

1 testifies?

2 THE COURT: I think they are coming right in the  
3 door. We'll take a break right before cross.

4 MR. KAUFFMAN: Okay. Very good.

5 COURT OFFICER: All rise. Jury, come on in.

6 THE COURT: Good afternoon.

7 COURT OFFICER: Okay. Jurors, take your seats. Be  
8 seated, please. Part 9 is now in session. The Honorable  
9 Debra Silber, presiding.

10 THE COURT: Mr. Grey, you may call your first  
11 witness.

12 MR. GREY: The City calls Dr. Alan J. Zimmerman to  
13 the stand, your Honor.

14 THE COURT: Okay.

15 COURT OFFICER: Do you have a cell phone?

16 THE WITNESS: It's off.

17 COURT OFFICER: Raise your right hand.

18 A L A N J. Z I M M E R M A N, MD

19 called as a witness and having been first  
20 duly sworn by the court officer, was  
21 examined and testified as follows:

22 COURT OFFICER: Okay. Be seated.

23 State your name, business address, and occupation  
24 for the record, and spell your last name.

25 THE WITNESS: My name is Alan, A-l-a-n, J.

1 Surgery at the 3320th United States Air Force Hospital,  
2 following which I went into private practice.

3 I was an Associate Professor of Clinical Orthopedic  
4 Surgery at the State University of Stony Brook at -- and,  
5 simultaneously, I was an Assistant Professor of Surgery at the  
6 New York College of Osteopathic Medicine.

7 I was chief of Orthopedic Surgery at Lenox -- I'm  
8 sorry, at Long Beach Medical Center for 14 years. I'm a Fellow  
9 of the American College of Surgeons. A Fellow of the  
10 International College of Surgeons. A Fellow of the American  
11 Academy of Orthopedic Surgeons, and I'm board certified by the  
12 American Board of Orthopedic Surgery.

13 THE COURT: And, born and raised in New York, I  
14 assume?

15 THE WITNESS: Yes.

16 THE COURT: Otherwise you wouldn't be talking so  
17 fast. Okay. Continue.

18 (Laughter.)

19 THE WITNESS: Brooklyn, actually, your Honor.

20 THE COURT: Oh my. How did I guess.

21 (Laughter.)

22 Q Dr. Zimmerman, can you please tell the jury what an  
23 independent medical examination is?

24 A I was hired by an agency who works for a law firm to do  
25 an orthopedic examination and evaluation of a claimant who was

1 involved in an accident; in this case a fall-down accident.

2 Q Did there come a time that you were hired to conduct an  
3 independent medical examination, and I'm going to call it an IME  
4 for short, of Ms. Knoch?

5 A Yes.

6 Q And on what date did you conduct that examination?

7 A May I refer to my records?

8 THE COURT: Yes.

9 A On November 18, 2008.

10 Q And I see you have some records with you?

11 A Yes.

12 Q What records did you bring with you?

13 A I have a copy of my operative report. I'm sorry. Of  
14 my IME report. I have various legal documents. I have records  
15 of Suffolk Orthopedic Associates, P.C., Richard Tabershaw, M.D.,  
16 and I have physical therapy reports, and I have a report of an  
17 MRI of the left shoulder of 6/5/2007.

18 Q Did you have an opportunity to view those records  
19 before you conducted the IME?

20 A Yes.

21 Q And with a reasonable degree of medical certainty, can  
22 you tell this jury what you learned from those records upon  
23 review?

24 A I learned that the claimant was a 60 year-old  
25 individual at the time of my examination, who tripped and fell

1 on 5/2/07, and sustained a fracture of the greater tuberosity of  
2 her left shoulder, that's the corner of the bone of the  
3 shoulder. She was treated in the emergency room of Long Island  
4 College Hospital, and then saw Dr. Tabershaw a few days later.  
5 She was placed in a sling; that's the only mobilization that she  
6 had.

7 He immediately started her on exercises, and then  
8 sometime thereafter started her on physical therapy. She was  
9 given pain medicine. She had no other treatment.

10 Q Can you explain to the jury what a greater tuberosity  
11 fracture is?

12 A The arm bone is called the humerus where it attaches to  
13 the shoulder. There are muscles that attach to the corner of  
14 the bone that help you to lift your arm.

15 The greater tuberosity is a portion of that bone that  
16 projects a little bit, to which the muscles and ligaments  
17 attach. In Ms. Knoch's case the bone cracked at that point. It  
18 separated minimally, but not significantly, so that the -- her  
19 doctor chose to treat it non-operatively, which is certainly the  
20 appropriate treatment.

21 We know that healing is not a problem in this  
22 circumstance, and it went on to heal uneventfully in a four-week  
23 -- in a six-week period.

24 Q And when you say it healed uneventfully in a six-week  
25 period, is there anything in the record that would indicate to

1 you the time it healed?

2 A Yes. In Dr. Tabershaw's note of June 21, 2007, which  
3 is roughly six weeks following the accident, he noted that  
4 x-rays show some callus, c-a-l-l-u-s, which is the word for bony  
5 healing.

6 Q You had mentioned that on the first visit with  
7 Dr. Tabershaw, that he had put Ms. Knoch immediately into  
8 exercises; what is the importance of that?

9 A We know from experience that the -- that this kind of  
10 fracture heals very easily, and without any problems, so it's  
11 not necessary to put somebody in a cast or put a pin in it or  
12 anything to encourage healing.

13 The problem is they tend to get stiff very fast, so the  
14 sooner you start them moving and exercising the better their  
15 ultimate end result would be.

16 Q Now, can you please tell the jury just what your IME  
17 consisted of?

18 A It consisted of an interview. When the claimant comes  
19 to the office, they fill out an intake sheet. It's got  
20 information like your name and your address, that kind of  
21 information, and then it goes on to a description of the  
22 accident, how you got hurt, what parts of you were hurt, what  
23 kind of treatment you had, if you had surgery or not. What your  
24 occupation is. What your complaints are now, those kinds of  
25 thing.

1 I reviewed that with the claimant, because very often  
2 the claimant is new to that kind of process, and sometimes they  
3 put down exactly what they meant, so I just clarify to make sure  
4 that I'm getting the appropriate information, and then I perform  
5 a physical examination. I identify the patient by their -- by  
6 writing down their height and weight and make sure that they  
7 didn't send their brother-in-law to take the examination. And I  
8 see if they are wearing any slings or supports or braces, things  
9 like that, and then I perform various tests on the injured part;  
10 in this case the shoulder, for issues such as rotator cuff tear,  
11 or pinching, called impingement. I did that, and they were both  
12 normal.

13 I poked around, palpated is the medical word, and to  
14 see if it evoked a response, if it hurt them or not or they  
15 responded in any way, and then I measured their range of motion,  
16 that's a measure of their mobility.

17 I measure it with a device called a goniometer. It's a  
18 protractor that has arms, so that you can put it on their arm  
19 and measure the angle, rather than guessing as to what the angle  
20 is, and that's what I did. And I measured her ability to lift  
21 her arm in front, to the side, across her chest and then  
22 backward or outward and then inward as well, and then I measured  
23 her muscle strength. That's a -- it's a manual test that it's  
24 kind of subjective.

25 I say, make a muscle. I try to pull against it and I'd

1 say, push out the other way. Hold your arms up, and I try to  
2 push them down, and you get a sense of how strong their muscles  
3 are or not.

4 Q Can you please tell the jury what the results of your  
5 range of motion test with Ms. Knoch were.

6 A First of all, I measured both arms, because sometimes  
7 people individually vary from what we call normal, but in regard  
8 to her left arm, which was the injured arm, she can elevate it  
9 to 135 degrees in front. That's -- this is 90; that's 135. She  
10 can abduct to 120. This is 90, so that would be roughly 120.  
11 She could "AB duct" to 45, which is normal. She could  
12 internally rotate to 60 out of 70, so this is 70. So that would  
13 be 60, and she could externally rotate to 70 out of 90.

14 So, this is 90, and that's 70. So, she had -- I would  
15 characterize it as a moderate restriction of her ability to lift  
16 her arm and some minor restriction of her ability to turn her  
17 arm.

18 I found her shoulder strength to be five out of five,  
19 which is normal.

20 Q And how would you determine her shoulder strength?

21 A There is a scale of one to five. Five is normal. Four  
22 means you can lift your arm against gravity, but not against  
23 resistance. Three means you can't lift it against gravity, all  
24 the way down to zero, which means it's paralyzed. It's a  
25 guesstimate kind of thing. There's no tool that you can use to

1 measure it, but you get a sense of approximately what it is.

2 Q In your records, did you notate whether or not she had  
3 any type of rotator cuff tear?

4 A I found no evidence of a rotator cuff tear.

5 Q Did you look at an MRI report or something else that  
6 might have indicated whether or not she had a rotator cuff tear?

7 A Sorry. I did. She had an MRI which reported a deep  
8 partial articular surface tear. The rotator cuff sits up  
9 against the shoulder, so there's the outside and the inside.  
10 This is, the radiologist is referring to the inside It was a  
11 deep partial tear.

12 In other words, it didn't go through the -- the tear  
13 didn't go through the rotator cuff completely, but it went  
14 through about two-thirds of the way without perforating it.

15 Now, you have to take that in context.

16 MR. KAUFFMAN: Just going to object, Judge. I  
17 believe it's outside the scope of the question.

18 THE COURT: Okay. It was a very simple question.

19 THE WITNESS: I'm sorry.

20 THE COURT: So, wait for another question.

21 Q Okay. Did you come to a reasonable degree of medical  
22 certainty as to whether or not the rotator cuff tear came from  
23 the fall on May 2nd, 2007?

24 MR. KAUFFMAN: Objection. Outside of the scope of  
25 the report.

1 THE COURT: Hold on. Sustained.

2 Q You were telling the jury the importance based on your  
3 review of the MRI report of the partial tear of the rotator  
4 cuff, what was the importance of that?

5 A At the time of the MRI, the claimant was about 60 years  
6 old; we know from experience that -- that large numbers of  
7 adults have rotator cuff --

8 MR. KAUFFMAN: Objection. Scope.

9 THE COURT: Sustained. We only want to know about  
10 the Plaintiff.

11 THE WITNESS: I'm sorry?

12 THE COURT: We only want to know about the  
13 Plaintiff. This is not a general medical lecture. I'm  
14 sorry. It's a trial.

15 THE WITNESS: Okay. I'm sorry.

16 A The finding of a partial thickness tear in this woman  
17 in the absence of clinical findings of a rotator cuff tear,  
18 based on my examination, would lead me to think that this was a  
19 degenerative tear, and not a tear that related to the accident.

20 Q Can you tell the jury what the term "degenerative"  
21 means?

22 A It means it's a wear and tear as part of the aging  
23 process.

24 Q To a reasonable degree of medical certainty, what is  
25 your prognosis as to the Plaintiff's necessity for future

1 treatment?

2 MR. KAUFFMAN: With the clarification of as  
3 November 2008.

4 THE COURT: Right.

5 MR. GREY: As of November of 2008.

6 A The natural history of her condition is to expect  
7 improvement over time. So, that I would expect that gradually  
8 her mobility would increase. I would doubt if she would ever  
9 have a perfect range of motion ultimately, but she would have an  
10 improvement, a significant improvement, over what my -- what her  
11 range of motion was at the time of my examination.

12 Q To a reasonable degree of medical certainty as of  
13 November of 2008, what is your prognosis as to the necessity for  
14 a future surgery for Ms. Knoch?

15 A It would be most unlikely that she would require  
16 surgery.

17 Q And why is that?

18 A Because I would expect that she would gradually  
19 increase her range of motion with normal use and exercise.

20 Q I'm going to show you what's been marked as Plaintiff's  
21 Exhibit 12, in evidence.

22 THE COURT: I believe he has it in his folder, but  
23 sure.

24 Q Do you recognize that?

25 A Yes.

1 Q What do you recognize that to be?

2 A The records of Dr. Tabershaw.

3 Q I'd like you to turn to the entry concerning the May  
4 26, 2009 visit.

5 MR. KAUFFMAN: Just repeat the date, please.

6 MR. GREY: May 26, 2009.

7 THE COURT: Is there a page number? They are  
8 numbered.

9 MR. GREY: I don't have the page number. They are  
10 chronological.

11 THE COURT: What?

12 MR. GREY: I'm sorry. I don't have the page  
13 number, but they are chronological.

14 THE COURT: Right. You got it?

15 THE WITNESS: Yes.

16 Q I want to specifically point your attention to the  
17 portion of that record that state that she has a 25 percent  
18 temporary impairment, do you see that?

19 A Yes.

20 Q Is that consistent with your diagnosis?

21 A No.

22 Q And how is that in any way inconsistent with your  
23 diagnosis?

24 A Well, at the time of my examination she could elevate  
25 to 135 out of 180 degrees, so that would be a 45-degree deficit.

1 THE COURT: You want a calculator?

2 THE WITNESS: 45.

3 A So, it's not inconsistent with -- I'll retract that.

4 Q And do you see where Dr. Tabershaw found that her power  
5 was a four out of five?

6 A Yes.

7 Q And I wanted to take your attention to the last entry  
8 in that record. Can you read me the date of that entry?

9 A 6/30/2009.

10 Q And as of 6/30 in 2009, what, if any, findings did  
11 Dr. Tabershaw have as to the Plaintiff's range of motion?

12 A She could forward flex to a 150 degrees, passively to a  
13 170 degrees. Internal rotation, and then it says, plus minus  
14 impingement, which doesn't make much sense. Plus minus  
15 impingement is reasonable, but there is no number for internal  
16 rotation. But, nonetheless, he finds that she could flex to 150  
17 actively, and passively to 170.

18 Q And does that record show that she made improvements  
19 after seeing you in her range of motion?

20 A Yes.

21 Q And could you please demonstrate for the jury what the  
22 residual deficit would be, based on Dr. Tabershaw's last  
23 findings?

24 A Well, if we use the active range, he says 150, so this  
25 is 90. This is 135, so that would be roughly 150, and normal

1 would be 180.

2 MR. GREY: Mind if I take a look at the records,  
3 your Honor?

4 THE COURT: Yes. Sure.

5 Q I'd like you to look at the January 9th, 2009 entry,  
6 and can you read to the jury what it says about the impression?

7 A Impression: Minimal residual adhesive capsulitis with  
8 impingement.

9 Q Can you tell the jury what that means?

10 A Well, adhesive capsulitis is the term for restriction  
11 of motion. At least, that's the way he's using it. So, she's  
12 left with a minimal loss of range of motion of her shoulder.  
13 Impingement means there's pinching at the -- as the shoulder  
14 rises it comes under an arch, and he feels that it's rubbing  
15 under that arch. That's what impingement states.

16 Q Can you state with a reasonable degree of medical  
17 certainty with or without surgery, whether Ms. Knoch's condition  
18 will improve in the future?

19 MR. KAUFFMAN: Objection.

20 THE COURT: I'm sorry. Can you repeat the  
21 question?

22 MR. GREY: No problem, your Honor.

23 THE COURT: The reporter can read it back.

24 (Requested portion read.)

25 A I would expect it would --

1 THE COURT: I haven't made a ruling.

2 THE WITNESS: Oh, I'm sorry.

3 MR. KAUFFMAN: Can I give the basis?

4 THE COURT: What?

5 MR. KAUFFMAN: Can I give the basis?

6 THE COURT: Yes, please.

7 MR. KAUFFMAN: He hasn't seen her for four years.

8 THE COURT: I think you can bring that out on  
9 cross. I'll allow it.

10 A Based on my experience, training and knowledge, I would  
11 expect that this claimant would continue to improve slowly over  
12 time, without treatment.

13 Q With or without?

14 A With or without treatment.

15 Q If you look at Dr. Tabershaw's records from the first  
16 visit going to the last visit, does it show that her arm was  
17 improving in range of motion each visit, if not each visit then  
18 over time?

19 A Yes.

20 Q Would it be consistent with your finding that her arm  
21 will continue to improve into the future?

22 A Yes.

23 MR. GREY: Thank you, Doctor. No further  
24 questions, your Honor.

25 THE COURT: Do you need a break before you do

1 cross?

2 MR. KAUFFMAN: Just very briefly. If I could just  
3 see the doctor's notes. I think I can get right to it, and  
4 not waste the jury's time.

5 THE COURT: Sure. I don't think he has any, but  
6 sure.

7 MR. KAUFFMAN: Thank you, Doctor. May I inquire,  
8 your Honor?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. KAUFFMAN:

12 Q Doctor, earlier you just reviewed what was marked as, I  
13 believe, Plaintiff's 12, and that's Suffolk Orthopedics Medical  
14 records, correct?

15 A Yes.

16 Q And those records, you understand, were brought in by a  
17 medical records witness yesterday; do you know that?

18 A I didn't know that, no.

19 Q Okay. Is it fair to say that's precise -- those are  
20 precisely the same notes though -- some of the same notes that  
21 you'd reviewed that defense counsel sent you previously back in  
22 2008?

23 A Some of them, yes.

24 Q Okay. When you say, some of them, it's because defense  
25 counsel didn't send you all of the notes, did he?

1 A Well, he didn't send me the notes after my examination.

2 Q Doctor, in fact, he didn't even -- his office didn't  
3 even send you the records for one year and two months before  
4 your examination, tell the jury?

5 A I don't know that.

6 Q Then I'll help you out, Doctor?

7 A Okay.

8 Q In September of 2007 --

9 THE COURT: No, let him answer the question instead  
10 of testifying, please.

11 MR. KAUFFMAN: Okay. Doctor --

12 THE COURT: One second.

13 Are the notes from Dr. Tabershaw that you received  
14 in your file?

15 THE WITNESS: Yes.

16 THE COURT: Can you take a look and see the date of  
17 the last entry? Not that complicated.

18 THE WITNESS: I have records of Dr. Tabershaw  
19 through August 9, 2007.

20 Q Correct. In other words, Doctor, the notes that you  
21 were sent prior to your November 2008 exam, you only had  
22 approximately four months worth of notes, true?

23 A Yes.

24 Q Okay. And you document which records you reviewed and  
25 which ones you didn't in your sworn report dated November 2008,

1 correct?

2 A Correct.

3 Q So, there is one year and two months that preceded your  
4 examination that you didn't have Dr. Tabershaw's notes for,  
5 true?

6 A Correct.

7 Q But, you knew that Mrs. Knoch was still in treatment at  
8 the time you saw her in November of '08, true? You knew that?  
9 She told you that?

10 MR. GREY: Let him answer.

11 THE COURT: Give him a minute to answer the  
12 question, please, and stop --

13 A Yes. Well, depends on how you want to define  
14 treatment.

15 Q And how do you define treatment?

16 A Well, my notes says that she was currently doing a home  
17 exercise program. I don't know if that qualifies as treatment.  
18 She was receiving chiropractic treatments; that's irrelevant.  
19 And she was taking medication.

20 So, she was not getting physical therapy, which was the  
21 only significant treatment that I would accept.

22 Q She was continuing to followup with the orthopedist  
23 though, you knew that?

24 A That's not treatment. That's an evaluation. The  
25 doctor wasn't treating her.

1 Q If a doctor prescribes medication, is that treatment;  
2 yes or no?

3 A I said medication. I said that she was getting  
4 medication, yes.

5 Q Okay. Was that prescription medication or  
6 non-prescription medication?

7 A The last note I have is that of prescription was faxed  
8 in June of 2007. I don't know.

9 Q I understand that's the last note that you have?

10 A Right.

11 Q But, the last note that you had prior to examining Mary  
12 Lou Knoch, was in September or August of 2008, I'm sorry, 2007,  
13 a year and two months before your November 2008 examination. My  
14 question is, do you know whether she was continuing to receive  
15 medication or take medication, prescription or otherwise, at the  
16 time of your November '08 exam?

17 A My note states that she reports her current medication  
18 is Ibuprofen and she reported taking her Ibuprofen prior to my  
19 examination.

20 Q Okay. And that's for pain, true?

21 A Yes.

22 Q And if somebody takes pain medication because they're  
23 in pain, that's going to -- the purpose of that is to allow for  
24 greater pain-free range of motion, true?

25 A I don't think Ibuprofen changes her range of motion,

1 no.

2 Q Okay. But you don't think it changes a person's pain  
3 level?

4 A Not significantly.

5 Q So, then, what's the purpose -- well, you prescribed  
6 pain medication for your patients?

7 A Ibuprofen is a very minor analgesic.

8 Q Do you still see patients privately, Doctor?

9 A Yes.

10 Q Doctor, I want to talk about the term independent. To  
11 be clear, you weren't appointed to examine Ms. Knoch, for  
12 example, by Judge Silber, were you?

13 A No.

14 Q My office sure as heck didn't contact you to do it,  
15 right?

16 A Correct.

17 Q Okay. You were contacted, you say by an agency, but  
18 you know that agency works for New York City in this particular  
19 case, true?

20 MR. GREY: Objection. Agency is not a part of New  
21 York City.

22 THE COURT: What?

23 MR. GREY: The agency is not a part of New York  
24 City.

25 MR. KAUFFMAN: I said they worked.

1 MR. GREY: Oh, I'm sorry. I thought you said they  
2 were part of New York City.

3 MR. KAUFFMAN: I didn't.

4 MR. GREY: Oh, yeah, the agency they work for us.  
5 I withdraw.

6 A Yes.

7 Q Okay. So, my point is it's not independent because you  
8 were essentially hired by one side to conduct the physical?

9 A I think you'll find --

10 Q Doctor, yes or no?

11 A Yes.

12 Q Okay. Doctor, as a -- tell the jury what symptomatic  
13 means?

14 A Symptomatic is something that the claimant complains  
15 of.

16 Q Okay. In other words, it could be pain, it could be  
17 restriction of motion?

18 A No. No.

19 Q Something like that?

20 A Only subjective. It's only subjective complaints.  
21 It's not restriction of motion.

22 Q Pain?

23 A Pain.

24 Q Okay. And when you say it's only subjective  
25 complaints, not restriction of motion, you're saying restriction

1 of motion is objective. In other words, it can be tested for?

2 A It's got an objective component, yes.

3 Q Okay. Tell the jury what asymptomatic means?

4 A Means without complaints.

5 Q Okay. And, Doctor, you would agree that a person with  
6 a rotator cuff tear can be symptomatic, in other words, with  
7 problems, pain and things of that nature, true?

8 A Yes.

9 Q Or asymptomatic, correct?

10 A Correct.

11 Q Okay. Doctor, have you seen any medical records in  
12 this case that ever show that Mrs. Knoch had any problems  
13 whatsoever before May 2nd, 2007, with regard to her left  
14 shoulder or left arm?

15 A No.

16 Q As a medical doctor, you're familiar with abbreviations  
17 in medicine, correct?

18 A Some.

19 Q Some?

20 A Yes. Some.

21 Q Okay. SX, in addition for standing for symptoms also  
22 means surgery, correct? That's what it means, Doctor, right?  
23 Tell the jury?

24 A There's no code -- there's no book of codes for what  
25 people use. Every doctor makes up his own abbreviation.

1 Q Doctor, it's a generally accepted medical abbreviation,  
2 SX means surgery?

3 A No.

4 Q You've never seen that, Doctor?

5 A I don't think so, no. SX means symptoms.

6 Q I understand it also means symptoms. You're telling  
7 this jury --

8 A I answered the question.

9 MR. GREY: Objection. It's been asked and  
10 answered.

11 THE COURT: Please stop arguing. He answered the  
12 question.

13 Q And the reason I asked, Doctor, is because now the last  
14 note that you were sent by defense counsel in your review of  
15 this case, was it August or is it September of 2007?

16 A The last note? Oh, I'm sorry. The last note that I  
17 have is dated 9/11/07, and it says, RX for PT faxed to somebody.

18 Q Would it surprise you to know that the very next note  
19 is 9/24/07, where there is a recommendation for surgery by  
20 Dr. Tabershaw?

21 You may not have that in your note because counsel  
22 didn't send it to you, but have you seen --

23 MR. GREY: Your Honor.

24 Q -- the medical records?

25 MR. GREY: The comments are getting a little long

1 and toothy. You can just ask the question.

2 THE COURT: Overruled.

3 A Would I be surprised? Nothing surprises me, Counsel.

4 Q It doesn't surprise you?

5 A No.

6 Q That defense attorney in a case like this doesn't send  
7 you a complete and accurate medical records?

8 MR. GREY: Objection. There is no -- there is  
9 nothing about us not sending accurate medical records.

10 MR. KAUFFMAN: Accurate --

11 THE COURT: Please, no more speeches. Please.  
12 Continue.

13 Q Doctor --

14 MR. GREY: Objection.

15 Q When you come in and testify before a jury, giving  
16 expert opinion with a reasonable degree of medical certainty,  
17 can we agree that it's probably not -- not probably, it is best  
18 that you have all the medical records made available to you?

19 A In general, yes.

20 Q Can you think of a single case to this jury that that  
21 wouldn't be best?

22 A I couldn't possibly know.

23 Q Doctor, you mentioned that Mary Lou Knoch, like other  
24 patients who you examine on behalf of either defense attorneys  
25 or companies or whomever, they fill out an intake sheet,

1 correct?

2 A Yes.

3 Q Show the jury the intake sheet?

4 A I don't have it with me.

5 Q Where did it go?

6 A It's maintained by the IME company.

7 Q Well, what purpose do they have for it, isn't that  
8 something that you would normally bring here?

9 MR. GREY: Just something. Objection.

10 A You would have to --

11 THE COURT: You're all talking at the same time.

12 COURT REPORTER: I didn't get an answer.

13 THE COURT: I know. I know. I know.

14 So, the question was, why didn't you bring the  
15 intake sheet?

16 MR. KAUFFMAN: Correct.

17 THE COURT: And your objection is based upon what  
18 evidentiary rule?

19 MR. GREY: Well, his question, if we have a  
20 read-back, said why does Ames keep the intake sheet, and he  
21 doesn't work for Ames, so I object to that portion.

22 THE COURT: Foundation. Foundation.

23 Q Doctor, you conducted the physical, correct?

24 A Yes.

25 Q Did you take the history?

1 A Yes.

2 Q And did you write down Mrs. Knoch's answers or did she  
3 write them down?

4 A She wrote down her answers on the intake sheet.

5 Q Okay. What happened to that intake sheet?

6 A It's -- I use it when I dictate my report and then the  
7 records are maintained by the agency that I work for.

8 Q Okay. And that's Ames, you said?

9 A Correct.

10 Q And Ames was the company that was contracted in this  
11 particular case by the City of New York; is that accurate?

12 A Yes.

13 Q Okay. To your knowledge, Ames uses a service, if you  
14 know, where they use templates, essentially, don't they?

15 A I dictate my notes. I don't know what Ames does.

16 Q Okay. Doctor, I want to talk about -- well, we'll to  
17 your report in a moment. Can we agree that a single limited  
18 examination is a less likely to be reliable than of a series of  
19 examinations conducted by the treating orthopedic surgeon over  
20 an extended period of time with extensive knowledge of the  
21 patient?

22 A No, I don't think that's true at all.

23 Q Doctor, can we agree that prior to coming in to testify  
24 in order to give a complete and accurate opinion, it's probably  
25 best to review all of the medical records; we can agree to that?

1 A In a general sense, yes.

2 Q Okay. And, in specific you said you couldn't cite a  
3 specific case where that wouldn't be the best practice?

4 A Correct.

5 Q Okay. In this case you did review Long Island College  
6 Hospital record, correct?

7 A Yes.

8 Q Okay. Dr. Tabershaw's records were approximately four  
9 months, am I right on that?

10 A Yes.

11 Q Okay. And you also reviewed the MRI report of the left  
12 shoulder, correct?

13 A Yes.

14 Q As an orthopedic surgeon, you ordered -- by the way,  
15 when was the last surgery you performed?

16 A 2001.

17 Q What kind of surgery?

18 A Oh, I don't know. I was actively operating at that  
19 time.

20 Q When was the last shoulder surgery you performed?

21 A I don't know. Probably in 2001.

22 Q Okay. So, well before this accident?

23 A Yes.

24 Q Okay. Do you know who Dr. Laith Jazrawi is, don't you?

25 A I'm sorry?

1 Q Do you know who Dr. Laith Jazrawi is, the shoulder  
2 specialist out of NYU Hospital for Joint Diseases?

3 A I'm sorry?

4 Q Do you know Dr. Laith Jazrawi, shoulder specialist, out  
5 of NYU Hospital for Joint Diseases?

6 A No.

7 Q You have never heard of him?

8 A Never.

9 Q Do you know Dr. James Andrews?

10 A Yes.

11 Q One of the top preeminent shoulder surgeons in sports  
12 medicine, correct, in the country?

13 A Yes. Yes.

14 Q Doctor, you also reviewed physical therapy records,  
15 correct?

16 A Yes.

17 Q And the way you got those is the City of New York sent  
18 them to you, so they had them and they sent them to you,  
19 correct?

20 A Yes.

21 Q And each of these medical records that you reviewed  
22 there were also certain records you are aware that you didn't  
23 review, correct, at the time of your examination?

24 A If I didn't review them I don't know that they exist,  
25 so I don't know how to answer that.

1 Q Okay. Well, Doctor, from September 24, 2007, right up  
2 until the end of 2007, you didn't have at the time of your  
3 examination Dr. Tabershaw's notes, true?

4 A True.

5 Q In fact, you didn't have his 2008 notes either, true?

6 A True.

7 Q Okay. And you also never reviewed -- by the way, when  
8 you would order MRI's in addition to having a radiologist review  
9 the film, you would review it yourself, wouldn't you?

10 A If they're available. Sometimes I commonly rely on the  
11 radiologist's interpretation.

12 Q Well, Doctor, if it's a surgical patient with possible  
13 surgery having to be performed, you would review that for the  
14 safety and welfare of your patient, true?

15 A In general, yes.

16 Q Okay. In other words, you have no problems reviewing a  
17 film, correct?

18 A Correct.

19 Q But in this particular case they never sent you the  
20 film to review?

21 A Correct.

22 Q Did you ever request it?

23 A No.

24 Q Did you ever request for them the updated Dr. Tabershaw  
25 records from September '07, which is the last time --

1 THE COURT: Mr. Kauffman, you're now talking like  
2 you are from Brooklyn too. Slow down.

3 MR. KAUFFMAN: I did live here for a long time.

4 (Laughter.)

5 Q From September of '07 up until the end of 2007, did you  
6 ever request that defense counsel send you those records?

7 A No.

8 Q Why not?

9 A Because I had enough information in the records that I  
10 had to make a rational and accurate judgment.

11 Q Enough information to be aware of Dr. Tabershaw's  
12 diagnoses before you even -- because, Doctor, at that point you  
13 hadn't seen the medical records that pre-existed your  
14 examination for one year and two months; isn't that accurate?

15 A No, wait a minute. Let me answer the first half of  
16 your question. You made a whole fuss about being independent.  
17 I'm an independent examiner. I'm not interested in  
18 Dr. Tabershaw's opinion. I make my opinions based on my own  
19 knowledge and experience and my findings, not on Dr. Tabershaw.

20 Q Don't you think --

21 MR. GREY: Let him finish.

22 Q Don't you think to --

23 MR. KAUFFMAN: Do you have anything else to add?

24 THE WITNESS: No.

25 MR. KAUFFMAN: He was finished.

1 Q Doctor, do you have -- Doctor, don't you think it's  
2 reasonable to see the results of Dr. Tabershaw's repeated  
3 comprehensive orthopedic physical examinations that preceded the  
4 date of your exam for one year and two months; you're telling  
5 the jury that's not important?

6 A Everything is important, but --

7 Q Okay.

8 A But I have --

9 Q Okay. But it's not important enough to review it?

10 A I have enough information to make the judgments that I  
11 made.

12 Q Fair enough, Doctor. Doctor, with regard to x-ray  
13 films, did you ever review the films?

14 A No.

15 MR. GREY: Objection. There is no x-ray films in  
16 evidence.

17 MR. KAUFFMAN: They are noted in Dr. Tabershaw's  
18 medical records.

19 THE COURT: Oh, my gosh. We're just asking a  
20 question.

21 MR. GREY: I'll withdraw, your Honor.

22 A No.

23 Q Did you ever ask counsel for films?

24 A No.

25 Q Did he ever offer to provide them to you?

1 A No.

2 Q Did you even know that they were taken?

3 A Well, I saw them in Dr. Tabershaw's notes.

4 Q In fact, the first time that you even saw  
5 Dr. Tabershaw's September of '07 records, up until and including  
6 2008, 2009, was when Mr. Grey just asked you about them about  
7 15 minutes ago, correct? You have never seen them before?

8 A I'm not sure I understand your question. Which records  
9 didn't I know?

10 Q Dr. Tabershaw, his records from September 2007, up  
11 until the end of 2007, including all of his treatment in 2008?

12 A Correct.

13 Q And all of his treatment in 2009, you've never seen  
14 them before 'till about ten minutes ago, correct?

15 A Correct.

16 Q And, Doctor, did you ever see Dr. Walsh's records?

17 A Doctor?

18 Q Dr. Walsh. Do you know who Dr. Walsh is?

19 A No.

20 Q Do you know who Mrs. Knoch's primary medical doctor is?

21 A No.

22 Q Do you think it's relevant if the primary medical  
23 doctor never rendered treatment for Mrs. Knoch's orthopedic  
24 injury that you would need to see them?

25 MR. GREY: Just object to the form. I don't -- I'm

1 not sure what he is asking.

2 THE COURT: Rephrase.

3 MR. KAUFFMAN: Okay.

4 A I'm not sure I understand your question. Sorry.

5 Q I'd like you to assume that Mrs. Knoch had an internal  
6 medicine doctor by the name of Dr. Walsh, W-a-l-s-h, whose name  
7 appears, if you review the record, on 5/4/07, because that's a  
8 letter that Dr. Tabershaw authored to the primary medical care  
9 doctor who did not render treatment at anytime prior to that for  
10 her shoulder injury, okay.

11 If he didn't render treatment that wouldn't be relevant  
12 to you, so you wouldn't need to review it, correct?

13 A Correct.

14 Q And if you wouldn't need to review it neither would  
15 Dr. Jazrawi, correct?

16 MR. GREY: Objection.

17 THE COURT: I'm sorry. Counsel, please let him  
18 answer the question.

19 A I have no knowledge of what Dr. Jazrawi reviewed or  
20 didn't review or whether it was necessary for him to review it  
21 or not.

22 Q Okay. Doctor, I'd like you to assume -- by the way,  
23 have you ever had -- you're familiar with Worker's Compensation  
24 on the state level, correct?

25 A Correct.

1 Q Lot of paperwork to fill out, physical examination  
2 reports, things have to get approved, correct?

3 A Yes.

4 Q But on a federal level, Doctor, did you ever in this  
5 case ever review any examination report of a physician who  
6 examined Mrs. Knoch for purposes of approving or delaying  
7 treatment?

8 A No.

9 Q The reason you didn't is because federal Worker's  
10 Compensation, in other words, U.S. Department of Labor, doesn't  
11 require that, true?

12 A I have no idea. I don't think federal compensation, I  
13 have very little knowledge about it.

14 Q Okay. Isn't it a fact, though, that no doctor is  
15 required, and no doctor does, examine the patient in those  
16 cases?

17 MR. GREY: Objection.

18 MR. KAUFFMAN: If you --

19 THE COURT: If you know.

20 A I don't know.

21 Q But we can agree that federal or state does have to  
22 approve additional treatment and follow-up from an orthopedic  
23 perspective, true?

24 A No, that's not true. I don't know anything about the  
25 federal Worker's Comp.

1 Q If that's the case I'm going to move on to the next  
2 question.

3 MR. GREY: Federal and state, your Honor.

4 THE COURT: Please.

5 MR. GREY: Let him answer.

6 THE COURT: Are you withdrawing your question?

7 MR. KAUFFMAN: I will withdraw the question.

8 THE COURT: Great. Then you can't object. Next  
9 question.

10 Q Doctor, I'd like to briefly discuss some of the 2007  
11 records that you did review, do you have the records there?

12 THE COURT: Of?

13 MR. KAUFFMAN: I'm referring to Dr. Tabershaw, and  
14 specifically May 4, 2007, under treatment plan, do you see  
15 that, Doctor?

16 A Yes.

17 Q Okay. As outlined in Dr. Tabershaw's note, one of the  
18 things he was concerned about, and you will see it from the  
19 record, is a possible rotator cuff tear, true?

20 A Yes.

21 Q Okay. And that's traumatically induced in this  
22 particular case, and you can glean that from the record, true?

23 A Yes.

24 Q And, because of that an MRI was ordered, true?

25 A Yes.

1 Q Okay. And you'd mentioned earlier that you'd seen no  
2 medical records whatsoever that pre-existed the accident that  
3 ever suggest to you or to this jury that Mrs. Knoch ever had any  
4 problems with her dominant left shoulder before the accident,  
5 true?

6 A Yes.

7 Q Okay. So, Doctor, when you did review the report, and  
8 you also reviewed the May 18, 2007, note, correct? That was one  
9 of the several 2007 records that you did review before your  
10 November '08 exam, true?

11 A Yes.

12 Q Okay. And, Mrs. Knoch, there is a note in the chart  
13 that actually says, that the patient, Mrs. Knoch, asked about  
14 surgery, correct?

15 A I don't remember, but, okay.

16 Q Well, you have the note there?

17 A What date is this supposed to be?

18 Q May 18, 2007, the note says, patient inquired about  
19 surgery. This is one of the notes that you reviewed that  
20 defense counsel did send you?

21 A Correct.

22 Q Okay. And, at that point it was determined, Doctor,  
23 that, well, we're -- according to Dr. Tabershaw, we got to hold  
24 off and see what the MRI shows, correct?

25 A Well --

1 Q Just yes or no, Doctor?

2 A I'm not sure that that's what it says, because the  
3 first -- the line prior to it talks about rotator cuff tear, the  
4 line after it talks about surgery for the fracture.

5 Q Well --

6 A So, I don't know what kind of surgery Mrs. Knoch was  
7 referring to.

8 Q Mrs. Knoch, okay. Doctor, turning to May 24, 2007, the  
9 swelling of her arm and hand and wrist was so severe that her  
10 ring had to be cut off, off of her left finger, correct?

11 A Yes.

12 Q Okay. Doctor, turning to May 29, 2007, Dr. Tabershaw  
13 concerned about a traumatic rotator cuff tear, true? Right at  
14 the bottom of the note.

15 A I don't see the word traumatic, Counsel. You are  
16 editorializing there.

17 Q Okay. Doctor, is there any indication that she ever  
18 had any problems again with her left shoulder before the  
19 accident?

20 MR. GREY: Objection.

21 THE COURT: Asked and answered.

22 Q Doctor, and at this point, by the way, May 29, 2007,  
23 Mrs. Knoch was disabled, true?

24 A Yes.

25 Q You have no reason to disagree with that?

1 A No.

2 Q Turning, Doctor, to the MRI report now. Doctor, you  
3 never reviewed the film, did you?

4 A No.

5 Q Tell the jury what effusion is?

6 A What?

7 Q Effusion. E-f-f-u-s-i-o-n?

8 A Effusion is swelling within the joint.

9 Q And that is consistent with trauma; is it not?

10 A It's consistent with a lot of things.

11 Q I didn't ask you that, Doctor. It's consistent with  
12 trauma, true?

13 A Yes.

14 Q Are you aware, one way or another, whether what MRI  
15 film showed effusion? I understand you never reviewed the film,  
16 but what about the report that you did review? Take a look at  
17 page two, Doctor.

18 A Page one says, no effusion is present. I don't have  
19 page two, so I don't know.

20 Q Doctor, are you aware of whether the radiologist found  
21 what's known as a labral tear? L-a-b-r-a-l?

22 A Yes.

23 Q So, why didn't you write that in your records?

24 A Because it's inconsequential.

25 Q Okay. Doctor, the tear that was found was nearly

1 two-thirds thickness, meaning two-thirds through the rotator  
2 cuff, correct?

3 A Yes.

4 Q And, Doctor, I now want you to turn to the June 7th  
5 note, do you have that? And I'd like you to skip -- move down a  
6 little bit, June 14th, do you have that? This is one of the  
7 records that counsel also sent you?

8 A Yes.

9 Q Okay. Pain medication and a anti-inflammatory, so at  
10 this point it's both Vicodin and is it Naprosyn?

11 A Yes.

12 Q Tell the jury what the person of both of those  
13 medications are in this setting?

14 A Vicodin is a pain medicine and Naprosyn is an  
15 anti-inflammatory medicine.

16 Q And, Doctor, turning to June 14, 2007, Mrs. Knoch still  
17 -- I'm sorry, June 21st, still unable to drive, true?

18 A Yes.

19 Q And, Doctor, you'd agree even when a broken bone heals  
20 it can have residual issues, true?

21 A In general.

22 Q Okay, tell the jury the possible residual issues of a  
23 broken bone even when it heals?

24 THE COURT: I'm sorry. Would you try to stick to  
25 the bone at issue. You don't really want to know about toes

1       -- I mean, really.

2               MR. KAUFFMAN:  No, no, no.

3       Q       The residual issues in the broken humerus, in other  
4 words, the person can still get pain especially in damp or cold  
5 or wet weather, true?

6       A       They can get weather related discomfort, yes.

7       Q       And, Doctor, turning to the August 2000 -- August 9th,  
8 2007 record, do you have that?

9       A       Yes.

10      Q       Adhesive capsulitis, true?

11      A       Yes.

12      Q       Okay.  And the last note that you have was September 11  
13 of 2007, true?

14      A       Yes.

15      Q       Okay.  The very next note, September 24, 2007, again,  
16 diagnosed with still adhesive capsulitis, right?

17      A       I don't have the note.

18      Q       And, you have the medical records --

19      A       Oh, I'm sorry.  I'm sorry.

20      Q       You do have them now?

21      A       I'm sorry.

22      Q       Have you seen any of these records up until today from  
23 September 24, 2007, up until the end of Dr. Tabershaw's formal  
24 treatment?

25      A       No.  I'm sorry.  9/24/07?

1 Q September 24, 2007.

2 A And what's your question?

3 Q My question is, at this point what Dr. Tabershaw now  
4 request authorization for surgery, correct?

5 A Yes.

6 Q Okay. And, Doctor, and this was a conversation that's  
7 had with the patient, it's documented in the chart, correct.

8 A Yes.

9 Q And, this doctor is requesting authorization to perform  
10 the surgery, correct, not authorization from Mrs. Knoch, but  
11 authorization from folks who are going to pay for it, true?

12 A Correct.

13 Q Okay. And, now, take a look at the very last note that  
14 appears on that same page, 10/13. It says, SX denied. That  
15 means surgery is denied?

16 A What notices now?

17 MR. KAUFFMAN: May I approach?

18 THE COURT: Tell him the date.

19 MR. KAUFFMAN: Sure. 10/13.

20 THE COURT: Of '09?

21 MR. KAUFFMAN: No, '07.

22 THE COURT: '07.

23 MR. KAUFFMAN: May I approach to speed it up  
24 perhaps?

25 A I have a note for --

1 THE COURT: The pages are numbered. I'm not sure  
2 why you can't refer to the page number.

3 A I have a note for 9/24/07 and then 11/19/07.

4 MR. KAUFFMAN: May I approach, your Honor?

5 THE COURT: Yes.

6 MR. KAUFFMAN: Thank you.

7 Q Well, Doctor, I'd like you to take a look at the  
8 11/19/07 note. It specifically says that authorization for  
9 surgery was denied, correct?

10 A Yes.

11 Q Okay. And you had never seen that note prior to today?  
12 In fact, you didn't even know Dr. Tabershaw had recommended  
13 surgery one year and two months before you saw Mary Lou Knoch in  
14 October of 2008, correct?

15 A Correct.

16 Q Wouldn't you have liked to know that?

17 A It's not going to change my opinion, no.

18 Q No, okay. And, Doctor, turning to November 19th of  
19 2007, do you see that?

20 A Yes.

21 Q Okay. And, I'd now like you to take a look at the very  
22 next note, which is February 12th of 2008?

23 A Okay.

24 Q And, once again, read the jury Dr. Tabershaw's  
25 impression, beginning with "persistent"?

1 A Persistent adhesive capsulitis --

2 Q And, once again, Doctor, surgery is requested?

3 Authorization of that surgery is requested, correct?

4 A It says it right there in the note.

5 MR. GREY: Just give him a minute.

6 A Correct. Correct.

7 Q Okay. And, by the way, does that note comment on

8 whether Mrs. Knoch said, oh, hell no, I'm not having the

9 surgery. I don't want it.

10 MR. GREY: Objection. Argumentative.

11 THE COURT: Rephrase.

12 Q What does the note say about Mrs. Knoch's desire or  
13 lack thereof for that surgery that was recommended yet again by  
14 Dr. Tabershaw? Read the jury that note.

15 A She wishes to try the arthroscopic examination with  
16 lysis of adhesions.

17 Q Continue.

18 A Please authorize arthroscopic lysis of adhesions with  
19 MUA.

20 Q MUA, manipulation under anesthesia, correct?

21 A Correct.

22 Q Okay. And, you haven't seen any -- well, I won't ask  
23 -- you didn't bring me the record, but I'll turn to the next  
24 one, March 14th, 2008, and I'd like you to assume that still  
25 there has been no approval from the folks who are going to pay

1 -- supposed to pay for the surgery; so I'd like you to now read  
2 Dr. Tabershaw's note on March 14, 2008, beginning with  
3 continues. Well, I'll read it, Doctor.

4 Continues to have discomfort and complaints of  
5 tightness.

6 A Continues to have discomfort and complaints of  
7 tightness.

8 Q Please read under impression?

9 A Persistent adhesive capsulitis --

10 COURT REPORTER: I'm sorry.

11 A Impression: Persistent adhesive capsulitis with  
12 continuing tightness.

13 Q Please read the next.

14 A Please authorize arthroscopic lysis of adhesions and  
15 manipulation under anesthesia ASAP, as soon as possible, as well  
16 as post-operative aggressive physical therapy, three to four  
17 times a week for six to eight weeks.

18 Q So, for the -- after September of '07, after that  
19 initial surgical recommendation, we just got done reviewing  
20 September of '07, surgery was recommended, February 2008 and  
21 March of 2008, surgery recommended on three prior occasions,  
22 well prior to your October 2008 one time visit, correct?

23 A Correct.

24 Q Okay. Let's turn to the next one, Doctor. January of  
25 '09, and I'd like you to assume that there is still no approval

1 for the surgery, once again, it says --

2 MR. GREY: I'm just going to object to that. We  
3 still don't have the records in evidence, your Honor. He's  
4 asking him to assume facts that are not in evidence.

5 Q Doctor, in reviewing Dr. Tabershaw's notes, either the  
6 one counsel sent you, whatever time or anything that you have in  
7 front of you, do you see any proof of any approval for that  
8 surgery?

9 MR. GREY: Again, he can't have --

10 THE COURT: Overruled.

11 MR. GREY: -- he doesn't have the records.

12 THE COURT: Overruled.

13 A No.

14 Q Okay. January of '09, Doctor, again still adhesive  
15 capsulitis, you would agree with that, correct? And this is  
16 three months after -- I'm sorry, two months, after your November  
17 2008 examination. I may have referred to it mistakenly as an  
18 October '08 exam, but your exam was November of 2008; correct?

19 A I don't know what the question is.

20 Q Okay. The question is according to the January '09  
21 note, Mrs. Knoch's adhesive capsulitis that was previously  
22 documented within Dr. Tabershaw's note throughout 2008, she  
23 still has it in January of '09?

24 A Yes.

25 Q Okay.

1       A     Well, it doesn't say that. It said she had a long slow  
2 healing period and developed adhesive capsulitis.

3       Q     Don't you have any reason to believe it just suddenly  
4 disappeared, Doctor?

5       A     All I can tell you is that the record doesn't say that  
6 she had it at that time.

7       Q     Well, Doctor, in January of '09, I'd want you to read,  
8 it's probably five or six lines down, beginning with patient  
9 comes in now.

10      A     Patient comes in now and states that she wants to  
11 consider that.

12      Q     And by consider that, if you read the sentence before,  
13 you don't have to read it out loud, but the doctor is  
14 specifically referring to that surgical procedure, true?

15      A     No, he's actually changing the procedure.

16      Q     Okay. But it's a surgical procedure?

17      A     Yes.

18      Q     Okay, tell the jury what that surgical procedure was  
19 that Dr. Tabershaw notes in his record that Mary Lou Knoch wants  
20 to consider?

21      A     Lysis of adhesions, and now he wants to do an operation  
22 for impingement and bursitis, which are unrelated issues.

23      Q     Well, Doctor, are you aware -- why do you say they are  
24 unrelated, Doctor?

25      A     Because they had nothing to do with this.

1 Q Doctor, are you aware that -- again, you didn't review  
2 the film, did you?

3 A No.

4 Q Would it surprise you to know that Dr. Laith Jazrawi  
5 who came into this courtroom to testify yesterday did review the  
6 film for the jury?

7 A Counsel, nothing surprises me. The MRI doesn't show  
8 any evidence of impingement.

9 Q And I apologize, it was actually two days ago he came  
10 in.

11 Doctor, with regard to impingement, January of '09  
12 that's exactly what Dr. Tabershaw says in his note. It says,  
13 Mary Lou Knoch has impingement. Look under impression, read it  
14 to the jury.

15 MR. GREY: He is asking a question or is he telling  
16 him to do something? He is asking him to do multiple  
17 things.

18 MR. KAUFFMAN: Let me slow it down. I'll break it  
19 down.

20 Q Do you have the January 2009 note, yes or no?

21 A Yes.

22 Q Good. Turn to impression, do you have it?

23 A Yes.

24 Q Doctor, Dr. Tabershaw documents that Mrs. Knoch has  
25 impingement, true? It's right there in the record?

1       A     Well, he says it, but he doesn't document it. In other  
2 words, he does a physical examination, but doesn't say anything  
3 about impingement in his examination. He simply makes that his  
4 impression at the end.

5       Q     Did you examine Mary Lou Knoch in January of '09?

6       A     No.

7       Q     So, you can't say what she did or didn't have, correct?

8       A     I can only say what he did in his exam.

9       Q     Would it be fair to, that we can rely on his  
10 comprehensive orthopedic examination that only he was there and  
11 document it?

12      A     It wasn't comprehensive that day --

13      Q     Were you there?

14      A     Sorry?

15      Q     Were you there?

16      A     He didn't document it. If he didn't --

17      Q     I didn't ask you that.

18      A     -- if he didn't document it it didn't happen. That's  
19 the rule of medicine if you don't write it down it didn't  
20 happen. He didn't write down anything about impingement in his  
21 examination.

22      Q     Okay. But somehow he just magically came up with the  
23 word impingement even though there was no basis for it?

24      A     Don't ask me to look inside his head.

25      Q     What are the signs of impingement, Doctor?

1 A A positive Hawkins sign --

2 Q Slow down. I'm going to ask you to slow down for a  
3 minute. Positive Hawkins. H-a-w-k-i-n-s sign.

4 A Right.

5 Q And that's an examination with range of motion, and the  
6 doctor will feel exactly where the impingement is, correct?

7 A No, not correct.

8 Q Okay. Explain.

9 A It's an examination we can manipulate the claimant's  
10 arm and at a certain point they complain of pain. It's not what  
11 the doctor feels. It's what the claimant complains of.

12 Q And you also mentioned Neers sign, N-e-e-r-s?

13 A Yes. It's a variation on the same test. There are  
14 three basic tests for impingement.

15 Q Okay. And the other?

16 A It's called an empty can test. You hold your arm out  
17 and you turn it like you are emptying a beer can, and they're  
18 supposed to get pain in their shoulder, if they have  
19 impingement. He didn't note any of those in his exam.

20 Q Do you see anything to indicate Neers or Hawkins or any  
21 of the other impingement sign testings were negative? You never  
22 even reviewed these records, Doctor.

23 MR. GREY: Objection. Let him answer. He said he  
24 didn't note it. He said if it's not in the record --

25 THE COURT: Please stop making a speech.

1 MR. GREY: It's been asked and answered.

2 THE COURT: Stop making a speech.

3 THE WITNESS: I'm sorry. Could you repeat the  
4 question?

5 MR. KAUFFMAN: Sure. May I have the question read  
6 back.

7 (Requested portion read.)

8 MR. KAUFFMAN: Thank you.

9 A There are no references to those tests in his  
10 examination.

11 Q Doctor, you stated, if I heard you correctly, Mr. Grey,  
12 was asking you questions that when you examined Mary Lou Knoch  
13 she did not have impingement, did I hear that correctly?

14 A Yes.

15 Q Okay. Show me where in your medical records you used  
16 the word impingement. Your medical report that's sworn under  
17 oath in November of 2008, show me the word impingement?

18 A It's not there, but I said --

19 Q You just said to this jury --

20 A Let me finish my answer.

21 Q Let me ask you a different question.

22 MR. GREY: Let him finish.

23 THE COURT: Please stop. Let the witness finish  
24 his answer.

25 Q Please, Doctor.

1       A     I said shoulder abduction test, which is another test  
2 for impingement was negative.

3       Q     Doctor, where is the Neer test that you performed  
4 that's documented in your note?

5       A     It's collectively under that line where it says  
6 shoulder abduction test.

7       Q     Do you ever say Neers?

8       A     No.

9       Q     Do you ever say Hawkins?

10      A     No.

11      Q     Do you ever say the other name of the test that I'm now  
12 forgetting?

13      A     Empty can.

14      Q     You don't have -- what happened to if it's not  
15 documented it's not done?

16      A     It's there.

17      Q     So, Dr. Tabershaw --

18            MR. GREY: Let him finish.

19            THE COURT: Oh, my God.

20      A     It's included in my line that says shoulder abduction  
21 test negative.

22      Q     Okay. So, abduction can test for impingement, agreed?

23      A     Yes.

24      Q     Okay. Now, turn to Tabershaw's notes, Doctor.  
25 Dr. Tabershaw tested for abduction?

1 MR. GREY: He said turn to the note.

2 THE COURT: Excuse me?

3 MR. GREY: He said turn to the note. I don't know  
4 which note he is referring to.

5 Q January 9th of 2009, Dr. Tabershaw did the very same  
6 test --

7 THE COURT: Let him find it. Please. Slow down.

8 Q January 9, 2009.

9 A No, he does a range of motion test and abduction but  
10 that's not an abduction test.

11 Q So, testing for abduction is not an abduction test?

12 A Correct.

13 Q Okay. Doctor, I'd like you now -- by the way, Doctor,  
14 when is the last time you testified?

15 A A month ago.

16 Q When is the next time you are going to testify?

17 A I don't know.

18 Q Okay. Could it be next week? Could it be this week?

19 A I don't know.

20 Q Are you -- is it possible you might be testifying  
21 tomorrow?

22 A I doubt it.

23 Q You doubt it?

24 A Yeah.

25 Q But it's possible, isn't it?

1       A     No, I'm going to visit my granddaughter tomorrow,  
2 actually.

3       Q     What about next week, is there possible --

4       A     I have no knowledge -- I have no knowledge of any other  
5 trials coming up.

6       Q     When did you find out you were going to testify in this  
7 case?

8       A     I don't know. Three weeks ago, four weeks ago,  
9 something like that.

10      Q     When did you find out it would be today, though?

11      A     Last week.

12      Q     And, Doctor, the examination that you performed, what  
13 office did you perform it at?

14      A     My Brooklyn office.

15      Q     And, how do you know it was in the Brooklyn office?

16      A     Because it says so.

17      Q     Okay. And when you say the Brooklyn office, there are  
18 also other offices that you perform these defense medical  
19 examinations at, correct?

20      A     Yes.

21      Q     Okay, where -- tell the jury the other offices. It  
22 doesn't have to be the address, but the towns?

23      A     One in Bellmore, one in Brooklyn, one in the Bronx, one  
24 if Patchogue, and one in Flushing.

25      Q     Okay. Are these your personal offices?

1 A They are when I'm there.

2 Q No, I didn't ask you that. You don't pay the rent on  
3 them?

4 A I don't pay the rent on that.

5 Q The people who pay the rent is, for example, is Ames or  
6 whomever is hiring you, correct?

7 A Correct.

8 Q And, Doctor, at the time you physically exam -- I'll  
9 withdraw that.

10 One of the purposes of your examination, Doctor, as you  
11 understood it, and you'll correct me if I'm wrong, is to assess  
12 -- is to find out what Mrs. Knoch's complaints were, correct?

13 A Yes.

14 Q And what her subjective problems were, whether it's  
15 pain or certain limitations?

16 A Yes.

17 Q Okay. And you were going to issue a written report in  
18 accordance with your findings, correct?

19 A Yes.

20 Q And one of the things that you were going to put down,  
21 and asked to do, is to determine and state whether these  
22 injuries and disability were related or unrelated to the  
23 accident, correct?

24 A It depends. Sometimes they want them, sometimes they  
25 don't. I don't remember in this case.

1 Q Well, Doctor, in a case where you're coming in to  
2 testify as to whether things are related to the accident or not  
3 related to the accident, whether somebody is disabled or not  
4 disabled, doesn't it make sense that you would document that?

5 A The law doesn't always make sense to me, but typically  
6 when I'm doing an examination, the party that asked me to do the  
7 examination ask me to respond to certain issues; sometimes  
8 that's included, sometimes that's not included.

9 Q Fair enough. The issues to which you are asked to  
10 respond, the defense lawyer send you a letter, correct?

11 A Yes.

12 Q Okay. Where's the letter that New York City sent you  
13 in this case?

14 A I don't know.

15 Q Well, who has it?

16 A I just said I don't know.

17 Q Was the letter destroyed?

18 A I don't know.

19 Q Do you have it back in your office?

20 A I don't maintain records, no.

21 Q Do you recall what the letter said?

22 A No.

23 Q And, Doctor, in addition to examining -- this is not  
24 the first time you testify for the City, correct?

25 A I rarely testify for the City.

1 Q I didn't ask you that.

2 A I can only recall one prior case, but I don't know  
3 precisely, you know, been in practice a long time.

4 Q When you say in practice, you talking about private  
5 practice or coming into court to testify?

6 A Both.

7 Q Okay. Doctor, you weren't in the business of helping  
8 Mary Lou Knoch get better from her injuries, were you?

9 A I was not a treating doctor, no.

10 Q And, doctor, are you coming in on cases, for example,  
11 oftentimes motor vehicle accidents, correct?

12 A Yes.

13 Q Do you recognize me?

14 A No.

15 Q Would it surprise you to know that you testified  
16 against one of my clients, John Grahali(ph), in Queens? You  
17 and I have met before?

18 A I told you nothing surprises me, Counsel. I don't  
19 recognize you and I apologize.

20 Q No, no, that's quite all right. Do you remember in a  
21 case by the name of Ransom, R-a-n-s-o-m, where you also examined  
22 two of my clients in Brooklyn, brothers in a motor vehicle  
23 accident?

24 A No.

25 Q You don't remember that either?

1 A No.

2 Q Okay. Doctor, for this particular exam you mentioned  
3 that you charged hundred dollars; is that with a report?

4 A Yes.

5 Q And when you say, you charged a hundred; is that you or  
6 is that the company that is hired by the City?

7 A That's what I was paid, I don't know.

8 Q Okay. How much was Ames paid?

9 A I have no idea.

10 Q And how many people -- what time did you see Mary Lou  
11 Knoch?

12 A I don't know.

13 Q Okay. Do you know the day of the week that you saw  
14 her?

15 A Day of the week?

16 Q The day of the week.

17 A No.

18 Q She was not the only person you were examining that day  
19 on behalf of defense attorneys and the people who are hired to  
20 defend the lawsuits, correct?

21 A I don't remember.

22 Q How many people were in that office?

23 A I don't know.

24 Q More than 20?

25 A I don't know. I doubt it.

1 Q When you're asked to do defense medical examinations,  
2 when you go into an office, it's not just that one patient who  
3 you see, correct? And when I say, patient, the one person who  
4 is injured and happened to have brought the lawsuit, correct?

5 A Correct.

6 MR. GREY: He testified he does the defense and  
7 plaintiffs and he is asking about a specific subset or he's  
8 asking about every time? I'm getting a little confused.

9 THE COURT: I don't know. Rephrase.

10 MR. KAUFFMAN: Sure.

11 Q Doctor, when is the last time you examined a plaintiff?

12 A A plaintiff? A month ago.

13 Q When is the last time you testified in court on behalf  
14 of the plaintiff?

15 A A year ago.

16 Q A year ago. When is the last time you testified on  
17 behalf of defendant?

18 A A month ago.

19 Q You're sure it wasn't more recently, Doctor?

20 A I don't know. Roughly a month.

21 Q You don't know?

22 A No.

23 Q Doctor, with regard to the number of exams that you  
24 performed for defendants, defendants, when you're in either one  
25 of your offices, the offices that are rented by someone else but

1 you go there to do the defense medical exams, in Bellmore, in  
2 Brooklyn, in the Bronx, in Patchogue, in Flushing, any others?

3 A No.

4 Q Okay. Typically, is it fair to say that you may see  
5 somewhere between five and 15 individuals in a day?

6 A I usually --

7 Q Sometimes more?

8 A Oh, no. I usually see six to eight patients in a day.

9 Q Six to eight?

10 A Claimants, not patients.

11 Q Exactly. They're not patients. They are not trying  
12 to --

13 A No.

14 Q Okay. Fine. And did you say six to eight?

15 A Roughly.

16 Q Six to eight, how many times a week do you do that?

17 A Three times a week.

18 Q Okay. So, if it's six to eight, let's say three times  
19 a week, we're dealing with about 18 to 24 per week? My math is  
20 okay?

21 A Yep.

22 Q Okay. So, that's somewhere in the area of 18 to 24  
23 hundred dollars a week? The math is okay?

24 A Yes.

25 Q So, that's somewhere in the area of 180 thousand to a

1 quarter of a million dollars a year just physically examining,  
2 and issue a report for people who are injured in lawsuits on  
3 behalf of the defense attorneys, true?

4 A True.

5 Q How many times do you come into court, an  
6 approximation?

7 A Six or eight times a year.

8 Q You're sure it's only six to eight times, Doctor,  
9 because you were just here, you said what you remember, just a  
10 month ago. You sure it wasn't more recent?

11 A My testimony is irregular. I can come in at the  
12 pleasure of some attorney. I don't decide how often I'm going  
13 to testify.

14 Q I didn't ask you that, Doctor. My question is, isn't  
15 it a fact that you're in court in upwards of 20 to 30 times a  
16 year.

17 A It should only be, Counsel. No, I'm not.

18 Q Why should it only be?

19 A Because I'd make a lot more money.

20 Q Quarter million is not enough just for how many people?

21 A Well, your line of reasoning is, you know, is getting  
22 kind of silly.

23 (Laughter.)

24 Q How much do you estimate that you make -- if you  
25 testify and you get paid \$5,000 for today?

1 A Yes.

2 Q And how did you get here today?

3 A I drove, actually.

4 Q From where?

5 A From my home.

6 Q I didn't ask that -- from where?

7 A Long Island.

8 Q Okay. And prior to this were you in Connecticut  
9 recently?

10 A No.

11 Q Approximately how many times a year, on average, do you  
12 testify?

13 A On average six or eight times a year.

14 Q Okay. Were there times as recently as two years ago  
15 that was closer to 15 or 20?

16 A No, I don't think I even testified that much.

17 Q You're sure?

18 A I don't believe so.

19 Q Doctor, I'd like to turn to your examination dated  
20 November -- it was November 18th, correct?

21 A Yes.

22 Q Okay. And you issued a report in conjunction with your  
23 findings?

24 A Yes.

25 Q Okay. And then taking a look at your e-mail address

1 that's listed, has sailor, s-a-i-l-o-r, are you a boater?

2 A Yes.

3 Q Can we agree that has nothing to do with this case?

4 A Correct.

5 Q Doctor, with regard to -- by the way, you would agree,  
6 that a disability, an orthopedic disability, can get worse over  
7 time, true?

8 A It's too general a question for me to answer.

9 Q Well, Doctor, is it possible that an orthopedic  
10 disability can get worse over time?

11 A It's possible, yeah.

12 Q And, Doctor, I'd like to talk about your report. Did  
13 you review it before -- by the way, did you sign the report?

14 A Yes.

15 Q Is it under oath?

16 A Yes.

17 Q Sworn to be true under penalties of perjury?

18 A There is one error in it, but it's basically correct.

19 Q What is the error?

20 A It says right at the bottom of page one, it should say  
21 left.

22 Q And, in other words, you -- by the way, you say you  
23 dictated this?

24 A Yes.

25 Q And you reviewed it?

1 A Yes.

2 Q And you signed off on it?

3 A Yes.

4 Q And it says, and what you signed off on is something  
5 saying that Mary Lou Knoch had fracture of the right humerus,  
6 correct?

7 A Correct.

8 Q Would it be fair to say I shouldn't hold that against  
9 you?

10 MR. GREY: Objection.

11 THE COURT: Overruled.

12 MR. GREY: He can't say what the attorney should or  
13 should not do, your Honor. It's not his role. He's  
14 testified about his examination.

15 MR. KAUFFMAN: I'll satisfy counsel's objection.

16 Q Would it be fair to say that was an honest mistake?

17 A It's an error. Honest error. However you want to  
18 phrase it. It's a typographical error.

19 Q It's a dishonest mistake?

20 A I'd call it whatever you call it. It's an error.

21 Q There was another error also under CL number -- a wrong  
22 number was listed there, also mistake, true?

23 A I don't know what you are referring to.

24 Q Okay. At the top of the page, Doctor. Do you see  
25 where it says claimant, Mary Lou Knoch?

1 A Yeah.

2 Q Right under there, CL and then it's crossed out and  
3 then the new number is written? Okay. Another mistake, right?

4 A It's not crossed out on my copy. I don't know what you  
5 see.

6 MR. KAUFFMAN: May I approach, your Honor?

7 THE COURT: Sure.

8 Q It's not crossed out on your copy?

9 A Sorry, no.

10 Q Okay. Fair enough. Let me move on to another mistake,  
11 Doctor.

12 MR. GREY: I'm just going to object to the  
13 characterization. He said another mistake, that wasn't a  
14 mistake. It wasn't crossed out on his copy.

15 MR. KAUFFMAN: I'll withdraw it. Let's just move  
16 on.

17 Q Doctor, you had mentioned that Mary Lou Knoch was in  
18 chiropractic treatment. Chiropractic neck and back, correct?  
19 That's what a chiropractor deals with?

20 THE COURT: Let him answer.

21 MR. GREY: Let him answer.

22 A Yes.

23 Q And back?

24 A That's what the law allows him to treat.

25 Q Okay. And, Doctor, you're aware that there's

1 absolutely no claim for neck or back injury in this case,  
2 correct?

3 A The heading on the paragraph says, historical accounts  
4 of events as relayed by the claimant. That means that's what  
5 she told me, Counselor. That's what I dictated.

6 Q Doctor, have you seen any medical records to indicate  
7 that Mrs. Knoch --

8 A I didn't say --

9 Q -- ever had any neck or back complaint?

10 A No.

11 Q Have you ever seen any medical record before your  
12 November 2008 exam that says she ever had any chiropractic  
13 treatment?

14 A I'm simply telling that you that that's what she  
15 reported to me on the date of the examination.

16 Q Did you ever --

17 A I don't know whether it's correct or not. I didn't say  
18 that's accurate.

19 Q Did you ever review any chiropractic records?

20 A I don't review chiropractic records.

21 Q In fact, none exists in this case because there was no  
22 chiropractic treatment, right?

23 A I don't know.

24 Q Doctor, if there was an injury, for example, because  
25 you document that Mary Lou Knoch complained of neck pain in

1 addition to left shoulder pain, correct?

2 A Yes.

3 Q You wrote down?

4 A Yes.

5 Q Then where's your examination of her neck?

6 A It's not in your Bill of Particulars, Counselor, and I  
7 only examined the parts that are listed in your Bill of  
8 Particulars.

9 Q Okay. Doctor, you understand the Bill of Particulars  
10 that's a legal document, alleging injuries to certain body  
11 parts?

12 A Correct.

13 Q And, the only documented complaints in the Bill of  
14 Particulars and the injuries alleged in this case were to her  
15 left shoulder and left arm, correct?

16 A Correct.

17 Q Doctor, under history, one of the purposes of taking  
18 history is to find out if Mrs. Knoch, or anyone for that matter,  
19 who you are examining on behalf of defense counsel ever had any  
20 prior similar medical condition, correct?

21 A Yes.

22 Q Tell the jury what you found out about that? That she  
23 didn't?

24 A She did not, yes.

25 Q Okay. And under -- bear with me for one moment,

1 Doctor; when you examined the left shoulder -- there is  
2 something known as a limitation of motion, in other words, and I  
3 think you had indicated, and correct me if I'm wrong. Forward  
4 elevation is this?

5 A Yes.

6 Q Am I doing 180 right now?

7 A Almost.

8 Q Okay, like that?

9 A Yes.

10 Q Okay, 150, something like that?

11 A Yes.

12 Q Okay, there're certain tasks that I'm able -- that a  
13 person is able to do that require, for example, 170, agreed?

14 A Yes.

15 Q Okay, for certain tasks that require, for example, 150,  
16 160, whatever the number might be?

17 A Approximately, yes.

18 Q Okay. And, if I have a certain percentage of  
19 limitation in my range of motion, that doesn't necessarily  
20 correspond to my total disability with regard to my shoulder; do  
21 you understand my question?

22 A No.

23 Q Okay. Let me rephrase it. Let's say I have a  
24 25 percent restriction in my forward elevation, and let's say I  
25 have a 25, 33 percent restriction in some other range of motion,

1 whether abduction, internal rotation, external rotation, my  
2 limitation of use of my extremity may very well be greater than  
3 my actual percentage limitation of range of motion, true?

4 A No.

5 Q No?

6 A No. It would be less not more.

7 Q Okay. Well, Doctor, with regard to forward elevation,  
8 you documented in the record and you compared it, by the way,  
9 her right shoulder to her left shoulder, correct?

10 A Yes.

11 Q Okay, and, her right shoulder at the time you examined  
12 it completely within normal limits, true?

13 A Yes.

14 Q Okay. And, we know that she never injured her right  
15 shoulder or arm, correct?

16 A Yes.

17 Q So, we know that whatever limitation she has are  
18 causally related to this accident, no doubt about that, correct?

19 A Correct.

20 Q Okay. And, Doctor, when you examined forward  
21 elevation, again, it was 135 degrees, whereas normal is 180  
22 degrees, correct?

23 A Yes.

24 Q Okay. And that's a 25 percent restriction, correct?

25 A Yes.

1 Q Okay. And that would permanently interfere, for  
2 example, with reaching?

3 A Yes.

4 Q Okay. And many other tasks that require overhead  
5 elevation, true?

6 A Well, it's not really reaching. It's elevation, but  
7 okay.

8 Q Well, reaching is elevation?

9 A No, reaching is forward. You reach up.

10 Q Okay. I don't want to quibble with you.

11 A Okay.

12 Q Okay. Abduction. Abduction, right shoulder perfectly  
13 normal, correct?

14 A Yes.

15 Q The left shoulder though with abduction, that was a one  
16 third restriction, wasn't it?

17 A Yes.

18 Q Okay. Internal rotation, that was about 12 degrees,  
19 correct?

20 A Twelve percent.

21 Q Twelve percent, I'm sorry?

22 A Yes.

23 Q External rotation is somewhere in the area of  
24 22 percent, correct?

25 A Okay.

1 Q Not okay, this is your finding?

2 A You're doing the math. I'm accepting your math. I'm  
3 not quibbling with you.

4 Q I'm sorry?

5 A I said I'm accepting your math. I'm not quibbling with  
6 you.

7 Q Fair enough. And, doctor, you wrote in your report  
8 that her left arm fracture had resolved, true?

9 A Yes.

10 Q Okay. And, but, Doctor, with regard to the greater  
11 tuberosity fracture, there is no doubt that she had that,  
12 correct?

13 A Correct.

14 Q Okay. And, with regard to the rotator cuff tear,  
15 Doctor, you never reviewed the film you mentioned earlier, so  
16 would it be fair to say that you can't opine on what the film  
17 showed?

18 A I can only rely on the radiologist's interpretation,  
19 yes.

20 Q Okay. And, perhaps other people who reviewed that film  
21 for this jury and demonstrated traumatic findings, correct?

22 A No. I don't know what other people did. I can only --  
23 I reviewed the radiologist's report. I can't opine about  
24 anybody else's opinion.

25 Q Okay. Did you ever review Dr. Jazrawi's testimony

1 about what that film showed?

2 A No.

3 Q Did counsel ever tell you what Dr. Jazrawi testified  
4 to?

5 A No.

6 Q Did you ever -- do you even know that someone else  
7 testified about that film earlier in this trial?

8 A I heard that he testified, but I don't know any of the  
9 details.

10 Q Okay. And, Doctor, according to your report -- now,  
11 your report you didn't document adhesive capsulitis, did you?

12 A I'm sorry?

13 Q In your report?

14 A Adhesive capsulitis?

15 Q Correct.

16 A Correct.

17 Q Doctor, in Dr. Tabershaw's note, November of 2007, he  
18 documents adhesive capsulitis. In February 2008, documents  
19 adhesive capsulitis. September -- I'm sorry, March 2008,  
20 documents adhesive capsulitis.

21 Is there something about your office that when Mary Lou  
22 Knoch walks into your office in November of 2008, all that  
23 adhesive capsulitis just magically disappears --

24 MR. GREY: Objection. Argumentative.

25 THE COURT: Rephrase.

1 Q -- but then comes back -- okay.

2 Doctor, do you have an opinion how -- if it's possible,  
3 or how it's possible, that Dr. Tabershaw documents consistently  
4 throughout 2007 and 2008, that Mary Lou Knoch has adhesive  
5 capsulitis of her dominant left shoulder and arm throughout  
6 those -- that time period, 2007, 2008, you don't find it, but  
7 Dr. Tabershaw does again just two months after your exam. Did  
8 it disappear when you were there?

9 A Huh --

10 Q Doctor?

11 A It's my opinion that -- that Dr. Tabershaw simply  
12 misused the term. I'm not disagreeing with his findings, but  
13 adhesive capsulitis is a different entity than he's referring  
14 to. He's simply using it as a description of somebody who has  
15 restricted motion in their arm, and that's not what true  
16 adhesive capsulitis is.

17 Q Did you ever speak with Dr. Tabershaw?

18 A No.

19 Q You didn't even review most of his records before  
20 coming here today and you are saying he's wrong; am I to  
21 understand that?

22 A I'm simply saying that on a semantic level he did not  
23 use the words -- the term appropriately. She had -- there is no  
24 question she had restricted range of motion. I'm not disputing  
25 that. Adhesive capsulitis is an entity that comes on

1 spontaneously and without an injury. It simply develops. It's  
2 common in people who have diabetes, for example.

3 Q Okay. Let me stop you there. Did she have diabetes?

4 A No.

5 Q Okay. What's the next thing -- what is the next thing,  
6 predisposing factor for person, alcoholism, true?

7 A Sometimes.

8 Q Okay. Was Mary Lou Knoch an alcoholic?

9 A It's most commonly idiopathic.

10 Q Idiopathic meaning, explain that to the jury.

11 A Meaning that it comes on for no known reason. People  
12 simply develop it. There is no explanation for it.

13 Q And it can also be traumatically induced, true?

14 A That's not the term. That's my objection to it.  
15 That's why I didn't use it.

16 Q Doctor?

17 A My report says that she has restricted motion. I'm not  
18 debating that point. I didn't like the term.

19 Q So, let me ask this. Let me ask you this. I'd like  
20 you to assume that throughout Dr. Tabershaw's notes that  
21 preceded your examination, and came after your examination, he  
22 says and documented adhesive capsulitis.

23 I'd like you to assume that Dr. Laith Jazrawi, whose  
24 report you never reviewed and testimony you are not aware of,  
25 also documents, and told this jury that Mary Lou Knoch has

1 adhesive capsulitis, and each of them recommended or prescribed  
2 surgery on one or more occasions; are they wrong and you are  
3 right?

4 A Then, yes --

5 MR. GREY: Objection. It's improper to ask him.

6 THE COURT: Rephrase.

7 MR. GREY: Thank you.

8 Q Do you disagree with Dr. Tabershaw and Dr. Jazrawi on  
9 the issue of traumatic adhesive capsulitis?

10 A I object on the use of that specific term, yes.

11 Q Okay. Did you ever author any subject or any articles  
12 on adhesive capsulitis?

13 A No.

14 Q Have you ever read Dr. Jazrawi's articles on adhesive  
15 capsulitis?

16 A No.

17 Q Any interest in it?

18 A No.

19 Q Doctor, at the time you examined Mrs. Knoch in November  
20 of 2008, fair to assume you were not aware that there were  
21 multiple requests for surgery for her shoulder, correct?

22 A I don't remember.

23 Q Well, by virtue of the medical records that you did  
24 review?

25 A April 7th?

1 Q At the time you saw her, you were unaware that  
2 Dr. Tabershaw had on multiple occasions recommended surgery,  
3 correct?

4 A Correct.

5 Q Doctor, would it be fair to say that as -- the last  
6 time and the only time that you saw Mrs. Knoch, prior to today,  
7 is November of 2008, correct?

8 A Correct.

9 Q Okay, so, would it be fair to say that you can't speak  
10 to how she's been since that time up until today, correct?

11 A Well, you showed me records of how she was.

12 Q Have you ever reviewed the reports of Dr. Laith Jazrawi  
13 from his June 2012 physical examination?

14 A No.

15 Q That spoke of restrictions of motion, loss of use,  
16 impingement or adhesive capsulitis; did you review any of that?

17 A I know nothing about his reports.

18 Q Did defense counsel ever tell you what he had testified  
19 to?

20 A No.

21 Q Any interest in knowing that?

22 A Not really, no.

23 Q Doctor, turning to the February 6, 2009 note, do you  
24 have that there?

25 A Yes.

1 Q Once again, adhesive capsulitis, it's noted by  
2 Dr. Tabershaw, correct?

3 A Correct.

4 Q Surgery again, authorization is asked for, correct?

5 A Yes.

6 Q Now, Doctor, when you saw Mary Lou Knoch in November of  
7 2008 you were of the opinion, and you just told this jury, that  
8 no further treatment, no further orthopedic treatment, or  
9 surgery or physical therapy was necessary, in your opinion,  
10 correct?

11 A Correct.

12 Q Okay. So, Dr. Tabershaw disagrees with you, doesn't  
13 he?

14 A You have to ask Dr. Tabershaw. I don't know.

15 Q Well, can't we tell by his record that --

16 A I can only testify to my opinion. I don't know  
17 about Dr. Tabershaw.

18 Q But you disagree with Dr. Tabershaw then, because --  
19 and here's my point, Doctor. In November of 2008, you said no  
20 further treatment is required, right?

21 A Correct.

22 Q Okay. Just two months later, about two and-a-half  
23 months later, in February 6 of 2009, she's treating with Dr.  
24 Tabershaw and Dr. Tabershaw is recommending surgery, correct?

25 A Correct.

1 Q So, you disagree with that?

2 A I degree with that.

3 Q And, by the way, in order to continue seeing

4 Dr. Tabershaw that had to be approved, didn't it?

5 A I have no idea.

6 Q Would you be interested to know whether it was approved  
7 or not?

8 A No.

9 Q No interest in that either? Okay. Well, Doctor,  
10 Dr. Tabershaw not only recommended surgery, but also possible  
11 injection for the pain, correct? So, that's further treatment  
12 being recommended that you said, no treatment is needed?

13 A Correct.

14 Q So, you disagree with Dr. Tabershaw thereto, yes?

15 A I wasn't there in 2009. I can only testify to my  
16 examination as of 2007. As of my examination she required no  
17 further treatment.

18 Q Okay. Doctor, in April of 2009, do you have that  
19 record? I apologize for showing it to you for the first time  
20 now, but April 7, 2009, you have it there?

21 A Yes. Yes.

22 Q And it says, Mrs. Knoch is still very tender in the  
23 supraspinatus tendon, correct?

24 A Yes.

25 Q Okay. And, again, treatment plan authorized an MRI --

1 this is the second MRI, of the left shoulder, and please  
2 authorize surgery, correct?

3 A Correct.

4 Q And you disagree with that too?

5 A Well, even from his record, if you want me to just  
6 review his record, she is getting better, so why does he want to  
7 operate on her? Her range of motion at that point was much  
8 better than her range of motion when I saw her, so then why does  
9 he want to operate on her? She's continuing to improve her  
10 range of motion.

11 Q Doctor --

12 A You don't operate on patients for the pain, you operate  
13 to improve their range of motion.

14 Q Doctor, isn't it true that on May 26, 2009, clinically,  
15 she was unchanged in terms of range of motion, correct? Let me  
16 rephrase that, actually, Doctor.

17 I'd like you to take a look at, in here, April 7, 2009,  
18 forward elevation, you see that?

19 A Yes.

20 Q And, now, compare that to the next month, her range of  
21 motion got significantly worse, true?

22 A Not true.

23 Q Doctor, read the numbers for the jury?

24 A Okay. Let's read the numbers.

25 Q Okay. Forward elevation?

1 MR. GREY: Let him answer.

2 A Forward elevation in April to 160, in May to 130.

3 Q Hold on, Doctor.

4 MR. GREY: Let him answer. Please stop stopping  
5 him in the middle of an answer.

6 MR. KAUFFMAN: I want to break it up one by one,  
7 your Honor.

8 THE COURT: Mr. Grey, please.

9 MR. GREY: Can he please answer.

10 THE COURT: He answered.

11 MR. GREY: He was still saying something. He cut  
12 him off, can he please answer.

13 THE COURT: Mr. Grey, he answered the question he  
14 was asked.

15 A I'm sorry, Counsel.

16 MR. KAUFFMAN: I'll make it very simple, Doctor.

17 Q April 2009, forward elevation it's listed as 160,  
18 correct?

19 A Yes.

20 Q Was Mrs. Knoch on anti-inflammatories at that time?

21 A It's irrelevant. I don't know.

22 Q It's irrelevant or you don't know?

23 A No, it's irrelevant. It's not going to change her  
24 range of motion.

25 Q Well, Doctor, then her range of motion went from 160

1 down to 130 in one month's time?

2 A Counsel, you are not being fair, okay.

3 Q Doctor. Doctor.

4 MR. GREY: Let him answer.

5 A Let me finish my answer now. You are misquoting the  
6 record.

7 MR. KAUFFMAN: Your Honor, may I please have an  
8 answer from the doctor.

9 MR. GREY: He is trying to.

10 Q It decreased with forward elevation?

11 A You are misquoting the record, okay.

12 Q Doctor.

13 A Read the whole record, Counsel, not part of it.

14 Q Doctor, forward elevation to 160?

15 A Passive 130. And forward elevation to 130. Passive to  
16 160. So, she basically was unchanged.

17 Q Tell the jury the difference between passive and  
18 active?

19 A Passive is what the doctor does. Active is what the  
20 claimant does.

21 Q Right.

22 A She went down in one and up in the other.

23 Q In other words, she needed the doctor's assistance to  
24 get it up to a certain level. She couldn't do it on her own.

25 A She went down in one and up in the other.

1 Q It's because the doctor needed to do it because she  
2 couldn't do it, that's what passive means when someone else is  
3 helping you with range of motion if the patient can't do it  
4 herself.

5 A Then why did it get better? You are telling me that  
6 her ranges went unchanged. If she couldn't do it in April then  
7 how come she could do it in May?

8 Q Doctor, with regard to power in May 26, 2009, she had  
9 weakness in her strength. It's documented in Dr. Tabershaw's  
10 note, true?

11 A No, that's what she reported to him, okay. That's not  
12 what he measured.

13 Q Under exam, May 26, 2009, you testified that I have --

14 A Right, power is four out of five, you're right.

15 Q So, that's a weakness, right?

16 A That was after a fall.

17 Q Okay, Doctor, it was after a fall, have you ever seen  
18 any medical records for that fall?

19 A Dr. Tabershaw reported it.

20 Q He reported it, Doctor, that after the April 7th, 2009  
21 exam, she came in on May 26th and sometime in that one  
22 and-a-half month period at some point in time she had fallen,  
23 correct?

24 A Correct.

25 Q Have you ever seen any medical records from any

1 treatment that might have come from that fall?

2 A No.

3 Q Would it surprise you to know that there was no  
4 treatment?

5 MR. GREY: Objection.

6 Q Other than --

7 MR. GREY: Objection. He is trying to testify,  
8 your Honor.

9 THE COURT: Overruled.

10 MR. GREY: There has been no testimony --

11 MR. KAUFFMAN: I'll withdraw it.

12 MR. GREY: -- she got --

13 MR. KAUFFMAN: I'll withdraw it.

14 THE COURT: Are you almost finished?

15 MR. KAUFFMAN: I am.

16 THE COURT: Because you are not allowing any time  
17 for redirect.

18 MR. KAUFFMAN: Okay.

19 Q Doctor, after that fall, it says in Dr. Tabershaw's  
20 expert opinion that she is clinically unchanged, correct? In  
21 other words, it's the same condition?

22 A You know -- no, it says clinically unchanged, however  
23 she states she hurts more and her pain can be a factor in her  
24 going from a five to a four in her power.

25 Q And, once again, the treatment plan though is the same,

1 the same surgery that had been recommended before that fall is  
2 still continuing to be recommended with no change?

3 A Correct.

4 Q Did you ever review Mrs. Knoch's testimony in this  
5 case?

6 A No.

7 MR. KAUFFMAN: Nothing further. Thank you for your  
8 time, Doctor.

9 MR. GREY: I'll be very brief, your Honor.

10 THE COURT: I mean, well, we've 15 to 20 minutes,  
11 do what you can.

12 MR. GREY: I'll be very brief.

13 REDIRECT EXAMINATION

14 BY MR. GREY:

15 Q You've now seen the records from Dr. Tabershaw that  
16 postdate your examination, correct?

17 A Yes.

18 Q And, do those records confirm or refute your opinion?

19 A They confirm my opinion.

20 Q Because she got better --

21 MR. KAUFFMAN: Objection to counsel testifying.

22 THE COURT: What?

23 Q Did she get better in those records?

24 A Yes.

25 Q And they showed her range of motion was improving,

1 correct?

2 A Yes.

3 Q And, would a surgery for adhesive capsulitis be done in  
4 order to increase her range of motion?

5 MR. KAUFFMAN: Objection. Scope.

6 THE COURT: Overruled.

7 MR. GREY: You could answer.

8 THE WITNESS: Sorry.

9 THE COURT: You may answer the question.

10 A Oh, yes.

11 Q So, if she was improving in her range of motion there  
12 would be no need for the surgery, correct?

13 A That's correct.

14 Q And, what is your understanding of why Worker's Comp  
15 denied the surgery?

16 A I don't know.

17 MR. KAUFFMAN: Objection.

18 Q And, you haven't seen the records either they denied it  
19 -- for whatever reason they denied it, correct?

20 A Correct.

21 Q And, you would agree with me --

22 MR. KAUFFMAN: Objection to the leading format.

23 Q Would you agree with me that in order to determine why  
24 Worker's Comp denied the surgery, you would have to look at the  
25 record and see why they denied it?

1 MR. KAUFFMAN: Objection. Scope. Leading.

2 THE COURT: Sustained. Sustained on all those  
3 grounds plus the fact that he says he doesn't know anything  
4 about Department of Labor or Worker's Comp claims.

5 Q Would you agree with me that if there is a record of a  
6 denial of a surgery, you'd want to see that to understand why  
7 the surgery was denied?

8 MR. KAUFFMAN: Objection. Scope. Leading.

9 THE COURT: For what purpose? Improp. question.

10 For a patient of his? Not clear question.

11 Q Okay. If you had a patient who had a surgery denied  
12 due to Worker's Comp, wouldn't you like to see the record to see  
13 why it was denied?

14 MR. KAUFFMAN: Objection. Relevance to this case.  
15 Scope. Leading.

16 MR. GREY: If the Worker's Comp records are  
17 irrelevant, why have we been talking about them for four  
18 days, your Honor?

19 MR. KAUFFMAN: If he has them I don't mind if he  
20 stipulates them into evidence.

21 THE COURT: Mr. Grey, please, we are not talking  
22 about other people, we are talking about this person. It's  
23 an improper question.

24 Q Did Dr. Tabershaw put in any of his records why  
25 Worker's Comp denied the surgery?

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1 A I don't believe so, no.

2 Q And, after seeing Dr. Tabershaw's records, is there  
3 anything about your opinion and your prognosis that you would  
4 like to change?

5 A No.

6 MR. GREY: There are no further questions.

7 THE COURT: Recross?

8 MR. KAUFFMAN: No.

9 THE COURT: Okay.

10 I guess you should go while the going is good  
11 before they change their minds. Thank you.

12 THE WITNESS: Thank you very much, your Honor.

13 (Laughter.)

14 THE COURT: Leave us our evidence and take your  
15 file.

16 (Witness exits the witness stand.)

17 THE COURT: Mr. Grey.

18 MR. GREY: I just have one quick reading I want to  
19 do, and then I can close my case, your Honor.

20 THE COURT: Go ahead.

21 MR. GREY: I'll tell you the page.

22 THE COURT: I don't have any transcripts left. I  
23 gave them back.

24 MR. GREY: You gave them back.

25 THE COURT: Motions today, I was trying to clear