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 vs.	DEPOSITION OF
CONSOLIDATED FREIGHTWAYS CORPORATION, et al.,	JAMES D. BRODELL, M.D.
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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DEPONENT -- JAMES D. BRODELL, M.D.

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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?

A. Yes.
Q. All right. Doctor, before we begin, it is necessary that we discuss, at least for a moment here, your education, your training and your professional experience that qualifies you as an expert in orthopedics. So, first of all, Doctor, could you begin by telling the jury about your educational background?
A. I went through the public school system here in Warren, Ohio, and graduated from Harding High School, which is not far down the road from here. In 1974, I graduated from Washington and Jefferson College, a small liberal arts school near Pittsburgh, Pennsylvania. That was a Bachelor of Arts degree and my major was in biology. I then spent four years in Cleveland and graduated in 1978 from Case Western Reserve University School of Medicine. That was my M.D. degree. It was then on to Rochester, New York, for five years,

and in 1983 I finished my residency in orthopedics.

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

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

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

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

specialties.

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

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

Q. Doctor, do you have hospital staff privileges?

A. Yes.

Q. And where?

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

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

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

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

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

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

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

A. Yes.

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

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

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

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

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

A. By making sure that requirements are met.

Q. And what would be the requirements for

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

A. One must graduate from an accredited program and have appropriate letters of recommendation from the professors, practice in a given location for two years with additional letters of recommendation from the community doctors and then there's also a written, followed by an oral examination. If everything is in order, your education is proper and you pass the examination, both the written and oral part, then a certificate is sent to you, which is evidence of your qualification to practice within the specialty.

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

A. Yes.

Q. Doctor, are you board certified?

A. Yes. I was certified in 1985.
Q. And, Doctor, have you undergone any recertification since 1985?
A. Yes. I was voluntarily recertified in 1995.
Q. All right. Now, Doctor, a little bit more about this board certification process. Is being board certified either something that you are or you are not?
A. Yes.
Q. All right. There's no in between?
A. No.
Q. Doctor, have you had an opportunity to review some -- the records and testimony of Dr. Dennis Zaslow of Philadelphia?
A. Yes.
Q. Doctor, at my request, did you check to see if Dr. Zaslow is listed as a board certified orthopedic surgeon by the American Board of Orthopedic Surgery?
A. Yes.
Q. And what did you find?
A. He is not.

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

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

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

MR. HENRETTA: Objection.

A. Yes.

Q. I'm sorry. You can answer.

A. Yes.

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

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

Q. Are you one of those 200 oral examiners in

orthopedic surgery?

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

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

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

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

A. Yes.

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

examination of Mr. Holland?

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

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

Q. Correct
A. Two or three times a month.
Q. All right. And you have never testified for me before at Reminger and Reminger, have you?
A. Not that I recall. It's possible, though --
Q. Okay.
A. -- if it was a long time ago.
Q. Doctor, have you been qualified before today to -- before this case to testify in court as an orthopedic surgeon?
A. Many times, yes.
Q. All right. Have you ever not been qualified, as been found not to be an expert in that field?
A. No.
Q. All right. Doctor, then, let me direct your attention to some of the issues that pertain to Walter Holland. And, by all means, if you need to refer to your report, go ahead and do so. Doctor, first of all, what do you understand from the history you obtained -- now, I'm going to

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

A. Yes.

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

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

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

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

A. Okay.

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

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

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

A. Yes.

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

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

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

A. That --

Q. Or not in that detail?

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

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

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

A. No.

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

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

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

A Yes.
Q All right. Is that something that you would find regularly or is that a rather unusual thing for you to come across in your particular practice?
A A daily occurrence with patients.
Q All right. And, Doctor, is there anything about Mr. Holland's condition or anything about his case that you feel puts him outside of your expertise or your specialty?
A. No.
Q. Okay. Doctor, the issue in this case, among others, involves what conditions -- what injuries, if any, Mr. Holland sustained in the underlying incident; that is, the April 6 accident. I would like you to tell the jury at this point -- and then we'll talk about why you believe that and the basis for it, but could you please tell the jury in your opinion, what do you think happened to Mr. Holland, medically

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

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

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

A. Yes.

Q. What other injury?

A. Bruises or contusions of his thighs.

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

A. No.

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

strain like you diagnosed?
A. Yes.
Q. All right.
A. of mild to moderate severity, not of severe consequence.
Q. All right. Now, Doctor, you are aware that there *is* medical opinion being expressed in this case to the effect that the subject accident caused some degree of herniation at the **L-5**, S-1 level. Are you aware of that?
A. Yes.
Q. First of all, do you agree with that?
A. No.
Q. All right. And, Doctor, let's talk about, just so far, the chunk that we've broken off to chew already, and that is the conduct of Mr. Holland from the time of the accident to the time that he first sought treatment on April 10, that Friday, in Philadelphia?
A. Okay.
Q. Okay. Now, with respect to that conduct, would

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

MR. HENRETTA: Objection.

Q. You can answer.

A. I think the proper answer would be no.

Q. Okay.

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

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

MR. HENRETTA: Objection.

A. There would have been abrupt and severe low

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

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

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

Q. Okay.

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

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

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

Q. And is that true, Doctor --

A. Was that clear enough?

Q. That was pretty clear.

A. Okay.

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

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

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

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

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

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

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

Q. Okay.

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

Q. What is the Achilles tendon reflex?

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

Q. And if you don't see that reaction, you say that it's an abnormal finding?
A. Correct, and it would imply a failure of the electric conduction of the S-1 nerve root.
Q. So, if you were getting -- conversely, if you're getting normal Achilles tendon reflexes upon examination, then that's telling you that there isn't a problem with the L-5, S-1; is that correct?
A. It makes it significantly less likely, that's true.
Q. Okay. That would at least be inconsistent with an L-5, S-1 neuropathy?
A. Relatively inconsistent, yes.
Q. Okay. Doctor, then let's return to Mr. Holland's history. We got him back to Philadelphia on Friday, the 10th, where he first sought medical treatment, and in that regard, he saw Chris Boucher, a chiropractor in Philadelphia. Are you familiar with that treatment from the records you reviewed?

A. Yes.
Q. All right. And are you familiar with what that particular chiropractor diagnosed?
A. Yes.
Q. And what was that?
A. Cervical, thoracic, lumbosacral sprain/strain with subluxation; contusion, sprain/strain knee and leg
Q. All right. And based upon what you told the jury a little earlier what you thought occurred to Mr. Holland in the accident, that seems consistent?
A. It does. The only thing I wouldn't agree with is the terminology subluxation. That would imply that one vertebra might have slipped forward or backward on another one, and I don't believe that there is any evidence that that occurred in this case.
Q. All right. And, Doctor, then the next -- later that very same day, Mr. Holland, at the referral of Dr. Boucher, the chiropractor went to the emergency department at the

Albert Einstein Medical Center. Are you aware of that?

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

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

A. Yes.

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

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

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

condition?

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

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

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

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

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

A. No.

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

A. Yes.

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

A. Yes.

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

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

Q. Okay. In fact --
A. -- out of order.
Q. -- there was a report that you would have seen generated --
A. Oh, okay.
Q. -- on May 2, 1998 --
A. Okay.
Q. -- by Dr. Verada talking about that particular examination.
A. Okay.
Q. And, in fact, if you don't have it in front of you right now, let me go ahead and hand it to you. And, in particular, Doctor, I want you to look at the neurological examination section and the diagnosis section. Again, this is for Dr. Verada.
A. Okay.
Q. Okay. Doctor, what did -- according to his records anyway, what did Dr. Verada find by way of neurological examination?
A. It was normal.
Q. And what significance, if any, do you place on

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

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

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

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

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

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

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

A. Yes.

MR. HENRETTA: Objection.

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

MR. HENRETTA: Objection.

A. Yes.

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

A. Yes.

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

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

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

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

A. Yes.

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

A. Yes.

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

A. I believe so, yes.

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

A. Yes.

Q. All right. Doctor, then with respect to

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

A. Yes.

Q. And what did he find?

A. The Achilles reflexes were normal.

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

A. Yes.

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

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

Q. Oh, yeah.

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

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

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

the tendon reflex for the L-4 nerve root.

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

A. Correct.

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

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

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

A. Yes.

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

A. Yes.

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

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

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

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

A. Yes, I have an opinion.

Q. And what is that?

A. They were there prior to the accident.

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

earlier?

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

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

A. Yes.

Q. That's something that is not unusual?

A. No

Q. Okay.

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

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

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

of the arthritis.

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

A. No.

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

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

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

MR. HENRETTA: Objection.

A. No.

Q. And why is that then?

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

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

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

MR. HENRETTA: Objection.

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

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

A. No.

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

A. Yes.

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

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

A. The radiologists have special and sophisticated training in the interpretation of regular X-rays and various imaging studies, including the MRI. I usually will look at the studies of a particular patient myself, but 1 also rely fairly heavily on the interpretation of the radiologist, because that's their area of expertise,

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

MR. HENRETTA: Objection.

A. No.

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

A. Yes.
Q. Doctor, with respect to that particular MRI, first of all, let's ask the same question I ended with before. Is there something about that MRI in July of 2000 that requires a trauma to explain it?
A. No.
Q. And why is that?
A. The findings were as follows when I looked at the July 6, 2000 MRI: First of all, the quality of the study was better. In other words, the resolution or the -- when I looked at the films, I felt that I could see better on those films than the earlier studies. I saw disk bulging at L-4, L-5; multiple levels had disk desiccation, which means that they were losing their water content; and I thought that there was a probable disk herniation at L-5, S-1.
Q. Now, Doctor, that's -- the difference, then, between your interpretation of the May and

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

A. Correct.

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

A. Yes.

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

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

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

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

herniated disk.

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

A. Yes.

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

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

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

A. I --

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

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

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

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

A. Okay. This is the second page --

Q. Right.

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

MR. HENRETTA: Objection.

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

Q. Doctor --

A. "Number three" --

Q. -- let me interrupt you.

A. Yes.

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

MR. HENRETTA: I just want to move to

strike the work related. So --

MR. TUREK: Okay.

MR. HENRETTA: We have to keep this clean.

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

A. Yes.

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

A. Yes.

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

A. Are we talking 1998?

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

A Either October or November of 1998, yes.
Q All right. And do you understand that he went back to work as an over-the-road truck driver?
A. Yes.
Q. All right. And that he continued to work for another year?
A. He -- I believe he worked for eight months.
Q. Okay. Eight months before he sought additional treatment?
A. Eight or nine months, correct.
Q. Okay. So, from the time he returned to work in late 1998 until he went back to see Dr. Mangino in April of 1999, you understand there was no treatment in between there?
A I -- that's correct. I was unable to identify any record of medical treatment during that eight or nine month hiatus.
Q. All right. And, Doctor, is that consistent with someone who has recovered from a back strain?

A. Yes.
Q. Okay. By the way, Doctor, would you expect during the course of that work that Mr. Holland was doing, if you assume he was doing over-the-road truck driving -- that is, long periods of time driving -- as well as load -- doing some loading and unloading and some chaining and unchaining, would you espect him to have occasional back pain?
MR. HENRETTA: Objection.
A. Yes.
Q. Would you say that that back pain -- would you have an opinion whether that occasional back pain he would have had would be related to the subject -- to the April '98 accident?
MR. HENRETTA: Objection.
A. My opinion would be that it would be just a matter of the normal course of work-related event and not related to the prior accident.

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

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

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

A. Yes.

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

A. Yes and no.

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

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

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

MR. HENRETTA: Move to strike.

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

A. In my opinion, there was no aggravation.

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

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

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

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

A. December 8th of last year.

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

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

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

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

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

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

A. Yes.

Q. What were those and what were the results?

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

Q. And what did they reveal, if anything?

A. Arthritis at multiple levels.

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

A. Yes.

Q. Okay. So, it's kind of what you expected to see?
A. Yes.
Q. Doctor, you talked a little bit about this earlier, and I want to go back to the symptoms he described and I want to make sure that we've explained what they mean to you. That is, for instance, you indicated earlier that he complained of pain traveling up the spine and down the arms causing numbness and tingling of the hands?
A. Yes.
Q. What -- I mean, then in your letter -- in your report, you say that's a non-anatomical symptom complex. What does that mean?
A. That means that the nerves simply don't run that way and that it's impossible for a reasonable person to experience something like that. So, it would be a complaint that would have a so-called functional or supratentorial basis. In other words, it

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

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

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

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

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

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

A. No.

Q. All right. Doctor, then with respect to the other -- you mentioned some incontinency?
A. He had some problems with urinary dribbling, and he said that he also had constipation alternating with diarrhea over a long period of time.
Q. Is that in any way related to an L-5, S-l?
A. No.
Q. Okay. What about complaints of pain in just the -- that is, the muscle of the thighs? Did he make any complaints to you of those kinds of things?
A. I did not document that.
Q. All right. Because there was, in fact, if you can believe it or not, yet another doctor who examined Mr. Holland after you, and that is Dr. LaVoice. Have you had an opportunity to review Dr. LaVoice's particular -- his --
A. Yes. I --
Q. -- report?
A. I read his report.

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

A. I read that, yes.

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

A. Yes.

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

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

Q. Right.

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

Q. Okay. And electrical studies are EMGs?
A. They're called nerve conduction EMG studies.
Q. Okay. And what is the purpose of that kind of study?
A. To see if there's any evidence of a pinched nerve in the lower back area.
Q. And what diagnostic value do you attribute to those tests?
A. Well, most physicians that have experience with low back problems do not give a tremendous amount of weight to electrical studies, because many times they'll lead you down the wrong path. In this particular case, the patient had electrical studies once in 1998 and then later the following year and they showed completely different things.
Q. Okay. Doctor, at this time -- by the way, in your examination, was there any kind of testing or anything that you wanted to do that you couldn't do with respect to this patient?
A. No.

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

A. Okay.

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

A. Okay.

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

A. Yes, I have an opinion.

Q. And what is that opinion?

A. He did have a condition antedating or

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

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

A. Yes, I have an opinion.

Q. And what is that opinion?

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

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

A. Do I have an opinion on that?

Q. Yeah.

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

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

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

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

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

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

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

A. Yes, I have an opinion.

Q. And what is that?

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

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

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

Q. Okay.

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

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

MR. HENRETTA: Objection.

A. Yes, I have an opinion.

Q. And what is that?

MR. HENRETTA: Objection.

A. None of them are related to the April 1998

accident.

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

MR. HENRETTA: Objection.

A. Yes.

Q. What is your opinion?

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

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

MR. HENRETTA: If I could see your file.

THE WITNESS: Sure.

(OFF THE RECORD)

CROSS EXAMINATION

BY MR. HENRETTA:

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

A. Correct.

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

A. Correct.

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

A. Correct.

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

A. It's correct to the extent that I didn't have any obligation to continue treatment. However, if 1 had identified a serious problem, I would have some moral or ethical obligation to pass that along to his treating physicians.

Q. Sure. Now, you only saw him once and that was here in your office back in December of 2000, right?
A. Yes.
Q. And the reason you saw him was because an attorney for Consolidated Freightways and Mr. Pearson asked you to do so, right?
A. The law firm of Reminger and Reminger asked me --
Q. Right. Well, they represent Consolidated Freightways and Mr. Pearson.
A. Okay.
Q. They're the Defendants in this case, okay. And I'm not sure which attorney it was. I'll say that attorney. An attorney asked you to look at some of his medical records and to examine him, correct?
A. Yes.
Q. And you were also asked to prepare a report concerning your findings and then give testimony here in court today, right?
A. Yes.

Q. Now, for your examination and your report on Walter Holland, how much did you charge the law firm for that?
A. $1,000.
Q. Okay. Did you conduct any diagnostic tests?
A. Yes.
Q. So, that would have been in addition to the 1,000, correct?
A. Yes. There would have been an additional charge for the low back X-rays that I obtained.
Q. Well, how much would that have been?
A. Probably around $100.
Q. Oh, okay. How much did you charge Mr. Turek to meet you today prior to your testimony?
A. $250.
Q. And then for the deposition testimony today or the trial testimony is about $750, sound about right?
A. Correct.
Q. Okay. So, today, your charge will be around $1,000 for the testimony today?

A. Yes.
Q. Okay. Now, over the course of a month, how many of the reports for which you charge $1,000 do you normally generate?
A. I average approximately one a week.
Q. All right. I want to ask you -- show you here a copy of a deposition, which is your trial testimony from 19, September 2001, a little -- just a while ago. It's in the case of Sylvia Lewis versus Bruce Emery. Do you recall that particular trial testimony?
A. No.
Q. Okay. That's a -- the lawyers in that case were from Harshman, Bernard and Ramage, Bill Ramage was representing the Plaintiff, and for the Defendant, it was Stephen Bolton of Manchester, Bennett, Powers and Ullman. Mr. Ramage asks you -- asked you this question on page 37 -- excuse me, on page 38. I'll show that to your attorney. And just, I guess, for the

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

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

A. Yes.

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

A. Well, I average between 45 and 55 a year. So, some months or some weeks 1 might do one or two exams, but it averages out during the course of a year to be about 45 or 55.

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

A. Correct.
Q. Okay. That's all. Thank you, Doctor. I believe you said earlier that you do about two or three depositions a month?
A. Yes.
Q. The records you reviewed when you saw Mr. Holland on 12-8-2000 to which you refer to in your report to Mr. Turek of the same date, which records did you review? Do you have them by name?
A. No.
Q. Okay.
A. I could -- if they're listed in the letter from Reminger and Reminger, I might be able to go through it for you.
Q. Well, why don't you look and see, because I don't recall -- I heard you mention a few, but I would like to know every document that you reviewed in order to render your opinions, or at least by name.
A. Okay. Number one, Chris Boucher, DC; number two, William Mangino, M.D.; number three,

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

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

A. No.

Q. When did you review deposition testimony?

A. Yesterday.

Q. And whose deposition testimony did you review?

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

Q. Sure.

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

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

A. Yes.

Q. Okay. When did you read those reports?

A. Yesterday

Q. All right. Are they contained in your file?
A. Right here.
Q. Oh, the exhibits to his deposition?
A. Yes.
Q. Is there any correspondence in this deposition from Dr. Zaslow to Dr. -- his name is Boucher, by the way?
A. I don't recall.
Q. Okay. When did you -- well, you wrote in your report, didn't you, Doctor, that there was never a problem with low back pain prior to the April 6, '98 crash?
A. Yes.
Q. Is that correct? Now, Mr. Holland didn't tell you, did he, that -- why he did not treat at the scene and left? Did he give you a reason for that?
A. No.
Q. Oh, by the way, was he cooperative with you?
A. Yes.
Q. Okay. I believe when you examined him, his low back pain was constant -- or consistent, I

believe, were your words, consistent?
A. I wrote down that it was long standing.
Q. You didn't indicate that his pain was consistent?
A. You mean constant?
Q. No, I think it was consistent.
A. Under his chief complaints? I don't believe I used that word.
Q. You used constant?
A. No, I didn't use that word either. I reported long-standing aching and stiffness of his lower back.
Q. All right. Now, with respect to Dr. Zaslow, do you agree that, according to his testimony, that the 7-6 -- July 6, 2000 MRI reading, that he indicated there's a substantial disk herniation at L-5 and S-l? And I just ask if you agree that that's what he said.
A. Yes.
Q. Okay. And are you aware that on his first visit with Dr. Zaslow, Mr. Holland's first

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

A. You did use the word surgery?

Q. I did.

A. Correct.

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. Yes.
Q. That he had chronic low back pain syndrome, correct?
A. Yes.
Q. And that he had lumbar radiculopathy causing irritation and numbness and tingling in his legs; is that correct?
A. Yes.
Q. Are you aware that Dr. Zaslow, in his next visit with his patient, Mr. Holland, reviewed an EMG and noted accordingly that the EMG objective findings prove that there was a major problem at L-5, S-1 and that problem was radiculopathy?
A. I read that, yes.
Q. Okay. And that he believed, Dr. Zaslow believed that this is in keeping with the disk herniation that he noted on Mr. Holland's back and that he further believed that this supported the subjective pain radiating down the legs of Mr. Holland?

A. Yes.
Q. All right. You're aware that Dr. Holland has performed three epidural injections to help relieve Mr. Holland's pain?
A. Dr. Zaslow?
Q. Yes.
A. Yes.
Q. Are those painful, the injections?
A. Yes.
Q. Okay. They're, I guess, with a long needle?
A. Yes.
Q. All right. Now, his degenerative process, as it has been called, had nothing to do with the truck crash, right?
A. That's true.
Q. Many people in their mid to late fifties have some form of degenerative process along the spine; is that correct?
A. Yes.
Q. I mean, in Mr. Holland's case -- and, by the way, these people -- and I guess that puts me in that category. We can work, as did

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

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

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

MR. TUREK: Okay.

Q. He could work regularly --

MR. HENRETTA: Thank you.

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

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

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

A. And the answer would be yes to that

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

A. Yes.

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

A. Yes.

Q. All right. And essentially carry on a normal

life without the need to medicate?
A. Many times, that's the true -- that is true, yes.
Q. Okay. Now, I guess, would you characterize this condition, this particular degenerative process as sort of a quiet condition in that it is -- a person could have the condition, but be symptom free in terms of pain?
A. In many cases, that is true.
Q. All right. Let's say that Walter Holland, indeed, had some degenerative process in his low back at the time of the crash. I would like you, if you can, to assume certain facts as true.
A. Okay.
Q. All right. That -- and some of this, I've said earlier; that the past medical history of Walter Holland indicates that there are no prior symptoms of back problems; that he was essentially pain free and he had no prior trauma to his back and that he had

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

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

MR. TUREK: Objection. You can answer.

A. No.
Q. Do you believe that it's good medical practice that when a physician is faced with an orthopedic injury to exhaust all forms of conservative treatment before surgical invention -- intervention?
A. Yes.
Q. Doctor, you saw Mr. Holland once and reviewed some of his records before you gave your opinion on December 8, 2000, correct?
A. Yes.
Q. His treating physicians, three of whom have given testimony in his trial, have seen him on many occasions since April 6th of '98, correct?
A. Yes.
Q. All right. Do you believe that you are in a better position than his treating physicians to give medical opinions about Walter Holland as those opinions relate to the truck crash of -- and the injuries sustained in the 4-6-98 crash?

A. In a better position?
Q. Yes.
A. No.
MR. HENRETTA: Thank you, Doctor.
MR. TUREK: Doctor, just a couple of questions on follow up here.

REDIRECT EXAMINATION

BY MR. TUREK:
Q. You were given some assumptions, and I want to talk about the first one that was given to you, and that is that Mr. Holland never had any prior back problems or complaints of pain or treatment. Doctor, when you were given that assumption, the fact is, you have no way of knowing whether that is a true statement or not, do you?
A. Correct.
Q. In fact, Doctor, are you aware of any -- is there some collection point that we can get on the internet or something like that and find out whether or not Mr. Holland has ever been treated with someone with

whom he is not telling us?

A. No.

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

A. Correct.

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

A. Correct.

Q. Could the pain go away?

A. Yes.

MR. TUREK: I have no further questions.

RECROSS EXAMINATION

BY MR. HENRETTA:

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

A. Yes.

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

A. Yes.

MR. HENRETTA: Okay. Thank you.

MR. TUREK: Thank you, Doctor.

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

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

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

STATE OF OHIO

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