

1                    IN THE COURT OF COMMON PLEAS

2                    CUYAHOGA COUNTY, OHIO

3            MORTON BIEL, et al.,

4                    Plaintiffs,

5                    -vs-

CASE NO. 203689

6            ALL-STRUCTURES, et al.,

7                    Defendants.

8                    - - - -

9            Videotaped deposition of DENNIS BROOKS, M.D.,  
10           taken as if upon oral examination before Gala J.  
11           Marzec, a Notary Public within and for the State  
12           of Ohio, at the offices of Dennis Brooks, M.D.,  
13           26900 Cedar Road, Beachwood, Ohio, at 4:30 p.m.  
14           on Friday, March 20, 1992, pursuant to notice  
15           and/or stipulations of counsel, on behalf of the  
16           Defendants in this cause.

17                    - - - -

18                    MEHLER & HAGESTROM  
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1        APPEARANCES:

2            David Paris, Esq.  
3            James Schumacher, Esq.  
4            Nurenberg, Plevin, Heller & McCarthy  
5            First Floor  
6            1370 Ontario Street  
7            Cleveland, Ohio 44113  
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9            On behalf of the Plaintiffs,

10           Joseph Wantz, Esq.  
11           Meyers, Hentemann, Schneider & Rea  
12           2121 The Superior Building  
13           Cleveland, Ohio 44114  
14           (216) 241-3435,

15           On behalf of the Defendants.

16        ALSO PRESENT

17           Doug Clark, Videotape Operator.

18           - - - -

1 VIDEOTAPE OPERATOR: We're on the  
2 record.

3 DENNIS BROOKS, M.D., of lawful age,  
4 called by the Defendants for the purpose of oral  
5 examination, as provided by the Rules of Civil  
6 Procedure, being by me first duly sworn, as  
7 hereinafter certified, deposed and said as  
8 **follows:**

9 ORAL EXAMINATION OF DENNIS BROOKS, M.D.  
10 BY MR. WANTZ:

11 MR. WANTZ: Okay For the record,  
12 we're back here for the deposition of  
13 Dr. Brooks pursuant to agreement of  
14 counsel. Mr. Paris is going to play the  
15 deposition he previously took of Dr. Brooks  
16 as part of his case; therefore, I'm going  
17 to go ahead and examine Dr. Brooks as a  
18 follow-up to your deposition. Is that  
19 correct, Dave?

20 MR. PARIS: Yes.

21 Q. Doctor, you testified previously on direct for  
22 Mr. Paris as a result of your examination of  
23 Mr. Biel, is that right?

24 A. Yes.

25 Q. What I want to do here this afternoon is just

1 follow up with some questions regarding your  
2 examination and your findings with regard to  
3 Mr. Biel.

4 Now, you indicated previously in response  
5 to Mr. Paris' questions that you did believe  
6 Mr. Biel would continue to have some ongoing  
7 limitations, is that correct?

8 A. Yes.

9 Q. Could you explain for the jury what those  
10 ongoing limitations would be?

11 A. Yes. I don't expect Mr. Biel to regain a normal  
12 or a complete range of shoulder motion. I do  
13 expect that he will have a very functional range  
14 of shoulder motion. He may have some limitation  
15 at the extremes of motion. But I believe he'll  
16 have a functional range of motion.

17 Q. Could you maybe demonstrate for us, doctor, when  
18 you say he will have limitations, at the  
19 extremes what kinds of motions and where the  
20 extremes would be that you would expect the  
21 limitations?

22 A. Yes. One of the motions is called abduction,  
23 bringing your arm out from the side and raising  
24 your hand above your head, I don't suspect that  
25 he's going to be able to get up to 180 degrees,

1 which would be having his hand this way.

2 However, as I reviewed the records and reviewed  
3 Dr. Brems' examination of May of 1991, he noted  
4 that Mr. Biel had 160 degrees, so it's not quite  
5 180, but it's 160. And that's a very functional  
6 range.

7 He **also** noted that Mr. Biel had about 65  
8 degrees of external rotation. External rotation  
9 can be measured in several ways. But the way it  
10 was measured is this would be neutral with your  
11 arm here, and then as you come back this would  
12 be 90 degrees, so he got back to about here.  
13 That's 65 degrees. He may gain another five  
14 degrees or so. But again, because of the nature  
15 of the injury he had and the surgery to repair  
16 it, he's not going to be able to get to 190.

17 The third motion is internal rotation,  
18 reaching behind your back, okay. Again, when  
19 Dr. Brems examined him, he could reach to T-12,  
20 which meant that he could reach right at the  
21 level where his thoracic spine joined his lumbar  
22 spine. The average person can probably reach up  
23 to about T-8 or even T-6. I don't expect that  
24 he can do that, but he can get to T-12. So he  
25 may be able to scratch the lower part of his

1 back this way and may have to use a back  
2 scratcher if he wants to get up higher.

3 Q. Doctor, would there be any pain associated with  
4 Mr. Biel's using the arm in the normal range and  
5 normal functions that you believe he will have  
6 as a result of this injury?

7 A. No. I believe that he really will be pain-free  
8 during the activities of daily living and using  
9 his arm in a functional range.

10 Q. Doctor, going back to your exam, which I believe  
11 you performed on July 16, 1991 --

12 A. Yes.

13 Q. -- you indicated that you found on his active  
14 range of motion that his abduction was 80  
15 degrees.

16 A. Yes.

17 Q. Yet if I heard you right, you indicated that  
18 Dr. Brems found that the range of motion for  
19 abduction was 165.

20 A. 160, yes.

21 Q. Excuse me. 160.

22 Doctor, can you explain the difference  
23 between your finding and Dr. Brems?

24 A. Yes. When I examined Mr. Biel, I asked him to  
25 perform these motions. They were done actively

1 by him. I didn't take his arm and passively put  
2 it through a range of motion. So I had to  
3 depend on whatever effort he was putting out.

4 He had seen Dr. Brems two months previously  
5 and there is no reason to believe that he  
6 deteriorated, that he got worse over those two  
7 months period of time. So I believe that when  
8 he saw me for whatever reason he wasn't  
9 demonstrating the entire range of motion that  
10 he, in fact, had.

11 Q. Is it possible, doctor, that he had regressed?

12 A. No. I don't --

13 MR. PARIS: Objection.

14 A. Anything is possible, Mr. Wantz. But there is  
15 nothing that he told me in his history, there is  
16 nothing in the record to indicate that he  
17 sustained another injury, that he disrupted or  
18 tore apart the repair that Dr. Brems had done.  
19 So I don't believe that it's possible that --  
20 I'm sorry, I don't believe that it's probable  
21 that he regressed.

22 Q. Doctor, were there any other discrepancies  
23 between your examination and Dr. Brems'  
24 examination?

25 A. Yes. When I saw him he only demonstrated 15

1 degrees of external rotation. So he just came  
2 out this way. When Dr. Brems saw him he was out  
3 to 65. So that was different.

4 Also when I saw him, he internally rotated  
5 to L-4, which is about the level of his waist.  
6 Whereas I mentioned earlier, when Dr. Brems saw  
7 him he could touch that area where his mid-back  
8 joins his low back.

9 Q. Were there any other differences, Doctor, that  
10 you can recall?

11 A. The only other thing was that when I tested his  
12 strength I found that his external rotator  
13 strength, which is a very important muscle  
14 group, was four out of five. In other words, it  
15 was 80 percent of normal, five out of five being  
16 normal. Dr. Brems had noted that he was, he  
17 demonstrated considerable weakness. So in that  
18 particular area he actually demonstrated  
19 improvement in the two-month period of time.

20 Q. Doctor, you've previously indicated for  
21 Mr. Paris that you believe that because of this  
22 injury Mr. Biel would not be able to engage in  
23 lifting paint cans for approximately one year,  
24 is that correct?

25 A. Yes.



1 Q. And you still agree with that opinion that you  
2 rendered previously?

3 A. Yes.

4 Q. Doctor, that refers to the right arm, is that  
5 correct?

6 A. That's correct.

7 Q. Is there anything about this injury that would  
8 have prevented Mr. Biel from lifting paint cans  
9 with his left arm?

10 A. No.

11 Q. You're aware, Doctor, that Mr. Biel was a  
12 manufacturer's representative selling paint for  
13 Sherwin-Williams?

14 A. Yes.

15 Q. Was there anything else about his injury apart  
16 from the fact that he could not lift paint cans  
17 with his right arm that you believe would have  
18 prevented him from doing that job?

19 A. As a manufacturer's representative, during what  
20 period of time?

21 Q. During any period of time after the accident,  
22 after the injury?

23 A. Yes. I believe that right after the injury, for  
24 example, it would have been impossible for him  
25 to drive unless he drove one handed. After he

1 had his surgery he was immobilized for a period  
2 of time, and it would have been impossible for  
3 him to drive his car again unless he drove one  
4 handed. So there is a period from the time of  
5 the injury to the time of his surgery, which was  
6 in December, and until the time that his  
7 immobilization was removed, plus say about a  
8 month or so of physical therapy. I don't recall  
9 the exact dates.

10 Q. Doctor, based on your examination of Mr. Biel  
11 and your review of the records regarding his  
12 treatment and your medical experience, do you  
13 have an opinion to a reasonable degree of  
14 medical certainty how long that disability from  
15 driving would have lasted?

16 A. Yes. I believe that --

17 MR. PARIS: Objection.

18 A. -- from the time of surgery --

19 Q. Excuse me, Doctor, you do have an opinion?

20 A. Yes, I do have an opinion,

21 Q. what is that opinion?

22 MR. PARIS: Objection.

23 A. I believe from the time of surgery to the time  
24 that he would have been able to drive would have  
25 been a period of five months.

1 MR. WANTZ: Thank you, Doctor. I  
2 have no other questions.

3 MR. PARIS: Off the record.

4 VIDEOTAPE OPERATOR: We're off the  
5 record.

6 - - - -

7 (Thereupon, a discussion was had off  
8 the record.)

9 - - - -

10 MR. PARIS: Let's go back on the  
11 record.

12 VIDEOTAPE OPERATOR: We're on the  
13 record.

14 - - - -

15 ORAL EXAMINATION OF DENNIS BROOKS, M.D.

16 BY MR. PARIS:

17 Q. Dr. Zaas -- I'm sorry. Dr. Brooks, it's David  
18 Paris again.

19 Just so we're clear, let's talk a little  
20 bit about the fact of Mr. Biel's inability to  
21 work for a period of time after this accident.  
22 I take it you are aware that he was a 75-year  
23 old man who was still self-employed as a  
24 manufacturer's rep?

25 A. Yes,

1 Q. And still going strong and earning a good living  
2 prior to this accident?

3 A. I really don't know what his income was.

4 Q. I'll ask you to assume that the evidence in this  
5 case is going to be that his income, his  
6 business income alone had continually increased  
7 from '87, 1988, 1989 to 1990. He was a very  
8 self motivated, hard working gentleman at that  
9 age.

10 MR. WANTZ: I'll object.

11 Q. Well, I will assume -- in any event, please  
12 assume he continued to earn more money during  
13 this period of time.

14 A. All right.

15 Q. As part of his duties, only part of his duties  
16 was to carry paint cans from store to store,  
17 restock shelves as a manufacturer's rep for  
18 Sherwin-Williams and other paint companies,  
19 which not only required the use of his dominant  
20 right arm, but also required the use of his left  
21 arm. I would expect that you would acknowledge  
22 that when one is handling cases of paint it not  
23 only requires the use of the left arm but also  
24 the right arm?

25 A. A case of paint that contains more than one can,

1       sure.

2       Q.   When I asked you your opinions originally in  
3       this case, it was your opinion that  
4       approximately 13 months off from work, or 13  
5       months of inability to lift a paint can, one  
6       paint can with his right arm was reasonable.  
7       Was that your original opinion in your original  
8       deposition?

9       A.   I don't recall. I've not had the opportunity to  
10      review that deposition, but I have no reason to  
11      change that today, 12 months, 13 months.

12     Q.   Okay. Now, you also indicated that there were  
13      some differences in his range of motion, which  
14      you detected in July of 1991, and which  
15      Dr. Brems detected in May of 1991.

16     A.   Yes.

17     Q.   And it was your suggestion that it was probably  
18      not due to a regression?

19     A.   That's correct.

20     Q.   Do I understand, Doctor, that once this surgery  
21      is done to a massive rotator cuff tear involving  
22      all four of the muscle groups that an  
23      individual, an elderly individual, will always  
24      regain the same or close to the same strength  
25      that he had before the accident?

1 A. I have a problem with the first part of your  
2 question. As I understand it, Mr. Biel did not  
3 tear all four muscles. He just tore three of  
4 the muscles. Did he tear all four muscles?

5 Q. I was under the impression -- well, you have the  
6 operative records. I thought it involved the  
7 subscapularis, the infra --

8 A. Supraspinatus, infraspinatus and teres minor. I  
9 wasn't aware that it involved the  
10 subscapularis. But given that difference, the  
11 question was, even if he tore three of the  
12 muscles,. would he regain the same degree of  
13 strength that he had preoperatively, is that  
14 correct?

15 Q. Yes.

16 A. No. I don't believe that he would necessarily  
17 regain the same degree, 100 percent of the  
18 strength that he had pre-injury,  
19 preoperatively.

20 Q. Okay. And as it relates to the age of an  
21 individual, what effect does that have in their  
22 recuperation?

23 A. It depends upon their motivation. You just told  
24 me he was a very motivated individual. So I  
25 don't think that in this situation age is

1 necessarily a factor.

2 Q. When you saw him in July of 1991, you saw quite  
3 a bit of atrophy in the muscle groups, did you  
4 not?

5 A. Yes.

6 Q. Atrophy in the muscle groups is a sign of what?

7 A. Atrophy of the muscle group is a sign of less  
8 bulk or substance than is present in a normal  
9 situation.

10 Q. Less substance to the muscle groups means what?

11 A. Well, it doesn't always mean weakness. That is  
12 to say, because somebody has less bulk, they can  
13 develop the remaining fibers to an extent that  
14 they can regain strength, okay.

15 Q. Sure. But as a general proposition in a 76-year  
16 old man who has obvious wasting of the  
17 subscapularis muscles and the two muscles in the  
18 back, which I believe you detected?

19 A. No, no.

20 Q. You did not detect that, doctor?

21 A. Let's look at what I detected.

22 Q. I can refer you to --

23 A. Page 2 of my report,

24 Q. Or I was going to refer to your deposition, but  
25 whatever.

1 A. My report says there was atrophy of the  
2 supraspinatus and infraspinatus.

3 Q. And doctor, wasn't there also atrophy of the  
4 tissue covering the humeral head or over the  
5 subscapularis?

6 A. No. I don't recall what I said in my  
7 deposition. What I said in my report was, the  
8 humeral head was palpably prominent anteriorly.  
9 So there was some loss of tissue. Whether it  
10 was subcutaneous tissue or not, I'm not certain.

11 Q. Let me refresh your recollection on page 21 of  
12 your deposition.

13 Your answer was: "In addition, the humeral  
14 head, the ball part of the ball and socket  
15 joint, was palpable anteriorly. I mean I could  
16 actually feel the front part of his shoulder  
17 joint."

18 Question: "What is the significance of  
19 that?"

20 Answer: "That there really wasn't a lot of  
21 tissue between his skin and the humeral head.  
22 He probably had some atrophy of the anterior  
23 part of the rotator cuff as well,  
24 subscapularis. And I made mention of it because  
25 it was a finding."



1           Okay. So he did have atrophy in the  
2           subscapularis, did he not?

3   A. Yes.

4   Q. Okay. This was in July of 1991?

5   A. Correct.

6   Q. And there is a relationship between atrophy and  
7           strength of the muscles?

8   A. Yes.

9   Q. And the reconditioning that is recommended for  
10          people with massive rotator cuff tears and the  
11          surgeries that Mr. Biel had is to try to  
12          increase the strength and the bulk of those  
13          atrophied muscles, is that correct?

14   A. One of the goals, yes.

15   Q. And to increase range of motion?

16   A. Yes.

17   Q. Sometimes it's successful and sometimes it's  
18          not?

19   A. That's correct.

20   Q. And a lot has to do with the age of the patient  
21          and the motivation of the patient?

22   A. I've not been convinced that the age of the  
23          patient is a factor. Motivation is a factor.

24   Q. Well, once again, Doctor, do you recall in your  
25          deposition where you testified that the

1 rehabilitation for an elderly person with  
2 rotator cuff surgery is longer, more extensive  
3 than that of a younger person?

4 A. I would agree. Again, I don't recall that. But  
5 I still believe that today, yes. It's longer  
6 and more extensive,

7 MR. PARIS: Thank you, Doctor.

8 I have no further questions.

9 - - - -

10 FURTHER ORAL EXAMINATION OF DENNIS BROOKS, M.D.

11 BY MR. WANTZ:

12 Q. Doctor, just a brief follow-up.

13 You indicated earlier this evening, and I  
14 think before, that when you examined Mr. Biel he  
15 had approximately 80 percent, four out of five  
16 finding for strength, is that correct?

17 A. Yes.

18 Q. Doctor, at the point when you examined him,  
19 would you expect to a reasonable degree of  
20 medical certainty that that strength would  
21 continue to improve to some degree?

22 A. I don't think so. I think that four out of  
23 five, 80 percent is about all we can expect.

24 MR. WANTZ: Okay. Thank you,

25 Doctor. I have no further questions.

MR. PARIS: One last question.

- - - -

FURTHER ORAL EXAMINATION OF DENNIS BROOKS, M.D.

BY MR. PARIS:

Q. The 80 percent was at the external rotation, is that right?

A. Right.

Q. He also only had 80 percent strength in internal rotation?

A. Yes.

Q. And he had only 60 percent strength in forward flexors?

A. Yes.

Q. And only 60 percent strength in abductors?

A. Yes.

MR. PARIS: Thank you very much,  
Doctor.

MR. WANTZ: Nothing further.  
Thank you, Doctor.

THE WITNESS: You're welcome.

VIDEOTAPE OPERATOR: Doctor, you  
can view this videotape to prove its  
accuracy and you can also waive that.

THE WITNESS: I'll waive that.

VIDEOTAPE OPERATOR: Will counsel

1 waive all filing requirements?

2 MR. WANTZ: Yes.

3 MR. PARIS: Yes.

4 VIDEOTAPE OPERATOR: We're off the  
5 record.

6 (Signature waived.)

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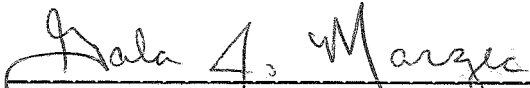
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C E R T I F I C A T E

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

I, Gala J. Marzec, 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 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 23rd day of March 19 92 A.D.

  
Gala J. Marzec, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires September 25, 1995

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FURTHER ORAL EXAMINATION  
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