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IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

RICHARD CAPRETTA,

Plaintiff,

-vs-

JUDGE MITROVICH
CASE NO. 01CV000660

AVERY DENNISON CORPORATION,
et al.,

Defendants.

- - - -

Videotape deposition of STANLEY DOBROWSKI,
M.D., taken as if upon direct examination before
Rachel M. Gentile, a Notary Public within and for
the State of Ohio, at the offices of Gallagher,
Sharp, Fulton & Norman, Seventh Floor Bulkley
Building, Cleveland, Ohio, at 2:10 p.m. on
Friday, March 8, 2002, pursuant to notice and/or
stipulations of counsel, on behalf of the
Defendants in this cause.

- - - -

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ALSO PRESENT:

Peter Graves, Certified Legal Video Operator

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1 MR. GOLDWASSER: Let the record
2 reflect that plaintiff objects to Dr.
3 Dobrowski's testimony in its entirety.
4 Plaintiff will be filing a written proffer
5 of objections along with a motion to strike
6 and/or exclude Dr. Dobrowski as a witness
7 in this case.

8 The objections of plaintiff
9 include, but are not limited to the
10 following: Number one, the witness is not
11 qualified to testify as an expert.

12 Number two, the witness has never
13 examined plaintiff in accordance with Local
14 Rule 582.

15 Number three, the witness's report
16 is inadequate.

17 Number four, the witness's
18 opinions are based on Workers' Compensation
19 records only, all of which are inadmissible
20 as collateral sources.

21 Number five, the witness stated
22 his opinions yesterday in deposition that
23 all of his opinions were formulated and
24 generated in his capacity as a Bureau of
25 Workers' Compensation State Reviewer. The

1 Bureau of Workers' Compensation has no
2 bearing on this case. Any reference to
3 Workers' Compensation should be excluded as
4 a matter of law since those sources are
5 collateral sources.

6 Number six, if the doctor is
7 allowed to testify, then any references to
8 the Bureau of Workers' Compensation should
9 be excluded and any opinions should be
10 limited to those conclusions that he
11 addressed in his report of May of 2000.

12 With the note that there is a
13 continuing objection to the doctor's
14 testimony today, I would also like to state
15 that plaintiff's counsel's examination of
16 this witness should in no way be considered
17 a waiver of these objections. Thank you.

18 MR. ROTH: I will briefly respond
19 to those. I'm sure we will have a more
20 extensive response when I see the written
21 motion, but, first of all, the doctor's
22 qualifications we put on the record today,
23 I think he's eminently qualified.

24 The fact that he's only reviewed
25 the records does not disqualify him as an

1 expert in this case. The fact that this
2 examination was within the purview of his
3 capacity or job as an employee of the State
4 of Ohio and the Bureau of Workers'
5 Compensation, likewise, it does not
6 preclude him from testifying in this case.

7 We are not planning on talking
8 about the Bureau of Workers' Compensation.
9 We are not planning on talking about any
10 Workers' Compensation claim, and certainly
11 we're not going
12 to -- any mention of Workers' Compensation
13 in this case would have nothing to do with
14 collateral source rule, which is the basis,
15 I assume, of that objection.

26 To the extent that there's some
27 mention in this lawsuit of the Bureau of
28 Workers' Compensation, I believe that would
29 be, again, not, if it's not used to present
30 evidence of a collateral source, I believe
31 that can be cured by an appropriated
32 instruction by the court.

33 I'm trying to think what other
34 objections were -- there was a list of
35 them.

1 I think the fact that any
2 objection that his report is inadequate, I
3 disagree with that as well. I think his
4 report adequately tells the other side what
5 his opinions are. And moreover, there was
6 an opportunity yesterday for the
7 plaintiff's lawyer to do a discovery
8 deposition of the doctor.

9 So even if this report was
10 inadequate, with which we disagree with any
11 inadequacies, would be remedied by the fact
12 that he had an opportunity to fully examine
13 Dr. Dobrowski yesterday in a discovery
14 deposition.

15 John, do you want to add anything?

16 MR. RASMUSSEN: No, thanks.

17 VIDEO OPERATOR: We are now ready
18 to begin the deposition. Will the court
19 reporter please swear in the doctor?

20 STANLEY DOBROWSKI, M.D., of lawful age,
21 called by the Defendants for the purpose of
22 direct examination, as provided by the Rules of
23 Civil Procedure, being by me first duly sworn, as
24 hereinafter certified, deposed and said as
25 follows:

1 DIRECT EXAMINATION OF STANLEY DOBROWSKI, M.D.

2 BY MR. ROTH:

3 Q. Hello, Doctor, how are you today?

4 A. Fine.

5 Q. Would you please state your full name for us?

6 A. Stanley Leonard Dobrowski, M.D.

7 Q. Is that M.D. for medical doctor?

8 A. Yes.

9 Q. You are a medical doctor?

10 A. Yes.

11 Q. How long have you been practicing medicine,
12 Doctor?

13 A. I graduated from medical school in 1948, took an
14 internship in surgical residency. I was called
15 into active duty in the Korean War, returned in
16 1955 and began practicing in 1955.

17 **a.** Doctor, at some point prior to your testifying
18 today have you had an opportunity to review the
19 medical records of Richard Capretta?

20 A. Yes, I have.

21 Q. Then did you form certain opinions from your
22 review of those records?

23 A. Yes, I did.

24 Q. All right. Doctor, I'm going to ask you about
25 those opinions, but before I do that I'd like to

1 go over some of your qualifications.

2 You went to medical school?

3 A. Yes.

4 Q. That was a four year medical school?

5 A. Four years.

6 Q. Were you licensed to practice medicine in the
7 State of Ohio?

8 A. Yes, and I still am.

9 Q. When were you so licensed?

10 A. During my residency, probably 1950.

11 Q. Has your license ever been revoked?

12 A. Never.

13 Q. And, Doctor, I'm going to go through your resume,
14 and feel free to look at that if it will help you
15 refresh your recollection.

16 Where did you work after graduating from
17 medical school?

18 A. Repeat that please.

19 Q. Where did you work when you graduated from
20 medical school?

21 A. I took my internship at St. Alexis Hospital, my
22 surgical residency at St. Alexis Hospital in
23 Cleveland, Ohio.

24 Then when I returned from the Korean War, I
25 set up practice. I joined with

1 Mr. -- or Dr. Chester Jablonoski who was
2 president of the Academy of Medicine. He
3 requested -- or asked me to join in his practice
4 because he was active in the Academy of Medicine
5 and wished to do some traveling.

6 So I was a partnership with him until January
7 of '57 and I opened up my own private office in
8 1957 for private practice of surgery.

9 Q. How long were you in the private practice of
10 surgery?

11 A. I closed my office in 1975 and became the
12 associate director of the emergency room at St.
13 Alexis Hospital.

14 Q. Were you a general surgeon, Doctor?

15 A. Yes.

16 Q. Doctor, are you board certified?

17 A. Yes, I am.

18 Q. When were you board certified?

19 A. 1967, I believe.

20 Q. And, Doctor, what does it mean to become board
21 certified?

22 A. Board certification requires you have a completed
23 residency program that has been approved by the
24 American College of Surgeons. At the time that I
25 was, had my residency, that period was three

1 years, I believe it is four years now.

2 After completion of your residency you take a
3 written examination of two or three hours. I
4 don't recall the exact time. If you successfully
5 pass that examination, you're requested to take
6 an oral examination by your peers who are
7 professors of surgery at different medical
8 schools as well as chairs of prestigious
9 hospitals in the surgical department.

10 Q. Doctor, have you 'ever lost your board
11 certification?

12 A. No, I have not.

13 Q. You've performed surgeries, Doctor, in your
14 practice?

15 A. I perform general surgery.

16 Q. In your close to 40 years of practicing medicine
17 how many surgeries have you performed?

18 A. Twenty years, probably 500.

19 Q. Now, Doctor, you're not an orthopedist
20 specialist, are you?

21 A. I am not.

22 Q. You're not a specialist on the spine, are you?

23 A. I am not.

24 Q. Have you ever operated on a person's spine?

25 A. Never.

1 Q. Doctor, what do you currently do?

2 MR. GOLDWASSER: Objection.

3 A. I do chart examinations for Ohio Bureau of
4 Workers' Compensation.

5 Q. And does that involve the treatment of patients?

6 A. No.

7 Q. So you no longer treat patients?

8 A. I do not.

9 Q. You only review medical records?

10 A. That is correct.

11 Q. And how long have you been employed by the State
12 of Ohio?

13 A. Began in June 1st, 1988.

14 Q. Are you currently employed in that same capacity?

15 A. When I first started with the Bureau of Workers'
16 Compensation, I did physical examinations for
17 them. Then the Ohio State Legislature requested
18 that the ANESTA Commission and Bureau of Workers'
19 Compensation be realigned, and that's when I
20 started to work for the Bureau of Compensation
21 doing file examinations.

22 MR. GOLDWASSER: Objection. Move
23 to strike. If I may just interject for a
24 moment so I don't have to keep objecting,
25 any reference to the Bureau of Workers'

1 Compensation, can I just be granted a
2 continuing objection?

3 MR. ROTH: Yes.

4 MR. GOLDWASSER: Thank you.

5 Q. Doctor, you told us that you've reviewed some
6 medical records of Richard Capretta?

7 A. Yes.

8 Q. Did you review medical records relative to an
9 accident that occurred on May 1st, 1999 at Avery
10 Dennison in Painesville, Ohio?

11 A. I did.

12 Q. And you've formed some opinions from your review
13 of those records?

14 A. I did.

15 Q. Doctor, I'm going to ask that you only offer
16 those opinions that you hold to a reasonable
17 degree of medical probability.

18 A. Yes.

19 Q. Would you only offer opinions that you do hold to
20 that reasonable degree of medical probability and
21 nothing else?

22 A. That's correct.

23 Q. Thank you. Doctor, do you recall when you first
24 reviewed Mr. Capretta's medical records?

25 A. May 1st, 1999.

1 Q. I'm sorry. When did you first review
2 Mr. Capretta's medical records?

3 A. I reviewed his chart, his medical records.

4 Q. Yes. What was the date when you reviewed it, not
5 when the accident happened?

6 A. Oh, I'm sorry. May 12th, 2000.

7 Q. All right. When you first reviewed those
8 records, were you aware of the lawsuit that was
9 filed by Mr. Capretta?

10 A. I was not.

11 Q. In May of 2000 did anybody from my law office ask
12 that you review these records?

13 A. No.

14 Q. Had anybody from Graff Trucking Company ask that
15 you review these records?

16 A. No.

17 Q. Doctor, up until just a short time ago, a few
18 days ago perhaps, have we ever met before?

19 A. Just a few days ago.

20 Q. Have you and I ever met before that?

21 A. Never.

22 Q. Have you ever reviewed any records that I asked
23 you to **do**?

24 A. No.

25 Q. Have you ever reviewed any medical records of

1 Richard departed from before ay 1st, 1999?

2 A. No.

3 Q. Have you ever met Mr. Depetta?

4 A. No.

5 Q. Have you ever examined him?

6 A. No.

7 Q. You've just reviewed his records?

8 A. Correct.

9 Q. Okay After you initially reviewed

10 Mr. Depetta's medical records did you reach
11 certain conclusions?

12 A. I did.

13 Q. And were those conclusions put in a written
14 report?

15 A. Yes, they were.

16 Q. Since you initially wrote this report after your
17 initial review have you since more recently
18 reviewed additional medical records?

19 A. I have.

20 Q. Has anything that you've seen in those medical
21 records changed any of your opinions?

22 A. It has not

23 Q. Doctor, as we indicated, we're asking today because
24 of an accident that happened on ay 1st of 1999
25 involving Richard Depetta.

1 Do you have a general understanding of the
2 facts of that accident?

3 A. I obtained the history of the accident from the
4 medical records.

5 Q. And what is your general understanding of how
6 that accident happened?

7 A. Mr. Capretta was employed as a tow motor
8 operator. Apparently he was emptying a truck
9 with the tow motor and as he was driving back off
10 the truck, the truck pulled forward causing
11 Mr. Capretta and the tow motor to fall.

12 Q. Was that on May 1st of 1999?

13 A. Yes, it was.

14 Q. Doctor, I'm going to ask you to look at some
15 additional records here. I'm going to hand you
16 what's a record from Lake Hospital Emergency
17 Room.

18 Doctor, have you seen that record before?

19 A. Yes, I have.

20 Q. Would you tell the jury what that is?

21 A. This is an emergency room report from the Lake
22 Hospital Systems.

23 Q. Of Mr. Capretta?

24 A. Of Mr. Capretta.

25 Q. And what's the date of that?

- 1 A. Please repeat that.
- 2 Q. What is the date from that record?
- 3 A. May 1st, '99.
- 4 Q. All right. And from that record can you see what
- 5 complaints Mr. Capretta had on that date?
- 6 A. The complaint states injury, back and pain
- 7 radiating into left leg.
- 8 Q. Is there any note of any prior injuries to
- 9 Mr. Capretta's lower back?
- 10 A. There is a statement here that says here an O L1
- 11 fracture by history.
- 12 Q. Doctor, what's an L1 fracture? Would you explain
- 13 that for us?
- 14 A. L1 is the first vertebrae of the lumbar spine.
- 15 There are seven cervical vertebrae, 12 thoracic
- 16 vertebrae, five lumbar vertebrae, and this is
- 17 located between T12 and L2.
- 18 Q. All right. Was a diagnosis made at the emergency
- 19 room that day, Doctor?
- 20 A. Yes, it was.
- 21 Q. What was that diagnosis?
- 22 A. Low back strain.
- 23 a. And, Doctor, what is a low back strain?
- 24 A. A low back strain is an injury suffered by
- 25 overexertion or overstress on soft tissue or

1 muscles of the body.

2 Q. Doctor, is there any mention from the emergency
3 room of any injury to Mr. Capretta's lumbar
4 spine.

5 A. No, there is not, other than an old injury.

6 Q. And, Doctor, I'm going to again hand you a record
7 from the Lake Hospital Radiology Department.
8 Have you reviewed that record before, Doctor?

9 A. Yes, I have.

10 Q. And, Doctor, what is that record?

11 A. It's an interpretation by the radiologist's
12 x-rays of the lumbar spine, dorsal spine, which
13 is the thoracic spine, and cervical spine.

14 Q. Doctor, in that x-ray that was taken -- first of
15 all, was that on May 1st of 1999?

16 A. Yes, it was.

17 Q. All right. Were any of the findings in that
18 x-ray from any injuries sustained by Mr. Capretta
19 on that day?

20 A. There's nothing in the radiologist's report that
21 shows an injury sustained on May 1st, '99. It
22 shows the old injury.

23 Q. There is a showing of a condition of the spine,
24 but, again, the finding from that day, what is
25 that from?

1 A. Please repeat that.

2 Q. I'm sorry. The finding of the x-ray, if it
3 wasn't from May 1st of 1999 what was the finding
4 from?

5 A. It was from a previous injury.

6 Q. What kind of injury?

7 A. He had a fracture of the lumbar vertebrae.

8 Q. Okay. Doctor, I'm now going to hand you another
9 record. This is from the Lake Urgent Care Center
10 also of Mr. Capretta. I believe that's dated May
11 2nd of 1999.

12 A. Correct.

13 Q. Have you reviewed that record before, Doctor?

14 A. Yes, I have.

15 Q. And, Doctor, I just want to ask you, from that
16 record how did Mr. Capretta report that he was
17 feeling that day?

18 A. States back a little better -- a little sore
19 today.

20 Q. And was there also a diagnosis made from that
21 day? I know it's hard --

22 A. Yes, yes. Lumbar strain.

23 Q. Doctor, now I'm going to hand you some records
24 which are from a Dr. Zahrawi. Do you know Dr.
25 Zahrawi, Doctor?

1 A. I know of him, but I don't know him personally.

2 Q. Doctor, from looking at the records from Dr.

3 Zahrawi, can you see when Mr. Capretta first went
4 to see Dr. Zahrawi?

5 A. On May 18th, '99.

6 Q. And what was his condition at that time?

7 A. History states claimant complained of back pain,
8 patients states he injured his back about two
9 weeks ago while lifting, which contradicts the
10 original history in the emergency room. Felt
11 pain in back. No radiculopathy, no leg pain, no
12 tingling or numbness, denied any problems with
13 urination, was seen at Lake County Emergency Room
14 and x-rays were taken.

15 Past history, patient states he was involved
16 in a motor vehicular accident several years ago
17 and states he was told he had a possible fracture
18 of L1 vertebrae.

19 Q. Is there a note as to whether Mr. Capretta was in
20 any discomfort at that time?

21 Ti. I'm sorry?

22 Q. Is there a note as to whether Mr. Capretta was in
23 any discomfort at that point?

24 A. I don't see any complaints.

25 Q. All right. After that examination did Dr.

1 Zahrawi make a notation as to whether
2 Mr. Capretta could return to work?

3 A. Yes. He released him to return to work the
4 following day on the 19th.

5 Q. All right. Did Mr. Capretta return to see Dr.
6 Zahrawi then?

7 A. He returned on June 15th, '99.

8 Q. How -- what was Mr. Capretta's condition at that
9 time?

10 A. Dr. Zahrawi's statement is he's doing very well
11 at this time and has occasional minimal
12 discomfort and to return on a prn basis, which
13 basically means he has been discharged and to
14 return only if symptoms recur.

15 Q. All right. Did Mr. Capretta then return at some
16 point in August of 1999 to see Dr. Zahrawi?

17 A. Mr. Capretta was reexamined by Dr. Zahrawi on
18 August 17th, '99.

19 Q. All right. Did Dr. Zahrawi ask for an MRI at
20 that time?

21 A. Yes. He suggested that an MRI be performed.

22 Q. All right. And, Doctor, I'm going to hand you
23 now a two page document. Have you seen that
24 document before, Doctor?

25 a. Yes, I have.

1 Q. Can you tell us what that is?

2 A. That's a radiologist's interpretation of the MRI.

3 Q. And what was the interpretation indicated on that
4 report? If you could, summarize that for us.

5 A. It shows the fractured vertebra at L1 with
6 degenerative changes at T12. It also shows disc
7 narrowing at L4 and L5, L5-S1 with dehydration
8 and small herniations.

9 Q. Doctor, you mention degeneration or degenerating,
10 what do you mean by that?

11 A. Degeneration of the spine is a normal, ongoing
12 process, which is a natural process usually
13 starting at age 15. Although, some experts in
14 the field feel that this starts at the day of
15 birth. It's a progressive ongoing, which causes
16 disc degeneration, herniation, subluxation and
17 eventually leading to arthritic conditions.

18 Q. Now, Doctor, based on your review of that MRI and
19 the findings of that MRI, do you have an opinion
20 as to whether Mr. Capretta had degenerative disc
21 disease?

22 MR. GOLDWASSER: Objection.

23 A. Yes.

24 Q. What is your opinion, Doctor?

25 MR. GOLDWASSER: Same objection.

1 A. I'm sorry?

2 Q. What is your opinion?

3 A. To what?

4 Q. As to the degenerated disc.

5 A. It preexisted the injury of May 1st, 1999.

6 Q. That leads to my next question. Doctor, do you
7 have an opinion as to whether the findings in
8 that MRI report in August of 1999 were caused by
9 the accident on May 1st of 1999?

10 MR. GOLDWASSER: Objection.

11 A. I feel they preexisted, the findings on the MRI
12 preexisted the accident on May 1st, 1999.

13 Q. Would that include the disc herniations?

14 A. Yes.

15 Q. Doctor, why do you believe the herniations and
16 the findings preexisted the May 1st, 1999
17 accident?

18 A. Please repeat that.

19 Q. Explain to us -- why do you believe that the
20 findings on this MRI in August of 1999 preexisted
21 the May 1st, 1999 accident?

22 A. It preexisted because first he had a severe
23 trauma to the back, which caused a fracture to
24 the vertebra, which probably transmitted into the
25 lower vertebra.

1 The degenerative process was accelerated by
2 the earlier trauma that caused the fracture and
3 it's an ongoing, progressive disease of the spine
4 usually beginning at age 15.

5 Q. Doctor, in your opinion did the conditions that
6 you see here, could those have developed in that
7 period of time?

8 MR. GOLDWASSER: Objection.

9 A. It would have taken a longer period of time for
10 those conditions to develop before the accident
11 of 5-1-99.

12 Q. Doctor, do you have an opinion to a reasonable
13 degree of medical probability as to the nature of
14 the injury suffered by Mr. Capretta on May 1st,
15 1999?

16 MR. GOLDWASSER: Objection.

17 A. I believe he suffered a soft tissue injury to his
18 lower back.

19 Q. Doctor, what is a soft tissue injury?

20 A. A soft tissue injury is a bruise or trauma,
21 contusion to the area which involves soft tissue,
22 muscular, skin, may cause some swelling, may
23 cause some discoloration, may cause some
24 discomfort.

25 Q. And, Doctor, how long would you expect a person

1 with a soft tissue injury to recover?

2 A. Usually soft tissue injuries with conservative
3 treatment recover in two to four weeks and many
4 times soft tissue injuries recover without any
5 specific treatment.

6 Q. Would you expect that somebody with a soft tissue
7 injury would be able to return to full work after
8 that period of time?

9 A. Definitely.

10 Q. Doctor, what is the difference between soft
11 tissue injury and the injuries that you see on
12 the MRI of August of '99?

13 A. A soft tissue is an acute injury, as I said, with
14 discoloration, tenderness, swelling. The
15 findings on the MRI have been present for
16 considerable time and is a progressive disease of
17 the spine, a natural process of aging.

18 Q. Doctor, do you have an opinion as to whether this
19 soft tissue injury that Mr. Capretta sustained
20 aggravated this preexisting disc problem?

21 MR. GOLDWASSER: Objection.

22 A. . I feel it was a minor soft tissue injury that
23 Mr. Capretta experienced on 5-1-99 would not
24 aggravate the underlying bony structures.

25 Q. And, Doctor, is that an opinion that you hold to

1 a reasonable degree of medical probability?

2 A. Yes

3 MR ROEH: Thank you, Doctor. I

4 have no further questions

5 - - - -

6 CROSS-EXAMINATION OF STANLEY DOROWSKIE M.D.

7 WY R GOLDWASSER:

8 Q Good afternoon, Doctor.

9 A. Good afternoon

10 Q My name is Andy Goldwasser and I believe we met
11 yesterday for the first time. is that correct?

12 A. That is correct

13 Q Doctor, you've been named as a medical expert to
14 talk about injuries pertaining to Mr Corbett a
15 back, correct?

16 A. Correct.

17 Q. And I believe you testified yesterday that you
18 are not an expert in the back, correct?

19 A. I am not.

20 Q. You never performed surgery on the back, correct?

21 A. I have not

22 Q. You're not an expert with herniated discs?

23 A. I am not.

24 Q. You're not an expert in the stages of disc
25 degeneration?

- 1 A. I am not.
- 2 Q. Although you speak about disc degeneration today,
3 correct?
- 4 A. Correct.
- 5 Q. You are not an orthopedic surgeon, correct?
- 6 A. I am not.
- 7 Q. You're not a neurosurgeon?
- 8 A. I am not.
- 9 Q. You're not a neurologist?
- 10 A. I am not.
- 11 Q. In fact, Doctor, yesterday you told me that you
12 have to refer to medical literature just to
13 remember some of the terminology associated with
14 the back, correct?
- 15 A. That I did.
- 16 Q. And, Doctor, you have not been involved in the
17 clinical practice of medicine since 1988,
18 correct?
- 19 A. Correct.
- 20 a. In other words, you haven't treated a patient in
21 14 years, correct?
- 22 A. Correct.
- 23 Q. And when you were seeing patients 14 years ago
24 back in 1988 and you had a patient with a
25 herniated disc, you would refer that patient to

1 an orthopedic surgeon, correct?

2 A. Yes, I would.

3 Q. An orthopedic surgeon like Dr. Zahrawi, correct?

4 A. Yes.

5 Q. Dr. Zahrawi who treated Richard Capretta,
6 correct?

7 A. Yes, he did.

8 Q. Dr. Zahrawi who, for the last two and a half
9 years, has known this patient as his patient,
10 correct?

11 A. That is correct.

12 Q. Dr. Zahrawi who physically cut open the back of
13 Richard Capretta and looked inside, correct? He
14 performed back surgery on him, did he not?

15 A. Well, he did do surgery, but I don't think it was
16 necessary to do an incision. I think he did
17 microdissect him.

18 Q. Dr. Zahrawi is the same doctor who you admitted
19 yesterday is more familiar with this patient than
20 you, correct?

21 A. Correct.

22 Q. Because you never examined the patient, correct?

23 A. I have not.

24 Q. You never treated the patient, correct?

25 A. I have not.

1 Q. In fact, you have never met Mr. Capretta; is that
2 right?

3 A. That is true.

4 Q. Doctor, in May of 2000 you wrote a report which
5 contains certain opinions about Mr. Capretta and
6 his injury, correct?

7 A. Yes, I did.

8 Q. And the reason you reviewed the medical records
9 was to make a conclusion as to two questions,
10 correct?

11 A. Yes, I did.

12 Q. And you were pretty specific with the two
13 questions that you were addressing, correct?

14 A. Yes.

15 Q. The first question was whether an additional
16 allowance of HNP, or herniated nucleus pulposis,
17 at the L4-L5 level should be granted. Is that
18 the first question that you were addressing?

19 A. That is correct.

20 Q. And the second question you were addressing in
21 your report based on your review of the medical
22 records was is there a direct relationship to the
23 initial injury; is that correct?

24 A. That is correct.

25 a. All right. And those two questions were the only

1 two questions you were looking into when you
2 reviewed Mr. Capretta's medical records and when
3 you wrote a report with your conclusions,
4 correct?

5 A. That is correct.

6 Q. And both of those questions related to the L4-L5
7 level of Mr. Capretta's back, correct?

8 A. That is correct.

9 Q. The L4-L5 level is a different level than the
10 L5-S1 level, correct, Doctor?

11 A. That is correct.

12 Q. And the surgery on Mr. Capretta's back was, in
13 fact, to his L5-S1 level, not to his L4-L5 level,
14 correct?

15 A. Correct.

16 Q. Now, your report contains all of your opinions
17 with respect to this particular case, true?

18 A. I'm sorry. Repeat that.

19 Q. Isn't it true that your report contains all of
20 your opinions with respect to this particular
21 case?

22 A. Yes.

23 Q. I believe you told me yesterday that in
24 formulating your opinions it is important for you
25 to review as much information as possible,

1 correct?

2 A. That is correct.

3 Q. For instance, if available, you'd like to review
4 any medical records which might predate the
5 incident, correct?

6 A. Yes.

7 Q. If available, you would like to review all
8 medical records which post-date the incident
9 before you reach a final conclusion, correct?

10 A. That is correct.

11 Q. It's important to review all of the surgical
12 records, correct?

13 A. That's correct.

14 Q. It's important for you to review any discograms
15 which might be available, correct?

16 A. That is correct.

17 Q. It's important for you to know the mechanism of
18 injury or how the patient got hurt, correct?

19 A. Correct.

20 Q. It's important for you to know the nature and
21 extent of the trauma, correct?

22 A. Yes.

23 Q. And, Doctor, despite knowing the importance of
24 all these things at the time you wrote your
25 report you had not reviewed the Lake East

1 Hospital Emergency Room records, correct?

2 A. That is correct

3 Q You had not reviewed the May 5, 2000 records of
4 Dr. Zahrawi, correct?

5 A. That is correct

6 Q You had not reviewed the May 5, 2000 medical
7 records of Lak West Hospital, correct?

8 A. I had the record from the Lak Urgent Care
9 Center, lumbar strain, referred to return to

10 restricted work estimated full duty on 5-5-99

11 Q But you had not reviewed the May 5, 2000 medical
12 records --

13 A. That is correct

14 Q. -- of Lak West Hospital, correct?

15 A. Yeah.

16 Q. And you never saw the results of the discogram.
17 correct?

18 A. That is correct.

19 Q. You had not reviewed the April 12, 2001 records
20 of Dr. Zahrawi, correct?

21 A. Correct

22 Q. You had not reviewed the November 27, 2001
23 records of Dr. Zahrawi, correct?

24 A. Correct

25 Q. You had not reviewed any of the December 2001

1 records of Dr. Zahrawi, correct?

2 A. Correct.

3 Q. At the time you wrote your report and stated your
4 opinions in this case you never even looked at
5 the surgical report, correct?

6 A. That is correct. Surgical report was performed
7 after I did the review.

8 Q. In fact, Doctor, you had not looked at any of the
9 medical records from Lake West Hospital for the
10 month of December 2001, correct?

11 A. That is correct.

12 Q. You never looked at any photographs relative to
13 the incident, correct?

14 A. I have not.

15 Q. You don't know what type of tow motor he was
16 operating on the day of the incident, correct?

17 A. That is correct.

18 Q. You don't know how much trauma he suffered as a
19 result of the tow motor crashing to the ground,
20 correct?

21 A. That is correct.

22 Q. You don't know whether he was thrown off the tow
23 motor or not, correct?

24 A. Correct.

25 Q. You don't know whether the tow motor landed on

1 its wheels or landed upside down, do you?

2 A. I did not when I did the report.

3 Q. And you don't today, do you?

4 A. I'm sorry?

5 Q. And you still don't know, correct?

6 A. Repeat the question again.

7 Q. Okay.

8 A. Because I understand he was driving the tow
9 motor. The truck that he was on started to pull
10 away as he was backing the tow motor out. The
11 tow motor and he dropped off the tailgate of the
12 truck and I found out about that after reviewing
13 the more complete records of Mr. Capretta.

14 Q. Okay. But you don't know how much trauma
15 Mr. Capretta suffered as a result of that fall?

16 A. I did not examine him.

17 Q. Okay. Dr. Dobrowski, despite the fact that you
18 didn't review any of the things you testified
19 were important to review before reaching
20 conclusions in this case, you nevertheless
21 reached certain opinions anyhow, correct?

22 A. I'm sorry. Say that again.

23 Q. Sure. Despite the fact that you didn't review a
24 number of materials that you told me you felt
25 were important to you to review before you reach

1 an opinion, you reached certain conclusions
2 anyhow, did you not?

3 A. I have to make my conclusions on what is
4 available to me.

5 Q. And those conclusions are set forth in your
6 report, correct?

7 A. They are.

8 Q. And none of the conclusions in your report dealt
9 with the L5-S1 level, which was the area of
10 concern for Dr. Zahrawi, correct?

11 A. That is correct.

12 Q. And none of your conclusions in your report even
13 address the area of Mr. Capretta's back which
14 required surgery, correct?

15 A. Correct.

16 Q. Doctor, one of the things you testified today to
17 and one of the things you had mentioned in your
18 report, is that the objective findings of the MRI
19 preexisted the incident, correct?

20 A. Repeat that, please.

21 Q. Sure. One of the conclusions in your report and
22 one of the conclusions you testified to today was
23 that the objective findings of the MRI predated
24 the incident, correct?

25 A. Correct.

1 Q. In other words, all of the objective findings on
2 the MRI existed before the accident, right?

3 A. Correct.

4 Q. And you reached that conclusion without having
5 read a single medical record prior to the date of
6 the incident, correct?

7 A. Prior to the incident, no, I have not.

8 Q. You never reviewed the actual MRI films, correct?

9 A. That is correct.

10 Q. You never saw an MRI which exists before the
11 incident, correct?

12 A. Correct.

13 Q. In fact, you told me yesterday and you testified
14 at deposition that you have no idea the condition
15 of Mr. Capretta's back as it existed prior to the
16 May 1, 1999 incident, correct?

17 A. Correct.

18 Q. Doctor, we already know that you never examined
19 Mr. Capretta, you never treated Mr. Capretta, you
20 never even met Mr. Capretta. Up until yesterday
21 the total time that you had taken in reviewing
22 his medical records and writing a report was 90
23 minutes, correct?

24 A. Yes, that is correct.

25 Q. Do you know how much time Dr. Zahrawi has spent

1 with Mr. Capretta over the last two and a half
2 years?

3 A. I have no idea.

4 Q. Doctor, you were asked to testify in this case by
5 the defense, correct?

6 A. Yes.

7 Q. And the only reason you agreed to testify is
8 because you're being paid to do so; is that
9 right?

10 A. That is correct.

11 Q. In fact, yesterday you charged me just to find
12 out what you were going to say \$250 an hour; is
13 that correct?

14 A. That's correct.

15 Q. Actually, you charged my client the \$250 an hour,
16 correct?

17 A. I don't know. You paid me. I'm not your client.

18 Q. And you're being paid by the defense today for
19 your testimony, correct?

20 A. That is correct.

21 Q. Doctor, you testified just a little bit ago when
22 Mr. Roth was examining you about the Lake
23 Hospital records from May 1, 1999.

24 A. Uh-huh.

25 Q. Correct?

- 1 A. Correct.
- 2 Q. You had not reviewed those medical records at the
3 time that you wrote your report, correct?
- 4 A. It was not available to me.
- 5 Q. On the second and third page of those records the
6 chief complaint reads injury to back and pain
7 radiating down the left leg, correct?
- 8 A. Yes.
- 9 Q. Pain radiating down a leg is consistent with a
10 disc problem, correct?
- 11 A. Usually.
- 12 Q. Doctor, you also testified about your review of
13 the Lake Urgent Care records, correct?
- 14 A. Correct.
- 15 Q. And you testified that the diagnosis reads lumbar
16 strain; is that right?
- 17 A. That is correct.
- 18 Q. In fact, Doctor, it says new lumbar strain,
19 correct?
- 20 A. New lumbar strain.
- 21 Q. Meaning it's not an old injury, but it's new?
- 22 A. That's right. It was a recent injury that
23 occurred on the day before, 5-1-99.
- 24 Q. What does it say below that, Doctor?
- 25 A. Discharge, discharge ambulatory with -- discharge

1 ambulatory with, I don't know what the initials
2 mean. I think that's verbal understanding of
3 instructions.

4 Q. But you're not sure, are you, Doctor?

5 A. I'm not sure. I cannot interpret the writing.

6 Q. Can't interpret all of the records, isn't that
7 true?

8 A. That's true.

9 Q. Doctor, you also testified about some of the
10 things mentioned in Dr. Zahrawi's records; is
11 that correct?

12 A. That is correct.

13 Q. If Dr. Zahrawi testifies that the May 1, 1999
14 incident exacerbated a preexisting injury of
15 Mr. Capretta to the point where he needed
16 surgery, would you agree or disagree with that
17 statement?

18 A. I would disagree.

19 Q. And you would disagree with that statement even
20 though he's Dr. Zahrawi's patient and not yours,
21 correct?

22 A. That is correct.

23 Q. Even though you've never done any back surgery,
24 correct?

25 A. That is correct.

1 Q. And even though you haven't seen a patient in 14
2 years; is that right?

3 A. That is correct.

4 MR. GOLDWASSER: I have nothing
5 further. Thank you for your time, Doctor.

6 MR. ROTH: Could we go off the
7 record for a second?

8 VIDEO OPERATOR: We're going off
9 the record.

10 - - - -
11 (Off the record.)

12 - - - -
13 VIDEO OPERATOR: We are now back
14 on the record.

15 - - - -
16 FURTHER DIRECT EXAMINATION OF
17 STANLEY DOBROWSKI, M.D.

18 BY MR. ROTH:

19 Q. Doctor, you were asked some questions by Mr.
20 Goldwasser, he first brought up that you looked
21 at the L5-S1 vertebrae when you were making your
22 opinions initially; is that correct?

23 A. No.

24 Q. I'm sorry. You were not looking at the L5-S1?

25 A. I was not.

1 Q. Were there findings on the MRI relative to the
2 L5-S1, the MRI of August of 1999?

3 A. Yes, there were.

4 MR. GOLDWASSER: Objection.

5 Q. Doctor, do you believe that, again, those
6 findings were related to the May 1st, 1999
7 accident?

8 MR. GOLDWASSER: Just note a
9 continuing objection to anything related to
10 the L5-S1 because it's not addressed in his
11 report.

12 A. I feel that it is not.

13 Q. Now, Doctor, you were also asked about some
14 records from the surgery that happened just
15 recently in December of 2001. You've never
16 looked at those records, have you?

17 A. I don't think -- I don't think I have a surgical
18 report from the doctor. I just have his notes
19 that he performed surgery. Yeah, it's just his
20 office notes that he performed surgery on
21 12-12-1.

22 Q. Doctor, would the records of the surgery in
23 December be necessary for you to make an opinion
24 as to the injury that occurred on May 1st of
25 1999?

1 A. They would not.

2 Q. How about the kind of tow motor he was driving?
3 Would that be relevant to your opinions?

4 A. It would not.

5 Q. Now, Doctor, you were asked some questions about
6 your report, and based on those questions I'm
7 going to ask that it be admitted, I will mark
8 this as a defense exhibit.

9 Do you have that report in front of you,
10 Doctor?

11 MR. GOLDWASSER: Objection to the
12 admission of the report.

13 A. The report of what now?

14 Q. Your report, Doctor, that you were asked about.

15 A. My report, yes.

16 Q. Doctor, will you read your conclusion for us?

17 MR. GOLDWASSER: Objection.

18 A. "In my medical opinion the additional allowance
19 of a herniated nucleus pulposus (L4-L5) should
20 not be granted in this claim.

21 In my medical opinion, the claimant suffered
22 a soft tissue injury to his back on 5-1-99, which
23 responded to little conservative," actually, it
24 should be treatment, "from which the claimant
25 completely recovered and returned to regular

1 work.

2 In my medical opinion, the findings on the
3 MRI of 2-24-99 preexisted the injury of 5-1-99
4 and are due to progressive degenerative disease
5 of the lumbar spine, the normal aging process and
6 not due to the soft tissue injury of 5-1-99.

7 Q. Doctor, did you actually mean to say 8-24-99, the
8 MRI?

9 A. Yeah, MRI of 8-24-99.

10 Q. Right. Now, Doctor, you were asked who was more
11 familiar with this patient, you or Dr. Zahrawi?

12 A. Dr. Zahrawi.

13 Q. Does the fact that you didn't have hands on
14 contact with Dr. -- or Mr. Capretta make it or
15 limit your ability to have an opinion as to the
16 injury he sustained?

17 MR. GOLDWASSER: Objection.

18 A. Repeat that, please.

19 Q. Doctor, we know you never met Mr. Capretta.

20 A. Correct.

21 Q. Because you never met him are you unable to make
22 a diagnosis or have an opinion as to the injury
23 he sustained?

24 MR. GOLDWASSER: Objection.

25 A. I do not. I have medical records that I can

1 interpret.

2 Q. And you were asked a number of other questions,
3 things you didn't look at, things that you didn't
4 do.

5 Doctor, based on all those questions has
6 anything that you were asked changed your opinion
7 that the preexisting disc problem was not
8 aggravated by the 5-1-99 soft tissue injury?

9 A. I agree it was not aggravated.

10 MR. ROTH: All right. Thank you,
11 Doctor.

12 - - - -

13 FURTHER CROSS-EXAMINATION OF

14 STANLEY DOBROWSKI, M.D.

15 BY MR. GOLDWASSER:

16 Q. Doctor, just a quick couple questions The
17 things that you didn't look at you just said did
18 not change your position, correct?

19 A. Correct.

20 Q. But you don't know that because you didn't look
21 at those records, right?

22 A. I feel that a soft tissue injury was occurred on
23 5-1-99 and would have no bearing on the future
24 positive findings of disease.

25 Q. Regardless of what some records say that you

1 haven't seen?

2 'A. That's correct.

3 Q. All right. And, Doctor, 100 percent of your
4 professional time is now devoted to do nothing
5 but medical reviews, correct?

6 A. That is correct.

7 Q. And of the, all of the medical reviews that you -
8 do and have done you have never been hired by the
9 individual claimant, correct?

10 A. Correct.

11 MR. GOLDWASSER: Nothing further.

12 Thank you.

13 VIDEO OPERATOR: Excuse me,
14 Doctor.

15 MR. ROTH: Let's go off the
16 record.

17 VIDEO OPERATOR: We are going off
18 the record.

19 - - - -

20 (Off the record.)

21 - - - -

22 MR. GOLDWASSER: Let the record
23 reflect that the Doctor has been instructed
24 on waiver and that the Doctor has waived
25 his right to review the transcript, is that

1 correct, Doctor?

2 THE WITNESS: Correct.

3 MR. GOLDWASSER: Thank you.

4 VIDEO OPERATOR: Is that also the
5 video?

6 MR. GOLDWASSER: It doesn't matter
7 if it's on or not.

8 MR. ROTH: Thanks, Doctor.

9 - - - -

10 (The reading and signing of the
11 deposition was expressly waived by the witness
12 and by stipulation of counsel.)

13 - - - -

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3 C E R T I F I C A T E

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

6
7 I, Rachel M. Gentile, a Notary Public
8 within and for the State of Ohio, authorized to
9 administer oaths and to take and certify
10 depositions, do hereby certify that the
11 above-named witness was by me, before the giving
12 of their deposition, first duly sworn to testify
13 the truth, the whole truth, and nothing but the
14 truth; that the deposition as above-set forth was
15 reduced to writing by me by means of stenotypy,
16 and was later transcribed into typewriting under
17 my direction; that this is a true record of the
18 testimony given by the witness; that said
19 deposition was taken at the aforementioned time,
20 date and place, pursuant to notice or
21 stipulations of counsel; that I am not a relative
22 or employee or attorney of any of the parties, or
23 a relative or employee of such attorney or
24 financially interested in this action; that I am
25 not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
11th day of March, A.D. 2002.

20 Rachel M. Gentile

21 Rachel M. Gentile, Notary Public, State of Ohio
22 1750 Midland Building, Cleveland, Ohio 44115
23 My commission expires November 7, 2002
24
25

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LAWYER'S NOTES

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