

State of Ohio,)
County of Summit.) SS:

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IN THE COURT OF COMMON PLEAS

DONALD B. KRAGER, et al.,)

Plaintiffs,)

vs.)

Case No. CV96051821

GERALD B. PITCOCK,)

Defendant.)

COPY

THE TRIAL DEPOSITION OF RICHARD S. KAUFMAN, M.D.
TUESDAY, FEBRUARY 18, 1997

The trial deposition of RICHARD S. KAUFMAN, M.D.,
called by the Defendant for examination pursuant to the
Ohio Rules of Civil Procedure, taken before me, the
undersigned, Gregory L. Koterba, Notary Public
within and for the State of Ohio, taken at Beachwood
Orthopedic Associates, 23250 Mercantile Road,
Beachwood, Ohio, commencing at 7:04 p.m., the day and
date above set forth.

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APPEARANCES :

On behalf of the Plaintiffs:

George J. Emershaw, Esq.
Emershaw, Mushkat & Schneier
437 Quaker Square
120 E. Mill Street
Akron, Ohio 44308

On behalf of the Defendant:

John Cubar, Esq.
McNeal, Schick, Archibald
& Biro Co., L.P.A.
700 Skylight Office Tower
1660 West 2nd Street
Cleveland, Ohio 44115

ALSO PRESENT:

Larry Martof, Video Reporter

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1 MR. CUBAR: The record
2 should reflect that the trial deposition of
3 Richard S. Kaufman, M.D. was dully noticed for
4 7:00 p.m. on February 18th, 1997 at Dr.
5 Kaufman's office.

6 And counsel for Donald Krager and Theresa
7 Krager is present. And he has just handed me a
8 signed copy, fax copy of a Rule 41 (A) 1 notice
9 of dismissal of plaintiff indicating that the
10 plaintiff, Theresa Krager only, voluntarily
11 dismisses her case pursuant to Rule 41 (A) 1,
12 and that the case of Donald Krager remains, is
13 not affected by this dismissal, inasmuch as we
14 were prepared to proceed with Dr. Kaufman's
15 trial testimony, not only as to Donald Krager,
16 as to Theresa Krager. Since her claim is being
17 dismissed we will not depose Dr. Kaufman today
18 with regard to Theresa Krager, since her claim
19 has been voluntarily dismissed without
20 prejudice.

21 And the doctor has indicated to me that he
22 is leaving the State of Ohio Thursday, February
23 20th, and will be gone for a period of a week.

24 And in the event that the original of this
25 dismissal is not filed, I take it, I've got your

1 permission to file it the morning of trial; is
2 that correct, Mr. Emershaw?

3 MR. EMERSHAW: Yes. In fact,
4 last Friday I indicated to Mr. Cubar that the
5 Rule 41 dismissal would be filed on Theresa's
6 case prior to trial. And I don't know whether
7 it has yet been filed today. If it has not been
8 filed today it will be filed tomorrow or the
9 next day. But I did represent that and I did
10 represent that we would not be taking the
11 deposition of Dr. Kaufman or Dr. Moodt tomorrow,
12 so both. He correctly stated the fact that we
13 did indicate that case is dismissed under Rule
14 41 (A) 1 and we will give that general entry to
15 Mr. Cubar when it's time stamped.

16 MR. CUBAR: Okay. And in
17 view of the statement of Mr. Emershaw, the
18 deposition of Dr. Moodt scheduled for tomorrow
19 at, I believe, 3:00 p.m. at Dr. Moodt's office
20 will not go forward in light of the dismissal.

21 - - - - -

22 RICHARD S. KAUFMAN, M.D.

23 of lawful age, called by the Defendant for
24 examination pursuant to the Ohio Rules of Civil
25 Procedure, having been first duly sworn, as

hereinafter certified, was examined and
testified as follows:

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MR. CUBAR: At this time on
behalf of the defendant we call Dr. Richard S.
Kaufman.

EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. CUBAR:

Q Doctor, would you state your full name for the
members of the Jury.

A Richard S. Kaufman, M.D

Q And, Doctor, at my request on behalf of my
client, Gerald Pitcock, did you examine an
individual by the name of Donald Krager?

A Yes, I did.

Q And, Doctor, can you tell me the date when you
examined Mr. Krager?

A January 2nd, 1997.

Q Doctor, would you tell the members of the Jury
your educational background, beginning with your
undergraduate education through medical school
and any postgraduate training you may have
received.

A I received my BA degree, Summa Cum Laude, that
means with highest honors, from Yale University

1 in 1952 and my M.D. degree from Columbia
2 University in 1956. I then had five years of
3 postgraduate training, a year of internship at
4 Mt. Sinai Hospital in Cleveland, a year of
5 residency at University Hospitals in Cleveland,
6 two years of orthopedic surgery residency at Mt.
7 Sinai Hospital, and a year of orthopedic surgery
8 residency at Indiana, University Medical Center
9 in Indianapolis.

10 **a** Doctor, are you licensed to practice medicine in
11 the State of Ohio?

12 A I'm licensed to practice medicine in the State
13 of Ohio since 1956, which is now 40 years. I'm
14 also licensed to practice in Indiana and
15 California.

16 **a** Doctor, would you tell the members of the Jury
17 what hospital affiliations you have at this time
18 and in the past?

19 A I'm on the active staff at Meridia South Pointe
20 Hospital, which used to be called Suburban
21 Hospital, where I've been chief of orthopedic
22 surgery for the last 29 years. I'm also on the
23 staff of Mt. Sinai Hospital, Hillcrest Hospital.
24 I was the chief of orthopedics at Woman's and
25 General Hospital for 23 years until it closed.

1 And I was the orthopedic consultant to the
2 arthritis clinic at Cleveland Metropolitan
3 General Hospital for 32 years until I recently
4 resigned.

5 Q Doctor, do you currently hold or have you held
6 in the past any teaching positions?

7 A Yes. I'm a clinical instructor in orthopedic
8 surgery at Case Western Reserve University
9 Medical School for the last 33 years. And I was
10 a professor for 20 years at the Ohio College of
11 Podiatry.

12 Q Doctor, have you delivered any papers or had any
13 papers published during your career?

14 A Yes. I published papers dealing primarily with
15 healing fractures or broken bones, which are the
16 same thing. And I've given innumerable papers on
17 various topics. I was invited to present a
18 paper at Harvard University Orthopedic Grand
19 Rounds in Boston. I was invited to give the
20 Harold Cummings lectureship at Tulane
21 University in New Orleans. I was invited to
22 participate in a symposium at the Mid-American
23 Orthopedic meeting in Colorado Springs. And I
24 gave the Dr. Russell Rizzo Memorial lectureship
25 in Cleveland.

1 Q Doctor, are you currently in private practice?

2 A Yes. I've been in private practice, orthopedic
3 surgery, since 1961, which is 35 years.

4 Q And, Doctor, would you tell the members of the
5 Jury what the specialty of orthopedics is?

6 A Orthopedic surgery, the branch of medicine that
7 deals with the diagnosis and treatment, both
8 medically and surgically, of diseases and
9 injuries to what we might call the locomotor
10 system, the parts of the body that move you
11 about, primarily the bones and joints, but also
12 the muscles and tendons and ligaments and nerves
13 of the spine and of the arms and legs.

14 Q And, Doctor, did you receive any type of
15 certification in orthopedic surgery?

16 A I'm certified by the American Board of
17 Orthopedic Surgery.

18 Q And, Doctor, how does a physician become board
19 certified in a specialty such as orthopedic
20 surgery?

21 A When I became board certified I had to have four
22 years of college, four years of medical school,
23 five years of postgraduate training. I finished
24 the 13 years. I then took a three-day series of
25 written and oral examinations, which I passed

1 the first time. I then had to be in practice
2 for two and a half years and take a second set
3 of written and oral examinations, which I also
4 passed the first time, and was certified by the
5 American Board of Orthopedic Surgery as a fully
6 trained and competent specialist.

7 Q Doctor, would you tell the members of the Jury
8 what professional associations that you
9 currently belong to?

10 A I belong to Cleveland Orthopedic Society, the
11 Ohio State Orthopedic Society, the Great Lakes
12 Orthopedic Club, the Mid-American Orthopedic
13 Society, the Clinical Orthopedic Society, the
14 Bioelectric Repair and Growth Society. I'm a
15 fellow of the American College of Surgeons, a
16 fellow of the American Academy of Orthopedic
17 Surgeons, and a diplomat of the American Board
18 of Orthopedic Surgery.

19 Q Doctor, have you had the opportunity during your
20 career to examine patients that are claiming
21 personal injury in a lawsuit?

22 A Oh, yes. I take care of many patients who
23 are -- as patients who have been injured and who
24 have, because they've been injured, have
25 lawsuits. I also, a very small portion of my

practice, about five percent of my practice, involves just examination and report, either to a plaintiff's attorney or defense attorney or the Industrial Commission of Ohio or third party or a second opinion. All of those lumped together come to about five percent of my practice. 95 percent of my practice are sick and injured patients.

Q Doctor, are you being compensated for your testimony today?

A For my time, certainly.

Q Doctor, turning to Donald Krager, that examination that you conducted of Mr. Krager was at my request; is that correct?

A That's correct.

Q And, Doctor, would you again tell the members of the Jury when you examined Dr. Krager -- I mean when you examined Donald Krager?

A January 2, 1997.

Q And, Doctor, did you obtain a history from Mr Krager?

A Yes.

Q And, Doctor, what's the purpose of obtaining a history from an individual?

A Well, a history is the story as the patient

1 tells it to me. Whatever he says I put down. I
2 ask him how he was hurt, what part of him was
3 hurt, how he's been treated, and what are his
4 symptoms today.

5 The importance of a history is to get some
6 idea of the patient's clinical picture and to
7 focus on those parts of his body which --
8 examination of which might bear on the
9 diagnosis

10 Q And, Doctor, would you tell the members of the
11 Jury the history provided to you by Mr. Krager?

12 A Mr. Krager said that he was injured about June
13 1994, when the car he was driving was involved
14 in a collision from the front with a truck.

15 He said he was wearing a seat belt, he
16 said his head hit the side window, he was not
17 unconscious.

18 Following the accident he said he
19 developed pain in his low back and his left side
20 that day. He went to First Care in Akron the
21 following day and was released after examination
22 and x-rays.

23 Following the accident Mr. Krager said he
24 came under the care of Dr. McCluskey, who
25 treated him with pain pills and heat at home.

1 He then saw Dr. Lefkovitz, who ordered an
2 MRI. An MRI is a magnetic resonance imaging.
3 It's a test which is done by placing the patient
4 in a large magnetic field. The field is flipped
5 90 degrees then flipped back again. The
6 magnetic field disturbs the atoms and molecules
7 in the patient's tissues, they in turn disturb
8 the magnetic field. The whole thing is measured
9 by special coils and fed into a computer. And
10 that's all I understand. But it comes out with
11 pictures of not only the bones but of the soft
12 tissues, in this case the cartilaginous disks
13 between the bones and the spine, and the nerves
14 and the spine.

15 And he had an MRI of his spine and EMG.
16 EMG stands for electromyogram. Electro means
17 electricity, myo means muscle and gram is a
18 picture. So it's a picture of the electrical
19 activity of the muscles and incidentally of the
20 nerves that supply the muscles by putting little
21 needles in the muscles and recording the
22 electrical activity.

23 In addition, he said he received hot packs
24 and Vicodin, which is a pain pill, which he said
25 helped, quote, "once in awhile," unquote. He

1 said he never had any real formal physical
2 therapy other than the hot packs.

3 Q Doctor, what is physical therapy?

4 A Well, physical therapy are -- is various
5 modalities such as ultrasound, which is a very
6 deep type of heat, electrical stimulation, which
7 tends to block the pain fibers and relieve the
8 muscle spasms. Therapeutic exercise, not in
9 this case, but such things as whirlpool. These
10 would all be -- traction. These are all types
11 of formal physical therapy, which would be done
12 by a physical therapist, and he apparently did
13 not require any of this.

14 Q Did you obtain any further history from Mr.
15 Krager?

16 A Yes. He said he also saw Dr. Bernath, but said
17 he did not receive any treatment from him.

18 At the time that I saw Mr. Krager he said
19 the low-back pain had persisted unchanged. He
20 said it was located on the left side and
21 involved the entire lower back from the ribs to
22 the pelvis. He said it was constant and on a
23 scale of one to 10, if one is the least and 10
24 is the most, a six out of 10 in degree. He said
25 it was made worse by bending excessively and by

1 lifting more than eight to nine pounds. He said
2 it was worse with going up and down stairs a
3 lot. and he said that he does 80 to 90 steps a
4 day at work He said it was better with heat at
5 times and with the use of his wife's TENS
6 machine.

7 A TENS unit stands for transcutaneous
8 electrical neuro stimulation. in which they put
9 little adhesive pads on the skin. and a very low
10 current goes through them and it seems to block
11 some of the pain fibers And he said he used
12 his wife's TENS machine when he said he would
13 use for a half hour at a time

14 It was said that the intermittent spread
15 of the low-back pain to the left leg. down the
16 left leg, all the way down the leg to the knee
17 and all the way around to the leg, back. front.
18 said. inside. outside. with a burning sensation
19 He said she paid and not go below the knee
20 This is what's known as a nonanatomical
21 distribution It doesn't fit any particular
22 nerve that might come from the back The
23 patient had not had any numbness or weakness in
24 his legs.

25 Mr Kragar's occupation is as a chemical

factory worker. X said he returned to regular work after one day and has lost no time from work as result of symptoms arising from the accident since returning after that one day. He said he had no previous or subsequent injuries or symptoms in his -- in this area. X said that he had been in good health with no serious illnesses or operations. And he had taken no medication on the way of this examination which would affect his symptoms.

Q Doctor, after obtaining the history from Mr.

Krager did you conduct an orthopaedic exam of r Krager?

4 Yes. On physical examination Mr. Krager appeared to be in no discomfort, he certainly did not look like he was in any pain. He was instructed to let me know if anything caused him pain during the examination.

His gait, the way he walked, was perfectly normal and moved about quite easily. He could walk on heels and toes easily, indicating good strength in his legs, because it takes a lot of strength to walk on your toes and your heels.

And good balance.

Q Doctor, did you examine the lower back or lumbar

1 area?

2 A Yes. The lumbar area is the part of the back
3 between the ribs and the pelvis. And
4 examination of his lumbar spine showed him to
5 stand straight, he wasn't tipped to one side or
6 the other. There was, however, a moderate
7 restriction of all motion due to complaints of
8 pain, going forward and backward and side to
9 side. All of these motions were moderately
10 restricted because he said it hurt.

11 There was no spasm in the muscles along
12 the spine. Spasm is the involuntary contracture
13 of a muscle when there is underlying pain. The
14 muscle will go into the spasm and prevent
15 motion. And the examiner can feel spasm through
16 the skin if it's present. And there was no
17 spasm in the muscles.

18 Q Doctor, you indicated that there were complaints
19 of pain and there was no finding of any muscle
20 spasm. Is there in medicine something called
21 subjective complaints and objective findings?

22 A Yes. Subjective findings are those things which
23 the patient says are present and there's no way
24 the examiner can tell one way or the other
25 whether they're present, except the patient says

1 so, such things as pain on motion or tenderness.
2 These will be subjective findings,

3 Objective findings are those things which
4 the examiner can find whether the patient tells
5 him if it's there or not, such things as muscle
6 spasms, swelling, warmth over an area,
7 discoloration of the skin, x-ray changes. These
8 are objective findings.

9 Q Doctor, continuing with your physical
10 examination of Mr. Krager, what else did you do?

11 A There was no indication of any tenderness in the
12 muscles or the ligaments of the back. When I
13 pressed on there there was no pain.

14 The Lasegue's sign was negative on both
15 sides. The Lasegue's sign is a test that we do
16 with the patient lying on his back. And with
17 the knee straight the knee is brought up in the
18 air like a periscope. This puts a stretch on
19 the sciatic nerve as it goes down the back of
20 the leg and will produce pain if this nerve is
21 being irritated. It did not in this case.

22 The Patrick's sign was negative on both
23 sides. This is a test that we do with the
24 patient lying on his back, and the heel of one
25 foot is placed on the opposite knee, much as if

1 you're going to tie your shoe laces if you're
2 lying flat on your back. And first leg then is
3 brought down into sort of a figure-four position
4 and putting stretch on the muscles and ligaments
5 of the lower back. And if these are in fact
6 irritated or inflamed, will produce pain in the
7 lower back. It did not in this case, it was
8 normal.

9 Measurement of his legs showed the lengths
10 to be equal, which you'll expect. The
11 circumference of the thighs and calfs were
12 equal, indicating that there was no muscle
13 atrophy, no wasting away of the muscle which we
14 sometimes see if there is a pinched nerve in the
15 back. The muscle may get smaller even before we
16 can show that it's weak. But that was normal,
17 too.

18 The neurological examination of his legs
19 showed the knee reflexes to be normal, that's
20 when you tap the knee and the leg kicks.
21 There's a similar reflex at the ankle where you
22 tap the heel cord and the foot kicks. And these
23 were also normal. There was no numbness present
24 and no weakness present in the legs. The
25 neurological examination was normal.

1 And in fact the examination of the lower
2 back was totally normal, except that he said it
3 had pain on motion.

4 Q Doctor, did you take any x-rays of Mr. Krager?

5 A Yes. X-rays were taken by this office of the
6 low back and pelvis, and they were reviewed by
7 me and showed no significant abnormalities.

8 Q Doctor, did you review any other x-rays or MRI
9 films pertaining to Mr. Krager?

10 A Yes. I reviewed x-rays of the low back and the
11 neck done on June 23rd, 1994, which were
12 essentially normal. And I reviewed an MRI of
13 the lumbar spine done September 27th, 1994 which
14 showed a slight bulge at the very lowest level
15 of the lumbar spine.

16 The -- there are five bones that make up
17 the lumbar spine, they're numbered L1 to L5.
18 And then the first bone in the sacrum, which is
19 the part of the spine that makes up the back of
20 the pelvis is called S1. So the space between
21 L5, the last lumbar, and the top of the sacrum
22 is called L5-S1. And there was a slight bulge
23 in the disk at this level. It was my opinion
24 that this was of no clinical significance.

25 Q Doctor, I have with me the x-rays of June 23rd,

1 1994 and the MRI of the lumbar spine that was
2 conducted on September 27 1994 are those the
3 films that you reviewed?

4 Yes I obviously can't remember exactly which
5 ones but I did review these films of the MRI
6 of the lumbar spine and the plain films that
7 were taken as well

8 Doctor, after conducting your physical
9 examination and your review of the x-rays and
10 the MRI, did you review any records of --
11 pertaining to Donald Kragger?

12 Yes I reviewed records from First Care where
13 Mr. Kragger was apparently seen October 10th,
14 1995 He was seen there for a preemployment
15 physical The x-rays of the low back were again
16 normal, the examination of the lumbar spine was
17 said to show motion to be limited Examination
18 of his extremities was normal And the
19 neurological examination was normal So their
20 exam was essentially the same as mine He had
21 some limited motion in his lower back, but
22 otherwise was normal.

23 Did you review any other records?

24 Where were records of Dr. Norman Leskowitz
25 These include a report from -- to Attorney

1 Emershaw dated January 16th, 1996. He saw Mr
2 Krager because of the funnel headaches and
3 dizziness. He reported that an EMG, that's that
4 electromyogram, was done which was, quote,
5 "suggestive," unquote, of S1 nerve root disease
6 bilaterally. Not diagnostic, but suggestive.
7 And an MRI was done of the lumbar spine which
8 Dr. Lefkovitz said demonstrated, quote, "L5-S1
9 disk protrusion suggesting displacement of the
10 left S1 nerve root," unquote, period. There
11 were no neurological signs to go along with
12 these findings, but that's what he said.

13 There are office notes, which I presume
14 are Dr. Lefkovitz's. They are handwritten and
15 they were difficult to read. But apparently'
16 there were consistent complaints of, quote, "a
17 lot of back pain," unquote, in spite of various
18 medications.

19 There was an EMG report, the impression of
20 which is normal, quote, "normal EMG of left
21 lower extremity and left L4 to S1 paraspinal
22 muscles," unquote. Dr. Lefkovitz said there was
23 a suggestive S1 nerve root disease, but the
24 impression of the EMG report was that it was
25 normal.

1 There was an MRI report of the lumbar
2 spine or report of the MRI, which I had seen
3 myself, dated September 27, 1994, which was said
4 to show, quote, "small disk protrusion at L5-S1
5 to the left which may be causing some mild
6 displacement of the left S1 nerve root,"
7 unquote. The S1 nerve root would not be
8 involved actually in the distribution of the
9 patient's complaints as he told them to me and
10 probably is of no clinical significance.

11 Q Did you review any other records pertaining to
12 Donald Krager, Doctor?

13 A There are records from Akron City Hospital which
14 are apparently microfilmed and difficult to
15 read. They apparently dealt with right-shoulder
16 pain in 1992. There were also some other
17 records concerning shortness of breath, fever
18 and chills in August of 1993, at which time the
19 diagnosis of pneumonitis, which is a lung
20 infection, was made. There are records
21 apparently of August 22nd, 1993 where he was
22 seen for right-foot pain when he stepped on a
23 nail. And also some inflammation of his face in
24 1991.

25 Q Did you review any records of a Dr. McCluskey?

1 A There were records from Dr. McCluskey. He saw
2 the patient June 9th, 1994 for neck and back
3 pain for about one week. The pain was, quote,
4 "up the back, left side," unquote, period.
5 There were further records concerning a shoulder
6 injury, which predated this accident, burn of
7 his leg and some other injuries which were
8 unrelated to this accident.

9 Q Doctor, based upon your -- the history that you
10 obtained from Mr. Krager, your orthopedic
11 examination, your review of the x-ray films and
12 the MRI and the review of the records of --
13 pertaining to Mr. Krager, were you able to form
14 an opinion based upon your education, training
15 and experience within a reasonable degree of
16 medical probability as to whether as of the time
17 that you examined him on January 2nd, 1997,
18 whether or not Mr. Krager had any physical
19 problems that you would relate to an automobile
20 accident that occurred on June 2nd, 1994?

21 A Yes, I would have an opinion.

22 Q And, Doctor, what is that opinion?'

23 A It's my opinion, based on reasonable medical
24 certainty, that I found no objective or
25 subjective evidence of injury. The patient's

1 complaints of pain on low-back motion were
2 totally unsupported by any further, either
3 objective or subjective. Findings If a patient
4 has pain on motion due to any injury to the
5 muscles or ligaments of his back, you would
6 expect tenderness in that area over the muscles
7 and ligaments. Which he did not have His only
8 complaint was as he said he had pain on motion.
9 totally unsupported by any other evidence So I
10 found no evidence of injury

11 Q Doctor. based upon your education. training and
12 experience. the history that you obtained. your
13 physical exam. your review of the x-rays and the
14 records. were you able to form an opinion within
15 a reasonable degree of medical probability as to
16 what the prognosis is for Mr Krager based upon
17 your exam and your review?

18 A Yes.

19 Q And what is that opinion. Doctor?

20 A It is my opinion that the patient would have no
21 future disability as a result of this accident
22 It was my opinion the patient would not require
23 any further treatment as a result of this
24 accident

25 Q And. Doctor. last question that I have for you

1 is, do you have an opinion within a reasonable
2 degree of medical probability, based upon your
3 review of the MRI film of the low back or as you
4 called it, L5-S1 area, that would indicate a
5 bulge in that area, as to whether or not that is
6 of any clinical significance?

7 A Yes. It's my opinion, based on reasonable
8 medical certainty, that the bulge seen in the
9 disk is of no clinical significance. This is
10 because the patient's symptoms are -- do not
11 indicate that the nerve root is being irritated,
12 that the nerve root at that level is being
13 irritated at all. And I found no evidence of
14 any nerve root irritation at all. And I think
15 that the finding is just something which -- or
16 able to visualize now that we have such a
17 sophisticated imaging technique, we can see --
18 see these small defects which are of no clinical
19 significance.

20 MR. CUBAR: Thank you,

21 Doctor. I have no further questions.

22 EXAMINATION OF RICHARD S. KAUFMAN, M.D

23 BY MR. EMERSHAW:

24 Q Dr. Kaufman, I'm George Emershaw.

2s A Mr. Emershaw.

1 Q And I represent Donald Krager in this particular
2 case

3 Doctor, I believe you indicated that a
4 small portion of your practice is spent doing
5 defense medical examination; is that correct,
6 you said about five percent?

7 A Well, no, I said the five percent of my practice
8 includes all types of examinations and reports,
9 not only for defense attorneys, but also for
10 plaintiff attorneys, for the Industrial
11 Commission of Ohio, for second opinions, other
12 third parties, whatever. That represents
13 about -- altogether represents about five
14 percent.

15 Q And the last time we talked, I believe you said
16 that was approximately six examinations a week;
17 is that correct?

18 A That sounds about right. I don't keep track of
19 them, but that's probably about right,
20 altogether.

21 Q And the date of the examination of Mr. Krager
22 was January 2nd of '97, correct?

23 A That's correct.

24 Q And the date of the accident was June 2nd of
25 '94. So you saw him approximately two and a

1 half years after the accident; is that correct?

2 A Yes.

3 Q And you hadn't seen him before and you hadn't
4 seen him since, have you?

5 A No. He missed his previous appointment, didn't
6 show up in October of '96, and I have not seen
7 him since.

8 Q When Mr. Krager did come to his appointment did
9 he come alone? Refer to your notes.

10 A Yes. I don't have the fact that anybody else
11 was in the examining room with him. He may have
12 come with somebody else to the waiting room, but
13 I don't have a notation that he was accompanied
14 by anybody in the examining room.

15 Q Are you indicating that you don't know or that
16 no one was in the examining room with him?

17 A I'm indicating that I don't remember at all.
18 And I usually note if somebody is, and I don't
19 have a note of it. It wouldn't make any
20 difference to me if they had 16 people in the
21 room with him. But I don't have a note of it.
22 And I can't say that there was. I presume it
23 was not, but I can't say for sure.

24 Q Was he cooperative and responsive?

25 A I believe so.

1 Q And did he do what you asked him to do?

2 A Yes.

3 Q Now, would it be fair to say, that the history
4 portion of your examination that you have
5 written in your file that you discussed with him
6 took approximately five minutes?

7 A No. I don't have any idea. I go in, I do a
8 complete and thorough job and I don't pay any
9 attention how long it took, so I don't have any
10 idea.

11 Q And would he be incorrect if he said that you
12 got called out of the room for about five
13 minutes? Do you remember that?

14 A No.

15 Q And would he be incorrect if he indicated that
16 the physical portion of the exam took four and a
17 half to five minutes? Would that be incorrect?

18 A As I said, I didn't pay attention. It doesn't
19 take long when there's nothing wrong with the
20 patient. But I don't have any idea how long it
21 took.

22 MR. EMERSHAW: Motion to strike
23 as not responsive.

24 A Oh, I think it was.

25 Q Doctor, the question was, would he be incorrect

1 if in fact he indicated the physical portion of
2 the exam took about five minutes?

3 A As I said, I don't time it. And all I can
4 answer your question by saying it does not take
5 long when there's nothing wrong with the
6 patient. But I don't know how long it took
7 exactly.

8 MR. EMERSHAW: Motion to
9 strike.

10 Q Doctor, would he be incorrect if he indicated
11 that the examination took about five minutes?

12 A I don't know how long it took. You've asked the
13 question three times. You don't like my
14 answers, stop asking the questions.

15 Q Fine. Thank you, Doctor.

16 Sir, your answer is, you don't know?

17 A That's not what I said. What I said was, I
18 don't keep track of the time, I don't know **how**
19 long it took. By my estimate would be that it
20 does not take long when there's nothing wrong
21 with the patient. I'm answering your question.

22 Q Doctor, then if he said you had him walk down
23 the hall to get x-rayed, would that be
24 consistent with your normal routine for
25 examinations?

1 A Yes. The x-ray is about 20 or 25 feet from --
2 down -- the same building, same office. It's in
3 all in the same office. We have examining
4 rooms, a long hall, and at the end of the hall
5 is the x-ray.

6 Q And then he put on his clothes and he went home
7 and was gone within 20 minutes, would that be
8 about right?

9 A Well, anybody -- how would I know?

10 Q When you talked to him -- referring to your
11 notes, Doctor, and you keep written notes, don't
12 you?

13 A Yes.

14 Q Would you refer to your written notes in your
15 file?

16 He indicated did he not, that he had
17 low-back pain?

18 A That's what he said.

19 Q And that he said to you that it was generally a
20 constant pain about a six?

21 A Out of 10, that's correct.

22 Q And it became worse with lifting and bending and
23 so forth, correct?

24 A I'm not sure what "so forth" means.

25 Q Lifting and bending?

1 A That's correct. That's what he told me.

2 Q And going up and down stairs?

3 A That's what he told me. That's what he said.

4 Q And that he has intermittent low-back pain that
5 radiates, burning sensation down the leg, did he
6 not?

7 A No, not the leg, the thigh as far as the knee.
8 The leg starts from the knee down and the thigh
9 is the portion between the hip and the knee.
10 And what he told me, his story was that he had
11 pain all the way around the thigh as far as the
12 knee.

13 Q Would you refer back to your written notes
14 section, Doctor --

15 A Certainly.

16 Q -- that you allowed me to look at before?

17 A Sure. Yes.

18 Q Actually the written section is a fill-out
19 sheet; is that correct?

20 A It's an out long sheet that we use for all of
21 the patients that we treat here, particularly --
22 not only this type of report, but of course the
23 95 percent of the patients that we treat we use
24 the same type of form for the initial history.

25 Q Well, this was the subjective portion of his

1 exam, wasn't it?

2 A No, this is his history, this is his story,
3 whatever he says. It's not part of his
4 examination -- I'm sorry, I haven't finished my
5 answer. This is not part of the examination at
6 all.

7 I'm sorry, go ahead.

8 Q And if he were to indicate that he told you that
9 the pain went down his leg, his whole leg, would
10 that be incorrect and is that noted in that
11 portion of it?

12 A Yes, it would be incorrect. It is noted exactly
13 that he said it was all the way around to the
14 knee.

15 Q Shooting pain?

16 A He said there was intermittent spread of the
17 low-back pain to -- down to the left leg left
18 thigh, all the way around to the knee.

19 Q In other words, down the back of the leg to the
20 knee?

21 A In the front and the sides, all the way around.

22 Q Does it say that in the notes?

23 A Yes, of course.

24 Q May I see that?

25 A Certainly. It says "all the way around," right

1 there.

2 Q Now, when he -- when you have all the way
3 around, could he have said "all the way down"?

4 A No. That's not what he said. I asked him, he
5 said it went into his leg, and I would say
6 "okay, where does it go in your leg and please
7 indicate is it on the back of the leg, front of
8 the leg or what part of your leg does it go
9 down." And he indicated that it went all the
10 way around his thigh to the knee. That's
11 exactly what he told me, that's why I put it
12 down there

13 Q And then, Doctor, you did your objective portion
14 of your examination, correct?

15 A I did the examination which entails both
16 objective and subjective findings; that's right.

17 Q And when you did that objective examination, in
18 fact you were hired by Mr. Cubar to do an
19 independent evaluation of permanent impairment,
20 were you not?

21 A No, not permanent impairment. He was asking to
22 find out what, if anything, was wrong with this
23 man. He didn't ask me to give an estimate of
24 permanent impairment at all.

25 Q And, Doctor, when these independent examinations

1 are done, is it not a fact that there is a
2 protocol to protect the public, to insure
3 fairness and objectivity, and the AMA has
4 adopted rules and guidelines for these
5 examinations?

6 A No.

7 Q is that not a fact?

8 A I don't know. I don't know of any rules and
9 guidelines by the AMA. There is a book on
10 permanent impairment, which is an estimation of
11 the -- how much the patient, the person is
12 impaired with certain ailments of their
13 musculoskeletal system, but it's got nothing to
14 do with any kind of a protocol about
15 examination.

16 Q Well, Doctor, when you examined this man for Mr.
17 Cubar he asked you about permanent impairment,
18 didn't he?

19 A Not that I'm aware of. I didn't answer it about
20 permanent impairment. I was not aware that he
21 wanted a permanent impairment estimate.
22 Certainly I don't think he has any, but I
23 didn't -- I didn't ask me --

24 Q Future disability would be a permanent
25 impairment, wouldn't it, Doctor?

1 A You didn't ask me about impairment. No,
2 disability and impairment are really two
3 different things. And that's why they -- I'm
4 sure you read this AMA book which you refer to,
5 so you know the difference between impairment
6 and disability

7 Q But in order to determine what the disability is
8 you have to determine what the impairment is,
9 don't you, Doctor?

10 A Well, he doesn't have any, any disability.

11 Q Well, Doctor, my question to you, did you use
12 the protocol?

13 A There is no protocol, I'm sorry, sir

14 Q There is none?

15 A No, not for examination of patients, not that
16 I'm aware of.

17 Q Doctor, is it not a fact that the protocol calls
18 for --

19 A I don't know the protocol, so I can't answer
20 your question.

21 Q For a range of motion, does it not indicate that
22 one must use a tractograph or goniometer and
23 measure the exact range of motion?

24 A No. Only if you are giving a permanent
25 impairment rating, which I was not doing. I

1 didn't give one on this report either.

2 Q In fact, do you use a tractograph and a
3 goniometer to measure the range of motion
4 pursuant to --

5 A What is a tractograph? I'm sorry, I don't know
6 what that means.

7 Q Well, Doctor --

8 A What is a tractograph?

9 Q -- the last time we were here you indicated --

10 A I don't know what a tractograph is.

11 Q -- that you did not own a tractograph.

12 A I don't know what it is.

13 Q I see. You don't --

14 A I know what a goniometer is, I have one of
15 those. This is a goniometer (indicating), it
16 measures angles. But I don't know what a
17 tractograph is. It sounds like a gadget that
18 somebody came up with.

19 Q Did you use a goniometer --

20 A No.

21 Q -- in your measurements?

22 A No. I didn't make a specific indication of
23 degrees.

24 Q You indicate, do you not, that you do workers'
25 compensation examinations?

1 A Yes.

2 Q Is it not a requirement to do ranges of motion?

3 A I do -- not necessarily. Depends on what the
4 examination is for. If it's for a permanent
5 impairment examination, then I would do that,
6 yes.

7 Q And you would measure the range of motion in a
8 person's either -- and in this case, lumbar
9 spine, would you not?

10 A If that's what I was examining the patient for,
11 yes, I would do that.

12 Q Well, Doctor, how are you going to determine for
13 Mr. Cubar that there was no future disability if
14 you didn't measure for any impairment?

15 A Because he doesn't have any disability.

16 Q I see. He had a restricted range of motion.
17 What was the range of motion, Doctor?

18 A It was moderately restricted. I didn't measure
19 it in terms of degrees.

20 Q A restriction in range of motion is an
21 impairment pursuant to the guidelines?

22 A I wasn't estimating his impairment.

23 Q Well, you've done the workers' comp. cases,
24 haven't you?

25 A This is not a workers' comp. case.

1 Q so you --

2 A I've operated on backs, I didn't operate on his
3 back either, because he didn't need it, he
4 didn't have any impairment.

5 Q But, Doctor, you have in effect -- you know what
6 the guidelines are, don't you?

7 A For what?

8 Q For the -- for examinations, Doctor

9 A No, there are not guidelines for fairness of
10 examinations. They are guidelines for permanent
11 impairment evaluations, exactly what they are.
12 And they've got nothing to do with fairness and
13 they've got nothing to do with protocols and
14 they're not listed that way.

15 Q Well, Doctor, isn't it a fact that the first
16 examination in determining whether or not there
17 is an impairment is the range of motion?

18 A Of what?

19 Q Of the area that is in question.

20 A It all depends. I think the first thing in
21 examining a patient to see if there's
22 impairment, is to see if the part is there. It
23 might have been amputated. I think that's
24 important, too, don't you? I didn't put that
2s down either.

1 Q Doctor, when you indicated that he had a
2 restricted range of motion, you did not quantify
3 that, did you?

4 A No. You got that right. You understand that,
5 exactly what I said.

6 Q And you then did a straight-leg raising or a
7 Lasegue, did you not?

8 A That's correct.

9 Q Did you quantify that?

10 A That was normal. That went up to 90 degrees,
11 had no complaints of pain.

12 Q Does your record reflect that?

13 A Yes.

14 Q Where?

15 A It says it was negative. And negative Lasegue's
16 sign is the patient can put up his leg up to 90
17 degrees and not have any pain at all.

18 Q So in other words, you do not have a range of
19 motion on your Lasegue?

20 A They don't have a range of motion on Lasegue's
21 sign. It's not a sign that requires range of
22 motion.

23 Q Do they ask in the guides as to what the range
24 of motion is on a straight-leg raising?

25 A No, not that I'm aware of. Not unless you're

1 testing hip problems, not from the back.

2 Q So it's fair to say you didn't quantify that?

3 A Didn't need to quantify that.

4 Q You then, Doctor, indicated that there was no
5 sensory or motor deficit; is that correct?

6 A That's correct.

7 Q Well, Doctor, tell me, did you use a tuning
8 fork?

9 A No. I used thigh touch.

10 Q Did you use a wheel?

11 A A wheel is a terrible thing to use. That would
12 be a very bad thing. Anybody that uses a wheel
13 is out of touch today with modern medicine. A
14 pin wheel.

15 Q Did you do a Babinski?

16 A I did not do a Babinski.

17 Q You did do a clonus sign?

18 A A clonus sign is for a long track sign. There's
19 no indication that there's --

20 Q Did you do a clonus?

21 A No. What is a clonus sign, I'm sorry?

22 Q Did you do a clonus exam, an exam for clonus?

23 A Well, I asked him to pull his toes back, yes,
24 and if he had clonus it would have shown up at
25 that time.

1 Q Did you do a Homans' sign?

2 A I don't know what a Homans' sign is.

3 Q How did you test the strength?

4 A I asked him to tighten the muscles and pushed
5 against them.

6 Q Doctor, when you measured his extremities what
7 was the measurement in his extremities?

8 A You mean the circumference?

9 Q Yes.

10 A The absolute numbers are of no importance. What
11 is important is the fact that they were equal.

12 Q Is he left or right hand dominant?

13 A I don't know. It doesn't make a difference in
14 the legs. You use the legs alternately. You
15 use one arm more than the other, but you don't
16 walk on one leg more than the other, so the two
17 legs are the same.

18 Q Did you quantify any of the strength test?

19 A There's no way to quantify unless you put him on
20 a special machine, and that's not necessary.

21 Q So your neurologic examination you -- what did
22 you do?

23 A I tested strength of his muscles, I tested to
24 see if there was any sensation loss to the light
25 touch, and I tested his reflexes.

1 Q That was after you did your orthopedic exam?

2 A It was part of my orthopedic exam.

3 Q I see. Then you looked over the MRI and the
4 x-rays; is that correct?

5 A Yes.

6 Q And the x-rays indicated or the MRI indicated
7 some type of a abnormality in L5-S1 area; is
8 that correct?

9 A Yes.

10 Q Showing you, Doctor, what's been marked
11 Plaintiff's Exhibit Number 17, which is the MRI
12 taken.

13 A Is this marked?

14 Q Yes, it is. Plaintiff's Exhibit 17, Doctor.

15 A Okey-doke.

16 Q Okay.

17 A Yes.

18 Q Doctor, can you identify any abnormalities on
19 that film?

20 A In this particular -- this particular set of
21 films I don't see any abnormalities.

22 Q Referring your attention, Doctor, to frames
23 eight and nine on that film, can you identify
24 any abnormalities?

25 A I'm trying to find eight and nine. Which ones

1 are eight and nine?

2 Q Starting from the top, one, two, three, four,
3 five, six, seven --

4 A Eight and nine are these two?

5 Q Yes, Doctor.

6 A No. No.

7 Q Doctor, showing you -- so you cannot identify an
8 abnormality in that film?

9 Showing --

10 A There is no --

11 Q Showing you Number 18, Doctor, can you identify
12 any abnormalities on that film?

13 A There is a small bulge here at number nine in
14 L5-S1. And you can see it again on number 10 on
15 L5-S1.

16 Q Doctor, you are indicating --

17 A A small bulge.

18 Q -- number five, can you point to --

19 A No, I didn't say number five.

20 Q Oh, I'm sorry

21 A I said number eight and number -- number nine
22 and number 10.

23 Q Eight, nine and 10?

24 A No. No. Not eight, just nine and 10.

25 I don't get eight shows -- it looks like a

1 small bulge at frame nine and frame 10.

2 Q Doctor, showing you Exhibit Number 20, which is
3 an axial view, can you identify any
4 abnormalities in that film?

5 A No, I don't think so.

6 Q Doctor, calling your attention to frame number
7 five, I'm going to ask you whether or not --

8 A That's this one here (indicating)?

9 Q That's correct. Whether or not --

10 A It says 40 on this one. I don't know what you
11 mean by five. It says 40.

12 Q I'm counting across, Doctor, one, two, three,
13 four, five, as we started on --

14 A It says frame 40 here.

15 Q Right.

16 A Is that the one you mean?

17 Q That's the one I mean, Doctor.

18 A Go ahead.

19 Q I'm going to ask you whether or not you can
20 identify a lesion to that intervertebral disk
21 and a displacement of the S1 nerve root to the
22 left?

23 A Well, this is left and here's the nerve root. I
24 don't think it's displaced. This is very poor
25 quality in here so it doesn't show up very well.

1 I don't really see any distinction in here of a
2 disk. I can't see any real pathology there, no.

3 Q So, Doctor, based on your ability to read those
4 radiographs, you indicated that there is a
5 bulge, correct?

6 A That's correct.

7 Q I'm going to ask you, based on reasonable
8 medical certainty and probability, as to whether
9 or not you agree or disagree with the
10 radiologist whose study you quoted, Plaintiff's
11 Exhibit 7 --

12 A Okay.

13 Q Which is the radiographic read, on 9-27 of '94,
14 do you agree or disagree with that analysis?

15 A Well, it says -- part of it I agree with and
16 part of it may or may not be so. He says there
17 is a small disk protrusion at L5-S1, which I
18 would agree with, to the left, which may be
19 causing some mild displacement of the left S1
20 nerve root. I can't make that out on these
21 films that there is any mild displacement of the
22 left S1. He thinks it may be. He didn't really
23 say that it was, he said it may be, but I don't
24 even --

25 Q Doctor --

1 A I'm unsure of that. So I can't really agree
2 with that portion of it. But I do agree that
3 there is a small disk protrusion.

4 Q Doctor, is it not a fact, that when the nucleus
5 proptosis breaks through the anulus fibrosis,
6 that that is considered to be a protrusion?

7 A No, I think that would be probably more an
8 extrusion. We call that an extrusion when it
9 actually breaks through the anulus, the
10 ligament. And I would call that an extrusion of
11 a bulge or herniation is just a bulging out of
12 the ligament without it actually breaking
13 through.

14 Q So, Doctor, it's -- you do agree then, that this
15 disk is protruded and in fact herniated?

16 A Well, it's the same word. A bulging and
17 herniated is the same word, it's just that one
18 has a little bit more --

19 Q And --

20 A -- connotation to it.

21 Q -- you're able to identify that?

22 A There **is** a small bulge, that's correct.

23 Q And --

24 A Which I agree with there. That's what he said,
25 too.

1 Q And, Doctor, if I may refer back to Number 17
2 again, which is an axial view, would you put
3 that up again, please?

4 A Certainly.

5 Q Referring to frame eight or nine, I do not have
6 the benefit of the more sophisticated numbers
7 that you have --

8 A The numbers are written on the films. So I
9 think we should go by that You mean this 21?

10 Q That one, that's right, Doctor.

11 A This is 20 and 21.

12 Q Okay. I'm going to ask you as to whether or not
13 you can identify nuclear material posterior to
14 the L5-S1 disk that is bulged?

15 A No. No. The quality of the film is such that I
16 really don't -- I think --

17 Q What is that, Doctor?

18 A This is the nerve. This is the -- all the
19 nerves together.

20 Q That spot right over there, right?

21 A I think that's -- I don't believe that that's
22 disk material at all.

23 Q Doctor, do you have any formal training in
24 reading MRI's?

25 A I'm sorry, I don't understand what you mean by

1 "formal training."

2 Q Have you ever gone to any school or study to
3 read MRI's?

4 A Yes.

5 Q And where was that, Doctor?

6 A Oh, I've taken courses in reading MRI's and I
7 meet with radiologists who reads MRI's
8 periodically, and we read MRI's together.

9 Q And Doctor, the fact of the matter is, you are
10 an orthopedic surgeon, are you not?

11 A Oh, I am indeed, yes, sir.

12 Q And you are not a radiologist?

13 A I read x-rays, but I don't read x-rays of
14 anything except those parts of the body which
15 pertain to orthopedics. I don't read x-rays of
16 the chest, of the skull, but I do x-rays of the
17 bones.

18 Q And orthopedics is a specialty, is it not, as is
19 radiology?

20 A Orthopedics is a specialty that deals with the
21 diagnosis of injuries and diseases of the
22 locomotor system, as I said earlier. Part of
23 the diagnosis of that is the reading of x-rays.

24 Q And, Doctor, the fact of the matter is, that
25 radiologists, they have their own separate

1 department in the hospital, don't they?

2 A Separate from what?

3 Q From orthopedics.

4 A Well, they don't operate, that's true.

5 Q They have a department and a department
6 chairman, don't they?

7 A I suppose. Chairman.

8 Q And they have their own equipment, do they not?

9 A Yes.

10 Q They have their own credentialing?

11 A Yes.

12 Q Orthopedics has its own?

13 A That's right. And reading x-rays is part of the
14 credentialing of orthopedic surgeons.

15 Q As does neurology. Neurology also has their own
16 department, doesn't it?

17 A I suppose, in some cases.

18 Q And when you send your patients to the hospital
19 for a CT or an MRI, you in effect get a read
20 from the radiologist, do you not?

21 A I always read the films myself, as well. I get
22 a report from them, but I always read the films
23 myself.

24 Q So you rely on the radiologist to read your own
25 films for your own doctors -- or your own

1 patients, don't you?

2 A No. I read the films myself.

3 As a matter of fact, there's been a recent
4 study, I believe it was in the AMA Journal, in
5 which they studied the reading of x-rays between
6 orthopedic surgeons and radiologists and they
7 found that roughly 95 percent of the time in
8 which there was disagreement in the reading the
9 radiologist was wrong.

10 Q Doctor --

11 A So I always read my own films.

12 Q Doctor, do you believe in interpreting that
13 lesion that a radiologist would be a better
14 individual to judge?

15 A Judge what?

16 Q To judge whether or not that disk is in fact
17 extruded?

18 A I don't think it is

19 Q I understand that.

20 A So how could I say?

21 Q Or to read the films?

22 A I would think that the radiologist would read it
23 the same way, yes.

24 Q Well, Doctor, the first time you looked at the
25 film you didn't see anything there?

1 A I still don't see anything.

2 Q Oh. Well, I thought you came back and said you
3 now saw that bulge there?

4 A Well, that was on the next film, not on 17.

5 Q Not on 17?

6 A No, it was 18, I believe.

7 Q 18 you saw something, 17 you didn't?

8 A It's not on 17.

9 Q So in other words, you -- when you treat your
10 own patients in your own practice you sometimes
11 order MRI's and CT scans, don't you?

12 A Oh, yes.

13 Q And in fact those that you do in your own
14 practice, which you have in your own facility,
15 correct, you have it right here in this
16 building?

17 A We have an MRI in the building, absolutely. I
18 read the x-rays myself.

19 Q And you have those read by a radiologist?

20 A Oh, yes, that, too. But we also read them
21 ourselves.

22 Q So in other words, when your own patient wants
23 an MRI read or you order an MRI, you in fact
24 have a radiologist read that film, don't you?

25 A In addition to ourselves, that's correct.

1 Q And you read it, too?

2 A Sure.

3 Q And in fact, your group hires radiologists to
4 read these studies?

5 A That's right.

6 Q Did you have a radiologist look at those films?

7 A No.

8 Q Doctor, talking about the AMA impairment
9 guideline again.

10 A Again.

11 Q Now that we find that we have this disk, is it
12 not a fact that in the AMA guideline a soft
13 tissue disk injury which last longer than six
14 months and causes pain, is in fact into the
15 category of a permanent impairment, is that not
16 a fact?

17 MR. CUBAR: Objection.

18 A It's not anything to do with this case. You
19 mean in the AMA?

20 Q Yes.

21 A I'd have to look it up again. But certainly it
22 might very well be the case, but that's not
23 anything to do with this case.

24 Q You agree that there is a disk lesion, do you
25 not?

1 A Yes, but not causing a permanent pain. The disk
2 lesion which we see on the MRI is a incidental
3 finding and it is not the cause of this man's
4 symptoms at all

5 Q Well, Doctor, and it's certainly unoperated,
6 correct?

7 A It's what?

8 Q It hasn't been operated on?

9 A Gosh, no. It doesn't need to be operated on.

10 Q Okay. And he's had medical treatment for six
11 months, has he not?

12 A That doesn't mean that he needed it.

13 Q Well, Dr. Lefkovitz treated this man. Do you
14 know Dr. Lefkovitz?

15 A No.

16 Q He's a board certified neurologist.

17 A Fine.

18 Q Do you believe that he would be able to judge if
19 an individual is having problems and examine his
20 and neurological basis?

21 A It all depends. I think that Dr. Lefkovitz
22 didn't find anything wrong with this man
23 actually.

24 Q And in effect that the man has had problems --

25 A Marital problems?

1 Q -- do not the AMA guidelines indicate that
2 that's a permanent impairment?

3 MR. CUBAR: Objection.

4 Q What is a permanent impairment?

5 A It's says "intervertebral disk and other soft
6 tissue lesions." It would have to be
7 symptomatic, not just spurious ones found on a
8 MRI.

9 Q Doctor., what does it say? Let's read that a
10 little bit further

11 A It says "unoperated with no residuals."

12 Q Okay.

13 A It has no residuals, he doesn't have anything.

14 Q Okay.

15 A Never had anything before. So chat's zero. It
16 says right across, zero, zero, zero.

17 Q Well, Doctor, I think you better look at that
18 again.

19 A It says "unoperated with no residuals." He's
20 not operated and he has residuals symptoms
21 from -- or any residuals, any symptoms at all
22 from the herniated disk or the bulging disk.
23 And it says "zero, zero, zero, zero impairment."

24 Q Well, Doctor, looking at that impairment guide,
25 you have a disk lesion, you have six months of

1 pain; is that not correct?

2 A Not from his disk, no.

3 Q You saw him two and a half years later. Is Dr.
4 Lefkovitz incorrect?

5 A I don't think he had six months of pain from his
6 disk. I don't think he has pain from his disk.

7 Q You don't think he had pain from the time of his
8 accident to the disk?

9 A The disk is not the cause of the pain. That's
10 what I'm trying tell you.

11 Q Well, Doctor, do you think maybe it's the
12 displaced Left lumbar root?

13 A No, not at all, absolutely not. There's no
14 symptom whatsoever right into to the left S1
15 nerve root at all.

16 Q Doctor, I think when you look at this unoperated
17 with medical documented injury --

18 A He doesn't have a medically documented injury.

19 Q Well, is the MRI that was done four months after
20 the accident, is that a medically documented
21 objective instrument?

22 A It's not an injury

23 Q Is that an objective test?

24 A Of what?

25 Q Indicating that there is a problem in the low

1 back.

2 A No, it's not. What it indicates is that there
3 is a bulging disk, it does not indicate that
4 there's a problem, nor does it indicate there's
5 an injury.

6 Q Well, Doctor, wasn't a nerve conduction test run
7 also?

8 A His report is negative.

9 Q Is that right, Doctor? Is that what you
10 believe?

11 A That's what it said.

12 Q Oh, is that right?

13 A Why don't you get the MRI report -- or the EMG
14 report.

15 Q Referring to you, Doctor, Plaintiff's Exhibit
16 Number 16. We're talking now -- Doctor, do you
17 know the difference between a nerve conduction
18 and an EMG?

19 A Yes. A nerve conduction test is the velocity of
20 the nerve impulse down the nerve and an EMG
21 tests the muscle --

22 Q Well, Doctor, what kind of --

23 A I'm not finished. For crying out loud.

24 Q Excuse me.

25 A The EMG test the nerve -- the muscle for nerve

1 innervation

2 Q Okay. Is that an abnormal nerve conduction
3 test?

4 A I don't know. I don't do these, one of my
5 associates does these.

6 Q Dr. Mars?

7 A He not my associate.

8 Q I'm sorry.

9 A It says "normal EMG."

10 Q Right, Doctor. What about the nerve conduction
11 test?

12 A What about it?

13 Q That is abnormal, is it not?

14 A No, not that I'm aware of,

15 Q Well, what does it say, Doctor?

16 A I don't know. Something, some scribble, H
17 reflexes bilaterally which could be something
18 but something to something bilaterally of
19 good -- good of root, probably disease,
20 otherwise negative nerve conduction study of the
21 left lower extremity.

22 Q Well, Doctor, when you read to Mr. Cubar
23 questions, when you went over Dr. Lefkovitz
24 report, it indicated that -- if you remember, do
25 you remember that report?

1 A No, I don't remember it.

2 Q Do you remember reading it in your examination
3 on the bottom of Page 2?

4 A Yes. You asked me if I remembered the report, I
5 think was the question. And, no, I don't
6 remember the report. I remember having reviewed
7 it. And he said he reports that an EMG was done
8 which was, quote, "suggestive of S1 nerve root
9 disease bilaterally," on both sides, not just
10 the left, where this bulging disk is supposed to
11 be going, but on both sides where there's
12 nothing wrong with the other side.

13 Q Well, you didn't find anything wrong on either
14 side, did you?

15 A No, I don't think it's significant on either
16 side. But he says it was bilateral on both
17 sides. And even your radiologist doesn't say
18 there's anything wrong with the right side.

19 Q Well, Doctor, when Dr. Lefkovitz does this
20 report --

21 A Which report, I'm sorry?

22 Q -- he indicates that there is an abnormal EMG --
23 or abnormal nerve conduction, doesn't he?

24 A I don't know. Where does it say that? I'm
25 sorry.

1 Q In his report

2 A Which report? Show me the report so I can
3 answer your question I don't remember the
4 report

5 Q Well, Doctor, you're quoting from the report in
6 your paper?

7 A He said it was suggestive of H1 nerve root
8 disease bilaterally. on both sides --

9 Q Well, Doctor --

10 A He didn't say there was anything wrong with the
11 H1 nerve root he said it was suggestive

12 Q Doctor, do you think that maybe your notes are
13 incorrect? Take a look Did you misquote Dr
14 Lefkowitz too where I did have circles? Does he
15 say "nerve conduction test"?

16 A "Nerve conduction slash EMG study" -- which is
17 generally done together

18 Q Right

19 A 'Demonstrate an absence of H reflexes
20 bilaterally," which then he goes to say
21 "suggestive of S1 nerve root disease," which is
22 on both sides. not -- on the right side which is
23 perfectly normal He's got the same findings
24 so --

25 Q Doctor, the question is very simple Is there

1 an abnormal nerve conduction test?

2 A I don't know.

3 Q And did you in effect --

4 A The H1 reflex I don't think is a part of the
5 nerve conduction test, it's part of the EMG.

6 Q Well, Doctor, tell me, isn't it a fact that in
7 the objective portion of your examination you
8 misquoted that?

9 A I'm not talking about the objective part of
10 my -- I don't know what you're talking about,
11 the objective part of my examination. My
12 examination is of the patient.

13 Q Right.

14 A And I didn't misquote his report. I quoted it
15 exactly. You're the one who's misquoting it.

16 First of all, it's not nerve conduction, I
17 believe the H reflex is part of the EMG and that
18 is what was normal.

19 Q Doctor, was there an abnormal nerve conduction
20 study?

21 A I don't know if the H reflex is part of the
22 nerve conduction study or EMG. I believe it's
23 part of the EMG.

24 Q Doctor, was it abnormal according to Dr.
25 Lefkovitz?

1 A He said it was suggestive. The H reflex was
2 abnormal, which was suggestive.

3 Q When you looked at the study now were you able
4 to determine whether or not it was or was not
5 abnormal?

6 A No. I don't think it was abnormal. He said it
7 was bilateral. And you can get H reflex changes
8 which have nothing to do with any real
9 pathology.

10 Q So now, Doctor, we have -- is it fair, we have
11 an MIR that has a disk lesion, which is a
12 protrusion, correct?

13 A To the left.

14 Q Central and --

15 A No, it didn't say central, it says "to the
16 left."

17 Q Doctor, let's go to Number 17. What does the
18 radiologist say, Doctor?

19 A Oh, boy. This is Number 7

20 Q I'm sorry, this is so different. Number 7.

21 A Number 7.

22 Q What does it say?

23 A "Small disk protrusion L5-S1 to the left."

24 Q Now, does it --

25 A I'm reading.

1 Q Read the body, Doctor.

2 A I'm just reading the impression. I'm Just
3 reading the impression.

4 "Some mild disk protrusion centrally and
5 to the left."

6 Q So central and to the left, correct?

7 A Yes.

8 Q And a protrusion is -- well, tell me. When the
9 nuclear material breaks through --

10 A No, not breaking through, that's not a
11 protrusion, that's an extrusion. I think we
12 went through that once before. And a protrusion
13 is just a bulging out.

14 Q That's based on your ability to read those
15 studies?

16 A No, that's what the find is.

17 Q So it is your testimony, then, Doctor, that --
18 that a protrusion is a -- is a condition where
19 the nucleus proptosis has protruded through the
20 annulus fibrosis or --

21 A No, that's not my -- that is not my -- you just
22 misquoted me again.

23 Q I'm sorry.

24 A Sure. But what I said was, that a protrusion,
25 and I said this before and maybe you'll get it

1 this time, that a protrusion is the disk
2 material bulging out. The anulus is not broken,
3 it's intact. There is a bulging out of the
4 nuclear material but -- of the annular ligament
5 which holds the material in place is bulging.
6 It has not broken through anything

7 Q That is your interpretation of a protrusion?

8 A That's right.

9 Q Okay.

10 A Exactly.

11 Q And that's based on your understanding of
12 radiology?

13 A My understanding of orthopedics.

14 Q Doctor, when you talked about other examiners
15 you also spoke when Mr. Cubar asked you
16 concerning the examination that was done one
17 year, 10-10 of 1995, do you remember that
18 examination?

19 A By whom, I'm sorry?

20 Q When you were doing the past medical history.

21 A Oh, that's what the patient told me, you mean?

22 Q No, that's what Mr. Cubar gave you a --

23 A A group of records you mean?

24 Q -- group of records, did he not?

25 A I'm not sure I understand which one you're

1 talking about, sir. Show me. I don't have a
2 note.

3 Q You have a separate charge for reviewing the
4 records don't you?

5 A If there are a lot of them I do, if there are
6 not a lot I don't.

7 Q \$250 an hour, correct?

8 A No, not necessarily. I may not charge at all
9 for review of records.

10 Q Well, in this particular case, Doctor, you
11 reviewed in 8 of '87 an injury to the left foot
12 at Cuyahoga Falls, didn't you?

13 A Let me see if I can find it. Yes, there was an
14 injury to the left foot in '87. I don't have
15 that it was August, but I do have it from Dr.
16 McCluskey records that there was an injury to
17 the left foot in '87.

18 Q Nothing to do with the low back?

19 A No. I went through the records. No.

20 Q 12 of '87 --

21 A I said that it had nothing to do with the low
22 back.

23 Q Sure. 12 of '87 you had a hand injury, didn't
24 you, right thumb?

25 A I sorry, I don't have the month. But I do have

1 the injury, had chip fracture of his hand in
2 1987, as well.

3 Q Then you -- that had nothing to do with the
4 back, did it?

5 A No.

6 Q 7 of '88 you had his records, he burned his leg?

7 A I don't have the month. I had '88 he burned his
8 leg on a motorcycle.

9 Q Got some cellulitis?

10 A Motorcycle accident.

11 Q Got some cellulitis?

12 A I just had a burn of his leg, I don't have the
13 cellulitis.

14 Q 1988 he had some facial cellulitis, correct?

15 A I think it was in a different set of records.

16 Q You reviewed all the records, didn't you?

17 A I said I believe that was in a different set of
18 records. I remember seeing something about
19 cellulitis of his face. I think it was in the
20 Akron Hospital record. Go ahead. Yes. That
21 was January of '91 what I got, not 1998.

22 Q I'm sorry. 1990 I have.

23 A I've got January 16th of 1991 anyway.

24 Q Doctor, in 1992 he injured his shoulder?

25 A Apparently. The man is prone to be sore, I

1 guess.

2 Q Nothing to do in his back, correct?

3 A Yeah.

4 Q And then he stepped on a nail in June of '93,
5 didn't he? Nothing to do with his back?

6 A Yeah, I got August of '93, but that's probably
7 the same injury.

8 Q August of '93 he had some pneumonia, didn't he?

9 A He had that pneumonitis. Let me find that.

10 Q Right.

11 A I know he had pneumonitis. I don't remember the
12 date.

13 Q Then you talked about the records from the First
14 Care where he went for an independent
15 examination for employment; is that correct?

16 A Apparently, yes.

17 Q Now, showing you what's been marked Plaintiff's
18 Exhibit Number 21, can you identify that as the
19 records that you reviewed from -- on that
20 examination, Doctor?

21 A I'm waiting for a question.

22 Q The question is, you reviewed that, that
23 examination, didn't you?

24 A It says --

25 Q This is a year and how many months after the

1 accident, Doctor?

2 A It says the First Care, 10-10-95.

3 Q And on that examination he had restricted range
4 of motion in the lumbar spine, didn't he?

5 A Yes.

6 Q That was reported to his employer, was it not?

7 A Um-huh. That's the only thing that they found
8 wrong, but that's right.

9 Q Is there a diagnosis of prolapsed disk? What is
10 a prolapsed disks?

11 A I don't know what he meant by that.

12 Q What does prolapse mean, Doctor?

13 A Well, I don't know what he means in terms of the
14 lumbar disk. I will not use that word in terms
15 of lumbar disk. So I don't know what he means.

16 Q So in other words --

17 A In other words, I don't know what he means.

18 Q He had a range of motion problem a year and some
19 months after that, correct?

20 A No,.not necessarily the case --

21 Q According to the doctor that examined him is
22 that right?

23 A I'll finish my answer.

24 Q I'm sorry.

25 A That's not necessarily the case. The range of

1 motion was limited, whether he had a problem or
2 not is another question. But his range of
3 motion was limited. They found nothing else
4 wrong with him

5 Q Except the diagnosis of prolapsed disk?

6 A I don't know what prolapsed disk was. That was
7 based on his history that he had an MRI.

8 Q So is it fair to say, Doctor, that a year and
9 some months, four months or five months after,
10 he is still having restricted range of motion in
11 his lumbar spine?

12 A Apparently he's still demonstrating it, yes.

13 Q And does that not fall within the AMA guidelines
14 for impairment?

15 A No.

16 MR. CUBAR: Objection.

17 Q So, Doctor, Dr. Lefkovitz has had an opportunity
18 to examine Don initially after the accident and
19 has treated him for the last two and a half to
20 three years. He has seen him approximately 35
21 or 36 times.

22 Now, do you agree that frequent
23 observations over a period of time, that the
24 treating doctor has a greater opportunity to in
25 effect diagnosis and prognose an individual's

condition?

A Not necessarily. Not necessarily at all
Certainly not in this case

Q And, doctor, sometimes with parapneumonic
examinations over periods of time you yourself,
your diagnosis will change, won't it?

A It may.

Q And you do agree that you have made mistakes in
diagnosis in the past, have you not?

A Yes.

Q And you certainly could be wrong with the
opinion you express in this case?

A No, I don't think so at all. I don't think I'm
wrong at all. As a matter of fact, my opinion
agrees with everybody else's, the same findings

Q It is possible that other doctors, equal skill,
would disagree with your diagnosis in this case?

A I don't think that's absolutely likely. I
don't know who they are, the doctors you have in
mind. But as far as I know, I would not think
so.

Q Doctor, you've frequently been called on on
behalf of the profession in cases like this have
you not?

A I'm sorry what are cases like this, people that

1 don't have anything wrong with them?

2 Q Independent --

3 MR. EMERSHAW: Motion to strike
4 as not responsive.

5 A I don't know what you mean by "patients like
6 this."

7 Q Doctor, you have frequently been called on to do
8 defense medical examinations, have you not?

9 MR. CUBAR: Objection.

10 A No, I would not -- frequently doesn't
11 characterize it particularly. I have been
12 asked, like I say, about five percent of the
13 time I do examinations and reports, not
14 necessarily for defense, for plaintiffs as well
15 and for other people.

16 Q Doctor, you do these examinations for the Law
17 Offices of Mark Pura, do you not?

18 A I have in the past.

19 MR. CUBAR: Objection.

20 Q You do these examinations for the Law Offices of
21 Paul Garlock?

22 MR. CUBAR: Objection.

23 A Who?

24 Q Paul Garlock.

25 A I have in the past. Not very many, I don't

1 think. But I don't keep track of how many I do
2 for anybody in particular. I don't do very many
3 of them to begin with. So I don't know how
4 many --

5 Q Doctor, you do these examinations for Hoppe,
6 Frey, Hewitt & Milligan, do you not, Mr. Murphy?

7 MR. CUBAR: Objection.

8 A I don't remember, but probably. If you say I
9 did. I don't remember. I don't keep track

10 Q Do you in fact do these defense examinations for
11 Commercial Union Insurance Company?

12 A Yes, I have.

13 MR. CUBAR: Objection.

14 Q Do you in fact do these for Nationwide Insurance
15 Company?

16 MR. CUBAR: Objection.

17 A I'm not sure, maybe I have.

18 Q Mr. Coffee, Mr. Kolozvary?

19 A I don't remember the names.

20 MR. CUBAR: Objection.

21 Q You do these examinations for Mr. Tim Fisher?

22 MR. CUBAR: Objection.

23 A I don't remember that name. But I may have
24 something. I don't remember the name.

25 Q Mr. Bill Michaels?

1 MR. CUBAR: Objection.

2 A I don't remember the name.

3 Q Bill Michaels?

4 MR. CUBAR: Objection.

5 A I don't remember the name, I'm sorry.

6 Q Did he not do a deposition yesterday?

7 MR. CUBAR: Objection.

8 A No.

9 Q Wasn't Bill Michaels?

10 MR. CUBAR: Objection.

11 A I don't think so, no.

12 Q And Mr. Cubar's firm, McNeal-Schick?

13 MR. CUBAR: Objection.

14 Q How many examinations and how many times have
15 you in fact done examinations for Mr. Cubar's
16 firm?

17 MR. CUBAR: Objection.

18 A I don't know. I don't keep track of that. It
19 doesn't make any difference who asks me to it, I
20 go in and I do an examination and send a report
21 to whoever asked for it. So I don't keep track
22 of who it is.

23 Q Doctor, can you tell us what percentage of your
24 income is generated from doing these exams?

25 A No. Only about five percent of my patients, but

basically I'm an orthopedist, I take care of sick and injured patients

Q And, doctor, you were paid for your examination on today's date, were you not?

A You mean this examination?

Q This examination.

A Yeah. That question was sort of ambiguous.

Q I'm sorry.

A Oh, yes, I presume so

Q What would be what, about \$400 or 350?

A I think it's \$400 It used to be \$50 I think it's 400 now.

Q Okay And you charge for x-rays Would it be fair to say about 100, \$150?

A I don't know Maybe 100 I don't keep track of that Whatever the Blue Cross usual customers reasonably for is, which is the same for we charge the patients that we take care of, whatever that charge is

Q Then you are in charge for reviewing records, like you reviewed all these records, at 250 an hour is that not correct?

A If there's a lot of records If there are not I would probably not charge as all

Q And you review x-rays, too, don't you?

1 A That's part of the records.

2 Q And you review MRI's and CT scans?

3 A That's part of the records. That would all be
4 together, it wouldn't be separate

5 Q And is it not a fact that you also charge for a
6 deposition such as this?

7 A Charge for my time, certainly.

8 Q That would be 850, 900?

9 A 850. I believe that's what we charge now.

10 Q Okay. Doctor, when Mr. Cubar requested that you
11 conduct this examination, you did not examine
12 Mr. Krager or Don to aid him in his medical
13 problems, did you?

14 A No.

15 Q In fact, in this examination you were not
16 functioning as a healer of the sick?

17 A No.

18 Q In fact, in this examination you were
19 functioning in the capacity of a separate
20 business; is that not correct?

21 A No. I was functioning as an expert to determine
22 what, if anything, was wrong with Mr. Krager.

23 Q And in this examination you're in fact examining
24 Dr. Lefkovitz's patient, correct?

25 A If it is his patient. I don't know.

1 Q For the purposes of collecting a fee?

2 A No. For the purposes of determining what, if
3 anything, is wrong with him.

4 Q And for testifying against the claims of the
5 patient?

6 A No, I don't testify against anybody. I testify
7 about him. And I might very well say there's
8 something wrong with him if there were. I
9 certainly would say there were something wrong
10 with him if there were.

11 Q Doctor, you have no professional duty to Don
12 Krager, do you?

13 A Well, not as a --

14 Q Or obligation?

15 A Oh, I think I do. I think I need to be truthful
16 and thorough. That's an obligation to anybody.

17 Q He does not have a right to rely on your
18 opinion, does he?

19 A No.

20 Q And if your opinion is wrong, he has no redress
21 against you professionally; is that correct?

22 A I don't know what that's got to do with it. No.
23 He's not going to drive my car either. I don't
24 know what that's got to do with it either.

2s Q Well, in effect you're the agent of Mr. Cubar?

1 A No. I'm not anybody's agent. He asked me to
2 examine this patient, tell him what, if
3 anything, was wrong with him. And that's what I
4 did.

5 Q Doctor, when you indicated that you were a
6 clinical professor in orthopedic surgery, why
7 don't you tell the ladies and gentlemen of the
8 Jury what that means.

9 A I said a clinical instructor of orthopedic
10 surgery.

11 Q I'm sorry.

12 A You misquote me again.

13 Q I'm sorry.

14 A I teach residents and medical students at the
15 medical school.

16 Q Is it not a fact that, most orthopedic surgeons
17 permit residents to come into their practices on
18 a rotation basis and receive some hands-on
19 training?

20 A It's all depending. We can have them come in
21 the office sometimes, we make rounds at the
22 hospital, we instruct them in their duties in
23 the hospital or the clinics.

24 Q Would you agree with me, that just about every
25 board certified orthopedic surgeon in the State

1 of Ohio conducts the same type of clinical
2 instruction to the residents as you do?

3 A No. I don't know if that's the case at all.
4 I'm sure that they're not -- not every
5 orthopedists in the State of Ohio is not a
6 clinical instructor at Case Western Reserve
7 Medical School.

8 Q But, Doctor, you are not a professor of
9 orthopedic surgery at University Hospitals, are
10 you?

11 A No. I'm a clinical instructor in orthopedic
12 surgery in the medical school.

13 MR. EMERSHAW: Could we go off
14 the record for one minute.

15 - - - . - -

16 (Discussion held off the record.)

17 - - - - -

18 MR. EMERSHAW: Thank you,
19 Doctor. I have no further questions.

20 REEXAMINATION OF RICHARD S. KAUFMAN, M.D.

21 BY MR. CUBAR:

22 Q Doctor, I have a few questions.

23 A Certainly.

24 Q You were asked by Mr. Emershaw about the branch
25 of medicine known as radiology and with regard

1 to radiologists in particular.

2 Do radiologists perform surgery?

3 A Oh, no. They just -- they're in their office
4 and they see the x-rays. For the most part they
5 don't even see the patients, they just see the
6 x-rays.

7 Q And in terms of any decisions as to the care and
8 management of a given patient, does that fall
9 upon the radiologist's shoulders or the
10 clinician's shoulders?

11 A Well, it's the treating physician who's
12 responsible for the patient. And that's why I
13 always read my own x-rays, the x-rays of my own
14 patients. Because it's my responsibility what's
15 on them. And that's why I'm always very careful
16 to read them myself.

17 Q And, Doctor, you were asked a number of
18 questions with regard to the MRI film and the
19 EMG test by Mr. Emershaw. Has any of the
20 questions that Mr. Emershaw has asked you for
21 the **past** hour or so, has that changed any of the
22 opinions that you have presented to the Jury
23 with regard to Mr. Donald Krager?

24 A No, it hasn't. Those findings were of no
25 clinical significance.

1 Q And when you say "the findings were of no
2 clinical significance," are you referring to
3 that bulge?

4 A The bulge that was seen on the MRI and I'm
5 referring to the H reflex on the EMG, neither
6 one of which are confirmed by any other
7 evidence.

8 Q And Doctor, I believe you indicated in some
9 testimony that Mr. Krager was complaining about
10 pain in -- all around his thigh?

11 A Yes.

12 Q And Doctor, you called that -- used a certain
13 term for that?

14 A It's what's called a nonanatomical distribution.
15 The nerves that go into the -- for instance, the
16 legs, go into certain distributions, go down the
17 side of the leg, down the back of the leg or
18 down the inner part of the leg, or they may skip
19 the thigh entirely and just go down into the --
20 down the entire lower extremity or just be into
21 the foot. But there is no distribution of
22 nerves that goes all the way around the thigh as
23 far as the knee. That doesn't make any sense.
24 That does not fit any anatomical picture
25 Q And, Doctor, it's still your opinion, within a

reasonable degree of medical probability, that
you believe that Mr. Krager is not going to have
any future disability; is that correct?

A From *this* accident, *that's* correct.

MR. CUBAR: Thank you,
Doctor. I have nothing further.

MR. EMERSHAW: I have no
further questions.

THE WITNESS: I'll waive
viewing and 1/11waive signing.

- - - - -


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

3 I, Gregory L. Koterba, a Notary Public within
4 and for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that the within-named
6 witness, RICHARD S. KAUFMAN, M.D., was first duly sworn
7 to testify the truth, the whole truth and nothing but
8 the truth in the cause aforesaid; that the testimony
9 the given by him was by me reduced to stenotype in the
10 presence of said witness, afterwards transcribed on a
11 computer/printer, and that the foregoing is a true and
12 correct transcript of the testimony so given by him, as
13 aforesaid.

14 I do further certify that this trial deposition
15 was taken at the time and place in the foregoing
16 caption specified.

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

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Cleveland, Ohio, on
22 this 19th day of February 1997.

23 
24 Gregory L. Koterba, Notary Public
25 within and for the State of Ohio
My Commission expires January 12, 2000.

[illegible]

(4- _____ Conte) DEPOSITION INDEX OF RICHARD KAUFMAN, M.D.
Kraaer v. Pitcock

PAGE/LINE

5/09 Direct examination for purposes of trial by Mr. Cubar

5/24--6/10 Educational background:
B.A. from Yale 1952, M.D. Columbia 1956, 5-year Mt. Sinai
internship, 2-year orthopaedic University Hospital
residency, 1-year ortho surgery Indiana University

6/19 Hospital privileges:
Chief of orthopaedic surgery for 29 years at Meridia
Southpointe, staff at Mt. Sinai and Hillcrest

24 Was chief of orthopaedics at Women's General Hospital for
23 years until it closed

7/01 Orthopaedic consultant to arthritis clinic at Metro for
32 years

7 Currently clinical instructor in orthopaedic surgery at
case for 33 years and was professor for 20 years at Ohio
College of Podiatry

14 Areas of publication primarily involve fractures, broken
bones

8/06 Definition of orthopaedic surgery

9/10 Professional associations

22 "I take care of many patients who have been injured and
who have, because they've been injured, have lawsuits.
Also, a very small portion of my practice, about 5%,
involves just-exam and report."

10/25--11/90 Purpose of obtaining a history: A history is the
'story the patient gives. The importance is to "get
some idea of the patient's clinical picture and to
focus on those parts of the body, examination of
which might bear on the diagnosis"

13/04 Definition of physical therapy and various types

13/16--15/10 Patient's description of pain distribution

16/11 Physical exam: of lumbar spine included feeling for spasm

22 Definition of objective and subjective findings

26

10 Professional associations 1

22

17/03 Some other objective findings are muscle spasms, swelling, warmth, over an area, discoloration of skin, and x-ray changes

14 Lasegue's Sign produces pain if the sciatic nerve is being irritated

22 Patrick's Sign will produce pain in the low back if those muscles are irritated or inflamed

18/09 Measurement of length of leg, circumference of thighs and calves, indicate pinched nerves, muscle atrophy

18 Neurological exam includes reflexes at knees and ankles

24/03 "If a patient has pain on motion due to an injury to the muscles or ligaments of his back, you would expect tenderness in that area over the muscles and ligaments

26/7-18 5% of practice, being exams and reports, constitutes approximately 6 exams per week

35/1-6 Difference between disability and impairment

11-20 Unaware of any protocol for examination of patients in determining impairment

14 Lasegue's

21-25 Goniometer is used to determine range of motion when doing a permanent impairment rating

36/05 Doesn't know what a tractograph is

19-23 Did not use a goniometer to make specific indication of degrees

37/03 If it had been an exam for permanent impairment, he would have used a goniometer

39/20 "They don't have a range of motion on Lasegue's Sign. It's not a sign that requires range of motion."

40/4-25 Sensory motor deficit testing included "thigh touch" and did not include tuning fork, pinwheel, Babinski, or Clonus

41/6-11 Actual numbers on measurement of extremities is of no importance. The important fact is whether they are equal

21-20

2 Neurologic exam included strength of the muscles, loss of sensation to light touch and reflexes

21-20

46/4-25 Definitions and distinctions between bulge, extrusion, and herniation

46/16 "'Bulging' and 'herniated' is the same word"
50/02 Kaufman always reads his own films
52/03 The medical group hires radiologists to read films
11-25 AMA Impairment Guidelines indicate soft tissue disk injury lasting longer than 6 months and causing pain is in the category of a permanent impairment but "this has nothing to do with this case"
62/17--63/7 Further definition of protrusion vs. extrusion
69/4-7 Sometimes with repeated exams over periods of time, your diagnosis will change ✓
08 Agrees that he has made mistakes of diagnosis in the past ✓
71/10 Does defense exams for commercial union
14 Does defense medicals for Nationwide
46/16 "'Bulging' and 'herniated' is the same word"
73/10 \$400 for exam
74/09 Charges \$850 for deposition
75/06 "I don't testify against anybody. I testify about the person and I might very well say there's something wrong with him if there were."
77/8-12 Kaufman is not a professor of orthopaedic surgery. He is a clinical instructor in orthopaedic surgery at the medical school
78/11 "It's the treating physician who's responsible for the patient" ✓
14 "It's my responsibility what's on the x-rays and that's why I'm always very careful to read them myself"

end