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22 -2 1993

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## I N D E X

WITNESS:

MALCOLM A. BRAHMS, M.D.

Page

Direct Examination by Mr. Lancione

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EXHIBITS:

(no exhibits marked.)

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MALCOLM A. BRAHMS

of lawful age, a witness herein, called for discovery examination by the plaintiffs, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, was examined and testifies as follows:

- - - - -

DIRECT EXAMINATION

BY MR. LANCIONE:

Q. State your name for the record.

A. Dr. Malcolm A. Brahms.

Q. Dr. Brahms, do you have a curriculum vitae with you currently?

A. No, but I can get the girls to get you one.

Q. Before the end of the deposition today?

A. I'll get you one.

Q. Thank you.

Dr. Brahms, you have had your deposition taken before, obviously. You know the rules of a discovery deposition. I'm going to be asking you questions about this patient, about your examination, a few questions about yourself.

A. Sure.

Q. If my questions are not clear or you don't understand them, please tell me and I will rephrase

1       them or ask them in a more understandable manner.

2       A.       Sure.

3       Q.       What is your medical specialty, doctor?

4       A.       Orthopedic surgery.

5       Q.       And when did you receive your license to  
6       practice medicine in Ohio?

7       A.       1950.

8       Q.       What is your current age?

9       A.       73.

10      Q.       Date of birth?

11      A.       December of 1st, 1919.

12      Q.       Are you practicing medicine full time now?

13      A.       Yes.

14      Q.       Are you Board certified?

15      A.       I am.

16      Q.       In orthopedic surgery?

17      A.       That's correct.

18      Q.       Are you Board certified by any other of the  
19      specialty boards?

20      A.       No.

21      Q.       You do not practice medicine in the  
22      subspecialty or the specialty of neurology or  
23      neurosurgery?

24      A.       I do not.

25      Q.       Or pulmonology or cardiology?

1 A. No.

2 Q. Now, the reason we are here today is because  
3 you conducted a medical examination of Wyetta  
4 Bachert?

5 A. Yes.

6 Q. Now, she was a person who was injured in an  
7 automobile accident and is a plaintiff in a lawsuit.

8 A. Yes.

9 Q. I'm going to refer to the type of medical  
10 examination that you did of her, for the purposes of  
11 this deposition, as an independent medical  
12 examination, since they are referred to that way  
13 under our rules of procedure.

14 How long have you been examining  
15 injured plaintiffs in personal injury lawsuits as you  
16 have done in this case, and how long have you been  
17 doing these independent medical examinations of  
18 injured plaintiffs?

19 A. I have been in practice since 1955 and I am  
20 sure that I've seen patients who were medical-legal  
21 in their content of their examination since that  
22 time.

23 Q. So you entered your private practice in 1955?

24 A. That's correct.

25 Q. And you have been conducting independent

1 medical examinations of injured plaintiffs in  
2 personal injury lawsuits since that time?

3 A. Not only examined, but I've treated people for  
4 injuries that they sustained in accidents and falls  
5 and so forth.

6 Q. Sure. But my questions are very specifically  
7 limited too, or that question was very specifically  
8 limited to independent medical examinations of  
9 injured plaintiffs.

10 A. That goes back to the day I first started to  
11 practice.

12 Q. Okay. Now, that's a number of years, if my  
13 math is right here, 42 years?

14 A. No. It's about 38 years, isn't it?

15 Q. 38. You are right. Told you my math wasn't  
16 that good. About 38 years?

17 A. That's correct.

18 Q. And during all of those 38 years, in the  
19 private practice, have you examined injured  
20 plaintiffs in personal injury lawsuits on behalf of  
21 defense attorneys or the defendant's insurance  
22 company during all of those 38 years?

23 A. I'm sure I have. And I've also treated  
24 patients so that I've testified for plaintiffs as  
25 well.

1 Q. I'll get to your involvement with testimony  
2 for plaintiffs.

3 MR. NAEGELE: Objection to the  
4 reference to insurance on the record. Go ahead.

5 Q. Right now my questions are limited to  
6 examining plaintiffs on behalf defense attorneys or  
7 the defendants insurance company in the lawsuit.

8 A. Yes. Well, in the last 20 years it's been  
9 more frequent for independent medical examinations  
10 than it was earlier in my practice.

11 Q. Can you tell me in the last 20 years  
12 approximately how many of these independent medical  
13 examinations you've conducted?

14 A. I wouldn't attempt to even answer that  
15 question.

16 Q. Why not?

17 A. Because I promise to tell the truth and  
18 nothing but the truth and so I don't have any  
19 estimate.

20 Q. You haven't kept count of that?

21 A. Absolutely not.

22 Q. What about in the last year, have you kept  
23 count in the last year?

24 A. I have no reason to answer questions of that  
25 nature since I won't be able to answer them



1 truthfully. No, I won't answer them.

2 Q. That's fair.

3 A. It is not an infrequent occurrence in this  
4 office for me to examine patients for independent  
5 medical examinations.

6 Q. Okay. I'm going to try to get to some kind of  
7 a number, and I am going to go by shorter and shorter  
8 time periods.

9 A. I'm not going to answer.

10 Q. How many a week?

11 A. I'm not going to answer those questions. I  
12 told you it's not an infrequent occurrence in this  
13 office for me to examine people for independent  
14 medical examinations.

15 Q. I understand that. But your lawyer might tell  
16 you that you should -- your job today is to answer my  
17 questions to the best of your ability.

18 A. To the best of my ability, I will. I will  
19 tell you this: I'm in my office four, sometimes five  
20 days a week. There are days when I see none, there  
21 are days when I see as many as three for independent  
22 medical examinations. If that can make an answer for  
23 you, so be it.

24 Q. Okay. How many have you done this week so far?  
25

1 A. Well, today is Wednesday.

2 Q. Right.

3 A. And I would say that I saw no one yesterday, I  
4 may have seen one or two on Monday, and I didn't see  
5 any today.

6 Q. Okay. Who are --

7 A. I did see one today. Sorry. I saw one today.

8 Q. How many did you do last week?

9 A. I have no way of answering that because I  
10 don't have any recollection.

11 Q. You did see some last week, though?

12 A. Yes. As I said, I'm in my office four days a  
13 week, sometimes five days a week and I may see as  
14 many as three in one day; I may see none.

15 Q. Do you have a calendar that you have these  
16 scheduled on, or does your receptionist have a  
17 calendar or secretary have a calendar that has these  
18 scheduled on?

19 A. I wouldn't let you be privy to it anyhow.

20 Q. I'm not asking you if you would let me be  
21 privy to it.

22 A. I think I've answered it adequately, Mr.  
23 Lancione. I think I've answered it adequately. I  
24 see these kind of examinations not infrequently every  
25 week.

1 Q. I appreciate your candor, but --

2 A. Let me just augment that by telling you I'm in  
3 my office approximately 40 weeks in the year.

4 Q. Okay.

5 A. Okay.

6 Q. Do you operate?

7 A. Yes. As a matter of fact I just got back from  
8 the hospital just now.

9 Q. What kind of surgery did you do?

10 A. Ankle surgery this afternoon.

11 Q. How many days a week do you operate?

12 A. Sometimes once, sometimes three.

13 Q. Do you operate on herniated spinal disks?

14 A. I have in the past. I don't anymore. I don't  
15 do spinal surgery anymore.

16 Q. When did you stop doing spinal surgery?

17 A. Probably five or eight years ago.

18 Q. Do you also examine injured employers on  
19 behalf of employers involved in workers' compensation  
20 cases?

21 A. Yes, I do.

22 Q. And that would be an examination similar in  
23 nature to the type of examination you did of Wyetta  
24 Bachert; would you agree with that?

25 A. Sure.

1 Q. Would the frequency of your examinations of  
2 injured people on behalf of defense attorneys or  
3 employers increase if you added the number of people  
4 that you examined who were workers' compensation  
5 claimants?

6 A. I don't see very many workman's compensation.  
7 I see occasional workman's compensation cases. I do  
8 see -- I do examine for the Department of Human  
9 Services as well.

10 Q. Disabled patients?

11 A. Sure.

12 Q. And you are hired by the Department of Human  
13 Services to evaluate?

14 A. U.S. Government, yes.

15 Q. Do you do examinations of injured workers on  
16 behalf of the Ohio Industrial Commission?

17 A. Occasionally. Not frequently.

18 Q. How many medical examinations of injured  
19 plaintiffs do you have scheduled for next week and  
20 the week after that?

21 A. I have no idea. I don't know who I'm going to  
22 examine tomorrow. I make no practice of looking  
23 ahead in my schedule.

24 Q. But you do have a schedule with those names  
25 and those scheduled appointments?

1 A. They would be scheduled through my secretary,  
2 yes.

3 Q. And can you go look in your schedule and tell  
4 me how many you have?

5 A. No, I won't do it.

6 Q. Why not?

7 A. Because I don't think it's necessary for me to  
8 do it. I've answered the question, I see people not  
9 infrequently, as many as three in any one day and as  
10 few as none in a day, and I think that should add up  
11 to every week that I'm in the office.

12 Q. Well, I'm trying to get to a figure that you  
13 do a week. If there is -- let me finish my  
14 question. If there is a means by which that number  
15 can be determined, I think that I'm entitled, unless  
16 Mr. --

17 A. Why don't you just add four times three is 12,  
18 let's call it that a week. It's not that many, but  
19 let's call it that for your benefit.

20 Q. Okay. 12 a week?

21 A. I don't see that many, but just to get on with  
22 this deposition, let's call a figure 12.

23 Q. Well, if you said you were going to swear to  
24 the tell the truth --

25 A. I am telling the truth. And I said that I

1 have no way of giving you accurate figures, if we --

2 Q. 12 is an accurate figure?

3 A. If we are stymied on numbers here I'll be glad  
4 to pick out a figure just to get on with this  
5 deposition.

6 Q. Just to answer a question you would be willing  
7 to speculate and you would throw out a figure that  
8 has no meaning or relevance whatsoever in answer to  
9 my question?

10 MR. NAEGELE: Objection.

11 A. I think I've answered that question at least  
12 three times here; three, sometimes five times week, I  
13 see sometimes no independent medical examinations and  
14 I may see as many as three in one day. Now, that  
15 should be adequate for anyone to understand my  
16 activities in this office.

17 Q. So three a week to 15 a week; that's the  
18 range?

19 MR. NAEGELE: I object. He  
20 didn't say that. He didn't say that.

21 MR. LANCIONE: I'm asking him,  
22 Joe.

23 A. I think I've answered it.

24 Q. Well, if you see as many as three in one day  
25 and some days you see none, there is a range, and you

1 are in the office four or five days, on a week that  
2 you are in the office four days, the minimum you  
3 might do would be three a week, right?

4 A. Might be none.

5 Q. Might be none?

6 A. Sure.

7 Q. So zero to 12?

8 A. Sure.

9 Q. Now, we are going to hold you to these answers  
10 later on next week in your trial testimony under oath  
11 too, okay?

12 A. That's fine.

13 Q. Do you have an hourly rate or charge that you  
14 charge defense attorneys, the people that hire you,  
15 is that an hourly rate?

16 A. I'm not hired by anyone.

17 Q. Retained?

18 A. I'm not retained by anyone.

19 Q. What do you call it?

20 A. The patients make an appointment in this  
21 office, I examine them, there is a fee for the  
22 examination, that fee is \$150. The fee for the  
23 medical report is \$150. The fee for reviewing  
24 records depends upon an hourly review.

25 Q. Exam is 150, the report is 150?

1 A. Yes.

2 Q. And records review is what, did you say?

3 A. 150 an hour.

4 Q. Now, you refer to these injured plaintiffs as  
5 patients?

6 A. Yes. They are patients the moment they  
7 register in this office.

8 Q. You call them patients, but you don't see them  
9 for care and treatment, do you?

10 A. I do not. I do not see them for care or  
11 treatment. But the moment they register in this  
12 office they are regarded as a patient.

13 Q. But they don't seek you out?

14 A. They may not seek any further treatment. They  
15 are still registered as a patient in this office.

16 Q. That's the terminology your office assigns to  
17 them?

18 A. That's correct.

19 Q. But these people don't seek you out for an  
20 examination; they are sent to you by their attorney  
21 who's instructed by the defense attorney?

22 A. That's correct.

23 Q. And the person that pays you is the defense  
24 attorney or his insurance company?

25 A. That is correct.



1 MR. NAEGELE: Objection to the  
2 reference to insurance company. Move to strike.

3 Q. How long has your fee for examinations been  
4 \$150?

5 A. Oh, a long time.

6 Q. Several years?

7 A. Yes, at least.

8 Q. Now, you charged me \$500 for a deposition.

9 A. That's the charge for my deposition. It's  
10 \$500 for the first hour and \$150 for each hour after  
11 that.

12 Q. Okay. So --

13 A. That's a standard fee.

14 Q. Okay. How much do you charge for trial  
15 testimony?

16 A. In the office on depositions, the same.

17 Q. Okay. Even if it's a videotape trial  
18 deposition?

19 A. Correct.

20 Q. Have you examined injured plaintiffs for Mr.  
21 Naegele before today?

22 A. Yes, I have.

23 Q. How many times?

24 A. I have no idea.

25 Q. More than twice?

1 A. I have no idea.

2 Q. Have you worked with him in the past --

3 A. I know Mr. Naegele.

4 Q. Mr. Who?

5 A. Mr. Naegele.

6 Q. How long have you known him?

7 A. Perhaps he can answer better than I can.

8 MR. NAEGELE: I have to think  
9 about it, doctor.

10 A. Several years I would say.

11 MR. NAEGELE: Goes over the  
12 years.

13 Q. Is the reason you have known him over several  
14 years is because he's been referring injured patients  
15 to you for independent medical examinations?

16 A. Not specifically. I have seen patients that  
17 he's referred here.

18 Q. Let's talk about examinations you conduct for  
19 plaintiffs.

20 A. Sure.

21 Q. On behalf of plaintiffs.

22 A. Sure.

23 Q. Are you asked by plaintiff's attorneys from  
24 time to time to examine an injured person for the  
25 purposes of testimony?

1       A.       Early in my practice that was true, but not  
2       any longer. The only plaintiff patients I see are  
3       those who are patients of mine who have been injured  
4       in some way or another.

5       Q.       And by virtue of their injury they become  
6       plaintiffs in a lawsuit?

7       A.       That's right.

8       Q.       And you have had a physician-patient  
9       relationship with them and you treat their injury?

10      A.       That's correct.

11      Q.       To your knowledge do their attorneys send them  
12      to you or they come to you because of your  
13      reputation?

14      A.       They probably start here before it becomes a  
15      lawsuit. On the other hand it might start the other  
16      way because I really don't -- I don't look at it in  
17      that fashion.

18      Q.       All right. You saw Mrs. Bachert one time?

19      A.       That's correct.

20      Q.       Do you have any plans to see her again for any  
21      treatment?

22      A.       I do not.

23      Q.       The time you examined her was March 4th of  
24      '93?

25      A.       That's correct.

1 Q. That was approximately two years and nine  
2 months after her injury of May 29, 1990?

3 A. Yes.

4 Q. Now, the reason for you seeing her was to  
5 examine her, write a report and testify if asked to?

6 A. That's correct.

7 Q. Now, when you see an injured plaintiff for the  
8 purposes of an independent medical examination, what  
9 is the scope of your inquiry when you -- what are you  
10 looking for? What issues are you trying to answer or  
11 what questions are you trying to answer when you  
12 examine these people?

13 A. I ask the patients what their chief complaints  
14 are, if they were involved in automobile accident or  
15 a fall, the nature of the injury, the mechanism of  
16 the injury, and what parts were injured, and go into  
17 details referable to those parts and the treatment  
18 they received earlier, and the residual  
19 manifestations that are present at the time that I  
20 examine them.

21 Q. So part of your inquiry, or part of the  
22 question you are trying to answer is one whether  
23 there was any injury resulting from the accident?

24 A. Sure.

25 Q. That's the subject of the lawsuit?

1 A. Sure.

2 Q. And number two, what residuals if any exist at  
3 the time of your examination?

4 A. That's correct.

5 Q. What about answering questions concerning  
6 permanency of the injury?

7 A. Sure.

8 Q. Do you also consider that?

9 A. I think that's part of my evaluation.

10 Q. What did Mr. Naegele ask you to do in this  
11 case?

12 A. Mr. Naegele doesn't ask me, or no attorney  
13 asks me to do anything. I examine them and I write a  
14 report and I call them as I see them.

15 Q. You understand that I'm not paying you for  
16 this, this time, or I'm not paying you for the  
17 examination of Mrs. Bachert?

18 A. That's correct.

19 Q. And the court isn't paying you?

20 A. That's correct.

21 Q. And Mr. Naegele is paying you?

22 A. That's correct.

23 Q. What injuries if any did Mrs. Bachert sustain  
24 as a result of the accident of May 29th, 1990?

25 A. Well, I think that she had several injuries.

1 She had a fracture of her left wrist, she had a  
2 slight contusion of her head, she had some  
3 lacerations which were treated, she's been treated  
4 for some organic heart disease by her treating  
5 physicians, she has osteoarthritis, and she had a  
6 fracture, or questionable fracture of one of her  
7 ribs.

8 Q. All right. My question was what injuries did  
9 she sustain from the accident, and you -- one of the  
10 things you mentioned was organic heart disease and  
11 osteoarthritis?

12 A. That's part of her diagnosis that was  
13 established in her -- by her treating physicians.

14 Q. Were those conditions that were diagnosed,  
15 were those a direct result of the accident?

16 A. No. The direct result of the accident was a  
17 fracture of her ribs, fracture of her wrist, the head  
18 injury, and any aggravation of her pre-existing  
19 arthritis.

20 Q. What is the basis -- are those your opinions  
21 based on reasonable medical probability?

22 A. Sure.

23 Q. What's the basis for your opinion, those  
24 opinions as to the injuries that were directly  
25 resulted from the accident?

1 A. I know she was treated for a fractured wrist  
2 by Dr. Radkowski.

3 Q. From the medical records?

4 A. Yes, sure. The patient also gave that  
5 information. She was seen and treated by Dr. Poolos  
6 for her head injury, she was known to have, by  
7 examination, and by records a kyphoscoliosis, which  
8 represents an osteoarthritic condition of her spine,  
9 as well as some arthritis in her wrist and hands.

10 Q. Are there any diagnoses that you read in the  
11 medical records for Mrs. Bachert from the admission  
12 at Fairview Hospital from May 29th to June 5th, 1990  
13 that you do not agree with?

14 A. No. Not at all.

15 Q. Do you agree that she was treated  
16 appropriately for the injuries that she sustained as  
17 a result of the accident?

18 A. Without question, she was.

19 Q. Now, you stated earlier that she sustained an  
20 aggravation of her pre-existing osteoarthritis?

21 A. Sure.

22 Q. From this accident?

23 A. By aggravation, it's meant that there is an  
24 increase in the symptomatology referable to the  
25 arthritic conditions.

1 Q. What areas of the body were these arthritic  
2 symptoms increased?

3 A. Her spine and her hands and wrists, left wrist  
4 and hand.

5 Q. What about her knee?

6 A. Oh, sure. Yes, I'm sorry. I didn't mention  
7 that before. Yes, she has degenerative arthritis in  
8 her knees and also has what is known as genuvarum  
9 deformity of her knees.

10 Q. What's that?

11 A. That means that she is bowlegged.

12 Q. Without arthritis, does that genuvarum  
13 deformity cause any problems?

14 A. Oh, yeah, sure it does. Genovarum, even  
15 without injury is a progressive arthritic condition  
16 which leads to degenerative changes in the knees.

17 Q. Does genuvarum deformity result from  
18 arthritis?

19 A. Genuvarum deformity can result from arthritis,  
20 but genuvarum can produce arthritis. Depends on what  
21 comes first.

22 Q. Do you know what came first with Mrs. Bachert?

23 A. No. I would suspect because of her age the  
24 genuvarum is the pre-existing problem.

25 Q. Before the arthritis?



1 A. Sure.

2 Q. Okay. Now, what problems if any would be  
3 caused by the genuvarum deformity? Can you overlay  
4 degenerative osteoarthritic changes in the knees?

5 A. They are in combination. They occur in  
6 combination.

7 Q. And what does that combination cause, what  
8 kind of problems does that combination cause?

9 A. Pain, swelling in the knees.

10 Q. In your history from Mrs. Bachert did you  
11 obtain any information that would suggest that she  
12 had pain and swelling in her knees before this  
13 accident?

14 A. Did she tell me that she had pain and swelling  
15 in her knee?

16 Q. Before May 29, 1990.

17 A. Let's see what she told me. She said the  
18 symptoms in her knee are manifested by cracking and  
19 swelling. She said she's only able to walk short  
20 distances. That's what she told me about her knees.

21 Q. Did you ask her whether she had any problems  
22 in her knees before the accident?

23 A. I don't think that it was pertinent for me to  
24 ask her whether she had; it's obvious she had to  
25 have.

1 Q. Well, isn't it important to know whether a  
2 person was having symptoms from arthritis prior to  
3 the injury that's the subject of the lawsuit?

4 A. She told me that she had swelling in her  
5 knees, said her knees were cracking and that  
6 represents arthritic changes because of the genuvarum  
7 deformity.

8 Q. Well, there is no time reference in your  
9 report where she says she has cracking and swelling  
10 in her knees; is that after the accident or before  
11 the accident?

12 A. I can assure you as sure as God made little  
13 chickens that her genuvarum and arthritis preceded  
14 her automobile accident.

15 Q. What symptoms did it cause?

16 A. Swelling and cracking in her knees.

17 Q. And I don't know how you know that because you  
18 haven't told me that you asked her that she had those  
19 problems.

20 A. She told me. I didn't have to do anything  
21 except ask her about her knees. And when I did she  
22 told me she had swelling in her knees and she has a  
23 cracking in her knees and she can't walk too far.

24 Q. She told you all those things existed before  
25 she was injured in her accident?

1 A. I'm sure, whether she told me or not they  
2 existed prior to the accident.

3 Q. Why?

4 A. Because of the deformities that are present.  
5 It's not a product of the accident, it's a product of  
6 something she's had for a number of years.

7 Q. Well, can someone have that arthritis in a  
8 genuvarum deformity and not have symptoms?

9 A. Not likely, no.

10 Q. Is it a possibility?

11 A. Not a possibility, no.

12 Q. It's an absolute medical impossibility?

13 A. In that age group it's an absolute fact that  
14 she would have arthritis in her knees with that  
15 deformity.

16 Q. Now, you say in your report that her past  
17 medical history is non-contributory?

18 A. Yes.

19 Q. What does that mean?

20 A. Means that she didn't have any previous  
21 automobile accidents, she didn't have any significant  
22 falls, and she didn't have anything that would have  
23 been of orthopedic importance other than her organic  
24 heart disease.

25 Q. You also said in your report that before the

1 accident she was active socially?

2 A. That's what she told me.

3 Q. And that her activity has curtailed since the  
4 accident?

5 A. Yes, that's what she told me.

6 Q. What kind of activity did she tell you she was  
7 involved in?

8 A. Well, she plays the piano, and she said  
9 formerly she was -- I'll tell you what she told me.

10 Q. It's on page 2.

11 A. I just want to see what I have on -- she told  
12 me at the time of the -- the date I examined her that  
13 she has affected her nerves. She said prior to the  
14 accident she was active, socially active and now this  
15 has curtailed her activities. She has an inability  
16 to walk very far, reports she mentally quote,  
17 "relives the trauma."

18 Q. Did she say she was able to walk further  
19 before she was injured?

20 A. I'm sure she walked less after her injury.

21 Q. Okay. That's because the injury and the  
22 trauma aggravated or exacerbated her pre-existing  
23 arthritic conditions?

24 A. For a short period of time, but not forever.

25 Q. Well, for how long did that continue?

1       A.       People who have injuries superimposed upon  
2       arthritis may have increasing symptoms for a period  
3       of 6, 8, 10, 12 weeks, and if there is no direct  
4       added injury to the part, they go back to their  
5       homeostatic pre-existing state. It isn't an  
6       everlasting condition that the accident produces.  
7       It's the arthritis that's made worse for a period of  
8       time.

9       Q.       Are you saying that she is in a condition  
10      today that she was in before she was injured on May  
11      29, 1990, or at the time you examined her?

12     A.       In general?

13     Q.       Yeah.

14     A.       In general, no. If we are talking about her  
15      knees, her knee problems would be no different now, a  
16      period of time three months after the accident than  
17      it was before the accident.

18                   As far as her wrist is concerned she  
19      may have had symptoms for a long period of time after  
20      the cast was removed, but the arthritis would not  
21      have been greatly altered after that period of  
22      rehabilitation.

23     Q.       Well, what rehabilitation did she have?

24     A.       Well, when she came out of the cast, it takes  
25      a period of time to regain the normal movements of

1 the wrist.

2 Q. What rehabilitation did she have with respect  
3 to her knees and back?

4 A. She didn't need any rehabilitation other than  
5 the general going -- getting in the shower, doing the  
6 things that she normally does, and slowly but surely  
7 they get back to their pre-injury state. Unless  
8 there is trauma which alters that, significant trauma  
9 that alters that.

10 Q. Is it your testimony that when you examined  
11 her on March 4th of 1993 she was in her pre-injury  
12 condition?

13 A. It's my opinion that the injuries that she  
14 sustained in this automobile accident, except for the  
15 fracture of her ribs and fracture of her wrist, that  
16 the injuries to her knees, the injuries to her back  
17 and so forth would not have been aggravated by the  
18 accident, would have been for a period of time  
19 aggravated, but returned to a state consistent with  
20 her age shortly thereafter.

21 Q. So it's your opinion that even if she hadn't  
22 been involved in an automobile accident on May 29th,  
23 1990 she was in a condition at the time you examined  
24 her that she would have been in had she not been  
25 involved in the accident?

1       A.       Except for her age, that's correct.

2       Q.       What do you mean "except for her age"?

3       A.       Well, she was 78 years of age. People get  
4 older, and even if one's never been in an automobile  
5 accident, older people get older and have more  
6 limitations as they get older.

7       Q.       Well, even if she walked a lot, went to the  
8 supermarket and the mall a lot, did gardening in her  
9 yard, played the piano, very active socially and  
10 physically active person and wasn't involved in an  
11 accident you are saying because two years from the  
12 time of the accident that somehow she would have had  
13 this onset of increased symptomatology in her spine,  
14 in her kness?

15      A.       I'm saying she, after the period of time from  
16 the accident, after her treatment, and for a period  
17 of time of several months thereafter, her  
18 pre-existing social activities should have been --  
19 she should have been able to return to all of those  
20 activities referable to her knees and her back.

21      Q.       What if she testifies that she hasn't returned  
22 to all her pre-accident activities?

23      A.       All I can say is she's getting older and maybe  
24 she can't do what she used to do.

25      Q.       And the automobile accident has nothing to do

1 with it?

2 A. I think it had something to do with the  
3 injuries that she sustained for a period of time, but  
4 did not cause her any significant manifestations  
5 other than the fracture of her wrist, which healed  
6 fine, but didn't do anything as far as the wrist,  
7 arthritis is concerned, the arthritis in her back, or  
8 arthritis in any other part of her, in her knees, et  
9 cetera.

10 Q. Okay. For the purposes of this question I  
11 want you to forget she was ever in an accident.

12 A. Yes. Sure.

13 Q. Never in an accident and she came in to see  
14 you.

15 A. Yes.

16 Q. And she testified that on May 28th she told  
17 you in her history, May 28th, 1990 I was doing fine,  
18 I was walking, I was going to the mall, I was going  
19 to the supermarket, I was gardening, I was bending  
20 down in my garden, resting on my -- kneeling on my  
21 knees, cleaning my own house, mowing my own lawn.  
22 And then she told you that was back in May of '90,  
23 then you saw her almost three years later and she  
24 told you that she was having -- she wasn't able to do  
25 those kinds of things. What would you attribute --



1 A. Her age.

2 Q. Okay. Her age. If she presented with the  
3 same history that she did at the time you examined  
4 her?

5 A. Absolutely.

6 Q. Now, if she told you -- when you examined her  
7 on May, or on March 4th, 1993, if she told you she  
8 was able to do all those things, would you accept  
9 that has reasonable; she had no symptomatology and no  
10 complaints?

11 A. If she was doing it before the accident, never  
12 had an accident, she would be doing it probably on a  
13 more limited basis, only on the basis of her age, not  
14 on the basis of the so-called exacerbation or  
15 aggravation of any arthritis.

16 Q. So those three years or two years and nine  
17 months you are saying you can say with reasonable  
18 medical probability that her previously asymptomatic  
19 arthritic conditions in her knees and spine --

20 A. They weren't asymptomatic. They weren't  
21 asymptomatic prior to the injury.

22 Q. How do you know?

23 A. I know.

24 Q. Why?

25 A. Because I can tell you that an 80 year-old

1 person with kyphoscoliosis and arthritis of that  
2 magnitude and has genuvarum deformities of the knees  
3 is not going to be able to do all of the activities  
4 that you alluded to. And if she did, they would be  
5 on a limited basis.

6 Q. What if she was doing them --

7 A. So fine.

8 Q. -- on a limited basis?

9 A. As she got older the limitation would be  
10 principally on her age, not on anything except an  
11 increasing progressive arthritic change in her back,  
12 her knees, her wrist, et cetera.

13 Q. Okay.

14 A. Without even -- even with or without the  
15 injury.

16 Q. So none of the complaints that she made to you  
17 at the time of your examination were the result of  
18 the accident?

19 A. I think that all of her complaints are based  
20 now on her arthritis and not as a result of her  
21 accident.

22 Q. Isn't it true, doctor, that a trauma like the  
23 type she sustained from her automobile accident can  
24 aggravate a pre-existing arthritic condition?

25 A. For a period of time, yes.

1 Q. Then you are saying it got better?

2 A. It gets back to the pre-existing state.

3 Q. Okay. Do you have any medical journals or  
4 medical textbooks here in your office?

5 A. Plenty.

6 Q. Do you consider any one of them or several of  
7 them authoritative in the field of arthritis?

8 A. I think that the textbooks that are written by  
9 individuals are things that we believe that they have  
10 knowledge of, but may not be -- the person who wrote  
11 that book or article may not be the only authoritative  
12 in that particular field.

13 Q. But they are authoritative in the sense that  
14 if you have a question about something that you would  
15 turn to that medical resource for guidance in  
16 answering a medical question?

17 A. I think my experience leads me to have all the  
18 guidance that I need.

19 Q. So you are saying none of the medical journals  
20 or medical books you have are authoritative in the  
21 field of arthritis?

22 A. I didn't say that at all.

23 Q. Some of them are?

24 A. I said that the people who write those  
25 articles are authorities in their field, but that's

1 their opinions and everyone may not agree with any  
2 one particular author.

3 Q. Now, she told you, as it states in your  
4 report, that she has headaches and shooting pains,  
5 occasional shooting pains in her head. That's on  
6 page 2, paragraph 3.

7 A. Sure.

8 Q. Are those shooting pains, occasional shooting  
9 pains as a result of the accident?

10 A. I think it's as a result of her arthritis in  
11 her neck.

12 Q. Now, what if she didn't have any shooting  
13 pains in her neck before then, before the accident  
14 and she does today?

15 A. So? That's subjective, isn't it?

16 Q. Yes.

17 A. Well, people -- subjective symptoms are that  
18 which the patient tells a doctor. There must be  
19 objective findings to correlate with those particular  
20 subjective symptoms.

21 MR. LANCIONE: Where are the  
22 x-ray report and the bill, Joe? Did she make copies?

23 MR. NAEGELE: I asked her to.  
24 She didn't make copies yet.

25 Q. In her thoracic spine, and I am reading from

1 the radiologic consultation performed on March 4th,  
2 1993 done by Doctors Krause, Lubert and Associates  
3 Inc., was this examination done at your examination,  
4 this radiographic examination?

5 A. Yes.

6 Q. And it says, "thoracic spine, no significant  
7 arthritic changes seen." Did you view those films?

8 A. Sure.

9 Q. Do you agree with it?

10 A. No, I don't agree with it. When they speak  
11 about thoracic -- when they speak about arthritic  
12 changes in the thoracic spine, they are talking about  
13 any overt bridging caused by arthritis. But there  
14 are changes in the thoracic spine consistent with  
15 arthritis.

16 Q. Would you term those as mild, moderate or  
17 severe?

18 A. She's got kyphoscoliosis, so I would classify  
19 it as moderate in degree.

20 Q. Okay. Lumbar spine, the intervertebral disk  
21 spaces appear maintained; would you agree with that?

22 A. Sure.

23 Q. And there is mild osteoarthritic spurring?

24 A. Sure.

25 Q. In the mid lumbar spine; do you agree with

1       that?

2       A.       Sure.

3       Q.       Where is her kyphoscoliosis?

4       A.       In the dorsal spine.

5       Q.       Dorsal spine. Okay. What is kyphoscoliosis?

6       A.       Kyphos means hunch back. Scoliosis means a  
7       curvature of the back.

8       Q.       And you are saying every person that has that  
9       has symptomatology relating to that?

10      A.       In that age group, yes.

11      Q.       What type of symptomatology?

12      A.       People don't get kyphosis until they get to be  
13      older unless they have what is known as Shoyerman's  
14      Disease, and she's not young enough to have  
15      Shoyerman's Disease.

16      Q.       What is that disease?

17      A.       It's a condition that occurs in adolescence  
18      that produces a round back deformity.

19      Q.       What kind of symptomatology does that type --

20      A.       May not, in young people, may not cause any  
21      symptoms.

22      Q.       What about in a 76 year old?

23      A.       There is no question people who have  
24      kyphoscoliosis at that age have pain in their back.

25      Q.       Pain in their back. Does the degree of pain

1 vary from person to person?

2 A. Absolutely.

3 Q. From mild to debilitating pain?

4 A. I don't think it would be debilitating unless  
5 there was some increasing scoliosis or kyphosis as a  
6 result of demineralization of the spine.

7 Q. Did Mrs. Bachert have demineralization of the  
8 spine?

9 A. All people in their '80s have demineralized  
10 spines, but she doesn't have a condition of  
11 demineralization that would cause a collapse of her  
12 vertebrae.

13 Q. And her knees, the x-ray report says there is  
14 moderate narrowing over both medial joint  
15 compartments?

16 A. Sure.

17 Q. Moderate spurring medially on both sides, no  
18 evidence of fracture, or significant -- what is that,  
19 osseous?

20 A. Osseous.

21 Q. Osseous, abnormally seen. What is osseous?

22 A. Bone.

23 Q. Also in your report you stated that she had  
24 pain in her neck radiating down to her upper back.

25 A. So.

1 Q. On the day you saw her what was your opinion  
2 as to the cause --

3 A. Arthritis.

4 Q. Nothing to do with the accident?

5 A. No, I don't think so.

6 Q. Did she give you a history of such complaints  
7 of pain radiating down her back, neck or into her  
8 upper back?

9 A. That's her subjective symptoms.

10 Q. I'm talking about a history prior to the  
11 accident; did she say she had that?

12 A. I'm sure she did. And I didn't think it was  
13 necessary for me to ask her.

14 Q. Well, the only way you can accurately assess a  
15 patient is by finding out the past medical history  
16 previous to the motor vehicle accident.

17 A. I don't think it's necessary for a prudent  
18 surgeon or doctor who treats a 75 to 80 year old  
19 person who complains of those symptoms to think other  
20 than the fact that this is arthritic in nature.

21 Q. Just because of the degree of arthritis that's  
22 present by x-ray?

23 A. No. You wouldn't need any x-rays to make that  
24 determination. It's an age related problem.

25 Q. Every 78 year old woman that has arthritis is



1 going to have pain and other symptomatology; is that  
2 right?

3 A. I'm sure every 80 year old person who has  
4 problems of pain in their shoulders or arms has  
5 arthritis in their neck.

6 Q. That wasn't my question. Any 80 year old  
7 person with arthritis in their neck, are they going  
8 to have pain from it?

9 A. Absolutely.

10 Q. Now, you talked about her wrist. She said she  
11 had difficulty carrying objects and she said she had  
12 atrophy and cramping.

13 A. Yes.

14 Q. Is that due to the accident, the fracture in  
15 her wrist?

16 A. The fracture of her wrist is obviously due to  
17 the trauma she received in the accident, yes.

18 Q. Are the problems she's experiencing today in  
19 her wrist as a result of the fracture from the  
20 accident?

21 A. No, it is not.

22 Q. What's that caused from?

23 A. Caused from her arthritis in the wrist.

24 Q. She has arthritis in her wrist, too?

25 A. Yes.

1 Q. So all her problems are related to the  
2 arthritis today and the accident has no causative  
3 role in her problems today?

4 A. I think that the accident did cause her  
5 problems when it occurred. The arthritic changes  
6 that she had are problems she had prior to the  
7 accident, yes.

8 Q. What about the statement that bowel movements  
9 aggravate the symptoms in her back?

10 A. Well, I think that that's not an uncommon  
11 problem with elderly people who are constipated and  
12 they strain at the stool and it causes pain in their  
13 back.

14 Q. At the physical exam you said she was quite  
15 anxious and constantly twitched her right shoulder.  
16 Is there any significance?

17 A. No. It's a form of a tremor that she  
18 demonstrates.

19 Q. Cervical spine, you said that her range of  
20 motion was relatively within normal limits?

21 A. Yes, for her age, yes.

22 Q. Yeah?

23 A. Yes.

24 Q. To what extent at this point was her range of  
25 motion of the cervical spine limited at all because

1 of the injury she sustained in the accident?

2 A. None, because it's due to her arthritis only.

3 Q. And again, the arthritis that existed in her  
4 neck on May 29th, 1990 was aggravated for a short  
5 period of time from the accident?

6 A. Sure, absolutely.

7 Q. And then your testimony is that it returned to  
8 its pre-accident state within several weeks to a  
9 couple months?

10 A. I would say in her age group, at least three  
11 months.

12 Q. Okay. At least three months, is that opinion  
13 consistent with the history you obtained from her?

14 A. I think so, yeah.

15 Q. Where does it state in your report --

16 A. The answer to your question is, is it  
17 consistent with what she told me? The answer is no,  
18 it's consistent with my experience in individuals who  
19 have arthritis.

20 Q. So you applied a general rule to a specific  
21 patient?

22 A. No, that's not true. There is an examination  
23 of this patient. The examination is objective  
24 findings. We try to correlate subjective symptoms  
25 with objective findings. And there is no question in

1 my mind that the objective findings here relate to  
2 the arthritis in her neck, principally, and most  
3 specifically.

4 Q. What about the subjective findings?

5 A. Subjective findings, I might tell you I have a  
6 tooth ache right now. The only way you would know is  
7 if I told you, because you can't feel my tooth ache.

8 Q. You are not concerned with subjective  
9 findings?

10 A. Absolutely. I have listen to them and write  
11 it down and then try to correlate the objective  
12 findings with those findings.

13 Q. Where does it say in your notes from the  
14 examination she was having the same kind of problems  
15 she was having on March 4th, or March -- March 4th,  
16 1993 that she was having before the accident?

17 A. Doesn't say in my notes.

18 Q. Because you didn't ask her?

19 A. Doesn't say in my notes because there is no  
20 reason for me to ask that kind of question.

21 Q. How can you make a determination as to whether  
22 the injury is continuing to cause a residual problem  
23 if you don't know what existed before the accident?

24 A. I ask her what's -- my examination is based on  
25 the findings that I take at the time of my

1 examination, not what happened three years ago. My  
2 examination and my findings are based on my  
3 examination only.

4 Q. What are your opinions based on; your  
5 examination only?

6 A. I examined the patient, and I asked her at the  
7 time of my examination what is wrong with her, and  
8 she tells me. And she gives me her subjective  
9 complaints. I carry out a physical examination and I  
10 put that together in my opinions at the end of my  
11 examination.

12 Q. You said she had bilateral boggy knees; what  
13 does that mean?

14 A. Means she has fullness in her knees, which  
15 relates to increased thickness of the tissues around  
16 the knee, skin, fascia, the supporting structures  
17 about the knee. It's not uncommon in people who have  
18 genuvarum deformities.

19 Q. Did she have a laceration on her knee from  
20 this accident?

21 A. I know she had a laceration. Exactly where, I  
22 can't tell you right now. But if she did have a  
23 laceration that was treated at the hospital.

24 Q. Would that laceration -- I can't remember if  
25 there was a laceration on her knee.

1 A. Even if she did, the laceration wouldn't be of  
2 any concern at this point in time, any laceration.

3 Q. Would it be indicative of direct trauma to her  
4 knee?

5 A. Could be an abrasion, could be a laceration.  
6 And if it was, certainly she was traumatized in the  
7 accident; there can be no question about that.

8 Q. Wouldn't that make a genuvarum deformity  
9 worse?

10 A. Absolutely not.

11 Q. No?

12 A. Age would make it --

13 Q. So 78 year-old people involved in accidents,  
14 don't have to worry about any problems with soft  
15 tissue injuries?

16 A. Genovarum is not a soft tissue injury.

17 Q. After several months -- 80 year old people or  
18 78 year old people with genuvarum deformities or  
19 arthritis in the knees and spine, as an age group, as  
20 a class of injured persons, you are saying all of  
21 them with the type of injury that Mrs. Bachert  
22 sustained, if they sustained the same type of injury  
23 they would resolve within three months?

24 A. There is no question in my mind that unless  
25 there was a direct trauma to the back or to the knees

1       which caused an increase in the deformity, that would  
2       be an aggravation. But a pre-existing genuvarum  
3       because of a contusion type of injury would not be  
4       affected by that.

5       Q.       She had a laceration on her forehead?

6       A.       That has nothing --

7       Q.       Would it be indicative of a direct trauma to  
8       her head?

9       A.       Absolutely.

10      Q.       Would that also be indicative of a direct  
11      trauma to her cervical spine?

12      A.       Indirect.

13      Q.       So indirect trauma doesn't cause any permanent  
14      increase in symptomatology in pre-existing arthritic  
15      patients?

16      A.       That's correct. I don't think it would, yes.

17      Q.       You've never testified to that under oath  
18      before, have you?

19      A.       There's just no question that the patient had  
20      pre-existing arthritis. And in order -- if one were  
21      to compare the arthritis of any 75 or 80 year old  
22      person three years later, the increase in arthritic  
23      changes can occur without trauma.

24      Q.       Increase in arthritic changes cannot occur?

25      A.       Can occur without trauma.

1 Q. And are those increases in arthritic  
2 conditions permanent or --

3 A. Absolutely, they are permanent.

4 Q. Why aren't these changes permanent with Mrs.  
5 Bachert?

6 A. Because she already had the condition, and by  
7 natural courses, by natural, just by the increasing  
8 in age, arthritic changes can increase, with or  
9 without trauma.

10 Q. But you would agree that direct -- that trauma  
11 like the kind Mrs. Bachert sustained in this accident  
12 can accelerate pre-existing arthritis?

13 A. Yes, for a period of time, yes. Not forever.

14 Q. Then does it reverse, does the arthritis  
15 reverse?

16 A. No, it does not reverse. If it's a direct  
17 trauma for example to her knee and she had  
18 ligamentous damage, the trauma would cause increasing  
19 arthritic changes. However, the changes that are  
20 there naturally would increase in and of themselves  
21 without trauma.

22 Q. Wouldn't the trauma accelerate that?

23 A. For a short period of time, yes.

24 Q. Increase the symptomatology, right?

25 A. And the objective findings.



1 Q. So you would see more arthritic changes  
2 radiographically?

3 A. I think for example if she had a direct trauma  
4 to her knee where there was ligamentous damage one  
5 would find symptoms increased and the arthritic  
6 changes would increase more rapidly than if there was  
7 not trauma.

8 Q. Page 4 of the last paragraph of your report  
9 you say "it is the impression of the undersigned this  
10 patient sustained soft tissue injuries as well as a  
11 fracture of her left wrist"?

12 A. Yes.

13 Q. Where on her body did she sustain soft tissue  
14 injuries?

15 A. I think she had general soft tissue injuries,  
16 her cervical spine, her lumbar spine, her knees, her  
17 wrists, all over.

18 Q. Now, on the last page, page 5, second  
19 sentence, "the prolongation of her recovery is based  
20 principally on her age and medical status." What do  
21 you mean "prolongation of her recovery"?

22 A. Meaning the time that it requires for her to  
23 get back to her pre-injury state would be longer in  
24 an older person than it would be in a younger person.

25 Q. What if her testimony in this case, doctor, is

1       that she still has problems that she had immediately  
2       following the accident, but she's getting better;  
3       would you say that is a prolongation of her recovery,  
4       that she is feeling better and better over time, but  
5       even today, June 30th, 1993 she's still having  
6       problems but getting better?

7       A.       I think that in essence that's correct, yes.

8       Q.       Now, why is it difficult to suggest there is a  
9       significant residual manifestation of the soft tissue  
10      injuries; have you already testified to that? Do you  
11      feel you've answered that question --

12     A.       I don't think that --

13     Q.       -- sufficiently?

14     A.       I don't think that soft tissue injuries last  
15      forever.

16     Q.       Would you agree that the longer a patient  
17      takes to recover from soft tissue injuries, the less  
18      likely they will have a full recovery?

19     A.       No, I don't believe that at all.

20     Q.       So every patient that has soft tissue injuries  
21      is going to have a full recovery?

22     A.       Yes, that's correct.

23     Q.       Have you ever testified under oath that the  
24      longer the period of recovery the less likely the  
25      patient will have a full recovery?

1       A.       It doesn't make any sense. Soft tissue  
2       injuries are soft tissue injuries, and soft tissue  
3       injuries respond within a period of time in  
4       individuals who have soft tissue injuries.

5       Q.       What about soft tissue injuries with  
6       underlying pre-existing osteoarthritis?

7       A.       Well, obviously the symptoms may last for a  
8       longer period of time, but they all get back to a  
9       pre-injury state unless there is direct trauma to  
10      that part.

11      Q.       How do you know she didn't have direct trauma  
12      to her cervical, thoracic or lumbar spine?

13      A.       I don't know that.

14      Q.       Do you know where she ended up in her car  
15      after this accident when her car came to a rest?

16      A.       I don't know that.

17      Q.       Would that alter your opinion if you found out  
18      she had direct trauma to her back?

19      A.       It wouldn't alter it at all because at the  
20      time I examined her I based my assumptions on my  
21      examination and nothing else.

22      Q.       Weren't you trying to determine whether she  
23      had any residuals from the accident?

24      A.       I did.

25      Q.       And if she suffered a direct trauma to her

1 cervical thoracic or lumbar spine --

2 A. It would be evidence if she had direct trauma  
3 to the cervical spine a patient in this age group,  
4 person with this degree of arthritis I think there  
5 would be a significant injury to her neck, may even  
6 have paralyzed her or killed her.

7 Q. What about her dorsal or lumbar spine?

8 A. She has kyphoscoliosis, and kyphoscoliosis was  
9 noted prior to the automobile accident.

10 Q. Would a direct trauma, a blow to her back have  
11 worsened that?

12 A. I don't really think so, for a long period of  
13 time.

14 Q. I thought you just testified direct trauma  
15 would alter the condition significantly.

16 A. If there was an injury to the bony parts, the  
17 arthritis would be aggravated significantly.

18 Q. What do you mean an injury to the bony parts?

19 A. We are talking about soft tissue injuries.  
20 Soft tissue injuries by definition excludes bone.

21 Q. How do you define injury to bony parts? What  
22 has to happen for a bony part to be injured;  
23 fracture?

24 A. Fracture, dislocations.

25 Q. You are saying a direct trauma to the spine is

1 not injury to a bony part?

2 A. If there is no injury to the bony contents,  
3 one would not be able to say that there is direct  
4 trauma to the bone.

5 Q. Is your opinion based on reasonable medical  
6 probability that her residual problems today are not  
7 a direct or proximate result of the motor vehicle  
8 accident?

9 A. I think that the fracture in her wrist is, I  
10 think the balance of her arthritic changes existed  
11 prior to the automobile accident, and I think that  
12 the problems in her knee, the problems in her wrist,  
13 the problem in her back were all pre-existing  
14 problems.

15 Q. What time do you have, Dr. Brahms?

16 A. Give you two more minutes.

17 Q. Okay. When a person like this at this age has  
18 trauma, and she even said -- you said it in her  
19 report she was bed ridden for weeks, does that period  
20 of bed rest, does that slow down or accelerate the  
21 period of recovery?

22 A. It does both. The most significant injury  
23 that this patient had, which was life threatening,  
24 was her pulmonary embolus. It slows down the  
25 process, bed rest will slow down the process which is

1 concerned with weight bearing. The arthritic  
2 conditions would benefit from bed rest. Her heart  
3 condition would not benefit by bed rest.

4 Q. Based on your review of the records do you  
5 have an opinion based on reasonable medical  
6 probability that Mrs. Bachert sustained a pulmonary  
7 embolus as a result of this accident?

8 A. Yes, I think she did.

9 Q. You reviewed the hospital records of Fairview  
10 General Hospital of the second admission of June  
11 15th?

12 A. Whenever it was, yes.

13 Q. Is it your opinion that that hospitalization  
14 was due to her injuries that she sustained in the  
15 accident?

16 A. Yes, I do.

17 Q. And did you look at the type of medical care  
18 and treatment she received for that second hospital  
19 admission?

20 A. I skimmed through it. But that would be the  
21 purview of her medical doctor and she received that  
22 kind of treatment.

23 Q. Having skimmed that -- those medical records  
24 do you agree her pulmonary embolus was treated  
25 appropriately?

1 A. Absolutely.

2 Q. And was the care and treatment she received  
3 necessary care and treatment for that injury to her  
4 lung?

5 A. Yes, absolutely.

6 Q. And did you happen to see any medical bills  
7 that were incurred as a result of hospitalization?

8 A. That's not my business.

9 Q. Any medical bills that were incurred for that  
10 care and treatment, would you agree that those were  
11 necessary medical bills incurred as a result --

12 MR. NAEGELE: Objection.

13 A. That's none of my business.

14 Q. Okay. That's not your inquiry.

15 A. No.

16 Q. This other exhibit, March 8th, 1993 statement  
17 from Drs. Trammer and Brahms, Inc., is this the bill  
18 that you submitted to Mr. Naegele?

19 A. Yes.

20 Q. For \$650?

21 A. That's correct.

22 Q. Medical report was \$300. Is that because it  
23 took two hours to write?

24 A. That's correct.

25 Q. Review of records was one hour and about 30

1 minutes?

2 A. The orthopedic examination was \$150, review of  
3 the records was \$200, and medical report was \$300.  
4 And I will make you some copies of this.

5 MR. LANCIONE: Thank you very  
6 much.

7 MR. NAEGELE: Thank you,  
8 doctor.

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12 (Deposition concluded; signature not waived.)

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## ERRATA SHEET

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LINE

I have read the foregoing transcript and the  
same is true and accurate.

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MALCOLM A. BRAHMS, M.D.

1 The State of Ohio, :  
2 County of Cuyahoga. : CERTIFICATE:  
3 I, Timothy G. Meinke, Registered Professional  
4 Reporter, Notary Public within and for the State of  
5 Ohio, do hereby certify that the within named  
6 witness, MALCOLM A. BRAHMS, M.D., was by me first  
7 duly sworn to testify to the truth in the cause  
8 aforesaid; that the testimony then given was reduced  
9 by me to stenotypy in the presence of said witness,  
10 subsequently transcribed onto a computer under my  
11 direction, and that the foregoing is a true and  
12 correct transcript of the testimony so given as  
aforesaid.

13 I do further certify that this deposition was  
14 taken at the time and place as specified in the  
15 foregoing caption, and that I am not a relative,  
16 counsel, or attorney of either party, or otherwise  
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand and affixed my seal of office at Cleveland, Ohio  
20 this 2nd day of July, 1993.

21  
22 

23 Timothy G. Meinke, RPR

24 Notary Public, State of Ohio

25 Commission expiration 4-16-95.