

Doc. 64

1 IN THE COURT OF COMMON PLEAS

2 SUMMIT COUNTY, OHIO

3 ---oOo---

4
5 KEVIN M. AKERS, et. al.,)
6 Plaintiffs,)
7 vs.) CASE NO. CV94-03-0755
8 MARGARET THORNSBERRY,) JUDGE MORGAN
9 Defendant.)

10
11 ---oOo---

12 Deposition of RONALD H. BELL, DDS, a
13 Witness herein, called by the Plaintiffs for
14 Cross-Examination pursuant to the Rules of Civil
15 Procedure, taken before me, the undersigned, Janine
16 J. Howard, a Registered Professional Reporter and
17 Notary Public in and for the State of Ohio, at the
18 offices of Ronald H. Bell, DDS, 21100 Southgate Park
19 Boulevard, Suite 212, Cleveland, Ohio, on Monday,
20 the 17th day of October, 1994, at 5:00 o'clock p.m.

21 Janine J. Howard, RPR

22 P.O. Box 283

23 Macedonia, Ohio 44056

24 (216) 468-2684

25 ---oOo---

1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 Messrs. Young & McDowall

4 BY: Dean A. Young, Attorney at Law
5 507 Canton Road
6 P.O. Box 6210
7 Akron, Ohio 44312

8 On Behalf of the Defendant:

9 Messrs. Buckingham, Doolittle & Burroughs

10 BY: Frank G. Mazgaj, Attorney at Law
11 Akron Centre Plaza
12 50 South Main Street
13 Akron, Ohio 44309-1500

14 ---oOo---

P R O C E E D I N G S

MR. MAZGAJ:

On the

record, briefly. The time is now 5:05. This deposition was scheduled by agreement to commence at 4:00 today. There was also an agreement ahead of time to conclude the deposition at 6:00 due to personal commitments of Dr. Bell.

We indicated to Mr. Young that we are going to stick to that commitment. We will be here to answer all of the questions until 6:00, but the Doctor must leave at 6:00.

MR. YOUNG:

Let me

indicate that we did, in fact, agree to commence the deposition at 4:00. Through no fault of counsel or Dr. Bell, the court reporter that was originally called and committed to do this deposition just failed to show up and apparently showed up at a residence. And so, at this point in time it was the earliest we could get another court reporter here.

I'm going to ask that we try to get through as much as we can today and see where we are, And then if I'm not concluded, have

1 the opportunity to ask some further questions
2 prior to the evidentiary deposition. I'm just
3 going to do the best I can and ask for
4 courtesy through counsel and Dr. Bell.

5 Dr. Bell, would you state your full name?

6 ---oOo---

7 RONALD H. BELL, DDS

8 of lawful age, a Witness herein, having been
9 first duly sworn, as hereinafter certified,
10 deposed and said as follows:

11 CROSS-EXAMINATION

12 BY MR. YOUNG:

13 Q. Dr. Bell?

14 A. My name is Ronald, middle initial, H, like in
15 Harry, Bell, B-E-L-L.

16 Q. Dr. Bell, **your** address, sir?

17 A. **21100** Southyate Park Boulevard, Southyate
18 Medical Building.

19 Q. That's suite 212?

20 A. **212.**

21 Q. That your business address?

22 A. Yes, it is.

23 Q. And what business are you in?

24 A. Oral and maxillofacial **surgery.**

25 Q. Dr. Bell, I had marked for purposes of this

1 deposition, a document marked as -- off the record.

2 ---oOo---

3 (Thereupon, a discussion was
4 held off the record.)

5 ---oOo---

6 (Thereupon, Plaintiffs' Exhibits 1
7 and 2 of Dr. Bell's Deposition
8 were marked for purposes of
9 identification.)

10 ---oOo---

11 BY MR. YOUNG:

12 Q. We have had marked solely for purposes of this
13 discovery deposition, no other purpose, a document
14 marked as Exhibit 2: would you identify that for me?

15 A. Yes, this is my CV.

16 Q. And does that set forth your credentials?

17 A. Yes, it does, sir.

18 Q. I've had marked as Plaintiff's Exhibit 1
19 solely for purposes of this discovery deposition,
20 for the record, I indicated, not for the purpose of
21 admission in trial. Can you identify that document?

22 A. Yes, sir. That's the letter that I wrote.

23 Q. That is the report that you have given in this
24 case to Attorney Mazgaj?

25 A. That's correct.

Q. Doctor, can you tell me what documents or other records you've had an opportunity to examine in formulation or prior to the formulation of your opinion?

A. Yes. The records are all right here that you have gone through. These are the records of the medical and dental records so submitted to me.

(Indicating.)

Q. Doctor, just so the record reflects it, it appears to me as though you have the office copies of the office records from Dr. Hendricks, Kevin's treating dentist; is that correct?

A. That appears to be correct, sir.

Q. That you had a copy of the records that Mr. Mazgaj subpoenaed from a dentist, John L Kimberly, K-I-M-B-E-R-L-Y, together with X-rays that were taken by Dr. Kimberly?

A. That is correct, sir.

Q. And those were Dr. Kimberly's, apparently Valley Dental Group. If I miss anything, go ahead and indicate that to me, Doctor, as well.

A. It is all right there.

Q. You have also received through Attorney Mazgaj, all of the records that he had obtained from Dr. Battaglia?

1 A. That is correct, sir.

2 Q. In addition, you had a copy of the emergency
3 room record of Akron General Medical Center of
4 April 24, 1992?

5 A. Correct.

6 Q. A report of Dr. Battaglia of July 23, 1992,
7 including with it, a personal injury questionnaire
8 and progress notes of Dr. Battaglia, and the Akron
9 City Hospital MRI study of 6/25/92; is that correct?

10 A. Whatever is in there, sir.

11 Q. Well, I'm just indicating --

12 A. Yes.

13 Q. -- having looked through what is reported
14 there, but also what I believe to be there?

15 A. That is correct.

16 Q. I also find all of the records from
17 Dr. Battaglia's office.

18 A. I think some of these are duplicates.

19 Q. Doctor, I see X-rays that are dated --

20 A. That is my X-ray that I took in my -- it was
21 on the date of our examination, August 5, 1994.

22 Q. And that is a panographic X-ray?

23 A. That is correct.

24 Q. I also see that there are other X-rays in your
25 file, one dated 5/9/92?

not
used
X-rays

1 A. Right. I really can't identify them. I've
2 not used them at all. I can't really identify and
3 the quality is not really -- call it what you want.
4 I don't know what they are. I've not looked at
5 them.

6 Q It appears to be a cervical spine X-ray?

7 A That is correct.

8 Q And there is a set of one additional X-ray
9 that appears to be cervical spine?

10 A Correct. I'm not sure this is meant to be
11 cervical spine or jaws or what. The quality is
12 not -- I don't know who took them.

13 Q Okay. Then there are three more sets of
14 X-rays in your file?

15 A There is four altogether. Those are -- those
16 were given to me. (Indicating.)

17 Q Okay. Doctor, let me get right down to some
18 of the questions that concern me. You admit, don't
19 you, that Kevin suffered a problem or injury to his
20 temporomandibular joint?

21 MR. MAZGAJ: Objection to
22 the form. You can answer.

23 THE WITNESS: No, I don't
24 think that he suffered an injury to the
25 temporomandibular joint.

BY MR. YOUNG:

2 Q My question, making reference now to your
3 report, if you take a look at it, on page 6 in the
4 first paragraph, you indicate, "I will not deny that
5 the patient may be having TMJ problems, but I
6 certainly feel that the cause of these problems is
7 bruxism and not the automobile accident."

8 A That is correct, sir.

9 Q Here is my question, sir: Do you have an
10 opinion, Doctor, as to whether Kevin Akers had a
11 problem in his TM joint?

12 A. At what time?

13 Q. Prior to the time that he came to your office
14 for examination?

15 A. Prior to the time he came to my office?

16 Q. Yes.

17 A. Yes. He apparently had **some** problem in his
18 temporomandibular joint.

19 Q. And did you conduct an examination to
20 determine whether he had a TMJ problem?

21 A. At the time he was here, I did conduct an
22 examination, yes.

23 Q. Okay. And what did you determine on that
24 issue?

25 A. At the time that he was here, he was able to

1 open his jaw up and down perfectly normally. He was
2 able to open laterally, perfectly normally. On
3 listening to his joint sounds, they were all
4 perfectly normally. I could detect no evidence of a
5 temporomandibular joint problem at the time of my
6 examination.

7 Q. On what basis do you conclude that he had a **TM**
8 problem prior to that examination?

9 A. Because he told me he did.

10 Q. So, you are simply accepting what Kevin Akers
11 tells you about that?

12 **MR. MAZGAJ:** Objection.

13 You can answer: is that what you are doing?

14 **THE WITNESS:** Yeah. He
15 was a very truthful patient. I had no reason
16 to question what he told me.

17 **BY MR. YOUNG:**

18 Q. You found Kevin Akers to be cooperative and
19 polite?

20 A. Totally polite.

21 Q. And Kevin Akers answered every question that
22 you posed of him?

23 A. Oh, absolutely.

24 Q. And was there anything that you **asked** him to
25 provide you that he refused to provide for you?

1 A. No, none whatsoever.

2 Q. Was there anything you needed for purposes of
3 reaching opinions and conclusions in this case that
4 was not given to you?

5 A. No. I think I might would like to have had
6 more information from Dr. Hendricks, but I had all
7 that was there.

8 Q. What is it that you would have wanted to have
9 from Dr. Hendricks?

10 MR. MAZGAS: I object,
11 you can answer, speculative in nature. You
12 can answer.

13 THE WITNESS: Why he was
14 doing orthodontia.

15 BY MR. YOUNG:

16 Q. Doctor, did you call Dr. Hendricks on the
17 phone?

18 A. No, I did not.

19 Q. You were aware of the fact that Dr. Hendricks'
20 records were provided to Attorney --

21 A. Oh, yes, sir.

22 Q. -- to Attorney Mazgaj through subpoena,
23 weren't you?

24 A. Yes.

25 Q. So that you could obtain from Dr. Hendricks

1 any information that you needed?

2 A. Yeah, I read over everything that he had. He
3 listed everything.

4 Q. Now, what is it that you would want to know
5 from Dr. Hendricks relative to orthodontia?

6 MR. MAZGAJ: Objection.
7 You can answer.

8 THE WITNESS: I think that
9 there is just -- it's a very incomplete set of
10 notes. I think that it just could have been a
11 little bit more complete; just curiosity more
12 than anything.

13 MR. YOUNG: But my
14 question -- you mean that had there been
15 certain information provided to you, you may
16 have found the orthodontia treatment to be
17 appropriate for the TMJ problem?

18 MR. MAZGAJ: Objection.

19 THE WITNESS: No.

20 BY MR. YOUNG:

21 Q. Well then, try to help me with what
22 information you would want from Dr. Hendricks that
23 would relate to --

24 A. We just --

25 MR. MAZGAJ: Let him

1 finish the question.

2 BY MR. YOUNG:

3 Q -- that would relate to providing braces or
4 orthodontia to Kevin Akers,

5 A. No. There would be no difference.

6 Q. Do you accept Dr. Hendricks' diagnosis that
7 Kevin Akers suffered a temporomandibular joint, that
8 is, a TMJ problem?

9 A. Do I accept that?

10 Q. Yes.

11 A. Yes, I do.

12 Q. I take it -- do you accept his diagnosis that
13 he suffered injury to the TMJ?

14 MR. MAZGAJ: Objection.

15 THE WITNESS: I don't

16 agree with that.

17 MR. YOUNG: Do you agree
18 that TMJ disorder is an extremely painful
19 condition?

20 MR. MAZGAJ: Objection.

21 THE WITNESS: Not to

22 everyone, no.

23 BY MR. YOUNG:

24 Q. You agree that it is extremely painful to some
25 people?

1 A I think that you have -- that's too broad of a
2 question to attempt to answer. I think you have to
3 determine just what kind of TMJ. Like, TMJ, there
4 are some people that live with it forever and it
5 doesn't bother them at all.

6 Q What type of TMJ would be painful?

7 MR. MAZGAJ: Objection.
8 Hypothetical in nature.

9 THE WITNESS: It's too
10 hypothetical of a question, it really is.

11 MR. YOUNG: You can't
12 indicate to me what type of TMJ that causes
13 pain that you can --

14 MR. MAZGAJ: You said
15 what type of TMJ cases cause severe pain.

16 THE WITNESS: I think that
17 if you saw a football player on a football
18 field that got hit on the jaw, that would be
19 very, very painful. He would let you know
20 right away that he's got severe pain and that
21 is an acute, very acute injury that would be
22 very painful.

23 MR. YOUNG: Doctor, what
24 is it -- would you explain to me either the
25 mechanisms or the anatomy of what causes pain

1 in a TMJ injury?

2 MR. MAZGAJ: Objection to
3 the question, broad in nature. You can answer
4 to the best you can.

5 THE WITNESS: It is the
6 same that causes pain to anything else, injury
7 to nerves.

8 MR. YOUNG: You don't
9 agree that pain, imminent from inflammation in
10 the joint, inflammation of the soft tissue in
11 the joint --

12 MR. MAZGAJ: Off the
13 record.

14 ---oOo---

15 (Thereupon, a discussion was
16 held off the record.)

17 ---oOo---

18 BY MR. YOUNG:

19 Q. My real question is: Can you explain to me
20 the mechanism of pain arising out of TMJ problems?

21 A. I think that's just as broad a question. I
22 can't give you a quick answer to that. Its way too
23 broad.

24 Q. Can you explain to me -- well, what is it that
25 causes you to have a problem with that question,

1 Doctor?

2 A I don't know where to start.

3 Q Do you agree that TMJ problems can be painful?

4 A Oh, yes, of course they can.

5 Q Can pain result from the inflammation of the
6 soft tissues around the joint itself?

7 A Yes.

8 Q Doctor, what are the symptoms of a displaced
9 disc of the TMJ?

10 A Simply can be many fold. It can be just
11 popping. It can be clicking. It can be pain.

12 Q Can it be difficulty opening the mouth?

13 A It can be; it is not always.

14 Q Can it include symptoms -- also include
15 Locking of the mouth open?

16 A Yes, it can.

17 Q Can the symptoms include headaches?

18 A Yes, it can.

19 Q And where would the headaches be located?

20 A Anyplace in the head. It could be anywhere in
21 the forehead, top of the head, back of the head.

22 Q Could it also be in the temporal area of the
23 head?

24 A Anyplace.

25 Q Would a symptom -- could a symptom include a

*symptoms - displaced
disc*

1 change in the bite?

2 A. Could a symptom include a change in the bite?

3 That's more likely to begin change. The bite could
4 cause TMJ more than a change in the TMJ could cause
5 a change in the bite.

6 Q. You don't agree that change in bite, that is,
7 how far the teeth would go open, would be a symptom
8 of TMJ?

9 A. I'm not really sure that I understand this.

10 MR. MAZGAJ: I think your
11 question was: Could a change in the bite be a
12 symptom of TMJ; was that your question?

13 THE WITNESS: I'll give
14 you an anything is possible answer.

15 BY MR. YOUNG:

16 Q. I don't want to know that anything is
17 possible. What I want to know in specific
18 symptoms -- I started by asking you signs or
19 symptoms of a problem with a TM joint.

*signs +
symptoms
from the
neck*

20 A. Okay.

21 Q. You gave me, I think, popping and clicking; is
22 that correct?

23 A. Yes, that is correct.

24 Q. Pain?

25 A. Yes.

1 Q.

2 A.

3 the entire side of the face.

*from into the
neck*

4 Q.

5 A.

6 Q.

7 of the symptoms I asked you about was a change in
8 the bite; a sign or symptom of TMJ could include a
9 change in the bite, specifically, inability to open
10 the mouth as far as --

11

12

13

14

15 what you mean by "inability to open the
16 mouth." I'm sorry, I don't understand what
17 you mean.

18 MR. YOUNG: Let me ask
19 it this way: Would a sign or symptom of a TMJ
20 problem also include inability to open the
21 mouth as far as normal?

22 THE WITNESS: Yes, but
23 that's not a change in the bite.

24 MR. MAZGAJ: Just answer
25 his questions.

1 THE WITNESS: Yes.

2 BY MR. YOUNG:

3 Q. You indicated to me the areas of pain. How
4 about pain that radiates down into the shoulder?

5 A. I don't believe that would be TMJ pain.

6 Q. But, pain radiating into the neck?

7 A. Depending on how far into the neck it would
8 go. It limits itself to the area of the face.

9 Q. Now, Doctor, does an injury to the TM joint
10 cause any permanent change in the joint?

11 MR. MAZGAJ: Objection.

12 THE WITNESS No.

13 BY MR. YOUNG:

14 Q. Now, Doctor, I take it that in your opinion
15 you concluded that Kevin **Akers** did suffer a problem
16 with his TM joint?

17 A. Not as a result of the accident.

18 Q. That's the issue then, in other words, you
19 dispute that his problem resulted from the accident?

20 A. That is correct, sir.

21 Q. And what is the cause, that is, your opinion
22 in this case has indicated a cause for his TM joint
23 problem, isn't it?

24 A. I had so indicated in my letter, yes, sir.

25 Q. Now, if I direct your attention to page 4 of

1 {our letter, Item Number 111, the fourth paragraph.

2 A. Uh-huh.

3 Q. Let me ask the question and then we can refer
4 to sections in your report.

5 Do I understand that it is your opinion that
6 the cause of Kevin Akers' TM joint problem was
7 bruxism?

8 A. Yes, sir.

9 MR. MAZGAJ: Objection to
10 the limited nature of the question, but you
11 can answer.

12 THE WITNESS:
13 indicate that.

Yes, I did

*the cause of the
problem - bruxism*

14 BY MR. YOUNG:

15 Q. Would you define for me what you mean by
16 bruxism?

17 A. Bruxism is grinding of the teeth.

18 Q. Now, was there any other cause for his TMJ
19 problem?

20 A. I think that this is the main cause.

21 Q. Well, Doctor, I read your report very
22 carefully and that is the only cause that you
23 identify in your report; isn't that correct?

only cause

24 A. That is correct, sir.

25 Q. Now, I just want to know, is there any other

1 cause for Kevin Akers' TM joint problem?

2 A. I think that this is a perfectly legitimate
3 cause of it.

4 MR. MAZGAJ: If there are
5 others, tell him others.

6 BY MR. YOUNG:

7 Q. That's what I am saying. Yeah, I just want to
8 be sure --

9 A. No, no.

10 Q. -- in trying to evaluate your opinion, that I
11 understand it correctly and you tell me if I
12 understand it correctly.

13 You reviewed all of these records and you have
14 identified bruxism as the cause of his TM joint
15 problem?

16 A. That is correct.

17 Q. And that there are other causes of TM joint
18 problems, aren't there?

19 A. Oh, there are lots of causes of TM joint
20 problems.

21 Q. But, those other causes are not causes of
22 Kevin Akers' TM joint problem, in your opinion?

23 A. That is correct.

24 Q. What would be some other causes?

25 A. Missing posterior teeth, nail biting, gum

1 chewing, thumbsucking. These are all parafunctional
2 habits.

3 Q. But, you are satisfied from a review of the
4 records that none of those causes are presented in
5 Kevin's case?

6 A. I think that the bruxism is the major cause.

7 Q. Well, Doctor, you say "major cause." It is
8 the only cause; isn't that correct?

9 A. Yes, sir.

10 Q. Now, what evidence do you have -- by the way,
11 bruxism, do I understand it correctly, bruxism is a
12 condition where the individual grinds their teeth?

13 A. That is correct.

14 Q. What evidence do you have that Kevin Akers
15 suffered from bruxism?

16 A. Diagnosis of bruxism is one of the easiest to
17 make. All you have to do is to look at the grinding
18 surfaces of the teeth and that you know a specific
19 individual for their age, how much abrasion there
20 should be on the teeth. All you have to do is to
21 look and it's a very visual observation.

22 Q. And you are saying that on August 5, 1994,
23 when you examined Kevin Akers, that you found
24 evidence of bruxism, grinding on his teeth?

25 A. Yes, sir.

1 Q. You questioned Kevin Akers about that, didn't
2 you?

3 A. I certainly did.

4 Q. And he told you he had never been told that?

5 A. No. He said he was unaware of it, a perfectly
6 legitimate answer. Most people don't know they do
7 it.

8 Q. In other words -- but, that means that he's
9 never been told that he was guilty of grinding his
10 teeth?

11 MR. MAZGAJ: Objection.

12 BY MR. YOUNG:

13 Q. Do you agree with that?

14 A. I don't know if anyone ever told him or not.
15 I don't know if anyone ever told him that or not.

16 Q. I don't understand what the difference between
17 that and to say that he said he was unaware of it.

18 A. He told me he was unaware of it. I can't tell
19 you whether anyone ever told him that before or not.

20 Q. Doctor, can you tell me specifically where
21 there was evidence of grinding on his teeth?

22 A. Yes. Mainly in his posterior teeth and the
23 middle teeth.

24 Q. Does this correctly describe it on page 4,
25 Item Roman Numeral III, fourth paragraph, where you

1 say, "This was very obvious by the amount of
2 abrasion of the incisal surfaces of the maxillary
3 and the mandibular teeth as well as the occlusal
4 surfaces of the posterior teeth"?

5 A. Correct.

6 Q. Now, Doctor, if Kevin **Akers** had no evidence of
7 grinding prior to the onset or the beginning of any
8 signs or symptoms of a TM joint problem, then
9 bruxism could not be the cause of that problem,
10 could it?

11 MR. MAZGAJ: Objection.

12 You can answer.

13 THE WITNESS: Please

14 rephrase **your** question, sir.

15 BY MR. YOUNG:

16 Q. Do you assume that this evidence of grinding
17 in his mouth, grinding on his teeth, existed prior
18 to him having any symptoms --

19 A. Yes.

20 Q. -- of TM -- let me finish.

21 A. Yes.

22 Q. -- of TMJ problems?

23 MR. MAZGAJ: Objection.

24 You can answer.

25 THE WITNESS: Yes. I

1 think it existed prior.

2 BY MR. YOUNG:

3 Q. Well, for your opinion to be valid, it would
4 have to exist prior, wouldn't it?

5 A. Of course.

6 Q. And if it did not exist prior to the beginning
7 of the symptoms and signs of a TM joint problem,
8 then your opinion would not be valid, would it?

9 MR. MAZGAJ: Objection.

10 You can answer.

11 THE WITNESS: But, it did
12 exist prior.

13 BY MR. YOUNG:

14 Q. What evidence do you have of that?

15 A. Things like this just don't happen overnight.
16 They come on -- it takes a lot of time for this
17 amount of grinding to occur.

18 Q. Is bruxism -- well, let me -- bruxism is a
19 condition that dentists are trained to observe,
20 isn't it?

21 A. They should be.

22 Q. It's a rather significant condition, isn't it?

23 A. It is something I look for, yes.

24 Q. Well, a treating dentist would normally look
25 for bruxism, wouldn't it?

1 MR. MAZGAJ: Objection.
2 I object to what a normally treating dentist
3 should do.

4 MR. YOUNG: He can't
5 respond to the standard of care in dentistry?

6 MR. MAZGAJ: No. If you
7 want to talk about bruxism at what degree
8 before it starts to manifest itself on the
9 teeth early on, by noting complaints -- there
10 are a lot of variables there.

11 THE WITNESS: Any dentist
12 should look for it.

13 BY MR. YOUNG:

14 Q. So, a family dentist ought to look for
15 evidence of bruxism on someone who's presenting to
16 him for care on that person's teeth?

17 A. He should.

18 Q. And he should do that so that if there is
19 bruxism, it should be dealt with: isn't that
20 correct?

21 A. It should be, it isn't always.

22 Q. Now, a dentist is trained to examine and
23 identify bruxism?

24 A. Yes, sir.

25 Q. What if bruxism isn't dealt with: what is the

1 consequences of that to the dental patient?

2 A. There are many things. First of all, you are
3 going to lose your chewing surface of the teeth.
4 Second of all, it would be discomfort in your
5 temporomandibular joints. Third of all, it will
6 eventually be periodontal disease where you start to
7 harm the bone that holds the teeth.

8 Q. And all of those are good reasons why the
9 family dentist will look for evidence of grinding
10 and if it's there, deal with it or make a referral?

11 A. They should. I'm not sure every dentist does,
12 but they should.

13 Q. Now, Doctor, you did panographic X-rays; isn't
14 that correct?

15 A. That is correct, sir.

16 Q. I'm interested in the statement that you make
17 in your report on page 5, the first full paragraph
18 indicating, "Although a panographic X-ray is not
19 specific for temporomandibular joint problems, the
20 joint as well as the condyles appear to be quite
21 normal"?

22 A. That is correct.

23 Q. You can't see the joint of the
24 temporomandibular?

25 A. Yes, you can see the area, sir.

1 Q. Can you visualize --

2 A. Yes.

3 Q. -- the joint space between the mandibular bone
4 and the condyle?

5 A. No.

6 Q. You cannot see the articular surface of the
7 skull, can you, with a panographic X-ray?

8 A. You can't see it specifically enough to use it
9 for diagnostic purposes, no.

10 Q. You can't see the articular surface of the
11 condyle with a panographic X-ray, can you?

12 A. No, you cannot.

13 Q. In fact, a panographic X-ray would not tell
14 you anything about the position of the condyle,
15 would it?

16 A. Yes, it would.

17 Q. What would it tell you?

18 A. it would tell you whether it is in the ^{fosse} false
19 or not in the false.

20 Q. But, it wouldn't tell you whether its been
21 displaced anteriorly or posteriorly or improperly in
22 place?

23 A. It is not meant to do that.

24 Q. A panographic X-ray is not diagnostic for TM
25 joint problems, is it?

1 A. That's specifically what I stated here.

2 Q. So, if you wanted to try to diagnose **TM** joint
3 problems, you would have to do something better than
4 that panographic X-ray?

5 A. That is correct.

6 Q. You didn't do any other kind of X-ray?

7 A. No, sir.

8 Q. Why not?

9 A. I didn't think it was my place to do it. I
10 wasn't treating him.

11 Q. If you wanted to determine the extent of
12 damage to the ligaments of Kevin Akers' **TM** joint,
13 what kind of X-ray or diagnostic technique would you
14 use?

15 A. What I would use today is probably a little
16 bit different than what I might have used in 1992.
17 Today, if it were possible, I would want an **MRI**.

18 Q. Wouldn't you generally do an MRI if surgery
19 was going to be indicated?

20 A. No.

21 Q. You would do an **MRI** to determine the extent of
22 damage to the ligament --

23 A. Uh-huh.

24 Q. -- of the **TM** joint?

25 A. Yeah. I think **MRI** is the best diagnostic.

1 Q. What would you use to determine the extent of
2 injury to the muscle?

3 A. I would use an MRI for everything if I could
4 afford to do it.

5 Q. How about the extent of injury to the disc?

6 A. I think the MRI would be most helpful.

7 Q. Would you find it helpful to examine a
8 transcranial X-ray?

9 A. Each and every one of these has its place.

10 Q. Doctor, in rendering an opinion in this case,
11 did you talk to Kevin Akers' wife?

12 A. No, sir.

13 Q. Did you talk to any of his co-workers?

14 A. No.

15 Q. The only person you talked to to arrive at an
16 opinion is Kevin Akers?

17 A. That is correct, sir.

18 Q. How long did you spend with Kevin?

19 A. Somewhere between 45 minutes to an hour. I
20 don't have the exact time.

21 Q. That was a single visit that he had?

22 A. That is correct, sir.

23 Q. Did you examine the sworn testimony that he
24 gave under questions from Attorney Mazgaj in this
25 case?

1 A. I don't believe that I've been privileged to
2 see that.

3 Q. I mean, you didn't examine that prior to
4 rendering an opinion in this case?

5 A. No, sir.

6 Q. You don't know what he told Mr. Mazgaj about
7 any grinding of his teeth?

8 A. No, I don't, sir.

9 Q. Did you examine the answers that Kevin Akers
10 gave under oath to interrogatories: those are
11 written questions that Mr. Mazgaj submitted to him
12 before you issued an opinion in this case?

13 A. No, sir.

14 Q. Were you aware that Mr. Mazgaj asked him about
15 all doctors that he had seen and dentists and
16 periods of hospitalization?

17 A, I think that you have everything in front of
18 you that I had to do my examination,

19 Q. So, you don't know anything about that?

20 A. No, sir.

21 Q. You did, however, examine the records of
22 Valley Dental?

23 A. I believe Valley Dental is the one that was --

24 Q. Dr. Kimberly?

25 A. -- Kimberly, yes, sir. Some of these notes

1 are hard to follow because they don't all have names
2 on each and every patient.

3 Q. Okay. Doctor, you did not review the MRI done
4 by the hospital or did you?

5 A. No. I have an X-ray report. I don't have an
6 MRI report.

7 MR. MAZGAJ: Do you have
8 a copy of that for us?

9 THE WITNESS: Of the X-ray
10 report?

11 MR. MAZGAJ: No, the MRI
12 report?

13 THE WITNESS: I don't have
14 it,

15 PIR. YOUNG: We will look
16 if we have time here.

17 MR. MAZGAJ: Go ahead.

18 BY MR. YOUNG:

19 Q. I'm interested in what Dr. Bell had to render
20 his opinion.

21 What evidence do you have, Dr. Bell, that the
22 grinding on Kevin's teeth existed prior to the
23 accident, the automobile accident of April 24, 1992?

24 A. My only clinical impression, amount of
25 grinding of the teeth.

1 Q. And what evidence do you have that there was
2 any sign or symptom of a TMJ problem prior to this
3 accident of April 24, 1992?

4 A. I don't have any evidence. The patient told
5 me he didn't.

6 Q. If there is a longstanding problem with
7 grinding of teeth, wouldn't you expect symptoms to
8 begin gradually and over time?

9 A. Everything begins -- most things begin
10 gradually over time, yes.

11 Q. You are aware of the fact that symptoms --
12 Kevin Akers' symptoms began within a week of the
13 accident, the automobile accident?

14 A. No. Kevin Akers indicated to me that it was
15 longer than that.

16 Q. What symptoms did he indicate to you: what
17 symptoms are you referring to, Dr. Bell?

18 A. Headaches and jaw pain.

19 Q. And what of the other symptoms -- when was the
20 beginning of the other symptoms?

21 A. What other symptoms?

22 Q. Well, you gave me a litany. We went through a
23 list of other symptoms. When was the beginning of
24 the other symptoms?

25 A. I don't know, because we never did get popping

1 or cracking. He never did report that.

2 Q. You have no information about when that
3 symptom began?

4 A He never complained about those symptoms.
5 Those are things that I said could happen. I didn't
6 think those were, in fact, things that did happen to
7 Kevin Akers.

8 Q Do you have your original notes from the
9 interview with Kevin Akers?

10 A. No, sir.

11 Q. You don't keep original notes?

12 A. I transfer those into my examination, right
13 here. (Indicating.)

14 Q. So, Doctor, if we need to refer to notes of
15 your examination, there are none in existence; is
16 that right?

17 A. It is all right here. (Indicating.)

18 Q. Doctor, you didn't ask Kevin Akers about
19 clicking, popping?

20 A. Yes. We asked at the time. He had no
21 clicking or popping.

22 Q. How about the symptoms; when was the onset of
23 the symptom, difficulty with opening his mouth?

24 A. This was not recognized. It was recognized by
25 Kevin Akers, really, as headaches.

7
1 Q. You don't know anything about a symptom
2 difficulty opening the mouth?

3 A. That wasn't until well after the accident.

4 Q. What is the basis that you have for that,
5 Doctor?

6 A. What he told me.

7 Q. But, we don't have any notes from your
8 examination?

9 MR. MAZGAJ I'm going to
10 object. He has a five-page, single spaced
11 report.

12 THE WITNESS: All right
13 here. (Indicating.)

14 BY MR. YOUNG:

15 Q. Doctor, when you conduct an examination of a
16 patient, do you maintain records of that
17 examination?

18 A. I make scribbly notes that I used to write my
19 letter to right here. (Indicating.)

20 Q. No. I'm asking about in your normal practice,
21 you don't maintain some kind of notes?

22 A. Oh, if I am treating a patient, of course, I
23 do. I was not treating him.

24 Q. You are not treating Kevin Akers?

25 A. No.

1 Q. Kevin Akers didn't come to you for purposes of
2 obtaining treatment?

3 A. No, sir, he did not, sir.

4 Q. He didn't come to you so that you could render
5 an opinion for his benefit?

6 A. He came to me for an evaluation.

7 Q. But, I mean, he didn't come to you so that you
8 could give him an opinion, give Kevin Akers an
9 opinion?

10 A. No. He never asked me for an opinion. He
11 wasn't sent here for that.

12 Q. Who is it that asked for your opinion?

13 A. This gentleman here:. (Indicating.)

14 Q. Mr. Mazgaj, the defense attorney, in this
15 case?

16 A. Yes, sir.

17 Q. Kevin was sent to you by Mr. Mazgaj?

18 A. That is correct.

19 Q. And he was sent to you so that you could
20 render an opinion as a defense doctor in this
21 situation?

22 MR. MAZGAJ: I object to
23 your characterization.

24 THE WITNESS: No, sir. He
25 was sent here to me as a doctor.

1 EBY MR. YOUNG:

2 Q. He was sent to you so that you could render an
3 opinion as a defense doctor in this case?

4 A. No. He was sent to me as a doctor. I don't
5 like to be classified. I'm a doctor, I don't come
6 in with prejudice.

7 Q. Doctor, do you claim that one has to receive
8 direct trauma to the jaw or temporomandibular joint
9 in order to have a TM joint injury?

10 A. I do subscribe to that theory, yes, sir.

11 Q. Does that mean that you would claim that
12 impact to the head is not sufficient to cause injury
13 to the TM joint?

14 A. That's correct, sir.

15 Q. Now, Doctor, could you point to some treatise
16 or textbook as a basis for that?

17 A. My experience.

18 Q. You don't have any -- there is no written
19 literature that you know of in your profession?

20 A. I have seen written literature on both sides.

21 Q. Well, Doctor, give me the benefit of some
22 written literature on your side of the question.

23 A. It is my personal experience, which is the
24 most important thing.

25 Q. You can't cite me then to any professional

1 literature on that issue?

2 A. I don't think it's necessary, no, sir,

3 Q. But, can you cite me to such literature?

4 A. No.

5 Q. Can you indicate to me an author that you
6 consider to be authoritative on the issue of trauma
7 causing TM joint disorders?

8 A. There are a whole litany of books out there.
9 There are dozens of them that deal with the subject.

10 Q. That you would find authoritative?

11 A. Each and every one has something authoritative
12 within them, yes, sir.

13 Q. Well, would you name those for me, Doctor?

14 A. No. I don't think it has anything to do with
15 this. I have worked with my own personal ability to
16 discern these things.

17 Q. You are just basing these on your personal
18 opinion?

19 A. That is correct, sir.

20 Q. You are not basing it on an opinion of
21 recognized sources in the profession?

22 A. That is correct, sir.

23 Q. So, it's simply a personal opinion?

24 A. Absolutely.

25 Q. Doctor, do you treat TMJ patients?

1 A. We see many TMJ patients here. They are
2 referred to us very frequently.

3 Q. Well, how many TMJ disorder problems did you
4 treat as a dentist in the last year?

5 A. I would say that I see at least one patient
6 every one to two weeks for a temporomandibular joint
7 problem.

8 Q. And do you see that patient for purposes of
9 rendering an opinion in a lawsuit?

10 A. I see some, not that many.

11 Q. Well, talking about the last year, are **you**
12 telling me that the figure that **you** gave me is the
13 number of patients you've seen for purposes of
14 providing treatment?

15 A. These are personal patients who have been sent
16 to me, not for legal reasons.

17 2. And how many do **you** say that you have examined
18 or treated in the last year for temporomandibular
19 joint problems?

20 A. I said, we see for evaluation, probably one
21 patient every one to two weeks.

22 Q. Not "we," are you talking about --

23 A. Me.

24 Q. -- **you** and Dr. Callahan: is that what you are
25 talking about?

1 A. Me, me.

2 Q. Okay. What experience have you had, Doctor,
3 with conservative treatment of TM joint problems?

4 A. Most of my experience is with conservative
5 treatment.

6 Q. What type of treatment do you provide?

7 A. Splint therapy.

8 Q. What do you consider to be the most common
9 causes of TM joint injury?

10 A. Missing molars.

11 Q. Can you give me a reference to journal
12 articles on which you base that opinion that that's
13 the most common cause of TM joint injury?

14 MR. MAZGAJ: Injury or
15 dysfunction?

16 MR. YOUNG: Injury.

17 MR. MAZGAJ: Traumatic
18 events?

19 BY MR. YOUNG:

20 Q. Yes. Injury, is that what you understand
21 injury to be, Dr. Bell?

22 A. Well, any missing molars cause injury to the
23 temporomandibular joint. Bruxism causes injury to
24 the temporomandibular joint.

25 Q. Well, you were distinguishing in your report

1 between major trauma and micro trauma?

2 A. Macro trauma and micro trauma, correct.

3 Q. Would you explain to me the difference?

4 A. Sure. Micro trauma are the parafunctional
5 habits that we discussed; that being, bruxism,
6 missing molars, nail biting, gum chewing. Macro
7 trauma being a direct blow to the jaw.

8 Q. Okay. As a person who is not trained as a
9 dentist, would you help me with an understanding why
10 it is called macro?

11 A. Yeah. Macro is big. Micro is small. Micro
12 are the little things that just keep on working away
13 over time. Macro is usually one blow.

14 Q. Okay. You asked Kevin Akers about the
15 accident, didn't you?

16 A. Yes, sir.

17 Q. By the way, did you -- I looked at your
18 material. My understanding is that you didn't have
19 an opportunity or that you didn't examine
20 photographs of the damage done to the vehicle by
21 Kevin Akers' head striking the windshield, did you?

22 A. No, I did not, sir.

23 Q. Do you consider that to be relevant in
24 formulating your opinion?

25 A. No, it really isn't. I've seen some

1 automobiles that look like no one would come out
2 alive and people have walked away from them without
3 a scratch.

4 Q. But, I'm talking about in terms of
5 understanding the mechanics of injury to his head?

6 A. No. It is more important that I see what he
7 told me, where he hit. He told me where the injury
9 was. The emergency room said exactly the same thing
9 that he did. Seeing a picture of a car really
10 doesn't make any difference.

11 Q. Do you think that emergency room personnel are
12 qualified to examine for TM joint injuries?

13 A. I think that they should be as qualified to
14 examine for that as a dentist is to examine for
15 bruxism.

16 Q. So, you believe that emergency room personnel
17 routinely examine for TM joint injury?

18 MR. MAZGAJ: We are to
19 assume no complaints of jaw pain in the
20 emergency room? There are so many factors
21 there.

22 BY MR. YOUNG:

23 Q. Well, I am just asking about the
24 qualifications of emergency room personnel to
25 determine if injury has occurred to the joint?

1 A. I'm not qualified to answer about the
2 qualifications of the emergency room personnel.

3 Q. So, you couldn't say whether or not they are
4 qualified to do that?

5 A. No, I am not, sir. I cannot, sir, I'm sorry.

6 Q. The fact that there was no mention of jaw
7 joint injury in the emergency room notes, does that
8 mean there was no injury to the TM joint?

9 A. It has been my opinion that usually if there
10 was a problem, you usually find some kind of
11 notation. Emergency room doctors today are becoming
12 much more clever in their observations.

13 Q. But, that doesn't change what opinion you are
14 qualified to render, does it?

15 A. No, no. I think that there is a difference.
16 Are you talking about the emergency room nurse? Are
17 you talking about the litter bearer or are you
18 talking about the new specialty that we have today
19 of emergency room physicians?

20 Q. I'm talking about the physicians that you
21 would find at the Akron Hospital.

22 A. That's a sophisticated hospital. Emergency
23 room physicians at a hospital like that would look
24 for a temporomandibular joint problem today, I
25 believe.

1 Q. Today; this accident happened April 24, 1992?

2 A. I think that they would have looked for it
3 then too. I hope they would.

4 Q. But, you told me you are not qualified to
5 render an opinion --

6 A. That is correct.

7 Q. -- as to whether they are qualified to do that
8 or not?

9 A. No, sir.

10 MR. MAZGAJ: I'm going to
11 object. Just because you don't like the
12 answer --

13 MR. YOUNG: Well, I
14 hoard him give two different answers.

15 MR. MAZGAJ: Well, you
16 can interpret it any way you want to.

17 THE WITNESS: I can't tell
18 you what the qualifications of this particular
19 emergency room physician were.

20 MR. YOUNG: Is it
21 unusual for a physician, either a dentist or a
22 chiropractor to diagnose a TMJ problem weeks
23 or even months after an injury?

24 MR. MAZGAJ: No, I don't
25 understand that one. Can they find something

1 months later and say it's **TMJ**: is that what
2 you are asking?

3 **MR. YOUNG:** Yes.

4 **MR. MAZGAJ:** Okay.

5 **THE WITNESS:** If they are
6 trained to look for it.

7 **MR. YOUNG:** Well then, I
8 would understand, do you agree that it is not
9 unusual for a treating physician or dentist to
10 diagnose a **TMJ** injury weeks or even months
11 following the injury itself?

12 **MR. MAZGAJ:** Well, I'm
13 going to object to that question. Are you
14 asking him about onset of symptoms? See,
15 I don't understand. That's a two-fold
16 question.

17 **MR. YOUNG:** I'm just
18 asking whether it would be unusual for them to
19 diagnose that.

20 **MR. MAZGAJ:** If
21 somebody -- if a physician saw a patient for
22 the first time, eight months later and that
23 person had signs consistent with **TMJ**, can they
24 say this person has **TMJ**? That's different
25 than treating for eight months and not

1 noticing things and saying that's reliable
2 to relate it back after eight months, I don't
3 know which one of those two.

4 Do you understand that, Doctor?

5 THE WITNESS: No, I don't
6 understand, totally understand.

7 MR. YOUNG: Hear my
8 question: It is not unusual for a physician
9 or dentist to diagnose a TM joint problem
10 weeks or even months after an injury, is it?

11 MR. MAZGAJ: Objection.
12 You can answer.

13 THE WITNESS: No, no.
14 This is not a fair question.

15 BY MR. YOUNG:

16 Q. Why not, Doctor?

17 A. It is not a fair question because if there is
18 a temporomandibular joint problem, then a dentist
19 should diagnose it right away, not months later.

20 Q. Can you give me some reference to your
21 statement here?

22 I'm referring now to your report on page 5
23 that, "If a patient is involved in an accident and
24 the trauma of that accident causes temporomandibular
25 joint problems, the patient knows immediately at the

1 time of the accident and certainly within the first
2 24 to 48 hours that he or she has a problem due to
3 extreme pain experienced."

4 A. That is correct, sir.

5 Q. Do you have a source for that?

6 A. Me.

7 Q. You can't cite me to any authority in the
8 a field of --

9 A. Yes, I'm the authority.

10 Q. Which I'm asking you, though, do I understand
11 then that the opinion that you are stating is based
12 upon your personal opinion?

13 A. That is correct.

14 Q. You don't have any citation to professional
15 literature, textbook, or treatise to support that?

16 A. I have given you the most important citation,
17 that is, my personal opinion.

18 Q. But, I am asking whether you have a citation?

19 A. No, sir.

20 Q. Now, how about the use of orthodontia, that
21 is, braces to treat TM joint disorder; you disagree
22 with that?

23 A. Absolutely.

24 Q. Is it your opinion that it is never a proper
25 treatment?

1 A. The word "never" is very broad. It is my
2 opinion an orthodontia is meant to straighten teeth,
3 not to treat temporomandibular joint.

4 Q. Doctor, are you aware of any professional
5 literature on the issue as to whether braces,
6 orthodontia, is a proper treatment for TM joint
7 problems?

8 A. Yes, my own personal experience.

9 Q. But, I'm asking you whether there is any --
10 are you aware of any authority in the field,
11 treatise, textbook or journal article that would
12 support that opinion of yours?

13 A. It is my opinion.

14 Q. Your personal opinion?

15 A. Correct sir.

16 Q. Doctor, what professional journals **do** you take
17 that deal with the subject of temporomandibular
18 joint problems?

19 A. Every professional journal today deals with
20 temporomandibular joint problems.

21 Q. I am asking you specifically which one you
22 take?

23 A. Journal of Oral Surgery, which is a
24 publication in the American Association of Oral and
25 Maxillofacial Surgeons. The OOO Journal, which is

1 Oral Surgery, Oral Medicine, Oral Pathology. The
2 Journal of the American Dental Association.

3 MR. MAZGAJ: When you say
4 "take," you mean subscribe to?

5 MR. YOUNG: Yeah and
6 read. I assume you read them?

7 THE WITNESS: We get every
8 one of them and read them all.

9 BY MR. YOUNG:

10 Q. Do you take the Journal of Craniomandibular
11 Practice?

12 A. No, sir.

13 Q. Why not?

14 A. I felt it was not a valid journal. It was not
15 worth my time.

16 Q. Why is that?

17 A. Because there are too many others more
18 important to me.

19 Q. Have you taken any courses or treatment to
20 diagnose treatment of temporomandibular joint
21 treatment?

22 A. Yes, sir.

23 Q. What are they?

24 A. We have a continuing education course going at
25 Mount Sinai Hospital that meets continually

1 throughout the year. Plus I attend --

2 Q. I'm sorry, who, as to that, Mount Sinai?

3 A. All of the members of the Mount Sinai and
4 University Hospitals staff.

5 MR. MAZGAJ: Dean, not to
6 break up, but I got two minutes to five.

7 BY MR. YOUNG:

8 Q. Doctor, obviously I want to ask you more
9 questions and as I indicated, I want to ask you some
10 more relative to this case. Let me use the last
11 couple minutes before you have to leave.

12 A. Sure.

13 Q. Tell me about the number of times that you
14 have testified in litigation cases, that is, cases
15 involving temporomandibular joint problems.

16 A. What do you mean me to tell you?

17 Q. First of all, have you ever testified for a
18 claimant, somebody who's injured?

19 A. I have testified on both sides, yes,

20 Q. Who have you testified for?

21 A. I don't have the names of these people here,
22 It's not important.

23 Q. How about the lawyers for whom you have
24 testified?

25 A. No, I don't have a list of these here.

1 Q. You can't tell me --

2 A. No.

3 Q. -- how many you testified for in the last
4 year?

5 A. No.

6 MR. MAZGAJ: Or for the
7 claimant?

8 BY MR. YOUNG:

9 Q. Claimant, individuals that have been injured
10 and say that the automobile -- either an automobile
11 injury or other traumatic event has caused the TM
12 joint problem?

13 A. I can only tell you that I get involved in
14 less than eight to ten cases a year, at least.

15 Q. So, 1994, you were involved in approximately
16 eight to ten cases?

17 A. And those are not all temporomandibular joint,
18 no.

19 Q And how many of those?

20 A. I would say about half dozen, six, would be
21 the right answer.

22 Q. That were TM joint cases?

23 A. That were TM joint cases, about a half dozen
24 cases, yes, sir.

25 Q. And those cases were at the request of defense

1 .lawyers?

2 A. No.

3 Q. Or insurance companies?

4 A. No. I saw some at the request of insurance
5 companies. I see some at the request of Plaintiff's
6 attorneys.

7 Q. I am asking you for the names of Plaintiff's
8 attorneys?

9 A. I don't have that.

10 Q. Let's talk about 1994, Dr. Bell.

11 A. I don't have this list with me and it's
12 privileged information, which I'm not about to give.

13 Q. It's privileged, the names of the lawyers that
14 you have done this work for?

15 A. I don't think that has anything to do with our
16 present case. I don't have the list here with me
17 nor do I keep it.

18 Q. Doctor, isn't it true that you regularly
19 receive referrals of cases to render exams and
20 opinions --

21 A. No, I don't, regularly.

22 MR. MAZGAJ: Let him
23 finish.

24 BY MR. YOUNG:

25 Q. -- render exams and opinions for defense

1 lawyers in injury cases?

2 A. No, no. I've seen cases for --

3 Q. Who have you -- which defense lawyers have you
4 received referral of cases?

5 A. i don't have that list here. So, there is no
6 use asking. I don't have that list here to answer
7 you.

8 Q. How many cases have you received from defense
9 lawyers and insurance companies in the last five
10 years?

11 A. I have no idea. I don't keep those records.

12 Q. You don't know whether you have done eight to
13 ten cases in the last year?

14 A. If I do eight to ten cases a year, that's a
15 lot. I make my living doing surgery.

16 Q. And have you been doing that number of **cases**
17 for tho last five years?

18 A. No, no.

19 Q. When did you start receiving referrals of
20 cases from defense lawyers or insurance companies?

21 A. Not that long ago, only within the last two or
22 three or four years.

23 Q. Prior to four years ago, you have not examined
24 patients at the request of -- let me ask tho
25 question:

1 You are saying prior to four years ago, you
2 have not examined patients and rendered opinions at
3 the request of defense lawyers or insurance
4 companies?

5 A. Only on a very occasional basis.

6 Q. So, beginning about four years ago, you began
7 to do it on a more regular basis?

8 A. I wouldn't call it seeing eight to ten cases a
9 regular basis. I am specifically an oral and
10 maxillofacial surgeon. I make my living doing
11 surgery. I enjoy that more.

12 Q. Doctor, in the last five years, how many cases
13 have you received from either defense lawyers or
14 insurance companies?

15 MR. MAZGAJ: Objection.

16 THE WITNESS: You don't
17 have to object, I don't know.

18 BY MR. YOUNG:

19 Q. Where do you maintain those records?

20 A. I maintain them here.

21 Q. Here at your office?

22 A. Uh-huh.

23 Q. So, that could be ascertained, how many cases
24 have been referred to you for examination and
25 rendering of an opinion by defense lawyers or

7
1 insurance companies in the last five years?

2 A. I suppose I could go back and check. I have
3 no idea. I don't keep specific records of this sort
4 that you are asking.

5 Q. But, **you** do maintain the records from which
6 that could be determined?

7 A. It would be hard to dig them out. I expect it
8 could be done.

9 Q. Doctor, in that same time period, **how** many
10 cases did **you** testify in?

11 A. Very few.

12 Q. How many?

13 A. I don't know.

14 **a.** Have you testified in any case for a claimant
15 in the last five years?

16 A. I cannot recall.

17 Q. The issue of whether you testified for a
18 claimant is something that could be determined from
19 the records **you** maintain here at your office?

20 A. I think it would be very difficult to maintain
21 that. **You** would have **to** go back. It would be very
22 difficult to find that out.

23 Q. Can you name any lawyers --

24 A. No.

25 Q. -- for whom you have given testimony?

1 A. No.

2 Q. Can you name any lawyers for whom you have
3 given testimony for the defense?

4 A. No.

5 Q. Is it your testimony that in the last year
6 that you have reviewed and provided testimony for
7 claimants?

8 A. Yes.

9 Q. And out of the eight to ten cases that would
10 be two?

11 MR. MAZGAJ: I object.

12 THE WITNESS: I don't have
13 specific numbers, sir,

14 BY MR. YOUNG:

15 Q. Doctor, you can't tell me whether you have?

16 A. No, I can't.

17 Q. And during the last five-year period, had most
18 of your cases that you have reviewed to render an
19 opinion been for the defense lawyer or insurance
20 companies?

21 MR. MAZGAJ: Objection.
22 You can answer.

23 THE WITNESS: I can't give
24 you the numbers that you are asking me to
25 give.

1 BY MR. YOUNG:

2 Q Well, can you tell me whether more have been
3 f'or the defense --

4 A. Yes.

5 Q. -- or insurance companies?

6 A. Yes, more have been for the defense.

7 Q. Would it be fair to say that you have reviewed
8 and provided opinions at the request of defense
9 lawyers or insurance companies 80 percent of the
10 time?

11 MR. MAZGAJ: Objection.

12 You can answer.

13 THE WITNESS: I'm not
14 going to answer because I can't give him an
15 honest answer.

16 BY MR. YOUNG:

17 Q. We know that it is more than 50 percent, but
18 you can't state whether it is?

19 A. That's correct, sir.

20 Q. You can't be anymore precise than that?

21 A. No, I can't.

22 Q. Well, Doctor, I have some more questions I
23 have to ask, which I am go ng to ask, that I am
24 going to ask prior to the evidentiary hearing.

25 A. Off the record, I am going to keep you happy

1 or my wife happy.

2 MR. MAZGAJ: No, we are
3 not going off the record. He would like to
4 read it.

5 MR. YOUNG: We are
6 ending the deposition because of your personal
7 schedule.

8 MR. MAZGAJ: That's
9 right. We started an hour later. He would
10 like to read it.

11 ---oOo---

12 (Thereupon, the deposition was
13 adjourned at 6:05 p.m.)

14 ---oOo---

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C E R T I F I C A T E

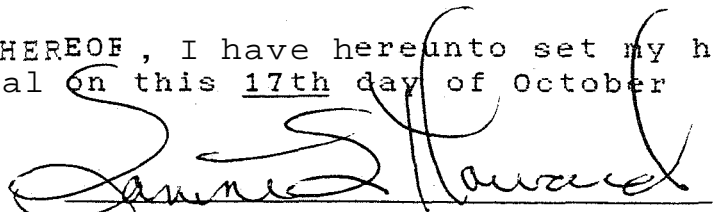
STATE OF OHIO,)
) SS:
SUMMIT COUNTY,)

I, Janine J. Howard, a Registered Professional Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, RONALD H. BELL, DDS, was by me, first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid: that the testimony then given by him was by me reduced to Stenotypy in the presence of said witness, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed and adjourned.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this 17th day of October 1994.


Janine J. Howard

Registered Professional Reporter
and Notary Public in
and for the State of Ohio.

My commission expires May 24, 1996.