

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

MORTON BIEL, et al.,

Plaintiffs,

-vs-

JUDGE MATIA

CASE NO. 203689

ALL-STRUCTURES,
INC., et al.,

Defendants.

- - - -

Deposition of DENNIS B. BROOKS, M.D., taken as
if upon cross-examination before Kenneth F.
Barberic, a Registered Professional Reporter and
Notary Public within and for the State of Ohio,
at the offices of Dennis B. Brooks, M.D., 26900
Cedar Road, Beachwood, Ohio, at 4:10 p.m., on
Friday, November 15, 1991, pursuant to notice
and/or stipulations of counsel, on behalf of the
Plaintiffs in this cause.

- - - -

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1 APPEARANCES:

2 David M. Paris, Esq.
3 Nurenberg, Plevin, Heller & McCarthy
4 First Floor
5 1370 Ontario Street
6 Cleveland, Ohio 44113
7 (216) 621-2300,

8 On behalf of the Plaintiffs;

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

14 On behalf of the Defendants.

15 ALSO PRESENT:

16 Dan Davis, Videotape Operator
17
18
19
20
21
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23
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25

P R O C E E D I N G S

MR. PARIS: This is the discovery deposition of Dr. Brooks taken by agreement of counsel, is that right, Joe?

MR. WANTZ: That's right.

MR. PARIS: And if you can waive any, well, it's by agreement so I take it you waive the qualifications of officers before whom taken?

MR. WANTZ: I'm objecting to the videotape because I wasn't noticed of the videotape. Further, as I understand it, the operator is from your office.

MR. PARIS: This isn't a first.

MR. WANTZ: It's a discovery depo plus I'm going to object to it being played at trial if it's a discovery deposition. I assume you are intending to with your video operator?

MR. PARIS: I don't know what my intentions are for trial.

MR. WANTZ: Well, I'm objecting for the record and we can go forward with those objections on the record. I mean I have no objection to the discovery depo being

1 taken. I object to it being videotaped
2 without notice.

3 MR. PARIS: We can also reconvene
4 the depo at any other time. I appreciate
5 your objection and if that's the case I'll
6 be more than happy to do this at another
7 time when we can do it under those
8 circumstances.

9 MR. WANTZ: No. We're here, we'll
10 go forward. But I am objecting to using it
11 at trial. It's a discovery deposition and
12 if you're, and I'm going to object to it
13 being played at trial.

14 MR. PARIS: If your, I'm trying to
15 remedy the objection. So if your objection
16 is that Dan is an employee of my office?

17 MR. WANTZ: No. My objection is
18 that I got notice that this was a discovery
19 deposition. If you are going to play it at
20 trial I have not come out here prepared for
21 a trial deposition.

22 MR. PARIS: Okay. Then since I
23 don't know what my present intentions are,
24 since I don't know what the doctor is going
25 to be saying, all I can tell you is that to

1 remedy your objection I will be happy to
2 continue this deposition, re-notice it with
3 a notice, tell you that it's a, it's a
4 deposition with a video operator and we can
5 do it on that basis.

6 MR. WANTZ: I'll withdraw the
7 objection to the video operator but I'm
8 still objecting to it if you are using it
9 at trial. Because I was not noticed it was
10 a deposition for trial. My point is I have
11 no plans to sit here and examine the doctor
12 myself. I plan to sit here and take notes
13 of your discovery deposition of him.

14 MR. PARIS: I understand.

15 MR. WANTZ: If you are going to
16 play it for trial I'm not going to
17 cross-examine and I'm not prepared to
18 cross-examine. I assume you are calling
19 him as your witness for trial if you are
20 taking the deposition?

21 MR. PARIS: I'm just trying to find
22 out what the opinions are of your, of the
23 doctor who you asked to examine Mr. Biel.

24 MR. WANTZ: I understand that.

25 MR. PARIS: I don't know whether

1 I'm going to be using the transcript or the
2 videotape at trial since I don't know what
3 the doctor's opinions are going to be.

4 Do I understand then that your
5 objection is not to the qualifications of
6 Dan Davis?

7 MR. WANTZ: I'll waive those.

8 MR. PARIS: Okay. You do have an
9 objection that you were not noticed of the
10 videotape?

11 MR. WANTZ: If you want to
12 videotape a discovery deposition I'll even
13 waive that objection. My objection is if
14 you are taking this for use at trial other
15 than for purposes of cross-examination in a
16 trial deposition, that is my objection. If
17 you intend to play this as a trial
18 deposition that's my objection to this
19 deposition.

20 MR. PARIS: I understand.

21 MR. WANTZ: Okay.

22 VIDEOTAPE OPERATOR: This begins
23 the deposition.

24 Will the court reporter please swear
25 in the witness?

1 DENNIS B. BROOKS, M.D., of lawful age,
2 called by the Plaintiffs for the purpose of
3 cross-examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn,
5 as hereinafter certified, deposed and said as
6 follows:

7 CROSS-EXAMINATION OF DENNIS B. BROOKS, M.D.
8 BY MR. PARIS:

9 Q. Good afternoon, Dr. Brooks. My name is David
10 Paris. How are you today?

11 A. Good afternoon, Mr. Paris. I'm fine, thank you,

12 Q. I represent Mr. Morton Biel in connection with
13 injuries he sustained on September 3rd, 1990.
14 What is your involvement in this case?

15 A. I was asked to examine Mr. Biel by Mr. Wantz.

16 Q. Okay. And that would be on behalf of the
17 Defendant All-Structures, Inc.?

18 A. Yes.

19 Q. Okay. And do your, does your file reflect the
20 approximate time when you were asked, first
21 contacted by Mr. Wantz?

22 A. I can check that for you.

23 I was first contacted by Mr. Wantz via a
24 letter dated February 26th, 1991. I don't know
25 when I received that letter.

1 Q. Okay. And did Mr. Wantz provide you with
2 materials to review which you did review after
3 your examination?

4 A. Yes.

5 Q. Okay. What materials were you asked to review?

6 A. I don't recall which ones I was asked to
7 review. But after my examination the materials
8 that I did review were those from the Med Center
9 on September 3rd, 1990. Dr. Sobel's letter of
10 December 12th, 1990. Dr. Brems' letter of
11 October 31st, 1990. The inpatient records from
12 The Cleveland Clinic for the period between
13 December 11th, 1990 and December 14th, 1990.
14 And the outpatient records from The Cleveland
15 Clinic up to May 13th, 1991.

16 Q. Okay. Did you review any records from any
17 therapy?

18 A. No.

19 Q. Okay. And when did you perform the independent
20 medical examination on Mr. Biel?

21 A. On July 16th, 1991.

22 Q. Okay. And I take it these type of examinations
23 are, are, you have performed them in the past?

24 A. Yes.

25 Q. And on behalf of defense counsel and plaintiffs'

1 attorneys?

2 A. Yes.

3 Q. Okay. And I take it you have testified in the
4 past as well?

5 A. Yes.

6 Q. And both on behalf of claimants and on the
7 behalf of defense attorneys?

8 A. Yes.

9 Q. Okay. Can you tell us a little bit about your
10 background since you will be providing expert
11 opinions in this case? Can you tell us your
12 qualifications and credentials which allow you
13 to give expert opinions?

14 A. Yes. I graduated from Harvard University in
15 1959 with a bachelor of arts degree.

16 I attended Western Reserve University
17 School of Medicine and graduated from there in
18 1963.

19 I then had six years of post-graduate
20 training. The first year was as a rotating
21 intern at the Mt. Sinai Hospital of Cleveland.
22 The second was as a general surgery resident.
23 The third and fourth years of post-graduate
24 training were as an orthopedic surgery
25 resident. The fifth year was as a research

1 associate in the biomechanics laboratory of Case
2 Western Reserve University. And the sixth year
3 of post-graduate training was in children's
4 orthopedics at the Indiana University Medical
5 Center.

6 Q. Okay. And, Dr. Brooks, by the way, what is your
7 professional address?

8 A. 26900 Cedar Road, Beachwood, Ohio.

9 Q. Okay. And you are an orthopedic surgeon?

10 A. Yes.

11 Q. That's an M.D.?

12 A. I'm an M.D. with a specialty in orthopedic
13 surgery, yes.

14 Q. Okay. And can you tell the, tell me what your
15 specialty involves?

16 A. Orthopedic surgery is that branch of medicine
17 that deals with the musculoskeletal system. As
18 an orthopedic surgeon I treat patients who have
19 problems with their bones, joints, the soft
20 tissues that cover those areas, the muscles,
21 ligaments and tendons, as well as treating
22 patients who have problems with their spine and
23 its contents, the intervertebral disks and the
24 nerve roots. I treat patients both with surgery
25 and without surgery depending upon their needs.

1 MR. PARIS: Okay. Off the record a
2 minute.

3 VIDEOTAPE OPERATOR: We will now go
4 off the record.

5 - - - -

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

8 - - - -

9 MR. PARIS: All right. Back on the
10 record.

11 VIDEOTAPE OPERATOR: We are now
12 back on the record.

13 Q. Okay. Doctor, did you complete telling me about
14 your, your qualifications and your background?

15 A. Yes.

16 Q. Okay. When did you go into private practice as
17 an orthopedic surgeon?

18 A. 1971,

19 Q. All right. And I take it you are a board
20 certified orthopedic surgeon?

21 A. Yes.

22 Q. And do you belong to certain medical
23 organizations and societies in your field?

24 A. Yes.

25 Q. Can you name a few of those?

1 A. Certainly. I'm a member of the American Academy
2 of Orthopedic Surgeons, the International
3 Society of Orthopedics and Traumatology, the
4 Orthopedic Research Society, and the Clinical
5 Orthopedic Society.

6 Q. Okay. And to which hospitals in this community
7 do you have staff and courtesy privileges?

8 A. Mt. Sinai Medical Center of Cleveland.

9 Q. And are you involved in teaching in any
10 capacity?

11 A. Yes.

12 Q. To what extent?

13 A. I'm an assistant clinical professor of
14 orthopedic surgery at Case Western Reserve
15 University. I'm active in the orthopedic
16 residency teaching program at the Mt. Sinai
17 Medical Center and I lecture to both physicians
18 and engineers in the field of biomechanics.

19 Q. Okay. And have you published or presented any
20 papers or articles in your field?

21 A. Yes.

22 Q. Okay. Now, in connection with Morton Biel, you
23 saw him at Mr. Wantz's request on July 16th,
24 1991 and would you tell me the information that
25 he gave you?

1 A. Mr. Biel gave me?

2 Q. Yes.

3 A. Yes. I first obtained his history and he told
4 me that he was injured on September 3rd, 1990
5 when he walked out of his house onto the steps.
6 The steps collapsed and he fell forward from
7 three steps up striking the concrete. He told
8 me that he extended his right arm to prevent his
9 fall and was aware of immediate, as he referred
10 to it, numbness in his right arm and right
11 shoulder.

12 In addition, he sustained what he referred
13 to as a rip on his right leg.

14 He went to a local medical center where his
15 right leg was bandaged and his shoulder was
16 evaluated. He told me that within a week of the
17 accident he came under the care of Dr. Froimson
18 who indicated that he had a torn rotator cuff
19 and that he, Mr. Biel, would require surgery.

20 Q. Excuse me. Who is Dr. Froimson?

21 A. Dr. Froimson is an orthopedic surgeon.

22 Q. And he also practices out of Mt. Sinai?

23 A. Yes.

24 Q. Okay.

25 A. Mr. Biel then told me within two to three weeks

1 after the accident he came under the care of
2 Dr. Brems at the suggestion of his son,
3 Mr. Biel's son. Dr. Brems also indicated that
4 he had a torn rotator cuff and that surgery was
5 indicated.

6 Q. And who is Dr. Brems?

7 A. Dr. Brems is an orthopedic surgeon who practices
8 at The Cleveland Clinic.

9 Q. All right.

10 A. Mr. Biel told me that on approximately December
11 10th, 1990 he was admitted to The Cleveland
12 Clinic and remained hospitalized there for three
13 days. He underwent right shoulder surgery.
14 Following his discharge he continued under Dr.
15 Brems' care, he wore a sling for several weeks.
16 He attended physical therapy two times a week
17 for eight to ten weeks. Mr. Biel told me he was
18 last examined by Dr. Brems approximately six
19 weeks prior to my examination. He told me that
20 he was scheduled to be re-examined by Mr., I'm
21 sorry, by Dr. Brems during the week of my
22 examination.

23 Mr. Biel told me he had had no additional
24 hospitalizations and had not been treated by any
25 other physicians.

1 Q. Okay. Did you ask him how he was doing?

2 A. Yes.

3 He told me that his right shoulder was, he
4 explained, extremely weak and painful. He
5 indicated that he had, as he put it, no strength
6 at all in his right shoulder. He noted this for
7 he was no longer able to, as he put it, shoot a
8 basketball. I have no lifting power either. He
9 was right hand dominant. He continued to have
10 pain in his right shoulder which would awaken
11 him from sleep. He would develop, as he put it,
12 soreness if I lift any weight at all. Mr. Biel
13 told me that he had been told by Dr. Brems that
14 sometimes it takes a full year to recover from
15 surgery. Mr. Biel believed that he had
16 experienced, as he put it, very slight
17 improvement during the past several months. He
18 was performing physical therapy at home several
19 times a day. He was also taking what he
20 referred to as light Bufferin four times a day.
21 He had not taken any medication on the day of
22 the examination. He was a diabetic and was also
23 taking insulin. And he told me that he had no
24 other problems with respect to his fall,

25 I then inquired into his past medical

1 history and he told me that he had not had any
2 symptoms referable to his right shoulder before
3 his fall. He also told me that he had not
4 sustained any new injuries since his fall.

5 At the time of the accident he was, as he
6 described it, self-employed. A manufacturer's
7 rep. He worked for some period of time after
8 his fall but did not return to work after his
9 surgery.

10 Q. Did he tell you whether or not he was involved
11 as a manufacturer's rep in the paint business?
12 If you recall?

13 A. I don't have any recollection of his telling,
14 his telling me that, no.

15 Q. Okay.

16 A. And that, that completed the history.

17 Q. All right. I take it you conducted a physical
18 exam?

19 A. Yes.

20 Q. And can you tell us about that?

21 A. Certainly. The exam revealed that **Mr.** Biel was
22 a male of approximately his stated age who was
23 of average proportions. He told me that he was
24 five foot eight inches tall and that he weighed
25 164 pounds, I noted that he got: out of a chair

1 without difficulty, that he walked without
2 limping and that he was able to climb up on to
3 and off of the examining table in a normal
4 fashion.

5 when I examined his right shoulder I noted
6 a well healed anterior oblique incision.

7 Q. Where would that be, if you can use your own
8 shoulder, doctor?

9 A. Do I have to cut it?

10 Q. No.

11 A. No. Okay. All right. Anterior refers to the
12 front. Okay. And oblique means **that** instead of
13 being straight across it followed the skin lines
14 and as I recall it looked like something like
15 this, off at an angle.

16 Q. Okay.

17 A. There was no tenderness **over** the incision, but
18 there was tenderness over the acromioclavicular
19 joint.

20 Q. And where is that, doctor?

21 A. The acromioclavicular joint is the joint between
22 the acromion and the clavicle. The clavicle is
23 your collar bone and the acromion is the
24 prominent bone over the top of your shoulder.
25 So the acromioclavicular joint is right in this

1 area.

2 Q. Okay.

3 A. I noticed that he had atrophy of the
4 supraspinatus and infraspinatus muscles.

5 Q. What are those?

6 A. The supraspinatus and infraspinatus are two
7 muscles that make up the, part of the rotator
8 cuff. And they are most prominent when you view
9 them from behind, looking at them from behind.
10 They both contain the word spinatus and that
11 refers to the spine of the scapula. So the
12 supraspinatus is the muscle that's above the
13 spine and the scapula and the infraspinatus is
14 the muscle thats below the spine and the
15 scapula.

16 Q. So they run in the area of the shoulder blade?

17 A. Much more simply said than I explained it.
18 Exactly.

19 Q. Okay. And those, those two muscles connect
20 where in relationship to the shoulder or the
21 rotator cuff? How do those come into play?

22 A. Those two muscles essentially make up one-half
23 of the rotator cuff and through their tendons
24 they attach to the greater tuberosity of the
25 humerus. The humeral, the shoulder joint, the

1 ball and socket joint and the humeral head is
2 the ball part of the socket and they attach to
3 the greater tuberosity, which is a prominence on
4 the humeral head.

5 Q. Okay. We're still talking up in the area of the
6 shoulder joint, where the upper arm meets the
7 shoulder?

8 A. Yes.

9 Q. Okay. And when you say atrophy, you're talking
10 about a wasting away of, of those two muscles?

11 A. Yeah. In the broadest sense when I examined
12 Mr. Biel I could note that looking at his left
13 shoulder girdle from behind you could see muscle
14 definition, there was a little bit of bulk, and
15 when I looked on the right side where the muscle
16 should be it was very flat, it was atrophied.

17 Q. Okay. Now, would somebody who's right,
18 right-handed and has been right-handed all their
19 life, what is the significance of the atrophy of
20 those two muscles on the right side?

21 A. Well, it doesn't really relate to whether they
22 are right or left-handed. It means that these
23 muscles have not been used for one of a number
24 of reasons.

25 Q. Okay. What about the range of motion of the

1 shoulder?

2 A. The active range of motion of the right
3 shoulder, that is to say the motion that he
4 himself performed, was that of abduction to 80
5 degrees.

6 Q. Can you demonstrate the abduction and the
7 flexion and so forth for us?

8 A. Certainly.

9 Q. Thank you. I'm sorry to interrupt, doctor.

10 A. Okay. His abduction, which he performed
11 actively, was to 80 degrees. So that's here.
12 90 degrees is at shoulder level. Okay. Forward
13 flexion was to 80 degrees, so that was here.
14 External rotation, which was to 15 degrees,
15 that's moving his arm away from his body.
16 Internal rotation is reaching behind his back,
17 and that was to L4 or essentially the top of his
18 waist. Horizontal flexion was to minus 30
19 degrees. Horizontal flexion is this maneuver.
20 The normal individual can come at least to the
21 midline. He was out to here somewhere.

22 Q. Okay.

23 A. Okay. I then checked his strength and normal
24 muscle strength is five out of five. That is to
25 say there are five grades when you check the

1 strength of the muscle. Five being the
2 strongest, and actual there's actually six if
3 you include zero, being nothing. Okay. So his
4 external rotators, that were, those were the
5 muscles that brought his arm **out** this way, were
6 four out of five. The internal rotators, the
7 muscles that come in this way, four out of
8 five. The abductors were three out of five.
9 And the forward flexors were three out of five.

10 In addition, the humeral head, the ball
11 part of the ball and socket joint, was palpable
12 anteriorly. I mean I could actually feel the
13 front part of his shoulder joint.

14 Q. What is the significance of that?

15 A. That there really wasn't a lot of tissue between
16 his skin and the humeral head. He probably had
17 some atrophy of the anterior part of the rotator
18 cuff as well, the subscapularis, and I made
19 mention of it because it was a finding. It
20 could also mean that the humeral head was not
21 sitting normally in its normal relationships.

22 Q. Okay.

23 A. His sensation was normal and the strength of his
24 biceps was normal.

25 Q. Okay. Did you measure passive range of motion

1 of the right shoulder?

2 A. No.

3 Q. Okay. Is there any reason for that?

4 A. Yes. I'm at somewhat of a difficult situation
5 when I do an exam such as this in that I'm not
6 Mr. Biel's treating physician and so that if I
7 were to ask him to move his arm as well as he
8 could and then I would do it passively he might
9 object because I'm making him do things that he
10 wouldn't otherwise do.

11 Q. I see. Okay. All right. Did you take x-rays?

12 A. No. But I referred him to the radiologist next
13 door and he took x-rays.

14 Q. All right. Did you look at those x-rays?

15 A. Yes, that I did do.

16 Q. Tell us about that.

17 A. Okay. I ordered radiographs of the right
18 shoulder as well as comparison views of the
19 left. There was no evidence of fracture or
20 dislocation. There was irregularity of the
21 greater tuberosity, some roughening of the
22 greater tuberosity, as well as arthritis of the
23 acromioclavicular joint on both the right side
24 and the left side.

25 Q. Okay. And just so we're clear on what the

1 greater tuberosity is, do I understand that to
2 be the top of the bone of the arm, that bone
3 between the elbow and the shoulder, that's
4 called the humerus, is that right?

5 A. Right.

6 Q. And the greater tuberosity of the humerus is the
7 top portion of that bone?

8 A. Right.

9 Q. At or near -- I was looking for a model before
10 and I didn't see one handy.

11 A. Well, we'll use one of the hip which will
12 actually not be all that --

13 Q. The same old type of ball and socket, right?

14 A. Exactly. That's the important thing. And this
15 is, again, the hip, but it's not the shoulder
16 joint. But we're talking about a ball and
17 socket joint and the top of the humerus, which
18 is the arm bone, if you will, okay, has a ball
19 which fits into the socket portion of the
20 shoulder. One of the protuberances or the
21 prominences is called the greater tuberosity.
22 So it's a bump on the bone.

23 Q. Okay. Now, apparently you reviewed, after your
24 independent medical examination you reviewed a
25 number of records. Were any of these records of

1 significance to you in and of assistance to you
2 in rendering your opinions?

3 A. Yes.

4 Q. Would you tell us about the records you
5 reviewed?

6 A. Yes. I think I mentioned them, I outlined them
7 earlier in terms of the Med Center for September
8 3rd, 1990; Dr. Sobel's letter of December 12th,
9 1990; Dr. Brems' letter of October 31st, 1990;
10 The Cleveland Clinic inpatient records for the
11 period between December 11th and December 14th,
12 1990; the outpatient records until May 13th,
13 1991.

14 Q. Okay. And you reviewed the operative records?

15 A. Yes.

16 Q. Okay.

17 A. They were part of the inpatient records.

18 Q. Okay. Based upon the records that you reviewed
19 through, say, the end of October of 1990,
20 doctor, do you have an opinion, based upon a
21 reasonable degree of medical certainty, as to
22 whether the patient's symptoms and examinations
23 and x-rays were all consistent with a right torn
24 rotator cuff?

25 A. Yes, i have an opinion.

1 Q. What is your opinion?

2 A. My opinion is that based on the records up to
3 October of 1990, I'm not saying that correctly,
4 through October 31st the of 1990, that the
5 patient's symptoms and physical examinations
6 were consistent with a torn right rotator cuff.

7 Q. Okay. Now, with regard to the inpatient records
8 of The Cleveland Clinic Hospital, can you tell
9 us what the findings were in the operative
10 record?

11 A. Certainly.

12 Q. As it relates to the rotator cuff?

13 A. This is the operative report for the surgery
14 that was performed on December 11th, 1990 which
15 was dictated by Dr. Brems on the day of the
16 accident.

17 There are a number of findings, but I think
18 the one of interest is that at the time of
19 surgery a massive rotator cuff tear comprising
20 the entire infraspinatus, supraspinatus,
21 subscapularis and likely a remnant of the teres
22 minor was found by the operating surgeon and
23 there was retraction of the edge of the cuff of
24 nearly three centimeters.

25 Q. All right. What does that mean?

1 A. What does which part mean?

2 Q. What you've read.

3 A. Oh. The rotator cuff is made up of four
4 muscles. There are three that come around the
5 shoulder blade from the backside and one that
6 comes in front of the shoulder blade from the
7 front side and they all join -- well, they don't
8 all join. The three from the back join on the
9 greater tuberosity and the one from the front,
10 the subscapularis joins on the lesser
11 tuberosity. Okay. The operative note indicated
12 that there was a tear that extended through all
13 four portions of the rotator cuff. So it was a
14 very large tear. In fact, it was characterized
15 as massive.

16 Q. Okay. And -- I'm sorry.

17 A. And the other finding was that there was
18 retraction of three centimeters, which is
19 slightly more than an inch. So it indicated
20 that it was not brand new, that a certain amount
21 of time had passed and the edges had retracted.

22 Q. Okay. Doctor, what is the purpose anatomically
23 of the rotator cuff?

24 A. The part of the rotator cuff that we generally
25 talk about, the three muscles from the back, are

1 stabilizers of the shoulder, the glenohumeral
2 joint. That is to say one of their first
3 functions is to hold the head of the humerus in
4 the glenoid so the patient can begin the motion
5 of abduction.

6 In addition to that, they are the muscles
7 that allow you to externally rotate, to bring
8 your arm out this way.

9 The fourth muscle, the one that comes
10 around the front, the subscapularis, is an
11 internal rotator primarily of the shoulder.

12 Q. Okay. Does the rotator cuff enable one, for
13 example, to lift one's arm beyond 90 degrees and
14 over their head? Does that come into play?

15 A. It is a -- yes, it comes into play.

16 Q. How does it come into play?

17 A. Well, the major muscle, the major abductor of
18 the shoulder is still the deltoid, Okay. But
19 it is important for the rotator cuff to help
20 stabilize the glenohumeral joint, the ball and
21 socket joint, so that the deltoid, which is
22 attached down lower, can help to bring the arm
23 up. So it's a stabilizer during that action.

24 Q. Okay. All right. And I take it you also
25 reviewed the outpatient records from The

1 Cleveland Clinic of May 13th, 1991?

2 A. Yes.

3 Q. And at that time what was the patient's
4 condition?

5 A. According to Dr. Brems he had considerable
6 weakness of external rotation to clinical exam,
7 but functionally he was doing very nicely and in
8 particular I recall, and I wanted to find the
9 record itself, but he had abduction of 160
10 degrees and he had external rotation of 65
11 degrees as I recall.

12 Q. And was that passive or active?

13 A. I don't recall. Let's --

14 MR. PARIS: Why don't we go off the
15 record a minute.

16 VIDEOTAPE OPERATOR: We will now go
17 off the record.

18 - - - -
19 (Thereupon, a discussion was had off
20 the record.)

21 - - - -
22 MR. PARIS: Let's go back on the
23 record.

24 VIDEOTAPE OPERATOR: We are now
25 back on the record.

1 A. I found the record from May 13th, 1991 and it,
2 the measurements that I gave you of 160 degrees
3 of abduction, 65 degrees of external rotation
4 and internal rotation to T12 were both active
5 and passive.

6 Q. Okay. All right. Doctor, based upon the
7 records that you reviewed and based upon your
8 examination of Mr. Biel, did you arrive at an
9 opinion, based upon a reasonable degree of
10 medical certainty, as to whether there was a
11 cause and effect relationship between Mr. Biel's
12 fall of September 3rd, 1990 and his torn rotator
13 cuff?

14 A. Yes, I did.

15 Q. And what is your opinion?

16 A. I believe that there is a causal relationship
17 between his fall of September 3rd, 1990 and the
18 torn rotator cuff.

19 Q. Doctor, do you have an opinion, based upon a
20 reasonable degree of medical certainty, as to
21 whether or not the care and treatment that
22 Mr. Biel received after September 3rd of 1990
23 and as reviewed by, by yourself was reasonable
24 and necessary by virtue of the injuries he
25 sustained in that accident?

1 First of all, do you have an opinion?

2 A. Yes, I have an opinion.

3 Q. What is your opinion?

4 A. That the care and treatment that I reviewed,
5 that is to say the care provided by the Med
6 Center, the care provided by Dr. Sobel, the care
7 provided by Dr. Brems, including the surgery
8 that he performed and the postoperative
9 follow-up, was reasonable and necessary for the
10 treatment of Mr. Biel's injury.

11 Q. And how about the second opinion from
12 Dr. Froimson?

13 A. Today was the first time that I reviewed the
14 second opinion from Dr. Froimson. I certainly
15 would believe that that also would be
16 indicated. Actually it was the first opinion
17 from Dr. Froimson.

18 Q. That's right.

19 A. He was the first person to see him. But that
20 also was necessary.

21 Q. All right, Now, as of the time that you
22 examined him, which would be about ten months
23 after the accident and about seven months after
24 the surgery, did you have an opinion, at least
25 as of that time, based upon a reasonable degree

1 of medical certainty, as to whether or not
2 Mr. Biel's shoulder injury was permanent in
3 nature?

4 A. Well, I, I can't answer that --

5 Q. I can rephrase it.

6 A. Yeah. And the major problem that I have is the
7 word injury, because I use it one way and you
8 use it another way and --

9 Q. I'll rephrase it.

10 A. Okay.

11 Q. Doctor, do you have an opinion, based upon a
12 reasonable degree of medical certainty, as to
13 whether Mr. Biel will return to his pre-injury
14 state?

15 A. Yes, I have an opinion.

16 Q. What is your opinion?

17 A. I do not believe that Mr. Biel will return to
18 his pre-injury state.

19 Q. Okay. And, doctor, the type of post-surgery
20 rehabilitative exercises such as the use of
21 pulleys, **the** wall climbing, with the fingers up
22 against the wall and so forth, are those
23 reasonable modalities of therapy for patients
24 who have undergone rotator cuff surgery?

25 A. Yes.

1 Q. Okay. And how long is it usually necessary for
2 a patient to have to undergo that type of
3 therapy at home or under the care of or under
4 the supervision of a therapist?

5 A. I don't know that there's an average. And I say
6 that because there are a variety of types of
7 rotator cuff tears and there are a variety of
8 types of patients.

9 Q. Okay. Are you, I take it you've treated people
10 with rotator cuff injuries?

11 A. Yes.

12 Q. Both with and without surgery?

13 A. Yes.

14 Q. And what has been your experience as it relates
15 to the type of recuperation that elderly people
16 make versus a younger person?

17 A. Somebody who is elderly is somebody who is older
18 than I am, right?

19 *a.* You bet.

20 A. Okay. As long as we got that straight.

21 I think in terms of people who are in the
22 65 to 70 age bracket as Mr. Biel was, that their
23 rehabilitation is longer than somebody who is in
24 his twenties or thirties.

25 Q. Okay. Doctor, based upon your experience and

1 your expertise, how does a rotator cuff injury
2 such as Mr. Biel's, how would that affect his
3 ability to lift full paint cans on a regular
4 basis?

5 A. I'm only hesitating because we have to talk
6 about a specific point in time.

7 Q. Right.

8 A. Okay. At the time that I saw him, for example?

9 Q. Yeah.

10 A. Okay. I don't think that, at the time I saw him
11 based on what he demonstrated to me, that he
12 would be able to lift a gallon of paint with his
13 right hand.

14 Q. He would be able to?

15 A. He would not be able to.

16 Q. Oh, okay. All right. Do you have an opinion
17 one way or the other, based upon reasonable
18 medical certainty, as to how long it would be
19 before Mr. Biel could lift paint cans, one
20 gallon paint cans on a regular basis? Assuming
21 he followed through with his therapy and so
22 forth.

23 A. I believe that, assuming that he followed
24 through with his therapy, he would be able to
25 lift a paint can not to shoulder level but

1 enough that he could carry it, for example, with
2 approximately three more months of physical
3 therapy.

4 Q. Okay. So about, say, 13 months post-accident?

5 A. Yes.

6 Q. Okay. Would he have any restrictions, based
7 upon your experience and expertise, as it
8 relates to the amount **of** weight he would be able
9 to lift or the frequency of lifting such one
10 gallon paint cans?

11 A. I wouldn't be able to describe the restrictions
12 without having some better indication of what
13 his final rehabilitative state was.

14 MR. PARIS: Okay. Off the record.

15 VIDEOTAPE OPERATOR: We will now go
16 off the record.

17 - - - -

18 (Thereupon, a discussion was had off
19 the record.)

20 - - - -

21 MR. PARIS: Let's go back on the
22 record.

23 VIDEOTAPE OPERATOR: We are now
24 back on the record.

25 MR. PARIS: Thank you, doctor. I

1 have no further questions at this time.

2 THE WITNESS: You're welcome,
3 Mr. Paris.

4 VIDEOTAPE OPERATOR: This will
5 now --

6 MR. PARIS: Wait. Mr. Want~,do
7 you have any questions?

8 MR. WANTZ: I'm not taking it.
9 Because it's a discovery.

10 VIDEOTAPE OPERATOR: This will now
11 conclude the deposition.

12 MR. PARIS: Doctor, will you waive
13 the reading of the deposition transcript?

14 THE WITNESS: Yes, I will.

15 MR. PARIS: Will you waive the
16 viewing of the videotape?

17 THE WITNESS: Yes, I will waive the
18 viewing of the videotape.

19 (Signature waived.)
20
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23
24
25

C E R T I F I C A T E

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 26th day of March A.D. 19 91.

Kenneth Barberic
Kenneth Barberic, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires October 16, 1993