

THE STATE of OHIO, :
COUNTY of CUYAHOGA. : SS:

COPY

IN THE COURT OF COMMON PLEAS

CATHERINE A. RUFFIN, et al., :
plaintiffs, :

vs. :

MICHAEL D. JELKS, et al., : Case No. 314136
: Judge Mary Boyle
defendants.

Deposition of ROBERT C. CORN, M.D.,
a witness herein, called by the defendants for the
purpose of direct examination pursuant to the Ohio
Rules of Civil Procedure, taken before
Frank P. Versagi, Registered Professional Reporter,
Certified Legal Video Specialist, Notary Public
within and for the State of Ohio, at the offices of
Robert C. Corn, M.D., 850 Brainard Road, Highland
Heights, Ohio, on TUESDAY, OCTOBER 6, 1998, .
commencing at 9:17 a.m., pursuant to notice.

COPY

1 APPEARANCES:

2
3 ON BEHALF OF THE PLAINTIFFS:

4
5 William T. Wuliger, Esq.

6 1340 Sumner Court

7 Cleveland, Ohio 44115

8 216-781-7777

9
10 -----

11
12 ON BEHALF OF THE DEFENDANTS:

13
14 Carole N. Siskovic, Esq.

15 Fillo & Siskovic

16 1520 Standard Building

17 Cleveland, Ohio 44113

18 216-781-8272

19 -----

20
21 Also present:

22
23 Don Johnson, videographer

24 -----

I N D E XWITNESS:ROBERT C. CORN, M.D.PAGE

Direct examination by Mrs. Siskovic	4
Cross-examination by Mr. Wuliger	30
Redirect examination by Mrs. Siskovic	61
Recross-examination by Mr. Wuliger	65

DR. CORN DEPOSITION EXHIBITSMARKED

1 through 8	56
-------------	----

(FOR COMPLETE INDEX, SEE APPENDIX)(IF ASCII DISK ORDERED, SEE BACK COVER)

ROBERT C. CORN, M.D.

of lawful age, a witness herein, called by the
defendants for the purpose of direct examination
pursuant to the Ohio Rules of Civil Procedure,
being first duly sworn, as hereinafter certified,
was examined, and testified as follows:

MRS. SISKOVIC: This will be
the deposition of Dr. Robert C. Corn, taken in the
case of Catherine Ruffin versus Michael D. Jelks,
Case Number 314136, pending before Judge Mary Jane
Boyle, with a waiver of defect.

MR. WULIGER: The defect in
terms of the notice of the deposition?' At least as
it relates to -- I'm here. I'm aware of the
deposition and it's a trial deposition.

MRS. SISKOVIC: Thank you,
Mr. Wuliger.

Good morning, Dr. Corn.

THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MRS. SISKOVIC:

Q. Would you state your name for the jury,
please?

A. My name is Robert Curtis Corn, C-o-r-n.

2 Q. What is your occupation?

3 A. I'm an orthopedic surgeon.

4 Q. Where is your address, Doctor? Where is your
5 office, Dr. Corn?

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

8 Q. And you are in private practice there?

9 A. I am in a group practice but it is a private
10 practice that is a non-hospital affiliated
11 practice.

12 Q. Would you give the jury a brief history of
13 your educational background starting with college,
14 please?

15 A. I received my Bachelor of Science in biology
16 from the Albright College in Reading, Pennsylvania
17 in 1971, I then moved back to my home town
18 Philadelphia, Pennsylvania, where I attended the
19 Hahnemann University School of Medicine from 1971
20 to 1975. I received my M.D. degree in 1975.

21 I then moved out here to Cleveland
22 where I started my orthopedic residency at the
23 Cleveland Clinic, I finished the -- graduated from
24 the Clinic's program in 1979.

25 I received my Ohio State license in

1 1976, and from August of 1979 I have been in the
2 private practice of orthopedic surgery.

3 Q. I take it that means, Doctor, that you are
4 licensed to practice medicine in the State of Ohio?

5 A. Yes.

6 Q. And Doctor, are you Board certified?

7 A. Yes, I am.

8 Q. Board certified in what area?

9 A. In 1980 I was Board certified by the American
10 Board of Orthopedic Surgery, and in 1996 I was
11 Board certified by the American College of Forensic
12 Medicine and the American College of Forensic
13 Medical Examiners.

14 Q. Would you explain to the jury, please,
15 Dr. Corn what it means to be Board certified and
16 what it entails to accomplish that?

17 A. Well, depending on the Board, there is a
18 process by which one, a physician, can be
19 recognized. You have to go through certain
20 educational material. In orthopedics you have to
21 go through a residency program.

22 The residency involves -- I guess
23 the best way to understand it is an apprenticeship
24 type of program, where as you develop your skills
25 and expertise and knowledge, you are given more

1 responsibility. You learn not only inpatient and
2 outpatient diagnostic skills and the ability to
3 examine a patient and to assess a medical problem,
4 but also to manager them, the problems surgically,
5 if indicated; that includes surgery on a wide
6 variety of areas, in a wide number of age groups.

7 After you complete your training
8 and go through a series of in training
9 examinations, there is usually a residence
10 requirement, that is you have to practice the
11 specialty for a certain period of time in a certain
12 geographical location.

13 During that period of time a peer
14 review takes place. After that's completed, you
15 have to sit for a series of examinations and after
16 passing the exams and fulfilling the other
17 requirements, then you would be certified.

18 Q. Would you explain to the jury what orthopedic
19 surgery means, Doctor; what it entails?

20 A. Orthopedic surgery is the branch of medicine
21 which involves the medical and surgical treatment
22 of diseases, disorders, injuries and some tumors of
23 the musculoskeletal system. It includes problems
24 of the bones, muscles, tendons, joints and
25 ligaments.

1 We deal with normal structures,
2 abnormal structures from either trauma or
3 degenerative or developmental type of problems,
4 that is stuff you're either born with or develop
5 with age.

6 We deal with a certain very highly
7 specialized area, the spinal problems; hand
8 problems, sports medicines problems, arthritic
9 problems.

10 One of my areas is the problems of
11 the elderly. When one gets old, what type of
12 problems, the wear and tear changes. Sometimes old
13 means 40's, but that's essentially what orthopedics
14 covers; it covers a wide amount of anatomical
15 areas, covers quite a spectrum of age related
16 problems, so it's a fairly large part of medicine.

17 Q. It deals with I believe you said primarily
18 with the muscles and skeletal structures of the
19 body?

20 A. We deal with the musculoskeletal system,
21 that's the bones and all the nearby soft tissues.

22 Q. Are you affiliated with any hospitals;
23 Dr. Corn?

24 A. Yes.

25 Q. Which hospitals are you currently affiliated

1 with?

2 A. Well, I have -- there are new name changes I
3 read about in the paper today, but hopefully
4 everyone will know which hospitals I'm talking
5 about.

6 I am on the active staff at
7 Hillcrest Hospital, formerly Meridia Hillcrest
8 Hospital; Euclid Hospital, Huron Hospital,
9 University Hospital's Bedford Medical Center, PHS
10 Mount Sinai Hospital System, primarily the east,
11 the old Richmond Heights Hospital; and the Lake
12 County Hospital System.

13 Q. The way the names keep changing, we have to
14 check before we --

15 A. It's difficult.

16 Q. Yes.

17 Do you hold any faculty positions,
18 Dr. Corn?

19 A. Yes.

20 Q. Where are you a faculty instructor?.

21 A. My primary faculty affiliation is with Case
22 Western Reserve University School of Medicine,
23 where I am a clinical professor -- clinical
24 instructor in orthopedic surgery.

25 Q. In the course of your practice, Doctor, did

1 you have occasion to examine Catherine **Ruffin** at my
2 request?

3 A. Yes, I did.

4 Q. When did that -- and you may refer to your
5 file, Doctor -- when did that examination take
6 place?

7 A. The examination was on May the 1st of 1998.

8 Q. To clarify this, Doctor, she was not a
9 patient of yours, but you were doing an independent
10 medical examination; is that accurate?

11 MR. WULIGER: Objection.

12 A. Yes, she was not a patient of mine and she
13 was here solely for a medical/legal opinion,

14 Q. Thank you.

15 And that exam you said was May 1st
16 of 1998?

17 A. Yes.

18 Q. When Mrs. Ruffin came to your office, did you
19 take a history from her?

20 A. Yes, I did.

21 Q. What did that history -- what history did she
22 give you with regard to her accident and injuries?

23 A. The examination was in reference to an
24 accident which occurred on October 12th of **1994**,
25 She was a driver of a **1978** motor vehicle, her child

1 was in the front seat.

2 The accident occurred in Cleveland
3 Heights, she was heading in a northbound
4 direction. A rear end collision occurred and she
5 was thrown in a forward position, hitting her head
6 on the steering wheel.

7 She complained of left -- of neck
8 and left shoulder pain, shoulder area pain since
9 that time.

10 Q. When Mrs. Ruffin gave you the history,
11 Dr. Corn, did she tell you that there were two
12 impacts to her vehicle?

13 A. I **don't** have that **in** my report. I don't
14 remember.

15 Q. Okay. Let me try it this way then.

16 If **in** fact -- if we'll stipulate
17 that there were two impacts to her vehicle which
18 took place in close succession, would it be
19 possible to determine what injury if any was caused
20 by which impact, Doctor?

21 A. At this point in time or at the time I saw
22 her, no.

23 Q. Thank you, Doctor.

24 What else **did** Mrs. Ruffin tell you
25 with regard to the accident and her alleged

1 injuries?

2 A. She stayed on the scene, ultimately her
3 husband came to pick she and her child up. They
4 went to Meridia Huron.

5 X-rays were taken, she had an
6 appropriate emergency visit. Those records were
7 reviewed.

8 She was given a cervical collar,
9 some pain medication, very appropriate emergency
10 and a specific -- this was an appropriate
11 treatment.

12 She then was referred back to her
13 family doctor, Dr. Kerry Rawl Shelton. She did not
14 recall whether she saw Dr. Shelton for this injury
15 as a follow-up, but she was essentially treated and
16 released. She was not admitted to the hospital.

17 Q. From Huron Road?

18 A. Correct.

19 Q. Do you know -- did she tell you when she next
20 had medical treatment or did you get that
21 information from the records?

22 A. At this point in time, I'm just looking at my
23 report, I can't remember what she told me and what
24 I found in the records; but she ultimately went to
25 see Dr. Daniel Leizman I think has been her only

1 treating physician for this.

2 Q. Do you know who referred her to Dr. Leizman?

3 A. She was not sure. She said a number of
4 individuals sent her to Dr. Leizman, but she really
5 couldn't recall who it was.

6 Q. Do you know when she first saw Dr. Leizman?

7 A. According to the records it was approximately
8 October 19th of 1994.

9 Q. What kind of treatment did Dr. Leizman
10 prescribe for Mrs. Ruffin?

11 A. The treatment she had -- first of all, he did
12 some x-rays and he did the appropriate
13 examination. I'm not sure by reading my notes what
14 he actually recommended in the way of physical
15 therapy, the specifics; but she did have
16 medications prescribed to her, she had therapy, I
17 believe at Dr. Leizman's center, his office at
18 Beachwood.

19 He did some x-rays, he did review
20 the films from Huron, and he followed her on a few
21 occasions after that; not many times but a few
22 times.

23 Q. Was Mrs. Ruffin working during this period of
24 time?

25 A. Mrs. Ruffin graduated from the Central School

1 of Practical Nursing at the end of September of
2 1994, and her first job started at the Suburban
3 Pavilion in November of 1994. I believe she has
4 been employed since that time in a capacity of a
5 licensed practical nurse.

6 Q. When you examined her in May of 1998, had
7 she -- did she allege any absences from her
8 employment of 1994 for any injuries allegedly
9 sustained in this accident?

10 A. I believe that once she started that job, she
11 really hasn't lost any period of time from that job
12 from this particular accident, at least she did not
13 recall any. I'm not sure the records reflect any
14 either.

15 Q. According to your report, Doctor, she first
16 saw Dr. Leizman on October 19th of 1994, and then a
17 follow-up visit on November 9th of 1994.

18 A. Yes.

19 Q. What was Mrs. Ruffin's condition in
20 November 9th of 1994 when she followed up with
21 Dr. Leizman?

22 A. From a subjective standpoint, that is from
23 her complaint standpoint, she was improving, the
24 pain was not constant but only intermittent, that
25 is off and on; it was associated with pain and

stiffness.

2 The mid and low back pain seemed to
3 have improved. The physical examination of her mid
4 and low back was normal. I don't have a notation
5 of what the exam showed of her neck, but I do not
6 recall any significant abnormalities.

7 Q. This was as of November 9th of 1994?

8 A. Yes.

9 Q. When is the next time that Mrs. Ruffin was
10 seen by Dr. Leizman, please?

11 A. The third visit was not until November 5th of
12 1997, which was about a year after the previous
13 visit, so she had no care documented for that year
14 period of time.

15 Q. Would that be a year, Dr. Corn, or would that
16 be three years?

17 A. Well, you know what, my arithmetic is not the
18 greatest in the whole world.

19 It was November, 1994 to November
20 of 1997. I'm sorry. That would be three years.

21 Q. During that period of time she had no
22 follow-up care with Dr. Leizman; is that correct,
23 Dr. Corn?

24 MR. WULIGER: Objection.

25 A. I believe that's what she explained to me.

1 Q. Do you know whether or not she had any care
2 with any other doctor?

3 A. I don't believe there were any records
4 presented to me nor did she recall any other
5 treatment with any other physicians during that
6 time period.

7 Q. What were Mrs. Ruffin's symptoms when she
8 saw -- or symptomatology or complaints when she saw
9 Dr. Leizman three years after the second visit?

10 MR. WULIGER: Objection, and
11 the basis for the objection is that there is no
12 specific question as to where this information is
13 coming from, whether it's coming from records or
14 whether this is what the doctor contends
15 Mrs. Ruffin told him; so without foundation
16 testimony as to the source of the information,
17 there is an objection.

18 Q. Dr. Corn, did you review a letter from --
19 which Dr. Leizman wrote on January 9th -- dated
20 January 9th of 1998?

21 A. Yes.

22 Q. Was that where the third and last patient
23 visit was talked about, that November 5th, 1997
24 visit, which took place three years after the '94
25 visit?

1 A. Yes.

2 Q. In that letter that Dr. -- or that report
3 that Dr. Leizman wrote, did he indicate what
4 Mrs. Ruffin's complaints were in 1997?

5 MR. WULIGER: Objection.

6 A. I believe he did, yes.

7 Q. What were those complaints?

8 MR. WULIGER: Objection.

9 A. He noted that she had intermittent pain and
10 soreness in the left neck and shoulder region. By
11 the history she related this to the same pain that
12 she was feeling since the motor vehicular
13 accident.

14 He changed his diagnosis somewhat
15 to include to what he felt was a shoulder tension
16 myalgia, which means muscle pain related to muscle
17 stiffness; and some residuals of the soft tissue
18 strain or sprain that she had in the neck.

19 He did not recommend any further
20 care or treatment. I do not believe he found any
21 significant objective abnormalities at that time,
22 although I didn't memorize the report. The report
23 obviously will -- the jury may have heard that
24 information already, but I didn't reread the report
25 recently.

1 Q. Did you do a physical examination of
2 **Mrs.** Ruffin, Doctor?

3 **A.** Yes, I did.

4 Q. What did that examination indicate?

5 **A.** Well, the examination was my typical
6 examination, orthopedic exam that I would do on a
7 patient, any patient coming to the office.

8 The exam revealed a pleasant,
9 somewhat soft spoken 41 year old woman who did not
10 appear in any distress. She did not appear
11 uncomfortable.

12 Her ability to walk was normal, she
13 was observed walking in and out of the exam suite
14 normally, she was observed to sit comfortably
15 throughout the bulk of the examination, because
16 part of the exam was sitting, standing, and moving
17 about; and she did not appear in any significant
18 discomfort.

19 She was able to sit normally, she
20 was able to climb **up** and down the exam table, she
21 was able to stand on her heels and her toes
22 normally, other than people having difficulty with
23 balance, there did not appear to be any physical
24 limitation to her ability to do that.

25 Q. Did you do an actual hands-on examination?

Yes.

2 Q. What did that entail, Doctor?

3 A. The exam of her neck area revealed some what
4 she called tenderness, that is she said there was
5 soreness when I was pushing in the area of the
6 trapezius muscle, which is the muscle that goes
7 from the neck down to the back of the shoulder
8 blade and in some of the muscles around the
9 shoulder blade. This was tenderness;. in other
10 words, I would touch her and she said it would
11 hurt.

12 What I try to observe was there any
13 objective or measurable correlation with that, was
14 there any sign of muscle irritation or muscle
15 inflammation. I know this was years after the
16 accident, but there really was none that I could
17 observe.

18 Q. What would some objective signs be, Dr. Corn?

19 A. The four cardinal objective signs that I look
20 for in patients that I treat and patients that I
21 evaluate are objective criteria. In other words,
22 something that if you know what to look for,.you
23 can feel, touch, or measure in some capacity.

24 The first is muscular spasm. This
25 is an uncontrolled somewhat charlie horse,

1 extraordinarily painful situation, in which the
2 muscles are very tight, there is limitation of
3 movement, and you can actually physically palpate
4 and touch these muscles which are very, very tight
5 and very exquisitely tender; this is really pretty
6 unusual many years after an accident but it's
7 really not that uncommon during the first couple
8 week of an injury.

9 The second is muscular guarding.
10 This is a protective posturing. We've all woken up
11 with a stiff neck or over did it at a company or
12 church volleyball game, and it's that stiffness
13 that you feel the day after or couple days
14 afterwards. Certain movements are restricted
15 because the muscles sort of tighten up, and this
16 can be an objective finding if it is present. So
17 this is just beyond the feeling of being stiff,
18 this is physically being stiff due to the muscles
19 protecting.

20 There is something called increased
21 muscle tone. This is a physical hardening of the
22 muscles or a harder sensation of the muscles,
23 indicating the muscles are contracting more than
24 the other muscles, the symmetrical muscle.

25 In other words, the human body,

1 you have a left and a right side. You can
2 typically look and compare one side to the other
3 side to see if there's any kind of differences in
4 muscular tone, and there were none.

5 And the third -- the fourth I
6 should say is what we call dysmetria, which is
7 abnormal muscle movement or abnormal muscle
8 coordination.

9 When you do certain body
10 positioning, muscles should fire in a certain order
11 to give you a smooth, fluid type of mobility.

12 When you do not have that mobility
13 that may indicate that either a muscle has been
14 injured or damaged or is not working correctly, and
15 therefore you would see some abnormal muscular
16 function, and that's what dysmetria is.

17 Q. None of those four objective findings were
18 present in Catherine Ruffin on the day of your
19 examination, correct, Doctor?

20 MR. WULIGER: Objection.

21 A. No, they were not.

22 Q. Did you perform any other tests on
23 Mrs. Ruffin?

24 A. I looked at her flexibility, her mobility of
25 the neck, and she had over 95 percent of what I

1 would expect individuals to have.

2 Range of motion is typically
3 subjective, that is patients -- I don't sit and
4 crank their parts of their body, I ask them to move
5 as much as they feel comfortable moving; and there
6 was almost normal movement; that means there was
7 very, very minimal movement, and that may have been
8 voluntary, I don't know; but there was a
9 significant preserved range of motion for her age.

10 The scapular, that is shoulder
11 blade movement, was normal. There was normal
12 movement of both the joints of the upper
13 extremities, that is the arms.

14 She did complain of some discomfort
15 again in that same muscle area with the extremes of
16 movement of her shoulder. Again, this was not
17 associated with any objective findings, again of
18 muscle irritation or muscle inflammation.

19 There was no wasting of the muscles
20 in the neck, upper back, shoulders or upper
21 extremities. In other words, if you do not use
22 your muscles because of pain or injury or a soft
23 tissue disruption, the physical bulk of the muscles
24 will be different.

25 occasionally if you are an

1 extraordinarily one handed athlete or had a one
2 handed occupation, such as a carpenter or a dry
3 wall, whatever those people are called, dry wall
4 people, where you do a lot of repetitive lifting
5 with one extremity, or professional tennis player,
6 you may have one extremity that may be very much
7 larger than the other; but most people are pretty
8 much the same. There may be very, very slight
9 left/right differences depending on dominance and
10 occupation, but you can observe this muscular
11 atrophy or muscular size.

12 And I physically take a tape
13 measure and measure the arms at various levels,
14 that's part of my neurological examination, which
15 is the next step; that is to detect any deficits or
16 deficiencies in the function of the muscles because
17 of a nerve problem, the ability to detect sensation
18 and motor strength testing as well as certain
19 neuromuscular reflexes.

20 We're all familiar with the knee
21 jerk. Well, there are a number of other reflexes
22 in the arms that were tested and these were all
23 fortunately normal.

24 I did a very brief examination of
25 her low back. There were really no complaints in

1 that area and my exam was just basically range of
2 motion. Doing some provocative testing of the
3 nerves in her lower extremity and doing some very
4 quick neurological functions of her lower
5 extremities, and these were normal as well,

6 Q. Would *you* explain to the jury what a range of
7 motion test is, Doctor?

8 A. A range of motion test is a test which I have
9 patients actively, that is they're moving as much
10 as they can to determine which degrees of movement
11 may be limited.

12 In other words, for the neck I ask
13 them to put their chins on their chest, look all
14 the way up to the ceiling, look to the right, to
15 the left, tilt to the right, tilt to the left; and
16 there are certain known ranges of movement and if
17 people have a significant restriction, you will
18 notice that not only in their inability to move,
19 but there may be some muscle protective posturing,
20 and I typically will have my hands or be watching,
21 hands on the area or be watching that area during
22 that portion of the exam.

23 Q. These are all tests that are done in the
24 office, Doctor?

25 A. Yes.

1 Q. Are there any types of testing which can be
2 done to determine whether or not there is
3 neuromuscular damage?

4 A. There are specific testing, objective testing
5 that can be ordered and performed by certain
6 specialists that do those, I don't do those types
7 of exams.

8 Q. What types of tests would those be, Dr. Corn?

9 A. The tests that would determine whether the
10 muscles and nerves electrically were working
11 appropriately are known as the electromyogram and
12 the nerve conduction velocities, that is that tell
13 how fast an impulse can travel through a nerve.
14 Sort of like how fast a message can go through a
15 telephone wire.

16 And the second one, the EMG, it
17 tells how the nerve and muscle are working
18 together, sort of like how your phone may be
19 working in response to a message coming in from the
20 main line, that's an objective way of testing
21 neurological function.

22 Q. And the purpose again of ordering those tests
23 would be what, Doctor?

24 A. Well, the purpose would be, first of all, an
25 index of suspicion. There may have been a

1 neurological injury or an abnormality that was
2 noted on physical examination that you may, as a
3 physician, you may want to know why; and that may
4 give you an answer.

5 Q. After you took a history from Mrs. Ruffin and
6 examined her, did you have an impression, Dr. Corn?

7 A. I had an initial impression, yes.

8 Q. What was that initial impression?

9 A. My impressions were that by the history
10 presented that she probably did sustain a
11 stretching or pulling muscular injury to the upper
12 mid and lower back regions, there was probably an
13 injury sustained. She did have appropriate
14 treatment for that injury, but by the time I had
15 seen her, even though she still had some
16 complaints, she had appeared to have objectively
17 recovered.

18 In other words, I was unable to
19 find any objective abnormalities that would be
20 directly related to that particular incident.

21 Q. In addition to the examination of
22 Mrs. Ruffin, did you review any medical records,
23 Doctor?

24 A. Yes.

25 Q. What did those records include?

1 A. Those included the Meridia Huron Hospital
2 records, the Geauga Community Hospital records,
3 Beachwood Orthopedic records, as well as their
4 physical therapy records.

5 There were some employment records
6 from the Suburban pavilion, there were results of
7 x-rays also in that material. I do not have any
8 independent recollection of reviewing specific
9 x-rays, the actual films, I mean.

10 Q. After the examination did you reach an
11 opinion, Dr. Corn?

12 A. Yes, I did.

13 Q. I mean the examination and review of the
14 records?

15 A. I did.

16 Q. Do you have an opinion with -- to a
17 reasonable degree of medical certainty as to what
18 injuries if any Catherine Ruffin sustained in the
19 October, '94 accident?

20 A. I do have an opinion.

21 Q. What is that opinion, Doctor?

22
23 that of a stretching or pulling injury to her neck,
24 mid and low back region. The bulk of her symptoms
25 seem to have resolved quickly, as noted in the

1 medical records, within the first few months after
2 the accident, which is the typical scenario we see
3 in our patients that suffer similar types of
4 injuries.

5 There was not a great deal of
6 medical care that was documented, and that she
7 basically still had some complaints in her muscles
8 that she referred back to the accident; but at the
9 time of my exam I was unable to find any physical
10 explanation for why there was such persistent
11 discomfort so long after the car accident in
12 question.

13 Q. Do you have an opinion to a reasonable degree
14 of medical certainty of whether the symptoms that
15 Catherine Ruffin complains of are indicative of a
16 permanent injury which was proximately caused by
17 the accident of October of '94?

18 **MR. WULIGER:** Objection.

19 A. The philosophy that I work under as an
20 orthopedic surgeon and in my daily practice is I
21 rely on patients to tell me what their symptoms
22 are.

23 She certainly has ongoing
24 complaints. I cannot verify as a doctor whether
25 complaints are permanent or not, because I can't

1 tell if complaints are existent.

2 I can tell whether there is
3 consistency of complaints, and that may be an
4 indication. I could order tests that show injuries
5 or muscular or ligamentous disruptions, which may
6 be the source of pain; but it is difficult to state
7 within a reasonable degree of medical certainty
8 that individuals that just complain of pain have a
9 permanent condition without some sort of physical
10 evidence of an ongoing injury or a persistent
11 injury.

12 Q. What is a strain or sprain, Doctor; and is
13 there a difference? .

14 A. There is a difference.

15 Q. What is a strain?

16 A. A strain is a musculotendinous injury, that
17 is a pulling or stretching injury to a muscle or
18 muscle/tendon unit. .

19 A sprain is a similar type of
20 mechanism but the tissue involved is the
21 ligaments. The ligaments are gristly,
22 non-stretchable, non-contracting tissues that
23 connect bones to bones; whereas muscles and tendons
24 connect -- are the movable, more movable, more
25 mobile pieces of tissues in the human body.

1 Q. Is it common or is it usual for a strain or a
2 sprain to be a permanent condition, Doctor?

3 MR. WULIGER: Objection.

4 A. It is not typical for a strain or sprain to
5 be permanent unless there has been a documentation
6 of an actual injury to the tissue, that is an
7 injury that results in abnormal mobility of a
8 joint, documentation of what we call instability;
9 or if there was documentation of a specific rip or
10 tear within a muscular structure.

11 It is only then when you have
12 documented a precise injury that has disrupted
13 fibers or disrupted tissue that you have a
14 potential for a permanent injury; but without that
15 documentation it is almost impossible to confirm
16 that that's what you have.

17 MRS. SISKOVIC: I have
18 nothing further at this time, Doctor.

19 Thank you

20 -----

21 CROSS-EXAMINATION

22 BY MR. WULIGER:

23 Q. Doctor, did I understand you to say that you
24 teach at Case Western Reserve University Medical
25 School?

1 A. I have a faculty appointment there- I do not
2 teach medical students there anymore. I did for a
3 period of time, but I still have my faculty
4 appointment there.

5 Q. Have you ever -- off the record.

6 MR. WULIGER: Off the record.

7 -----

8 (Discussion had off the record.)

9 -----

10 MR. WULIGER: On the record.

11 Q. Doctor, you have been performing a function
12 similar to the one you performed in this case on
13 behalf of insurance companies and those who have an
14 economic interest in defending personal injuries
15 claims since you've been in private practice, that
16 would be back in 1979; is that correct?

17 MRS. SISKOVIC: Objection.

18 A. No, that's not true.

19 Q. Okay.

20 A. Not to my knowledge, other than possibly a
21 patient that I had been taking care of.

22 Q. Have you ever testified that you have been
23 doing it since 1979?

24 MRS. SISKOVIC: Continuing
25 objection.

1 A. I don't recall. That's really incorrect
2 if -- I may have been confused, but I believe I
3 started this in 1984.

4 Q. You have given testimony in personal injury
5 cases on behalf of -- strike that.

6 You have been engaged by law firms
7 and insurance companies and the Industrial
8 Commission in -- for litigation period -- purposes
9 for a number of years; is that fairly stated?

10 MRS. SISXOVIC: Objection.

11 A. That's fairly stated, yes.

12 Q. And you have given over the years what, 1,000
13 or more depositions such as this?

14 MRS. SISKOVIC: Objection.

15 A. Mr. Wuliger, you know I don't keep track of
16 them. I really don't know the number. I would not
17 be surprised if I -- if it were thousands over an
18 almost 20 year period of time, but I really don't
19 have a precise number of how many I did, I have
20 done for what, or if that number is even true.

21 I may have testified to that as a
22 response to a hypothetical type of question, but I
23 really don't know the exact number. I don't really
24 keep track of that.

25 Q. Well, Doctor, I'd like to get beyond

1 hypothats, if I could.

2 Did you give testimony on
3 **May 14, 1997** regarding the subject of whether or
4 not you've ever instructed a class at Case Western
5 Reserve University; do you recall giving testimony
6 on that subject?

7 A. No, I do not.

8 Q. Do you recall that you were engaged by the
9 defense in a case called Levine versus Luchi?

10 MRS. SISKOVIC: Objection.

11 Q. And you were deposed on May 14, 1997 in that
12 case in a trial situation much the same as we're
13 here today on?

14 MRS. SISKOVIC: Note a
15 continuing objection relating to prior testimony.

16 A. You have the deposition. I don't recall the
17 case.

18 MRS. SISKOVIC: Especially
19 when no documentation has been provided to either
20 counsel or doctor.

21 Q. Doctor, do you recall this question and your
22 responses in that deposition?

23 MRS. SISKOVIC: Just do an
24 automatic objection.

25 Q. Question, when is the last time you were an

1 instructor at Case?

2 Answer, I'm currently a faculty
3 member at Case Western Reserve University.

4 Question, when is the last time you
5 instructed a class?

6 Answer, I never instructed a
7 class.

8 A. That's true.

9 Q. Do you recall that testimony?

10 A. I don't recall the testimony but that is a
11 true statement. My involvement has always been
12 through Meridia Huron Hospital --

13 Q. Doctor, you're aware that you have an
14 obligation in these proceedings since you are
15 someone who's been through depositions on a number
16 of occasions to answer the questions that my
17 opposing counsel asked and to answer my questions.
18 You understand that obligation?

19 A. I do.

20 Q: And you understand that you are not supposed
21 to volunteer information but you are supposed to
22 respond to my questions. You understand that?

23 A. I understand I'm suppose to respond but I
24 can't always respond in a yes or no answer.

25 Q. Well, my question was very simply: Did you

1 recall that testimony?

2 A. I did not recall that testimony.

3 Q. And then my question was: Is that testimony
4 truthful, and you said it was?

5 A. Yes.

6 Q. Now --

7 A. To the best of my recollection.

8 Q. Now, despite the fact that that is the case,
9 that you have never taught a class at Case Western
10 Reserve University, there are a number of occasions
11 in which you've given testimony in contested court
12 proceedings that you were teaching at Case Western
13 Reserve University; isn't that true?

14 A. I don't believe I ever testified that I
15 taught a class at Case Western Reserve University.
16 I taught medical students from Case Western Reserve
17 University, but I don't believe I was ever asked
18 did I ever physically go and testify at that
19 institution.

20 Q. Well, this so-called teaching, Doctor, the
21 last time it occurred was in 1992 and you are
22 talking about some students that came through Huron
23 Road Hospital; are you not, sir?

24 A. That has always been my involvement, either
25 teaching through Mount Sinai Hospital or students

1 that are rotating through Meridia Huron Hospital,
2 that's right; that's when I was chief of
3 orthopedics then that I was in charge of --

4 Q. Doctor, I didn't ask why or what the
5 circumstances were, did I?

6 A. But I thought that was necessary for my
7 answer.

8 Q. All right, sir.

9 MR. WULIGER: Off the record.

10 -----

11 (Discussion had off the record.)

12 -----

13 MR. WULIGER: On the record.

14 Q. Doctor, is it your testimony that you have
15 not been examining claimants on behalf of the
16 Industrial Commission of Ohio since 1979; is it
17 your position that's not true?

18 MRS. SISKOVIC: Objection.

19 A. I have -- I am not sure what you mean by
20 examining. I have taken care of individuals and
21 have reported to the Industrial Commission. I
22 don't remember if I specifically was being sent
23 things back in 1979 strictly for evaluation.

24 Q. Doctor, do you recall giving testimony on
25 April 28, 1995 in a case captioned Hammerschmidt

1 versus the Chubs Insurance Company, and you were
2 examined in that case on April 28th, 1995 by
3 Mr. Lancione?

4 A. I don't recall.

5 MRS. SISKOVIC: Objection.

6 Q. Do you recall this testimony, sir?

7 You have also examined injured
8 Workers! Compensation claimants for the Industrial
9 Commission since about 1979 when you first started
10 your private practice.

11 Answer, yes.

12 MRS. SISKOVIC: Objection.

13 Q. Do you recall that testimony?

14 A. No, that's not -- I still didn't understand
15 what you meant. I still don't understand the
16 question.

17 I have taken care of industrial
18 patients but I don't specifically remember if I was
19 doing it back in 1979.

20 Q. Well, Doctor, this question doesn't say
21 examining patients. It says examining injured
22 worker claimants for the Industrial Commission.

23 MRS. SISKOVIC: Objection,

24 Q. You didn't indicate back in 1995 when that
25 question was posed to you that you didn't

1 understand it, did you?

2 A. My interpretation for it on the basis of your
3 questions is a little different than my
4 interpretation may have been at that point in
5 time.

6 Q. Well, Doctor, after you did that work for the
7 Industrial Commission, you then did something
8 called a 90 day exams for the Industrial
9 commission, correct?

10 A. I do do them.

11 MRS. SISKOVIC: Objection.

12 A. I don't remember when that particular thing
13 started, whenever they started doing those types of
14 exams.

15 Q. Well, Doctor, isn't it fair to say you
16 stopped doing the one type of exam sometime in the
17 mid '80s for the Industrial Commission, then took
18 up the 90 day exams for the Industrial Commission?

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

21 Q. Well, those examinations --

22 A. Which ones?

23 Q. For the Bureau of Workers' Compensation was
24 the -- for the purpose of assessing the state of an
25 individual's injury recovery and to determine

1 whether or not they have been provided accurate and
2 appropriate care; isn't that true?

3 A. That's my understanding of the 90 day
4 examination.

5 Q. okay. The other examinations were to
6 determine the extent of an injured person's
7 disability; isn't that true?

8 A. Well, actually that may be partially true but
9 they were industrial specialist reports. In other
10 words, to give a percentage of disability based on
11 the American Medical Association Guidelines. I
12 think that's probably what you are referring to the
13 early types of reports that I used to do.

14 Q. Now, how long have you been working assisting
15 insurance companies and defense firms that defend
16 personal injuries cases? How long have you been
17 providing that service?

18 MRS. SISKOVIC: Objection.

19 A. I believe it has been since 1984.

20 Q. Now, in connection with this case you are
21 being compensated by the defense; is that correct?

22 A. Yes.

23 Q. Now, I had earlier taken a deposition of you
24 to ascertain certain information before we
25 commenced these proceedings; do you recall that?

1 A. Yes.

2 Q. And I had requested certain economic
3 information from you in order for the jury to
4 determine any bias if any you might have because
5 you do a lot of this work; you recall that?

6 MRS. SISKOVIC: Objection.

7 A. I do recall those questions, yes.

8 Q. At that time you indicated to me that you
9 didn't provide records in a -- as it relates to my
10 subpoena for records, did you?

11 MRS. SISKOVIC: Objection.
12 Continuing objection to all this entire line of
13 questioning.

14 A. I don't remember which specific things that I
15 was objecting to producing. Some of the things you
16 were asking I did not have in my possession, nor
17 were there any records of, that's about the best I
18 can answer it.

19 Q. Where are the records regarding what you
20 are -- you have charged and are charging in this
21 case?

22 A. I do not specifically have those. The only
23 charges so far have been for the independent
24 medical evaluation, they have been paid because
25 there is no record of it in the computer.

1 The only other charges that were
2 made were to you for the time of the discovery
3 deposition, that I believe are the only charges to
4 date.

5 Q. Well, it's fair to say, Doctor, that you have
6 been asked over the last ten years for these kinds
7 of records from lawyers such as myself who are
8 representing people who have been injured in motor
9 vehicle accidents, haven't you?

10 A. Yes, I have.

11 Q. And *you* are aware that there is a -- a
12 function that the court and jury has in cases such
13 as this to determine the nature and extent of
14 someone's injury?

15 MRS. SISKOVIC: Objection.

16 Q. You are aware of that?

17 A. Sure.

18 Q. And you are also aware that the court and
19 jury have every right to delve into what economic
20 interest you have as it relates to your continuing
21 duties as it relates to performing this function?

22 Objection.

23 Q. You are aware of that as well?

24 A. I am aware of that recently. I was not
25 totally aware of that all along the line that I

1 have been doing this.

2 Q. But it is fair to say that what you do is you
3 deliberately destroy your records in order for
4 lawyers such as myself in cases such as this not to
5 have specific and precise information as to how
6 much money you earn performing this function; isn't
7 that true?

8 MRS. SISKOVIC: Objection.

9 A. I do not keep those types of records but I
10 intend to start keeping them as of October 1st of
11 this year.

12 Q. Well -- but my question is --

13 A. I haven't in the past.

14 Q. And the reason you haven't in the past is
15 because you have made a conscious decision in all
16 of these cases, including my case, to keep this
17 information out of my hands and out of the jury's
18 hands; isn't that true?

19 MRS. SISKOVIC: Objection.

20 A. I have deliberately made a decision not to
21 even have that available for myself. So I had made
22 a conscious decision not to keep those records. It
23 was not specifically against you or the jurors in
24 this courtroom. I felt it was unnecessary for the
25 practice, the normal practice of my business to

1 keep those records.

2 MR. WULIGER: Off the record.

3 MRS. SISKOVIC: Objection.

4 Objection to going off the record.

5 We have had two previous off the record sessions
6 while Mr. Wuliger rummages through his file.

7 I would prefer this deposition
8 proceed in a timely manner on the record.

9 MR. WULIGER: I don't have
10 enough room to --

11 MRS. SISKOVIC: Could you
12 please mark the time we've gone off.

13 -----

14 (Discussion had off the record.)

15 -----

16 MR. WULIGER: On the record.

17 Q. Doctor, were you in the courtroom of Judge
18 Russo on September 28th, 1998 on contempt
19 proceedings that were initiated against you related
20 to your destruction of records -- of economic
21 records that you have for this particular type of
22 function?

23 MRS. SISROVIC: Objection.

24 A. I was in Judge Russo's courtroom. I did not
25 know until the end of the proceedings what her

1 intent of the hearing was. I am not exactly sure
2 that that was stated precisely. We were brought
3 there on a different pretense, but that seemed to
4 have been the thrust of her questioning.

5 Q. Doctor, do you recall testifying in those
6 proceedings that you purge yourself of appointment
7 calendars and other economic records in order to
8 prevents plaintiffs' lawyers from having this
9 information; do you recall giving that testimony?

10 MRS. SISKOVIC: Objection.

11 A. That was one of the reasons that I presented
12 to the judge, yes; that's not the only reason, but
13 that was one, yes; and I don't think it was just
14 plaintiffs' lawyers. I thought my answer was
15 anyone.

16 Q. Well, Doctor, do you recall the following
17 colloquy in Judge Russo's courtroom on
18 September 28th, 1998.

19 Question, isn't it true, Doctor,
20 that one of the reasons you discard those calendars
21 is to prevent attorneys like me that represent
22 plaintiffs from establishing an interest, a
23 financial interest in the type of work you do
24 through **IME's**?

25 Answer, as the court will see this

1 afternoon, if they need to see the book, there
2 really is no differentiation of any type of patient
3 in that book.

4 The lawyer, Mr. Coticchia, objects
5 to your response and the court says sustained,
6 that's not responsive.

7 The question is then posed: Isn't
8 it true, Doctor, that one of the reasons, if not
9 the sole reason that you destroy those appointment
10 calendars on a systematic basis is to prevent
11 plaintiffs and plaintiffs' lawyers like me from
12 establishing your financial interest and your bias
13 when you conduct an IME?

14 Answer, again there is no
15 designation of IME.

16 The court ordered you yes or no; do
17 you recall that?

18 MRS. SISKOVIC: Objection.

19 A. I don't recall.

20 Q. And your answer was that was part of the
21 reason, yes.

22 MRS. SISKOVIC: Continuing
23 objection.

24 Q. Do you recall that?

25 A. I don't recall but that seems to be the same

1 answer that I gave you just a couple minutes ago.

2 Q. Now, you went on to testify that no lawyer
3 had advised you to do that, this is something you
4 have been doing over a number of years on your own;
5 do you recall?

6 A. Yes.

7 MRS. SISKOVIC: continue
8 objection to any references to anything outside of
9 the scope of this, what should be this testimony on
10 cross-examination.

11 Q. Now, Doctor, you have refused to give me tax
12 returns for this organization for which you are a
13 principal, personal tax returns and other economic
14 information which you do have, correct?

15 A. I'm not sure what other information I do have
16 but I did not feel that without a judge's order
17 that I needed to turn that over to you.

18 Q. Despite the fact that I subpoenaed it, which
19 is an order?

20 MRS. SISKOVIC: Objection.

21 A. Well, there were motions and I **was** waiting to
22 hear what the final motions were before I released
23 them.

24 Q. Well, the fact of the matter is, Doctor, that
25 you and Mr. Gordon, Dr. Gordon are the principals

1 of this organization, correct?

2 A. Yes.

3 Q. And that's who you are in practice with,
4 correct?

5 A. Yes.

6 Q. And both of you do this kind of work,
7 correct?

8 A. Yes.

9 MRS. SISKOVIC: Objection.

10 Q. And your income is directly related to the
11 gross revenues that you bring into this
12 organization, correct?

13 A. That's correct, yes.

14 Q. And it's also true, is it not, Doctor, that
15 you earn a salary of over \$800,000 a year; isn't
16 that true?

17 MRS. SISKOVIC: Objection.

18 A. I think review of my tax returns will
19 indicate that that is not entirely correct.

20 Q. Well, what is entirely correct, Doctor?

21 A. That is not what it is each year. I don't
22 remember what my income is for every single year,
23 but I know that that is high, very high in
24 comparison to what it was in the early parts of
25 this decade.

1 Q. What is your -- what was your income in 1997?

2 MRS. SISKOVIC: Objection.

3 A. I don't know.

4 Q. What was your salary?

5 A. I don't know.

6 MRS. SISKOVIC: Objection.

7 Q. Was it \$800,000, Doctor?

8 A. I did not file my --

9 MRS. SISKOVIC: Continuing
10 objection.

11 A. -- 1997 tax return yet so I do not know what
12 that salary is.

13 Q. But you have an accountant and you have
14 received a salary for the year 1997 and that salary
15 was in the vicinity of \$800,000, wasn't it, Doctor?

16 MRS. SISKOVIC: Objection.

17 A. I don't know. It could have been.

18 Q. Isn't it fair to say that this organization
19 for which you and Dr. Gordon are the principals,
20 receives over a million dollars a year for
21 assisting insurance companies, defense lawyers, and
22 other entities in the defenses of personal injury
23 claims?

24 MRS. SISKOVIC: Objection.

25 A. We may make that money. I really don't have

1 the breakdown how much of that is related to that,
2 but there's no question that a portion of that
3 certainly is.

4 Q. And Doctor, as it relates to surgeries, it is
5 fair to say that your work as it relates to any
6 surgeries of the neck and back has declined
7 dramatically over the years; isn't that true?

8 MRS. SISKOVIC: Objection.

9 A. Well, the truth is I have not done any neck
10 surgery since 1980, nor have I done any back
11 surgery since I believe 1995 or late 1994, so I
12 would say it is nonexistence from that point on
13 because I stopped doing that type of invasive
14 surgery.

15 I still take care of patients with
16 those problems but I don't do the surgical
17 procedures for them.

18 Q. Doctor, is it fair to say that this office
19 conducts anywhere from four to 16 defense medicals
20 a .week?

21 A. You know, I don't have those numbers. I
22 don't have the exact numbers.

23 Is it possible, sure; can I confirm
24 it, no. I don't know.

25 Q. Now, you have testified on direct examination

1 that muscle stretching or tearing of muscle tissue
2 is what you would call a strain, and a tearing or
3 stretching of ligamentous tissue is what you would
4 call a sprain?

5 A. Yes, sir, that's the definitions.

6 Q. If I understand correctly, it is your opinion
7 that both muscle and ligamentous tissues were
8 disrupted as a result of the automobile collisions
9 in 1994 involving Catherine Ruffin?

10 A. Well, there was no indication that they were
11 disrupted. There were certainly an occasion that
12 it may have been stretched. No one ever did any
13 testing to show of any disruption, but there's no
14 question that an injury of this type would be
15 compatible with a pulling or stretching injury.

16 Q. Doctor, your report indicates that it's your
17 opinion that the injuries are soft tissue, neck,
18 mid and low back strain or sprain; have you not?

19 A. Yes, sir.

20 Q. And I assume that the reason you have stated
21 that is because you cannot tell whether or not the
22 injuries also involve ligamentous structures; is
23 that correct?

24 MRS. SISKOVIC: Objection.

25 A. I think that that's a fair statement. I

1 don't think anyone ever was able to detect that, so
2 certainly by the time I saw her it would have been
3 impossible to detect.

4 Q. Doctor, it is also fair to say that you are
5 not telling this jury that Catherine Ruffin was
6 dishonest or faking these injuries when you
7 examined her, are you?

8 A. I really didn't draw a medical opinion of
9 that, that's something that's somewhat beyond my
10 ability.

11 I basically take a history and do a
12 physical examination and then draw my information
13 from that and from the medical records.

14 Q. There -- the fact is that when you examined
15 Catherine Ruffin she still had symptoms related to
16 soft tissue injury; isn't that correct?

17 A. She had symptoms that she related to that
18 particular injury, yes.

19 Q. And you have testified on a number of
20 occasions that when it comes to determining
21 proximate cause, a physician such as yourself has
22 to rely on what the patient tells you?

23 A. I think that we have to rely on the patient,
24 what the patients tell us, now whether that is
25 correct or incorrect may be up to some medical

1 argument; but we are really at the mercy of the
2 patients that we see telling us what they think
3 things are from.

4 Q. In terms of what you observed, you observed
5 that there was -- that the bulk of her present pain
6 is in the area of her left shoulder and neck,
7 correct?

8 A. I believe that's what I stated, yes,

9 Q. And that her pain is deep, dull, aching,
10 radiating from her scapula area into the left
11 shoulder and over the top of the shoulder into her
12 anterior chest; isn't that correct?

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

14 Q. Now, Doctor, isn't it true that there is no
15 diagnostic test that could be performed on
16 Catherine Ruffin which would demonstrate the muscle
17 and ligamentous injury that she sustained; isn't
18 that correct?

19 A. At this point in time it would be unlikely.
20 Initially in theory a MRI scan could have shown a
21 muscular or ligamentous disruption if it was done
22 appropriately. Theoretically you could have
23 determined that, but at this point in time you
24 cannot.

25 Q. As it relates to her range of motion, at

1 least whatever limitation she has -- and she does
2 have some limitation in her range of motion; isn't
3 that true?

4 A. Very slight, yes.

5 Q. But that's a limitation; it's less than
6 normal?

7 A. It's less than perfectly normal, yes; but
8 it's certainly well within functional ability.

9 MR. WULIGER: Are we changing
10 something? Okay.

11 Q. What she indicated is that she's sensitive to
12 cold and that there are times that she feels a
13 stabbing and pulling pain and feels a knot under
14 her scapula and a deep ache, correct?

15 A. Essentially, yes. She didn't tell me that in
16 that order; but essentially, yes, she did say that.

17 Q. By the way, Doctor, soft tissue injuries can
18 be and often are very painful?

19 A. Initially and typically they are very
20 painful.

21 Q. Now, Doctor, it is fair to say that you do
22 not have an opinion when if ever her painful
23 sensations will end; isn't that true?

24 A. I don't have opinion when they'll end or even
25 if they exist, other than what she tells me.

1 Q. And *you* have no reason to disbelieve her;
2 isn't that true, Doctor?

3 A. I have no reason to disbelieve her, no.

4 Q. Now, Doctor, during the proceedings before
5 Judge Russo, Mr. Coticchia showed you 104 medical
6 reports that somehow you hadn't gotten to destroy
7 and asked you to review them; do you recall that?

8 MRS. SISKOVIC: Objection.

9 A. He showed me reports which were active IME's
10 that we had in our files that we pulled at some
11 point in time earlier this year. They were not
12 destroyed because they were still active, but
13 essentially those were the reports that we turned
14 over to Mr. Coticchia, yes.

15 Q. Every single case involving a soft tissue
16 injury, your report always read the same, which is
17 there are no permanent objective signs of injuries
18 or something to that effect; isn't that correct?

19 A. That's what I was told by Mr. Coticchia,
20 yes.

21 Q. And you were asked to review the records and
22 dispute it if you chose to?

23 MRS. SISKOVIC: Objection.

24 Continuing objection to prior proceedings.

25 A. I did go through them, yes.

1 Q. Where you found objective signs of injury you
2 invariably concluded the injury wasn't caused by
3 the accident, correct?

4 A. I don't know. I may have stipulated to that
5 but I don't remember each case and I certainly
6 can't answer anything more specifically.

7 Q. Now, the Allstate Insurance Company on your
8 behalf has filed a Writ of Prohibition against
9 Judge Gaul in a case in which my opposing counsel's
10 law firm is involved, to prevent Judge Gaul from
11 conducting hearings and getting various economic
12 records of yours; isn't that true?

13 MRS. SISKOVIC: Objection.

14 A. I'm not sure.

15 MRS. SISKOVIC: On relevancy
16 and veracity.

17 A. I'm not sure that's entirely true because the
18 portion of that case that I was involved with was
19 settled and I was no longer a witness in the
20 secondary portion of the case. I believe that was
21 why the Writ of Prohibition was filed because I was
22 not a witness nor was a party in that particular
23 second half of the lawsuit.

24 MR. WULIGER: Off the record.

25 MRS. SISKOVIC: Objection.

1 Objection to going off the record again,

2

3

(Discussion had off the record.)

4

(Dr. Corn Deposition Exhibits 1 through 8

5

marked for identification.)

6

7

MRS. SISKOVIC: Note my

8

objection to these.

9

THE WITNESS: I haven't seen

10

these and I really don't choose to look at them.

11

MR. WULIGER: I'm going to

12

ask you to look at them.

13

MRS. SISKOVIC: Any questions

14

about those would call for legal conclusion, this

15

man is a doctor, not a lawyer.

16

Secondly, they're irrelevant to the

17

case at hand.

18

MR. WULIGER: Take a look at

19

the documents before we go back on the record.

20

MRS. SISKOVIC: We are on the

21

record.

22

THE WITNESS: I'm not going

23

to look at them.

24

MR. WULIGER: Then we'll go

25

back on the record.

1 MRS. SISKOVIC: We are on the
2 record.

3 MR. WULIGER: The video
4 thing.

5 Q. Doctor, I'm handing you Plaintiffs' 1
6 through 8, would you take a look at those
7 documents, please?

8 A. Okay.

9 Q. No. Would you read them, please. Look
10 through them.

11 MRS. SISKOVIC: Objection.

12 Q. I asked you to do it off the record. You
13 said you wouldn't do it, so I went back on the
14 record and now I'm asking you to look through
15 them.

16 A. Okay. I looked through them.

17 Q. Excuse me.

18 Doctor, it is fair to say that the
19 Allstate Insurance Company has filed in the Court
20 of Appeals a petition for Writ of Prohibition
21 against Judge Gaul as it relates to the
22 investigation he ordered to be conducted regarding
23 your activity in personal injury cases; isn't that
24 true?

25 MRS. SISKOVIC: Show a

1 continuing objection to any questions relating to
2 any of the information that he's pursuing at this
3 point in time with regard anything about
4 prohibition, anything that occurred in Daniel
5 Gaul's room, Nancy Russo's room, or any of those
6 questions please note an objection so I don't have
7 to keep repeating it.

8 Thank you.

9 A. That appears to be true.

10 Q. In connection with those documents you signed
11 an affidavit under oath; did you not?

12 A. Yes.

13 Q. In that affidavit you reference that you have
14 been engaged by a colleague of my opposing counsel
15 in this case as it relates to another lawsuit
16 involving a gentleman by the name of Hegidus; isn't
17 that true?

18 A. Yes.

19 Q. All of the work that Allstate is doing as it
20 relates to stopping the investigation against *you*
21 is being given to you free; *isn't* that true?

22 A. I'm paying for the work that my attorney is
23 doing and on the affidavits that have been
24 submitted specifically for me I was told that I am
25 going to be paying for that.

1 Q. You have been told you're going to pay for
2 the work that Mr. Kramer has done?

3 A. No, the work that my attorneys have been
4 doing for this, they have submitted -- they have
5 told me what my expenses are probably going to be
6 with them, and I will be paying for my portion
7 of -- actually, everything that my attorneys filed
8 for me they will be billing me directly.

9 Q. But the head of claims for the Allstate
10 Insurance Company and the people associated with
11 Allstate Insurance Company, the work that they have
12 engaged to be done, they are doing that at their
13 own expense; isn't that true?

14 A. That may be true. I have never really
15 discussed that with them. I just discussed with my
16 attorneys what my responsibility would be to them.

17 MR. WULIGER: Off the
18 record.

19 MRS. SISKOVIC: Objection to
20 going off the record yet again.

21

(Discussion had off the record.)

23

24 MR. WULIGER: on the record.

25 Q. Doctor, over the years you have given

1 opinions that contested opinions and conclusions of
2 various plaintiffs' treating physicians; isn't that
3 true?

4 MRS. SISKOVIC: Objection.

5 A. Sometimes I have and sometimes I have agreed
6 with them.

7 Q. Do you have any idea, Doctor, how many Board
8 certified orthopedic surgeons in northeastern Ohio
9 you have given opinions in court proceedings that
10 conflicted or differed from the opinion that they
11 gave regarding their own patients?

12 MRS. SISKOVIC: Objection.

13 A. I have no idea.

14 Q. Is it fair to say that it's in the hundreds?

15 MRS. SISKOVIC: Objection.

16 A. I have absolutely no idea.

17 Q. Are there any of the doctors who you have
18 given opinions against, and there's literally
19 hundreds of them --

20 MRS. SISKOVIC: Objection.

21 Q. -- that in your judgment are inadequate
22 physicians or less than skillful?

23 MRS. SISKOVIC: Objection.

24 A. I've never made a comment to that. I've
25 disagreed with their conclusions but I would never

1 make disparaging remarks about their abilities.

2 Q. As I understand it, Doctor, when a person
3 such as Catherine Ruffin suffers ligamentous as
4 well as muscular tissue pulling, strains and tears,
5 that if the ligaments are involved the symptoms
6 will be apparent closer in time to the accident if
7 only the muscle -- as contrasted if only the
8 muscles are involved; isn't that true?

9 A. I'm not sure that's a universally true
10 statement.

11 Q. Have you ever testified to that effect?

12 A. Not that I can recall.

13 MR. WULIGER: Off the record.

14 MRS. SISKOVIC: Objection to
15 going of the record yet again.

16 -----

17 (Discussion had off the record.)

18 -----

19 MR. WULIGER: On the record.

20 I have no further questions.

21 Thank you.

22 -----

23 REDIRECT EXAMINATION

24 BY MRS. SISKOVIC:

25 Q. Dr. Corn, you testified on cross-examination

1 that you do not disbelieve Catherine Ruffin, that's
2 an accurate statement, correct?

3 A. Yes.

4 Q. Catherine Ruffin has complained of symptoms
5 when you examined her; is that correct, Dr. Corn?

6 A. Yes.

7 Q. And those symptoms consisted of what,
8 Dr. Corn?

9 A. Pain and stiffness. I think Mr. Wuliger went
10 over a little bit more of the details but
11 essentially she has residual pain in the vicinity
12 of her left shoulder and upper back which she
13 believes or she told me is directly related to the
14 accident.

15 Q. That's what she told you?

16 A. Correct.

17 Q. And these are symptoms in the left shoulder
18 and the left back or the left neck area, correct,
19 Doctor?

20 A. Essentially that's pretty close.

21 Q. Catherine Ruffin is a right-handed woman?

22 MR. WULIGER: We'll stipulate
23 she was right-handed.

24 A. Okay.

25 Q. Dr. Corn, these are episodes of pain that she

1 has?

2 A. The -- that's what my understanding is.
3 Certain things tend to precipitate it, certain
4 activities she tends to avoid that may precipitate
5 it, but these are not constant from what I
6 understand.

7 Q. And I believe on Mr. Wuliger's
8 cross-examination he indicated that weather changes
9 and temperature change seem to bother her; is that
10 accurate?

11 A. That's what she said, yes.

12 Q. And that's what she told you?

13 A. Yes.

14 Q. Dr. Corn, you examined this woman in May of
15 1998, approximately four and a half years after the
16 motor vehicle accident in which she was involved;
17 is that accurate?

18 A. Yes.

19 Q. And she's telling you that she has symptoms
20 or she has pain in her shoulder.

21 Doctor, do you have an opinion to a
22 reasonable degree of medical certainty as to'
23 whether or not Catherine Ruffin is experiencing
24 pain?

25 MR. WULIGER: Objection.

1 A. I do have an opinion.

2 Q. What is that opinion?

3 A. I really cannot within a reasonable degree of
4 medical certainty state whether Catherine Ruffin is
5 still having pain other than what she is telling
6 me.

7 Q. Do you have an opinion to a reasonable degree
8 of medical certainty whether these symptoms which
9 Catherine Ruffin is subjectively -- has and is
10 relating which are subjective are directly related
11 to the motor vehicle accident of October ,of 1994?

12 MR. WULIGER: Objection.

13 A. I do have an opinion.

14 Q. What is that opinion, Doctor?

15 A. Other than what she says, I have no way of
16 confirming whether in fact her current symptoms are
17 directly related to the accident in question. It's
18 strictly on the basis of what she's telling me.

19 Q. You testified, Doctor, that you believe that
20 Catherine Ruffin is a nurse's aide?

21 A. I think she is a licensed practical nurse.

22 Q. Licensed practical nurse?

23 A. Yes.

24 Q. In the course of her job duties as a licensed
25 practical nurse, would it possible for Catherine

Ruffin to have injured herself in any way?

2 MR. WULIGER: Objection.

3 A. The type of work a LPN typically performs is
4 patient care: lifting, bending, assisting patients
5 in their daily activities, doing bathing,
6 transferring patients, it is certainly types of --
7 a type job which can be somewhat strenuous.

8 Q. Miss Ruffin did not testify or tell you about
9 any additional incidents which had occurred to her
10 during the course of her work; did she, Doctor?

11 A. Not specifically, no.

12 MRS. SISKOVIC: Thank you. I
13 have nothing further at this time.

14 -----

15 RECROSS-EXAMINATION

16 BY MR. WULIGER:

17 Q. Doctor, when you were deposed by me on
18 8-20-98 you were under oath, correct?

19 A. Yes.

20 Q. And the following questions were posed to
21 you; were they not, Doctor?

22 MRS. SISKOVIC: Objection.

23 Q. After describing that she has ongoing
24 symptoms of pain and episodes where pain is deep,
25 dull, aching pain seems to radiate from her scapula

1 area in the left shoulder into the anterior left
2 chest; is that correct?

3 Answer, that's what she told me.

4 Question, do you disbelieve her?

5 Answer, I don't have an opinion one
6 way or the other.

7 Do you believe she is faking?

8 I don't know.

9 That was your answer then?

10 A. I think I gave a pretty similar answer now.

11 Q. So you think that what you just told this
12 jury is the same thing I just read; is that
13 correct?

14 A. I believe it is consistent, sure, that she's
15 still complaining of pain. She says it's the
16 origin is the car accident. I don't know whether
17 it is or it isn't and I have to take that for
18 whatever historical value it is.

19 MR. WULIGER: I have no
20 further questions

21 MRS. SISKOVIC: Will you
22 waive signature, Doctor?

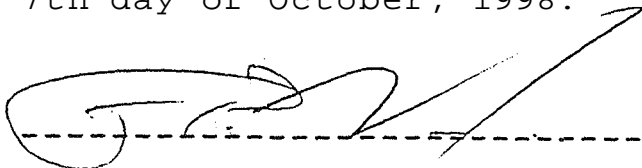
23 THE WITNESS: Probably, yes.
24 MR. WULIGER: I want a copy
25 of the tape and the transcript

1 The State of Ohio,

2 County of Cuyahoga. : CERTIFICATE:

3 I, Frank P. Versagi, Registered Professional
4 Reporter, Certified Legal Video Specialist, Notary
5 Public within and for the State of Ohio, do hereby
6 certify that the within named witness, ROBERT C.
7 CORN, M.D., was by me first duly sworn to testify
8 the truth in the cause aforesaid; that the
9 testimony then given was reduced by me to stenotypy
10 in the presence of said witness, subsequently
11 transcribed onto a computer under my direction, and
12 that the foregoing is a true and correct transcript
13 of the testimony so given as aforesaid. I do
14 further certify that this deposition was taken at
15 the time and place as specified in the foregoing
16 caption, and that I am not a relative, counsel or
17 attorney of either party, or otherwise interested
18 in the outcome of this action.

19 IN WITNESS WHEREOF, I have hereunto set my hand and
20 affixed my seal of office at Cleveland, Ohio, this
21 7th day of October, 1998.

22 
23 -----

24 Frank P. Versagi, RPR, CLVS, Notary Public/State of
25 Ohio. Commission expiration: 03-09-03.