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A R B I T R A T I O N

JENNIFER STILSON, )  
 )  
 Plaintiff, )  
 )  
 vs . )  
 )  
 STATE FARM MUTUAL )  
 AUTOMOBILE INSURANCE )  
 COMPANY , )  
 )  
 Defendant, )

- - - -

Deposition of DR. DENNIS B. BROOKS,  
taken on direct examination before William J. Mahan,  
Registered Professional Reporter and Notary Public  
within and for the State of Ohio, at 26900 Cedar  
Road, Beachwood, Ohio, at 4:40 p.m., Monday, April  
13, 1992, pursuant to notice and/or stipulations  
of counsel, by the Defendant in this case.

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**APPEARANCES:**

**David Paris, Esq.  
Nurenberg, Plevin, Heller & McCarthy  
Standard Building  
Cleveland, Ohio 44113**

**on behalf of the Plaintiff;**

**Gerald Jeppe, Esq.  
Meyers, Hentemann, Schneider & Rea  
21st Floor  
Superior Building  
Cleveland, Ohio 44114**

**on behalf of the Defendant.**

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**ALSO PRESENT:**

**Timothy Paleho, Videotape Technician.**

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1 DR. DENNIS B. BROOKS, called by  
2 **the** Defendant for the purpose of direct  
3 examination, as provided by **the** Ohio  
4 Rules of Civil Procedure, having been  
5 first duly sworn as hereinafter certified,  
6 deposed and said **as** follows:

7 DIRECT EXAMINATION OF DR. DENNIS B. BROOKS

8 BY MR. JEPPE:

9 MR. JEPPE: Mr. Paris,  
10 on behalf of Jennifer Stilson, and I  
11 believe Mrs. Stilson's husband, do you  
12 have any objection to **the** taking of Dr.  
13 Brooks' videotape deposition at **this time**  
14 or in this manner for **the** purposes of  
15 being used at the underinsured  
16 motorists' arbitration scheduled for this  
17 week?

18 MR. PARIS: No, I don't.

19 Q Would **you please** state your name for **the** record?

20 A Dennis Bruce Brooks .

21 Q **And**, Dr. Brooks, briefly, would you give **the**  
22 Panel the benefit of your educational background?

23 A **Yes**, I graduated from Harvard University in 1959.  
24 I **then** attended Western Reserve University  
25 School of Medicine and graduated from there in

1 1963.

2 I spent a year as a rotating intern  
3 at the Mt. Sinai Hospital of Cleveland and  
4 spent a year as a general surgery resident  
5 also at Mt. Sinai.

6 My third and fourth years as a course  
7 graduate trainee was an orthopedic surgery  
8 resident at Mt. Sinai. And during my fifth  
9 year I was a research associate with the  
10 biomechanics laboratory of Case Western Reserve  
11 University.

12 My sixth and final year of postgraduate  
13 training was in childrens' orthopedics at  
14 University Medical Center of Indiana.

15 Q Doctor, what is your business address?

16 A 26900 Cedar Road, Beachwood.

17 Q And you are a licensed orthopedic surgeon in the  
18 State of Ohio?

19 A Yes.

20 Q And when were you licensed to practice medicine?

21 A 1963,

22 Q When did you take up the actual practice of  
23 medicine in the State of Ohio?

24 A After I returned from the service in 1971.

25 Q From 1971 to the present time, have you then been

1 continuously engaged in the active practice of  
2 orthopedic surgery?

3 A Yes .

4 Q And are you presently engaged in the practice  
5 of orthopedic surgery?

6 A Yes.

7 Q Do you see patients on a daily basis?

8 A Yes .

9 Q And you still conduct surgery?

10 A Yes.

11 Q Doctor, what hospitals are you affiliated with?

12 A Mt. Sinai Medical Center of Cleveland.

13 Q And, doctor, have you at any time during your  
14 professional life had an opportunity to teach  
15 orthopedic surgery or a part thereof to medical  
16 students at a university or in a hospital?

17 A Yes.

18 Q Would you please outline that for the Panel, if  
19 you would.

20 A Certainly. I am presently an assistant clinical  
21 professor of orthopedic surgery at Case Western  
22 Reserve University.

23 I'm active in the orthopedic residency  
24 teaching program at Mt. Sinai Medical Center.

25 Q Doctor, have you authored any publications ,

1       articles or chapters in books, et cetera, with  
2       respect to your specialty?

3       **A.**    Yes.

4       **Q.**    Can you briefly just describe or relate some for  
5       the panel, if you would, please?

6       **A.**    Yes. I've written articles that have dealt with  
7       bone grafting in orthopedic surgery; the  
8       biomechanics of knee injuries; several articles  
9       that dealt with the biomechanics of internal  
10      fixation devices, and an article on congenital  
11      dislocation of the knee.

12      **Q.**    Doctor, are you associated or are you a member  
13      of any professional organizations or associations?

14      **A.**    Yes.

15      **Q.**    Would you briefly describe some of them or relate  
16      some of them to the Panel?

17      **A.**    Certainly. I'm a member of the American  
18      Academy of Orthopedic Surgeons; the International  
19      Society of Orthopedics and Traumatology; the  
20      Orthopedic Research Society, and the Clinical  
21      Orthopedic Society.

22      **Q.**    Now, doctor, there is a term that is used both  
23      in medicine and in law, it's called Board  
24      certified or Board certification, if you would.  
25      First of all, doctor, are you Board certified?

1       **A**     **Yes.**

2       **Q**     Are **you** Board certified in orthopedic surgery?

3       **A**     **Yea.**

4       **Q**     Would you briefly, then, relate for the Panel  
5               what **it** takes to become Board certified and how  
6               long you have been Board certified?

7       **A**     Briefly, **it** takes a lot of hard **work**. I've  
8               been Board certified **since** 1971. In order to  
9               do that, I had to pass the requirements of **the**  
10              Board which included **a** prescribed period of  
11              postgraduate training,

12                       I had to successfully complete an  
13                      examination, **both** oral and written,

14      **Q**     Doctor, have you had any connections with the  
15               Board of Examiners **since** you passed **the** Board  
16               certification back in -- what year was that  
17               again, sir?

18      **A**     1971,

19      **Q**     19711

20      **A**     **Yes, I** have.

21      **Q**     Can you briefly outline for **the** Panel what other  
22               connections you have, had **with the** Board of  
23               Examiners?

24      **A**     **Yes, I** have been an examiner for the American  
25               Board of Orthopedic Surgery **for** the **past** six

1       **years .**

2       **Q     Now, doctor, at my request, did you have an**  
3       **opportunity to examine a Jennifer Stilson?**

4       **A     Yes .**

5       **Q     All right. If you would, doctor, please, relate**  
6       **to the Panel when you examined Jennifer Stilson**  
7       **and where that examination took place.**

8       **A     I examined Jennifer Stilson on December 30, 1991**  
9       **here in my offices.**

10      **Q     Doctor, did you take a history of Jennifer**  
11      **Stilson?**

12      **A     Yes .**

13      **e     Did you take the history yourself?**

14      **A     Yes .**

15      **Q     Would you please relate to the Panel, if you**  
16      **would, the history that was given to you by**  
17      **Jennifer Stilson on the date of the examination?**

18      **A     Certainly. She told me that she had been**  
19      **injured on December 21st, 1989 after midnight.**

20           **She told me, as she put it, that she**  
21      **was asleep when the accident happened and thus**  
22      **did not recall the accident.**

23           **She had been riding as a front middle**  
24      **seat passenger, When she awoke she was on what**  
25      **she referred to as a bed board on the street.**



1           She indicated that she remembered what  
2       **she** called bits and **pieces**. In essence she  
3       **indicated** to me that she was taken to Parma  
4       Community Hospital where radiographs were  
5       obtained .

6           She **was then** transferred to Metropolitan  
7       General Hospital, She was admitted under **the**  
8       care **of** Dr. Wilbur who treated her for what  
9       **she** referred to **as a** burst fracture of one of  
10      my **lumbar** vertebra, five broken ribs, and  
11      scrapes and cuts,

12          **She** told me that **the** day following her  
13      admission she underwent surgery at which time  
14      Dr, Wilbur **did**, as she indicated, **a** fused  
15      vertebra with **scrapings** fram my right hip.

16          Before surgery **she** was given **what she**  
17      was told, **a** choice of a body cast or surgery.  
18      **With the body cast, it** might **set** but it might  
19      be crooked.

20          **The** bone fragments **would do damage** to my  
21      spinal cord. These were factors **that** were  
22      explained to her by her treating **physicians**.

23          She told me that at the time of her  
24      discharge from Metropolitan General Hospital  
25      she was wearing a brace which extended from the

1       cervical thoracic junction to the sacrum  
2       posteriorly, and from the sternum to the iliac  
3       crest anteriorly.

4               She was required to wear this brace  
5       when she was up.

6               She told me that she could remove it  
7       when she was lying down,

8               She told me following her discharge  
9       she continued under Dr. Wilbur's care and  
10      was reexamined by him at varying intervals  
11      from one month to six months,

12              She was last examined by Dr. Wilbur  
13      approximately 11 months before I saw her.  
14      Dr. Wilbur had examined her in January of  
15      1991. In December of 1991, she had told me  
16      that she was to be reexamined by Dr. Wilbur  
17      in January of 1992.

18              I then inquired as to her complaints  
19      at the time I saw her in December of 1991 and  
20      she indicated that she had, as she put it,  
21      pain in my lower back, right in my lower back.  
22      She told me that her pain was present as she  
23      indicated usually everyday, it's like a headache, d L1  
24      pain to real hard pain.

25              She indicated she would become more

1 symptomatic when she stood for 15 to 20  
2 minutes or when she sat for 25 minutes.

3 Activities such as cleaning house,  
4 mopping floors and vacuuming also increased  
5 her symptoms.

6 Her pain was decreased by aspirin or  
7 laying down. She generally took Bufferin but  
8 because she was three months pregnant when I  
9 saw her in December of 1991, she was taking  
10 Tylenol.

11 She had no associated leg radiation.

12 She also indicated that she was symptomatic  
13 with respect to her ribs, as she put it,  
14 occasionally, if my ribs are hit the wrong  
15 way or I'm laying on a hard surface. Her rib  
16 pain, as she indicated, was momentary.

17 I inquired into her past medical history  
18 and she indicated that she had no symptoms  
19 referable to her chest or low back before the  
20 accident. She had not been involved in any  
21 new accidents.

22 Lastly, she told me that at the time  
23 of this accident she was employed as a teacher  
24 and was in fact on Christmas vacation when the  
25 accident happened in 1989.

1                   Following the accident **she** missed a month  
2                   from **work** in addition to the **time** she had been  
3                   **off for** vacation. And that concluded **the** history.

4   **P**     Doctor, let's, just taking the history, going  
5           back a little ways, I have **a** couple of questions  
6           that I would like to ask you about Jennifer  
7           Stilaon.

8                   When **you** saw **her** back on December 30,  
9                   1991, what was her major complaint at that time?

10 **A**     **Her** major complaint was that of back pain.

11 **Q**     **Now**, doctor, with respect to **her** activities,  
12           you stated, I believe, that you said such  
13           activities, such **as** cleaning **the** house, mopping  
14           floors and vacuuming, increased her symptoms?

15 **A**     **Yes.**

16 **Q**     Did **she** state to you that she could not do these  
17           things **at** all or that she could **do** those things  
18           and they increased **her** symptoms?

19 **A**     **When I asked** her what were the activities that  
20           increased her symptoms, she told **me** those were  
21           **the** activities that increased her symptoms.  
22           She did not give me any indication that she  
23           could not **do** those things,

24 **Q**     Did **she** give **you** **an** indication that **she** could  
25           not perform her duties **at** work as a fifth grade

1           **school teacher?**

2   **A**    **No, she did not.**

3   **Q**    **Now, doctor, other than the pain, which I think**  
4           **she described as dull to -- what was that**  
5           **again, sir?**

6   **A**    **A real hard pain.**

7   **Q**    **A dull to a real hard pain. Other than that**  
8           **complaint, did she have any complaints at all**  
9           **about her -- or symptoms at all with respect**  
10          **to her condition?**

11   **A**    **No.**

12   **Q**    **All right. Now, following the taking of the**  
13          **history, doctor, what was done at that time?**

14   **A**    **I then performed a physical examination.**

15   **Q**    **Would you please relate for the Panel, if you**  
16          **would, doctor, the areas of the body that**  
17          **you examined and your findings upon examination.**

18   **A**    **Certainly. I examined two areas about which**  
19          **she3 had complaints, her chest and her spine.**

20               **The examination of her chest revealed**  
21               **there was no tenderness with palpation of her**  
22               **ribs.**

23               Chest expansion was **symmetrical.**

24               When I examined her lumbar spine I  
25               **noted that she had a well healed scar extending**

1 from approximately **the level** of T-11 to the  
2 sacrum,

3 **There was** an increase in her lumbar  
4 lordosis.

5 There was no evidence of spasm.

6 There was no tenderness with palpation  
7 of the **scar**, the lumbosacral spine, sacroiliac  
8 joints or sciatic notches.

9 Forward flexion could **be** accomplished  
10 such that her fingertips reached her ankles.

11 Extension and lateral bending were  
12 performed normally.

13 **Heel** walking and **toe** walking were performed  
14 without evidence **of** weakness **or** pain.

15 Burns' test was negative. After she  
16 performed Burns' test, I asked **her** to repeat  
17 forward flexion again and she did **so** such that  
18 her fingertips again reached her ankles.

19 **Q** All right. Doctor, let's **stop there just** for  
20 **a** second. Going back and reviewing just that  
21 portion **of the** examination relating **to the** lumbar  
22 spine thus far, with respect **to** your physical  
23 examination, have **you** found at this point **any**  
24 abnormal findings with respect **to** Jennifer Stilson?

25 **A** Yes.

1 Q Would you explain to the Panel what abnormal  
2 findings you had found as of that point?

3 R I found a long scar on her back,

4 I noted that she had an increase in her  
5 lumbar lordosis, And if the ability to touch  
6 the floor or to touch your toes is considered  
7 normal, then the third abnormal finding was  
8 inability to do so. Reaching as far as her  
9 ankles was all that she could do,

10 Q Now, doctor, the significance of the -- I believe  
11 you said the lumbar lordosis, the increase in the  
12 lumbar lordosis?

13 A It was significant in that knowing what I knew  
14 about Jennifer and the fact that she had had  
15 a fusion, I would have actually have expected  
16 a decrease in her lumbar lordosis. So the fact  
17 that her lumbar lordosis was increased beyond  
18 the average was significant, An increase in  
19 lumbar lordosis can be a cause of low back  
20 pain.

21 Q Could you find anything on physical examination  
22 that would have caused an increase in the lumbar  
23 lordosis?

24 A You don't generally find something on physical  
25 examination to explain why somebody has an

1           increase in lumbar lordosis.

2       **Q**     Can you explain to **the** Panel why there **was** an  
3           **increase** in the lumbar lordosis?

4       **A**     Can I explain it to the Panel?

5       **Q**     Yes .

6       **A**     She **was** **three** months pregnant and **there is** an  
7           **increase in** lumbar **lordosis** that accompanies  
8           pregnancy **so** that **is** one explanation.

9       **Q**     Now, **also**, doctor, you stated that **as** far **as** the  
10          touching of **the** floor with one's fingers, **is** that  
11          correct?

12      **A**     I **don't** understand the question,

13      **Q**     There **is** a bending exercise that Jennifer  
14          Stilson performed?

15      **A**     Yes ,

16      **Q**     Was she able to touch **the** floor with her fingers?

17      **A**     No .

18      **Q**     How far **was** she able to bend **over**?

19      **A**     She **could** reach her ankles.

20      **Q**     **Is this** an abnormal finding?

21      **A**     Yes.

22      **Q**     In what respect, **air**, would you expect a normal  
23          person **to** be able to reach the floor?

24      **A**     Well, as I said a minute ago, if you **consider**  
25          the ability to touch **the** floor **to** be normal, or



1 to touch your toea to be normal, then what she  
2 did was slightly abnormal,

3 Q Any other abnormal findings besides that, sir?

4 A Not at that point,

5 Q All right. Did you conduct a further examination  
6 of her low back?

7 A Yea.

8 Q Would you please describe for the Panel, if you  
9 would, then, your further examination?

10 A I noted that sitting straight leg raising  
11 could be accomplished to the horizontal bilaterally

12 Supine straight leg raising was restricted  
13 to 70 degrees bilaterally and accompanied by  
14 hamstring tightness.

15 Lasegue's maneuver increased the hamstring  
16 tightness ,

17 With contralateral hip and knee flexion,  
18 supine straight leg raising could be accomplished  
19 to 90 degrees bilaterally.

20 The neurological examination revealed  
21 symmetrically hyperactive deep tendon reflexes ,  
22 negative Babinski signs and normal muscle  
23 strength ,

24 There was disesthesia with pinprick  
25 testing along the medial aspect of the left first

metatarsal. Sensation **was** normal in all other areas.

The **deep** tendon reflexes in **the upper** extremities also were hyperactive.

Q All right. And, doctor, let's stop here for a second.

If **you** would, please, would you explain to the Panel anything of significance in this portion **of** the x-rays that would have a bearing on Jennifer **Stilson's** injury and recovery?

A This portion of the examination?

Q Yes.

A When I put together the **various** straight leg raising tests, **the** major factor in Jennifer's apparent limitation of supine straight leg raising, when she **is** lying flat, was hamstring tightness. And the way I was **able** to demonstrate that to myself was, **first** of **all**, when **she** was in the sitting position with her **legs** hanging over **the** table, **she** was able to perform sitting straight **leg** raising to the horizontal,

She has hip flexion at that time and actually has **knee** flexion on the opposite side.

Also when she was lying down, by flexing **the** contralateral **or** **the** opposite hip and **knee**,

1       **she** was able to perform straight leg raising  
2       on **each side** to 90 degrees.

3               Well, when you take somebody who has  
4       contralateral hip and knee flexion, that is  
5       comparable to having them sitting up with one  
6       hip flexed and one hip -- I'm sorry, one knee  
7       bent, with one hip flexed and the same knee  
8       bent. So in essence when her hamstrings were  
9       relaxed, okay, she had normal straight leg  
10      raising, That's important,

11              Her deep tendon reflexes were hyperactive ,  
12      There are a variety of Causes of hyperreflexia,

13              In an injury such as Jennifer had, one  
14      of the things that was important to determine  
15      whether the injury caused the hyperreflexia,  
16      but by finding that she had hyperactive reflexes  
17      in her upper extremities, which are innervated  
18      by an area of her spine far away from the  
19      injured area in her low back, I was able to  
20      determine that the increased reflexes or  
21      the hyperreflexia was a normal condition for her.

22              The other finding was that of disesthesia.  
23      In essence --

24      Q     Excuse me,

25      A     Well, I was going to explain that,

1 Q What is disesthesia?

2 A Well, I'm just trying to figure out-a good way  
3 to explain it if you will give me a chance,

4 It's a funny feeling, Okay? In other  
5 words, Jennifer didn't have total disesthesia,  
6 but I used that word because whatever her exact  
7 response was, it was different, it was an  
8 abnormal feeling, okay, and that abnormal  
9 feeling was located along the medial aspect of  
10 the first metatarsal on the left which is the  
11 area that is innervated by the L-4 nerve root  
12 which certainly waa a nerve root that was  
13 irritated in this accident, so the finding of  
14 abnormal sensation, or disesthesia, along her  
15 left great toe, was an abnormal finding. It  
16 wouldn't have any functional significance but  
17 it was a finding,

18 Q All right, Did this conclude your examination  
19 of Jennifer Stilson?

20 A Yes.

21 Q Now, doctor, did you also have record8 or did you  
22 also review certain records with regard to  
23 Jennifer Stilson?

24 A Yes. I would like to point out that I was unable  
25 to obtain any radiographs at that time because

1 she was three months pregnant,

2 Q All right, so at the time of your examination,  
3 no x-rays were taken?

4 A Correct.

5 Q Did you have a chance to review other x-rays,  
6 though, that were taken before she was pregnant?

7 A Ultimately, yes.

8 Q Can you outline for the Panel, please, the records  
9 of Jennifer Stilson that you did review?

10 A Yes. I reviewed records from Parma Community  
11 Hospital for December 22nd, 1989; records from  
12 MetroHealth Medical Center for the period  
13 between December 22nd, 1989 and December 30th,  
14 1989.

15 I reviewed Dr. Wilbur's letter of  
16 November 5th, 1990.

17 I reviewed radiographs which were  
18 obtained on January 25th, 1991; radiographs  
19 that were obtained on July 13, 1990 and on  
20 April 6th, 1990; and I have reviewed an office  
21 record from Dr. Wilbur which was prepared on  
22 January 25th, 1991 as well as the radiologist's  
23 report of the radiographs that were obtained  
24 on January 25th, 1991.

25 Q All right. Doctor, without going through all of

the records individually that you have reviewed, starting with the Parma Community Hospital and going up through the hospitalization and Dr. Wilbur's treatment, would you please summarize for the Panel, if you would, the significant portions of those records that you found to be of value with respect to the injury and the treatment and recovery that Jennifer has made?

A Certainly, The important things that I gleaned from the Parma Community General Hospital and the MetroHealth records were the indication that she had sustained a fracture of L-3 which was referred to as an atypical burst fracture; that she had sustained fractures of the left seventh, eighth, ninth and tenth ribs as well as the right first rib; a laceration of her elbow.

Also of importance was the fact that she underwent what was referred to as a posterior spinal fusion from L-2 to L-4, using Cotrell-Dubosset instrumentation; and L-3 laminectomy with exploration of the right L-3 nerve root and right autogenous iliac bone graft.

When she was discharged from the hospital she was wearing a TLSO which means a thoracal lumbar sacral orthosis. It's a brace that covers

**the** thoracic lumbar and **sacrum**. That **is** what **was** important in **those** records,

Dr. Wilbur's record, or **his** letter rather of November 5<sup>th</sup>, 1990, indicates that when **he** examined Mrs. Stilson eight months after **the** accident, **she** had **no** significant leg pain, no **disesthesias** and no neurologic complaints.

8 Q At **this** point in time, then, doctor, what **is**  
9 the significance of these findings with respect  
10 to Dr. Wilbur's letter?

11 A **She** has **made** a very good recovery eight months  
12 after **the** accident.

13 8 Now, you read I believe, a note **front** Dr. Wilbur  
14 dated 1-25-91 and have **you** had **a** chance to  
15 review the x-rays and x-ray reports **that** were  
16 taken on 1-25-91?

17 A **Yes.**

18 Q With respect to the x-rays -- first of **all**, with  
19 respect to Dr. Wilbur's report, at that time  
20 **is** there anything of significance **in** **that** record  
21 **that** would indicate how **her** recovery was  
22 progressing?

23 A **Yes.**

24 Q Would you please explain that for **the** Panel?

25 A **Yes**, On January 25<sup>th</sup>, 1991, which was **13 months**

1       after the accident, Dr. Wilbur's records indicates  
2       that she was, and I quote, completely asymptomatic,  
3       working on a full time basis and neurologically  
4       intact. So 13 months after the accident, she  
5       had made an excellent recovery.

6       Q     The fact that she was what Dr. Wilbur calls  
7       completely asymptomatic, what does that mean to  
8       you, doctor?

9                       MR. PARIS:

                              Objection.

10      A     It means to me that she is without symptoms, that  
11      she has no symptoms. In fact, she was completely  
12      without symptoms.

13      Q     You had a chance to compare the x-rays, I believe,  
14      of June the 6th of 1990, July 13 of 1990 and  
15      January 25th of 1991, is that correct, sir?

16      A     Yes, sir.

17      Q     Will you please, if you would, outline for the  
18      jury your findings with respect to those x-rays,  
19      the comparisons that were made and your  
20      findings there, sir?

21      A     Certainly. I reviewed the most recent radiographs,  
22      those taken January 25th of 1991, about 11 months  
23      before I saw her, and then we compared them  
24      with previous radiographs. The comparison  
25      demonstrated that there had been no change in the



1 configuration or the alignment of the lumbar  
2 spine, its shape, if you will, in the interval  
3 between April 6th, 1990 which was five months  
4 after the accident, and January 25th, 1991,  
5 13 months after the accident. There had been  
6 healing of the L-3, the third lumbar vertebral  
7 body fracture as well as consolidation of the  
8 bone graft. So the comparison revealed that the  
9 fracture had healed, the bone graft had  
10 healed and the fusion was stable.

11 Q Did this appear to be a good recovery from  
12 these injuries?

13 A Absolutely.

14 Q Now, doctor, with respect to your examination of  
15 Jennifer Stilson, I realize that you reviewed  
16 some of these records before you examined her  
17 and some of these records after you examined her.  
18 Can you tell the Panel, if you would, what  
19 degree of limitations or restrictions and  
20 activities you would expect from Jennifer Stilson  
21 at this time?

22 A As of my examination in December of 1991?

23 Q That's correct, at the time you saw her.

24 A I think it would be difficult for her to bend over  
25 and touch the floor with her knees straight. She

1       **definitely has a hamstring** tightness.

2               I think that she would have **no** difficulty  
3 bending if she bent with her knees **as** she  
4 attempted to bend or to lift.

5               I think that she would have symptoms of  
6 mechanical back pain, generalized aching with  
7 repetitive activities that **is to** say, if she  
8 was engaged in an activity where **she was**  
9 required to repetitively bend over, I think  
10 she would have **some** mechanical low **back** symptoms.  
11 On the **other** hand, just barely bending over  
12 from time **to** time with her knees bent shouldn't  
13 bother her.

14              Other limitations -- well, there are  
15 certainly **some** sports activities that **would not**  
16 **be** advisable for her to participate in, only  
17 because the result of a new injury would have  
18 greater consequences than **if** she had **not** had  
19 her back fused, for **example**, I think there was  
20 **mention** somewhere about snow **skiing**. I think  
21 **it** would be foolhardy, if that **is** an appropriate  
22 word to use, to even participate in **that** kind  
23 of sport.

24       Q       Would that be because of her inability to **do**  
25 **so or because** of what possibly could happen **if**

1       it was reinjured?

2       **A**     It would not be because of her inability to do  
3       so. She ought to be able to ski, but an injury  
4       might have more devastating consequences than  
5       if she had not had a spinal fusion.

6       **Q**     What about with respect to range of motion of the  
7       back, can you give the Panel an idea as to the  
8       restrictions or limitations with respect to range  
9       of motion as of the data of your examination?

10      **A**     Well, as I have tried to point out, she really  
11      had very little limitation of motion.

12               She could get her fingertips as far as  
13      her ankles. She couldn't touch her toes.  
14      She couldn't touch the floor.

15               Now, I can't think of any activities that  
16      I do on a daily basis where I have to bend over  
17      and touch the floor with my knees straight, so  
18      although she had some limitation, I can't perceive  
19      of something that would be of great functional  
20      consequence.

21      **Q**     Well, having examined her and having examined her  
22      records and the x-rays, would she be able to  
23      perform her normal daily functions, let's say,  
24      at home?

25      **A**     As a housewife --

1 Q As a housewife and mother?

2 A And soon to be mother, yes.

3 Q She would be able to perform those?

4 a Yes.

5 Q You're aware, of course, that she is a fifth  
6 grade, she was a fifth grade Schoolteacher.

7 Would she be able to perform her functions as  
8 a fifth grade schoolteacher?

9 A Well, it has been a long time since I've been  
10 in the fifth grade, but as I remember the  
11 duties of a teacher, yes, I think she could get  
12 around and communicate with the class. You  
13 know, she might have some low back pain if she  
14 stood in one place for 45 minutes or so, but  
15 there are things that you can do while you're  
16 on your feet for a period of time like that to  
17 decrease those kinds of problems.

18 Q Well, doctor, is there anything that you can  
19 think of with respect to her condition, anything  
20 that she could do to improve the condition that  
21 she is presently in or was in at the time you  
22 saw her, things that could be done to help her?

23 A Yes.

24 Q Further?

25 A Yes.

1 Q Would you outline that for the Court, if you  
2 would?

3 A Pes. To deliver her child, and I'm not saying that  
4 facetiously, but with pregnancy there is an  
5 increase in your lumbar lordosis. There is also  
6 a laxity of certain supporting structures around  
7 the pelvis, so delivering of the child will  
8 return those things to her pre-pregnant status.  
9 After her delivery she is going to have to work  
10 again on rehabilitation which will include  
11 strengthening her abdominal muscles.

12 And certainly as her examination  
13 demonstrated, she has tight hamstrings. And  
14 by working on a program of hamstring stretching,  
15 that will also improve her condition.

16 Q Now, I think this goes without saying, but  
17 tight hamstrings were not caused by this  
18 accident, is that correct?

19 A That's correct, they were not,

20 Q It's just something that is natural with her,  
21 is that in her makeup or what?

22 A Some people have tight hamstrings, Whether they  
23 are born with it, or whether they develop it,  
24 you know, it depends, Women often have tighter  
25 hamstrings than men. But the tight hamstrings

1           were **not caused by** the accident.

2       **Q**   All right, Doctor, then with respect again to you,  
3           at the time that you examined Jennifer Stilson  
4           back in December of 1991, and again with respect  
5           to the records **that** you have reviewed with this  
6           individual, for this individual, at the time  
7           you saw her, would **you** just again outline for  
8           the panel your impression **as** to her recovery from  
9           this injury?

10      **A.**   I think **she** has made an excellent recovery  
11           from the very significant injury that she  
12           sustained ■

13                   MR. JEPPE:

Nothing

14                   further **at** this time,

15                   MR. PARIS:

Off the

16                   record.

17                   MR. PALCHO:

**We are off**

18                   the record.

19                   (Discussion off the record.)

20  
21                   **CROSS-EXAMINATION OF DR. DENNIS B. BROOKS**

22      **BY MR. PARIS:**

23      **Q**    Doctor, good afternoon. I am David Paris,

24      **A.**    Good afternoon, **Mr, Paris.**

25      **Q**    Can we agree, doctor, **that** Jennifer Stilson, **as a**

1       direct and proximate result of this collision  
2       sustained the following injuries which perhaps  
3       you and I can go over together?

4               No, 1, she fractured the spinous process  
5       of the first lumbar vertebra?

6   A     I may have missed that but that is not a  
7       problem.

8   Q     Let's take a look at the initial x-ray films  
9       there from Parma E.R., and the reports that  
10      you reviewed.

11  A     Yes, it says in that report there appears to be  
12      a fracture line extending through the spinous  
13      process of L-1,

14  Q     Okay. She also had a fracture of the spinous  
15      process of L-23

16  A     Yes.

17  Q     She had an anterior compression fracture or an  
18      atypical burst fracture of the third lumbar  
19      vertebra?

20  A     Yes.

21  Q     As well as a fracture of the spinous process of  
22      that vertebra?

23  A     Okay.

24  Q     Did she also have a fracture of the spinous  
25      process of the fourth lumbar vertebra? You will

1           **not** find that in that report.

2   **A**     Okay, I'm not aware that she did.

3   **Q**     All right. Would you take a look at the  
4           Metro records?

5   **A**     Certainly,

6   **Q**     Specifically at the operative note of Dr,  
7           Wilbur, Page 2 of the operative report,

8   **A**     Right, I have just got to find it.

9                   It was noted that the spinous processes  
10           of the L-2, 3 and 4 were avulsed, and **the**  
11           inner-spinous and supraspinous ligaments were  
12           torn. So, yea, she did have an injury to L-2,  
13           L-3 and **the** spinous process of L-2, 3 and 4.

14   **Q**     And L-1 as indicated in the E.R. x-ray?

15   **A**     Right,

16   **Q**     In addition to those fractures she had a  
17           laceration of the right side of her nose and  
18           right lip, are you aware of that from the E.R.  
19           record from Parma?

20   **A**     I would agree to that, Okay.

21   **Q**     And a laceration to her right elbow?

22   **A**     Yes .

23   **Q**     I'm sorry. Left elbow?

24   **A**     I'm aware of the elbow laceration,

25   **Q**     And the laceration to her left leg?



1 A Ye e

2 Q You're also aware that she had a fracture to  
3 her left ribs, seventh rib, the eighth rib and  
4 ninth and tenth rib?

5 A All right,

6 Q I mean, are we in agreement on that?

7 A Yes, we are in agreement.

8 Q We also agree, doctor, that she fractured the  
9 first right rib?

10 A Correct.

11 Q Now, did she also have a small pneumothorax?

12 A I don't know.

13 Q If you'll look at the Metro Hospital records  
14 there should be a radiology report.

15 A It should be in the discharge summary if it is  
16 of any significance.

17 Q Well, here, this might be a little faster,

18 A Was this done before or after surgery? It  
19 certainly says small pneumothorax.

20 Q And probably contused lung?

21 A CT of abdomen 12-22-89.

22 Q Surgery was 12-223

23 A Okay. Something about a possible contused lung,  
24 did you say?

25 Q Probable contused lung. Do you see that there?

1     **A**     I'll find it. No. Let's see.

2     **Q**     Perhaps I can help you.

3     **A**     Surely. Probably contused lung,

4     **Q**     Posteriorly?

5     **A**     There is also probably contused lung posteriorly,  
6     Okay,

7     **Q**     Now, doctor, she also had quite a bit of soft  
8     tissue tearing within the areas of the fractures  
9     from L-1 down to L-4, is that correct?

10    **A**     Soft tissue tearing?

11    **Q**     Yes, rupturing?

12    **A**     Right,

13    **Q**     Now, perhaps you can help us out here, Is  
14    this illustration adequate?

15    **A**     Oh, can I keep this?

16    **Q**     Not on your life?

17    **A**     Yes, this is a very well recognized illustration,

18    **Q**     Okay, Can you focus in on that all right? All  
19    right. Without using a pen --

20    **A**     That's all right. Read what it says on there.

21    **Q**     ALL right. If we can hold this up for everybody,  
22    maybe we can go through some of the, areas  
23    beginning with, in looking at the operative  
24    note I see that they noted there was tearing  
25    of the interspinous and supraspinous ligaments from

1 L-2 to L-4. What **is** that area that **we** are  
2 talking about in those soft tissues?

3 **a** Yes, it **is** marked. Okay,

4 The interspinous ligaments are the --  
5 **is** the ligament that **is** between the two spines  
6 of **the** vertebral body. So here **is** an  
7 interspinous Ligament, There **is** an interspinous  
8 ligament, So it's **all** this **area** in through here.

9 **Q** All right. And if **we** are looking at -- can you  
10 point out L-4, 3, 2 and 1?

11 **A** Certainly, Here **is** 4, 3, 2 and 1,

12 **Q** And these are the spinous processes?

13 **A** These are the spinous processes.

14 **Q** So these are fractured, 1, 2, 3 and 4?

15 **A** Correct.

16 **Q** In addition to those fractures, **we** have --

17 **A** Wait, Was it spinous or transverse process?

18 **Q** Spinous.

19 **A** Spinous. Okay.

20 **Q** Okay, So **we** have **those** fractured.

21 We have tearing of the --

22 **A** Ligaments between **them**.

23 **Q** The interspinous ligaments?

24 **A** Right.

25 **Q** And **we** have tearing of the supraspinous ligament

1       which ~~is~~ where?

2       A     Well, hare ~~it says~~ supraspinous ligament and  
3       the supraspinous ligament ~~is the~~ ligament that  
4       is posterior to the interspinous ligament and  
5       sort of connects all these structures together.

6       Q     All right. As a matter of fact, doctor, in  
7       your review of the operative note, did you  
8       find that the spinous processes were actually  
9       free floating?

10      A     I don't recall that terminology. But I recall --  
11      wait a minute. I think I left it out here.

12      Q     Page 2 of the operative note.

13      A     There are actually two operative notes. Dr.  
14      Wilbur's operative note?

15      Q     Yes.

16      A     Okay. I just have to find that again, Let me  
17      borrow your copy for a minute.

18      Q     Yes, that will be easier.

19      A     That ~~is what it~~ says. It was noted that the  
20      processes were essentially free floating.

21      Q     Now, how did the-- well, let me just keep this  
22      out here.

23      A     Okay .

24      Q     How do you get the spinous processes to be  
25      free floating within the confines of that space?

1 A Wall, I think, as you have asked and as the  
2 operative note indicated, if she has got  
3 fractures of 4, 3, 2 and 1, and if they are  
4 fractured in through here, and if the --  
5 there is tearing of the ligaments that connect  
6 them together, then they are all separate, so  
7 they would be, quote, free floating, yes.

8 Q Apparently she also had a rupture of the  
9 ligamentum flavum at the L-2, 3 junction, are  
10 you aware of that?

11 A I recall reading that, yes,

12 Q And on the illustration, to the right of that  
13 side view --

14 A Correct.

15 Q -- can you show us where the ligamentum flavum  
16 is and what the purpose of that is? Can you  
17 focus in on that all right?

18 A Okay. Here is 5, 4, 3. They have removed  
19 posterior elements but it is the same structure.  
20 The ligamentum flavum is another ligament that  
21 extends from one level to the other, I suspect  
22 that it gives some stability to the spine,

23 Q And that actually covers -- that is posterior  
24 to the posterior longitudinal ligament?

25 A Yes, The ligamentum flavum is posterior to the --

1 the posterior longitudinal ligament is also  
2 posterior to the dura. It's a thing that sits  
3 -- here it is free in the inner lamina area  
4 but it...sitsunderneath the lamina right here,

5 Q Actually, I think on the next page we might  
6 have a better view. I just remembered that,

7 A There it is. So this is anterior, This is  
8 way posterior, These are the spinous processes  
9 that we were talking about and here is the  
10 yellow ligament or the ligamentum flavum.

11 Q All right. So that was ruptured at that L-3,  
12 4 -- L-2, 3 juncture?

13 A Okay .

14 Q Okay, Thank you, doctor,

15 A You're welcome.

16 Q In addition to that she had an operative  
17 procedure which resulted in approximately a  
18 nine inch scar on her back.

19 A I didn't measure it. It extended from the  
20 lower part of her thoracic spine.

21 Q The T-11 or 12?

22 R T-11, right, to her sacrum, yes,

23 Q Okay. And also she had disesthesia of the left  
24 right toe?

25 A Correct,

1 Q. -- Probably due to an L-4 nerve root irritation  
2 from this accident?

3 A. Correct.

4 Q. And does that complete all of the injuries that  
5 this woman sustained?

6 A. That I'm aware of,

7 Q. All right. Doctor, would you agree with me  
8 that these injuries were productive of great  
9 pain for Jennifer?

10 A. Yes.

11 Q. And do I understand correctly that she underwent  
12 three distinct operative procedures, one being  
13 the posterior fusion from L-2 to L-4 with the  
14 Cotrell-Dubosset instrumentation performed by  
15 Dr. Wilbur, is that right?

16 A. Before I can answer your question, tell me  
17 the three procedures. and I'll tell you whether --

18 Q. The L-3 laminectomy and the right iliac  
19 harvesting,

20 A. Okay. No, I don't agree that there are three  
21 distinct and separate procedures. They are  
22 all part of the same thing, They were all  
23 performed at the same time and they were all  
24 necessary to achieve the end result.

25 Q. Okay. All right. The laminectomy and the

1 posterior fusion were all part of the same  
2 thing?

3 A. certainly.

4 Q They are not two separate procedures, though?

5 A No.

6 Q Okay. Now,, have you ever performed yourself  
7 the posterior fusion, L-2 through L-4 with the  
8 Cotrell-Dubosset instrumentation?

9 A No.

10 Q Okay. Do you agree that each of these  
11 injuries that we have described were directly  
12 and proximately caused by her car accident of  
13 December 22, 1989?

14 A Yes.

15 Q And would you agree that the medical care and  
16 the surgeries were reasonable and necessary  
17 to treat those injuries?

18 A Yes.

19 Q And in your report dated March 15, 1991, it was your  
20 opinion at that time that the fusion will eliminate  
21 approximately one-third of the normal thoracic  
22 lumbar motion?

23 A Yes.

24 Q And in your expert report dated March 15,  
25 1991, it was your opinion that the fusion would



1       **also result in increased stresses on the**  
2       **unfused levels of her; spine which would**  
3       **manifest itself in recurrent mechanical low**  
4       **back pain?**

5       **A     Yes.**

6       **Q     And when you examined Jennifer on December 30,**  
7       **1991, she told **you** that she had pain in her**  
8       **low back which was present everyday?**

9       **A     Yes.**

10      **Q     That the pain **was** worse when standing longer than**  
11      **15 minutes?**

12      **A     Yes.**

13      **Q     Or sitting for more than **25** minutes?**

14      **A     Yes.**

15      **Q     **She** told you that normal activities such as**  
16      **housecleaning, mopping fkoors and vacuuming**  
17      **increased **the** pain?**

18      **A     That is what she told **me**, yes.**

19      **Q     And during the **physical** examination you performed**  
20      **the **Burns'** test?**

21      **A     Yes.**

22      **Q     And one **of** the purposes of the **Burns'** test is**  
23      **to ferret out those people who are **malingerers**?**

24      **A     Yes.**

25      **Q     And if your **test** was positive on the **Burns'** test,**

that would suggest that there was a great deal of exaggeration by the patient?

A That would suggest that there was exaggeration on the part of the patient, depending upon the positivity of the Burns' test, would be whether it was great or not.

Q Okay. And in this particular case, the Burns' test was not positive?

A Right. You see, some people have a negative Burns' test.

Q Now, going back to the increased stresses that are now put on Jennifer's unfused levels of her spine, would you agree that she is at a higher risk or more susceptible to develop degenerative disk disease at an earlier age than the general population?

A Yes .

Q And, doctor, in your opinion, are the following complaints of pain, which are associated with certain activities and restrictions, reasonable and consistent with the type of injuries Jennifer had, housecleaning, which requires repetitive bending and stooping for extended periods of time?

A Just so I can understand, you're going to give

1        ~~me~~ some activities, ~~these~~ activities cause her  
2        pain and you want to know whether I believe they  
3        are consistent with the injuries and the treatment  
4        that: she has had?

5        E     Right .

6        A     Right? Repetitive housecleaning, or housecleaning  
7        which requires repetitive bending and stooping  
8        over a prolonged period of time, yes.

9        Q     Pushing a vacuum cleaner, around the house?

10      A     No.

11      Q     How about lifting over 10 or 15 pounds?

12      A     Not with proper lifting techniques, it shouldn't  
13      be painful.

14      E     Okay, Lifting and walking with grocery bags?

15      A     It depends upon the number of times she has to  
16      lift, how heavy the grocery bags are and how  
17      far she has to walk. So at one extreme, yes,  
18      it certainly could be painful. On the other  
19      extreme, it wouldn't necessarily be.

20      Q     Sitting in one position for over 20 minutes?

21      K     I wouldn't relate that to her accident.

22      E     Standing in one position for over 20 minutes?

23      A     Twenty minutes is a little bit short, If it was  
24      45 minutes, I would say yes,

25      Q     Yes, you did mention that in your direct examination

1 A Right.

2 Q Participating in a bowling league, on a weekly  
3 basis?

4 A I guess it would depend on her form because as  
5 a good bowler, again, you bend your knees when  
6 you deliver the ball. And if she bends her  
7 knees when she lifts the ball off the rack  
8 it could probably could accomplish that.

9 Q But certainly no snow skiing?

10 A Certainly no snow skiing.

11 Q Yardwork such as raking, weeding, and shoveling  
12 snow?

13 A Again, it depends upon duration, so it is possible.

14 Q Contact: sports are out?

15 a Yes, I wouldn't expect she would play football.

16 Q And she is going to have to take special care  
17 as it relates to lifting and bathing her newborn  
18 child, newborn as long as the baby still has to  
19 be carried around over the next couple of years,  
20 is that right?

21 A She is going to have to be careful how she lifts,  
22 Jennifer, yes.

23 e Yes.

24 A Right.

25 Q And how she puts the baby in the tub?

1 A Right,

2 Q And how she takes the baby out of the tub?

3 A Right.

4 Q And how she breast feeds or if she intends to  
5 breast feed the baby?

6 A I don't know how that would -- I don't know how  
7 your back enters into that one. But we can have  
8 a demonstration, I guess,

9 Q You would agree, doctor, that Jennifer will  
10 always have to maintain an exercise regimen with  
11 respect to her injuries?

12 A With respect to the injured part of her, yes.

13 Q Sure, And would you agree, doctor, that the  
14 five months she was required to wear her brace  
15 was reasonable and necessary?

16 A Yes.

17 MR. PARIS: Off the  
18 record ,

19 MR, PALCHO: We are off  
20 the record.

21 (Discussion off the record.)

22 MR. PARIS: Back on the  
23 record.

24 MR. PALCHO: We are back  
25 on the record.

1 MR. PARIS: Thank you,  
2 doctor, I don't have anything further.  
3

4 REDIRECT EXAMINATION OF DR. DENNIS B. BROOKS

5 BY MR. JEPPE:

6 Q Doctor, I just have three or four more questions.

7 With respect to Jennifer Stilson's  
8 condition at **the** time you saw her back in  
9 December of 1991 --

10 A Yes.

11 Q -- I know that she **was** complaining of pain **or**  
12 some pain in **the** low back at **that** time, is that  
13 correct?

14 A Yes.

15 Q And at **the** time I took Jennifer's deposition,  
16 she was complaining of **almost** continuous pain  
17 in the **low** back. With respect to the injuries  
18 that she did sustain, and from the records  
19 that **you** reviewed and **also** your examination of  
20 **her**, is this consistent, this continuous type  
21 complaint **of** pain **with** **the** type of recovery  
22 that **she** experienced?

2 A No, I **don't** believe that the **continuous nature**  
2 of the pain is consistent with **her** recovery.

2 Q And why is **that**, doctor?

1 A Well, as we noted earlier, she was seen by Dr.  
2 Wilbur approximately 11 months I believe before  
3 I saw her. And she was without pain. She was  
4 asymptomatic.

5 I believe she will have an does have  
6 symptoms of mechanical back pain, but those  
7 are intermittent and variable. They are not  
8 continuous.

9 Q Now, doctor, in your report as referred to by  
10 Mr. Paris, the report dated March 15 of 1991,  
11 at that time you stated, and you were referring  
12 to the fusion will eliminate approximately  
13 one-third of the normal thoracic lumbar  
14 sacral motion. Upon your examination of  
15 Jennifer, back in December of 1991, did you  
16 in fact -- is that what happened, is that in  
17 fact the case that she has one-third limitation  
18 of that motion?

19 A Well, certainly the manner in which I tested  
20 her motion, asking her to bend forward to touch  
21 the floor and she just reached her ankles, that  
22 would not indicate that she has lost a third of  
23 her lumbar motion. So the answer has to be no.

24 Q Now, doctor, also regarding -- off the record  
25 a second.

MR. PALCHO: We are off  
the record.

(Discussion off the record.)

MR. PALCHO: We are on  
the record.

Doctor, you have a right to review  
this tape or you can waiver that right.

THE WITNESS: I waive that  
right,

MR. PALCHO: And will  
counsel waive filing of that tape?

FIR. JEPPE : Yes .

MR. PARIS: Yes .

MR. PALCHO: We are off  
the record.



C E R T I F I C A T E

19

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

3       I, William J. Mahan, a Notary Public within and for  
4   **the State of Ohio**, authorized to administer oaths and to  
5   take and certify depositions, do hereby certify that the  
6   above-named DR, **DENNIS B. BROOKS** was by me, before the  
7   giving of his deposition, first duly sworn to testify  
8   the truth, the whole truth and nothing but **the** truth:  
9   that **the** deposition as above set forth **was** reduced to  
10   writing by me by **means** of stenotypy, and was later  
11   transcribed into typewriting under my direction; that  
12   this is a true record of the testimony given by the  
13   **witness**, and that the reading and signing of the  
14   deposition was expressly waived by the witness and by  
15   stipulation of **counsel**; that said deposition **was** taken  
16   at the aforementioned time, date and place, pursuant to  
17   notice and stipulations of counsel; and that I am not a  
18   relative or **employee** or **attorney** of any of the parties,  
19   or a **relative** or **employee** of such attorney, or  
20   financially interested in this action.

21       IN WITNESS WHEREOF, I have hereunto set my hand  
22   and seal of office, at Cleveland, Ohio, **this** 15<sup>th</sup> day  
23   of April, A.D. 1992.

24       William J. Mahan  
25   William J. Mahan, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires January 19, 1995.