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IN THE COURT OF COMMON PLEAS

FRANKLIN COUNTY, OHIO

GEORGE Z. PAPPAS,

)

Plaintiff,

)

vs.

)

Case No. 90CVC09-7134

ANNA M. TIMBERLAKE,

)

JUDGE D. JOHNSON

et al.,

)

Defendants.

)

CONF

Videotape deposition of CHARLES E. DUVALL,  
JR., D.C., a Witness herein, called by the  
Defendants for direct examination pursuant to the  
Rules of Civil Procedure, taken before me, the  
undersigned, Linda M. Yelinek, an RPR and Notary  
Public in and for the State of Ohio, at the offices  
of DuVall Chiropractic Clinic, 2311 East Avenue,  
Akron, Ohio, on Tuesday, the 5th day of November,  
1991, at 2:07 o'clock p.m.

COMPUTERIZED TRANSCRIPTION BY  
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## APPEARANCES:

On Behalf of the Plaintiff:

Law Offices of Aristotle R. Matsa

By: Aristotle R. Matsa, Attorney at Law  
Box 45  
Columbus, Ohio 43216

and

Messrs. McCarthy, Palmer, Volkema and  
Becker

By: William C. Becker, Attorney at Law  
Suite 315  
580 South High Street  
Columbus, Ohio 43215-5695

On Behalf of the Defendant Denise Storts:

Messrs. Sheppard and Bale

By: Glori E. Smith, Attorney at Law  
50 W. Broad Street  
Columbus, Ohio 43215

On Behalf of the Defendants Anna M.  
Timberlake and Nationwide:

(No appearance.)

On Behalf of the Defendant Cindy L.  
Yerkes:

(No appearance.)

## ALSO PRESENT:

Tom Baker, Video Technician  
Al Meyers

- - -

<u>EXHIBIT</u>	<u>INDEX</u>				<u>MARKED</u>
Plaintiff's Exhibit Nos. 1, 2 and 3					45
<u>EXAMINATION BY:</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>	
Ms. Glori E. Smith	5		48		
Mr. William C. Becker		16			
Mr. Aristotle R. Matsa		46			

- - -

1 MS. SMITH: Before we begin, this is  
2 the videotape deposition of Dr. Charles E. DuVall,  
3 Jr., for the purposes of trial. My name is Glori  
4 Smith, I'm counsel for Defendant Storts in this  
5 action. The videotape deposition is taken pursuant  
6 to notice.

7 Counsel for Defendant Timberlake and  
8 Storts are not present but have no objection to us  
9 proceeding. You may swear in the witness.

10 MR. BECKER: Let me just make a  
11 statement for the record also before we officially  
12 begin here. I'll move at this time in limine to  
13 prevent any use of this deposition at trial. I  
14 understand Dr. DuVall has not ever examined George  
15 Pappas, and accordingly and on that basis I don't  
16 believe he'll be testifying upon anything other  
17 than perhaps other doctors' opinions, and  
18 accordingly would move in limine to prevent any use  
19 of this deposition at trial.

20 THE NOTARY: Would you raise your right  
21 hand, please?

22 - - -

23 CHARLES E. DUVALL, JR., D.C.  
24 of lawful age, a Witness herein, having been first  
25 duly sworn, as hereinafter certified, deposed and

1 said as follows:

2 - - -

3 DIRECT EXAMINATION

4 BY MS. SMITH:

5 Q. Could you please state your name for the  
6 record.

7 A. Charles Edward DuVall, Jr.

8 Q. And what's your address?

9 A. 2311 East Avenue, Akron, Ohio 44314.

10 Q. And, Doctor, what is your profession?

11 A. I'm a chiropractic physician.

12 Q. You're actively engaged in chiropractic  
13 medicine at this time?

14 A. Yes, I am.

15 Q. Could you please tell the jury your  
16 professional credentials and education?

17 A. After high school?

18 Q. Yes.

19 A. Okay. I graduated Harvey S. Firestone  
20 High School, Akron, Ohio, 1965; graduated the  
21 United States Naval Hospital Corps School, Great  
22 Lakes, Illinois, April, 1966; graduated U.S. Naval  
23 Field Medical Service School, Camp LeJeune, North  
24 Carolina, August, '66; Combat Medic, United States  
25 Marine Corps, August, 1966 through October, 1968,

1 with combat service in VietNam, September, 1967  
2 through October, 1968; Operating Room Technician,  
3 Green Cross General Hospital, Cuyahoga Falls, Ohio,  
4 February, 1969 through August, 1969; Certified  
5 Cardiopulmonary Technician, August 1969 through  
6 October, 1977.

7           Employed at the following hospitals:

8 Green Cross General Hospital, Cuyahoga Falls, Ohio;  
9 Clear Lake Hospital, Webster, Texas; Diagnostic  
10 Center Hospital, Houston, Texas; Ben Taub-Harris  
11 County Hospital, Houston, Texas; Pasadena Bayshore  
12 Hospital, Pasadena, Texas.

13           Attended the University of Akron in  
14 pre-med studies, September, 1969 through June of  
15 '73; and San Jacinto College in Deer Park, Texas,  
16 pre-med studies, January, '74 through June of '77;  
17 currently enrolled at the University of Akron in  
18 the biology department, currently a senior.

19           Graduate Texas College of Chiropractic,  
20 Pasadena, Texas, May, 1977; actively practicing  
21 chiropractic physician in Akron, Ohio, Ohio License  
22 No. 770; ongoing continuing education, postgraduate  
23 training in orthopedics, National-Lincoln College  
24 of Chiropractic, Lombard, Illinois; postgraduate  
25 symposiums in orthopedics and neurology, Harvard

1 Medical School, Boston, Massachusetts, 1981 through  
2 the present; University of Michigan College of  
3 Medicine, 1982; Medical Evaluation for Disability  
4 of Claims, Department of Postgraduate Medicine &  
5 Health Professions Education; American Disability  
6 Evaluation Research Institute Certification of  
7 Competency, March 10, 1984.

8 Professional offices, I have been the  
9 vice president of the Tri-County Chiropractic  
10 Association, 1979 through 1980; president of the  
11 Tri-County Chiropractic Association, 1980 through  
12 1982; Board of Governors, Ohio Council Against  
13 Health Fraud; Secretary of the Ohio Council Against  
14 Health Fraud, 1987 through 1988; Treasurer of the  
15 Ohio Council Against Health Fraud, 1988 through  
16 1991; Board of Governors, National Council Against  
17 Health Fraud; Board of Governors, National  
18 Association for Chiropractic Medicine; Secretary  
19 for the National Association for Chiropractic  
20 Medicine, 1987 through 1988; Vice President,  
21 National Association of Chiropractic Medicine, 1988  
22 through 1990; currently the president of the  
23 National Association for Chiropractic Medicine.  
24 Editorial Board "Health Fraud News" published by  
25 the Consumer Health Information Research Institute,



1 Kansas City, Missouri.

2 I am a member of the American  
3 Chiropractic Association; the Tri-County  
4 Chiropractic Association; a charter member for the  
5 National Association of Disability Evaluating  
6 Physicians, served on numerous Steering Committees  
7 for that organization; Fellow of the American Back  
8 Society; am on the committees for manipulative  
9 medicine, interpersonal relations, and physical  
10 medicine; member of the National Council Against  
11 Health Fraud; member of the National Association  
12 for Chiropractic Medicine; founding member of the  
13 Ohio Council Against Health Fraud; Diplomat  
14 American College of Chiropractic Consultants; and  
15 member of the American College of Chiropractic  
16 Orthopedics.

17 I was an instructor for the American  
18 Heart Association; team physician for local high  
19 school for seven years; independent medical  
20 consultant/investigator from 1981 through the  
21 president -- through the present working for the  
22 insurance industry, private industry, state,  
23 federal, and international organizations;  
24 consultant to the Ohio Attorney General's office,  
25 Division of Medicaid Fraud; consultant of the Ohio

1 Bureau of Workers' Compensation, Division of Fraud  
2 Investigation.

3 I have co-authored or authored -- I  
4 co-authored, "A Guide For Measuring The Scope And  
5 Conduct Of Practice Of Chiropractic Physicians In  
6 Relation To Life And Health Insurance Contracts,"  
7 September, 1982. I co-authored the "Chiropractor  
8 Services: Occupational Medicine And Legal  
9 Sourcebook" edited by John Cunningham, M.D., and  
10 William Johnston, L.L.B., J.D., September, 1985;  
11 authored in "Overview Of The National Association  
12 For Chiropractic Medicine", Journal of Insurance  
13 Medicine, Volume 22, No. 2, Summer of 1990;  
14 co-authored, "Chiropractic Pseudoscience Part 1:  
15 Free Spinal Examination & Consultation"; and  
16 authored "Scanning Surface Electromyographic  
17 Studies," medical quarterly, Volume 12, No. 3,  
18 August, 1991.

19 Q. Doctor, considering your extensive and  
20 professional credentials --

21 MR. BECKER: I object to the way you're  
22 asking this question in terms of characterizing the  
23 doctor's credentials.

24 BY MS. SMITH:

25 Q. It's interesting that you do not have a

1 Bachelor's Degree. At the time that you enrolled  
2 in chiropractic school was a Bachelor's Degree  
3 necessary?

4 A. Bachelor's Degree is not necessary for any  
5 chiropractic college as well as most of your  
6 medical schools do not require the baccalaureate  
7 degree.

8 Q. Thank you. On the average what is the  
9 number of patients that you treat per week at your  
10 clinic?

11 A. Anywhere from 5 to 20 patients per day, 5  
12 to 6 days per week.

13 Q. Well, one question before I jump ahead,  
14 you're licensed to practice chiropractic medicine  
15 in the State of Ohio?

16 A. Yes, I am.

17 Q. And you've been licensed since 1979?

18 A. Correct.

19 Q. Okay. What percentage of your practice  
20 would you say you spend evaluating or seeing  
21 patients referred to you for an independent  
22 evaluation?

23 A. I might see anywhere from one to three per  
24 week for the examination of the patient themselves.

25 Q. So out of the 25 to 120 patients you treat

1 a week only 1 or 2 of those patients were referred  
2 to you for an independent evaluation?

3 A. Correct.

4 Q. And for the patients referred to you for  
5 an independent evaluation you would not render any  
6 treatment?

7 A. Correct.

8 Q. What percentage of your practice would you  
9 say you spend evaluating records of other  
10 chiropractors' treatment?

11 A. Oh, anywhere from five to ten a week.

12 Q. Without seeing the patient, you would  
13 review the records of the treating chiropractor and  
14 based on your education and experience and the  
15 records you would render an opinion regarding the  
16 reasonableness and necessity of care and treatment?

17 MR. BECKER: Glori, this is direct  
18 examination.

19 MR. MATSA: Correct.

20 MR. BECKER: You can't lead like that.  
21 Objection, move to strike question, move to strike  
22 the answer.

23 MS. SMITH: I'll rephrase the  
24 question.

25 BY MS. SMITH:

1 Q. Doctor, you render an opinion on  
2 reasonableness and necessity of treatment, and what  
3 -- what do you base that on?

4 A. On the medical data presented by the  
5 person requesting the review.

6 Q. And you do that -- do you see the patient?

7 A. Sometimes I do, generally I do not.

8 Q. In the past have you ever evaluated  
9 chiropractic treatment for a patient on my behalf?

10 A. No, I have not.

11 Q. Is today the first time I've met you?

12 A. Today is the first time I ever met you.

13 Q. And I spoke to you yesterday --

14 A. Spoke to you on the phone yesterday.

15 Q. -- for the first time? Have you reviewed  
16 the records of George Pappas?

17 A. Yes, I have.

18 Q. Have you ever examined George Pappas?

19 A. No, I have not.

20 Q. Based on your review of the chiropractic  
21 and orthopedic records of Mr. Pappas, do you have  
22 an opinion within a reasonable degree of certainty  
23 as to whether the treatment rendered by Dr. Robin  
24 Hunter to George Pappas was reasonable and  
25 necessary as a result of the September 23rd, 1988

1     automobile accident?

2           A.     Yes, I do.

3           Q.     And what is that opinion?

4           A.     Based upon the --

5                   MR. BECKER:  Objection.

6                   THE WITNESS:  -- information originally  
7     provided to me, which was very little, originally I  
8     was only provided 19 pages of billings and 6 pages  
9     of an accident report, there was a diagnosis  
10    rendered by the attending physician.

11                   Since there was an accident involved  
12    and there was a diagnosis, I did consider that  
13    there was medical necessity for some treatment.  
14    After the review of the records, I concurred that  
15    there was medical necessity for 18 treatments from  
16    September of 1988 through December of 1988.

17    BY MS. SMITH:

18           Q.     And how much money do you think that each  
19    treatment should have cost?

20                   MR. BECKER:  Objection.

21                   THE WITNESS:  In my review I gave the  
22    range of 23 to \$41 as a reasonable and customary  
23    fee.  In my determination of the exact fee I chose  
24    \$38, for at that time \$38 was considered reasonable  
25    and customary charges for chiropractic services

1 within the State of Ohio by the Ohio Bureau of  
2 Workers' Compensation.

3 BY MS. SMITH:

4 Q. From reviewing all the records how much  
5 money do you think was reasonable and necessary for  
6 the treatment of George Pappas for the injuries  
7 sustained in the September, 1988 automobile  
8 accident?

9 A. Eight hundred --

10 MR. BECKER: Objection.

11 THE WITNESS: \$874.

12 BY MS. SMITH:

13 Q. Since you wrote a report dated April 11th,  
14 1989 I have provided you with additional medical  
15 records regarding George Pappas which include a  
16 medical report of Dr. Hauser, a medical report of  
17 Dr. Mavian, a chiropractic report of Dr. Hunter,  
18 and Dr. Hunter's complete office chart. You've had  
19 an opportunity to review those records?

20 A. Yes, I have.

21 Q. And based on all the records that have  
22 been provided to you, do you change your opinion  
23 with a reasonable degree of medical certainty as to  
24 the amount of treatment that was required and the  
25 cost of treatment?

1 A. No, I do not.

2 MR. BECKER: Objection.

3 BY MS. SMITH:

4 Q. With the reasonable degree of medical  
5 certainty do you believe that Mr. Pappas sustained  
6 any permanent disability as a result of the  
7 automobile accident?

8 A. No, I do not --

9 MR. BECKER: Objection.

10 THE WITNESS: -- feel that there's any  
11 indication that the -- Mr. Pappas suffered any  
12 percentage of physical impairment as the direct and  
13 proximal result of the motor vehicle accident.

14 BY MS. SMITH:

15 Q. So no further treatment is necessary?

16 MR. BECKER: Objection.

17 THE WITNESS: No.

18 BY MS. SMITH:

19 Q. With a reasonable degree of certainty do  
20 you have an opinion as to whether Mr. Pappas' soft  
21 tissue injuries would have prevented him to work as  
22 an attorney following the automobile accident?

23 MR. BECKER: Objection.

24 THE WITNESS: From the information  
25 presented to me I would consider that there may



1 have been some impairment of his ability to  
2 function as an -- as an attorney for approximately  
3 seven to ten days.

4 MS. SMITH: Thank you. I have no  
5 further questions.

6 - - -

7 CROSS-EXAMINATION

8 BY MR. BECKER:

9 Q. Doctor, my name is Bill Becker and I along  
10 with Rick Matsa represent George Pappas. Do you  
11 have now in front of you everything that would have  
12 been sent to you and everything that you would have  
13 generated or reviewed in this case?

14 A. Yes.

15 Q. So nothing has been removed or --

16 A. No.

17 Q. -- taken away from what you had or what  
18 you generated?

19 A. No.

20 MR. BECKER: Let's just take a short  
21 break here as I have an opportunity to look at that  
22 for the first time.

23 THE WITNESS: Now, this is what she  
24 gave me today --

25 VIDEO TECHNICIAN: We're off the

1 record.

2 (Discussion had off the record.)

3 VIDEO TECHNICIAN: We're on the record.

4 BY MR. BECKER:

5 Q. Doctor, thank you for the opportunity to  
6 take a look at the records that you have before  
7 you. Let me ask you some preliminary questions,  
8 and I guess maybe I'll start with where we are  
9 today.

10 We're here in part of your office  
11 complex in Akron, Ohio, I believe this area around  
12 here is called Kenmore; is that correct?

13 A. Correct.

14 Q. Now, we're in a house here today. It  
15 looks like somebody lives here. Do you live here?

16 A. No. This is a house that we own, and I  
17 have it set up just for depositions and storage.

18 Q. Okay. And the we is the other part of the  
19 team here, your father?

20 A. Well, now it's just me. My father passed  
21 away.

22 Q. Oh, I'm sorry, I didn't know that. We  
23 walked over here to the house. Was -- was this  
24 your house or your parents' house originally?

25 A. When -- originally at one time when I

1 first moved back here I lived here for awhile.

2 Q. Okay. And next-door is your clinic,  
3 correct?

4 A. Correct.

5 Q. So the sign out in front says the DuVall  
6 Chiropractic Clinic, and then attached to that I  
7 guess it's kind of an L-shape --

8 A. Correct.

9 Q. -- is another building it looked like  
10 maybe originally it wasn't part of -- of the rest  
11 of the office complex. What were these buildings  
12 out here originally, do you know?

13 A. Let's see, when my father first took over  
14 his part of the office here, the part that you're  
15 talking about, that wasn't -- didn't look like was  
16 attached, the L-part was a Lawson's and the far --  
17 as facing at the far right-hand portion of the  
18 building was a cleaners.

19 My father first moved in I believe it  
20 was 1961. He took over the cleaners in 19- -- I  
21 believe '68 or '69, and then we took over the  
22 Lawson's I believe it was in 1980.

23 Q. And for those of us, I grew up around this  
24 area so I know Lawson's was the place where you  
25 went and bought milk --

1 A. Dairy Mart.

2 Q. -- and dairy things --

3 A. Dairy Mart now.

4 Q. -- and now they are kind of convenient  
5 stores and gas stations these days but --

6 A. Correct.

7 Q. -- in those days they used to be  
8 self-contained. I also noticed on that office on  
9 the outside it said International Corporate Office  
10 under, I think, DuVall Chiropractic, Inc.

11 A. Right.

12 Q. Do you have overseas offices or --

13 A. No.

14 Q. What is the explanation for that?

15 A. We were doing -- because we were doing for  
16 awhile work in Canada, and I still do some  
17 consulting in Canada with the Canadian Chiropractic  
18 Association --

19 Q. Okay.

20 A. -- and carriers in Canada.

21 Q. All right. Who first contacted you about  
22 this case?

23 MS. SMITH: Objection.

24 THE WITNESS: I was first sent the  
25 information by Helen Hill of Nationwide.

1 MS. SMITH: Move to strike. If I could  
2 have a continuing objection on any information  
3 regarding insurance, I would appreciate it.

4 MR. BECKER: Yeah, I would be happy to  
5 give you a continuing objection, but I don't agree  
6 with obviously the basis for the objection.

7 BY MR. BECKER:

8 Q. Helen Hill is who, she works for  
9 Nationwide Insurance Company?

10 A. Yes.

11 Q. And do you know who she is --

12 A. No, I don't.

13 Q. -- in terms of her title or what she does?

14 A. I have no idea. There's no indication on  
15 her note to me.

16 Q. Had Helen Hill ever contacted you before  
17 this case?

18 A. Not that I can remember.

19 Q. Okay. Do you know -- maybe let's quit  
20 talking about Helen Hill for a minute and talk  
21 about why or how Nationwide Insurance Company would  
22 have gotten your name, I mean, contacted you up  
23 here in Akron.

24 A. We have done work with Nationwide. My  
25 father started working with Nationwide I believe it

1 was about 197- -- '71, I believe, or '72, somewhere  
2 in that area.

3 Q. Okay. And your father did the same kind  
4 of thing that you're doing here today? I think on  
5 your resume you indicated that what you're doing  
6 here is an independent medical consult?

7 A. Correct.

8 Q. And you've done that for Nationwide  
9 Insurance Company. What other insurance companies  
10 have you done this for?

11 A. Lots of them, Aetna, State Farm,  
12 Travelers, Lincoln National, Prudential, John  
13 Hancock, geez, Wausau, Progressive, Golden Rule,  
14 all kinds of them.

15 Q. How is it that all these insurance  
16 companies got your name or your father's name, if  
17 it goes back that way, I mean, how -- how is it  
18 that they come to you in the first place?

19 A. Word of mouth.

20 Q. Okay. Do -- do you or did your dad, and  
21 let's take this into the past, ever do any  
22 advertising or ever do anything to solicit this  
23 type of work?

24 A. We have never advertised or solicited any  
25 -- any business at all.

1 Q. You've never in the past written letters  
2 to insurance companies, for example, saying that --  
3 that these types of services are available if you'd  
4 care to use them?

5 A. No, not that I can ever remember.

6 Q. As you have testified then on behalf of  
7 insurance companies, you've essentially for the  
8 most part been testifying against the injured  
9 party, I assume, in these cases that have been  
10 brought to you?

11 A. I've also done work for Plaintiff.

12 Q. Have you?

13 A. Yes.

14 Q. Are there any Plaintiffs' lawyers either  
15 here in Akron or down in Columbus that you've  
16 worked for?

17 A. Right off the bat, the Plaintiff work that  
18 I have done has been in medical negligence cases.

19 Q. Okay. Where you may have testified as an  
20 expert witness that, for example, a chiropractor  
21 failed below certain standards of care?

22 A. Correct.

23 Q. Did you advertise or solicit for that work  
24 in any way?

25 A. No.

1 Q. How did it come about that you also  
2 testified in medical malpractice cases?

3 A. I was contacted and asked if I would look  
4 at the file, that there was a complaint, and would  
5 I take a look at it and see if there was, in fact,  
6 some problem. On some cases there have been, on  
7 other cases I have told them there was no problem.

8 Q. Miss Smith asked you about the number of  
9 these types of cases that you see, I think, in a  
10 week, and I was just a little bit confused about  
11 that, so let me clarify that. This type of case  
12 where you don't examine or don't even see the  
13 injured party, did I -- did I understand correctly  
14 you're doing about five or ten of those a week?

15 A. On an average.

16 Q. Okay.

17 A. There may be weeks I do none, there may be  
18 weeks I do twenty. It varies.

19 Q. Okay. So it averages out --

20 A. Averages out to about ten a week.

21 Q. All right. And has that number been  
22 fairly consistent over the years, or is that at a  
23 low number or a high number? Let's say the last  
24 five years, would that have been typical in the  
25 last five years for you?



1       A.     No. At one time we were doing much more  
2 than that because of the way contracts have changed  
3 and because there are more consultants now. We  
4 always try to refer people to one closest to them.  
5 And when we're contacted, if I know somebody in  
6 West Virginia or do I know somebody in Maine, if I  
7 do, I'll inform them.

8       Q.     Okay. In part I'm not sure I understood  
9 your answer. You said that you were doing more in  
10 the past because of contracts?

11      A.     Some -- yeah, sometimes -- see,  
12 contractual languages have changed, and when they  
13 change the contracts they restrict the coverages so  
14 they don't need the reviews as much.

15      Q.     Oh, the insurance companies?

16      A.     The carriers do.

17      Q.     I see, okay. So they just may not be  
18 paying at all versus questioning whether they  
19 should be paying?

20      A.     Right. Or they have a set limit on what  
21 they will consider.

22      Q.     All right. And then you were asked about  
23 the number of examinations that -- that you would  
24 do, and I think you said about one or three a week  
25 on the average?

1 A. Yeah.

2 Q. And that's --

3 A. All these are averages because I don't  
4 keep any running figures. I would say roughly one  
5 to three a week.

6 Q. All right. And that's when you -- when  
7 you see -- actually see the injured party --

8 A. Correct.

9 Q. -- to -- to examine them? And again, with  
10 regard to these examinations or these reviews,  
11 those are really for the most part, if not nearly  
12 all of them, are being done for insurance  
13 companies, I take it?

14 A. No.

15 Q. Okay.

16 A. No. The examinations themselves are done  
17 for industries relative to workers' comp claims.  
18 They are -- some are done in relationship to  
19 accident claims. This year I have probably done  
20 more physical examinations of patients than I've  
21 ever done.

22 Q. Okay. So if somebody gets hurt in the  
23 workplace you would be asked by the employer to  
24 examine this injured party to see, for example, how  
25 long they should be off work or what benefits --

1 A. Correct.

2 Q. -- should be paid?

3 A. Or if they've been off work do they still  
4 need treatment, what type of treatment do they  
5 need, get another opinion, maybe they are truly  
6 injured but they need to have other diagnostic  
7 considerations.

8 Q. Okay. And then as to your written  
9 evaluations --

10 A. Uh-huh.

11 Q. -- are the majority, if not all of them,  
12 done for insurance companies?

13 A. Again, no, I do, like I said, for third  
14 party administrators, for --

15 Q. Who, give us an example of who that would  
16 be.

17 A. A third party administrator like, oh, God,  
18 EGP, Executive Group Planning, several --

19 Q. Company that administers a health plan --

20 A. They administer health plans --

21 Q. -- for example?

22 A. -- for numerous corporations.

23 Q. Okay. Now, if you can, in terms of  
24 perhaps giving us a percentage of these exams and  
25 that you -- and reviews that you do, what

1 percentage would be done for the injured party or  
2 for the attorney, for example, who may ask you on  
3 behalf of the injured party to review a case?

4 A. Probably -- on the written reviews that I  
5 have done? All my written reviews have been  
6 defense.

7 Q. Okay.

8 A. As I said, as just to look at the paper,  
9 the -- the reports that I have generated for  
10 attorneys or testimony Plaintiff-wise have been in  
11 medical malpractice or medical negligence cases.

12 Q. Okay. How long have you been doing  
13 medical malpractice cases?

14 A. About five years, I believe --

15 Q. Okay.

16 A. -- right about.

17 Q. And on the average how many cases would  
18 you say you review every year?

19 A. I think for a couple years I only did one  
20 or two. Last two years I think I probably had  
21 about five or six that are still in a working  
22 stage. I get calls frequently to discuss and  
23 review the records and say is there something here,  
24 and I will look at it and say, yes, there is, or  
25 no, there's not.

1 Q. You no doubt are being paid -- I would  
2 expect you to be paid for your time here today,  
3 correct?

4 A. Correct.

5 Q. Who is paying for that time?

6 A. I think I will bill either Miss Smith or  
7 Mike.

8 Q. The other defense lawyer?

9 A. The other defense lawyer --

10 Q. Okay.

11 A. -- yeah.

12 Q. What will be your charge for -- for  
13 today? You bill by the hour or --

14 A. Yeah, \$200 an hour.

15 Q. Before you got these additional documents  
16 that came to you, and we'll segregate out in a  
17 minute what you had really before you started to  
18 prepare for the deposition and what you have now,  
19 how much time had you put into this review?

20 A. When? Just when I did my original  
21 review?

22 Q. Yeah, yeah, let's stick with that.

23 A. My original review was approximately, oh,  
24 20 minutes, 15 to 20 minutes.

25 Q. Okay. And then on that basis you were

1 able to come up with the report of April 11th,  
2 1989?

3 A. Correct.

4 Q. And then -- okay. And that was the report  
5 that you sent back to Miss Hill of Nationwide  
6 Insurance Company?

7 A. Correct, on April the 11th, 1989.

8 Q. Okay. As I understand your testimony you  
9 have found that, in fact, Mr. Pappas did need some  
10 medical treatment, but that you have a disagreement  
11 perhaps about how much of that treatment he may  
12 have needed. Did you know Dr. Hunter at all before  
13 you reviewed this case for the first time?

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

15 Q. Okay. Are you able, just on the basis of  
16 what you had, let's say, before this deposition to  
17 prepare this April of 1989 report, on the basis of  
18 that alone were you able to formulate a diagnosis  
19 as to what injuries George Pappas did receive in  
20 this automobile collision?

21 A. I took what the doctor gave me, which was  
22 basically only a diagnosis.

23 Q. That's Dr. Hunter you mean?

24 A. Yes, Dr. Hunter's, I accepted her  
25 diagnosis. I accepted there was the information

1 relative to the accident, there was an accident,  
2 and, as I said, the only thing that I was initially  
3 given to review were 6 pages of accident report and  
4 19 pages of bills. There was a diagnosis. There  
5 was an accident.

6 On that basis I determined fine, the  
7 man did have some complaints, otherwise he wouldn't  
8 go to see the doctor. I did give him the benefit  
9 of the doubt that he had a complaint, with the  
10 diagnosis would be amiable to treatment.

11 Q. Then incorporating the additional  
12 information that you got, as you sit here today  
13 then and formulated your opinions would it be fair  
14 to say that you have no challenge or disagreement  
15 to the diagnosis or to the conclusion that Dr.  
16 Hunter came up with as to the type of injuries that  
17 George sustained in the automobile collision; is  
18 that fair?

19 A. I continue to accept those.

20 Q. Okay. Now, as to -- well, let me ask you  
21 one other thing: You were good enough to let me  
22 look at -- at your notes that you had before you  
23 rendered this report in April of 1989. And in the  
24 police report there are some circling, maybe if we  
25 both get to the same page I'll show you what I'm

1 talking about, (reviewing file.)

2 A. Yeah, right here.

3 Q. Yeah. In the police officer's report  
4 where it notes at least from the police officer's  
5 perspective as to the amount of damage in the cars  
6 that were involved, disabling moderate, disabling  
7 heavy, disabling moderate, non-functional moderate,  
8 those are circled. Would you have done that --

9 A. I did that.

10 Q. -- in the initial review?

11 A. No, no. I did that today.

12 Q. Oh, just today?

13 A. Last night when I was going over the rest  
14 of the information again --

15 Q. All right.

16 A. -- I checked back over that.

17 Q. And can I assume that the reason that you  
18 did that is you were at least interested in getting  
19 some information, at least what was provided to  
20 you, as to the -- oh, the type of property damage  
21 and that then might relate to the trauma or the  
22 force of the collision in this case?

23 A. Correct.

24 Q. And that I assume may be important then in  
25 terms of how badly somebody was injured, that is



1 the force of the impact on their car?

2 A. It can have an effect.

3 Q. Yeah. Have you also seen in your own  
4 practice, however, with certain clients that that  
5 is not always conclusive, that is, the force of the  
6 impact, in fact, some people can be involved in a  
7 car collision and get up and walk away and yet  
8 somebody is left there disabled or maybe even  
9 paralyzed?

10 A. Certainly anything is possible.

11 Q. Have you seen that in your own practice  
12 with your own clients?

13 A. In my own practice, as far as their  
14 complaint relative to the type of injury described,  
15 you have to take into consideration the patient's  
16 own embellishment and look at the patient's, A,  
17 motivation, and, B, how well they can cope with  
18 their own situations.

19 Q. Have you ever had your own medical  
20 treatment reviewed by any other chiropractor?

21 A. Probably.

22 Q. But not to your knowledge?

23 A. Not to my knowledge.

24 Q. Okay. You have been practicing then --  
25 did you start practicing chiropractic care with

1 your dad?

2 A. Yes.

3 Q. And you started practicing when?

4 A. I got my license to practice in 1979.

5 Q. And did you -- you start right up with  
6 your dad then --

7 A. Yes.

8 Q. -- seeing patients in 1979?

9 A. Yes.

10 Q. Now, Miss Smith asked you or clarified  
11 that you had not received a Bachelor's Degree,  
12 stated another way, you have not graduated from a  
13 college or university other than the Graduate Texas  
14 College of Chiropractic; is that correct?

15 A. Correct.

16 Q. Is that really where you found your  
17 chiropractic training? Let me ask another  
18 question.

19 A. I'm a third generation chiropractor.

20 Q. Okay.

21 A. My grandfather was a chiropractor. My  
22 father was a chiropractor. As far as finding  
23 chiropractic, I was raised in it.

24 Q. Okay. The formal education -- I didn't  
25 ask the question --

1 A. Right.

2 Q. -- very well, but the formal education in

3 -- in -- that led to your licensure as a

4 chiropractor --

5 A. Correct.

6 Q. -- would that have been the Graduate Texas

7 College of Chiropractic?

8 A. Yes.

9 Q. Now, how long were you at that college?

10 A. From August of 1973 until August of 1977.

11 I graduated in May and had to finish up some extra

12 hours in the clinic and left in August.

13 Q. Okay. Did you go full-time?

14 A. Yes.

15 Q. So it's a four-year program?

16 A. Yes.

17 Q. All right. What were -- were the

18 requirements to get into this college of

19 chiropractic medicine the same as they would be to

20 -- to -- to another type of college, let's say the

21 University of Akron, in other words, you have to

22 graduate from high school, correct?

23 A. Correct.

24 Q. Are there any other requirements to get

25 into the college?

1       A.     You -- they wanted you to have minimum  
2 pre-professional credits, and that's why they did  
3 have a program with the San Jacinto College where  
4 if you didn't have all your physics and chemistry  
5 that you could go both schools at one time. Let's  
6 see, I graduated in '77, since then now they're  
7 with the Southwest Conference and they also confer  
8 through the school a Bachelor of Science Degree in  
9 biology.

10               MR. BECKER: Let's go off the record  
11 for just a minute.

12               VIDEO TECHNICIAN: We're off the  
13 record.

14               (Discussion had off the record.)

15               (The Notary read back as requested.)

16               VIDEO TECHNICIAN: Stand by. We're on  
17 the record.

18 BY MR. BECKER:

19       Q.     You also mentioned, Doctor, that -- strike  
20 that. You are -- well, you were president of the  
21 Tri-County Chiropractic Association. I assume  
22 since Akron is in Summit County that one of the  
23 counties was Summit?

24       A.     The Tri-County is Summit, Medina and  
25 Portage.

1 Q. Okay. Would that be an association of  
2 maybe you or your dad had started?

3 A. No, no.

4 Q. Okay.

5 A. The Tri-County -- no, I can't say that. I  
6 don't remember if my father started the  
7 Tri-County. I know he was very active in -- in  
8 getting the association started. I don't know for  
9 sure what his role was with the Tri-County. At one  
10 time there was just a separate Summit County  
11 Chiropractic Association and I think they merged  
12 together.

13 Q. Okay.

14 A. It was a long time ago.

15 Q. So there's a local chiropractic  
16 association and then also is there a state  
17 chiropractic association as well?

18 A. There are two or three state associations  
19 in Ohio. There are five national associations, if  
20 I'm not mistaken.

21 Q. Do you belong to all the state  
22 associations, or do you belong to any state  
23 associations?

24 A. I don't belong to any state associations.

25 Q. Of chiropractors?

1       A.     Of chiropractors.

2       Q.     Is there a reason for that, Doctor?

3       A.     I just don't feel like paying them 7, 800  
4 bucks to join. I was at one time a member and had  
5 just stopped paying dues. And then I belonged to  
6 the Ohio State Chiropractic Association.

7       Q.     In terms of the opinions that you've  
8 rendered here today about how many times in your  
9 opinion George should have seen a chiropractor and  
10 over what period of time, did you follow any --  
11 other than just you feeling that way did you follow  
12 any published guidelines or standards to reach  
13 those conclusions?

14       A.     The way in which I render my opinion are  
15 -- is based upon the medical scientific knowledge  
16 relative to the efficacy of treatment for  
17 neuromusculoskeletal conditions of musculoskeletal  
18 origin using spinal manipulative therapy. There  
19 are numerous studies published relative to the  
20 efficacy of treatment and the length of time as far  
21 as soft tissue injuries should respond to spinal  
22 manipulative therapy.

23       Q.     I guess that's a no, but my question, if  
24 you didn't understand it was fairly simple, and  
25 that is, did you sit down and have next to you a

1 book or any published standards that you then  
2 compared to the material that was sent to you and  
3 said, hey, this doesn't follow this book, this  
4 text, these standards?

5 A. Based upon the sparse amount of  
6 information I had, which was, A, there was an  
7 accident, B, the man had a complaint of soft tissue  
8 injuries, given that information and knowing what  
9 the type of -- how the injuries described respond  
10 to treatment, there are numerous guidelines  
11 relative to that and studies published.

12 If I'm not mistaken, relative to  
13 manipulation there probably are about 52 to 54  
14 different studies that have been published relative  
15 to the efficacy of manipulation since 1955.

16 Q. So you just kind of had that in the back  
17 of your mind as you took a look at this case?

18 A. Sure.

19 Q. Okay. Do you know who comprises the State  
20 of Ohio Board of Chiropractic Examiners and what  
21 they do?

22 A. Specifically who is on the Board of  
23 Examiners?

24 Q. Well, that -- that -- that's not -- well,  
25 I don't know if you know that, that's fine.

1 A. No.

2 Q. But do you know generally what this Board  
3 is all about? I understand it's a -- it's a part  
4 of State Government, is that your understanding?

5 A. The Ohio State Chiropractic Examining  
6 Board is the governing body of the chiropractic  
7 profession in the State of Ohio. They're the ones  
8 who confer the license.

9 Q. Okay. Sort of like the analogy might be  
10 the Supreme Court of Ohio for lawyers, they're the  
11 ones that --

12 A. Confer the license.

13 Q. -- give us the bar exam --

14 A. Right.

15 Q. -- and confer the license and make sure we  
16 keep up with our certificates. Do you know if your  
17 -- if -- if these types of reviews that you did in  
18 this case have been reviewed by the State of Ohio  
19 Board of Chiropractic Examiners?

20 A. I know that the Ohio State Chiropractic  
21 Examining Board is not happy with the kind of  
22 reviews I do.

23 Q. In fact, their unhappiness is that they  
24 feel you are -- are too restrictive in your  
25 opinions about chiropractic care and how much



1 somebody should receive and over what period of  
2 time?

3 A. Again, that is their opinion. The  
4 Constitution gives everybody a right to an opinion.

5 Q. And you've come to understand that that's  
6 their opinion about your reviews?

7 A. Yeah, that's their opinion.

8 Q. Okay. And, in fact, their opinion is also  
9 such that this restriction actually limits, in some  
10 instances, the right that people have to obtain  
11 chiropractic care because as a result of your  
12 reviews and examinations insurance companies will  
13 stop paying for it, were you aware of that?

14 A. In -- in their mind they may feel they are  
15 restrictive. As I said, that's simply their  
16 opinion. It is not any judgment. It is not any  
17 sanction or reprimand from the Board. The Ohio  
18 Bureau of Workers' Compensation, I work with them  
19 and the Attorney General's Office of the state, and  
20 they don't seem to have any problem.

21 Q. Well, actually the issue of chiropractic  
22 care and the Bureau of Workers' Compensation is a  
23 hotly contested issue presently, is it not?

24 A. Yes, it is.

25 Q. Yes, it is. But I take it you -- you are

1 aware of the consequences of what you do in these  
2 reviews in that I assume the insurance companies  
3 pay attention to what -- what you have to say and  
4 on that basis often will stop paying for  
5 chiropractic care for injured people, is that --

6 A. I have --

7 Q. -- is that a fair consequence?

8 A. I have no control over -- I am asked for  
9 an opinion, I render an opinion. If they want to  
10 use it, they can. If they don't, that's up to  
11 them.

12 Q. Okay. But certainly if they pay attention  
13 to what you have to say in some of these cases  
14 they're going to stop authorizing payment for  
15 chiropractic care, won't they?

16 A. They may or may not.

17 Q. Let me ask you this: Again, as a  
18 percentage of the cases that you review without  
19 seeing the patient, can you tell me how many times  
20 that you find that the chiropractic care -- that  
21 the patient needs more chiropractic care?

22 A. First I have to clarify one thing. When I  
23 get a case it has been looked at by other people  
24 prior to my getting it. I see a very small  
25 fraction of cases, those that are questionable for

1 some reason or another, either there's not enough  
2 information, they can't get information, or there  
3 are questions that they don't understand. I don't  
4 see every claim.

5 Of those claims that I see maybe one  
6 percent there's nothing wrong with. There might be  
7 another one percent that the patient does, in fact,  
8 need further treatment. Now, I can't say one.  
9 There's probably more than one percent, maybe ten  
10 percent or more, and I recommend they need so much  
11 more treatment. Again, it's a recommendation. If  
12 they want to take it, they can; and if they don't  
13 want to take it, they can.

14 Q. And I assume in terms of the examinations  
15 that you perform for the most part are they done  
16 after the patient has been finished with their  
17 treatment, or do you see them even while they're  
18 still treating?

19 A. It can vary. I can see them while they're  
20 treating. I have seen them after -- I generally  
21 don't see them if treatment has stopped unless in  
22 workers' compensation, if a man has had a workers'  
23 comp and for ten years he's never used it, now he  
24 wants to reactivate it. They may want an opinion  
25 now is the patient's present complaints reasonable

1 on the old injury.

2 Q. Of then the examinations, the people that  
3 you examine, let me ask you the same percentage  
4 question as to how many of those people you don't  
5 find any fault with the chiropractic care, first of  
6 all, then how many as a percentage basis you would  
7 recommend further chiropractic care for?

8 A. Those that I find no fault with in the  
9 care, maybe 1 percent. Those that I find that  
10 there is a problem that must be further  
11 investigated, that there is something wrong, the  
12 patient needs other diagnostic tests, I'd say 10 to  
13 20 percent there's something else wrong that needs  
14 to be addressed.

15 Q. Perhaps addressed in a non-chiropractic  
16 way?

17 A. All -- all in a non-chiropractic way.  
18 They need a neurosurgical or orthopedic surgical or  
19 rheumatological MRI, some type of other examination  
20 must be done. There's something seriously wrong  
21 with the patient that hasn't been addressed.

22 Q. And then the opinions that you've  
23 expressed today about what you felt was a fair  
24 charge for chiropractic services, I'm not sure I  
25 understood but did you use Bureau of Workers'

1 Compensation guidelines for that or did you use any  
2 guidelines?

3 A. The fee that I used was what was  
4 reasonable and customary for chiropractic  
5 physicians in 1988 by the Ohio Workers'  
6 Compensation.

7 Q. Okay.

8 A. They considered \$38 as reasonable and  
9 customary.

10 Q. Doctor, I'm almost finished with the  
11 questions I have for you right now, but what I'd  
12 like to do while I confer with my co-counsel is  
13 just have marked for the record first of all as our  
14 first exhibit those records that you would have had  
15 that resulted in a report from you of April of  
16 1989. And we can do this off the record --

17 A. Okay.

18 Q. -- I'm just going to give you the outline  
19 here. And then secondly, because I think you  
20 divided them into three parts, the second part  
21 would have been documents that were sent to you  
22 afterwards.

23 A. The second part was documents that Glori  
24 sent me yesterday, this.

25 Q. Okay.

1       A.       And then this morning -- or this afternoon  
2 when we were talking she let me use her records,  
3 which had the doctor's progress notes on them.

4       Q.       All right. That would be then the second  
5 and third set respectively. And I apologize, I may  
6 have been a few minutes late here, I was stopping  
7 by to get a cup of coffee, but I assume that you  
8 had a private conference with Miss Smith to discuss  
9 your testimony before you began today?

10      A.       Yes.

11               MR. BECKER: All right. Well, Doctor,  
12 I'll have the Court Reporter do that marking off  
13 the record and we'll be back on here in just a  
14 minute.

15               VIDEO TECHNICIAN: We're off the  
16 record.

17               (Plaintiff's Exhibit Nos. 1, 2 and  
18 3 were marked for identification.)

19               (A recess was had.)

20               VIDEO TECHNICIAN: We're on the record.

21 BY MR. BECKER:

22      Q.       And, Doctor, just to summarize because  
23 we've had a little bit of a break here and I  
24 frankly can't remember what we ended saying, but  
25 you have now with the Court Reporter's assistance

1 gone ahead and marked as our first exhibit those  
2 records that you had prior to the report of April  
3 of 1989.

4 Then as our second exhibit you've  
5 marked those materials that you received just  
6 yesterday. And then as a third exhibit you marked  
7 what you received just before the start of this  
8 deposition this afternoon, correct?

9 A. Correct.

10 MR. BECKER: Well, Doctor, I thank  
11 you. I have no further questions at this time, but  
12 I understand my co-counsel may have a couple of  
13 questions for you.

14 - - -

15 BY MR. MATSA:

16 Q. Yes, Doctor, my name is Rick Matsa. I  
17 have just a couple of questions that I -- that I  
18 was interested in asking you. You mentioned that  
19 you graduated in May of 1977 from the Graduate  
20 Texas College of Chiropractic?

21 A. Texas College, yes.

22 Q. And you indicated that -- that you  
23 continued working there at the college, studying  
24 there at the college until August of 1977?

25 A. Correct.

1 Q. What did you do from the time that you  
2 graduated until August of 1977?

3 A. I worked with my father in the clinic  
4 doing examinations, doing X-rays and other jobs in  
5 the clinic.

6 Q. While you were at the college did you ever  
7 fail or have to repeat any courses?

8 A. I believe I failed I know a couple of  
9 philosophy courses, right off the bat those I can  
10 remember.

11 Q. Were there any other courses that you  
12 failed?

13 A. Right off the top of my head at the  
14 present time I can't -- I can't remember.

15 Q. Okay. Now, Doctor, when was the -- you  
16 mentioned that there's a licensing board that  
17 licenses chiropractors. Could you tell me again  
18 which organization that is?

19 A. That's the Ohio State Chiropractic  
20 Examining Board.

21 Q. And do they administer an examination?

22 A. Yes, they do.

23 Q. Did you take an examination?

24 A. I took the examination four times.

25 Q. When was the first time that you took it?



1 A. August of 1977, February of 1978.

2 Q. Wait. Could you -- could you go more  
3 slowly for me, please, Doctor?

4 A. August of 1977, February of 1978, August  
5 of 1978, and February of 1979. And I got my  
6 license in April of 1979.

7 Q. What was the -- what was the result when  
8 you took the exam in August of 1977?

9 A. I failed portions of the exam, as I did in  
10 February and the following August. I had a tough  
11 time with the test.

12 MR. MATSA: Okay. Thank you, Doctor.  
13 I don't have any further questions at this time.

14 MS. SMITH: Doctor, I just have one  
15 other question.

16 VIDEO TECHNICIAN: Excuse me, we're off  
17 the record.

18 (Discussion had off the record.)

19 VIDEO TECHNICIAN: Stand by. We're on  
20 the record.

21 - - -

22 REDIRECT-EXAMINATION

23 BY MS. SMITH:

24 Q. Doctor, I have only one additional  
25 question. Your license has never been suspended or

1       revoked?

2           A.       No, it hasn't.

3                   MS. SMITH: Thank you.

4                   MR. BECKER: Doctor, I don't believe we  
5       have any further questions. Thank you.

6                   VIDEO TECHNICIAN: Doctor, you have the  
7       right to review this videotape in its entirety or  
8       you may wish to waive that right.

9                   THE WITNESS: I'll waive it.

10                   VIDEO TECHNICIAN: We're off the  
11       record.

12                               - - -

13                   (Deposition concluded at 3:16 o'clock p.m.)

14                               - - -

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I, CHARLES E. DUVALL, JR., D.C., do  
verify that I have read this transcript consisting  
of fifty (50) pages and that the questions and  
answers herein are true and correct with  
corrections as noted on the errata sheet.

\_\_\_\_\_  
CHARLES E. DUVALL, JR., D.C.

Sworn to before me, \_\_\_\_\_,  
a Notary Public in and for the State of \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_.

My commission expires \_\_\_\_\_.

COPY

C E R T I F I C A T E

STATE OF OHIO,)

) SS: \_\_\_\_\_

SUMMIT COUNTY.)

I, Linda M. Yelinek, an RPR and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, CHARLES E. DUVALL, JR., D.C., 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 the witness was by me reduced to Stenotypy in the presence of said witness, afterwards transcribed upon a computer; and that the foregoing is a true and correct transcription of the testimony so given by the witness as aforesaid.

I do further certify that this videotape 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, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 11th day of November, 1991.

*Linda M. Yelinek*

Linda M. Yelinek, an RPR and Notary  
Public in and for the State of Ohio.

My Commission expires July 31, 1996.