

IN THE COURT OF COMMON PLEAS
OF LUCAS COUNTY, OHIO

MYRTLE M. THOMAS, et al.,:

Plaintiffs, :

vs.

:Case No. 93-0621

Hon. Robert G. Christiansen

SHERYLE L. BORATYN, :

et al., :

Defendants. :

- - -

Deposition of NABIL A. EBRAHEIM, M.D., a
witness herein, called by the Plaintiffs as upon
Cross Examination, pursuant to the Ohio Rules of
Civil Procedure, taken before Nicole D. Blaker,
Registered Professional Reporter and Notary Public
in and for the State of Ohio, pursuant to Notice
and agreement of Counsel, at the offices of Nabil
A. Ebraheim, M.D., Medical College of Ohio, 3000
Arlington Avenue, Toledo, Ohio, on Monday, July
11, 1994, commencing at 4:10 p.m.

- - -

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I N D E X

DEPOSITION OF NABIL A. EBRAHEIM, M.D. PAGE
Cross Examination
By Mr. Bolotin 3

E X H I B I T S

Plaintiffs' Exhibits 15-16 marked. 34

1 APPEARANCES:
2 On behalf of the Plaintiffs:
3 THE BOLOTIN LAW OFFICES:
4 Samuel G. Bolotin
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5 On behalf of the Defendants:

6 MANAHAN, PIETRYKOWSKI, BAMMAN & DELANEY:
7 Mark L. Pietrykowski
414 North Erie Street
8 Toledo, Ohio 43603 (419) 243-6148

9
10 MR. BOLOTIN: Swear the doctor in,
11 please.

12
13 NABIL A. EBRAHEIM, M.D.,
14 was first duly sworn, as hereinafter certified,
15 testified and said as follows:

16
17 MR. BOLOTIN: Doctor, my name is
18 Sam Bolotin, and we've met before. Also
19 with us today is Mr. Mark Pietrykowski,
20 who represents the Defendant.

21 Doctor, I'm going to be asking you a
series of questions. If at any time you
don't understand a question that I ask
you, let me know and I'll be happy to
rephrase the question. I need to ask you

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<p>1 though, Doctor, before we start if you 2 wish to reserve signature or waive 3 signature. 4 THE WITNESS: Waive signature. 5 6 CROSS EXAMINATION 7 BY MR. BOLOTIN: 8 Q Doctor, if you would, would you generally tell me 9 your education, experience and your -- up to your 10 current position, just briefly? 11 A I came to Toledo about nine years ago. I'm a 12 professor at the Medical College of Ohio. 13 Q That's where we're at today, correct? 14 A Yes. And I have two years of specialization prior 15 to that, two years on injuries, accidents. One of 16 those two years is in Europe and the other year in 17 Baltimore, Maryland, in the shock-trauma unit. I 18 had training in Brooklyn, New York, in orthopedics. 19 I have written a lot of papers. 20 Q Are you the chief of orthopedics here at Medical 21 College? 22 A Chief of orthopedic trauma. I'm the vice-chairman 23 of the department. 24 Q Okay. And how long have you held that position? 25 A For nine years.</p>	<p>1 insurance records and some Interrogatories in here. 2 A Things related to medicine and things are not 3 related to medicine. 4 Q Right. But generally, is this the complete medical 5 file that you had on Miss -- 6 A Complete file? 7 Q Yes. 8 MR. PIETRYKOWSKI: That you had. 9 Q On Myrtle Thomas. 10 A This is the only -- yeah, this is the file. 11 Q The only other thing you would have is your report 12 which I see there? 13 A Yes. 14 Q You have two copies of that? 15 A X-ray. 16 Q X-ray reports? 17 A That's it. 18 Q And did you take any personal notes of your exam or 19 did you dictate them? 20 A We took notes. 21 Q Where would that be? 22 A It's in the clinic notes and dictate later on. 23 Q Would you be able to submit copies of the notes 24 later on -- 25 A Sure.</p>
<p>1 Q Okay, nine years. You are Board certified 2 obviously? 3 A Board certified and also recertified. 4 Q When did you first become Board certified? 5 A 1987. 6 Q Now, you were hired by Mr. Pietrykowski on behalf 7 of his client to do an examination of my client, 8 Myrtle Thomas; is that correct? 9 A Yes. 10 Q And you knew that when you did that examination you 11 would be called upon perhaps to testify? 12 A Sure. 13 Q And before we get into the results of your report, 14 a copy of which I have here, I need to ask you what 15 records did you review in preparation of your 16 report and seeing Myrtle Thomas back on January 17 24th of 1994? 18 A The records that -- 19 Q May I see them? 20 A -- were sent to me. 21 Q So am I correct in that this file of records is 22 what Mr. Pietrykowski sent you? 23 A Yes. 24 Q Essentially these are the medical records or 25 hospital records -- I see there's also some</p>	<p>1 Q -- or is it proper to do that now? 2 A Every note is made immediately. 3 Q Okay. Let me take a moment here and look at these 4 records to see what copies you have. I see you 5 were also sent a copy of the accident report? 6 A Everything that's there, whatever you say. 7 Q Now, the records that you would find relevant would 8 be the medical records rather than the other 9 records? The legal pleadings and the accident 10 reports, those wouldn't be relevant for you? 11 A I don't look at them. 12 Q Pardon? 13 A I don't look at them. 14 Q You don't look at them, okay. 15 A It's important, the accident report, the history of 16 the patient from before, her current treatment. 17 Q Now, I see here that you have Dr. Belardi's 18 records, Dr. Assenmacher's records, the emergency 19 room records, certain physical therapy records, and 20 the surgical records of -- 21 A Dr. Assenmacher. 22 Q -- Assenmacher for Myrtle Thomas' surgery? 23 A Yes. 24 Q Was there anything else that you looked at? Did 25 you look at any x-rays, original x-rays of her?</p>

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1 A I don't recall if I seen x-rays when she was in the
2 clinic.
3 Q You have some x-ray reports there that you pulled
4 out?
5 A I got x-ray reports.
6 Q May I see what you have here?
7 A I actually requested the x-rays of her accident,
8 and I haven't gotten them.
9 Q I see you have two x-ray reports here, and
10 basically these are the emergency room x-ray
11 reports of Flower Memorial Hospital dated December
12 4th, 1991, which is the day after the accident?
13 A No, which is -- you know, I got that because I
14 really didn't get the initial x-rays. I wanted to
15 see the x-rays of the accident, but I couldn't get
16 them.
17 Q We'll get into that later. At this point I just
18 wanted to find out exactly what records you had
19 reviewed. So you're not sure or clear whether you
20 reviewed the actual x-rays from Flower Hospital?
21 A No, I never seen the actual x-rays. I may have
22 seen x-rays after that.
23 Q Did you take any x-rays of your own here at Medical
24 College?
25 A No. Usually when you go for evaluation, unless

8

1 it's absolutely necessary, you know -- it's not
2 really necessary. I didn't think it's necessary.
3 Q Understood. I just wanted to find out what your
4 evaluation was based on.
5 A Based on the record she came with, the x-rays, her
6 history, and the examination.
7 Q Okay. Now, this was a one-time examination that
8 you performed?
9 A Absolutely correct.
10 Q You've never had an occasion to see her before or
11 after?
12 A Never seen her before or after.
13 Q And so that the record is clear, you have no
14 doctor/patient relationship with Myrtle Thomas; is
15 that correct?
16 A You're absolutely correct.
17 Q And you're not responsible in any way for her
18 present or future treatment; isn't that true?
19 A You're correct.
20 Q Now, how often do you do independent or defense
21 examinations? I guess it's your point of view. We
22 refer to them as defense examinations, they refer
23 to them as independent, but let me ask it. How
24 often do you do defense examinations?
25 A How often you see -- how often you see liability

9

1 cases like that?
2 Q No. But I mean as part of your practice, how often
3 do you do defense examinations?
4 A Defense?
5 Q Yes. How often are you requested by a defendant to
6 do an examination?
7 A I'm not sure what a defendant means here.
8 Q Well --
9 A By the insurance company?
10 Q Yeah, by an insurance company or by defense
11 counsel.
12 A Very, very rare.
13 Q Okay. But how often would that be, once a month?
14 A I would say not even once a month.
15 Q Okay. You have no ongoing relationship with Mr.
16 Pietrykowski's firm then --
17 A No.
18 Q -- is that fair? Have you met Mr. Pietrykowski
19 before today?
20 A Yes, on another case.
21 Q On other cases?
22 A Another case.
23 Q Another case, okay.
24 A In nine years.
25 Q Now, when you --

10

1 A A couple of cases in nine years. The same number I
2 seen you in nine years.
3 Q But those couple cases would have been in the last
4 year or two, or would it have been over nine years?
5 A Over a few years. I can't recall.
6 Q When you saw Mrs. Thomas, was she polite and
7 cooperative?
8 A Very polite.
9 Q And I take it at that time you took a history from
10 her, you asked her what happened?
11 A Sure.
12 Q And you were also supplied with a history by Mr.
13 Pietrykowski, I assume?
14 A Sure.
15 Q And you had the medical records that you have in
16 front of you, which include emergency records and
17 actually all her medical records; is that fair?
18 A Yes.
19 Q Did you examine any medical records or any x-rays
20 of her taken before the accident, dated before
21 December 3rd of 1991?
22 A No. This, again, was a -- I wanted to get these
23 x-rays. I couldn't get them. I want x-rays of the
24 accident. I don't even care what's before.
25 Q Now, let's take a look at your report. You have a

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1 copy of it in front of you?

2 A Sure.

3 Q Now, when you examined her, she gave a history of

4 being involved in a motor vehicle accident?

5 A Yes.

6 Q And that accident, did that occur on December 3rd,

7 1991, do you know?

8 A Yes.

9 Q And at that time she told you she was bruised up in

10 different areas of her body?

11 A Right shoulder, she got her back, and her left

12 knee.

13 Q Now, the conclusions in your report are contained

14 under diagnosis; is that fair?

15 A It's conclusions and diagnosis both.

16 Q All right.

17 A I was just trying to simplify to make more -- more

18 distinction to it so it would be noticeable.

19 Q Isn't it true, Doctor, that you found she had some

20 mechanical right shoulder impingement with a

21 decreased range of motion when you examined her?

22 A Yeah, I did have that in the report, right shoulder

23 rotator cuff tendinitis, which is some shoulder

24 mechanical impingement, and decreased range of

25 motion. I did not see any rotator cuff tear as

12

1 seen in surgery.

2 Q Now, you found also for Number 2 diagnosis no

3 objective findings related to the low back; is that

4 right?

5 A Yeah. Objective findings is range of motion and

6 also neurological examination. That was normal.

7 Q Those were normal?

8 A Yeah. She had subjective --

9 Q Subjectively she was complaining of back pain?

10 A She was complaining, which is not, you know,

11 objective.

12 Q But subjective complaints are complaints that a

13 physician takes into account when he's treating and

14 examining a patient?

15 A Yes. Almost 20 percent of the population have

16 subjective low back pain and they don't have an

17 objective criteria. It's very common thing.

18 Q Very common. Though isn't it fair, Doctor, that

19 most complaints of low back pain are related to a

20 history of some sort of trauma?

21 A Or a sprain, yes.

22 Q You agree with that then?

23 A Yeah, I agree.

24 Q Isn't it true you're a professor here at the

25 Medical College of Ohio?

13

1 A Yes.

2 Q As a professor you teach other doctors orthopedics?

3 A Yes.

4 Q And as part of your teachings, do you not tell them

5 to listen and pay attention to history given by a

6 patient to them?

7 A Not --

8 Q To listen to it?

9 A Absolutely, always listen, you know, always look

10 for things. Things may be simple -- you know, back

11 pain that's simple in a 17-year-old patient may

12 turn out to be cancer in her spine.

13 Q You have to be very --

14 A Cautious.

15 Q -- alert and cautious?

16 A Yes.

17 Q Now, your examination of the knee, you found no

18 interarticular pathology. What did you mean by

19 that?

20 A There was no internal derangement. There is no

21 meniscus or no cruciate ligament disruption or the

22 collateral ligament, the medial collateral

23 ligament.

24 Q You did this through range of motion basically?

25 A Yeah, an examination. She has pain exactly at the

14

1 same area that she said she was hit, was swollen,

2 which is beyond any joint. It's distant to her

3 knee joint itself, so obviously there was nothing

4 inside the knee joint. But she had a bruise below

5 to the knee joint itself. So we know that we do

6 not have any problem inside the the knee joint.

7 Q But you did not look inside the knee, you just

8 based it upon your physical examination?

9 A Yes, I did not look inside the knee. I did not use

10 the arthroscope.

11 Q You used the phrase, "lower extremity appears

12 stable." What did you mean by that?

13 A Which line is that?

14 Q The last sentence of Number 3 --

15 A Oh.

16 Q -- on Page 2.

17 A Means the knee is not loose. It means there is

18 no -- there is no ligament injury, so the

19 interarticular pathologies always refer to the

20 cruciate ligament and to the meniscus, and the

21 ligaments are stable, means the knee doesn't

22 buckle, does not open, means that the ligaments are

23 intact.

24 Q Was she complaining of pain, however, in the knee?

25 A Yeah, and she was pointing at a spot beyond the

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<p>15</p> <p>1 knee joint.</p> <p>2 Q Now, to be safe, would it be best to do an</p> <p>3 arthroscopic procedure to verify that?</p> <p>4 A No, no. It's diagnostic arthro -- there is no</p> <p>5 indication nowadays for diagnostic arthroscopy.</p> <p>6 Q As long as it's stable, you wouldn't do that?</p> <p>7 A Yeah, and as long as the physical exam does not</p> <p>8 point to anything inside the knee. She had a</p> <p>9 bruise, you know, at the knee area in the past, and</p> <p>10 the bruise was giving her some discomfort. It's in</p> <p>11 the medial side and below the knee joint level,</p> <p>12 which is good for her.</p> <p>13 Q Now, you conclude your report by saying that, "I</p> <p>14 believe that the arthritis of the distal clavicle</p> <p>15 that required excision was not a result of the</p> <p>16 accident, but was age related."</p> <p>17 A Yes. I did base that on the operative report.</p> <p>18 Does anybody have the operative report handy?</p> <p>19 Q You do have it there in the records.</p> <p>20 A The operative report to my recollection, he did</p> <p>21 mention this spur in the acromion.</p> <p>22 Q The operative report refers to a right A-C joint</p> <p>23 large spur at the inferior distal clavicle.</p> <p>24 A Yes.</p> <p>25 Q That was --</p>	<p>17</p> <p>1 A Oh, yeah. I'm saying that she had an arthritis in</p> <p>2 the A-C joint and the arthritis in the acromion</p> <p>3 prior to -- prior to the accident.</p> <p>4 Q Do you know if she has it in the other shoulder?</p> <p>5 A She didn't complain about the other shoulder.</p> <p>6 Q Is it common, though, if a 70-year-old woman has</p> <p>7 arthritis in one shoulder, she usually has it in</p> <p>8 the other shoulder too?</p> <p>9 A It can migrate, but usually you have one, you have</p> <p>10 it in one shoulder. Usually it's like knees, you</p> <p>11 have it in one worse than the other.</p> <p>12 Q I was always told, Doctor, through other</p> <p>13 depositions that arthritis tends to be symmetrical;</p> <p>14 is that --</p> <p>15 A No, it's not true.</p> <p>16 Q Not true?</p> <p>17 A No. There's a lot of patients have only one total</p> <p>18 knee replacement from arthritis, only bad in one</p> <p>19 knee. So I -- I made my assumption that the</p> <p>20 arthritis of the distal clavicle was not the result</p> <p>21 of the accident.</p> <p>22 Q Let me ask you another question. If people with</p> <p>23 arthritis can be pain-free -- and in Myrtle's case</p> <p>24 the history indicates she was pain-free before the</p> <p>25 accident?</p>
<p>16</p> <p>1 A And also spur in the acromion. He did mention</p> <p>2 there was a spur in the acromion.</p> <p>3 Q Right, spur in acromion.</p> <p>4 A So you have a spur and arthritis in the clavicle</p> <p>5 and spur in the acromion. Now, the time frame</p> <p>6 between the accident and the occurrence of the</p> <p>7 surgery was about six months.</p> <p>8 Q Six months.</p> <p>9 A That's not long. I mean, you -- if you get a</p> <p>10 doctor, orthopedic surgeon, and you give them any</p> <p>11 topic, they will never agree on anything, you get a</p> <p>12 50 percent split. But if you give them that</p> <p>13 question, six months, do you have the spurs in the</p> <p>14 acromion, the spurs in the A-C joint and arthritis,</p> <p>15 they will tell you that is not from the accident</p> <p>16 because the time is short, very short.</p> <p>17 Q Let me ask you this, Doctor: Can a person have</p> <p>18 arthritic spurs and be pain-free?</p> <p>19 A Oh, yeah.</p> <p>20 Q In fact, you would expect -- how old is she? How</p> <p>21 old is Mrs. Thomas?</p> <p>22 A She is about 70.</p> <p>23 Q You would expect that she would have arthritis --</p> <p>24 A Oh, yeah.</p> <p>25 Q -- in her body?</p>	<p>18</p> <p>1 A Yes.</p> <p>2 Q Do you agree with that history?</p> <p>3 A According to what she told me, she said she was</p> <p>4 pain-free, but looking at what Dr. Williams said in</p> <p>5 his report, June 16, 1993, he said she have -- was</p> <p>6 a history of mild bursitis of the right shoulder</p> <p>7 for which she was successfully treated with Nalfon,</p> <p>8 so I couldn't -- I could not get --</p> <p>9 Q You couldn't tell?</p> <p>10 A Yeah.</p> <p>11 Q Let me ask you this: Can a person have arthritis</p> <p>12 in the shoulder or some other joint and then have</p> <p>13 trauma to that joint and then that joint which was</p> <p>14 asymptomatic becomes symptomatic?</p> <p>15 A Yeah, it will aggravate it slightly. It will not</p> <p>16 be the cause of the problem. It will cause a</p> <p>17 little.</p> <p>18 Q Don't people go through lives with arthritis that</p> <p>19 doesn't bother them at all until they have some</p> <p>20 sort of trauma?</p> <p>21 A It's possible, but it's not probable. Trauma</p> <p>22 will -- well, of course will make something like</p> <p>23 she has some symptoms, would make it a little bit</p> <p>24 worse, but it will not be that major contributory</p> <p>25 factor for that.</p>

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<p>19</p> <p>1 Q Well, can you have trauma that causes an arthritic condition to be symptomatic and therefore require some sort of surgical intervention, whereas without the trauma there wouldn't be a need for the surgical intervention?</p> <p>2 A Yeah, if the trauma caused the arthritis.</p> <p>3 Q No. I mean suppose you have the arthritis already, but you're symptom-free. I'm sure you've seen cases like that. People have arthritis, they're symptom-free, they have a car accident, and then suddenly they've got pain and problems. And I'm sure you've treated patients like that, have you not?</p> <p>4 A I've treated patients like that.</p> <p>5 Q And you've seen over the years that it's a common sequence of events, especially in elderly people, that when they have arthritis and then they have trauma, they develop symptoms which require treatment by a specialist such as yourself?</p> <p>6 A A single isolated incident of trauma usually has some symptoms to somebody that have arthritis. It contribute to the symptoms, but it's not the major cause.</p> <p>7 Q Can aggravate the arthritis?</p> <p>8 A It contribute to aggravation of --</p>	<p>21</p> <p>1 A Yes, or have minimal symptoms.</p> <p>2 Q Right. Now, at the same time, if you have someone with degenerative arthritis, can that arthritis be made worse; that is, aggravated to accelerate the degenerative process?</p> <p>3 A It's possible, but it's not probable. I want to --</p> <p>4 Q What is traumatic arthritis, Doctor?</p> <p>5 A Traumatic arthritis is an injury to a joint, either from repeated stimulus or repeated load to that joint, or you have an injury that fractures the cartilage, causes fracture of the cartilage itself, and the fracture of the cartilage has to be more than 50 percent of the thickness to cause arthritis. So it would invade here and cause more cracks and fissures. Arthritis is cracks and fissures. So if you already have cracks and fissures, while the process is coming, it's possible that a very severe injury may cause acceleration of the arthritis, but it's not very common. You don't see that common.</p> <p>6 Q Well, have you treated young patients with traumatic arthritis?</p> <p>7 A Yes, from injury to the joints where it involve fractures and the fracture was going to the joint.</p> <p>8 Q How long does it take for arthritis to develop</p>
<p>20</p> <p>1 Q Can it also accelerate the arthritis?</p> <p>2 A No. Arthritis is a time procedure that can go by itself.</p> <p>3 Q Isn't it fair to characterize arthritis as a degeneration of the joint, of the bony joint?</p> <p>4 A Uh-huh.</p> <p>5 Q Correct?</p> <p>6 A Uh-huh.</p> <p>7 Q You have to say yes.</p> <p>8 A Yes.</p> <p>9 Q And that degeneration can be brought upon -- that can occur due to trauma?</p> <p>10 A Oh, yes.</p> <p>11 Q It can occur due to wear and tear?</p> <p>12 A Yes.</p> <p>13 Q From too much physical work?</p> <p>14 A Yes.</p> <p>15 Q Which is another form of trauma?</p> <p>16 A Yes.</p> <p>17 Q It can be brought upon through old age?</p> <p>18 A Yes.</p> <p>19 Q And we all age, do we not?</p> <p>20 A Yes.</p> <p>21 Q So you can have people with degenerative arthritis but who are symptom-free?</p>	<p>22</p> <p>1 after trauma?</p> <p>2 A I would say between -- it's very hard, but it can show up after 20 years, and, for example, in the arthritis of the socket, 20 years later you get arthritis.</p> <p>3 Q Have you seen examples where it showed up in six months to a year following trauma?</p> <p>4 A If you have an injury to the joint where the contact stresses change, these contact stresses -- like this is an ankle fracture, for example, and you fix the fracture and A is narrowed and A is wide, you get more stress, that ankle can deteriorate in six months.</p> <p>5 Q What's the shortest time period you have experienced and seen arthritis to develop in?</p> <p>6 A When it involved fractures?</p> <p>7 Q Well, without fracture, when it was just trauma.</p> <p>8 A Without fracture, I would say five years.</p> <p>9 Q And the longest would be 20 years?</p> <p>10 A It's about 20 years.</p> <p>11 Q Now, the medical records that you reviewed, some of those medical records would be the emergency room record. Do you have that there?</p> <p>12 A Yes.</p> <p>13 Q And you have as part of that record the report and</p>

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1 the x-ray report of the right shoulder taken on
2 December 4th of 1991?
3 A Yes.
4 Q Isn't it true, Doctor, that there's no indication
5 in the x-ray or the radiologist's report of any
6 arthritis or any spurs in the A-C joint area?
7 A Two things about that. Number one, the A-C joint
8 was not center of attention of the physician, it
9 was the shoulder region, so he did not get the
10 proper views for the A-C joint.
11 The second one about that, arthritis of the
12 A-C joint most of the time is a finding that the
13 physician finds in surgery and not necessarily on
14 the x-ray. He have to feel for it.
15 Q Right. But you would agree, though, that the
16 report says there's no mention of any arthritic
17 changes found on the right shoulder x-ray?
18 A Yeah. But he said that the glenoid region, which
19 is the shoulder area, have mild narrowing of medial
20 compartment -- no, the glenoid --
21 Q Which --
22 A I have the page here. The glenoid region is noted
23 which may represent a simple cyst or be secondary
24 to the degenerative change. Do you have that,
25 Flower Memorial Hospital?

24

1 Q He's talking about the right glenoid region. What
2 region is that now?
3 A It's the shoulder itself.
4 Q But we're talking about the surgery that was
5 performed was performed on the A-C joint?
6 A But, again, I was trying to draw -- I will explain
7 it to you. This is the glenoid. This is the
8 shoulder region, one shoulder joint. This is the
9 A-C joint. This is the acromion here, and this is
10 the shoulder. This is the impingement here. This
11 is 3, so she has some arthritis here (indicating).
12 It's an arc. It crosses an arc. If you get
13 arthritis, you get arthritis in the second, you get
14 arthritis in the third one.
15 Q Doesn't it say it may be a simple cyst or may be
16 secondary to degenerative changes, correct?
17 A Yes.
18 Q And, of course, the degenerative changes could be
19 from wear and tear?
20 A Yeah.
21 Q Or they could be from the accident?
22 A From old -- no.
23 Q You're saying it would not be from the accident?
24 A It's an age-related process.
25 Q But the radiology report -- my question is real

25

1 simple. The radiology report does not make any
2 definitive findings of any spurs in the shoulder
3 region in the A-C joint either at the distal
4 clavicle or at the acromion?
5 A He did not.
6 Q The records reflect that she injured that shoulder
7 in the accident, do they not?
8 A Yes.
9 Q In fact, the records show at the emergency room
10 that she -- that shoulder was swollen and bruised?
11 A And she complained about it, and the doctor got an
12 x-ray for the shoulder that she complained about.
13 Q You also have the physical therapy records, do you
14 not?
15 A I had somewhere here. She was given extensive
16 therapy for the shoulder.
17 Q These would be Dr. Williams' records.
18 A Uh-huh.
19 Q Do you have Dr. Williams' records from March 12th
20 of '92?
21 A March 12, '92. I don't have what happened, but you
22 can give it to me.
23 Q Let me show you a copy.
24 A Yeah, he said she has no prior shoulder pain.
25 Q Okay. My question was going to be, based upon the

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1 medical records you reviewed, she indicated she had
2 no prior shoulder pain?
3 A Yeah, that's what he said. But here he's saying
4 she has -- on June 16, '93, he's saying she has
5 mild bursitis.
6 Q But the June 16, '93, is a year and a half after
7 the accident and after this March 12th, '92 entry;
8 is that correct?
9 A No. He said there was a history of mild bursitis.
10 He's referring -- in this letter he's referring to
11 prior to the accident.
12 Q Well, I don't -- may I see that, Doctor? I don't
13 think he says that.
14 MR. PIETRYKOWSKI: It's a letter to you,
15 Sam, prior to the accident.
16 A I tried to get the record to find out.
17 Q I see.
18 A I tried to get the record to find out, you know --
19 if I can't -- if you give me a minute, I can
20 explain things for everybody and everybody will be
21 happy.
22 Q All right. Go ahead, Doctor.
23 A This is an A-C joint. She have arthritis here.
24 That didn't happen from the accident. She has a
25 spur underneath the acromion. She has that from

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<p>27</p> <p>1 before. And she has a little narrowing. She's an 2 old woman. The accident is a contributory, 3 contribute some to her discomfort in the shoulder. 4 And because of that we don't know how much 5 contribution there is, you know, maybe five 6 percent. 7 Well, she had the operation, and he removed 8 that piece of acromion to give her more room so the 9 shoulder -- so eliminate her prior bursitis that 10 she has, the contributory factor of the accident is 11 gone. So now her shoulder is able to move. So 12 when they are there, you know, he feels the A-C 13 joint and he removes that because that part was 14 arthritic, which if he doesn't -- if he doesn't, he 15 would be negligent for not doing that. He has to 16 do that. 17 Q So the removal -- the surgery was necessary to 18 remove the arthritic changes -- 19 A In the acromion. 20 Q -- that were in the acromion which was causing the 21 pain that she was complaining about -- 22 A Yes. 23 Q -- after the accident? 24 A Yeah, because there's some contributory effect, 25 maybe 5 percent, 10 percent. I can't determine</p>	<p>29</p> <p>1 A It was necessary and reasonable. 2 Q And you also agree, if I understand your 3 explanation, that the accident was a contributing 4 factor for the necessity for that procedure? 5 A Some contribution, you know. How much we can't 6 tell without checking the record from Dr. Williams 7 prior to her accident. 8 Q You know Dr. Assenmacher, do you not? 9 A Yes. 10 Q Do you respect his professional opinion and his 11 expertise? 12 A Yes. 13 Q He's a respected, well-known orthopedic surgeon in 14 the Toledo metropolitan area? 15 A Can I answer the page? 16 (Discussion held off the record.) 17 Q I take it the answer is yes? 18 A Yes, the answer is yes. 19 Q There's no doubt in your mind, is there, Doctor, 20 that Myrtle Thomas suffered trauma as a result of 21 this motor vehicle accident on December 3rd, 1991? 22 A According to the record from the emergency room, 23 she suffered and she complained from trauma. 24 Q And she injured her low back, her right shoulder, 25 and her knee?</p>
<p>28</p> <p>1 without seeing the record from before when she was 2 treated by Dr. Williams. 3 Q Now, didn't the history also show that she had 4 developed a limited range of motion following the 5 accident? 6 A Yes. 7 Q And before the accident she had full range of 8 motion of the shoulder? 9 A Yes, it's very -- very common sometimes to have 10 decreased range of motion in people in that age 11 after a simple trauma. You don't have to break the 12 bones, you just have to touch the shoulder and you 13 will get limitation of the range of motion. And to 14 be fair, you know, to everybody, I did not see the 15 documented range of motion before the accident, 16 which is going to be on Dr. Williams' notes. 17 Q But as part of the operative report of Dr. 18 Assenmacher and part of the records of Dr. 19 Williams, it indicates that her range of motion 20 decreased after the trauma from the accident? 21 A Yeah, according to my evaluation also that the 22 range of motion was affected. 23 Q Now, you agree that the surgical procedure that Dr. 24 Assenmacher performed was a reasonable and 25 necessary procedure?</p>	<p>30</p> <p>1 A And she claimed she injured the knee and the back. 2 Q The records confirm that, do they not? 3 A To some extent, yes. 4 Q When you have someone who's had trauma and now 5 suffers from a low back problem, are they more 6 susceptible to re-injury? 7 A No. They are more susceptible to some weakness of 8 the muscle and they need some therapy to be able to 9 cope with that. 10 Q Can low back sprains and strains be severe and 11 disabling? 12 A Well, yeah, it can be. 13 Q Can they be of long term and of long duration and 14 very troublesome for a person, especially an older 15 person? 16 A Actually, older person handle it better than 17 younger ones, but the answer is yes, it can be 18 disabling. 19 Q And doesn't the Medical College of Ohio have a low 20 back clinic that specializes in treating people 21 with low back problems? 22 A Yes, and I'm in charge, actually, of that spine 23 disorder clinic or program. 24 Q So it is recognized that low back injuries and low 25 back strains are very severe and disabling, and</p>

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<p>31</p> <p>1 many times in various patients --</p> <p>2 A Yeah. A lot of it's psychological.</p> <p>3 Q A lot of it is weakness as well though, is it not?</p> <p>4 A Some weakness of the muscles and some sprain of the</p> <p>5 muscles.</p> <p>6 Q Is it also true, Doctor, that people with low back</p> <p>7 strains can have good days and bad days?</p> <p>8 A That's what they say.</p> <p>9 Q Well, in your experience being involved with the</p> <p>10 low back clinic, do you find that the patients go</p> <p>11 through periods of exacerbations and remissions?</p> <p>12 A They go through, you know, through cycles, yes.</p> <p>13 Q Do the medical records also reflect that Myrtle</p> <p>14 Thomas had difficulty performing her occupation and</p> <p>15 her work after the trauma from the accident?</p> <p>16 A That's what she said.</p> <p>17 Q The records confirm that though?</p> <p>18 A Uh-huh.</p> <p>19 Q Yes?</p> <p>20 A Yes.</p> <p>21 Q You have performed this procedure on other</p> <p>22 patients, have you not, the procedure that Dr.</p> <p>23 Assenmacher performed, the A-C surgery?</p> <p>24 A Yes.</p> <p>25 Q Have you ever had to perform it on patients that</p>	<p>33</p> <p>1 A You know, how would I know?</p> <p>2 Q Well, would you -- let me ask it another way.</p> <p>3 Would you agree that the medical bills appear to be</p> <p>4 reasonably related to the medical procedures that</p> <p>5 were performed by the doctors that treated her?</p> <p>6 A If you tell me this is related to the procedure, I</p> <p>7 will tell you it's probably, you know, necessary</p> <p>8 because the operation was necessary, but I -- I</p> <p>9 can't tell you -- this is not my hospital. The</p> <p>10 charges is a little bit high, but that's okay. If</p> <p>11 it's related to the operation, it's necessary.</p> <p>12 Q They appear to be reasonable, do they not?</p> <p>13 A A little high, but reasonable.</p> <p>14 Q Well, when you say --</p> <p>15 A I don't see too many \$5,000.</p> <p>16 Q What does your hospital charge for the procedure?</p> <p>17 A Medicare, I don't charge \$2,900 for acromioplasty.</p> <p>18 Q Do these bills also include physical therapy</p> <p>19 records and a hospital stay?</p> <p>20 A I'm talking about the physician fee, \$2,900.</p> <p>21 Q Isn't that his charge for treating her as well as</p> <p>22 the surgery, from March 12 to October of '92?</p> <p>23 A Medicare cover three months of charges.</p> <p>24 Q Doctor, I don't need you to mention Medicare</p> <p>25 because that will be a collateral benefit which</p>
<p>32</p> <p>1 had developed symptoms after accidents?</p> <p>2 A I don't recall. I perform it mostly in people that</p> <p>3 have an occupational repeated stress in the</p> <p>4 shoulder.</p> <p>5 Q Usually older people?</p> <p>6 A No, younger people, usually around 45 to 50 years</p> <p>7 old, repeated stress on the shoulder. Younger</p> <p>8 people have other problems.</p> <p>9 Q Would that be work-related injuries?</p> <p>10 A Mostly work-related. Like carpal tunnel is stress</p> <p>11 on the shoulder. It's almost repeated trauma.</p> <p>12 And, of course, bursitis, inflammation.</p> <p>13 Q Let me show you what has been marked for</p> <p>14 identification purposes, Doctor, as Plaintiffs'</p> <p>15 Exhibits 1 through 13 with a summary of Exhibit 14,</p> <p>16 and I'm going to move the summary exhibit to the</p> <p>17 front, if I may, to make it easier for you to</p> <p>18 review.</p> <p>19 Are these the medical -- do these appear to be</p> <p>20 the medical bills that are associated with the</p> <p>21 medical records that you were given by Mr.</p> <p>22 Pietrykowski?</p> <p>23 A Yeah, these are bills.</p> <p>24 Q Now, are there any medical bills there that you</p> <p>25 feel were totally unnecessary?</p>	<p>34</p> <p>1 creates an admissibility problem for us lawyers.</p> <p>2 But just looking at the charges generally for</p> <p>3 performing this surgery --</p> <p>4 A They're reasonable, a little high, but reasonable.</p> <p>5 Q Reasonable, okay. The physical therapy records and</p> <p>6 the hospital stay, do those bills appear to be</p> <p>7 reasonable as well?</p> <p>8 A Yes.</p> <p>9 Q Are there any bills here that you find to be</p> <p>10 unreasonable?</p> <p>11 A No, I don't.</p> <p>12 Q And the last thing I want to do, Doctor, do you</p> <p>13 have two copies of your report there or just one?</p> <p>14 A No, just one copy. Do you want to have it?</p> <p>15 Q I just want to mark it, have it identified so we</p> <p>16 know what we've been referring to.</p> <p>17 (Plaintiffs' Exhibits 15-16 marked.)</p> <p>18 Q I hand you, Doctor, what has been marked for</p> <p>19 identification purposes as Plaintiffs' Exhibit 15.</p> <p>20 Is this the medical report that you prepared?</p> <p>21 A Yes.</p> <p>22 Q And I also hand you what has been marked as</p> <p>23 Plaintiffs' Exhibit 16. Is this the shoulder x-ray</p> <p>24 from the emergency room that we've been referring</p> <p>25 to during your deposition?</p>

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1 A Yes.
2 Q Doctor, I thank you very much for your testimony.
3 A Thank you.
4 (Discussion held off the record.)
5 MR. BOLOTIN: Let the record show
6 that I am retaining the original exhibits
7 of 1 through 14. The court reporter will
8 retain 15 and 16. And I've given Mr.
9 Pietrykowski a copy of Plaintiffs'
10 Exhibits 1 through 14.
11 MR. PIETRYKOWSKI: Yeah, the 1 through
12 14.
13 MR. BOLOTIN: Any objection?
14 MR. PIETRYKOWSKI: No.
15 (Deposition concluded at 5:00 p.m.)
16 (Signature waived.)
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1 C E R T I F I C A T E
2 STATE OF OHIO)
3) SS.
4 COUNTY OF LUCAS)
5 I, Nicole D. Blaker, Registered Professional
6 Reporter and Notary Public in and for the State of
7 Ohio, do hereby certify that the within-named Witness,
8 NABIL A. EBRAHEIM, M.D., was by me first duly sworn to
9 tell the truth, the whole truth, and nothing but the
10 truth in the cause aforesaid; that the testimony then
11 given by him was by me reduced to stenotype in the
12 presence of said witness, afterwards transcribed upon a
13 computer; that the foregoing is a true and correct
14 transcript of the testimony so given by him as
15 aforesaid; that the testimony was taken at the time and
16 place in the foregoing caption specified and was
17 completed without adjournment; that the signature of
18 said witness to the transcribed copy of his deposition
19 was waived.
20 I do further certify that I am not a relative,
21 employee, or attorney of any of the parties hereto;
22 further, that I am not a relative or employee of any
23 attorney or counsel employed by the parties hereto or
24 financially interested in this action.
25 IN WITNESS WHEREOF, I have hereunto set my hand and
26 affixed my notarial seal of office at Toledo, Ohio, on
27 this ____ day of July, 1994.
28
29 NICOLE D. BLAKER, RPR
Notary Public
in and for the State of Ohio
30 My Commission expires January 26, 1999.

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