State of Ohio,)
) SS:
County of Lake.)

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IN THE COURT OF COMMON PLEAS

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LESLIE MULLINS, Plaintiff,	)	
vs.	)	Case No. 92CV001341
FIRST NATIONAL SUPERMARKETS, INC., dba FINAST SUPERMARKETS Defendant.	)	Judge Martin Parks

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VIDEOTAPED DEPOSITION OF ROBERT C. CORN, M.D.

Monday, November 1, 1993

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The videotaped deposition of ROBERT C. CORN, M.D., a witness, called by counsel on behalf of the Defendant for examination under the Ohio Rules of Civil Procedure, taken before me, Kristin A. Beutler, a Registered Professional Reporter and Notary Public in and for the State of Ohio, pursuant to notice, at the offices of Robert C. Corn, M.D., 850 Brainard Road, Highland Heights, Ohio, commencing at 5: p.m., on the day and dat above set forth

R. CURTIN: Initially, let the record reflect this is the deposition of Dr. Robert Corn, which is being taken pursuant to notice.

It's my understanding that the statutory and procedural formalities of notice, service, and the filing of this deposition will be waived; is that correct, counsel?

MS. GARSON: That's correct.

MR. CURTIN: This deposition is being taken upon direct exam in order to preserve the doctor's testimony for use at the time of the trial of this action brought by Mr. Leslie Mullins against my client, Finast Supermarkets, said action bearing Case No. 92CV001341, before the Honoralbe Judge Parks in the Court of Common Pleas in Lake County.

Would you please swear in the doctor?

ROBERT C. CORN, M.D.

a witness, called by counsel on behalf of the Defendant for examination under the Rules, having been first duly sworn, as hereinafter

certified, was deposed and said as follows:

DIRECT EXAMINATION

BY MR. CURTIN:

Q. Doctor, would you please state your full name for the record?

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

Q. What is your current professional address, and are we at that address today?

A. My main office address is 850 Brainard Road in Highland Heights, Ohio, and that's where we are today.

Q. What is your profession, sir?

A. I'm an orthopedic surgeon.

Q. When were you first licensed to practice medicine in the State of Ohio?

A. In 1976.

Q. Would you please explain to the ladies and gentlemen of the jury what's involved with the specific specialty of orthopedic surgery?

A. Orthopedic surgery 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, and ligaments -- and also has a number of areas of

My specialty is orthopedic Surgery, and the American Board of Orthopedic Surgery sets about certain training requirements necessary to become an orthopedic surgeon. They approve residencies, they approve certain teaching, they approve examinations, and they have defined a way of getting certified or getting qualified.

In 1980 when 1 was certified, I had to have completed a Board approved residency program that is approved by the American Board of Orthopedic Surgery, have completed a year in the community during which time the peer review took place, and then an oral and written examination was given over a two day period of time. And after fulfilling the training requirements, the practice requirements, and then passing the examination, you are certified.

Q. Are all orthopedic surgeons Board certified, sir?

A. Most are, but you don't have to be Board certified to practice orthopedic surgery.

Q. Because isn't Board certification one of, if not the highest, achievements obtainable in

your specialty?

A. Yes.

Q. Thank you, Doctor.

Would you please give the ladies and gentlemen of the jury a little of your background, including college through medical school, as well as your internships, residencies, et cetera, up until the present time?

A. I received my Bachelor of Science in biology from the Albright College in Reading, Pennsylvania in 1971. I then moved to Philadelphia, Pennsylvania, where I attended the Hahnemann University School of Medicine from 1971 through 1975. I received my M.D. degree from that institution in June of 1975.

I then moved out to here to Cleveland where from 1975 through 1979 I completed the orthopedic residency program at The Cleveland Clinic, and from August of 1979 to the present time I've been in the private practice of orthopedic surgery.

Q. Are you a member of any medical organizations, societies, or associations?

A. Yes.

Q. Could you tell us about a few of those, sir?
A. I am a fellow in the American Academy of Orthopedic Surgeons, a fellow in the American College of Surgeons, a member of the American Medical Association, Ohio State Medical Association, Orthopedic Research Society, Cleveland Orthopedic and Philadelphia Orthopedic Societies, and a number of other organizations.
Q. Do you have staff or courtesy privileges at any Greater Cleveland area hospitals?
A. Yes.
Q. What are those, sir?
A. I am attending orthopedic surgeon at the Meridia Huron Hospital, Meridia Hillcrest, Meridia Euclid, the Mt. Sinai Medical Center, Lake County Hospital Systems, and the Community Hospital of Bedford.
Q. You served as chief of orthopedic surgery for how long, sir?
A. From January of 1984 through November of 1992 at Meridia Huron.
Q. Are you involved in any teaching or publications in your specific field?
A. Yes, I am.

A. I am a clinical instructor in orthopedic surgery at the Case Western Reserve University school of Medicine, I am also an assistant professor of orthopedic surgery at the Ohio College of Podiatric Medicine, the podiatry school here in Cleveland, and I also am a preceptor for the residency program at both the Ohio College of Podiatric Medicine and the Mt. Sinai Medical Center podiatry program.

Q. Doctor, as part of your professional practice, do you have occasion to examine individuals who are not your patients for the purposes of evaluation, including for the purposes of consultation, second opinion, evaluational legal matters, or Bureau of Workman's Compensation proceedings?

A. *Yes.*

Q. Would you please tell the ladies and gentlemen of the jury whether you had an occasion to examine the plaintiff in this particular matter, Mr. Leslie Mullins, at my request?

A. *Yes,* I did.

Q. When did that exam take place, and where did it take place, sir?

A. The exam took place here in my office on March

Q. As part of your office records, do you have a copy of a report prepared and dated June 22nd, 1993, with regard to your examination of the plaintiff, Mr. Mullins, and your findings upon that examination?

A. Yes.

Q. Doctor, feel free to refer to that report and any other records you might have in answering any of my questions, as well as those of counsel for the plaintiff.

Doctor, the main reason I asked your assistance and guidance was to assist me in understanding, and the jury, whether or not there was a cause and effect relationship between a herniated disk sustained by Mr. Mullins and subsequent surgery, and a slip and fall he had at a Finast at about February of 1991.

Let me ask you the question directly, sir. Do you have an opinion, based upon a reasonable degree of medical certainty, as to whether or not Mr. Mullins sustained a herniated disk and accompanying the surgery as

a direct and proximate result of a fall that occurred in February of 1991?

First, sir, do you have an opinion?

A. Yes, I have an opinion.

MS. GARSON: Objection.

Q. What is that opinion, Doctor?

MS. GARSON: Objection.

A. My opinion is there is no direct correlation between the subsequent disk surgery done by Dr. Shafron and the original slip and fall incident which occurred on or about February 16th, '91.

MS. GARSON: Motion to strike.

Q. Doctor, let me begin at the beginning with respect to a doctor's care and treatment. The first step you would have taken in examining Mr. Mullins would have been to have taken a history; is that correct?

A. Yes.

Q. Dr. Shafron, who operated on the herniated disk, presumably would have done the same thing; is that correct?

A. Yes.

Q. Doctor, when you examined Mr. Mullins in your office, you took a history from him. Did he

reveal to you the existence of any prior or subsequent injuries to his lower back, and particularly, a painting incident that occurred around February of 1992?

A. I don't recall a specific -- I did ask him were there any previous or subsequent problems, and he denied them.

Q. Doctor, would you be surprised if I asked you to assume that Dr. Shafron's deposition was taken by counsel for the plaintiff on July 9th of 1993, and before me I have the transcript.

Are you aware of the fact that Dr. Shafron was advised by Mr. Mullins' attorneys at the time of the deposition of a subsequent painting incident that merely was an aggravation of Mr. Mullins' lower back problems?

MS. **GARSON**: Objection.

A. I was made aware of that, yes.

Q. And that was by myself; is that correct, sir?

A. Correct, yeah.

Q. Doctor, let me talk a little bit more about what exactly represents a herniated disk, and more specifically, what type of symptoms does a herniated disk manifest itself in?

Let's step away from Mr. Mullins for a moment, and could you fill us in a little bit about, in the instances of a herniated disk, what type of symptom or symptomatology does a person display?

A. The -- both the classical and typical symptoms of a herniated disk are -- or the symptoms include, leg, either pain, numbness, burning, or some neurological type of pain, which is a referred pain, into the lower extremity or both lower extremities. This is a pain, quote/unquote, that is not manifested by direct pain; in other words, the hip won't hurt, the thigh won't hurt, the calf won't hurt, but it follows a certain pattern which mimics the way the neurological or the nerves are arranged in the lower extremity.

If you have one particular nerve root that is being pinched or pushed on by a herniated disk, then there's a certain skin area that will be affected, a certain muscle group that will be affected, and a certain reflex which would be affected. It's not a generalized pain, it's a very specific pain in a specific anatomical distribution.

It can be associated with back pain, but it is more commonly, especially down the line, an unrelenting type of specific pain, numbness, burning. By "specific," I mean in specific location that would follow the precise anatomic arrangement of the nerves in the lower extremity.

Q. Doctor, does an individual who complains of leg pain, does that mean that he or she automatically has a herniated disk?

A. Absolutely not.

Q. Can you tell us what you -- a little bit more, why is it absolutely not? What indicators, what special signs are there that you doctors look for that indicates the difference between just casual leg pain and herniated disk pain?

A. Herniated disk pain is very specific. It's usually pain that occurs with certain activities; bending, lifting, standing, walking, straining, coughing, that type of thing. And it would follow -- it would be relieved by sitting, it would be relieved by bed rest, or minimized by bed rest.

It would follow certain patterns; in other words, if you did certain things on

physical examination, such as a straight leg raise, such as a sign called the Lasegue's sign, which just means you're stretching the foot due to a paralyzed or weakened muscle. Fain is a feature, but pain is not -- pain is obviously a subjective aspect of a problem and

it has to be following a certain -- with certain objective findings to be suspected for a herniated disk.

Q. Now, Doctor, there is no dispute in this particular matter that the incident at issue occurs approximately February 15th, 1991.

A. Right.

Q. And that the herniated disk, I believe, is discovered on CAT scan, is it late February, early March of 1992, about a year later?

A. Well, it's not -- it's more definitively addressed, and diagnosed with the MRI scan that followed the CAT scan, but the CAT scan was done certainly subsequent to March of 1992.

Q. So we have a period of a year, is that correct, sir, between the slip and fall and the CAT can?

A. Yeah, it's a little over a year, and it's eight months after the initial treatment ended that the other, second group of doctors, Dr. Kulka and Dr. Shafron, were really called in. So there was more than -- there was -- specifically there was delay in the diagnosis of a herniated disk until the index of

suspicion was high enough for the treating doctor to do a CAT scan

Q Doctor, you anticipated my next area of questioning

In order to assist the doctor to make a determination as to whether or not a herniated disk was caused by an accident one year earlier, would it be of assistance to examine the medical records in order to observe the person's complaints during that one year period of time, would that be helpful?

A Sure, it would be helpful Now, it's not critical to the diagnosis of a herniated disk, but I think it is critical in providing the appropriate or the accurate or the possible cause of the herniated disk.

Q Now, doctor, prior to giving us your opinion that there was not a causal relationship between the heroiated disk and the slip and fall, did you have medical records available to you, sir?

A. If I was going by the history, I would not have thought there was -- I would have thought there may have been a direct correlation, but in that I did have a chance to review medical

records from treatment, that was part of the features that lead me to the diagnosis or the opinion that the disk was not caused by the supermarket fall.

Q. And, Doctor, let's go right to those records. Can we begin, sir, with the emergency room record of the very first time the gentleman has any medical care and treatment, I believe is at Lake Hospital Systems?

A. Correct.

Q. And why don't I ask you Doctor, to fill i what, if any, reference is there to his leg, to nerve pain things of that nature? Please fill us in, sir.

A. There were no mentions of it. He was -- he essentially slipped and fell and landed on his left side. He had pain in the left side of his chest, the left hip, the left thigh, the left knee, and the low back region essentially was sore all over, but there was no specific -- first of all, the neurologic examination was reported -- I'm looking for it here now, but it was reported as normal. It was thought it was a bruising, contusing type of injury he sustained to his leg and ribs

area. There was really no -- there was absolutely no mention of any -- or no suspicion on the physician's part at that time that there was a disk involvement at all. The leg pain at that time was suspected to be leg pain directly related to trauma.

Q. Meaning that --

A. A direct injury.

Q. Okay. So I could hypothetically fall out of this chair and land on the ground, I may have leg pain due to my clumsiness, which is bruising of my leg, but may not have involved a disk?

A. Of course; I mean, you just -- you can't assume that all leg pain or all arm pain is directly related to a disk.

If there is a history of another trauma, or as I'm sure you'll point out, he did have subsequent treatment by a physician who saw him fairly regularly over the next few months.

Q. Well, Doctor, once again, you have led into my next area of inquiry. Let's go right to that physician. I believe it was Dr. Maggiore; is that correct, sir?

A. Correct.

Q. And do you have in your possession a Complete set of the Euclid Therapy Center Records, sir?

A. Yes, I do.

Q. I believe Mr. Mullins was first seen on March 6th of 1991, several weeks, up to three weeks after the incident at issue; correct, sir?

A. Right.

Q. Doctor, again, why don't I turn it over to you. Could you help us understand what Dr. Maggiore's findings were at that time?

A. Well, according to the medical records which stated Dr. Maggiore saw and treated Mr. Mullins from March 6th of 1991 through May 23rd of 1991, they're -- without -- without going over every single entry, there is noted to be a back and neck problem, and there is noted to be a contusion of the left leg. There is -- there were, in Dr. Maggiore's opinion, objective signs, there was muscle spasm, indicating an injury, so that there was some verification that this was -- there was a trauma sustained, which I don't doubt that there was a trauma sustained.

There was no neurological findings, there was no particularly descriptive terms that

were even suggestive of a suspicion of a herniated disk. There was tenderness in the thigh, which you don't get with a disk, there is tenderness in the hip,, which you don't get with a disk.

There was improvement, which is really unusual to get with a disk, so much improvement, that he was actually discharged from the doctor's care back to the Maggiore describes as a, quote, "baseline," end of quote, with no particular complaints. He was discharged from care and essentially had no medical care from March 23rd, **1991**, until -- I'm sorry, May 23rd, **1991**, until March of 1992. So it was about a nine month, eight month, nine month period of time.

And there was a second incident that occurred.

Q Doctor, you're getting ahead of me. Let me see if I can understand some of the points you raised.

Number one, Dr. Maggiore's records, did you have any problems reading them, sir?

A No, they were perfectly typed.

Q Right.

A. Very legible, right.

Q. You had absolutely no problem. In the first visit, 3/6, 1991, he actually palpated or touched the lumbar spine, the exact area where this herniated disk eventually was found a year later; correct, sir?

A. Correct, yes.

Q. Did Mr. Mullins have complaints when the lower back was palpated or touched, sir?

MS. **GARSON:** Objection.

A. There was tenderness over the right paraspinal muscles and right trapezius, so they were going up more toward the neck. The lumbar spine was soft and nontender with flexion to approximately 40 percent because of pain radiating from the left gluteus down the leg. There was no swelling or ecchymosis noted in the leg.

So there really wasn't any mention of his low back at all, most of this was cervical spinal range of motion.

Q. Doctor, please indicate -- drop down about six lines, same entry. There's an indication plan, what does it say?

A. Plan, it says "PTE nitiate physical th apy

after we contact attorney and reevaluate in one week."

MS. GARSON: Objection. Motion to strike.

Q. Doctor, you're reading from the medical records of Dr. Maggiore; are you not?

A. Correct.

Q. He saw -- and we will not go through every single visit, but he continues to follow Mr. Mullins through March and April of 1991; is that correct?

A. Right. And the only real treatment he had was a heat-type treatment, some muscle relaxants, a mild analgesic in the form of Motrin, which is essentially over-the-counter analgesics, he provided him with a TENS unit, which is an electrical pain-blocking unit, and there was improvement, there was improvement over the two-month period of time to the point that he was well enough to be discharged from his care.

Q. Now, let me ask you, there is an indication in the record of April 1991 about tingling in his left leg. Might that mean he had a herniated disk then, sir?

A. Well, it says tingling when sitting for neurological symptoms. I get tingling when I sit for a long period of time.

MS. GARSON: Objection,

A. I think that sitting --

MS. GARSON: Motion to strike.

A. I think that sitting and associate of sitting and tingling are not compatible with a diagnosis, or certainly not diagnostic of a herniated disk, or not even suspicious for a herniated disk.

Q. People can be sitting, Doctor, and experience tingling that has nothing to do with a herniated disk; would that be accurate, sir?

A. Absolutely correct.

Q. The last question as it pertains to Dr. Maggiore's care and treatment is the May 23rd, 1991 entry, which reads, I'll just read two sentences because it gets right to the point.

Quote, "The patient reports that he is

now back to his baseline." Close quote. What do you doctors mean by baseline, sir?

A. The way he started prior to the injury.

Q. Thank you.

The last sentence reads, quote, "He has no particular complaints at this time," period. "We will go ahead and discharge him from our care, prepare a final report," et cetera, et cetera, close quote. Have I read it accurately, sir?

A. Right.

Q. As a lay person, I can understand the term, he has no particular complaints at this time. If Mr. Mullins had been walking around with a herniated disk in May of 1991 under the good and competent care of Dr. Maggiore, can we assume that Mr. Mullins would have had some complaints, sir?

A. I think it's unusual for a herniated disk, as described by Dr. Shafron in his operative note, to be asymptomatic, if it existed, on the basis of both the doctor's opinion and the fact there was really no care rendered after that time until the second incident occurred in late February or March of 1992.

Q You've helped us through the March, April, May period of 1991, the year of the accident; and it's my understanding, through June, July, August, September, October, November, and December of 1991, Mr. Mullins sees no medical care provider as a result of this accident; is that correct, sir?

A. That's my understanding.

Q. January, he sees no care provider, but in February, I believe, or specifically March of 1992, he goes to see Dr. Kulka; is that correct?

A. Right.

Q. You have the medical records of Dr. Kulka available to you; is that correct, sir?

A. Yes, I do.

Q. You had an opportunity in formulating your opinion to review those records; is that correct, Doctor?

A. Yes, I did.

Q. Can you tell us a little bit about what complaints -- I think March 6th, 1992 is the first?

A. March 2nd.

Q. Excuse me, March 2nd, 1992. What are the

complaints -- first, what does Mr. Mullins say happened, why did he go to a doctor?

A. Painting old firehouse studio approximately four or five days prior to this. He developed -- at that point he developed both back and associated back and leg pain. So this is a completely different scenario, where he is not complaining of thigh discomfort to pressure. This is a more specific neurological pain that, you know, obviously it's a different description, even though it's written by a chiropractor. And there was enough of a high index of suspicion that -- and with positive straight leg raising, which was suspicious for a herniated disk, and definite objective signs at that point in time to go along with the severity of the subjective symptoms which are highly compatible and highly suggestive of a herniated disk, of something else happening, certainly a completely differently clinical picture than he had on his treatment with Dr. Maggiore that ended the previous May.

Q. So, Doctor, if I understand, there were some different red flags that went up in March of

1992 when he went to see Dr. Kulka. I'm saying from a physician's point of view. These red flags included low back pain with accompanying leg pain, correct?

A. Well, it was more so than that. It was back pain with leg pain with objective findings compatible with a herniated disk.

Q. What were the objective findings compatible with a herniated --

A. Straight leg raising was abnormal. It's very difficult reading his writing, these are not as well written out and transcribed as Dr. Maggiore's notes. But he had -- he said, quote, "antalgic posture," which means he's cocked over to one side, that he definitely as an .abnormal straight leg raising to 45 degrees on the right, 20 degrees on the left, which would be -- that's really highly suspicious for at least an acute sciatic nerve irritation.

There was no mention of any straight leg raising abnormality in all of Dr. Maggiore's care. So, to me, as a clinician, looking at other clinicians' opinions on physical findings, there's really no mention in any of

Dr. Maggiore's notes that would be compatible with a herniated disk, whereas in the very first entry on Dr. Kulka's records there, it's highly suggestive of a more of a neurological type of leg pain with positive physical findings compatible with an acute herniated disk.

Q. Doctor, straight leg raising, just as a lay person, from what little I understand, there is a nerve that extends from the area of our disks and goes into our legs that is called the sciatic nerve; am I correct so far?

A. Sciatic -- sort of. The sciatic nerve essentially is a combination of a number of levels of nerve roots, each of which exit the spine at a particular level and go together, and they form, in other words, they -- you think of it like a lot of little telephone lines going from a lot of different houses to a main trunk line. The trunk line would be considered the sciatic nerve.

Q. If an individual was asked to lay on their back, and then a doctor was lifting the leg up from its position on the table up into the air, is that called a straight leg raising

A That is one of the ways a straight leg raising test is done. I do it in two ways, I do it with the patient sitting and with the patient lying down. And the findings should be the same, which I'm sure we'll go into later, but they were different when I saw him. But the finding of a straight leg raise is usually indicative of a herniated disk.

Q Well, the point I was trying to understand, Doctor, was, as one raises the leg, one is stretching the sciatic nerve; is that correct, sir?

A Absolutely, correct, that's exactly what's happening.

Q If there was an irritation or some damage to an area of the sciatic nerve, if you're stretching it, will that -- will the person say, hey, that hurts, that produces some pain, do I understand?

A They will probably be a little more vocal than that, it's usually a very painful thing, if it's in fact a neurological thing.

Q Just so I'm clear, when Kulka, Dr. Kulka, in March of 1992, conducted a straight leg

--ising test of the sciatic nerve, did it produce some response from Mr. Mullins?

A. Yes.

Q That is highly suggestive of what, sir?

A Well, until proven otherwise, it's highly suggestive of nerve root irritation and possibly a herniated disk.

Q Had Maggiore ever reported any negative or -- excuse me, any abnormal straight leg raising of Mr. Mullins during all his care and treatment?

A No.

Q All right. Now, Doctor, within, I believe, March of 1992, Mr. Mullins comes under the care of Dr. Melvin Shafron; is that correct?

A. Correct.

Q Dr. Shafron is, by profession, a neurosurgeon, sir?

A. Yes.

Q. Dr. Shafron does a CT scan and MRI, both of which, I believe, in roughly March of 1992?

A. Essentially Dr. Kulka ordered the CT scan. Dr. Shafron felt that was not -- he wanted a more specific test, and then he ordered the MRI scan which was done at Mt. Sinai.

Q. Did you have an opportunity to examine those radiological tests, sir?

A. Yes.

Q What was the result of the CT scan and MRI of March, April 1992, sir?

A. Both the CT scan and the MRI scan were suggestive of a, actually, disk disease at two levels, the L4-5, but a herniated disk at the L5-S1. so the last two levels were not normal, but the lowest level was the one that was herniated.

Q. And that was the area herein Dr. Shafron subsequently performed urgery, is that correct?

A. That's correct.

Q. Doctor, with everything we just reviewed in the context of the medical records, in the context of filling in on the care and treatment given, do you have an opinion, based upon a reasonable degree of medical certainty, as to whether or not the herniated disk operated on by Dr. Shafron in 1992 was directly and proximately caused by the slip and fall that occurred in February of 1991? First, sir, do you have an opinion?

MS. GARSON: Objection.

A Yes, I have an opinion.

Q. What is that opinion, sir?

MS. GARSON: Objection.

A. My opinion is that there is no direct causal relationship between the herniated disk operated on by Dr. Shafron in 1992 and the fall which occurred in February of 1991.

Q. Do you have an opinion, based upon a reasonable degree of medical certainty, as to the proximate cause of the herniated disk upon which Dr. Shafron subsequently performed surgery upon Mr. Mullins?

MS. GARSON: Objection.

Q. First, do you have an opinion?

A. Yes, I have an opinion.

Q. What is your opinion, sir?

A. My opinion is that, according to the medical records, that a second incident occurred as part of a work-related injury which occurred as a professional painter, which he is, or was, and after that particular incident, that's when the true discogenic type of leg pain started, at least according to the medical records.

Q. Doctor, I have to ask you some questions legally, which you may be thinking to yourself, gee, Mr. Curtin, I've answered these for you, but as a matter of law I am required to ask them of you.

Sir, based upon your physical examination, your examination of the records, and the opinions and conclusions you've described to us, do you have an opinion, based upon a reasonable degree of medical certainty, as to whether or not the, one, medical bills incurred by Mr. Mullins as a result of the lower back surgery were caused by the accident of February 1991; and two, any period of time Mr. Mullins might have been away from work was proximately caused by the slip and fall of February 1991?

First, sir, do you have an opinion?

A. Yes, I have an opinion.

Q. What is your opinion, sir?

MS. GARSON: Objection.

A. My opinion is that the -- all expenses occurred -- occurring after the completion of care by Dr. Maggiore were not related to the trip, the fall at Ffnast. In my opinion, all

of the medical charges and the time lost up to the time that he was released from Dr. Maggiore's care were probably related to the fall. But certainly any care and treatment rendered after the painting episode were not related to the original injury.

Q. Doctor, let me move on now to the physical examination portion of your evaluation. First, did you conduct a physical examination of Mr. Mullins?

A. Yes.

Q. Would you please tell the ladies and gentlemen of the jury your findings upon physical exam?

A. The physical examination revealed a large-framed male who was approximately six-foot-one-inches -- six-foot-one-inches in height and weighing in excess of 290 pounds. He stated his normal weight was about 215 pounds.

His gait pattern, or his walking ability, was normal, there was no limp detected. He was able to arise from the sitting position without difficulty, he was able to climb up and down an examining table in a minimally labored physician. In other words, it looked

pretty normal.

Examination of his lumbar spine revealed a well-healed scar compatible with the surgery which we know he had. There seemed to be some restriction of motion in flexion. This was not limited by muscle spasm or uncontrolled muscle contraction, and it was not limited by increased muscle tension, such as that we would see in muscular inflammation. He was able to bend to the mid-tibia level, the mid-shin level. And, I'm looking, and I was unable to ascertain whether the limitation was due to his low back just being tight, or whether it was just the size of his belly, he couldn't bend down any farther. His ability to arch his back, bend sideward, and rotate his lower spine was minimally limited, if limited at all.

There were no objective signs of acute muscle injury or muscle irritation in the form of spasm or dysmetria, which is a muscle incoordinate or incoordination.

Now, we were talking about the straight leg raising earlier, and I think I briefly mentioned that I do the test in two positions.

The straight leg raising was tested with the patient sitting, and that was normal. And by a LaSegue's sign, is when the leg is all -- when the leg is all the way bent up to 90 degrees, and you bring the foot all the way up, that puts excessive stress on the sciatic nerve. That was perfectly normal in the sitting position. In the supine position, however, I could -- I had a difficult time elevating his leg to 30 degrees, and he complained of primarily back pain with that type of maneuver.

so there was a significant difference and significant discrepancy between the sitting and supine straight leg raising, which we can talk about in a couple minutes.

I then did a detailed neurological examination, and that revealed a symmetrical -- that is, both sides about the same -- but a slightly decreased ankle jerk on both sides. The fact that it's symmetrical means that it's probably normal for him.

There was no sensory deficits, his ability to detect touch and pinprick was normal, his reflex ability was normal, and I

also had the opportunity of taking a tape measure and circumferentially measuring his thighs and his calves at set positions, and they were equal, indicating no muscle wasting; no muscle atrophy, which means essentially normal muscular use.

Q. Did you reach a diagnosis as it pertains to your physical examination of Mr. Mullins on March 22nd, 1993, sir?

A. Yes.

Q. And what was your diagnosis, sir?

MS. **GARSON:** Objection.

A. My diagnostic impression at that time was he had suffered a resolved cervical sprain, a contusion of the left leg from the trip and fall. There was absolutely no objective residuals of injury from that particular injury, that he was status post herniated disk from the second injury as described, and also status post disk excision surgery.

Q. Doctor, is that an opinion you hold within a reasonable degree of medical certainty?

A. Yes.

Q. You commented about the straight leg raising. Before I leave the physical examination area,

could we return to that, sir?

A. Sure.

Q. You indicated some disparity in the testing procedure. Would you tell us a little bit more about that?

A. Well, the tests should be the same. You're testing the exact same structures, you're testing the exact same function, and the testing should be the same. When there is a discrepancy, it usually means that the patient's exaggerating. Everybody knows about the lying down straight leg raise, because I'm sure you probably had it hundreds of times throughout the resolution of this herniated disk problem.

Not many people know that there's a sitting straight leg raise that tells the exact same thing. When there is a discrepancy, it usually means there's a degree of malingering, a degree of exaggeration, or, you know, the patient's just not telling the truth. And it would certainly negate or erase the fact that there was a positive straight leg raise in the supine position, while lying on their back, because it should be the same.

If it's normal in the sitting position, it should be normal in the supine, or lying down on the back position.

Q. Now, Doctor, you never treated Mr. Mullins, is that correct, you saw him at my request?

A. That's right.

Q. What records did you have an opportunity to review, sir, in order to facilitate or help your answering my questions as well as those for counsel for plaintiff?

A. When -- the medical opinions I'm giving and my letter were addressed to you after I reviewed the Lake County West Hospital records, the Euclid Therapy Clinic and Dr. Maggiore's records, Dr. Kulka's records, Dr. Shafron's records, some records from the Mt. Sinai Medical Center, including the MRI scan, and records fromt the Sachs, Ross unit at Meridia Hillcrest Hospital, the building, which was the CT scan that was performed.

Q. Doctor, now, you were aware of the fact, sir, that a Dr. Melvin Shafron has reached a contra, or an opposite, conclusion. Specifically, Dr. Shafron, by the time your videotaped deposition has been played, has

given the opinion that he believes there is a cause and effect relationship between the two.

I want you to assume the following facts to be true: Number one, I have before me a complete copy of Dr. Shafron's deposition dated July 9th, 1993. The second fact I would like you to assume is that on page 18 of the deposition, the following question and answer occurred:

Question: "And what is the basis of your opinion, Doctor?"

Answer: "Well, the primary basis is the temporal relationship of his complaints to the injury. If you had these complaints beginning a year, year and a half later, it would be very difficult. But I do believe that very acutely after the injury he had the symptoms of a herniated left'' --

Question: "What were those?"

Answer: "Leg pain and leg tingling."

Question, beginning on Page 21: "Can we thereafter agree, sir, that a very important component of your opinion as to the cause and effect relationship between the slip and fall and herniated disk is Mr. Mullins recounting

that he had leg pain since the slip and fall; is that a fair statement?"

Answer: "It began very shortly thereafter, yes."

That's the end of the quotation. I ask you to assume for the purposes of my following question that I have accurately read a portion of Dr. Shafron's deposition testimony.

Doctor, do you have an opinion, based upon a reasonable degree of medical certainty, as to whether or not the records you reviewed, your physical examination, and the oral history provided by Mr. Mullins, indicated that in fact Mr. Mullins had been complaining of left leg pain soon after the slip and fall at the Finast. First, do you have an opinion?

Yes, I have an opinion.

What is that opinion, sir?

My opinion is there were no complaints of neurological or neurologically-related left leg pain after the slip and fall accident, and under the care of Dr. Maggiore.

MS. **GARSON:** Objection. Motion to strike.

If a doctor such as yourself or Dr. Melvin

left leg pain right after a slip and fall, and that left leg pain and lower back pain, in the manner that you've described to us, Doctor, had continued since February 15th, 1991, would you causally relate a slip and fall to a herniated disk, or could you?

MS. **GARSON:** Objection.

A. You could.

Q. Doctor, you indicated that the CT scan showed evidence of disk disease.

A. Right.

Q. Is that caused by an accident, sir?

A. No.

Q. What is that indicative of, sir?

A. Well, this particularly is degenerative disk disease, so it is probably in this case related to this man's physical build and the type of work that he does. He's a professional painter, he's got to crawl, lift, carry. He's a big guy. And usually the degenerative disk disease seen in these type of people are manifested at more than one level. Traumatic disk herniations rarely affect more than one level. They can affect

it, but it's sort of rare. The fact that there were two levels that had degenerative disk disease, the lower one had the herniation, leads me to feel that the herniated disk stems from the degenerative process which was aggravated, at least by history, and with neurological complaints after the painting incident in February or March of 1992.

MS. GARSON: Objection.

Q. The L5-S1 disk space where the surgery was performed is adjacent or right next to the L4-5 disk space, is that correct?

A. It's about an inch and a half away, yeah.

Q. Those are the two areas the CT scan observed to reflect degenerative changes, is that correct, sir?

A. The MR scan, yes. Not so much the CT, but more the MR scan.

Q. Thank you, Doctor.

Can individuals herniate a disk by sneezing?

A. If you have a diseased disk. First of all, normal disks don't herniate. There is never a case in the literature of medicine that says

you can have a completely normal disk and that normal disk will herniate. The disk has to be undergoing some sort of degenerative process or had a prior injury to herniate. So the fact that a degenerative disk -- if you did get a herniated disk from sneezing, it would be somewhat unusual, but it is possible, and it usually is a diseased disk.

Q. Doctor, just a few more questions, if I may.

Do you have a prognosis for this gentleman's future, regardless of the source of the herniated disk?

What is that, sir?

Well, my -- in general for this man, it's fair. This is primarily due to the signs, you know, his physical signs, he's somewhat overweight, he's got MR evidence of degenerative disk disease at two levels, and he's 30 -- he was 30 years old when I saw him, I'm sure he's about the same, maybe 31 now. But that's not a real good scenario, so chances are he's going to have problems with his back in the future if he doesn't, you know, lose some weight and work on the low

back exercise program. But it's not related to the -- certainly not, in my opinion, related to the slip and fall.

Q. Doctor, last question as to Mr. Mullins.

Based upon your physical examination, the oral history provided by him, and your review of the records, do you have an opinion, based upon a reasonable degree of medical certainty, as to what, if any, injury was sustained by Mr. Mullins as a direct and proximate result of the incident at the Finast Supermarket in May of 1991. First, sir, do you have an opinion?

A. Yes, I have an opinion.

Q. What is that opinion, sir?

A. My opinion is that he sustained a probable strain or sprain of his neck, soft tissue to his neck, and multiple contusions to his left ribs, left hip, and left leg.

Q. Doctor, you've had to take time out from a very busy orthopedic practice in order to present testimony this afternoon, and I would like you to advise us whether or not there will be a charge for the time which you've had to take away from your practice and obviously

not being able to see your patients in order to present this testimony?

A

Finally, Doctor, with the injury you described that Mr. Mullins sustained as a result of the February 1991 accident, would that be permanent in nature?

No, it would not be permanent in nature.

MR. CURTIN: Thank you very much, Doctor, I have nothing further.

MS. GARSON: Off the record.

(A brief recess was taken.)

CROSS-EXAMINATION

BY MS. GARSON:

Q. Hello, Doctor, my name is Ann Garson, I'm the attorney representing Leslie Mullins in this action, and I am entitled to ask you some questions on cross-examination.

You prepared a report for Mr. Curtin regarding your treatment -- or, I'm sorry, you didn't treat Mr. Mullins -- regarding your examination of Mr. Mullins and your review of the records, and this report includes in it what your opinions are and the bases for them; is that accurate?

asked by Mr. Curtin, but I would say my medical opinions are related in my report.

Q. All right. And your opinions are based upon your own notes, your own exam of Mr. Mullins, as well as on the other medical records that were relevant to his history; is that accurate?

A. Yes.

Q. And it's fair to say, then, to at least some degree, that your opinions depend upon the accuracy of your own notes and on the accuracy of the other notes and other medical records in this case?

A. Yes.

Q. I haven't heard you deny that Mr. Mullins had a herniated disk; is that correct?

A. That's true.

Q. And you state in your report that the herniated disk that he experienced was caused by a second accident. Those are your words, second accident.

A. The second incident, yes.

Q. When Mr. Mullins was painting an old firehouse -

A. Right.

-- is that correct?

You stated on direct exam from Mr. Curtin that you didn't recall whether Mr. Mullins had told you this or not. How did you -- did you learn about this through Dr. Kulka's office notes?

A. It's in Dr. Kulka's notes.

Q. Okay. So Leslie Mullins didn't tell you that directly; that's correct, right?

A. I specifically asked him if he had any prior or subsequent injuries, and he denied that he had any injuries.

Q. Okay. You also stated -- I don't want to misstate your so if any point I do, I'm sure that you'll correct me, but I'm trying to remember as I took my notes what you said. You stated that radiating pain and numbness into a leg can be a classic or typical sympton of a herniated disk.

A. Well, it's a general statement. I may have said that, but I must have qualified my statement by saying it has a specific radiation.

Q. Okay.

A. And I'm pretty sure I did talk about the

specificity of the symptomatology.

Q. And you also stated that -- I was somewhat confused about this. Can the size of a herniated disk vary?

A. I'm not really sure what you mean.

Q. Can the degree of the herniation vary?

A. You mean does it get bigger and smaller?

Q. Yes.

A. Not usually.

Q. It can, though?

A. Well, it doesn't usually get bigger. What would happen, it can desiccate or dry out, so that the size of the disk herniation may shrink up, and I've had a couple of my patients that have avoided surgery that way, but I have never -- I can never think of any one that keeps increasing in size.

Q. Have you had occasion to treat patients whose pain varied who had a herniated disk?

A. I think, sure, pain -- well, it's not usually a real painful --

Q. Well, you've already --

A. -- problem.

Q. -- talked about, Doctor, how pain can be relieved by certain things, or made worse by

certain things. Implicit in that is that the pain is not always a constant, unrelenting type of pain or numbness, or whatever it is you want to call it?

A. What -- well, you're saying pain, and I would say that pain with a herniated disk is unusual.

Q. Let me rephrase my question. Can the symptoms of a herniated disk vary?

A. If you have an acute herniated disk --

Q. Yes or no, Doctor, yes or no.

MR. CURTIN: No, Doctor.

A. I can't answer it.

MR. CURTIN: You don't have to answer yes or no.

Q. So you can't answer whether or not the symptoms of a herniated disk can vary? Is it possible for them to vary?

A. I'm not really sure what you mean by vary, you mean vary between levels of herniated disk, vary as in a time reference, vary with activity? I'm really not sure what you really mean.

Q. Well, I'm asking a pretty straightforward question that everyone in the room can

understand. Simply, can the symptoms of a herniated disk vary, can they change from day-to-day, can they be changed from day-to-day, better or worse?

MR. CURTIN: I'm going to object.

A. I'm still not sure exactly what you mean by

Okay, thanks.

It's very significant for you, Doctor, in terms of your opinion as to the herniated disk not being caused by the slip and fall at Finast in February of '91, it's significant for you that Dr. Kulka's records indicate low back and left leg pain in a sciatic distribution; is that correct?

A.

Q. And it's also significant for you in that opinion that there was this quote/unquote, second accident, in Dr. Kulka's notes; is that correct?

A. Is it sig -- well, yes, it's significant to me that something, something triggered this second episode which eventually led to his surgery.

Q. Well, you've in fact attributed the cause of

the herniated disk to this second accident, quote/unquote, which was painting an old firehouse. That's what you said in your report.

A. Essentially the incident was associated with painting a studio of a firehouse. Now --

Q. All right, Doctor, I'm going to have this marked as an exhibit.

MS. **GARSON:** Can we go off the record for a moment?

(Plaintiff's Exhibit 1 marked.)

Q. Okay. Doctor, what you are looking at now is what has been marked as Plaintiff's Exhibit 1, and can you identify that for us?

A. It's a copy of my report I sent to Mr. Curtin.

Q. Okay. And on Page 3 of that report in the second half of the last paragraph, the sentence beginning with, "In my opinion," can you read that one sentence?

A. There are a number of ones that say "in my opinion," which is the one?

Q. Five lines up from the bottom.

A. "In my opinion, a herniated disk occurred as a result of the second accident in February of 1992, and was not related at all to the

February 1991 .slip and fall."

Q. so we can agree that you wrote in your report that this herniated disk was caused by the quote/unquote, second accident, in February of '92, correct?

A. Right.

Q. Given that, it could be very significant to you, Doctor, if you knew that there wasn't ever any kind of second accident occurring while Mr. Mullins was painting a firehouse. Wouldn't that fact be significant to you?

A. Well, the fact is that one of the doctors stated that doing repetitive bending in painting an old firehouse when that -- when the disk herniation symptoms began. Whether there --

Q. I'm asking you --

A. In my opinion, that was a second incident, whether you would consider it an accident, or overdoing it, or painting something in a funny position, the fact that he was able to get --

Q. Doctor, excuse me, you're assuming that that's correct, that there was a second accident --

A. I'm assuming there was a second incident.

Q. -- in February of 19921

A. Right. I'm assuming that.
Q. Thank you.
You've given a lot of credence to Dr. Kulka's notes throughout this, so we might as well look at a few more of them. I'm going to show you -- these I believe are in your file along with his other notes. They are Dr. Kulka's handwritten notes, they are the fourth page of the handwritten notes.
A. Is there a date on it at all?
Q. 3/6/92.
A. Okay, there's two pages?
Q. Yeah.
A. Okay.
Q. Can you read just the very first part of that note, the date of the note?
A. Now, this should be mentioned that there's two notations. He saw -- Kulka saw Mr. Mullins on 3/2/92, and then he saw him again on 3/6/92.
Q. Correct.
A. And on 3/6/92 he mentions the 2/16/91 accident. It was not mentioned in the 3/2/92.
Q. What did he say?
A. He said DI, date of injury, 2/16/91 -- '92, Finast Supermarket on Vine Street in Eastlake,

late evening --

Q. Wait, what was the date, 2/16 --

A. 2/16/91, sorry.

Q. Okay. Finast --

A. Shopping in store near meat department and -- I can't read this -- and tripped over some swept up debris and small cardboard box.

Q. Okay. And then on the next page, Doctor, there's three slashes there on the margin, can you start at the third slash and just read the first sentence as much as you can?

A. While in store, left leg tingling, something to toes.

Q. Thank you, Doctor.

Dr. Corn, is it unusual -- you've treated a lot of people in your practice as an orthopedic surgeon, is it unusual for people with low back injuries to initially go to either a family doctor, a general practitioner, a chiropractor, or someone else before they make it to you?

A. I don't have any statistics. There are patients that go to an emergency room then come to me, there are patients that come to me without seeing anybody else, and there's

patients that *go* to other doctors before they see me.

Q. And of those patients who *go* to other doctors before they see you, it's not unusual for those other physicians to prescribe, for a low back injury, conservative treatment, which might involve rest, medication, physical therapy, or even some home therapy or exercise; is that true?

A. It occurs, sure.

Q. And it's also not unusual that when that conservative care does not resolve a problem, that the person is either referred or seeks out a specialist, such as Dr. Shafron or yourse1f?

A. That is one scenario, sure.

Q. And the specialist is often the one who in fact orders the more sophisticated diagnostic tests, like a CT scan or an MRI?

A. I would say that, sure, that does occur.

Q. And the specialist often makes proper diagnosis after a course of conservative care and further diagnostic tests have been done; isn't that true?

A. It can be, sure.

Q. And then, of course, a specialist is the one who performs any surgery that might be necessary?

A. If the surgery's indicated, yes.

Q. Doctor, you've -- I believe you've already testified, but I'm not sure, have you indicated whether you believe herniated disks can be painful?

A. Well, the herniated disks themselves are not painful, but the pressure on the nerves follow -- produce pain, numbness, within a certain -- within certain parameters, so in essence, that is a painful condition.

Q. Where do they cause the -- if a disk was herniated at L5-S1, where would that cause the pain or numbness that you're talking about?

A. The pain and numbness would be primarily along the -- below the knee, the outside of the leg, radiating down to the fourth toe and the fifth toe, the baby toe and the one right next to it. So it would be on the outside of the foot and would rarely -- well, it wouldn't occur above the level of the knee, it would be strictly below the level of the knee.

Q. And the other levels of the lumbar spine or

low back, the other disk levels cause their each individual dermatome or pattern of pain or numbness, depending on which nerve root they're impinging on; is that correct?

A. Absolutely.

Q. And even after low back surgery is conducted for a herniated disk, pain and limitations can persist even after a successful surgery; isn't that true, Doctor?

A. In general, sure, anything can exist after surgery. Whether it's pain and limitation from the same reason that the surgery was performed is a whole other issue.

Q. In your report, Doctor, that we've marked as an exhibit, you diagnosed -- for your diagnosis you stated that there was resolved cervical strain and left leg contusion. Is that what your report states as your diagnosis?

A. That's by his history and Dr. Maggiore's history, yes.

Q. You never in your report indicated that Mr. **Mullins** sustained a sprain or a strain of his low back, did you?

A. No.

Q. You also stated that it was your understanding he worked as a professional painter; is that correct?

A. Right.

Q. Would it -- did he ever tell you that himself?

A. Yes.

Q. You have a record that you can show me where he told you he was a professional painter?

A. Do I have a record of it that he said it? I have testimony that -- well, I asked him what he did for a living, and that's what he said he did.

Q. Do you have a record that says -- that shows that he said that to you?

A. Do I have a record that says it, no, I don't have any record that says it, other than my medical report.

Q. And you're sure that he said that to you?

A. That he was a painter, yes. That was my understanding.

Q. It must have been your understanding because you also indicated in your report that as of of the date that you saw him he still had not returned back to work as a painter?

A. Since the surgery.

Q Uh-huh.
A. But he was working prior to the development o his disk problem.
Q. As a professional painter?
A. That was my understanding.
Q. Okay.
A. Somebody being paid for painting.
Q. I understand. You also stated, Doctor, that sneezing could cause a herniated disk, correct?
A. Theoretically it could.
Q. Is it more likely that sneezing would cause a herniated disk, or that sneezing would aggravate a herniated disk?
A. I don't know.
Q. And, Dr. Corn, you were hired here today by Mr. Curtin; is that correct?
A. I was asked by Mr. Curtin to review the medical records and be his expert in this action, yes.
Q. And who's paying you for your testimony today?
A. I assume Mr. Curtin's law firm.
Q. Did they also pay you for the review of the records, a separate fee?
A. I'm not -- my beeper's going off. One fee was

presented to them, and I don't know what the amount was, for the conduction -- conducting the examination, review of the medical records, and the development of a medical report. That was one separate fee. And another fee will be generated at the time that we concluded this tonight.

Q. Because what we're doing tonight is based upon an hourly rate?

A. Correct.

Q. And what was the flat fee for the review of the records, the exam, and the preparation of the report?

A. Well, that also is not a flat fee, but it's based on the amount of records, amount of time it took, and I have no idea what that was, I don't have that in front of me.

Q. You have no idea what you've charged them?

A. I have no idea what I charged them for this.

Q. Finally, Doctor, do you recall whether Mr. Mullins was alone when he was here being examined by you?

A. I really don't remember.

Q. Do you recall a Mr. David Borland?

A. Oh, yes, David Borland was here.

Q. Okay. He was there to take notes?
A. I don't know why he was there, but I do know David Borland was there, yes.
Q. Are you aware of the fact that he timed your exam of Mr. Mullins?
A. It doesn't surprise me.
Q. Would it surprise you if he timed the exam as occurring from 2:25 to 2:31?

MR. CURTIN: Objection.

A. Yes, I would think that it would take a little bit more than six minutes to do this examination, yes. I would object to that; I mean, I don't think that's possible.

MS. GARSON: Okay. I have no further questions.

REDIRECT EXAMINATION

BY MR. CURTIN:

Q. Doctor, just a few points. Let me start in the beginning of Ms. Garson's questions.

The first area of inquiry to you was dedicated to whether or not a second incident had occurred. You recall those questions and answers; do you not, sir?
A. Yes.
Q. Do you recall the questions and answers of Ms.

Garson to the effect of, Doctor, you are assuming that a second incident occurred; do you remember that question and answer?

A. Yes.

Q. That was dealing with the painting thing we've been discussing quite a bit.

A. Right.

Q. Doctor, are you aware that Dr. Melvin Shafron's deposition was taken July 9th, 1993, and a Ms. Garson -- I emphasize Ms. Garson -- was in the deposition as was a Mr. Kulwicki, who is a cocounsel for the plaintiffs, I think he was just referred to. I'm sorry, he wasn't referred to, but he's a cocounsel for the plaintiff.

A. Yes, I know who he is.

Q. All right, thank you.

The following question and answer was asked by myself, and I'm going to ask, were you aware of this?

I asked Dr. Shafron the following quote, "Did Mr. Mullins, did Ms. Garson, or did her cocounsel Mr. Kulwicki, ever provide you any other information whatsoever as to a possible cause of the herniated disk aside from -- let

me finish -- the history provided by Mr. Mullins?"

The answer of Dr. Shafron to that question was this: Quote, "They did tell me today that he was -- I can't remember the exact date -- that he was painting something, and that he was bent over to either pick up the paint can, or put the brush in the paint can, and had an acute exacerbation of symptoms. I didn't know that until today." Close quote.

Were you aware of Dr. Shafron's prior deposition testimony, which will be read to the jury, to that effect, sir?

A. No.

Q. Doctor, did I ask you whether or not you could recite every fact, including Mr. Mullins' middle initial, his last known address, his phone number, and possibly his dedicated occupation, or did you understand your role to assist me and the ladies and gentlemen of the jury in understanding whether or not a herniated disk was caused by an accident?

A. I did not think that I had to have the other information committed by memory.

Q. Is it your testimony that his occupation caused any disk, or is it your testimony that for the reasons you previously stated he had abnormalities of a herniated disk?

A. I'm sorry, could you give me that one again?

Q. Certainly. It is not your testimony, sir, that any trade or occupation over a long period of time caused this gentleman a herniated disk --

A. No.

Q. -- rather, if I understood you, you focused --

A. It was not on that incident.

Q. -- you focused on an incident with the assistance of the medical records and you reached an opinion, correct?

A. Correct.

Q. Whether the gentleman worked behind a desk, was a painter, a bell ringer, or a drummer for the Indians, it was not dispositive of your opinion, correct?

A. It does not change my opinion.

Q. Doctor, can individuals with a herniated disk such as discovered in Mr. Mullins, you have the records, it was a relatively large herniated disk discovered in March, April of

herniated disk discovered in March, April of

A. It says a large disk left of midline.

Q. A large fragmentation of, or large herniation, sir?

A. That's what it says.

Q. Doctor, let me ask you the question directly. Do people who walk around with large herniated disks go untreated for eight months, never go to a doctor? I mean, does that happen in clinical experience in the hundreds of herniated disks you've treated?

A. It's unusual, very unusual.

Q. People typically will have some type of symptoms associated with that, correct?

A. They will usually have recurrent symptoms, doing specific activities, doing specific, know, activities, sitting, walking, standing, lifting, getting in and out of a car, something will usually re-exacerbate their symptoms to the point that they would necessitate medical care or some sort of medications, or something like that.

Q. The medical records of Dr. Kulka, although difficult to read, did I believe reveal the history of the painting which you described as