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The State of Ohio,)
) SS:
County of Lake.)

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IN THE COURT OF COMMON PLEAS

- - - - -

RICHARD E. KING, ET AL.,)
)
Plaintiffs,)
) Case Number 92000048
vs.)
)
RICHARD R. MC CULLOUGH,)
)
Defendant.)

- - - - -

DEPOSITION OF RICHARD S. KAUFMAN M.D.
Tuesday, September 14, 199

Deposition of RICHARD S. KAUFMAN, M.D., called by the Defendant
for direct examination under the Ohio Rules of Civil Procedure,
taken before me, the undersigned, Gerald Abbadini, Registered.
Professional Reporter, a Notary Public in and for the State of
Ohio, at the office of the deponent, 23250 Mercantile Road,
Beachwood, Ohio 44122, commencing at 1:40 p.m. the day and date
above set forth.

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APPEARANCES:

On Behalf of the Plaintiffs:

Colman R. Lalka, Esquire
270 E. Main Street, Suite 100
Hillside Professional Center
Painesville, Ohio 44077

On Behalf of the Defendant:

Mark A. Greer, Esquire
Gallagher, Sharp, Fulton & Norman
6th Floor, Bulkley Building
Cleveland, Ohio 44115

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ALSO PRESENT:

John Smith, Multi-Video, Inc.

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RICHARD S. KAUFMAN, M.D.

1
2 called by the Defendant for direct examination under the
3 Rules of Civil Procedure, after having been first duly sw
4 as hereinafter certified, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. GREER:

8 Q Doctor, would you please state your full name for the
9 record?

10 A Dr. Richard S. Kaufman, M.D.

11 Q What is your business address, Doctor?

12 A 23250 Mercantile Road, Beachwood, Ohio.

13 Q And Doctor, how long have you been licensed to practice
14 medicine in the State of Ohio?

15 A I have been licensed to practice since 1956 which is
16 years. I'm also licensed to practice in Indiana and
17 California.

18 Q Do you have a particular specialty?

19 A I specialize in the field of orthopedic surgery.

20 Q And Doctor, what exactly is orthopedic surgery?

21 A Orthopedic surgery or orthopedics is the branch of
22 medicine that deals with the diagnosis and treatment, both
23 medically and surgically, of diseases and injuries to what
24 might call the locomotor system, the parts of the body that
25 move you about, the bones and joints and tendons and

1 ligaments of the spine and the arms and legs.

2 Q Are you board certified, Doctor?

3 A I'm certified by the American Board of Orthopedic
4 Surgery.

5 Q When did you become board certified?

6 A 1963. - I certification - Have to be certified
10/1/2015.

7 Q What exactly is board cert^{Every}ion?

8 A When I became board certified, I had to have 4 years
9 college, 4 years of medical school, 5 years of postgraduate
10 training. Following that, I took a 3-day series of written
11 and oral examinations which I passed the first time. I then
12 had to be in practice for 2 and a half years and take a
13 second set of written and oral examinations, which I also
14 passed the first time, and was certified by the American
15 Board of Orthopedic Surgery as a fully trained and competent
16 specialist.

17 Q Doctor, could you describe for the ladies and gentlemen
18 of the jury your educational background?

19 A I received my BA degree from Yale University ~~summa~~ c
20 laude in 1952. I then received my MD degree in 1956 from
21 Columbia University. I had 5 years of postgraduate training:
22 A year of internship at Mount Sinai Hospital in Cleveland.
23 A year of surgical residency at University Hospitals in
24 Cleveland. 2 years of orthopedic surgery residency at Mount
25 Sinai Hospital, and a year of orthopedic surgery residency

1 Indiana University Medical Center in Indianapolis.

2 Q Doctor, how long have you been in the private practice
3 of medicine?

4 A Since July 1961, which is now 32 years.

5 Q What specific types of orthopedic problems do you
6 treat, Doctor?

7 A We treat all types of problems. Fractures, all types
8 of injuries to the back and to the arms and legs. I
9 particularly am interested in arthritis and in problems with
10 the spine.

11 Q Are you associated with *any* particular hospitals?

12 A I am on the active staff at Suburban Community
13 Hospital. I have been the chief of orthopedic surgery for 28
14 years. Mount Sinai Hospital, Hillcrest Hospital. I was the
15 chief of orthopedic surgery at Women's General Hospital for
16 23 years until it closed, and I'm the orthopedic consultant
17 to the Arthritis Clinic at Cleveland Metropolitan General
18 Hospital, or MetroHealth as it's now called.

19 Q Doctor, I would like to shift focus now and ask you
20 when you had the first occasion to meet the plaintiff in this
21 matter?

22 A September 25, 1992.

23 Q And Doctor, how was it that you met the plaintiff?

24 A You referred Mr. King to me.

25 Q Doctor, am I correct this is not the first time you

1 have been asked to perform an independent medical
2 examination?

3 A No, I would say that 95 percent of my practice is
4 devoted to the treatment of sick and injured patients. About
5 5 percent is involved with just examination and a report to
6 somebody, a plaintiff's attorney, defense attorney, third-
7 party, Industrial Commission of Ohio, that sort of thing. I
8 would say about 5 percent. But 95 percent of my practice is
9 devoted to treating sick and injured patients.

10 Q Doctor, you have been asked by my office to perform
11 independent medical examinations before?

12 A Yes.

13 Q I believe, though, that this is the first time I have
14 had the opportunity to take your trial deposition?

15 A I believe so.

16 Q Doctor, you charged us for examining Mr. Xing,
17 reviewing all his medical records and issuing a report?

18 A That's correct.

19 Q And you are charging us for your time today?

20 A Yes.

21 Q Now, Doctor, in addition to examining the plaintiff,
22 what specifically did you review?

23 A I reviewed a lot of records. I reviewed some X-rays
24 which were returned, and some MRI reports. Some records of
25 Dr. Moon, Chiropractor Moon. Lake Massotherapy Clinic. This

1 is some handwritten notes from somebody. I don't know what
2 is. I think this is from John Schaffer. It's an office
3 from John Schaffer. It's the Center for Total Wellness.
4 there is some more records of Chiropractor Moon.
5 Radiology. Then recently just today I received some records
6 from Dr. Brickel, including a report and some X-ray reports
7 and EMG report.

8 Q Am I correct, Doctor, that you also had the opportunity
9 to review each X-ray, CT scan and MRI film which have been
10 taken of the plaintiff?

11 A I believe I have, as of now, I just saw, before we
12 started this deposition, I just saw some, but I reviewed some
13 before and I reviewed the rest of them now.

14 Q Doctor, when you first examined the plaintiff, did you
15 obtain a history?

16 A Yes.

✓ 17 Q What history did you obtain from the plaintiff?

18 A Mr. King said that he was injured in January of 1990
19 when the car he was driving was involved in a collision from
20 the rear with a van. He said he was wearing a seatbelt.

21 MR. LALKA: Objection.

22 A He said his forehead hit the visor. He said he was not
23 unconscious. Following the accident, he developed pain in
24 his neck and his mid and low back that day or the following
25 morning. He wasn't sure which one. He went to Chiropractor

1 Beth Moon the following day.

2 Since the accident, he's been under the care of
3 Chiropractor Moon and has been given physical therapy and
4 manipulations for about a year. Be also saw Dr. John
5 Schaffer in 1990, 2 or 3 times, and got physical therapy
6 Lake County West Hospital where he was also given an exercise
7 program which he said helped initially, but then increased
8 his pain after 5 or 6 weeks, so he stopped it. Be said
9 still doing some exercises at home. He has not had any
10 medications.

11 He said that at the time I saw him, the neck pain
12 persisted unchanged. Be said it was located in the middle
13 Be said it was constant and moderate to severe in degree.
14 said it was made worse by nothing that he knew of and was
15 relieved by heat and exercise. He said there was spread
16 the neck pain through the left upper arm on the back of the
17 arm and down the arm to the hand. He said he had tingling
18 the hand from the wrist down.

19 The mid back pain he said had improved some. He said
20 it was located in the area between the shoulder blades. Be
21 said it would come and go and was mild to moderate in degree.
22 He said he is not having any pain at the time of this
23 examination. Since he said it would come and go, I wanted
24 know whether he was having pain then and he said he was not.
25 And he said the last time he had pain was "a couple of weeks

1 ago.* He said the pain was made worse by nothing that he
2 knew of and was relieved by exercise, heat and massage.

3 Mr. King said that the low back pain had persisted
4 unchanged. He said it was located in the middle at the level
5 of the pelvis, from the waist down across the pelvis. The
6 pain was said to be constant and moderate to severe in
7 degree. He said it was made worse by nothing that he knew
8 of, and was relieved by heat, massage and exercise.

9 He said there was spread of the low back pain to the
10 left thigh and back of the thigh, and at times to the calf.
11 He said he had numbness of the backs of both thighs and of
12 the whole foot on the left, with weakness of the left foot in
13 the past. He said the last time this had occurred was 2
14 weeks before I saw him, and the symptoms lasted for less than
15 2 hours.

16 His occupation is as a maintenance supervisor. He
17 returned to regular work the day after the accident and had
18 lost no time from work as a result of the accident. He said
19 there had been no previous or subsequent injuries or symptoms
20 in his neck or his middle back, and he never had any trouble
21 with those in the past, he said. He had previous problems
22 with his lower back for 2 years prior to this accident. He
23 said he was still being treated for his low back pain at the
24 time of this accident. He said the symptoms now were in the
25 same area as they had been before, but he said that they were

1 now more severe. The patient said he was in good health with
2 no serious illnesses or operations.

3 Q Doctor, was there anything significant in the history
4 you obtained from the plaintiff?

5 A Well, I'm not sure what you mean by significant. He
6 said he had pain. He said it was unchanged, And he said
7 that he had been treated with physical therapy, but it hasn't
8 been for a while, apparently.

9 Q When I say anything significant, I was referring to any
10 prior problems before the accident?

11 A Oh, yes. It is significant that he had low back pain
12 before. He said he didn't have any trouble with his neck,
13 but he said he had had low back pain in exactly the same
14 place prior to the accident, and was having pain there at the
15 time of this accident.

16 Q Doctor, did you have an opportunity to conduct a
17 physical examination of the plaintiff?

18 A Yes. On physical examination, the patient appeared to
19 be in no discomfort. That is, just looking at him, he
20 certainly did not appear to be fa the constant moderate to
21 severe pain that he said he had. He was instructed to let me
22 know if anything caused him pain during the examination. Hi8
23 gait, the way he walked was perfectly normal.

24 He got up and

~~stood about 30 seconds and he did not appear to be in any~~
~~discomfort.~~
~~He was instructed to let me know if anything caused him pain during the examination.~~
~~He got up and~~

1 indicating good muscle strength in his legs, as well as good
2 balance and ability to move about easily.

3 The examination of his neck showed him to hold his head
4 straight, it wasn't tipped to one side or another. The neck
5 motion was normal in range without pain. He can put it down
6 and back and side to side and turn it from side to side
7 without *any* complaints of pain. Despite the fact he said he
8 was in constant pain in his neck. He said there was mild
9 tenderness in the left trapezius muscle which is this muscle
10 on the side of the neck.

11 Neurological examination of his arms showed the
12 reflexes to be normal. Just as when you tap the knee and
13 leg kicks, there are other tendons that you can tap and the
14 muscles will twitch. Actually there are 3 in the arms and
15 these were all normal, There was no numbness and there was
16 no weakness found in his arms. Neurological examination was
17 normal and the only abnormal finding that was found was he
18 said he was some tenderness in the muscle on the left side of
19 his neck.

20 Examination of his mid back showed no deformity. The
21 motion of his thoracic spine, that is the part of the back
22 that the ribs attach to is called the thoracic spine or the
23 dorsal spine which is the same thing. It was normal in range
24 without pain, he could bend down, come back and turn from
25 side to side. He said there was some mild tenderness between

1 the shoulder blades. The motion of his shoulder blades,
2 however, was perfectly normal in range and he did say that he
3 had some pain in the muscles, these big muscles on his back
4 when he would bend his shoulder blades up. Other motions in
5 his shoulder blades were without any pain at all.

6 Examination of his lower back revealed him to stand
7 straight. He wasn't leaning to one side or another. The low
8 back motion was normal in range. He said he had pain when he
9 bent down and he also said he had pain when he bent to the
10 right. But it was normal in range, that is, down and back
11 and side to side, but he said he had pain on those 2 motions.
12 The other motions, he did not have pain.

13 There was no muscle spasm in the paraspinal muscle.
14 Spasm is the involuntary contracture of a muscle. When there
15 is underlying pain, the muscle goes into spasm and prevents
16 the joint from moving. You can feel the spasm through the
17 skin and there was no spasm. Tenderness of moderate degree
18 was said to be present over the muscles of his lower back.

19 The Lasegue's sign was negative bilaterally. That's a
20 test you do with the patient lying on his back and with the
21 knee straight, the leg is brought up in the air like a
22 periscope. This puts a stretch on the sciatic nerve. If
23 that's being irritated, it will cause pain going down the
24 leg. This did not in this case. However, lifting the leg
25 straight in the air was said to give some back pain when it

1 got up to 80 degrees, which is practically all the way u
2 Then he said he had some back pain.

3 The Patrick's sign or test was negative on both si
4 That's a test that we do with the patient lying on his b
5 and the heel of one foot is placed on the opposite knee
6 the first leg is brought down in sort of a figure 4 posit
7 That puts a stretch on the muscles and ligaments of the l
8 back and if they are irritated, will produce pain. It di
9 not in this case.

10 Measurements of his leg showed the lengths to be eq
11 which you would expect. The circumference of the thighs
12 the calves were also equal, indicating .. which is normal
13 indicating that there was no wasting away of the muscle.
14 Sometimes when there is nerve injury, the muscle will get
15 smaller, and even before you can measure a difference in
16 amount of strength, you can measure the difference in the
17 amount of muscle. But they were normal.

18 The neurological examination of his legs revealed th
19 knee jerks to be normal. That's when you sit on the edge
20 the table and hit the tendon below the kneecap and the leg
21 kicks. There is a similar reflex where you tap the heel c
22 and the foot kicks. That's the ankle jerk and that was al
23 normal, There was no numbness present and there was no
24 weakness present in his legs. So the neurological
25 examination of his legs was perfectly normal.

1 When I was testing the strength of the muscle in the
2 front of his thigh which was normal, he said that he had
3 tenderness in the muscles and the tendons that is called the
4 hamstring tendons, the tendons behind his knee on the left.
5 I had him straighten out his knee, put my arm behind his knee
6 as a sort of fulcrum, as a rest, then press on his leg to see
7 how strong the muscles of his thigh were, and he said that
8 that produced pain in the hamstring muscles, the tendons
9 behind his knee,

10 However, when I examined his knee, there was no -- the
11 knee itself was totally normal. So I don't know why he
12 complained of the pain in those tendon8 at that particular
13 time because there wasn't any tenderness later on. So the
14 examination of the lower back -- so primarily is the fact he
15 said he had pain on motion and some tenderness over the
16 muscles.

17 Q Doctor, what significance was there to the results of
18 your physical examination?

19 A Well, I found -- let me say there are 2 types of
20 findings. There are objective findings and subjective
21 findings. Objective findings are those which the patient
22 does not have to tell me are present, such things as muscle
23 spasm, deformity, swelling, skin color changes, redness,
24 black and blue, X-ray changes, fractures. These are all
25 objective findings. Subjective findings are those that the

1 patient has to tell me are present. I have no way of
2 knowing. He says they're present, such things as tenderness
3 or pain on motion.

4 In my examination of Mr. King, I found no objective
5 findings at all. He did have some subjective findings,
6 complaints of pain on motion and some tenderness.

7 Q Again, subjective findings are merely the patient's
8 complaints?

9 A Just what he says are present. I have no way of
10 knowing.

11 Q Doctor, subsequent to your examination of the
12 plaintiff, you had an opportunity to review the CT scans, the
13 MRI films, as well as the prior X-rays of Mr. King?

14 A Yes.

15 Q Could you explain to the ladies and gentlemen of the
16 jury what exactly CT and MRI tests are?

17 A CT stands for computerized tomography. What it is is
18 the patient is placed in a round ring and about 120 X-rays
19 are taken all the way around the ring. Then the patient is
20 moved a little bit further and then another set of X-rays are
21 taken, These X-rays are fed into a computer and you come up
22 with a picture not only of the bones, but of the soft
23 tissues, And not only of the area as if you looked at it
24 from a normal X-ray. That is, in a normal X-ray you would
25 look at it from the front or you can look at it from the

1 side.

2 But a CT scan, you can look, the tomography means you
3 ~~can~~ cut it, actually view it as if you are looking at it on
4 ~~an end~~, and you can see that the bone and the nerves and the
5 disks which are between the bones, you can see these are on
6 the CT scan. An MRI you can also visualize the soft tissue,
7 same as a CT scan, but it's just done differently. It's done
8 by placing the patient in a large magnetic field, then the
9 magnetic field is spun and then spun back, and the changes in
10 the field are then reported on the computer and you come up
11 with pictures which are quite similar.

12 There are some very distinct advantages and
13 disadvantages to both types of imaging, which is why we have
14 2 different types. The MRI will also show the nerves which
15 run down the back, and the disks which are between the bones
16 in the back as opposed to just the bones.

17 Q Am I correct, Doctor, you have now also been able to
18 review the recent test films that were performed in the last
19 month or so?

20 A Yes.

21 Q Doctor, am I correct that as of June of 1990, the
22 plaintiff's chiropractor had diagnosed him as having
23 sustained an injury constituting cervical, thoracic and
24 lumbar sprain/strain?

25 A Yes.

1 Q Could you describe for the ladies and gentlemen of the
2 jury what exactly that means?

3 A Well, cervical means neck, so strain/sprain means that
4 the soft tissues have been pulled on and that's a strain. A
5 sprain, they are pulled on somewhat beyond their limits, so
6 that they are torn a little bit, like a sprained ankle. And
7 cervical means neck and dorsal means the mid back or thoracic
8 spine, the part where the ribs are attached, and lumbosacral
9 is the low back, the part between the ribs and the pelvis.
10 That would be a sprain of the muscles and ligaments of the
11 spine.

12 Q Now Doctor, I'm going to ask you some opinions
13 regarding the plaintiff, the injuries he may have sustained
14 in the January 16, 1990 accident, what physical problems he
15 may have had before the accident, the present problems the
16 plaintiff complains of, and future problems or treatment that
17 he may experience. As to any such opinions, I'm going to ask
18 you to base those upon your education, your training, your
19 experience, your examination of the plaintiff, your review of
20 all his medical records. I would also ask that all such
21 opinions be based on reasonable medical certainty.

22 A Certainly.

23 Q First, Doctor, I would like to ask you whether or not
24 the plaintiff was suffering from any degenerative condition
25 prior to the accident of January 16, 1990

1 A Yes, it's my opinion based on reasonable medical
2 certainty that Mr. King had considerable degenerative
3 osteoarthritis, which is the wear and tear type of arthritis
4 that we all get as we grow older, of his lower neck,
5 where you get it more frequently, and the lower back where
6 you also get it. Both of these areas had degenerative
7 arthritis prior to this accident.

8 Q And Doctor, what do you base your opinion on?

9 A Well, the fact that he had it at the time of the
10 accident and it takes a considerable period of time for this
11 to develop and it was quite severe, it was quite marked even
12 at the time of this accident. So he obviously had it before.

13 Q Now Doctor, you have had an opportunity to review the
14 February 12, 1990 MRI film and the March 31, 1990 CT scan,
15 which those tests being performed a month or so after the
16 accident, is that correct?

17 A Yes.

18 Q Were there any significant findings in those 2 tests?

19 A Yes, the significant findings were, first of all, that
20 there were degenerative changes, what we call osteophytes,
21 which are like little icicles of bone that are pulled off by
22 the tendons over a period of time. The ligaments are pulling
23 on the bone and they pull sort of like an icicle or bone off
24 and this is part of the degenerative process. There was
25 definite degenerative osteophytes in the neck and lower back,

1 as seen on these studies.

2 Also of significance. there was no herniated disks
3 That is, the disks them elves, there was no evidence that the
4 disks themselves were bulging out, just the arthritic
5 changes.

6 Q Doctor, the process of degeneration, can you describe
7 for the jury over what time period that occurs?

8 A Oh, several years. It starts when we are in our 30's
9 and continues as long as we live. Just, some people wear out
10 faster than others, just as some automobiles wear out faster
11 than others. But it occurs in all of us. It's a progressive
12 condition and just goes on with time.

13 Q Now Doctor, were the findings on the February 12, 1990
14 MRI and the March 31, 1990 scan caused by the accident of
15 January 16, 1990?

16 A It is my opinion based on reasonable medical certainty
17 that the degenerative changes, which were the only changes
18 seen on those studies, were definitely not the result of the
19 automobile accident, but pre-existed to the accident and were
20 due to the normal wear and tear.

21 Q Now Doctor, am I correct you also had the opportunity
22 to review the September 24, 1992 CT and MRI films of the
23 plaintiff?

24 A Yes.

25 Q Were there *any* significant findings in those films?

1 A Again, they show the osteophytes, the bony spurs, the
2 degenerative changes that were seen before and are there now
3 They don't change. They don't go away. They were
4 essentially the same as they were before and again, I do not
5 believe there is any herniated disk.

6 Q And were the findings in the September 1992 tests
7 caused by the 1989 automobile accident or were they
8 degenerative changes?

9 A No, all the changes on those tests in '92 were the
10 result of degenerative changes and were unrelated to the
11 automobile accident,

12 Q Doctor, are you aware that the plaintiff recently
13 consulted with a neurologist and underwent some additional
14 tests?

15 A Yes.

16 Q You have had an opportunity to review those test
17 results and the actual films?

18 A Yes.

19 Q Are there any significant findings in those tests?

20 A Again, the only significant findings are the
21 osteophytes, the degenerative changes, and also there is one
22 other significant finding on the EMG. EMG stands for
23 electromyogram. Electro, of course, means electricity. Myo
24 means muscle and gram means a picture. So it's a picture of
25 the electrical activity of the muscle. Just like a

1 cardiogram is a picture of electrical activity of the heart
2 muscle. And it did show some degenerative -- some changes
3 which were consistent with C6, call it C6 radiculitis.
4 Radiculitis translated from the Greek means -- radiculo is
5 the stem word for a nerve root. Itis is inflammation, So
6 it's inflammation of a nerve root.

7 Again, that's probably due to the osteophytes, the
8 degenerative changes that he has at that level in his neck,
9 C5, C6. There are 7 cervical vertebrae and they are just
10 numbered from the top down. Between the 5th and 6th are
11 usually where most of the changes -- the changes are maximum
12 in the neck, sort of a short end of the stick down to the
13 ribs where the motion is the most. The C6 radiculitis is
14 consistent with the marked osteophytes which are seen on the
15 imaging studies, the MRI and other studies. So that's the
16 significance, as well.

17 Q Doctor, are the findings of the tests performed by Dr.
18 Brickel caused by the January 16, 1990 accident?

19 A No, it's my opinion based on reasonable medical
20 certainty that the degenerative changes which Dr. Brickel's
21 tests indicate are due to the normal wear and tear of the
22 spine and not in any way related to the automobile accident.

23 Q Now Doctor, in your opinion, based on reasonable
24 medical certainty, what injuries did the plaintiff sustain in
25 the January 16, 1990 accident?

1 A Well, I think he may have sprained his neck and has had
2 some pulling on the muscles and ligaments. He said he had
3 some pain immediately after the accident and that's
4 reasonable. Usually lasts about 6 or 8 weeks. Actually I
5 think most of it, people get over it even faster than that.

6 MR. LALKA: Objection.

7 A But it's my opinion in this case that the symptoms
8 probably lasted 6 or 8 weeks.

9 MR. LALKA: Objection.

10 A It is my opinion, then, that that was all he got
11 injured at the time of the accident.

12 Q Doctor, what type of treatment is appropriate for such
13 types of injuries?

14 A They usually respond very well to physical therapy,
15 same form of PT, and sometimes traction, sometimes certain
16 forms of electrical therapy, 3 times a week for about 3
17 weeks. Sometimes 6 weeks. We treat the patients with anti-
18 inflammatory medication as it reduces the inflammation on the
19 muscles and ligaments and that's generally what it takes.

20 Q Now Doctor, in your opinion, based upon reasonable
21 medical certainty, can you state whether the problems the
22 plaintiff complained of at the time of your examination were
23 caused by the January 16, 1990 accident?

24 A Yes, it's my opinion based on reasonable medical
25 certainty that they were not the result of the automobile

I accident, but the result of degenerative changes.

Q After your recent review of the new medical records of the plaintiff, has your opinion changed regarding the cause of the plaintiff's present problems?

A No.

Q Doctor, in your opinion again, based on reasonable medical certainty, do you believe that the plaintiff needs surgery at this time?

A Oh, absolutely not. There is no reason to have surgery at this time.

Q Doctor, in your opinion, again based on reasonable medical certainty, do you believe that the plaintiff is presently able to work?

A Absolutely. I think he is still working. But yes, I think -- I find no evidence that he couldn't work.

Q Again, Doctor, in your opinion based upon reasonable medical certainty, do you believe that the plaintiff will be able to continue to work into the future?

A Oh, absolutely. I see no reason why he couldn't. If he does not work in the future, it's not because of this accident. It may be his degenerative arthritis, which is a progressive condition and gradually gets worse normally. Although not necessarily, but it might progress to where he might have difficulty. But it would not be due to this accident, it would be due to the arthritis.

1 Q Finally, Doctor, in your opinion, again based upon a
2 reasonable medical certainty, do you believe that the
3 treatment performed by Dr. Moon and Lake Massotherapy was
4 reasonable and necessary as a result of the January 16, 1990
5 accident?

6 MR. LALKA: Objection.

7 A I think that some of the therapy -- I don't think the
8 massotherapy is therapeutic at all. A nice massage makes you
9 feel good, but it's not therapeutic, doesn't cure anything.
10 I don't think the manipulations helped his condition. I
11 think that the PT is reasonable for a few weeks, but that's
12 all,

13 MR. GREER: Thank you, Doctor.

14 MR. LALKA: If we could go off the
15 record, I would like to look at the doctor's
16 file.

17 (Discussion had off the record.)

18 - - - - -

19 CROSS-EXAMINATION

20 BY MR. LALKA:

21 Q Dr. Kaufman, we met a few moments ago before the start
22 of your direct examination, I'll introduce myself again, I'm
23 Colman Lalka. I represent Richard King in these proceedings.
24 You indicated in the history of Mr. King that Mr. King
25 stated to you that he was, in fact, still treating for lower

1 back problems on the date of **this** car accident, **is that**
2 correct?

3 A That's what he told me.

4 Q **Is** that what **Mr. King**, in fact, told you **or** is that
5 **your** recollection of what he told **you**?

6 A No, I'll look at **my** notes. I don't recall, I have no
7 independent recollection at **all**. **That's** what he told me.
8 Still being treated at the time of this accident.

9 Q That's a note that you wrote down based **on** what **Mr.**
10 King told you?

11 A Exactly.

12 Q So if **Mr.** King's medical records indicate that he **was**,
13 in fact, done treating **for** his lower back, that would be
14 incorrect, or **Mr. Xing** **would** have been incorrect when he **made**
15 that statement to you?

16 A Yes, sir.

17 Q You talked about subjective complaints that **Mr. King**
18 **has** and the objective complaints. You indicated that the way
19 you **can** locate the findings would be the patient telling you,
20 that would **be** a subjective finding, is that correct?

21 A During physical examination there are objective and
22 subjective findings. Subjective findings are those the
23 patient tells me **are** present that I can't tell **for myself**,
24 such things **as** tenderness and pain on motion.

25 Q So if the patient told you he had pain in a particular

1 place, you would put that down as patient is positive, in
2 other words, the patient said he **had pain**, is that correct?

3 A Yes.

4 Q And also when you perform these certain tests like the
5 Lasegue's test and the Patrick's test, you also rely on the
6 patient to tell you when he doesn't have pain and when the
7 test is negative, is that correct?

8 A That's correct.

9 Q In those particular cases, Mr. King also told you when
10 the tests were negative, is that right, or in other words,
11 when he ~~didn't~~ have pain?

12 A He did not indicate that he was having **any** pain at all.
13 He was told in the beginning of the examination very
14 carefully, instructed to let me know if anything caused him
15 pain, and he did not indicate that he was having **any** pain.

16 Q He did not indicate that he had pain, so ..

17 A Only during my testimony, when he indicated he said he
18 had pain, did he actually say he had pain.

19 Q Now, there is nothing wrong with a patient .. or
20 testing a patient, then asking him to elicit or give a
21 response to when he feels pain, is that correct?

22 A I'm not sure I understand the question.

23 Q In other words, Doctor, in your practice when you see a
24 patient, in your practice you have occasion to see many
25 patients, I think you indicated, is that correct?

1 A Oh, absolutely.

2 Q *Many* patients in addition to the patients that are sent
3 you, for ~~exam~~ple, by Mr. Greer's firm, is that correct?

4 A Oh, as I indicated, mostly I see patients that actually
5 --

6 Q Okay. Is it fair to say, Doctor, one of the first
7 things you do is ask the patient "what is this problem" or
8 "how do you feel" or "what's bothering you"?

9 A Yes, it's called a history.

10 Q In other words, you are asking the patient for
11 subjective complaints of pain or discomfort, isn't that
12 correct?

13 A No .

14 Q You are not asking him for --

15 A What I'm asking him for is history. When I'm examining
16 him, then I record subjective or objective findings.

17 Q So before the start of the examination, you have no
18 desire to know whether he's having *any* pain or discomfort?
19 You don't ask --

20 A No, that's not what I said. You obviously didn't
21 ~~listen~~ or you are purposely misquoting what I said. What I
22 said was I do ask, but: that's called history. That's the
23 story as the patient tells it to me. ~~The~~ patient's story,
24 whatever they say, I put down. Subjective and objective
25 findings are those things that I find when I examine a

1 patient.

2 Q When you meet the patient and you take his history

3 A Take a history, that is correct. That is one part
4 tha --

5 Q Let me finish the question.

6 A Okay, I just don't want you to be confused.

7 Q Well, I appreciate that. You take the patient's
8 history. You at no time ask him if he is in pain or
9 discomfort?

10 A That's not what I said. Exactly the opposite of whr
11 said.

12 Q Let me finish, Doctor. So you do ask the patient
13 during the course of his history if he is in any pain or
14 discomfort?

15 A Absolutely, I did this time, too. I put down what h
16 said- He said he was in severe pain.

17 Q Thank you, Doctor.

18 A Which I didn't find.

19 Q Severe pain where, Doctor?

20 A Mr. King said that he has constant moderate to severe
21 pain in his neck. So obviously he had moderate
22 pain in his neck when I examined him. And he
23 constant moderate to severe pain in his lower
24 didn't find either one.

25 Q Now, one of the purposes of you eliciting

1 responses of pain or indications of pain by the patient is so
2 that -- to assist you in making or forming a diagnosis of the
3 patient, is that correct?

4 A I'm sorry, I don't understand your question. What part
5 of the examination are you describing, the physical
6 examination or the patient's story as he tells it to me? I
7 just don't understand your question. Maybe you can clarify
8 your question.

9 Q Sure, I'll be happy to. Now Doctor, let me ask it this
10 way. You ask the patient if he has *any* pain or discomfort,
11 you perform examinations to elicit responses of pain or
12 discomfort, is that correct?

13 A Yes.

14 Q You do both proceedings?

15 A Yes.

16 Q I assume then you do both because both are important to
17 the process, is that correct?

18 A Yes,

19 Q So you do both and both of these are used to assist you
20 in the ultimate diagnosis of the patient's problem, is that
21 correct?

22 A They may or may not. It all depends, It may be of no
23 benefit at all. I think if a patient tells me he is having
24 moderate to severe pain, then he is having moderate to severe
25 pain and I don't find it --

1 MR. LALKA: I'm going to object at
2 this time. That's totally unresponsive to the
3 question,

4 A I was answering the question.

5 Q Doctor, you need to know also what the person who is
6 here seeing you has noticed about himself since the
7 occurrence that caused his injury, is that correct?

8 A That's why I ask him that.

9 Q You need to know about his changes, that's because he
10 knows his body around the clock, whereas you don't, so you
11 have to ask him, is that correct?

12 A No, that's not necessarily true. A lot of times
13 patients don't know their body.

14 Q You use the subjective complaints of pain or discomfort
15 that are told to you by the patient as a beginning for your
16 examination of the patient?

17 A I think it's important to find out where he said he was
18 hurt so I know where to examine, yes.

19 Q And you use that as a foundation of your treatment of
20 the patient?

21 A It may be, it may not be,

22 Q Would you agree that complaints of pain are considered
23 a diagnostic tool in the examination and treatment of a
24 patient?

25 A I don't think you can say diagnostic. They are his

1 story, as you have just asked me, they are the starting
2 point, so you know at least the parts of the body that the
3 patient is having pain. I think the diagnosis is based on
4 the examination, but I think "" and the examination may be a
5 total variance from what the patient tells you. I don't
6 think they may not be at all helpful "" what he says may not
7 be at all helpful in making the diagnosis.

8 Q So if a patient is, in other words, trying to mislead
9 you, he might give you some bogus symptoms?

10 A He might say he is in constant moderate to severe pain.

11 Q In that case, you would disregard what he tells you
12 about his pain ""

13 A Certainly it is in variance with what I find.

14 Q Doctor, in the normal course of events when conducting
15 an examination, really an examination of a doctor, an
16 orthopedic surgeon such as yourself would not be considered
17 complete and thorough if you didn't take into consideration
18 the statements or complaints of pain and discomfort by the
19 patient, is that true?

20 A I think it's part of the total examination of the
21 patient, yes.

22 Q One of the things, in fact, Doctor, that distinguishes
23 you from a veterinarian is you can ask your patient where the
24 pain is, is that correct, or "what's bothering you"?

25 A Sometimes an animal can give you a more truer

1 indication, yes, that's true.

2 Q Well, as a matter of fact, even a veterinarian will as
3 the dog's owner, "What's the problem with your pet." will he
4 not?

5 A I don't know.

6 Q You never had a dog do that?

7 A Well, he's never asked me.

8 Q I was just wondering.

9 A My wife usually takes the dog to the vet.

10 Q Now, I notice also in this letter ~~that~~ you wrote to Mr.
11 Greer dated September 25, 1992 --

12 A Yes.

13 Q That's the one you read earlier?

14 A Yes.

15 Q At no time did you read that the plaintiff had *any*
16 indications, Mr. King had *any* indications of complaints of
17 headaches, that's because you didn't ask him about *any*
18 headaches, is that correct?

19 A Headaches are not part of my specialty. I take care of
20 people from the neck down. I indicated before, when I was
21 asked about orthopedics. I don't take care of headaches, so
22 I did not go into headaches. That's outside the scope of my
23 specialty.

24 Q Well, in fact, headaches are one of the symptoms of
25 problems with the neck area at times, is that not true?

- 1 A Posterior headaches may be from pain in the neck, but I
2 did not go into his headaches.
- 3 Q Even though Mr. King indicated he had pain in the neck,
4 moderate to severe as you indicated?
- 5 A I'm not sure he told me everything he had headaches.
- 6 Q You did not deem it necessary to ask him whether or not
7 he had headaches?
- 8 A Oh, yes, of course. I asked him if the pain from his
9 neck spread anywhere, and he said the pain went into the left
10 arm, but it didn't go through his head.
- 11 Q Isn't it true, Doctor, that *many* times patients don't
12 realize that the headache they are having is associated with
13 a neck problem?
- 14 A As far as I know he didn't have any headaches. He
15 didn't complain to me of headaches.
- 16 Q You didn't ask him if he had *any* headaches --
- 17 A Oh, I asked him whether he hurt. Absolutely I asked
18 him where he hurt,
- 19 Q You asked him if the pain spread. Did you specifically
20 ask him --
- 21 A Let me finish the last question.
- 22 Q Please answer my question,
- 23 A I'm trying to. Let me answer *your* question.
- 24 Q Doctor, you didn't --
- 25 A The last question -- the first question -- I'll get to

1 the second question. Give me a chance.

2 Q My questfon was, Doctor --

3 A Are you withdrawing the first one?

4 MR. LALKA: Read the question back
5 to him, please.

6 TEE NOTARY: I didn't get the
7 question.

8 Q The question is, Doctor, you did not ask at any time
9 Mr. King whether or not he had headaches, did you?

10 A I asked Mr. King at the time I took the history.

11 Q Doctor, that question requires a yes or no answer.
12 Would you please give it to me?

13 A I'll give you the answer the best I can. You don't
14 want to mislead the jury, I'm sure.

15 Q No, I don't, but I don't want you to mislead the jury,
16 either.

17 A I will tell you that I asked Mr. King, that's what you
18 asked me.

19 Q I asked you, Doctor, you did not ask Mr. King whether
20 or not he had headaches. It's a simple question, Doctor.

21 A I asked Mr. Ring where he hurt. He never told me he
22 had headaches. I did not ask him whether he had headaches
23 specifically.

24 Q Thank you, Doctor.

25 A You are welcome.

1 Q Now, you talked about arthritis and degenerative
2 condition?

3 A Which he has.

4 Q And you indicated you have an interest in arthritic
5 conditions, I believe you said?

6 A That's correct.

7 Q You also indicated that that's a wearing away type of
8 degeneration?

9 A His type of arthritis is wear and tear arthritis.

10 Q That's something you call osteoarthritis?

11 A I call it degenerative osteoarthritis.

12 Q I think you indicated it starts in some people at age
13 30?

14 A It may, or 35 or 40.

15 Q By the time most people are 40, most of us have some
16 degree of arthritis?

17 A Absolutely.

18 Q Most of us at age 40, however, never know that we have
19 arthritis, is that correct, never have the symptoms of the
20 arthritis, never feel it, is that correct?

21 A That's correct.

22 Q Is it also true, Doctor, that a person can go through a
23 normal entire life span, in other words, age 75 or so, and
24 never have a disability or a complaint from arthritis?

25 A Yes.

1 Q But when you do have an arthritic condition in your
2 back or your neck, isn't that person more vulnerable to pain
3 from injury to those areas?

4 A Not from the arthritis, no.

5 Q Is it more susceptible -- I'm sorry, more vulnerable to
6 pain in those areas where the arthritis is?

7 A Well, I'm not sure what you mean by more vulnerable to
8 pain.

9 Q Par example, if a person is 60 years old and has an
10 arthritic condition in his hand and bumps his hand on a
11 table, whereas a person like myself who has no arthritic
12 condition bumps his hand on the table, the person with the
13 arthritic condition would feel more pain in his hand than I
14 would, is that correct?

15 A No, not necessarily, no.

16 Q The arthritic condition would have no bearing then on
17 the feeling of the pain, is that your testimony?

18 A Not when you slap the hand on the table.

19 Q What about if you bump the table with the back of your
20 hand?

21 A No, not necessarily.

22 Q Now, a person with a degenerative condition in his back
23 or his neck and an arthritic condition in his back or neck,
24 that person is more easily injured than a healthy person, is
25 that correct?

1 A Probably.

2 Q That kind of person is also harder and takes longer to
3 cure of his problem, is that also true?

4 A Generally true.

5 Q At the time of the rear-end collision --

6 A Not from the arthritis, but of something else, that's
7 right.

8 Q The arthritis, of course, we don't have a cure, you
9 people in the medical profession do not yet have a cure for
10 that, once it starts, it's going to go on and it's going to
11 degenerate?

12 A That's correct.

13 Q If nothing else, it just gets worse, it won't get
14 better?

15 A That's right.

16 Q At the time of the rear-end car collision in which Mr.
17 King was involved, he was 50 years old. Doctor, do you have
18 any evidence to present to the jury in the records that you
19 reviewed that Mr. King ever had one moment of pain or a
20 problem or treated at *any* time for his neck in the entire 50
21 years of his life prior to this automobile accident?

22 A No.

23 Q You indicated in your letter of September 25 to Mr.
24 Greer, at page 3, that your office took X-rays. X-rays were
25 taken by this office of the cervical and lumbosacral, which I

1 believe is the lower back?

2 A That's correct.

3 Q You took 15 of them, is that correct?

4 A I didn't count. Whatever it takes. We take the normal
5 series. It's the same X-rays we take for all the patients we
6 treat.

7 Q How many is that, Doctor?

8 A I don't know, would you like me to count them up?

9 Q Yes, would you get Mr. King's file and count them? I
10 thought we had his file.

11 A (Pause.)

12 These are some of the other chiropractor's X-rays, as
13 well. The normal X-rays of the neck, I can tell you, there
14 is a front view, a side view, 2 oblique views, that's 4.
15 Open mouth view is 5. 5 views of the neck.

16 Lower back, there is again a front view, side view,
17 spot view of the lower back, that's 3, Both obliques is 5.
18 And the pelvis is 6.

19 Q It comes to 11?

20 A Yes.

21 Q If somebody said you took 15 X-rays, that would be
22 incorrect? Would you count the X-rays there? I'm kind of
23 curious.

24 A These are the chiropractor's. That stack is not mine,
25 We also took a dorsal spine, there is 2 of that.

1 Q That's 12, 13.

2 A I don't think I billed him for it There is the
3 pelvis. There is the dorsal spine. So 1, 2, 3, 4, 5, 6, 7,
4 8, 9, 10, 11, 12, 13, 14. That's what I said.

5 Q 14?

6 A Well, I said I took the dorsal spine That would be 2
7 more than I originally counted. That's 14, that's the normal
8 series.

9 Q Page 3 of your letter to Mr. Greer dated September 25,
10 you indicate that they show no significant:abnormality, is
11 that correct?

12 A Well, he's got the arthritis, but there is no
13 indication of injury. I said there is no significant
14 abnormality. There are moderate degenerative changes in C5,
15 6, 7 and L5, S1.

16 Q Okay, thank YOU. Now, the X-rays that are taken, they
17 react to the density of the material that they encounter, the
18 material in the human body, is that correct?

19 A I'm not sure I understand the question. I'm not sure
20 what you mean by react to.

21 Q The X-rays when they show an image, Doctor, explain to
22 the jury in your own words how an X-ray image appears?

23 A The X-rays go through the object that they are supposed
24 to be imaging, and will leave a shadow on a suitable piece of
25 film, like a photographic film. Depending on the amount of

1 X-ray that hits the film, the images are darker or lighter.

2 Q The density of the ma

3 passing, then, controls of X-ray ha hits the
4 film, is that correct?

5 A That's correct. And the type of material goes through,
6 as well.

7 Q The denser the material such as bone will show up as a
8 lighter image than, say, the soft tissue of a human body, is
9 that correct?

10 A That's correct.

11 Q And the X-rays that you took of Mr. King's neck and
12 back reveal the bony portions of his anatomy in that area, is
13 that correct?

14 A Yes, that's correct.

15 Q So when you are indicating that there was no
16 significant abnormality found on the X-rays "

17 A Except the degenerative changes.

18 Q Except the degenerative changes, you are referring to
19 the bony parts of his spine, you are not attempting to make a
20 diagnosis of the status of the soft tissue based on that
21 X-ray, are you?

22 A Oh, no, that's correct.

23 Q As a matter of fact, X-rays will not reveal tissue or
24 skin, is that correct?

25 A The plain X-rays, you mean?

- 1 Q Yes, I'm talking about X-rays of the type you took.
- 2 A It shows it as a gray mass. They show it, but they
- 3 don't show any detail.
- 4 Q Nothing for diagnostic purposes?
- 5 A No.
- 6 Q The same thing applies for muscle, you know where it is
- 7 and you might be able to see the bending of a bone if a
- 8 muscle is contracted or something, but the muscle itself
- 9 doesn't show up on the X-ray of the type that you took, is
- 10 that correct?
- 11 A Well, there are certain types of muscles that will, but
- 12 not those muscles.
- 13 Q Not those muscles?
- 14 A There is the -- the iliopsoas muscle in the lower
- 15 abdomen shows up in the pelvic film, but that's unusual. But
- 16 most of the muscles show up as a mass of gray.
- 17 Q Tendons don't show up on the X-rays?
- 18 A No .
- 19 Q Nerves didn't show up on your X-rays?
- 20 A No.
- 21 Q Blood vessels didn't show up on your X-rays?
- 22 A Not unless he ~~has~~ calcium in them, I don't know.
- 23 Q Ligamenta didn't show up on your X-rays?
- 24 A No.
- 25 Q Because these nerves, for example, don't show up on the

- 1 X-ray, you can't see the stretching of a nerve on an X-ray, is
2 that correct?
- 3 A That's correct.
- 4 Q You can't see the stretching of a nerve on an X-ray?
- 5 A That's also true.
- 6 Q You can't see the healing process of a muscle on an
7 X-ray, is that correct?
- 8 A That's right.
- 9 Q And you cannot see scar tissue on a muscle in an X-ray,
10 is that correct?
- 11 A Also correct,
- 12 Q Is it true, Doctor, that a person can have a severe and
13 permanent injury that can't be seen on an X-ray?
- 14 A Yes, it's possible,
- 15 Q In fact, Doctor, in your practice in treating your
16 people for orthopedic problems, you will at times treat
17 people whose X-rays are, in fact, negative, but continue to
18 have problems of some sort, is that correct?
- 19 A Oh, yes.
- 20 Q And you will treat the person more than once, that's an
21 attempt to either cure the person or keep him pain free or as
22 free of pain as possible, is that correct?
- 23 A Yes.
- 24 Q Doctor, I would like to ask you to assume that a person
25 age 50 is injured in a rear-end car collision, That person

1 has pain and limitation of motion from the collision 3 and a
2 half years after the accident when examined by a physician.

3 Doctor, is it fair to say that the pain and the
4 limitation of motion 3 and a half years since the onset of
5 the injury and the accident is permanent?

6 A No, not necessarily. All depends. There axe many
7 other factors involved. Depends on what's causing the
8 limitation of motion. Depends on what caused it. So I
9 really can't -- just that little bit of hypothetical, I
10 cannot give an answer.

11 Q Let me ask it this way, Dr. Kaufman. A person as Mr.
12 Ring, if he were to appear in your office, and another doctor
13 finds pain and limitation of motion 3 and a half years in the
14 soft tissue areas of Mr. King post-accident, is it not fair
15 to say that that pain and limitation of motion is permanent?

16 A No, it's not fair to say that at all, because when I
17 examined the motion, it was normal. Obviously if somebody
18 else found it limited when they examined him, it obviously
19 wasn't permanent because when I examined him, it was normal.

20 Q If that physician examined him after you, Doctor --

21 A It's quite possible that he has limitation of motion
22 after I saw him. But when I saw him it was normal, so I
23 can't say it was permanent.

24 Q In fact, Doctor, when you saw him, you saw him at one
25 moment in time?

1 A Oh, yes.

2 Q On one day of Mr. King's entire life, is that correct?

3 A That's right.

4 Q You are not telling the jury that - ~~range with~~ and
5 and limitation of motion 3 and a half years post-injury will
6 spontaneously heal himself, are you?

7 A I'm not sure I understand the question, but does this
8 apply to Mr. King or just people generally?

9 Q A person as Mr. King.

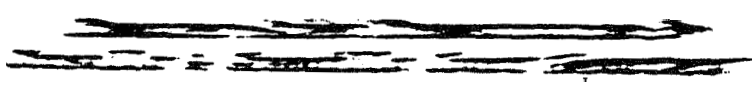
10 A Are we talking about Mr. King or --

11 Q Let's talk about Mr. King.

12 A Okay. What was the question?

13 Q The question is *if* another doctor examines Mr. King 3
14 and a half years post-accident and finds limitation of motion
15 and pain, you would not reasonably expect Mr. King's pain and
16 limitation of motion to spontaneously heal itself, would you?

17 A Oh, yes, I think when I examined Mr. King, he had
18 normal range of motion. That was about 2 years after this
19 accident, 2 and a half years. So 3 and a half years after
20 his accident if somebody examined him and found pain and
21 limitation, I think it would be probably due to his
22 arthritis. We know arthritis is a condition which
23 spontaneously gets better and gets worse, and they can have
24 pain one day and have no pain and limitation the next day.
25 Spontaneously it just gets better. Now, the arthritis, of



1 course, is still there, but the symptoms go away.

2 Q By spontaneously get better, you mean the pain ebbs and
3 flows, but didn't you say before the symptoms of arthritis --
4 the arthritis is not curable?

5 A The arthritis is not curable, but the symptoms are
6 curable.

7 Q So you are saying that he might spontaneously heal
8 himself, but that would be on a temporary basis?

9 A He would heal himself in the sense that the pain -- you
10 are talking about pain and limitation of motion is just what
11 you were asking the question about. I said yes, that can
12 spontaneously go away. But arthritis is still there, which
13 is causing it, but the pain and limitation of motion came and
14 go.

15 Q Then the pain and limitation of motion, because the
16 arthritis is still there, will spontaneously return again, is
17 that true?

18 A It might or might not.

19 Q -- yes, doctor, isn't it --
20 ex ct that the pain and limitation of motion will last for
21 the rest of Mr. King's life?

22 A I'm sorry, what will last?

23 Q The pain and limitation of motion, is that right?

24 -- pain and limitation of motion
25 will last for the rest of Mr. King's life?

1 A No, I don't think I said that. When I saw him, he
2 didn't have it. So why would it last the rest of his life?

3 Q Doctor, you indicated you performed some tests and you
4 indicated I think the Lasegue's test, for example. Let's use
5 that one. The patient lays down, you band the leg, then you
6 raise it upward into the air, is that correct?

7 A Actually if he lays down with the knee straight, the
8 leg is brought up into the air like a periscope.

9 Q Now, that test was developed in 1864 by a French doctor
10 named Lasegue, is that correct?

11 A I don't know the exact date, but it was certainly named
12 after Dr. Lasegue.

13 Q That test ~~has~~ been around for at least a hundred years,
14 are you aware of that?

15 A Yes.

16 Q Now, there have been other tests, of course, developed
17 since the Lasegue test to examine patients, is that correct?

18 A Oh, yes.

19 Q For example, we looked at MRI's and CT scans --

20 A Those are not physical examinations.

21 Q Well, Doctor, diagnostic tools, okay? I'll use that
22 word. You explained to the jury very nicely how they will
23 show soft tissue and how *they* will show things that X-rays
24 cannot show.

25 A They will not show what the Lasegue sign shows.

1 Q The Lasegue's sign is still in use, of course, is
2 correct?

3 A Oh, yes.

4 Q The Lasegue's sign is in use to be augmented by
5 types of examinations or tests, is that correct?

6 A Yes.

7 Q You didn't cause any MRI's or CT scans to be per:
8 on Mr. King, did you?

9 A I think Mr. King has had enough of those already.

10 Q Let me ask you this, Doctor. Medicine isn't an e
11 science, is it?

12 A No, of course not.

13 Q 2 equally competent physicians such as yourself c
14 review the same information and come to different
15 conclusions, isn't that correct?

It's possible, Not necessarily so, but possible,
17 think generally speaking, most physicians will review the
18 same material and come to the same conclusions.

19 Q If one physician has more information available to
20 regarding the condition of a person than another, that
21 physician with the more information is at an advantage in
22 diagnosing a problem, is that correct?

23 A Not necessarily. It may be more misinformation or
24 may be more information of the same kind and missing some
25 more important information.

1 Q Can you tell me, Doctor, if Mr. King is having any pain
2 today as we are here in this deposition?

3 A Oh, no, I don't know that.

4 Q You don't know the same thing for last week or last
5 month?

6 A All I know is what he was like on the day I examined
7 him, which was September 25, 1992.

8 Q But yet, you were able to tell Mr. Greer on examination
9 that Mr. King had soft tissue injuries as a result of the
10 accident which probably lasted 6 or 8 weeks?

11 A That's the usual course.

12 Q But you don't know that, do you?

13 A No, except I know when I saw him, what he had was due
14 to arthritis.

15 Q So your testimony to Mr. Greer of what he probably had
16 is your best speculation, is that correct?

17 A Yes, that's correct.

18 Q Now, when Mr. King was here, did you find him
19 cooperative with you?

20 A Well, I don't have any notes to the contrary. So I
21 presume I did, yes.

22 Q Did he answer all your questions?

23 A I think so.

24 Q You wouldn't have any recollection personally, I
25 believe you indicated, so let me rephrase the question.

1 Your questions are answered, so that would indicate
2 that he did answer all your questions?

3 A If I had any problems with him answering my questions,
4 I would have made a note about it and I didn't make any note
5 about it, so I'm sure he was answering quite well.

6 Q Now, any symptoms that Mr. Xing says he is having, you
7 are not suggesting to the jury that Mr. King is malingering,
8 are you?

9 A Well, malingering, my understanding of malingering is
10 that somebody who is voluntarily putting you on and
11 pretending he's having symptoms he's not having. That's a
12 motive sort of diagnosis and I don't diagnose malingering,
13 All I can tell you is he said he was in constant pain in his
14 neck and low back and I did not find it when I examined him.

15 Q You are not stating to the jury that Mr. King is
16 exaggerating or faking his symptoms?

17 A I didn't find it when I examined him. Except, he did
18 have some tenderness, he said, in his muscles and he did say
19 he had pain on certain motions of his neck and back.

20 Q You didn't find any symptoms, but if other doctors did,
21 then obviously their findings would be in contrast to yours,
22 is that correct?

23 A No, as I say, the pains come and go, He may have had
24 some, I don't know.

25 Q If another doctor says Mr. King's pain is attributable

1 to the car accident of 1-16-90, that conclusion would be in
2 contrast to yours, would it not?

3 A Which pain is that?

4 Q The pain in his neck and back.

5 A When? You mean right after the accident?

6 Q I'm talking to this day.

7 A You mean to say this pain today is due to that, yes.

8 Q Now, Doctor, you were paid approx^{ima}tely, as Mr. Greer
9 indicated, that you were paid by his firm for your
10 examination and 3-page letter of Mr. King, is that correct?

11 A Ye.,

12 Q You were paid approximately \$300, is that correct?

13 A Probably \$350.

14 Now, you were paid that amount for more than just the
examination and the history, is that correct?

I don't understand what you mean .. and the report.

You were paid that amount, in other words, Doctor, to
15 also help Mr. Greer to develop a medical case against Mr.
is that not true?

20 MR. GREER: Objection.

21 A No, of course not. That's nonsense. All I did, I
22 examined Mr. King. I sent Mr. Greer a report and I never
23 even discussed it with him. I just sent him my report which
24 you have and that was the end of it. He wanted to know what
25 if anything was wrong with Mr. King. I examined him and sent

1 him a report. I'm not trying to help anybody.

2' Q Did you just testify that you didn't discuss this with
3 Mr. Greer?

4 A Not until this afternoon for half an hour before we sat
5 down, I discussed it with him. I certainly did not examine
6 him and write the report that was in *any* way helping him
7 prepare his defense,

8 Q In addition to the \$350 charge for the examination and
9 report, you also charge for the 14 X-rays, is that correct?

10 A Oh, yes.

11 Q Then you are being paid, as Mr. *Greer* indicated, to
12 testify here today, is that correct?

13 A And for my time, of course.

14 Q And your time is being billed at the rate of what, \$850
15 for this deposition?

16 A For the afternoon, However long it takes.

17 Q For the entire afternoon. Doctor, it's quarter to 3.
18 We started about quarter to 2, If we wrap it up shortly, you
19 will still receive \$850?

20 A Yes, I broke off the whole afternoon. And I have
21 nothing else scheduled for this afternoon. And I can't
22 because I don't know how long it's going to take. So I broke
23 off the entire afternoon.

24 Q You have no other work to do in your office here?

25 A No, I'm done.

1 Q Thank you, Doctor.

2 Now, I want to ask you a question here, some more
3 questions regarding the examination of Mr. King. I reviewed
4 your file prior to asking you some questions, and I didn't
5 note in your file anywhere that you timed the amount that you
6 spent examining Mr. King. Did you not keep a record of the
7 time you spent --

8 A No, I don't bill by the time, like attorneys do. I
9 just go in, I see the patient, I take the history. I do a
10 complete and thorough job of the examination and I leave. I
11 don't keep track of how much time it takes.

12 Q You didn't keep track of the time you spent in taking a
13 history and reviewing your records?

14 A That's right, I don't keep track of that at all.

15 Q Then Doctor, let me make a couple of statements to you
16 and ask if you have any reason to refute these statements.

17 A No, I have no reason to refute anything.

18 Q You reviewed the records and took Mr. King's history
19 from 9:27 to 9:43. There was a pause and we'll get that in a
20 minute. You continued with the review and history from 9:45
21 to 9:46. There was a pause, then you continued with the
22 review and the records and history from 9:47 to 9:57. Do you
23 have any reason to refute that?

24 A I don't refute anything. I do a complete and thorough
25 job -- doesn't take long when there is nothing wrong with

1 him. I have no idea how long it took.

2 Q You have no idea -- the hands-on examination that you
3 performed on Mr. King, the Lasegue's sign and so forth, that
4 took place from 9:43 to 9:45. There was a pause, you went
5 back to the records, and you continued with the hands-on
6 examination from 9:46 to 9:47. That was the conclusion then
7 of your hands-on examination. You have no reason to refute
8 that?

9 A I told you, it doesn't take long when there is nothing
10 wrong with him. I did a complete and thorough examination of
11 his complaining areas. As I say, when there is nothing wrong
12 --

13 Q Well, Dr. Kaufman, if a patient were to come to you
14 other than one being referred by Mr. Greer's office, would
15 you consider a 3 minute hands-on examination of a patient,
16 provided he had the same complaints as Mr. King, then telling
17 the patient that there is nothing wrong with him and he can
18 go about his activities of daily life, would you consider
19 that competent medical care?

20 - A It could very well be. I'm sure I did a complete and
21 thorough job. Exactly the same way I would have if I were
22 treating Mr. Greer and if Mr. Greer had come to me as a
23 patient, that's exactly what I would have done.

24 Q That's how you treat your own patients, in other words,
25 is that correct?

1 A Exactly the Same way.

2 Q Now, you are not Mr. King's obviously treating
3 physician, is that correct?

4 A He doesn't need one.

5 Q You were not Mr. King's treating physician, is that
6 correct?

7 A Absolutely not.

8 Q You testified, and we have the testimony already, that
9 you were paid by Mr. Greer's law firm, but I want to ask a
10 question, Doctor. The word independent, as in an independent
11 examination, was used. That independent, that coincides with
12 you not being the treating physician, is that right?

13 A That's correct.

14 Q That does not mean Richard King was sent to you by the
15 Court, is that correct?

16 A No.

17 Q Independent also means that you have no responsibility
18 for misdiagnosis of Richard King, is that correct?

19 A I have no responsibility for taking care of him at all.

20 MR. LALKA: Thank you, Doctor. I
21 don't have anything further at this time.

22 MR. GREER: Doctor, I just have a
23 couple follow-up questions.

24 - - - - -

25

REDIRECT EXAMINATION

1

2 BY MR. GREER:

3 Q Mr. Lalka asked you a question about making your
4 diagnosis based upon -- issuing your report based upon a
5 review of the X-rays, and you indicated that the X-rays you
6 took did not reflect the soft tissues of the plaintiff?

7 A That's correct.

8 Q You did have the opportunity to review all the actual
9 CT and MRI films which have been taken of Mr. Xing, correct?

10 A Yes.

11 Q Am I correct that those films demonstrate degenerative
12 changes in his neck and back?

13 A That's all they demonstrate, that's correct,

14 Q Am I correct that your opinion to a reasonable medical
15 certainty is that nothing in those films, any of the findings
16 in those films were caused by the January 16, 1990 accident?

17 A That's correct. Degenerative changes caused by wear
18 and tear unrelated to the accident.

19 Q Mr. Lalka asked you some questions about your actual
20 history of Mr. Xing and your physical examination of Mr.
21 King. At the time that *you*' first saw Mr. Xing, you did not
22 have the opportunity to review all the medical records of Mr.
23 Xing at that time?

24 A That's correct.

25 Q Subsequent to your examination of Mr. King, *you* were