

APPENDIX G

1 Doctor. Is it true that you testified, in your estimate, in
2 the year 2007, you did as many as 81 of these examinations for
3 medical defense firms?

4 A. . That probably is about right, yes.

5 Q. And in 2007, that you did at least 64?

6 A. I suppose, if I was -- I mean, I -- I would think I
7 did more than that, quite honestly.

8 Q. You've done hundreds of these exams in the past few
9 years, haven't you?

10 A. Yeah, I've done hundreds, for sure.

11 Q. You do about 10 a month or more; is that right?

12 A. I don't do 10 a month. I would say that I do
13 probably eight a month.

14 Q. Okay. And you gave an office address on Delaware
15 when you sat down and started testifying. That's your office
16 for doing these examinations; is that right?

17 A. That's correct, yes.

18 Q. You don't -- you don't see any patients, because you
19 don't treat any patients anymore; is that right?

20 A. That's correct.

21 Q. And that office is open solely for the purpose of
22 scheduling these examinations for defense firms; is that
23 correct?

24 A. Correct.

25 Q. And, in fact, you don't even live in Buffalo anymore,

1 you come in from Florida, you come in from Canada to do these
2 exams and then you go back; isn't that right, sir?

3 A. Yes, that's correct.

4 Q. And, sir, you feel -- you feel, sir, that you are --
5 you are qualified, that you are fit to offer these opinions
6 because of your training, your experience, and your practice as
7 an orthopedic surgeon; is that right, sir?

8 A. That's correct.

9 Q. Okay. And you've done this from the year at least
10 2001 forward, that's what you've been doing; is that right,
11 sir?

12 A. That's correct.

13 Q. And you've been earning income doing that; is that
14 right, sir?

15 A. That's correct.

16 Q. Okay. You've been earning substantial income doing
17 that?

18 A. I do.

19 Q. Hundred percent of your income now comes from doing
20 these exams?

21 A. Hundred percent of my professional income certainly
22 does, yes.

23 Q. And you have not treated a patient for almost eight
24 years now?

25 A. Probably a little less than that, but that's close.

1 Q. You do not operate?

2 A. I do not.

3 Q. You do not order tests?

4 A. Almost never.

5 Q. You do not prescribe medications?

6 A. Well, I mean, not to the people I'm seeing.

7 Q. Who do you prescribe medications to?

8 A. Well, occasionally for myself.

9 Q. Doctor, isn't that an ethical violation for a
10 physician to prescribe himself medication?

11 A. Not at all. No, it is not. They're not narcotics,
12 you know. Every once in a while, I need an antiinflammatory
13 drug.

14 Q. Are you still licensed as a physician?

15 A. I am.

16 Q. Now, I -- I think -- I just want to clarify something
17 for the jury. I think you referred at one point to this --
18 these examinations that you do as independent medical
19 examinations. Have you used that terminology to refer to
20 these?

21 A. I have.

22 Q. And you put it on your report; is that right?

23 A. Yes.

24 Q. Now, in terms of independent, just so the jury's
25 clear, you weren't selected by Judge NeMoyer to do an

1 examination in this case; is that right?

2 A. No, I was not.

3 Q. You weren't selected by me; is that right?

4 A. No.

5 Q. You weren't selected by Greg Laughlin?

6 A. No.

7 Q. You weren't selected by any of his physicians to do
8 this examination?

9 A. No.

10 Q. You were selected by Mr. Schule and his firm to do
11 this examination; is that right?

12 A. Correct.

13 Q. All right. So, sir, in 2003, that single year, you
14 told us that you were doing these examinations, you were
15 earning substantial income from doing these examinations, using
16 your medical background, training and experience to do these
17 examinations, write these reports and testify for defense
18 firms; is that right, sir?

19 A. Correct.

20 Q. Isn't it true, Doctor, that in that year, 2003, when
21 you were doing these things, that you filed a Court pleading
22 that you swore to swearing that you were disabled from any
23 occupation involving -- that you were reasonably fit for by
24 education, training and experience?

25 A. No.

1 Q. Did you not file that sworn pleading in 2003 swearing
2 that you were disabled from that occupation, sir?

3 A. No, that's not true.

4
5 (Whereupon, a Sworn Pleading was then marked
6 Plaintiff's Exhibit 18 for identification.)

7 BY MR. DOYLE:

8 Q. Doctor, I'm going to show you what we marked for
9 identification as Plaintiff's Exhibit 18, which, on the cover
10 of it, appears the word summons. I'm going to let you look at
11 the whole thing, but just for the record, there's a
12 verification with a signature James J. White Jr.; is that your
13 signature?

14 A. That's my signature, yes.

15 Q. That's a verification page swearing that you have
16 read the foregoing document and that the same is true, to your
17 knowledge?

18 A. Right.

19 Q. You duly swore to that before a notary public; is
20 that correct?

21 A. Correct.

22 Q. I'm going to show that to you, Doctor, I'll let you
23 look at any part of it you want, but I'm going to ask you
24 specifically to review paragraphs 14 through 17 -- pardon me,
25 13 through 17, read those to yourself.

A. Okay. How about 12?

1 Q. Any part that you want, Doctor.

2 A. Okay. Right. That's correct.

3 Q. Doctor, does that refresh your memory that, in 2003,
4 you filed a sworn statement pleading in Court swearing that you
5 were disabled from performing the duties of any gainful
6 occupation for which you were reasonably fitted by education,
7 training or experience?

8 A. I don't read it that way, quite honestly. Okay. I
9 don't read it that way.

10 Q. You don't read it that way?

11 A. No, I don't.

12 Q. Did you file a statement in 2003 that you recall
13 swearing to the fact that you were disabled?

14 A. Yeah, I was -- a certain part of my activities, I was
15 disabled from performing.

16 Q. And did you -- did you swear that you were disabled
17 from performing the duties of any gainful occupation for which
18 you were reasonably fitted by education, training or
19 experience?

20 A. Not any activity, certain activities.

21 Q. Well, at the time, Doctor, you were working as a
22 physician doing these examinations, were you not?

23 A. I was.

24 Q. Using your training, background and experience,
25 correct?

1 A. Exactly.

2 Q. And you were earning -- Doctor, you were earning
3 hundreds of thousands of dollars a year doing that?

4 A. Correct.

5 Q. From 2003 up to the present; is that correct?

6 A. Correct.

7 Q. And -- and what experience, Doctor, gave you -- in
8 your opinion, entitle you to do these examinations, your
9 experience as an orthopedic surgeon?

10 A. As an orthopedic surgeon, as somebody who is
11 fellowship trained in spine surgery and as someone who did
12 spine surgery for 16 years.

13 Q. And as --

14 A. 17.

15 Q. And as regarding this statement, this sworn statement
16 that you said you recall filing in 2003 with the Court, did you
17 swear in this statement that you are not performing the duties
18 of any gainful occupation as an orthopedic surgeon for which
19 you were reasonably fitted by education, training or
20 experience?

21 A. Obviously that -- I disagree with your interpretation
22 of that. I'm sorry.

23 Q. Take a look at Paragraph 23, Doctor.

24 A. Okay. Yes, it does say that.

25 Q. It does say that?

1 A. Yes, it does.

2 Q. You did make that sworn statement to Court?

3 A. Well -- well, I did sign it, and -- but I
4 certainly -- I never have said that I couldn't be employed
5 doing certain activities. The -- whatever you call that
6 complaint, whatever it is, was because I couldn't stand to
7 operate as a spine surgeon. That was the disability.

8 Q. Sir, your -- the claim that you -- you just said that
9 you filed and you admitted this particular language, that claim
10 was rejected by the Court, wasn't it?

11 A. It was.

12 Q. And you appealed that; is that right?

13 A. I did.

14 Q. And your appeal was rejected by the Court in
15 Rochester?

16 A. It was.

17 Q. And you appealed that to the highest Court in the
18 state, the Court of the Appeals of New York; is that right?

19 A. I guess it was, yes.

20 Q. And that appeal was rejected as well?

21 A. Yes, it was.

22 Q. Now, Doctor, you've told us about the income that you
23 earn doing these examinations. You told us that you do this
24 work for a number of different defense firms and entities.
25 Let's specifically talk about Mr. Schule's firm. You know that

1 Mr. Schule works at a firm that -- that is known by the name of
2 Kenny, Shelton, Liptak & Nowak, I think, if I'm getting that
3 right?

4 A. Correct.

5 Q. That firm is one of your repeat customers?

6 A. Yes.

7 Q. You do work on files that they refer to you; is that
8 right?

9 A. That's correct.

10 Q. And you get paid for that --

11 A. I do.

12 Q. -- correct? All right. Now, Doctor, between the
13 years 2002 and 2007, five-year period, the first five years,
14 basically, you were doing this independent medical examination,
15 isn't it true that the Kenny, Shelton firm, Mr. Schule's firm,
16 paid you \$611,000 for your examinations and your reports and
17 your testimony?

18 A. I do not know that. That may be true. I'm not
19 saying it isn't.

20 Q. Well, let's make sure there's no doubt about it,
21 Doctor.

22
23 (Whereupon, a Transcript was then marked
24 Plaintiff's Exhibit 19 for identification.)

24 BY MR. DOYLE:

25 Q. And, Doctor, I'm going show you what we've marked for

1 identification as Plaintiff's Exhibit 19, which is a transcript
2 of testimony in a prior case, the Ona, O-N-A, Patton case tried
3 in front of Judge John Michalek. And the attorney that called
4 you and questioned you was a Brian McDonald from the firm of
5 Kenny, Shelton. I'm going to ask you, you can look at any part
6 of it you want, Doctor, specifically I wanted to ask you
7 about -- to read a certain part and ask if that refreshes your
8 memory.

9 A. Okay.

10 Q. If you could start here and continue to this page.
11 Read it to yourself, Doctor, and I'll ask you if it refreshes
12 your memory.

13 A. Yes, you're right.

14 Q. So having read that, does that refresh your memory
15 that you testified under oath that, between 2002 and 2007, that
16 Mr. Schule's firm has paid you \$611,191.62 for your work on
17 behalf of files that they have sent to you?

18 A. Correct.

19 Q. Now, Doctor, by the way, your testimony in that case,
20 the Patton case, that was pursuant to a subpoena that had been
21 served on you by the -- well, strike that. Let me -- first of
22 all, the Patton case was a case in which you examined a person
23 who claimed to be injured and came in and testified on behalf
24 of the Kenny, Shelton firm; correct?

25 A. I'm sure it is. I don't remember this now.

1 Q. And the -- you were paid for your work; is that
2 right?

3 A. Sure.

4 Q. In this case?

5 A. Yes.

6 Q. And in that case, that testimony that you gave about
7 the amount of money that had been paid on files sent to you by
8 the Kenny, Shelton firm, that only came about because the
9 attorney in that case had given -- served a subpoena on you for
10 that information?

11 A. I'm sure that's correct.

12 Q. Okay. And in this case, Doctor, did I serve a
13 subpoena on you for some information?

14 A. You did.

15 Q. Okay. And as a result of that, were you ordered by
16 the Court and advised that you were to come in to provide
17 information for the last two years, so from 2007 --

18 A. Yes.

19 Q. -- to the present?

20 A. Yes.

21 Q. Okay. And so your work, and Mr. Schule referred to
22 this about the number of cases that they had had, your work and
23 your examination for the number of files and the number of --
24 the amount of money that had been paid to you for the Kenny,
25 Shelton files in the last two years, that came about because of

1 my subpoena and the court order; is that right?

2 A. That's correct.

3 Q. And tell the jury, Mr. Schule mentioned it and you
4 answered it, I think there were 22 files in the last two
5 years --

6 A. Correct.

7 Q. -- that you've worked on on behalf of the Kenny,
8 Shelton firm?

9 A. Yes.

10 Q. Mr. Schule's firm? How much money have they paid
11 you -- pardon me, strike that. Let me ask you this question:
12 How much money have you been paid on those files in the last
13 two years?

14 A. 178,000.

15 Q. So if my math is correct, Doctor, since 2002, the
16 Kenny, Shelton firm has sent files to you to do examinations,
17 to write reports, to come into Court, if they request you to,
18 correct?

19 A. Correct.

20 Q. Where, when you come into Court, you almost always
21 testify that the person isn't hurt, that there's no causal
22 relationship, and that there were preexisting conditions,
23 correct?

24 A. Well, based on the information available to me, if
25 that's what I've said, that's what I've said.

1 Q. And for this work, in the last seven years, you've
2 been paid \$700,900, almost \$800,000 correct?

3 MR. DOYLE: I have no further questions, Judge.

4 THE COURT: Counsel.

5 MR. SCHULE: No questions.

6 THE COURT: Okay. Thank you, Doctor. You are
7 excused.

8 THE WITNESS: Thank you.

9 THE COURT: Can I see the attorneys up here,
10 please?

11 (Discussion off the record.)

12 THE COURT: Jurors, that's going to conclude the
13 testimony for today. You'll hear from one witness tomorrow
14 morning, it will be brief, and you'll hear the attorney's
15 summations. And the county will pay for your lunch
16 tomorrow, so when you come in, first thing in the morning,
17 the court clerk will provide you with a luncheon menu from
18 whatever restaurant we're currently using, and as I pointed
19 out, Bob gets a free lunch too. But I do want it brought
20 to your attention that the attorneys and the other court
21 personnel do not get a free lunch, nor do I, only Bob.
22 With that understanding, see you tomorrow morning at 9:40.
23 Okay?

24 (The Members of the Jury were excused for the evening.)

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