

#581 1

IN THE COURT OF COMMON P —

CUYAHOGA COUNTY, OHIO

BETTY BUGGS,

Plaintiff,

-vs-

JUDGE STRICKLAND-SAFFOLI
CASE NO. 308892

LIU QINGWEI,

Defendants.

- - - -

Videotaped deposition of ROBERT C. CORN,
M.D., taken as if upon direct examination before
Kristin L. Wegryn, a Registered Professional
Reporter and Notary Public within and for the
State of Ohio, at the offices of Robert C. Corn
M.D., 850 Brainard Avenue, Highland Heights,
Ohio, at 4:25 p.m. on Friday, May 9, 1997,
pursuant to notice and/or stipulations of
counsel, on behalf of the Defendant in this
cause.

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MEHLER & HAGESTROM
Court Reporters
1750 Midland Building
Cleveland, Ohio 44115
216.621.4984
FAX 621.0050
800.822.0650

1 APPEARANCES:

2 David I. Pomerantz, Esq.
 3 Pomerantz & Crosby Co., L.P.A.
 4 20676 Southgate Park Boulevard, Suite 103
 5 Maple Heights, Ohio 44137
 6 (216) 587-1221,

7 the Plaintiff;

8 Joseph Wantz, Esq.
 9 Meyers, Hentemann & Rea
 10 2100 The S
 11 Cleveland Superior Avenue
 12 (216) 241-3435, 44114

13 On behalf of the Def dant.

14 ALSO PRESENT:

15 Dan Williams, Video Operator
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 17
 18
 19
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 21
 22
 23
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DIRECT EXAMINATION OF ROBERT C. CORN, M.D.

9 Q. Doctor, could you state your
0 record, please? name for the

12 Q. Dr. Corn, we're here at your offices, it's
13 Friday afternoon, May 9th,

trial in this matter. Before I get into the particulars of this case, I want to ask you so questions in order to qualify you f me and for the court. or the jury

Yes, I do.

23 A. In 1976.

24 Q. And, as I indicated, we're here in your office
25 Could you tell the jury where your office is

located?

My main office is at 850 B inard Road in
Highland Heights, Ohio.

4 Q. Doctor, now, you indicated you got your license
5 in 1976. How long have you actually been
6 practicing medicine?

7 A. Well, I theoretically have been practicing some
8 form of medicine since 1975, when I graduated
9 and I started my internship; however, that was
10 really under the supervision of an institution
11 and other physicians. I really started my own
12 private practice in August of 1979.

13 Q. And have you been practicing medicine
14 continuously since then?

15 A. Yes.

16 Q. Doctor, could you tell us where you obtained
17 your medical training and education? Excuse
18 me.

19 Okay. I received my medical doctorate degree
20 from the Hahnemann University School of Medicine
21 in Philadelphia, Pennsylvania and I received my
22 M.D. degree in 1975.

23 Q. And after that, doctor, did you participate in
24 any internship or residency programs?

25 A. Yes.

1 Q. And could you tell us about those, please?

2 A. In early July of 1975 I started my orthopedic
3 residency, that's an in-training program for the
4
5 field of orthopedic surgery, and I did my
6 training at the Cleveland Clinic. I was at the
7 Clinic from the January, rather July of 1975 to
8 June of 1979 when I graduated from the program.
9 And, doctor, do you now specialize in any
10 particular branch of medicine?

11 Yes.

12 Could you tell us, please, what that is?

13 The specialty is known as orthopedic surgery.

14 And could you explain to us, what is orthopedic
15 surgery?

16 A. Orthopedic surgery basically covers a very large
17 portion of the fields of injury and also the
18 large portion of the human body. We basically
19 take care of diseases, disorders, injuries,
20 tumors, developmental abnormalities, problems
21 with aging, problems with injuries from the base
of the skull down to the tip of the toes. We
deal with problems of the bones, the muscles,
tendons, joints and ligaments, and have a number
of areas of subspecialty work within this field,
including the repair and treatment of fractures

1 and complicated soft tissue injuries,
2 arthroscopic surgery for sports medicine and
3 degenerative conditions, total joint
4 replacements for arthritic conditions, surgery
5 of the spine, surgery of the hand. These all
6 fit into the realm of orthopedic surgery.

7 Q. Thank you, doctor.

8 Now, doctor, as part of your practice, are
9 you on staff at any hospitals?

10 A. Yes.

11 Q. Could you tell us, please, which hospitals?

12 A. I am an attending orthopedic surgeon, which
13 means I have emergency room hospital privileges
14 and surgical privileges at the Meridia Hillcrest
15 Hospital, the Meridia Euclid Hospital, Meridia
16 Huron Hospital, University Hospitals, Bedford
17 Medical Center, the Lake Hospital Systems, as
18 well as the Mt. Sinai Medical Center.

19 Q. Doctor, do you now or have you in the past held
20 any positions at any of these hospitals?

21 A. Yes.

22 Q. Could you tell us, please, about those?

23 A. I was the chief of orthopedic surgery at the
24 Meridia Huron Hospital from January of 1984
25 through November of 1992.

Q. Doctor, do you do any teaching?

A. I do.

Q. Again, please tell us about the teaching you do.

A. The current teaching I do is I instruct fellow doctors and other orthopedic surgeons by using laser and orthopedic surgery, primarily arthroscopy. I do do a few lectures a year through the Case Western Reserve Medical School. I'm still a clinical instructor in orthopedic surgery at that institution. I use to do far more teaching when I was chief of orthopedics, but since I've devoted everything now to my private practice, I've done a lot less of that, but I have taught extensively in the past.

Q. Doctor, are you board certified?

A. Yes.

Q. And could you tell the jury what it means to be board certified?

A. Board certification is a designation that is given by a board or a committee for each medical and surgical subspecialties. If you want to become a special kind of doctor, then you have to go through what the board says you have to go

1 through educational-wise, testing-wise, peer
2 review and interview-wise. You have to complete
3 a training program, been in a certain
4 geographical location for a certain period of
5 time during which time your work is evaluated,
6 and then you have to take a series of
7 examinations through the training program, and
8 the final exams which include both oral exams
9 and written exams. And after fulfilling all the
10 obligations of the American Board of Orthopedic
11 Surgery, you would be certified by the board.

12 Q. Now, doctor, do you belong to any professional
13 groups or societies?

14 A. Yes.

15 Q. Could you please tell us a little bit about
16 which ones you belong to?

17 4. I have both memberships and fellowships. A
18 fellowship a member, but you have to go through
19 a peer review process and be board certified in
20 that area. I'm a fellow in the American Academy
21 of Orthopedic Surgeons; I'm a fellow in the
22 American College of Surgeons; in the American
23 College of Forensic Medicine and the American
24 College of Forensic Examiners. I'm also a
25 fellow in the Orthopedic Research Society.

1 I have memberships in the American Medical
2 Association, the state and local medical
3 associations; the Cleveland Orthopedic Society,
4 as well as a number of other organizations.

5 Q. Thank you.

6 Doctor, do you do any writing in your
7 field?

8 A. I have in the past, yes.

9 Q. What types of papers have you written, and have
10 you been published?

11 A. I have been published. My initial writings were
12 primarily in orthopedic research, some of the
13 preliminary work that is done on biological
14 fixation of bone implants. I did that original
15 research work when I was at the Cleveland
16 Clinic. I've also looked at sports injuries and
17 the various knee braces as well as metabolic
18 bone diseases, osteoporosis, bone infections,
19 trauma, complications in the elderly, in the
20 realm of orthopedic trauma, that type of
21 interest in the past.

22 Q. Now, doctor, at my request, did you have an
23 occasion to see the plaintiff in this case, Miss
24 Betty Buggs?

25 A. Yes.

1 Q. Now, doctor, Miss Buggs saw you as a result of a
2 motor vehicle accident that happened in I
3 believe it was March of 1995, is that correct?

4 A. Correct.

5 Q. Doctor, before I ask you specifically about Miss
6 Buggs, we're here talking about a complaint she
7 has of injury to her low back. In your own
8 practice, do you have occasion to treat people
9 who have back injuries?

10 A. Sure.

11 Q. And, doctor, do you have occasion to treat
12 people for low back injuries specifically?

13 A. Absolutely.

14 Q. Doctor, now, let me also ask you, when you
15 examined Miss Buggs, again, it was at my
16 request, is that correct?

17 A. Yes, it was.

18 Q. All right. Were you asked to examine her as
19 part of a treatment plan?

20 A. No, I was not. And it really would fall outside
21 the guidelines that have been set up in our
22 community for this type of examination. This
23 was strictly a nontreatment examination.

24 Q. Doctor, you've done these type of examinations
25 at my request in the past, have you not?

1 A. Yes, I have.

2 Q. And you've done them for my office as well?

3 A. Sure.

4 Q. All right. Doctor, when you do these
5 examinations at the request of myself or other
6 people from my office, these type of independent
7 one-time examinations, do you treat them any
8 differently than you would an examination of
9 your own clients, or your own patients, I'm
10 sorry?

11 A. I actually spend probably a little bit more time
12 because I only get one chance to see these
13 individuals, but, essentially, the exact same
14 type of evaluation, that is a complex history
15 and a physical examination is performed very
16 similar to what I do for a new patient coming to
17 my office.

18 Q. Now, doctor, do you do these type of one-time
19 examinations for other than lawyers?

20 A. Sure.

21 Q. Could you tell us, please, who else you do these
22 type of examinations for?

23 A. I do these for the Bureau of Workers'
24 Compensation and Industrial Commission of Ohio,
25 and that includes both for to see how people are

1 progressing, there are so-called 90-day exams as
2 well as independent exams on their extent of
3 their disability, that is how much are they
4 impaired by what they did as part of a work
5 injury.

6 I also review cases for the Attorney
7 General's office of Ohio specifically for
8 contested workman's compensation claims. I see
9 people for industries, for companies, for
10 various health plans, as well as defense
11 attorneys and plaintiffs' attorneys.

12 Q. And, doctor, are you compensated for doing these
13 examinations?

14 A. I am.

15 Q. Now, doctor, when did you first see Betty Buggs?

16 A. The exam was on January 9th of 1997.

17 Q. And at that time, doctor, could you tell us
18 generally what you do as part of an examination
19 of a person like Betty Buggs?

20 A. The whole scenario, as individuals come to the
21 building, they check in at the front desk, they
22 are asked to fill out some basic three-page
23 patient questionnaires, and these are all new
24 patients that come to the office, they're placed
25 in an exam room, and then I come into the exam

1 room where I do the history and the actual
2 physical exam.

3 The medical history, basically, I trace the
4 problem from the time the patient perceives they
5 had that problem to the present time in a
6 chronological or time sequence order as close as
7 possible. Included in that is how everything
8 started; who the treating physicians were; what
9 kinds of care and treatment were provided for
10 the individual; what types of studies or scans
11 or operations; or what exactly has transpired
12 during that time period. What kind of problems
13 have they had similar, or did they have problems
14 similar in the past; who their current doctors
15 are; what they understand their current status
16 is.

17 Then I go through a detailed physical
18 examination, which includes hands-on
19 measurements, calculations, trying to observe
20 the individuals do simple activities, do more
21 sophisticated activities to test the function of
22 the muscles, the functions of the skeletal
23 system, and the functions of the nervous
24 system.

25 At the conclusion, that would essentially

1 end the doctor/patient encounter. Then I would
2 sit down at some point in time to review the
3 medical records, which can be a somewhat
4 difficult, slow process looking at all the x-ray
5 studies that were performed, and then try to put
6 it all together in the form of a medical
7 report. So the final product of all this is a
8 medical report.

9 Q Thank you, doctor.

10 Now, did you perform all these steps in
11 this particular examination of Miss Buggs?

12 A I did.

13 Q All right. So you, in fact, obtained a history
14 from her, did a physical exam, reviewed her
15 records, and rendered an opinion?

16 A Correct.

17 Q Doctor, as part of Miss Buggs' history, did she
18 tell you about any prior motor vehicle
19 accidents?,

20 A She did discuss a knee ligament injury she had
21 when she was in California, and a prior low back
22 injury which was as a result of a motor
23 vehicular accident. The last one was in 1993.

24 Q Doctor, did she also give you any past medical
25 history regarding any conditions in her back?

1 A. I do not believe she was aware of any conditions
2 other than the scolioses, a slight curvature-of
3 the spine, that she had since she was an
4 adolescent.

5 Q. Now, doctor, then you obtained as well a history
6 of her regarding this accident?

7 A. Correct.

8 Q. And a history, just so we're all clear, is what
9 the patient tells you about the accident?

10 A. Correct. We're at the mercy of what the
11 patients can remember and what the patients want
12 to tell us, and we basically make some of our
13 conclusions based on what the patients tell us.

14 Q. Doctor, after you obtained the history from Miss
15 Buggs, did you then perform an examination?

16 A. Yes.

17 Q. Could you tell us, please, the details of your
18 examination of her?

19 4. The physical examination that was performed
20 revealed a pleasant 57-year-old female who at
21 the time of the exam did not appear in any
22 distress. She did not appear that she was in
23 pain. Her ability to walk was normal. She was
24 able to get out of a chair without difficulty.
25 She was able to climb up and climb down from the

1 exam table without difficulty. She was, in
2 fact, able to stand on her heels and toes and
3 take a few steps in both those positions without
4 difficulty. Those are what we call composite
5 movements. Those use many muscles in both the
6 upper extremities, that is the arms, the lower
7 extremities, or the legs, the spinal area. You
8 need -- to do these, you need to have a
9 well-coordinated system, that is the muscle's are
10 all working together and the skeletal and the
11 neurological functions are **all** working
12 together. So these were all normal.

13 The examination also was a detailed exam of
14 her neck area. This included feeling, touching,
15 observing her neck moving, looking at any
16 abnormality in the muscle contractions,
17 specifically looking for what we call objective
18 or measurable abnormalities. Patients come in
19 with complaints, and it's the doctor's duty to
20 try to find an objective abnormality that would
21 go along with those complaints. And that's
22 essentially the purpose of the physical exam.

23 Q. Doctor, with regard to the cervical, did you
24 find any objective signs of injury?

25 A. No. Anything that she had had at one point in

1 time had completely resolved. There was a
2 normal functional range of motion and
3 essentially a normal exam in the neck, upper
4 back, shoulders, and both of her arms.

5 Q.' Doctor, you also performed I assume a physical
6 examination of her low back, her lumbar area?

7 A. Yes.

8 Q. And could you tell us the details of that
9 examination?

10 A. The same type of examination was done. In other
11 words, an observation. I looked at, I looked
12 and felt the various muscles on either side of
13 the spine. I looked for certain objective
14 findings of ongoing muscle irritation or
15 inflammation. And there are basically four
16 major objective findings that we look for: One
17 is a muscle spasm, which is a Charleyhorse type
18 of contraction. I also look for dysmetria,
19 which is abnormal muscle movement, or abnormal
20 muscle coordination. I look and I feel for
21 increased muscle tone, that is one side muscles
22 are contracting more than the other, or
23 something called muscle guarding. Muscle
24 guarding is a protective posturing, or a
25 protective reflex, in order to, for the body to

1 protect the injured area. And there were none
2 of these abnormalities that were noted.

3 The examination of her back revealed a, the
4 scolioses, the slight curvature of her spine.
5 There was a well-healed scar compatible with the
6 surgery that was done by Dr. Columbi for the
7 arthritic condition in her back. With some
8 coaxing, she was able to bend forward to almost
9 touch her ankle level, which showed almost
10 normal, completely normal flexion. There was a
11 good reversal of her certain back posturing
12 called the swayback, or lordosis. If you have a
13 normal back, then this will be observed to
14 occur, and it did occur.

15 Arching her back was normal. Rotation and
16 tilting to the sides was also performed
17 normally.

18 I then deliberately tried to test the
19 neurological system, first testing for
20 inflammation in the nerves, or the nerve roots,
21 and there was no objective response to the
22 so-called straight leg raising maneuver. This
23 deliberately puts stretch on the sciatic nerve,
24 which is composed of the nerve leaving the
25 back. The same nerves that were decompressed

1 with Dr. Columbi's surgery, and there was no
2 residuals from that objectively.

3 I then looked at the muscle development of
4 her lower extremities. These included the upper
5 and lower thigh muscles, the calf muscles, the
6 ability of the hip and knee and ankle joints to
7 move, and also testing the neurological
8 function, that is detecting sensation, motor
9 exams and the reflex exams, and these were all
10 within normal limits.

11 So other than the scar that she had from
12 her surgery and the slight scolioses and maybe a
13 tiny little bit of stiffness in the low back, it
14 was really a pretty normal back and lower
15 extremity examination.

16 Q. Doctor, did that complete your physical
17 examination of Miss Buggs?

18 A. Yes, it did.

19 Q. After you completed your physical examination,
20 doctor, did you review any medical records with
21 regard to Miss Buggs?

22 A. Yes, I did.

23 Q. Could you tell the jury what records you
24 reviewed?

25 A. Records were reviewed from the University

1 Suburban Health Center, Meridia Huron Hospital,
2 the Shaker Medical Center, Beachwood
Orthopedics, including the x-rays from those
institutions, an independent evaluation from a
5 Dr. Bacevich, B-a-c-e-v-i-c-h, as well as the
6 records from her. surgeon, Dr. Columbi, and the
7 associated records from Mt. Sinai about the
8 surgery, as well as the actual series of MRI
9 scans, and there were two series, one from St.
10 Luke's and one from Beachwood Orthopedics.

11 Q. Doctor, MRI scans, the jury's heard a little bit
12 about them already, but what are they?

13 A. The MRI is a radiological imaging technique.
14 It's not truly an x-ray, but it creates a
15 picture that is virtually identical in
16 appearance to an x-ray. Instead of having
17 radiation being bombarded through a portion of
18 the body and recorded on a photographic plate,
19 what happens is the body is placed in a very
high density magnetic field. The better and the
higher the magnetic field, the better the image
22 is produced. And then radio waves are bombarded
23 through the patient at extremely high and rapid
24 rates. And how they are bent and distorted by
25 the magnetic fields and how they hit the

1 molecules of water, which are the most common
2 molecules in the body, will determine what types
3 of images. And the varying densities of water
4 between the images, and that's what an MRI scan
5 is. You're essentially looking at images that
6 are created by magnetism, radio waves, and by
7 varying densities of water within the body.

8 Q Thank you.

9 Now, doctor, are you trained to read MRI
10 scans?

11 A Yes.

12 Q And do you as a normal course of your practice
13 read and review MRI scans personally?

14 A Yes, I do.

15 Q Now, doctor, as a result of the examination and
16 the history you obtained as well as your review
17 of the records, did you make some findings
18 regarding Betty Buggs?

19 A Yes.

20 Q And could you tell the jury, please, what your
21 findings were?

22 MR. POMERANTZ: Objection.

23 Q Let me rephrase that, doctor, just to make it
24 clear.

25 Doctor, as a result of your medical

1 training and background and based on your review
2 of the records, the history you obtained and the
3 examination you performed, did you reach any
4 findings to a reasonable degree of medical
5 certainty or probability regarding the condition
6 of Miss Buggs and what injuries, if any, she
7 suffered as a result of the motor vehicle
8 accident of March 28, 1995?

9 A. Yes.

10 Q. And what were your conclusions or findings,
11 doctor?

12 4. My basic conclusions was that she had a
13 significant preexisting condition known as
14 spondylosis, or osteoarthritis of the spine,
15 She also had a condition which was not as bad as
16 arthritis, but a similar type of condition which
17 involve the discs, the intervertebral discs of
18 the lumbar spine. She had moderate disc
19 disease, lumbar degenerative disc disease, and
20 much more significant spinal arthritis. It is
21 the arthritis that ultimately was the problem
22 that was addressed in her surgery that
23 Dr. Columbi did.

24 Q. Doctor, could I interrupt you, please? Before
25 we go any further, could you explain to the jury

1 what the osteoarthritis is and what this disc
2 disease is that you've just talked about?

3 A Well --

4 Q And if it would help, Doctor, maybe you could
5 either use the MRI's or use a model

6 A Sure. I can probably do both

7 Q Okay.

8 A The two basic elements in the spine are the bony
9 elements and the soft tissue elements. The soft
10 tissue elements that were probably injured were
11 the muscles and maybe the ligaments as part of
12 the strain or sprain. What the background
13 disease, or the ongoing disease, was that had
14 been present for years and was ultimately
15 surgically treated was a condition called
16 spondylosis, or osteoarthritis of the spine.

17 Arthritis is a disease of joints. It's not
18 a problem with the discs; it's not a problem
19 with muscles; it's not a problem with ligaments;
20 it's a problem with cartilage. The best way of
21 showing or demonstrating what the cartilage is
22 is we've all broken chicken joints. You've
23 ripped them apart or cut them apart. You saw
24 that nice, rubbery-looking material on the end
25 of the bones. That is the joint cartilage.

1 That is what is affected in arthritis. You have
2 very small joints in the back of the spine known
3 as the facet joints, and these are the joints
4 that, when I bend and straighten the spine, you
5 can see some movement, some sliding movements
6 between. That isn't part of the normal function
7 of the spine, this gliding and sliding. This
8 allows for motion both in the side planes in a
9 spinning or rotatory fashion, and also what we
10 call flexion and extension or front and back
11 posturing. And what the arthritis ultimately
12 influences is the junction points between the
13 two bones, sort of where the tip of the pointer
14 is. When these become arthritic, they stiffen
15 and they form something called bone spurs. And
16 these are a reaction, or an attempt of the body,
17 it's not a great response and it's not a good
18 response, but this is the only thing we know how
19 to do around our joints, and it forms spurs.
20 These are not sharp, stabby things or things
21 that are in the back of cowboy boots. These are
22 space-occupying bony swellings that basically
23 take up more space than they were originally
24 designed to. When those spurs grow big enough,
25 what they do is they encroach, They start

1 squeezing out tissues that normally have more
2 space. What happens, if I can turn this right
3 on end, is that you have the vertebrae, which is
4 the backbone, the bulk of it is in the front.
5 This is the belly side of the back. These bones
6 here, if you feel the middle of your back and
7 you feel those little bones sticking out, this
8 is what you're feeling, the top of these bones.
9 What happens is that the spinal canal, that is
10 the hole by which the spinal cord and the spinal
11 nerve roots traverse the spine, that gets
12 narrowed, and it overgrows, and it eventually
13 pinches off the nerves.

14 In I think one of the exhibits that looks
15 like it must have been from Dr. Morris'
16 deposition, we see the same type of thing on the
17 MR scan. Again, this is slightly reversed.
18 This is the abdominal cavity here. This is the
19 vertebrae, ,or the backbone here. These are the
20 solis muscles, which are in the back of the
21 abdominal cavity. And for those who are
22 interested in butchering meats, that's the
23 fillet mignon in a cow. But that's what this --
24 that's where they are located, in the back of
25 the abdominal cavity.

1 Then we have the spinous process, which is
2 this area in the back, and then the little
3 joints that are right here. If you slip over
4 one image, you can just barely make out the
5 little joint right here because it's the
6 cartilage is so, so much gone, there's almost no
7 space between it. What happens is this keeps
8 growing and it encroaches in, going back to this
9 one again, it moves in closer and closer until
10 it pinches off the nerves that go out to the
11 various portions of the body. And this is what
12 we call either central stenosis, or central
13 narrowing, or foraminal stenosis, that is this
14 neural foramina.

15 If I can just come back to the model, this
16 is the hole in which the spinal nerves exit.
17 And if I pull this nerve out of the way and you
18 can see if this spur keeps growing forward, it's
19 going to pinch off that nerve. It's going to
20 squeeze it toward the vertebral body and squeeze
21 it toward the intervertebral disc. And this is
22 the ultimate condition. This is what arthritis
23 of the spine is.

24 You could have the other condition --

25 Q. Doctor, before we --

1 A. Okay.

2 Q. Excuse me, but you just referred to that MRI and
3 it's already been identified, and could you tell
4 the jury, please, which exhibit it is?

5 A. It's Plaintiff's Exhibit Number 7.

6 Q. Thank you, doctor.

7 Doctor, this condition, this osteoarthritis
8 or spondylosis that you found in Miss Buggs, is
9 that a condition that develops as a result of
10 trauma?

11 A. No.

12 Q. Doctor, how long does it take for a condition
13 like that to develop in a normal person?

14 A. There is the current thought in the people that
15 take care of spines that this takes decades,
16 many, many years to develop. It's a slow,
17 methodical process that as the body ages and
18 it's part of the aging process, these joints
19 become narrower, they lose their cartilage, and
20 they, the body starts to try to heal itself and
21 it forms these spurs, so it takes a long time,
22 many, many years.

23 Q. Doctor, the first MRI that was performed on Miss
24 Buggs I believe was in May of 1995. Is that
25 correct?

1 A. Right. That was the one at St. Luke's.

2 Q. Doctor, that was about five weeks after the
3 motor vehicle accident, give or take?

4 A. Approximately, that's right.

5 Q. Doctor, would the osteoarthritis or spondylosis
6 that you observed in the MRI of Miss Buggs have
7 developed in that five-week period?

8 MR. POMERANTZ: Objection

9 A. Absolutely not.

10 Q. Doctor, to your -- do you have an opinion to a
11 reasonable degree of medical certainty as to
12 whether that osteoarthritis or spondylosis would
13 have developed in that five-week period?

14 A. I do have an opinion.

15 Q. And what is that, doctor?

16 A. It would not have developed in five, in a
17 five-week period of time.

18 Q. Doctor, as you're aware, Miss Buggs ultimately
19 had surgery; by Dr. Columbi, I believe it was in
20 1996, is that correct?

21 A. Yes.

22 Q. And you've reviewed those medical records as
23 well?

24 A. Yes, I have.

25 Q. Do you have an opinion to a reasonable degree of

1 medical certainty as to whether that surgery was
2 related to this motor vehicle accident of March
3 28th, 1995?

4 A. I do.

5 Q. And what is your opinion in that regard, doctor?

6 A. My opinion is the surgery performed was
7 unrelated to the soft tissue injury sustained as
8 part of the motor vehicular accident. The sole
9 purpose of the surgery was to treat the spinal
10 canal and foraminal stenosis.

11 Q. Doctor, could you tell us f'irst, please, how the
12 surgery, what kind of surgery it was and how it
13 treated these problems?

14 A. The problems are created by an overgrowth of
15 spurs, spurs that eventually squeeze off or
16 have, form less room for the nerves to pass
17 through that area, and the sole purpose of the
18 surgery was to remove fragments of bone in the
19 form of the lamina, which is on the model this
20 back portion of the bone, and to do a
21 foraminotomy. In other words, you would
22 basically open up this hole, take off part of
23 the bone, and open up the hole. In other words,
24 this was an operation done solely on the bones.
25 This was not done on the discs. It has nothing

1 to do with the discs. It has nothing to do with
2 her mild degenerative disc disease. It has
3 nothing to do with disc bulges. This is solely
4 related to an arthritis, an arthritic problem.

5 Q. And, doctor, could you tell us then what you
6 base your opinion on that it is not related to
7 the motor vehicle accident, to the extent you
8 might not have already said that?

9 A. Well, we know the accident didn't cause the
10 arthritis. We know the arthritis could not have
11 been caused in that, created in that short
12 period of time. And the stenosis by definition
13 takes many years, if not decades, to develop.
14 So the operation that was performed was for the
15 slow developing problem which finally became
16 symptomatic enough to have the surgery on. It
17 was not related to the accident. The arthritis
18 was not related, and the results basically, if
19 not cured, it certainly vastly improved the pain
20 that she was having. So the pain was coming
21 from an arthritic condition.

22 Q. Thank you, doctor.

23 Now, doctor, you also are aware that there
24 was a second MRI series taken I believe in May
25 of 1996, is that correct?

1 A. Right.

2 Q. Have you reviewed those MRI films as well?

3 A. Yes, I have.

4 Q. Doctor, in your review of the two sets of films,
5 did you note any significant differences in
6 those two sets between 1995 and 1996?

7 A. There was really no significant difference.

8 There was no lesions or abnormalities that were
9 related to a traumatic incident. There may have
10 been a slight change in some of the
11 configurations of the spurs' and the spinal
12 canal, but these were done in two different
13 techniques in two different places, and you,
14 it's hard to compare them, like to superimpose
15 one on top of another. There was very minimal
16 change between the two, and no new conditions
17 were identified.

18 Q. Doctor, in your opinion to a reasonable degree
19 of medical certainty, was there any evidence of
20 an aggravation or acceleration of her
21 osteoarthritis or spondylosis as a result of
22 this motor vehicle accident?

23 A. I do have an opinion.

24 Q. And what is that opinion?

25 A. My opinion is there was no objective

1 radiological evidence of any worsening of this
2 arthritic condition between the two MR scans.
3 And the ultimate procedure that was done was
4 solely for this arthritic condition. There was
5 no permanent aggravation objectively, and there
6 was no acceleration, or objective worsening of
7 the condition, during the time period between
8 the scans.

9 Q. Doctor, let me finally ask you, do you have an
10 opinion to a reasonable degree of medical
11 certainty as to whether the 'plaintiff, Betty
12 Buggs, suffered any injury as a result of this
13 motor vehicle accident of March 28, 1995?

14 A. I do have an opinion.

15 Q. And what is that opinion, doctor?

16 A. My opinion, as related in the medical records
17 and by the patient's history, she probably
18 sustained a strain or sprain, a soft tissue
19 injury solely as a result of the accident.

20 Q. And do you have an opinion, doctor, as to
21 whether, to a reasonable degree of medical
22 certainty as to whether that strain or sprain is
23 a permanent condition?

24 A. I do have an opinion.

25 Q. And what is your opinion in that regard, doctor?

1 A. It is not a permanent condition. It is a
2 condition which has healed, and a condition
3 which typically heals in the general population.

4 MR. WANTZ: Thank you, doctor. I
5 have no further questions.

6 - - - -

7 CROSS-EXAMINATION OF ROBERT C. CORN, M.D.

8 BY MR. POMERANTZ:

9 Q. Doctor, my name is David Pomerantz and I
10 represent the plaintiff, Betty Buggs. I'd like
11 to ask you, first, a few questions.

12 I see you have some notes in front of you.
13 May I have a quick moment to look at your file
14 in this matter?

Sure.

Okay. I don't think we need to go off the
17 record. This will just take two seconds.

18 Thank you. Okay, doctor. Thank you very
19 much. I'll give that back to you.

20 Doctor, is it fair to say that your records
21 consist of the medical report which you wrote to
22 Mr. Wantz, the questionnaire that Mrs. Buggs
23 completed when she came in to see you, and I
24 believe a pain diagram which she also completed
25 when she came to see you, is that correct?

1 A. Correct.

2 Q. And that constitutes your full chart on this
3 matter?

4 A. My personal chart, yes.

5 Q. In addition, you also have records that you've
6 mentioned, correct?

7 A. Correct.

8 Q. Doctor, so the jury understands your role in
9 this case, would you please tell us when you
10 first examined my client, Betty Buggs?

11 A. On January 9th of 1997.

12 Q. Have you ever seen Mrs. Buggs since that day?

13 A. No.

14 Q. So your examination of January 9th, 1997
15 constitutes the one and only time you have ever
16 laid eyes on this woman, correct?

17 A. Correct, to my knowledge.

18 Q. Unlike you, Dr. Morris, her treating physician,
19 has seen her on numerous occasions, correct?

20 A. He has seen her on more than one occasion, yes.

21 Q. Do you have any plans or appointments to see
22 Mrs. Buggs in the future?

23 A. No.

24 Q. Is it fair to say then that your involvement in
25 this case effectively ends today with the giving

1 of your testimony?

2 A. Probably.

3 Q. Unlike you, Dr. Morris remains Mrs. Buggs'
4 treating physician and is responsible for a
5 future case, correct?

6 A. I'm not sure if he is or Dr. Columbi is

7 Q. Have you had the opportunity to review

8 Dr. Morris' records?

9 A. At one point in time I have

10 Q. Were you aware that she saw Dr. Morris as
11 recently as April of this year, last month?

12 A. It would not surprise me.

13 O. All right. So then at least as of April of this
14 year, he was still seeing her, correct?

15 A. Well, we know he saw her at that time. I'm not
16 sure when that time before that was, but at least
17 we know he saw her last month.

18 Q. As you mentioned, you conducted your on-site
19 only examination of Mrs. Buggs at the request of
20 Mr. Wantz, who is the defense attorney in this
21 case, right?

22 A. Right.

23 Q. And the purpose of this examination was to take
24 a history from Mrs. Buggs, examine her, review
25 her medical records, write a report to

1 Mr. Wantz, and to testify in this matter, if
2 asked by Mr. Wantz, correct?

3 A. Yes.

4 Q. And you were, of course, paid for conducting
5 this defense medical examination, correct?

6 A. Correct.

7 Q. As I understand it, your normal charge for a
8 defense medical examination, examining the
9 patient, reviewing the records, and writing the
10 report, ranges from \$400 to \$2,000, depending on
11 the time involved and the c'omplexity of the
12 case?

13 A. Yes.

14 Q. What did you charge Mr. Wantz for doing these
15 things in this case?

16 A. I don't have that figure in front of me.

17 Q. All right. Well, how much time did you spend
18 doing those things in this case?

19 A. I don't remember at this point in time.

20 Q. Well, doctor a moment ago you handed me your
21 file and you told us that that was your complete
22 chart on the matter.

23 A. It is.

24 Q. I saw no time sheets or other records reflecting
25 how much time you spent in this case. Would

1 that be a fair statement?

2 A. There are none. I don't even keep those in my
3 office, nor do they ever exist or ever have
4 existed.

5 Q. So I guess my question would be how do you bill
6 for your time when you have no recollection of
7 how much time you spent on the matter and you
8 keep no records of your time?

9 A. I bill for my time immediately after the job is
10 done, so to speak, and we send a bill out. Only
11 the bill is kept in the computer and I have no
12 other records of how much time or what the time
13 was worth or how much time I spent on the case.

14 Q. So, as I understand it, knowing that you might
15 well be called to testify in this matter by Mr.
16 Wantz, you discarded any notes that you may have
17 which would reflect how much time you spent on
18 the matter?

19 A. Well, you asked two questions. Number one, I do
20 not keep my handwritten notes for any of my
21 patients; and, number two, I do not ever for any
22 purpose even have a time sheet, so to speak,
23 that would allow me or you or anyone to
24 determine how much time I spent on something.
25 That type of documentation never has existed in

1 my office for myself or my partner. But the
2 handwritten notes that I did use to write my
3 original report I do not keep as a part of any
4 record.

5 Q. This is not the first time you've performed one
6 of these defense medical examinations at the
7 request of a defense attorney, am I correct?

8 A. That's absolutely correct.

9 Q. You have, in fact, done so on numerous
10 occasions?

11 A. I do so, as you're aware, on a fairly regular
12 basis over the last 14 years.

13 Q. All right. This is not even the first time that
14 you've performed a defense medical examination
15 at the request of Mr. Wantz, I believe you told
16 us, right?

17 A. That's true.

18 Q. You've been asked to do this by Mr. Wantz on
19 more than one occasion in the past?

20 A. You just asked me that. Yes.

21 Q. All right. And you've also performed defense
22 medical examinations for other members of Mr.
23 Wantz' firm, I believe I counted he has 14,
24 there are 14 attorneys in the firm?

25 A. I no idea how many attorneys. Some -- a lot

1 have left and some new ones have joined, so I
2 couldn't begin to tell you all of them.

3 Q. But you have done examinations for other
4 attorneys in Mr. Wantz' office?

5 A. Yes.

6 Q. And you've been doing this for Mr. Wantz' office
7 since I believe the late '80s, is that correct?

8 A. Probably.

9 Q. And you mentioned before that, all told, you've
10 been doing this, these defense medical
11 examinations for I think you said 14 years?

12 A. Well, it's 1984, so it's 13 years.

13 Q. Thirteen years. All right.

14 And you've also been performing these
15 one-time defense medical examinations for other
16 defense firms in town, is that correct?

17 A. Sure.

18 Q. And for some of these firms you've done so on
19 more than 40 occasions?

20 A. I'm not sure where that number came from, but I
21 don't have a problem with that. Over the 14
22 years, I'm sure it's been over 40 occasions.

23 Q. Okay. I'm talking about for specific firms
24 you've done more than 40.

25 A. I don't know where that number comes from, but

1 I'm sure it exceeds that for some law firms, and
2 probably doesn't come anywhere close to it far
3 other law firms.

4 Q. All right. On average, I understand that you
5 schedule two such defense medical examinations
6 per week, week in and week out?

7 A. For the weeks that I work during the year, yes,
8 it's about 36 to 38 weeks a year.

9 Q. All right. And, as I understand it, that you
10 have a policy that if some are cancelled without
11 adequate notice, that you generally charge for
12 that time, even though the defense medical
13 examination does not go forward, correct?

14 A. Absolutely, yes.

15 Q. Now, in some of these cases you're also asked to
16 give a discovery deposition like you submitted
17 to the other day with me, is that correct?

18 A. Correct.

19 Q. And your normal charge for the discovery
20 deposition, as I understand it, is \$900 an hour?

21 A. The charge for any deposition, whether it's
22 discovery, trial, video or nonvideo, is the
23 same.

24 Q. And that is \$900 an hour?

25 A. Correct.

1 Q. When you conduct these one-time defense medical
2 examinations, you mentioned you render no
3 treatment, offer the person no suggestions, and
4 offer no care plan for that person, is that
5 correct?

6 A. That's the guidelines that have been set up by
7 the Bar Association and the Academy of Medicine
8 for Cuyahoga County, yes.

9 Q. To put this into perspective then, if you
10 conduct a defense medical examination in what
11 you consider a complex case', which would include
12 a \$2,000 charge, give a two-hour discovery
13 deposition, and give a two-hour trial
14 deposition, you would earn, all told, \$5,600?

15 A. Well, first of all, if I was to do that, and if
16 the attorneys would comply with my fees, then I
17 would probably, in the best case scenario, make
18 that kind of money, but it's usually nowhere
19 near that.

20 Q. All right.' But that, in that best case
21 scenario, that would be the fee that you would
22 earn in a single case?

23 A. I wish I could earn that in a single case. I
24 would probably do even less than I do, but I
25 don't come anywhere near that in most cases.

1 Q. And that would be, so I understand, the type of
2 case which you offer no treatment and no
3 treatment plan to the person?

4 A. That's absolutely correct.

5 Q. In this case, you're testifying at the request
6 of the defense attorney regarding a low back
7 injury, correct?

8 A. Well, a neck and low back.

9 Q. And this is not the first time that you've
10 testified at the request of the defense attorney
11 regarding a low back injury', is it?

12 A. No.

13 Q. You've done so on several occasions in the past?

14 A. I'm sure I've done it on many occasions in the
15 past.

16 Q. You've also testified at the request of defense
17 attorneys regarding neck injuries in the past,
18 correct?

19 A. Sure.

20 Q. You've also testified at the request of the
21 defense attorney regarding shoulder injuries in
22 the past, correct?

23 A. Probably.

24 a. You've also testified at the request of the
25 defense attorney regarding wrist injuries in the

1 Q. Correct?

2 A. I'm sure I know.

3 Q. You've also testified at the request of the
4 defense attorney regarding foot and
5 injuries, is that correct?

6 A. I don't recall any, but I'm not saying I never
7 saw those who actually pretty common, all
8 those were were probably the most common ones
9 that have been injured in the musculoskeletal
10 system, so it would not surprise me that I've
11 reviewed cases.

12 Q. And you've also testified at the request of the
13 defense attorney regarding thumb injuries,
14 correct?

15 A. Probably.

16 Q. This is also not the first time you've testified
17 at the request of the defense attorney in a case
18 filed in Cuyahoga County court, correct?

19 A. Correct.

20 Q. You've also, you've done that on several
21 occasions, correct?

22 A. Sure.

23 Q. You've also testified at the request of the
24 defense attorney in cases filed in Lorain
25 County?

1 A. Are you going to list the number of counties,
2 then maybe I could say yes to all of them.

3 Q. Well, we're going to explore that.

4 A. Yes.

5 Q. You've done so on more than one occasion Lorain
6 County?

7 A. Most likely, yes.

8 Q. You've also testified at the request of the
9 defense attorney in cases filed in Lake County?

10 A. Sure.

11 Q. You've done that on more than one occasion?

12 A. Probably.

13 Q. You've been involved in such cases in Summit
14 County?

15 A. Probably.

16 Q. Portage County?

17 A. Yes.

18 Q. Medina County?

19 A. Yes.

20 Q. You've testified at the request of the defense
21 attorney in other car accident cases before this
22 one, have you not?

23 A. Most of them are car accidents.

24 Q. You've also been involved in motorcycle accident
25 cases?

1 A. Probably.

2 Q. Bus accident cases?

3 A. I don't recall any, but I'm not saying I
4 haven't. I don't remember.

5 Q. Well, doctor, if I'm not mistaken, you testified
6 in a case of Lizzy Jackson, a client of mine
7 just two months ago, I'm sorry, rendered a
8 defense medical exam and report in which she was
9 involved in an accident. Do you recall that?

10 A. No.

11 Q. You're not saying it didn't happen, you just
12 don't recall?

13 A. No. I'm saying I don't remember who she is or
14 what the circumstances were.

15 Q. You've also testified at the request of the
16 defense attorney in several slip and fall cases?

17 A. Yes.

18 Q. You've also testified at the request of a
19 defense attorney in uninsured motorist cases?

20 A. Probably.

21 Q. And you've also testified --

22 MR. WANTZ: Objection. Move to
23 strike on that last question. I'm going to
24 object generally at this point. I think
25 we've established that Dr. Corn testifies

1 for the defense on numerous occasions. I
2 think it's a little repetitive and
3 overbearing.

4 Q. You've also testified at the request of a
5 defense attorney in medical malpractice cases?

6 A. Yes.

7 Q. Doctor, as I understand your testimony here
8 today, you do not believe that Mrs. Buggs needed
9 back surgery as a result of the car collision of
10 March 28th, 1995, correct?

11 A. Yes.

12 Q. Rather, in your opinion, Mrs. Buggs needed back
13 surgery because of preexisting degenerative
14 arthritis and the interrelated condition of
15 degenerative disc disease, correct?

16 A. She needed the surgery because of her
17 arthritis. It doesn't matter whether it's
18 preexisting or not. The reason for the surgery
19 was arthritis.

20 Q. Are you saying that the arthritis may have been
21 a result of the car accident?

22 A. We know it's not.

23 Q. Okay. I'm just looking at your report at Page
24 6. In the second paragraph it says "In my
25 opinion, the surgery was solely due to her

1 degenerative arthritis and disc disease." Fair
2 statement?

3 A. That's what it says.

4 Q. All right. Doctor, isn't that what you say in
5 every case in which you're asked by the
6 deference attorney to testify regarding neck and
7 back injuries, that the problems are due to
8 degenerative disc disease?

9 MR. WANTZ: Objection.

10 A. Only when I truly and honestly believe it's,
11 that that's the real source'.

12 Q. Rut isn't that in every case, case after case?

13 MR. WANTZ: Objection.

14 A. Maybe in your opinion it is, but it's not in my
15 opinion. Only when it's valid do I make that
16 opinion.

17 Q. Didn't Mr. Wantz know before he ever hired you
18 in this case that you would say Mrs. Buggs' back
19 problems were due to degenerative disc disease?

20 MR. WANTZ: Objection.

21 A. I have no idea. That's a question Mr. Wantz
22 could probably answer.

23 Q. Well, isn't it a fact in January of 1996 you
24 testified at the request of Mr. Wantz in the
25 case of Mr. Joseph Amatto, a gentleman who was

1 injured in a motor vehicle accident?

2 A I know no idea.

3 MR GANMZ: objection.

4 Q Would you like me to show you your trial
5 testimony, or will you take my word for it?

6 A Make your word for it about what?

7 Q That you testified in a case regarding Joseph
8 Amatto.

9 A I don't know I don't -- I can't remember every
10 case I've testified in.

11 Q Okay All right I'll tell you what

12 MR GANMZ: Counsel, do you want
13 to admit the jury result in that case as
14 well?

15 Q I'll just hand you a -- would you agree with me
16 that that is the sworn position testimony that
17 you gave in the case of Joseph Amatto in January
18 of 1996?

19 A It certainly looks like it.

20 Q And the defense attorney was Joseph Wantz, the
21 same attorney that's here today?

22 A That's the way it looks, yeah

23 Q. And in that case you attributed Mr. Amatto's
24 lack of problems due -- I'm sorry, back problems
25 to negligence, is that true?

1 A. I have no idea.

2 Q. Well, if you'd like to refer to Page 24 of that
3 deposition to refresh your recollection.

4 MR. WANTZ: I'm going to object to
5 the whole line of questioning at this
6 point. To pull out a couple depositions or
7 one deposition and suggest that that's all
8 the doctor testifies to is, I don't believe
9 it's proper.

10 Q. Is it --

11 A. Do you want me to answer th'e question?

12 Q. Is it fair to say you attributed part of his, or
13 his back problems to degenerative disc disease
14 in that case?

15 A. If you're asking me what it says on Page 24,
16 that's what I said, yes.

17 Q. In March of 1996, you testified in a case at the
18 request of Mr. Richard Talbert, a lawyer in Mr.
19 Wantz' firm, in a case involving a gentleman
20 named Harvey Horowitz, who was injured in a car
21 accident. Do you recall that case?

22 A. No.

23 MR. WANTZ: Continuing objection.

24 Q. Doctor, I'm handing you a transcript of your
25 sworn testimony in the case of Harvey Horowitz.

1 Would you agree with me that that is your
2 testimony that you gave in that case and that it
3 was at the request of Richard Talbert, an
4 attorney in Mr. Wantz' firm?

5 A. I'm not really sure. This is -- that's what it
6 says in the front. I don't remember the case at
7 all.

8 Q. Okay. To refresh your recollection, didn't you
9 testify in that case that Mr. Horowitz' neck
10 problems were due to preexisting degenerative
11 disc disease?

12 A. I don't remember.

13 Q. Well, if I can refresh your recollection, if
14 you'd like to turn to Page 25 of that
15 deposition.

16 A. Okay.

17 Q. Isn't it a fair statement that you attributed
18 Mr. Horowitz' neck problems due to preexisting
19 degenerative disc disease?

20 A. Well, it's not all it says here, but he did have
21 preexisting degenerative disc disease.

22 Q. In 1994 you testified at the request of the
23 defense attorney in a case involving a woman
24 named Roberta Grant who injured her back when
25 she fell at Finast. Do you recall that case?

1 A. No.

2 Q. Isn't it a fact that you testified that
3 Mrs. Grant's back problems were due to
4 degenerative disc disease?

5 A. I have no idea.

6 Q. Doctor, I'm handing you a copy of your sworn
7 testimony given in the case of Roberta Jean
8 Grant versus First National Supermarkets. Will
9 you agree that you were called as a witness by
10 the defense attorney in that case?

11 A. That's the way it looks.

12 Q. And, doctor, if I would turn your attention to
13 Pages 35 and 36, would you agree with me that
14 you attributed her low back problems to
15 degenerative disc disease?

16 A. It doesn't really say that. She certainly has
17 degenerative disc disease, and I felt that's
18 where the bulk of her symptoms were coming from.

19 Q. All right., Doctor, in --

20 A. She's had it for five to seven years, so that
21 certainly goes along with it.

22 Q. Doctor, in 1993, you testified at the request of
23 the defense attorney in a case involving a
24 gentleman named James Butcher who was hurt in a
25 car accident. Do you recall that case?

1

4 No

2

MR GRANMIZ: Note my objection as

3

well

4

Will you accept my word that you testified in

5

that case that Mr. Butcher's ongoing neck and

6

back problems were due to degenerative disc

7

disease?

8

4 I'm not going to accept your word on anything

9

Okay Fair enough

10

Doctor I'm handing you a copy of your

11

sworn testimony in that case of James Butcher

12

versus Richard Moses Molman. Would you agree

13

with me that you testified in 1993 at the

14

request of the defense attorney in that case?

15 A

Yes

16 Q

And would you, at Page 38, agree with me that

17

you attributed Mr. Butcher's ongoing neck and

18

back problems were as a result of degenerative

19

disc disease?

20 A

I'm not sure where you saw that He did have

21

preexisting degenerative disc disease I did

22

say that that disc disease and that arthritis

23

were unrelated to the trauma That's what it

24

says.

25

The trauma in that case being a motor vehicle

1 accident like this one?

2 A. Absolutely.

3 Q. Doctor, also in 1993 you testified at the
4 request of the defense attorney in a case
5 involving a gentleman named Leslie Mullins who
6 injured his back, low back in a fall in a
7 store. Do you recall that case?

8 A. No.

9 Q. Didn't you testify in that case that his back
10 condition was the result of degenerative disc
11 disease?

12 A. I don't know.

13 MR. WANTZ: Counselor, are we
14 going to go through every single deposition
15 that you've ever found in the world?

16 MR. POMERANTZ: Yeah.

17 A. So far it's only one a year, so I'm not doing
18 too badly.

19 Q. Doctor, first of all, would you agree with me
20 that in 1993 on November 1st you testified in
21 the case of Leslie Mullins versus First National
22 Supermarkets in a case in Lake County on behalf,
23 or at the request of the defense attorney?

24 A. Yes.

25 Q. All right. And, doctor, turning your attention

1 to Page 43 of that deposition, would you agree
 2 with me that you testified in that case that
 3 Mr. Mullins' ongoing back condition was a result
 4 of degenerative disc disease?

5 A No. It says that he has degenerative disc
 6 disease as part of his ongoing back condition.

7 I'm not sure what else it says. He's got to
 8 read it. This is a very heavyset man
 9 overweight, with a very, very bad degenerative
 10 low back problem. And he's also had multiple
 11 surgeries. So, I mean, there's a lot of things
 12 that were discussed in that case.

13 Q Doctor, in 1990 you testified at the request of
 14 the defense attorney in a case involving a woman
 15 named Rosa Lee Cook who was injured, who injured
 16 her back in a car accident. Do you recall that
 17 case?

18 A No. But you forgot '91 and '92. Maybe we're no
 19 cases in those two years?

20 Q Doctor, would you accept my word that in 1990
 21 you testified at the request of the defense
 22 attorney in a case involving a woman named Rosa
 23 Lee Cook?

24 A. I don't have any recollection whatsoever.

25 Q Doctor, I'll hand you a copy of your sworn

1 testimony in the case of Rosa Lee Cook versus
2 Elizabeth Losito. Would you agree with me that
3 you did testify in that case at the request of
4 the defense attorney?

5 A. Absolutely.

6 Q. And would you agree with me also at Page 30 of
7 that deposition that you stated that Mrs. Cook's
8 dysfunction of her back was due to degenerative
9 disc disease?

10 A. I'm sorry, what page?

11 Q. Thirty.

12 A. Again, you know, what you're saying doesn't
13 really match with any of these cases, but all of
14 these people had degenerative disc disease. I
15 mean, it's the only link between all of these
16 cases, other than the ones that because I've
17 reviewed them, they've all had very significant,
18 very severe degenerative disc disease.

19 Q. Well, and the other link is that you testified
20 in all of these cases at the request of the
21 defense attorney, correct?

22 A. Well, those are the ones that they were asking
23 me to review the cases, absolutely.

24 Q. And just two months ago, as I mentioned before,
25 didn't you examine at the request of the defense

1 attorney a woman who I represented named Lizzy
2 Jackson who was hurt in a motor vehicle
3 accident?

4 A. I don't recall that at all.

5 Q. Doctor, I'll hand you a copy of the report that
6 you wrote in that case, and to the defense
7 attorney, and at Page 4 would you agree with me
8 that you concluded that my client's ongoing neck
9 and back complaints were the result of
10 degenerative changes in the spine? The bottom
11 of the page, I believe.

12 A. That's not what it says. It's not what any of
13 those have really said.

14 Q. Would you like to read that?

15 A. I'll be glad to read it.

16 Q. Go ahead.

17 A. At what point do you want me to read it?

18 Q. Am I correct that at the bottom of the page it
19 says that my client had degenerative changes?

20 A. Yes. There was a very minor degree of stiffness
21 in her neck and low back regions, compatible
22 with the x-ray finding of early degenerative
23 changes in the spine.

24 Q. Okay. Doctor --

25 A. I'm not sure -- I'll let the jury decide what

1 the linkage between all those are.

2 Q. We'll move to strike that.

3 Doctor, without belaboring the point
4 further, isn't it fair to say that when asked to
5 review a case for a defense attorney, you have
6 frequently blamed the person's neck or back
7 problems on the degenerative disc disease?

8 A. I don't think that at all. That's not what I
9 said. That's not what the questions were. And
10 that's -- and these are very misleading examples
11 because there were other items that were
12 discussed throughout all those depositions, and
13 you're picking one line, one page out of what,
14 eight years worth of depositions. And if you
15 want to use those as examples, those are fine,
16 but my answer would be that I tell the truth, I
17 look at each case individually, and if I think
18 the problems are coming from arthritis, then
19 they're coming from arthritis.

20 3. Okay. Doctor, you agree that Mrs. Buggs needed
21 the back surgery she had in July of 1996, do you
22 not?

23 A. I think Dr. Columbi would be the best one to
24 answer that. I don't know. I didn't see her
25 beforehand.

1 Q. Well, doctor, when we met just a few days ago in
2 your office for your discovery deposition,
3 didn't you state under oath, and I'll quote,
4 "Doctor, as I read your report, it's not your
5 opinion that the surgery performed on Mrs. Buggs
6 on July 9th, 1996 was unnecessary surgery?"

7 "Answer: That's true."

8 "Question: So, in other words, you agree
9 that the operation was medically necessary?"

10 "Answer: On the basis of information,
11 yes."

12 Do you agree that that's what you said?

13 A. That's not what you asked me just five minutes
14 ago, two minutes ago. You asked me was, was the
15 operation a result of, was it a medical
16 necessity, and I said it was on the basis of the
17 information, but I wasn't her treating doctor,
18 so I'm not sure I would have said that at that
19 time based on her symptoms. But you certainly
20 know on the basis of the arthritis and on the
21 amount of encroachment, if she had the
22 appropriate amount of symptoms, then she had the
23 right kind of surgery.

24 Q. You are familiar with Dr. Benedict Columbi, who
25 did the surgery?

1 A. Sure. I refer him cases all the time.

2 Q. Okay. Now, as I understand it, you believe
3 that, as you mentioned, that she needed the
4 surgery because of preexisting degenerative
5 arthritis and disc disease, not because of the
6 car accident? That's your opinion?

7 A. She needed the surgery because she was having a
8 painful arthritis of the spine. That's why she
9 needed the surgery, because of the arthritis.

10 Q. You formulated that opinion after you examined
11 her and looked at her recor'ds and when you wrote
12 your report, correct?

13 A. I don't understand what you mean. That's been
14 my opinion ever since the report has been
15 written.

16 Q. And you've not changed that opinion since you
17 wrote your report?

18 A. No.

19 Q. When you met Mrs. Buggs, with Mrs. Buggs, did
20 she give you any history of back problems or leg
21 pain before her car accident back in 1993?

22 A. Before 1993?

23 A. Right.

24 A. Not that I can recall, no.

25 Q. And she told you that she injured her back in

1 1993, but she told you that she made a full
2 recovery, correct?

3 A. That's what she said.

4 Q. Before writing your report, you reviewed a
5 number of records. You've told us about,
6 University Suburban Health Center, Meridia Huron
7 Hospital, Shaker Medical Center, Beachwood
8 Orthopedics, Dr. Columbi, and the Mt. Sinai
9 Hospital records, correct?

10 A. Yes.

11 Q. And also a Dr. Bacevich's report, right?

12 A. Right.

13 Q. That's a complete list of the records you
14 reviewed before writing that report, correct?

15 A. Yes.

16 Q. Can we agree that all of those records are for
17 care after this car accident in 1995?

18 A. I believe that's correct.

19 Q. So, in reaching your opinions, you did not
20 review any records of Mrs. Buggs from before the
21 car accident of March 28th, 1995?

22 A. I don't believe there were any provided to me.

23 Q. And, so we're clear, all the medical records
24 that you received were from Mr. Wantz or the
25 service that he uses, Records Deposition

1 Serwice, correct?

2 4 Probably.

3 O 1 Okay. So it's fair to say that Mr. Wantz did
4 not growiup you with any records from before
5 this car accident in 1995?

6 A True.

7 Q Well, doctor, I'd like the take just a moment
8 and show you those records if I may

9 First of all, I'm going to hand you a
10 record. And you're free to look through all of
11 it if you care to. I'll turn it to the last
12 visit. These are records that I'll represent to
13 you are from Mrs. Buggs' doctor in the 1993
14 accident, a Dr. Prachen, I believe. Now you
15 ever seen those before right now?

16 A. No.

17 Q. Would you agree with me that as of October 22nd,
18 1993 her last visit, it said that her low back
19 had regained the full range of motion she had
20 had previously, or normal for her, and that her
21 low back was main-fine?

22 4 I think t^oat's what it says

23 Q All right Doctor, I'm handing you now what's
24 been -- and, for the record, that was previously
25 marked as Plaintiff's Exhibit 10

1 I'm now going to hand you what's been
2 marked as Plaintiff's Exhibit 9.

MR. WANTZ: What's that?

4 Q. And which I represent to you, doctor, is a
5 physical examination performed of my client in
6 1990. Would you agree with me that this --
7 first of all, have you ever seen this form
8 before?

9 A. I did before we started today.

10 Q. Okay. But today was the first time that you've
11 seen this?

12 A. Correct.

13 Q. Would you agree with me that there are
14 examinations of several parts of the body that
15 are listed in grid form?

16 A. Well, this is a GYN surgeon that's doing this,
17 or GYN physician that's doing this, but there
18 are apparently a checklist of things that should
19 have been looked at.

20 Q. And for each part of the body examined, there
21 are three categories, N for normal, NSA for not
22 significantly abnormal, and ABN for abnormal,
23 correct?

24 A. That's what it says.

25 Q. And would you agree that one of the examinations

1 that's listed on the chart is spine, and another
2 musculoskeletal?

3 A. That's what it says.

4 Q. And would you also agree with me that the
5 physician checked off the N for normal for spine
6 and other musculoskeletal examinations?

7 A. It does say that.

8 Q. Doctor --

9 A. It also mentions there's osteoarthritis
10 somewhere, but I can't really read where it is.

11 Q. Would it be fair to say that -- that's a good
12 point, but would it be fair to say that there is
13 nothing specifically listed as osteoarthritis in
14 the low back area?

15 A. There's nothing specific about that form.

16 Q. Is it true that osteoarthritis can occur in many
17 different joints in the body?

18 A. Sure.

19 Q. Okay. Doctor, I'm going to hand you what's been
20 marked as Plaintiff's Exhibit 8 and represent to
21 you that that is a similar physical examination
22 performed on Mrs. Buggs in 1992. Would you
23 agree with me that there is a similar grid as in
24 the 1990 examination?

25 A. Yeah.

1 Q. And would you also agree with me that under
2 musculoskeletal, spine and other
3 musculoskeletal, that the doctor checked off the
4 normal box?

5 A. The doctor checked off the normal box.

6 Q. Okay. Doctor, for the records that we've
7 reviewed now from before this car accident of
8 1995, would you agree with me that none of them
9 demonstrate complaints of low back pain or leg
10 pain?

11 A. Well, in the extremely limited records from
12 borderline qualified musculoskeletal physicians,
13 I would say none of them said anything about the
14 spine, leg pain, or back pain.

15 Q. Doctor, when you took the history of
16 Mrs. Buggs, you asked her a series of questions,
17 and she responded. You didn't just say start
18 talking, fair statement?

19 A. I asked her, a great deal of questions.

20 Q. All right. In those great deal of questions,
21 did you discover any information regarding any
22 other treatment for her low back other than, and
23 than what we've discussed, what we've looked at
24 just now?

25 A. She did not recall anything else. She didn't

1 even recall the

2 Q She didn't recall the 1998 accident?

3 A She didn't recall that particular record that
4 you showed me.

5 Q But she did freely tell you about the 1998
6 accident when she was asked?

7 A To the best of my knowledge she did. Yes

8 Q Doctor, a car accident is a type of trauma, is
9 it not?

10 A It can be.

11 Q And a disc herniation can be caused by trauma?

12 A It can be.

13 Q If there is preexisting degeneration
14 degeneration or pathology of the disc?

15 A Correct

16 Q So a previously degenerated or injured disc is
17 a predisposing factor to suffering a herniated
18 disc from trauma?

19 A You're asking theoretical questions now?

20 Q I'm asking --

21 A It has not in to do with this case but, yes.

22 You need preexisting conditions to a herniated a
23 lumbar intervertebral disc or a cervical disc

24 Q And that preexisting disc pathology or disease
25 would be a predisposing factor?

1 A. It's not a predisposing factor. It's a pre --
2 it's a prerequisite factor.

3 Q. All right. I'll accept your terminology.

4 In other words, prerequisite means it must
5 be present before you can have a herniation from
6 a trauma such as a car accident?

7 A. It must be present if you have prior to a
8 herniation, that's correct.

9 Q. All right. And Mrs. Buggs did have some
10 preexisting degenerative disc disease, as you've
11 told us, correct?

12 A. Yes. But she never had a disc herniation.

13 Q. A positive straight leg raising test is
14 suspicious for a herniated disc?

15 A. A positive straight leg raising test means that
16 there's probably nerve root inflammation, and
17 one of the causes of that could be a herniated
18 disc.

19 Q. Doctor, I'm only quoting from your testimony
20 that you gave in a previous case, in the Mullins
21 case that we talked about previously. Do you
22 deny having stated that a positive straight leg
23 raising test is suspicious for a herniated disc?

24 A. I just said that it's, it is a result of nerve
25 root inflammation which could be stemming from a

herniated disc

Q All right.

A It doesn't mean you have a herniated disc

or it's suspicious?

A I think that's one of the things you have to rule out, sure.

Q And according to Huron, Meridian Huron Hospital's emergency room records, Mr. Buggs had a positive straight leg raising test bilaterally on March 31st, '95, the third day after this car accident?

A He may have. I don't remember that record.

Q. Do you need to review it?

A. No.

Q. All right. You'll take my word for it?

A I'll take your word for it.

Q All right. By the way, you mentioned before.

You're on the staff of Hillcrest Meridian

Hospital? I'm sorry, Meridian Huron Hospital

A I am still on the staff there, yes.

Q Okay. And Dr. Musker at the Shaker Medical

Clinic also noted positive straight leg raising tests for Mr. Buggs after this car accident?

A That's Max Hagen, yes.

Q Mr. Buggs complained of pain into her legs

1 shortly after this car accident at Meridia Huron
2 Hospital, is that correct?

3 A. I believe she did.

4 Q. She also complained of pain radiating into her
5 leg to Dr. Muskara?

6 A. Probably.

7 Q. And to Dr. Morris?

8 A. At one time, sure.

9 Q. If a doctor such as yourself is told that an
10 individual had continual leg and back pain since
11 the trauma, could you relate that to a herniated
12 disc?

13 A. Not without some sort of physical finding. I
14 would not strictly relate a subjective symptom
15 to any particular diagnosis without an objective
16 finding

17 Q. Doctor, in that same deposition, the Mullins
18 case in 1993, you were asked if a doctor such as
19 yourself, or Dr. Melvin Shafron, who is I
20 believe a neurologist, or was, had been told
21 that an individual had left leg pain right after
22 a slip and fall -- and, by the way, a slip and
23 fall would be a trauma, would it not?

24 A. It could be.

25 Q. And that left leg pain and lower -- and that

1 left leg pain and lower back pain in the manner
2 you've described to this doctor had continued
3 since that date, would you causally relate a
4 slip and fall to a herniated disc, or could you,
5 and your answer was you could. Was that an
6 accurate --

7 A. I have no idea.

8 Q. You want to take a look?

9 A. It may have been my opinion at that time, but it
10 doesn't seem relevant in this case at all.

11 Q. All right. Signs of a hern'iated disc include
12 altered sensation in the associated extremity or
13 extremities?

14 A. Well, you have to be a little more specific than
15 that. That's pretty subjective.

16 Q. Well, would you agree that if you have a sign of
17 a herniated lumbar intervertebral disc, it can
18 include altered sensation in the leg?

19 A. Well, not the entire leg.

20 Q. In a certain pattern of the leg?

21 A. Correct, it could.

22 Q. And that, those altered sensations would include
23 pain in the extremity?

24 A. One of the altered sensations could be pain

25 Q. And, as we mentioned before, Mrs. Buggs as early

1 as three days after this collision was
2 complaining of some leg pain, correct?

3 A I think the medical evidence, medical records
4 said that ~~is~~ ^{was} at one point in time complain
5 primarily of leg pain.

6 Q And you mentioned a moment ago that this
7 radiating pain or symptoms would follow a
8 certain pattern specific to the level of the
9 nerve root irritation?

10 A You didn't get that whole question out before,
11 but yes, that is true.

12 Q All right And as we understand the pattern for
13 the L3/4 disc is different from the L0/L5 disc,
14 which is different both are different from the
15 L5/S1 disc, correct?

16 4 Yes

17 O All of which Mrs. Puggs had operation on in July
18 of 1996, correct?

19 A No, not on the discs. She had those levels
20 operated on.

21 Q At the levels.

22 A The discs were nerve root touch

23 Q Doctor, you don't currently perform the type of
24 intervertebral disc surgery that Dr. Puggs had
25 in July of 1996, is that correct?

1 A. First of all, she did not have any
2 intervertebral disc surgery ever. She had
3 spinal canal stenosis surgery. She had the
4 spurs removed. She had no surgery done of her
5 intervertebral discs.

6 Q. But you don't do that type of surgery?

7 A. But I don't do that type of surgery anyway.

8 Q. Doctor, I want to ask you some questions about
9 the property damage suffered by the two cars in
10 this motor vehicle collision. Am I correct that
11 Mr. Wantz never showed you any photographs of my
12 client's car or of the defendant's car?

13 A. That's true.

14 Q. All right. And Mr. Wantz did not show you any
15 other documents regarding the damage done to the
16 cars such as repair bills or estimates?

17 A. It's irrelevant from my standpoint.

18 2. All right. In fact, I think as you just alluded
19 to, the extent of the property damage played no
20 role whatsoever in the formulation of your
21 opinions in this case?

22 A. It never does.

23 a. All right. And it never does because there's no
24 known medical literature that correlates the
25 extent of automotive damage to the extent of

1 bodily injury?

2 A. Correct.

3 Q. You yourself do not know of any correlation
4 between the extent of damage to the metal of a
5 car in a car accident and the bodily damage to a
6 person in one of those cars?

7 A. There is no correlation. That's why certain
8 areas of the car are designed to deform, so that
9 absorbs of the some energy. So there really is
10 no correlation.

11 Q. Right. In fact, it's outside the realm of
12 modern medicine to be able to correlate property
13 damage to bodily injury?

14 A. I don't know that it's outside modern medicine
15 It's certainly out of the field of orthopedic
16 surgery. I'm not an accident reconstruction
17 specialist, and I'm sure there's medical
18 physicists that do that kind of stuff, but I
19 don't know.,

20 Q. So short of a metallurgist coming in and
21 testifying in this case, it's fair to say that
22 the extent of the property damage is not
23 relevant to what injuries Mrs. Buggs may or may
24 not have suffered in this case?

25 A. Correct.

1 Q. Doctor, you would not argue that Mrs. Buggs
2 suffered soft tissue sprains or strains of her
3 neck and low back in this accident. I think you
4 mentioned that on direct exam?

5 A. I mentioned it on direct exam, yes.

6 Q. Yes. And, in fact, those injuries were
7 diagnosed by the hospital, Dr. Muskara, and
8 Dr. Morris, correct?

9 A. Yes.

10 Q. Doctor, you're familiar with the terms
11 remissions and exacerbations?

12 A. Yes.

13 Q. And wouldn't you agree that a person with neck
14 and low back sprains and strains can have
15 remissions and exacerbations?

16 A. I don't believe they exist.

17 Q. All right. In fact, isn't it the rule rather
18 than the exception that people who suffer neck
19 and low back soft tissue sprains and strains
20 have an ongoing pattern of exacerbations and
21 remissions?

22 A. I don't believe that's true. I know certain
23 doctors have that opinion, but I certainly don't
24 share that opinion at this point in my career.

25 Q. But you did at one time?

1 A. I don't know. I may have been foolish enough to
2 believe that at one point in time.

3 Q. Well, for your memory, doctor, didn't you
4 testify in 1991 in a case of Manju Taneja versus
5 Neil Angerman in which you testified exactly to
6 such a thing?

7 A. I have no idea.

8 Q. All right. Well, I'll refresh your recollection
9 then, doctor.

10 In that deposition -- well, first of all,
11 do you recall that the, tha't the diagnoses in
12 this case were that of neck and low back
13 sprains?

14 A. I don't remember her at all.

15 Q. I'll tell you what, I'll hand you a copy of it,
16 and I'll direct your attention to Page 13.

17 A. This is -- she was one of my patients.

18 Q. Correct. And --

19 A. Okay. Where are we looking at?

20 Q. At Line 17, the question was asked what was your
21 diagnosis for Mrs. Taneja, and your answer was
22 "My impression was acute cervical and
23 lumbosacral sprain and strain, indicating a soft
24 tissue injury to the ligaments and muscles in
25 the neck and low back area."

1 A. That's what it says.

2 Q. And, doctor, if I could turn your attention to
3 Pages 61 at the bottom, continuing on to 62, it
4 says, "Doctor, is it unusual to have in a case
5 like Mrs. Taneja's, to have remissions and
6 exacerbations of the problem?"

7 And didn't your answer, wasn't your answer
8 at that time "No, I think it is the rule instead
9 of the exception?"

10 A. That's what it says. That's incorrect.

11 Q. Okay. So that in that case your testimony
12 wasn't accurate, correct?

13 A. I believe that's an inaccurate statement in the
14 way I believe things really exist.

15 Q. But the testimony you gave to Mr. Wantz today is
16 accurate, correct?

17 A. It's my opinion, yes.

18 Q. All right. And you testified I believe on
19 direct, and you seem to have alluded to it
20 again, that these kind of low back and neck
21 sprains and strains cannot be permanent? Is
22 that your current opinion?

23 A. My opinion, and it's been my opinion for at
24 least five years, that, and this is after
25 extensive research on the project, because I did

1 do a presentation on it, was that there is no
2 documented evidence that once it heals, that any
3 further problem or pain is directly related to
4 the original injury. And just because you hurt
5 it at one time, it doesn't make you immune to
6 pulling it, twisting it, turning the, twisting,
7 reinjuring the same area even in a minor type of
a trauma.

9 Q. But, doctor, back in 1991 when you gave that
10 deposition about Mrs. Taneja, wasn't it your
11 opinion that her chronic inflammatory condition
12 in her upper back and lower back were permanent
13 and that your prognosis was guarded?

14 A. That may have been my opinion at that time. I
15 said I don't remember the case. I don't
16 remember the issues in the case. I don't
17 remember a thing about the case.

18 Q. Well, I'll -- if you want to look it over, it's
19 on Page 24.

20 A. I'm sorry, where am I looking again?

21 Q. I'm sorry. Would you agree with me at Line 15
22 that -- well, starting at Line 12 you said that
23 your opinion was that her condition from this
24 car accident was, is permanent, and that your
25 prognosis was guarded? Through Line 19. And by

1 guarded, you meant that you doubted that she
2 would ever be cured of the symptoms, or that the
3 symptoms would be eliminated. Is that the
4 opinion you gave at that time?

5 A. Well, that's not exactly what I said here.

6 Q. Well, if you want to read it, that's fine.

7 A. What line do you want me to start at?

8 Q. Have I misrepresented what you testified?

9 A. I think you're totally misrepresenting it. This
10 is -- this is -- we're talking about someone
11 that really has not improved at all during a six
12 to eight-week period, not somebody who has
13 healed. This is somebody who still is having
14 problems during that time period.

15 Q. Is it your opinion that Mrs. Buggs' condition
16 improved six to eight weeks after this car
17 accident?

18 A. I don't remember what her situation was at that
19 point in time. That was right after she had her
20 MRI scan. I don't know.

21 Q. All right. Well, would it refresh your
22 recollection to review Dr. Morris' records,
23 because that's about when he started seeing her,
24 wasn't it?

25 A. Well, Dr. Morris can certainly speak for his own

1 opinions.

2 Q. Okay. Let's talk about the outlook for
3 herniated or ruptured discs for a minute. I
4 understand you're not of the opinion that my
5 client suffered a herniated disc?

6 A. This is -- my opinion is this line of
7 questioning would be totally irrelevant to this
8 case.

9 Q. All right. We'll let the Judge and the jury
10 decide that.

11 MR. WANTZ: I'm going on object as
12 well because I don't know that there's any
13 evidence of any herniated disc.

14 Q. And, doctor, just so we have the nomenclature
15 correct, sometimes doctors use the term ruptured
16 disc interchangeably with what you believe, or
17 what you prefer to call a herniated disc,
18 correct?

19 A. Yes. ,

20 Q. All right. So we can understand them to mean
21 the same thing, is that fair enough?

22 A. I don't know if they mean the same thing. I
23 feel that they're the same thing.

24 Q. Okay. Would you agree that once a herniated,
25 that once it's herniated or ruptured, a disc

1 never regains its normal function?

2 A. Yes.

3 Q. In fact, the nucleus degenerates and loses its
4 normal shock-absorbing qualities?

5 A. The whole disc degenerates.

6 Q. You would recognize that once a herniated or
7 ruptured disc is operated, that pain and
8 limitations can persist?

9 A. It depends on what kind of pain you're talking
10 about.

11 Q. I'm just asking is it possible for --

12 A. I don't know what your question is.

13 Q. I'm asking you whether or not after a disc is, a
14 herniated or ruptured disc is operated on, that
15 pain and limitations in the back and into the
16 leg can persist?

17 A. I don't know. They can. Most don't. If it's
18 done for an appropriate and proper reason, most
19 get 95 percent successful results from it.

20 Q. And also that a patient's pain can recur after a
21 period of lesser or no symptoms after surgery?

22 4. I don't understand what you just asked.

23 2. Do you recognize that after surgery on a
24 herniated or ruptured disc that a patient can be
25 pain-free for a time, but then the pain can

recur, or recur?

2 A. I don't know. Some do. Most don't.

3 Q. So you recognize that it does happen?

4 A. I've seen it happen.

5 Q. Okay. And that such recurrence can require

6 further treatment and even other surgery?

A. Possibly.

8 Q. You've reviewed Dr. Columbi's records, correct?

9 A. Yes.

10 Q. And, as you mentioned before, he's continued to

11 see Mrs. Buggs after the operation?

12 A. I don't remember how many times, but I know he

13 followed up with her.

14 Q. Would you agree that Mrs. Buggs complained of a

15 marked increase of back and leg pain after

16 returning to work after the surgery?

17 A. I don't remember.

18 Q. All right. Well, do you have his records with

19 you?

20 A. They're somewhere on my desk.

21 Q. All right. Maybe I'll get you mine to make it a

22 little easier.

23 Doctor, I would turn your attention to

24 Dr. Columbi's notes from September 19th, 1996,

25 and would you agree with me that at that time he

1 notes a marked increase, or she complained of a
2 marked increase in pain in her back and I
3 believe her thigh after returning to work
4 following the surgery?

5 A. Well, that's what it says on this particular,
6 this particular day, yes;

7 Q. All right

8 A. But he felt this was myofascitis, or back
9 inflammation, postoperative back inflammation

10 Q. After disc surgery, patients usually need some
11 kind of rehabilitation, exercise and so forth?

12 A. I think it's appropriate. There are many spinal
13 surgeons that don't think it's appropriate.

14 Q. All right. In your opinion, such rehabilitation
15 should, exercising and so forth should continue
16 indefinitely?

17 A. That's what I would recommend to my patients.

18 MR. POMERANTZ: Thank you,
19 doctor. I have nothing further.

20 - - - -

21 RE-DIRECT EXAMINATION OF ROBERT C. CORN, M.D.

22 BY MR. WANTZ:

23 2. Dr. Corn, I have just a couple follow-up
24 questions for you.

25 You know, before I get into the medicals, I

1 want to go back. And Mr. Pomerantz asked you a
2 lot of questions about your doing defense
3 medicals and your fees and your charging of \$900
4 for depositions per hour.

5 Mr. Pomerantz took your deposition earlier
6 this week, is that correct?

7 A. Yes.

8 Q. For discovery purposes?

9 A. Yes.

10 Q. And, doctor, did you charge Mr. Pomerantz \$900
11 an hour?

12 A. I requested it. He only paid me 400.

13 Q. You ultimately agreed to that fee?

14 A. To avoid any hassles with you or with the Court.

15 Q. Okay. Doctor, by the way, have you ever
16 testified on behalf of a plaintiff in a case?

17 A. Sure.

18 Q. Have you ever been asked by plaintiffs'
19 attorneys to perform examinations?

20 A. Yes.

21 Q. All right. Doctor, I'm also going to hand you,
22 and I think it was marked Exhibit 9, Plaintiff's
23 Exhibit 9, that 1990 physical examination form.
24 Would you look at that again, doctor? At the
25 bottom it indicates I think you said

1 osteoarthritis.

2 A. Yes.

3 Q. It doesn't tell you where the osteoarthritis is?

4 A. No.

5 Q. Doctor, anywhere in that check marked section
6 does it indicate any abnormality that would
7 relate to osteoarthritis?

8 A. Not particularly. Again, this was a GYN
9 examination, so.

10 Q. What's GYN examination?

11 A. That's a gynecological examination.

12 Q. Doctor, every section virtually is checked
13 normal, is it not?

14 A. Every section except the uterine cervix.

15 Q. All right. And despite everything being checked
16 normal, there's still a notation at the bottom
17 that says osteoarthritis?

18 A. That's what it says, yes.

19 Q. And, doctor, in this particular case, you've
20 examined the MRIs?

21 A. I have.

22 Q. All right. And those MRIs revealed
23 osteoarthritis in the lumbar spine, is that
24 correct?

25 A Absolutely

1 Docto~~r~~, now, You w~~e~~r~~e~~ also ask~~e~~d about a
 2 positi~~w~~e straight leg raising test and t~~h~~e exact
 3 that it was positi~~w~~e 4~~r~~e ther~~e~~ ot~~h~~e~~r~~ p~~ro~~bl~~e~~m~~s~~
 4 o~~r~~ things t~~h~~at cause a st~~ra~~ight leg raising test
 5 to b~~e~~ positi~~w~~e besid~~e~~s a p~~er~~niat~~e~~d disc?

6 A S~~u~~re.

7 Q Could You tell t~~h~~e jury som~~e~~ o~~f~~ thos~~e~~ diff~~e~~rent
 8 caus~~e~~s o~~f~~ a positi~~w~~e st~~ra~~ight leg raising test?

9 4 T~~h~~e most common is p~~ro~~abl~~y~~ hamstr~~ing~~ spasm, or
 10 tight muscl~~e~~s, due to recent so~~ft~~ tissue strain
 11 or sp~~rain Ther~~e~~ can b~~e~~ a h~~er~~ve root irritation
 12 s~~er~~om a stretch~~ing~~ or a pulling injury, whic~~h~~ is
 13 v~~er~~y frequent and it usually resol~~ves~~ wit~~h~~in a
 14 s~~er~~ to six-w~~e~~ek period o~~f~~ time and ther~~e~~ -- H
 15 mean, it's a v~~er~~y common abnormality and just
 16 becaus~~e~~ th~~ey~~ say it's a positi~~w~~e straight leg
 17 raising, I don't know wh~~o~~'s doing it, how
 18 th~~ey~~'r~~e~~ doing it, how th~~ey~~'r~~e~~ verifying it, or
 19 wh~~at~~, wh~~at~~ importanc~~e~~ th~~ey~~'r~~e~~ putting on it
 20 It's on~~e~~ of 20 or 30 mis~~er~~ent things that You
 21 can do or You sh~~ou~~ld do and just becaus~~e~~ You
 22 hav~~e~~ on~~e~~ positi~~w~~e subj~~e~~cti~~w~~e s~~er~~ptom don't
 23 mean You sh~~ou~~d an~~y~~ particu~~lar~~ wh~~at~~ o~~ne~~ is
 24 Docto~~r~~, can osteoarth~~rit~~is of th~~e~~ typ~~e~~ that You
 25 foun~~d~~ in Miss Mugg~~s~~, can that caus~~e~~ a positi~~w~~e~~

1 straight leg raising test?

2 A. If it's acutely inflamed, sure.

3 Q. Doctor, Mr. Pomerantz asked you a lot of
4 questions about a herniated disc and
5 symptomatology. Just to be clear, do you have
6 an opinion to a reasonable degree of medical
7 certainty as to whether the plaintiff, Betty
8 Buggs, suffered a herniated disc as a result of
9 this motor vehicle accident?

10 MR. POMERANTZ: Objection. Asked
11 and answered.

12 A. I do have an opinion.

13 Q. Doctor, what is your opinion?

14 A. She never had a herniated disc. There's no
15 documentation anywhere in the medical records of
16 a herniated disc. And the last MRI clearly says
17 that she didn't have any herniated disc.

18 Q. And, doctor, have you reviewed those MRIs
19 yourself? ,

20 A. Yes.

21 Q. Did you find any evidence of any disc
22 herniations?

23 A. No.

24 Q. Doctor, did you also review a report from the
25 radiologist who reviewed the second MRI?

1 A Yes

2 Q Dr Spulowsky, is it reliable that it is

3 A Sielman

4 Q Sielman, I'm sorry

5 Doctor, did that radiologist find any
6 evidence of a herniated disc at any level?

7 A No

8 MR WANNZ: I have no other
9 questions thank you

10 MR POMERANZ: I have no further
11 questions

12 VIDEO OPERATOR: Doctor, you have
13 the right to review this videotape, or you
14 can waive that right.

15 THE WITNESS: I will definitely
16 waive that right

17 VIDEO OPERATOR: Both sides waive
18 the filing of this videotape?

19 MR WANNZ: Sure

20 MR POMERANZ: Yeah

21 (Signature waived)

22

23

24

25

C E R T I F I C A T E

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

I, Kristin L. Wegryn, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named ROBERT C. CORN, M.D. was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 12th day of May 19 97 . A.D.

Kristin L. Wegryn
Kristin L. Wegryn, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires June 21, 1998

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