

THE STATE OF OHIO,)
) SS:
 COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

MICHAEL HOLLIDAY,)
)
 Plaintiff,)
 Appellant,)

vs.) Case No. 131,234

JAMES L. MAYFIELD,) Sam A. Zingale, J.
 Administrator, Bureau of)
 Worker's Compensation,)
 and AREWAY, INC.,)
)
 Defendant,)
 Appellee.)

- - -

DEPOSITION OF GARY KATZ, M.D.

TUESDAY, MAY 8, 1990

- - -

Deposition of Dr. Gary Katz, a
 witness called for examination by the Defendant
 under the Ohio Rules of Civil Procedure, taken
 before me, Richard G. DeMonico, a Professional
 Reporter and Notary Public within and for the
 State of Ohio, pursuant to notice, at 14100
 Cedar Road, Cleveland, Ohio, commencing
 at 3:40 p.m. the day and date above set
 forth.

- - -

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

APPEARANCES:

On behalf of the Plaintiff/Appellant:

DAVID I. POMERANTZ, ESQ.
Pomerantz and Cichocki Co., L.P.A.
15726 Broadway Avenue
Maple Heights, Ohio 44137

On behalf of the Defendant/Appellee
James L. Mayfield, Administrator,
Bureau of Worker's Compensation:

ELIZABETH L. BURKHART, AAG.
Office of The Attorney General
12th Floor, State Office Building
615 West Superior Avenue
Cleveland, Ohio 44113

1 MS. BURKHART: This is the
2 deposition of Dr. Gary Katz which has
3 been taken or is going to be taken
4 pursuant to notice of the parties on
5 direct examination for the purpose of
6 perpetuation of testimony at trial.

7 It is now 3:40. The notices
8 were sent to all of the respective
9 parties that the deposition was to
10 commence at 3:30. Mr. Pomerantz,
11 however, scheduled his doctor's
12 deposition at 1:00 o'clock this day in
13 another city, which has prevented Mr.
14 Tricarichi from being able to attend at
15 this time, the representative for the
16 employer. And we are still waiting for
17 Mr. Pomerantz's presence.

18 We will take a break at this
19 point for a few more minutes and
20 hopefully Mr. Pomerantz will be here in
21 a timely fashion.

22 (Brief recess.)

23 MS. BURKHART: We are now
24 commencing this deposition at 3:47.
25 Mr. Pomerantz is present at this time.

1 As I stated, Mr. Tricarichi is not able
2 to make this deposition.

3 Mr. Pomerantz, do you waive
4 any defects in notice or service that
5 might exist?

6 MR. POMERANTZ: I'm going to
7 reserve those at this point.

8 MS. BURKHART: Can we stipulate
9 to the court reporter's qualifications?

10 MR. POMERANTZ: Yes, I will.

11 MS. BURKHART: And the gentleman
12 taking the video?

13 MR. POMERANTZ: Yes.

14 MS. BURKHART: As I stated
15 beforehand, this deposition is being
16 taken on direct examination for
17 purposes of perpetuation of testimony
18 at trial.

19 DIRECT EXAMINATION

20 BY MS. BURKHART:

21 Q. Dr. Katz, my name is Elizabeth Burkhardt,
22 I'm an Assistant Attorney General for the State
23 of Ohio in the Workers Compensation Section.

24 We're here regarding the cause of action
25 entitled Michael Holliday versus the

1 Administrator of The Bureau of Workers
2 Compensation. And I'm just here to ask you some
3 questions regarding this cause of action.

4 Could you please state your name in full
5 and spell your last name for the record.

6 A. Gary Katz, K-A-T-Z.

7 Q. And what is your business address?

8 A. May Medical Building, University Heights.

9 Q. And your present occupation, sir?

10 A. Orthopedic surgeon.

11 (Off the record.)

12 MR. POMERANTE: Could you please
13 swear the witness in?

14
15 GARY KATZ, M.D.

16 of lawful age, called as a witness by the Defendant
17 pursuant to the Ohio Rules of Civil Procedure,
18 being by me first duly sworn, as hereinafter
19 certified, deposed and said as follows:

20 BY MS. BURKHART:

21 Q. Dr. Katz, the testimony that you just
22 provided regarding your name and your business
23 address and your occupation, did you testify
24 truthfully to that?

25 A. Yes.

1 Q. Are you licensed to practice in the State
2 of Ohio?

3 A. Yes.

4 Q. And how long have you had your license?

5 A. Since 1968.

6 Q. Could you briefly describe your educational
7 background for us beginning with college?

8 A. I graduated undergraduate college, 1957,
9 and Ohio State Medical School in 1961. And then
10 I did a five year residency in orthopedic surgery
11 in Cleveland at Mt. Sinai Hospital. And at
12 University of Indiana, I finished there in 1966.

13 Q. You have been in private practice then for
14 how long?

15 A. Well, then I was in the army. I got out of
16 the army in 1969, so 21 years.

17 Q. Could you please define for the jury the
18 term specialist?

19 A. Well, specialist would be a physician who
20 just works primarily in one area of medicine.

21 Q. Do you have a particular speciality?

22 A. Yes, orthopedics.

23 Q. And what does that involve exactly?

24 A. Well, it's the taking care of patients with
25 injuries or deformities involving the extremities

1 and spine.

2 Q. Which would of course include the lower
3 back?

4 A. Right.

5 Q. Could you please define Board certification
6 for us?

7 A. Well, when you finish your training
8 program, at that time two years later you took an
9 examination, and if you passed that, then you were
10 Board certified.

11 Q. And are you Board certified?

12 A. Yes.

13 Q. And in what area?

14 A. Orthopedics.

15 Q. Have you written or published any articles
16 related to the area of orthopedics?

17 A. Yes.

18 Q. Could you please just name a few of these
19 articles?

20 A. Well, I've had articles published on open
21 reduction of ankle fractures, finger deformities.

22 Q. Doctor, have you ever testified in court or
23 on deposition as we are now doing today?

24 A. Yes.

25 Q. Approximately how many times a month have

1 you done so by deposition?

2 A. I'd guess one or two.

3 Q. And in court, about how many times a year
4 have you testified?

5 A. Probably not in years, five years at least.

6 Q. Doctor, how many times have you testified
7 at my request?

8 A. I think once.

9 Q. Basically doctor, have you testified evenly
10 on behalf of plaintiffs and defendants?

11 MR. POMERANTZ: Objection as to

12 form.

13 A. Should I answer?

14 Yeah, I would say about evenly.

15 Q. How many medical evaluations have you done
16 in general, doctor, all totaled?

17 A. In 20 years?

18 Q. Yes.

19 A. Medical evaluations? Many.

20 Q. Are you talking hundreds, thousands?

21 A. I'm sure in 20 years. I mean, I couldn't
22 give you a number but I'm sure it has been many.

23 Q. It would be in the thousands then you are
24 talking about?

25 A. Probably.

1 Q. Doctor, do you expect to be compensated for
2 this deposition?

3 A. Yes.

4 Q. And do you expect to be compensated for the
5 examination you performed of Mr. Holliday and the
6 review of his records?

7 A. Sure.

8 Q. Is your compensation for today based upon
9 the total amount of time that's expended?

10 MR. POMERANTZ: Objection.

11 Q. Or how is it calculated?

12 A. Yes, usually by time that's spent.

13 Q. In an average working day, how many
14 patients would you see if you were in your
15 office?

16 A. Probably about 30.

17 Q. And if you were at the hospital, how many
18 patients would you see on an average day?

19 A. Well, it varies. Usually if -- you mean
20 doing surgery? It could be anywhere, two, three,
21 four operations. And, you know, just making
22 rounds you could see whatever patients are there.
23 Or sometimes I see patients in the emergency
24 room. So it would be pretty variable.

25 Q. Are you familiar with a patient named

1 Michael Holliday?

2 A. Yes.

3 Q. Have you had an opportunity to examine him?

4 A. Yes.

5 Q. On what date did you examine him?

6 A. August 9, 1988.

7 Q. Doctor, are you now referring to a report
v that you have prepared?

8 A. Yes.

10 Q. And would it be helpful for you to use that
11 as a reference to recall the answers to a variety
12 of questions that I might pose to you?

13 A. Yes.

14 Q. You said -- I'm sorry, on what date did you
15 see Mr. Holliday?

16 A. August 9, 1988.

17 Q. At whose request did you examine him?

18 A. Yours.

19 Q. At this time, doctor, I would like to call
20 your attention to some exhibits that I have here,
21 they are marked joint exhibits and I'm going to
22 hand them to you one at a time, if you could
23 identify them.

24 This is Joint Exhibit A.

25 A. Yes, this is --

1 Q. Could you please identify that for the
2 jury, just briefly?

3 A. It's a record from Bellaire Medical Clinic,
4 three office visits. Well, it's got a history
5 from the patient about an injury on March 23,
6 1986. He was seen the following day, March 24,
7 '86, and then there's three office visits.

8 Q. And that's from the Bellaire Clinic?

9 A. Right.

10 Q. And then, doctor, handing you what has been
11 marked as Joint Exhibit 3, could you please
12 identify that for the jury?

13 A. This is another medical record from Dr.
14 R.C. Roseman regarding the same patient. It's
15 regarding an office visit April 1, 1986.

16 Q. And then handing you what is marked as
17 Joint Exhibit C. Could you please briefly
18 identify that for the jury?

19 A. Yes. These are records from Southwest
20 Orthopedics, Inc. This is about an office visit
21 May 12, 1986 and June 2nd, 1986.

22 And then there is other records from
23 Deaconess Hospital.

24 Q. And finally handing you what's been marked
25 as Joint Exhibit D. Could you please identify

1 that for the jury?

2 A. Yeah. These are records from Dr. Sawhny
3 about the same patient. This is an office visit
4 September, '87. And there are other records in
5 here from Deaconess Hospital about the same
6 patient.

7 Q. Doctor, have you had a chance to review all
8 of these records?

9 A. Yes.

10 Q. Doctor, who provided these records to you?

11 A. I think you did.

12 Q. Were these records helpful in learning
13 about Mr. Holliday's medical history?

14 A. Sure.

15 Q. For the jury's benefit, could you please
16 explain exactly what a medical history of a
17 person is?

18 A. The history would be what the patient
19 relates regarding his problems and complaints.

20 Q. And doctor, when you first see a patient,
21 what is the first thing that you usually do?

22 A. Take a history.

23 Q. Is it at this point then that you would
24 learn about the patient's complaints?

25 A. Right.

1 Q. What history did you obtain from Mr.
2 Holliday, or what history did you glean from
3 reading the medical records that we have just
4 identified as Joint Exhibits A, B, C and D?

5 A. Well, at the time I saw him he told me he
6 was 27 years old, he was involved in an accident
7 at work March 23, 1986. He told me he was
8 bending over to pick up a polished truck wheel
9 and sprained his groin and lower back.

10 I looked over these records, the first
11 one's from Bellaire Medical Clinic. He was seen
12 the day after the accident -- well, he had three
13 visits there, the first was March 24, '86, that
14 was a day after the accident.

15 His complaint was pain in the right groin.
16 The right groin is in the front of the hip, the
17 upper thigh. He had very slight tenderness on
18 palpation. There was no hernia. And their
19 diagnosis was strain of the right groin and they
20 gave him some medication.

21 They saw him two days later, March 26, he
22 had the same complaint, minimal tenderness, and
23 they recommended heat. And they saw him again
24 March 28, which is five days after the incident.
25 And they said he again -- well, they said here,

1 his right groin was improved and he had no
2 complaints.

3 And that was the three visits at Bellaire.

4 Q. Doctor, if I might interject at this point.

5 Is there any mention of the back on the
6 record that you are looking at, Joint Exhibit A,
7 from Bellaire Clinic?

8 A. No, the three visits from Bellaire Clinic,
9 after the accident, there is no mention of any
10 complaints involving the back or legs.

11 Q. And then doctor you also have been talking
12 about a right inguinal sprain.

13 Is there a significance of a diagnosis of
14 right inguinal sprain versus a hernia?

15 A. Well, they said he had no hernia. A hernia
16 would be -- a hernia would be if the tissues
17 below -- if you have a defect for some reason in
18 the fascia and the tissues would herniate
19 through, like rupture. But they said he didn't
20 have a hernia.

21 Q. So is that a more significant injury than
22 the one diagnosed as right inguinal strain, which
23 is what they said Mr. Holliday had?

24 A. Yeah, sure, a hernia would be more
25 significant.

1 Q. Thank you, doctor. And then if you could
2 take a look at Joint Exhibit B, which is the
3 medical record from Dr. Roseman?

4 A. Yes, there is a record that he saw him on
5 April 1st, which is nine days after that
6 incident. He also said he was lifting truck
7 wheels, and Dr. Roseman said he developed pain in
8 the abdomen and right flank. The abdomen would
9 be the belly and the right flank.

10 Q. Would be the part of the body that you are
11 pointing to now?

12 A. Right. Over the right side or right kidney
13 or the right abdominal area, right lower
14 quadrant. That's in the front.

15 He mentioned that he complained -- well,
16 his complaint when he saw Dr. Roseman was pain in
17 the right lower quadrant, which is here. It's
18 actually the area where you have pain with
19 appendicitis.

20 He also said there was no evidence of a
21 hernia. And he had no other complaints, and
22 there were no objective findings with Dr. Roseman
23 either.

24 Q. You are talking about objective findings
25 regarding what?

1 A. His examination of the right groin. And no
2 mention again of the back or legs.

3 Q. And then doctor, if you could refer to
4 Joint Exhibit C, which are the medical records
5 from Southwest Orthopedics, Incorporated or Dr.
6 Eudd?

7 A. Yes. These records are May 12, '86, that's
8 about six weeks after the incident, approximately
9 six weeks. And they mention his complaint was
10 pain in the right leg that started about two
11 weeks before they saw him, which would make it
12 about -- the pain in the right leg starting about
13 a month after the incident. He was complaining
14 of soreness in the right thigh, pain in the knee
15 and calf, numbness and tingling in the outside
16 of the foot. They said the pain was helped by
17 heat. They also mentioned that he polishes tires
18 and lifts 75 pound objects. And the patient says
19 sometimes this will aggravate his symptoms.

20 He had no muscle spasm. They said that he
21 had some back pain but was not a prominent
22 feature. They said -- their examination that he
23 could flex, bend over and touch his toes without
24 any back pain. So obviously he had full motion
25 of the back as his -- I'm just looking, their

1 examination was all negative of the back and
2 legs. X-rays of the lower back were normal. And
3 they felt that he had a mild L4-5, disk
4 protrusion. And they gave him some medication.

5 They saw him again about three weeks later.
6 That's June 2nd of '86. And his symptoms were
7 worse, and this is when they referred him to a
8 neurosurgeon.

9 Q. Doctor, then the first mention regarding
10 any complaints of his back are in this May 12th,
11 1986 report from Dr. Budd or Southwest
12 Orthopedics, Incorporated, is that not correct?

13 MR. POMERANTZ: Objection.

14 A. Yeah. The first mention was at this visit
15 six weeks later when they mentioned that the
16 symptoms started about a month after the
17 incident.

18 Q. In the records that you just discussed,
19 Joint Exhibits A, B and now C, do you see any
20 recording regarding the patient telling the
21 doctors that part of his history included falling
22 down cement stairs on April of 1986 at an
23 Indians game?

24 MR. POMERANTZ: Objection.

25 A. I didn't see it in any records.

1 Q. Assuming that the testimony provided at
2 trial by other witnesses establishes that this
3 incident occurred, would you consider that
4 significant that the patient, Mr. Holliday, not
5 relate as part of his history to the doctors that
6 in April of 1986 he fell down cement stairs at
7 the Indians game?

8 MR. POMERANTZ: Objection.

3 A. Well, if he fell down cement stairs a few
10 weeks before that visit -- in April?

11 Q. Yes.

12 A. Yes, that would be about the time,
13 according to the May 12, '86 doctors records,
14 that's about the time when his problems started
15 with his back and right leg. So I think it's
16 very possible that it could be related, sure.

17 That's not -- I didn't see that in the
18 records.

19 Q. Doctor, you say that you did examine the
20 records that have been identified as Joint
21 Exhibits A, B, C and D, have you not?

22 A. Right.

23 Q. And relative to low back problems, what did
24 you learn regarding Mr. Holliday's history from
25 the review of these records?

1 A. Well, like I mentioned before, after the
2 incident on the 23rd, he went to the Bellaire
3 Clinic three times in a five day period, had no
4 complaints about his back or legs. He went to
5 Dr. Roseman nine days later and no complaints
6 about his back or legs. And the next doctor's
7 visit was six weeks later, and at that visit he
8 said that the pain started in the leg and back
9 two weeks before, which would mean it started a
10 month -- one month after the incident.

11 Q. Of March 23rd, 1986 you are referring to?

12 A. Right. And if you say he fell down cement
13 stairs at that time, then I think it's fairly
14 obvious that any complaints about his right leg
15 or back has nothing to do with that March 23rd
16 incident.

17 MR. POMERANTZ: Motion to strike
18 as being non-responsive.

19 Q. Doctor, did the problems that are described
20 in Dr. Budd's report regarding Mr. Holliday's
21 back, I'm referring to Joint Exhibit C now, the
22 May 12th, 1986 visit, did the problems regarding
23 his back as reported by Dr. Budd result from the
24 March 23rd, 1986 incident?

25 A. No.

1 Q. Could the back problems that Dr. Budd
2 relates have resulted from Mr. Holliday falling
3 down cement stairs in April, 1986 at an Indians
4 baseball game, should the testimony from the
5 witnesses so establish this occurrence?

6 MR. POMERANTZ: Objection. Also
7 I would like, for the record, this is
8 beyond the scope of Dr. Katz's report
9 and therefore is inadmissible.

10 Go ahead, doctor.

11 A. Should I answer?

12 Q. Yes.

13 A. Well, yes, the incident, the few weeks
14 before that May 12 visit would be about the time
15 when the pain in the back and legs started,
16 according to the medical records.

17 It's fairly obvious that if he had an
18 incident bending over to lift something and he
19 had no problem with his back or leg until four
20 weeks later, which is documented in the records,
21 it has nothing to do with that incident. But the
22 incident of falling down the stairs at that time
23 would be more relative to his complaints.

24 Q. Doctor, would a low back sprain, an L4 and
25 5 disk protrusion and a herniated had L5 disk,

1 would those injuries be apparent at a closer time
2 to the March 23rd, 1986 injury than what is
3 reflected in the records?

4 MR. POMERANTZ: Objection as to
5 form.

6 A. Sure. Obviously if you have an injury to a
7 part of the body, for example if I punched you in
8 the nose, you would have pain then and swelling
9 and it would be black and blue or you would have
10 symptoms. If you bend over to pick something up
11 and injure your back somehow, your back should
12 hurt at that time or shortly after or later that
13 day or maybe the next day or maybe a day or two
14 later but not a month later.

15 Q. So how quickly then would it become
16 apparent if one had experienced on March 23rd,
17 1986 an injury of low back sprain, L4-5 disk
18 protrusion and herniated L5 disk, when would you
19 experience these injuries? How much time could
20 possibly elapse?

21 A. It would either be that day or possibly a
22 day or so later, but not a month later.

23 I wanted to also add that you can get pain
24 in the back or leg or pain anywhere else in the
25 body without a history of trauma. But if a

1 traumatic incident is -- a traumatic episode is
2 going to cause pain in an area, it would occur
3 within a day or two, but for sure not a month
4 later.

5 Q. Referring you back to Joint Exhibit C, Dr .
6 Budd, or the Southwest Orthopedics, Incorporated
7 ordered X-rays on May 12th, 1986. What do these
8 X-rays reveal regarding Mr. Holliday's back?

4 A. On May 12th?

10 Q. Yes.

11 A. As I recall, they were normal.

12 Q. Would you like to take a moment to confirm
13 that?

14 A. Yes, normal.

15 Q. Doctor, you said you performed a physical
16 examination of Mr. Holliday on August 9th, 1988.
17 Could you please tell the jury what that
18 entailed?

19 A. Well, when I saw him he had a scar on the
20 lower back secondary to the surgery he had; he
21 had mild tenderness over the lower back; he had
22 normal motion of the back with no pain; no muscle
23 spasm, tightness of the muscles; he had no
24 deformity, no list; his curvature was normal; and
25 the appearance of the back was normal. He had

1 good motion of the hips. He did have slight
2 tenderness over the right groin but no hernia.
3 All the other tests were normal, straight leg
4 raising test, reflexes, there was no motor
5 sensory loss, no atrophy.

6 So basically the examination of his back
7 and legs was all normal, at the time I saw him.

8 Q. What symptoms, if any, did Mr. Holliday
9 present to you on August 9th, 1988 regarding his
10 low back?

11 A. When I saw him, he complained of occasional
12 pain in the lower back and thigh, occasional pain
13 in the ankle. He said the back pain occurred
14 about three, four times a week and went away with
15 medications or rest. He said prolonged sitting
16 aggravated the pain. And the pains were about
17 the same in the right leg and the lower back. He
18 had no problem with the left leg and he had no
19 numbness.

20 Q. Are these symptoms supported in the
21 medicals that you have reviewed that we have
22 marked as Joint Exhibits A through D regarding
23 Mr. Holliday?

24 A. Well, he complained of pain in the right
25 groin earlier. Actually that was his main

1 complaint after the accident. And the lower back
2 pain and pain in the leg sounds about like the
3 same pain he started complaining about, you know,
4 about a month after that incident, around the
5 time he fell down the stairs.

6 MR. POMERANTZ: Motion to
7 strike.

8 Q. As a result of your August 9th, 1988
9 examination of Mr. Holliday, did you make any
10 objective findings regarding permanent nerve
11 damage that he might have sustained?

12 A. No.

13 Q. Did you make any objective findings, as a
14 result of your August 9th, 1988 examination of
15 Mr. Holliday, regarding low back sprain, an L4-5
16 disk protrusion or herniated L5 disk?

17 A. No. When I saw him there were no objective
18 findings.

19 Q. Doctor, based upon your physical
20 examination of Mr. Holliday, the history you
21 obtained from him, the history as found in the
22 medical records that you reviewed, and your
23 experience and training as a physician and an
24 orthopedic surgeon, do you have an opinion, based
25 upon a reasonable degree of medical certainty, as

1 to whether the incident of March 23rd, 1986 as
2 described by Mr. Holliday directly and
3 proximately caused him to sustain a low back
4 sprain, L4-5 disk protrusion, and a herniated L5
5 disk?

6 First of all, do you have an opinion?

7 A. Yes.

8 Q. And what is that opinion?

9 A. I think it had nothing to do with any
10 problems or complaints about his back or right
11 leg.

12 Q. And doctor, what is the basis for your
13 opinion?

14 A. Well, the basis is fairly well documented.
15 The fact that after the accident -- after the
16 incident on the 23rd he went to the Bellaire
17 Clinic three times in a period of five, six days,
18 with no complaints about the back or legs. He
19 went to another doctor nine days later, again
20 with no complaints about the back or legs. He
21 went to another doctor about six weeks later who
22 said he started having pain in the back and leg
23 about one month after the incident.

24 So it's obvious that that incident has
25 nothing to do with his back or leg complaints.

1 MS. BURKHART: I have no further
2 questions at this time.

3 MR. POMERANTZ: May we be
4 permitted to go off the record so I
5 could review the doctor's chart.

6 MS. BURKHART: You have a copy
7 of them.

8 MR. POMERANTZ: I don't have a
9 copy. I don't know what he has there.

10 MS. BURKHART: Okay.

11 (Off the record.)

12 CROSS EXAMINATION

13 BY MR. POMERANTZ:

14 Q. Doctor, as you know, my name is David
15 Pomerantz. I would like to ask you a few
16 questions.

17 You examined Mr. Holliday on August 9th,
18 1988, is that correct?

19 A. Yes.

20 Q. Had you ever examined him before that date?

21 A. Not that I know of.

22 Q. So the first time that you had ever laid
23 eyes on this individual would have been what,
24 more than two years and four months after this
25 lifting incident of March 23rd, 1986, wouldn't

1 be so?

2 A. Right.

3 Q. And the first time you ever examined him
4 was over two years after he had surgery to repair
5 a herniated disk in his low back, is that a fair
6 statement?

7 A. Yes, that's true.

8 Q. Have you examined Mr. Holliday since your
9 examination of August 9th, 1983?

10 A. No.

11 Q. So then -- Allright, this one and only
12 examination of Mr. Holliday, that was some 27
13 months after his work injury, that was not for
14 the purpose of rendering treatment to Mr.
15 Holliday, was it?

16 A. Right.

17 Q. In fact, you were hired by the defendant's
18 attorney, Miss Burkhardt, to conduct that
19 examination?

20 MS. BURKHART: Objection that's
21 already been answered.

22 Q. -- to conduct that examination?

23 You can answer, doctor?

24 A. Yes, Miss Burkhardt sent him to me.

25 Q. And you were hired to write a report and to

1 testify, if necessary, in this case; is that
2 correct?

3 A. Well, I think she sent him to me to review
4 the records, take his history and examine him,
5 and give her an opinion as to whatever questions
6 she asked as true.

7 Q. So it was contemplated that if necessary
8 you would testify in this matter?

9 A. I suppose, if necessary.

10 Q. Now unlike you, Dr. Sawhny, Mr. Holliday's
11 treating doctor, first saw him some three months
12 after this injury. Is that a fair statement?

13 A. Three months? Let's see, it was March. I
14 think it was later than that; about four months
15 probably.

16 Q. Well, according to the records, the
17 incident occurred on March 23rd, 1986, is that
18 correct?

19 A. Right.

20 Q. And according to your records, when was the
21 first time Dr. Sawhny examined him?

22 A. I think June 23, three months -- three
23 months you're right.

24 Q. So three months to the day, is that right?

25 A. Yeah.

1 Q. Allright. Unlike you, Dr. Sawhny became
2 involved in this matter when Mr. Holliday was
3 referred to him by another doctor that was then
4 treating him, Dr. Budd; is that correct?

5 A. I'm not sure who referred him to Dr. Budd.
6 It's got here Attorney Barry Trattner.

7 Q. Well --

8 A. I don't know -- I'm not sure who referred
9 him to Dr. Sawhny.

10 Q. Doctor, if I represent to you Dr. Sawhny
11 has already testified that Mr. Holliday came
12 under his care because he was referred by an
13 orthoped, Dr. Budd, would you have any reason to
14 disagree with that?

15 A. No.

16 Q. And unlike you, Dr. Sawhny actually did
17 treat Mr. Holliday, is that correct?

18 A. Sure.

19 Q. From the records you have, would you agree
20 that Dr. Sawhny actually prescribed medication to
21 Mr. Holliday?

22 A. Sure. He operated on him.

23 Q. And he gave him physical therapy?

24 A. I don't think --

25 Q. He ordered physical therapy?

1 A. He probably ordered it, sure.

2 Q. And he ordered a CAT scan to be done on
3 him?

4 A. He had a CAT scan, myelogram, and he had
5 surgery.

6 Q. And Dr. Sawhny was in fact the one who
7 performed that surgery?

8 A. Sure.

9 Q. And doctor, you have done none of these
10 things in this matter, have you?

11 A. I only saw him once.

12 Q. Allright. Do you have any appointments
13 scheduled to see Mr. Holliday in the future?

14 A. I doubt it.

15 Q. Would the answer then be: no, you do not
16 have any appointments scheduled to see him in the
17 future?

18 A. To be sure I would probably have to look at
19 my appointment book.

20 Q. Well, that you are aware of, do you have
21 any appointments?

22 A. That's what I said, I doubt it.

23 Q. Would you like to get your appointment book
24 and check it? If that would help your
25 recollection.

1 MS. BURKHART: Objection.

2 A. I don't think it's necessary.

3 Q. Allright. Now doctor, if Mr. Holliday
4 needs treatment in the future, you would *not* be
5 expected to be consulted by his treating doctor,
6 would you?

7 A. By Dr. Sawhny?

8 Q. Or by any doctor that would treat him in
9 the future?

10 MS. BURKHART: Objection.

11 A. I haven't seen him. I mean, I don't think
12 I'll ever see him again, but I can't tell you for
13 sure.

14 Q. Well, I am asking you, would you expect to
15 be consulted by a treating doctor in the future?

16 MS. BURKHART: Objection.

17 A. I never know who I'll see. You know, I
18 couldn't answer it.

19 Q. Doctor, in your practice, where you have
20 treated a patient who has been evaluated
21 regarding a legal medical matter by another
22 doctor, do you ever refer to that doctor or
23 consult with that doctor prior to giving further
24 treatment?

25 A. I didn't understand that.

1 MR. POMERANTZ: Do you want to
2 read it back.

3 THE WITNESS: Would you say that
4 again?

5 (The question was read by the
6 reporter.)

7 MS. BURKHART: I'm going to
8 object.

9 A. I think I have.

10 Q. All right, doctor.

11 A. It's sort of a complex question, but I think
12 that I have had consultations with many
13 neurologists, neurosurgeons who have been
14 involved in different matters like this. So I
15 probably have.

16 Q. Thank you, doctor. Now you testified from
17 some records that you have in front of you right
18 now. Are those the complete records and charts
19 that you have regarding Mr. Holliday?

20 A. Yes.

21 Q. You have no other office notes?

22 A. Right.

23 Q. And as -- I don't know if the jury can see
24 this on the video tape -- but the papers that you
25 have are not contained within a file, is that

1 correct?

2 A. Right.

3 Q. Did you have a file for Mr. Holliday?

4 A. This is it.

5 Q. So you actually did not have any file
6 binder?

7 A. Well, it's all apart because I have been
8 looking at them now.

9 Q. Are you --

10 A. No, there is no binder, they are stapled
11 together.

12 Q. And there are no other documents which you
13 don't have in front of you regarding Mr.
14 Holliday's file?

15 A. Right.

16 Q. And would I be correct that the entire sum
17 and substance of your records would be the letter
18 that you wrote or the report that you wrote to
19 Miss Burkhart and the prior medical records which
20 have been provided you today by Miss Burkhart?

21 A. Right.

22 Q. Doctor, will you agree that on the one
23 occasion when you did see Mr. Holliday that I was
24 there accompanying my client?

25 A. I couldn't tell you.

1 Q. You don't recall at this time?

2 A. No. That's right, I don't recall.

3 Q. If I represent to you that I did accompany
4 him, would you have any reason to doubt me?

5 A. No.

6 Q. All right. Now, that visit, as I
7 understand it and as I witnessed it, it included
8 essentially two parts: talking with Mr. Holliday,
9 in other words taking a history from him, and
10 performing a physical examination on him. Would
11 that be a fair statement?

12 MS. BURKHART: I'm going to
13 object.

14 A. Probably reviewing records.

15 Q. Okay. According to my notes, that visit
16 began at 1:35 p.m. on August 9th, 1988.

17 Would you agree with that?

18 A. No.

19 Q. You disagree with that?

20 A. I wouldn't -- it's from a medical
21 standpoint, whether it started at 1:35, 12:35,
22 4:30 in the afternoon isn't significant and no
23 physician can answer that question because no
24 physician would mark a time like that.

25 Q. In other words, you did not make any

1 notation in your notes as to what time this
2 exam began?

3 A. No physician would do it. It's not the
4 standard procedure.

5 Q. So the answer is no?

6 A. Right, I said no.

7 Q. And if I represent to you that I did note
8 this, being a legal medical matter, and the
9 exam began at 1:35, you'd have no evidence to
10 contradict that, would that be a fair statement?

11 A. I have no evidence to contradict it or --

12 Q. Okay, thank you.

13 MS. BURKHART: I'm going to
14 object to you not letting him finish
15 his answers to your questions.

16 MR. POMERANTZ: I'm sorry, I
17 received an answer, I was moving on.

18 Q. Now, you talked with Mr. Holliday, took a
19 history from him, according to my notes, until
20 1:50 p.m. And again you would have no way to
21 contradict that; is that a fair statement?

22 A. It is not significant.

23 Q. But you have no way to contradict it?

24 A. I couldn't say anything about it.

25 MS. BURKHART: I'm going to

1 object to this. Are you prepared to
2 testify on the stand that you have
3 these time schedules and these notes,
4 which have never been provided to
5 anybody, are accurate?

6 Q. Now doctor --

7 MR. POMERANTZ: You made your
8 objection?

9 MS. BURKHART: Yes.

10 Q. Okay. Now doctor, you then, after you took
11 a history you proceeded to conduct a physical
12 examination of Mr. Holliday, correct?

13 A. Right.

14 Q. And according to my notes that physical
15 examination lasted until approximately 2:00 p.m.
16 So in other words, about a 10 minute physical
17 examination.

18 Would that -- Do you have any reason to
19 contradict --

20 MS. BURKHART: I'm going to
21 object again.

22 A. I wouldn't comment on those kind of records
23 because they are meaningless.

24 Q. So in other words, you are not denying that
25 that was the approximate length of the exam?

1 A. I'm not agreeing or denying it.

2 Q. Okay, fair enough, doctor.

3 Now, during the course of that examination
4 you took notes on -- I'll call it, for want of a
5 better term, a scratch pad. You took notes on a
6 small piece of paper --

7 MS. BURKHART: Objection.

8 Q. -- as to the information you were able to
9 derive from that exam, would that be a fair
10 statement?

11 A. I don't know.

12 Q. You don't remember?

13 A. That's over two years ago.

14 Q. What was your standard procedure -- you've
15 testified previously that you have conducted
16 these types of evaluations in the past. What is
17 your normal procedure? Do you make office notes
18 or do you write it on a scratch pad?

19 A. Sometimes I'll write nothing, sometimes
20 I'll write notes. And after I dictate a letter
21 and review that, I'll throw the notes, the
22 scratch type notes away. So I would say it's
23 variable. There is no set routine.

24 Q. Fair enough.

25 Now if I were to represent to you that

1 Dr. Sawhny, Mr. Holliday's treating physician,
2 did precisely the same thing, took notes,
3 dictated them shortly after the examination, and
4 then disposed of them, you wouldn't be shocked
5 or surprised by that methodology, would you?

6 MS. BURKHART: Objection.

7 A. I don't understand what. I wouldn't be
8 surprised or not surprised, I don't know what you
9 mean by that.

10 Q. Would you be --

11 A. Whatever Dr. Sawhny -- I mean, some doctors
12 will examine a patient and take notes, some won't
13 take notes, some will dictate. It doesn't --
14 it's just whatever -- it's your personal
15 preference, I think, however you want to do it.

16 Q. So in other words, taking notes,
17 transcribing them shortly thereafter, and then
18 disposing of the original notes, as you have done
19 on occasion and as Dr. Sawhny has testified he
20 has done, that's not a deviate from accepted
21 medical practice, does it?

22 MS. BURKHART: Objection.

23 A. No.

24 Q. All right, fair enough.

25 Now, you also had the opportunity to

1 examine some records regarding Mr. Holliday.
2 According to those records, Mr. Holliday was
3 injured on March 23rd, 1986 and sought treatment
4 the very next day on March 24th at the Bellaire
5 Industrial Clinic. Is that true?

6 A. Right.

7 Q. And were you aware that Bellaire Clinic was
8 the employer's clinic?

9 A. You mean owned by the employer?

10 Q. There is a contractual relationship between
11 the clinic and the employer; were you aware of
12 that?

13 MS. BURKHART: Objection.

14 A. I wasn't aware of it. It wouldn't make any
15 difference. I mean, the doctors would see the
16 patient, take his history and examine him. And I
17 think whatever the contract is, I don't think
18 would make a bit of difference to the doctor.

19 So if you are -- are you inferring that
20 there is some relationship between the employer
21 and the doctor?

22 Q. Well, let me ask you this.

23 A. I don't think --

24 Q. You've reviewed the medical records and I
25 would encourage you to review them again.

1 Is there any evidence on there that
2 Mr. Holliday was in fact examined by a medical
3 doctor?

4 A. Well, I know he was examined by Dr.
5 Roseman.

6 Q. No, I mean at the Bellaire Clinic?

7 A. The Bellaire Clinic. I have to get just
8 their records.

9 Q. I think you are holding them in your left
10 hand?

11 A. Is it only one sheet?

12 Q. I think so, yes.

13 A. Okay. Well, as I said, there's three
14 visits.

15 Q. Is there a signature from a doctor, for
16 example, a medical doctor on there?

17 A. I'm looking.

18 MS. BURKHART: I'm going to
19 object to that. How would he know the
20 initials that are signed on there.

21 A. It's hard to read, but I would say it's a
22 doctor's notes. The reason I say it, it's got
23 the history and there is examination.

24 Q. Well doctor --

25 A. His -- the parts that he complained about

1 were examined. So from these records I would say
2 that a doctor examined him.

3 Q. But you agree with me that there is no
4 either written in or a signature of a medical
5 doctor anywhere on those records?

6 MS. BURKHART: Objection.

7 A. I don't see any.

8 Q. So doctor, isn't it possible that those --
9 that history was taken and the examination was
10 conducted by, for example, a physician's
11 assistant?

12 A. No. I would say no. Because a doctor --
13 these three notes, these three office visits
14 appear to be, in all probability, written by a
15 medical doctor. It's not the type of -- it's the
16 type of note that a medical doctor would write
17 when he says "no hernia," that's something a
18 doctor would have to write.

19 So I would say, even though there's no name
20 of the doctor, for some reason, I think
21 inadvertantly the doctor didn't sign it, but
22 from reading these notes, probably these three
23 notes were written by a doctor. And I think if
24 you go back back and check you will find out
25 that's the case.

1 Q. Would you stake your medical reputation on
2 that, doctor?

3 MS. BURKHART: Objection.

4 A. I'm just giving my opinion.

5 Q. Okay. Is that a medical opinion or is that
6 just your opinion from --

7 A. Oh no, it's a medical opinion because of
8 the examination and the diagnosis. Oh, not only
9 that, he was given prescriptions for medications,
10 so I think there is no question, these
11 medications would have to be given by a doctor.
12 He was given Parafon Forte, which is not an over
13 the counter drug. So I would say for sure it was
14 a medical doctor.

15 Q. But you don't know, for example, whether a
16 nurse or physician's assistant took the history
17 or actually performed the examination, from those
18 notes?

19 MS. BURKHART: Objection.

20 A. He gave him the medication. No, I think
21 the doctor did all of that.

22 Q. You think the doctor did all of that?

23 A. Well, it's all in one handwriting.

24 Q. That's fair enough.

25 A. The examination and prescription for the

1 medication, so it's fairly obvious it was all
2 written by a doctor.

3 Q. All right. Now doctor, as you testified
4 previously, according to those records, after the
5 initial visit, the day after the lifting incident,
6 Mr. Holliday returned for treatment on March 26th
7 and again on March 28th, 1986, correct?

8 A. Right.

9 Q. And you testified in direct that on March
10 28th, at that visit there was a notation that
11 said "no complaints," is that correct?

12 A. Right.

13 Q. And am I correct that there was also a
14 notation there "diathermy"?

15 A. Right.

16 Q. And diathermy is a form of physical therapy
17 in the broad sense, would that be a fair
18 statement? Heat treatment?

19 A. Diathermy is heat.

20 Q. Okay. Doctor, would you, as a physician,
21 normally give treatment for a muscle strain or
22 sprain when the patient is asymptomatic, has no
23 symptoms?

24 A. Would I?

25 Q. Would you?

3 A. No. I don't give physical therapy
2 treatments, so I wouldn't give it to anybody.

3 Q. But you prescribe physical therapy
4 treatments --

5 A. yes.

6 Q. -- on occasion?

7 A. Right.

8 Q. Would you prescribe physical therapy
9 treatments if a person had had a muscle strain by
10 history but was asymptomatic?

11 A. Right.

12 Q. You would not?

13 A. Right.

14 Q. All right. And yet in this, after the no
15 complaints -- on the date where it listed no
a6 complaints there was a heat treatment given. Is
17 that a fair statement?

18 A. I think you are wrong in that statement.
19 It doesn't say diathermy treatment was given.

20 Q. Doctor, could I see that please, so we are
21 working from the same.

22 Doctor, the last line on the -- and maybe
23 I'm misreading this, but on the last line of the
24 3/28/86 notation, can you read what's written
25 there?

1 A. Well, on this visit of March 28th,
2 specifically I mean, you are very concerned about
3 this particular visit. It says, "exam right groin
4 improved, no complaints." Under that it says
5 "diathermy."

6 Q. Okay, thank you, doctor.

7 A. It doesn't say diathermy -- they might have
8 been referring to that he had diathermy the last
9 time, I don't know. But it says, "no complaints,
10 return if necessary."

11 But nowhere does it say he was given a
12 diathermy treatment to what or any part of the
13 body.

14 Q. Okay, doctor.

15 A. So I think that's -- that particular
16 mention of diathermy in that case really doesn't
17 mean much.

18 Q. Okay, doctor.

19 Now, according to the records that you
20 reviewed, he was also seen on April 1st, which
21 would have been four days later, by a Dr. Roseman,
22 his personal physician, is that correct?

23 A. Right.

24 Q. And you made mention in direct testimony
25 that there was an indication in Dr. Roseman's

1 notes that he complained of pain in the right
2 flank, is *chat*; correct?

3 A. Right.

4 Q. And you indicated that the right flank was
5 on the side and around the belt line; would that
6 be a fair statement? On the side of the body?

7 A. Well, pain in the right lower quadrant on
8 the right flank. So right lower quadrant and
4 right flank would be right here.

10 Q. Okay, so --

11 A. More in the front of the body.

12 Q. You've moved your hand in a motion leading
43 from the abdominal area towards the side of the
14 body. Would that be a fair statement?

15 A. Right.

16 Q. And in addition, you also mentioned that
17 the right flank, you made mention in direct
18 testimony about the kidney. Now the kidney is
19 located in the back, is that a fair statement?
20 The lower back?

21 A. No, the kidney's in the flank.

22 Q. Okay. But if somebody has pain referable
23 to a kidney problem, is that usually in the back?

24 A. Kidney pain?

25 Q. Yes.

1 A. No. Kidney pain or kidney stones normally
2 would radiate down into the -- it could be in the
3 testicles.

4 Q. Can it be in the back?

5 A. Severe pain in the testicles.

6 Q. Can any type of kidney disorders cause back
7 pain?

8 MS. BURKHART: Objection.

9 A. I would say probably you would have to ask
10 a urologist more specifically, but I would say in
11 my experience, you know, not being a urologist,
12 kidney pain usually would not go to the back, it
13 would go more into the groin, the flank, the
14 groin or into the testicles.

15 Q. Okay, doctor.

16 A. Plus it would be associated with bleeding
17 in the urine and other findings; burning,
18 bleeding.

19 Q. Doctor, you also reviewed records of a Dr.
20 Budd, correct?

21 A. Yes.

22 Q. And Dr. Budd is an orthopedic surgeon like
23 yourself?

24 A. Right.

25 Q. And according to the chart, Dr. Budd first

1 saw my client on May 12th, 1986?

2 A. Right.

3 Q. According to Dr. Budd, Mr. Holliday was
4 experiencing radiating symptoms, that is pain,
5 numbness, tingling, into the right leg down into
6 the right foot; is that correct?

7 A. Right.

8 Q. And doctor, pain, numbness, tingling down
9 the leg, those can be symptoms of a herniated
10 disk in the low back; is that correct?

11 A. Right.

12
13 Q. And specifically, Dr. Budd found that such
14 symptoms were -- I'm sorry, that such symptoms
15 were in the right thigh to the knee, on the outer
16 aspect of the right calf, and on the outer side
17 of the right foot; is that a fair statement?

18 A. Right.

19 Q. Doctor, that distribution of radiating
20 symptoms would be consistent with a herniation of
21 an L5 disk, would it not?

22 A. Right.

23 Q. And furthermore, if a herniated disk was
24 causing irritation to the nerve root on the right
25 hand side in the lumbar disk, that would be
consistent with pain in the right lower

1 extremity; is that a true statement?

2 MS. BURKHART: Objection.

3 A. I don't -- I think -- is that the same
4 question I just answered?

5 Q. I'm asking --

4 A. Can you ask that last one again?

7 Q. I'm asking, if I had a herniated disk in
3 the L5 -- herniated L5 disk that was --

9 A. Do you mean the L4-5 interspace or L5, S1
10 interspace?

11 Q. L5, S1 interspace.

12 A. L5, S1 interspace. Okay, go ahead.

13 Q. And it was causing irritation to the right
14 nerve root.

15 A. L5, S1?

16 Q. Right.

17 A. Right.

18 Q. Would right leg pain and numbness and
19 tingling be consistent -- in other words, what
20 I'm getting at, does a right nerve root
21 irritation tend to cause symptoms on the right
22 side?

23 A. Yeah, you said numb -- where is the
24 numbness? Because this is a 5-1 disk?

25 Q. That's right.

1 MS. BURKHART: Objection.

2 A. Usually an L5, S1 disk you'll get findings,
3 for example, you will have an absent ankle jerk,
4 would be the main physical finding. You'll have
5 a positive straight leg raising test. You could
6 have muscle spasm. You could have a list. You
7 could have numbness in the S1 distribution.

8 Q. Okay, doctor.

9 A. That L5, S1, these are the findings -- type
10 of findings you would have.

11 Q. Doctor, in your report you stated what you
12 found when you reviewed these various medical
13 records, is that a fair statement?

14 A. Right.

15 Q. Including Dr. Budd's records?

16 A. Right.

17 Q. And that would be the third paragraph on
18 the first page of your report?

19 A. On which page?

20 Q. First page, third paragraph?

21 A. Yes.

22 Q. He then saw another physician on May 12th,
23 1986, et cetera?

24 A. Right.

25 Q. Right. You didn't make any mention there

1 of back pain, did you?

2 A. Let me look.

3 Oh, about the May 12 office visit?

4 Q. Correct.

5 A. That's true.

6 Q. And yet in fact, as you testified in direct,
7 upon inquiry Mr. Holliday did tell Dr. Budd that
8 he was experiencing some low back pain, correct?

9 A. Well, because I have his records here.

10 Q. Okay.

11 A. Right.

12 Q. So did you write this report without
13 looking at the records first?

14 A. No. I think it was inadvertently left out.

15 But I think the record speaks for itself
16 that Dr. Budd mentions that he had pain in the
17 right leg and lower back. And like I mentioned
18 before, that Dr. Budd's examination on that day,
19 he didn't find any objective findings.

20 Q. All right. Now, you have testified in
21 direct that there were normal X-rays, there were
22 X-rays taken or ordered by Dr. Budd at that May
23 12th visit and you said that those X-rays were
24 normal, is that correct?

25 A. Right.

1 Q. Did you review those X-ray films?

2 A. No. Dr. Budd said they were normal.

3 Q. Okay. But you have not actually reviewed
4 the X-ray films yourself, is that a fair
5 statement?

6 A. No. Right.

7 Q. Doctor, when Mr. Holliday went to see
8 Dr. Budd on May 12th, 1986, he reported that he
9 had been having those radiating symptoms, the
10 pain, the numbness, the tingling into his right
11 leg and foot, which as you testified are symptoms
12 of a herniated disk, for about two weeks before
13 seeing Dr. Budd; is that true?

14 A. Right.

15 Q. And so it's fair to say that Mr. Holliday,
16 by history, had been experiencing those symptoms
17 in April of 1986?

18 A. Well, May 12th, that would be starting
19 April 28th, I suppose.

20 Q. All right.

21 A. Which would be about close to five weeks
22 after the incident.

23 Q. When you spoke with Mr. Holliday did he
24 give you any history of any other trauma between
25 March 23rd, 1986, the date when he hurt himself

1 lifting, and May 12th when he saw Dr. Budd and
2 was having those radiating symptoms?

3 A. Between March 23rd and May 12th?

4 Q. When he first saw Dr. Budd and was having
5 those radiating symptoms. Did he relate to you
6 that he had had any other trauma during that
7 period?

8 A. Well, you mean like bending over, things
9 like that?

10 Q. Any other trauma: a fall, a car accident, a
11 blow to the back, any other trauma did he relate
12 to you in his history?

13 A. Well, trauma theoretically --

14 Q. I don't want to be theoretic, I want to
15 know, did he relate to you any trauma?

16 Did he relate bending over and having pain
17 on another occasion?

18 A. I'm sure he bent over on other occasions.

19 Q. I'm not asking you whether he bent over,
20 I'm asking you whether or not he related any
21 history of trauma?

22 A. Oh, you mean trauma at work?

23 Q. No, any type of trauma.

24 A. Oh, any trauma.

25 I don't think so.

a Q. Okay, thank you.

2 Have you reviewed any records whatsoever
3 regarding another trauma between March 23rd,
4 1986, following this lifting incident, and May
5 12th, 1986, when he had all those radiating
6 symptoms at Dr. Budd's office?

A. Well, the only trauma that I know about
8 between that time is what Miss Burkhart said, when
9 he fell down the steps, cement steps, around the
10 time that the pain in the back and leg started.
11 But I didn't see any records or it.

12 Q. Okay. That's what -- the records that you
13 have, those were provided to you by Miss
14 Burkhart, is that a fair statement?

15 A. As far as I know.

16 Q. And did she give you any emergency room
17 records of any other trauma following this
18 lifting incident about a fall?

19 MS. BURKHART: He's already
20 testified as to what records he has
21 reviewed.

22 A. You mean the fall down the cement steps?

23 Q. Did she provide you with any emergency room
24 records respecting that?

25 A. No, I didn't know about this, she just told

1 me there was a fall -- that he fell down the
2 cement steps and that's when this pain in the
3 back and leg started. That's what I mentioned
4 before.

5 Q. That's what she told you?

6 A. Yeah, you heard her the same as me.

7 Q. But you haven't seen any medical records
8 whatsoever to support that, have you?

9 A. No.

10 MS. BURKHART: Objection, he's
11 answered that.

12 Q. All right. Have you seen any incident
13 reports, for example, showing that there was a
14 fall after this lifting incident?

15 MS. BURKHART: Objection.

16 A. You are referring to down the cement
17 steps?

18 No, I just heard about it when you did.

19 Q. Okay. So until today you were totally --
20 this had never come up before, and Miss Burkhardt
21 had never told you about it?

22 A. That's right. I didn't know about it
23 before today.

24 Q. And even now she's never provided you with
25 any emergency room records showing that he sought

1 treatment for a fall down stairs?

2 MS. BURKHART: Objection.

3 You've asked that question before. It
4 has been answered.

5 Q. Go ahead. You have to respond.

6 A. Oh. About the fall down the cement stairs,
7 I never saw that -- no, you're right, I never saw any
8 records about it. Miss Burkhardt just told you
9 and I together that he fell down cement stairs.
10 The patient never told me that.

11 Q. And you've also reviewed the records of the
12 Bellaire Clinic, Dr. Roseman, Dr. Budd and
13 Dr. Sawhny. Is there any notation in any of
14 those records regarding any type of fall down
15 stairs?

16 A. Well, don't forget the Bellaire records and
17 Dr. Roseman's records were before this particular
18 fall down the cement stairs. So they couldn't
19 mention it.

20 Q. But none of the records before or after --

21 MS. BURKHART: Objection.

22 Q. -- show anything about any complaints about
23 a fall down the stairs? Is that a fair
24 statement?

25 A. No. I said I didn't see anything.

1 Q. And you said that Dr. Roseman's and the
2 Bellaire Clinic's records were from before this
3 happened but that Dr. Budd's and Dr. Sawhny's
4 came afterwards?

5 A. Right.

6 Q. Do you know what date this alleged incident
7 occurred?

8 A. No. I only know the same thing you know.
9 I heard the same thing from Miss Burkhart, just
10 like you did.

11 Q. So it's possible, if this incident occurred
12 at all, it happened after Dr. Budd saw Mr.
13 Holliday, isn't that true?

14 MS. BURKHART: Objection.

15 A. Well -- Oh, you are saying it did happen?

16 Q. I'm asking you, it's possible, isn't it?

17 A. It's possible that he fell down cement
18 stairs? Sure it's possible?

19 Q. After, after Dr. Budd saw him and he had
20 all these herniated disk symptoms.

21 A. Mr. Pomerantz, it's possible that I fell
22 down the stairs walking into the building today.
23 It's possible that I'll trip and fall down the
24 stairs walking out. Anything's possible.

25 Q. All right. So your answer is yes, it may

1 have happened after Dr. Budd examined him?

2 MS. BURKHART: Objection.

3 A. I don't know. It's not really a question
4 you are asking me.

5 Q. It is a question I'm asking you. Why isn't
6 it a question, doctor? I'll rephrase it if you
7 don't understand it.

8 A. If you are asking me if it's possible -- I
9 think it's such a vague question to ask me if
10 it's possible if this person fell down cement
11 stairs. It's possible he fell down cement stairs
12 any time. So I would have to say yes, it's
13 possible.

14 Q. Let me ask you this doctor.

15 A. I don't know how I can answer it any
16 better?

17 Q. You're not testifying here today that Mr.
18 Holliday never had a herniated L5 disk, are you?

19 A. No.

20 Q. In fact, you are of the opinion that he did
21 suffer from a herniated L5 disk, isn't that true?

22 A. He had surgery for it.

23 Q. All right. So the answer is yes?

24 A. Yes, he had surgery for it.

25 Q. But did he have it --

1 A. At that time? I didn't see him at that
2 time. But according to the records and the
3 surgery, he had a herniated disk.

4 Q. Now doctor, if -- and would you also agree
5 that he had a herniated L5 disk and nerve root
6 irritation as of his May 12th, 1986 visit with
7 Dr. Budd?

8 MS. BURKHART: Objection.

9 Q. In your opinion?

10 A. Yes, in my opinion at the time he saw Dr.
11 Budd, Dr. Budd's examination showed no objective
12 findings. And a patient with no objective
13 findings cannot have a herniated disk, that's a
14 fact.

15 So at that particular visit, he did
16 not have a herniated disk.

17 Q. Doctor, what is hypesthesia?

18 A. That's subjective.

19 Q. No, what is hypesthesia?

20 A. Hypesthesia is if you put pressure on an
21 area and the patient says it doesn't feel as
22 normal as it does here. That's a subjective
23 finding.

24 Q. But would you agree that in Dr. Budd's
25 notes as of May 12th, 1986, Mr. Holliday did

1 indicate hypesthesia in his right leg?

2 A. Yes. But what I said is --

3 MS. BURKHART: Objection.

4 A. What I said is, in Dr. Budd's notes there
5 were no objective findings by physical
6 examination. He had normal motion of the back.
7 He could bend over and touch his toes. You can't
8 have a herniated disk with no objective findings,
9 that's a fact.

10 Q. But what I'm saying --

11 A. Any orthopedic --

12 MR. POMERANTZ: Motion to
13 strike.

14 Q. Doctor, my question to you is, did he
15 report -- was there a finding noted of
16 hypesthesia on that May 12th, 1986 examination?

17 A. Yeah, sure. I said that.

18 Q. Okay. And would that be considered a
19 positive or a negative findings?

20 A. It's a positive finding.

21 Q. So there was a positive finding as of that
22 May 12th, 1986 examination, correct?

23 MS. BURKHART: Objection.

24 A. Well, that's a subjective finding.

25 Q. All right, doctor.

1 And when you say subjective, you mean
2 anything in which the patient tells you or in
3 which the patient has to have some input, verbal
4 or otherwise?

5 A. Sure. For example, straight leg raising
6 test is normal. He can bend over and touch his
7 toes.

8 Q. Now wait a second.

9 MR. POMERANTZ: Motion to
10 strike.

11 Q. Doctor, please, just answer my question,
12 we'll all be out of here a lot faster.

13 MS. BURKHART: I'm going to
14 object to that.

15 MR. POMERANTZ: That's fine. I
16 don't want to be here all night.

17 (Off the record.)

18 Q. Doctor, you testified earlier that your
19 first knowledge, and your only knowledge, of an
20 alleged fall on steps that Mr. Holliday suffered
21 is what Miss Burkhardt just told you today,
22 correct?

23 MS. BURKHART: Objection, he's
24 answered that question. It's been
25 asked and answered.

1 MR. POMERANTZ: I think it
2 transitionalism.

3 A. You mean the cement steps?

4 Q. Correct.

5 A. Yes.

6 Q. All right. And you have no way of knowing
7 whether Miss Burkhart told you the truth or
8 whether she's lying, do you?

9 MS. BURKHART: Objection.

10 A. I don't think Miss Burkhart would lie.

11 Q. Well, you don't know whether she actually
12 witnessed that incident, the alleged incident, do
13 you?

14 A. Oh, I have no idea of that.

15 MS. BURKHART: Objection.

16 Q. So in other words, she may be telling you
17 something that she has no personal knowledge
18 about, correct?

19 A. You're asking me if Miss Burkhart saw him
20 fall down the cement steps?

21 Q. Correct. That's what I'm asking you.

22 A. I don't think she said she saw him fall.

23 Q. All right. Now doctor, you testified
24 previously that in your opinion someone would not
25 have a herniated L5 disk and not seek treatment

1 rather quickly, correct?

2 A. I never said that.

3 Q. Well, didn't you testify previously that if
4 somebody -- if Mr. Holliday had herniated his L5
5 disk lifting, that he would have sought treatment
6 rather quickly after that?

7 A. I never said that.

8 Q. Well, that he would have had symptoms of a
9 herniated L5 disk rather quickly afterwards?

10 A. I don't think I said that either.

11 Q. Okay, doctor. So do you agree with those
12 statements or you disagree with those statements?

13 A. Which statements?

14 MS. BURKHART: Objection.

15 Q. Do you agree that if a person suffered a
16 herniated L5 disk and some sort of trauma, that
17 he would normally seek some sort of treatment
18 rather quickly?

19 A. What do you mean by rather quickly?

20 Q. Within, for example, a couple of days?

21 A. Absolutely.

22 Q. All right, thank you.

23 And yet you have no records and you've seen
24 no records that Mr. Holliday appeared, presented
25 himself at an ER, at a med center, at a personal

1 physician's office, at an orthopod's office or a
2 neurologist's office saying, I fell on concrete
3 steps and I have back pain.

4 Is that a fair statement?

5 MS. BURKHART: Objection.

6 That's been answered and asked on many
7 occasions.

8 A. No. I said after the March 23 incident he
9 went the next day.

10 MR. POMERANTZ: Motion to
11 strike.

12 Q. That's not what I'm asking you.

13 a, You are talking about the steps again?

14 Q. Right.

15 MS. BURKHART: Objection.

16 A. What was the question about the steps?

17 MR. POMERANTZ: Do you want to
18 read the question back. I'm too tired
19 to read it again.

20 (The question was read by the
21 reporter.)

22 MS. BURKHART: I'll renew my
23 objection.

24 A. Yes.

25 Q. Okay. Now doctor, to your personal

knowledge, Mr. Holliday was not involved in any
trauma between March 26th and May 12th, except
3 for this lifting incident. Is that a fair
4 statement?

5 MS. BURKHART: I am going to
6 object again. The question has been
7 asked and answered.

8 A. Well, I'm only aware of it from, like I
9 said before, what Miss Burkhardt told us today.

10 Q. Okay, fair enough.

11 And in addition, doctor, to your knowledge
12 Mr. Holliday had no pre-existing back problem
13 before March 23rd, 1986; isn't that a fair
14 statement?

15 A. Not that I know of.

16 Q. And in fact you noted in your report, as
17 far as I can see, the patient has had no
18 pre-existing back problems before March 23rd,
19 1986?

20 MS. BURKHART: Objection. He
21 just answered.

22 Q. Correct?

23 A. Should I look at the report? I think as
24 far as I know that's the case.

25 What sentence is it?

1 Q. That's the last sentence of the second last
2 paragraph in the report.

3 A. Which page?

4 Q. Second page.

5 A. Second page. Which paragraph?

6 Q. The second to the last paragraph.

7 It's your report, doctor.

8 MS. BURKHART: Objection.

9 A. He had no pre-existing back problem.

10 Q. Okay.

11 A. Yes.

12 Q. In other words, he had not suffered from
13 back pain or radiating symptoms into his leg
14 before March 23rd, as far as you are aware?

15 A. That's true. As far as I'm aware before
16 about five weeks after that; about April 28th, I
17 would say.

18 Q. Now, you do agree that Mr. Holliday felt
19 groin pain immediately after this incident on the
20 lifting incident on March 23rd, 1986, correct?

21 MS. BURKHART: Objection.

22 That's not at issue in this case.

23 A. Yes.

24 Q. And according to the Bellaire Clinic
25 records, when they examined him the very next

1 day they found no hernia, isn't that so?

2 A. Yes,

3 Q. And when you examined him you found no
4 evidence of a hernia either, correct?

5 A. Correct.

6 Q. Now doctor, on June 28th, 1986 a CAT scan
7 was performed on Mr. Holliday, correct?

8 A. June what?

9 Q. 28th, 1986?

10 A. Yes.

11 Q. And have you reviewed the actual CAT scan
12 films yourself?

13 A. No.

14 Q. So in other words, you're testifying
15 without ever having read the CAT scan films?

16 A. Right.

17 Q. Now according to the reports you read, that
18 CAT scan showed a central protrusion of the L5
19 disk, correct?

20 A. I've got the report here by the
21 radiologist, Dr. Deville, so that's what I'm
22 looking at.

23 The L5, S1?

24 Q. Correct.

25 A. On this report, Dr. Deville says at L5, S1?

1 There does not -- this is quote -- "there does
2 not appear to be --"

3 Do you want to get it?

4 Q. Yes,

5 Go ahead,

6 A. I'm just quoting it. He says, "the nerve
7 roots at this level appear symmetrical and there
8 does not appear to be encroachment upon the L5,
9 S1 foramina."

10 Q. Let me see this, if I may, save some time.

11 A. You want me to underline it for you?

12 Q. All right. Why don't you read what
13 Dr. Deville's impression is. It would be the
14 last sentence in all capital letters?

15 A. Yes. That's what I'm getting at.

16 Q. I knew you were.

17 A. "The nerve roots are symmetrical, there
18 does not appear to be encroachment at L5, S1 at
19 this particular level you are talking about. The
20 appearance is that of a central disk protrusion."

21 Q. And a protrusion would be a herniation?

22 A. No.

23 Q. Well, a herniation would be a type of
24 protrusion?

25 A. No.

1 Q. You disagree with that?

2 A. Yes. Could I explain it?

3 Q. Please do.

4 A. Okay. The disk and -- the bones that go up
5 and down the back are the vertebrae. In-between
6 the vertebrae are the disks, that's the soft
7 material. The disks are mostly made up of water,
8 that's a fact. The center part is the softer
9 part and around it there is a tougher soft
10 tissue.

11 All right. It's very common for these
12 disks to bulge a little, okay? And when they
13 cause symptoms is when they bulge to one side or
14 the other, because the nerve roots are either
15 right or left.

16 Q. Doctor, I think we are getting a little bit
17 afield here.

18 What I asked you was, would a herniation be
19 a protrusion of the disk?

20 A. No. That's what I'm trying to explain.

21 Q. In other words, a herniated disk does not
22 protrude outward?

23 A. Well, you're not -- I think you are
24 confused about it, that's why I was trying to
25 explain it to you.

1 Q. Doctor, so we understand, you are
2 disagreeing that a herniated disk -- that that
3 disk protrudes outwards from its normal location?

4 A. No, that's true.

5 Q. Okay, thank you.

6 Now, would you please read for us the
7 impression of the radiologist that you quoted
8 from before? The last line that's in all capital
9 letters, doctor.

10 A. "Impression. The findings are consistent
11 with a central protrusion of the fifth lumbar
12 disk."

13 Q. Okay, thank you.

14 Now doctor, were you aware and did you
15 review records that subsequently a myelogram was
16 performed on Mr. Holliday?

17 A. Right.

18 Q. And would you agree that the myelogram
19 showed that there was an extradural defect at L5,
20 S1 compatible with a herniated disk?

21 A. Right.

22 Q. Okay. And as you testified before -- oh,
23 incidentally, did you review the myelogram
24 film yourself?

25 A. No.

1 Q. Okay. So in other words, you have not
2 reviewed the X-ray, the CAT scan or the myelogram
3 films?

4 A. Right.

5 Q. When Dr. Sawhny performed surgery, he
6 opened up Mr. Holliday and found, in fact, that
7 there was a herniated L5 disk, is that correct?
8 L5, S1 disk?

9 A. I'm reading the operative note.

10 MS. BURKHART: I'm going to
11 object to this. I believe that you
12 asked him this question when you began
13 your cross examination, and he answered
14 it,

15 A. Yes, he says there was a bulge at the L5
16 disk. That's true.

17 Q. And I think he called it a prominent bulge,
18 isn't that correct?

19 A. Yes.

20 Q. And didn't he also state that there were
21 several fragments of the disk in the disk space,
22 correct?

23 A. Well, there always are.

24 Q. Did he say that or didn't he?

25 A. He said there were no free fragments. In

1 other words, it wasn't herniated, there were
2 several moderate size fragments.

3 Q. Doctor, you testified previously that this
4 gentleman did in fact suffer a herniated L5 disk.
5 Are you now changing your testimony saying he
6 never did suffer a herniated disk?

7 MS. BURKHART: Objection.

8 A. No.

9 Q. You are agreeing he did suffer a herniated
10 disk.

11 A. Yes.

12 MS. BURKHART: Objection. He's
13 answered that before.

14 A. I answered that before.

15 Q. And would you agree that the disk was
16 herniated or bulging on the right side?

17 A. Yes.

18 MS. BURKHART: Objection. He's
19 answered that also before.

20 A. No, no, no. Not herniated, bulging.

21 Q. Okay, doctor.

22 A. It wasn't herniated, according to the
23 doctor's records. It was not herniated.

24 Q. And would you agree with me, in all
25 likelihood the herniated L5 disk on the right

1 side was what was causing Mr. Holliday's pain and
2 numbness and tingling to radiate into his right
3 leg and foot?

4 MS. BURKHART: Objection. What
5 time period are you talking about here?

6 MR. POMERANTZ: I'm talking as
7 of -- whenever it showed up on the
8 records.

9 A. Well, when I saw him in '88 he complained
10 of pain and numbness in the right foot.

11 Q. I'm talking about prior to surgery.

12 A. And he probably didn't have a herniated
13 disk then. It's hard to say really, anymore
14 than I could say in '88.

15 Q. Okay.

16 A. In other words, in '88, although he had
17 these complaints about his right leg, his
18 examination was normal. He had no evidence of a
19 disk.

20 Q. Okay. Now after the operation a piece of
21 that disk that was removed from his low back was
22 taken to the pathology lab, is that correct?

23 A. I suppose. That's standard procedure.

24 Q. And did you have an opportunity to read the
25 report of the pathology lab that was contained

1 within those records?

2 A. Yes.

3 Q. And would you agree --

4 A. Oh no, I'm sorry.

5 Yes.

6 Q. And would you agree with me that the
7 pathology lab did not find any tumor or -- didn't
8 find any tumor in the material?

9 MS. BURKHART: Objection.

10 A. I don't see any mention of a tumor.

11 Q. So in other words, would you agree with me
12 that the pathologist that reviewed that piece of
13 disk that was removed from his back confirmed
14 that it was a herniated disk material?

15 MS. BURKHART: Objection.

16 A. No, the only -- the pathologist can't say --
a7 well first of all, the disk wasn't herniated.
18 According to the surgeon it was not herniated.

19 Second of all --

20 Q. In other words, you saw something in the
21 notation that says it wasn't herniated?

22 A. In the op note, sure. It was bulging but
23 not herniated. That's what I was trying to
24 explain to you before.

25 Q. But what I'm asking --

1 A. That's what you're confused about. But the
2 pathologist couldn't comment on whether a disk is
3 herniated, bulging or normal.

4 When you take the disk material out and
5 give it to the pathologist, all he can say is
6 this is disk material.

7 Q. Okay.

8 A. He can't say if it was extruded, if it was
9 in the inner-space, or where it was.

10 Q. But what I'm saying to you is that he could
11 say whether it was diseased, for example?

12 A. Not really.

13 Q. Whether it was cancerous?

14 A. Cancerous, sure.

15 Q. Okay. Would you read for us what, the last
16 line of the report in all capital letters under
17 diagnosis, that the pathologist made?

18 A. Nucleus pulposus --

19 MS. BURKHART: Objection.

20 Q. Go ahead.

21 A. Nucleus pulposus right L5, focal
22 degeneration.

23 Q. Okay, thank you, doctor.

24 Now, doctor, if -- to see if I understand,
25 because we have been talking about some

1 complicated matters here.

2 As far as you know, up until March 23rd,
3 1986 Mr. Holliday suffered from no back
4 problems, correct?

5 MS. BURKHART: Objection.

6 A. Right.

7 Q. And there was -- and I'm not waiving my
8 prior objection but let me ask you a couple
9 things about the -- apparently there was some
10 discussion of a motor vehicle accident prior to
11 this incident?

12 MS. BURKHART: Objection.

13 MR. POMERANTZ: Are you now
14 objecting to it? Did you bring it out?

15 MS. BURKHART: No.

16 MR. POMERANTZ: Okay. I'll
17 strike that. Never mind.

18 A. You said a motor vehicle accident?

19 MS. BURKHART: He's striking his
20 question.

21 Q. Prior to March 23rd, 1986 Mr. Holliday
22 suffered from no back problems. You also --

23 MS. BURKHART: Objection.

24 MR. POMERANTZ: Now wait a
25 second, I haven't asked my question

1 yet.

2 MS. BURKHART: That's why I was
3 objecting, because it wasn't a
4 question.

5 Q. If I understand your testimony correctly,
6 to your knowledge, he suffered from no back
7 problems prior to March 23rd, 1986. He suffered
8 some sort of injury -- March 23rd, I'm sorry --
9 lifting at work on March 23rd, 1986.

10 A. Well, could I ask you something about that?

11 Q. Well, you can't ask me any questions, I get
12 to ask you the questions.

13 A. Because you -- I'm assuming that he lifted
14 something. He told me he was bending over to
15 lift something.

16 Q. All right. In a bending or lifting
17 position.

18 A. But he didn't lift anything.

19 Q. You agree that there was a trauma at work
20 regarding bending and lifting?

21 A. Not really. Because the -- Mr. Holliday
22 told me he was bending over to lift something, he
23 didn't tell me he lifted it.

24 Now I don't know -- can I show you?

25 Q. You don't know --

1 A. No, what I'm getting at is, I'm not sure I
2 can say bending over is -- in other words, can I
3 stand up? In other words, he told me that he was
4 bending over to lift something, okay? Now he
5 didn't say he lifted it, he was bending over to
6 lift it and he got pain in the right groin. That
7 was the history he gave me.

8 Q. Doctor, would you read first the history
9 that he gave to the Bellaire Clinic less than 24
10 hours after this incident occurred?

11 A. Well, here it's different.

12 Q. What does it say there?

13 A. Here it says, "While I was at work I was
14 lifting truck rims."

15 Q. Okay.

16 A. Of course it doesn't say what they weighed.
17 "Onto a chrome polishing machine. And in doing
18 so, felt pain in the right groin."

19 Q. And do you have any reason to disagree with
20 that statement?

21 MS. BURKHART: Objection. He
22 answered that already.

23 A. Well --

24 Q. Doctor, what I'm getting at is, you
25 testified already that there was no prior back

1 problems, as far as you know. There was some sort
2 of lifting or bending incident at work, which you
3 contest now whether it was a lifting incident or
4 not, that he felt pain in the right groin?

5 A. Right.

6 Q. He subsequently felt back pain with
7 radiating symptoms into his leg.

8 I forget which way you are at now, are you
9 agreeing there is a herniated or are you denying
10 it now?

11 MS. BURKHART: I'm going to
12 object to that entire scenario.

13 Q. Do you agree there was a herniated disk or
14 not?

15 A. Yes.

16 MS. BURKHART: Objection. He
17 answered that already.

18 A. Yeah, sure I agree.

19 MR. POMERANTE: Well, he has
20 gone back and forth, so I --

21 MS. BURKHART: Objection. Move
22 to strike that too.

23 A. No, I've never gone back and forth. I've
24 always said --

25 Q. If I could restate the question.

1 He had no pre-existing back problems before
2 March 23rd. He suffered some sort of injury
3 during an incident at work on March 23rd. You
4 have no evidence of any trauma after March 23rd,
5 1986. And he ultimately did have a herniated
6 disk.

7 Is that all consistant with your opinion?

8 MS. BURKHART: Objection.

9 A. I think it's very sparce.

10 Q. But --

11 A. As far as --

12 Q. But you don't disagree with any statement
13 there?

14 MS. BURKHART: Objection..

15 A. I think you left out one very important
16 fact.

17 Q. What was that?

18 A. That the pain in the back started five
19 weeks later.

20 Q. Okay, that's what I'm getting at.

21 Would you agree with me that a lumbar disk
22 can -- so it's your opinion that the herniated L5
23 disk was not caused by that lifting incident, in
24 a nutshell?

25 MS. BURKHART: Objection.

1 A. It's my opinion that the herniated disk,
2 the later complaints of pain in the back and leg
3 have nothing to do with an incident five weeks
4 before.

5 Q. Okay. Would you agree with me that one way
6 a lumbar disk can be injured is from lifting or
7 trying to lift?

8 A. Sure.

9 Q. And I would assume that this is
10 particularly true where you are lifting a heavy
11 object, say one weighing over 60 pounds?

12 A. Not necessarily. People lift things
13 hundreds of pounds every day and never have
14 herniated disks. So you can't surmise that.

15 Q. But would you say that --

16 A. Or you can have a herniated disk with no
17 lifting and no history of trauma.

18 Q. Okay.

19 A. So all these things I think you are saying
20 are irrelevant.

21 Q. But I take it in your own practice you have
22 had an opportunity to see and treat patients who
23 did suffer lumbar herniated disks as a result of
24 lifting. Is that a fair statement?

25 A. I already said people can have --

1 Q. No, I'm saying have you treated patients?

2 A. Sure. They can have herniated disks from
3 lifting.

4 Q. Doctor, would you agree with me that a
5 herniated lumbar disk can cause groin pain?

6 A. An L5 disk? No.

7 Q. Would you agree with me that a lumbar disk
8 at some level?

3 A. Yes, higher, higher lumbar disk.

10 Q. But you disagree with me that a herniated
11 L5 disk can cause groin pain?

12 A. Right.

13 MS. BURKHART: Objection. He
14 answered that.

15 MR. POMERANTZ: I'm just trying
16 to clarify it.

47 MS. BURKHART: It was very clear
18 the first time. I'm going to continue
19 my objection.

20 Q. Now, when you examined Mr. Holliday in
21 August of 1988, over two years after his back
22 surgery, you didn't find any motor or sensory
23 loss in his leg, is that correct?

24 A. I think I answered that.

25 Q. The answer is no, you didn't find any?

1 MS. BURKHART: Objection.

2 Q. Correct?

3 A. was that my answer?

4 Q. I don't know. What's your answer now? Did
5 you find any motor or sensory weakness or loss in
6 his leg --

7 MS. BURKHART: Objection.

8 Q. -- when you examined him in August of '88?

3 MS. BURKHART: Objection.

10 A. Can I -- am I obligated to keep answering
11 the same questions? Because I've already
12 answered this.

13 Q. Doctor, yes, you are obligated, unless you
14 refuse to answer and then we can get a court
35 order.

16 A. Okay.

17 MS. BURKHART: Objection.

18 A. Even though it's the same question?

19 Q. Even though it's the same question.

20 A. Okay.

21 Q. Bear with me, doctor. I'm sorry, I'm not a
22 doctor, I'm a little bit slow, I just want to
23 make sure, there has been some differences in
24 your testimony. I want to make sure I understand
25 your testimony.

1 MS. BURKHART: Objection.

2 A. No, there has been no -- my testimony has
3 been the same since we started.

4 Q. We will let the jury decide that.

5 A. And my answer is the same as before, there
6 was no motor or sensory loss.

7 Q. And you didn't find any sign of nerve root
8 compression?

9 A. Right.

10 MS. BURKHART: Objection.

11 Q. Now you have already testified that Mr.
12 Holliday did have disk-like symptoms before his
13 surgery in July of '86, is that correct?

14 A. Correct.

15 MS. BURKHART: Objection.

16 Q. And we know that his L5 disk was herniated?

17 MS. BURKHART: Objection.

18 A. Right.

19 Q. So your findings when you examined him two
20 years down the road were consistent with a
21 successful lumbar laminectomy and disks excision,
22 is that true?

23 A. Well, I don't know if you could, if you can
24 say that because he still complained of pain.

25 Q. I'm talking about your objective findings?

1 A. Well, he never had any objective findings,
2 so you can't compare how he was before or after.
But his subject complaints are the same as
4 before.

5 Q. Doctor, what I'm saying to you is, would
6 you agree that if somebody had a herniated L5
7 disk and then had a successful operation on the
8 back, a lumbar laminectomy and disks excision,
9 that you would expect two years down the road,
10 barring any new trauma, that he would have a
11 normal neurological examination?

12 A. No.

13 Q. Okay. What would you expect to find?

14 A. The reason I say no is because when you
15 have an L5, S1 disk, one of the most common
16 physical finding -- well, it's common to have
17 objective findings on examination.

18 Q. Following surgery?

19 A. Before surgery.

20 Q. I only want to talk about after surgery?

21 A. Okay. One of the common findings of an L5,
22 S1 disk is an absent ankle jerk.

23 Q. After surgery?

24 A. Absolutely. It never comes back.

25 Q. And you did not find that on examination?

1 A. Yeah. In other words, you asked me --

2 Q. What I'm getting at is, do you agree that
3 Dr. Sawhny's surgery was successful?

4 MS. BURKHART: Objection.

5 A. No, no. What I'm saying is, that his
6 subjective complaints are about the same as they
7 were before.

8 So if the patient complained that he still
9 had pain in the back and right leg, well he had
10 those pains before, so --

11 Q. Doctor, I guess what I'm asking you in a
12 nutshell is --

13 A. I don't know what you are getting at.

14 Q. You examined Mr. Holliday two years after
15 the surgery. And the question we are here to
16 find out is what caused the herniated L5 disk.

17 Why did you bother to examine him,
18 physically examine him at all?

19 MS. BURKHART: Objection.

20 A. Well, in order to evaluate a patient you
21 have to take a history, examine the patient,
22 review whatever records you can.

23 Q. Were you expecting to find, after surgery,
24 were you expecting to find nerve root
25 symptomology?

1 MS. BURKHART: Objection.

2 A. I was expecting to find whatever I found by
3 examination.

4 I just examine them and whatever I find,
5 that's what I find.

6 I'm not expecting --

7 Q. What I'm asking you, doctor. Wasn't having
8 you physically examine him after he's had
9 surgery, two years after having surgery, kind of
10 like closing the hen house door after the
11 chickens have escaped? I mean, the surgery's
12 already been performed at that point?

13 MS. BURKHART: Objection.

14 A. I mean, I was there to review all this and
15 give an opinion. That's what I'm doing.

16 Q. All right. But you did charge for that
17 examination, correct?

18 MS. BURKHART: Objection.

19 A. Sure.

20 Q. You charged Miss Burkhardt's office?

21 MS. BURKHART: Objection.

22 That's been answered.

23 A. I don't know. Sure I'm going to charge
24 her.

25 Q. And for the examination of Mr. Holliday,

1 reviewing the records and writing the report to
2 Miss Burkhart, how much did you charge?

3 A. I have no idea. I have to get the bill
4 from her.

5 Q. All right. Well, doctor, if I represent to
6 you that a copy of the bill was provided to me by
7 Miss Burkhart and it states that it was \$350,
8 would you have any reason to disagree with that?

9 A. No.

10 Q. And would it also be a fair statement that
11 you are charging for your testimony here today?

12 A. Sure.

13 MS. BURKHART: Objection. He's
14 answered that too.

15 Q. And are you charging on an hourly basis or
16 a flat fee?

17 MS. BURKHART: Objection. He's
18 answered that too.

19 A. Hourly basis, just like I said before.

20 Q. Did you meet with Miss Burkhart prior to
21 testifying here today?

22 A. Yes.

23 Q. And what time did you begin to meet with
24 her?

25 A. I have no idea.

1 Q. You have no idea?

2 A. No .

3 Q. Would you be able to check your records and
4 give us an answer? We can take a break for you
5 to do that?

6 A. I told you before, Mr. Pomerantz, no doctor
7 keeps records of what time he started or stopped.
8 It's not significant.

9 Q. In other words, you are testifying to this
10 jury that you are going to charge Miss Burkhart
11 an hourly basis, but you didn't keep track of how
12 much time you put into this?

13 MS. BURKHART: Objection.

14 A. All right. Now that you ask, it's 5:15.
15 What time did we start, about 3:00 o'clock? So
16 it's a couple hours.

17 Q. Okay. And how much do you charge per hour
18 for this type of testimony?

19 A. 100, \$150 an hour.

20 Q. You've stated two different amounts, do you
21 know?

22 A. \$125 an hour.

23 Q. Okay. And is that for a full hour and it's
24 pro-rated; or is that for an hour and any portion
25 thereof?

1 MS. BURKHART: Objection.

2 A. Whatever it comes out to. I mean, if it's
3 half an hour, I suppose you divide it in half.

4 MR. POMERANTZ: Fair enough. I
5 have no further questions.

6 - - -

7 REDIRECT EXAMINATION

8 BY MS. BURKHART:

9 Q. Doctor, when you do an examination of a
10 patient, does the time that you expend on that
11 examination vary?

12 A. Sure.

13 Q. And it would vary according to the specific
14 problem that you are examining at that point
15 relative to that patient?

16 MR. POMERANTZ: Objection as
17 to form.

18 A. Sure, if everything's normal it probably
19 would take less time.

20 Q. So then how do you gauge the amount of time
21 necessary to perform an examination of a patient?

22 A. Well, like I mentioned before, Miss
23 Burkhart, no physician, if you asked any
24 physician how much time they spend examining a
25 patient or what time they started the exam or

1 what time they ended the exam, none of them can
2 tell you because none of them keep those kind of
3 records. None of them would time an examination.
4 That's nothing that any physician would do. It's
5 not necessary.

6 Q. So you would spend --

7 A. As much time as necessary.

8 Q. Doctor, you had an opportunity to review
9 the reports relative to the CAT scan that was
10 performed and the myelogram on Mr. Holliday, is
11 that not correct?

12 A. Right.

13 Q. Why did you not order a myelogram or a CAT
14 scan of Mr. Holliday at the time that you saw
15 him?

16 MR. POMERANTZ: Objection. We
17 didn't go into that on cross.

18 A. Well, I didn't order it because number one,
19 it wasn't indicated; and number two, I wasn't
20 treating him. His own treating physicians didn't
21 order any more of these tests, so obviously they
22 didn't think it was indicated.

23 MR. POMERANTZ: I'll withdraw
24 the objection.

25 MS. BURKHART: I have no further

1 questions at this time.

2 MR. POMERANTZ: I have no
3 further questions.

4 MS. BURKHART: Doctor, do you
5 waive the viewing of the video tape and
6 the signing of the transcript?

7 THE WITNESS: Right.

8 MS. BURKHART: And Mr.
9 Pomerantz, do you waive the filing in
10 the court and the reading and signing
11 by Dr. Katz of his deposition?

12 MR. POMERANTZ: Yes, I do.

13 MS. BURKHART: And the video?

14 MR. POMERANTZ: Yes.

15 - - -

16 (Deposition Concluded.)

17 (Signature Waived.)

18

19

20

21

22

23

23

25

1
2 THE STATE OF OHIO,)
3) SS: CERTIFICATE
COUNTY OF CUYAHOGA.)

4 I, Richard G. DelMonico, a Notary Public
5 within and for the State of Ohio, duly
6 commissioned and qualified, do hereby certify
7 that the above-named DR. GARY KATZ was
8 by me, before the giving of his deposition,
9 first duly sworn to testify to the truth, the
10 whole truth and nothing but the truth; that the
11 deposition as above set forth was reduced to
12 writing by me by means of stenotype and was later
13 transcribed into typewriting under my direction
14 by computer-aided transcription; that the said
15 deposition was taken pursuant to agreement
16 at the time and place aforesaid; that I am not
17 a relative or attorney of either party or
18 otherwise interested in the event of this action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and seal of office at Cleveland, Ohio, this
21 9th day of May, 1990.

22
23 Richard G. DelMonico
24 Richard G. DelMonico, Notary Public
Within and for the State of Ohio

25 My Commission expires April 19, 1993.