumor initially presents in the distal radius.

Local treatment can still result in complications other than recurrence, including stiffness, pain, infection, neurapraxia, joint collapse, etc. When this tumor occurs in the radius, it is known to be most aggressive and the commonest site to seed patients with pulmonary metastases. Recurrence is most likely in tumors which have a higher histiologic grade and aggressive features. While curettage may be preferred, in view of the aggressiveness of tumors of the distal radius, primary resection and reconstruction may be indicated and gives the lowest recurrence rate. I feel that looking back at the extremely aggressive nature of this particular lesion, even with an earlier diagnosis, wide excision and resection of the radius would have been required to give the lowest rate of recurrence and perhaps cure the patient. Even then, cure would not be certain.

There may have been microscopic or blood system extension of the tumor even as of April 13th, or when the patient reported swelling by April 20th, or by the time there was definitive action taken had the lucency been worked-up and surgery occurred, even if suspected as of April 13th. One must also keep in mind that even if the initial x-rays detected some abnormality, it is likely that there would have been several weeks of delay, and progression of the tumor, until surgically treated, just as was the case even when it was classic in appearance by June 9, 2005. The tumor may have at least microscopically breached the cortex in April, increasing the risk of recurrence and spread, had only a limited procedure been performed. With recurrence, the same procedure would have been indicated and the outcome the same or worse, depending on if there was spread to the lungs or other organs with disastrous consequences. There is significant risk of metastasis particularly to the lungs from such an aggressive tumor. The surgical approach that stood the best chance of curing her even in April would have been a wide excision.

As to the issue of the original x-ray and its interpretation obtained April 12, 2005, I do not feel that the interpretation is a violation of the standard of care or negligence by a general radiologist, under the circumstances. When the radiologist reviews a radiograph, he is trying to answer the question of the ordering physician. As in this case when the history given to the radiologist is nonspecific, the radiologist may not answer a question that is not asked. The ordering clinician controls this process, which puts the radiologist at some disadvantage. The radiologist is trained to assume that he has been given all pertinent data by a competent clinician. He does not examine the patient, take his own history, nor dictate what studies to obtain. The request that Dr. Alajaji received for interpretation of the x-ray of the wrist states only that Mrs. Carlson is 33 years old with "pain."

The question or history in this case should have been indicated in the requisition and should have at least said, "pain distal radius, no past acute or repetitive trauma, ?carpal tunnel, ?tendonitis, rule out any boney pathology." The ordering clinician should have stated what she sought to rule out. If that history had been given and question asked, I believe Dr. Alajaji would have focused more closely on the distal radius and the odds are greatly increased that even though he had never seen an early giant cell tumor of the radius in 11 years of practice, even though it was small and not visible on two of the four views, I believe he would have commented on the lucency in his report even though it is subtle. His report largely addresses acute injury or chronic degenerative conditions which he correctly indicates are not evident. This is typically the question being asked regarding such studies. PA-Natoli's notes reflect this is what she was seeking. Per his deposition testimony, it also appears that Dr. Alajaji was influenced by lucency of other bones seen in the films when studied via computerized imaging, and lack of any suggestion of abnormality on two of the four views. One must also consider the whole context in which the images were presented to Dr. Alajaji, including his lack of experience with this small and very rare tumor, in an unusually early stage, in an unusual location, and without classic findings that would make same more apparent.

The wrist was not definitively declared "normal" by the radiologist's impression. What was described was accurate. When an x-ray report is reported as negative and the problem persists, as in this case, radiologists expect that a diligent further investigation is warranted by the clinicians. With common boney causes of such symptoms discounted by the radiologist's findings, it was incumbent on the clinicians to start considering the more rare potentialities. Obviously, Mrs. Carlson's clinicians never contemplated such a rare and aggressive tumor either, and may well never had had a patient with same either. Their office records reflect uncertainty of diagnosis, but slow follow-up with an indicated plan. Carpal tunnel and tendinitis did not make sense, and were never found even at the later stage of the disease upon presentation to Dr. Piasio. Somehow, the patient was labeled with carpal tunnel syndrome or tendinitis when there was no suggestion of either. The carpal tunnel is in the base of the palm, just distal to the wrist crease. The symptomatic cyst located in the distal radius did not involve the tendons and the clinician's diagnosis of tendinitis actually delayed investigation and appropriate treatment. Wrist x-rays would nether confirm nor rule out either carpal tunnel syndrome or tendinitis. An MRI would have been the appropriate study to have imaged for problems of the tendons and sheath, and the radiologist would most certainly have advised PA-Natoli of this had her requisition indicated that she as considering carpal tunnel or tendinitis. The subtle lucency in the distal radius would have been most likely to be more apparent on an MRI at this time.

The MRI would have been helpful to rule out tendinitis and had a greater likelihood for detecting the distal radial tumor. There was still no tendinitis by the time of Dr. Piasio's evaluation in June, as he documents. A repeat x-ray, bone scan, or MRI should have been ordered for this patient when the pain persisted. A bone scan could also have been ordered before or after the x-ray and would isolate the tumor to the distal radius, thus assisting the radiologist in interpreting the plain films. A plain film x-ray is the most rudimentary of our arsenal of radiologic and imaging studies in an attempt to discern pathology. It is not good at detecting small, early lesions inside of a bone. It is known that some bony abnormalities may not be discerned on initial images, and it is commonplace for treating clinicians to request further consideration of the original images or to order repeat images at regular intervals, or more detailed and specialized studies, particularly where there was development of swelling within two weeks, normal EMG/nerve conduction studies, worsening complaints, etc.

You have also asked me for any comments I might have on Mrs. Carlson's work loss claim based not only on my familiarity with the medicine, but also the position of a radiation technician with whom I have worked over the years. Mrs. Carlson had persistent complaints of work related low back pain and neck pain, even at a young age suffering a herniated disc in her neck prior to the giant cell in the wrist. She has always been very thin, petite, and not a strong woman. Functional assessment at the time of application for the position in 1992 revealed quite low static strength testimony with maximum effort, even at that time at the age of 21. While she managed in her job for many years, most likely using the compensatory strategies and good body mechanics and assistance of others as needed (the technicians work in teams), she had lifting injuries and difficulties, leading to required work duty modification and periodic medical care. In my opinion, it is unlikely that she would have been able to continue working an entire career with such recurrent problems with her cervical and lumbar discs. Her films have shown that the bony abnormalities such as vertebral spurs have developed and her degenerative condition progressed, as is expected, even at her relatively young age. I see a number of patients on a daily basis and follow them for a number of years with similar cervical and lumbar disc problems. I find that the disc protrusions, boney degeneration, and pain associated with these protrusions never goes away, recurs, and only increases in severity and extent over the years. Dr. Graeca's records also document mood swings and headaches from work and family care stress, which also take their toll. Also, the rare tumor that developed in her radius was a surprise to everyone, and even with a lesser procedure, would likely have impacted her employment, at least long term. I also note that a period of recuperation and physical therapy would likewise be needed post a curettage.

I would also like to comment on the accommodations possible for Mrs. Carlson's problems. The work of a radiation technologist is of two types. The preliminary work is positioning the patient on the therapy table prior to beginning the treatment. This portion of the technician's work can at times involve lifting, maneuvering, pushing, etc. which can be stressful on the back and wrists. The second part of the technician's work is operating a computer that controls the therapy machine. With skilled job function analysis one may find that the job can be made easier. Good body mechanics and compensatory techniques should also be instituted. I also believe that if a technician's aide was made available, then Mrs. Carlson would be able to do her job as a radiation therapist indefinitely. Many departments already recognize the periodic need for physical assistance to the therapy technician. Often, this work is done in teams. The tech aide would assist and provide the manual effort with positioning the patient and equipment. This would allow Mrs. Carlson to be relieved of the physical aspects of the job and focus solely on the computer manipulation of the equipment, radiotherapy planning, and interacting with and instructing the patient. Perhaps the same tech aide would be helpful for the other technicians as well to focus on their work careers. The cost is minimal. This is quite similar to nurses' aides assisting nurses with physical work in hospital settings and can actually make the whole department more efficient and safer for patients as well as Mrs. Carlson, with or without the consequences of her tumor.

Regarding resumption of her employment, the most recent, February 14, 2007 evaluation by Dr. Richman notes tendon function, sensation, and vascular examination remained normal to her digits. She had surprisingly well preserved pronation and supination. Radiographs revealed an excellent solid arthrodesis and position.

Please contact me should you require further information or clarification of this report. I would also be glad to consider any pertinent additional information that may become available.

Sincerely,



Ross A. Horsley, M.D.

EXHIBIT B

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

CARLSON,PAULA J OPC Unit # 000406631
1373 SAND STONE DR
FALLS CREEK PA 15840 Age 33Y Acct # D0510200479

Date:04/12/05 Time:0913

NATOLI,LORIE B
C/O DRS KRUK AND GRAECA
DUBOIS PA 15801

GRAECA,STEVEN W
145 HOSPITAL AVENUE
DUBOIS PA 15801

Chk-in #	Order	Exam	
759066	0002	44511	DI-WRIST MIN 3*R
			Ord Diag: ;PAIN

RIGHT WRIST:

The bones are intact. The joint relationships are normally maintained. The soft tissues are unremarkable.

IMPRESSION: NEGATIVE.

/READ BY/ JERJIS ALAJAJI
/Released By/ JERJIS ALAJAJI

04/13/05 0941
BC

Natoli

Complete

EXHIBIT C

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

CARLSON,PAULA J
1373 SAND STONE DR
FALLS CREEK PA 15840

OPW
Age 34Y

Unit # 000406631
Acct # D0516000388

Date:06/09/05 Time:1326

PIASIO,MARK
145 HOSPITAL AVE MED ARTS
DUBOIS PA 15801

GRAECA,STEVEN W
145 HOSPITAL AVENUE
DUBOIS PA 15801

Chk-in #	Order	Exam	
775773	0001	45540	PI-WRIST MIN 3*R

Ord Diag: 719.43-JOINT PAIN-FOREARM

RIGHT WRIST - AP, LATERAL, AND OBLIQUE:

A large lytic lesion is seen on the ulnar aspect of the distal radius. It incorporates predominance of the distal radius. It extends to the articular margin. It does not cross the articular margin. There appears to be some punctate calcification in an ulnar direction on the AP view. No discrete fracture is seen.

IMPRESSION: LYTIC LESION PERMEATIVE WITHOUT DEFINED MARGINS DISTAL RADIUS.
CONSIDERATIONS FOR GIANT CELL OR EWING'S.

/READ BY/ MARK A PIASIO M.D.
/Released By/ MARK A PIASIO M.D.

06/14/05 1154
LLW

Complete

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY BY DEFENDANTS' GENERAL RADIOLOGIST ROSS HORSLEY REGARDING STANDARD OF CARE FOR PCP STEPHEN GRAECA AND PHYSICIAN ASSISTANT LORIE NATOLI** was served by First Class Mail, postage prepaid on the 25th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, upon consideration of Plaintiffs' Motion In Limine To Preclude Testimony by Defendants' General Radiologist Ross Horsley Regarding Standard of Care for PCP Stephen Graeca and Physician Assistant Lorie Natoli, it is hereby ORDERED that Defendants' General Radiologist Ross Horsley may only testify as to whether Dr. Alajaji deviated from the standard of care in his interpretation of the x-ray and/or computer image of April 12, 2005.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OR REFERENCE TO PAULA CARLSON'S UNRELATED HEALTH HISTORY

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

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JURY TRIAL DEMANDED

FILED NO CC
m/10:18 3M
JAN 28 2008 GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OR REFERENCE TO PAULA CARLSON'S UNRELATED HEALTH HISTORY

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion In Limine To Preclude Evidence of or Reference to Paula Carlson's Unrelated Health History:

1. This is a medical malpractice case arising out of Dr. Jerjis Alajaji's failure to read properly an April 12, 2005 x-ray and report a tumor in Ms. Carlson's right wrist.

2. At the time of Dr. Alajaji's negligence, Ms. Carlson was working as a Radiation Therapist at DuBois Regional Medical Center.

3. Ms. Carlson had worked at DuBois Regional Medical Center as a Radiation Therapist since 1992. When Ms. Carlson was hired, she was found fit to perform the job of a radiation therapist. (See 7/31/92 T. Carpin memo to Sue Miller attached as Exhibit "A.")

4. During the entire time Ms. Carlson worked at DuBois Regional Medical Center, she consistently received good evaluations. (See, e.g.,1/19/05 and 1/14/04 evaluations, collectively attached hereto as Exhibit "B.")

5. Additionally, Rose Campbell, Administrative Manager for DuBois Regional Medical Center, testified at her deposition that Ms. Carlson was a good employee and that she was able to fulfill all the physical requirements of her job. (See R. Campbell dep. at p. 29, line 24 to p. 30, attached hereto as Exhibit "C.")

6. Ms. Carlson received annual physicals, which consistently showed her to be in good health. (See, e.g., 5/9/01 and 5/20/03 evaluations, collectively attached hereto as Exhibit "D.")

7. Ms. Carlson participated in the DuBois Regional Medical Center's Health Quest which promoted good employee health in 2004 and 2005 and in fact was a Health Quest "Winner". (See Health Quest reports of 2004 and 2005, attached hereto as Exhibit "E.")

8. Likewise, Ms. Carlson's PCP, Dr. Graeca, reported that Ms. Carlson is "a really healthy individual," except for an ovarian cyst and the tumor at issue here. (See Dr. Graeca letter dated 6/14/06, attached hereto as Exhibit "F.")

9. Dr. Ross A. Horsley, a General Radiologist, and Ronald S. Kushner, a Vocational Consultant, have submitted expert reports on behalf of Dr. Alajaji.

10. In their respective reports, Dr. Horsley and Mr. Kushner discuss at length Ms. Carlson's unrelated medical history regarding her neck, shoulder and back and they both offer rank speculation that these problems could and or would have affected Ms. Carlson's ability to perform her job as a Radiation Therapist at some unspecified time in the future.

11. Neither Dr. Horsley nor Mr. Kushner are qualified to offer opinions about Ms. Carlson's neck, shoulder or back problems, as Dr. Horsley is a general radiologist and Mr. Kushner is not a doctor. They are speculating on a matter they are not qualified to discuss in the first place.

12. The only purpose in discussing Ms. Carlson's unrelated medical history is to prejudice the jury against Ms. Carlson.

13. Both Dr. Horsley and Mr. Kushner merely speculate that Ms. Carlson may not be able to continue working as a radiation therapist. For example, Mr. Kushner states in his report, "there is some question whether Ms. Carlson could continue to work indefinitely due to these recurrent and progressive problems," and "[i]n view of Ms. Carlson's recurrent work injuries and demonstrated pre-existing medical and strength problems, ... accommodations may well be needed in any event to continue work as a Radiation Therapist." Similarly, Dr. Horsley states, "In my opinion it is unlikely that she would have been able to continue working an entire career with such recurrent problems."

14. These opinions are completely speculative and uncertain and do not qualify as expert opinions. Moreover, Mr. Kushner is not qualified to render any medical opinion and Dr. Horsley is a general radiologist and is not qualified to render an opinion on such matters under MCARE. See 40 P.S. § 1303.512.

15. Defendants have offered no opinion by a qualified medical expert that Ms. Carlson could not perform her job based on her medical history prior to Dr. Alajaji's negligence that is at issue in this case. The uncontroverted evidence establishes that Ms. Carlson, in fact, was performing her job and was in very good health.

16. Accordingly, Defendants should be precluded from offering any evidence or testimony, expert or otherwise, relating to Ms. Carlson's medical history regarding her back, neck or shoulder, including the testimony of Dr. Horsley and Mr. Kushner on this issue.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court issue an Order prohibiting Defendants from referring to or mentioning in any

manner or offering any evidence, including but not limited to the testimony of Dr. Ross Horsley and Ronald Kushner, about Ms. Carlson's medical history regarding her back, neck or shoulder, and requiring all such references to be redacted from all documents prior to submission to the jury.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____

Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/2008

TO: Sue Miller, DRMC Employee Health

FROM: Tracey Carpin, PT

DATE: 07/31/92

RE: Albert, Paula

This individual reports to the clinic today stating she is applying for a radiation therapy technician position with DRMC. She states her past occupation was as a student. She is 21 years old, right hand dominant, 5'4", 104 lbs. Past medical history is negative for any low back pain, and she takes no medications.

Active range of motion is within normal limits in the upper extremities, lower extremities and spine. Strength is within normal limits in the upper and lower extremities. Special tests are within normal limits. Standing posture of the pelvis and spine is within normal limits. Upon functional assessment with 25 lbs., she was independent and pain free with sit to stand, straight lift, carry 100', ascending and descending stairs. Static strength testing with the dynamometer ranged from less than the 1st percentile for left and right grip strength up through the 56th percentile for torso strength. Ms. Albert viewed the American Back School slides on proper lifting technique and back injury prevention.

Ms. Albert presents with no musculoskeletal abnormalities at this time that should prevent her from performing a radiation therapy technician position for DRMC. If you have any questions or concerns, please do not hesitate to contact me.

Tracey Carpin PT

Tracey Carpin, PT

EXHIBIT "A"

Carlson 220000120

DuBois Regional Medical Center
Hahne Cancer Center Criteria-Based Performance Evaluation

Radiation Therapist
Hahne

Name: Paula Carlson

Date: 1.19.05

Qualifications and Duties	Does Not Meet Standards	Meets Standards	Role Model
Complies with DRMC policies and procedures, with accreditation agency requirements, federal, state or local law and regulations.		✓	
Performs the start-up and lock-up procedures for Linear Accelerator		✓	
Delivers accurately the prescribed course of radiation therapy		✓	
Reports any concerns/changes in patient condition to radiation nurse or oncologist		✓	
Documents daily treatments		✓	
Maintains daily records as required			✓
Observes patients for unusual reactions or events		✓	
Provides patient education as necessary		✓	
Assists in the maintenance of the filing system		✓	
Assists in maintaining inventory of supplies		✓	
Attends chart rounds/tumor board N/A			
Reviews port films with Radiation Oncologist		✓	
Accurately simulates patient for treatments		✓	
Accurately cuts blocks and makes shields for radiation treatment		✓	

Supportive Documentation and/or Comments (Qualifications And Duties Section)

EXHIBIT "B"

Carlson 220000017

DRMC Core Behaviors	Does Not Meet Standards	Meets Standards	Role Model
CORE BEHAVIOR #1: CARING ATTITUDE			
• Introduces self and explains functions to patients, family, visitors, co-workers.		✓	
• Attire/appearance is professional, properly displayed nametag.		✓	
• Language is professional and appropriate.		✓	
• Respects patient/co-worker privacy		✓	
• Displays a positive attitude & actions		✓	
CORE BEHAVIOR #2: CONFIDENTIALITY			
• Ensures that confidentiality is protected		✓	
CORE BEHAVIOR #3: COMMUNICATION			
• Involves the patient/family/co worker as a fully informed partner.			✓
• Collaborates with Physicians/Co-workers.		✓	
• Answers the telephone per DRMC protocol.		✓	
• Responds to Call Light or requests promptly.		✓	
• Communicates with co-workers professionally.		✓	
CORE BEHAVIOR #4: COLLABORATION			
• Accepts responsibilities and pays attention to details.		✓	
• Treats all co-workers professionally & with Respect.		✓	
CORE BEHAVIOR #5: CUSTOMER SATISFACTION			
• Consistently asks: Is there anything more I can do for you?		✓	
• Takes initiative to meet the customers needs.		✓	
• Informs customers of delays promptly & provides updates as needed.		✓	
• Recognizes & implements the REACT Plan when needed.		✓	
• Escorts lost customers to their destination.		✓	

Supportive Documentation and/or Comments (Core Behaviors Section)

I have read and understand **DRMC's CORE BEHAVIORS** policy and the **5C's TO CUSTOMER SERVICE EXCELLENCE HANDBOOK**. I agree that as a requirement and duty of my job, I will abide by this policy. Furthermore, I understand intentional or involuntary violations of this policy may result in disciplinary actions up to and including termination.

I will demonstrate this agreement by affixing my signature and date below:

Paula J Carlson
Signature

1/19/05
Date

EXHIBIT "B"

Carlson 220000018

Required Competencies	Does Not Meet Standards	Meets Standards	Role Model
Actively participates or becomes aware of department **Performance Improvement** initiatives		✓	
Demonstrates familiarity with **equipment** necessary in performing his/her job		✓	
Understands hospital **Safety** policies and procedures to maintain a safe environment		✓	
Understands **Infection Control** policies and procedures and implements infection control measures		✓	
Maintains a continuing **education** log of all training/education initiatives		✓	
Must acknowledge the concerns dealing with **privacy** and **confidentiality**		✓	
Must respond **promptly** to patient/client/customer/co-worker requests for service within the scope of the employee's responsibility. If not in the scope of responsibility, employee must refer the request to the appropriate resource **(Principle of Information)**		✓	

Supportive Documentation and/or Comments (Competencies Section)

Confidentiality Statement

It is a policy of the Medical Center that all information concerning patients; doctors and other employees must be kept strictly confidential. Erroneous or confidential information released my expose you and the Medical Center to liability and can cause embarrassment to you, the Medical Center and other patients. Remember that it is strictly a violation of DuBois Regional Medical Center policy to discuss or reveal information concerning a patient's condition or diagnosis, and any employee found doing so is subject to disciplinary action up to and including termination of employment.

Those employees having access to a patient's medical record should not review this information, unless the job requires you to make entries or review a section for professional and patient care.

Requests for newspapers, radio, TV and other news medial for information concerning the medical condition of patients must be referred to the nursing supervisor or the Manager or Supervisor in charge of the department.

I have read and understand the Confidentiality Policy of DuBois Regional Medical Center as it appears above. I agree that as a requirement and duty of my job, I will abide by this policy. Furthermore, I understand that intentional or involuntary violations of this policy may result in disciplinary actions up to and including termination.

I will demonstrate this agreement by affixing my signature and date below.

Paula J Carlson — Signature

11/19/05 — Date

EXHIBIT "B"

Carlson 220000019

Performance Evaluation Summary Sheet

Developmental Goals and Training Needs: You need to be aware of "Near Miss" and the importance of reporting them.

Employee Comments:

Employee Signature: Paula J Carlson Date: 1/19/05

Evaluator Signature: Sheri Dell Date: 1/19/05

Manager Signature: Lorie A Campbell Date: 1-18-05

EXHIBIT "B"

Carlson 220000020

DuBois Regional Medical Center
Hahne Cancer Center Criteria-Based Performance Evaluation

Radiation Therapist
Hahne

Name: Paula Carlson 01550

Date: 1/13/04

Qualifications and Duties	Does Not Meet Standards	Meets Standards	Role Model
Complies with DRMC policies and procedures, with accreditation agency requirements, federal, state or local law and regulations.		✓	
Performs the start-up and lock-up procedures for Linear Accelerator		✓	
Delivers accurately the prescribed course of radiation therapy		✓	
Reports any concerns/changes in patient condition to radiation nurse or oncologist		✓	
Documents daily treatments			✓
Maintains daily records as required			✓
Observes patients for unusual reactions or events		✓	
Provides patient education as necessary		✓	
Assists in the maintenance of the filing system		✓	
Assists in maintaining inventory of supplies		✓	
Attends chart rounds/tumor board		✓	
Reviews port films with Radiation Oncologist		✓	
Accurately simulates patient for treatments		✓	
Accurately cuts blocks and makes shields for radiation treatment		✓	

Supportive Documentation and/or Comments (Qualifications And Duties Section)
Paula does an excellent job with the electronic charting. She makes sure the patient schedule and treatment info. are accurately documented so that the patient's treatments are not disrupted.

CHECKED JAN 2004

EXHIBIT "B"

Carlson 220000008

DRMC Core Behaviors	Does Not Meet Standards	Meets Standards	Role Model
CORE BEHAVIOR #1: CARING ATTITUDE			
• Introduces self and explains functions to patients, family, visitors, co-workers.		✓	
• Attire/appearance is professional, properly displayed nametag.		✓	
• Language is professional and appropriate.		✓	
• Respects patient/co-worker privacy		✓	
• Displays a positive attitude & actions		✓	
CORE BEHAVIOR #2: CONFIDENTIALITY			
• Ensures that confidentiality is protected		✓	
CORE BEHAVIOR #3: COMMUNICATION			
• Involves the patient/family/co worker as a fully informed partner.		✓	
• Collaborates with Physicians/Co-workers.		✓	
• Answers the telephone per DRMC protocol.		✓	
• Responds to Call Light or requests promptly.		✓	
• Communicates with co-workers professionally.		✓	
CORE BEHAVIOR #4: COLLABORATION			
• Accepts responsibilities and pays attention to details.		✓	
• Treats all co-workers professionally & with Respect.		✓	
CORE BEHAVIOR #5: CUSTOMER SATISFACTION			
• Consistently asks: Is there anything more I can do for you?		✓	
• Takes initiative to meet the customers needs.		✓	
• Informs customers of delays promptly & provides updates as needed.			✓
• Recognizes & implements the REACT Plan when needed.			✓
• Escorts lost customers to their destination.		✓	

Supportive Documentation and/or Comments (Core Behaviors Section)

I have read and understand **DRMC's CORE BEHAVIORS** policy and the **5C's TO CUSTOMER SERVICE EXCELLENCE HANDBOOK**. I agree that as a requirement and duty of my job, I will abide by this policy. Furthermore, I understand intentional or involuntary violations of this policy may result in disciplinary actions up to and including termination.

I will demonstrate this agreement by affixing my signature and date below:

Paula J Carlson
Signature

1-14-04
Date

EXHIBIT "B"

Carlson 220000009

Required Competencies	Does Not Meet Standards	Meets Standards	Role Model
Actively participates or becomes aware of department **Performance Improvement** initiatives		✓	
Demonstrates familiarity with **equipment** necessary in performing his/her job		✓	
Understands hospital **Safety** policies and procedures to maintain a safe environment		✓	
Understands **Infection Control** policies and procedures and implements infection control measures		✓	
Maintains a continuing **education** log of all training/education initiatives		✓	
Must acknowledge the concerns dealing with **privacy** and **confidentiality**		✓	
Must respond **promptly** to patient/client/customer/co-worker requests for service within the scope of the employee's responsibility. If not in the scope of responsibility, employee must refer the request to the appropriate resource (**Principle of Information**)		✓	

Supportive Documentation and/or Comments (Competencies Section)

Confidentiality Statement

It is a policy of the Medical Center that all information concerning patients; doctors and other employees must be kept strictly confidential. Erroneous or confidential information released my expose you and the Medical Center to liability and can cause embarrassment to you, the Medical Center and other patients. Remember that it is strictly a violation of DuBois Regional Medical Center policy to discuss or reveal information concerning a patient's condition or diagnosis, and any employee found doing so is subject to disciplinary action up to and including termination of employment.

Those employees having access to a patient's medical record should not review this information, unless the job requires you to make entries or review a section for professional and patient care.

Requests for newspapers, radio, TV and other news medial for information concerning the medical condition of patients must be referred to the nursing supervisor or the Manager or Supervisor in charge of the department.

I have read and understand the Confidentiality Policy of DuBois Regional Medical Center as it appears above. I agree that as a requirement and duty of my job, I will abide by this policy. Furthermore, I understand that intentional or involuntary violations of this policy may result in disciplinary actions up to and including termination.

I will demonstrate this agreement by affixing my signature and date below.

Paula J Carlson — 1-14-04

Signature — Date

EXHIBIT "B"

Carlson 220000010

Performance Evaluation Summary Sheet

Developmental Goals and Training Needs:

Employee Comments:

Employee Signature: Paula J Carlson **Date:** 1-14-04

Evaluator Signature: Bob C Wells **Date:** 1-14-04

Manager Signature: Rose M Campbell **Date:** 1-16-04

EXHIBIT "B"

Carlson 220000011

All right. This is a request for such documents prior to April 1, 2005 or prior to April 12, 2005. If you have such documents, I'm, again, requesting that you produce them. If they are not produced and not given a chance to look at them, take appropriate discovery based on the production of those documents, I'll certainly object. If they end up being produced some other time at trial or just before trial, I'm asking for those documents to support an issue in the case, the general description of what you think may or may not exist is not sufficient. So again, making that request. Respectfully making that request.

BY ATTORNEY CRENNEY:

Q. Was Paula a good employee prior to getting this tumor?

EXHIBIT "C"

A. Yes.
Q. Okay. Were you satisfied with her work?
A. Yes.
Q. Was she able to fulfill all of the physical requirements of her job?
A. Yes.
Q. And she got --- we don't have to go through them then. She got a lot of good evaluations; correct?
A. Yes.
Q. Did anybody complain about Paula's work to you prior to April of 2005?
A. Nut that I recall.
Q. Did anybody complain about Paula's attitude, anything at all? Did you have any problems of Paula of any description, now's the time to tell me?
A. No significant problems.
Q. Okay. All right. Who was Paula's immediate supervisor?
A. It was Sheila Welsh.
Q. And I assume Sheila Welsh

DuBois Regional Medical Center Occupational Health Center

____ Pre Placement Physical Exam X Annual Physical

Name Paula Carlson Date 5-9-01

Position Radiation therapist

Vital Signs BP 110/70 P 80 R 20 Ht 5'4" Wt 104#

	Normal	Abnormal	Comments
General			
Skin			
Head			
Eyes			
Ears			
Nose/Throat			
Neck			
Lymph Nodes			
Chest/Lungs			
Breasts			
Heart			
Abdomen			
Genitalia			
Rectal			
Extremities			
Back			
Neurological			

Pre Placement physicals only:

__X__ Applicant is capable of performing above indicated position

_____ Applicant is not capable of performing above indicated position

_____ Applicant is capable of performing above indicated position with the following accommodations: _____

_____

Signature _____

Annual Physicals only:

__V__ Normal physical _____ Abnormal Physical (see below)

Signature _____

The physical examination and/or laboratory studies suggest the need for additional follow-up for the following reasons _____

_____

Signature _____ Date 5/9/01

EXHIBIT "D"

Carlson 220000169

DuBois Regional Medical Center Occupational Health Center

____ Pre Placement Physical Exam X Annual Physical

Name Paula Carlson Date 5-2003

Position Radiation Therapist

Vital Signs BP 98/60 P 72 R 20 Ht 5'4" Wt 109

	Normal	Abnormal	Comments
General	✓		
Skin	✓		
Head	✓		
Eyes	✓		
Ears	✓		
Nose/Throat	✓		
Neck	✓		
Lymph Nodes	✓		
Chest/Lungs	✓		
Breasts	✓		
Heart	✓		
Abdomen	✓		
Genitalia	✓		
Rectal	✓		
Extremities	✓		
Back	✓		
Neurological	✓		

Pre Placement physicals only:

_____ Applicant is capable of performing above indicated position

_____ Applicant is not capable of performing above indicated position

_____ Applicant is capable of performing above indicated position with the following accommodations: _____

_____

Signature _____

* * * * * * * * * * *

Annual Physicals only:

X Normal physical _____ Abnormal Physical (see below)

Signature _____ 5/20/03

* * * * * * * * * * *

The physical examination and/or laboratory studies suggest the need for additional follow-up for the following reasons _____

_____

Signature _____ Date _____

EXHIBIT "D"

Carlson 220000188

Congratulations!!!!!

CARLSON, PAULA J.

You are a 2004 Health Quest Winner

YOUR POINTS ARE AS FOLLOWS:

Exercise Program Participation	0
Percentage Body Fat	1
Self directed activities	1
Seat Belt use	1
Cholesterol Score	1
Sick time usage	1
Injury Free	1
Tobacco Free	1
Quiet time	1
Blood pressure	1
Total	9

Employee # 1550

Any questions regarding points, please call Sue Miller at x3351

23000005

EXHIBIT "E"

Congratulations!!!!!

CARLSON, PAULA J.

You are a 2005 Health Quest Winner

Your Points are as follows:

Exercise Program Participation	0
Percentage Body Fat	1
Self directed activities	1
Seat Belt use	1
Cholesterol Score	1
Sick time usage	1
Injury Free	1
Tobacco Free	1
Quiet time	1
Blood pressure	1
Total	9

Employee # 1550

Any questions regarding points, please call Sue Miller at x3351

23000003
EXHIBIT "E"

DuBois Regional
Medical Center

Making the difference for life.

Steven Graeca, D.O.
Board Certified Internal Medicine

145 Hospital Avenue
DuBois, Pennsylvania 15801

Telephone: (814) 371-1717

June 14, 2006

Adolfo Rapaport, DO
90 Beaver Drive
Suite 211-D
DuBois, PA 15801

RE: Paula Carlson

Dear Adolfo:

I am sending you Paula Carlson for an ovarian cyst. We did a CAT scan in relation to this 35 year old for hematuria and found a 4.2 X 4 cm cyst near the right ovary. I have ordered an intravaginal ultrasound that will be available and wish you to take a comment because it seems a touch large to me for an ovarian cyst.

She has a history of giant tumor cell which was found late and is currently undergoing litigation. Otherwise, she is a really pretty healthy individual. Thank you.

Sincerely,

Steven Graeca, D.O.

SG/lmw

EXHIBIT "F" (16)

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OR REFERENCE TO PAULA CARLSON'S UNRELATED HEALTH HISTORY** was served by First Class Mail, postage prepaid on the 25th day of JANUARY, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, a Motion in Limine to Preclude Evidence of or Reference to Paula Carlson's Unrelated Health History having come before the Court, upon consideration thereof, Motion is GRANTED and it is ORDERED, ADJUDGED and DECREED that Defendants are prohibited from referring to or mentioning in any manner or offering any evidence, including but not limited to the testimony of Dr. Ross Horsley and Ronald Kushner, about Ms. Carlson's medical history regarding her back, neck or shoulder, and requiring all such references to be redacted from all documents prior to submission to the jury

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENSE'S CLAIM THAT PLAINTIFF MAY RETURN TO HER JOB AT DUBOIS REGIONAL MEDICAL CENTER

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED NO CC
M/10:18/621
JAN 28 2008 GK
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENSE'S CLAIM THAT PLAINTIFF MAY RETURN TO HER JOB AT DUBOIS REGIONAL MEDICAL CENTER

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion In Limine To Preclude Defense's Claim That Plaintiff May Return to Her Job at DuBois Regional Medical Center:

1. This is a medical malpractice case arising out of Defendant Dr. Jerjis Alajaji's failure to properly read an x-ray of April 12, 2005 and report a lesion in Ms. Carlson's right wrist.

2. Paula Carlson has been left with a significant disability. She has been declared permanently and totally disabled by the Social Security Administration. See the Notice of Decision – Fully Favorable dated March 5, 2007 attached as Exhibit A. Nonetheless, DuBois Regional Medical Center and the other Defendants will try to claim at trial that she has no wage loss claim because Defendant hospital was willing and/or is willing to provide her with a job at

her prior rate of pay of approximately $64,000 a year on a permanent and lifetime basis. They further claim that they will make whatever modifications are necessary to accommodate her in the radiation department.

3. This claim and this evidence is grossly self-serving and should be precluded altogether at trial. A Defendant should not be permitted to defeat a wage loss claim by presenting in Court with a speculative promise regarding future employment.

4. Ms. Carlson was not a member of a union. Ms. Carlson was an at-will employee. Even if this scheme could be undertaken for a time, Ms. Carlson would remain an at-will employee. The Court is well aware of the prerogatives and latitude provided an employer in Pennsylvania for an at-will employee.

5. Plaintiff respectfully submits that the Court should preclude all together such evidence or in the alternative severely curtail the presentation of this evidence including confining such presentation to appropriate witnesses. (In that regard, it is noted that at the videotaped deposition of Plaintiffs' economic expert, Professor James Kenkel, defense spent an inordinate amount of time asking the basic question *isn't it true if the hospital gave her her job back she would have no wage loss.* Plaintiffs have listed the page numbers and lines for each time that question essentially was asked by Attorney Slimak. They are as follows:

Page	Lines
60	5 – 12
61	11 – 15
61	19 – 25
62	4 – 12
64	1 – 8
64	15 – 19
67	9 – 14
69	3 – 8
69	17 – 22
71	20 – 25
72	1 – 3

72	14 – 23
73	2 – 11
73	18 – 24
74	6 – 10
77	5 - 10

Please see the testimony collectively attached as Exhibit B for the Court's convenience. If this testimony was live before Your Honor, this line of questioning would have been stopped as already asked and answered and repetitious. Attorney Slimak took advantage of the videotaped setting to ask essentially the same question approximately 15 times. Plaintiff has also requested in its Motions in Limine that that Professor Kenkel's cross examination be struck or severely limited.)

6. Additionally, if the Court does not in the exercise of its discretion strike this defense all together, it is respectfully submitted that the Court should preclude any further evidence of this so-called job offer to the present state of the record. Two witnesses have been deposed and have claimed that an offer of a job was and/or is available at Defendant hospital. They are Rose Campbell, Plaintiff's supervisor, and Robert McKee, the Human Resource Manager. Again, if the Court does not wish to strike this testimony altogether, it is submitted discussion of it be limited to the testimony of these witnesses and no last minute grandstanding be permitted on this very prejudicial issue.

WHEREFORE, Plaintiffs' respectfully request that this Honorable Court issue an Order prohibiting Defendants from mentioning the claimed job offer at trial or evidence of the offer is limited to the testimony already recorded of two witnesses, Rose Campbell and Robert McKee, who have already been deposed in this matter.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____

Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/2008

EXHIBIT A

SOCIAL SECURITY ADMINISTRATION

Refer To: 201-66-3077

Office of Disability Adjudication and Review
334 Washington St., Suite 200
Johnstown, PA 15901
Telephone: (814) 533-4462
Date:

05 MAR 2007

Paula Jo Carlson
1373 Sandstone Dr.
Falls Creek, PA 15840

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

See Next Page

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 of the regulation lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

See Next Page

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (814) 372-1470. Its address is 302 Liberty Blvd, Dubois, PA 15801.

cc: Martin G. Colavincenzo
Attorney at Law
4 West Manilla Avenue
Pittsburgh, PA 15220

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
Paula Jo Carlson (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	201-66-3077 (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On May 1, 2006, the claimant protectively filed an application for a period of disability and disability insurance benefits, alleging disability beginning May 5, 2005. This claim was denied and is now before the undersigned Administrative Law Judge on a timely written request for hearing filed on October 15, 2006 (20 CFR 404.929 *et seq.*). The claimant appeared and testified at a hearing held on February 15, 2007, in Dubois, Pennsylvania. Judy Schollaert, an impartial vocational expert, also appeared at the hearing. The claimant is represented by Martin G. Colavincenzo, Attorney at Law.

ISSUES

The issue is whether the claimant is disabled under Sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of Sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2010. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from May 5, 2005 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

See Next Page

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

See Next Page

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant meets the insured status requirements of the Social Security Act through December 31, 2010.

2. The claimant has not engaged in substantial gainful activity since May 5, 2005, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

The evidence shows the claimant returned to work part-time two weeks before the hearing as a seater but is unable to perform ancillary duties including moving tables and chairs. Further, this work activity does not constitute substantial gainful activity in accordance with Section 404.1574. Consequently, the undersigned concludes the claimant has not engaged in substantial gainful activity at any time relevant herein.

3. The claimant has the following severe impairments: Giant cell tumor of the right wrist and residuals of a radical resection of the right distal radius and a right wrist fusion (20 CFR 404.1520(c)).

The above impairments cause significant limitation in the claimant's ability to perform basic work activities.

See Next Page

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)).

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform sedentary work activity. Further, she is unable to lift more than two to three pounds ten percent or less of the time with the right dominant hand or perform fine manipulation, push or pull with the right upper extremity, is limited to occasional balancing, crawling and climbing ramps and stairs, is unable to climb ladders, ropes and scaffolds, needs to avoid concentrated exposure to extreme hot or cold, vibration and hazards, and is unable to perform fine fingering more than occasionally with the left, non-dominant hand.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

On June 9, 2005, Dr. Mark Piasio reported the claimant's two to three-month history of right wrist pain located in the radial aspect. There was pain with range of motion, marked tenderness over the distal radius, X-ray evidence of a lytic lesion in the distal radius ulnar aspect, which was confirmed by MRI that appeared to penetrate a cortex (Exhibit 1F).

The claimant was hospitalized between June 27, 2005 and June 29, 2005, to undergo radial resection of the distal radius and right wrist fusion due to a giant cell tumor (Exhibit 2F). However, Dr. Steven Graeca reported the claimant continued to experience pain and was unable to move the wrist (Exhibit 4F).

Dr. Kenneth Yaw reported the claimant had marked soft tissue wasting around the single bone forearm crossing the right wrist and she experienced worsening pain with a work hardening program. There was synovial thickening over the plate of the middle finger metacarpal dorsum, tenderness on the radial border and irritation from tendon overuse. Following a functional capacity evaluation, Dr. Yaw concluded the claimant was limited to lifting and carrying three to five pounds on a periodic but not repetitive basis with her right upper extremity due to loss of motion and motor power, as well as sensitivity to direct force. Additionally, Dr. Yaw completed a physical residual functional capacity questionnaire, which reported the claimant continued to experience stiffness, weakness and right wrist pain, she was unable to lift and carry any weight with the right upper extremity and had lost almost complete function of the right upper extremity (Exhibits 5F, 7F and 10F).

Mary T. Defranco, Vocational Rehabilitation Counselor, reported the claimant was not qualified for other work, as her education, skills and experience were very specific to her field. Her severe limitations made it difficult to establish appropriate vocational goals, as she was unable to perform even fine motor skills including writing and manipulating in a sedentary-type position (Exhibit 8F).

See Next Page

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinion is given little weight because evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultant. Furthermore, the State agency consultant did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

The claimant has past relevant work as a radiation therapist, DOT Code 078.361-034, which was classified as light, skilled work activity but heavy as performed by the claimant. As the claimant is limited to sedentary work activity, she is unable to perform past relevant work.

7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568).

The vocational expert testified that based on the claimant's residual functional capacity, there were no transferable skills.

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

See Next Page

If the claimant had the residual functional capacity to perform the full range of sedentary work, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled sedentary occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience and residual functional capacity. The vocational expert testified that given all of these factors there are no jobs in the national economy that the individual could perform.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, a finding of "disabled" is appropriate under the framework of the above-cited rule.

11. The claimant has been under a disability, as defined in the Social Security Act, from May 5, 2005 through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the application protectively filed on May 1, 2006, the claimant has been disabled for a period of disability and disability insurance benefits under Sections 216(i) and 223(d) of the Social Security Act beginning on May 5, 2005.

Raymond J. Zadzilko
Administrative Law Judge

Date 05 MAR 2007

LIST OF EXHIBITS

Claimant: Paula J. Carlson SSN: 201-66-3077

Exh. No.	Part No.	Description	No. of Pages
		MEDICAL RECORDS	
1	F	Medical records covering the period from 4/12/05 through 6/13/05 from Mark A. Piasio, MD	15
2	F	Hospital Records for admission on 6/27/05 through discharge on 6/29/05 from Mercy Hospital of Pittsburgh, pre-op records 6/20/05	25
3	F	Operative report dated 1/25/06 from Kenneth M. Yaw, MD with outpatient records, Mercy Hospital	4
4	F	Medical Records covering the period from 4/12/05 to 5/23/06 from Steven W. Graeca, DO	43
5	F	Medical Records covering the period from 6/17/05 to 7/10/06 from Kenneth M. Yaw, MD	13
6	F	RFC - Residual Functional Capacity Assessment - Physical (completed by DDS physician) dated 08/07/06	7
7	F	Medical Records dated September 7, 2006 from Kenneth Yaw, MD (submitted by atty)	3
		RECEIVED DURING HEARING	
8	F	Report dated 01/29/07 from OVR, DuBois, PA	1
9	F	Pre-Hearing Memorandum dated 02/13/07 by Attorney Martin G. Colavincenzo	4
10	F	Physical Residual Functional Capacity Questionnaire dated 02/14/07 from Mercy Orthopedic Associates	4
11	F	X-ray Report dated 02/14/07 from Mercy Hospital of Pittsburgh	1

LIST OF EXHIBITS

CLAIMANT: Paula Jo Carlson **SSN:** 201-66-3077

X-REF: _____ **SSN:** _____

Section A **PAYMENT DOCUMENTS/DECISIONS**

Section B **JURISDICTIONAL DOCUMENTS/NOTICES**

NON-DISABILITY DEVELOPMENT

Section D contains paperwork that involves non-disability issues such as records of Social Security taxes paid in. Each set of documents is labeled with section number and numerically as an exhibit.

Section D consists of 4 exhibits.

DISABILITY RELATED DEVELOPMENT AND DOCUMENTATION

Section E contains paperwork related to the claimant for disability such as forms and reports completed by and for the claimant, information on work background and medications. Each set of documents is labeled with the section number and numerically as an exhibit.

Section E consists of 5 exhibits.

Part A (Yellow) - Payment Documents/Decisions
Part B (Red) - Jurisdictional Documents/Notices
Part D (Orange) - Non-Disability Development
Part E (Blue) - Disability Related Development and Documentation
Part F (Yellow) - Medical Records

ADDITIONAL CLAIM FILE, IF APPLICABLE:

Part (SSI) - Supplemental Security Income
Part (DWB) - Disabled Widow/Widower
Part (CDB) - Child's Disability Benefits

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER

IN THE CASE OF	**CLAIM FOR**
Paula Jo Carlson (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	201-66-3077 (Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim results in past-due benefits.

My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise accepted. I neither approve nor disapprove any other aspect of the agreement.

HOW TO ASK US TO REVIEW THE FEE AGREEMENT DETERMINATION

You or your representative may ask us to review the determination on the fee agreement. If you decide to ask us for a review, write us within 15 days from the day you get this order. Tell us that you disagree and give your reasons.
Send your request to this address:

- Jasper J. Bede
  Acting Regional Chief Administrative Law Judge
  SSA ODAR Regional Office
  4th Floor
  PO Box 13496
  Philadelphia, PA 19101

Your representative also has 15 days to write us if he or she does not agree with the determination on the fee agreement.

You should include the social security number(s) shown on this order on any papers that you send us.

Raymond J. Zadzilko
Administrative Law Judge

05 MAR 2007
Date

YOUR RIGHT TO PAYMENT WITHIN A REASONABLE TIME

We are required by a District Court order in Holman et al. V. Bowen, (Civ. No. 78-0494, M.D. PA, May 1, 1987), to notify you of your right to have your disability payments sent to you by us within a reasonable time after a favorable determination of your eligibility for benefits.

If you would like to know when you will receive your benefits, you may contact any Social Security office to ask when you can expect to receive payment of your claim.

If, at any time, you feel that your payments are being unreasonably delayed, you may seek relief from a United States District Court.

You may wish to contact an attorney regarding your rights. If you do not have an attorney, free legal services may be available if you qualify for them due to financial need. For further information about where to apply for free legal help, you may call the Law Coordination Center, toll free, at 1-800/732-3545.

EXHIBIT B

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,	CIVIL DIVISION
Plaintiffs,	No. 2006-563-CD
vs.	
JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	VIDEOTAPE DEPOSITION TRANSCRIPT OF: James Kenkel, Ph.D.
Defendants.	DEPOSITION DATE: January 21, 2008 Monday, 2:06 p.m.
	PARTY TAKING DEPOSITION: Plaintiffs
	COUNSEL OF RECORD FOR THIS PARTY: Thomas Crenney, Esq. LAW OFFICES OF THOMAS CRENNEY & ASSOCIATES One Gateway Center 18th Floor Pittsburgh, PA 15222 412-644-5545
	REPORTED BY: Kristin Lytle, RPR Notary Public AKF Reference No. KL04947

A. I would agree that if certain things are grossly wrong then it's possible that my projections are totally wrong.

BY MR. SLIMAK:

Q. Okay. Well, did you personally meet with and interview Ms. Carlson's employment supervisor at DuBois Regional Medical Center, Rose Campbell, or the hospital's human resources administrator, Mr. Bob McKee, or any other medical center personnel to determine whether Ms. Carlson could return to work at the medical center as a radiation technician?

MR. CRENNEY: Objection. It's an irrelevant question. Beyond the scope.

A. No, I did not.

BY MR. SLIMAK:

Q. In preparing your report did you take into consideration and cite the Americans With Disabilities Act return-to-work provisions?

A. I am aware of the act so --

MR. CRENNEY: Same objection.

THE WITNESS: I am aware of it, so it's in the background of any projection I make. I am assuming that she is not capable of returning to her former employment.

BY MR. SLIMAK:
Q. Are you aware that under that law employers must provide reasonable accommodations to allow disabled employees to return to work as long as with the accommodations the employee is able to perform the essential functions of their job?
A. Yes.
MR. CRENNEY: Pardon me. I'm so, sorry, Professor. Same objection.
BY MR. SLIMAK:
Q. Are you aware of efforts that the DuBois Regional Medical Center was making to accommodate and prepare for Ms. Carlson's return to work as a radiation therapist before she sued them?
A. No.
MR. CRENNEY: Same objection.
BY MR. SLIMAK:
Q. Are you aware of whether the medical center was willing to comply with the law to provide reasonable accommodations to Ms. Carlson so as to allow her to return to work performing the essential functions of her radiation technician job without loss of any earnings or fringe benefits at all?

MR. CRENNEY: Same objection.
A. No.
BY MR. SLIMAK:
Q. Do you agree that if the facts of this case show that the hospital had undertaken efforts to make sure that Ms. Carlson could continue to do her radiation technologist job on a full-time basis despite her giant cell tumor problems because of the surgery performed by Dr. Yaw that she could have returned to work and would not have had any ongoing income loss at all?
MR. CRENNEY: Same objection.
A. If she could earn the same income as I've projected and that income is going to be earned for as long as I have projected, then in any year that the income is earned that matches the income that I projected there wouldn't be a loss that year. But that presumes that somebody is going to actually pay her to do something that possibly she can't do.
BY MR. SLIMAK:
Q. Did plaintiff's attorney, Mr. Crenney, provided you with the deposition of sworn testimony he took of Rose Campbell or of Mr. Bob McKee that

Q. Were you aware that Mr. Maloney had performed a job function analysis and made changes in the job description as well as recommendations for reducing the amount of weight and physical activity that she would have to perform with her affected arm in order to potentially accommodate her medical problem and allow Ms. Carlson to return to work?

MR. CRENNEY: Objection to the form. Objection to the relevance.

A. No.

MR. CRENNEY: Objection as beyond the scope of this witness's testimony on direct.

BY MR. SLIMAK:

Q. Are you aware of whether the hospital was willing to do whatever it would take and the law would require to accommodate Ms. Carlson so that she could return to work as a radiation therapist and have no ongoing work loss?

A. No.

MR. CRENNEY: Objection. Just let me get this out. I'm so sorry, Professor. I don't mean to interrupt you.

Objection to the form. Objection to the relevance. Objection to the phrase

he would have had this information available to utilize it. That's perfectly appropriate and critical cross-examination.

MR. CRENNEY: Not so.

BY MR. SLIMAK:

Q. I'm not sure if we had the answer to the last question, sir. Let me re-ask it I think where I was at.

Are you aware of whether the hospital was willing to do whatever it would take and the law would require to accommodate Ms. Carlson so that she could return to work as a radiation therapist and have no ongoing work loss?

MR. CRENNEY: Same objection. Objection to the form.

MR. SLIMAK: We already have your objection. I just re-asked the same question. You don't have to repeat your objections again. You're being obstructive.

MR. CRENNEY: I am not trying to be obstructive.

MR. SLIMAK: Do you have nothing new, sir?

MR. CRENNEY: Mr. Slimak, please

Q. Now I'm going to re-ask the question so we know what it was.

Are you aware whether the hospital was willing to do whatever it would take and the law would require to accommodate Ms. Carlson so that she could return to work as a radiation therapist and have no ongoing work loss?

MR. CRENNEY: Same objection.

A. No.

BY MR. SLIMAK:

Q. Now I know that you testified earlier that Ms. Carlson had worked at the hospital in this position for 12 to almost 13 years; is that correct?

A. Yes.

Q. And do you agree that with her training and background in this radiation technician area with that degree of experience that she was an extremely valuable and experienced employee that a hospital would want to keep working if at all possible?

MR. CRENNEY: Objection. Do I have a continuing objection similar to the last one, sir? I don't want to interrupt you.

inappropriate. You're just being obstructionist.

MR. CRENNEY: No, I'm not. I'm just making objections. If you'll agree that I have that continuing objection, I won't interrupt you. I don't mean to interrupt you.

MR. SLIMAK: I do think if you have an objection because of your prior position on such questions you should say same objection, and then we will understand that whatever it is that you have just been going on about would be what you meant in that regard. I think that's the easiest way to do it so that we know that you have an actual objection versus whether you don't have an objection to a particular question so we're not guessing when we go before the judge and have issues ruled upon.

BY MR. SLIMAK:

Q. Now let me re-ask the question.

Mr. Kenkel, do you agree that with Ms. Carlson's training and background as a radiation technician and radiation therapist and her 12 to 13 years' experience working in the radiation department of the DuBois Regional Medical Center that she would be an extremely

valuable and experienced employee that the hospital would want to keep working if at all possible?

MR. CRENNEY: Same objection.

A. Yes.

BY MR. SLIMAK:

Q. Are you aware of testimony that Attorney Crenney obtained from Mr. McKee at the DuBois Regional Medical Center where he testified that the hospital did feel she was a good employee?

A. No.

MR. CRENNEY: Same objection.

BY MR. SLIMAK:

Q. Are you aware of testimony that plaintiffs' attorney, Mr. Crenney, had developed under oath that Mr. McKee had called Paula Carlson in February of 2006 after he had spoke with Mr. Ray Graeca, the president of the medical center, and John Sutika, the vice president and chief financial officer, to reaffirm the medical center's position that they would like to work with her in terms of whatever she would be able to do when she could return to work?

MR. CRENNEY: Same objection.

A. No.

BY MR. SLIMAK:

Q. Are you aware of testimony by Mr. McKee that Mr. McKee communicated to Paula Carlson that the medical center wished to work with her when it was identified that she would be able to return to work?

And what I mean by with work her, identified what she could and could not do and determine what accommodations we could make so it would be possible for her to return to work. Were you aware of that?

A. No.

MR. CRENNEY: Same objection.

Q. That's at his deposition at page 18 and 19.

MR. CRENNEY: Excuse me. I'm so sorry. Same objection.

BY MR. SLIMAK:

Q. And were you aware of Mr. McKee's testimony in that same deposition at page 21 when he was asked the question: And it was the medical center's position that you wanted her back and you would make every effort to accommodate her; is that correct? And his answer was: That's what our goal was, yes.

MR. CRENNEY: Same objection.

BY MR. SLIMAK:
Q. Were you aware of that?
A. No.
MR. CRENNEY: Same objection.
BY MR. SLIMAK:
Q. Are you aware Ms. Carlson testified in her deposition that there was a meeting set up by her supervisor, Rose Campbell, to talk to Ms. Carlson about when she could return to work?
A. No.
Q. Were you even provided with the sworn testimony of Ms. Carlson in her deposition?
A. No.
Q. Is it relatively common, sir, in gathering appropriate information to prepare a report and come into a court of law or give sworn testimony in a serious matter like this that you would often review deposition testimony of various witnesses if it is given to you by the attorney who hired you?
A. Yes.
Q. Do you agree that it's best to have complete information rather than incomplete information when you are making important forensic economic

Q. Now did you ask Mr. Crenney what all information was available to take into consideration to prepare your report?
A. No.
Q. If information would be provided to you that indicated that Ms. Carlson could return to work at the DuBois Regional Medical Center in her job position as a radiation therapist, would you have felt that was important information for you to consider?
MR. CRENNEY: Same objection. May I add to that asked, asked, asked, and asked and answered. It's repetitive beyond belief.
MR. SLIMAK: Unfortunately because there's so many objections to everything I have to clarify. And this is actually a bit different than the prior questions because I am trying to avoid some of your on and on repetitive objections to every single question, sir.
BY MR. SLIMAK:
Q. You'll have to answer.
A. If I was provided information that I thought was relevant in making my projections that would change my projection, I would take it

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION IN LIMINE TO PRECLUDE DEFENSE'S CLAIM THAT PLAINTIFF MAY RETURN TO HER JOB AT DUBOIS REGIONAL MEDICAL CENTER was served by First Class Mail, postage prepaid on the 25th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
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811 University Drive
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(Counsel for Jerjis T. Alajaji, M.D.)

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Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, a Motion In Limine To Preclude Defense's Claim That Plaintiff May Return to Her Job at DuBois Regional Medical Center having come before the Court, upon consideration thereof, Motion is GRANTED and it is ORDERED, ADJUDGED and DECREED that Defendants are prohibiting from mentioning the claimed job offer or evidence of the offer is limited to the testimony already recorded of two witnesses, Rose Campbell and Robert McKee, who have already been deposed.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION TO STRIKE PORTIONS OF DR. MARK A. PIASIO'S DEPOSITION

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

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JURY TRIAL DEMANDED

FILED NO CC
JAN 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and JAMIE CARLSON, her husband, Plaintiffs, vs. JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER, Defendants.	No. 2006-563-CD Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION TO STRIKE PORTIONS OF DR. MARK A. PIASIO'S DEPOSITION

AND NOW comes the Plaintiffs' by and through their attorneys and files the within motion to strike portions of the deposition of Dr. Mark A. Piasio. Said deposition transcript is attached as Exhibit "A" for the Court's reference.

1. **Plaintiffs' Objection, Pg. 83, lines 12-16 and 19-20.** Plaintiffs' counsel objected to the question asked at lines 8-9. Attorney Slimak following the objection re-asks the same question on page 84 lines 4 -14 and receives the same answer from Dr. Piasio. Plaintiff would simply ask that the question and answer be removed from **page 83, lines 8 -11** as it is repetitive.

2. **Plaintiffs' Objection, Pg. 94, lines 13-15. Objection, Pg. 95, lines 21-22. Objection, Pg. 98, lines 9-10.** Mr. Slimak at this point in the video deposition has taken parts of Ms. Carlson's medical records, blown them up, highlighted only particular portions of the medical record and is holding them up next to the doctor on the videotaped record. Mr. Slimak proceeds to read from Ms. Carlson's medical records that

have not been marked as an exhibit or properly moved into evidence. Mr. Slimak then publishes these highlighted medical records to the jury on the videotaped record without requesting this Honorable Court's permission.

A witness should not be permitted to show a document to the jury unless the document itself has been admitted. It is ordinarily within the discretion of the trial judge whether a document shall be read to the jury. At least on proper introduction it is not error to permit it to be read to the jury. Where documents have not been formally introduced into evidence, they may not be exhibited to the jury. 88 C.J.S. Trial Section 149 (2007).

Mr. Slimak was clearly taking advantage of the videotape setting to not properly follow any rules regarding the introduction of documents into evidence and the court's discretion as to whether any of these medical records in their highlighted fashion should be published to the jury on the videotaped record.

Additionally, Plaintiffs' counsel made an objection that the questions regarding her family medical history of cancer, blood in Ms. Carlson's urine, and prior back pain just to name a few were irrelevant to the issues in this case. Those objections are contained at **pages 95 and 98** of the transcript. In an effort to explain to this Honorable Court how the irrelevant questioning regarding Ms. Carlson's medical history went on for an extreme amount of time I draw the Court's attention to **page 98, lines 19 -25, page 99, lines 1 -25, and page 100, lines 1-7.** At this point in the record the witness himself stops the questioning by Mr. Slimak to ask the relevance of all of the questioning regarding the medical history and is in fact so confused he asks whether he should stop the deposition

and get counsel because he believes Mr. Slimak is trying to lay the foundation for a negligence case against him for treatment he rendered to Paula Carlson.

Plaintiff requests that all of the questioning involving Plaintiff Paula Carlson's medical history and the use on the video record of the highlighted medical records be stricken from the record as irrelevant and on the grounds that the documents were not properly admitted into evidence before being published to the jury.

3. **Plaintiffs' Objection page 108, lines 12-17.** Plaintiff objects to the extraneous comments by Mr. Slimak on page 108, lines 7 -11. The comments by Mr. Slimak are set forth below:

> Now, I was looking at your records and report and Attorney Crenney read you certain portions of them, but there were other portions he had not read to you and so let me ask you about some aspects of that.

The commentary by Attorney Slimak is not a question and serves no purpose. He received no response from the witness at that point in the deposition. Plaintiff would ask that these comments be stricken from the record.

4. **Plaintiffs' Objection page 109, lines 7 -18.** Plaintiff objects to the use once again of the medical records of Dr. Mark Piasio's treatment of Paula Carlson that Mr. Slimak has chosen to blow-up, highlight certain portions of the documents and publish to the jury. Once again, Mr. Slimak has taken advantage of the videotape setting to not properly follow the rules and put a narrative report of a treating physician in front of the jury when it is not clear that this Honorable Court would have permitted the medical record to be published to the jury at all let alone with the selective highlighting.

Plaintiff ask that the portion of the videotape with Mr. Slimak holding up the highlighted narrative report be stricken from the record.

5. **Plaintiffs' Objection page 121, lines 8 -14.** Plaintiff objects to the questions asked by Mr. Slimak as repetitious and irrelevant. Counsel questions Dr. Piasio regarding past medical history, definitions of conditions, explanations of the different type of medical studies performed and numerous other topics that he repeatedly describes as background information. A great majority of the many questions are designed simply to distract, confuse the issues and mislead the jury. Plaintiff requests that this repetitive and irrelevant questioning by Mr. Slimak be stricken from the record.

6. **Plaintiffs' Objection page 142, line 25.** Plaintiff objects to Mr. Wall's question regarding how Dr. Piasio supervises and if he reviews chart entries made by his Physician Assistant. The defense in this case is to blame both Dr. Graeca and Physician Assistant, Lori Natoli for not figuring out what was wrong with Paula Carlson after they received A negative x-ray report from the Defendant, Dr. Alijaji. Dr. Piasio is not presented as an expert in this case. This is an improper line of questioning for a medical treater and this specific question is never completely answered by the doctor on the record. The only words on the transcript in the form of a answer from Dr. Piasio oat line 142 are "I rarely--- ." Plaintiff requests that the question and answer at **page 142, lines 22-24** be stricken from the record.

7. **Plaintiffs' Objection, pg. 151, line 25 and pg. 152, line 1.** Once again on the video record Mr. Slimak holds up a blow-up to be published to the jury. The documents itself can be best described as a demonstrative exhibit containing one word, in large bold letters, **ARTIFACT**. Mr. Slimak questioned Dr. Piasio on cross-examination

at length regarding his findings on the April 12, 2005 x-ray and then attempts on re-cross to ask the doctor for the spelling of the word artifact while holding a blow-up of the word on the video record. The document serves no purpose but to mislead and inflame the jury. Plaintiff requests that the question and answer be stricken from the record.

8. Finally, Plaintiff attaches a letter sent to all counsel dated January 24, 2008 submitting Plaintiffs' proposals for testimony to be stricken and voluntary withdrawal of Plaintiffs' objections in an effort to save the Court time. Said letter is attached hereto as Exhibit "B". As of this date, Plaintiff has received no response from any Defendant regarding said proposals. In addition, Plaintiff is adding to its removal of objections, Plaintiffs' objection at page 123, line 20.

WHEREFORE, Plaintiffs respectfully request that the above motion to strike testimony be granted.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOC., LLC

Date: 1/25/08

By: _____

Thomas E. Crenney, Esquire
Attorney for Plaintiffs

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs, No. 2006-563-CD

- vs -

JERJIS T. ALAJAJI, M.D., DuBOIS RADIOLOGISTS, INC., and DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

VIDEOTAPE
DEPOSITION OF:
MARK A. PIASIO, M.D.

DEPOSITION TAKEN:
January 22, 2008
Tuesday, 4:16 p.m.

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY:
Thomas E. Crenney, Esq.
LAW OFFICES OF THOMAS
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Pittsburgh, PA 15222
412-644-5545

REPORTED BY:
Tammie Elias, RPR
Notary Public
AKF Ref. No. TE04821

EXHIBIT "A"

VIDEOTAPE DEPOSITION OF MARK A. PIASIO, M.D., a witness, called by the Plaintiffs for examination, in accordance with the Pennsylvania Rules of Civil Procedure, taken by and before Tammie Elias, RPR, and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of Dr. Piasio, 145 Hospital Avenue, Suite 311, DuBois, Pennsylvania, on January 22, 2008, commencing at 4:16 p.m.

APPEARANCES:

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EXAMINATION INDEX

MARK A. PIASIO, M.D
BY MR. CRENNEY 5
CONTINUED BY MR. CRENNEY 10
BY MR. SLIMAK 57
BY MR. WALL 137
RE BY MR. CRENNEY 144
RE BY MR. SLIMAK 150
RE BY MR. WALL 152

CERTIFICATE OF REPORTER 154

(ALL EXHIBITS WERE RETAINED BY PLAINTIFF COUNSEL)

- - - -

VIDEOGRAPHER: Good afternoon. My name is Matthew Martin, I'm the videographer. I'm here from AKF Court Reporting and VideoTech Services. Today's date is January 22, 2008 and the time right now is 4:16 p.m. and that is indicated on the screen. We're here to take the video deposition of Dr. Mark Piasio in the case caption Carlson versus Alajaji. We are at 145 Hospital Avenue, DuBois, Pennsylvania 15801. The case is being heard in the Court of Common Pleas of Clearfield County, No. 2006-563.

Would counsel please identify themselves and whom they represent.

MR. CRENNEY: Tom Crenney for the Carlsons.

MR. WALL: Walter Wall for DuBois Radiology, Inc.

MR. SLIMAK: This is Darryl Slimak, I represent Dr. Alajaji.

MR. JOHNSON: Dave Johnson, DuBois Regional Medical Center.

VIDEOGRAPHER: And if the Court Reporter may swear in the witness, we may

proceed.

- - - -

MARK A. PIASIO, M.D.,
having been duly sworn,
was examined and testified as follows

- - - -

EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, could you state your name?

A. Mark A. Piasio.

Q. And what is your profession?

A. I am an orthopedic surgeon at DuBois Regional Medical Center.

Q. And what is your office address?

A. 145 Hospital avenue, Suite 311, DuBois, Pennsylvania.

Q. Where did you go to college?

A. Johns Hopkins.

Q. And where did you go to medical school?

A. Georgetown University.

Q. And could you just tell us about your medical training after you got out of medical school?

A. I spent two years at the Washington Hospital Center in general surgery, four years at Tufts

months at the New England Baptist Hospital in spine surgery.

Q. What's orthopedics generally?

A. Bone and joint.

Q. Are you a surgeon, are you an orthopedic surgeon?

A. Yes.

Q. Could you tell us about your average week? I realize probably there's no average week, but generally how you spend your time in terms of clinical, administrative, teaching, things that you do?

A. My job is a little bit more unique. At least over the past couple of years, I have had more administrative work, but generally speaking I would probably as chief of surgery here spend maybe ten percent of my time in administrative duties. When I occasionally have students, five to ten percent of my time in that and about 80 percent of my time in clinical duties. Of that time, I would put in maybe now about eight or nine, maybe eight hours of surgery a week and 30, 40 hours of clinical, of office based orthopedics.

Q. When you say here, what hospital are you

referring to?

A. At DuBois, at DuBois Regional Medical Center.

Q. And are you chief of surgery at DuBois Regional Medical Center?

A. Yes, I am.

Q. How long have you held that position?

A. I believe it's seven or eight years.

Q. Did you also at least for a time work at Clearfield Hospital?

A. I worked at Clearfield from 1989 through 1997.

Q. And what did you do over there?

A. Was an orthopedic surgeon and I was the chairman of the quality assurance committee.

Q. Are you board certified?

A. Yes.

Q. What's board certification and how do you become board certified?

A. I can only speak from the prospective of the M.D.s. The D.O.s have their own certification process of which I'm not familiar. On the M.D. process in the specialty of orthopedic surgery, which I'm familiar, when you finish your orthopedic residency, if it's accredited and you complete it and you're given accreditation from your training program, you

take an oral examination and if you pass that oral examination, you have to practice for two years, at which point then you sit for -- correct, let me go back.

You take a written examination at the end of your training program. If you pass that exam, two years subsequent you have an oral examination that goes over, you know, what you know as well as what you've done, going over your particular -- the particular procedures that you do. You give them a case list and the examiners question you on that.

The process has changed a little bit since I took my initial oral examination. Every then every ten years subsequent, you have to retake either an oral or a written examination.

Q. How long have you been board certified?

A. I was board certified in 1991. I was recertified in I believe '97 or '98 and my re-recertification is coming up in 2011.

Q. Do you belong to the Pennsylvania Medical Society?

A. Yes, I do.

Q. What is that society?

A. It's a professional society representing -- we represent all the physicians in the Commonwealth, but we don't necessarily have them all as members. But we pretty much try to promote the profession and the general welfare through a professional organization no different than the bar association.

Q. About how many physicians are there in the society?

A. We have about 18,000 members.

Q. And did you ever hold office in that society?

A. Yes. I have been a county president in Clearfield County, chair of -- or vice chair of governing counsel of young physicians, board of trustees and recently I was president of the organization.

Q. Statewide?

A. Yes.

Q. Do you belong to any other professional societies?

A. I'm a member of the AMA. I'm a member of the -- I'm a fellow of the American College of Surgeons, a fellow of American Orthopedic Association, and a fellow of the -- what is it, College of Physician Executives.

Q. Doctor, have you written learned articles or have you published in your field?
A. I have, but not extensively. It's not been the thrust of my professional career.
Q. And do you commonly treat patients for orthopedic problems, problems involving their bones and joints?
A. Yes, I do. I would consider myself, although subspecialty trained, I'm a general orthopedic surgeon.
Q. What's your subspecialty training in?
A. I was trained in spine.

MR. CRENNEY: Are there questions on qualifications?

MR. SLIMAK: I reserve my questions until later.

- - - -

CONTINUED EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, when did you first see Paula Carlson?
A. For accuracy I'm going to go to the chart because I don't know off the top of my head. In my chart I have here that I saw her first June 9th, 2005.

Q. And did you make a note of that first visit?
A. Yes, I did.
Q. And would you be kind enough to read the first paragraph of that note?
A. 6/9/05. Paula Carlson, date of birth 4/26/1971. S, stands for subjective, this woman is self-referred for problems with her right wrist. She's a delightful 34 year old woman who works here as a radiation x-ray tech. She has had wrist pain now going on for about two to three months. She saw Dr. Graeca, reported no injury, and had radial wrist pain and the EMG study was done, which really was unremarkable for carpal tunnel.
Q. And we are looking at your note of that date; correct?
A. Yes.

MR. CRENNEY: I'm going to mark that as Plaintiffs 3 and move it into evidence. Any objection?

- - - -

(Exhibit 3 marked for identification.)

- - - -

MR. WALL: No objection.

MR. JOHNSON: I object to the extent

that I'm not sure that medical records should be moved into evidence to go out with the jury, so I would object on that basis.

MR. SLIMAK: I join in that.

MR. CRENNEY: Anything else, Mr. Slimak?

MR. SLIMAK: No, I'm just waiting for your questions, sir.

MR. CRENNEY: oh, okay. I just wanted to be polite and give you a chance.

BY MR. CRENNEY:

Q. Doctor, when Paula Carlson first came to see you on June 9th, did you have access to films or computer images that had been taken on April 12th, 2005?
A. Yes.
Q. And was it your understanding that they had been -- and I will refer you to the last sentence in the fourth paragraph of your note, was it your understanding that those x-rays had been reported as normal?
A. Yes.

MR. SLIMAK: Objection.

BY MR. CRENNEY:

Q. If you would be so kind, would you read the

last sentence in the fourth paragraph of your note?
A. She had an x-ray, which was reported to be normal.
Q. Is that something you wrote?
A. Yes.
Q. Okay. Did you look at that computer image?
A. Yes.
Q. And what was your interpretation, what did you see?
A. I felt there was a lytic lesion on the ulnar aspect of the distal radius.
Q. Could you show us where that is, if you would be so kind using your own wrist?
A. If you would look at your wrist, the thumb side is the radial side and the pinky is the ulnar side. There are two bones in your wrist, there's one on the radial side, which is the bigger bone, and there's a little bone on the ulnar side. So it would be if you took the bigger bone, it would be on the pinky side of the bigger bone. Somewhere around the middle, would be about the middle of your wrist, would be where it would be located.
Q. And did you at that time decide to do another

x-ray on June 9th, 2005?
A. Yes.
Q. Were you able to do that right in your office?
A. Yes.
Q. Did you yourself interpret that x-ray?
A. Yes.
Q. I'm going to mark your interpretation as Plaintiff's Exhibit 4 and do you have access to that in your chart, Doctor?

- - - -

(Exhibit 4 marked for identification.)

- - - -

A. I have the reading in my chart.
BY MR. CRENNEY:
Q. And naturally this was almost two months later, what was your interpretation of that right wrist x-ray that you ordered and interpreted that day?
A. My impression as I dictated at the time was lytic lesion, permeative without defined margins, distal radius. Considerations for giant cell or Ewings.
Q. And, Doctor, if you could refer back to your note of the narrative that you did of June 9th, and in that regard I'll call your

attention to the bottom paragraph or at least the one with three or four sentences, do you comment on the x-ray on that note?
A. Yes.
Q. And this is the x-ray you took on the 9th?
A. Yes.
Q. And would you be kind enough to read what you wrote that day?
A. X-ray done from April shows a lytic lesion in the ulnar aspect of the distal radius. A repeat x-ray today shows more progressive changes of the lytic lesion with a much more worrisome peripheral margin. It is moth-eaten in nature, permeative and without sclerotic margins.
Q. What did you mean when you stated much more worrisome peripheral margin?
A. The perimeter of the lesion was not as discrete, meaning that it's difficult to say where the lesion ended and where it started. A margin on a bone lesion can be sclerotic where it has a rim of white or dense bone. It can be demarcated with no rim of bone or non-sclerotic, which was the original presentation. And then on the repeat film

that I did at that time, the margin was non-distinct.

In other words, it was hard to tell looking at if you had to draw the lesion, where did it end. So the periphery seemed to blend -- the peripheral lesion seems to blend more into normal bone than a discrete line.
Q. And what did you mean that it is moth-eaten in nature?
A. Moth-eaten, it has little tiny punctate, thinned out bone. No different than if your sweater was in the closet and a moth had gotten at it. It would be little tiny perforations or thinning of the fabric. It looks as if similar -- if you look at a bone, the striations of the bone, it has what we call sort of a permeative moth-eaten. It's what we see in tumors where there's particular punctate, nondescript absences of bone.
Q. Doctor, was this the same lesion that you saw when you reviewed the image from April 12th?
A. Well, it looked different than the image in April.
Q. How was it different?
A. It appeared larger. And again like I

commented, larger and less distinct.
Q. Doctor, did you make a differential diagnosis after you saw Paula Carlson on June 9th?
A. Yes.
Q. And what was your -- first of all, what's a differential diagnosis?
A. It's a list of likely or probable diagnoses.
Q. And what was that?
A. My number one was giant cell, giant cell tumor, and number two was the Ewing sarcoma.
Q. At that time, did you make a treatment plan?
A. Yes.
Q. And is that contained under the rubric P in your note of June 9th, 2005?
A. Yes.
Q. And would you be kind enough to read that?
A. Obviously she needs a very aggressive immediate workup and we've scheduled it all done for today and tomorrow. A MR and bone scan has been ordered as well as full chemistry evaluation as well and I will see her back probably tomorrow.
Q. What is an MR?
A. Magnetic resonance or MRI.
Q. And what is the difference between an x-ray,

flat x-ray an MRI?

A. They all have their pros and cons or their ability to see different things. A plain x-ray is a little better to look at some bone issues, but it's only in a single plain. An MRI gives you three plain or 3D capacity to look at lesions and then it gives you a soft tissue comment as well. With the plain x-ray does not show you soft tissue to the level of an MRI.

A CAT scan can show you soft tissue as well. It's a little bit better defined for bone, but in this circumstance on physical exam where I thought there was fullness, that I felt there was some soft tissue comment, and if you're going to diagnose Ewings, you need to get a better look at soft tissue. So the MR particularly in that short time frame was an acceptable study.

Q. Doctor, did you see the patient again on June 13th?

A. Yes.

Q. Had an MRI been done?

A. Yes.

Q. And did you have the results of that MRI?

A. I don't know if I had the results. I looked at it myself.

Q. What did you see, what was your interpretation?

A. Well, I gave -- at that time I ordered pretty much a full tumor workup. There are things that we do when we suspect a tumor to look at other areas that are going to guide how we're going to treat it, so i would have a chest x-ray and a lung CT ordered as well, particularly if you're looking at osteosarcoma or Ewings, which are metastatic to bone. That's the reason for the bone scan as well, trying to stage what she may have. It also is stuff that's going to have to get done when she eventually sees a tumor surgeon, which I am not.

The MR to me showed lesion in the ulnar aspect of the radius, I believe it penetrated the cortex. I did not appreciate a large soft tissue mass. The MR seemed to show a pretty good delineation of what the tumor was.

Q. What is the cortex?

A. It is the hard bone, the hard perimeter of

bone, whether it marrow or medullary cavity or cancellous bone is the internal bone.

Q. Did you make a further plan in terms of the treatment of Paula Carlson?

A. Well, from the time she first presented, the ultimate plan was referral because we don't have the capacity to do biopsy for that and I am not -- the first rule as a board examiner when you see a musculoskeletal tumor, you refer it to a musculoskeletal tumor expert. We don't treat them in the community, so the plan was referral, but it was to get as much done as possible before she had to go to Pittsburgh so that they could make a decision on a short basis.

The only question was whether or not she needed an arteriogram, which is debatable in this day and age with MR study, but at that point in time I thought it was giant cell. It met all the characteristics of a giant cell tumor.

Q. And did you say in your plan of June 13, I recommend fairly urgent referral to a tumor specialist?

A. Yes.

Q. And who did you refer her to?

A. Dr. Ken Yaw at UPMC.

MR. CRENNEY: I would like to note that I have marked Dr. Piasio's note of June 13, 2005 as Plaintiffs Exhibit 5 and I will be moving that into evidence as well as 4 noting your objections. You may have another same objection, Mr. Johnson and Mr. Slimak.

- - - -

(Exhibit 5 marked for identification.)

- - - -

MR. JOHNSON: Thank you.

BY MR. CRENNEY:

Q. Had you worked with Dr. Yaw previously?

A. Yes.

Q. And why did you refer her to Dr. Yaw?

A. Several reasons, number one, there were not very many tumor -- musculoskeletal tumor specialists available. There are only two in the Pittsburgh area, both he and Dr. Goodman and I know both of them, they both do fine work and I use them both interchangeably. Generally who I can get into the quickest is usually who I'll use, but he's well respected and does fine appropriate work, so I have no

problem sending a patient to him.
Q. Did you have occasion incident to your administrative duties here at DuBois Regional Medical Center, to attempt to recruit Dr. Yaw to come to your hospital?
A. Yes.
Q. Did you decide to do a further study, a CT scan, on June 13th?
A. I believe we did because I had a day or two before I got her to Dr. Yaw and I really wanted to get as much done as I could, but I think that's the last that I saw her. I'm not even sure I saw the CT.
Q. I'm going to mark the CT report as Exhibit 6 and if you don't have it, I can give you a copy?

- - - -

(Exhibit 6 marked for identification.)

- - - -

A. I have a copy of the radiology report. I have it here, yes.
BY MR. CRENNEY:
Q. Was that read by Dr. Shah?
A. Yes.
Q. Did it show that soft tissue component that

you had talked about before?
A. Yes.
Q. Did you write a letter to Dr. Yaw regarding this patient?
A. I know we called him to get her in as soon as possible. I generally do write a letter and I'm looking through my chart. I'm not sure he would have got it in time, but I'm sure I made comment to him. Let me see if I can find it.

MR. CRENNEY: I have marked that letter as Exhibit 7 and I'll be moving that into evidence with deference to your objections.

- - - -

(Exhibit 7 marked for identification.)

- - - -

A. Okay.
BY MR. CRENNEY:
Q. And rather than read the whole thing, would you read the last paragraph?
A. I look forward to your thoughts and again, thanks so much for getting her in so quickly as it does appear this lesion does appear fairly rapidly growing.
Q. Thank you, Doctor. Doctor, I'm going to show

you the report of April 12th, which I marked as Exhibit 8, and this is the film of April 12th that you had access to when Paula first came in on June 9th.

MR. SLIMAK: Objection leading. And he's holding a report, not a film.

MR. CRENNEY: I understand that.

- - - -

(Exhibit 8 marked for identification.)

- - - -

BY MR. CRENNEY:
Q. Would you identify Exhibit 8, what you're holding there?
A. I'm holding a radiology report of an x-ray taken 4/12/05 for Drs. Kruk and Dr. Natoli and Graeca of a right wrist on Paula Carlson.
Q. Is this a report of the image that you looked at on June 9th?
A. I believe so.

MR. WALL: I'm going to object. The Doctor would have to make assumptions on that unless he had seen that report when he treated the patient.

BY MR. CRENNEY:
Q. Doctor, did you see the report when you saw

the patient?
A. I don't believe so, but I don't routinely look for the radiology reports when I have the films, I can read my own.
Q. All right. As I recall, however, it was reported to you that this x-ray or computer image was reported at normal -- as normal, that's what you put in your note of June 9th; correct?

MR. SLIMAK: I'm going to object to the form because that was a report by Ms. Carlson to the doctor's notes. So I'm going to object to what your inference is, that this report was sent to the Doctor.

MR. CRENNEY: Well, I'm not inferring or implying actually that this was sent to the Doctor.

BY MR. CRENNEY:
Q. I'm going to ask you, what was your understanding of how the x-ray of April 12th, the one you looked at on June 9th, what was your understanding of how it was reported?
A. Well, since we're getting so technical, in looking back, it's my recollection that Ms. Carlson told me the x-ray was reported to

be normal.
Q. Okay.
A. Now, I don't recall if I read the x-ray report specifically or not because when I saw the film, I saw what I saw and did what I did. I don't know, I can't recall exactly if I read the report or not, but was under the impression that it was reported as normal because I was seeing her for carpal tunnel and wrist pain supposedly with a normal x-ray.
Q. What does the Exhibit 8 -- you're holding Exhibit 8, what does it say under impression?
MR. SLIMAK: I'm going to object because this Doctor hasn't indicated that he had a foundation for having reviewed the course of his treatment. That seems to me that at this point in time you're going beyond in having or developing testimony as a fact witness with regard to Dr. Piasio's care of this particular patient, now you're trying to introduce or have the Doctor expound and give expert opinions and there's certainly been no special report prepared in that regard to have him comment on physicians reporting or have him criticize it or comment on it or support

it or whatever.
MR. CRENNEY: Well, your objection is noted.
MR. WALL: I join in the objection.
BY MR. CRENNEY:
Q. Let's mark your report, the report that you did provide.
A. This, is that what you want?
Q. Thank you, Doctor.
A. I'll give you this as well.
MR. CRENNEY: I'm going to mark Dr. Piasio's report of --
MR. SLIMAK: Which report is that?
MR. CRENNEY: It is a report of June 11th, '07. It was filed with our pretrial statement.
- - - -
(Exhibit 9 marked for identification.)
- - - -
BY MR. CRENNEY:
Q. And, Doctor, if you'd be kind enough to read the second paragraph of that report?
A. What am I reading now? Oh, the letter?
Q. It's called Exhibit 9, it's a letter that you wrote or a report that you filed in this case

A. A letter that I wrote to you June 11, '07?
Q. Yes, sir.
A. The second paragraph?
Q. Yes, if you would be so kind.
A. At that point in time review of her radiograph from my belief 4/12/05, revealed a lytic lesion on the ulnar aspect of the distal radius. I repeated the x-ray at that time to ensure that this was not artifact and indeed they were progressive changes of that lytic lesion. An immediate workup ensued including an MR study of the wrist, chest x-ray and blood work.
Q. Is that an accurate statement, Dr. Piasio, that second paragraph?
A. Yes.
Q. And was the radiograph that you looked at that day, was it normal?
A. The radiograph that was done in April or the one in June?
Q. The one on April 12th, was it normal?
A. In my opinion it was not.
Q. Was it negative?
A. I read a lesion.
Q. Thank you, Doctor. Doctor, also in that

report, Exhibit 9, would you be kind enough to read -- strike that question.
Doctor, by the way, you're here under subpoena today, are you not?
A. Yes.
Q. And if you would be kind enough to read the last paragraph of your report, the last longer paragraph?
A. She was found to have a giant cell tumor. Referred to Dr. Ken Yaw, who has treated her since. I have not had the opportunity to see Ms. Carlson in follow up and would be unable to comment on any continuing disability and would have to defer that to Dr. Yaw, who is much more familiar with her current situation.
Q. And are you comfortable with Dr. Yaw determining her current situation in the nature of her disability?
MR. SLIMAK: Objection.
MR. WALL: Objection.
MR. JOHNSON: I object to that, no proper foundation. Also, object on the basis of relevance.
BY MR. CRENNEY:
Q. Is it accurate that Dr. Yaw is in a better

position to comment on her disability?
MR. SLIMAK: Same objection.
MR. JOHNSON: Same objection.
MR. WALL: Same objection.
MR. CRENNEY: Excuse me, if you would be kind enough to just let me finish the question.
BY MR. CRENNEY:
Q. Doctor, are you still comfortable with the paragraph that you just read?
MR. SLIMAK: Same objection.
BY MR. CRENNEY:
Q. Is that your position today?
A. And I comfortable with the paragraph?
Q. Yes.
A. Yes. I have not seen Ms. Carlson in follow up since my initial evaluation.
Q. Okay. And is Dr. Yaw in a better position than you would be to determine her current disability?
MR. SLIMAK: Same objection.
MR. JOHNSON: Same objection.
MR. WALL: Same objection.
A. Do I still answer?
BY MR. CRENNEY:

Q. You can answer.
A. Yes, I believe so.
Q. Thank you, Doctor. Now, Doctor, are those opinions expressed to a reasonable degree of medical certainty?
A. I would have to say so because I have rendered very little opinion.
Q. Okay. And -- that's true. That's true.
MR. CRENNEY: If we could go off the record, gentlemen, I'd like to try to set up and see if we can take a look at the two images that we have discussed, the one of April 12th and the one of June 9th.
VIDEOGRAPHER: We are now going off the record. The time now is 4:46 p.m. and that's indicated on the screen. Please stand by.
- - - -
(There was a discussion off the record.)
- - - -
VIDEOGRAPHER: We're now back on the video record. The time right now is 4:53 p.m. and that's indicated on the screen. You may proceed.

BY MR. CRENNEY:
Q. Doctor, I think we're looking at what a layperson would call an x-ray, I know it's a computer image?
A. It's a digital, a digital image.
Q. Could you tell me the date of that image?
A. April 12th, 2005.
Q. And, Doctor, how are you able to bring that up so that we can look at it today as part of this deposition?
A. We have what's called Packs or digital archiving of our x-rays here at DRMC. We'll able to do all of our radiology now is done digitally. So this would be an analog type of data is converted to digital data. Whereas, MRs and CTs are digital data and they are stored as such on a computer as opposed to on a piece of film. The advantage of this is the ability to archive and access files from anywhere in the world.
Q. And so basically have you asked this computer to give you the film, the x-ray that was done on Paula Carlson's wrist on April 12, 2005?
A. Yes. This computer is directly hooked up or linked to the hospital server computers where

all of our x-rays are archived --
Q. And that's what we have here?
A. -- since about 2005 when we instituted this type of radiology.
Q. And can we agree that that should be what Dr. Alajaji looked at, Alajaji?
A. I would assume so, yes.
Q. And you testified previously that you interpreted a lesion in the film of April 12th, could you show us where that is?
A. Well, my original call was what's called a lucency or in this area right here on the ulnar side of the radius, appears to have less bone than the rest of the radius and there seems to be, although not very distinct, but a demarcated area where can you see there's less bone to where there's more normal bone and you can see it here, a little sclerotic rimming there or whiteness. But right in that area there, it looks like there's less bone than the rest of the -- of the rest and there's some other projections, which I can show you here.
And you might be able to -- with this little cursor, you can see a little bit

in there. Here's it's not as easily visualized. These are different positions of the wrist when x-ray is taken allowing us to try to get a 3D understanding where something maybe.

Q. These are the lateral views we're looking at now?

A. This is a lateral view, this is an oblique view.

Q. Was it harder to see on those views?

A. Yes. This AP view or front to back shooting it this way, is the easiest view.

Q. And are you -- I assume as a layperson, do you have the mouse on the darker portion there that's in --

A. Yes, right here.

Q. And why is that darker portion significant in your interpretation?

A. Well, areas that looked darker, areas that have less calcium, therefore, less bone. So we look for things like that, you have a fracture, there's a line because there's no bone, there's no bone in that area. Tumors, cysts and things of that nature, whether it's missing bone, they look darker or less white

EXHIBIT "A"

or lucent.

Q. And, Doctor, can you show us the x-ray that you took, are you able to retrieve that, the one that you took on June 9th?

A. Yeah. You got to give me a minute here. June 9th?

Q. Yes, the one you took that day.

MR. CRENNEY: Should we go off the record for a moment, maybe we should.

VIDEOGRAPHER: We're now going off the record. The time right now is 4:57 p.m. and it's indicated on the screen.

- - - -

(There was a discussion off the record.)

- - - -

VIDEOGRAPHER: We are now back on the video record. The time right now is 4:58 p.m. as indicated on the screen.

BY MR. CRENNEY:

Q. What are we looking at now, Doctor?

A. We're looking at the right wrist of Paula Carlson, plain radiograph taken June 9th, 2005.

Q. And is it different?

EXHIBIT "A"

A. Yes.

Q. How has it changed?

A. Well, you can see here, the lucent area or the less white is considerably larger. There are areas outside that look, as I described earlier, permeative or moth-eaten. Still within -- looks to be within the bone in terms of the wrist joint cortex here, it looks like it maybe a little violated. And again here the margins are much less distinct, might be some fracture there.

And here at least I don't see breakthrough, although there's a little hint that there maybe some there. I can't tell for sure on this film if anything has come through the cortex or not, but the lucent area is larger.

Q. Thank you, Doctor.

VIDEOGRAPHER: We are now going off the record. The time right now is 4:59 p.m. Please stand by.

- - - -

(There was a discussion off the record.)

- - - -

EXHIBIT "A"

BY MR. CRENNEY:

Q. Doctor, who is your employer?

A. DuBois Regional Medical Center.

Q. And again you're under subpoena for this deposition; correct?

MR. SLIMAK: Asked and answered.

A. That's correct.

BY MR. CRENNEY:

Q. Doctor, could I look at your chart, please? I'll give that back to you. Doctor, last week did you receive a letter from Mr. Slimak?

A. Yes.

MR. CRENNEY: I'm going to mark that as Exhibit 10 and we only have one right now, so we'll share it.

- - - -

(Exhibit 10 marked for identification.)

- - - -

BY MR. CRENNEY:

Q. And did it say that Mr. Slimak represented Dr. Alajaji and Paula Carlson was represented by a Pittsburgh attorney, Tom Crenney; is that right?

MR. JOHNSON: I'm going to object to any questions concerning this letter.

EXHIBIT "A"

MR. WALL: Join in.

A. I don't remember specifically. I know it had -- the contents had some testimony that I had -- was aware of before and some new and was asked to review it.

BY MR. CRENNEY:

Q. Well, let's just check the third paragraph and I'm going to read it and then give it to you. It has been indicated to me that you were not given full and complete information by Attorney Crenney as to why Dr. Alajaji, DuBois Radiologists, Inc., and the DuBois Regional Medical Center are defending this claim. Is that what that sentence says?

MR. JOHNSON: Object to the question.

MR. WALL: Join.

A. Yes.

BY MR. CRENNEY:

Q. And as to that letter, is Paula Carlson copied on that letter?

A. I don't know. I don't think so.

Q. Is there any indication on the letter that --

A. No.

Q. -- that she received a copy?

A. No.

Q. Is there any indication that I received a copy?

A. No.

Q. And does Mr. Slimak choose to provide you all the expert reports in the case, is that what it says, both sides?

A. I was provided several reports, several of which I have already had the chance to review, and a couple that were new, some responses I think to some original reports of what I had not seen before. But some of the original expert reports I did have a chance to review. I don't know when, but in the past.

Q. Did I send you any expert reports, either my own or others?

A. I believe so.

Q. What was sent?

A. I reviewed a letter to Attorney -- is it Slimak, Slimak?

MR. SLIMAK: My name is Slimak, yes.

A. Slimak, okay. A letter from a Dr. Ross Horsley that was dated May 24, 2007 and a letter from a Dr. Richard Schmidt, June 28, 2007. I believe that was it, those two

letters.

BY MR. CRENNEY:

Q. You're not saying I sent you those, I mean I believe you got those from Mr. Slimak; correct?

MR. SLIMAK: I don't think so.

A. I think you sent me those.

MR. SLIMAK: Let's have that marked as an exhibit what you're referring to.

BY MR. CRENNEY:

Q. Is there a cover letter for that, sir?

A. Yes.

MR. SLIMAK: Just so the record reflects, we're looking at the letter July 2nd, 2007 from Thomas Crenney to Dr. Piasio enclosing two reports. We'll have a copy of that marked for the record then.

MR. CRENNEY: I will indeed. If we can mark that as Exhibit 11.

- - - -

(Exhibit 11 marked for identification.)

- - - -

BY MR. CRENNEY:

Q. Now, Doctor, did you read the further reports of Dr. Schmidt?

A. Yes.

Q. Reports that I had not sent you; correct?

A. Yes.

Q. And you were treating this patient in June of 2005; correct?

A. For three days, yes.

Q. On the 9th and on the 13th?

A. 13th, four days.

Q. Are you familiar with the procedure that Dr. Yaw did in late June of 2005?

MR. WALL: Objection. I believe this witness is being called to make some assumptions and conclusions far beyond his practice and far beyond his knowledge.

MR. SLIMAK: I join in. He's already indicated he's not an orthopedic bone tumor specialist and had to make the referral out.

MR. JOHNSON: I join in those and I also join -- I also object on the basis that any such testimony would exceed the scope of the Doctor's report.

MR. SLIMAK: I join in that too.

MR. WALL: Join in.

BY MR. CRENNEY:

Q. Doctor, could you give us a list of the reports that Mr. Slimak sent to you if you'd be so kind?
A. You'd have to give me them, I don't recall.
MR. JOHNSON: Objection, relevance.
MR. WALL: Join in.
A. A copy of the June 28th, 2007 report from Dr. Schmidt.
BY MR. CRENNEY:
Q. June what, Doctor?
A. June 28, 2007. A report March 26, 2007 by a Dr. Anthony Mastropietro. A letter from Ken Yaw dated April 24, 2007 and a letter from Ken Yaw July 19th, 2007. A letter from Ken Yaw February 23rd, 2006 to Mr. Crenney from Dr. Yaw and March 7, 2006 from Dr. Yaw. A letter March 26 probably related to the report from and Anthony Mastropietro. A letter July 30, 2007 from Dr. Richard G. Schmidt, that's July 30, 2007 and comment 2007. The same one, July 30, 2007.
Q. Are there two different reports, if you could take a look at that on July 30th, I think you'll find there are two?
A. Yes, there are two separate reports.

Q. Thank you, sir. Go ahead?
A. A letter from Dr. Lawrence Cooperstein, March 25th and March 7th.
Q. Okay.
A. And a letter March 24th, 2007, I believe that's probably the same from Dr. Horsley and a June 6, 2007 Dr. Horsley. July 25th, 2007 Dr. Cooperstein. July 24, 2007, Dr. Mastropietro.
Q. And so Mr. Slimak in fairness to him as far as you can tell, sent you all the reports?
A. Well, I don't know if it's all, but certainly more than I had seen in the past.
Q. Well, I'm not absolutely sure, but it looks like he covered all of them, he covered a lot of them; right?
A. I don't know what all would be. I mean I'm not -- I have been very peripherally involved in this case. I saw the woman for four days and haven't seen or treated her since. So what reports are out there, I don't know if this is all or one of many, I don't know. There are a lot of fair number of reports.
Q. Did you read all of Dr. Schmidt's reports?
A. I believe I read them all.

Q. Did he say that Dr. Yaw did the wrong operation in June of 2005?
A. Yes.
MR. WALL: Objection.
A. I believe so.
BY MR. CRENNEY:
Q. Do you know the operation that Dr. Schmidt recommend, the allograph, the articular allograph?
A. Yeah.
MR. SLIMAK: Same objections as before, no qualifications or foundation.
MR. WALL: I join.
MR. CRENNEY: I'm going to ask about that.
BY MR. CRENNEY:
Q. Are you familiar with that procedure?
A. Yes.
Q. Are you familiar with the fusion, the operation that Dr. Yaw did?
A. Yes.
Q. And while you -- have you ever done those operations yourself?
A. No.
Q. Have you assisted in surgeries where that

procedure was done?
A. Yes.
Q. And have you treated patients and followed patients who have had both of those procedures?
A. Not really, not that I can really recall, not followed. I'm aware of them, I have done them as a resident, but -- wait, let me think. I don't think I have treated and followed specifically radial allograph or ulnar transposition or wrist fusion in my practice.
Q. Do you have an opinion as to whether both of those procedures would have been constituted reasonable courses of action for Paula Carlson in June of 2005?
MR. JOHNSON: Objection.
MR. WALL: Objection. This witness has not produced a report to put any of the defense counsel on notice of your intended use of him as an expert offering these opinions. My understanding was you referenced to the court as late as yesterday that this physician was going to be called primarily as a treating physician and we are certainly not prepared to cross examine or deal with this line of

questioning.

MR. CRENNEY: Well, Mr. Slimak has --

MR. SLIMAK: Also lack of qualifications established for a given opinion with regard to that type of issue.

MR. CRENNEY: Just a second --

MR. JOHNSON: Let me get my objection on the record. I also object to it for the reasons that had been stated. I also object to it on the grounds that this witness is a factual witness. This witness is not obliged to offer opinion testimony, particularly having been subpoenaed, and I believe that you're putting the witness in an unfair position of soliciting opinion testimony from a factual witness.

MR. CRENNEY: Let me just say a couple of things. One, that Mr. Slimak was certainly prepared to cross. Whether he gave you guys a heads up, I don't know.

MR. SLIMAK: Well, that's not for you to say and actually no basis. I had no idea that you had given him reports for sure before at which indicates that you were trying

to sandbag us in fact. That's what was going on.

MR. CRENNEY: With greatest respect, I give you credit for brass. I didn't remember that I had provided those reports.

MR. SLIMAK: Well, I know what you're like.

MR. CRENNEY: Well, I really wonder if that's necessary, Mr. Slimak.

MR. SLIMAK: Well, no, I know what you're like, you would feed him reports of various experts before you would take a deposition. It was obvious that you would do that.

BY MR. CRENNEY:

Q. Did we talk about those reports, the reports I gave you in the time that we were preparing, Doctor, the two that you found I gave to you?

MR. JOHNSON: Objection relevance.

BY MR. CRENNEY:

Q. Did we talk about them, did I bring them up, those two reports?

A. No. Most of the reports I have kept to myself. Although, I will admit from the very beginning, I don't know if I can say this --

can you go off the record? We can't go off the record.

Q. Sure, you can go off.

MR. CRENNEY: We'll go off the record.

VIDEOGRAPHER: We are now going off the record. The time now is 5:14 p.m. as indicated on the screen.

- - - -

(There was a discussion off the record.)

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VIDEOGRAPHER: We are now back on the video record. The time right now is 5:15 p.m. as indicated on the screen. You may proceed.

BY MR. CRENNEY:

Q. Mr. Slimak has accused me of being a sandbagger --

MR. SLIMAK: I'm going to object. This is on the videotape and now we're being inappropriate with your questioning and need to strike. You're being argumentative as well.

MR. CRENNEY: And it seems a bit

unfair that he would make that accusation. Mr. Slimak sent all of the experts reports to a treating physician, all of them, in saying -- and sent a letter saying that I had been unfair and he did that, he violated the privacy of Paula Carlson. I believe he violated Pennsylvania Rules of Procedure 4003. I wasn't going to bring this up, I was going to let it go.

MR. WALL: Is there a reason this is going on because it's not going to be played for the jury, so what are we doing on the record here?

MR. CRENNEY: Because I need to make a record for whatever court decides this issue and Mr. Slimak has made this accusation, Mr. Wall. I didn't make it. I don't like handling it this way. For him -- I'd like the chance to finish.

MR. WALL: Let's gets done with it.

MR. SLIMAK: It's inappropriate for the video record.

MR. CRENNEY: I think it's -- be cut from the video just like -- I think it's very unfair and most importantly, in terms of

responding to the objection, it is Mr. Slimak who on the eve of this deposition, said here is the material that's relevant, here is the material you should look at. And I think if things have turned out differently, he would think it was a very good idea that it be looked at by the Doctor and that's exactly what he intended. So I don't know what the basis of his objection is.

MR. SLIMAK: That's because you had to presented only some of the reports to the Doctor.

MR. CRENNEY: You don't have the slightest idea about that. I didn't even know it.

MR. SLIMAK: You were sandbagging that. It has your name on your letterhead. Mr. Crenney, now that is very disingenuous of you.

MR. CRENNEY: You continue to use that word and given what you have done, you didn't know about that. I had forgotten and for you to continue to use that word, I don't think is appropriate. I'm going to move on.

MR. SLIMAK: You're forgetting what

you have done --

MR. CRENNEY: I'm going to move on.

MR. SLIMAK: Does not make it disingenuous for you to deny it.

MR. CRENNEY: I'm going to move on and talk to you maybe after the deposition about what I think is the appropriate action in this case. These other guys don't want to listen to this, I'm sure the judge won't want to listen to it either.

BY MR. CRENNEY:

Q. Doctor, you specifically do not wish to give an opinion in this case on standard of care; correct?

A. The two standards upon which I would be asked, one radiology, I am not a radiologist. I'm an orthopedic surgeon, and so I cannot comment on the standard of care of a radiologist. Two, I am a general orthopedic surgeon, I am trained in tumor and have to answer questions in tumor, but I don't specifically treat tumor, nor did I have subspecialty training in musculoskeletal management, although it is not foreign to me.

I can testify as a generalist that

understands and knows treatment of tumor, but not as a subspecialist in that regard. So I would want everyone to understand what the level of -- the level of my -- my level of expertise is.

Q. Well, Doctor, you read Schmidt's report and you know he said that Yaw's surgery was the wrong surgery to do and that the allograph would have been the right surgery. And my question to you, do you feel comfortable in your -- do you feel comfortable in answering the question, were both reasonable options, that's all I'm asking you?

MR. WALL: I'm going to object for the record. Can we have a continuing objection to every opinion you're seeking of him regards any other doctor's report?

MR. CRENNEY: In regards to these reports he has received, sure, Mr. Wall, absolutely.

MR. SLIMAK: I want to renew my objections on the same basis as previously stated.

MR. JOHNSON: I object on the basis that it's not an issue of whether the Doctor

is comfortable or not comfortable in rendering an opinion, it's an issue that it's beyond the scope of any report that's been prepared by the Doctor. It's also the situation that this witness is a factual witness who has not been retained as an expert and I believe it's unfair and inappropriate to solicit any opinions from him.

MR. CRENNEY: I would agree with that and it wouldn't have happened if Mr. Slimak hadn't sent this letter accusing me of foul play and all of these reports which you --

MR. WALL: It has nothing to do with Mr. Johnson's client or my client

MR. CRENNEY: Maybe so.

MR. SLIMAK: It had nothing to do with your having sent reports, plus your having met with the Doctor beforehand?

MR. CRENNEY: He's the treating Doctor, Mr. Slimak, you know better than that.

MR. SLIMAK: Of course, I do. But he's an employee of the hospital and you're soliciting reports and opinions and meeting

with an employee of the hospital who's a defendant in this case.

MR. CRENNEY: I'm asking him about the reports that you sent him.

BY MR. CRENNEY:

Q. Do you feel you have the expertise to make a call on that, whether that was the wrong surgery to do?

MR. JOHNSON: That's a different question --

MR. WALL: That's a different question.

MR. JOHNSON: And I object to it for the same reasons as the last question.

MR. CRENNEY: Go ahead. You have all the objections you want to.

MR. JOHNSON: And I also would appreciate it if you would advise the witness that as a factual witness, he has the ability to decline to offer any opinions.

MR. CRENNEY: Absolutely. If you don't --

BY MR. CRENNEY:

Q. What I'm asking you is we have got this guy Schmidt saying Yaw did the wrong surgery, he's

accusing him of malpractice --

MR. SLIMAK: Objection.

MR. WALL: Objection to that characterization.

MR. SLIMAK: That's totally improper for you to --

MR. WALL: There's only one of two problems and it's yours.

MR. CRENNEY: No, there are two others. Mr. Slimak has accused Dr. Yaw of malpractice and Dr. Graeca of malpractice and we all know it and he knows it because he's read the records.

MR. WALL: It's not malpractice.

MR. CRENNEY: Please.

MR. SLIMAK: He had a error in judgment.

MR. CRENNEY: A change, that's a distinction without a difference.

MR. SLIMAK: That's a legal distinction.

BY MR. CRENNEY:

Q. You have every right not to answer that question. Mr. Johnson is 100 percent correct and in fairness to you, if you don't want to

answer it, don't answer it. If you want to answer the question of whether Doctor --

A. I can answer the question to the level of my training. It is my understanding that both of those procedures are surgical alternatives for the tumor at hand. I cannot tell you which is the preferable procedure in the literature or which is better in any one particular surgeon's hands. Generally the best procedure is the one you do best and -- but I do know that both are accepted procedures for that tumor.

MR. WALL: Move to strike.

MR. SLIMAK: Same.

MR. JOHNSON: Join.

MR. CRENNEY: That's it. The other lawyers are going to have questions for you.

A. Certainly.

VIDEOGRAPHER: We are now going off the video record. The time right now is 5:22 p.m. This will mark the end of tape number one of the video deposition. Please stand by.

- - - -

(There was a discussion off the

record.)

- - - -

VIDEOGRAPHER: We're now back on the video record. The time right now is 5:42 p.m. that's indicated on the screen. This marks the beginning of tape number two. You may proceed.

- - - -

EXAMINATION

- - - -

BY MR. SLIMAK:

Q. Hello, Dr. Piasio. I want to follow up with some questions that Attorney Crenney had posed to you.

A. Sure.

Q. And at one point in time you said that he had sent you a subpoena for this deposition; is that correct?

A. Yes.

Q. Did he just sent it by mail or did he send it through the sheriff?

A. I don't know.

Q. Isn't there a letter, cover letter, saying that he sent it along?

A. I didn't pay any attention to it.

Q. So doesn't it say on this letter by Attorney Crenney he did not use the sheriff's office to serve a subpoena, but rather he sent it by Federal Express to deliver and serve you with a subpoena, isn't that what it says?
A. Okay.
Q. Do you agree?
A. I guess. I don't know. I mean you're way out of my field. I mean I'm assuming it was sent by Federal. I had asked to have it sent.
Q. Did you ask to have it sent because your wife had told you that, well, if you're giving a deposition, you better get a subpoena for that?
A. Because I'm a hospital employee and they are named in the suit, she's recommended for my own good that I be subpoenaed.
Q. And so then you conveyed that to Mr. Crenney and then he sent you one by mail; is that correct?
A. I believe that's correct.
Q. But he apparently to your knowledge did not follow the procedure of sending it by the sheriff?
A. I don't know what the procedure is.

Q. Now, with regard to your contacts with Mr. Crenney over the years, is it correct that it goes back in time even before the lawsuit had been filed?
A. I don't know when the lawsuit was filed, but we have communicated over some time prior to all of this occurring.
Q. And did you require subpoenas for any of that?
A. No.
Q. In fact, have you had several conversations with him on the telephone and several exchanges of correspondence with Mr. Crenney without needing any subpoena at all?
A. Yes.
Q. And, in fact, did you get a contact from a Dr. Yaw indicating that, hey, I want to let you know about this attorney Mr. Crenney and did you make a note of that in your chart?
A. Yes.
Q. And what I'm showing you, is this part of your chart?
A. Yes.
Q. And I'd like to have the videographer focus in on that. Did you make a note on April 3rd of 2006?

A. I have -- I'm looking at this note. I have no -- nothing written on that. This is not my signature.
Q. Yes.
A. I didn't make this note.
Q. Would the usual practice in your office be that your staff takes a phone message, they write you a note, and then you would provide you the note, and then you would review it; correct?
A. Yes.
Q. So then the note becomes part of your chart; correct?
A. Yes.
Q. Does this note indicate that can you return his call at your convenience next week, Thomas Crenney, Attorney, and you had a phone number; correct?
A. Correct.
Q. Does it look like a cell phone number or toll free number?
A. I believe it's probably toll free.
Q. And then Ken Yaw, did you get a call according to this note from Ken Yaw, orthopedic oncologist, spoke to you about this attorney?

A. Yes.
Q. Did you understand that he was calling you, Dr. Yaw, to tell you about Attorney Crenney?
A. Yes.
Q. And at that point in time, did they give you any reports at that point in time?
A. Any reports?
Q. Yes.
A. No, I don't believe so. This is all recollection for me. I don't have specific time frames.
Q. Now, over the months and years since that time up to the present time, have you had several other contacts with Mr. Crenney or his staff?
A. Yes.
Q. And, in fact, was there a period of time back in July of 2007 that Mr. Crenney on his signature on his letterhead had sent you this letter, Dear Dr. Piasio, enclosing with that some reports?
A. That's correct.
Q. And that pertains to the Paula Carlson matter; correct?
A. Correct.
Q. Did he give you as many reports as I had given

you in a subsequent letter when Mr. Crenney sent you his letter?
A. No. I believe, if I can recall, there were two reports, one was from I believe a Dr. Horsley or something like that and one was from a Dr. Schmidt.
Q. Okay. And so Mr. Crenney at that point in time through this letter had given you a couple of the reports and did he also ask you that these doctors will testify consistent with these reports? Once you had the opportunity to read them, would you be kind enough to give me a call; is that correct?
A. Yes.
Q. And did he give you a call after doing that providing you with the reports, some reports?
A. As I recall, I believe so. Again I did not make record of any phone conversations.
Q. And then I'm going to show you another document that we had from your file. Can you identify this as a document, it's another letter, now, September 18, 2007 from Attorney Crenney to you, Mark Piasio, M.D.?
A. Yes.
Q. And did he indicate that he was intending to

call you to give testimony in this letter?
A. Yes.
Q. Now, previously there were questions asked of you and probably marked as an exhibit in this case, a letter that you had authored written to Mr. Crenney; is that correct?
A. Yes.
Q. Do you remember writing him --
A. Yes, yes.
Q. -- Mr. Crenney a letter --
A. Yes.
Q. -- of June 11, 2007?
A. Yes.
Q. And I'm going to approach you with that, if I may. And is this the letter then that you wrote Mr. Crenney June 11, 2007?
A. Yes.
Q. Did Mr. Crenney talk to you or ask you for this letter in some fashion?
A. I could only -- I would have to assume yes.
Q. Okay.
A. But I don't -- I would not just send a letter for no reason.
Q. Well, it says this letter is in response to need for clarification of my medical records

of Paula Carlson, referring to my being you; correct?
A. Correct
Q. So in some fashion, had Mr. Crenney contacted you before this letter to ask you to write this letter?
A. I would believe so, yes.
Q. In that regard, did Mr. Crenney contact you by telephone or did he write you a letter to ask you to contact him to write a report for clarification?
A. I can't recall. I believe by phone.
Q. So did he subpoena you before asking you --
A. No.
Q. -- to talk about this matter?
A. No, no.
Q. And in that regard then, did you call him up?
A. Yes.
Q. Did he tell you what he wanted you to write about in your letter?
A. The clarification of what my involvement was, as I recall in the case, what I thought I saw at the time.
Q. So what you thought you saw at the time is what you wrote in this letter of June 11,

2007; correct?
A. Yes.
Q. And at that time, referring back to when you had the office visits back in June of 2005?
A. Yes, it was reference with those two visits.
Q. We'll get into that in a little further in just a few minutes. Now, prior to today's deposition, did you meet with Mr. Crenney?
A. Yes.
Q. And did you meet with him for awhile before you started your testimony today?
A. Not much.
Q. Was it five minutes, ten minutes, more?
A. Maybe five, five to ten.
Q. And did you go over a number of things that Mr. Crenney was going to ask you about and testify to?
A. Just that I only wanted to stipulate as to what I saw.
Q. Yes, okay. Now, with regard to that meeting, was there any other of the attorneys representing the hospital, your employer, present, was there an attorney present for DuBois Radiologists, Inc. or was there Dr. Alajaji's attorney present for that

meeting?
A. No.
Q. Was it just a meeting between you and Mr. Crenney?
A. Yes.
Q. And was it held back here in this office?
A. It was held in one of the exam rooms. They were setting up for videography at the time.
Q. So the two of you went to a private office; is that correct?
A. Yes.
Q. And no one else was present and the two of you talked?
A. Yes.
Q. Then you started this deposition shortly after that?
A. Yes.
Q. All right. Now, I want to go back and discuss aspects of some other matters, if I may. I have been moving around here a little bit. With regard to the letter I had sent to you with a variety of reports, did I send you reports from both the plaintiffs and the defendants experts?
A. Yes.

Q. Did I indicate in my letter that was not read out into the record previously, that I sent them to you in the interest of fairness and understanding, that I included the reports of both parties experts; correct?
A. Correct.
MR. JOHNSON: So that I may preserve my objections, I object to any questioning at this time regarding those letters as well.
MR. SLIMAK: I'm only asking those questions because right now we have a videotape record that Mr. Crenney has asked questions about that were duly objected to.
MR. JOHNSON: I understand. I just didn't want there to be any inference of a waiver.
MR. SLIMAK: I understand. There is none.
BY MR. SLIMAK:
Q. Now, let me ask you some questions about Paula Carlson's care that you were involved with, okay, plus I want to ask you some questions about your background, experience in this area. I think you indicated previously in your testimony that you're not qualified to

give testimony as to the standard of care of a radiologist; correct?
A. I believe that's correct.
Q. Yes. And your training in board certification and medical practice is as an orthopedic surgeon; correct?
A. Correct.
Q. And I think you went through aspects of your qualifications as I take it you have some very extensive specialized training as an orthopedic surgeon; correct?
A. Yes.
Q. And then you went onto specialize in fellowship training in the area of orthopedic surgery or orthopedics; correct?
A. Yes.
Q. And what was that area again?
A. Spine.
Q. The spine. And then since your practice, you focused in on general orthopedic surgery I think you testified to; correct?
A. That's correct.
Q. Am I correct that you do not hold yourself out as an orthopedic subspecialist in bone tumors?
A. Correct.

Q. In fact, if one of those would develop or be seen or thought to be there in your practice, you would make a referral out to someone else; correct?
A. I would make a referral for definitive treatment, yes.
Q. Yes. And because you're in Clearfield, do you typically refer toward the Pittsburgh area rather than the Philadelphia area?
A. That's closer, yes.
Q. Closer for your patients; correct?
A. Right.
Q. And so that's the usual direction you would send them; correct?
A. Usual and I'm very comfortable with the care they receive.
Q. I understand. Now, with regard to your practice, do you get to personally see the patient and take a history from the patient, examine the patient, order and pull up a review x-rays or MRIs or other imaging studies, make a diagnosis and treat the patient, is that how you go about your practice?
A. Pretty much, right.

Q. And based on your experience, is that different than what a radiologist does?
A. A radiologist generally doesn't have an opportunity to see a patient.
Q. Okay.
A. Unless they are doing invasive procedure or something of that nature.
Q. But a plain x-ray is not an invasive procedure; correct?
A. Correct. They would not see a patient.
Q. Have there been any times in your practice over the years where you could not make a diagnosis based on standard x-rays alone and had to either repeat the x-ray sometime later to compare and see if anything had changed or order other imaging studies, such as an MRI, CT scan in order to help you diagnose your patient?
A. Certainly.
Q. Do you agree that is helpful to an orthopedic surgeon such as yourself in an attempt to reach a diagnosis, to have the ability to personally examine the patient, take a history of the patient's condition from the patient, ask the patient questions, and to order and

obtain and review the various studies and tests, do you find that helpful?
A. Yes, sure.
Q. Now, do you agree giant cell tumor is a rare condition?
A. Yes.
Q. Prior to Mrs. Carlson's situation, had you ever personally seen and diagnosed a giant cell tumor of the radius bone in your practice at DuBois Regional Medical Center?
A. Not of the radius bone.
Q. How many patients have you seen over the years with some types of wrist pain?
A. Wrist pain?
Q. Yes.
A. Hundreds, thousands.
Q. How many years have you been in practice here?
A. 20 years.
Q. And over all of that time, there have never been a giant cell tumor of the wrist?
A. Of the wrist?
Q. Yes.
A. No.
Q. I'm correct? I just want to clarify what your answer is? I believe that's what you were

saying earlier.
A. I would have to surmise a response because I can't say for sure what I did over 20 years. I can't recall anyone specifically, but I can't say for a fact that I have never seen a giant cell of the wrist in my practice.
Q. In your training, had you been trained on giant cell tumors specifically?
A. Yes.
Q. And had you seen them in your residency training as an orthopedic surgeon with the advanced training that you underwent?
A. Yes.
Q. Had you seen them in advanced stages?
A. Advanced stages?
Q. Yes.
A. No.
Q. Had you seen them --
A. Well, I really don't recall. That's quite awhile back. I can't remember all the cases I had as a resident.
Q. Do you recall in your training, and you trained at where, Johns Hopkins, where else?
A. I went undergrad at Johns Hopkins.
Q. Where else?

A. I trained at the Washington Hospital Center in general surgery, Tufts University in orthopedics and the New England Baptist Hospital in spine.
Q. At some of those facilities, had you been introduced in some fashion to giant cell tumors that a patient had happened to come in?
A. I have seen them at some point in my residency training and actually did some tumor modeling research at IH when I was in Washington on giant cells.
Q. So at some point in your past career, you had some specific interest in giant cell tumors to whatever degree you have just been talking about?
A. I was certainly trained to diagnose and recognize them.
Q. Specifically giant cell tumors; correct?
A. Yes. Well, yeah, most tumors. I had a complete residency.
Q. Are there some classic characteristics of a giant cell tumor that you had received specific training in looking for?
A. There are some characteristics of them that would make one think of one.

Q. Now, in the giant cell tumors that you had seen in your training, do you know if there was evidence of fracture present?
A. I really can't recall in training.
Q. Do you recall back at that point in time, there was evidence of bone expansion, cortical thinning or cortical erosion?
A. Yes, those are hallmark of giant cell tumor. They typically occur in the distant ends of long bones. In the joint, don't cross the joint. It can be expand lesions, they can break cortex. They can be permeated, they can be slow growing, fast growing depending upon their histologic grade. They are a variable tumor. They intend to not metastasize, but they tend to be locally problematic.
Q. Now, are those the types of things that you would look for to diagnose giant cell tumor, which you have been talking about?
A. Yes. Once I see a radiograph that is suspicious of it, then we look for those issues.
Q. Now, you agree that in this particular case when you did make a tentative diagnosis of giant cell tumor, that you did so at that June

9th office visit where you got to talk to Paula Carlson, you got to learn about her medical history and treatment to that point, she had provided you with some written materials with regard to her background and care and how she got to you as well as what her problems were; is that correct?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. Did you also get an opportunity to examine her and review all the tests that had been obtained to that point in time?
A. Yes.
Q. Do you find it easier to make the diagnosis of giant cell tumor when that tumor has classic characteristics and is more evident on repeat x-rays, that shows some progression?
A. Well, that wouldn't be fair to say because it depends on what your initial radiograph looks like.
Q. I understand that.
A. Obviously in this particular case, the repeat x-rays were more -- I was more worried about Ewing, which is a more serious tumor.

Q. We'll talk about that in a little bit in a minute. Would you agree that when you first saw Mrs. Carlson in your office on June 9, 2005, that her tumor at that point had several characteristics on the standard x-rays that you obtained on that date, which were different from and not present on the April 12, 2005 films?
A. That's correct
Q. Would you agree that the x-rays you ordered and obtained on June 9th, 2005 of the distal radius had some rather classic indications of giant cell tumor of the radius?
A. Of an aggressive giant cell tumor, yes.
Q. Tell me about those findings, if you can recollect, if you need to refer to your records, which are indicative as of June 9th, 2005 that you saw on the June 9th, 2005 films that indicated this was a particularly aggressive giant cell tumor of the radius?
A. Well, at that time I couldn't say what tumor it was other than the fact that in the two month time frame it was fairly aggressive bone disruption. It was treated four times its original size, the margins were indistinct.

It was a permeative pattern, questionable breakthrough to the cortex. The articular surface was still intact.
Q. The joint itself?
A. The joint itself. The distal radius was still intact, the cartilage surface of the radius. There was no expansion of the cortex, there was no cortical reaction.
Q. Are you talking on the --
A. Or periosteal reaction on the June film.
Q. Thank you for clarifying that. Is it true that on the June films, you weren't sure of whether or not there was cortical expansion?
A. I didn't know if there was cortical breakthrough. I couldn't say for sure.
Q. Is that true with x-rays in general, there are other tests that can be more specific to try to determine such things of whether or not there's cortical breakthrough?
A. There are. Generally a plain film is reasonably good. If there is, then it's there it is. The purpose of getting the additional studies is to look for that specifically to see if the cortex is attacked, but more so to look at is there a soft tissue component of

the tumor as well. In the Ewings, which was a possibility in her case --

Q. That type of cancer?

A. -- Ewings sarcoma, which would be much worse. They classically have a large soft tissue component. On physical exam she had some swelling, but not to the extent that one might see in a Ewing, but a Ewing is more likely to be in the mid shaft and not so much the distal.

Q. By the time you saw Paula Carlson in June, there was some swelling present; correct?

A. I believe I noted in my record that I thought there was some fullness around the radius.

Q. And that equates with swelling?

A. Swelling.

Q. And do you know for how long that swelling had been present and reported by Paula Carlson prior to the time that you saw her?

A. I can't recall. I'd have to look at my chart if I made a note of that.

Q. Yes, you may.

A. I don't believe she reported swelling. At least I don't have that documented.

Q. But from your physical examination findings,

EXHIBIT "A"

you detected evidence of fullness which you equated with swelling?

A. Let me see. I said I think on physical exam there maybe a soft tissue component as well. So I didn't say specifically fullness, but I felt something.

Q. You thought that what you felt was essentially fullness or swelling?

A. Some soft tissue component. What we call soft tissue component. There's soft tissue in the radius, around the area where I saw the lesion, that was not supposed to be there. I don't know if it's fluid, blood, tumor, synovitis, I don't know. But there was soft tissue component there that's not in my wrist, so I feel mine, it's not there, there I felt something.

Q. You feel there was a sensation of more fullness or thickness or something there that's not in a normal wrist?

A. Compared to her opposite side, her baseline.

Q. Now, did you know at that point in time that Ms. Carlson had previously been seen by Lori Natoli, a physician's assistant at Dr. Graeca's office?

EXHIBIT "A"

A. At that point I wasn't fully -- you know, at that point, I wasn't fully aware of who she was seeing or treating.

Q. Did they provide you, meaning Dr. Graeca's office or Ms. Carlson or Lori Natoli, the physician's assistant, with their records of care of Ms. Carlson prior to her seeing her in June?

A. I have been in practice 20 years and I can count on maybe ten times that I have actually been given information on the patient that's referred. So after over 20,000 patients, I can count them on one hand.

Q. I'm only asking specifically --

A. Specifically I would say it's extremely unusual for me ever to get records on a patient and I don't believe I got any before I saw her as well.

Q. That's what I want to confirm. So then you would not have been aware of how long the patient had been complaining that she felt that she had had swelling of her wrist, is that fair to say, you would not have known?

A. Well, I asked her directly. I mean she had pain for two, three months.

EXHIBIT "A"

Q. Did you ask her specifically of how long she had had swelling?

A. I didn't ask her if she had swelling. At least I didn't document that I asked her if she had swelling. That was on my exam.

Q. Do you know if Mrs. Carlson had actually had swelling that she felt was present going back into April of 2005?

A. Do I know if she thought she had swelling?

Q. Yes.

A. How would I know that?

Q. Either by talking to her, reviewing some records or if Mr. Crenney told you or not?

A. I don't have any recollection of that. I mean I don't have it documented in my note that I asked her that. I have no records from anyone indicating if there was any swelling there. But again I would say that is something that I am expert at and would pick up more than somebody else. I wouldn't expect a person on the street to pick that up.

Q. How about the patient herself, shouldn't she be able to say I have swelling?

A. She may or may not. She may or may not. A lot of tumors come in here, people don't

EXHIBIT "A"

notice. You know, it depends on their -- the symptoms that come from it.

Q. Well, if the patient reported to you that she felt she had swelling, do you feel that the patient is a good person to rely upon in that regard?

A. Occasionally, not always. I have had complaints of swelling that are not there.

Q. Now, swelling, what does that suggest to you about the giant cell tumor?

A. Knowing that it's a giant cell tumor now or at the time when I examined her?

Q. Yes, now.

A. It can indicate a lot of things.

Q. Does the swelling --

A. It can indicate --

Q. Go ahead.

A. Fracture, soft tissue component, bleeding, any of those things.

Q. Does that swelling, can it indicate that there maybe cortical expansion or cortical erosion or breakthrough occurring?

A. Yeah, that would be consistent with soft tissue component of tumor, tumor expansion or bleeding.

Q. Thank you, very much. Now, when you diagnosed this giant cell tumor of the wrist in June of 2005, you had obtained x-rays that you had ordered on that same date; correct?

A. Yes.

Q. You repeated x-rays; correct?

A. Yes.

Q. You wanted to get some additional films; correct?

A. I wasn't sure what I was looking at on the film of April was real or artifact.

MR. CRENNEY: I'd object to the form of the question in that it suggests he had other x-rays when he diagnosed the April 12th film. That was not his testimony, nor is that consistent with this record.

MR. SLIMAK: I don't think that's my question, Mr. Crenney.

MR. CRENNEY: The first thing he did was look at the film of April 12th.

MR. SLIMAK: Your argument is noted. Could we read back the question, please, for the Court Reporter?

- - - -

(The record was read back by the

Reporter.)

- - - -

BY MR. SLIMAK:

Q. Would you now answer again?

A. That I wanted to get additional films?

Q. Yes.

A. Yes.

Q. And on June 9th, 2005, had you just indicated that you wanted to get additional films because you weren't sure if the original films showed artifact or not; correct?

A. Correct. I saw what I thought was a lesion and I wanted to be sure that I was not over reading the film.

Q. What is artifact?

A. Something that would cause you to see something that's not there. Let's give an example. An x-ray is a two dimensional representation of a three dimensional process. So if you've got a paperclip in your pocket and I x-ray your hip and it looks like the paperclip is in your hip and that would be artifact. Or if you are -- let's say I'm wearing a blouse with a plastic button, that button maybe enough to show a little halo over

something that you would see on a chest x-ray. That's not a lesion of the chest x-ray, but artifact from a button.

So you worry that am I seeing something or is that an overlying shadow or oftentimes you get an x-ray of an abdomen and a gas pattern maybe overlying a bone and it looked like a tumor because there's a gas or fat pattern overlying it and that area is going to be less dense when the x-ray goes through. So you'll see something that looks like something, but isn't really something, it's what we call an artifact, something throwing you off from some external process that's not making the radiograph interpretable.

Q. Is it fair to say that an artifact is not actually a disease condition itself?

A. Correct.

Q. Now, with regard to the films that you took and interpreted yourself of June 9th, 2005, okay?

A. Okay.

Q. These x-rays, did those films clearly appear to you to not be artifact?

A. The films that I took?
Q. On June 9th.
A. You mean the ones I took in June?
Q. Yes, yes.
A. Yes, those were not artifact.
Q. Did they have classic things such as an unusually large lytic area?
A. They had many classic radiographic appearances of a tumor.
Q. That's when you were talking about had this moth-eaten appearance or permeative borders; is that correct?
A. That's correct.
Q. I think in your report you indicated that it appeared to you that there may even be some punctuate calcifications in the ulnar direction on the AP view, if I use your words, do you recall that?
A. I don't recall that, but I'll look it up.
Q. Please do.
A. This is in my original x-ray reading or in my office note?
Q. If you would like me to share it with you?
A. That would be wonderful.
Q. I'm reading in your report, this portion was

not read in previously in testimony by Mr. Crenney's questions. Do you indicate here --
A. Okay.
Q. What did you read here?
A. It extends the articular margin. It does not cross the articular margin.
Q. That's the joint itself; correct?
A. That's the joint, right.
Q. Then what did you write here?
A. There appears to be some punctuate calcification in the ulnar direction on the AP view.
Q. Now with regard to now in June there's punctuate calcification that you see on those x-rays that are in the ulnar direction on the AP view --
A. I think I said I may see.
Q. Yes, that's exactly what I want to point out?
A. Yes.
Q. You said --
A. Because if you have a lot of bone eaten away by tumor, I might be looking at punctuate calcification or remaining bone, so I'm not sure if that's calcified tumor or bone left

over that isn't quite all the way eaten, which is why I believe I said may.
Q. I know you didn't say may, but you did say there appears to be?
A. Appears to be, okay.
Q. So I can take that as a may, okay?
A. Okay.
Q. Is that the way that it is with these standard basic x-rays, that sometimes you're not certain of what you're seeing with that particular study, it can be interpreted different ways?
A. We may disagree on readings, yes. We don't always --
Q. You don't mean you and I, you mean professionals in your field?
A. Sure.
Q. Even between board certified orthopedic surgeons, they can have differences of opinions of what a film does or doesn't show; correct?
A. Correct.
Q. And in between specialties they can have differences of opinion; correct?
A. I would venture to say that we may disagree on

things, yes.
Q. And does that happen to you over time in your practice?
A. Yes.
Q. Over the years here at DuBois Regional Medical Center as well as in your training?
A. Absolutely.
Q. And your training was at these other institutions that you have talked about earlier; correct?
A. That's right.
Q. Were you still trying to do a good job even though someone else disagreed with you?
A. On?
Q. Interpretation?
A. You mean in life or --
Q. Interpretation of films, I'm sorry?
A. I was doing my job.
Q. Thank you.
A. Although if my care is going to be on trial here, then I may need representation, which I don't have.
Q. I'm not suggesting that in any way.
A. I just want to make sure if we're going to get to that. I'm just trying to --

Q. Now --

MR. CRENNEY: It's Dr. Graeca and Dr. Yaw.

MR. SLIMAK: I don't know what that was for sure, but let me continue with my questions.

MR. CRENNEY: That's a fact.

BY MR. SLIMAK:

Q. With regard to your involvement in this case, did physician's assistant Natoli call you up?

A. She might have, I don't recall for sure.

Q. Did Dr. Graeca call you up?

A. I think he might have, but I don't recall for sure.

Q. Did you make any note of either of that?

A. I didn't make any note, but I do remember talking to him about the case, I don't know if it was before or after.

Q. Now, with regard to the x-rays in April 12, 2005, when you did look at them, was it the course of your practice that day that you first obtained written information from Paula Carlson when she came in the office that you would review initially; correct?

A. Correct.

EXHIBIT "A"

Q. And after that, then did you meet and talk with her about why she was there, what her symptoms may be and what her past course of care had been to date?

A. That's correct.

Q. And after that did you do a physical examination?

A. Yes.

Q. And then after that did you pull up these x-rays as you did for Attorney Crenney here today in your deposition and then look at those?

A. Yes.

Q. And then after that, did you order some additional studies, being an MRI, a bone scan, and as well as your repeat x-rays?

A. I ordered the repeat x-ray and then after reviewing that film, then I ordered the remaining workup after I saw the second x-ray, not before.

Q. So there was a sequence of events that you went through to work up the patients condition and situation and then order additional studies and make your determinations of what you thought was going on at that point in time

EXHIBIT "A"

in ;June correct?

A. Correct.

Q. So is it correct that you did not just have the patient come into the office and look at her past x-rays, you went through these other processes and steps first?

A. That's my job.

Q. That's what I wanted to find out. Now, with regard to the information that you had obtained from Paula Carlson before you looked at any films, I would like you to look at some of your records with us. And if we may, if the videographer can assist in this regard, and Doctor, it maybe easier if you don't mind, if you're going to sit there, if I can just prop this right on the arm of your chair. Okay? Are you able to see that from your angle?

A. Yes.

MR. SLIMAK: And the videographer, were you able to read that reasonably well if I point out anything? Yes, he's indicating yes. Thank you.

BY MR. SLIMAK:

Q. So is this standard as an orthopedic surgeon

EXHIBIT "A"

to have your patients come into the office before you would actually examine them or talk to them and have them complete historical information?

A. That's correct.

Q. What is the significance of why you go through this process with your patients before you see them?

A. Well, sometimes there's something here that I may miss in my history taking or that we can document some past history with something as different later, we can get a good look, but we try to get as much history as we can. Sometimes they are very unnecessary. Sometimes they are helpful down the road when I can try to look back and see if I can recall patients and as things change. I have patients for a very long time and it's good to have a basic -- we like to have a full basic past history, past medical history and a review of systems in the chart. So we have them fill out as much as they can and I focus -- I have a much more problem focused evaluation when I see a patient. I'm not a primary care physician.

EXHIBIT "A"

Q. Would that have been the process then that would occur with regard to this type of -- this document here, which is for Paula Carlson in June 9, 2005?
A. Every patient that comes through is supposed to have a form of this nature filled out before they present.
Q. And in your chart in front of you, do you have this form in that?
MR. CRENNEY: I'd just like to make a general --
A. Yes.
MR. CRENNEY: Excuse me, an objection to what you got on the video because it is highlighted.
MR. SLIMAK: Well, I want to draw his attention to certain aspects of the record and we're entitled to do that. So your objection is noted, sir.
MR. CRENNEY: Thank you.
BY MR. SLIMAK:
Q. Now, have I highlighted that this is your DRMC orthopedics stationary or forms?
A. Yes.
Q. And Paula Carlson --

A. Yes.
Q. -- that would be the patient's name; correct?
A. Correct.
Q. And then to address your attention over here, June 9, 2005, would that be the date that the information was gained from the patient?
A. Yes.
Q. And do you take before you see the patient or work on her diagnosis, a family history as recorded here?
A. Just as recorded there. I don't personally take one.
Q. But you have the patient complete this form to provide that background information?
A. As background, correct.
Q. Yes. And you through this form have specific questions, such as, for instance, does the family members relatives, has any blood relative ever had cancer; correct?
A. Correct.
MR. CRENNEY: Objection as to relevance.
BY MR. SLIMAK:
Q. In this particular circumstance, what information did Ms. Carlson provide to you at

that point in time as to whether or not there was some family history of a family member having had cancer prior to June 9th, 2005 that you had available to you as background?
A. I have available, but it was not relevant to what I was doing at the time.
Q. I understand. But my question just is, what information did she provide to you through this record at that time?
A. That her father had lung cancer.
Q. Now, do you also ask other questions about diabetes and her father had diabetes; correct?
A. Correct.
Q. But the point is, you would take into consideration, if relevant, all of this information with regard to you then seeing the patient and working up the condition and trying to make your diagnosis of what she had; correct?
A. It's used as a -- we create a record so that we have information over time. Things may change, I get different things, something is not what it is, I have something to refer to it.
Q. And is there a question that down below here

where it says -- I think there's a hole marked there. Does it say, have you --
A. Have you been treated for this problem by another physician.
Q. And the answer circled is what?
A. Yes.
Q. And who is the physician indicated that had been treating her for this condition?
A. Dr. Meyers.
Q. Was there any indication that Dr. Graeca -- or physician assistant Natoli had been treating her for her condition or her complaint?
A. Not on this.
Q. And then do you obtain personal -- detailed personal information history as well provided to you by the patient at this initial visit?
A. Yes.
Q. Is that what we're looking at here?
A. Yes.
Q. Does that run the gamut from everything whether she's had chickenpox or anemia, pain in the wrist or arms; correct?
A. Yes.
Q. Could you say yes just so our record is clear?
A. Yes.

Q. Whether she's had swelling of the hands, feet or ankles and she indicated yes; correct?
A. Yes.
Q. Whether she's had sprains, she indicated yes; correct?
A. Yes.
Q. Whether she's had blood in -- any blood in the urine, the indication was yes; correct?
MR. CRENNEY: Objection to relevance. Objection as to the highlighting.
MR. SLIMAK: Well, we're showing this evidence to indicate the thoroughness of the background information that the Doctor's standardized forms of processing of orthopedic patients develops and then we're going to ask some specific questions related to this as we go through the patient's care.
BY MR. SLIMAK:
Q. Is there additional information that's asked and answered in this form of whether she had had recurrent back pains?
A. I'm going to reiterate again, am I being questioned as to the standard of care that I'm rendering; if so, I want counsel?
Q. No, you're not.

MR. WALL: On the record, you're not, Doctor.
A. Because we seem to be asking these questions. I don't understand the questioning line here.
MR. WALL: On the record, you're not, Doctor.
MR. SLIMAK: Yes.
A. I realize we're on the record, but I'm in a room of attorneys and this is a liability case and I know where people are being accused or whatever and I'm a little uncomfortable right now.
MR. SLIMAK: That's all right.
A. So if this is where we're going, I may just ask that we could stop and I'll get counsel.
BY MR. SLIMAK:
Q. We're only asking factual information, that's all I'm intending and then there's no intention I don't think of anybody in this room to sue you for anything, Doctor. I think I speak for all the counsel here. I don't know for Mr. Crenney, who I can't speak for, but --
MR. CRENNEY: Mr. Slimak, please don't make remarks like that.

MR. SLIMAK: I don't pretend to speak for you is what I'm indicating. Okay.
MR. CRENNEY: By the way, I have no idea why questions about Ms. Carlson's urine in the blood has been highlighted and all of this irrelevant information, I don't have the slightest idea. If I knew, I would chime in.
BY MR. SLIMAK:
Q. We're trying to develop this additional background information. And at this point in time, we're going factually through. Are you trying to be through with regard to your question here, to anticipate all possible circumstances that might have relevance to your orthopedic care?
A. We like to have a baseline record of a patient's past medical history on all patients that come through. Do we pour over them, no. You come in and you break your leg, I don't need to know what your grandmother had, but we do for completeness put it in the record. If at any one point in time it becomes relevant, we have record of it.
Q. With regard to some of that information, did you obtain information that Ms. Carlson had

had recurrent back pains, backaches, joint pains, swelling of any joints, tingling or weakness of hands or feet and loss or change in sensation of hands or feet?
A. I would just say this is Mrs. Carlson's -- or Ms. Carlson's record.
Q. And then did you do a physical examination?
A. Yes.
Q. And is this the page of your chart that reflects your handwritten notes at the time before you had them put into a typewritten form?
A. These are the notes I scribble while I'm talking to her and then dictate as soon as I have see her.
Q. In that regard, did you specifically note that there was no injury?
A. Yes.
Q. Why is that significant to you when you talk to her to find there's no evidence of injury?
A. We're obviously looking for occult fractures. We're looking for dead bone or somewhere that I can localize where the problem is. Injury obviously changes the nature of the disease from something that's infectious or metabolic,

chemical, tumorous or traumatic. So that's as I'm trying to diagnose why she has wrist pain and nobody seems to have been able to figure it out, that's what I'm trying to sort out.

Q. With the history that you solicited from the patient that she had had no injury, does that make you start thinking more along the lines of perhaps something metabolic or something that's tumorous or something of that nature?

A. I'm less likely to look for fracture. I'm not looking for fracture or thinking fracture as much.

Q. And your writing I have to say with due respect, I'm not criticizing you for this --

A. No.

Q. -- but it is difficult to read?

A. I'm having trouble with it too.

Q. Good, because it's not just me.

A. That's why I dictate right away.

Q. What is this that I highlighted so I could remind to ask you?

A. I am thinking about that one myself. It's something for six weeks.

Q. No change for six weeks or something else?

A. What I have here is burning dorsal right

wrist.

Q. Okay.

A. And this is no, I believe it's relief for six weeks.

Q. And then what do you have over here?

A. Negative shoulder, negative neck, negative paresthesias.

Q. What do you mean by those?

A. I'm looking for something in her cervical spine.

Q. Do you initially evaluate whether there's something in her neck or cervical spine by questioning the patient in order to try to rule in or rule out that?

A. I generally will do it on a wrist, but I have a patient coming to me with a normal x-ray, normal EMG, seen two physicians without a diagnosis, I'm looking at everything.

Q. Yes, okay.

A. My job is now to figure this problem out.

Q. Would that be the process that you would try to look at everything that's pertinent if she would have come to see you back in April just as she had come to see you in June?

A. Yes.

Q. You try to be thorough with your questioning and developing of information; correct?

A. I have an undiagnosed problem here and I have to be fairly thorough at this point. Some things I'm not as thorough. You break your arm, I'm not that thorough, it's fairly clear to me. But this was not when this patient came, this was a patient with a lot of pain that did not have a diagnosis.

Q. Have there been patients in the past of Dr. Graeca or physician's assistant Natoli that they were having trouble diagnosing and they would make the referral to you because it was an orthopedic issue within your specialty?

MR. CRENNEY: Object to the form of the question.

A. I have a lot of patients referred to me because they can't make a diagnosis. I like to think that when they can't make a diagnosis, here's where they send them.

BY MR. SLIMAK:

Q. Is tendinitis something within your medical specialty --

A. Yes, it is.

Q. -- for diagnosing?

A. Yes.

Q. And how about carpal tunnel syndrome?

A. Yes.

Q. How about as far as a cervical problem or herniated disc, whether that was causing symptomatology into the wrist and hand?

A. Yes.

Q. Those are right up your alley; correct?

A. That's what I do.

MR. CRENNEY: Objection as to reference.

BY MR. SLIMAK:

Q. I'll just take my seat again and look at some notes, I wanted to ask you about some other things. Do you agree that back on the April 12th, 2005 x-rays, if you can review your records in that regard or your recollection, that at that point in time, there was no permeative appearance or moth-eaten appearance on the April 12th films?

A. Absolutely, correct.

Q. And with regard to the April 12th films, there was no evidence of any change in the joint; correct?

A. In the joint?
Q. In the joint.
A. That's correct.
Q. On the April 12th films, there was no indication of fracture; correct?
A. That's correct.
Q. And on the April 12th films, you couldn't see on those films any evidence of expansion of the cortical bone or osseous extension; correct?
A. Or interosseous extension, correct.
Q. Correct me, thank you for using the right word. Correct?
A. Correct.
Q. What do those mean that were not there?
A. It's the interarticular extension. The bone was not dilating. The bone gets bigger and the cortex does not break, it's more indicative of a slower growing tumor. If it doesn't invade the joint, that's more indicative again of a less aggressive tumor. Giant cell classically -- giant cell classically can be slower -- slow or fast growing and can expand the bone, go to the joint, but will not go into the joint. That's

usually a more histologically lower grade giant cell.
Q. When you evaluated Ms. Carlson in June, took additional studies of repeat x-rays, bone scans, MRI scans, CT scans, did you find evidence at that point in time that this was indeed a very rapid growing aggressive type of giant cell tumor?
A. I didn't know that it was a giant cell tumor, but it was an aggressive -- a locally aggressive neoplasm probably from the bone that did not appear to have any metastatic source or any other metabolic source. You can have like a Brown's tumor is a hypothyroidism, you can occasionally get tumors that may get of this nature, which is why we check the thyroid function.
Q. That's what I want to clarify next. To make those kind of decisions, is that because you ordered other tests and studies, metabolic studies as well as these additional imaging studies?
A. I'm trying as hard as I can to make an noninvasive diagnosis and rule out as many things as possible knowing full well that

looking at this knowing that this is a tumor and it's going to be referred, but to make sure the workup is complete. I am trained to completely workup a tumor and I will do that before I refer them, you know, for expediency, but I do know what has to be ordered.
Q. Now, I was looking at your records and report and Attorney Crenney read you certain portions of them, but there were other portions he had not read to you and so let me ask you about some aspects of that.
MR. CRENNEY: Object to the form of the question.
MR. SLIMAK: Do you disagree with that?
MR. CRENNEY: Object to the form of the question.
BY MR. SLIMAK:
Q. Specifically, let's then refer to your report of June 9th, 2005, your actual office record, okay?
A. Okay.
Q. In that regard, did you develop some history from talking to Paula Carlson that she had had wrist pain now going on for two to three

months?
A. Yes.
Q. And if I may bring this back up to the arm of your chair, so we can share this with the jury. Tell the videographer to focus on this, please. In addition --
MR. CRENNEY: Same objection on the highlighting. None of this -- objection that all of these are not in evidence. I doubt they will be in evidence with the highlighting.
MR. SLIMAK: You have already identified them and moved into admission this record, highlighting so I can direct the Doctor the questions I'm going to talk about.
MR. CRENNEY: The highlighting is inappropriate on the video. I've never seen anybody do it and I object to it.
MR. SLIMAK: It's been done a million times, Mr. Crenney, in court including in the Court of Common Pleas of Clearfield County.
BY MR. SLIMAK:
Q. Now, did you take a history just from talking to her that there that she reported -- she saw

Dr. Graeca, reported no injury; correct?
A. That's what I wrote.
Q. And that she had radial wrist pain; correct?
A. Correct.
Q. In talking to her, did she use the word radial wrist pain or was that something you determined based on whatever it was that she saw you?
A. I would have to assume that that was my word. A few people would tell me -- would say I have radial wrist pain.
Q. Well, you know she's a radiation technician at the hospital here; correct?
A. She's a radiation technician, not a radiograph technician, so --
Q. Do you know for sure?
A. I don't know for sure if she said radial or I said radial.
Q. Regardless of whether she said radial or you said radial wrist pain when you wrote the note, did she give you information that able you to focus in on the radius at the wrist as to the area of her pain?
A. From my history taking?
Q. Yes.

A. If I wrote that, she would have had to have indicated to me that the pain was more radial than ulnar because ulnar sided wrist pain is a different situation, that's a different workup.
Q. Did you note that the EMG study was done, which really was unremarkable for carpal tunnel?
A. Yes.
Q. And what is carpal tunnel?
A. That's a situation of pressure on a nerve in your hand, which generally gives you some finger numbness and some hand pain, but generally not a wrist pain. Although, it can be unusual in a younger patient.
Q. So typically wrist pain would not be the pain of carpal tunnel; correct?
A. It can be in a younger patient, but it's not what I would classically attribute to carpal tunnel.
Q. When you say younger, what age are you talking?
A. People in their 20s and 30s as opposed to 60s and 70s.
Q. Are there various tests that can be performed

then to determine if there's a carpal tunnel going on?
A. Clinical exam is usually the best.
Q. And that would be the Phalen's sign?
A. Phalen's, Tinel's, examination of sweat patterns in the fingers, loss of sensation, two point discrimination, things of that nature.
Q. Are these tests that only an orthopedic surgeon can do or can physician assistants or family physicians perform those types of testing as well?
A. I would not trust the family physician to make an accurate judgment. Myself, a neurologist, neurosurgeon, classic surgeon, yes. On physical exam I think that we're a little more sophisticated in making that call.
Q. Thank you very much. Now, you note here that she's apparently had some cervical disc problem in the past; correct?
A. That's what she reported to me.
Q. And then you have recorded here spine workup, however, did not seem to relate to her arm symptom; correct?
A. I wrote that, I don't understand that.

Q. Do you know if that was from her or what you were assessing from what she was telling you?
A. I don't know if that was from my assessment when I took a history of her hand, her arm, those kind of things. I believe that my spine workup in questioning about her hand, her neck, sensation, things of that nature, did not seem to relate to the arm. So I would say that that -- if I in describing that sentence, I think that's from my workup of her spine when I examined her.
Q. You said did not seem to relate to the arm, do you mean relate to the neck?
A. Exactly. I didn't think that the complaints in her wrist were cervical spine related by her history.
Q. That's from just talking to her; correct?
A. From the history taking.
Q. And then you again confirm the pain is most likely -- excuse me, the pain is mostly on the radial aspect of the right wrist; correct?
A. Yes.
Q. It seems to be over the distal wrist; correct?
A. Correct.

Q. The distal wrist, could you just point your hand, what do you mean by distal?
A. Somewhere more in the base of the wrist area as opposed to if someone says my wrist hurts and they go here, but it was very, very close to what are called the radial carpal joint, very close to where the hand --
Q. So she had given you information about specific pain in a specific area of the wrist; correct?
A. Correct.
Q. And then after that, you again note about the EMG studies were done, which were consistent with a mid cervical radiculopathy that was done in February of 2003; correct?
A. Uh-huh, yes.
Q. Does that relate back to like a herniated disc or some abnormality in the cervical neck spine causing symptomatology into the arm?
A. Yes.
Q. Now, but is that something that you kind of felt you were ruling out?
A. Well, it was an older study. It was 2003 and a most recent study was nondiagnostic, so I was more comfortable with a more recent

study. Although, the more recent study I don't recall was as complete. Those are two separate EMGs that can be done. They don't always do all.
Q. Now, here you have no wrist synovitis; correct?
A. Correct.
Q. What do you mean there was no wrist synovitis?
A. There was no swelling within the wrist joint.
Q. So you're distinguishing between a wrist joint and other areas of the wrist?
A. I'm trying to determine if this is possibly rheumatoid arthritis, which with the history that came in, a person on the street is going to miss and I would notice that by having specific synovitis or swelling and inflammation of the wrist joint proper and I didn't see that.
Q. But that is not excluding your finding or your thinking there was some fullness in another part of the wrist?
A. Right.
Q. Correct?
A. Correct.
Q. Then you say there is no tenosynovitis, what

is tenosynovitis?
A. Tendinitis.
Q. The same thing; correct?
A. Different than synovitis.
Q. I understand.
A. One is the wrist. Wrist synovitis and tenosynovitis is inflammation of the tendon sheath.
Q. So when you have teno or tenosynovitis, that means there's no tendinitis; correct?
A. That was my opinion, yes.
Q. And you determined that on a physical examination; correct?
A. Correct.
Q. You determined that on physical examination on June 9, 2005, even though we know from the studies that you had looked at, that she had a more advanced stage giant cell tumor at that point in time; correct?
A. I did the examination of her tendons before I read the second film.
Q. Fine.
A. Yes.
Q. But as of that point in time --
A. I did not diagnose her with tenosynovitis.

Q. You felt that there was none present; correct?
A. That's correct.
Q. No tendinitis?
A. Correct.
Q. Is that something that you usually evaluate patients for, that's something different than -- well, let me just strike that. Let me go onto something else.
Finkelstein is negative, right, or Finkelstein?
A. Correct.
Q. Is that where you have them cup their thumb in their hand and then bend their finger to the other direction --
A. That's correct.
Q. -- to see if it pulls along the outer aspect of their hand in those tendon areas, is that correct?
A. That's correct.
Q. Now, that's a test of the tendons of the thumb and the base and the wrist; correct?
A. Correct, two tendons of the radial side of the wrist.
Q. Is that a test that if there would be a report of pain in that area due to the Finkelstein

examination, then that would give you cause to think that there might be tendinitis of the wrist?

A. It's another source of wrist pain.

Q. And with regard to the Finkelstein test, did you find that to be negative?

A. That was negative.

Q. Did you mean there was no report of pain?

A. I could not elicit pain with that maneuver.

Q. Now, did you say that that was normal or did you use the word negative?

A. Negative.

Q. And is that somehow different than normal in that context?

A. Negative is normal.

Q. Can you have an abnormality of the thumb base and not have a positive Finkelstein test?

A. Yes.

Q. So you can have an abnormality there at the thumb base at the wrist in the tendons or other structures even though the test is negative; correct?

A. That would be another diagnosis, correct.

Q. Thank you. Now, so then you did your repeat studies today, correct, and you show the

progressive changes of the lytic lesion in a much more worrisome peripheral margin; correct?

A. Correct.

Q. Now, it's moth-eaten in nature, permeative and without sclerotic margins; correct?

A. Correct.

Q. Would you agree then that there were also there were no sclerotic margins back in the April film when you looked at that?

A. On retrospec looking back at the film now, if someone were to beat me up and said do you think there's any sclerotic margin anywhere, I could make a case that there maybe some.

Q. But that's in retrospec; correct?

A. But at the time I did not see and still don't on the AP view see a sclerotic margin. I would argue with myself that the more ulnar proximal margin of the lesion is less distinct than the more radial aspects of the lesion, if I really had to critically look at the film now.

Q. Now, is that something that occurs sometimes, when you go back and look at these plain standard x-rays in retrospect, you may think

that you see some additional things there that you didn't determine the first time?

A. If we could do retrospect, we would never be in these rooms, but you can always see things better once you have a better idea of how things went, they look much more obvious to you later.

Q. With your physical examination, you indicated there maybe a soft tissue component as well; correct?

A. Yes.

Q. So that was something --

A. I thought that -- you know, she's a very small woman and I thought that in palpating the area where she had pain, that it seemed a little bigger than her other side, but this was a very subtle finding.

Q. Is that something that you were not able to see on either of your x-ray studies of April or the June ones?

A. That's not a radiographic finding, that's a physical exam finding.

Q. Now, we had talked about the tenosynovitis or tenosynovitis, I guess that's the same word, and being the same as tendinitis; correct?

A. It's a similar word, right.

Q. With regard to tendinitis, is that something that would usually come on in a patient that has had some type of acute trauma or injury or some repetitive stress activity to the wrist or hand?

A. There are --

MR. CRENNEY: You know, I'm afraid I'm going to have to object, asked and answered, relevance. My objection would be mercy, mercy on all of us. So I would like to add that objection. No, I'm just kidding. My objection is as to it's repetitious and not relevant.

BY MR. SLIMAK:

Q. Do you recall the question, Dr. Piasio?

A. Tendinitis can come -- actually tendinitis and tenosynovitis are slightly different. tenosynovitis is swelling of the tendon lining. Tendinitis can be that in addition to degenerative change or calcified change in a tendon. Degenerative change within a tendon, you can use that specific terminology.

Q. Okay, but my question --

A. Tenosynovitis can come from a host of things.

Trauma repetitive activity can be one, that's debatable, but that's argued that that's a source.

Q. That's something that it's commonly attributed to; correct?

A. Correct.

Q. Some type of acute trauma or repetitive stress type?

A. Repetitive activity is more commonly associated with it than the tendinitis.

Q. Let me just review a few notes. Now, when the patient did come to see you, did you indicate in your record for June 9, 2005 that she was self-referred?

A. Yes.

Q. And what do you mean by Ms. Carlson was self-referred to you on June 9th?

A. It was my understanding -- I generally ask where I get my -- I like to find out where my patients come from.

Q. Yes.

A. And she said that she wanted to see me for this problem.

Q. On her own initiative?

A. That was my understanding.

Q. And that's what you recorded in your chart back then; correct?

A. Yes.

Q. Now, with respect to that, if she had been referred to you by physician assistant Natoli back in April, would you have seen her in that fashion in the regular course of your practice?

MR. CRENNEY: Objection, relevance.

A. If she was referred to me with a wrist?

BY MR. SLIMAK:

Q. Yes.

A. I see almost anybody referred to me. There are very few patients I don't see.

Q. And then with regard to that referral back at that point in time, if it would had occurred in April, would you see the patients in approximately a week?

A. That I can't -- I would have no idea.

MR. CRENNEY: Objection, relevance.

BY MR. SLIMAK:

Q. With regard to if you had seen the patient back in April, would you have gone through the same process of working up the patient that you did in June?

A. Yes.

MR. CRENNEY: Objection, relevance.

BY MR. SLIMAK:

Q. Now, is a basic x-ray such as your obtaining on June 9th, 2005, the test that you would perform to look for tendinitis?

A. I will generally get an x-ray on any complaint because of the world within which I live.

Q. My specific question is, would you use an x-ray to look for tendinitis?

A. An x-ray is not used for tendinitis unless, of course, it's end stage calcific tendinitis and then you'll make that determination. So if you have tendinitis, tennis elbow, I will x-ray that and can diagnose that on an x-ray.

Q. When you say end stage, you mean a very severe longstanding?

A. Calcific change. Or rotator cuff tendinitis I can diagnose with an x-ray occasionally.

Q. But tendinitis in the wrist you typically couldn't unless it was an end stage very severe with calcific changes?

A. There are only a handful of tendonitis about the wrist and other than own, there are very few that are diagnosed on a plain film, but

there are some.

Q. Is MRI study a better study if you were --

A. No.

Q. -- trying to use an imaging study?

A. No.

Q. Does the MRI show both structures of bone as well as soft tissue?

A. Yes.

Q. And it also can show fluids and things?

A. Yes.

Q. Now, do you agree that there is quite a bit of bone density variability from person to person, there can be?

A. There can be.

Q. Is there a normal range of variation of bone density?

A. Yes.

Q. So everybody's bones don't look exactly the same, even if you're looking at the same bone in different people on a plain film x-ray; correct?

A. Not only can they be different, but even the radiographic technique can change them as well as I can with the computer as well. I can change -- which is one of the advantage, I

can't change the radiographic technique if I like without repeating the film.

Q. And that's something that you do here in your office because you have access to this system?

A. I do it routinely on cases where I'm not sure if I'm looking at -- you know, what I'm actually looking when I try to sometimes move what we call the window in and out of the x-ray to change if I want to see more soft tissue or more bone. By highlighting, by playing with the computer, I can change the image to pick up soft tissue changes as opposed to bone changes.

Q. So by doing that, one of the things you can try to look for is actually, although it's not bone, but the soft tissue surrounding the bones of the forearm, correct, you're looking to see if there's something evident there?

A. Possibly.

Q. I understand that.

A. You can change the technique of a plain film with a digital film by playing with the computer and adjusting how the digital presentation shows itself. So that with otherwise with a regular x-ray, I have to take

multiple films if I want to look at soft tissue and look for fluid or look for mass or something and see if it's there. Whereas, with the computer, I can just do it with any film I can change it, change the way it looks.

Q. Now, when you say playing with it, do you mean examining it in a professional manner?

A. Yes.

Q. Just because you used that word, I wanted to have you clarify that?

A. Correct. That's correct.

Q. Because you wouldn't be playing --

A. If you'd like, I can demonstrate that, but --

Q. I know what it means, to look at it in a professional manner which you determined as playing?

A. Playing.

Q. Now, just give me a moment, please bear with me. We have been here a long time and I think I'm getting close to the end of my questions?

A. I'm still good.

Q. Thank you. You're still smiling.

A. I'm still okay.

MR. SLIMAK: The videographer indicated this would be a good time to change

the tape, so let's take a quick break for that purpose.

A. Okay.

VIDEOGRAPHER: We're now going off the record. This marks the end of tape number two in the deposition. The time right now is 6:45 p.m. Please stand by.

- - - -

(There was a discussion off the record.)

- - - -

VIDEOGRAPHER: We are now back on the video record. The time right now is 6:48 p.m. that's indicated on the screen. This will mark the beginning of tape number three in the deposition. You may proceed.

BY MR. SLIMAK:

Q. In your records and I think in your earlier testimony, you indicated that one of the tests you performed was a bone scan; correct?

A. Correct.

Q. Are bone scans tests that can only be ordered by orthopedic surgeons such as yourself?

A. No.

Q. Can they be ordered by family physicians or

physician assistants?

A. PAs, yes.

Q. Is the bone scan the type of test that can attempt to identify whether there is essentially a hot area in a certain area of bone due to decrease of something or other?

A. Bone activity.

Q. Bone activity --

A. Yes.

Q. -- the word escapes me?

A. A bone scan is a very nonspecific but sensitive test that localizes bone activity. It doesn't tell you if it's tumor, fracture, infection. It just says that there's bone turnover, bone action and it's like a red flag, a place you want to look, or isolates other areas for tumor patients that may have other lesions that may not be symptomatic.

Q. If you do that bone scan, is it also called a three-phase radionuclide scan?

A. Yes.

Q. The same thing. Now, is that something that you can do body wide and then be able to see on that study whether or not there is increased activity, so to speak, in just one

wrist versus in both wrists and make comparisons?
A. Yes.
Q. Does that help you isolate the area for possible diagnosis or further workup?
A. It can be used for lots of different reasons. In this particular case, it was done to stage her and not to diagnose her with -- otherwise it can be used if you're looking for occult fractures, we use it for scaphoid fractures, we use them for stress fractures in those circumstances.
Q. Are there times whenever there are plain basic x-rays ordered of both right and left arm or wrist for comparison purposes?
A. Generally only in two circumstances, one, if you have trauma in a child and they have growth plates and you cannot determine from that film if something is in line or not because there's not bone evident, and that's oftentimes just at the elbow, which is very confusing. And you'll occasionally get them in other parts if there's a congenital anomaly that where you look at it, are there two of those, is this isolated, or is this the way

they are born. Like you can see people with different ears or something.
Q. Is that a method then to look at both hands and compare them with the radiographic appearance would be?
A. You could get a bone scan to look at -- we sometimes get -- we get them oftentimes for scaphoid fractures, which you can see on an x-ray occasionally and you'll see increased flow or uptake in that particular bone and not on the other side. So we get -- when we do a bone scan, we generally don't do them in one area just because the tracer is in your whole body and there's no reason not to get a comparison because it's sitting there and you get it either way.
Q. You reference that you get the bone scan for scaphoid fractures, you'll have to tell us, where's the scaphoid bone?
A. The scaphoid is a bone in the wrist. It's a -- in a traumatic patient that has a normal x-ray that has continued radial wrist pain, it would be what one would get in a trauma case.
Q. So sometimes there are x-rays that would not pick up even fractures --

A. That's correct.
Q. -- in the area of the wrist; correct?
A. That's correct.
Q. Now, Attorney Crenney had taken you through the sequence of events after your initial visit. As I understand it, you saw Ms. Carlson back on the 13th after you had had additional imaging studies; correct?
A. Correct.
Q. At that point in time, then you discuss the situation with her, indicated that you would make a referral at that point to Dr. Yaw; correct?
A. Correct.
Q. And you noted in your chart that among other things, it appeared the lesion, being this tumor, appeared to be fairly rapid growing; correct?
A. Correct.
Q. Now, there were evidence in this case -- well, let me back up. Were you aware that Dr. Yaw did not actually perform his surgery until June 27th, 2005?
A. I don't doubt that. I don't know that I recall specifically.

Q. If we assume for the moment that the facts show that you made your referral to Dr. Yaw by letter of June 13th, 2005 and he did not perform his surgery that we talked about earlier on her wrist until June 27th, 2005, okay, is that a typical period of time that would transpire in your practice from when you would see a patient and make a diagnosis until your patients would undergo surgery by the bone tumor specialist?
MR. CRENNEY: Objection.
A. I would tell you that that's a very short period of time to get someone on for that kind of procedure. It was about a week.
MR. CRENNEY: Withdraw the objection.
A. I saw her the 13th I believe, Ken saw her a couple of days after, within ten days she had a radical resection on her wrist, that's very good time.
BY MR. SLIMAK:
Q. Good. Thank you for clarifying that because that's what I want to establish. In the usual course or oftentimes in your practice, even if you suspect that there's a tumor of the bone

and you're going to make a referral of a patient to an orthopedic bone specialist that you anticipate will be performing surgery, does it oftentimes even take longer than 14 days for that surgery to occur?

A. I have a very close relationship with -- or had with Dr. Yaw before he left and Dr. Goodman and I don't make that referral without a phone call. I don't leave that up to anyone and if it's not timely in my opinion, we discuss it. But I also know that the only two oncologists in five states, so that usually necessitates a call from me when I want them seen, but it's not unusual for a tumor case to take longer than that. That's actually fairly quick from phone call to surgery knowing -- just knowing how busy they are, knowing that Mark Goodman says he does up to 28, 30 cases a week, so that was good.

Q. With regard to the suspicion of a giant cell tumor on the basis of which you made a referral to a physician in Pittsburgh, if you had had that suspicion back in April of 2005, would you have expected that it would be two weeks or greater for your patient to undergo

EXHIBIT "A"

surgery indicated?

MR. CRENNEY: Objection.

A. Can I answer?

MR. CRENNEY: Sure, absolutely.

A. I'm trying to understand the question. If I had seen the patient originally.

BY MR. SLIMAK:

Q. Just let me ask the question --

MR. CRENNEY: Let him answer the question.

A. I'm not sure I understand the question.

BY MR. SLIMAK:

Q. Let me try to clarify.

MR. CRENNEY: Please let him answer the question. He was beginning to answer your question. You have a question on the board.

A. It's hard to say because if I had seen the patient in April, obviously the urgency of the workup would not be as acute at that time.

BY MR. SLIMAK:

Q. It would be less, less urgent?

A. I don't know that I would get everything done in a day. I would get it done within a week because I knew I had a tumor, but --

Q. What do you mean by everything?

EXHIBIT "A"

A. An MRI, CAT scan, CAT scan of the lungs, chest x-ray, all the blood work.

Q. So you may have taken longer than you took when you saw her in June to get all of that done if you had seen her in April?

MR. CRENNEY: Objection. He said exactly how long.

A. I don't know that I would have been able to impress upon anyone to get all of that done because basically other patients were cancelled to get her, to accommodate her because the phone call went out this will not wait, I need this today. Initial presentation, you know, probably within a week. We would have said we need this within the week, we're not waiting longer than a week.

BY MR. SLIMAK:

Q. And then would you expect if she needed surgery, even if you had made that referral and did that workup within a week of April 12th, that there would still be a period of at least two weeks until your patient would have undergone surgery?

A. I don't know how -- I don't know how to answer

EXHIBIT "A"

that. I mean that's up to their -- I would have to make the referral that I have a lytic lesion of the distal radius. I suspect this giant cell and I'm looking at the mercy of whatever their schedule is. I don't know how quickly they would get someone in. You like them the next day, but realistically I don't know how quickly that would occur.

Q. Now, when you specifically advise the Pittsburgh orthopedic surgeons that you felt this was a fairly aggressive rapidly growing lesion that you felt was a tumor, correct, they took two weeks to take her to surgery; correct?

A. Correct.

Q. That's from the date you made the call until she underwent the surgery, June 27th; correct?

A. Correct.

MR. SLIMAK: That's all the additional questions I have for you at this time. The other attorneys may have some.

- - - -

EXAMINATION

- - - -

BY MR. WALL:

EXHIBIT "A"

Q. Doctor, as you know, we just met earlier this evening, I'm Walter Wall and I represent DRI, DuBois Radiology, Inc. and I appreciate your patience of going on with us. I can assure you, I will be relatively speaking shorter, just two areas. Is it fair to say when this patient first came to your office, the complaint was pain in the right wrist; is that correct?
A. That's correct.
Q. And we'll bypass everything you have testified to, but you have your chart there, I direct your attention to the requisition you thereafter did for the MRI and the bone scan and that, of course, was the same date, Thursday, June 9th?
A. Am I looking for the --
Q. Let me show you?
A. -- x-ray orders?
Q. Do you have it somewhere? I just need clarification on what's on the top there?
A. I have it.
Q. Up on the history on the right-hand corner at the top, could you read --
A. This is June 9th?

Q. Yes, sir.
A. Under history?
Q. Yes, sir.
A. Mass right radius.
Q. And then down below it said MRI --
A. MR right distal radius.
Q. Correct?
A. Correct.
Q. And then next page, at least the next page I have, is the bone scan and you basically wrote the same things under both history, mass of the right radius, and down below mass of the right radius; correct?
A. I'm looking. I have a lot of requisitions.
Q. I'm sorry.
A. For the bone scan, correct, mass right radius, mass right radius.
Q. What was your purpose for writing both the history and the direction as you did?
A. I am forced to so they can bill correctly. If I don't fill in those forms, they are unable to code and bill for the x-ray correctly and sometimes necessitates a delay in getting them approved.
Q. However, you could have easily said just as

was done before in this case, pain in right wrist, MRI right wrist?
A. I could, but I -- at that point I'm a little better. I mean I could write pain and still get it approved and there's no issue. You can write pain, but when I'm writing that order, June 9th or 10th, it's not pain right wrist, it's mass right wrist.
Q. You're trying to be more definitive?
A. Correct. I try to help them as much as I can.
Q. Help them being the staff that's going to undertake the MR and the bone scan?
A. That's correct.
Q. You want to give them as best information as you can to focus on?
A. Right.
Q. Doctor, in your practice currently or in the past, you have had occasion to have physician's assistant on your staff, have you not?
A. That's correct.
Q. Did you have or do you have a policy as to a patient coming in with a new complaint, how many office visits will pass when only a physician's assistant sees that patient?

MR. CRENNEY: Objection.
BY MR. WALL:
Q. You can answer.
A. There maybe state law in a primary practice, but occasional I don't even see patients long enough to necessarily warrant the visit. That's something we are debating very viciously at the state regulatory level and probably beyond the scope of this deposition, but I think that those -- I don't know what state law is with respect to primary care, but I think a lot of that is determined by the particular relationship you have with that ancillary provider and their level of expertise into what it is.
Now, when I had a nurse practitioner in my office, we're very focused on one area and almost never were not in the office together. It was rare that we did not work at the same time, so our relationship was a little bit different. But so it's hard to comment. I don't know what actual law is in terms of how often someone has to see.
Q. Well, we both agree there is statutory --
A. I believe there is some and I think it's every

third or fourth visit or sixth. I'm not sure where it is right now, where the regulation is.

Q. I wasn't going to ask you the legal issue, I asked you if you had a policy established as to that fact?

A. Our policy in my office was to be consistent with state regulations as they apply to the nursing board because I had a nurse practitioner, not a PA, and those regulations are different. And the nurse practitioner, I don't believe it's as frequent as to what the physician assistant. Hopefully we won't get any worse than that, but it -- but we had a very close working relationship. So, it was -- like I said, it was rare.

The way that we worked, we tried to see patients simultaneously so that I was always there for any time that she would see so that I would actually see my patients and half of hers.

Q. Would you have occasion thereafter to review her chart entries?

A. I rarely --

MR. CRENNEY: Objection.

EXHIBIT "A"

A. We worked close enough that I would usually see the patient at the time and anything unusual, she would always bring it up to me. We had a close relationship.

BY MR. WALL:

Q. So the two of you are communicating that way?

A. Very intensely.

Q. Nevertheless, when she would see a patient and make a chart entry, would you review that chart?

A. Not all of them, no.

Q. Did you sign it?

A. No. Every chart entry?

Q. Yes.

A. No.

MR. WALL: Thank you, Doctor. That's all I have.

MR. JOHNSON: Doctor, I'm Dave Johnson. I represent DuBois Regional Medical Center. You and I met for the first time just as I was walking into the room today; correct?

A. Correct.

MR. JOHNSON: It's the first time you and I have ever talked with each other?

A. I have heard your name, but this is the first

EXHIBIT "A"

we have met, yes.

MR. JOHNSON: Doctor, I have no questions of you. Thank you very much.

- - - -

RE-EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, you may recall sometime ago when Mr. Slimak began his cross examination -- I didn't have my mic, so I don't know if that pick up. It probably did. But do you remember when Mr. Slimak began his cross examination, that he talked about the times you and I had talked, do you recall that, over the telephone?

A. Yes.

Q. And during those talks, he -- well, strike that. He mentioned the report, correct, the report that you wrote and sent to me?

A. Correct, that one-page letter, correct.

Q. Do you recall when I called you about that report, I said if you will write a report and clarify your record, maybe you won't have to testify at all, do you recall that?

MR. SLIMAK: I'm going to object to

EXHIBIT "A"

leading.

BY MR. CRENNEY:

Q. Do you recall --

A. I recall that in our conversations, I believe I was relatively clear of the difficult circumstance that I was in as a treating physician with knowledge of the case and a differing opinion within the facility within I work, that that was a very sensitive circumstance and expressed I believe in multiple times to please settle this without me having to be here today.

MR. WALL: Move to strike.

MR. JOHNSON: Move to strike.

MR. SLIMAK: Same objection.

By MR. Crenney:

Q. Doctor, would you be kind enough to tell me if you were reluctant to testify in this case and, if so, would you tell me why?

MR. JOHNSON: Objection, relevance.

MR. WALL: Objection.

MR. SLIMAK: I join.

A. Am I answering?

BY MR. CRENNEY:

Q. Yes, you are, sir.

EXHIBIT "A"

A. That I had to answer that question two ways. I'm reluctant because I don't want to be in this circumstance because I work here and I know all the parties involved, so I'm reluctant to be a witness. No different than anyone who witnesses something that they don't want to be involved in the trial. On the other hand, I am not reluctant if it's -- you know, to come and tell the truth as I see it.

Q. And, Doctor, Mr. Slimak talked a lot about a lot of conditions like Paula Carlson's dad died of lung cancer, he brought that to your attention. That somebody in their family had diabetes. He talked about the Finkelstein test and the spines and necks, do you recall that, going through all of that about Paula?

A. Yes.

Q. Did you need that information to identify the lytic lesion that when you looked at the x-ray of April 12th, was that important information, did you need it?

A. No.

Q. Was the lytic lesion clear when you first looked at that image to you?

A. It was clear to me.

Q. Doctor, are you in any way critical of the care provided by Dr. Graeca or his staff to Paula Carlson?

MR. WALL: Objection.

MR. SLIMAK: Objection, lack of a report.

MR. CRENNEY: I think your cross examination and its purpose was to explicitly and implicitly call into question Dr. Graeca's care and I feel it's a fair question based on your cross. You may answer.

MR. WALL: Well, I'm going to object, there's no foundation. I don't know if the Doctor has ever reviewed Dr. Graeca's records to be able to afford an answer to you.

MR. SLIMAK: He's already indicated he hadn't. No foundation.

MR. Crenney: Well, he received a lot of information on what Dr. Graeca did from you through the report of Dr. Horsley, so he has that foundation.

BY MR. CRENNEY:

Q. Basic on what you know, are you critical of Dr. Graeca?

MR. CRENNEY: Your objections are noted.

MR. SLIMAK: Same objection.

BY MR. CRENNEY:

Q. You can answer?

A. No, I'm not critical.

Q. How about Dr. Yaw?

A. I'm not critical.

Q. Thank you, Doctor. Are you critical of Dr. Natoli or Dr. Meyers, not Dr. Natoli, PA Natoli or Dr. Meyers?

MR. SLIMAK: Same objections.

MR. CRENNEY: I'll withdraw the question. Thank you, Doctor.

MR. WALL: I guess we're at you, Mr. Slimak.

MR. SLIMAK: Oh, I wasn't sure.

MR. CRENNEY: All done, thank you. Well, no, not quite, one more thing. May I turn this back, Mr. Slimak to the beginning one?

MR. SLIMAK: Yes.

BY MR. CRENNEY:

Q. Doctor, we're now looking at the first page that Mr. Slimak brought to your attention and

without waiving my objection to that, I would like to ask you about items that are not highlighted on what Mr. Slimak gave you. Does it say referred by Dr. Graeca, see to the referred by?

A. Yes.

Q. And then does it say by Dr. Graeca?

A. Yes.

Q. And that's your record; correct?

A. That record is -- that's filled out by sometimes the front office and sometimes patient when it's incomplete. I'm not always fully aware of how a patient presents to my office. I try to find it out only because I like to know who my friends are. However, I don't like to give someone credit for referral that really wasn't or vice versa, so I like to -- and we do chart in looking at our business practices who refers patients to us and who doesn't.

So you know, we basically know, you know, who can get someone in today, who can get someone in tomorrow. So we try to keep track of. Plus for billing purposes and also for documentation purposes, I need to know

where my letters need to go. And I also need to know we have different billing codes if someone is referred or not. This is the world within which I live.

MR. JOHNSON: Just for the record, I move to strike that as being beyond the scope of the question and also on the basis of relevance.

MR. WALL: Join.

MR. CRENNEY: I'm going to withdraw questions about this document altogether and conclude my redirect. So I will withdraw all the questions from the very beginning that I asked about this.

MR. WALL: From the beginning of the deposition?

MR. CRENNEY: No, except for this document. Thank you very much, Doctor.

- - - -

RE-EXAMINATION

- - - -

BY MR. SLIMAK:

Q. Doctor, is Dr. Graeca one of your friends here, so to speak, at the hospital?

A. We don't socialize. We -- you know, certainly

consider him a friend. I mean he does refer patients to me. I refer patients to him and we work professionally together. We don't -- not that I wouldn't socialize with him, but we just don't. I have no problems with him personally. He's not in my circle of friends and vice versa.

Q. You try to keep a good relationship with Dr. Graeca?

A. Absolutely.

Q. And the two of you still practice here at the hospital in separate offices, but in the same building; correct?

A. Yes, we do.

Q. Now, just one other thing, you had used this word artifact previously, correct --

A. Correct.

Q. -- when you talked about this case?

MR. CRENNEY: Objection. Beyond the scope of my redirect.

BY MR. SLIMAK:

Q. Is this the word artifact you're talking about?

A. Yes.

MR. CRENNEY: Objection. Move to

strike. Very funny, but move to strike.

MR. SLIMAK: I think that's all the questions I have for you at this time. Thank you, sir.

MR. WALL: One question.

- - - -

RE-EXAMINATION

- - - -

BY MR. WALL:

Q. Doctor, Mr. Crenney asked you a question over my objection, but you didn't answer it --

A. I'm sorry.

Q. -- and that was, do you have any criticism of PA Natoli from whatever it is you know about the treatment Mrs.. Carlson received before she saw you?

A. No, I don't.

MR. SLIMAK: I have an objection, the same as before that were objected to in Mr. Crenney's questions in that regard.

MR. WALL: That's all I have. We're done.

VIDEOGRAPHER: With there being no further questions, the deposition is concluded. The time now is 7:12 p.m. and

that's indicated on the screen. Thank you very much and have a good night.

- - - -

(Thereupon, the deposition was concluded at 7:12 p.m.)

- - - -

COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
COUNTY OF ALLEGHENY) SS:

I, Tammie Elias, RPR, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, MARK A. PIASIO, M.D., was by me first duly sworn to testify to the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and then reduced to printing under my direction, and constitutes a true record of the testimony given by said witness.

I further certify that the inspection, reading and signing of said deposition were waived by counsel for the respective parties and by the witness.

I further certify that I am not a relative or employee of any of the parties, or a relative or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 22nd day of January, 2008.

_____

Notary Public

EXHIBIT "A"

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January 24 2008

Via Facsimile and U.S. Mail

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Re: Paula Carlson, et al. vs. Jerjis T. Alajaji, M.D., et al.
Docket No. 2006 – 563 GD (Clearfield County)
Our File No. 2895.01

Gentlemen:

Listed below are my proposals for removal of sections of Dr. Piasio's testimony and my withdrawals of objections. Please note the references are from the emailed version of the transcript. I continue to believe that the best way to accomplish our goals which would be to save the Court's time is to work together in good faith over the telephone. I note that I have not heard from anyone regarding voluntary withdrawals or proposals for removals. This, of course, makes it difficult for me in preparing my submissions to the Court.

1. Remove page 19, second line 25, all of pages 20 & 21, and page 22, lines 11 - 25 and 1 - 4

2. Remove pages 31 through 47 and page 47, lines 19 – 25 and 1 – 9

3. Remove page 55, lines 1 – 15 and page 56, lines 16 – 18.

4. Remove page 74, lines 2 - 7

5. Remove page 79, lines 21 & 22

6. Withdraw objection at page 86, lines 16 & 17

EXHIBIT "B"

7. Withdraw objection at page 87, lines 11 & 12

8. Withdraw objection at page 102, lines 9, 20 & 2

9. Withdraw page 110, lines 11, 15 & 16

10. Withdraw page 111, lines 2, 9 & 10

11. Remove page 112, lines 14 – 16 and 6 & 7

12. Withdraw page 116, line 1

13. Withdraw page 118, line 25

14. Withdraw page 122, lines 9 – 19 at the bottom

15. Withdraw page 123 in its entirety

16. Withdraw page 124, lines 1- 18

Thank you for your kind attention to this matter.

Yours truly,

Thomas E. Crenney

TEC/bjw

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO STRIKE PORTIONS OF DR. MARK A. PIASIO'S DEPOSITION** was served by First Class Mail, postage prepaid on the 25th day of January, 2008, as follows:

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Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Plaintiffs' Motion to Strike Portions of Dr. Mark A. Piasio's Deposition is granted.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, it is hereby ORDERED that oral argument on Plaintiffs' Plaintiffs' Motion to Strike Portions of Dr. Mark A. Piasio's Deposition is scheduled for the _____ day of _____, 2008, at _____ o'clock ___.m. before the Honorable Charles C. Brown, Jr. in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION TO SUSTAIN OBJECTIONS AND STRIKE PORTIONS OF JAMES KENKEL, PH.D.'S DEPOSITION

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED NO CC
m/10:18/01
JAN 28 2008
GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' MOTION TO SUSTAIN OBJECTIONS AND STRIKE PORTIONS OF JAMES KENKEL, PH.D.'S DEPOSITION

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion to Sustain Objections and Strike Portions of James Kenkel, Ph.D.'s Deposition as follows:

1. Attached hereto as Exhibit "A" is a list of specific objections that Plaintiff asks the Court to sustain.

2. Plaintiffs have submitted a brief explaining the basis for its objections and why they should be sustained.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court grant this Motion and sustain its objections and strike corresponding portions of James Kenkel, Ph.D.'s deposition.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____
Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/08

A	**Plaintiffs' objections to cross examination regarding whether Ms. Carlson returning to her pre-injury job would affect her wage loss should be sustained on the grounds that the questions were repetitive, irrelevant and intend to prejudice Plaintiffs.**	
	1	p. 59, lines 1-2, 22
	2	p. 60, lines 13-14
	3	p. 62, lines 1 and 13
	4	p. 64, lines 9-10, 21-25, p. 65, lines 1-17
	5	p. 69, line 9
	6	p. 72, line 24
	7	p. 73, lines 13-16 and 25
	8	p. 74, line 4
	9	p. 77, lines 11-13
B	**Plaintiffs' objections to medical questions should be sustained.**	
	10	p. 80, lines 22-23
	11	p. 83, lines 9-10, 13-14, 16-17
	12	p. 93, line 4
	13	p. 94, line 1
C	**Plaintiffs' objections to questions regarding evaluation of lost household services should be sustained as Dr. Kenkel's direct testimony did not include lost household services.**	
	14	p. 87, lines 16-18
	15	p. 88, lines 2-5
	16	p. 111, lines 15-16 and 21
	17	p. 112, lines 3-8
	18	p. 129, lines 1, 9-10, 20, 22-25
	19	p. 131, lines 17-19
D	**Plaintiffs' objection to question violating the collateral source rule should be sustained.**	
	20	p. 92, lines 7 and 13
E	**Plaintiffs' objections to questions implying that Dr. Kenkel was provided with incorrect or incomplete information.**	
	21	p. 75, lines 8-13
	22	p. 76, lines 5-8, 11-14

EXHIBIT "A"

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO SUSTAIN OBJECTIONS AND STRIKE PORTIONS OF JAMES KENKEL, PH.D.'S DEPOSITION** was served by First Class Mail, postage prepaid on the 25th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Plaintiffs' Motion to Sustain Objections and Strike Portions of James Kenkel, Ph.D.'s Deposition is granted.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, it is hereby ORDERED that oral argument on Plaintiffs' Motion to Sustain Objections and Strike Portions of James Kenkel, Ph.D.'s Deposition is scheduled for the _____ day of _____, 2008, at _____ o'clock ___.m. before the Honorable Charles C. Brown, Jr. in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE IN OPPOSITION TO DUBOIS RADIOLOGISTS, INC.'S MOTION IN LIMINE TO PRECLUDE REFERENCES TO INSURANCE AND CONTRACT BETWEEN DUBOIS RADIOLOGISTS, INC. AND DUBOIS REGIONAL MEDICAL CENTER

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED 1cc
JAN 28 2008 Atty Crenney
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE IN OPPOSITION TO DUBOIS RADIOLOGISTS, INC.'S MOTION IN LIMINE TO PRECLUDE REFERENCES TO INSURANCE AND CONTRACT BETWEEN DUBOIS RADIOLOGISTS, INC. AND DUBOIS REGIONAL MEDICAL CENTER

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Response in Opposition to DuBois Radiologists, Inc.'s Motion in Limine to Preclude References to Insurance and Contract Between DuBois Radiologists, Inc. and DuBois Regional Medical Center:

1. Plaintiffs initiated this lawsuit on April 11, 2006. The original complaint named only Dr. Jerjis Alajaji and DuBois Radiologists, Inc. Plaintiffs chose not to include the hospital even though she was advised there was a meritorious ostensible agency case against the hospital.

2. Incident to discovery in the case, it was learned that DuBois Radiologists, Inc., in violation of its contractual duties to the DuBois Regional Medical Center pursuant to its Agreement with Ghazanfar Ali Shah, M.D., P.C., the predecessor of DuBois Radiologists, Inc., had no insurance. See attached as Exhibit "A" Section 6 of the Agreement between DuBois Regional Medical Center and Ghazanfar Ali Shah, M.D., P.C.

3. This meant that there was only $1,000,000 in insurance to cover this loss. Plaintiff's wage loss claim alone is from $1,456,099.64 to $1,692,538.42. Plaintiff was a healthy 33 year old woman in 2005 earning over $65,000 a year at the hospital as a radiation therapist.

4. Plaintiffs felt compelled to join the hospital under these circumstances and reluctantly provided her permission for same to her attorney.

5. On July 24, 2006, an Amended Complaint was filed adding DuBois Regional Medical Center.

6. At the deposition of Plaintiffs' economic expert, Attorney Slimak asked the following question:

> Q Are you aware of the efforts that DuBois Regional Medical Center was making to accommodate and prepare for Ms. Carlson's return to work as a radiation therapist before she sued them?

7. It is believed that Defendants will attempt to disparage Ms. Carlson for suing the hospital.

8. Further, it is believed that the defense will, as it has done already, suggest that Plaintiff sued the hospital because she did not wish to return to work. This is completely false.

9. Plaintiff should be permitted to explain to the jury the reason that she sued the hospital. She should be permitted to state that the insurance situation was key in her making that decision.

10. It is axiomatic in the law that a matter not permitted into evidence for one purpose may be permitted into evidence for another legitimate purpose. While insurance generally is not discussed before the jury, in this case, especially considering the activities of Defendant and

the evidence they wish to present and suggest and the inferences they will suggest be drawn from that evidence, Plaintiff should be permitted to explain why she brought the hospital into the case.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court deny Defendants' Motion and permit the agreement to be put into evidence. Plaintiffs further request that Paula Carlson be permitted to explain that she was required to pursue the hospital because DuBois Radiologists, Inc. did not carry any insurance. In the alternative, Plaintiffs respectfully request that Defendants be precluded from in any manner, testimony or argument, suggesting that it was improper for Paula Carlson to sue her employer or that she did so with any ulterior or collateral motive and all references suggesting same already in the record be stricken.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____
Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/24/08

EXHIBIT A

COPY

DUBOIS REGIONAL MEDICAL CENTER

HOSPITAL AND PHYSICIAN AGREEMENT

PARTIES

DUBOIS REGIONAL MEDICAL CENTER (hereinafter referred to as "Hospital"), and GHAZANFAR ALI SHAH, M.D., P.C., (hereinafter referred to as "Corporation").

DATE

October 1, 1993

PREMISES

Hospital is a Pennsylvania not-for-profit corporation which is exempt from taxation under the Internal Revenue Code. Hospital operates an acute care general hospital at DuBois, Pennsylvania, in which there is located a Department of Radiology (hereinafter referred to as "Department"). Corporation is a Pennsylvania professional corporation. Corporation employs or otherwise retains Physicians who are licensed to practice medicine in the Commonwealth of Pennsylvania, are duly qualified Radiologists (as defined herein), and have met the requirements for membership on the Medical Staff of Hospital (hereinafter referred to as "Corporation's Physicians"). A Physician who practices the medical specialty of Radiology (including its subspecialties) is referred to as a "Radiologist". Hospital and Corporation desire to enter into an Agreement which provides that Corporation has the exclusive right to provide the services of Radiologists at Hospital because such Agreement will be of substantial benefit to Hospital and Corporation in that it will augment the opportunity of Corporation's Physicians to maintain and improve expertise in their specialty; provide consistent training of Hospital's technical staff; result in an accessible pool of medical knowledge in the medical specialty of Radiology for the benefit of the entire Medical Staff; facilitate accurate review of the quality of care in Department; allow for central control of scheduling of Radiology Services (as defined herein), provide for effective and efficient management of Department, provide for full coverage of all Hospital needs for Radiology Services, provide effective and efficient consultation between Department and Medical Staff members, provide effective and efficient supervision of the delivery of Radiology Services, and promote continuity of patient care. Hospital and Corporation desire to

(xix) Participate in establishing and maintaining a quality assurance program acceptable to Hospital and as required by the JCAHO, which shall include a systematic review of the quality, safety, and appropriateness of Radiology services rendered at Hospital.

(c) COMPENSATION. For the services of Medical Director, Hospital shall pay the Medical Director . . per year in equal monthly installments over the year for the first three-year term of this Agreement. If the Corporation exercises its option to renew for an additional two years as per Section 9, the annual Medical Director fee will be renegotiated. Weighing heavily on the renegotiated Medical Director fee will be whether or not the Corporation has interpretation of MRI within its exclusive right to provide radiology services.

SECTION 6. PROFESSIONAL LIABILITY. Corporation agrees at all times to maintain malpractice insurance covering Corporation in such amounts as shall be mutually agreed. In addition, Corporation shall cause each of Corporation's Physicians performing Radiology services required hereunder to maintain professional liability insurance with like limits of liability. When requested, Corporation shall supply Hospital with Certificates of Insurance or other evidence satisfactory to demonstrate that such insurance is in force and effect. If the Medical Director notifies Hospital of a premium increase as a result of the Medical Director's administrative duties hereunder or noncoverage of such duties, Hospital shall reimburse Corporation for and to the extent of the increase or shall provide coverage under Hospital's own risk protection policy.

SECTION 7. BILLING FOR SERVICES.

(a) DIRECT BILLING. At its expense, Corporation shall bill its patients for professional services rendered by Corporation's Physicians.

(b) LEVEL. Fees will reflect the specialty, expertise, and experience of Corporation's Physicians. Periodically, Corporation shall review its fees for each Radiology service and adjust them according to its independent judgment. Such fees shall not inappropriately exceed those available in the surrounding communities. In no event shall the fee for any particular service exceed that which is permissible under applicable regulations. Corporation shall provide written notice to the President of Hospital prior to changing its fees.

(c) FEE SCHEDULE. Corporation shall furnish a copy of its current fee schedule to administration and vice versa. Hospital agrees not to disclose the fees to anyone and

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO DUBOIS RADIOLOGISTS, INC.'S MOTION IN LIMINE TO PRECLUDE REFERENCES TO INSURANCE AND CONTRACT BETWEEN DUBOIS RADIOLOGISTS, INC. AND DUBOIS REGIONAL MEDICAL CENTER** was served by First Class Mail, postage prepaid on the 24 day of JANUARY, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Defendant's Motion in Limine to Preclude References to Insurance and Contract Between DuBois Radiologists, Inc. and DuBois Regional Medical Center having come before the Court, upon consideration thereof and Plaintiffs' response, it is hereby ORDERED that Defendant DuBois Radiologists, Inc.'s Motion in Limine is DENIED and the agreement may be put into evidence. It is further ORDERED that Plaintiffs are permitted to explain that Paula Carlson was required to pursue the hospital because DuBois Radiologists, Inc. did not carry any insurance. In the alternative, Defendants are precluded from in any manner, testimony or argument, suggesting that it was improper for Paula Carlson to sue her employer or that she did so with any ulterior or collateral motive and all references suggesting same already in the record are stricken.

BY THE COURT

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

NOTICE OF SERVICE OF DEPOSITION OF DR. ROSS A. HORSLEY BY WRITTEN INTERROGATORIES

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED No CC
m 11:40 am
JAN 30 2008
William A. Shaw
Prothonotary/Clerk of Courts

No. 2006-563-CD
Clearfield County, Pennsylvania

NOTICE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **NOTICE OF SERVICE OF DEPOSITION OF DR. ROSS A. HORSLEY BY WRITTEN INTERROGATORIES** was served by Facsimile and First Class Mail, postage prepaid on the 28th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

NOTICE OF SERVICE OF DEPOSITION OF DR. RICHARD G. SCHMIDT BY WRITTEN INTERROGATORIES

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED No cc.
m/11:40 cm
JAN 30 2008
William A. Shaw
Prothonotary/Clerk of Courts

No. 2006-563-CD
Clearfield County, Pennsylvania

NOTICE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **NOTICE OF SERVICE OF DEPOSITION OF DR. RICHARD G. SCHMIDT BY WRITTEN INTERROGATORIES** was served by Facsimile and First Class Mail, postage prepaid on the 28th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
MCQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

James Tallman

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

WFW/NDC/msp/DRI-110103

FILED
FEB 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON AND JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. AND DUBOIS RADIOLOGISTS, INC.,

Defendants.

CIVIL DIVISION

No. 2006-563- CD

JURY TRIAL DEMANDED

JOINDER IN MOTIONS IN LIMINE

Filed on Behalf of Defendant, DuBois Radiologists, Inc.

Counsel of Record for this Party:

WALTER FREDRICK WALL, ESQUIRE
PA. I.D. #23657
10 Sheraton Drive
Altoona, PA 16601
Telephone No.: (814) 296-2072
Fax No.: (814) 946-8788

NORMAN D. CALLAN, ESQUIRE
PA I.D. #23518
120 Lakemont Park Boulevard
Altoona, PA 16602
Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON AND JAMIE CARLSON, her husband, Plaintiffs, vs. JERJIS T. ALAJAJI, M.D. AND DUBOIS RADIOLOGISTS, INC., Defendants.	CIVIL DIVISION No. 2006-563- CD JURY TRIAL DEMANDED

JOINDER IN MOTIONS IN LIMINE

NOW COMES the Defendant, DuBois Radiologists, Inc., by and through its counsel, Walter Fredrick Wall, Esquire and files the following Joinder in Motions in Limine filed by Co-Defendants.

Defendant hereby joins in all Motions in Limine filed by Co-Defendants, except to the extent that the Defendant has filed or articulates in oral argument that it does not wish to be included as a moving party with respect to one or more Motions. As to all other Motions, however, Defendant hereby incorporates said Motions by reference.

Respectfully submitted,

BY: _____

WALTER FREDRICK WALL, ESQUIRE
Counsel for Defendant, DuBois Radiologists, Inc.
10 Sheraton Drive
Altoona, PA 16601
Phone No.: (814) 296-2072
ID # 23657
NORMAN D. CALLAN, ESQUIRE
Counsel for Defendant, DuBois Radiologists, Inc.
120 Lakemont Park Blvd.
Altoona, PA 16602
Phone No.: (814) 941-4600
ID #23518

CERTIFICATE OF SERVICE

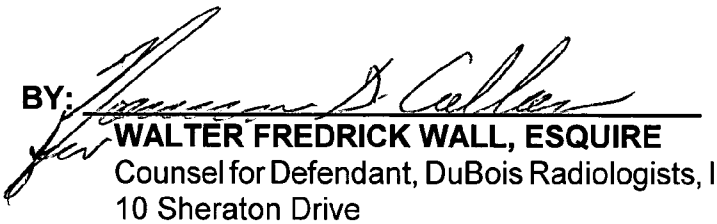
TO THE PROTHONOTARY:

I, Walter Fredrick Wall, Esquire, hereby certify that on this **4th day of February, 2008**, I have served the foregoing Joinder in Motions of Limine of Co-Defendants on behalf of Defendant, DuBois Radiologists, Inc., upon all counsel/parties of record, by mailing a true and correct copy of same by United States first class mail, postage prepaid as follows:

Thomas E. Crenney, Esquire
One Gateway Center
18th Floor West
Pittsburgh, PA 15222

Darryl Slimak, Esquire
McQuaide Blasko
811 University Drive
State College, Pennsylvania

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

BY: 

WALTER FREDRICK WALL, ESQUIRE
Counsel for Defendant, DuBois Radiologists, Inc.
10 Sheraton Drive
Altoona, PA 16601
Phone No.: (814) 296-2072
ID # 23657
NORMAN D. CALLAN, ESQUIRE
Counsel for Defendant, DuBois Radiologists, Inc.
120 Lakemont Park Blvd.
Altoona, PA 16602
Phone No.: (814) 941-4600
ID #23518

FILED
FEB 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Response and Brief Regarding Plaintiffs' Motion in Limine Re Plaintiff Paula Carlson's Receipt of Social Security Benefits

Filed on Behalf of Defendant
Jerjis T. Alajaji, M.D.

Counsel of Record for This Party
Darryl R. Slimak, Esquire
Pa. Supreme Court I.D. #41695

McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Counsel for Adverse Party
Thomas E. Crenney, Esquire

FILED NO cc
m/11:18 BY
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S RESPONSE AND BRIEF REGARDING PLAINTIFFS' MOTION IN LIMINE RE PLAINTIFF PAULA CARLSON'S RECEIPT OF SOCIAL SECURITY BENEFITS

1-3. Plaintiffs hypocritically seek to preclude the Defense from offering evidence of Plaintiff's receipt of Social Security benefits, but yet, Plaintiffs have submitted two expert reports attempting to introduce such evidence at the trial of this matter. Thus, in response to Plaintiffs' Motion in Limine regarding her having obtained Social Security Disability benefits, Dr. Alajaji responds by incorporating herein by reference his own separately field Motion in Limine and Brief to preclude Plaintiffs from introducing any evidence of Mrs. Carlson's receipt of Social Security benefits or the Administrative Decision related thereto. As such, Defendant Dr. Alajaji's and Plaintiffs' Motions in Limine should be granted to the extent that Defendant Dr. Alajaji does not intend to reference Mrs. Carlson's receipt of Social Security benefits. However, if Plaintiffs contend at trial that Mrs. Carlson is only working part time at Red Lobster at or about minimum wage because she is disabled from greater work, Defendant reserves the right to introduce evidence of her receipt of Social Security benefits in that the receipt of such income is

her disincentive to not work greater hours in that same would affect the amount of her Social Security benefits and/or her eligibility for same. Such evidence would also affect Mrs. Carlson's credibility regarding the reasons why she is not working full time at present.

WHEREFORE, Defendant Dr. Alajaji respectfully requests that Dr. Alajaji's and Plaintiffs' Motions in Limine with regard to Mrs. Carlson's receipt of Social Security benefits be granted to the extent as noted hereinbefore.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

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Dated: 2-6-2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant Dr. Alajaji's Response to Plaintiffs' Motion in Limine Re Plaintiff's Receipt of Social Security Benefits in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 6th day of February, 2008, to the attorney(s) of record:

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CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Response and Brief in Opposition to Plaintiffs' Motion in Limine to Limit Testimony of Defense Expert Dr. Ross Horsley Regarding Liability and Causation Issues Pertaining to Physician's Assistant Natoli's and Dr. Graeca's Care of Plaintiff Paula Carlson

Filed on Behalf of Defendant
Jerjis T. Alajaji, M.D.

Counsel of Record for This Party
Darryl R. Slimak, Esquire
Pa. Supreme Court I.D. #41695

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Counsel for Adverse Party
Thomas E. Crenney, Esquire

FILED NO CC
FEB 07 2006
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S RESPONSE AND BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO LIMIT TESTIMONY OF DEFENSE EXPERT DR. ROSS HORSLEY REGARDING LIABILITY AND CAUSATION ISSUES PERTAINING TO PHYSICIAN'S ASSISTANT NATOLI'S AND DR. GRAECA'S CARE OF PLAINTIFF PAULA CARLSON

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and files the following Response and Brief in Opposition to Plaintiffs' Motion in Limine:

1. The averments in Plaintiffs' motion paragraph 1 are admitted that the MCARE Act so provides in part, albeit Plaintiffs' summary of MCARE is grossly insufficient and incomplete. By way of a further response, it is averred that not only **does** Defense expert, Dr. Horsley, in fact practice in the same subspecialty as the Defendant physician, Dr. Alajaji, he also has training and substantial familiarity and experience as a general medical practitioner such as Dr. Graeca and Physician's Assistant Natoli, albeit they are not parties to this case such as that MCARE Act does not, on its face, apply to testimony regarding them in any event.

2. It is admitted that Dr. Horsley has prepared an 11 page report attached to Plaintiffs' Motion, with the clarification that Dr. Horsley is not only a general radiologist, but also has received training and practice as a general practioner physician, as reflected in part on his curriculum vitae attached hereto as Exhibit "A." Plaintiffs' motion ignores this fact.

3. The averments of paragraph 3 are denied as stated. *See* prior responses. Dr. Horsley is clearly qualified to express the professional opinions set forth in his report under Pennsylvania law and the facts of this case. In addition, Dr. Horsley's report reviews the care and treatment primarily of Physician's Assistant, Lorie Natoli, from April 11 through June 31, 2005, and general practitioner Dr. Graeca's care from June 1 until June 9, 2005 when orthopedic surgeon Dr. Piasio diagnosed the giant cell tumor at issue in this case. The purpose of said review of such care is not *per se* to testify that either Physician's Assistant Natoli or Dr. Graeca violated standards of care, for indeed they are non-parties to this case, but as Dr. Horsley explicitly states in his report, their consideration and pursuit of diagnoses which were ill-considered under with the facts of the case caused a material delay in diagnosing Plaintiff's bone tumor until they finally made a referral of their patient to Dr. Piasio who immediately was able to diagnose her condition when he saw her June 9th.

4-8. The averments of paragraphs 4 through 8, inclusive, are woefully incomplete and misleading as to the pertinent facts of the case. In fact, they are demonstrably incorrect. For instance, in paragraph 5, it is alleged that Paula Carlson supposedly presented to her primary care physician, Dr. Graeca, on April 12, 2005 complaining of wrist pain. The fact of the matter is that she was **never** seen by Dr. Graeca until June 1st. Prior to that time, she was only seen and evaluated by Physician's Assistant Natoli. Moreover, Dr. Graeca never ordered any x-ray as Plaintiffs' allege, rather, Physician's Assistant Natoli did so. In addition, contrary to Plaintiffs'

incorrect allegation, said x-ray was interpreted by Dr. Alajaji on April 13th as "negative", and he did not describe same as "normal." Plaintiffs are also incorrect in asserting that "only" Dr. Alajaji and Dr. Horsley agree that Dr. Alajaji did not violate any standards of care in interpreting the x-rays at issue. Moreover, it is irrelevant whether Plaintiffs' specially retained experts or any subsequent treaters/specially retained experts criticize Dr. Alajaji's interpretation of the x-rays. Dr. Alajaji has and will at trial defend his interpretation of the x-rays as within the standards of care and not error, with which contention Defense specially retained expert, Dr. Horsley, agrees, as does Defense expert, Dr. Richard Schmidt. It is further irrelevant whether primary care physician Dr. Graeca, who did not read the x-ray, assumed that Dr. Alajaji's interpretation was correct or not correct as there is no indication in Dr. Graeca's records that he ever looked at Dr. Alajaji's report of interpretation of the x-ray and indeed, he was never involved in the patient's care for nearly the first two months.

9. The averments of paragraph 9 are denied as stated. Dr. Horsley's report speaks for itself and Plaintiffs' attempts to rewrite or mischaracterize same are not only incorrect but irrelevant. Plaintiffs misconstrue the purposes for and content of Dr. Horsley's report. *See* prior responses.

10. Plaintiffs' averments regarding orthopedic surgeon specialist Dr. Piasio's review and interpretation of the x-ray of April 12th is irrelevant. Moreover, Dr. Piasio is of a different medical specialty than Dr. Alajaji and Dr. Horsley and has special qualifications and experience in identifying giant cell bone tumors, which is an exceedingly rare condition. There is no relevance to Dr. Piasio's opinions as regards the issue of whether Dr. Horsley is qualified to testify as set forth in his report. Indeed, in his trial deposition testimony Dr. Piasio indicated that regardless of the opinions he holds with regards to how the April 12th x-ray should be interpreted,

he specifically stated in his deposition he is not a radiologist and is **not** qualified to testify as to the radiologist's standard of care. *See* Dr. Piasio's deposition testimony at pp. 51-52, copies attached hereto as Exhibit "B."[1]

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[1] The attached pages of Dr. Piasio's deposition testimony **taken by Plaintiffs' counsel** on January 22, 2008, indicate as follows:

> A. Dr. Piasio is an orthopedic surgeon at DuBois Regional Medical Center which specializes in diseases of the bones and joints. (pp. 5-7)
>
> B. Dr. Piasio, like Dr. Yaw, but different than Dr. Alajaji, has undergone extensive training in orthopedic specialty residency programs. (pp. 5-7, 10, 67-68). He also had a specific interest in, and received specialized advanced training and conducted research during his orthopedic residency program on, evaluation and diagnosis of giant cell tumors. (pp. 72-73).

Plaintiffs' counsel sought to qualify and have orthopedic surgeon Dr. Piasio, who was able to diagnose the April 12, 2005 x-ray as possibly showing a giant cell tumor, testify as an expert against Dr. Alajaji. (*See, e.g.*, p. 51). However, Dr. Piasio clearly and unequivocally confirmed and stated that **as an orthopedic surgeon, he is not qualified to comment on the standard of care of a radiologist**. Id.

Specifically, Dr. Piasio indicated as follows:

> MR. CRENNEY:
>
> Q: Doctor, you specifically do not wish to give an opinion in this case on standards of care; correct?
>
> A: The two standards upon which I would be asked, one radiology, **I am not a radiologist. I'm an orthopedic surgeon, and so I cannot comment on the standard of care of a radiologist.** Two, I am a general orthopedic surgeon, I am trained in tumor and have to answer questions in tumor, but I don't specifically treat tumor, nor did I have subspecialty training in musculoskeletal management, although it is not foreign to me. I can testify as a generalist that understands and knows treatment of tumor, but not as a subspecialist in that (continued . . .)

(. . . continued) regard. So I would want everyone to understand what the level of - - the level of my - - my level of expertise is. (Id. at page 51-52.)

In his testimony, Dr. Piasio also confirmed distinctions in the practice of orthopedic surgeons and radiologists. The distinctions include the fact that it is helpful to an orthopedic surgeon such as himself "in an attempt to reach a diagnosis, to have the ability to personally examine the patient, take a history of the patient's condition from the patient, ask the patient questions, and to order and obtain and review the various studies and tests. . . ." (pp. 69-71).

Dr. Piasio also stated that a giant cell tumor is quite rare (p. 71), and Dr. Piasio had never seen one of the radius bone of the wrist in 20 years of practice but in his subspecialty training, he had been trained specifically on giant cell tumors and actually underwent a tumor modeling research focused specifically on giant cell tumors which trained him to diagnose and recognize them. (pp. 72-73).

Dr. Piasio also testified that as an orthopedic specialist with such training in giant cell tumor diagnosis, the practice of his profession is quite different than what a radiologist does because "a radiologist generally doesn't have an opportunity to see a patient." (pp. 69-70). When asked regarding plain x-rays, he indicated, "They (a radiologist) would not see a patient." (p. 70). Also, he reconfirmed that as an orthopedic surgeon, he gets to personally see the patient, take a history from the patient, examine the patient, order and pull up and review x-rays or MRI's or other imaging studies, make a diagnosis and treat the patient, which a radiologist does not. (pp. 69-70).

The ability to do these things in an attempt to reach a diagnosis is something that he finds "helpful," as an orthopedic surgeon. (pp. 70-71).

Dr. Piasio also testified that as between even Board Certified Orthopedic Surgeons, they can have differences of opinion as to what an x-ray film does or does not show. (p. 88). In addition, he was asked:

Q: Is that the way that it is with these standard basic x-rays, that sometimes you are not certain of what you are seeing with that particular study, it can be interpreted different ways?

A: We may disagree on readings, yes. We don't always - -

Dr. Piasio also testified as follows:

Q: And in between specialties, they can have differences of opinion: correct? (continued . . .)

(. . . continued)

A: I would venture to say that we may disagree on things, yes.

Q: And does that happen to you over time in your practice?

A: Yes.

Q: Over the years here at DuBois Regional Medical Center as well as in your training?

A: Absolutely.

Q: And your training was at these other institutions that you have talked about earlier; correct.

A: That's right.

Q: Were you still trying to do a good job even though someone else disagreed with you?

A: On?

Q: Interpretation.

A: You mean in life or - -

Q: Interpretation of films, I'm sorry.

A: I was doing my job.

Q: Thank you.

A: Although if my care is going to be on trial here, then I may need representation, which I don't have. (Id. at pp. 88-89).

As demonstrated in Dr. Piasio's deposition taken by Plaintiffs for trial, even Board Certified Orthopedic Surgeon Dr. Piasio, who is also head of the Pennsylvania Medical Society, has unequivocally indicated in his testimony given for Plaintiffs' case in chief that **orthopedic surgeons are not qualified to testify as to the standards of care of a Board Certified Radiologist, they undergo different training, have different experiences and qualifications, and the nature of their practices and how they go about same and what information they are or are not given in an attempt to make a diagnosis based on x-ray films is vastly different.**

11. The averments of motion paragraph 11 are admitted only that same set forth isolated portions of Dr. Horsley's report. There is nothing contained therein or in any other part of Dr. Horsley's report which preclude Dr. Horsley from being qualified to testify as regards to same. Indeed, even the portions cited indicate that Dr. Horsley's report is discussing what the material cause of delay was in reaching the proper diagnosis, which is not Dr. Alajaji's interpretation of the initial x-ray, but clinician treating physician Natoli and/or Graeca's diversion into other diagnoses which were not warranted under the circumstances. Moreover, Dr. Horsley's discussion of the issues makes clear that in this context, he is discussing the radiologist's standard of care in that Dr. Alajaji was not provided with the basic factual information that clinician Physician's Assistant Natoli and/or primary care physician Dr. Graeca had available to them in order to assist Dr. Alajaji in making a proper radiologic diagnosis or recommendations for additional, more definitive studies in order to discern the pathology precipitating the Plaintiff's symptomatology. Indeed Plaintiffs' own radiology expert, Dr. Cooperstein, contends in his report that Defendant radiologist Dr. Alajaji should have made care recommendations to the Physician's Assistant Natoli and primary care physician Dr. Graeca. See report attached hereto as Exhibit "C." Thus, Plaintiffs' contentions are hypocritical to contend that the Defense expert cannot address the care of the physician's assistant and primary care physician. In this regard, Dr. Horsley is thus responding to criticism of Plaintiffs' radiology expert Dr. Cooperstein by indicating the division of responsibility between the clinicians and the radiologist with regard to standards of care for interpretations of x-rays and diagnosing a patient's condition. Indeed, Plaintiff's radiologist expert, Dr. Cooperstein, appears to contend in his report that it is incumbent on the radiologist to direct the care and treatment decisions and tests ordered by clinicians PA-Natoli and Dr. Graeca, a position which Dr. Alajaji and Dr.

Horsley adamantly disagree. As such, Defense expert Dr. Horsley, as a general practitioner physician as well as a radiologist, must be permitted to respond to such contentions by Plaintiffs' experts.

12-14. The averments of paragraphs 12 through 14, inclusive, are incorrect legal assertions of Plaintiffs and therefore denied. Dr. Horsley is qualified to testify as regards issues of causation, radiologic diagnoses, and the differentiation between the practice of a family physician/physician's assistant and a radiologist. Moreover, Dr. Horsley's contentions are specifically directed to counter the contentions of Plaintiffs' radiology expert, Dr. Cooperstein in said regards, and it is thus wholly appropriate and directly on point for Dr. Horsley's testimony to be presented to the jury in this matter. Plaintiffs are not entitled to direct or limit the focus of a Defendant's defense just because they do not like the defense experts' opinions and want to keep out same merely because it is contrary or damaging to Plaintiffs' theories of the case. By way of further response, *see* Defendant's Brief regarding Dr. Horsley's testimony, which is being field concurrently herewith.

WHEREFORE, Plaintiffs' Motion in Limine seeking to limit Dr. Horsley's testimony must be denied.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

Darryl R. Slimak
Attorneys for Defendant
JERJIS T. ALAJAJI, M.D.
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Dated: 2-6-2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant Dr. Alajaji's Response and Brief in Opposition to Plaintiffs' Motion in Limine to Limit Testimony of Defense Expert Dr. Ross Horsley Regarding Liability and Causation Issues Pertaining to Physician's Assistant Natoli's and Dr. Graeca's Care of Plaintiff Paula Carlson in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 6th day of February, 2008, to the attorney(s) of record:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
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David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
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FLEMING & FAULKNER, INC.

By: _____

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EXHIBIT A

CIRRICULUM VITAE

NAME: ROSS A. HORSLEY, M.D.

ADDRESS: 13 UPLAND TERRACE, ALLEGANY, NY 14706

DATE OF BIRTH: MARCH 29, 1953

PLACE OF BIRTH: MADISON, TENNESSEE

MARITAL STATUS: MARRIED, FOUR CHILDREN

EDUCATION:

COLLEGE: ATLANTIC UNION COLLEGE
SOUTH LANCASTER, MASS 01561
B.A. DEGREE 1974

MEDICAL:

1. 1976-1978 UNIVERSIDAD AUTONOMA DE CIUDAD JUAREZ, JUAREZ, CHIH., MEXICO

2. 1978-1979 AMERICAN UNIVERSITY OF THE CARIBBEAN, PLYMOUTH, MONTSERRAT BRITISH WEST INDIES
M.D. DEGREE DECEMBER 1979

POST GRADUATE MEDICAL:

FLEXIBLE INTERNSHIP: JANUARY 1980 TO JANUARY 1981
AT C.S WILSON MEMORIAL HOSPITAL
33-57 HARRISON ST, JOHNSON CITY, NY 13790

DIAGNOSTIC RADIOLOGY RESIDENCY: JANUARY 1981 TO DECEMBER 31, 1983
ALBANY MEDICAL COLLEGE
NEW SCOTLAND AVE.
ALBANY, NY 12208

EXAMINATIONS;

ABR CERTIFIED-1987
ECFMG-1979
FLEX- 1980

LICENSURE:

KENTUCKY # 39869
MASSACHUSETTS# 347574
NEW YORK # 153020
PENNSYLVANIA # 038835

PRACTICE;

ST. FRANCIS HOSPITAL&
OLEAN GENERAL HOSPITAL
OLEAN, NY
1984-1990

BRADFORD HOSPITAL
BRADFORD, PA.
1988-2005

CUBA MEMORIAL HOSPITAL
CUBA, NY
2006-Present

OLEAN OPEN MRI
OLEAN, NY
2001-Present

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

- vs -

JERJIS T. ALAJAJI, M.D., DuBOIS RADIOLOGISTS, INC., and DuBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

VIDEOTAPE
DEPOSITION OF:
MARK A. PIASIO, M.D.

DEPOSITION TAKEN:
January 22, 2008
Tuesday, 4:16 p.m.

CERTIFIED TRANSCRIPT

FILED ON BEHALF OF:
Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY:
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412-644-5545

REPORTED BY:
Tammie Elias, RPR
Notary Public
AKF Ref. No. TE04821

proceed.

- - - -

MARK A. PIASIO, M.D.,

having been duly sworn,

was examined and testified as follows

- - - -

EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, could you state your name?

A. Mark A. Piasio.

Q. And what is your profession?

A. I am an orthopedic surgeon at DuBois Regional Medical Center.

Q. And what is your office address?

A. 145 Hospital avenue, Suite 311, DuBois, Pennsylvania.

Q. Where did you go to college?

A. Johns Hopkins.

Q. And where did you go to medical school?

A. Georgetown University.

Q. And could you just tell us about your medical training after you got out of medical school?

A. I spent two years at the Washington Hospital Center in general surgery, four years at Tufts University in orthopedic surgery and six

months at the New England Baptist Hospital in spine surgery.

Q. What's orthopedics generally?

A. Bone and joint.

Q. Are you a surgeon, are you an orthopedic surgeon?

A. Yes.

Q. Could you tell us about your average week? I realize probably there's no average week, but generally how you spend your time in terms of clinical, administrative, teaching, things that you do?

A. My job is a little bit more unique. At least over the past couple of years, I have had more administrative work, but generally speaking I would probably as chief of surgery here spend maybe ten percent of my time in administrative duties. When I occasionally have students, five to ten percent of my time in that and about 80 percent of my time in clinical duties. Of that time, I would put in maybe now about eight or nine, maybe eight hours of surgery a week and 30, 40 hours of clinical, of office based orthopedics.

Q. When you say here, what hospital are you

referring to?

A. At DuBois, at DuBois Regional Medical Center.

Q. And are you chief of surgery at DuBois Regional Medical Center?

A. Yes, I am.

Q. How long have you held that position?

A. I believe it's seven or eight years.

Q. Did you also at least for a time work at Clearfield Hospital?

A. I worked at Clearfield from 1989 through 1997.

Q. And what did you do over there?

A. Was an orthopedic surgeon and I was the chairman of the quality assurance committee.

Q. Are you board certified?

A. Yes.

Q. What's board certification and how do you become board certified?

A. I can only speak from the prospective of the M.D.s. The D.O.s have their own certification process of which I'm not familiar. On the M.D. process in the specialty of orthopedic surgery, which I'm familiar, when you finish your orthopedic residency, if it's accredited and you complete it and you're given accreditation from your training program, you

Q. Doctor, have you written learned articles or have you published in your field?

A. I have, but not extensively. It's not been the thrust of my professional career.

Q. And do you commonly treat patients for orthopedic problems, problems involving their bones and joints?

A. Yes, I do. I would consider myself, although subspecialty trained, I'm a general orthopedic surgeon.

Q. What's your subspecialty training in?

A. I was trained in spine.

MR. CRENNEY: Are there questions on qualifications?

MR. SLIMAK: I reserve my questions until later.

- - - -

CONTINUED EXAMINATION

- - - -

BY MR. CRENNEY:

Q. Doctor, when did you first see Paula Carlson?

A. For accuracy I'm going to go to the chart because I don't know off the top of my head. In my chart I have here that I saw her first June 9th, 2005.

you have done --

MR. CRENNEY: I'm going to move on.

MR. SLIMAK: Does not make it disingenuous for you to deny it.

MR. CRENNEY: I'm going to move on and talk to you maybe after the deposition about what I think is the appropriate action in this case. These other guys don't want to listen to this, I'm sure the judge won't want to listen to it either.

BY MR. CRENNEY:

Q. Doctor, you specifically do not wish to give an opinion in this case on standard of care; correct?

A. The two standards upon which I would be asked, one radiology, I am not a radiologist. I'm an orthopedic surgeon, and so I cannot comment on the standard of care of a radiologist. Two, I am a general orthopedic surgeon, I am trained in tumor and have to answer questions in tumor, but I don't specifically treat tumor, nor did I have subspecialty training in musculoskeletal management, although it is not foreign to me.

I can testify as a generalist that

understands and knows treatment of tumor, but not as a subspecialist in that regard. So I would want everyone to understand what the level of -- the level of my -- my level of expertise is.

Q. Well, Doctor, you read Schmidt's report and you know he said that Yaw's surgery was the wrong surgery to do and that the allograph would have been the right surgery. And my question to you, do you feel comfortable in your -- do you feel comfortable in answering the question, were both reasonable options, that's all I'm asking you?

MR. WALL: I'm going to object for the record. Can we have a continuing objection to every opinion you're seeking of him regards any other doctor's report?

MR. CRENNEY: In regards to these reports he has received, sure, Mr. Wall, absolutely.

MR. SLIMAK: I want to renew my objections on the same basis as previously stated.

MR. JOHNSON: I object on the basis that it's not an issue of whether the Doctor

Q. Did I indicate in my letter that was not read out into the record previously, that I sent them to you in the interest of fairness and understanding, that I included the reports of both parties experts; correct?

A. Correct.

MR. JOHNSON: So that I may preserve my objections, I object to any questioning at this time regarding those letters as well.

MR. SLIMAK: I'm only asking those questions because right now we have a videotape record that Mr. Crenney has asked questions about that were duly objected to.

MR. JOHNSON: I understand. I just didn't want there to be any inference of a waiver.

MR. SLIMAK: I understand. There is none.

BY MR. SLIMAK:

Q. Now, let me ask you some questions about Paula Carlson's care that you were involved with, okay, plus I want to ask you some questions about your background, experience in this area. I think you indicated previously in your testimony that you're not qualified to

give testimony as to the standard of care of a radiologist; correct?

A. I believe that's correct.

Q. Yes. And your training in board certification and medical practice is as an orthopedic surgeon; correct?

A. Correct.

Q. And I think you went through aspects of your qualifications as I take it you have some very extensive specialized training as an orthopedic surgeon; correct?

A. Yes.

Q. And then you went onto specialize in fellowship training in the area of orthopedic surgery or orthopedics; correct?

A. Yes.

Q. And what was that area again?

A. Spine.

Q. The spine. And then since your practice, you focused in on general orthopedic surgery I think you testified to; correct?

A. That's correct.

Q. Am I correct that you do not hold yourself out as an orthopedic subspecialist in bone tumors?

A. Correct.

Q. In fact, if one of those would develop or be seen or thought to be there in your practice, you would make a referral out to someone else; correct?

A. I would make a referral for definitive treatment, yes.

Q. Yes. And because you're in Clearfield, do you typically refer toward the Pittsburgh area rather than the Philadelphia area?

A. That's closer, yes.

Q. Closer for your patients; correct?

A. Right.

Q. And so that's the usual direction you would send them; correct?

A. Usual and I'm very comfortable with the care they receive.

Q. I understand. Now, with regard to your practice, do you get to personally see the patient and take a history from the patient, examine the patient, order and pull up a review x-rays or MRIs or other imaging studies, make a diagnosis and treat the patient, is that how you go about your practice?

A. Pretty much, right.

Q. And based on your experience, is that different than what a radiologist does?
A. A radiologist generally doesn't have an opportunity to see a patient.
Q. Okay.
A. Unless they are doing invasive procedure or something of that nature.
Q. But a plain x-ray is not an invasive procedure; correct?
A. Correct. They would not see a patient.
Q. Have there been any times in your practice over the years where you could not make a diagnosis based on standard x-rays alone and had to either repeat the x-ray sometime later to compare and see if anything had changed or order other imaging studies, such as an MRI, CT scan in order to help you diagnose your patient?
A. Certainly.
Q. Do you agree that is helpful to an orthopedic surgeon such as yourself in an attempt to reach a diagnosis, to have the ability to personally examine the patient, take a history of the patient's condition from the patient, ask the patient questions, and to order and

obtain and review the various studies and tests, do you find that helpful?

A. Yes, sure.

Q. Now, do you agree giant cell tumor is a rare condition?

A. Yes.

Q. Prior to Mrs. Carlson's situation, had you ever personally seen and diagnosed a giant cell tumor of the radius bone in your practice at DuBois Regional Medical Center?

A. Not of the radius bone.

Q. How many patients have you seen over the years with some types of wrist pain?

A. Wrist pain?

Q. Yes.

A. Hundreds, thousands.

Q. How many years have you been in practice here?

A. 20 years.

Q. And over all of that time, there have never been a giant cell tumor of the wrist?

A. Of the wrist?

Q. Yes.

A. No.

Q. I'm correct? I just want to clarify what your answer is? I believe that's what you were

saying earlier.

A. I would have to surmise a response because I can't say for sure what I did over 20 years. I can't recall anyone specifically, but I can't say for a fact that I have never seen a giant cell of the wrist in my practice.

Q. In your training, had you been trained on giant cell tumors specifically?

A. Yes.

Q. And had you seen them in your residency training as an orthopedic surgeon with the advanced training that you underwent?

A. Yes.

Q. Had you seen them in advanced stages?

A. Advanced stages?

Q. Yes.

A. No.

Q. Had you seen them --

A. Well, I really don't recall. That's quite awhile back. I can't remember all the cases I had as a resident.

Q. Do you recall in your training, and you trained at where, Johns Hopkins, where else?

A. I went undergrad at Johns Hopkins.

Q. Where else?

A. I trained at the Washington Hospital Center in general surgery, Tufts University in orthopedics and the New England Baptist Hospital in spine.

Q. At some of those facilities, had you been introduced in some fashion to giant cell tumors that a patient had happened to come in?

A. I have seen them at some point in my residency training and actually did some tumor modeling research at IH when I was in Washington on giant cells.

Q. So at some point in your past career, you had some specific interest in giant cell tumors to whatever degree you have just been talking about?

A. I was certainly trained to diagnose and recognize them.

Q. Specifically giant cell tumors; correct?

A. Yes. Well, yeah, most tumors. I had a complete residency.

Q. Are there some classic characteristics of a giant cell tumor that you had received specific training in looking for?

A. There are some characteristics of them that would make one think of one.

over that isn't quite all the way eaten, which is why I believe I said may.

Q. I know you didn't say may, but you did say there appears to be?

A. Appears to be, okay.

Q. So I can take that as a may, okay?

A. Okay.

Q. Is that the way that it is with these standard basic x-rays, that sometimes you're not certain of what you're seeing with that particular study, it can be interpreted different ways?

A. We may disagree on readings, yes. We don't always --

Q. You don't mean you and I, you mean professionals in your field?

A. Sure.

Q. Even between board certified orthopedic surgeons, they can have differences of opinions of what a film does or doesn't show; correct?

A. Correct.

Q. And in between specialties they can have differences of opinion; correct?

A. I would venture to say that we may disagree on

things, yes.

Q. And does that happen to you over time in your practice?

A. Yes.

Q. Over the years here at DuBois Regional Medical Center as well as in your training?

A. Absolutely.

Q. And your training was at these other institutions that you have talked about earlier; correct?

A. That's right.

Q. Were you still trying to do a good job even though someone else disagreed with you?

A. On?

Q. Interpretation?

A. You mean in life or --

Q. Interpretation of films, I'm sorry?

A. I was doing my job.

Q. Thank you.

A. Although if my care is going to be on trial here, then I may need representation, which I don't have.

Q. I'm not suggesting that in any way.

A. I just want to make sure if we're going to get to that. I'm just trying to --

EXHIBIT C

Titusville Area Hospital

March 25, 2007

Thomas E. Crenney
Attorney at Law
One Gateway Center
18th Floor-West
Pittsburgh, PA 15222

Dear Mr. Crenney,

As to the radiographs of the right wrist of Paula Carlson, dated April 12, 2005, I would have dictated the following report had I read them in my normal course of work.

"Multiple views of the right wrist demonstrate a lucent lesion in the distal radius. The lesion is slightly greater than one centimeter in size and extends to the end of the bone. There is no cortical erosion and no extra-osseous extension is evident. The lesion is uniformly lucent and contains no calcification or ossification. Proximally, the lesion has a poorly defined border. No other abnormality can be identified. There is no pathologic fracture.

Based on the appearance of the lesion and the patient's age, the leading consideration is giant cell tumor. Other etiologies however, both benign and malignant, are possible. Further imaging with a bone scan and MRI are recommended to evaluate this further. Biopsy/excision will most likely be needed for definitive diagnosis.

Impression: Lucent lesion distal radius. The leading differential diagnostic consideration is giant cell tumor. Further imaging is recommended."

I have also read the depositions of Dr. Shah and Dr. Alajaji. Having read these depositions, my opinions expressed in my letter to you dated May 7, 2005 have not changed.

Sincerely,

Lawrence Cooperstein, M.D.

406 West Oak Street
Titusville, Pennsylvania 16354
(814) 827-1851

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Response* and Brief *in Opposition to Plaintiffs' Motion in Limine to Exclude Paula Carlson's Pertinent Past Health History

Filed on Behalf of Defendant
Jerjis T. Alajaji, M.D.

Counsel of Record for This Party
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FILED NO CC
m/11:18 BA
FEB 17
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S RESPONSE AND BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE PAULA CARLSON'S PERTINENT PAST HEALTH HISTORY

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc., and responds in opposition to Plaintiffs' Motion o Limine as follows:

1. It is admitted that Plaintiffs' allege a misreading of an April 12, 2005 x-ray report of a tumor in Mrs. Carlson's right wrist.

2-8. The averments of paragraphs 2 through 7, inclusive, are misleading and incomplete as stated, and in any event are immaterial as regards the issue presented by the Plaintiffs' Motion in Limine. It is flatly incorrect for Plaintiffs to contend in paragraph 15 that the evidence is supposedly "uncontroverted," that "Mrs. Carlson, in fact was performing her job and was in very good health." Indeed, the medical evidence and Mrs. Carlson's own sworn deposition admissions prove to the contrary. The ability of Mrs. Carlson to perform the job of a radiation therapist at the time of her hire **in 1992**, and subsequent receipt of "good employee"

evaluations, or who underwent annual physicals which assessed her to be generally healthy, in no way precludes the introduction of critically relevant evidence that Plaintiffs' motion ignores, that supports the contention of the Defendants, including the opinions of Defendants' vocational expert Ronald Kushner and medical expert Ross Horsley, M.D., that Mrs. Carlson's past medical history and other pertinent evidence demonstrate that Mrs. Carlson could not continue indefinitely in the job she held as a radiation therapist at the time she developed a bone tumor, which supports Defendants' contentions that Plaintiffs' economic/work loss claims are grossly overstated. The evidence Plaintiffs ignore includes the fact that Mrs. Carlson testified in her deposition that even prior to development of her bone tumor she has suffered work related injuries to her back and neck, including a herniated disc, which have caused her to miss work and/or modify the way she performs the work in order to have continued working up through the date she left work following her development of a bone tumor in her wrist. *See* deposition of Paula Carlson at p. 27-29; 40; 102-106, attached hereto as Exhibit "A" (the radiation therapists worked in teams and switched off as regards weight lifting duties; she herniated her neck lifting patients in the past and had to undergo medical care and missed work; this caused her to have to alter the way she went about her job, particularly trying to avoid lifting and getting greater assistance from her team members; she had also injured her low back at work as a radiation therapist). S*ee also* office records of Dr. Graeca attached hereto as Exhibit "B," confirming the notations in the report of Dr. Ross A. Horsley, copy attached herewith as Exhibit "C," summarizing her past medical history and how her past work-related neck and back injuries had in the past and were expected in the future to affect her abilities to continue in the job as a radiation therapist that would, irrespective of her having developed a bone tumor of her wrist in the interim, have required changes in and/or accommodations by the employer of her resulting

limitations and disabilities, and/or led to progressively worsening debilitation of her neck and back. Said records and expert medical reports further demonstrate that based on a subsequent cervical neck MRI, there is in fact objective worsening of Mrs. Carlson's neck degenerative disc disease with bone spurs developing. As summarized in Dr. Horsley's expert report attached hereto as Exhibit "C":

> The records document that Mrs. Carlson underwent evaluation at DRMC Employee Health before starting her radiation therapist position in 1992, with significantly low results on strength testing.
>
> Paula Carlson presented originally to Dr. Graeca on September 3, 2002, to establish herself as his patient. At that time, she was 31 years of age and was complaining of several months of low back pain. The pain was aggravated by her work as a radiation therapist. Curling up in a fetal position seemed to help. She had also had chronic urinary tract infections and had a herniated disc in her cervical spine confirmed by MRI, also caused or aggravated by her work as a radiation therapist. She had a history of mood swings requiring medication, and occasional headaches, which she attributed to stress at work and at home caring for her husband and two children. She was to undergo physical therapy, daily Motrin, wear a back brace and use good lifting techniques. A plan was stated of follow-up studies such as "x-ray and then onto MRI" was contemplated "if she is not better." She was subsequently seen for anemia and skin biopsies, shoulder, back and neck pain, and gastroesophageal reflux disease.
>
> Problems developed in her right shoulder in January 2003, that had become a constant and throbbing pain, severe at 10/10. Icy Hot, ice packs, heat packs, and Aleve were all not helpful. She was having tingling sensation into her arm and fingers, and neck discomfort to the right. There was no recent injury reported. Physician's Assistant Natoli conducted a physical examination and diagnosed musculoskeletal strain of the right shoulder and neck area. Multiple medications were prescribed. The plan was for physical therapy and x-rays if the discomfort did not improve in two weeks.
>
> She was followed for recurrent right sided neck pain in March 2004 which felt similar to her pain suffered from the

previous disc herniation. She again needed physical therapy, Lodine, and now Skelaxin was added.

Mrs. Carlson was seen and treated at Summit Rehabilitation in February 2003 for neck and right arm pain, cervical radiculopathy/C_{5-6} disc herniation, dysesthesias, decreased reflexes and sensation in the right arm, and decreased strength with elbow flexion and extension of the right wrist. Restricted work duty, physical therapy modalities including traction and Lodine medications were instituted. At discharge several months later (May 20, 2003), she was improved but occasionally experiencing problems. Her neck pain was "about nonexistent," but not completely gone. It was noted she had been seen and treated by Dr. Meyers for a herniated disc found by MRI that Dr. Meyers had ordered. That MRI found a cause of the symptoms that plain x-rays ordered by Dr. Graeca's Physician's Assistant Lori Fenton (Natoli) had not. Mrs. Carlson was to continue on a home exercise program, and was still taking Lodine two or three times a week.

Plain films cervical x-rays ordered and obtained on January 15, 2003 by Dr. Graeca's office suggested possible muscle spasm but no bony abnormalities. An MRI had to be performed February 18, 2003 per Dr. Meyer's order, which revealed a herniated C_{5-6} disc, to the right side, that the x-rays could not detect. By April 26, 2005, cervical spine x-rays showed expected progression with mild degenerative narrowing and small marginal spurs now evident.

• • • •

You have also asked me for any comments I might have on Mrs. Carlson's work loss claim based not only on my familiarity with the medicine, but also the position of a radiation technician with whom I have worked over the years. Mrs. Carlson had persistent complaints of work related low back pain and neck pain, even at a young age suffering a herniated disc in her neck prior to the giant cell in the wrist. She has always been very thin, petite, and not a strong woman. Functional assessment at the time of application for the position in 1992 revealed quite low static strength testimony with maximum effort, even at that time at the age of 21. While she managed in her job for many years, most likely using the compensatory strategies and good body mechanics and assistance of others as needed (the technicians work in teams), she had lifting injuries and difficulties, leading to required work duty modification and periodic medical care. In my opinion, it is unlikely that she would have been able to continue working an entire career with such recurrent problems with her cervical and

lumbar discs. Her films have shown that the bony abnormalities such as vertebral spurs have developed and her degenerative condition progressed, as is expected, even at her relatively young age. I see a number of patients on a daily basis and follow them for a number of years with similar cervical and lumbar disc problems. I find that the disc protrusions, boney degeneration, and pain associated with these protrusions never goes away, recurs, and only increases in severity and extent over the years. Dr. Graeca's records also document mood swings and headaches from work and family care stress, which also take their toll. Also, the rare tumor that developed in her radius was a surprise to everyone, and even with a lesser procedure, would likely have impacted her employment, at least long term. I also note that a period of recuperation and physical therapy would likewise be needed post a curettage.

I would also like to comment on the accommodations possible for Mrs. Carlson's problems. The work of a radiation technologist is of two types. The preliminary work is positioning the patient on the therapy table prior to beginning the treatment. This portion of the technician's work can at times involve lifting, maneuvering, pushing, etc. which can be stressful on the back and wrists. The second part of the technician's work is operating a computer that controls the therapy machine. With skilled job function analysis one may find that the job can be made easier. Good body mechanics and compensatory techniques should also be instituted. I also believe that if a technician's aide was made available, then Mrs. Carlson would be able to do her job as a radiation therapist indefinitely. Many departments already recognize the periodic need for physical assistance to the therapy technician. Often, this work is done in teams. The tech aide would assist and provide the manual effort with positioning the patient and equipment. This would allow Mrs. Carlson to be relieved of the physical aspects of the job and focus solely on the computer manipulation of the equipment, radiotherapy planning, and interacting with and instructing the patient. Perhaps the same tech aide would be helpful for the other technicians as well to focus on their work careers. The cost is minimal. This is quite similar to nurses' aides assisting nurses with physical work in hospital settings and can actually make the whole department more efficient and safer for patients as well as Mrs. Carlson, with or without the consequences of her tumor.

• • • •

I have received and reviewed additional medical records and documents including handwritten notes of Mrs. Carlson upon a

February 20, 2003 "Employee Incident Report." Also, Occupational Health Center Medically Advised Work Status form and Medical Report Form of February 21, 2003 by Dr. Edward McVay, M.D., MPH and James F. Cobbett, PAC, the Occupational Health Center at DuBois Regional Medical Center.

The records document and further support my opinions as set forth in my original report. Mrs. Carlson's work as a radiation therapist has been problematic for her over the years inclusive of specific work incidents which in 1997 injured her cervical spine as well as built up progressive problems, particularly with her neck. These resulted in medical evaluations and work modifications. The records document that her pain was significant of 5/10 and increasing at the right cervical trapezius area with end limit cervical extension against resistance and with rightward cervical rotation against resistance, as well as increased with axial compression techniques into the right cervico-trapezius and cervico-occipital areas. Cervical distraction or traction techniques relieved some of the discomforts. This would be related to her cervical degenerative disc disease as confirmed on subsequent studies commented on in my original report. This documentation further supports my opinion that Mrs. Carlson was highly unlikely to continue indefinitely in her job as a radiation therapist without substantial modification of the position because of repeated and progressive work related injuries and difficulties which are subject to recurrence and worsening.

See also, the Occupational Health records of DuBois Regional Medical Center attached hereto as Exhibit "D," (confirming a "health history" of numerous, ongoing and/or repetitively occurring work-related injuries to Mrs. Carlson's neck and back, and needed care for same); records of Tracey Carpin, P.T., regarding original employee health evaluation demonstrating gross abnormalities from norms regarding Mrs. Carlson's arm and back strength).

9-16. The averments of paragraphs 9 though 16, inclusive, are inaccurate, incorrect and misleading, and thus denied as stated. Dr. Horsley is a physician who was originally trained and practiced as a general practice physician, and then went on to advanced training and specialization and practice as a general radiologist. Dr. Horsley is fully qualified to testify with

regard to the issues of Plaintiff's medical condition, its expected deterioration, and actual past and future expected interference with her ability to have continued working as a radiation therapist, a job position which Dr. Horsley is intimately familiar with in his capacity as a radiologist and radiation therapist supervisor. Similarly, Dr. Horsley is fully qualified and capable of opining as to Mrs. Carlson's projected ultimate disability by reason of same, further confirmed by the fact that there was demonstrable progression over the years of degenerative disc disease condition of her neck per recent cervical neck MRI attached hereto as Exhibit "E."

Mr. Ronald Kushner is a "Vocational Expert" and "Registered Case Manager" and "Qualified Rehabilitation Professional" whose qualifications and report are set forth in Exhibits "F" and "G" attached hereto. Mr. Kushner's curriculum vitae confirms that he interacts daily with a variety of medical providers with regard to vocational and medical claim management, including development, determination and coordination of medical treatment plans and vocational assessment and job identification/development regarding whether injured workers can return to productive employment and/or to maximize their vocational rehabilitation potential. Mr. Kushner's expertise is with regard to work site evaluation and application of evidence of medical problems, disabilities and capabilities, to questions of whether individuals can continue to function in the time of injury job with or without reasonable accommodations and modifications of the job, and/or whether said individuals are suitable of performing other available employment opportunities as identified by Mr. Kushner in his report. Mr. Kushner is not himself offering any medical opinions in so doing, but rather, applies the available medical information to his extensive personal assessment and evaluation of the worksite job duties and requirements of Mrs. Carlson's job position as a radiation therapist, in determining whether she can currently and/or in the future return to and/or continue working in such job position, with or

without changes/accommodations by the employer in the essential job duties and functions in light of her medical conditions, abilities, and restrictions. These are not matters of speculation as Plaintiffs contend, but rather, professional expert opinions from qualified experts in these fields. See Novitski v. Rusak, ___A.2d___, 7008 WL 54320 (Pa.Super. Opinion of January 4, 2008); Zak v. Prudential Prop. & Cas. Ins. Co., 713 A.2d 681, 689 (Pa.Super. 1998). Mr. Kushner opines that based on the available data, Mrs. Carlson could in fact return to her job duties as a radiation therapist despite the limitations and restrictions of her bone tumor surgery, without experiencing any residual wage loss. Plaintiffs' motion falsely contends that Mr. Kushner offered opinions as to whether Mrs. Carlson's pre-existing medical conditions would have disabled her in the future.

Physician Dr. Horsley opines that not only could Mrs. Carlson return to work as a radiation therapist despite her medical limitations post her bone tumor care, with slight adjustments in her job duties and/or the assistance of a technical aide as is commonly done in radiation therapy facilities, he also opines that her pre-existing condition had and would be expected to continue progressing and deteriorating such that irregardless of the development of a bone tumor, she would have required such changes in her job duties in time or otherwise not have been able to continue indefinitely in her job as a radiation therapist.

WHEREFORE, Defendant Dr. Alajaji respectfully requests Plaintiffs' Motion in Limine be denied.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

Darryl R. Slimak
Attorneys for Defendant
JERJIS T. ALAJAJI, M.D.
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Dated: 2-6-2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant Dr. Alajaji's Response in Opposition to Plaintiffs' Motion in Limine re Paula Carlson's Health History in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 6th day of February, 2008, to the attorney(s) of record:

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EXHIBIT "A"

THE COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY, PA

CIVIL DIVISION

* * * * * *

PAULA CARLSON and *
JAMIE CARLSON, her *
husband, *
Plaintiffs * No. 2006-563-CD
~VS~ *
JERJIS T. ALAJAJI, *
M.D., DUBOIS *
RADIOLOGISTS, INC. *
and DUBOIS REGIONAL*
MEDICAL CENTER, *
Defendants *

* * * * * *

DEPOSITION OF

PAULA CARLSON

October 4, 2006

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DEPOSITION
OF
PAULA CARLSON, was taken on behalf of the Defendant, herein, Doctor Alajaji, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Lacey C. Gray, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of DuBois Regional Medical Center West, Home Health Building, 100 Hospital Avenue, DuBois, Pennsylvania, on Wednesday, October 4, 2006, at 12:58 p.m.

APPEARANCES

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INDEX

WITNESS: PAULA CARLSON
EXAMINATION
By Attorney Slimak 7 - 174
By Attorney Wall 174 - 193
By Attorney Korinski 193 - 204
RE-EXAMINATION
By Attorney Slimak 204 - 216
By Attorney Wall 216 - 217
DISCUSSION AMONG PARTIES 217 -218
CERTIFICATE 219

EXHIBIT PAGE

PAGE NUMBER	DESCRIPTION	IDENTIFIED
NONE OFFERED		

OBJECTION PAGE

ATTORNEY	PAGE
Crenney	129, 131, 162, 169, 171

PROCEEDINGS

PAULA CARLSON, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY ATTORNEY SLIMAK:

Q. Mrs. Carlson, do you go by Ms. or Mrs., would you prefer?

A. It doesn't matter.

Q. Well, my name is Darrell Slimak and I'm going to ask you a number of questions, but before we begin, I'll give you some general instructions about depositions. You may well have spoken to your attorney about the deposition process, but just so we're both on the same page with regard to some guidelines. If at any time my questions would be unclear, please do not answer. Ask me to re-ask the question and I'll clarify it. If I speak too fast once again, slow me down and tell me that that's a problem and I'll try not to talk over you. If you would not respond until question is done that way the court reporter's job would be easier.

If at any time you need to take a break at any time whatsoever, let me know and we'll be glad to accommodate that. Do you understand those instructions so far?

A. Yes.

Q. If at any time you don't recall the answer that's an acceptable answer, of course. We're just looking for best recollection of things and events and some of the things you may not have answers for. Would you state your full name and tell us where presently live?

A. Paula Jo Carlson 373 Sandstone Drive, Falls Creek, Pennsylvania 15840.

Q. And how long have you lived at address in Falls Creek?

A. Six years.

Q. Prior to that where did you live?

A. Right next door, which was a different address because of 911 but I lived there for five years.

Q. Okay. Is that the first home that you and your husband lived in then when you were married?

A. Yes.

Q. Prior to that where did you live?

A. With my parents.

Q. Where was that?

A. West Decatur, Pennsylvania.

Q. I understand from some responses you gave to discovery inquiries in writing that you apparently went to school in Ralston area and then went to Philipsburg for, junior and senior high school; is that correct?

A. Yes.

Q. What year did you graduate from high school in Philipsburg?

A. 1989.

Q. Can you take us through your educational training and experiences

Page 10

after high school?
A. I went to Mercy Hospital School of Radiology from '89 to '91 a two year program, graduated with a certificate degree from radiology. And then I continued my education for one year down at the Community College of Allegheny County in Pittsburgh and became certified in radiation therapy.
Q. Okay. Now can you tell us, let's go first to your training at Mercy Hospital School of Radiology where you got your first certificate in that field. What was the nature of the training leading up then to the certificate that you achieved?
A. I was trained and registered to take x-rays.
Q. And was that a one year program or longer?
A. Two.
Q. It was a two year program. All right. And was there any particular types of x-rays --- when you use the word x-rays do you mean plain film x-rays?
A. Yes, plain films.
Q. How do they go about training you in that regard?
A. Classes, teaching you on anatomy, physiology, teaching you how to position patients.
Q. Okay. Did they give you any training or exposure at all to interpretation of the films?
A. I don't remember. We weren't in charge of interpreting them. You could look at films but we didn't, we generally were not trained to do that.
Q. At any time have you looked at your films from April 12th of 2005 that were taken in this case?
A. Yeah, Doctor Piasio showed it to me on June 9th.
Q. Other than that occasion have you ever looked at the films?
A. No. At the hospital as an employee you are not able to look at any type of lab work or x-rays or you will be terminated.

Page 12

Q. Did you ever ask whether you could look at the films?
A. No.
Q. And then you said that you went on to Community College of Allegheny County where you were certified in radiation therapy; is that correct?
A. Yes.
Q. How long of a program in training is that?
A. One year.
Q. What was the nature of that training?
A. We were taught same thing anatomy, physiology, positioning patients, learning about the equipment used in radiation therapy.
Q. Okay. Throughout the course of your training in radiation areas did you ever learn of a giant cell tumor?
A. I believe I did, many at one point, but don't recall anything about it.
Q. Do you believe that was in your original radiology training or in your radiation therapy subsequent training?
A. No, radiation therapy.
Q. Prior to of course the problem that you developed medically in this matter, what did you know of giant cell tumors?
A. Nothing.
Q. You just only heard of the word?
A. I don't even know that I learned about them back then. I don't know that they were around back then. A lot of the training that we learned on different types of tumors I didn't use in my profession. Our job as a radiation therapist was to treat the area that the radiation oncologist assigned us to treat. I didn't know the nature of tumors and what they were and how they were treated. So when --- I don't --- I don't know if I answered that for you or not.
Q. Prior to April of 2005 had you had any experience with patients who had had giant cell tumors?

A. No.
Q. Do you have any family members who have had giant cell tumors?
A. No.
Q. In the course of your training did you ever receive any information as to what could be the causes of giant cell tumors?
A. No.
Q. Were you ever advised of the certain risks of the type of occupation that you chose?
A. Yes. We were monitored that we didn't receive radiation.
Q. And while you were working at DuBois Regional Medical Center did you continue to be monitored in that regard?
A. Yes.
Q. What's the method of the monitoring?
A. We wear a badge that detects any radiation.
Q. Where do you wear the badge?
A. Up around your neck.

Q. Can you me tell me about the --- in your course of training did they ever indicate to you that there were any risks going into the radiation field with regard to developing any type of diseases or greater instance of those occurring?
A. Not with radiation therapy.
Q. Tell me then about your education if you had anything further beyond what we've already talked about up to the present time.
A. No.
Q. Have you had any continuing education courses or anything like that to maintain your position or certifications?
A. Yes, we have to receive 12 credits per year to keep our license.
Q. And so your position is one that is actually licensed by the State of Pennsylvania?
A. Uh-huh (yes).
Q. Yes?
A. Every year, yes, I'm registered

through the ARRT.
Q. And give us the breakdown of what that abbreviation means?
A. American --- I don't have my card with me. American Radiologic.
Q. You have some difficulty recalling?
A. I don't know. I don't know.
Q. Okay. But you're certain the abbreviation was correct?
A. ARRT.
Q. All right.
A. I am also a member of the ASRT, which is who I get my credits through.
Q. Do you know what that stands for?
A. No, but I could get it to you.
Q. American Society of Radiation Therapy?
A. Radiologic Technology. American Society of Radiologic Technology, I believe.
Q. Okay. Now, I think you did mention but I lost track of it, but you get 12 credits I think per year

you have to take?
A. I have to get 12 credits.
Q. How do you go about getting your credits?
A. You can read articles through the ASRT and do quizzes and you have to send them in and they grade them or you can be sent to seminars.
Q. Okay. Have you attended any of those types of seminars or training here at the hospital?
A. I hadn't. We used to go to it was called a tumor board and several, several years ago we got so busy that our time didn't allow us to attend them.
Q. When you talk about the tumor board, what do you mean by that?
A. They would take cases and talk about them, the physicians would talk about them. And it was just that, a lunchtime thing.
Q. Uh-huh (yes). And what physicians are you talking about would be on the tumor board that would be

Page 18

involved with these educational activities with you as a radiation therapist?
A. The oncologists.
Q. That would be the cancer specialists here at the DuBois Regional Medical Center?
A. Yes.
Q. After the training we talked about what was your first position?
A. The one I had, radiation therapists at the hospital.
Q. When were you hired?
A. August 24th, 1992. It's the only job I've ever had.
Q. Okay. And when did you last work your position as a radiation therapist at DuBois Regional Medical Center?
A. May 5th, 2005.
Q. So would it be approximately give or take 13 years you worked as a radiation therapist here at the Hahne Regional Cancer Center?
A. Yes.

Page 19

Q. Now can you tell us about your day-to-day activities and responsibilities as a radiation therapist at the medical center?
A. Our job role was to treat patients with cancer. We would escort the patients back to the treatment room, put them on our table for our linear accelerator. You would have to move the table, position the patient, computer work, going outside of the room then to deliver the radiation treatment. I did simulations, which was the room where you had to figure out where the doctor wanted to give the treatment to.
Q. Okay. With regard to the monitoring that you would undergo on a daily basis in your capacity as a radiation therapist, do you know what the levels of radiation that were deemed to be acceptable?
A. I don't understand what you're asking.
Q. I just want to know how does

Page 20

the monitoring take place, obviously you're wearing a card or a badge?
A. Oh, the badge.
Q. Yes. And what do you know about that. I mean is there some indication if you're getting excess radiation?
A. It's sent away monthly. Yeah there's a little film that is sent away monthly to come back to tell whether or not you received radiation.
Q. And is that something that you believe there's a record kept of then at the hospital?
A. I believe there should be.
Q. Would there also be records at the hospital with regard to the various educational seminars or training that you underwent either within the hospital for instance with the tumor board or outside of the hospital itself?
A. Yes.
Q. Who would keep those records? Did you have to turn them into the

Page 21

hospital or someone else?
A. Mike Bosic would have the records from my film badge, Rose Campbell, my manager, would probably have the continuing education.
Q. What hours do you work?
A. I worked 7:30 to 5:00 four days a week.
Q. Did you have many breaks over the day?
A. No.
Q. You worked pretty much straight through?
A. We would get a lunch break and maybe a half an hour if we were lucky.
Q. Now you mentioned about positioning patients for the linear accelerator; correct?
A. Uh-huh (yes).
Q. Could you explain to us what that is?
A. That is the machine that delivers the radiation.
Q. And you talk about the patient positioning, what function did you

have in that regard?
A. We had to move the patients around to put the area right in the direct target zone for the radiation.
Q. Okay. Is this after the area the patient has been tattooed or marked for the administration of the radiation?
A. Yes.
Q. Is that done by someone else or by yourself?
A. I have done that. It wasn't my --- we had one therapist that her role was the simulation therapist, but we rotated through that room, so.
Q. When you say you rotated through that room, what do you mean?
A. Like maybe once every three, four months I would go into that room to be with her.
Q. You talk about as a simulation position?
A. Uh-huh (yes).
Q. What do you mean by that?
A. That's the room where they put

the marks on, find out exactly where the doctor wants to treat the target volume.
Q. Now what function do you have with the linear accelerator itself other than positioning the patient?
A. Running it.
Q. Tell me what you have to do in that regard.
A. You have to be able to move the table. There's what's called a pendant that you had all types of functions for the table and moving the actual --- the linear accelerator has what's called a gantry that moves. We would move the gantry.
Q. I'm just trying to develop the day-to-day functions and things that you need to be able to do to do your job and get an understanding. That's where I'm going with these questions, nothing tricky about them. I want you to break some of these things down. When you talk about a gantry you're talking now about a movable head that

administers the dosage to the patient once properly positioned?
A. Right.
Q. Is that basically like sort of a crane type apparatus there's a handle or something that you reach?
A. There's actually like an arm that sits, this is the gantry and there's a head. This is where the radiation comes out of and this moves to move the whole gantry. We had the ability to move this to position the patients with our pendant.
Q. And is that something that takes any particular or significant amount of force to be able to move that or is it relatively easy to move and position?
A. You have a pendant that you have to move it with.
Q. And that is what?
A. A hand held, you have to hold it with one hand and it has buttons that you move.
Q. It's sort of almost a remote

control ---
A. Yeah.
Q. --- to operate basically the crane or the apparatus that administers the radiation dosages?
A. Yes. But if you are the person that is running the pendant, running the gantry, you also have to be the patient that is moving the table to bring the patient in. The patient has marks on them and if you're the patient running the gantry.
Q. If you're the patient?
A. I'm sorry. If you are the employee running the gantry, the radiation therapist, you are the one that is moving the table to put the patient where your mark is on and the other side of the table is the other employee that they are moving the patient. So no matter what your job role is as a radiation therapist you are moving that patient. You are in charge of moving them.
Q. Okay. And when you say you are

Page 26

in charge of moving them, are you talking about something physical that you're doing to the patient themselves?
A. Yes.
Q. The patients, they are able to move around themselves?
A. Some, not all.
Q. Some are not depending on what their general overall medical condition should with?
A. Yes. But when you're positioning them for radiation.
ATTORNEY CRENNEY:
Just answer his questions. He asked you a question. You listen to the question and then you answer it.
ATTORNEY SLIMAK:
Yes, of course.
BY ATTORNEY SLIMAK:
Q. Now what do you have to do physically to move the patient?
A. You either position them or

Page 27

move the table.
Q. Are these patients able to move to some degree by themselves depending on their medical condition?
A. Getting on and off the table, yes.
Q. After that do you typically not ask them to move on their own?
A. Yes.
Q. And then you physically or with the assistance of the other individual who's a therapist as well then moves and repositions the patient properly to administer the radiation dosage?
A. Yes.
Q. Now who would the other person be or does it vary from time to time?
A. It varies.
Q. And what other people would they be, who would they be as far as names and what would their position be?
A. Wendy Kline, Lehan Well, Sheila Welsh, Janet Freeze, those were the ones I worked with. There was another

Page 28

guy there there that was a student.
Q. Now I want to clarify the responsibilities. Were you always in charge of the gantry and the moving of it or are you sometimes taking the other person's position that you just mentioned?
A. Yes, we switched.
Q. And what was the switching dependent on? What would be the factor to cause you to switch from one position to the other?
A. Whoever brought the patient into the room.
Q. Okay. So is that something between the two of you that would be involved with this process that the two of you could agree upon?
A. Yes.
Q. And people will be flexible in that regard?
A. I don't know.
Q. Do you think that they would refuse to take their turn or be the one to bring the patient in versus the

Page 29

one that would be the assistant?
A. I don't know.
Q. Something you never talked with them about?
A. No.
Q. Did you ever have any difficulties in working with the other employees in the department in that regard?
A. No.
Q. Now what would the other person's function be if you were the one running the control?
A. They were moving the patient, physically moving the patient, not the table.
Q. Okay. In other words, they would be using their hands to lift or adjust the patient's part of the body that they need to align more properly?
A. Yes.
Q. And how long does the positioning aspect of this job take for a patient?
A. Depends on the patient.

Q. Okay. Would that be dependent on the nature of the amount of radiation for instance that was going to be administered for their particular type of cancer condition?
A. No.
Q. What does it depend on?
A. The patient and how well they were, how easily they were to set up.
Q. Okay. Are there time slots for each patient?
A. Yes.
Q. What's the time that is usually allotted?
A. Every 15 minutes.
Q. That you would typically go to another patient, at least that is what would be hoped?
A. Yes.
Q. Sometimes it would take less time, sometimes they may take more time?
A. Yes.
Q. Over the course of the day approximately how many patients would

you typically see?
A. Forty (40).
Q. All right. Are your days usually pretty full?
A. Yes.
Q. Is it probably unusual to have extended periods of time where there would be no patients that need treatment?
A. Yes.
Q. Especially at Hahne Cancer Center like this I would presume?
A. Yes.
Q. Who else would you work with in the department?
A. The other radiation therapists.
Q. Would you have direct interactions with the oncologists?
A. Sometimes. Not much unless you were in the simulator room.
Q. Okay. In the simulator room, what interactions would you have with the oncologists?
A. They were in there with you to show you what the target volume was

that they wanted to set up to give treatment to.
Q. The target volume would that be the adjustments you make to the linear accelerator in order to administer the proper dosages?
A. No.
Q. Tell me what it is then.
A. They are picking out where they want to treat, they're telling you where to put the marks on.
Q. Okay. Now just my general understanding, of course, you can correct me because I don't do the job. Are there generally plain film x-rays that are taken before that to determine anatomy or something like that before they do the marking in the simulator room?
A. Sometimes, yes, sometimes no.
Q. Are you ever involved in that process?
A. No.
Q. Is there someone else in your department that would be?

A. Just the oncologist.
Q. Okay.
A. Viewing them, not taking them. We don't take plain films.
Q. The patients would go elsewhere to get the plain films taken?
A. Yes.
Q. The oncologist review them and have an assistant to determine the direction to administer radiation?
A. Yes.
Q. What other physical functions of your job are there?
A. Lifting films, lifting chemicals, lifting --- we had lead blocks they were called Cerrobend blocks.
Q. Give me the name again?
A. C-E-R-R-O-B-E-N-D, it's like a lead alloy.
Q. Okay.
A. Lifting wedges.
Q. Is that for positioning patient?
A. No, they are an apparatus that

Page 34

is put into the machine. There were electron cones.
Q. Electron cones?
A. Uh-huh (yes), that were put on the machine to use.
Q. Any other physical aspects of the job?
A. Wheeling patients on a wheelchair or a litter, lifting patients.
Q. Anything else?
A. Lifting the equipment, breast boards, T bars.
Q. Anything else physical about the job that you haven't told us about yet?
A. Not that I can recall.
Q. Do you know if there's a job description for the position?
A. Yes.
Q. Does it have the weight requirements, those types of things?
A. Yes.
Q. To your knowledge is that job description the same as it was at the

Page 35

present time frame as it had been in 2005?
A. I believe.
Q. When you talk about the films that would have to be moved or lifted, what are we talking about as far as quantity or weight if you can qualify it in that regard?
A. I have no idea how much they weigh.
Q. Okay?
A. I have no idea.
Q. All right. Well, are there typically more than one film, more than ten, are they variable or what?
A. It varies according to the patient what their areas that we're treating how many films we have to take.
Q. Okay. Now are they still doing films in your department on film, are they not all computerized yet?
A. They still use films as far as I know.
Q. Okay. And that knowledge is

Page 36

based on what it was at the time you last worked?
A. Yes.
Q. Have you been back to the department to determine if they're still using the films or not?
A. No, I believe they are.
Q. What would the films be used in in your capacity as a therapist?
A. Hard copies of the area that is being treated.
Q. What would you use them for as a therapist?
A. To take the film to show the doctor.
Q. You mean physically just carrying them over to the doctor?
A. We take the film, we have to run the film, develop it and then take the film out of the cassette. When I say film I mean there's an actual cassette that you have to lift up and carry.
Q. Okay. Yes. And what would you be taking the films of?

Page 37

A. The area that is being treated you have to have reference so they can see.
Q. So they can see what?
A. What's being treated.
Q. Is that done every time for every patient?
A. No.
Q. How commonly or uncommonly? I mean can you quantify it how often you would take the films?
A. You take it in the beginning of their treatment before they actually start their treatment, you may take it once a week or you may not have to take it against until there's some type of change made.
Q. Now you talked about the Cerrobend blocks; correct?
A. Yes.
Q. Something else that you might need to move or lift?
A. Yes.
Q. Can you tell me about how much they weigh?

A. It varies. Some of them aren't real heavy, some of them are very heavy.
Q. What's their purpose?
A. They are used on our one machine as shielding to block out the radiation.
Q. And do they come in various sizes apparently?
A. Yes.
Q. Depending on what areas you're radiating and how much radiation is being administered to the extent you're going to need them or not?
A. Yes.
Q. So that varies from patient to patient as well?
A. Yes.
Q. You said you utilize one particular machine, what machine are we talking about?
A. The machine for the Cerrobend blocks?
Q. Yes.
A. That's the 6100.

Q. What other use in the capacity of a therapist?
A. The 2300.
Q. What's the difference in the machines other than the number or their function or what to use them for?
A. It's the radiation, the 6100 uses 6 mv. The 2300 has the capability to use 6 to 2300 mev.
Q. Now you mentioned about lifting wedges for machines; correct?
A. Yes.
Q. Tell me first what a lifting wedge is.
A. The wedges are a compensating device that put into the machine when the radiation comes out. Depends on the wedge that is used. It will deviate the radiation when it comes through the wedge.
Q. And are they used with every patient every time?
A. No.
Q. How commonly or uncommonly are they utilized?

A. It just depended, maybe out of 40 patients in a day we might use them half, 2/3rds amount of patients, it just depended.
Q. And would it be necessary --- let me back up. Is there generally always two therapists involved with working with a patient in any given session?
A. Yes.
Q. And is there any specific division responsibility for either the Cerrobend blocks or the films moving them or lifting wedges and electron cones or wheeling the patient? I mean is there any one of you that specifically must do those particular functions or is it just --- I mean how does it work as far as knowing who is going to do what function for those types of thing?
A. It depends on --- it starts from whoever brought the patient into the room, what side of the table you

end up on.
Q. Okay. So for instance you would not have to do each of those functions with every patient every time?
A. If I didn't I might as well just sit at the machine.
Q. Well, the lifting wedges do you know how much they way?
A. No, they're heavy.
Q. When you say heavy do you have any ballparking?
A. No.
Q. Are they something that you just typically lift with two hands?
A. Yes.
Q. And place them on the machine itself?
A. They slide into the callinator head.
Q. Are they kept on some type of a cart or shelf?
A. Shelf.
Q. How far is that from the machine that utilized it?

Page 42

A. Four feet.
Q. And the Cerrobend blocks where are they kept?
A. Shelves.
Q. About the same distance from the machine they are used at; is that correct?
A. Yes.
Q. Are they kept at waist level below or higher?
A. Some of them are waist level and then they go up according to the shelf.
Q. Okay. Now you said about the electron cones, what are they?
A. They are probably about this big a piece of apparatus that you have to physically pick up and slide into the machine, they're heavy.
Q. Do you know how much they would weigh?
A. No.
Q. Are they utilized for every patient?
A. No.

Page 43

Q. Are they used infrequently?
A. They're used daily.
Q. Okay. On average, how much would they be used in a day?
A. Maybe a third of the patients.
Q. Are they used for any particular type of conditions or treatments?
A. More like superficial skin cancers.
Q. Now you also mentioned a breast bar?
A. Board.
Q. Board, I'm sorry tell me about that.
A. It's a piece of equipment that a patient that we're treating her breast lays on. It's pretty big.
Q. Is that something that has to be physically positioned for the patient to lay down?
A. Has to be taken off of a shelf and put on to a table.
Q. Approximately the same distance if you're carrying that?

Page 44

A. It's not as far as the wedges.
Q. So be less than four feet?
A. Yeah.
Q. And that is obviously only utilized for those patients that have some type of breast cancer being treated?
A. Mostly.
Q. What other patients or conditions do you see other than the breast cancer patients?
A. A lot.
Q. All different types?
A. Yes.
Q. Wherever cancer occurs?
A. Yes.
Q. Now you mentioned T bars, what are T bars?
A. It's another piece of equipment that the patient lays on and they have to physically bring their arms you up above their head and grab on to it.
Q. What is your function with the T bars?
A. Same thing pick it up and put

Page 45

it on to the table.
Q. Is it something hanging on the ceiling?
A. Sitting on a shelf that you actually lay on to the table and they lay on it.
Q. Do you know approximately how much that weighs?
A. No.
Q. How often is that utilized?
A. Maybe a third.
Q. Okay. Now are all patients asked to sit in the wheelchair as they move around the department or is that just for certain patients that have the capacity to walk well?
A. Certain patients.
Q. So other patients are mobile themselves, they don't have to be pushed in the wheelchair?
A. Or on the litter.
Q. Sure, I understand that. Now as far as discharge from the radiology department if they're outpatients, are they wheeled out to the door by a

therapist or do they walk out under their own power, that type of thing?
A. Depends on what they can do.
Q. Well, if they didn't come in in a wheelchair?
A. Yeah, they walk out.
Q. All right. I just need some general information about your height, your weight, if it's changed materially over the last year or so?
A. 5'4" approximately 100 pounds.
Q. Okay. And has your weight changed materially in the last year and a half?
A. I have lost maybe six pounds.
Q. Okay. And so were you previously able to do all these functions at obviously your same height and within six pounds of this weight?
A. Yes.
Q. Did you ever need any assistance of doing any of the functions of your job as a radiation therapist prior to the surgery that

you had on your wrist?
A. I don't believe.
Q. You were doing all those functions yourself?
A. Yes.
Q. Including lifting and moving and all of the weights and carrying and the things we just discussed?
A. Yes.
Q. Just generally speaking --- well let me back up and ask it a different way. The other therapists in the department, I know some of them obviously were woman were they all woman or was at least one that was a man?
A. There was a man.
Q. That's Lee?
A. Yeah.
Q. And are they all working the same shifts or?
A. No, we all work four days. They work said ten hour days, I worked nine.
Q. Was there any particular reason

for that?
A. That I worked the nine hours?
Q. Yes.
A. The hospital had asked for managers to cut their budget and my manager asked us if there were any suggestions on how she could cut and I volunteered to go to 72 hours.
Q. Was there some reason that you volunteered?
A. My family.
Q. And what was the reasons with your family?
A. Getting them up in the morning and seeing them at night, more time with them.
Q. Tell me a little bit about your family.
A. I have two children.
Q. Their ages?
A. My daughter is ten and my son is eight.
Q. Are you at home in the mornings and have been home in the mornings prior to the surgery on your wrist to

get them off to school or whatever?
A. I was home. I got them ready in the morning.
Q. What school do they go to?
A. Brockway Elementary.
Q. How far is that from your home?
A. About 15 minutes.
Q. Is that a bus ride or do you drive them?
A. Bus.
Q. And that's the way it's been over the years?
A. Yes.
Q. What time would you head out to work?
A. I generally left about between 7:00 and 7:15.
Q. Had you offered or suggested to go to even lesser hours or how did the nine hours come up?
A. Just to --- 72 hours you were still a full-time employee.
Q. So you went down to the minimum to maintain full employee status?
A. Yes.

Page 50

Q. **Was there a particular reason why you wanted to maintain full employee status?**
A. Yes, my husband has multiple sclerosis and I needed to be full time in case I ever needed to carry our benefits.
Q. **Does your husband work?**
A. Yes.
Q. **And where does Mr. Carlson work?**
A. He works for the Commonwealth of PA.
Q. **What does he do for the Commonwealth?**
A. He's a state dog warden.
Q. **And does he work out of a particular office?**
A. His office is in our basement, but his regional office is in Meadville.
Q. **But typically he works out of your home basically?**
A. Yes.
Q. **And then he has a vehicle**

Page 51

provided by the state?
A. Yes.
Q. **And he drives wherever he needs to go?**
A. Yes.
Q. **With regard to your day-to-day activities prior to the surgery on your wrist I want to talk a little bit about that. We know you get the kids going in the morning to go to school. Do you continue to do that at the present time?**
A. My husband and I do, yes.
Q. **Did your husband help previously, as well?**
A. Yes, he was there.
Q. **Okay. What all is there to do in the morning that you helped with even at the current time?**
A. Getting them up, helping them get dressed, feeding them.
Q. **Do you take them out to the bus?**
A. Take them out on the porch, they catch the bus at the end of our

Page 52

driveway.
Q. **Okay. And then what is your routine after that?**
A. The first thing I do after I get my kids on the bus?
Q. **Yes.**
A. Study the Bible.
Q. **Yes? Anything else?**
A. Depends on the day.
Q. **What time do you head to work?**
A. Oh, you mean on a workday?
Q. **Yes.**
A. I'm sorry. I thought you meant now.
Q. **No.**
A. No. When I worked, I got my kids up early enough that they had to --- after I went to work they were still home with my husband and he fed them and put them on the bus. I left before they got on the bus. I'm sorry.
Q. **No. It may have been a confusing question on my part. So prior to the surgery on your wrist**

Page 53

your husband had a greater responsibility with the children than he does now as far as getting them off to school and taking care of them in the morning; correct?
A. Yes.
Q. **Now does your husband actually have to leave the home to go to work at some point in time every day or is it flexible, or what?**
A. It can vary depending on what he has going on for the day.
Q. **Does he work certain hours or is his a type of job it's kind of around the clock? You get the call, you got to go do your job.**
A. No. He works 8:00 to 4:00 sometimes he --- in the summertime he had to leave earlier and he may get home later. But his general hours were 8:00 to 4:00.
Q. **Now maybe you've already told me. What were your general hours of working?**
A. 7:30 to 5:00.

Q. And the children come home from school before that?
A. Yes.
Q. Would your husband typically be there to receive them and help them at that point in time?
A. Yes.
Q. As far as doing their homework and things like that, who would work with them you or both of you?
A. Both.
Q. And that was the same as it was before the surgery on your wrist?
A. Yes.
Q. Continues to be that way at the present time?
A. Yes.
Q. As far as getting dinner ready in the evening prior to the surgery on your wrist who would take care of that?
A. Me.
Q. Your husband is not the cook?
A. No.
Q. How about as far as the

housework and things like that prior to the surgery on your wrist?
A. I had a housekeeper.
Q. Okay. How long had you had a housekeeper?
A. Since my daughter was born.
Well, she was --- probably since 1996.
Q. Okay. And who is she, do you have the same one ---?
A. I no longer have her. Can't afford her, her name was Merna Anderson.
Q. How many years did you have a housekeeper prior to the surgery on your wrist?
A. Since 1996.
Q. Through 2005?
A. Yes.
Q. Okay. And why did you hire her?
A. Because I couldn't keep up with it.
Q. Keep up with what?
A. Cleaning the house and my daughter was getting into the cleaning

products when I was trying to d
and I just decided that I needed some help.
Q. Do you have a big house, a small house? I mean what kind of house?
A. Now or ---?
Q. Talking about then.
A. Then a ranch.
Q. Okay.
A. Three bedroom ranch.
Q. How much square foot?
A. No idea. It was my husband's house when we got married.
Q. Okay. And have you changed homes?
A. Yes.
Q. And when did you change homes?
A. 2000, March of 2000.
Q. Okay. I thought maybe you mentioned you changed homes since the surgery on your wrist?
A. No.
Q. How big is that home?
A. Two stories.

Q. All right. So it has stairs obviously?
A. Yes.
Q. And can you approximate for me how large of a home it is?
A. 2400 square feet.
Q. Is it something that you and your husband got built?
A. Yes.
Q. I see. Now do you have a yard?
A. Yes.
Q. I saw from your diary you do the mowing?
A. Yes.
Q. Is that something that has always been your responsibility?
A. No.
Q. That is something that you have taken up since you had the surgery on your wrist?
A. This year.
Q. In 2006?
A. Yes.
Q. Any particular reason you started doing the mowing?

Page 58

A. Because my husband has MS and I try to do some jobs that would take some stress off of him and being out in the heat is hard on him.
Q. All right. How large of a yard do you have?
A. A couple acres.
Q. And do you mow it all?
A. I ride the mower, that's all I can do.
Q. You have a riding mower?
A. Yeah.
Q. Do you and your husband do any trim push mowing that type of thing?
A. Yeah. He uses the weed eater.
Q. And you don't ever use the weed eater?
A. I can't lift it.
Q. I understand. Did you ever used to do any of the yard work prior to your surgery?
A. Maybe three times.
Q. Over a course of a number of years?
A. Yeah.

Page 59

Q. I hate to ask too many questions about your husband's condition, but has his condition worsened with his multiple sclerosis over the years?
A. Yes.
Q. How many years had that diagnose?
A. Since 2002.
Q. He's still able to work at this point?
A. He has had a period of time where he has been off but he's working now.
Q. How long was he off?
A. Seven weeks.
Q. When was that?
A. 2004.
Q. Was that --- he was off work of course because of the problems with the multiple sclerosis?
A. Yes.
Q. How's he affected day to day with that problem, that very serious disease?

Page 60

A. He has a lot of numbness in his right hand and arm and his legs.
Q. Okay. It affects him in what particular activities?
A. Writing, his hand is very clumsy, walking is difficult for him some days.
Q. Okay. He's undergoing treatment?
A. Yeah.
Q. Does he go to DuBois Regional Medical Center or this area for treatment?
A. He had gone here to receive chemotherapy, but he no longer does.
Q. Well, let me just ask you for what reason does he no longer undergo chemotherapy here?
A. They changed the medication he's using.
Q. And he does not have to go to the hospital for that then?
A. Not here, Pittsburgh.
Q. How frequent does he have to travel to Pittsburgh?

Page 61

A. Every month.
Q. Do you go with him?
A. Yes.
Q. Do you drive?
A. No.
Q. He does all of the driving yet?
A. Yes.
Q. Does he have any particular restrictions with regard to his driving at this point?
A. No.
Q. As far as getting the kids around at their ages, I assume they're pretty busy?
A. Yes.
Q. A lot of activities?
A. Yes.
Q. It was suggested that way from your diary. What all activities are the kids into at the present time? At the present time I'm talking generally in a year.
A. My daughter does basketball right now and Girl Scouts.
Q. Are you yourself involved with

Page 62

those?
A. I help with Girl Scouts.
Q. What position do you have?
A. I'm a leader.
Q. So you have your own Girl Scout troop?
A. Yes.
Q. How many girls do you have in your troop?
A. This year I have 11.
Q. Do you have assistance?
A. Yes.
Q. Adult leaders?
A. Yes.
Q. How many do you have?
A. Now I have two. I had had one. This year I got another one because I needed more help.
Q. And sometimes I forget what I just asked you, but how many girls do you have in your troupe?
A. Eleven (11).
Q. Has that stayed pretty consistent over the last couple of years or has it changed much?

Page 63

A. This year it had went up, I had had seven.
Q. And any particular reason why it went up?
A. They heard it was fun.
Q. So just had some more girls want to join?
A. Yes.
Q. No other troop folded or something?
A. Nope, new girls.
Q. What grades does your troop range?
A. Fifth grade.
Q. All fifth graders?
A. All fifth graders.
Q. How frequently do you meet?
A. Every other week.
Q. And where do you meet?
A. This week we're going to meet at the Curry Creek Camp in Brockway.
Q. That would be for your regular meetings?
A. Yes.
Q. Do you guys make excursions to

Page 64

beach jam or anything like th
A. We've gone places. Yes.
Q. Did you go anywhere this year or last year in 2005 or 2006?
A. Yes, we have gone places.
Q. Where have you gone?
A. I took them to Sheer Imagination and they had their hair and nails done. We went to the Rocky Grill and had a valentine's dinner. We went --- oh, they got a bowling party because they all raised money. We went to Splash Lagoon. We went a lot of places. This year because of my surgery from the prior year I couldn't take them anywhere. Every summer I had taken them somewhere and wasn't able to in 2005. So 2006 we did a lot of stuff to spend our money.
Q. Any other places that you've taken them that you recall in 2006?
A. I can't remember.
Q. Okay. I think you've been to the food bank?
A. Oh yeah, food pantry.

Page 65

Q. And how often is that that the girls and you go down with their girls to help in that regard?
A. My girls have done it three times.
Q. How many times in 2006?
A. Probably all three. I don't remember if the first time was before 2006 or not.
Q. Okay. And is that in Brockway or where is that?
A. Yes, Brockway.
Q. And do you typically drive the girls down or do the parents drop them all off at the activities or what?
A. Parents bring them.
Q. Have there been any out of town excursions?
A. We went to Splash Lagoon.
Q. Where was that located?
A. Erie, Pennsylvania.
Q. That's that indoor facility?
A. Uh-huh (yes).
Q. Did you drive to that?
A. My husband did.

Page 66

Q. **Did other parents go as well?**
A. Yes.
Q. **And do you know approximately when that was that you went?**
A. April 2006 I believe.
Q. **Now when you have your Girl Scout meetings what type of activities do you do? What do you do with them?**
A. They do crafts, sometimes we have to sit down and have discussions, they play games.
Q. **Okay. Do you lead these discussions and the games, that type of thing or demonstrate the games or anything of that nature?**
A. I don't demonstrate games, I don't play games now.
Q. **What kind of games are you talking about now?**
A. They play like relay races, they do red light/green light.
Q. **Okay. What do you do, physical activity?**
A. What do I do?
Q. **Yeah. I mean do you try to**

Page 67

exercise?
A. No.
Q. **Any particular reason why not? I mean you're a thin person to begin with maybe you don't need it?**
A. I think that's it.
Q. **Maybe you have high energy?**
A. I do. Very high metabolism.
Q. **And it just pretty much always seemed to be that way?**
A. Always.
Q. **So you don't have any formal exercise that you do or anything like that on a day-to-day basis?**
A. I tried to start exercising last year and just didn't keep up with it.
Q. **Any particular reason why, not enough time or whatever?**
A. Strenuous. I don't enjoy physical activity, exercising. I don't enjoy it.
Q. **Do you go for daily walks, anything like that?**
A. No.

Page 68

Q. **Do you have any pets?**
A. Yes.
Q. **What kind of pet do you have?**
A. I have a dog, two cats, fish and two dwarf hamsters.
Q. **Do the kids take care of them?**
A. Yes.
Q. **They do take care of them all?**
A. Yes.
Q. **How about as far as feeding them and bathing the dog?**
A. We don't bathe him.
Q. **Is he a house dog?**
A. Yes.
Q. **Does he go for walks?**
A. No.
Q. **Is he a small dog?**
A. Yes.
Q. **Fish, hamsters a couple cats. Who takes care of the litter that type of thing with the cats?**
A. My kids.
Q. **Are they indoor or outdoor cats?**
A. Both.

Page 69

Q. **And how long have you had the dog?**
A. Three years.
Q. **How long have you had the cats?**
A. The one six and the other one a few months.
Q. **Any other day-to-day activities that you're engaged in at the present time?**
A. You mean something that I do every single day.
Q. **Well, no. Just generally speaking. I mean do you spend a lot of time watching TV, are you reading books, are you involved in any church or community organizations perhaps? I mean, I don't know anything like that. I'm just trying to find out what you do on a day-to-day basis because we know that you're not presently working.**
A. Right. I belong to Tricounty Church of God and we have a small group that we meet every two weeks and right now I'm studying the Bible.

Q. Is that something you did prior to your surgery on your wrist as well?
A. I don't like to say it, but no not a lot. I didn't have time. Tried to listen to the Bible.
Q. Did you just join the church more recently?
A. No.
Q. You have been a member for quite a number of years?
A. Eight years.
Q. Any other activities that you generally engage in during the week?
A. Just try to maintain my house the best I can.
Q. What types of work do you do around the house?
A. Pick it up every day, put dishes in the dish washer.
Q. Do you put them away?
A. Yes.
Q. Do you do sometimes do you wash them by hand?
A. Very minimal.
Q. Okay. And how about the laundry?

A. Yes, I do laundry.
Q. For everybody?
A. Yes.
Q. Do you put it away for the kids?
A. Yes.
Q. They have not gotten to the point where they put it away themselves if they get it there?
A. It's wrinkly if they do. And I can't use the iron.
Q. So you do put away the laundry for the kids and your husband and yourself, of course; correct?
A. Yes.
Q. As far as housework what type of housework do you do at the present time?
A. I dust. I can run the vacuum. Everything is pretty much left-handed and my laundry is on the same floor as my bedroom so I don't have to carry baskets.
Q. Okay. Do the kids bring the laundry to the central locatio do they have their own baskets in their room?

A. They have a central location.
Q. Has that always been the case?
A. Yes. At least they're supposed to put it in the central location.
Q. All right. Who takes care of things the garbage needs taken out or to the curb?
A. Anybody. My husband, my kids, myself.
Q. I read in your diary that you do some pulling the weeds or something like that in the yard. Do you maintain flower beds?
A. No.
Q. Have you been pulling weeds at time from time or something like that?
A. Yeah, time to time.
Q. And I was wasn't sure from the context of the diary that you provided us, but do you mean like dandilions or talking about flower beds or a regular garden or what?

A. I had a regular garden this year not up until --- I hadn't had one for several years. In the old house I did, but we had one this year.
Q. Okay. And what kind of garden do you have?
A. Tomatoes, cucumbers, zucchini.
Q. How large a garden block?
A. Not very big.
Q. Of course you only need one zucchini plant.
A. Yeah. I don't even know if it was, maybe a ten by four area.
Q. Okay. Is it like a raised bed sort of deal?
A. No.
Q. Do you stake your tomatoes and things like that?
A. No, I didn't.
Q. Is this your project?
A. My husband and my father in law helped me.
Q. Joint activity?
A. Yes.
Q. Is there any particular reason

Page 74

you took up this gardening plot this year?
A. Something to do. I'm going crazy at home.
Q. Do you spend a lot of times watching TV or reading books or too busy for that type of thing?
A. I read basically the Bible, other than that I'm one of those people that when you start reading a book you can't put it down. So I generally read the Bible and spend my time doing that.
Q. Okay. Not a big television person?
A. At night I watch TV.
Q. Do you guys have sort of a routine with the family every evening, I mean, for like homework or TV time together or anything like that or anything like that you do particularly?
A. No.
Q. Do you have to assist your husband with various things because of

Page 75

his medical condition?
A. Not at the present time, but I have.
Q. Okay. Is that because he has gotten better?
A. He had an attack and he lost the use of his right arm and I had to help him dress himself.
Q. But he has regained that function at the present time?
A. Not 100 percent but enough that he can do those functions himself right now.
Q. But he's able to independently bathe and dress himself otherwise and things like that?
A. Yes. I help him fix his hair.
Q. All right. Grocery shopping, do you do that?
A. Yes.
Q. And where do you go to Martina's Superduper or whatever is over in Brockway?
A. Shop 'N Save.
Q. Maybe it's been longer. I'm

Page 76

dating myself.
A. There is Martina's, yeah.
Q. But is that in DuBois or Brockway?
A. DuBois.
Q. So you would drive over to get groceries?
A. Uh-huh (yes).
Q. Do you typically do that yourself?
A. Yes.
Q. How often do you go or do you go a certain day of the week?
A. No, not very often once a month, once every two weeks. Depends.
Q. Have you generally speaking been the shopper of the family for groceries and such?
A. Yes.
Q. Has that been the same over the years?
A. Always.
Q. I saw in your diary you must have a type of penchant for doing shopping, shopping for clothes and

Page 77

things like that. Is that something you enjoy as well?
A. I used to.
Q. Do you still do shopping?
A. Not much.
Q. Would you go over to DuBois because I'm sure there's not much in Brockway or going to the other direction to Brookville or Ridgeway? So I presume you go to DuBois?
A. Yes, to Wal-Mart in DuBois most of the time.
Q. Do you ever go to the mall and do some shopping?
A. Rarely now.
Q. As far as Christmas presents or birthday is that your responsibility, you go out and do the shopping for that?
A. Yes.
Q. Do you celebrate your children's birthdays and Christmas, holidays like that?
A. We have.
Q. Did you in 2005?

Page 78

A. Yes.
Q. Have you been on any family vacations since your surgery on your wrist?
A. We went to North Carolina last year.
Q. In 2005?
A. Yes.
Q. And did you go anywhere in 2006?
A. Two camping trips.
Q. Okay. I think your family must have a camper?
A. Yes.
Q. Is that a pull behind camper?
A. Yes.
Q. And I saw that you're apparently in charge of cleaning it?
A. Yes.
Q I saw a lot of entries in your journal that you would make a note of that?
A. Yes.
Q. How commonly or frequently do you and your family go camping since

Page 79

your surgery on your wrist?
A. The year I had my surgery, none, this year twice.
Q. In 2006?
A. Yes.
Q. How many years have you had a camper?
A. Three or four. I can't remember the year we bought it.
Q. Okay. And where have you gone camping this year?
A. Parker Dam and Deer Meadow.
Q. Okay.
OFF RECORD DISCUSSION
BY ATTORNEY SLIMAK:
Q. Now, you mentioned that you had been on vacation to North Carolina?
A. Yes.
Q. And that was in 2005?
A. Yes.
Q. Where did you go in North Carolina?
A. Nagshead.
Q. How long were you down there?
A. A week.

Page 80

Q. When you went to these camping trips at Deer Meadows over in Cooks Forest, or if you went to Parker Dam up on top of mountain outside of Clearfield, how long did you go?
A. We got there Friday and left Sunday.
Q. On both occasions those trips?
A. Yes.
Q. Okay. You want to take a break here?
ATTORNEY WALL:
Whenever you ---.
ATTORNEY SLIMAK:
That would be fine.
Let's take a break right here.
SHORT BREAK TAKEN
BY ATTORNEY SLIMAK:
Q. Just to clarify something for me. I know you have a Falls Creek address. Do you actually live closer to Brockway?
A. Between DuBois and Brockway.
Q. Do your kids go to DuBois or Brockway?

Page 81

A. Brockway.
Q. They go to Brockway schools?
A. Yes.
Q. In Brockway School District?
A. Yes.
Q. I have been looking at the diary you provided particularly with regard to entries after your surgery on your wrist and I understand that you have gone horse riding?
A. Yes, once.
Q. That was over at Cooks Forest?
A. Yes.
Q. Did you ride a horse yourself?
A. Yes.
Q. That you've gone playing mini golf?
A. Yes.
Q. And since your surgery on your wrist you go boating from time to time?
A. I ride in a boat.
Q. Okay. Where do you go boating at?
A. We went to East Branch.

Page 82

Q. **Do you and your husband have a boat then?**
A. No.
Q. **Just went over there and rented one?**
A. Our friends have a boat.
Q. **And do you do a lot of swimming?**
A. I get in the water I don't swim a lot.
Q. **Do you go to the pool in Brockway or some place else?**
A. No, we have a swimming pool.
Q. **Oh I see, in the back yard?**
A. Yes.
Q. **I saw in your diary that since your surgery did you actually, yourself, dig a ditch around your swimming pool?**
A. I tried to shovel one out with a little spay.
Q. **What were you doing that for?**
A. We have water that comes down off our hill and around the swimming pool it was like staying around and I

Page 83

was trying to get it to move.
Q. **So you dug whatever ditch you needed with a hand tool?**
A. Yeah.
Q. **And who takes care of the day to day maintenance or weekly maintenance of the pool?**
A. My husband and myself. We have one of those lady bugs that you put in the pool and it will go around.
Q. **Yes. Now, the chemicals and things like that do you do that?**
A. No, I can't lift them.
Q. **Someone else do that?**
A. My husband.
Q. **Did you ever used to do that or is that something he's always done?**
A. We didn't get the pool until this happened to my arm.
Q. **Is there a particular reason you got the pool after your surgery to your arm?**
A. We got it before the surgery. My girlfriend, it was her pool and she didn't want it any more so we had

Page 84

somebody move it and put it up for us.
Q. **Okay. Are you right-handed or left-handed?**
A. Right.
Q. **And has it always been your practice to maintain a diary?**
A. I started January of last year when my dad got cancer.
Q. **January of 2005?**
A. Yeah.
Q. **Lets talk a little bit about your other relatives then. Well, we'll start in-house. Your husband has MS we've talked about that?**
A. Yes.
Q. **How are your children as far as their health?**
A. Fine.
Q. **No particular significant problems?**
A. No.
Q. **Have you lost your mother I think I read?**
A. No.
Q. **Is she still alive?**

Page 85

A. Yes.
Q. **How's your father?**
A. He has lung cancer.
Q. **How long has he been suffering from that?**
A. January of 2005.
Q. **And have you been involved over the years with his care in some fashion or assisting him getting him to appointments or anything like that?**
A. He was healthy until last year and I had gone to some of his appointments. I go to some, not all.
Q. **And how's your mother's health?**
A. Good.
Q. **How old are she?**
A. Fifty-seven (57).
Q. **How old is your father?**
A. She just turned 58, I'm sorry. He's 59.
Q. **And where do they live?**
A. West Decatur.
Q. **Do you go visit them very often?**
A. Not as much as I should.

Q. Do you have any regular routines like on Sundays or once a month or ---?
A. No.
Q. Just holidays or not even that?
A. Whenever I have time. They come up here sometimes.
Q. Okay. Do you have any brothers or sisters?
A. Yeah, a brother.
Q. Where do they live?
A. West Decatur.
Q. And where does he work?
A. He is self employed.
Q. What type of work does he do?
A. He's a truck driver.
Q. And how about your father, does he work?
A. Not now.
Q. Where had he worked?
A. He had owned his own coal business and then he was a truck driver also.
Q. What was the name of his coal business?

A. Albert Contracting.
Q. Okay. Now I can place him. Okay. I also saw in your diary that you have done some badminton since you've developed a giant cell tumor; is that correct?
A. Everything I do is left-handed.
Q. Okay. I'm just asking you, that's another activity you've done; is that correct?
A. Yes.
Q. Now, how's your brother's health?
A. Good.
Q. And you just have the one brother?
A. Yes.
Q. How about your grandparents?
A. I have one grandfather still alive.
Q. On which side?
A. My dad's.
Q. Do you know what age your other grandparents passed on and from what conditions?

A. My grandma died March of 05. She had kidney disease. My grandfather on my mom's side passed away when I was nine and my grandma on my dad's side died probably 2001. She had Alheimer's.
Q. Do you have any medical conditions other than your having the giant cell tumor?
A. No.
Q. No diabetes or anything like that?
A. No.
Q. I saw in some of your diary notes and perhaps it was suggested in some of your medical records that you had some scare with ovarian cysts or some concern there?
A. Yes.
Q. When was that?
A. That was this year, June.
Q. Okay. And you underwent a couple different studies including an ultrasound I know?
A. Yes.

Q. And ultimately did that turn out to be something significant or not?
A. No.
Q. No cancer?
A. No.
Q. Have you had any instances of a reoccurrence of a giant cell tumor anywhere?
A. No.
Q. How frequently do you see anybody for the follow up for the giant cell tumor that you developed?
A. I will have to see Doctor Yaw every year.
Q. Just once a year?
A. Yes.
Q. When is the last time you saw Doctor Yaw?
A. June.
Q. Of 2006, this is now October of course?
A. 2006, no --- just recently I saw him the beginning of August --- no wait it was after my kids started

Page 90

school. Beginning of September.
Q. Was that a regularly scheduled visit or was there some particular issue you went to see him for?
A. I needed to have a follow up and I was having some pain in my wrist.
Q. And was there any particular care or treatment rendered as a result of that?
A. He said I could go back into surgery and have a tendon cut, but I chose not to do that at this time.
Q. What type of particular problems or symptoms were you having at that time?
A. A lot of pain in my wrist.
Q. Up through that point in time had you had much in the way of pain following the initial recuperation period following the surgery for your bone tumor?
A. I have pain whenever I use my right arm.
Q. That's been essentially

Page 91

continuous?
A. Yes.
Q. Have there been a significant reduction in pain following the surgery to remove the bone tumor from your wrist?
A. Compared to what I had before I had it?
Q. Yes?
A. Oh yes.
Q. Can you quantify that in any way?
A. Before my surgery I wanted to cut my arm off, now I tolerate it.
Q. Okay. Does Doctor Yaw have you coming in any particular point in time right now for a follow up visit?
A. June, every year. I'll go back in June.
Q. Okay. And prior to having seen him in September of 2006 when is the last time you recall seeing hip or was it June?
A. February.
Q. Okay. Are the regularly

Page 92

scheduled follow up visits getting further and further apart or something like that?
A. They were from February he wanted to see me in six months and then after my follow up in September he said I could come back every year in June.
Q. Are these essentially just examinations or does he talk to you and see how you're doing or is there anything specific that is done?
A. They'll x-ray my arm, recurrence of giant cell generally can come back every two years or within the two years.
Q. Uh-huh (yes). Okay. And so that's something that ever since you had the development of the giant cell tumor is now going to be a concern?
A. The rest of my life.
Q. All right. Has Doctor Yaw discussed with you any further needed treatment at this time?
A. Not that I have to do.

Page 93

Q. Are you on any treatment currently because you have had a giant cell tumor develop in your wrist?
A. No.
Q. You're not on any medications whatsoever at the present time?
A. I take Vicodin whenever needed.
Q. Anything other than the Vicodin?
A. I should take a daily vitamin and calcium, and I do sometimes.
Q. But not regularly?
A. No.
Q. Just too busy or don't care to do it?
A. Forget.
Q. Okay. Does Doctor Yaw have you doing any specific therapy?
A. No.
Q. Is he recommending any at home exercises or doesn't feel there's anything to be done at this point?
A. Nothing more can be done.
Q. May we see your wrist or your arm?

Page 94

A. Sure.
Q. Okay. And can you show us your other arm as well then so we can see?
A. Sure.
Q. Okay. And so I take it this is the scar that you have?
A. Right.
Q. That we're seeing there?
A. Right.
Q. And how about as far as function of your hand, tell us about that?
A. I can move my fingers. I can't make a full fist. I can't turn my arm out the whole way and my --- there's a titanium plate that runs from there to about back here that I can never bend my wrist again.
Q. Yes, I understand.
A. It's in this fixed locked position.
Q. Do you continue to write with your right-hand?
A. Yes.
Q. You have not become

Page 95

ambidextrous or anything?
A. I tried. It's very difficult.
Q. And do you have to use any special devices to write or to do anything in particular. You have no particular like orthopedic devices or anything like that?
A. No.
Q. Am I correct?
A. Yes. You're correct.
Q. You can use a regular pen and hold it and write; is that right?
A. Yes, for a short amount of time.
Q. What would you write other than your diary entries?
A. Nothing.
Q. But ---.
A. Checks to pay my bills. Other than that probably nothing.
Q. Okay. Now, you've talked about some of the problems you have. On a day to day basis give me some information about what difficulties, the problems you have with your right

Page 96

wrist and arm that cause you day to day functions?
A. Lifting, anything in the kitchen is difficult, you know, washing dishes is difficult, any type of cooking is difficult for me. Everything is a challenge using my right arm.
Q. Tell me in what ways because I don't have your ---.
A. It hurts. I have pain whenever I use it. No matter what I do with it. Whether I write with it, whether I --- whenever I use it it hurts.
Q. Okay. And I mean to what extent does it hurt that you quit the activity or you take a Vicodin or just work through it or what?
A. Yes.
Q. To all?
A. Yes.
Q. Are there any particular difficulties that stand out in your mind that you have had with regard to the use of the arm since you've had

Page 97

this particular difficulty?
A. Things that I don't do?
Q. Yes.
A. I don't do anything that really may put my arm at risk of getting hit.
Q. Uh-huh (yes). Is it sensitive to touch?
A. Yes.
Q. Is it sensitive if you bump it?
A. Yes.
Q. Okay. Do you continue to drive?
A. Yes.
Q. Do you have any restrictions on your driver's license?
A. No.
Q. Do you feel that you're safe to drive?
A. Yes.
Q. What kind of vehicle do you drive?
A. A van.
Q. Is it automatic?
A. Yes.
Q. Something you previously had

Page 98

was always automatic?
A. Yes.
Q. Do you ever driver a standard?
A. No, don't know how.
Q. Do you have any burns or anything like that or cuts that you had as a result of the problems you had with your wrist or arm?
A. At the present time.
Q. Yes?
A. Not that I recall.
Q. Okay. Do you have any particular problem dropping things or breaking things or anything of that nature?
A. Yeah, clumsy.
Q. Is there anything that got broken or ruined or something that you dropped?
A. I don't recall.
Q. I understand you underwent a functional capacity evaluation?
A. Yes.
Q. Do you recall when that was?
A. Yes.

Page 99

Q. When was it?
A. My last one was June 13th I believe.
Q. 2006?
A. Yeah.
Q. Had you undergone one earlier than that?
A. Yes.
Q. In 2005?
A. No.
Q. Who performed the most recent one?
A. PT Group. I had it in Blairsville.
Q. Okay. And who directed you down there?
A. Doctor Yaw.
Q. Okay. Is it called the PT Group?
A. Yes, I believe.
Q. You had previously had one done by Martin Malone through the DuBois Regional Medical Center presumably at the Brockway Physical Therapy office, or was it at DuBois?

Page 100

A. DuBois.
Q. Is it just the two functional capacity evaluations you've undergone?
A. Yes.
Q. Do you know what your restrictions or capabilities are based on that study?
A. I can lift three to five pounds periodically, but not repetitively with my right arm.
Q. Do you have any restrictions on your left arm?
A. No.
Q. Do you have any restrictions with regard to moving your shoulder in any way above your head or anything like that?
A. Not that I believe.
Q. Any other restrictions that you're aware of or limitations that you're aware of based on your functional capacity evaluation?
A. I can't bend my wrist.
Q. Obviously we understand that. Anything else other than what you just

Page 101

mentioned?
A. Not that I recall.
Q. Do you still use your right hand and arm in day to day activities?
A. A little bit.
Q. Do you use your left arm more to assist, is that what you're saying?
A. No, my right arm is the assisting arm.
Q. You try to primarily do things more so with the left?
A. Yes.
Q. But you then use your right to steady or to help grip or something like that?
A. Yes, if I need it.
Q. Do you open cans or jars or anything like that?
A. Yes.
Q. You able to do that?
A. With my left arm.
Q. All right. Do you hold the jar with your right or you hold it with the left and turn the lid or do you use a device?

A. I have a device.
Q. Do you have one of those little Y shaped things that you put on to a jar and turn the lid?
A. Yeah.
Q. My wife has one too.
A. From pampered chef.
Q. Go to the same parties. Speaking of that are you involved in anything like that. Home parties, decorators or any of those things like that?
A. I had parties until last year.
Q. So that's not something you would do?
A. No.
Q. You're not one of the salespeople or anything like that?
A. No.
Q. Okay. Your past medical history I want to talk about that prior to the April time frame March time frame 2005. Had you had any particular problems over time that come to your recollection?

A. Problems with my neck.
Q. Okay. And what was the nature of the problem with your neck?
A. I ended up having a herniated disc.
Q. Do you know how that occurred?
A. I think from just lifting patients, you know, my day to day activity at work.
Q. Was that something that you presented as a work-related injury?
A. No.
Q. You did not have a Workers' Compensation claim for that?
A. No.
Q. Did you undergo surgery for that?
A. No.
Q. What kind of treatment did you undergo for that?
A. Physical therapy.
Q. What time frame are you talking about that you had that particular problem?
A. 2003, I believe.

Q. Approximately how long was the period of care that you underwent for that?
A. Just a couple months.
Q. As a result of that problem that you had with your neck that you're attributing to probably lifting patient, did you alter the way you went about your job?
A. Somewhat.
Q. In what ways?
A. I just tried not to lift as much.
Q. Would you get greater assistance from the other people that would be working with you?
A. Yes.
Q. That was as a result of the problems you had in the past with your neck?
A. Yes.
Q. Does that problem continue to still have any periodic symptoms you attribute to the problem with your neck?

A. Now?
Q. Yes.
A. No.
Q. Did you have a herniated disc in your neck?
A. One.
Q. Other than the physical therapy did you have any other care?
A. I had had physical therapy for my lower back before that.
Q. Okay. Where did you get that at?
A. DuBois.
Q. What time frame was that that you had problems with your lower back?
A. Probably 2000. Maybe 2000, 2001.
Q. Did you present that as a Workers' Compensation claim?
A. No.
Q. Did you feel that that was aggravated in some part due to your work?
A. Yeah they did, the therapist did. It was the shoes I was wearing.

Page 106

Q. Okay. So then did you alter the types of shoes that you were wearing?
A. Yes.
Q. Did that seem to actually help with your back?
A. Yes.
Q. What kind of shoes were you wearing?
A. Ones with higher heels and then I went to nursing shoes.
Q. Did you alter any of your interactions with patients as a result of having had problems with your lower back?
A. No.
Q. I saw in some of your records that apparently you had been having some problems with blood in your urine?
A. Yes.
Q. With when was that time frame?
A. It started about the same time that I started having problems with my arm. I think I had had a routine

Page 107

physical exam and they found traces of blood in my urine.
Q. Is that with Doctor Graeca?
A. Yes.
Q. How many years have you been seeing Doctor Graeca?
A. Probably at least three or four maybe.
Q. Who did you see before that for general medical care?
A. Doctor Shunsky.
Q. Where is Doctor Shunsky located?
A. He was in the Medical Arts Building but he left. And Doctor Graeca --- I don't know that he took over his practice, but he took a lot of his patients.
Q. Were they in the same office?
A. In the Medical Arts Building, yeah.
Q. And anybody else other than Doctor Shunsky?
A. Shunsky.
Q. And Doctor Graeca that you seen for general medical care over the years and since adulthood?
A. That was probably it since I came to the DuBois area.
Q. Do you have any recollections of specific problems that you've seen Doctor Graeca or Shunsky for before 2005?
A. No.
Q. Just colds or somethings that would come up, that type of thing?
A. Yes.
Q. Would you see them for gynecologic care or OB care?
A. I saw Doctor Rappaport for GYN care up until probably 2002 I think when I started to go to Doctor Graeca. I went to him instead of Rappaport because I didn't plan on having any more children.
Q. What time frame was it that you made that decision?
A. Probably around 2000. I can't remember if I had my tubes tied in 2002 maybe.

Page 108

Page 109

Q. Okay. Did it ever turn out there was anything significant that was determined as the reason you were having the problems with blood in your urine?
A. No, just my makeup.
Q. Had you had some problems with iron deficiency or anemia?
A. Yeah. I took iron pills. I don't any more.
Q. When was that time frame that that was diagnosed as a problem?
A. Maybe 2003.
Q. And for how long did you continue on that kind of treatment?
A. On and off maybe for about a year to two years, I don't recall.
Q. Was there ever determined that there would be a specific cause of why you were having problems of iron deficiency or anemia?
A. No.
Q. Have you continued to be tested for that?
A. Yeah. I don't have to take

Page 110

iron pills any more.
Q. So that's actually a condition that's improved?
A. Yes.
Q. Did you start with Doctor Graeca because Doctor Shamsky had left the area or something?
A. Yes.
Q. And let's then talk about the problems you started having with your wrist or your arm on the right side. Excuse me. What's the earliest you recollect of having some problems there?
A. March of --- end of March 2005.
Q. Did you have a specific diary entry that refreshed your recollection in that regard or not?
A. No.
Q. Do you know when in March?
A. The end.
Q. What was the problems that you noticed?
A. Pain.
Q. What kind of pain?

Page 111

A. Just like an ache.
Q. Sharp dull ache?
A. Ache.
Q. Was it with particular activities or when you're sleeping or any time or what?
A. Nothing particular.
Q. What did you attribute it to?
A. Work and painting.
Q. What painting were you doing?
A. Painting in my house.
Q. Okay. Did that seem at the time to precipitated it in your mind?
A. I --- yeah.
Q. What was there about work in your mind that seemed to precipitate the pain that you were having in your arm back in March of 2005?
A. You're always using your hands in that job.
Q. And you're right-hand dominant?
A. Yes.
Q. Okay. Had you ever had any injuries to your right arm or upper extremity?

Page 112

A. Never.
Q. Had you been in sports as a young girl?
A. No.
Q. In school or anything like that?
A. No.
Q. All right. And so did you try treating it yourself initially or did you go see someone right away or what?
A. I wore a brace for a week thinking maybe it was carpal tunnel.
Q. Where did you get your brace?
A. Wal-Mart.
Q. Is that something that you decided to do on your own?
A. Yes.
Q. Why was it that you wore it a week?
A. Because it didn't get any better so I decided I needed to see my doctor.
Q. Who did you go see?
A. I saw Lori Matolli (phonetic), Doctor Graeca's PA.

Page 113

Q. Into April yet or still into March?
A. Yes, April 12th.
Q. So April 12th was the first time that you saw any healthcare provider with regards to symptoms into your right upper extremity?
A. Yes.
Q. Where exactly, as best as you recall, was the pain symptom that you were having?
A. In my wrist right in here.
Q. You're pointing to the top of the wrist with the palm facing down?
A. It was all over my wrist. Some days it seemed like it would be underneath. Some days it would be on top. It was like inside. I couldn't pinpoint and say it's coming from here or it's coming from here.
Q. And do you recall, were you having particular difficulty with certain activities at that point in time or not?
A. Just using it was aching. It

Page 114

was achy.
Q. **Did using it seem to be making it worse at that point in time?**
A. Yes.
Q. **Did it seem to get better when you were not working or not painting or that sort of thing?**
A. I thought it was.
Q. **Did you try any other treatments by yourself other than the splint you got at Wal-Mart?**
A. No.
Q. **What do you recollect about going to see the PA, the physician's assistant at Doctor Graeca's office?**
A. She sent me for an x-ray of my wrist.
Q. **Did she do a physical examination before she did that?**
A. She looked at my arm and, yeah, just checked my arm out.
Q. **Okay.**
A. Checked my neck, I think.
Q. **Was there anything else ordered or care recommended at that point in**

Page 115

time?
A. Not on that day, no. She sent me to --- I don't recall if she sent me to see Doctor Myers that day or made me an appointment to see Doctor Myers.
Q. **What kind of physician is Doctor Myers?**
A. He's a rehabilitation specialist.
Q. **At DuBois Regional Medical Center as well?**
A. Yes.
Q. **Did you go see Doctor Myers?**
A. Yes.
Q. **When did you see him?**
A. May 5th.
Q. **Was there a particular reason why it was not until May 5th that you went to see Doctor Myers?**
A. That was the soonest he could see me.
Q. **Was that appointment made for May 5th prior to getting the results back of the x-ray that was taken April**

Page 116

12th?
A. I don't know.
Q. **Do you recall when you left the office with the physician's assistant April 12th if you had the appointment already or not?**
A. I don't remember.
Q. **Was it discussed at the April 12th appointment that she would be arranging for you to see Doctor Myers whenever his schedule would open up?**
A. Yes.
Q. **So you went to DuBois Regional Medical Center and had the x-ray taken; is that right?**
A. Yes.
Q. **Do you recall who it was that you saw for the technician?**
A. No.
Q. **Had you ever been there to that department previously?**
A. No, I don't believe.
Q. **Okay. And take us through what you recall of going in for the x-ray?**
A. I went in and they positioned

Page 117

my arm and took x-rays.
Q. **Do you recall anything else about it whatsoever?**
A. No.
Q. **Any discussion with the personnel there at that time?**
A. No.
Q. **What do you next recall about your care or your condition, you had your x-ray and what happened next?**
A. She gave me three days off.
Q. **Who did?**
A. Lori.
Q. **She did that before learning about the x-ray?**
A. Yes.
Q. **She did that at the time of the original office visit?**
A. Yeah.
Q. **Okay. So you were to take three days off?**
A. Yes. I took my three days off, it wasn't much better, but I went back to work.
Q. **Were you understanding that was**

Page 118

intending just to give your arm some rest?
A. Yes.
Q. Did not seem better?
A. I don't remember.
Q. Did it seem worse?
A. I don't recall.
Q. Did you have a follow up appointment scheduled as of the day that you saw Lori, the physician's assistant, on April the 12th?
A. Yes.
Q. When was the next follow up appointment scheduled for?
A. April 26th.
Q. So you went to see the physician's assistant April 12th, but she did not give you a follow up appointment until April 26th?
A. Yes.
Q. Do you know why that was?
A. No.
Q. Did you have any contact with her office in between those two visits?

Page 119

A. I don't remember. I think she had --- I can't remember if she had called me to tell me the x-ray was negative or I don't recall.
Q. You don't recall one way or the other?
A. No.
Q. In the time from April 12th the first visit with the physician' assistant in Doctor Graeca's office who's Lori and I think you said last name was what Matolli?
A. Matolli.
Q. Until the next office visit she scheduled April 26th did your condition of your wrist or hand change in any way?
A. Yeah, it was getting more painful.
Q. Did it change in any other way?
A. (Indicates no).
Q. How about it's function or use?
A. Yeah, I was using it less.
Q. Did you go back to work then after three days as of April 15th?

Page 120

A. Yes.
Q. Did you continue working your regular job up through April 26th?
A. Yes.
Q. And were you able to put in the same amount of hours? Did you have to take off any days or hours?
A. I don't remember.
Q. Okay. At that point in time what did you feel was your nature of your condition?
A. What did I think was wrong?
Q. Yes.
A. I didn't know.
Q. Did Lori, the physician's assistant, give you any idea what she felt was wrong with your wrist as of April 12th?
A. She said it could be carpal tunnel or tendonitis. She didn't know.
Q. Did she schedule an EMG or nerve conduction velocity studies as of April 12th?
A. When they made my appointment

Page 121

to see Doctor Myers, he did it May 5th.
Q. But Lori, the physician's assistant, at Doctor Graeca's office had not scheduled that even though she was discussing with you the potential that it might be carpal tunnel syndrome?
A. She called Doctor Myers' office and they were the ones doing it. I don't recall if it was on April 12th that she set that up.
Q. Okay. Now, April 26th you had a follow up appointment; is that correct?
A. Yes.
Q. Was that with Lori Matolli the physician's assistant or with Doctor Graeca?
A. Lori.
Q. What do you recall about that visit?
A. Not much.
Q. Do you recall anything?
A. No.

Page 122

Q. **Do you recall what examination she did, if any?**
A. She sent me for an x-ray of my neck, of my C spine.
Q. **Were you complaining about your neck?**
A. No.
Q. **Were you complaining about your shoulder?**
A. I don't believe.
Q. **Were you complaining about from your elbow up?**
A. I don't believe.
Q. **You were still only complaining about pain in your wrist?**
A. I don't recall.
Q. **Were you complaining of pain into your fingers?**
A. I think I was complaining that I had some numbness.
Q. **So when was the x-ray study to your neck?**
A. I believe April 26th.
Q. **Was that a plain film x-ray?**
A. Yes.

Page 123

Q. **Not an MRI?**
A. No.
Q. **Did you go to DuBois Regional Medical Center for that?**
A. Yes.
Q. **Do you recall anything else about the second office visit with physician's assistant Lori Matolli on April 26th, '05 that you have not already told us?**
A. Not that I recall.
Q. **Did she prescribe any treatment?**
A. No.
Q. **No physical therapy yet?**
A. No. She wanted me to see Doctor Myers.
Q. **No medications?**
A. She may have prescribed me Lodine. I can't recall if it was her or Doctor Myers.
Q. **Did you have some Lodine that you had taken yourself from times that you had had problems with your neck?**
A. I don't remember.

Page 124

Q. **Now, did Lori or someone contact you with regard to the x-ray of your neck?**
A. I don't remember.
Q. **What's the next thing you recall with regards to healthcare addressing your wrist?**
A. I went to see Doctor Myers on May 5th of 2005.
Q. **Had your condition changed in any particular way between April 26th through May 5th?**
A. It was still painful. I don't recall if it was getting worse at that point, but I still had pain.
Q. **Did you continue working between April 26th and May 5th?**
A. Yes.
Q. **Full time?**
A. Yes.
Q. **Did you change anything the way you went about your work?**
A. I just wasn't using my arm as much.
Q. **But you're still able to work**

Page 125

full time and complete all of the functions that were part of your job duties?
A. I don't recall if I was doing less then or not. I knew that at that point that it was starting to be pretty achy when I was using it for ---.
Q. **Did it seem to getting worse?**
A. I don't know if I would say worse but achy, hurt, painful.
Q. **On May 5th who did you actually see?**
A. Doctor Linne Myers.
Q. **And what did Doctor Myers do at that time?**
A. He did EMG to see if I had carpal tunnel.
Q. **Same day May 5th?**
A. Yes.
Q. **Did he tell you about the results on that day?**
A. Yes, it was negative. He said I had tendonitis.
Q. **He said the studies he did were**

negative?
A. Yes.
Q. What did you understand that to mean?
A. That I didn't have carpal tunnel.
Q. But he felt you had tendonitis?
A. Yes.
Q. Did he prescribe anything?
A. I was starting occupational therapy.
Q. When did that start?
A. May 9th, I believe.
Q. How long did you continue at occupational therapy?
A. Up until like maybe a couple days before June 9th.
Q. And is there a particular reason that you ended the occupational therapy at that time?
A. Yeah, I went to see Doctor Piasio.
Q. Did you have any follow up appointments scheduled with ---?
A. Yeah, I went to see Doctor

Myers with, actually I saw his PA, Mark Galinsky. I'm not sure if I pronounced that right. I saw him May 19th, still hadn't gotten better. They started what's called iontophoresis in occupational therapy.
Q. Just explain for our record what that is?
A. It's --- they put a medicine into like an electrical shock and shock my arm to try to like stimulate what they thought was the tendon that was being bothered to make it better. That was on May 19th. I saw Doctor Graeca on June 1st for a physical, had told him that my hand was still bothering me and that Mark had said that if it didn't get better I would get a steroid shot.
Q. Did Doctor Myers make any comment with regard to the April 12th x-ray?
A. No.
Q. Never came up discussed?
A. No.

Q. Did Lori Matolli ever dis in any way the April 12th x-ray?
A. No.
Q. Is it fair to say you never learned the results of that by seeing Lori, Matolli the physician's assistant, or Doctor Myers?
A. Other than believing it was negative.
Q. But you had never been told by any healthcare providers; correct?
A. I don't recall if it was Lori. I'm sure she told me at some point I can't recall if she called me or if it was when I went back. When I didn't hear from anybody I assumed it was negative, but I believe she probably had told me that.
Q. Okay. In your training or experience as a radiation therapist and the other training you had for the certifications in radiology had you been aware of situations where an x-ray may be read as negative but still be underlying disease or

pathology going on?
A. Say that again.
Q. Yes. In your training and experience in radiation therapy or the other certificate for radiology had you ever become aware of any circumstances where an x-ray film may be read as negative but there still could be some underlying condition or disease that was not detected?
ATTORNEY CRENNEY: I'm just going to object to the form of the question.
ATTORNEY SLIMAK: You may go ahead and answer.
ATTORNEY CRENNEY: You can give it a shot if you know. You can try to answer it, if you can't.
A. I don't --- can there be medical mistakes made?
ATTORNEY SLIMAK: That's not the question.
ATTORNEY CRENNEY:

Page 130

That's a fair interpretation of the question.
ATTORNEY SLIMAK:
I think that's your characterization of the question.
ATTORNEY CRENNEY:
She said it. I didn't say anything.
ATTORNEY SLIMAK:
That's right. I'm asking the questions and asking for her answers not yours.
ATTORNEY CRENNEY:
She answered it.
ATTORNEY SLIMAK:
If you have a specific objection you can make it.
ATTORNEY CRENNEY:
She gave it. All I said is that's a fair interpretation when you said that's not the question I asked.
ATTORNEY SLIMAK:
Well just noting for the

Page 131

record that I move to strike your characterization of that. Okay.
ATTORNEY CRENNEY:
You're striking my characterization that that was a fair answer to your question? Which is okay, just go ahead.
ATTORNEY SLIMAK:
Your comment's on the record.
ATTORNEY CRENNEY:
Okay. No problem.
BY ATTORNEY SLIMAK:
Q. Have you ever heard of circumstances where an x-ray was read as negative but understand that there still may be some disease entity that was not detected at the time?
ATTORNEY CRENNEY:
Well, I'll object again.
A. I don't --- medical mistakes are made. Is that what you're asking me? Do I believe that medical mistakes are made?

Page 132

BY ATTORNEY SLIMAK:
Q. No. Well, I'm not asking that specifically?
A. I was taught in x-ray school you don't question the radiologist. I was taught through DRMC that you can't look at your stuff. I didn't question it.
BY ATTORNEY SLIMAK:
Q. Ultimately those are the questions I want to ask you about. When you were undergoing further evaluations by physician's assistant Ms. Matolli or by Doctor Myers or his physician assistants as that was. Did you feel that there may be something else going on that they had not yet detected?
A. No, I believed them.
Q. That's what I'm trying to find out. Now, would you take us through the subsequent care and evaluations, what occurred next. You have seen now Doctor Myers or his physician's assistant who's name I won't try to

Page 133

pronounce. And then what happened next?
A. June 1st I went and saw Doctor Graeca for my yearly physical. Had told him it still didn't feel like it was getting better. Told him that Mark was going to give me a steroid shot if it didn't get better in three weeks from the 19th. And.
Q. Mark?
A. The PA, Doctor Myers' PA.
Q. Uh-huh (yes)?
A. And it was left at that. He told me if I had any other problems to give him a call. I don't recall what day I had called Doctor Myers office and --- no it was after that visit. It was after my visit with Doctor Graeca that I went, I believe, and asked them if I could get the steroid shot because I didn't feel like it was getting better and I wanted to get better. So she told me that he couldn't see me for, I don't know how long, it was quite a while, he didn't

Page 134

have an appointment. And I had asked if there was an opening if they could call me. So I believe it may have been the next day, I don't know the exact date that they called and said I could come in and get the steroid shot. So I believe that was June 2nd.

Q. Okay.

A. I got a shot.

Q. Okay. Now, up through that point in time did you feel that your condition had stayed the same worsened or got better during the course of the occupational therapy?

A. I didn't really think it was getting better. I was still having pain.

Q. Did you feel it was getting worse?

A. Yeah. It was getting worse.

Q. Did you communicate that to the physicians or the physicians' assistants?

A. Yes.

Q. Did they do anything

Page 135

differently?

A. He gave me the shot but said that tendonitis is something that takes time and I'm just going to have to give it time.

Q. Was there anything discussed up to that point in time about addition or other studies from the radiology department?

A. No.

Q. No MRIs were discussed?

A. No.

Q. No CT scans?

A. No.

Q. No additional x-rays?

A. No.

Q. Did the steroid shot into the wrist area have any full effect?

A. I thought the next day that it felt a little bit better, but then it continually got worse.

Q. Okay. What was the next healthcare provider visit that you had?

A. I called Doctor Graeca's office

Page 136

and told them that it wasn't bet and what do they recommend that I do.

Q. Do you recall what day that was that you called?

A. I don't --- I believe it was June --- I don't know the date.

Q. Would it be within a couple days of the shot?

A. Yes.

Q. Less than a week?

A. Yes.

Q. Because we know you went to Piasio, I think, on the 9th?

A. The 9th. So I believe it was the beginning of that week.

Q. And what did they say in response to that if anything that you recall? You called and said it's not working?

A. What did Doctor Graeca say?

Q. Yes.

A. They were going to send me to see Doctor Piasio.

Q. Did they call you for a visit first?

Page 137

A. No.

Q. Did he make the arrangements Piasio or ---

A. I believe Lori did.

Q. --- Matolli?

A. Matolli.

Q. And then between that last contact with Doctor Graeca, you know, which had been just after the steroid shot to the time you went to see Doctor Piasio had your condition changed in any way?

A. The day I called Doctor Graeca I was just having a lot of pain.

Q. Did it seem to have gotten worse?

A. It was a rainy day and I thought maybe the weather was affecting me.

Q. From April 12th through June 9th when you went to see Doctor Piasio had you noticed anything visibly different with regard to your wrist or arm?

A. No never.

Page 138

Q. Had your condition changed in any way that you could detect?
A. It was getting more painful.
Q. How bad was the pain at that point in time?
A. Pretty bad.
Q. Was the pain localized in any particular area?
A. It was my wrist area. I could never pinpoint a spot.
Q. You said previously and prior to April 12th I think that you had some pain sometimes it was above and below your wrist you pointed to different areas of your wrist and it continued, or was it now just pain all over, or I don't know you tell me.
A. It was just the same they thought it was a tendon that was in there that sometime it was more aggravated.
Q. I just want to know what you felt at that point in time when you went to see Doctor Piasio. Did you feel the pain had changed in any way

Page 139

or location or any other attribute?
A. It just had gotten more achy. It was still ---.
Q. How badly was it aching by that point in time?
A. Pretty bad.
Q. Would it wake you up from sleep?
A. I don't recall.
Q. Did you continue working up through that visit with Doctor Piasio?
A. No, I had not been working since May 5th.
Q. Did Doctor Myers take you off work?
A. Yes.
Q. But he didn't institute any additional new treatment at that time?
A. Occupational therapy, yeah. I had been taking occupational therapy the whole time from May 9th.
Q. Was there particular elements of occupational therapy that seemed to make your pain worse in any way?
A. Not really.

Page 140

Q. Okay. What do you recall about going to see Doctor Piasio?
A. I went on June 9th. He started bending my wrist around and immediately said this is not tendonitis. Had asked me what I had done, I told him the occupational therapy, the steroid, told him I had gone, you know, had an x-ray and he pulled up the wrist x-ray from April 12th. And instantly he, myself and my two children could see the spot that was in the bone and he said there's something there. He said I don't know what it is. I'm going to take you across the hallway, we're going to get another x-ray and he took me across. And when it come back he showed me the spot that was there at that time.
Q. It had changed in appearance?
A. Yes.
Q. You could see that for yourself?
A. Oh, yes.
Q. Is it accurate that when Doctor

Page 141

Piasio first saw the April 12th, 2005 x-ray in your presence that he could not identify what it was as far as the actual condition?
A. He told me he believed if was some type of tumor.
Q. Is that what he said initially or after he got the second x-ray?
A. I don't recall.
Q. What else do you recall about that visit with Doctor Piasio on the first occasion?
A. Being scared.
Q. Anything else?
A. Just getting ready to do all of the tests that I was going to have to do.
Q. Was there some discussion with Doctor Piasio what was needed or indicated next?
A. I was going to have an MRI of my wrist and then a bone scan and I believe a chest x-ray.
Q. Did Piasio obtain a second x-ray in his office or did he send you

some place for the second x-ray?
A. He got it in his office.
Q. He has that facility right there?
A. Yes.
Q. So he then lined up a number of tests; correct?
A. Yes.
Q. What else do you recall then about the course of your care, I want to go through that now?
A. I had an MRI that day, the next day I went and I had my injection for my bone scan, I went and had my chest x-ray, I came home, Doctor Piasio's office was on the phone telling me I needed to go get a CAT scan of my chest. I went back up, I had the --- I believe I had the CT on my chest first and then I had my bone scan.
Q. Was there concern at that point in time that this may be cancerous?
A. Yes.
Q. Am I correct that it was ultimately determined that this was not cancerous?
A. Yeah.
Q. Was that somewhat of a relief?
A. Yeah. That wasn't until June 20th.
Q. The biopsy by Doctor Yaw?
A. Yeah.
Q. And the results of that came back?
A. Yeah.
Q. Now, take us through the additional course of care. Doctor Piasio obviously ordered a number of new additional tests when he has determined that there is some type of abnormality, he suspects may be a tumor according to your testimony. What was occurring then?
A. The 10th I had all those tests. I went back to see him on the 13th I believe and he told my husband and myself that he felt it was either a Ewing sarcomea.
Q. Which is cancerous condition?
A. Or a giant cell.
Q. Which is noncancerous?
A. Yeah.
Q. That's what you understood at that time?
A. Yes. I didn't know. And he wanted me to get a CT of my wrist. I believe that was the next day.
Q. Did he send you to DuBois Regional Medical Center for that?
A. Yes.
Q. Did you get that CT done at DuBois?
A. Yes.
Q. What was the next stage of your care?
A. Then I went to see Doctor Yaw on June 17th.
Q. Uh-huh (yes). Down in Pittsburgh?
A. Yes.
Q. He told me that they were going to, he x-rayed it, told me they were going to biopsy it and he splinted me that day.
Q. Do you know if Doctor Yaw indicated to you if he knew what this was at that point in time or not?
A. He thought that it was a giant cell, but could not guarantee me that it was.
Q. So he wanted to do the biopsy?
A. Yes.
Q. And then that was scheduled?
A. Yes.
Q. June 22nd?
A. 20th.
Q. That was performed down in Pittsburgh?
A. Yes.
Q. All right. And what was your next follow up care?
A. I had surgery on June 27th.
Q. Okay. Following that surgery June 27th --- not following, but how many days were you in the hospital for the surgery in your wrist?
A. Three 27th, 28th and 29th
Q. The biopsy was that a one day in and out procedure?
A. Yes.

Page 146

Q. What was the course of your care after the three days for your surgery?
A. I had a splint on my arm until July 14th and went back to Doctor Yaw and had a cast on until August 23rd. And then I got fitted for a brace that I wore until October.
Q. Okay. Now, have you ever had any conversations with Doctor Yaw about the onset of your condition --- let me back up. Have you ever had any conversations with Doctor Yaw in which the April 12th, 2005 x-ray was discussed?
A. Yes.
Q. When was that occur?
A. When I went to see him on the 17th.
Q. Of June?
A. Yeah.
Q. The first visit?
A. Yes.
Q. And what was the discussion that you recall at that time?

Page 147

A. That it had been there since April. It was missed and giant cell tumors are rapid growers. And that my operation was going to be a lot more extensive than what it would have been back in April.
Q. Anything else?
A. That if I would have been there in April I would have probably been back to work in three months.
Q. Did he discuss with you in any way in which he felt that may have been a different surgery or care that would have been rendered if it had been diagnosed as of April 12th?
A. Yes.
Q. In what regard?
A. If it would have been caught at the size it was April 12th he would have went in, scraped it out, cemented it, and I would have went back to work.
Q. Did he describe anticipated care at that time anything else other than what you've said --- maybe that's not a very good question. Did he discuss any of the details of what the care might have been other than scraping it and going in surgically scraping it out and cementing it?

Page 148

A. No.
Q. Did he discuss a freeze procedure?
A. I don't remember.
Q. Did he discuss with you that until they go in they don't really know exactly how extensive it is?
A. I don't remember.
Q. Okay. After the biopsy procedure that Doctor Yaw performed try to determine if it was cancerous or noncancerous did you have some discussions with him about the anticipated surgery to remove the tumor?
A. Say it again. I'm sorry.
Q. After the biopsy results came back did you have further conversation with Doctor Yaw with regard to the planned surgery?

Page 149

A. In his office?
Q. Yes, or by telephone.
A. I think he just called to tell me that it was a giant cell and I was going to have the surgery on the 27th.
Q. Okay. Did he tell you exactly the nature and extent of the surgery prior to performing the surgery?
A. Yes.
Q. Did he indicate that there would anything that might vary depending on what he found when he actually went into do the surgery?
A. I don't believe. I think he had pretty much told me what was going to have to happen and ---.
Q. Okay. So you already knew in advance of the surgery with regard to the resection of the ulna and replacement of that with the radius in place of the radius and that type of thing and the positioning of the plate and such; is that correct?
A. By that time --- it was caught in June. That was what was going to

have to be done.
Q. Right. And then take us through your subsequent care. After your surgery in June when was the next time you followed up with Doctor Yaw?
A. July 14th.
Q. Was there anything specifically done at that time?
A. They took my splint off, x-rayed it and put a cast on it.
Q. Was there any additional care or medications prescribed at that time?
A. Vicodin. I was taking Vicodin.
Q. What was next as far as your care?
A. I had to wear the cast from June 14th until August --- or July 14th, I'm sorry. July 14th to August 23rd.
Q. And what occurred at that time?
A. August 23rd?
Q. Yes.
A. I went back and they took the cast off, they x-rayed it and they

sent me to have a brace made.
Q. Okay. And then did you get the brace and have to wear that for a period of time?
A. Yes.
Q. How long?
A. August 23rd until October 4th. A year from today.
Q. And then since August 4th of 2005?
A. October 4th.
Q. I'm sorry October 4th of 2005, a year actually today. Have you had any more braces or things, orthopedic type devices that you used or?
A. No devices.
Q. Did you ever undergo any type of physical therapy?
A. I did occupational therapy after I got the brace off and then after that I went back to Doctor Yaw on January --- I don't recall the date. Beginning of January. I had had to go in and have another surgery and ---.

Q. For what? Where your s had gotten a little nodule on it?
A. Yes.
Q. So the stitch had been taken out from the little nodulate of scar tissue that had formed?
A. Right. And I have another one that I have in my arm.
Q. You're planning to get something done for that?
A. Not until it bothers me.
Q. So right now you determined there might be another nodule developing, but it's not to the point where you feel you need to do anything with it?
A. Yes.
Q. Did the other one get painful or something like that?
A. Yes.
Q. And so you went and saw Doctor Yaw and he took care of that?
A. Yes.
Q. Was that in hospital procedure or an in office procedure?

A. I had to go back in the hospital.
Q. Was it same day in and out?
A. Yes.
Q. Any other care that you received from Doctor Yaw that we haven't talked about so far?
A. I had physical therapy starting in the end of February --- well, middle of February, I believe, it was of '06 and did physical therapy up until March 8th.
Q. At some point in time or on more than one occasion did you have conversations with Doctor Graeca about the concerns that he was going to be sued?
A. Yes.
Q. When did that occur?
A. I believe after he found out what had happened.
Q. Did he discuss, what did he discuss with you about his concern of getting sued?
A. He told me that he learned in

Page 154

law school that physicians ---
Q. Law school ---
A. I'm sorry in medical school that physicians get sued once every five years and that was his fifth year of practice.
Q. Was there any other discussion?
A. He had told me that when he pulled up the x-ray that he had seen it.
Q. Okay. So he felt that he might get sued because of that?
A. He felt that he might get sued because he was my treating physician, I guess.
Q. Did he give you any other indications of why Doctor Graeca felt that he might get sued over what had occurred with your care?
A. I don't remember our whole conversation.
Q. Do you recall Doctor Graeca attempting to convince you not to sue him?
A. No. I don't believe he was

Page 155

trying to convince me of that.
Q. Did Doctor Graeca tell you that he would not be able to continue in your care if you sued him?
A. Yes.
Q. Did he tell you that he would not continue your care if you sued the hospital?
A. No.
Q. Don't recall him ever saying anything to that affect?
A. No.
Q. Did you ever have any conversations with Lori Matolli about whether she would get sued?
A. No.
Q. Ever have any conversations with Doctor Myers with regards to whether he may get sued?
A. No.
Q. Do you continue to see Doctor Graeca?
A. Yes.
Q. When is the last time you saw him?

Page 156

A. May of this year.
Q. Am I correct that you have not sued Doctor Graeca, am I correct or you don't know?
ATTORNEY CRENNEY:
Not to that I know of.
ATTORNEY SLIMAK:
Well, between the two of you, you should know.
ATTORNEY CRENNEY:
Well, between two of us we do. No.
A. No.
ATTORNEY CRENNEY:
You haven't sued him have you?
A. No.
ATTORNEY CRENNEY:
I have not on your behalf.
BY ATTORNEY SLIMAK:
Q. Now are you continuing to see Doctor Graeca?
A. Yes.
Q. What conditions do you continue

Page 157

to see Doctor Graeca for?
A. Gynecological physical exam and yearly physical.
Q. Okay. Was it Doctor Piasio that made the referral to Doctor Yaw?
A. Yes.
Q. At some point in time did you make some efforts to seek out alternative employment?
A. Say that again.
Q. At some point in time since you developed this tumor have you undertaken some efforts to seek out other employment?
A. Oh, no.
Q. Did you not go to the job training center and apply or something like that?
A. I had to go there to be able to collect unemployment.
Q. But you made no inquiries on available jobs?
A. No.
Q. Any reason why you haven't?
A. To be totally honest with you

I'll never make the amount of money that I'm collecting on unemployment so when my unemployment runs out I'll be seeking a job.

Q. When is your unemployment scheduled to run out?

A. November.

Q. Do you have some --- November of 2006?

A. Yes.

Q. Are you doing any planning right now with regard to seeking out another job come November 2006 whenever your unemployment runs out?

A. I haven't done anything, no.

Q. But you plan on doing ---?

A. November, I'm not sure of the date.

Q. Okay. Have you given any thought to what efforts you're going to undertake to start seeking out work when your unemployment runs out?

A. No.

Q. Do you ever watch the --- look through the newspaper to see if there

are jobs available?

A. Yes.

Q. Have you made any computer inquiries through the job placement service locally to determine if there are any jobs out there that might be of interest, be able to physically do, or based on your experience?

A. I haven't.

Q. Have you made any inquiries of the hospital to see whether or not they would be able to accommodate you under the Americans with Disability Act to see whether or not you could return to your prior employment here or in some alternative position?

A. No.

Q. You never have talked to human resource director in that regard?

A. (Indicates no).

Q. Is your answer no or yes?

A. No.

Q. Do you know who the human resources director is?

A. Yes.

Q. Who is he?

A. Bob McKee.

Q. Have you had conversations in the past with Mr. McKee?

A. Yes.

Q. Do you know where his office is?

A. Yes.

Q. Is there any reason why you haven't gone back to see Mr. McKee with regard to whether or not there might be a position at DuBois that they can utilize your skill and training and experience and be able to accommodate the difficulties that you have?

A. Fear.

Q. Fear of what?

A. Fear that they would accommodate me for a short period of time.

Q. You don't want to work here?

A. I loved my job here. I loved that job. It was the only job I ever had. I loved that job, but I fear

that they would accommodate me for a short period of time and then in a year or two years down the road I wouldn't have a job.

Q. Is there some specific thing that has occurred why you would have that fear?

A. Conversations with my manager.

Q. Okay. Tell me about that. First of all, who's the manager?

A. Rose Campbell.

Q. What kind of conversation is this?

A. She had told me on several occasions that she didn't know if I had a job even when I had asked human resource if I was, you know, past my functional capacity would I have a job and she told me she didn't know.

Q. Did she say why she didn't know?

A. She just didn't know what the job market was going to be at the time.

Q. Were you applying for a job at

Page 162

that point in time or asking to come back to work or not?
A. I had approached her several times to come back to work. I had asked her about doing a secretary job. She had told me that they had to lift ten pounds and I couldn't do it.
Q. But you even went to the human resources manager or formally applied in any particular channel to see whether or not there's some job anywhere in the hospital that could accommodate you; is that correct?
A. Correct.
Q. Do you feel that there's any reason why even being re-employed for a year or two years is something you don't want to do?
ATTORNEY CRENNEY:
Object to the form of the question. I don't understand it.
BY ATTORNEY SLIMAK:
Q. Would you accept employment at the hospital for a year or two years

Page 163

if they could accommodate you?
A. For only two years?
Q. Let's start with that, a year or two years would you accept a position if they could offer it?
A. I would love to have a job here.
Q. If they could offer you accommodations to employ you continuously as long as they had the work would you accept that position?
A. Yes.
Q. Okay. If the hospital does not offer you or does not have a position available to you within your restrictions is it your intentions to look for work elsewhere?
A. Yes.
Q. Is there any particular areas of interest that you have that you feel is something you might look for?
A. I have no idea.
Q. To your knowledge is there any physician within the radiation therapy department that you worked in that you

Page 164

feel that you could do with the positions as they actually exist. I know there may be someone else in the position presently, but taking that into consideration as far as the job functions are there other positions you feel you could do?
A. I don't believe.
Q. Is there any accommodations that you feel could be offered with regard to your radiation therapist position that would assist you in actually being able to be a functional or an effective worker?
A. I don't know.
Q. Is that something you just haven't looked into at this point?
A. I haven't, no.
Q. Have you ever talked to, did you say Rose Campbell?
A. Yes.
Q. With regard to whether or not there could be something done to alter the position so that you could return to work as a radiation therapist?

Page 165

A. No. She has never offered me anything.
Q. Okay. Did you ever make an inquiry in writing about returning to work? Did you ever send a letter or note in asking to be reconsidered for work?
A. To them.
Q. Yes?
A. No.
Q. Have you ever provided any type of --- back up. Your most recent functional capacity evaluation, have you provided that to your employer to see whether or not those restrictions or abilities could be accommodated?
A. I don't know if they received it or not.
Q. You know that you didn't take it into the employer?
A. I have not seen my manager in the workplace.
Q. Have you ever consulted with a vocational rehabilitation specialist to determine if there are jobs locally

Page 166

or at the hospital that you could perform?
A. I have talked to OVR.
Q. Office of Vocational Rehabilitation?
A. Yes.
Q. State agency?
A. Yes.
Q. When did you apply to them?
A. I had talked to them after I signed up for my unemployment.
Q. And when was that?
A. June.
Q. Of 2000 what?
A. 2006.
Q. Was your salary continued at DuBois Regional Medical Center for a period of time before you went on to unemployment?
A. They paid me my sick time.
Q. Once you used up your sick time then you went on to unemployment; is that accurate?
A. Do you mean the whole time I've been off.

Page 167

Q. Yeah. I'm just trying to get a gist?
A. I received sick time then I received short-term disability and then once my short term disability ran out I collected sick time and now I'm on unemployment.
Q. There was a period of time until your short term disability was approved that you were using the sick time?
A. Yes, six weeks.
Q. And when that ran out, the short term disability, you went back on sick time?
A. Yes.
Q. And then ultimately you used that up and went on unemployment?
A. Yes.
Q. You don't have a long term disability policy?
A. No.
Q. Do you continue --- let me back up. Does DuBois provide for --- let me ask it a different way. Does your

Page 168

husband have medical care benefits for you and the family?
A. Yes.
Q. Is that who's paying for your bills?
A. His insurance?
Q. Yes.
A. Yes, it is through his insurance.
Q. Okay. So you have never had to utilize any healthcare insurance through your employment at the hospital for your illness; correct?
A. No, not for my illness. I had had benefits through them back in 1991 when my husband was changing jobs for a brief period.
Q. How long has he worked for the state?
A. Since '91.
Q. Okay. What was the reason that you went to the office of vocational rehabilitation?
A. I didn't go there, I talked to them on the phone. They sent me

Page 169

information that I can fill out to see if they can somehow rehabilitate me.
Q. Would that be with some different training or some other function?
A. I believe so. I talked to her briefly.
Q. Is there any particular reason why you haven't followed up on that yet?
A. At the time it was in the the summer when my kids were still home and I haven't done anything, but I need to.
Q. Okay. Do you have any claims that you're making that this medical problem that you had has affected you in any other ways we have not yet discussed?
ATTORNEY CRENNEY:
Objection. Overly broad.
BY ATTORNEY SLIMAK:
Q. I'll be more specific. Are you claiming it affected your relationship with your husband in some negative

Page 170

fashion?
A. We've had arguments.
Q. Is that the only way that you're claiming it's affected your relationship?
A. I don't understand what you're asking.
ATTORNEY CRENNEY:
The question that Counsel has to ask and he's asking you if, and it's embarrassing for old men, but he's asking you I think if it's affected your love life.
A. Oh, yeah.
BY ATTORNEY SLIMAK:
Q. Are you making a claim for that in this case?
ATTORNEY CRENNEY:
Yes.
A. Yeah.
BY ATTORNEY SLIMAK:
Q. Well, then whatever you're going to be claiming that you've been affected by this problem that you've

Page 171

had. I need to know what you're going to claim?
A. Oh yeah. The stress that him and I have both carried, you know, my job was the strong income and now it no longer is. I don't feel like being sexually active.
Q. Do you still have relations?
A. Yes.
Q. Has it changed in frequency or something or what?
A. Yeah.
Q. Changed in any other ways that you're making a claim for?
A. Such as?
Q. Such as I don't know your relationship?
A. Stressful.
Q. Is there any other ways that you feel that medical problems you've had affected you that we've not yet discussed?
ATTORNEY CRENNEY:
Objection overly broad.
BY ATTORNEY SLIMAK:

Page 172

Q. Anything coming to mind?
A. I'm affected every day by what happened to me.
Q. That's what I'm trying to develop. Have you gone to see a psychologist or psychiatrist?
A. No.
Q. Have you under gone any counseling of any kind?
A. No.
Q. Has your husband undergone any counseling or therapy with regard to the problems that you have been having?
A. No.
Q. Has he undergone any counseling or therapy with regard to the particular medical problem he's having?
A. Has he gone through therapy?
Q. Yes?
A. No.
Q. Some type of emotional or psychological counseling or care?
A. No.

Page 173

Q. Have you seen anybody for depression?
A. No.
Q. Do you feel that you're depressed?
A. Sometimes yes, not enough that I'm going to pay for medication.
Q. Do you do things to try to keep up your spirits?
A. Yes.
Q. Tell me about that?
A. I try to stay active.
Q. Anything else?
A. I go to church.
Q. All right. Have you incurred any particular expenses that's you attribute to the claims you're making in this case?
A. Oh yeah. All of the trips I have had to spend to go to Pittsburgh. My husband's insurance changed at the beginning of the year so I had to pay for my physical therapy. All of my medications I have had to pay for.
Q. Have you ever kept track of

what your out of pocket expenses would have been?
A. No.
Q. Any other costs or expenses you may have incurred?
A. I don't recall.
Q. I'll defer to other counsel who may have some follow-up questions. I may have something further at the end of the session.
SHORT BREAK TAKEN
ATTORNEY WALL:
I'll be relatively brief.
EXAMINATION
BY ATTORNEY WALL:
Q. Mrs. Carlson, we met earlier I'm Walter Wall. I represent DuBois Radiology, Inc. in this matter. You've just been through extensive Cross Examination at the beginning of which you'll recall Mr. Slimak gave you some instructions?
A. Yes.
Q. Any need for me to repeat any

of those instructions?
A. No.
Q. You commented several times that your position at DRMC was the only job you ever had?
A. Yes.
Q. Prior to that you never had any work activity at all?
A. No.
Q. Part time?
A. I watched a lady's kids in x-ray school maybe three times.
Q. And I take it from your testimony that since your last employment at DRMC you had no income earning capacity at all anywhere at any time?
A. No.
Q. I want to go back to that area of testimony you were talking about meeting with your manager Rose Campbell I believe?
A. Yes.
Q. Discussing possible employment you said you were looking particularly

for one time for a secretarial
A. I had asked her about it, yes.
Q. You have a diary entry on April 20th of '06 meeting at work about going back to work references Rose?
A. Yes.
Q. Was that meeting requested by you or by Rose?
A. By Rose.
Q. And were you discussing at that time returning to your original occupation or substitute occupation?
A. Original.
Q. What was the result of that meeting?
A. I didn't return back to work.
Q. Well, what occurred during that meeting concerning what was the reason Rose asked you to come in?
A. She came into talk to me about when I could return to work.
Q. And what did you tell her?
A. Whenever they were ready to have me.
Q. And was there anything else

said that explains why you didn't start then?
A. She had stated that my job no longer existed 72 hours, the hours that I had worked were no longer available because they had gotten extremely busy while I was off. I was going to have to go to at least 80, maybe more hours and she had asked me about a comment that she had heard second hand that I said I would let a patient fall.
Q. What did you say in regard to that?
A. She said that she heard this comment and that I could not let a patient fall and I had to use good body mechanics, bring them down on my hip, catch them with my left arm and I could no longer --- I would never be able to say that comment again. That wasn't the comment that I had made. I had told her that I knew that my arm --- if she put me back into that job my arm --- they were saying my arm was

Page 178

100 percent and that if I hurt my arm then I could --- then it wouldn't be my own fault.
Q. All right. And as a result of that meeting she told you to come back?
A. She told me yes that she would talk to my supervisor the next day and she would call me and let me know when they wanted me to start back the following week.
Q. And did she call you?
A. No.
Q. You have never heard from her since?
A. No.
Q. Did you ever contact her again?
A. No.
Q. Did you ever contact your supervisor?
A. No.
Q. So ever since that meeting you have had no further contact with anyone at DRMC about this job?
A. Bob McKee had called me.

Page 179

Q. After this?
A. Yes.
Q. And what occurred then?
A. He told me that we needed to get together to speak about my concerns that I have.
Q. Was that relatively a short time after this meeting with Rose?
A. That was --- I believe it was Friday. It was Friday afternoon.
Q. Was that the Friday after the meeting is that what you mean?
A. Yes.
Q. And was there a meeting then?
A. No. His secretary had called me Monday at, I don't even know what time it was in the afternoon, I wasn't even home. She left me a message that he wanted to meet with me at 2:30, 3:00 in the afternoon.
Q. That same afternoon?
A. Yes.
Q. And did you keep that meeting?
A. No.
Q. Did you contact McKee again?

Page 180

A. No.
Q. Contact anybody at DRMC?
A. No.
Q. So that's what ended the discussions?
A. Yes.
Q. There's also an entry on 2/8/06. Doctor Graeca called about job what was that?
A. Doctor Graeca was trying to see if he could somehow find some type of job for me to do in the cancer center.
Q. Was he able to do that or what?
A. No.
Q. You made a statement here earlier that I need you to clarify for me because I just don't under. You said you loved the job you had at DRMC?
A. Yes.
Q. And you would love to come back and I'm paraphrasing, but something to the effect that you were afraid if you would come back you would only work a year or two and then they would let

Page 181

you go?
A. Yes.
Q. Given the fact you can't work anywhere else what's the negative aspect of that. If you did come back?
A. Right.
Q. And if, in fact, your fear was fulfilled that a year or a year after that they let you go you would have still had a year or two years work; right?
A. Yes.
Q. So what I'm asking you to clarify is why was that a fear to you? What was the concern with taking a job if it was the possibility you would only work a year or two?
A. I was concerned because of my arm. I was afraid that in two years I wasn't going to be able to physically be able to do that job that they told me they were going to give me.
Q. Was that a different job?
A. No, that was them making me go back to my reg --- the job I had

already had.
Q. Did any one tell you when this was being discussed that they would make alterations or modifications to your job?
A. No.
Q. Your diary that has been provided to us --- you said earlier you started keeping that diary when your father was diagnosed with cancer?
A. Yes.
Q. Is that what prompted you to do it?
A. Yes.
Q. Now, it goes up to July 13, 2006. Have you maintained it since then?
A. No.
Q. What made you stop on 7/13?
A. I had to send it to Mr. Crenney's office.
Q. I understand. But how would that prevent you from making further entries thereafter if you chose to?
A. I started studying the Bible.

Instead of using my time to write journals I decided that it was time to go to the Bible.
Q. And without getting into that area too much would you explain to me when your father was diagnosed with cancer why that prompted you to maintain a diary?
A. I just knew that, you know, dates were going to have to be remembered of, you know, event that were going to take place so I ---.
Q. Because of your experience with your father?
A. Right.
Q. You applied for Social Security disability?
A. Yes.
Q. And what was the result of that?
A. I've been denied and ---
Q. You been denied any Social Security disability?
A. I have been denied.
Q. What were their findings that led to their deny?
A. I'm too young and I have too much education and too many years experience on a job.
Q. Did they make any finding as to any partial disability you might have?
A. No.
Q. Did you have to submit medical records in support of that application?
A. They had gotten the medical records. I didn't supply them myself personally.
Q. You had to give them authorizations?
A. Yes.
Q. And did you give them authorizations for any physicians other than those we talked about or whose records have been produced in this case?
A. No.
Q. Your husband, I understand his current employment --- could you tell me how far he went in education?
A. High school.
Q. And he has had no further subsequent training at all?
A. (Indicates no).
Q. Since your surgery, have you considered taking any further educational courses?
A. I would love to, but I can't afford it.
Q. So the answer is no, you haven't under taken any?
A. No, I haven't.
Q. How about job training type courses other than the Bureau of vocational education?
A. No.
Q. When you went to the hospital at some point you said you were looking for a secretarial job?
A. Through Hahne.
Q. Yeah. Do you have any past experience doing secretarial work?
A. No.
Q. Do you type?
A. No.

Page 186

Q. **Was there a particular type of secretarial job you were applying for at that time?**
A. I didn't apply.
Q. **What brought that up?**
A. Because Doctor Yaw said could pick up a pencil and answer a telephone. I was going crazy at home. I wanted a job.
Q. **You told us earlier that your hours were voluntarily --- when you worked here your hours were voluntarily reduced to 36 hours?**
A. Yes.
Q. **Because of, I assume, by cuts or ---?**
A. Yes.
Q. **They were seeking someone to do that?**
A. Yes.
Q. **Were you ever --- did you have an understanding at that point in time that at some point your hours would be restored?**
A. Not at that time, no.

Page 187

Q. **Did you have any understanding that your hours might be cut further?**
A. No.
Q. **And prior to that were you working 40 hours?**
A. Yes.
Q. **You mentioned when I was asking about this meeting with Rose something about 72 hours?**
A. Yes.
Q. **What's that?**
A. In two weeks I made 72 hours. 36 hours a week.
Q. **Has any of your treating physicians, Doctor Yaw or anyone else who has treated you since the diagnosis of the giant cell tumor, indicated to you that an earlier diagnosis would have resulted in a better recovery for you?**
A. I don't remember.
Q. **Has anyone indicated --- any of your treating physicians indicated to you that an earlier diagnosis would have resulted in less treatment?**

Page 188

ATTORNEY CRENNEY: This is other than Doctor Yaw.
ATTORNEY WALL: I'm asking her anybody including Doctor Yaw.
A. Yeah I didn't understand you.
ATTORNEY CRENNEY: Mr. Slimak went over that about Doctor Yaw. He's including doctor Yaw.
A. Say the first question again.
BY ATTORNEY WALL:
Q. **The first question including Doctor Yaw has any treating physicians told you that an earlier diagnosis would have resulted in an a better outcome for you?**
A. Oh yes, Doctor Yaw.
Q. **Anyone else?**
A. I can't remember if Doctor Piasio did or not. Doctor Piasio said it was there back in April, but didn't know at the time what it was. So I don't recall if he said that.

Page 189

Q. **Well, when Doctor Yaw said to you, you would have a better outcome what specifically do you recall him saying in that regard?**
A. He said if it would have been caught back on the 12th of April they would have went in cut scraped it cemented it and I would have been back to work before three months.
Q. **Did he tell you that under those circumstances there would still be the possibility of a recurrence?**
A. There is with a giant cell tumor there's always a possibility of recurrence.
Q. **And I then asked you including Doctor Yaw if any of your treating physicians had indicated to you that your --- well strike that you answered that.**
Now, currently and I understand you have said several times that whenever you use your right arm you have pain. But if you're sitting as you have been here and you're not

using it for anything do you then have pain currently?
A. It's always there. My plate is really superficial and it's stretched my skin so I am always aware that my arm is there.
Q. And I understand I'm just trying to qualify that as you say you're always aware and I understand you have feeling there that is not normal?
A. Right.
Q. Is that pain?
A. I don't know that you would call it a pain. It's ---.
Q. I'm trying to distinguish between that and when you actively try to use your right arm. I assume there's a difference in the sensation; right?
A. Yeah.
Q. And you call that pain when you use it or ---?
A. When I'm at rest it's like a stretch. Like it feels like somebody

is grabbing your arm and stretching it. Stretching the skin down overtop of your arm. So it's a stretching pain.
Q. Does that intensify when you're using your right arm?
A. Yes.
Q. And you're taking one pain medication at this point in time?
A. Yes.
Q. Who prescribes that?
A. I think the last time I got it Doctor Graeca prescribed it.
Q. And in the last six months --- strike that.
I assume when he gives you prescription it's for 30 capsules or 30 pills?
A. I want to say it was 60.
Q. How many times did you refill that in the last six months?
A. I just got it refilled probably a couple weeks ago and before that I don't know because I had had some from Doctor Yaw. I don't know.

Q. Do you use the same pha[illegible]y all of the time?
A. Yes.
Q. What is that?
A. Bi-Lo Main Street.
Q. In DuBois?
A. Yeah. I've had Vicodin from my dentist too so --- because I had a root canal so I think I had some of those too, so I'm not sure when I had those.
Q. Now I take it you were here when Doctor Shah testified earlier; right?
A. Yes.
Q. And he said he may have had occasion to see you in the hospital when you were employed there but he really didn't know you by name?
A. Yes.
Q. Did you ever recall --- strike that.
You have never spoke to Doctor Shah about this case or your condition though?

A. No.
Q. And do you recall ever --- other than passing him in the hall and greeting do you recall any communications with him?
A. No.
Q. There's also an entry in the diary of a 7/6/06 CareerLink appointment, what was that for?
A. That was for my unemployment.
Q. Did they ever advise you of a position they had available for you?
A. No.
Q. And I take it from what you indicated to Mr. Slimak at this point, up until this point in time you have not specifically considered any other employment?
A. No.
Q. The nature of the employment I mean?
A. No.
ATTORNEY WALL:
Thank you. That's all I have.

Page 194

A. Thanks.
EXAMINATION
BY ATTORNEY KORINSKI:
Q. I've got a few questions for you, Ms. Carlson. We met before, my name is Brad Korinski and I represent DuBois Regional Medical Center in this lawsuit.
You have testified previously that you're job as a radiation therapist was the only job that you have had besides some informal baby sitting I believe?
A. Yes.
Q. When you were in school did you ever do any internships or externships, anything of that nature?
A. You mean outside of what I had to do?
Q. Yes. Did you ever work for any hospitals or physicians?
A. No.
Q. Not that you would have been paid for that, but that you would have received school credits or it would

Page 195

have been part of your curriculum?
A. Yes. I had to go into the hospital for part of my schooling.
Q. And what part of your schooling was that?
A. Well, my radiology was at the hospital. I was there all of the time.
Q. What hospital was that?
A. Mercy Hospital of Altoona. It's now Bon Secours.
Q. That was in Altoona?
A. Yes.
ATTORNEY WALL:
Actually it's now part of Altoona Medical. It's about to become a warehouse.
ATTORNEY KORINSKI:
I don't keep abreast of developments in Altoona.
BY ATTORNEY KORINSKI:
Q. Did you work with the radiologists during that time, ma'am?
A. No, not really.
Q. Did you have any understanding

Page 196

during that time as to how the radiologists there were employed?
A. No.
Q. When you worked at DuBois Regional Medical Center for those 13 years, where physically did you work at the hospital?
A. In Hahne Cancer Center.
Q. Was the Hahne Cancer Center always in the same place?
A. Yes.
Q. What other departments are near the Hahne Cancer Center?
A. There used to be a physical therapy department and occupational therapy. But I don't believe they are there anymore.
Q. Where is the radiology department in relation to the Hahne Cancer Center?
A. It's in the hospital on the first floor.
Q. Is it the case that you would regularly walk through the radiology department as part of your employment

Page 197

duties?
A. No.
Q. Did you ever interact with the radiology department in the course of your employment?
A. No, not really. No.
Q. When you say not really, did you ever have occasion to interact with the radiology department?
A. No.
Q. Didn't speak to anyone there during your job?
A. I knew some of the technologists but was not personal friends. I knew them enough that we would say hi in the hallway. I did not go to the radiology department.
Q. Did you know any of those technologists or anyone else who worked in the radiology department socially?
A. No, not that I did things with or considered my friends.
Q. Anyone that you regularly spoke to?

A. At the time that this happened?
Q. Before the time that this happened.
A. I don't understand what ---.
Q. Beyond passing them in the hall and saying hi, Charlie, or hi, Jane, was there someone that you regularly had lunch with, spoke to, telephoned?
A. No, I don't know if you consider --- John was in radiology and had come to our department. He was going to start school to become a radiation therapist but we didn't speak about the department. I never talked about radiology, never had any reason to speak about radiology.
Q. Prior to April 2005 did you receive any imaging studies at the DuBois hospital?
A. Yeah, I had x-rays, not very many.
Q. And you had those in the radiology department?
A. Yes.
Q. Do you recall when you would

have been in the radiology department as a patient?
A. I know in 2003 I had x-rays of my C spine, I believe it was 2003. I had had an IVP done. I don't know when that was.
Q. And those would have been here at the DuBois Hospital?
A. Yes.
Q. How about your husband, had he ever received any imaging services at the DuBois Hospital?
A. Yes.
Q. Did you ever accompany him on any of those visits?
A. I don't remember.
Q. Do you know how many imaging ---?
A. My husband has had MRIs because of his disease and generally I don't go with him.
Q. And he would have had those MRIs here prior to April of 2005?
A. Yes.
Q. How about your children, ma'am,

prior to April of 2005, had th received any imaging services at DuBois hospital?
A. I believe my daughter did. She had a bone age x-ray but I don't remember when that was.
Q. Now from the imaging service that you received at DuBois Hospital prior to April 2005, after having had that service, did you receive any bills, documents or correspondents related to the service that you received at DuBois Hospital?
A. I get --- I've gotten bills from DRMC that I have had to pay and I get statements through our insurance but I don't pay much attention to them.
Q. Did you get bills or statements from any entity other than DRMC?
A. My husband gets bills through the oncologists at Hahne. I believe they are Hemotology, Oncology of Northern Pennsylvania.
Q. Do you recall prior to April of

2005 ever receiving a bill for statement from DuBois Radiology, Inc.?
A. No.
Q. Prior to April of 2005 had you ever heard or seen DuBois Radiology, Inc.?
A. No.
Q. Are you the individual in your home that would normally open the mail?
A. Before this happened to me?
Q. Yes.
A. My husband or myself I'm trying to think if a bill would have been sent.
Q. Is it fair to say you would have seen it?
A. Yes, I pay the bills.
Q. Do you also keep the statements you receive from your health insurance providers?
A. I put them away, yeah.
Q. Do you maintain a file of those statements?
A. I can't tell you that I have

Page 202

all of them.
Q. Was it your practice prior to April of 2005 to save those statements?
A. I had started saving some of them when my husband was diagnosed.
Q. Would you still have those statements?
A. I do not have any statements that I paid bills other than the hospital. Is that what you're asking me?
Q. I'm asking for bills from the hospital or statements from your health insurance provider as to benefits that they may have rendered on your behalf?
A. I probably have them. I don't know that I have kept everything. I never paid much attention to them.
Q. In the course of your employment at DRMC did you interact with any of the physicians at the hospital?
A. Other than the ones I worked

Page 203

with.
Q. Who were the ones that you worked with?
A. Doctor Albert Lee, Doctor Debra Waites was there for a brief period maybe back in 2000, '99 something like that. She's no longer there. And there were oncologists that were there, but I didn't work with them directly.
Q. Doctor Lee and Doctor Debra and I forget her last name.
A. Waites.
Q. Waites. What type of doctors were they?
A. Radiation oncologists.
Q. Did you know anything about their employment status?
A. I knew that Doctor Lee was employed through Williamsport.
Q. Williamsport Hospital?
A. I don't believe it was the hospital. I don't know what --- I knew his billing came out of Williamsport. The medical oncologists

Page 204

were employed through DRMC at the time.
Q. In April of 2005 when you received your imaging services at DRMC did you have any idea of how that radiologist was employed?
A. I believe he was through the hospital.
Q. And what led you to believe that?
A. Because I had never gotten any bills that stated otherwise.
Q. Before that time you had never gotten any bills from an entity other than DRMC?
A. No, other than my husband's bills through the oncology department.
ATTORNEY KORINSKI:
I don't have any further questions. Thank you, ma'am.
ATTORNEY SLIMAK:
I do have a follow up.
RE-EXAMINATION
BY ATTORNEY SLIMAK:
Q. I saw in your diary you

Page 205

mentioned Corey? Who's Corey?
A. My girlfriend, Janet's, husband.
Q. Corey apparently has some problems going on too that has been concerning to you? And you record that in your diary as well?
A. Yes.
Q. Just generally what particular problem does Corey have that has you so concerned?
A. He had cancer.
Q. Do you have any other close friends or relatives that have cancer or serious medical conditions?
A. Just my dad and my husband.
Q. Did Doctor Yaw ever give you an opinion as to why he felt that you got a giant cell tumor of your wrist?
A. They don't know why.
Q. You discussed that with him?
A. Yeah.
Q. And he could not give you a particular reason?
A. No. They said sometimes it

comes in a woman who has recently given birth with children and that was not the case with me. Had no idea.

Q. Okay.

A. Oh, another person with cancer, my friend Lisa, her son has cancer. I don't know if that makes a difference.

Q. Okay. I was looking at your diary for April 25th, 2005 and it indicates that my arm still hurts tendon looks swelled. Did you make that note at that time and I can show you an actual copy if you would like?

A. I don't remember. I don't remember writing that.

Q. Were all these entries in the diary made on the date that's indicated for that day?

A. No.

Q. When did you make these entries?

A. Sometimes I would make them days later.

Q. Okay. But typically within a week?

A. No, sometimes it was weeks.

Q. With regard to the date that you put into the calendar, it says April 25th tendon looks swelled. Would it have been your best recollection that that's the date that you would have noticed that swelling occurring?

A. I don't know.

Q. Do you remember at a point in time that your tendons started to look swollen?

A. I don't remember.

Q. Was there a period of time when your tendons did not look swollen and they became swollen?

A. I don't think so. I don't know if it --- I don't know.

Q. Would you have an explanation for why you wrote on the entry for April 25th, 2005 in your diary my arm still hurts, tendon looks swelled?

A. I guess I was thinking it was swelled.

Q. Was there any day prior to

April 25th, 2005 that you wr[illegible]n your diary that your tendon looked swelled?

A. I don't remember.

Q. I was looking at diary entries for July but the date is not actually on the page for this --- for 2005 apparently and I'll show it to you. It says I talked to Ray Graeca, he said they wanted to keep paying me. I said no. I told him why. Do you recall --- do you see that in your ---

A. Yeah.

Q. --- diary. Why did you make this note in your diary?

A. I thought it would have been considered fraud if they were paying me and I was disabled.

Q. Who is Ray Graeca?

A. President of DRMC.

Q. Did he say why he wanted to continue paying you?

A. He felt bad for them messing up my short term disability.

Q. Was there something about the

application form or processing of that?

A. Yeah, something happened and they hadn't sent it in so I went for probably a period of maybe a month without getting paid.

Q. All right. And then did you get back pay or something in that time frame?

A. Yeah.

Q. Did that it come through your disability insurance?

A. Yes.

Q. What did you think was fraudulent about the hospital continuing to pay you until your disability checks come through?

A. I just thought it was fraud. I wasn't working. How can you pay an employee and show that they're working when they're not working?

Q. Well I just want to understand what your reasoning was. After the surgery on your wrist am I correct that you had made a note that you

Page 210

changed a tire on your son's bicycle?
Do you remember doing that?
A. Me or my husband?
Q. Well, the way it was written it read to me as though it had been you that did that.
A. When was that?
Q. Well that may be difficult for me to find out here through hundreds of pages but maybe I can find it. Do you even remember changing a bicycle tire?
A. No, not by myself, maybe watching my husband.
Q. Okay. Well, it was in there somewhere, but it's difficult to find with all of the pages that you wrote. Did you recall taking a trip to the capital, I presume this means Harrisburg, in June of 2006?
A. Yes.
Q. Is that with your Girl Scout troop?
A. No, that was with my husband and my children.

Page 211

Q. And spent some time at the science center there too?
A. Yes.
Q. Looked into the 3-D movie and everything; right?
A. Yes. We visited relatives.
Q. Okay there's the tire entry this is for July 6th of 2006. Do you see where I'm referring to here. Put Ryan's tire on whatever on his bike. Was that you does that refresh your recollection or was that your husband or someone else?
A. I'm guessing it was probably both of us.
Q. What's the Sayer's shindig?
A. Our friends their last names were the Sayers it's a party.
Q. Is that something you did in July of 2006 apparently?
A. Yeah. We're country people.
Q. Nothing wrong with a shindig. On the entry for July 11th there's something about you called apparently about wanting to go back to school.

Page 212

Am I reading that correctly?
A. Yes, that was through CareerLink.
Q. Well, what was the inquiry that you were making at that point in time?
A. I believe that Pennsylvania is alotted so much money for employees that get displaced or disabled. I don't even really know what the category fell into. But he had told me that they have already allotted all of their funds out and there was no more money there.
Q. Was that just for the year 2006?
A. I don't know. I don't know if was --- I don't know if it went yearly.
Q. Do you recall who it was that you talked to?
A. No.
Q. Did you go down to Baltimore in July of 2006?
A. Yes.
Q. What was that kind of trip,

Page 213

what reason?
A. My dad went --- his surgeon, he had surgery in Baltimore.
Q. Okay. And then you did a little Excursion over to Mount Vernon?
A. That's the motel we stayed at.
Q. Okay it just says we went to Mount Vernon?
A. When we go to Baltimore that's what it is.
Q. I'm looking for or at your entry for Saturday July 15th and could you read this for me. I started something?
A. It says Friday continued to see Pirates of the Caribbean and Cars. Those are drive in movies.
Q. Yes. Okay?
A. It started to storm at the end.
Q. And then what else did you write for that day? Jamie cut up our big tree in the yard?
A. This, I believe, this was probably Saturday.
Q. Yes.

A. That was Friday night. Today Jamie cut up our big tree in the yard. I worked on laundry and cleaned some of the camper and went swimming.
Q. Is that one of your children?
A. Yes.
Q. What else did you do there?
A. We went to help him bring ---
Q. Mattress and box spring?
A. Yeah bring in a mattress and box spring. We came home and Ryan went to Lexi's and we went back to Wal-Mart. Continue.
Q. Now what were you doing with the mattress and box spring?
A. My husband Jamie was --- she got a knew one. He helped her son Brian. I sat and watched my kids swim.
Q. Okay. And then apparently on the 18th of July, 2006 you went DelGrosso's Amusement Park?
A. Yes.
Q. Did you do any activities while you were there?

A. I sat in the baby splash pool and rode a few rides.
Q. You apparently rode the water slide?
A. No, I don't do the water slides anymore. My kids did.
Q. Oh I see. It says they rode the slide and we stayed on the water side for about one and a half hours?
A. Yeah I sit in the baby pool.
Q. Did you ride the dodging cars?
A. Yes.
Q. About ten times?
A. Yeah.
Q. That's like the bumper cars?
A. Yeah.
Q. And apparently Monday the day before, you had been to the food bank and helped box the food; correct?
A. I didn't box it, my girls boxed it.
Q. You just have it written I boxed the food.
A. Yeah, but I didn't box the food.

Q. And you have we swam when we got home and I cut the grass in the bottom, so all of our grass was cut within 24 hours?
A. Yeah.
Q. Those are things you did do?
A. I cut the grass on the riding lawn mower, yeah.
Q. And then Wednesday, July 19th the last entry, that you have some things you're doing including you did the laundry and cleaned the camper?
A. Yeah.
Q. There's a reference to a Doctor Housner?
A. That's my dad's physician.
ATTORNEY SLIMAK:
That's all of the additional questions I have at this time. Thank you very much.
A. Thank you.
BY ATTORNEY WALL:
Q. Just one question. He was asking about the entry 7/6/06 that you

were seeking information as to when there was funding available for education?
A. Yes.
Q. What was your thought what type of education were you looking into?
A. I have no idea.
Q. You had never followed up on that before you got there to see about funding?
A. No, because I don't know what I'm going to be able to do.
ATTORNEY WALL:
Thank you. That's all I have.
ATTORNEY SLIMAK:
Okay.
ATTORNEY KORINSKI:
No questions. Thank you.
ATTORNEY CRENNEY:
You're done.
ATTORNEY SLIMAK:
Yes.
ATTORNEY CRENNEY:

We will read.
OFF RECORD DISCUSSION
ATTORNEY CRENNEY:
Let the record show that we noticed the designee sent the notice out in August and I didn't even find out until this morning that the hospital decided not to produce a designee. And I think that was improper and inappropriate. But since we have to pay, I would ask for sanctions if --- except for the fact that we're coming back and we can do it another day and there's no real harm done. But I don't feel I have to do anything more than notice a designee, the issues of agency are obviously germane in this case.
You can produce whoever you want, but I'm not setting forth anything. I'm going to notice another one and if you

don't show up that time I will ask for sanctions. I just wanted to put that on the record because I asked Brad if he would produce a designee he indicated that he thinks I should have to do something else to have somebody show up in response to a perfectly deposition.
* * * * * * * *
DEPOSITION CONCLUDED AT 4:07 P.M.
* * * * * * * *

Sargent's Court Reporting

Page	Line	Error	Correction	Reason
8	18	373	1373	needed to add the one.
9	16	Ralston	Wallaction	spelling
25	9	patient	person	I meant the employee not patient
27	23	Kline, Lehan Well	Cline, Lee Hanwell	mis-pelled
27	24	freeze	fries	misspelled
37	16	against	again	I stated "again" not against
41	19	callinator	collimator	misspelled
63	20	week	year	We are meeting the whole year
75 76	22 2	Martina's	Martino's	misspelled
107 107	11 24	Shunsky	Szumski	misspelled
112. 119 137	24 13 6	Ma-lo/li	Na-to/li	Misspelled
125	14	Linne	Lynn	misspelled
161	17	past	pass	I stated "pass" not past
168	15 20	1991 '91	1997 '97	my husband's employment started in 1997
186 214	6 6	said could yes	said I could no-It's my husband	I stated "I" I believe I stated "no"
214.	8	We went to help him bring--	in the mattress. I did not help carry it in.	

I have read the transcript of my testimony and certify that it is accurate with the above corrections.

Paula Carlson 10/31/06

Deponent's Name: Paula Carlson
Deposition Date: October 4, 2006

Notary Public

DAVID B. INZANA
District Justice
Magisterial District 54-3-02
My Commission Expires
1st Monday of January 2010

EXHIBIT "B"

DuBois Regional Medical Center
Primary Care Associates

PROGRESS REPORT: AGE 18 – 65

NAME Paula T. Carlson DOB 4-26-71 DATE 9-3-02 CHART # 406631

CC: For physical. C/O back pain several months

LMP ____

NURSING RX: Dr Rapaport

1.) Are things going OK at home/school/work (major stresses)? yes
(If "no" investigate further and complete mental health/ chemical dependency screening form if needed)

2.) Have you been having pain lately? If "yes" explain: 8 (Refer to pain scale)

3.) Have you gained or lost 10 pounds or more in the last 6 months without trying? no

4.) Are you able to care for yourself and get around without difficulty? yes (If "no" refer to OT /PT (phone 3372; fax 3025) /SS policy # PR1.0, 1.2, 1.3; phone 3528) How do you come to and keep your appointments? drives

5.) Do you smoke or chew tobacco or use alcohol? no (If "yes" How often and for how long? Refer to smoking cessation classes, AA or other physician recommended treatment)

6.) Is anyone hurting you? no (If "yes" refer to SS: policy # PR1.0, 1.2, 1.3; phone 3528)

HISTORY:

HPI

Location, quality, severity, duration, timing, context, modifying factors, associated signs and symptoms OR status of chronic diseases

ROS	NL	SEE NOTE
CONST		
EYES		
ENT/MOUTH		
CV		
RESP		
GI		
GU		
MUSC		
SKIN/ BREASTS		
NEURO		
PSYCH		
ENDO		
HEM/LYMPH		
ALLERG/IMMUN		

PFSH	NO CHNG	SEE NOTE
PAST		
FAMILY		
SOCIAL		

COMMENTS:

- ☐ ASSESS PATIENT PREGNACY STATUS
- ☐ WORK HISTORY
- ☐ GENERAL STRESS

EXAM	NL	SEE NOTE
GENERAL APPEARANCE		
VITAL SIGNS REVIEWED		
SKIN		
EYES		
ENT/MOUTH		
NECK		
RESP		
CV		
CHEST/ BREASTS		
GI /ABDOMEN		
LYMPH		
GU		
MUSC		
NEURO		
PSYCH		
EXTREMITIES		

COMMENTS:

IMMUNIZATIONS	DATE
Td (every 10 yrs)	
MMR (2 vacc. high risk pts. born after 1957)	
Pneumococcal (high risk – 1 vaccination)	
Influenza (≥50 yrs. annually)	
Hepatitis B (high-risk pts.- 3 vaccinations)	
PREVENTATIVE HEALTH	**DATE**
Cholesterol (every 5 yrs. low risk or annually high risk)	normal 1x
Clinical Breast Exam (≥50 yrs. annually)	2002
Mammogram (annually)	never
Pap Smear (every 1-3 years)	2002
Stool for Occult Blood (≥50 yrs. annually)	no
Sun exposed skin examination for skin cancer (annually)	____
PSA/ Rectal exam (≥40 yrs. annually)	____

- ☐ WEIGHT BEARING EXERCISE
- ☐ LOW-FAT DIET
- ☐ BIRTH CONTROL/ STD'S
- ☐ PRECONCEPTION DAILY CONSUMPTION OF FOLIC ACID 0.4mg
- ☐ CONSIDER DAILY ASPRIN USE FOR HIGH RISK PATIENTS
- ☐ DISCUSSION AND MANAGEMENT OF MENOPAUSE

INJURY PREVENTION
- ☐ SEAT BELT USE
- ☐ SMOKE DETECTORS
- ☐ FIREARMS SAFE USE AND STORAGE
- ☐ BICYCLE HELMET USE

SUBSTANCE ABUSE
- ☐ TOBACCO
- ☐ ALCOHOL
- ☐ ILLEGAL DRUGS
- ☐ PRESCRIPTION DRUGS

DOMESTIC VIOLENCE

INSTURCTION
- ☐ MONTHLY SELF BREAST EXAMS
- ☐ DIET /EXERCISE PRN
- ☐ MEDICATIONS
- ☐ ADEQUATE FLUID INTAKE
- ☐ OTHER INSTRUCTIONS:

Language other than English? None
Special Barriers to Learning: None

In what way/s does the patient learn best?
☐ Reading ☐ Demonstration ☐ Pictures ☐ Discussion

ASSESSMENT:

PLAN:

SIGNATURE: Mary Ann Sims LPN

NEXT APPOINTMENT: ____

(1)

CARLSON, PAULA J 406531 09/03/02

Paula is here to establish herself, a former patient of Dr. Szumski. She is 31 years of age. Her only complaint today is back pain. She has had it for several months. It only happens at nighttime when she gets done at work. She is a Radiation Therapist and does lifting of people. It is in her low back. Curling up in a fetal position does help it. She has no bowel or bladder incontinence. She has had no fevers or chills. She has had no urinary pain or burning. No diarrhea or constipation or other symptoms. She has always been underweight.

ALLERGIES: None.

MEDICATIONS: Ortho-Cept daily.

PAST MEDICAL HISTORY:
1. Back pain.
2. Status post appendectomy.
3. Status post chronic UTI. Cystoscopy in 1994 negative-Dr. Robert Cherry.
4. Status post left axilla lymph node removed, benign-Dr. Eric Lundgren.
5. Status post tubal 09/2002-Dr. Rapaport.

SOCIAL HISTORY: Married to her husband, Jamie, of 8 years. He does have multiple sclerosis. They have two children, daughter 6 and son 4. She is a nonsmoker and does not drink alcohol. She works at DRMC Radiation Therapy as a Radiation Therapist.

FAMILY HISTORY: Mother is living and healthy. Father has diabetes. No heart or lung disease, cancer, or diabetes otherwise in the family. One brother, healthy.

REVIEW OF SYSTEMS: Besides the back pain, she is doing well. She has had some mood swings in the past that required medication. She says she relates this and her occasional headache to being stressed at work and being stressed at her occupation at home when she takes care of her two kids and her husband recently diagnosed with multiple sclerosis, on Avonex. Otherwise, she moves her bowels and bladder. She has no urinary complaints. No seizures, stroke, or thyroid problems. She has always had trouble maintaining her weight. She does not throw up or skip meals, in fact she says she "eats all the time" but, again, no diarrhea, no other fatigue, or other signs that are concerning. Rest of review of systems reviewed and unremarkable.

PHYSICAL EXAMINATION: Vital Signs: 98.4, 72, 20, 98/60, weight 105, and height is 64". General: She is in no acute distress. She is alert and oriented x 3. HEENT: AT/NC. Pupils appear to be equal, round, and reactive to light. Extraocular muscles are intact. Sclerae are not icteric. Moist mucous membranes. Neck is supple without evidence of JVD, lymphadenopathy, or bruit. Thyroid is not enlarged. Heart is regular rate and rhythm without S3, S4, or murmurs. Lungs are clear to auscultation bilaterally. Abdomen is soft, nontender. Bowel sounds are present. Extremities are without clonus, claudication, or edema. Dorsalis pedis pulses are 2+ bilaterally. Breast, Pap, pelvic, and rectal will be done by Dr. Rapaport and will not be repeated. Skin examination reveals no suspicious lesions except for a pigmented mole on the right lateral aspect of her upper arm. It has been there for many years but it is raised and has some color change to it. It should be taken off with a shave biopsy. No active synovitis. Normal neurologic exam. Back exam reveals straight spine. Negative straight leg raise. Good reflexes. Good strength. Anal tone not checked. Bending forward test reveals some mild restriction at best.

LABORATORIES: Cholesterol panel in the past has been 120-140 on routine wellness check.

IMPRESSION AND PLAN: Paula, 31 years old, presents with the following medical problems:
1. Back pain. I gave her three weeks of Physical Therapy three times a week with nightly Motrin 600 mg with her dinner meal because the pain is mainly at nighttime. I advised her to wear a back brace and good lifting technique. If she is not better, we will x-ray and then on to MRI. There are no other concerning signs at this time. We will check a CBC, UA, urine culture, BUN, creatinine, and lytes for completeness today.
2. Status post appendectomy.

(1)

CARLSON, PAULA J 406631 09/03/02

CONTINUED

3. Chronic UTI. We will be checking UA and urine culture.
4. Status post left axilla lymph node, benign. No lymph nodes today in neck, axilla, or groin.
5. Status post tubal to be completed this Friday. I told her to avoid Aspirin products for the next several days until the surgery and then restart the above Motrin afterwards with food. I also told her to wait for her physical therapy program for a week until after she has been cleared.

PREVENTATIVE: I passed out my preventative sheet and reviewed it with her.

She was quite pleased. I will see her back in three months for a shave biopsy of right upper arm lesion and then I will see her 12 months from that time. I will also be checking thyroid because of her weight status.

R: 09/04/02 T: 09/04/02 SG/lmw

1

2

CARLSON, PAULA 406631 01/07/03

Dr. Graeca's patient.

CHIEF COMPLAINT: Right shoulder discomfort off and on times three weeks but becoming constant the last two days.

HISTORY OF PRESENT ILLNESS: Paula phoned the office yesterday desiring to be seen for right shoulder discomfort. She describes her discomfort as an intermittent, throbbing pain that is nonradiating. At its worst, it is a 10/10 on the pain scale. Right now, she is at an 8/10. She states that the only position which she finds relief is with her arm up above her head and whenever she is using it. She has tried Icy Hot, ice packs, heat packs, and Aleve with no relief. She states that lying down is when it is most bothersome and it is more severe in the evening. She also mentioned that for the past week she has been experiencing a tingling sensation in her arm and fingers. She also has been having discomfort with neck rotation to the right. She denies a recent or past injury to the area, problems with any of her other joints, weakness, decrease in range of motion, recent increase in stress or fatigue.

MEDICATIONS AND ALLERGIES: Were reviewed.

PHYSICAL EXAMINATION: Vital Signs: Temperature 97.9, pulse 76 and regular, respirations 20 and unlabored, blood pressure 110/68, and weight was 106. General: Patient is a pleasant, extremely thin, 31-year-old, white female in no acute distress. She is alert and oriented X 3. Bilateral upper extremities were visualized and without edema, erythema, ecchymosis, muscular atrophy, or bony deformities. She was tender to palpation over the right upper fiber of the trapezius. There was also muscle spasm felt on exam today. There was no tenderness to palpation over the glenohumeral joint or cervical, thoracic, and lumbar spine. She had full range of motion of bilateral upper extremities. Manual muscle strength was also tested to be 5/5 and equal in bilateral upper extremities. Brachial radialis, triceps, and biceps reflexes were 2+ and symmetric. She had a negative drop arm sign and speed test. Cervical rotation to the right as well as cervical bending to the right were decreased secondary to patient discomfort. Bilateral radial pulses were felt to be 2+ and symmetric.

ASSESSMENT AND PLAN:

1. Musculoskeletal strain right shoulder and neck area. Because Paula is so small, she was given samples of Vioxx 12.5 mg and advised to take two tablets together with food X 7 days and then she is to take one tablet with food until tablets are gone. She was given 30 12.5 mg tablets. She was also given a prescription for Flexeril 10 mg and advised to take one tablet before she goes to bed. She was given 10 tablets. I explained the side effects of Flexeril and advised that she does not drive or drink alcohol while taking them. She expressed verbal understanding of these side effects. I also explained to Paula that if her numbness does not resolve in her hand or if her shoulder discomfort does not improve within two weeks she is to give our office a call and, at that time, physical therapy and x-ray will be considered.

R: 01/09/03 T: 01/09/03 LF/lmw

Lori Lenton, PA-C

3

CARLSON, PAULA 406631 03/18/04

Here for acute visit. Complains of right-sided neck pain similar to her previous disk herniation. Does not have radiculopathy though. It feels like a muscle spasm actually on exam. She has good reflexes. She has ropiness of the paraspinal muscles on the right. She wanted me to take a look at her throat. She said that she has had pus at times, not there today. Tonsils look okay. There is no pus. There is a little bit of posterior pharynx cobblestoning. I told her to take some Sudafed for that. For her neck, told her to take Lodine as she has before with some Skelaxin at 400 mg one to two tablets q. eight hours p.r.n., watch for sedation, do not drink and drive, and I will see her up for physical therapy next week. If she is better, she can stop. She needs to start doing the physical therapy exercises.

R: 03/19/04 T: 03/19/04 SG/mw

8

EXHIBIT "C"

OLEAN OPEN
MRI & CT
The Diagnostic Edge

June 6, 2007

Ross A. Horsley, M.D.
Open MRI
434 North 9th Street
Olean, New York 14760

In re: Paula and Jamie Carlson vs. Jerjis T. Alajaji, M.D., DuBois Radiologists, Inc., and DuBois Regional Medical Center
Docket No: 2006 - 563 - C.D. (Clearfield County)

Dear Mr. Slimak,

I have received and reviewed additional medical records and documents including handwritten notes of Ms. Carlson upon a February 20, 2003 "Employee Incident Report." Also, Occupational Health Center Medically Advised Work Status form and Medical Report Form of February 21, 2003 by Dr. Edward McVay, M.D., MPH and James F. Cobbett, PAC, the Occupational Health Center at DuBois Regional Medical Center.

These records document and further support my opinions as set forth in my original report. Ms. Carlson's work as a radiation therapist has been problematic for her over the years inclusive of specific work incidents which in 1997 injured her cervical spine as well as built up progressive problems, particularly with her neck. These resulted in medical evaluations and work modifications. The records document that her pain was significant of 5/10 and increasing at the right cervical trapezius area with end limit cervical extension against resistance and with rightward cervical rotation against resistance, as well as increased with axial compression techniques into the right cervico-trapezius and cervico-occipital areas. Cervical distraction or traction techniques relieved some of the discomforts. This would be related to her cervical degenerative disc disease as confirmed on subsequent studies commented on in my original report. This documentation further supports my opinion that Ms. Carlson was highly unlikely to continue indefinitely in her job as a radiation therapist without substantial modification of the position because of repeated and progressive work related injuries and difficulties which are subject to recurrence and worsening.

Very truly yours,

Ross A. Horsley,MD

OLEAN OPEN
MRI&CT
The Diagnostic Edge

May 24, 2007

Darryl R. Slimak, Esquire
McQuaide Blasko Law Offices
811 University Drive
State College, PA 16801-6699

In re: Paula and Jamie Carlson vs. Jerjis T. Alajaji, M.D., DuBois Radiologists, Inc. and DuBois Regional Medical Center

Dear Mr. Slimak:

I have reviewed the medical records of Paula Carlson including the office records of Drs. Graeca, Yaw, Piasio, Summit Rehabilitation, and DRMC Employee Health. In addition, I have reviewed the depositions of Paula Carlson and Dr. Jerjis Alajaji. I have also reviewed the radiology films in the case.

I am a general radiologist who has practiced in small town settings very similar to Dr. Alajaji. I have practiced at Olean General Hospital, Bradford Regional Medical Center, and currently at Cuba Memorial Hospital and Olean Open MRI. In addition to geography and proximity, Dr. Alajaji and I share practice patterns in that we both practice general radiology and have similar patient population. I am a board certified radiologist who has seen and followed a wide variety of cases over the past 25 years including a number of giant cell tumors.

In preparation for this review, as I would in my own cases of rare diseases, I have reviewed articles and other publications in Resnick and Kronsdorf, Bone and Joint Imaging, 3rd Ed.; the European Radiology Journal on giant cell tumors, published 5-3-05; Journal of Hand Clinic, #20, published in 2004 on "Aneursymal Bone Cyst and Giant Cell Tumor of the Hand and Distal Radius"; Chapter 21, "Benign (Occasionally Aggressive) Tumors of Bone," Campbell's Operative Orthopedics, published 2003; Current Therapy in Plastic Surgery, published 2006; American Journal of Clinical Oncology, Vol. 29, No. 1, February 2006, Giant Cell Tumor of Bone; and the American Academy of Orthopedic Surgeons, Orthopedic Information on Giant Cell Tumor of Bone.

My opinion as to this case is to the best of my medical judgment, and based on reasonable medical certainty.

The records document that Mrs. Carlson underwent evaluation at DRMC Employee Health before starting her radiation therapist position in 1992, with significantly low results on strength testing.

Paula Carlson presented originally to Dr. Graeca on September 3, 2002, to establish herself as his patient. At that time, she was 31 years of age and was complaining of several months of low back pain. The pain was aggravated by her work as a radiation therapist. Curling up in a fetal position seemed to help. She had also had chronic urinary tract infections and had a herniated disc in her cervical spine confirmed by MRI, also caused or aggravated by her work as a radiation therapist. She had a history of mood swings requiring medication, and occasional headaches, which she attributed to stress at work and at home caring for her husband and two children. She was to undergo physical therapy, daily Motrin, wear a back brace and use good lifting techniques. A plan was stated of follow-up studies such as "x-ray and then onto MRI" was contemplated "if she is not better." She was subsequently seen for anemia and skin biopsies, shoulder, back and neck pain, and gastroesophageal reflux disease.

Problems developed in her right shoulder in January 2003, that had become a constant and throbbing pain, severe at 10/10. Icy Hot, ice packs, heat packs, and Aleve were all not helpful. She was having tingling sensation into her arm and fingers, and neck discomfort to the right. There was no recent injury reported. Physician's Assistant Natoli conducted a physical examination and diagnosed musculoskeletal strain of the right shoulder and neck area. Multiple medications were prescribed. The plan was for physical therapy and x-rays if the discomfort did not improve in two weeks.

She was followed for recurrent right sided neck pain in March 2004 which felt similar to her pain suffered from the previous disc herniation. She again needed physical therapy, Lodine, and now Skelaxin was added.

Mrs. Carlson was seen and treated at Summit Rehabilitation in February 2003 for neck and right arm pain, cervical radiculopathy/C_{5-6} disc herniation, dysesthesias, decreased reflexes and sensation in the right arm, and decreased strength with elbow flexion and extension of the right wrist. Restricted work duty, physical therapy modalities including traction and Lodine medications were instituted.

At discharge several months later (May 20, 2003), she was improved but occasionally experiencing problems. Her neck pain was "about nonexistent," but not completely gone. It was noted she had been seen and treated by Dr. Meyers for a herniated disc found by MRI that Dr. Meyers had ordered. That MRI found a cause of the symptoms that plain x-rays ordered by Dr. Graeca's Physician's Assistant Lori Fenton (Natoli) had not. Mrs. Carlson was to continue on a home exercise program, and was still taking Lodine two or three times a week.

Plain films cervical x-rays ordered and obtained on January 15, 2003 by Dr. Graeca's office suggested possible muscle spasm but no bony abnormalities. An MRI had to be performed February 18, 2003 per Dr. Meyer's order, which revealed a herniated C_{5-6} disc, to the right side, that the x-rays could not detect. By April 26, 2005, cervical spine x-rays showed expected progression with mild degenerative narrowing and small marginal spurs now evident.

On April 11, 2005, Mrs. Carlson called into Dr. Graeca's office and the telephone log relates that she complained of pain in her right wrist and had worn a brace for approximately one week. Other records reflect the symptoms may have been occurring for as long as three weeks. There was no swelling yet. "Hurts at joint." The following day she saw Lori Natoli, a PA who works with Dr. Graeca. Right wrist only x-ray imaging was ordered and interpreted by Dr. Alajaji on the April 13th. There were no right and/or left wrist comparison x-rays ordered. Even before the x-ray report was returned, Ms. Carlson was assessed by her clinician as having carpal tunnel or tendinitis and Mrs. Carlson's Lodine prescription was "refilled." There was a plan stated to send Mrs. Carlson back to Dr Meyers for evaluation and treatment, and additional tests, but this did not occur for nearly a month until May 5, 2005. PA-Natoli's note indicates that she ordered the x-ray "because of the acute nature of her wrist pain," noting that Mrs. Carlson "does not recall injury but she states that she could have done something at work and did not realize it." PA-Natoli considered Mrs. Carlson's history of herniated cervical disc a "possible" explanation. Physical examination indicated no Tinel's sign but carpal tunnel syndrome was being considered, although Ms. Natoli admitted the "exam does not really point to that." Her supervisor, Dr. Graeca, was not consulted despite the physician's assistant's uncertainty, and he was not scheduled to see Mrs. Carlson until May 31, 2005. No bone scan, MRI or cervical spine x-rays were ordered at that time.

None of this history or uncertainty was communicated to the radiologist who was to interpret the wrist images. The only information provided on Mrs. Carlson was age 33, "pain."

While being off work initially seemed to lessen Mrs. Carlson's symptomatology somewhat, the physical therapy initiated on May 9th did not resolve the complaints and the physical therapy progress notes at times documented that even Mrs. Carlson questioned the propriety of exercises. In an April 20, 2005 telephone log to Dr. Graeca's office, the patient reported that she now felt there was a new onset of swelling in her wrist, and Lodine was not taking the pain away. The EMG/NCV that had not yet been done was then to be scheduled.

She was seen again by Lori Natoli on April 26, 2005, two weeks after the first evaluation, and given an appointment with Dr. Meyers for May 5, 2005. There is no indication in the records or testimony that Dr. Meyers was advised by PA-Natoli that an initial x-ray of the wrist was reported as normal, even though from the beginning Mrs. Carlson's work up and care was largely deferred to him. It thus did not influence his treatment. PA-Natoli pursued work up of the neck, despite palpatory findings at the wrist and no presenting complaints in the neck area. A cervical spine x-ray was also ordered. No repeat wrist x-rays, MRI, CT scans or bone scans were ordered, however. EMGs and nerve conduction studies were eventually ordered. There was degenerative narrowing of the C_{5-6} disc space evident on the cervical spine x-ray, however, the EMGs and nerve conduction studies were reported as normal into the right extremity. The cause of the wrist symptoms was obviously elsewhere. PA-Natoli lists no working diagnosis. She notes an orthopedic referral may be needed, but it was not pursued at that time. Mrs. Carlson's appointment with Dr. Graeca remained scheduled over a month out, for May 31, 2005 and was not moved up.

Dr. Meyers saw Mrs. Carlson on May 5th and read the EMG/NCV as normal for the right upper extremity, with no cervical mediated problem at that time. Prednisone taper and physical therapy were recommended, as was a wrist splint, with steroid injection to be considered in approximately two weeks if not significantly improved.

On the progress report in PA-Natoli's and Dr. Graeca's records for May 31, 2005, the records indicate a diagnosis of chronic tendinitis in the wrist. Physical therapy and Prednisone taper had not been helpful. It was noted that an injection was still planned and had not been tried yet. Dr. Graeca suggests "significant tendonitis of the flexor at the right wrist," that eight days later orthopaedic surgeon, Dr. Piasio, indicates was not present. A June 6th note records the injection did not work and now Mrs. Carlson was "in horrible pain."

A thyroid function test was normal. Mrs. Carlson "refused" a further appointment with PA-Natoli. Dr. Graeca then finally referred her to orthopaedic surgeon Dr. Piasio. After that, the patient never saw PA-Natoli again and Dr. Graeca's notes through June of 2006 review the failed course of care orchestrated to date via his office, the prompt diagnosis and institution of proper care by Dr. Piasio and referral to Dr. Yaw, and Dr. Graeca's concerns of being sued for what he documents was a "very rare" giant cell tumor.

On June 9, 2005, Dr. Piasio documented a history of "no injury." He notes that the EMG/NCV of May 5, 2005 were normal. Dr. Piasio documented that there was no wrist synovitis or tenosynovitis even by then. New, very appropriate studies were timely obtained, and showed a classic tumor. Dr. Mark Piasio ordered a bone scan of both wrists and hands with total body scan. This was done on June 10, 2005 and showed findings consistent with a giant cell tumor. Repeat x-rays, wrist MRI and a CT of the chest were obtained and an approximately 2.0 cm expansile lesion in the distal radius with extension beyond the bone into the volar soft tissues was identified. Dr. Piasio's records explicitly confirm my assessment that this was an "aggressive" and "rapid growing" tumor. The diagnosis by a specialist was easier as the history was more extensive and physical examination focused on the distal radial aspect of the wrist.

She was referred to Dr. Yaw in Pittsburgh, PA, who did not proceed to immediate surgery due to the potential for cancer, and initially did a biopsy on June 20, 2005 which showed a giant cell tumor. On June 27, 2005, he then resected the distal radius and transposed the ulna onto the radius and fused the ulna to the wrist. This was nearly three weeks after the tumor was identified. Obviously, the work-up was likely to have been somewhat less aggressive had a nondescript lucency of unknown but recent origin, in an seemingly early, nonclassic stage, been identified on April 13th.

On hindsight review of the radiographs obtained April 12, 2005 of the right wrist, there is a subtle 1.0 cm in diameter lucency involving the distal radius. This is just over 1/3 of an inch. The lucency is only present on two of the four views that were obtained. There were no corresponding views of the left wrist ordered for comparison. This lucency shows very discrete margins and is not expanding the cortex. The small lucency is the only aspect of the images suggestive of some abnormality. This type of lucency does not have an appearance characteristic of giant cell tumor and most likely would represent an interosseous ganglion, a simple bone cyst, or an interosseous lipoma. The cyst on initial x-ray shows no evidence of typical cortical expansion (the cortex is preserved), and does not involve the most distal radius.

There is no evidence of cortical thinning, soft tissue extension, loculation, fracture, tribeculations, sclerotic changes or calcifications, or other findings classic for giant cell tumor or malignant etiology. It would not have warranted an expedited workup. The report does not mention the small cyst but is accurate in indicating that there is no fracture, joint abnormality or soft tissue abnormality of acute or chronic duration.

A giant cell tumor of the wrist is quite rare occurring in approximately 1 in 10 million population for one year. In my experience, it is most often located about the knee either in the distal femur or the proximal tibia. The literature reports only 10% occurrence in the radius. Almost always there is a long (approximately 6 months) period of symptoms before diagnosis. In the distal radius and ulna, 92% of these tumors are not diagnosed until Stage II or later. Stage I lesions are found only 8% of the time; State II 2-72%; and Stage III 20%. Based on my experience and also after review of the literature, the symptoms related to giant cell tumors are usually present for six months in duration prior to the initial diagnosis. The radiographic appearance of the tumor when diagnosed is typically highly characteristic. Here it was not on April 12th. My review of the literature indicates that 93% of the cases show radiographic evidence of bony expansion and 65% show cortical destruction when first diagnosed. Soft tissue extension is detected in as many as 50% of initial diagnosed cases. Trabeculations are often present. Fractures are the first indication of the abnormality in 10-30% of cases. Sclerotic margins may or may not be seen. Nevertheless, one can not say that this was a very early tumor in the low stage on April 12, 2005. Standard radiographs have limitations. An MRI at that time may have shown a more advanced stage and there could well have been at least microscopic penetration of the cortex that would not have been discernable even on MRI.

In my opinion, the symptoms were not suggestive of carpal tunnel syndrome or tendinitis and the diversion into those and other diagnoses by Mrs. Carlson's clinicians delayed further evaluation which should have occurred more promptly in the case of persistent pain in the wrist joint with an April 12, 2005 "negative" x-ray report. A "negative" initial x-ray report does not categorically exclude the presence of a cause of symptoms that other studies may detect, if ordered. The clinicians, but not the radiologist, knew there was no accident, trauma or repetitive stress mechanism leading to the onset of symptomatology, yet did not bring this to the attention of the radiologist or promptly order more definitive studies that are well known to clinicians to be more sensitive to such pathology, and in my opinion would have allowed the radiologist to discern the early tumor. In particular, an MRI should have been obtained sooner in this case. A radiologist may recommend a further study if the initial study revealed a condition that needed better analysis.

Updated cervical studies, EMG/NCV, and referral to physiatry and orthopaedic specialists was delayed despite uncertainty of the cause. The onset of swelling reported by the patient on April 20, 2005, and the clinical suspicion of tendinitis should have prompted requesting an MRI study by the clinician. It is the responsibility of the clinician, not the radiologist, to put all the clues together and determine what other studies and plan of action to pursue. The radiologist is not responsible for the lack of a proper plan and diligence or supervision of the clinicians. Radiology is a focused and limited science, and also an art. The reality of radiology and indeed medicine in general, is that it is not always possible to make a diagnosis that is clearer in hindsight, or that subspecialties or other specialties might make. The radiologist provides an interpretation based on his judgment. He does not undertake the patient's care from the clinicians. The treating clinicians know well the numerous types of imaging and other studies available and their advantages, and do not need to be told by the radiologist. The cause of any material delay in diagnosis was not the radiologist's report.

On the CT scan of the wrist obtained June 14, 2005, there is marked enlargement of the cyst with extension of the cortex and erosion through the cortex with extension of the lesion into the volar soft tissues. The margin of the distal radius is intact and there is a permeative erosion of bone at the margins of the lesion which is typical for giant cell tumor, and is also seen on the repeat plain film x-rays which are now classic in appearance at only 2½ months. In my opinion, this eight week course from a tiny cyst that even in hindsight could only be seen on two of four views, without classic giant cell characteristics, to a very aggressive appearing expansile lesion with soft tissue extension is clearly a case of a highly aggressive lesion. The progression of this lesion, in this patient, is very rapid and unusually aggressive, even for a giant cell tumor. Dr. Piasio likewise documents such.

In such rare diseases, the clinicians and surgeons often consult with me as a radiologist, to discuss the extent, indicated course of the disease, and treatment plans, and I have followed such cases over time. Radiation is sometimes utilized as treatment, but is itself problematic. While the incidence of recurrence reportedly varies, in my training and experience, giant cell tumors have an approximately 70% recurrence rate when treated with intralesional curettage where the cyst is scooped out and wide excision is not performed. If this type of treatment had been attempted on the lesion in April 2005, there would have been an approximately 70% chance of local recurrence. Local implantation of the tumor in adjacent soft tissues has been reported with mere curettage and grafting. The literature documents that even with adjuvant therapies, usual recurrence rates have not been reliably obtained where the tumor initially presents in the distal radius.

Local treatment can still result in complications other than recurrence, including stiffness, pain, infection, neurapraxia, joint collapse, etc. When this tumor occurs in the radius, it is known to be most aggressive and the commonest site to seed patients with pulmonary metastases. Recurrence is most likely in tumors which have a higher histiologic grade and aggressive features. While curettage may be preferred, in view of the aggressiveness of tumors of the distal radius, primary resection and reconstruction may be indicated and gives the lowest recurrence rate. I feel that looking back at the extremely aggressive nature of this particular lesion, even with an earlier diagnosis, wide excision and resection of the radius would have been required to give the lowest rate of recurrence and perhaps cure the patient. Even then, cure would not be certain.

There may have been microscopic or blood system extension of the tumor even as of April 13th, or when the patient reported swelling by April 20th, or by the time there was definitive action taken had the lucency been worked-up and surgery occurred, even if suspected as of April 13th. One must also keep in mind that even if the initial x-rays detected some abnormality, it is likely that there would have been several weeks of delay, and progression of the tumor, until surgically treated, just as was the case even when it was classic in appearance by June 9, 2005. The tumor may have at least microscopically breached the cortex in April, increasing the risk of recurrence and spread, had only a limited procedure been performed. With recurrence, the same procedure would have been indicated and the outcome the same or worse, depending on if there was spread to the lungs or other organs with disastrous consequences. There is significant risk of metastasis particularly to the lungs from such an aggressive tumor. The surgical approach that stood the best chance of curing her even in April would have been a wide excision.

As to the issue of the original x-ray and its interpretation obtained April 12, 2005, I do not feel that the interpretation is a violation of the standard of care or negligence by a general radiologist, under the circumstances. When the radiologist reviews a radiograph, he is trying to answer the question of the ordering physician. As in this case when the history given to the radiologist is nonspecific, the radiologist may not answer a question that is not asked. The ordering clinician controls this process, which puts the radiologist at some disadvantage. The radiologist is trained to assume that he has been given all pertinent data by a competent clinician. He does not examine the patient, take his own history, nor dictate what studies to obtain. The request that Dr. Alajaji received for interpretation of the x-ray of the wrist states only that Mrs. Carlson is 33 years old with "pain."

The question or history in this case should have been indicated in the requisition and should have at least said, "pain distal radius, no past acute or repetitive trauma, ?carpal tunnel, ?tendonitis, rule out any boney pathology." The ordering clinician should have stated what she sought to rule out. If that history had been given and question asked, I believe Dr. Alajaji would have focused more closely on the distal radius and the odds are greatly increased that even though he had never seen an early giant cell tumor of the radius in 11 years of practice, even though it was small and not visible on two of the four views, I believe he would have commented on the lucency in his report even though it is subtle. His report largely addresses acute injury or chronic degenerative conditions which he correctly indicates are not evident. This is typically the question being asked regarding such studies. PA-Natoli's notes reflect this is what she was seeking. Per his deposition testimony, it also appears that Dr. Alajaji was influenced by lucency of other bones seen in the films when studied via computerized imaging, and lack of any suggestion of abnormality on two of the four views. One must also consider the whole context in which the images were presented to Dr. Alajaji, including his lack of experience with this small and very rare tumor, in an unusually early stage, in an unusual location, and without classic findings that would make same more apparent.

The wrist was not definitively declared "normal" by the radiologist's impression. What was described was accurate. When an x-ray report is reported as negative and the problem persists, as in this case, radiologists expect that a diligent further investigation is warranted by the clinicians. With common boney causes of such symptoms discounted by the radiologist's findings, it was incumbent on the clinicians to start considering the more rare potentialities. Obviously, Mrs. Carlson's clinicians never contemplated such a rare and aggressive tumor either, and may well never had had a patient with same either. Their office records reflect uncertainty of diagnosis, but slow follow-up with an indicated plan. Carpal tunnel and tendinitis did not make sense, and were never found even at the later stage of the disease upon presentation to Dr. Piasio. Somehow, the patient was labeled with carpal tunnel syndrome or tendinitis when there was no suggestion of either. The carpal tunnel is in the base of the palm, just distal to the wrist crease. The symptomatic cyst located in the distal radius did not involve the tendons and the clinician's diagnosis of tendinitis actually delayed investigation and appropriate treatment. Wrist x-rays would nether confirm nor rule out either carpal tunnel syndrome or tendinitis. An MRI would have been the appropriate study to have imaged for problems of the tendons and sheath, and the radiologist would most certainly have advised PA-Natoli of this had her requisition indicated that she as considering carpal tunnel or tendinitis. The subtle lucency in the distal radius would have been most likely to be more apparent on an MRI at this time.

The MRI would have been helpful to rule out tendinitis and had a greater likelihood for detecting the distal radial tumor. There was still no tendinitis by the time of Dr. Piasio's evaluation in June, as he documents. A repeat x-ray, bone scan, or MRI should have been ordered for this patient when the pain persisted. A bone scan could also have been ordered before or after the x-ray and would isolate the tumor to the distal radius, thus assisting the radiologist in interpreting the plain films. A plain film x-ray is the most rudimentary of our arsenal of radiologic and imaging studies in an attempt to discern pathology. It is not good at detecting small, early lesions inside of a bone. It is known that some bony abnormalities may not be discerned on initial images, and it is commonplace for treating clinicians to request further consideration of the original images or to order repeat images at regular intervals, or more detailed and specialized studies, particularly where there was development of swelling within two weeks, normal EMG/nerve conduction studies, worsening complaints, etc.

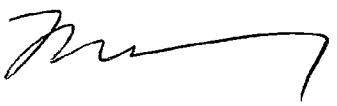
You have also asked me for any comments I might have on Mrs. Carlson's work loss claim based not only on my familiarity with the medicine, but also the position of a radiation technician with whom I have worked over the years. Mrs. Carlson had persistent complaints of work related low back pain and neck pain, even at a young age suffering a herniated disc in her neck prior to the giant cell in the wrist. She has always been very thin, petite, and not a strong woman. Functional assessment at the time of application for the position in 1992 revealed quite low static strength testimony with maximum effort, even at that time at the age of 21. While she managed in her job for many years, most likely using the compensatory strategies and good body mechanics and assistance of others as needed (the technicians work in teams), she had lifting injuries and difficulties, leading to required work duty modification and periodic medical care. In my opinion, it is unlikely that she would have been able to continue working an entire career with such recurrent problems with her cervical and lumbar discs. Her films have shown that the bony abnormalities such as vertebral spurs have developed and her degenerative condition progressed, as is expected, even at her relatively young age. I see a number of patients on a daily basis and follow them for a number of years with similar cervical and lumbar disc problems. I find that the disc protrusions, boney degeneration, and pain associated with these protrusions never goes away, recurs, and only increases in severity and extent over the years. Dr. Graeca's records also document mood swings and headaches from work and family care stress, which also take their toll. Also, the rare tumor that developed in her radius was a surprise to everyone, and even with a lesser procedure, would likely have impacted her employment, at least long term. I also note that a period of recuperation and physical therapy would likewise be needed post a curettage.

I would also like to comment on the accommodations possible for Mrs. Carlson's problems. The work of a radiation technologist is of two types. The preliminary work is positioning the patient on the therapy table prior to beginning the treatment. This portion of the technician's work can at times involve lifting, maneuvering, pushing, etc. which can be stressful on the back and wrists. The second part of the technician's work is operating a computer that controls the therapy machine. With skilled job function analysis one may find that the job can be made easier. Good body mechanics and compensatory techniques should also be instituted. I also believe that if a technician's aide was made available, then Mrs. Carlson would be able to do her job as a radiation therapist indefinitely. Many departments already recognize the periodic need for physical assistance to the therapy technician. Often, this work is done in teams. The tech aide would assist and provide the manual effort with positioning the patient and equipment. This would allow Mrs. Carlson to be relieved of the physical aspects of the job and focus solely on the computer manipulation of the equipment, radiotherapy planning, and interacting with and instructing the patient. Perhaps the same tech aide would be helpful for the other technicians as well to focus on their work careers. The cost is minimal. This is quite similar to nurses' aides assisting nurses with physical work in hospital settings and can actually make the whole department more efficient and safer for patients as well as Mrs. Carlson, with or without the consequences of her tumor.

Regarding resumption of her employment, the most recent, February 14, 2007 evaluation by Dr. Richman notes tendon function, sensation, and vascular examination remained normal to her digits. She had surprisingly well preserved pronation and supination. Radiographs revealed an excellent solid arthrodesis and position.

Please contact me should you require further information or clarification of this report. I would also be glad to consider any pertinent additional information that may become available.

Sincerely,



Ross A. Horsley, M.D.

EXHIBIT "D"

Paula Carlson

Employee Health File

MEDICAL REPORT FORM

Name of Employee: CARLSON, PAULA 0305200301-000406631
Employee's Address: RD1, Box 200A, Falls Creek, PA 15840 372-3669
Employee's S.S. No.: 201-66-3077 Date of Birth: 04-26-71
Date of Injury: mid December 2002 Employer: DRMC
Occupation: Radiation Therapist Source of Referral: Employer
Date of Evaluation & Report: 02/21/03

CHIEF COMPLAINT: "I hurt my neck."

HISTORY OF PRESENT ILLNESS: A 31-year-old right hand dominant white female working full time as a radiation therapist for the last 10+ years at DRMC states that in the mid portion of December 2002 she began having right sided neck pain with pain into the right shoulder and right arm and numbness into the right thumb. She states that within the last 10-14 days she has had intermittent mild to moderate glove-like numbness of the right hand and elbow. She denies any type of specific injuries. She denies any slips, trips, or falls. Denies any blunt trauma. She states she did have a history of a cervical muscular strain treated in 1997 by Dr. McVay with a short course of therapy and muscle relaxants which had completely resolved. The patient states she does do a lot of heavy lifting of equipment and patients and this puts a strain on her neck. She mentions she does feel somewhat improved with less intense pain and better motion since treatments by Dr. Steven Graeca and Dr. Lynn Myers. She states she was seen by Lynn Fenton, physician assistant for Dr. Graeca, in January and had some complaints of right thumb numbness. She was started on a course of physical therapy and diagnosis was unclear, according to the patient. The patient was seen by Dr. Lynn Myers, physiatrist. She states she has undergone EMG nerve conduction study tests and cervical MRI. The results of the EMG nerve conduction study are unknown to the patient. The patient mentions she was told that the MRI did show a right sided cervical disc between C5-C6. She was unsure as to whether or not there was any type of stenosis, foraminal or thecal sac impingement. She states at times that she has a pulling sensation into the right cervico-occipital and cervical-trapezius musculature when she does heavier lifting, pushing, or pulling. The patient states she does have a follow up appointment with Dr. Myers for Monday, the 24th.

ALLERGIES: CIPRO.

MEDICATIONS: Celebrex samples from Dr. Myers which she states does give her some benefit from her cervical pain, iron supplementation, and multivitamins.

PAST MEDICAL HISTORY: Unremarkable for this particular event other than that mentioned in HPI.

SOCIAL HISTORY: She is married with two children. She does not use alcohol or tobacco. Hobbies are being involved in the Brownies Association and also doing crafts. She has no second job outside of her full time employment at DRMC.

FAMILY HISTORY: Unremarkable for this particular event.

PHYSICAL EXAM: VITAL SIGNS: Within normal limits. She appears in no acute distress. She currently rates her pain as a 5/10. Shoulder shrug was full and equal without side-to-side variance. She shows full unrestricted range of motion in the cervical spine. Strength against resistance with maneuvers of the cervical spine was full and complete. She did have some increasing pain at the right cervical-trapezius area with end limit cervical extension against resistance and with rightward cervical rotation against resistance. Cervico-axial compression techniques increased her pain into the right cervical-trapezius and cervico-occipital area. No radicular component was noted. Cervical distraction or traction techniques actually relieved some of her discomforts. Spurling test was negative for radiculopathy bilaterally, but on the right side it did have isolated pain at the right cervical-trapezius and cervicothoracic junction. Grip strength was good and equal bilaterally.

CONTINUED ON NEXT PAGE.....

She shows full strong resistance for forearm flexion and extension bilaterally without side-to-side variance. Deep tendon reflexes of the left upper extremity were +2/4 throughout. For the right extremity, they were trace to +1, slightly decreased at the biceps and brachioradialis. She does show the ability to perform rapid alternating movements of pronation and supination without side-to-side variance. She is also able to oppose the thumb to each individual finger in a cascading motion without side-to-side variance. Grip strength, hook grip, and pincer grip were all intact bilaterally. Light touch was intact bilaterally. She does show a two-point discrimination deficit at the right thumb. Otherwise, two-point discrimination was intact. In the supine position with traction to the left arm and forceful strength against resistance motions to the left forehead, there was no cervical pain. With repeated testing on the right side with rightward arm traction and forcing against the right forehead, there was pain into the right cervical-trapezius and cervico-occipital area. The patient was mildly tender to palpation at the proximal lateral point of the cervico-occipital insertion. The remainder of the cervical-trapezius, cervicothoracic paraspinal musculature was nontender and was also without spasm.

DIAGNOSIS: Right cervical-occipital, cervical-trapezius strain with radicular component, rule out C5-6 disc involvement.

PLAN: Continue to follow up with Dr. Myers on the 24th. Medications and modified duty as per Dr. Myers.

PROGNOSIS: Good.

R: 02/24/03
T: 02/26/03 EJM/JFC/mrr

Edward J. McVay, M.D., MPH
Occupational Health Center

James F. Cobbett, PAC
Occupational Health Center

Paula Carlson

THE OCCUPATIONAL HEALTH CENTER at DRMC
MEDICALLY ADVISED WORK STATUS FORM

DRMC

Employee Name P J Carlson Employer Name DRMC

Date of Injury 12/___/02 Diagnosis Back pain - C4-6 - radiculopathy

EMPLOYEE'S MEDICALLY ADVISED WORK STATUS:

_____ 1. May resume regular duties on ____/____/____

X 2. May return to modified work on 2/21/____ consisting of:

Work Above Shoulder	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Squatting or stooping	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Bending or twisting movements of the trunk	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Repetitive use of _____	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Lifting, pushing, pulling up to _____lb.	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Overhead lifting	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Climbing ladders	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Crawling or kneeling	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Use of heavy hand tools (picks, axes, shovels, etc.)	NONE	OCCASIONAL	FREQUENT	NO LIMIT
Use of vibratory tools (drills, sanders, grinders, etc.)	NONE	OCCASIONAL	FREQUENT	NO LIMIT

Standing with a _____ minute break every _____ minutes
Change position to stand, sit or walk to control pain: AS NEEDED
Left / Right Hand work only
Other Restrictions: _____

_____ 3. The employee has a wound burn and should not expose the wound to water, dirt, grease, oil, solvents or other potential contaminants. Do not expose burn to extreme heat or sunlight. Do not immerse wound burn in fluids for one week.

_____ 4. The employee may not return to work at this time due to: _____
Expected length of time until work may be resumed: _____

_____ 5. Continue Modified Duty Status as before. Refer to previous Work Status Form for details.

X 6. Comments: mod duty as per Dr L Meyer

FOLLOW-UP INSTRUCTIONS: The patient has been advised to have follow-up medical care with:

_____ The Occupational Health Center at DRMC on ____/____/____

_____ May cancel OHC follow-up if improved. Patient instructed to contact OHC to cancel follow-up.

X No scheduled follow-up needed. Return only if needed.

_____ PT/OT/Chiropractor/Specialist Dr L Meyer 2/24/03

_____ Other _____

Patient Education materials which may include information on medications, treatments, diagnosis and medical procedures have been provided. Yes _____ / No _____ / Not Applicable for this visit _____

X Paula Carlson 2/21/03
Patient Signature Date

Health Care Provider Signature 2/24/03 Date

THE OCCUPATIONAL HEALTH CENTER at DRMC
145 HOSPITAL AVENUE, SUITE 301 DUBOIS PA 15801
TELEPHONE: (814) 375-3000 FAX: (814) 375-3346

3

EMPLOYEE INCIDENT REPORT

EMPLOYEE

Employee Name Paula J. Carlson Department HRCC

Job Title Radiation Therapist Normal Starting Time 7:30am

Married X Yes __No Number of Children Under Age 18 2

OCCURENCE

Accident Date _____ Accident Time _____ am pm

Date Reported _____ Was Supervisor Notified _____

Name of Person First Notified of Incident _____

Other Employees Involved or Witnesses:

name department

Exact Location Where Incident Occured _____

What Was Employee Doing When Incident Occured _____

How Did Incident Occur _____

SIGNATURE OF EMPLOYEE Paula J Carlson DATE/TIME 2/20/03

Physician Statement [illegible]

INJURY

Disposition of Employee:

____Return To Duty

____Sent Home For ____Days

X May Return To Duty With Restriction. EXPLAIN: [illegible]

SIGNATURE [illegible] DATE/TIME 2/4/03

(4)

2/20/03 - Employee Incident Report

- Had MRI 2/18/03 - Herniated disc between C5 & C6 -
- I went to Dr Graccas office in Jan 2003 due to increased pain in neck and Rt shoulder and numbness in Rt thumb. Told them I didnt do anything specific to my neck - My job requires me to turn patients to position them properly and lift heavy wedges to put into the machine.
- I had an incident 4/28/97 while working I was moving our film holder and injured my C-spine. I went to employee Health - Saw Dr McKay he prescribed me pain reliever & muscle relaxer.
- I believe I have had trouble with my neck for years and lately it has just been a build up of number of patients, size of patients, & use c

the wedgies.

- went to Dr Lynn Myers 2/13/03 - Did EMG - Ordered MRI - Will see him again 2/24/03 - Was told no lifting, turning, pushing, + pulling over 10 lbs.

RECORDS AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
:SS
COUNTY OF Clearfield :

The undersigned does hereby declare that I am the duly authorized custodian of records with authority to certify records. Following a careful search by me or at my direction and under my supervision, I hereby submit the attached records to McQUAIDE BLASKO LAW OFFICES, legal counsel for Defendant(s), and hereby certify that the records so submitted conform to the following:

1. The films/records pertain to **Paula J. Carlson, d/o/b 4/26/1971, SS # 201-66-3077.**

2. The films/records represent all documents for to the present date of this Affidavit [unless otherwise specifically requested by McQUAIDE BLASKO].

3. The films/records submitted under this Affidavit consist of _____ disk/pages.
[If no records exist, please so indicate "No Records," sign and return this Affidavit.]

4. The copies of films/records for which this certification/affidavit is made are true and complete reproductions of the original records which are housed by _____. The original records were made in the regular course of business at or near the time of the matter recorded. This certification/affidavit is given pursuant to 42 Pa. C.S. § 61(e) (relating to medical records) by the custodian of the records in lieu of his personal appearance.

I declare that the foregoing facts as are within my personal knowledge are true and correct and other facts contained herein are true to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 19 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

_____
[Signature of Records Custodian]

Edward Mill
_____
[Print or Type Name of Records Custodian]

Sworn to and subscribed
before me this 25th day
of May, 2007.

_____
Notary Public
[SEAL]

PLEASE EXECUTE AND RETURN THIS DOCUMENT WITH THE REQUESTED RECORDS

TO: Sue Miller, DRMC Employee Health

FROM: Tracey Carpin, PT

DATE: 07/31/92

RE: Albert, Paula

P. CARLSON

This individual reports to the clinic today stating she is applying for a radiation therapy technician position with DRMC. She states her past occupation was as a student. She is 21 years old, right hand dominant, 5'4", 104 lbs. Past medical history is negative for any low back pain, and she takes no medications.

Active range of motion is within normal limits in the upper extremities, lower extremities and spine. Strength is within normal limits in the upper and lower extremities. Special tests are within normal limits. Standing posture of the pelvis and spine is within normal limits. Upon functional assessment with 25 lbs., she was independent and pain free with sit to stand, straight lift, carry 100', ascending and descending stairs. Static strength testing with the dynamometer ranged from less than the 1st percentile for left and right grip strength up through the 56th percentile for torso strength. Ms. Albert viewed the American Back School slides on proper lifting technique and back injury prevention.

Ms. Albert presents with no musculoskeletal abnormalities at this time that should prevent her from performing a radiation therapy technician position for DRMC. If you have any questions or concerns, please do not hesitate to contact me.

Tracey Carpin PT

Tracey Carpin, PT

DuBois Regional Medical Center

Partners in Progress for Life

MUSCULOSKELETAL SCREENING

NAME Albert, Paula DATE 7/31/92

DATE OF BIRTH 21 yo DOMINANCE (R) L

OCCUPATION PAST Student HEIGHT 5'4"

PRESENT DRMC Radiation Therapy Tech WEIGHT 104#

HISTORY no history of LBP
No MEDS

PAIN

WNL

CONSTANT

INTERMITTENT

MAKES WORSE

COMMENT:

ASSESSMENT

WNL

ROM

FOOT LUMBAR

HAMSTRING SHOULDER ROTATE

QUADRICEPS OVERHEAD

ILIOTIBIAL NECK

ANKLE UPPER EXTREMITIES

COMMENT:

Declan 220000121

STRENGTH

GIRTH WNL

DYNOMETER R ____ L ____

R UE ____ L UE ____

R LE ____ L LE ____

COMMENTS: ____

SPECIAL TEST

REFLEX WNL ____ % FAT ____

SWELLING ____ BALANCE ____

SKIN ____ PATELLA TRACK ____

FABRE ____ KNEE MOBILITY ____

FOOT/ANKLE ____ SHOE WEAR ____

CREPITUS ____ Q ANGLE ____

TINEL ____

POSTURE ____

STANDING

ASIS LEVELS =

LEG LENGTH =

PSIS LEVELS =

PRONATION Ø

SCOLIOSIS Ø

TRUNK R L

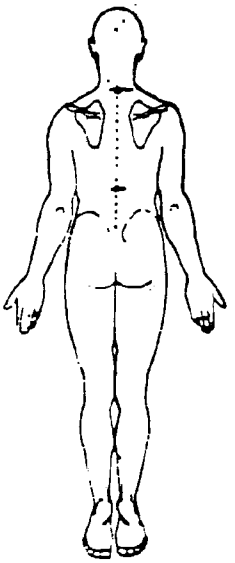
EXTENSION WNL WNL

ROTATION ____ ____

FLEXION ____ ____

EXTENSION ____ ____

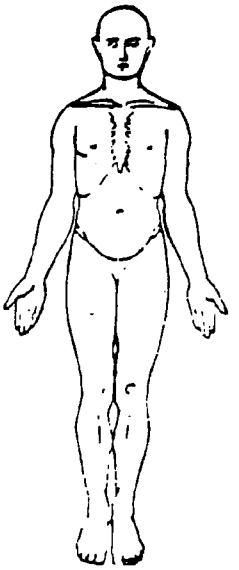
COMMENTS: ____



T - TENDER

P - PAIN

S - SENSORY



FUNCTIONAL ASSESSMENT (I) + Pain Free

SIT TO STAND _____

SQUAT _____

KNEE TO STAND _____

LIFTING CRATE WT 25 LBS WNL

KNEES _____

WAIST _____

OVERHEAD _____

REACH 3 FT _____

CARRY 100 FT _____

CARRYING 4 STAIRS _____

SIDE LIFTING R _____ L _____

COMMENTS: _____

_____

THERAPIST _____

DATE _____



TORSO



LEG



ARM



Back-Kyphosis



Back-Lordosis



Hand Grip

STATIC STRENGTH

SUBJECTIVE PAIN BEFORE TESTING: 0 - 10

TEST	MAXIMUM EFFORT	PAIN	REASON FOR STOPPING	Percentile of Healthy Male/Female[1,2,3]
Torso	148.2 lbs.	0	max effort	56.1 %
Leg	112.3 lbs.			05.03%
Arm	63.4 lbs.			24.5 %
Back—Kyphosis	124.6 lbs.			Percentile of Norms by Age Group[4]
Back—Lordosis	112.3 lbs.			
Hand Grip L	15 lbs.			60 %
Hand Grip R	20 lbs.			<0 %

EXHIBIT "E"

DUBOIS MAGNETIC IMAGING CENTER, 145 HOSPITAL AVE. SUITE 102, DUBOIS, PA 15801
PHONE (814) 375-3595 OR (814) 375-3596 OR FAX (814) 375-3298

PATIENT NAME: CARLSON, PAULA J.
ADDRESS : RD 1 BOX 200-A
FALLS CREEK, PA 15840
DATE OF BIRTH:4-26-71 AGE:31
SOC. SEC # : 201-66-3077
EXAM REQUESTED: MRI OF CERVICAL SPINE
DATE OF EXAM: 2-18-03 SCAN #: 20783
REF. PHY.: MYERS

MRI CERVICAL SPINE:

SCAN SEQUENCE: Multi-planar and multi-sequence images of the cervical spine were obtained.

REPORT: There is reversal of lordosis, ~~compatible with muscle spasm.~~ A moderate-sized right lateral herniated disc is noted at C5-6, resulting in narrowing of the intervertebral neural foramen. There is no compression of the thecal sac or significant central spinal stenosis. The rest of the cervical discs are preserved with no herniation or bulge. The spinal cord is of normal signal and caliber.

IMPRESSION: MODERATE-SIZED RIGHT LATERAL HERNIATED DISC AT C5-6.

Jerjis T. Alajaji, M.D.

D: 2-19-03
T: 2-19-03
llw

20

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

CARLSON, PAULA J
1373 SAND STONE DR
FALLS CREEK PA 15840

REF
Age 34Y

Unit # 000406631
Acct # D0511600738

Date:04/26/05 Time:0906

NATOLI, LORIE B
C/O DRS KRUK AND GRAECA
DUBOIS PA 15801

GRAECA, STEVEN W
145 HOSPITAL AVENUE
DUBOIS PA 15801

Chk-in #	Order	Exam	
763079	0001	43503	DI-CERVICAL SPINE MIN 4

Ord Diag: CERVICAL HNP

CERVICAL SPINE:

Minimal degenerative narrowing of the C5-6 disc space is noted associated with small marginal spurs. The rest of the cervical discs are preserved. Posterior elements, articular facets and intervertebral neural foramina are unremarkable and preserved bilaterally.

/READ BY/ JERJIS ALAJAJI
/Released By/ JERJIS ALAJAJI

04/27/05 0836
RAW

Notify Pt

4-28-05 - Pt NA - message left
Natoli

Complete

11

2.3.05

EXHIBIT "F"

ASSOCIATES IN REHABILITATION INC.

www.associnrehab.com

2741 Noblestown Road
Pittsburgh, PA 15205
412.922.9055
Fax 412.922.9056
1.888.351.5790

Claimant:	**Paula Jo Carlson**	**Employer:**	**DuBois Regional Medical Center**
Address:	**1373 Sandstone Drive Falls Creek, PA 15840**	**Address:**	**100 Hospital Avenue DuBois, PA 15801**
Phone:	**814-372-3669**	**Phone:**	**814-371-2200**
A.I.R. No.:	**9989040907**	**Referral Source:**	**Daryl Slimak, Esquire McQuaide Blasko**
Date of Birth:	**4/26/71**	**Address:**	**811 University Drive State College, PA 16801**
Occupation:	**Radiation Therapist**	**Phone:**	**(814) 238-4926**
Type of Injury:	**Fusion Right Wrist**	**Claim No.:**	**N/A**
Date of Injury:	**6-27-05**	**Report Date:**	**May 14, 2007**

INITIAL VOCATIONAL REPORT

CURRENT STATUS UPDATE:

Thank you for Paul Jo Carlson's June 27, 2005 Civil Liability Claim to Associates in Rehabilitation, Inc for the purpose of an Earning Power Evaluation.

An Initial Vocational Interview was conducted with Ms. Carlson in Attorney Thomas Crenney's office in Pittsburgh, PA on May 8, 2007. I informed Ms. Carlson at the time of our meeting that her Civil Liability Claim has been referred to Associates in Rehabilitation, Inc. to for the purpose of an Earning Power Evaluation and that there is no client counselor relationship. The information in this report was provided by Ms. Carlson at the time of our meeting on May 8, 2007.

Ms. Carlson's current employer, Red Lobster in DuBois, PA was also visited on May 8, 2007 and an onsite Job Analysis was completed for her position as seater.

MEDICAL HISTORY:

Description of Medical Condition:

Ms. Carlson was diagnosed with a giant cell tumor in her right wrist. When asked, Ms. Carlson was unsure of the date of her diagnosis. Ms. Carlson explained that her accepted date for her civil liability claim is the date of her surgery which was performed on June 27, 2005.

Description of Medical Condition – cont.

Specifically, Ms. Carlson had a giant cell tumor removed from her right wrist along with her radius bone resulting in a fusion of her right wrist.

Current Treatments:

Ms. Carlson's treating physician is Kenneth Yaw, MD at Mercy Hospital in Pittsburgh, PA. Ms. Carlson was last examined by Dr. Yaw in February of 2007 and her next examination by Dr. Yaw will be in one year. Ms. Carlson is being prescribed Vicodan which she takes on an as needed basis.

Medical History not related to Current Diagnosis:

Ms. Carlson denied having any prior injuries work related or non-work related. Ms. Carlson also reported that she is in good health other than the giant cell tumor that was removed from her right wrist. Ms. Carlson does not smoke nor consume alcohol and denied any drug or alcohol related addictions.

Current Complaints:

Ms. Carlson is right hand dominant and has limited usage of her right hand due to the fusion of her right wrist. Ms. Carlson utilizes her left hand to perform some activities, although she still uses her right hand for writing and various other activities.

Ms. Carlson related that she experiences in weaknesses in both arms. The weakness in Ms. Carlson's right arm is due to the fusion of her right. Ms. Carlson clarified that the weakness in her left arm is not due to any physiological problems and is only because she is not a strong woman.

Subjective Opinion of Physical Capabilities:

Attorney Crenney would not allow Ms. Carlson to comment on whether she agreed with the results of her two Functional Capacity Evaluations. With regards to specific weights that Ms. Carlson is capable of lifting and carrying, Ms. Carlson informed me that she is unable to lift a "Jug of Milk".

PHYSICAL DESCRITION:

Ms. Carlson stands approximately 5"5' tall, weighs 105 lbs, she has brown shoulder length hair and brown eyes.

DAILY ACTIVITIES/HOBBIES:

Ms. Carlson's daily activities consist of performing light household chores, caring for her school age children and minor gardening in the spring and summer.

DAILY ACTIVITIES/HOBBIES – cont.

Ms. Carlson's hobbies consist of sewing and crafts which she only engages in minimally due to her limited usage of her right hand.

FINANCIAL:

Ms. Carlson's salary as a Radiation Therapist at DuBois Regional Medical Center was $62,000 per year. Ms. Carlson is currently receiving $1700.00 per month in Social Security Disability Benefits and she will begin receiving an undisclosed amount of money per month in disability for her school age children in June of 2007. Ms. Carlson is also employed at Red Lobster in DuBois, PA as a seater with a wage of $6.25 per hour working two 7-hour days per week totaling 14 hours per week.

TRANSPORTATION:

Ms. Carlson possesses a valid PA Drivers License and owns a 2000 Dodge Caravan which would serve as reliable transportation to and from work. Ms. Carlson does not have any pending motor vehicle violations that result in her driving privileges being revoked.

LEGAL ISSUES:

Ms. Carlson is not a convicted felon and doe not have any pending legal issues that would result in her becoming a convicted felon.

EDUCATIONAL/VOCATIONAL BACKGROUND:

Ms. Carlson is a 1989 graduate of Philipsburg Osceola High School. Ms. Carlson is able to read and write and has never been diagnosed with a learning disability.

Post High School, Ms. Carlson completed a two year Radiology Program at Altoona Mercy Hospital in 1991 and received a certificate as a Radiologic Technologist. Ms. Carlson also completed a one-year program at Community College of Allegheny County in 1992 and received a certificate as a Radiation Therapist.

Retraining:

Ms. Carlson was unable to provide any a specific response as to what type of profession she would like to be retrained. Ms. Carlson believes that she is capable of working, although she can't determine what she can be retrained to do considering her limited usage of her right wrist.

EMPLOYMENT HISTORY:

Ms. Carlson is currently employed at Red Lobster in DuBois, PA as a seater. Ms. Carlson employment began with Red Lobster on January 24, 2007 and she is currently working Mondays and Thursdays, 7 hours per day totaling 14 hours per week. As explained by Ms. Carlson, her job duties consist of greeting and seating customers; handing out menus; vacuuming; wiping tales, chairs, walls, light fixtures and door glass; checking restrooms for cleanliness; changing silverware over from paper to linen from lunch to dinner; presenting requests for gift cards to the manager on duty.

Prior to working at Red Lobster, Ms. Carlson worked for DuBois Medical Center from 1992 through 2005 as a Radiation Therapist. Ms. Carlson job duties as a Radiation Therapist consisted of providing radiation therapy to patients as prescribed by a Radiologist to include inputting patient data into a computer, scheduling patients, preparing equipment, positioning of the patient on a linear accelerator, making electron blocks, cutting and shaping Styrofoam, etc.

SKILLS AND KNOWLEDGE:

Ms. Carlson owns a home computer which she informed me that she only occasionally uses to send emails and surf the Internet.

Ms. Carlson's skills and knowledge are those learned on the job working as a Radiation Therapist at DuBois Regional Medical Center for 14 years and as a seater at Red Lobster for 3 ½ months.

TRANSFERRABLE SKILLS ANALYSIS

Transferable Skills identified:

A Transferable Skills Analysis was completed utilizing the OASYS Program which is based upon the U.S. Department of Labor's Dictionary of Occupational Titles. An O'Net Transferable Skills Analysis was also conducted on O'Net Online to develop additional transferable skills.

The Transferable Skills Analyses were completed utilizing the March 8, 2006 results of Ms. Carlson's Functional Capacity Evaluation which identified her physical capabilities in the medium-lifting category (20-50 lbs occasional, 10-20 frequently and 10 lbs constantly). Please note that this FCE was the result of a referral by Ms. Carlson's treating physician, Kenneth Yaw, MD.

OASYS Program Results:

Skills Transfer Components:		SVP
294	Health Caring-Medical	7
201	Photographing	7
291	Accommodating	6

Components of Combination Work Fields	**SVP**
None	

MPSMS		**SVP**
925	Health Technological Services	7
903	Meals Service, except Domestic	6

The following are some occupational titles identified from the OASYS Transferable Skill Analysis: Radiation Therapist, Medical Receptionist, Hostess, Greeter, Customer Service, Counter Clerk, Cashier, etc.

O'Net Online Results:

Radiation Therapist
Radiologic Technologist

Please note that the descriptions for Radiation Therapist and Radiologic Technologist fall within the light duty classification.

The following are vocational titles that were identified from O'Net Online for retraining possibilities:

Medical Technologist (Lab Technician)	(light)
Phlebotomist	(light)
Respiratory Therapist	(medium)
Registered Nurse	(medium)
Sales Representative, Pharmaceuticals	(light)
Sales Representative, Medical Supplies	(light)

INSURED CONTACT:

Telephone calls were placed to the insured and a request was made to conduct an onsite Job Analysis for Ms. Carlson's position as a Radiation Therapist. A response from the insured is pending.

RED LOBSTER:

Travel was conducted to Red Lobster in DuBois, PA on May 8, 2007 and an onsite Job Analysis was conducted for Ms. Carlson's position as a seater. Ms. Carlson's explanation of her job duties as a seater is consistent with the description that was provided to me by Cheri Cullen, Culinary Manager.

ACCOUNT CONTACT:

As you are aware, I have kept you updated regarding case management activities.

ACTION PLAN:

1. Complete Earning Power Evaluation by no later than June 15, 2007.

Sincerely

Ronald S. Kushner

Ronald S. Kushner, B.S., QRP
Vocational Consultant

RSK:
amt

EXHIBIT "G"

ASSOCIATES IN REHABILITATION INC.

www.associnrehab.com

2741 Noblestown Road
Pittsburgh, PA 15205
412.922.9055
Fax 412.922.9056
1.888.351.5790

Claimant:	**Paula Jo Carlson**	**Employer:**	**DuBois Regional Medical Center**
Address:	**1373 Sandstone Drive Falls Creek, PA 15840**	**Address:**	**100 Hospital Avenue DuBois, PA 15801**
Phone:	**814-372-3669**	**Phone:**	**814-371-2200**
A.I.R. No.:	**9989040907**	**Referral Source:**	**Darryl R. Slimak, Esquire McQuaide Blasko**
Date of Birth:	**4/26/71**	**Address:**	**811 University Drive State College, PA 16801**
Occupation:	**Radiation Therapist**	**Phone:**	**(814) 238-4926**
Type of Injury:	**Fusion Right Wrist**	**Claim No.:**	**N/A**
Date of Surgery:	**6-27-05**	**Report Date:**	**June 18, 2007**

LABOR MARKET SURVEY REPORT

CURRENT STATUS UPDATE:

Thank you for referring Paul Jo Carlson's June 27, 2005 Civil Liability Claim to Associates in Rehabilitation, Inc for the purpose of a Labor Market Survey/Earning Capacity Evaluation.

Six potential employers were identified in Ms. Carlson's immediate geographic area. The types of positions with these employers were Greeter, Cashier and School Van Driver.

Retraining options for Pharmaceutical Sales and Nursing were also researched on Ms. Carlson's behalf. Specifically the cost of retraining for these vocational employment opportunities at Penn State University Altoona and Labor Market Employment Statistics are provided within this report.

LABOR MARKET SURVEY RESULTS:

Labor Market Survey efforts identified the following non exclusive six sample positions as viable return to work options:

1. Employer: Wal-Mart
   20 Industrial Drive, Dubois, PA 15801
   Telephone: 814.375.5000

LABOR MARKET SURVEY RESULTS (cont.)

	Contact:	Sue Dodge, Personnel Manager
	Position:	Cashier
	Hours:	Part time, 16-33 hours per week
	Wage:	$6.25 per hour or above-wage discussed at the time of interview
	Available:	April 24, 2007
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
2.	Employer:	Sears Roebuck & Company 5522 Shaffer Road, Dubois, PA 15801
	Telephone:	814.375.3100
	Contact:	Stephanie Tibbens, H.R. Assistant
	Position:	Cashier
	Hours:	Part time, 15-29 hours per week
	Wage:	$6.25 per hour
	Available:	April 24, 2007
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
3.	Employer:	Eat N Park RD 3 Box 1461, Schaeffer Road, Route 255 North, DuBois, PA 15801
	Telephone:	814.375.8622
	Contact:	Jeremy Johnson, Assistant Manager
	Position:	Greeter
	Hours:	Part time, 25-30 hours per week, variable shifts morning, day, evening, 4, 5, 6 and 8 hour shifts
	Wage:	$6.25 per hour
	Available:	Position available 4/06, employer hires occasionally for this position
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
4.	Employer:	Clepper Bus Service 162 Lincoln Drive, DuBois, PA 15801
	Telephone:	814.371.2450
	Contact:	Sue Shugars, Administrative Assistant
	Position:	School Van Driver
	Hours:	$8.95 per hour
	Wage:	Part time, 20-25 hours per week, 2.5 hours in a.m. and 2.5 hours in p.m.
	Available:	May 25, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis

LABOR MARKET SURVEY RESULTS (cont.)

5.	Employer:	Clarion Hotel 1896 Rich Highway, DuBois, PA 15801
	Telephone:	814.371.5100
	Contact:	Suzanne Welsh, Front Desk Manager
	Position:	Front Desk Clerk
	Hours:	$6.25 per hour or above-wage discussed at the time of interview
	Wage:	Part time, 16-24 hours per week
	Available:	June 13, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis
6.	Employer:	Olan Mills 5820 Shaffer Road, DuBois, PA 15801
	Telephone:	814.371.9451
	Position:	Pre-Seller
	Hours:	Part time, 12 hours per week
	Wage:	$6.25 per hour or above
	Available:	June 13, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis

LABOR MARKET SURVEY RESULTS:

Six potential employment opportunities were identified utilizing Ms. Carlson's Functional Capacity Evaluation results of June 13, 2006 which concluded that Ms. Carlson's demonstrated performance level was in the medium lifting category. It should be noted that to be conservative all of the positions identified are classified as light duty. It is my professional opinion that each of these jobs can be performed by Ms. Carlson taking into consideration her right arm limitations and capabilities.

MEDICAL JOB ANALYSES:

Job Analyses were completed for each of the six positions as they were identified and are included with this report. In the comments section of each Job Analysis, you will note that there is an indication that each employer was informed of Ms. Carlson's physical limitations. Each signified that this was not a problem for employment. The applicability of the Americans with Disabilities Act is noted which would require employment opportunities to be extended to prospective employees who can

MEDICAL JOB ANALYSES (cont.)

perform the essential functions of a job with or without reasonable accommodations by the prospective employers. While it should be noted that while Ms. Carlson does not currently utilize same, there is no contraindication in the medical records to Ms. Carlson's utilizing a protective device for her arm/wrist during work activities, if felt appropriate.

MEDICAL:

A review of all significant medical records provided by the account is as follows:

Ms. Carlson underwent a musculoskeletal screening and static strength testing on July 31, 1992 in conjunction with her applying for the radiation therapy position at DuBois Regional Medical Center. The results of the testing for the functional assessment revealed that Ms. Carlson was very low in left

and right grip strength at the time of her application for the position. Specifically, Ms. Carlson demonstrated 15 lbs lifting with the left hand and 20 lbs with the right hand with a dynamometer rating of less than 1% grip strength for both hands. Ms. Carlson's torso strength was at the 56th percentile rating and her leg and arm strength were at the 25th and 24th percentile ratings respectively. The March 2008 FCE revealed improved left hand grip average of 68 lbs which is at the 41st percentile; right hand grip was 40 lbs which is less than the 10th percentile, similar to test results in 1992. Of note, torso lift in 2006 was 114lbs which is the 31st percentile, while in 1992 same was 56 %. Leg lift was 27th percentile in 2006 compared to 25 % in 1992. Arm lift is currently 30 lbs average which is less than 10th percentile, comparable to same as measured in 1992.

June 13, 2006 "Grip Position 2" FCE assessment was repeated at 35 lbs on the right and 52 lbs on the left. The unaffected left hand strength testing reviewed consistently well below expected norms. The right was slightly reduced from March 2, 2006 testing, but still similar to the results of 1992. Ms. Carlson managed to perform her Radiation Therapy job adequately over the years despite her significant upper extremity capabilities limitations dating back to 1992.

Medical records from Summit Rehabilitation for 2002-2003 confirm that Ms. Carlson has a history of work related low back and/or neck problems as well as shoulder problems on the right side. Specifically, Ms. Carlson is status post C5-6 herniated disk prior to the removal of the giant cell tumor in her right wrist. Ms. Carlson's C5-6 disk herniation was treated conservatively with medications, physical therapy modalities, home exercises, and work modifications, her symptoms appeared to have last resolved in May of 2003.

Information pertaining to Ms. Carlson's diagnosis of a giant cell tumor revealed that Ms. Carlson called in to Dr. Graeca's office on April 11, 2005 complaining of pain in her right wrist for which she had worn a brace for approximately one week. Right wrist x-ray imaging was ordered and interpreted by Dr. Alajaji on April 13, 2005. Eventually, a cervical x-ray of the spine was ordered which revealed degenerative narrowing of the C5-6 disc space. EMG's and nerve conduction studies were also

MEDICAL:

conducted and reported as normal in the right upper extremity. Dr. Piasio ordered repeat x-rays, an MRI, CT Scan and a bone scan of both wrists and hands with a total body scan which was conducted on June 10, 2005 showing findings consistent with a giant cell tumor. Ms. Carlson was referred to Dr. Yaw who did a biopsy on June 20, 2005 confirming the giant cell tumor. On June 27, 2005, Dr. Yaw resected the distal radius and transposed the ulna onto the radius and fused the ulna to the wrist.

Information provided by Ms. Carlson at the time of our initial meeting on May 8, 2007 confirmed that she was diagnosed with a giant cell tumor in her right wrist which was removed surgically on June 27, 2005.

Ms. Carlson's treating physician is Kenneth Yaw, MD at Mercy Hospital in Pittsburgh, PA. Ms. Carlson was last examined by Dr. Yaw in February of 2007 and her next examination by Dr. Yaw will be in one year. Ms. Carlson was prescribed Vicodan that she said she takes on an as needed basis.

Please note that Ms. Carlson denied having any prior injuries work related or non-work related. This is contrary to the medical records received from the account and reviewed as noted above. Ms. Carlson also reported that she is in good health other than the giant cell tumor that was removed from her right wrist.

Ms. Carlson reported that she is right hand dominant and has limited usage of her right hand due to the fusion of her right wrist. Ms. Carlson utilizes her left hand to perform some activities, although she still uses her right hand for writing and various other activities.

Ms. Carlson related that she experiences weaknesses in both arms. The weakness in Ms. Carlson's right arm is due to the fusion of her right. I note that significant weakness on the right was documented as far back as 1992. Ms. Carlson clarified that the weakness in her left arm is not due to any physiological problems and is only because she is not a strong woman. This appears consistent with the DRMC musculoskeletal screening and static strength testing performance July 31, 1992, in conjunctions with Ms. Carlson's applying for the Radiation Therapy position, which revealed very low upper extremity grip strength and lifting capabilities.

With regard to Ms. Carlson's specific physical capabilities, Attorney Crenney would not allow Ms. Carlson to comment on whether she agreed with the results of her two Functional Capacity Evaluations. However, Attorney Crenney did allow Ms. Carlson to comment that she is unable to lift a "Jug of Milk" with her right hand.

MEDICAL-FUNCTIONAL CAPACITY EAVLUATION RESULTS

Kenneth Yaw, MD, Ms. Carlson's treating physician prescribed a Functional Capacity Evaluation for Ms. Carlson which was conducted by Rehabilitation Safety Associates in Plum, PA on June 13, 2006.

MEDICAL-FUNCTIONAL CAPACITY EAVLUATION RESULTS (cont.)

The results of this testing revealed that Ms. Carlson's demonstrated performance level places her in the Medium Lifting Category (20-50 pounds occasional, 10-20 frequently, and 10 pounds constantly, 3.6 – 6.3 METS) according to the United States Department of Labor's guidelines for physical demand characteristics at work. This testing result is similar to that determined by Martin Maloney at DRMC per the March 8, 2006 FCE.

EDUCATIONAL/VOCATIONAL:

Ms. Carlson is a 1989 graduate of Philipsburg Osceola High School. Ms. Carlson is able to read and write and has never been diagnosed with a learning disability.

Post High School, Ms. Carlson completed a two year Radiology Program at Altoona Mercy Hospital in 1991 and received a certificate as a Radiologic Technologist. Ms. Carlson also completed a one-year program at Community College of Allegheny County in 1992 and received a certificate as a Radiation Therapist.

Retraining:

Ms. Carlson would not provide a specific response as to what type of profession she would like to pursue in retraining. Ms. Carlson believes that she is capable of working despite her limited usage of her right wrist. Ms. Carlson has to date evidently made no effort whatsoever to pursue retraining or further educational studies to enhance her employment prospects. There is no evident reason why she could not do so on a full or part time basis while maintaining at least her current level of work.

Please note that review of Ms. Carlson's handwritten diary notes reveal that her handwriting with her right hand has progressively improved from when she began her diary on January 1, 2005 and stopped on July 20, 2006. Ms. Carlson's diary entries and testimony, as well as that of her husband, reflect a very active and energetic woman despite her right wrist problems.

VOCATIONAL WORK RELATED HISTORY:

Ms. Carlson is currently employed at Red Lobster in DuBois, PA as a seater. Ms. Carlson employment began with Red Lobster on January 24, 2007 and she is currently working Mondays and Thursdays, 7 hours per day totaling 14 hours per week. Ms. Carlson's hours per week as confirmed by her pay stubs for the pay period extending from 2/5/07 through 3/4/07 have ranged from 12 to 28 hours per week. It appears that this employer is flexible on both the days of the week and hours worked. Ms. Carlson's job duties at Red Lobster consist of greeting and seating customers; handing out menus; vacuuming; wiping tales, chairs, walls, light fixtures and door glass; checking restrooms for cleanliness; changing silverware over from paper to linen from lunch to dinner; presenting requests for gift cards to the manager on duty.

VOCATIONAL WORK RELATED HISTORY (cont.)

Prior to working at Red Lobster, Ms. Carlson worked for DuBois Medical Center from 1992 through 2005 as a Radiation Therapist. Ms. Carlson job duties as a Radiation Therapist consisted of providing radiation therapy to patients as prescribed by a Radiologist to include inputting patient data into a computer, scheduling patients, preparing equipment, positioning of the patient on a linear accelerator, making electron blocks, cutting and shaping Styrofoam, etc.

SKILLS AND KNOWLEDGE:

Ms. Carlson owns and can operate a home computer which she says she uses to send emails and surfs the Internet.

Ms. Carlson's vocational skills and knowledge are those primarily learned on the job working as a Radiation Therapist at DuBois Regional Medical Center for 14 years and as a seater at Red Lobster for 3 ½ months.

INSURED (EMPLOYER CONTACT):

The Job Site Analysis completed by Martin Maloney, PT on April 17, 2006 for Ms. Carlson's position as Radiation Therapist at Hahne Regional Cancer Center was reviewed prior to my conducting a Worksite Job Evaluation on June 4, 2007. I also reviewed Mr. Maloney's deposition transcript.

I had the opportunity to conduct the Worksite Job Site Job Evaluation with Rose Campbell, Manager of Hahne Regional Cancer Center. Specifically, Ms. Campbell explained Ms. Carlson's job duties to me as I conducted a walk through.

Patients are walked to the Radiation Therapy Department by a hospital volunteer. Non ambulatory patients are brought to the department either in a wheel chair or with a hospital gurney. For efficiency purposes, there are always two Radiation Therapists on duty at any given time. A patient is initially registered by one therapist who upon completion of the patient's registration escorts the patient to the therapy table. Both therapists on duty take turns positioning the patient on the treatment table which is initially elevated 26 inches from the floor. If needed, a third person can be called to provide assistance positioning the patient. Electron cone holders and Cerrobend blocks are readily available in the department and are also set in place and positioned. One therapist performs the treatment while the other therapist returns to the registration desk to register the next patient in waiting. The therapist performing the treatment enters the patient's treatment data and controls the patients treatment through utilization of a treatment console located at the foot of the treatment table. The therapist then leaves the room while the treatment is being performed.

Other job duties consist of cutting, pouring and forming Cerrobend Blocks 6-10 times per week. I concur with Ms. Campbell's indication that the Cerrobend blocks weigh a maximum of 25 pounds as I

INSURED (EMPLOYER CONTACT) (cont.)

had the opportunity to lift the blocks. Mr. Maloney's April 17, 2006 Job Site Analysis indicates the heaviest block is 15 lbs. The largest cone weighs 18 lbs. The heaviest wedge is 16.3 lbs.

Ms. Campbell explained that modifications can be made for Ms. Carlson to perform the job duties of the Radiation Therapist. Specifically, Ms. Campbell stated that job duties can be designated to each of the two therapists on duty. Ms. Carlson would be assigned the registration of the patient and escorting the patient back to the treatment table. The majority of the patients being treated are ambulatory and the positioning of a patient is at a relative minimum. Either one or both therapists can position the patient and if needed a third person assist can be requested. With regard to making the Cerrobend blocks, again another therapist could be assigned this duty. Also, the Center complies with the ADA considerations which require reasonable accommodations be made to enhance returns to work.

While conducting the Worksite Job Evaluation, I had the opportunity to speak to Lee Hanwell, Radiation Therapist. Mr. Hanwell informed me that he has been a Radiation Therapist at Hahne Regional Cancer Center for approximately 14 years. Mr. Hanwell stated that in his 14 years of employment that he had only one patient out of thousands of patients that he has treated, who lost balance and needed assistance to keep from falling while attempting to stand after treatment. The assistance that was provided involved good body mechanics and a low height and was minimal. Such circumstances can usually be anticipated based on assessment of the patients' physical condition and stability, and questioning, and precautionary assistance provided by others if indicated.

It is my expert opinion that based upon my observation of the Radiation Therapist's Worksite, explanation and designation of job duties as explained by Rose Campbell that Ms. Carlson would be able to return to her position as Radiation Therapist thereby eliminating any wage loss.

TRANSFERRABLE SKILLS ANALYSIS

Transferable Skills Identified:

A Transferable Skills Analysis was completed utilizing the OASYS Program which is based upon the U.S. Department of Labor's Dictionary of Occupational Titles. An O'Net Transferable Skills Analysis was also conducted on O'Net Online to develop additional transferable skills.

An updated Transferable Skills Analysis was completed utilizing the June 13, 2006 FCE confirming the results of the prior Transferable Skills Analysis utilizing the March 8, 2006 FCE results. Ms. Carlson's Functional Capacity Evaluation is identified in the medium-lifting category (20-50 lbs occasional, 10-20 frequently and 10 lbs constantly). The FCE's took into consideration Ms. Carlson's difficulties in use of her right arm since the surgery for the giant cell tumor. To be conservative, this report only identifies employment opportunities within the light category, unless otherwise noted.

OASYS Program Results:

Skills Transfer Components:		**SVP**
294	Health Caring-Medical	7
201	Photographing	7
291	Accommodating	6

Components of Combination Work Fields	**SVP**

None

MPSMS		**SVP**
925	Health Technological Services	7
903	Meals Service, except Domestic	6

Please note that the following are some occupational titles identified from the OASYS Transferable Skill Analysis based upon Ms. Carlson's prior and current work experience: Radiation Therapist, Radiologic Technologist, Medical Receptionist, Hostess, Greeter, Customer Service, Counter Clerk, Cashier, etc.

O'Net Online Results:

Radiation Therapist
Radiologic Technologist

Please note that the descriptions for Radiation Therapist and Radiologic Technologist fall within the light duty classification according to the O'Net Online.

The following are vocational titles that were identified from O'Net Online for retraining possibilities:

Bachelor of Science in Nursing	(light to medium) unit specific-hospital, physician's office etc.
Sales Representative, Pharmaceuticals	(light)

DEMOGRAPHICS:

Ms. Carlson currently resides in Falls Creek, PA which is located approximately 4.0 miles from DuBois, PA and 25 miles from Clearfield, PA.

DEMOGRAPHICS (cont.)

Ms. Carlson possesses a valid PA Drivers License and owns a 2000 Dodge Caravan which would serve as reliable transportation to and from work. Ms. Carlson does not have any pending motor vehicle violations that result in her driving privileges being revoked.

Labor Market information was obtained through the State of Pennsylvania's Internet website. Information is as follows:

April, 2007 Labor Market Statistics for the State of Pennsylvania reveal that the labor force is estimated at 6,192,000 persons. The employment rate is estimated at 5,957,000 persons. The unemployment rate is estimated at 236,000 persons which calculate to be at a 3.8 % unemployment rate.

The average weekly wage for Pennsylvania in 2006 was $807.20 per week. This would be equivalent to $20.18 per hour or $41.974.40 per year assuming a 40 hour week were worked year round.

April, 2007 Labor Market Statistics for Clearfield County reveal that the labor force is estimated at 39,800 persons. The employment rate is estimated at 37,900 persons. The unemployment rate is estimated at 2,000 persons which calculate to be at a 4.9 % unemployment rate.

The average weekly wage for Clearfield County in 2006 was $507.00 per week. This would be equivalent to $12.675 per hour or $26.364.00 per year assuming a 40 hour week were worked year round.

Labor Market Statistics reveal that employment opportunities exist in Clearfield County. Specifically, six entry level employment opportunities were identified during this Labor Market Survey demonstrating Ms. Carlson's employability with no additional training. These positions are samples, and are not exclusive of the work that would be available.

RETRAINING OPTIONS EXPLORED:

Vocational retraining options were explored for Nursing and Pharmaceutical Sales Representative as the physical requirements of these positions are light duty. The physical requirements of Nursing positions are unit specific and the information provided is for medical office nurse and school nurse. The job duty requirements of a medical office nurse are specific to the physician's office or facility that employment is obtained.

RETRAINING OPTIONS EXPLORED (cont.)

Job Title:	**Registered Nurse, School Nurse**			
DOT Codes:	075.124-010			
Physical Demand Level:	Light			
National Wage Data:	Hourly Mean:	$23.96	Hourly Median:	$23.12
	Annual:	$49,840.00		
Growth:	26.0 %			

Job Title:	**Registered Nurse, Medical Office**			
DOT Codes:	075.374-014			
Physical Demand Level:	Light			
National Wage Data:	Hourly Mean:	$23.96	Hourly Median:	$23.12
	Annual:	$49,840.00		
Growth:	26.0 %			

Contact with Penn State Altoona School of Nursing revealed that RN Licensure can be obtained through completing an Associates Degree in Nursing. Upon completion of the ASN program, a registered nurse can continue complete an additional two years of education to obtain a more specialized Bachelors of Science in Nursing degree. The Nursing Program can be completed at Penn State University DuBois Campus in Clearfield County.

I spoke to Diane Jankura, Academic Counselor at PSU State College Campus on June 11, 2007 regarding the Registered Nurse Program. Ms. Jankura informed me that PSU has a 98 % to 100 % placement rate. The average hourly wage for a registered nurse in State College, PA is $12.00 to $15.00 per hour starting rate. The hourly wage for the lowest 10 % for a nurse with a Bachelors Degree in Nursing is $18.26 per hour and the median average annual income is $58,000 per year.

U.S. Department of Labor Statistics for registered nurses nationwide in May of 2004 was $52,330 annually. The middle 50 percent earned between $43,370.00 and $63,360.00. The lowest 10 % earned $37,000 and the highest 10 % earned $74,760.00 per year.

The median annual earnings in the industries employing the largest number of registered nurses in May of 2004 were as follow:

Employment Services	$63,170
General medical and surgical hospitals	$53,450
Home health care services	$48,990
Offices of physicians	$48,250
Nursing care facilities	$48,220

RETRAINING OPTIONS EXPLORED (cont.)

Should Ms. Carlson decide to pursue retraining as a registered nurse at Penn State University, per academic year tuition for a Pennsylvania Resident is currently $11,646.00. To obtain a degree as a registered nurse the total cost would be calculated at $23,292.00. To obtain a four year degree as a BSN the total cost would be calculated at $46,584.00.

Various sources of funding for retraining and or further education for persons with disabilities are available, including the Office of Vocational Rehabilitation (OVR), grants and loans, employer programs, etc.

Job Title:	**Pharmaceutical Sales Representative**	
DOT Codes:	262.357-010	
Physical Demand Level:	Light	
National Wage Data:	Hourly Mean:	$30.51
	Hourly Median:	$26.80
	Annual:	$63,460
Growth:	7.5 %	

Information obtained from **http//careers.stateuniversity.com** revealed that the education and training for a pharmaceutical sales representative is two to four years of college and on the job training. The median salary is $60,130 per year and the employment outlook is good.

To become a pharmaceutical sales person, a person must have a high school diploma preferably two to four years of college. Health care related experience is a plus that makes a job candidate very attractive, and can be substituted for educational experience. Drug companies provide on the job training selecting employees for their verbal and social skills.

Information obtained from a reliable industry source, **coreynahman.com,** revealed that pharmaceutical companies look for outstanding people to represent their company. Some desirable qualities for a good sales representative are a four year degree with a strong work ethic and good communication skills. Of interest is 50 % of all Pharmaceutical Sales Representatives are women which is a trend to diversify the sales force with regard to cultural backgrounds. I should also be noted that Mr. Nahman comments in his frequently asked questions page that a good candidate is a good candidate regardless of age. Specifically, he commented that "his mentor became a pharmaceutical sales representative at age 45 and is now in his 70's having his best year ever".

RETRAINING OPTIONS EXPLORED (cont.)

Salary statistics obtained from **salary.com** revealed that salaries for Pharmaceutical Sales Representatives in the Falls Creek, PA 15840 area as follows:

Salary Percentiles:

10th	$23,072
25th	$33,644
75th	$57,126
90th	$62,648

Considering that Ms. Carlson has an Associates Degree in Radiation Therapy and 13 years experience working as a Radiation Therapist and from information researched, she would be a qualified candidate to pursue employment as a Pharmaceutical Sales Representative without retraining.

If Ms. Carlson decided to pursue employment as a Pharmaceutical Sales Representative and wanted to be more competitive, she could attend Penn State Altoona's School of Business Program. To obtain a Business Degree at Penn State University Altoona per academic year tuition for a Pennsylvania Resident is currently $10,000.00. Various courses for this major may also be available at the DuBois PSU Campus and or via the PSU Internet distance learning network.

Should Ms. Carlson pursue a four year business degree, additional employment opportunities would become available to her in other sales related fields. The foregoing examples given are not the exclusive opportunities that could be pursued.

EARNING POWER ASSESSMENT/LABOR MARKET SURVEY:

Ms. Carlson's Labor Market Survey was conducted utilizing several sources of employment information: Local newspaper classified advertisements, yellow page directories, employment websites via the Internet and the PA Career Link database.

Vocational job titles were targeted utilizing the aforementioned resources in an effort to identify potential employment and retraining opportunities within Ms. Carlson's vocational work history and physical capabilities:

Please note that the physical demand level is a Dictionary of Occupational Titles/O*Net Classification and varies according to each specific employer, whereas each specific employer is unique in and of itself and may actually require less physical exertion while performing the required job duties. ADA considerations also apply.

VOCATIONAL EXPERT CONCLUSION:

National average wage data obtained from the OASYS, DOT/O*NET concluded that Ms. Carlson's average hourly wage potential for positions that are available or become available frequently in Ms. Carlson's geographic area are as follows: greeter – median wage $7.36 per hour; cashier - median wage $7.41 per hour and school bus driver – median wage $14.22 per hour. Ms. Carlson's wage would range from $7.36 to $14.22 per hour with a weekly remuneration ranging from $294.40 to $355.50 and with annual salary of $15,308.80 to $18,486.00.

Information obtained from contact with the six potential employers identified and listed in this Labor Market Survey revealed that Ms. Carlson's earning potential for entry level positions within her physical capabilities range from $6.25 to $8.95 per hour and would translate into a weekly remuneration of $83.40 to $223.75. The median wage is calculated to be $153.57 per week.

Future increases in the minimum wage and the effect of same on current wage scales would increase these earnings potentials. One or more of these jobs could be combined to obtain a full time work equivalent.

Should Ms. Carlson opt to pursue further education as a registered nurse, U.S. Department of Labor Statistics reveal registered nurses in May of 2004 were being paid $52,330 annually. The middle 50 percent earned between $43,370.00 and $63,360.00. The lowest 10 % earned $37,000 and the highest 10 % earned $74,760.00 per year.

Information identified through Internet Research identified that Ms. Carlson already possesses the minimal educational qualifications and work related experience necessary to pursue employment as a Pharmaceutical Sales Representative. The annual salary for a Pharmaceutical Sales Representative is between $23,072.00 and $62,648.00 per year. The median income for this position is $42,860.00 annually.

Fringe benefits attributable to the foregoing positions have not been quantified in this evaluation.

The foregoing is stated based on reasonable professional certainty, judgement and experience.

Sincerely

Ronald S. Kushner

Ronald S. Kushner, B.S., QRP
Vocational Consultant

RSK:
amt

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Response and Brief in Opposition to Plaintiffs' Motion in Limine to Preclude Testimony of Defense Vocational Expert Ronald Kushner

Filed on Behalf of Defendant
Jerjis T. Alajaji, M.D.

Counsel of Record for This Party
Darryl R. Slimak, Esquire
Pa. Supreme Court I.D. #41695

McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
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Counsel for Adverse Party
Thomas E. Crenney, Esquire

FILED Ncc
m/11:18 BY
FEB 07 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S RESPONSE AND BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DEFENSE VOCATIONAL EXPERT RONALD KUSHNER

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and files the following Response and Brief in Opposition to Plaintiffs' Motion in Limine to Preclude Testimony of Defense Vocational Expert Ronald Kushner:

1. It is admitted that Plaintiffs allege a claim of malpractice occurred pertaining to Dr. Alajaji's interpretation of an April 12, 2000 x-ray of Ms. Carlson's right wrist.

2. The averments of paragraph 2 are admitted that Defense expert, Ronald Kushner, is a vocational and rehabilitation expert, whose qualifications are more fully set forth in his curriculum vitae attached hereto as Exhibit "A." Plaintiffs' motion misleadingly ignores Mr. Kushner's curriculum vitae of professional training, experience and qualifications. A substantial portion of Mr. Kushner's expertise is to work with employers to "develop, determine, and

coordinate effective programs to return injured workers to productive employment and/or maximize vocational rehabilitation potential" as well as "vocational development of injured workers to include conducting initial assessments, testing, counseling, placement, on the job training and funded employment programs."

3-7. The averments of paragraph 3 through 7, inclusive are denied as stated. Copies of Mr. Kushner's actual reports are attached hereto as Exhibit "B." Mr. Kushner's reports appropriately set forth his professional vocational opinions with regard to Mrs. Carlson's ability to perform the job duties of a radiation therapist, which job she held at the time she developed a bone tumor, with or without reasonable accommodations and adjustments in her job duties. Mr. Kushner's report appropriately sets forth his professional expert vocational opinions that Mrs. Carlson can perform the job duties and essential job functions of a radiation therapist with modifications of that position as required under law and/or which are exceedingly practical to implement. His expert opinions in this regard are not only based on his professional training, experience and judgment, but are also based on his personal investigation of and job site analysis of Mrs. Carlson's radiation therapist position. In addition, Mr. Kushner properly relies in part on the deposition testimony and/or information provided to him by Mrs. Carlson's employer, Dubois Regional Medical Center's witnesses, including, but not limited to, Radiation Therapy Department Supervisor Rose Campbell, Human Resources Manager Robert McKee, and Physical Therapist/Job Function Analyst/Functional Capacity Evaluator Martin Maloney, who have all provided deposition testimony under oath that the hospital not only intended, but in fact, made worksite modifications and undertook other efforts to adjust the physical requirements of the radiation therapist job position to accommodate Mrs. Carlson so that she could perform the job, despite her having been treated for a bone tumor of her right wrist. Moreover, there was and is

an open radiation therapist job position at DuBois Regional Medical Center, and they even asked Mrs. Carlson to come back to work and held meetings with Mrs. Carlson to discuss her return to work which the hospital desired despite Mrs. Carlson's limitations post her bone tumor surgery, and testified that DuBois Regional Medical Center would make whatever accommodations would be required. *See* depositions of R. Campbell at pp. 44; 46-47; 57; 63-64;76-77; 91; 94; R. McKee at pp. 14; 17-19; 21- 31; and M. Maloney at *passim* and pp. 66-70; 76-78; 89, copies attached hereto as Exhibits "C," "D," and "E," respectively.

5. Denied as stated. The issue is not whether the Medical Center will create a position for Mrs. Carlson in years to come, for the hospital had already undertaken substantial efforts to accommodate Mrs. Carlson and return her to work even before the hospital was sued. Rather, the issue is why Mrs. Carlson did not accept the position that existed and return to work, despite the fact that she could have performed the available job. Whether or not there are issues of fact or credibility determinations regarding the facts underlying expert Mr. Kushner's vocational opinions, are not grounds for precluding his testimony as Plaintiffs improperly attempt to do.

6-7. It is indeed appropriate for vocational expert Ronald Kushner to testify as to his opinions that Mrs. Carlson can perform the job of a radiation therapist. It is also appropriate for such an expert to testify as to the accommodations in the job tasks of such a position that an employer could make to allow a worker to return to work. It is also appropriate for a vocational expert to rely on the type of information that is usually and customarily relied on by such experts in formulating their opinions, whether or not such evidence is admissible or admitted at the trial of the matter. *See, e.g.*, Pa. Rule of Evidence 703 (experts may rely on information reasonably relied on by experts in such field, even if such information is not admissible in evidence).

Moreover, the radiation therapist, Mr. Hanwell's testimony can be directly presented at trial and/or it is equally appropriate under the Rules of Evidence for Mr. Kushner to describe the information he obtained from Mr. Hanwell and used as the factual foundation for his professional expert opinions that Mrs. Carlson could indeed continue working as a radiation therapist at DuBois Regional Cancer Center or elsewhere. *Id.*

Plaintiffs' motion is specious and ignores both the Rules of Evidence and well-established case law. Rule 702 provides that:

> "If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise."

Plaintiffs' motion also ignores Rule 703, "Bases of Opinion Testimony by Experts," which provides:

> "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence."

The Comments to Rule 703 provide:

> "Historically, Pennsylvania courts limited the facts or data upon which an expert could base an opinion to those obtained from firsthand knowledge, or from substantive evidence admitted at trial. *See, e.g., Collins v. Hand*, 431 Pa. 378, 246 A.2d 398 (1968); *Murray v. Siegal*, 413 Pa. 23, 195 A.2d 790 (1963). In the case of *Commonwealth v. Thomas*, 444 Pa. 436, 282 A.2d 693 (1971), **the Pennsylvania Supreme Court adopted a rule that allows a medical expert witness to offer an opinion that is based, in part, on otherwise inadmissible hearsay, if it is of a type that is customarily relied on by the expert in the practice of the expert's profession.**

Later case law expanded the evidential ruling in the Thomas case to various non-medical expert witnesses. *See, e.g., Steinhauer v. Wilson*, 336 Pa. Super. 155, 485 A.2d 477 (1984) (expert on construction costs); *Maravich v. Aetna Life & Casualty Co.*, 350 Pa. Super. 392, 504 A.2d 477 (1986) (fire marshal); *Kearns v. DeHaas*, 377 Pa. Super. 392, 546 A.2d 1226 (1988) (vocational expert); *In re Glosser Bros.*, 382 Pa. Super. 177, 555 A.2d 129 (1989) (tax accountant); *Commonwealth v. Bowser*, 425 Pa. Super. 24, 624 A.2d 125 (1993) (accident reconstruction expert).

Pa. R.E. 703 requires that the facts or data upon which an expert witness bases an opinion be "of a type reasonably relied upon by experts in the particular field . . . ." Whether the facts or data satisfy this requirement is a preliminary question to be determined by the trial court under Pa. R.E. 104(a).

• • • •

When an expert testifies about the underlying facts and data that support the expert's opinion and the evidence would be otherwise inadmissible, the trial judge, upon request shall or on his own initiative may instruct the jury to consider the facts and data only to explain the basis for the expert's opinions, and not as substantive evidence.

Plaintiff's motion also ignores other Rules of Evidence:

Rule 704. Opinion on ultimate issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosure of facts or data underlying expert opinion

The expert may testify in terms of opinion or inference and give reasons therefore; however, the expert must testify as to the facts or data on which the opinion or inference is based.

Defense vocational expert Mr. Kushner will testify in accordance with the foregoing Rules of Evidence. A proper foundation will be laid at trial, and is reflected at length in his expert reports. Such testimony is clearly admissible.

The propriety of Mr. Kushner's expert vocational opinions is well settled in the case law. In Novitski v. Rusak, ___ A.2d ___, 2008 WL 54320 (Pa. Super. 2008) (Opinion of January 4, 2008 attached hereto as Exhibit "F"), it was held that a vocational consultant had the proper foundation to give expert testimony regarding an injured person's projected need in the future to reduce his ability to work due to a progressive herniated neck disc, even though the injured party was currently working full time. The court held that a vocational expert need not be a medical expert to so testify, and may offer such opinions based on the medical records and other evidence even though no medical expert has expressly opined that there would be such future disability. (In the instant Carlson case, there is such medical evidence.) See ¶¶13-14; 21-24. In so holding, the court held that the test to qualify as an expert is a liberal one: "whether the witness has any reasonable pretension to specialized knowledge on the subject of investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine." (¶21). (Medical evidence in an MRI report of worsening herniated discs, and evidence of effects of same on the inured person's functioning, similar to the evidence in the Carlson case, was a sufficient foundation.) The court held that "it is within the vocational expert's expertise to establish the extent to which a plaintiff's injuries prevent him from working." (*Id.* at ¶23). *See also*, Zak v. Prudential Prop. & Cas. Ins. Co., 713 A.2d 681, 689 (Pa. Super. 1998), copy attached hereto as Exhibit "G."

WHEREFORE, Defendant Dr. Alajaji respectfully requests this Honorable Court DENY Plaintiffs' Motion in Limine to Preclude Testimony of Vocational Expert Ronald Kushner.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

Darryl R. Shmak
Attorneys for Defendant
JERJIS T. ALAJAJI, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: 2-6-2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Dr. Alajaji's Response and Brief in Opposition to Plaintiffs' Motion in Limine to Preclude Testimony of Defense Vocational Expert Ronald Kushner in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 6th day of February, 2008, to the attorney(s) of record:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
One Gateway Center 18th Floor West
Pittsburgh, PA 15222

Walter F. Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck, LLC
120 Lakemont Park Boulevard
Altoona, PA 16602

David R. Johnson, Esquire
Thompson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

Darryl R. Slimak
Attorneys for Defendant
JERJIS T. ALAJAJI, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

EXHIBIT A

RONALD S. KUSHNER

213 Hickory Street, McKees Rocks, PA 15136 (412) 771-1109

Vocational Expert, Commonwealth of Pennsylvania Department of Labor & Industry March 22, 2002
Registered Case Manager, Workers Compensation Commission State of Maryland, VR #: 0010
Qualified Rehabilitation Professional State of West Virginia
University of Pittsburgh Main Campus: BS in Psychology/Minor in Administration of Justice 1989

EMPLOYMENT HISTORY

ASSOCIATES IN REHABILITATION MANAGEMENT, INC. Pittsburgh, PA
Vocational Consultant/Case Manager 4/05 – Present

- Program Development, Vocational and Medical Claims Management with workers compensation insurance carriers.
- Develop, determine, and coordinate plans to effectively realize cost containment on behalf of insured and/or client.
- Develop, determine, and coordinate medical treatment plan to expedite full recovery and or maximum medical improvement for injured workers.
- Develop, determine, and coordinate effective programs to return injured workers to productive employment and/or maximize vocational rehabilitation potential.
- Vocational development of injured workers to include conducting initial assessments, testing, counseling, placement, on the job training and funded employment programs.
- Conduct labor market surveys and provide earning power assessments.
- Interact daily with various medical providers including, but not limited to Neurosurgeons, Orthopedic Surgeons, Physiatrists, Neurologists, Physical and Occupational Therapists and pain management facilities
- Interact daily with major insurance underwriters, insureds, third party administrators, defendant and plaintiff legal counsel, potential employers within injured worker's labor market, various federal, state, and local government agencies including the Social Security Disability Administration, Office of Vocational Rehabilitation, and Adult Education Facilities.
- Provide legal testimony in workers compensation proceedings to include depositions and live testimony.
- Responsibilities to include report generation, billing and account communication.

SELF EMPLOYED Mckees Rocks, PA
Vocational Consultant/Case Manager 1/02 - Present

ALLIANCE IMPAIRMENT MANAGEMENT SERVICES, INC Wilmerding, PA
(Formerly WOODS REHABILITATION SERVICES) 3/99-12/01
Vocational Case Manager

SELF EMPLOYED Pittsburgh, PA
Vocational Consultant/Case Manager 8/98-5/99

CONCENTRA MANAGED CARE, INC. Pittsburgh, PA
Vocational Case Manager 3/96-7/98

HAMILTON AND JORDAN, INC. Bridgeville, PA
Vocational Case Manager 1/94-2/96

CRAWFORD HEALTH AND REHABILITATION Pittsburgh, PA
Employment Consultant 8/92-12/93

REHABILITATION AUDITING & PLACEMENT SERVICES, INC. Carnegie, PA
Job Placement Specialist 11/90-3/92

TRANSITIONAL SERVICES, INC.
Resident Advisor

Pittsburgh, PA
10/89-3/91

EXHIBIT B

ASSOCIATES IN REHABILITATION INC.

www.associnrehab.com

2741 Noblestown Road
Pittsburgh, PA 15205
412.922.9055
Fax 412.922.9056
1.888.351.5790

Claimant:	**Paula Jo Carlson**	**Employer:**	**DuBois Regional Medical Center**
Address:	**1373 Sandstone Drive Falls Creek, PA 15840**	**Address:**	**100 Hospital Avenue DuBois, PA 15801**
Phone:	**814-372-3669**	**Phone:**	**814-371-2200**
A.I.R. No.:	**9989040907**	**Referral Source:**	**Daryl Slimak, Esquire McQuaide Blasko**
Date of Birth:	**4/26/71**	**Address:**	**811 University Drive State College, PA 16801**
Occupation:	**Radiation Therapist**	**Phone:**	**(814) 238-4926**
Type of Injury:	**Fusion Right Wrist**	**Claim No.:**	**N/A**
Date of Injury:	**6-27-05**	**Report Date:**	**May 14, 2007**

INITIAL VOCATIONAL REPORT

CURRENT STATUS UPDATE:

Thank you for Paul Jo Carlson's June 27, 2005 Civil Liability Claim to Associates in Rehabilitation, Inc for the purpose of an Earning Power Evaluation.

An Initial Vocational Interview was conducted with Ms. Carlson in Attorney Thomas Crenney's office in Pittsburgh, PA on May 8, 2007. I informed Ms. Carlson at the time of our meeting that her Civil Liability Claim has been referred to Associates in Rehabilitation, Inc. to for the purpose of an Earning Power Evaluation and that there is no client counselor relationship. The information in this report was provided by Ms. Carlson at the time of our meeting on May 8, 2007.

Ms. Carlson's current employer, Red Lobster in DuBois, PA was also visited on May 8, 2007 and an onsite Job Analysis was completed for her position as seater.

MEDICAL HISTORY:

Description of Medical Condition:

Ms. Carlson was diagnosed with a giant cell tumor in her right wrist. When asked, Ms. Carlson was unsure of the date of her diagnosis. Ms. Carlson explained that her accepted date for her civil liability claim is the date of her surgery which was performed on June 27, 2005.

Description of Medical Condition – cont.

Specifically, Ms. Carlson had a giant cell tumor removed from her right wrist along with her radius bone resulting in a fusion of her right wrist.

Current Treatments:

Ms. Carlson's treating physician is Kenneth Yaw, MD at Mercy Hospital in Pittsburgh, PA. Ms. Carlson was last examined by Dr. Yaw in February of 2007 and her next examination by Dr. Yaw will be in one year. Ms. Carlson is being prescribed Vicodan which she takes on an as needed basis.

Medical History not related to Current Diagnosis:

Ms. Carlson denied having any prior injuries work related or non-work related. Ms. Carlson also reported that she is in good health other than the giant cell tumor that was removed from her right wrist. Ms. Carlson does not smoke nor consume alcohol and denied any drug or alcohol related addictions.

Current Complaints:

Ms. Carlson is right hand dominant and has limited usage of her right hand due to the fusion of her right wrist. Ms. Carlson utilizes her left hand to perform some activities, although she still uses her right hand for writing and various other activities.

Ms. Carlson related that she experiences in weaknesses in both arms. The weakness in Ms. Carlson's right arm is due to the fusion of her right. Ms. Carlson clarified that the weakness in her left arm is not due to any physiological problems and is only because she is not a strong woman.

Subjective Opinion of Physical Capabilities:

Attorney Crenney would not allow Ms. Carlson to comment on whether she agreed with the results of her two Functional Capacity Evaluations. With regards to specific weights that Ms. Carlson is capable of lifting and carrying, Ms. Carlson informed me that she is unable to lift a "Jug of Milk".

PHYSICAL DESCRITION:

Ms. Carlson stands approximately 5"5' tall, weighs 105 lbs, she has brown shoulder length hair and brown eyes.

DAILY ACTIVITIES/HOBBIES:

Ms. Carlson's daily activities consist of performing light household chores, caring for her school age children and minor gardening in the spring and summer.

DAILY ACTIVITIES/HOBBIES – cont.

Ms. Carlson's hobbies consist of sewing and crafts which she only engages in minimally due to her limited usage of her right hand.

FINANCIAL:

Ms. Carlson's salary as a Radiation Therapist at DuBois Regional Medical Center was $62,000 per year. Ms. Carlson is currently receiving $1700.00 per month in Social Security Disability Benefits and she will begin receiving an undisclosed amount of money per month in disability for her school age children in June of 2007. Ms. Carlson is also employed at Red Lobster in DuBois, PA as a seater with a wage of $6.25 per hour working two 7-hour days per week totaling 14 hours per week.

TRANSPORTATION:

Ms. Carlson possesses a valid PA Drivers License and owns a 2000 Dodge Caravan which would serve as reliable transportation to and from work. Ms. Carlson does not have any pending motor vehicle violations that result in her driving privileges being revoked.

LEGAL ISSUES:

Ms. Carlson is not a convicted felon and doe not have any pending legal issues that would result in her becoming a convicted felon.

EDUCATIONAL/VOCATIONAL BACKGROUND:

Ms. Carlson is a 1989 graduate of Philipsburg Osceola High School. Ms. Carlson is able to read and write and has never been diagnosed with a learning disability.

Post High School, Ms. Carlson completed a two year Radiology Program at Altoona Mercy Hospital in 1991 and received a certificate as a Radiologic Technologist. Ms. Carlson also completed a one-year program at Community College of Allegheny County in 1992 and received a certificate as a Radiation Therapist.

Retraining:

Ms. Carlson was unable to provide any a specific response as to what type of profession she would like to be retrained. Ms. Carlson believes that she is capable of working, although she can't determine what she can be retrained to do considering her limited usage of her right wrist.

EMPLOYMENT HISTORY:

Ms. Carlson is currently employed at Red Lobster in DuBois, PA as a seater. Ms. Carlson employment began with Red Lobster on January 24, 2007 and she is currently working Mondays and Thursdays, 7 hours per day totaling 14 hours per week. As explained by Ms. Carlson, her job duties consist of greeting and seating customers; handing out menus; vacuuming; wiping tales, chairs, walls, light fixtures and door glass; checking restrooms for cleanliness; changing silverware over from paper to linen from lunch to dinner; presenting requests for gift cards to the manager on duty.

Prior to working at Red Lobster, Ms. Carlson worked for DuBois Medical Center from 1992 through 2005 as a Radiation Therapist. Ms. Carlson job duties as a Radiation Therapist consisted of providing radiation therapy to patients as prescribed by a Radiologist to include inputting patient data into a computer, scheduling patients, preparing equipment, positioning of the patient on a linear accelerator, making electron blocks, cutting and shaping Styrofoam, etc.

SKILLS AND KNOWLEDGE:

Ms. Carlson owns a home computer which she informed me that she only occasionally uses to send emails and surf the Internet.

Ms. Carlson's skills and knowledge are those learned on the job working as a Radiation Therapist at DuBois Regional Medical Center for 14 years and as a seater at Red Lobster for 3 ½ months.

TRANSFERRABLE SKILLS ANALYSIS

Transferable Skills identified:

A Transferable Skills Analysis was completed utilizing the OASYS Program which is based upon the U.S. Department of Labor's Dictionary of Occupational Titles. An O'Net Transferable Skills Analysis was also conducted on O'Net Online to develop additional transferable skills.

The Transferable Skills Analyses were completed utilizing the March 8, 2006 results of Ms. Carlson's Functional Capacity Evaluation which identified her physical capabilities in the medium-lifting category (20-50 lbs occasional, 10-20 frequently and 10 lbs constantly). Please note that this FCE was the result of a referral by Ms. Carlson's treating physician, Kenneth Yaw, MD.

OASYS Program Results:

Skills Transfer Components:		SVP
294	Health Caring-Medical	7
201	Photographing	7
291	Accommodating	6

Components of Combination Work Fields	**SVP**
None	

MPSMS		**SVP**
925	Health Technological Services	7
903	Meals Service, except Domestic	6

The following are some occupational titles identified from the OASYS Transferable Skill Analysis: Radiation Therapist, Medical Receptionist, Hostess, Greeter, Customer Service, Counter Clerk, Cashier, etc.

O'Net Online Results:

Radiation Therapist
Radiologic Technologist

Please note that the descriptions for Radiation Therapist and Radiologic Technologist fall within the light duty classification.

The following are vocational titles that were identified from O'Net Online for retraining possibilities:

Medical Technologist (Lab Technician)	(light)
Phlebotomist	(light)
Respiratory Therapist	(medium)
Registered Nurse	(medium)
Sales Representative, Pharmaceuticals	(light)
Sales Representative, Medical Supplies	(light)

INSURED CONTACT:

Telephone calls were placed to the insured and a request was made to conduct an onsite Job Analysis for Ms. Carlson's position as a Radiation Therapist. A response from the insured is pending.

RED LOBSTER:

Travel was conducted to Red Lobster in DuBois, PA on May 8, 2007 and an onsite Job Analysis was conducted for Ms. Carlson's position as a seater. Ms. Carlson's explanation of her job duties as a seater is consistent with the description that was provided to me by Cheri Cullen, Culinary Manager.

ACCOUNT CONTACT:

As you are aware, I have kept you updated regarding case management activities.

ACTION PLAN:

1. Complete Earning Power Evaluation by no later than June 15, 2007.

Sincerely

Ronald S. Kushner

Ronald S. Kushner, B.S., QRP
Vocational Consultant

RSK:
amt

ASSOCIATES IN REHABILITATION INC.

www.associnrehab.com

2741 Noblestown Road
Pittsburgh, PA 15205
412.922.9055
Fax 412.922.9056
1.888.351.5790

Claimant:	**Paula Jo Carlson**	**Employer:**	**DuBois Regional Medical Center**
Address:	**1373 Sandstone Drive** **Falls Creek, PA 15840**	**Address:**	**100 Hospital Avenue** **DuBois, PA 15801**
Phone:	**814-372-3669**	**Phone:**	**814-371-2200**
A.I.R. No.:	**9989040907**	**Referral Source:**	**Darryl R. Slimak, Esquire** **McQuaide Blasko**
Date of Birth:	**4/26/71**	**Address:**	**811 University Drive** **State College, PA 16801**
Occupation:	**Radiation Therapist**	**Phone:**	**(814) 238-4926**
Type of Injury:	**Fusion Right Wrist**	**Claim No.:**	**N/A**
Date of Surgery:	**6-27-05**	**Report Date:**	**June 18, 2007**

LABOR MARKET SURVEY REPORT

CURRENT STATUS UPDATE:

Thank you for referring Paul Jo Carlson's June 27, 2005 Civil Liability Claim to Associates in Rehabilitation, Inc for the purpose of a Labor Market Survey/Earning Capacity Evaluation.

Six potential employers were identified in Ms. Carlson's immediate geographic area. The types of positions with these employers were Greeter, Cashier and School Van Driver.

Retraining options for Pharmaceutical Sales and Nursing were also researched on Ms. Carlson's behalf. Specifically the cost of retraining for these vocational employment opportunities at Penn State University Altoona and Labor Market Employment Statistics are provided within this report.

LABOR MARKET SURVEY RESULTS:

Labor Market Survey efforts identified the following non exclusive six sample positions as viable return to work options:

1. Employer: Wal-Mart
   20 Industrial Drive, Dubois, PA 15801
   Telephone: 814.375.5000

LABOR MARKET SURVEY RESULTS (cont.)

	Contact:	Sue Dodge, Personnel Manager
	Position:	Cashier
	Hours:	Part time, 16-33 hours per week
	Wage:	$6.25 per hour or above-wage discussed at the time of interview
	Available:	April 24, 2007
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
2.	Employer:	Sears Roebuck & Company 5522 Shaffer Road, Dubois, PA 15801
	Telephone:	814.375.3100
	Contact:	Stephanie Tibbens, H.R. Assistant
	Position:	Cashier
	Hours:	Part time, 15-29 hours per week
	Wage:	$6.25 per hour
	Available:	April 24, 2007
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
3.	Employer:	Eat N Park RD 3 Box 1461, Schaeffer Road, Route 255 North, DuBois, PA 15801
	Telephone:	814.375.8622
	Contact:	Jeremy Johnson, Assistant Manager
	Position:	Greeter
	Hours:	Part time, 25-30 hours per week, variable shifts morning, day, evening, 4, 5, 6 and 8 hour shifts
	Wage:	$6.25 per hour
	Available:	Position available 4/06, employer hires occasionally for this position
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
4.	Employer:	Clepper Bus Service 162 Lincoln Drive, DuBois, PA 15801
	Telephone:	814.371.2450
	Contact:	Sue Shugars, Administrative Assistant
	Position:	School Van Driver
	Hours:	$8.95 per hour
	Wage:	Part time, 20-25 hours per week, 2.5 hours in a.m. and 2.5 hours in p.m.
	Available:	May 25, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis

LABOR MARKET SURVEY RESULTS (cont.)

5.	Employer:	Clarion Hotel 1896 Rich Highway, DuBois, PA 15801
	Telephone:	814.371.5100
	Contact:	Suzanne Welsh, Front Desk Manager
	Position:	Front Desk Clerk
	Hours:	$6.25 per hour or above-wage discussed at the time of interview
	Wage:	Part time, 16-24 hours per week
	Available:	June 13, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis
6.	Employer:	Olan Mills 5820 Shaffer Road, DuBois, PA 15801
	Telephone:	814.371.9451
	Position:	Pre-Seller
	Hours:	Part time, 12 hours per week
	Wage:	$6.25 per hour or above
	Available:	June 13, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis

LABOR MARKET SURVEY RESULTS:

Six potential employment opportunities were identified utilizing Ms. Carlson's Functional Capacity Evaluation results of June 13, 2006 which concluded that Ms. Carlson's demonstrated performance level was in the medium lifting category. It should be noted that to be conservative all of the positions identified are classified as light duty. It is my professional opinion that each of these jobs can be performed by Ms. Carlson taking into consideration her right arm limitations and capabilities.

MEDICAL JOB ANALYSES:

Job Analyses were completed for each of the six positions as they were identified and are included with this report. In the comments section of each Job Analysis, you will note that there is an indication that each employer was informed of Ms. Carlson's physical limitations. Each signified that this was not a problem for employment. The applicability of the Americans with Disabilities Act is noted which would require employment opportunities to be extended to prospective employees who can

MEDICAL JOB ANALYSES (cont.)

perform the essential functions of a job with or without reasonable accommodations by the prospective employers. While it should be noted that while Ms. Carlson does not currently utilize same, there is no contraindication in the medical records to Ms. Carlson's utilizing a protective device for her arm/wrist during work activities, if felt appropriate.

MEDICAL:

A review of all significant medical records provided by the account is as follows:

Ms. Carlson underwent a musculoskeletal screening and static strength testing on July 31, 1992 in conjunction with her applying for the radiation therapy position at DuBois Regional Medical Center. The results of the testing for the functional assessment revealed that Ms. Carlson was very low in left

and right grip strength at the time of her application for the position. Specifically, Ms. Carlson demonstrated 15 lbs lifting with the left hand and 20 lbs with the right hand with a dynamometer rating of less than 1% grip strength for both hands. Ms. Carlson's torso strength was at the 56th percentile rating and her leg and arm strength were at the 25th and 24th percentile ratings respectively. The March 2008 FCE revealed improved left hand grip average of 68 lbs which is at the 41st percentile; right hand grip was 40 lbs which is less than the 10th percentile, similar to test results in 1992. Of note, torso lift in 2006 was 114lbs which is the 31st percentile, while in 1992 same was 56 %. Leg lift was 27th percentile in 2006 compared to 25 % in 1992. Arm lift is currently 30 lbs average which is less than 10th percentile, comparable to same as measured in 1992.

June 13, 2006 "Grip Position 2" FCE assessment was repeated at 35 lbs on the right and 52 lbs on the left. The unaffected left hand strength testing reviewed consistently well below expected norms. The right was slightly reduced from March 2, 2006 testing, but still similar to the results of 1992. Ms. Carlson managed to perform her Radiation Therapy job adequately over the years despite her significant upper extremity capabilities limitations dating back to 1992.

Medical records from Summit Rehabilitation for 2002-2003 confirm that Ms. Carlson has a history of work related low back and/or neck problems as well as shoulder problems on the right side. Specifically, Ms. Carlson is status post C5-6 herniated disk prior to the removal of the giant cell tumor in her right wrist. Ms. Carlson's C5-6 disk herniation was treated conservatively with medications, physical therapy modalities, home exercises, and work modifications, her symptoms appeared to have last resolved in May of 2003.

Information pertaining to Ms. Carlson's diagnosis of a giant cell tumor revealed that Ms. Carlson called in to Dr. Graeca's office on April 11, 2005 complaining of pain in her right wrist for which she had worn a brace for approximately one week. Right wrist x-ray imaging was ordered and interpreted by Dr. Alajaji on April 13, 2005. Eventually, a cervical x-ray of the spine was ordered which revealed degenerative narrowing of the C5-6 disc space. EMG's and nerve conduction studies were also

MEDICAL:

conducted and reported as normal in the right upper extremity. Dr. Piasio ordered repeat x-rays, an MRI, CT Scan and a bone scan of both wrists and hands with a total body scan which was conducted on June 10, 2005 showing findings consistent with a giant cell tumor. Ms. Carlson was referred to Dr. Yaw who did a biopsy on June 20, 2005 confirming the giant cell tumor. On June 27, 2005, Dr. Yaw resected the distal radius and transposed the ulna onto the radius and fused the ulna to the wrist.

Information provided by Ms. Carlson at the time of our initial meeting on May 8, 2007 confirmed that she was diagnosed with a giant cell tumor in her right wrist which was removed surgically on June 27, 2005.

Ms. Carlson's treating physician is Kenneth Yaw, MD at Mercy Hospital in Pittsburgh, PA. Ms. Carlson was last examined by Dr. Yaw in February of 2007 and her next examination by Dr. Yaw will be in one year. Ms. Carlson was prescribed Vicodan that she said she takes on an as needed basis.

Please note that Ms. Carlson denied having any prior injuries work related or non-work related. This is contrary to the medical records received from the account and reviewed as noted above. Ms. Carlson also reported that she is in good health other than the giant cell tumor that was removed from her right wrist.

Ms. Carlson reported that she is right hand dominant and has limited usage of her right hand due to the fusion of her right wrist. Ms. Carlson utilizes her left hand to perform some activities, although she still uses her right hand for writing and various other activities.

Ms. Carlson related that she experiences weaknesses in both arms. The weakness in Ms. Carlson's right arm is due to the fusion of her right. I note that significant weakness on the right was documented as far back as 1992. Ms. Carlson clarified that the weakness in her left arm is not due to any physiological problems and is only because she is not a strong woman. This appears consistent with the DRMC musculoskeletal screening and static strength testing performance July 31, 1992, in conjunctions with Ms. Carlson's applying for the Radiation Therapy position, which revealed very low upper extremity grip strength and lifting capabilities.

With regard to Ms. Carlson's specific physical capabilities, Attorney Crenney would not allow Ms. Carlson to comment on whether she agreed with the results of her two Functional Capacity Evaluations. However, Attorney Crenney did allow Ms. Carlson to comment that she is unable to lift a "Jug of Milk" with her right hand.

MEDICAL-FUNCTIONAL CAPACITY EAVLUATION RESULTS

Kenneth Yaw, MD, Ms. Carlson's treating physician prescribed a Functional Capacity Evaluation for Ms. Carlson which was conducted by Rehabilitation Safety Associates in Plum, PA on June 13, 2006.

MEDICAL-FUNCTIONAL CAPACITY EAVLUATION RESULTS (cont.)

The results of this testing revealed that Ms. Carlson's demonstrated performance level places her in the Medium Lifting Category (20-50 pounds occasional, 10-20 frequently, and 10 pounds constantly, 3.6 – 6.3 METS) according to the United States Department of Labor's guidelines for physical demand characteristics at work. This testing result is similar to that determined by Martin Maloney at DRMC per the March 8, 2006 FCE.

EDUCATIONAL/VOCATIONAL:

Ms. Carlson is a 1989 graduate of Philipsburg Osceola High School. Ms. Carlson is able to read and write and has never been diagnosed with a learning disability.

Post High School, Ms. Carlson completed a two year Radiology Program at Altoona Mercy Hospital in 1991 and received a certificate as a Radiologic Technologist. Ms. Carlson also completed a one-year program at Community College of Allegheny County in 1992 and received a certificate as a Radiation Therapist.

Retraining:

Ms. Carlson would not provide a specific response as to what type of profession she would like to pursue in retraining. Ms. Carlson believes that she is capable of working despite her limited usage of her right wrist. Ms. Carlson has to date evidently made no effort whatsoever to pursue retraining or further educational studies to enhance her employment prospects. There is no evident reason why she could not do so on a full or part time basis while maintaining at least her current level of work.

Please note that review of Ms. Carlson's handwritten diary notes reveal that her handwriting with her right hand has progressively improved from when she began her diary on January 1, 2005 and stopped on July 20, 2006. Ms. Carlson's diary entries and testimony, as well as that of her husband, reflect a very active and energetic woman despite her right wrist problems.

VOCATIONAL WORK RELATED HISTORY:

Ms. Carlson is currently employed at Red Lobster in DuBois, PA as a seater. Ms. Carlson employment began with Red Lobster on January 24, 2007 and she is currently working Mondays and Thursdays, 7 hours per day totaling 14 hours per week. Ms. Carlson's hours per week as confirmed by her pay stubs for the pay period extending from 2/5/07 through 3/4/07 have ranged from 12 to 28 hours per week. It appears that this employer is flexible on both the days of the week and hours worked. Ms. Carlson's job duties at Red Lobster consist of greeting and seating customers; handing out menus; vacuuming; wiping tales, chairs, walls, light fixtures and door glass; checking restrooms for cleanliness; changing silverware over from paper to linen from lunch to dinner; presenting requests for gift cards to the manager on duty.

VOCATIONAL WORK RELATED HISTORY (cont.)

Prior to working at Red Lobster, Ms. Carlson worked for DuBois Medical Center from 1992 through 2005 as a Radiation Therapist. Ms. Carlson job duties as a Radiation Therapist consisted of providing radiation therapy to patients as prescribed by a Radiologist to include inputting patient data into a computer, scheduling patients, preparing equipment, positioning of the patient on a linear accelerator, making electron blocks, cutting and shaping Styrofoam, etc.

SKILLS AND KNOWLEDGE:

Ms. Carlson owns and can operate a home computer which she says she uses to send emails and surfs the Internet.

Ms. Carlson's vocational skills and knowledge are those primarily learned on the job working as a Radiation Therapist at DuBois Regional Medical Center for 14 years and as a seater at Red Lobster for 3 ½ months.

INSURED (EMPLOYER CONTACT):

The Job Site Analysis completed by Martin Maloney, PT on April 17, 2006 for Ms. Carlson's position as Radiation Therapist at Hahne Regional Cancer Center was reviewed prior to my conducting a Worksite Job Evaluation on June 4, 2007. I also reviewed Mr. Maloney's deposition transcript.

I had the opportunity to conduct the Worksite Job Site Job Evaluation with Rose Campbell, Manager of Hahne Regional Cancer Center. Specifically, Ms. Campbell explained Ms. Carlson's job duties to me as I conducted a walk through.

Patients are walked to the Radiation Therapy Department by a hospital volunteer. Non ambulatory patients are brought to the department either in a wheel chair or with a hospital gurney. For efficiency purposes, there are always two Radiation Therapists on duty at any given time. A patient is initially registered by one therapist who upon completion of the patient's registration escorts the patient to the therapy table. Both therapists on duty take turns positioning the patient on the treatment table which is initially elevated 26 inches from the floor. If needed, a third person can be called to provide assistance positioning the patient. Electron cone holders and Cerrobend blocks are readily available in the department and are also set in place and positioned. One therapist performs the treatment while the other therapist returns to the registration desk to register the next patient in waiting. The therapist performing the treatment enters the patient's treatment data and controls the patients treatment through utilization of a treatment console located at the foot of the treatment table. The therapist then leaves the room while the treatment is being performed.

Other job duties consist of cutting, pouring and forming Cerrobend Blocks 6-10 times per week. I concur with Ms. Campbell's indication that the Cerrobend blocks weigh a maximum of 25 pounds as I

INSURED (EMPLOYER CONTACT) (cont.)

had the opportunity to lift the blocks. Mr. Maloney's April 17, 2006 Job Site Analysis indicates the heaviest block is 15 lbs. The largest cone weighs 18 lbs. The heaviest wedge is 16.3 lbs.

Ms. Campbell explained that modifications can be made for Ms. Carlson to perform the job duties of the Radiation Therapist. Specifically, Ms. Campbell stated that job duties can be designated to each of the two therapists on duty. Ms. Carlson would be assigned the registration of the patient and escorting the patient back to the treatment table. The majority of the patients being treated are ambulatory and the positioning of a patient is at a relative minimum. Either one or both therapists can position the patient and if needed a third person assist can be requested. With regard to making the Cerrobend blocks, again another therapist could be assigned this duty. Also, the Center complies with the ADA considerations which require reasonable accommodations be made to enhance returns to work.

While conducting the Worksite Job Evaluation, I had the opportunity to speak to Lee Hanwell, Radiation Therapist. Mr. Hanwell informed me that he has been a Radiation Therapist at Hahne Regional Cancer Center for approximately 14 years. Mr. Hanwell stated that in his 14 years of employment that he had only one patient out of thousands of patients that he has treated, who lost balance and needed assistance to keep from falling while attempting to stand after treatment. The assistance that was provided involved good body mechanics and a low height and was minimal. Such circumstances can usually be anticipated based on assessment of the patients' physical condition and stability, and questioning, and precautionary assistance provided by others if indicated.

It is my expert opinion that based upon my observation of the Radiation Therapist's Worksite, explanation and designation of job duties as explained by Rose Campbell that Ms. Carlson would be able to return to her position as Radiation Therapist thereby eliminating any wage loss.

TRANSFERRABLE SKILLS ANALYSIS

Transferable Skills Identified:

A Transferable Skills Analysis was completed utilizing the OASYS Program which is based upon the U.S. Department of Labor's Dictionary of Occupational Titles. An O'Net Transferable Skills Analysis was also conducted on O'Net Online to develop additional transferable skills.

An updated Transferable Skills Analysis was completed utilizing the June 13, 2006 FCE confirming the results of the prior Transferable Skills Analysis utilizing the March 8, 2006 FCE results. Ms. Carlson's Functional Capacity Evaluation is identified in the medium-lifting category (20-50 lbs occasional, 10-20 frequently and 10 lbs constantly). The FCE's took into consideration Ms. Carlson's difficulties in use of her right arm since the surgery for the giant cell tumor. To be conservative, this report only identifies employment opportunities within the light category, unless otherwise noted.

OASYS Program Results:

Skills Transfer Components:		**SVP**
294	Health Caring-Medical	7
201	Photographing	7
291	Accommodating	6

Components of Combination Work Fields	**SVP**
None	

MPSMS		**SVP**
925	Health Technological Services	7
903	Meals Service, except Domestic	6

Please note that the following are some occupational titles identified from the OASYS Transferable Skill Analysis based upon Ms. Carlson's prior and current work experience: Radiation Therapist, Radiologic Technologist, Medical Receptionist, Hostess, Greeter, Customer Service, Counter Clerk, Cashier, etc.

O'Net Online Results:

Radiation Therapist
Radiologic Technologist

Please note that the descriptions for Radiation Therapist and Radiologic Technologist fall within the light duty classification according to the O'Net Online.

The following are vocational titles that were identified from O'Net Online for retraining possibilities:

Bachelor of Science in Nursing	(light to medium) unit specific-hospital, physician's office etc.
Sales Representative, Pharmaceuticals	(light)

DEMOGRAPHICS:

Ms. Carlson currently resides in Falls Creek, PA which is located approximately 4.0 miles from DuBois, PA and 25 miles from Clearfield, PA.

DEMOGRAPHICS (cont.)

Ms. Carlson possesses a valid PA Drivers License and owns a 2000 Dodge Caravan which would serve as reliable transportation to and from work. Ms. Carlson does not have any pending motor vehicle violations that result in her driving privileges being revoked.

Labor Market information was obtained through the State of Pennsylvania's Internet website. Information is as follows:

April, 2007 Labor Market Statistics for the State of Pennsylvania reveal that the labor force is estimated at 6,192,000 persons. The employment rate is estimated at 5,957,000 persons. The unemployment rate is estimated at 236,000 persons which calculate to be at a 3.8 % unemployment rate.

The average weekly wage for Pennsylvania in 2006 was $807.20 per week. This would be equivalent to $20.18 per hour or $41.974.40 per year assuming a 40 hour week were worked year round.

April, 2007 Labor Market Statistics for Clearfield County reveal that the labor force is estimated at 39,800 persons. The employment rate is estimated at 37,900 persons. The unemployment rate is estimated at 2,000 persons which calculate to be at a 4.9 % unemployment rate.

The average weekly wage for Clearfield County in 2006 was $507.00 per week. This would be equivalent to $12.675 per hour or $26.364.00 per year assuming a 40 hour week were worked year round.

Labor Market Statistics reveal that employment opportunities exist in Clearfield County. Specifically, six entry level employment opportunities were identified during this Labor Market Survey demonstrating Ms. Carlson's employability with no additional training. These positions are samples, and are not exclusive of the work that would be available.

RETRAINING OPTIONS EXPLORED:

Vocational retraining options were explored for Nursing and Pharmaceutical Sales Representative as the physical requirements of these positions are light duty. The physical requirements of Nursing positions are unit specific and the information provided is for medical office nurse and school nurse. The job duty requirements of a medical office nurse are specific to the physician's office or facility that employment is obtained.

RETRAINING OPTIONS EXPLORED (cont.)

Job Title:	**Registered Nurse, School Nurse**			
DOT Codes:	075.124-010			
Physical Demand Level:	Light			
National Wage Data:	Hourly Mean:	$23.96	Hourly Median:	$23.12
	Annual:	$49,840.00		
Growth:	26.0 %			

Job Title:	**Registered Nurse, Medical Office**			
DOT Codes:	075.374-014			
Physical Demand Level:	Light			
National Wage Data:	Hourly Mean:	$23.96	Hourly Median:	$23.12
	Annual:	$49,840.00		
Growth:	26.0 %			

Contact with Penn State Altoona School of Nursing revealed that RN Licensure can be obtained through completing an Associates Degree in Nursing. Upon completion of the ASN program, a registered nurse can continue complete an additional two years of education to obtain a more specialized Bachelors of Science in Nursing degree. The Nursing Program can be completed at Penn State University DuBois Campus in Clearfield County.

I spoke to Diane Jankura, Academic Counselor at PSU State College Campus on June 11, 2007 regarding the Registered Nurse Program. Ms. Jankura informed me that PSU has a 98 % to 100 % placement rate. The average hourly wage for a registered nurse in State College, PA is $12.00 to $15.00 per hour starting rate. The hourly wage for the lowest 10 % for a nurse with a Bachelors Degree in Nursing is $18.26 per hour and the median average annual income is $58,000 per year.

U.S. Department of Labor Statistics for registered nurses nationwide in May of 2004 was $52,330 annually. The middle 50 percent earned between $43,370.00 and $63,360.00. The lowest 10 % earned $37,000 and the highest 10 % earned $74,760.00 per year.

The median annual earnings in the industries employing the largest number of registered nurses in May of 2004 were as follow:

Employment Services	$63,170
General medical and surgical hospitals	$53,450
Home health care services	$48,990
Offices of physicians	$48,250
Nursing care facilities	$48,220

RETRAINING OPTIONS EXPLORED (cont.)

Should Ms. Carlson decide to pursue retraining as a registered nurse at Penn State University, per academic year tuition for a Pennsylvania Resident is currently $11,646.00. To obtain a degree as a registered nurse the total cost would be calculated at $23,292.00. To obtain a four year degree as a BSN the total cost would be calculated at $46,584.00.

Various sources of funding for retraining and or further education for persons with disabilities are available, including the Office of Vocational Rehabilitation (OVR), grants and loans, employer programs, etc.

Job Title:	**Pharmaceutical Sales Representative**	
DOT Codes:	262.357-010	
Physical Demand Level:	Light	
National Wage Data:	Hourly Mean:	$30.51
	Hourly Median:	$26.80
	Annual:	$63,460
Growth:	7.5 %	

Information obtained from **http//careers.stateuniversity.com** revealed that the education and training for a pharmaceutical sales representative is two to four years of college and on the job training. The median salary is $60,130 per year and the employment outlook is good.

To become a pharmaceutical sales person, a person must have a high school diploma preferably two to four years of college. Health care related experience is a plus that makes a job candidate very attractive, and can be substituted for educational experience. Drug companies provide on the job training selecting employees for their verbal and social skills.

Information obtained from a reliable industry source, **coreynahman.com,** revealed that pharmaceutical companies look for outstanding people to represent their company. Some desirable qualities for a good sales representative are a four year degree with a strong work ethic and good communication skills. Of interest is 50 % of all Pharmaceutical Sales Representatives are women which is a trend to diversify the sales force with regard to cultural backgrounds. I should also be noted that Mr. Nahman comments in his frequently asked questions page that a good candidate is a good candidate regardless of age. Specifically, he commented that "his mentor became a pharmaceutical sales representative at age 45 and is now in his 70's having his best year ever".

RETRAINING OPTIONS EXPLORED (cont.)

Salary statistics obtained from **salary.com** revealed that salaries for Pharmaceutical Sales Representatives in the Falls Creek, PA 15840 area as follows:

Salary Percentiles:

10th	$23,072
25th	$33,644
75th	$57,126
90th	$62,648

Considering that Ms. Carlson has an Associates Degree in Radiation Therapy and 13 years experience working as a Radiation Therapist and from information researched, she would be a qualified candidate to pursue employment as a Pharmaceutical Sales Representative without retraining.

If Ms. Carlson decided to pursue employment as a Pharmaceutical Sales Representative and wanted to be more competitive, she could attend Penn State Altoona's School of Business Program. To obtain a Business Degree at Penn State University Altoona per academic year tuition for a Pennsylvania Resident is currently $10,000.00. Various courses for this major may also be available at the DuBois PSU Campus and or via the PSU Internet distance learning network.

Should Ms. Carlson pursue a four year business degree, additional employment opportunities would become available to her in other sales related fields. The foregoing examples given are not the exclusive opportunities that could be pursued.

EARNING POWER ASSESSMENT/LABOR MARKET SURVEY:

Ms. Carlson's Labor Market Survey was conducted utilizing several sources of employment information: Local newspaper classified advertisements, yellow page directories, employment websites via the Internet and the PA Career Link database.

Vocational job titles were targeted utilizing the aforementioned resources in an effort to identify potential employment and retraining opportunities within Ms. Carlson's vocational work history and physical capabilities:

Please note that the physical demand level is a Dictionary of Occupational Titles/O*Net Classification and varies according to each specific employer, whereas each specific employer is unique in and of itself and may actually require less physical exertion while performing the required job duties. ADA considerations also apply.

VOCATIONAL EXPERT CONCLUSION:

National average wage data obtained from the OASYS, DOT/O*NET concluded that Ms. Carlson's average hourly wage potential for positions that are available or become available frequently in Ms. Carlson's geographic area are as follows: greeter – median wage $7.36 per hour; cashier - median wage $7.41 per hour and school bus driver – median wage $14.22 per hour. Ms. Carlson's wage would range from $7.36 to $14.22 per hour with a weekly remuneration ranging from $294.40 to $355.50 and with annual salary of $15,308.80 to $18,486.00.

Information obtained from contact with the six potential employers identified and listed in this Labor Market Survey revealed that Ms. Carlson's earning potential for entry level positions within her physical capabilities range from $6.25 to $8.95 per hour and would translate into a weekly remuneration of $83.40 to $223.75. The median wage is calculated to be $153.57 per week.

Future increases in the minimum wage and the effect of same on current wage scales would increase these earnings potentials. One or more of these jobs could be combined to obtain a full time work equivalent.

Should Ms. Carlson opt to pursue further education as a registered nurse, U.S. Department of Labor Statistics reveal registered nurses in May of 2004 were being paid $52,330 annually. The middle 50 percent earned between $43,370.00 and $63,360.00. The lowest 10 % earned $37,000 and the highest 10 % earned $74,760.00 per year.

Information identified through Internet Research identified that Ms. Carlson already possesses the minimal educational qualifications and work related experience necessary to pursue employment as a Pharmaceutical Sales Representative. The annual salary for a Pharmaceutical Sales Representative is between $23,072.00 and $62,648.00 per year. The median income for this position is $42,860.00 annually.

Fringe benefits attributable to the foregoing positions have not been quantified in this evaluation.

The foregoing is stated based on reasonable professional certainty, judgement and experience.

Sincerely

Ronald S. Kushner

Ronald S. Kushner, B.S., QRP
Vocational Consultant

RSK:
amt

EXHIBIT C

THE COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY, PA

CIVIL DIVISION

* * * * * *

PAULA CARLSON and *
JAMIE CARLSON, her *
husband, * No.
Plaintiffs * 2006-563-CD
VS. *
JERJIS T. ALAJAJI, *
M.D., DUBOIS *
RADIOLOGISTS, INC., *
and DUBOIS *
REGIONAL MEDICAL *
CENTER, *
Defendants *

* * * * * *

DEPOSITION OF

ROSE CAMPBELL

DECEMBER 8, 2006

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by the certifying agency.

DEPOSITION
OF
ROSE CAMPBELL, was taken on behalf of the Plaintiffs herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Lacey C. Gray, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at DuBois Regional Medical Center, Home Health Building, 100 Hospital Avenue, DuBois, Pennsylvania, on Friday, December 8, 2006, beginning at 2:02 p.m.

APPEARANCES

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INDEX

WITNESS: ROSE CAMPBELL
EXAMINATION
By Attorney Crenney 8 - 83
EXAMINATION
By Attorney Slimak 83 - 94
RE-EXAMINATION
By Attorney Crenney 95 -99
RE-EXAMINATION
By Attorney Slimak 99 -100
CERTIFICATE 101

EXHIBIT PAGE

		PAGE
NUMBER	IDENTIFICATION	IDENTIFIED
One	Notice of Deposition	15
Two	Job Description	--
Three	Job Description	26
Four	Notes of Ms. Campbell	78

OBJECTION PAGE

ATTORNEY	PAGE
Johnson	12, 23, 38, 40, 41, 45, 48, 50, 55, 56, 59, 66, 67, 68, 69, 72, 74, 75, 82, 95, 96, 97, 99
Slimak	17, 40, 41, 44, 46, 47, 48, 50, 55, 57, 60, 64, 68, 69, 70, 74, 75, 99
Maierhofer	43, 60, 71
Crenney	45, 90, 91,92

PROCEEDINGS

ROSE CAMPBELL, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY ATTORNEY CRENNEY:

Q. Could you state your name?

A. Rose Campbell.

Q. Are you employed?

A. Yes.

Q. By whom are you employed?

A. DuBois Regional Medical Center.

Q. And how long have you been so employed?

A. Eight years.

Q. Can you give me your educational background?

A. I have a bachelor's degree in nursing, and I have a master's degree in business administration.

Q. Where did you go to high school?

A. Central Cambria high school in Ebensburg, Pennsylvania.

Q. Ebensburg. That's quite a courthouse they have in Ebensburg. What year did you graduate ---

A. From ---.

Q. --- from high school.

A. 1979.

Q. Did you get your Bachelor's in Nursing right away after graduating from high school?

A. No.

Q. Tell me about your education, when you got it and where?

A. I got my Bachelor's in Nursing from St. Francis college in Loretto, Pennsylvania. I graduated in 1985.

Q. When did you get your Master's?

A. I graduated again from the same college/university in Loretto, and I graduated in 1995.

Q. Okay. Are you married?

A. Yes.

Q. Do you have kids?

A. Yes.

Q. How many times have you been married?

A. Once.
Q. Good for you. How many kids do you have?
A. Two.
Q. Okay. Can you tell me about your work history?
A. I first graduated from --- as a registered nurse I worked at the Altoona Hospital, and on a general med/surg floor. I left there to find full-time work at Conemaugh Hospital, telemtry, came back to Altoona Hospital after probably six, seven months, and worked at Altoona Hospital then in ICU until I left there in 1998. Where I managed a consulting firm for several months and then I came to DuBois to manage the cancer center.
Q. When was that?
A. 1998.
Q. Do you have any special training or --- let's start with education. Let me strike the question.

Do you have any special education in radiology?
A. No.
Q. Do you have any special education in oncology radiology?
A. Radiation oncology.
Q. Right.
A. I have attended conferences, seminars, studied on my own, but as far as a specific course, through a school, no.
Q. Okay. What kind of nursing did you do in your career?
A. Orthopedic, neurology, intensive care, open heart, oncology, palliative care, in-patient.
Q. Okay. What is your job title now?
A. Administrative manager.
Q. Do you do any patient care?
A. Maybe two or three times a year.
Q. What is that --- is that like in a strike or a snowstorm or something like that, an emergency of some type?
A. Uh-huh (yes).
Q. Have you ever done the job that Paula Carlson does?
A. No.
Q. And you've never been a radiation therapist?
A. No.
Q. Have you ever done anything close to that job?
ATTORNEY JOHNSON: Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. Anything like that at all. You can answer.
ATTORNEY JOHNSON: When I object, you can answer.
A. Can you be more specific?
BY ATTORNEY CRENNEY:
Q. No. If you can't, you can say it.
ATTORNEY JOHNSON: But if you don't

understand the question ---
BY ATTORNEY CRENNEY:
Q. If that doesn't make sense to you.
ATTORNEY JOHNSON: --- or if it doesn't make sense to you.
A. It doesn't make sense to me.
BY ATTORNEY CRENNEY:
Q. Okay. All right. Have you ever worked in an x-ray department?
A. No.
Q. Okay.
A. But I have worked with radiologists and radiation technicians and radiation therapists, but I have not specifically worked in a radiology department.
Q. What work have you done with those classes of professions?
A. Assisting them with their job duties, taking x-rays, positioning patients.
Q. So you've taken x-rays, where, on the floor, in the room, sometimes

Page 14

that has to be done; correct?
A. Yes.
Q. All right. Like any other nurse would do, any other floor nurse; correct?
A. Yes.
Q. From time to time, that's what you do. Okay. I think you said you have a Master's in Business?
A. Uh-huh (yes).
Q. And is that what qualified you for your current position?
A. What qualified me for --- I met the qualifications for this position --- that was one of them. Another was that I am a registered nurse. I have experience in management from my previous work.
Q. And you've had this job since '98?
A. Uh-huh (yes).
Q. What are your job duties?
A. Planning for the department, strategic operational planning, budget planning, marketing planning,

Page 15

executing those plans, oversight of the supervisors that supervise the daily operations of the center.
Q. Say that again.
A. I have supervisors that supervise in different areas within the department that report to me.
Q. You supervise the supervisors?
A. They report to me.
Q. All right. Okay.
A. I occasionally, as I said, two or three times a year, provide patient care if there's an emergency and a nurse is absent, I'll work in the clinic to cover that person.
Q. Is it fair to say that you're mainly on the business administrative managing end of the operation?
A. Yes.
Q. I'm going to mark your Notice of Deposition as Exhibit One.
(Campbell Exhibit One marked for identification.)
BY ATTORNEY CRENNEY:

Page 16

Q. And ask you, have you seen your Notice of Deposition?
A. Yes.
Q. Okay. Is there a job description that you have for Paula Carlson?
ATTORNEY CRENNEY:
Let the record show that you provided me with a document styled job description for DuBois Regional Medical Center, and there's a few things more there, but it says title staff radiation therapist. I'm going to take a moment to read it.
COUNSEL REVIEWS DOCUMENT
BY ATTORNEY CRENNEY:
Q. This document was approved by you on 5/16/06; is that right?
A. Uh-huh (yes).
Q. And it has a third page which is physical demands; is that right?
A. Yes.
Q. And I'm going to show you Exhibit Three from Mr. Maloney's

Page 17

deposition. Are you familiar with that document?
A. Uh-huh (yes).
Q. And can you identify Exhibit Three to Mr. Maloney's deposition, can you tell me what that is?
A. Yes. Exhibit Three was the original --- or the previous job description, physical demands for radiation therapist at Hahne.
Q. Okay. And the third page of Exhibit Two to your deposition is the new physical demands protocol?
A. Based on Mr. Maloney's evaluation, yes.
Q. Based on Mr. Maloney's evaluation. Did you ask Mr. Maloney to do that evaluation?
A. I did.
Q. Did any physician request that you do that?
ATTORNEY SLIMAK:
I'm just going to object to the form. Are you referring to the jobsite analysis

Page 18

evaluation or the functional capacity evaluation? The question was not clear to me.

ATTORNEY CRENNEY:

Sure.

BY ATTORNEY CRENNEY:

Q. I assume when you said based on Mr. Maloney's evaluation that you were referring to Exhibit Two of Mr. Maloney's deposition.

A. Are you handing that to him or me?

Q. No, to you.

ATTORNEY SLIMAK:

Identify for me which one is Two. I don't have mine marked.

ATTORNEY CRENNEY:

Two is the one you were kind enough to give me, Mr. Slimak.

ATTORNEY SLIMAK:

The jobsite analysis radiation therapist position. Okay.

Page 19

BY ATTORNEY CRENNEY:

Q. Is that's what you meant to tell me, that the new physical demands, as set forth on the third page of your Exhibit Two, that's based on what Mr. Maloney did?

A. Yeah.

Q. And what's marked as Exhibit Two to Mr. Maloney's deposition; correct?

A. Yes.

Q. And my question was, did any physician ask you to ask Mr. Maloney to do a jobsite analysis, as he did here? Did any physician ask you that that be done?

A. No physician asked me directly that that be done, no.

Q. Okay. Was it your idea that it be done?

A. I had requested an evaluation of the physical demands for a radiation therapist, because the way that we were treating patients and the machine we were using had changed. We

Page 20

stopped using one machine and we were only using another that was more electronic.

Q. Was this jobsite analysis, which is marked Exhibit Two to Mr. Maloney's deposition, was this your idea? Was it your idea that he do this?

A. No. I asked that he do this, evaluate the physical demands for a radiation therapist in Hahne for the way we were treating now.

Q. Did that request --- did you do that in part because of Paula Carlson's situation?

A. Yes.

Q. How so, explain that to me?

A. Paula was going through work hardening and evaluation to determine if she could come back to work at the cancer center. When Paula left the cancer center we were using two machines, one which was very --- I don't know how to explain it, required a lot of manual --- more manual labor,

Page 21

I guess, I would say as far as lifting what we call blocks and molds. And the other machine which has a multileaf collimator did not require that. So because the work had changed and she was being evaluated against that, I thought this needed to correctly reflect the work that was currently happening.

Q. What's the name of the first machine, the machine that requires more manual labor?

A. Varian 6100 Linear accelerator.

Q. V-A-R-I-A-N?

A. Uh-huh (yes).

Q. 6100.

A. Uh-huh (yes).

Q. Is there more to that name?

A. Linear Accelerator.

Q. Do you no longer use that?

A. No. In fact, it's been removed as of December 1st.

Q. What machine do you use?

A. It's a Varian 2300 CD with 120-Leaf.

Page 22

Q. 100 and ---?
A. 120-Leaf.
Q. L-E-A-F?
A. Uh-huh (yes).
Q. Okay?
A. Collimator,
C-O-L-L-I-M-A-T-O-R.
Q. And did you believe that this made it easier from a physical perspective to do the job?
A. As far as the lifting and placing of blocks on to the head of the machine, yes.
Q. And in any other way was the job easier?
A. I would say, no.
Q. And so you requested this job analysis study be done specifically to see if Paula could return to her job?
A. No, I did not request that jobsite analysis be done. I requested the physical demands for a radiation therapist in Hahne be evaluated, because the work practice patterns had changed.

Page 23

Q. And was this provided to you in response to that request?
A. That was provided to me, but this specifically was provided to me in response to that request.
Q. Okay. Is it your testimony that this Exhibit Two to Mr. Maloney's deposition, that that is not related to the request you made?
ATTORNEY JOHNSON: Object to the form of the question. I think it's ambiguous.
ATTORNEY CRENNEY: Well, let me clear it up.
BY ATTORNEY CRENNEY:
Q. You asked Mr. Maloney to do a task; right?
A. I asked ---.
Q. Just a minute. If you give me ---.
A. Sure.
Q. Did you ask him to do something for you?

Page 24

A. I actually asked Employee Health, who directed me to physical therapy to do the physical demands evaluation.
Q. Who at Employee Health did you talk to?
A. Sue Miller.
Q. Did Sue Miller send you to Mr. Maloney?
A. Actually, first to George Fatula.
Q. Did you talk to George Fatula?
A. No, George declined to evaluate the physical demands of the job because he was Paula's therapist.
Q. So he declined because he knew Paula Carlson was the reason you were doing it; is that right?
A. He declined because he was working directly with Paula and felt it --- I don't know. That's all I got was that he was working with Paula so then Marty Maloney did the evaluation.
Q. Did you talk to him about what you wanted done?

Page 25

A. I did explain to him ---.
Q. What did you say to him?
A. I don't recall the conversation verbatim, but I just explained that the practice had changed. We were no longer using the 6100, which required the making and lifting and placement of blocks, lead blocks onto the machine, that we were more electronic now and I thought it needed to be evaluated.
Q. Okay. And you're saying that Exhibit Two was provided to you, of your deposition, and Exhibit Two of Mr. Maloney's deposition, both of these items were provided to you?
A. This Exhibit Two here is the previous job description.
Q. Okay.
A. This was provided to me.
Q. That's Exhibit Two of Mr. Maloney's deposition?
A. Yes. And the third page of --- I don't know which exhibit you're calling this one. This page --- these

Page 26

recommendations were also provided to me by Mr. Maloney based on his evaluation of our department.
Q. Was it on a separate page, just one page what Mr. Maloney gave you, just this physical demands page?
A. This was --- actually, I can't remember if we did this over the phone or if he e-mailed me this.
Q. Was it just one page, this page that has the physical demands?
A. This piece, yes.
Q. Let's mark Number Three to your deposition, that's the new job description, okay. It's three pages.
(Campbell Exhibit Three marked for identification.)
BY ATTORNEY CRENNEY:
Q. We'll come back to that in a little bit. Let me ask you this one in regard to your Notice of Deposition.
A. Okay.
Q. If I could call your attention

Page 27

to B. Any and all documents which DuBois Regional Medical Center claims show or tend to show that Paula Carlson knew that Dr. A-L-A ---.
ATTORNEY CRENNEY:
How do you pronounce it?
I'm so sorry.
MR. ALAJAJI:
Alajaji.
BY ATTORNEY CRENNEY:
Q. Alajaji was employed by DuBois Radiology, Inc. and/or show or tend to show that Paula Carlson knew of the existence of DuBois Radiology, Inc. at any time prior to April 1, 2005. Do you have any such documents?
A. I do not.
Q. Were you asked to locate such documents?
A. Only by what's written here.
ATTORNEY CRENNEY:
Ms. Campbell is the designee for the hospital; correct?
ATTORNEY JOHNSON:

Page 28

We don't have any documents presently other than such billings as she may have received from the service itself that appear to be responsive to that, that I'm aware of at the present time.
ATTORNEY CRENNEY:
And I am correct that Ms. Campbell is the designee for the hospital in response to my request for a designee; is that correct?
ATTORNEY JOHNSON:
That's correct.
ATTORNEY CRENNEY:
And what billings are you talking about, Mr. Johnson?
ATTORNEY JOHNSON:
It's my understanding that to the extent services were provided by the radiologists, they separately billed the patient for that.
ATTORNEY CRENNEY:

Page 29

All right. This is a request for such documents prior to April 1, 2005 or prior to April 12, 2005. If you have such documents, I'm, again, requesting that you produce them. If they are not produced and not given a chance to look at them, take appropriate discovery based on the production of those documents, I'll certainly object. If they end up being produced some other time at trial or just before trial, I'm asking for those documents to support an issue in the case, the general description of what you think may or may not exist is not sufficient. So again, making that request. Respectfully making that request.
BY ATTORNEY CRENNEY:
Q. Was Paula a good employee prior to getting this tumor?

Page 30

A. Yes.
Q. Okay. Were you satisfied with her work?
A. Yes.
Q. Was she able to fulfill all of the physical requirements of her job?
A. Yes.
Q. And she got --- we don't have to go through them then. She got a lot of good evaluations; correct?
A. Yes.
Q. Did anybody complain about Paula's work to you prior to April of 2005?
A. Nut that I recall.
Q. Did anybody complain about Paula's attitude, anything at all? Did you have any problems of Paula of any description, now's the time to tell me?
A. No significant problems.
Q. Okay. All right. Who was Paula's immediate supervisor?
A. It was Sheila Welsh.
Q. And I assume Sheila Welsh

Page 31

didn't make any complaints about Paula's work or Paula's attitude or anything about Paula while she was working here at the hospital?
A. No, nothing significant.
Q. And by nothing significant, you mean nothing worth bringing up or talking about; correct?
A. Correct.
Q. There are little things about everybody, believe it or not people --- Allison works in my office, and people from time to time complain about little things that I do. I know it's hard to believe, but it's really no flow big deal.
All right. And when you signed off on the performance reviews --- strike that question.
I noticed when I went through the personnel file, that when you came on in '99, you declined to sign off on Paula's --- I can find it, but maybe you can remember. You had only been there two months, and you wrote I'm

Page 32

not going to sign off on this because I've only been here two months; do you recall that?
A. Uh-huh (yes).
Q. Is that because you take signing off seriously, if you're signing off you're put your impramator on what's being said that, and you take that seriously; right?
A. That was actually in 1988.
Q. Okay.
A. And I do take my signature seriously.
Q. So if you say somebody is doing a good job, they're a good employee because that's what you think?
A. Yes.
Q. If you want to take a look at your notes.
A. Sure.
Q. And it says note to file. What file?
A. My file.
Q. And what do you mean by that, my file?

Page 33

A. Just notes that I keep on --- for example, an ongoing situation, I supervise, or I have a little over 50 people within my chain of command. I can't remember everything, so sometimes I keep notes.
Q. Let me ask you this. Is there any reason why this wouldn't be in Paula's personnel file?
A. No. It just doesn't --- it's just a ---.
Q. It didn't get there?
A. Yeah.
Q. Okay. When you say my file. Do you have one file, or if there's a special problem or concern do you maybe just make a file regarding that; is that what you did in this case?
ATTORNEY JOHNSON:
Wait. I'm not sure what you question is now, Tom.
ATTORNEY CRENNEY:
Well, I'm trying to help the witness out, but I'll ask again. Okay.

Page 34

BY ATTORNEY CRENNEY:
Q. You told me when I asked you what type of file this was, you said to me my file; right?
A. Uh-huh (yes).
Q. And I'm trying to have a better understanding of what that is and how it is that you do things; okay?
A. Uh-huh (yes).
Q. Generally and how you do things in this case.
A. Uh-huh (yes).
Q. And is it because --- did you create this because this was kind of an unusual problem and you wanted to stay in touch with it?
A. I created this because it was an ongoing situation with an employee. And I keep --- I have files on all my employees. I keep notes of different things through the year, so ---.
Q. Do you go to the same church as Paula?
A. Yes, I do.
Q. What church is that?

Page 35

A. Tri-County Church of God.
Q. We almost have no Protestants in Pittsburgh, so it's nice. Very rare?
A. We're not Protestant.
Q. What are you?
A. It's a non-denominational church.
OFF RECORD DISCUSSION
BY ATTORNEY CRENNEY:
Q. In your first note of 8/18/05, at the bottom, if you could look, Paula asked you if she still had a job.
A. Uh-huh (yes).
Q. And you say I explained she has not lost her job, but we do not know what she is physically able to do and may not know for several moths; is that right?
A. Uh-huh (yes).
Q. At that time, was it your opinion that Paula hoped to come back to work?
A. Yes.

Page 36

Q. On 8/23/05, and you should read the whole note so you can put it in context, but what I want to ask you about is the last sentence. It says the employee will be terminated and may re-apply for a position at a later time. But if you'll read the whole note --- and I want to ask you what that means, that last sentence?
A. When I spoke with Rick Dixon, who was the human resource liaison designated for Hahne, I called to question the use of a personal --- just what it says there, a personal leave of absence form after an employee has exhausted 12 weeks of FMLA. And Rick advised me that I could deny a personal leave of absence request at that time because the 12 weeks of FMLA had been exhausted, and then he went on to explain that the employee's position would be terminated at that point. And at a point when they could come back to work, they could re-apply for a

Page 37

position and be re-evaluated.
Q. Was she terminated at that time?
A. No.
Q. Has she ever been terminated?
A. Not that I am aware.
Q. What is her status?
A. I don't know.
Q. Does she receive any benefits of any type from the hospital of which you are aware?
A. No.
Q. No, she does not receive any; correct?
A. Not that I'm aware of.
Q. Right. Now, if you'll look at your 11/1/05 note, where it says that her physician told her she was to lift no more than 31 pounds, do you see that?
A. Three pounds.
Q. Three pounds. Okay.
ATTORNEY JOHNSON:
You're referring there where it also says that she

Page 38

couldn't lift a pencil or a phone, that sentence?
ATTORNEY CRENNEY:
That sentence. Correct.
BY ATTORNEY CRENNEY:
Q. Now, when you were referring to learning what was going on from her physician, you met her surgeon; correct?
A. Yes.
Q. Dr. Yaw; right?
A. Yes.
Q. You were waiting to see what he thought to determine whether she could do the job; correct?
A. Yes.
Q. Does that continue to be your view, in terms of determining whether she can do her job? Are you going to want to hear what Dr. Yaw has to say, her surgeon?
ATTORNEY JOHNSON:
I object to the form of the question, because I don't understand it.

Page 39

BY ATTORNEY CRENNEY:
Q. Okay. You mention at several points in your notes needing to hear from her physician; is that correct?
A. Uh-huh (yes).
Q. Did you mean --- I'm just going over this again to make sure I've got it right. Did you mean Dr. Yaw her, surgeon?
A. Yes.
Q. And did you want to know --- in terms of whether she could come back to work, did you want to know whether he thought she could do the job?
A. Because of the amount of time Paula had been off, she could not return to work without some return to work from that physician.
Q. Okay. In terms of determining whether she could do the job, was his opinion of whether she could do the job or not important to you?
A. Yes.
Q. Was that the key opinion you were waiting to hear from?

Page 40

ATTORNEY SLIMAK:
Objection to the form.
ATTORNEY JOHNSON:
Joining the objection.
BY ATTORNEY CRENNEY:
Q. Are you still waiting to here from him, whether he thinks she can do the job?
A. Today?
Q. Yes, now.
A. No.
Q. Why not?
A. Because she had --- he had said she was to go through work hardening and then be evaluated, and based on that evaluation, she could return to work.
Q. Who said that?
A. That came from Marty Maloney's evaluation --- or George Fatula's evaluation through Marty. However, that worked through physical therapy through the work hardening.
Q. Is it your understanding that Dr. Yaw thinks she can go back to

Page 41

work?
A. I think so. Yes.
Q. If Dr. Yaw thought she could not go back to work, would that have any impact on whether you would let her come back to work or not?
ATTORNEY JOHNSON:
I'm going to object to that question as being speculative. I don't think that's an appropriate question for this witness to respond to.
ATTORNEY CRENNEY:
Okay.
ATTORNEY SLIMAK:
I object to it, too. There's no foundation for her to respond to it in any event.
ATTORNEY CRENNEY:
Well, I don't know what you mean by that.
ATTORNEY SLIMAK:
Well, whatever Yaw knows or doesn't know, how can she speculate to any of that?

Page 42

ATTORNEY JOHNSON:
Well, in any event,
she's not going to answer that
question, so ---.
BY ATTORNEY CRENNEY:
Q. At some point you wanted to know what Dr. Yaw thought in terms --- at some point, whether she could go back to work or not, you've already told us that; right?
A. Yes.
Q. And is it your testimony that you no longer needed to do that or get that information after the work capacity test done by Mr. Maloney?
A. Is that report here from Mr. Maloney?
Q. Yeah, it is. We'll get it for you. This is it. I'm showing you Exhibit One from his deposition.
A. This was sent to Dr. Yaw from Mr. Maloney, and based on this Paula was able to return to work.
Q. Okay. That's what I'm saying. Is it your view Paula can return to

Page 43

work?
A. If she ---.
ATTORNEY JOHNSON:
Well, based on capacity
and ability, is that what
you're asking? Because I mean,
there may be a lot of other
factors as well.
ATTORNEY CRENNEY:
Yeah. There may be a
lot of things like a competent
functional capacity exam.
ATTORNEY MAIERHOFER:
I'm going to object to
the form.
ATTORNEY CRENNEY:
There are lot of
factors. That's right.
ATTORNEY JOHNSON:
Or whether the person's
inclined or whether they really
have other motivations not to
come back to work. So I think
there's a lot of things, Tom.
I just want a clear question.

Page 44

BY ATTORNEY CRENNEY:
Q. Is it your view, based on whatever foundation you want to make that Paula can come back to work?
A. Based on this information and her physical ability to do the job, made the essential functions of a therapy job, yes.
Q. Okay. And is the foundation for saying this, this test that was done by George Maloney?
A. Marty Maloney.
ATTORNEY SLIMAK:
Objection to form.
BY ATTORNEY CRENNEY:
Q. Marty Maloney. Is that the reason you say she can come back to work?
ATTORNEY SLIMAK:
Same objection.
ATTORNEY JOHNSON:
If you understand the
question, or if it's unclear,
you can tell Mr. Crenney, and
he'll rephrase it.

Page 45

BY ATTORNEY CRENNEY:
Q. People have a reason for saying something, okay. I assume you have a reason for saying you think Paula can come back to work. Now, I'm asking you the reason. And I'm saying to you, is the reason this test that you asked to look at that Marty Maloney did?
ATTORNEY JOHNSON:
And I object to the form
of the question, because it
suggests that there's only one
reason as opposed to multiple
factors.
ATTORNEY CRENNEY:
I object to you coaching
the witness. If you want to go
out, down the hall and coach
the witness, coach her out
there.
BY ATTORNEY CRENNEY:
Q. Is this the reason?
ATTORNEY JOHNSON:
Object to the form of

Page 46

the question. Because I don't think it's appropriate, Mr. Crenney, to suggest that there's only one reason for a decision.
BY ATTORNEY CRENNEY:
Q. Now, witness, I think you now know that your lawyer would like to consider --- for you to consider whether or not there are other reasons, okay, besides this. Okay. So keep that in mind when you answer the question. Is this one reason why you think she can go back to work?
A. Yes.
ATTORNEY SLIMAK:
I just want to object to the form of the earlier question. It's argumentative.
BY ATTORNEY CRENNEY:
Q. Is there any other reason?
A. Paula's experience in the position. She did the job before she left.
Q. Is there any other reason other

Page 47

than Exhibit One, the test that Maloney did, that you think she can meet the physical demands of the job?
A. Based on his evaluation, he evaluated her ability to do the physical demands of the job.
Q. I understand that. What I'm asking you now, is there any other reason, other than this reason? The fact that --- Exhibit One, this test, is there any other reason that you think she can do the physical demands of the job?
A. This is her evaluation of her ability to do that, so I would say it was based on this.
Q. That and only that, correct?
ATTORNEY SLIMAK:
Objection to the form.
ATTORNEY CRENNEY:
Well, we've given this witness every chance in the world to give us any other reason that she has. If she wants to do it, I'd ask the

Page 48

lawyer to tell her to do it now. You've asked me to ask her are other reasons. You pointed out there may be other reasons.
BY ATTORNEY CRENNEY:
Q. If there are other reasons please be kind enough to tell them what they are?
ATTORNEY JOHNSON:
Object to the form.
ATTORNEY SLIMAK:
Objection to the form of the question.
BY ATTORNEY CRENNEY:
Q. Are there any other reasons other than this, Exhibit One, the test that Marty Maloney did? Are there any other reasons you think she can perform the physical demands of the job?
A. I was basing my decision on Marty's evaluation, as requested by her physician.
Q. Have you seen any other

Page 49

functional capacity test --- exam?
A. On who?
Q. On Paula.
A. No.
Q. Were you aware any other test was done?
A. No.
Q. Have you talked to Dr. Yaw about the issue?
A. Personally, no.
Q. In writing, anything, have you talked to Dr. Yaw at all?
A. No.
Q. Do you think Paula doesn't want to come back to work?
A. I don't know.
Q. Was there anything in her history prior to April of 2005, anything you saw, heard, that would suggest to you that she didn't want to do the job, didn't like her job, didn't want her job, didn't want to stay working?
A. She had mentioned in the past that she would, you know, like to be

Page 50

home with her kids and --- but other than that, no.
Q. That seems reasonable for a mother; correct? Would you agree with that?
ATTORNEY SLIMAK:
Objection to form.
ATTORNEY JOHNSON:
Objection to the form of the question.
BY ATTORNEY CRENNEY:
Q. Do consider that unusual for a mother to have that sentiment?
A. No. I would say, no.
Q. When you had little kids, did you have to work?
A. Yes, I did.
Q. Were there times you wished you were with your little kids?
A. Sure.
Q. Okay. Do you know --- let me ask you this. You are employed by the hospital; right?
A. Yes.
Q. Who runs the emergency room at

Page 51

the hospital?
A. It's a hospital department.
Q. Okay. Is it owned and operated by the hospital?
A. As far as I know, yes.
Q. Are all the employees, doctors who worked there, do they all work for the hospital?
A. I do not know.
Q. Do you know the name of any emergency room corporation over there?
A. I'm not aware of any.
Q. Do you assume they're all there working on behalf of the hospital?
A. Yes.
Q. Is that also true in the radiology department?
A. No.
Q. When did you find out that the doctors in the radiology department did not work for the hospital?
A. The very first time I got an x-ray here, and I received a bill from DuBois Radiologists, Incorporated that clearly stated that this was a bill

Page 52

for the physician services, part of that x-ray exam.
Q. When was that?
A. I'm going to say 1999 probably.
Q. What happened that you got an x-ray?
A. It probably was just routine.
Q. A routine x-ray?
A. Uh-huh (yes). I ---.
Q. Did you break a bone? Are you sure --- I mean, I never had a routine x-ray, so I'm wondering?
A. No. No, I've had --- I don't know the exact time, but I have gotten bills from them for mammograms that I get yearly and they read.
Q. That makes sense, okay. Prior to that, prior to getting that bill, is it fair to say you didn't know and had never heard of DuBois Radiology, Inc.?
A. Yes.
Q. Had it not been for getting that bill and seeing that notation, you wouldn't have known it even then;

Page 53

correct? It was reading that bill that gave you that knowledge; correct?
A. Yes.
Q. So if you didn't look at the bill and seen that, you wouldn't have known; right?
A. Yes.
Q. And was there any other source of that information that you received other than that bill at any time up until April of 2005?
A. I knew before that, because I knew Dr. Shaw, who is part of that group is also the serving --- he's also the radiation safety officer for the hospital. So I became aware that he was not employed by the hospital. He was not a hospital employee, just through that information and just working with him in that regard.
Q. When was that, that you got that information, was this before you got your bill?
A. I can't say, to be honest with you. It would of had to of been early

Page 54

on. I'm going to say in 1999, probably my first year here in attending radiation --- being a radiation oncology manager and knowing who the RSO is.

Q. Did you ever tell Paula Carlson this?

A. I had no cause to tell her.

Q. Do you know if Paula Carlson knew this?

A. I have no idea.

Q. Did you tell anybody that worked for you this information?

A. I don't know, not that I recall.

Q. These meetings that you went to, what kind of meetings were they?

A. Radiation safety committee meetings.

Q. Okay. Any of your employees go with you to those meetings?

A. Yes.

Q. Who?

A. Michael Bosick went to those meetings. Neil Samirra (phonetic),

Page 55

who was a physicist, went to those meetings.

Q. Any of the radiation therapists go with you?

A. Not that I recall. Michael Bosick is a radiation therapist who works in dosimetry.

Q. Works where?

A. He's a dosimetrist. He performs a different function than this one, in this job description.

Q. Okay. If you could look at your note on 4/20/06, Mrs. Campbell?

A. Sure.

Q. It says there about the middle, I explained that the expectations for her, that's Paula; right, is the same as for all employees; correct?

A. Uh-huh (yes).

Q. It's fair to say the hospital was not prepared to make any accommodations for her; correct?

ATTORNEY JOHNSON:
Object to the form of the question.

Page 56

BY ATTORNEY CRENNEY:

Q. It says here, I explained that the expectation for her is the same as for all employees; correct?

A. I think that is taken out of context.

Q. Okay. First of all, that is what it says?

A. Yes.

ATTORNEY JOHNSON:
That's what one sentence in the middle of a paragraph says.

ATTORNEY CRENNEY:
If you have an objection, go ahead and make it, Mr. Johnson.

ATTORNEY JOHNSON:
I just said it. If you're ---.

ATTORNEY CRENNEY:
Say objection instead of just talking.

ATTORNEY JOHNSON:
You're making a

Page 57

misleading statement and a misleading question, because you're taking a single sentence out of the context of it being in the middle of a paragraph. So I object to form of the question.

ATTORNEY SLIMAK:
I join in the objection of Attorney Johnson.

BY ATTORNEY CRENNEY:

Q. Did you offer accommodations to Paula?

A. Yes.

Q. What accommodations?

A. Everything that Marty Maloney had recommended we made sure existed in the department, as far as safety. And the one thing that he had requested specifically for Paula were a pair of vice grips to hold the blocks that they were making for electronic cutouts.

Q. When did you find out that Paula had sued the hospital?

Page 58

A. I didn't find out that Paula sued the hospital. I got this notice.
Q. Okay. You claim you never knew --- strike that.
When did you find out she had sued DuBois Radiology, Inc. and Dr. Alajaji?
A. When I got this notice.
ATTORNEY JOHNSON:
And for the record, the witness is holding in her hand the Notice of Deposition.
A. I'm sorry.
ATTORNEY SLIMAK:
Issued by attorney Crenney's office?
ATTORNEY JOHNSON:
Yes.
BY ATTORNEY CRENNEY:
Q. Okay. So you claim that at no time up until the time this notice was issued --- and the date on it's November 8th, 2006, you claim that at no time did you know Paula was involved in any lawsuit against

Page 59

anybody at the hospital; is that your testimony?
A. I knew nothing for certain until I received this document.
Q. Well, that's different than not knowing anything. Okay. I want to help you with answering the question. All right. That's very different. Okay. What did you know about any lawsuits Paula might have filed in 2006?
ATTORNEY JOHNSON:
Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. Let me just try to explain to you. First you said you didn't know anything about it until you got this Notice of Deposition, didn't know about any lawsuit against Dr. Shaw, against DuBois Radiology, against the hospital, against anybody. And then you said to me you didn't know for certain. So that's what I'm trying to ---.

Page 60

A. I ---.
ATTORNEY JOHNSON:
Wait, wait, wait.
BY ATTORNEY CRENNEY:
Q. My question is, what did you know?
ATTORNEY SLIMAK:
I'll object to Counsel being argumentative.
ATTORNEY CRENNEY:
Nobody's being argumentative. This is the testimony the witness made.
ATTORNEY SLIMAK:
No, you're testifying ---.
ATTORNEY CRENNEY:
I'm trying to help the witness.
ATTORNEY SLIMAK:
Well, you're not helping anything, it sounds.
ATTORNEY MAIERHOFER:
And I'm just going to object to the form of the

Page 61

question.
ATTORNEY CRENNEY:
Pardon me?
ATTORNEY MAIERHOFER:
I said I'm going to object to the form of the question, because I don't think your question initially, the way you phrased it, was how you phrased it now.
ATTORNEY CRENNEY:
Okay.
ATTORNEY JOHNSON:
Just ask a straight question.
ATTORNEY CRENNEY:
I am asking a straight question, okay. What I want is a straight answer. All right.
ATTORNEY JOHNSON:
As you've been getting all day.
ATTORNEY CRENNEY:
Pardon me?
ATTORNEY JOHNSON:

Page 62

As you've been getting all day.
ATTORNEY CRENNEY:
Well --- you know.
BY ATTORNEY CRENNEY:
Q. Is it your testimony that you never knew anything --- and just tell me, anything about a lawsuit, hadn't heard anything, didn't know there might be a lawsuit until you got this Notice of Deposition?
A. No.
Q. Okay. What had you heard, what did you know? If you knew anything, just tell me.
A. I had heard secondhand that Paula was threatening a lawsuit.
Q. And who did you hear that from?
A. From Sheila Welsh.
Q. Okay. When did you hear that?
A. I don't recall exactly.
Q. Is that in your notes? Do you know --- okay. We're both looking.
A. Uh-huh (yes).
Q. Okay. It's at the very end;

Page 63

right?
A. Yes.
Q. Did you ever ask Paula to come back to work?
A. Yes, I did.
Q. When did you do that?
A. On April 20th of 2006.
Q. And who is Bob?
A. Bob --- where are you looking at, Tom?
Q. It says Bob to contact Paula and post ---.
A. That would be Bob McKee.
Q. And until he and I have had the opportunity to meet with Paula and discuss further. Do you see that?
A. Uh-huh (yes).
Q. Okay. So if she was asked to go back --- the Monday start date was postponed; correct?
A. Uh-huh (yes).
Q. Did you meet with her?
A. I did not.
Q. What happened with that meeting?

Page 64

A. As far as I'm aware, Bob called Paula to arrange the meeting for that same Monday, and the meeting did not occur.
Q. Do you know why it did not occur?
A. I was told by Bob that her attorney had called to discuss this meeting, and that was --- we were to meet with this attorney.
Q. Okay. And you didn't want to meet if the attorney was going to be there; is that right?
A. That's not correct.
ATTORNEY SLIMAK:
Objection to form.
BY ATTORNEY CRENNEY:
Q. What is correct?
A. The meeting was to be arranged.
Q. Have you ever looked at Paula's arm, her wrist ---
A. Yes.
Q. --- and compared it with her other arm and wrist?
A. Yes.

Page 65

Q. Okay. Is a job still open for her?
A. Yes.
Q. And what accommodations, specifically, are you wanting to make for her?
A. The accommodation that Marty recommended was the use of vice grips. Everything --- there are safety recommendations he had in his evaluation, we either already had or implemented.
Q. Okay. Was there any other accommodation, other than the use of vice grips?
A. No, not that I recall.
Q. Okay. Is it accurate that other than that you would expect from her what you would expect from any other employee?
A. Yes.
Q. Okay. And if she was not able to meet those requirements than she couldn't have the job; is that correct?

Page 66

A. If she was not able to fulfill the essential functions of the job, then I would say no.
Q. Okay. And the only accommodation you wanted to make was this vice grip accommodation; ---
ATTORNEY JOHNSON: Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. --- is that right?
ATTORNEY JOHNSON: Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. Is it true that that ---?
A. It was not the only accommodation. It was the accommodation recommended at the time.
Q. What other accommodation were you ready to make?
ATTORNEY JOHNSON: Objection to the form of the question, calling for speculation.

Page 67

BY ATTORNEY CRENNEY:
Q. Were you willing to make other accommodations?
A. I wasn't aware of any. I would have to --- I wasn't aware of any other accommodations required.
Q. Did Paula say to you that she didn't want to come back to work?
A. No.
Q. Did she say that to anybody, has it been reported to you that she said that to anybody?
A. No.
Q. Were you or the hospital ready to guarantee Paula's job after this lawsuit was over?
ATTORNEY JOHNSON: Object to the form of the question. I don't understand what you mean by guarantee.
BY ATTORNEY CRENNEY:
Q. I mean, it's all well and good to sit here and say as the designee of the hospital that Paula come back to work. But were you willing to guarantee her job after the lawsuit was resolved one way or another so that she wouldn't be fired.

Page 68

ATTORNEY JOHNSON: You don't have to answer that question. I think that's an inappropriate question as phrased.
BY ATTORNEY CRENNEY:
Q. Do you think that's inappropriate?
ATTORNEY JOHNSON: It doesn't matter if the witness does if I, as the attorney, feel that that's an inappropriate question.
BY ATTORNEY CRENNEY:
Q. Do you understand ---?
ATTORNEY SLIMAK: I object to the form of as well.
BY ATTORNEY CRENNEY:
Q. Do you understand how Paula might fear that?

Page 69

ATTORNEY JOHNSON: Object to the form of the question, calling for speculation.
BY ATTORNEY CRENNEY:
Q. Doesn't it make sense to you?
ATTORNEY JOHNSON: Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. Wouldn't she have to be a real idiot not to worry about that?
ATTORNEY JOHNSON: Object to form of the question.
ATTORNEY SLIMAK: I object to the form as well.
BY ATTORNEY CRENNEY:
Q. In any event, no guarantee has been made that she could keep her job; is that true?
ATTORNEY JOHNSON: Object to the form of the question.

Page 70

ATTORNEY SLIMAK:
Object to the form.
BY ATTORNEY CRENNEY:
Q. Is there any guarantee that she can keep her job if she comes back?
ATTORNEY JOHNSON:
Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. You can answer.
ATTORNEY JOHNSON:
No, I don't think that's an appropriate question.
ATTORNEY CRENNEY:
I think it's absolutely appropriate. Do they have any Judges on Friday afternoon? It's absolutely appropriate, especially in this situation. Is it's right on the money.
ATTORNEY JOHNSON:
Absolutely not, Tom, because Pennsylvania, as you know, is an at-will employment state.

Page 71

ATTORNEY CRENNEY:
You better believe it. Exactly my point.
BY ATTORNEY CRENNEY:
Q. So I wanted to determine in terms of offering her to come back, would she be an at-will employee, how about that? Would she be an at-will employee if she came back?
ATTORNEY MAIERHOFER:
I'm just going to object to the form of the question. I think it might call for a legal conclusion.
ATTORNEY JOHNSON:
If you know the answer, you can answer the question.
A. Yeah, working in the State of Pennsylvania she would be an at-will employee.
ATTORNEY CRENNEY:
Great. She knows the answer.
BY ATTORNEY CRENNEY:
Q. So you can fire her whenever

Page 72

you wanted after she came back; correct?
ATTORNEY JOHNSON:
Object to that question as calling for legal ---.
BY ATTORNEY CRENNEY:
Q. And you could fire her for any reason?
ATTORNEY JOHNSON:
Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. Do you know what an at-will employee is?
A. Yes.
Q. What is an at-will employee?
ATTORNEY JOHNSON:
Object to that. You don't need to answer that.
ATTORNEY CRENNEY:
Well, you brought it up, Mr. Johnson.
ATTORNEY JOHNSON:
I only brought it up, Mr. Crenney, because you ---.

Page 73

ATTORNEY CRENNEY:
The witness knows what it is. I'm just asking the terms of the --- the hospital has come here today after maiming this woman, okay. And claiming we have a job for her, we're ready to take her back with open arms. I'm asking what the terms of the employment would be.
That it's being offered. You're going to walk into court and you're going to discern the jury, and you're going to continue to --- like I said, after all that's happened to her say she doesn't want to work, we have a job for her. I'm asking the terms of the job you're offering, that's all. That's fair enough.
She says we have a job, I'm asking the terms. And she knows what an at-will employee

Page 74

is, and I want to talk with her about that. What's wrong with that?

ATTORNEY JOHNSON:

Ask your next question and we'll see if it's appropriate question or isn't.

BY ATTORNEY CRENNEY:

Q. I think you told me; did you not --- am I right that you know what an at-will employee is?

A. Yes.

Q. Would Paula be an at-will employee when she came back?

A. Yes.

Q. Does that mean that in a year or two or three, if the hospital wanted to they could fire her?

ATTORNEY JOHNSON:

Object to the question.

ATTORNEY SLIMAK:

Same objection.

ATTORNEY JOHNSON:

And you're not going to answer that question because

Page 75

it's just an improper question in many respects.

BY ATTORNEY CRENNEY:

Q. You wouldn't do that, though; would you, Rose? I can tell.

ATTORNEY SLIMAK:

Objection.

ATTORNEY JOHNSON:

Object to the question.

ATTORNEY CRENNEY:

Well no, I know Rose wouldn't do that.

ATTORNEY SLIMAK:

Well, Counsel, if you want to testify then fine, ---

ATTORNEY JOHNSON:

Next question.

ATTORNEY SLIMAK:

--- but that's not appropriate.

ATTORNEY CRENNEY:

Not appropriate to give the witness some credit?

ATTORNEY SLIMAK:

No, it's not appropriate

Page 76

for you to be argumentative and sharp in your questions or statements in the record. It's unprofessional, frankly.

ATTORNEY CRENNEY:

Is that right?

ATTORNEY SLIMAK:

That's my opinion, yes.

ATTORNEY CRENNEY:

Yeah, well, you would know about that.

BY ATTORNEY CRENNEY:

Q. Who --- strike the who.

You say there's a job for Paula, is that a decision you have made or have you made that decision with others to offer Paula a job, and to say to me today there's still a job for Paula?

A. There is an open radiation therapy position at Hahne.

Q. And are you offering that job to Paula today as we sit here?

A. If Paula is able to come back to work and willing to come back to

Page 77

work, then yes.

Q. Okay. And I'm asking on who's authority are you making that offer, yours or have you talked to others about it, or is it just you?

A. It would --- today it's just me sitting here.

Q. But you're confident you speak for the hospital on this issue?

A. Yes.

Q. It says Paula, in her evaluations, needs to be aware of near misses, what are near misses?

A. Near misses are it is a reporting system so that if we have a situation that occurs that --- but didn't reach the patient --- an error that didn't reach the patient was caught prior to ever reaching the patient we call it a near miss, and I encourage all of the therapists to report those so that we can trend them and implement actions to prevent them. Hopefully from ever reaching the patient.

Page 78

Q. **Okay. Let me just mark your notes as Number Four before I forget.**

(Campbell Exhibit Four marked for identification.)

ATTORNEY CRENNEY: Did we already mark them? Let the record show I marked Rose Campbell's notes on Paula Carlson as Exhibit Four.

BY ATTORNEY CRENNEY:

Q. **Who is Debbie O'Hara --- is it O'Hara? Do you know who that is?**

A. (Indicates no.)

Q. **And Greg Volpe is who?**

A. Greg Volpe is --- I can't remember if his title is director or manager of risk management.

Q. **Who is Cheryl Juvides (phonetic), J-I ---?**

A. Jividen.

Q. **Sorry. Who's that?**

A. She works in the benefits office.

Q. **Did you ever tell Paula she**

Page 79

might not have a job even if she passed her physical capacity, functional capacity exam because of market conditions?

A. No.

Q. **Has there been an opening for a radiation therapist since Paula stopped working?**

A. Yes.

Q. **Have you hired anybody new?**

A. Uh-huh (yes).

Q. **And who have you hired --- strike that.**

I mean, what position have you filled?

A. I filled a radiation therapist position and I filled the clinical supervisor position of radiation therapy.

Q. **But the radiation therapist wasn't to replace Paula?**

A. I have two positions.

Q. **Are you holding that position for Paula?**

A. I am not.

Page 80

Q. **Are you looking for somebody else?**

A. Uh-huh (yes). Yes.

Q. **Have you interviewed anybody else?**

A. I have not.

Q. **But your activity trying to fill that position?**

A. Uh-huh (yes).

Q. **Is that a yes?**

A. Yes.

Q. **Did Paula ask you for a secretary's job?**

A. No.

Q. **That was never discussed?**

A. Not that I recall.

Q. **Did Paula say to you that she would let a patient fall rather than hurt her arm?**

A. Yes, she did.

Q. **Okay. Tell me about that, what exactly did she say?**

A. She said --- I actually have that in the notes, the file. She said that if a patient goes to fall, she

Page 81

will let them fall and that she could break her arm if she tried to catch them.

Q. **Okay. Did she say that directly to you?**

A. Yes.

Q. **And how did you respond to that?**

A. I explained to her that --- that's where the statement comes from, the expectation for her is the same for all employees. That I would expect her to do what she could to prevent a patient from falling, use good body mechanics, assist the patient to the floor.

Q. **Do you know what kind of body mechanics she used when she did the physical capacity exam with Mr. Maloney?**

A. I do not. I wasn't present.

Q. **Do you know if she used her legs to do lifts?**

A. Is that in his ---?

Q. **Strike that. Let me ask you**

Page 82

again. **Do you know if she used her legs to lift things that she was supposed to be lifting with her arms?**
A. Can I look at this report?
Q. **Sure.**
A. She did do leg lifts, yes.
Q. **Do you know if she used proper body mechanics when she did this test?**
ATTORNEY JOHNSON:
Object, there's no proper foundation.
ATTORNEY CRENNEY:
I'll withdraw the question.
BY ATTORNEY CRENNEY:
Q. **Would you agree you have to use proper body mechanics when you're doing your lifting as a radiation therapist?**
A. To do everything you can to prevent injury, yes.
Q. **Have you talked to Dr. Gracca about Paula?**
A. I have not.
Q. **Are there two Dr. Graeca's?**

Page 83

A. No. One Dr. Graeca.
Q. **Only one?**
A. Uh-huh (yes).
Q. **Is he an internist?**
A. I don't know if he's internist or family medicine.
ATTORNEY CRENNEY:
Let me talk to Paula for a minute and get you out of here.
A. Sure.
SHORT BREAK TAKEN
ATTORNEY CRENNEY:
Mrs. Campbell, thank you very much for coming in. I don't have anything else. Mr. Slimak may have some for you.
EXAMINATION
BY ATTORNEY SLIMAK:
Q. **I do have questions for you. I was looking at what Attorney Crenney has marked, I believe, now as Exhibit Four for your deposition, which I believe would be your notes to file regarding Paula Carlson.**

Page 84

A. Uh-huh (yes).
Q. **Did you make a note on January 10th, 2006?**
A. Yes.
Q. **Could you read into the record please what the note was that you made at that time?**
A. Received a prescription pad note from Paula's surgeon stating that she was improving, has not reached MMI.
Q. **Which is what? Maximum medical improvement, have you ever heard that term?**
A. Yes.
Q. **Continue. What else did you write?**
A. Re-eval with FCE.
Q. **Do you know what FCE is? Do you know the term functional capacity evaluation?**
A. Yes.
Q. **Okay. Then read that sentence again.**
A. With FCE after six weeks

Page 85

PT/work hardening. Paula explained that she would be having PT and then work hardening to determine her abilities.
Q. **Now, I believe that there was another exhibit that Attorney Crenney has brought to your attention that was marked as, if I may, Mr. Maloney's deposition Exhibit One, do you have that in front of you?**
A. Yes.
Q. **And then following your note of January 10th, 2006, where there was an FCE that you indicated was going to be obtained. Did you receive a copy or information on this Exhibit One from Mr. Maloney's deposition, which is a March 8th, 2006 functional capacity evaluation of Paula Carlson?**
A. I don't --- I don't think this specific one was copied to me.
Q. **Okay. And then let's look another exhibit that Mr. Crenney had, I believe, marked in Mr. Maloney's deposition.**

ATTORNEY CRENNEY:
Can I help you, Mr. Slimak?
ATTORNEY SLIMAK:
Yes. I'm looking for the job analysis exhibit. It's in the court reporter's pile.
BY ATTORNEY SLIMAK:
Q. Am I correct that Attorney Crenney has not yet shown you this Maloney Deposition Exhibit Number Two during the course of your deposition?
A. He did show me this.
Q. You have seen this?
A. Yes.
Q. Well then, fine. With regard to Maloney Exhibit Number Two, have you previously seen the jobsite analysis radiation therapist at Hahne, dated April 17, 2006 prepared by Martin Maloney?
A. Yes.
Q. Okay. And what was the reason you had received this in the course of your position with the Hahne Cancer

Center?
A. I received this document from Marty Maloney based on an evaluation that he did, which is exactly their jobsite analysis radiation therapist Hahne.
Q. Mr. Maloney had testified earlier in his deposition that he made various recommendations and job description changes recommendations.
A. Uh-huh (yes).
Q. And also, he has a summary in this report. Do you know if those have been implemented for the radiation therapist position at Hahne?
A. Everything except for the purchase of the Quick Clamp, or vice grips, to secure this air bend mold in place of present clamps, has been completed or was existing.
Q. Is there any particular reason why that has not yet been completed at this point?
A. At that point we were just waiting to purchase something that was

specific for Paula.
ATTORNEY CRENNEY:
Excuse me, if I may. Everything has been implemented. Would it be okay if she could just say what everything is and just list it there?
ATTORNEY SLIMAK:
Well, we do have the document, if you would like her read in all of the document?
ATTORNEY CRENNEY:
No, just when she says everything, does she mean recommendations one through seven.
ATTORNEY SLIMAK:
Or do you mean more than that?
ATTORNEY CRENNEY:
Or do you mean more than that, right.
A. The recommendations two through seven, the job description changes ---

I don't know if these are the same --- these weren't complete in the same as what was the final changes to that job description is.
BY ATTORNEY SLIMAK:
Q. Is there anything in the job description changes that were recommended that have not been incorporated into the revised physical demands radiation therapist position document? If so, we just want to know what it is.
A. Ask me your question again.
Q. Yes. Mr. Maloney's job description changes, recommendations, then comparing that to the physical demands or job description document that you also have in front of you. Are there any of his recommendations in the job description recommendations section of his report that have not been incorporated at this point into the physical demands document for the job?
A. No.

Page 90

Q. **Okay. They're all in there?**
A. Yes.
Q. **Now, with regard to the vice grip-type device or clamp to replace clamps, is that something that you feel would be a reasonable accommodation if Paula Carlson were to return to work, that the hospital would obtain for her?**
A. Yes.
Q. **If she had made other reasonable accommodations requests, would they be considered by the hospital?**
ATTORNEY CRENNEY:
Object to the form.
A. They would be evaluated, yes.
BY ATTORNEY SLIMAK:
Q. **Looking, again, at your Exhibit Four, on April 19th, 2006 was there any action agreed upon at that time regarding asking Paula Carlson to return to work?**
A. It was essentially ---.
ATTORNEY CRENNEY:

Page 91

I'm so sorry. Object to the form. I didn't mean to interrupt you.
A. Essentially, the action was to contact Paula and advise her regarding her return to work.
BY ATTORNEY SLIMAK:
Q. **Because of the objection I'm going to ask a new question. Did you take any action on April 19th, 2006 with regard to Paula Carlson?**
A. I believe I contacted her to --- I cannot recall if it was that specific day or the next day that we met.
Q. **Why did you contact her?**
A. To have her come in and meet with me to discuss her return to work.
Q. **Okay. Did you then meet with her on April 2006 with regard to her return to work?**
A. Yes, I did.
Q. **In your meeting with Paula, did you have a discussion with her with regard to if she should report to you**

Page 92

anything that she felt difficult with the job if she would return to work?
ATTORNEY CRENNEY:
Object to the form of the question.
A. I noted there ---.
BY ATTORNEY SLIMAK:
Q. **Let me just ask you a new question. Did you give any explanations to Paula during the meeting of April 20, 2006?**
A. Yes. Yes.
Q. **What did you explain to her?**
A. Several things that I've listed here. I explained to her that I was made aware that she made a statement that if a patient goes to fall she'll let them fall. I explained that the expectation for her is the same as for all employees. In regards to her request for time off, I explained that it shouldn't be a problem, as we weren't anticipating her return during that specific week when the schedule was completed, and I explained I would

Page 93

speak with Sheila Welsh, at the time the clinical supervisor, regarding the schedule and call her the following day. And I explained to her that when she did return to work that I would depend on her to tell me --- I think she was having difficulty with work tasks.
Q. **If Paula Carlson returned to work would the position be at her same salary or at what salary or rate of pay?**
A. If Paula Carlson returned to a radiation therapist position, it would be at that rate of pay.
Q. **That rate being what rate?**
A. I would assume the rate she was --- I'm not sure I can answer that. I would assume the rate she was at.
Q. **Okay. If she would return to work, to the radiation therapy position, would she resume having the benefits of that position, such as fringe benefits?**
A. Yes.

Page 94

Q. Is there a need for the hospital to have someone like Paula come back to fill that position?
A. To have a radiation therapist?
Q. Yes.
A. Yes.
Q. Is part of your job to assist employees with return to work under the Americans With Disabilities Act?
A. In collaboration with human resources, yes.
Q. So there are other hospital people who have helped to facilitate that as well?
A. Yes.
ATTORNEY SLIMAK:
That's all of the questions I have as well.
Thank you.
ATTORNEY MAIERHOFER:
Ma'am, I have no questions.
ATTORNEY JOHNSON:
I have none at this time.

Page 95

RE-EXAMINATION
BY ATTORNEY CRENNEY:
Q. Is Paula someone you've considered pursuant to your responsibilities or the hospital's responsibilities under the Americans for disability Act (sic)?
ATTORNEY JOHNSON:
Object to the form of the question.
BY ATTORNEY CRENNEY:
Q. You can answer.
ATTORNEY JOHNSON:
If you understand it.
A. Is she --- I don't know, is she disabled? Is she ---?
BY ATTORNEY CRENNEY:
Q. Well, Mr. Slimak asked you about helping people out with disabilities pursuant to the hospital's duties under the ADA, American's Disability Act; correct?
A. Yes.
Q. Have you done that with Paula; is that a consideration with Paula?

Page 96

ATTORNEY JOHNSON:
And I object to the form of the question.
ATTORNEY CRENNEY:
I understand.
BY ATTORNEY CRENNEY:
Q. Go ahead. You can answer.
ATTORNEY JOHNSON:
Do you understand it?
A. If Paula --- no. If Paula is able to do the essential functions of this job, as a hiring manager and part of that hiring process, then consideration under the Americans With Disability Act is part of that.
BY ATTORNEY CRENNEY:
Q. What considerations in regard to Paula Carlson are there?
A. Well, the first question is, can the employee perform the essential functions of the job as they're listed. They meet the qualifications, are they --- can they meet the physical requirements.
Q. Of doing the job?

Page 97

A. Uh-huh (yes).
Q. Okay. And then what is the next question?
A. And the next question is if they can't, are there reasonable accommodations that could be made. I think ---.
Q. Is that how you're approaching Paula's case?
A. We did approach --- based on Paula's evaluation by Marty Maloney, as requested by her surgeon, we looked at the recommendations for safety and the --- the recommendations that he made, and they were reasonable, as he suggested.
Q. Okay. As far as you know, did that have anything to do with the American's for Disability's Act, or are these just changes that you made based on his recommendation?
ATTORNEY JOHNSON:
Object to the form of the question. And I don't know that there's a proper

Page 98

foundation for the witness to answer that question.
BY ATTORNEY CRENNEY:
Q. Does Paula's case have anything to do with the American Disability Act as far as you're concerned?
ATTORNEY JOHNSON:
Tom, let me state more clearly the reason for my objection. I don't know that that's an appropriate question for the witness to respond to because the Americans With Disabilities Act is a statute. It obviously has to be taken into consideration with respect to all employment aspects, and it may be relevant or not relevant in any context. So I mean --- I just don't understand the question for that reason.
ATTORNEY CRENNEY:
Well, I understand, but I think this witness will tell

Page 99

us that the Americans for Disability Act had nothing to do with her dealings with Paula and the accommodations she's made, and I want her to give us a chance to do that, okay.
BY ATTORNEY CRENNEY:
Q. Isn't that accurate?
ATTORNEY SLIMAK:
Object to the form.
ATTORNEY JOHNSON:
As do I. I object to the form.
A. I don't know what to say. As far --- Paula wasn't declaring a disability that I was aware of.
ATTORNEY CRENNEY:
All right. That's all I have.
ATTORNEY SLIMAK:
A follow-up question.
RE-EXAMINATION
BY ATTORNEY SLIMAK:
Q. Did Paula make you aware of any restrictions with regard to her

Page 100

unaffected left arm?
A. No.
ATTORNEY SLIMAK:
No other questions.
ATTORNEY JOHNSON:
We'll read the transcript.
* * * * * * * *
DEPOSITION CONCLUDED AT 3:34 P.M.
* * * * * * * *

EXHIBIT D

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PA

CIVIL DIVISION

* * * * * * * * *

PAULA CARLSON and	*	
JAMIE CARLSON, her	*	Case No.
husband,	*	2006-563-CD
Plaintiffs	*	
vs.	*	
JERJIS T. ALAJAJI,	*	
M.D., DUBOIS	*	
RADIOLOGIST, INC.,	*	
and DUBOIS REGIONAL	*	
MEDICAL CENTER,	*	
Defendants	*	

* * * * * * * *

DEPOSITION OF

ROBERT MCKEE

December 8, 2006

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DEPOSITION
OF
ROBERT MCKEE, taken on behalf of the Plaintiffs herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Lacey C. Gray, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at DuBois Regional Medical Center, Homehealth Building, 100 Hospital Avenue, DuBois, Pennsylvania, on Friday, December 8, 2006 beginning at 3:44 p.m.

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INDEX

WITNESS: ROBERT MCKEE
EXAMINATION
by Attorney Crenney 8 - 45
CERTIFICATE 46

EXHIBIT PAGE

PAGE NUMBER	DESCRIPTION	IDENTIFIED
	NONE OFFERED	

OBJECTION PAGE

ATTORNEY	PAGE
Johnson	16, 38, 394
Slimak	16,38

PROCEEDINGS

ROBERT MCKEE, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY ATTORNEY CRENNEY:

Q.Could you state your name sir?

A.My name is Robert McKee.

Q.And are you employed?

A.Yes.

Q.By whom are you employed?

A.DuBois Regional Medical Center.

Q.In what capacity?

A.I'm the director of human resources.

Q.How long have you held that job?

A.As the department director, 9 years.

Q.And how long have you been employed by DuBois?

A.17 years.

Q.Where did you grow up?

A.Grove City, Pennsylvania.

Q.Grove City?

A.Uh huh (yes).

Q.Did you go to college there?

A.Yes.

Q.What year did you graduate?

A.1976.

Q.And why don't you tell me, did you further your education after you graduated from Grove City?

A.Yes.

Q.Can you tell me about that?

A.I obtained an MBA from the University of Pittsburgh.

Q.Were you in the military?

A.No.

Q.Can you tell me your work history?

A.Work history, shortly after graduating from college in 1777, I was a school teacher, secondary education, social studies in West Field, New York. A layoff, that took place at the end of my first year, caused me to return to Grove City College to obtain the credits required for my literature in communication arts teaching

Page 10

certification. And instead of doing that, I accepted a temporary three month position as a maintenance supervisor that lasted for about a year before I began an assignment in the student affairs department. And in student affairs I became the director of programming which is the student activities coordinator. And in 1979 I became the college's business manager, and I was the college business manager until I left at the end of 1988, which was the same month that I had received my MBA and in 1989 I came to work here at the Medical Center.

Q.What college was it, the college?

A.Grove City College.

Q.You were at Grove City all that time?

A.Uh huh (yes).

Q.Okay. Very conservative school?

A.Some would note that, yes.

Q.In your role as the director of human relations --- that's a wonderful

Page 11

term isn't it, human relations --- did you come to know Paula Carlson?

A.Yes, and it was director of human resources.

Q.Resources?

A.Close.

Q.And when did you get to know her?

A.Actually I've been aware of Paula an as an employee over the years at the Medical Center. I was aware that she worked as a radiation therapist, but I don't remember exactly what year I did become aware of Paula specifically as an employee.

Q.Okay. Was it after April of 2005 or before for?

A.Oh, before.

Q.Did you learn about her reputation as an employee before April of 2005?

A.As far as I am aware, there was never any performance issue or problem that Paula had as an employee at the Medical Center.

Page 12

Q.As far as you know she was a good employee?

A.Yes.

Q.Okay. When Paula went off work, couldn't work, or at least wasn't working, did you become involved in this case? Did you have contact with her?

A.Not initially. It is not uncommon for people to be away from work, be on leaves of absence. And usually those items are routinely addressed through our benefits group, which are people who work for me. But I was not aware of Paula's being away from work or being on a leave until either late June or early July of 2005.

Q.And how did you become aware?

A.An inquiry came to my attention, and I note that one of the groups that reports to me at the Medical Center is payroll. And an inquiry came to my attention about Paula becoming eligible for disability coverage, and the inquiry was about the Medical Center

Page 13

paying the difference between disability coverage, what somebody would receive in disability and their full salary.

When that came to my attention, it must have been an inquiry that had come through Greg Volp because I went to speak with Greg. And the two of us spoke by telephone with Ray Graeca because I was providing counsel at that point in time that if somebody was on disability, according to our disability plan, they could not be receiving earned wages in addition to disability. Things had to be clean, you either had to be on disability or you would be paid wages at the Medical Center. Now, you can take your accrued time, but you could not be paid non-accrued time because there would be a problem with the disability. And my recommendation to Ray Graeca was that if there was a desire for Paula to be able to continue in her employment at full wages, that she be provided with

Page 14

that option. And as far as I know that option was communicated to Paula and she elected an option where she would go on disability.

Q.So are you saying to me, sometime in June the hospital offered to pay her her full wages even though she wasn't working?

A.As far as I know, yes.

Q.And why did you do that, why was that offer made to Paula?

A.As far as why that offer would be made, there are different reasons why we do what we do at the Medical Center. Sometimes we're dealing with very long-term employees. Sometimes we're dealing with employees that are working in job roles where it's very difficult to recruit those persons. And there are also times that we have dealt with what our role is as a hospital and our public image in the community and we've wanted to make sure that people understood that we went above and beyond in dealing with

Page 15

employee's needs. I only know that it came to me that there was this idea of paying the differential tied to the disability. And I knew, wait a minute there's going to be a problem with how this is paid out so I need to present the options. If this is what is decided, then it needs to be done a different way.

Q.Was Mr. Graeca's idea to pay her her full wages even though she wasn't working?

A.I would imagine --- I would believe that that was the case because I know that we were discussing it with him to determine how that could take place.

Q.And what is Mr. Graeca's position?

A.He's the president of the Medical Center.

Q.And his son is the PCP for Paula; is that correct?

A.I believe so, yes.

Q.Do you know if the offer was made because it was felt that Paula had been damaged, suffered injury because of medical error?

Page 16

ATTORNEY JOHNSON:

Object to the form of the question. No proper foundation.

ATTORNEY SLIMAK:

I object, too.

BY ATTORNEY CRENNEY:

Q.You may answer.

A.I do not know why the offer was initially made. As I note, it is not unusual that we have found different cases for different reasons that we have made the election to continue to pay somebody their full wages. At least for some period of time and I do not know what that would have been.

Q.Are you currently paying someone their full wages, hospital employee, who's not working?

A.I don't believe right at this time.

Q.Okay. And that was in June of 2005; correct? Did you meet with Paula

Page 17

or talk to Paula at that time?

A.I don't believe I did. I believe that whatever was discussed was discussed between her and Ray Graeca at that point.

Q.Since April of 2005, have you ever talked to Paula?

A.By phone, yes.

Q.Have you ever met with her in person?

A.No, I don't believe so.

Q.Okay. And how many times have you talked to her over the telephone?

A.I know for sure there were at least two occasions.

Q.Do you know when the first occasion was?

A.Yes. It was in February of 2006.

Q.Did you call her or did she call you?

A.I called her.

Q.What was the purpose of your call?

A.On that day I was asked by John

Page 18

Sutika, our vice president and chief financial officer, to give Paula a call to reaffirm the Medical Center's position that we would like to work with her in terms of whatever she would be able to do when she could return to work. Not provide a ---.

Q.John?

A.John Sutika.

Q.S-U?

A.S-U-T-I-K-A.

Q.And you had talked to him about this matter before you called Paula?

A.Yes. He made the request of me.

Q.Okay. And what was the position of the Medical Center that you communicated to Paula?

A.The position that I communicated was that again the Medical Center wished to work with her when it was identified that she would be able to return to work. And what I mean by work with her, identify what she could and could not do and determine what accommodations we could make so it

Page 19

would be possible for her to return to work.

Q.And did you tell her that over the telephone?

A.Yes, I did.

Q.And specifically if you can, tell me exactly what you told her?

A.I guess at this point in time I probably can only remember general comments. I did note that although I could not guarantee what the Medical Center would be able to do, it was really a case that we were waiting at that point in time for her release to return to work and a statement of what she could or could not do, what restrictions she might have in her job. Given what those were, we would naturally be trying to find whatever accommodations we could make that would make it likely that she could return to that job.

Q.And you told her that?

A.Yes.

Q.And what did she say?

Page 20

A.She seemed to appreciate the comment that that was being shared with her. She had made some statements to me that she was very uncertain and appreciated some assurance that that was what the Medical Center's position was.

Q.She made statements that she was uncertain about what?

A.Uncertain about what our position was in terms of wanting to facilitate or aide her reemployment here at the Medical Center, her return to the Medical Center.

Q.Did she make those statements during that phone conversation, or prior to the conversation?

A.Well, actually she made those statements to me during the conversation as part of a statement of appreciation that I had placed the call to try to provide that clarification.

Q.Okay. So you're saying she told you she wasn't sure whether they wanted her back or not, and she was happy to

Page 21

hear from you that they did; is that accurate?

A.I'm trying I'm not sure that she specifically said that they didn't want her back. She had noted that she had had some conversations with Rose and that she was uncertain. And I just simply was providing some reassurance to her as far as what the Medical Center's position was.

Q.And it was the Medical Center's position that you wanted her back and you would make every effort to accommodate her; is that correct?

A.That's what our goal was, yes.

Q.Okay. All right. When did you next talk to her?

A.The next time that I am sure that I spoke with her I believe was on April 21st, which was a Friday. And at that point in time I was contacting her, we had believed that we had brought closure on what we needed to do for her to be able to start back to work at that point. And Rose Campbell

Page 22

had shared with me that there had been a comment that had been made by Paula that she was fearful of potential injury in her work. And the comment was that if a patient were to fall she wouldn't try to catch them. And what I wanted to do was I wanted to specifically address that comment and determine if we had a problem in her return that might be a patient safety issue.

Q.Did you talk to her about that?

A.I spoke with her briefly about that. And during that conversation, number one, I did raise specifically that that was the concern that I was trying to address. She had indicated during that conversation that she did have some potential fears of re-injury. And I had indicated to her that I wanted to meet with her and with Rose to fully discuss those concerns, and that I was going to setting up a meeting on the following Monday for us to get together. But since I did not

Page 23

know what Rose's schedule was I had indicated that she would receive a call on Monday as early in the day as we could nail that down to give her a time when that meeting would occur.

Q.Do you remember what you said to her and what she said to you

ATTORNEY JOHNSON:

Other than what he has already told you?

BY ATTORNEY CRENNEY:

Q.Yes, other than the narrative you've given me, the overall view.

A.In general that's somewhat of an approximation. No, I wasn't taking notes on the conversation, but that was roughly what I was dealing with. And the primary purpose of dealing with that was to lay out the basis for Paula, Rose Campbell and myself to be able to actually sit down, discuss the comment and see if we could resolve that concern.

Q.Okay. Was it your understanding that a radiation therapist had to be

Page 24

able to catch a patient if they fell to do their job?

A.It's my understanding that anybody who is in a primary patient care role and it's not a matter of just a radiation therapist. If you're an x ray tech, certainly if you're a nurse, if somebody is getting out of a bed, off of a table or something like that, that if a patient was to fall, that there are various means and ways that a patient's fall is going to be, shall we say cushioned by what people do. So that it's not going to be just simply a letting somebody fall. And the impression that I was given was that the statements that Paula had made at that point in time, I wasn't sure that that was going to be done.

Q.Was it your understanding that a radiation therapist should try to keep a patient from falling off of a table and make sure they don't?

A.Yes, I would expect that a radiation therapist, anybody who's

Page 25

working in one of those roles wouldn't just let a patient fall.

Q.Well, did you have that meeting?

A.No, we did not.

Q.Why didn't you have the meeting?

A.The meeting. We had left a message for Paula that the meeting was going to take place at three o'clock on that Monday, and Paula did not come to in meeting. Instead I received a call from you.

Q.And what did I say to you?

A.You had asked the question first of all --- the first thing that you had done was asked me if we could discuss the matter. And I very much so wanted to try to resolve this, and I indicated, you know, yes we could. And I explained the concern that we had. I think I may have even given the illustration that we've all had those times that we heard that people were fighting a serious disease and then because they ended up having some kind of an injury because of something that

Page 26

came out of something like a fall, people went downhill from that. And that we wanted to resolve that. During that conversation, I remember you had asked the question, could you be present at that meeting? And what I will note is our normal procedure or path whenever an issue coming up where an attorney is involved is that our usual position is, well, now that an attorney is involved your attorney can speak with our attorney. But I truly did want to see if there was a way to try to resolve this issue. So as I noted to you, yes, you would be able to attend but certainly I would also want our attorney to be present if you were going to be present. And at that point in time I believe that we did have an agreement that there would be a meeting. And I did turn the matter over to our attorney to see that that would be scheduled.

Q.Was this somebody at Reed Smith?

Page 27

A.Yes.

Q.Do you know the name of the person?

A.Joe Milcoff.

Q.And do you know what happened with that?

A.The only thing that he had indicated was that he was never able to resolve that with you.

Q.Okay. All right. Was I nice to you over the phone?

ATTORNEY JOHNSON:

I'm sorry, I didn't hear that question.

BY ATTORNEY CRENNEY:

Q.Was I nice to you over the phone, polite and everything?

A.Yes. And I hope I was also.

Q.Yes, you were. Very professional.

A.Thank you.

Q.How about me, was I real professional?

A.Yes.

Q.Is it still the position of the hospital that there's a job there for Paula, you want her to come back, and you would like to hear from her and give her the job?

A.I'll note at this point in time with the passage of time I'd have to identify exactly what is still open. But Paula's status as an employee here at the Medical Center was --- we did not have a problem with her performance, and so what I would note is with our ability to resolve this matter, whatever positions that she would be qualified for, and I would believe she would certainly be qualified as a radiation therapist. Any available positions here in the Medical Center, we would very much so seek her candidacy. But if you want to know what her current position is at the Medical Center in actuality we have never actually gone through an exit interview. Mainly because we really didn't know how everything here was

Page 28

Page 29

going to end up working out or resolving.

Q.Okay. So what is her status right now?

A.If I was to actually look into the system, it still shows that she is identified to be on a personal leave I believe.

Q.So she's still an employee of the hospital who happens to be on personal leave?

A.That's what it is in our system. I think that somebody would question is somebody really an employee when they haven't worked someplace for over a year. But officially in our systems, we never did an exit interview.

Q.Okay. Well, can you tell me what her status is definitively or ---?

ATTORNEY JOHNSON:

He just answered that question I thought.

ATTORNEY CRENNEY:

Well, I wasn't sure of his answer. He sort of said in

Page 30

the system she is, but she is no
A. And when I say in our system ---.
BY ATTORNEY CRENNEY:
Q. I don't understand your answer.
A. We have never changed what we've entered into our information systems because we never had resolution of this current issue. What I note to you is, it was our hope that this was all going to be resolved last April with our ability to offer the actual return to work. And since it has not, we just simply have not taken any action.
Q. Is she still an employee of the hospital?
A. And I think it depends on how you define employee. If you're defining employee as a person who works for the Medical Center, no she has not done that for over a year at this point. We have never done an exit interview, so is it a case that this is not resolved at this point? The answer is, is it is not.
Q. What was your understanding of the accommodations that were offered to Paula, if she returned to work? What's your understanding of these accommodations?
A. It's my understanding that an assessment was done by physical therapy, Marty Maloney, and that that assessment of the workplace identified a series of you accommodations. And I do not personally remember, in detail, what those were that would make it possible for her to perform her work role as a radiation therapist.
And in my meeting with Rose Campbell prior to her contact back in April with Paula, it was my understanding that she had reviewed the recommendations outlined by Marty Maloney and had identified that we would be able to make all of those accommodations. So actually at that point in time, I had believed that we finally had a resolution.

Page 32

Q. Do you know what the accommodations were that were offered to her, that you think were offered to her?
A. Well, I'm thinking that there was some comments about a platform needing to be built and some kind of a gripping device that she needed. But there were probably others that were involved. I wasn't looking in detail at that. I just simply accepted Rose's comments that those accommodations could be made and was resolving the matter?
Q. Are you responsible in deciding whether employees are eligible for accommodations under the ADA?
A. When you say deciding whether they are eligible, it's my understanding that any employee who can perform the essential functions of a job role with accommodation are able to work in that job role and are deemed to be qualified persons to do so. I'm not necessarily a clinical person who understands the detail of every job here. So I do rely on somebody like Marty Maloney to be able to identify what accommodations somebody needs, and in this particular case, a manager who said yes, those accommodations can be met, as being the Medical Center fully responding to those requirements and expecting that the employee would be then able to return to work.
Q. Do you have people here who are being provided accommodations pursuant to ADA at the hospital?
A. At different times we have people and I'm sure we probably do now.
Q. Are you aware of any right now or ?
A. We probably have different people who are working on some modified duty arrangements. I know that there have been times that we have dealt with the need of potentially whether a copier needed to be moved so that somebody wouldn't have to do something or something of that nature. We have

Page 34

employees who have had periods of time where it's been deemed that they could not take call because of a certain issue or problem that they might have or a medication of their medications. So the Medical Center fully does comply to determine whether somebody is able to perform the essential functions of a job role without accommodations --- or with accommodations I should say.

Q.Did anybody ever tell you Paula did not want to come back to work?

A.No. People were not telling me that Paula didn't want to come back to work. As a matter of fact, I think in conversations that I had with her, my February conversation, I believe she stated that she did want to come back to work.

Q.Since April 21, 2006 has anybody told you that Paula didn't want to come back to work?

A.There have probably been some conversations where the question has been raised, why she hasn't or didn't

Page 35

accept that offer. But nobody has told me that she did not want to return to work.

Q.Did you participate in those conversations?

A.Probably only to the extent of hearing somebody raise the question.

Q.And what question did they raise?

A.The question being we have this resolved, why don't you think Paula's coming back to work? Does she want to or does she not want to?

Q.Did you talk to Doctor Yaw about her ability to do this job, Kenneth Yaw?

A.No, I did not.

Q.Are you aware of any further functional capacity exam that was done on her besides the one Martin Maloney did?

A.No, I am not.

Q.Okay. Do you know whether or not she can perform the physical requirements of the job with or without

Page 36

an accommodations?

A.The last thing that I am aware of was Marty Maloney's assessment of the workplace and the identification of the accommodations. Nothing has come to me since that point in time.

Q.Do you have any information about whether Paula knew that there was an organization or legal entity called DuBois Radiology, Inc.?

A.I'm sorry. I don't understand the question. You're saying ?

Q.I'll try again. Have you ever heard of DuBois Radiology, Inc.?

A.Yes, I have.

Q.When did you hear of that organization?

A.I've been aware for sometime of DuBois Radiology, Inc.

Q.Two years, 17 years, how long have you known they existed?

A.Probably if I reach back to a point in time when I broke my own ankle a lot of years ago, I think I received a bill from them even at that point.

Page 37

Q.Do you know if Paula knew about DuBois Radiology, Inc. That they existed? I'm just asking for any information.

A.Yeah, and I really don't know what she knew.

Q.Did you talk directly to Mr. Ray Graeca about Paula?

A.The only time that I spoke with him was by phone, with Greg Volp present, back in mid 2005, when this initial issue was raised concerning the payment of the difference between the disability and providing to Ray, in that telephone conversation, my concerns that you can't be paying wages to somebody who is on the disability program. They can draw accrued benefit time but they can't pay wages. And that was actually the only conversation directly that I had with Ray Graeca.

ATTORNEY CRENNEY:

Is it Doctor Alajaji?

I'm so sorry. Is that the correct ---?

Page 38

ATTORNEY SLIMAK:
Pretty close. Doctor
Alajaji (corrects
pronunciation).
BY ATTORNEY CRENNEY:
Q.Do you know why Doctor Alajaji was terminated from the hospital
ATTORNEY SLIMAK:
I object to that.
ATTORNEY JOHNSON:
Object to the form.
ATTORNEY SLIMAK:
You can answer that yes
or no?
A.Yes, I have received an
explanation of that.
BY ATTORNEY CRENNEY:
Q.And why was he terminated?
ATTORNEY SLIMAK:
Objection to the form?
A.I am not told that it dealt with
any patient care or quality issues. It
dealt with --- actually the explanation
has been presented to me is that it is
not anything that is involved with

Page 39

patient care.
BY ATTORNEY CRENNEY:
Q.What was the explanation?
ATTORNEY JOHNSON:
I may object to this and
instruct the witness not to
answer the question. But I
don't know that. For that
reason, I want to confer with
the witness and see whether an
objection is appropriate.
OFF RECORD DISCUSSION
BY ATTORNEY CRENNEY:
Q.Why was Doctor Alajaji let go or what were the circumstances of his the termination of his relationship to the hospital?
ATTORNEY JOHNSON:
And I'm going to object
to that question or any similar
questions and instruct the
witness not to answer the
question. The reasons for my
objections first I believe it's
outside of the scope of

Page 40

permissible discovery insofar as
the witness has articulated that
he has no knowledge that it was
a patient care concern in any
regard. So therefore, I believe
that any information elicited on
this subject would be neither
relevant nor likely to lead to
admissible evidence.
Further I can represent,
as you know, that Doctor Alajaji
was not a hospital employee but
rather was employed by the
radiology group. And if the
question were to be asked
whether this witness has had any
conversations with any member of
the radiology group, with regard
to the reasons for Doctor
Alajaji's employment, the answer
would be in the negative.
So for that reason, we're
not going to get into that line
of inquiry without a court order
that we need to do so.

Page 41

ATTORNEY CRENNEY:
Okay. Well, let me just
say that no witness has been
willing to tell me why Doctor
Alajaji lost his staff
privileges. And it isn't for
the defense lawyers in this case
to make that decision. I'm
entitled to that information and
I will ask for sanctions. A
Plaintiff, in a case like this,
is put through the ringer, all
aspects of her personal life
examined, questioned. You for
instance, suggest that, you know
one, of the reasons --- you
suggest to a witness one of the
reasons that she's not working
is she does not want to work.
Okay. So all of her motives
come under close scrutiny. But
the Defendant who in the case
--- one who is in this case
clearly a negligent Defendant,
which everybody knows is somehow

Page 42

afforded this special privilege. It's not warranted. I shouldn't have to file a motion, and when I file a motion, some sort of written explanation is not going to be what I want. I want to come up and I want to question him about it. And that's what ought to happen, and you know if the question is answered you're right, we'll just move on. But I want to make that clear, and that goes for the next witness when I ask him. Regardless, you're not going to let him answer the question; is that correct?

ATTORNEY JOHNSON:

I have nothing more to add on the subject, other than of course I don't agree with the comments that you made.

ATTORNEY CRENNEY:

Those comments are right

Page 43

on the button. Because he's a the doctor, you're the Defendants, somehow he gets special treatment. You think he's entitled to it. He's not. You'll decide that I can't have that information.

BY ATTORNEY CRENNEY:

Q.You had at some point at least a belief that Paula could come back and do the job; correct?

A.Yes.

Q.And that was based principally on the functional capacity exam and recommendations made by Martin Maloney; is that correct?

A.Actually, the functional capacity exam, as a non-clinical person, I was not able to understand it. It identified a certain percentage of ability to --- you know a percentile rating of ability to do certain items in the job role. The actual evaluation of the workplace and the identification of the accommodations by Marty Maloney

Page 44

was what I was able to rely on as being a statement, if these specific things were done Paula given what his evaluation on that functional capacity exam, it was a certification that she would be able to do the job then. And so yes, I did believe that.

Q.Okay. But on your own you don't know one way or the other, correct? You're just relying on them; right?

ATTORNEY JOHNSON:

Object to the form of the question.

BY ATTORNEY CRENNEY:

Q.It's not your area of expertise?

A.I am relying on that, yes.

ATTORNEY CRENNEY:

That's all I have

ATTORNEY SLIMAK:

I have no questions at this time.

ATTORNEY MAIERHAOFER:

I have no questions.

ATTORNEY JOHNSON:

Nor do I, and we'll read

Page 45

the transcript.

* * * * * * * *

DEPOSITION CONCLUDED AT 4:37 P.M.

* * * * * * * *

EXHIBIT E

THE COURT OF COMMON PLEAS OF

CLEARFIELD COUNTY, PA

CIVIL DIVISION

* * * * * *

PAULA CARLSON and *
JAMIE CARLSON, *
Her husband, *
Plaintiffs * No.
* 2006-563-CD
JERJIS T. ALAJAJI,*
M.D., DUBOIS *
RADIOLOGISTS, INC.*
And DUBOIS *
REGIONAL MEDICAL *
CENTER, *
Defendants *

* * * * * *

DEPOSITION OF

MARTY MALONEY

December 8, 2006

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by the certifying agency

Page 2

DEPOSITION
OF

MARTY MALONEY, was taken on behalf of the Plaintiffs herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Lacey C. Gray, a Court Reporter and Notary Public, in and for the Commonwealth of Pennsylvania, at Dubois Regional Medical Center, Home Health Building, 100 Hospital Avenue, Dubois, Pennsylvania, on Friday, December 8, 2006 at 12:04 p.m.

Page 3

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Page 5

INDEX

WITNESS: MARTY MALONEY
EXAMINATION
By Attorney Crenney 8 - 52
EXAMINATION
By Attorney Slimak 58 - 80
RE-EXAMINATION
By Attorney Crenney 81 -95
CERTIFICATE 96

Page 6

EXHIBIT PAGE

NUMBER	IDENTIFICATION	PAGE IDENTIFIED
One	FCE Report	18
Two	Jobsite Analysis	23
Three	Job Description	28
Four	FCE Report	--

Page 7

OBJECTION PAGE

ATTORNEY PAGE

Johnson: 14, 14, 14, 15, 39, 40, 81, 82, 90, 91, 93, 94, 94

Slimak: 20, 82, 82, 83, 91, 91, 92, 94, 94

Crenney: 63, 63, 78, 79

Page 8

PROCEEDINGS

- - - - - - - - - - - -

MARTY MALONEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

- - - - - - - - - - - -

EXAMINATION

BY ATTORNEY CRENNEY:

Q. Would you state your name, please?

A. My name is Marty Maloney. I'm the manager of the physical therapy department here at the hospital.

Q. Okay. Marty, I'm Tom Crenney, Paula's lawyer.

A. Okay.

Q. I'm going to ask you a few questions, a few about your background and your work generally and then a little bit about the functional capacity ---

A. Sure.

Q. --- test that you did and that will be it. You should be on your way and back to work. I shouldn't be too long. Where do you live?

Page 9

A. I live in DuBois.

Q. Is that your home town?

A. Originally from Saint Mary's.

ATTORNEY CRENNEY:

Where are you from, Mr. Johnson, Bradford?

ATTORNEY JOHNSON:

I'm from Kane.

A. Right up the road.

OFF RECORD DISCUSSION

BY ATTORNEY CRENNEY:

Q. Did you go to high school?

A. Yes.

Q. And what year did you graduate?

A. 1985.

Q. Did you further your education?

A. Yeah, I went to Penn State for two years, general studies.

Q. Which campus?

A. DuBois here.

Q. Okay.

A. And then I got my Bachelor's in Physical Therapy at Daemen College.

Q. Where?

A. Daemen College in Buffalo.

Page 10

Q. How do you spell that?
A. D-A-E-M-E-N. And then I'm finishing up my MBA.
Q. Okay. And is that a Master's in Business Administration?
A. Yes.
Q. Is that related in any way to physical therapy or what you're doing now?
A. No.
Q. And where are you doing your MBA?
A. It is called Kennedy Western University.
Q. And where is that?
A. That's actually located in Wyoming. It's a long distance.
Q. And are you getting pretty close?
A. Yeah, actually I submitted my thesis so hopefully, it will get approved and we'll be done.
Q. Okay. Are you planning to do something other than be a therapist, is that why you're getting your MBA?

Page 11

A. The MBA is just to help me with some of my administrative duties here at the hospital.
Q. Okay. Have you been in the military?
A. No.
Q. And are you employed presently?
A. Yes.
Q. By whom are you employed?
A. DRMC.
Q. And how long have you been employed by DRMC?
A. It will be 14 years, I believe, in June or July of '07.
Q. And you are ---?
A. Thirty-nine (39).
Q. Thirty-nine (39)?
A. Thirty-nine (39).
Q. What's the best job you ever had, other than the one here at DM --- DRMC?
A. I worked at the Altoona Rehab before coming here.
Q. Is that also a physical therapy job?

Page 12

A. Yes.
Q. And your current position is what?
A. I'm the manager of the PT, OT and speech departments.
Q. And how long have you held that position?
A. Probably about five or six years. I'm not sure.
Q. Who is George Fatula (phonetic)?
A. He is one of the therapists that works with me.
Q. Are you his supervisor?
A. Yes.
Q. How long have you been his supervisor?
A. Let's see, George probably came on '94, 95, so 10 to 12 years.
Q. Okay. The functional capacity exam, is that the proper name for it?
A. Yes.
Q. FCE?
A. Uh-huh (yes).
Q. Does George do a lot of those?

Page 13

A. Yes.
Q. Does he do most of them?
A. He does --- he splits it between himself and we have another clinician, Julie Miller, who also does some of those.
Q. How long has Julie Miller been with you?
A. Thirteen (13) years.
Q. Okay. So is it accurate that as a general proposition, Ms. Miller does about half of those and Mr. Fatula does about half?
A. Yes, and I do them occasionally. I did those --- all of the functional capacities before either were on board.
Q. Okay. Day to day here in 2006, how often do you do a functional capacity exam?
A. Probably one or two a year.
Q. Okay. Was George Fatula the therapist for Paula Carlson?
A. Yes.
Q. In the normal course of events

Page 14

would he have done her functional capacity?

ATTORNEY JOHNSON: Object to the form of the question.

BY ATTORNEY CRENNEY:

Q. You can answer.

A. George or Julie would typically do a functional capacity examination.

Q. And typically would have done Paula's; correct?

ATTORNEY JOHNSON: Object to the form of the question.

BY ATTORNEY CRENNEY:

Q. Would they typically have done Paula's?

ATTORNEY JOHNSON: Same objection.

A. Either or.

BY ATTORNEY CRENNEY:

Q. You can answer.

A. Either or.

Q. But you did it; correct?

A. Yes.

Page 15

Q. And why was that?

A. George was treating Paula at the time and he just --- I'm going to try to think here. He felt that it would be better that I did the functional capacity examination.

Q. Was George afraid that he would have to fail her?

ATTORNEY JOHNSON: Object to the form of the question. No proper foundation.

A. Yeah, I really --- I can't answer exact --- I don't --- I don't know why.

BY ATTORNEY CRENNEY:

Q. In any event, did George ask you to do the test?

A. Yes.

Q. Okay. And it's your testimony that you're not sure why?

A. I can't recall at this time, no. That's correct.

Q. And my suggestion that it was because he was afraid she was failed

Page 16

does not jog your memory?

A. No.

Q. Did anyone else talk to you about Paula before you did that test and reported your results?

A. No.

Q. Anybody from the hospital, anybody at all?

A. No.

Q. Did you understand Paula's history at the time that you did the exam?

A. I understood that --- I can't --- I can't remember exactly what her medical history was, other than some sort of tumor was removed. We discussed that which is recorded on the functional capacity. But ---.

Q. Okay. Did you know she had been employed down at the cancer center?

A. Yes.

Q. And did you know she was currently off work?

A. Yes, she shared that with me.

Page 17

Q. And was it your understanding when she presented for this test that she wanted to go back to work?

A. I believe that's the discussion she and I had.

Q. Had you known her before --- strike that question.

Did you know who she was before she came in that day and presented for the test?

A. Socially. We said hi in the hall.

Q. She was maybe an acquaintance, would that be a fair description?

A. Somebody that I was familiar with, sure.

Q. Not a good friend or anything like that, but somebody you knew?

A. Someone I could say hi to, yes.

Q. Certainly, you were not unfriendly with her; correct?

A. That's correct.

Q. All right. Let me give you a copy of the test.

ATTORNEY CRENNEY:

Page 18

We can mark that.
OFF RECORD DISCUSSION
(Maloney Deposition Exhibit Number One marked for identification.)
BY ATTORNEY CRENNEY:
Q. And we mentioned the history and as is indicated in the first paragraph of the report, you knew that there had been a giant cell tumor and a partial removal of the distal radius; is that right?
A. Yes.
Q. Did you encourage her doing the test?
A. What do you mean by encouraged?
Q. Well, did you say to her, keep at it, you can do it, do your best?
A. I don't recall doing that, no.
Q. Do you normally do that? Do you normally encourage people that are doing this test?
A. No.
Q. So if you did do that, that

Page 19

would be unusual; is that correct?
A. It would be unusual, yes.
Q. Now, is it your testimony that you do not recall doing it or that you did not do it? And I want to make sure you understand the difference in what you'd be telling me; okay? Do you understand the difference between those two things?
A. I believe I do.
Q. Okay. Is it your testimony that you didn't say those kinds of things to her or that you just don't remember saying those things?
A. I don't recall.
Q. Do you recall feeling that you wanted her to pass?
A. I want everybody to pass, but that's --- the functional capacity is just an objective series of tests that we perform.
Q. I understand that. And I'm sure you want everybody to do well and be in good health. What I'm asking you is, do you recall especially

Page 20

wanting this candidate to pass the test?
ATTORNEY SLIMAK:
I'm just going to object to the use of the word pass. Form of the question.
ATTORNEY CRENNEY:
Okay.
A. Again I want everybody to do well with this. I don't know that I felt any differently for Paula versus anyone else that I have ever done this test with.
BY ATTORNEY CRENNEY:
Q. Okay. How long is --- strike that.
Are all of these tests the same length of time?
A. Depends on the candidate, the discussions that you have. Everybody is a little bit different. Every test is a little bit different. Some people talk more, some people may require more rest between sessions. It's all based on, you know, how the

Page 21

individual feels and how they're performing.
Q. Okay. Can you give me an average for the length of time that these tests take?
A. Sure. One to two hours would be the typical amount of time.
Q. Do you know how long Paula's test took on March 8th, 2006?
A. No, I don't remember the exact amount of time.
Q. Are you familiar with the duties and work requirements of a radiation therapist?
A. Yes.
Q. Have you ever worked as a radiation therapist?
A. No.
Q. Have you ever worked in the department?
A. No.
Q. How did you get familiar with the duties of a radiation therapist?
A. I did a worksite analysis following the functional capacity.

Page 22

Q. **Following?**
A. Following.
Q. **Tell me about that, what did you do?**
A. Actually, do you have a copy of the analysis?
Q. **I have the test itself. Is this the analysis?**
A. No.
Q. **Okay.**
ATTORNEY CRENNEY:
We can mark this as Number Two if that's all right. I don't know if I have a copy of this.
ATTORNEY SLIMAK:
Yes, I'll be glad to provide an extra copy of that. I have made a couple for today.
ATTORNEY CRENNEY:
Okay.
ATTORNEY JOHNSON:
It was produced.
ATTORNEY SLIMAK:
Yes, I received it in

Page 23

discovery from the hospital.
ATTORNEY CRENNEY:
Why don't we mark that as Number Two.
(Maloney Deposition Exhibit Number Two marked for identification.)
BY ATTORNEY CRENNEY:
Q. **All right. And this is the analysis you did on 4/17/06?**
A. Yes.
Q. **Is there a protocol, a written protocol, for functional capacity exam?**
A. This is our format. This is the format that we use.
Q. **And you have held up Exhibit One; correct?**
A. Yes.
Q. **And what I'm asking you is there a written protocol for such an exam?**
A. There is probably many written protocols out there. Ours is modeled

Page 24

after the Blakenship Functional Capacity Examination.
Q. **And do you have such a written protocol onsite in your offices?**
A. I'm not sure. We have this, this is the format that we use. I don't know that there's a protocol. I'm not quite sure what you're asking.
Q. **Is there something written out that you follow that guides you in what you do in a functional capacity?**
A. Yes, these are guidelines that we follow, yes.
Q. **And do you have them?**
A. I don't have them with me but I can produce those.
Q. **And they're in your offices?**
A. Sure.
Q. **And is there a name for them, are they called the Blankenship protocol or ---?**
A. This is modeled after the Blakenship Functional Capacity. This information is taken from his information.

Page 25

Q. **Do you always do an analysis, a worksite analysis like number two or was that something special that you did in this case?**
A. Many times we'll suggest in our recommendations, which I did in the functional capacity at evaluation, we make recommendations based on what we've found. And at that time on 3/9/06, I recommended that a worksite analysis or worksite modification be done. Also an ergonomic evaluation be done to make sure that the physical demand characteristics listed were actually what needed to be followed.
Q. **It says here you recommended a worksite modification?**
A. Yes.
Q. **What does that mean?**
A. Worksite modification and an ergonomic evaluation would be where we would go in and look at the worksite, see if there's some opportunities to modify the job to make it safer or easier for someone to perform their

Page 26

job.
Q. So are you saying you weren't really recommended --- recommending in this paragraph, the last paragraph of Exhibit One, you weren't really recommending that they modify the worksite, is that your testimony?
A. I was recommending that an ergonomic evaluation should be done for --- to see if there was an opportunity for worksite modification and to see if the physical demands for the job were actually accurate.
Q. Okay. Were the physical demands for the job accurate?
A. On the worksite analysis, I have the different weights and descriptions. Let me see. No, the weights weren't accurate.
Q. How were they inaccurate?
A. The weights were actually less than what was listed on the physical demand.
Q. Can you be specific, please?
A. Yes, I'm just trying to find

Page 27

the maximum weight here that was handled. I believe the heaviest weight that had to be handled was there was a vacuum machine at 35 pounds which would be on the second page.
Q. I'm going to have to share with you because I don't have a copy. I'm so sorry. Is this the vacuum?
A. Oh, yes, I'm sorry, these are overhead lifts. I can ---.
Q. Is this a vacuum cleaner?
A. It's some type of vacuum. I'm not sure what exactly it was used for.
Q. Do you know what it is?
A. Yeah, it's a box.
Q. To vacuum what?
A. I believe it is to vacuum some of the molds that they had. I believe it --- they suck the air out of the molding material, but I'm not sure.
Q. What molding material?
A. Where was this --- it would be a machine that they used in their simulator room. But I'm looking back

Page 28

at the physical demands, lift overhead, there was --- let me refer to that.
ATTORNEY CRENNEY:
Why don't we label the physical demands while we're at it, Number Three.
(Maloney Deposition Exhibit Number Three marked for identification.)
A. Referring to the overhead lifts on the third page, it looks like 35 inches was the highest height to lift and that weight was at 18 pounds. That would be somewhere in here.
BY ATTORNEY CRENNEY:
Q. Okay. This is a cone --- is then added and slides into place at 65.5 inches and the largest cone weighs 18 pounds ---
A. Yes.
Q. --- done standing; is that right?
A. Yes.

Page 29

Q. What kind of cone was it?
A. It's --- I don't know the technical term but there are different areas that, I guess, they use in the radiation room and this cone was fabricated like in a frame and they use that to, I guess, direct and protect when their shooting the radiation. But again, I'm not --- I have no --- you know, I don't know exactly.
Q. And so it's your testimony that 50 pounds, lifting 50 pounds was not required to do anything?
A. Overhead, or anything, yes.
Q. Anything. So you never had to lift 50 pounds period, is that your testimony?
A. When I did the simulation, I didn't find anything that required 50 pounds.
Q. Okay. Did you look at the process or chemicals?
A. Yes. Yeah, if you look on the first page, Sheila reports that she

Page 30

does --- Sheila would be the supervisor, she does the most of the chemical dumping, she reported that she did that the majority of the time.

Q. Okay. So did those --- for her to do that test did she have to be able to lift 50 pounds, she, Sheila?

A. Sheila?

Q. Yeah, you just mentioned Sheila did that task.

A. Uh-huh (yes).

Q. I'm asking to do that task, did she have to lift 50 pounds?

A. I'm not sure I understand what you're asking.

Q. Okay. I'm asking you about the process or chemicals and they're on Exhibit Three. They're listed ---.

A. Yes.

Q. Number one it says lift overhead 1 to 50 pounds; ---

A. Uh-huh (yes).

Q. --- correct?

A. Yes.

Q. Okay. Is this a Hahne document

Page 31

by the way, Number Three?

A. Yes.

Q. And you're telling me --- at least you're telling me Paula didn't have to lift 50 pounds; correct?

A. I'm looking at page three, I have lifting the chemicals 27 inches high, chemicals are in 30-pound jugs, and then poured into containers. So she would have to handle 30 pounds when dumping the chemicals and Sheila or whoever is working with the chemicals.

Q. Was it Sheila's testimony that she did all of the work with the chemicals, the processor chemicals that are mentioned in Exhibit Three, the radiation therapist, physical demands document?

A. She reported to me that she does that almost exclusively.

Q. Did she say if Paula never had to do that?

A. I don't recall.

Q. Do you usually do this jobsite

Page 32

analysis radiation --- strike that.

Do you usually do this jobsite analysis in conjunction with the functional capacity exam?

A. It's usually a recommendation that we made for any functional capacity evaluation.

Q. Okay. Have you done any functional capacity exam since you did Paula's?

A. No.

Q. Okay. And so that has been, what, almost nine months right?

A. Yes.

Q. All right. Prior to doing Paula's, when was the last one you did, if you can remember?

A. Probably six months.

Q. When was the last time you did a jobsite analysis as part of a functional capacity exam, you?

A. I have done ergonomic analysis for a lot of our people in the hospital, which we go in --- what we do is we go into a work area and we

Page 33

look at different things, make recommendations based on that. I have not done anything as detailed as this. This would be the first time I've done a more detailed worksite analysis or ergonomic analysis.

Q. Okay. Let me ask that question again. So I make sure I understand your testimony.

A. Sure.

Q. My question was when was the last time before you did this with Paula Carlson --- and if the answer you never did it, that's fine, but I just need to understand. When was the last time --- before you did this with Paula Carlson in March 2006, when was the last time you did a jobsite analysis in conjunction with a functional capacity exam?

A. This would have been the first time.

Q. And were you trained to do that? Did you get any special training that related to this, what

Page 34

you did here with Paula, this jobsite analysis?
A. The training would be included with my education, physical therapy education.
Q. Can you point to anything specific where you were trained to do a jobsite analysis like the one you did for Paula?
A. Nothing --- with my training, you know, we were schooled on different heights and thoughts and body mechanics and things like that. So based on that, I also talked with George Fatula, he's the --- he has some ergonomic certifications and he and I --- he helped me design the process.
Q. Did he help you do this project?
A. He suggested things to look for, but he did not work on the report with me or some into the worksite with me.
Q. You said he has an ergonomic certification?
A. He has several certification in ergonomics.
Q. Do you have any?
A. No.
Q. But he did not go to the worksite; correct?
A. George was actually out. He had a herniated disc so he was out for six weeks.
Q. Now, you say you talked to Sheila?
A. Yes.
Q. What was Sheila's last name?
A. Welsh.
Q. And she is?
A. She's the supervisor.
Q. Immediate supervisor for Paula?
A. That's what --- yeah, I guess.
Q. You can say you're not sure?
A. I'm not sure.
Q. Okay. Fair enough. Did you talk to anybody else other than Sheila?
A. Different x-ray techs or whatever their title is. They were in there and I was just getting feedback, asking them to help me understand the process. So they went through some of the processes with me.
Q. Did someone ask you to do this?
A. I'm not sure where this came from.
Q. I mean, you've never done one before you told me. And you've been with the hospital 14 years; right?
A. Uh-huh (yes).
Q. And I understand that you don't do these very often and so I'm wondering why you did it in this case and so that's why I'm asking, did somebody ask you to do this?
A. I'm not sure if this --- I'm not sure where this came from. The physician's office or --- I'm not sure.
Q. Okay. And I assume it's not in the document, obviously I didn't look --- at least I didn't look carefully at the document before today. So the document --- Exhibit Two does not tell us whose idea this was?
A. I don't believe so.
Q. Do you believe somebody had to ask you, I mean, and what I mean by that question is would you have done this on your own without any prompting or request from somebody else or some other entity?
A. No.
Q. So somebody asked you to do it; right?
A. Yes.
Q. You just don't know who?
A. I can't recall.
Q. Is there anything in Exhibit Two about lifting or maneuvering patients?
A. There is just reference that there are two clinicians in the areas to help assist patients if needed.
Q. And where is that, sir?
A. Number one and then down below, it says addresses the procedure.
Q. Do you recall talking to anyone

Page 38

--- strike that.
Is there anything in that report beyond what you've showed me about the physical demands involved in lifting, maneuvering and supporting patients incident to the process of taking x-rays?
A. Can you ask your question again?
Q. Beyond what you've showed me, is there anything that you have recorded that speaks to the issue involving the physical demands of the worker in lifting, supporting, maneuvering patients incident to the process of x-raying?
A. No, other than number three, patient was brought in, assisted onto the table and a pillowcase is placed under the patient to be used for adjustment. The clinicians can pull on this to get the patients into position.
Q. So how much strength is required to do this, that's not

Page 39

addressed here; correct?
A. That's correct.
Q. Is it fair to say you don't know how much strength is required to perform that activity?
A. It is going to vary, yes.
Q. Is it fair to say you don't know whether Paula can do that or not?
A. It wasn't tested here.
Q. Okay. Is it fair to say that you're not sure when Paula can perform the physical demands of her job or not?
ATTORNEY JOHNSON:
Object to the form of the question.
A. I can just refer to my summary here. Based on the information that we collected and what I saw, there's an indication based on those numbers that she could possibly return, but it's also noticed that there are real work and real life issues which may or may not, you know, be considered or covered with this report.

Page 40

BY ATTORNEY CRENNEY:
Q. Okay. Let me look at that. After reviewing these materials and reviewing that paragraph specifically ---
A. Uh-huh (yes).
Q. --- would it be accurate to say that the answer to my question is the question can she in reality perform the physical demands of her job, that your answer would be maybe, maybe not?
ATTORNEY JOHNSON:
Object to the form of the question.
A. Based on the functional capacity and the physical demands that we have from Hahne and the worksite analysis, it looks as though she would be able to return to work. Again, barring real life issues or real job issues which can't be covered here, I'm not sure exactly how to answer that question.
BY ATTORNEY CRENNEY:
Q. Do you feel confident that you

Page 41

understand thoroughly and adequately to your own satisfaction what the physical demands of the job really are?
A. Yes.
Q. You had her for an hour or two; correct?
A. That's correct.
Q. In terms of a person's ability to do a job, are there issues of repetition and endurance that are not easily tested in an hour or two, in a functional capacity exam setting?
A. The different tasks that we performed in the functional capacity examination are all based on studies and projections that the government has done in the past or in our case Blankenship has done research on. So they're projections based on performing a certain amount of repetitions or a certain distance for various tasks.
Q. Is it fair to say that while there are projections that you make

Page 42

based on this foundation, these studies, that how people will react to actually doing their job, how much endurance they'll have and how they will respond to the repetition varies from person to person?
A. Yes.
Q. All right. Paula was not as strong as the average female to begin with, that's true, isn't it?
A. I can't --- let me see here.
Q. Didn't your own studies show she was ---?
A. Yeah, I'm referring to that.
Q. Okay.
A. She scored lower in some of the strength tests and there were also some --- you can see with the active things that she did, the active lift, they're broke down into different categories defined by the U.S. Department of Labor figures.
Q. By the way, it's fair to say that some people try harder than other in this test; correct?

Page 43

A. Sure.
Q. And your results were that Paula tried hard, she did her best; correct?
A. That's how I remember it, yes.
Q. In fact, that's how you recorded it; correct?
A. Yes.
Q. That's what the document shows? And some people magnify their symptoms, their pain or discomfort; correct?
A. That's correct.
Q. And Paula did not do that; right? She was negative in symptom magnification; correct?
A. Yes.
Q. And it was, as we discussed before, your overall impression that she wanted to go back to work; correct?
A. I'm not sure that we discussed the fact that she wanted to go back to work but that was the assumption.
Q. I'm sure in your business you

Page 44

run into some people that you're pretty sure don't want to go back to work; is that correct?
A. Yes.
Q. She was certainly not in that category?
A. I don't remember that impression, no.
Q. Did you compute or calculate an impairment rating for Paula Carlson, a whole body impairment rating?
A. I don't understand the question.
Q. Do you know what an AMA impairment rating is?
A. No.
Q. Obviously, you did not do that and you're not qualified to do that; correct?
A. That's correct.
Q. Did you diagnose Paula as suffering from sensitivity of the right forearm and wrist with associated weakness of the right forearm and wrist?

Page 45

A. I'm not able to diagnose.
Q. Was your test consistent with those symptoms and conditions?
A. The hand grip test showed that the right hand was weaker than the left. There's some limitations with the wrist.
Q. What limitations did you determine she had with the right wrist and forearm?
A. She's --- patient's wrist is flexed at approximately ten degrees extension, secondary to internal fixation device. She has no active flexion or radial or ulnar deviation in the right hand. So there's range of motion deficits.
Q. Did you ever suggest to anyone that accommodations be made for Paula in her work location in the radiology?
A. Yes.
Q. To whom did you make that suggestion?
A. I included it in this report, the work study analysis report.

Page 46

Q. And could you point me to that?
A. Sure.
Q. Thank you.
A. I believe there's some other recommendations in the summary.
Q. And what are they specifically if you could --- a job description change is recommended. It says Cerrobend blocks. What did you recommend in that regard?
A. In Paula's case, there was a clamp that they used.
Q. Can we share? I'm so sorry.
A. Sure.
Q. Go ahead, sir.
A. I recommended a simpler, easier clamping mechanism when making the Cerrobend blocks.
Q. To whom did you make that recommendation?
A. I believe Rose Campbell and Bob McKee got a copy of this report. I'm not sure who else.
Q. Is it possible Rose Campbell and/or Bob McKee asked you to do this

Page 47

project?
A. It's possible. I can't recall though.
Q. Did you receive the request in writing, do you recall?
A. I don't believe. Unless there's a prescription. Like I said, I'm not sure if it came from the physician or where.
Q. If it came from the physician there should be a ---.
A. There would probably be some sort of documentation.
Q. Right. And what is the breakdown electron cone holders? What is that?
A. They're just different components. I need to look at the report.
Q. Go ahead. I'm sorry.
A. Breakdown cone holder.
Q. If it's any help, what I recall is those cone holders are 18 pounds and I see you have 11 and a half there. Does that help you at all?

Page 48

A. There's different components. The total weight, I believe there's a frame and then there's --- the Cerrobend block sits down in the frame. So it looks like that I'm recommending that the different components be broke down to lighten up the weight when putting this piece.
Q. Okay. What is the next one there, Cerrobend blocks 15 pounds? Do you know what that is?
A. I'm looking up here, recommendation. The job description changes though, you're referring to are maximum weight at one time at 65.6 inches, shoulder level, be changed to 18 pounds.
Q. From what?
A. There is a Cerrobend block lift overhead at 50 pounds approximate on the physical demands.
Q. Okay.
A. And the process or chemicals I recommend that be changed to 30 pounds and I have the actual heights listed,

Page 49

which is approximately weight level --- waist level. So those are the recommendations I made regarding the physical demands that the hospital has in place. I also recommended developing a pulling component and develop a grip component.
Q. For what?
A. I believe the pulling component was referring to the task of using the sheet or pillow to adjust the patients. And the gripping component just for the clamps used for the --- making this Cerrobend mold.
Q. And then it says for the process or chemicals, 30 pounds lifted from 13 inches to 27 inches?
A. Yeah.
Q. Does that mean the other way around 27 to 13?
A. No, the handle is 13 inches from the floor, so when you would pick that up, it's approximately, what, 27.7 inches to dump it into the --- whatever the receptacle was that they

Page 50

dumped the chemicals in. So here it's listed as an overhead lift of 50 pounds and that's actually not occurring. It is 13 inches to 27 and a half inches, 30 pounds.

Q. Do you know whether or not these accommodations were made or offered?

A. The discussion that I had with rose was that she had talked to the staff and that they were willing to make these changes.

Q. That she had talked to them or she would talk to them?

A. She had talked.

Q. How much could Paula lift over her head, actually lift over her head, did you determine that?

A. In functional capacity shoulder to overhead was 23 pounds.

Q. Did you talk to Paula at all about this after the test?

A. I know that she and I talked. I can't remember if we talked before or after. I told her that I would be

Page 51

performing this. I just can't remember if that happened before or after the test.

Q. Have you seen the functional capacity test that was done in Blairsville, the second one?

A. No.

Q. Have you talked to anybody about that?

A. No.

Q. Okay. If a test was done June 27th, 2005, three months later, is it necessarily going to have the same results?

A. Without knowing what type of test they did, I ---.

Q. Are there different types of functional capacity tests?

A. There are different --- yes, there's ---.

Q. Well, let me show you this one then and ask you if you could look at it and just tell me if this is the same protocol that you used?

A. What was your question?

Page 52

Q. My question is, did they do the same protocol for the functional capacity exam as you did?

A. It looks as though they did some similar things, but I'm not real familiar with --- I'm not familiar exactly with their format.

Q. Okay.

ATTORNEY CRENNEY:

That's all I have for the witness.

BY ATTORNEY SLIMAK:

Q. Mr. Maloney, my name is Darryl Slimak. I have some questions for you, too.

A. Okay.

Q. Was your initial training in physical therapy, the Bachelor's degree that you've received from Daemen College in Buffalo, New York?

A. Yes.

Q. And then after that did you begin working in the physical therapy or rehabilitation field?

A. Yes.

Page 53

Q. Where did you begin working in that field?

A. Altoona Rehab.

Q. Is that Altoona HealthSouth Rehabilitation Hospital?

A. Yes.

Q. Do you know how large of a facility that is?

A. At the time I worked there, it was 66 beds and then they had several --- they had an outpatient center there and several satellite outpatient clinics.

Q. Is that a facility dedicated solely to physical therapy and rehabilitation?

A. They do inpatient rehab which involves PT, OT, speech, rec, soc, social work and whatever else is needed and then they also do the outpatient therapies, PT, OT and speech.

Q. Okay. You've been using those terms repeatedly both as to what you do and now in very summary form as to

Page 54

what they did and you helped participate in the rehabilitation program in Altoona?
A. Uh-huh (yes).
Q. Could you tell me, you worked in the physical therapy area over the years; correct?
A. Yes.
Q. What does physical therapy consist of on a day-to-day basis?
A. We do an assessment to ascertain what someone's limitations or problems may be, very simply and then we develop a treatment plan in conjunction with a diagnosis we receive from the doctor. Sometimes it will have specific things they want us to address, other times they'll ask us to evaluate and treat and then based on our findings, we'll develop a treatment plan to help the patient achieve goals to address any functional problems they may have or abnormalities.
Q. Now, how many years have you

Page 55

been doing that on a day-to-day basis?
A. I have been a physical therapist, it will be 7 --- 16 years.
Q. Okay. Now, you also mentioned OT, which I believe you at one point described as occupational therapy; is that correct?
A. Yes.
Q. Have you been doing occupational therapy or aspects of that over the years that you've been in practice as well?
A. No.
Q. Did you have specific training in occupational therapy?
A. No.
Q. With regard to occupational therapy on a day-to-day basis, what is occupational therapy?
A. It's --- the procedure is similar. They receive a diagnosis from a physician, again, with or without recommendations. It could be evaluate and treat or the doctor may be very specific in what they want.

Page 56

And again, they perform an assessment and based on that assessment and their findings, they'll develop a treatment plan, but their training and background is similar --- or different than a physical therapist.
Q. Now, you've indicated you've not been doing the occupational therapy aspects of this area. You have been doing ergonomic assessment over the years; is that correct?
A. Yes.
Q. How many years have you been doing ergonomic assessments?
A. Six, seven, something like that.
Q. How did you start doing ergonomic assessment, in what capacity and based on what past experience or training?
A. The hospital has really developed a good wellness program and it was in conjunction to the wellness program. It was more or less an initiative to make sure that people

Page 57

are in the right environment that's going to be conducive. And so we were approached years ago, the department, the PT department. And as a result, we'll go in and check out worksites and make sure that chairs are the right heights, computers are the right heights, it's just more of a wellness thing that we do here in the hospital just do keep our employees healthy.
Q. Are you doing the ergonomic assessment just at the DuBois hospital facility, itself, or are you doing them for other employers outside of the hospital if they would request some consultation for a wellness program?
A. We've done some for other companies in the area.
Q. If individuals at the hospital for whatever reasons would incur a work-related injury, is that something they may come to you to do an ergonomic assessment of their job in the hopes of returning them to a job

Page 58

that may need to be modified but they can do effectively?
A. Yes.
Q. And how commonly have you done that over the years?
A. It's a fairly common practice here in the hospital. If we know that there's an area that is having injuries or even if an employee makes that request, we'll go into the areas and just do an ergonomic evaluation of that area and make recommendations.
Q. With the ergonomic evaluation you do and the recommendations that you make, what types of things are you actually considering in those circumstances?
A. We're looking at heights, various heights, we're looking at the people's body mechanics, chairs, keyboards, computers, just the whole worksite. There are standards out there that the government has that, you know, you try to make sure that those things are in place.

Page 59

Q. Could you be looking at such things as amounts of weights they may need to move or lift or the various actions or repetitive natures of the job, that type of things, as well?
A. Yes.
Q. So you look at all aspects of their job to see how it may affect them ergonomically?
A. As much as we can, sure.
Q. Just so we have it, if you can, what does ergonomics mean?
A. It's just the --- I guess, it's more or less the science of body mechanics and for our purposes, it's just --- our focus is to make sure that people are in the best position --- for what we're doing here at the hospital, we're just trying to ensure that the patients' health or our employees' health is protected. So we want to make sure that the work environment is conducive and it is not going to prevent --- or cause any injury to the employee. So we want to

Page 60

make sure that we have the best, safest environment possible.
Q. Are ergonomic evaluations such as you've been describing something that at times you may do at the direction or request of a physician?
A. Sure.
Q. And that would include patients --- or excuse me --- well, patients of that physician but who may be employees of the hospital that have a work-related injury, for instance?
A. I'm not sure what you're asking.
Q. That's okay. In this particular case, there was an exhibit marked by Attorney Crenney. I do not have the number in front of me. But if I may move closer just to see which one it was. Mr. Crenney had marked it as Exhibit Number One for your deposition.
A. Uh-huh (yes).
Q. And this is the March 8th, 2006 functional capacity evaluation that

Page 61

you indicated you had performed and prepared this document with regard to Paula Carlson; is that correct?
A. Yes.
Q. Did you note on it a medical record number for Paula Carlson?
A. I don't see a medical record number on there.
Q. I just happened to see a number on the first page. It says MR Number ---.
A. Yes, you're right. I'm sorry.
Q. So it says 406631; correct?
A. That's correct.
Q. What would be the purpose of identifying a medical record number with regard to a functional capacity evaluation?
A. We --- with any physician order therapy, it's part of our requirements that we put a medical record number on it.
Q. Okay. Now, with regard to this particular report, did you address it to any physicians or someone else?

Page 62

A. This was sent to --- I believe, it was sent to Doctor Kenneth Yaw and Doctor Steven Graeca.
Q. And do you reflect that on your report where it says the date and then it says two and then you list Doctor Kenneth Yaw and Doctor Steven Graeca; is that correct?
A. That's correct.
Q. You indicated it's from yourself, Martin R. Maloney, PT; correct?
A. Yes.
Q. Regarding Paula Carlson's functional evaluation and then you list the medical record number; correct?
A. That's correct.
Q. Now, I saw in your report of this evaluation on the fourth page that you do make some specific recommendations; is that correct?
A. Yes.
Q. And is it accurate that that fourth page follows three earlier

Page 63

pages of fairly small print it looks like, at least on my copy, of assessments of various types of lifts, hand grips, work levels and other things as you list here; correct?
ATTORNEY CRENNEY:
Object to the form of the question.
BY ATTORNEY SLIMAK:
Q. In the course of performing a functional capacity evaluation, do you assess a multitude of areas relating to the patient as well, as to the various types of lifts or other activities that are going to be considered in the functional capacity evaluation?
ATTORNEY CRENNEY:
Object to the form.
BY ATTORNEY SLIMAK:
Q. You may answer.
A. Yes.
Q. Now, when you perform a functional capacity evaluation what types of parameters do you typically

Page 64

consider and that you would reflect on your report?
A. What do you mean by parameters?
Q. Well, there's some objections to the way I formed the question earlier, so I'm just going to ask you different --- in a different fashion the question of what parameters or what things did you test during your functional capacity evaluation of Paula Carlson on March 8th, 2006?
A. We did a series of static strength tests, series of three, took the average. We did maximum efforts tests which were various lifting positions. We also performed a symptom magnification portion of the test and we also did a nonmaterial handling portion of the test.
Q. Okay. And then you list the various subparts of each of those tests in this report; is that correct?
A. I believe there's a summary of each.
Q. Okay. And then that was then

Page 65

signed by yourself after it was completed on March 9th, 2006?
A. Yes.
Q. There was another document that Attorney Crenney marked that I wanted to ask some follow-up questions on.
A. Sure.
Q. And this one looks to be a jobsite analysis ---
A. Yes.
Q. --- for radiation therapists at Hahne; is that correct?
A. Yes.
Q. You have it marked as Exhibit Number Two?
A. That's correct.
Q. What was the date that that jobsite analysis or the radiation therapist at Hahne position was performed?
A. 4/17/06.
Q. So April 17th, 2006?
A. Yes.
Q. And you were the evaluator?
A. Yes.

Page 66

Q. I was looking at what I believe to be the third page of that exhibit, where it indicates an observation. It says treatment consult/radiation and then there's numbered items. Do you see what I'm referring to?
A. Yes.
Q. What is item number one that you noted in that section?
A. It states that there are always two clinicians in this area.
Q. Did you actually underline the word always in the sentence there are always two clinicians in this area?
A. Yes.
Q. Was there a particular reason why you put emphasis on that statement in your report?
A. That's --- it was emphasized to me that there are always two clinicians in that area.
Q. From your perspective in performing a jobsite analysis, did you find that potentially to be significant?

Page 67

A. I found it significant that there would be two people in there so that they could share the various tasks in there.
Q. Okay. In your assessment or your report, which is called, I'm sorry, the jobsite analysis, for the radiation therapist at Hahne, did you list then seven items that you were making for recommendations?
A. Yes.
Q. And what is the difference between that section with the seven specified recommendations and then you have another section below that that says job description changes recommended? I just want you to explain why there's those two recommendation sections.
A. The job description changes recommended were a more precise as far as they refer to the physical demand portion of the job description that the radiation therapist has listed, which would be Exhibit Three. That

Page 68

job description changes were targeted at the physical demand portion. The recommendations were observations that I had made suggestions to improve some of the processes that were occurring in the department.
Q. Improve them in what way?
A. For example, number one was to research and purchase an easier clamp system when they were making these Cerrobend molds, stepping platforms in the radiation room to decrease overhead and shoulder lifting. Do you want me to continue on through?
Q. Yes, please.
A. Breakdown of the electron cone holder on the radiation machine, so that you could kind of lighten the loads. There was a problem with the fix --- an image component that they were getting --- that they told me they were getting fixed. If I can remember right, it was just getting a piece of machinery out of the way to make the job a little bit easier.

Page 69

Q. Now, you make reference with regard to that item, I believe, here on item number four ---
A. Uh-huh (yes).
Q. --- to enable better body mechanics to be used.
A. Yes.
Q. What does that mean?
A. What that refers to is just maintaining a body position to kind of protect your back, not doing any irregular movements or putting your body in any positions that might cause injury.
Q. Now, I'm interested in item number five, I don't think you've explained that one yet. Would you proceed to do so?
A. If I can recall right, there was --- where they slide this cone component, they slide it above the patient or onto a machine. I'm not sure if it was above or where it was but they slide this piece of equipment or this cone component it into a piece

Page 70

of equipment and my recommendation was that two people hang onto this one placing it in the machine.

Q. How did you specifically record your recommendation in your report? What did you write?

A. I wrote two people place a cone components on the machine when a patient is already in the treatment position for patient safety. Then in parentheses, I wrote there are always two people in the room.

Q. Why did you write in that paragraph in recommendation the note in parentheses that there are always two people in the room, you mean the patient and the technician?

A. I was referring to there's always two clinicians in the room.

Q. The clinicians would be the radiation therapists?

A. That's how I understand it.

Q. Okay. And then you had some additional recommendations?

A. There's some carts or some film

Page 71

that I believe was transported once or twice a week that I believe they were carrying. I recommended a cart be purchased for the film to be transported and also the blue vacuum --- a cart for the blue box and vacuum, top level for the blue box, lower level for the vacuum. This would prevent unnecessary lifting and can be used to move this equipment without lifting it, can be stored behind the scanner, set up on lower cupboards and can be removed so that the cart can be stored there.

Q. Now, were these recommendations solely for Paula Carlson or were you making them for broader purposes?

A. These recommendations were recommendations I made for the entire department, the processes they had in place.

Q. Okay. And then you indicated, I believe, your testimony already that you also recommended some changes to the job description, which I think you

Page 72

said was Exhibit Three marked for your deposition by Attorney Crenney; is that right?

A. Yes.

Q. And what was the reason? I'm just not certain that I'm clear. You made the recommendations that the job description, Exhibit Three, as it existed at that time perhaps be considered for some changes?

A. Based on the observation, the measurements and weights that I took when I was in performing the worksite analysis, it showed that the some of the physical demands were not correct. That they were actually different and that was the basis for my recommendation that changed the job description to get a more accurate reflection on the heights and the weights that were to be handled. And also I also made suggestions on developing a pulling component and a grip component.

Q. Okay. What was your summary of

Page 73

your jobsite analysis, the radiation therapist position that you noted in your report of April 17th, 2006? Would you read it into the record, please?

A. The entire summary?

Q. Yes, because I may have some questions as we go through it.

A. Based on the functional capacity findings of 4/8/06, Paula falls into the light category for shoulder to overhead which states that the maximum lift carry at 33 pounds of the day eight hours.

Q. You said 33 pounds?

A. Or 33 percent, I'm sorry.

Q. Read that again.

A. Based on the functional capacity findings of 4/8/06, Paula falls into the light category for shoulder to overhead lift --- overhead, which states that the maximum lift carry at 33 percent of the day 8 hours is 20 pounds. Breaking a typical 10-hour day into

Page 74

minutes, 600 and subtracting 50 minutes for breaks, it gives 510, that should be minutes --- 510 in working minutes, 40 treatment set ups a day of 3 minutes is 120 minutes with the heaviest weight handled being the cone at 18 pounds. The heaviest cone in parentheses. 120 minutes divided by 515-minute shows at 24 percent of the time, 20 pounds, parenthesis, 18 pounds will be handled. It should also be known that not all subs require electron cone holder, cone and block placement and that many of the set ups are lighter than the heaviest set up weight components which would impact to 24 percent by lowering its value.

Q. What do you mean by that last sentence in particular?

A. At most 24 percent of the time 20 pounds or 18 pounds would be handled at the heaviest scenario, but not all of the setups require an 18-pound setup. So I would just

Page 75

referring that 24 percent --- it would actually be lower than 24 percent of the time where she would be handling 18 pounds.

Q. Now, is your summary of the jobsite analysis through this point in time, as you have read it to us, based on the job as it presently existed at the time you did the analysis?

A. Yes.

Q. And so that the did not take into consideration the various recommendations that we've just discussed; correct?

A. No.

Q. Would you go on then to explain what other aspects of your jobsite analysis for the radiation therapist position that you summarized?

A. Employing quick clamps and/or vice scripts in the Cerrobend process is recommended. There are many strong, easy to close and release commercial clamps and/or vice grips, which are cheaply available today

Page 76

which could be possibly used as an alternative to the clamps presently used. The amount of force used to open and close these devices is considerably less than the present clamping system.

Q. Did you then go on to indicate whether or not, in your opinion, Paula Carlson would be able to perform aspects of her job?

A. Do you want me to read that?

Q. If you did, yes. Please, go ahead.

A. The functional capacity finding indicates that Paula will be able to perform all aspects of her job requirements with the exception of using the clamps presently utilized in the Cerrobend process, parentheses, seek quick clamp recommendations, end of parentheses.

Q. What do you mean by that parenthetical statement?

A. I was referring back to recommendation number one, that

Page 77

research be done to purchase a quick clamp for the Cerrobend mold process.

Q. Was your intentions to make that aspect of the job easier for Paula in particular?

A. I think it was the intent in this case it was referring to --- I was referring that Paula was unable to manipulate the present clamp so I recommended that a different clamping system be researched.

Q. Okay. And would you then continue with the balance of your assessment --- summary, excuse me.

A. The FCE is a simulation of work weights to be handled and there may be some real work lifting situations and positions which differ somewhat from the FCE lifts. These findings are based on government projections and studies relating to maximum efforts and nonmaterial handling which may differ from real life performances at work. As with any employee, if Paula returns to work, observation and

Page 78

evaluation of her ability to safely perform her job requirements will need to take place on an ongoing basis.

Q. So let me ask you a question about that aspect of your report. You indicated that you frequently, in your position at the DuBois Regional Medical Center, do perform these ergonomic evaluations of various work stations; correct?

A. Uh-huh (yes).

ATTORNEY CRENNEY:
Object to the form of the question.

BY ATTORNEY SLIMAK:

Q. In your capacity as a therapist at DuBois Regional Medical Center do you perform the ergonomic evaluations of employee work stations?

A. Yes.

Q. And do you ever follow up after you make recommendations with regard to ergonomic changes to evaluate the employee actually on a return to work performing the position?

Page 79

ATTORNEY CRENNEY:
Object to the form.

A. The ergonomic evaluations that we do are --- basically, you know, we do our measurements and stuff and we make our recommendations. I don't recall following up. It is usually left in the manager's hands.

BY ATTORNEY SLIMAK:

Q. Do you know, are the managers free to contact you to ask if you need to reassess?

A. Sure.

Q. And would you if you were so contacted?

A. Yes.

Q. Did you indicate in your summary when you were making any recommendations to possibly increase patient and employee safety?

A. Yes, I referred to --- I write the other recommendations are made possibly to increase patient and employee safety.

Q. Did you give any indication of whether or not your recommendations would be subject to supervisor or managerial evaluation of whether or not these were practical considerations for the performance of the job?

A. Yes, I did refer to that.

Q. Did you give any indication if you would be available to be contacted if there would be any questions regarding the report and recommendations?

A. Yes.

ATTORNEY SLIMAK:
That's all of the additional questions I have for you at this time. I thank you.

ATTORNEY MAIERHOFER:
Sir, I have no questions.

A. Good. Thank you.

ATTORNEY MAIERHOFER:
You're welcome.

ATTORNEY JOHNSON:
I don't have any more

Page 80

Page 81

questions.

RE-EXAMINATION

BY ATTORNEY CRENNEY:

Q. Do you consider yourself an expert on ergonomics?

ATTORNEY JOHNSON:
Object to the form of the question.

A. How do you define expert?

BY ATTORNEY CRENNEY:

Q. I'll withdraw the question. Mr. Slimak asked you about this medical number, the MR number on Exhibit One.

A. Yes.

Q. And I believe you testified that if such a test is ordered by a physician that this number is required; correct?

A. That's correct.

Q. Can we agree there's no such number on Exhibit Two, the jobsite analysis?

A. Yes.

Q. Okay. And would that suggest

Page 82

to you that it was not requested by a physician since having an MR number would be required if a physician requested it?
ATTORNEY SLIMAK:
Objection to the form.
A. I just can't recall to tell you the truth.
BY ATTORNEY CRENNEY:
Q. The record will speak for itself. You're not changing your testimony. An MR number is required if a physician orders a test; correct?
ATTORNEY JOHNSON:
Objection to the form of the question.
ATTORNEY SLIMAK:
Same objection.
ATTORNEY CRENNEY:
I'll withdraw and let your testimony stand.
BY ATTORNEY CRENNEY:
Q. I was confused about the testimony regarding two clinicians in that area?

Page 83

A. Sure.
Q. In what area are you talking about when you say there are always two clinicians?
ATTORNEY SLIMAK:
Objection to the form.
BY ATTORNEY CRENNEY:
Q. Counsel mentioned to you --- questioned you about this issue, actually about you underlined the word always; okay?
A. Yes.
Q. So that's what I'm referring to. And as I recall, it said two clinicians in that area somewhere. Do you remember that?
A. Yes.
Q. Okay. What area?
A. That would be the treatment console and radiation area.
Q. What is the treatment console and radiation area?
A. That's --- I believe that's where they administer the radiation treatments.

Page 84

Q. Do you know?
A. I'm not positive, no.
Q. Okay. Is it your understanding that at all times when a radiation therapist is doing their job that two people are present; is that your understanding? Two clinicians are present?
A. In the simulator room I've noted in 3A, in most cases there are two clinicians in the area. If a clinician was sick, one clinician would be present, an assistant --- assistance with tasks would be made available as needed. And the treatment console and radiation area, they were adamant that there were always two clinicians in this area.
Q. What is the difference between those two areas, if you know, that you just read about?
A. There is just different tasks, performance of tasks.
Q. What are the two areas, tell me the name of the one where they were

Page 85

adamant that there were always two?
A. That would be the treatment console and radiation area.
Q. Treatment consult?
A. Console.
Q. S-O-L-E?
A. Yeah.
Q. Radiation area. Do you know what goes on there?
A. I could tell you.
Q. Let me just stop you for a moment. Without looking at your report, do you know? And I'm happy to let you look in a moment. Without looking at your report, do you know?
A. In the treatment console area?
Q. Treatment console radiation area, yeah.
A. I believe there's radiation therapy treatment going on there.
Q. You mean that's where they do x-rays?
A. No, that's where they would do the radiation treatment for cancer patients.

Page 86

Q. **Okay. All right. And they say there are always two people when they're doing that?**
A. Yes.
Q. **And what's the other area?**
A. The other area was the simulator room.
Q. **What goes on there?**
A. You want me to look here or ---?
Q. **Do you know off the top of your head?**
A. I just know that the patients are positioned and there's some type of device in there that they use to --- I don't know if it's some type of x-ray device or --- but I don't know exactly what the procedure is that they're performing in this room.
Q. **What is the goal of what they're doing in the simulator room? What are they trying to accomplish?**
A. Am I allowed to refer to the ---?
Q. **In a minute. I just want to**

Page 87

know if you know off the top of your head.
A. You're asking me what?
Q. **What are they trying to accomplish in the simulator room.**
A. I believe there was --- I know they were doing some molding for different things in there but the exact procedure, I can't speak to that.
Q. **Okay. Go ahead and look. No problem.**
A. All right.
ATTORNEY JOHNSON:
Do you have additional questions or are you asking him to do something further?
ATTORNEY CRENNEY:
He asked if he could look. I'm just permitting him to look. He need not look if he doesn't want to.
ATTORNEY JOHNSON:
Well, you were just asking for general recollection

Page 88

without reference to his report.
ATTORNEY CRENNEY:
Correct. And now he's looking at the report which he asked to do. I'm just trying to be polite.
ATTORNEY JOHNSON:
So you don't have any questions or you're not eliciting any responses?
ATTORNEY CRENNEY:
Yes, I am. What do they do in the simulation room. He can now look to see if he knows. That was the question, what was the goal.
ATTORNEY JOHNSON:
Well, that was my point whether you wanted him to respond and whether you were just having him look at a report.
ATTORNEY CRENNEY:
I didn't know what your

Page 89

point was.
A. It looks like they do some tattooing. They do a scanning, tattooing, final marking, charting the computer work.
BY ATTORNEY CRENNEY:
Q. **Okay. Now, I want to ask you again about your recommendations.**
A. Sure.
Q. **Did you believe these recommendations --- strike that.**
I'll start again. Did you believe that these recommendations were adopted, that the recommendations, the job description changes that you recommended and any of the recommendations you made in your summary, those three areas, was it your view that that would benefit Paula Carlson and more likely make her successful if she tried to return to her job?
A. Yes.
Q. **Okay. So in that sense, they were aimed at Paula Carlson; correct?**

Page 90

A. Yes.
Q. All right. Do you know if any of those were adopted or not?
ATTORNEY JOHNSON:
I'm going to object to the form of the question, because I think it's a misleading question in view of the question and the answer which preceded it. Because Paula Carlson hasn't come back to work.
ATTORNEY CRENNEY:
Okay. Forget that.
BY ATTORNEY CRENNEY:
Q. I thought you said that you also made these in terms of a broader approach to the problem. Were these recommendations solely for Paula Carlson or were they made generally? And I thought that's what was elicited from Mr. Slimak from you, so if I'm wrong, Mr. Johnson is right and I won't continue with that line.
ATTORNEY JOHNSON:

Page 91

I'm not exactly sure what your question is now.
ATTORNEY SLIMAK:
And I'm going to object to the form.
BY ATTORNEY CRENNEY:
Q. We've got recommendations that are made, a job description change is recommended and recommendations made in the body of the summary. My question is do you know if any of those recommendations were adopted, that's all; do you know.
A. No.
Q. Would you agree that Paula demonstrated functional weakness and poor endurance with activity involving her right hand during your test?
ATTORNEY SLIMAK:
Objection to form.
ATTORNEY JOHNSON:
Joining the objection to form.
A. Her hand grip show weakness when compared to the left and puts her in the tenth percentile when compared to healthy industrial females.

Page 92

BY ATTORNEY CRENNEY:
Q. Did she generally have poor endurance during the test?
A. She fell into the lower percentiles when compared to other females.
Q. In terms of endurance; right?
A. In terms of strength.
Q. Did she require frequent breaks?
A. The only reference I have to that is the reason for stopping the test was maximal efforts.
Q. Did her pain increase during the test?
A. I don't have any reference to that.
Q. Did you believe these recommendations needed to be adopted if she was going to be able to do her job; is that why you made those recommendations?
ATTORNEY JOHNSON:

Page 93

Object to the form of the question.
ATTORNEY SLIMAK:
I join it.
A. The recommendations that I made, I know that my biggest concern was the clamps and that's why I referred to my summary, the FCE findings indicate that Paula will be able to perform all aspects of her job requirements with the exception of using the clamps presently utilized in the Cerrobend process. In parentheses I have see quick clamp recommendations.
BY ATTORNEY CRENNEY:
Q. When you said the other recommendations are made to possibly increase patient, employee safety, did you mean Paula's safety?
A. I meant Paula's safety and the other employees in the area.
Q. And you acknowledged that the findings were based on government projections and studies?

Page 94

A. Yes.
Q. **And it might be different in real life; correct?**
ATTORNEY SLIMAK:
Objection to form.
ATTORNEY JOHNSON:
Object to the form.
A. I indicated that the FCE is a simulation of work weights to be handled and there may be some real work lifting situation, a position which may differ. I also stated these findings are based on government projections and studies related to maximum efforts and nonmaterial handling which may be different from real life performances at work.
BY ATTORNEY CRENNEY:
Q. **Does that mean things might turn out different in real life?**
ATTORNEY SLIMAK:
Object to the form of the question.
ATTORNEY JOHNSON:
Objection to the form of

Page 95

the question.
A. It means there were some things that may occur on the job that may not be captured in the functional capacity.
ATTORNEY CRENNEY:
Thank you, sir. I don't know if anybody else has anything for you.
ATTORNEY SLIMAK:
I have no other questions for you at this time.
ATTORNEY JOHNSON:
We'll read the transcript, please.

* * * * * * *
DEPOSITION CONCLUDED AT 1:40 P.M.
* * * * * *

EXHIBIT F

Novitski v. **Rusak**
Pa.Super.,2008.

Superior Court of Pennsylvania.
John **NOVITSKI** and Theresa **Novitski**, Appellee
v.
Matthew **RUSAK**, Appellant.
No. 431 MDA 2007.

Jan. 4, 2008.

Background: Motorist injured in motor vehicle accident sued driver of other vehicle for negligence. After a jury trial, the Court of Common Pleas, Luzerne County, Civil at No. 3717-C of 2004, entered judgment in favor of motorist and denied driver's post-trial motion for new trial, molding of verdict, or remittitur. Driver appealed.

Holding: The Superior Court, No. 431 MDA 2007,Stevens, J., held that vocational rehabilitation consultant had proper foundation to give expert testimony that motorist would need to reduce his work schedule to three-quarter time.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ⇨971(2)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k971 Examination of Witnesses
30k971(2) k. Competency of Witness. Most Cited Cases
The standard of review for granting a new trial based on the alleged inadmissibility of expert opinion testimony is whether there was a clear and palpable abuse of discretion in permitting the expert testimony.

[2] Appeal and Error 30 ⇨1152

30 Appeal and Error
30XVII Determination and Disposition of Cause
30XVII(C) Modification
30k1152 k. Modifying Provisions of Judgment or Order. Most Cited Cases
Regarding the molding of a verdict, an appellate court will do so where there is error and a manifest clear intent on the part of the jury.

[3] Appeal and Error 30 ⇨1015(4)

30 Appeal and Error
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1015 Decision on Motion for New Trial
30k1015(4) k. Amount of Recovery. Most Cited Cases
Regarding remittitur, an appellate court reviews a verdict to determine whether the verdict shocks the sense of justice to suggest the jury was influenced by partiality, prejudice, mistake or corruption.

[4] Evidence 157 ⇨536

157 Evidence
157XII Opinion Evidence
157XII(C) Competency of Experts
157k536 k. Knowledge, Experience, and Skill in General. Most Cited Cases
The standard for qualification of an expert witness is a liberal one.

[5] Evidence 157 ⇨536

157 Evidence
157XII Opinion Evidence
157XII(C) Competency of Experts
157k536 k. Knowledge, Experience, and Skill in General. Most Cited Cases

Evidence 157 ⇨570

157 Evidence

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157XII Opinion Evidence
157XII(F) Effect of Opinion Evidence
157k569 Testimony of Experts
157k570 k. In General. Most Cited Cases
The test to be applied when qualifying an expert witness is whether the witness had any reasonable pretension to specialized knowledge on the subject under investigation; if he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

[6] Evidence 157 ⇐536

157 Evidence
157XII Opinion Evidence
157XII(C) Competency of Experts
157k536 k. Knowledge, Experience, and Skill in General. Most Cited Cases
A witness may be qualified to render an expert opinion based on training and experience; formal education on the subject matter of the testimony is not required, nor is it necessary that an expert be a licensed medical practitioner to testify with respect to organic matters.

[7] Evidence 157 ⇐536

157 Evidence
157XII Opinion Evidence
157XII(C) Competency of Experts
157k536 k. Knowledge, Experience, and Skill in General. Most Cited Cases
It is not a necessary prerequisite that an expert witness be possessed of all of the knowledge in a given field, only that he possess more knowledge than is otherwise within the ordinary range of training, knowledge, intelligence, or experience.

[8] Evidence 157 ⇐555.10

157 Evidence
157XII Opinion Evidence
157XII(D) Examination of Experts
157k555 Basis of Opinion
157k555.10 k. Medical Testimony. Most Cited Cases
Vocational rehabilitation consultant had proper foundation, in motorist's negligence action arising from motor vehicle accident, to give expert testimony that motorist needed to reduce his work schedule to three-quarter time as a result of his neck injury, though no physician had recommended such a schedule, where treating physician testified that motorist's herniated discs were worsening and he would experience pain and loss of function for the rest of his life, another treating physician had given motorist physical restrictions, and motorist had indicated that he was having difficulty getting through an entire work day.

[9] Evidence 157 ⇐537

157 Evidence
157XII Opinion Evidence
157XII(C) Competency of Experts
157k537 k. Bodily and Mental Condition. Most Cited Cases
It is within a vocational expert's expertise to establish the extent to which a plaintiff's injuries prevent him from working.

Appeal from the Judgment entered April 4, 2007, In the Court of Common Pleas of Luzerne County, Civil at No(s): 3717-C of 2004.

BEFORE: STEVENS, BENDER, and McCAFFERY, JJ.

OPINION BY STEVENS, J.:

***1** ¶ 1 This is an appeal from the judgment entered in the Court of Common Pleas of Luzerne County in favor of Appellees John and Theresa **Novitski** in the amount of $443,040.14. Appellant Matthew **Rusak** contends the trial court should have granted Appellant a new trial, molded the verdict, or granted remittitur on the basis the trial court erred in admitting expert testimony regarding loss of future earning capacity since there was no proper foundation for the testimony. We affirm.

¶ 2 The relevant facts and procedural history are as follows: On August 19, 2002, at approximately 5:45 p.m., Appellant's vehicle improperly turned directly into the path of a vehicle being driven by Mr. **Novitski**, who suffered injury as a result

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thereof. Appellees filed a complaint alleging Appellant was negligent and seeking various damages, including those for loss of future earning capacity .FN1Prior to trial, Appellant stipulated to his negligence and filed a motion *in limine* seeking to preclude the expert testimony of Mark Lukas, Ph.D., who was qualified as an expert in vocational rehabilitation, and Mr. Andrew Verzilli, who was qualified as an expert in the field of economic losses, as it related to Mr. **Novitski's** claim for loss of future earning capacity. The trial court denied the motion, and on November 13, 2006, the matter proceeded to a jury trial.[FN2]

¶ 3 At the trial, Appellees presented the following relevant evidence: As a result of the collision, Mr. **Novitski** hit his head on the sun visor and his vehicle's air bags deployed. N.T. 11/14/06 at 3-4. The day after the accident, Mr. **Novitski** was sore, his forehead was swollen, his arm was sore, and his eyes were black and blue. N.T. 11/14/06 at 5. Mr. **Novitski** was examined by Dr. Paul Latzko, and he went for an MRI on August 29, 2002. N.T. 11/14/06 at 7. On August 29, 2002, Mr. **Novitski** was laid off from his job due to downsizing, and he was unemployed from September, 2002, to January, 2003. N.T. 11/14/06 at 7-8, 29. In January of 2003, Mr. **Novitski** was hired by Lasco Fittings as a service center manager. N.T. 11/14/06 at 10. Mr. **Novitski** indicated he oversees ten employees, is a "hands-on guy," and needs to do whatever has to be done to ensure the operation works. N.T. 11/14/06 at 10. Mr. **Novitski** testified to a decrease in his hobbies. N.T. 11/14/06 at 11-13. Mr. **Novitski** testified he built approximately twenty outdoor decks but was unable to do so after the accident. N.T. 11/14/06 at 20-21. He is also unable to golf. N.T. 11/14/06 at 21.

¶ 4 On cross-examination, Mr. **Novitski** indicated he schedules his medical appointments for his lunch hour or after work and he continues to work full-time. N.T. 11/14/06 at 30.

¶ 5 On redirect examination, Mr. **Novitski** testified that Lasco Fittings does not offer any part-time manager positions. N.T. 11/14/06 at 36.

¶ 6 Paul J. Latzko, M.D., who is a family practitioner, testified he examined Mr. **Novitski** on August 20, 2002, and diagnosed him as suffering from a cervical strain. Videotaped Deposition of Paul J. Latzko, M.D., dated 9/7/06 at 10-12. On August 27, 2002, Dr. Latzko again examined Mr. **Novitski**, who complained of persistent pain in his neck and numbness in his hand. *Id.* at 13-14.Dr. Latzko sent Mr. **Novitski** for an MRI, which revealed two herniated discs in Mr. **Novitski's** neck. *Id.* at 15-16.Dr. Latzko examined Mr. **Novitski** in July of 2003, and Mr. **Novitski** complained of increased pain in his neck and shoulder. *Id.* at 18-19.Dr. Latzko discovered that, during the past year, Mr. **Novitski** had weakened strength in his right arm. *Id.* at 19.Dr. Latzko ordered another MRI, which was completed on July 19, 2003. *Id.* at 19-20.Dr. Latzko concluded the disc herniations were more pronounced on the second MRI; that is, during the past eleven months, Mr. **Novitski's** condition had worsened and the herniated discs were applying more pressure to the spinal cord.*Id.* at 20, 28.

***2** ¶ 7 Dr. Latzko examined Mr. **Novitski** on August 19, 2003, and in September of 2003, April of 2004, October of 2004, and January of 2005. Mr. **Novitski** continued to complain of pain and weakened arm strength. *Id.* at 30-36.When Dr. Latzko examined Mr. **Novitski** in April of 2005, he indicated he felt discomfort in performing light work around the house. *Id.* at 39.Mr. **Novitski's** complaints of pain persisted in March of 2006, and Mr. **Novitski** indicated he felt frustrated by his pain. *Id.* at 40.Dr. Latzko testified to a reasonable degree of medical certainty that Mr. **Novitski** sustained herniated discs as a result of the motor vehicle accident. *Id.* at 41.Dr. Latzko testified that, following the motor vehicle accident, Mr. **Novitski** was disabled, unable to work, and remained unemployed until January of 2003 due to the herniated discs. *Id.* at 42, 51.Dr. Latzko testified that Mr. **Novitski** will continue to experience pain for the rest of his life and will continue to experience a loss of function. *Id.* at 42-44.

¶ 8 On cross-examination, Dr. Latzko admitted that he gave Mr. **Novitski** no work restrictions and

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never wrote a letter excusing him from work. *Id.* at 46-50, 55.Dr. Latzko testified he believed Mr. **Novitski** was unable to work due to his injuries until January of 2003. *Id.* at 51.Dr. Latzko testified he was unaware that Mr. **Novitski** had been laid off from his job in August of 2003 and he believed that such was irrelevant to his diagnosis. *Id.* at 51.Dr. Latzko indicated Mr. **Novitski** has not had surgery related to the herniated discs. *Id.* at 55.

¶ 9 Albert D. Janerich, M.D., who is a specialist in physical medicine and rehabilitation, testified he examined Mr. **Novitski** on December 30, 2003, and concluded that Mr. **Novitski** was suffering pain from two herniated discs in his neck resulting from the motor vehicle accident. N.T. 11/14/06 at 7-8. Dr. Janerich indicated that Mr. **Novitski** informed him that he was unable to perform lawn work, golf, and heavy lifting. N.T. 11/14/06 at 10. Dr. Janerich concurred with Dr. Latzko's opinion that the second MRI revealed Mr. **Novitski's** herniated discs had worsened and were applying more pressure to the spinal cord. N.T. 11/14/06 at 11-12. Dr. Janerich recommended that Mr. **Novitski** use a cervical pillow, take medication, and avoid activities such as lifting, carrying, pushing, and pulling more than five pounds with his right arm and ten pounds with his left arm. N.T. 11/14/06 at 12-13, 15. He also discouraged repetitive use of his arms below the height of his shoulder. N.T. 11/14/06 at 13.

¶ 10 Dr. Janerich examined Mr. **Novitski** on October 25, 2006, and discovered that Mr. **Novitski's** pain had increased, use of his right arm was restricted, and he had muscle spasm in his neck. N.T. 11/14/06 at 13-14. Dr. Janerich opined to a reasonable degree of medical certainty that, as a result of the accident, Mr. **Novitski** suffered two herniated discs, which were worsening, and a pinched nerve in the right arm. N.T. 11/14/06 at 14. Dr. Janerich opined that Mr. **Novitski's** prognosis was "guarded" and "[t]he likelihood of him getting better is remote and indeed doubtful...." N.T. 11/14/06 at 15.

*3 ¶ 11 On cross-examination, Dr. Janerich indicated that, in a report he drafted in December 2003, he noted that Mr. **Novitski** had missed no time from his work. N.T. 11/14/06 at 17. He acknowledged that he did not recommend that Mr. **Novitski** stop working, reduce his work schedule, or restrict the hours in his workday. N.T. 11/14/06 at 17-19, 21. However, Dr. Janerich noted that he gave Mr. **Novitski** various physical restrictions in 2003 and 2006. N.T. 11/14/06 at 18, 21.

¶ 12 On redirect examination, Dr. Janerich indicated that it would make sense for Mr. **Novitski** to work a reduced workday but he did not tell him that fact. N.T. 11/14/06 at 23.

¶ 13 Mark Lucas, Ph.D., who is a vocational rehabilitation consultant, testified, without objection, that he is qualified to render an opinion on the effect the motor vehicle accident had on Mr. **Novitski's** future employability. N.T. 11/15/06 at 27. He reviewed medical records and met with Mr. **Novitski** in February of 2005 for the purposes of a vocational interview and evaluation. N.T. 11/15/06 at 28. Dr. Lucas indicated Mr. **Novitski**, who was forty-six years old, described he was laid off from a job in August of 2002 but was reemployed with Lasco Fittings, where his job requires him to stand on his feet, walk in the warehouse, and operate a forklift. N.T. 11/15/06 at 29-30. Mr. **Novitski** reported that the physical demands of his job were challenging to his neck and shoulder condition, he had to take medication in the afternoon to get through the remainder of the day, and he expressed concern about his ability to continue functioning as a full duty manager. N.T. 11/15/06 at 31. Dr. Lucas specifically testified he reviewed medical records, including those of Drs. O'Leary, Janerich, Murphy, Latzko, and Sedor, and concluded that, although Mr. **Novitski** had physical restrictions, he was persevering in his job "as best he could." N .T. 11/15/06 at 33, 37. Dr. Lucas opined that Mr. **Novitski's** best chance to remain in the job market was to reduce his work schedule to a three quarter time schedule. N.T. 11/15/06 at 34. Dr. Lucas testified an abbreviated schedule was appropriate given the nature of his condition and the fact Mr. **Novitski's** pain became worse as the work day progressed. N.T. 11/15/06 at 34-35. Dr. Lucas testified

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that, to a reasonable degree of professional certainty, Mr. **Novitski** should work three quarter time as opposed to full-time, resulting in a loss of $10,000.00 to $16,000.00 annually. N.T. 11/15/06 at 37-38.

¶ 14 On cross-examination, Dr. Lucas admitted that he found no notation in the medical records indicating Mr. **Novitski** could not work and he saw no limitations on standing. N.T. 11/15/06 at 44, 49. Dr. Lucas admitted that no medical doctor explicitly indicated that Mr. **Novitski** should reduce his work schedule by 25%; however, Dr. Lucas indicated the reduction was his expert opinion based on his vocational evaluation, which included a review of the medical records. N.T. 11/15/06 at 50. Dr. Lucas admitted that Mr. **Novitski** continues to work full-time and has not missed work; however, Dr. Lucas testified that, if the objective is to keep Mr. **Novitski** in the workforce, then cutting his work hours by 25% would provide the best chance. N.T. 11/15/06 at 51-52. Dr. Lucas opined that the reduced work schedule should start immediately. N.T. 11/15/06 at 52.

***4** ¶ 15 Andrew C. Verzilli, who is an economist, testified he reviewed Dr. Lucas' report and took into account his opinion that Mr. **Novitski** would earn $10,000.00 to $16,400.00 less per year. N.T. 11/15/06 at 62, 65. Mr. Verzilli opined that, based on a 25% future wage loss, Mr. **Novitski's** loss of future earning capacity would be in the range of $449,000.00 to $1,065,000.00. N.T. 11/15/06 at 79-85.

¶ 16 On cross-examination, Mr. Verzilli admitted that he reviewed no medical reports and relied on the opinions of Dr. Lucas. N.T. 11/15/06 at 90.

¶ 17 Appellant presented the following relevant countervailing evidence. Dr. Robert Thomas O'Leary, who specializes in physical medicine and rehabilitation, testified he initially examined Mr. **Novitski** on April 28, 2003. Videotaped Deposition of Robert Thomas O'Leary, D.O., dated 9/20/06 at 16. During the examination, Mr. **Novitski** told Dr. O'Leary about the accident and said he had increasing neck pain. *Id.* at 23.Dr. O'Leary reviewed Mr. **Novitski's** MRI and observed two herniated discs. *Id.* at 24.Mr. **Novitski** reported that his right arm pain had improved and informed the doctor that he worked approximately nine hours a day as a customer service manager. *Id.* at 24-25.Regarding physical restrictions, Mr. **Novitski** told Dr. O'Leary that he watched how he turned his neck and did not lift over shoulder level. *Id.* at 26.Mr. **Novitski** told Dr. O'Leary that "his main concern besides pain in the right side of his neck was some crepitus or cracking with extreme range of motion rotating left and right."*Id.* at 26.Mr. **Novitski** reported mild pain, which was aggravated when he turned his neck to the left or to the right and was alleviated with stretching. *Id.* at 27.Dr. O'Leary's physical examination revealed no muscle atrophy and a normal range of motion, although Mr. **Novitski** complained of pain when he fully rotated his head to the left and right. *Id.* at 29-30.Mr. **Novitski** complained of tenderness in his right cervical and right neck, although Dr. O'Leary was unable to palpate any trigger points or spasms. *Id.* at 30.Dr. O'Leary found Mr. **Novitski's** strength and reflexes to be normal. *Id.* at 31-32.Dr. O'Leary opined that, to a reasonable degree of medical certainty, due to the motor vehicle accident, Mr. **Novitski** sustained a mild ligament sprain/strain of his cervical spine and he strained his neck, although it resolved by the time Dr. O'Leary examined him. *Id.* at 34-35.He noted that Mr. **Novitski** also suffered a pinched nerve; however, the injury had healed. *Id.* at 36.Dr. O'Leary acknowledged that Mr. **Novitski** sustained herniated discs; however, he concluded that his condition was not worsening and Mr. **Novitski** had reached maximum medical improvement as of the time he examined him. *Id.* at 35-36.Dr. O'Leary opined that the herniated discs were giving Mr. **Novitski** ongoing pain in his neck and he would recommend Mr. **Novitski** avoid heavy use of his right arm, particularly over shoulder level. *Id.* at 37-38.Dr. O'Leary opined that Mr. **Novitski** could continue performing his current job duties since it was of a light-duty nature. *Id.* at 38.

***5** ¶ 18 Dr. O'Leary examined Mr. **Novitski** for a second time on April 26, 2005, and Mr. **Novitski**

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reported ongoing pain with his neck and right arm.*Id.* at 39-40.Mr. **Novitski** reported increased pain from the previous examination but indicated he continued working full-time as a customer service manager. *Id.* at 41.Mr. **Novitski's** range of motion was decreased with extension and right rotation, with complaints of pain, and he complained of tenderness of the right side of his neck, although Dr. O'Leary was unable to palpate any spasms or trigger points. *Id.* at 41-42.In comparison to the first physical examination performed by Dr. O'Leary, the second physical examination revealed a decreased range of motion in Mr. **Novitski's** neck. *Id.* at 42.Regarding restrictions, Dr. O'Leary opined that heavy repetitive lifting, particularly over the right shoulder level, would worsen Mr. **Novitski's** condition. *Id.* at 46.

¶ 19 On cross-examination, Dr. O'Leary opined that the restriction regarding heavy lifting was a permanent impairment. *Id.* at 64.He also opined that the double-level disc herniation sustained by Mr. **Novitski** was permanent. *Id.* at 66.

¶ 20 At the conclusion of all testimony, the jury returned a verdict of $300,000.00 for non-economic damages, including pain and suffering, and $100,000.00 for future lost earning capacity.FN3Appellees filed a timely motion for delay damages, and Appellant filed a timely post-trial motion arguing, *inter alia,* the trial court erred in admitting the expert testimony of Dr. Lukas and Mr. Verzilli on the issue of future lost earning capacity. Appellant sought a new trial, a molding of the verdict, or remittitur. Following a hearing, by order and opinion entered on February 9, 2007, the trial court denied Appellant's post-trial motion in its entirety. The trial court granted Appellees' motion for delay damages. Appellant filed an appeal to this Court, which was perfected when judgment was entered on April 4, 2007, in favor of Appellees in the amount of $443,040.14.[FN4]

[1][2][3][4][5][6][7]¶ 21 Appellant contends the trial court erred in permitting Dr. Lukas to opine that, as a result of the injuries sustained in the motor vehicle accident, Mr. **Novitski** would need to reduce his work schedule to three-quarter time, resulting in a wage loss of twenty-five percent. Appellant contends this expert opinion testimony was improper since there was no competent medical evidence to support the opinion that Mr. **Novitski's** accident-related injuries impacted on his ability to work. Appellant further contends the trial court erred in permitting Mr. Verzilli to opine that, based on Dr. Lukas' testimony Mr. **Novitski** would have a twenty-five percent work reduction, Mr. **Novitski** would have a future wage loss of between $449,000.00 to $1,065,000.00. Appellant contends Mr. Verzilli's opinion was improper since it was based on Dr. Lukas' improper opinion. After a careful review, we conclude there was competent and concise medical testimony that Mr. **Novitski's** accident-related injuries impacted on his ability to work, and therefore, Dr. Lukas' and Mr. Verzilli's expert opinion testimony on this subject was properly admitted.[FN5]

***6** It is well established in this Commonwealth that the standard for qualification of an expert witness is a liberal one. *The test to be applied when qualifying an expert witness is whether the witness had any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.*It is also well established that a witness may be qualified to render an expert opinion based on training and experience. Formal education on the subject matter of the testimony is not required, nor is it necessary that an expert be a licensed medical practitioner to testify with respect to organic matters. It is not a necessary prerequisite that the expert be possessed of all of the knowledge in a given field, only that he possess more knowledge than is otherwise within the ordinary range of training, knowledge, intelligence, or experience.

Zak v. Prudential Property & Casualty Ins. Co., 713 A.2d 681, 689 (Pa.Super.1998) (quotations omitted) (emphasis in original).

[8]¶ 22 Here, Dr. Lukas was qualified as a vocational expert and certainly was qualified to render an opinion about the degree to which Mr. **Novit-**

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ski's herniated discs and pinched nerve affect his ability to work. Furthermore, we conclude there was clear and concise medical testimony linking all of Mr. **Novitski's** injuries to the motor vehicle accident and that such medical testimony unquestionably indicates that his injuries will impact on his ability to work. Specifically, Dr. Latzko testified that a second MRI revealed Mr. **Novitski's** herniated discs were worsening, and he opined that Mr. **Novitski** will continue to experience pain and loss of function for the rest of his life. Dr. Janerich concurred with Dr. Latzko's opinion that a second MRI revealed that Mr. **Novitski's** herniated discs were worsening and applying more pressure to the spinal cord. He described several restrictions placed on Mr. **Novitski**, including the avoidance of activities such as lifting, carrying, pushing, and pulling more than five pounds with his right arm and ten pounds with his left arm. He also discouraged repetitive use of Mr. **Novitski's** arms below the height of his shoulder and noted that Mr. **Novitski** was experiencing increased pain and a restriction in the use of his right arm. He opined that the possibility of Mr. **Novitski** getting better was remote. Dr. Janerich testified that it made sense for Mr. **Novitski** to reduce his workday.[FN6]Based on the medical testimony regarding Mr. **Novitski's** declining health status and physical restrictions, along with Mr. **Novitski's** indication to Dr. Lucas that he was having difficulty getting through the entire work day, Dr. Lucas opined that Mr. **Novitski** should reduce his work day by 25%. Based on the aforementioned, we conclude Dr. Lucas had a proper foundation for rendering this opinion.

[9]¶ 23 We note that we find unavailing Appellant's suggestion that a physician was required to explicitly state that the accident-related injuries restricted Mr. **Novitski** to "three quarters time" work. As we held in *Zak, supra,* it is within the vocational expert's expertise to establish the extent to which a plaintiff's injuries prevent him from working. Here, Dr. Lucas assumed all of Mr. **Novitski's** injuries stemmed from the accident; his injuries were ongoing and, in fact, becoming worse; and physicians had proposed various physical limitations. These assumptions were based on solid medical testimony. Dr. Lucas then testified about the extent to which the injuries affected Mr. **Novitski's** ability to work. This testimony was clearly within his area of expertise and did not require a physician to state explicitly the amount of time by which Mr. **Novitski** should reduce his work load.

*7 ¶ 24 Having found Dr. Lucas' expert testimony was properly admitted, we find no merit to Appellant's contention that Mr. Verzilli's expert testimony, which was based on Dr. Lucas' expert testimony, was improper. Therefore, we affirm.

¶ 25 Affirmed.

FN1. Mrs. **Novitski** sought damages for loss of consortium.

FN2. Appellant renewed his objection to the experts' testimony at trial. N.T. 11/15/06 at 64.

FN3. The jury did not award damages for Mrs. **Novitski's** loss of consortium claim.

FN4. The trial court did not order Appellant to file a Pa.R.A.P.1925(b) statement, and no such statement was filed.

FN5. We note Appellant seeks a new trial, a molding of the verdict, or a remittitur. Our standard of review for granting a new trial is whether there was a clear and palpable abuse of discretion in permitting the expert testimony. *See Walsh v. Kubiak,* 443 Pa.Super. 284, 661 A.2d 416 (Pa.Super.1995) (*en banc*). Regarding the molding of a verdict, this Court will do so where there is error and a manifest clear intent on the part of the jury. *See Krock v. Chrost,* 330 Pa.Super. 108, 478 A.2d 1376 (Pa.Super.1984). Regarding remittitur, we review the verdict to determine whether the verdict shocks the sense of justice to suggest the jury was influenced by partiality, prejudice, mistake or corruption. *See Vogelsberger v. Magee-Womens Hospital,* 903 A.2d 540 (Pa.Super.2006). No matter

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which standard of review is applied in this case, for the reasons discussed *infra,* we conclude no remedy is available since the trial court did not err in permitting Dr. Lucas and Mr. Verzilli to offer the challenged expert testimony.

FN6. Appellant makes much of the fact Dr. Lucas was not present in the courtroom when Dr. Janerich testified. However, Dr. Lucas testified that he reviewed numerous medical reports, including Dr. Janerich's report, in forming his expert opinions.

Pa.Super.,2008.
Novitski v. Rusak
--- A.2d ----, 2008 WL 54320 (Pa.Super.), 2008 PA Super 9

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=> 1 **Novitski v. Rusak,** --- A.2d ----, 2008 WL 54320, 2008 PA Super 9 (Pa.Super. Jan 04, 2008) (NO. 431 MDA 2007)

Court Documents

Appellate Court Documents (U.S.A.)

Pa.Super. Appellate Briefs

2 John NOVITSKI and Theresa Novitski, Appellees, v. Matthew RUSAK, Appellant., 2007 WL 4782811 (Appellate Brief) (Pa.Super. 2007) **Brief for Appellant** (NO. 431MDA2007)

3 John NOVITSKI and Theresa Novitski, Appellees, v. Matthew RUSAK, Appellant., 2007 WL 4782810 (Appellate Brief) (Pa.Super. Oct. 23, 2007) **Brief for Appellees and Supplemental Reproduced Record** (NO. 431MDA2007)

Citing References

No references were found within the scope of KeyCite's citing case coverage.

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EXHIBIT G

C
Zak v. Prudential Property & Cas. Ins. Co.
Pa.Super.,1998.

Superior Court of Pennsylvania.
Kimberly A. ZAK, Appellant,
v.
PRUDENTIAL PROPERTY & CASUALTY INSURANCE COMPANY, Appellee.
Submitted Jan. 26, 1998.
Filed June 8, 1998.

Insured petitioned to vacate arbitrators' award of underinsured motorist (UIM) benefits. The Court of Common Pleas, Lackawanna County, Civil Division, No. 96 Civil 5880, O'Malley, J., confirmed award. Insured appealed. The Superior Court, No. 3678 Philadelphia 1997, Hester, J., held that: (1) clause making arbitration award binding if it did not exceed $15,000 limits of Financial Responsibility Law was void; (2) insured did not waive challenge by failing to raise it before arbitrators; (3) challenge to exclusion of expert testimony was reviewable; and (4) testimony by vocational rehabilitation consultant should have been admitted.

Reversed and remanded.

Ford Elliot, J., filed a dissenting statement.

West Headnotes

[1] Insurance 217 ⇐3330(3)

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(B) Claim Procedures
217XXVII(B)7 Arbitration
217k3326 Judicial Review
217k3330 Grounds
217k3330(3) k. Presentation and Reservation of Grounds. Most Cited Cases
Insured did not waive challenge to validity of clause making arbitration award binding if it did not exceed limits of Financial Responsibility Law, even though she did not raise issue before arbitrator; since the clause became operational once the arbitration award was entered, its validity was properly raised in the first instance at the trial court level.

[2] Insurance 217 ⇐3324(3)

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(B) Claim Procedures
217XXVII(B)7 Arbitration
217k3305 Award
217k3324 Effect of Award
217k3324(3) k. Conclusiveness. Most Cited Cases
Clause in automobile insurance policy making arbitration award binding if it did not exceed $15,000 limits of Financial Responsibility Law was unconscionable and void as against public policy; it allowed the insurer to obtain a trial for arbitration award of any significant amount, but bound the insured to an award of nothing or a miniscule amount, and it implicated provision of Unfair Insurance Practices Act that prohibits attempts to compel settlements by publicizing a practice of appealing arbitration in favor of insureds. 40 P.S. § 1171.1 et seq.

[3] Insurance 217 ⇐1725

217 Insurance
217XIII Contracts and Policies
217XIII(A) In General
217k1720 Validity and Enforceability
217k1725 k. Public Policy. Most Cited Cases
The test of whether a clause in an insurance contract is unconscionable is two-fold: one party must have lacked a meaningful choice about whether to accept the provision in question, and the challenged provision must unreasonably favor the other party.

[4] Insurance 217 ⇐3272

217 Insurance
217XXVII Claims and Settlement Practices

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217XXVII(B) Claim Procedures
217XXVII(B)7 Arbitration
217k3271 Agreements to Arbitrate
217k3272 k. In General. Most Cited Cases

Invalidation of clause in automobile insurance policy making arbitration award binding if it did not exceed $15,000 limits of Financial Responsibility Law did not have effect of voiding arbitration clause; rather, insurer lacked right to a trial on all issues if an award was entered in favor of a claimant or insured.

[5] Insurance 217 ⇐3328

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(B) Claim Procedures
217XXVII(B)7 Arbitration
217k3326 Judicial Review
217k3328 k. Decisions Reviewable. Most Cited Cases

Arbitrators' decision to exclude expert opinion by vocational rehabilitation consultant deprived insured of hearing on claim for underinsured motorist (UIM) benefits and, therefore, was reviewable. 42 Pa.C.S.A. § 7341.

[6] Insurance 217 ⇐3302

217 Insurance
217XXVII Claims and Settlement Practices
217XXVII(B) Claim Procedures
217XXVII(B)7 Arbitration
217k3300 Arbitration Proceedings
217k3302 k. Evidence. Most Cited Cases

Testimony by insured's vocational rehabilitation consultant that injury to shoulder limited work to one-half time was based on competent medical testimony by treating physician that accident-related injuries affected ability to work and, therefore, should have been admitted by arbitrators at hearing on claim for underinsured motorist (UIM) benefits, even though physician never testified about extent of injuries; consultant was competent to testify about extent of impact on work.

***682** John R. Lenahan, Jr., Scranton, for appellant.
Timothy E. Foley, Scranton, for appellee.

Before FORD ELLIOTT, JOYCE and HESTER, JJ.

HESTER, Judge:

Kimberly A. Zak appeals from the judgment entered against her after the trial court denied her petition to vacate an arbitration award entered in favor of appellee, Prudential Property & Casualty Insurance Company, and granted appellee's petition to confirm the award. We agree with appellant's contention that a clause in the relevant insurance policy is void. That clause grants the insurer the right to a trial when any type of substantial arbitration award is made in favor of the claimant while, at the same time, it provides that if the arbitration award is between zero and $15,000, the award is binding on the claimant. We also conclude that the arbitrators' failure to consider the testimony of an expert witness deprived appellant of a hearing and entitles her to have the award vacated under the relevant standard of review. Since we have awarded appellant another hearing, we need not consider the merits of appellant's third issue, which is that the arbitrators erred in failing to consider evidence of medical bills incurred by appellant. Finally, we do not agree with appellant's contention that she is entitled to a trial on her claims. Rather, we remand for another arbitration hearing.

On May 21, 1992, appellant was a passenger in a car being driven by William Tonkin. Mr. Tonkin's car was struck from the rear by a vehicle that was propelled into it when struck in the rear by a second car, which, in turn, had been struck by another car. In the collision, appellant sustained shoulder injuries. Appellant instituted an action against the operator of the vehicle responsible for the accident, and that action was settled for less than the tortfeasor's applicable insurance limits, $100,000. Appellant then made a claim against appellee, Mr. Tonkin's underinsured motorist carrier, claiming that damages from her injuries exceeded $100,000. Appellee was given credit for the tortfeasor's policy limits, and the parties proceeded to arbitrate whether damages from appellant's injuries sustained in the auto-

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mobile accident exceeded the policy limits of the tortfeasor's policy, entitling her to underinsured motorist benefits under Mr. Tonkin's policy.

Liability was not questioned; however, damages were contested. After the accident, appellant had surgery on and continuing pain associated with her right shoulder. These problems affected her ability to work and enjoy life. Appellant maintained that injuries she sustained in the accident necessitated the surgery and caused her continuing shoulder pain. Appellee countered that the surgery and pain stem from a pre-existing condition unrelated to the accident.

***683** After taking testimony and considering the parties' briefs, two of the three arbitrators issued an award in favor of appellee, concluding that the value of appellant's claim did not exceed the $100,000 credit appellee received from the action against the tortfeasor. In the award, the arbitrators expressly state that "in arriving at the ... award, a majority of the arbitrators sustained the Defendant's objections and did not consider evidence of the Plaintiff's economic damages, specifically, any medical bills or vocational testimony offered by the Plaintiff." Reproduced record ("R.R.") at 22a-23a. Appellant filed a petition to vacate the award, which was denied. Appellee then filed a petition to confirm the award, which was granted. This appeal followed entry of judgment against appellant.

Appellant raises three contentions for our review. First, she alleges that one of the clauses in the insurance policy is void as a matter of public policy and that as a result, she is entitled to proceed to trial on her claim. Next, she argues that the arbitrators erred in failing to consider both her medical bills and the testimony of her vocational expert. As to these latter two errors, appellant argues that the panel's failure to consider those items of damages denied her a hearing. We conclude that we can review two of three of appellant's claims. We also agree that the arbitrators' refusal to consider the testimony of the vocational expert, which was competent and proper, denied her a hearing and warrants reversal. However, we do not agree that appellant is entitled to a trial on the issues. Rather, we conclude that parties must proceed to another arbitration. We do not consider the issue of whether the arbitrators erred in failing to consider appellant's medical bills due to 75 Pa.C.S. § 1722 since that issue is rendered moot by our decision to award another arbitration hearing.

We first examine our standard of review with respect to the first issue. The parties both acknowledge that we have the right to review that issue, which is whether a clause in the policy is void as a matter of public policy. *See Hall v. Amica Mutual Insurance Co.,* 538 Pa. 337, 648 A.2d 755 (1994); *see also Caron v. Reliance Insurance Co.,* 703 A.2d 63 (Pa.Super.1997). Appellant contends that she is entitled to a trial on her underinsured motorist claim due to that fact that the following clause in the applicable insurance policy is void as a matter of public policy.

A decision agreed to by two arbitrators will be binding if the award does not exceed the limits required under the Financial Responsibility Law of Pennsylvania.

If an arbitration award exceeds these limits, either party has a right to trial on all issues in a court of competent jurisdiction. This right must be exercised within thirty days of the award. Each party will pay their own expenses.

[1] The effect of this clause is clear.[FN1] An arbitration award is binding if it is less than $15,000. However, if the award exceeds $15,000, either party may appeal and obtain a trial on all issues. Herein, the award was zero so appellant did not have the right to a trial even though appellee would have been entitled to a trial if appellant would have received a substantial award, *viz.,* one over $15,000.

FN1. Appellee suggests that this issue is waived due to appellant's failure to present it to the arbitration panel. *See* Appellee's brief at 9. However, the clause had no effect until the arbitration award was entered, and therefore, whether the clause was void as against public policy was not

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relevant to the arbitration proceeding. Since the clause became operational once the arbitration award was entered, the validity of the clause properly was raised in the first instance at the trial court level.

We also disagree with appellant's related contention that the clause is not involved in this case and that, therefore, we may not consider its validity. Appellant received a zero award. Thus, under the clause, she was not entitled to a trial on all issues, and the arbitration award became "binding." Whereas, if appellant had received a substantial award, appellee could have obtained a trial under the clause. Thus, the clause did come into play in this case because it limited appellant's right to appeal from the award while it would have expanded appellee's rights if an appropriate award had been entered.

Our Supreme Court has explained the circumstances under which we may determine whether public policy is violated by a particular insurance clause:

***684** Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest. As the term "public policy" is vague, there must be found definite indications in the law of the sovereignty to justify the invalidation of a contract as contrary to that policy ...

It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring. There must be a positive, well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people and in their conviction of what is just and right and in the interests of the public weal ... Only in the clearest cases, therefore, may a court make an alleged public policy the basis of judicial decision.

Hall v. Amica Mutual Insurance Co., supra, 648 A.2d at 760,*see also Eichelman v. Nationwide Insurance Co.,* 711 A.2d 1006 (1998); *Caron v. Reliance Insurance Co., supra.*

[2] In this case, the clause is completely unconscionable. It allows the insurer to obtain a trial when the claimant or insured obtains an arbitration award of any significant amount but binds the claimant or insured to the amount of the arbitration award when the claimant or insured is awarded nothing or a miniscule amount. Appellee suggests that the clause is fair because "either party" can appeal if the award is over $15,000. This suggestion ignores the reality of the *effect* of the clause. It allows the insurance company the unfettered right to a trial whenever an award is made in favor of a claimant or insured while a losing claimant or insured is bound by his award. The clause so clearly favors the insurer over the claimant or insured that it is repugnant to notions of due process, equal protection, justice, and fair play.

[3] The test of whether a clause in an insurance contract is unconscionable is two-fold: "First, one of the parties to the contract must have lacked a 'meaningful choice' about whether to accept the provision in question. Second, the challenged provision must 'unreasonably favor' the other party to the contract." *Koval v. Liberty Mutual Insurance Co.,* 366 Pa.Super. 415, 531 A.2d 487, 491 (1987). Both conditions are met in this case. Insurance contracts, which are promulgated by the insurer and which have terms not subject to negotiation, generally are considered contracts of adhesion. *See Standard Venetian Blind Co. v. American Empire Insurance Co.,* 503 Pa. 300, 469 A.2d 563 (1983). Furthermore, this clause, as discussed above, clearly unreasonably favors the insurer.

We find reasoning employed in *Hall v. Amica Mutual Insurance Co., supra,* instructive herein. In that case, the claimant argued that the courts could not review the arbitrators' decision that a clause was void as against public policy even though the courts could review a decision that a clause was not void. The Supreme Court stated such an argument was repugnant to logic, due process, and equal protection. The same reasoning is implicated in this case. It is fundamentally unfair for an insurer to obtain a trial any time an award it does not like is made while the claimant or insured is not afforded a

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similar right. The procedure offends notions of due process and equal protection.

We also agree with appellant that the clause implicates a provision of the Unfair Insurance Practices Act, 40 P.S. §§ 1171.1, *et seq.* Section 1171.5(10)(xi) of that act provides that the following, if committed with such frequency as to indicate a business practice, constitutes an unfair claim settlement or compromise practice: "Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants to induce or compel them to accept settlements or compromises less than the amount awarded in arbitration."

By including the relevant clause in their policies, appellee has created a standardized threat. Any time a claimant or insured obtains any type of substantial arbitration award, he is faced with relitigating all the issues at a trial. If a claimant or insured obtains no award or a small one, he can do ***685** nothing. The clause can be used to intimidate claimants and insureds into accepting less than the amount awarded in arbitration by confronting them with a possible trial. Based on the foregoing, we find the clause void as against public policy. *See Daley-Sand v. West American Insurance Co.,* 387 Pa.Super. 630, 564 A.2d 965 (1989).

[4] While we hold that the clause is void as against public policy, we do not agree with appellant's interpretation of the effect of that holding. Appellant suggests that the clause modified her appeal rights, and the limitations on her appeal rights inherent in the clause should be struck down. She maintains that by altering its appeal rights and granting an appeal when an award is high, appellee altered her appeal rights, allowing her to go to trial when an award is low. We disagree.

Declaring this clause void does not have the effect of voiding the provision calling for the parties to arbitrate disputes, which is entirely separate and distinct. By striking the clause, we make both parties subject to the same procedures. Thus, our holding has the effect of denying the insurer the right to a trial on all issues if an award is entered in favor of a claimant or insured. The parties however remain subject to the agreement to arbitrate, which is a separate clause and not against public policy. The effect of our holding is to make an arbitration award equally binding on both parties.

[5] We now address appellant's allegation that the panel erred in excluding from evidence the opinion of one of her expert witnesses, vocational rehabilitation consultant Mark Lukas. Mr. Lukas indicated that appellant could work only one-half time due to her shoulder injuries. We first must determine whether we can review the merits of this issue under the applicable standard of review. The parties agree that the insurance policy at issue provided for arbitration but did not provide for statutory arbitration and that, therefore, the relevant standard of review is found in 42 Pa.C.S. § 7341. *See Prudential Property & Casualty Insurance Co. v. Stein,* 453 Pa.Super. 227, 683 A.2d 683 (1996). That section provides that an award of common law arbitrators may not be vacated or modified "unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award."

Appellant contends that the arbitrators' refusal to consider the testimony of her vocational expert resulted in denial of a hearing and is reviewable under *Smaligo v. Fireman's Fund Insurance Co.,* 432 Pa. 133, 247 A.2d 577 (1968). We agree that *Smaligo* permits review of this issue.

In that case, parents brought the action under the uninsured motorist clause of their insurance policy after their daughter was struck and killed by a hit-and-run driver. They asked for a recess during the arbitration hearing to obtain the testimony of an expert witness as to the future work expectancy of insureds' decedent. The daughter had not worked for a number of years due to a mental condition. The arbitrator refused to grant a recess, concluding that the expert testimony was "unnecessary" to a resolution of the issues, which included the extent to which the daughter would have had future earn-

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ings. Thus, the arbitrator made a legal determination that the testimony was not relevant. This determination must have been premised upon the arbitrator's conclusion that the daughter had no future earning capacity since she had not worked for years. Our Supreme Court held that the correctness of the arbitrator's failure to consider the witness's testimony was reviewable under the standard of review applicable to common law arbitrations. The standard of review at that time was identical to the present standard of review.

The Supreme Court noted that there was no evidence, in the absence of the expert's testimony, to support the parents' position that their daughter could have been gainfully employed at some time in the future. It then observed that the parents did proffer medical testimony which was relevant and competent on the determination of loss of future earnings of the decedent. The court concluded that the arbitrator's refusal to hear the testimony on the grounds it was unnecessary was not merely a mistake of law or fact binding ***686** upon the parties and the courts. It ruled that the failure to regard the expert's testimony "of any import resulted in the [parents] being denied a full and fair hearing. That an award is not binding where there has been a denial of a hearing has been clearly stated by this Court on several occasions." *Id.,* 247 A.2d at 580. The court then held that the arbitrator's decision was in error and that the parties should proceed to another arbitration.

We cannot distinguish *Smaglio* from the present one. Herein, appellant claims that the arbitrators' failure to consider competent expert testimony denied her a hearing. It involves a decision that the testimony was infirm. Similarly, in *Smaglio,* the arbitrator decided that the daughter did not have a future earning capacity since she had not worked for years. The arbitrator refused to hear relevant testimony on the subject, deciding it was infirm in that it was not relevant. Our Supreme Court reviewed the decision that the testimony was not relevant. Hence, under *Smaglio* we may review the determination that Mr. Lukas's testimony was not admissible because it was not based on competent medical evidence that appellant's accident-related injuries impacted on her ability to work. *Compare Prudential Property & Casualty Insurance Co. v. Stein, supra* (where arbitrators did not declare a provision of insurer's policy void and where insurer did not establish that it was denied a hearing nor that fraud, misconduct, corruption, or other irregularity caused the entry of an unjust award, insurer's issues were not reviewable).

At the hearings, appellant presented the following evidence. Appellant was a passenger in the rear seat of Mr. Tonkin's vehicle when the accident occurred. She struck her right shoulder against the rear of the seat in front of her. She sustained, among other things, trauma to the right shoulder. She was diagnosed as suffering myofascial pain syndrome and instability of the right shoulder resulting from the accident. As a result of the shoulder injury, appellant underwent surgery at the University of Pennsylvania Hospital on July 7, 1993.

Despite the surgery, appellant's right shoulder remained subject to pain, limited movement, numbness, and tingling into the right hand and fingers. One of appellant's treating physicians diagnosed her with right shoulder instability with recurrent dislocation as a result of the accident. He also indicated that appellant has recurrent tendonitis secondary to the instability. The right shoulder and back injuries affected appellant's ability to work, participate in sports, and care for her child. The surgeon who performed appellant's operation stated that his surgery was performed to correct an accident-related injury.

Appellee presented the following countervailing evidence. The vehicle in which appellant was riding at the time of the accident sustained nominal damage in the amount of $557.03. Appellee was injured when her right shoulder struck the back of the front seat. She was treated at a local hospital and released the next day. A consulting orthopedic doctor, Gerald Gryczko, was consulted at the hospital. Dr. Gryczko indicated that appellant had a bruise on the right shoulder and soft tissue injury. X-rays revealed no fracture or other significant abnormality. Dr. Gryczko also concluded that appellant did

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not have a separation of the shoulder joint or any instability. Appellant continued to treat with Dr. Gryczko, who ordered an MRI on June 15, 1992. That study revealed that the rotator cuff of appellant's right shoulder was normal except for tendonitis. Dr. Gryczko indicated that appellant's tendonitis was a degenerative condition, which pre-dated the May 21, 1992 accident. He stated that the degenerative condition existed prior May 21, 1992, since the MRI was taken within a month of the accident. Appellant treated with Dr. Gryczko until August 22, 1992.

Appellee's doctor also examined appellant, and he opined that the MRI film was normal with respect to any trauma-related injury and that appellant's surgery was to correct the pre-existing degenerative condition tendonitis and not any trauma-related injury. Appellee also established that appellant bowls an average of four times per week and had done so for a significant period of time. Appellee contended that "the capsular shift*687 procedure performed by Dr. Glasgow in July, 1993, was not accident-related, but rather was done to correct a chronic rotator cuff problem and tendonitis problem that was degenerative in nature." Reproduced record at 107a.

[6] Appellee objected to the arbitrators' consideration of any testimony by appellant's vocational expert, Mr. Lukas. The basis for that objection was that the testimony was "incompetent because *the records upon which Mr. Lukas based his opinion were completely devoid of any medical opinion that Petitioner was restricted in her ability to work.*" FN2 R.R. at 95a (emphasis added); *see also* Appellant's brief at 13. Interestingly, in its brief to the arbitration panel, appellee conceded that Mr. Lukas was "competent to give an expert opinion based upon a medical disability or restriction rendered by a physician." R.R. at 95a.

> FN2. We note that appellant asked the trial court to review the medical evidence, contending that her expert medical witness did testify that her accident-related injuries affected her ability to work. The trial court refused to do so.

We disagree with appellee's representation of the record. There was clear, concise, and competent medical testimony that appellant's accident-related injuries impacted on her ability to work. Mr. Lukas reviewed and relied upon the deposition of Dr. Kenneth Gentilezza. R.R. at 161a-62a. We now review that deposition.

Dr. Gentilezza noted that prior to the accident, appellant never had experienced any pain or problems with her right shoulder. When appellant initially came to see him in October, 1992, due to right shoulder and back problems, he diagnosed her as follows:

A. Well, I felt that she had diffuse pain in the cervical spine, shoulder and multiple areas increasing over the last several weeks. I had a differential diagnosis based upon those findings and my examination of definite secondary myofascial pain syndrome due to the previous motor-vehicle accident of May 1992, and possible right shoulder instability based upon either a rotator cuff tear, a continuing shoulder separation or possibly a more serious glenohumeral lesion to the right shoulder due to the previous motor-vehicle accident.

R.R. at 251a. The doctor was asked whether in October, 1992, he had "an opinion based upon a reasonable degree of medical certainty as to whether your diagnoses as you've just described them were conditions in Kimberly Zak that were related to the motor-vehicle accident on May 21, 1992?" *Id.* The doctor responded, "Yes, I did," and, "That they were directly related to that motor-vehicle accident that occurred in 1992." *Id.*

Dr. Gentilezza continued to treat appellant with physical therapy and drugs. She had periods of improvement with her ability to use her right shoulder but nonetheless continued to experience problems. On January 7, 1993, the doctor thought that appellant "continued to have secondary myofascial pain due to the automobile accident, but it was improving. I felt that she still had right shoulder instability due to a shoulder dislocation/separation and that it

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had been improving." *Id.* at 253a. The next month, he diagnosed her with the same conditions and stated that the shoulder instability was "secondary to her automobile accident." *Id.* at 254a.

Appellant's shoulder separated from its joint one night while she was sleeping, causing her extreme pain. In July, 1993, she underwent the surgery, which resulted in enough improvement for her to resume some normal activities. After the surgery, however, appellant continued to have problems. On November 10, 1994, Dr. Gentilezza diagnosed appellant with "significant bicipital tendonitis." The following exchange occurs in the deposition with respect to this diagnosis:

Q. What is that?

A. Right in this region here. Right where the biceps tendon runs across the shoulder. You see that commonly in individuals who get shoulder surgery. They rely more on the biceps tendon to move the shoulder as opposed to the true shoulder muscles and it gets inflamed.

***688** Q. Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether the bicipital tendonitis was related to the motor-vehicle accident or treatment that was related to the motor-vehicle accident?

A. Yes, I do.

Q. What's your opinion?

A. I felt it was definitely related to the treatment that was provided for injuries sustained in the motor-vehicle accident.

Id. at 256a. The doctor placed appellant on physical therapy and medication. In March, 1995, Dr. Gentilezza diagnosed appellant with chronic right shoulder instability and acute bicipital tendonitis. As noted above, the doctor already expressly, clearly, and to a reasonable degree of medical certainty, had related all those problems to the traffic accident. He also indicated that the fact that the shoulder instability did not appear on the June, 1992 MRI was not significant because that type of instability does not always appear on a MRI.

Finally, the following exchanges occurred:

Q. Do you have an opinion based upon a reasonable degree of medical certainty as to whether Kimberly Zak has had or will have restrictions on her activities of daily living or employment as a result of the injuries that she sustained in the motor-vehicle accident as you've described them?

A. Yes, definitely she'll have restrictions.

Q. Could you please describe that for us, please?

A. Sure. Of the two she certainly will have less restrictions in her activities of daily living than she will with her employment for the most part or any type of employment. However, she will have difficulties with activities of daily living when you take into consideration what that means. She should do fairly well with dressing; although, there may be times when she tries to put her arm into her sleeve that it will cause pain and discomfort and may even dislocate again. She will have difficulty performing household chores. She will have difficulty reaching into cupboards over her shoulder height. She will have difficulty performing yard work or things that she has to lift. She may have difficulty lifting a child, holding a child in one arm, feeding a child, washing a child, those type of activities. With respect to work, jobs even sedentary for her may cause problems such as a typist, not basically because of her shoulder but because of the myofascial pain that she developed from the accident. Those prolonged repetitive activities, especially ones that don't allow an individual to change positions frequently, commonly aggravate myofascial pain and produce increasing symptoms and impairment as a result of that. Other activities at work, she may not be able to lift at work. She wouldn't be able to work in an assembly line where she has to predominantly use her right arm. There's a whole host of other things that she won't be able to do. Some things she will. Some things she won't. I'd say there's more won'ts than wills.

Q. Doctor, do you have an opinion as to whether Kimberly Zak has sustained permanent injury to her anatomy as a result of the motor-vehicle accident?

A. Yes.

Q. And what, in your opinion, constitutes permanency with regard to her condition?

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A. Permanency in exactly her or what defines permanency?

Q. No, I'm sorry. What is permanent in the patient?

A. She does not have a normal capsule of her shoulder, nor does she have a normal glenohumeral joint anymore. She's had an injury sustained to it from the accident plus surgery to repair it, and she does not have a normal joint anymore.

Q. Doctor, is there any chronicity to her conditions related to the accident?

A. Yes.

Q. What is that?

***689** A. Chronic loss of range of motion, dysfunction, ability to use the shoulder, pain; and she has higher risk of developing arthritic problems in that right shoulder than compared to the left.

R.R. at 261a.

Thus, the testimony unquestionably relates all of appellant's current right-shoulder problems to the accident and also unquestionably indicates that those shoulder problems will impact on her ability to work. The physician did not state that the accident-related injuries restricted appellant to "one-half" time work. Appellee appears to believe that the doctor was required to do so to render Mr. Lukas' testimony admissible. We disagree. *It was within the area of expertise of Mark Lukas* to establish the *extent to which* appellant's injuries prevented her from working. Dr. Gentilezza unequivocally stated to a reasonable degree of medical certainty that all of appellant's right shoulder problems stemmed from the accident and that the problems impacted on her ability to work. Dr. Lukas assumed all of appellant's right shoulder problems stemmed from the accident. This assumption was based on solid medical testimony of Dr. Gentilezza that they did. Mr. Lukas then testified about *the extent* to which the shoulder problems affected her ability to work. This testimony was clearly within his area of expertise.

The standards applicable to qualification of an expert follow:

It is well established in this Commonwealth that the standard for qualification of an expert witness is a liberal one. *The test to be applied when qualifying an expert witness is whether the witness had any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.* It is also well established that a witness may be qualified to render an expert opinion based on training and experience. Formal education on the subject matter of the testimony is not required, nor is it necessary that an expert be a licensed medical practitioner to testify with respect to organic matters. It is not a necessary prerequisite that the expert be possessed of all of the knowledge in a given field, only that he possess more knowledge than is otherwise within the ordinary range of training, knowledge, intelligence or experience.

Erdos v. Bedford Valley Petroleum Co., 452 Pa.Super. 555, 682 A.2d 806, 808 (1996) (emphasis in original), *quoting Miller v. Brass Rail Tavern, Inc.*, 541 Pa. 474, 664 A.2d 525, 528 (1995).

Mr. Lukas was a vocational expert and certainly was qualified to render an opinion about the degree to which appellant's shoulder problems have affected her ability to work. Furthermore, there was clear and concise medical testimony linking all of appellant's shoulder problems to the accident. The arbitrators' failure to consider the testimony was incorrect and requires reversal.

Appellant further contends that the arbitration panel erred in ruling that she was not entitled to recover for certain outstanding medical bills. The arbitrators determined that the bills were paid or payable under section 1722 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1722, and therefore, were not recoverable against appellee. However, since we have awarded appellant a new arbitration hearing, it is clear that we need not address this issue as the second arbitration panel will render its own conclusions regarding this claim and may come to a different conclusion regarding the admissibility of those bills. However, the panel may benefit from our recent decision in *Scott v. Erie In-*

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surance Group, 706 A.2d 357 (Pa.Super.1998), which is relevant to the issue presented by appellant.

Order reversed. Case remanded for arbitration proceedings. Jurisdiction relinquished.

FORD ELLIOTT, J., files a dissenting statement.

FORD ELLIOTT, Judge, dissenting:

I must respectfully dissent because I do not find the challenged contract clause relevant to the arbitration award entered in this case.

***690** As the majority correctly notes, ordinarily common law arbitration awards may only be reviewed where a party clearly shows he did not get a hearing, or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award. 42 Pa.C.S.A. § 7341. This court has interpreted § 7341 to allow for review of common law arbitration awards where a provision in an insurance policy is challenged as "contrary to constitutional, legislative or administrative mandate or against public policy or unconscionable." *Caputo v. Allstate Ins. Co.,* 344 Pa.Super. 1, 4, 495 A.2d 959, 961 (1985). In *Caputo,* for example, this court found reviewable a claim by Caputo that the arbitration award denying him stacked insurance coverage, permissible under Pennsylvania law, violated Pennsylvania's public policy favoring compensating victims of uninsured motorists.[FN1] Thus, I could agree with the majority that the challenged provision is reviewable on public policy grounds *if it affected the arbitration award.*

> FN1. *Caputo* involved a conflict-of-laws issue: the vehicle's owner resided and entered into the insurance contract in New Jersey, which did not allow stacking.

As the majority correctly notes, however, the contract provision at issue in this case affects the parties' rights to a trial *de novo* if they are not satisfied with the arbitration award.[FN2] Thus, the arbitrators clearly could not have based their award on the challenged clause. Additionally, by granting a new arbitration hearing, the majority does not provide the insured with any relief from the offending provision. As a result, the majority's determination that the clause violates public policy does not affect the validity of the previously entered arbitration award, nor will it implicate the proceedings at a new arbitration hearing. I therefore respectfully dissent.

> FN2. The contract provision actually expands both parties' entitlement to review of a common law arbitration award, albeit only under circumstances favoring the insurer.

Pa.Super.,1998.

Zak v. Prudential Property & Cas. Ins. Co.

713 A.2d 681

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CZak v. Prudential Property & Cas. Ins. Co., 713 A.2d 681 (Pa.Super., Jun 08, 1998) (NO. 3678 PHILA. 1997)

History

=> 1 **Zak v. Prudential Property & Cas. Ins. Co.**, 713 A.2d 681 (Pa.Super. Jun 08, 1998) (NO. 3678 PHILA. 1997)

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42 Patricia A. BURNS, Appellee, v. Kevin M. BURNS, Appellant., 2007 WL 4782718, *4782718+ (Appellate Brief) (Pa.Super. Oct 31, 2007) **Brief for Appellee Patricia a. Burns** (NO. 1510EDA2007) ★★ **HN: 5 (A.2d)**

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43 John NOVITSKI and Theresa Novitski, Appellees, v. Matthew RUSAK, Appellant., 2007 WL 4782810, *4782810+ (Appellate Brief) (Pa.Super. Oct 23, 2007) **Brief for Appellees and Supplemental Reproduced ...** (NO. 431MDA2007) " ★★★★ **HN: 6 (A.2d)**

44 Roberta LOJAK, Appellee, v. Ronald LOJAK, Appellant., 2007 WL 4723846, *4723846+ (Appellate Brief) (Pa.Super. Oct 02, 2007) **Brief for Appellee** (NO. 339WDA2007, 340WDA2007) " ★★ **HN: 5 (A.2d)**

45 John NOVITSKI and Theresa Novitski, Appellees, v. Matthew RUSAK, Appellant., 2007 WL 4782811, *4782811+ (Appellate Brief) (Pa.Super. 2007) **Brief for Appellant** (NO. 431MDA2007) ★★★★ **HN: 1,6 (A.2d)**

46 Philip THIBODEAU, individually and on behalf of all others similarly situated, Plaintiff-Appellee, v. COMCAST CORPORATION, et al., Defendants-Appellants., 2006 WL 3367479, *3367479+ (Appellate Brief) (Pa.Super. Jun 08, 2006) **Brief of Amici Curiae the National Consumer Law ...** (NO. 02176EDA05, 02177EDA05) ★★ **HN: 1,2,4 (A.2d)**

47 Lorena AFROILAN, Plaintiff-Appellee, v. AT&T WIRELESS and PANASONIC TELECOMMUNICATIONS COMPANY, a division of Matsushita Electric Company, Defendants-Appellants., 2006 WL 3367486, *3367486+ (Appellate Brief) (Pa.Super. Jun 08, 2006) **Brief of Amici Curiae the National Consumer Law ...** (NO. 02197EDA05, 02277EDA05) ★★ **HN: 1,2,4 (A.2d)**

48 Philip THIBODEAU, individually and on behalf of all others similarly situated, Plaintiffs - Appellee, v. COMCAST CORPORATION, et al., Defendants - Appellants., 2006 WL 3367476, *3367476+ (Appellate Brief) (Pa.Super. May 19, 2006) **Brief of Appellees, Thibodeau and the Class** (NO. 02176EDA05, 02177EDA05) " ★★★ **HN: 2 (A.2d)**

49 Lorena AFROILAN on behalf of herself and others similarly situated, Plaintiff-Appellee, v. AT&T WIRELESS, a Delaware Corporation; and, Panasonic Telecommunications Systems Company, Division of Matsushita Electric Corporation of America, Defendants-Appellants., 2006 WL 3367482, *3367482+ (Appellate Brief) (Pa.Super. May 19, 2006) **Brief of Appellee Lorena Afroilian on Behalf of ...** (NO. 02197EDA05, 02277EDA05) ★★ **HN: 3 (A.2d)**

50 James TROMBETTA, Tara Trombetta Witover and Julie Trombetta Gray, Appellants, v. RAYMOND JAMES FINANCIAL SERVICES, INC., Raymond James & Associates, Inc., Peter Gialames and Edward Lewis, Appellees, v. Neil M. Niren, M.D., Appellee., 2005 WL 4720028, *4720028+ (Appellate Brief) (Pa.Super. Dec 14, 2005) **Brief for Appellant** (NO. 01250WDA05, 01347WDA05) " ★★★ **HN: 2,4 (A.2d)**

51 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA, Appellee., 2005 WL 3968624, *3968624+ (Appellate Brief) (Pa.Super. Mar 24, 2005) **Substituted Brief of Appellee, Steven O'Mara on ...** (NO. 02798EDA03) " ★★

52 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA, Appellee., 2005 WL 3968625, *3968625+ (Appellate Brief) (Pa.Super. Mar 02, 2005) **Appellant's Supplemental Brief on Reargument** (NO. 02798EDA03) ★★ **HN: 2 (A.2d)**

53 Patricia M. EGGER, Administratrix of the Estate of Charles Egger, Deceased, v. GULF INSURANCE COMPANY, Brownyard Group, Inc., W.H. Brownyard Corporation and/or Brownyard Brothers, Inc., 2004 WL 4905984, *4905984+ (Appellate Brief) (Pa.Super. Jul 15, 2004) **Brief of Appellee Patricia M. Egger, ...** (NO. 01001EDA04) ★★

54 Marie RICOT-LAROSE, Claire Dominique LaRose, and Frantz LaRose, Appellees, v. AAA MID-ATLANTIC INSURANCE COMPANY, Appellant., 2004 WL 871270, *871270 (Appellate

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Brief) (Pa.Super. Feb 09, 2004) **Reply Brief for Appellant** (NO. 03272EDA03) ★

55 Albert GOLFIERI, v. METROPOLITAN LIFE INSURANCE COMPANY., 2004 WL 3259727, *3259727+ (Appellate Brief) (Pa.Super. 2004) **Appellant'S Brief Volume 1 of 1** (NO. 01686MDA04) ★★

56 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA, an individual, Appellee., 2003 WL 24309260, *24309260+ (Appellate Brief) (Pa.Super. Dec 24, 2003) **Brief of Appellant** (NO. 02798EDA03) ★★★ **HN: 2 (A.2d)**

57 Marie RICOT-LAROSE, Claire Dominique, LaRose, and Frantz LaRose, Appellees, v. AAA MID-ATLANTIC INSURANCE COMPANY, Appellant., 2003 WL 23420276, *23420276 (Appellate Brief) (Pa.Super. Dec 23, 2003) **Brief for Appellant** (NO. 03272EDA03) ★★

58 Erin M. McNULTY and Brian J. Erzar, on Behalf of Themselves and all Others Similarly Situated, Plaintiffs/Appellees, v. H&R BLOCK, INC.; H&R Block Group, Inc.; H&R Block Services, Inc.; H&R Block Tax Services, Inc.; H&R Block Eastern Tax Services, Inc.; H&R Block Eastern Enterprises, Inc.; and H&R Block Eastern Support Services, LLC, Defendants/Appellants., 2003 WL 23974919, *23974919+ (Appellate Brief) (Pa.Super. Sep 03, 2003) **Brief of Plaintiffs/Appellees** (NO. 00679MDA03) ★★ **HN: 3 (A.2d)**

59 PACIFIC EMPLOYERS INSURANCE COMPANY, Appellant, v. Caroline MCGUIGAN, Administratrix of the Estate of Connie Lou Henricks, Appellees., 2003 WL 23026090, *23026090+ (Appellate Brief) (Pa.Super. Jan 21, 2003) **Brief for Appellees, Carolyn McGuigan, ...** (NO. 01436MDA02) ★★ **HN: 6 (A.2d)**

60 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA, an individual, Appellee., 2003 WL 23525244, *23525244+ (Appellate Brief) (Pa.Super. 2003) **Brief of Appellant** (NO. 02798EDA03) ★★ **HN: 2 (A.2d)**

61 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA, an individual, Appellee., 2003 WL 23525245, *23525245+ (Appellate Brief) (Pa.Super. 2003) **Reply Brief for Appellant, the Hartford Insurance ...** (NO. 02798EDA03) ★★

62 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA, an individual, Appellee., 2003 WL 24300777, *24300777+ (Appellate Brief) (Pa.Super. 2003) **Reply Brief for Appellant, the Hartford Insurance ...** (NO. 02798EDA03) ★★

63 THE HARTFORD INSURANCE COMPANY, Appellant, v. Steven O'MARA., Appellee., 2003 WL 24300779, *24300779+ (Appellate Brief) (Pa.Super. 2003) **Appellant's Reply Brief on Reargument** (NO. 02798EDA03) ★★ **HN: 2 (A.2d)**

64 PACIFIC EMPLOYERS INSURANCE COMPANY, Appellant, v. Caroline McGUIGAN, Administratrix of the Estate of Connie Lou Henricks, Appellee., 2002 WL 32797771, *32797771+ (Appellate Brief) (Pa.Super. Dec 16, 2002) **Brief for Appellant, Pacific Employers Insurance ...** (NO. 01436MDA02) " ★★★ **HN: 5,6 (A.2d)**

65 J. Stephen HOGAN, Robert Lepore and Alma M. Hogan t/d/b/a Hogan Development Co. II, v. Richard A. CASSELBURY and Mary A. Casselbury., 2002 WL 32795164, *32795164+ (Appellate Brief) (Pa.Super. Oct 16, 2002) **Brief for Appellees** (NO. 01084MDA02) ★★

66 Joanne Melody JENSEN, Cross Appellant, v. Erik B. JENSEN, Cross Appellee., 2002 WL 32352732, *32352732+ (Appellate Brief) (Pa.Super. 2002) **Brief of Cross Appellee** (NO. 00020EDA02, 00024EDA02) ★★ **HN: 5 (A.2d)**

67 Earl R. DeHART, Individually and as Executor of the Estate of Nora M. DeHart, Deceased, Ap-

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pellant, v. Robert D. RECTOR, M.D. and Michael J. Rupp, M.D., Appellees., 2001 WL 34611932, *34611932+ (Appellate Brief) (Pa.Super. Oct 11, 2001) **Brief of Appellee, Robert D. Rector, M.D.** (NO. 00567MDA01) ★★ **HN: 6 (A.2d)**

68 Michael BROADNAX, Appellant, v. THE PRESBYTARIAN CHILDREN'S VILLAGE IN PENNSYLVANIA, et al., Appellees., 2001 WL 34314854, *34314854+ (Appellate Brief) (Pa.Super. Feb 15, 2001) **Brief of Appellee Hilary Field, Md.** (NO. 265EDA2000) ★★ **HN: 5 (A.2d)**

69 Sharon CERANKOWSKI, Appellee, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellant., 2000 WL 34238499, *34238499+ (Appellate Brief) (Pa.Super. Nov 21, 2000) **Brief for Appellant, State Farm Mutual Automobile ...** (NO. 02581EDA00) " ★★ **HN: 3 (A.2d)**

70 Jerome SANDERS, Appellant, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellee., 2000 WL 34405254, *34405254+ (Appellate Brief) (Pa.Super. Oct 18, 2000) **Brief of Appellee** (NO. 01813EDA00) ★★★ **HN: 1,2,4 (A.2d)**

71 Sharon CERANKOWSKI, Appellee, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellant., 2000 WL 34238503, *34238503+ (Appellate Brief) (Pa.Super. Aug 09, 2000) **Brief for Appellee** (NO. 02581EDA00) ★★

72 John E. BOLAND and Lillian Boland, his wife, Appellants, v. Keith L. ZELIGER, D.O. and Susquehanna Orthopedic Associates, Ltd., Appellees., 2000 WL 35601963, *35601963+ (Appellate Brief) (Pa.Super. Jun 21, 2000) **Brief of Appellants** (NO. 535MDA2000) ★★

73 Jerome SANDERS, An Individual, Appellant, v. STATE FARM INSURANCE COMPANY, Appellee., 2000 WL 34405255, *34405255+ (Appellate Brief) (Pa.Super. 2000) **Brief for Appellant** (NO. 01813EDA00) ★★ **HN: 2,4 (A.2d)**

74 Terri Ann Moore BARESSI, Appellee, v. Frank Albert BARESSI, Appellant., 2000 WL 34408604, *34408604+ (Appellate Brief) (Pa.Super. 2000) **Reply Brief for Appellant** (NO. 00215WDA00) ★★ **HN: 6 (A.2d)**

75 Barbara Ann Marie RYAN, Appellee, v. I. Joel BERMAN, D.O., and Morris I. Rossman, D.O., and Regional Internal Medicine Associates, Ltd., and Joel D. Jaffe, M.D., Appellees, Leon M. Cattolico, D.O., and Henry DiTommaso, D.O., Appellants., 1999 WL 33884642, *33884642+ (Appellate Brief) (Pa.Super. Dec 29, 1999) **Brief of Appellee** (NO. 01402EDA99, 01551EDA99) ★★

76 Jacquelyn DEWALD by Nicholas James Dewald, Administrator of the Estate of Jacquelyn Dewald and Nicholas Dewald, in His Own Right, Appellants, v. Krn ASSOCIATES, P.C. and Hooshang M. Nikoo, M.D., Appellees., 1999 WL 33894126, *33894126+ (Appellate Brief) (Pa.Super. Jul 23, 1999) **Brief on Behalf of Appellees Krn Associates, P.C. ...** (NO. 00159EDA99) " ★★

77 Prudential PROPERTY and Casualty Company, Appellant, v. Sidney and Doreen BURSTEIN, h/w, Appellees., 1999 WL 33909458, *33909458+ (Appellate Brief) (Pa.Super. Jan 11, 1999) **Brief on Reargument of Amicus Curiae Pennsylvania ...** (NO. 02619PHL97) ★★ **HN: 2,4 (A.2d)**

78 Barbara Ann Marie RYAN, Appellant, v. I. Joel BERMAN, D.O., and Morris I. Rossman, D.O., and Regional Internal Medicine Associates, Ltd., and Joel D. Jaffe, M.D., and Leon M. Cattolico, D.O., and Henry DiTommaso, D.O., Appellees., 1994 WL 16168110, *16168110+ (Appellate Brief) (Pa.Super. Nov 29, 1994) **Brief for Appellant** (NO. 01551EDA99, 01402EDA99) ★★

79 Doug SCOTT, et al., Petitioners, v. CINGULAR WIRELESS LLC, Respondent., 2006 WL

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811761, *811761+ (Appellate Brief) (Wash. Jan 25, 2006) **Brief Amici Curiae of Aarp and National ...** (NO. 77406-4) ★★ **HN: 2,4 (A.2d)**

Trial Court Documents (U.S.A.)

Trial Pleadings

80 Patricia M. EGGER, Administratrix of the Estate of Charles Egger, Deceased, Plaintiff, v. GULF INSURANCE COMPANY, Brownyard Group, Inc., W.H. Brownyard Corporation and/or Brownyard Brothers, Inc., Defendants, v. Aon Risk Services, Inc. of Pennsylvania, and Brokerage Professionals, Inc., Additional Defendants., 2003 WL 24010114, *24010114 (Trial Pleading) (Pa.Com.Pl. Apr 30, 2003) **Plaintiff's Omnibus Motion in Limine** (NO. MAY2001-001908) ★

81 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual; Respondent/Defendant., 2002 WL 32802171, *32802171+ (Trial Pleading) (Pa.Com.Pl. 2002) **Answer to Respondent's Preliminary Objections** (NO. FEB2002-1769) ★★

82 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 32802175, *32802175+ (Trial Pleading) (Pa.Com.Pl. 2002) **Petitioner's Reply to Respondent's New Matter** (NO. FEB2002-1769) ★

83 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 32802178, *32802178 (Trial Pleading) (Pa.Com.Pl. 2002) **Petitioner's Answer to Respondent's Cross-Motion ...** (NO. FEB2002-1769) ★

Trial Motions, Memoranda and Affidavits

84 Angela Kimberly RAND, Plaintiff, v. DISCOVER CARD CORPORATION, Defendant., 2003 WL 23921865, *23921865 (Trial Motion, Memorandum and Affidavit) (D.Md. May 09, 2003) **Memorandum of Law in Support of Plaintiff's ...** (NO. PJM-2003-911) ★

85 Don A. STEED and Elizabeth B. Steed, Plaintiffs, v. SANDERSON FARMS, INC., Defendant., 2006 WL 507486, *507486 (Trial Motion, Memorandum and Affidavit) (S.D.Miss. Jan 12, 2006) **Plaintiffs' Response to Defendant's Motion for ...** (NO. 205-CV-02146-KS-JMR) ★★

86 Raymond KING, Sandra Coates, on behalf of themselves and all others similarly situated, Plaintiffs, v. ADVANCE AMERICA, Cash Advance Centers of Pennsylvania, LLC d/b/a Advance America, d/b/a National Cash Advance, Defendant., 2007 WL 3091651, *3091651 (Trial Motion, Memorandum and Affidavit) (E.D.Pa. Sep 14, 2007) **Defendant's Reply Memorandum of Law in Support of ...** (NO. 07-CV-237) ★★

87 Adam SCHWARTZ, individually and on behalf of all others similarly situated, v. COMCAST CORPORATION., 2006 WL 1358318, *1358318+ (Trial Motion, Memorandum and Affidavit) (E.D.Pa. Apr 27, 2006) **Plaintiff's Brief in Opposition to Comcast ...** (NO. 05-CV-2340) ★★

88 THE HARTFORD INSURANCE COMPANY OF THE MIDWEST, Plaintiff, v. Laverne GREEN, Defendant., 2003 WL 23640506, *23640506+ (Trial Motion, Memorandum and Affidavit) (E.D.Pa. 2003) **The Hartford Insurance Company of the Midwest's ...** (NO. 03-3368) ★ ★

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89 THE HARTFORD INSURANCE COMPANY OF THE MIDWEST, Plaintiff, v. Laverne GREEN, Defendant., 2003 WL 23640507, *23640507+ (Trial Motion, Memorandum and Affidavit) (E.D.Pa. 2003) **The Hartford Insurance Company of the Midwest's ...** (NO. 03-3368) ★

90 Terrace M. CHOICE, Plaintiff, v. OPTION ONE MORTGAGE CORP., et al., Defendants., 2002 WL 32956497, *32956497+ (Trial Motion, Memorandum and Affidavit) (E.D.Pa. Nov 19, 2002) **Reply Brief in Support of Option One Mortgage ...** (NO. 02-CV-6626) ★★

91 Terrace M. CHOICE, Plaintiff, v. OPTION ONE MORTGAGE CORP., et al., Defendants., 2002 WL 32956496, *32956496+ (Trial Motion, Memorandum and Affidavit) (E.D.Pa. Nov 12, 2002) **Brief in Support of Plaintiff's Opposition to ...** (NO. 02-CV-6626) ★★

92 Barbara LASH, Plaintiff, v. MBNA AMERICA BANK, Defendant., 2005 WL 5758544, *5758544 (Trial Motion, Memorandum and Affidavit) (Del.Ch. Aug 01, 2005) **Motion to Enjoin Arbitration Proceedings** (NO. 1530-N) ★

93 Patricia M. EGGER, Administratrix of the Estate of Charles Egger, Deceased, Plaintiff, v. GULF INSURANCE COMPANY, Brownyard Group, Inc., W.H. Brownyard Corporation and/or Brownyard Brothers, Inc. Defendants, v. Aon Risk Services, Inc. of Pennsylvania, and Brokerage Professionals, Inc., Additional Defendants., 2003 WL 25433710, *25433710 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. Apr 30, 2003) **Plaintiff's Omnibus Motion in Limine** (NO. MAY2001-001908) ★

94 Michael and Kim RINNIER 209 Tower Road Villanova, PA 19085, v. TERMINIX INTERNATIONAL COMPANY, L.P. 526 W. Lancaster Avenue Haverford, PA 19041., 2002 WL 32802508, *32802508 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. Nov 19, 2002) **Plaintiffs' Response Memorandum of Law in ...** (NO. 01-8392) ★

95 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 32802176, *32802176 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Petitioner's Motion for Summary Judgment** (NO. FEB2002-1769) ★

96 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plkaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 32802177, *32802177 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Petitioner's Memorandum of Law in Support of the ...** (NO. FEB2002-1769) ★

97 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 32802179, *32802179+ (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Memorandum of Law in Response to O'Mara's Cross ...** (NO. FEB2002-1769) ★★

98 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 32802180, *32802180 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Petitioner's Memorandum of law in Support of the ...** (NO. FEB2002-1769) ★

99 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. STEVEN O'MARA, an individual, Respondent/Defendant., 2002 WL 32802183, *32802183 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Petitioner's Reply to Respondent's New Matter** (NO. FEB2002-1769) ★

100 ROYAL BANK OF PENNSYLVANIA 732 Montgomery Avenue Narberth, PA 19072, v. INSURANCE PLACEMENT FACILITY OF PENNSYLVANIA d/b/a Fair Plan 325 Chestnut

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Street, Suite 600 Philadelphia, PA., 2002 WL 32802976, *32802976 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Answer to Motion to Vacate Arbitration Award and ...** (NO. 003843) ★★

101 THE HARTFORD INSURANCE COMPANY, a Connecticut corporation, Petitioner/Plaintiff, v. Steven O'MARA, an individual, Respondent/Defendant., 2002 WL 34096813, *34096813 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2002) **Petitioner's Motion for Summary Judgment** (NO. FEB2002-1769) ★

102 PENNSYLVANIA NATIONAL SECURITY INSURANCE COMPANY, Plaintiff, v. MAHLA OFFICE EQUIPMENT COMPANY, Ronald Mahla, Thomas H. Stiokis, Jr., All Pro Detail and Tow, James Ahearn, Amy Ahearn and Gary Boyle, Defendants., 2001 WL 34760895, *34760895 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. May 21, 2001) **Response to Motion for Judgment on the Pleadings, ...** (NO. DIVISIONGD01-4714) ★★

103 PENNSYLVANIA NATIONAL SECURITY INSURANCE COMPANY, Plaintiff, v. MAHLA OFFICE EQUIPMENT COMPANY, Ronald Mahla, Thomas H. Stiokis, Jr., All Pro Detail and Tow, James Ahearn, Amy Ahearn and Gary Boyle, Defendants., 2001 WL 35932180, *35932180 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. May 21, 2001) **Type of Document: Response to Motion for Judgment ...** (NO. GD01-4714) ★★

104 Donna LONZO, Plaintiff, v. FIRST USA BANK, N.A. and Bank One Corporation, Defendants., 2001 WL 34760859, *34760859 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2001) **Brief in Support of Plaintiff's Motion to Lift ...** (NO. GD01-9291) ★★

105 Sharon CERANKOWSKI 576 Bristol Road Warminster, PA 18974, v. STATE FARM INSURANCE COMPANY 3340 Tillman Drive Bensalem, PA 19020., 2000 WL 34492301, *34492301 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2000) **Brief in Support of Petition to Vacate Award of ...** (NO. 00-001241-13-6) ★★

106 Sharon CERANKOWSKI 576 Bristol Road Warminster, PA 18974, v. STATE FARM INSURANCE COMPANY 3340 Tillman Drive Bensalem, PA 19020., 2000 WL 34492320, *34492320 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. 2000) **Brief in Support of Petition to Vacate Award of ...** (NO. 00-001241-13-6) ★★

107 Robert LAND and Spencer M. Wertheimer, Administrators of the Estate of Andrew Lavern Brown Walters, III, a/k/a Andrew Walters, III; Johnatahn Victor Phillipe Bo Brown, a/k/a Johnathan Walters; Julie Janelle Tiffany Briana Walters, a/k/a Julie Walters and Aimee Elizabeth Helen Zuhairan Walters, a/k/a Aimee Walters, Decedents, v. THE SALVATION ARMY and Cope Lippincott Slifer Architects and C. Daniel Weyman and Weyman Associates, Inc., v. Jeanette L. Walters., 1999 WL 33924253, *33924253 (Trial Motion, Memorandum and Affidavit) (Pa.Com.Pl. Nov 29, 1999) **Brief in Opposition to Plaintiffs' Motions for ...** (NO. 1655) ★★

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 563 - C.D.

Jury Trial Demanded

Type of Pleading
Defendant Dr. Alajaji's Response and Brief re DuBois Regional Medical Center's Motions in Limine and to Prevent Plaintiffs and Their Expert Donal Kirwan, From Improperly Asserting That Defendants Herein Should be Held Liable for Speculative Purported Future (Illegal) Discrimination Against Individuals With a Disability Like Plaintiff Paula Carlson

Filed on Behalf of Defendant
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FEB 07 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

DEFENDANT DR. ALAJAJI'S RESPONSE AND BRIEF RE DUBOIS REGIONAL MEDICAL CENTER'S MOTIONS IN LIMINE AND TO PREVENT PLAINTIFFS AND THEIR EXPERT DONAL KIRWAN FROM IMPROPERLY ASSERTING THAT DEFENDANTS HEREIN SHOULD BE HELD LIABLE FOR SPECULATIVE PURPORTED FUTURE (ILLEGAL) DISCRIMINATION AGAINST INDIVIDUALS WITH A DISABILITY LIKE PLAINTIFF PAULA CARLSON

AND NOW comes Defendant, JERJIS T. ALAJAJI, M.D., by and through his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc., and responds to co-Defendant DuBois Regional Medical Center's Motions in Limine as follows:

1. It is admitted that Paula Carlson was employed as a radiation therapist at the time she contracted the bone tumor which is the subject of this lawsuit.

2. It is admitted that after Plaintiff's surgery, the hospital was prepared to and had undertaken efforts to return to Mrs. Carlson to work as an employee, by making necessary accommodations. However, Mrs. Carlson ultimately did not return to work. The reason for her not actually coming back to the open job position is not clear.

3. It is admitted that Plaintiff's primary care physician was Dr. Stephen Graeca and his father, Raymond Graeca, is Chief Executive Officer of the hospital.

4-5. It is admitted that at various junctures throughout the case, Plaintiffs' attorney has attempted through deposition questioning or offhand comments to inject entirely inappropriate subject matters into the case including those listed in the hospital's motion. It is further admitted that not only are some of such contentions irrelevant, they are legally incorrect and unduly prejudicial to the various Defendants in this case. For instance, it is legally inappropriate for Plaintiffs to contend through counsel's insinuations and/or through any witness, that Mrs. Carlson will be discriminated against because she has a medical disability so as to purportedly earn less than employees who are not disabled. This ignores laws such as the Americans With Disabilities Act, and numerous other laws, which preclude such illegal discrimination. (*See* legal discussion, *infra*). It is thus inappropriate for Plaintiffs to present arguments or "expert" opinion evidence asserting that the Defendants herein should be liable for illegal discrimination which Mrs. Carlson might possibly face should her employers in the future not follow the law and act illegally. Similar considerations apply to Plaintiffs' insinuations or contentions that because Mrs. Carlson was an "at will employee," the hospital could bring her back to work and just fire her for any or no reason.

6. It is agreed that it **is** relevant, as the hospital's motion indicates, whether or not Plaintiff Paula Carlson is capable of returning to work, whether there was a job position available for her, and the reasons why Plaintiff is not presently employed by the hospital. It is also agreed that the hospital correctly states that it is not proper to imply or suggest that the hospital intended to or would have likely returned Mrs. Carlson to work then fired her for any no reason, or otherwise eventually discriminated against her on the basis of her disability.

Dr. Alajaji differs with the hospital's position, however, to the extent the hospital's position may be construed as indicating that it would not be relevant or admissible for Defendant Dr. Alajaji or others to present evidence that under applicable legal provisions such as the Americans With Disabilities Act, employers would be required to offer and make accommodations and changes to a job so that Mrs. Carlson would be able to perform the essential functions of the job. This information can be easily and simply presented through appropriate expert testimony such as the Defense vocational rehabilitation specialist expert and certified vocational rehabilitation counselor George Barrett and/or Ronald Kushner, as set forth in their reports, copies of which are attached hereto as Exhibits "A" (p. 12) and "B," (pp. 3-4) respectively. In fact, the applicability of the Americans With Disabilities Act provisions against illegal discrimination is exactly why it is **inappropriate** for **Plaintiffs** to raise contentions and argument, and/or attempt to present evidence via such witnesses as their Mr. Donal Kirwan (report attached hereto as Exhibit "C," (p. 4 and footnote 1 on page 5)) that Mrs. Carlson's future income or employability would be affected by illegal discrimination that Plaintiffs speculate might occur at some time in the future.

Legal Discussion

While Pennsylvania's appellate courts have not directly addressed the issue of economists projecting income losses based in part on hypothecated workplace discrimination,[1] many cases throughout the nation have held that discrimination in the future by potential employers is **not** a proper consideration in evaluating future income losses to personal injury victims. For instance,

[1] As the discussion to follow will demonstrate, Pennsylvania's appellate courts have at least indirectly addressed this issue and would most certainly follow the common rule that evidence of future possible discrimination in employment is **not** admissible.

in Wheeler Tarpeh-Doe v. United States, 771 F. Supp. 427 (D.D.C. 1991), rev'd on other grounds, 28 F.3d 120 (D.C.Cir. 1994), a mother sued the United States for failing to provide proper medical care to a child who ended up blind and neurologically damaged after birth. In that case, one parent was white and one was black. The defendants argued that future earnings should be based on statistical evidence of average earnings of black males. Id. at 455. The court rejected this, stating:

> [I]t would be inappropriate to incorporate current discrimination resulting in wage difference between the sexes or races or the potential for any future such discrimination into a calculation for damages resulting from lost wages.

Id.

The Sixth Circuit took the same approach in a disfigurement case. In Drayton v. Jiffee Chemical Corp., 591 F.2d 352 (6th Cir. 1978), a black female child sued the maker of a liquid drain cleaner after the child became severely burned by the chemical. The defendant argued that the future income award should be limited by statistical evidence showing a history of job discrimination against blacks and females. Id. at 368. The court rejected this argument, stating that discrimination against black females will be less prevalent in the future. Id.

The First Circuit, in a personal injury action by a female child, has stated that "we see no reason to distinguish between the sexes" when calculating damages. Caron v. United States, 548 F.2d 366, 371 (1st Cir. 1976). Furthermore, the First Circuit has also held that there is no clear error in a court's refusal to accept gender-specific work statistics for calculations of earning capacity. Reilly v. United States, 665 F.Supp. 976 (D.R.I. 1987), *affirmed in part, remanded in part*, 863 F.2d 149 (1st Cir. 1988).

The foregoing cases refusing statistical evidence of discrimination against blacks and women as a factor in calculating recoverable income loss damages in a personal injury case, apply equally herein where the discrimination is based on the illegal consideration of disability or handicap. Such testimony as is proposed to be offered by Plaintiffs' Donal Kirwan should **not** be permitted.

Exclusion of such evidence is also supported by the Pennsylvania Rules of Evidence. Under Rule 403, the court has the power to determine whether evidence has a propensity for misleading the jury, confusion of issues or undue prejudice to the defendant. Moreover, under Rule 703, the court may exclude opinion testimony where the facts or data are not "reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." *See* Pa.R.E. 703; *see also* Shatkin v. McDonnell Douglas Corp., 727 F.2d 202, 208 (3rd Cir. 1989). Moreover, the Pennsylvania Standard Jury Instructions (S.S.J.I.) recognize standard tables for **life** expectancy (S.S.J.I. No. 6.21), but do **not** recognize **work life** tables based on discrimination by potential future employers.

In addition, reliance on historical evidence of employer discrimination against the disabled, even if it has occurred in years past, is not reasonable in light of its illegality and available remedies should it occur. The jury would be mislead, the issues confused, and the Defendants prejudiced by virtue of substantially increased liability for income losses claimed by individuals with disabilities as opposed to nondisabled workers, imposed by illegal actions of hypothetical future employers that cannot be cross examined. Moreover, should such claims or "evidence" of hypothecated future discrimination be allowed to be presented by Plaintiffs herein, a more detailed explanation of the terms, provisions, and remedies of the Americans with Disabilities Act and myriad other laws would then likely have to be demonstrated to the jury by

way of a defense to such claims, thereby raising collateral issues.[2] And, it should not be ignored that such data as is proposed to be relied upon is apparently nonspecific and not tailored to Mrs. Carlson's particular "disability," and would necessarily include persons with such diffuse disabilities as total loss of limbs, paraplegia and quadriplegia, mental retardation, and an innumerable host of other noncomparable disabilities. *See* generally, discussion of authorities in Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 505 F. Supp. 1313, 1324-1334 (E.D. Pa. 1980), *cert. denied*, 481 U.S. 1029, 107 S. Ct. 1955 (1987); *see* also, U.S. v. 318.88 Acres of Land, Etc., 498 F. Supp. 763 (D. Nev. 1980) (expert's valuation testimony is **incompetent** if based on erroneous assumptions of law or fact, i.e., that employers can continue to discriminate against employment candidates with impunity).

The Congressional "Findings" and "Purposes" of the Americans with Disabilities Act of 1990, 42 U.S.C.A. §12101(a) and (b), should dispel the claim that future discrimination is a recoverable item of damages in this case. The Act provides Plaintiff with a full remedy should same ever occur. Therein, Congress invoked its full "sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities" and "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," such that in the future "**census data**, **national polls**, and **other studies**" will **no longer** "**document . . .that people with disabilities**, as a group, **occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally**." §12101(a)(6), (b)(1), and (4).

[2] The Pennsylvania Human Relations Act also provides remedies to employees who have been subject to employment discrimination. *See* 43 P.S. § 951, *et seq.*

Moreover, the article Plaintiffs' economic "expert" Kirwan relies on for his contention at page 4 of his report (Exhibit "C") that "smaller employers are more likely to be reluctant to hire an individual with a work restriction due to concerns over productivity," (*see* footnote 1), of eight (8) pages set forth in a 2000 publication called "Disability Status and Perceptions of Employability by Employers," is hardly scientific, to say nothing of speculative of illegal discriminatory motivations of some possible future employer, and is not specific to either Mrs. Carlson's highly skilled and desirable job qualifications and experience as a radiation therapy technician, nor does it consider Mrs. Carlson's specific "disability" which is limited function of her one wrist. This alone points out the fallacy of attempted reliance on same. *See* Pa.R.E. 403 and 703; *see* also Christopherson v. Allied-Signal Corp., 939 F.2d 1106, 1114 (5th Cir. 1991), *cert. denied*, 503 U.S. 912; 112 S. Ct. 1280 (1992) (judges may reject opinions founded on critical facts that are plainly untrustworthy, principally because such an opinion cannot be helpful to the jury); Eymard v. Pan Am. World Airways, 795 F.2d 1230 (5th Cir. 1986) (economist's testimony erroneously admitted where he made assumptions inconsistent with common sense); Viterbo v. Dow Chemical Co., 826 F.2d 420 (5th Cir. 1987) (exclusion of expert testimony proper where "critical fact" not considered). As the party seeking admissibility of such evidence, where as herein the objectionability of the evidence **has been raised in advance of trial by the defense**, **the burden of demonstrating its admissibility on the Plaintiffs**, and the Defendants need not first prove its impropriety. *See* Pa. Rules of Evidence 103; cf., Dowling v. U.S., 493 U.S. 342, 110 S. Ct. 668, 673, note 3, 107 L.Ed. 2nd 208 (1990) (threshold inquiry for the court is whether proponent of evidence has established its relevance and therefore its admissibility).

In addition, the court in Marcel v. Placid Oil Co., 11 F.3d 563 (5th Cir. 1994), applying Daubert standards, upheld the district court's exclusion of an expert economist's testimony

which was criticized by the opposing party as being "outdated, statistically suspect, and untrustworthy," among other objections. Id. at 567. The Circuit Court noted that the offering party attempted to introduce "specific statistics," but did not "tender" any evidence tied in to the plaintiff's actual work-life expectancy situation. Id. It then ruled that the evidence could be properly excluded on several bases, including that "the probative value did not outweigh the prejudice to the plaintiffs of its admission or that it was not sufficiently reliable in the present context." Id. 11 F.3d at 568. Pennsylvania follows similar rules. *See* Pa.R.E. 403 and 703.

In Drayton v. Jiffee Chemical Corp., 591 F.2d 352 (6th Cir. 1978), the court "considered" such evidence and then went on to indicate the unreliability of utilizing "statistical evidence showing that blacks and females generally do not presently enjoy the benefits of the American standard of living." The court "recognize[d] the likelihood that these disadvantages will have considerably less impact in the future on the ability of a black female . . . to obtain gainful employment comparable to that available to white males." 591 F. Supp. at 368 (emphasis added). It is obviously implicit, if not explicit, that the court felt it **inappropriate** to credit statistical evidence of illegal employment discrimination in determining future income losses.

Further, with respect to expert testimony generally, the Pennsylvania Supreme Court has held that "[a]n expert **cannot base his opinion upon facts which are not warranted by the record**...[n]o matter how skilled or experienced the witness may be, **he will not be permitted to guess or to state a judgment based on mere conjecture**." *See* Childers v. Power Line Equipment Rentals, Inc., 452 Pa.Super. 94, 681 A.2d 201, 209 (1996); Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 404 (1968). The policy notions supporting the foregoing rule of law where first set forth by the Pennsylvania Supreme Court in Auerbach v. Philadelphia Transp. Co., 421 Pa. 594, 221 A.2d 163, 170 (1966), which held that, to permit an expert to opine upon facts **not**

warranted by the record, "would be to **build a presumption on a presumption, which would build a smoke ladder into the skies of irresponsible speculation, which, fortunately, the law prohibits**."

Herein, Plaintiffs' witness Mr. Kirwan postulates income loss may result from future speculated discrimination. As such, this opinion and proposed testimony as set forth in his report should be precluded from the trial of this matter as a matter of law. Similarly, Plaintiffs' counsel should be precluded from insinuating or arguing same at trial. To allow same could cause the jury to improperly speculate as to whether there would be such discrimination in the future, and is magnified by the fact that if same ever occurred, Plaintiff Paula Carlson would have appropriate remedies against such violations of the law.

The purpose behind the preclusion of speculative expert testimony is based upon well settled Pennsylvania substantive and procedural rules that recognize "[t]he primary purpose of expert testimony" to be that of "assisting the trier of fact in understanding complicated matters." *See* Panitz v. Behrend, 429 Pa. Super. 273, 632 A.2d 562, 565 (1993); *see* also Pa.R.E. 702. Based upon the foregoing, the Appellate Courts have repeatedly admonished that "[s]peculative expert testimony or testimony made without reasonable certainty does not aid the trier of fact and should be stricken." *See* Duquesne Light Co. v. Woodland Hills School Dist., 700 A.2d 1038, 1047 (Pa.Cmwlth. 1997). Because Mr. Kirwan's report speculates as to supposed future damages based on illegal discrimination, his theory is based upon facts not warranted nor supported by the record in this case. Thus, Mr. Kirwan's "expert" postulated opinion of Mrs. Carlson's future economic losses amounts to nothing more than guess-work, speculation and conjecture so as to mandate the preclusion of such speculative theories from evidence at trial.

WHEREFORE, it is respectfully submitted this Honorable Court should grant the Hospital's Motion in Limine except as regards general references to the Americans With Disabilities Act provisions which preclude illegal discrimination and which facilitate employer's returning disabled individuals to productive employment by reasonably accommodating their disabilities as long they can perform the essential functions of the job. Similarly, Plaintiffs' expert Donal Kirwan and Plaintiffs' counsel should be precluded from insinuating, arguing, or otherwise contending that Mrs. Carlson will possibly face workplace discrimination and resulting income loss in the future. Defendant Dr. Alajaji believes that evidence that the hospital's administrator offered job and wage continuation to Mrs. Carlson for reasons that might include fear of a suit against the Chief Executive Officer's son, Dr. Graeca, should be permitted.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

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Attorneys for Defendant
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Dated: February 7, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant Dr. Alajaji's Response to DuBois Regional Medical Center's Motions in Limine in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 7th day of February, 2008, to the attorney(s) of record:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
One Gateway Center 18th Floor West
Pittsburgh, PA 15222

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120 Lakemont Park Boulevard
Altoona, PA 16602

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

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EXHIBIT A

MLB&A

Michael L. Brookshire & Associates

333 12th Street, Suite 3
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July 2, 2007

Darryl R. Slimak, Esquire
McQuaide Blasko
811 University Drive
State College, Pennsylvania 16801

RE: PAULA JO CARLSON

Dear Mr. Slimak:

Enclosed, please find the written vocational report in the PAULA JO CARLSON case.

If you have any questions, please feel free to contact us.

Sincerely,

George A. Barrett, MBA, MSRC, CRC, CVE
Forensic Economist / Vocational Evaluator

Enclosure

VOCATIONAL ANALYSIS

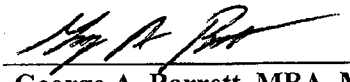
IN THE CASE OF

PAULA CARLSON

CERTIFICATION

I hereby certify that I have no interest, present or contemplated, in the above matter and that neither the employment to make the appraisal nor the compensation are contingent on the amount of the appraisal.

I certify that according to my belief and knowledge, all statements and information in the report are true and correct, subject to the underlying assumptions. I further certify that I adhere to codes of ethics for rehabilitation counselors and vocational evaluators, as prescribed by the Commission on Rehabilitation Counselor Certification, the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists and the American Rehabilitation Economics Association.



George A. Barrett, MBA, MSRC, CRC, CVE
Forensic Vocational Evaluator
July 2, 2007

Name:	**Paula Carlson**
D.O.B.:	**April 26, 1971**
D.O.I.:	**April 2005**
Age at D.O.I.:	**34**
Race:	**White**
Gender:	**Female**
Education:	**Some College, No Degree Certificate in Radiation Therapy, Community College of Allegheny County**
Pre-Injury Employment:	**Radiation Therapy Technician, DuBois Regional Medical Center**

The purpose of this report is to present the results of an independent vocational evaluation of Ms. Carlson's employment potential. Ms. Carlson claims that she was injured as a result of a failure to diagnose the presence of a tumor in her right arm. Further, Ms. Carlson claims that as a result of this alleged failure to diagnose that she sustained physical injury leading to her inability to perform the essential job tasks as a radiation therapy technician, which was her pre-injury occupation.

The focus of the independent vocational evaluation was to objectively and independently assess Ms. Carlson's ability to work and resulting earning capacity relating to her vocational assets, occupationally significant characteristics, and residual capacities.

Methodology

The method used to perform this independent vocational evaluation included the following activities and tasks:

1) Review of medical records and other vocationally relevant records in order to assess past and current employment, educational background, functional abilities, typical daily activities, and other vocationally relevant factors.

2) Development of a work ability profile, based on age, past work experience,

education, training, and work capacities.

3) The information obtained from all of the above sources was then considered in formulating an objective opinion, based on a reasonable degree of vocational certainty, of Ms. Carlson's overall potential for performing gainful employment.

Vocationally Relevant Information from the Records of Paula Carlson

The following records and reports were reviewed:

1) Paula Carlson Deposition Transcript, October 4, 2006
2) Rose Campbell Deposition Transcript, December 8, 2006
3) Marty Maloney Deposition Transcript, December 8, 2006
4) Robert McKee Deposition Transcript, December 8, 2006
5) Kenneth M. Yaw, MD, June 17, 2005—February 14, 2007
6) Steven W. Graeca, MD, September 3, 2002—June 14, 2006
7) Ross A. Horsley, MD, May 24, 2007
8) Ronald S. Kushner, B.S., QRP, June 18, 2007

Summary of Vocationally Relevant Information from Records and Reports Reviewed

1) **Paula Carlson Deposition Transcript, October 4, 2006**
Summary: Ms. Carlson states that her formal name is Paula Jo Carlson and that she currently resides in Falls Creek, Pennsylvania. She describes herself as being right hand dominant, 5'4" tall, and weighing approximately 100 pounds. She reports that she graduated from Philipsburg High School in 1989 before enrolling at Mercy Hospital School of Radiology where she completed a certificate in radiology in 1991. She then attended the Community College of Allegheny County in Pittsburgh for a period of one year in order to complete the certification requirements in radiation therapy. During her training at Mercy Hospital School of Radiology, she received training to take x-rays. The training consisted of classes in the subjects of anatomy, physiology, patient positioning, etc. While at the Community College of Allegheny County, she completed courses in anatomy, physiology, patient positioning, and the equipment used in radiation therapy. She states that she was hired at the DuBois Regional Medical Center on August 24, 1992 as a radiation therapist and remained in this position until May 5, 2005. As a radiation therapist, she would be a caregiver to cancer patients. Essential job tasks included escorting patients to the treatment room, positioning them on the linear accelerator table, repositioning the table, delivery of the radiation treatment, and some computer work. The positioning of patients on the table requires the physical repositioning of the patients on

the table but also entailed using a remote control to maneuver the table to the appropriate position for the therapy equipment. She would also be required to lift films, chemicals, and Cerrobend (lead alloy) blocks used to shield radiation, wedges (electron cones), breast boards, T-bars, and sometimes the patients. Her work schedule was 7:30am to 5:00pm four days per week during which, she would see approximately 40 patients per day. She states that prior to the surgery on her wrist that she prepared dinner regularly for the family but that she had employed a housekeeper named Merna Anderson since the birth of her daughter in 1996. She states that she currently mows the lawn and has done so since 2006 by using a riding mower. She claims unable to lift the string trimmer and so her husband handles this chore. She states that she performs household work by picking up clutter around the home, washing and putting away dishes, and doing the laundry. She also states that she can dust, vacuum and perform most aspects of household services because, as she puts it, "everything is pretty much left-handed." She states that she recently started a vegetable garden and was capable of pulling weeds. She also states that she maintains a valid driver's license and still drives. She claimed to have no medical conditions aside from the giant cell tumor, although she experienced ovarian cysts in June 2006. However, she admits to having a herniated disc in her neck prior to her surgery (2003), which she attributes to the day-to-day activities of her job, such as lifting patients. She also states that she received physical therapy for a lower back condition that she attributes to the type of shoes she was wearing during her work. Ms. Carlson states that she can move her fingers but cannot make a full fist with her right hand. Also, she claims to be unable to turn her arm out the whole way and that because of the titanium plate, she cannot bend her wrist. She states that this impairment affects her ability to lift items with her right hand. She claims that when she uses her right hand that she experiences pain. She had a functional capacity evaluation most recently in June 2006 which stated that she can lift 3 to 5 pounds periodically, but not repetitively with her right arm with no restrictions on her left arm. She states that she approached the office of vocational rehabilitation (PA agency) for vocational retraining opportunities but that she had not followed-up with the agency. She met with her manager (Rose Campbell) in April 2006 regarding the possibility of her returning to her job and Ms. Carlson implies that she is capable of performing the essential job tasks required of this position. She has not been contacted regarding the status of this request. She states that she would be interested in continuing her education but has not pursued this because of financial reasons.

2) **Rose Campbell Deposition Transcript, December 8, 2006**
Summary: Rose Campbell is employed by DuBois Regional Medical Center as a departmental supervisor and has held that job since 1998. As manager she conducts strategic operational, budgeting, marketing plans and provides oversight of the supervisors from the various operations of the center. Ms. Campbell requested that a jobsite analysis of the radiation therapist position in response to Ms. Carlson's situation.

The decision to have a job analysis conducted was because Ms. Carlson was considering a return to work at the center and the nature of the work had changed since she had left due to new equipment being purchased. Ms. Campbell states that she believes that the new equipment made it easier from a physical perspective to do the job with regard to lifting and placing the blocks on to the head of the machine. Ms. Campbell states that Ms. Carlson was a good employee and was able to fulfill all of the physical requirements of the job. Ms. Campbell states that Ms. Carlson was not terminated but she is unsure as to her employment status with the center. It is Ms. Campbell's understanding that Ms. Carlson's surgeon, Dr. Yaw, believes that Ms. Carlson can return to work. Ms. Campbell states that Ms. Carlson can return to work due to the information provided in the work capacity test done by Mr. Maloney relating to her physical ability to do the essential functions of a (radiation) therapy job. Ms. Campbell is unaware of any other functional capacity tests conducted on Ms. Carlson. Job accommodations were offered to Ms. Carlson in the form of "a pair of vice grips to hold the blocks that they were making for electronic cutouts." Mr. Maloney recommended various accommodations for Ms. Carlson so that she could continue working as a radiation therapist and all of these accommodations were carried out with the exception of placing the "vice grips" to secure the air bend mold in place instead of clamps.

3) **Marty Maloney Deposition Transcript, December 8, 2006**

Summary: Marty Maloney is the manager of the physical therapy department at DuBois Regional Medical Center. The worksite analysis found that the weights of objects to be lifted as part of the essential functions of the radiation therapy job were less than those published in the job description. The heaviest weight to be lifted was a vacuum machine, which weighed 35 pounds; so, no objects were found exceeding 50 pounds. Although the job description states that the job requires the ability to lift 50 pounds, even the chemical containers weighed only 35 pounds. During the functional capacity evaluation, the hand grip test showed that Ms. Carlson's right hand was weaker than the left with some limitations noticed in the right wrist. The limitations are related to range of motion because her right wrist is flexed at approximately ten degrees extension as a result of the internal fixation device. A recommended accommodation for Ms. Carlson's right wrist limitations was to use an easier clamping mechanism when making the Cerrobend blocks. It was determined that the job description for radiation therapist be altered to reflect the actual weights being lifted. The jobsite analysis portion indicated that there were always two clinicians in the area. Mr. Maloney indicates that the presence of two clinicians is significant as these individuals could share the various tasks associated with the job. Additional modifications to the job included purchase of stepping platforms to decrease overhead and shoulder lifting, breakdown of the electron cone holder to lessen the weight of this apparatus, requiring two people place the cone components on the machine to share the lifting, purchase of carts to transport the film and vacuum. These recommendations were made for the entire department independent of Ms. Carlson's

physical condition. According to the job site analysis completed, two clinicians are present during all times in the center and so teamwork could be used to perform the heavy lifting requirements. Mr. Maloney opines that Ms. Carlson will be able to perform all aspects of her job requirements with the exception of using the clamps presently utilized in the Cerrobend process, which can be accommodated by using a quick clamp replacement such as vise grips.

4) **Robert McKee Deposition Transcript, December 8, 2006**
Summary: Robert McKee is the director of human resources at DuBois Regional Medical Center. In February of 2006, Mr. McKee called Ms. Carlson to communicate that the center wished to work with her when it was identified that she would be able to return to work. Mr. McKee states that given a medical release for her to return to work and the implementation of any necessary job accommodations Ms. Carlson could return to work in her job as a radiation therapist. Mr. McKee states that it was the center's goal to make every effort to accommodate Ms. Carlson so that she could return to work. Mr. McKee states that it is his understanding that any professional in a primary patient care role not simply allow a patient to fall off of a table. He states that it is their responsibility to reduce the likelihood of patient injury by cushioning the fall by reasonable means. Currently, Ms. Carlson is classified as an employee of the hospital who is on personal leave. Mr. McKee accepted Ms. Campbell's comments regarding the accommodations recommended by Mr. Maloney and that the accommodations could be made and that this would resolve the matter.

5) **Kenneth M. Yaw, MD, June 17, 2005—February 14, 2007**
Summary: June 17, 2005 notes indicate that an assessment of giant cell tumor is present and that the treatment plan consists of biopsy as a separate procedure from surgical treatment. October 4, 2005 notes indicate that Ms. Carlson is healing and doing well with some pain on the ulnar border of her hand when she rests the hand and some pain in her forearm and elbow. Office note dated July 10, 2006 indicates that Ms. Carlson has undergone two independent functional capacity evaluations in March and June of 2006. Based upon his knowledge of the case and the information provided in these two reports, it is the opinion of Dr. Yaw that Ms. Carlson will be permanently precluded to return to work as a radiation therapy technician under the usual description of that job. This, according to Dr. Yaw, is due to the job description requiring this position to be able to lift 50 pounds overhead. Dr. Yaw states that there might be some variation with what she is capable of doing in the future, he does not expect her to lift more than 5 pounds with her right arm on a periodic basis. Operative report dates July 1, 2005 indicates that Ms. Carlson underwent surgery to remove the region of her right arm affected by the tumor. It is noted that a locking plate was installed on her wrist. September 7, 2006 office note states that her surgical wound has healed but that her functional status remains as previously documented with limited lifting ability because of loss of motion, loss of

muscle power, and sensitivity to direct force. February 17, 2007 office note by Jory D. Richman, M.D. assessment indicates that Dr. Yaw believes that Ms. Carlson is effectively disabled from gainful employment that involves the use of the right arm due to her chronic pain.

6) **Steven W. Graeca, MD, September 3, 2002—June 14, 2006**
Summary: September 3, 2002 impression and plan notes indicate that Ms. Carlson was treated for back pain. January 7, 2003 assessment notes musculoskeletal strain of the right shoulder and neck area. May 20, 2003 notes indicate that MRI study of her back and cervical neck showed herniated disc. March 18, 2004 notes indicate that Ms. Carlson returned for treatment of right-sided neck pain similar to the previous disc herniation. April 26, 2005 radiological study from DuBois Regional Medical Center shows minimal degenerative narrowing of the C5-6 disc space with small marginal spurs.

7) **Ross A. Horsley, MD, May 24, 2007**
Summary: According to Dr. Horsley, Ms. Carlson had persistent complaints of work related low back pain and neck pain, even at a young age suffering a herniated disc in her neck prior to the giant cell in the wrist. Functional assessment at the time of the application for the position in 1992 revealed quite low static strength with maximum effort. While she managed in her job for many years, she had lifting injuries and difficulties, leading to required work duty modification and periodic medical care. It is the opinion of Dr. Horsley that Ms. Carlson would be unlikely to have continued working an entire career with such recurrent problems with her cervical and lumbar discs. Dr. Horsley states that the work of a radiation technologist is of two types. The preliminary work is positioning the patient on the therapy table prior to beginning the treatment. This portion of the technician's work can, at times, involve lifting, maneuvering, pushing, etc. which can be stressful on the back and wrists. The second part of the technician's work is operating a computer that controls the therapy machine. Dr. Horsley opines that a skilled job function analysis might find that the job can be made easier. He suggests that good body mechanics and compensatory techniques could be instituted. Dr. Horsley suggests that the presence of a technician's aide would enable Ms. Carlson to be able to do her job as a radiation therapist indefinitely. Dr. Horsley continues by stating that many departments have recognized the periodic need for physical assistance to the therapy technician with this work often being completed in teams. Here, the tech aide would assist and provide the manual effort with positioning the patient and equipment. This would allow Ms. Carlson to be relieved of the physical aspects of the job and focus solely on the computer manipulation of the equipment, radiotherapy planning, and interacting with and instructing the patient. According to Dr. Horsley, an aide would be quite similar to nurses' aides assisting nurses with physical work in hospital settings.

8) **Ronald S. Kushner, B.S., QRP, June 18, 2007**

Summary: Labor market survey of the DuBois area was conducted. Mr. Kushner found that various jobs paying between $6.25 and $8.95 per hour were identified. These jobs were clerical and retail sales oriented and had weekly hours ranging between 15 and 30. Mr. Kushner states that Ms. Carlson could easily return to work in these positions. Vocational retraining options are discussed. Mr. Kushner contacted the Penn State Altoona School of Nursing and learned that licensure as a registered nurse (RN) can be obtained through completion of the Associates Degree in Nursing. Further, upon completion of the associate's degree, an RN may continue to complete an additional two years of training to obtain a more specialized Bachelors of Science in Nursing degree at the Penn State University Clearfield Campus. According to Mr. Kushner, the annual tuition cost for classes in the RN program at Penn State University is $11,646 in 2007 dollars. Mr. Kushner estimates that the total cost to obtain an RN degree would be $23,292 in 2007 dollars with the total cost for the Bachelors of Science in Nursing degree to be $46,584 in 2007 dollars.

Education

Ms. Carlson graduated from Philipsburg High School in 1989 before enrolling at Mercy Hospital School of Radiology where she completed a certificate in radiology in 1991. She then attended the Community College of Allegheny County in Pittsburgh for a period of one year in order to complete the certification requirements in radiation therapy. During her training at Mercy Hospital School of Radiology, she received training to take x-rays. The training consisted of classes in the subjects of anatomy, physiology, patient positioning, etc. While at the Community College of Allegheny County, she completed courses in anatomy, physiology, patient positioning, and the equipment used in radiation therapy.

Career Aspirations

Ms. Carlson's deposition testimony indicates that she has maintained a consistent interest in the healthcare industry as a clinical practitioner. Leading to her right wrist surgery, her only form of employment was as a radiation therapist. It seems reasonable that she would be interested in healthcare careers, status post-injury. In fact, her deposition testimony indicates that she has an interest in returning to work as a radiation therapist if appropriate job modifications / accommodations could be made which would enable her to perform the essential job tasks related to physical demands.

Current Treatment and Job Specific Physical Abilities

Ms. Carlson developed a tumor in her right arm which has resulted in surgical intervention which has reduced the functionality of this extremity. According to job analyses and descriptions provided for her pre-injury occupation of radiation therapist, upper body strength is required in

order to position patients and adjust equipment and replenish chemical supplies. As a result, Ms. Carlson does not believe that she is physically capable of returning to this form of employment. However, the job analysis performed by Mr. Maloney indicates that numerous modifications and accommodations could be implemented in the center which would enable Ms. Carlson to satisfy the physical demands required in this position. Of these, the construction of steps leading to higher shelved items would alleviate the stress of lifting heavier items from these elevated storage locations. Also, modifying the method by which Cerrobend blocks are secured, i.e. using simpler clamping devices such as locking pliers would alleviate the need for a high degree of grip strength. Dr. Horsley goes further and suggests that it is quite feasible to hire an aide to assist with heavy lifting, both patients and equipment, during the scope of normal work activities in the center. Taken together, or independently, these modifications and accommodations appear reasonable and would allow Ms. Carlson to return to work as a radiation therapist at the DuBois Regional Medical Center, or any other facility providing similar treatment services to oncology patients.

Ms. Carlson stated that she was interested in continuing her education by returning to college. Such an effort would allow Ms. Carlson to obtain skills enabling her to seek employment in more broad areas of employment. Given the highly specialized area of her previous academic training and work experience, vocational retraining might provide a breadth of vocational opportunities previously unavailable to Ms. Carlson. Given that she has an established interest in healthcare, a logical suggestion would be for Ms. Carlson to obtain training necessary to become a registered nurse. This is certainly an option; however, given the functional limitations of her right hand, it is uncertain if she possesses the finite dexterity required of nursing professionals. Furthermore, it is unclear if Ms. Carlson's fine bilateral dexterity would permit successful completion of the required clinical experience. Although possible, additional information would be required to determine if Ms. Carlson could complete a nursing curriculum. Nevertheless, Ms. Carlson appears intellectually capable of completing any number of collegiate programs and therefore would have the ability to ascertain her preference for a major field of study once enrolled in an institution of higher education. Once completed, Ms. Carlson could reenter the labor force and be expected to compete for employment opportunities requiring a bachelor's degree.

Current Employment

Employer: Red Lobster
Job: Seater
Description:

310.137-010 HOST/HOSTESS, RESTAURANT (hotel & rest.) alternate titles: dining-room manager; waiter/waitress, head

Supervises and coordinates activities of dining room personnel to provide fast and courteous service to patrons: Schedules dining reservations and arranges parties or special services for diners. Greets guests, escorts them to tables, and provides menus. Adjusts complaints of patrons. Assigns work tasks and coordinates activities of dining room personnel to ensure prompt and courteous service to patrons. Inspects

dining room serving stations for neatness and cleanliness, and requisitions table linens and other dining room supplies for tables and serving stations. May interview, hire, and discharge dining room personnel. May train dining room employees. May schedule work hours and keep time records of dining room workers. May assist in planning menus. May prepare beverages and expedite food orders. May total receipts, at end of shift, to verify sales and clear cash register. May collect payment from customers [CASHIER (clerical) II 211.462-010].
GOE: 09.01.03 STRENGTH: L GED: R4 M3 L4 SVP: 6 DLU: 80

Previous Employment (In order of most recent employment)

Date: August 24, 1992 – May 5, 2005
Employer: DuBois Regional Medical Center
Job: Radiation Therapist
Description:

078.361-034 RADIATION-THERAPY TECHNOLOGIST (medical ser.)

Provides radiation therapy to patients as prescribed by RADIOLOGIST (medical ser.) 070.101-090, according to established practices and standards: Reviews prescription, diagnosis, patient chart, and identification. Acts as liaison with physicist and supportive care personnel. Prepares equipment, such as immobilization, treatment, and protection devices, and positions patient according to prescription. Enters data into computer and sets controls to operate and adjust equipment and regulate dosage. Observes and reassures patient during treatment and reports unusual reactions to physician. Photographs treated area of patient and processes film. Maintains records, reports, and files as required. Follows principles of radiation protection for patient, self, and others. May assist in dosimetry procedures and tumor localization. May train therapy students.
GOE: 10.02.02 STRENGTH: L GED: R5 M4 L5 SVP: 7 DLU: 89

Opinion Regarding Occupational Ability

Currently, Ms. Carlson is a 36 year-old white female high school graduate who has completed post-secondary certification programs in radiology technology and radiation therapy. Ms. Carlson's work history is exclusively in the field of radiation therapy, with the exclusion of her current, status post-injury, occupation as a seater for Red Lobster restaurant.

Ms. Carlson has stated that she enjoyed her work as a radiation therapy and would prefer to return to this occupation following her surgery for complications secondary to giant cell tumor in her right arm. Unfortunately, Ms. Carlson alleges that her current physical condition precludes her return to work as a radiation therapist.

Apparently, Ms. Carlson remains an employee of DuBois Regional Medical Center. According to the director of human resources, Robert McKee, she is listed as an employee on leave. Deposition testimony provided by supervisors and managers at Ms. Carlson's employer indicates that various accommodations have been identified which were intended to allow Ms. Carlson to return to work in her pre-injury capacity. These accommodations included a modification of the job description for radiation therapists to correspond with the actual lifting requirements

expected in the clinic treatment area as identified by the job analysis. This was suggested upon the findings provided in the job analysis by Mr. Maloney which found that the requirements specified in the job descriptions exceeded the expected scenarios actually anticipated by radiation therapists in the clinical setting. Other accommodations included the construction of steps which would provide an ease of access, and therefore and ease of lifting higher shelved items in the clinic, such as chemical solutions. Also, a teamwork approach (asking two technicians to lift and manipulate heavy objects) to the physical aspects of the job might be ideal. Finally, Mr. Maloney recommended that a less complex clamping system be implemented for the Cerrobend (lead alloy) blocks used to shield radiation. For this purpose, Mr. Maloney suggested that locking pliers, such as the vise-grip brand be used rather than the more cumbersome clamps now used.

Radiologist expert Dr. Ross A. Horsley agrees that accommodating Ms. Carlson's specific job related disabilities is quite reasonable. Most notably, Dr. Horsley suggests that the employer could obtain the services of a technician aide to assist with heavy lifting within the treatment area. According to Dr. Horsley, this type of assistance is common in clinical settings and compared these services to those offered by nursing aides who provide assistance transferring patients and other activities where heavier physical demands are required.

355.674-014 NURSE ASSISTANT (medical ser.) alternate titles: nurse aide

> Performs any combination of following duties in care of patients in hospital, nursing home, or other medical facility, under direction of nursing and medical staff: Answers signal lights, bells, or intercom system to determine patients' needs. Bathes, dresses, and undresses patients. Serves and collects food trays and feeds patients requiring help. Transports patients, using wheelchair or wheeled cart, or assists patients to walk. Drapes patients for examinations and treatments, and remains with patients, performing such duties as holding instruments and adjusting lights. Turns and repositions bedfast patients, alone or with assistance, to prevent bedsores. Changes bed linens, runs errands, directs visitors, and answers telephone. Takes and records temperature, blood pressure, pulse and respiration rates, and food and fluid intake and output, as directed. Cleans, sterilizes, stores, prepares, and issues dressing packs, treatment trays, and other supplies. Dusts and cleans patients' rooms. May be assigned to specific area of hospital, nursing home, or medical facility. May assist nursing staff in care of geriatric patients and be designated Geriatric Nurse Assistant (medical ser.). May assist in providing medical treatment and personal care to patients in private home settings and be designated Home Health Aide (medical ser.).
> *GOE: 10.03.02 STRENGTH: M GED: R3 M2 L2 SVP: 4 DLU: 89*

According to the Commonwealth of Pennsylvania Department of Labor and Industry, the mean hourly wage for nursing aides (SOC 31-1012) in the North Central Workforce Investment Area, which includes McKeen, Potter, Elk, Cameron, Jefferson, and Clearfield counties is $9.62 in 2006 dollars. Assuming an annual number of hours worked equivalent to 2,080, then the annual mean wage for nursing aides in this location would be $20,010 in 2006 dollars.

In the return-to-work hierarchy, individuals with work specific disabilities should attempt to return to work with their pre-injury employers in their pre-injury occupation. Because of this, it is recommended that Ms. Carlson take advantage of accommodations offered by prospective employers which will allow her to return to work as a radiation therapist with DuBois Regional

Medical Center. Of course, other prospective employers have an interest in offering these accommodations to Ms. Carlson, as well as other radiation therapy recruits with physical disabilities, as required by the Americans with Disabilities Act. If this occurs, Ms. Carlson will be able to return to work immediately.

However, if it is not plausible for her to return to work for this employer, then she should take advantage of accommodations deemed reasonable by other prospective employers so that she can take advantage of her extensive education and work experience in this highly specialized career field. As discussed above, one accommodation might be the employment of a technician aide to assist with heavy lifting responsibilities. In this situation, the employer would be required to compensate the technician aide for services provided in this capacity. If the center did not already have a technician aide available and/or would not have employed an aide absent the intention to accommodate Ms. Carlson's specific work disability, then it could be argued that Ms. Carlson's compensation be offset by the amount of compensation to be paid to the technician.. In this event, Ms. Carlson could expect to earn the difference between her pre-injury hourly rate of pay, or $32.87 in 2006 dollars according to page 4 of the April 1, 2007 economic report provided by James L. Kenkel, and the mean hourly rate of pay for nursing aides in the DuBois area, or $9.62 in 2006 dollars. Of course, the technician aide could expect to receive employer contributions to fringe benefits. According to the 2006 Employee Benefits Study by the U.S. Chamber of Commerce, employer contributions for fringe benefits were equivalent to 30.75 percent of wages. By adding 30.75 percent to the hourly rate of pay for nursing aides, the total hourly compensation for the technician aide would be $12.59. Therefore, Ms. Carlson could expect to earn the difference between her pre-injury hourly rate of pay of $32.87 and the offsetting accommodation compensation of the technician aide of $12.59, which is $20.28. Therefore, under this scenario, Ms. Carlson could expect to earn $20.28 per hour in 2006 dollars, or $42,182 annually, status post-injury. In such a scenario, she would continue to receive all employer contributions to fringe benefits on her behalf. Therefore, she would not sustain any loss of fringe benefits. Of course, as Dr. Horsley suggests, if the center already has or plans to hire a technician aide to assist with the more physical aspects of this job for all of the therapists, then Ms. Carlson could expect to earn at her pre-injury hourly compensation rate as the presence of the assistant would not be the result of her accommodation.

Should Ms. Carlson elect to continue her education and seek a post-secondary degree from an institution of higher education, she will discover that employment opportunities will be available in a more diverse collection of potential jobs. Apparently, there is some concern about her ability to return to work as a radiation therapist, even with the aforementioned accommodations. Expanding her educational base would enable Ms. Carlson to compete for employment opportunities in other career fields. Both associate degree and bachelor's degree programs are offered by institutions of higher education within reasonable distance from Ms. Carlson's residence.

Penn State DuBois is an institution granting associate and bachelor's degrees and is located approximately 4 miles from Ms. Carlson's residence. According to the CollegeBoard, annual in state tuition and fees for Penn State DuBois is $10,510 with books and supplies totaling $1,800 in 2006 dollars. Assuming that an associate degree could be completed in 2.5 years, the total cost for tuition, fees, books, and supplies would be $30,775 in 2006 dollars. Assuming that a bachelor's degree could be completed in 5.0 years, then total educational expenses would be $61,550 in 2006 dollars.

Clarion University of Pennsylvania is an institution granting associate and bachelor's degrees and is located approximately 37 miles from Ms. Carlson's residence. According to the CollegeBoard, annual in state tuition and fees for Clarion University is $6,614 with books and supplies totaling $850 in 2006 dollars. Assuming that an associate degree could be completed in 2.5 years, the total cost for tuition, fees, books, and supplies would be $18,660 in 2006 dollars. Assuming that a bachelor's degree could be completed in 5.0 years, then total educational expenses would be $37,320 in 2006 dollars.

Indiana University of Pennsylvania is an institution granting associate and bachelor's degrees and is located approximately 53 miles from Ms. Carlson's residence. According to the CollegeBoard, annual in state tuition and fees for Indiana University is $6,390 with books and supplies totaling $1,000 in 2006 dollars. Assuming that an associate degree could be completed in 2.5 years, the total cost for tuition, fees, books, and supplies would be $18,475 in 2006 dollars. Assuming that a bachelor's degree could be completed in 5.0 years, then total educational expenses would be $36,950 in 2006 dollars.

Assuming that Mr. Carlson begins college classes in January 2008, she could complete the associate's degree by June 2010 when she could begin earning the average annual earnings of white females aged 35-39 years old, or $36,468 in 2005 dollars. Assuming the same start date of January 2008, she could complete the bachelor's degree by January 2013 when she could begin earning the average annual earnings of white females aged 40-44 years old, or $54,279 in 2005 dollars.

Of course, financial assistance including scholarships and need-based financial aid in the form of grants might be available which could limit the financial obligations for Ms. Carlson's return to school. Also, attendance during summer school sessions and increased academic course loads during the traditional academic year could reduce the amount of time required to complete these programs. Therefore, it is possible for Ms. Carlson to achieve these goals earlier.

Conclusions

Paula Carlson is a 36 year-old white female high school graduate with post-secondary training as a radiology technician and radiation therapist who was allegedly injured as a result of a failure to diagnose the existence of a giant cell tumor in her right arm. As a result, Ms. Carlson claims that

she has sustained a work disability precluding her from employment in her pre-injury occupation as a radiation therapist.

Testimony has been given that numerous job accommodations have been recommended in order to allow Ms. Carlson to return to work as a radiation therapist. If the implementation of accommodations is successful, then Ms. Carlson can expect to return to work immediately earning at her pre-injury compensation rate; therefore, she would have only sustained a loss of earning capacity during the period of time following her surgical recovery and the present date.

If it is determined that the most appropriate accommodation is to hire a technician aide to assist with the more physically demand job tasks, then Ms. Carlson could expect to earn $20.28 per hour, or $42,182 annually in 2006 dollars beginning immediately. This reduction in her compensation, explained in detail above, will be due to her earnings being offset to compensate for the hiring of an aide.

If Ms. Carlson's return to her pre-injury employment is not successful then she could elect to continue her education by obtaining an associate's degree. In this scenario, an average of college tuition, fees, books, and supplies at three local public colleges would total $22,637 in 2006 dollars for the entire 2.5 years anticipated for associate degree completion. Upon the completion of the associate's degree in June 2010, Ms. Carlson could expect to begin earning $36,468 annually in 2005 dollars.

Should Ms. Carlson elect to pursue a bachelor's degree, an average of college tuition, fees, books, and supplies at three local public colleges would total $45,273 in 2006 dollars for the entire 5.0 years anticipated for bachelor's degree completion. Upon completion of the bachelor's degree in January 2013, Ms. Carlson could expect to begin earning $54,279 in 2005 dollars.

EXHIBIT B

ASSOCIATES IN REHABILITATION INC.

www.associnrehab.com

2741 Noblestown Road
Pittsburgh, PA 15205
412.922.9055
Fax 412.922.9056
1.888.351.5790

Claimant:	**Paula Jo Carlson**	**Employer:**	**DuBois Regional Medical Center**
Address:	**1373 Sandstone Drive**	**Address:**	**100 Hospital Avenue**
	Falls Creek, PA 15840		**DuBois, PA 15801**
Phone:	**814-372-3669**	**Phone:**	**814-371-2200**
A.I.R. No.:	**9989040907**	**Referral Source:**	**Darryl R. Slimak, Esquire**
Date of Birth:	**4/26/71**		**McQuaide Blasko**
		Address:	**811 University Drive**
			State College, PA 16801
Occupation:	**Radiation Therapist**	**Phone:**	**(814) 238-4926**
Type of Injury:	**Fusion Right Wrist**	**Claim No.:**	**N/A**
Date of Surgery:	**6-27-05**	**Report Date:**	**June 18, 2007**

LABOR MARKET SURVEY REPORT

CURRENT STATUS UPDATE:

Thank you for referring Paul Jo Carlson's June 27, 2005 Civil Liability Claim to Associates in Rehabilitation, Inc for the purpose of a Labor Market Survey/Earning Capacity Evaluation.

Six potential employers were identified in Ms. Carlson's immediate geographic area. The types of positions with these employers were Greeter, Cashier and School Van Driver.

Retraining options for Pharmaceutical Sales and Nursing were also researched on Ms. Carlson's behalf. Specifically the cost of retraining for these vocational employment opportunities at Penn State University Altoona and Labor Market Employment Statistics are provided within this report.

LABOR MARKET SURVEY RESULTS:

Labor Market Survey efforts identified the following non exclusive six sample positions as viable return to work options:

1. Employer: Wal-Mart
   20 Industrial Drive, Dubois, PA 15801
   Telephone: 814.375.5000

LABOR MARKET SURVEY RESULTS (cont.)

	Contact:	Sue Dodge, Personnel Manager
	Position:	Cashier
	Hours:	Part time, 16-33 hours per week
	Wage:	$6.25 per hour or above-wage discussed at the time of interview
	Available:	April 24, 2007
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
2.	Employer:	Sears Roebuck & Company 5522 Shaffer Road, Dubois, PA 15801
	Telephone:	814.375.3100
	Contact:	Stephanie Tibbens, H.R. Assistant
	Position:	Cashier
	Hours:	Part time, 15-29 hours per week
	Wage:	$6.25 per hour
	Available:	April 24, 2007
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
3.	Employer:	Eat N Park RD 3 Box 1461, Schaeffer Road, Route 255 North, DuBois, PA 15801
	Telephone:	814.375.8622
	Contact:	Jeremy Johnson, Assistant Manager
	Position:	Greeter
	Hours:	Part time, 25-30 hours per week, variable shifts morning, day, evening, 4, 5, 6 and 8 hour shifts
	Wage:	$6.25 per hour
	Available:	Position available 4/06, employer hires occasionally for this position
	Source:	Directories
	Job Duties:	See enclosed Job Analysis
4.	Employer:	Clepper Bus Service 162 Lincoln Drive, DuBois, PA 15801
	Telephone:	814.371.2450
	Contact:	Sue Shugars, Administrative Assistant
	Position:	School Van Driver
	Hours:	$8.95 per hour
	Wage:	Part time, 20-25 hours per week, 2.5 hours in a.m. and 2.5 hours in p.m.
	Available:	May 25, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis

LABOR MARKET SURVEY RESULTS (cont.)

5.	Employer:	Clarion Hotel 1896 Rich Highway, DuBois, PA 15801
	Telephone:	814.371.5100
	Contact:	Suzanne Welsh, Front Desk Manager
	Position:	Front Desk Clerk
	Hours:	$6.25 per hour or above-wage discussed at the time of interview
	Wage:	Part time, 16-24 hours per week
	Available:	June 13, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis
6.	Employer:	Olan Mills 5820 Shaffer Road, DuBois, PA 15801
	Telephone:	814.371.9451
	Position:	Pre-Seller
	Hours:	Part time, 12 hours per week
	Wage:	$6.25 per hour or above
	Available:	June 13, 2007
	Source:	Career Link
	Job Duties:	See enclosed Job Analysis

LABOR MARKET SURVEY RESULTS:

Six potential employment opportunities were identified utilizing Ms. Carlson's Functional Capacity Evaluation results of June 13, 2006 which concluded that Ms. Carlson's demonstrated performance level was in the medium lifting category. It should be noted that to be conservative all of the positions identified are classified as light duty. It is my professional opinion that each of these jobs can be performed by Ms. Carlson taking into consideration her right arm limitations and capabilities.

MEDICAL JOB ANALYSES:

Job Analyses were completed for each of the six positions as they were identified and are included with this report. In the comments section of each Job Analysis, you will note that there is an indication that each employer was informed of Ms. Carlson's physical limitations. Each signified that this was not a problem for employment. The applicability of the Americans with Disabilities Act is noted which would require employment opportunities to be extended to prospective employees who can

MEDICAL JOB ANALYSES (cont.)

perform the essential functions of a job with or without reasonable accommodations by the prospective employers. While it should be noted that while Ms. Carlson does not currently utilize same, there is no contraindication in the medical records to Ms. Carlson's utilizing a protective device for her arm/wrist during work activities, if felt appropriate.

MEDICAL:

A review of all significant medical records provided by the account is as follows:

Ms. Carlson underwent a musculoskeletal screening and static strength testing on July 31, 1992 in conjunction with her applying for the radiation therapy position at DuBois Regional Medical Center. The results of the testing for the functional assessment revealed that Ms. Carlson was very low in left

and right grip strength at the time of her application for the position. Specifically, Ms. Carlson demonstrated 15 lbs lifting with the left hand and 20 lbs with the right hand with a dynamometer rating of less than 1% grip strength for both hands. Ms. Carlson's torso strength was at the 56th percentile rating and her leg and arm strength were at the 25th and 24th percentile ratings respectively. The March 2008 FCE revealed improved left hand grip average of 68 lbs which is at the 41st percentile; right hand grip was 40 lbs which is less than the 10th percentile, similar to test results in 1992. Of note, torso lift in 2006 was 114lbs which is the 31st percentile, while in 1992 same was 56 %. Leg lift was 27th percentile in 2006 compared to 25 % in 1992. Arm lift is currently 30 lbs average which is less than 10th percentile, comparable to same as measured in 1992.

June 13, 2006 "Grip Position 2" FCE assessment was repeated at 35 lbs on the right and 52 lbs on the left. The unaffected left hand strength testing reviewed consistently well below expected norms. The right was slightly reduced from March 2, 2006 testing, but still similar to the results of 1992. Ms. Carlson managed to perform her Radiation Therapy job adequately over the years despite her significant upper extremity capabilities limitations dating back to 1992.

Medical records from Summit Rehabilitation for 2002-2003 confirm that Ms. Carlson has a history of work related low back and/or neck problems as well as shoulder problems on the right side. Specifically, Ms. Carlson is status post C5-6 herniated disk prior to the removal of the giant cell tumor in her right wrist. Ms. Carlson's C5-6 disk herniation was treated conservatively with medications, physical therapy modalities, home exercises, and work modifications, her symptoms appeared to have last resolved in May of 2003.

Information pertaining to Ms. Carlson's diagnosis of a giant cell tumor revealed that Ms. Carlson called in to Dr. Graeca's office on April 11, 2005 complaining of pain in her right wrist for which she had worn a brace for approximately one week. Right wrist x-ray imaging was ordered and interpreted by Dr. Alajaji on April 13, 2005. Eventually, a cervical x-ray of the spine was ordered which revealed degenerative narrowing of the C5-6 disc space. EMG's and nerve conduction studies were also

MEDICAL:

conducted and reported as normal in the right upper extremity. Dr. Piasio ordered repeat x-rays, an MRI, CT Scan and a bone scan of both wrists and hands with a total body scan which was conducted on June 10, 2005 showing findings consistent with a giant cell tumor. Ms. Carlson was referred to Dr. Yaw who did a biopsy on June 20, 2005 confirming the giant cell tumor. On June 27, 2005, Dr. Yaw resected the distal radius and transposed the ulna onto the radius and fused the ulna to the wrist.

Information provided by Ms. Carlson at the time of our initial meeting on May 8, 2007 confirmed that she was diagnosed with a giant cell tumor in her right wrist which was removed surgically on June 27, 2005.

Ms. Carlson's treating physician is Kenneth Yaw, MD at Mercy Hospital in Pittsburgh, PA. Ms. Carlson was last examined by Dr. Yaw in February of 2007 and her next examination by Dr. Yaw will be in one year. Ms. Carlson was prescribed Vicodan that she said she takes on an as needed basis.

Please note that Ms. Carlson denied having any prior injuries work related or non-work related. This is contrary to the medical records received from the account and reviewed as noted above. Ms. Carlson also reported that she is in good health other than the giant cell tumor that was removed from her right wrist.

Ms. Carlson reported that she is right hand dominant and has limited usage of her right hand due to the fusion of her right wrist. Ms. Carlson utilizes her left hand to perform some activities, although she still uses her right hand for writing and various other activities.

Ms. Carlson related that she experiences weaknesses in both arms. The weakness in Ms. Carlson's right arm is due to the fusion of her right. I note that significant weakness on the right was documented as far back as 1992. Ms. Carlson clarified that the weakness in her left arm is not due to any physiological problems and is only because she is not a strong woman. This appears consistent with the DRMC musculoskeletal screening and static strength testing performance July 31, 1992, in conjunctions with Ms. Carlson's applying for the Radiation Therapy position, which revealed very low upper extremity grip strength and lifting capabilities.

With regard to Ms. Carlson's specific physical capabilities, Attorney Crenney would not allow Ms. Carlson to comment on whether she agreed with the results of her two Functional Capacity Evaluations. However, Attorney Crenney did allow Ms. Carlson to comment that she is unable to lift a "Jug of Milk" with her right hand.

MEDICAL-FUNCTIONAL CAPACITY EAVLUATION RESULTS

Kenneth Yaw, MD, Ms. Carlson's treating physician prescribed a Functional Capacity Evaluation for Ms. Carlson which was conducted by Rehabilitation Safety Associates in Plum, PA on June 13, 2006.

MEDICAL-FUNCTIONAL CAPACITY EAVLUATION RESULTS (cont.)

The results of this testing revealed that Ms. Carlson's demonstrated performance level places her in the Medium Lifting Category (20-50 pounds occasional, 10-20 frequently, and 10 pounds constantly, 3.6 – 6.3 METS) according to the United States Department of Labor's guidelines for physical demand characteristics at work. This testing result is similar to that determined by Martin Maloney at DRMC per the March 8, 2006 FCE.

EDUCATIONAL/VOCATIONAL:

Ms. Carlson is a 1989 graduate of Philipsburg Osceola High School. Ms. Carlson is able to read and write and has never been diagnosed with a learning disability.

Post High School, Ms. Carlson completed a two year Radiology Program at Altoona Mercy Hospital in 1991 and received a certificate as a Radiologic Technologist. Ms. Carlson also completed a one-year program at Community College of Allegheny County in 1992 and received a certificate as a Radiation Therapist.

Retraining:

Ms. Carlson would not provide a specific response as to what type of profession she would like to pursue in retraining. Ms. Carlson believes that she is capable of working despite her limited usage of her right wrist. Ms. Carlson has to date evidently made no effort whatsoever to pursue retraining or further educational studies to enhance her employment prospects. There is no evident reason why she could not do so on a full or part time basis while maintaining at least her current level of work.

Please note that review of Ms. Carlson's handwritten diary notes reveal that her handwriting with her right hand has progressively improved from when she began her diary on January 1, 2005 and stopped on July 20, 2006. Ms. Carlson's diary entries and testimony, as well as that of her husband, reflect a very active and energetic woman despite her right wrist problems.

VOCATIONAL WORK RELATED HISTORY:

Ms. Carlson is currently employed at Red Lobster in DuBois, PA as a seater. Ms. Carlson employment began with Red Lobster on January 24, 2007 and she is currently working Mondays and Thursdays, 7 hours per day totaling 14 hours per week. Ms. Carlson's hours per week as confirmed by her pay stubs for the pay period extending from 2/5/07 through 3/4/07 have ranged from 12 to 28 hours per week. It appears that this employer is flexible on both the days of the week and hours worked. Ms. Carlson's job duties at Red Lobster consist of greeting and seating customers; handing out menus; vacuuming; wiping tales, chairs, walls, light fixtures and door glass; checking restrooms for cleanliness; changing silverware over from paper to linen from lunch to dinner; presenting requests for gift cards to the manager on duty.

VOCATIONAL WORK RELATED HISTORY (cont.)

Prior to working at Red Lobster, Ms. Carlson worked for DuBois Medical Center from 1992 through 2005 as a Radiation Therapist. Ms. Carlson job duties as a Radiation Therapist consisted of providing radiation therapy to patients as prescribed by a Radiologist to include inputting patient data into a computer, scheduling patients, preparing equipment, positioning of the patient on a linear accelerator, making electron blocks, cutting and shaping Styrofoam, etc.

SKILLS AND KNOWLEDGE:

Ms. Carlson owns and can operate a home computer which she says she uses to send emails and surfs the Internet.

Ms. Carlson's vocational skills and knowledge are those primarily learned on the job working as a Radiation Therapist at DuBois Regional Medical Center for 14 years and as a seater at Red Lobster for 3 ½ months.

INSURED (EMPLOYER CONTACT):

The Job Site Analysis completed by Martin Maloney, PT on April 17, 2006 for Ms. Carlson's position as Radiation Therapist at Hahne Regional Cancer Center was reviewed prior to my conducting a Worksite Job Evaluation on June 4, 2007. I also reviewed Mr. Maloney's deposition transcript.

I had the opportunity to conduct the Worksite Job Site Job Evaluation with Rose Campbell, Manager of Hahne Regional Cancer Center. Specifically, Ms. Campbell explained Ms. Carlson's job duties to me as I conducted a walk through.

Patients are walked to the Radiation Therapy Department by a hospital volunteer. Non ambulatory patients are brought to the department either in a wheel chair or with a hospital gurney. For efficiency purposes, there are always two Radiation Therapists on duty at any given time. A patient is initially registered by one therapist who upon completion of the patient's registration escorts the patient to the therapy table. Both therapists on duty take turns positioning the patient on the treatment table which is initially elevated 26 inches from the floor. If needed, a third person can be called to provide assistance positioning the patient. Electron cone holders and Cerrobend blocks are readily available in the department and are also set in place and positioned. One therapist performs the treatment while the other therapist returns to the registration desk to register the next patient in waiting. The therapist performing the treatment enters the patient's treatment data and controls the patients treatment through utilization of a treatment console located at the foot of the treatment table. The therapist then leaves the room while the treatment is being performed.

Other job duties consist of cutting, pouring and forming Cerrobend Blocks 6-10 times per week. I concur with Ms. Campbell's indication that the Cerrobend blocks weigh a maximum of 25 pounds as I

INSURED (EMPLOYER CONTACT) (cont.)

had the opportunity to lift the blocks. Mr. Maloney's April 17, 2006 Job Site Analysis indicates the heaviest block is 15 lbs. The largest cone weighs 18 lbs. The heaviest wedge is 16.3 lbs.

Ms. Campbell explained that modifications can be made for Ms. Carlson to perform the job duties of the Radiation Therapist. Specifically, Ms. Campbell stated that job duties can be designated to each of the two therapists on duty. Ms. Carlson would be assigned the registration of the patient and escorting the patient back to the treatment table. The majority of the patients being treated are ambulatory and the positioning of a patient is at a relative minimum. Either one or both therapists can position the patient and if needed a third person assist can be requested. With regard to making the Cerrobend blocks, again another therapist could be assigned this duty. Also, the Center complies with the ADA considerations which require reasonable accommodations be made to enhance returns to work.

While conducting the Worksite Job Evaluation, I had the opportunity to speak to Lee Hanwell, Radiation Therapist. Mr. Hanwell informed me that he has been a Radiation Therapist at Hahne Regional Cancer Center for approximately 14 years. Mr. Hanwell stated that in his 14 years of employment that he had only one patient out of thousands of patients that he has treated, who lost balance and needed assistance to keep from falling while attempting to stand after treatment. The assistance that was provided involved good body mechanics and a low height and was minimal. Such circumstances can usually be anticipated based on assessment of the patients' physical condition and stability, and questioning, and precautionary assistance provided by others if indicated.

It is my expert opinion that based upon my observation of the Radiation Therapist's Worksite, explanation and designation of job duties as explained by Rose Campbell that Ms. Carlson would be able to return to her position as Radiation Therapist thereby eliminating any wage loss.

TRANSFERRABLE SKILLS ANALYSIS

Transferable Skills Identified:

A Transferable Skills Analysis was completed utilizing the OASYS Program which is based upon the U.S. Department of Labor's Dictionary of Occupational Titles. An O'Net Transferable Skills Analysis was also conducted on O'Net Online to develop additional transferable skills.

An updated Transferable Skills Analysis was completed utilizing the June 13, 2006 FCE confirming the results of the prior Transferable Skills Analysis utilizing the March 8, 2006 FCE results. Ms. Carlson's Functional Capacity Evaluation is identified in the medium-lifting category (20-50 lbs occasional, 10-20 frequently and 10 lbs constantly). The FCE's took into consideration Ms. Carlson's difficulties in use of her right arm since the surgery for the giant cell tumor. To be conservative, this report only identifies employment opportunities within the light category, unless otherwise noted.

OASYS Program Results:

Skills Transfer Components:		**SVP**
294	Health Caring-Medical	7
201	Photographing	7
291	Accommodating	6

Components of Combination Work Fields	**SVP**
None	

MPSMS		**SVP**
925	Health Technological Services	7
903	Meals Service, except Domestic	6

Please note that the following are some occupational titles identified from the OASYS Transferable Skill Analysis based upon Ms. Carlson's prior and current work experience: Radiation Therapist, Radiologic Technologist, Medical Receptionist, Hostess, Greeter, Customer Service, Counter Clerk, Cashier, etc.

O'Net Online Results:

Radiation Therapist
Radiologic Technologist

Please note that the descriptions for Radiation Therapist and Radiologic Technologist fall within the light duty classification according to the O'Net Online.

The following are vocational titles that were identified from O'Net Online for retraining possibilities:

Bachelor of Science in Nursing	(light to medium) unit specific-hospital, physician's office etc.
Sales Representative, Pharmaceuticals	(light)

DEMOGRAPHICS:

Ms. Carlson currently resides in Falls Creek, PA which is located approximately 4.0 miles from DuBois, PA and 25 miles from Clearfield, PA.

DEMOGRAPHICS (cont.)

Ms. Carlson possesses a valid PA Drivers License and owns a 2000 Dodge Caravan which would serve as reliable transportation to and from work. Ms. Carlson does not have any pending motor vehicle violations that result in her driving privileges being revoked.

Labor Market information was obtained through the State of Pennsylvania's Internet website. Information is as follows:

April, 2007 Labor Market Statistics for the State of Pennsylvania reveal that the labor force is estimated at 6,192,000 persons. The employment rate is estimated at 5,957,000 persons. The unemployment rate is estimated at 236,000 persons which calculate to be at a 3.8 % unemployment rate.

The average weekly wage for Pennsylvania in 2006 was $807.20 per week. This would be equivalent to $20.18 per hour or $41.974.40 per year assuming a 40 hour week were worked year round.

April, 2007 Labor Market Statistics for Clearfield County reveal that the labor force is estimated at 39,800 persons. The employment rate is estimated at 37,900 persons. The unemployment rate is estimated at 2,000 persons which calculate to be at a 4.9 % unemployment rate.

The average weekly wage for Clearfield County in 2006 was $507.00 per week. This would be equivalent to $12.675 per hour or $26.364.00 per year assuming a 40 hour week were worked year round.

Labor Market Statistics reveal that employment opportunities exist in Clearfield County. Specifically, six entry level employment opportunities were identified during this Labor Market Survey demonstrating Ms. Carlson's employability with no additional training. These positions are samples, and are not exclusive of the work that would be available.

RETRAINING OPTIONS EXPLORED:

Vocational retraining options were explored for Nursing and Pharmaceutical Sales Representative as the physical requirements of these positions are light duty. The physical requirements of Nursing positions are unit specific and the information provided is for medical office nurse and school nurse. The job duty requirements of a medical office nurse are specific to the physician's office or facility that employment is obtained.

RETRAINING OPTIONS EXPLORED (cont.)

Job Title:	**Registered Nurse, School Nurse**			
DOT Codes:	075.124-010			
Physical Demand Level:	Light			
National Wage Data:	Hourly Mean:	$23.96	Hourly Median:	$23.12
	Annual:	$49,840.00		
Growth:	26.0 %			

Job Title:	**Registered Nurse, Medical Office**			
DOT Codes:	075.374-014			
Physical Demand Level:	Light			
National Wage Data:	Hourly Mean:	$23.96	Hourly Median:	$23.12
	Annual:	$49,840.00		
Growth:	26.0 %			

Contact with Penn State Altoona School of Nursing revealed that RN Licensure can be obtained through completing an Associates Degree in Nursing. Upon completion of the ASN program, a registered nurse can continue complete an additional two years of education to obtain a more specialized Bachelors of Science in Nursing degree. The Nursing Program can be completed at Penn State University DuBois Campus in Clearfield County.

I spoke to Diane Jankura, Academic Counselor at PSU State College Campus on June 11, 2007 regarding the Registered Nurse Program. Ms. Jankura informed me that PSU has a 98 % to 100 % placement rate. The average hourly wage for a registered nurse in State College, PA is $12.00 to $15.00 per hour starting rate. The hourly wage for the lowest 10 % for a nurse with a Bachelors Degree in Nursing is $18.26 per hour and the median average annual income is $58,000 per year.

U.S. Department of Labor Statistics for registered nurses nationwide in May of 2004 was $52,330 annually. The middle 50 percent earned between $43,370.00 and $63,360.00. The lowest 10 % earned $37,000 and the highest 10 % earned $74,760.00 per year.

The median annual earnings in the industries employing the largest number of registered nurses in May of 2004 were as follow:

Employment Services	$63,170
General medical and surgical hospitals	$53,450
Home health care services	$48,990
Offices of physicians	$48,250
Nursing care facilities	$48,220

RETRAINING OPTIONS EXPLORED (cont.)

Should Ms. Carlson decide to pursue retraining as a registered nurse at Penn State University, per academic year tuition for a Pennsylvania Resident is currently $11,646.00. To obtain a degree as a registered nurse the total cost would be calculated at $23,292.00. To obtain a four year degree as a BSN the total cost would be calculated at $46,584.00.

Various sources of funding for retraining and or further education for persons with disabilities are available, including the Office of Vocational Rehabilitation (OVR), grants and loans, employer programs, etc.

Job Title:	**Pharmaceutical Sales Representative**	
DOT Codes:	262.357-010	
Physical Demand Level:	Light	
National Wage Data:	Hourly Mean:	$30.51
	Hourly Median:	$26.80
	Annual:	$63,460
Growth:	7.5 %	

Information obtained from **http//careers.stateuniversity.com** revealed that the education and training for a pharmaceutical sales representative is two to four years of college and on the job training. The median salary is $60,130 per year and the employment outlook is good.

To become a pharmaceutical sales person, a person must have a high school diploma preferably two to four years of college. Health care related experience is a plus that makes a job candidate very attractive, and can be substituted for educational experience. Drug companies provide on the job training selecting employees for their verbal and social skills.

Information obtained from a reliable industry source, **coreynahman.com,** revealed that pharmaceutical companies look for outstanding people to represent their company. Some desirable qualities for a good sales representative are a four year degree with a strong work ethic and good communication skills. Of interest is 50 % of all Pharmaceutical Sales Representatives are women which is a trend to diversify the sales force with regard to cultural backgrounds. I should also be noted that Mr. Nahman comments in his frequently asked questions page that a good candidate is a good candidate regardless of age. Specifically, he commented that "his mentor became a pharmaceutical sales representative at age 45 and is now in his 70's having his best year ever".

RETRAINING OPTIONS EXPLORED (cont.)

Salary statistics obtained from **salary.com** revealed that salaries for Pharmaceutical Sales Representatives in the Falls Creek, PA 15840 area as follows:

Salary Percentiles:

10th	$23,072
25th	$33,644
75th	$57,126
90th	$62,648

Considering that Ms. Carlson has an Associates Degree in Radiation Therapy and 13 years experience working as a Radiation Therapist and from information researched, she would be a qualified candidate to pursue employment as a Pharmaceutical Sales Representative without retraining.

If Ms. Carlson decided to pursue employment as a Pharmaceutical Sales Representative and wanted to be more competitive, she could attend Penn State Altoona's School of Business Program. To obtain a Business Degree at Penn State University Altoona per academic year tuition for a Pennsylvania Resident is currently $10,000.00. Various courses for this major may also be available at the DuBois PSU Campus and or via the PSU Internet distance learning network.

Should Ms. Carlson pursue a four year business degree, additional employment opportunities would become available to her in other sales related fields. The foregoing examples given are not the exclusive opportunities that could be pursued.

EARNING POWER ASSESSMENT/LABOR MARKET SURVEY:

Ms. Carlson's Labor Market Survey was conducted utilizing several sources of employment information: Local newspaper classified advertisements, yellow page directories, employment websites via the Internet and the PA Career Link database.

Vocational job titles were targeted utilizing the aforementioned resources in an effort to identify potential employment and retraining opportunities within Ms. Carlson's vocational work history and physical capabilities:

Please note that the physical demand level is a Dictionary of Occupational Titles/O*Net Classification and varies according to each specific employer, whereas each specific employer is unique in and of itself and may actually require less physical exertion while performing the required job duties. ADA considerations also apply.

VOCATIONAL EXPERT CONCLUSION:

National average wage data obtained from the OASYS, DOT/O*NET concluded that Ms. Carlson's average hourly wage potential for positions that are available or become available frequently in Ms. Carlson's geographic area are as follows: greeter – median wage $7.36 per hour; cashier - median wage $7.41 per hour and school bus driver – median wage $14.22 per hour. Ms. Carlson's wage would range from $7.36 to $14.22 per hour with a weekly remuneration ranging from $294.40 to $355.50 and with annual salary of $15,308.80 to $18,486.00.

Information obtained from contact with the six potential employers identified and listed in this Labor Market Survey revealed that Ms. Carlson's earning potential for entry level positions within her physical capabilities range from $6.25 to $8.95 per hour and would translate into a weekly remuneration of $83.40 to $223.75. The median wage is calculated to be $153.57 per week.

Future increases in the minimum wage and the effect of same on current wage scales would increase these earnings potentials. One or more of these jobs could be combined to obtain a full time work equivalent.

Should Ms. Carlson opt to pursue further education as a registered nurse, U.S. Department of Labor Statistics reveal registered nurses in May of 2004 were being paid $52,330 annually. The middle 50 percent earned between $43,370.00 and $63,360.00. The lowest 10 % earned $37,000 and the highest 10 % earned $74,760.00 per year.

Information identified through Internet Research identified that Ms. Carlson already possesses the minimal educational qualifications and work related experience necessary to pursue employment as a Pharmaceutical Sales Representative. The annual salary for a Pharmaceutical Sales Representative is between $23,072.00 and $62,648.00 per year. The median income for this position is $42,860.00 annually.

Fringe benefits attributable to the foregoing positions have not been quantified in this evaluation.

The foregoing is stated based on reasonable professional certainty, judgement and experience.

Sincerely

Ronald S. Kushner

Ronald S. Kushner, B.S., QRP
Vocational Consultant

RSK:
amt

EXHIBIT C

FORENSIC HUMAN RESOURCES
413 Sylvania Drive
Pittsburgh, PA 15229

Phone: (412) 260-8000 Fax: (412) 364-7221

June 11, 2007

Mr. Thomas E. Crenney, Esq.
Thomas E. Crenney & Associates, LLC
One Gateway Center, 18th Floor West
Pittsburgh, PA 15222

Dear Mr. Crenney:

You asked that I prepare a Labor Market Survey regarding your client, Paula Carlson.

I reviewed the following documents in order to prepare this Labor Market Survey:

- Offices notes of Kenneth Yaw, MD and Jory Richman, MD dated 1995 through 2/14/07;
- Dr. Yaw's report of 4/24/2007;
- Ms. Carlson's 2007 pay stubs from her employment at the Red Lobster;
- Job description for a Radiation Therapist at the DuBois Regional Medical Center (DRMC);
- Letter dated 1/29/2007 and the records of Mary T. DeFranco of the Pennsylvania Office of Vocational Rehabilitation;
- Social Security Disability file for Ms. Carlson;
- Ms. Carlson's Human Resources file from DRMC;
- Ms. Carlson's Employee Health file from DRMC; and,
- Copy of the transcript of the deposition of Ms. Carlson conducted October 4, 2006.

Educational and Work History Background

Paula Carlson is currently 36.14 years old. She studied radiation technology and subsequently graduated from the radiation therapy program at Community College of Allegheny County. Ms. Carlson worked at the DuBois Regional Medical Center from August 1992 to May 5, 2005. Her hourly pay rate at that time was $32.26 per hour. In addition, she received fringe benefits which I valued at 30.4% of her wages. Ms. Carlson began work in February 2007 as a seater at the Red Lobster at a pay rate of $6.25 per hour. She is currently earning $6.50 per hour. She is currently working 14 hours per week. Her fringe benefits in this position are the value of the employer's contribution to the Social Security Retirement program, 5.9% of her wages.

Medical History

Dr. Yaw, on June 17, 2005, writes:

> This is a 35 year old right hand dominant woman referred for office consultation regarding tumor in her right distal radius. The patient reports onset of aching wrist discomfort in April, 2005 with repeated lifting. She was treated with an elastic sleeve and some physical therapy and did not have any relief. She gradually went on to have progressively worsening pain and was recently found to have a tumor in the distal radius.

Ms. Carlson underwent a biopsy of the right distal radius on June 20, 2005 followed by a radical resection of the right distal radius on June 27, 2005. Dr. Yaw's 7/10/2006 office note reports that:

> She has a fused (non-mobile) right wrist with some weakening of grip and strength in her right hand...As part of her job description she is required to be able to lift 50lb overhead. Both these functional capacity evaluations came to the conclusion that she cannot now and probably never will be able to do that.
>
> It is my opinion with a reasonable degree of medical certainty that Paula Carlson is permanently precluded to return to work as a radiation therapy technician under the usual description of that job which requires significant lifting with the right upper extremity. While there may be some variation in what she is capable of in the future, I think for planning purposes it would be reasonable to expect her to lift from 3-5 lb with her right upper extremity on a periodic but not repetitive basis.

Dr. Yaw's office note of 9/7/06 notes that Ms. Carlson continued to have pain and sensitivity to touch and motion in the right wrist. He states: "Her functional status remains as previously documented with limited lifting ability because of loss of motion, loss of muscle power, and sensitivity to direct force."

Dr. Richman's office note of 2/14/07 states:

> She is doing reasonably well although she does have chronic pain that requires occasional opiate medication. She was forced to discontinue working as a radiation therapist and currently works as a seater for Red Lobster but she has trouble clearing tables due to her chronic wrist and forearm pain.
>
> I do believe she is effectively disabled from gainful employment that involves the use of the right arm due to her chronic pain.

Dr. Richman also notes that Ms. Carlson was applying for Social Security Disability benefits: She has subsequently been adjudged disabled by the Social Security Administration as of May 5, 2005. The Notice of Decision, dated 5 March 2007, details the reasons Ms. Carlson met the criteria under which she was adjudged disabled and will not be repeated here, except to note that

Ms. Carlson does have the residual functional capacity to perform sedentary work, with restrictions. The Notice of Decision states:

> If the claimant had the residual functional capacity to perform the full range of sedentary work, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled sedentary occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience and residual functional capacity. The vocational expert testified that given all these factors there are no jobs in the national economy that the individual could perform.

Other Pertinent Information

Ms. Carlson has attempted to find other employment and, in those attempts, utilized the services of the Pennsylvania Department of Labor and Industry's Office of Vocational Rehabilitation (OVR). Ms. Carlson worked with Mary T. DeFranco of the DuBois office who writes on January 29, 2007:

> Paula has very significant limitations with her dominant hand and wrist due to surgery to remove a bone tumor. She has very poor general strength, grip, speed, endurance, dexterity and coordination. She does not have sufficient ability with her non-dominant hand to make up for the limitations with the other.
>
> Although Paula worked for years, her education, skills and experience are very specific to her field. Unfortunately, she can no longer handle the duties of a radiation therapist. ***She is not qualified for anything else and has no other work experience.*** (Emphasis added) Her severe limitations make it difficult to establish appropriate vocational goals; for example, even sedentary and/or professional jobs require activities including computer use and other fine motor skills, such as writing and manipulating. As a result, I cautioned Paula that it may be very difficult, if not impossible, to find something she will be able to handle, plus, if/when a position is found, it likely will be part-time and low-paying.
>
> Although the overall goal is for Paula to return to work in some capacity, it is not likely she will be gainfully employed, as in the past.

Ms. Carlson lives in Falls Creek, Pa, in Jefferson County. She had previously worked at the DuBois Regional Medical Center which is in Clearfield County. For purposes of this report, prospective job opportunities in both counties were evaluated. The Pennsylvania Careerlink website (http://www.pacareerlink.state.pa.us/) was used to evaluate potential opportunities in Ms. Carlson's area. As of this date, that website showed 107 potential openings in Jefferson County and 126 in Clearfield County. Jobs posted on that website included the following, among others:

Care Aide
Front Desk Clerk
Housekeeper
Server
Medical Office Clerk
Sales Professional (Insurance sales)
Planner/Buyer/Scheduler
Part-time Personal Care Aide
Entry level Manufacturing Technicians

A review of the posted job requirements for these jobs shows that the physical requirements are beyond Ms. Carlson's functional capacity. Some of the posted jobs require specialized training or education (e.g., Licensed Outpatient Therapist, Family Based Therapist) and some listed jobs were part-time. One job, that of the Front Desk Clerk, was for evening and weekend work and required computer knowledge and use. That job had a posted wage rate of $6.25 per hour.

One posted opportunity at the time of the survey was for the position of Office Support-Route Coordinator. That position was listed as a full-time opportunity in DuBois with a pay rate of $9.50. The employer was Paris Uniform Rental & Supply and we learned that the position required a good deal of computer work. There is concern regarding Ms. Carlson's ability to handle the required job duties given the limitations involving her right wrist.

Competing in the labor market puts Ms. Carlson, with her physical work limitations, at a significant competitive disadvantage. The Pennsylvania Department of Labor and Industry Center for Workforce Information and Analysis website, http://www.paworkstats.state.pa.us, data show that there are 5,605 private employers within a 25 mile radius of zip code 15840, Ms. Carlson's home zip code. Of the 5,605 employers, 1,281 have over 10 employees and only 115 have over 100 employees. Smaller employers are more likely to be reluctant to hire an individual with a work restriction due to concerns over productivity.[1] As Ms. DeFranco notes, any job she does find will likely be part-time and low-paying. The jobs available through PA Career Link bear out that assessment since many jobs listed on the website are for part-time, low-paying positions.

Adding to her competitive disadvantage in the labor market, U.S. Census Bureau data show that only 57.4% of the population in Clearfield County and 58.4% of the Jefferson County population over 16 are in the labor force. That means there would be significant competition for any posted job openings.

The number of employed in the two county area has grown from 47,299 to 47,861 from the first quarter 2000 to 2006.[2] However, as shown in the table below, the number of new hires has consistently been exceeded by the number of separations over the same period.

Change in Employment, Jefferson and Clearfield counties, Q1 2000 – Q1 2006

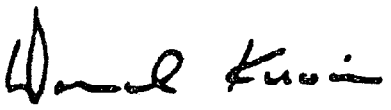
	2000	2001	2002	2003	2004	2005	2006
Employment	47,299	46,366	45,840	45,993	45,489	45,606	47,861
Job Creation	2,459	2,452	4,651	2,230	2,025	2,212	2,325
New Hires	5,583	5,395	5,800	5,033	6,622	5,459	5,469
Separations	7,002	7,194	6,627	6,396	8,192	5,270	5,982

Conclusion

It is my opinion, based on over thirty years experience in the staffing industry and Human Resources profession, that Ms. Carlson will not be able to find work in her prior field as a radiation therapist due to the weight lifting requirements. It is also my opinion that she will not be able to obtain employment in jobs other than those similar to her present one due to her physical restrictions. It is also my opinion, based on my experience, that Ms. Carlson will be at a disadvantage in the labor market due to her specialized education and work history: she has limited transferable skills from her prior occupation as a radiation therapist. Another factor to be considered, from my experience in staffing, is the reluctance on the part of employers to consider a candidate who, in the past, has earned significantly more than the wage being offered. That is, she had been earning $32.26 per hour in 2005: the Center for Workforce Information and Analysis website data show that the average wage for all occupations in Clearfield County is $13.76 per hour and $12.94 in Jefferson County.[3] As noted above, the posted jobs are in the range $6.25 and $9.50 per hour.

The research reflected in this report was done by the author or individuals under my direction and supervision.

Very truly yours,



Donal F. Kirwan, SPHR

Endnotes:

1. See Bricourt, John C. and Bentley, Kia J., *"Disability Status and Perceptions of Employability by Employers,"* Social Work Research, Vol 24, no. 2, June 2000, pp 87-95
2. Source: http://lehd.dsd.census.gov/led/datatools/qwiapp.html
3. County Profiles for Clearfield and Jefferson counties, May 2007, accessed at http://www.paworkstats.state.pa.us/gsipub/index.asp?docid=372

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2006-563-CD

Issue No.

REPLY TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF RONALD S. KUSHNER

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for This Party:

David R. Johnson, Esquire
PA I.D. #26409

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FILED
m/11:15 BY NO CC
FEB 08 2007
William A. Shaw
Prothonotary/Clerk of Courts

REPLY TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF RONALD S. KUSHNER

NOW COMES DuBois Regional Medical Center, one of the defendants, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following response to plaintiffs' motion in limine to preclude testimony of Ronald S. Kushner.

Ronald S. Kushner is a vocational expert retained by the defendants. Plaintiffs' motion seeks to preclude Mr. Kushner "from offering opinions based on claimed job modifications or modifications to Paula's job." According to the premise of plaintiffs' motion, Mr. Kushner should be "limited to testifying about his opinion as to whether Paula Carlson can perform her former job as a radiation therapist based on her present physical abilities."

Plaintiffs inadvertently or purposefully ignore Mr. Kushner's role as a vocational expert. As such, it is appropriate for Mr. Kushner to testify as to plaintiff's ability to perform her old job, plaintiff's ability to perform her old job with accommodations, plaintiff's ability to perform some other job at the hospital, plaintiff's ability to perform a job with a different employer, or plaintiff's ability to become retrained for employment she is capable of performing. In other words, as a vocational expert, there is absolutely no basis upon which Mr. Kushner's testimony should be pigeon-holed so as to require him only to testify about "whether Paula Carlson could perform her former job as a radiation therapist based on her present physical abilities."

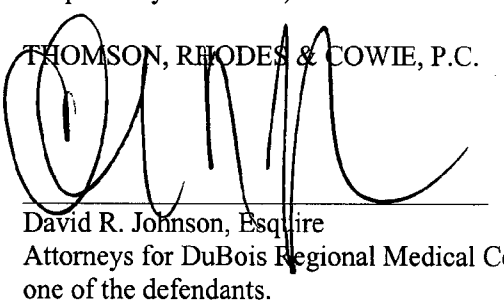
Analysis of the plaintiff's ability to be employed is much broader than suggested by plaintiff's motion. To the extent that Mr. Kushner demonstrates qualifications to testify as a vocational expert, he should be permitted to do so. Once he is so qualified, Mr. Kushner should be able to testify as to all of the relevant and appropriate subjects within the scope of his expertise that are identified in his reports. These would include jobs which the plaintiff could perform, other than her old job as formerly structured. These would include her former position with modifications, or any other jobs which Mr. Kushner deems suitable for her.

Plaintiffs have identified no valid reason for restricting the testimony of Mr. Kushner on any basis other than the extent of his qualifications and the scope of his reports.

WHEREFORE, plaintiffs' motion in limine to preclude testimony of Ronald S. Kushner should be denied.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center,
one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within REPLY TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF RONALD S. KUSHNER has been served upon the following counsel of record and same placed in the U.S. Mails on this 7th day of Feb, 2008:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222

Darryl R. Slimak, Esquire
McQuaide, Blasko, Fleming
& Faulkner, Inc.
811 University Drive
State College, PA 16801

Walter F. Wall, Esquire
10 Sheraton Drive
Altoona, PA 16601

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D.; DUBOIS RADIOLOGISTS, INC.; and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2006-563-CD

Issue No.

RESPONSE TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE REFERENCE TO PLAINTIFF'S RECEIPT OF SOCIAL SECURITY BENEFITS

Code: 007

Filed on behalf of DuBois Regional Medical Center, one of the defendants.

Counsel of Record for This Party:

David R. Johnson, Esquire
PA I.D. #26409

THOMSON, RHODES & COWIE, P.C.
Firm #720
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FILED NO CC
FEB 08 2006
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within RESPONSE TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE REFERENCE TO PLAINTIFF'S RECEIPT OF SOCIAL SECURITY BENEFITS has been served upon the following counsel of record and same placed in the U.S. Mails on this 7th day of Feb, 2008:

Thomas E. Crenney, Esquire
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THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical Center, one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DR. ALAJAJI'S MOTION IN LIMINE AND BRIEF TO PRECLUDE VARIOUS OPINIONS OF PLAINTIFFS' ORTHOPEDIC SURGEON DR. KENNETH YAW

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

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JURY TRIAL DEMANDED

FILED NO CC
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DR. ALAJAJI'S MOTION IN LIMINE AND BRIEF TO PRECLUDE VARIOUS OPINIONS OF PLAINTIFFS' ORTHOPEDIC SURGEON DR. KENNETH YAW

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Response in Opposition to Defendant Dr. Alajaji's Motion in Limine and Brief to Preclude Various Opinions of Plaintiffs' Orthopedic Surgeon Dr. Kenneth Yaw:

A. DR. YAW SHOULD BE ALLOWED TO TESTIFY AS TO THE STANDARD OF CARE OF DR. ALAJAJI AND WHETHER IT WAS VIOLATED.

1. Dr. Yaw is an orthopedic oncologist. He will testify at trial that he has extensive experience reading x-ray films and has been trained to read x-ray films. It is part of his job to review such films and to make diagnoses based on x-ray films.

2. As Defendant acknowledges in his Motion, under Section 512 of the M-Care Act, a specialist in one field may testify as to the standard of care of another field if based on training, experience and knowledge he is qualified to do so.

3. At the very least, Plaintiffs should be allowed to qualify Dr. Yaw as to the standard of care applicable to Dr. Alajaji.

4. Moreover, Dr. Yaw should be allowed to testify whether under the standard of care applicable to an orthopedic oncologist the tumor should have been spotted on the April 12th film. The corollary of such testimony would be that if it was a breach of the standard of care for an orthopedic oncologist, it would be a breach for a board certified radiologist, as the standard of care for a board certified radiologist reading x-ray films would be higher. Dr. Yaw's testimony would, therefore, be probative of whether Dr. Alajaji violated the standard of care applicable to him.

5. Moreover, Defendant's expert orthopedic oncologist, Richard Schmidt, M.D., opined on the standard of care for Dr. Alajaji in his own report.

6. Certainly, if Dr. Schmidt is allowed to testify that Dr. Alajaji complied with the standard of care, Dr. Yaw should be allowed to offer his opinion on that issue.

B. DR. YAW SHOULD BE ALLOWED TO DEFEND HIMSELF AGAINST THE IRRELEVANT CRITICISM OF DR. SCHMIDT ON THE PROCEDURE DR. YAW PERFORMED ON MS. CARLSON.

7. Defendant Dr. Alajaji has submitted the expert report of Dr. Richard Schmidt, an orthopedic oncologist.

8. Dr. Schmidt states in his report that he could see "a well-circumscribed radiolucency of the right distal radius" in the 4/12/05 report that Dr. Alajaji read as negative. Dr. Schmidt, however, states that the time between 4/12/05 and 6/9/05 did not play any significant role with regards to this patient's condition.

9. The focus of Dr. Schmidt's report, however, is his irrelevant criticism of Dr. Yaw's care of Paula Carlson. Essentially, Dr. Schmidt accuses Dr. Yaw of malpractice.

10. In an attempt to shift blame from Dr. Alajaji, Dr. Schmidt makes the following inflammatory and irrelevant statements:

(a) "The most disturbing portion of this case as far as I'm concerned, is how this particular patient was ultimately treated on 6/27/05;"

(b) "For the life of me, I'm not able to ascertain why a perfectly normal distal ulna was sacrificed and swung into the position of the distal radius when the distal radius could have been completely and satisfactorily replaced with a fresh, frozen osteoarticular allograft. In addition, it is apparent and incredibly bizarre that carpal bones were sacrificed;"

(c) "This patient should have been treated with a distal radius osteoarticular allograft. There is no reason why this patient received the operative procedure that ultimately compromised the function of her arm;"

(d) "Apparently, the patient is not happy with her surgical result. The patient should not be pointing to the radiologist for her unhappiness, but should be asking Dr. Yaw questions as to why a perfectly normal ulna and luna were sacrificed. The appropriate surgery was not done in this case."

11. Notably, however, nowhere in his report does Dr. Schmidt state that the procedure performed by Dr. Yaw did not fall within the generally accepted standard of care.

12. Dr. Yaw should be allowed to defend himself against the criticism of Dr. Schmidt, including pointing out that it is a violation of the American Academy of Orthopaedic Surgeons Standards of Professionalism to condemn an accepted technique falling within the generally accepted standards. See AAOS Standards of Professionalism, Orthopaedic Expert Testimony, #4, attached as Exhibit "A."

13. Moreover, Dr. Schmidt's criticism of Dr. Yaw's care and treatment of Paula Carlson, however, is irrelevant under Pennsylvania law. The black-letter law of Pennsylvania is that a tortfeasor whose negligence is the legal cause of an injury to a plaintiff is also liable for the additional injury caused by unskillful treatment that the plaintiff receives from a physician whom the plaintiff exercising ordinary care has selected. Corbett v. Weisband, 380 Pa. Super. 292

(1988); Lebesco v. Southeastern Pennsylvania Transportation Authority, 251 Pa. Super. 415, 422, 380 A.2d 848, 852 (1977). See also Restatement (Second) of Torts §457.

14. Thus, if the jury finds Dr. Alajaji liable, he is liable for all of the damages experienced and sustained by Paula Carlson, including any damages caused by Dr. Yaw (which Plaintiff maintains is none). The Defendants should not be permitted to suggest otherwise.

15. In light of this black-letter law, the Defendants should not be permitted to interject the irrelevant issue of Dr. Schmidt's criticism of Dr. Yaw's treatment of Paula Carlson. Such testimony will only serve to confuse the jury and be highly prejudicial to Plaintiffs.

16. At the very least, Dr. Yaw should be allowed to defend himself against the criticism of Dr. Schmidt, including discussing the AAOS Standards of Professionalism.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court enter an Order denying Defendant Dr. Alajaji's Motion in Limine to Preclude Various Opinions of Plaintiffs' Orthopedic Surgeon Dr. Kenneth Yaw.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By Thomas E Crenney

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

One Gateway Center
18th Floor - West
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(412) 644-5545

DATE: 2/7/08

STANDARDS OF PROFESSIONALISM

ORTHOPAEDIC EXPERT WITNESS TESTIMONY

Orthopaedic surgeons are frequently called upon to provide medical testimony in legal or administrative proceedings. It is in the public interest for orthopaedic testimony to be readily available, knowledgeable and objective. As a member of this profession, an orthopaedic surgeon must recognize a responsibility to provide testimony that is truthful, scientifically correct and in accordance with the merits of the case. To this end, the American Academy of Orthopaedic Surgeons and the American Association of Orthopaedic Surgeons ("AAOS") have adopted the following Standards of Professionalism.

The Standards of Professionalism draw from the aspirational Code of Medical Ethics and Professionalism that appears in bold Italics. The statements that follow the aspirational Code establish the minimum standard of acceptable conduct for orthopaedic surgeons when providing expert witness testimony. Violations of these minimum standards may serve as grounds for formal complaint to and action by the AAOS as outlined in the AAOS Bylaws Article VIII.

These Standards of Professionalism apply to all AAOS Fellows and Members who provide expert opinion services to attorneys, litigants, administrative agencies or the judiciary in the context of administrative, civil or criminal matters and include written expert opinions as well as sworn testimony. Only an AAOS Fellow or Member may file complaints of an alleged violation of these Standards of Professionalism regarding another AAOS Fellow or Member.

A. Impartial Testimony

Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:

Orthopaedic surgeons are frequently called upon to provide expert medical testimony in courts of law. In providing testimony, the orthopaedic surgeon should ensure that the testimony provided is non-partisan, scientifically correct, and clinically accurate.

Mandatory Standards:

1. An orthopaedic expert witness shall not knowingly provide testimony that is false.

2. An orthopaedic expert witness shall provide opinions and/or factual testimony in a fair and impartial manner.

3. An orthopaedic expert witness shall evaluate the medical condition and care provided in light of generally accepted standards at the time, place and in the context of care delivered.

EXHIBIT "A"

4. An orthopaedic expert witness shall neither condemn performance that falls within generally accepted practice standards nor endorse or condone performance that falls outside these standards.

5. An orthopaedic expert witness shall state how and why his or her opinion varies from generally accepted standards.

6. An orthopaedic expert witness shall seek and review all pertinent medical records related to a particular patient prior to rendering an opinion on the medical or surgical management of the patient.

B. Subject Matter Knowledge

Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:

Orthopaedic surgeons are frequently called upon to provide expert medical testimony in courts of law. In providing testimony, the orthopaedic surgeon should ensure that the testimony provided is non-partisan, scientifically correct, and clinically accurate.

Mandatory Standards:

7. An orthopaedic expert witness shall have knowledge and experience about the standard of care and the available scientific evidence for the condition in question during the relevant time, place and in the context of medical care provided and shall respond accurately to questions about the standard of care and the available scientific evidence.

8. An orthopaedic expert witness shall provide evidence or testify only in matters in which he or she has relevant clinical experience and knowledge in the areas of medicine that are the subject of the proceeding.

9. An orthopaedic expert witness shall be prepared to state the basis of the testimony presented and whether it is based on personal experience, specific clinical or scientific evidence.

C. Qualifications

Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:

The orthopaedic surgeon should not testify concerning matters about which the orthopaedic surgeon is not knowledgeable.

Mandatory Standards:

10. An orthopaedic expert witness shall have a current, valid, and unrestricted license to practice medicine in any state or U.S. territory.

EXHIBIT "A"

11. An orthopaedic expert witness shall maintain a current certificate from the American Board of Orthopaedic Surgery (ABOS), the American Osteopathic Board of Orthopaedic Surgery, or the certifying body, if any, in the country in which the orthopaedic surgeon took his or her training.

12. An orthopaedic expert witness shall be engaged in the active practice of orthopaedic surgery or demonstrate enough familiarity with present practices to warrant designation as an expert.

13. An orthopaedic expert witness shall not misrepresent his or her credentials, qualifications, experience or background.

D. Compensation

Aspirational: AAOS Code of Medical Ethics and Professionalism for Orthopaedic Surgeons, V. C.:
It is unethical for an orthopaedic surgeon to accept compensation that is contingent upon the outcome of litigation.

Mandatory Standards:

14. An orthopaedic expert witness shall not agree to or accept an expert witness fee that is contingent upon the outcome of a case.

15. Compensation for an orthopaedic expert witness shall be reasonable and commensurate with expertise and the time and effort necessary to evaluate and testify on the facts of the case.

EXHIBIT "A"

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DR. ALAJAJI'S MOTION IN LIMINE AND BRIEF TO PRECLUDE VARIOUS OPINIONS OF PLAINTIFFS' ORTHOPEDIC SURGEON DR. KENNETH YAW** was served by First Class Mail, postage prepaid on the 7th day of February, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Walter Fredrick Wall, Esquire
10 Sheraton Drive
Altoona, PA 16601
(Counsel for DuBois Radiologists, Inc.)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Defendant Dr. Alajaji's Motion in Limine to Preclude Various Opinions of Plaintiffs' Orthopedic Surgeon Dr. Kenneth Yaw having come before the Court, upon consideration thereof and Plaintiffs' response, it is hereby ORDERED that said Motion in Limine is denied.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DR. ALAJAJI'S COMBINED MOTIONS IN LIMINE

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
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Telephone: (412) 644-5545
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JURY TRIAL DEMANDED

FILED NO CC
m/12:48 BH
FEB 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DR. ALAJAJI'S COMBINED MOTIONS IN LIMINE

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Response in Opposition to Defendant Dr. Alajaji's Combined Motions in Limine:

A. PLAINTIFF SHOULD BE ALLOWED TO OFFER TESTIMONY AND EVIDENCE OF THE SOCIAL SECURITY ADMINISTRATION'S DETERMINATION OF PERMANENT DISABILITY.

1. Paula Carlson was determined by the Social Security Administration to be permanently disabled.

2. Plaintiffs' vocational expert, Donal Kirwan, prepared a labor market survey and in his report makes reference to the Notice of Determination of the SSA that Ms. Carlson is disabled.

3. In Dr. Kenneth Yaw's April 24, 2007 letter to Plaintiffs' counsel attached to Defendants' Motion as Exhibit "A," Dr. Yaw lists eight items that he reviewed, including SSA's Notice of Determination.

4. Under Pennsylvania Rule of Evidence 703, an expert may testify about the underlying facts and data that support the expert's opinion even though the evidence may otherwise be inadmissible if the evidence is "of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject." See, e.g. Berkshire Constr. Co. v. Workers Compensation Appeal Bd., 707 A.2d 599 (Pa. Commw. Ct. 1998); Commonwealth v. Thomas, 444 Pa. 436, 282 A.2d 693 (1971) (adopting a rule that allows a medical expert witness to offer an opinion that is based, in part, on otherwise inadmissible hearsay, if it is of a type that is customarily relied upon by the expert in the practice of the expert's profession.)

5. It is reasonable given their respective fields for both Donal Kirwan and Dr. Yaw to refer to and rely upon the Social Security Administration's Decision in rendering their opinions.

6. The Collateral Source Rule does not apply here and does prevent evidence of an independent governmental agency's determination of permanent disability. The Collateral Source Rule is intended to protect the plaintiff from a defendant attempting to admit into evidence the plaintiff's receipt of money from a third-party "collateral" source, such as SSD.

7. Donal Kirwan's and Dr. Yaw's reference to and reliance on the Notice of Decision is proper under Pa. R.E. 703 and the Collateral Source Rule does not apply.

WHEREFORE, Defendant Dr. Alajaji's Motion in Limine to Preclude Plaintiffs from offering testimony or evidence regarding Plaintiff Paula Carlson's Social Security Disability Determination should be denied.

B. DEFENDANTS SHOULD BE PRECLUDED FROM OFFERING ANY EVIDENCE, TESTIMONY OR MAKING ANY REFERENCE TO PLAINTIFF'S RECEIPT OF UNEMPLOYMENT COMPENSATION BENEFITS.

8. The Collateral Source Rule precludes any evidence, testimony or reference to Ms. Carlson's receipt of unemployment compensation benefits.

9. Defendant is attempting to use Ms. Carlson's receipt of unemployment compensation as proof that she was not disabled.

10. In fact, Ms. Carlson received unemployment compensation benefits as a result of her tumor and surgery. See Notice of Determination, Findings of Fact, attached as Exhibit "A." The Notice of Determination explains that Ms. Carlson met her burden to show that she informed her employer of her health limitations and that her employer did not offer Ms. Carlson alternate work within the Claimant's work limitations. Therefore, it was determined that the Claimant had a "necessitous and compelling reason for leaving her job" and was entitled to benefits. If Defendants are allowed to question Ms. Carlson about her receipt of unemployment compensation benefits or otherwise offer into evidence Ms. Carlson's receipt of unemployment benefits, Plaintiffs should be allowed to enter into evidence the Notice of Determination and the basis for Ms. Carlson's receipt of unemployment compensation.

11. The Collateral Source Rule should be applied here and Defendants should be precluded from offering any testimony or evidence of making reference to Ms. Carlson's receipt of unemployment compensation benefits.

WHEREFORE, Plaintiffs respectfully request that his Honorable Court deny Defendant Dr. Alajaji's Motion in Limine to allow limited reference to Plaintiff's receipt of unemployment compensation benefits and enter an order precluding Defendants from making any reference or offering any evidence or testimony of Ms. Carlson's receipt of unemployment compensation benefits.

C. PLAINTIFFS' EXPERT, N. ANTHONY MASTROPIETRO, M.D., SHOULD BE ALLOWED TO TESTIFY CONSISTENT WITH HIS REPORT.

12. Dr. Mastropietro is a family practice doctor. As such, he has experience, knowledge and training in reading x-rays.

13. The standard of care applicable to Dr. Alajaji regarding x-ray films, however, is higher than that applicable to Dr. Mastropietro, because Dr. Alajaji is a board certified specialist in radiology. It logically follows that Dr. Mastropietro should be permitted to testify about the standard of care applicable to him and whether the failure to see the lesion on the April 12th film was a violation of that standard. Such testimony is probative of whether Dr. Alajaji violated the higher standard of care applicable to him.

14. At the very least, Plaintiffs should be allowed to qualify Dr. Mastropietro based on his training, knowledge and experience under Section 512 of M-Care Act.

15. The Court should either deny this motion or hold it in abeyance until after such time as Plaintiffs have qualified Dr. Mastropietro.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny Defendant Dr. Alajaji's Motion to Preclude testimony from Plaintiffs' especially retained family practice/internal medicine expert, N. Anthony Mastropietro, M.D., or in the alternative to hold this motion in abeyance until Plaintiffs qualify Dr. Mastropietro at trial.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By _____
Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 2/7/08

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF UC BENEFITS AND ALLOWANCES

NOTICE OF DETERMINATION

The final day to timely appeal this determination is June 29, 2006.

SSN: 201-66-3077
Type Claim: UC
AB Date: May 21, 2006
Mailed On: June 14, 2006
Page: 1 of 3

EMPLOYER:

DUBOIS REGIONAL MEDICAL CENTER
P O BOX 447
DUBOIS PA 15801-0447

CLAIMANT:

PAULA J. CARLSON
1373 SANDSTONE DRIVE
FALLS CREEK PA 15840-

FINDINGS OF FACT

1. The Claimant was last employed on May 5, 2005.
2. The Claimant's job title was Radiation Therapist..
3. The Claimant took a leave of absence due to health problems.
4. The Claimant's health problems were: Cell tumor in the right wrist.
5. The Claimant's limitations were: not able to lift over 35 lbs.
6. The Claimant informed her Employer of her work limitations.
7. The Employer did not offer alternate work to the Claimant.
8. The Claimant's ability and availability for work is affected because: of surgery on right wrist.

DISCUSSION

In order to qualify for benefits in situations where the Claimant takes a leave of absence due to health problems, the burden is on the Claimant to show that she informed her Employer of her health limitations. It is then the Employer's responsibility to provide suitable work within the Claimant's work limitations. In this case, the Claimant did inform her Employer of her work limitations. However, the Employer did not offer the Claimant alternate work. As such, the Claimant had a necessitous and compelling reason for leaving her job and benefits must be allowed under Section 402(b).

The burden of proof is on the Claimant to show that she is able and available for suitable employment. In this case the Claimant has sustained her burden of proof and is able and available for suitable work. As such, benefits must be allowed under Section 401(d)(1).

DETERMINATION

The Claimant is eligible for benefits under Sections 402(b) and 401(d)(1) of the Pennsylvania Unemployment Compensation Law beginning with waiting week ending May 27, 2006. In addition, the following compensable week(s) are eligible: 06/03/2006.

UC Representative: W. Krick

APPEAL INSTRUCTIONS

The last day to timely appeal this determination is: June 29, 2006.

Under Section 501(e) of the Pennsylvania Unemployment Compensation Law, this determination becomes final unless you file an appeal. For your appeal to be timely, it must be filed within fifteen calendar days after the mailing date shown on the determination. However, if the fifteenth day is a Saturday, Sunday or legal holiday, you may file a timely appeal on the next business day. If your appeal is not filed on time, the UC Board of Review will determine if you had good cause for filing a late appeal.

The last day to timely appeal this determination is: June 29, 2006
If you disagree with this determination, you may appeal. If you want to file an appeal, you must do so on or before the date shown above. Information for filing an appeal is included in this determination.

You may use a Petition for Appeal form, a letter or e-mail to appeal. Regardless of the format you choose, your appeal must include the name and address of the claimant, the social security number of the claimant, if known, the date of the determination being appealed, the reason for the appeal and the name and address of the individual filing the appeal. If you use a Petition for Appeal form or a letter to appeal, you may file your appeal by mail, common carrier or fax, or by personal delivery to any CareerLink office. Please follow these appeal instructions carefully:

- If you file your appeal by mail, the appeal is filed on the date of the U.S. Postal Service postmark, certificate of mailing, or certified mail receipt. If there is no postmark, certificate of mailing or certified mail receipt, but the appeal contains a postage meter mark, the appeal is filed on the date of the postage meter mark. If there is no Postal Service information or postage meter mark, the appeal is filed on the date recorded by the Department when the appeal is received. If you file your appeal by common carrier, the appeal is filed on the date it is delivered to the common carrier as established by the records of the common carrier. If the date of the delivery to the common carrier cannot be determined by documents in the record, the appeal is filed on the date it is received by the Department. If you wish to appeal please complete Section 1 of the enclosed Petition for Appeal form and return the form to the following address, or send a letter of appeal to:

  Duquesne UC Service Center
  14 N Linden Street
  Duquesne PA 15110-1067

- If you file your appeal by fax, the appeal is filed on the date of receipt imprinted by the receiving fax machine. If the receiving fax machine does not imprint a legible date, the appeal is filed on the date of transmission imprinted by the sending fax machine. If the faxed appeal does not contain a legible date of transmission, it is filed on the date recorded by the Department when it receives the appeal. If you appeal by fax, you are responsible for any delay, disruption, or interruption of electronic signals and the readability of the appeal, and you accept the risk that the appeal may not be properly or timely filed. Please complete Section 1 of the enclosed Petition for Appeal or fax a letter of appeal to: **412-267-1476.**

- If you file your appeal by e-mail, the appeal is filed on the date of receipt recorded by the Department's electronic transmission system, if the e-mail is in a form capable of being processed by the Department's system. If you appeal by e-mail, you are responsible for any delay, disruption, or interruption of electronic signals and the readability of the appeal, and you accept the risk that the appeal may not be properly or timely filed. If you wish to appeal by e-mail, forward your appeal information to the Department at L&I-UC-Appeals@state.pa.us. **Warning: information submitted by e-mail is not secure.**

- If you file your appeal by personal delivery to a CareerLink, your appeal is filed on the date it is delivered to the CareerLink, during normal business hours. If you wish to appeal by personal delivery, take the completed appeal form (UC-46B) or letter to the nearest Team Pennsylvania CareerLink. The CareerLink representative will forward your appeal or letter of appeal to the UC Service Center. **NOTE: Appeals can not be filed in-person at UC Service Centers.**

IMPORTANT: If you remain partially or fully unemployed while an appeal concerning your eligibility is pending, continue to file your bi-weekly claims for benefits. If the appeal is decided in your favor, only benefits for the weeks you claimed will be released for payment. Your employer has the same rights of appeal as you do.

PROVISIONS OF THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW

Section 402(b) of the Law provides, in part, that a Claimant shall be ineligible to receive benefits for any week in which her unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature, but that a Claimant shall not be denied benefits for any week in which her unemployment is due to exercising the option of accepting a layoff from an available position pursuant to a Labor-Management contract or agreement, or pursuant to an established employer plan, program or policy.

Section 401(d)(1) of the Law provides, in part, that a Claimant shall be ineligible to receive benefits for any week in which

she is not able to work or is not available for suitable work.

THE EXPLANATION OF THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION LAW PROVISIONS IS PROVIDED FOR INFORMATION ONLY. FOR FURTHER EXPLANATION OF THIS DETERMINATION, CONTACT THE PENNSYLVANIA UC SERVICE CENTER INDICATED IN THE APPEAL INSTRUCTIONS.

CONTRIBUTING BASE YEAR EMPLOYER: This is not a determination on relief from charges. However, this determination may affect a request for relief from charges.

- An appeal to a Claimant's eligibility and a request for relief from charges MUST BE FILED SEPARATELY.

- For procedures and time limits for requesting relief from charges, see Form UC-44FR previously sent to you with the Claimant's Notice of Financial Determination or contact the Employers' Charge Section, 7th Floor, Labor & Industry Building, 7th & Forster Streets, Harrisburg, PA 17121.

A REQUEST FOR RELIEF FROM CHARGES, WHETHER GRANTED OR NOT, WILL HAVE NO EFFECT ON THIS DETERMINATION.

The last day to timely appeal this determination is: June 29, 2006
If you disagree with this determination, you may appeal. If you want to file an appeal, you must do so on or before the date shown above. Information for filing an appeal is included in this determination.

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DR. ALAJAJI'S COMBINED MOTIONS IN LIMINE** was served by First Class Mail, postage prepaid on the 7th day of February, 2008, as follows:

Darryl R. Slimak, Esquire
McQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
10 Sheraton Drive
Altoona, PA 16601
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Defendant Dr. Alajaji's Combined Motions in Limine having come before the Court, upon consideration thereof and Plaintiffs' response, it is hereby ORDERED as follows:

A. Defendant Dr. Alajaji's Motion in Limine to Preclude Plaintiffs from offering testimony or evidence regarding Plaintiff Paula Carlson's Social Security Disability Determination is denied;

B. Defendant Dr. Alajaji's Motion in Limine to allow limited reference to Plaintiff's receipt of unemployment compensation benefits is denied and Defendants are precluded from making any reference or offering any evidence or testimony of Ms. Carlson's receipt of unemployment compensation benefits; and

C. Defendant Dr. Alajaji's Motion to Preclude testimony from Plaintiffs' especially retained family practice/internal medicine expert, N. Anthony Mastropietro, M.D., is denied or in the alternative this motion is held in abeyance until Plaintiffs qualify Dr. Mastropietro at trial.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE TO DUBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNEY & ASSOCIATES, LLC
One Gateway Center
18th Floor West
Pittsburgh, PA 15222
Telephone: (412) 644-5545
Facsimile: (412) 644-5581

JURY TRIAL DEMANDED

FILED no cc
m/12:28 bl
FEB 08 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

PLAINTIFFS' RESPONSE TO DUBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Response in Opposition to DuBois Regional Medical Center's Motion in Limine:

1. This response to various Motions in Limine attempting to limit Plaintiffs' evidence on the issue of hospital job offer. The defendants' principal defense in this case is on damages. The damage defense rests on the proposition that the hospital will provide Paula Carlson her job as a radiation therapist at her current salary with periodic raises in perpetuity or at least for the next 27 to 33 years. This even though she has been determined to be totally disabled by the Social Security Administration. Additionally, she has, of course, sued the hospital in this case subsequent to the alleged job offer being made.

2. Plaintiffs have requested in their own Motion in Limine that this defense of job offer/job availability be precluded altogether.

3. If the Court allows this defense in any measure, Plaintiff, at a minimum, should be permitted to put in evidence that Paula Carlson would be an employee at will. (Rose Campbell, her supervisor, has so testified.)

4. Further, Paula Carlson should be permitted to discuss her concerns that the hospital would discharge her outright or constructively after the suit had resolved.

5. Paula should also be able to discuss insurance. The record already contains references suggesting that she sued the hospital so that she could not avail herself of the claimed job offer. She sued the hospital only when she learned that DuBois Radiologists, Inc. was uninsured. This information regarding insurance should be placed before the jury if Defendants are permitted evidence of the claimed job offer.

6. Dr. Steven Graeca was Plaintiff's treating physician when her giant cell tumor developed. His records document that he feared he would be sued by Paula Carlson. The claimed job offer was made, hospital witnesses suggested, at the behest of Ray Graeca, Steven Graeca's father and the Chief Operating Officer of DuBois Regional Medical Center. All this was done prior to the running of the statute of limitations.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request this Honorable Court issue an order that all evidence and argument regarding a job offer to Paula Carlson be precluded and/or Paula Carlson be permitted as Plaintiff to put into evidence, as described in this Motion, to rebut the claimed legitimacy, permanency and realism of the claimed job offer.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By Thomas Crenney
Thomas E. Crenney, Esquire
Attorneys for Plaintiff

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 2/6/08

No. 2006-563-CD
Clearfield County, Pennsylvania

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DUBOIS REGIONAL MEDICAL CENTER'S MOTION IN LIMINE** was served by Facsimile & First Class Mail, postage prepaid on the 6th day of February, 2008, as follows:

Darryl R. Slimak, Esquire
MCQUAIDE BLASKO FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(Counsel for Jerjis T. Alajaji, M.D.)

Walter Fredrick Wall, Esquire
10 Sheraton Drive
Altoona, PA 16601
(Counsel for DuBois Radiologists, Inc.)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for DuBois Regional Medical Center)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS RADIOLOGISTS, INC. and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional Liability Action

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Defendant DuBois Regional Medical Centers' Motion in Limine having come before the Court, upon consideration thereof and Plaintiffs' response, it is hereby ORDERED that all evidence and argument regarding a job offer to Paula Carlson is precluded and/or Paula Carlson is permitted as Plaintiff to put into evidence, as described in this Motion, to rebut the claimed legitimacy, permanency and realism of the claimed job offer.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,

Defendants.

Docket No: 2006 - 562 - C.D.

Jury Trial Demanded

Type of Pleading
Praecipe to Discontinue Action

Filed on Behalf of Plaintiffs
Paula and Jamie Carlson

Counsel of Record for This Party
Thomas E. Crenney, Esquire

Thomas E. Crenney & Associates, P.C.
One Gateway Center 18th Floor West
Pittsburgh, PA 15222

Counsel for Adverse Parties
Darryl R. Slimak, Esquire
Walter F. Wall, Esquire
David R. Johnson, Esquire

FILED
m 11:00 am GK
FEB 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

Cert of discon. to Atty
NO CC
GK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION

PAULA CARLSON and JAMIE CARLSON, her husband,	:	
	:	Docket No: 2006 - 563 - C.D.
Plaintiffs,	:	
	:	Jury Trial Demanded
vs.	:	
	:	
JERJIS T. ALAJAJI, M.D. and DUBOIS RADIOLOGISTS, INC., and DUBOIS REGIONAL MEDICAL CENTER,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praecipe to Discontinue Action in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 26th day of February, 2008, to the attorney(s) of record:

Thomas E. Crenney, Esquire
Thomas E. Crenney & Associates, LLC
One Gateway Center 18th Floor West
Pittsburgh, PA 15222

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Walter F. Wall, Esquire
Meyer, Darragh, Buckler, Bebenek & Eck, LLC
120 Lakemont Park Boulevard
Altoona, PA 16602

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____

Darryl R. Slimak
Attorneys for Defendant
JERJIS T. ALAJAJI, M.D.

811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Paula Carlson
Jamie Carlson

Vs. **No. 2006-00563-CD**

Jerjis T. Alajaji, M.D.
DuBois Radiologists, Inc.
DuBois Regional Medical Center

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on the 28th Day of February, 2008, marked:

Discontinued

Record costs in the sum of $105.82 have been paid in full by Thomas E. Crenney, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of February A.D. 2008.

William A. Shaw, Prothonotary