

STATE OF OHIO
COUNTY OF CUYAHOGA

Geraldine Zurawski,
et al.,

Plaintiffs,

vs.

Case No. 215511

Kingsbury G. Heiple,
M.D., et al.,

Defendants.

Deposition of DAVID HALLEY, M.D., a
Witness herein, called by the Plaintiff for
cross-examination under the statute, taken
before me, Kathryn E. Smith, a Registered
Professional Reporter and Notary Public in and
for the State of Ohio, pursuant to notice and
stipulations of counsel and by agreement, at
the offices of Halley Orthopedics, 4560 North
High Street, Columbus, Ohio, on Wednesday,
September 22, 1993, at 3:05 o'clock p.m.

1 APPEARANCES :

2 Joseph L. Coticchia Co., LPA
3 1640 Standard Building
4 Cleveland, Ohio 44113
By Mr. Joseph L. Coticchia,

5 On behalf of the Plaintiffs.

6 Jacobson, Maynard, Tuschman & Kalur
7 1001 Lakeside Avenue
Suite 1600
8 Cleveland, Ohio 44114-1192
By Ms. Susan M. Reinker,

9 On behalf of the Defendants
Kingsbury G. Heiple, M.D. and
University Orthopedics.

10 Arter & Hadden
11 1100 Huntington Building
12 925 Euclid Avenue
Cleveland, Ohio 44115
By Mr. Thomas H. Allison,

13 On behalf of the Defendants
14 William Petersilge, M.D. and
15 University Hospitals of
Cleveland.

Wednesday Afternoon Session

September 22, 1993

3:05 o'clock p.m.

- - - - -

It is stipulated by and between
counsel for the respective parties that the
deposition of DAVID HALLEY, M.D., a Witness
herein, called by the Plaintiff for cross-
examination under the statute, may be taken at
this time by the Notary, by agreement of
counsel and pursuant to notice and
stipulations of counsel; that said deposition
may be reduced to writing in stenotypy by the
Notary, whose notes may thereafter be
transcribed out of the presence of the
witness; that proof of the official character
and qualification of the Notary is waived.

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1 DAVID HALLEY, M.D.

2 **by** me first **duly** sworn, as hereinafter
3 certified, deposes and says **as** follows:

4 MR. COTICCHIA: Before we get
5 started, can we agree that this deposition is
6 being taken pursuant to notice and agreement?

7 MS. REINKER: Correct.

8 MR. ALLISON: Yes.

9 - - - - -

10 CROSS-EXAMINATION

11 BY MR. COTICCHIA:

12 Q. Dr. Heiple, please state your full
13 name.

14 MS. REINKER: Dr. Halley.

15 MR. COTICCHIA: I mean Halley.

16 MS. REINKER: Great start, Joe.

17 A. David K. Halley.

18 Q. What is your office location?

19 A. 4560 North High Street, Columbus,
20 Ohio.

21 Q. , 'And what is your occupation?

22 A. Orthopedic surgeon.

23 MR. COTICCHIA: I have a copy **of** his
24 curriculum vitae. I think we **can** just

1 stipulate to that, can't we? It was attached
2 to Dr. Halley's letter.

3 MS. REINKER: I don't know -- we
4 just got a new one. I don't know if there is
5 any change in that.

6 MR. COTICCHIA: Let's use the new
7 one.

8 THE WITNESS: There you are.

9 MR. COTICCHIA: All right.

10 BY MR. COTICCHIA:

11 Q. You have handed my your curriculum
12 vitae and that is current, Doctor?

13 A. To my knowledge, yes.

14 Q. It ends on page seven and it ends
15 with item 37; is that correct?

16 A. Yes.

17 Q. Where did you attend undergraduate
18 school?

19 A. Ohio State University.

20 Q. When did you graduate?

21 A. '1963.

22 Q. Where did you attend medical school?

23 A. Ohio State University.

24 Q. And when did you graduate from

1 there?

2 A. **1967.**

3 Q. Did you serve a residency?

4 A. Yes, sir.

5 Q. Where was that?

6 A. Started out at Riverside Methodist
7 Hospital; and in the last year, it combined
8 with Ohio State University as a dual program.

9 Q. Okay. Did you -- during your
10 residency, did you have any specialized
11 training in orthopedic surgery?

12 A. Yes.

13 Q. Where was that?

14 A. At Riverside Hospital and at Ohio
15 State University.

16 Q. The University Hospital?

17 A. Yes.

18 Q. Okay. Are you board certified?

19 A. Yes.

20 Q. When did you become board certified?

21 A. Let's look at this and see for
22 sure. Must have been about 1974.

23 Q. Okay. I understand that you also
24 had a fellowship with Dr. Charnley?

1 A. Yes, sir.

2 Q. Where was that?

3 A. Wrightington Hospital, near Wigan,
4 in England.

5 Q. When was that?

6 A. 1974, '75.

7 Q. Was that also in the field of
8 orthopedic surgery?

9 A. Yes, I was at the Center for Hip
10 Surgery for Total Hip Replacement; John
11 Charnley was the inventor of total hip
12 replacement.

13 Q. Doctor, within the area of
14 orthopedic surgery, do you limit your
15 practice?

16 A. Yes, sir.

17 Q. What do you limit it to?

18 A. Total hip replacement, total knee
19 replacement.

20 Q. Over the last five years, on the
21 average per year, how many hip replacements
22 would you approximate that you have performed?

23 A. Two hundred to 250 hip replacements
24 per year.

1 Q. In regard -- the same question, on
2 the average over the last five years, how many
3 knee replacement surgeries?
4 A. Probably about the same.
5 Q. Two hundred to 250?
6 A. We do, probably between 500 and 550
7 cases a year.
8 Q. Before today's deposition, will you
9 tell me what documents you reviewed?
10 A. The documents that were sent to me,
11 Volume I.
12 Q. What is Volume I?
13 A. Dr. Kingsbury Heiple's office chart,
14 reports of Howard Tucker, M.D., report of
15 Harold W. Pearson, M.D., and report of Dorene
16 A. Spak, M. Ed., and University Hospital
17 records from August 6, 1990 to August 18, 1990
18 labeled Heiple/Zurawski, File No. 675459, and
19 then the deposition Kingsbury G. Heiple, M.D.,
20 Case No. 215511.
21 Q. Did you review the deposition of Dr.
22 William Petersilge?
23 A. Peter who?
24 Q. William Petersilge. He **is** the other

1 surgeon.

2 MS. REINKER: He is the resident. I
3 don't think I got you that one.

4 A. I don't think I saw that.

5 Q. Did you review any textbooks,
6 medical journals or articles prior to today's
7 deposition?

8 A. One article.

9 Q. What article was that, Doctor?

10 A. I don't know if I have it here.

11 MS. REINKER: If you recall.

12 A. Clinical Orthopedics and Related
13 Research.

14 Q. What was that first name, Doctor?

15 A. Clinical Orthopedics.

16 Q. How do you spell it?

17 A. C-l-i-n-i-c-a-l, Orthopedics,
18 O-r-t-h-o --

19 Q. Okay. What volume is that and date?

20 A. Volume 179, 1983.

21 Q. What is the name of the article?

22 A. Nerve Injury and Total Hip
23 Replacement.

24 Q. Did that article -- did you use that

1 article in preparing your letter or forming
2 your opinion in the letter of **July 13**, 1992?

3 A. That wasn't the sole basis for that,
4 no.

5 Q. But was it part of it?

6 A. Yes.

7 Q. What is in that article upon which
8 you relied or find it significant?

9 MS. REINKER: Objection. I don't
10 know that he relied on anything in that
11 article. He said he read it.

12 A. I don't recall at this point because
13 I don't have the article with me.

14 Q. Did it deal with nerve injury to the
15 sciatic nerve?

16 A. Yes.

17 Q. You don't recall anything of
18 significance that you noted or used in
19 preparing your letter of July 13, '92?

20 A. No.

21 Q. Do you subscribe to Clinical
22 Orthopedics?

23 A. Yes.

24 Q. What other journals do you subscribe

1 to?

2 A. American Journal of Bone & Joint
3 Surgery, British Journal of Bone & Joint
4 Surgery. I have to get the other one **up** here.

5 Q. Do you recall what it is?

6 A. No.

7 Q. Is it here in the library?

8 A. Yes.

9 Q. Can you point it out?

10 A. Over there, that green one. Those
11 green journals.

12 MR. COTICCHIA: What does that say,
13 Tom?

14 MR. ALLISON: Are these the ones you
15 are referring to, Doctor?

16 THE WITNESS: No, below that.

17 MR. ALLISON: These?

18 THE WITNESS: Up there.

19 MR. ALLISON: This one?

20 THE WITNESS: No.

21 MR. ALLISON: This one?

22 THE WITNESS: Yes.

23 MR. ALLISON: The Journal of
24 Arthroplasty.

1 The percentages are getting worse.
2 Usually if you give me one **or** two picks, I
3 will get the wrong one. But this one I was
4 what? One for four?

5 MR. COTICCHIA: Three.

6 (Laughter.)

7 BY MR. COTICCHIA:

8 Q. Do you refer to any textbooks in
9 your practice, Doctor? Or do you have any
10 here?

11 A. What do you mean by refer to any
12 textbook?

13 Q. Do you use any here in your
14 practice? I see, just as we sit here, lots of
15 books on your several shelves, and I was just
16 curious what some of them are. I see you have
17 Campbell's Insole Surgery of the Knee; is that
18 correct?

19 A. Um-hmm.

20 Q. Are those reliable sources of
21 medical information?

22 A. I don't use those textbooks in my
23 practice.

24 Q. **How** did they come to be part of your

1 library?

2 A. I purchased them.

3 Q. Did you use them when you were in
4 medical school?

5 A. I used -- we read Campbell's as an
6 orthopedic resident.

7 Q. Do you consider Campbell's a good
8 medical textbook?

9 A. It is a respected textbook in
10 orthopedic surgery.

11 Q. Were there any other articles in
12 addition to the article in Clinical
13 Orthopedics that you reviewed or used prior to
14 your preparation of your letter dated July 13,
15 '92?

16 A. No.

17 Q. Do you remember, in addition to the
18 fact that it dealt with sciatic nerve injury
19 during total hip replacement, do you remember
20 anything in particular that you would consider
21 significant in that article?

22 MS. REINKER: Objection. He has
23 answered that already.

24 A. No.

1 Q. In addition to these medical
2 journals and articles, did you review any
3 committee recommendations or correspondence in
4 regard to Mrs. Zurawski's surgery?

5 MS. REINKER: Objection.

6 A. I don't understand the question.

7 MR. ALLISON: I don't either.

8 MS. REINKER: I don't either.

9 Q. Okay. What I am getting at is you
10 were requested, I assume, by either Susan
11 Reinker or Thomas Allison to review these
12 records, were you not?

13 A. Yes.

14 Q. And you were asked to submit an
15 opinion regarding whether or not Mrs. Zurawski
16 was medically treated in any manner by way of
17 breach of standard of care; is that correct?

18 A. Yes.

19 Q. How did either Miss Reinker or Mr.
20 Allison come about contacting you?

21 A. I don't know.

22 Q. Who did they contact? Mr. Storm?

23 A. I don't know.

24 Q. Have you reviewed -- prior to this

1 case, have you reviewed any medical claims or
2 charts at the request of Susan Reinker?

3 A. No.

4 Q. Have you reviewed any records or
5 claims at the request of Thomas Allison?

6 A. Not that I am aware of.

7 Q. In the past, have you reviewed any
8 medical records or medical claims at the
9 request of any attorneys from the firm of
10 Jacobson, Maynard, Tuschman & Kalur?

11 A. I don't recall.

12 Q. Do you know any attorneys from the
13 firm of Jacobson, Maynard, Tuschman & Kalur,
14 either here in Columbus or in Cleveland?

15 A. I don't -- I can't recall any.

16 Q. Who is your medical malpractice
17 insurance carrier?

18 MS. REINKER: Objection.

19 A. Bill, but I don't know his last
20 name.

21 Q. Bill?

22 A. Bill.

23 MS. REINKER: Are you talking about
24 **an** attorney?

1 Q. I am talking about your insurance
2 company.

3 A. My insurance company?

4 Q. Yes.

5 MS. REINKER: Objection.

6 A. I don't -- I don't know the
7 insurance company that covers me. And I
8 certainly don't know who sells it.

9 Q. Well, does the company PIE Mutual
10 Insurance Company sound familiar to you?

11 MS. REINKER: Objection.

12 A. I have heard of the company,

13 Q. Isn't that your carrier?

14 MS. REINKER: Objection.

15 A. I don't know.

16 Q. Have you ever sat on any review
17 committees at the request of anybody from that
18 insurance company?

19 MS. REINKER: Objection.

20 A. I was -- I don't know -- I was at a
21 meeting, but I don't know if it was that
22 company.

23 Q. Where was the meeting?

24 A. That **was** at a restaurant.

1 MS. REINKER: Objection.

2 A. Many years ago, and we didn't sit on
3 anything. They just had a dinner, but I don't
4 recall anything from it.

5 Q. You went to a dinner. Were other
6 doctors there?

7 A. A few.

8 Q. Were there attorneys or members of
9 the insurance company at this dinner?

10 A. I don't recall.

11 MS. REINKER: Show a continuing
12 objection to this line of questioning.

13 Q. Were you asked by anybody at this
14 dinner if you would be willing to review
15 medical malpractice claims or medical records
16 involving possible medical malpractice?

17 A. I don't believe so.

18 Q. Have you been asked to testify as a
19 medical expert in other medical malpractice
20 cases independent of this one?

21 A. 'Yes.'

22 Q. Who requested you to do that?

23 A. I don't understand what you mean by
24 who.

1 Q. The person that contacted **you**, that
2 asked you to review a medical record.

3 A. I don't recall any names.

4 Q. In regard to this -- I want to go
5 back a minute. In regard to this meeting at
6 the restaurant, what restaurant was that?

7 A. I don't recall the name of the
8 restaurant because it is out of business.

9 Q. Was that here in Columbus?

10 A. Yes.

11 Q. Do you know when it was?

12 A. No.

13 Q. In the last five years?

14 A. It was longer than that.

15 Q. Do you know who was there?

16 A. No.

17 Q. Now going back to this last
18 question, when you were asked to review a
19 medical record, do you know who asked you to
20 review that record?

21 MR. ALLISON: Objection.

22 A. No.

23 Q. Was that a person from PIE Mutual
24 Insurance Company?

1 MS. REINKER: Objection.

2 A. I don't know.

3 Q. Was it a person from an insurance

4 company?

5 A. I don't recall.

6 Q. What type of case was it?

7 A. It was a case involving hip surgery.

8 Q. What happened in the hip surgery?

9 MS. REINKER: Are you referring to

10 any particular case?

11 MR. COTICCHIA: This particular case

12 he **is** talking about right now he was asked to

13 review.

14 MS. REINKER: Okay.

15 MR. ALLISON: Asked to testify as an

16 expert I believe is what your question was

17 that he answered yes to.

18 A. It was -- it had to do with the

19 acetabulum loosening.

20 Q. The loosening of the acetabulum?

21 A. 'Um-hmm.

22 Q. Did you give an opinion as an

23 expert?

24 A. Yes.

1 Q. What was your opinion in that case?

2 A. That the loosening can occur in that
3 type of case.

4 Q. Did you give an opinion as to
5 whether or not there was a breach of standard
6 of care?

7 A. Yes.

8 Q. What was your opinion in that case?

9 A. It was my opinion there was not a
10 breach in the standard of care.

11 Q. Have you ever testified as a medical
12 expert on behalf of a patient in a medical
13 malpractice case?

14 A. No.

15 Q. Have you testified in other medical
16 malpractice claims or cases independent of the
17 one that we just talked about, which was the
18 acetabulum?

19 A. Possibly one many years ago.

20 Q. What kind of a case was that?

21 MS. REINKER: You are talking about
22 testified in cases as an expert witness,
23 correct?

24 MR. COTICCHIA: Yes.

1 MS. REINKER: As a retained expert
2 witness?

3 MR. COTICCHIA: Yes.

4 A. I believe it had to do with
5 dislocation of the total hip.

6 Q. Was this following hip replacement
7 surgery?

8 A. Yes.

9 Q. Did you give an opinion in regard to
10 standard of care in that case?

11 A. Yes.

12 Q. Do you know the name of the case?

13 A. No.

14 Q. Do you know the name of the doctor?

15 A. No.

16 Q. Do you know the name of either of
17 the attorneys?

18 A. No.

19 Q. Was it a case here in Franklin
20 County?

21 A. Yes.

22 Q. What was your opinion in that case
23 regarding standard of care?

24 A. I felt there was no breach in the

1 standard of care.

2 Q. Outside of the state of Ohio, have
3 you ever given an opinion as a medical expert
4 that a doctor had breached a medical standard
5 of care?

6 A. No. Not that I am aware of.

7 Q. Before today, have you ever given
8 testimony under oath either by way of
9 deposition or in court independent of those
10 cases that we just talked about?

11 A. Would you repeat that again,
12 please?

13 Q. Yes. Before today's deposition,
14 independent of those cases that we just talked
15 about in which you gave an opinion on standard
16 of care, have you given testimony under oath,
17 either in court or in a deposition such as
18 this?

19 A. Not that I am aware of.

20 Q. You are unaware of ever giving any
21 testimony under oath by way of deposition?

22 MS. REINKER: Other than the two you
23 have already talked about.

24 Q. Other than the two we have already

1 talked about.

2 A. I gave -- I met with an attorney
3 whom I do not know and gave an opinion --

4 MS. REINKER: He is just asking
5 about deposition.

6 A. No, I wasn't in a deposition. No.
7

8 Q. Have you been a defendant in a claim
9 against you for negligence --

10 MS. REINKER: Objection.

11 Q. -- a claim for breach of standard
12 of care?

13 MS. REINKER: Objection. You mean
14 was he personally sued?

15 MR. COTICCHIA: Yes.

16 A. Yes.

17 MS. REINKER: Continuing objection.

18 Q. Do you remember the name of that
19 case? Or cases.

20 A. It was 17 years ago. It is hard for
21 me to remember.

22 Q. All right. What kind of a case was
23 that, Doctor?

24 A. That was in revision hip surgery.

1 Q. What happened in that case?

2 A. We had a laceration of the sciatic
3 nerve in a case that had been operated on five
4 times.

5 Q. What was that patient's name?

6 A. I can't recall.

7 Q. Any other cases in which you have
8 been in the past or presently a defendant in a
9 negligence claim for breach of standard of
10 care?

11 MS. REINKER: Objection. That has
12 been answered.

13 Q. Independent of this one.

14 MS. REINKER: He said there was -- I
15 think he said there was just one.

16 A. There was one about 18 years ago
17 with total hip replacement.

18 Q. Is that the one we were just talking
19 about?

20 A. No.

21 Q. "This is another one?"

22 A. Yes.

23 Q. What happened in that case?

24 A. That was --

1 Q. Let me back up a little bit. In
2 this first one during the hip revision surgery
3 and laceration of the sciatic nerve, was that
4 a male or a female?

5 A. Female.

6 Q. Do you remember her name?

7 A. No.

8 Q. That resulted in a lawsuit?

9 A. Yes.

10 Q. All right. Then you said there was
11 another one several years back. I think you
12 said 18 years. Please describe that one.

13 MS. REINKER: Then show a continuing
14 objection to this line of questioning.

15 A. That was in a patient who had a
16 dislocation of a total hip.

17 Q. Was there any injury to the sciatic
18 nerve?

19 A. No.

20 Q. Do you know who your insurance
21 company was at that time?

22 A. No.

23 Q. Within the last five years to the
24 present time, have you been a defendant in a

1 lawsuit for breach of standard of care?

2 A. No.

3 Q. Are you sure of that? 215

4 A. Yes.

5 Q. Within the last five years, have any
6 of those cases settled or been resolved that
7 were pending against you?

8 MR. ALLISON: Of the two --

9 MS. REINKER: Objection.

10 MR. COTICCHIA: No. In the last
11 five years up until now.

12 MS. REINKER: As best you recall.

13 A. Not that I am aware of.

14 Q. You don't recall any lawsuit filed
15 against you in the last five years by a
16 patient for breach of standard of care?

17 A. No.

18 MR. ALLISON: Before you start
19 again, just let me state that because Dr.
20 Halley is our joint expert in the main, Ms.
21 Reinker will be objecting on behalf of the
22 defendants and I will join in all of the
23 objections she makes, although at times I may
24 feel it necessary to make an objection of my

1 own **so** we don't muddy up the record. But I
2 wanted that to be quite clear.

3 Q. In addition to these records that
4 you have before **us**, Doctor, did **you** review a
5 report prepared by Dr. Anstandig,
6 A-n-s-t-a-n-d-i-g? It is an EMG report.

7 THE WITNESS: Was that in here?

8 MS. REINKER: I think it was
9 attached to one of Dr. Tucker's records,
10 wasn't it?

11 An EMG dated 3-20-93, is that what
12 you are referring to, Joe?

13 MR. COTICCHIA: Yes. I think this
14 is it right here.

15 BY MR. COTICCHIA:

16 Q. Did you review that, Doctor?

17 A. Yes.

18 Q. Did you review a videotape shown to
19 Mrs..Zurawski at University Hospital?

20 A. No.

21 Q. Did you review any pamphlets which
22 were given to Mrs. Zurawski regarding total
23 hip surgery?

24 A. There was some things in here with

1 drawings. Where would that **be**? It might be
2 in here. Something that said what to bring to
3 the hospital and things like that.

4 MS. REINKER: I don't recall sending
5 the doctor any pamphlets. I don't know. Joe,
6 if there is something in particular you want
7 to show him, why don't you show him.

8 MR. COTICCHIA: No. We will assume
9 at this point you don't remember seeing it and
10 it doesn't seem to be in the records in front
11 of you, okay, Doctor?

12 THE WITNESS: Okay.

13 BY MR. COTICCHIA:

14 Q. Doctor, what is the sciatic nerve?

15 A. It is a nerve. I mean what do you
16 mean, what is a sciatic nerve?

17 Q. What does it do?

18 A. Sciatic nerve innervates muscles in
19 the lower extremity.

20 Q. What is its function, what muscles
21 does it innervate?

22 A. It innervates muscles that have to
23 deal with moving your foot and ankle up and
24 down.

1 Q. Where does the sciatic nerve start?

2 A. It starts from branches up in the
3 spinal cord.

4 Q. And where does it branch to?

5 A. Comes down posteriorly by the hip
6 joint and it goes down the back of the leg,
7 and then it splits up at the knee, and one
8 becomes a front branch and one is a back
9 branch.

10 Q. When you say posterior, you mean in
11 the back?

12 A. Um-hmm.

13 Q. Is the sciatic nerve the largest
14 nerve in the human body?

15 A. Yes.

16 Q. Approximately at its widest point,
17 what is the diameter? *

18 A. I have never measured it, but I
19 would probably say half an inch to three
20 quarters of an inch. It would vary in the
21 size of the individual probably. *

22 Q. When you perform total hip surgery,
23 do you use retractors?

24 A. Yes.

1 Q. What is a retractor?

2 A. A retractor is a device to retract
3 tissue.

4 Q. And why do you retract tissue?

5 A. For exposure.

6 Q. What kind of retractors do you use?

7 A. I use a Charnley self-retraining
8 retractor.

9 Q. What do you mean by self-retaining?

10 A. No one has to hold it.

11 Q. During total hip surgery -- and I am
12 going to try to keep most of these questions
13 connected to total hip surgery, Doctor.

14 A. Um-hmm.

15 Q. And if there is something you want
16 to explain, if I am interrupting and you want
17 to explain something, go ahead and do that.

18 During total tip surgery that you
19 perform, do you use retractors that have to be
20 held by hand?

21 A. No.

22 Q. Do you recall, in reviewing the
23 depositions of Dr. Heiple, that he used the
24 type of retractor or retractors that had to be

1 held by hand?

2 A. Let me take a look at the operative
3 note.

4 MR. COTICCHIA: I don't think there
5 is anything in the operative note that talks
6 about the retractors, other than causing the
7 damage.

8 (Pause in the proceedings.)

9 BY MR. COTICCHIA:

10 Q. Doctor, you can assume that in the
11 second surgery for repair of Mrs. Zurawski's
12 sciatic nerve, there is a statement that the
13 -- or in the discharge summary by Dr. Heiple
14 and Dr. Petersilge, there is a statement that
15 apparently the sciatic nerve **was** damaged by a
16 retractor. And you can assume that in both
17 the depositions **of** Dr. Heiple and Dr.
18 Petersilge, they stated they held a retractor
19 during Mrs. Zurawski's surgery.

20 MR. ALLISON: Objection.

21 MS. REINKER: Objection.

22 A. Show me where that is.

23 MS. REINKER: Can you show me too
24 where it is?

1 MR. COTICCHIA: I want you to assume
2 it. If I am wrong, I am wrong. I am not
3 going to go through every page of the
4 depositions. He said the read the
5 depositions.

6 MS. REINKER: Where in the operative
7 note?

8 BY MR. COTICCHIA:

9 Q. I'm not saying operative note. 1
10 said in the deposition. In the operative note
11 and the clinical resume --

12 A. Show me where it says that because I
13 am not going to assume anything.

14 Q. Let me put it this way: Are there
15 retractors used by orthopedic surgeons during
16 hip replacement surgery that have to be held
17 by hand?

18 A. Some people do that, yes.

19 Q. Why don't you use hand-held
20 retractors?

21 A. I have good enough exposure with the
22 Charnley retractor. That is how I was taught.

23 Q. Have you always used self-retaining
24 retractors?

1 A. Yes.

2 Q. Have you ever used hand-held
3 retractors in your practice as an orthopedic
4 surgeon?

5 A. Not routinely.

6 Q. In your practice as a board
7 certified orthopedic surgeon, do you consider
8 damage to the sciatic nerve a risk of total
9 hip replacement surgery?

10 A. It is one of the many risks.

11 Q. Is that a risk that you would
12 specifically discuss with a patient prior to
13 surgery?

14 A. No.

15 Q. Why wouldn't you specifically
16 discuss it?

17 A. Well, in most of the cases of
18 primary hip replacement, it is hardly a
19 problem. And it would be way, way, way down
20 the list. I discuss with patients the fact
21 about pulmonary embolus or blood clots or
22 infection, those are my main things.
23 Occasionally talk to them about dislocation.
24 We always stress to them the importance of

1 protecting that hip in the first **six** weeks **so**
2 **they** avoid dislocation. Those are the things
3 that I stress.

4 Q. During surgery, do I -- I am talking
5 -- when you say primary, you are talking about
6 a patient who is going through total hip
7 replacement for the first time, correct?

8 A. Correct.

9 Q. And revision is when you have had a
10 patient with total hip surgery who for some
11 reason has to have some kind of revision or
12 replacement or repair?

13 A. Yes.

14 Q. Okay. So we are on the same
15 understanding on this case, Mrs. Zurawski, she
16 is a primary total hip replacement, correct?

17 A. Yes. 

18 Q. Now when you are performing surgery
19 for a total hip patient, do you identify the
20 sciatic nerve?

21 A. 'Well, it is right there in your
22 approach. I see it -- I can either see it --
23 it is slightly covered with some fatty tissue
24 so it is directly visible that way or you can

1 actually peel some of that off and see the
2 nerve itself.

3 Q. You can peel away some of the fatty
4 tissue?

5 A. You can.

6 Q. In—relation to the hip joint, where
7 would this be located, the sciatic nerve?

8 A. Posterior.

9 Q. After you have identified it, you
10 mentioned you peel away some of the fatty
11 tissue; is that right?

12 A. No. I said you can. I don't do
13 that all the time. I mean, you know, when you
14 make your approach to the hip, and you are
15 going to size a capsule, the sciatic nerve is
16 visible.

17 Q. At that point, approximately how
18 wide would you state the diameter of the
19 sciatic nerve --

20 A. Probably -- again, it would vary on
21 the size of the individual, but it wouldn't be
22 unreasonable probably to say half an inch to
23 three quarters of an inch.

24 Q. Do you protect the sciatic nerve


1 during surgery?

2 MS. REINKER: Objection.

3 A. well, I watch it, you know. I am
4 right there at the time of surgery and I look
5 at it.

6 Q. All right. How do you protect it?

7 MS. REINKER: Objection. I think he
8 just answered.

9 A. Usually I have got my hand there 
10 when I am opening up the capsule. The main
11 thing is you are looking at it.

12 Q. So you keep it within sight during
13 the surgery; is that correct?

14 MS. REINKER: Objection.

15 A. No. When you first go in and do a
16 hip, on your approach, the nerve is there.
17 And so you know -- you know where it is in
18 approximation anyhow. Sometimes you can see
19 it visibly. Sometimes you can't. You can
20 just see a little elevation or you can run
21 your finger there and just feel it. You don't
22 have to see it. You can just run your finger
23 and know where it is at. So then in that
24 situation, then I can proceed and open up my

1 capsule for dislocation.

2 Q. All right. When you say capsule,
3 you are talking about the capsule of the hip
4 joint?

5 A. That's right.

6 Q. That would be the head of the femur?

7 A. Well --

8 Q. And the socket?

9 A. Yes.

10 Q. And this sciatic nerve runs behind
11 the capsule posteriorly; is that correct?

12 A. Yes.

13 Q. Approximately.

14 A. Yes, posteriorly.

15 Q. Isn't it true, Doctor, that during
16 your primary hip replacement surgery, you
17 protect the sciatic nerve throughout the case?

18 A. What do you mean by protect it?

19 Q. I don't know. Those are your
20 words.

21 MS. REINKER: Objection. What do
22 you mean those are his words? Did he just say
23 that? I didn't hear that.

24 A. I said that when I go in I can see

1 the nerve. I know where it is at. I can feel
2 it with my hand. And sometimes when you go in
3 a case, you can't see it, but you know where
4 it is.

5 Q. Isn't it true, Doctor, during your
6 surgery for primary hip replacement, you
7 identify the sciatic nerve and you protect it
8 throughout the case?

9 MS. REINKER: Objection. What are
10 you reading from, Joe? Objection. He is
11 entitled to see what you are reading from.

12 MR. COTICCHIA: I don't have to tell
13 you what I am reading from.

14 MS. REINKER: You are reading from
15 something.

16 MR. COTICCHIA: That's right, I'm
17 reading from something. I am asking a
18 question.

19 A. The first thing I do when I go in is
20 I can see it or I can see the lump where the
21 nerve is. Then I can feel it with my hands.
22 And then in some cases, if there is a lot of
23 fat around there, over the capsule, you peel
24 that fat off so that you can see the capsule

1 and the muscle layers.

2 As you are doing that, the nerve is,
3 you know, in your hand. So I have got my hand
4 there. I will take a sponge and put it there,
5 and that helps me peel off the fat. Now with
6 my hand there, I can make a cut into the
7 capsule.

8 Q. You can make a cut into the capsule
9 without any damage to the sciatic nerve by
10 doing those things that you just described?

11 A. Well, I hope that is the case, you
12 know.

13 Q. Do you ever have occasion to tag the
14 sciatic nerve?

15 A. I don't -- I think -- I don't
16 normally tag the sciatic nerve in surgery.

17 Q. Have you had occasion to do that?

18 A. I think maybe one time in evacuating
19 a hematoma.

20 Q. And again, was that a method of
21 protecting the sciatic nerve from damage?

22 A. Not necessarily to protect -- well,
23 it is in a means, a method, but it is just so
24 I know where it is, because there was so much

1 blood. I don't like to do that because
2 sometimes when you tag it, I **am** always
3 concerned that maybe that tag could hurt the
4 nerve.

5 Q. Why do you want to protect the
6 sciatic nerve, Doctor?

7 A. Well, you try to avoid damage to it.

8 Q. All right. Of course, why don't you
9 want to damage the sciatic nerve?

10 A. Because it innervates many muscles
11 in the lower extremity.

12 Q. What happened to Mrs. Zurawski in
13 her surgery?

14 A. What do you mean what happened?

15 Q. What happened to her sciatic nerve?

16 A. There was a laceration evidently of
17 the sciatic nerve or some disruption of it.

18 Q. And what effect does this have on a
19 patient when the sciatic nerve is lacerated?

20 A. Well, it depends to the extent and
21 -- to the extent of the damage, to the size of
22 the laceration, to the recuperative abilities
23 of the nerve.

24 Q. Assuming that the damage to the

1 sciatic nerve does not completely recover,
2 what happens?

3 MS. REINKER: Objection. He just
4 said it depends, Joe.

5 A. Pardon?

6 Q. I want you to assume that in Mrs.
7 Zurawski's case the sciatic nerve has not
8 completely recovered. What happens to a
9 patient when the sciatic nerve is lacerated
10 and it doesn't completely recover?

11 MS. REINKER: Objection.

12 A. Well, it depends on how much damage
13 there is.

14 Q. What effect does that have on the
15 function of the foot or leg?

16 A. You could have partial loss or
17 complete loss, depending on the extent of
18 sensation or motor function.

19 Q. Have you, in your practice used the
20 term "drop foot"?

21 A. Yes.

22 Q. Can that be the result of a
23 laceration to the sciatic nerve?

24 A. Well, it depends on **how** severe the

1 laceration is and what part of it, It can be
2 a part -- if you get the right part of the
3 nerve, you could have a drop foot.

4 Q. Who is Dr. Charnley?

5 A. He is the inventor of total hip
6 replacement. He is the inventor of the
7 instruments, many of the instruments that we
8 use. He is an inventor of the concept of
9 using bone cement. He is the inventor of the
10 high-density polyethylene socket. **He** is the
11 inventor of the space suits that we wear to
12 try to avoid infection. And he is an inventor
13 of the air room that we use to try to avoid
14 infection. For his work, he was knighted by
15 the Queen of England.

16 Q. You studied in your fellowship under
17 Dr. Charnley, didn't you?

18 A. **Yes.**

19 Q. You knew him personally?

20 A. Yes.

21 Q. What hospitals do you have staff
22 privileges with?

23 A. Riverside Methodist Hospital.

24 Q. Any other hospitals?

1 A. No.

2 Q. Is there such a thing as board
3 certification in hip surgery or knee surgery?

4 A. No.

5 Q. If there was, I would assume you
6 would be board certified in that limited
7 specialty.

8 A. Boy, I hope so.

9 Q. Do you presently, or in the past,
10 have you held any teaching positions with any
11 medical schools?

12 A. Well, I -- in our program, the
13 residents at the Ohio State University,
14 Riverside Methodist Hospital, it is a combined
15 program, also including Children's Hospital,
16 and those students, those residents rotate
17 through our program. And I am on the teaching
18 staff.

19 Q. Teaching staff at Riverside?

20 A. Yes.

21 Q. Do you teach at Ohio State School of
22 Medicine?

23 A. No, I don't operate out of there.
24 Occasionally I give a lecture there.

1 Q. In addition to the text that you
2 have already identified, do you use Turner's
3 Revision on Total Hip Arthroplasty?

4 A. Do I use it?

5 Q. Or have you used it in the past.

6 A. I have read it. I mean I -- I just
7 read it.

8 Q. Do you have that here in your
9 library or in your office?

10 A. It might be. Right here. Yes.

11 Q. Have you heard or used of -- I am
12 sorry. Have you used a medical text authored
13 by Dr. Eftekhar, E-f-t-e-k-h-a-r?

14 A. Yes.

15 Q. Do you have that here at your
16 office? You don't have to look for it. If
17 you say yes, we will assume it is here.

18 A. I don't know if it is here, but I
19 have it

20 Q. Would it be fair to say, Doctor, in
21 the last five years, a reasonable estimate of
22 hip surgeries that you have performed would be
23 1,000?

24 A. Oh, yes.

1 Q. Probably more?

2 A. Yeah, 1,000 or slightly more, yes.

3 Q. Do you know why Mrs. Zurawski

4 underwent hip replacement surgery?

5 A. Yes.

6 Q. What was the reason?

7 A. She was -- let's see here. She,

8 with her right hip, had -- the right hip began

9 10 to 15 years ago, and one would suspect this

10 is related to all the steroid therapy she had

11 at one point in here life. And she had been

12 getting increasing difficulty in management

13 with her arthritic right hip over the years.

14 And it is now getting to be very difficult to

15 tolerate. She was still working at Higbee's,

16 but having a difficult time managing.

17 Q. What was the condition of her hip or

18 what was the disease that she was suffering

19 from?

20 A. The interpretation was that she had

21 severe arthritis of the right hip, probably

22 secondary to a focal avascular necrosis many

23 years ago.

24 Q. Are you reading from Dr. Heiple's

1 note of August 6, 1990?

2 A. 7-3-90.

3 Q. I am sorry. Mrs. Zurawski had no
4 previous surgery on either her right or left
5 hip prior to August 6th, 1990; is that
6 correct?

7 A. I don't know that.

8 Q. Will you describe the position that
9 Mrs. Zurawski was in and the incision that was
10 done by Dr. Heiple or Dr. Petersilge?

11 MR. ALLISON: Objection.

12 A. She was in a right decubitus
13 position.

14 Q. What does that mean?

15 A. She was placed on her side with her
16 right side up.

17 Q. Where was the incision made?

18 A. Over the posterior lateral aspect of
19 the right hip.

20 Q. What does that mean?

21 A. It means it was made over the
22 posterior lateral aspect of the right hip.

23 Q. Where would that be in relation to
24 -- would it be in the back?

1 A. Posterior would be in the back and
2 lateral would be **on** the side.

3 Q. Would the incision go **from** hip to
4 hip or would it go from -- I am trying to get
5 a sense of direction here. Would it **go** from
6 hip to hip? In that general area, I don't
7 mean literally from hip to hip. It would go
8 from side to side?

9 A. No.

10 Q. Which way would it go?

11 A. I don't understand what you mean by
12 side to side.

13 Q. Well, if we look at the anatomy --
14 let's see if I can get a picture here.

15 Okay. Here is a photocopy that
16 shows the posterior thigh deep vessels and
17 nerves. And it is taken from this book which
18 is Anatomy by Carmine Clemente.

19 Will you, with your ball point pen,
20 draw me just approximating, it doesn't have to
21 be accurate, the direction or the line of the
22 incision that Mrs. Zurawski had?

23 A. I can't.

24 MR. ALLISON: What page is that,

1 Joe?

2 MR. COTICCHIA: This figure is
3 Figure 269. I am sorry, Figure 369.

4 MR. ALLISON: Figure 369.

5 BY MR. COTICCHIA:

6 Q. Did you say you can't draw for me
7 the direction that Dr. Heiple or Dr.
8 Petersilge made the incision?

9 A. That's right.

10 Q. How can you describe it to me?

11 A. well, he said it is posterior and it
12 is lateral. The only thing that -- I don't
13 know how long he made it or where he placed
14 it. All I know is that it involved the
15 posterior aspect of the hip and lateral aspect
16 of the hip.

17 Q. Let's start from the beginning. We
18 know that Mrs. Zurawski is laying on her left
19 side; is that right?

20 A. With her right side up.

21 Q. Her right side up. And the surgeon
22 is standing behind her; is that correct?

23 A. Well, I don't know that either
24 because it doesn't state that in here.

1 Q. Well, it says posterior.

2 A. No, it says incision was made over
3 the posterior lateral aspect of the right
4 hip. It doesn't say where he is standing.


5 Q. All right. Let me ask you this
6 question: If Mrs. Zurawski is standing on her
7 two feet, would the incision go -- and we are
8 assuming it is posterior which is in the back
9 of the hip; is that correct?

10 A. Um-hmm.

11 Q. Would the incision go up and down or
12 sideways?

13 MR. ALLISON: Or some other
14 direction.

15 MS. REINKER: If he knows.

16 Q. You mean you don't know, Doctor, 
17 from reading Dr. Heiple's report?

18 A. It would tend to go up and down.

19 Q. Okay.

20 A. But I can't comment on it because I
21 have not seen the incision.

22 Q. Can you draw in the up and down
23 direction of the incision on this diagram?

24 A. I said no, I can't.

1 Q. It doesn't have **to** be accurate. I
2 just want **to** know, would it **go** from the bottom
3 of the page to the top of the page or from one
4 side **of** the page or the other?

5 A. I can't do it.

6 Q. I am not asking you to do it. I am
7 asking *you* the direction as you look at this
8 page.

9 A. Again, I just told you I can't do
10 it.

11 MR. COTICCHIA: You don't know from
12 this diagram -- let's mark this Halley
13 Deposition Exhibit 1.

14 - - - - -

15 Thereupon, Halley Deposition
16 Exhibit No. 1 was marked for
17 purposes of identification.

18 - - - - -

19 BY MR. COTICCHIA:

20 Q. Showing you what has been marked
21 Halley Deposition Exhibit 1, and as I stated
22 earlier, this is Figure 369 taken from Anatomy
23 by Carmine Clemente. Do *you* recognize this
24 diagram, Doctor?

1 MS. REINKER: Does he recognize it?

2 Q. Yes. Do **you** recognize the anatomy
3 that is portrayed in that diagram?

4 MR. ALLISON: Let the record reflect
5 that this is a multi-paged document.

6 MR. COTICCHIA: I will take the top
7 page off.

8 MS. REINKER: I don't know that the
9 doctor is familiar with Carmine Clemente or
10 has any knowledge of --

11 MR. COTICCHIA: I don't care if he
12 **is** familiar with Carmine Clemente. Does he
13 recognize the anatomy portrayed in that
14 diagram?

15 MS. REINKER: It may or may not be
16 accurate.

17 THE WITNESS: I don't know where
18 this came from because it is not labeled.

19 BY MR. COTICCHIA:

20 Q. What do you mean it is not labeled?

21 A. "It doesn't tell what book it came
22 from.

23 Q. Here, I will show you the book.

24 A. Okay.

1 Q. Do you see Figure 369?

2 For the record, I am showing Dr.
3 Heiple Anatomy, a Regional Atlas of the Human
4 Body by Carmine Clemente. I call your
5 attention to Figure 369.

6 A. Yes.

7 Q. All right. Now my question is does
8 Exhibit 1 -- is Exhibit 1 a copy of Figure
9 369? It is in black and white.

10 A. Yes.

11 Q. Okay. Now my question is can you
12 tell me as a board certified orthopedic
13 surgeon based on your review of the records
14 and based on this diagram that I copied marked
15 Exhibit 1, the direction of the incision on
16 Mrs. Zurawski during hip replacement surgery?

17 MS. REINKER: Objection.

18 A. I said no, I can't.

19 Q. Why not?

20 A. Because I haven't seen the incision.

21 Q. I am not asking for an exact
22 detail. You say it is lateral?

23 A. It is posterior and it is lateral,
24 posterior lateral incision.

1 Q. What does that mean, lateral?

2 A. Lateral is on the side of the thigh.

3 Q. And which direction would it be as
4 you are looking at this page marked Exhibit 1?
5 would it be from side to side or from up and
6 down?

7 MR. ALLISON: Objection.

8 MS. REINKER: Objection. This is a
9 posterior view, isn't it?

10 THE WITNESS: Yes.

11 BY MR. COTICCHIA:

12 Q. Do you know, Doctor?

13 A. I can't make a statement on that. I
14 have told you that

15 Q. So you don't know when the record
16 states lateral incision posterior, you don't
17 know as you look at this diagram whether the
18 incision goes in the general direction from
19 the top of the page to the bottom of the page
20 or in the general direction from one side of
21 the page to the other in relation to the --

22 MR. ALLISON: Objection.

23 MS. REINKER: Objection.

24 Q. -- in relation to the anatomy in

1 this picture?

2 A. It goes posteriorly and laterally,
3 but ~~I don't know how the surgeon himself made~~
4 ~~it.~~

5 Q. Why don't you draw on the back of
6 this exhibit what you understand it to be.

7 MS. REINKER: Objection. No.

8 Q. Show me -- make a diagram of the hip
9 in your own -- it doesn't have to be accurate,
10 so I get an idea of this patient laying on the
11 operating table on her left hip, which way the
12 incision went.

13 MS. REINKER: Objection. The record
14 says that it is a posterior lateral incision
15 which Dr. Heiple or Dr. Petersilge or someone
16 else made. This diagram is one dimensional.
17 There is no way -- I don't see how it is
18 possible the doctor can diagram --

19 MR. COTICCHIA: I am asking a simple
20 plane.

21 MS. REINKER: You can't do a simple
22 plane.

23 BY MR. COTICCHIA:

24 Q. If the patient is laying **on her** left

1 side and the doctor is standing on the floor
2 behind her, which way does the incision **go?**
3 **Up** and down or sideways?

4 MS. REINKER: Objection. The doctor
5 said he can't do that unless --

6 MR. COTICCHIA: I am not asking
7 you.

8 MS. REINKER: Let's just end this
9 whole area of questioning.

10 MR. COTICCHIA: No, I am not --

11 MR. REINKER: **You** are wasting time.

12 MR. COTICCHIA: I have a right to
13 ask this --

14 MS. REINKER: You have been doing
15 this **for** ten minutes.

16 MR. COTICCHIA: I have a right to
17 ask this doctor if he understands the
18 operative note and the direction that the
19 incision was made.

20 MR. ALLISON: Let the record reflect
21 that the operative note says absolutely
22 nothing about the direction of the incision,
23 the length of the incision or anything else.

24 MR. COTICCHIA: I am not asking

1 about the length.

2 MS. REINKER: It says incision was
3 -- and I quote, "Incision was made over the
4 posterior lateral aspect of the right hip"
5 which clearly means that there was an incision
6 made, which does not talk anything about its
7 direction, length or anything else over the
8 posterior lateral aspect of the hip which
9 defines the general area that the incision was
10 made and says nothing further about the
11 incision.

12 BY MR. COTICCHIA:

13 Q. What does lateral mean, Doctor?

14 A. Lateral means side.

15 Q. Which side?

16 A. Side. Lateral.

17 Q. Which side in regard to Mrs.
18 Zurawski?

19 A. It would be on the lateral aspect of
20 the hip.

21 MS. REINKER: I think he means right
22 or left. Is that what your question is? Joe,
23 is that your question?

24 Q. On the side of the hip?

1 A. Yes, lateral means on the lateral
2 side of the hip.

3 Q. When you perform surgery of this
4 type, which would be primary, which way do you
5 make the incision?

6 A. I use a Kocher incision.

7 Q. What is a Kocher incision?

8 A. Kocher incision passes over the
9 greater trochanter down the lateral side of
10 the hip with a portion of the posterior aspect
11 of the hip.

12 Q. Doctor, I am showing you for the
13 record a model, full-size model, full-scale
14 model of the skeletal bones of the right hip,
15 right femur, tibia, fibula and foot. In
16 regard to the Kocher incision that you are
17 describing, will you show me how and where
18 that incision is made?

19 How do you spell Kocher by the way?

20 A. K-o-c-h-e-r.

21 Q. Will you show me how the incision is
22 made when you are performing that type of
23 surgery? How and where.

24 MR. ALLISON: If you can show him,

1 Doctor, on a skeletal model knowing full well
2 the incision is made in the skin, with all the
3 muscles and other tissue overlying the
4 skeleton.

5 A. This is the lateral aspect and that
6 is the posterior aspect. My Kocher incision
7 just comes like this over the greater
8 trochanter and bit back like that.

9 Q. This part of the bone in the femur
10 is the greater trochanter?

11 A. Yes.

12 Q. Where is the lesser trochanter?

13 A. I don't know how we are going to
14 identify this for --

15 MS. REINKER: Don't worry about it.

16 MR. ALLISON: Don't worry about it,
17 Doctor.

18 A. The lesser trochanter is right here.

19 Q. And that is the -- will you show me
20 that again, please?

21 A. Right there.

22 Q. That is the small knob below the
23 head of the femur; is that correct?

24 A. Um-hmm.

1 Q. And that **is** somewhat posterior **also**,
2 isn't it?

3 A. I don't think so.

4 Q. This is not near the back **of** the
5 femur?

6 A. Uh-huh.

7 Q. You pointed out, when you did the
8 Kocher incision, it runs parallel with the
9 femur?

10 MR. ALLISON: Objection.

11 A. Yes.

12 Q. Okay. Thank you. That is what I
13 was trying to find out.

14 MS. REINKER: Part of it I believe
15 he said.

16 MR. COTICCHIA: He didn't say part
17 of it.

18 MS. REINKER: I'm **sorry**, I thought
19 he said --

20 MR. ALLISON: Objection. The record
21 **will** reflect exactly what the doctor said.

22 MR. COTICCHIA: That's right.

23 **BY** MR. COTICCHIA:

24 Q. While we are using this, Doctor,

1 will you show me the area -- again and are
2 You looking at it from the posterior point?

3 A. Yes.

4 Q. Will you show me where the sciatic
5 nerve runs in relation to the hip capsule?

6 MR. ALLISON: Same objection as
7 previously stated.

8 A. The sciatic nerve comes down the
9 back of the hip.

10 Q. Does it run by the greater or lesser
11 trochanter?

12 A. No.

13 Q. Where does it run by?

14 A. It runs in the posterior aspect of
15 the hip.

16 Q. All right. Where is the ischium?

17 A. Here.

18 Q. Does it run by the ischium?

19 A. Yes.

20 Q. Does it run by this little notch
21 here?

22 A. In that area.

23 Q. In the ischium?

24 A. Yes.

1 Q. Is there any reference to scar
2 tissue in Mrs. Zurawski's operative note?

3 A. Which operative note?

4 Q. The first one.

5 A. No.

6 Q. Since this is a primary hip surgery,
7 you wouldn't expect to find scar tissue, would
8 you?

9 A. Not surgical scar tissue.

10 Q. Do you know whether or not Dr.
11 Heiple and Dr. Petersilge took turns holding
12 the retractor?

13 MR. ALLISON: Objection.

14 A. There is no mention of that in the
15 operative note.

16 Q. Is there any mention of that in Dr.
17 Heiple's deposition? If you recall.

18 A. Let me take a look.

19 MS. REINKER: If you recall.

20 A. I can't recall.

21 Q. Was there any mention of that in Dr.
22 Petersilge's deposition?

23 MS. REINKER: He didn't see that.

24 A. I didn't see it.

1 Q. Okay. Doctor, **now** getting back to
2 what has been marked Halley Deposition Exhibit
3 1, does this diagram marked Figure 369
4 illustrate the sciatic nerve?

5 A. Yes.

6 Q. And does it illustrate generally the
7 course in which the sciatic nerve runs'?--

8 A. Yes.

9 Q. And that branches from the area of
10 the buttock and right through the entire leg,
11 does it not?

12 A. Yes.

13 MS. REINKER: The entire leg?

14 A. Well, it branches down the posterior
15 aspect of the thigh. Not the entire leg. The
16 posterior aspect of the thigh.

17 Q. Most of the leg, but not all of it;
18 is that fair?

19 A. No.

20 Q. How much of the leg does it
21 innervate?

22 MR. ALLISON: Object.

23 A., The sciatic nerve itself doesn't
24 pass in the leg at all.

1 Q. well, it branches. I guess it is
2 called the tibial branch; is that correct?
3 A. You have a tibial nerve and you have
4 a common paroneal nerve.
5 Q. ~~And they branch from the sciatic~~
6 nerve?
7 A. Yes.
8 Q. How far down does the tibial nerve
9 extend?
10 A. It extends all the way down.
11 Q. How far down does the paroneal nerve
12 extend?
13 A. All the way down.
14 Q. During hip replacement surgery,
15 primary hip replacement surgery, does the hip
16 joint -- is the hip joint dislocated?
17 A. During primary?
18 Q. Yes.
19 A. Do you dislocate the hip joint, yes.
20 Q. And in your own practice, this is
21 after you have protected the sciatic nerve; is
22 that correct?
23 A. Well, at that point I don't have to
24 protect the sciatic nerve.

1 Q. Why don't you?

2 A. Because I am dislocating the hip. I
3 don't -- it is not in the way.

4 Q. Is that because you have already
5 identified it?

6 A. Yes. But I could dislocate the hip
7 and not have to identify it for that, for
8 those purposes.

9 Q. Okay. Why don't you want to
10 identify it?

11 A. well, you know where it is at. I
12 mean --

13 Q. That is because --

14 A. It is all automatic. When you go
15 in, you identify just by either sight or
16 touch.

17 Q. Okay. So you do that before you
18 dislocate the hip, correct?

19 A. Well, yes, because it is right
20 there. I mean, you know, it is --

21 Q. Okay. Is the sciatic nerve
22 something you look for before you do the hip
23 dislocation?

24 A. Are you talking about me or others?

1 Q. You.

2 A. Me personally?

3 Q. Yes.

4 A. Yes.

5 Q. Isn't it true, Doctor, that in the
6 operative report prepared by Drs. Heiple and
7 Petersilge, there is no mention of the sciatic
8 nerve on the primary hip replacement surgery?

9 A. There is no mention of it.

10 Q. Would you expect either Dr. Heiple
11 or Dr. Petersilge to look for and identify the
12 sciatic nerve?

13 MR. ALLISON: Object.

14 MS. REINKER: Objection.

15 A. We are making an assumption when we
16 do that, so I can't comment on that.

17 Q. Why can't you comment on that?

18 A. Because it would be an assumption.

19 Q. Well, make an assumption. You are
20 an expert.

21 MS. REINKER: Do you understand his
22 question?

23 THE WITNESS: No.

24 BY MR. COTICCHIA:

1 Q. There is no mention of identifying
2 the sciatic nerve during Mrs. Zurawski's
3 primary hip replacement surgery.

4 A. That's right.

5 Q. My question to you as an expert,
6 with a subspecialty in hip replacement, is
7 wouldn't you expect either Dr. Petersilge or
8 Dr. Heiple to identify the sciatic nerve?

9 MR. ALLISON: Objection.

10 MS. REINKER: Are you asking him
11 whether the surgeon has an obligation to
12 identify the sciatic nerve? Is that your
13 question to him?

14 MR. COTICCHIA: I am not asking
15 about that. I am asking a simple question.

16 MS. REINKER: It sounds like that to
17 me.

18 BY MR. COTICCHIA:

19 Q. Would you expect that in the
20 operative note?

21 MR. ALLISON: Objection.

22 A. No.

23 Q. You put it in your notes, don't you?

24 A. Yes, but I would expect most people

1 ~~don't~~

2 Q. You practice within the standard of
3 medical care, don't you?

4 A. well, we try to.

5 Q. Would you expect either Dr. Heiple
6 or Dr. Petersilge to identify the sciatic
7 nerve before they open the hip capsule?

8 MR. ALLISON: Objection.

9 MS. REINKER: Continuing objection.

10 A. I don't understand your question.

11 Q. What part don't you understand?

12 A. You are asking me two questions.
13 One, you are asking me would I expect them to
14 do that. Well, how do I know if they do or
15 don't.

16 Q. well, there is no mention of it in
17 the operative report, is there?

18 A. It doesn't have to be. That is the
19 problem I have with that question.

20 Q. I call your attention to page 77,
21 the deposition of Dr. Petersilge.

22 MS. REINKER: We don't have that.

23 Q. Well, I will read it to you. This
24 is line one.

1 Question: During the hip surgery of
2 Mrs. Zurawski, do you recall visualizing the
3 sciatic nerve? ★

4 Mr. Allison objects.

5 Answer: During the initial surgery,
6 hip surgery, I did not visualize the sciatic
7 nerve.

8 And my question to you is as a
9 surgeon expert in the area of orthopedic
10 surgery and hip surgery, isn't it within the
11 standard of care to visualize the sciatic
12 nerve?

13 MR. ALLISON: Objection.

14 MS. REINKER: Objection.

15 A. No.

16 Q. Why not?

17 A. You don't have to.

18 Q. But you do, don't you, in your
19 surgery? ★

20 A. Yes, but I don't lay the guidelines
21 for standard of care.

22 Q. I am not asking you to. But you
23 have been represented as an expert on those
24 standards.

1 A. I do that personally, but you don't
2 have to.

3 Q. Why do you do you that?

4 MS. REINKER: Are you talking about
5 visual or be aware of where it is?

6 MR. COTICCHIA: Visualize.

7 A. I am working in that area, so I just
8 normally identify it. I either see it or feel
9 it.

10 Q. And you do that as a standard
11 technique as a competent and skilled
12 orthopedic surgeon, don't you?

13 A. I do that, but in my residency
14 program we never did that.

15 Q. Well, your residency program was
16 many years ago; is that correct?

17 A. Well, they still don't.

18 Q. But you do, don't you?

19 A. Yes.

20 Q. And when you bring residents into
21 surgery, they see you doing that, don't they?

22 A. Yes.

23 Q. Because that is the way you practice
24 medicine, isn't it?

1 A. Yes.


2 Q. You practice medicine within the
3 standard of care, don't you?

4 A. I try to. But I don't think that it
5 is necessary that you identify the nerve and
6 still not be practicing within the standard of
7 care.

8 Q. If you identify the nerve, isn't it
9 safer than not identifying the nerve in regard
10 to any possible damage to the sciatic nerve?

11 MR. ALLISON: Objection.

12 A. I don't think that has ever been
13 proven in primary surgery.

14 Q. Um-hmm. But you do it because *you*
15 think it is a careful standard and skillful
16 standard, don't you? Objection. 


17 MS. REINKER: Objection.

18 A. I personally identify it because I
19 want to know where it is.

20 Q. You want to know where it is. And
21 you want to protect it, don't you, Doctor?

22 A. Everyone wants to protect it, but I
23 don't think you have to see it to protect it.

24 Q. But you as the expert in this case,

1 as a practice, identify and protect the 
2 sciatic nerve, don't you?

3 A. Yes.

4 Q. And in the case with Dr. Heiple, he
5 didn't do that, did he?

6 MS. REINKER: Objection.

7 A. I don't know that.

8 Q. And in the case with Dr. Petersilge,
9 he didn't do that, did he?

10 MR. ALLISON: Objection.

11 MS. REINKER: Objection.

12 A. I don't know that either.

13 Q. I just read his deposition to you.

14 MR. ALLISON: Objection.

15 MS. REINKER: He said he didn't
16 visualize it.

17 A. He said he didn't visualize it.
18 That doesn't mean he is not protecting it.
19 You would have to discuss that with him.

20 Q. Well, all right. What do you mean
21 when you say protect it?

22 A. It depends on the case, you know.
23 Number one, if it is a primary case or
24 revision case.

1 Q. This is a primary case. We are
2 talking about Mrs. Zurawski.

3 A. In the primary case, I think in the
4 normal process of total hip replacement, it is
5 not necessary to identify it because generally
6 everything you do, you are going to know where
7 it is going to be.

8 Q. And my question to you is what do
9 you do or what do you mean when you say
10 protect the sciatic nerve?

11 MR. ALLISON: Objection.

12 A. It is -- again, it would depend upon
13 the approach. But assuming that we use the
14 Kocher approach, my approach, it is
15 instinctive as you go in, it is right there,
16 you either see it or you feel it. They don't
17 really make a point of it. I am sure -- I
18 can't tell you for certain, but I am certain
19 -- I am sure that most of the doctors probably
20 don't really identify it because it is not in
21 the way.

22 Q. Well, you just testified that you
23 see it or you feel it; is that correct?

24 A, Yes.

1 Q. There is nothing to that effect in
2 the operative note prepared by Dr. Heiple, is
3 there?

4 A. True.

5 Q. There is nothing to that effect in
6 the operative note prepared by Dr. Petersilge,
7 is there?

8 MR. ALLISON: Objection.

9 A. I haven't seen --

10 Q. His name is on there.

11 A. Yes.

12 Q. And Dr. Heiple signed it.

13 Did Dr. Heiple know where Mrs.
14 Zurawski's sciatic nerve was located during
15 hip replacement surgery?

16 MS. REINKER: Objection.

17 A. I can't speak for Dr. Heiple.

18 Q. Can you tell from the operative
19 report?

20 MR. ALLISON: Can he tell what?

21 MS. REINKER: Can he tell what Dr.
22 Heiple knew about her nerve from the operative
23 report?

24 Q. From the operative report and in

1 addition from reading Dr. Heiple's deposition,
2 did Dr. Heiple know where Mrs. Zurawski's
3 nerve was located?

4 A. I can't comment on that.

5 Q. Why not?

6 MS. REINKER: Because he doesn't
7 know what Dr. Heiple knew.

8 Q. From what you read of the operative
9 report and his deposition.

10 MS. REINKER: If you recall.

11 A. I don't think that is a reasonable
12 question to ask. I don't think that I can
13 make a statement on that.

14 Q. Well, I am not asking you to guess
15 what is in the mind or the eye of the
16 surgeon. I am asking you based on what you
17 read. I will rephrase the question. I will
18 change the question. First, let me go back to
19 that question.

20 From what you read in the deposition
21 of Dr. Heiple and the operative note for the
22 primary hip replacement of Mrs. Zurawski,
23 could you tell that Dr. Heiple knew where Mrs.
24 Zurawski's sciatic nerve was located?

1 A. I already answered that question.

2 Q. What is your answer?

3 A. I can't make a comment on that.

4 Q. Why not?

5 A. Because it is not written in the
6 operative note. And normally, I don't think
7 that it would be in the operative report.

8 Q. Okay. Let me ask you another
9 question. Based on the deposition of Dr.
10 Heiple, based on your review of Dr. Heiple's
11 operative note of August 6, 1990, could you
12 tell whether or not Dr. Heiple saw Mrs.
13 Zurawski's sciatic nerve?

14 A. Again, I can't make comment on
15 that. You will have to ask Dr. Heiple that
16 question.

17 Q. There is no comment in the operative
18 note that he saw it, is there?

19 A. There is no comment about the
20 sciatic nerve in the operative note.

21 Q. And there is no comment by Dr.
22 Heiple in his deposition that he saw or
23 identified or protected the sciatic nerve, is
24 there?

1 MR. ALLISON: Objection.

2 MS. REINKER: Objection.

3 MR. ALLISON: Unless you want the
4 doctor to **sit** there and re-read Dr.
5 Heiple's --

6 Q. He's read it.

7 A. I can't recall on that.

8 Q. You don't recall, do you?

9 A. Do *you* want me to re-read it?

10 Q. No, I don't want you to re-read it.
11 I can't help it if *you* are not aware of what
12 is in the deposition. I know it's been a long
13 time. I don't know everything that is in
14 there either.

15 You would expect a board certified
16 orthopedic surgeon to know the location of a
17 sciatic nerve, wouldn't you?

18 A. Yes.

19 Q. And you would expect a doctor to go
20 through hip replacement surgery without
21 damaging the sciatic nerve, wouldn't you?

22 A. No.

23 Q. Does a patient have a right to
24 expect hip replacement surgery and no damage

1 to the sciatic nerve?

2 MS. REINKER: Objection.

3 A. Damage to the sciatic nerve is a
4 complication of surgery. A potential
5 complication of surgery.

6 Q. My question is at the hands of a
7 board certified orthopedic surgeon, does Mrs.
8 Zurawski or any primary hip replacement
9 surgery patient have a right to expect that
10 the sciatic nerve will not be damaged?

11 A. No.

12 Q. Then if that is the case, don't you
13 think that that risk should be explicitly
14 discussed with the patient prior to surgery?

15 A. No.

16 Q. Why not?

17 A. Because it is so very infrequent,
18 that if I would do that, I would probably have
19 to give them a list of 3 or 400 different
20 things. Anything. It is very, very rare that
21 that occurs. That is not the major
22 complication of total hip replacement.

23 Q. We know it happens.

24 A. Very, very rarely.

1 Q. It has happened to you during
2 surgery?

3 A. That's right. I have done an awful
4 lot of hips.

5 Q. Do you expect an orthopedic surgeon
6 to avoid damaging the sciatic nerve during hip
7 replacement surgery?

8 A. I think that is a very obtuse
9 wording because normally we don't expect to
10 damage the sciatic nerve. But it can occur in
11 the course of an operation.

12 Q. And in your case, you avoid it by
13 identifying it and protecting it; is that
14 correct?

15 MR. ALLISON: Objection.

16 A. It is such a rare occurrence, you
17 know, we could say I avoid it by protecting
18 it, but it is such a rare occurrence. But
19 perhaps the reason it hasn't been damaged is
20 because it is so rare.

21 Q. Of course, if the surgeon doesn't
22 see the sciatic nerve, then he doesn't know
23 whether or not he is damaging it, does he?

24 MR. ALLISON: Objection.

1 MS. REINKER: Objection. Is that a
2 question?

3 MR. COTICCHIA: Yes.

4 A. If the surgeon doesn't see the
5 sciatic nerve -- go ahead.

6 Q. If the surgeon doesn't see the
7 sciatic nerve, he doesn't know whether or not
8 he is damaging it, does he?

9 A. well, you can see the sciatic nerve
10 and not know if you damaged it.

11 Q. That is not my question.

12 A. I know. I am just turning it around
13 the same way.

14 Q. My question is if the surgeon
15 doesn't see the sciatic nerve, he doesn't know
16 whether or not he is damaging it, does he?

17 MR. ALLISON: Objection.

18 MS. REINKER: Objection.

19 A. It is a very poorly worded question.

20 Q. I am not a surgeon, Doctor. That is
21 the best I can do. Can you answer that?

22 A. No

23 Q. You would expect a doctor not to
24 damage the sciatic nerve if he sees it, don't

1 *you?*

2 A. ~~No.~~

3 Q. You don't expect the doctor not to
4 damage the sciatic nerve if he sees it?

5 A. Sciatic nerve can be damaged whether
6 you see it or you don't see it.

7 Q. Well, what is a greater chance of
8 damaging the sciatic nerve, when the surgeon
9 sees it or doesn't see it?

10 A. I don't think that has ever been
11 statistically proven.

12 Q. What **is** your answer?

13 MS. REINKER: Objection.

14 A. I can't comment on that.

15 Q. Why not?

16 A. Because it is such a rare occurrence
17 that we don't know.

18 Q. Isn't it true that when the incision
19 is made posteriorly and laterally, there is a
20 risk of damaging the sciatic nerve?

21 A. "There is a risk of damaging the
22 sciatic nerve regardless of what incision you
23 use.

24 Q. I understand. But I **am** talking

1 about in the area posterior and lateral.

2 A. So based upon that, regardless of
3 any incision you utilize, there is a risk of
4 damage to the sciatic nerve. So in context
5 with that statement, with a posterior lateral
6 approach, there is risk of damaging the
7 sciatic nerve.

8 Q. As a board certified surgeon, do you
9 agree that care should be exercised to avoid
10 damage to the sciatic nerve?

11 A. Care should be exercised to attempt
12 to avoid damage.

13 Q. Do you agree that the damage to Mrs.
14 Zurawski's sciatic nerve occurred during
15 surgery?

16 A. I think that would be a fair
17 statement. She certainly didn't have sciatic
18 damage before surgery. And it 'certainly could
19 -- it didn't happen after surgery, it was
20 noted after surgery. So I have to make the
21 assumption that some time during the surgical
22 procedure she had damage to her sciatic nerve.

23 Q. What precautions -- from what you
24 have read in the hospital record, the surgery

1 record, and the deposition of Dr. Heiple, what
2 precautions did Dr. Heiple take to avoid
3 damage to the sciatic nerve?

4 A. Well, I don't think you can tell
5 from the operative report, because in most
6 instances you wouldn't put that in the
7 operative report. With regards to the
8 deposition, I can't recall.

9 Q. What is a Cobra retractor?

10 A. Well, it is a curved retractor.

11 Q. Do you use that type of instrument
12 during hip replacement surgery?

13 A. Not routinely I don't.

14 Q. Have you used it in the past?

15 A. I don't know if I have used a Cobra
16 retractor in hip replacement.

17 Q. You don't remember?


18 A. I don't recall.

19 Q. You know what it is, don't you?


20 A. We have used Cobra retractors in
21 surgery when I was a resident. I have heard
22 the term.

23 Q. Is it important to maintain a dry
24 operative field during hip replacement

1 surgery?

2 A. Your questions are misleading
3 questions because what -- if I interpret
4 things correctly, then you are stating if I
5 say is it important, and I say yes, then many
6 times in surgery, especially hip surgery, you
7 have -- you don't have a dry field because
8 there is great blood **loss**, sometimes as much
9 as 20 units of blood. You want to try to keep
10 it as dry as possible, but many times it is
11 impossible. So to your question, you make
12 every attempt to the best of your ability to
13 keep it dry, but you can't always accomplish
14 that. 

15 Q. In Mrs. Zurawski's case, would you
16 expect to find the sciatic nerve lying in its
17 normal location in relation to the hip
18 capsule?

19 A. I think that is reasonable to assume
20 since it is a primary case. 

21 Q. How much do you charge for hip
22 replacement surgery?

23 MS. REINKER: Objection.

24 Q. Primary. Not a revision.

1 A. I don't know.

2 Q. Who would know? Your **bookkeeper?**

3 Mr. Storm?

4 A. Mr. Storm would know.

5 Q. Well, sometime before we leave here,

6 could you find that out from him?

7 A. You are quite welcome to ask him.

8 MS. REINKER: At what point in time?

9 Are you talking about now or back in **1990** or

10 are you talking about currently today?

11 THE WITNESS: It varies and it is

12 going to vary again after today with the

13 health program. It just varies from place **to**

14 place.

15 MS. REINKER: Probably from case to

16 case too, depending on the complexity of the

17 case.

18 BY MR. COTICCHIA:

19 Q. What was the -- specifically what

20 was the plan, the objective of Mrs. Zurawski's

21 hip replacement surgery?

22 A. You are asking me, I wasn't involved

23 in the case.

24 Q. Well, what **was to be** done?

1 MS. REINKER: Objection.

2 A. What do *you* mean, what was to be
3 done?

4 Q. During hip replacement surgery,
5 what was done?

6 A. You have just asked me two separate
7 questions. You said plan and then what was
8 done. You have to be more specific.

9 Q. During the surgery itself, what was
10 done?

11 MS. REINKER: Objection. That is
12 reflected in the operative note. Unless you
13 have something specific -- ask him a specific
14 question, Joe. Don't try to answer that.

15 Q. You heard the question, didn't you?

16 MS. REINKER: The entire operative
17 note describes what was done.

18 MR. COTICCHIA: I am asking him
19 what was done. I am not a doctor.

20 MS. REINKER: To repeat what the
21 doctor --

22 MR. COTICCHIA: The jurors don't
23 know when they read **all** these terms what was
24 done.

1 BY MR. COTICCHIA:

2 Q. What was done?

3 MS. REINKER: Objection.

4 A. I can read the operative note for
5 YOU.

6 Q. I want you to tell me in layman's
7 terms and so I can understand it and the
8 members of the jury can understand it.

9 MS. REINKER: Objection. Dr. Heiple
10 is the one to do that.

11 Q. What does hip replacement surgery
12 mean? If you tell me you are going to replace
13 my hip or you tell Mrs. Zurawski she is going
14 to have a primary and total hip replacement,
15 what does that mean?

16 A. It can mean a number of things. But
17 basically what you are doing is removing the
18 femoral head and neck. But even in that
19 situation, I think it would be more specific
20 to state that you are resurfacing the
21 articular surfaces.

22 MR. ALLISON: Is that helpful?

23 MR. COTICCHIA: Yes.

24 BY MR. COTICCHIA:

1 Q. What **do** you mean **by** resurfacing the
2 articular surfaces?

3 A. Well, generally you insert a plastic
4 liner to the acetabular component.

5 Q. What is the acetabular component?

6 A. That is the ball -- I mean that **is**
7 the socket part of the hip joint, the
8 concavity.

9 Q. What else is done? Is there
10 anything else done?

11 A. And then you have a damaged femoral
12 head, **so** in some form you either resurface the
13 head or you insert an artificial ball.

14 Q. Okay. And then what is done?

15 A. That is it.

16 Q. Was that the objective of Mrs.
17 Zurawski's surgery?

18 A. You would have to ask Dr. Heiple
19 what the objective of that specific surgery
20 was. I can't comment on that.

21 Q. Do you expect a surgeon to be
22 complete when dictating the operative report?

23 MR. ALLISON: Objection.

24 MS. REINKER: Objection.

1 A. What **do** you mean by complete?

2 Q. Complete in describing what was done
3 in surgery.

4 MR. ALLISON: Objection.

5 A. The statement is still vague.

6 Q. What standards do you follow when
7 you dictate an operative report? Do you try
8 to be thorough?

9 A. I am very thorough. I tell exactly
10 what component I put in.

11 Q. And you would expect that of any
12 surgeon, wouldn't you?

13 A. Of the component put in?

14 Q. Yes. And to be thorough.

15 A. Two different terms.

16 Q. You said you are very thorough, what
17 do you mean?

18 A. What do you mean by thorough?

19 Q. You just said you **are** very
20 thorough. You tell me.

21 A. I am thorough. I put in -- when I
22 mean thorough, I put in my operative report
23 the type of implant that has been inserted.

24 Q. When you are performing right hip --

1 primary total hip replacement surgery, what
2 position do you put your patient in?

3 A. Well, it depends which approach I am
4 using.

5 Q. Do you use a Montreal frame?

6 A. No.

7 Q. What is a Montreal frame?

8 A. It is a frame to stabilize the
9 patient's body so it doesn't roll from side to
10 side.

11 Q. If you were doing Mrs. Zurawski's
12 hip replacement surgery, would you have put
13 Mrs. Zurawski in the right decubitus
14 position?

15 MS. REINKER: Objection.

16 A. Yes.

17 Q. And why do you choose that position
18 as opposed to, for example, the supine
19 position?

20 A. By the approach I use.

21 Q. What approach is that, Doctor?

22 A. Kocher approach.

23 Q. All right. And when you are
24 performing the surgery in relation to the

1 patient's body, where are **you** standing?

2 A. I stand on the posterior aspect **of**
3 the patient.

4 Q. All right. So you would be facing
5 the back and the top side of the right hip; is
6 that correct?

7 A. Yes.-

8 Q. Why do you prefer that position?

9 A. As to what other position?

10 Q. Supine for example.

11 A. Supine position is a good position
12 also. I use that if I take the greater
13 trochanter off.

14 Q. All right. Is that -- does that
15 help *you* find the anatomical landmarks that
16 you are looking for in this type of surgery?

17 A, What?

18 Q. Hip surgery.

19 A. Yes. What was your question?

20 Q. The supine you mentioned for --

21 A. Yes.

22 Q. -- if you are removing the
23 trochanter. Does that help you identify those
24 anatomical landmarks that you are looking for?

1 A. That is not why I use that approach.
2 Q. Okay. Let's get back to the
3 decubitus approach. Why do you use that
4 approach?
5 A. So that I don't have to take the
6 trochanter off.
7 Q. All right. Why don't you use a
8 Montreal frame?
9 A. Because I use a bean bag.
10 Q. Is that to keep the patient stable?
11 A. Um-hmm.
12 Q. Doctor, do you agree with this
13 statement: The sciatic nerve may be injured
14 by direct surgical trauma, traction and
15 pressure from the retractor?
16 MR. ALLISON: Objection.
17 MS. REINKER: Objection.
18 A. That is a possibility.
19 Q. Do you agree with this statement:
20 Self-retaining retractors must be carefully
21 positioned to avoid pressure on the nerves?
22 MR. ALLISON: Objection.
23 A. What they are trying to tell you in
24 that statement is what every orthopedic

1 surgeon will do, is that you wouldn't want to
2 put it directly on the nerve. You are going
3 to try to put it away from the nerve as best
4 as possible.

5 Q. Is that one standard that you use to
6 protect the sciatic nerve?

7 MR. ALLISON: Objection.

8 A. When you are in surgery, you use
9 your retractor for exposure. And so you try
10 to protect -- put it in a protected area to
11 the best of your ability.

12 Q. Okay. Is that to avoid any damage
13 to the sciatic nerve?

14 A. That is one of the things.

15 Q. What is a nerve conductor?

16 A. I don't know. What do you mean by
17 that?

18 Q. Well, I am just going on what little
19 laymen amateur information that I have read.
20 Do you use or have you used a nerve conductor
21 during hip replacement surgery?

22 A. No.

23 Q. What is it used for?

24 MS. REINKER: If you know what he

1 is talking about.

2 A. There **is** an article that **some** people
3 have used a nerve conductor which I am not
4 familiar with, to monitor the nerve during the
5 surgery, but that is not used in most places.
6 It certainly has never been used at the Center
7 for Hip Surgery where they have done over
8 30,000 total hips. And where they invented
9 the operation.

10 Q. That is in England?

11 A. Yes.

12 Q. Have you ever used the nerve
13 stimulator?

14 A. No.

15 Q. What muscles surround the hip, the
16 hip capsule?

17 A. You got your internal rotators, your
18 gemelli, quadratus femoris.

19 MS. REINKER: Do you need to take a
20 break, some water or anything to drink?

21 THE WITNESS: Yes.

22 MS. REINKER: Is it okay to **take** a
23 break?

24 MR. COTICCHIA Sure.

1 (Short recess taken.)

2 MR. COTICCHIA: Back on the record,
3 please.

4 BY MR. COTICCHIA:

5 Q. Doctor, will you turn --

6 MS. REINKER: Before you start, I
7 think he wants to say something.

8 THE WITNESS: I went down and I
9 checked with Mike Storm. And you asked if
10 there was a lawsuit in the past five years.

11 MR. COTICCHIA: Yes.

12 THE WITNESS: I thought there was a
13 claim and he says there is an actual lawsuit
14 in the past five years against me.

15 BY MR. COTICCHIA:

16 Q. Okay. What was that lawsuit for?

17 A. For damage to a sciatic nerve.

18 Q. What is that patient's name?

19 A. I had to ask him. Terry Starkey.

20 Q. And you also had a lawsuit filed by
21 a lady named Carolyn Mox... didn't you?

22 A. Long time ago.

23 Q. You remember her, don't you?

24 A. When I hear the name, yes.

1 Q. She had a sciatic nerve injury
2 during hip revision surgery?

3 A. Yes.

4 Q. All right. I noticed in your report
5 that you mailed to Miss Reinker, you state in
6 your second paragraph, female patients,
7 particularly those with congenital hip
8 relocation, appear to have a higher risk of
9 sustaining nerve injury.

10 In Mrs. Zurawski's case she does not
11 have a congenital hip dislocation, does she?

12 A. No.

13 Q. But in Carolyn Mox's case she did
14 have that problem, didn't she?

15 A. Yes.

16 Q. Were you thinking of her when you
17 were writing this report?

18 A, No.

19 Q. Why did you mention congenital hip
20 dislocation?

21 A. As I said in my statement to you,
22 the nerve is injured most frequently either
23 with CDH or with revision surgery.

24 Q. What do you mean by CDH?

1 A. Congenital dislocation of the hip.

2 Q. All right. In regard to this case
3 involving Terry Starkey, who was your lawyer
4 in that case?

5 A. Again, I don't know his last name.
6 His first name is Bill.

7 Q. He is from the firm of Jacobson
8 Maynard, isn't he?

9 A. I don't know what firm he is with.

10 Q. And that is the same firm that Susan
11 Reinker is from, isn't it?

12 A. If he is with Jacob & Maynard, then
13 it would be the same firm.

14 Q. And those attorneys represent PIE
15 Mutual, don't they?

16 MS. REINKER: Objection.

17 A. I don't know.

18 Q. Isn't it true you are insured by PIE
19 Mutual?

20 MS. REINKER: Objection.

21 A. I have insurance. I have never
22 identified with whom I am insured with.

23 Q. Well, according to the answers to
24 your interrogatories, that is your insurance

1 company.

2 A. Okay.

3 Q. And that is the same company that
4 insures Dr. Heiple.

5 A. Okay.

6 Q. Now don't you think that you have
7 some conflict here in regard to a financial
8 outcome of this case affecting your premiums?

9 MS. REINKER: Objection. The doctor
10 just stated he had no idea who his carrier
11 was.

12 MR. COTICCHIA: I am asking him a
13 question. He answered it in the
14 interrogatories.

15 MR. ALLISON: In the other cases you
16 are talking about?

17 MS. REINKER: In the other case?

18 A. I really can't remember. I never
19 pay attention. I suppose -- to my knowledge,
20 there are two firms that do, handle the
21 thing. And I have never been quite sure who I
22 am with. So if I have answered that, then I
23 have had to ask to find out, but I don't
24 recall.

1 Q. My question is are **you** concerned **or**
2 don't you have a concern in regard to the
3 financial outcome **of** this case affecting your
4 premiums for medical malpractice?

5 MS. REINKER: Objection.

6 A. would you repeat that, please?

7 Q. Do you have a financial interest in
8 the outcome of this case because it may have
9 an effect on your premiums for medical
10 malpractice insurance?

11 MS. REINKER: Objection.

12 A. No, because I don't even know what I
13 pay in my premiums.

14 Q. Well, if it is mutual, you
15 participate in the gains and losses.

16 MS. REINKER: Objection.

17 A. I have never paid attention to that.

18 Q. You are a stockholder in PIE, aren't
19 you?

20 MS. REINKER: Objection.

21 A. I have no idea if I am a
22 stockholder. If I am, I have not paid
23 attention to it. I am not concerned about
24 that.

1 Q. I am not going through every
2 question and answer, but during your
3 deposition in the case of Carolyn Mox you
4 stated you were a stockholder of PIE.

5 MS. REINKER: Objection.

6 A. Well --

7 Q. I don't think that has changed, has
8 it?

9 MS. REINKER: PIE is not a stock
10 company.

11 MR. COTICCHIA: It is a mutual
12 company.

13 A. I really don't know. I don't know,
14 because that was a long time ago and I have
15 never paid any attention to that.

16 BY MR. COTICCHIA:

17 Q. Okay. Was Terry Starkey a primary
18 total hip replacement?

19 A. Yes.

20 Q. I would like to call your attention
21 to the operative report of August 6, 1990.
22 Under the heading Operative Note, which is in
23 the middle of the page -- as a matter of fact,
24 right in the middle of that paragraph, "Short

1 external rotators are identified and tagged
2 using #1 Vicryl suture."

3 Do you see that, Doctor?

4 A. Um-hmm.

5 Q. Did I quote that correctly?

6 A. Yes.

7 Q. What is the short external rotator?

8 A. Those are the muscles about the
9 capsule.

10 Q. Why were they tagged?

11 A. I would presume that he tagged them
12 so that he could reapproximate them later in
13 the closure of the wound.

14 Q. Do you tag the rotator muscles
15 during hip surgery?

16 A. No.

17 Q. Why don't you tag them?

18 A. Because I don't reattach them.

19 Q. And again, there *is* nothing in here
20 in regard to identifying the sciatic nerve, is
21 there?

22 A. No.

23 MR. ALLISON: Objection.

24 Q. Do you know what portion of the

1 sciatic nerve of Mrs. Zurawski was lacerated?
2 You are welcome to turn to the second
3 operative report.

4 A. Do you want me to read what it says?

5 Q. No. You can just tell me, if you
6 know.

7 A. It says "it appeared to be the
8 tibial division of the sciatic nerve."

9 Q. Now in regard to what has been
10 marked exhibit, Halley Exhibit 1, where is
11 that area on the diagram? If you can point it
12 out.

13 A. It is the portion that contributes
14 to the tibial nerve

15 Q. Will you mark it with a ball point
16 pen?

17 MS. REINKER: Objection. Do you
18 feel comfortable knowing --

19 A. Here is the tibial nerve, so that
20 just follows that up and this part is for the
21 tibial and this part is for the common
22 peroneal.

23 Q. Will you mark it just so we know if
24 we have to refer --

1 MR. ALLISON: The tibial nerve, not
2 the area where, that it was damaged, correct?

3 A. All I can say is that the tibial
4 nerve comes up and blends in with the common
5 paroneal, and then they make the sciatic
6 nerve.

7 Q. Right. You mentioned that earlier.
8 The sciatic nerve branches off into the tibial
9 nerve and the paroneal, right?

10 A. Um-hmm.

11 Q. The note says "Approximately 50
12 percent of the fascicles," f-a-s-c-i-c-l-e-s,
13 "of the tibial division were noted to be
14 interrupted. While 50 percent was in
15 continuity."

16 Will you mark on here where the
17 tibial division is that Dr. Heiple is talking
18 about?

19 A. Well, it doesn't show up here. You
20 see, the tibial division and paroneal division
21 blend in. So up in the upper part of the
22 nerve, what he thought was the tibial portion
23 is where they are together.

24 Q. Okay.

1 A. And they said in here it **is**
2 somewhere around the acetabulum.

3 Q. Around the acetabulum, right, below
4 the level of the acetabulum. And that is
5 posterior, is it not?

6 A. Should be, yes.

7 Q. All right. So where would that be
8 in this diagram?

9 A. Well, you don't see the acetabulum
10 in this diagram.

11 Q. No, because it shows the muscles and
12 the nerves.

13 A. Covered up by muscles.

14 Q. Approximately where would that be?

15 A. The greater trochanter is a little
16 bit below, so it is going to be somewhere in
17 this whole area here.

18 Q. Will you draw a circle in that area
19 generally? I know this is not exactly
20 perfect.

21 A. I would assume there, from their
22 description.

23 Q. In layman's term, would that be in
24 the area of the buttock, but deeper of course?

1 A. Yes, Maybe a bit lower. And
2 probably in the area of the buttock.

3 Q. I don't know if I asked you this.
4 Did you read a report prepared by Dr. Michael
5 Devereaux?

6 A. I don't think **so**.

7 Q. Okay. Do you agree that Mrs.
8 Zurawski has a permanent injury to the sciatic
9 nerve?

10 MR. ALLISON: Objection.

11 MS. REINKER: Objection.

12 A. I don't have his report.

13 Q. Well, it has been over three years
14 since the surgery. Do you want a copy of his
15 report?

16 MR. ALLISON: Only if you intend to
17 give the doctor sufficient time to sit here
18 and read it.

19 MR. COTICCHIA: I will give him all
20 the time he wants.

21 BY MR. COTICCHIA:

22 Q. Independent of any report, based
23 upon your own knowledge of the damages
24 described in Dr. Heiple's second operative

1 report, which is the repair of the sciatic
2 nerve. I also call to your attention Dr.
3 Heiple's notes dated -- this one is August 6,
4 1990.

5 A. Okay.

6 Q. Will you go to the middle paragraph
7 where the -- right in the middle it says "This
8 may have been as much as 50 percent of the
9 tibial division, probably somewhat less and
10 certainly only about 20 percent of the entire
11 nerve."

12 So as I understand it, where this
13 nerve branches, where the sciatic nerve
14 branches, the doctor is talking about 50
15 percent of that tibial branch; is that
16 correct?

17 A. That's what it says here.

18 Q. That represents 20 percent of the
19 entire nerve?

20 A. That was his estimate.

21 Q. Okay. Down toward the end of that
22 paragraph the doctor states "several were
23 shredded enough to be unrepairable."

24 And based on the positive results of

1 an EMG conducted on Mrs. Zurawski ~~for~~ the
2 tibial -- ~~for~~ the sciatic nerve, would you
3 agree that this **is** a permanent injury?

4 MR. ALLISON: Objection.

5 MS. REINKER: Objection.

6 A. Well, some of those that were not
7 repairable, they can still jump the gap and
8 become healed, maybe not completely normal.

9 Q. Has --

10 A. I would anticipate that she will
11 probably have some residuals, but how much I
12 couldn't comment on.

13 Q. Has Terry Starkey made a complete
14 recovery in regard to complete recovery of his
15 nerve?

16 MS. REINKER: Objection.

17 MR. ALLISON: Objection.

18 A. I don't think we are here to discuss
19 that case.

20 Q. You are talking about the sciatic
21 nerve in some cases the shredded ends can jump
22 the gap.

23 MS. REINKER: Objection. Do you
24 have a question?

1 Q. Yes, In regard to Terry Starkey,
2 one of your patients, has he recovered from
3 the sciatic nerve injury?

4 MS. REINKER: Objection.

5 A. I don't think we can make comment on
6 that. That is not involved in this case.

7 Q. I am asking you as an expert.

8 MS. REINKER: Objection. I am going
9 to instruct the doctor not to answer any
10 questions pertaining to his own litigation.
11 It is not relevant.

12 MR. COTICCHIA: I think the doctor
13 has said in his own report that some patients
14 make almost a complete recovery.

15 MS. REINKER: Um-hmm.

16 BY MR. COTICCHIA:

17 Q. Here is the last page, Doctor, let's
18 turn to the last page of your report.

19 A. Okay.

20 Q. Page two. You state in the first
21 paragraph, "Patients with incomplete
22 neurological recovery at follow-up
23 examination, one year or later, function at or
24 near levels of individuals who have had no

1 sciatic nerve damage."

2 That is your statement, isn't it?

3 A. Um-hmm.

4 Q. My question is in regard to Terry
5 Starkey's sciatic nerve damage. First of all,
6 he was your patient, wasn't he?

7 A. We are not going to comment on my
8 case.

9 Q. You are talking about patients. I
10 am asking you about one of your own patients.

11 A. I am not talking about Terry
12 Starkey.

13 Q. You can object, but I think you have
14 to answer the question.

15 MS. REINKER: You can answer that
16 one.

17 Q. Was Terry Starkey your patient?

18 A. Yes.

19 Q. Today has Terry Starkey completely
20 recovered from sciatic nerve damage?

21 MS. REINKER: I instruct the witness
22 not to answer.

23 MR. COTICCHIA: You cannot instruct
24 the witness not to answer.

1 MS. REINKER: I am instructing the
2 witness not to answer.

3 MR. COTICCHIA: He has made a broad
4 statement that patients with incomplete
5 neurological recovery. Now how would he know
6 any better than with his own patient.

7 MS. REINKER: By the literature. I
8 am going to instruct the witness not to
9 answer.

10 MR. COTICCHIA: Maybe we can depose
11 Mr. Starkey.

12 MS. REINKER: That is your
13 business.

14 MR. COTICCHIA: All right. Maybe we
15 will just call him as a witness.

16 MS. REINKER: Whatever.

17 BY MR. COTICCHIA:

18 Q. How about Carolyn **Mox**, did she make
19 a complete recovery from her sciatic nerve
20 injury?

21 MS. REINKER: I instruct the witness
22 not to answer.

23 Q. **Dr.** Halley?

24 MS. REINKER: I am going to instruct

1 him not to answer.

2 A. I am not going to answer that.

3 Q. Well, you don't have to answer that
4 question. Do **you** know if she made a complete
5 recovery from her sciatic nerve injury?

6 A. I don't know.

7 Q. Do you know if Mr. Starkey has made
8 a complete recovery?

9 A. I don't know.

10 Q. Was he examined by a neurologist as
11 an expert in that case?

12 A. I am not discussing that case.

13 Q. Why not?

14 MS. REINKER: I am instructing him
15 not to answer any questions about his own
16 litigation.

17 MR. COTICCHIA: There will be a
18 motion to compel. He is an expert. If he
19 can't talk about what happens to his own
20 patients, maybe he is not an expert.

21 MR. ALLISON: That is an interesting
22 and novel theory.

23 MR. COTICCHIA: We try to be novel,
24 *you* know. Plaintiffs try to use their

1 imagination. As unimaginative as I am.

2 BY MR. COTICCHIA:

3 Q. Are there any other patients which
4 have brought a claim against you independent
5 of lawsuits for sciatic nerve damage?

6 MS. REINKER: Objection.

7 A. Not that I am aware of.

8 Q. Have you ever damaged a sciatic
9 nerve on other patients, even though there was
10 no claim made?

11 A. How does that relate to what I am
12 doing here?

13 Q. Well, you are the medical expert. I
14 want to know if it has happened to you in
15 other cases, independent of any claim, any
16 lawsuit, possibly something you wrote up in
17 your research or that you discussed with
18 resident surgeons.

19 MS. REINKER: Are you asking the
20 doctor whether he had any other patients who
21 sustained the complication of sciatic nerve
22 problem after surgery?

23 MR. COTICCHIA: Right.

24 A. Yes.

1 Q. How many?

2 A. Possibly two.

3 Q. Did they recover from a sciatic
4 nerve injury?

5 A. They didn't have much disability.

6 Q. Did they recover from the sciatic
7 nerve injury?

8 MR. ALLISON: What do you mean by
9 recover? The doctor answered the question.

10 A. They had very, very minimal things
11 such as the literature points out, that it
12 really didn't interfere with their
13 post-operative recovery once they healed.

14 Q. Do you agree that many of these
15 sciatic nerve injuries do not completely heal?

16 A. Yes.

17 Q. When did you perform surgery on
18 Terry Starkey?

19 MS. REINKER: Objection. Instruct
20 the witness not to answer.

21 Q. Did you report Terry Starkey's case
22 in any medical journal or seminar or symposium
23 or conference?

24 MS. REINKER: Object. Instruct the

1 witness not to answer.

2 A. I am not going to discuss the case.

3 Q. Did you report Carolyn Mox's case in
4 any medical journal, seminar or symposium or
5 conference?

6 A. I am not going to discuss the case.

7 MR. COTICCHIA: Will you do
8 whatever you do to mark these questions.

9 (Pause in the proceedings.)

10 BY MR. COTICCHIA:

11 Q. Did you discuss Mrs. Zurawski's case
12 with any physician?

13 A. No.

14 Q. Not even with Dr. Heiple?

15 A. I don't even **know** Dr. Heiple.

16 Q. All right. Did you discuss it with
17 Dr. Petersilge?

18 A. No.

19 Q. You haven't discussed it with any
20 other physician; is that correct?

21 A. ,Correct.

22 Q. Have you ever lectured on or written
23 papers or reports or discussed **at** symposiums
24 or conferences sciatic nerve damage --

1 A. Let me see my bibliography.

2 MR. ALLISON: He has your CV.

3 A. Not to my knowledge.

4 Q. You have not written anything about
5 this type of injury in total hip replacement
6 surgery?

7 A. I don't think so.

8 Q. Doctor, in your report you state
9 such -- in your report of July 13, 1992 that
10 you mailed to Miss Reinker, you state that
11 "Such injuries can occur in the best of
12 hands;" is that correct? It is the second
13 paragraph, second page.

14 MR. ALLISON: Second to the last
15 paragraph. I guess that depends.

16 A. Yes.

17 Q. The sciatic nerve, I think you
18 stated, varies in size depending on the size
19 of the patient, from approximately half an
20 inch to three quarters of an inch, doesn't it?

21 A. That is a generalization. I mean we
22 have never sat'down and measured them. Just
23 like the size of your finger, could be
24 bigger --

1 Q. Do you agree that as an orthopedic
2 surgeon that is an easily identifiable nerve?

3 A. Oh, yes.

4 Q. What precautions did Dr. Heiple and
5 Dr. Petersilge take to protect the nerve?

6 MR. ALLISON: Objection.


7 MS. REINKER: Objection. That has
8 been answered long ago.

9 A. I answered that before.

10 Q. I don't understand your answer.

11 MS. REINKER: Objection. He has
12 answered that before, Joe.

13 Q. What precautions did he take?

14 MR. ALLISON: Objection. 

15 Q. Can you tell from the record?

16 A. Well, in the operative note they
17 make no specific mention, but as I stated
18 before, I wouldn't expect them to do so in a
19 primary case.

20 Q. Well, the reason I ask you is
21 because in your letter to Miss Reinker, you go
22 on to state that "This can happen whatever
23 precautions taken." And yet, you can't tell
24 from the operative note prepared by Drs.

1 Heiple and Petersilge what precaution can be
2 -- what precautions were taken, can you?

3 MR. ALLISON: Joe, he has already
4 testified that there is nothing in there about
5 it. There is nothing in there about the
6 sciatic nerve at all.

7 MR. COTICCHIA: Right.

8 MR. ALLISON: To try and **do** what you
9 are doing, especially since we have been
10 through this already once, is totally
11 inappropriate.

12 MR. COTICCHIA: The reason I bring
13 it up is we just started talking about the
14 doctor's report. It says whatever precaution
15 is taken, this can happen.

16 BY MR. COTICCHIA:

17 Q. And my question is simple. You
18 don't know what precautions were taken based
19 on what you have read in this case, do you?

20 MR. ALLISON: What the doctor has
21 previously testified to is there is nothing in
22 the operative report --

23 MR. COTICCHIA: I would like him to
24 answer.

1 MR. ALLISON: -- that he didn't
2 recall **from** the deposition.

3 MR. COTICGHIA: Thank you for your
4 testimony.

5 BY MR. COTICCHIA:

6 Q. Doctor, can you answer that
7 question?

8 A. I already have.

9 Q. It is also true isn't it, that even
10 in the best of hands in regards to surgeons,
11 the standard of care can occasionally be
12 breached?

13 MS. REINKER: Objection.

14 A. I don't understand that question.

15 Q. Well, you said that this can happen
16 in the best of hands in regard to your report
17 to Miss Reinker, didn't you?

18 A. Yes.

19 Q. And you don't find any negligence by
20 the surgeons in this case, do you?

21 A. No.

22 Q. And my question to you is even in
23 the best of hands, occasionally medical
24 standards of care are breached, aren't they?

1 A. I don't know.

2 Q. You don't know. You have never seen
3 that in your practice?

4 A. No.

5 Q. Did a doctor testify against you or
6 write a report in regard to your damage to the
7 sciatic nerve with Carolyn Mox?

8 A. I would imagine --

9 MS. REINKER: Objection.

10 A. -- but we are not discussing that
11 case.

12 Q. Was there a medical expert who
13 stated you breached the standard of care in
14 regard to your case against Terry Starkey?

15 A. We are not going to discuss the
16 case

17 Q. Okay. I may have asked this
18 question before. I don't remember the
19 answer.

20 Have you sat on any review
21 committee's for PIE or for the law firm of
22 Jacobson Maynard?

23 MS. REINKER: Objection.

24 A. I don't recall. I have already

1 answered that question.

2 Q. Have you reviewed any claims or
3 written any reports at the request of Miss
4 Reinker in regard to other cases independent
5 of this one?

6 MS. REINKER: That has been
7 answered. No.

8 A. I don't think so.

9 Q. Are there other nerves that you are
10 concerned about independent of the sciatic
11 nerve when you perform total hip replacement?

12 A. Yes.

13 Q. What nerves are they?

14 A. Femoral nerve.

15 Q. Where does that lie?

16 A. In the front.

17 Q. Front of what?

18 A. Front of the hip joint.

19 Q. When you have the posterior lateral
20 incision of the type Mrs. Zurawski had,
21 obviously there is very little risk to have
22 damage to the femoral nerve, from that side,
23 isn't there?

24 A. Same risk as in any surgery.

1 Q. Well, what nerve is closer to the
2 incision that Dr. Heiple or Dr. Petersilge
3 did, the femoral or the sciatic nerve?

4 A. With that approach, you are going to
5 be closer to the sciatic nerve, but there is
6 potential to damage the femoral nerve also.

7 Q. Isn't it true that when the incision
8 is inferiorly and posteriorly in regard to the
9 hip capsule, the concern is damage to the
10 sciatic nerve?

11 A. would you restate your question? I
12 don't understand what you are trying to get
13 to.

14 Q. Isn't it true when the incision is
15 done inferiorly and posteriorly, the only
16 nerve you are concerned about at that point,
17 the incision, is the sciatic nerve?

18 A. I suppose with the incision itself,
19 yes.

20 Q. Is it reasonable and necessary to
21 take steps not to cut the nerve?

22 A. Of course it is reasonable.

23 Q. As a surgeon, do you do everything
24 possible to avoid cutting the sciatic nerve?

1 A. I think we have been over that and
2 over that.

3 Q. As a surgeon, do you do everything
4 possible to avoid cutting the sciatic nerve?

5 MR. ALLISON: Objection.

6 MS. REINKER: Objection.

7 A. Well, I try to.

8 Q. As I -- as we talked about earlier,
9 the retractor muscle was tagged by the
10 surgeon, either Dr. Heiple or Dr. Petersilge,
11 wasn't it?

12 A. The what muscle?

13 Q. I am sorry. I said retractor. I
14 used the wrong word. The rotator.

15 MS. REINKER: Where is that, Joe?

16 MR. COTICCHIA: Right in the middle
17 under Operative Note. Short external rotators
18 were identified and tagged.

19 A. Tagged.

20 Q. But there is nothing in the note
21 about tagging the sciatic nerve, is there?

22 MS. REINKER: Objection. Joe, you
23 are repeating yourself.

24 MR. COTICCHIA: Yes, I am.

1 MS. REINKER: You are going to
2 repeat that series of questioning?

3 MR. COTICCHIA: This is deposition.

4 A. Are you asking did they tag the
5 sciatic nerve?

6 Q. Yes.

7 A. There is nothing in there to suggest
8 it nor is there anything in there to suggest
9 they didn't tag it.

10 Q. But you think it is important enough
11 when you prepare your operative note to
12 identify and protect the sciatic nerve and you
13 include it in your note, don't you?

14 MR. ALLISON: Objection.

15 MS. REINKER: Objection.

16 A. In this approach, yes. The sciatic
17 nerve is visualized, so I just say the sciatic
18 nerve is visualized. I don't think it is
19 necessary to say that though. There is --

20 MS. REINKER: That is okay.

21 MR. COTICCHIA: Let him answer. I
22 want to know what he thinks. He is the
23 expert.

24 MS. REINKER: You are now the second

1 time around in the question. Let's just get
2 this done. Do **you** have anything new to ask?

3 MR. CUTICCHIA: You wanted to add
4 something, go ahead and add it. Why cut **off**
5 your own expert?

6 Go ahead, Doctor. What did you want
7 to add to that?

8 MR. ALLISON: If anything.

9 MS. REINKER: **If** anything.

10 THE WITNESS: Repeat the question
11 again. I lost my train of thought.

12 (Record read back as requested.)

13 MS. REINKER: Would *you* read back
14 his answer, please, **so** he **can** see if there is
15 anything he wants to add?

16 (Record read back **as** requested.)

17 MS. REINKER: Is there something you
18 want to add?

19 THE WITNESS: No, that is good
20 enough.

21 MR. COTICCHIA: Thank you.

22 BY MR. COTICCHIA:

23 Q. Now independent of any medical
24 ma practice case, have you been a medical

1 expert in any type **of** injury **cases**?

2 A. I don't think **so**. I don't know what
3 you mean by that.

4 Q. Well --

5 A. I must not have been because I
6 don't --

7 Q. A patient that you treat gets hurt
8 in a car accident or an accident at work or
9 injured by a machine or gets caught in some
10 kind of a machinery.

11 A. Okay.

12 Q. Have you ever been a medical expert
13 in regard to cause of injury and treatment?

14 A. I don't think so. I can't recall.
15 I mean we, you know, we write reports. They
16 are injured and we write a report stating they
17 were injured. But I don't think I have ever
18 testified.

19 Q. How about a deposition, did you ever
20 give a deposition on behalf of an injured
21 patient independent of medical malpractice?

22 A. I can't recall.

23 Q. Have **you** ever served on **any**
24 morbidity, mortality or surgical committees or

1 peer review committee with the duty of
2 evaluating medical care provided by a
3 physician?

4 A. No.

5 Q. You are not a member of any
6 committees at Riverside Hospital?

7 A. No.

8 Q. Are you aware of any statistical
9 studies, you identified an article,
10 independent of the article you identified, any
11 paper or research, textbooks or treatise
12 providing information in regard to the injury
13 to the sciatic nerve during total hip
14 replacement surgery?

15 A. Any specific article?

16 Q. Independent of the one we talked
17 about earlier.

18 A. I can't recall offhand. But there
19 are certainly plenty of them in bone and joint
20 journals, if you go back and look at the
21 reference's.

22 Q. Now it is my understanding that your
23 opinion is that Dr. Heiple and Dr. Petersilge
24 did not breach any standard of medical care;

1 is that correct?

2 A. Correct.

3 Q. In regard to the damage to Mrs.
4 Zurawski's sciatic nerve; is that correct?

5 A. Correct.

6 Q. Okay. What is the basis of that
7 opinion?

8 A. There is no comment in the operative
9 note of any undue difficulty to the
10 operation. It appears to have been a very
11 straight-forward case. And to my knowledge,
12 they had no idea that there was any problem
13 with the sciatic nerve until, until in the
14 recovery room. Once they found out, they took
15 her back to surgery to explore it, not knowing
16 what they would find.

17 Q. All right. In regard to the lack of
18 comment in the operative report, do you agree
19 that it is possible there is no comment
20 because they just never saw the sciatic
21 nerve?

22 MR. ALLISON: Objection.

23 A. Anything is possible.

24 Q. So you agree with that, that it is

1 possible they didn't see the sciatic nerve?

2 MR. ALLISON: Objection.

3 A. I said anything is possible

4 Q. It is possible they damaged the
5 sciatic nerve and they didn't know it?

6 MR. ALLISON: Objection.

7 A. That is possible.

8 Q. As a matter of fact, turning back to
9 Dr. Heiple's note of August 6, 1990.

10 A. Yes.

11 Q. His note states right in the middle,
12 "At that time of that exploration, it was
13 found that apparently one of the retractors or
14 some instrument had caught the edge of the
15 sciatic nerve and created a tear in the margin
16 of the tibial division of the nerve."

17 Those are Dr. Heiple's own words,
18 aren't they?

19 A. Those are his words there.

20 Q. Now based on the fact that as you
21 say, there is no comment in the operative
22 note, but there is certainly a comment in his
23 note, office notes, the same day as the
24 surgery, isn't it more likely that Dr. Heiple

1 and Dr. Petersilge just never saw the sciatic
2 nerve?

3 MR. ALLISON: Objection.

4 MS. REINKER: Objection.

5 A. I don't think they know why the
6 sciatic nerve was damaged.

7 Q. Why do you say that?

8 A. well, apparently it is
9 questionable. I don't think that they are
10 aware at all of the cause of the nerve damage.

11 Q. Do you agree at the time of the
12 primary total hip surgery, the surgeons, both
13 Dr. Heiple and Dr. Petersilge, did not know
14 the sciatic nerve had been damaged?

15 A. Yes.

16 Q. They didn't know that until Mrs.
17 Zurawski was back in the recovery room,
18 correct?

19 A. Correct.

20 Q. I call your attention to the
21 discharge summary signed by Dr. Heiple, and it
22 is dated August 18, 1990.

23 MS. REINKER: Anything in
24 particular?

1 Q. Yes. Do you see the note in capital
2 letters, it says hospital course?
3 A. Yes.
4 Q. And in the middle it says the
5 sciatic nerve, do you see that?
6 A. Yes.
7 Q. Doesn't it state "The sciatic nerve
8 had been stretched likely beneath one of the
9 retractors"?
10 A. That is what he has placed there.
11 Q. He says that is likely, doesn't he?
12 MS. REINKER: The words are what
13 they are.
14 Q. Does that sound like a doctor that
15 knows what he is talking about?
16 A. Well, it sounds to me that he is not
17 sure. I don't think he knows the cause.
18 Q. Doctors try to give the best
19 information they can in their reports, don't
20 they?
21 A. I believe so.
22 Q. And he wouldn't say that, would he
23 -- let me ask you, you wouldn't put anything
24 down like that if you were guessing, would

1 you?

2 MR. ALLISON: Objection.

3 MS. REINKER: Objection.

4 A. I think that sometimes as a
5 physician, you stretch the limits trying to
6 figure out what is going on and make a
7 statement when you really don't know.

8 Q. So you are not relying on that
9 statement when you give your opinion?

10 A. I take that -- I take that just the
11 opposite of the way you take it. You take it,
12 I assume, that as to likely cause; I look at
13 that statement as he really doesn't know why.

14 Q. Well, I would say it is -- I don't
15 want to play with words, but it is more likely
16 than less likely, isn't it?

17 A. I have just given you my
18 interpretation.

19 Q. My question is it is more likely
20 than less likely.

21 MR. ALLISON: What is more likely
22 than less likely?

23 MS. REINKER: Objection. These are
24 not appropriate questions to put to this

1 witness.

2 MR. COTICCHIA: Sure they **are**.

3 MS. REINKER: He did not dictate
4 this discharge summary.

5 MR. COTICCHIA: I can't help it.

6 MS. REINKER: He doesn't know why --

7 MR. COTICCHIA: He said he reviewed
8 it and he based his opinion on these records.

9 MR. ALLISON: **So?**

10 THE WITNESS: I just told you from
11 review of those records I don't think that
12 they fully understand why the nerve had a
13 partial laceration or stretch or whatever it
14 was.

15 BY MR. COTICCHIA:

16 Q. My question is when you wrote your
17 report to Miss Reinker on July 13, 1992, did
18 you take into consideration Dr. Heiple or Dr.
19 Petersilge's statement "The sciatic nerve had
20 been stretched likely beneath one of the
21 retractors, and there was partial laceration
22 of several of the nerve fascicles"? Did you
23 take that statement into consideration?

24 MR. ALLISON: I don't understand

1 your question. And I may be not nearly as
2 intelligent as you and the doctor are, but I
3 have no idea what you are asking the witness.
4 And until I understand the question, unless
5 the doctor can understand it, I really don't
6 think it should be answered.

7 MR. COTICCHIA: Please read the
8 question back.

9 A. I already made the statement, I
10 interpret it just opposite from the way you
11 interpret it.

12 Q. So if you interpret just the
13 opposite, then the statement is the sciatic
14 nerve has been stretched unlikely by the
15 retractor?

16 A. I interpret that as that they really
17 don't know what stretched or damaged the
18 sciatic nerve. And --

19 Q. Let me ask you a question: Within
20 reasonable medical probability, was the
21 sciatic nerve damaged by the retractor?

22 MR. ALLISON: Objection.

23 MS. REINKER: In his opinion?

24 A. In my opinion I can't make a comment

1 ~~on that.~~

2 Q. Why not?

3 A. ~~Because I don't know.~~

4 Q. Based on your review of the
5 operative report, you don't know?

6 A. Because I don't think they know.

7 Q. Based on your review of the clinical
8 resume, you don't know?

9 A. I just told you based upon what I
10 saw, yes.

11 MS. REINKER: Yes.

12 Q. So this statement, "The sciatic
13 nerve had been stretched likely beneath one of
14 the retractors" is not a reasonably medically
15 certain or probable statement in your
16 opinion?

17 MR. ALLISON: Objection.

18 MS. REINKER: Objection.

19 A. In my opinion, I have already stated
20 I look at that statement totally different
21 from you."

22 Q. I understand that. But you are
23 taking -- you are saying you are taking it
24 totally different from what **is** here in the

1 record?

2 A. My interpretation is that they don't
3 understand the cause of injury to the nerve.
4 That they don't know why.

5 Q. Then why would a doctor put this in
6 a medical ..record?

7 A. You are going to have to speak to
8 whomever dictated that because I can't comment
9 for them.

10 Q. So you are -- let me ask you another
11 question: Aren't medical records,
12 particularly clinical resume, to be reasonably
13 accurate?

14 MR. ALLISON: Objection.

15 MS. REINKER: Objection.

16 A. Well, of course any document is to
17 be reasonably accurate. Sometimes it is a
18 synopsis, some people give a synopsis, some
19 people go into great detail. From that
20 statement, I am trying to make my point clear,
21 and that is that I don't interpret that as
22 them knowing the etiology of the damage to the
23 nerve.

24 Q. Do you try to, as a medical expert,

1 do you, when you prepare a clinical resume, do
2 you make that resume reasonably accurate?

3 MR. ALLISON: Objection. Go ahead
4 and answer it.

5 A. You are talking about discharge
6 summary?

7 Q. Yes. Discharge summary and clinical
8 resume I am using synonymously.

9 A. I consider a discharge summary and I
10 do just about that, I make it a brief summary
11 usually. Because if -- it is something that I
12 have in my chart for my patients at least, I
13 can come back and just give me a brief
14 overview. Now if for some specific reason I
15 want to get real detailed, or I think that
16 maybe another doctor is going to want this,
17 maybe a referring physician for some special
18 problem, then I will make it detailed. But
19 most of the time it is just what it says, a
20 summary.

21 Q. If you make your summary brief, are
22 they also accurate?

23 A. Yes, I think they are accurate. I
24 just put down the main diagnoses and many

1 times -- I don't put every little, you know,
2 blood count in or electrolyte finding or
3 things like that.

4 Q. And when another doctor or board
5 certified orthopedic surgeon prepares a
6 clinical resume or discharge summary, would
7 you expect within the standard of care that
8 summary or that resume to be accurate?

9 MR. ALLISON: Objection.

10 A. I think he has been accurate here.
11 If you look here, he has final diagnosis,
12 avascular necrosis of the right hip, number
13 two, hypercalcemia, number three, sciatic
14 nerve injury. I think that is very accurate
15 there.

16 Now when you get to the rest, I
17 think it is speculative and I can't make
18 comment on a speculative statement.

19 Q. Independent of what is in the
20 record, if you exclude the retractor, would
21 you agree that Mrs. Zurawski's sciatic nerve
22 was damaged by some surgical instrument?

23 MR. ALLISON: Objection.

24 MS. REINKER: Objection.

1 A. you could assume that, but I don't
2 think you can be 100 percent certain in that
3 case. I mean obviously some sharp object or
4 firm object, not necessarily even sharp, could
5 do that. And -- but I don't -- and it could
6 have been manmade or could have been natural.
7 I can't speculate on that. I don't know.

8 Q. All right. Well, you said earlier
9 she had no -- based on the record she had **no**
10 signs or symptoms of sciatic nerve damage
11 before the surgery.

12 A. I agree with you there.

13 Q. You agree that this happened at the
14 hands of the surgeon?

15 MR. ALLISON: Objection.

16 MS. REINKER: Objection?

17 A. Just happened at the time of the
18 surgery.

19 Q. And the surgeons were Dr. Heiple and
20 Dr. Petersilge, correct?

21 MR. ALLISON: Objection.

22 A. Yes.

23 Q. And it wasn't caused by anybody
24 else, was it?

1 A. No. I am not saying it was by them
2 either. But they were in attendance during
3 the case.

4 Q. My question is this, Doctor: Do you
5 agree that Dr. Heiple doesn't really know how
6 the sciatic nerve was damaged?

7 MR. ALLISON: Objection.

8 Q. Just a minute. You stated that your
9 conclusion is the opposite of my understanding
10 of the clinical resume. And my next question
11 is do you agree then in your opinion Dr.
12 Heiple doesn't know how the sciatic nerve was
13 damaged.

14 MS. REINKER: Objection. He can't
15 speak as to Dr. Heiple's state of knowledge.
16 He can only speak to his interpretation of the
17 records.

18 A. I am not going to speak for Dr.
19 Heiple. But my interpretation is this: That
20 it has been documented in the literature
21 throughou't, that in a good many of the cases,
22 possibly even over 50 percent, that the
23 etiology of the sciatic nerve problem is never
24 known.

1 Q. But it happens during surgery,
2 doesn't it?

3 A. Yes. But they never -- they never
4 fully identify what the cause of damage to the
5 nerve was.

6 Q. Well, what caused the damage in this
7 case?

8 A. We don't know.

9 Q. You don't know.

10 A. No.

11 Q. You don't have an opinion on cause
12 other than it happened during surgery?

13 A. I really don't know what caused it.

14 Q. What is a drop foot?

15 MR. ALLISON: Objection.

16 A. We already answered that.

17 Q. What is plantar flexion?

18 A. Plantar flexion is where you push
19 off with your foot. You can push your foot
20 downward.

21 Q. And what happened to Mrs. Zurawski
22 in her case?

23 A. Well, I would have to look at the
24 follow-up report.

1 Q. Does the sciatic nerve provide the
2 function of plantar flexion? Or one **of** the
3 branches of the sciatic nerve?

4 A. Yes.

5 Q. Will Mrs. Zurawski need future
6 surgery?

7 A. I don't know.

8 MR. ALLISON: Objection to that last
9 question.

10 MR. COTICCHIA: I said 6:00, I was
11 right. I don't have any more questions.
12 Thank you. And I don't care whether or not
13 the doctor waives signature.

14 MS. REINKER: I always suggest that
15 you not waive signature. What that means is
16 you can review the transcript to make any
17 corrections you deem necessary before your
18 signature is put on it. And I think in a
19 medical case it is a good idea **so** you can look
20 for spellings and things like that.

21 THE WITNESS: Okay.

22 - - - - -

23 Thereupon, the deposition **was**
24 concluded at 5:57 o'clock p.m.

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DAVID HALLEY, M.D.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my seal of office at
-----, Ohio, on this ----- day of
-----, 1993.

Notary Public in and for
the -----

My commission expires: -----

1 CERTIFICATE

2 STATE OF OHIO

3 COUNTY OF FRANKLIN : SS.

4 I, Kathryn E. Smith, a Registered
5 Professional Reporter and Notary Public in and
6 for the State of Ohio duly commissioned and
7 qualified, do hereby certify that DAVID
8 HALLEY, M.D. was by me first duly sworn to
9 testify to the truth, the whole truth, and
10 nothing but the truth in the cause aforesaid;
11 that the testimony then given by him was by me
12 reduced to stenotypy in the presence of said
13 witness, afterwards transcribed by means of
14 computer; that the foregoing is a true and
15 correct transcript of the testimony so given
16 by him as aforesaid; and that this deposition
17 was taken at the time and place in the
18 foregoing caption specified, and was completed
19 without adjournment.

20 I do further certify that I am not a
21 relative, counsel or attorney of either
22 party herein, or otherwise interested in the
23 outcome of this action.

24

1 IN WITNESS WHEREOF, I have hereunto set
2 my hand and affixed my seal of office at
3 Columbus, Ohio, on this 4th day of
4 October, 1993.

5 Kathryn E. Smith

6 KATHRYN E. SMITH, Notary Public -
7 State of Ohio.

8 My commission expires January 22, 1998.
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1 ORIGINAL

2 DEPOSITION OF: DAVID HALLEY, M.D.

3 DATE OF DELIVERY: 10-4-93

4 Joseph L. Coticchia Co., LPA
5 1640 Standard Building
6 Cleveland, Ohio 44113
By Mr. Joseph L. Coticchia,

7 Mr. Joseph L. Coticchia-----
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1 RUNFOLA & ASSOCIATES
2 995 SOUTH HIGH STREET
3 COLUMBUS, OHIO 43206
4 (614) 445-8477

5 October 1, 1993

6 Jacobson, Maynard, Tuschman & Kalur
7 1001 Lakeside Avenue
8 Suite 1600
9 Cleveland, Ohio 44114-1192

10 Attn: Ms. Susan Reinker

11 In Re: Geraldine Zurawski, et al. vs.
12 Kingsbury G. Heiple, M.D., et al.

13 Dear Ms. Reinker:

14 Your copy of the deposition of DAVID HALLEY,
15 M.D. taken on September 22, 1993, in the
16 above-captioned case has been submitted to
17 you. You will recall at the time of the
18 deposition that the deponent did not waive the
19 right to read the transcript and therefore
20 must now read and then sign the deposition
after making any pertinent changes, additions
or corrections.


21 If there are any changes to be made, they
22 should be made in the following fashion: On
23 the page provided at the end of the transcript
24 indicate the page of the correction, the line,
and then the change to be made and the reason
for making the change. Please have the
deponent sign on page 142 of the transcript
and have the signature notarized.

21 Pursuant to Ohio Rules of Civil Procedure, the
22 deponent now has seven days, after receipt of
23 this letter, in which to complete this.
24 After having done so, please return the
original signature page and original copy of
the correction sheet to this office, and
substitute xerox copies of said pages to your
transcript.

RUNFOLA & ASSOCIATES (614) 445-8477
COMPUTERIZED TRANSCRIPTION

1 Thank you very much for your assistance in
2 this matter.

3 Sincerely,

4 

5 Kathryn E. Smith
6 Registered Professional Reporter

7 cc: Joseph L. Coticchia, Esq.
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Gluteus
maximus m.

Internal
pudendal
artery and vein

Post.
femoral
cutan. n.

Acetabular and
transverse branches
(med. fem. circumfl. art.)

Muscular branches
of sciatic nerve
(tibial)

Sciatic nerve

Biceps femoris
(long head)

Semitendinosus m.

Semimem-
branosus m.

Tibial nerve

Popliteal vein
Popliteal artery

Tibial nerve

**DEPOSITION
EXHIBIT**

Halley 1

Small saphenous v.

Med. sural cutan. n.

Lat. sural cutan. n.

Fig. 369: Deep Nerves and Vessels of the Gluteal Region and Posterior Thigh

NOTE: 1) the course of the sciatic nerve as it passes through the greater sciatic foramen in the gluteal region, inferior to the piriformis muscle, lateral to the ischial tuberosity and under cover of the gluteus maximus muscle.

Gluteus
maximus
muscle

Greater
sciatic
foramen

Piriformis m.
Obturator
internus m.

Superior
gemellus m.

Bursa (under
obturator int. m.)

Biceps femoris m.

Sacrobuterous
ligament

Lesser sciatic
foramen

Gracilis m.

Semimembranosus m.

Adductor
magnus m.

Semimembranosus
muscle

Adductor
magnus m.

Semiten-
dinosus
tendon

Semimembranosus
tendon

Gas
(medial head)

Trochanteric
network

Quadratus
femoris m.

Perforating
artery

Adductor
magnus m.

Perforating
artery

Biceps femoris m.
(long head)

Perforating artery

Biceps femoris m.
(short head)

Common peroneal nerve

Communicating vein
(betw. small saphenous
vein and femoral vein)

Fig. 370: Deep Muscles of the Gluteal Region

NOTE: 1) in the gluteal region reflected, revealing the obturator of the obturator internus muscle severed.

2) in the thigh, the common peroneal nerve