

1 The State of Ohio,)
2 County of Cuyahoga.) SS:

3 IN THE COURT OF COMMON PLEAS

4 Pamela Nagy, et al.,)
5 Plaintiffs,) Case No.

6 -vs-) 357514

7 Cassens Transport)
8 Company, et al.,)
9 Defendants.)

10 - - - 000 - - -

11 Deposition of SHELDON KAFFEN, M.D., a
12 witness herein, called by the Plaintiffs as
13 if upon cross-examination under the statute,
14 and taken before Luanne Stone, a Notary
15 Public within and for the State of Ohio,
16 pursuant to the agreement of counsel, and
17 pursuant to the further stipulations of
18 counsel herein contained, on Tuesday, the
19 1st day of June, 1999 at 4:00 P.M., at the
20 offices of Sheldon Kaffen, M.D., 26900 Cedar
21 Road, the City of Beachwood, the County of
22 Cuyahoga and the State of Ohio.

23 - - - 000 - - -

24

25

1 APPEARANCES:

2

3

On behalf of the Plaintiffs:

4

Schulman, Schulman & Meros, by:

5

John Meros, Esq.

6

7

8

On behalf of the Defendants:

9

Quandt, Giffels & Buck, by:

10

Jeffrey A. Schenk, Esq.

11

12

13

- - - 000 - - -

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

SHELDON KAFFEN, M.D., being of
lawful age, having been first duly sworn
according to law, deposes and says as
follows:

CROSS-EXAMINATION OF SHELDON KAFFEN, M.D.

BY MR. MEROS:

Q May we have your full name for the
record?

A Sheldon Kaffen.

Q Dr. Kaffen, I'm going to try to move
along quickly here. I have a copy of the CV
that was given to me. I'm going to have it
marked as an exhibit. I just want to ask
you a few questions about it.

MR. MEROS: We'll mark this as
Raffen Depo Exhibit A.

(At this time Plaintiff's Exhibit
A was marked for identification purposes.)

BY MR. MEROS:

Q Dr. Kaffen, that was given to me by the
attorney who retained you in this case, Jeff
Schenk. Is that a current CV?

A Yes.

Q Okay. May I ask you, in addition to

1 the memberships that are noted on there, do
2 you have any other memberships in any
3 professional medical associations?
4 A The medical staff societies of the
5 hospitals: Meridia South Pointe, Mt. Sinai
6 Medical Center and Meridia Hillcrest
7 Hospital.
8 Q Are you not a current member of the AMA?
9 A No, I'm not.
10 Q All right. Are you a member of any
11 other orthopedic associations outside of the
12 two that are indicated there?
13 A The American Academy of Orthopedic
14 Surgeons.
15 Q Okay. You are Board certified
16 currently?
17 A Yes, I am.
18 Q And you were originally Board certified
19 in?
20 A 1966.
21 Q Okay. Tell me the area hospitals where
22 you have staff privileges.
23 A Mt. Sinai Medical Center and Meridia
24 South Pointe Hospital and Meridia Hillcrest
25 Hospital.

1 Q Okay. Can you tell me in the past year
2 how many medical examinations you have done
3 for attorneys that are in the category of
4 medical/legal matters?

5 MR. SCHENK: Objection.

6 THE WITNESS: Would you rephrase
7 that, please?

8 BY MR. MEROS:

9 a Sure.

10 A Or just repeat it.

11 a In the past year, and I'll rephrase it
12 for you, how many independent medical
13 examinations or defense medical examinations
14 have you performed?

15 MR. SCHENK: Objection.

16 THE WITNESS: I don't know
17 exactly. Depending upon the category, for
18 attorneys, I would say ten, 15 at the most.

19 BY MR. MEROS:

20 a Okay.

21 A Independent medical exams for the
22 Industrial Commission, maybe 50; independent
23 medical exams for the Bureau of Workers'
24 Compensation for matters of determination of
25 impairment, maybe 100. Then, there's an

1 occasional independent medical exam for
2 companies that provide independent medical
3 exams for their clients.

4 Q Okay. So, there are different
5 categories of medical examinations that you
6 perform?

7 A Yes.

8 Q And let me see if I can categorize
9 these. These are medical examinations of
10 people that you have no intention of
11 treating or where there's no expectation
12 that you will render treatment?

13 A Yes.

14 a Okay. All right. Let's talk about
15 that. In the category of medical exams
16 where there's no expectation that you will
17 render any treatment, we have a category of
18 Workers' Compensation exams where you are
19 retained by the state as a state examiner or
20 a state doctor?

21 A Yeah, I guess so.

22 Q Is there a better way to describe that?

23 A Just independent medical examination.

24 Q Okay.

25 A They have a requirement of the

1 examiners to be certified by the Bureau of
2 Workers' Comp., requiring specialization in
3 the specific field, and also having CME
4 credits, and taking a yearly course with the
5 bureau and with the Industrial Commission.

6 Q In terms of the categories of parties
7 who retain you for medical exams in which
8 there's no expectation that you will treat
9 the patient, at least I'm correct in saying
10 that one category is that the state Bureau
11 of Workers' Comp. --

12 A Yes.

13 Q -- retains you for medical examinations?

14 A Yes.

15 Q And those are situations in which
16 there's no expectation that you will treat
17 the person being examined.

18 A Yes.

19 Q A second category, then, would be
20 attorneys who would confer or consult with
21 you in medical/legal matters?

22 A They would -- well, I don't know if we
23 should use the word "confer" and "consult."
24 It would be a referral for purposes of
25 independent medical evaluation of these

1 patients.

2 Q Okay, and in that particular category
3 you would put the examination of Pamela
4 Nagy. She was examined by you for the
5 purposes of giving an opinion or giving
6 information to an attorney that referred her
7 or retained you for that purpose.

8 A Yes.

9 Q Is there a third category of a party or
10 an entity that would retain you for a
11 medical examination without the expectation
12 of you rendering treatment?

13 A Yes.

14 Q And what is that?

15 A There are companies whose business it
16 is to obtain medical examinations for
17 clients. Usually these are the U.S.
18 Department of Labor, Office of Workers'
19 Compensation programs, and they have certain
20 medical questions that need answering in
21 terms of allowance of the claim,
22 appropriateness of treatment, and
23 disability, and they contract with the
24 company. The company contacts the physician
25 and makes the appointment and gives the

1 appropriate medical records and asks
2 specific questions.

3 Q Okay. Is there a fourth category of
4 entity or party that retains your services
5 to examine a person without the expectation
6 of any treatment being rendered?

7 A The Industrial Commission of the state
8 of Ohio.

9 Q Is that separate from the Workers'
10 Compensation Bureau?

11 A It's a separate thing, yes.

12 Q Okay. Is there a fifth category of
13 entity that retains you for medical exams in
14 which no treatment is expected?

15 A No.

16 Q Okay. Are you still seeing patients on
17 a weekly basis to whom you render treatment?

18 A Yes, I do.

19 Q Okay. What percentage of your
20 professional time is spent on a weekly basis
21 seeing persons or patients for whom you will
22 not render treatment?

23 A Not including the time it takes to go
24 through the medical records and provide a
25 report --

1 Q Right.

2 A -- the actual patient load is, maybe,
3 65 percent my own patients that I treat, and
4 the balance are these independent medical
5 exams.

6 Q Okay. During the past calendar year,
7 during the past 12 months, how many times
8 have you either testified at trial or
9 testified at a deposition?

10 A Again, I can't be specific. I would
11 say that I have done, maybe, six depositions.

12 Q In the past year?

13 A Yes.

14 Q Can you give me a sampling of some of
15 the law firms in Cleveland that have
16 retained you or retained your services for
17 independent medical examinations?

18 MR. SCHENK: Objection.

19 THE WITNESS: I can't remember
20 the names.

21 BY MR. MEROS:

22 Q Okay. We have one here in this case.
23 I think it's Quandt, Giffels & Buck; is that
24 correct?

25 A Yes.

1 Q Have you done any work in the past year
2 on an independent medical examination basis
3 for the firm of Reminger & Reminger?

4 MR. SCHENK: Objection.

5 THE WITNESS: I don't remember.

6 BY MR. MEROS:

7 Q All right.

8 A I don't think so, but I can't be
9 specific.

10 Q Have you done any work in the past year
11 conducting independent medical examinations
12 for the firm of Gallagher, Sharp, Fulton &
13 Norman?

14 MR. SCHENK: Objection.

15 THE WITNESS: I don't think so.

16 BY MR. MEROS:

17 Q Or the firm of Davis & Young?

18 MR. SCHENK: Objection.

19 THE WITNESS: Again, I don't
20 think so.

21 BY MR. MEROS:

22 Q Okay. For the firm of Meyers,
23 Hentemann, Schneider & Rea?

24 MR. SCHENK: Objection.

25 THE WITNESS: Not to my

1 recollection.

2 BY MR. MEROS:

3 **a** Okay. In the past year, have you
4 performed any of the following surgical
5 procedures: discectomy or microdiscectomy?

6 A No.

7 Q Laminectomy?

8 A No.

9 Q Spinal fusion?

10 A No.

11 **a** When was the last time you performed
12 any back surgery on any patient?

13 A I stopped doing back surgery
14 approximately five or six years ago.

15 **a** Okay. Give me a sampling of the
16 surgeries that you have performed in the
17 past 12 months.

18 A Multiple knee arthroscopies for torn
19 cartilage. I do reconstructions for
20 anterior cruciate ligament ruptures; total
21 knee replacements; total hip replacements;
22 trauma fractures involving the extremities;
23 arthroscopy of the ankle; foot surgery,
24 bunions, hammer toes; shoulder surgery,
25 arthroscopy, repair of rotator cuff; a few

1 elbow arthroscopies as I recall in the past
2 year. Total hip replacements, did I mention
3 that?

4 Q Okay.

5 A That's about it.

6 Q What was the predominant reason for
7 your discontinuance of back surgeries five
8 or six years ago?

9 A I discontinued doing back surgery
10 because of the malpractice law, and the
11 number of patients that I was doing was
12 diminishing anyway. So, it wasn't worth
13 keeping up the high malpractice fee or extra
14 charges for the few patients that I felt
15 needed surgery that I would do.

16 Q Were you ever considered a specialist
17 in back surgery?

18 A No.

19 Q Were you ever considered a specialist
20 in any form of surgery?

21 A Orthopedic surgery in general.

22 Q Okay, any subspecialty within
23 orthopedic surgery?

24 A No.

25 Q Have you ever been sued for malpractice?

1 A Yes.

2 MR. SCHENK: Objection.

3 BY MR. MEROS:

4 Q May I ask when the last time was that
5 you were sued for malpractice?

6 MR. SCHENK: Objection.

7 THE WITNESS: There's a current
8 suit now. I can't remember exactly when;
9 about a year ago.

10 BY MR. MEROS:

11 a Okay, and that was not in connection
12 with any back operations, I take it.

13 MR. SCHENK: Objection.

14 THE WITNESS: That was not in
15 connection with a back operation.

16 BY MR. MEROS:

17 a Have you ever had any judgments or
18 verdicts against you for medical
19 malpractice?

20 MR. SCHENK: Objection.

21 THE WITNESS: There was one, God,
22 maybe 20, 25 years ago. It was a
23 settlement. I don't know if you'd call that
24 a judgment.

25 BY MR. MEROS:

1 *a* No, no. Can you recall at any time, as
2 a result of a malpractice suit, whether or

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20 A Yes.

21 Q Did you know at that time that you
22 would probably be testifying at some point
23 in this case?

24 A I didn't know for sure, but I thought I
25 probably would.

1 Q Do you have your working file with you
2 here --

3 A Yes.

4 Q -- concerning Pamela Nagy?

5 A Yes.

6 MR. MEROS: Is there any
7 objection to my taking a look at his working
8 file?

9 MR. SCHENK: No.

10 MR. MEROS: Okay.

11 BY MR. MEROS:

12 Q Without belaboring this, let me see if
13 I can quickly go through the information.
14 First of all, Dr. Kaffen, it appears that
15 there's a stack of medical records, or is
16 this not that?

17 A These are medical records, yes.

18 Q Okay. So, you had, apparently, some
19 medical records that would involve, and tell
20 me if I'm incorrect about this, therapy
21 records.

22 A Yes.

23 Q Dr. Ortega's records?

24 A Yes.

25 Q Dr. Hoffman's records?

1 A Yes.

2 Q Reports of radiology?

3 A Yes.

4 Q Did you have any original radiologic
5 films on Pamela Nagy?

6 A Yes. Well, I don't know if they're
7 originals or copies, but I had films.

8 Q You saw the films?

9 A Yes.

10 Q Okay. Can you recall for me whether
11 you saw both MRI films that were taken on
12 Pamela Nagy, both in 1998?

13 A I just saw the ones in December.

14 Q Of '98, okay. You have the
15 radiologist's reports, I see.

16 a Yes.

17 Q Can you think of any other medical
18 records that you had on Pamela Nagy that I
19 haven't mentioned?

20 A No. Some of these are duplicates.

21 Q Okay.

22 A But --

23 Q Did you have a copy of Dr. Hoffman's
24 office chart as her long-time family doctor?

25 A Yes.

1 Q Okay. Did you confer at any time with
2 any radiologist that rendered a report in
3 this case?

4 A Rendered a report?

5 Q Yes.

6 A No.

7 Q There was a Dr. Lanzieri, I believe,
8 that was the radiologist from University
9 Hospitals that read the Magnatech report of
10 December of '98. Did you confer with him at
11 all at any time? That's it there.

12 A No.

13 Q Did you note an apparent discrepancy in
14 his description of the size of the thoracic
15 herniated disk?

16 A Yes.

17 Q How did you resolve that discrepancy as
18 an orthopedic surgeon?

19 A I didn't.

20 Q Did you assume that he meant that it
21 was a two-millimeter bulge?

22 A Yes.

23 Q I'm sorry, that it was a two-
24 millimeter herniation.

25 A Yes.

1 Q As opposed to his statement that it was
2 a three-millimeter?

3 A Yes, yes, I did.

4 Q So, you adopted the conservative,
5 smaller size of the herniation?

6 A Yes.

7 Q Do you know whether or not he intended
8 to describe the size of the herniation at
9 T8/9 as is stated in his final impression
10 and final statement in his report?

11 A Do I know what?

12 Q Do you know whether he intended to
13 describe it as a three-millimeter
14 herniation?

15 A I don't know what his intentions were,
16 no.

17 **a** Do you feel that you should have
18 conferred with him to have a definitive
19 explanation for his discrepancy?

20 A No.

21 Q Are you comfortable that it's a
22 two-millimeter herniation?

23 A Yes.

24 Q You have immunity from suit by Pamela
25 Nagy for any incorrect opinions that you may

1 have given regarding her. Are you willing
2 to waive immunity from suit in your
3 examination of Pamela Nagy?

4 A No.

5 Q Did you make any notes of your exam?

6 A Yes, I did.

7 Q May I see those?

8 A Yes.

9 Q I'd like to get a copy of these before
10 I leave.

11 MR. MEROS: Is there a problem
12 doing that?

13 MR. SCHENK: Do you have a
14 copying machine so that we could make copies
15 of those?

16 THE WITNESS: Yes.

17 MR. MEROS: Thank you very much.

18 BY MR. MEROS:

19 Q Did you confer with anybody concerning
20 Pamela Nagy's condition?

21 A No.

22 Q In your report that you wrote in this
23 case, I think on the final page you've
24 indicated that, in your opinion, the
25 prognosis is satisfactory for a complete

1 recovery.

2 A Yes.

3 Q Do you have an opinion that Pamela can
4 go out and do any activity that she did
5 before the motor vehicle accident?

6 A Yes.

7 Q And would it be safe for her to be an
8 aerobics instructor once again and do
9 aerobics as she had in the past?

10 A Yes.

11 Q Would it be safe for her to ride
12 amusement park rides?

13 A I think so, yes.

14 Q And as a physician who examined her and
15 wrote opinions, you are not willing to waive
16 your immunity from suit in the event that
17 Pamela does some of those activities and has
18 a medical condition resulting; is that
19 correct?

20 MR. SCHENK: Objection.

21 THE WITNESS: No, I'm not willing
22 to waive -- I'm not her treating physician.
23 I don't advise her to do anything.

24 BY MR. MEROS:

25 Q But you feel that it would be okay if

1 she went and did the activities that she did
2 prior to the motor vehicle accident?

3 A Yes.

4 Q Okay. On May 17th, you examined Pamela
5 Nagy according to the information I've been
6 given.

7 A Yes.

8 a Did you have any contact on that day
9 with the referring attorney, either before
10 the exam or after the exam?

11 A The only contact I had was the letters
12 that were sent to me and the phone call
13 setting up the appointment.

14 a Okay.

15 A Not on the same day.

16 Q Okay. Do you have those letters with
17 you?

18 A Yes.

19 MR. MEROS: Is there an
20 objection to my seeing those referral
21 letters?

22 MR. SCHENK: No.

23 THE WITNESS: This is about the
24 discovery deposition.

25 MR. MEROS: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TACKLA & ASSOCIATES

1 opinions in this case?

2 A No, just on one point.

3 Q And what was that?

4 A That was the discrepancy between what
5 she told me regarding wearing a seat belt
6 and the fact that she had said in her
7 deposition that she did not have the
8 shoulder harness part of the seat belt on,
9 just the lap part.

10 Q Right, and did she not explain to you
11 that she doesn't wear the harness part
12 because it cuts into her neck?

13 A It doesn't make any difference.

14 Q Okay.

15 A She didn't have it on.

16 Q Right. She had the lap part on?

17 A Yes.

18 Q Okay. Was it significant to you that
19 the passengers in her car were injured but
20 did not seek any treatment?

21 A No.

22 Q Was it significant to you in any way
23 that there were other people in the car
24 injured in some way, albeit minor?

25 A Would you repeat that, please?

1 **a** Was it of significance to you that
2 other people in that car were also injured,
3 albeit in a minor way?

4 **A** In a negative way, yes. I was
5 surprised that they weren't in the same
6 position that she is as a claimant in a
7 suit.

8 **Q** All right.

9 **A** To tell you the truth.

10 **Q** Do you know whether the husband and son
11 struck anything in the car with their --

12 **A** No, I don't.

13 **Q** -- head or face?

14 **A** No, I don't.

15 **Q** Okay. Let me give you this back. This
16 is the letter of May 12th. Then, the next
17 letter that you received from Mr. Schenk is
18 dated May 17th, just confirming the
19 scheduling of your videotaped trial
20 deposition in connection with your exam of
21 Pam Nagy, and that is scheduled for June 9th
22 at 3:30; is that correct?

23 **A** Yes.

24 **Q** Okay, and on May 21st, he sent you a
25 letter indicating that I'd be taking your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 A Mailed.

2 Q Okay. Do you know a Dr. Ben Ortega?

3 A I know of him. I don't know him
4 personally.

5 Q Have you ever met him?

6 A Not to my knowledge.

7 Q Do you know whether or not in the
8 orthopedic surgeon community he is
9 considered a competent surgeon?

10 A I think he's a neurosurgeon.

11 Q Okay.

12 A Not an orthopedic surgeon.

13 Q Okay.

14 A And I have not -- to answer it the
15 other way, I've never heard anything that he
16 was not competent.

17 a Can you recall having any patients that
18 you were treating at the same time that he
19 was also treating them?

20 A No.

21 Q I have a copy of his report with me,
22 and I think you've also been provided with a
23 copy. It's dated April the 15th of '99. Do
24 you have one handy or not?

25 A Well, I had it here somewhere.

1 Q If you could take -- I've got an
2 original.

3 A Here it is. I've got it.

4 Q You've got it? Okay.

5 A April --

6 Q April. 15th of '99. First of all,
7 before I ask you about the report of Dr.
8 Ortega, in your examination of Pamela Nagy
9 and in your study of her radiology, did you
10 find any evidence of any degenerative
11 changes that she has going on in her spine?

12 A No, I did not.

13 Q Did you find any evidence of any
14 degenerative arthritis?

15 A Not that I can recall.

16 a Did you find anything that would
17 indicate to you that she has disk disease of
18 any kind?

19 A In physical findings -- in the physical
20 exam?

21 Q Either that or looking at the radiology
22 films or looking at the radiologist's
23 report.

24 A There was a report of the disk
25 herniation, thoracic at T8/9, and a bulging

1 disk in the cervical region at C5/6 and
2 C6/C7.

3 Q Do you have an opinion as to whether or
4 not that results from trauma or from disk
5 disease?

6 A Yes, I have an opinion.

7 Q What is that?

8 A Neither.

9 Q Okay.

10 A Because the bulging disks are not due
11 to degenerative change or -- it's a very
12 common finding. It is not related to
13 symptoms.

14 Q Okay, and as to the herniation at T8/9,
15 do you have an opinion as to whether that is
16 the result of trauma or disk disease or
17 other degenerative change?

18 A On the basis of the finding of the MRI
19 alone, you can't answer that question.

20 Q Okay.

21 A Because a herniated disk can be present
22 in the neck, the low back and thoracic areas
23 and be asymptomatic just as an incidental
24 finding.

25 Q It can be?

1 A It can be.

2 Q It can be, in some cases. You aren't
3 indicating that all herniated disks are
4 asymptomatic where all people suffering from
5 those are pain-free?

6 A No. I'm saying that there's a
7 significant number of so-called herniated
8 disks found on MRI which are asymptomatic.

9 **a** Okay.

10 A And that's more common in the lumbar
11 and cervical than in the thoracic regions,
12 but still you can find it as an incidental
13 finding.

14 Q And in those situations, the
15 orthopedist would be informing the patient
16 for the first time that they have a
17 herniated disk because the patient is
18 asymptomatic; is that what you're saying?

19 A You know, "would be informing," no. A
20 doctor may or may not inform the patient of
21 the finding on the MRI depending on what the
22 symptoms are and whether he thinks that what
23 he finds is related to the symptoms. The
24 significance becomes important when there
25 are symptoms to correlate with the MRI. The

1 MRI alone does not make a diagnosis.

2 Q I see.

3 A It's a finding on an X-ray, on an
4 imaging study.

5 Q Getting back to Pamela Nagy
6 specifically, did you find any evidence of
7 stenosis in her spinal canal?

8 A Clinically?

9 Q Yea.

10 A No.

11 Q In Dr. Ortega's report, which I started
12 to ask you about a moment ago, on the second
13 page, he makes four points.

14 A Yes.

15 Q Let's go one by one. Tell me whether
16 or not you agree with the first point. The
17 first point is, "She has significant medical
18 symptoms of pain in the neck, mid-thoracic
19 and lower back ongoing since her motor
20 vehicle accident of March 12, 1998. She had
21 no history of these symptoms prior to the
22 accident."

23 Do you agree or disagree with that
24 point of Dr. Ortega's report?

25 A Well, there's more than one point in

1 that statement.

2 Q Okay.

3 A I would agree that, as far as I know,
4 she had no history -- well, I don't agree
5 with this last line that she had no history
6 of symptoms prior to this accident.

7 I don't believe the medical
8 symptoms in the neck and low back are
9 significant.

10 Q Okay.

11 A As a matter of fact, the word,
12 "symptoms," I'm interpreting that as meaning
13 her complaints, subjective complaints. So,
14 I really didn't feel at the time that the
15 complaints, the subjective complaints were
16 significant of her pain in the neck,
17 mid-thoracic and low back.

18 Q Is there anything in point one of Dr.
19 Ortega's four points that you agree with?

20 A No, I didn't agree with point one.

21 Q In point two, it reads, "It appears
22 that she needs to cope with her symptoms as
23 there is presence of disk herniation at
24 T8/9. A repeat study of the MRI showed that
25 the disk herniation had increased from two

1 to three millimeters. This finding does not
2 call for surgical intervention, at least at
3 this time. I also do not know of any other
4 treatment that would give her relief of
5 symptoms."

6 Is there anything in point two
7 that you agree with?

8 A Agree with? I agree completely with
9 the finding that it does not call for
10 surgical intervention at this time, and
11 about any other treatment that would give
12 her relief of symptoms.

13 Q You agree with that part?

14 A Yes.

15 Q What else in there, if anything, do you
16 agree with?

17 A I can't completely agree about the
18 herniated disk at T8/T9.

19 Q And what would you --

20 A Also, there's some question about the
21 change in the size of the disk herniation
22 between the two **MRIs**, between the two and
23 three millimeters as we discussed before.

24 Q That I understand. What do you not
25 agree with in terms of Dr. Ortega saying,

"There is presence of disk herniation at T8/9"?

A I don't think that the question of the relationship of her thoracic symptom, pain, to the presence of the findings on the MRI has been resolved.

Q Okay. Do you think she does have a herniated disk at T8/9?

A Clinically, I cannot tell. By MRI,
10 it's an objective finding.

11 Q Objectively, there's a finding from the
12 radiology that there's a herniation at T8/9.
13 Have I got that right?

14 A Yes.

15 Q Clinically upon your examination, she
16 appears to not have a herniated disk at
17 T8/9?

18 A I don't think there's enough symptoms
19 to make a specific diagnosis of a thoracic
20 herniated disk on the basis of her
21 subjective complaints --

22 **a** Okay.

23 A -- and lack of objective physical
24 findings.

25 Q When you looked at the MRI film of

1 December of 1998, did you see herniation at
2 T8/9?

3 A Yes, I did.

4 Q So, you know there's a herniation
5 there.

6 A Yes.

7 Q There's no question about that
8 medically; you actually saw it.

9 A Yes, yes.

10 Q Under item three in Dr. Ortega's report
11 it says, "If the thoracic disk continues to
12 increase in size and starts to develop
13 spinal cord compromise, then it is
14 conceivable that surgical intervention would
15 be warranted."

16 Is there anything in item three
17 that you agree with?

18 A Yes. I agree with item three.

19 Q Okay. Item four, "Because of absence
20 of medical difficulties prior to the 1998
21 accident, it is more probable than not that
22 the acute incident of March 12, 1998 was the
23 proximate cause of her immediate medical
24 problems."

25 Is there anything in item four

1 that you agree with?

2 A No, on the basis of his statement of
3 absence of medical difficulties prior to the
4 1998 accident.

5 a In your review of records, she had
6 medical difficulties prior to this accident?

7 A There were some references to thoracic
8 and low back pain in her past history.

9 a We'll get to that in a moment. Let me
10 have you summarize for me what problems Pam
11 Nagy was having prior to this motor vehicle
12 accident.

13 A There was a report of complaints of low
14 back pain and thoracic back pain to her
15 attending physician on two occasions in the
16 past.

17 Q How close in time to the motor vehicle
18 accident?

19 A I think they were in 1990 and 1994.

20 Q Do you find any significance that one
21 complaint of pain was eight years prior to
22 this accident?

23 A Not necessarily, no.

24 Q Would it be important to you as an
25 orthopedic surgeon to find out the

1 precipitating factors involving those
2 instances of back pain?

3 A One was, from the notes, an amusement
4 park ride, a bumper car collision.

5 Q That was the one from 1990, eight years
6 prior to the accident?

7 A Yes, yes.

8 Q Would that give you, as an orthopedic
9 surgeon, a history of back pain?

10 A It is a history, a history of back pain.

11 Q Did she have treatment for the 1990
12 incident involving a collision on an
13 amusement park ride?

14 A I can't tell from these notes, but I
15 can't read them all. I think medication was
16 prescribed, Nalfon. Maybe not.

17 **a** From your medical history of Pamela
18 Nagy, did she say whether or not she had
19 ongoing treatment for her back after 1990?

20 A I don't think she did, no.

21 Q Then, the incident in 1994, your report
22 says February.

23 A Yes, yes.

24 Q **B u t** the medical chart of Dr. Hoffman
25 indicates December of '94. Would that be

1 more accurate, if I were to represent to you
2 that Dr. Hoffman's chart note indicates
3 December of '94?

4 A Well --

5 Q Or did you actually find something in
6 February of '94?

7 A No, the date on the copy was cut off,
8 and I thought it was a 12. I mean, I
9 thought it was February. It could be
10 December.

11 Q Fair enough.

12 A I won't argue with that.

13 Q Did she receive ongoing treatment of
14 any kind for the complaint of pain in her
15 back in 1994?

16 A Not to my knowledge.

17 a Okay. Would that be significant for
18 you that she had no back treatment or
19 medical treatment for her back between the
20 onset of pain in 1994 and this car accident?

21 A Yes.

22 Q And how would that be significant to
23 you?

24 A That she didn't have complaints of pain
25 as far as we can tell from the records.

1 Q Okay. Would you agree with me, if she
2 had ongoing pain and difficulty in her back
3 after 1990 or after 1994, that her family
4 doctor would have been informed of it?

5 MR. SCHENK: Objection.

6 THE WITNESS: Not necessarily.

7 BY MR. MEROS:

8 Q Okay. It isn't anything that she
9 sought medical treatment for after 1994; are
10 you comfortable with that?

11 A Yes.

12 Q What was her physical condition prior
13 to this motor vehicle accident? Do you
14 know?

15 A Her physical condition was good.

16 Q Was she overweight?

17 A No, I don't think so.

18 Q Was she physically active?

19 A She stated she was, yes.

20 Q Was she injured in this motor vehicle
21 accident of March 12, '98?

22 A Did she have an injury resulting from
23 it? I thought so, yes.

24 Q What did you find her injury to be?

25 A Well, I thought the neck and back

1 injury consisted of just muscle and ligament
2 sprains, cervical and lumbar sprains,
3 strains. I thought that the thoracic back
4 injury consisted of a sprain and strain
5 also. The relationship between the finding
6 on the MRI and her complaints, absent
7 positive neurological findings, remains
8 unresolved.

9 Q Okay. What would it mean to you **as** an
10 orthopedic surgeon if a patient came to you
11 for treatment after being rear-ended by a
12 truck, and they had complaints of dizziness,
13 nausea, tingling of arms and legs, itching
14 and burning in the mid-back region? What
15 would that indicate to you in taking a
16 medical history?

17 A Well, they're very nonspecific
18 complaints. Some of them could be from
19 nerves and excitement and being upset. They
20 weren't really specific enough to go any
21 further than that.

22 **a** If you had a patient like that, that
23 had just **been** involved in a motor vehicle
24 accident, would you have a tendency to
25 believe the subjective complaints of pain?

1 A Well, after the -- well, by the time
2 you see the patient, the doctor sees the
3 patient, there's something more specific
4 than the things that you mentioned to begin
5 with.

6 Q All right.

7 A If there's a more concrete complaint, I
8 would tend to believe them.

9 Q If she was physically active and
10 pain-free prior to this motor vehicle
11 accident, do you have an opinion as to what
12 would have been the cause of her complaints
13 after the accident?

14 A Would you restate that, please?

15 Q If she was pain-free and active prior
16 to the accident, physically active and not
17 having any limitation in range of motion or
18 any difficulties for which she was being
19 treated, what, in your opinion, would be the
20 cause of her problems after this motor
21 vehicle accident?

22 A Probably the accident.

23 Q Okay. Have you, yourself, in your own
24 medical practice had patients with bulging
25 disks?

- 1 A Yes.
- 2 Q How have you treated those?
- 3 A I treat it as if it doesn't exist.
- 4 Q Okay. Go ahead.
- 5 A Bulging is a description. It is not a
6 symptomatic condition.
- 7 Q Have you treated patients that have had
8 **MRIs** showing bulging cervical disks in which
9 the patient came in to you with a complaint
10 of neck pain?
- 11 A Yes.
- 12 Q Are bulging disks at times associated
13 with neck pain, if they're bulging cervical
14 disks?
- 15 A No.
- 16 Q Are you saying that bulging disks do
17 not cause pain?
- 18 A Yes.
- 19 Q Okay. Have you treated people and
20 prescribed medication for your own patients
21 when they subjectively complain of pain and
22 MRI findings show bulging disks?
- 23 A Yes.
- 24 Q You have?
- 25 A Yes.

1 Q Is that unusual for a physician to be
2 doing that?

3 A To treat their pain?

4 Q Yes --

5 A No.

6 Q -- when there's no objective finding of
7 pain.

8 A Well, I mean, there's no objective
9 finding of pain. Pain is not objective.

10 Q All right.

11 A So, there never would be an objective
12 finding of pain. Do you understand what I'm
13 saying?

14 Q I understand that.

15 A The question doesn't make sense.

16 Q Okay. In a situation where **you** have a
17 ruptured disk, and it's confirmed on MRI,
18 and the patient comes to you complaining of
19 pain, is the objective finding of a ruptured
20 disk consistent with a complaint of pain?

21 A Yes.

22 Q Okay.

23 A But not bulging disks.

24 Q I understand. To back up a bit, you've
25 had patients that you've treated that have

1 come to you with complaints of pain in the
2 cervical region for which you have then
3 found on an MRI that there are bulging disks?

4 A Yes.

5 **a** And you have treated them and given
6 them medication to ease their pain; is that
7 correct?

8 A Yes, I've treated them for their neck
9 complaints.

10 Q Okay.

11 A But not for the bulging disk.

12 Q But have you prescribed medication to
13 patients like those --

14 A Yes.

15 **a** -- who complain of pain in their neck
16 --

17 A Yes.

18 **a** -- and you find on MRI bulging disks?

19 A Yes.

20 Q What do you typically prescribe for
21 that condition?

22 A Well, I usually give analgesic
23 medication and muscle relaxant medication,
24 sometimes nonsteroidal anti-inflammatory
25 medication, and depending upon their initial

1 response, we may refer them to physical
2 therapy.

3 Q What is the explanation that you give
4 to those patients in terms of what is
5 causing the pain?

6 A It's a soft tissue injury. It's an
7 injury to the ligaments and muscles of the
8 neck.

9 Q Okay, and how do the injuries to the
10 soft tissue organs or organisms cause a
11 bulging disk?

12 A They don't cause a bulging disk.

13 Q What causes a bulging disk?

14 A It's a normal finding, and if you take
15 asymptomatic individuals and submit them to
16 a -- subject them to an MRI, you're going to
17 find up to 50, 60 percent of the patients
18 will have at least one bulging disk.

19 Q Okay.

20 A And a significant portion of them will
21 have a herniated disk, more than just the
22 bulge.

23 Q Is a herniated disk capable of causing
24 pain?

25 A A herniated disk is capable of causing

1 pain.

2 Q Okay.

3 A But, see, the problem is, the
4 terminology is so screwed up in that there
5 are different degrees of herniation.

6 Q Okay.

7 A Okay? And a protrusion, extrusion and
8 free fragment would be three categories of
9 increasing severity.

10 Q All right. A free fragment is a
11 rupture; is that correct, or not?

12 A Well, I guess you would call it a
13 rupture, yes.

14 Q Let me have you explain it to me, then.
15 What are the categories of the nucleus
16 pulposus of the disk that gets out of its
17 space?

18 A Bulging, which is a very common finding
19 and not necessarily -- and not at all
20 related to symptoms, and there's -- it's a
21 symmetrical type of bulge.

22 Q All right.

23 A There's a protrusion which is a more
24 localized prominence of the disk that
25 usually is in one -- it's not symmetrical.

1 It's toward either central, right or left.

2 Q Okay.

3 A And an extrusion or a rupture would be
4 where the piece has gone through the outer
5 ligaments supporting the center of the
6 nucleus of the disk and sticks further out
7 and can cause nerve irritation and symptoms.

8 Q All right.

9 A Then, the free fragment is where that
10 piece has broken loose, and the fragment is
11 loose within the spinal canal.

12 Q That's the third and most extreme
13 stage.

14 A Right.

15 Q Okay, and is it fair for me to
16 categorize that as a ruptured disk?

17 A Yes, yes.

18 Q Okay.

19 A I guess you can.

20 Q In terms of potential for causing pain,
21 ruptured disks do cause pain?

22 A Yes.

23 Q Is that fair to say?

24 A Yes.

25 Q Herniated disks are capable of causing

1 pain; is that correct?

2 A Some categories, and I guess it's a
3 problem with terminology again. The
4 protruded -- the protrusions, significant
5 protrusions, extrusions and free fragments
6 can cause pain.

7 Q Okay. Do you have a degree of a
8 herniated disk that you differentiate
9 between causing pain and not causing pain?

10 A A degree? Well, you know, it depends
11 on the findings on the MRI and the physical
12 findings for every herniation, whatever
13 category it is, except for bulging disks
14 which do not cause pain.

15 Q All right. So, I'm understanding
16 right, and you've stated this before, and I
17 just want to restate it so that I'm
18 understanding it and it's on the record
19 clearly: you have categorically stated that
20 bulging disks are not painful.

21 A Yes.

22 Q And are not capable of causing pain.

23 A Yes.

24 Q Yet, you treat your own patients for
25 bulging disk symptoms by giving them pain

1 medication. Have I got that right?

2 A No, you don't.

3 Q Okay.

4 A The patients who come in with neck pain
5 and who have a bulging disk are treated for
6 their neck pain and not for their bulging
7 disk.

8 Q Okay.

9 A That's number one. Number two, a
10 person who comes in with neck pain without
11 symptoms or physical findings to indicate
12 that it's more than a neck sprain/strain
13 does not get an MRI.

14 Q Okay.

15 A Because it's not going to change the
16 type of treatment, and it's a clinical
17 diagnosis, not an MRI diagnosis, on which
18 treatment is based.

19 Q Regarding the patients that you see in
20 whom you find a bulging disk in the presence
21 of a complaint of pain cervically, do you
22 always not equate the bulging disk with the
23 pain?

24 A Right. If that patient has come to me
25 in consultation from somebody else who's

1 already got an MRI, I would say I do not
2 equate the bulging disk with the symptoms.
3 Rather, the symptoms are secondary to the
4 soft tissues of the neck, yes.

5 Q Are you aware that Dr. Larry Hoffman
6 ordered the first MRI for Pamela Nagy upon
7 the complaints that she made to him when she
8 first saw him? Are you aware of that?

9 A The MRI of the --

10 Q May, '98, the one from Regional
11 Diagnostics.

12 A Yes, that was of the lumbar spine --

13 Q Uh-huh.

14 A -- and the thoracic spine --

15 Q Uh-huh.

16 A -- and the cervical spine.

17 Q Right. That was ordered by Dr.
18 Hoffman.

19 A Yes.

20 Q Are you saying that it would have been
21 inappropriate for him to order that exam?

22 A Yes.

23 Q Okay.

24 A Yes, on the basis -- yes, and every
25 back pain and every neck pain does not

1 require an MRI. That's my philosophy and my
2 opinion. ,

3 Q In hindsight, the finding was
4 herniation at T8/9. Do you still say that
5 it would have been inappropriate for him to
6 order the MRI exam?

7 A It was inappropriate to order the MRI,
8 in hindsight, of the lumbosacral spine and
9 the cervical spine. I don't think there
10 were any indications for that, just back
11 pain.

12 Q But it was -- sorry.

13 A In hindsight, the finding from the
14 ordering of an MRI was serendipitous in that
15 there was something to be found. Again, the
16 relationship of her pain to the finding is
17 still up for grabs. I'm not sure that her
18 physical -- her complaints are due to the
19 presence of the herniated disk on the MRI.

20 Q Would it have been appropriate or was
21 it appropriate for him to not order an MRI
22 back in 1994 when she had a complaint of
23 mid-thoracic pain?

24 A Yes, yes.

25 Q Because there was no trauma associated

1 with that?

2 A Well, there was a history of trauma,
3 but, you know, I guess, from the little
4 notes that I saw, there was no indication
5 for ordering it.

6 Q She experienced mid-thoracic pain in
7 1994 from lifting something.

8 A Yes.

9 Q So, it was appropriate for him not to
10 order one at that time.

11 A Yes.

12 Q Was it appropriate for him back in 1990
13 to not order one when she had a collision on
14 an amusement park ride which was on a ride
15 where you expect a collision?

16 A Yes.

17 Q All right, but you are now saying that
18 it was inappropriate for him to order an MRI
19 with her complaints of pain following a
20 rear-end collision with a truck?

21 A Yes.

22 Q Is that what you're saying?

23 A Yes.

24 Q And you would not have done that?

25 A No, I would not have done it, no.

1 Q Have you treated patients with ongoing
2 neck problems?

3 A Yes.

4 Q Have you treated patients with ongoing
5 back problems?

6 A Yes.

7 Q Have any of those patients had
8 herniated disks?

9 A Yes.

10 Q Have any of those patients had surgical
11 procedures?

12 MR. SCHENK: Objection.

13 THE WITNESS: I think so, yes.

14 BY MR. MEROS:

15 Q Does herniation that impinges upon the
16 spinal cord call for surgery?

17 A Not all the time, but it can.

18 Q Does it more often than not, or is it
19 merely in the category of it's possible?

20 A For?

21 Q Surgery when the herniated disk
22 impinges on the spinal cord.

23 A You know, it's a difficult question to
24 answer, because in each individual case, it
25 depends upon the response of the patient to

1 nonoperative treatment. Some of them end up
2 not responding, thus requiring the surgery
3 in the face of neurological finding, and
4 others do respond. There are a few
5 instances where surgery becomes an
6 emergency, like a sudden, massive extrusion
7 of a disk causing pressure on the nerves
8 such that there's bowel and bladder
9 problems.

10 Q Have you had patients of your own that
11 have had herniated disks that have required
12 long-term care with you but did not result
13 in surgery?

14 A Yes.

15 Q What long-term care did you render?

16 A The treatment is the same as it would
17 be for a patient with a back sprain/strain
18 or arthritis of the back: medication, a
19 course of physical therapy, wearing a back
20 support, more supportive care.

21 Q Change of lifestyle?

22 A Change of lifestyle, change of
23 activities, yes.

24 Q Have you had patients with herniated
25 disks that have had years of care with you

1 short of surgery?

2 A I can't recall. I don't think so, not
3 years.

4 a Okay. Have you had patients with
5 herniated disks that you treated over a
6 period of time that have then resolved and
7 gone away?

8 A I've had some like that, yes.

9 Q Some. Is that in the minority?

10 A I can't answer that.

11 Q Have you had some patients who have had
12 long-term care with you for herniated disks
13 that have then gone on to surgical
14 procedures?

15 A Yes.

16 Q The opinions that you expressed in this
17 case before today are contained in the
18 report that you authored on May 22 of 1999.
19 The questions I have for you now involve
20 whether or not you have any additional
21 opinions beyond what's in your report and
22 beyond what you've already stated today.

23 A Yes.

24 Q Okay. Do you have any opinions about
25 whether or not the shoulder portion of her

1 seat belt -- strike that. I'll ask it
2 another way.

3 Do you have any opinions about the
4 shoulder portion of Pam Nagy's seat belt and
5 its effectiveness in preventing injury?

6 A Yes, I have an opinion.

7 Q And what is that opinion?

8 A It's my opinion that the shoulder
9 portion of a seat belt is effective in
10 preventing injuries.

11 Q Have you rendered expert testimony as
12 an expert in biomedical aspects of how a
13 seat belt prevents injury to an occupant of
14 a car? Have you ever done that?

15 A Have I given testimony?

16 Q Yes.

17 A No, no.

18 Q But have you --

19 A Not on that point alone, no.

20 Q Is it your opinion that the shoulder
21 harness would have prevented all injuries to
22 Pamela Nagy in this accident?

23 A Not all injuries, no.

24 Q And do you have support for that
25 opinion? Do you have expertise for your

1 opinion that the shoulder harness would have
2 been effective in reducing her injuries?

3 A The expertise is, as an orthopedic
4 surgeon and, you know, having over 30 years
5 of practice, the more an occupant of a motor
6 vehicle is thrown about inside the car, the
7 worse the injuries.

8 Q Do seat belts at times cause injuries?
9 Do you have expertise in that area?

10 A Seat belts can cause some injuries,
11 yes.

12 Q Do you have expertise in that area?

13 A Expertise as a --

14 Q As an orthopedic surgeon.

15 A Just in my experience as an orthopedic
16 surgeon.

17 Q Have you ever rendered testimony in any
18 court about the effectiveness of seat belts?

19 A Not that I recall, no.

20 Q Do you have any biomedical training?

21 A No.

22 Q Have you ever had any engineering
23 courses in seat belt effectiveness and their
24 proper use?

25 A No.

1 Q You've already stated an opinion, I
2 think, that she was injured in the
3 collision, and you explained the extent of
4 the injuries that you felt she had.

5 A Yes.

6 Q Am I correct?

7 A Yes.

8 Q Do you have an opinion whether the
9 herniated disk at T8/9 causes her any pain
10 or discomfort?

11 A Yes, I have an opinion.

12 Q And what is that opinion?

13 A That it may or may not be the cause of
14 her back pain. I don't think there's a way
15 to know.

16 Q Okay. So that I understand, you do not
17 know whether or not the herniation at T8/9
18 is causing her any back pain.

19 A I do not know whether **it's** causing her
20 back pain, yes.

21 **a** Do you have an opinion or not as to
22 whether Pam Nagy is faking any of her
23 symptoms?

24 A Faking?

25 Q Yes.

1 A I have an opinion.

2 Q What is that?

3 A I don't know whether she's faking or
4 exaggerating her symptoms.

5 Q Okay. So, you don't know whether she
6 is faking or exaggerating her symptoms.

7 A Yes.

8 Q Okay. Do you have an opinion whether
9 or not she had the herniated disk prior to
10 this motor vehicle accident?

11 A I have no way of knowing whether she
12 did or not since she had no MRI prior to the
13 date of this automobile accident.

14 Q Can you state an opinion just based
15 upon a review of the records and your
16 clinical examination of Pamela Nagy as to
17 whether or not, to a medical probability,
18 she had a herniated disk at T8/9 before this
19 accident?

20 A I can state that, based on the history
21 and the physical examination, she had no
22 symptoms to indicate the presence of a
23 herniated disk.

24 Q Okay.

25 A But as I said before, the MRI findings,

1 we don't have a previous MRI to determine
2 whether there was an asymptomatic herniated
3 disk prior to the accident, which is
4 possible.

5 Q Possible.

6 A Yes.

7 Q Is it more probable than not, or is it
8 more likely than not that she did not have a
9 herniated disk prior to the rear-end
10 collision with the truck in March of '98?

11 A Well, here we get into some semantics
12 again. On a clinical basis, it's more
13 likely than not that she did not have the
14 herniated disk prior to this.

15 a Okay.

16 A But my quandary is that a patient may
17 have an asymptomatic finding on an MRI
18 diagnosed as a herniated disk by a
19 radiologist and not be related to symptoms,
20 and a patient may have the same symptoms as
21 she has with a negative MRI, and that's why
22 I'm unable to say whether what we see on the
23 MRI is causing her symptoms.

24 Q I see. When, if at all, would you
25 recommend surgery for this type of disk

1 problem in this type of a patient?

2 MR. SCHENK: Objection.

3 THE WITNESS: If she develops
4 neurologic findings, changes, objective
5 neurologic changes.

6 BY MR. MEROS:

7 Q Would you, as an orthopedic doctor,
8 require a certain extension of her bulge on
9 MRI to then qualify her as a candidate for
10 surgery?

11 A I didn't hear what you said.

12 Q I'm sorry. Would you as an orthopedic
13 surgeon require a certain increase in the
14 size of her herniated disk before you would
15 say --

16 A No.

17 Q -- she should have surgery?

18 A No.

19 MR. SCHENK: Objection.

20 BY MR. MEROS:

21 Q You would not?

22 A Not size.

23 Q What would you look for then?

24 A Symptoms.

25 Q Symptoms, and an example of those would

1 be what?

2 A A weakness in her lower extremities,
3 loss of bowel and bladder control.

4 Q I see.

5 A Things like that.

6 Q Neurologic deficits.

7 A Exactly.

8 Q Something like a Babinski sign?

9 A That might,

10 Q Do patients with this kind of a back
11 problem typically get referred to a
12 neurologist?

13 A A neurologist?

14 Q Yes.

15 A A neurosurgeon.

16 Q Is it the neurologist who would make
17 the finding of neurological symptoms, or is
18 that done by an orthopedic doctor and/or a
19 neurosurgeon?

20 A Yes, it goes both ways. The primary
21 care physician who saw the patient first may
22 send them to a neurologist first, and then
23 the patient goes to a neurosurgeon or
24 directly to a neurosurgeon. The
25 neurosurgeon is competent to make the

1 determination as to whether there's
2 neurologic deficit --

3 Q Okay.

4 A -- and indications for surgery.

5 Q Do you have any other opinions in this
6 case that you have not either expressed in
7 your report or during this deposition?

8 A No, I don't think so.

9 MR. MEROS: That's all I have.
10 Thank you very much. We'd ask for a waiver.
11 He may not want to waive. Maybe he does; I
12 don't know.

13 THE WITNESS: I'll waive the
14 signature.

15 MR. MEROS: We have a waiver.
16 Thank you very much.

17

18

19 - - - 000 - - -

20

21

22

23

24

25

CERTIFICATE

The State of Ohio,)
County of Cuyahoga.)

I, Luanne Stone, a Notary Public within
and for the State of Ohio, duly commissioned
and qualified, do hereby certify that the
above-named witness, SHELDON KAFFEN, M.D.,
was by me first duly sworn to testify to the
truth, the whole truth and nothing but the
truth in the case aforesaid; that the
testimony then given by the above-referenced
witness was by me reduced to stenotypy in
the presence of said witness; afterwards
transcribed; and that the foregoing is a
true and correct transcription of the
testimony so given by the above-referenced
witness.

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

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

1
2 IN WITNESS WHEREOF, I have hereunto set
3 my hand and seal of office at Cleveland,
4 Ohio this ---10th--- day of ---June---
5 A.D., 1998.

6
7
8 

9 Luanne Stone, f.k.a., Protz-

10 Notary Public

11 Within and for the State of Ohio

12 My commission expires 4/6/03.