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I N D E X

WITNESS : MALCOLM A. BRAHMS, M.D.

Page

Direct Examination by Mr. Lancione 4

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 **far?**

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 E
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 123

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 recorda depends upon an **hourly** review.

25 Q. Exam **is** 150, the report **is** 1503

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, 19903

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 f r 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 possiblity?

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 hospitalizati n
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 **\$6503**

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.

9
10
11
12 (Deposition concluded; signature not waived.)
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ERRATA SHEET**PAGE****LINE**

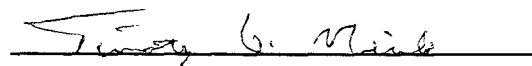
**I have read the foregoing transcript and the
same is true and accurate.**

MALCOLM A. BRAHMS, M.D.

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

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 **\$6503**

21 A. That's correct.

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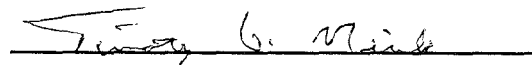
I have read the foregoing transcript and the
same is true and accurate.

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.

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22 

23 Timothy G. Meinke, RPR

24 Notary Public, State of Ohio

25 Commission expiration 4-16-95.