IN THE COURT OF COMMON PLEAS

CRAWFORD COUNTY, OHIO

- - -

MICHAEL HOSKINS, et al.,)
Plaintiffs,)
vs.) Case No. 96-CV-0070
OTIS WRIGHT & SONS, INC.,) Judge Kimmerline
et al.,)
Defendants.)

- - -

Videotaped deposition of ROBERT C. CORN, M.D., a Witness herein, called by the Defendants for direct examination pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Trisha L. Beban, RPR and Notary Public in and for the State of Ohio, at the offices of Robert C. Corn, M.D., 850 Brainard Road, Highland Heights, Ohio, on Friday, the 15th day of January, 1999, at 9:30 o'clock a.m.

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APPEARANCES:

On Behalf of the Plaintiffs:

Messrs. Scanlon & Co., L.P.A.

By: Lawrence J. Scanlon, Attorney at Law
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Akron, Ohio 44308

On Behalf of the Defendant
Otis Wright & Sons, Inc.:

Messrs. Keller & Curtin Co., L.P.A.

By: G. Michael Curtin, Attorney at Law
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On Behalf of the Third-party Defendant
Elmer Hoskins, via telephone:

Messrs. Sauter, Hohenberger & Beddow

By: Wayne P. Hohenberger, Attorney at Law
Suite 306 - 24 west Third Street
Mansfield, Ohio 44902

ALSO PRESENT:

Jon Jastromb, Multi Video Service, Inc.

- - -

ROBERT C. CORN, M.D.
of lawful age, a Witness herein, having been first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION

MR. CURTIN: Let the record reflect this is the trial deposition of Dr. Robert Corn taken in the matter of Michael Hoskins, et al., versus Otis Wright & Sons, et al., said case presently pending in the Crawford County Court of Common Pleas bearing Case No. 96-CV-0070.

It's my understanding that -- my understanding there will be a waiver of any defects in service, notice of the taking of the deposition?

MR. SCANLON: That's correct.

MR. CURTIN: Thank you.

BY MR. CURTIN:

Q. Doctor, would you please state your full name to the ladies and gentlemen of the jury.

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

orthopedic surgeon.
Q. Doctor, what address are at -- are we at today and where is that address?
A. We're at my main office. That's at 850 Brainard Road in Highland Heights, Ohio.
Q. Doctor, you're licensed to practice medicine in the State of Ohio?
A. Yes.
Q. Would you give the ladies and the gentlemen of the jury a little bit of your educational background beginning with college through medical school, internships, residencies, things of that nature up until the present time.
A. I received my Bachelor of Science in biology in 1971 at the Albright College in Reading, Pennsylvania. I then moved back to my hometown, Philadelphia, Pennsylvania, where I attended the Hahnemann University School of Medicine from 1971 until the middle of 1975. I graduated in 1975 with my M.D. degree.

I then moved out here to Cleveland, and I started my formal training in orthopedic surgery at the Cleveland Clinic. I was at the Clinic from 1975 till the middle of 1979 when I graduated from the program.

I entered private practice in orthopedic surgery in August of 1979, and for almost 20 years I've been a private practice orthopedic surgeon working primarily in the east and southeast side of Cleveland.
Q. Doctor, what's involved in the field of orthopedics?
A. Orthopedic surgery is the branch of medicine which involves the medical and surgical treatment of diseases, disorders, injuries and some tumors involving the musculoskeletal system. That includes problems of the bones, muscles, tendons, joints and ligaments.

We have to read musculoskeletal X-rays like a radiologist does so we deal with radiological abnormalities, we deal with physical therapy challenges. Taking care of most age groups from young children to the most senior members of our society.
Q. Are you Board certified?
A. Yes.
Q. And when were you so Board certified?
A. September of 1980.
Q. What's involved in the Board certification of an orthopedic surgeon?

A. In 1980 you had to have completed a approved residency, that is a training program, an apprenticeship program so to *speak,* that is approved by the American Board of Orthopedic Surgery. This is a national organization but an international designation. They are the people that certify the residency programs, and they have developed a certain criteria so that you can qualify to be -- for a certification.

That includes completing a residency program which is an apprenticeship program where the more years you're in it, the more responsibility and hopefully the more knowledge you have accumulated. You have to have been in the clinical practice of orthopedic surgery for one calendar year in one geographical location.

And during that time period, the community gets to look at you, peer -- it's a peer review period where doctors come, they watch you in surgery, they listen to you present cases at conferences, you may go through interview process.

And then you sit for a final series of examinations, both oral exams and written exams, and after fulfilling all those requirements and passing the exams you are certified.

Q. Is Board certification one of if not the highest achievement obtainable in your specialty?
A. Yes.
Q. Doctor, what about teaching positions? Do you hold any teaching positions?
A. Yes.
Q. Could you tell the ladies and gentlemen of the jury a little bit about that?
A. I am currently a clinical instructor in orthopedic surgery at the Case Western Reserve University School of Medicine, although my primary teaching at this point in time is teaching residents, that is doctors who are in their training programs rotating through the various hospitals.

I'm on the staff at a number of hospitals recently acquired by the Cleveland Clinic Health System. This is a -- they have a number of residency programs, and the residents occasionally scrub with us and we take them on rounds with us, and that's the teaching that I do now.
Q. Doctor, how long have you been teaching future doctors the art of orthopedic surgery?
A. About 19 years.
Q. Now, do you also practice in this greater

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

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

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proceedings, or lawsuits? Do you do that, sir?
A. Sure.
Q. Did you take the opportunity in this particular case to examine Michael Hoskins at my request?
A. Yes.
Q. Where did that examination take place and when did it take place, sir?
A. The exam took place on October 23rd of 1998 in my offices.
Q. When that examination took place did you first take a history from Michael Hoskins with respect to what had happened with respect to his care and treatment before you saw him?
A. Yes.
Q. Now of course he was not your formal patient; is that correct?
A. That's true.
Q. You saw him on one occasion at my request; is that correct?
A. Yes.
Q. Did Mr. Hoskins give you a history of his medical care and treatment before the accident -- I mean after the accident?
A. Yes.

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

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Q. Doctor, I'm going to hand you what's been previously marked as Defendant's Exhibit 1 which is the Shelby Memorial Hospital records from the day of the accident. Do you have that in front of you, sir?
A. Yes.
Q. Doctor, what if any indication in the hospital records is there as to whether or not immediately after the accident Mr. Hoskins wanted medical attention?
A. The records indicate that there was -- the attention was not immediate, it was a period of time after the accident.
Q. I believe the records --
A. It's about two hours afterwards.
Q. I believe the records in the information section, the nurses' notes, state, quote, States was disoriented initially, denied medical attention at time of accident, close quote; is that correct?
A. That's what it says. There's also indications on the top the time of the accident and the time of the arrival.
Q. He was not transported by ambulance then, sir?
A. It does not appear that he was, no.

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Q. Doctor, there's an indication in the emergency room record that he was alert and oriented times three; is that correct?
A. Yes.
Q. What does that mean, sir, in layperson's terms?
A. One of the ways of assessing someone's degree of cognitive ability or consciousness or how alert they are is asking them where they are, what day is it, establishing what the time was, the place and the person. That's the orientation times three.
Q. Was he able to answer all those questions and essentially viewed as normal with respect to being able to answer those questions?
A. Yes.
Q. Were X-rays taken of his neck and lower back, sir?
A. Yes, they were.
Q. Do you have those radiological findings before you now?
A. Yes.
Q. That's from the date of the accident, correct?
A. Correct, yes.

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Q. Doctor, let's begin with the neck which is referred to medically as the cervical area; is that correct?
A. Correct.
Q. Doctor, please tell the ladies and gentlemen of the jury what these findings were on X-ray in this gentleman's neck.
A. The radiological assessment was that there was no evidence of any bony or soft tissue trauma sustained to the neck. There were some abnormal findings that were compatible with what is known as cervical spondylosis. This is a medical term indicating both a disease of the joints, arthritis, and a disease of the disk which happens as the disk dries out.
This is a chronic process and the fact that it appeared with spur formation and disk space narrowing is indication that this is a process that's been clearly going on for many years, if not five or ten years.
Q. Now Doctor, just for the purposes of my understanding, you're looking at Dr. Lew, L-E-W, his radiological interpretation, correct?
A. Yes.
Q. And quite clearly there, Dr. Lew concludes

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the existence of cervical spondylosis through C4 to C7 with narrowed disk spaces and anterior bone spur formation, correct?
A. Yes.
Q. Now, Doctor, spondylo- -- spondylosis --
A. Spondylosis.
Q. -- is that also a hi- -- does that have anything to do with arthritis?
A. Well, spondylosis is a medical term which means two things basically. It means that there's two processes going on. There are -- is a process of arthritis that is going on. That is a disease of the joints. And there is a process known as disk disease which is an aging process where the disk material, that is the cushions that are between the back bones and the neck bones, loses their water cont- -- water content, and as they lose their water content the bones get closer together. And as a response to healing, the body tries to heal itself and it makes these bone spurs, So these are all a process.
You can streamline that whole statement that I just stated by just saying it's spondylosis. So it really encompasses two pathological conditions, disk disease and

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

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

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

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lumbar spine, the low back, were either of those changes trauma related? I mean were they due to an accident?
A. No.
Q. What were they due to, sir?
A. They were in the neck due to a degenerative process, a premature aging process in the neck, and that same process in the low back superimposed upon a congenital or a birth abnormality.
Q. Do these degenerative processes in the neck as well as the low back, do they get better, sir?
A. No. They always get worse.
Q. Tell us about that, Doctor.
A. This is a deterioration process. There's nothing that we know in medicine to halt it. There's nothing that we know how to prevent it from developing in severity. This always gets worse with time. There's nothing we can do to stop that progress. This is a progressive disease or disorder. In other words, once it starts, it progresses unrelentingly. Now it can progress at various speeds but it always progresses. It always gets worse. It never gets better.

Q. Doctor, we've thoroughly covered the day of the accident. Then according to the history and the medical records the Plaintiff was next seen by his family doctor, a Dr. Dowds; is that correct, sir?

A. Yes.

Q. That was on September 20th of 1994, about three days later; is that correct?

A. That's right.

(Defendant's Exhibit 2 was marked for identification.)

BY MR. CURTIN:

Q. According to Exhibit 2 which are Dr. Dowds' records, Dr. Dowds' records indicate, quote, Whiplash, dash, rear ended, close quote; is that correct?

A. Yes.

Q. And Dr. Dowds also according to the records restricted his work from September 19th to October 3rd of 1994, correct?

A. Yes.

Q. And it indicates that the gentleman complained of his neck being sore and his low back, correct?

A. Yes, both areas.

Q. Now, he was seen on September 27th of 1994, a period of about ten days later, but at least according to the records I have can you determine what was done on that date, sir, absent taking his weight?

A. No. There's really no indication of any care or service that was rendered on that time. There's -- there's nothing written here.

Q. Okay. So at least we know he's there on September 20th complaining about the neck and low back, and then he returns about ten days later to his general doctor, correct?

A. Yes.

Q. Now, in the same exhibit, sir, are -- did you have the opportunity to review a physical therapy referral?

A. Yes.

Q. And Dr. Dowds apparently referred this patient for physical therapy, Doctor?

A. Yes, he did.

Q. Doctor, in the physical therapy referral, it indicates, and please stop me if I misstate anything because you're the expert, quote, Michael Hoskins is a 46 year old white male who was referred to physical therapy by Dr. Dowds with a

diagnosis of cervical whiplash, close quote. Did I read that correctly?

A. Yes.

Q. Would the physical therapist like any other doctor have taken a history of any prior medical problems in the same areas being treated?

A. That would be the norm or the standard in ourcommunity.

Q. Okay. This is a very important point so let me be crystal clear. According to the physical therapy notes contained in Dr. Dowds' records, Mr. Hoskins was complaining about his neck, mid and low back; is that correct?

A. Yes.

Q. And this is on September 28th of 1994; is that correct?

A. Yes.

Q. Here's a very important question I want to ask you, sir. According to the medical records from Shelby Memorial Hospital contained in Dr. Dowds' own medical file, did **Mr.** Hoskins acknowledge, admit to any prior problems with his neck or low back?

A. He did not.

Q. What if any indication is contained in the

records, if he actually gave any answer to that question, what does it say?

A. He indicated that there was no previous problems, so obviously that question was asked in one way, shape or form and he denied the fact that he had any previous problems or treatable abnormalities in those areas.

Q. And specificallyjust so I'm crystal clear, the medical records indicate, quote, He indicates no previous problems with the cervical spine or low back, close quote; is that correct?

A. Yes.

Q. Now, Doctor, I'm going to show you some additional documentation, but first I want to ask you two more questions.

First, we know what he told the physical therapy group. We've reviewed that. He denied any prior neck or low back complaints. When you examined him years later, did you ask him, Sir, did you ever have any problems with your neck or low back before this accident, or words to that effect?

A. I did ask him that question.

Q. Okay, Doctor. Now please tell the ladies and gentlemen of the jury what his response to that

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question was.
A. He said that, quote, No prior problems in the neck or back area.
(Defendant's Exhibit 3 was marked for identification.)
BY MR. CURTIN:
Q. Now, Doctor, finally I'm going to hand you a copy of Defendant's Exhibit 3 which I'm going to ask you to assume is page 49 of Mr. Hoskins' deposition. I hand it to you merely to remove any question as to what is contained in that document.
On Exhibit 3 I want you to assume or I want you to verify for me that in sworn deposition testimony when asked in this litigation, quote, Before this accident did you ever have any type of pain or problems with your neck or back, did Mr. Hoskins answer, No, sir?
A. Yes, he did answer no. He de- -- denied the fact that he had any previous treatable problems with his neck or back.
Q. "Even from a hard day at work?" Answer, "None that I can recall." Is that what he testified to?
A. Yes.
MR. SCANLON: Objection. I'd ask that

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you read the next question and answer.
MR. CURTIN: You can redirect for whatever you'd like, sir.
BY MR. CURTIN:
Q. Doctor, we at least then have three specific episodes, first, the physical therapist; second, your own history; and third the deposition where Mr. Hoskins denied any prior problems with his neck or low back, true?
A. That's true.
Q. Now, Doctor, at the time of the examination did you have the benefit of a chiropractor's records by the name of Dr. Stuckey? Did you have them with you, sir?
A. I did not.
Q. Have you subsequent to your examination been provided those records by myself?
A. Yes.
(Defendant's Exhibit 4 was marked for identification.)
BY MR. CURTIN:
Q. Doctor, I'm going to hand you what's been marked as Defendant's Exhibit 4 and ask you whether or not you recognize those to be Dr. Stuckey's records?

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A. Yes, these are the records that I saw previously.
Q. I'll ask you to assume, sir, they are Dr. Stuckey's records subpoenaed and shared with opposing counsel. Now, Doctor, on the first page of Dr. Stuckey's records there's a health history; is that correct?
A. Yes.
Q. Now, Dr. Stuckey is a chiropractor in Attica, Ohio I believe. Let me ask you this, sir. In the document marked health history, the question is posed to Mr. Hoskins, "What is your major complaint?" What did he answer?
A. "Hips, back and neck."
Q. Question is posed, "How long have you had this condition?" What did he answer?
A. "15 years."
Q. Now, is this document, this first one, dated, sir?
A. It is not.
Q. In the upper left-hand portion of the document, his occupation is listed as a student; is that correct?
A. That's what it says, yes.
Q. Now, Doctor, you know at the time you

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evaluated this gentleman he was not a student, he was a working man, correct?
A. Correct.
Q. Now, the second page of Dr. Stuckey's records, you have those in front of you?
A. Yes.
Q. Is that dated?
A. Yes, there's a date on this.
Q. Where is the date you see on that, sir?
A. 4/16/93.
Q. This accident is 9/17/1994; is that correct, sir?
A. Yes.
Q. What if any indication did Mr. Hoskins according to these record!; give with respect to any pnor history of neck stiffness?
A. He checked that off as one of those problems.
Q. This is before our accident; is that correct?
A. Yes.
Q. Did Mr. Hoskins admit to before our accident in 1993 difficulty in rising to walk after sitting?
A. Yes.

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Q. Did he admit to in 1993 difficulty in walking?
A. He did.
Q. Did he admit to difficulty in bending in 1993?
A. Yes.
Q. Did he -- did he admit to pain while walking?
A. Yes.
Q. Did he admit to pain while standing?
A. Yes.
Q. Did the chiropractor indicate any conclusion with respect to primary and secondary subluxation in January of 1993, about a year and a half before this accident?
MR. SCANLON: All right. That's enough. I'll object to the forms of the question. This witness is here not as a puppet. You are not the puppeteer. He is here to answer questions. And I would ask that you put him -- put questions to him that are not leading in nature.
BY MR. CURTIN:
Q. Doctor, what if any indication is there with respect to any primary or secondary subluxation in or around January 10th of 1993?

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

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

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

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

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

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

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

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

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

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

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

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MRI in the absence of symptoms would show anything that would be treatable.

Most surgeons would not do an MRI scan at this point in time unless one was contemplating surgical intervention and trying to figure out at which level the surgery would be appropriate for this degenerative type of condition.

I don't believe there's clear indication in the medical records that this type of scan was even indicated due to the lack of neurological symptomatology. That is there is no evidence in the records of any pinched nerve or irritation of the nerve or inflammation, irritation or pressure on the spinal cord, and therefore this test is really not indicated.

Q. And would a symptom be radiculopathy, pain running down your arms?

A. Well, a specific pain in a specific distribution, yes, that could be one of the things, sure.

Q. Doctor, let me just very briefly go down the MRI of his neck of the --

MR. SCANLON: I'm going to object to you reading it into the record.

BY MR. CURTIN:

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Q. Doctor, I'm not going to read it into the record. I'm going to phrase my question as follows.

First, how many disk spaces are there in the neck, from what to what, sir?

A. There is one between C2 and 3 and goes all the way down to C7 and T1. So it's really six segments.

Q. C2-3, C3-4, what if any evidence of abnormality in the neck based upon the MRI?

A. There basically appears radiologically normal as did the regular X-rays.

Q. C4-C5, what if any evidence of abnormality noted on the MRI?

A. It shows degenerative changes, some bulging of the disks as well as some foraminal stenosis. That basically means that the hole in which the nerve exits the spine is narrowed and it's due to spur formation, arthritic abnormality.

Q. Is that trauma related?

A. No.

Q. What is that caused by, sir?

A. Degenerative arthritis.

Q. C5-C6, what if any evidence of abnormality based upon the MRI finding?

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A. This level was involved a little bit more significantly than the 4-5 level, both on the X-rays and the MRI. It shows what we call osteo-- osseous ridges and spurring. This is clearly a long-term chronic healing or reparative process that's trying to be accomplished. There is arthritis and disk disease, and again, the same narrowing. So this is a worser -- or more significantly involved level than the **4-5** level.

Q. Trauma related --

A. No.

Q. -- degenerative, what?

A. Degenerative.

Q. C6-C7 which is the lowest level I believe?

A. Well, there's actually one below that. But this one was even more involved than the C5-6 level because there was a very small protrusion or this -- this disk bulging had gone to the two to three millimeter range. Now this is still very, very tiny. Two to three millimeters is about an eighth of an inch which is clinically insignificant but radiologically it's significant 'cause it's there.

But this indicates, again, a worse -- a progressively worse process as you go to the lower

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levels of the neck. And the lowest level was essentially normal so --

Q. C7-T1?

A. Correct. So 4-5 was abnormal, 5-6 was more abnormal and 6-7 was even more abnormal.

Q. What if any evidence of there -- excuse me, what if any evidence existed based upon the MRI interpretation of a herniation at C6-C7?

A. There was no herniation mentioned in the report.

Q. What did Dr. Sacco conclude was the degenerative abnormality noted at C6-C7?

A. A moderate right side foraminal stenosis and a small right-sided posterolateral disk protrusion.

Q. Doctor, could you tell the ladies and gentlemen of the jury whether or not individuals in the general population when examined with an MRI, what if any disk abnormalities are shown based upon your clinical studies?

MR. SCANLON: Objection.

BY MR. CURTIN:

Q. Doctor, let me rephrase the question. What if any evidence exists with respect to how individuals as they age manifest that aging process

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with changes in their neck? What if any evidence exists?
MR. SCANLON: Objection.
BY MR. CURTIN:
Q. You can answer.
A. There are quite a few articles in the medical and orthopedic literature in which MRI scans are done, were done to the neck, mid and low back region in people who consider themselves normal.
In these individuals who never had neck problems, never had treated for neck and consider their neck and backs normal, about two-thirds, 60 percent, 66 percent, had MRI evidence of degenerating and bulging disks at one level. And a third of those individuals, about 33 percent, had two or more levels involved.
So there is a high number of people in the normal population that have disk abnormalities which is why the recommendations were as early back as 1995 is not to do MRIs as our routine screening procedure because there are going to be a high number of abnormalities. And they should base any clinical decision on treatment, surgery, therapy on the patient's physical findings and not on the

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basis of an MRI scan, simply because of the high amount of abnormality noted in the normal population.
Q. Doctor, is there a difference medically in the term protrusion and herniation?
A. Some physicians use those terms interchangeably. Typically a herniation would be a larger protrusion in which you would not see a bulge but physically disk material on the scan behind the back of the -- the vertebrae.
A bulging or protrusion is part of the degenerative process whereas a herniation means that the actual disk material has moved beyond that -- that limit. There's no indication that that existed on these films.
Q. Setting aside the label then, what if any evidence exists with respect to what the radiologist was looking at on the MRI as to whether or not any of the disk material had extruded or gone out? What if any evidence exists of that?
A. There's no indication in the X-ray report that there was any extruded material or disk herniation. It just -- there was a bulging that was two to three millimeters, or protrusion, which is essentially as the disk collapses, the material

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has to go somewhere and it typically bulges in an outward or a lateral direction.
Q. This gentleman had an EMG, an electromyogram; is that correct, sir?
A. He did.
Q. What was the results of the electromyogram?
A. This test was normal.
Q. Doctor, you've talked to us about the medical records in part and we've spoken about the history. Did you also conduct a physical examination of the gentleman?
A. Yes.
Q. Would you please tell the ladies and gentlemen of the jury what your findings were on physical examination of the gentleman.
A. The exam revealed a pleasant muscular 50 year old man who did not appear in any discomfort at the time of the examination. When he was sitting, standing and walking and while I spoke with him, he seemed to hold his neck in a stiff type of posture, moving his trunk and his head at the same time and not specifically moving his neck.
He was able to walk without

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difficulty. He was able to stand up and down from the chairs in the rooms without difficulty. And he was able to climb up and down the exam table normally. This may not seem like medical observations but this tells me how the neck, back, upper and lower extremities, how they were working together and if there's any kind of deficiencies or deficits, and there was none noted.
I then did a specific examination of his neck area. And what I'm doing in this exam is I'm essentially looking for objective abnormalities, that is things that I can tell, abnormalities that I can tell, feel, touch, measure or quantitate. What doctors do is they take your symptoms, what you go to the doctor and complain about, and they look for abnormal -- abnormalities to treat. You don't treat symptoms, you treat underlying problems.
And that's the purpose of an examination. That's also the purpose of X-rays, EKGs, lab tests. You're looking for objective manifestations of a process that you can treat.
So part of this involved observation, that is looking at the muscles, feeling, touching, manipulating the muscles. There was really no

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

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

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

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

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

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

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

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

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

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

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

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

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

I spent some time doing a neurological

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

A. I do have an opinion, yes.

Q. What is that opinion?

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

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

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

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

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

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

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

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

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whole process. So I would say about four to five hours typically.
Q. All together in order to prepare what we are now discussing today?
A. Yes.
Q. Is there a cost associated with the time of the completion of your deposition, sir?
A. Yes.
Q. And what is the cost of that?
A. $900 an hour.
Q. And, Doctor, typically when you're not in a deposition or preparing a report, what is the time -- what is your time spent doing?
A. I take care of patients.
MR. CURTIN: Thank you, Doctor. I have nothing else.
MR. SCANLON: Can we go off the record, please?
(Short recess had.)
- - -
CROSS-EXAMINATION
BY MR. SCANLON:
Q. Doctor, my name is Larry Scanlon, and I represent the Hoskins family in this case. You and I have never had an opportunity to meet and speak

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

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

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

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structural injuries that may have permanent injury.
But in typical soft tissue injury, even in my own patients, they don't persist or become permanent. All of these patients I believe were injured at one point in the, but very few of them have any permanent residuals of solely a soft tissue injury. I just don't believe that exists.
Q. I'm sorry, what did you say?
A. I don't believe there's a high volume of individuals that have soft tissue injuries that have permanent injuries solely related to soft tissue strains and sprains.
Q. All right. All right. Doctor, do you believe that it -- it is necessary for you in this case to -- to conclude one way or another that this accident was the sole cause of Mi. Hoskins' complaints?
A. I'm not sure I understand your question.
Q. Well, you've used that word now on more than one occasion, solely. You understand what I'm asking you now?
A. I'm -- I'm waiting for the question part of it.
Q. I already gave you the question.

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A. Oh. I'm -- may -- still may not understand what you're asking.
Q. Well, maybe if you locked at me instead of the camera, you and I could make some eye contact.
MR. CURTIN: You don't have to direct the doctor where he has to look, sir.
MR. SCANLON: And maybe we could understand each other.
MR. CURTIN: You won't instruct him which way to look. He'll look wherever he deems it appropriate.
BY MR. SCANLON:
Q. Doctor, you're used to performing for cameras for Mr. Curtin, are you not, sir?
MR. CURTIN: I'll object.
THE WITNESS: I'm not sure how to answer that.
BY MR. SCANLON:
Q. All right. You didn't have any trouble answering questions directed to you by Mr. Curtin, sir, and I'd -- I'd like you to give me the same courtesy.
MR. CURTIN: Objection. Move to strike. That's not a question.
BY MR. SCANLON:

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Q. All right? Is that fair?
MR. CURTIN: That's a comment.
THE WITNESS: I will be as fair and as straightforward as I can.
BY MR. SCANLON:
Q. All right.
A. But if I can't answer your questions I can't answer them.
Q. All right. And, Doctor, you are -- you have been forthcoming in your testimony here today, right?
A. I have answered it to the best -- the questions to the best of my abilities, yes.
Q. And the questions that I'm going to put to you you will answer truthfully and honestly, will you not, sir?
A. Yes.
Q. Sir, have you not been excluded from testifying in cases involving soft tissue injuries where you have performed examinations for the defense?
MK. CURTIN: Objection. Continuing. You can answer if you know.
THE WITNESS: I -- I have been informed through my personal counsel that there have been

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one or two times where in the initial series of motions I was being excluded, but I do not believe that final motions have been filed. Again, I don't know what the -- what the outcome of any of these particular incidents are as additional motions go back and forth, and I frequently don't know what the end point is.
BY MR. SCANLON:
Q. Well, Doctor, you've hired your own personal lawyer to file motions on your behalf in order for you to be permitted to testify in cases where you have been retained by the defense; is that not true?
MR. CURTIN: Continuing objection.
THE WITNESS: I have a corporate counsel that helps me with issues that are legal. And occasionally that's what I need them for, because I don't know what the law is behind a lot of the motions and requests that I have. And I think it's only normal to hire an expert which -- a person who's there at all times to help with legal issues.
BY MR. SCANLON
Q. Doctor, who is your lawyer?
A. My corporate lawyers are McLaughlin and

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McCafferty.
Q. And have they provided you with the documents they have filed in connection with the case that you've been excluded from testifying in, do you know?
MR. CURTIN: I think that might be privileged, Counsel. I caution you that even though he's not a lawyer, you're not asking him as to any communications between he and his lawyer. And I -- I think you know better.
MR. SCANLON: Well, the doctor has testified he's not sure about the state of the papers, and I'm going to ask you about those papers.
MR. CURTIN: And, Larry, I --
MR. SCANLON: These are public filings. And my question is is he aware, first --
MR. CURTW: Fair enough.
MR. SCANLON: -- of filings?
MR. CURTIN: You can ask him is he aware of it, if you know.
THE WITNESS: I -- I don't know the status of it.
BY MR. SCANLON:
Q. Have you been provided copies of those

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

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my attorney to the other plaintiff's attorney.
BY MR. SCANLON:
Q. You haven't or you have?
A. I've -- I've only seen our responses. I have not seen what the issues were, the original motions --
Q. All fight.
A. -- or the court -- the specific court orders.
Q. So you have seen the plaintiff's responses, I mean your -- your lawyer's responses?
A. I have seen them up to a week ago.
Q. Right.
A. I'm not sure what has been filed since then.
Q. Okay. You were asked to examine a John Pohorence; is that right?
A. Yes.
Q. And you were also asked to produce information regarding your financial dealings with the defense counsel who sent you that witness?
MR. CURTIN: Why don't you state who that is, Larry? Was that Michael Curtin?
MR. SCANLON: That was your former partner, Roger Williams.

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

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Q. And do you understand why the court has excluded you?
A. Not really.
Q. But you know your lawyers have filed a motion for reconsideration?
A. Yes.
Q. Could I have that?
Doctor, you are also busily engaged in the 8th District Court of Appeals, are you not, in two other cases in an attempt to resist efforts to find out your financial dealings with defense counsel, insurance companies and the like?
MR. CURTLN: Objection. Continuing.
THE WITNESS: I'm not going to answer any questions about the Court of Appeals issues. I was instructed by my attorney not to discuss it in any way, and I'm not going to talk about it.
BY MR. SCANLON.
Q. Well, Judge Sutula's order that you read that you say you've never seen grants the plaintiff's motion to exclude your testimony on the basis that the Defendant retained Dr. Corn knowing that Dr. Corn was resisting through cross-examination on the issue of bias in at least two other cases and further that any efforts to

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compel production of documents necessary to conduct a thorough cross-examination would be futile since all documents were ordered sealed by the Court of Appeals.
You are involved in those cases and you have had your records sealed, right?
MR. CURTIN: Objection.
THE WITNESS: It's not my records that have been sealed. It's the -- some case -- some records from the Cuyahoga County court system that have been sealed. My records have been distributed widely through the Northeastern Ohio area in direct violation of the Court of Appeals order.
BY MR. SCANLON:
Q. Well, Doctor, I don't have any of your financial records, but I -- I have tried to calculate roughly, if you've spent four to five hours in this case, are you charging Mr. Curtin $900 for each hour?
A. For the deposition.
Q. All right.
A. I hope this wouldn't go on for four or five hours.
Q. All right. No. I was asking about the time you say you've spent in forming your opinions

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in this case.
A. No. There was a global fee for the initial evaluation which included everything we talked about before.
Q. You do about a hundred of those a year?
A. I don't know what the mathematics is of it, but I could do a hundred a year, sure.
Q. Could be more?
A. Could be more.
Q. Could be less?
A. Yes.
Q. Isn't it true that you have assisted Mr. Curtin in defending cases since 1985 at the rate of two to three defense medicals a month?
MR. CURTIN: Objection.
THE WITNESS: I'm not sure where that came from. I'm not sure that's accurate during that entire time period.
MR. SCANLON: Can we go off the record.
(Short recess had.)
BY MR. SCANLON:
Q. Doctor, do you remember giving testimony similar to what you have done in connection with this case in June 6th, 1995 involving a Christina Farinella for Mr. Curtin?

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A. I don't remember that case at all.
Q. And Claudia Eklund was here for the plaintiff. You were under oath, sir, as you are in all depositions. And back then you were charging $850 an hour, does that sound right?
A. I thought it was higher. As far as I can remember we've been charging $900 an hour since 1994.
Q. Do you remember this question being asked, "Do you recall though that back at least in 1985 you were doing something in the vicinity of one or two defense examinations per month just for Mr. Curtin's office," do you remember that question?
A. I don't remember that question.
Q. And your answer?
A. I don't remember what the answer was either.
Q. "In 1985 that was the only office I was doing defense medical examinations for."
A. That's true.
Q. "That was I think in 1985 up until the middle of 1986 because I was in my old office at that time. I was just not doing that many of -- of them at that time."
Question, "By that many does one to two

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a month sound approximately right?"
"That could have been right, I don't -- really don't remember."
And wasn't Mr. Williams a named partner in that firm at the time?
MR. CURTIN: We'll stipulate, Larry, that Roger Williams was a partner in our office. There was never a question about that.
BY MR. SCANLON:
Q. Do you recall that?
MR. CURTIN: That he's a partner?
THE WITNESS: Which part?
MR. SCANLON: I'm asking the witness, Mike. I understand your --
THE WITNESS: Do I recall what part? I don't --
BY MR. SCANLON:
Q. Yeah. Do you remember Roger Williams being a partner in the firm at that time?
A. Yes. I don't remember when he left but I do remember initially he was part of that firm, yes.
Q. All right. Do you remember giving testimony in the case of Peter Prete versus Paul Begnaud in -- on April 30th, 1987?

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

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

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

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

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

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

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

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

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

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

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

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

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MR. CURTIN: Object.
BY MR. SCANLON:
Q. "Where was his office?" "Attica, Ohio."
So at the time you wrote this report, whether it was from **Mr.** Hoskins or from the lawyers, you knew the patient had identified Dr. Stuckey as treating him for prior low back problems, yes or no, Dr. Corn?
MR. CURTIN: If you can answer it like that. You're not required urtder our law to be a puppet and to answer a question the way he wants it answered. You can answer it any way you deem appropriate.
THE WITNESS: I was aware that he had seen a chiropractor. I did not and was not aware at the time that I finished my review including the review of the medical records of what he was seeing the chiropractor for, how often the treatments were and for what diagnosis may have preexisted the accident. **All** I knew is that he had seen him before and there was some mention in the medical records of some prior care, but I did not know the details.
BY MR. SCANLON:
Q. All right.

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A. And that's why I wanted to review the records.
(Plaintiff's Exhibit 2 was marked for identification.)
BY MR. CURTIN:
Q. Let me hand you then your report that we'll mark as Plaintiff's Exhibit 2 in this case. Instead of getting up and walking over there, Doctor --
A. I have my copy of it -- that's --
Q. **All** right. Now that note is dated November lst, 1998, correct?
A. That's when it was typed, yes.
Q. You reviewed it before it became your final report in this case?
A. I did.
Q. You signed it?
A. I did.
Q. You dictated it?
A. Yes.
Q. If there had been any errors in that letter would you have corrected it before you signed it and sent it to **Mr.** Curtin?
A. If I picked it -- if I was able to note the errors, yes, they probably would have been

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

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

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

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

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otherwise, wouldn't it?
A. I'm not sure what legally that means, but I would not have any idea from a medical standpoint.
Q. Not having any idea means guesswork, speculation. Would you agree with that?
A. Yes.
Q. All right. And you agree that Mr. Hoskins was, in fact, hurt in this collision, right?
A. Probably, yes.
Q. And you agree that Mr. Hoskins required treatment for his injuries, correct?
A. Yes.
Q. And you agree that Mr. Hoskins required bed rest or at least not working, yes?
A. For a period of time, sure.
Q. And I understand that to be from your prior testimony about four months --
MR. CURTIN: Objection. That was not his testimony.
BY MR. SCANLON
Q. -- for -- of treatment and three and a half months for being off work?
MR. CURTIN: Objection. That was not his testimony.

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

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

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

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similar -- same fashion.
Q. On occasion you have given testimony like this on behalf of your patients, have you not, Doctor?
A. Absolutely.
Q. And have you ever testified in a case, Doctor, that a motor vehicle collision, particularly a rear end motor vehicle collision, can aggravate a patient's underlying degenerative disk disease?
A. Absolutely.
Q. Have you ever testified in a case that a motor vehicle collision, particularly a rear end motor vehicle collision, can aggravate a previously asymptomatic congenital back condition such as what Mr. Hoskins has, the spondylolisthesis in the L5-S1?
MR. CURTIN: Objection.
THE WITNESS: I do believe it's -- it's possible and probable. I can't think of a -- a case right now, but sure, it's -- it's a potential.
BY MR. SCANLON:
Q. All right. And isn't it a fact, Doctor, that given the condition that you say existed in Mr. Hoskins' neck and back on September 17th, 1994,

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

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

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but I can't relate it to what you're asking me specifically.
Q. All right. Of course if you could or would, you wouldn't be here testifying as a defense witness, would you, Doctor?
MR. CURTIN: Objection.
THE WITNESS: I am testifying because I felt that my opinions about this case were valid, and I felt I was expert enough to discuss them. That's why I am -- I am testifying, and that's not because of who hired me or why I was -- why I was hired.
I guess we're here because I believe from a medical standpoint that what I'm saying is within a reasonable degree of medical certainty my beliefs about his original injuries and about his ongoing level of symptoms.
MR. SCANLON: Objection. Move to strike.
And I turn the witness back to you, Mr. Curtin.

- - -

REDIRECT EXAMINATION

BY MR. CURTIN:
Q. Thank you. Doctor, just a few questions.

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

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down some of the dates. I heard him describe a deposition on April 30th of 1987, November 1st of 1993 and June 6th of 1995. Did you hear him say that, sir?
A. Yes.
Q. That's a period of about 12 years, from '87 up until the present time, including this deposition, correct?
A. I think the first one may have even been '85.
Q. '85 he was asking you questions about.
All right, Doctor. Now just so I'm crystal clear in all of Mi. Scanlon's questions relative to your objectivity, jet me be clear. Number one, you don't dispute this man's injury, do you?
A. I don't dispute that he was injured, no.
Q. All right. Number two, you don't dispute this man had some degree of pain and suffering from this accident, do you?
A. No.
Q. Number three, you don't dispute this man needed medical care and treatment for a period of three or four months after this accident, do you?
A. No.

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Q. You don't dispute this man may have had to have been away from work for a period of time, do you?
A. No.
Q. And yet Mr. Scanlon's asking you questions dealing with how often you've testified for either myself or a man who hasn't worked for my law firm in five years, isn't that true, sir?
MR. SCANLON: Objection.
THE WITNESS: Yes.
BY MR. CURTW:
Q. Ivfr. Scanlon's asking you questions about depositions from the 1980s, isn't he, sir?
A. Yes.
Q. Your fee arrangement with respect to completing a medical report, the four to five hours, is that at a certain range for those four or five hours? All together what does that equal?
A. I'm not exactly sure I understand what you're asking.
Q. Sure.
A. It's a global fee for that entire process.
Q. Okay. And what would -- what's the range of the global fee?
A. Depending on the time and complexity of

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it, 900 to $1,700. Sometimes it's more. Sometimes it's a lot more depending on how long it takes and how complicated the records.
Q. All right. But basically that global fee would be for the four to five hours, not at a rate of $900 per hour, correct?
A. Yes, that's absolutely correct.
Q. All right. So --
A. It would be a flat rate for the preparation of the report.
Q. So if you spent five hours there could be a charge of $900 for those five hours, correct?
A. Well, it would be unlikely it would be that low, but it would -- the reports would probably be in the 15 to $1,700 range.
Q. Okay. For five hours worth of work?
A. Correct.
Q. All right. Now let me ask you something, Doctor, because many questions were asked dealing with who you see. Do you recall the questions, 70 percent of the work you do may be for the defense?
A. Yes.
Q. Now I'm going to ask you to assume that Ivfr. Scanlon across the table represents almost exclusively plaintiffs, and I've worked with Mr.

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Scanlon and had that pleasure for some 16 years. Do you believe that merely because Mr. Scanlon represents almost exclusively plaintiffs that makes him any less honest as a lawyer?
MR. SCANLON: Objection.
BY MR. CURTIN:
Q. Do you think so, sir?
A. No.
Q. Nor do I. When you see two patients per week for examinations regardless of plaintiff or defense, how many patients do you typically see during a week, sir?
A. Depending on the emergencies, anywhere from 40 to 60 patients a week.
Q. 40 to 60 per week, and two per week are dedicated to these examinations we've discussed, correct?
A. Well, it can be two, it can be more. But certainly it's a much smaller number than the number that I see for treatment,
Q. A small percentage, would that be fair to say?
A. A smaller percentage, sure.
Q. Okay. Doctor, you received, and you and I reviewed in detail, Dr. Stuckey's records this

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morning; is that correct?
A. Yes.
Q. Quite clearly your medical report made no question that at the time you completed the report you did not have Dr. Stuckey's records for whatever reason; is that correct?
A. Yes.
Q. You have a portion of your report where you review what records you reviewed; is that correct?
A. Yes.
Q. And you never mentioned Stuckey's records, correct?
A. Correct.
Q. And actually in the report you say perhaps the review of those records would clearly define his preexisting spinal condition, correct?
A. Yes.
Q. And did those records that you saw after you prepared this medical report of November 1st, 1998 better illuminate, better address his preexisting spinal condition?
A. Much more -- a little bit -- well, more clearly than I knew before, yes.
Q. Doctor, if patients continue to want to

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

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RECROSS-EXAMINATION
BY MR. SCANLON:
Q. Doctor, I'm sorry, but I have some more questions.
MR. CURTIN: I'm going to object to those additional questions.
BY MR. SCANLON:
Q. There's no doubt in the emergency room record that you were asked to look at that the patient reported hitting his head on the rear window, correct?
A. There's no question that that's mentioned in the medical records, that's correct.
Q. All right. And didn't the -- and I guess I need to ask you this, so I won't testify. I'll ask you to tell me what it means. Would you look at the physicians's evaluation, please, about halfway down, and there are initials ROS.
A. (Witness nodding head up and down.)
Q. And then a plus and vertigo and then a negative, syncope or LOC, Do you see that line?
A. Yes.
Q. Can you interpret that for us in lay terms?

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

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

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

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MR. CURTIN: Objection.
BY MR. SCANLON:
Q. -- combining together?
MR. CURTIN: Unless we're talking this patient.
BY MR. SCANLON:
Q. Yes or no?
A. I think that the potential for injury may be slightly higher if there's a preexisting condition, sure. This was in his low back, not in his neck.
Q. Well, he had the spondylolisthesis in his low back, but he had a spondylosis in the neck, didn't he?
A. Well, spondylosis is the degenerative arthritis and **disk** disease.
Q. But the spondylolisthesis is the congenital condition?
A. Congenital, correct.
Q. And so he has -- Mr. Hoskins had a congenital condition on September 17th, 1994 in his low back, correct?
A. Sure. He's had it all his life probably.
Q. He worked in a factory and coped with it to the best of your knowledge, right?

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A. Well, and he also had symptoms somewhere from his low back as well off and on.
Q. And then he gets hit from behind with -- by a tractor-trailer. Do you know the speed of that collision?
A. No.
Q. Do you know -- would it surprise you to hear that the tractor-trailer had a 40,000 pound load on it?
MR. CURTIN: Objection.
THE WITNESS: I don't really have an opinion one way or another.
BY MR. SCANLON:
Q. Okay. The mechanics of the injury are -- don't -- didn't really concern you in this case, did it?
A. I'm not an accident reconstructionist specialist --
Q. Right.
A. -- so the physics behind it really -- other than general interest --
Q. Right.
A. -- would not really help me determine --
Q. Right.
A. -- medically what the problem was.

CERTIFICATE

STATE OF OHIO,)
) SS:
SUMMIT COUNTY.)

I, Trisha L. Beban, RPR and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, ROBERT C. CORN, M.D. was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to Stenotypy in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

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

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

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

Trisha L. Beban

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

My Commission expires June 11, 2001

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

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

MR. SCANLON: Exactly. Thank you, Doctor.

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

MR. SCANLON: Do you want him to read?

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

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

- - -

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

(Signature waived.)

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