

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

- - - - -

IN THE COURT OF COMMON PLEAS

- - - - -

CHERYL A. GUTCHALL, ET AL.,	)	
	)	
Plaintiffs,	)	
vs .	)	Case No. 201239
	)	Judge Linda Rocker
SANDRA K. SPANGLER,	)	
	)	
Defendant.	)	

- - - - -

DEPOSITION OF DENNIS BRUCE BROOKS, M.D.  
Monday, April 24, 1992

- - - - -

Deposition of DENNIS BRUCE BROOKS, M.D., called by the  
Plaintiffs for examination under the Ohio Rules of Civil  
Procedure, taken before me, the undersigned, Mary Ann  
Valentino, Registered Professional Reporter, a Notary Public  
in and for the State of Ohio, at the offices of Dennis Bruce  
Brooks, M.D., 26900 Cedar Road, Beachwood, Ohio 44122,  
commencing at 4:40 p.m. the day and date above set forth.

- - - - -

SCANNED  
4/4/92

Computer-Aided Transcription by  
**DENNIS A. PARISE & ASSOCIATES**  
223 The Chesterfield  
1801 East 12th Street  
Cleveland, Ohio 44114  
(216) 241-5950

## APPEARANCES :

## On Behalf of the Plaintiffs:

Richard C. Alkire, Esq.

-and-

Ellen McCarthy, Esq.

Nurenberg, Plevin, Heller &amp; McCarthy Co., L.P.A.

1st Floor, Standard Building

Cleveland, Ohio 44113

## On Behalf of the Defendant:

Johanna Sfiscko, Esq.

Kitchen, Deery &amp; Barnhouse

1100 Illuminating Building

Cleveland, Ohio 44113

- - - - -

1 DENNIS BRUCE BROOKS, M.D.  
2 called by the Plaintiff for examination under the Ohio Rules  
3 of Civil Procedure, after being first duly sworn, as  
4 hereinafter certified, was examined and testified as follows:

5 EXAMINATION

6 BY MR. ALKIRE:

7 Q Dr. Brooks, Rick Alkire is my name and I represent the  
8 Gutchalls in respect to an action that they have brought  
9 concerning an automobile accident which took place on January  
10 10, 1989.

11 During the course of my questioning of you this  
12 afternoon, if you don't understand any of my questions,  
13 please let me know so that I can rephrase the question and  
14 make it understandable to you. Do you understand that?

15 A Yes, I understand.

16 Q As you've just done, please answer out loud so the  
17 court reporter can take down your testimony. Do you  
18 understand that?

19 A Yes.

20 Q Lastly, Doctor, if you do answer one of my questions,  
21 I'm going to assume that you understood it and I'm going to  
22 reply on your answer. Do you understand that?

23 A Yes.

24 Q Please state your full name and spell your last name.

25 A Dennis Bruce Brooks.

- 1 Q And where are we today, Dr. Brooks?
- 2 A You didn't give me a chance to finish. You asked me to
- 3 spell my last name.
- 4 Q Go ahead.
- 5 A B-r-o-o-k-s.
- 6 Q Where are we today?
- 7 A We're in my office.
- 8 Q Where is that located?
- 9 A **26900** Cedar Road in Beachwood, Ohio.
- 10 Q Dr. Brooks, we're here on a case called Gutchall. Who
- 11 retained you in respect to this case?
- 12 A Ms. Sfiscko.
- 13 Q You have, therefore, been retained by her personally or
- 14 her law firm, or is it some other entity that's retained you?
- 15 A I don't recall whether the initial letter I got was
- 16 from her or from a member of her law firm. I believe it was
- 17 she, however, who retained me.
- 18 Q All right. And I take it the arrangement is that her
- 19 law firm will reimburse you for any time you spend in
- 20 connection with what you do in this case; is that correct?
- 21 A Not any time. Not for any time. For example --
- 22 Q This time I prepaid.
- 23 A Right.
- 24 Q By the way, did Ms. Sfiscko prepay you for any time?
- 25 A No.

1 Q Now, how much time have you spent in this case prior to  
2 this actual deposition?

3 A I don't know.

4 Q Do you have any materials in your file in front of you  
5 which will enable you to advise the jury in this case how  
6 much time you spent before today?

7 A No.

8 Q What activities have you done before today in  
9 connection with this case?

10 A I've examined Ms. Gutchall. I've reviewed some  
11 records. I've prepared a report and I've read through my  
12 report today.

13 Q And what charge did you make for the services you've  
14 rendered which you've just enumerated, that is, examination,  
15 review of records, preparation of report?

16 A I don't know what my charge was in this case.

17 Q Okay. At one time, at least in November of 1990, your  
18 charge was \$275 per hour, correct, for those activities?

19 A That sounds about right.

20 Q And did your charges change in 1991?

21 A Yes.

22 Q And what were your charges in 1991?

23 A \$300 an hour.

24 Q And have your charges changed in 1992?

25 A Yes.

1 Q And what are your charges in 1992?

2 A \$325 per hour.

3 Q Now, when you accepted the job of looking at records,  
4 examining Ms. Gutchall and preparing a report in 1991, is it  
5 fair for me to assume, Dr. Brooks, that you would be charging  
6 \$300 per hour?

7 A Yes.

8 Q All right. You, of course, are charging Ms. Sfiscko  
9 that amount?

10 A Correct.

11 Q And in this case, you don't know how much time you  
12 spent examining Ms. Gutchall; is that correct?

13 A That's correct.

14 Q And in this case, you have no idea as to how much time  
15 you spent reviewing records; is that correct?

16 A Yes.

17 Q And in this case, you have no idea as to how much time  
18 you spent preparing the report; is that correct?

19 A Yes.

20 Q And the report that you did prepare was dated January  
21 28, 1992; is that correct?

22 A That's correct.

23 MR. ALKIRE: Off the record.

24 (Discussion had off the record.)

25 - - - - -

1                   (Plaintiff's Exhibits 1 and 2  
2                   were marked for identification.)

3                   - - - - -

4   Q       Doctor, do you have your February 28, 1992 report in  
5   front of you?

6   A       Yes.

7   Q       And is the report you have in front of you a copy of  
8   that which I've now marked Plaintiff's Exhibit 1?

9   A       Yes.

10   Q       Thank you, Doctor.

11   A       You're welcome.

12   Q       Now, if, indeed, you accepted the task of examining Ms.  
13   Gutchall, preparing a report and reviewing records in 1992,  
14   is it fair for me to assume, Doctor, that you would be  
15   charging Ms. Sfiscko \$325 per hour?

16   A       Yes.

17   Q       Have you billed her yet in this case?

18   A       I certainly hope so.

19   Q       And so, of course, any billing you've made in  
20   connection with this case, you would have a record of that;  
21   is that correct?

22   A       My office would have a record, that's correct.

23   Q       And how much notice does your office need to produce  
24   that record so that we can comply with any office procedures  
25   you have before your deposition in this case, which will be

1 for trial or before you testify at trial? I just want to  
2 make sure that whatever I ask you to do is reasonable given  
3 your office practice.

4 A And you want to know how much notice I need to produce  
5 a bill of what my charges were for the report in this case?

6 Q Yes, Doctor.

7 A 24 hours.

8 Q Very good. Thank you. Now, how do you keep track of  
9 billing in a case? Is it by the last name of the individual  
10 examined, is it by the attorney or is it some other matter?

11 A The billings are generated based on the last name of  
12 the individual.

13 Q When you say "The last name of the individual," you're  
14 talking about, for instance, in this case, Gutchall?

15 A Correct.

16 Q All right. So there would be a bill in your records  
17 for Gutchall even though the bill would have been sent to Ms.  
18 Sfiscko; is that correct?

19 A There is a bill in the billing system for Gutchall,  
20 that's correct.

21 Q Now, will there be any differentiation between that  
22 bill and the charges you've made for the deposition in  
23 advance of the deposition today?

24 A I don't understand your question.

25 Q Well, I've already paid you \$750 for the opportunity to



1     depose you today.

2     A       Yes.

3     Q       And, of course, that payment was made pursuant to  
4     instructions I received from Ms. Sfiscko, which have been  
5     marked Plaintiff's Exhibit 2. And I take it Exhibit 2 is,  
6     indeed, the arrangement you expected in connection with your  
7     deposition today, correct?

8     A       That's correct.

9     Q       Now, I want to understand if that's going to be mixed  
10    with any accounting your office does.

11    A       Maybe you ought to depose my bookkeeper.

12    Q       I suppose, Doctor, you have some knowledge of that.

13    A       I have some knowledge, yes.

14    Q       Share that with me then.

15    A       I don't know what she is going to do, whether she is  
16    going to have one account that's going to be Ms. Gutchall  
17    with Ms. Sfiscko as the responsible party and whether, when  
18    the check came in for my discovery deposition, that was put  
19    into that account to offset a charge for the deposition or  
20    whether she opened up a new account, I don't know.

21    Q       All right. Now, your bookkeeper is who?

22    A       My bookkeeper's name is Helen Curtz.

23    Q       Would you spell her last name, please?

24    A       C-u-r-t-z.

25    Q       Where does she live?

1 A I don't think that that's germane and I'm not going to  
2 tell you where she lives.

3 Q Okay. Are you authorized to receive service of a  
4 subpoena on her behalf in connection with her activities here  
5 at this business?

6 A Am I authorized to receive subpoenas on her behalf?

7 Q Yes.

8 A I don't know what the law is.

9 Q Does she perform her duties here at the Cedar address  
10 that we're at today?

11 A Yes.

12 Q And does she work regular hours, that is, 9:00 to 5:00  
13 during the week?

14 MS. SFISCKO: What's the point of  
15 this?

16 MR. ALKIRE: Is that an objection?

17 MS. SFISCKO: Well, yes. I would  
18 object because I think he's cooperating and  
19 he's answered the questions that you asked.

20 MR. ALKIRE: I want to make sure we  
21 don't have a problem with subpoenas, Johanna,  
22 when it comes time --

23 MS. SFISCKO: Why do you want a  
24 subpoena?

25 MR. ALKIRE: I want to verify amounts

1 when it comes time for trial testimony.

2 MS. SFISCKO: You can ask me that. I  
3 can get that for you.

4 MR. ALKIRE: Great, as long as that's  
5 the --

6 MS. SFISCKO: What do you want to  
7 know, what account --

8 MR. ALKIRE: I want to know how  
9 much --

10 MS. SFISCKO: -- your \$750 went into?

11 MR. ALKIRE: No. I want to know how  
12 much he paid you.

13 MS. SFISCKO: Here. I will give you  
14 the bill. You should have asked. It will  
15 save time. I don't think we have to be  
16 hostile here today.

17 MR. ALKIRE: We are being precise  
18 like the doctor likes to be.

19 MS. SFISCKO: Here's a copy of my  
20 documents from my file.

21 MR. ALKIRE: Great.

22 MS. SFISCKO: Maybe that will --

23 MR. ALKIRE: Would you generate  
24 another sticker, please?

25 - - - - -

1                   (Plaintiff's Exhibit 3 was  
2                   marked for identification.)

3                   - - - - -

4     Q       Exhibit 3, Doctor, are those your charges, then, for  
5     the services you performed in connection with the Gutchall  
6     matter, at least to Ms. Sfiscko?

7     A       Yes.

8     Q       And what do they total?

9     A       The total amount is \$800.

10    Q       \$650 of which is actual time spent, \$150 of which is  
11    because of a missed appointment when she was pregnant?

12    A       That's correct.

13    Q       Now, given the \$650 dollars, Doctor, does that assist  
14    you in being specific with us on how much time you spent in  
15    connection with writing the report, reviewing records and  
16    examining Ms. Gutchall?

17    A       Yes.

18    Q       And what does that mean?

19    A       That I spent two hours.

20    Q       Thank you, Doctor.

21            Now, in terms of your examination of Ms. Gutchall,  
22    please feel free to refer to your report and explain to me  
23    what your examination consisted of.

24    A       I took a history and I performed a physical  
25    examination. Would you like me to be more specific than

1 that?

2 Q Sure. Let's start with the history. What was the  
3 history that you obtained?

4 A Would you like me to read my report into the record?

5 Q No, not at all, Doctor. Perhaps you could simply point  
6 out to me where in the record you have reported the history  
7 you received from Ms. Gutchall.

8 A Okay. Beginning on page one, paragraph two and  
9 continuing on to page two through and including paragraph  
10 six.

11 Q All right. And then the next paragraph on page two  
12 that begins "Physical examination," I take it that's where  
13 you begin reporting the details of the findings you made  
14 during the course of your physical examination of Ms.  
15 Gutchall?

16 A Yes.

17 Q Is that correct?

18 A That's correct.

19 Q All right. Now, is there anyplace in this report where  
20 you purport to summarize or review the medical records that  
21 you were provided?

22 A Yes.

23 Q And where might that be found?

24 A Page three, second paragraph continuing on to page four  
25 through and including paragraph four.

1 Q And then I take it the final three paragraphs on page  
2 four comprise the opinions you rendered in this report; is  
3 that correct?

4 A The last three paragraphs comprise opinions, that's  
5 correct.

6 Q All right. And have you expressed opinions in any  
7 other document, other than that which has been marked  
8 Plaintiff's Exhibit 1?

9 A No.

10 Q Do you have in your file in front of you the records  
11 you were provided for review?

12 A No.

13 Q What has happened to those records?

14 A They were returned to Ms. Sfiscko.

15 Q And is that your custom and practice in connection with  
16 this type of professional service that you provide?

17 A Yes.

18 Q Now, let me ask you, Doctor, in connection with the  
19 opinion stated in the first paragraph of your opinions, that  
20 would be, then, paragraph five on page four, did you review a  
21 record which showed that Ms. Gutchall was examined in the  
22 employee clinic 48 hours after this accident?

23 A No, I didn't.

24 Q Okay. What is the significance, Doctor, of Ms.  
25 Gutchall receiving medical attention within 48 hours as it

1 relates to the opinions that you expressed on page four?

2 A I think it would have significance with respect to the  
3 opinion that I --

4 (Discussion had off the record.)

5 Q It would have significance, Doctor?

6 A It would have significance, yes.

7 Q What would the significance be?

8 A It would indicate that she had sought medical attention  
9 sooner than the eight days that I gathered from reading the  
10 records.

11 Q And in addition to that, would it have any significance  
12 in respect to your designation of the cervical strain as  
13 mild?

14 A I can't say with certainty, but it might, depending on  
15 what those records showed.

16 Q All right. Would it have any significance in respect  
17 to your gradation of the severity of the injury?

18 A Again, it might.

19 Q And would it be important to you to know that the  
20 individual that did examine her in the employee clinic was a  
21 physician who referred her to Dr. Sanford?

22 A Yes.

23 Q And prior to today, you weren't aware of any such  
24 record; is that correct?

25 A That's correct.

1 Q Now, Doctor, what do you understand to be the details  
2 concerning the mechanics of Ms. Gutchall's injury?

3 A I understand that she was riding as a front seat  
4 passenger in an automobile which was moving when it was  
5 involved in an accident with a second car, that the front end  
6 of the car in which she was riding was damaged, that she was  
7 wearing a combination lap belt and harness and went forward  
8 and backward in her seat.

9 Q Doctor, do you have in mind or recorded anywhere  
10 details concerning the forces on impact?

11 A No.

12 Q Do you have any knowledge concerning the amount of  
13 property damage sustained by either of the vehicles involved  
14 in the collision?

15 A No.

16 Q Do you have any knowledge concerning the speed of  
17 either of the vehicles involved in the incident?

18 A No.

19 Q Is it fair to state, Doctor, that based on what you  
20 learned from Ms. Gutchall, she had a flexion/extension injury  
21 of her cervical spine?

22 A Yes.

23 Q All right. And is it also fair to say, Doctor, that  
24 the degree of injury to that area of her body would be  
25 dependent upon the forces which caused the flexion and



1 extension?

2 A Yes.

3 Q And in order for you to thoroughly and carefully  
4 evaluate the degree of injury due to the collision, it would  
5 be, indeed, helpful for you to understand the forces involved  
6 in the collision?

7 THE WITNESS: Would you repeat the  
8 question, please?

9 (Record read.)

10 A It would be helpful.

11 Q Doctor, it would be helpful especially in a situation  
12 where there is some degree of pre-existing intervertebral  
13 narrowing.

14 A I don't agree with that statement.

15 Q Why don't you agree with that statement?

16 A Because the statement implies that the only time that  
17 it's helpful is when somebody has a pre-existing problem.

18 Q In a situation where there is a pre-existing problem,  
19 it is important for **you**, in rendering a thorough and careful  
20 opinion about causation of injuries due to a collision, to  
21 understand the forces engendered during the collision; is  
22 that correct?

23 A No, I don't think that's correct either.

24 Q And why is that not correct?

25 A The thing that's of most importance is the person who

1 is injured. To have information that one car was going 30  
2 miles an hour and another car was going 35 miles an hour and  
3 they had a head-on collision and there was \$3,000 of property  
4 damage is all incidental information because the key thing is  
5 the amount of force that the individual who was riding within  
6 the car experienced.

7 Cars are made nowadays to be energy absorbers, so the  
8 degree of body damage to the vehicle can no longer be equated  
9 to the degree of damage that the individual within the  
10 vehicle sustains. So those facts are not as important to me  
11 as the facts about the individual and what they complained of  
12 within 48 hours of the accident.

13 Q Is there any question in your mind, Doctor, that the  
14 amount of force visited upon one who is seated in an  
15 automobile is dependent upon the energy-absorbing  
16 characteristics of the vehicle?

17 A There is no question.

18 Q And to bring this down to something that we all can  
19 understand, when two Cadillacs collide, there might be  
20 different forces than when two Toyotas collide, correct?

21 A Certainly each accident is separate and different in  
22 and of itself.

23 Q And each automobile has separate and different  
24 characteristics in terms of the translation of forces on  
25 impact to bodies within them, correct?

1 A The transmission of forces, yes, that's correct.

2 Q And, indeed, that is what is occurring in every single  
3 automobile collision where there is some flexion and  
4 extension, that is, a translation of forces from the exterior  
5 bodies of the vehicles to those seated within the vehicles,  
6 correct?

7 A I don't know what you mean by "translation."

8 Q Let's say "transmission."

9 A Okay. Transmission, yes.

10 Q So you would agree with that statement if we substitute  
11 "transmission" for "translation"?

12 A Right.

13 Q Thank you.

14 A And I need to have you understand I'm not trying to  
15 give you a hard time, but when we talk about physics and  
16 engineering, "translation" has a very specific meaning.

17 Q I understand, Doctor.

18 A Okay.

19 Q That's my bag, too.

20 A Okay. You're an engineer as well?

21 Q Well, my specialty is product liability, so I'm very  
22 concerned about forces.

23 A Good.

24 Q And I know you want to be precise as well. That's why  
25 I'm trying to frame my question with some precision.

1 A I appreciate that.

2 Q Now, do you know what vehicles were involved in this  
3 case?

4 A No.

5 Q Did you ask Ms. Gutchall?

6 A No.

7 Q If you had asked her, I assume that you would have  
8 reported her answer in your report?

9 A That's correct.

10 Q All right. Did you find her cooperative with you in  
11 terms of answering your questions?

12 A Yes.

13 Q Was there anything during your examination of Ms.  
14 Gutchall that would lead you to believe she was anything  
15 other than candid with you?

16 A She was very conclusory, and whether that means that  
17 she was not candid, I'm not sure, but it was difficult to get  
18 a history from her.

19 Q The history you did obtain is recorded in your report?

20 A Right.

21 Q By the way, you did obtain a history that she was  
22 examined at the employee health clinic at University  
23 Hospitals, correct?

24 A Correct.

25 Q Did you request a copy of the record that applied to

1 that examination from anyone?

2 A No, I didn't.

3 Q All right.

4 Q And you haven't summarized any such record anywhere in  
5 your report, have you?

6 A That's correct. I have not.

7 Q I take it that the purpose of your examination of Ms.  
8 Gutchall in this case was not to treat her but to be in a  
9 position to render an opinion and testify if necessary; is  
10 that correct?

11 A Yes.

12 Q That is normally your task in a defense medical  
13 examination situation such as this one, correct?

14 A Yes.

15 Q Now, you caused X-rays to be taken as an adjunct or in  
16 addition to your examination of Ms. Gutchall, correct?

17 A Yes.

18 Q And do you recall how many X-rays you caused to be  
19 taken?

20 A I don't recall specifically the number.

21 Q Can you tell, Doctor, whether Plaintiff's Trial Exhibit  
22 7-Z is one of the X-rays you caused to be taken?

23 A Yes, it is. It's a copy of one of the radiographs that  
24 was taken when I examined her.

25 Q Thanks. And did you also review any of the X-rays that

1    were taken of her on January the 19th --

2    A        Yes.

3    Q        --, 1989?

4    A        Yes, I did.

5    Q        And are Exhibits 7-A through 7-D inclusive the X-rays  
6    or copies of the X-rays that you reviewed?

7    A        Plaintiff's Exhibits 7-A through 7-D appear to be the  
8    actual radiographs that were taken on January 19th, 1989. I  
9    don't have any recollection whether I saw the actual  
10   radiographs or copies.

11   Q        Please hang onto them, Doctor, if you would.

12   A        Okay.

13   Q        I want to understand your answer. You don't recall  
14   whether you examined precisely those items that you have in  
15   your hand now, 7-A through 7-D inclusive, or whether you  
16   examined copies of them; is that correct?

17   A        That's correct.

18   Q        Now, it is your opinion, however, that Plaintiff's  
19   Exhibit 7-Z demonstrates no change in narrowing to those  
20   portions of the cervical spine that you've opined were  
21   pre-existing conditions to the January 10, 1989 collision,  
22   correct?

23                                THE WITNESS:        Would you read the  
24                                question back again, please?

25                                (Record read.)

1 A That's correct.

2 Q It is, therefore, your opinion in this case, Doctor,  
3 that Plaintiff's Exhibit 7-Z shows no change in the  
4 pre-existing condition as depicted in Exhibits 7-A through  
5 7-D, correct?

6 A That's correct.

7 Q Okay. And you understand that Dr. Wilber disagrees  
8 with you in connection with that opinion; do you not?

9 A Yes, from the material that I reviewed when I examined  
10 Ms. Gutchall.

11 a Well, were you aware that Dr. Wilber's deposition was  
12 taken on videotape last week and he was presented your X-rays  
13 and opined that there is, indeed, a change between the  
14 January 19, 1989 X-rays, A through D inclusive, and 7-Z?

15 A I've not had the opportunity to read Dr. Wilber's  
16 deposition or to see his deposition.

17 Q And counsel hasn't informed of you that?

18 A That's correct.

19 Q But nonetheless, you believe there is no change?

20 A I believe there is no change.

21 Q Do you know Dr. Wilber?

22 A Yes.

23 a Professionally?

24 A I've not been a patient of his so I don't know him  
25 professionally. I honestly don't know what you mean by that.

1 Q As a colleague.

2 A He's an orthopedic surgeon in town, that's correct.

3 Q Do you have any question in your mind about his  
4 qualifications to engage in the practice of orthopedic  
5 surgery in the treatment of patients like Cheryl Gutchall?

6 A No, I do not.

7 Q Do you know Dr. Sanford?

8 A No.

9 Q Do you know Dr. Tarvez Tucker?

10 A No.

11 Q Did you realize she was a woman and not a man as you  
12 referred to her in your report?

13 A If I realized she was a woman, I wouldn't have referred  
14 to her as a man.

15 Q So you didn't know her before you wrote the report?

16 A That's correct.

17 Q So that I understand what records you've reviewed, you  
18 reviewed a group of office notes of Dr. Sanford, correct?

19 A Correct.

20 Q Beginning with January the 18th, 1989, correct?

21 A Correct.

22 Q You reviewed office notes of Dr. Wilber from April of  
23 '89 through May of '91, correct?

24 A If Dr. Wilber's letter of May 15th, 1989, which  
25 describes his examination of April 25th, 1989, is an accurate



1 reflection of his office record for April 25th, 1989, then I  
2 have examined Dr. Wilber's records beginning with April 25th,  
3 1989.

4 Q Maybe you misspoke or maybe I misheard. I thought you  
5 wrote in your report that you reviewed a letter of May 15,  
6 '89, not October of '89.

7 A May 15, 1989.

8 Q Right. And so that you understand his custom and  
9 practice, since I have had the benefit of examining him last  
10 week on the subject matter, that May 15, '89 letter was his  
11 office note for his first visit. That's his custom and  
12 practice in speaking to and relaying information to the  
13 referring physician.

14 A Okay.

15 Q From then on, he generates office notes, which are  
16 typewritten for each visit.

17 A Right.

18 Q I suspect, Doctor, you reviewed that May 15, '89 letter  
19 and the typewritten office notes through May of 1991; is that  
20 correct?

21 A That's correct.

22 Q All right. And you also reviewed his report to me  
23 dated August 16th of 1991, correct?

24 A Correct.

25 Q Which did not differ in material respects from his

1 office notes, correct?

2 A That's correct.

3 Q And you then referred to a letter of Dr. Tucker dated  
4 May 11, 1990?

5 A Correct.

6 Q Which you examined, correct?

7 A Correct.

8 Q You also examined a letter of Dr. Tucker dated November  
9 7, 1990, correct?

10 A Correct.

11 Q Now, have we covered all of the records that you  
12 reviewed in connection with the professional services you've  
13 rendered in this case?

14 A The only thing that we haven't covered is that I had  
15 the opportunity today to review a progress note of Dr. Wilber  
16 that was generated in March of 1992.

17 Q All right. So you were updated in terms of his  
18 examination of March 1992 which he related, but you didn't  
19 review that note of January 12th, 1989 today from the  
20 employee health clinic?

21 A No.

22 Q All right. Now, I take it you understood when you  
23 wrote this report that it would be transmitted to counsel for  
24 plaintiff, Ms. Gutchall, correct?

25 A Absolutely.

1 Q And you understood that that report at least would be  
2 relied upon by counsel in terms of opinions you hold in this  
3 matter?

4 A Yes.

5 Q That's what you meant to accomplish by that report,  
6 correct?

7 A I don't know that that's what I meant to accomplish by  
8 that report. I meant that report to contain the results of  
9 my history, physical examination, review of records and my  
10 opinions, and I knew that it would be transmitted to you as  
11 well. Certainly.

12 Q You knew I would rely on it?

13 A Certainly.

14 Q Now, Doctor, please explain how, if at all, one is  
15 injured when flexion/extension of the cervical spine occurs.

16 A I don't understand your question.

17 Q Well, does the flexion/extension mechanics of injury  
18 cause some type of physical injury to a cervical spine under  
19 some circumstances?

20 A Flexion/extension of the cervical spine can cause  
21 injury to the cervical spine under some circumstances, yes.

22 Q Can it cause injury to the soft tissue structures?

23 A Yes.

24 Q And how does that occur just from a biomechanical or  
25 orthopedic point of view?

1 A In the type of injury that we're talking about here  
2 where there is a rapid deceleration which then causes a  
3 flexion, there is tension placed on the posterior structures.

4 Similarly, when those forces that have caused the  
5 deceleration cease and the rest of the body catches up, there  
6 is a relative extension of the cervical spine and so there  
7 can be tension on the anterior structures.

8 The degree of tension causes stretching of those soft  
9 tissues, and, if it's of great enough magnitude, can cause  
10 tearing of those structures.

11 Q What occurs by way of an individual's perception when  
12 the flexion and extension is severe? In other words, is it  
13 productive of pain? Is it productive of restriction of  
14 motion? That's my question basically.

15 A Certainly if it's a severe injury, the individual is  
16 going to have pain and restriction of motion.

17 Q Why restriction of motion?

18 A Restriction of motion occurs because the motion is  
19 painful.

20 Q Is there some mechanical reason as well?

21 A At the present moment, we're talking about soft tissue  
22 injuries, correct?

23 Q That's correct. That was my understanding.

24 A Right, and we're assuming there is no bony injury and  
25 no joint injury. So the restriction of motion is because of

1 the soft tissue injuries and it's painful to move your neck.

2 Q What in respect to the anatomy is productive of pain?

3 In other words, must you have tearing, for instance, to  
4 produce pain?

5 A No. Just stretching can cause pain.

6 Q And why does stretching cause pain?

7 A It's been 30 years since I graduated from medical  
8 school. I don't know that anybody knows why stretching  
9 causes pain. There is a lot of theory that you can go into,  
10 but I'm not sure.

11 Q Well, is there any theory that you adhere to?

12 A No, not particularly.

13 Q Is there any explanation you would like to give us for  
14 the production of pain today?

15 A When you stretch a muscle, you cause some degree of  
16 injury to that muscle. When there is injury, there is  
17 swelling. When a structure is swollen, that in and of itself  
18 can be painful.

19 There are also certain chemicals that are released  
20 during the injury process and those chemicals can -- I can't  
21 find the word -- trigger off the pain receptors.

22 Q Okay. How do you, Doctor, determine whether there is  
23 restriction of motion where there is strictly a soft tissue  
24 injury?

25 A I ask the person to move the affected part of their

1 body through what we refer to as a range of motion, and if  
2 there is limitation, that is synonymous with restriction.

3 Q Would you explain in words what you physically do to  
4 assess whether the range of motion has been affected by a  
5 muscle injury of the cervical spine?

6 A I will ask the patient to attempt to touch their chin  
7 to their chest, to look back at the ceiling, to look over  
8 toward their right shoulder, to look toward their left  
9 shoulder, to touch their right ear to their right shoulder  
10 and touch their left ear to their left shoulder.

11 Q And then do you assess visually the success that the  
12 patient has in complying with your instructions?

13 A Yes.

14 Q And is there any way you're able to assess whether the  
15 patient is cooperating with you rather than not cooperating?

16 A I think it's easier to determine when an individual is  
17 not cooperating than to determine whether an individual is  
18 cooperating.

19 MS. SFISCKO: I want to take a  
20 timeout.

21 MR. ALKIRE: Sure.

22 (Recess taken.)

23 Q Please explain to me how you determine whether  
24 someone's not cooperating with you since that's easier then.

25 A Right. When an individual performs cervical range of

1 motion in a cogwheel- or a ratchet-like fashion, it's readily  
2 apparent that they are attempting to exaggerate and,  
3 therefore, are not cooperating.

4 Q What do you mean "cogwheel- or ratchet-like fashion,"  
5 distinct --

6 A Absolutely. Distinct stops. It's as though you had a  
7 ratchet that you were tightening like this.

8 Q Did you detect that with Cheryl?

9 A No.

10 Q Did Cheryl exhibit during your examination of her any  
11 decreased range of motion?

12 A Yes.

13 Q And, in fact, was it two of the four range of motion  
14 tests?

15 A She demonstrated decrease in lateral rotation, both to  
16 the right side and to the left side, and also demonstrated  
17 decrease in lateral bending, both to the right side and the  
18 left side.

19 Q So those are four distinct motions or two pairs of  
20 motions in which she demonstrated some decrease; is that  
21 correct?

22 A That's correct.

23 Q And did she complain of pain during the performance of  
24 those maneuvers at your request?

25 A Yes.

1 Q Not the pain at your request, but the performance of  
2 the maneuvers at your request.

3 A Correct.

4 Q Is that range of motion due to a chronic muscular  
5 injury to her cervical spine?

6 A No, I don't believe that that decreased range of motion  
7 is due to a chronic muscular injury.

8 Q Is there some other reason why she has a decreased  
9 range of motion, which she exhibited to you on physical  
10 examination?

11 A I don't have an explanation for the degree of decreased  
12 motion that she demonstrated.

13 Q Is some portion of her decreased range of motion due to  
14 a muscular explanation rather than some mechanical  
15 explanation?

16 A I don't believe that any of the decreased range of  
17 motion that she demonstrated can be attributed to a muscular  
18 explanation.

19 Q Are you attributing all of her range of motion  
20 difficulty to the abnormality or narrowing of her cervical  
21 disk space, C-5 C-6 and C-6 C-7?

22 A No.

23 Q What are you attributing it to?

24 A As I said earlier, I **can't** give you an explanation for  
25 the degree of reduction that she has based on what I know



1 about her.

2 Q Well, can you give any explanation for any of the range  
3 of motion difficulty?

4 A Yes. She has disk space narrowing at C6-7. She has  
5 got some spurring at C5-6 as well as C6-7. I would attribute  
6 approximately -- I guess I can say "strike that", too, can't  
7 I?

8 If she had demonstrated 25 percent reduction in lateral  
9 bending bilaterally and 25 percent reduction in lateral  
10 rotation bilaterally, I would have been able to attribute  
11 those reductions to her underlying cervical spondylosis. 50  
12 percent reduction is too much to attribute to a two-level  
13 cervical spondylosis.

14 Q Is there any other incident in her history which would  
15 be productive of a range of motion reduction other than the  
16 automobile accident that you are aware of?

17 A There is nothing that I'm aware of, no.

18 Q And in your review of records, you found no other  
19 record of any complaints by Cheryl of cervical pain or range  
20 of motion restriction, correct?

21 A That's correct. I did not find anything.

22 Q The only traumatic incident you know of in Cheryl's  
23 history which would be productive of any range of motion  
24 difficulties in her cervical spine is the automobile accident  
25 of January 10, 1989, correct?

1 THE WITNESS: Could you read the  
2 question back, please?

3 (Record read.)

4 A That's correct.

5 Q And, indeed, severe enough flexion and extension of the  
6 cervical spine can account for the complaint of pain by an  
7 individual, correct?

8 A I'm sorry. I don't understand what time you're  
9 speaking of.

10 Q Within 48 hours.

11 A Yes.

12 Q And the report of numbness or tingling in the left arm  
13 reported within 48 hours of an automobile accident in which  
14 flexion/extension occurred can often be attributed to the  
15 automobile accident, correct?

16 A Yes.

17 Q And that numbness and tingling can be due to a severe  
18 flexion/extension injury, correct?

19 A Yes.

20 Q Can that kind of complaint, that is, a numbness or  
21 tingling into the long finger of the left hand, for instance,  
22 which complaint lasts two years and five months after an  
23 automobile accident, can that be due to the severe  
24 flexion/extension of the cervical spine?

25 A Are we talking specifically or in general?

1 Q We are talking in general.

2 A I would have to know more about the patient to answer  
3 that question.

4 Q All right. Many individuals are living their lives  
5 today and not complaining about pain or range of motion  
6 difficulty with the degree of narrowing and spurring which is  
7 demonstrated in Cheryl Gutchall; isn't that correct?

8 A I don't believe that's correct.

9 Q Do you believe any individuals exist today that have no  
10 complaints of pain or range of motion difficulties with the  
11 degree of spurring and disk abnormality demonstrated by  
12 Cheryl?

13 A Anything is possible.

14 Q Well, we don't live unless the sun rises, so I don't  
15 know that anything is possible. Would you concede that the  
16 possibility exists?

17 A If the sun didn't rise we would all die?

18 Q I think so.

19 MS. SFISCKO: I don't know if we're  
20 dealing in possibilities.

21 MR. ALKIRE: We are getting  
22 philosophical.

23 MS. SFISCKO: I'm not going to have  
24 him answer anything on possibilities.

25 A What I'm trying to say to you is that, how do we know

1 that these people have the same degree of problem that Cheryl  
2 has, if they are asymptomatic, unless somebody does a study?

3 Q When you use the term "asymptomatic," you imply that a  
4 person is not complaining, is that correct, when you use that  
5 term?

6 A "Complaining" means that they are telling somebody else  
7 about their problems. There are a lot of people who have  
8 problems and don't tell anybody about their problems. When  
9 I'm using the word "asymptomatic," I mean that the individual  
10 doesn't feel any symptoms, any pain, which is a symptom as a  
11 result of this condition.

12 Q All right. In your experience, have you ever had a  
13 patient who was asymptomatic and who had a pre-existing  
14 condition of a similar nature to Cheryl's who was then  
15 involved in a traumatic event like an automobile accident and  
16 had flexion and extension and became symptomatic?

17 A I've never had a patient that is identical to Cheryl in  
18 all the respects that we need to talk about.

19 Q That's not my question. I'm asking you, as a general  
20 matter, whether you ever had a patient who had cervical disk  
21 abnormalities similar to Cheryl's who was asymptomatic until  
22 a traumatic event like an automobile accident occurred in  
23 which event that person sustained a flexion/extension injury  
24 and then became symptomatic?

25 A I don't recall any particular patient.

1 Q Is it your opinion that such a case could not exist?

2 A No, it's not my opinion that such a case could not  
3 exist.

4 a It's your opinion that there can be a case of an  
5 individual who had a pre-existing condition similar to  
6 Cheryl's in respect to the cervical spine who became  
7 symptomatic, previously before the accident asymptomatic,  
a because of a severe flexion/extension injury, correct?

9 A Yes.

10 Q And in this case, at least by virtue of the records,  
11 Cheryl, before this automobile accident, was asymptomatic in  
12 respect to her cervical spine, correct?

13 A According to the records that I have reviewed, yes.

14 Q And no one has suggested to you, whether that be  
15 defense counsel or anyone else you've talked to, that there  
16 are records that exist that you have not been provided, apart  
17 from, obviously, this January 12th health clinic record,  
18 which you did not review, correct?

19 A That's correct.

20 Q Now, is it your opinion in this case that Cheryl  
21 doesn't have pain emanating from her cervical spine?

22 A No, that is not my opinion.

23 Q Is your opinion in this case that Cheryl does, indeed,  
24 have pain from her cervical spine?

25 A Yes.

1 Q Would you categorize Cheryl's pre-existing condition as  
2 underlying degenerative arthritis or would you not go that  
3 far?

4 A I wouldn't go that far.

5 Q All right. When you say that Cheryl exhibits cervical  
6 spondylosis, do you mean that she has reactive changes in her  
7 vertebral bodies of the cervical spine about the interspace  
8 which one would associate with chronic discopathy?

9 A When I use the term "cervical spondylosis," I'm using a  
10 term that is synonymous with degenerative disk disease that's  
11 synonymous with cervical arthritis. I'm saying that she has  
12 changes in her cervical spine that can include a number of  
13 demonstrable features.

14 Q Through and including pain and range of motion  
15 restriction?

16 A I hadn't thought about it that way before. Generally  
17 when we use the term "cervical spondylosis," we're talking  
18 about the X-ray or the radiographic manifestation, but  
19 certainly there are clinical manifestations as well, and the  
20 pain and the decreased range of motion are components of  
21 cervical spondylosis.

22 Q But the amount of range of motion or the extent of  
23 range of motion in this case you do not solely attribute to  
24 the cervical spondylosis, do you?

25 A That's correct.

1 Q Is it true, in your opinion, that if an individual has  
2 some underlying degenerative arthritis and they get subjected  
3 to a flexion/extension type of injury, that they frequently  
4 develop symptoms and disability that were not present  
5 previously?

6 A Yes.

7 Q And do you agree that in many cases a person who is  
8 subjected to the biomechanical trauma of flexion and  
9 extension superimposed on a latent or quiescent pre-existing  
10 degenerative cervical disk condition, that the trauma may  
11 precipitate or at least aggravate the latent or quiescent  
12 cervical condition into active symptomology?

13 A I don't believe that that's necessarily true.

14 a Can it be true?

15 A Anything is possible, but you said we can't talk about  
16 possibilities.

17 Q No, that's what defense counsel said, and I don't agree  
18 with her.

19 MS. SFISCKO: Possibilities are not  
20 admissible and I'm not going to have him talk  
21 in terms of possibilities.

22 Q Well, has it occurred in cases in which you've  
23 testified to in the past, Doctor, where you've admitted that  
24 people who were subjected to biomechanical trauma  
25 superimposed on a latent or quiescent pre-existing

1 degenerative cervical disk condition, that the trauma may  
2 precipitate or at least aggravate that cervical condition  
3 into active symptomatology?

4 A As bad as I talk, I don't talk that way, so I don't  
5 know where you got that statement. How about trying it in a  
6 simpler form because I'm really lost in your words.

7 Q Well, you recall the McKnight case in which you  
8 testified, don't you?

9 A Well, the only thing I remember about McKnight is that  
10 that's Mr. Paris' favorite deposition to bring along when he  
11 cross-examines me. I don't remember any of the details.

12 Q Well, you don't have to have David bring it along. You  
13 have it here in your office, don't you?

14 A As a matter of fact, it may still be sitting up there.

15 Q Sure. In that lumbar L-5 disk situation where there  
16 was a trauma that had the movement of the body forward and  
17 backwards, in that case, that trauma at least aggravated the  
18 otherwise latent or quiescent condition of the lumbar spine  
19 into active symptomatology?

20 A If I said that in the past, that is not my opinion as I  
21 sit here today.

22 Q And why not?

23 A Because I've learned some things.

24 Q And what have you learned --

25 A What have I learned?



1 Q -- that changes that opinion? That's at page 68 of  
2 your McKnight deposition.

3 A Read me the question.

4 MS. SFISCKO: First of all, I would  
5 like know when that deposition was taken.

6 MR. ALKIRE: April 10, '86.

7 THE WITNESS: Six years ago.

8 Q The question was, "Certainly you would agree that  
9 somebody who is subjected to the type of trauma as described  
10 to you by -- in this particular case, which that trauma is  
11 superimposed on a quiescent pre-existing narrowed L-5 disk  
12 space, that such a trauma may precipitate or at least  
13 aggravate this quiescent condition to become actively  
14 symptomatic; would you agree with that?"

15 Your answer was, "If you say "may," then I would agree  
16 with you. I believe that's what you said."

17 Do you still agree with that today?

18 MS. SFISCKO: I'm going to object,  
19 but you can answer.

20 THE WITNESS: Okay.

21 MS. SFISCKO: Because that's "may"  
22 again.

23 A That's exactly accurate. I mean, anything is possible,  
24 okay?

25 MS. SFISCKO: It's inadmissible

1                    anyway.

2                    MR. ALKIRE:        Thank you, Judge

3                    Sfiscko.

4    Q        Go ahead, Doctor.

5    A        There is no question before me, Counselor.

6    Q        Doctor, my question is, in some cases may a quiescent  
7    condition be affected to cause an active symptomatology?

8                    MS. SFISCKO:        I'm going to object,  
9                    but you can answer.

10   A        Anything is possible, so, yes, it may happen, okay?

11   Q        Now, in this case, Doctor, it is your opinion that the  
12   condition that you believe Ms. Gutchall has and the degree of  
13   restriction of motion that she has is not due to the  
14   automobile accident, correct?

15   A        That's correct.

16   Q        And the pain, what do you think it is due to if it's  
17   not the automobile accident? Are you attributing all the  
18   pain to the pre-existing condition, Doctor?

19   A        I can't judge how much pain an individual has. I can  
20   only listen to what they say. I believe what pain she truly  
21   had when I saw her on February 27th, 1992 was related to the  
22   underlying condition, not the automobile accident.

23   Q        And do you think, Doctor, and do you hold an opinion to  
24   a reasonable degree of medical certainty that her underlying  
25   condition, as you put it, will be productive of pain in this

1 woman for the rest of her life to some extent?

2 A To some extent, yes.

3 Q So you agree with Dr. Wilber that she will have pain  
4 for the rest of her life, but you don't agree that the pain  
5 is due in any way to the automobile accident; is that  
6 correct?

7 A I don't know that that's what Dr. Wilber said, but that  
8 is my opinion, yes.

9 Q Do you believe that there was any period of time  
10 between January the 10th, 1989 and the present when Cheryl  
11 Gutchall was in pain and suffered restriction of motion due  
12 to the forces engendered in the automobile accident of  
13 January 10, 1989?

14 A Yes.

15 Q And over what period of time would you attribute any  
16 pain and range of motion difficulties to the automobile  
17 accident?

18 A I can't tell you precisely.

19 Q What's your best estimate based on your many years of  
20 experience and your review of similar cases? And if you're  
21 comfortable giving a range, please do so.

22 A Thank you. The range would have to be somewhere  
23 between two months and four months.

24 Q After four months, that would be May 10, 1989, any  
25 range of motion decrease or any pain which was noted by Dr.

1 Wilber or Dr. Sanford, that would not be due to the  
2 automobile accident, in your opinion, correct?

3 A I can't answer a specific question like that.

4 Q Why not?

5 A Because I don't have enough information.

6 Q What other information do you need?

7 A I don't have the results, for example -- well, I don't  
8 have the information about what her condition was at those  
9 periods of time.

10 Q Well, you did have it. You had the records.

11 A Do you want to look at the records along with me? Do  
12 you want to show me perhaps where somebody examined her at  
13 the particular time that we're talking about?

14 Q You mean after May of 1989 you're not aware of any  
15 office notes that did that?

16 A You're going from very specific to very general, okay?  
17 Dr. Sanford, as I'm sure you're well aware, examined Ms.  
18 Gutchall on three occasions during a year and a half period  
19 of time.

20 Q Right.

21 A That doesn't give us a lot of specific information.  
22 Dr. Wilber examined her on April 25th, 1989 and I don't have  
23 a notation as to when he examined her after that.

24 Q Well, no, your records do note that, Doctor. You did  
25 summarize Dr. Wilber and you noted that he also saw her on

1 June the 14th, 1989; May the 8th, 1991 and you told me you  
2 looked at the record from March of 1992.

3 I'm asking you, Doctor, to assume that, during his  
4 deposition last week, he made it clear that all the symptoms  
5 he noted he felt were related to the automobile accident,  
6 which symptoms included the continuing complaints of pain,  
7 range of motion decrease and numbness and tingling in her  
8 left arm all the way down to her left long finger.

9 Now, are you telling me that you disagree with Dr.  
10 Wilber in his assessment of that which caused those symptoms  
11 and conditions that he noted as the treating physician?

12 A We have suddenly gone from one question with a long  
13 proffer to another question. Now, if you want me to answer  
14 your last question, I can't answer that without actually  
15 sitting down and reviewing Dr. Wilber's records again.

16 MR. ALKIRE: Read him back the  
17 question.

18 Q Tell me whether you can answer it. If you can't, we  
19 will give you the records and let you look at them and let  
20 you respond to the question. They are here. They were  
21 marked and they were available for Dr. Wilber's deposition  
22 last week.

23 (Record read.)

24 A From reading Dr. Wilber's records, there certainly is  
25 no indication as to what he believes the cause of her

1 symptoms is at the time of the various examinations.

2 Q I asked you to assume, Doctor, that in his deposition  
3 last week, after he reviewed the findings that he places in  
4 those notes, he related that all to the automobile accident  
5 or a substantial aggravation of the pre-existing condition  
6 due to the automobile accident.

7 A Right. I will assume that.

8 Q I'm asking you to assume that.

9 A I will. Okay.

10 Q Now, do you disagree with that?

11 A Yes.

12 Q Your disagreement has to do with any continuing  
13 complaints or range of motion difficulties that were noted by  
14 Dr. Wilber because you don't believe after four months any of  
15 those findings were due to the automobile accident; is that  
16 correct? That's all my question is. Just draw the line.

17 A In this particular case, I can't give you a specific  
18 end point as to when symptoms that she had were related to  
19 the accident, were causally related to the accident, and when  
20 they were causally related to her underlying condition.  
21 Certainly I believe that when he first examined her on April  
22 25th, 1989, which was three months after the accident, the  
23 symptoms and physical findings that she had were related to  
24 the accident.

25 Q What about the next time?

1 A The next time that he examined her was June 14th, 1989,  
2 and in this particular case, those symptoms may well be as a  
3 result of the accident.

4 Q How about the next examination?

5 A The next examination, which is August 23, 1989, I do  
6 not believe that those symptoms were caused by the accident.

7 Q So at least that's where you're willing to draw the  
8 line and say anything before that has a causal connection to  
9 the automobile accident, and, in your opinion, anything after  
10 the August '89 examination by Dr. Wilber, which revealed  
11 physical findings and complaints, is not due to the  
12 automobile accident; is that correct?

13 A With the understanding that you do not include the  
14 August 23, '89 as being related to the accident.

15 Q All right. Very good.

16 I'm now at the last page of your report, last  
17 paragraph. When you make the statement, "I believe that she  
18 has completely recovered from that accident and that she will  
19 have no permanent disability with respect to it," you don't  
20 mean to imply that this woman will someday not have any pain  
21 in the cervical region; is that correct?

22 A That's correct.

23 Q Because it is your opinion, as it relates to this lady,  
24 that she will have some degree of pain in the cervical region  
25 of her body for the rest of her life, correct?

1 A Correct.

2 Q Now, the last line of questions are I just want to make  
3 sure we are up-to-date with you based on David's last  
4 deposition where this subject matter was covered.

5 In connection with your defense medical examinations, I  
6 take it that you have performed them in the past for defense  
7 attorneys, correct?

8 A It's the only one you can perform defense medical  
9 examinations for.

10 Q You've also done them for insurance companies, haven't  
11 you?

12 A Oh, I see. Yes.

13 Q You've also done them for employers in Worker's  
14 Compensation claims, correct?

15 A Yes.

16 Q And would it be fair to say, in fact, that you perform  
17 about three defense medical examinations per week in personal  
18 injury cases such as this, correct?

19 A Yes.

20 Q That hasn't changed since November 1st of 1990, that  
21 frequency; is that correct?

22 A That's correct.

23 Q And in addition, you perform about three defense  
24 medical examinations per week for employers in Worker's  
25 Compensation claims, correct?



- 1 A No. That's diminished.
- 2 Q And what is it now?
- 3 A Probably doing one or two a week.
- 4 Q Okay. And you've been performing defense medical  
5 examinations in this community since 1977, correct?
- 6 A I think that's correct, yes.
- 7 Q And in connection with the defense medical  
8 examinations, you are called upon to testify in videotape  
9 depositions for purposes of use at trial or in trial,  
10 correct?
- 11 A Yes.
- 12 Q Something different than a discovery deposition like  
13 we're having today, correct?
- 14 A Yes.
- 15 a Now, is it fair to say, Doctor, that you provide four  
16 trial testimonies a month, once a week, whether that be  
17 videotape depo here in your office or at trial?
- 18 A I don't know what the present frequency is. I don't  
19 keep track of it.
- 20 Q When is the last time you testified in videotape  
21 deposition or actually in trial?
- 22 A I believe that I testified last week in a videotape  
23 deposition.
- 24 Q And how about the week before?
- 25 A I don't have an independent recollection of that. I

1 don't know.

2 Q It would be typical that you testify once a week on  
3 videotape or in trial, wouldn't it?

4 A I don't think it's typical anymore to be that frequent.

5 Q How about twice a month? Is that typical?

6 A Twice a month is fair.

7 Q All right.

8 A On an average.

9 Q And when you do testify in trial personally or in  
10 videotape deposition for trial, what is your rate for your  
11 professional services?

12 A At the present time, it's \$375 an hour.

13 Q And are you finding that there is any average amount of  
14 time you're spending in trial testimony, whether that be in  
15 trial itself or in videotape deposition? Are you finding  
16 that that's usually about an hour rather than two hours or  
17 two hours rather than three hours?

18 A I don't know. I don't keep track of those kinds of  
19 things.

20 Q Well, you keep track of the income at the end of the  
21 year due to those things, I take it?

22 A No, I don't break them down like you're going to break  
23 them down and determine what percentage of my income comes  
24 from this stuff. Dr. Zaas writes me a check and whatever I  
25 get, I get.

1 Q Okay. Would you say that most of your videotape  
2 depositions for trial would be in the hour range rather than  
3 two hours?

4 A Yes.

5 Q In all fairness?

6 A Yes. I think it's rare they go two hours.

7 Q And about how often are you engaged in a discovery  
8 deposition these days rather than the early days?

9 A Well, my recollection is that this is the second  
10 discovery deposition that I've given probably in the last  
11 four weeks, and I don't recall having given a discovery  
12 deposition prior to that time for a long period of time.

13 Q All right. And I take it your rate for a discovery  
14 deposition is the same rate you would apply for a trial  
15 deposition or videotape deposition?

16 A Yes.

17 Q That's why the \$750 in advance was requested, because  
18 you anticipated a two-hour discovery deposition?

19 A Yes.

20 Q And is that usually the amount of time spent in a  
21 discovery deposition?

22 A Between an hour and two hours, yes.

23 Q Usually somewhat longer than your videotape trial  
24 testimony?

25 A Yes.

1 Q And the frequencies that you and I just discussed as it  
2 relates to trial testimonies and discovery depositions, would  
3 that apply to **1991** generally?

4 A On the average twice month?

5 Q Yes, for each.

6 A No, not for each. For total. I mean, again, I want to  
7 make it perfectly clear that I don't keep a record of these  
8 things.

9 Q I understand that, Doctor.

10 A Okay. So I don't have any independent recollection,  
11 but if you were to say to me, "Does it seem reasonable that  
12 over a year's period of time, you give either a videotape  
13 deposition or a trial deposition on the average of twice a  
14 month," I would say, "Yes, that seems reasonable."

15 Q And in addition to that, Doctor, would it seem  
16 reasonable in **1991** that you would give two discovery  
17 depositions per month?

18 A No. That's much too high.

19 Q It would be more reasonable to say that you gave one  
20 discovery deposition per month in **1991**?

21 A Even that's too high.

22 Q Even though your experience in the last month is that  
23 you gave two?

24 A Right.

25 Q Is it picking up in **1992**?

1 A No, I think your firm has just adopted a different  
2 policy. I'm not quite sure what it is.

3 Q Was it my firm that deposed you two weeks ago?

4 A Yes.

5 Q Oh, okay. We are concerned. All right.

6 A I don't know that it was two weeks ago that *Mr. Paris*  
7 was out here or it was longer than that, but that was the  
8 only other discovery depo that I can remember.

9 Q All right. I take it we have covered all the records  
10 that you've reviewed in this case, correct?

11 A Yes.

12 Q And I take it we have covered, at least in part, all of  
13 the opinions you've rendered in your report?

14 A Yes.

15 MR. ALKIRE: I have nothing further  
16 of this witness at this time. Thanks very  
17 much, Dr. Brooks. I appreciate your patience.

18 THE WITNESS: You're welcome.

19 MS. SFISCKO: What do you want to do  
20 about signature?

21 THE WITNESS: I will not waive  
22 signature.

23 MR. ALKIRE: Write it up.

24 MS. SFISCKO: Copy to me.

25

1

- - - - -

2

(Deposition concluded.)

3

- - - - -

4

5

6

---

Dennis Bruce Brooks, M.D.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

I, Mary Ann Valentino, Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named DENNIS BRUCE BROOKS, M.D. was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 8th day of May, 1992.

  
\_\_\_\_\_  
Mary Ann Valentino, Notary Public  
in and for the State of Ohio.

My Commission expires 10-13-96.

**CROSS-EXAMINATION OF DENNIS BROOKS, M.D.**

1. AGREE THAT:

a. CHERYL WILL HAVE PAIN IN HER NECK REGION FOR THE REST OF HER LIFE (43, 47) HOLD THIS OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY

b. THERE WAS A PERIOD OF TIME BETWEEN JANUARY 10, 1989 AND THE PRESENT TIME WHEN CHERYL WAS IN PAIN AND SUFFERED RESTRICTION OF MOTION DUE TO MVA OF JANUARY 10, 1989.

c. AUTOMOBILE ACCIDENT OF JANUARY 10, 1989 DID CAUSE SYMPTOMS AND PHYSICAL FINDING OF DR. WILBUR OF APRIL 25, 1989, JUNE 14, 1989. (46, 47)

d. YOU BELIEVE DR. WILBUR'S FINDINGS OF AUGUST 23, 1989 AND THEREAFTER NOT DUE TO AUTOMOBILE ACCIDENT. (47) WHICH YOU REALIZE IS CONTRARY TO DR. WILBUR'S OPINION.

e. CHERYL HAD PAIN IN HER CERVICAL SPINE WHEN YOU EXAMINED HER IN FEBRUARY, 1989. (37)

f. CHERYL HAD NO HISTORY OF SYMPTOMS ASSOCIATED WITH HER NECK BEFORE JANUARY 10, 1989. (37)

g. A CASE COULD EXIST WHERE A PATIENT HAD CERVICAL DISK ABNORMALITIES SIMILAR TO CHERYL'S WHO WAS NOT SYMPTOMATIC UNTIL A MOTOR VEHICLE ACCIDENT INVOLVING A FLEXION/EXTENSION INJURY WHICH THEN PRODUCES SYMPTOMS. (36-37)

h. IN A SEVERE FLEXION\EXTENSION INJURY A PERSON HAS PAIN AND RESTRICTION OF MOTION. (28)

i. A SEVERE FLEXION\EXTENSION INJURY CAN BE PRODUCTIVE OF NUMBNESS AND TINGLING IN THE LEFT ARM (34) BURNING PAIN IN NECK

j. WHEN YOU EXAMINED CHERYL SHE EXHIBITED A DECREASED RANGE OF MOTION

i. LATERAL ROTATION TO RIGHT AND LEFT

ii. LATERAL BENDING RIGHT AND LEFT (31)



k. SHE WAS COOPERATIVE IN ANSWERING YOUR QUESTIONS (20)

1. DID NOT DETECT ANY ATTEMPT OF CHERYL TO EXAGGERATE WHILE YOU WERE EVALUATING HER RANGE OF MOTION, RATCHETING, ETC. (31)

m. YOU DON'T HAVE AN EXPLANATION FOR THE DEGREE OF DECREASED MOTION SHE EXHIBITED, EXCEPT YOU DON'T BELIEVE ITS DUE TO THE MVA. (32)

n. IF AN INDIVIDUAL HAS SOME UNDERLYING DEGENERATIVE ARTHRITIS AND GETS SUBJECTED TO A FLEXION\EXTENSION INJURY, THEY FREQUENTLY DEVELOP SYMPTOMS AND DISABILITY NOT PRESENT BEFORE OR PREVIOUSLY. (39)

o. A QUIESCENT CONDITION MAY BE AFFECTED TO CAUSE AN ACTIVE SYMPTOMATOLOGY. (42)

2. YOUR OPINION THAT MVA ONLY CAUSED A MILD CERVICAL STRAIN

a. BASE THIS ON FACT THAT SHE DID NOT SEEK MEDICAL ATTENTION UNTIL EIGHT DAYS AFTER THE ACCIDENT, "ALTHOUGH SHE HAD EASY ACCESS TO MEDICAL TREATMENT." (PAGE FOUR OF REPORT, EX. 1)

b. SHE TOLD YOU SHE WENT TO EMPLOYEE HEALTH CLINIC WITHIN 48 HOURS OF INCIDENT (JANUARY 12, 1989, DURING WORKING HOURS) (ACCIDENT HAPPENED AT 7:14 P.M., POLICE REPORT, TRIAL EXHIBIT 13) (13)

c. BEFORE YOU WROTE REPORT AND GAVE DEPO DIDN'T REQUEST A COPY OF RECORD FOR EMPLOYEE HEALTH CLINIC. (20)

d. I QUESTIONED YOU ON APRIL 24, 1989 IN YOUR DEPOSITION ABOUT WHETHER YOU SAW A RECORD FOR THIS VISIT- HAVE YOU SEEN A RECORD SINCE

e. WHETHER CHERYL SOUGHT MEDICAL CARE WITHIN 48 HOURS MAY HAVE SIGNIFICANCE IN RESPECT TO DESIGNATING THE CERVICAL STRAIN AS MILD. (15)

f. IT MIGHT BE SIGNIFICANT IN GRADING THE SEVERITY OF THE INJURY. (15)

g. THE SEVERITY OF THE INJURY WILL DEPEND UPON THE AMOUNT OF FORCE DUE TO THE COLLISION TRANSMITTED TO THE PERSONS SEATED IN THE VEHICLE (19)

h. WHEN AN AUTO ABRUPTLY STOPS THE PERSONS IN THE VEHICLE CAN SUFFER A FLEXION/EXTENSION INJURY

i. THIS IS THE TYPE OF INJURY SUSTAINED BY CHERYL (16)

j. THE DEGREE OF INJURY TO THE NECK WOULD BE DEPENDANT UPON THE MAGNITUDE OF THE FORCES WHICH CAUSED THE FLEXION EXTENSION (17)

k. IT WOULD BE HELPFUL FOR YOU TO UNDERSTAND THE FORCES INVOLVED IN THE COLLISION TO THOROUGHLY AND CAREFULLY EVALUATE THE DEGREE OF INJURY DUE TO THE COLLISION. (17)

1. WHEN YOU WROTE YOUR REPORT AND EXPRESSED YOUR OPINION THAT CHERYL ONLY HAD A MILD CERVICAL STRAIN DUE TO THE COLLISION YOU DID NOT KNOW:

i. DETAILS CONCERNING THE FORCES ON IMPACT (16)

ii. THE AMOUNT OF PROPERTY DAMAGE SUSTAINED BY EITHER OF THE VEHICLES INVOLVED IN THE COLLISION (HEAVY TO BOTH VEHICLES, POLICE REPORT)

iii. SPEED OF EITHER VEHICLE AT TIME OF IMPACT

iv. THE TYPES OF VEHICLES INVOLVED (20)

3. PURPOSE OF YOUR EXAM OF MS. GUTCHALL WAS NOT TO TREAT HER BUT TO BE IN A POSITION TO RENDER AN OPINION AND TESTIFY IF NECESSARY. (21)

a. BEEN PERFORMING DEFENSE MEDICAL EXAMS SINCE 1977 (49)

b. A SUBSTANTIAL PORTION OF YOUR INCOME IS DERIVED FROM PERFORMING DEFENSE MEDICALS AND TESTIFYING CONCERNING THEM

c. YOU DO DEFENSE MEDICAL EXAMS FOR:

i. DEFENSE ATTORNEYS (48)

ii. INSURANCE COMPANIES (48)

- iii. EMPLOYERS IN W.C. MATTERS (48)
- d. 3 PER WEEK IN PERSONAL CASES SUCH AS THIS ONE (48)
- e. 1-2 PER WEEK FOR EMPLOYERS (48)
- f. CHARGES 325 HOUR FOR MEDICAL, RECORD REVIEW AND REPORT, TYPICALLY TWO HOURS PER PATIENT. (7)
- g. SPENT TWO HOURS IN THIS CASE TO EXAMINE, REVIEW RECORDS AND WRITE REPORT (DEPO. EX. 3)
- h. CHARGES 100 FOR APPOINTMENT CANCELLATION (IN THIS CASE)
  - i. HOW OFTEN
- i. TESTIMONY ON VIDEO FOR TRIAL 2 TIMES MONTH (50)
  - i. 375/HOUR (51)
  - ii. USUALLY TAKES ONE HOUR (51)
- j. DISCOVERY DEPOS LAST 2 HOURS, LONGER THAN TRIAL DEPOS (WHEN I DEPOSED YOU THAT WAS THE SECOND DISCOVERY DEPO IN FOUR WEEKS) (51)
- k. GO OVER MATH
- l. IN THIS CASE YOU RECEIVED:
  - i. 750 FROM MS. SFISKO ON MARCH 26, 1992
  - ii. 750 FROM ME TO DEPOSE YOU (8-9)
  - iii. 375 FOR TODAY
  - iv. TOTAL- 1875.00
  - v. MORE THAN ALL THE DOCTORS GOT FOR THEIR TREATMENT OF HER, SEE EXHIBIT 1)