

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

CONNELL SMITH,

Plaintiff,

- vs -

JUDGE GALLAGHER  
CASE NO. 281860

REV. ROBERT KNUFF,

Defendant.

- - - -

Videotaped deposition of DENNIS B. BROOKS,  
M.D., taken as if upon direct examination before  
Colleen M. Malone, a Notary Public within and  
for the State of Ohio, at the offices of Dennis  
Brooks, M.D., 26900 Cedar Road, Suite 325,  
Cleveland, Ohio, at 9:30 a.m. on Saturday,  
February 8, 1997, pursuant to notice and/or  
stipulations of counsel, on behalf of the  
Defendant in this cause.

- - - -

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1        APPEARANCES:

2            Daniel Scott Kalish, Esq.  
3            Donald E. Caravona & Associates  
4            1900 Terminal Tower  
5            Cleveland, Ohio 44113  
6            (216) 696-6500,

7            On behalf of the Plaintiff;

8            John G. Farnan, Esq.  
9            Weston, Hurd, Fallon, Paisley & Howley  
10           2500 Terminal Tower  
11           Cleveland, Ohio 44113  
12           (216) 241-6602,

13           On behalf of the Defendant.

14        ALSO PRESENT:

15           Keith E. McGregor, Videotape Operator  
16  
17  
18  
19  
20  
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1                    DENNIS B. BROOKS, M.D., of lawful age,  
2                    called by the Defendant for the purpose of  
3                    direct examination, as provided by the Rules of  
4                    Civil Procedure, being by me first duly sworn,  
5                    as hereinafter certified, deposed and said as  
6                    follows:

7                    DIRECT EXAMINATION OF DENNIS B. BROOKS, M.D.  
a                    BY MR. FARNAN:

9                    MR. FARNAN:     Before we begin, I'd  
10                    like the record to show this is the  
11                    deposition for use at trial of Dr. Dennis  
12                    Brooks, and that all formalities as to  
13                    service of notice of the deposition and any  
14                    other formalities are waived. Is that  
15                    correct, Mr. Kalish?

16                    MR. KALISH:     That is correct.

17                    3. Doctor, my name is John Farnan. I represent the  
18                    estate of Father Robert Knuff in this lawsuit.

19                    Would you state your full name and  
20                    professional address, please.

21                    4. Yes, my name is Dennis Bruce Brooks, and my  
22                    address is 26900 Cedar Road.

23                    2. What is your profession, doctor?

24                    A. I'm an orthopedic surgeon.

25                    2. Just at the outset, could you Just tell us what

1           orthopedic surgery is?

2   A.   Yes.   Orthopedic surgery is that branch of  
3       medicine that treats patients who have problems  
4       with their musculoskeletal systems.  By that I  
5       mean I take care of patients who have problems  
6       with their bones, joints; the soft tissues that  
7       cover those areas; the muscles, ligaments, and  
8       tendons, as well as taking care of patients who  
9       have problems with their spine and its contents,  
10      the intervertebral discs and nerve roots.

11  Q.   Doctor, we're in your office today, February 8,  
12       1997, correct?

13  A.   Yes.

14  Q.   Why are we doing this on a Saturday in your  
15       office?

16  Ti.   We're doing it this morning on a Saturday in my  
17       office because I'm leaving next week to go to  
18       the American Academy of Orthopedic Surgeons'  
19       meeting, and I would not be available at any  
20       other time.

21  A.   Before the scheduled March trial, right?

22  A.   Yes.

23  2.   Doctor, I'd like to explain to the jury a little  
24       bit of your background.  Where did you go to  
25       college?

1 A. Harvard University.

2 Q. And where did you go to medical school?

3 A. Western Reserve University.

4 Q. What year did you graduate from medical school?

5 A. 1963.

6 Q. Following medical school, what types of  
7 additional training did you receive in terms of  
8 internships and residencies?

9 A. Following medical school I served as a rotating  
10 intern at the Mt. Sinai Hospital of Cleveland  
11 for one year, and then as a general surgery  
12 resident at Mt. Sinai for one year. During my  
13 third and fourth years of postgraduate training,  
14 I was an orthopedic surgery resident also at Mt.  
15 Sinai. During my fifth year I was a National  
16 Institute of Health research associate in the  
17 biomechanics laboratory of Case Western Reserve  
18 University. And my sixth and final year of  
19 postgraduate training was in children's  
20 orthopedics at the Indiana University Medical  
21 Center.

22 Q. Okay. Doctor, after your medical training and  
23 your residency, did you serve in the military?

24 A. Yes.

25 Q. What did you do and what position did you last

1 hold?

2 A I was in the United States Air Force for two  
3 years; I served as an orthopedic surgeon, and  
4 during my last year in the Air Force I was chief  
5 of orthopedic services

6 Q. After the Air Force, when did you return to the  
7 Cleveland area to set up a private practice?

8 A In 1971

9 Q How long in the private practice of  
10 orthopedic surgery in the Cleveland area since  
11 1971?

12 A Yes.

13 Q What medical societies do you belong to?

14 A I'm a member of the American Academy of  
15 Orthopedic Surgeons, the International Society  
16 of Orthopedics and Traumatology, and the  
17 Clinical Orthopedic Society  
18 I'm orthopedic surgeon, a recognized specialty  
19 within the overall field of medicine?

20 A. Yes.

21 Q. Are you board certified in the field or  
22 specialty of orthopedic surgery?

23 A Yes.

24 Q By whom were you certified?

25 A The American Board of Orthopedic Surgery.

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1 Q. How long have you been board certified?

2 A. I was initially board certified in 1971, so  
3 that's almost 26 years. Then I was recertified  
4 in 1994.

5 Q. Would you please tell the jury what it means to  
6 be board certified and how you become board  
7 certified?

8 A. Board certification is an indication that I have  
9 the knowledge, skill and expertise to practice  
10 my speciality of orthopedic surgery. I became  
11 board certified with a lot of hard work. I had  
12 to take the postgraduate training courses that I  
13 mentioned to you, I had to practice only  
14 orthopedic surgery in one location for one year;  
15 I had to submit letters of recommendations from  
16 my peers, and then I had to take an examination,  
17 which in my case was a full day written  
18 examination and a half day oral examination.

19 Q. You mentioned that you were board certified,  
20 recently recertified in 1993. What did you have  
21 to do to become recertified?

22 A. In order to become recertified I had to take a  
23 written examination, which tested my knowledge  
24 of current orthopedic surgery, and I had to  
25 submit what seemed like a ton of paperwork that

in essence outlining or recording my orthopedic practice since I returned to the Cleveland area in 1971.

Q Does b. in<sup>u</sup> board certify in orthopedic surgery require you to limit your practice to that field of specialization?

A. Yes.

Q. Do you presently hold or have you previously held any positions with the American Board of Orthopedic Surgery?

A. Yes.

Q. What position do you hold?

A I am the principal examiner for the American board of orthopedic surgery. I have responsibility as an examiner with the American board of orthopedic surgeons have?

A Well, I have two functions when a candidate is applying to become a diplomate of the American board of orthopedic surgery, he or she has to pass two examinations; one is a written examination and one is an oral examination. And

I help to conduct the oral portion of the board. Another examiner and I discuss a candidate's practice patterns over a specific period of time prior to the taking the board



examination. I also have that responsibility of examining individuals who are applying for recertification.

And then the second major function is to conduct what are called practice audits. For example, just recently in December another orthopedist and I went to the hometown of an orthopedist who was applying for recertification by the American Board of Orthopedic Surgery. And while we were there, we assessed his practice patterns, his care and his overall practice.

2. Doctor, have you authored any publications in the field of orthopedic surgery?

A. Yes.

B. Could you describe just in general the subject of these published articles?

A. Yes. The subjects vary, actually. I've authored papers on bone grafting in orthopedic surgery, congenital dislocation of the knee, biomechanics of knee injury. Authored and coauthored several papers on the treatment of new devices for hip, wrist and ankle fractures.

2. Doctor, do you have any teaching positions, hold any teaching positions currently?

1 x-rays or radiographs?

2 A. Yes.

3 Q. And also such MRIs?

4 A. Yes.

5 Q. Why are you qualified to do that?

6 A. Qualified to do that because beginning with  
7 medical school we were taught to interpret  
8 radiographs. As an orthopedic surgery resident  
9 the interpretation of radiographs, CAT scans,  
10 special diagnostic studies is an integral part  
11 of our course of study. As a practicing  
12 orthopedic surgeon, I review all the radiographs  
13 that I request on behalf of my patients; I  
14 review all the MRIs that I request. I have  
15 attended several courses on the interpretation  
16 of MRIs. Finally, as a board examiner I  
17 question other people on their ability to  
18 interpret radiographs, MRIs, CAT scans.

19 Q. Doctor, is there a difference between a  
20 radiograph and an x-ray, can you just explain  
21 that, please?

22 A. Yes, x-rays are sort of like the sun's rays,  
23 those are the things that expose the  
24 radiographic film which is akin to the prints  
25 that you get back from Revco or wherever you

1        send your films for processing. So that when a  
2        patient goes down for, quote, x-rays, a machine  
3        generates the x-rays, those x-rays then expose  
4        the radiographic film, and I as an orthopedist  
5        look at the radiograph, the hard copy. |

6    Q. And can you also explain, doctor, to the jury  
7        what an MRI is?

8    A. Yes. An MRI stands for magnetic resonance  
9        imaging. And basically the individual is placed  
10       into a machine that is like a large magnetic  
11       coil. By manipulating the input of certain  
12       energy sources, certain information is generated  
13       that is then transferred to a computer and the  
14       computer then, in essence, sends out signals  
15       which exposes the radiographic film. So, in  
16       essence you end up with radiographs that are  
17       generated not by x-rays but by the MRI machine.

18   Q. Doctor, at my request did you perform an  
19       orthopedic exam of plaintiff, Connell Smith?

20   A. Yes.

21   Q. Do you have an office chart or some office notes  
22       or reports that would refresh your recollection  
23       as we go along here?

24   A. Yes.

25   Q. Feel free to refer to that at any time if it

1 will assist you in refreshing your recollection  
2 in giving the jury the most details, okay?

3 A Thank you.

4 Q Can you tell the ladies and gentlemen of the  
5 jury when you examined plaintiff, Connell Smith?

6 A Yes, in December of 1995

7 Q Before conducting the physical orthopaedic exam  
8 of Connell Smith, did you obtain a history from  
9 her?

10 A. Yes.

11 Q. What is a medical history?

12 A Medical history is the beginning of the  
13 diagnostic process. Without a history, I would  
14 not know certain things. The history is broken  
15 up into three parts, and from these three parts  
16 I gain the information that I need.

17 The first part of the history is a  
18 recitation by the patient of the things that  
19 have occurred between the onset of their present  
20 problem and the time that I examined them. For  
21 example, the first part of the history was what  
22 Mrs. Smith told me occurred between her  
23 automobile accident in March of 199 and my  
24 examination in December of 1995

25 The second part of the history is the

1 | patient's recitation of their symptoms or  
2 present complaints; how they're feeling on the  
3 day that I examine them.

4 The third part of their history is their  
5 past medical history, their telling me if  
6 they've had any similar symptoms before the  
7 onset of their present problem.

8 Q. Doctor, what history did Connell Smith give you  
9 when you examined her at my request in December  
10 of 1995?

11 A. Mrs. Smith told me that she had been injured on  
12 March 19th, 1994, when she was driving an  
13 automobile that was moving when it was involved  
14 in an accident with a second car. She told me  
15 that the front end of her car was damaged. She  
16 was wearing a lap belt at the time of the  
17 accident. She told me that she was jarred; my  
18 chest hit the steering wheel she said. She was  
19 taken by ambulance to Meridia Euclid Hospital  
20 where she was examined, treated and released.

21 She told me that the following day she  
22 became aware of pain in her neck, shoulders and  
23 low back. Sometime thereafter she came under  
24 the care of a provider that she referred to as a  
25 chiropractor. She was recommended to him by her

1 attorney. She received treatment for  
2 approximately three days -- excuse me -- that  
3 included what she described as sandbags and  
4 solution and jelly.

5 She went on to tell me that she did not  
6 receive any additional treatment until  
7 approximately October of 1994. At that time she  
8 came under the care of Dr. Robson. She told me  
9 that she had low back pain and that that had  
10 gotten, quote, "worse. I couldn't walk, sit or  
11 lay." Dr. Robson treated her with medication.

12 In approximately November of 1994 she began  
13 experiencing pain in the anterior and posterior  
14 aspect of both thighs and calves. An MRI was  
15 obtained. She was told that, quote, "I need to  
16 have surgery, a disc was degenerating."

17 MR. KALISH: Objection. Move to  
18 strike.

19 A. She went on to tell me that in December of 1994  
20 she came under the care of Dr. Colombi. On  
21 February 3rd, 1995, she was admitted to Mt.  
22 Sinai Medical Center for three days. During  
23 that time Dr. Colombi performed surgery. She  
24 told me at the time of her discharge from the  
25 hospital she was, quote, "terrible," and she was

1 in this situation because of pain in her back  
2 and both legs.

3 She went on to tell me that following her  
4 surgery she was reexamined by Dr. Colombi on two  
5 or three cases. She was last examined by him in  
6 May of 1995. In June of 1995 she was examined  
7 by Dr. Robson, who released her to return to  
8 work.

9 Q. Doctor, let me interrupt you there. Did Connell  
10 Smith also give you a past medical history?

11 A. Yes, she did.

12 Q. And what history did she give you regarding her  
13 past pertinent medical history?

14 A. She told me that since 1991 her back would,  
15 quote, "give out," unquote, once a year. Prior  
16 to the accident in 1994, she'd been examined by  
17 Dr. Robson in approximately October of 1993.  
18 She told me that she had symptoms for one or two  
19 weeks and was then able to return to work. She  
20 had no leg pain prior to the accident of March  
21 19th, 1994.

22 She told me that she first experienced leg  
23 pain in November of 1994. She told me that she  
24 had not sustained any prior on-the-job or  
25 off-the-job injuries, nor had she sustained any

1 subsequent on-the-job or off-the-job injuries.

2 Q. Doctor, in relating her past medical history to  
3 you, did Connell Smith mention that she had  
4 received treatment at University Hospital in  
5 1987 for leg pain and leg numbness?

6 A. No, she did not.

7 MR. KALISH: Objection. Move to  
8 strike.

9 a. Orthopedically what could be the medical  
10 significance of complaints of leg numbness?

11 A. Well, from an orthopedic standpoint there are a  
12 number of reasons why someone might have leg  
13 pain and leg numbness. Several of those relate  
14 to conditions in the back; one of which would be  
15 pressure on a nerve root. Second would be a  
16 condition called spinal stenosis where there's a  
17 narrowing of the canal in the spine that also  
18 causes either pressure on the nerve root as it's  
19 leaving that area or pressure on what's called  
20 the cauda equina, the collection of the nerve  
21 roots in the lower lumbar area.

22 A third cause of leg pain and numbness  
23 could be vascular, could be related to hardening  
24 of the arteries, and a fourth cause could be as  
25 a result of diabetes.



1 Q. Doctor, in giving her past medical history to  
2 you, did Connell Smith make any mention  
3 whatsoever of treatments in the 1980s at  
a University Hospital in Cleveland for back pain  
5 or leg pain?

6 A. No --

7 MR. KALISH: Objection. Move to  
a strike. Excuse me, doctor.

9 A. No, she did not.

10 Q. Following the history that Connell Smith gave  
11 you, did you perform a physical exam of her?

12 A. Yes.

13 Q. What did you do?

14 A. First thing I did was observation, I observed  
15 her. I noted that she was a female of  
16 approximately her stated age, who got out of the  
17 chair without difficulty, who walked without  
18 limping, and who was able to climb onto and off  
19 of the examining table without assistance.

20 I then examined her lumbosacral spine and  
21 noted that she had normal lumbar lordosis  
22 without evidence of paraspinous spasm. There  
23 was a well-healed, nontender midline scar.  
24 There was no tenderness with palpation of any  
25 area of the spine. Forward flexion could be

1       accomplished such that her fingertips reached  
2       the top of her feet. Extension and lateral  
3       bending were performed normally. Heel walking  
4       and toe walking were performed without evidence  
5       of weakness or of pain. And she had no  
6       complaints of calf pain with repetitive toe  
7       raises.

8   Q. Doctor, let me interrupt you. You mentioned  
9       that the lumbosacral spine examination revealed  
10      normal lumbar lordosis without evidence of  
11      paraspinous spasm. What does that mean in  
12      laymen's terms?

13   A. If you look at somebody from the side, you will  
14      see that in general there is a C shaped  
15      curvature to their low back, their lumbar  
16      spine. That C shaped curvature is referred to  
17      as lordosis. Paraspinous means on the sides of  
18      the spine, and spasm is a sustained contraction  
19      of a muscle much like a charley horse.

20   Q. So there was no evidence of that spasm?

21   A. Correct.

22   Q. Did you conduct further examinations of Ms.  
23      Smith?

24   A. Yes.

25   Q. What did that further examination show?

1 A. Sitting straight leg raising could be  
2 accomplished to 90 degrees bilaterally, tripod  
3 sign was negative. Supine straight-leg raising  
4 was restricted to 60 degrees bilaterally and  
5 accompanied by low back pain and hamstring  
6 tightness. Lasegue's sign was negative  
7 bilaterally. With contralateral hip and knee  
8 flexion, supine straight-leg raising could be  
9 accomplished to 80 degrees bilaterally.

10 A neurological examination of the lower  
11 extremities revealed normal sensory perception  
12 and normal muscle strain. The deep tendon  
13 reflexes indicated that the patellar tendon  
14 reflexes were symmetrically equal, that the left  
15 Achilles' tendon reflex was depressed compared  
16 to the right. The peripheral pulses were  
17 palpable.

18 Q. Doctor, in a nutshell, could you restate that in  
19 laypersons' terms for the attorneys and the  
20 jury?

21 A. Yes. That part of the examination revealed that  
22 the majority of the examination was normal. It  
23 did demonstrate that she had a slightly  
24 depressed ankle jerk on the left side, but that  
25 she had normal strength and normal sensory

1 perception.

2 Q. Doctor, after your exam or in conjunction with  
3 your exam, did you have an opportunity to review  
4 and analyze Connell Smith's medical records?

5 A Yes.

6 Q Which sets of medical records did you have the  
7 opportunity to review?

8 A Initially I reviewed her records for the  
9 treatment at the emergency room of Meridia  
10 Euclid Hospital on March 19th, 1994;

11 Dr. Murawsky's letter of March 28th, 1994;  
12 Dr. Murawsky's letter of June 18th, 1994;

13 Dr. Murawsky's bill I reviewed the MRH of the  
14 lumbar spine that was obtained on December  
15 19th -- I'm sorry, December 9th, 1994.

16 I reviewed Dr. Colompi's records that  
17 covered the period between December 22nd, 1994  
18 and March 28th, 1995. I reviewed letters that  
19 Dr. Colompi wrote on July 5th, 1995, and  
20 September 26th, 1995. And I reviewed the  
21 records from the Mt Sinai Medical Center for  
22 Mrs Smith's treatment between February 1994  
23 1995, and February 6th, 1995.

24 Q Subsequent to that initial review, Doctor, did  
25 you later have the opportunity to review

1 additional medical records that became available  
2 concerning Connell Smith?

3 A. Yes.

4 Q. Which records were those?

5 A. I reviewed the actual radiographs that were  
6 obtained on the day of the accident, March 19th,  
7 1994. I reviewed Dr. Robson's records for the  
8 period between June 2nd, 1988 and May 19th,  
9 1995. I reviewed Dr. Robson's letter of  
10 February 14th, 1996, and the letter that  
11 Dr. Colombi wrote on March 13th, 1996.

12 And in addition to that, I reviewed the  
13 University Hospital of Cleveland records that  
14 covered the period between November 5th, 1979,  
15 and a period in 1987, I believe.

16 MR. KALISH: Move to strike any  
17 reference to University Hospital records.

18 Q. Okay. Doctor, did the emergency room records  
19 which you reviewed from Meridia Hospital from  
20 the day of the accident so show any bulging back  
21 disc or any need for surgery?

22 A. No.

23 Q. Also, doctor, when you examined Connell Smith,  
24 did you have any radiographs taken of her?

25 A. Yes.

1 Q What part of her body?

2 A Her lumbar spine.

3 Q Have you also had the opportunity to review  
4 Connell Smith's radiographs from March, 1994,  
5 the day of the accident?

6 A Yes.

7 Q Have you had the opportunity to compare the  
8 x-rays that you had taken of Connell Smith on  
9 December 5th, 1995, with the x-rays or  
10 radiographs she had on the day of the accident?

11 A Yes.

12 Q What did that comparison show to you?

13 A That comparison showed to me that there had been  
14 no change in the appearance of her lumbar spine  
15 in the interval between March 19th, 1994, and  
16 December 5th, 1995. It showed me that on the  
17 day of the accident she had evidence of  
18 intervertebral disc degeneration at the L4-5  
19 interspace, and that condition had not changed  
20 or had not gotten worse in the interval between  
21 the day of the accident and the time that I  
22 examined her

23 Q Doctor, you mentioned a term with which some of  
24 us are not real familiar, intervertebral disc  
25 degeneration at L4-L5. Can you explain that in

1        layperson's terms, perhaps with a model or  
2        something that would help?

3    A.    Yes.    This is a model of the lumbar spine.  
4        You're looking at it from the side.    Here's the  
5        patient's front and here's the patient's back or  
6        buttocks.    As can you see, there are five  
7        vertebra or vertebral bodies, and between each  
8        vertebral body there is a structure that's  
9        referred to as the intervertebral disc.

10            Intervertebral disc degeneration is a  
11        condition where the disc begins to wear out, and  
12        as it wears out it actually gets smaller, and so  
13        then on plain radiographs the space between the  
14        two vertebral bodies is narrower.    And on the  
15        day of the accident Mrs. Smith demonstrated  
16        narrowing of the L4-5 interspace, and here you  
17        can see L4 and L5, and there was narrowing at  
18        that space.

19    Q.    Doctor, if Ms. Smith had that on the day of the  
20        accident, is that something that is normally  
21        caused by trauma like an auto accident that she  
22        described to you, or is that something that  
23        occurs over time?

24    A.    That is something that occurs over time.    It is  
25        not a condition that occurred as a result of the

1        automobile accident.

2        Q.    Doctor, did you also have the opportunity to  
3        review Dr. Robson's records?

4        A.    Yes.

5        Q.    What of significance to you did Dr. Robson's  
6        records show?

7        A.    Dr. Robson's records were significant in that  
8        they demonstrated two-and-a-half years before  
9        the accident of March 19th, 1994, Mrs. Smith  
10       complained of low back and leg symptoms, and  
11       that occurred on August 20th of 1991. And she  
12       treated with Dr. Robson between August 20th of  
13       1991 and on October 24th of 1991 she was still  
14       having symptoms.

15                In addition to that, they were significant  
16       to me because following the accident of March  
17       19th, 1994, Mrs. Smith was examined by  
18       Dr. Robson on November 18th, 1994, and at that  
19       time there was no mention in his records of back  
20       pain, leg pain or an automobile accident. Ten  
21       days later she returned to Dr. Robson  
22       complaining of low back and buttock pain,  
23       indicated to Dr. Robson that her symptoms had  
24       begun on Thanksgiving, November 24th, of 1994.  
25       And, in fact, on November 28th, 1994, Dr. Robson



1       made a notation in his records, no history of  
2       trauma.

3                   MR. KALISH:    Objection.   Move to  
4       strike.   Sorry, John.

5                   MR. FARNAN:    That's okay.

6   Q.   How many times did you count that Dr. Robson  
7       examined Connell Smith after the accident and  
8       before the first mention of the accident appears  
9       in his medical records?

10  A.   Three occasions.

11  Q.   Did you also review the medical records and  
12       notes of Dr. Colombi, Connell Smith's surgeon?

13  A.   Yes.

14                   MR. KALISH:    Objection.   Move to  
15       strike any reference as to Dr. Colombi.

16                   MR. FARNAN:    We'll note a  
17       continuing objection.

18  Q.   What was of significance to you in Dr. Colombi's  
19       notes and records?

20  A.   Dr. Colombi's records covered the period between  
21       December 22nd, 1994, and March 23rd, 1995. Nine  
22       months after the accident on December 22nd,  
23       1994, Mrs. Smith complained of back and  
24       bilateral leg pain. She told Dr. Colombi,  
25       quote, pain started in low back Thanksgiving.

1 Has been present for two to three weeks.

2 Dr. Colombi made the diagnosis of a  
3 herniated disc at L4-5 with secondary stenosis,  
4 and he recommended surgery.

5 Q. Have you seen any medical records or notes from  
6 Dr. Colombi, Connell Smith's surgeon, to draw  
7 the conclusion based upon a reasonable degree of  
8 medical certainty that Connell Smith had a  
9 herniated disc as a result of the March 19th,  
10 1994, accident?

11 MR. KALISH: Objection. Move to  
12 strike.

13 A. No, I have not.

14 Q. Have you seen any medical records from  
15 Dr. Colombi, Connell Smith's surgeon, to draw  
16 the conclusion based upon a reasonable degree of  
17 medical probability and certainty that Connell  
18 Smith needed surgery in May -- excuse me,  
19 February of 1995, due to injuries she sustained  
20 in the March, 1994 accident?

21 A. No, i have not.

22 MR. KALISH: Objection. Move to  
23 strike.

24 Q. Doctor, did you also have the opportunity to  
25 review the medical records of Connell Smith from

1 University Hospital?

2 A. Yes.

3 Q. What was of significance to you orthopedically  
4 from the review of those records?

5 A. Those records were of significance in that they  
6 indicated on December 16th, 1987, before the  
7 accident of March of 1994, that Mrs. Smith  
8 presented with the complaints of leg problem  
9 times four years. She indicated that sometimes  
10 her leg was numb. So that was of significance  
11 to me because it was another indication that she  
12 had had low back and leg complaints for a period  
13 of time before the accident of March of 1994.

14 Q. Doctor, just so the jury is clear, when you say,  
15 when you see medical records that say complaints  
16 of pain times four years, what does the times  
17 four years mean to you?

18 MR. KALISH: Objection.

19 A. It means to me that the patient had these  
20 complaints for four years.

21 Q. Okay. Doctor, based upon your review of the  
22 radiographs taken of Connell Smith on the day of  
23 the accident, your own radiographs that you had  
24 done of Ms. Smith, your review of her medical  
25 records from Meridia Euclid Hospital, Dr. Carl

1 Robson, Dr. Murawsky, Dr. Colombi and University  
2 Hospital, based on the history that Connell  
3 Smith gave you and your exam of her, do you have  
4 an opinion based upon a reasonable degree of  
5 medical certainty and probability of what  
6 injuries, if any, that Ms. Smith sustained in  
7 the March 19th, 1994, accident?

8 A. Yes, I have an opinion.

9 Q. What is that opinion, doctor?

10 A. I believe that she sustained the cervical and  
11 lumbosacral strain.

12 Q. In other words, back strain or neck strain, is  
13 that correct?

14 A. In other words, a strain of her neck and of her  
15 low back, yes.

16 Q. Doctor, based on the records and test results  
17 that we just referenced, do you have an opinion  
18 based upon a reasonable degree of medical  
19 certainty and probability as to the duration of  
20 those injuries or how long they lasted? \*

21 A. Yes.

22 Q. And what is that opinion?

23 A. I believe that she required treatment for those  
24 injuries for a period of approximately eight  
25 weeks.

1 Q. What do you base that on?

2 A. I base that on a review of Dr. Murawsky's  
3 records that indicated that he treated her  
4 during March and April of 1994.

5 Q. Was there anything that you saw in  
6 Dr. Murawsky's records when he treated her in  
7 March and April of 1994, in the two months  
8 following the accident, that indicated a  
9 herniated disc or a need for surgery?

10 MR. KALISH: Objection. Move to  
11 strike.

12 A. No, there was not.

13 Q. Doctor, based on your exam and your review of  
14 the records we discussed above and the  
15 diagnostic testing, do you have an opinion based  
16 upon a reasonable degree of medical certainty  
17 and probability as to whether Connell Smith's  
18 surgery on February 3rd, 1995, 11 months after  
19 the accident, was necessitated or needed as a  
20 result of the March, 1594 accident?

21 MR. KALISH: Objection.

22 A. I have an opinion.

23 Q. What is that opinion, doctor?

24 MR. KALISH: Objection.

25 A. My opinion is that the surgery that Dr. Colombi

1 performed in February of 1995 was not caused by  
2 any injuries that Mrs. Smith sustained in the  
3 accident of March of 1994.

4 Q. Just so we're clear, you're not saying the  
5 surgery wasn't needed in February of 1995,  
6 you're just saying it wasn't needed as a result  
7 of the March, 1994 accident, right?

8 A. That's correct. I believe based on her  
9 condition at the time and the diagnostic studies  
10 that were available to Dr. Colombi, the surgery  
11 was indicated, it was an appropriate operation  
12 to do; but I'm saying that the need for that  
13 surgery was not as a result of any injuries that  
14 she sustained in the automobile accident.

15 Q. Doctor, do you also have an opinion based upon a  
16 reasonable degree of medical certainty as to  
17 whether the auto accident of March 19, 1994,  
18 caused a disc herniation in Connell Smith's  
19 back?

20 MR. KALISH: Objection.

21 A. Yes, I have an opinion.

22 Q. What is that opinion?

23 A. The automobile accident of March 19th, 1994, did  
24 not cause a herniated disc in Connell Smith's  
25 back,

1 Q. What do you base that upon, what's the basis of  
2 that opinion?

3 A. Things we've been discussing for the last half  
4 hour or so. To try to summarize that, I  
5 reviewed a considerable amount of records, and  
6 in those records there was no indication that  
7 Mrs. Smith had any symptoms or physical findings  
8 of a herniated disc when she was in the  
9 emergency room on the day of the accident, when  
10 she was under Dr. Murawsky's care for four  
11 months, or when she first came to see Dr. Robson  
12 in November of 1994.

13 Ten days later she came back to Dr. Robson  
14 and told him that she had an onset of symptoms,  
15 which later were related to a herniated disc  
16 during the Thanksgiving weekend.

17 In addition to that, records that I  
18 reviewed prior to the accident demonstrated that  
19 Mrs. Smith had had similar symptoms with respect  
20 to back and leg pain before the automobile  
21 accident.

22 Q. Doctor, do you have an opinion based upon a  
23 reasonable degree of medical certainty and  
24 probability as to whether Connell Smith has any  
25 permanent disability directly attributable to

1 the March 19, 1994 accident?

2 A. Yes, I do.

3 Q. What is that opinion?

4 MR. KALISH: Objection.

5 A. She has no permanent disability directly  
6 attributable to the accident.

7 Q. Doctor, do you have an opinion based upon a  
8 reasonable degree of medical certainty and  
9 probability as to whether Connell Smith has  
10 fully recovered from the injuries she suffered  
11 in the March 19, 1994 accident?

12 A. Yes.

13 Q. What is that opinion?

14 MR. KALISH: Objection.

15 A. I believe that she has fully recovered from the  
16 automobile accident and the injuries that she  
17 sustained on March 19th, 1994.

18 MR. FARNAN: Thank you, doctor. I  
19 have no further questions at this time.

20 THE WITNESS: You're welcome.

21 - - - -

22 CROSS-EXAMINATION OF DENNIS B. BROOKS, M.D.

23 BY MR. KALISH:

24 Q. Good morning, doctor. My name is Scott Kalish.  
25 I work for Donald Caravona & Associates, and I



1 represent Connell Smith.

2 A. Good morning.

3 Q. Good morning. At this time I'd like to review  
4 your file that you referred to a couple times on  
5 direct exam with your attorney.

6 MR. KALISH: If I may, off the  
7 record.

8 VIDEOTAPE OPERATOR: Off the  
9 record.

10 - - - -

11 (Thereupon, a discussion was had off  
12 the record.)

13 - - - -

14 VIDEOTAPE OPERATOR: We're on the  
15 record.

16 Q. Doctor, thank you for allowing me to review your  
17 record.

18 A. You're welcome, Mr. Kalish.

19 Q. Doctor, so the jury understands your roll in  
20 this case, you saw Ms. Smith on one occasion, on  
21 December 5th, 1995, approximately one year and  
22 nine months after the accident, correct?

23 A. Yes.

24 Q. Okay. And doctor, you have not seen Connell  
25 Smith since that one day on December 5th, 1995,

1 correct?

2 A. Yes.

3 Q. Okay. Since you have not seen her in over a  
4 year, you could not comment on her present  
5 physical condition as you sit there today, can  
6 you?

7 A. No, I cannot.

8 Q. Doctor, you saw Ms. Smith at the request of  
9 attorney John Farnan and his law firm, Weston,  
10 Hurd, correct?

11 A. Yes.

12 Q. How much did attorney Farnan's law firm pay you  
13 for drafting your first report after you saw Ms.  
14 Smith and reviewed Ms. Smith's record?

15 A. I don't know, I'm sorry.

16 Q. Okay. Because I see no notation or billing  
17 statement in your file, that's the reason I  
18 ask. You have no idea whatsoever?

19 A. That's correct. I don't.

20 Q. Let me ask you this: Was it over \$500?

21 A. I'm sorry, if I have no idea, I don't know  
22 whether it was over 500 or under 500.

23 Q. But you did get paid for drafting that first  
24 report, correct?

25 A. I hope so. I don't know, as a fact, for a fact.

1 Q. Who would know that, doctor?

2 A. The person that would know that would be the  
3 billing -- well, yeah, the billing company.

4 Q. Okay. But as a standard practice in your  
5 profession, you would ordinarily bill for such a  
6 report and review of records and examination,  
7 correct?

8 A. Sure. I bill for all medical services.

9 Q. Okay. And doctor, then it's safe to say you

10

11

12

?

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14

15

16 Q.

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23

24 A. Okay.

25 x. ....

- 1           this case?
- 2   A.   No, I haven't been paid. I haven't submitted a  
3       bill for my time today.
- 4   Q.   Okay. You will submit a bill in the future  
5       though, correct?
- 6   A.   Without question.
- 7   Q.   Okay. Doctor, on December 5th, 1995, when you  
8       saw Ms. Smith, did, do you recall if you saw  
9       your regular patients that same day?
- 10  A.   I am sure that I saw regular patients that same  
11       day. December 5th of '95 was over a year ago,  
12       and I have no recollection what day of the week  
13       it was or how many patients I saw.
- 14  Q.   But ordinarily, again, in the ordinary course",  
15       and scope of your practice, you would see more  
16       than one patient, would you not?
- 17  A.   Yes. Right.
- 18  Q.   And Ms. Smith was not a patient seeing you for  
19       medical treatment or care, was she?
- 20  A.   No, she was not.
- 21  Q.   Okay. And where did that exam take place?
- 22  A.   That exam took place in my offices.
- 23  Q.   Okay. The offices we sit in today?
- 24  A.   No.
- 25  Q.   Okay. Can you give me the address of those

1 offices?

2 A. Yes, 26900 Cedar Road, but that office was on  
3 the second floor and this office is on the third  
4 floor.

5 Q. I see. And when we say 26900 Cedar Road, we're  
6 mentioning or we're basically stating the Mt.  
7 Sinai Medical Building, correct?

8 A. Yes.

9 Q. How long was your physical exam of Connell Smith  
10 on that one occasion?

11 A. I don't know.

12 Q. Okay. You couldn't estimate for the ladies and  
13 gentlemen of the jury?

14 A. No, I really couldn't. I know that I did a  
15 complete examination, and I never worry about  
16 the amount of time that it takes me. It's  
17 making sure that I do a complete job that's  
18 important to me.

19 Q. Okay. Would it have been over 20 minutes?

20 A. Probably not.

21 Q. Okay. Now, on December 5th, 1995, you saw  
22 Connell Smith in order to put together a report  
23 for Attorney Farnan and to testify if necessary,  
24 correct?

25 A. Yes.

MR. FARNAN: Objection.

Q. Doctor, let me ask you this: What percentage of your exams when you are retained or hired by attorneys are done for defendants compared with plaintiffs? And this is just an approximation.

A. Right. I don't keep track of that, so I can't even give you an approximate percentage.

Q. Okay. Again, using your best recollection and to approximate, do you do more defense exams than you would for plaintiffs' attorneys?

A. Yes.

Q. Doctor, you're obviously aware that Ms. Smith was involved in an automobile accident on March 19th, 1994, involving the defendant, Robert Knuff, are you not?

A. We can finally agree on something.

Q. Okay. Thank you. Are you aware of the degree of impact between these vehicles on the date of the accident?

A. No.

Q. Okay. Are you aware that after the accident Ms. Smith had to remain inside her car because of the pain in her back and was thereafter transported on a backboard by the EMS personnel to the ambulance?

1 A. Yes.

2 Q. You are aware of that?

3 A. That she was transported on a backboard by EMS  
4 ambulance to the Meridia Hospital, yes.

5 Q. In the two reports that you supplied to your  
6 attorney, Mr. Farnan, that was never mentioned.  
7 Was that just not mentioned for a purpose or  
8 just overlooked?

9 A. I think if you read the history that Connell  
10 Smith gave me, she told me that she was taken by  
11 ambulance to the hospital, and so that's how I  
12 was aware of it.

13 Q. But you weren't aware until today that she was  
14 actually transported to the ambulance from her  
15 car on a backboard?

16 MR. FARNAN: Objection.

17 A. Oh, I'm sorry, I guess I didn't understand your  
18 question. No, I wasn't aware in this particular  
19 case that that occurred.

20 Q. Okay. Thank you, doctor. Doctor, in your, on  
21 that note, you're probably not aware that the  
22 defendant Knuff fled the scene of the accident  
23 before the police arrived, are you?

24 MR. FARNAN: Objection. Move to  
25 strike.

1 A. No, that wouldn't have been at all relevant in  
2 my assessment of Mrs. Smith's injuries.

3 Q. Okay. Let's talk about the medical treatment of  
4 Ms. Smith. Doctor, you're aware that Ms. Smith  
5 sought medical treatment at the Shaker Square  
6 Medical Clinic and Dr. Murawsky the first  
7 business day after this accident, are you not?

8 A. Yes.

9 Q. Okay. And you would not dispute Dr. Murawsky's  
10 testimony that when he discharged Connell Smith  
11 from his care and treatment, the lower back  
12 injury sustained in the accident was deemed, and  
13 I quote, unresolved, end quote?

14 MR. FARNAN: Objection.

15 A. No, if that's what he said, I wouldn't dispute  
16 that.

17 Q. You would dispute that?

18 A. No, I'm sorry, I said if that's what he said, I  
19 would not dispute that.

20 Q. Okay. And what does unresolved mean to you,  
21 doctor?

22 A. It means that it's still an ongoing problem.

23 Q. Okay. Doctor, in your report of December 12th,  
24 1995, you believe that Ms. Smith sustained  
25 injuries to her neck, lower back -- and lower



1 back from this accident, correct?

2 A. Yes.

3 Q. Doctor, you go on to say in that same report  
4 that the neck and back injuries required some  
5 treatment in the immediate post-accident period,  
6 correct?

7 A. Yes.

8 Q. Doctor, have you performed a laminectomy and  
9 discectomy surgery?

10 A. Yes.

11 Q. Excuse me, let me pronounce that again, a  
12 discectomy surgery?

13 A. Yes.

14 Q. How many approximately in your career?

15 A. I'm not a counter of a whole bunch of things. I  
16 mean, I've been practicing orthopedic surgery  
17 for, well, almost 27 years, and I guess if you  
18 include my residency, which was six years, I  
19 mean, over a 30 year period of time I've done a  
20 whole bunch.

21 Q. Okay. Thank you, doctor. Doctor, then you  
22 would agree with me that a trauma to the back  
23 area or impact to the back area could cause a  
24 small herniation in a disc located in the back,  
25 correct?

1 A. Anything is possible.

2 Q. Okay. And you would also agree with me that a  
3 herniation can increase in size as time  
4 progresses?

5 A. That's also possible.

6 Q. Okay. And when that herniation of the disc  
7 increases in size, it has a more likelihood of  
8 impinging upon a nerve in the back, correct?

9 A. Yes.

10 Q. Okay. What are some of the effects when that  
11 herniated disc does, in fact, impinge upon a  
12 nerve in the back?

13 A. The patient would experience back pain that  
14 radiates or travels into an extremity in a  
15 location that is consistent with the part of the  
16 body that is supplied by the nerve that the disc  
17 is pressing on.

18 Q. Okay. And when you say an extremity, correct me  
19 if I'm wrong, you're indicating a radicular pain  
20 or shooting pain through the lower limb, such as  
21 the legs and buttocks, correct?

22 A. Extremity means either arm or leg. So if we're  
23 talking about the low back, it's the leg, yes.

24 Q. Doctor, when your patients come in here after  
25 they've been involved in a motor vehicle

1 accident and complain of back and neck pains,  
2 what is your course of treatment at the  
3 beginning with those patients?

4 A. You know, it's always hard to generalize, but  
5 let's assume that we're talking about a patient  
6 who's had an automobile accident and has neck  
7 pain and low back pain, no arm pain or leg pain,  
8 physical examination reveals that it's a mild to  
9 moderate lumbar strain, cervical strain.

10 Initially I would prescribe some  
11 nonsteroidal antiinflammatory medication. If  
12 they had a neck injury, give them a cervical  
13 collar, and I'd ask them to go home and just  
14 take it easy for about a week.

15 Q. Thereafter, if they are still symptomatic of  
16 pain in the neck and back, would you then  
17 prescribe conservative measures such as therapy  
18 treatments?

19 A. Yes, I think it's important to know that I treat  
20 everybody conservatively. Sometimes the most  
21 conservative thing that you can do for a patient  
22 is to operate on them. So I, I'm not trying to  
23 be difficult, but I would treat them in a  
24 nonoperative fashion, and I would refer them to  
25 physical therapy.

1 Q. So, in your opinion then, surgery would not be a  
2 last resort, correct?

3 A. Correct.

4 Q. But you would, as you've testified, try  
5 conservative treatment as far as therapy to see  
6 if these symptoms persist prior to prescribing  
7 or performing surgery?

8 A. I certainly would try nonoperative treatment  
9 before I tried operative treatment, yes.

10 Q. Okay. And you would agree with me with any  
11 surgical procedure three things can happen, two  
12 of which are bad, correct?

13 Let me expand.

14 A. Thank you.

15 Q. The condition can remain the same; they can, the  
16 condition can get worse, or it can be surgically  
17 corrected?

18 MR. FARNAN: Objection.

19 A. I'm sorry, Mr. Kalish, I don't know of any  
20 operation that I've performed where the  
21 condition has remained the same. Fortunately  
22 the majority of the time the condition gets  
23 better, and I guess there are times when  
24 occasionally it can get worse.

25 Q. Okay. But that's yourself, you're just speaking

1 for yourself and base on your own personal  
2 experience?

3 A Well, I think I'm speaking for the majority of  
4 orthopedic surgeons and my familiarity with a  
5 variety of thing that would lead me to that  
6 conclusion.

7 But you, of course, have heard of stories that  
8 after a surgery on a herniated disc, that the  
9 condition worsens, correct?

10 MR. FARNAN: objection

11 A Yes.

12 Q Okay.

13 A That's the kind of business that, you know, you  
14 help people with, right?

15 Q Thank you, doctor

16 Dr. Brooks, you do not dispute that the  
17 surgery performed by Dr. Colompi on Ms. Smith  
18 was never passed on S. Smith's symptoms,  
19 physical findings and diagnostic studies, do  
20 you?

21 A No, I do not.

22 Q Dr. Brooks, you have no evidence that Ms. Smith  
23 experienced any trauma to her lower back area  
24 between April 28th, 1994, the last day she saw  
25 Dr. Murawsky, and prior to Ms. Smith's

1 complaining to Dr. Robson in November of '94, do  
2 You?

3 MQ FARNAN: Objection

4 A That's correct, I do not

5 Q Dr. Brooks, <sup>u</sup>ou know Dr. Colombi, correct?

6 A Yes

7 Q Okay. As a matter of fact, I believe he works  
8 right across the hall from you in Suite 324,  
9 correct?

10 A Yes.

11 Q And we're presently in Suite 325?

12 A Right.

13 Q And you're both affiliated with Mt. Sinai  
14 Hospital, correct?

15 A Yes.

16 Q Have you ever socialized with Dr. Colombi or his  
17 family in any regard?

18 A No.

19 Q Okay. You have performed surgeries, you've  
20 already answered this question and I just want  
21 to clarify, you have performed surgeries on  
22 herniated discs in the back, correct?

23 A Yes.

24 Q You just couldn't give the ladies and gentlemen  
25 an amount or even an approximate amount of those

1           surgeries?

2           A       Correct

3           Q       And you've performed laminectomies and  
4       discectomies in Mt Sinai Hospital, correct?

5           A       Yes

6                       MR KALISH:   Off tape record for  
7       on record

8                       WITNESSES OPERATOR:   O S tape  
9       record

10                      -   -   -   -

11                     (Thereupon, a discussion was had off  
12       the record )

13                      -   -   -   -

14                     (Thereupon, Plaintiff's Exhibit 1,

15       a copy of Patient Statement of Account, for

16       Connell Edit , dated 2-1 -95, was marked off

17       purposes of identification.)

18                      -   -   -   -

19                     (Thereupon, Plaintiff's Exhibit 2,

20       a copy of a bill from WMS Wolkin, Shafron &

21       Colombi, Inc , dated 9-19-9 , was marked off

22       purposes of identification )

23                      -   -   -   -

24                     MR. KALISH:   Back on the record  
25       VIDEOTAPE OPERATOR:   On the

1 record.

2 Q. Doctor, I'm handing you what's been marked as  
3 Plaintiff's Exhibit 1. Can you identify that  
4 for the ladies and gentlemen of the jury?

5 A. Thank you. This is a patient's statement of  
6 account from Mt. Sinai Health Care System for an  
7 admission that occurred between February 3rd,  
8 1995 and February 6th, 1995 for Connell Smith.

9 MR. FARNAN: Just note my  
10 objection, continuing, so I don't interrupt  
11 you with respect to the use of these  
12 exhibits.

13 MR. KALISH: Thanks, John. So  
14 noted.

15 Q. Doctor, what is the amount at the bottom for the  
16 total charges relative to Mt. Sinai Hospital?

17 A. \$6,291.76.

18 Q. Okay. Doctor, having stated that amount, would  
19 you agree with me that's reasonable and  
20 customary in this community for a hospital to  
21 charge for services rendered on a surgery such  
22 as that performed on Connell Smith?

23 MR. FARNAN: Objection.

24 A. I would agree with you that it's reasonable for  
25 a hospital to charge for chose services. I



1 don't know anything about other hospital  
2 charges. In fact, I don't even know a lot about  
3 Sinai charges.

4 Q. But you've already testified to the ladies and  
5 gentlemen of the jury that you have, in fact,  
6 performed the exact surgery that Dr. Colombi  
7 performed at Mt. Sinai Hospital, correct?

8 A. Yes.

9 Q. Okay. Those surgeries that you performed at Mt.  
10 Sinai, were they in the approximate amount as  
11 far as that figure on Connell Smith's bill?

12 MR. FARNAN: Objection.

13 A. I don't see the patient's bills from the  
14 hospital. I'm not even sure that I see my own  
15 bills, but so that's why I can't comment about  
16 the amount. I mean, it's reasonable the  
17 hospital charges for these services, just like  
18 it's reasonable for me to charge for my medical  
19 services. But, I'm sorry, I don't, I can't say  
20 anything about the amount of the charge.

21 2. Okay. Surely, doctor, you've been in practice  
22 for many, many years, and you've worked in this  
23 particular building and been affiliated with Mt.  
24 Sinai for quite some time. I'm going to ask  
25 you, again, do you think this figure on

1 Plaintiff's Exhibit A -- Plaintiff's Exhibit 1,  
2 excuse me, of \$6,291.76 is reasonable and  
3 customary in the community?

4 MR. FARNAN: Objection.

5 A. I can tell you that I believe those charges are  
6 reasonable. I can't tell you whether they're  
7 customary in the community because I don't know  
8 what goes on in the community.

9 Q. As far as other hospitals?

10 A. That's the community.

11 Q. Okay. Fair enough, doctor. Thank you.

12 Now I'm going to hand you Plaintiff's  
13 Exhibit 2, which is -- can you identify that for  
14 the ladies and gentlemen of the jury?

15 A. Yes, this is --

16 MR. FARNAN: Objection.

17 A. A bill, it looks like, from Drs. Wolkin, Shafron  
18 and Colombi. It really doesn't say who the  
19 particular doctor is that is making this bill.  
20 It is with regard to Connell Smith.

21 Q. And what surgical procedure is indicated there,  
22 doctor?

23 A. A right L4-5 laminectomy and discectomy.

24 Q. And for that surgical procedure, can you tell  
25 the ladies and gentlemen of the jury what the

1 figure, the total figure charged on that bill  
2 was?

3 MR. FARNAN: Objection.

4 A. \$3,130.

5 Q. And for, again, that surgical procedure, would  
6 you agree with me that that's reasonable and  
7 customary in the community here to charge for  
8 such a procedure?

9 MR. FARNAN: Objection,

10 A. No, I couldn't agree with you. Those are very  
11 high charges for a laminectomy and discectomy.

12 Q. On that note, doctor, what do you charge for a  
13 laminectomy and discectomy?

14 A. Discectomy at one level 2,000 to \$2,200.

15 Q. Do you charge additionally for follow-up  
16 examinations?

17 A. No, that's called unbundling and that's  
18 unethical.

19 Q. So, in other words, you're telling me that your  
20 peer, who has a place of business across the  
21 hall from you, has overcharged --

22 A. I'm telling you --

23 Q. -- my client. Excuse me, doctor.

24 MR. FARNAN: Objection.

25 A. Excuse me for interrupting you.

1 Q. Yes.

2 A. I'm telling you that my peer, who works across  
3 the hall, charges more than I do. Maybe I don't  
4 charge enough, maybe he charges too much, maybe  
5 he has space in the high priced area of the  
6 building. I don't know, all I can tell you is  
7 that there's a difference in what we charge.

8 Q. Okay. Would you deem your charges reasonable in  
9 this community?

10 A. Certainly.

11 Q. Okay. Thank you, doctor.

12 A. You're welcome.

13 MR. FARNAN: Are you finished with  
14 him? Do you have any other questions, or  
15 are you done?

16 MR. KALISH: I'm going to ask you,  
17 do you have questions?

18 MR. FARNAN: Yes. Are you done?

19 MR. KALISH: Yes.

20 - - - -

21 REDIRECT EXAMINATION OF DENNIS B. BROOKS, M.D.

22 BY MR. FARNAN

23 Q. Doctor, John Farnan, I have a couple questions  
24 for you.

25 Do you have anything to do with the billing

1 system at Mt. Sinai for Connell Smith's back  
2 surgery operation as depicted in Plaintiff's  
3 Exhibit 1?

4 A. No.

5 Q. Have you ever seen this bill before?

6 A. No.

7 Q. Do you normally and customarily review bills for  
a patients that are sent out by Mt. Sinai medical  
9 system?

10 A. No.

11 Q. Similarly have you ever reviewed Dr. Colombi's  
12 bills before?

13 A. No.

14 Q. But you have reviewed his records, which show  
15 that he is unwilling to make a causal connection  
16 between Connell Smith's accident and his  
17 surgery, correct?

18 MR. KALISH: Objection.

19 A. Yes.

20 MR. FARNAN: No other questions.

21 Thank you.

22 - - - -

23 RECROSS-EXAMINATION OF DENNIS B. BROOKS, M.D.

24 BY MR. KALISH:

25 Q. Doctor, just a follow-up, a few questions.

1 A. Okay. Your question was did Dr. Colombi make a  
2 statement as to the causal -- no, why don't you  
3 ask me the question again.

4 Q. Okay. I'm sorry, doctor. Has Dr. Colombi  
5 rendered an opinion, either way, relative to  
6 whether or not this motor vehicle accident and  
7 the injuries sustained by Connell Smith were  
8 related to his surgery on her herniated disc?

9 A. No.

10 MR. KALISH: Nothing further.

11 - - - -

12 FURTHER DIRECT EXAMINATION OF

13 DENNIS B. BROOKS, M.D.

14 BY MR. FARNAN:

15 Q. Doctor, one follow-up question. The notes and  
16 records and letters you reviewed from  
17 Dr. Colombi, is it fair to say that they express  
18 or they record the fact that Ms. Smith never  
19 told him prior to the surgery of any automobile  
20 accident?

21 MR. KALISH: Objection.

22 A. Yes.

23 Q. And the records you reviewed also, despite  
24 requests by plaintiff's counsel, he has been  
25 unwilling to render an opinion within the,

1 within a reasonable degree of medical certainty  
 2 and probability that the accident caused the  
 3 need for surgery, is that fair?

4 MR. KALISH: objection

5 4 Yes

6 MR FARNAN: I have no other

7 questions.

8 - - - -

9 FURTHER CROSS-EXAMINATION OF

10 WENNE P BROOKS, M D

11 BY MR XALISX:

12 One follow-up, Doctor, I apologize

13 When you saw Ms Smith on that one occasion  
 14 on December 5th, 1995, which was more than  
 15 one-and-a-half years after the accident, ten  
 16 months after her surgery. Ms Smith still had  
 17 complaints of low back pain and leg pain,  
 18 correct?

19 A Yes.

20 Q Okay. The very last question, I promise you,  
 21 Doctor, I appreciate your patience

22 before you testified before today, did you  
 23 have a private meeting with Attorney Farnan this  
 24 morning?

25 A Yes.

Mehler & Hagestrom

1 Q Okay will you go over in that meeting with  
2 Attorney Farnan your opinions that you would  
3 render here today?

4 A Yes.

5 Q Okay And obviously you talk with Attorney  
6 Farnan about your upcoming testimony in front of  
7 this jury?

8 A You just said one more question Mr Brooks  
9 that's now the third question. But, yes we will  
10 discuss my testimony today Mr Farnan, with  
11 all the respect, did not tell me what to say I  
12 told him what I was going to say.

13 Q Doctor, I don't mean to be difficult, and I'm  
14 going to move to strike that last comment as  
15 nonresponsive.

16 Thank you for your time

17 A You're welcome

18 - - -

19 FURTHER DIRECT EXAMINATION OF

20 DENNIS W BROOKS, M D

21 WY R. FARNAN:

22 Q Doctor, do you know that when you  
23 attorneys ahead of time it speeds up the  
24 presentation of your testimony so it doesn't  
25 delay the jury?

Mehler & Hagestrom



1 A. Yes.

2 MR. FARNAN: Okay. I have no  
3 other questions.

4 MR. KALISH: Nothing further.

5 VIDEOTAPE OPERATOR: Doctor, you  
6 have the right to read the transcript when  
7 it is transcribed and also review the  
8 videotape; do you waive that right?

9 THE WITNESS: I'll waive that  
10 right.

11 MR. FARNAN: Thank you, doctor.

12 (Signature waived.)  
13  
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25

C E R T I F I C A T E

The State of Ohio, ) SS:  
County of Cuyahoga.)

I, Colleen M. Malone, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named DENNIS B. BROOKS, M.D. was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Cleveland, Ohio, this 14th day of February A.D. 19 97.

*Colleen M. Malone*

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Colleen M. Malone, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires August 3, 1997

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E X H I B I T I N D E X

<u>EXHIBIT</u>	MARKED
Plaintiff's Exhibit 1, a copy of Patient Statement of Account, for Connell Smith, dated 2-11-95 .....	48
Plaintiff's Exhibit 2, a copy of a bill from Drs. Wolkin, Shafron & Colombi, Inc., dated 9-19-96 .....	48

1	O B J E C T I O N I N D E X	
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25		

PATIENT STATEMENT OF ACCOUNT

**Mt. Sinai**  
HEALTH CARE SYSTEM  
EXCELLENCE. IT'S OUR HERITAGE.

PATIENT'S NAME	ACCOUNT NO.	SERVICE LOCATION	ADMISSION DATE	DISCHARGE DATE
TH CONNELL	00758622-5026	MT SINAI MEDICAL CTR	02/03/95	02/06/95

PLEASE REFER TO PATIENT'S NAME AND ACCOUNT NO. ON ALL INQUIRIES AND CORRESPONDENCE

**BILL TO:**

CONNELL SMITH  
1458 CLEPMONT RD  
CLEVELAND OH 44110

**REMIT TO:**

MT. SINAI HEALTH CARE SYSTEM  
P.O. BOX 73379-N  
CLEVELAND, OH 44193-0213

PERSONAL PHYSICIAN CARE P30

MAKE CHECKS PAYABLE TO MT SINAI HEALTHCARE SYSTEM

**STATEMENT DATE**

02/11/95

NOTE: PLEASE DETACH & RETURN THE TOP PORTION OF THIS STATEMENT WITH YOUR REMITTANCE TO ASSURE PROPER CREDIT

PATIENT'S NAME	ACCOUNT NO.	STATEMENT DATE	PAGE NO.
TH CONNELL	00758622-5026	02/11/95	SM01

INSURANCE PORTION IS COMPUTED  
ACCORDING TO THE INFORMATION  
SUPPLIED BY YOUR INSURANCE CARRIER

SERVICE DATE	REF. NO.	DESCRIPTION	TOTAL AMOUNT	INSURANCE PORTION	PATIENT PORTION
		SUMMARY OF CHARGES			
		DAILY ROOM CHARGES			
	001	SEMI-PRIVATE 3 DAYS AT 692.00	2,046.00		
		UB- TOTAL DAILY ROOM CHARGES	2,046.00		
		ANCILLARY SERVICES			
	250	PHARMACY	595.02		
	270	MED-SURG SUPPLIES	910.88		
	300	LABORATORY	414.23		
	360	OPERATING ROOM	1,755.70		
	370	ANESTHESIA SUPPLIES	250.91		
	410	RESPIRATORY SERVICES	21.46		
	420	PHYS/OCCUP/SPEECH THERAPY	81.34		
	710	RECOVERY ROOM	210.22		
	993	TELEPHONE	6.00		
		SUB- TOTAL ANCILLARY SERVICES	4,245.76		
		TOTAL CHARGES	6,291.76		
		PLEASE PAY THIS AMOUNT			

PLAINTIFF'S  
EXHIBIT

2-8-97 CM

**Drs. Wolkin, Shafron & Colombl, Inc.**

26900 Cedar Road  
Beachwood, Ohio 44122  
(216) 831-6595

September 19, 1996

Re: Connell Smith

**FOR PROFESSIONAL SERVICES**

12-22-94  
2-3-95

Initial Office Exam  
R. L4-5 lamin. & discec,

100.00	100.00
3130.00	3230.00

AMOUNT RECEIVED \_\_\_\_\_ DATE \_\_\_\_\_

RECEIVED BY \_\_\_\_\_

PENGAD-Bayonne, N. J.

**PLAINTIFF'S  
EXHIBIT**2

2-8-97 Cm