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

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IN THE COURT OF COMMON PLEAS

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MANJU TANEJA, ET AI,.,)
)
Plaintiffs,)
)
vs.) Case Number 204573
) Judge Patricia Anne Gaughan
NEIL S. ANGERMAN,)
)
Defendant.)

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DEPOSITION OF ROBERT CURTIS CORN, M.D.
Tuesday, September 10, 9, 1991

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Deposition of ROBERT CURTIS CORN, M.D., called by the Plaintiffs for direct examination under the Ohio Rules of Civil Procedure, taken before me, the undersigned, Kathleen Grandillo, Registered Professional Reporter, a Notary Public in and for the State of Ohio, pursuant to agreement of counsel, at the offices of Robert Curtis Corn, M.D., 850 Brainard Road, Highland Heights, Ohio 44143, commencing at 3:35 p.m., the day and date above set forth.

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APPEARANCES:

On Behalf of the Plaintiffs:

Fred Wendel III, Esquire
Stewart & DeChant Co., L.P.A.
Suite 850 - The Atrium Office Plaza
668 Euclid Avenue
Cleveland, Ohio 44114

On Behalf of the Defendant:

William A. Walker, Esquire
Walker, Hawkins & Chulick
Suite 618 - Huntington Building
Cleveland, Ohio 44115

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ALSO PRESENT:

Doug Clark, Multi-Video Service

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ROBERT CURTIS CORN, M.D.

called by the Plaintiffs for direct examination under the Ohio Rules of Civil Procedure, after having been first duly sworn, as hereinafter certified, was examined and testified as follows:

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DIRECT EXAMINATION

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BY MR. WENDEL:

Q Dr. Corn, my name is Fred Wendel. I represent the Plaintiffs in this case, Manju Taneja and Jugal Taneja. I would like to ask you a number of questions concerning your care and treatment of Mrs. Taneja.

First of all, for the benefit of the ladies and gentlemen of the jury, would you give us your full name, please?

A My name is Robert Curtis Corn.

Q And, Doctor, where is your office?

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

Q May I ask how old you are?

A I'm 42.

Q Doctor, you are licensed to practice medicine in the State of Ohio, are you not?

A Yes, I am.

Q And when were you so licensed?
A In 1976.
Q And, Doctor, briefly tell us a little bit about your education leading up to receiving your medical degree.
A I received my Bachelor of Science in biology from the Albright College in Reading, Pennsylvania in 1971. I then moved to Philadelphia, Pennsylvania when I attended the Henneman University School of Medicine from 1971 through 1975. I received my M.D. Degree from that institution in 1975.

I then moved out here to Cleveland, and from 1975 through 1979 I completed my orthopedic residency at the Cleveland Clinic Hospital. And from August of 1979 to the present I have been in the private practice of orthopedic surgery.

Q Doctor, you have used the term orthopedic surgery. Can you tell us what orthopedic surgery is?
A Orthopedic surgery is a surgical subspecialty which deals with orthopedics. Orthopedics is that branch of medicine which involves the medical and surgical treatment of diseases, disorders and injuries of the musculoskeletal system, that includes bones, muscles, tendons, joints, ligaments, and has a number of areas of subspecialty, such as sports medicine, surgery of the spine, surgery for arthritis and surgery of the hand.

Q Doctor, do you practice solely in the field of orthopedic surgery?
A Yes.
Q Do you have any affiliations with any hospitals where you can practice orthopedic surgery?
A Yes, I do.
Q Where are they?
A I am the chief of orthopedic surgery at the Meridia Huron Hospital. I am also an attending orthopedic surgeon at the Meridia Euclid Hospital, Meridia Hillcrest Hospital, the Mount Sinai Medical Center and Lake County West Hospital.
Q Doctor, are you board certified?
A Yes, I am.
Q And what are you board certified in?
A I'm board certified in orthopedic surgery.
Q How long have you been so certified?
A I was certified in September of 1980.
Q And what does it mean to become board certified, Doctor?
A Board certification is a designation provided by the American Board of Orthopedic Surgery, which is a -- a committee which sets the standards of education for a variety of general medicine and submedical and surgical specialties. The board that certifies one in orthopedics is the American Board of Orthopedic Surgery. They have certain requirements;

completion of residencies; in 1980 I had to be in one location practicing for one calendar year prior to sitting for an oral and written examination, and after passing the exam and fulfilling the residency requirements, the board would certify you.

Q It's a national certification, then?

A It is a national certification but it is an internationally recognized certification.

Q Doctor, do you teach medicine at all?

A Yes, I do.

Q And where is it that you teach medicine?

A Well, I'm a clinical instructor in orthopedic surgery at the Case Western Reserve School of Medicine. I also do an extensive amount of teaching for the general surgical residency, nursing students, podiatry residents and physicians, assistant students at Meridia Huron.

In addition, I am a clinical instruct -- a clinical -- associate professor of orthopedic surgery at the Ohio College of Podiatric Medicine here in Cleveland.

Q Do you lecture to other physicians?

A Yes, I do.

Q On how many occasions would you say you have done that?

A Two or three times a year minimum.

Q Do you publish in the field of medicine?

A Yes, I do.

Q Approximately how many publications do you have in the medical journals?
A I would say between 16 and 20 over the past ten years.
Q I presume you belong to professional organizations affiliated with your specialty of orthopedic surgery?
A Yes.
Q Approximately how many of those organizations do you have memberships in?
A Probably eight or nine.
Q Doctor, have you had an occasion in the past to see Manju Taneja for care and treatment of medical conditions?
A Yes.
Q And can you tell the members of the jury when it was that you first saw her?
A I first examined her on April the 17th of 1989, about ten days after this accident.
Q And can you tell us what the purpose of that visit was for?
A The purpose was to initiate treatment, to be evaluated and start treatment for her spinal injuries.
Q What did your initial visit consist of?
A The initial visit consisted of a medical history, a physical examination and a -- I believe we took some x-rays, and evaluation and treatment, initiation of treatment.
Q Let's take the history first. What is a medical

history?

A A medical history is that portion of an evaluation where the patient has an opportunity to explain exactly what led up to coming into the doctor's office. If there was an injury, the details of the injury, what the chief complaints are, what has been done from the time of the injury to the present time, basically filling in all the gaps. And there is a give and take question and answer type of format where the patient tries to remember all the details and the physician tries to get the patient to fill-in the bulk of the details.

And the history is very important, usually provides a -- 80 to 90 percent of the time -- a diagnosis without the physical examination.

Q All right, Doctor. Would you share with us what that history consisted of that was taken back on April 17, 19891

A She presented with a history that she was the operator of a vehicle that was heading eastbound on 1-480 around the Lee and Warrensville exits, south of Cleveland. I guess it would be southeast of Cleveland.

A car in front of her braked and stopped suddenly. She was able to control her vehicle, coming to a complete stop. In the process of this she was rear ended by a pickup truck.

She stated that the impact felt like a "big jerk", being thrown forward and backwards in the interior of the

car, her head being, somewhat being thrown in an uncontrolled fashion, sort of whipping forward and backwards.

There was immediate pain at the time of the injury in the right posterior, that is the back part, of the neck, as well as the upper back region.

Later that evening she developed what she described as exquisite headaches, which were described in the posterior of, the back part of the skull or the occipital region of the skull. There was also increasing complaints of pain in the right forearm as that day progressed.

So there was not only axial complaints -- that is spinal complaints -- but headaches and also some radicular, arm complaints.

Q Radicular meaning?

A Following a specific nerve root or root pattern, usually associated with -- in other words, extremity symptoms, pain or abnormal sensation associated with a spinal injury denotes radicular symptoms.

Q Did she describe for you what had happened in the interim between the day of the collision and April 17th?

A Yes.

Q What was related to you, Doctor?

A She was home medicating herself with Advil and Tylenol for pain. That did not seem to relieve her pain to any great extent and she sought medical care.

Q Did she indicate whether the complaints that she had had improved or gotten worse before she saw you?

A There was some improvement transiently with the medication, but on a day-to-day scale, no, there was no improvement. And, in fact, she may have been getting worse.

She continued having the same types of pain. The pain had -- the headaches had diminished somewhat, were controlled somewhat with the aspirin and the Advil.

Q In what areas, again, was she complaining about, by history?

A At the time of the initial evaluation, she had diffuse aching pain in the neck, radiating pain from the neck into the upper back region, as well as a mild headache which had been persistent since the time of the injury.

There was an intermittent aching in both of the forearms; that is, the upper extremity between the elbow and the wrist.

She complained about the left side of the neck being worse than the right, but she did have bilateral neck pain. She started having low back pain after the accident which she described as aching pain on the left side more than the right side, but there was complaints of pain on both sides. She described this as a, "deep dull ache".

The aching pain seemed to worsen with activities of daily living, such as attempting to lift or carry, and stair

climbing. Sitting, however, did not significantly aggravate her symptoms.

O Now, you mentioned as part of that initial exam an actual physical examination. Did you perform one that day?

A Yes.

Q And can you tell the members of the jury what you did and what your findings were?

A Well, physical examination revealed a pleasant 39-year-old female who appeared in some distress. Her gait pattern or her ability to walk was normal. She was able to arise from a sitting position as well as climb up and down the examining table normally, and heel and toe walking was performed normally.

The examination of her neck revealed no muscle spasm, that is no abnormal uncontrolled muscle contraction. There was, however, a diffuse tightness in the muscles on either side of the spine, and also in the muscle called the trapezius muscle, which is a big muscle that runs from the neck down into the shoulder in the back.

Q Now, what is muscle tightness, Doctor?

A It is a muscle -- an attempt of the body at protecting itself. In other words, the physical tone in the muscles increase.

Q Why does the body want to protect itself under these types of circumstances?

A There is usually pain associated with this type of injury.

Q All right. I know I interrupted you there. You were telling us about the examination of the neck area.

A Yes.

Q Was there any more to your examination?

A Yes.

There was approximately a 10 percent decreased range of motion of her neck and her ability to bend her head forward, putting her chin to her chest, looking up to the ceiling, turning to the left and right and tilting to the right and to the left.

Q That was not normal?

A That was not normal. There was restriction due to pain.

There was tenderness in the scaline muscle group, which is a deep muscle group in the front of the neck and at the side of the neck. There was normal motion of the shoulders, a full rage of motion of both shoulders, and the scapula, which are the shoulder blades.

Neurologically she examined normally. That was my major concern with her complaints of forearm pain, that she may have injured a nerve. But apparently there was no obvious signs of a nerve injury on examination.

Q Did you examine her back?

A Yes
Q What were *your* findings there, Doctor?
A Well, her back demonstrated an approximately 30 percent decrease in range of motion, in its ability to bend forwards and backwards. Lateral bending -- that is side bending -- and rotation were performed essentially normal. So it is this front/back motion which is still the source of complaints. Essentially the rest of the examination, hip, lower extremity examination, were normal.
Q Did you do anything else for her on that day?
A X-rays were performed of her neck and low back in which there was no sign of any pre-existing arthritis or any fractures or dislocations, significant disruptions.
Q As a result of your examination and the history, did you come to a diagnosis at that time?
A Yes, I did.
Q And what was your diagnosis for Mrs. Taneja?
A My impression was acute cervical and lumbosacral sprain and strain, indicating a soft tissue injury to the ligaments and muscle in the neck and low back area.
Q Now, what is a sprain and a strain? I mean, we have a common understanding, but what do you mean by that term medically, Doctor?
A Well, medically there are specific differences between the two.

A sprain is a ligamentous injury, that is a stretching or pulling or tearing, partial or complete, of the ligament. A ligament is a dense tissue which connects a bone to a bone.

A strain denotes an injury, stretch, similar type of mechanism, except that it occurs to a muscle or muscle tendon unit. So it is the same type of mechanism but it is a different type of tissue and, therefore, the injury has a different name to it, the sprain being the ligament and the strain being the muscle injury.

Q Now, Doctor, you use the terms cervical and lumbosacral. Just so we can understand, cervical means neck?

A The neck, correct.

Q And lumbosacral is?

A Refers to the low back region.

Q Okay.

Doctor, at that time did you place her under any type of course of treatment?

A Yes.

Q And can you tell the members of the jury what that course of treatment was?

A Essentially, what was initiated first was to start her on an anti-inflammatory medication to try to quiet down the soft tissue response to the injury she sustained. That seemed to help somewhat. It knocked a couple notches off of her level of pain, increased her flexibility subjectively.

But it did not give her total relief.

And at that point in time, or actually the next visit, which was on May 4th, she was started on physical therapy which she continued for many months.

Q What is the purpose of physical therapy?

A Well, the goal of physical therapy is, number one, pain relief or assisting in pain relief. The second goal would be for mobilization; that is, to keep areas that were stiff or not moving correctly, that -- to start them moving correctly. And the last step, which is the longest term part of it, is conditioning, taking a muscle or an area that was injured and providing a long-term type of rehabilitation to obtain full function and to maintain full function over a period of time.

Q Now, Doctor, what happens to a muscle when it is strained?

A Well, what happens -- and this may be visible from the skin and it may not. Usually in the spine it is not -- is there is local bleeding in the area. Muscle, as I'm sure most of the jury knows, is an extremely vascular tissue. It has lots of blood vessels. Whenever one is bruised, there can be external bleeding, that is the bleeding actually leaks out through the muscle, appears underneath the skin as a black and blue mark, sometimes known as a hematoma. Other times the muscle, the hematoma or the blood collection remains within the muscle. That is -- looks somewhat less

ominous, but is usually more difficult for the muscle to recover in that there is usually scarring as part of the healing process that takes place as this clot resolves and as the body tries to heal itself.

That is essentially the natural history of what happens to a strain; is that the blood leaks out and the tissue goes back to a normal size and configuration with some scar tissue formation, or if the blood is maintained for longer periods of time within the muscle -- which is common in spinal injuries -- then there is usually some more significant sequelae later on down the line.

Q Now, how does that occur, where you get the blood into the tissue in a stretching injury like this?

A Well, physically you are tearing the little microscopic blood vessels and they bleed. That's the origin of the bleeding. Some of them are larger vessels, but most of them are under a millimeter, so they are very tiny blood vessels.

Q All right, Doctor.

What kind of medication did you give her?

A Initially she was started on Naprosyn, which is an anti-inflammatory medication, non-steroid anti-inflammatory medication.

Q And what is the purpose of an anti-inflammatory medication?

A The main purpose is to chemically block the body's

response to an injury, to lessen the response and to allow less tissue swelling and hopefully less pain so that the normal function can be resumed as quickly as possible.

Q Was anything else done for her on April 17th?

A I don't believe so.

Q Did you see her --

A Other than discussing the problem with her.

Q Did you see her again?

A Yes.

Q Doctor, without going through each of the various individual visits, on how many occasions did you see her since -- have you seen her since that time?

A She's been seen ten times between April of '89 and January of '91.

Q And when was the last time you did see her?

A January 10th, 1991.

Q Would you tell the members of the jury what kind of progress she showed, what kind of changes, if any, you instituted in her care and treatment for these injuries?

A The initial phase of the injury you have to be somewhat gentle with the patients, not knowing exactly what their muscle conditioning was prior, what kind of shape they were in, so to speak, prior to an accident. So the initial phase of -- of treatment includes using a variety of medications, sometimes using a pain medication to try to allow the

patients to do more. If they can do more then they are not quite as stiff for long periods of time.

The second step is to start using the muscles again.

And the third step is using the muscles and conditioning the muscles to work at a higher level than they may have been used to using before, or the level that they were being used to using before.

The therapy and the medication did help. They helped with headaches. They helped with a -- a portion of the neck and upper back pain, and they significantly helped the low back pain, which was almost constant and then became intermittent, that is off and on related to her level of activity.

The neck and upper back pain, however, remained fairly consistent. And this was the major source of the ongoing treatments that she has had over the years, both for physical therapy and also her present conditioning program at Scandinavian.

Q Now, Doctor, you indicated that in your opinion her complaints have been consistent with time?

A Her complaints have been very consistent. Her neck and upper back complaints have been the most consistent. The back, the lower back complaints have been intermittent, off and on, seem to be related to activity; in other words, an increase in activity may increase her amount of low back

pain. Standing for long periods of time, attempting to bend or lift. She -- when she was working in her stores, she's unable to stand for as long as she can. Climbing or kneeling or doing the normal household chores or chores that she was used to doing aggravated the low back, but if she wasn't doing that the back was pretty good, whereas the neck and upper back seemed to be pretty consistent and didn't really improve much.

Q Let's direct ourselves, if we can, to the latter part of the treatment that you had with her up to the last time you saw her in January of 1991. What was her status about that time?

A Well, at that point in time, she had completed a fair amount of physical therapy, had reached a certain level of flexibility. She had a -- a fairly significant decreased range of motion which had been persistent for over six months at that point in time. There was intermittent flare-ups of neck and back pain to the point that she was quite symptomatic. She had some relief with a heat massage type of chair, she was visiting friends or family down in Texas.

And I discussed with her at that point in time getting her into a more active conditioning program that would assist her in maintaining a higher level of physical conditioning than she would have had doing regular physical therapy. And it was suggested that she start with a health club

membership, using the whirlpool and the heat and sauna and the machines to try to work on strengthening and maintaining the upper back musculature and upper extremity muscles.

Q Was that at your recommendation?

A Yes.

Q Now, can you briefly tell us what kind of therapy modalities you recommended for her?

A At what stage?

Q During the course of her treatment.

A Well, she's had a lot. She's had traction. She's had massage. She's had ultrasound. She's had heat. She's had ice packs. She had stretching exercises. She had progressive resistance exercises, to the point that she could do the same things we were doing in therapy when she was more acute on her own, which is the purpose of this health club membership.

Q So the purpose of the health club membership is just to continue the therapy that you placed her on?

A Well, it is at a higher level. In other words, to maintain her level and hopefully improve her level as time goes on. But at least to maintain the degree of flexibility and the degree of strength that she had worked on so much with the physical therapist.

Q Now, Doctor, you mentioned quite a number of different types of therapy she's undergone. Are there other types of

therapy that in your opinion might be of help to her at this point?

A At this point in time, I'm -- I would maintain her on the highest level of physical conditioning that she could tolerate, which is beyond the stage of most physical therapy departments. Most people can, once they know what they can do and what they are capable of doing, can certainly carry on by themselves.

Q Doctor, did you change the type of medication or add another medication during the course of your treatment?

A She was, about a year ago, in July of 1990, she was started on a muscle relaxant which is a non -- non-addicting muscle relaxant called Parafon Forte to help her with the stiffness. She was having a fair amount of neck and upper back complaints, and an additional medication, which was felt to not be terribly dangerous to take over a long period of time, was also prescribed.

Q Doctor, during the course of treatment that you were rendering to Mrs. Taneja, did you ever change her diagnosis?

A No, I don't believe so.

Q Your diagnosis remained the same throughout, did it?

A Well, the major diagnosis. Of course we went from acute, meaning recent, to a chronic. But essentially she's suffering from the same thing that she came to me with, only at a not so bad a level for her low back and an off and on

bad level for her upper back.

Q Now, Doctor, was the treatment that you rendered to her and suggested to her -- that being the physical therapy, the medication, the Scandinavian Health Club workouts -- did you find that reasonable and necessary for the treatment of these injuries?

A Absolutely.

Q Now, awhile ago you had made a -- you used a term, a subjective complaint. What is a subjective complaint, Doctor?

A A subjective complaint is essentially a complaint that is verbalized by the patient or an individual. Pain, the quality and the intensity of the pain, where it hurts, how it travels, what causes it, what diminishes it, those are all subjective. In other words, the patient is presenting in their own words how they feel.

Q What is an objective sign or symptom?

A Something that is objective is something that is either -- can be felt, can be measured, can be observed by a skilled observer on more than one occasion. An x-ray finding, the finding of swelling or bleeding, or in some cases muscle spasm. These are things that can be seen and felt, touched or measured by a skilled observer.

Q Doctor, in your treatment and care of Manju Taneja, did you find that there were objective signs that would verify or

back up her subjective complaints?

A Absolutely.

Q Doctor, I am going to ask you a number of questions and, if we can, can you agree that if you render your opinion you will render it based upon a reasonable degree of medical certainty or probability?

A Yes.

Q Doctor, assuming the facts to be true as given to you, and based upon the information you received from your examination and treatment of Mrs. Taneja, as well as your experience in the field of orthopedic surgery, do you have an opinion based upon a reasonable degree of medical certainty or probability as to whether the injuries that *you* treated Mrs. Taneja for are as a direct and proximate relation -- direct and proximate relationship to the automobile collision of April 7, 19891

A Yes, I have an opinion.

Q What is that opinion, Doctor?

A My opinion is there is a direct causal relationship between the injuries that she has been treated for and the motor vehicular accident in question in early April of 1989.

Q And why do you hold that opinion, briefly, Doctor?

A The consistency of her symptoms, the follow-up evaluation, the lack of pre-existing complaints, all -- the origin of her symptoms starting with the accident and the

continuation of her symptoms throughout the years.

Q Doctor, are the nature and kinds of injuries that she has presented to you consistent with the mechanism of injury from the automobile collision from a rear end accident?

A Absolutely.

Q Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether the conditions that you last saw Mrs. Taneja with are permanent as it relates to the automobile collision of April 7, 1989?

A Yes.

Q What is that opinion, Doctor?

A My opinion is that the condition that she appeared in in January of 1991 was essentially unchanged for six to eight months and, in my opinion, the lack of motion in her neck, the continuation of her chronic inflammatory condition in her upper back and lower back, are permanent.

Q Doctor, your prognosis for Mrs. Taneja is, therefore, what?

A My ~~Progresses~~ Prognosis is guarded.

Q And what do you mean by guarded?

A By guarded, it means I doubt whether she will be cured or the symptoms will be eliminated. I believe that with the conditioning program she's in now her symptoms can be controlled. She may have flare-ups of her symptoms that may necessitate more medication or more formal physical therapy.

But, in essence, I do not expect a complete recovery. I expect her to have symptoms in the future from this.

Q Doctor, in your opinion, is there anything that can be done for her medically at this point in time?

A I don't believe there is anything that can be done medically to cure her condition.

Q Is there anything that can be done to help her at all at this point medically?

A Sure. She's doing it now.

Q What is that?

A Two to three times a week she is working out with weights, using a whirlpool for stretching. She's maintaining and not losing ground. She's not gaining ground, but she's not losing any ground. So I believe that her present -- what she is doing now is the appropriate, from a -- an appropriate thing to do for her spinal condition and spinal injuries from an orthopedic standpoint.

Q Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not Mrs. Taneja would either improve or have more problems if she stopped the Scandinavian program?

MR. WALKER: Objection.

A I do have an opinion.

Q What is that opinion, Doctor?

A My opinion is if she does not maintain her physical

status at this point in time and do it on a consistent basis, that she wi11 predictably have an increase in her symptoms.

Q If Mrs. Taneja were to stop going to Scandinavian, is there anything that could be done medically to help her maintain that level that you are talking about?

A Other than purchasing the equipment and doing it at home, no.

I think that that's a -- she's at the stage in her recovery from injury that if she does not maintain herself at a specific level and it is to the most that she can tolerate of athletic conditioning she's going to get worse. She's going to get to be the way she was before she got to that level. She's got to maintain it.

Q Do you have an opinion, based upon a reasonable degree of medical certainty, as to whether physical therapy would be of help to her in the future?

A Yes, I have an opinion.

Q What is that opinion, Doctor?

A There is no indication at this point in time that she needs physical therapy. But certainly if her condition would worsen or if she would have a flare-up, I believe that a formal physical therapy program would be more appropriate than trying to cure herself.

Q What kind of physical therapy program would that be?

A Well, it would depend on her symptoms, but I would

imagine it would be something very, very close to what she was in the latter stages of her rehabilitation prior to starting her conditioning workouts.

Q Doctor, based upon the history that you have taken from her and your examination of her, and in light of the fact that she has had no subsequent reinjury from an automobile collision or other type of injury, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not she would have suffered from these complaints had she not been involved in that automobile collision on April 7th, 1989?

MR. WALKER: Objection.

A Yes, I have an opinion.

Q What is that opinion, Doctor?

A On the basis of there being no pre-existing disease, it would be doubtful that had she not been injured that she would have the current complaints or need the current treatments.

Q Doctor, do you know what you have charged Mrs. Taneja for your medical services to date?

A Not offhand. I'm sure I can have a bill generated, but I don't know offhand.

Q Okay.

Are the amounts that are reflected on your bills reasonable for the services you render, though?

A I believe so, yes.
Q And I may have asked you, Doctor, but let me ask it again if I haven't; do you believe that all the care that she has gone through, including the exercise program at Scandinavian as well as her membership, do you believe that that's all reasonable and necessary for the treatment of the injuries?
A Absolutely.

MR. WENDEL: Okay. I have nothing further. Thank you.

MR. WALKER: Go off the record.

MR. CLARK: We are off the record.

(Off the record discussion.)

MR. CLARK: We are on the record.

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CROSS-EXAMINATION

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BY MR. WALKER:
Q Doctor, my name is Bill Walker. I am one of the attorneys representing the Defendant in this case. And I have got some questions to ask you about the Plaintiff.
The first time you saw the Plaintiff she gave you a history of having been injured in this auto accident; is that correct?
A Correct.

Q And she said that she had what amounted to, in layman's term, a whiplash, her head went back and forward; is that right?

A I believe that was essentially the mechanism of injury.

Q Did she tell you she was wearing a seatbelt?

MR. WENDEL: Objection.

A I don't recall.

Q And you used the term, "somewhat uncontrolled flexion/extension manner." I'm sure she didn't use those terms. What did she tell you exactly?

A I don't remember her exact words at this point in time.

Q In other words, you --

A But those are my interpretation of -- of what she said.

Q In other words, she said she was moved around in the car; is that right?

A I don't remember her precise words, but I think that she conveyed to me the picture that it was a somewhat more intense type of moving, movement back and forth.

Q Okay.

And she also said when she came in to see you that she had no other problems prior to that time; is that correct?

A I said she had no previous injuries like this, yes.

Q How was her posture when she came to see you?

A I'm not sure what you mean.

Q How tall is she?

A I don't know.
Q You have seen her many occasions; is that right?
A Yes.
Q She was measured several weeks ago. She's five-foot-two. At the present time she weighs 170 pounds.
What did she weigh when she came in to see you the first time?
A I have no idea.
Q Did she have any problems due to her weight as having a poor posture that could cause problems in the back?
A I don't believe so.
Q The physical therapy notes in your file indicates that she had poor posture which was affecting her low back. Did you read those?
A I -- no, but certainly they are entitled to their own opinions. That wasn't mine and is not my opinion.
Q In other words, you believe her weight and posture have nothing to do with her problem; is that correct?
A I believe her weight and her posture have absolutely nothing to do with her traumatic problem, no.
Q Then in your letter of February 16th, the second paragraph, talking about Scandinavian, you said, "In my opinion, based on following this woman over a period of time, this type of therapy would be excellent for her strength, endurance and for weight reduction."

When did you suggest that she reduce in her weight?
A I never suggested that she reduce or go on any specific weight reduction. I explained to her that removing some of the ongoing stresses on her back would be appropriate. But her -- she's not morbidly obese, she's a little overweight. I don't think that is any longer lasting problem for her low back. Her low back is not the major source of her symptoms.
Q When you first saw her, you indicated she attempts some reduction in the cervical area in certain movements; is that correct?
A Yes.
Q You said it was 10 -- 10 percent; is that right?
A That's what it was initially.
Q Okay.
On forward flexion, would you demonstrate to the jury what a normal forward flexion would amount to?
A Normal forward flexion would be the ability to put one's chin on the chest.
Q And she could put her chin as far as 90 percent of what you just did; is that right?
A Approximately, yes.
Q And would this also apply to extension, which is going the other way, backwards?
A Yes.
Q And you -- how did you measure that, just by looking at

her?
A Correct.
Q And she told you when she had some pain; is that right?
A She would have told me. I don't remember the specific examination.
Q What I am getting at is how did you come up with the 10 percent? When she moved her head forward she told you; is that right?
A She was not able to move it further.
Q And she told you there was pain at that point?
A Well, there was probably -- and I don't -- as I said, I don't remember the specific examination, but usually when motion is limited, there is usually some contracture of the muscle or protected muscle contraction. That's probably what the cause was, although I can't remember what it is now.
Q And how did you measure that contraction? She told you --
A I had my hand on her neck.
Q And she got down to 90 percent?
A Initially, correct.
It worsened, and then it didn't really get better from that point on.
Q Didn't it?
A No.
Q Would you look at your notes on 6/28/89?

A Oh, she had full motion at that point of her neck.
Q She also had full motion in her low back at that point; is that right?
A Correct.
Q And that was roughly two months after the accident?
A Yes, that's correct.
Q And subsequently she had remissions; is that right?
A Yes. She would get better and worse and then --
Q And this would be on activity?
A Well, you know, minimal activity, like climbing stairs or sitting for long periods of time or --
Q Was she --
A Or bending.
Q Was she employed?
A I don't know her precise employment. I knew she owned a number of stores, but I really don't know the details of that.
Q One of your reports indicates she was off for one week and then went back to work. Do you remember having that in your report?
A I -- not specifically.
Q Wait a minute until I find it.
Okay. This was in a -- not in your report, Doctor. I was mistaken. Dr. Brahms.
Do you know Dr. Malcolm Brahms?

A Sure.
Q Do you know his reputation?
A I'm -- don't know his public reputation. I know his orthopedic reputation. He is a friend of mine.
Q Okay.
And do you consider him a good orthopedist?
A I think he is a qualified orthopedic surgeon.
Q And she told him that she was off -- unable to work for a week, and she has not been able to return to full-time work, she works about three or four hours a day.
Is that what she also told you?
A I don't remember. I didn't have that particular --
Q You didn't question her about that?
A I may have, but it was not a real prominent --
Q Now, since by 6/28/89 she had full range of motion and basically would have no problems at that time; is that right?
A Well, full range of motion is a objective type of observation. It certainly was not subjective. And she was having neck and radiating arm pain and forearm pain still at that point in time.
Q She could move her neck --
A Objectively --
Q -- objectively?
A -- she was -- she was fine, although subjectively she always had symptoms. She was never subjectively relieved of

her symptoms.

Q Okay.

You saw her periodically ten times since the accident and you saw her in June 28th of '89.

A Yes.

Q You saw her August 28th, September 28th, January -- or November 28th of '89.

A 29th.

Q 29th?

A Of '89.

Q Okay.

Then you saw her January 10th, '90; March 22nd, '90; July 9th, '90; and October 4th, '90, and then a final visit; is that right?

A On 1/10/91, correct.

Q And would you look through all your records and tell me where you recommended the Scandinavian to her?

A I recommended it subsequent to the January visit.

Q Hadn't she already joined it?

A I don't know when she joined.

Q In other words, didn't she tell you she had joined the Scandinavian when she came in to see you in January?

A I don't remember her mentioning if she joined or not. I think that she called subsequent to that and asked if it was all right and what she would do, and I believe we talked

about what machines to do and what not to do and that type of stuff. I think that was all done over the telephone.

Q In your letter of February 16th you indicate that, "She is getting similar relief from a home-remedy type of physical therapy, performing exercises and using the whirlpool at the local Scandinavian Health Spa."

You prescribed home exercise for her right at the beginning, didn't you?

A Well, she was certainly instructed on a home exercise program by the therapist.

Q Okay.

And looking at the notes of the therapist, on several occasions she indicates she wasn't doing it.

A I don't know. I don't have those records.

Q Did the therapist ever report to you that she wasn't following the program you had set up?

A No.

Q Did you give any specific instructions to the therapist as to what modalities of physical therapy you wanted used by the patient?

A I'm not sure I understand your question.

Q Did you give specific instructions to the physical therapist as to what modalities she was to use, or would you leave that to her discretion?

A At whose discretion, the patient's or the therapist?

I'm not --
Q The therapist.
A Oh, I usually leave it up to the therapist. They are the ones that are seeing them for longer periods of time.
Q Now, when you said before she used several modalities, are you aware of that from what the patient told you or what the therapist told you? Where did you get that opinion?
A Oh, I don't remember exactly where I got the opinion. I usually talk with the therapist a couple times a week and we talk about 40 or 50 patients that, you know, they are following currently.
Q In other words, when you are talking about traction and all these things, that was off the top of your head?
A Correct.
Q You don't know what therapy she actually had?
A I don't know off the top of my head what therapy she actually had or on what particular day, no.
Q Or whether she in fact had traction?
A I don't know in fact if she had traction.
Q You don't know whether she had a TENS unit?
A Are you asking do I know if she had a TENS unit? No, I don't know. I don't remember.
Q You don't know whether or not she was using ice packs, heat packs, ultrasound or what she was using?
A Are you asking me do I specifically know?

Q That's right.
A No, I don't particularly know right now.
Q All right.
A I haven't seen her for eight months now.
Q Okay.
Now, you said, Doctor, that she had no muscle spasm when you first saw her. And muscle spasm is the protective device that the body uses to protect muscles that have been injured; is that not so?
A No, that's not necessarily true.
Q What is muscle spasm?
A What is it?
Q Yeah.
A It is an uncontrolled muscle contraction and it is usually a very transient, short-lived type of problem that people cannot tolerate if they have constant spasms. So it is something that usually they demand or seek some sort of attention if they do have it. And it is variable from person to person.
Q And it has been known to last for months?
A Absolutely not. That's -- I have never heard of a muscle spasm lasting for months. I would be surprised if a muscle spasm lasts minutes.
Q Minutes?
Haven't you ever seen a patient where over a period of

time on several examinations the patient had muscle spasms?
A No. I think a lot of doctors use muscle spasm quite loosely. I have a very specific definition for muscle spasm.
Q And what is your specific definition?
A Well, it is on physical findings. In other words, there is a specific contraction of the muscle which doesn't really change. That's not related to position or posture of the patient, it is not re -- related to the patient's lying or sitting or standing, it is there all the time. It is a very painful type of situation and it does not last for that long.
Q And what is -- what causes a muscle spasm?
A Nobody really knows what causes a muscle spasm, but it is -- it is a somewhat violent, massive contraction of muscle. It is usually fleeting. It usually doesn't last for a long time. It is like, a Charlie horse is a good example of a muscle spasm. One could not tolerate a Charlie horse type of pain for more than seconds or minutes at a time without seeking some significant medical attention.
Q Although orthopedics use the term muscle spasm as you have used the term, I believe, tightness of the muscle, a protective device, when a muscle contracts or tightens to protect it; is that correct?
A Well, there is muscle -- there is muscle tightness and there is a protective muscle contraction. That's what this

woma: demonstrated on multiple occasions.

But true muscle spasm, uncontrolled massive muscle contraction, I never witnessed in her. She may have had tha but I have never seen it. I have only seen it, in 12 years of practice, probably less than 20 times. It is not a very common finding.

Q You have read other medical reports from other doctors. The term muscle spasm appears frequently; is that right?

A Probably too frequently, yes.

Q And what they allege to be muscle spasm you would call tightness?

A I would call -- I would -- well, being that I am not usually there when they are examining the patients, but I would interpret in that -- because of the frequency that it is reported -- that what they are calling as a reflex muscle contracture, in other words, a protective muscle contracture, they may be calling spasm, but that's not what muscle spasm is.

Q Then in your examination you checked for spasm?

A Absolutely.

Q And *you* have only seen this to occur for very short periods of time. Would you expect to find it ten days after the accident if the patient hadn't sought any medical treatment in those ten days?

A I think it depends on the patient and it depends on the

type of injury, on the severity of the injury. It is -- I don't think there is an answer to that question.

Q Well, didn't you say that this is something that only lasts momentarily and cannot be tolerated without medical treatment?

A Yes. But whether it can exist intermittently at ten days, I don't really know. That -- that, I believe, was your question.

Q Now, when you checked her lower back, the lumbo area, lumbosacral area to be specific, the only problem she had was bending forward; is that correct?

A Bending forward was where most of her discomfort -- bending forward and backwards was where her restriction was. Side bending and rotation were pretty normal.

Q You also did a straight leg raise, which is the patient lays on the table and lifts her leg straight up?

A No, it is done in two -- well, actually the patient doesn't do any raising, it is a passive examination. And it is done both in the sitting position and the supine; that is, in sitting and with the patient lying on their back. And it is a passive test. In other words, the doctor does it, the patient doesn't do it.

Q What is that designed to tell the doctor?

A Basically that is an examination for sensitivity in the sciatic nerve and sciatic nerve roots, the lower lumbar nerve

roots, which would possibly indicate neurological deficit or a herniated disk. And there certainly was never any evidence of that.

Q And this patient continued, as far as you know, on normal activities; is that correct3

A I believe there was some restriction. I'm not sure how physically active she has been over the years. I think that she can't do what she wants to do. She is restricted in the amount of time that she can spend doing certain things, but she's not incapacitated in a wheelchair, if that's what you mean, no.

Q What physical activities can she not do or could she not do in last time you saw her?

A I am not sure that she couldn't do anything. There were certain things, such as bending, stair climbing, lifting, standing for long periods of time, sitting for long periods of time, which would increase her symptoms to the point that she would have to take medication or that she would have to -- or, you know, that she would certainly remember. There was probably a level of activity that she could maintain where she was relatively asymptomatic.

But I think that everytime she would do specific things -- and they were not, you know, massive lifting or changing tires on cars or moving furniture around, these were mild, household, everyday type of chores, including just sitting

for long periods of time -- the symptoms would get aggravated.

Q And that's what she told you?

A Correct.

Q And you -- this is based strictly on the history she gave you; is that correct?

A I -- there is no other way of basing it.

Q Now, you say she had a lot of physical therapy over a period of months; is that correct?

A I'm not sure I said a lot. She attended frequently. I don't know how many times she went exactly.

Q She was getting therapy from April 17th to May 17th and then discontinued treatment and resumed it July 27th and --

MR. WENDEL: Objection.

Q -- of '89 and went through August 24th of '89.

MR. WENDEL: Objection.

Q Was that on your instructions?

A You mean when she went?

Q Yes.

A It would not be my instructions as to when she went.

Q Who would give her the instructions as to when to come? As needed basis or how does she arrange for it?

A What I tell my patients to do is they have a specific number of times which they are allotted by prescription and they contact the physical therapist. If they need to have

those 15 or 20 treatments in a shorter period of time or whether they can extend them out, that is really up to the patient and the therapist to work out.

Q Looking at your notes, Doctor, she was -- well, let's put it this way; she then went to physical therapy again in January of '90, January 17th specifically; through February 13th of '90. Is there anything in your notes that would indicate why she returned to therapy? Did you send her back?

A Other than saying in the -- I don't, of course, can't remember the specific visit, but there is a notation saying that, "I spoke to the therapist downstairs and they are going to start working with her again."

Q When was that?

A January 10th, 1990.

Q *Any* specific reason?

A I assume it was because of her neck and upper back pain. I didn't note it in my chart and I certainly don't recall it now.

Q She then discontinued therapy until April 18th of '90 and went from April 18th to May 25th. During that period she never saw *you.*

Is there anything that would indicate why she went back to therapy in your records?

A There would be none in my records. There may have been a phone call. I don't remember at this point, though.

Q Now, what therapy did she -- where did she go for therapy, let's put it that way?
A She went to therapy here at the Highland Medical Building.
Q And this therapy, is the therapy connected with you? Do you have an interest in the therapy, Highland Physical Therapy Center?
A Not officially, no, other than they are -- I'm a part owner in the building and they rent from us.
Q Okay.
A I'm not a --
Q Who is in charge of it?
A Who is in charge of the therapy?
Q Yes.
A You mean -- it is run by a conglomerate. They basically rent space from us.
Q Do you own any of that conglomerate?
A No, I do not.
Q Okay.
Now, in your records, she never displayed any problems in the neck beyond 20 percent of motion. In other words, she always had at least 80 percent?
A Correct.
Q And as of the date I gave you, June 28th, she had 100 percent of motion?

A Well, that particular day, yes. There was some improvement, but it was never that good again.

Q And there could be intervening problems at a home, work or elsewhere where she had strained the muscles? Would you consider that an exacerbation or a new injury?

A Well, this is a hypothetical question, because I am really unaware of any specific incidents in which her pain -- she reinjured herself. I would say that if that was the case, it would probably be re-exacerbation and not new injuries.

Q Now, if the patient reached a certain level of recovery and then had another incident that she didn't tell you about, there is no way of you knowing about that except the history she gave you; is that correct?

A I would have to say yes, that would be my answer to your question. Whether it is relevant or not, I'm not sure.

Q There is nothing in your records to indicate anything other than activity that caused any problems except you have one note that she had more pain in the shoulder when it was wet?

A That's about all I can remember now. I would have to go through, look at visit for visit, but I can't remember her having *any* significant, you know, injury or reinjury.

I think that certain things that she did significantly aggravated her symptoms.

Q At one point she went on vacation for two months to New York, didn't she?

MR WENDEL: Objection.

A I don't know where she went and how long she was there for.

Q Isn't that in your records, Doctor?

A It said she was going to New York for a vacation. I don't know how long she was going or what she was doing there.

Q What I am getting at, basically, Doctor, is you have no idea from your records what activities this patient engaged in prior to the auto accident, what activities she engaged in subsequent to the auto accident; is that a fair statement?

A Activities meaning -- I'm not really sure what you mean by -- like sports or something like that? I'm not really sure. That's a pretty vague --

Q Sports, activities around the home, cleaning, what she did in work?

A Well, she's definitely cut back in the amount of time that she is able to work.

Q Where is that in your records, Doctor?

A I don't know that it is in my records. You're the one that told me that. That's what she apparently told Dr. Brahms.

Q But as far as you are concerned, you never asked her

about any cut down in work or what she in fact did at work; is that correct?

A I think I must have asked her, but I didn't think it was that important in her care and treatment.

Q Well, if someone was having problems such as this patient, you didn't think that what actives she was doing were of any importance in the treatment?

A I think I mentioned what kind of activity, doing minimal activities, climbing stairs, bending, sitting €or long periods of time. She would say that consistently almost on every visit when asked what would bother her back or what would bother her neck.

Q Your records indicate by late 1989 most of her back -- low back symptoms had resolved; is that correct?

A For the most part they had resolved, correct. She didn't have the daily problem with the back. The back would only flare-up when she would do repetitive bending or when she was on her feet for a long period of time.

Q And this was not true about the neck; is that right?

A That's absolutely correct. It was never true about the neck.

Q Now, when you first examined her you indicated that she had a full range of motion with -- in both shoulders?

A The shoulders, correct.

Q And you said she had some problem with the trapezius

muscle?
A Right.
Q Now, that controls the shoulders to some extent, doesn't it?
A Not the actual shoulder joint but the shoulder girdle, yes.
Q So that if she had full range of motion, you say that there was some pain in the trapezius on motion in the shoulder?
A Well, when I examine the shoulder joint, I can -- I'm isolating the ball and socket joint of the shoulder. I am not looking at the whole composite motion of the upper extremity.
Q Now, at one point you indicated she was having pain in her arm?
A Yes. Forearm. Both of them, as a matter of fact.
Q And you checked and there was no neurological deficit or no problem there?
A There was no neurological deficit, but she was complaining of discomfort.
Q And what caused that discomfort? Do you have an opinion about that with any reasonable medical certainty?
A No.
Q It cleared up, did it not?
A Pes.

Q How long did it take for that to clear up?
A I don't remember. Shortly. It was not a long lasting type of thing. Probably weeks or something like that. I don't remember.
Q And this could have been caused by the accident or by something else?
A I think it may have been caused by her (indicating) possibly gripping the steering wheel at the moment of impact as a reflex gesture.
Q But you can't say --
A But I don't know.
Q You can't say that with any degree of medical certainty, correct?
A Correct.
Q It could have pre-existed as far as you know?
A Well, she never said it was pre-existing, so --
Q But there is no way --
A But is it possible? Sure, it is possible.
Q Fine.
Now, you haven't seen her since January of '91; is that right?
A That's correct.
Q And you hadn't seen her for three months prior to that.
Why did she visit you in January of '91? Do you have any idea?

A I think that she had just come back from Texas and she had some increase in her symptoms. She wanted to talk to me about this chair that she had access to in Texas and ask me my feelings of whether that would be appropriate for her.

We also discussed exercise and continuing the conditioning. It was --

Q Did you ever ask her, prior to that, whether she was continuing the exercises at home?

A I would ask her that probably as a routine, for any patient that I see that's on -- that's supposed to be on some maintenance of activity.

Q This is a series of exercises that involved moving the neck and the head from shoulder to shoulder, et cetera; is that right?

A Well, part of it is the flexibility exercises. Others are strengthening exercises against resistance, sort of like isometric exercises.

Q And you gave her that regimen early on in the treatment, either the first or second visit?

A Well, I didn't give -- I never gave them to her. I sent her to physical therapy for them. And I believe after the second visit she was sent to physical therapy, so it was shortly after she started treating.

Q And you say that the use of a whirlpool at the Scandinavian right now would be better than physical therapy;

is that correct?
A Well, I think I stated that her condition had improved to the point where she was not in need of the physical therapy as frequently as she was getting it. It was much more expensive and she was developing symptomatic relief from just using the whirlpool, some light machine exercises and her exercises at home. I felt that if you can maintain yourself from a physical standpoint and it would be less expensive, I certainly would recommend that.
Q Doctor, your notes on 10/4/90 indicate that she had now had a 20 percent restriction of motion in the cervical area.
A Correct.
Q As opposed to 10 prior to --
A Yes.
Q -- at the beginning, zero in June of '89, and you say that she had now improved -- she now has more restriction, at least she did in October of '90, than when she started?
A She has a worse restriction or more restriction. Her condition was worse, yes.
Q Well, would you consider that an improvement?
A No.
Q So that she hadn't improved to any extent; is that right?
A I think I testified to that earlier. I thought that her neck and upper back symptoms had not improved

significantly in the long term, and certainly in the last six months that I was treating her regularly it had not improved.

Q So that when you say she's improved to the point where Scandinavian is better than formal physical therapy, is that a contradiction?

A No. In other words, her symptomatic improvement was as good with going to the whirlpool and doing her exercises at home than was her symptomatic improvement when she was going to physical therapy.

Q Okay.

Why --

A In other words, it wasn't improving my measured range of motion, but she felt that she was more comfortable doing that, and that was therapy -- driving all the way over here and going through the therapy routine was not necessary. And I agreed with her.

Q Okay.

Could she have done that six months earlier?

A I don't believe so.

Q Why not?

A Because her condition had not stabilized to the point that she had -- was able to control her pain and control her function without the therapy.

Q Didn't you say that she had had no improvement within that six-month period?

A She had no measurable improvement. In other words, you are asking me specifically range of motion, and I said no, there was no improvement in range of motion during that time period. She would get symptomatic relief. In other words, she felt better after she went to therapy and after she went to the whirlpool, but she felt no better after the therapy than she did after the whirlpool, so she wanted to just do that and I said that's fine.

Q You also said that the therapy was very transient.

A I don't think I ever used that word.

MR. CLARK: Excuse me, counsel. I need to go off the record.

(Off the record discussion.)

MR. CLARK: We are on the record.

BY MR. WALKER:

Q In your letter of February 16th, 1991, in the second paragraph, stating, "It is my opinion that it is both reasonable and appropriate for her to join a health spa to participate in exercise but at the same time save a fair amount of money for physical therapy which gave her only temporary relief at best."

If the relief was temporary at best, why did you continue the physical therapy?

A Her condition demanded it. If she had no relief without it and was at least getting some relief which lasted

a few hours or a few days, it was better than not getting any relief at all. So I felt that the therapy was appropriate.

Q You also indicated in -- that you were thinking that if she got any worse you would go into some more testing. You specifically mention an MRI. What is that?

A An MRI is a type of radiological imaging. It does not involve an x-ray, but it involves placing the patient in a very large magnetic field and by pulsating or mag -- modifying the magnetic field, a -- an image, and an image which was indistinguishable from an x-ray, would be created.

Those imaging techniques, the MRI scan is the definitive test for an occult herniated disk in the neck or in the low back. It is better than any other test that was ever designed for diagnostic purposes. That would have -- would be always the next step if there was never any relief or certainly if there were any neurological complaints.

Q And you found no need for that in this case at all; is that right?

A I did not think it was necessary, no.

Q They also use a CAT scan sometimes in these cases. That also is not necessary, is it?

A Well, you shouldn't use a CAT scan for the neck. I know there are certainly people that do, but the CAT scan for the neck is an inappropriate examination. For the low back it still has its uses, but the major portion of her symptoms

were in her neck and upper back, not her low back.
Q By the end of 1989, the low back was basically asymptomatic except for occasional flare-ups?
A It was not as consistently symptomatic as the neck was. I was -- I felt that the low back was improving significantly to the point that she could do almost anything she wanted to do without having back pain, low back pain. It was not a major concern of mine from that point on.
Q Okay.
As you said, by late 1989 most of her low back symptoms had resolved; is that right?
A Correct.
Q Now, Doctor, I'm going to show you one of your bills -- we will mark it Exhibit A -- and ask you if this is a bill that was generated by your office.
A Was that the question?
Q Yes.
A Okay. Yes, this was a bill that was generated which covered the dates of service from 4/17/89 to 11/28/89.
Q And on the bottom of that you have a legend to show what the bill is for, the various charges?
A Yes.
Q Is that right?
A Uh-huh.
Q And you have office visit down there, which is OV; is

that right?
A Correct.
Q And the first thing you have there is MLC, I believe?
A Correct.
Q And what does the legend indicate that means?
A It states for medical legal consultation.
Q And all the other treatment there is listed as MLO or V?
A MLV.
Q What does that mean?
A That means a medical legal visit.
Q What is the difference between a medical legal visit and an office visit?
A Well, essentially there is a slight difference in charges, $5 more, due to the processing that is necessary for medical legal claims. So essentially they are just like an initial consult or office visit, but it denotes why the charges were different.
Q And you up the charges for this because initially when she first came to you it was for medical legal purposes rather than straight medical purposes?
A No, no, no. It was -- whenever anybody -- and it is hard to avoid this in orthopedics -- but whenever anybody is evaluated and it is involving an accident, we know that reimbursement is difficult to obtain from the private

carriers because there is an accident and that, therefore, they are designated now in the computer so we do not go ahead and bill for each individual visit and the patients are responsible for these bills. It is an internal audit type of thing.

Q And for that you charge more money; is that right?

A Yes.

Q And I'll show you -- you say you have a little trouble collecting from the private carriers; is that correct?

A I'm not sure if you are going to get into insurance matters now.

Q On accident cases?

A On accident cases it is virtually impossible to collect from the private carriers.

Q From Blue Cross, Blue Shield?

A Correct. Yes.

Q Their own med pay on the car?

MR. WENDEL: Objection.

A I'm sorry, their what?

Q Their medical payments coverage they carry on their own automobile?

MR. WENDEL: Objection.

A I don't know that specifically, what the answer to that is.

Q And on the second bill -- which will be Exhibit B -- it

contains the last four visits, or up until October 4th, 1990. It says the same thing, medical legal case, and there is a comment, "There is a letter of protection."

What does that mean?

A So we will get our fees for our services. As I said, there is a little -- little box you have got to check off that goes into the -- to the health insurers, and if it is related to an accident they don't pay for those services.

Q What does letter of protection, who were you going to collect from?

MR. WENDEL: Objection.

A I am not really sure, but I assume it is ultimately the client -- the patient.

Q Isn't it the patient's attorney, Doctor?

MR. WENDEL: Objection.

A I don't believe -- the letter of protection is obtained from the attorney, but the -- the fees eventually come from the patient.

Q The letter of protection, the attorney tells you that he will guarantee payment to you; is that correct?

MR. WENDEL: Objection.

A I believe that's correct.

Q And you have no intention of seeing the patient again?

A Only if she needs me.

Q Okay.

And you have no belief that she will need you at this present juncture; is that correct?

MR. WENDEL: Objection.

A I would bet on the fact that she will be needing some medical care for this injury at sometime in the future. But as long as she's status quo and can handle herself, them there really is no need to schedule any further visits.

Q And the last visit you had with her was basically to talk about buying a chair; is that right?

A No. That was part of the conversation that I wanted to note in my chart note.

Q What does your chart note say other than that, on January 19th?

A It says, "Patient is doing about the same; intermittent neck and upper back pain. Will plan to see again in two months. No medications."

I also gave her a prescription for the chair that she thought would be beneficial to her.

Q And --

A But she was examined and it was a typical office visit. That is just what I noted at that time was to remind me of why -- what she needed the chair for in case we ever got a letter about it.

Q And there is no mention of Scandinavian in that at all, is there?

A No.
Q And in none of your records is there a mention of Scandinavian until the letter that was written on February 16th; is that right?
A Yeah. About a month after the last office visit.
Q And that was generated, you believe, by a telephone call?
A I'm sorry, what was? The recommendation? I lost you.
Q Yeah, the recommendation.
A It was probably a telephone call.
Q And you don't know when she in fact joined Scandinavian?
A I have no idea when she joined.
Q Did she tell you in that telephone call that she was going there and felt better?
A I don't really recall the conversation at this point in time.

MR. WALKER: That's all I have at the present time for you, Doctor.

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REDIRECT EXAMINATION

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BY MR. WENDEL:
Q Doctor, I have a couple.
Doctor, is it unusual to have, in a case like Mrs.

Taneja's, to have remissions and exacerbations of problems?
A No, I think it is the rule instead of the exception.
Q And the remission and exacerbation means what, Doctor?
A It gets better and it gets worse.
Q So the fact that you had 20 percent restriction of motion in October of '90 and in January of '91 as opposed to the 10 percent on your first visit, did you find that unusual?
A No. It is not unusual at all.
Q Is it unusual to have these exacerbations and remissions with normal daily activities of regular living?
A I do not believe and it would be my opinion that it is not abnormal, it is not unusual to have exacerbations and remissions based on activity, and it can be a variety of activity.
Q Such as what?
A Such as more strenuous activity, such as participating in a country club picnic or something like that, or doing simple household chores, lifting a vacuum cleaner wrong, starting a lawnmower, picking up a pet. I mean, anything can start it off.
Q So in order to have an exacerbation or a worsening of the condition it is not necessary that someone be out moving pianos, is it?
A No, absolutely not.

Q The normal activities that one does everyday can cause that?

A Sure. You know, it is an indic -- the kinds of activities that do exacerbate the problem is indicative of the chronicity and the severity of the underlying condition and the severity of the original injury. So the more trivial the activity, I believe, the more significant the recurrence.

Q Doctor, much was made about the fact that in June of '89 the range of motion, according to your notes, was almost full; the range of motion, not necessarily the subjective complaints of pain.

A Correct.

Q Was she on a program of pain medication by that point?

A Well, she was on the high dose Naprosyn at that particular point in time.

Q Might that have an effect upon the range of motion?

A Also the physical therapy, sure. I mean, that's what -- that's what all the treatment is designed for, to -- to get improvement.

Q Doctor, can you check your file and do you have any records in there from the physical therapist?

Again, much was made of your lack of knowledge of the physical therapist.

A There are some records here.

Q So the knowledge that you talked about of the various

kinds of therapy that you weren't exactly sure of, would that have been through your discussions with the therapist as well as those notes you have in your file?

A Sure.

Q Now, you mentioned you talked to the therapist. They are in the same building?

A Yes.

Q Does everything that happens in a patient's treatment plan go into that file that you have there?

A No, of course not. We couldn't possibly do that.

Q Now, is this muscle tightness of which we were talking about awhile ago an objective sign?

A Muscle tightness is an objective sign, yes.

Q It is something that you felt during your examination?

A Yes.

Q Which is an indication of an abnormal condition or problem?

A Absolutely.

Q And is it a painful condition?

A Usually.

Q And is it something that the patient can fake?

A Not that consistently.

I will say that a lot of the examination is redundant. In other words, people -- people are examined in more than one way during an evaluation and any discrepancy between the

individual examinations would be noteworthy.

Q Now, Doctor, again, a great deal was made of Mrs. Taneja's periodic return for physical therapy to the center here and you weren't sure how it was that she got there. I would like to have these marked as Exhibits 1 and 2 and have you identify those for us, please.

MR. CLARK: We are off the record.

(Off the record discussion.)

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(Defendant's Exhibits A and B were marked for identification.)

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

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MR. CLARK: We are on the record.

BY MR. WENDEL:

Q Doctor, you have had an opportunity now to take a look at Exhibits 1 and 2 at this point. Can you identify those?

A Sure. These are prescriptions from my office to physical therapy.

Q And now there is two different names on the physical therapist at the heading. Is that the same outfit, though?

A Correct. Yeah. They changed their names.

Q Now, those are all for physical therapy prescriptions

for Mrs. Taneja?
A Yes.
Q Can a patient go to a physical therapist and receive therapy without a doctor's prescription?
A No.
Q So Mrs. Taneja couldn't walk in there on her own and get care without you referring her there for the needed care; is that correct?
A That's absolutely correct.
And the dates, by the way, do correspond with the dates that she reinitiated her therapy.
Q Those various periods of time?
A Correct.
Q Now, Doctor, Mr. Walker was discussing with you, if you will, the benefits of physical therapy versus the Scandinavian treatment.
Assuming that Mrs. Taneja would go off of the less expensive Scandinavian regimen and get back on the physical therapy for the future, do you have an opinion based upon a reasonable degree of medical certainty as to what the costs would be for that care for the future, for physical therapy?
A I have -- yes, I have an opinion.
Q What would that be, Doctor?
A I estimated that the cost of physical therapy would be from 3500 to $4500 over the next three or four years.

Q And that would be more expensive than Scandinavian?
A I know for a fact it is much more expensive than Scandinavian.
Q And under Mrs. Taneja's circumstances, as you understand them to be, would physical therapy give her any more benefit than that which she is receiving at Scandinavian?
A At this point in time?
Q Yes.
A No.
Q Okay.
A If it gets worse, my opinion would change.
Q Doctor, you were asked as to -- about the physical therapy and the fact that it only gave temporary relief. Do you expect physical therapy to give immediate and complete relief to a patient once -- when a patient undergoes it?
A It depends on the condition.

Certainly for a long-term problem like this it would be more toward palliation or making the patient temporarily better or getting them back to a tolerable level of discomfort. For certain conditions that we use the therapy for it is obviously part of the cure. Muscle rehabilitation after a sprain or a fracture or something like that. So the goals are a little bit different.

Q You didn't find it unusual, then, to -- when you

learned that she wasn't getting complete relief, were you?
A I was not surprised, no.
Q Doctor, as far as your billing goes, as far as how it is charged, Mrs. Taneja had nothing to do with the categorization of the visits, did she?
A No, absolutely not.
Q She didn't come in and tell you to categorize them as MLV or MLC, did she?
A Absolutely not.
Q Doctor, though your chart, as you had said before, doesn't reflect everything that goes on with the patient, you were aware of, in fact you had recommended that she undergo the treatment plan at Scandinavian, didn't you?
A Yes, that's correct.

MR. WENDEL: I have nothing further. Thank you.

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RECROSS-EXAMINATION

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BY MR. WALKER:
Q Doctor, since at Scandinavian she's using the whirlpool apparently exclusively, what would it cost to buy a whirlpool unit to put into the tub at her home?
A First of all, I don't know for a fact that she is using the whirlpool exclusively. And I have absolutely no idea

what a -- a good whirlpool unit would cost, but I would imagine it would be quite expensive.

Q In your letter of February 16th you say, "She's getting similar relief from the home remedy type of physical therapy program performing exercises and using a whirlpool at the local Scandinavian."

To the best of your knowledge, she's using a whirlpool a period at the Scandinavian; is that correct, sir?

A No, that's not to the best of my knowledge.

Q What is the best of your knowledge?

A My -- I have spoken with her on the phone concerning what exercises she was capable of doing with the variety of machines at that particular establishment. I don't know what in fact she is doing.

Q Now, on the reports A and B -- which are the prescriptions for physical therapy -- could you give us the dates of those, please?

A Sure. In chronological order, they are 5/3/89 --

Q What was that for?

A For physical therapy.

Q What did you ask that they do?

A Evaluate and treat, hot/cold packs, massage, ice massage, flexibility exercises, MEMS, which is like a TENS unit, LS spine, C spine isometric exercises.

Q That was for four weeks; is that right?

A For two times a week for four weeks.
Q What is the next date?
A Next date was 6/28/89.
Q Okay.
And what was that for?
A Basically continue the same therapy.
Q The type of treatment, you have got, "evaluate and treat," period.
A Well, essentially it says, "Continue PT," which is my designation to our in-house therapists to continue what they were doing.
Q Okay.
But she didn't go back to therapy until June -- July 27th of '89, which is a month after you gave her the prescription. Do you have any idea why that happened?
MR. WENDEL: Objection.
A No, I have no idea.
Q What's the next date?
A The next date is January 10th, 1990. And the last date was 4/18/90.
Q Okay.
And on that one for January 10th, '90, you were more specific, you asked for a MEMS unit -- whatever that is -- similar to a TENS unit; is that right?
A Well, it's a different -- well, she had a MEMS unit

starting back on 5/3/89.

But the MEDS, if you notice, they changed their prescription, so MEDS was not something to check off, you had to actually physically write it in, which is why it was written in at that point in time.

Q And the last prescription is 4/18; is that right?

A 4/18/90, yes.

Q And that was for how long?

A Two times a week for *six* to ten weeks.

Q Okay.

And what was that for?

A Essentially, "Please resume therapy," so it was the same stuff she was getting before.

Q Do you use TENS units regularly with your patients?

A No.

Q TENS unit is an electrical stimulant, right?

A It's an electrical stimulator.

Q And there has been some articles indicating it is more a placebo than anything else; is that right?

A I think with any modality there are articles that you can find that both praise and discount.

Q But you don't use it at all with your patients; is that right?

A I don't say I don't use it at all, I just -- it is not my primary mode of treatment as it is for some other people

in the area.

Although I have patients that are off their narcotic analgesics when they are using their TENS unit. So I think that in -- if they are applied correctly, if they are -- patients are instructed on their use correctly and if they are monitored for a correct functioning, I think they are valuable as a tool for a physician to use in the -- for pain control.

Q There was an article in the New England Journal of Medicine -- which is a rather prestigious medical publication, is it not, Doctor?

A That is not a prestigious orthopedic journal, nor do any orthopedic surgeons that I know of read it on a frequent basis, so probably unnoticed by the orthopedic population.

Q So you wouldn't have read the article that came out in the -- that journal?

A I haven't read the New England Journal of Medicine since I have left my medical school training.

Q And you say it has no reputation as being a prestigious medical journal?

A I said it has no reputation as being anything other than a medical journal to the orthopedic surgeons in general. It is not a commonly reviewed periodical for an orthopedic surgeon. It has very little, if any, orthopedic articles or anything of value to an orthopedic surgeon in it.

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

I, Kathleen Grandillo, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named ROBERT CHERTOW 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 him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcibed upon a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 13th day of September, 1991.

Kathleen Grandillo

Kathleen Grandillo, Notary Public
in and for the State of Ohio.

My Commission expires 1-15-95.

record.

MR WENDEL: Can we get a stipulation on the one day filing of this?

MR. WALKER: Yes.

MR. WENDEL: Thank you.

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(Deposition concluded.)

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