IN THE COURT OF COMMON PLEAS

OF CUYAHOGA COUNTY, OHIO

WILLIAM M. PRUSAK, et al.,

Plaintiffs,

vs.

Case No. 306768

JENNIFER E. NEEL, et al.,

Defendants.

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Videotaped deposition of ROBERT C. CORN, M.D., called for examination under the statute, taken before me, Claudine Kelly, a Notary Public in and for the State of Ohio, pursuant to notice and stipulations of counsel, at the offices of Robert C. Corn, 850 Brainard Road, Mayfield, Ohio, on Monday, June 2, 1997, at 5:37 o'clock p.m.

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APPEARANCES:

On behalf of the Plaintiffs:

Donald E. Caravona & Associates, by
MICHAEL W. CZACK, ESQ.
1900 Terminal Tower
Cleveland, Ohio 44113
696-6500

On behalf of the Defendants:

Dyson, Schmidlin & Foulds, by
RAYMOND SCHMIDLIN, JR., ESQ.
5843 Mayfield Road
Mayfield, Ohio 44124
461-9000

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ALSO PRESENT:

Kurt Henschel, Video Tech

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MR. HENSCHEL: Today is June 2nd, 1997. We are on the record at 5:37. Would the Notary please swear in the witness.

ROBERT C. CORN, M.D., of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF ROBERT C. CORN, M.D.

BY MR. SCHMIDLIN:

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

A. My name is Robert Curtis Corn.

C O R N.

Q. And what is your business address?

A. My main office address is at 850 Brainard Road in Highland Heights, Ohio.

Q. And what is your occupation?

A. I'm an orthopedic surgeon.

Q. Are you board certified?

A. I am.

Q. And what is an orthopedic surgeon?

A. An orthopedic surgeon is a physician who has fulfilled the obligations of the American Board of Orthopedic Surgery and practices a

medical subspecialty known as orthopedic surgery.

Q. And what is orthopedics, the study of orthopedics?

A. The subspecialty of orthopedic surgery deals with the medical and surgical treatment of diseases, disorders, injuries and tumors of the musculoskeletal system that includes the bones, the muscles, the tendons, joints and ligaments, and has a number of more recognized subspecialties, such as surgery of the spine, surgery of the hand, sports medicine and arthroscopic surgery, rehabilitation, as well as surgery for arthritis and total joint replacement surgery.

Q. Are you licensed to practice in the State of Ohio?

A. Yes.

Q. And what year did you become licensed in Ohio?

A. In 1976.

Q. Doctor, can you tell us a little bit about your educational background?

A. I received my Bachelor of Science in Biology from the Albright College in Reading, Pennsylvania in 1971. I then moved back to my

hometown, Philadelphia, Pennsylvania, where I attended the Hahnemann University School of medicine from 1971 to the middle of 1975. I received my M.D. Degree when I graduated in 1975.

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

I then started private practice in the field of orthopedic surgery in August of 1979. And since that time I have been in the private practice of orthopedic surgery primarily on the east side of Cleveland.

Q. Doctor, do you have any teaching responsibilities?

A. At this point in time I still have an instructorship at the Case Western Reserve University School of Medicine in orthopedic surgery. And I'm an assistant professor of orthopedic study at the Ohio College of Podiatric Medicine.

Most of my time, however, is devoted at this point in my career to the private

practice. I was chief of orthopedic surgery for eight years at the Meridia Huron Hospital during which time I did a fair amount of teaching on a daily basis.

Q. Doctor, could you highlight one or two of your most relevant, or most important publications that you've had in your career?

A. My early interest in medicine was orthopedic research. When you can't practice medicine you do the next best thing and that's you do research to try to advance it. I started, I guess every summer between college, college years, and also between college and medical school. And I worked in this small animal research at my future medical school.

I guess some of the more interesting things that we worked on was to try to find out why people were dying when they first started doing total joint replacement surgery in the United States, and realizing that it was an allergic response and a physiologic response to the glue that was being used.

And the first research work I did was trying to figure out why this happened and we used an experimental model and ended up giving

some recommendations which are still used on a daily basis, by orthopedic surgeons and anesthesiologists even to this day.

Some of my initial research work in orthopedics was in the field of implant fixation. Now in English that means how do you keep a joint replacement in the body for as long as possible without it wearing out, breaking or becoming loose?

And the initial work that I did over the four years at the Cleveland Clinic in the biomechanics laboratory was we developed criteria for biological coatings for actual surface coatings of metal that will allow and promote the body to physically grow into the mental pieces and that also is used in everyday work.

The other area which I am also proud of because it took a lot of work was the use of external limb compression. Everybody that has major abdominal or lower extremity surgery you have that, those special cuffs that are put on your leg to pump the blood out and keep the circulation going in the legs. As a medical student project we did the first animal research work on why that works and how to use it.

So those are probably some of the highlights.

Q. Doctor, could you also highlight some of the associations that you belong to?

A. I have fellowship distinction in a number of organizations, and these are -- a fellowship is a type of membership, but you have to be elected into that body of -- or that group. I am a fellow in the American Academy of Orthopedic Surgeons.

I'm a fellow in the American College of Surgeons. Last year I became a fellow in the American Academy of Forensic Medicine and the American College of Forensic Examiners. I was also board certified in both of those fields last year in 1996.

I have membership in the national, state and local medical associations, the Cleveland Orthopedic Society, as well as a number of other organizations.

Q. And where do you have hospital privileges, Doctor?

A. I have hospital privileges at a number of the Meridia Health System Hospitals including Meridia Hillcrest, Meridia Euclid and

Merida Huron Hospitals. Most of the work I do is at Euclid and Hillcrest.

I also have staff privileges at University Hospitals Bedford Medical Center, the Mt. Sinai Hospital System, as well as the Lake County Hospital System.

Q. Doctor, do you see patients on a regular basis in your practice?

A. Yes, I do.

Q. And are you familiar with treating injuries to the knees, neck and back?

A. Yes.

Q. And I asked you to examine William Prusak and Mary Prusak as a result of a car accident that they were involved in. Do you recall examining them?

A. I do.

Q. And the purpose of that examination was to give an opinion as to their injuries, not to treat them for their injuries, is that correct, Doctor?

A. Yes. That's correct.

Q. Okay. I think this would be easier if we handled these one at a time, Doctor, starting with William Prusak can you tell me if

you conducted a history of Mr. Prusak?

A. I did.

Q. And what does that history consist of?

A. The medical history is the part of a doctor/patient encounter in which a number of facts are developed. In other words, in order for the doctor to get a full understanding of what the injuries were and how the injuries affected an individual, the doctor takes a medical history. And this is something that we do on a routine basis.

I see anywhere from 60 to 90 patients a week. So I will go through the same type of questioning many times during the course of a week. The history we try to elicit is: How did the accident happened? If it was an accident of course. What was the history of the present illness? What happened right afterwards? What health care providers were seen? What type of diagnostic testing was performed?

And, basically, to establish in a chronological order what transpired from the time the injury occurred up to the present time, or when the last treatment was rendered.

Q. Okay. And what was the history that William Prusak gave you?

A. Mr. Prusak was an unrestrained driver of the motor vehicle. His wife was in the front seat. That was the other co-Plaintiff, so to speak, Marion, their daughter was in the back seat of the car.

The collision occurred in a -- they described as a somewhat rural area. A car pulled out in font of their vehicle. The driver was unable to stop because of the timing and a -- an impact occurred between their 4-by-4 and the other -- the other vehicle, The force of the collision, this was primarily a front end collision.

The -- Mr. Prusak sustained neck injury and may have slammed his knee against part of the interior of the car. The vehicle apparently turned on its side, and Mrs. Prusak was sort of suspended from her seat belt for a period of time until they were extricated by the rescue squad and conveyed to the Medina General Community Hospital.

At that point in time certain appropriate testing was performed. X-rays were

-- were done. Some pre-existing arthritic condition was noted in his neck. There was some, a little bit of arthritis noted in his right knee that was injured. He also injured his forearm and right collar bone area and he was discharged from the emergency room primarily with a diagnosis of contusions or bruises.

He then came under the care of Dr. Kavlich, his family doctor. He treated him for a period of time, primarily for the neck and back and the right knee contusion. He then saw an orthopedic surgeon, Dr. Karns, who basically had been treating him with follow-up x-rays, some medications for arthritis. And he was also seen by a Dr. Perry who was another family physician,

Q. All right. Did you, in connection with the history, conduct an examination of Mr. Prusak?

A. Yes.

Q. Okay. And what did that examination consist of?

A. The examination was a standard orthopedic examination that I perform on a regular basis. This involved certain composite movements, watching how he moves, stood up,

climbed, walked. And then I did specific examination of his neck, low back and both of his knees.

Q. And as a result of that examination did you come up with a diagnosis?

A. I did.

Q. And what was that diagnosis?

MR. CZACK: Objection.

A. On the basis of the examination I felt that he probably sustained a strain, which is a muscular injury of the neck and low back, or possibly a sprain, which is a ligamentous injury.

These had resolved by the time I had seen him and he had some pre-existing degenerative changes in the neck and low back, which also may have been, by history, transiently aggravated. He didn't know he had them before or may not have been that significant before, He was treated and it got better.

He also had some arthritis in both of his knees. The right knee may have been injured a little bit more significantly than the left. But, again, most of his symptoms had revolved by the time I had seen him.

MR. CZACK: Objection.

Move to strike.

Q. Doctor, in connection with your treatment did you review any records in preparing your report?

A. Yes, I did.

Q. And can you tell me which records you reviewed?

A. The records I reviewed were those from Medina Community General Hospital, Dr. Kavlich, Dr. Karns and the Parma Community General Hospital.

Q. And did you have an opportunity to review the x-ray reports and other diagnostic tests contained in those reports?

A. Yes.

Q. And did those diagnostic tests or those x-rays contain any evidence of any degenerative arthritis?

A. There were degenerative changes, both arthritis and some disk disease in the neck and the low back area, yes, as well as in his knees.

Q. And in your opinion, based upon a reasonable degree of medical certainly, were these conditions present prior to the automobile

accident?

A, Yes.

Q. Doctor, in your discussions with Mr. Prusak did he give you any histories relating to his work history?

A. He did.

Q. Okay. Can you tell me what he related to you about his work history?

A. He was employed by LTV most of his working life. He was working in labor for quite some time. He ultimately applied for a job as an electrician, which he did for about a year and-a-half after the accident. And then he took a less demanding physical job working in the HVAC, the heating/air-conditioning group, service group at the -- at the plant.

He was out of work for a couple weeks. He has limited his overtime in the HVAC capacity. He was working in a more laboring capacity for about a year and-a-half prior to his job switch. I think that it was less strenuous, less demand on him physically, and he is able to continue to work in that capacity up to the time of my evaluation.

Q. Okay, Doctor, based upon a reasonable

degree of medical certainty, do you have an opinion as to whether or not William Prusak sustained any permanent injury in the motor vehicle accident?

A. I do have an opinion.

MR. CZACK: Objection.

Q. And what is that opinion?

MR. CZACK: Objection.

A. My opinion is that he did not sustain any permanent injury as part of the residuals of the motor vehicular accident.

Q. And based upon a reasonable degree of medical certainty, speaking to specific areas of his body, particularly his knee, neck or back, do you have an opinion, as to a reasonable degree of medical certainty, whether there is permanent injury to those areas of his body?

MR. CZACK: Objection.

A. I do have an opinion.

Q. Okay. And, again, for the sake of being repetitive, what is that opinion, Doctor?

A. My opinion is that he sustained no permanent injury to his neck, low back or right knee.

Q. And based upon a reasonable degree of

medical certainty, do you see the need for any surgery to any of those areas of his body in the future, Doctor?

A. I do not, on the basis of this evaluation and review of the x-ray reports and the medical records, believe, within a reasonable degree of medical certainty any surgery is necessary or appropriate at this point in time. And there is no evidence that any of these pre-existing conditions were accelerated by the accident.

There is no indication that surgery is necessary now or in the future.

MR. CZACK: Objection.

Move to strike.

Q. Okay. Doctor, based upon a reasonable degree of medical certainty, do you see any reason to limit Mr. Prusak's activities, or to limit his activities at work?

MR. CZACK: Objection.

A. Not on the basis of my evaluation, no.

MR. CZACK: Objection.

Move to strike.

Q. Doctor, let's move on to Mary Prusak

now. Without being too repetitive, can you highlight what her history was?

A. Again, she was a front seat passenger in the motor vehicle. She was restrained. After the emergency squad reached them and extricated her from the vehicle she was taken again to the Medina Community General Hospital and the same type of work-up was performed. She had the appropriate level of x-rays. She had the appropriate examination.

This again also revealed some degenerative changes in the lower end of her neck, what we call the cervical spine, but the pelvic films and the x-rays of the chest essentially were -- were normal. It was felt that she had a bruise of the chest and a bruise of the left knee as the initial -- the initial doctors' opinions.

She then returned to Dr. Perry, who's her family doctor, about two days after the accident, because of her ongoing symptoms and the suspicion that they may have missed something, certain x-rays were repeated primarily of her chest. These were again normal, no fractures were seen. A bone scan was performed. This is a

radionuclides scan, radioactive materials injected into the blood stream.

It travels around the blood and seems to settle in areas where there is rapid bone turnover where we see in tumors or fractures, And there were no fractures that were identified or there was some increased uptake where the ribs, the soft part of the ribs meet the hard part of the ribs.

She was then referred to an orthopedic surgeon. She never did see him. She went instead to Dr. Juguilon, who is a neurologist. Dr. Juguilon, because of her complaints, ran her through a series of diagnostic testing. And these included electrophysiological testing, that is looking at the nerves, seeing how they conduct impulses and how the muscles work in response to known impulses. And those were normal.

She had an MR scan, which is a type of radiological imaging study, in which the body is placed into a large magnetic field bombarded with radio waves and the degree of water content is assessed by computer imaging. This basically confirmed there was degenerative disk disease the

lower three levels of her cervical spine. This test done of her brain was normal.

Let's see, what else did she have? She continued to see with -- follow with Dr. Juguilon. He did a MR scan of her thoracic spinal area. That's the chest area of the spine. That showed a minor disk abnormality between the T7 and T8. This is in the lower middle portion of the thoracic area. There are 12 vertebrae in the thoracic area.

She basically conditioned with Dr. Perry. He sent her to physical therapy, and that was essentially her care and treatment. The only medical doctors that she saw were Dr. Juguilon and Dr. Perry.

Q. Doctor, did you review any medical records of Mary Prusak in connection to your opinion and what were they?

A. The records that were reviewed were from the Medina General Hospital, the Parma Community Hospital, Dr. Juguilon, Parma Radiology, Magnatech, that was the MRI facility and then McCoy Physical Therapy Associates,

Q. Doctor, I take it that you also conducted an examination of Mary Prusak?

A. Yes, I did.

Q. And can you tell me what that examination consisted of?

A. Well, again, a complete orthopedic evaluation of her neck, chest, upper back, both upper extremities and her lower back.

Q. Okay. And based upon a reasonable degree of medical certainty what was your impression of Mary Prusak's condition at the conclusion of your examination?

A. My opinions was that she more likely than not sustained a soft tissue strain or sprain of her neck and a chest wall contusion.

Now, by the MRI scan, however, more abnormalities were detected, and that included primarily disk disease and arthritis at the lower end of her neck, the mid-thoracic spine. There was no signs of any disk herniation or any disk putting mechanical pressure on any of the significant spinal nerve roots or spinal cord,

So these were just some degenerative changes that by history may have been aggravated by the accident as well, but primarily a soft tissue injury.

Q. And based upon a reasonable degree of

medical certainty, Doctor, did Mary Prusak sustain any permanent injury in the motor vehicle accident?

A. On the basis of my evaluation, I was unable to detect any permanent injury sustained.

Q. And based upon a reasonable degree of medical certainty, Doctor, do you see any need for surgery in the future of Mary Prusak?

A. No.

Q. And, Doctor, based upon a reasonable degree of medical certainty, do you see any reason to limit the activities of Mary Prusak or to limit her work activities?

MR. CZACK: Objection.

A. On the basis of my evaluation there really are no specific limitations for sports or recreation. I think if she appropriately trains for something she can do anything she wanted to.

Obviously, contact type of athletics would not be recommended, but I'm not sure that would be a choice in this case. But on the basis of the physical examination and objective findings, I would not restrict her. She could try or do anything she'd like.

Q. Doctor, can you tell me what is meant

by the term osteophyte?

A. An osteophyte, this is a medical term, usually a radiological term of a attempt of the bone to heal a arthritic area or an area that is under some sort of chronic stress. It is most commonly associated with an arthritic joint. It can also be noted with a degenerative or a wearing out disk.

But it is a objective bony reaction to either chronic stress or a chronic arthritic condition.

Q. And are the presence of osteophytes something that is normal to find in a 50 year old individual?

A. Yes. I would think so.

MR. SCHMIDLIN: Okay, Doctor, I don't believe I have anything further at this point. Thank you.

EXAMINATION OF ROBERT C. CORN, M.D.

BY MR CZACK:

Q. Good evening, Doctor, my name's Mike Czack. We've met on a number of occasions.

A. Yes.

Q. I represent Mr. and Mrs. Prusak, so I'm here to ask you some questions concerning

your evaluation and your testimony here today. Can I take a moment to look at your files on the Prusaks, please?

A. Sure.

MR. CZACK: Off the record.

MR. HENSCHEL: Off the record.

(Recess had.)

MR. HENSCHEL: 6:02, on the record.

Q. Thank you, Doctor. You can take a second to organize those if you need to.

Now, I'm going to ask you some -- some general questions first, Doctor, that relate to your examinations, and then I'll talk specifically about Mr. and Mrs. Prusak.

In order for the jury to understand your role in this case, you saw these people just one time in December of '96, is that correct?

A. Yes.

Q. And you saw them, I take it, during your normal business office hours?

A. Probably.

Q. All right. And how long did your physical examination of each of these people take?

A. Well, I don't usually keep a log of

the history and physical. I would say the bulk of the time was probably taking the histories

them about the accident

And you never saw these people before December of '96 as patients, correct?

A. I never did, no.

Q. And you've not examined them since them?

A. That's correct also.

Q. And, as Mr. Schmidlin asked you, you didn't see them for the purpose of treating or helping them medically, we know that, correct?

A. Yes.

Q. In fact, the sole purpose of your exam was to prepare a report and to testify here today if -- if need be, correct?

A. Yes.

Q. Now you were hired by Mr. Schmidlin's firm, is that -- is that how I understand it?

A. That's how I understand it.

Q. And in the past year how many times have you examined patients for Mr. Schmidlin's law firm?

A. I'm not really sure.

Q. Okay.

A. I don't think it's been more than five or six --

Q Okay

A -- over the past couple years.

Q All right. Now you also examine, I know my office, at Caravona and Czack, you examined patients I know that are being represented by a defense firm Meyers Hentemann. You examined patients --

A. Sure.

-- or that law firm

Yes.

For the defense firm of Keller & Curtin

Yes.

Q. For the defense firm of Weston & Hurd?

I have. Sure,

Q. Okay, And for the defense firm of

Damelio, Marilyn Damelio's law office?

A. Yes.

Q. Examined patients there.

Can you estimate the percentage of your practice, Doctor, devoted to doing defense examinations and depositions?

A. Well, I usually, over the past 10 years I have averaged two of these a week. So you're talking about two 45 minute sessions. I think I may have examined but of these on the same day, so that --

Q. Yeah. I think you did. Yeah. You did.

A. -- may have screwed up that week's percentage or statistics, but, and then I schedule routinely, my deposition times are Monday and Thursday afternoons at five. Similar to what we're doing today.

have available to schedule two of each per week on a average over the last 10 years.

Q. And you're paid for the time you take to do the examinations of these people and the reports that you prepare, correct?

A. Yes.

Q. What do you charge for the examination and preparation of a report, Doctor?

A. It would be a single charge for the examination history, physical, review of the records and the report. And it ranges anywhere from 900 to $1,700 on the average, depending on how complex. How long it takes --

Q. Sure.

A. -- to get through. That kind of thing.

Q. Okay. Per exam or per patient?

A. Per report essentially.

Q. Okay. And in this case you also are doing depositions here today. What are your charges for the depositions here this evening?

A. Well, it's one deposition from what I understand.

Q. Okay.

A. With our standard charge is $900 an hour for that.

Q. All right. So even though we're doing two patients we're charging just under one deposition?

A. It's for the time. Yes.

Q. Okay. And, again, these charges for the report and exam and for the deposition are paid by Mr. Schmidlin's firm to you, correct?

A, I'm not sure who ends up paying me, but that's who the bill would go to.

Q. Okay. To his law firm. And when you made this one examination of the Prusaks, as I understand it from your testimony and looking at your reports, Mr. Schmidlin didn't send you the actual x-rays and diagnostic scans you talked about. You just looked at the reports, correct?

A. I looked through the medical records today and I don't -- there's no indication that I saw the actual x-rays.

Q. All right. And you didn't look through the discovery depositions that he did of Mr. and Mrs. Prusak, correct?

A. I did not.

Q. Where they talked about their injuries?

A. I didn't see them at all, no.

Q. And he never sent you the reports. Actually you never sent your reports to any of their treating physicians either, did you?

A. Not directly, no.

All right. Now let's talk about the history of the collision, Doctor. You took histories from both of these people, you'd agree that this was a pretty serious and violent collision, would you not?

I never saw any pictures, but it certainly sounded that way.

Q. Mr. Schmidlin didn't show you any of the photos?

A. No.

Q. Okay. Did he show you any of the photos of the Prusaks and the bruising and contusions that were on their body after the accident?

A. No.

Q. Did he show you the State Highway patrol pictures of the vehicles at the -- at the wreck scene?

A. I did not.

Q. All right. Did you inquire to him as to the extent, severity and location of the damage to the vehicles?

A. No.

Q. Upon your examination I noted in your report that you found these people to be pleasant

and cooperative?

Yes. They were very nice people.

Appear to be honest sincere people?

To the best that you can judge people?

Sure. Doctor, what affect can stress have on one's physical and emotional makeup and well-being?

A. Well, it would be out of my area of expertise to be precise. But obviously stress plays a role usually in the maintenance or the development of certain symptoms. Are you talking about psychological stress?

Q. Psychological and physical I mean.

A. Well, physical -- physical stress would be related to a particular activity or exercise. Where psychological would be a little bit less, less clear.

Q. Sure. Could it have an affect on someone's blood pressure, if they're under stress?

A. I think that they're -- and again this is --

Q. Sure. I understand.

A. I don't even have a sphygmomanometer

in my office.

Q. I understand.

A. So I think that it's probably generally accepted that physical stress can occur with trauma.

Q. Okay.

A. And this -- these could transiently, for a short period of time, raise blood pressure, sure.

Q. Okay. Can stress, have you ever heard in doing all your medical studies and research and reading and having patients, can stress cause hair loss, can stress cause skin problems on people?

A. I guess 1 don't really pay attention to that literature, and I really wouldn't choose to comment as an expert on that.

Q. How about pain, can pain affect one's physical and emotional makeup?

A. I have been told that, yes.

Q. All right. Now you made a point in both of your reports, Doctor, concerning Mr. and Mrs. Prusak appearing older than their stated age. What criteria do you use to make that judgement about people?

A. It's purely subjective on my part.

Q. All right. There's no --

A. I see, you know, many, many patients and that's just the way they may have appeared to me.

Q. All right. So you don't know what they looked like before this accident, correct?

A. I don't know what they look like now.

Q. All right. Let me ask you, let's talk about Mary first, if you could, you could turn Mary's file out, since we most recently talk about her. You've given this jury your opinion that she injured her upper spine, her neck and -- and thoracic area and her chest in this accident, correct?

A. Correct.

Q. Now, Mr. and Mrs. Prusak have previously testified in this case that in some ways this collision has changed their life, Doctor, Have you learned, you haven't learned of any prior neck or thoracic injuries or complaints to Mrs. Prusak before this collision in 1994, did you not?

A. I didn't see any records that predated the accident, and they didn't claim any

previous problems with those areas.

Q. Okay, And further there's no indication that Mrs. Prusak had any pain or symptoms in the neck or thoracic area from any degenerative changes or arthritic conditions before this crash, did she?

A. She didn't complain about it and there were no records available that predated the accident, so I have to say on the basis of what I have there was no indication.

Q. Okay. Now when you saw her in December of '96 she was still complaining of discomfort in her neck area you said?

A. She was.

Q. She complained of occasional tingling and numbness in the left side of her face and down her left arm, according to your report?

A. Yes.

Q. And her most constant symptom at that time was in the upper part of the back and spine?

A. Correct. In the muscles and the upper back. Yes.

Q. And she still had some occasional burning chest pain, but that had mostly resolved, correct?

A. That's what she told me, yes.

Q. Now you've talked about, and I heard you mention once or twice in Mr. Schmidlin's examination about soft tissue injuries as being part of what you diagnose these people as having, is that right?

A. Correct.

Q. All right. And soft tissue injuries involved injuries to, to what, the tendons and ligaments and muscles, everything that's not bony inside the body?

A. Well, I think that you could -- you could say that, but the colloquial reference for soft tissue is either muscle or ligament.

Q. Okay. Normally soft tissue injuries don't show up on plain x-rays, do they?

A. Normally soft tissue injuries, the actual injuries don't show up --

Q. Okay.

A. -- on a plain x-ray. They would show up on more sophisticated scans, but they won't show up on regular x-rays.

Q. Soft tissues injuries can be painful, can they not, Doctor?

A. Sure.

Q. And if you have a tearing of a muscle or ligament like you talked about with regard to these soft tissues, that heals in with scar tissue, is that right?

A. Well, first of all, I didn't say tearing.

Q. Okay.

A. I said it could be a stretching. It could be a bruising. It could be an irritation of the lining. And they may or may not heal with scar tissue, depending on if there has been a physical disruption or not.

Q. Of that particular tendon or muscle, correct?

A. Well, it will be -- wouldn't be a tendon.

Q. All right.

A. We'd know about it if it was tendon, but if it was a muscle.

Q. Okay. Now you've also made a point to talk about arthritis. Once, obviously, somebody has arthritis that's a permanent condition, is it not?

A. Usually.

Q. And arthritis can be a painful

condition, can it?

A. It can be sure, in and of itself.

Q. All right. And trauma, as you've talked about earlier, can activate arthritis that is not symptomatic, correct?

A. Although there's no scientific evidence of that in the literature. I think from an anecdotal standpoint and what I've seen in my own practice, it can for a short period of time become symptomatic solely on the basis of trauma, although there's no statistics for that.

Q. Okay. Let's switch gears here a little bit, Doctor. You deal with patients obviously in your practice who complain of pain from injury related traumas, accidents, any number of things, correct?

A. Sure.

Q. Pain can range from -- from mild to moderate to severe?

A. in general i think that's the typical category, yes.

Q. And in many people, I'm sure many of your patients, they try to continue on with their normal activities in spite of pain, don't they?

A. Some do. Some don't.

Q. As an orthopedic surgeon would you tend to encourage that, they continue on with their activities as much as they're able to?

A. That's a tough general question to answer. I would, with appropriate rehabilitation, with appropriate care and easing into it and reconditioning, I think most people can get back to most of the things they were doing before, unless there was a horrendous disruption of the joint or something that needed some further reconstruction.

Q. But, nevertheless, people, be it a factory worker, an injured doctor, an injured lawyer, people work in pain every day, correct?

A. In general?

Q. Yes.

A. I don't know. I don't know the statistics. I don't doubt that that exists, but I don't really know.

Q. All right. Let's talk about subjective symptoms, Doctor. Somebody complains of pain or discomfort or tenderness. That's a subjective system, is it not?

A. Correct.

Q. And subjective systems are an

important part of your work as an orthopedic surgeon, isn't that true?

A. Well, I think that subjective, meaning the patient is the only person that can tell whether they exist or not. I think it's an important consideration. But I certainly don't practice medicine, nor do I treat or operate on people solely on the basis of what their complaints are.

I think their complaints are important because they point out where on a physical examination that you have to spend the time to try to find some objective or physical correlation with that complaint. So I think as a physician we all take into consideration the patient's complaint, but it certainly isn't gospel or the sole way we have of judging what the patient's injury is.

Q. Now I want to close here on Mrs. Prusak, Doctor. I want to summarize some things. On page four of your report you talk about, I've come to some conclusions concerning her ongoing level of physical impairment.

Now you've told us that Mrs. Prusak has had no prior neck, thoracic or chest injuries

this accident happened, correct, by history?

A. I

that's what she told me. Yes.

Q. Okay. And you do believe, as you told us, Mrs. Prusak did sustain trauma related injuries from this accident, did you not?

A. She probably did, sure.

Q. All right. Let's move to Mr. Prusak, Doctor. Can you pull, do you have his file right there?

A. Sure.

Q. Okay. His primary injuries from this crash were to his neck, his low back and his right knee, correct?

A. Yes.

Q. And when he saw you in December of '96, two and-a-half years after the accident, he still had a deep and aching pain which occasionally turned into a sharp pain in his neck

and upper back, correct?

A. I'm fairly certain that's what his complaints were.

Q. All right. And the pain was [illegible] exacerbated by activities such as crawling, lifting or working in certain positions?

A. That's what he said. Yes.

Q. And he also had pain in his knees again worse with doing activity related things such as climbing, sitting or kneeling?

A. Again this is the history that was presented, yes.

Okay. And he also had intermittent symptoms with regard to his low back, you that?

A Yes.

Q. Now, again, I want to ask you, Doctor, isn't it true that you have no evidence or knowledge that Mr. Prusak ever had a neck, upper back, lower back or knee injury or problem prior to the April 1994 crash?

a. I think that's a true statement. Yes.

Q. Now, we talked about soft tissue injuries when we talked about Mrs. Prusak. We

talked about subjective complaints and how they're used by the physician in evaluating a patient.

What I want to ask you is Mr. Prusak was still complaining of pain in December of '96 to various areas as a result of this crash, correct?

A. On an intermittent basis in some areas. But, yes, he did have some ongoing complaints.

Q. And from a medical standpoint when pain continues over six months, is it fair to state generally that -- that that pain condition moves from an acute state to a chronic state?

A. Well, actually in medicine chronic is past six weeks.

Q. Okay.

A. So you don't need to have it for six months to be chronic.

Q. All right. When -- when pain moves past six weeks and becomes chronic regardless of the cause and continues on into two, two and-a-half years, doesn't that condition tend to become permanent, Doctor?

A. I don't know. If you are basing it

just on the symptoms you can come to some conclusions. But I don't treat symptoms. I treat people and I treat actual diseases and abnormalities.

Q. Let me -- let me talk about your study of Mr. Prusak's case. You said you made a, in your report, a careful review of the records concerning Mr. Prusak and you told us that you looked at the Medina Hospital records, Dr. Kavlich's records, Dr. Karns' records and the records from Parma Hospital.

Did you ever look at Dr. Marvin Perry's records or reports, Doctor?

A. I don't recall. I don't recall that they were forwarded to me.

Q. All right. Did you ever look at the 80 or 90 pages of LTV records dating back to 1959 that Mr. Schmidlin has regarding Mr. Prusak?

A. No.

Q. And the notes that you made when you made your review of these peoples records, do you still have those in your file?

A. I do not.

Q. What did you do with those?

A. I don't keep them as part of the

file. Once the reports are dictated I don't keep them.

Q. Now, in your physical exam of your Mr. Prusak you did find objective abnormality in his knee, something called patella femoral crepitans?

A. Correct. In both of his knees.

Q. What is that, Doctor?

A. It's a grinding or a crunching sensation.

Q. And that's elicited how, when you're examining the knee?

A. It is -- well, I do it a couple different ways, with the patient sitting I have them do range of motion. That is moving the knees to the fullest extent. And I also do some provocative testing.

MR. CZACK: All right. Now at this time I'd like to note for the record that 1 reserve the right to withdraw the following questions concerning occupation and employment pending a ruling on my objection.

Q. Doctor, I want to ask you a question. Mr. Schmidlin asked you about Mr. Prusak and his -- his ability or inability to

limit his activities. Did you study at all, you noted in your testimony Mr. Prusak missed a couple of weeks of work. Do you remember when that was in terms of the accident?

A. I assumed it was right after the accident.

Q. Okay. And in your study of Mr. Prusak did you come to learn at all about his inability to take as much overtime as he had before this accident?

A. I think he told me that. Yes.

Q. Okay. Do you know how much overtime he had to limit himself to after this accident versus before this accident?

A. I don't recall asking that question.

Q. And I don't think, Doctor, that you have any opinion, according to your direct testimony, concerning Mr. Prusak's inability to take overtime after this accident, is that correct?

A. Again, in situations where there are voluntary overtime people have whatever reasons why they do or they do not take them. So I don't have any direct opinion, as I really didn't ask him what influence his physical condition did

versus any other personal need or lack of need to work extra.

Q. All right. So when Mr. Schmidlin talked to you about any reason to see that Mr. Prusak should limit his activities at all, you testified that you didn't see any reason for him to limit his activities, you weren't then referring to his inability to work overtime, is that correct?

A. I was referring to any activity. There was nothing that would stop him from working overtime on the basis of my evaluation. I felt that he could work as much as he want, or limit himself as much as he wants. That's really usually a personal choice.

Q. Okay. All right. And if he was having problems in doing that kind of work it's reasonable for him to limit himself according to how he felt, correct?

A. Well, I think there may be many factors that decide whether you're going to take voluntary additional work. His physical condition could be one. His own personal finances could be another. I mean there are many, many, if we just sit down and try to think

of them. I don't know the real reason why.

Q. All right. Well, let me ask you this, Doctor, if -- if somebody's limiting his ability to work overtime, what do his personal finances have to do with that?

A. He may not need to work extra.

Q. Okay. Assuming that Mr. Prusak continues to need to work extra time, and assuming before this accident he worked anywhere between 60 and 70 hours a week up until the time of this accident in terms of regular hours and overtime hours, the fact that he is now limiting himself to only a few overtime hours a week, there's no other reason he should limit himself other than this accident, correct, that you see in your study of him?

A. I don't know how to answer that question. I didn't really go into his personal life to any extent. I think that unless it's a mandatory overtime situation. If it's voluntary there can be any number of reasons why you may not choose to -- to work as hard, and I don't really know.

Q. What -- what was the nature of his job, Doctor?

A. At the job at the time that he was doing, he was an electrician --

Q. Right.

A. -- at the time of the accident.

Q. What did he do?

A. I have a number of patients who work as electricians at LTV and it really depends, basically they are in the maintenance and repair crew. They have to climb. They have to carry. They have to work in certain obscure areas. It's usually a young man's type of job.

I'm not sure what the demographics of the other individuals working that job, but I doubt if there are a significant number of people over 50 that -- that continue to do that kind of work. It's somewhat strenuous.

Q. And you did -- you did not look at, as I recall, Mr. Prusak's LTV records, is that correct?

A. I think you asked me that and that was not --

Q. Okay.

A. -- immediately available.

Q. I wasn't aware if I asked you that again.

And, in closing with Mr. Prusak's case, Doctor, the evidence in this case and I think you have admitted to this jury that by this accident he injured his neck, his low back and his right knee, is that correct?

A. That's certainly what the records show.

Q. Okay. And by the history and by the evidence and by all the records that you've been given by the defense law firm, there's no evidence that Mr. Prusak had ever had any problems with his neck, his low back or his right knee prior to April of 1994, is that correct?

A. I think, as I stated before with Mrs. Prusak, that there were no records that preceded or predated the accident. So based on the history presented in the medical records, which were solely after the accident, I would have to say yes.

Q. Okay. And we can assume that if Mr. Schmidlin in representing the defense in this case had such records they'd have been given to you, right, Doctor?

A. Well, there was a couple of the records that you stated that may have assisted me

to answer some of your questions, but I didn't see them, so.

Q. Right. He didn't give them to you, correct?

A. No.

MR. CZACK: Okay. Off the record for one second, if I can take a moment.

MR. HENSCHEL: Off the record.

MR. HENSCHEL: 6:26, on the record.

MR. CZACK: Doctor, I don't have any further questions. Thank you.

MR. SCHMIDLIN: No further questions. Do you waive signature, Doctor?

THE WITNESS: Yes and yes.

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CERTIFICATE

The State of Ohio, )

SS:

County of Cuyahoga. )

I, Claudine Kelly, a 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 above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

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 for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 16th day of June, 1997.

Claudine Kelly

Claudine Kelly, Notary Public within and for the State of Ohio

My commission expires December 1, 1997.

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