

VIRGINIA: IN THE CIRCUIT COURT OF YORK COUNTY

MICHAEL J. KLOSTERMAN, :
Plaintiff, :
 :
v. : CIVIL NO.
 : CL08-1470
 :
HETTIE G. MICHEL, :
Defendant. :

 :

VIDEOTAPED DE BENE ESSE
DEPOSITION UPON ORAL EXAMINATION
CHARLES KUROWSKI, DC

September 17, 2009 -- 9:52 a.m.

Yorktown, Virginia

APPEARANCES: SHAPIRO, COOPER, LEWIS & APPLETON, P.C.
By: Randall E. Appleton, Esquire,
counsel for the Plaintiff.

HALL, FOX AND ATLEE, P.C.
By: Michael L. Atlee, Esquire, counsel
for the Defendant.

ALSO PRESENT: Tayloe Associates, Inc.
By: Josh Bridges, Videographer.
Old Dominion Reporting
Telephone: (757) 620-6836 Facsimile: (757) 255-4397

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OBJECTIONS

BY MR. ATLEE

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1 Videotaped de bene esse deposition upon oral
2 examination of Charles Kurowski, DC, taken before Shannon A.
3 Crittenden-Mann, a Notary Public for the Commonwealth of
4 Virginia at Large, pursuant to Notice and Agreement,
5 commencing at 9:52 a.m. on September 17, 2009, at the
6 Medical Offices of Charles Kurowski, DC, A Family
7 Chiropractic Center, 121 Hampton Highway, Yorktown,
8 Virginia, and these in accordance with the Rules of the
9 Supreme Court of Virginia, 1950, as Amended.

10
11 THE VIDEOGRAPHER: We're on the record at
12 9:52 on September 17th, 2009. This is the
13 videotaped deposition of Dr. Charles Kurowski at
14 121 Hampton Highway, Yorktown, Virginia. This
15 deposition is being taken on behalf of the
16 plaintiff in the matter of Michael J. Klosterman
17 versus Hettie G. Michel, Civil Action Number
18 CL08-1470.

19 My name is Josh Bridges with the firm of
20 Tayloe Associates, Incorporated, located at 253
21 West Bute Street, Norfolk, Virginia, 23510. I'm
22 the video technician for this deposition, and the
23 court reporter is Shannon Mann of Old Dominion
24 Reporting.

25 Will the counsel please introduce themselves
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1 for the record and state whom they represent?

2 MR. APPLETON: I'm Randy Appleton. I
3 represent the plaintiff, Mike Klosterman.

4 MR. ATLEE: I'm Michael Atlee, and I
5 represent the defendant, Hettie Michel.

6 Before we get started, I'm going to hold my
7 objections until after the doctor finishes just
8 so if it's edited it's not an absolute nightmare.

9 MR. APPLETON: That -- that's fine.

10 MR. ATLEE: Okay. I don't want you to think
11 that I'm waiving something but I -- I want to try
12 to keep it as clean as possible.

13 MR. APPLETON: Okay.

14 THE COURT REPORTER: Would you raise your
15 right hand?

16
17 CHARLES KUROWSKI, DC, called as a witness on
18 behalf of the Plaintiff, after having been first duly sworn,
19 was examined and testified as follows:

20

21 DIRECT EXAMINATION

22

23 BY MR. APPLETON:

24 Q Doctor, can you state your name for me, please?

25 A Charles Peter Kurowski.

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1 Q And what's your profession?

2 A I'm a doctor of chiropractic.

3 Q And where is your practice, Doctor?

4 A Right here at 121 Hampton Highway, Yorktown,
5 Virginia.

6 Q What's the name of your practice?

7 A Family Chiropractic Center.

8 Q Describe for me your educational background, the
9 degrees you have achieved, the years you achieved those
10 degrees and the schools or institutions that awarded the
11 degrees.

12 A Okay. I have an associate's degree from Penn
13 State in nuclear engineering technology. I'd have to look
14 up the dates. I believe it was '77 where I graduated.

15 Q Okay.

16 A I have -- I have -- I do have my résumé here if
17 we --

18 Q Well, I have a copy if you want me to put it.

19 A That's okay. I got it right here. But it seems
20 like it was April of '77. I hate to admit that, but a long
21 time ago. Yeah, April of '77. Then I graduated with a
22 bachelor of science in physics from Jacksonville University
23 in April of '83 I believe it was, and then my doctor of
24 chiropractic I graduated in March of 1994 from Life
25 University.

1 Q And describe for the jury what -- what the
2 practice of chiropractics entails.

3 A Well, it tells the -- the diagnosis and treatment
4 of neuromuscular and skeletal disorders of the spine and
5 pelvis.

6 Q And are you licensed by the Commonwealth of
7 Virginia?

8 A Yes, I am.

9 Q How long have you held licensure within the
10 Commonwealth?

11 A About 15 years.

12 Q And, Doctor --

13 MR. APPLETON: And at that point I'd offer
14 the doctor as an expert in chiropractics if you'd
15 like to voir dire him on his qualifications.

16 MR. ATLEE: Save for cross-examination.

17 MR. APPLETON: Okay. Thank you.

18

19 BY MR. APPLETON:

20 Q Doctor, have you had an opportunity to -- to treat
21 and examine Mike Klosterman?

22 A Yes.

23 Q Can you tell me when Mr. Klosterman initially came
24 to your office?

25 A Okay. That was March 8th of '06.

1 Q And are you referring to your -- your office
2 notes?

3 A Yes.

4 Q Okay. And feel free to do that.

5 A Okay.

6 Q And when Mr. Klosterman came to see you on March
7 8th of 2006 did he give you a history?

8 A Yes, he did.

9 Q What was the history he provided to you?

10 A He had been in a car accident. Would you like --
11 he described the accident. Would you like that?

12 Q Yes, sir.

13 A He said upon approaching the intersection with
14 Long Green on Route 134 south at the red light -- or the red
15 light turned to green and he proceeded to accelerate back up
16 to 55 miles per hour, and there was a car from Long Green
17 Boulevard at the light who pulled into his lane causing him
18 to swerve left to avoid the collision, and then he went
19 through a median and struck the trees.

20 He mentioned that he had injuries to his --
21 his back, chest and neck, and mentioned also that the -- the
22 injuries started the day of the accident, and he said that
23 also they are progressively getting worse. He was feeling
24 some achy -- achiness, tingling. The pain was constant, and
25 it was interfering with his work, sleep, daily routine,

1 recreation. And the movements that were painful to perform
2 for him were sitting, bending, lying -- or lying down on his
3 back.

4 Q Did -- did he provide you with a -- a date of the
5 accident or the collision?

6 A Yes.

7 Q What was the date?

8 A February 24th of '06.

9 Q And, Doctor, once you obtained the history from
10 Mr. Klosterman did you conduct an examination?

11 A Yes.

12 Q What did the examination reveal?

13 A His blood pressure was a little elevated, which is
14 somewhat typical of an accident victim or somebody in pain
15 or -- or also somebody that has white coat syndrome. I
16 wasn't overly concerned about that.

17 MR. ATLEE: I'm -- I'm going to object to
18 any testimony regarding blood pressure as it's
19 being outside the scope of the statute that
20 allows the chiropractor to opine as to injuries.

21

22 BY MR. APPLETON:

23 Q Doctor, do you -- do you consider the -- the blood
24 pressure findings when you're considering a course of
25 treatment for somebody's spine or spinal injuries?

1 A We -- we do that routinely as a -- a part of our
2 physical exam.

3 Q Okay. Go ahead.

4 A Okay. He had a positive on the straight --
5 straight leg raiser exam, also leg lowering exam. It's
6 called the Hibb's -- Hibb's test and a Kemp's test.

7 Q You need to explain what all those tests are.

8 A Okay.

9 Q How you do them and why you do them.

10 A A straight leg raiser is where the patient is
11 lying supine, and what we do is we raise one leg as high as
12 he -- he can get it pain free, and when I -- when I did that
13 he complained about pain across his low back.

14 Q Why would a movement of the leg stimulate any type
15 of reaction in somebody's back?

16 A Well, you're -- you're stretching the soft tissue
17 in the -- in the low back and also you're affecting the
18 sciatic nerve when you -- when you stretch the leg like
19 that.

20 The leg lowering exam, what I have the
21 patient do is raise their legs off the table and then
22 bring -- bring them back down, and that -- that elicited
23 some pain in the central low back area on Mr. Klosterman.
24 Once again, your -- when -- not only are you contracting the
25 abs but you're also contracting the soft tissue in the low

1 back. So if you have an injury there that -- that will
2 bring it out, exacerbate it, okay.

3 The Hibb's exam the patient is lying prone,
4 face down, and what I'll do is I'll have them bend their leg
5 and I'll turn that in -- turn it in and out and that -- that
6 caused some pain across the -- across his low back as well.

7 And then Kemp's test is where the patient is
8 standing, and I'll have him put the hands on the hips and
9 twist to the right and twist to the left and he -- he had
10 pain in the lower thoracic area, which is roughly in this
11 area.

12 Q You're pointing to the middle of your back?

13 A Yeah. I was pointing -- would you like me to
14 demonstrate?

15 Q No. That's fine. I --

16 A Okay. So let's see what else. Okay. His -- on
17 postural exam he had a high left shoulder, and his range of
18 motion was decreased in -- in most ranges of motion. I have
19 a computerized program that checks the range of motion.

20 Q What -- can you explain to the jury what range of
21 motion is and -- and why you measure that?

22 A Well, there are some guidelines that -- that I use
23 from the AMA, the American Medical Association, that a
24 person should have roughly a -- a certain degree of motion
25 in different ranges of motion. For example, the -- the leg

1 raisers they -- they should be roughly 80 degrees or -- or
2 better. With Mr. Klosterman they were on the left leg 22
3 degrees, on the right leg 31 degrees. So they were markedly
4 decreased. What I do is I tell patient -- the patient to --
5 to raise as far as they can without pain, and once they
6 reach the point of pain they stop -- I'll stop it and then
7 I'll take the measurement at that point.

8 His flexion extension/flexion, flexion is --
9 I'm talking about in the cervical region now. Flexion is
10 forward. Extension is backward like that. (Witness
11 indicating.) The flexion was 41 degrees. Extension was 42.
12 The extension wasn't too far off. The -- the flexion was --
13 was a little bit limited. Lateral flexion was -- is side to
14 side like that. (Witness indicating.) To the left he could
15 go 32 degrees and to the right 28 degrees, and that -- that
16 was fairly significant because that should be about 45
17 degrees each way. Rotation, like this and like this,
18 should -- should be about 80 degrees also, and he -- he was
19 going left 48 degrees and right 26 degrees. (Witness
20 indicating.)

21 In the lumbar or low back region we also test
22 flexion, extension. His flexion was 36 degrees. It should
23 be more like 50. Extension was 5 degrees. Extension is
24 backwards. It was 5 degrees, and it should be more like 25
25 degrees. Lateral flexion to the left was 20 degrees and to

1 the right was 9 degrees. That should be about 25 degrees,
2 so he had a lot of difficulty in a lot of ranges of motion.

3 Q And once you -- you concluded your -- your
4 examination what else -- did you do anything else for
5 Mr. Klosterman during that visit?

6 A We took some x-rays of the low back region and of
7 the neck.

8 Q Anything significant on either of those studies?

9 A Okay. Okay. I -- I found a -- what is called
10 a -- the L5 retrolisthesis. What that means is L5 was
11 rocked backwards on -- on the sacrum, which is the very
12 bottom triangular-shaped bone on the pelvis.

13 Q And when you say L5 what are you referring to?

14 A The lowest lumbar in the spine.

15 Q And what's the lumbar in the spine?

16 A Okay. Let me get out my -- my model here.

17 Q I didn't even see that, okay.

18 A Okay. L5 is down here. (Witness indicating.)

19 Q Well, you got to tell the jury what you have in
20 your hand.

21 A Oh, this is a -- a model of the -- the human
22 spine. This is the pelvis. This is the cervical region.
23 This is the thoracic region through here, and this is the
24 lumbar region through here. This triangular-shaped bone
25 down here is the sacrum and down below the sacrum is the

1 coccyx. (Witness indicating.)

2 Q And is -- is that oriented so that the back is
3 facing the camera?

4 A Yeah. You -- you'd be looking at it like this.

5 Q Okay.

6 A Okay. And I'm holding it like that, okay.

7 Q All right. So --

8 A So here's L5.

9 Q Okay.

10 A And here's the sacrum. So L5 was rocked backwards
11 this way on the sacrum.

12 Q Okay.

13 A As demonstrated by x-ray.

14 Q Okay. Any other findings on the x-ray?

15 A Yes. I'm going to sit this down. Okay. He had
16 a -- a femur height deficiency. I take a standing x-ray so
17 I can measure the -- the femur heights on the -- on the
18 pelvis to see if a person has a leg length inequality, and
19 his was 6 millimeters off, which -- which isn't gross but it
20 is right at the borderline of where -- where we would
21 typically put a heel lift in there.

22 He also had cervical kyphosis, which -- which
23 means that the -- well, first of all, once again this is the
24 cervical region. This is the side view now of this spine.

25 The cervical region is supposed to have a curve, a backwards

1 curve kind of like that. His -- his was straightened out to
2 the point where it was actually going the wrong way.

3 Q What's the significance of that, if any?

4 A Over -- over time there will be arthritic changes
5 there. Also I think I -- oh, here we go. I've got a
6 picture of -- of a textbook normal. You can see where
7 he's -- where he's got a nice curve. What I did is I put a
8 red line at the back of the vertebral bodies, okay.

9 Q Okay.

10 A And on -- this is Mr. Klosterman's right here.
11 You can see where it's angulated going -- going the wrong
12 way. Also I put a -- an arrow at the point where the C4
13 vertebrae contacted the -- the C5 vertebrae in the -- in the
14 whiplash effect from -- from the accident. You can see
15 where it's rounded off at the edge. It's probably hard for
16 him to see, but if you look carefully the C5 vertebrae right
17 at the corner is kind of pushed in and rounded off.

18 Q Uh-huh.

19 A Okay. Right where the arrow is. So those --
20 those were the x-ray findings.

21 Q Now, Doctor, do you have an -- an opinion to a
22 reasonable degree of probability as to whether or not those
23 x-ray abnormalities of the neck are related to the -- the
24 car wreck that Mr. Klosterman related to you?

25 A I think they probably were.

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1 Q And --

2 A By the angulation of that cervical curve. I -- I
3 think they probably are. Unless he had an accident before
4 that that had caused that, which he didn't report to me.

5 Q And tell me why you -- why is it that a car wreck
6 would cause somebody's neck to have changes in angulation
7 like that?

8 A Well, once you contact -- once the inertia wheel
9 locks on the -- on the harness, the seat belt, the head is
10 going to keep going forward like that, and as you can see it
11 kind of whips forward like that. That's probably where
12 the -- the C4 vertebrae contacted the C5, rounded it off and
13 caused that backwards angulation of the cervical spine.

14 MR. ATLEE: I'm going to object and move to
15 strike to the extent that some of that was
16 accident reconstruction. Other of it was
17 testimony that was not to the reasonable degree
18 of chiropractic certainty that is required.

19

20 BY MR. APPLETON:

21 Q Doctor, are your opinions to a reasonable degree
22 of chiropractic certainty?

23 A I think they are, yeah.

24 Q Doctor, did -- did you reach any other diagnosis
25 to a reasonable degree of chiropractic certainty based on

1 your examination of -- of Mr. Klosterman, the history that
2 he provided to you and your review of the diagnostic
3 studies?

4 A I believe he had some strain and sprain injuries
5 to the soft tissue in his upper dorsal region, which again
6 upper back, to his cervical lumbar areas, and he had some
7 contusions in -- in the sternal, which is in the breast bone
8 most people think of it, and the costosternal regions, which
9 are along the breast bone probably from the -- the seat
10 belt.

11 MR. ATLEE: Objection. Move to strike.

12

13 BY MR. APPLETON:

14 Q Go ahead, Doctor.

15 A He potentially -- potentially had some what is
16 called annular tearing of the L5, which is the lowest lumbar
17 vertebrae, the -- the disk once again from the -- from the
18 impact of the accident I believe.

19 Q And tell me what the opinion concerning the
20 annular -- annular tear is based upon.

21 MR. ATLEE: Yes. I'm going to object and
22 move to strike. That's nowhere in the notes.

23 THE WITNESS: The annular tear?

24 MR. ATLEE: Go ahead and respond to his
25 question.

1 THE WITNESS: What was the question again?

2

3 BY MR. APPLETON:

4 Q What is -- what is the conclusion that -- that
5 there was the probability of annular tearing based upon?

6 A Some of the symptomatology he had with the -- the
7 low back pain and the -- when he had it and where he had it.

8 Q Well, tell me what -- tell me the specifics.

9 A Okay. Typically if somebody has an annular tear
10 they will -- they will still -- they'll have a positive
11 straight leg raiser test, which he did, but he won't -- the
12 individual won't have radiating pain down the legs but
13 they'll have -- it will be more localized to the low back
14 area and across the low back area and that's what -- that's
15 what -- what he had. That's -- that's my professional
16 opinion. Without the MRI I -- I can't tell for a fact that
17 he did, but he had -- he had the -- some of the more classic
18 symptoms of an annular tear. I can't say that for a fact
19 though, and that's probably why you're objecting.

20 Q Can you say it's more likely than not? That's
21 the -- that's the --

22 A I would say it's likely, yeah.

23 MR. ATLEE: Let me get in an objection. I
24 move to strike all discussion about potentially
25 having an annular tear. One, it's nowhere in the
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1 notes, nor was it ever disclosed that -- that
2 this witness would testify about an annular tear.

3

4 BY MR. APPLETON:

5 Q And, Doctor, did you recommend any treatment for
6 Mr. Klosterman?

7 A Yes. We --

8 Q And tell -- tell me what.

9 A We did some what is called interferential therapy.
10 It's an electrical stimulation of the musculature. What
11 that does is help the body to relieve some of the muscle
12 spasm, takes the edge off the pain. It, you know,
13 stimulates circulation so it -- it -- it helps the healing
14 process.

15 Q Well, can you -- can you describe it for me? What
16 is it? How do you administer it?

17 A Well, we -- we put down electrodes on the affected
18 area and we hook the electrodes up to the interferential
19 machine and then we -- we turn up the -- the intensity until
20 the patient can feel it, and then I -- I have them -- I take
21 it to the point where it's significant but not -- not
22 uncomfortable. So we do that to help with the soft tissue
23 injury.

24 Q And how long do you do that in a -- in a session?

25 A Eight to ten minutes.

1 Q Any -- any other treatment that you recommended
2 for him?

3 A We -- we did some traction of the low back. What
4 that entails is having the patient lay on this table and we,
5 you know, put some straps around their ankles. It's sort of
6 like putting you on the rack but not to the point where
7 causing people to scream out, but, you know, just to the
8 point where they're feeling some of the -- the stretch in
9 the low back. That -- that helps take the pressure off the
10 disks and also it enhances the -- what is called inhibition
11 into the disk. What that is the drawing of fluid into the
12 disk to help the healing process along. The -- the disks
13 don't have their own blood supply so they rely on this
14 inhibition process to -- to draw nutrition into -- into the
15 disk to -- to enhance the healing, so we did some of that.
16 We also did some chiropractic adjustments. That's where we
17 normalize the -- the biomechanics of the spine and pelvis
18 through high velocity, low -- low amplitude thrusts into
19 the -- into the spinal segments.

20 Q And, Doctor, did -- did Mike treat with you over
21 extended period of time for these injuries?

22 A Yeah, it was over extended period.

23 Q What I'd like for you to do is -- is describe the
24 course of treatment for the jury. I'd like for them to
25 know, you know, how often you saw him and -- and what --

1 what you did for him instead of me going through each
2 appointment.

3 A Okay. Generally speaking what I do is I see the
4 patient frequently at first until they start responding and
5 making, you know, positive steps, you know, towards healing,
6 and then I see them on a decreasing frequency basis
7 depending on how they do in between visits. So we were
8 seeing him every two or three days in the beginning and then
9 I get some suggestive input from him as far as, you know,
10 how each area is doing. And based on what he reports
11 I'll -- I also ask, "Okay, what -- what seems to be helping?
12 What's not helping?" And then I try and stick with the
13 things that seem -- seem to be helping and -- and as I
14 mentioned, I taper off the visits as the -- the patient does
15 better and better.

16 Q Well, during the -- the course of -- of your
17 treatments did your -- did your protocols change at all?
18 Did you -- did you provide any different type of care than
19 you've already described for the jury?

20 A Let me check that. We -- we did some -- I see
21 here some soft tissue work called an MR, which is
22 neuromuscular reeducation. What that is is we contact
23 the -- the affected areas, and I have the patient move in
24 certain ways. While they're moving I'll work the soft
25 tissue. What that helps to do is break up muscle spasms and

1 remove what we call trigger points. Those are areas where
2 the -- the muscle fibers are bound up and not moving well.
3 It also helps stimulate circulation to the area to remove
4 some of the metabolic products that have built up in the
5 tissue.

6 Q And when did you -- when did you begin those
7 treatment regimens?

8 A Okay. The -- the MR -- MR specifically?

9 Q Yes, sir.

10 A Okay. That was March 17th we started doing that.
11 We did that several times and then we -- we did that later
12 on in the treatment as well, okay.

13 Q Okay. I'd like for the jury to -- to hear when
14 he -- when he came to see you, how often you saw him and how
15 long your -- your treatment program was.

16 A Okay. He -- he started treatment on the 8th of
17 March, and as I mentioned we -- we saw him on -- somewhat
18 frequently in the beginning and then tapered off, and that
19 continued until I released him January 19th of '07.

20 Q And -- and how did he respond to your treatment?

21 A At first it was a little bit slow going but he --
22 he eventually started coming around, getting better, but he
23 would have periodic exacerbations of the problem where we
24 would have to see him more frequently again to kind of get
25 him back on track, and then we would start tapering off

1 again. So he -- he would have periodic exacerbations where
2 we would see him more frequently and then back off again.

3 Q Anything unusual about a patient with the injuries
4 that Mr. Klosterman demonstrated to you suffering transient
5 exacerbations as they're recovering from the injury?

6 A I would say that's common.

7 Q And, Doctor, based upon your -- your examinations
8 of Mr. Klosterman, your treatment and your testing, did you
9 formulate a prognosis to a reasonable degree of chiropractic
10 certainty concerning his recovery from these injuries?

11 A I -- I would say that he -- he recovered pretty
12 well but I -- I expected him to have periodic exacerbations
13 over the -- the months and years to -- to follow just
14 because of what I've seen in the past from my own past
15 experience with other car accident victims.

16 Q When you released him from your care how was he
17 doing?

18 A He was doing pretty well. If you look back in the
19 notes at that time I have a wellness scale. It's not a pain
20 scale, and so he was, you know, eights and nines for several
21 visits in a row as I was tapering him off, and so on the
22 19th we did a reexam.

23 Q 19th of what month and year?

24 A I'm sorry. 19th of January of '07 we did a -- a
25 follow-up exam of him. All of the positives that were --

1 the tests that we did were positive -- I'm sorry. No. No.
2 It was the 2nd. I thought -- it was the 2nd of January
3 where I did the follow-up exam, and he at that point had --
4 all the tests that were positive on the first exam were then
5 negative and the ranges of motion had improved greatly.

6 Q Okay. And, Doctor, I have an itemized statement
7 in front of you. Does that reflect your charges associated
8 with the treatment of Mr. Klosterman's injuries of
9 February 24, 2006?

10 A Yes.

11 Q And does that bill reflect the number of times and
12 the dates that he came to see you for treatment?

13 A I -- I believe so. I'd have to go down each one
14 but it -- it looks about right.

15 Q And are the charges that are reflected on that
16 statement in your opinion reasonable?

17 A Yes, for -- for the number of times that I'd seen
18 him I'd say they were reasonable, yes.

19 Q And was the treatment reasonably necessary?

20 A Yes.

21 MR. APPLETON: All right. I'd like to make
22 that as an exhibit, and I'd also like to make the
23 photograph that you used as an exhibit if you
24 don't mind.

25 THE WITNESS: Do you want both of these
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1 right now?

2 MR. APPLETON: No. I don't need them right
3 now.

4 THE WITNESS: Okay.

5 MR. APPLETON: You keep them in front of
6 you.

7 MR. ATLEE: I would object to the photograph
8 of the -- the person that's not Mike Klosterman.

9 MR. APPLETON: Thank you, Doctor.

10 THE WITNESS: Okay.

11 MR. ATLEE: You all finished?

12 MR. APPLETON: Yes, sir.

13

14 (Bill for Services Rendered was marked as Kurowski
15 Deposition Exhibit Number One.)

16

17 (Photograph was marked as Kurowski Deposition
18 Exhibit Number Two.)

19

20 CROSS-EXAMINATION

21

22 BY MR. ATLEE:

23 Q Doctor, we met a few moments ago. You're not a
24 medical doctor; are you?

25 A No.

1 Q And do you have any privileges at any of the local
2 hospitals?

3 A No.

4 Q And you're prohibited by law from prescribing
5 medications; is that correct?

6 A That's correct.

7 Q Serums?

8 A Sure.

9 Q And -- and vaccines; is that correct?

10 A That's correct.

11 Q If you would look at your chart, I'm looking at
12 the first -- what I have is the first document. It's
13 entitled chiropractic registration and history. Tell me
14 when you get there.

15 A Okay.

16 Q That's a document that is filled out by the --

17 A Patient.

18 Q -- plaintiff in the case?

19 A Right.

20 Q And then there's a little diagram down at the
21 bottom where it says patient condition; is that correct?

22 A That's correct.

23 Q That's of the human body both front and back?

24 A Yes.

25 Q And that's where in this particular situation the
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1 plaintiff put X's where he felt pain; is that correct?

2 A Correct. It's also another one that's a little
3 bit of a blowup. You might want to check it as well.

4 Q Yes, sir. And that's entitled pain assessment on
5 top; is that correct?

6 A Correct.

7 Q And if you would show that to the jury. Just --
8 just hold it up because I'm going to introduce that into
9 evidence.

10 A This?

11 Q Yes. What you're holding up now is something that
12 the plaintiff in this case marked to indicate where his pain
13 was; is that correct?

14 A That's correct.

15 Q And that's on the initial visit to you dated
16 March 8, 2006?

17 A That's correct.

18 Q So in the initial history and -- and information
19 sheets he marked on two separate human body diagrams where
20 his pain was?

21 A Yes.

22 Q And fair to say that in each of those markings
23 this plaintiff did not put any sort of X or any notation
24 whatsoever in his lower back?

25 A That's correct. He -- can I -- can I amplify on
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1 that?

2 Q No, sir.

3 A Okay.

4 Q We'll move on to the next question. The history
5 goes on to a second page; is that -- is that correct? It's
6 entitled health history?

7 A Right.

8 Q And then there is a personal injury questionnaire;
9 is that correct?

10 A Yes.

11 Q On either of the health history or the personal
12 injury questionnaire where is it that you ask him whether or
13 not he's had neck pain prior to the car accident of
14 February 2006?

15 A Okay. Prior to, no, nothing there.

16 Q Well, do you ask that in either of these two full
17 page questionnaires?

18 A Yeah. Injuries and surgeries you have had, under
19 description on that second page.

20 Q And there's -- is it fair to say that this
21 plaintiff did not note anything about having prior neck
22 pain?

23 A Yeah, that's true, he did not note that.

24 Q Fair to say that this plaintiff did not note
25 anything about having prior low back pain?

1 A Right. He did not mention anything about that.

2 Q Fair to say that this plaintiff did not note
3 anything about being in a prior car accident which caused
4 him injury?

5 A That's not noted, no, it isn't.

6 Q Why is it that you don't just have a simple blank
7 that says, "Did you have prior neck pain? Did you have
8 prior back pain? If so tell me when"?

9 A Well, I thought this is -- would cover it where it
10 says injuries and surgeries you have had in the past.

11 Q Because you as a -- a treating health care
12 provider would certainly want to know whether or not this
13 plaintiff had had any neck pain or low back pain prior to
14 your first visit?

15 A That's a good thing to know, yes.

16 Q I mean, the more information the better; is that
17 correct?

18 A Uh-huh.

19 Q Because additionally whether or not this plaintiff
20 had prior neck pain or low back pain or any injury to those
21 parts of the body that might influence the way you relate a
22 finding on those x-rays that you talked about?

23 A That's true.

24 Q Because without a full and complete history you
25 couldn't tell whether or not the findings on the x-ray are

1 related to our car accident or some other car accident?

2 A If he had had one.

3 Q On the personal injury questionnaire midway down
4 your form asks about who was charged with a traffic citation
5 in this car accident; isn't that true?

6 A Yes.

7 Q What does the -- the absence or the fact that
8 somebody received a traffic summons, how does that affect a
9 medical diagnosis or prognosis of this plaintiff?

10 A I would say that -- that won't affect the
11 diagnosis or prognosis.

12 Q Then why ask the question?

13 A I think I -- when I -- when I got this form it --
14 it was -- it was already on there, and I just left it. I --
15 it's not something that I necessarily need. It just
16 happened to be on there, just something of interest. I
17 think that's probably more for Susan's benefit than -- than
18 mine or anybody else's.

19 Q Where did you get the form?

20 A From another chiropractor.

21 Q You have a chiropractic diagnosis on a March 8,
22 2006 record. This is what I'm looking at, sir, and tell me
23 when you get there.

24 MR. APPLETON: Can you show me? Thanks.

25 A Okay.

1 BY MR. ATLEE:

2 Q And in that diagnosis -- well, let me back up. A
3 diagnosis is what after your review of this plaintiff you
4 find to be potentially wrong with him; is that correct?

5 A Right.

6 Q And in your diagnosis, the written diagnosis, you
7 don't mention anything about having a lumbar injury; is that
8 correct?

9 A Well, the paraspinal myalgia covers -- covers
10 that.

11 Q You write in there an injury to the thoracic
12 spine; is that correct?

13 A Yes. Uh-huh.

14 Q That's the middle back as you've described?

15 A Uh-huh.

16 Q Did you take a thoracic x-ray?

17 A No.

18 Q Why not if that's a -- an area that was injured?

19 A I thought it was soft tissue in nature.

20 Q Meaning a strain or a sprain?

21 A Yes. Uh-huh.

22 Q I believe from the information that the plaintiff
23 provided with he advised you that he had a -- a primary
24 medical doctor; is that correct?

25 A Yes.

1 Q And that he had seen that medical doctor prior to
2 his seeing you?

3 A That's correct.

4 Q At any point in time during your course and
5 treatment of this plaintiff did you speak or contact
6 Dr. McCormick?

7 A No.

8 Q At any point in time did you request and obtain
9 Dr. McCormick's records?

10 A No.

11 Q At any point in time did you speak with any of
12 the -- the plaintiff's doctors or physical therapists that
13 treated him after this car accident?

14 A The only one I think that he saw before he saw me
15 was Dr. McCormick.

16 Q Did he --

17 A I think the others he saw after he came to me.

18 Q Yes, sir. Are you aware of whether or not this
19 plaintiff saw any other health care providers during that
20 course of treatment that you had with him that was March of
21 '06 through early January 2007?

22 A I don't recall. I remember that he -- he did see
23 a physical therapist. He saw an orthopedist. I don't know
24 when he did that.

25 Q Did you ever contact that orthopedic or physical
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1 therapist?

2 A That might have been after I released him.

3 Q Did you ever try to make contact with any of the
4 health care providers -- any other health care providers
5 during your course of treatment of this plaintiff?

6 A No, because I think that he -- he saw them
7 after I -- after I released him. I'm not positive about
8 that. I'll have to check, but I think that he -- he saw
9 those providers after he saw me and I released him.

10 Q Now, during the time of that initial treatment of
11 this plaintiff in March of 2006 or during your treatment of
12 him in the next months or in the next -- through January of
13 '07 did you ever ask this plaintiff whether or not he'd
14 injured his neck or back before?

15 A I don't recall.

16 Q I believe that you advised Mr. Appleton that --
17 that you released this plaintiff in January of 2007; is that
18 correct?

19 A Right. That's correct.

20 Q And the next time he came back to see you was in
21 April of 2008; is that correct?

22 A Yes.

23 Q And he came back to see you in April of 2008
24 because he hurt himself playing racquetball?

25 A That's correct.

1 Q How many times did you treat him after April
2 of 2008?

3 A I think that was it.

4 Q You saw him on the -- April 1st and April 2nd; is
5 that correct?

6 A Yes.

7 Q And under your treatment notes you have a block
8 that says new accident or injury; is that correct?

9 A Right.

10 Q And you checked or marked Y meaning yes?

11 A Uh-huh.

12 Q Okay. So you -- in your chiropractic opinion you
13 viewed this new racquetball injury to be a new injury
14 separate and distinct from our car accident of February
15 2006?

16 A Yeah, I think it was something that aggravated
17 the -- the low back injury, yes.

18 Q And you marked a one next to his low back wellness
19 number?

20 A Right.

21 Q One is a -- a bad number --

22 A Exactly.

23 Q -- on that scale?

24 A Yeah.

25 Q You want it to be nines?

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1 A It's a wellness scale. Yeah, I want it to be
2 eight, nines and tens, yeah.

3 Q It looks like you marked wellness numbers for the
4 plaintiff's low back up to that April of 2008 visit; is that
5 correct?

6 A Yeah. There are numbers in there, yes.

7 Q During any of the treatment that this plaintiff
8 had leading up to that April 2008 did you ever mark a one
9 down next to his low back wellness?

10 A I don't believe I did.

11 Q So this plaintiff's lower back when he saw you in
12 April of 2008 following that racquetball injury was worse
13 than you had ever seen it before?

14 A Well, that's a subjective thing. That's what he
15 told me.

16 Q Well, he told you -- he told you it was worse than
17 it had ever been before during your treatment?

18 A Yeah. According to this number, yeah.

19 Q Did he tell you how he injured his back?

20 A Playing racquetball.

21 Q Yes, sir. But did he tell you he fell on it, he
22 fell against the wall?

23 A I -- I don't recall exactly how that happened, no.

24 Q You mentioned in response to Mr. Appleton's
25 question some range of motion studies that you did in March
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1 of 2006?

2 A Uh-huh.

3 Q At any point in time had you seen any range of
4 motion studies performed on this plaintiff prior to March of
5 2006?

6 A No.

7 Q Had you ever seen any of his prior medical
8 records?

9 A No.

10 Q Whether or not the plaintiff had neck pain prior
11 to our February 2006 accident would certainly impact his
12 potential range of motion; is that true?

13 A Yeah. If he had a neck injury before that it
14 potentially could affect his range of motion.

15 Q And the same goes with the lower back; is that
16 correct?

17 A Yes.

18 Q Looks like in January of 2007 at the time he was
19 released you told him to come back for maintenance type
20 visits?

21 A Yes.

22 Q Did he ever call you for those maintenance visits?

23 A No.

24 Q Did he ever schedule any appointments for
25 maintenance visits?

1 A No.

2 Q Up until the --

3 A Correct.

4 Q The new injury from racquetball?

5 A Up until the -- yeah.

6 Q Fair to say that if this plaintiff had had neck or
7 back pain prior to February of 2006 that he may be a
8 candidate for maintenance visits from you?

9 A Yeah, that would be fair to say. I don't know at
10 that time he was going to see the physical therapist or not.
11 That might have been a time he was seeing the orthopedic
12 physician and the -- and the physical therapist, but he
13 wasn't the type to -- to let -- let something go.

14 Q You've mentioned neuromuscular reeducation?

15 A Yes.

16 Q Is that where you massage the area of the body?

17 A It's similar to that. What the patient will do is
18 I'll have them move in certain directions, and I will
19 work -- work the muscles as they move to enhance the
20 circulation and reduce the spasm and get the -- the muscle
21 fibers moving better.

22 Q How was that different from a massage?

23 A I don't know that the massage therapists have the
24 patient move while -- while they're -- while they're working
25 the tissue.

1 Q Okay. So the -- the pressure and movement that
2 you do is the same as a massage?

3 A That part of it is similar, yeah. Uh-huh.

4 Q Okay. How long does the typical neuromuscular
5 reeducation last?

6 A About 15 minutes.

7 MR. ATLEE: Thank you, sir. I don't have
8 any further questions.

9

10 REDIRECT EXAMINATION

11

12 BY MR. APPLETON:

13 Q Doctor, if you could take a look at the -- the
14 chiropractic registration and history that -- that Mr. Atlee
15 referred you to initially. Do you have the document in
16 front of you?

17 A Yes.

18 Q If you look at the diagram that -- that he
19 referred you to that's in the field that says patient
20 condition --

21 A Uh-huh.

22 Q -- are there any indications of -- of problems
23 with the low back on that diagram?

24 A Well, the -- the tingling that he noted on -- in
25 his leg potentially could be. Also the activities and

1 movements that he reported that were painful to perform were
2 bending and sitting and -- and those would -- those would
3 indicate a low back issue.

4 Q And is the -- the presence of tingling in that leg
5 consistent with your findings during your initial physical
6 examination?

7 A Yeah, I would say yes. During the impact it's
8 common for the -- the vertebrae to strike the nerve and
9 cause that tingling. The tingling will subside over time,
10 but when the nerve is struck -- well, you've probably felt
11 it yourself when you hit your -- what people call their
12 funny bone. They get the tingling for -- for a time. When
13 you have an injury like that a nerve can be struck and cause
14 a tingling sensation.

15 MR. ATLEE: Objection. Move to strike.

16

17 BY MR. APPLETON:

18 Q In the cervical kyphosis that you -- you described
19 and -- and you showed to us with that x-ray, does that have
20 any -- any symptoms that are associated with that condition,
21 not -- not just with Mr. Klosterman but just generally?

22 A Well, the impact that -- that can cause that
23 kyphosis will certainly cause some muscle strains and the
24 ligamentous sprains.

25 Q And -- and how do you feel those? What are the
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1 symptoms of a -- of a sprain or a strain? We've been
2 talking about it, but we haven't talked about how that
3 actually feels.

4 A That -- that will -- the patient will have pain --
5 pain in motion particularly. You know, when they move
6 certain ways they will be very painful and their -- their
7 motion will be limited.

8 Q Okay. And, Doctor, I have the four documents that
9 you referred to initially with Mr. Klosterman -- with
10 Mr. Atlee. Are those accurate copies of the documents that
11 are in your records that you referred to earlier?

12 A Yes.

13 MR. APPLETON: Okay. I'd like to offer
14 those as exhibits to the deposition as well.
15 And, Doctor, I don't have any other questions for
16 you. Thank you.

17
18 (Chiropractic Registration and History Form,
19 Health History Form, Personal Injury Questionnaire and
20 Pain Assessment Form were marked collectively as
21 Kurowski Deposition Exhibit Number Three.)

22
23 MR. ATLEE: I don't have anything further.
24 We're just going to have to redact some of
25 those -- those documents.

1 MR. APPLETON: Okay.

2 THE VIDEOGRAPHER: There being no further
3 questions --

4 MR. APPLETON: Doctor, you have a right to
5 read and sign the deposition. You can waive that
6 right. It is completely up to you. If you don't
7 waive it the court reporter will -- you don't
8 have to put this on the record.

9

10 (There was an off-the-record discussion, after
11 which, testimony continues as follows:)

12

13 MR. APPLETON: Do you want to waive or do
14 you want to sign?

15 THE WITNESS: I'd like to take a look at it.
16 No offense.

17 THE VIDEOGRAPHER: There being no further
18 questions, this concludes the videotape
19 deposition of Dr. Charles Kurowski. One tape was
20 used. We're going off record at 10:36 a.m.

21

22 (The witness was excused.)

23

24

25

1 COMMONWEALTH OF VIRGINIA AT LARGE, To-Wit:

2

3

4

5 I, Shannon A. Crittenden-Mann, a Notary

6 Public in and for the Commonwealth of Virginia at

7 Large, whose commission expires May 31, 2012, certify

8 that the foregoing videotaped de bene deposition of CHARLES

9 KUROWSKI, DC, was duly taken and sworn to before me at

10 the time and place for the purpose in the caption

11 mentioned, and that the foregoing is a true and

12 correct transcript to the best of my ability of the

13 testimony given by the witness.

14 I further certify that I am not a relative or

15 employee of attorney or counsel of any of the parties

16 or financially interested in the action.

17 Given under my hand this _____ day of

18 _____, _____.

19

20

21

22

23

Notary Public

24

Registration No. 217036

25