

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**NOTICE OF FILING AMENDED
EXHIBITS C, D, H AND J TO
DEFENDANT SAM GHOUBRIAL,
M.D.'S OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

Now comes Defendant, Sam N. Ghoubrial, M.D., by and through counsel, and hereby gives notice of filing Amended Exhibits C, D, H and J to his Opposition to Plaintiffs' Motion for Class Certification. These Exhibits are being amended to include pages inadvertently omitted from the original filing.

Respectfully Submitted,

By: /s/ Bradley J. Barmen

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Sam N. Ghoubrial, M.D.***

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 2019, the foregoing Notice of Filing was electronically filed with Court and will be served upon all parties via the Court's Electronic Filing System.

/s/ Bradley J. Barmen

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Counsel for Defendant/Appellant
Sam N. Ghoubrial, M.D.

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07/03/2018

Page 1

1 STATE OF OHIO,)
 COUNTY OF SUMMIT.) SS:
 2
 3 IN THE COURT OF COMMON PLEAS
 4 MEMBER WILLIAMS, et al.,)
 Plaintiffs,)
 5 vs.) JUDGE BREAUX
 6) CASE NO. CV-2016-09-3928
 7 KISLING, NESTICO &)
 REDICK, LLC, et al.,)
 8 Defendants.)

9 - - - - -
 10 THE VIDEOTAPE DEPOSITION OF
 THERA REID
 11 TUESDAY, JULY 3, 2018
 - - - - -

12 The deposition of THERA REID, called by the
 13 Defendants for examination pursuant to the Ohio
 14 Rules of Civil Procedure, taken before me, the
 15 undersigned, Margaret A. Trombetta, RMR and Notary
 16 Public within and for the State of Ohio, taken at
 17 the offices of Kisling, Nestico & Redick, LLC, 3412
 18 W. Market Street, Fairlawn, Ohio, commencing at
 19 10:30 a.m., the day and date above set forth.

20
 21
 22
 23
 24
 25



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1 A Because I had voicemail.
2 Q Did you save those?
3 A No, I didn't save them.
4 Q How many people left voicemails?
5 A How many people have voicemails?
6 Q How many people left you a voicemail?
7 A Oh, I don't know. There was a few. They were
8 saying they were from this place or that place
9 and, you know, left this number to call and get
10 back in touch with them, and it was about this
11 accident that, you know, you had.
12 Q Do you remember any of the names?
13 A No, no, I do not.
14 Q And nobody from KNR left you a message that
15 day, did they?
16 A There was no call from KNR, no.
17 Q Okay.
18 A It was from Akron Square. And I did not get a
19 call from KNR until -- I did not get a call
20 from KNR. Akron Square called KNR, their
21 lawyer.
22 Q Okay. Ma'am, I'm going to ask the question
23 again. Did KNR call you the day after this
24 accident?
25 A No.

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1 Q You don't know one way or another?

2 A Exactly, and I never will.

3 Q And you never had to give a deposition in the
4 underlying case, did you, the accident case
5 where Allstate paid you?

6 A No, I did not.

7 Q Okay. A lawsuit wasn't even filed, was it?

8 A No.

9 Q You were able to get that recovery without any
10 of the things that are happening in this case
11 like video discovery and complaints and all
12 that, correct?

13 A Right.

14 Q And you're glad for that, aren't you?

15 A Yeah.

16 Q I mean, do you know if Allstate had hired a
17 lawyer to defend the case against you that they
18 would have looked into all the care and
19 treatment and your background? Do you know
20 that?

21 A Yes.

22 Q And if they did all that, do you know whether
23 they would have agreed to pay 45,000?

24 A I don't know.

25 Q Okay. Now, KNR, and when I say "KNR," I'm

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1 including the lawyers there, Matt Walker or any
2 of the others, they never pressured you into
3 unwanted medical care, did they?

4 A No.

5 Q They never pressured you into unwanted
6 chiropractic care, did they?

7 A No.

8 Q Okay. So if we look at your answer to
9 Interrogatory Number 29, and before you told me
10 that the conflicted legal representation was
11 your own internal conflict because you were
12 vulnerable or whatever the words are you used,
13 but that's not the answer you gave when you
14 were under oath answering these
15 interrogatories, is it? Would you agree your
16 answer to Interrogatory Number 29 is completely
17 different from what you told me before about
18 conflicted local representation?

19 A Yes.

20 Q And your answer to Interrogatory Number 29, it
21 indicates "pressuring clients into unwanted and
22 unneeded chiropractic care."

23 And you've already told us they didn't do
24 that to you. Do you know anybody they did do
25 that too?

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1 call me.

2 Q You don't have any proof that KNR told them to
3 call you, do you?

4 MR. PATTAKOS: Objection.

5 A I don't have proof.

6 Q Okay.

7 A No, I don't know, okay. It was them telling
8 me, "Here, here's our lawyer."

9 Q No, this is the first phone call, ma'am. They
10 didn't say anything about KNR in that first
11 phone call, did they?

12 A Not in the first one, no.

13 Q Okay.

14 A But after I went there.

15 Q My question is, ma'am, on that phone call to
16 you the day after this accident, did Akron
17 Square --

18 A No.

19 Q -- mention any other lawyer's name, any
20 lawyer's name?

21 A No.

22 Q Any law firm's name?

23 A No.

24 Q The next paragraph, "No person who identified
25 himself or herself as being employed by or

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1 COMMON PLEAS COURT OF THE STATE OF OHIO
2 IN AND FOR THE COUNTY OF SUMMIT
3
4 MEMBER WILLIAMS, et al.,
5 Plaintiffs,
6 vs. JUDGE JAMES A. BROGAN
7 CASE NO. CV-2016-09-3928
8
9 KISLING, NESTICO & REDICK
10 LLC, et al.,
11 Defendants.

12
13 VIDEOTAPED DEPOSITION OF
14 THERA REID, VOLUME II
15 MONDAY, APRIL 22, 2019
16 9:15 A.M.
17 Hilton Akron/Fairlawn Hotel
18 3180 West Market Street
19 Fairlawn, Ohio
20
21
22
23
24

25 REPORTED BY: SARAH DROWN

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1 A No, I'm not.

2 Q Okay. So KNR did not recommend that you take
3 any loan, did they?

4 A No.

5 Q In fact, they advised against it, correct?

6 A Yes.

7 Q They certainly did not recommend to you at any
8 time during your representation that you take a
9 loan with Liberty Capital, true?

10 A True.

11 Q In fact, even when -- you said the name Liberty
12 was never mentioned.

13 Even when you called in asking for Oasis
14 information, they didn't tell you about Liberty
15 Capital's information then, did they?

16 A No.

17 Q They didn't try to push Liberty on you at all,
18 did they? Fair?

19 A They didn't push nobody.

20 Q In fact, the only reason you called about a
21 loan is because you saw an advertisement on TV,
22 separate and apart from KNR, correct?

23 A Yes.

24 Q Can you tell me a little bit about your
25 treatment with Dr. Ghoubrial and how you got to

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1 him and what happened during those treatments?

2 A After the wreck, I was getting phone calls. I
3 answered one.

4 Q Not Akron Square, Dr. Ghoubrial.

5 MR. PATTAKOS: She's answering
6 the question, Tom.

7 Go ahead.

8 A I answered one. And it was somebody telling me
9 that they can put me in touch with a
10 chiropractor and set me up with a ride.

11 Q This is the conversation we talked about at
12 your last deposition, correct?

13 A So I started seeing said chiropractor, who was
14 Floros. Then Floros put me in touch with
15 Dr. Ghoubrial. I think they were in the same
16 office. They in turn put me in touch with some
17 surgeon in the Falls, but that didn't go
18 through. But I seen them for a while and seen
19 Dr. Ghoubrial. He gave me shots, prescription
20 Percocets.

21 Q Now, we already talked at your first deposition
22 about the fact that you had no criticisms of
23 the healthcare you were provided in this case.
24 And that's true, isn't it?

25 A I'm not ...

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1 Q I know you wanted shoulder surgery, but we're
2 talking about -- with Dr. Ghoubrial and
3 Dr. Floros, you testified there was none of the
4 care that you were unsatisfied with, correct?

5 A Financially.

6 Q Well, okay. You made no complaints about the
7 actual care being provided by Dr. Floros and
8 Dr. Ghoubrial, fair? Not the bills, the
9 treatment.

10 A I didn't make any complaints.

11 Q Okay. And, in fact, they were helping you,
12 weren't they?

13 A I thought it was. I don't know about now, to
14 be honest with you, because I'm not seeing
15 anybody and anymore I'm in just so much doggone
16 pain that I can't deal half the time.

17 Q At the time they were helping your pain,
18 weren't they?

19 A To be pumped up on pills and injections, I
20 don't know.

21 Q Ma'am.

22 A I don't know.

23 Q Are you serious?

24 A Serious.

25 Q So you claimed at your last deposition that you

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1 had no unwanted healthcare and you weren't
2 upset about the healthcare you received. Are
3 you changing that?

4 A I'm not changing anything, I'm just saying I
5 don't know.

6 Q Okay. In fact, you recall sending an email to
7 Marty or Matt, one of the two, over at KNR
8 saying that the chiropractic treatment's going
9 okay?

10 A I believe so.

11 Q Okay. In fact, we talked about it at your last
12 deposition, that not only it was helping you,
13 you would not have kept going if it wasn't
14 helpful, true?

15 A True.

16 Q I mean, from spending time with you at a
17 deposition and reading your emails and that, I
18 mean, you're not afraid to voice your opinion
19 if you're upset about something, are you?

20 A No.

21 Q I mean you've threatened to get congressmen
22 involved, true?

23 A True.

24 Q You got, in your words, bitchy with KNR and
25 apologized the next day because you were in a

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1 tough situation and you were sort of at the end
2 of your nerves, fair?

3 A Fair.

4 Q They were understanding about that, weren't
5 they?

6 A Yes.

7 Q I mean if you had criticisms of Dr. Ghoubrial
8 or Dr. Floros, you would have been telling KNR
9 that, wouldn't you?

10 A I would have told them that.

11 Q Okay. And you never did, did you?

12 A I don't believe so.

13 Q That's because you were satisfied with their
14 care, weren't you?

15 A Well, to an extent, I believe.

16 Q In fact, when you saw -- tell me about when you
17 first went to see Dr. Ghoubrial.

18 Do you recall how long that was after the
19 accident?

20 A No, I do not.

21 Q A week, two weeks, a month?

22 A It wasn't very long, but I don't recall exactly
23 how long.

24 Q Okay. You still were in a lot of pain by the
25 time you saw him, though?

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1 A I was in a lot of pain for a long while. It
2 was broke three places up here and -- fractured
3 my arm.

4 Q So even though the chiropractic care might have
5 given you some relief, there was still a lot of
6 pain and you needed more than just the
7 chiropractic?

8 A Yes.

9 Q That's why you and Dr. Floros talked about
10 seeing Dr. Ghoubrial, true?

11 A Yes.

12 Q What did Dr. Floros tell you about
13 Dr. Ghoubrial?

14 A That he would help with injections and pain med
15 and something about referral to a surgeon.

16 Q An orthopaedic surgeon?

17 A I believe so, yes.

18 Q Okay. So you talked to Dr. Floros. You asked
19 a lot of questions.

20 Did you ask him, "What do you mean by
21 'injections'?"

22 A Yes.

23 Q What did he tell you, do you remember?

24 A Vaguely, but it was something about tens
25 injections, I believe it was. Something for

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1 the pain. And then there was Percocets, pain
2 pills, and I ...

3 Q Is that what Floros said or what you talked
4 about with Ghoubrial?

5 A What I talked about with both of them.

6 Q Okay. Now, you had when you left the hospital
7 because -- were you in overnight?

8 A Yes.

9 Q They gave you Percocets in the hospital, right?

10 A Yes.

11 Q Okay. So you went to see Dr. Ghoubrial.

12 You actually were already taking
13 Percocets, but you only had so much left from
14 the hospital, I take it. Is that true?

15 A I believe so, yes.

16 Q Okay. Do you recall then -- tell me about your
17 visit with Dr. Ghoubrial.

18 A Oh, goodness. I don't even know.

19 Q Was there somebody in the office with him when
20 he saw you?

21 A Probably my mom.

22 Q Okay. Was there a nurse in the office as well?
23 Or do you not recall?

24 A Probably.

25 Q Do you recall that interaction that you had

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1 with Dr. Ghoubrial?

2 A We just talked the first time.

3 Q Now, I noticed from looking at the notes -- I
4 didn't even see that you called up and told KNR
5 that you were going to go see Dr. Ghoubrial.
6 You didn't talk about that with them until
7 later. I'm not criticizing you, I'm just
8 saying.

9 Do you remember differently than that?

10 A No.

11 Q Your decision to go to Dr. Ghoubrial was based
12 on Dr. Floros' recommendation, true?

13 A True.

14 Q I mean KNR didn't tell you to go to
15 Dr. Ghoubrial, did they?

16 A No.

17 Q When you went and saw Dr. Ghoubrial, you then
18 had a discussion with him about what your
19 symptoms were, fair?

20 A Yes.

21 Q You told him you were in a lot of pain?

22 A Well, yeah. It was pretty obvious. You could
23 see it. My whole arm was black and purple.

24 Q Dr. Ghoubrial talked to you about different
25 options for treatment, fair?

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1 A Yeah. I guess so. As far as I can remember,
2 yes.

3 Q Okay. Well, what do you remember about that
4 first visit?

5 A I mean we sat and we talked about what -- I
6 don't really remember. I mean we talked.

7 Q He didn't sneak up on you and just jab you with
8 a needle without talking about it, did he?

9 A No.

10 Q He wasn't smoking in the room, was he?

11 A No.

12 He didn't grope me.

13 Q Okay. So what do you remember your discussion
14 being with him?

15 A It would probably be about the medication that
16 I was taking and what was wrong with me.

17 Q What do you mean by that?

18 A X-rays.

19 What I was already on. My medication
20 that I was already on.

21 Q Okay.

22 A And what was already wrong with me. So as to
23 not mess me all up, I don't know.

24 Q You told him about the accident?

25 A Yeah.

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1 Q You told him that your pain was basically 10
2 out of 10?

3 A At that time it was like a 50 out of 10, but
4 yes.

5 Q You knew you were going there in part to talk
6 potentially about injections, true?

7 A I don't know, to be honest.

8 Q Well, I thought you just said when you
9 talked --

10 A Well --

11 Q -- to Dr. Floros he mentioned that.

12 A He may have. I don't know.

13 Q Okay. Did you do any research about injections
14 before you went, just out of your own
15 curiosity?

16 A No.

17 Q Had you ever heard of them before?

18 A No.

19 Q Did they refer to them as cortisone injections?
20 Or how was it referred to? Or do you not
21 recall?

22 A I don't recall.

23 Q Okay. Do you recall discussing that issue of
24 trigger point injections with Dr. Ghoubrial?

25 A No.

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1 Q So let me make sure I have this right.

2 You're not saying you did not talk about
3 trigger point injections, you're saying you
4 don't recall the specifics?

5 A I'm not saying I didn't talk to him about it.
6 I'm not saying that at all. I'm saying --

7 Q You're saying you don't remember the specifics?

8 A -- I don't remember the specifics about it.

9 Q Obviously you agreed to get the trigger point
10 injections, correct?

11 A Correct.

12 Q You wouldn't have done that unless you were
13 satisfied in your own mind that you knew what
14 was in the medication and what it did to you,
15 true?

16 A Right.

17 Q You may not remember the conversation, but you
18 know you would make sure you had that
19 information, true?

20 A Right.

21 Q In fact, they helped, didn't they?

22 A I guess so.

23 Q I'm looking at your second visit there where it
24 says "She said she had tremendous relief after
25 the trigger point injections in her lower

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1 back."

2 Do recall that?

3 A "tremendous relief."

4 Q "after the trigger point injections in her
5 lower back."

6 A I don't know about tremendous relief. I may
7 have had some relief.

8 Q You went back for more, true?

9 A Well, yeah.

10 Q You wouldn't have done that if you didn't think
11 they were working, would you?

12 A I don't think so, no.

13 Q You never complained to anybody that they
14 weren't working, did you?

15 A No, but I wasn't sure. I mean between that and
16 the Percocets, I didn't know if, you know,
17 which one, if both of them, you know. And if
18 the pills were helping the shots or the shots
19 were helping the pills, you know.

20 Q Well, let me ask you this: Do you deny saying
21 that you had tremendous relief after the
22 trigger point injections in your lower back?
23 Are you denying that you said that?

24 A I don't know if I said that or not.

25 Q Okay.

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1 A I don't remember saying "tremendous relief."

2 Q Okay.

3 A I don't use that word.

4 Q Do you at least remember telling him that you
5 had relief after the trigger point injections?

6 A I may have told him I had relief.

7 Q Okay. And then you went back a third time for
8 more trigger point injections --

9 MR. PATTAKOS: Objection.

10 Q -- correct?

11 A I guess, yes.

12 Q Again, you wouldn't have done that if they
13 weren't working, would you?

14 MR. PATTAKOS: Objection.

15 A No.

16 Q You also didn't complain about those, did you?

17 A No.

18 Q Now, I see where you were referred to chronic
19 pain management.

20 Do you recall who that was?

21 A Chronic pain management.

22 Q Yeah. It says "I will refer her to chronic
23 pain management."

24 Do you remember talking with

25 Dr. Ghoubrial about that?

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1 A I was referred to a couple people. Possibly.
2 Aye yi yi. I'm not sure.
3 Q Okay. But you understood that Dr. Ghoubrial
4 would only treat you so long for the pain, he
5 wasn't going to treat you long-term or
6 chronically, true?
7 A Oh, that's what -- yes. I -- I got that,
8 uh-huh. Yes.
9 Q That's why he was referring you out, true?
10 A Right.
11 Q Okay. He also referred you to Dr. Chonko for
12 your shoulder surgery?
13 A Yes.
14 Q Okay. I know there was some problems.
15 Dr. Chonko referred you then to a
16 Dr. Nice?
17 A Yes, because Dr. Chonko doesn't do shoulders,
18 he does hips. And Dr. Nice does shoulders, but
19 he was going to Oregon for a year and --
20 Q You wanted continuity of care?
21 A Didn't want to do my shoulder and leave me
22 hanging.
23 Q Okay.
24 A So ...
25 Q Did he refer you to the Crystal Clinic?

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1 A True.

2 Q Did you two discuss a TENS unit at all?

3 A I believe so.

4 Q Do you know what a TENS unit is?

5 A Vaguely.

6 Q Do you recall what he said about it?

7 A Not really, no.

8 Q He didn't push a TENS unit on you, did he?

9 A We talked, discussed it. No. I don't ...

10 Q It wasn't appropriate for your injuries? Or do
11 you recall the exact conversation?

12 A No.

13 Q Okay. But you two decided a TENS unit wasn't
14 going to help you, fair?

15 A Yeah.

16 Q Well, do you recall anything about the
17 conversation?

18 A No. It's been a while.

19 Q We know you did not get a TENS unit, right? Or
20 did you?

21 A I just -- I don't know. I guess I just got the
22 shots.

23 Q Okay. So after discussing it with
24 Dr. Ghoubrial, you and he decided together that
25 a TENS unit would not be necessary for your

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1 injuries, true?

2 A I guess so.

3 Q He never pushed that on you either, did he?

4 A I don't remember.

5 Q You don't recall him pushing it on you, do you?

6 A I don't remember. I ...

7 Q I'm saying, ma'am, do you have a memory of him
8 pushing it on you, yes or no?

9 MR. PATTAKOS: She just said
10 "I don't remember," Tom.

11 A I just told you. I don't have a memory of it.

12 Q Okay. So it's fair to say he did not try to
13 push it on you, true?

14 A I don't remember that, no.

15 Q You don't remember it happening, is that what
16 you're saying?

17 MR. MANNION: I'm trying to
18 find out. She said "I don't remember that."

19 Q You don't remember him pushing it on you, true?

20 A No, I don't remember.

21 Q Ma'am --

22 MR. PATTAKOS: She just said
23 she doesn't remember.

24 MR. MANNION: Stop. I'm not
25 asking you.

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1 paperwork.

2 MR. MANNION: 29.

3 - - - - -

4 (Defendants' Exhibit 29 was marked.)

5 - - - - -

6 Q I'm showing you some of Dr. Ghoubrial's
7 records.

8 Do you remember when you went in and he
9 asked you what happened and asked you about the
10 accident and your pain? Do you recall that?

11 A Yes.

12 Q It says here on 29, "Thera is a 37-year-old
13 very pleasant woman who had a motorcycle
14 accident on April 20, 2016."

15 That's information you would have
16 provided to him?

17 A Well, I don't know if I provided that I'm very
18 pleasant, but --

19 Q Okay. True.

20 A Okay.

21 Q That's how he described you, but the rest of
22 the information you would have provided to him?

23 A Okay. Yes.

24 Q It's accurate, true?

25 A Yes.

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1 Q "She was the passenger on the back of a
2 motorcycle when the motorcycle approached an
3 intersection and a SUV ran a stop sign."

4 Did I read that correctly?

5 A Yes.

6 Q Also information you would have provided to
7 him, correct?

8 A Yes.

9 Q "The motorcycle driver slammed on the brakes
10 and Thera went flying off the back of the
11 motorcycle and broke her right humerus."

12 Was that correct?

13 A Yes.

14 Q "She went to the emergency room at Akron City
15 Hospital by ambulance, where she was treated
16 and released."

17 Was that correct?

18 A Yes.

19 Q You provided him that information?

20 A Yes.

21 Q Do you need to take a break because of your
22 shoulder?

23 A Nope. I'm good.

24 Q Okay. It says "She" -- referring to you -- "is
25 unfortunately in severe pain in her shoulder,

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1 neck, and back."

2 That was true information, correct?

3 A Yes.

4 Q He would have got that from both examining you
5 and talking to you, correct?

6 A Yes.

7 Q "On a scale of 1 to 10, her pain is 10 out of
8 10 in severity."

9 We already talked about I think you said
10 it was a 50.

11 A Anyway.

12 Q "She has significant pain and discomfort."

13 That's accurate, correct?

14 A Yes.

15 Q "She is going to be seeing the orthopaedic
16 surgeon."

17 That was true as well, correct?

18 A Yes.

19 Q So you talked about all of those things with
20 the doctor?

21 A Eventually.

22 Q Well, I mean you talked about that with him
23 when you went in and saw him for the first
24 time, correct?

25 A I believe so.

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1 Q Okay. Well, when you say "eventually," the
2 first thing he did with you was ask you what
3 happened and how you're feeling basically,
4 correct?

5 A Yeah.

6 Q This was the information you two went over,
7 fair?

8 A Yes.

9 Q He did an exam of you, didn't he?

10 A Yes.

11 Q He examined your -- that "HEENT" means head,
12 ears, eyes, nose, and throat. I don't know if
13 you know that.

14 But he looked at your ears, he looked at
15 your eyes, he looked down your throat. He did
16 that all, didn't he?

17 A Yes.

18 Q He also palpated. That means he touched your
19 neck like this.

20 Did he, ma'am? He touched your neck to
21 check it out?

22 A I believe so.

23 Q Okay. He looked at your spine and your back,
24 correct?

25 A Yes.

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1 Q It says here that "She has severe pain and
2 tenderness at the cervical and upper thoracic
3 spine."

4 Would you agree that you essentially had
5 pain throughout your entire back?

6 A Oh, yeah.

7 Q It says "reproducible pain." Meaning, I
8 believe, that if he touches it, it was even
9 more painful, but -- was it?

10 A Yes.

11 Q Okay.

12 A A lot.

13 Q Then it says "guarding," which means you sort
14 of flinch if you think someone's going to touch
15 it.

16 Is that how you were?

17 A Yes.

18 Q Spasms. Do you know what those are?

19 A Yes.

20 Q You had those, true, right?

21 A Yes. Still do.

22 Q It says significant tenderness of your lower
23 back. It says "lumbar spine."

24 That was true as well?

25 A Yes.

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1 Q Now, do you remember that it was greater on the
2 right -- or greater on the left than the right,
3 or do you not remember that detail?

4 A I really don't remember that detail particular,
5 I just remember it hurt like heck all over.

6 Q He also checked your grasp and manipulation,
7 correct?

8 A Yes.

9 Q By the way, up above, where it says past
10 medical history of nystagmus, migraines, and
11 hypothyroidism, he would have got that from
12 you?

13 A Yes.

14 Q Okay.

15 A That's where I was telling you that we went
16 over the past meds and everything I was on.

17 Q You didn't give him any of the past about
18 depression and that or?

19 A I don't believe so.

20 Q Okay.

21 A If I did, it would have been on there.

22 Q Right. It's okay.

23 Past surgical history. You talked to him
24 about four different things that you had done
25 in the past?

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1 A Uh-huh. Yes.

2 Q He asked you obviously about drug use and
3 tobacco use and things like that. Correct?

4 A Yes.

5 Q He also asked you the medications you were on,
6 true?

7 A Yes.

8 Q You told him about the Paxil and the other
9 medications?

10 A Well, see, Paxil's right there. So why he
11 didn't have depression up there is beyond me.

12 Q Well, you don't recall telling him depression
13 other than saying you're on Paxil, right?

14 A Well ...

15 Q He wasn't there to treat your depression, true?

16 A I know. No. But, I mean, it goes hand in
17 hand.

18 Q Well, my point is that all of these medications
19 are medications you told him you were on.

20 A Yes.

21 Q The "oxycodone from the emergency room." You
22 told him about that?

23 A Yes.

24 Q Do you have any drug allergies?

25 A Codeine.

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1 Q Oh. Okay.

2 Do you know why it says none on drug
3 allergies?

4 A No.

5 Q Okay. You don't remember talking to him about
6 codeine?

7 A I tell every doctor codeine.

8 Q Okay. So now if we go down, further down in
9 the physical exam, after he talked to you, he
10 then examined you, true?

11 A After, yeah.

12 Q And then it says "Grasp/Manipulation."

13 He actually checked how you could grasp
14 and manipulate your fingers too, correct?

15 A I believe so.

16 Q He checked your arms, your upper extremities,
17 true?

18 A Yeah.

19 Q It says the "right upper extremity is
20 immobilized."

21 That was true, right?

22 A The right upper is immobilized.

23 Q In a sling.

24 A Yes.

25 Q "She has a 40 by 60 centimeter bruise in the

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1 A Yeah.

2 Q Now, when you talked to him about the trigger
3 points, you obviously agreed that you would get
4 some injections at trigger points, true?

5 A Yes.

6 Q Can you tell me what you remember about that
7 conversation, or is that just something that
8 doesn't stick in your memory?

9 A It doesn't really stick.

10 Q Okay. Can you recall how it is that those were
11 administered? Did he do it? Did the nurse do
12 it?

13 A He did.

14 Q Did he have to -- did you already have your
15 shirt removed?

16 A No.

17 Q Okay. Do you know how he did that?

18 A Just lift my shirt up.

19 Q Okay. He had to prep it with alcohol right?

20 A Yes.

21 Q I mean you knew he was giving you these,
22 correct?

23 A Yes.

24 Q There was no secret about it, was there?

25 A No.

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1 Q You then set another appointment for the
2 following week, correct?

3 A Yes.

4 Q How long did that first visit take, to go
5 through all that history, the medications, the
6 social history, the physical exam, the trigger
7 point injections?

8 A It took a while.

9 Q I mean we're talking half hour, 45 minutes?

10 A It seemed like. Maybe a little bit longer. I
11 don't know. It took a while.

12 Q Okay. I saw no comment in there about any
13 discussion of a TENS unit. So you're not sure
14 whether you had that discussion or not?

15 A I'm not sure.

16 Q Okay. And then if we come back, on May 4, your
17 arm was still in a sling, is that correct?

18 A Yes.

19 Q Again, we went over this one about -- but will
20 you agree with me it's in the record here?

21 "She said she had tremendous relief after the
22 trigger point injections in her lower back." I
23 read that correctly?

24 A You read it correctly, but, like I said, I
25 don't use that word. So ...

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1 Q But you had relief?

2 A But I had relief.

3 Q Okay. You still had some discomfort in your
4 neck, though, and still some guarding and
5 tenderness in the right trapezius. So there
6 were some more trigger point injections, but
7 only in the neck, not the lower back, fair?

8 A Right.

9 Q You didn't get the lower back because you no
10 longer needed them, right?

11 A I guess I did. I don't really know.

12 Q Okay. He certainly didn't recommend to you
13 that you get them in the lower back and you say
14 no, true?

15 A Right.

16 Q So you then come back again, and this is where
17 it says "I will refer her to Dr. Chonko."

18 But you come back then in -- six more
19 days you were supposed to come back, but you
20 were a no show for some reason. I don't know
21 what happened. I assume you don't remember
22 that.

23 Do you remember it?

24 A There was a couple times I had to miss.

25 Q Just for whatever reason? Transportation or

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1 Q That's why you and Dr. Ghoubrial talked about
2 trying trigger point injections again in the
3 neck, correct?
4 A Yes.
5 Q You agreed to those, fair?
6 A Yes.
7 Q KNR never told you to get a trigger point
8 injection, did they?
9 A No.
10 Q Okay. You came back for follow-up on June 1.
11 Do you see that?
12 A Yes.
13 Q You talked about the surgery again.
14 It says "The trigger point injections
15 were very beneficial to her neck."
16 Did I read that correctly?
17 A Yes.
18 Q That's how you remember it as well, correct,
19 ma'am?
20 A What, that they were beneficial?
21 Q Yes.
22 A Well, like I said, you know, it helped.
23 Q You wanted them, right?
24 A I wanted it to help.
25 Q When you went there, you wanted the trigger

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1 point injections, right? It was your desire to
2 have the trigger point injections, true?

3 A Yes.

4 Q Okay.

5 A Because I wanted something to help. I needed
6 something to help me. And I didn't know if it
7 was that or the Percocets or the combination of
8 that was helping.

9 Q Either way, you were starting to get benefit
10 from your treatment with Dr. Ghoubrial, true?

11 A I was feeling a little bit of relief.

12 Q You were telling him that the trigger point
13 injections were working and that the Percocets
14 were working as well, true?

15 A I was feeling relief, yes.

16 Q From both of those is what you told him, true?

17 A Yes.

18 Q So what are you saying the kickbacks are from
19 Dr. Floros to KNR?

20 MR. PATTAKOS: Asked and
21 answered, Tom. We went over this at the last
22 deposition.

23 MR. MANNION: Stop.

24 Q Go ahead.

25 MR. MANNION: You've now

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1 COMMON PLEAS COURT OF THE STATE OF OHIO
 2 IN AND FOR THE COUNTY OF SUMMIT
 3
 4 MEMBER WILLIAMS, et al.,
 5 Plaintiffs,
 6 vs. JUDGE JAMES A. BROGAN
 7 CASE NO. CV-2016-09-3928
 8
 9 KISLING, NESTICO & REDICK
 10 LLC, et al.,
 11 Defendants.

12
 13 VIDEOTAPED DEPOSITION OF RICHARD A. HARBOUR
 14 SATURDAY, FEBRUARY 2, 2019
 15 9:47 A.M.
 16 DoubleTree by Hilton Hotel
 17 3150 West Market Street
 18 Fairlawn, Ohio

19
 20
 21 REPORTED BY:
 22 Sarah R. Drown

23
 24
 25 RPR, Notary Public



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1 Q Did you talk to anybody before you sought legal
2 advice?

3 A No, sir.

4 Q What did you want to seek legal advice for?
5 What was the reason?

6 A Getting the repairs done on my vehicle properly
7 and to make sure that my medical needs were
8 properly taken care of.

9 Q When you say your medical needs were properly
10 taken care of, do you mean to help you get to a
11 doctor or do you mean to be paid for the
12 services?

13 A My intention of that was to ensure that the
14 bills that I would incur were not handled by
15 myself or my private insurance but were handled
16 by the at-fault party's insurance and taken
17 care of in that matter.

18 Q Have you ever tried to negotiate a settlement
19 with an insurance company yourself?

20 A Not that I can recall, no.

21 Q Okay. You didn't want to do that in this case
22 either, true?

23 A Correct.

24 Q Why?

25 A At that time -- I'm not an attorney. I'm not

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1 and KNR about the treatment of his clients and
2 something to do with trigger points.

3 Q You had trigger point injections with
4 Dr. Ghoubrial?

5 A Correct. Yes.

6 Q They helped you, didn't they?

7 A I can't say whether they did or didn't. My
8 body could have healed itself or, you know, it
9 could have been other course of medical care
10 that I was given at the time as well.

11 Q Well, I guess we'll just go right to it, then.

12 - - - - -

13 (Defendants' Exhibit 14 was marked.)

14 - - - - -

15 Q When is the last time you read your deposition?

16 I'm showing you Exhibit 14.

17 A I don't recall ever reading this.

18 Q You've never read this ever?

19 A No.

20 Q If you would turn to page 102.

21 Well, and by the way, first turn to page
22 4.

23 Do you see at the top it says -- it's --
24 yeah, there are four to a page.

25 "WHEREUPON,

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1 RICHARD HARBOUR.
2 who, after being first duly sworn,
3 testified as follows"?
4 Do you see that?
5 Right here, sir. Do you see where I'm
6 looking?
7 Yeah, right there.
8 A Yes.
9 Q In other words, you were under oath, true?
10 A Yes.
11 Q And then if you turn to page -- it's 102 of the
12 transcript and page 26 of this.
13 MR. PATTAKOS: Do you need a
14 hand?
15 THE WITNESS: I got it.
16 Q I'm going to read the question at line 5.
17 "And did that treatment provide you
18 relief?"
19 What was your answer?
20 A Are you on page 26?
21 Q Yeah. Page 102.
22 A Oh, sorry. I heard you say --
23 Q Yeah, 26 --
24 MR. PATTAKOS: 26.
25 Q -- of the document.

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1 MR. PATTAKOS: If you look --
2 yeah. Yeah, here, I'll get it.

3 Here it is. Wait a minute.

4 THE WITNESS: I'm going off
5 of, you know.

6 MR. PATTAKOS: 26 of the
7 document.

8 MR. MANNION: "26 of 42" at
9 the bottom.

10 MR. PATTAKOS: This says 124.
11 Oh, "7 of 42." I see.

12 MR. MANNION: The far right,
13 it says "26 of 42." Do you see that?

14 MR. PATTAKOS: Yeah. See,
15 it's confusing, because sometimes it's on the
16 left and sometimes it's on the right. It
17 depends on -- so it's page -- which page on
18 this page 26?

19 MR. MANNION: 102.

20 MR. PATTAKOS: So right there.

21 A Yep. Okay. Line 5.

22 Q Question, "And did that treatment provide you
23 relief?"

24 What was your answer?

25 A Answer was "The cortisone shots did, yes."

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1 Q Okay. You can set that aside for now.

2 So as of March 12, 2015, when you were
3 under oath, you stated that the injections by
4 Dr. Ghoubrial did provide you relief, true?

5 A According to the document, yes.

6 Q So do you agree that in fact for you the
7 trigger point injections helped you?

8 A To some -- I can't say 100 percent whether they
9 did or did not. The answer to that question
10 was yes. I mean, they could have. There's
11 other things that could have been involved in
12 that.

13 But the question that I was asked
14 directly and that you just read was did they
15 provide relief and the answer to that question
16 was yes, but you're asking me if I can say
17 whether they did or did not. I can't tell you
18 what really made my body feel better.

19 Q Well, let me ask it another way.

20 You believed the cortisone shots provided
21 you relief, fair? That was what you believed?

22 A At the time, yes.

23 Q Did that change at some point?

24 A No. I'm answering -- you're asking about this
25 deposition. I've answered the question in that

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1 A No.

2 Q But now this is a different question I'm asking
3 you and let me explain what I'm asking. I'm
4 not asking you whether what was injected into
5 you was or wasn't cortisone, I'm asking what
6 you were told by Dr. Ghoubrial.

7 Did he specify the type of medication
8 that he was going to use?

9 A Yes, he did.

10 Q He specified it as cortisone, correct?

11 A Yes, he did.

12 Q So it would not be an unspecified medication,
13 would it?

14 A If you want to look at it that way, no.

15 Q Are you going to remove that allegation?

16 A That's not for me to make the determination of.

17 Q You're not claiming Dr. Ghoubrial just gave you
18 an injection and didn't tell you what it was,
19 are you?

20 A I'm saying that Dr. Ghoubrial told me he was
21 giving me cortisone, but when I asked if I knew
22 what it was, I don't know 100 percent that's
23 what it was.

24 Q Let me ask it again.

25 Are you claiming that Dr. Ghoubrial did

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1 A "Dr. Auck did."
2 Q Question, "Why?"
3 What was your answer?
4 A "Because I was having, you know, pain, he felt
5 pain management would be appropriate care to go
6 along with his care."
7 Q So under oath in March 2015 you testified that
8 you were referred to Dr. Ghoubrial by Dr. Auck,
9 correct?
10 A Yes.
11 Q That was truthful, correct?
12 A Yes.
13 Q So would you agree now that it was actually
14 Dr. Auck who referred you?
15 A I do now recall that Dr. Auck and I did have a
16 discussion, yes.
17 Q In fact, after Dr. Auck referred you to
18 Dr. Ghoubrial, you had some trouble getting in
19 because of your work schedule and his patient
20 slots, true?
21 A Correct. Yes.
22 Q So you called and talked with Mr. Redick, fair?
23 A Correct. Yes.
24 Q He said he would see what he could do?
25 A If my memory's correct on that, yes. I don't

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1 remember the exact conversation, you know.

2 Q And then actually Mr. Redick called Dr. Auck
3 and advised him of what was going on and asked
4 if there was another doctor that Dr. Auck could
5 refer you to. Do you recall that?

6 A I don't know what Mr. Redick did, but that
7 could be correct, yes.

8 Q In fact, you actually called your primary care
9 physician then when you couldn't get in to see
10 Dr. Ghoubrial and he told you he couldn't see
11 you because he didn't want to be involved in a
12 motor vehicle accident case?

13 A Yes.

14 Q You contacted your primary care about that,
15 fair?

16 A I did, yes.

17 Q And then eventually they were able to get you
18 in to see Dr. Ghoubrial. You saw him, fair?

19 A Yes.

20 Q Okay. Do you recall telling KNR -- sending
21 them an email that said that you saw
22 Dr. Ghoubrial, he gave you some shots of
23 cortisone and we shall see if these work and
24 what, if any, relief I'm able to get?

25 Do you recall that?

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1 A Yes.

2 Q In fact, you wouldn't have kept getting the
3 shots if you didn't think they were working,
4 fair?

5 A That's fair to say, yes.

6 Q As of June 2011, a couple months into the
7 representation, you told KNR everything's been
8 going extremely well and you were very
9 impressed with KNR.

10 Do you recall that?

11 A Yes.

12 Q You liked Dr. Auck quite a bit, didn't you?

13 A I did, yes.

14 Q He was wonderful, wasn't he?

15 A Yes, he was.

16 Q Oh, by the way, you understand the impact that
17 unpaid medical bills can have on somebody,
18 don't you?

19 A What do you mean by that?

20 Q Well, if medical bills pile up and you can't
21 pay them, they can cause a lot of problems,
22 fair?

23 A For some people, yes.

24 Q Well, they have to you, right?

25 A Yes.

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1 Q They caused you to file bankruptcy, fair?

2 A Well, no. That's not why I filed bankruptcy,
3 no.

4 Q Well, when you were first asked about that in
5 your deposition, you mentioned it was from
6 medical bills and went on to say you couldn't
7 work and couldn't pay your bills?

8 A Right.

9 Q Okay.

10 A That was -- the main reason was because I was
11 injured and was not able to work.

12 Q But if it wasn't for those medical bills being
13 unpaid, you wouldn't have had to file
14 bankruptcy, fair?

15 A I can't say that 100 percent. There was other
16 factors involved in that bankruptcy.

17 Q Those are the only things you mentioned in your
18 deposition, was the fact of the medical bills
19 and not being able to work, fair?

20 A Correct. Yes.

21 Q So you know that unpaid medical bills can
22 really cause a problem for somebody, fair?

23 A They can, yes.

24 Q They have for you?

25 A To some degree, yes.

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1 Q Well, even in 2011 when you were being
2 represented, you were worried about medical
3 bills then, correct?

4 A I was.

5 Q There was a collection attorney -- maybe not an
6 attorney, but some of the bills went to
7 collection, fair?

8 A They did, yes.

9 Q Some hit your credit report?

10 A Yes, they did.

11 Q But not Dr. Ghoubrial's or Dr. Auck's, fair?

12 A Not that I can recall, correct.

13 Q Because there was a letter of protection in
14 place, true?

15 A Right. I believe the bills would be held off
16 until the case was resolved.

17 Q Okay. And you wanted that, didn't you?

18 A Yes.

19 Q That was in your best interest, wasn't it, sir?

20 A Yes.

21 Q I don't want to talk about any of your
22 treatment for any of your nonaccident-related
23 conditions, injuries, or anything of that
24 nature, but I just want to ask you generally.
25 Is it fair to say that you've treated with

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1 dozens of healthcare providers over the years?

2 A Due to the fact I have cerebral palsy, yes.

3 Q I don't want to talk about those, as far as
4 what the treatment was, but any of those dozens
5 of healthcare providers, did any of them ever
6 tell you what profit they were making when they
7 were treating you?

8 A Most of them were when I was under the age of
9 18, so I wouldn't have access to that. But
10 after the age of 18, I don't believe so, no.

11 Q Okay. After the age of 18, do you recall any
12 of them saying, "Hey, you can get the same
13 treatment elsewhere for cheaper"?

14 A No, that was never brought up that I can
15 recall.

16 Q Of the chiropractors that you saw -- let's see.
17 You saw Dr. Kenneth Parker from age 2
18 until about 18?

19 A Uh-huh.

20 Q Yes.

21 A Yes?

22 Q Thanks.

23 A Sorry. I apologize.

24 Q No. No. That's okay. I do it too sometimes.

25 Did Dr. Kenneth Parker ever say, "Hey,

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1 concerns and my medical care seriously.

2 Q You're not claiming that Dr. Auck was giving
3 kickbacks to KNR, are you?

4 A No, I'm not.

5 Q Well, didn't KNR refer you to Rolling Acres,
6 where he worked?

7 A Yes, they did.

8 Q The fact that they referred you there, don't
9 you infer from that that they're somehow
10 getting a kickback?

11 A No, I do not.

12 Q That's not a reasonable inference, is it?

13 A A reasonable inference as far as they're
14 getting kickbacks? Is that what you're asking
15 me?

16 Q Yes.

17 A I wouldn't assume that just because an attorney
18 refers you to a doctor that they're getting
19 kickbacks. They may refer you there because
20 other patients had success with that doctor.

21 Q Other patient may have had excellent care from
22 that doctor, true?

23 A Correct. Yes.

24 Q That doctor might be willing to execute a
25 letter of protection on the medical bills,

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1 true?

2 A Yes.

3 Q That's important, isn't it?

4 A Yes, it is.

5 Q What is your understanding of what stage of the
6 case we're in right now in the class action?

7 A That we are taking -- we're in discovery and
8 that the stages of class certification is
9 coming soon.

10 Q Okay. Do you know what has to be proven for
11 the class to be certified?

12 A No, I do not.

13 Q What pleadings have you read other than the
14 complaint?

15 A I've just read the complaint.

16 Q Anything else?

17 A No.

18 Q Do you know what motions have been filed?

19 A No.

20 Q You haven't gone on the docket to look at all
21 of the different motions or anything?

22 A At one point I believe I tried, but some of
23 that stuff was down at the time from the court
24 system when I tried. So I have not been back
25 on since.

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1 because they get off the top of any
2 settlements.

3 Q Now, Dr. Goubrial never called up KNR when you
4 were at the office with him, did he?

5 A Not that I'm aware of.

6 Q We already talked about the fact that you went
7 there on Dr. Auck's referral, correct?

8 A Correct.

9 Q And Dr. Goubrial discussed with you the trigger
10 point injections before you got them?

11 A Yes.

12 Q You agreed to them?

13 A Yes.

14 Q You wanted them?

15 A I agreed to them because I believed in what he
16 said, they would help me. So I agreed to them,
17 yes.

18 Q After you got one, you thought it provided some
19 relief?

20 A Yes, I did.

21 Q And when you went back, you got another one?

22 A Yes.

23 Q And you agreed to that one?

24 A Yes.

25 Q And after that you got some relief, so you went

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1 back again, true?

2 A Yes.

3 Q And that helped as well?

4 A Yes.

5 Q During any of those times, you don't know
6 whether KNR knew how many injections you were
7 getting or not until they got the records,
8 true?

9 A Yes, that would be correct.

10 Q You're not trying to say that Mr. Redick or KNR
11 conspired with Dr. Goubrial for you to get
12 injections, are you?

13 A Not me specifically, no.

14 Q Now, if we look at Frain Chiropractic on the
15 settlement memorandum on Exhibit 10.

16 A Yes.

17 Q How did you get to Frain Chiropractic?

18 A It's actually Frain.

19 Q Frain. I'm sorry.

20 A That's okay.

21 I had called -- Dr. Auck closed his
22 office in Akron and I had a relationship with
23 him. So I called him and asked him if he knew
24 any chiropractors in the area that he trusted,
25 he could refer me to. And he said him and

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1 Q Why not?

2 A Because I was also still seeing Dr. Auck at the
3 time for regular maintenance care and he had a
4 professional TENS unit, was doing it there.

5 Q Explain what you mean.

6 A Okay. What part do you need me to explain?

7 Q You said he had a professional there.

8 A A professional TENS unit.

9 Q Okay.

10 A Sorry.

11 Q So you were using a TENS unit at Dr. Auck's?

12 A Yes, I was.

13 Q It helped?

14 A Yes, it did.

15 Q So you don't know whether the TENS unit
16 Dr. Goubrial prescribed you would have helped
17 or not?

18 A No, I do not.

19 Q Because you never used it?

20 A Correct.

21 Q Did you tell Dr. Goubrial you couldn't reach?

22 A That was never anything that was brought up.
23 That was handed to me as I walked out of the
24 office and he, you know, walked away. So there
25 was not an opportunity to even say that.

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1 Q Well, you went back and saw him again, though,
2 right?

3 A Yes, I did. For another --

4 Q Did you tell him at that time?

5 A For another case.

6 No, I did not.

7 Q So it was your very last visit with
8 Dr. Goubrial from the first accident that he
9 handed you the TENS unit?

10 A Yes, sir.

11 Q Then when you saw -- you saw Dr. Goubrial
12 again?

13 A Yes, I did.

14 Q For the second case?

15 A Yes, I did.

16 Q During the first case were you pleased with
17 Dr. Goubrial's care?

18 A For the most part, yes.

19 Q What were you not pleased with?

20 A The amount of muscle relaxers he was
21 prescribing to me.

22 Q Okay. Were you upset with Akron General for
23 prescribing muscle relaxers?

24 A No.

25 Q Why?

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1 Q You saw him write it?

2 A I did not see him write it, no.

3 Q Where did he get it from?

4 A I don't know where he got it from. I would,
5 you know, be out making an appointment for the
6 next visit at the front desk and be handed the
7 prescription by the receptionist.

8 Q Okay. You would then take that to the
9 pharmacy?

10 A Yes.

11 Q Certainly the pharmacy knows that if you have
12 one open prescription, they're not going to
13 fill another one, fair?

14 A I would assume that's correct, yes.

15 Q So how many prescriptions for Flexeril were you
16 given the first accident?

17 A To the best of my recollection, two to three.

18 Q Okay. That didn't cause you any injury or
19 damage, did it?

20 A No, because I stopped taking the medication.

21 Q Okay. The second time that you saw
22 Dr. Goubrial, did you get trigger point
23 injections again?

24 A I believe I did, yes.

25 Q And you wanted them?

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1 A He suggested them and I agreed to them, yes.

2 Q Because they worked the first time?

3 A I believe they worked the first time, yes.

4 Q Never once did Dr. Goubrial ever give you a
5 trigger point injection that you didn't want,
6 did he?

7 A Are you deeming by force?

8 Q By any way.

9 How did he -- did he give you a trigger
10 point injection that you didn't want?

11 A No.

12 Q Okay. When did he give you a TENS unit the
13 second time?

14 A I was only at his office on the second case for
15 a couple visits, but it was either -- maybe the
16 second or third, if there even was a third.
17 But shortly after -- shortly after treatment
18 began.

19 Q Okay. What was the discussion about the TENS
20 unit?

21 A He just handed me one, told me that I should
22 use this. I advised him I already had another
23 one at home. And he said, "Well, here. You
24 can have another."

25 Q He didn't tell you he was going to charge you?

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1 pain well"?

2 A That sounds about correct, yes.

3 Q Okay. He's also done several cortisone shots
4 in the neck and back to relieve some trigger
5 points.

6 Do you recall telling her that?

7 A I believe so, yes.

8 Q What's a trigger point?

9 A From what my understanding is, part of a muscle
10 that flares up and they -- the trigger that
11 causes the issue to happen.

12 Q It certainly wasn't an unspecified shot back at
13 the time you were talking to Danielle Delong,
14 was it?

15 A Can you rephrase that, please?

16 Q Sure.

17 Was it an unspecified shot when you
18 called Danielle Delong in June 2012 and told
19 her it was cortisone?

20 A No, because that's what Dr. Goubrial told me he
21 was putting in me. So that's what I told her.

22 Q Okay. He specified to you what it was and you
23 told that to her?

24 A Correct.

25 Q And then the next month, though, you became

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1 you to Goubrial is false. Is that also true?

2 MR. PATTAKOS: Object.

3 Q They can't both be true, right, Richard?

4 A Well, they can be, because if one brings up the
5 doctor and the other one refers him, they're
6 correlated and linked together.

7 Q Based on what?

8 A Based upon the fact that their attorney,
9 Mr. Lindsey, brought up that they work with
10 Dr. Goubrial.

11 Q But we've already established that neither
12 Attorney Lindsey nor anyone else from KNR
13 actually told you to go to Goubrial, right?

14 A Correct.

15 Q Okay. You don't see the contradiction there,
16 sir?

17 A No, I don't see a contradiction there.

18 Q Okay.

19 MR. PATTAKOS: I don't see one
20 either, for the record.

21 MR. BARMEN: Nobody asked
22 you.

23 MR. PATTAKOS: I understand.

24 Q Dr. Auck at one point gave you options relative
25 to doctors, right, because there was a problem

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1 Q You were not pressured to treat with Goubrial,
2 correct?

3 A No. It was suggested I treat with him, but not
4 pressured.

5 Q Suggested by Dr. Auck?

6 A And Mr. Lindsey at the time, who said they had
7 a relationship with Dr. Ghoubrial.

8 Q Sir, you have testified multiple times that you
9 were referred to Dr. Goubrial by Dr. Auck. Are
10 you changing that testimony now?

11 A No. And as I've stated before, in the initial
12 consultation with Mr. Lindsey, he mentioned
13 they had a relationship with Dr. Goubrial.
14 Yes, Dr. Auck did help facilitate that
15 referral, however, it is also my opinion that
16 there had to be some kind of back dealings in
17 there that -- how would -- Dr. Auck, a
18 chiropractor, knew about a medical doctor and
19 that -- the same doctor that KNR had also
20 mentioned. There had to be back dealings in
21 there.

22 Q We've gone through this several times.

23 Attorney Lindsey never referred you to
24 Dr. Goubrial, true?

25 A He said that was a doctor I could treat with.

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1 a trigger point, true?

2 A That's what you state the medical record shows,
3 yes.

4 Q Okay. So if you have alleged that he would
5 push trigger points and give shots, as opposed
6 to prescribing pills, that wouldn't be true, at
7 least as it relates to you, correct?

8 A In the first two visits, yes.

9 Q I think Mr. Mannion went through that
10 sufficiently.

11 You understood, sir, that if KNR hadn't
12 recovered for you in your cases, you would have
13 been personally responsible to pay
14 Dr. Goubrial's bills for services provided,
15 correct?

16 A Under the agreements I signed, yes.

17 Q You read those agreements before you signed
18 them?

19 A Yes, I did.

20 Q And you authorized those bills to go to KNR,
21 correct?

22 A Yes, I did.

23 Q You authorized voluntarily those amounts be
24 withheld to pay for the bills, right?

25 A Yes, I did.

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1 get a trigger point injection and leave, was
2 it?

3 A No.

4 Q In fact, what you told Dr. Goubrial at the
5 second visit was that the Flexeril was working,
6 true?

7 A The one pill I had taken at the time, yes.

8 Q You then discussed at that second visit that if
9 you continued to have pain, that then you might
10 get some trigger point injections.

11 Do you recall that?

12 A Possibly, yes.

13 Q When you came back, you still had some pain,
14 fair?

15 A If he gave me the trigger point injection and
16 that's what I said, yes.

17 Q It says here "I talked with him about the risks
18 and benefits of trigger point injections."
19 Which he did, correct?

20 A I don't recall that exact, but something
21 similar to that, yes.

22 Q He actually lists in here the exact
23 medications. Methoprazine and -- I can't
24 pronounce it right. But he told you at the
25 time it was -- what did he tell you at the time

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1 he was injecting you with?

2 A Cortisone.

3 Q What did he tell you it would do?

4 A It would stop muscle spasm in the trigger
5 points to relax them.

6 Q Okay. When you came back in June, June 8,
7 2009, to see Dr. Goubrial, you told him that
8 you had tremendous relief from the trigger
9 point injections, true?

10 A That's what I said, yes.

11 Q But you had a recurrence in a different area.
12 And that was with your lower back. Do you
13 recall that?

14 A Not 100 percent.

15 Q Do you recall when at one point you started to
16 make progress and your lower back seemed to
17 start hurting again?

18 A Yes.

19 Q He identified two trigger points in the lower
20 back. Do you recall that?

21 A I recall one, possibly two, yes.

22 Q Do you remember at that visit in June he
23 actually gave you four trigger point injections
24 because he found four trigger points?

25 A I don't remember the exact amount, I just know

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IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs-

CASE NO. CV-2016-09-3928

KISLING, NESTICO
& REDICK, LLC, et al.,

Defendants.

- - - -

Videotaped deposition of SAM N. GHOUBRIAL, MD,

taken as if upon examination before Brian A.

Kuebler, Chana Margareten, Notary Publics within

and for the State of Ohio, at the Hilton

Akron-Fairlawn Hotel and Suites, 3180 W. Market

Street, Fairlawn, Ohio, at 10:39 a.m. on Tuesday,

April 9, 2019, pursuant to notice and/or

stipulations of counsel, on behalf of the

Plaintiffs.

- - - -

JK COURT REPORTING
55 PUBLIC SQUARE
SUITE 1332
CLEVELAND, OHIO 44113
(216) 664-0541

www.jarkub.com



- 1 Q. And that was from 1993 to 1996?
- 2 A. Yes, sir.
- 3 Q. Where did you go to high school?
- 4 A. Walsh Jesuit High School.
- 5 Q. What year did you graduate?
- 6 A. 1983.
- 7 Q. When did you move to the United States?
- 8 A. My family immigrated from North Africa in 1968 or
- 9 '69.
- 10 Q. How old were you?
- 11 A. I was four.
- 12 Q. When you say immigrated from North Africa you
- 13 mean Egypt?
- 14 A. Yes.
- 15 Q. Did you ever live anywhere else in North Africa
- 16 other than Egypt?
- 17 A. No.
- 18 Q. Have you ever lived anywhere in Africa besides
- 19 Egypt?
- 20 A. I believe we lived in Alexandria for a little
- 21 bit, which is also part of Egypt.
- 22 Q. It's a city in Egypt, correct?
- 23 A. Yes, sir.
- 24 Q. So there's no other country that you lived in in
- 25 Africa other than Egypt, correct?

1 A. That's is correct, sir.

2 Q. Okay. It says here under medical practice that
3 you are the president and owner of Sam N.
4 Ghoubrial M.D. Inc., Wadsworth's largest primary
5 care practice. Is that true?

6 A. To my knowledge, yes.

7 Q. And the address there is 195 Wadsworth Road,
8 Suite 402, Wadsworth, Ohio 44281.

9 A. Yes.

10 Q. Is that a current address?

11 A. Yes, sir.

12 Q. How do you know you're Wadsworth's largest
13 primary care practice?

14 A. Well, there were several practices that had
15 gotten bought up by the hospital and so that left
16 us with the most doctors and the largest patient
17 base by virtue of attrition. And we acquired
18 some other doctors in the area.

19 Q. Does this -- are you taking into account --
20 strike that.

21 Does Sam N. Ghoubrial M.D. Inc encompass both
22 your family practice and the personal injury
23 practice?

24 A. No, sir.

25 Q. What is the personal injury practice named?

1 A. I believe it was '17 or '18.

2 Q. What does it mean to be board certified?

3 A. It means you completed an accredited residency,
4 you took the boards, passed the boards and then
5 ten years later I also passed the recertification
6 part.

7 Q. So why did the board certification expire?

8 A. I just haven't had time to take it.

9 Q. Are you allowed to practice without it?

10 A. Yes.

11 Q. Okay.

12 A. I'm board eligible.

13 Q. How does it impact your practice to have your
14 board certification expire --

15 MR. BARMEN: Objection.

16 Q. -- if at all?

17 MR. BARMEN: Objection. Go ahead.

18 A. It didn't -- it's not uncommon for us to take
19 some time due to circumstances. I just simply
20 didn't have the time to renew it and so they --
21 they allow you a leeway of several years before
22 you can get recertified again. So I remain board
23 eligible.

24 Q. And is your Ohio licensure still current?

25 A. Yes.

1 the internal medicine practice?

2 A. Personal injury clinic, almost all those patients
3 have been involved in some sort of accident
4 whether it be a slip/fall or a motor vehicle
5 accident.

6 The primary care internal medicine practice,
7 that's involved in managing chronic conditions
8 like high blood pressure or diabetes, wellness
9 checks, things like that.

10 Q. What's the purpose of keeping the personal injury
11 clinic separate?

12 MR. BARMEN: Objection.

13 A. I'm sorry?

14 Q. What's the purpose of keeping the personal injury
15 clinic separate from the internal medicine
16 practice?

17 MR. BARMEN: Objection.

18 A. Well, they're two different populations of
19 patients. One population is geared towards
20 conventional, just primary care. The other
21 populat -- group of patients are just almost
22 exclusively related to accidents. So it's a
23 completely different patient population.

24 Q. Well, why would that require two separate
25 clinics?

1 Q. You don't publish advertisements for the personal
2 injury clinic, do you?

3 A. No.

4 Q. So how does the personal injury clinic get its
5 business?

6 MR. BARMEN: Objection.

7 A. Well, the patients request the chiropractors feel
8 the need for them to be seen by an allopathic
9 provider. Because their modalities, as you know
10 in the personal injury setting, you need to take
11 a multidisciplinary approach, and I've testified
12 to that before. The modalities the chiropractor
13 can't do and the modalities I can't do, so the
14 best approach to these patients is a
15 multidisciplinary approach. So generally it's
16 usually done by the patient and the chiropractor.

17 Q. When you said the chiropractors in this answer,
18 which chiropractors?

19 A. Several. Like I'll be available, as you
20 mentioned, in one of the chiropractic clinics,
21 and they'll say, look, we have a doctor on board,
22 if you can't see your doctor, you're more than
23 happy to see one we have here, and so they make
24 the choice together.

25 Q. The chiropractor and the patient?

1 seen. It's an underserved community,
2 predominantly minority, they don't have a lot of
3 health insurance, they can't get in to see a
4 doctor, can you help us out? So I did. And so
5 it was actually Jim Slater who got me involved.

6 Q. Of the Slater & Zurz law firm?

7 A. Yes.

8 Q. You said primarily minority, what do you mean by
9 that?

10 A. Many of them are minority patients and many of
11 them are socioeconomically disadvantaged.

12 Q. You mean minority ethnic groups?

13 A. Some. You know, some Latino, some African
14 American, some from various parts of the world,
15 some from the Middle East. And so these patients
16 have yet to get established, yet to have
17 insurance, yet to establish a primary care.

18 So it's an underserved area where they're
19 looking for doctors to sort of take care of these
20 patients. And it's hard enough for them to
21 receive care in the conventional setting and
22 certainly they can't find it in a setting like
23 the one you're referring to.

24 Q. What's that?

25 A. Personal injury.

1 Q. So how did it develop from there with -- from
2 your conversation with Mr. Slater?

3 MR. BARMEN: Objection. Go ahead.

4 A. Well, eventually started talking to a few
5 chiropractors, they said, yeah, you know, we have
6 a need because these patients can't get seen,
7 they kept having to go back to the ER, back to
8 the ER, the family doctor won't see them. They
9 don't have health insurance, they don't have
10 anybody that will take care of them and they need
11 to be treated. Can you help us out, so I did.

12 Q. Who was the first chiropractor you worked with in
13 this way?

14 A. You know, I don't recall.

15 Q. Who are the chiropractors that you work with in
16 this way?

17 MR. BARMEN: Today?

18 MR. PATTAKOS: Over time.

19 A. Gosh, there's been so many. Some of them have
20 come and gone --

21 Q. Uh-huh.

22 A. -- but there's been quite a few.

23 Q. Who are the ones that send you the most patients?

24 MR. BARMEN: Objection. Go ahead.

25 A. Again, I don't keep track of that, so I don't

- 1 know.
- 2 Q. Well, you only travel to so many clinics,
3 correct?
- 4 A. Correct.
- 5 Q. What are the clinics that you travel to?
- 6 A. We go to Detroit Shoreway, Columbus, Akron,
7 Canton.
- 8 Q. What are the clinics in these cities that you go
9 to to treat?
- 10 A. They're chiropractic clinics.
- 11 Q. Right. What are the clinics? What clinic in
12 Columbus: Town & Country?
- 13 A. Yeah. Town & Country is the name of one of them,
14 yeah.
- 15 Q. Do you treat at any other clinics in Columbus?
- 16 A. No, sir.
- 17 Q. And in Akron you treat patients at Akron Square
18 Chiropractic, correct?
- 19 A. I don't know what it's called, but --
- 20 Q. Dr. Floros' --
- 21 A. Dr. Floros --
- 22 Q. -- practice?
- 23 A. Yes, yes, sir.
- 24 Q. On Arlington Street.
- 25 A. Yes, sir.

1 Q. And Town & Country is Dr. Khan, correct?

2 A. I think Dr. Khan is there but there's a few other
3 doctors.

4 Q. Dr. Rendek, her husband, correct?

5 A. Yeah, but there's also chiropractors that they
6 hire, so I think it's more than just them.

7 Q. Who are the chiropractors at the Detroit Shoreway
8 Clinic?

9 A. I believe it's Dr. Cawley, Eric Cawley.

10 MR. PATTAKOS: What is -- David,
11 why are you showing him notes in the middle
12 of his testimony? You want to produce that
13 and make it an exhibit, David?

14 BY MR. PATTAKOS:

15 Q. Dr. Ghoubrial, what's on the note that David Best
16 just showed you?

17 MR. BARMEN: Objection.

18 A. It was nothing pertaining to this case.

19 Q. Okay. Who are the attorney -- sorry. What's the
20 name of the chiropractic in Canton where you
21 treat patients?

22 A. Canton Injury.

23 Q. And that's Dr. Tassi, correct?

24 A. I don't know he's there anymore.

25 Q. But he used to be there, correct?

1 Q. Please identify them.

2 A. Again, like I said, there's a whole litany of
3 things. I don't recall what they are off the top
4 of my head.

5 MR. PATTAKOS: Why don't we take a
6 short break.

7 THE VIDEOGRAPHER: We're going off
8 the record. The time is 11:39.

9 - - - -

10 (Thereupon, a recess was had.)

11 - - - -

12 THE VIDEOGRAPHER: We're back on
13 the record. The time is 11:51.

14 BY MR. PATTAKOS:

15 Q. Dr. Ghoubrlal, you testified that the patients of
16 your personal injury practice were typically
17 involved in some kind of accident, correct?

18 A. Correct.

19 Q. And most of those patients in your personal
20 injury practice are treating with you for pain
21 resulting from soft tissue injuries, correct?

22 A. Correct.

23 Q. And that's as opposed to broken bones or
24 herniated discs or something like that?

25 A. We see some herniated discs.

1 Each and every patient is individual.

2 Q. So once a trigger point resolves --

3 A. Uh-huh.

4 Q. -- there is no way you can prove that it once
5 existed, correct?

6 A. No, actually that's great proof that it existed.
7 Once you administer a trigger point and the pain
8 goes away, as I've seen in thousands of cases,
9 then you can be sure that not only did you
10 localize the trigger point, you treated the
11 trigger point with the proper medication, you
12 introduced it into the proper area and got the
13 desired result.

14 Q. How do you know the pain wasn't being caused by
15 something else?

16 MR. BARMEN: Objection.

17 A. Because I examined the patient.

18 Q. Okay. We'll get into that. My question though
19 is different from the one you answered. My
20 question was: A trigger point itself, whether
21 you inject it or not, let's say you don't inject
22 the trigger point, when a trigger point forms in
23 a patient and resolves, there is no way that you
24 can tell -- there's no way that you can prove it
25 once existed after it resolved unless you took an

1 it with a broad brush. Patients who are involved
2 in motor vehicle accidents have acute muscle
3 trauma and they also meet the criteria, on
4 occasion patient-specific depending on case, for
5 a trigger point. So I disagree with that
6 particular statement.

7 Q. Isn't the point, Dr. Ghoubrial, that when a
8 patient suffers acute muscle trauma, it's
9 impossible to tell whether the pain is coming
10 from a trigger point or not, which is why you
11 wait for the acute pain to resolve before
12 you identify a trigger point?

13 MR. BARMEN: Objection. Go ahead.

14 A. That's not the case. I've treated thousands of
15 these patients, I can guarantee you more than the
16 authors of these articles and I've seen the
17 benefits of the trigger point injections and I
18 know when to give them, how to give them, where
19 to give them and when not to give them.

20 Q. Have you ever published a study on trigger point
21 injections?

22 A. I have not.

23 Q. You think that's something you might do one day?

24 MR. BARMEN: Objection.

25 A. I don't know, never gave it any thought.

1 Q. Who else?

2 A. I don't know off the top of my head, but I know
3 when I was in training they said that on occasion
4 they use trigger point injections.

5 Q. Any other reason you disagree with this other
6 than what you've already stated today?

7 A. I've treated thousands of patients with
8 fibromyalgia and typically they respond well to
9 some tricyclics, but on occasion they may need
10 trigger point injections.

11 Q. Well, when you administer trigger point
12 injections, how do you know the patient's pain is
13 related to a trigger point and not the soft
14 tissue trauma or other issues related to their
15 accident?

16 MR. BARMEN: Objection.

17 A. Because they come in after the accident. They
18 were pain free before and now they have pain
19 afterwards. They have subjective and objective
20 findings to support it.

21 Q. But, Doctor, you're also giving them narcotics,
22 you're giving them other pain medication, you're
23 giving them muscle relaxers, they're undertaking
24 chiropractic treatment -- every single one of
25 them is undertaking chiropractic, how do you know

1 of time, as far as narcotics I don't use
2 narcotics on every patient. In fact, that's one
3 of the reasons that I like to use trigger points,
4 when appropriate is to avoid the use of
5 narcotics. Muscle relaxers, again, it's patient
6 specific.

7 I can't emphasize to you enough that there is
8 no class of patients where I just give everything
9 to everyone. Each individual is specific.

10 Q. Dr. Ghoubrial, how do you know that it's not the
11 chiropractic care or other medication that
12 they're taking that's causing the pain to
13 resolve?

14 MR. BARMEN: Objection. Go ahead.

15 A. As I testified to before, these patients get
16 better in a multidisciplinary manner. You treat
17 them with allopathic care. You treat them with
18 chiropractic and physical therapy and
19 occasionally pharmacological care that expedites
20 their treatment. I know that because I've been
21 doing it for ten years on thousands of patients.
22 They wouldn't be seeing me had the chiropractor
23 been sufficient. They would have simply said,
24 I'm doing okay with the chiropractor.

25 Q. So you're saying it's better to provide as much

1 treatment and as many different kinds of
2 treatment as possible and the patient is more
3 likely to get better that way?

4 MR. BARMEN: Objection.

5 MR. BEST: Objection.

6 MR. BARMEN: That's not what he
7 said.

8 A. That's not what I'm saying. I'm saying that
9 patients improve when you take a
10 multidisciplinary approach to their care.

11 Q. What is a multidisciplinary approach?

12 MR. BARMEN: Objection.

13 A. In other words, depending on the patient, like I
14 said it's patient specific, there's no one class
15 of patients here. If a patient comes in -- and
16 I'll use an example. They have cervical pain
17 with guarding, spasm, and they also have a disc
18 injury. So I can treat the cervical strain with
19 some antiinflammatories, possibly with some
20 trigger points. When I find out about the disc,
21 the chiropractor may do some traction. If the
22 disc is significant after the MRI, we may refer
23 them to pain management. They can do some
24 epidurals to try and shrink the disc. If that
25 doesn't work, then they may require surgical

1 amelioration. A long term opioid use at which
2 point we refer them. So every patient is
3 specific.

4 If you're looking for one answer that covers
5 all patients, it just simply doesn't exist.

6 Q. I'm just looking for an answer of when you're
7 injecting a patient with a trigger point
8 injection within a week or two after they get
9 into a car accident and they get better, I just
10 want to know how you know that it's the trigger
11 point injection and not the chiropractic care
12 that they're receiving or not the
13 antiinflammatory medications, muscle relaxers or
14 narcotics that they may be taking or that the
15 injury is simply not resolving over time, you
16 haven't explained that?

17 MR. BARMEN: Objection.

18 MR. POPSON: Objection.

19 MR. BARMEN: He has.

20 Q. If you don't have a better answer than what
21 you've provided, then let me know. But if you
22 do, please, now would be the time to provide it.

23 MR. BARMEN: Objection. Move to
24 strike the inappropriate narrative. Asked
25 and answered.

1 MR. MANNION: Objection.

2 Plaintiff's counsel's ignorance as to the
3 medical issues is not a proper method to
4 impeach a witness.

5 MR. BEST: Sustained.

6 BY MR. PATTAKOS:

7 A. As I told you, each patient is different. You're
8 looking for one answer that fits all patients --

9 Q. Any answer that would fit any patient --

10 MR. BEST: Don't interrupt him.

11 A. No, no, no, there's no such thing.

12 MR. MANNION: Objection.

13 Interrupting the witness.

14 A. There's no such thing, Peter. Peter, I wish I
15 could give you the answers you're looking for,
16 but I can only tell you the truth. The truth is
17 each and every one of the patients that I treat
18 is a unique individual by virtue of their age, by
19 virtue of their problems, by virtue of the
20 medications they're on, by virtue of the
21 contraindications, by virtue of when they
22 present, how they present. So there is no
23 uniform answer that I can give you, I can just
24 tell you it's patient specific.

25 Q. Okay.

1 MR. POPSON: Objection. Form.

2 MR. MANNION: Objection.

3 Incomplete hypothetical.

4 MR. BARMEN: Improper

5 hypothetical. To the extent you can, go
6 ahead.

7 A. I've had ten years of experience doing this. I
8 know when to give them and I know when not to
9 give them. If it's an acute event and I give the
10 trigger point injection and I alleviate their
11 pain and they're happy, I'm going to do it,
12 Peter. If I can avoid the use of narcotics while
13 I'm doing it, I'm going to do it. If I only need
14 a week's worth of narcotics and a couple of
15 trigger points, I'll take that route.

16 I want to get the patient back to being
17 productive and working and pain free as quickly
18 as possible.

19 Q. How do you know it's the injections that are
20 working, Doctor --

21 MR. BARMEN: Objection.

22 A. Because --

23 Q. -- and not any of those other things?

24 A. They come back -- like I said, it's based on ten
25 or 12 years of experience. They come back and

1 they say, hey, these trigger point injections did
2 great. I was in horrible pain before, after
3 these injections, I'm now able to go back to
4 work --

5 Q. How would the patient --

6 A. -- so your hypothetical --

7 Q. How would the patient know?

8 MR. BARMEN: Objection.

9 A. The patient tells me.

10 Q. Well, how do they know it's the injections --

11 A. I examine --

12 Q. -- and not any of these other modes of treatment?

13 MR. BARMEN: Don't argue with him,
14 don't speak over him and don't raise your
15 voice to him. Let him finish the answer to
16 the question you asked.

17 A. Each patient, Peter, is an individual. I treat
18 that patient according to their symptoms,
19 according to their circumstances. And when they
20 come back and tell me, Doctor, thank you, I've
21 been able to get back to work within a few days
22 of those cortisone shots that you gave me, I
23 really appreciate it, I don't need to have them
24 anymore, I know it was the medication.

25 Because on the flip side I've seen patients

1 MR. BARMEN: Objection. Other
2 than what he just told you?

3 MR. PATTAKOS: Yes.

4 A. If those patients are already under chiropractic
5 care, if they're not, I recommend physical
6 therapy. I'm not a physical therapist or a
7 chiropractor so I think that's one less invasive.
8 Occasionally TENS units, those are helpful.

9 Q. Anything else?

10 A. Yes. On occasions braces.

11 Q. What about RICE therapy?

12 MR. BARMEN: Objection.

13 A. Never used it.

14 Q. Do you understand what it is?

15 A. No.

16 Q. Rest, ice, compression, elevation.

17 A. Those are modalities that the chiropractor would
18 recommend. By the time they get to me, they're
19 not candidates for that. Or if they are, I send
20 them back to the chiropractor.

21 Q. Do you provide trigger point injections to
22 patients in your family -- I'm sorry, your
23 internal medicine practice?

24 MR. BARMEN: Objection. Go ahead.

25 A. Typically I do joint injections there. Very

1 Q. What does "adjunctive treatment" mean?

2 A. Additional treatment modality.

3 Q. And you were using the TENS units to treat for
4 which diagnoses?

5 A. We treat a variety. Some cervical, some
6 thoracic, some lumbar, some unilateral, some
7 bilateral, some trapezius, some periscapular, any
8 number.

9 Q. You're referring to body parts there. What type
10 of injuries? Sprain and strains; is that what
11 you're primarily referring to?

12 A. Lumbar strains, sprain, et cetera.

13 Q. Okay. How does the TENS Unit work to provide
14 relief to the patients?

15 A. There was -- delivers low dose electrical
16 frequency, it stimulates the muscle, and provides
17 some relief.

18 Q. Does it provide relief to patients suffering from
19 myofascial pain syndrome?

20 MR. BARMEN: Objection.

21 A. If you are talking in the context of
22 fibromyalgia, are you talking in the context of
23 the myofascial pain syndrome that we see in the
24 motor vehicle accident setting?

25 Q. Either one.

1 A. It does provide benefits in both settings, in my
2 opinion.

3 Q. You rely on any research or peer-reviewed studies
4 to support your use of TENS units?

5 A. Over the years, I've seen many articles that have
6 pointed to the benefits of utilizing TENS units.
7 And further more, it's another modality that
8 allows us to avoid narcotics, when possible.

9 Q. Could you -- do any articles specifically come to
10 mind, either the author or the specific contents
11 of the articles?

12 A. There's -- I have seen dozens of articles, but
13 none of them come to mind.

14 Q. Do you use the TENS units to treat patients for
15 anything, other than strains or sprains?

16 A. Predominantly, that's it.

17 Q. Does the same go for back braces?

18 A. No. Back braces, I typically use in a patient
19 who not only has lumbar strain, pain on range of
20 motion, and may be engaged in some sort of
21 physical activity or is trying to get to work and
22 needs to be braced in order to give him some
23 additional support.

24 Q. Okay. And that's typically for strains or
25 sprains to the lumbar region?

1 reflects what we were -- what we actually were
2 paid. But I know on 99.9 percent of the cases,
3 we receive a reduction.

4 Q. Okay.

5 A. But --

6 Q. And you said it's typically about 30 or 40 or
7 50 percent, that reduction?

8 A. I wish it were that good. It varies anywhere
9 from 30 percent to, you know -- I just settled a
10 case now for 75 percent reduction.

11 So what you're seeing here is the paid
12 amount, which represents a reduced figure from
13 what's billed. The only way to find out would be
14 to go through each individual patient and find
15 out what was billed. The software doesn't do
16 that.

17 Q. Okay. I just want to pull these up on my
18 computer, if you give me one moment here.

19 Okay. Here we are. Okay. So, the
20 deductible field on this first exhibit, I'm
21 sorry, it's Exhibit 5?

22 A. Yes.

23 Q. That's essentially meaningless, because that only
24 pertains to insurance, correct?

25 A. Correct.

1 25th, it says she is going to have extensive
2 surgery on her right arm for the fracture to the
3 shoulder. And on June 1st it says, she is going
4 to have surgery of her shoulder, correct?

5 A. Right. And it also says -- let's read the whole
6 thing. The trigger points were very beneficial
7 to her neck. And she needed narcotic analgesics,
8 not only because of the neck, the back, and the
9 fracture.

10 Q. And she received four prescriptions for narcotics
11 from you, correct?

12 A. Correct.

13 Q. And that was on April 27th, May 4th, May 10th,
14 and June 1st, correct?

15 A. That's correct.

16 Q. And no muscle relaxers, no TENS Unit, and no back
17 brace, correct?

18 A. Correct.

19 Q. And this was after her first date of treatment at
20 Akron Square, being April 22nd, 2016. And you
21 could see that from the first page; is that
22 correct?

23 A. Correct.

24 Q. Okay. Dr. Ghoubrial, of these 13 files that we
25 just went over, 13 out of 13 were offered trigger

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

-vs-

CASE NO. CV-2016-09-3928

VOLUME II

KISLING, NESTICO
& REDICK, LLC, et al.,

Defendants.

- - - -

Videotaped deposition of GARY PETTI, taken as if upon examination before Brian A. Kuebler, a Notary Public within and for the State of Ohio, at the Pattakos Law Firm, 101 Ghent Road, Fairlawn, Ohio, at 9:33 a.m. on Friday, March 1, 2019, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs.

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1 MR. MANNION: Objection as to
2 anything outside this case.

3 A. Yes. When I had a settlement, it was not final
4 until Nestico did the approval of the cut on the
5 medical bills -- on the chiropractic in
6 particular.

7 So I would get an offer from the insurance
8 company, get authority from the client to accept
9 a certain net amount, was the way I did it, net
10 amount in their pocket. And in order to make
11 that work, I would have to adjust the medical
12 bills, reduce doctor whomever, and then I'd write
13 it all up saying, okay, you know, this makes the
14 math work if Dr. Kahn, for example, cuts her bill
15 from 5,500 to four, then the math works, the
16 client gets what they're expecting, we get
17 whatever in a fee, and then you take that file
18 all written up and set it in Nestico's office.
19 And then at some point later, you get it back
20 with an "okay" I think he wrote on it.

21 Q. Or?

22 A. Or no. You know, you've got to get more, we've
23 got to take less or cut somebody else. Further
24 instruction. Most of mine were always okay
25 though, as I recall.

1 doing.

2 THE WITNESS: Oh, okay.

3 A. Zealously representing people within the bounds
4 of the law, whatever that entails, in any
5 particular case.

6 So I don't have a lot to say other than it's
7 easy for him to say, but as a practical matter,
8 I'm not sure again that the treatment from
9 Clearwater added value to the client's case.

10 MR. MANNION: Objection.

11 MR. RUBIN: Objection.

12 Q. And when you talk about insurance companies, to
13 some degree, are always going to be doing their
14 jobs --

15 A. Uh-huh.

16 Q. -- to represent their sides zealously, this isn't
17 just that, is it? What Kelly Phillips is talking
18 about here.

19 MR. RUBIN: Objection.

20 MR. MANNION: I'm going to object
21 again.

22 A. I would say no. It's a -- it's a, you know,
23 perception that these look like manufactured
24 cases. And that certainly is an opinion that I
25 share.

1 record.

2

- - - -

3

(Off the record.)

4

- - - -

5

THE VIDEOGRAPHER: On the record.

6

BY MR. PATTAKOS:

7

Q. So even if a client had a primary care physician
8 who was reluctant to handle personal injury cases
9 or handle them in a way that maybe the ER would
10 be best for the client in terms of recovery,
11 there were other doctors that the client could go
12 see, correct?

13

MR. MANNION: Objection.

14

MR. RUBIN: Objection.

15

A: Sure. There's -- you would get -- you know, some
16 of the doctors would approach you if they wanted
17 to be involved in personal injury stuff. You
18 know, they would send you promotional materials
19 and buy you bagels. You know, hey, we can get --
20 do you want to refer people here? You know,
21 we'll work on an assignment or we'll work on a
22 letter of protection. Less often certainly for
23 MDs than other doctors, but, yeah.

24

Q. There were also doctors who would be comfortable
25 handling personal injury cases and being paid