

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

3 - - - - -

4 IN THE COURT OF COMMON **PLEAS**

5 - - - - -

6 ROSALIE COOK,)
7 Plaintiff)
8 vs.) Case No. 89 CIV 1144
9 ELIZABETH MASITTO, et al.,) Judge James W. Jackson
10 Defendants)

11 - - - - -

12 DEPOSITION OF ROBERT CURTIS CORN, **M.D.**

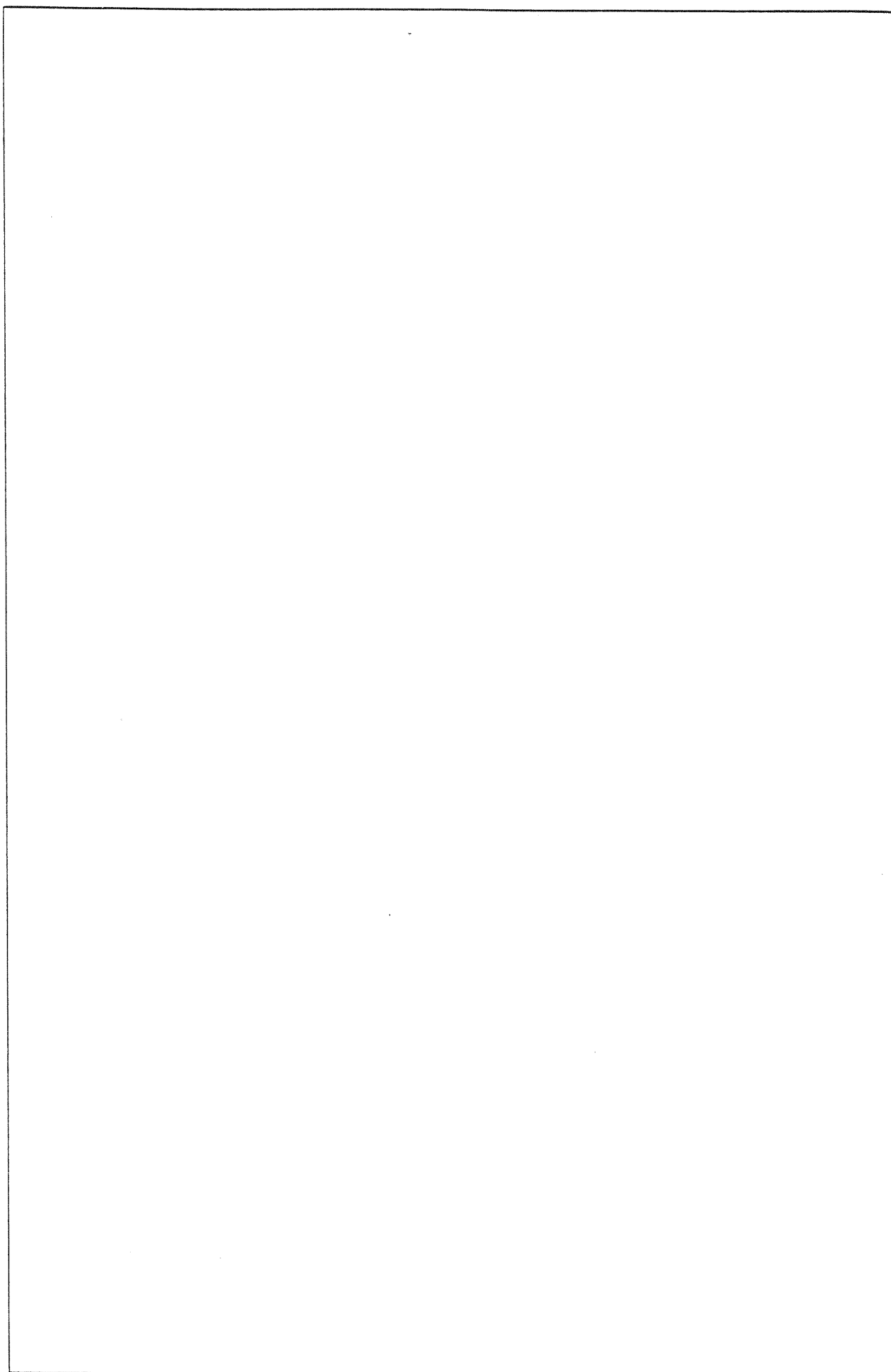
13 Monday, November 12, 1990

14 - - - - -

15 The deposition of ROBERT CURTIS CORN, M.D., a
16 witness herein, called by counsel on behalf of the
17 Defendants **for** examination under the Ohio Rules of
18 Civil Procedure, taken before me, Toni M. Salopek, **a**
19 Registered Professional Reporter and Notary Public
20 within and for the State of Ohio, **by** agreement of
21 counsel, at the offices of Dr. Robert Corn, 850
22 Brainard Road, Highland Heights, Ohio, commencing at
23 5:45 p.m., on the **day** and date above set forth.

24 - - - - -

25



1 APPEARANCES:

2

On behalf of the Plaintiff:

3

David Goldense, Esq.

4

Paul Wolf, Esq.

Dubyak & Goldense

5

920 Terminal Tower

Cleveland, Ohio 44113-2206

6

7

On behalf of the Defendants:

8

G. Michael Curtin, Esq.

9

Keller, Scully & Williams

330 Hanna Building

10

Cleveland, Ohio 44115

11

12

13

14 ALSO PRESENT:

15

Barry Hersh, Videographer

Cynthia Curtin

16

17

18

- - - - -

19

20

21

22

23

24

25

1 ROBERT CURTIS CORN, M.D.
2 a witness herein, called by the Defendants pursuant to
3 the Rules, having been first duly sworn as hereinafter
4 certified, was examined and deposed as follows:

5 MR. CURTIN: Initially, let the record
6 reflect that this is the deposition of Dr. Robert
7 Corn, which is being taken pursuant to notice,
8 and it's my understanding that the statutory and
9 procedural formalities of notice, service, and
10 the filing of this deposition will be waived.

11 Is that correct?

12 MR. GOLDENSE: We will waive any defects
13 as to the time or taking of Doctor's deposition.
14 As to the filing, I make no such waiver at the
15 moment.

16 MR. CURTIN: Thank you.

17 This deposition is being taken upon direct
18 examination in order to preserve the doctor's
19 testimony for use at the time of the trial of
20 this case brought by Rosalie Cook against my
21 client, Elizabeth Masitto, said action bearing
22 Case No. 89 CIV 1144, before the Honorable Judge
23 Jackson in the Court of Common Pleas, Lake
24 County, Ohio.

25

DIRECT EXAMINATION

1
2 BY MR. CURTIN:

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

5 A. Robert Curtis Corn.

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

8 A. **My** office address is 850 Brainard Road in
9 Highland Heights, Ohio; and, yes, we're here today.

10 Q. What is your profession?

11 A. I'm an orthopedic surgeon.

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

14 A. In 1976.

15 Q. **It's** my understanding that your specialty is in
16 the field of medicine known as orthopedic surgery; is
17 that correct, Doctor?

18 A. Yes, it is.

19 Q. Would you **please** explain to the Ladies and
20 Gentlemen of the Jury what is involved with that
21 specific specialty?

22 A. Well, orthopedic surgery is that branch of
23 medicine which involves the medical and surgical
24 treatment of disorders, diseases, and injuries to the
25 musculoskeletal system.

1 That includes the muscles, bones, tendons,
2 joints, ligaments, and it also has a number of
3 sub-specialties, such as surgery of the hand, surgery
4 for arthritis, sports medicine surgery, and surgery of
5 the spine.

6 Q. Are **you** board certified; and, if so, when were
7 you so board certified?

8 MR. GOLDENSE: Mr. Curtin, I'd **be** more
9 than willing to stipulate for the record that the
10 doctor is qualified to offer expert opinion
11 testimony to this Jury, if you're **so** inclined.

12 MR. CURTIN: I appreciate that, Counsel,
13 but for the edification of the Jury, I just want
14 them to understand how experienced he really is.

15 MR. GOLDENSE: Feel free.

16 MR. CURTIN: Thank you, sir.

17 Q. Doctor, are you board certified, and when were
18 you **so** board certified?

19 A. Yes, I am board certified. And I was certified
20 approximately 10 years ago, in **1980**.

21 Q. What is involved in the board certification of an
22 orthopedic surgeon?

23 A. **Well**, in 1980, the candidate for certification
24 had to have completed an approved orthopedic residency
25 that is approved by the American Board of Orthopedic

1 Surgery, practice in the clinical milieu, so to speak,
2 for one calendar year in one location.

3 And then the candidate would have to sit for an
4 oral and written examination which, at that time, was
5 given once a year.

6 And after satisfactorily completing all three
7 steps and passing the examination, the American Board
8 of Orthopedic Surgery would certify the candidate.

9 Q. Is board certification one of, if not the highest
10 achievement obtainable in your specialty?

11 A. Yes.

12 Q. Thank you, Doctor.

13 Would you please give the Ladies and Gentlemen of
14 the Jury a little of your background, including college
15 through medical school, as well as your internships and,
16 residencies, et cetera, up until the present time?

17 A. I received my Bachelor of Science in biology from
18 the Albright College in Reading, Pennsylvania in 1971.

19 I then moved to Philadelphia, Pennsylvania, where
20 I attended the Hahnemann University School of Medicine
21 from 1971 through 1975. I received my M.D. Degree from
22 that institution.

23 I then came out here to Cleveland, and from 1975
24 through 1979, I was an orthopedic fellow or resident at
25 the Cleveland Clinic.

1 From August of 1979 to the present, I've been in
2 the private practice of orthopedic surgery.

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

5 A. Yes.

6 Q. What are those, sir?

7 A. I am a fellow in the American College of
8 Surgeons, a fellow in the American Academy of
9 Orthopedic Surgeons, a member of the Orthopedic
10 Research Society, the American Medical Association,
11 Ohio State Medical Association, Cleveland Academy of
12 Medicine, Cleveland Orthopedic Club, Philadelphia
13 Orthopedic Club and a variety of other small
14 organizations.

15 Q. Do you have any staff or courtesy privileges at
16 any Greater Cleveland area hospitals?

17 A. Yes.

18 Q. What are those doctor?

19 A. I am Chief of Orthopedic Surgery at the Meridia
20 Huron Hospital. I am also an attending orthopedic
21 surgeon at the Meridia Euclid Hospital Meridia
22 Millcreek Hospital the Mt Sinai Medical Center
23 St. Vincent Charity Hospital and the Lake Hospital
24 System.

25 Q. Doctor how long have you been Chief of

1 Orthopedic Surgery at the Meridia Huron Hospital?

2 A. Since January of 1984.

3 Q. Thank you, Doctor.

4 Are you involved in any teaching or publications
5 in your specific field?

6 A. Yes.

7 Q. Can you give us a brief overview of those,
8 Doctor?

9 A. I am a clinical instructor in orthopedic surgery
10 at the Case Western Reserve University School of
11 Medicine.

12 I am an assistant professor of orthopedic surgery
13 at the Ohio College of Podiatric Medicine as well as
14 my teaching responsibilities as Chief of Orthopedics
15 involving resident nursing student, physician
16 assistant student, and medical student training at the
17 Meridia Huron Hospital.

18 Q. Doctor how long have you been teaching future
19 doctors how to practice medicine?

20 A. Since I was qualified, basically, in 1979.

21 Q. Doctor as part of your professional practice, do
22 you have an opportunity to examine individuals who are
23 not your patients for the purposes of evaluation
24 including for the purposes of consultation second
25 opinion evaluation of legal matters and/or Bureau of

1 Workmen's Compensation proceedings?

2 A. Yes.

3 Q. Would you please tell the Ladies and Gentlemen of
4 the Jury whether you had an occasion to examine the
5 plaintiff in this particular matter, Rosalie Cook, **at**
6 **my** request?

7 A. **Yes**, I did.

8 Q. When did that examination take place and **where**
9 did it take place?

10 A. The examination took place on August 20th, 1990,
11 here in my office.

12 Q. Doctor, as part of your office records, do **you**
13 have a copy of the report prepared and dated
14 September 6th, 1990 with regard to your examination of
15 the plaintiff and your findings upon that examination?

16 A. Yes, I do.

17 Q. Please feel free to refer to that report **and** any
18 other records you have available during your testimony
19 in answering any of my questions, as well as those of
20 counsel for the plaintiff.

21 Upon your first meeting the plaintiff, did **you**
22 obtain a history from her?

23 A. **Yes**, I did.

24 Q. Did she indicate in the history that she was
25 involved in a motor vehicle accident?

1 Q. What areas of the body were x-rayed?

2 A. I believe it was her neck only.

3 Q. What were the results of the x-rays taken of the
4 plaintiff the day after the accident of the neck only?

5 A. The x-rays were reported as normal

6 Q. Did the plaintiff chronicle to you whether or not
7 she had any medical treatment with any other physicians
8 after the one-day hospital visit at Lake County West?

9 A. Yes.

10 Q. What did she tell you, Doctor?

11 A. The day after her E.R. visit which would be two
12 days after the injury, she was seen by Dr. Edward
13 Galman, an orthopedic surgeon.

14 Q. Did he recommend any type of diagnostic tests be
15 performed on the plaintiff?

16 A. Yes he initially sent her for physical therapy.
17 And then in early June of 1988, a CT scan was
18 performed at Dr. Galman's office.

19 Q. Now Doctor were you going to be talking about a
20 series of tests including CT scans x-rays.

21 B. For we go any further I want to ask you how
22 you personally had an opportunity to actually examine
23 those tests?

24 A. The scans yes

25 Q. Doctor with respect to the CT scan will you

1 tell us who ordered it and when it was accomplished?

2 A. It was ordered by Dr. Gabelman, and it was
3 performed on 6-3-88, at Dr. Cabelman's office.

4 Q. Were there any other tests performed either by
5 Dr. Gabelman or at his request by another physician?

6 A. Yes.

7 Q. Tell us about those, please, sir?

8 A. EMG or electromyogram and nerve conduction
9 studies were performed by a neurologist, Dr. Harold
10 Mars, who saw the patient on neurological consultation
11 for Dr. Gabelman.

12 Q. As it pertains to the EMG, what was the test
13 result?

14 A. The EMG was normal.

15 Q. As it pertains to the nerve conduction study,
16 what was the test result?

17 A. Also normal.

18 Q. As it pertains to the CT scan, what was the test
19 result?

20 A. The CT scan was performed of her neck and -- no,
21 I believe it was her low back. I believe this showed
22 some abnormality. I have to review the letter here.

23 The CT scan essentially showed some degenerative
24 disc disease at the L4-5 level, which is the second
25 lowest level of the low back.

1 Q Doctor before we talk about the CT scan let me
2 review the EMG and the nerve conduction studies.

3 What areas of the body were these tests focused
4 on?

5 A. I believe it was her low back

6 Q. What, if any, medical history did the plaintiff
7 provide to you as her explaining the car accident
8 she had after the motor vehicle accident?

9 MR. GOLDENSE: Objection.

10 Q. Go ahead Doctor.

11 A. Well in addition to the emergency room visit,
12 she consulted with Dr. Gabrilman. Dr. Gabrilman saw her
13 on physical therapy for, basically, some low back
14 exercises not pills, ultrasound treatments.

15 Q. Did she have anything else significant in her
16 medical, aside from Dr. Gabrilman and the motor vehicle
17 accident?

18 A There was another motor vehicle accident in 1983.

19 Q. All right. What areas of the body did she injure
20 there?

21 A. She stated she injured her neck and low back,
22 same areas that were injured in this accident

23 Q. Now about any children; had she had any children
24 at all, Doctor?

25 A. Well she had one pregnancy that was -- the child

1 was five and a half years old at the time of this
2 evaluation, and she had just delivered recently on
3 June 8th, 1990 with her second child.

4 Q. Did she give any history of a **loss** from work
5 after our accident?

6 A. She lost approximately three days after the
7 accident. She said she missed, quote, off and on,
8 since that time.

9 She obviously was off during the latter stage of
10 her pregnancy, and I believe had just returned to **work**
11 about two weeks before I had seen her from her
12 pregnancy leave.

13 Q. Doctor, did the plaintiff describe her physical
14 condition to you when you evaluated her in August of
15 1990?

16 A. Yes.

17 Q. Would you please tell the Ladies and Gentlemen of
18 the Jury how the plaintiff described herself in August
19 of 1990?

20 A. Well, at the time of the visit, she complained of
21 pain, essentially, in two areas, and these were the
22 neck and low back regions.

23 Concerning the neck, she described, quote, some
24 aching, end of quote, with changes in the weather.

25 This **was also** described **as** intermittent; that **is**, there

1 were pain-free intervals.

2 Her pain seemed to be increasing with increased,
3 quote nervous tens on, end of quote She had never
4 had any radicular symptoms, that is, any indication of
5 any nerve root irritation that is shoulder hand arm
6 type of pain.

7 There were no complaints of numbness or tingling
8 in her neck. And basically it was an intermittent
9 aching off and on type of pain with changes in the
10 weather and with increasing nervousness nervous
11 tension.

12 Low back concerning her low back she also had
13 intermittent pain. At times she stated she was
14 totally quote pain-free end of quote
15 Q. When you say, quote, pain-free, end of quote
16 whose words are those?

17 A. Those were her words.

18 Q I m sorry Go on Doctor please.

19 A The pain seemed to increase with repetitive
20 bending and twisting her small child as well as
21 sitting for long periods of time.

22 She had left and right buttock pain, which, when
23 she showed me in the physical examination, it was not
24 really buttock pain, it was really pain in the
25 sacroiliac area, that is the low back area. And this

1 was sometimes relieved by sitting.

2 Motrin, which is a non-steroid anti-inflammatory
3 medication seemed to relieve some of her symptoms. On
4 good days, she was totally asymptomatic, that is, felt
5 normal; on bad days, she would take Motrin throughout
6 the day.

7 She had not had any bad days, quote recently, end
8 of quote. She, as I stated before, had just gone back
9 to work about two weeks before this visit after her
10 pregnancy leave. There was no increase in her pain
11 since her return back to work.

12 Q. And, of course, the most recent absence from work
13 was not attributable to the accident, but rather her
14 recent pregnancy?

15 A. That was my understanding, yes.

16 Q. Did you conduct a physical examination, Doctor?

17 A. Yes, I did.

18 Q. What was your findings upon physical exam?

19 A. Well, physical examination revealed a pleasant
20 25-year old female, approximately five foot five,
21 weighing about 170 pounds.

22 Her gait pattern, that is, her ability to walk,
23 was normal. She was able to arise from a sitting
24 position, as well as climb up and down from an
25 examining table without difficulty.

1 Q. Were you able to examine the neck area or the
2 cervical spine?

3 A. Yes.

4 Q. What were your findings upon physical examination
5 of the cervical spine?

6 A. Well, a complete physical examination was
7 performed and, essentially, there were no abnormal
8 findings.

9 There was a full range of motion in forward
10 flexion, that is putting the chin on the chest,
11 hyper-extension, which is looking backwards, lateral
12 bending and rotation, turning the head from side to
13 side.

14 There was no muscle spasm noted. There was no
15 muscle tightness noted, that is, any reflex to the
16 motion, or reflex muscle contraction. Her shoulders
17 examined normally, as did her elbows, wrists, and small
18 joints of the hand.

19 Circumferential measurements of her arms at the
20 axillary or the armpit level, the arm, mid-arm, forearm
21 level, and wrist level were symmetrical. There was no
22 evidence of any muscular atrophy, and no evidence of
23 any neurological abnormality on objective testing.

24 Q. Doctor, in layperson's terms, how would you
25 describe the examination of the neck?

1 A. Normal.

2 Q. Did your examination also include the lower back?

3 A. Yes, it did.

4 Q. What were your findings upon physical examination
5 of the lower back?

6 A. There was a full range of motion in forward
7 flexion, extension side bending and rotation, she
8 could bend forward to touch just about her ankle
9 level.

10 Most of her low back discomfort was pointed in
11 the region of the left center mid-line which seemed to
12 radiate into the sacroiliac joint.

13 Her sacroiliac joint, is now worse to put your
14 hands on your hips and reach your thumbs toward the
15 middle of the back that is about the level of the pain
16 and the area of that particular anatomic structure.

17 She described this as buttock pain, even though
18 this was not anatomically, the buttocks.

19 Her range of motion of her hips were normal. The
20 range of motion of the knees ankles and small joints
21 about the foot were also normal.

22 Her ligaments were equal, and there was no
23 atrophy or muscle wasting noted in circumference
24 measurements. And a neurologic examination that is
25 her ability to detect sensation, motor examination, and

1 reflexes were essentially normal.

2 Q Doctor in layperson's terms as it pertains to
3 objective signs of abnormalities or injury what is
4 amiss, existing in the low back area of this plaintiff
5 upon physical examination?

6 MR. GOLDENEE: Objection.

7 A. Well there were no objective abnormalities
8 throughout the entire physical examination.

9 Q. Let's talk about an objective versus a subjective
10 abnormality

11 Doctor is there a discrepancy?

12 A. Of course.

13 Q. Would you please explain to the Ladies and
14 Gentlemen of the Jury what the discrepancy is?

15 A. Subjective versus objective -- it may be easier
16 to describe what objective is first.

17 Objective finding is something that can be seen,
18 felt, touched, measured, examined, by anyone trained to
19 notice that type of activity.

20 Certain other objective findings could be noted
21 by non-medical people such as bruising, cuts,
22 lacerations, bleeding. That would be an objective
23 finding.

24 In a musculoskeletal examination, we look for
25 something called spasm or spasmia. Spasm is an

1 uncontrolled contraction, sort of a charley horse, so
2 to speak, in a muscle.

3 Whereas, dysmetria is, the muscles don't seem to
4 fire in an appropriate order. There was none of this
5 noted.

6 Subjective would be complaints; complaints of
7 pain, complaints of radiation of pain, the sensations
8 of numbness, tingling, burning.

9 Basically, subjective is what someone would say:
10 objective is something that someone could see, touch,
11 feel or measure.

12 Q. The plaintiff did display some subjective
13 complaints, if I heard you correctly, in the lower back
14 area?

15 A. Yes.

16 Q. But as to a trained orthopedic surgeon's eye,
17 looking for objective signs, what if any, did you
18 discover, in the neck or low back area?

19 A. Well, as I stated above, at the time of this
20 evaluation, which was in August of 1990, there were no
21 objective findings that indicated any traumatic
22 abnormality, other than her postpartum obesity.

23 Q. And that postpartum obesity would relate to the
24 post-pregnancy, the post-delivery of the child,
25 correct?

1 A. Yes.

2 Q. Doctor, have you detailed all the tests
3 performed, and are these tests approved and accepted
4 within your field and performed **by** other orthopedic
5 surgeons?

6 A. Yes, to both parts **of** the question.

7 Q. Did you have sufficient time in which to perform
8 a full and complete orthopedic evaluation of this
9 particular patient?

10 A. Yes, I did.

11 MR. GOLDENSE: Objection.

12 Q. Did you have an opportunity to review additional
13 medical records available, either prior to or
14 subsequent to your examination of the plaintiff in this
15 particular matter?

16 A. There were medical records and x-rays reviewed
17 subsequent to the examination.

18 Q. What records did **you** have available, and did they
19 give you **a** more complete picture **of** the plaintiff,
20 herself?

21 A. To answer the second part first, yes, they did.
22 The records that were reviewed were from Dr. Gabelman's
23 office, Dr. **Mars'** office, from a chiropractor, David
24 Sukalac, who was seen for a physical therapy only, as
25 well as the records **from** the Lake West Hospital.

1 I also had the opportunity of reviewing the
2 actual films from Advanced Imaging X-ray, which is,
3 essentially, Dr. Gabelman's x-ray outfit. These
4 included lumbosacral spinal films, as well as the CT
5 scan of her lumbar spine.

6 Q. Doctor, from your examination of the plaintiff,
7 Rosalie Cook, from the oral history provided by her,
8 from the records reviewed, were you able to make a
9 diagnosis within a reasonable degree of medical
10 certainty as to her condition at the time of your
11 examination?

12 A. Yes, I was.

13 Q. What is that, Doctor?

14 A. My clinical impression was resolved cervical
15 sprain, resolving low back sprain, and there was no
16 evidence of a herniated disc or neuromuscular
17 abnormality.

18 Q. Doctor, would this diagnosis be based upon the
19 assumption that all the medical records which you
20 reviewed, as well as the oral history provided by the
21 individual, were true statements?

22 A. Yes.

23 Q. Doctor, I'd like to talk about, a little more,
24 some of the tests that were done.

25 Now, initially, I am going to hand to you, I

1 believe, what represents the EMG test you referred to
2 earlier?

3 A. Yes.

4 Q. Or they are the test results; is that correct?

5 A. Yes, this is the test results and clinical
6 summary from Dr. Mars.

7 Q. Doctor, what portion of the body was the EMG
8 directed towards?

9 A. The left lower extremity,

10 Q. What is the left lower extremity, Doctor?

11 A. Well, basically, the left leg, including the
12 thigh and buttock area.

13 Q. Doctor, is there any relationship between the
14 possibility of a problem with one's low back and
15 numbness, tingling, or pain in the leg?

16 A. Sure.

17 Q. Would you please tell us a little bit about that
18 relationship?

19 A. I would **say**, certainly, in my clinical practice,
20 the major portion of people that complain of numbness
21 or tingling or funny feelings or weakness, or giving
22 out in the lower extremities, the etiology would be
23 from the low back.

24 Usually a pinched nerve of some sort or an
25 irritation of the nerve, which would weaken certain

1 muscle groups and would give abnormal sensory or
2 abnormal sensations of pain or numbness or tingling.

3 Q. Could a disability or dysfunction -- I think
4 medically it's referred to -- in a lower disc area,
5 result in numbness or tingling in a leg?

6 A. Sure.

7 Q. Okay. **So** that's why I wanted to crystalize that
8 cause and effect or interrelationship between the two.

9 Now --

10 A. It's not the only cause, but it's probably one of
11 more common causes.

12 Q. Now, there was a test done on the plaintiff's
13 left leg: is that correct?

14 A. Yes.

15 Q. To ascertain whether or not, clinically, this
16 test could correlate some complaints she had, correct?

17 MR. GOLDENSE: Objection.

18 Q. For what, if any, purpose was the EMG done,
19 Doctor?

20 A. I wasn't her treating physician, so I am just
21 extrapolating from Dr. Gabelman's records that there
22 was a suggestion on the CT scan of an abnormality at
23 the E4-5 level.

24 To corroborate an x-ray finding with her clinical
25 symptoms, a more precise, highly sensitive electrical

1 study was ordered of her left lower extremity.

2 And this was basically in two parts: one of them
3 was the EMG, which is the electromyogram, that is,
4 physically sticking a needle -- a small needle, but
5 still a needle -- in various muscle groups and watching
6 the effect of that muscle being stuck on an
7 oscilloscope.

8 And the second one was actually, physically,
9 testing the conductivity of nerves, such as testing the
10 way a wire would conduct an electrical impulse.

11 So those are the two phases to rule out any
12 electrical abnormality, which would be a very sensitive
13 indicator of a disc irritation or nerve irritation.

14 Q. As it pertains to this plaintiff, what was the
15 result of the EMG and the nerve conduction study of her
16 left leg?

17 A. Both were entirely normal.

18 Q. Done by a neurologist, Dr. Harold Mars?

19 A. Yes.

20 Q. Let's talk about the CT scan that was done of the
22 lower back.

22 Do you recall actually reviewing the films,
23 themselves?

24 A. Yes.

25 Q. Doctor, initially, is there a continuum, or a

1 spectrum running between say a ruptured disc
2 herniated disc and a bulging disc?

3 MR GOLDENSE: Objection

4 A. Not necessarily.

5 Q. Doctor would you compare and contrast the three
6 terms I've just used specifically a herniated, a
7 ruptured, and a bulging disc?

8 A. Disc disease degenerative disc disease which is
9 essentially what this whole line of questioning is,
10 represents a spectrum.

11 The lumbar intervertebral disc which is the real
12 work for the disc is a material which is fibrous and
13 gristly with a center of a somewhat gelatinous
14 material, sort of the consistency of wobbly jello
15 that you may find in the back of the refrigerator.

16 This essentially, is a pushing or shock absorber
17 type of material which allows for motion between a
18 stack of vertebrae or back bones.

19 As would happen with a number of etiologies, such
20 as aging or obesity or multiple pregnancies, or trauma,
21 the disc allows some degree of injury.

22 And what happens is small tears develop in the
23 ring or the peripheral aspect of the disc. With time --
24 and it does take a period of time -- there is a loss of
25 water content within the disc and the disc actually

1 physically, narrows.

2 Now, as it narrows, that material that's inside
3 the disc has to go someplace. If there is a bulging
4 disc, there is a symmetrical or asymmetrical, in other
5 words it could be more on one side more on the other,
6 and I saw two cases in the last week where it bulged
7 out the front and not out the back which is where most
8 of them bulge.

9 There is an asymmetry to it at the disc. The
10 asymmetry, in and of itself, doesn't mean anything,
11 except that there is a physical abnormality.

12 There is a condition called a herniated disc.
13 And the best way of thinking of a herniated disc is to
14 think of this gelatinous-like material squeezing
15 through like you would squeeze a tube of old
16 toothpaste. And the disc material, the central
17 material retropulses or goes backwards. Not
18 universally, but in a very high percentage, it's
19 usually one side or the other, or it can be central,
20 which is much more unusual.

21 This material can be contained, that is, within
22 the membrane, or it can be extruded outside the
23 membrane, the limiting membrane of the back.

24 A herniated disc is something that is protruded
25 beyond the borders of the membrane. And this can be

1 either a free-floating fragment, that is something
2 that's actually, physically outside of the disc, or it
3 can be still contained within the membranes of the disc
4 or the barrier of the disc.

5 Whether it's herniated, whether it's bulging, or
6 whether it's a free fragment, that is, this piece has
7 gone beyond the confines, that, in and of itself
8 doesn't really matter.

9 What matters is what structures are in the same
10 area as that material, and that is the spinal nerves in
11 the lower end of the spine: in the neck, it's the
12 spinal cord itself.

13 Nerves **do** not like pressure, and any
14 manifestation of pressure on a nerve will cause
15 symptoms within certain distributions. There will be
16 certain muscle groups that will be weakened, there will
17 be certain reflexes that may be lost or diminished, and
18 there is certain electrical activity which would be
19 rendered abnormal to diagnostic testing.

20 If you have a symptomatic herniated disc, and
21 let's just use one example for that, and there is disc
22 material pushing on a nerve, you will have precise
23 physical complaints, subjective complaints. You will
24 have precise, almost universal, physical abnormalities.
25 And **you** will have a definite sign on a CT scan or MRI

1 scan, or some diagnostic imaging technique that there
2 is this material. And you will have a positive EMG in
3 this area.

4 So all of those, we're talking about a continuum,
5 there's a lot of diagnostic tests you can do to rule
6 in or rule out a problem.

7 Certainly if I had a patient who had an
8 abnormality on the CT scan, and who was having symptoms
9 that were similar or compatible with a disc herniation,
10 the appropriate step would be to get an EMG to see
11 whether this is, in fact, is the source of her pain or
12 probably source of the pain or if it isn't.

13 In this case, the EMG's were performed by a board
14 certified neurologist, and the were normal, indicating
15 this radicular -- this buttock and leg pain that she
16 had experienced was not neurogenic or not nerve origin,
17 and, certainly, not related to the CM abnormality.

18 Q. Doctor, with respect to the CM scan, do you have
19 an opinion, based upon a reasonably degree of medical
20 certainty after your review of the CM scan, whether or
21 not the plaintiff in this matter, had a herniated disc?

22 First, do you have an opinion?

23 A. Yes, I have an opinion.

24 Q. What is that opinion, Doctor?

25 A. My opinion is that she, on the basis of the CM

1 scan only, does not have a herniated disc.

2 Q. Doctor Dasow upon --

3 MR. GOLDENSE: Objection. Motion to strike.

4 Q. Doctor Dasow upon a review of the medical
5 records, the history provided by the plaintiff and in
6 conjunction with the examination performed by yourself
7 do you have an opinion as to upon a reasonable degree
8 of medical certainty as to what, if any dysfunction
9 or abnormality may be at issue in the L4-L5 area of
10 Plaintiff Cook?

11 First, do you have an opinion?

12 A. Yes I have an opinion.

13 Q. What is that opinion, Doctor?

14 A. My opinion is that she has a localized
15 degenerative disc disease at the L4-5 level. There is
16 bulging or asymmetry of the L4-5 disc and there is no
17 evidence, clinically, radiologically, or electrically
18 that there is any nerve root impingement or
19 neurological abnormality.

20 Q. Which would be a sign of what?

21 A. Asymptomatic herniation.

22 Q. Doctor, what, if anything, do you attribute the
23 degenerative disc disease that you described at the
24 L4-L5 level?

25 MR. GOLDENSE: Objection.

1 A. In my opinion, the degenerative disc disease is a
2 function of, possibly, her old low back injury,
3 probably her chronic obesity, and also influenced would
4 be her two pregnancies.

5 MR. GOLDENSE: Move to strike.

6 Q. Doctor, what if any, significance would a CT scan
7 displaying a bulging disc have?

8 A. I'm not sure I understand what you mean.

9 Q. Okay.

10 A. But it, in and of itself, without matching
11 symptoms or some other testing, means nothing.

12 Q. That's what I'm getting at, Doctor.

13 If you were to walk in to me, as an orthopedic
14 surgeon, and say, Mr. Curtin, there is evidence on the
15 CT scan of a bulging disc, what if anything, without
16 symptoms, does that represent to the patient?

17 A. It may just be something that you have to watch
18 out for: it may be a stimulus for you to lose some
19 weight and get a little bit more physically active.

20 But, essentially, it would not need any further
21 treatment, and it doesn't deserve any treatment. It's
22 an x-ray finding.

23 Q. Doctor, as it pertains to -- you were talking
24 about this buttock or leg pain. You told us about the
25 EMG and the nerve conduction study and the result.

1 Upon physical examination, did the plaintiff
2 display any lower leg pain to you?

3 A. There was nothing that I did that would produce
4 the low back pain. There was no evidence of any
5 irritation of the sciatic nerve or any of the nerve
6 roots.

7 By neurological testing there certainly was t
8 any clinical evidence of any neurological impingement
9 or nerve root irritation.

10 Q. Okay what about this buttocks pain? I mean,
11 you mention that.

12 Does that mean she may have a herniated disc,
13 Doctor?

14 A. No.

15 Q. Would you please --

16 A. First of all, it wasn't buttock pain. What she
17 described as her buttocks is anatomically not the
18 buttocks; it's the sacroiliac joint.

19 But even if she did have buttock pain, with a
20 normal EMG I would not think that this would be
21 interpreted by anyone as a herniated disc.

22 MR. GOLDENSE: Objection. Move to strike.

23 Q. Doctor, did the plaintiff give you a history of
24 any other injuries aside from that involving our
25 accident and the one of 1983?

1 A. No.

2 Q. Doctor, of course, the care and treatment
3 rendered by Dr. Gabelman, **would** give you some barometer
4 of the plaintiff's recovery, would it not, sir?

5 A. **Well**, if he was her primary treating physician.

6 Q. Doctor, I am going to hand to you Dr. Gabelman's
7 records and ask you to please examine that record dated
8 **4-21-88**.

9 First, do you see the record, Doctor, from the
10 first visit?

11 Or is it **4-20-88**?

12 A. **4-20-88**.

13 Q. Thank you, Doctor.

14 As it pertains to the visit of **4-20-88**, and, for
15 the record, you have Dr. Gabelman's notes before you,
16 sir?

17 A. **Yes**.

18 Q. Is there any indication as to a potential return
19 to work date?

20 A. She was given a return to work date as the
21 following day, **4-21-88**.

22 Q. Okay. **And** was there a **follow-up** visit wherein
23 she presented herself again to Dr. Gabelman's office?

24 A. She came in on **4-22-88**, the day after she was
25 scheduled to go back to work, and got a return to work

1 for that particular day -22-88

2 Q. Now Doctor I would direct your attention to the
3 October 29th 1988 visit at Dr Gabelman's. We are now
4 a period of approximately six months post-accident.

5 First do you have that record before you sir?

6 A No. No this really ends on June 3rd 1988.

7 Q. Would you be kind enough to flip the page,
8 Doctor? The pages may not be in order.

9 A. I'm sorry. Why're you out of order I apologize.

10 Q. As I am many times too Doctor.

11 As it pertains to October 29th 1988 about six
12 months post-accident would you please tell the Ladies
13 and Gentlemen of the Jury how the plaintiff described
14 herself to Dr. Gabelman?

15 A. This is a quote.

16 "The patient feels that her neck and back no
17 longer bother her. She has no symptoms related to
18 the injured area physical examination unremarkable.
19 Return as needed." End of quote.

20 Q. Thank you Doctor May I return those records to
21 my file. Just a few more things sir.

22 Doctor based upon your examination or review of
23 the records were you able to reach an opinion based
24 upon a reasonable degree of medical certainty as to
25 the plaintiff's prognosis for the future?

1 MR. GOLDENSE: Objection.

2 A. Yes, I was.

3 Q. What was that opinion, Doctor?

4 MR. GOLDENSE: Note my continuing
5 objection.

6 A. My opinion was that the prognosis was favorable.

7 Q. Doctor, you indicate in your report that there
8 was an absence of objective signs to support the
9 subjective complaints.

10 Based upon a review of all the medical records,
11 your physical examination, and the history provided by
12 the plaintiff, were you able to reach an opinion, based
13 upon a reasonable degree of medical certainty, as to
14 whether or not the plaintiff sustained a permanent
15 injury as a direct and proximate result of the motor
16 vehicle accident of April 18th, 1988?

17 MR. GOLDENSE: Objection.

18 A. Yes, I have an opinion.

19 Q. What is that opinion, sir?

20 A. My opinion would be that there was no permanent
21 injury sustained at the time of this accident in
22 question.

23 Q. Doctor, you've had to take time out from a very
24 busy orthopedic practice in order to present testimony
25 this evening, and I would like you to advise us as to

1 whether or not you will charge for the time which
2 you've had to take out from your practice and,
3 obviously, not see any patients in order to present
4 this testimony?

5 A. Yes.

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

8 Counsel?

9 MR. GOLDENSE: Let's go off the record.

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

12 CROSS EXAMINATION

13 BY MR. GOLDENSE:

14 Q. Doctor, my named is David Goldense. We met
15 briefly a few minutes ago. As you know,. I trust, I
16 represent Rosalie Cook in connection with this personal
17 injury action brought against the Metropolitan Casualty
18 Insurance Company, who Mr. Curtin represents.

19 You had a chance to examine Mrs. Cook back in
20 August of 1990 at Mr. Curtin's request; is that
21 correct?

22 A. Yes.

23 Q. And when you examined her, you did so for the
24 purpose of being able to take the oath today and
25 testify on behalf of the defense of this case; is that

1 correct?

2 A. Well, at that time, I know I was not going to be
3 treating her.

4 Q. Right.

5 A. This would be solely for an expert opinion and
6 expert testimony if necessary

7 Q. Right I mean. You weren't having consultation as
8 might have been suggested in the direct examination,
9 for any record opinions as to what treatment might be
10 indicated on her behalf were you?

11 A. I don't think that was suggested at all.

12 Q. Okay. Now doctor it seems to me from what
13 you we said on direct examination that there are a
14 number of areas of agreement between you and
15 Drs Gabelman and Mars as to her condition
16 specifically with respect to what happened.

17 You agree that she had a neck sprain subsequent
18 to this automobile accident. Don't you?

19 A. There were symptoms of it yes

20 Q. And based on your review of the emergency room
21 record and the treatment notes from Dr. Gabelman you
22 have no reason to doubt a diagnosis that she had a neck
23 sprain following this accident, do you?

24 A. No.

25 Q. And you agree also that we had, and continue

1 to have, at least as of the time of your accident, some
2 low back sprain problem; is that correct?

3 MR. CURTIN: He didn't have an accident.
4 Examination. You said his accident.

5 MR. GOLDENSE: Oh, I'm sorry.

6 MR. CURTIN: **Same** way I said I represent
7 **Ms.** Masitto instead of Metropolitan. We all make
8 **such** errors.

9 MR. GOLDENSE: I misspoke.

10 MR. CURTIN: I did the same thing myself.

11 Q. Doctor, in this particular case, you conducted an
12 examination in August of 1990; is that correct?

13 A. **Yes.**

14 Q. And at that time, it was your diagnostic opinion,
15 was it not, that there was a still resolving low back
16 sprain that Mrs. Cook sustained, correct?

17 A. By symptoms only, yes.

18 Q. And **by** symptoms, that means what she told you,
19 correct?

20 A. **Yes.**

21 Q. And physicians regularly rely on the history and
22 information they obtain from patients in making a
23 diagnosis, don't they?

24 A. I would say that a competent physician would rely
25 partially on what the patient says.

1 Q. I did not mean to imply anything else.

2 A. But, certainly, the history is not the only thing
3 one should consider. Especially when there is
4 discrepancy or disparity between complaints and
5 objective findings.

6 Q. I didn't mean to imply for a minute, Doctor --
7 and if you took my meaning to the extent that history
8 was the only component of making a diagnosis, we didn't
9 communicate effectively. Let me rephrase my question.

10 You agree, do you not, that history is a precise
11 medical term of art, do you not?

12 A. I'm not really sure what you mean by that.

13 Q. Well, history means something special to a
14 doctor, correct?

15 A. Yes.

16 Q. And it means the past events that a patient
17 relates to a physician as part of the care and
18 treatment that the physician is to provide, correct?

19 A. Yes, and it also relates to the present
20 condition, as well.

21 Q. Yes.

22 And that is a component, is it not, of every
23 physician's diagnosis, the history given by the
24 patient.

25 A. Well, I wouldn't say necessarily the diagnosis,

1 but I certainly think that the history is a component
2 of the physical examination and evaluation --

3 Q Okay.

4 A. -- for treatment or for other purposes.

5 Q. Now in this particular case the x-ray was also the
6 CAM Scan that was done by Dr. Gadelman's or Dr. and
7 performed by Dr. El Shaar.

8 You've had a chance to review that; is that
9 correct?

10 A. Well, I'm not sure that Dr. El Shaar did the
11 examination, but he interpreted the x-rays.

12 Q. Well, that's what I'm saying; that he was the one
13 who read the CAT Scan film giving rise to the
14 interpretation that was in --

15 A. To his interpretation, yes.

16 Q. Right, okay.

17 Doctor, for your benefit, I think I marked that
18 with the number one on those yellow pages.

19 Is that the CAM scan interpretation from

20 Dr. El Shaar?

21 A. Yes.

22 Q. Now, in your report that you wrote for

23 Mr. Curtin, you indicated that you saw an abnormality
24 at the L4-L5 level appeared to be a central
25 asymmetrical bulge.

1 Is that a fair analysis of what you described --

2 A. Yes.

3 Q. -- your findings to be?

4 Looking, then at Dr. El Shaar's interpretation
5 from the records that you we had in this case do you
6 agree with his statement --

7 MR. CURREN: Note an objection.

8 Q. -- that the bulging annulus and protruding focal
9 herniation of L4-L5 disc centrally indenting the thecal
10 sac and possibly the right nerve root --

11 MR. CURREN: Move to strike

12 Q. -- is an interpretation that you saw when you saw
13 the films, yourself?

14 A. No, I disagree, that I did not think there was
15 any significant indenting of the thecal sac, nor did I
16 think there was any significant pressure on any of the
17 nerves, especially in the right leg, since her symptoms
18 were always in the left leg, it would have zero, if
19 any, clinical significance.

20 But my opinion did not appear to be a focal disc
21 herniation and it seemed to be an asymmetrical bulge,
22 which I see virtually on a day-to-day basis on
23 patients with degenerative disc disease.

24 Q. Well, I appreciate that, Doctor.

25 My question was, quite simply, then, you disagree

1 with Dr. El Shaar's interpretation as set forth in the
2 exhibit that you have in front of you; is that correct?

3 A. My opinion would differ, yes.

4 Q. **Now, do** you actually have the CAT Scan films here
5 in your office today?

6 A. I looked for them: I could not find them. I **did**
7 **at** one time, obviously, have them, I'm not sure what
8 was done with them.

9 I believe they were sent back to Mr. Curtin's
10 office, but I really don't have any independent
11 recollection now.

12 Q. Does **your** file reflect anywhere, **your** handwritten
13 notes or dictated notes of your reading of this CAT
14 Scan that you don't have any more?

15 A. I don't follow you.

16 Q. Do you have any record right there in front **of**
17 you on your desk of your --

18 A. The only record I --

19 Q. Let me finish my question.

20 A. Okay.

21 Q. Do you have any record right there in front **of**
22 **you** on your **desk** of your interpretation of the CAT Scan
23 films?

24 A. Other than that included in my letter, no.

25 Q. You didn't make any notes as you were **looking** at

1 the CAT Scan films on a shadow box, did you?

2 A. I looked at the films as I was dictating the
3 report. I do not have any independent recollection of
4 a separate report for that.

5 Q. And what independent separate record do you have
6 of the physical examination you conducted of Rosalie
7 Cook?

8 A. Of whose physical examination?

9 Q. Your physical --

10 A. Mine?

11 Q. Your physical examination of Rosalie Cook.

12 A. I have, basically, one typewritten sheet that was
13 generated right at the time of her evaluation, and
14 basically, it's an incomplete report that was generated
15 probably that same day that she was here to go over the
16 physical examination.

17 Q. May I see it, Doctor?

18 A. Sure.

19 MR. GOLDENSE: Let's go off the record and
20 mark this as an exhibit.

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

23 (Thereupon, Plaintiff's Exhibit No. 1
24 (Dr. Corn) was marked for identification.)

25 MR. GOLDENSE: Let's go back on the

1 record.

2 BY MR. GOLDENSE:

3 Q. Doctor, handing you what has been marked for
4 identification purposes as Plaintiff's Deposition
5 Exhibit 1, the first line of that reads that the
6 details are in the enclosed chart notes.

7 Do you see that word at the top?

8 A. Yes.

9 Q. Where is the chart note that's referred to in
10 Plaintiff's Deposition Exhibit 1?

11 A. I don't keep the chart notes after the reports
12 have been dictated.

13 So in other words, what happens the patient
14 comes in for evaluation and we look at the x-rays. I
15 never look at the material. I dictate a story, very
16 brief history and physical and wait for the rest of the
17 records, I review the records. I take my handwritten
18 notes, look at the x-rays generate a report, and I
19 discard everything that is superfluous.

20 Q. Superfluities.

21 A. Superfluities. In other words, everything --

22 Q. I understand what the word means.

23 A. My opinions are in the letter and there is no real
24 need to keep anything else.

25 Q. Okay. Are those superfluous notes the notes

1 that you made at the time that you actually interviewed
2 Mrs. Cook?

3 A. Yes.

4 Q. so those would be the quotations about the --

5 A. That's right.

6 Q. -- extent of the property damage and the actual
7 times -- in your direct testimony several times you
8 said quote, unquote?

9 A. That's correct.

10 Q. And so these are the handwritten notes that
11 you've called superfluous?

12 A. Well, they're superfluous once the report is
13 written, yes.

14 Q. Okay. Going back, then, to the radiologist,
15 Dr. El Shaar's, interpretation of the CAT Scan, which
16 you have in front of you with the yellow number one on
17 it, Doctor.

18 Do you agree or disagree with his statement that
19 the spinal canal --

20 MR. CURTIN: Objection.

21 Q. -- and lateral recesses at the L4-L5 disc region
22 appear narrowed, based on your reading of the films
23 that you conducted?

24 MR. CURTIN: Objection. Move to strike.

25 A. I don't recall that right now.

1 Q. Okay. Would pain spreading to Mrs. Cook's right
2 lower back be consistent with the findings that you've
3 had in the CAT scan?

4 A. That's not what she said, but it would be
5 compatible with a soft tissue injury to the low back.

6 Q. Okay. Are the --

7 A. Any soft tissue injury to the low back.

8 Q. Well, that's what we're trying to explore in this
9 case, isn't it?

10 And I suppose my question, better phrased, is
11 this: Is there anything about the abnormality that you
12 found in her intervertebral disc between the fourth and
13 fifth vertebrae that is consistent with the complaints
14 of pain that she made?

15 A. No. I don't think this type of condition is a
16 painful condition.

17 Q. Okay.

18 A. And it certainly doesn't follow her pain pattern,
19 nor does it follow the findings at the time of the
20 examination.

21 Q. Well when you said in your report that there was
22 a central asymmetrical bulge, which way was her disc
23 bulging, towards the rear or towards the front?

24 A. Towards the rear.

25 Q. And that would be in the direction of her spinal

1 canal would it not?

2 A. Sure.

3 Q. And did you see any evidence in your reading of
4 these films of that bulge compromising any important
5 structures in her spinal column?

6 A. What do you mean by compromising?

7 Q. Compromising. Boy, I thought that --

8 A. I mean, I know what I mean by compromising, but
9 I'm not sure the Jury has any idea what you mean by
10 compromising, nor do I.

11 Q. Okay. Doctor, well, it's nice of you to be able
12 to read the Jury's mind in this case.

13 If you know what compromising means, why don't
14 you answer it.

15 Were any of the spinal structures in the area of
16 the central asymmetrical bulge compromised?

17 MR. CURTIN: Move to strike the
18 superfluous comments of Counsel.

19 A. In my opinion, no, there were no structures that
20 were compromised.

21 Q. Was there any indication of the thecal sac from
22 the central asymmetrical bulge that you saw?

23 A. It was touching the thecal sac, but I was not
24 impressed with any type of indentation.

25 Q. Now, it is your written opinion in this case, is

1 A. *RE

2 Q Did she indicate the degree of damage done to the
3 car as a result of the motor vehicle accident?

4 A. Yes, she did.

5 Q. Would you please tell us what she told you?

6 A. She stated that there was quoted not too much
7 damage of quote.

8 Q. Did she indicate whether the vehicle was
9 originally after the accident?

10 A. Yes it was originally

11 Q. Did she indicate whether or not she was wearing a
12 safety belt at the time of the accident?

13 MR. GOLDENSE: Objection

14 Q. You can answer Doctor.

15 A. She stated she was not wearing a seat belt.

16 MR. GOLDENSE: Move to strike.

17 Q. Did she give you an idea as to whether or not she
18 went to the emergency room on the day of the accident?

19 A. She did not go to the emergency room the day of
20 the accident.

21 Q. Did she go the following day to the emergency
22 room?

23 A. Yes.

24 Q. And did the emergency room take any x-rays?

25 A. Yes, they did.

1 it not, that multiple pregnancies that Mrs. Cook
2 experienced were a cause of the degenerative disease
3 you saw when you read her CAT Scan films?

4 A. My opinion is that one can get degenerative disc
5 disease with multiple pregnancies.

6 Q. Okay.

7 A. I have no idea what the etiology is, except that
8 it's, in all likelihood, not trauma.

9 Q. You mean for Rosalie Cook?

10 A. Yes.

11 Q. All right. I'm not sure if that was a yes or no.
12 Does --

13 A. The answer is that multiple pregnancies can
14 contribute to degenerative disc disease.

15 Q. Did they for Rosalie Cook?

16 A. I don't know.

17 Q. Okay.

18 A. I don't think anybody knows. It is my opinion
19 that her obesity and her pregnancies contributed much
20 more than the alleged injuries.

21 . And when you say alleged injuries, you mean the
22 automobile accident of April 18th 1988 that has us here
23 tonight?

24 A. Yes. I would be more concerned with the earlier
25 injury being more of a source than the injury that

1 we're here discussing.

2 Q. Okay. Now, did you ever see any records of
3 the -- by the earlier injury, you're talking about a
4 1983 accident, right?

5 A. Correct.

6 Q. Did you ever see any medical records from the
7 1983 accident?

8 A. I don't believe there were any.

9 Q. I didn't ask if there were any; I asked if you
10 saw any?

11 A. No.

12 Q. You never saw any records from a 1983 accident,
13 did you?

14 A. Not to my recollection,

15 Q. And you don't know if she ever even saw a
16 physician in the 1983 accident, do you?

17 A. Off the top of my head, I would say no, but I
18 really don't remember.

19 Q. And you don't know if there were any CAT Scan
20 studies done at the time of her 1983 accident, do you?

21 A. I'm pretty sure there was not a CAT Scan done.

22 Q. Okay.

23 A. I asked her.

24 Q. And you have no idea or the period of time which
25 she may have treated with a physician back in 1983, do

1 you?

2 A. Not off the top of my head, no.

3 Q. Now, she did tell you in her history, did she
4 not, that she had been symptom-free for five years
5 after this accident, up until this accident in 1988,
6 correct?

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

8 Q. Now, do you totally discount her truthfulness in
9 saying that she had been symptom-free from 1983 to the
10 time of this accident in 1988, in offering the
11 testimony that you just did, that it's more likely that
12 the 1983 accident was the cause of her back?

13 A. I don't think it has anything to do with
14 truthfulness or not truthfulness.

15 The natural history of degenerative **disc** disease
16 is that it takes many years to develop after an injury;
17 that an '83 injury showing up in 1989 would be far more
18 likely than an injury in 1988 contributing to the
19 appearance or the development of degenerative disc
20 disease.

21 I don't doubt that she was pain-free -- she's
22 pain-free now, and it's not five years after the 1988
23 injury. I don't think that really has any pertinence
24 in this at all.

25 The fact is that, in my opinion, degenerative

1 disc disease, if it's caused or initiated by trauma, it
2 takes many years to develop.

3 So it is not incompatible or unbelievable to me
4 that she was symptom-free for many years.

5 Q. Okay. And, Doctor, you also agree, don't you,
6 that trauma can cause an acute abnormality of an
7 intervertebral disc, do you not?

8 A. **An** acute trauma will only damage a previously
9 damaged intervertebral disc, acutely.

10 There are no such things as acute herniated discs
11 that occur on a normal disc. So there has to be a
12 degenerative disc disease or a previous trauma
13 experienced, if there's a true documented herniated
14 disc, that is free fragment or more than a half
15 centimeter mass protruding beyond the rim of the
16 annulus.

17 Q. I'm sorry, Doctor. I tried to use the word
18 abnormality and avoid this definitional problem of
19 bulges, herniations, and ruptures that was suggested by
20 Counsel in direct examination, so --

21 A. The problem --

22 Q. -- using the term abnormality that you **saw** in
23 Rosalie Cook's intervertebral disc, **is** it impossible
24 that that abnormality you saw, whatever we choose **to**
25 call it, occurred in the April 18th, 1988 accident?

1 A. Is it impossible? I would say it is not
2 reasonably medically probable.

3 It would be a really unusual case if it was true
4 and that is why I don't believe that the disc
5 abnormality should be concentrated on the way it is by
6 you because I don't think it has any clinical
7 significance whatsoever.

8 That is merely a radiological finding, without
9 any matching clinical neurological abnormalities or
10 anything else. It is purely an abnormality seen on
11 x-ray

12 You are equating that with the source of all per
13 problems and there is absolutely no indication on the
14 medical records that those two can be joined.

15 MR. GOLDENSE: Objection over to strike.

16 His answer was totally unresponsive.

17 Q Doctor my question was when it happened --

18 A. When what happened?

19 Q -- not its significance.

20 A. I'm not sure, when what happened?

21 Q. When the abnormality in her intervertebral disc
22 occurred.

23 A. I don't know when it occurred

24 Q. And wouldn't you really need to see a CAT scan
25 from before April 18th, 1988 to know when this

1 abnormality, whatever we choose to call it actually,
2 in fact, occurred?

3 A. I don't think the actual abnormality occurred; I
4 think it slowly developed over a very long period of
5 time, possibly five to ten years.

6 Q. And you think --

7 A. I don't think that -- I mean, based on my
8 knowledge -- and I treat people with disc disease
9 virtually on a daily basis -- I can't think of one
10 clinical example or one reference or one textbook that
11 would describe that type of clinical presentation or
12 radiological presentation for an abnormality such as
13 observed in Miss Cook's back to exist.

14 Q. Okay. Now, you do agree that in this case a
15 magnetic resonance imaging test, or an MRI, would have
16 been a proper diagnostic tool to have employed
17 subsequent to your examination; is that correct?

18 A. Well, in my opinion, I would not have done a CT
19 scan of her. I would employ just an MRI scan, because
20 of the woman's size.

21 The CT scans are usually not very diagnostic,
22 and, as seen in her films, they were very difficult to
23 interpret and very difficult to read.

24 But an MRI would certainly be a more accurate
25 test in an obese patient. And it may not mean anything

1 from a clinical standpoint, because there were no
2 symptoms, but I would have ordered an MRI scan.

3 Q. Doctor, is it not correct that she weighed 170
4 pounds according to Dr. Gabelman's chart at the time of
5 this CT scan back in June of 1988?

6 A. I don't know.

7 Q. Well, you have Dr. Gabelman's records right in
8 front of you,, It's not --

9 A. You must have them in front of you, too, or you
10 wouldn't be asking me that.

11 Do you know what page they're on?

12 Q. You're the one who gets to testify, Doctor, I'm
13 only allowed to ask questions.

14 A. Okay. Well, why don't you find them for me --

15 Q. I'll be glad to.

16 A. -- and then I'll be glad to answer your question.

17 MR. GOLDENSE: Let's go off the record.

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

20 MR. GOLDENSE: Back on record.

21 BY MR. GOLDENSE:

22 Q. Doctor, when we went off the record, I had a
23 chance to look through the records that you've had as
24 part of your chart and found Dr. Mars' report that he
25 wrote as part of the record in this case that you

1 reviewed; is that correct?

2 A. Yes.

3 Q. And Dr. Mars saw Mrs. Cook twice in the month of
4 August in 1988; did he not?

5 A. Yes.

6 Q. And he recorded her weight on both of those
7 visits, did he not?

8 A. Yes.

9 Q. And on one visit he recorded her weight at 170
10 pounds; is that correct?

11 A. Yes.

12 Q. And on the second visit, he recorded her weight
13 at 169 pounds; is that correct?

14 A. Well, I think it was the other way around. On
15 the first visit it was 169, and the second one was 170.

16 Q. Okay. We agree to that.

17 A. Which, essentially, is the same number.

18 Q. Now, is that sufficient weight to be obese to
19 cause the low back disorder of a degenerative disc
20 disease that you've testified to earlier?

21 A. If it persists over a period of time, sure.

22 Q. Are you aware of the fact that prior to the CAT
23 Scan in June of 1988, there had not been multiple
24 pregnancies, but only one for Mrs. Cook?

25 A. That's true.

1 Q. Dr. Corn, you have regularly made a part of **your**
2 practice offering your services to the defense of
3 personal injury cases over the last few years, have you
4 not?

5 A. I am equally available to the plaintiff's side,
6 as well as I am to the defense side.

7 Q. I appreciate that, Doctor. **My** question was a
8 little different.

9 You have offered your services regularly over the
10 last few years to the defense of personal injury cases:
11 is that correct?

12 A. Yes, I have.

13 Q. And, Doctor, approximately how many cases a week
14 do you review, say, in 1990 -- here we are at the end
15 of the year in November of 1990 -- how many cases per
16 week in 1990 have you reviewed for the defense of
17 personal injury actions?

18 A. At the least zero, at the most, two.

19 Q. Okay. And what would be --

20 A. I would say an average of four or five a month.

21 Q. And has four or five a month been the average for
22 the last two or three years prior to this time --

23 A. I have no idea.

24 Q. -- in November of 1990?

25 A. I have no idea.

1 MR. GOLDENSE: Let's go off the record.

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

4 MR. GOLDENSE: Back on the record.

5 BY MR. GOLDENSE:

6 Q. Dr. Corn, Mr. Curtin asked you some questions
7 during his direct examination, and particularly turned
8 your attention to an October 29th, 1988 visit, at which
9 time you testified that Mrs. Cook reported herself to
10 be okay, is that correct, referring to the October
11 29th, 1988 visit with Dr. Gabelman?

12 A. Yes.

13 Q. Now, in fact, Doctor, you have records in front
14 of you showing that she returned again December 30th,
15 1988 to Dr. Gabelman's office, reporting a flare-up of
16 pain; is that correct?

17 A. Yes.

18 Q. And she, again, reported in September of 1989,
19 that she had pain in the back occurring three to four
20 times a week: is that correct?

21 A. Well, first of all, if I can answer your
22 question, the December, 1980 showed a flare-up of her
23 low back --

24 Q. 1988.

25 A. I'm sorry, '88 -- when she said, quote, she does

1 a lot of stand and people come to pick up boxes: she has
2 some help with some boxes indicating that her work was
3 aggravating her back.

4 And when was the other date?

5 Q. The next date was September 25 1989 again
6 reporting pain in her low back to Dr. Gabelman's
7 office; is that correct?

8 A. Well, it says, quote, the patient still notes
9 pain in the back occurring three to four times a week
10 lasting a half an hour at a time.

11 Q. It would be incorrect for this jury to conclude
12 that she never complained of pain in the low back after
13 October 29th, 1988 correct?

14 A. Well, she complained to me that she had pain in
15 her low back.

16 Q. And that was some 28 months after this accident
17 occurred correct?

18 A. Yes.

19 Q. And again, she reported to Dr. Gabelman during
20 her pregnancy in February of 1990 that she had
21 increased pain in the buttock area and lower back on
22 the left; is that correct?

23 A. That's what she said to him, but she told me she
24 had no increase of pain with her pregnancy. So I'm not
25 sure which is the valid statement.

1 Q. My question was only what she reported to
2 Dr. Gabelman, not what she reported to you.

3 A. Well, that's what she reported to Dr. Gabelman.

4 Q. In February of 1990, she did report to
5 Dr. Gabelman increased pain in her buttock area and
6 lower back on the left, correct?

7 A. That's what his notes say.

8 Q. Okay. And those notes were part of your chart
9 when you examined her in August of 1990, correct?

10 A. They were available for my review, yes.

11 MR. GOLDENSE: I have no further
12 questions.

13 MR. CURTIN: Let's go off the record,
14 please.

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

17 (Thereupon, Defendants' Exhibits A and B
18 (Dr. Corn) were marked for identification.)

19 MR. CURTIN: Okay. Let's go back on the
20 record.

21 REDIRECT EXAMINATION

22 BY MR. CURTIN:

23 Q. Doctor, taking things in the order that they were
24 just described or inquired to by opposing counsel.

25 First, February of 1990, the plaintiff had some

1 physical complaints that she described to Dr. Gabelman;
2 is that correct?

3 A. Yes.

4 Q. How many months pregnant was she in February of
5 1990?

6 A. Approximately six months.

7 Q. All right October 29th, 1988. I have asked you
8 to review Dr. Gabelman's records and read them to the
9 Jury

10 Do you recall that testimony on direct
11 examination?

12 A. Yes.

13 Q. And my opposing counsel had you reference other
14 dates but would you take a look at Dr. Gabelman's
15 records and indicate to the Jury whether or not
16 October 29th 1988 was the only visit in 1988 where
17 the doctor did not direct her to return in a certain
18 period of time to his office?

19 MR. GOLDENSE: Objection as to form.

20 Q. Doctor, please -- I'll withdraw the question;
21 I'll rephrase it.

22 Doctor, examine the records of Dr. Gabelman for
23 calendar year 1988.

24 What, if anything, is different about the

25 October 29th 1988 notation as compared to the other

1 1988 notations?

2 A. There is no return visit notation or request for a
3 return visit noted.

4 Q. And the October 29th, 1988 notation states what,
5 as it pertains to the necessity of this patient
6 returning to Dr. Gabelman?

7 A. Well, actually it says, return as needed.

8 Q. Okay. By contrast in the earlier visits, what if
9 anything was there given to the patient relative to
10 when she should return?

11 A. Well, in the prior visits, and also in some of
12 the subsequent visits there was a recommendation that
13 she return within a stipulated period of time.

14 Q. Very good Doctor.

15 There was some suggestion ^C that your practice
16 involves essentially that of personal cases.

17 Now, first, Doctor, what, if anything, is the
18 primary focus of your practice?

19 MR. GOLDENSE: objection. Move to strike
20 Counsel's editorial comments.

21 Go ahead, Doctor.

22 A. I am a clinical orthopedic surgeon.

23 Q. And what, if any, experience have you had with
24 respect to evaluating plaintiffs in the prosecution of
25 a plaintiff's personal injury claim? Any?

1 A. I have, I would say, fairly extensive experience
2 and an ongoing experience. I would say I see more
3 plaintiffs for evaluation and treatment than I do
4 defense examination.

5 Q. Doctor, there was some discussion between
6 yourself and my opposing counsel relating to whether or
7 not an abnormality in an L4-L5 area, represented a
8 problem.

9 Now, I'd like you to assume the following set of
10 facts: First, that myself, I'm a 34-year old man who
11 participated in high school and college sports; I've
12 never sustained any significant injury, but like many
13 other individuals my age, I've ignored my doctor's
14 recommendations and have become overweight.

15 Do you have an opinion, based upon a reasonable
16 degree of medical certainty, as to whether or not, if a
17 CAT Scan was performed on my lower back area, whether
18 or not any abnormality could be detected?

19 And I'd further like you to assume I have no
20 lower back complaints either now or in the recent
21 history.

22 MR. GOLDENSE: Objection.

23 THE WITNESS: I figured that was coming.

24 MR. GOLDENSE: Yes, it was pretty clear.

25 A. In general, I would not be terribly surprised if

1 there was a CT abnormality of degenerative disc
2 disease, and, in fact, I would probably expect it.

3 Q. Well, I might object to that myself, Doctor. I
4 didn't know you would expect it.

5 A. Nothing personal.

6 Q. All right, nothing taken.

7 Let's talk about Defendants' Exhibit A. Let me
8 refer you to that, first.

9 My opposing counsel asked you questions relating
10 to whether or not Dr. Gabelman's records, as contained
11 in Defendants' Exhibit A, represents the totality of
12 the records you reviewed from that physician's office:

13 Do you recall those questions?

14 A. Not specifically.

15 Q. Doctor, please examine your report, Page 2, and
16 tell us whether or not there's any indication as to
17 whether, in the 1983 accident, the plaintiff was
18 treated by Dr. Gabelman according to the history she
19 provided to you?

20 MR. GOLDENSE: Objection,

21 A. She stated that Dr. Gabelman treated her at that
22 time with physical therapy and medication.

23 Q. Who told you that she was treated by Dr. Gabelman
24 for physical therapy and medication?

25 A. She did.

1 Q. As it pertained to what accident?

2 A. The 1983 accident.

3 Q. Doctor, is there something known as the patient-
4 physician privilege?

5 A. Sure.

6 Q. Okay. Does that require a physician not to
7 reveal information as to what transpires between a
8 patient and their physician?

9 MR. GOLDENSE: Objection.

10 A. I think, within reason, as long as -- I'm not
11 really sure what the legal ramifications are --

12 Q. I'm not asking you as a lawyer: just tell me what
13 you understand as a doctor.

14 A. I would understand that --

15 MR. GOLDENSE: Note my continuing
16 objection.

17 A. -- a patient would have to sign a release to
18 permit me to release the information.

19 Q. As it pertains to Defendants' Exhibit A, do you
20 recognize the top page of that document?

21 A. Of A?

22 Q. Yes, sir.

23 A. The top page, yes.

24 Q. Is a what, sir?

25 A. It's a subpoena.

1 Q. Directed to whom?

2 A. To Dr. Gabelman and the Orthopedic Associates.

3 Q. Dealing with what patient?

4 A. Rosalie Cook.

5 Q. Asking for any and all records pertaining to what
6 patient?

7 A. Rosalie Cook.

8 Q. Okay. The records that are marked as Defendants'
9 Exhibit A were transmitted to your office by whom?

10 A. I assume it was your office.

11 Q. Do those records that were received in compliance
12 with the subpoena, include any of Dr. Gabelman's
13 records for care and treatment, if any, from 1983?

14 A. No.

15 Q. There has been a suggestion, if I listened to the
16 cross-examination carefully, that you may or may not
17 have reviewed a CAT Scan.

18 Initially, do you have an independent
19 recollection, with the assistance of your notes and
20 report, of reviewing the CAT Scan?

21 A. Sure.

22 Q. Okay. Doctor, I am going to represent to you
23 that Defendants' Exhibit B is a letter that has been
24 stipulated by my opposing counsel and myself was
25 directed by my office to my opposing counsel. I want

1 You to accept that stipulation as true, and that was
2 agreed on of the record.

3 Now, Doctor as it pertains to the content of
4 that letter does that content increase or decrease the
5 probability that, in fact, you did review the CAT Scan
6 pertaining to Ms. Cook?

7 A. I believe it would increase the probability that
8 I did review the actual CAT Scan.

9 Q. Please tell the Ladies and Gentlemen of the Jury
10 why it would increase the probability that you did,
11 personally, review the CAT Scan?

12 A. My letter is -- I am not sure how to --

13 Q. Tell us what the letter says.

14 A. I'll just read it. I'm not sure it would be
15 accurate, but other than this is essentially a formal
16 notification of the deposition which was scheduled for
17 today.

18 It says I will naturally provide now with
19 Dr. Corn's report will be for the purpose. However
20 the display is attributable to the fact that I was
21 awaiting receipt of the Advanced Imaging CT scans which
22 were only recently transmitted by that organization to
23 Dr. Corn's attention On that basis, I have requested
24 Dr. Corn to produce his report as soon as practicable.

25 (sic)

1 Q. Doctor, who **is** the author of that letter?

2 A. You are.

3 Q. **And** to whom was that letter directed, sir?

4 A. To Mr. Goldense.

5 Q. And it has been stipulated that letter was
6 received.

7 Finally, sir, you were asked some questions
8 relating to the history and the importance of history.

9 Do **you** recall that portion of the deposition
10 cross-examination?

11 A. Yes.

12 Q. Doctor, there were certain portions of the
13 history that the plaintiff related to you that I did
14 not inquire into during the course **of** my direct
15 examination; is that accurate?

16 A. Yes.

17 Q. Doctor, the primary purpose why we're here
18 tonight, and **why** I asked you to give an opinion **as to**
19 her condition, **was** to give an evaluation as to **how she**
20 was upon your examination, as well as what, if any,
21 impact or injury was occasioned to her **by** the accident
22 at issue in this case, correct?

23 MR. GOLDENSE: Objection. **As** to form,
24 Counsel.

25 A. That's my understanding.

1 MR. CURTIN: And finally, Doctor, I would
2 like to thank you for your time and testimony. I
3 have nothing more.

4 RECROSS EXAMINATION

5 BY MR. GOLDENSE:

6 Q. Doctor, keep Defendants' Exhibit A in front of
7 you. It's the records from Dr. Gabelman.

8 Mr. Curtin just asked you whether or not in any
9 of the 1988 visits she was asked to return on a
10 regularly scheduled basis.

11 Do you remember that question just now in his
12 redirect examination?

13 A. I think he **was** directing -- the question was on
14 how many dates did she not have the order or the
15 request to return.

16 But as I said, most of the time, there were
17 requests to return.

18 Q. And, in fact, when she reported her flare-up of
19 pain to Dr. Gabelman on December 30th, 1988, he
20 referred her to therapy and asked her to return in four
21 weeks: is that correct?

22 A. That's correct. She didn't show up until nine
23 months later, though.

24 **a.** But he did schedule her?

25 A. I don't know that it was scheduled.

1 Q. Okay. Now --

2 A. Apparently it was scheduled, and she didn't show
3 up for that or the subsequent visit.

4 Q. You are aware of the fact that she is married?

5 A. I didn't ask her, but I assumed that she was.

6 MR. GOLDENSE: I have nothing further.
7 That's fine.

8 MR. CURTIN: Thank you, Doctor. I have
9 nothing further.

10 MR. GOLDENSE: For the record, I will
11 waive the requirement of filing Doctor's
12 deposition testimony, either by way of filing the
13 videotape or the court reporter's stenographic
14 report of the deposition,

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

17 THE VIDEOTAPE OPERATOR: Doctor, do you
18 wish to waive signature?

19 THE WETNESS: I waive my right to review
20 both the transcript and the tape.

21 - - - - -

22 (Deposition concluded; signature waived.)

23 - - - - -

24


25

C E R T I F I C A T E

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

I, Toni M. Salopek, Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named ROBERT CURTIS CORN, M.D., was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid: that the testimony as above set forth was reduced to writing by me, by means of stenotype, and was later transcribed into typewriting under my direction by computer-aided transcription; that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 26th day of November, 1990.



Toni M. Salopek, Notary Public
in and for the State of Ohio.
Registered Professional Reporter
My Commission expires 9/7/94

The State of Ohio } ss:
CUYAHOGA COUNTY

TO **Edward H. Gabelman, M.D.**
c/o Orthopedic Associates
23250 Mercantile Road
Beachwood, Ohio 44122

Attention:, Records Custodian,

You are hereby commanded to appear before me, a Notary Public in and for the County and State aforesaid,
 at the office of **G. Michael Curtin, Esq.; Keller, Scully & Williams,**
330 Hanna Building,

in the City of Cleveland, County of Cuyahoga, State of Ohio, on **Wednesday** *, the* **29th** *day*
August, A.D. 1990 *, at* **11:30** *o'clock* **A. M., then and there to give evidence as**

the truth to say in a certain action pending in the **Court of Common Pleas-Lake County,**
entitled

Rosalie Cook, Plaintiff,

vs.

Elizabeth Masitto, et al., Defendants,

being cause No. **89 CIV 1144** *in said court, on the part of the* **defendant.**

You are further commanded to bring with you the following, to wit:

Any and all medical records, reports, x-ray reports
and office notes you have pertaining to:

Rosalie Cook

Date of Birth: 7-31-65

Social Security No. 289-68-0373

RECEIVED

AUG 27 1990

Keller, Scully & Williams Co., L.P.A.

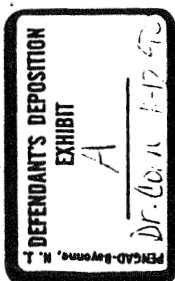
Please Note: Certified copies may be mailed instead
of appearance, however, please contact
G. Michael Curtin, Esq., at 566-7100, upon receipt
of this subpoena.

This you do wise omit, under the penalty of the law.

Given under my hand and official seal, this **17th** *day of* **August,** **A.D. 1990.**

MORSE, GANTVERG & HODGE
SHORTHAND AND STENOGRAPHIC REPORTERS
730 LEADER BUILDING - CLEVELAND
771-3350

Sidney Gantverg
Notary Public



Fosalia Cook
W.S.3

669.9C

JAN 28 1989

NO show

JOHN COO ORTHOPEDIC ASSOCIATES
ATRIUM CENTER
23750 MERCANTILE ROAD
SEATHOOD, OHIO 44129

MAY 10 1989

No show

SEP 25 1989 - O.V. DR. G.: The patient still notes pain in the back occurring 3-4 times a week lasting 1/2 hr at a time. During this period the pains are sharp and of short duration. Her work involves mainly standing. She did not have definite radicular symptoms. physical exam revealed tenderness. There was no definite spasm. There **was** some restriction of lumbar motion with flexion to 70°, extension 20°. SLR produced pain at 70°. Reflexes were equal.

Treatment: work with back exercises, back support was recommended. **Also** consider unit, Flexeril t.i.d. prn, return 6 weeks.

NOV. 6 1989

No show

FEB 21 1990 - O.V. DR. G.: The patient has noted some increased pain in the buttock area and lower back on the left. No history of new injuries. She is approx. 6 months pregnant. She stopped taking all medication. She indicated the TNS unit is helpful but she did not take it because she is pregnant. She had no radicular symptoms.

physical exam today revealed a normal gait. There **was** some tenderness in the lumbar area with some restriction of motion, flexion and extension. No definite spasm. No neurological findings.

Treatment: intermittent heat at rest. Will be seen after the delivery.

6699C

BEACHWOOD ORTHOPEDIC ASSOCIATES
 ATRIUM CENTER
 23250 MERCANTILE ROAD
 BEACHWOOD, OHIO 44122

Rosalie Cook
 P. 2

JUN 24 1988 - O.V. DR. C.: The patient **has** noted improvement. Her neck no longer bothers her. She still notes **some** intermittent pain in the lower back pain, mainly on the left. She did not have numbness or tingling.

Physical exam revealed normal cervical motion without tenderness or **spasm**. There was some restriction of lumbar motion. There was tenderness in **the** left lower back area. SI on the left produced pain at 60°, unremarkable on the right. Reflexes were equal. Normal gait.

Finish therapy, work with back exercises, swimming, medication, Return 4 weeks,

JUL 27, 1988 - O.V. DR. G.: The patient overall does feel better. She still notes inter pain mainly in the left buttock and occasionally will extend into the left lower extremity with numbness and tingling. She was on vacation and had no difficulty,

Physical exam revealed tenderness in the left buttock. SLR produced some discomfort 70" on the left, but was unremarkable on the right. There was slight tenderness but no spasm the lumbar spine. Motion **was** restricted.

Treatment: refer Dr. Mars for neurological evaluation. Continue medication, return 6

8.19.88: PC PHARMACY - Flexeril #30 - I.T.I.D.N.R. per Dr G

31 1988 - O.V. DR. G.: The patient overall feels much improved. She occasionally feels much improved. She notes some discomfort in the back. She had no neurological symptoms. She found therapy helpful and Flexeril.

Physical exam at this time was negative. Return as needed. Will continue with exercises and use mild analgesics as necessary.

9.7.88 Pt called because of back pain. She indicated she missed two days of work. Flexeril made her sleepy but she will continue. She made a return apt for Sept 28.

SEP 28 1988 Came day of appt

OCT 29 1988 - O.V. DR. G.: The patient feels that her neck and back no longer bother her. She has no symptoms referable to the injured areas.

Physical exam unremarkable, Return as needed.

DEC 30 1988 - O.V. DR. C.: The patient has done well without pain until 2 days ago when she noted flare up of pain in the lower back. She had been working. She does a lot of stand and bends over to pick up boxes. She has some help with some boxes. The pain is in the left buttocks and extends into the left **lateral** thigh. No numbness or tingling. There was tender and spasm in the lumbar **area**. Flexion to 70°, extension 20°. SLR on the left produced pain, 60°, on the right to 90°. There was some low back pain. No leg pain. Reflexes were equal. had a normal gait, Flexeril t.i.d., may work, Refer for therapy, Return 4 weeks.

BEACHWOOD ORTHOPEDIC ASSOCIATES
ATRIUM CENTER
23250 MERCANTILE ROAD
BEACHWOOD, OHIO 44122

Acct. # 66990

Name Cook, Rosalie Address _____ Phone _____
LAST NAME FIRST NAME INITIAL

Present Employer _____ Phone _____

Age _____ Sex _____ D.O.B. _____ Referred By _____ Resp. Party _____

Insurance _____ Claim # _____ D.O.I. _____

Employer at Time of Injury _____ Attorney _____

APR 20 1988 - O.V. DR. G.: sprain cervical & lumb
spines.

Darvocet N-100, -hydro 800mg. PT.
Return to work 4-21-88. Return 3 wks.

4-22-88. Patient stopped in office; was to
return to work 4-21-88, she stated
because of increase back pain she didn't
return 4-21-88; will return 4-22-88.

MAY 11 1988 NO SHOW.

5/13/88 phone - P back pain. No rest - last: O.V. as;
Return say to. Able to work 5/22/88 - less now
6/6/88

JU 3 1988 - O.V. DR. G.: The patient noted some increased pain in the back in the
left lower extremity with numbness and tingling 1 week ago. No history of new injuries. The
was no loss of bowel or bladder control. She still notes some neck pain. She found therapy
quite helpful. She indicated her work involved finishing products for the automotive industr
which weighed 15 pounds a piece. She would have to bend over to lift each of these to do the
finishing process. She also had to lift heavy boxes of these. She was laid off a few weeks
Physical exam revealed tenderness, spasm and restriction of lumbar motion. There
was some tenderness over the cervical area, but no restriction of motion or spasm. Reflexes
were equal in the upper and lower extremities. SLR produced pain at 60° on the left and 70°
the right. She had a normal gait.

Treatment: swimming, refer for therapy, continue medication. Obtain lumbar CT, r
3 weeks.

ADVANCED IMAGING
CT SCANNING
ATRIUM CENTER
23150 MERCANTILE ROAD
REACHWOOD, OHIO 44122
TELEPHONE 292-0607

PATIENT NAME: Rosalie Cook
DATE: June 3, 1988

PATIENT ACCOUNT: 66990
REFERRING PHYSICIAN: Edward H. Gabelman, M.D.

CT SCAN OF L3-L4, L4-L5 AND L5-S1 DISCS;
Axial CT sections of the lumbar spine were obtained from the lower body of L3 to the upper body of S1 vertebrae followed by multi-planar, sagittal and coronal reconstructions,

L3-L4 and L5-S1 discs appear normal and they show no herniation. There is bulging annulus and probable focal herniation of L4-L5 disc centrally indenting the thecal sac and possibly the right nerve root: (scan #16 and 17). The spinal canal and lateral recesses at L4-L5 disc region appear narrowed. The rest of the exam is unremarkable,

IMPRESSION;

Normal L3-L4 and L5-S1 discs. Bulging annulus and probably herniation of L4-L5 disc indenting the thecal sac and nerve root with narrowing of the corresponding spinal canal and lateral recesses.

AELS/nE

A. EL. Shaar M.D.
A. EL. Shaar, M.D.

66

September 4, 1990

David W. Goldense, Esq.
920 Terminal Tower
Cleveland, OH 44113

RE: Rosalie Cook vs. Elizabeth Nasitto et al
Lake County Common Pleas Court
Case No. 89 CIV 1144
Our file: 9083-M

Dear Mr. Goldense:

Please allow this letter to serve as formal notification that I have scheduled Dr. Robert Corn's video tape deposition for November 12, 1990 at 5:30 p.m. Dr. Corn's office is located at 850 Brainard Road, Highland Heights, Ohio.

I will naturally provide you with Dr. Corn's report well before the deposition. However, the delay is attributable to the fact that I was awaiting receipt of the Advanced Imaging CAT scans which were only recently transmitted by that organization to Dr. Corn's attention. On that basis, I have requested Dr. Corn to produce his report as soon as practicable.

Should you have any questions, please do not hesitate to contact me.

Thank you for your attention to this letter,

Sincerely yours,

KELLER, SCULLY & WILLIAMS CO., L.P.A.

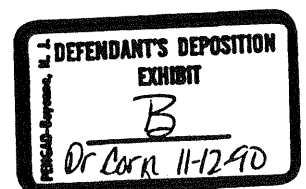
By:

G. Michael Curtin

GMC:mob

cc:

Andrew Thomas
CL015037RH



1 that the combination of these drugs enhance the
2 endorphin production or make the endorphins work
3 for efficiently, so to **speak**.

4 These can cause less pain and are
5 interpreted as improvement in the patient's
6 subjective complaints.

7 Q. Did Mr. Prete appear to you to be motivated to
8 concur his pain?

9 A. Absolutely, no question about that, As I
10 testified previously, I wish most of our chronic
11 pain patients had that kind of attitude because
12 it is an excellent attitude.

13 MR. GARDNER: Off the record,

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

16 BY MR. GARDNER:

17 Q. Doctor, did you have Mr. Prete take his shirt
18 off, remove his neck tie for your examination?

19 A. I believe so, yes.

20 Q. Were you present in the room when Mr. Prete put
21 his neck tie back on and shirt **back** on?

22 A. I doubt it, I really don't remember.

23 Q. Well, I will represent to you professionally
24 that you were during part of the time that he
25 put his tie back on.

Did you happen to notice how he used his fingers to put his tie back on or button his shirt.

MR. WILLIAMS: Objection.

A, No, I didn't.

Q. If Mr. Prete didn't really use his thumbs but just used his forefingers to put his neck tie on and button his shirt, you failed to observe that as part of your examination?

MR. WILLIAMS: Objection.

A. I was finished with the examination at that point. I did observe that he was using-- I think I stated that previously, that he was not using his thumbs appropriately. I think I stated that previously.

Q. Did you discuss with Mr. Prete what kinds of work he has to do and what kinds of equipment he has to use?

A. Yes,

MR. GARDNER: Okay, Doctor, I think that is all I have. Mr. Williams may have some additional questions. Thank you very much.

MR. WILLIAMS: No, I have no further questions, either. Doctor, would you waive your right to review the videotape and also waive

1 your right to read the transcript of this
2 deposition.

3 THE WITNESS: Yes.

4 MR. WILLIAMS: Thank you, Doctor, I
5 have nothing further.

6 MR. PALCHO: Will Counsel waive
7 filing of the tape?

8 MR. GARDNER: Yes.

9 MR. WILLIAMS: Yes.

10 - - -

11 (DEPOSITION CONCLUDED.)

12 (SIGNATURE WAIVED.)

13 - - -

CERTIFICATE


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

I, Diane M. Stevenson, a Registered Professional Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness, ROBERT CORE, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed by means of computer-aided transcription, and that the foregoing is a true and correct transcript of the testimony as given by him as aforesaid.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 4th day of MAY, 1987.


Diane M. Stevenson, RPR
Notary Public in and for
The State of Ohio.

My Commission expires October 26, 1990.

Diane M. Stevenson, RPR
Morse, Gantverg & Hodge

LAWYER'S NOTES

[illegible]

NAME COOK, Rosalee

DATE: 8/20/90

ADDRESS:

D.O.I.:

PHONE:

EMPLOYER:

REFERRED BY:

IC #

Patient evaluated for an IME. DOI 4/18/88. Essentially she was rearended. The details are in the enclosed chart note.

PHYSICAL EXAMINATION was entirely within normal limits. There was no **spasm** or dysmetria. Full ROM in both her neck and upper **back**, shoulders, elbows, wrists and hands. No signs of any neurological impingement. SLR to 90° in both the sitting and supine positions.

Most of her low back discomfort was just to the left center of midline, radiating into the sacroiliac joint. This is what she called her buttocks. She has had no medical care recently. She **was** pregnant until approximately June 8, 1990 when she delivered her second child. She also was in a previous **MVA** injuring her neck and low back in 1983. She stated there has been no problems for the last 5 years.

Will complete an IME after I review the additional medical records, (RCC/bn)

B

