

IN THE CIRCUIT COURT OF ST., FRANCIS COUNTY, ARKANSAS

CHARLES CHADWICK SR., Individually
and a Guardian and Next Friend of
CHARLES CHADWICK, JR.,: A MINOR,
And Guardian and Next Friend of THOMAS
CARLOCK, A MINOR,

Plaintiffs,

No. CV 974

VS.

AMTRAN INTERNATIONAL
CORPORATION, AMERICAN
TRANSPORTATION CORPORATION"
and WARD BUS SALES,:
INCORPORATED,

Defendants.

DEPOSITION

OF

BEN R. HIPPI, DDS

July 19, 1999

ORIGINAL

ALPHA REPORTING CORPORATION
Debra A. Dibble, C.S.R., R.P.R.
Suite 210-A - 100 North Main Building
Memphis, TN 38103
(901) 523-8974

The deposition of BEN R. HIPPI, DDS, taken on behalf of the plaintiff, on this, the 19th day of July, 1999, pursuant to notice and consent of counsel, beginning at 3:00 p.m., at the offices of Dr. Ben R. Hipp, 875 Union Avenue, Dunn Building, Suite 300, Memphis, Tennessee.

This deposition is taken pursuant to the terms and provisions of the Tennessee Rules of Civil Procedure.

All forms and formalities are waived, including signature of the witness, and objections alone as to matters of incompetency, irrelevancy, responsiveness, and immateriality of the testimony are reserved, to be presented and disposed of at or before the hearing of the cause.

APPEARANCES

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PROCEEDINGS

BEN R. HIPPI DDS

having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LEDBETTER:

Q. State your name and address?

A. It's Ben R. Hipp, 875 Union Avenue, Memphis, Tennessee, 38163.

Q. And, Dr. Hipp, if you would, tell me what your profession is.

A. I'm an oral and maxillofacial surgeon.

Q. And can you give the members of the jury the benefit of, in a few words, what oral and maxillofacial surgery is?

A. It involves a treatment of the of problems and situations related to the jaws and the related areas of the face,

Q. And can you tell the ladies and gentlemen of the jury about your education up through your professional training?

A. I received a BS in chemistry at Ouachita Baptist University in Arkadelphia, Arkansas. DDS, University of Missouri at Kansas City.

Post-graduate year of training at Georgetown University when I was in the army. Did my oral and maxillofacial surgery residency training in the army at the Walter Reed Army Medical Center and Tripler Army Medical Center in Honolulu.

And I'm a diplomate of the American Board of Oral and Maxillofacial Surgeons and a fellow of the American Association of the Maxillofacial Surgeons. Chairman of the department of oral maxillofacial surgery here in Tennessee.

Q. And tell me in what states you've held licenses.

A. Okay. In total, I've held licenses in Missouri, Arkansas', and Tennessee. Currently hold them in Arkansas and Tennessee, and in the specialty of oral and maxillofacial surgery.

Q. And in what hospitals are you currently on staff?

A. At the Regional Medical Center in Memphis, Baptist Memorial Hospital, University of Tennessee Memorial Hospital, and the LeBonheur Children's Medical Center.

Q. Well, Dr. Hipp, are you a member of any professional medical associations in your profession?

A. The American Association of Oral and Maxillofacial surgeons, the Tennessee Society of Oral and Maxillofacial Surgeons, the Memphis Society of the American Dental Association, the Tennessee Dental Association, and so on.

Q. In addition to your work in actual clinical care, are you also a professor, or do you teach?

A. I'm a professor of oral and maxillofacial facial surgery, and until recently I was director of the oral and maxillofacial surgery residency program, training program.

Q. How is your time split between the teaching side and the actual clinical side?

A. The actual -- there's not much of a split in our residency training, because the teaching is clinical, and also didactic. I'd say 70/30 clinical.

Q. Now, can you give me some idea of the number of surgeries or jaw surgeries which you performed in your career, or on an annual basis?

A. Hundreds annually. We see -- well, I, myself, am not involved in hundreds annually but our department is.

Q. Okay. Now, in this case we're here concerning a young man by the name of William Joseph Paulman, who goes by Joey, and interested in your care of him.

And if you would, I'd like to refer you to your chart and ask if you can tell the members of the jury how and when you came to see Joey Paulman first as a patient?

A. Well, we came to see him on or about April the 13th, 1995. He had sustained injuries to his face in a vehicular accident, and we saw him at LeBonheur Children's Medical Center.

Q. And what was your assessment or diagnosis of his injuries at that time?

A. Okay. He had had several injuries. He had a complex laceration of his chin which had extended into his mouth, and his lower jaw or his mandible was broken in four places, and he had one primary molar tooth essentially knocked out.

Q. And when you say primary, are you talking about --

A. Temporary teeth.

Q. A temporary --

A. A baby tooth.

Q. And on which side was that?

A. That was on the right. The lower right.

Q. And was your diagnosis consistent with the history of a trauma in a motor vehicle accident?

A. Yes. The fact that he had the laceration in the area of his chin indicated that he had hit something with his chin. These type of injuries usually will damage the mandible in some form or another.

Q. Okay. So do you connect the laceration on the under surface of his chin to the fractures in the mandible?

A. Oh, directly. That's where he hit. Whatever he hit, he hit it with his chin.

Q. Okay. Is this the type of an injury which you have seen before in the course of your practice as an oral surgeon?

A. Over and over and over, yes.

Q. Now, if you would, detail, from your notes or memory, the treatment that you rendered to Joey Paulman.

A. Okay. Joey was treated in the operating room at LeBonheur under general anesthesia, and he had -- we did several things to him and for him in treatment of these injuries.

The first thing we did was to remove the rest of the pieces of the broken tooth. Then we placed arch bars on his upper and lower teeth to -- and these are wire devices that help us to wire the teeth together.

And then at some point in time during that procedure we put little rubber bands around those elastics so that his teeth would close together in their proper occlusion, or proper relationship between the teeth.

Also at some point in time during that procedure we approached the bone of the lower jaw on the right side through this laceration and placed a wire around it, around it and through it, to hold it together, because the jaw was rather split on that side.

And then after all that was done and his laceration was sewed up, first in the mouth and then out on the face, and that essentially completed his treatment.

Q. Now, let me show you two sheets of simply -- they're just charts from Gray's Anatomy, and ask if you can identify the -- these as being useful as a trial aid or to illustrate the fracture areas on Joey Paulman, and I'll show the first one, which I'd like to have marked Plaintiff's Exhibit 1.

**(Whereupon, Exhibit No. 1
was marked for identification.)**

Q. (BY MR. LEDBETTER) And ask if you can tell me what the -- what this represents and what the yellow markings represent, if you could, sir.

A. Okay. The markings represent two approximate areas of the fracture that he had, one near the joint of the jaw, the temporomandibular joint, in the subcondylar region, and then the another one near the angle of the mandible on the -- this would be the right side.

No, I'm sorry, this would be the left side.

Q. So there were actually two fractures on the left side of his jaw?

A. Yes, mm-hmm.

Q. All right, sir. And next I'm going to hand you what we'd like to have marked as Plaintiff's Exhibit No. 2.

**(Whereupon, Exhibit No. 2
was marked for identification.)**

Q. (BY MR. LEDBETTER) And ask if this is a fair and accurate representation of an adult jaw, I believe.

A. Yes.

Q. And on the right side?

A. The same thing, he had two fractures there, once again in the subondylar area near the joint, and then in the body of the right mandible.

Q. Okay.

Now, how did you put these back together?

What did you -- did you use wire? Was that the means by which they were brought together?

A. In one case, the fracture on the right side of the mandible we used wires. The other fracture on the left side of the jaw was -- at the angle of the mandible, was essentially non-displaced, and so by wiring the one side, that adequately replaced the bone in their normal position. We did not wire directly the fractures in the subcondylar region near the joint.

Q. All right. Now, any idea how long the recovery cycle would have been, or was, for this type of an injury and the surgery which followed?

A. Usually the sutures are removed from the wounds in five to seven days, somewhere in that general neighborhood. The patients -- at the end of this procedure, his jaws were held together with rubber bands. His jaws were essentially wired together but we use rubber bands. And he stayed in that position for -- usually in children we leave them there for about two weeks, and then we'll take the rubber bands off and let them move their jaw, we call that exercising the jaw, in areas of the damage around the joint. That's necessary to make sure that it doesn't scar down.

And then we place the rubber bands back on for varying periods of time until he can tolerate having them off. And this went until -- from April the 13th, and we

eventually took the wires off, or took the elastics off and let him open his mouth on May the 19th. So that was about a month and a half.

Q. All right. And what was the care for him which was rendered by you to him after his release from the hospital, other than what you've just mentioned? I don't want you to have to go through that again.

A. Okay. We saw him on -- he was -- we saw him on May -- April the 15th and placed a splint, a little plastic wafer splint between his teeth. And his teeth had indent -- the splint had indentations for the teeth so that when the rubber bands held his jaw together in that little splint, it would hold them in the proper position.

And then -- that was on April the 15th. And we saw him several times during that time and checked his progress, exercised his temporomandibular joint during that time. And then on May the 24th we removed the arch bar and the wire that we had placed around the mandible to hold it together. That was under IV sedation. And then we saw him three times more following that time.

Q. And did you understand that he had an orthopedic injury to his upper right extremity at the time that he was simultaneously being treated by you?

A. Yeah, I understand that. I don't know the details of that, though.

Q. All right. I'm going to show you what -- photographs, and ask if these photographs are, first of all, of your patient, Joey Paulman, and of his condition during the time that he was hospitalized and under your treatment and care, which we'll mark these as Plaintiff's Exhibit No. 3, collective.

**(Whereupon, Exhibit No. 3
was marked for identification.)**

THE WITNESS: Yeah, I recognize Joey and some of the indications of his injury.
Yes.

Q. (BY MR. LEDBETTER) Thank you.

Now, I'd like to show you a list of medical expenses for William Joseph Paulman, or Joey Paulman, and ask if you can tell the ladies and gentlemen of the jury whether these medical expenses \$16,155.42, reportedly incurred by young Paulman, are reasonable and necessary expenses incurred by reason of the injuries sustained by Joey Paulman on April 12, 1995.

A. As far as I can tell they are.

Q. And do these appear to be the kind of bills that would reasonably be incurred for the types of injuries which he sustained, including his jaw injury and his arm fracture?

A. Mm-hmm. They seem to be.

MR. LEDBETTER: Mark that as Plaintiff's 4.

**(Whereupon, Exhibit No. 4
was marked for identification.)**

Q. (BY MR. LEDBETTER) Now, do you have an opinion, to a reasonable degree of medical certainty, as to whether Joey Paulman is likely to have discomfort for the rest of his life associated with these mandibular fractures?

A. That's difficult to tell. It sometimes happens in injuries around this particular joint, because in the developmental stage, particularly in children, you just don't know how it's going to turn out.

So the possibility of him having continued problems exists.

Q. Well, if he's having problems at this time in terms of headaches, which he occasionally relates to this, is that consistent with the types of post-injury sequelae that you can sometimes see with bilateral mandibular fractures?

MS. SCANDY: Objection. Go ahead.

THE WITNESS: Yes, it is. It's not uncommon at all.

Q. (BY MR. LEDBETTER) Now, in terms of any further medical or surgical care, what is reasonably likely in the future, if you know?

A. I really can't say. I don't know. The possibility exists, you just have to see as he matures.

Q. In other words, there is a possibility, but not a reasonable or absolute certainty?

A. No. No.

Q. What is it about these joints, on both of these sides, that would predispose him to some possible injury, if there is anything?

A. The problem, particularly in children, involving around these joints, is the development of the jaw, whether or not it develops fully or not. And Joey was at a particular age group that he's kind of betwixt and between. A little -- at about his age, up until about that age, when people have injuries in this area, it may very well involve and impede the growth of the jaw on one side, or the other, or both. Or you might have scarring of the area that would make the area of the jaw difficult to open and close.

Then again, after you get about 12 years old, the likelihood of these problems is not as severe as it is earlier. So he's kind of just about in between those areas.

Q. Dr. Hipp, with these injuries of Joey Paulman for which you treated him, consistent, to a reasonable degree of medical certainty, with his being an unrestrained passenger in a school bus involved in an accident.

MS. SCANDY: Objection. You can answer.

THE WITNESS: Yes. We see these all the time. In fact, most of the patients we treat don't have their seatbelts on. Sometimes we think that if people wore their seatbelts we wouldn't have anything to do.

Q. (BY MR. LEDBETTER) Well, what do you think the mechanism of injury was in -- you know, in a motor vehicle accident with an injury of the type that you saw and treated, if you know?

MS. SCANDY: Objection.

THE WITNESS: Usually these type of Injuries are a result of someone hitting something, rather severely, with their jaw. And the laceration that he had was just an absolute indication that he hit something right on the point of his chin, which would have caused the type of injuries that he had, in addition to the laceration.

Q. (BY MR. LEDBETTER) In terms of your practice and familiarity with injuries of this type, involving persons who are in vehicles who are not wearing seatbelts, how many similar injuries have you seen or treated in the last four or five years?

A. Hundreds. Hundreds.

Q. Dr. Hipp, if you assume that it is true that Joey Paulman was an unrestrained passenger on the school bus, which was involved in an accident of the type shown to you in the accident report and then the seat photos, what is your opinion, to a reasonable degree of medical certainty, as to whether or not the lack of a seatbelt was a substantial factor in these injuries?

MS. SCANDY: I'm going to object.

Do you mind if I have that read back before he answers?

MR. LEDBETTER: Why don't you read it back?

(Whereupon, the pending testimony was read by the court reporter.)

MS. SCANDY: Just place an objection. That's all.

THE WITNESS: I think that the lack of a seatbelt was a substantial reason for his injury.

MR. LEDBETTER: That's all.

CROSS EXAMINATION

BY MS. SCANDY:

Q. Doctor, my name is Kelly Scandy. We've met briefly off the record. I'll represent the defendants in the lawsuit that's been brought on Joey Paulman's behalf as a result of the accident.

Doctor, am I correct in stating that you are not an expert in the field of accident reconstruction? Is that a correct statement?

A. I'm sorry, I don't understand.

Q. Would you agree with me that you are not a trained expert in the field of accident reconstruction

A. Oh, reestablishing the facts of -- yes, true.

Q. All right.

How about the field of biomechanics? Would you give the same answer?

A. Probably.

Q. Have you been qualified in any court to give opinions on injury causation relative to seatbelts? To your knowledge?

A. No.

Q. You have no specific training and have published no articles on the topics of injury causation relative to seatbelts?

A. Not yet.

Q. Do you have current plans to?

A. We have enough material to do that with.

Q. Have you studied the literature concerning what happens to belted and unbelted school bus occupants in real-world crashes and in actual crash testing?

A. No.

Q. If you assume that Joey Paulman was belted in this particular accident, you could not tell the jury, for example, the forces that he still may have experienced in the crash, could you?

A. No.

Q. Or what parts of his body may have struck certain parts of the bus?

A. Not with certainty, no.

Q. Or, therefore, what injuries he may have sustained?

A. If he had been wearing a seatbelt?

Q. Correct.

A. Not with certainty.

MS. SCANDY: Thank you, Doctor. I don't have anything further.

MR. LEDBETTER: No more questions.

Maybe if you can arrange to get a copy of his chart, or we can just --

How long is it? Is this pretty much it or is there more?

THE WITNESS: Well, all we have here are his outpatient records.

MR. LEDBETTER: Why don't we just --

THE WITNESS: Follow-up, and our clinical -- after he was discharged.

MR. LEDBETTER: Include that.

THE WITNESS: And I think I have a copy somewhere of his operation report.

MR. LEDBETTER: Report of operation, make this Exhibit 5.

We're out of here.

**(Whereupon, Exhibit No. 5
was marked for identification.)**

MS. SCANDY: Do you have standard stipulations for trial depositions in Arkansas,
that they're all preserved for trial? Because I'd like to --

MR. LEDBETTER: Except to the form? That will be in there.

MS. SCANDY: Pardon?

MR. LEDBETTER: All objections are reserved, that will be on the style of it.

MS. SCANDY: Okay.

MR. LEDBETTER: Except as to form of the question.

MS. SCANDY: Fair enough. Standard stipulation then.

(Whereupon, the deposition was
concluded at 3:28 p.m.)

STATE OF TENNESSEE

S S

COUNTY OF SHELBY

THIS IS TO CERTIFY that the deposition of BENNIE R. HIPPI, DDS, the witness in the foregoing deposition named, was taken before me, DEBRA A. DIBBLE, a Certified Shorthand Reporter and Notary Public in and for the State of Tennessee, residing at Oakland, Tennessee.

That the said witness was by me, before examination, duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause.

That the testimony of said witness was reported by me in Stenotype, and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages numbered from 5 to 22 inclusive, and said witness deposed and said as in the foregoing annexed deposition.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this of July, 1999.

Debra A. Dibble, C.S.R., R.P.R.