

Doc 1,

1 State of Ohio, ) SS:

2 County of Cuyahoga. )

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4 IN THE COURT OF COMMON PLEAS

5 -

6 Christina Farinella,

7

vs Plaintiff, ) Case No. CP266018

8 et al., ) Judge Callahan

10 Gary Fallsgraff Defendants. )

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12 THE DEPOSITION OF ROBERT C. CORN, M.D.

13 TUESDAY, JUNE 6, 1995

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15 The deposition of ROBERT C. CORN, M.D., a witness,

16 called for examination by the Defendants, under the Ohio

17 Hordinski Civil Procedure, taken before me, Michelle R.  
, Registered Professional Reporter and Notary

19 Public in and for the State of Ohio, pursuant to

20 agreement, at the offices of Robert C. Corn, M.D., 6801

21 Mayfield Road, Mayfield Heights, Ohio, commencing at 2:30

22 p.m., the day and date above set forth.

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1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 CLAUDIA EXLUND, ESQ.  
Sindell, Lowe & Guidubaldi  
5 610 Skylight Office Tower  
Cleveland, Ohio 44114

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On behalf of the Defendants:

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G. MICHAEL CURTIN, ESQ.  
9 Keller & Curtin  
330 Hanna Building  
10 Cleveland, Ohio 44115

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16 ALSO PRESENT: Barry Hersch

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1 PROCEEDINGS

2 MR. CURTIN: Let the record  
3 reflect this is the videotaped deposition of  
4 Dr. Robert Corn taken in the matter of  
5 Farinella versus Fallsgraff bearing case  
6 number 266018 in the Cuyahoga County Court  
7 of Common Pleas.

8 The case is pending before the honorable  
9 Judge Callahan. My name is Michael Curtin.  
10 I represent the Defendant. We're going to  
11 ask the court reporter now to swear in the  
12 doctor.

13 - - -

14 ROBERT C. CORN, M.D.  
15 a witness, called for examination by the Defendants,  
16 under the Rules, having been first duly sworn, as  
17 hereinafter certified, deposed and said as follows:

18 DIRECT EXAMINATION

19 BY MR. CURTIN:

20 Q. Good afternoon, Doctor.

21 Would you please state your full name for the  
22 record?

23 A. My name is Robert Curtis Corn, C-O-R-N.

24 Q. And what address are we at today, sir?

25 A. We are at -- I have to think, because we just moved

1           the office last week -- 6801 Mayfield Road in  
2           Mayfield Heights.

3   Q.     Is that your professional address?

4   A.     Temporarily, yes.

5   Q.     And your typical, permanent address is what, sir?

6   A.     850 Brainard Road in Highland Heights, Ohio.

7   Q.     The reason is there is some building construction  
8           going on, I believe, correct?

9   A.     Correct, and I haven't memorized the address yet.

10  Q.     All right, Doctor, well I'll try to give some  
11           better questions that perhaps will prompt some  
12           easier answers.

13           Could you tell the ladies and gentlemen of the  
14           jury your area of medical specialty?

15  A.     I am an orthopedic surgeon.

16  Q.     What is involved in the field of orthopedic  
17           surgery?

18  A.     Orthopedic surgery is defined as the medical branch  
19           -- and that is a surgical subspecialty involving  
20           the medical and surgical treatment of diseases,  
21           disorders, and injuries of the musculoskeletal  
22           system.

23           That includes the bones, muscles, tendons,  
24           joints, ligaments, and has a number of areas of  
25           subspecialty surgery, surgery of the spine, surgery

1 of the hand, sports medicine and arthroscopic  
2 surgery, surgery for total joint replacements, bone  
3 tumors, and many little other small areas involved  
4 in orthopedics. It covers a wide area.

5 We usually deal with all of the bones  
6 underneath the head and down to the toes.

7 Q. Doctor, could you give the ladies and gentlemen of  
8 the jury a little bit of your educational  
9 background including college, medical school,  
10 residencies up until the present time?

11 A. I received my bachelor of science in biology from  
12 the Albright College in Reading, Pennsylvania in  
13 1971. I then moved back to my home town,  
14 Philadelphia, Pennsylvania, where I attended the  
15 Hineman University School of Medicine from 1971  
16 through 1975.

17 I received my M.D. degree in 1975. I then  
18 moved out here to Cleveland where, from 1975  
19 through the middle of 1979, I completed the  
20 orthopedic residency program at the Cleveland  
21 Clinic. And from August of 1979 to the present  
22 I've been in the private practice of orthopedic  
23 surgery.

24 Q. Doctor, do you have any hospital privileges at any  
25 greater Cleveland area facility?

1 A. Yes.

2 Q. Could you tell us a little bit about those,  
3 please?

4 A. I am an attending orthopedic surgeon at the Meridia  
5 Hillcrest Hospital, Meridia Euclid Hospital,  
6 Meridia Huron Hospital, University Hospitals,  
7 Bedford Medical Center, the Lake Hospital System,  
8 and the Mt. Sinai Medical Center.

9 Q. Have you ever served in the capacity as a Chief of  
10 Orthopedic Surgery?

11 A. Yes.

12 Q. How long and where, sir?

13 A. I was Chief of Orthopedic Surgery at the Meridia  
14 Huron Hospital from January of 1984 through  
15 November of 1992.

16 Q. , Doctor, what about teaching positions, do you teach  
17 any future doctors?

18 A. Yes.

19 Q. Could you tell us a little bit about that,  
20 please?

21 A. I am currently a clinical instructor in orthopedic  
22 surgery at the Case Western Reserve University  
23 School of Medicine, and I'm an assistant professor  
24 of orthopedic surgery at the Ohio College of  
25 Podiatric Medicine.

1           As part of my regular, routine schedule, we  
2           have residents that either come to the office and  
3           follow me around both in the hospital and out of  
4           the hospital -- they come to the office and see  
5           patients with me.

6           I'm also involved in lecturing medical and  
7           nursing students that are rotating through the  
8           Meridia Huron Hospital.

9   Q.     What about articles, publications, things of that  
10          nature, are you active in that area?

11  A.     I was more active, obviously, when I was in my  
12          training program and shortly afterwards.

13          As my practice has developed and my time for  
14          medical research has dwindled, I haven't had the  
15          opportunity to write many papers recently.

16          But all through my residency and early years, I  
17          had probably 16 or 17 publications, national and  
18          international meetings, exhibits, and the like.

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

21  A.     Yes.

22  Q.     And for how long, sir?

23  A.     Since 1976.

24  Q.     Are you board certified in orthopedic surgery?

25  A.     **Yes.**



1 Q. What is involved in the board certification of an  
2 orthopedic surgeon?

3 A. Every medical and surgical subspecialty has a board  
4 or a committee which sets the standard of training  
5 and education as well as testing for each and every  
6 individual specialty.

7 The American Board of Orthopedic Surgery  
8 established certain criteria which have changed  
9 over the years. But in 1980, when I received my  
10 certification, you had to have completed a  
11 residency program approved by the board, have been  
12 in the clinical practice of orthopedic surgery for  
13 one calendar year and one geographical location.

14 During that time other doctors would come in  
15 and observe you in surgery, observe your charts,  
16 observe how you carry yourself with patients, and  
17 then you were eligible to take the examination.

18 Examinations at that time were given only once  
19 a year over a two-day period of time, oral and  
20 written exams. And after passing the exam and  
21 fulfilling other requirements, you were  
22 certified.

23 Q. Doctor, thank you.

24 Do you as part of your professional practice  
25 examine individuals who are not your patients for

1 the purposes of consultation or evaluation?

2 A. Sure.

3 Q. Did you have the opportunity to see Ms. Farinella  
4 at my request, sir?

5 A. Yes.

6 Q. When was that, sir?

7 A. The date of the examination was August 31st of last  
8 year, 1994.

9 Q. Do you have before you a medical report dated  
10 February 7th, 1995 which essentially summarizes  
11 your findings?

12 A. Yes.

13 O. Doctor, please feel free to refer to that report as  
14 well as any other material that you have that we  
15 will discuss.

16 Doctor, the key issue in this particular case  
17 is trying to make a determination as to whether or  
18 not a motor vehicle accident was the cause of neck  
19 surgery completed in November of **1992** and lower  
20 back surgery completed in July of **1993**.

21 Doctor, initially, does the area of surgery to  
22 the neck and lower back specifically to disk spaces  
23 fall within the subspecialty of orthopedic  
24 surgery?

25 A. The surgery of the spine actually falls in two

1 surgical subspecialties, the field of neurosurgery  
2 and the field of orthopedic surgery.

3 Neurosurgeons are usually more concerned with  
4 diseases and disorders of the nervous system.  
5 Certainly if there is disk pressure on the central  
6 nervous system, that would be their area of  
7 interest and area of expertise, as well.

8 So actually both specialties operate and take  
9 care of patients dealing with spinal injuries and  
10 spinal problems.

11 Q. And clearly orthopedic surgery is one of those  
12 specialties?

13 A. Absolutely, yes.

14 Q. Doctor, how many necks and lower backs do you think  
15 you've operated on in all the years you've been  
16 board certified and licensed to practice  
17 medicine in the State of Ohio as an orthopedic  
18 surgeon?

19 A. ~~The number of back surgeries have diminished over~~  
20 the years, and I haven't done neck surgery since  
21 the mid-1980's simply because I don't see that many  
22 patients that need surgery.

23 Most of these patients usually can be treated  
24 nonoperatively. And since my areas of interest are  
25 primarily with arthroscopic, laser, and total joint

1 surgery, I've sort of given a lot of that surgical  
2 care and treatment to other physicians.

3 I take care of these individuals. I will work  
4 them up. I will manage them conservatively until  
5 the time where surgery is immanent, and then I  
6 usually refer them to a group of neurosurgeons who  
7 would perform the neck surgery on a more routine  
8 basis.

9 The reason I've done that is because, if you're  
10 only doing something three or four times a year,  
11 you obviously aren't as good as someone who does it  
12 on a routine basis. And my personal feeling is  
13 that I want my patients to get the same kind of  
14 care that I would want to have for myself and my  
15 family.

16 And if I don't do something on a routine basis,  
17 and I don't feel comfortable doing it, and I think  
18 other people do it technically a little bit better  
19 than I do, then I usually refer them out.

20 Q. Doctor, perhaps my question was poorly worded.

21 Have you, in your past years of experience,  
22 performed an anterior cervical discectomy and/or  
23 laminectomy discectomy in the lower back?

24 A. Yes.

25 Q. Are you familiar with the signs of those particular

1 conditions that warrant subsequent surgery?

2 A. Sure.

3 I take care of those on a routine basis.

4 Q. Then let's apply that skill, knowledge, expertise  
5 to Ms. Farinella.

6 As I indicated, sir, one of the first things  
7 we're trying to determine is whether a motor  
8 vehicle accident caused two operations.

9 You're aware of that, sir, is that correct?

10 A. Yes.

11 Q. You prepared a medical report, and one of the  
12 things you discussed in your medical report were  
13 some radiological findings called MRI's that had  
14 been taken both before the accident as well as  
15 after the accident, is that correct, sir?

16 A. , Yes.

17 Q. Now, Doctor, this accident, just so the record is  
18 clear, is on October 13th of 1992, is that  
19 correct?

20 A. That's right.

21 Q. Let me begin with the neck in order to determine  
22 whether or not there is a cause and effect  
23 relationship between the October 13th, '92 accident  
24 and the November 20th, 1992 surgery to the neck.

25 Doctor, first, do you have any MRI's that you

1 can discuss with the ladies and gentlemen of the  
2 jury that show whether or not there is a cause and  
3 effect relationship between the two, sir?

4 A. Yes, I do.

5 Q. Would you please -- do you have a shadow box handy  
6 that we could look at, Doctor?

7 A. Yes.

8 Q. Do you have **MRI's** from I believe you indicated **1988**  
9 and **1989** of the neck?

10 A. Yes.

11 Q. As well as one from **1992** after the accident, is  
12 that correct?

13 A. That's correct.

14 Q. And just so I'm clear, the area that we're  
15 focussing on that was operated on was defined as  
16 the cervical 5th-6th vertebra?

17 A. Actually, the disk space between the 5th and 6th  
18 cervical vertebrae.

19 Q. Thank you, sir.

20 That's really the only area that was operated  
21 on at C5-C6?

22 A. Well, you know she did have previous very complex  
23 surgery where all the posterior portions of the  
24 bone **were** removed from the upper cervical through  
25 the entire cervical and the upper thoracic, and

1           that was done a number of years ago.

2                       MS. EKLUND:                       Objection, move  
3                       to strike.

4 BY MR. CURTIN:.

5 Q.       Doctor, at this point in time, would you please  
6           explain to the ladies and gentlemen of the jury,  
7           based upon your review of the medical history and  
8           the records provided to you, what if any prior  
9           history or surgery to the neck was performed to Ms.  
10          Farinella?

11 A.       There was a long-standing history of neck  
12           problems, problems with intermittent numbness in  
13           the hands, in the arms, and in the legs for many  
14           years.

15               The first surgical procedure that was performed  
16           , was actually a number of years ago, 15 to 20 years  
17           ago done, I believe, in Pittsburgh, where she had  
18           an extensive laminectomy, that is the removal of  
19           all the posterior bony structures from the 2nd  
20           cervical vertebra. There are 7 cervical, also, 2,  
21           3, 4, 5, 6, 7, and T1, the first thoracic vertebra.

22               This was all done for what she described as a  
23           congenital problem, an abnormality in the neck.  
24           She had problems postoperatively. She was seen by  
25           the same neurosurgeon that operated on her a

1        number of years before this accident for  
2        intermittent arm numbness, pain, as well as some  
3        ~~burning pain in the feet and the legs.~~

4                This has been an on-going source of problems  
5        through the 1980's with her, as well, being  
6        followed extensively at the Cleveland Clinic. As a  
7        matter of fact, the symptoms were such that her  
8        doctors at that time were curious as to what was  
9        going on in the spine, and she, in fact, had two  
10       MRI's, one in 1988, and one in 1989, of her neck  
11       just to see what was going on, if there was any  
12       anatomical, that is any physical reason for the  
13       significant neurological complaints that she had.

14 Q.        Thank you, Doctor.

15                With that background, are MRI's ordered just  
16        automatically if a person comes in and says, you  
17        know, I woke up this morning, and my neck is a  
18        little bit stiff, or are they only called for in  
19        more serious cases?

20                MS. EXLUND:

Objection. WD

21 A.        The MRI is a very expensive test.

22 Q.        Doctor, let me rephrase the question, because there  
23        was an objection, and I'm sorry. Let me ask the  
24        same question again, but in a little different  
25        way.



1 Doctor, what if any protocol or policy is  
2 followed with respect to administering or ordering  
3 an MRI for a patient?

4 MS. EKLUND: Objection to the  
5 extent that he can only speak to his own  
6 practice.

7 BY MR. CURTIN:

8 Q. In your clinical practice, Doctor, go ahead.

9 A. The reason that people do MRI scans are one and only  
10 one reason, to ascertain whether there -- this is of  
11 the spine I'm talking about -- is to ascertain  
12 whether there is pressure caused by an anatomical  
13 abnormality, a tumor, a herniated disk, a  
14 degenerated disk, pushing on part of the spinal cord  
15 or the spinal nerves.

16 The only indication for an MRI scan is  
17 neurological insult or neurological complaints or a  
18 series of findings that are not explained on any  
19 other physical examination or any radiological  
20 examination.

21 The MRI scan, that is the magnetic resonance  
22 imaging scan was really developed for humans and  
23 perfected probably in the mid-1980's. There's been  
24 a constant evolution of the types of machines that  
25 have been used and the strength of the magnets

1           which generate the pictures. So that you'll see  
2           that there is an increase in what you can see as  
3           the technology has increased.

4   Q.     It's relatively new?

5   A.     1985. It's been around ten years.

6   Q.     When you said it's ordered in cases of neurological  
7           insult, what does that mean?

8   A.     Well, suspected neurological insult. In other  
9           words, either physical findings, objective physical  
10          findings of specific numbness that is following a  
11          certain dermatomal pattern, a certain anatomical  
12          pattern, loss of reflexes, or significant  
13          unresolving subjective symptoms in the form of  
14          burning, numbness, weakness, muscle wasting that  
15          follow particular patterns.

16  Q.     Doctor, I'm going to ask you now to show to the  
17          ladies and gentlemen of the jury the **MRI's** taken of  
18          the Plaintiff's neck in 1988 and 1989, and we'll be  
19          paying particular attention to the area of C5-C6.

20                 Would you please be good enough to place them  
21          on the shadow box, and then you can discuss them  
22          for the ladies and gentlemen of the jury?

23                 Can you put them on the shadow box, sir?

24  A.     Sure.

25  Q.     Thank you.

1 First you'll show us 1988, Doctor?

2 A. Yes.

3 Q. And I believe, so the record is clear, that's  
4 previously been marked as Defendant's Exhibit A, is  
5 that correct, sir?

6 A. Exhibit A, correct.

7 Q. Thank you.

8 Now, we're looking at a 1988 MRI film of Ms.  
9 Farinella's neck, sir?

10 A. Yes.

11 Q. You are placing up Exhibit B, which is what?

12 A. B is the scan done in 1989.

13 Q. Of her --

14 A. Cervical spine, of her neck.

15 Q. Now, C5-C6, can you identify with respect to the  
16 1988 MRI study?

17 A. I think that we just compare the two films. The  
18 '88 is on the left side, and the '89 is on the  
19 right side.

20 You can see just by the quality of the film --  
21 and even if you're not familiar with all th'ese  
22 little pieces parts, you can see they are much more  
23 clearly seen in the later film indicating a  
24 stronger magnet, a better technique for  
25 visualization.

1           The July 14th, 1988 films, what we see here,  
2           this is the base of the brain. This is the  
3           mid-brain area, and this is the spinal cord coming  
4           down. This is the chin, the patient's tongue.  
5           This is the back of the skull and the back of the  
6           neck. '  

7           What we're dealing with, this is the 2nd, 3rd,  
8           4th, 5th, and 6th vertebrae. What we're dealing  
9           with -- and Barry, if you could sort of focus up.  
10          This is a very poor quality as compared to what  
11          we're dealing with now, but there is a small little  
12          white projection, which was -- by the way, these  
13          were interpreted as normal by the radiologist, and  
14          they may, in fact, be normal, but looking at the  
15          other films and going backwards, what I'm concerned  
16          about is this little white area that is sort of at  
17          the tip of the pointer, and there's a little yellow  
18          arrow.

19          You can see the disks have a little white line,  
20          sort of looks like a little black and white  
21          sandwich, but there seems to be an extra little  
22          calcification or extra little white area which may  
23          indicate disk material or may indicate a bone spur  
24          at the C5-6 level.

25   Q.     Now -- I'm sorry, is there anything else with

1           respect to the 1988 film you wish to address,  
2           sir?

3   A.     No.

4           Really basically that's the film that you can  
5           see that structure the best on. This is the most  
6           midline film. Remember these are films that are  
7           cut just like a meat slicer in a vertical  
8           direction. You start at one end and work your way  
9           all the way to the other end, and this is the  
10          middle picture.

11 Q.     Apparently a second MRI is ordered in 1989 due to  
12          neck complaints?

13 A.     Correct, neck and arm complaints, as well.

14 Q.     Excuse me, neck and arm complaints.

15                 It looks like, just from a lay person's view,  
16          ,     that the picture is better.

17 A.     Yes.

18                         MS. EKLUND:

Objection. *W/D*

19 BY MR. CURTIN:

20 Q.     Doctor, how would you describe the difference in  
21          quality of the MRI film between '89 and '88?

22 A.     I think it's pretty obvious that the size of the  
23          magnet and the technique that was used is far  
24          superior.

25                 The later MRI, the 1992 is even better than

1           this one is, but this is obviously a lot better  
2           than the 1988 film.

3   Q.       Then Doctor, let me get right to it.

4           Based upon your review of the MRI film in 1989,  
5           can you determine any abnormality at C5-C6?

6   A.       Well, this is the C5-6 vertebra, again, that I had  
7           previously marked out, and that same little white  
8           area that we saw in the '88 film I think you can  
9           more clearly see. There's clearly a bulging of  
10          disk material that looks virtually identical to the  
11          1988, only obviously much clearer.

12          This was also interpreted by the radiologist as  
13          having a bulging disk, that is a degenerative disk  
14          at the C5-6 level, that is bulging posteriorly,  
15          pushing backwards. It's obviously not pushing back  
16          far enough to push on the spinal cord, as you'll  
17          see, but it is obviously pushing backwards and is  
18          grossly abnormal. It's the same level that's  
19          abnormal in the 1988 film.

20   Q.       You have placed little arrows by both of those, is  
21           that correct, sir?

22   A.       Yes.

23   Q.       The 1989 film is done at the Cleveland Clinic  
24           Foundation, and have you had an opportunity to look  
25           at the MRI interpretation from the Cleveland Clinic

1 Foundation?

2 A. Yes.

3 Q. That's by a separate radiologist.

4 That wasn't you, was it, sir?

5 A, No, it was not.

6 Q. What if any indication by the radiologist at the  
7 Cleveland Clinic in 1989 was there with respect to  
8 C5-C6?

9 A, Well, even though they call the study a normal  
10 study, it did show an abnormality in the form of a  
11 ventral bulge, that is a back bulge, just as I  
12 pointed out at the C5-6 level.

13 This is not normal, and I disagree with the  
14 radiologist's interpretation that this is normal.  
15 He did point out an abnormality. Why the final  
16 interpretation was normal is beyond me, but I think  
17 I am pretty convinced that there was an abnormality  
18 in the '88 film, an abnormality in the '89 film,  
19 and as we'll see in the '92 films, the exact same  
20 process. It's at the same level. It's a little  
21 larger due to progressive degeneration of that  
22 particular disk.

23 MS. EKLUND: Objection, move  
24 to strike. This is beyond the parameters of  
25 the medical report which was issued in this

1 matter and in violation of local Rule 21.

2 BY MR. CURTIN:

3 Q. Doctor, is a radiologist a board certified  
4 orthopedic surgeon?

5 A. No.

6 Q. With respect to the July, 1988 MRI, it was done in  
7 response to what complaint, sir, based upon your  
8 review of the medical records?

9 A. Patient has poor balance, paresthesias, that is  
10 numbness and tingling -- that's what paresthesias  
11 means -- and a movement disorder of the upper and  
12 lower extremities.

13 Q. What is your upper and lower extremity?

14 A. Arms and legs.

15 Q. That's based upon your review in '88 of the  
16 Cleveland Clinic records?

17 A. Correct.

18 Q. Now, Doctor, then let's take us to, please, 1992.

19 A third MRI is done, is that correct, sir?

20 A. Correct.

21 Q. And that serves as the spring board or the basis  
22 for subsequent surgery, is that correct, sir?

23 A. That's right.

24 Q. Doctor, can you tell the ladies and gentlemen of  
25 the jury whether or not the abnormality you pointed



1 to in the '88 and the '89 films can be seen in the  
2 1992 study?

3 A. Absolutely.

4 Q. Would you please show the ladies and gentlemen of  
5 the jury that abnormality, sir?

6 A. What I'll do is I'll leave the '89 film up in that  
7 the '89 is the better of the two studies.

8 Q. That's marked as Exhibit C, sir?

9 A. Correct, this is C.

10 I think that what is visible in this -- again,  
11 the same level, the C5-6 level. There is again  
12 this little bubble of tissue. There's no question  
13 about the presence of this.

14 In my opinion, there's no question it is at the  
15 exact same level. It looks maybe slightly bigger,  
16 maybe a half a millimeter to a millimeter bigger,  
17 but definitely the disk material has pushed out  
18 just a tiny little bit more than the disk material  
19 pushed out in the 1989 film.

20 This is the MRI that was done after the  
21 accident.

22 MS. EXLUND: Objection, move  
23 to strike for the reasons previously  
24 cited.

25 /////

1 BY MR. CURTIN:

2 Q. Doctor, based upon your review of the medical  
3 history, the records provided to you, and based  
4 upon your skill and experience, do you have an  
5 opinion based upon a reasonable degree of medical  
6 certainty as to whether or not the abnormality  
7 you've been describing at C5-C6 was a direct and  
8 proximate cause of the motor vehicle accident of  
9 October 13th, 1992?

10 First, sir, do you have an opinion?

11 A. I do have an opinion.

12 Q. What is your opinion, sir?

13 MS. EKLUND: Objection for the  
14 same reason previously cited. W/D

15 A. My opinion within a reasonable degree of medical  
16 certainty is that this is not, not a traumatic  
17 problem, but a degenerative problem that was seen  
18 for many years before at the exact same level.

19 Q. Now, Doctor, did you have an opportunity to review  
20 any of the operative notes and pathology notes with  
21 respect to the surgery done in November of 1992  
22 with respect to Ms. Farinella's neck?

23 A. Yes.

24 Q. Do those medical records support or take away from  
25 your theory concerning this being a degenerative

1 as opposed to trauma-related abnormality in the  
2 neck?

3 MS. EKLUND: Objection. <sup>W</sup>9

4 A. The medical records clearly indicate in Dr.  
5 Columbi's operative note that he removed a  
6 degenerative disk. And a degenerative disk was  
7 noted on the pathology report.

8 That is the specimen that was taken from  
9 surgery and looked at by an independent physician  
10 felt that this was a degenerative material.

11 Q. Doctor, there was an objection raised, so I have to  
12 repeat the question. I'm sorry.

13 First I'm going to hand you the Mt. Sinai  
14 medical record from the operative note of Dr.  
15 Columbi dated November 20th, 1992.

16 Have you seen that, sir?

17 A. Yes.

18 Q. I'm going to hand you what is the pathologist's  
19 report from November 20th, 1992, Mount Sinai  
20 Hospital.

21 Have you seen that, sir?

22 A. Yes.

23 Q. Based upon your skill, experience, and knowledge,  
24 what if any indication, based upon a review of the  
25 records, also, is there with regard to whether or

1 not the disk that was removed at C5-C6 was  
2 degenerative?

3 A. It's obviously degenerative by both physicians'  
4 opinion.

5 Q. Tell us how you know that, sir.

6 A. Well, Dr. Columbi stated that, quote, a large  
7 amount of obviously degenerative, fragmented disk  
8 was removed.

9 And Dr. Jeffrey Mendelson, who is a pathologist  
10 at Mt. Sinai, stated that these fragments were --  
11 that they had degenerative changes.

12 So this was clearly a degenerative disk that  
13 was removed from the C5-6 level.

14 Q. Doctor, based upon the pathologist's report and the  
15 operative note, what if any impact does that have  
16 upon your theory regarding these changes being  
17 degenerative in nature?

18 MS. EXLUND: Objection. WD

19 A. I think they go along with my opinion that this was  
20 a long-standing degenerative disk which was  
21 operated on in **1992** by Dr. Columbi.

22 Q. Doctor, let me now turn your attention, if I could,  
23 to the lower back.

24 There was some surgery performed in July of  
25 **1993**, I believe, **is** that correct?

1 A. Right.

2 Q. There was a laminectomy and discectomy done at that  
3 level, sir?

4 A. Yes.

5 Q. Doctor, initially as it pertains to the history  
6 provided to you, the medical records reviewed, in  
7 conjunction with your knowledge, skill, and  
8 experience, do you have an opinion based upon a  
9 reasonable degree of medical certainty as to  
10 whether or not the motor vehicle accident of  
11 October 13th, 1992 was a direct and proximate cause  
12 of the surgery performed to the lower back in July  
13 of 1993?

14 First, sir, do you have an opinion?

15 A. I do have an opinion.

16 Q. What is your opinion, sir?

17 A. My opinion, both from a temporal, or a  
18 chronological standpoint, and from a symptom  
19 standpoint, is that the operation performed in July  
20 of 1993 was related to degenerative disk disease of  
21 the lumbar spine which also had long-standing  
22 symptoms over many years.

23 Q. Now, Doctor, did you have an opportunity, in order  
24 to test that theory, to examine the pathology  
25 report from the operative notes of Dr. Columbi of

1 July, 1993, sir?

2 A. Yes.

3 Q. What if any comment is there with regard to the  
4 pathology as to what was removed in the Plaintiff's  
5 lower back in '93?

6 A. Dr. Columbi again stated that, quote, several large  
7 fragments of obviously degenerative disk were  
8 easily removed. These were the exact same words he'  
9 used to describe his operative findings in the  
10 cervical spine, as well.

11 Using the word obviously, this seems to be  
12 fairly strong.

13 Q. Would that mention of an obviously degenerative  
14 disk in the lower back support or take away from  
15 your theory, sir?

16 A. , It would support my opinion --

17 Q. Excuse me, your opinion.

18 A. -- that this was degenerative disk disease in the  
19 neck and the low back.

20 Q. Doctor, then, based upon the history, the records  
21 provided to you, your skill, experience, and  
22 expertise, do you have an opinion based upon a  
23 reasonable degree of medical certainty **as** to  
24 whether or not the surgery and related medical  
25 bills of October -- excuse me, November of 1992 to

1           the neck and the surgery and related medical bills  
2           for the lower back surgery in July of 1993 were a  
3           direct and proximate cause of the motor vehicle  
4           accident of October 13th, 1992?

5           First, sir, do you have an opinion?

6   A.     I do have an opinion.

7   Q.     What is your opinion, sir?

8   A.     In my opinion, the care and treatment rendered for  
9           the degenerative disk disease in her neck and the  
10          degenerative disk disease in the lumbar spine were  
11          solely related to degenerative disk disease and the  
12          normal worsening and progression of this phenomenon  
13          as the years go on, and they were unrelated to  
14          this accident. That is this accident did not cause  
15          the degenerative disk disease.

16   Q.     Doctor, one of the important things, it's my  
17          understanding, in a physician providing an answer  
18          as to cause and effect relationship is the history  
19          provided by the patient.

20          Doctor, is a history a very important aspect to  
21          help any doctor to make a determination in his or  
22          her mind as to the cause and effect relationship  
23          between an accident or any trauma and an injury?

24   A.     Well, I think it's a factor.

25          It should not be the only factor, because

1 people have reasons that are possibly nonmedical to  
2 associate conditions or problems with one  
3 particular event or one particular onset.

4 I always listen to my patients very carefully,  
5 and I don't disbelieve them, but I always look for  
6 confirmatory signs, either through x-rays or  
7 through medical records or by physical examination  
8 that would confirm a reasonable cause and effect  
9 relationship between what the patient feels is the  
10 onset of the problems and what the true problem  
11 is.

12 Q. Let's talk about Dr. Columbi for a minute, because  
13 he will be presented or has been presented by the  
14 Plaintiff in the case in chief.

15 And I'm going to ask you to take a look at a  
16 medical report dated August 30th, 1993 prepared by  
17 Dr. Columbi directed to Plaintiff's counsel.

18 Have you seen that report, sir?

19 A. Yes, I have.

20 Q. Now, with respect to Dr. Columbi's -- Dr. Columbi,  
21 of course, relies upon the Plaintiff to be  
22 truthful, is that correct, sir?

23 MS. EKLUND: Objection as to  
24 what Dr. Columbi relies upon.

25 /////



1 BY MR. CURTIN:

2 Q. Doctor, when you take a history of a patient, do  
3 you believe that individual to be truthful?

4 MS. EKLUND: Objection, WD  
5 relevancy.

6 A. I would hope that the patient would be truthful.

7 Q. Good enough.

8 Then let's see, Doctor, what did Ms. Farinella  
9 tell Dr. Columbi based upon your review of Dr.  
10 Columbi's medical report with regard to whether she  
11 had any symptoms before the motor vehicle accident  
12 of October 13th, 1992?

13 MS. EKLUND: Objection to the WD  
14 extent that a medical report is not a  
15 summary of the patient's history or the  
16 findings of the physician consistent with  
17 the office records.

18 Q. You can answer, Doctor.

19 A. According to what Dr. Columbi addressed in the  
20 8-30-93 letter, quote, it is my impression that  
21 this patient clearly had no symptoms of back or leg  
22 discomfort prior to the motor vehicular accident,  
23 and these symptoms began afterwards. I would  
24 therefore say that the motor vehicle accident is  
25 the probable cause of her herniated disks, end of

1 quote.

2 Q. And is disks plural or singular?

3 A. It's plural.

4 Q. Thank you.

5 Doctor, tell the ladies and gentlemen of the  
6 jury, in order to facilitate your opinion and your  
7 testimony here today, did you review any medical  
8 records, sir?

9 A. Sure.

10 Q. You examined the Plaintiff, is that correct?

11 A. I took a history from the Plaintiff. I examined  
12 her. Her attorney was present throughout the  
13 evaluation.

14 Q. Did you look at any medical records, sir?

15 A. Yes.

16 I assume that the delay in the report from the  
17 time of the evaluation was because we were trying  
18 to get all the records together.

19 Q. Are there quite a few records as it pertains to  
20 this Plaintiff?

21 A. Yes, there were.

22 Q. Would you please tell the ladies and gentlemen of  
23 the jury, then, the medical records you reviewed?

24 A. These included the records from the Mount Sinai  
25 Medical Center, the Kaiser Permanente records, the

1 Cleveland Clinic records, the records from Dr.  
2 Columbi, Dr. Ortega, who is another neurosurgeon,  
3 Dr. Robert Copala, who is a neurologist, Dr. Peter  
4 Contos, who is a psychiatrist.

5 There were a bunch of x-rays from Kaiser, from  
6 the Cleveland Clinic, from Parma Hospital, and from  
7 Magnatech, which is another MRI and imaging  
8 center.

9 Q. Very good, sir.

10 Dr. Columbi's report you just referenced  
11 stated, quote, it is my impression that this  
12 patient clearly had no symptoms of back or leg  
13 discomfort prior to the motor vehicle accident, and  
14 these symptoms began afterwards, closed quote.

15 Doctor, did your review of the medical records  
16 bear out the accuracy of that statement?

17 MS. EKLUND: Objection. *UD*

18 A. They were not accurate statements.

19 Q. Doctor, let's begin at the beginning in order to  
20 paint a picture as to some of the prior medical  
21 records you reviewed.

22 I'm not a physician, so I'm going to need your  
23 guidance to make sure as to what exactly these  
24 records mean.

25 First, sir, I'm going to hand to you what I

1 will mark as Defendant's Exhibit 1. It is a  
2 document, January 8th, 1980 from the Cleveland  
3 Clinic Foundation.

4 First, sir, to whom do they apply?

5 A. Christina Farinella.

6 Q. What if any complaints did Ms. Farinella have to  
7 the Cleveland Clinic Foundation on or about January  
8 8th of 1990 that are reflected in the records?

9 MS. EKLUND: Show an objection  
10 to any past medical history which is not  
11 related specifically to the complaints of  
12 the neck or the lower back. WD

13 BY MR. CURTIN:

14 Q. Go ahead, Doctor.

15 A. She basically went through the history of the  
16 previous neck surgery.

17 At the time of this evaluation, she felt there  
18 was a progressive loss of strength in all four  
19 extremities, that is arms and legs, a progressive  
20 problem with her balance, paresthesias, which is  
21 the numbness and tingling in the extremities, et  
22 cetera.

23 She was also complaining of a mild strength  
24 diminishment or lessening in both upper  
25 extremities, and she also was complaining of an

1 abnormal motion in the ankle called clonus, which  
2 is a neurological motor abnormality.

3 Q. Doctor, just so there's no confusion, the medical  
4 report of Dr. Columbi lists certain complaints on  
5 November the 10th, 1992.

6 Do they mention anything about the arms and  
7 legs?

8 A. No.

9 Q. In here (Indicating)?

10 A. You mean the conclusion or in the beginning of the  
11 letter?

12 Q. In the very beginning, .sir.

13 A. She had complaints in her arms and pain in both  
14 hands. She also was complaining of burning in her  
15 feet and the fact that her legs were burning.

16 Q. When did Ms. Farinella, according to that report,  
17 date those problems?

18 A. 13th of October. I assume it was the year of the  
19 accident, 1992.

20 Q. Does it say anything about them starting after the  
21 accident?

22 A. All of the symptoms started on October 4th, and it  
23 says she dated these to the motor vehicular  
24 accident.

25 Q. That's Columbi's report after our accident,

1 correct?

2 A. Correct. That was 8-30-93.

3 Q. Let's go back, then, to 1980.

4 There were some complaints of the upper and  
5 lower extremities, sir?

6 A. Absolutely.

7 Q. Now I'm going to take you to the Cleveland Clinic  
8 Foundation, Exhibit 2, from 1980, sir.

9 What if any complaints was there associated  
10 with the neck, and who does that pertain to,  
11 sir?

12 A. It pertains to Christina Farinella, and this was  
13 from a neurologist, Dr. Breuer, B-R-E-U-E-R.

14 She was again complaining of a cervical strain  
15 syndrome, which is muscular neck pain.

16 Q. May I have that, sir?

17 And then taking you to Defendant's Exhibit 3,  
18 which is a Cleveland Clinic Foundation record from  
19 June of 1980, what if any complaints are there in  
20 June of '80 in the neck, arms, shoulders, or legs,  
21 sir, by Ms. Farinella?

22 A. This is from Dr. Sweeney, a neurologist at the  
23 Clinic on 6-27-80. Pain in the neck, arms,  
24 shoulders, legs, muscles left side of neck swell  
25 periodically.

1 Q. Thank you, sir.

2 Moving to June of 1981, was Ms. Farinella seen  
3 at the Cleveland Clinic with any complaints of her  
4 arms and legs based upon your review of the  
5 records?

6 A. Yes.

7 Q. What if any complaints, sir, in June of '81?

8 A. She had periods where the arms and legs would  
9 become numb.

10 Q. Thank you, sir.

11 In December of 1981 -- that was Exhibit 4.  
12 This is Exhibit 5 for the defense.

13 December of 1981, Cleveland Clinic, what if any  
14 references is there to her complaining of her right  
15 arm?

16 A. This is 12-16-81. The right arm felt dead off and  
17 on.

18 Q. Doctor, let me move ahead some years to January of  
19 1989, Exhibit 6, from the Cleveland Clinic  
20 Foundation. This would be a period of two plus  
21 years before our accident, is that correct, sir?

22 A. January 11th, '89, correct.

23 Q. Is there an indication about the physician  
24 recording the patient's own words on that document,  
25 Exhibit 6?

1 A. Yes.

2 Q. What if any indication is there, based upon your  
3 review of that record, as to Ms. Farinella's  
4 complaints at that period of time, January of 1989,  
5 sir?

6 A, Basically she complained of these abnormal  
7 movements continuing, neck pain when she turns to  
8 the right or left, and not being able to bend her  
9 head far forward because of neck pain.

10 Q. Any other abnormalities noted, sir, as it pertains  
11 to the neck, or does that cover her subjective  
12 complaints?

13 A. That's in her words, yes.

14 Q. Very good, sir, thank you.

15 Finally, Doctor, I believe in March of 1989,  
16 Exhibit 7, she was seen by Dr. Sweeney, and did she  
17 have any complaints then, sir, that you could see  
18 from the records?

19 A. Many complaints. Much pain everywhere, has  
20 multiple joint pains, aches every -- I'm not sure I  
21 can read this word -- every which -- I'm not quite  
22 sure what he's saying, but below it said, repeat  
23 MRI of the head and neck for the neck pain. Ask  
24 rheumatologist to see for the multiple joint pains,  
25 and then also another mention of her depression.



1 MS. EKLUND:

Objection, move

2 to strike.

3 BY MR. CURTIN:

4 Q. Doctor, based upon your review of these records in  
5 the 1980's, what if any opinion do you hold as to  
6 whether or not Ms. Farinella, based upon your  
7 review of the records, had documented complaints in  
8 her neck before the accident of 1992?

9 Do you have an opinion?

10 A. I do have an opinion.

11 Q. What's that opinion?

12 MS. EKLUND: Objection. It's  
13 beyond the parameters of the medical report  
14 provided.

15 A. There were clearly obvious previous treatments for  
16 neck pain, radiating arm pain, radiating leg pain  
17 dating back to the '80's, as I did state in my  
18 report.

19 Q. Doctor, we know that the MRI is thereafter ordered,  
20 correct, sir?

21 A. Correct.

22 Q. Doctor, what if any relationship is there between  
23 arm pain and a disk abnormality?

24 Could you explain that to us?

25 A. There's a certain anatomical pattern, which all

1 humans are mapped, where between every single  
2 vertebra in the neck, chest area, and low back  
3 area, a nerve exits.

4 That nerve goes to a particular area of the  
5 arms or a particular area of the leg or a  
6 particular area of the trunk. So that if you had  
7 a nerve that was being pinched or had pressure on  
8 it by a disk or the spinal cord had pressure on, it  
9 would follow a certain pattern.

10 The worse the central pressure, that is the  
11 pressure on the spinal cord, the worse the  
12 neurological picture and the more global the  
13 picture. That is it would involve more parts of  
14 the arms and more parts of the legs.

15 When you have a lesion or a problem at one  
16 particular level, it will affect one particular  
17 nerve root. And that particular nerve root has a  
18 certain sensory component, that is heat, cold,  
19 pain, touch, vibration, ability to detect those  
20 sensations, motor testing, certain muscle groups,  
21 and certain levels there are certain reflex  
22 abnormalities. If you have a pinched nerve or a  
23 problem, that will manifest itself.

24 Q. Thank you, Doctor.

25 We've been talking quite a bit about

1 preexisting problems in the neck area. I'd like to  
2 now turn your attention to the lower back, the  
3 lumbar area, and ask you whether or not, in  
4 reviewing some of the medical records, you had the  
5 opportunity to observe any complaints Ms. Farinella  
6 might have had before the motor vehicle accident.

7 First, sir, based upon your review of the  
8 records, were you able to observe any complaints?  
9 Now I'm dealing with the lower back.

10 A. Yes, there were references to previous low back  
11 pain and leg pain prior to the '92 accident.

12 Q. And the leg pain would have significance as it  
13 pertains to an abnormality of a disk for what  
14 reason, a lower back disk?

15 A. Well, it may. It doesn't necessarily.

16 But if it would, it would follow a particular  
17 pattern. That is for the L4-5, it would go to a  
18 certain area. For the L5-S1, it would go into a  
19 certain area.

20 Q. Would it go into your legs?

21 A. Absolutely.

22 Q. There we go. I just wanted to be clear as to my  
23 understanding, sir.

24 Let me go back and talk about the back. Did  
25 you have an opportunity to review some of the

1 medical records of Dr. Goliat, G-O-L-I-A-T, sir?

2 A. Yes.

3 Q. I'm handing you what has been previously marked as  
4 Defendant's Exhibit 8, which I believe includes  
5 office visits for '84, '85, and '89 as opposed to  
6 going through every single year.

7 What if any complaints are there, sir, based  
8 upon your review of that medical document  
9 pertaining to this Plaintiff?

10 A. Well, she's seen periodically through this time  
11 period.

12 They either notate that there are problems with  
13 the back, stiffness and problems and pain with the  
14 neck, but clearly there's multiple references to  
15 previous low back discomfort and low back  
16 treatments as well as medications.

17 Q. What is the lumbar area of the back, sir?

18 A. The lumbar means the low back, the area from below  
19 the chest area to the pelvis.

20 Q. Is that Exhibit 8, sir?

21 A. Yes, this is 8, and the diagnosis was given of  
22 acute lumbar myositis, which indicates essentially  
23 muscular back pain.

24 Q. Exhibit 9, sir, is from Dr. Goliat's records.

25 What if any indication is there pertaining to

1 the lower back or even the neck?

2 A. Well, there are references both to the neck and the  
3 back that were treated with manipulations during  
4 this time period.

5 Q. Exhibit 10, sir, is from May/June, of 1990.

6 What if any mention of Ms. Farinella  
7 complaining about her back is there, sir?

8 A. Well, there's a notation that she did have on-going  
9 of€ and on back pain. She did have physical  
10 therapy for her back and recurrent episodes of the  
11 back, quote, going out, end of quote.

12 Q. That was Exhibit 10.

13 On Exhibit 11, November/December of 1990, what  
14 if any mention of the back, leg going out, or the  
15 neck causing her discomfort is there in those  
16 records?

17 A. Well, there are reference on 11-28-90, quote,  
18 pulled back out, and legs are burning, end of  
19 quote. She also has episodes where she would wake  
20 up with the neck hurting, as well. This was  
21 December of 1990.

22 Q. February/March of 1992 -- excuse me, 1991 and into  
23 1992, Exhibit 12, what if any indication is there  
24 of any lower back or neck discomfort, sir?

25 A. Low back went out again in March of 1991.

1           In February of 1992 she's again placed on  
2           medications for her back complaining of the back  
3           and hip swelling and burning.

4 Q.       Doctor, based upon your review of the medical  
5           records that we just briefly reviewed, were you  
6           able to reach an opinion based upon a reasonable  
7           degree of medical certainty as to whether or not  
8           the Plaintiff displayed any symptoms of lower back  
9           discomfort prior to the accident of October 13th,  
10          19921

11                 First, do you have an opinion, sir?

12 A.       Yes, I have an opinion'.

13 Q.       What is your opinion?

14                 MS. EXLUND:                                 Objection.     WD

15 A.       My opinion is that there is very well documented  
16           complaints of back and leg pain in the years prior  
17           to the '92 motor vehicle accident.

18 Q.       Well, Doctor, let me ask you, then, were you able  
19           to form an opinion after taking the history,  
20           examining this Plaintiff, and reviewing all of the  
21           medical records, only some of which we've  
22           discussed, as to whether or not the Plaintiff  
23           sustained any injury as a result of the accident of  
24           October 13th, 19921

25                 First, sir, were you able to reach an opinion?

1 A. I did, and I do have a clinical impression, yes.

2 Q. What is that, sir?

3 A. That she sustained a soft tissue injury to the neck  
4 as discussed in the medical records, that there was  
5 a questionable new disk problem at the C5-6 level,  
6 there was obviously significant abnormalities, in  
7 my opinion, in the 1988 and 1989 films, and that  
8 her shoulder problems that she was also  
9 complaining about were unrelated to this accident  
10 and were related to degenerative arthritis in the  
11 shoulder.

12 Q. Do you have an opinion based upon a reasonable  
13 degree of medical certainty as to whether or not  
14 the Plaintiff sustained a permanent injury as a  
15 result of the motor vehicle accident of October  
16 13th, 1992?

17 First, sir, do you have an opinion?

18 A. I do have an opinion.

19 Q. What is your opinion?

20 MS. EKLUND: Objection, beyond  
21 the parameters of the report.

22 A. In my opinion, there is no permanent injury  
23 sustained, and there is no documentation of a  
24 permanent injury or any aggravation, permanent  
25 aggravation, or acceleration of her preexisting

WD

1 problems.

2 Q. Doctor, did you conduct a physical examination of  
3 this Plaintiff?

4 A. Yes.

5 Q. Would you please tell the ladies and gentlemen of  
6 the jury what your findings on physical examination  
7 were in August of 1994?

8 A. Physical examination revealed a pleasant, 44 year  
9 old female who appeared in no distress. She was  
10 able to walk normally. She was able to arise from  
11 a sitting position without difficulty. She was  
12 able to move about the exam table and room in a  
13 normal fashion.

14 Examination of her neck area revealed the well  
15 healed scar from her previous posterior neck  
16 surgery, the transverse scar in the front of her  
17 neck from the second surgery.

18 Range of motion was very minimally restricted.  
19 There was less than ten percent restriction. In  
20 other words, she had over 90 percent of her normal  
21 motion of her neck being able to bend her neck  
22 forward, look up, look to the right, left, tilt to  
23 the right, and tilt to the left.

24 There was normal scapular or shoulder blade  
25 motion. There was no signs of muscular atrophy or



1 muscle wasting in either the shoulder area or the  
2 upper extremities.

3 The left shoulder basically was stiff from the  
4 arthritic condition, but despite this stiffness and  
5 her claim that she was not able to use the shoulder  
6 as well, there was really a less than two  
7 millimeter difference, which is a clinically  
8 insignificant difference on circumferential  
9 measurements of the left and right side.

10 In other words, there was no atrophy or muscle  
11 wasting detected.

12 Examination of her lumbar spine revealed a well  
13 healed scar in the midline in the back compatible  
14 with the second surgery done by Dr. Columbi. There  
15 was very minimal restriction of motion. She was  
16 able to bend forward to just about touch her ankle  
17 level. Leaning backwards and side to side were  
18 performed normally.

19 Neurologic examination of both upper and lower  
20 extremities were normal, and essentially she had,  
21 other than a little stiffness, a pretty normal  
22 examination.

23 Q. Based on your physical exam, do you have an opinion  
24 as to her prognosis for the future?

25 A. I do.

1 Q. What is that opinion, sir?

2 A. My opinion is favorable for any soft tissue  
3 component.

4 She is rather young to have these degenerative  
5 conditions, and these will probably worsen in the  
6 normal aging process as the years go on. There is  
7 certainly no indication that this degenerative or  
8 aging process was influenced at all permanently by  
9 this accident.

10 Q. Doctor, just a few more things to conclude my  
11 questioning, then.

12 Ms. Farinella was never a formal patient of  
13 yours, was she, sir?

14 A. No, she was not.

15 Q. You examined her at my request, is that correct?

16 A. Right.

17 Q. Will you receive a compensation for your time you  
18 took away from seeing your patients in order to  
19 present your testimony here today, sir?

20 A. Yes.

21 Q. You have told us that you believe she sustained a  
22 soft tissue injury?

23 A. Correct.

24 Q. Doctor, have you been able to form an opinion based  
25 upon a reasonable degree of medical certainty as to

1           whether or not she had any change in her disk at  
2           C5-C6 or the lower back, both of which resulted in  
3           surgery, as a direct and proximate result of the  
4           motor vehicle accident of October 13th, 1992?

5                       MS. EKLUND:                       Objection, beyond  
6                       the parameters of the medical report       WD  
7                       provided.

8   A.       In my opinion, she did not.

9   Q.       Now, Doctor, with respect to the lower back as I  
10           conclude, sir, I believe you commented in your  
11           report that the onset of symptoms were somewhat  
12           delayed after the accident, is that correct, sir?

13 A.       They were significantly delayed.

14 Q.       Tell us what you mean by that, sir.

15 A.       If one was to sustain an injury, a back injury, for  
16           example, and incurred a herniated disk as a result  
17           of that injury, virtually 90 to 95 percent of  
18           people will have symptoms of either a back injury,  
19           significant back injury, or radicular, that is leg  
20           pain, within 72 hours of the injury.

21                       The fact that this was really not documented  
22                       for many months after the accident in my mind and  
23                       in my opinion clearly shows this is not  
24                       specifically related to this particular traumatic  
25                       event or a claim of traumatic event and is probably

1           coincidental in nature or related to some other  
2           minor problem.

3   Q.     When you say this, what are you referring to,  
4           sir?

5   A.     The motor vehicular accident.

6   Q.     And when you said this is not caused by the motor  
7           vehicle accident, are you referring to --

8   A.     The disk herniation, the disk degeneration.

9   Q.     Of the lower back?

10  A.     Of either.

11  Q.     You had an opportunity to review some of Dr.  
12          Columbi's notes, is that correct, sir?

13  A.     Yes.

14  Q.     **As** recently as September of **1989**, with if any  
15          complaints did Ms. Farinella have with respect to  
16          her extremities, which you told us means arms and  
17          legs, as well as her neck?

18  A.     She complained of weakness in the arms and legs,  
19          and this is back in September of '89.

20                 She also complained that her neck feels stiff  
21          all the time.

22  Q.     Doctor, do you have an opinion based upon a  
23          reasonable degree of medical certainty as to  
24          whether or not this particular Plaintiff will  
25          require any future medical care and treatment as a

1 result of the motor vehicle accident of October  
2 13th, 19927

3 MS. EKLUND:

Objection. WD

4 A. I do have an opinion.

5 Q. What is your opinion, sir?

6 A. It is my opinion that there will not be any further  
7 medical care rendered specifically for this motor  
8 vehicular accident.

9 Q. Now, Doctor, the medical records that we've  
10 discussed are a portion of the medical records you  
11 reviewed, is that correct, sir?

12 A. Correct.

13 Q. There were probably several hundred pages worth of  
14 those records, sir?

15 MS. EKLUND:

Objection. WD

16 A., A full box full of it.

17 Q. Let me do this, Doctor.

18 Will you show this box to the jury and indicate  
19 what if anything was in that box, Doctor?

20 A. There's still something in there, but this box was  
21 filled with medical records that were reviewed  
22 (Indicating) as part of the preparation of the  
23 report.

24 MR. CURTIN:

Doctor, thank you

25 very much. I have nothing further.

## 1 CROSS-EXAMINATION

2 BY MS. EKLUND:

3 Q. Doctor, it's a fact, is it not, that you have  
4 offered your services regularly over the last few  
5 years to the defense of personal injury cases, is  
6 that correct?

7 A. Yes.

8 Q. And a large percentage of your income is generated  
9 from performing defense examinations and related  
10 activities, is it not?

11 A. I don't think that's a true statement, no.

12 Q. Doctor, you are paid to review medical records,  
13 correct?

14 A. Sure.

15 Q. You are paid to conduct an examination of a  
16 , Plaintiff?

17 A. At times, yes.

18 Q. And you are paid to write a report relative to that  
19 examination?

20 A. Correct.

21 Q. And you are paid to testify at trial?

22 A. Correct.

23 However, the first three are usually combined  
24 in one charge.

25 Q. What do you charge for something like that?

- 1 A. It depends on the complexity of the medical  
2 records. It can be anywhere from **400** to \$1,000.00  
3 depending on how long it takes me to read through  
4 the records, sort out the x-rays, and then to  
5 prepare a report.
- 6 Q. What did you charge Mr. Curtin to review medical  
7 records for Christina Farinella?
- 8 A. I don't believe there was a separate charge for  
9 reviewing medical records, and I don't know what  
10 the charge was for the independent medical  
11 evaluation, which included the review of the  
12 medical records.
- 13 Q. **As** we sit here today, you have no idea what you've  
14 been paid to perform services for Mr. Curtin in  
15 this matter?
- 16 A. , I have no idea.
- 17 Q. Who sets your fees, Doctor?
- 18 A. My corporation does.
- 19 Q. And who is your corporation?
- 20 A. It consists of both Dr. Timothy Gordon and myself.
- 21 Q. You are involved in fee setting for yourself, are  
22 you not?
- 23 A. We decide, from a corporate standpoint, what would  
24 be appropriate for our time and our efforts for  
25 surgical procedures, office procedures, and

1 including medical-legal work.

2 Q. What do you charge for giving a deposition,  
3 Doctor?

4 A. There's 'an hourly charge that's charged by both  
5 physicians in this office for deposition  
6 testimony.

7 Q. How much is that?

8 A. It's \$850.00 an hour.

9 Q. Doctor, you have worked with Mr. Curtin's firm  
10 since at least 1985. That would be a ten-year  
11 period of time, correct?

12 A. I believe it was '85, 'yes.

13 Q. And all of the work that you have done for Mr.  
14 Curtin's firm has been to assist them in defending  
15 personal injury cases?

16 A. , No, that's not true.

17 There are at least two or three cases that I've  
18 seen from that office which were Plaintiffs and  
19 were Plaintiffs who were injured. I was their  
20 expert, and the attorney referral came from Mr.  
21 Curtin's firm.

22 Q. So you have been also a treating physician on  
23 behalf of Mr. Curtin's firm?

24 A. Yes.

25 Q. As well as defending personal injury cases on their



1           behalf?

2   A.       Correct.

3   Q.       And at least back since **1985**, you were performing  
4           somewhere between one to two medical examinations  
5           for Mr. Curtin's office, correct?

6   A.       I'm not sure I understand your question.

7   Q.       I'm trying to ascertain the number of defense  
8           medical examinations that you have performed for  
9           Mr. Curtin's office since **1985**.

10  A.       I have no idea, and I have no good way of  
11           calculating that.

12  Q.       Do you recall, though, that back at least in **1985**  
13           you were doing something in the vicinity of one to  
14           two defense examinations per month just for Mr.  
15           Curtin's office?

16  A.       In **1985** that was the only office I was doing  
17           defense medical examinations for. That was, I  
18           think, in **1985** up to the middle of **1986**, because I  
19           was in my old office at that time. I just was not  
20           doing that many of them at that time.

21  Q.       By not that many, does one to two a month sound  
22           approximately right?

23  A.       That could have been right. I really don't  
24           remember.

25  Q.       And since that time, you have also been employed by

1 other defense firms in town to perform defense  
2 medical examinations, correct?

3 A. I'm not sure employed by them is an appropriate  
4 term.

5 I've been hired by them to perform  
6 medical-legal services for review of medical  
7 records, independent medical evaluations, for  
8 defense firms, for the State, for employers. I do  
9 that on a regular basis.

10 Q. All of those are primarily for defensive purposes,  
11 are they not?

12 A. Those particular times a week that I have reserved  
13 for that particular service are usually for  
14 defense, and that would be two exam slots a week  
15 out of 100 patient visits.

16 Q. , That is your present schedule, correct?

17 A. That's my present schedule, correct.

18 Q. So you see two patients or two individuals per  
19 week. Over the course of a year you're seeing over  
20 100 individuals for medical-legal purposes.

21 A. Well, let's be a little bit more specific since  
22 you're asking about those visits.

23 I have limited those visits to -- they are on a  
24 first come first served basis for one-time  
25 evaluations. They could be for employers. They

1           could be for the state. They could be for  
2           Plaintiff's firms. They could be for medical  
3           negligence cases. They could be for personal  
4           injury cases. I really don't stipulate what those  
5           times are for except that these are patients that I  
6           do not treat.

7           The rest of the time I have to reserve for  
8           treating patients, which is what business I'm in.

9   Q.    To be clear, and I think you've already said this,  
10        but you did not see Christina Farinella for  
11        purposes of rendering medical treatment.

12  A.    That's correct.

13  Q.    You saw her only because Mr. Curtin asked you to  
14        examine her.

15  A.    Right.

16  Q.    And you wrote a report only because Mr. Curtin  
17        asked you to write a report?

18  A.    I think that you probably wanted a report, as well,  
19        but the primary purpose was for an independent  
20        medical evaluation and a report.

21  Q.    Did I ask you for a report, Dr. Corn?

22  A.    I'm sure you wanted a copy of it.

23  Q.    Did I ask you to generate a report, is my question?

24  A.    Specifically for you, no.

25  Q.    Thank you.

1           You're testifying here today because Mr. Curtin  
2           has asked you to do that, also?

3   A.     Correct. I think there was a subpoena to do that.

4   Q.     You received a subpoena for that?

5   A.     I usually do. I'm not sure. I don't usually keep  
6           those as part of the charts.

7   Q.     Doctor, you did not see Christina Farinella until  
8           almost two years after her accident, correct?

9   A.     Right.

10   Q.    You saw her one time?

11   A.    Right.

12   Q.    And by the time you saw her, she had had two  
13          surgeries?

14   A.    That's correct.

15   Q.    And was pretty much free of complaints relative to  
16          her neck and her back?

17   A.    I'm not sure free of complaints.

18   Q.    Well, she had no significant complaints relative to  
19          her neck and back?

20   A.    She had complaints. She had aches and pains.

21                They seemed to be less than she was complaining  
22                through the 1980's and through the early 1990's.

23   Q.    In fact, she told you at the time of your  
24          examination that she had obtained significant  
25          relief from the surgeries that Dr. Columbi had

1 performed, did she not?

2 A. That was her response to my questions, yes.

3 Q. In fact, she told you she was much improved from  
4 the surgeries that he had performed?

5 A. Right.

6 Q. Doctor, you would agree that she has had a rather  
7 extensive history of cervical problems beginning  
8 with the cervical surgery that was done for her in  
9 1975 when she was a young woman?

10 A. Your question was she has a long-term history of  
11 it?

12 Q. Yes.

13 A. Yes, she does.

14 Q. It is not surprising to you that, since given the  
15 extensive surgery which she did have in 1975, that  
16 she has had on-going complaints associated with her  
17 neck?

18 A. I don't think that's a true statement. I think  
19 that those are two entirely separate entities.  
20 That is she had previous surgery to her neck, and  
21 she has on-going complaints for her neck. I don't  
22 know the on-going complaints are coming from her  
23 degenerative disk disease or her residuals of her  
24 previous surgery.

25 Q. Doctor, do you agree that a normal disk does not

1           herniate?

2   A.     Yes.

3   Q.     Do you agree that a disk can be degenerative, but  
4           not herniated?

5   A.     Sure.

6   Q.     And it wouldn't surprise you at all if everybody  
7           sitting in this room with you today had some degree  
8           of degenerative disk disease, would it not?

9   A.     Are you talking about by MRI scan?

10  Q.     Yes.

11  A.     Yes.

12           There's clearly evidence in the medical  
13           literature of studies that are done prospectively  
14           on normal people, and 64 percent of normal people,  
15           that is people who have never had a back injury and  
16           never had a low back complaint will have a positive  
17           MRI for a degenerative disk and/or a herniated  
18           disk. 32 percent of those people will have  
19           herniated disks at two levels, and these are  
20           totally asymptomatic individuals.

21           So I think that you have to differentiate MRI  
22           abnormalities from true, clinical, treatable  
23           diseases.

24  Q.     I guess my point, Doctor, is that not every  
25           degenerated disk ends up as a herniated disk,

1 correct?

2 A. And not all herniated disks are symptomatic,  
3 obviously.

4 Q. Doctor, would you agree that burning in the legs is  
5 a sign of nerve impingement coming from the low  
6 back area?

7 A. It could. It doesn't always, but it could.

8 Q. Now, Doctor, you wrote a report for Mr. Curtin, and  
9 I will take you to the last page of that report,  
10 because I think you expressed an opinion to a  
11 reasonable degree of medical certainty that the  
12 only injury that Ms. Farinella sustained in this  
13 automobile accident was a soft tissue injury.

14 I believe, if you will look at the last  
15 paragraph of your report, and I'll read to you, you  
16 wrote, after careful review, in my opinion, she  
17 sustained a minor soft tissue injury to her  
18 cervical spine which may or may not have herniated  
19 the C5-6 disk.

20 Did you write that, Doctor?

21 A. Yes.

22 Q. Thank you.

23 Now, Doctor, Christina Farinella had a CT scan  
24 of the lumbar spine in March of 1991.

25 Do you recall that?

- 1 A. March of '91?
- 2 Q. Yes. I'll show you the report --
- 3 A. Okay, I don't remember.
- 4 Q. -- given the large number of medical records you  
5 have reviewed.
- 6 A. Okay.
- 7 Q. Have you seen that report prior to today?
- 8 A. I don't remember. Probably.
- 9 Q. But that report indicates there was a CT of the  
10 lumbar spine?
- 11 A. Right.
- 12 Q. It shows a small bulge, but no herniation in the  
13 lumbar area, correct?
- 14 A. It shows slight degenerative change at the L4 and  
15 L5. There was diffuse, mild bulge of the **L5-S1**  
16 disk, but no focal abnormality to suggest a  
17 herniation. That's what it says.
- 18 Q. So in March of **1991**, a herniated lumbar disk was  
19 ruled out, correct?
- 20 A. By CT scan, which is not the best way of testing  
21 it. But the CT scan was negative for a  
22 herniation.
- 23 Q. And I believe also the **MRI's** which you reviewed  
24 with us from the Cleveland Clinic from **1988** and  
25 **1989** were also reported back by the radiologist and



1 the physicians taking care of her as normal  
2 studies, correct?

3 A. That's what they said, yes.

4 Q. You disagreed with those physicians?

5 A. Absolutely I do.

6 Q. That was to a reasonable degree of medical  
7 certainty, wasn't it, Doctor?

8 A. Absolutely.

9 Q. Now, a disk abnormality such as a bulging disk is  
10 not necessarily a herniated disk, correct?

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

12 Q. When you talk about an abnormality as you talked  
13 about in the 1988 and 1989 cervical MRI's, the  
14 abnormality you're talking about is a slight  
15 bulging disk which is not impinging on the spinal  
16 cord.

17 A. Right. There wasn't any impingement even in the  
18 1992 film.

19 Q. Let's be clear about a couple things here,  
20 Doctor.

21 You don't question the fact that Christina  
22 Farinella did, in fact, have a cervical disk which  
23 was repaired by Dr. Columbi?

24 A. He did absolutely no repair of a disk. He removed  
25 a degenerative disk, and that's what his operative

- 1           note says.
- 2   Q.     That was a herniated degenerated disk, was it not?
- 3   A.     Correct. That's what he said.
- 4   Q.     There's no question about that condition existing
- 5           at that time in your mind, is there, Doctor?
- 6   A.     I don't know. I wasn't there.
- 7   Q.     You've looked at the operative report.
- 8   A.     I did.
- 9   Q.     You were willing to draw conclusions for Mr. Curtin
- 10          based on your review of medical records back from
- 11          1980 at which time you were not present, either.
- 12  A.     Correct.
- 13  Q.     So I'm asking you, do you have any doubt in your
- 14          mind that Christina Farinella had a cervical disk
- 15          when Dr. Columbi performed surgery?
- 16  A.     You mean a herniated cervical disk?
- 17  Q.     Yes.
- 18  A.     She probably did.
- 19  Q.     She also, would you agree, had lumbar disks, two of
- 20          them?
- 21  A.     Correct, degenerative disks noted for at least one
- 22          year before the accident and two years before the
- 23          surgery.
- 24  Q.     Move to strike. That was not my question, Doctor.
- 25                 Is there any question in your mind that, when

1 Dr. Columbi performed lumbar surgery on Christina  
2 Farinella in July of **1993**, that she, in fact, had  
3 two herniated lumbar disks?

4 A. I don't remember that.

5 Q. Would you like to refer to the operative report?

6 A. I would love to look at the operative report  
7 again.

8 Q. I'm not sure I can find it for you that quickly.

9 (Thereupon, a short recess was taken.)

10 BY MS. EXLUND:

11 Q. Doctor, Mr. Curtin has been kind enough to hand me  
12 his copy of the operative report from July of **1993**.

13 I'll repeat my question, which is, do you have  
14 any doubt that there were two herniated lumbar  
15 disks when Dr. Columbi performed surgery in July of  
16 **1993**?

17 A. That's what Dr. Columbi said.

18 Q. Do you have any reason to doubt what's contained in  
19 that operative report?

20 A. I don't doubt what's in the operative report, no.

21 Q. Do you know Dr. Columbi?

22 A. Sure.

23 Q. Is he a respected neurosurgeon?

24 A, I think so, yes.

25 Q. Have you ever referred patients to him for

1           neurosurgery purposes?

2   A.     Probably, but he's not my prime referral.

3   Q.     Doctor, you talked about previous review of records  
4           and complaints of weakness and numbness in the arms  
5           and legs that Ms. Farinella had reported to other  
6           physicians, correct?

7   A.     Right.

8   Q.     You didn't mention in any of those prior summaries  
9           any burning in the legs or feet.

10           Do you recall that, Doctor?

11  A.     I think we did, sure.

12  Q.     I don't recall that. .

13           Also, when Dr. Columbi saw Ms. Farinella in  
14           1989 --

15  A.     She had those similar complaints.

16  Q.     Well, let's take a look at that.

17           Do you have those records there, Doctor?

18  A.     No. Mr. Curtin has all the records.

19           (Thereupon, a discussion was had off the record.)

20  BY MS. EKLUND:

21  Q.     Doctor, I have been able to locate Dr. Columbi's  
22           office notes from September of 1989. I believe you  
23           looked at this for Mr. Curtin, but I'll ask you to  
24           take another look, and tell me if you see any  
25           reference to burning in her legs or feet in that

1 1989 note.

2 A. This is very difficult to read. The one that I saw  
3 was underlined.

4 Q. You were able to read it for Mr. Curtin, weren't  
5 you, Dr. Corn?

6 A. Just that one section.

7 Q. Would you read that one section for me?

8 A. Sure. It says, quote, weakness in arms and legs,  
9 end of quote.

10 Q. No reference to burning?

11 A. Not in that particular reference, no.

12 Q. Doctor, I'm also going to hand you a report from  
13 Dr. Columbi dated January 11th, **1994**, which we'll  
14 mark as Plaintiff's Exhibit 1.

15            Could you read that short report into the  
16            record, please?

17 MR. CURTIN: Objection.

18 A. Quote, I am in receipt of your letter detailing the  
19 fact that Ms. Farinella had some sporadic.  
20 complaints of neck and back pain since June of  
21 1988. Actually, it's been since early 1980; but  
22 she apparently had an MRI scan in June of '89 of  
23 her cervical spine, which was normal, and clearly  
24 pre-dated the motor vehicular accident of October  
25 of 1992.

1           There is still no question in my mind that the  
2           patient's problems were related to the motor  
3           vehicular accident as a direct cause of her  
4           problems, end of quote.

5                       MR. CURTIN:                       Move to strike. WD

6 BY MS. EKLUND:

7 Q.       Doctor, would you agree that it would be very  
8           unlikely that a large herniated disk could exist  
9           without treatment for a period of eight months?

10 A.       Large herniated disks can exist for probably  
11           decades. And only if it pinches on a nerve or puts  
12           pressure on a nerve would you have any symptoms  
13           from it or would you look for it.

14               There are many patients that have large  
15           herniated disks and have absolutely no symptoms  
16           whatsoever.

17 Q.       Doctor, I'm sorry I'm not better organized.  
18           There's just not a lot of room to work here.

19               Let me ask you about this, Doctor. You were  
20           asked a similar question back in 1993 where you  
21           gave a videotaped deposition in the case of Leslie  
22           Mullens. Michael Curtin was the defense lawyer in  
23           that case.

24               And at page 67, you were asked by Mr. Curtin,  
25           and I'll quote -- and I'll show you this as soon as

1 I've read it, Mike.

2 It says, Doctor, let me ask you the question  
3 directly, do people who walk around with large  
4 herniated disks go on treating for eight months,  
5 never go to a doctor? I mean, does that happen in  
6 your clinical experience in the hundreds of  
7 herniated disks you've treated?

8 Your answer was, it's unusual, very unusual.  
9 You don't happen to recall that particular  
10 testimony, do you, Doctor?

11 A. No, but I would say that was before the New England  
12 Journal of Medicine Journal came out, which was  
13 last year in 1994, which showed that I was wrong.  
14 There are quite a number of people, a very  
15 significant number of people who have large  
16 herniated disks that are totally asymptomatic.

17 Q. I'll move to strike.

18 Doctor, that answer was given based on your own  
19 clinical experience and judgment.

20 A. In 1993, yes, that's correct.

21 Q. And given under oath, was it not, Doctor?

22 A. Sure.

23 Q. Thank you.

24 Doctor, did you have a chance to confer with  
25 Mr. Curtin before we started this deposition

1           today?

2   A.     Yes.

3   Q.     How long was that conference?

4   A.     I have no idea.

5   Q.     Did you discuss your testimony in this case, what  
6           it would be?

7   A.     We basically went over some of the exhibits, and I  
8           picked out the x-rays that I wanted to use.

9   Q.     You did discuss what your testimony would be here  
10          at this deposition?

11  A.     I didn't go over all his questions.  I didn't go  
12          over any of your anticipated questions.  I  
13          basically went over some of the highlights of the  
14          exhibits that he wanted to present.

15  Q.     Doctor, are you aware that Dr. Columbi has  
16          indicated that the symptoms which Ms. Farinella  
17          presented with after her automobile accident were  
18          significantly different than those she presented  
19          with in 1989?

20  A.     I don't know if that's his opinion.

21  Q.     Doctor, would you agree that the physician who saw  
22          and treated Ms. Farinella during the acute period  
23          of injury, actually performed the surgeries, and  
24          followed her thereafter is in a better position  
25          than yourself to give opinions as to the cause and



1 effect relationship of her injuries to this motor  
2 vehicle accident?

3 A. I think it depends on how much that physician knew  
4 or knows of her previous problems, what her  
5 previous level of complaints are.

6 If you're talking about prospective treatment,  
7 which is what doctors do for a living, that is what  
8 are you going to do next for the patient, sure, the  
9 treating physician is the person that can probably  
10 best judge what is necessary to do next.

11 However, I had the opportunity to have seen all  
12 of Dr. Columbi's records, all of the hospital  
13 records, all of the operative reports, all the path  
14 reports, and I looked at them all retrospectively.  
15 I think my opinion on the cause and effect  
16 relationships are certainly the same level of  
17 opinion or the same level of accuracy, if not more  
18 accurate than Dr. Columbi had.

19 Q. Move to strike.

20 Doctor, you've indicated that the physician  
21 treating the patient at the time the symptoms  
22 occurred would probably, in your opinion, be in the  
23 best position to determine what treatment is  
24 necessary and what the problem is, is that what you  
25 just told me?

1 A. No.

2 I said not what the problem is, but what  
3 treatment would be necessary next, sure.

4 Q. Yet you've testified that the doctors at the  
5 Cleveland Clinic in 1988, 1989, and the doctors  
6 who treated her for her back being out made the  
7 wrong clinical decision, didn't diagnose what you  
8 found?

9 A. No, I didn't say they made the wrong clinical  
10 decision. They did not have the opportunity of a  
11 better MRI in 1992, nor did they have the  
12 opportunity to look at 1992, 1989, and 1988 and see  
13 the exact same level there was some abnormality.

14 And in my opinion, they misread the x-rays.

15 Q. Okay.

16 A. I think I pointed out the abnormality is pretty  
17 clearly evident.

18 Q. These x-rays would have been misread by the  
19 radiologist at the Cleveland Clinic in '88 and the  
20 doctor who was following her up for that condition,  
21 they would have been misread by the radiologist at  
22 the Cleveland Clinic in 1989 and the physician who  
23 ordered that test. It would have been misread by  
24 Dr. Columbi --

25 A. I don't think Dr. Columbi saw those MRI's. There's

1 no indication he saw the '88 MRI, nor is there any  
2 indication that he saw the actual '89 MRI. He saw  
3 the report of the 1989 MRI. I think it's very  
4 obvious 'that, if you look retrospectively, you can  
5 always pick up more than you can prospectively.

6 And there's no question in my mind, and I hope  
7 there's no question in the jury's mind that what I  
8 pointed out as clear abnormalities are not normal.

9 Q. Doctor, I know you're trying to convince the jury  
10 that what you see retrospectively is there.

11 You would probably be very surprised if you  
12 heard that Dr. Columbi did, in fact, review the  
13 actual MRI films in '88 and '89 and disagrees with  
14 your conclusions, wouldn't you?

15 A. He's certainly able to disagree. Every doctor is  
16 entitled to their own opinions.

17 Q. You don't have any question about Dr. Columbi's  
18 ability to read and interpret an MRI, do you,  
19 Doctor?

20 A. I think he thinks he's very good at it.

21 Q. Doctor, again, a degenerative disk, can a  
22 degenerative disk be herniated by trauma?

23 A. Sure.

24 Q. That trauma can be in the nature of an automobile  
25 accident, can it not?

1 A. Sure.

2 Q. It is also possible that, without that trauma, the  
3 degenerated disk would never, in fact, herniate?

4 MR. CURTIN: Object. *Wls*

5 A. I don't know that. I don't know if that's a true  
6 statement.

7 MS. EXLUND: Thank you. I  
8 have nothing further.

9 (Thereupon, a discussion was had off the record.)

10 - - -

11 REDIRECT EXAMINATION

12 BY MR. CURTIN:

13 Q. Doctor, let me ask you a few questions as a follow  
14 up to that of Miss Eklund.

15 Initially, Doctor, with regard to any  
16 relationship between yourself and myself, first,  
17 have you and I sat down in a videotaped deposition  
18 this year that you recall, sir?

19 A. I don't think we've got together this year, no.

20 Q. This is June something of 1995, sir?

21 A. June the 6th of 1995.

22 Q. Now, with respect to how many exams you do, did  
23 you say two exams per how many patients her week?

24 A. About 100 patient visits a week.

25 Q. You do two examinations per 100 patients you see a

1 week?

2 A. Approximately, yes.

3 Q. Now, have you presented testimony on behalf of a  
4 Plaintiff who was prosecuting a personal injury  
5 case?

6 A. **Sure.** Actually, much more frequently.

7 Q. Now, Doctor, with respect to the deposition that  
8 was read to you and the suggestion as to some  
9 connection between your corporation and my law  
10 firm, the matter of Mullens versus First National,  
11 do you have any recollection of it?

12 A. No.

13 Q. The first page, though, does identify who the  
14 defense lawyer is, and it was myself, is that  
15 correct?

16 A. Right.

17 Q. The Plaintiff's lawyer was who?

18 A. Anne Garson.

19 MS. EKLUND: Objection. W P

20 BY MR. CURTIN:

21 Q. That person has no relationship to the law firm of  
22 Sindell, Lowe & Guidubaldi, are you aware of that  
23 fact?

24 MS. EKLUND: Objection.

25 A. I don't have any idea.

1 Q. Okay.

2 I just want to be sure the jury is clear as to  
3 what one would assume was the bountiful number of  
4 depositions that must exist between you and I.

5 What Ms. Eklund read to you was a deposition  
6 not even from her law firm, is that correct, sir?

7 A. It does not appear to be from her law firm, no.

8 Q. Also with respect to that, you don't remember that  
9 person, do you, sir?

10 A. No.

11 Q. A couple years years back.

12 While Ms. Eklund was asking you questions, she  
13 was kind enough just to let me take a quick look at  
14 it, and I think there was a question asked, a  
15 question, Doctor, can an individual with a  
16 herniated disk such as discovered in Mr. Mullens --  
17 you have the records -- it was a relatively large  
18 herniated disk discovered in March/April of 1992.  
19 Answer, it says a large disk left of midline.

20 Assuming I read that correctly, sir, does this  
21 case involve a large herniated disk that you know  
22 of, sir?

23 A. No.

24 Q. Do you know what this has got to do with anything  
25 you talked about?

1 A. I don't think it has anything to do with it other  
2 than the fact it was a deposition involving you and  
3 me.

4 Q. Did I ask you, sir, as one of your charges, one of  
5 your obligations, to give an opinion as to a cause  
6 and effect relationship between this accident and  
7 the neck surgery and lower back surgery?

8 A. Yes.

9 Q. Ms. Eklund cross-examined you for about 30 minutes,  
10 sir.

11 Does that sound about right to you?

12 A. I don't know, approximately.

13 Q. Did you hear one question going to the issue of  
14 whether or not this accident caused those  
15 surgeries?

16 MS. EKLUND: Objection. WP

17 A. I don't remember that.

18 Q. Doctor, with respect to the CT scan that Ms. Eklund  
19 presented to you from March of 1991 correctly  
20 noting that there were no herniations, what she  
21 didn't ask you was what disk spaces were involved  
22 when they were being examined in a CT scan in March  
23 of '91.

24 What disk spaces, sir?

25 A. The exact same disk spaces that Dr. Columbi

1       operated on three years later, two years later.

2 Q. So if I show you now the July, 1993 operative note,  
3 what disk spaces were operated on when compared to  
4 that CT scan for March of '91?

5     A.     The same ones.

6 Q. Now, Doctor, I spoke with you for about an hour.  
7 We went through some records. We went through  
8 radiologist's reports, but I don't want there to be  
9 any confusion.

10           There was a single sentence read to you from a  
11       report where Ms. Eklund says, isn't it true your  
12       report states she may've sustained a minor soft  
13       tissue injury to her cervical spine which may or  
14       may not have herniated a disk.

15           Let me ask you directly, do you have an opinion  
16       based upon a reasonable degree of medical certainty  
17       as to whether or not the motor vehicle accident,  
18       which is the subject matter of this lawsuit,  
19       herniated the disk at C5-C6?

20 First, sir, do you have an opinion?

21 A. I do have an opinion.

22 Q. What's your opinion?

23 MS. EKLUND: Objection.

24 A. My opinion is the accident did not herniate the  
25 disk.



1 Q. What if anything does this sentence mean?

2 MS. EKLUND: Objection. WD

3 A. I don't know.

4 Q. Doctor, 'would you defer to the testimony you've  
5 given us with respect to your findings and your  
6 opinions?

7 MS. EKLUND: Objection. WD

8 A. I think that there were much more details asked at  
9 this particular point in time, and my opinions  
10 expressed are the ones that were given previously.

11 MS. EKLUND: Objection. WD

12 BY MR. CURTIN:

13 Q. Doctor, there was something that was represented to  
14 you that I wanted to kind of clear up.

15 Do you remember questions from Ms. Eklund about  
16 '88 and '89, all the radiologists found absolutely  
17 perfect studies.

18 Do you remember those questions, sir?

19 A. She said they interpreted -- was trying to say that  
20 what I was saying was incorrect and that I was in  
21 disagreement of all the doctors that had seen her  
22 records before.

23 MS. EKLUND: Objection, move,  
24 to strike. U

25 Q. Doctor, let me ask you whether or not, in truth,

1 the 1989 radiological interpretation did note an  
2 abnormality.

3 A. Yes. I think I stated that on direct questioning.  
4 There was a bulging disk at C5-6.

5 Q. Which area was operated on by Dr. Columbi a couple  
6 years later?

7 A. C5-6.

8 Q. Last question, sir.

9 When making a determination as to cause and  
10 effect relationship between a motor vehicle  
11 accident to surgeries, what if any helpfulness,  
12 what if any role is to be played by all these  
13 medical records you and I discussed?

14 MS. EKLUND: Objection. W D

15 A. Well, it basically clearly defines if there was an  
16 abnormality before and what that abnormality was  
17 before to ascertain whether, in fact, there was any  
18 injury or any new trauma or any new documentable  
19 area of injury that was really not there or  
20 abnormal before.

21 Q. Doctor, in your opinion, do you believe, having all  
22 the medical records available, as many are as  
23 available to you, paints a better picture for an  
24 individual practitioner, medical doctor, who is  
25 called upon to make a cause and effect

1 determination?

2 Is that important, sir?

3 MS. EKLUND: Objection. *Wt*

4 A. In my opinion, it is, yes.

5 Q. Doctor, I have to ask you regrettably the same  
6 question, because there's been an objection.

7 What if any importance is there to be played by  
8 a medical practitioner who is giving an opinion as  
9 to cause and effect relationships, what if any  
10 importance do the medical records play?

11 A. I believe that it's of vital importance to know as  
12 much as you can about 'any preexisting conditions,  
13 preexisting complaints, preexisting abnormalities  
14 before ascertaining whether there was, in fact, a  
15 new pathology or a new abnormality created by a  
16 particular traumatic event.

17 Q. Did you hear Ms. Eklund advise you as to whether or  
18 not Dr. Columbi had all of the medical records that  
19 we discussed?

20 A. That was my interpretation.

21 Q. You just assumed that, correct?

22 No one told you what Dr. Columbi did or did not  
23 see before he testified?

24 A. I don't know what he saw before he testified. I  
25 know what he said he saw prior to completing of his

1 reports.

2 Q. Last point, sir.

3 Ms. Eklund cross-examined you indicating that,  
4 well, Doctor she had some burning complaints in the  
5 legs after the accident. She didn't have them  
6 before the accident, isn't that true.

7 Do you remember something like that?

8 A. I think it was whether Dr. Columbi mentioned in the '  
9 1989 chart note whether she complained specifically  
10 of burning. He didn't use the word burning,  
11 although I think burning was clearly discussed in  
12 prior medical records.'

13 Q. Ms. Eklund's response to that same answer was that  
14 was not her recollection. Let's resolve that.

15 I'm going to hand you what's been previously  
16 marked as Exhibit 11 and ask you whether or not  
17 there's any mention whatsoever of leg are  
18 burning.

19 A. November 28th, 1990. It says, "Leg are burning."

20 Q. Pertaining to the Plaintiff?

21 A. Yes.

22 Q. That's Exhibit 11, the medical records of Dr.  
23 Goliat?

24 A. Correct.

25 Q. Does a leg burning, finally, is that dispositive of

1           whether a person has a herniated disk?

2   A.       It's a subjective description of what the patient  
3           feels. It could indicate nerve root irritation.  
4           It could denote a referred type of pain. But it  
5           certainly could describe a discogenic type of  
6           neurological abnormality.

7           MR. CURTIN:                            Doctor, thank you  
8           very much. I have nothing further.

9           MS. EKLUND:                           I just have a  
10          couple questions, and we don't even need to  
11          trade places.

12   - - -

13   REXCROSS-EXAMINATION

14   BY MS. EKLUND:

15   Q.       Doctor, the medical report that you wrote for Mr.  
16           Curtin, that's certainly not the first medical  
17           report you've written, is it, Doctor?

18   A.       No.

19   Q.       And Doctor, the complaints of the burning leg which  
20           Mr. Curtin referenced in 1990, we do have the  
21           benefit of the CT which was done in 1991 which  
22           showed no herniated lumbar disk, correct?

23   A.       It showed no herniation in the lumbar disk area,  
24           correct.

25   Q.       And if you will review -- or if you have them or if

1           you recall that Dr. Columbi described both the  
2           cervical disk and the lumbar disk as large.

3           Do you recall that, Doctor.

4           MR. CURTIN:                           I'm going to  
5           object. WD

6 A.       I don't remember that. I know he described them as  
7       degenerative.

8 Q.       I think I may have even highlighted the section  
9       where he talks about the large amount of herniated  
10       disk material which he removed.

11 A.      Large amount of disk material doesn't mean a large  
12       herniated disk. That means from the curettage,  
13       that means from scraping the space between the  
14       vertebrae, you can obtain a larger amount of  
15       material from a degenerated disk than from a  
16       herniated disk. That's what that means.

17           MS. EKLUND:                        I have nothing  
18       further.

19   - - -

20   REDIRECT EXAMINATION

21 BY MR. CURTIN:

22 Q.       Doctor, I just handed you -- actually, Ms. Eklund  
23       highlighted from the operative notes from July and  
24       November from the neck and lower back, she  
25       highlighted something. I think the jury may want

1 to know what she was asking about that she  
2 highlighted.

3 MS. EKLUND: Objection. W D

4 BY MR. CURTIN:

5 Q. First, Doctor, what if any indication is there with  
6 respect to July, 1993 as it pertains to a large  
7 amount of disk, July of '93, sir?

8 A. July of '93, it says a large amount of obviously  
9 degenerative disk material was removed. And this  
10 means the interspace, that is the area between the  
11 two vertebral bodies, which is normal. I mean,  
12 this is the normal thing that you see with  
13 degenerative disk material.

14 It doesn't mean that it's herniated a large  
15 amount. That means he scraped out a large amount  
16 of material.

17 Q. That is highlighted, that portion about the large  
18 amount of obviously degenerated disk, is that  
19 correct?

20 A. Actually, in both reports there is a similar type  
21 of description, and that's what Dr. Columbi uses to  
22 describe -- one of the big problems after disk  
23 surgery is recurrent disk herniations, that is more  
24 material coming out.

25 So what you try to do is you try to remove a

1 large amount -- as large amount of tissue as  
2 possible to prevent more tissue from coming out.  
3 And that is a surgical denotation of how much  
4 material- was removed to prevent the complication of  
5 ~~recurre~~nt disk herniation.

6 ~~It~~ is no indication of how much was actually  
7 physically herniated out.

8 Q. Finally, the ~~November of 1992~~ entry indicates a  
9 large amount of what, sir?

10 A. Degenerative fragments, degenerative disk  
11 disease.

12 Q. Of the disk?

13 A. Correct.

14 MR. CURTIN: Thank you very  
15 much, Doctor.

16 , Nothing else.

17 MS. EKLUND: Nothing else,  
18 Doctor.

19 MR. HERSCH: Doctor, you  
20 have the right to read the transcript or  
21 review the video tape, or you can waive that  
22 right.

23 THE WITNESS: I'll waive my  
24 right.

25 MR. HERSCH: Any filing



1 requirements?

2 MS. EKLUND: I'll waive them.

3 MR. CURTIN: Sure.

4

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- - -

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(DEPOSITION CONCLUDED)

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(SIGNATURE WAIVED)

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1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA. ) SS:

3 CERTIFICATE

4 I, MICHELLE R. WORDINSKI, a Registered  
5 Professional Reporter and Notary Public within and for  
6 the State of Ohio, duly commissioned and qualified, do  
7 hereby certify that the within-named witness, ROBERT C.  
8 CORN, M.D., was by me first duly sworn to tell the truth,  
9 the whole truth and nothing but the truth in the cause  
10 aforesaid; that the testimony then given by him was  
11 reduced to stenotypy in the presence of said witness, and  
12 afterwards transcribed by me through the process of  
13 computer-aided transcription, and that the foregoing is a  
14 true and correct transcript of the testimony so given by  
15 him as aforesaid.

16 I do further certify that this deposition was taken  
17 at the time and place in the foregoing caption specified.

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

21 IN WITNESS WHEREOF, I have hereunto set my hand and  
22 affixed my seal of office at Cleveland, Ohio, on this  
23 13th day of June, 1995.

24 Michelle R. Wordinski  
25 Michelle R. Wordinski, RPR and Notary Public  
in and for the State of Ohio  
My Commission expires December 19, 1995.