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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

WALTER HOLLAND,	)	CASE NO. 5:00-CV-1722
	)	JUDGE DAN A. POLSTER
	)	
Plaintiff	)	DEPOSITION OF
vs.	)	
	)	JAMES D. BRODELL, M.D.
CONSOLIDATED FREIGHTWAYS	)	
CORPORATION, et al.,	)	
	)	
	)	
Defendants	)	

Videotaped deposition taken before me,  
Christine Breinz, Notary Public within and for the  
State of Ohio, on the 29th day of October, 2001, at  
4:15 PM, pursuant to notice, taken at the offices of  
Dr. James D. Brodell, 2614 East Market Street,  
Warren, Ohio, to be used in accordance with the  
Federal Rules of Civil Procedure or the agreement of  
the parties in the aforesaid cause of action pending  
in the United States District Court for the Northern  
District of Ohio, Eastern Division.

## A P P E A R A N C E S

On Behalf of the Plaintiff:

J. Thomas Henretta, Attorney at Law

On Behalf of the Defendants:

James J. Turek, Attorney at Law

REMINGER & REMINGER CO., L.P.A.

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## I N D E X

DEPONENT -- JAMES D. BRODELL, M.D.

## E X A M I N A T I O N S

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## P R O C E E D I N G S

JAMES D. BRODELL, M.D.

having been duly sworn according to law, on his  
oath, testified as follows:

## DIRECT EXAMINATION

BY MR. TUREK:

Q. Good afternoon, Doctor. Would you please  
introduce yourself to the jury?

A. My name is James David Brodell.

Q. Dr. Brodell, where are we for the purpose of  
taking your trial testimony?

A. In my office.

Q. And where is your office located?

A. 2614 East Market Street, Warren, Ohio.

Q. Dr. Brodell, you are testifying today about  
your examination and review of various  
medical records regarding Mr. Walter  
Holland; is that correct?

A. Yes.

Q. All right. And, Doctor, you have your file  
with you and material generated by your  
involvement in this matter?

1 A. Yes.

2 Q. All right. Doctor, before we begin, it is  
3 necessary that we discuss, at least for a  
4 moment here, your education, your training  
5 and your professional experience that  
6 qualifies you as an expert in orthopedics.  
7 So, first of all, Doctor, could you begin  
8 by telling the jury about your educational  
9 background?

10 A. I went through the public school system here in  
11 Warren, Ohio, and graduated from Harding  
12 High School, which is not far down the  
13 road from here. In 1974, I graduated from  
14 Washington and Jefferson College, a small  
15 liberal arts school near Pittsburgh,  
16 Pennsylvania. That was a Bachelor of Arts  
17 degree and my major was in biology. I  
18 then spent four years in Cleveland and  
19 graduated in 1978 from Case Western  
20 Reserve University School of Medicine.  
21 That was my M.D. degree. It was then on  
22 to Rochester, New York, for five years,

1                   and in 1983 I finished my residency in  
2                   orthopedics.

3   Q.     Doctor, when you say your residency in  
4                   orthopedics, could you tell the jury, what  
5                   is orthopedics?

6   A.     It's a specialty area in medicine that involves  
7                   the diagnosis, treatment and  
8                   rehabilitation of problems related to the  
9                   musculoskeletal system. In other words,  
10                  we take care of problems related to the  
11                  neck, mid and lower back areas, arms and  
12                  legs as it relates to a host of problems,  
13                  including congenital and developmental  
14                  abnormalities, arthritis, infection,  
15                  metabolic disease, cancer and trauma.

16   Q.     Doctor, does the field of orthopedics --  
17                  generally, is that where you would find  
18                  spine conditions, arthritic conditions in  
19                  the spine, traumatic injuries to the  
20                  spine? Would that all fall within the  
21                  broad category of orthopedics?

22   A.     Yes. Although, there's overlap with other

1 specialties.

2 Q. All right. Doctor, in addition to your  
3 educational experience, could you explain  
4 to the jury and describe your professional  
5 history, where you've worked  
6 professionally?

7 A. Okay. Since 1983, I moved back here to my  
8 hometown of Warren, Ohio, and I've been  
9 continuously practicing as a solo, private  
10 practitioner. So, we're moving up on 18  
11 or 19 years, I believe.

12 Q. Doctor, do you have hospital staff privileges?

13 A. Yes.

14 Q. And where?

15 A. I spend almost all of my clinical time at the  
16 largest of our community hospitals,  
17 Trumbull Memorial. I also have courtesy  
18 or consulting privileges at several other  
19 facilities.

20 Q. Doctor, can you give the jury an idea of what  
21 would -- what is your practice like? I  
22 mean, what do you do on a daily basis, on



1 a weekly basis in terms of seeing  
2 patients, where you would see them and  
3 what you would be involved in doing?

4 A. I'm a general orthopedic surgeon, which means  
5 that I see a cross section of all of those  
6 things that I just mentioned to you. On  
7 many days, I'm in the office seeing  
8 patients and I'll see between 60 and 70  
9 patients a day in my office with a variety  
10 of these bone and joint related problems.  
11 Some days, I'm in the operating room down  
12 at the hospital. That would involve  
13 larger cases, like total joint  
14 replacements or bad fractures of the  
15 femur, tibia, pelvis and so forth. **Most**  
16 of my operations, though, are ambulatory  
17 procedures related to things like  
18 arthroscopy, where we use a little  
19 telescope to look inside people's joints.

20 Q. Doctor, how many days a week, then, would you  
21 actually be in the hospital doing some  
22 kind of surgery?

1 A. Two to three. It depends on how much needs to  
2 be done.

3 Q. Okay. Now, Doctor, in the field of orthopedic  
4 surgery, is there a professional  
5 certification recognized in that  
6 particular specialty?

7 A. Yes.

8 Q. What -- could you tell the jury a little bit  
9 about that?

10 A. Our specialty board is known as the American  
11 Board of Orthopedic Surgery.

12 Q. And what exactly does that board do vis-a-vis  
13 all the orthopedic surgeons out there in  
14 the country?

15 A. They make sure that the practitioners are  
16 qualified to practice within that  
17 specialty.

18 Q. How do they do that? How do they make sure  
19 that they are -- the practitioners are  
20 qualified in this field?

21 A. By making sure that requirements are met.

22 Q. And what would be the requirements for

1           orthopedic surgeons, at least as it  
2           relates to the American Board of  
3           Orthopedic Surgery?

4   A.    One must graduate from an accredited program  
5           and have appropriate letters of  
6           recommendation from the professors,  
7           practice in a given location for two years  
8           with additional letters of recommendation  
9           from the community doctors and then  
10          there's also a written, followed **by** an  
11          oral examination. If everything is in  
12          order, your education is proper and you  
13          pass the examination, both the written and  
14          oral part, then a certificate is sent to  
15          you, which is evidence of your  
16          qualification to practice within the  
17          specialty.

18   Q.    Does that mean when you get that certificate  
19           that you just described that you are board  
20           certified?

21   A.    Yes.

22   Q.    Doctor, are you board certified?

1 A. Yes. I was certified in 1985.

2 Q. And, Doctor, have you undergone any  
3 recertification since 1985?

4 A. Yes. I was voluntarily recertified in 1995.

5 Q. All right. Now, Doctor, a little bit more  
6 about this board certification process.  
7 Is being board certified either something  
8 that you are or you are not?

9 A. Yes.

10 Q. All right. There's no in between?

11 A. No.

12 Q. Doctor, have you had an opportunity to review  
13 some -- the records and testimony of  
14 Dr. Dennis Zaslow of Philadelphia?

15 A. Yes.

16 Q. Doctor, at my request, did you check to see if  
17 Dr. Zaslow is listed as a board certified  
18 orthopedic surgeon by the American Board  
19 of Orthopedic Surgery?

20 A. Yes.

21 Q. And what did you find?

22 A. He is not.

1 Q. Doctor, what does that mean, that Dr. Zaslow is  
2 not board certified by the American Board  
3 of Orthopedic Surgery?

4 A. That he hasn't -- that either he hasn't met the  
5 recommend -- the requirements to sit for  
6 the exam or he failed the examination.

7 Q. Does that mean that he is not qualified in the  
8 eyes of the board to practice orthopedic  
9 surgery?

10 MR. HENRETTA: Objection.

11 A. Yes.

12 Q. I'm sorry. You can answer.

13 A. Yes.

14 Q. Doctor, finally, with respect to this -- the  
15 Board of Orthopedic Surgery, who makes up  
16 that board?

17 A. The board is comprised of professors in the  
18 country who alternate, and then in  
19 addition to eight to ten members of the  
20 board, there are approximately 200 oral  
21 examiners.

22 Q. Are you one of those 200 oral examiners in

1                   orthopedic surgery?

2     A.     Yes.    Since 1998, I have been an oral examiner.

3     Q.     And very briefly, Doctor, could you tell the  
4                   jury, what does that mean then to be an  
5                   oral examiner for the American Board of  
6                   Orthopedic Surgery?

7     A.     One week out of the year, I travel to Chicago  
8                   and I'm a representative of the board.  I  
9                   examine applicants to make sure they're  
10                  qualified to practice within the  
11                  specialty, both the new applicants for  
12                  certification as well as currently  
13                  practicing orthopedic surgeons for the --  
14                  for recertification.

15    Q.     Thank you, Doctor.  Now, as it relates to your  
16                  involvement in this particular matter, you  
17                  were first asked by me to review some  
18                  medical records; is that correct?

19    A.     Yes.

20    Q.     And, Doctor, following the review -- in  
21                  addition, I should say, to the review of  
22                  medical records, you also conducted an

1 examination of Mr. Holland?

2 A. Yes.

3 Q. And you have authored a report regarding your  
4 review of the records, your examination  
5 and some of your opinions about all of  
6 those things; is that correct?

7 A. Yes.

8 Q. All right. Now, Doctor, with respect to, first  
9 of all, some of the housekeeping matters,  
10 you have, in order to -- in exchange for  
11 doing these medical services, you have  
12 been paid, correct?

13 A. Yes.

14 Q. All right. And, in fact, you are being paid  
15 today for the time for this particular  
16 deposition and your testimony, correct?

17 A. Yes.

18 Q. All right. And, Doctor, that is consistent  
19 with your practice in other matters? In  
20 other words, let me -- how often do you  
21 find yourself testifying in trial?

22 A. By way of deposition, as we're doing today?

1 Q. Correct

2 A. Two or three times a month.

3 Q. All right. And you have never testified for me  
4 before at Reminger and Reminger, have you?

5 A. Not that I recall. It's possible, though --

6 Q. Okay.

7 A. -- if it was a long time ago.

8 Q. Doctor, have you been qualified before today  
9 to -- before this case to testify in court  
10 as an orthopedic surgeon?

11 A. Many times, yes.

12 Q. All right. Have you ever not been qualified,  
13 as been found not to be an expert in that  
14 field?

15 A. No.

16 Q. All right. Doctor, then, let me direct your  
17 attention to some of the issues that  
18 pertain to Walter Holland. And, by all  
19 means, if you need to refer to your  
20 report, go ahead and do so. Doctor, first  
21 of all, what do you understand from the  
22 history you obtained -- now, I'm going to



1           jump ahead a little bit to your  
2           examination, because you did obtain a  
3           history from Mr. Holland about the  
4           accident of April of 1998; is that  
5           correct?

6    A.    Yes.

7    Q.    All right. And, again, feel free to refer to  
8           your report. What history did he give  
9           you?

10   A.   Well, he presented with complaints of  
11           long-standing aching and stiffness in his  
12           lower back, pain that would intermittently  
13           radiate into his legs, more on the left  
14           leg than the right, and this was  
15           associated with numbness and tingling of  
16           his feet. He told me that if he dipped  
17           his toes into water that he was unable to  
18           differentiate hot from cold. At times,  
19           his low back discomfort would radiate up  
20           his spine, down into his arms and was  
21           accompanied by numbness and tingling of  
22           his hands. And then we also discussed a

1           little bit about some chronic  
2           gastrointestinal and urological trouble  
3           that he had been having.

4   Q.    All right. Doctor, let me, a little more  
5           specifically, talk about the incident  
6           itself.

7   A.    Okay.

8   Q.    And in that regard -- also, from your review ~~of~~  
9           the records, because I know you've got  
10          those that you've had to review. First ~~of~~  
11          all, do you understand that the incident  
12          occurred on April 6, 1998?

13   A.    Yes. The patient related all of his low back  
14          difficulty that I just described to an  
15          incident that occurred on April 6th of  
16          1998.

17   Q.    Doctor, during the course of your history,  
18          Mr. Holland is in your office, I presume,  
19          and you're asking him questions about what  
20          happened and he's answering them? Is that  
21          the way it goes?

22   A.    Yes.

1 Q. As simple as that, okay. Did he tell you that  
2 after the impact that he was able to get  
3 out of his tractor and go over to the  
4 other tractor trailer that was involved to  
5 determine the status of that particular  
6 individual? Did he go into that kind of  
7 detail?

a A. He may have, but I did not document that in my  
9 record and I don't remember that  
10 conversation.

11 Q. All right. Doctor, were you told by  
12 Mr. Holland that after the accident he  
13 climbed back into his tractor after  
14 checking on the driver, got his triangles  
15 out, went and put those out on the roadway  
16 where they belonged and then went back and  
17 otherwise cooperated with the police  
18 during their investigation? Did that  
19 generally --

20 A. That --

21 Q. Or not in that detail?

22 A. That may have been discussed with me, but it

1           wasn't -- I didn't document that in my  
2           records and I don't recall.

3   Q.   All right. Now, Doctor, in this particular  
4           incident, did Mr. Holland seek treatment  
5           immediately from the accident scene?

6   A.   No.

7   Q.   And instead do you understand that he waited  
8           about eight hours for another truck to  
9           come with another driver and then he --  
10          then Mr. Holland, the other driver drove  
11          that truck and trailer to Indianapolis,  
12          then to Chicago and then back to  
13          Philadelphia over the course of the next  
14          five days?

15   A.   Well, I know that now and from a review of  
16          transcripts of records, but at the time, I  
17          don't believe that we discussed it in that  
18          great of detail.

19   Q.   Okay. Doctor, one of the issues in this case  
20          revolves around degenerative disk disease.  
21          Doctor, in your practice, are you familiar  
22          with that particular condition?

1 A Yes.

2 Q All right. Is that something that you would  
3 find regularly or is that a rather unusual  
4 thing for you to come across in your  
5 particular practice?

6 A A daily occurrence with patients.

7 Q All right. And, Doctor, is there anything  
8 about Mr. Holland's condition or anything  
9 about his case that you feel puts him  
10 outside of your expertise or your  
11 specialty?

12 A. No.

13 Q. Okay. Doctor, the issue in this case, among  
14 others, involves what conditions -- what  
15 injuries, if any, Mr. Holland sustained in  
16 the underlying incident; that is, the  
17 April 6 accident. I would like you to  
18 tell the jury at this point -- and then  
19 we'll talk about why you believe that and  
20 the basis for it, but could you please  
21 tell the jury in your opinion, what do you  
22 think happened to Mr. Holland, medically

1 speaking, as a result of the April 6, 1998  
2 accident?

3 A. He had a stretching of the muscles and  
4 ligaments about the spine of his mid and  
5 lower back area. That type of a soft  
6 tissue injury is commonly known as a  
7 sprain or a strain.

8 Q. Okay. Did he sustain any other injury in the  
9 accident of April 6, 1998?

10 A. Yes.

11 Q. What other injury?

12 A. Bruises or contusions of his thighs.

13 Q. All right. Doctor, anything else that your  
14 review *of* the records or from your  
15 examination of Mr. Holland you attribute  
16 to the subject accident?

17 A. No.

18 Q. All right. Now, with respect to the activities  
19 that I just described a few moments ago  
20 that Mr. Holland did following the  
21 accident, are those -- is that conduct  
22 consistent with someone with a low back

1 strain like you diagnosed?

2 A. Yes.

3 Q. All right.

4 A. of mild to moderate severity, not of severe  
5 consequence.

6 Q. All right. Now, Doctor, you are aware that  
7 there is medical opinion being expressed  
8 in this case to the effect that the  
9 subject accident caused some degree of  
10 herniation at the L-5, S-1 level. Are you  
11 aware of that?

12 A. Yes.

13 Q. First of all, do you agree with that?

14 A. No.

15 Q. All right. And, Doctor, let's talk about, just  
16 so far, the chunk that we've broken off to  
17 chew already, and that is the conduct of  
18 Mr. Holland from the time of the accident  
19 to the time that he first sought treatment  
20 on April 10, that Friday, in Philadelphia?

21 A. Okay.

22 Q. Okay. Now, with respect to that conduct, would

1           you find that going back into his truck,  
2           refusing treatment at the scene, driving  
3           to Indianapolis, to Chicago and then back  
4           to Philadelphia over the course of five  
5           days is consistent or inconsistent with  
6           someone who has suffered a traumatic  
7           herniated L-5, S-1 disk?

8                       MR. HENRETTA:  Objection.

9   Q.    you can answer.

10  A.    I think the proper answer would be no.

11  Q.    Okay.

12  A.    In other words, it was sort of a long question,  
13           but I don't believe, based on that  
14           behavior, that it's consistent with  
15           blowing out an L-5, S-1 disk.

16  Q.    What would you have expected to see instead by  
17           way of the behavior of Mr. Holland  
18           following the impact if he, indeed,  
19           sustained a fresh, new herniation at L-5,  
20           s-1?

21                       MR. HENRETTA:  Objection.

22  A.    There would have been abrupt and severe low



1 back pain, radiating pain down one or both  
2 legs and that would be associated with  
3 numbness, tingling and weakness in a  
4 particular distribution. The idea that he  
5 was able to get up and around, so on and  
6 so forth, is not consistent with a severe  
7 low back injury.

8 Q. You said, Doctor, in your answer -- you used  
9 the phrase particular distribution, and  
10 the jury is going to hear a little bit  
11 about that probably before they hear from  
12 you. So, we don't have to go into a great  
13 detail, because it is rather technical,  
14 but could you describe for the jury what  
15 you mean by a particular distribution when  
16 we're talking about a potential injury to  
17 L-5, s-1?

18 A. Okay. Stacked one on top of another in a  
19 person's back are bony blocks known as  
20 vertebrae. In between each of those bony  
21 blocks is a jelly disk called a nucleus  
22 palposes.

1 Q. Okay.

2 A. The vertebrae surround, in the back, the spinal  
3 column -- or the spinal cord, I should  
4 say, that breaks down into lots of little  
5 nerves that are called the cauda equina.  
6 The cauda equina means horse's tail. It  
7 looks like a horse's tail of all these  
8 nerves coming down. And then each of  
9 those nerves exist on each side to go down  
10 into the leg to provide sensation, the  
11 ability to move, so on and so forth.

12 If one herniates an L-5, S-1 disk,  
13 that means some of the jelly material  
14 between the fifth lumbar vertebra and the  
15 sacrum, which is a confluence of bone down  
16 below, making up the tail area of us human  
17 beings. If a portion of that herniates or  
18 sticks out, it presses on the L-5 nerve  
19 root -- or, I'm sorry, if it's an L-5, S-1  
20 disk, it presses on the S-1 nerve root,  
21 and that S-1 nerve root provides sensation  
22 to a particular area of the foot. It

1           supplies a reflex and the ability to move  
2           a certain muscle group.

3   Q.   And is that true, Doctor --

4   A.   Was that clear enough?

5   Q.   That was pretty clear.

6   A.   Okay.

7   Q.   Doctor, is that like for everybody or is that  
8           just in some people?

9   A.   There's a little overlap and it can be a little  
10           different in one person to another, but as  
11           I just described, it's a pretty constant  
12           part of human anatomy.

13   Q.   So, if you have an injury to a certain part of  
14           the back, a certain level of your  
15           vertebral column, the -- if there is some  
16           kind of nerve problem, it's going to be in  
17           a special place because that's where the  
18           nerve runs to from that particular injured  
19           spot?

20   A.   That was a quicker and better synopsis than I  
21           provided, yes.

22   Q.   I'm not sure it's better, but I just -- if I

1           can understand it, then I know anyone can.  
2           Now, Doctor, in this case, first of all,  
3           could you tell the jury, where would --  
4           you would -- the L-5, S-1 would result in  
5           what kind of symptoms? I think you said  
6           in the foot.

7   A.     Numbness along the lateral border of the foot.  
8           That means the outside part of the foot.

9   Q.     Okay.

10   A.    Weakness **of** the calf muscle, which could be  
11           varying in severity, but basically enough  
12           weakness that one would have trouble  
13           standing up on their toes, and then also  
14           the loss of the Achilles tendon reflex.

15   Q.    What is the Achilles tendon reflex?

16   A.    The Achilles tendon is the largest tendon of  
17           the body that runs behind the ankle and  
18           goes down to the foot. You take a little  
19           reflex hammer and you strike it lightly,  
20           holding the foot in the proper position  
21           and then you'll see a little jerk of the  
22           foot.

1 Q. And if you don't see that reaction, you say  
2 that it's an abnormal finding?

3 A. Correct, and it would imply a failure of the  
4 electric conduction of the S-1 nerve root.

5 Q. So, if you were getting -- conversely, if  
6 you're getting normal Achilles tendon  
7 reflexes upon examination, then that's  
8 telling you that there isn't a problem  
9 with the L-5, S-1; is that correct?

10 A. It makes it significantly less likely, that's  
11 true.

12 Q. Okay. That would at least be inconsistent with  
13 an L-5, S-1 neuropathy?

14 A. Relatively inconsistent, yes.

15 Q. Okay. Doctor, then let's return to  
16 Mr. Holland's history. We got him back to  
17 Philadelphia on Friday, the 10th, where he  
18 first sought medical treatment, and in  
19 that regard, he saw Chris Boucher, a  
20 chiropractor in Philadelphia. Are you  
21 familiar with that treatment from the  
22 records you reviewed?

1 A. Yes.

2 Q. All right. And are you familiar with what that  
3 particular chiropractor diagnosed?

4 A. Yes.

5 Q. And what was that?

6 A. Cervical, thoracic, lumbosacral sprain/strain  
7 with subluxation; contusion, sprain/strain  
8 knee and leg

9 Q. All right. And based upon what you told the  
10 jury a little earlier what you thought  
11 occurred to Mr. Holland in the accident,  
12 that seems consistent?

13 A. It does. The only thing I wouldn't agree with  
14 is the terminology subluxation. That  
15 would imply that one vertebra might have  
16 slipped forward or backward on another  
17 one, and I don't believe that there is any  
18 evidence that that occurred in this case.

19 Q. All right. And, Doctor, then the next -- late:  
20 that very same day, Mr. Holland, at the  
21 referral of Dr. Boucher, the chiropractor  
22 went to the emergency department at the

1           Albert Einstein Medical Center. Are you  
2           aware of that?

3   A.    Yes, and when I talked to the patient, I -- and  
4           as I documented things in my record, I  
5           wasn't quite sure whether he went to the  
6           emergency room before he saw the  
7           chiropractor or after, but it's become a  
8           little bit more apparent to me, I guess,  
9           that he went to the chiropractor first and  
10          then went to the emergency room.

11   Q.   And, Doctor, first of all, are you familiar  
12          with the Albert Einstein Medical Center in  
13          Philadelphia?

14   A.   Yes.

15   Q.   Does that particular facility enjoy a good or  
16          excellent, fair reputation?

17   A.   It's one of the most famous medical centers in  
18          the country. It's considered to be an  
19          extremely high-quality facility.

20   Q.   And from your reading of the records generated  
21          at that facility regarding Mr. Holland,  
22          what did they diagnose with respect to his

1 condition?

2 A. There was some discussion of low back pain, but  
3 they were mainly concerned with swelling  
4 involving the lower extremities. To that  
5 end, they obtained what was known -- what  
6 is known as a Doppler ultrasound. That's  
7 a little listening device for the veins in  
8 the legs, and they were basically looking  
9 for evidence of a blood clot in the legs.

10 Q. And, Doctor, what significance -- okay. So,  
11 the diagnosis there is lower extremity  
12 edema, swelling or bruising of the lower  
13 extremities. What significance does the  
14 fact that they didn't do any kind of  
15 diagnostic tests of the back have for you,  
16 if any?

17 A. In my opinion, it means that they did not  
18 consider his lower back complaints to be  
19 sufficient to document a formal physical  
20 examination or even get X-rays.

21 Q. Doctor, would the -- would that be consistent,  
22 in your opinion, with someone suffering



1 from a traumatic herniated L-5, S-1 disk,  
2 to go through the Albert Einstein Medical  
3 Center emergency room without so much as  
4 even an X-ray of the low back?

5 A. No.

6 Q. On the other hand, Doctor, is everything that  
7 you saw the emergency room record **do** for  
8 Mr. Holland consistent with a low back  
9 strain and bruised legs?

10 A. Yes.

11 Q. All right. Doctor, then the next treatment was  
12 by a physiatrist by the name of  
13 Dr. Verada. Are you familiar with the  
14 records he generated?

15 A. Yes.

16 Q. All right. And apparently he was seen on  
17 April 23 at the request of the  
18 chiropractor. Is that consistent with  
19 your understanding?

20 A. Possible. My date for Dr. Verada was  
21 May 2nd of '98, but there are a lot of  
22 records. I may just have that --

1 Q. Okay. In fact --

2 A. -- out of order.

3 Q. -- there was a report that you would have seen  
4 generated --

5 A. Oh, okay.

6 Q. -- on May 2, 1998 --

7 A. Okay.

8 Q. -- by Dr. Verada talking about that particular  
9 examination.

10 A. Okay.

11 Q. And, in fact, if you don't have it in front of  
12 you right now, let me go ahead and hand it  
13 to you. And, in particular, Doctor, I  
14 want you to look at the neurological  
15 examination section and the diagnosis  
16 section. Again, this is for Dr. Verada.

17 A. Okay.

18 Q. Okay. Doctor, what did -- according to his  
19 records anyway, what did Dr. Verada find  
20 by way of neurological examination?

21 A. It was normal.

22 Q. And what significance, if any, do you place on

1           that normal neurological finding, given  
2           the debate about whether he had a  
3           herniated L-5, S-1 disk at that time?

4   A.    A normal neurological examination would not be  
5           consistent with a clinically significant  
6           herniated disk.

7   Q.    All right. And what was the diagnosis, then,  
8           that Dr. Verada came up with?

9   A.    Acute, severe thoracic and lumbosacral  
10           sprain/strain with associated myofascitis,  
11           right thigh contusion with strain.

12   Q.    Okay. Is myofascitis another name for like  
13           muscle pain?

14   A.    It's just another medical term implying that  
15           the patient is having low back pain.

16   Q.    Okay. Doctor, is there -- would you find -- do  
17           you believe, is it your opinion that  
18           Dr. Verada's opinions, as we've just  
19           discussed them, are consistent with a back  
20           strain?

21   A.    Yes.

22                   MR. HENRETTA: Objection.

1 Q. Would you agree that they're inconsistent with  
2 a herniated L-5, S-1 disk?

3 MR. HENRETTA: Objection.

4 A. Yes.

5 Q. Doctor, now, in continuing with his treatment  
6 after Dr. Verada, he was seen by a partner  
7 of the chiropractor, and that is  
8 Dr. Mangino, an anesthesiologist. Did you  
9 see that?

10 A. Yes.

11 Q. Now, is an anesthesiologist -- how are they  
12 different from an orthopedic surgeon with  
13 respect to the treatment of a back?

14 A. Anesthesiologists are best known in this  
15 country as providing the method by which  
16 patients sleep for surgery and they also  
17 provide spinals; for example, to make the  
18 legs go to sleep, and they also do other  
19 regional blocks to facilitate surgeon's  
20 operative procedures. Over the last ten  
21 years, anesthesiologists have also been  
22 actively involved in what's become known

1 as pain management, and I believe that  
2 that is the function of Dr. Mangino in  
3 this particular type of case.

4 Q. So that -- and have you had an opportunity to  
5 review Dr. Mangino's report dated May 8,  
6 1998, which I believe was his first  
7 report?

8 A. Yes.

9 Q. Did you note that in his history he reports  
10 that Mr. Holland told him that  
11 Mr. Holland -- that is, he was traveling  
12 at about 35 to 40 miles per hour when his  
13 truck was hit from behind?

14 A. Yes.

15 Q. Okay. Is -- by the way, is that what  
16 Mr. Holland told you, that he was going  
17 40 miles per hour at the time he was hit?

18 A. I believe so, yes.

19 Q. All right. And that's what you have in your  
20 report, correct?

21 A. Yes.

22 Q. All right. Doctor, then with respect to

1 Dr. Mangino's report, do you note that he  
2 found -- he did a -- tested the Achilles  
3 tendon reflex?

4 A. Yes.

5 Q. And what did he find?

6 A. The Achilles reflexes were normal.

7 Q. And again, Doctor, that would be inconsistent  
8 with an L-5, S-1 herniation, correct?

9 A. Yes.

10 Q. Doctor, now, what does it mean to have patellar  
tendon reflex diminished?

12 A. The patellar tendon reflex is tested by taking  
13 a little reflex hammer and tapping right  
14 below the kneecap area of the knee and  
15 then you'll see a little leg jerk. That's  
16 probably the most common --

17 Q. Oh, yeah.

18 A. -- reflex that most patients are familiar with  
19 in a doctor's office.

20 Q. Does that have anything to do with the L-5,  
21 s-1?

22 A. No. That is an L-4 nerve root level. That's

1 the tendon reflex for the L-4 nerve root.

2 Q. So, finding a diminished or abnormal patellar  
3 tendon reflex relates to a different level  
4 of the back than the L-5, S-1?

5 A. Correct.

6 Q. Okay. Doctor, would you agree or disagree that  
7 Dr. Mangino's initial findings were  
8 consistent with your opinion that this was  
9 a strain superimposed over preexisting  
10 degenerative condition?

11 A. Yes, that was his diagnosis, and consistent  
12 with my opinion.

13 Q. All right. Doctor, at this point in May of  
14 1998, in the treatment chronology anyway,  
15 there was an MRI that was done. Are you  
16 aware of that?

17 A. Yes.

18 Q. Have you had a chance to actually see the film?

19 A. Yes.

20 Q. What, in your opinion, does that film reveal?

21 A. Well, three things: Number one, the quality or  
22 resolution of the film, in my opinion, was

1           suboptimal; number two, the film  
2           demonstrated multi-level degenerative disk  
3           and joint disease. That means that he has  
4           arthritis in his lower back; and then,  
5           lastly, there was some evidence of bulging  
6           of the disk at L-5, S-1.

7   Q.    Now, Doctor, do you have an opinion whether  
8           those findings, as you saw in the MRI of  
9           May 18, 1998 preexisted the subject  
10          accident?

11   A.   Yes, I have an opinion.

12   Q.    And what is that?

13   A.    They were there prior to the accident.

14   Q.    Doctor, just a quick -- again, I don't -- the  
15           jury has been told some things before  
16           they're going to hear from you regarding  
17           degenerative disease, but I think it's  
18           important to just touch on a few of the  
19           characteristics of it. How can you tell  
20           this jury within a reasonable degree of  
21           certainty that the stuff that is seen on  
22           that MRI actually was there six weeks



1 earlier?

2 A. Because we know from experience that those  
3 types of changes take many years to  
4 develop, not just a few weeks.

5 Q. Well, would you expect to see those kinds of  
6 findings absent trauma in a man of  
7 Mr. Holland's age, weight and job  
8 classification?

9 A. Yes.

10 Q. That's something that is not unusual?

11 A. No

12 Q. Okay.

13 A. It's normal. It's abnormal, but it would be  
14 normal for him.

15 Q. Okay. And, Doctor, then in terms of the  
16 characteristics, a little bit more -- just  
17 a little bit more on the characteristics  
18 of degenerative disease, is this something  
19 that is chronic or does this just come and  
20 go away then?

21 A. Well, you have to distinguish between patient  
22 symptoms and the X-ray or imaging findings

1 of the arthritis.

2 Q. Well, will arthritis ever go away on an X-ray?

3 A. No.

4 Q. All right. **So** that if we would expect to take  
5 an X-ray of Mr. Holland's back, or an MRI,  
6 in ten years, what would you expect to see  
7 compared to what you saw in May of 1998?

8 A. Worsening of the arthritic change involving the  
9 joints and disk spaces.

10 Q. Even though you're certain that you would see  
11 some worsening of that, can you be certain  
12 as to how much his symptoms in ten years  
13 would be worse or not?

14 MR. HENRETTA: Objection.

15 A. No.

16 Q. And why is that then?

17 A. Because just because the X-rays or imaging  
18 studies look worse as time goes by, that  
19 does not necessarily correlate with how  
20 the patient feels. Some patients will  
21 sort of smolder along and say they have  
22 aching and stiffness. Some patients will

1           say they feel worse over the progression  
2           of time. Interestingly enough, some  
3           patients will have long periods of time  
4           where they say they feel substantially  
5           better.

6   Q.     But, Doctor, isn't it true that if you -- that  
7           degenerative condition that is visible to  
8           you and that you described to the jury on  
9           the May 18 MRI is a permanent condition?

10           MR. HENRETTA: Objection.

11   A.     The imaging finding on X-ray and on the MRI is  
12           a permanent condition, but that does not  
13           necessarily mean that the patient is going  
14           to suffer permanently from that condition.

15   Q.     Okay. Now, Doctor, one other thing about the  
16           interpretation of these MRIs. Are you a  
17           radiologist?

18   A.     No.

19   Q.     Do you work in concert with radiologists on a  
20           regular basis?

21   A.     Yes.

22   Q.     What is their role in the treatment, let's say,

1 of Mr. Holland? If he had come to you as  
2 a treating patient, what role, if any,  
3 would a radiologist have played?

4 A. The radiologists have special and sophisticated  
5 training in the interpretation of regular  
6 X-rays and various imaging studies,  
7 including the MRI. I usually will look at  
8 the studies of a particular patient  
9 myself, but I also rely fairly heavily on  
10 the interpretation of the radiologist,  
11 because that's their area of expertise,

12 Q. Okay. Now, Doctor, with -- finally, with  
13 respect to your review of that May 18 MRI,  
14 are the findings there, do those findings  
15 require some traumatic explanation for  
16 them when you look at that particular  
17 film?

18 MR. HENRETTA: Objection.

19 A. No.

20 Q. Okay. Doctor, let's jump ahead to the  
21 July 2000 MRI. Did you have a chance to  
22 look at that?

1 A. Yes.

2 Q. Doctor, with respect to that particular MRI,  
3 first of all, let's ask the same question  
4 I ended with before. Is there something  
5 about that MRI in July of 2000 that  
6 requires a trauma to explain it?

7 A. No.

8 Q. And why is that?

9 A. The findings were as follows when I looked at  
10 the July 6, 2000 MRI: First of all, the  
11 quality of the study was better. In other  
12 words, the resolution or the -- when I  
13 looked at the films, I felt that I could  
14 see better on those films than the earlier  
15 studies. I saw disk bulging at L-4, L-5;  
16 multiple levels had disk desiccation,  
17 which means that they were losing their  
18 water content; and I thought that there  
19 was a probable disk herniation at L-5,  
20 S-1.

21 Q. Now, Doctor, that's -- the difference, then,  
22 between your interpretation of the May and

1           the July two years later MRI is that in  
2           the second one you see a herniation for  
3           sure?

4   A.    Correct.

5   Q.    All right.  And that is at L-5, S-1?

6   A.    Yes.

7   Q.    Okay.  Now, Doctor, what if Mr. Holland is  
8           making complaints at this time about pain  
9           in the upper thighs, just below the  
10          buttocks?  Would you attribute that to the  
11          finding that you've just talked about on  
12          that July MRI?

13  A.    Some of it, yes; some of it, no.

14  Q.    All right.  Talk about both of those for the  
15          jury, what -- some of it, yes, first.

16  A.    The part that would be correlated with low  
17          back, buttock and proximal thigh pain  
18          would be the patient's advanced  
19          multi-level degenerative disk and joint  
20          disease.  It means he has a lot of  
21          arthritis in his back.  The symptoms would  
22          not be consistent with an L-5, S-1

1 herniated disk.

2 Q. Okay. Doctor, then I want to go through  
3 again -- continue with the chronology of  
4 treatment and leading up to your  
5 examination; that, indeed, Mr. Holland was  
6 then seen by Dr. Clements in Philadelphia.  
7 Are you aware of that?

8 A. Yes.

9 Q. And Dr. Clements saw him in 1998 through the  
10 time that he returned to work in November  
11 of 1998? If you want --

12 A. The answer is yes, but I had down for my review  
13 that he probably successfully returned to  
14 work in October of 1998.

15 Q. Okay. With respect to Dr. Clements, who do you  
16 understand was at the Temple University,  
17 Department of Orthopedic Surgery?

18 A. I --

19 Q. Here, I'll be happy to show you. I don't  
20 expect you to recall all these things.  
21 There's his report.

22 A. Yes, David Clements, M.D., from Temple

1 University. The date of this letter is  
2 March 9th of 2000.

3 Q. All right. And from your review of the  
4 records, let me -- here, we'll just do it  
5 this way. Would you read what his  
6 impression is, the number listed there?

7 A. Okay. This is the second page --

8 Q. Right.

9 A. -- letter from Dr. Clements. "Impression,  
10 lumbar strain secondary to a work-related  
11 automobile accident 4-6-98."

12 MR. HENRETTA: Objection.

13 A. "Number two, degenerative changes in the lumbar  
14 spine, including possible left-sided small  
15 disk herniation."

16 Q. Doctor --

17 A. "Number three" --

18 Q. -- let me interrupt you.

19 A. Yes.

20 Q. And go through a couple of these, just so that  
21 we can see what your findings --

22 MR. HENRETTA: I just want to move to



1 strike the work related. So --

2 MR. TUREK: Okay.

3 MR. HENRETTA: We have to keep this  
4 clean.

5 Q. The first impression with the patient is that  
6 he got a lumbar strain attributable to the  
7 4-6-98 auto accident. Is that something  
8 you agree with?

9 A. Yes.

10 Q. All right. Dr. Clements further opines that  
11 Mr. Holland had completely recovered from  
12 that strain, back strain when he was  
13 released back to work on August 27, 1998.  
14 Do you agree with him in that respect?

15 A. Yes.

16 Q. All right. Doctor, then are you aware that  
17 Mr. Holland did, in fact, return to work  
18 in November of 1999?

19 A. Are we talking 1998?

20 Q. I'm sorry, 1998. That was just a trick  
21 question there to see if you were paying  
22 attention.

1 A Either October or November of 1998, yes.

2 Q All right. And do you understand that he went  
3 back to work as an over-the-road truck  
4 driver?

5 A. Yes.

6 Q. All right. And that he continued to work for  
7 another year?

8 A. He -- I believe he worked for eight months.

9 Q. Okay. Eight months before he sought additional  
10 treatment?

11 A. Eight or nine months, correct.

12 Q. Okay. So, from the time he returned to work in  
13 late 1998 until he went back to see  
14 Dr. Mangino in April of 1999, you  
15 understand there was no treatment in  
16 between there?

17 A I -- that's correct. I was unable to identify  
18 any record of medical treatment during  
19 that eight or nine month hiatus.

20 Q. All right. And, Doctor, is that consistent  
21 with someone who has recovered from a back  
22 strain?

1 A. Yes.

2 Q. Okay. By the way, Doctor, would you expect  
3 during the course of that work that  
4 Mr. Holland was doing, if you assume he  
5 was doing over-the-road truck driving --  
6 that is, long periods **of** time driving --  
7 as well as load -- doing some loading and  
8 unloading and some chaining and  
9 unchaining, would you expect him to have  
10 occasional back pain?

11 MR. HENRETTA: Objection.

12 A. Yes.

13 Q. Would you say that that back pain -- would you  
14 have an opinion whether that occasional  
15 back pain he would have had would be  
16 related to the subject -- to the April '98  
17 accident?

18 MR. HENRETTA: Objection.

19 A. My opinion would be that it would be just a  
20 matter of the normal course of  
21 work-related event and not related to the  
22 prior accident.

1 Q. All right. Doctor, then again with respect to  
2 the chronology of his treatment,  
3 Dr. Hayken, Gerald Hayken of the -- an  
4 orthopedic surgeon in Mount Laurel, New  
5 Jersey, examined Mr. Holland. Are you  
6 aware of that?

7 A. Yes. I believe that was in June of 2000.

8 Q. All right. So, we are now over two -- by the  
9 time Dr. Hayken sees him, we are now over  
10 two years past the accident, correct?

11 A. Yes.

12 Q. And did you find from Dr. Hayken that his  
13 opinions were consistent with, first of  
14 all, your opinions about what injuries  
15 were attributable to the subject accident?

16 A. Yes and no.

17 Q. Okay. Tell the jury how yes and tell the jury  
18 how no.

19 A. Dr. Hayken's diagnosis was lumbosacral strain  
20 superimposed on disk degeneration and  
21 facet joint arthritis. Basically, what  
22 he's saying is that the patient has a

1 low -- has a soft tissue injury  
2 superimposed on arthritis. I agree with  
3 that except that I wouldn't agree that the  
4 strain was an ongoing problem at that  
5 point. In other words, I would simply  
6 have made the diagnosis of arthritis in  
7 the lower back and then I would have said  
8 with a history of a strain two years ago.

9 MR. HENRETTA: Move to strike.

10 Q. All right. And, Doctor, do you believe --  
11 strike that. Do you have an opinion as to  
12 whether or not the subject incident  
13 aggravated this preexisting -- I mean, I  
14 hear this aggravated coming up now and  
15 then, and the jury is going to hear that.  
16 What is your opinion about whether or not  
17 that preexisting degenerative condition  
18 was aggravated by our accident?

19 A. In my opinion, there was no aggravation.

20 Q. And what do you base that on, Doctor?

21 A. You have to divide between patient symptoms and  
22 what can actually be documented or proven.

1           In this particular case, one can say that  
2           the patient was aggravated or had pain  
3           after the accident, but that's different  
4           than saying that somehow the arthritis in  
5           the lower back was worsened, or  
6           accelerated, or that the arthritis was  
7           made even more severe as a result of the  
8           accident. There's no proof of that in  
9           this case.

10    Q.     Doctor, then let's go ahead to your examination  
11           of Mr. Holland and begin by telling the  
12           jury when that occurred.

13    A.     December 8th of last year.

14    Q.     All right. So, in the chronology, this is  
15           where you come in, and would you tell the  
16           jury, first of all, what you found upon  
17           physical examination of Mr. Holland?

18    A.     My examination involved looking at the patient,  
19           inspecting the involved areas and doing a  
20           neurological examination. In this  
21           particular case, I found that he was 6  
22           feet tall and weighed 303 pounds. He was

1 friendly and cooperative. The lower back  
2 area was normal appearing. There was  
3 diffuse tenderness. His ability to move  
4 his lower back was restricted because of  
5 complaints of pain. There were no  
6 abnormal neurological findings and no  
7 evidence of lower extremity atrophy.

8 Q. What significance does that have with respect  
9 to your concern about the potential for a  
10 herniated L-5, S-1?

11 A. There were no findings consistent with a  
12 herniated L-5, S-1 disk.

13 Q. All right. Now, Doctor, did you conduct any  
14 other tests during that examination?

15 A. Yes.

16 Q. What were those and what were the results?

17 A. I obtained regular X-rays of his lower back.

18 Q. And what did they reveal, if anything?

19 A. Arthritis at multiple levels.

20 Q. Is that, first of all, consistent with what you  
21 had seen on the other films?

22 A. Yes.

1 Q. Okay. So, it's kind of what you expected to  
2 see?

3 A. Yes.

4 Q. Doctor, you talked a little bit about this  
5 earlier, and I want to go back to the  
6 symptoms he described and I want to make  
7 sure that we've explained what they mean  
8 to you. That is, for instance, you  
9 indicated earlier that he complained of  
10 pain traveling up the spine and down the  
11 arms causing numbness and tingling of the  
12 hands?

13 A. Yes.

14 Q. What -- I mean, then in your letter -- in your  
15 report, you say that's a non-anatomical  
16 symptom complex. What does that mean?

17 A. That means that the nerves simply don't run  
18 that way and that it's impossible for a  
19 reasonable person to experience something  
20 like that. So, it would be a complaint  
21 that would have a so-called functional or  
22 supratentorial basis. In other words, it



1           would be more in his mind than having an  
2           actual organic basis.

3   Q.    All right.  So, there's nothing you can tell  
4           the jury -- we don't have a chart or a  
5           model that you can point and say when this  
6           thing is touching against that thing, you  
7           get that kind of --

8   A.    No, that's not the way the human body works.

9   Q.    Okay.  What about the difficulty distinguishing  
10          hot and cold water by dipping toes into  
11          water?  What -- you mentioned that  
12          earlier.  What do you attribute that to?

13   A.    Well, those symptoms sound like the types of  
14          problems that people with diabetes have.  
15          People with diabetes have high blood  
16          sugars and that adversely affects the  
17          ability of nerves to conduct electricity,  
18          and the lack of ability to differentiate  
19          hot from cold is common in diabetes.

20   Q.    Okay.  Doctor, then that wouldn't be related to  
21          the accident, in your opinion?

22   A.    No.

1 Q. All right. Doctor, then with respect to the  
2 other -- you mentioned some incontinency?

3 A. He had some problems with urinary dribbling,  
4 and he said that he also had constipation  
5 alternating with diarrhea over a long  
6 period of time.

7 Q. Is that in any way related to an L-5, S-1?

8 A. No.

9 Q. Okay. What about complaints of pain in just  
10 the -- that is, the muscle of the thighs?  
11 Did he make any complaints to you of those  
12 kinds of things?

13 A. I did not document that.

14 Q. All right. Because there was, in fact, if you  
15 can believe it or not, yet another doctor  
16 who examined Mr. Holland after you, and  
17 that is Dr. LaVoice. Have you had an  
18 opportunity to review Dr. LaVoice's  
19 particular -- his --

20 A. Yes. I --

21 Q. -- report?

22 A. I read his report.

1 Q. All right. In that report, did you note that  
2 he -- that Mr. Holland apparently was  
3 making complaints referable to both  
4 thighs and that Dr. LaVoice could not  
5 really come up with any explanation for  
6 all those complaints?

7 A. I read that, yes.

8 Q. Is that a fair reading of what Dr. LaVoice was  
9 saying?

10 A. Yes.

11 Q. Okay. Now, with respect then to your  
12 examination, Doctor, did you conduct any  
13 further tests that we have not covered or  
14 any other symptoms he described that we  
15 haven't talked about?

16 A. Number -- the number one, I actually looked at  
17 his magnetic resonance studies. I think  
18 we discussed those.

19 Q. Right.

20 A. The only other thing that we haven't discussed  
21 are his electrical studies. He had two  
22 electrical studies in the past.

1 Q. Okay. And electrical studies are EMGs?

2 A. They're called nerve conduction EMG studies.

3 Q. Okay. And what is the purpose of that kind of  
4 study?

5 A. To see if there's any evidence of a pinched  
6 nerve in the lower back area.

7 Q. And what diagnostic value do you attribute to  
8 those tests?

9 a. Well, most physicians that have experience with  
10 low back problems do not give a tremendous  
11 amount of weight to electrical studies,  
12 because many times they'll lead you down  
13 the wrong path. In this particular case,  
14 the patient had electrical studies once in  
15 1998 and then later the following year and  
16 they showed completely different things.

17 Q. Okay. Doctor, at this time -- by the way, in  
18 your examination, was there any kind of  
19 testing or anything that you wanted to do  
20 that you couldn't do with respect to this  
21 patient?

22 A. No.

1 Q. All right. And, Doctor, then I would like to,  
2 in conclusion here, to run through then  
3 your opinions that you hold within a  
4 reasonable degree of medical certainty  
5 based upon, of course, your education and  
6 experience and training, but also your  
7 review of the records and your examination  
8 of the Plaintiff.

9 A. Okay.

10 Q. Okay. And, again, all of your answers, you  
11 know, have to be within a reasonable  
12 degree of medical certainty, more likely  
13 than not, scientifically speaking, okay?  
14 And you understand that.

15 A. Okay.

16 Q. Doctor, with that in mind, do you have an  
17 opinion as to whether or not Mr. Holland  
18 had a condition in his lower back that  
19 preexisted the subject accident?

20 A. Yes, I have an opinion.

21 Q. And what is that opinion?

22 A. He did have a condition antedating or

1 preexisting the accident, which would be  
2 known as axial skeletal spondylosis.  
3 That's the fancy medical term meaning  
4 arthritis up and down his spine.

5 Q. And, Doctor, is -- do you have an opinion as to  
6 whether he still has that condition today?

7 A. Yes, I have an opinion.

8 Q. And what is that opinion?

9 A. He does have the arthritis that I mentioned  
10 based on his regular X-rays and also his  
11 magnetic resonance imaging studies.

12 Q. Doctor, do you have an opinion as to whether  
13 there is a cure for arthritis in the low  
14 back?

15 A. Do I have an opinion on that?

16 Q. Yeah.

17 A. My opinion is, number one, there's no cure for  
18 the arthritis; but, number two, there are  
19 things that can be done to help the  
20 patient feel better, even though they're  
21 afflicted with the condition.

22 Q. Doctor, then what did -- what is your opinion

1 as to what Mr. Holland sustained by way of  
2 injury in the April 1998 accident?

3 A. Do I have an opinion about what he sustained?

4 Q. Yes. What is your opinion as to what he  
5 sustained?

6 A. A soft tissue injury, a stretching of the  
7 muscles and ligaments about the spine of  
8 his lower back. That would be known as a  
9 lumbosacral sprain/strain.

10 Q. Then, Doctor, at the time of your -- strike  
11 that. Doctor, do you have an opinion as  
12 to whether or not, based upon your review  
13 of the records, Mr. Holland was able to  
14 return to work having recovered from that  
15 strain that you attribute to the subject  
16 accident?

17 A. Yes, I have an opinion.

18 Q. And what is that?

19 A. The record documents that after approximately  
20 five or six months that he was  
21 sufficiently improved and healed that he  
22 was able to return to work.

1 Q. All right. And, Doctor, then again as it  
2 relates to your exam, could you again just  
3 tell the jury -- make sure we do this  
4 within a reasonable degree of medical  
5 certainty -- what did you find were his  
6 medical problems at the time of your  
7 examination in December of 2000?

8 A. Number one, lumbosacral spondylosis. This is  
9 also known as degenerative disk and joint  
10 disease or, to the lay public, arthritis.

11 Q. Okay.

12 A. Number two, obesity; number three, diabetes  
13 mellitus and hypertension.

14 Q. Doctor, do you have an opinion as to when --  
15 whether any of those conditions you  
16 diagnosed in December of 2000 were  
17 attributable to the subject accident?

18 MR. HENRETTA: Objection.

19 A. Yes, I have an opinion.

20 Q. And what is that?

21 MR. HENRETTA: Objection.

22 A. None of them are related to the April 1998



1 accident.

2 Q. Doctor, do you have an opinion as to whether or  
3 not Mr. Holland can work?

4 MR. HENRETTA: Objection.

5 A. Yes.

6 Q. What is your opinion?

7 A. I believe that he could work if he was  
8 motivated to do so. However, he has  
9 significant underlying problems, including  
10 malignant obesity, hypertension, diabetes  
11 and a lot of arthritis up and down his  
12 spine. He is also not getting any  
13 younger, and all of those things might  
14 make it difficult for him to engage in a  
15 strenuous vocation, such as driving truck  
16 and all of the associated lifting,  
17 pushing, pulling, so on and so forth.

18 MR. TUREK: Thank you, Doctor. I  
19 have no further questions.

20 MR. HENRETTA: If I could see your  
21 file.

22 THE WITNESS: Sure.

1 (OFF THE RECORD)

2 CROSS EXAMINATION

3 BY MR. HENRETTA:

4 Q. Dr. Brodell, Mr. Holland is not one of your  
5 patients, right?

6 A. Correct.

7 Q. You've never treated him for anything, right?

8 A. Correct.

9 Q. He didn't call and make an appointment to see  
10 you?

11 A. Correct.

12 Q. Since he's not one of your patients, you don't  
13 have particularly any professional duty  
14 owing him; is that correct? I mean,  
15 there's no physician/patient privilege or  
16 relationship; is that correct?

17 A. It's correct to the extent that I didn't have  
18 any obligation to continue treatment.  
19 However, if I had identified a serious  
20 problem, I would have some moral or  
21 ethical obligation to pass that along to  
22 his treating physicians.

1 Q. Sure. **Now**, you only saw him once and that was  
2 here in your office back in December of  
3 2000, right?

4 A. Yes.

5 Q. And the reason you saw him was because an  
6 attorney for Consolidated Freightways and  
7 Mr. Pearson asked you to do so, right?

8 A. The law firm of Reminger and Reminger asked  
9 me --

10 Q. Right. Well, they represent Consolidated  
11 Freightways and Mr. Pearson.

12 A. Okay.

13 Q. They're the Defendants in this case, okay. And  
14 I'm not sure which attorney it was. I'll  
15 say that attorney. An attorney asked you  
16 to look at some of his medical records and  
17 to examine him, correct?

18 A. Yes.

19 Q. And you were also asked to prepare a report  
20 concerning your findings and then give  
21 testimony here in court today, right?

22 A. Yes.

1 Q. Now, for your examination and your report on  
2 Walter Holland, how much did you charge  
3 the law firm for that?

4 A. \$1,000.

5 Q. Okay. Did you conduct any diagnostic tests?

6 A. Yes.

7 Q. So, that would have been in addition to the  
8 1,000, correct?

9 A. Yes. There would have been an additional  
10 charge for the low back X-rays that I  
11 obtained.

12 Q. Well, how much would that have been?

13 A. Probably around \$100.

14 Q. Oh, okay. How much did you charge Mr. Turek to  
15 meet you today prior to your testimony?

16 A. \$250.

17 Q. And then for the deposition testimony today or  
18 the trial testimony is about \$750, sound  
19 about right?

20 A. Correct.

21 Q. Okay. So, today, your charge will be around  
22 \$1,000 for the testimony today?

1 A. Yes.

2 Q. Okay. Now, over the course of a month, how  
3 many of the reports for which you charge  
4 \$1,000 do you normally generate?

5 A. I average approximately one a week.

6 Q. All right. I want to ask you -- show you here  
7 a copy of a deposition, which is your  
8 trial testimony from 19, September 2001, a  
9 little -- just a while ago. It's in the  
10 case of Sylvia Lewis versus Bruce Emery.  
11 Do you recall that particular trial  
12 testimony?

13 A. No.

14 Q. Okay. That's a -- the lawyers in that case  
15 were from Harshman, Bernard and Ramage,  
16 Bill Ramage was representing the  
17 Plaintiff, and for the Defendant, it was  
18 Stephen Bolton of Manchester, Bennett,  
19 Powers and Ullman. Mr. Ramage asks you --  
20 asked you this question on page 37 --  
21 excuse me, on page 38. I'll show that to  
22 your attorney. And just, I guess, for the

1 record in this proceeding, that was Sylvia  
2 Lewis versus Bruce Emery. It was pending  
3 in the Mahoning County Court of Common  
4 Pleas before Judge James C. Evans.

5 Mr. Ramage asked you this question. "Now,  
6 Doctor, over the course of a month, how  
7 many of these reports would you generate?"  
8 At that time, your answer was, "Four to  
9 eight," is that correct?

10 A. Yes.

11 Q. That's only been a month ago. So, would that  
12 be the answer today or would your average  
13 of one a week be the answer today?

14 A. Well, I average between 45 and 55 a year. So,  
15 some months or some weeks I might do one  
16 or two exams, but it averages out during  
17 the course of a year to be about 45 or 55.

18 Q. My question would be, was this a truthful  
19 answer when he asked you, how many -- over  
20 the course of a month, how many of these  
21 reports would you generate and you said  
22 four to eight?

1 A. Correct.

2 Q. Okay. That's all. Thank you, Doctor. I  
3 believe you said earlier that you do about  
4 two or three depositions a month?

5 A. Yes.

6 Q. The records you reviewed when you saw  
7 Mr. Holland on 12-8-2000 to which you  
8 refer to in your report to Mr. Turek of  
9 the same date, which records did you  
10 review? Do you have them by name?

11 A. No.

12 Q. Okay.

13 A. I could -- if they're listed in the letter from  
14 Reminger and Reminger, I might be able to  
15 go through it for you.

16 Q. Well, why don't you look and see, because I  
17 don't recall -- I heard you mention a few,  
18 but I would like to know every document  
19 that you reviewed in order to render your  
20 opinions, or at least by name.

21 A. Okay. Number one, Chris Boucher, DC; number  
22 two, William Mangino, M.D.; number three,

1 Callow Hill Open MRI; number four, Allied  
2 Medical Group; number five, Gerald Hayken,  
3 M.D.; and, number six, Written House  
4 Square Imaging.

5 Q. All right. Now, had you reviewed any  
6 deposition testimony at that time -- in  
7 other words, before you generated your  
8 report?

9 A. No.

10 Q. When did you review deposition testimony?

11 A. Yesterday.

12 Q. And whose deposition testimony did you review?

13 A. Barry Foss, M.D. and Dr. Zaslow, and then there  
14 were exhibits and --

15 Q. Sure.

16 A. -- medical records that went along with them.

17 Q. All right. Have you read any of Dr. Zaslow's  
18 reports that he generated, about which he  
19 has testified in this proceeding?

20 A. Yes.

21 Q. Okay. When did you read those reports?

22 A. Yesterday



1 Q. All right. Are they contained in your file?

2 A. Right here.

3 Q. Oh, the exhibits to his deposition?

4 A. Yes.

5 Q. Is there any correspondence in this deposition  
6 from Dr. Zaslow to Dr. -- his name is  
7 Boucher, by the way?

8 A. I don't recall.

9 Q. Okay. When did you -- well, you wrote in your  
10 report, didn't you, Doctor, that there was  
11 never a problem with low back pain prior  
12 to the April 6, '98 crash?

13 A. Yes.

14 Q. Is that correct? Now, Mr. Holland didn't tell  
15 you, did he, that -- why he did not treat  
16 at the scene and left? Did he give you a  
17 reason for that?

18 A. No.

19 Q. Oh, by the way, was he cooperative with you?

20 A. Yes.

21 Q. Okay. I believe when you examined him, his low  
22 back pain was constant -- or consistent, I

1 believe, were your words, consistent?

2 A. I wrote down that it was long standing.

3 Q. You didn't indicate that his pain was  
4 consistent?

5 A. You mean constant?

6 Q. No, I think it was consistent.

7 A. Under his chief complaints? I don't believe I  
8 used that word.

9 Q. You used constant?

10 A. No, I didn't use that word either. I reported  
11 long-standing aching and stiffness of his  
12 lower back.

13 Q. All right. Now, with respect to Dr. Zaslow, do  
14 you agree that, according to his  
15 testimony, that the 7-6 -- July 6, 2000  
16 MRI reading, that he indicated there's a  
17 substantial disk herniation at L-5 and  
18 S-1? And I just ask if you agree that  
19 that's what he said.

20 A. Yes.

21 Q. Okay. And are you aware that on his first  
22 visit with Dr. Zaslow, Mr. Holland's first

1 visit that Dr. Zaslow has testified that  
2 he noted in the past medical history  
3 portion that there had never been any back  
4 surgery performed on Mr. Holland prior to  
5 the 4-6-98 crash?

6 A. You did use the word surgery?

7 Q. I did.

8 A. Correct.

9 Q. That he never had been treated for back  
10 problems prior to the 4-6-98 crash?

11 A. Yes.

12 Q. And that he suffered no trauma to his back in  
13 the past?

14 A. Yes.

15 Q. And that his doctor, Dr. Zaslow, determined  
16 that there was radicular pain across his  
17 back and down into the lateral legs,  
18 thighs?

19 A. Yes.

20 Q. That Dr. Zaslow provided a diagnosis in his  
21 testimony, and that was herniation of disk  
22 at L-5, S-1, correct?

1 A. Yes.

2 Q. That he had chronic low back pain syndrome,  
3 correct?

4 A. Yes.

5 Q. And that he had lumbar radiculopathy causing  
6 irritation and numbness and tingling in  
7 his legs; is that correct?

8 A. Yes.

9 Q. Are you aware that Dr. Zaslow, in his next  
10 visit with his patient, Mr. Holland,  
11 reviewed an EMG and noted accordingly that  
12 the EMG objective findings prove that  
13 there was a major problem at L-5, S-1 and  
14 that problem was radiculopathy?

15 A. I read that, yes.

16 Q. Okay. And that he believed, Dr. Zaslow  
17 believed that this is in keeping with the  
18 disk herniation that he noted on  
19 Mr. Holland's back and that he further  
20 believed that this supported the  
21 subjective pain radiating down the legs of  
22 Mr. Holland?

1 A. Yes.

2 Q. All right. You're aware that Dr. Holland has  
3 performed three epidural injections to  
4 help relieve Mr. Holland's pain?

5 A. Dr. Zaslow?

6 Q. Yes.

7 A. Yes.

8 Q. Are those painful, the injections?

9 A. Yes.

10 Q. Okay. They're, I guess, with a long needle?

11 A. Yes.

12 Q. All right. Now, his degenerative process, as  
13 it has been called, had nothing to do with  
14 the truck crash, right?

15 A. That's true.

16 Q. Many people in their mid to late fifties have  
17 some form of degenerative process along  
18 the spine; is that correct?

19 A. Yes.

20 Q. I mean, in Mr. Holland's case -- and, by the  
21 way, these people -- and I guess that puts  
22 me in that category. We can work, as did

1           Mr. Holland, every day. We can engage in  
2           normal activities, correct?

3           MR. TUREK: Objection as to every  
4           day. The record does not reflect that Mr. Holland  
5           worked every day.

6           MR. HENRETTA: Well, all right.  
7           Everyday activities. I'm not talking about work.

8           MR. TUREK: Okay.

9           Q. He could work regularly --

10          MR. HENRETTA: Thank you.

11          Q. -- he could perform everyday, normal  
12             activities; is that correct?

13          A. I think when you started the question, you were  
14             talking about people in general.

15          Q. People, and I did. And I did.

16          A. And the answer would be yes to that

17          Q. All right. And generally perform work without  
18             any restrictions, right?

19          A. Yes.

20          Q. As did Mr. Holland, as far as you know?

21          A. Yes.

22          Q. All right. And essentially carry on a normal

1           life without the need to medicate?

2   A.    Many times, that's the true -- that is true,  
3           yes.

4   Q.    Okay. Now, I guess, would you characterize  
5           this condition, this particular  
6           degenerative process as sort of a quiet  
7           condition in that it is -- a person could  
8           have the condition, but be symptom free in  
9           terms of pain?

10   A.   In many cases, that is true.

11   Q.   All right. Let's say that Walter Holland,  
12           indeed, had some degenerative process in  
13           his low back at the time of the crash. I  
14           would like you, if you can, to assume  
15           certain facts as true.

16   A.   Okay.

17   Q.   All right. That -- and some of this, I've said  
18           earlier; that the past medical history of  
19           Walter Holland indicates that there are no  
20           prior symptoms of back problems; that he  
21           was essentially pain free and he had no  
22           prior trauma to his back and that he had

1 no real physical limitations, as it  
2 relates to his low back. That is to say,  
3 he was able to work and engage in normal,  
4 daily activities. Assume those as true.

5 Also assume, if you will, Doctor,  
6 that his truck was rear ended by another  
7 truck with sufficient force to disable  
8 that truck, the one that struck him; that  
9 the driver of the truck which crashed into  
10 Mr. Holland's sought immediate medical,  
11 emergency room medical treatment at a  
12 local hospital and broke the windshield  
13 with his head and hands; that  
14 Mr. Holland's treating physicians  
15 recommend surgical intervention on his  
16 back. If you assume those facts as true,  
17 don't you think that the crash and the  
18 resulting injuries then aggravated or  
19 accelerated or made worse any underlying  
20 or preexisting condition he may have had?

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



1 A. No.

2 Q. Do you believe that it's good medical practice  
3 that when a physician is faced with an  
4 orthopedic injury to exhaust all forms of  
5 conservative treatment before surgical  
6 invention -- intervention?

7 A. Yes.

8 Q. Doctor, you saw **Mr.** Holland once and reviewed  
9 some of his records before you gave your  
10 opinion on December 8, 2000, correct?

11 A. Yes.

12 Q. His treating physicians, three of whom have  
13 given testimony in his trial, have seen  
14 him on many occasions since April 6th of  
15 '98, correct?

16 A. Yes.

17 Q. All right. Do you believe that you are in a  
18 better position than his treating  
19 physicians to give medical opinions about  
20 Walter Holland as those opinions relate to  
21 the truck crash of -- and the injuries  
22 sustained in the 4-6-98 crash?

1 A. In a better position?

2 Q. Yes.

3 A. No.

4 MR. HENRETTA: Thank you, Doctor.

5 MR. TUREK: Doctor, just a couple of  
6 questions on follow up here.

7 REDIRECT EXAMINATION

8 BY MR. TUREK:

9 Q. You were given some assumptions, and I want to  
10 talk about the first one that was given to  
11 you, and that is that Mr. Holland never  
12 had any prior back problems or complaints  
13 of pain or treatment. Doctor, when you  
14 were given that assumption, the fact is,  
15 you have no way of knowing whether that is  
16 a true statement or not, do you?

17 A. Correct.

18 Q. In fact, Doctor, are you aware of any -- is  
19 there some collection point that we can  
20 get on the internet or something like that  
21 and find out whether or not Mr. Holland  
22 has ever been treated with someone with

1                   whom he is not telling us?

2     A.     No.

3     Q.     So, we're basically dependent upon Mr. Holland  
4                   to be forthright on those issues, and if  
5                   he had experienced some back pain or if he  
6                   had gotten treatment and hadn't told us  
7                   about it, you can think of no way we could  
8                   find out, can you?

9     A.     Correct.

10    Q.     Doctor, the -- asked -- the only other thing I  
11                   want to talk about is you were asked about  
12                   the symptoms of pain associated with that  
13                   degenerative condition, and that is, I  
14                   think you've made it clear, that the  
15                   condition itself doesn't mean there has to  
16                   be pain?

17    A.     Correct.

18    Q.     Could the pain go away?

19    A.     Yes.

20                   MR. TUREK: I have no further  
21                   questions.

22                   RECROSS EXAMINATION

1 BY MR. HENRETTA:

2 Q. Doctor, a history from a patient is important,  
3 is it not, in order for the physician to  
4 arrive at a number of things, diagnosis,  
5 choice of treatment; is that correct?

6 A. Yes.

7 Q. And how else can one get a history if not from  
8 the patient; other than providing records,  
9 but the patient's history is important to  
10 the doctor, is it not?

11 A. Yes.

12 MR. HENRETTA: Okay. Thank you.

13 MR. TUREK: Thank you, Doctor.

14 THE WITNESS: And I have the  
15 opportunity to waive viewing and reading if I so  
16 choose and I do so choose.

17 (WHEREUPON THE DEPOSITION OF JAMES D. BRODELL, M.D.,  
18 WAS CONCLUDED AT 5:30 PM AND SIGNATURE WAIVED)

19

20

21

22

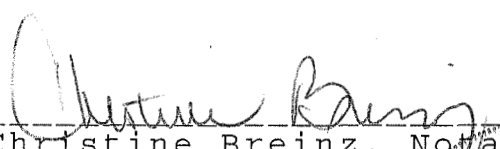
## REPORTER'S CERTIFICATE

I, Christine Breinz, a Notary Public within and  
for the State of Ohio, duly commissioned and  
qualified, do hereby certify that the above-named  
JAMES D. BRODELL, M.D., was by me first duly sworn  
to testify the truth, and that this deposition was  
written in the presence of the witness and by me  
transcribed, and that the deposition was taken at  
the time and place in the notice specified.

I certify that I am not of counsel or relative  
to either party or otherwise interested in this  
action.

I further certify that the above and foregoing  
is a true and complete transcript of all the  
testimony and proceedings had in this deposition, as  
shown by stenotype notes written in the presence of  
the witness at the time of this deposition.

IN WITNESS WHEREOF, I have set my hand and Seal  
of Office at Warren, Ohio, this 30th day of October,  
2001.

  
Christine Breinz, Notary Public  
My Commission Expires 11-01-01

SIMONI COURT REPORTING





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