

1 **The State of Ohio, :**
 SS:
2 **County of Lake. .**

3 **IN THE COURT OF COMMON PLEAS**

4
5 **Donnie E. Nesselrotte, .**
 et al., -

6 **Plaintiffs,**

7 **vs.**

: No. 86 CIV 0914

8 **Edward Kowalski, -**
9 **et al., .**

10 **Defendants. .**

11 **- - - - -**

12 **Videotape deposition of**
13 **MALCOLM A. BRAHMS, M.D., a witness herein, called**
14 **for direct examination by the Defendants, taken**
15 **before Michelle A. Bishilany, a Registered**
16 **Professional Reporter and Notary Public within**
17 **and for the State of Ohio, at Mt. Sinai Medical**
18 **Center, 26900 Cedar Road, Beachwood, Ohio, on**
19 **Tuesday, the 27th day of October, 1987, at**
20 **5:28 P.M.**

21 **- - - - -**
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APPEARANCES:

**Dworken & Bernstein, by
Mr. Ronald A. Margolis,**

on behalf of the Plaintiffs;

**Quandt, Giffels, Buck & Rodgers, by
Mr. Joseph R. Tira,**

on behalf of the Defendants.

- - -

1 MALCOLM A. BRAHMS, M.D., a witness
2 herein, called for direct examination by the
3 Defendants, being by me first duly sworn,
4 as hereinafter certified, deposed and said
5 as follows:

6 MR. TIRA: Let the record
7 reflect that this is the videotaped
8 trial deposition of Dr. Malcolm A.
9 Brahms which will be presented at the
10 trial of this matter in lieu of his
11 personal appearance.

12 Mr. Margolis, I would ask for a
13 waiver of any defect in notice or
14 service thereof.

15 MR. MARGOLIS: Yes, Mr. Tira, I
16 will waive the same.

17 MR. TIRA: Thank you.

18 DIRECT EXAMINATION

19 BY MR. TIRA:

20 Q Doctor, will you state your full name for
21 the ladies and gentlemen of the jury, please?

22 A Dr. Malcolm A. Brahms.

23 Q We're here at your office this evening?

24 A That is correct.

25 Q Where is your office located?

1 **A** **26900 Cedar Road**, Beachwood, Ohio.

2 **Q** Doctor, where did you go to undergraduate
3 school at?

4 **MR. MARGOLIS:** For purposes
5 of the record we'll stipulate to
6 Dr. Brahms' expertise as an ortho-
7 pedic physician, Mr. Tira, so that
8 there will not **be a need to** qualify
9 him as an expert,

10 **MR. TIRA:** **Okay.** I will
11 **just** ask a few questions.

12 **Q** Doctor, when were **you** licensed to practice
13 medicine in the State of Ohio?

14 **A** 1950.

15 **Q** Your area of specialization is orthopedics?

16 **A** Orthopedic surgery.

17 **Q** Are you Board certified in orthopedics?

18 **A** I am.

19 **Q** What does it mean to **be** Board certified in
20 orthopedic surgery?

21 **A** Board certification implies a completion of
22 a formal residency, AMA approved residency
23 in orthopedic surgery, followed by a written
24 and oral examination and then practicing for
25 two years and repeating a written and oral

1 examination. This qualifies **one** to **become**
2 certified.

3 Q Doctor, **do** you have staff privileges at any
4 hospitals?

5 A I do,

6 Q Which ones?

7 A Mt. Sinai Medical Center and Suburban
8 Community Hospital.

9 Q **Have** you held any teaching positions in your
10 field of medicine?

11 A **Yes.** I'm Assistant Clinical Professor of
12 orthopedic **surgery** at **Case** Western Reserve
13 University.

14 Q **Have** you published in your area of expertise?

15 A I have. I have **articles** in **all** of the major
16 and the minor journals and the author of **a**
17 chapter in two of the most recent orthopedic
18 textbooks **on** the market.

19 Q Doctor, do you belong **to** any **medical**
20 societies or organizations?

21 A

22 Q Would you list a few for the jury, please?

23 A Yes. I'm a member of the Cleveland Academy
24 of **Medicine**, the Ohio State Medical
25 Association. I'm a member of the American

1 Medical Association. I am **a** Fellow of the
2 American College of Surgeons. I'm a Fellow
3 of the American Academy of Orthopedic
4 Surgeons. I'm a founding member of the
5 American Academy of Orthopedic Surgeons of
6 the Foot and Ankle, I'm a member of the
7 American Academy of Orthopedic Surgeons for
8 Sports Medicine. I'm a **member** of the
9 International Society of **Orthopedists and**
10 **Traumatologists**. I'm a member of **the**
11 **Mid-America Association, and some** other
12 groups as well,

13 Q Doctor, in your practice as an orthopedic
14 surgeon do **you** have occasion to treat
15 individuals who **have** injuries involving **the**
16 nerves?

17 A Yes.

18 Q In your practice, Doctor, do you have
19 occasion to treat individuals who suffer

21 A Yes.

22 Q In your practice, Doctor, have you had
23 occasion to perform operations to relieve
24 individuals from symptoms and complaints
25 they have which is known **as** carpal tunnel

1 syndrome?

2 A Yes.

3 Q Doctor, would you define carpal tunnel
4 syndrome **for** the jury, please?

5 A Yes. Carpal tunnel syndrome is **a** condition
6 which involves a compression of the median
7 nerve at the level of the wrist. The nerve
8 at the level of the wrist goes through a
9 canal and a compression of that canal,
10 increasing thickness of the canal **decreases**
11 the space for the median nerve causing
12 impingement and compression of the **nerve**
13 resulting in principally tingling in the
14 fingers, in the first three fingers, the
15 thumb, index and middle finger, half of the
16 ring finger, and the pain may **be** increased
17 by certain positions of the wrist.
18 Frequently **the** pain can awaken people
19 because of the symptoms.

20 Doctor, how is it that individuals suffer
21 this co pression of the median nerve which
22 is known as carpal tunnel syndrome?

23 MR. MARGOLIS : Objection.

24 MR. TIRA: What is the
25 basis of the objection?

MR. MARGOLIS: Basis of the

objection is its relevance as it

pertains to the facts that we're

trying before this jury today,

Mr. Tira.

Q Doctor, in what manner or manners based upon experience and medical training do individuals present with **symptoms that** are known as **carpal** tunnel syndrome?

A Yes. The **condition** may be related to **occupations, may be related to trauma, may be related principally to the collagen,** certain collagen make **ups** of people. Pre-arthritis individuals may develop carpal tunnel syndrome **as well as** other collagen-related stenotic problems of their hands and their wrists without injury or without any significant reasons other than the collagen make **up**.

How or what type of occupations based upon your experience and practice cause:

individuals to present with symptoms known as carpal tunnel syndrome?

MR. MARGOLIS: Objection.

? Well, for example, a person who uses a

1 jackhammer **is likely** to **develop** problems
2 of this nature. People who do work such as
3 roofing, and carpenters may develop some-
4 thing like that. It's conceivable that
5 individuals **who** do **a** lot of work with their
6 hands and their wrists, typists, steno-
7 graphers, people who do **a** lot of work
8 crocheting, knitting **may** develop, and
9 people with rheumatoid arthritis would
10 **develop** this more frequently than the
11 **average** person.

12 Q **Doctor**, how does one traumatically **begin** to
13 suffer from carpal tunnel **syndrome**? What
14 is required? What **type** of trauma?

15 MR. MARGOLIS: Objection.

16 A A fracture of the **wrist** is the most likely
17 reason for someone to develop trauma of that
18 nature.

19 Q **Doctor**, in the case that **we're here to talk**
20 about today the Plaintiffs will testify --

21 MR. MARGOLIS: Objection as to
22 what the Plaintiffs **will** testify to.
23 **Ask** it be stricken from the record.

24 MR. TIRA: Okay. Strike the
25 question.

1 Q Doctor, I believe there will be evidence
2 presented in this case by the Plaintiffs
3 that --

4 MR. MARGOLIS: Objection.

5 MR. TIRA: May I finish the
6 question?

7 Q Doctor, in this case I believe there will be
8 testimony from the Plaintiffs that in the
9 automobile accident which is the subject of
10 this lawsuit that they **struck** their right
11 hands or wrists on the dashboard in the
12 vehicle in which they were **seated** when the
13 accident occurred. **Doctor**, is such a fact
14 pattern competent to produce carpal tunnel
15 syndrome?

16 MR. MARGOLIS: Objection. Can
17 we go off the record a second,
18 **counsel?**

19 MR. TIRA: **Certainly.**

21 Doctor, I want you to assume that we have an
22 individual in an automobile which is at a
23 stop. I want you to assume further that
24 that vehicle **is struck** from behind by another
25 automobile and the impact **causes** the

1 occupant in the stopped automobile to be
2 thrown forward so that the right wrist and
3 hand makes contact with the dashboard of the

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7 A

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13 Q

14 A

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16 nerve. A bump on the wrist is not likely to
17 cause median nerve compression,

18 Q Would you describe for the jury what
19 significant trauma you would expect to
occur --

A Yes.

Q -- to cause carpal tunnel syndrome --

23 A Sure.

24 Q -- with one blow?

25 A Yes. If this patient -- I gave the example

1 of a jackhammer, **a** person who holds onto a
2 jackhammer would have ~~repeated~~ trauma to
3 his wrist. If a person used his hand to
4 constantly push and compress the median
5 nerve, the likelihood of developing enough
6 trauma to the envelope around the median
7 nerve to **cause** it to become thickened is
8 unlikely to happen one single episode of
9 trauma.

10 Q Doctor, I want you to assume the facts I
11 asked you to assume before concerning the
12 automobile accident and the striking of the
13 hand and **wrist** in the dash. If such an
14 individual in that hypothetical situation
15 did in fact sustain traumatic carpal tunnel
16 syndrome, would you expect that individual
17 to have any immediate complaints relative to
18 that wrist **and** hand?

19 A If the trauma was significant, yes, I'd
20 expect to have some pain similar to anyone
21 who has a very significant injury to their
22 wrist. That would be a chief complaint.

23 Q Doctor, can you state with any degree of
24 reasonable medical certainty **as** to the
25 probability of an individual sustaining

1 traumatic carpal tunnel syndrome where
2 that individual strikes the hand and wrist
3 on the dashboard of an automobile in the
4 hypothetical situation I **described** for you
5 absent a fracture of the wrist?

6 **A** In my experience it would be so unlikely
7 **I'd** say less than one percent.

8 **Q** Doctor, assuming all the other aforementioned
9 facts., what is the probability of
10 two individuals in the same automobile who
11 both strike their hand and wrist on the
12 dash of sustaining traumatic carpal tunnel
13 syndrome?

14 **A** Almost as likely as I would **win** the lottery

15 **Q** Doctor, what type of procedure is surgery
16 to relieve ~~the~~ complaints associated with
17 carpal tunnel syndrome?

18 **A** The surgery entails making an incision in

22 the wrist level in these **little** channels
23 that I mentioned. What we do is we open
24 the wrist and then open that transverse
25 carpal ligament at the site that the median

1 nerve traverses from the beginning of that
2 canal to the end of the canal to completely
3 relieve it of all of the compression. It's
4 like **opening** the seam on a pair of trousers

5 Q What is the degree of difficulty in that
6 surgical procedure, Doctor?

7 A The **surgery** itself is really not difficult,
8 **However**, a small percentage of patients,
9 perhaps as much as five percent of the
10 cases of **carpal** tunnel surgery, **may** have
11 other concerns in the surgery that the
12 surgeon himself must have good enough
13 experience to recognize the problems that
14 **are** other than the usual findings. But
15 that is so infrequent I'd say less than
16 five percent.

17 Q Doctor, first of all I would like to
18 discuss Plaintiff Donnie Nesselrotte.
19 Doctor, I provided *you* with various **records**
20 and films pertaining to Mr. Nesselrotte
21 from Lake Hospital Systems, the Iselin
22 Clinic, **the Cleveland Clinic** and electrical
23 studies performed by Dr. Lashgari on
24 October 30th of 1984. Did you review those
25 records and films?

1 A Yes, I did.

2 Q Doctor, did you conduct an examination of
3 Mr. Nesselrotte?

4 A I did.

5 Q What was the date of the examination?

6 A I examined him on the 17th of September of
7 1987.

8 Q Did you obtain a history from him at that
9 time?

10 A I did.

11 Q Doctor, why do you obtain a history from a
12 patient when you see him?

13 A When a patient comes to the doctor's
14 office the importance is to find out the
15 reasons for the patient's visit and the
16 concern referable to the trauma to that
17 part of the anatomy that bothers them.

18 Q Is it important to obtain an accurate
19 history?

Yes.

21 What history did Mr. Nesselrotte give you?

22 A All right. Mr. Nesselrotte told me that
23 they were involved in this automobile
24 accident on the 30th of July of 1984. This
25 accident occurred in Perry, Ohio on Route

1 **20 .**

2 Mr. Nesselrotte reported that he was
3 **stopped** to make a left turn into Ohio
4 **Street.** His automobile was hit from the
5 rear, Mr. Nesselrotte reported he was
6 the driver of the automobile and was not
7 wearing a seat belt.

8 He reported that the accident **caused**
9 **him** to have his neck forced backward and
10 then forward. He reports his teeth fell
11 out, His chest struck the steering wheel.
12 He complained of pain in his neck and his
13 right shoulder, He was not knocked
14 unconscious, He experienced a headache.

15 He was taken by ambulance to Lake
16 County Hospital East. He was not admitted.
17 He was provided with a cervical collar
18 after the X-rays were taken. He was given
19 some medication and referred to
20 Dr. John Paul. He believes that the X-rays
21 were taken of his neck and his shoulder.
22 He was not sure whether or not X-rays were
23 taken of his low back region.

24 He was examined by Dr. Paul initially
25 on the 31st of July of 1984. His

1 examination included a prescription for
2 medication, the continued use of his collar.
3 He **was** able to return to work six
4 weeks after the injury. He told me that he
5 **was** employed at the Painesville City School
6 in the maintenance department. His job
7 description was that of driving **a** truck,
8 receiving and shipping, unloading,
9 **carpenter** assistant, plowing snow and
10 "assisting wherever needed."
11 Q Doctor, is there any significance to the
12 **type** of employment Mr. Nesselrotte told you
13 he engaged in --
14 A **Yes**, I think so.
15 Q -- and the carpal tunnel syndrome?
16 A **Yes**, I think that there is a relationship.
17 Q What is that relationship?
18 A Well, the fact that this man uses his hands
19 to a great deal, does a lot **of** work **such as**
21 forth are more likely the occupations that
22 increase the amount of flexion of the wrist
23 and irritation to the median nerve for
24 individuals who would suffer from carpal
25 tunnel syndromes.

1 Q Thank you, Doctor. Would you continue on
2 with the history **Mr.** Nesselrotte gave you?

3 A **Yes.** He told me he **was examined by**
4 Dr. Ortega. He reported that several EMG's
5 were obtained, He said he had **a** myelogram
6 and an **MRI.** He complained of pain in his
7 right shoulder and tingling in his fingers.

8 He said that on the 6th of June of
9 1986 that carpal tunnel surgery was
10 performed by Dr. Ortega which improved the
11 symptoms in his hand. **However,** he still
12 **complained** of numbness **in** the right ~~arm~~
13 especially when driving and when **doing**
14 overhead functions. He reports that when
15 his neck bothers him he has symptoms of
16 tingling in his upper extremity.

17 At the time that I examined him he
18 reported that he is working; that damp and
19 cold weather aggravates the symptoms in his
20 neck; that driving also increases his
21 symptoms. Overhead work or motions increase
22 the discomfort in his arm. He has inter-
23 mittent numbness in his right arm. The
24 symptoms in his fingers have improved since
25 his surgery.

1 That was the current history that he
2 gave me.

3 Q Doctor, what type of complaints or
4 conditions based upon your experience
5 caused the present complaints that
6 Mr. Nesselrotte related to you, for example,
7 the damp and cold weather aggravate the
8 symptoms in his neck?

9 A Yes. I think that arthritic changes in the
10 neck can cause those symptoms.

11 Q Doctor, did you obtain a past history from
12 Mr. Nesselrotte?

13 A I did.

14 Q What was that past history?

15 A He told me that when he was high school
16 age he was involved in a motorcycle
17 accident but he denied any injuries. He
18 said he had two herniorrhaphies and a
19 circumcision besides his carpal tunnel

23 unloading paper which was packed overhead.
24 He tripped in the process. He was not
25 hospitalized. He was treated by

1 Dr. Sailors, He **was** out of work for
2 three days.

3 In October of 1982 he injured **his**
4 back while unloading a **truck** and he lost
5 three days of work. He was again treated
6 by Dr. Sailors. He told me that he had a
7 herniorrhaphy in 1984 and in 1985.

8 That **was** the past history.

9 Q Doctor, is there anything significant in
10 Mr. Nesselrotte's past history relative to
11 the complaints he voiced to you when you
12 examined **him**?

13 A **Yes. He's had at least** three automobile
14 accidents, **the** last two in 1982, March **and**
15 October of '82 -- not automobile
16 accidents, but injuries referable to his
17 cervical and low back region which **I** think
18 are of **importance**.

19 Q Doctor, did you conduct an examination of
20 Mr. Nesselrotte on September 17 of 1987?

21 A I did.

22 Q Would you **tell** the ladies and gentlemen of
23 the jury what your examination consisted of
24 and what your findings were?

25 A Yes. The physician examination revealed

1 **that we** were dealing with **a** 34-year old,
2 200-pound, 5'11" male. The examination of
3 his cervical spine, which is his neck,
4 revealed that the motions of his neck, that
5 is bringing his head forward, his head
6 backward, turning his head to either side
7 and tilting his head to either side, **all**
8 were within **normal** limits, He had no loss
9 of sensation to pin prick. He had no
10 evidence of any motor impairment. His
11 reflexes were physiological, were normal,
12 We checked his grip strength with a
13 dynamometer and on the right he ~~was~~ **able** to
14 compress twelve and seven pounds on two
15 **different** occasions **per square** inch; and
16 on his left, eighteen and **twelve** pounds
17 per square inch.

18 Q Doctor, is there **any** significance to **the two**

21 A Yes. I think that this demonstrates a

23 Q Would *you* explain to the ladies and

1 **A** Well, **if a man compresses a dynamometer**
2 twelve pounds on one occasion and seven
3 pounds on another occasion **it means that**
4 **he's** not using the same **effort**. **If it was**
5 a matter of one or two pounds in **one**
6 direction, I think that that **would be**
7 within **the** limit of error.

8 **Q** Would **you** continue on, Doctor?

9 **A** Yes. **We** examined him **for an Adson** sign
10 which **was** absent. **Nyperduction test was**
11 also negative. The circumference of his
12 **biceps muscles were equal, no evidence of**
13 any atrophy. **The** reflexes were **bilaterally**
14 physiological. In the standing position **we**
15 note he **was able to bend forward 75 degrees**
16 He was **able to stand on his heels and his**
17 toes. **The** straight leg raising sign **was**
18 permissible to 75 degrees. The calf
19 measurements **on the riaht were 15 inches**
20 and on the left 14 1/2 inches. The
21 reflexes were physiological meaning normal.
22 He was **able to move about on and off the**
23 examining table with **ease**. His Babinski
24 signs **were** absent and the Flip sign **was**
25 negative. All of these representing signs

1 of information referable to his back.

2 Q Doctor, rather than going through each of
3 the various tests and the findings, were
4 any of those findings abnormal?

5 A None.

6 Q Would you continue on, Doctor?

7 A Yes. We noticed that he didn't have any
8 atrophy in his hands in the area of the
9 thumb or the small fingers. The intrinsic
10 muscles, the muscles which move the fingers,
11 were normal.

12 That was the examination.

13 Q Okay. Doctor, I provided you with the
14 electrical studies performed by Dr. Lashgari
15 on October 30 of 1984, which studies reveal
16 no cervical radiculopathy. Is that of any
17 significance to you?

18 A Yes. An EMG examination is a satisfactory
19 exam, it's not the greatest exam, it's a

23 interruption of the nerves in the neck

25 Q Doctor, there was a subsequent electrical

1 **study** that indicated **C-9** radiculitis.

2 Doctor, what part of the body is served
3 by the seventh cervical nerve, the **C-7**

4 A **Principally the wrist and** the hand.

5 Q What about the arm?

6 A C-7 doesn't innervate any of the sensory
7 portions of the **arm** or the forearm.

8 Q What cervical nerves are involved with the
9 arm between the wrist and the shoulder?

10 A Principally five, To a small extent, six.

11 Q Doctor, based upon your review of the
12 records and films submitted, the history
13 you obtained from Mr. Nesselrotte and your
14 examination of him on September 17 of
15 1987, do *you* have an opinion **based** upon
16 reasonable medical certainty **as** to whether
17 Mr. Nesselrotte suffered carpal tunnel
18 syndrome **as a** result of the vehicular
19 accident of July 30, 1984?

20 A Well, I'm sure he had carpal tunnel syndrom
21 since he had surgery for the same. When
22 he **developed** his carpal tunnel syndrome I
23 can't say, It's highly unlikely in my
24 opinion that it **was** a result of striking
25 **his** arm -- his wrist on the dashboard at

1 the time of this accident,

2 Q Why is that?

3 A I don't think that one single episode of
4 injury of that nature can produce a carpal
5 tunnel syndrome. I think it has to be
6 related to his occupation or some previous
7 reasons other than that one single episode
8 of trauma.

9 Q Doctor, again based upon your review of
10 the records and films submitted, the
11 history you obtained from Mr. Nesselrotte
12 and your examination of him, do **you** have
13 an opinion based upon reasonable medical
14 certainty as to whether or not Mr. Nessel-
15 rotte sustained C-7 radiculitis in the
16 vehicular accident of July 30, 19841

17 A First of all, I don't think he ever had
18 radiculitis. Radiculitis is an inflamma-
19 tion. The radiculopathy, in my opinion, is

obi

23 referrable to the seventh cervical nerve
24 **as** well as anything else.

25 Q Doctor, do you have an opinion based upon

reasonable medical certainty as to whether or not the arthritic changes found in Mr. Nesselrotte's cervical spine are due to the accident of July 30, 1984

A. No. No. No. They occurred much **before** that.

Q Doctor, based upon your review of the records and films submitted, the history **you** obtained from Mr, Nesselrotte and your examination of him, do **you** have an opinion based **upon** reasonable medical certainty as to the nature of the injury sustained by Mr. Nesselrotte in the vehicular accident of July 30, 1984?

A Yes, I do **think** that **he** sustained some soft **tissue** injuries to **his** neck, to his upper extremity, to the symptomatic portions that he related in his history, These soft tissue injuries, in **my** opinion in a man of this age, would respond favorably and within a reasonable period of **time**.

Q Doctor, do you **have** an opinion **based** upon reasonable medical certainty **as** to the duration of those injuries which resulted

1 from the vehicular accident in question³

2 A Yes. Soft tissue injuries of the **neck** and
3 the back in a person of this **age** should
4 respond favorably **within a period** of six
5 weeks, perhaps as much as eight weeks,

6 Q Doctor, do you have an opinion based upon
7 reasonable medical certainty **as** to whether
8 or not **Mr.** Nesselrotte is prohibited **today**
9 from engaging in **any** work or hobby
10 activity **because** of the injuries he
11 sustained in the vehicular accident of
12 July 30, 19843

13 A There **should** Be no limitations to **his** duties
14 in work or **play as early as six** weeks after
15 the trauma.

16 Q Doctor, lastly, do you have an opinion based
17 upon reasonable medical certainty ^{a5} to
18 whether or not Mr, Nesselrotte sustained any
19 permanent disability **as** a result **or, I**
20 should say, any permanent injuries as a

sub

23 A I have an opinion.

24 Q What is that opinion?

25 A It's my opinion that he did not sustain any

1 significant residual manifestations of
2 injury **as** a result of this accident.

3 MR. TIRA: Thank you,
4 Doctor. I have no further questions
5 concerning Mr. Nesselrotte.

6 (Discussion had off record.)

7 CROSS-EXAMINATION

8 BY MR. MARGOLIS:

9 Q Dr. Brahms, my name is Ronald Margolis.
10 I'm the attorney representing the
11 Plaintiffs in this lawsuit.

12 Sir, I'll be asking you a series of
13 questions. If you don't understand a
14 question, please indicate to me and I'll
15 rephrase it. Okay, Doctor?

16 A Yes. That's right.

17 Q Doctor, isn't it a fact that Mr. --

18 A May I have my record back? Did you give
19 me back my --

20 Q Doctor, I don't believe I have any of your

23 Q I reviewed your records. I may have
24 misplaced some in the order that you had
25 them in, but I've not withheld any records.

1 A I've found them. It's in the folder.
2 Thank you. Okay.
3 Q Are you ready, Doctor?
4 A Yes, I am.
5 P Doctor, isn't it a fact that Mr. Nesselrotte
6 is not your patient?
7 A That is correct.
8 Q Isn't it a fact, sir, that you examined
9 Mr. Nesselrotte at the request of the
10 defense counsel in this case, Mr. Tira?
11 A That is correct.
12 Q Isn't it a fact, sir, that you only
13 examined Mr. Nesselrotte on one occasion,
14 that being 9-17-87?
15 A That is correct.
16 Q Isn't it further a fact, sir, that on the
17 date you examined him that was in excess of
18 three years after the motor vehicle
19 accident?
20 A Yes, that is right.
21 Q The exam was scheduled by Mr. Tira as
22 well, was it not, sir?
23 A Yes, that's correct.
24 Q Now, in conjunction with the exam Mr. Tira
25 arranged with my client, Mr. Nesselrotte,

1 he forwarded certain records to you, did
2 he not, sir?

3 A Yes.

4 Q I believe he forwarded certain correspon-
5 dence to you **as** well, did he not, sir?

6 A Yes.

7 Q You don't have that correspondence in your
8 records, today, do **you, sir?**

9 A Correspondence from Mr. **Tira?**

10 Q Yes, sir,

11 A I do not.

12 Q You disposed of that **correspondence** of your
13 own volition; isn't that a fact, **sir?**

14 A That is correct.

15 Q So there's no way that myself as counsel
16 on Mr. Nesselrotte's behalf could question
17 you as to the contents of that correspon-
18 dence because you disposed of it; isn't
19 that true?

20 A That is correct.

21 Q You further had an opportunitp, did you
22 not, sir, to meet with Mr. **Tira** on at least
23 **two** occasions prior to your testimony being
24 recorded today for trial; isn't that true?

25 A Yes, that's the usual, customary thing we

1 do **with** all trials, all depositions of
2 this nature,

3 Q Do you perform a lot of defense medicals,
4 Dr. Brahrns?

5 A I do frequently, yes.

6 Q Mr. Tira indicated to you, did he not, that
7 your evaluation **was** strictly for purposes
8 of trial?

9 A No, not for purposes of trial, for purposes
10 of an examination and to render a report.

11 Q It was your understanding, sir, that the
12 report that **you** have rendered **was** going to
13 be **used by** Mr. **Tira** in the representation
14 of **his** client?

15 A I would assume so, **yes**,

16 Q You did not at any time afford any treat-
17 ment to Mr. Nesselrotte, did you?

18 A I did not.

19 Q As a matter **of** fact, you **never** even
20 contemplated performing treatment on
21 Mr. Nesselrotte's behalf?

22 A That is correct.

23 Q In all fairness to you, that's because he
24 **was** not your patient, correct?

25 A That is correct,

1 Q Now, at the time that you took the
2 history of Mr. Nesselrotte I was present
3 at that time as well, was I not, sir?

4 A Yes, you were.

5 Q You asked Mr. Nesselrotte a series of
6 questions, did you not?

7 A Yes, I did,

8 Q I believe my notes indicate that it took
9 around 15 minutes as it pertains to the
10 questions that you asked Mr. Nesselrotte?

11 A Mr. Margolis, you must have been wearing a
12 stopwatch, it must have stopped after 15
13 minutes. It's very unlikely that the
14 history that I took from this patient could
15 be as little as 15 minutes, but if you said
16 so I'll agree. I don't believe it, but
17 I'll agree with it.

18 Q Do you have anything in your records to
19 indicate the period of time that you were

22 Mr. Nesselrotte, do you have any idea how
23 long you were speaking strictly with
24 Mr. Nesselrotte on that date?

25 A I usually write it down just because I get

1 questions of this nature frequently, and
2 unfortunately I did not write it down on
3 this date. But you must have written it
4 down.

5 Q Thank you, Doctor. At that time
6 Mr. Nesselrotte was cooperative with you,
7 was he not?

8 A Oh, yes.

9 Q He answered all your questions?

10 A Absolutely.

11 Q You took no independent X-rays of
12 Mr. Nesselrotte in accordance with your
13 exam; is that true, sir?

14 A No, I did not,

15 Q You did not perform an EMG test, correct?

16 A I did not.

17 Q You did not perform the NCV test?

18 A Wouldn't be necessary to repeat these
19 tests once they're done.

20 Q Okay. What type of automobile was
21 Mr. Nesselrotte riding in at the time of
22 the accident?

23 A I have no idea.

24 Q You don't know whether it was a compact or
25 a larger automobile?

1 A I have no **idea**.

2 Q What type of automobile **was** the Defendant
3 operating?

4 A Mr. Margolis, I don't **know** any of **those**
5 particulars.

6 Q You don't know the speed of the vehicles?

7 A I don't know that.

8 Q So you are unable as **a** result of not
9 **asking** those questions **and** elicited those
10 **answers** to really **determine the** nature of
11 the impact; isn't that true?

12 A Mr. **Margolis**, most frequently if I were to
13 attempt to ask questions **like** that and if
14 you were in attendance or any other
15 attorney in attendance they wouldn't permit
16 me to ask those questions, so I don't ask
17 them in general.

18 MR. MARGOLIS: Would you
19 please read the question back to the
20 witness?

21 Q Doctor, would you please answer the
22 question that I asked you, sir?

23 A Yes, I will.

24 (Record read.)

25 A Yes, that's correct, I am not.

1 Q Doctor, isn't it a fact that orthopedics
2 differ from -- strike that.

3 Isn't it true, Doctor, that orthopedi
4 surgery differs from neurosurgery in that
5 orthopedic surgery, while it involves soft
6 tissue and nerves, is more emphasizing
7 fixing bones whereas neurosurgery most of
8 the time has an emphasis or a greater
9 emphasis on nerves?

10 A No. There ~~is~~ a difference, **but** the
11 difference in many instances overlaps so
12 that both of us do the **same** thing.

13 Q Do you do brain surgery? '

14 A No.

15 Q Do neurosurgeons do brain surgery?

16 A **Yes.**

17 Q Doctor, what is the significance of
18 Mr. Nesselrotte's teeth being knocked out
19 of his mouth as a result of the impact in
20 the 7-30-84 accident?

21 A I didn't pursue that, Mr. Margolis.

22 Q Bell, Doctor, you've been practicing
23 medicine approximately 37 years?

24 A Yes, that's right.

25 Q You've treated many patients, I believe

1 by your own testimony, who have been
2 involved in accidents, automobile
3 accidents?

4 h Yes, that's right,

5 Q What type of force is necessary to knock
6 a man's dentures out of his mouth?

7 A Depends on how well they fit. It depends
8 on how well they fit, more than anything
9 else.

10 Q Assuming they fit properly.

11 A Unless he had a direct blow on one, either
12 the upper or the lower dentures, perhaps
13 they could be cracked. Knocked out, not
14 likely.

15 Q So are you saying that you disbelieve
16 Mr. Nesselrotte?

17 A No, I don't. I just wrote down what he
18 told me. I didn't question the validity
19 of any of the subjective symptoms.

20 Q Okay. Now, Doctor, the question that I'm
21 asking you is: Given the history that
22 you've taken, it was related to you that
23 his dentures were knocked out of his mouth;
24 isn't it a fact --

25 A Let's agree --

1 Q Doctor, let's not agree. Doctor, please
2 permit the opportunity --

3 A Yes.

4 Q -- to question you --

5 A Fine.

6 Q -- and please answer the question that
7 I'm asking.

8 A Fine.

9 Q Isn't it a fact, Doctor, that a force
10 sufficient to knock a man's dentures out
11 of his mouth as what occurred to
12 Mr. Nesselrotte on 7-30-84 would be a
13 significant force?

14 A Yes.

15 Q Doctor, fasciculations, if I'm pronouncing
16 the term properly, ~~are~~ involuntary
17 contractions of the muscle as a result of a
18 nerve root irritation; is that correct?

19 h It might be. That may be one of the

21 Q Fasciculations, thank you, Doctor. I'll
22 probably be mispronouncing many medical
23 terms here today --

24 A That's all right.

25 Q -- and I appreciate your correcting me.

1 Have you had an opportunity in the
2 documents that defense counsel, Mr. Tira,
3 has forwarded to you to review the medical
4 reports of Dr. Ortega?

5 A. I have reviewed **all** the reports that were
6 rendered to me including perhaps most or
7 all of Dr. Ortega's records, but **I** didn't
8 **study them.**

9 Q **Okay.**

10 A If you're alluding to something specific,
11 **I'll be glad to** review it.

12 Q Dr. Ortega, **are** you familiar with **him** as a
13 neurosurgeon?

14 A I know Dr. Ortega and I **know** he has an
15 excellent reputation as a neurosurgeon.

16 Q So you would not have any doubt to question
17 the veracity or the medical certainty of
18 what Dr. Ortega says?

19 A I have no questions about Dr. Ortega's
20 integrity.

23 concerning patients?

24 A It's not unusual.

1 found on his examination in the **upper**
2 right extremity, that would be **classified**
3 as an objective symptom; isn't that true?

4 **A** Yes.

5 **Q** All right. Would you please indicate
6 for the **ladies** and gentlemen of **the** jury
7 the difference between an objective
8 symptom and a subjective symptom?

9 **A** Sure. Subjective means that which the
10 patient tells us about. Objective is a
11 sign which can be seen, can be felt, can
12 be measured, can be tested.

13 **Q** Had you had the **opportunity** to examine
14 Mr. Nesselrotte earlier than **some** 39
15 months after the automobile accident you,
16 too, possibly would have been able to have
17 observed some objective symptoms at that
18 time?

19 **A** Yes, that's correct.

20 **TIRA:** Objection.

23 nerve root; is that correct?

24 **A** It may not be the nerve root. It may be
25 the nerve root or the nerve.

1 Q But it is -- radiculitis does denote an
2 inflammation of the nerve root **or** the nerve
3 itself?

4 A **That is correct.**

5 Q Isn't it further a fact, Doctor, that many
6 times fasciculations are indicative of the
7 fact that **radiculitis is** present?

8 A No, that's not true at all.

9 Q The **fact** that Dr. Ortega indicated that
10 in his testimony, **you** would disagree **with**
11 it?

12 A I don't **care**, That doesn't **hold** at all,

13 Q **So you would** disagree?

14 A Absolutely. Fasciculations don't **have**
15 to have anything to do with inflammation.

16 Q Would that be one of the areas, Doctor,
17 where we've identified earlier where
18 physicians disagree?

19 A I don't think it's a matter of disagreeing,
20 I think it's a matter of interpretation.

21 Q The fact that Dr. Ortega testified to that
Yes.

23 Q -- is a different interpretation?

24 A I think that if Dr. Ortega were given the
25 same question again that I think he **would**

1 have answered it exactly as I've answered
it.

2 Have you had the opportunity to review the
3 tests of Dr. Winer?

4 A If I could see it I'll -- I don't recall,
5 but I know Dr. Winer's -- I know who
6 Dr. Winer is. I don't know him, but I
7 do know who he is and that he does EMG's
8 and neurological examinations.

9 Q He's a neurologist?

10 A Yes, that's correct.

11 Q Do you have any reason to doubt his
12 competency in the field of neurology?

13 A I don't know anything about his abilities,
14 his competency. I've only seen his reports
15 I know nothing about the man.

16 Q Now, Doctor, as I understand it, you don't
17 dispute the fact that Mr. Nesselrotte had
18 carpal tunnel syndrome; is that correct?

19 A I have no doubts that he did.

20 -- and I refer you to Page 3, you comment on
21 the EMG test; isn't that true?

22 A Yes.

23 Q Excuse me, Doctor, I'm just trying to find
24

1 a specific portion **of** your report.

2 **A** It's the third paragraph.

3 **Q** I know that. I'm looking for a specific
4 **section of** that, **Doctor**. You further
5 **comment as to some** tests being more
6 sophisticated than the vague inference of
7 radiculopathy **on** the EMG test; is that
8 correct?

9 **A** **Yes,** that's correct.

10 **Q** You further go on to **make comment as to the**
11 reliability of the EMG test; isn't that
12 true?

13 **A** **That's** correct.

14 **Q** **Now,** Doctor, isn't **it a** fact that you are
15 not Board certified **as it** pertains to **EMG**
16 or EEG testing?

17 **A** That is correct.

18 **Q** To be Board certified **you** have to take an
19 oral exanination for those tests; isn't

21 **A** Yes, that's correct.

22 **Q** You have to take **a written examination;**
23 isn't that true?

24 **A** I don't **know what** the neurologists have to
25 do. I refer to **what** the orthopedic

1 surgeons have to do. But I'm certain
2 for them to be certified they have to take
3 some sort of an examination.

4 Q Well, in your practice of orthopedic
5 medicine you do not administer EMG tests,
6 correct?

7 A No, we do not.

8 Q If you have a need to have the test
9 administered you refer the patient to a
10 neurologist, correct?

11 A Yes, that's correct.

12 Q We've established the fact that you don't
13 have the competency to administer EMG
14 tests yet --

15 A I don't like the term competency,
16 Mr. Margolis. I think there is a better
17 choice of words than competency. If I
18 owned an EMG machine --

19 Q Doctor. Doctor.

20 A Let me explain.

21 Q Doctor. Doctor.

22 A I expect to explain the difference --

23 Q There's not a question before you now.

24 A -- between competency and what a better
25 adjective or verb might be.

1 Q Well, Doctor, you have the opportunity --

2 A Just a minute. Let me explain,

3 Q No, Doctor, I will not let you explain.

4 A I will explain to the Judge and the jury
5 that an EMG examination can be done by
6 someone else other than a neurologist.
7 The interpretation of an EMG is better
8 done by a neurologist, but the examination
9 can be done by a technician.

10 Q Are you done, Doctor?

11 A I'm done.

12 Q Is there anything else you'd like to
13 explain to the Judge or jury at this time?

14 A No, not at this time.

15 Q Thank you, Doctor.

16 A Thank you.

17 Q In your 30 years, 37 years of medicine --

18 A Right.

19 Q -- whenever you needed an EMG test you
20 referred out to a neurologist to perform
21 that test?

22 A No, I referred it to the neurology
23 department, It was always done by a
24 technician,

25 Q Who interprets the test?

1 **A** I just got through explaining that the
2 interpretation of the EMG is done by **the**
3 neurologist.

4 **Q** Okay. The fact is you are not **Board**
5 certified to interpret an EMG test?

6 **A** I am not a neurologist. I'm not Board
7 certified in the EMG,

8 **Q** Thank you. Given the fact that you **are**
9 not **Board** certified in EMG testing **and**
10 given **the** fact that whenever an EMG test
11 is indicated, you refer it to a neurologist
12 who has a technician **administer the test --**

13 **A** Yes.

14 **Q** -- and then the neurologist **interprets the**
15 **results** of the **tests**?

16 **A** That's exactly right.

17 **Q** You have still commented in your report to
18 the reliability of the EMG test; **isn't** that
19 true, Doctor? Yes **or no**.

20 **A** No. No, **it's** not true.

21 **Q** Are you now indicating to the jury that you
22 **did not indicate in your report** as to the
23 reliability of the ENG test?

24 **A** I will read what I wrote and then **it will**
25 **explain** itself if I can read that **sentence**.

1 Q Doctor --

2 MR. TIRA: Objection.

3 Q -- is the sentence that **we** are referring
4 to: "While the EMG is **a** reliable test in
5 the **upper** extremities, more so in the upper
6 than in the lower extremities" --

7 A **Yes.**

8 Q -- "the physical findings are not
9 significant enough to recommend surgery."

10 **a** That is correct. That's exactly **what I**
11 **wrote.**

12 Q Okay. That is commenting **as to the**
13 reliability of the EMG **test** within **that**
14 context; **is** that correct?

15 A That is correct.

16 Q Thank you. **You** commented on the reliability
17 of the **EMG** test in the context that we have
18 identified even though you are not Board
19 certified to interpret the results **of** an
20 EMG test?

21 MR.

22 MR. TIRA: Objection.

23 A -- I want to read that sentence **again.**

24 "While the EMG is a reliable test," and I
25 have indicated that the EMG is a reliable

1 test, I said that it is more reliable in
2 the upper extremity than it is in the lower
3 extremity and it does not compare to other
4 sophisticated tests that can be done.

5 Q Understood, Doctor.

6 A Good.

7 MR. MARGOLIS: Now, would you
8 please read the question back to the
9 doctor? And, Doctor, would you
10 please answer the question that I've
11 asked of you?

12 THE WITNESS: Yes.

13 MR. TIRA: Objection.

14 (Record read.)

15 A I don't think we said anything different.
16 I think we're both saying the same thing.

17 Q Now, Doctor, before we get into the
18 situation of the carpal tunnel syndrome
19 that my clients suffered, I'd like to
20 question you as it pertains to the soft

1 A That is correct.

2 Q And the thoracic area is that **mid** back
3 area?

4 A That's correct.

5 Q And the lumbar area is the lower back area?

6 A That is correct,

7 P Doctor, Mr. Tira asked you relative to
8 films that you have reviewed.

9 A **Yes.**

10 Q **Would** you **please** produce the films of
11 my clients' cervical area that **you** reviewed
12 in conjunction with your evaluation of **my**
13 clients' condition **for** Mr. **Tira**?

14 A You want the **X-rays**?

15 Q Yes, please.

16 A Sure.

17 (Discussion had off record.)

18 Q **Now**, Doctor, you have testified that
19 Mr, Nesselrotte sustained soft tissue
20 injury to his cervical area, correct?

21 A That's right.

22 Q **Now, Doctor**, would the semi **spinal** muscle
23 be involved?

24 A I don't know where the semi spinal muscle
25 is, Mr. **Margolis**.

1 Q I'm pointing to this muscle here, Doctor.
2 I'm not going to be able certainly to
3 identify the names such **a5** yourself

5 the best of my ability. Doctor, this
6 muscle here (indicating) --

7 A That's not a semi spinal muscle.

8 Q -- what is that called, Doctor?

9 A That's one of the just musculi colli
10 muscles.

11 Q Doctor, would you indicate for the ladies
12 and gentlemen of the jury by pointing to
13 this muscular system chart what muscles
14 were involved when you indicated soft
15 tissue injury to the cervical area?

16 A This chart really is not -- it just shows
17 the outer muscles. And all of the muscles,
18 and there are layers of muscles which go in
19 this way in between two vertebrae that you
20

21 and they're the muscles that go from the
22 base of the neck to the tip of the shoulder
23 this muscle here which is the trapezius
24 muscle, a whole group of muscles are
25 involved in the injuries that we relate to

1 as soft tissue injuries.

2 Q Those muscles would all be in this general
3 area, Doctor (indicating)?

4 A No. It's limited to this particular area
5 in the neck (indicating). One muscle
6 which goes beyond the neck is the so-called
7 trapezius muscle which goes all the way
8 down to the low back region.

9 Q Thank you, Doctor.

10 MR. MARGOLIS: Thank you,
11 Mr. Tira. Off the record.

12 (Discussion had off record.)

13 Q Doctor, would you characterize the
14 injury that Mr. Nesselrotte sustained as
15 a flexion-extension type of injury to his
16 back?

17 A To his back or his neck?

18 Q His neck.

19 A To his neck? If a man is hit from the
20 rear the first impact is an injury which
21 puts the neck in extension. If one is hit
22 from the front the first impact, the first
23 stress is in the opposite direction which
24 is a so-called extension injury.

25 Q Now, Doctor, addressing ourselves to the

1 carpal tunnel syndrome suffered by
2 Mr. Nesselrotte. Some of **the** symptoms that
3 are indicative of that condition, as I
4 understand it, is tingling or numbness or
5 in-the-hand pain; is that correct?

6 **A.** Yes.

7 **Q.** Specifically those first three fingers,
8 the thumb, the index finger and the long
9 finger?

10 **A.** That's correct.

11 **Q.** **Now**, isn't it a fact, Doctor, that carpal
12 tunnel syndrome occurs more often in
13 **women** than it does in men?

14 **A.** It depends on the occupation. The answer
15 to your question is no. I think that one
16 who has a **good** experience in hand surgery
17 would find that if there's a percentage
18 difference it's a small one.

19 **Q.** Okay. **So the** fact of it occurring more
20 in women on a five-to-one ratio you would
21 disagree with?

22 **A.** Yes.

23 **Q.** Doctor, I'm going to hand you an anatomy
24 of the transverse section of the wrist in
25 the middle of the carpal tunnel.

1 A Yes.

2 Q I'd like you to look at that and tell me
3 if that accurately depicts that area of
4 the body.

5 A It depicts a graphic demonstration of it,
6 yes.

7 Q Okay.

8 A I wouldn't say it's accurate, but it's a
9 graphic demonstration.

10 Q Okay. Now, Doctor, in that area the
11 median nerve is in a canal that's surrounde
12 by nine tendons on three sides and by bone
13 on the fourth side in a non-yielding
14 transverse carpal tunnel ligament; is that
15 correct?

16 A In pricipal it's right. The implication is
17 wrong, but the principal's right.

18 P I guess what I'm getting at, Doctor, is if
19 you could focus in on that picture that
20 the doctor has hung up on the shadowbox,
21 in the area where the median nerve is
22 there are many other structures surrounding
23 it; is that correct?

24 A Only one structure of importance and that's
25 the canal to which the median nerve goes.

1 Nothing **else is** important.

2 **Q** There **is** little room in the **area** where the
3 median nerve is for any **type** of swelling;
4 is that **correct**?

5 **A** In the normal individual **who has** no
6 thickening **of** the transverse carpal
7 ligament, the canal through which the
8 **median** nerve, there's room enough for the
9 swelling to occur. **It's when the** sheath,
10 the sleeve gets thicker that the median
11 **nerve** is compromised. **It's not --** the
12 swelling in itself would not be an
13 important factor until the sheath becomes
14 thickened and then **compromises** the room for
15 **the median nerve.**

16 **Q** **Now,** for the clinical exam of **carpal tunnel**
17 syndrome there's **a** Tinel sign; is that
18 **correct**?

19 **A** **It's** Tinel sign.

20 **Q** Tinel sign?

21 **A** **Yes.**

22 **Q** **Ana that's** a gentle tapping over the median
23 nerve at the wrist?

24 **A** **Yes,** that's correct.

25 **Q** If it's positive **it** causes pain or tingling

1 in the hand?

2 A It **causes** numbness --

3 Q Numbness in the hand?

4 A -- tingling, right.

5 Q Was a Tinel sign performed by **you** in your
6 examination of Mr. Nesselrotte?

7 A I think it **was**, yes. I don't know if it
8 was or not, but I think it was. **Because**
9 the relationship to the examination of a
10 man who's had a previous release with a
11 Tinel sign would not be positive under
12 any circumstance, **unless** the **release** was
13 incomplete.

14 Q Okay. There's also a tourniquet test;
15 **is** that correct?

16 A Yes, there is a tourniquet test.

17 Q That test is you put a **blood** pressure cuff
18 on the arm and you inflate it for about a
19 minute?

20 A Yes .

21 Q What occurs if **it's** a positive test? What
22 happens?

23 A That's really a very insignificant **test**.
24 It's not reliable. It's probably signifi-
25 cant in maybe five or ten percent of the

1 cases.

2 Q Okay. And there's -- again, Doctor, I'll

5 A That's a Faline sign, it's **the name** of a
6 doctor **who used** to be at the Cleveland
7 Clinic who described the test by flexing
8 the wrist down and holding it in that
9 position increasing the pressure on the
median **nerve** would produce tingling in the
finger.

12 e **Again**, these tests you probably didn't
13 perform **because** it was after the **fact**,
14 **after his carpal tunnel had** been remedied?

15 A That's correct.

16 Q Now, as far **as** injuries to **the** carpal tunne
17 which would be work related, wouldn't that
18 -- I believe you gave the example of a
19 **jackhammer**?

20 A Uh-huh.

21 Isn't it more common that over a work-related
22 type of injuries **there** is some constant
23 vibration in that area?

24 A Vibration only causes the increased collagen
25 thickness of the canal, that's all it does-

1 It's not vibration itself that causes it.
2 Vibration can damage the nerves. But the
3 example I gave was to the increase in the
4 thickness of this sleeve through which the
5 nerve goes which causes median nerve
6 compression.

7 Q Would you disagree with the statement,
8 Doctor, that carpal tunnel is usually work
9 related if the job requires continuous
10 repetitive motion of the hand?

11 A I think there can be a direct relationship,
12 But everybody who has a job where he uses
13 continuous motions of his **hands** doesn't
14 develop carpal tunnel syndromes.

15 Q Now, Doctor, you're not saying that the
16 only way that you can develop carpal tunnel
17 syndrome from trauma is to have **a** fracture
18 in that area, are you?

19 A **No**, I didn't say that. But I said if it's
20 one significant injury it would have to **be**

1 of the bones in that **area**?

2 **A** It doesn't have to involve a fracture, but
3 **it** would have to **be** a crushing injury or
4 a fracture, something of a protracted
5 nature that puts pressure on the median
6 nerve.

7 **Q** Dr. Winer had testified that any severe
8 extension or flexion **of** the **wrist** could
9 cause carpal tunnel syndrome **from** a single
10 incident. Do you disagree with that,
11 Doctor?

12 **A** I **disagree** with **it** only unless **there has**
13 **been** a rupture of **some** of the ligaments **of**
14 the wrist. A hyperextension injury in and
15 of itself won't **cause** a carpal tunnel
16 syndrome or every **major league outfielder**
17 would have a carpal tunnel syndrome.

18 **Q** Doctor, **if** Mr. Nesselrotte had had a
19 carpal tunnel syndrome prior **to** the motor
20 vehicle accident of 7-30-84 would you expect
21 him **to** have had some symptoms of carpal
22 tunnel syndrome?

23 **A** Oh, I would expect that he would have
24 symptoms **if** the condition **was** progressive
25 **and** started **at** **some** point in time and got

1 worse as it went along, yes.

2 Q Doctor, could it be that the trauma to the

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8 A.

9 Q

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14 A.

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24 A.

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1 itself was enough to **make** the compression
2 at that point in time present. I think he
3 **had** symptoms prior to this.

4 Q Doctor, I understand **and** I'm not trying to
5 joust with you, I just -- I want the
6 ladies and gentlemen of the jury to be able
7 to follow us as well. So I'm going to try
8 to summarize it, and you can indicate to
9 me if you feel this is a fair summary.

10 Assuming he had some problems with
11 carpal tunnel predating **the** accident, for
12 whatever reason whether it was job related
13 or otherwise, Further assume that he
14 didn't **have** symptoms **but** he was, let's
15 say, 90 percent of the **way** there to
16 developing active carpal tunnel symptoms.
17 Do you feel that the blow that he sustained
18 in the accident to his wrist could have
19 been that additional ten percent that caused
20 him to develop **carpal tunnel symptoms?**

21 A For the **sake of the** argument, yes, **but I**
22 don't **believe** what I'm **saying.**

23 Q What percentage of Mr. Nesselrotte's **work**
24 involves carpentry; do you know?

25 A I don't know,

I believe **you** indicated in your report, Doctor, that **you saw some** degenerative -- the X-rays of **his** cervical spine **show** a mild degree of **C-6-7** degenerative changes?

5

6

A Yes.

5

Q Would you please elaborate on what degenerative changes **are**?

8

9

A Yes. That indicates by X-ray that the space between **the** two bones **is** narrow -- **is** narrower **than** the space above **and** below. In **other** words, between each **two** vertebrae **is a** disc space **and** when **a disc** becomes degenerated that space decreases **in** height so that **his** X-rays indicate and **show** this narrowing **which** has occurred **at** that level. Doctor, were you **able** to review any **X-rays of** Mr. Nesselrotte that were taken before the **auto** accident of 7-30-84 of **his** cervical spine area?

10

11

12

13

14

15

16

I don't know if I did or not. I've seen X-rays, but I don't recall the dates.

23

(Discussion had off record.)

25

Doctor, do you believe that **Dr.** Ortega, the neurosurgeon that performed the carpal

1 tunnel syndrome surgery on Mr. Nesselrotte,
2 and Dr. Paul, another orthopedic surgeon
3 who Mr. Nesselrotte saw the day, I believe,
4 after the accident, given the fact that they
5 had the opportunity to examine him and
6 treat him on a more continued basis than the
7 one defense medical exam that you performed,
8 do you believe, Doctor, that they would be
9 in a better position to assess or evaluate
10 his condition because of that?

11 A At the time of the accident?

12 Q Yes, sir.

13 A Yes.

14 MR. MARGOLIS: Thank you. No
15 further questions.

16 FIR. TIRA: Doctor, I just
17 have a few follow-up questions.

18 REDIRECT EXAMINATION

19 BY MR. TIRA:

20 Q Would you tell the ladies and gentlesen of
21 the jury why you didn't believe what you
22 were saying when you agreed with
23 Mr. Margolis concerning the carpal tunnel
24 syndrome and the accident perhaps being the
25 ten percent cause of it, would you explain

1 **that for us?**

2 **A** **Yes.** I said before that I didn't think that
3 that single trauma, unless it **was** rather
4 severe, would have been the reasons for his
5 development of a carpal tunnel syndrome the
6 result of this **accident.** **It's** my -- it is
7 my experience that tells me that in all
8 likelihood his symptoms of carpal tunnel
9 syndrome probably preexisted the automobile
10 accident.

11 **Q** Doctor, are you saying -- **strike** that.

12 Doctor, you did state that **perhaps**
13 **the** accident **was** a contributing **cause.**
14 **Are** you saying that the accident was such
15 a contributing **cause** that it necessitated
16 the carpal tunnel surgery?

17 **A** Oh, no. If he never had an accident and
18 he had symptoms that were progressive, at
19 some point in time if **the** tingling and **the**
20 pain got severe enough and it woke him up
21 he would have the surgery with or without
22 an automobile accident.

23 **Q** Doctor, you've told the ladies and gentlemen
24 of the jury that you **did** not keep the
25 correspondence I **sent** you when I enclosed

1 the records and X-ray films of
2 Mr. Nesselrotte. Did that correspondence
3 play any part in your rendering your
4 opinion concerning the nature and extent of
5 the injuries sustained by Mr. Nesselrotte
6 in the motor vehicle accident?

7 MR. MARGOLIS: I'll object to
8 any questions concerning documents
9 which counsel on behalf of the
10 Plaintiffs is incapable of examining
11 on because of **its** nonexistence.

12 A That correspondence usually states **that**
13 they've called my office and made arrange-
14 ments with my secretary for **a** physical
15 examination on a certain date at a certain
16 time and it may **even** include the fact that
17 there was either a motor vehicle accident
18 or a patient fell off a motorcycle or for
19 some reason why he's coming to my office.

20 Q Well, Doctor, in this particular case did
21 you base your opinion upon any correspon-
22 dence I sent you?

23 A None whatsoever.

24 Q Mr. Margolis asked you about Dr., I believe
25 it **was**, Winer stating that something about

1 a severe flexion or extension injury to the
2 wrist. In a severe flexion or extension
3 injury of the wrist what if anything would
4 you expect the individual suffering that
5 injury to experience when it occurred?

6 A It would have to be a very traumatic
7 flexion and extension injury, enough to
8 disrupt the ligamentous structures, enough
9 to disrupt the inner carpal ligaments in
10 order to produce enough of an injury to
11 inflict damage on the median nerve.

12 Q Doctor, based upon reasonable medical
13 certainty if there **was** a severe flexion and
14 extension injury of the wrist would the
15 individual suffering that injury know it
16 was occurring?

17 A It would be similar to that experience if
18 he had a fracture of the wrist.

19 Q Lastly, Doctor, Mr. **Margolis** asked you
20 about Mr. Nesselrotte's dentures flying out
21 upon impact, he **gave** you that in his
22 history and the significance of that
23 historical event. Doctor, I believe there
24 will be evidence in this case that at the
25 time of the accident Mr. Nesselrotte only

1 had **an** upper plate and that his lower **teeth**
2 had been extracted but he had **yet** to
3 receive **the** lower plate. **Is** that fact of
4 **any significance** to you when taken **with** the
5 fact that **his** denture flew **out** upon **impact**?

6 A **I made** no -- **it** made no impression on me
7 because of the fact that **if** he'd **had** a
8 significant injury to his **face** there would
9 have been **some** history of **trauma** to his
10 maxilla or mandible **or his** face or his
11 nose, something consistent with the **fact**
12 that his teeth flew out.

13 **MR. TIRA:** Thank **you,**
14 **Doctor.** I have no further questions
15 concerning Mr. **Nesselrotte.**

16 **MR. MARGOLIS:** No recross.

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1 THE STATE OF OHIO,
2 COUNTY OF CUYAHOGA.

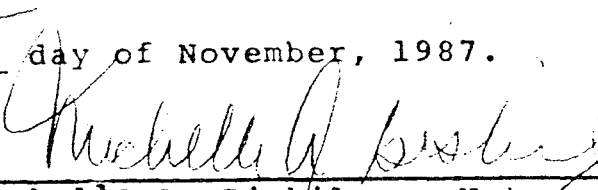
) SS:

CERTIFICATE

3 I, Michelle A. Bishilany, a Notary Public
4 within and for the State of Ohio, do hereby
5 certify that the within named witness, MALCOLM A
6 BRAHMS, M.D., was by me first duly sworn to test
7 fy the truth, the whole truth, and nothing but
8 the truth in the cause aforesaid; that the
9 testimony then given was reduced by me to steno-
10 typy in the presence of said witness, subsequent
11 ly transcribed into typewriting under my direc-
12 tion, and that the foregoing is a true and
13 correct transcript of the testimony so given as
14 aforesaid,

15 I do further certify that this deposition wa
16 taken at the time and place as specified in the
17 foregoing caption, and that I am not a relative,
18 counsel or otherwise interested in the outcome of
19 this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office at Cleveland,
22 Ohio, this 13 day of November, 1987.

23 
24 Michelle A. Bishilany, Notary Public
25 520 National City E. 6th Building
Cleveland, Ohio 44114

My commission expires January 11, 1991.