

1 IN THE COURT OF COMMON PLEAS
 2 CRAWFORD COUNTY, OHIO
 3 - - -
 4 MICHAEL HOSKINS, et al.,)
 5 Plaintiffs,)
 6 vs.) Case No. 96-CV-0070
 7 OTIS WRIGHT & SONS, INC.,) Judge Kimme Line
 8 et al.,)
 9 Defendants.)

COPY

10 - - -
 11 Videotaped deposition of ROBERT C. CORN,
 12 M.D., a Witness herein, called by the Defendants
 13 for direct examination pursuant to the Rules of
 14 Civil Procedure, taken before me, the undersigned,
 15 Trisha L. Beban, RPR and Notary Public in and for
 16 the State of Ohio, at the offices of Robert C.
 17 Corn, M.D., 850 Brainard Road, Highland Heights,
 18 Ohio, on Friday, the 15th day of January, 1999, at
 19 9:30 o'clock a.m.
 20 _____
 21 COMPUTERIZED TRANSCRIPTION BY
 BISH & ASSOCIATES, INC.
 812 Key Building
 Akron, Ohio 44308-1318
 (330) 762-0031
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1 APPEARANCES:
 2 On Behalf of the Plaintiffs:
 3 Messrs. Scanlon & Co., L.P.A.
 4 By: Lawrence J. Scanlon, Attorney at Law
 5 1612 Ohio Edison Building
 Akron, Ohio 44308
 6 On Behalf of the Defendant
 7 Otis Wright & Sons, Inc.:
 8 Messrs. Keller & Curtin Co., L.P.A.
 9 By: G. Michael Curtin, Attorney at Law
 10 920 Key Building
 Akron, Ohio 44308
 11 On Behalf of the Third-party Defendant
 12 Elmer Hoskins, via telephone:
 13 Messrs. Sauter, Hohenberger & Beddow
 14 By: Wayne P. Hohenberger, Attorney at Law
 15 Suite 306 - 24 west Third Street
 Mansfield, Ohio 44902
 16 ALSO PRESENT:
 17 Jon Jastromb, Multi Video Service, Inc.
 18 - - -
 19)
 20)
 21)

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1 ROBERT C. CORN, M.D.
 2 of lawful age, a Witness herein, having been first
 3 duly sworn, as hereinafter certified, deposed and
 4 said as follows:
 5 DIRECT EXAMINATION
 6 MR. CURTIN: Let the record reflect
 7 this is the trial deposition of Dr. Robert Corn
 8 taken in the matter of Michael Hoskins, et al.,
 9 versus Otis Wright & Sons, et al., said case
 10 presently pending in the Crawford County Court of
 11 Common Pleas bearing Case No. 96-CV-0070.
 12 It's my understanding that -- my
 13 understanding there will be a waiver of any defects
 14 in service, notice of the taking of the
 15 deposition?
 16 MR. SCANLON: That's correct.
 17 MR. CURTIN: Thank you.
 18 BY MR. CURTIN:
 19 Q. Doctor, would you please state your full
 20 name to the ladies and gentlemen of the jury.
 21 A. My name is Robert Curtis Corn, C-O-R-N.
 Q. Doctor, where are you employed and in what
 capacity?
 A. I am employed in -- by Highland
 Musculoskeletal Associales, Inc. I am an

Page

1 orthopedic surgeon.
 2 Q. Doctor, what address are at -- are we at
 3 today and where is that address?
 4 A. We're at my main office. That's at 850
 5 Brainard Road in Highland Heights, Ohio.
 6 Q. Doctor, you're licensed to practice
 7 medicine in the State of Ohio?
 8 A. Yes.
 9 Q. Would you give the ladies and the
 10 gentlemen of the jury a little bit of your
 11 educational background beginning with college
 12 through medical school, internships, residencies,
 13 things of that nature up until the present time.
 14 A. I received my Bachelor of Science in
 15 biology in 1971 at the Albright College in Reading,
 16 Pennsylvania. I then moved back to my hometown,
 17 Philadelphia, Pennsylvania, where I attended the
 18 Hahnemann University School of Medicine from 1971
 19 until the middle of 1975. I graduated in 1975 with
 20 my M.D. degree.
 21 I then moved out here to Cleveland, and
 22 I started my formal training in orthopedic surgery
 23 at the Cleveland Clinic. I was at the Clinic from
 24 1975 till the middle of 1979 when I graduated from
 25 the program.

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1 I entered private practice in
 2 orthopedic surgery in August of 1979, and for
 3 almost 20 years I've been a private practice
 4 orthopedic surgeon working primarily in the east
 5 and southeast side of Cleveland.
 6 Q. Doctor, what's involved in the field of
 7 orthopedics?
 8 A. Orthopedic surgery is the branch of
 9 medicine which involves the medical and surgical
 10 treatment of diseases, disorders, injuries and some
 11 tumors involving the musculoskeletal system. That
 12 includes problems of the bones, muscles, tendons,
 13 joints and ligaments.
 14 We have to read musculoskeletal X-rays
 15 like a radiologist does so we deal with
 16 radiological abnormalities, we deal with physical
 17 therapy challenges. Taking care of most age groups
 18 from young children to the most senior members of
 19 our society.
 20 Q. Are you Board certified?
 21 A. Yes.
 22 Q. And when were you so Board certified?
 23 A. September of 1980.
 24 Q. What's involved in the Board certification
 25 of an orthopedic surgeon?

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1 A. In 1980 you had to have completed a
 2 approved residency, that is a training program, an
 3 apprenticeship program so to *speaking*, that is
 4 approved by the American Board of Orthopedic
 5 Surgery. This is a national organization but an
 6 international designation. They are the people
 7 that certify the residency programs, and they have
 8 developed a certain criteria so that you can
 9 qualify to be ~~in~~ for a certification.
 10 That includes completing a residency
 11 program which is an apprenticeship program where
 12 the more years you're in it, the more
 13 responsibility and hopefully the more knowledge you
 14 have accumulated. You have to have been in the
 15 clinical practice of orthopedic surgery for one
 16 calendar year in one geographical location.
 17 And during that time period, the
 18 community gets to look at you, peer -- it's a peer
 19 review period where doctors come, they watch you in
 20 surgery, they listen to you present cases at
 21 conferences, you may go through interview process.
 22 And then you sit for a final series of
 23 examinations, both oral exams and written exams,
 24 and after fulfilling all those requirements and
 25 passing the exams you are certified.

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1 Q. Is Board certification one of if not the
 2 highest achievement obtainable in your specialty?
 3 A. Yes.
 4 Q. Doctor, what about teaching positions? Do
 5 you hold any teaching positions?
 6 A. Yes.
 7 Q. Could you tell the ladies and gentlemen of
 8 the jury a little bit about that?
 9 A. I am currently a clinical instructor in
 10 orthopedic surgery at the Case Western Reserve
 11 University School of Medicine, although my **primary**
 12 teaching at this point in time is teaching
 13 residents, that is doctors who are in their
 14 training programs rotating through the various
 15 hospitals.
 16 I'm on the staff at a number of
 17 hospitals recently acquired by the Cleveland Clinic
 18 Health System. This is a -- they have a number of
 19 residency programs, and the residents occasionally
 20 scrub with us and we take them on rounds with us,
 21 and that's the teaching that I do now.
 22 Q. Doctor, how long have you been teaching
 23 future doctors the art of orthopedic surgery?
 24 A. About 19 years.
 25 Q. Now, do you also practice in this greater

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1 Summit County area? Do you have an office there?
 2 A. I do. I have --
 3 Q. Where?
 4 A. -- an office at the Merid- -- I **think** it's
 5 still called the Meridia Medical Center now that
 6 all these names -- but it's in Sagamore Hills. We
 7 do have time-share privileges there.
 8 Q. Doctor, what about articles? Have you
 9 written any articles involving your -- involving
 10 your specialty?
 11 A. Yes, I have.
 12 Q. Could you tell us a little bit about
 13 those?
 14 A. Some of the articles were clinical, that
 15 is case reports. When I was -- did my residency in
 16 my earlier years of practice I was very interested
 17 in biological fixation of total joint implants. In
 18 English that means there was a high complication
 19 rate after five or ten years with total joints that
 20 were implanted, and we were looking for alternative
 21 ways of fixing these into the bone or having the
 22 body physically growing into them.
 23 I've also done research work on -- in
 24 sports medicine, arthroscopic surgery,
 25 complications of osteoporosis

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1 including spinal injury, bone infections, a number
 2 of topics over the years,
 3 Q. What about hospital affiliations, sir? Do
 4 you have any?
 5 A. Yes.
 6 Q. What are those, sir?
 7 A. The hospitals that I'm affiliated with now
 8 under the Cleveland Clinic Health System include
 9 the Hillcrest Hospital, the Euclid Hospital, and
 10 the Huron Hospital. I have privileges at
 11 University Hospitals Bedford Medical Center, the
 12 Lake County Hospital System, and the PHS Mt. Sinai
 13 Hospital System.
 14 Q. Doctor, have you ever been selected to
 15 serve as the chief of orthopedics at any area
 16 hospitals?
 17 A. Yes.
 18 Q. And how long did you serve as chief of
 19 orthopedics and where, sir?
 20 A. I was chief of orthopedics for eight years
 21 at the Huron Road Hospital in East Cleveland, Ohio.
 22 Q. Doctor, as part of your practice do you
 23 take some time to examine individuals who are not
 24 your patients for the purposes of second opinions,
 25 consultation, Bureau of Workman's Compensation

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1 proceedings, or lawsuits? Do you do that, sir?
 2 A. Sure.
 3 Q. Did you take the opportunity in this
 4 particular case to examine Michael Hoskins at my
 5 request?
 6 A. Yes.
 7 Q. Where did that examination take place and
 8 when did it take place, sir?
 9 A. The exam took place on October 23rd of
 10 1998 in my offices.
 11 Q. When that examination took place did you
 12 first take a history from Michael Hoskins with
 13 respect to what had happened with respect to his
 14 care and treatment before you saw him?
 15 A. Yes.
 16 Q. Now of course he was not your formal
 17 patient; is that correct?
 18 A. That's true.
 19 Q. You saw him on one occasion at my request;
 20 is that correct?
 21 A. Yes.
 22 Q. Did Mr. Hoskins give you a history of his
 23 medical care and treatment before the accident -- I
 24 mean after the accident?
 25 A. Yes.

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1 Q. Doctor, I want to review with you a little
 2 bit of the medical records. It's my understanding
 3 you also reviewed medical records that were
 4 assembled by the attorneys in this litigation and
 5 forwarded to you, and they formulated a portion of
 6 your opinion in this matter, correct?
 7 A. Yes.
 8 Q. And, Doctor, there's also a report that
 9 you prepared that you're looking down at right now
 10 that includes some of your opinions and findings;
 11 is that correct?
 12 A. Yes.
 13 Q. Feel free to refer to that report during
 14 any of my questioning or that of Mr. Scanlon, all
 15 right, sir?
 16 A. Sure.
 17 Q. Doctor, initially on the day of this
 18 accident, November -- excuse me, September 17th of
 19 1994, the Plaintiff was seen at the emergency room;
 20 is that correct, sir?
 21 A. Yes, the Shelby Memorial Hospital in
 22 Shelby, Ohio.
 23 (Defendant's Exhibit 1 was
 24 marked for identification.)
 25 BY MR. CURTIN:

1 Q. Doctor, I'm going to hand you what's been
2 previously marked as Defendant's Exhibit 1 which is
3 the Shelby Memorial Hospital records from the day
4 of the accident. Do you have that in front of you,
5 sir?

6 A. Yes.

7 Q. Doctor, what if any indication in the
8 hospital records is there as to whether or not
9 immediately after the accident Mr. Hoskins wanted
10 medical attention?

11 A. The records indicate that there was -- the
12 attention was not immediate, it was a period of
13 time after the accident.

14 Q. I believe the records --

15 A. It's about two hours afterwards.

16 Q. I believe the records in the information
17 section, the nurses' notes, state, quote, States
18 was disoriented initially, denied medical attention
19 at time of accident, close quote; is that correct?

20 A. That's what it says. There's also
21 indications on the top the time of the accident and
22 the time of the arrival.

23 Q. He was not transported by ambulance then,
24 sir?

25 A. It does not appear that he was, no.

1 Q. Doctor, let's begin with the neck which is
2 referred to medically as the cervical area; is that
3 correct?

4 A. Correct.

5 Q. Doctor, please tell the ladies and
6 gentlemen of the jury what these findings were on
7 X-ray in this gentleman's neck.

8 A. The radiological assessment was that there
9 was no evidence of any bony or soft tissue trauma
10 sustained to the neck. There were some abnormal
11 findings that were compatible with what is known as
12 cervical spondylosis. This is a medical term
13 indicating both a disease of the joints, arthritis,
14 and a disease of the disk which happens as the disk
15 dries out.

16 This is a chronic process and the fact
17 that it appeared with spur formation and disk space
18 narrowing is indication that this is a process
19 that's been clearly going on for many years, if not
20 five or ten years.

21 Q. Now Doctor, just for the purposes of my
22 understanding, you're looking at Dr. Lew, L-E-W,
23 his radiological interpretation, correct?

24 A. Yes.

25 Q. And quite clearly there, Dr. Lew concludes

1 Q. Doctor, there's an indication in the
2 emergency room record that he was alert and
3 oriented times three; is that correct?

4 A. Yes.

5 Q. What does that mean, sir, in layperson's
6 terms?

7 A. One of the ways of assessing someone's
8 degree of cognitive ability or consciousness or how
9 alert they are is asking them where they are, what
10 day is it, establishing what the time was, the
11 place and the person. That's the orientation times
12 three.

13 Q. Was he able to answer all those questions
14 and essentially viewed as normal with respect to
15 being able to answer those questions?

16 A. Yes.

17 Q. Were X-rays taken of his neck and lower
18 back, sir?

19 A. Yes, they were.

20 Q. Do you have those radiological findings
21 before you now?

22 A. Yes.

23 Q. That's from the date of the accident,
24 correct?

25 A. Correct, yes.

1 the existence of cervical spondylosis through C4 to
2 C7 with narrowed disk spaces and anterior bone spur
3 formation, correct?

4 A. Yes.

5 Q. Now, Doctor, spondylo- -- spondylosis --

6 A. Spondylosis.

7 Q. -- is that also a hi- -- does that have
8 anything to do with arthritis?

9 A. Well, spondylosis is a medical term which
0 means two things basically. It means that there's
1 two processes going on. There are -- is a process
2 of arthritis that is going on. That is a disease
3 of the joints. And there is a process known as
4 disk disease which is an aging process where the
5 disk material, that is the cushions that are
6 between the back bones and the neck bones, loses
7 their water cont- -- water content, and as they
8 lose their water content the bones get closer
9 together. And as a response to healing, the body
0 tries to heal itself and it makes these bone
1 spurs, So these are all a process.

2 You can streamline that whole statement
3 that I just stated by just saying it's
4 spondylosis. So it really encompasses two
5 pathological conditions, disk disease and

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1 arthritis.
 2 Q. So you had three specific evidence --
 3 pieces of evidence dealing with the existence of
 4 arthritis in this man's neck. First, spondylosis;
 5 second, narrowed disk spaces; third, anterior bone
 6 spur formations, correct?
 7 A. Yes.
 8 Q. Now, Doctor, C4 through C7, does that
 9 include the C5-C6, C6-C7 intervertebral disk
 10 spaces?
 11 A. Yes. That's essentially the lower half of
 12 the neck.
 13 Q. Was there an examination, an X-ray done of
 14 his lumbar spine?
 15 A. Yes.
 16 Q. Would you please tell the ladies and
 17 gentlemen of the jury the findings based upon the
 18 X-ray of the lower back.
 19 A. A similar type of process was going on in
 20 the low back as well. This was at the lowest
 21 movable segment in the low back, what we call the
 22 L5 and between the S and the S1. The S1 indicates
 23 the first vertebrae of the sacrum which is the
 24 lowest five vertebrae of the back which are fused
 25 together typically.

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1 And there was two things that was
 2 noted. Number one, the disk space again was
 3 narrowed which indicates a chronic process going
 4 on. And the other thing that was noted was there
 5 was a slight slippage of the L5 vertebrae forward
 6 on the S1 vertebrae.
 7 This is graded in a system grade one
 8 through grade four. Grade one means it slipped
 9 less than 25 percent. And that's -- this is --
 10 there's a term that is called spondylolisthesis
 11 which means -- spondy means back, listhesis means
 12 slippage. This also indicates a chronic process
 13 related to degeneration.
 14 Q. Now Doctor, it indicates at that
 15 particular -- and I won't even try to pronounce
 16 that -- at L5-S1 was congenital in origin. What
 17 does that mean?
 18 A. Congenital means it's -- there are a
 19 number of ways of classifying orthopedic
 20 conditions. There's our stuff that is hereditary,
 21 that's stuff that is -- appears on a very
 22 predicted ratio basis, three to one, two to one
 23 ratio.
 24 There is something called congenital
 25 which is something that you're born with or that is

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1 manifested very early in the baby's development.
 2 The next thing would be a developmental
 3 abnormality. In other words, this was normal at
 4 one point in time but then developed to be
 5 abnormal.
 6 The third or fourth one would be
 7 degenerative; in other words, it's a process of
 8 aging or wear and tear.
 9 And the fifth one would -- or the last
 10 one would be related to tumor.
 11 Q. But basically, Doctor, this particular
 12 radiologist concluded that whatever was wrong at
 13 L5-S1 was congenital meaning he had been born with
 14 it; is that correct?
 15 A. That's what their interpretation was,
 16 yes. Not related to an injury but related to a
 17 birth abnormality.
 18 Q. Was the narrowing of the disk space at
 19 L5-S1 suggestive to you of arthritis in the lower
 20 back?
 21 A. Of spondylosis in the lower back, yes.
 22 Q. Does that relate to arthritis?
 23 A. It can. That's part of it, yes.
 24 Q. Doctor, were either of the abnormalities
 25 noted in the cervical spine, the neck, or the

Page 20

1 lumbar spine, the low back, were either of those
 2 changes trauma related? I mean were they due to an
 3 accident?
 4 A. No.
 5 Q. What were they due to, sir?
 6 A. They were in the neck due to a
 7 degenerative process, a premature aging process in
 8 the neck, and that same process in the low back
 9 superimposed upon a congenital or a birth
 10 abnormality.
 11 Q. Do these degenerative processes in the
 12 neck as well as the low back, do they get better,
 13 sir?
 14 A. No. They always get worse.
 15 Q. Tell us about that, Doctor.
 16 A. This is a deterioration process. There's
 17 nothing that we know in medicine to halt it.
 18 There's nothing that we know how to prevent it from
 19 developing in severity. This always gets worse
 20 with time. There's nothing we can do to stop that
 21 progress. This is a progressive disease or
 22 disorder. In other words, once it starts, it
 23 progresses unrelentingly. Now it can progress at
 24 various speeds but it always progresses. It always
 25 gets worse. It never gets better.

1 Q. Doctor, we've thoroughly covered the day
 2 of the accident. Then according to the history and
 3 the medical records the Plaintiff was next seen by
 4 his family doctor, a Dr. Dowds; is that correct,
 5 sir?
 6 A. Yes.
 7 Q. That was on September 20th of 1994, about
 8 three days later; is that correct?
 9 A. That's right.
 10 (Defendant's Exhibit 2 was
 11 marked for identification.)
 12 BY MR. CURTIN:
 13 Q. According to Exhibit 2 which are Dr.
 14 Dowds' records, Dr. Dowds' records indicate, quote,
 15 Whiplash, dash, rear ended, close quote; is that
 16 correct?
 17 A. Yes.
 18 Q. And Dr. Dowds also according to the
 19 records restricted his work from September 19th to
 20 October 3rd of 1994, correct?
 21 A. Yes.
 22 Q. And it indicates that the gentleman
 23 complained of his neck being sore and his low back,
 24 correct?
 25 A. Yes, both areas.

1 Q. Now, he was seen on September 27th of
 2 1994, a period of about ten days later, but at
 3 least according to the records I have can you
 4 determine what was done on that date, sir, absent
 5 taking his weight?
 6 A. No. There's really no indication of any
 7 care or service that was rendered on that time.
 8 There's -- there's nothing written here.
 9 Q. Okay. So at least we know he's there on
 10 September 20th complaining about the neck and low
 11 back, and then he returns about ten days later to
 12 his general doctor, correct?
 13 A. Yes.
 14 Q. Now, in the same exhibit, sir, are -- did
 15 you have the opportunity to review a physical
 16 therapy referral?
 17 A. Yes.
 18 Q. And Dr. Dowds apparently referred this
 19 patient for physical therapy, Doctor?
 20 A. Yes, he did.
 21 Q. Doctor, in the physical therapy referral,
 22 it indicates, and please stop me if I misstate
 23 anything because you're the expert, quote, Michael
 24 Hoskins is a 46 year old white male who was
 25 referred to physical therapy by Dr. Dowds with a

1 diagnosis of cervical whiplash, close quote. Did I
 2 read that correctly?
 3 A. Yes.
 4 Q. Would the physical therapist like any
 5 other doctor have taken a history of any prior
 6 medical problems in the same areas being treated?
 7 A. That would be the norm or the standard in
 8 our community.
 9 Q. Okay. This is a very important point so
 10 let me be crystal clear. According to the physical
 11 therapy notes contained in Dr. Dowds' records, Mr.
 12 Hoskins was complaining about his neck, mid and low
 13 back; is that correct?
 14 A. Yes.
 15 Q. And this is on September 28th of 1994; is
 16 that correct?
 17 A. Yes.
 18 Q. Here's a very important question I want to
 19 ask you, sir. According to the medical records
 20 from Shelby Memorial Hospital contained in Dr.
 21 Dowds' own medical file, did Mr. Hoskins
 22 acknowledge, admit to any prior problems with his
 23 neck or low back?
 24 A. He did not.
 25 Q. What if any indication is contained in the

1 records, if he actually gave any answer to that
 2 question, what does it say?
 3 A. He indicated that there was no previous
 4 problems, so obviously that question was asked in
 5 one way, shape or form and he denied the fact that
 6 he had any previous problems or treatable
 7 abnormalities in those areas.
 8 Q. And specifically just so I'm crystal
 9 clear, the medical records indicate, quote, He
 10 indicates no previous problems with the cervical
 11 spine or low back, close quote; is that correct?
 12 A. Yes.
 13 Q. Now, Doctor, I'm going to show you some
 14 additional documentation, but first I want to ask
 15 you two more questions.
 16 First, we know what he told the
 17 physical therapy group. We've reviewed that. He
 18 denied any prior neck or low back complaints. When
 19 you examined him years later, did you ask him, Sir,
 20 did you ever have any problems with your neck or
 21 low back before this accident, or words to that
 22 effect?
 23 A. I did ask him that question.
 24 Q. Okay, Doctor. Now please tell the ladies
 25 and gentlemen of the jury what his response to that

Page 25

1 question was.

2 A. He said that, quote, No prior problems in

3 the neck or back area.

4 (Defendant's Exhibit 3 was

5 marked for identification.)

6 BY MR. CURTIN:

7 Q. Now, Doctor, finally I'm going to hand you

8 a copy of Defendant's Exhibit 3 which I'm going to

9 ask you to assume is page 49 of Mr. Hoskins'

10 deposition. I hand it to you merely to remove any

11 question as to what is contained in that document.

12 On Exhibit 3 I want you to assume or I

13 want you to verify for me that in sworn deposition

14 testimony when asked in this litigation, quote,

15 Before this accident did you ever have any type of

16 pain or problems with your neck or back, did Mr.

17 Hoskins answer, No, sir?

18 A. Yes, he did answer no. He de- -- denied

19 the fact that he had any previous treatable

20 problems with his neck or back.

21 Q. "Even from a hard day at work?" Answer,

22 "None that I can recall." Is that what he

23 testified to?

24 A. Yes.

25 MR. SCANLON: Objection. I'd ask that

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1 you read the next question and answer.

2 MR. CURTIN: You can redirect for

3 whatever you'd like, sir.

4 BY MR. CURTIN:

5 Q. Doctor, we at least then have three

6 specific episodes, first, the physical therapist;

7 second, your own history; and third the deposition

8 where Mr. Hoskins denied any prior problems with

9 his neck or low back, true?

10 A. That's true.

11 Q. Now, Doctor, at the time of the

12 examination did you have the benefit of a

13 chiropractor's records by the name of Dr. Stuckey?

14 Did you have them with you, sir?

15 A. I did not.

16 Q. Have you subsequent to your examination

17 been provided those records by myself?

18 A. Yes.

19 (Defendant's Exhibit 4 was

20 marked for identification.)

21 BY MR. CURTIN:

22 Q. Doctor, I'm going to hand you what's been

23 marked as Defendant's Exhibit 4 and ask you whether

24 or not you recognize those to be Dr. Stuckey's

25 records?

Page 2

1 A. Yes, these are the records that I saw

2 previously.

3 Q. I'll ask you to assume, sir, they are Dr.

4 Stuckey's records subpoenaed and shared with

5 opposing counsel. Now, Doctor, on the first page

6 of Dr. Stuckey's records there's a health history;

7 is that correct?

8 A. Yes.

9 Q. Now, Dr. Stuckey is a chiropractor in

10 Attica, Ohio I believe. Let me ask you this, sir.

11 In the document marked health history, the question

12 is posed to Mr. Hoskins, "What is your major

13 complaint?" What did he answer?

14 A. "Hips, back and neck."

15 Q. Question is posed, "How long have you had

16 this condition?" What did he answer?

17 A. "15 years."

18 Q. Now, is this document, this first one,

19 dated, sir?

20 A. It is not.

21 Q. In the upper left-hand portion of the

22 document, his occupation is listed as a student; is

23 that correct?

24 A. That's what it says, yes.

25 Q. Now, Doctor, you know at the time you

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1 evaluated this gentleman he was not a student, he

2 was a working man, correct?

3 A. Correct.

4 Q. Now, the second page of Dr. Stuckey's

5 records, you have those in front of you?

6 A. Yes.

7 Q. Is that dated?

8 A. Yes, there's a date on this.

9 Q. Where is the date you see on that, sir?

10 A. 4/16/93.

11 Q. This accident is 9/17/1994; is that

12 correct, sir?

13 A. Yes.

14 Q. What if any indication did Mr. Hoskins

15 according to these record!; give with respect to any

16 pnor history of neck stiffness?

17 A. He checked that off as one of those

18 problems.

19 Q. This is before our accident; is that

20 correct?

21 A. Yes.

22 Q. Did Mr. Hoskins admit to before our

23 accident in 1993 difficulty in rising to walk after

24 sitting?

25 A. Yes.

1 Q. Did he admit to in 1993 difficulty in
 2 walking?
 3 A. He did.
 4 Q. Did he admit to difficulty in bending in
 5 1993?
 6 A. Yes.
 7 Q. Did he -- did he admit to pain while
 8 walking?
 9 A. Yes.
 10 Q. Did he admit to pain while standing?
 11 A. Yes.
 12 Q. Did the chiropractor indicate any
 13 conclusion with respect to primary and secondary
 14 subluxation in January of 1993, about a year and a
 15 half before this accident?
 16 MR. SCANLON: All right. That's
 17 enough. I'll object to the forms of the question.
 18 This witness is here not as a puppet. You are not
 19 the puppeteer. He is here to answer questions.
 20 And I would ask that you put him -- put questions
 21 to him that are not leading in nature.
 22 BY MR. CURTIN:
 23 Q. Doctor, what if any indication is there
 24 with respect to any primary or secondary
 25 subluxation in or around Jar uary 10th of 1993?

1 accident; is that correct, sir?
 2 A, Yes.
 3 Q. By whom was it signed, sir?
 4 A. By Dr. Stuckey.
 5 Q. What, if anything, does it indicate with
 6 respect to ability to work or not work?
 7 A. It was recommended that he be excused from
 8 work until August 14th of 1994, so for -- looks
 9 like a two to three day period of time.
 10 Q. And what was the reason given, if any?
 11 A. Sacroiliac strain.
 12 Q. Doctor, based upon a review of those
 13 records that we have just discussed, specifically
 14 those of Dr. Stuckey, do you have an opinion based
 15 upon a reasonable degree of medical certainty as to
 16 whether or not Mr. Hoskins had symptoms in his neck
 17 and/or low back prior to the accident of September
 18 17th, 1994? First, do you have an opinion?
 19 A. I do have an opinion.
 20 Q. What is that opinion, sir?
 21 A. Opinion is that there is medical
 22 documentation of a preexisting symptomatic
 23 condition in his neck and low back prior to the car
 24 accident in question.
 25 Q. Now, Doctor, with respect to the X-rays we

1 A. The records indicate that there was a
 2 sacroiliac joint primary subluxation and a cervical
 3 secondary subluxation.
 4 Q. Where is the sacroiliac joint, sir?
 5 A. Sacroiliac joint is where the low back
 6 joins the pelvis. It's essentially low back, low
 7 low back.
 8 Q. Would that -- what -- where would that be
 9 in relationship to L5-S1?
 0 A. Slightly below that.
 1 Q. And the cervical area is where, sir?
 2 A. That's the neck.
 3 (Defendant's Exhibit 5 was
 4 marked for identification.)
 5 BY MR. CURTIN:
 6 Q. Okay. Doctor, I'm going to hand you
 7 what's been marked as Defendant's Exhibit 5, and
 8 I'm going to ask you to assume this is a document
 9 drawn from Mr. Hoskins' work records at
 0 Copperweld. Do you see the upper portion of that
 1 document, sir?
 2 A. Yes.
 3 Q. When is it dated?
 4 A. August the 12th of 1994.
 5 Q. That's approximately one month before *this*

1 discussed from the day of the accident, 9/17/1994,
 2 what if any relationship do those X-ray findings
 3 have that you talked about earlier to his
 4 complaints that predate this accident? What if any
 5 relationship is there between his complaints and
 6 those X-ray findings?
 7 A. Well, the X-ray abnormalities were in the
 8 lower half of the neck and in the lowest area of
 9 the low back. These corresponded to the same areas
 0 as the medical records indicate there may have been
 1 some prior problems or at least necessity of care
 2 prior to the car accident. So they correspond to
 3 the same anatomic or geographical area.
 4 Q. So basically for a layperson like me to
 5 understand, the areas that he complained of in the
 6 neck and low back before the accident, his X-rays
 7 confirm there were some degenerative changes in
 8 there as seen in the X-rays of 9/17/94?
 9 A. Yes.
 0 (Defendant's Exhibit 6 was
 1 marked for identification.)
 2 BY MR. CURTIN:
 3 Q. I'm handing you what's been previously
 4 marked as Exhibit 6 which is the CT scan done of
 5 his head; is that correct?

1 A. Yes.
 2 Q. What would be the typical cost of a CT
 3 scan, Doctor?
 4 A. CT scans would be 2 to \$300.
 5 Q. Is that medically reasonable, that price,
 6 2 to \$300?
 7 A. Yes. Typically they're not that terribly
 8 expensive.
 9 Q. The CT scan of this gentleman was done on
 10 or about October 4th of 1994; is that correct?
 11 A. Yes.
 12 Q. What was the finding of the CT scan?
 13 A. This is a -- a test to look for
 14 abnormalities within the brain and within the --
 15 the skull cavity, and it was interpreted as a
 16 normal CT of the brain.
 17 Q. Doctor, based upon your review of the
 18 records, you were aware of the fact that the
 19 gentleman treats throughout the remainder of 199
 20 is that correct, sir?
 21 A. Yes, he does.
 22 Q. Doctor, what if any objections do you have
 23 -- and I don't mean legal. Let me rephrase.
 24 Please comment, do you have any quarrel
 25 or question with the correctness of him treating

1 A. I do have an opinion.
 2 Q. What is that opinion, sir?
 3 A. In that these types of injuries typically
 4 resolve within a three to four month period of time
 5 it is doubtful that any care or treatment beyond
 6 that is solely related to a singular soft tissue
 7 injury and is more likely than not related to his
 8 ongoing progressive degenerative conditions which
 9 he obviously was symptomatic before this accident
 10 and will probably remain symptomatic and worsen
 11 through the course of his life.
 12 MR. SCANLON: Objection. Move to
 13 strike.
 14 BY MR. CURTIN:
 15 Q. Doctor, with respect to -- there was an
 16 objection raised, so I'll have to ask you the same
 17 question again to ensure the fact that I was not at
 18 fault in my phraseology of my question. Let me try
 19 it one last time.
 20 Doctor, based upon the physical
 21 examination, the history taken from the patient as
 22 well as the medical records reviewed, do you have
 23 an opinion within a reasonable degree of medical
 24 certainty and/or probability as to whether or not
 25 any and all medical care and treatment rendered to

1 for three or four months after this accident? Do
 2 you have any quarrel with that, sir?
 3 A. No, not at all. Typically soft tissue
 4 injuries necessitate care during that time period,
 5 and it's usually successful resolution within that
 6 time period.
 7 Q. Then, Doctor, you don't -- it would be
 8 your opinion that the care and treatment rendered
 9 three or four months after this accident would have
 0 been caused by the accident, correct?
 1 A. Yes.
 2 Q. You're not here to say the man wasn't
 3 injured, are you, sir?
 4 A. No, I am not.
 5 Q. Or that he should not have been treated,
 6 are you?
 7 A. No, I do believe at that time period the
 8 care and treatment was appropriate.
 9 Q. Doctor, do you have an opinion based upon
 0 a reasonable degree of medical certainty as to
 1 whether or not medical care and treatment rendered
 2 after December, 1994 or January of 1995 was a
 3 direct and proximate cause of the accident of
 4 September 17th, 1994? First, do you have an
 5 opinion?

1 Mr. Hoskins after December, 1994 or January, 1995
 2 was a direct and proximate cause of the motor
 3 vehicle accident of September 17th, 1994? First,
 4 do you have an opinion?
 5 A. Yes, I do have an opinion.
 6 Q. What is that opinion, sir?
 7 A. My opinion is the care and treatment
 8 rendered after this four month period of time was
 9 not related to a singular traumatic episode and
 0 more likely than not was related to his progressive
 1 degenerative condition which was symptomatic both
 2 before and will remain symptomatic during the
 3 course of the rest of his lifetime as this
 4 condition worsens.
 5 Q. Doctor, he continued to treat throughout
 6 calendar year 1995; is that correct?
 7 A. Yes.
 8 Q. I believe his treatment continued into
 9 calendar year 1996; is that correct, sir?
 0 A. Yes.
 1 Q. Doctor, based upon the review of the
 2 records and the history provided, the gentleman had
 3 a cervical MRI on or about May 2nd of 1996. Is
 4 that accurate to the best of your knowledge?
 5 A. Yes.

1 Q. Is it also accurate that in May of 1996
 2 the gentleman had three nerve blocks or epidural
 3 blocks that cost approximately \$1,600?
 4 A. That's -- the records do indicate that.
 5 Q. So that's about \$3,000 of medical care and
 6 treatment that I'll represent to you is being
 7 submitted as part of this lawsuit incurred in May
 8 of 1996. Is that consistent with the history he
 9 gave you and the review of the records?
 10 A. It is.
 11 (Defendant's Exhibit 7 was
 12 marked for identification.)
 13 BY MR. CURTIN:
 14 Q. Okay. Now, Doctor, I'm going to hand you
 15 what's been previously marked as Defendant's
 16 Exhibit 7, and focusing with you in the middle
 17 portion of 1996 but a little before \$3,000 worth of
 18 medical care and treatment. I'm going to ask you
 19 to assume the document I've handed you is drawn
 20 from Coppenveld work records that have been
 21 subpoenaed and shared in this matter between the
 22 litigants.
 23 What if any indication is there as to
 24 whether or not Mr. Hoskins may have sustained any
 25 type of injury to his person in March of '96?

1 Hoskins was engaging in immediately before he
 2 underwent the cervical MRI and the nerve block, not
 3 immediately but several months before?
 4 MR. SCANLON: Objection.
 5 BY MR. CURTIN:
 6 Q. Let me rephrase the question, Doctor.
 7 What, if anything, did the emergency room records
 8 from Willard Hospital indicate with respect to
 9 what, if anything, had happened to Mr. Hoskins in
 10 March of 1996? Go ahead, you can answer.
 11 A. The history on the bottom states that,
 12 quote, One week ago Friday shooting a lay-up at
 13 Shelby Y, not aware shoe string untied, right ankle
 14 turned -- or it says ankle, parentheses, right,
 15 turned completely over, was swollen and black and
 16 blue, kept ice on it.
 17 Q. And this is in March of 1996, about two
 18 months before the cervical MRI and the nerve blocks
 19 to his neck, correct?
 20 A. Yes.
 21 (Defendant's Exhibit 8 was
 22 marked for identification.)
 23 BY MR. CURTIN:
 24 Q. I want to talk with you, sir, about the
 25 cervical MRI which we discussed on a couple of

1 MR. SCANLON: I'll object to this
 2 document on the issue of relevancy. Go ahead,
 3 Doctor.
 4 THE WITNESS: This indicates that on or
 5 about 3/15/96 in the late morning hours he was at a
 6 local YMCA playing basketball with his daughter,
 7 lost his footing, fell and sprained his ankle
 8 badly.
 9 BY MR. CURTIN:
 10 Q. Now this is in March of 1996?
 11 A. Yes. March 15th it says.
 12 Q. This is about two months before he
 13 undergoes a cervical MRI and three nerve blocks,
 14 correct?
 15 A. Yes.
 16 (Defendant's Exhibit 7-A was
 17 marked for identification.)
 18 BY MR. CURTIN:
 19 Q. Doctor, I'm going to hand you what's been
 20 marked as Defendant's Exhibit 7-A. It's from
 21 Willard Hospital. I'll ask you to assume that to
 22 be accurate. Do you see a date on that, sir?
 23 A. 3/31/96.
 24 Q. What, if anything, does it indicate with
 25 respect to the type of basketball play that Mr.

1 occasions. I'm going to hand you what is marked as
 2 Defendant's Exhibit 8 and ask you whether or not
 3 you recognize that to be the cervical MRI?
 4 A. Yes, this -- these are the results from
 5 the MRI scan.
 6 Q. That was done in May of 1996, correct?
 7 A. Yes.
 8 Q. Now Doctor, what, if anything, does the
 9 clinical data indicate as to why ~~the~~ cervical MRI
 0 was being ordered by Dr. Patterson?
 1 A. It says, quote, Clinical data, neck pain,
 2 rule out disk herniation, slash, stenosis.
 3 Q. Let me ask you directly, Doctor. From
 4 your review of the medical records, what if any
 5 indication is there based upon your review of the
 6 medical records, the history and your exam, as it
 7 pertains to the necessity of an MRI in May of 1996?
 8 A. I do have opinions.
 9 Q. What is that opinion?
 0 A. The MRI scan was requested without there
 1 being any evidence, either subjectively or
 2 objectively, of any neurological impingement or
 3 impairment. The X-rays we know from the immediate
 4 post accident films showed diffused degenerative
 5 disease. The MRI would -- it's unlikely that the

1 MRI in the absence of symptoms would show anything
 2 that would be treatable.
 3 Most surgeons would not do an MRI scan
 4 at this point in time unless one was contemplating
 5 surgical intervention and trying to figure out at
 6 which level the surgery would be appropriate for
 7 this degenerative type of condition.
 8 I don't believe there's clear
 9 indication in the medical records that this type of
 10 scan was even indicated due to the lack of
 11 neurological symptomatology. That is there is no
 12 evidence in the records of any pinched nerve or
 13 irritation of the nerve or inflammation, irritation
 14 or pressure on the spinal cord, and therefore this
 15 test is really not indicated.
 16 Q. And would a symptom be radiculopathy, pain
 17 running down your arms?
 18 A. Well, a specific pain in a specific
 19 distribution, yes, that could be one of the things,
 20 sure.
 21 Q. Doctor, let me just very briefly go down
 22 the MRI of his neck of the --
 23 MR. SCANLON: I'm going to object to
 24 you reading it into the record.
 25 BY MR. CURTIN:

1 A. This level was involved a little bit more
 2 significantly than the 4-5 level, both on the
 3 X-rays and the MRI. It shows what we call osteo-
 4 -- osseous ridges and spurring. This is clearly a
 5 long-term chronic healing or reparative process
 6 that's trying to be accomplished. There is
 7 arthritis and disk disease, and again, the same
 8 narrowing. So this is a worse -- or more
 9 significantly involved level than the 4-5 level.
 10 Q. Trauma related --
 11 A. No.
 12 Q. -- degenerative, what?
 13 A. Degenerative.
 14 Q. C6-C7 which is the lowest level I believe?
 15 A. Well, there's actually one below that.
 16 But this one was even more involved than the C5-6
 17 level because there was a very small protrusion or
 18 this -- this disk bulging had gone to the two to
 19 three millimeter range. Now this is still very,
 20 very tiny. Two to three millimeters is about an
 21 eighth of an inch which is clinically insignificant
 22 but radiologically it's significant 'cause it's
 23 there.
 24 But this indicates, again, a worse -- a
 25 progressively worse process as you go to the lower

1 Q. Doctor, I'm not going to read it into the
 2 record. I'm going to phrase my question as
 3 follows.
 4 First, how many disk spaces are there
 5 in the neck, from what to what, sir?
 6 A. There is one between C2 and 3 and goes all
 7 the way down to C7 and T1. So it's really six
 8 segments.
 9 Q. C2-3, C3-4, what if any evidence of
 0 abnormality in the neck based upon the MRI?
 1 A. There basically appears radiologically
 2 normal as did the regular X-rays.
 3 Q. C4-C5, what if any evidence of abnormality
 4 noted on the MRI?
 5 A. It shows degenerative changes, some
 6 bulging of the disks as well as some foraminal
 7 stenosis. That basically means that the hole in
 8 which the nerve exits the spine is narrowed and
 9 it's due to spur formation, arthritic abnormality.
 0 Q. Is that trauma related?
 1 A. No.
 2 Q. What is that caused by, sir?
 3 A. Degenerative arthritis.
 4 Q. C5-C6, what if any evidence of abnormality
 5 based upon the MRI finding?

1 levels of the neck. And the lowest level was
 2 essentially normal so --
 3 Q. C7-T1?
 4 A. Correct. So 4-5 was abnormal, 5-6 was
 5 more abnormal and 6-7 was even more abnormal.
 6 Q. What if any evidence of there -- excuse
 7 me, what if any evidence existed based upon the MRI
 8 interpretation of a herniation at C6-C7?
 9 A. There was no herniation mentioned in the
 0 report.
 1 Q. What did Dr. Sacco conclude was the
 2 degenerative abnormality noted at C6-C7?
 3 A. A moderate right side foraminal stenosis
 4 and a small right-sided posterolateral disk
 5 protrusion.
 6 Q. Doctor, could you tell the ladies and
 7 gentlemen of the jury whether or not individuals in
 8 the general population when examined with an MRI,
 9 what if any disk abnormalities are shown based upon
 0 your clinical studies?
 1 MR. SCANLON: Objection.
 2 BY MR. CURTIN:
 3 Q. Doctor, let me rephrase the question.
 4 What if any evidence exists with respect to how
 5 individuals as they age manifest that aging process

1 with changes in their neck? What if any evidence
2 exists?

3 MR. SCANLON: Objection.

4 BY MR. CURTIN:

5 Q. You can answer.

6 A. There are quite a few articles in the
7 medical and orthopedic literature in which MRI
8 scans are done, were done to the neck, mid and low
9 back region in people who consider themselves
10 normal.

11 In these individuals who never had neck
12 problems, never had treated for neck and consider
13 their neck and backs normal, about two-thirds, 60
14 percent, 66 percent, had MRI evidence of
15 degenerating and bulging disks at one level. And a
16 third of those individuals, about 33 percent, had
17 two or more levels involved.

18 So there is a high number of people in
19 the normal population that have disk abnormalities
20 which is why the recommendations were as early back
21 as 1995 is not to do MRIs as our routine screening
22 procedure because there are going to be a high
23 number of abnormalities. And they should base any
24 clinical decision on treatment, surgery, therapy on
25 the patient's physical findings and not on the

1 basis of an MRI scan, simply because of the high
2 amount of abnormality noted in the normal
3 population.

4 Q. Doctor, is there a difference medically in
5 the term protrusion and herniation?

6 A. Some physicians use those terms
7 interchangeably. Typically a herniation would be a
8 larger protrusion in which you would not see a
9 bulge but physically disk material on the scan
10 behind the back of the -- the vertebrae.

11 A bulging or protrusion is part of the
12 degenerative process whereas a herniation means
13 that the actual disk material has moved beyond that
14 -- that limit. There's no indication that that
15 existed on these films.

16 Q. Setting aside the label then, what if any
17 evidence exists with respect to what the
18 radiologist was looking at on the MRI as to whether
19 or not any of the disk material had extruded or
20 gone out? What if any evidence exists of that?

21 A. There's no indication in the X-ray report
22 that there was any extruded material or disk
23 herniation. It just -- there was a bulging that
24 was two to three millimeters, or protrusion, which
25 is essentially as the disk collapses, the material

1 has to go somewhere and it typically bulges in an
2 outward or a lateral direction.

3 Q. This gentleman had an EMG, an
4 electromyogram; is that correct, sir?

5 A. He did.

6 Q. What was the results of the
7 electromyogram?

8 A. This test was normal.

9 Q. Doctor, you've talked to us about the
10 medical records in part and we've spoken about the
11 history. Did you also conduct a physical
12 examination of the gentleman?

13 A. Yes.

14 Q. Would you please tell the ladies and
15 gentlemen of the jury what your findings were on
16 physical examination of the gentleman.

17 A. The exam revealed a pleasant muscular 50
18 year old man who did not appear in any discomfort
19 at the time of the examination. When he was
20 sitting, standing and walking and while I spoke
21 with him, he seemed to hold his neck in a stiff
22 type of posture, moving his trunk and his head at
23 the same time and not specifically moving his
24 neck.

25 He was able to walk without

1 difficulty. He was able to stand up and down from
2 the chairs in the rooms without difficulty. And he
3 was able to climb up and down the exam table
4 normally. This may not seem like medical
5 observations but this tells me how the neck, back,
6 upper and lower extremities, how they were working
7 together and if there's any kind of deficiencies or
8 deficits, and there was none noted.

9 I then did a specific examination of
10 his neck area. And what I'm doing in this exam is
11 I'm essentially looking for objective
12 abnormalities, that is things that I can tell,
13 abnormalities that I can tell, feel, touch, measure
14 or quantitate. What doctors do is they take your
15 symptoms, what you go to the doctor and complain
16 about, and they look for abnormal -- abnormalities
17 to treat. You don't treat symptoms, you treat
18 underlying problems.

19 And that's the purpose of an
20 examination. That's also the purpose of X-rays,
21 EKGs, lab tests. You're looking for objective
22 manifestations of a process that you can treat.

23 So part of this involved observation,
24 that is looking at the muscles, feeling, touching,
25 manipulating the muscles. There was really no

1 objective evidence that the muscles were tight,
2 hot, sore, or abnormal in size. There was no
3 muscle spasm which is a reflexed charley horse type
4 of muscle contraction. There was no dysmetria
5 which is abnormal muscle movement or abnormal
6 muscular coordination. Muscle guarding was not
7 noted, nor was there any evidence of a increased
8 muscle tone.

9 So he held his neck in a somewhat stiff
10 posture but there was really no correlating
11 muscular objective evidence of why the neck was
12 stiff. The muscles weren't tight, they weren't
13 enlarged, they weren't atrophied or smaller because
14 they were not used. He was just sort of almost
15 like a habit holding his head and neck in a stiff
16 posture.

17 Even on range of motion testing there
18 was only minor restrictions of motion. He had over
19 85 percent of his predicted flexibility. There was
20 no stiffness that was claimed, but again, the
21 stiffness is somewhat subjective because I don't
22 force the neck, I just have people move as much as
23 comfort -- as they are comfortable. The end point
24 of the movement seemed to be a complaint of pain
25 and was not associated with the muscles tightening

1 up or that gripping sensation within the -- the
2 musculature.

3 The movement of the shoulder blade was
4 also normal in all directions that the shoulder
5 blade moves. And looking at the neck, upper back
6 and the muscle -- muscles around the shoulder
7 blades, there was no signs of atrophy or wasting
8 which would indicate fairly normal or normal usage
9 of these mus- -- these muscles.

10 The patient was left-handed, so you
11 expect some sort of left/right differences or at
12 least potential differences in size. Range of
13 motion of the shoulders were normal. The -- when
14 he was moving his shoulder to the extremes of
15 movement he was complaining of some aching
16 discomfort. Again, this was not associated with
17 any objective finding. The elbows, the wrists and
18 the small joints, the hand, also examined
19 normally.

20 The next step and the final step was
21 really doing a careful neurological examination in
22 that he told me he had scans, he told me he had bad
23 disks. I had not read the medical records at this
24 point in time.

25 I spent some time doing a neurological

1 exam, that is looking at his ability to detect
2 sensation, looking at the motor examination, that
3 is muscle strength testing, muscle range of motion,
4 muscle tone, and then certain reflexes. All of
5 these were in -- objectively within normal limits.

6 I even went as far as taking a tape
7 measure and circumferentially measuring the upper
8 arm, mid arm, forearm and the wrist level, and
9 there was really no left/right differences. So
10 there was no objective signs of any neurological
11 irritation or inflammation. And there was really
12 no subjective, that is no complaints, of
13 neurological inflammation and irritation.

14 Q. Did he complain about his low back at all,
15 sir?

16 A. Not at the time that I saw him, no.

17 Q. Doctor, then to sort of wrap up, you had a
18 chance to examine him, you had a chance to take a
19 history, you had a chance to review subsequently
20 some medical records.

21 Let me ask you this question. Based
22 upon all those steps, were you able to reach an
23 opinion based upon a reasonable degree of medical
24 certainty as to what if any injury was sustained by
25 Michael Hoskins as a result of an accident that

1 occurred on or about September 17th, 1994? First,
2 do you have an opinion?

3 A. I do have an opinion, yes.

4 Q. What is that opinion?

5 A. My opinion is that by the history and
6 review of the records from the accident, he
7 sustained a stretching or pulling injury to the
8 neck, probably muscular in origin. He probably had
9 the same type of injury to his low back although
10 not as bad as his neck.

11 There was -- at the time that I had
12 seen him which was many months after the accident
13 he had recovered objectively. There was MRI
14 evidence of multiple levels of disks that were
15 abnormal and a small degenerative type of disk
16 protrusion. I called it a herniation because
17 that's what Dr. Patterson called it. The
18 radiologist however didn't call it a herniation.

19 Again, this is a two to three
20 millimeter range which is clinically
21 insignificant. He had essentially objectively
22 recovered other than a complaint of stiffness in
23 his neck.

24 Q. Did you find any objective sign of injury
25 based upon your physical exam?

1 A. Not at the time that I saw him, no.
 2 Q. Do you have an opinion based upon a
 3 reasonable degree of medical certainty as to
 4 whether or not Mi. Hoskins sustained a permanent
 5 injury as a result of the accident of September
 6 17th, 1994? First, do you have an opinion?
 7 MR. SCANLON: Objection.
 8 THE WITNESS: I do have an opinion,
 9 yes.
 10 BY MR. CURTIN:
 11 Q. What is that opinion?
 12 A. On the basis of this evaluation, there
 13 does not appear to be any objective evidence of any
 14 permanent injury.
 15 Q. Doctor, let me ensure the fact that my
 16 question was not deficient because there was an
 17 objection raised by counsel.
 18 MR. SCANLON: Objection. Move to
 19 strike comments of counsel.
 20 MR. CURTIN: They never go to the jury
 21 anyway. That's for the judge.
 22 BY MR. CURTIN:
 23 Q. Doctor, based upon the physical
 24 examination, the history provided and the review of
 25 medical records, were you able to reach an opinion

1 and treatment for his progressive degenerative
 2 conditions, but not specifically related to the
 3 motor vehicular accident.
 4 Q. And when you say degenerative conditions,
 5 you mean what, sir?
 6 A. The spondylosis, the arthritis and disk
 7 diseases both in the neck and low back region.
 8 Q. Were those caused by this accident?
 9 A. They were not.
 10 Q. Did you have an opportunity to review
 11 medical records, Doctor, some of which we
 12 discussed?
 13 A. I did.
 14 Q. In closing would you please tell the
 15 ladies and gentlemen of the jury what medical
 16 records you reviewed?
 17 A. At the time that I completed my evaluation
 18 the records were present from the Shelby Hospital,
 19 the CT scan that was done on 10/4/94. There were
 20 medical records from Drs. Dowds, Brosch,
 21 B-R-O-S-C-H, Patterson, Biscup and Goldberg.
 22 Records were also reviewed from the Fairview
 23 General Hospital as well as the diagnostic MR- --
 24 MRI and the EMG and nerve conduction studies.
 25 Q. Doctor, do YOU put a charge associated

1 based upon a reasonable degree of medical certainty
 2 and/or probability as to whether or not Michael
 3 Hoskins sustained a permanent injury as a result of
 4 the motor vehicle accident of September 17th,
 5 1994? First, were you able to reach an opinion?
 6 MR. SCANLON: Same objection.
 7 THE WITNESS: I do have an opinion.
 8 BY MR. CURTIN:
 9 Q. What's that opinion?
 10 A. My opinion is that he sustained no
 11 permanent injury that was manifested in any
 12 objective abnormality noted at the time of my
 13 evaluation.
 14 Q. Doctor, do you have an opinion based upon
 15 the physical exam, the history and the review of
 16 records as to what if any future treatment Michael
 17 Hoskins may need as a direct and proximate result
 18 of any injuries sustained in the motor vehicle
 19 accident of September 17th, 1994? First, do you
 20 have an opinion?
 21 A. I do have an opinion.
 22 Q. What's that opinion?
 23 A. There is no further care or treatment that
 24 is necessary for the soft tissue injury which has
 25 resolved. He may at some point in time need care

1 with the time that you see an individual like Mr.
 2 Hoskins or review medical records and you're not
 3 able to see your patients'?
 4 A. Yes.
 5 Q. What is that cost typically -- let me
 6 first begin with respect to the medical report
 7 itself, sir. What would the total cost be, if you
 8 know?
 9 A. I do not know the exact figure. The cost
 10 would be for the history and physical, the time
 11 taken to review the medical records and the
 12 production of the report. And that typically would
 13 be in the 14 to \$1,700 range.
 14 Q. And, Doctor, how much time is dedicated to
 15 the history and physical?
 16 A. About 45 minutes.
 17 Q. How much time is dedicated to reviewing
 18 the medical records, and I mean in this case?
 19 A. In this case, it was a little bit more,
 20 probably minimum of two to *three* hours.
 21 Q. So we're at two to three, four roughly
 22 hours. And what about writing the report?
 23 A. The report typically would take about an
 24 hour to review, to write, and then that would
 25 include proofreading it and reviewing it and that

Page 5

1 whole process. So I would say about four to five
 2 hours typically.
 3 Q. All together in order to prepare what we
 4 are now discussing today?
 5 A. Yes.
 6 Q. Is there a cost associated with the time
 7 of the completion of your deposition, sir?
 8 A. Yes.
 9 Q. And what is the cost of that?
 10 A. \$900 an hour.
 11 Q. And, Doctor, typically when you're not in
 12 a deposition or preparing a report, what is the
 13 time -- what is your time spent doing?
 14 A. I take care of patients.
 15 MR. CURTIN: Thank you, Doctor. I have
 16 nothing else.
 17 MR. SCANLON: Can we go off the record,
 18 please?
 19 (Short recess had.)
 20 - - -
 21 CROSS-EXAMINATION
 22 BY MR. SCANLON:
 23 Q. Doctor, my name is Larry Scanlon, and I
 24 represent the Hoskins family in this case. You and
 25 I have never had an opportunity to meet and speak

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1 before, have we?
 2 A. I don't believe so.
 3 Q. Especially we have not had an opportunity
 4 to meet and speak about Mr. Hoskins, correct?
 5 A. Yes.
 6 Q. You have met with Mr. Curtin at least on
 7 one occasion in connection with your testimony in
 8 this case, right?
 9 A. Just before we started today.
 0 Q. Right. You have a long relationship of
 1 examining patients at the request of Mr. Curtin, do
 2 you not, sir?
 3 A. Yes.
 4 Q. 13 years at least, right?
 5 A. Well, maybe not specifically with Mr.
 6 Curtin, but with his law firm since the mid-1980s.
 7 Q. And you're not doing surgery anymore, are
 8 you, Doctor?
 9 A. Sure, I do surgery -- I've got surgery
 0 2:30 this afternoon and I do it on a routine basis.
 1 Q. All right. And how many kinds of -- how
 2 many examinations do you perform on a weekly basis
 3 of individuals that have been sent to you by
 4 lawyers?
 5 A. I assume you mean patients that are not

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1 being treated or are not sent to me for treatment
 2 'cause that happens on a regular basis as well.
 3 That number varies from week to week and month to
 4 month. I don't have a specific number that I see
 5 maximally. And the bad weather and emergencies, it
 6 can go from zero to five, six, seven, sometimes a
 7 week. But typically it's around two a week.
 8 That's what it's been for the past two months at
 9 least.
 10 Q. All right. You reserve, do you not, sir,
 11 two patient slots per week for the purposes of
 12 examining people who have been sent to you by
 13 lawyers asking you to perform an examination,
 14 right?
 15 A. I would say that's a true statement, yes.
 16 Q. And is it fair for me to say, sir, that
 17 that is at the request of lawyers defending
 18 personal injury cases, similar to the one that
 19 brings us together?
 20 A. Well, I would say the bulk of those times
 21 I get filled up with requests from defense
 22 attorneys, but I also do examinations for Workman's
 23 Comp, Department of Labor, for plaintiffs. That
 24 would all go within those allotted non-patient
 25 treatment time allotments --

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1 Q. And are you --
 2 A. -- but I would say the major portion of
 3 those are for IMEs for defense attorneys.
 4 Q. What do you mean by IME?
 5 A. Independent medical evaluations.
 6 Q. And what is the percentage of the division
 7 between the times that you examine for the defense
 8 and when you examine for the patient's side?
 9 A. I would say it's probably 70/30 if not
 10 higher for the defense. But again, that varies
 11 week to week, month to month. I would say anywhere
 12 from 60 to 70, maybe sometimes 75 percent of those
 13 scheduled exams. It's just based -- and that's
 14 based on demand. That's not based on anything
 15 other than limited periods of time and first come
 16 first serve basis.
 17 Q. And in how many instances when you examine
 18 for the defense do you conclude that there's no
 19 objective evidence of an ongoing medical basis for
 20 pain and suffering?
 21 A. I would say in the vast majority of cases
 22 people have -- I see them two and three years after
 23 injuries, and I have -- it's very unusual to have a
 24 soft tissue injury last that long. I see peop- --
 25 patients with major fractures and other major

1 structural injuries that may have permanent
 2 injury.
 3 But in typical soft tissue injury, even
 4 in my own patients, they don't persist or become
 5 permanent. All of these patients I believe were
 6 injured at one point in the , but very few of them
 7 have any permanent residuals of solely a soft
 8 tissue injury. I just don't believe that exists.

9 Q. I'm sorry, what did you say?

10 A. I don't believe there's a high volume of
 11 individuals that have soft tissue injuries that
 12 have permanent injuries solely related to soft
 13 tissue strains and sprains.

14 Q. All right. All right. Doctor, do you
 15 believe that it -- it is necessary for you in this
 16 case to -- to conclude one way or another that this
 17 accident was the sole cause of Mi. Hoskins'
 18 complaints?

19 A. I'm not sure I understand your question.

20 Q. Well, you've used that word now on more
 21 than one occasion, solely. You understand what I'm
 22 asking you now?

23 A. I'm -- I'm waiting for the question part
 24 of it.

25 Q. I already gave you the question.

1 A. Oh. I'm -- may -- still may not
 2 understand what you're asking.

3 Q. Well, maybe if you looked at me instead of
 4 the camera, you and I could make some eye contact.

5 MR. CURTIN: You don't have to direct
 6 the doctor where he has to look, sir.

7 MR. SCANLON: And maybe we could
 8 understand each other.

9 MR. CURTIN: You won't instruct him
 10 which way to look. He'll look wherever he deems it
 11 appropriate.

12 BY MR. SCANLON:

13 Q. Doctor, you're used to performing for
 14 cameras for Mr. Curtin, are you not, sir?

15 MR. CURTIN: I'll object.

16 THE WITNESS: I'm not sure how to
 17 answer that.

18 BY MR. SCANLON:

19 Q. All right. You didn't have any trouble
 20 answering questions directed to you by Mr. Curtin,
 21 sir, and I'd -- I'd like you to give me the same
 22 courtesy.

23 MR. CURTIN: Objection. Move to
 24 strike. That's not a question.

25 BY MR. SCANLON:

1 Q. All right? Is that fair?

2 MR. CURTIN: That's a comment.

3 THE WITNESS: I will be as fair and as
 4 straightforward as I can.

5 BY MR. SCANLON:

6 Q. All right.

7 A. But if I can't answer your questions I
 8 can't answer them.

9 Q. All right. And, Doctor, you are -- you
 10 have been forthcoming in your testimony here today,
 11 right?

12 A. I have answered it to the best -- the
 13 questions to the best of my abilities, yes.

14 Q. And the questions that I'm going to put to
 15 you you will answer truthfully and honestly, will
 16 you not, sir?

17 A. Yes.

18 Q. Sir, have you not been excluded from
 19 testifying in cases involving soft tissue injuries
 20 where you have performed examinations for the
 21 defense?

22 MK. CURTIN: Objection. Continuing.

23 You can answer if you know.

24 THE WITNESS: I -- I have been informed
 25 through my personal counsel that there have been

1 one or two times where in the initial series of
 2 motions I was being excluded, but I do not believe
 3 that final motions have been filed. Again, I don't
 4 know what the -- what the outcome of any of these
 5 particular incidents are as additional motions go
 6 back and forth, and I frequently don't know what
 7 the end point is.

8 BY MR. SCANLON:

9 Q. Well, Doctor, you've hired your own
 10 personal lawyer to file motions on your behalf in
 11 order for you to be permitted to testify in cases
 12 where you have been retained by the defense; is
 13 that not true?

14 MR. CURTIN: Continuing objection.

15 THE WITNESS: I have a corporate
 16 counsel that helps me with issues that are legal.
 17 And occasionally that's what I need them for,
 18 because I don't know what the law is behind a lot
 19 of the motions and requests that I have. And I
 20 think it's only normal to hire an expert which -- a
 21 person who's there at all times to help with legal
 22 issues.

23 BY MR. SCANLON

24 Q. Doctor, who is your lawyer?

25 A. My corporate lawyers are McLaughlin and

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1 McCafferty.
 2 Q. And have they provided you with the
 3 documents they have filed in connection with the
 4 case that you've been excluded from testifying in,
 5 do you know?
 6 MR. CURTIN: I think that might be
 7 privileged, Counsel. I caution you that even
 8 though he's not a lawyer, you're not asking him as
 9 to any communications between he and his lawyer.
 10 And I -- I think you know better.
 11 MR. SCANLON: Well, the doctor has
 12 testified he's not sure about the state of the
 13 papers, and I'm going to ask you about those
 14 papers.
 15 MR. CURTIN: And, Larry, I --
 16 MR. SCANLON: These are public
 17 filings. And my question is is he aware, first --
 18 MR. CURTIN: Fair enough.
 19 MR. SCANLON: -- of filings?
 20 MR. CURTIN: You can ask him is he
 21 aware of it, if you know.
 22 THE WITNESS: I -- I don't know the
 23 status of it.
 24 BY MR. SCANLON:
 25 Q. Have you been provided copies of those

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1 filings?
 2 MR. CURTIN: I'm going to object.
 3 Doctor, that is likely communication privileged
 4 between you and your lawyer. I think Mr. Scanlon
 5 is aware of that. And I know he does not want to
 6 invade the attorney/client privilege.
 7 BY MR. SCANLON:
 8 Q. I'm not asking you for personal
 9 communications. I'm asking you if you've seen the
 10 document.
 11 MR. CURTIN: Note the same objection.
 12 Doctor, you're not obligated to disclose to Mr.
 13 Scanlon any conversations including transmittal of
 14 documents by your lawyers to you.
 15 You can ask him is he aware of it,

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1 my attorney to the other plaintiff's attorney.
 2 BY MR. SCANLON:
 3 Q. You haven't or you have?
 4 A. I've -- I've only seen our responses. I
 5 have not seen what the issues were, the original
 6 motions --
 7 Q. All right.
 8 A. -- or the court -- the specific court
 9 orders.
 10 Q. So you have seen the plaintiff's
 11 responses, I mean your -- your lawyer's responses?
 12 A. I have seen them up to a week ago.
 13 Q. Right.
 14 A. I'm not sure what has been filed since
 15 then.
 16 Q. Okay. You were asked to examine a John
 17 Pohorence; is that right?
 18 A. Yes.
 19 Q. And you were also asked to produce
 20 information regarding your financial dealings with
 21 the defense counsel who sent you that witness?
 22 MR. CURTIN: Why don't you state who
 23 that is, Larry? Was that Michael Curtin?
 24 MR. SCANLON: That was your former
 25 partner, Roger Williams.

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1 MR. CURTIN: He's no longer affiliated
 2 with my law firm --
 3 MR. SCANLON: Yeah.
 4 MR. CURTIN: -- for five some years,
 5 right, Larry? I just want the record to be clear.
 6 MR. SCANLON: That's true but --
 7 MR. CURTIN: Put a continuing objection
 8 down.
 9 MR. SCANLON: -- he is your former
 0 partner, is he not?
 1 MR. CURTIN: Oh, with no doubt we did
 2 practice law together, Larry.
 3 (Plaintiff's Exhibit 1 was
 4 marked for identification.)
 5 BY MR. SCANLON:
 6 Q. Doctor, I'm going to hand you the order
 7 that was filed in that case. It's Plaintiff's
 8 Exhibit 1 at the top.
 9 MR. CURTIN: Renew the continuing
 0 objection.
 1 THE WITNESS: Okay.
 2 BY MR. SCANLON:
 3 Q. Doctor, is it your testimony you've never
 4 seen that order?
 5 A. I have never seen this order.

1 Q. And do you understand why the court has
2 excluded you?

3 A. Not really.

4 Q. But you know your lawyers have filed a
5 motion for reconsideration?

6 A. Yes.

7 Q. Could I have that?

8 Doctor, you are also busily engaged in
9 the 8th District Court of Appeals, are you not, in
10 two other cases in an attempt to resist efforts to
11 find out your financial dealings with defense
12 counsel, insurance companies and the like?

13 MR. CURTLIN: Objection. Continuing.

14 THE WITNESS: I'm not going to answer
15 any questions about the Court of Appeals issues. I
16 was instructed by my attorney not to discuss it in
17 any way, and I'm not going to talk about it.

18 BY MR. SCANLON.

19 Q. Well, Judge Sutula's order that you read
20 that you say you've never seen grants the
21 plaintiff's motion to exclude your testimony on the
22 basis that the Defendant retained Dr. Corn knowing
23 that Dr. Corn was resisting through
24 cross-examination on the issue of bias in at least
25 two other cases and further that any efforts to

1 in this case.

2 A. No. There was a global fee for the
3 initial evaluation which included everything we
4 talked about before.

5 Q. You do about a hundred of those a year?

6 A. I don't know what the mathematics is of
7 it, but I could do a hundred a year, sure.

8 Q. Could be more?

9 A. Could be more.

10 Q. Could be less?

11 A. Yes.

12 Q. Isn't it true that you have assisted Mr.
13 Curtin in defending cases since 1985 at the rate of
14 two to ~~three~~ defense medicals a month?

15 MR. CURTIN: Objection.

16 THE WITNESS: I'm not sure where that
17 came from. I'm not sure that's accurate during
18 that entire time period.

19 MR. SCANLON: Can we go off the record.

20 (Short recess had.)

21 BY MR. SCANLON:

22 Q. Doctor, do you remember giving testimony
23 similar to what you have done in connection with
24 this case in June 6th, 1995 involving a Christina
25 Farinella for Mr. Curtin?

1 compel production of documents necessary to conduct
2 a thorough cross-examination would be futile since
3 all documents were ordered sealed by the Court of
4 Appeals.

5 You are involved in those cases and you
6 have had your records sealed, right?

7 MR. CURTIN: Objection.

8 THE WITNESS: It's not my records that
9 have been sealed. It's the -- some case -- some
10 records from the Cuyahoga County court system that
11 have been sealed. My records have been distributed
12 widely through the Northeastern Ohio area in direct
13 violation of the Court of Appeals order.

14 BY MR. SCANLON:

15 Q. Well, Doctor, I don't have any of your
16 financial records, but I -- I have tried to
17 calculate roughly, if you've spent four to five
18 hours in this case, are you charging Mr. Curtin
19 \$900 for each hour?

20 A. For the deposition.

21 Q. All right.

22 A. I hope this wouldn't go on for four or
23 five hours.

24 Q. All right. No. I was asking about the
25 time you say you've spent in forming your opinions

1 A. I don't remember that case at all.

2 Q. And Claudia Eklund was here for the
3 plaintiff. You were under oath, sir, as you are in
4 all depositions. And back then you were charging
5 \$850 an hour, does that sound right?

6 A. I thought it was higher. As far as I can
7 remember we've been charging \$900 an hour since
8 1994.

9 Q. Do you remember this question being asked,
0 "Do you recall though that back at least in 1985
1 you were doing something in the vicinity of one or
2 two defense examinations per month just for Mr.
3 Curtin's office," do you remember that question?

4 A. I don't remember that question.

5 Q. And your answer?

6 A. I don't remember what the answer was
7 either.

8 Q. "In 1985 that was the only office I was
9 doing defense medical examinations for."

10 A. That's true.

1 Q. "That was I think in 1985 up until the
2 middle of 1986 because I was in my old office at
3 that time. I was just not doing that many of -- of
4 them at that time."

5 Question, "By that many does one to two

1 a month sound approximately right?"
 2 "That could have been right, I don't
 3 -- really don't remember."
 4 And wasn't Mr. Williams a named partner
 5 in that firm at the time?
 6 MR. CURTIN: We'll stipulate, Larry,
 7 that Roger Williams was a partner in our office.
 8 There was never a question about that.
 9 BY MR. SCANLON:
 10 Q. Do you recall that?
 11 MR. CURTIN: That he's a partner?
 12 THE WITNESS: Which part?
 13 MR. SCANLON: I'm asking the witness,
 14 Mike. I understand your --
 15 THE WITNESS: Do I recall what part? I
 16 don't --
 17 BY MR. SCANLON:
 18 Q. Yeah. Do you remember Roger Williams
 19 being a partner in the firm at that time?
 20 A. Yes. I don't remember when he left but I
 21 do remember initially he was part of that firm,
 22 yes.
 23 Q. All right. Do you remember giving
 24 testimony in the case of Peter Prete versus Paul
 25 Begnaud in -- on April 30th, 1987?

1 remember examining Miss Mullins?
 2 A. No.
 3 Q. Would you be surprised to hear that you
 4 found her to have had some personal injury of a
 5 soft tissue nature but again no objective injury?
 6 MR. CURTIN: Objection.
 7 THE WITNESS: Again, if those were the
 8 findings and my opinions at that time, I would have
 9 to go along. I don't remember the case or the
 10 details.
 11 BY MR. SCANLON:
 12 Q. And as you've said here today on direct,
 13 that is generally the conclusion you reach, isn't
 14 it, Doctor?
 15 A. That is generally the medical facts that
 16 it is very, very unusual to have permanent soft
 17 tissue injuries, at least objective evidence of
 18 that. And I believe that medically, and I practice
 19 that in my own patient care.
 20 Q. How do you take an X-ray of pain?
 21 A. You report the pain, but you have to --
 22 you can't, and I don't think it's appropriate from
 23 a medical standpoint, to -- to say that the pain
 24 because it is subjective, I can't verify whether
 25 it's there or it's not. And to determine whether

1 A. '87?
 2 Q. Yes.
 3 A. No, I don't remember that at all.
 4 Q. You were under oath as you are today and
 5 you were testifying at the request of Roger
 6 Williams, a partner in the firm of Keller, Scully
 7 and Williams.
 8 Would you be surprised to hear that in
 9 a rear end collision where there was soft tissue
 0 damage to the plaintiff, you found no objective
 1 injury, Doctor?
 2 MR. CURTIN: Objection.
 3 THE WITNESS: Again, I don't remember
 4 the case. But again, I do not believe that it is
 5 common to have a permanent soft tissue injury
 6 without any kind of skeletal disruptive problem.
 7 BY MR. SCANLON:
 8 Q. Common but not -- it's not unknown, is it?
 9 A. It's not unknown. I have individuals like
 0 that in my own practice.
 1 Q. You do?
 2 A. Yes.
 3 Q. We'll get to that in a minute. You also
 4 testified on November 1st, 1993 in a case of Lesley
 5 Mullins versus First National Supermarkets. Do you

1 something that is unverifiable is permanent is
 2 medically impossible. I -- just my philosophy and
 3 my reading and --
 4 Q. Do you believe in God?
 5 A. Of course I believe in God.
 6 MR. CURTIN: Objection.
 7 BY MR. SCANLON:
 8 Q. Do you have objective evidence of the
 9 existence of God?
 0 MR. CURTIN: Object.
 1 THE WITNESS: I have probably scars
 2 from my mother beating it into me when I was
 3 younger, but no, there's no -- that's -- one is a
 4 belief, and I don't think beliefs have anything to
 5 do with medical objective evidence or medical
 6 injuries.
 7 BY MR. SCANLON:
 8 Q. Can you take a CAT scan of pain?
 9 A. No, there's no way of documenting whether
 0 pain exists or not -- doesn't exist.
 1 Q. An MRI?
 2 A. No. Those tests would under -- would
 3 determine whether there was a process going on that
 4 could be painful. But there's no objective way of
 5 documenting whether their pain is there or not.

1 Q. The surgery at 2:30 this afternoon, is
 2 that downtown Cleveland?
 3 A. No. It's at Hillcrest.
 4 Q. Okay. Now, Doctor, it's -- without
 5 divulging any confidences, it's fair for me to say,
 6 is it not, that you're only operating on this
 7 patient after you've done appropriate testing,
 8 correct?
 9 A. Yes, that's absolutely true.
 10 Q. Did that include an MRI?
 11 A. It did.
 12 Q. Did it include a CAT scan?
 13 A. It did not.
 14 Q. Did it include X-rays?
 15 A. Yes.
 16 Q. So it would be appropriate for a surgeon
 17 like yourself to use those kinds of diagnostic
 18 tests before concluding one way or another whether
 19 or not to do surgery?
 20 A. Well --
 21 Q. Yes or no?
 22 A. Well, the decision for surgery is based on
 23 the patient's clinical picture, that is the
 24 symptoms, the clinical findings, and the results of
 25 the diagnostic testing. And the only time I

1 you?
 2 A. Yes.
 3 Q. And I would ask that you turn to Bates
 4 stamp page number seven. You were asked a question
 5 as to whether or not there was any treatment on
 6 September 27th, 1994, and I think my recollection
 7 is you testified there was none.
 8 A. There was none on the page that I was
 9 being asked --
 10 Q. Right. That was the page that Mr. Curtin
 11 asked you to look at?
 12 A. Correct.
 13 Q. And what page is that?
 14 A. Page one.
 15 Q. All right. Well, why don't you look at
 16 page seven and tell me what you see.
 17 A. It looks like a more complete note from
 18 September 27th, 1994.
 19 Q. All right. Well, tell us about that.
 20 A. What do you want me to tell you about it?
 21 Q. Well, instead of me reading it to you, why
 22 don't you read it to us?
 23 A. It says, "Nausea, neck sore, can't sleep,
 24 indication of two medications that were not
 25 helpful." It says, "Off work until 10 of October,

1 operate -- well, I can't say only. But most of the
 2 time that I operate is when all those correlate.
 3 So in other words you wouldn't get the
 4 MRI or the X-rays if the symptoms weren't there and
 5 if the physical exam wasn't suspicious. So it's
 6 part of a workup and part of my responsibility as
 7 an orthopedic surgeon to do those things.
 8 Q. You're not criticizing Dr. Biscup in this
 9 case, the surgeon who had diagnostic tests done
 10 when -- when asked to determine whether or not Mr.
 11 Hoskins' condition could be alleviated by surgery,
 12 are you?
 13 A. I'm not sure why Mr. Hoskins was referred
 14 to Dr. Biscup. Certainly on the basis of the
 15 examination and the symptoms, an MRI scan was not
 16 indicated.
 17 MR. SCANLON: Can we go off the record
 18 for a moment?
 19 (Short recess had.)
 20 BY MR. SCANLON:
 21 Q. Doctor, a few more questions. I wanted to
 22 make sure that you didn't overlook anything in the
 23 notes. You were asked some questions about Dr.
 24 Dowds' records, and I want to direct your attention
 25 to that. Do you have the Exhibit 2 in front of

1 '94, Physical therapy, neck. See evaluation."
 2 That's what we discussed before. And he started
 3 him on a muscle relaxant at that time.
 4 Q. And what were the patient's complaints
 5 other than nausea, neck sore and unable to sleep?
 6 You skipped a -- a note in the middle.
 7 A, I don't -- can't read that.
 8 Q. Well, uncomfortable right posterior
 9 cervical spine on the left side, can you read that?
 10 A. I -- that's -- I don't really -- I can see
 11 that could say that but I don't know what that
 12 says.
 13 Q. Oh.
 14 A. I can't read that.
 15 Q. All right. So --
 16 A. I mean I don't know what it means.
 17 Q. Nausea could be from the medication?
 18 A. Could be.
 19 Q. Could it be from the head injury?
 20 A. Well, there was no documentation of the
 21 head injury by the CT scan.
 22 Q. So in other words, unless there was a
 23 bleed into the skull, there wouldn't be any
 24 objective evidence of a head injury?
 25 A. Or signs of bleeding outside the skull.

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1 Q. All right. Well, we know he did have
 2 injury to his head though, don't we?
 3 A. He is claiming an injury. I don't --
 4 didn't memorize the medical records. I don't
 5 remember --
 6 Q. Well, why don't we see what the emergency
 7 room records said.
 8 A. I don't believe the emergency room
 9 indicates any objective evidence of a head injury.
 10 Q. Broke the front seat, hit his knees.
 11 A. Yeah. That doesn't say anything about
 12 objective evidence of a head injury. No
 13 ecchymosis, no black and blue mark, no
 14 lacerations. There's no visible signs of an injury
 15 and certainly by the CT scan there wasn't any
 16 visible signs of injury. So I mean nausea could be
 17 coming from a lot of different things. Could be
 18 from a viral infection. Could be from
 19 nervousness.
 20 Q. The nurses' notes, do they not, sir, say,
 21 "States struck back of head on rear window"?
 22 A. That's what he told me too.
 23 Q. "Glass was not broken, complained of pain
 24 in the neck, headache, low left scapula, low back
 25 pain"?

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1 A. Absolutely.
 2 Q. You have no reason to think that's not
 3 true, do you?
 4 A. I have no opinion one way or another.
 5 That's what the records state.
 6 Q. All right. Now, you were handed
 7 documents, Doctor, in this case of a patient who
 8 worked on his feet for a living. Did you know
 9 that?
 10 A. He is employed as a factory worker. I
 11 assume that wasn't a desk job and a machine
 12 operator, so I assume he's on his feet all day.
 13 Q. And you were asked questions about his
 14 prior treatment and prior complaints and you were
 15 shown a port -- part of his deposition, is that --
 16 A. Yes.
 17 Q. -- right? Have you read his deposition at
 18 all?
 19 A. I have not read it.
 20 Q. Let me ask you to consider this, and Mr.
 21 -- Mr. Curtin didn't ask you this, but I'm going
 22 to ask you. Did you find Mr. Hoskins to be
 23 forthcoming?
 24 MR. CURTIN: Object.
 25 THE WITNESS: Well, he -- he answered

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1 all my questions. There was some conflicts between
 2 what he said and what were subsequently discovered
 3 in the medical records. But I really didn't
 4 approach him --
 5 BY MR. SCANLON:
 6 Q. Right.
 7 A, --with any --
 8 Q. Did he cooperate with you?
 9 A. To the best that I can recall.
 10 Q. Did he do everything you -- you asked him
 11 to do?
 12 A. I can't remember otherwise.
 13 Q. Doctor, there is no conflict in the record
 14 to the extent that you knew about Dr. Stuckey
 15 because Mi. Hoskins told you?
 16 A. Well --
 17 Q. Yes or no, sir?
 18 A. I don't recall at this point in time.
 19 Q. Well, look at page four of your own
 20 report.
 21 A. I know it says in my report but I don't
 22 remember if that's in my discussion.
 23 Q. Well, read that, sir, please, past medical
 24 history --
 25 MR. CURTIN: You re going to have to

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1 let him -- here are the ground rules, Larry.
 2 You're going to let him finish an answer. You're
 3 not going to interrupt.
 4 MR. SCANLON Please read your --
 5 MR. CURTIN: Go ahead with your
 6 question, Doctor -- I mean Larry.
 7 BY MR. SCANLON:
 8 Q. Well, Doctor, you have your report in
 9 front of you, correct?
 10 A. Yes.
 11 Q. At page four in the section entitled past
 12 medical history, will you please read that verbatim
 13 to the jury?
 14 A. It says, "Past medical history according
 15 to the patient revealed that there was no prior
 16 problems," in quotes, "in the neck and back area."
 17 And then I -- second sentence is, "He was
 18 apparently treated by a cluropractor in the past
 19 noting spinal complaints with his low back for a
 20 period of time." Now he didn't tell me that.
 21 Q. Now, keep reading.
 22 A. "Review of these records would more
 23 clearly elucidate his pree:isting condition."
 24 Q. You didn't have those records when you
 25 wrote the note, right, Doctor?

1 A. I didn't have any of those --
 2 Q. So --
 3 A. -- when I wrote the letter.
 4 Q. -- where did you get the information about
 5 Dr. Stuckey?
 6 A. In the ER records his name was mentioned.
 7 I can't remember where else it was mentioned.
 8 Q. Well, he told the lawyers too, didn't he?
 9 A. Where?
 10 Q. In the deposition?
 11 A. I don't know. I didn't review that entire
 12 deposition.
 13 Q. Well, let me hand you the part that Mr.
 14 Curtin wouldn't read and --
 15 A. I have my copy.
 16 MR. CURTIN: Objection.
 17 BY MR. SCANLON:
 18 Q. Well, let's -- let's read it. Page 49,
 19 line nine, question, "Did you ever seek any type of
 20 medical care or treatment of any kind for any neck
 21 or back problems before the accident?" Answer,
 22 "Well, a couple of times I went to a chiropractor
 23 over but not on a regular basis."
 24 Question, "What chiropractor did you
 25 see before this?" Answer, "Glenn Stuckey."

1 A. And that's why I wanted to review the
 2 records.
 3 (Plaintiff's Exhibit 2 was
 4 marked for identification.)
 5 BY MR. CURTIN:
 6 Q. Let me hand you then your report that
 7 we'll mark as Plaintiff's Exhibit 2 in this case.
 8 Instead of getting up and walking over there,
 9 Doctor --
 10 A. I have my copy of it -- that's --
 11 Q. All right. Now that note is dated
 12 November 1st, 1998, correct?
 13 A. That's when it was typed, yes.
 14 Q. You reviewed it before it became your
 15 final report in this case?
 16 A. I did.
 17 Q. You signed it?
 18 A. I did.
 19 Q. You dictated it?
 20 A. Yes.
 21 Q. If there had been any errors in that
 22 letter would you have corrected it before you
 23 signed it and sent it to Mr. Curtin?
 24 A. If I picked it -- if I was able to note
 25 the errors, yes, they probably would have been

1 MR. CURTIN: Object.
 2 BY MR. SCANLON:
 3 Q. "Where was his office?" "Attica, Ohio."
 4 So at the time you wrote this report,
 5 whether it was from Mr. Hoskins or from the
 6 lawyers, you knew the patient had identified Dr.
 7 Stuckey as treating him for prior low back
 8 problems, yes or no, Dr. Corn?
 9 MR. CURTIN: If you can answer it like
 10 that. You're not required under our law to be a
 11 puppet and to answer a question the way he wants it
 12 answered. You can answer it any way you deem
 13 appropriate.
 14 THE WITNESS: I was aware that he had
 15 seen a chiropractor. I did not and was not aware
 16 at the time that I finished my review including the
 17 review of the medical records of what he was seeing
 18 the chiropractor for, how often the treatments were
 19 and for what diagnosis may have preexisted the
 20 accident. All I knew is that he had seen him
 21 before and there was some mention in the medical
 22 records of some prior care, but I did not know the
 23 details.
 24 BY MR. SCANLON:
 25 Q. All right.

1 corrected. If I misread it, then the errors or
 2 abnormalities or inconsistencies are still there,
 3 but I do proofread them.
 4 Q. And you dictated, "Past medical history
 5 according to patient revealed that there were,"
 6 quote, "no prior problems," end quote, "in the neck
 7 or back area"?
 8 A. That's what he told me. That was the
 9 specific response to the question.
 10 Q. You also dictated, "He was apparently
 11 treated by a chiropractor, Dr. Stuckey, in the past
 12 noting spinal complaints in his low back for a
 13 period of time."
 14 You also dictated, "Review of these
 15 records would more clearly elucidate his
 16 preexisting condition," correct?
 17 A. That's what the report says, yes.
 18 Q. All right. You asked for those records
 19 and you received those records and you have given
 20 an opinion here today that Mr. Hoskins had
 21 preexisting degenerative disk disease; is that
 22 right?
 23 A. Well, I knew he had preexisting
 24 degenerative disk disease on the basis of the
 25 X-rays, not on the Dr. Stuckey -- Stuckey records.

1 I mean that was pretty obvious from the initial
 2 films that were done in the emergency room.
 3 Q. Unusual for a person in their late 40s to
 4 have degenerative disk disease?
 5 A. You know, there's really no age limit, any
 6 minimum where it can't be seen. It has -- was
 7 rather extensive in his late 40s.
 8 Q. Both in the neck and back?
 9 A. Yes.
 10 Q. And superimposed on a congenital condition
 11 in which area of his spine, Doctor?
 12 A. Low back.
 13 Q. So here's a man who is born with a
 14 congenital spinal defect. Do you think he knew
 15 about it?
 16 A. No.
 17 Q. Many people don't --
 18 A. 30 percent of people are born with --
 19 Q. I'm sorry, how many?
 20 A. 30 percent of individuals are born with
 21 spinal defects --
 22 Q. Okay.
 23 A. -- so it's pretty common.
 24 Q. And most of us develop some kind of
 25 degenerative disk disease, don't we?

1 reviewed. But I didn't specifically request them.
 2 Q. All right. So on September 17th, 1994,
 3 what was Mr. Hoskins feeling just before the
 4 collision?
 5 A. What was he feeling?
 6 Q. Yes. Do you have an opinion?
 7 A. I don't have any idea.
 8 Q. Do you have an opinion as to his physical
 9 condition at that moment in time prior to the
 10 collision with this tractor-trailer rig into the
 11 rear of the car he was riding in?
 12 A. He said he was fine.
 13 Q. Do you have -- do you believe he wasn't
 14 fine medically, Doctor?
 15 A. I have no idea. He obviously --
 16 Q. Do you have --
 17 A. He obviously had been out of work a month
 18 before that with a back problem.
 19 Q. You can't express an opinion to a
 20 reasonable degree of medical certainty though what
 21 he was while he was riding in the back seat on that
 22 car westbound on Route 30 immediately prior to the
 23 impact, can you, Doctor?
 24 A. No, no idea.
 25 Q. It would be speculation for you to say

1 A. If we're lucky to live long enough, yes.
 2 Q. All right. So it's a matter of time and
 3 -- and the amount of physical activity we engage
 4 in, isn't it?
 5 A. Well, there is a lot more aspects of it.
 6 There's hereditary factors, how many people in the
 7 family have had it, were there any old injuries,
 8 what kind of sporting activities did the people
 9 engage in, what type of work does the patient
 10 engage in. And again, we're talking about findings
 11 which may or may not be relative from a treatment
 12 standpoint or from a complaint standpoint.
 13 But things -- we're all having wear or
 14 tear depending on what we do to our bodies and what
 15 our hereditary background is.
 16 Q. Right. And you have now seen those
 17 additional records. You've had the opportunity to
 18 see radiology reports of X-rays, CT scans, MRIs.
 19 Incidentally, did you do any of your own X-rays?
 20 A. It was not necessary, no.
 21 Q. So you -- you completely rely on the
 22 radiology record in this case, right?
 23 A. Well, this is a retrospective review.
 24 It's unnecessary to take my own X-rays. And if the
 25 X-rays were provided then they would have been

1 otherwise, wouldn't it?
 2 A. I'm not sure what legally that means, but
 3 I would not have any idea from a medical
 4 standpoint.
 5 Q. Not having any idea means guesswork,
 6 speculation. Would you agree with that?
 7 A. Yes.
 8 Q. All right. And you agree that Mr. Hoskins
 9 was, in fact, hurt in this collision, right?
 10 A. Probably, yes.
 11 Q. And you agree that Mr. Hoskins required
 12 treatment for his injuries, correct?
 13 A. Yes.
 14 Q. And you agree that Mr. Hoskins required
 15 bed rest or at least not working, yes?
 16 A. For a period of time, sure.
 17 Q. And I understand that to be from your
 18 prior testimony about four months --
 19 MR. CURTIN: Objection. That was not
 20 his testimony.
 21 BY MR. SCANLON
 22 Q. -- for -- of treatment and three and a
 23 half months for being off work?
 24 MR. CURTIN: Objection. That was not
 25 his testimony.

1 BY MR. SCANLON:
 2 Q. Well, what is it? What is your opinion,
 3 Doctor?
 4 A. My opinion is that most of these injuries
 5 resolve in the three to four month period of time.
 6 If you have a lighter duty or desk type of job, you
 7 certainly don't have to be out of work for four
 8 months. The more heavier the duty, the more
 9 physically active, probably the longer period of
 10 recovery is necessary.
 11 Q. More active in having a physical factory
 12 like job? Do you know what Mr. Hoskins did?
 13 A. I've -- my understanding, he was a machine
 14 operator.
 15 Q. You consider that light duty?
 16 A. I don't know what his particular duties
 17 were --
 18 Q. Right.
 19 A. -- so I really didn't evaluate him for his
 20 occupation status.
 21 Q. Right. So you really don't know what he
 22 was required to do at work?
 23 A. I never asked him.
 24 Q. Right. And did you -- did you conclude
 25 when you looked at the sprained ankle that he hurt

1 perform.
 2 Q. Try to go back to work?
 3 A. Well, he was working by then.
 4 Q. All right. Now, ten percent of people who
 5 have soft tissue injuries don't get better, do --
 6 isn't that correct, Doctor?
 7 A. I have -- that's basically my statistic.
 8 About ten percent of people get better physically
 9 but still have complaints. In other words, they
 10 have ongoing complaints that they report back to
 11 one particular episode. But they typically if it's
 12 just a soft tissue injury do not have any objective
 13 correlation to that.
 14 I have patients in my practice like
 15 that. Still complain of pain, but I can't find
 16 anything specifically wrong with them that would be
 17 related to that accident.
 18 Q. Why do you continue to see them?
 19 A. Because they have an underlying condition,
 20 a degenerative condition, progressive condition,
 21 they may have -- I'm a general orthopedic surgeon.
 22 They may have had a neck injury from a car accident
 23 but their knee -- I'm seeing them with their knee
 24 or their ankle or bad hip or a different area. But
 25 they still may complain about their old injury in a

1 his neck somehow in that incident playing
 2 basketball?
 3 A. No.
 4 Q. Do you remember being asked those
 5 questions?
 6 A. I remember being asked, but whether there
 7 was another incident, he obviously was in physical
 8 condition enough to try that. But I don't believe
 9 the ankle sprain affected his neck --
 10 Q. Right.
 11 A. -- or it could affect his low back but
 12 it's unlikely that it would affect his neck.
 13 Q. But the MRI was really for the upper --
 14 was for the neck, wasn't it?
 15 A. Correct.
 16 Q. And that was in March of '9- -- 1996 is
 17 when he sprained his ankle, and that was a year and
 18 a half or more after this accident, right?
 19 A. That's true.
 20 Q. You would hope that the patient would try
 21 to live a normal life, wouldn't you, Doctor?
 22 A. If you were physically capable of doing.
 23 Q. Right.
 24 A. I would have hoped that he was doing as
 25 much as he felt he had physically recovered to

1 similar -- same fashion.
 2 Q. On occasion you have given testimony like
 3 this on behalf of your patients, have you not,
 4 Doctor?
 5 A. Absolutely.
 6 Q. And have you ever testified in a case,
 7 Doctor, that a motor vehicle collision,
 8 particularly a rear end motor vehicle collision,
 9 can aggravate a patient's underlying degenerative
 10 disk disease?
 11 A. Absolutely.
 12 Q. Have you ever testified in a case that a
 13 motor vehicle collision, particularly a rear end
 14 motor vehicle collision, can aggravate a previously
 15 asymptomatic congenital back condition such as what
 16 Mr. Hoskins has, the spondylolisthesis in the
 17 L5-S1?
 18 MR. CURTIN: Objection.
 19 THE WITNESS: I do believe it's -- it's
 20 possible and probable. I can't think of a -- a
 21 case right now, but sure, it's -- it's a potential.
 22 BY MR. SCANLON:
 23 Q. All right. And isn't it a fact, Doctor,
 24 that given the condition that you say existed in
 25 Mr. Hoskins' neck and back on September 17th, 1994,

1 that he was more at risk for chronic pain syndrome
 2 arising from a rear end collision with a soft
 3 tissue injury superimposed on those conditions that
 4 you found in him?
 5 A. No.
 6 Q. No?
 7 A. He certainly could have irritated or
 8 aggravated on a temporary basis this preexisting
 9 condition, but I don't think there's any evidence
 10 of a chronic pain syndrome developing. I'm not
 11 aware of that.
 12 Q. Uh-huh.
 13 A. Or a higher risk for that.
 14 Q. The ten percent of your patients that --
 15 that have ongoing complaints from a soft tissue
 16 injury, what causes them to continue to complain?
 17 A. I have no idea.
 18 Q. Is it pain?
 19 A. Well, that's what they're complaining of.
 20 I'm not sure what is creating the symptoms that
 21 they are stating. These are people that have no
 22 underlying degenerative condition.
 23 Q. So it's not that you doubt your patients,
 24 Doctor, it's just that you don't have anything to
 25 treat, right?

1 but I can't relate it to what you're asking me
 2 specifically.
 3 Q. All right. Of course if you could or
 4 would, you wouldn't be here testifying as a defense
 5 witness, would you, Doctor?
 6 MR. CURTIN: Objection.
 7 THE WITNESS: I am testifying because I
 8 felt that my opinions about this case were valid,
 9 and I felt I was expert enough to discuss them.
 10 That's why I am -- I am testifying, and that's not
 11 because of who hired me or why I was -- why I was
 12 hired.
 13 I guess we're here because I believe
 14 from a medical standpoint that what I'm saying is
 15 within a reasonable degree of medical certainty my
 16 beliefs about his original injuries and about his
 17 ongoing level of symptoms.
 18 MR. SCANLON: Objection. Move to
 19 strike.
 20 And I turn ~~the~~ witness back to you, Mr.
 21 Curtin.
 22 - - -
 23 REDIRECT EXAMINATION
 24 BY MR. CURTIN:
 25 Q. Thank you. Doctor, just a few questions.

1 A. Yes, that's a good way -- it's not that I
 2 don't doubt Mr. -- Mr. Hoskins that he's perceiving
 3 something and he's describing what he may be
 4 perceiving. But I don't think it's coming from the
 5 soft tissue injury. I think it's coming from his
 6 progressive arthritic condition. And I think
 7 that's the job of the doctor to figure out if those
 8 symptoms are real, what are those symptoms coming
 9 from. Are they coming from something that should
 0 have gotten better or are you missing something?
 1 Q. And with the ten percent of your patients
 2 who have a soft tissue injury that don't seem to
 3 get better, you can't treat them but you don't turn
 4 them away, do you, Doctor?
 5 A. Again, I don't particularly see them for
 6 that problem. I see them for other conditions, and
 7 I say, hey, by the way, how's your neck or how's
 8 your wrist or how's your shoulder. And they say,
 9 well, you know, it still aches or it still gives me
 10 some problems.
 11 Q. They say they have good days and they have
 12 bad days, don't they?
 13 A. I don't know, I can't generalize that.
 14 Q. You've never heard that phrase, Doctor?
 15 A. I've heard that nhrase manv. manv times

1 Point one, the emergency room records Mr. Scanlon
 2 asked you to look at, I want to address for one
 3 last time the issue of whether or not this man had
 4 an injury to his head. Would you look at Exhibit
 5 No. 1, please? Do you have that, Doctor?
 6 A. I do.
 7 Q. Is there a diagnosis section that's
 8 completed by a medical doctor like yourself in that
 9 emergency room record?
 0 A. Yes.
 1 Q. Please tell this jury what that conclusion
 2 was, sir, from that medical doctor on September
 3 17th of 1994.
 4 A. It says, "Cervical and lumbar
 5 sprain/strain, bilateral knæ contusion."
 6 Q. Was there any indication whatsoever of the
 7 doctor based upon your review of the emergency room
 8 record concluding Mr. Hoskins sustained an injury
 9 to his head?
 10 A. No.
 11 Q. Did they even X-ray his head?
 12 A. No.
 13 Q. Thank you on that point, Doctor. Point
 14 two, Mr. Scanlon has taken you through a series of
 15 deoositions that he maintains he has, and I wrote

1 down some of the dates. I heard him describe a
2 deposition on April 30th of 1987, November 1st of
3 1993 and June 6th of 1995. Did you hear him say
4 that, sir?

5 A. Yes.

6 Q. That's a period of about 12 years, from
7 '87 up until the present time, including this
8 deposition, correct?

9 A. I think the first one may have even been
10 '85.

11 Q. '85 he was asking you questions about.

12 All right, Doctor. Now just so I'm
13 crystal clear in all of Mi. Scanlon's questions
14 relative to your objectivity, let me be clear.
15 Number one, you don't dispute this man's injury, do
16 you?

17 A. I don't dispute that he was injured, no.

18 Q. All right. Number two, you don't dispute
19 this man had some degree of pain and suffering from
20 this accident, do you?

21 A. No.

22 Q. Number three, you don't dispute this man
23 needed medical care and treatment for a period of
24 three or four months after this accident, do you?

25 A. No.

1 it, 900 to \$1,700. Sometimes it's more. Sometimes
2 it's a lot more depending on how long it takes and
3 how complicated the records.

4 Q. All right. But basically that global fee
5 would be for the four to five hours, not at a rate
6 of \$900 per hour, correct?

7 A. Yes, that's absolutely correct.

8 Q. All right. So --

9 A. It would be a flat rate for the
10 preparation of the report.

11 Q. So if you spent five hours there could be
12 a charge of \$900 for those five hours, correct?

13 A. Well, it would be unlikely it would be
14 that low, but it would -- the reports would
15 probably be in the 15 to \$1,700 range.

16 Q. Okay. For five hours worth of work?

17 A. Correct.

18 Q. All right. Now let me ask you something,
19 Doctor, because many questions were asked dealing
20 with who you see. Do you recall the questions, 70
21 percent of the work you do may be **for** the defense?

22 A. Yes.

23 Q. Now I'm going to ask you to assume that
24 Ivfr. Scanlon across the table represents almost
25 exclusively plaintiffs, and I've worked with Mr.

1 Q. You don't dispute this man may have had to
2 have been away from work for a period of time, do
3 you?

4 A. No.

5 Q. And yet Mr. Scanlon's asking you questions
6 dealing with how often you've testified for either
7 myself or a man who hasn't worked for my law firm
8 in five years, isn't that true, sir?

9 MR. SCANLON: Objection.

10 THE WITNESS: Yes.

11 BY MR. CURTIN:

12 Q. Ivfr. Scanlon's asking you questions about
13 depositions from the 1980s, isn't he, sir?

14 A. Yes.

15 Q. Your fee arrangement with respect to
16 completing a medical report, the four to five
17 hours, is that at a certain range for those four or
18 five hours? All together what does that equal?

19 A. I'm not exactly sure I understand what
20 you're asking.

21 Q. Sure.

22 A. It's a global fee for that entire process.

23 Q. Okay. And what would -- what's the range
24 of the global **fee**?

25 A. Depending on the time and complexity of

1 Scanlon and had that pleasure for some 16 years.
2 Do you believe that merely because Mr. Scanlon
3 represents almost exclusively plaintiffs that makes
4 him any less honest as a lawyer?

5 MR. SCANLON: Objection.

6 BY MR. CURTIN:

7 Q. Do you think so, sir?

8 A. No.

9 Q. Nor do I. When you see two patients per
0 week for examinations regardless of plaintiff or
1 defense, how many patients do you typically see
2 during a week, sir?

3 A. Depending on the emergencies, anywhere
4 from 40 to 60 patients a week.

5 Q. 40 to 60 per week, and two per week are
6 dedicated to these examinations we've discussed,
7 correct?

8 A. Well, it can be two, it can be more. But
9 certainly it's a much smaller number than the
0 number that I see for treatment,

1 Q. A small percentage, would that be fair to
2 say?

3 A. A smaller percentage, sure.

4 Q. Okay. Doctor, you received, and you and I
5 reviewed in detail, Dr. Stuckey's records this

1 morning; is that correct?
 2 A. Yes.
 3 Q. Quite clearly your medical report made no
 4 question that at the time you completed the report
 5 you did not have Dr. Stuckey's records for whatever
 6 reason; is that correct?
 7 A. Yes.
 8 Q. You have a portion of your report where
 9 you review what records you reviewed; is that
 10 correct?
 11 A. Yes.
 12 Q. And you never mentioned Stuckey's records,
 13 correct?
 14 A. Correct.
 15 Q. And actually in the report you say perhaps
 16 the review of those records would clearly define
 17 his preexisting spinal condition, correct?
 18 A. Yes.
 19 Q. And did those records that you saw after
 20 you prepared this medical report of November 1st,
 21 1998 better illuminate, better address his
 22 preexisting spinal condition?
 23 A. Much more -- a little bit -- well, more
 24 clearly than I knew before, yes.
 25 Q. Doctor, if patients continue to want to

1 - - -
 2 RE CROSS-EXAMINATION
 3 BY MR. SCANLON:
 4 Q. Doctor, I'm sorry, but I have some more
 5 questions.
 6 MR. CURTIN: I'm going to object to
 7 those additional questions.
 8 BY MR. SCANLON:
 9 Q. There's no doubt in the emergency room
 10 record that you were asked to look at that the
 11 patient reported hitting his head on the rear
 12 window, correct?
 13 A. There's no question that that's mentioned
 14 in the medical records, that's correct.
 15 Q. All right. And didn't the -- and I guess
 16 I need to ask you this, so I won't testify. I'll
 17 ask you to tell me what it means. Would you look
 18 at the physicians's evaluation, please, about
 19 halfway down, and there are initials ROS.
 20 A. (Witness nodding head up and down.)
 21 Q. And then a plus and vertigo and then a
 22 negative, syncope or LOC, Do you see that line?
 23 A. Yes.
 24 Q. Can you interpret that for us in lay
 25 terms?

1 treat with no benefit associated with the treatment
 2 absent them coming in and seeing the doctor, do you
 3 consider that medically reasonable and necessary?
 4 A. Well, certainly for care it's not
 5 necessary. People go to see doctors for a variety
 6 of reasons, some of them just to reinforce what the
 7 doctor has stated in the past. So there are many
 8 reasons that people continue to go to a doctor that
 9 are not always medically necessary.
 10 Q. And then, Doctor, basically what you have
 11 explained to the ladies and gentlemen of the jury
 12 is that you have no question this gentleman was
 13 injured, but you do have an opinion based upon a
 14 reasonable degree of medical probability dealing
 15 with the issue of whether he was permanently
 16 injured; is that correct?
 17 A. Yes.
 18 Q. What opinion do you have on that issue?
 19 MR. SCANLON: Objection. Asked and
 20 answered.
 21 THE WITNESS: There's no evidence in
 22 the records or in my evaluation or examination that
 23 a permanent soft tissue injury was sustained.
 24 MR. CURTIN: Thank you very much,
 25 Doctor. I have nothing else.

1 A. ROS stands for a review of system --
 2 systems in which you ask general questions that may
 3 or may not be related to what the patient's
 4 primarily being seen for. There's a positive sign
 5 in front of vertigo. Vertigo means the sensation
 6 of the room spinning around and you're staying
 7 fixed. It's different really than dizziness.
 8 Negative, minus sign, syncope --
 9 syncope which means passing out. LOC means loss of
 0 consciousness. So basically he's complaining of a
 1 -- the room spinning or a dizzy sensation, but he
 2 did not have a blackout spell or appear to -- where
 3 he was rendered unconscious.
 4 Q. And the doctor quotes Mr. Hoskins as
 5 saying he feels sleepy, do you see that?
 6 A. Correct, yes.
 7 Q. In your experience as an orthopedic
 8 surgeon with a head injury that doesn't cause a
 9 laceration or skull fracture, is a feeling of
 0 vertigo or sleepiness an unusual sign? Can it
 1 occur?
 2 MR. CURTIN: Objection.
 3 THE WITNESS: It's been a long time
 4 since I've covered an emergency room so I don't
 5 typically see that. From what I remember, it is

1 not unusual. I can't state any statistical or
 2 numbers that really -- I'm a little out of that
 3 venue for many years.
 4 BY MR. SCANLON:
 5 Q. Doctor, I -- I didn't mean to try to ask
 6 you questions about old, old cases. I just didn't
 7 go through the whole stack.
 8 MR. CURTIN: Are you going to testify,
 9 Mr. Scanlon, because if you want to, you better get
 10 another lawyer to represent your client, otherwise
 11 please cease with the comments.
 12 MR. SCANLON: Okay, All right.
 13 MR. CURTIN: Move to strike them.
 14 BY MR. SCANLON:
 15 Q. There was a deposition in November 4th of
 16 1993, Mi-. James Butcher versus Richard Tolman. You
 17 testified for Mr. Curtin. Do you remember that
 18 patient?
 19 A. I do not recall.
 20 Q. Would it surprise you, Doctor, if you --
 21 that you testified in that cast: that -- that the
 22 patient had a soft tissue injury, but there was no
 23 objective evidence to support his ongoing
 24 complaints?
 25 MR. CURTIN: Objection.

1 MR. CURTIN: Objection.
 2 BY MR. SCANLON:
 3 Q. -- combining together?
 4 MR. CURTIN: Unless we're talking this
 5 patient.
 6 BY MR. SCANLON:
 7 Q. Yes or no?
 8 A. I think that the potential for injury may
 9 be slightly higher if there's a preexisting
 10 condition, sure. This was in his low back, not in
 11 his neck.
 12 Q. Well, he had the spondylolisthesis in his
 13 low back, but he had a spondylosis in the neck,
 14 didn't he?
 15 A. Well, spondylosis is the degenerative
 16 arthritis and **disk** disease.
 17 Q. But the spondylolisthesis is the
 18 congenital condition?
 19 A. Congenital, correct.
 20 Q. And so he has -- Mr. Hoskins had a
 21 congenital condition on September 17th, 1994 in his
 22 low back, correct?
 23 A. Sure. He's had it all his life probably.
 24 Q. He worked in a factory and coped with it
 25 to the best of your knowledge, right?

1 THE WITNESS: Again, if that's what I
 2 found at the time of the examination, that's what I
 3 would have testified to.
 4 BY MR. SCANLON:
 5 Q. All right. And as recently as May 14th,
 6 1996, do you remember testifying in a case
 7 involving a Patricia Lindamood?
 8 A. No.
 9 Q. Do you remember being asked this question,
 10 "Would it surprise you, Doctor, that a review of
 11 the Ohio Verdict Reporter indicates that you
 12 testify primarily for Myers, Hentemann, Williams,
 13 Sennett, Keller and Curtin" --
 14 MR. CURTIN: Object.
 15 BY MR. SCANLON:
 16 Q. -- "would that surprise you, Doctor?" And
 17 your answer, "It doesn't surprise me, no."
 18 Do you remember that question being
 19 asked and that answer being given?
 20 A. I don't remember either.
 21 Q. There -- there are patients, aren't there,
 22 Doctor, who have objective evidence of a congenital
 23 problem with degenerative disk disease superimposed
 24 on that condition that are more susceptible to
 25 injury because of those conditions --

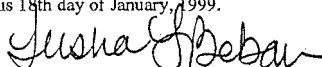
1 A. Well, and he also had symptoms somewhere
 2 from his low back as well off and on.
 3 Q. And then he gets hit from behind with --
 4 by a tractor-trailer. Do you know the speed of
 5 that collision?
 6 A. No.
 7 Q. Do you know -- would it surprise you to
 8 hear that the tractor-trailer had a 40,000 pound
 9 load on it?
 10 MR. CURTIN: Objection.
 11 THE WITNESS: I don't really have an
 12 opinion one way or another.
 13 BY MR. SCANLON:
 14 Q. Okay. The mechanics of the injury are --
 15 don't -- didn't really concern you in this case,
 16 did it?
 17 A. I'm not an accident reconstructionist
 18 specialist --
 19 Q. Right.
 20 A. -- so the physics behind it really --
 21 other than general interest --
 22 Q. Right.
 23 A. -- would not really help me determine --
 24 Q. Right.
 25 A. -- medically what the problem was.

1 CERTIFICATE
 2 STATE OF OHIO,)
 2) SS:
 3 SUMMIT COUNTY.)
 4 I, Trisha L. Beban, RPR and Notary
 4 Public within and for the State of Ohio, duly
 5 commissioned and qualified, do hereby certify that
 5 the within named witness, ROBERT C. CORN, M.D. was
 6 by me first duly sworn to testify the truth, the
 6 whole truth and nothing but the truth in the cause
 7 aforesaid; that the testimony then given by the
 7 witness was by me reduced to Stenotypy in the
 8 presence of said witness, afterwards transcribed
 8 upon a computer; and that the foregoing is a true
 9 and correct transcription of the testimony so given
 9 by the witness as aforesaid.

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

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

15 IN WITNESS WHEREOF, I have hereunto set
 15 my hand and affixed my seal of office at Akron,
 16 Ohio on this 18th day of January, 1999.



17 Trisha L. Beban, RPR and Notary
 18 Public in and for the State of Ohio.

19 My Commission expires June 11, 2001

20
21
22
23
24
25

3 you don't know, the one thing you do know is this
 4 patient did not have a permanent injury coming from
 5 the accident, right?

6 A. I was unable to determine the existence of
 7 any permanent injury solely related to that
 8 accident, that's correct.

9 MR. SCANLON: Exactly. Thank you,
 10 Doctor.

11 MR. CURTIN: Thank you, Doctor.
 12 Nothing else.

13 MR. SCANLON: Do you want him to read?

14 VIDEO TECHNICIAN: Doctor, you have a
 15 right to review this videotape to determine its
 16 accuracy or you may waive that right.

17 THE WITNESS: I will waive my right to
 18 review the tape and the transcript.

19 - - -

20 (Deposition concluded at 11:30 o'clock a.m.)

21 (Signature waived.)

22 - - -

23

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