IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

DO 2 6

JOSEPH McCLARIN, et al.

Plaintiffs,

-vs-

JUDGE CALLAHAN
CASE NO. 253311

BRANDFORD GIDDINGS, et al.,

Defendants.

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Videotape deposition of RICHARD S. KAUFMAN, M.D., taken as if upon direct examination before Colleen M. Malone, a Notary Public within and for the State of Ohio, at the offices of Beachwood Orthopedics, Inc., 23250 Mercantile Road, Beachwood, Ohio, at 3:30 p.m., on Friday, September 16, 1994, pursuant to notice and/or stipulations of counsel, on behalf of the Defendants in this cause.

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On behalf of the Defendants.

RICHARD S. KAUFMAN, M.D., of lawful age, called by the Defendants for the purpose of direct examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. THOMAS:

MR. THOMAS: Let the record reflect that we're here for the videotape deposition of Dr. Richard Kaufman, which is being taken for trial purposes and will, in fact, be played for the jury during the trial of the case of Joseph McClarin, et al. versus Brandford Giddings, Case Number 253311 and is pending before Judge Kenneth R. Callahan and this deposition is being taken pursuant to notice.

I assume all formalities as to service, notice are waived?

MS. TRAPP: That's correct, Mr. Thomas.

MR. THOMAS: All right. Thank you.

Q. All right. Doctor, would you please state your

name for the record?

A. Richard S. Kaufman, M.D.

Q. All right. Thank you. And, doctor, are you a duly licensed physician and surgeon in the State of Ohio?

A. I've been licensed to practice in the State of Ohio, I've practiced medicine in the State of Ohio since 1956, which is now 37 years. I'm also licensed to practice in Indiana and California.

Q. All right. Thank you, doctor. And where is your office located?

A. 23250 Mercantile Road, Beachwood, Ohio.

Q. And, doctor, would you please tell the ladies and gentlemen of the jury where you received your education and your medical training?

A. I received my BA degree summa cum laude from Yale University in 1952 and my M.D. degree from Columbia University in 1956.

I then had five years of postgraduate training, a year of internship from Mt. Sinai Hospital in Cleveland, a year of general surgery residency at University Hospitals in Cleveland. Two years of orthopedic surgery residency at Mt. Sinai Hospital, and a year of orthopedic surgery

residency at Indiana University Medical Center in Indianapolis.

Q. Thank you, doctor. And did, doctor, do you specialize in any particular branch of medicine?

A. I specialize in the field of orthopedic surgery.

Q. And would you describe for the ladies and gentlemen of the jury just what the specialty of orthopedic surgery is?

A. Orthopedic surgery is the branch of medicine that deals with the diagnosis and treatment, both medically and surgically, of diseases and injuries to what we might call the locomotor system, the parts of the body that move you about. Primarily the bones and joints, but also the muscles, tendons, ligaments, nerves of the spine and the arms and legs.

Q. All right. Thank you, doctor. And after you received your education and your medical training, did you then begin the practice of orthopedic surgery on a full-time basis?

A. Yes, I've been in the practice of orthopedic surgery full time since July, 1961, which is 33 years.

Q. All right. And, doctor, are you on staff at any hospitals?

A. I'm on the active staff at Suburban Community Hospital where I've been the chief of orthopedic surgery for 29 years. Mt. Sinai Hospital, Hillcrest Hospital. I was the chief of orthopedic surgery at Woman's General Hospital for 23 years until it closed, and I'm the orthopedic consultant to the Arthritis Clinic at Cleveland Metropolitan General Hospital, or MetroHealth, as it's now called.

Q. All right. And, doctor, do you teach medical students and/or residents?

A. Yes, I'm a clinical instructor in orthopedic surgery at Case Western Reserve University Medical School for 30 years, and I was a professor for 20 years at the Ohio College of Podiatry.

Q. And, doctor, are you a board certified physician?

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

Q. And what does it mean to be board certified, doctor?

A. When **I** became board certified **I** had **to** have four years of college, four years of medical school, five years of postgraduate training. Following

that I took a three-day series of written and oral examinations, which I passed the first time.

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

Q. All right. Thank you. And, doctor, is board certification done on a national and international level?

A. Oh, yes, it's a national and international certification.

Q. And, doctor, do you belong to any professional associations?

A. I'm a member of the Cleveland Orthopedic Society, the Ohio State Orthopedic Society, the Great Lakes Orthopedic Club, the Mid-America Orthopedic Society, the Clinical Orthopedic Society, the Bioelectric Repair & Growth Society. I'm a fellow of the American College of Surgeons, a fellow in the American Academy of Orthopedic Surgeons and a diplomate of the American Board of Orthopedic Surgery.

Q. Thank you, doctor.

MR. THOMAS: Let's go off the record for a second.

VIDEOTAPE OPERATOR: We are off the record.

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(Thereupon, a discussion was had off the record.)

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VIDEOTAPE OPERATOR: We are on the record.

Q. All right. Doctor, as part of your practice in orthopedic surgery, have you treated and diagnosed patients with back problems or physical problems which have ultimately resulted in a surgical procedure known as a foramenotomy?

A. Yes, many.

Q. All right. Thank you, doctor. And, doctor, are you being compensated for the time that you've devoted to this case?

A. Yes.

Q. And, doctor, have you been asked to testify in court by plaintiffs and defendants?

A. Oh, yes, more by the plaintiffs than defendants, because 95 percent of my practice is taking care

of sick and injured patients, and those are plaintiffs.

Q. All right. Doctor, did you have the occasion to examine Ms. Mae Campbell at the request of my office?

A. Yes.

Q. And when did you examine Ms. Campbell?

A. September 13th, 1994.

Q. And did you review Mae Campbell's medical records as well?

A. Yes.

Q. And subsequent to your review of her medical records and your examination of Ms. Campbell, did you draft a report concerning your examination and your findings?

A. Yes, I did.

Q. And would that report assist in your testimony here this afternoon?

A. Yes. That represents my office notes and is part of my office chart.

Q. If that's the case, doctor, please feel free to review that report if you deem it necessary.

A. Thank you.

Q. Doctor, would you please tell the ladies and gentlemen of the jury just what a history is?

A. A history is the story as the patient tells it to me. Whatever she says, I put down. It doesn't make any difference what she says, whatever she says I put down, ask her how she got hurt, how she's been treated, how she feels today, that sort of thing. Whatever she says, I put down.

Q. All right. And prior to your examination of Mae Campbell, did you receive a history from Mae Campbe11?

A. Yes.

Q. And would you then for the ladies and gentlemen of the jury tell her -- tell the ladies and gentlemen of the jury just what history was given to you by Mae Campbell?

A. She said that she was injured June 14th, 1991 when the car in which she was riding in the front seat was involved in a collision from the front with another car.

She said she was wearing a seat belt. She said that her head hit the windshield and that she was stunned but not unconscious.

Following the accident she did not develop any symptoms until she developed some low back pain two to three days later.

She went to Suburban Hospital three days after the accident and was released after examination and x-rays.

Following the accident she came under the care of Dr. Sanford Friedman one week later, who treated her with moist heat three times a week for six weeks with only temporary relief.

In addition, she took analgesics, which are pain pills, and a muscle relaxant.

She then saw Dr. Hardy in January of 1992, which would be about six months after the accident, seven months after the accident, at University Hospitals, who treated her with physical therapy for three to four months and one injection of a steroid which is like cortisone into her low back where the pain was localized.

She said the injection did not give her any relief.

She said that her, that she had two MRIs. An MRI is a magnetic resonance imaging in which the patient is placed in a large magnetic field and the field is spun one way and then spun back and you can get a picture of the, all put through a computer, and you get a picture not

only of the bones but of the soft tissues, of the nerves and the cartilage disks between the bones in the back.

MS. TRAPP: Objection. Move to strike any of the testimony that's unresponsive. I believe the question is what history was given to you, doctor, not what an MRI is.

THE WITNESS: I'm trying to explain, I'm trying to explain it as I go along so that the jury would understand it, I thought you would want them to know.

MS. TRAPP: Sure, counsel can ask those questions.

THE WITNESS: I'm trying to be as clear in my answer as I can be.

MS. TRAPP: Move to strike.

Q. You may continue, doctor.

A. She had two MRIs and a myelogram CT, which I can't explain to you.

MS. TRAPP: Move to strike.

A. At University Hospitals.

MS. TRAPP: Objection, move to strike.

A. The myelograms were said to show a herniated

disk at L4-5 and a mild herniated disk and spinal stenosis at L5-S1.

She had the surgery in October of 1992, which consisted of a foramenotomy at L4-5 on the left and bilaterally at L5-S1 for bony overgrowth and spinal stenosis.

The patient said that she had no treatment since the surgery except for Motrin, 600 milligrams for, quote, severe pain, unquote, That's Ibuprofen, for, quote, severe pain, which she said she takes every other day. The last time four days before I saw her.

She said that until the time of the surgery her low back pain seemed to increase.

After the surgery she said her low back had improved. She said it was located on the left side. It was come and go and it was moderate in degree.

She said that she was having pain at the time of this examination, The pain was made worse by excess activity, such as housework, by bending and lifting, and was relieved by analgesics and by walking.

She said that there was intermittent spread of the low back pain to the left thigh behind

the knee.

She -- back of the left thigh to the knee, I'm sorry.

The pain spread, she said the pain spread from the low back to the left thigh, down the back of the left thigh to the knee.

She said that she had numbness in the entirety of both of her legs after she had been sitting more than 45 minutes.

Her occupation was as a machine operator. She said that she had not worked since the accident.

She said that she did not plan to return to work, if she could not find a job which paid her as much as she was making prior to the accident.

She said there had been no previous or subsequent injuries or symptoms in the above areas.

She had been in good health with no serious illnesses or operations. No medication which would affect her symptoms had been taken on the day of this examination.

Q. All right. Thank you, doctor. Just for point of clarification, doctor, would you explain to

the ladies and gentlemen of the jury just, first of all, what an MRI is and then what a myelogram/CAT scan is?

A. An MRI is a type of imaging in which the patient is placed in a large magnetic field, the magnetic field is spun one way and then it's spun back and the atoms and molecules disturb the magnetic field and the whole thing is fed into a computer and they come up with an image, not only of the bones, but of the soft tissues, including the disks between the bones and the nerves. In this case, of the lower back.

A myelogram is a test in which a needle is placed into the sac surrounding the nerves in the low back, the sac is filled with fluid and the nerves, it's got nerves and fluid in this sac. Another fluid is inserted, it's, it's clear fluid, but we call it dye, because it, the x-rays won't go through it, and it makes the fluid around the nerves what we call radiopaque, which means the x-rays won't go through it, it turns white on the x-rays.

This then outlines the sac and the nerve roots as they lie in the spinal canal.

After the dye has been injected and regular

x-rays are taken, then a CT scan is done, which is a computerized x-ray in which a series of x-rays are taken in a ring around the body and all these images are then fed into another computer and you come up with an image again of the, not only the bones but of the soft tissues and in this case also the myelogram dye is part of the image, and so you can learn more combining the CT scan and the myelogram together:

Q. All right. Thank you, doctor. And did you have the occasion to review a, or two MRIs or an MRI of Ms. Campbell?

A. Yes.

Q. All right. And what were the results of that MRI?

A. The MRI does show some herniation of the disk at L4-5 and a mildly herniated disk, seemed to show that at L5-S1 with what we call spinal stenosis, which means a narrowing of the spinal canal, the canal down through which the nerves come inside the bone, nerves go through a canal and that canal is narrowed in this case.

Q. All right. Thank you, doctor. All right. Subsequent to receiving a history from Ms.

Campbell, did you then examine her?

A. Yes.

Q. And what did your examination reveal, doctor?

A. On physical examination Ms. Campbell appeared to be in no discomfort, that is just looking at her she did not appear to be in any pain, although she had told me that she was.

She was told to let me know if anything caused her pain during the examination.

Her gait was somewhat slow and deliberate, as if moving about produced pain.

She walked with a cane because she said her knee would tend to give way, not because she needed it for balance, she just said her knee would tend to give way and so she used a cane.

Examination of the low back revealed her to stand without a list, she could stand straight, it wasn't tipped, one side or the other.

There was a well-healed midline scar in her back from her surgery.

The low back motion was mildly restricted, due to voluntary guarding, that is you ask her to bend down and back and side to side, and all these motions were not quite normal in range, because she would just stop moving, but she

didn't complain of any pain, she just stopped moving.

Tenderness of moderate degree was said to be present over the pelvis on the left side of the spine, about two or three inches to the left of the spine over an area that we call posterior iliac spine, which is a little area of bone about two-and-half or three inches from the midline in the back and this was the only place it was tender.

It was not tender over the muscles and ligaments of her low back.

There was no muscle spasm noted. Muscle spasm is the involuntary contracture of a muscle when there is underlying pain and there was no muscle spasm noted in the muscles of the lower back.

The Lasegue's sign was negative bilaterally when sitting, but was said to be positive at 40 degrees on the right and 20 degrees on the left when laying on her back.

Now let me explain that, what that means. The Lasegue's sign is a test we do with the patient laying on -- it's done two ways, with the patient sitting up, the leg can be

straightened out and this puts a stretch on the nerves that comes down the back of the leg, from the back and down the back of the leg, and if that nerve is being irritated, will produce pain in the back and down the leg. This is when they're sitting up.

The same test can be done with the patient laying on her back and the leg is brought up to 90 degrees like that and that's the same position 'as if she was sitting on the edge of the bed. In this case she could do this perfectly fine, she had no pain at all when she was sitting on the edge of the bed. However, when she was laying flat on the bed, she said it hurt at 40 degrees on the right, which would be about that high on the right, and even less on the left, 30 degrees on the left, she said produced -- 20 degrees on the left, barely got her off the bed, and she said it produced pain in her back.

This is a contradiction because the two tests should be the same.

The Patrick's sign was normal on both sides. This is a test that we **do** with the patient laying on her back and the heel of one

foot is placed on the opposite knee, much as if you're going to tie your shoelace, and then the first leg is brought down in sort of a figure 4 position and this puts a stretch on the muscles and ligaments of the low back and if they are inflamed, will produce pain. It did not in her case.

Measurements of her legs showed the length to be equal, which you would expect, the circumference of the thighs and the calves were also equal. If, sometimes if the muscle is -- if the nerve is being irritated or pressed upon, it will lose some of its function to the, to the muscle, and the muscle will tend to waste away. And you can detect this by measuring the circumference of the thighs and the calves even before the patient has any demonstrable weakness. But they were normal.

The neurological examination of the legs revealed the knee jerks to be equal, that's where you tap the knee and the leg kicks. There is a similar reflex at the ankle, where you tap the heel cord and the foot kicks. And this was also normal.

There was no weakness in either leg.

Decreased sensation was said to be present on the outer side of the left thigh, which is not the distribution of either of the nerves that were complained about, that were shown in the MRI to be possibly involved, it's a much higher nerve, the nerve on the outer side of the thigh.

That was the physical examination.

Q. All right. Thank you, doctor. Doctor, you had noted that during the history that was given to you by Ms. Campbell, she indicated that she suffered from numbness in the entirety in both legs after sitting for more than 45 minutes, is that correct?

A. That's what she told me.

Q. All right. Now, doctor, is that complaint significant?

A. Well, not really because it's not, what's called nonanatomical, it doesn't make any sense. There are about five different nerves that go to the legs and at least as far as any kind of pressure on a nerve would be concerned, you don't get numbness of the entire leg from sitting 45 minutes.

Sometimes you can cut **off** the circulation

to your legs if you sit cross-legged or something, but that's a circulatory problem, it's got nothing to do with her back or any kind of pinched nerves.

Q. All right. Thank you, doctor. Now, subsequent to your examination of Ms. Campbell, what did you do next?

A. X-rays were taken by this office of her lower back and pelvis and these showed some narrowing of the disk space, the space between the bones at the L -- at the two lower levels of the back, L4-5 and L5-S1.

There are five bones in the lower back, and they are numbered from one to five, and then there is the sacrum which is the part of the back that's part of the pelvis and there are five bones in that which are all fused together.

So the top one is S1, for sacral bone. And so the space between the bottom two lumbar vertebra or low back bones and between the last lumbar vertebra, L5 and the top of the sacrum, the disk space was a little bit narrowed and there was the defect from the previous surgery that she had had at those two levels, the bony

defect, you can see that.
Q. All right. Doctor, would you please explain to the ladies and gentlemen of the jury just what it means when you discuss a narrowing of the L4-5 and L5-S1?
A. Well, it just means the two bones are closer together. That can be due to a lot of things. Primarily it's due, generally due to just a degeneration of the disk, the disk gets dried out, it doesn't have as much water in it, just from wear, and tear and particularly of the lower part of the back the disk gets dried out, it gets smaller and the bones get closer together, the disk space narrows.
Q. All right. Thank you, doctor. Subsequent to taking x-rays of Ms. Campbell, did you have the opportunity to review her medical records?
A. Yes.
Q. And what records did you review, doctor?
A. I reviewed x-rays from University Hospitals, including a myelogram and a CT myelogram; records from TRW; records from Dr. Zahrawi, which are difficult to read because of poor Xerox copies; records from Dr. Sheldon Friedman; records of the University Hospitals; and records

from the Industrial Commission of Ohio.

The latter dealt with an elbow injury in 1989 which had nothing to do with this.

Q. Okay. Thank you, doctor. Now, doctor, upon taking the history from Ms. Campbell, reviewing her medical records, she had a surgery in October of 1992, is that correct?

A. Yes.

Q. And what was that surgery, doctor?

A. They took off some of the bone in the back of the spine to make the bony canal larger so that it wouldn't press down on the nerves as much, took off some of the overgrowth of bone that had occurred there.

Q. All right. Now, what is that procedure called, doctor?

A. It's called a decompression laminotomy and foramenotomy. Foramen -- otomy means the cut, and they cut, the lamina is the bone across the back part of the bony canal, and the foramen is the hole out through which the nerve goes. So they open up that hole some more by taking out some of the overgrown bone and they took off some of the bone across the back to allow the canal to have more room.

Q. Thank you, doctor. Doctor, do you have an opinion based upon a reasonable medical certainty as to whether or not the surgery that you discussed and concerning Mae Campbell which was performed on, in October of 1992, whether that surgery was proximately caused by the motor vehicle accident of June 14 of 1991?

A. Yes.

MS. TRAPP: Objection.

Q. You, and what is your opinion, doctor?

MS. TRAPP: Objection.

A. It's my opinion based upon reasonable medical certainty that the surgery consisting of a laminotomy and foramenotomy at L4-5, L5-S1 was not the result of the automobile accident.

Q. And, doctor, what do you base your opinion on?

A. Well, the cause of the, need for the surgery was the bony overgrowth and this takes years to develop gradually over a long period of time, it had nothing to do with the accident.

Q. All right. Doctor, you had the opportunity to review the operative report from Dr. Hardy, I believe?

A. Yes, that's correct.

Q. University Hospital, is that correct?

A. Yes.
Q. And that report indicated that there were no herniated disks found when the surgery was performed?
A. Yes --
MS. TRAPP: Objection. Form of the question.
Q. You may answer, please.
A. When they, on examination of the operative report, the, Dr. Hardy specifically looked at the disks that were said to be bulging in the MRI and found that they were normal, there was no herniated disk.
Q. All right. And is that finding significant, doctor?
A. Well, it's significant in the fact that she is, that although there were some bulging disks suggested on the MRI, on the imaging study, the imaging study is still only an image, and the best way to find out what really is there is to look at the patient, and when Dr. Hardy looked at the patient, she did not have a herniated disk.
Q. All right. Thank you, doctor.
MR. THOMAS: Let's go off the

record.

VIDEOTAPE OPERATOR: We are off the record.

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(Thereupon, a discussion was had off the record.)

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VIDEOTAPE OPERATOR: We are on the record.

Q. All right. Doctor, what causes bony overgrowth of foramina?

A. This is caused by wear and tear, by just when stress is placed on the body anyplace it responds by increasing the bony mass and in order to withstand the pressures and the stresses and this is what happens, in the lower back with time more and more bone is built up. In some people it's built up to the extent that it causes problems because of the bony overgrowth.

Q. All right. Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not the bony overgrowth of a foramen was caused by the June 14th, 1991 motor vehicle accident?

MS. TRAPP: Objection.

A. Yes.

Q. And what is your opinion, doctor?

MS. TRAPP: Objection.

A. It's my opinion based on reasonable medical certainty that it was not caused by the automobile accident, it was caused by wear and tear over a long period of time, It was there prior to the automobile accident.

Q. All right.. Doctor, in the history that was given to you by Mae Campbell, did she indicate to you what her occupation was prior to the motor vehicle accident?

A. She said she was a machine operator.

Q. All right. And do you have an opinion, doctor, based upon a reasonable degree of medical certainty as to whether or not her employment as a machine operator contributed to the wear and tear or the degenerative process that you have discussed here today?

MS. TRAPP: Objection.

Q. You can answer.

A. The wear and tear, something which we all get as we grow older, just a matter of function of living and doing stressful things during our

life.

I don't know exactly how much stress the machine put her to that she operated, so I can't answer that question directly. But it's due to wear and tear over a period of time and just general activities.

Q. All right. Thank you, doctor.

MS. TRAPP: Move to strike.

MR. THOMAS: Let's go off the record for a second.

VIDEOTAPE OPERATOR: We are off the record,

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(Thereupon, a discussion was had off the record.)

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VIDEOTAPE OPERATOR: Stand by. We are on the record.

Q. Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not Ms. Campbell would have needed the surgery which you have discussed even if this motor vehicle accident had not occurred on June 14th of 1991?

MS. TRAPP: Objection.

A. Yes.
Q. And what is your opinion, doctor?
MS. TRAPP: Object.
A. It's my opinion that, based on reasonable medical certainty that she probably would have had to have surgery on her back regardless of whether or not she was in the accident. I don't think the accident had anything to do with that.
Q. All right. Thank you, doctor. And, doctor, do you have an opinion, based upon a reasonable degree of medical certainty, as to whether or not Mae Campbell physically is able to have gainful employment at this point in time?
MS. TRAPP: Objection.
A. Yes.
Q. And what is your opinion, doctor?
MS. TRAPP: Objection.
A. It's my opinion, based on reasonable medical certainty, that she could be gainfully employed, if she wanted to be.
MS. TRAPP: Move to strike.
MR. THOMAS: All right. Thank you, doctor. I don't have anything further at this time.
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CROSS-EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MS. TRAPP:

Q. Thank you. Doctor, my name is Mary Jane Trapp. I'm with the law firm of Apicella & Trapp.

Dr. Kaufman, before I complete your cross-examination, I'd like an opportunity to take a look at your file, if I could.

A. Oh, of course.

MS. TRAPP: We will go off the record.

VIDEOTAPE OPERATOR: We are off the record.

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(Thereupon, a discussion was had off the record.)

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VIDEOTAPE OPERATOR: Stand by. We are on the record.

Q. Thank you, doctor.

A. Certainly.

Q. Are you -- it's true you've seen my client, Mae Campbell, only one time, that's correct, on September 13th, 1994?

A. That's correct.

Q. And that was more than three years after the

automobile accident which is the subject of that, of this case, isn't that correct?

A. Yes.

Q. All right. And, doctor, isn't it true that the depth of your knowledge concerning Mrs. Campbell and Mrs. Campbell's symptoms and the course of her symptoms and the course of her treatment is not the same as her treating physicians, either Dr. Friedman, Dr. Zahrawi or Dr. Hardy, who have seen her 'repetitively?

A. It's much more complete than theirs.

Q. In what way, doctor?

A. Well, I had the advantage of having, Dr. Friedman saw her before she had a lot of this, these imaging studies and before she had Dr. Hardy's surgery, so that I had the advantage of what Dr. Hardy found at surgery and her subsequent findings.

Q. But considering the fact that you've only seen her one time and you don't have the benefit of seeing her in your office and doing a hands-on examination or actually opening up her body and taking a look at her spine, as Dr. Hardy did, you would agree with me that, wouldn't you, that you're not in as good a position to, and you

don't have the full extent of the knowledge of Mrs. Campbell in order to arrive at an opinion about her pain and her disability and her ability to work at this time?

A. No, that's not true, because as I say, I have the advantage of having seen her after a period of time that many of her doctors did not.

I certainly expect that Dr. Hardy described accurately what he saw at the time of surgery, so that I would expect that I would be aware of whatever he found. I don't think he was hiding anything when he dictated his notes, so that I think that's been perfectly clear what he found.

I think that it's -- I don't think there was any more advantage to having seen it in person as to having read his note which is really quite clear.

Q. And you have no doctor/patient relationship with Ms. Campbell, do you?

A. No, none at all,

Q. And the purpose of you seeing Ms. Campbell on September 13th of this year was to prepare a defense medical report for Mr. Thomas and not for treatment of Ms. Campbell's problems,

correct?

A. My purpose of seeing her on September 13th was to provide Mr. Thomas with a report as to what, if anything, was wrong with Ms. Campbell.

Q. And not to treat any of her problems?

A. Oh, my, no.

Q. And, in fact, you have no responsibility towards Mrs. Campbell for treatment?

A. No.

Q. And you have no responsibility to her for any misdiagnosis that you may make of her problems today?

A. I think everybody has a responsibility for misdiagnosis. I don't think I've made any.

Q. You're saying that if you misdiagnose something that later turns up there is a problem, that you can be sued in malpractice?

A. I'm not a lawyer.

MR. THOMAS: Objection.

A. You, all you lawyers talk about suits, you don't talk about patients.

Q. I'm talking about responsibility.

A. I'm sorry, you're talking about legal things I'm not aware of.

Q. So you're refusing to answer my question about

your responsibility --

A. I'm not refusing at all. I'm just telling you it's outside the realm of my -- my expertise is an orthopedic surgeon. I think you have to talk to a lawyer about what you're asking me now.

Q. The September 13th, '94 exam was arranged between your appointment scheduler and Mr. Thomas's office, correct?

A. That's correct.

Q. And you have a letter?

A. I presume that's correct.

Q. And you have a letter in your file from Mr. Thomas's office regarding the scheduling of the appointment?

A. I, I will have to look to be sure. I presume you wouldn't have asked the question if that weren't the case. Yes.

Q. How much did you charge Mr. Thomas for the exam and report?

A. $350.

Q. And you also charged for the x-rays that you ordered as well?

A. Yes.

Q. And those were taken in your x-ray center next door here?

A. Yes.
Q. And how much did you charge for the x-rays?
A. I don't know, that comes off the computer. Whatever the Blue Cross UCR fee is for that, I have no idea. Same amount we charge for patients, doesn't make any difference.
Q. And, doctor, you're being paid by Mr. Thomas for your testimony here today?
A. No, for my time, not my testimony. That's not for sale.
Q. And how much are you being paid for your time?
A. 3 -- $850 for the afternoon, however long it takes.
Q. Doctor, how many medical exams do you perform on average per week for the purpose of preparing a medical/legal report?
A. About something between four and six.
Q. Isn't it more like six, doctor, or more?
A. I'm not arguing with you, I'm just answering you. You asked me a question. You asked me a question. I think it's between four and six, four to six in theory, about five percent of my time.
Q. Doctor, do you recall giving a deposition in the case of Mark E. Parisi verses Ralf Caswell in

the Lake County Common Pleas Court, Case Number 292 CV 1580 on Monday, May 16th, 1994?

A. No.

Q. You don't recall that?

A. No.

Q. I have a copy of that transcript here, doctor. And on page 25 do you recall this question being asked and this answer being given:

"How many medical exams do you perform on an average per week in order to testify at trial?

"Answer: I don't know how many I do for that purpose, about, I do maybe six consultations a week."

Do you recall that question being asked --

A. Four to six.

Q. -- and that answer being given?

A. It's the same, I think it's the same figure I just named. It's consistent, isn't it?

Q. And, doctor, when you prepare those reports -- and turning your attention to what I marked Plaintiff's Exhibit A in your chart, would you take a look at that?

A. Yes.

- - - -

(Thereupon, Plaintiff's Exhibit A was marked for purposes of identification.)

- - - -

Q Are you familiar with that document?

A Oh, yes, I use it all, all of my patients, those, both the ones that I treat, which is 95 percent of the people that I see, and those in which I just write a report, I use the same form.

Q Would you identify that document for me?

A What do you want me -- how do you want me to identify it, as what?

a Well, tell me what that document is.

4 It's a form that we use that I go through and take the patient's history. It gives us a nice, organized way of being sure that we get a good history from the patient. It's a series of questions and there is a lot of writing in the margins as well as some checking of common answers.

Q Isn't that basically a form outline of your letter from start to finish with fill in the blanks for different findings?

A. No.

Q. It isn't?

A. No, there is no blanks to fill in. What it is is it's not an outline of my report. My report is dictated from that, from that report just as my office notes are on the patients on whom I don't dictate a report. This is form that we use for all of the patients.

Q. I'm not questioning whether you use it for --

A. It's not --

Q. -- medical or legal or regular patients.

A. There is no blanks to fill in. It's not fill in the blanks, such as what your question said.

Q. Doctor, I'm reading from page one of Plaintiff's Exhibit A, typed in it says: I examined blank on blank, because of the injury which occurred on blank, when the blank in which he or she was driving, and you also have a check for riding in, was involved in a collision from the, check one, rear, front, right, left side, et cetera.

And if I can read from your report your report reads: "I examined Mae Campbell on September 13th, 1994 because of injuries which she said occurred on June 14th, 1991 when the car in which she was riding in the front seat was involved in a collision from the front with another car."

Now, what this indicates to me, doctor, is that you have your report prepared with blanks to fill in.

A. That's not true. I dictate the report and it's typed from a stenographic tape. A report is not prepared. Every report is typed de novo from a stenographic tape.

Q. But it's fair to say, doctor, you have prepared so many reports that you find it necessary, for the efficient operation of your office, to prepare a template, if you will, and then you fill in the blanks from that point, is that not true?

A. This is a rough outline of the questions which we're going to ask and there is also plenty of room, as you are also aware but didn't read, of much that is written in. It's not, not blanks at all.

Q. How many years have you been performing defense medical exams?

A. I think about 30, 31, something like that. I've been in practice 33 years.

Q. And I'm not sure whether I asked this question, how much are you charging Mr. Thomas for this trial deposition?

MR. THOMAS: Objection. Asked and answered. Go ahead. You can answer.

A. $850 for as long as it takes.

Q. How many depositions do you give a month?

A. I don't know.

Q. Pardon?

A. I don't know.

Q. More than one?

A. Yes, more than one.

Q. Do you ever give as many as one a week?

A. Yes.

Q. So, doctor, to summarize, you do maybe six exams on average a week at $350 each?

A. This is for all the exams together.

Q. Right.

A. Not just required by the defense attorneys. Plaintiffs attorneys, other people as well.

Q. And you work 46 weeks a year?

A. Uh-huh, about.

Q. Given vacation. So your income from medical/legal exams would be approximately $96,600 and your income in depositions would be approximately $10,200 for a total of approximately $106,800 in medical/legal income per year?

A That's correct.

MR. THOMAS: Objection. If you know.

A That's gross income, and our overhead is about 60 percent, that brings it down to about 40,000 and I split that five ways, because I'm one of five people in the practice so that brings it down to about 8,000 which is about right.

Q. During your exam of Ms. Campbell you found her to be cooperative, didn't you?

A. I don't have any record to the contrary, so I presume she was.

Q. She answered your questions?

A. Yes.

Q. And she followed your directions in the physical exam?

A. Yes, uh-huh.

Q. Now, doctor, isn't it true that in your practice you use both objective and subjective findings in treating your patients?

A. A combination of both, that's right.

Q. And a complaint of pain would be an example of a subjective symptom?

A. Pain or motion or tenderness, yes.

Q. And a muscle spasm, that a doctor trained such

as yourself would feel, is an objective symptom?
A. That's correct.
Q. Now, you took a history from Mae Campbell in which she described a collision in which the force of the impact caused her head to hit the windshield, isn't that true?
A. Yes.
Q. And, doctor, you reviewed the records including Dr. Sheldon Friedman's report, Dr. Friedman saw her five days after the accident, isn't that true?
A. Yes, uh-huh.
Q. And Dr. Friedman noted, did he not, objective findings of injury to Ms. Campbell's back five days after the accident, primarily muscle spasms?
A. That's what he said.
Q. And he also found clinical or objective symptoms of a brachial plexus impingement?
A. No, I don't know what that, what that means. I don't know what you mean.
Q. Well, I'm using the words of Dr. Friedman.
A. Well, I don't know what Dr. Friedman means.
Q. Dr. Friedman is on the staff at Suburban. You're not familiar with him?

A. Good for him. No, he's not an orthopedic surgeon.
Q. Would you disagree, you recall -- read his report, did you not?
A. I'd have to reread it in order to discuss it.
Q. Are you disagreeing that he found a brachial plexus impingement clinically?
A. There certainly was no evidence in her history of it, but I'd have to see, I'd have to reread his report in order to discuss it, if that's what you want me to do.
Q. Well, I'll read it to you.
A. Why don't you show it to me, I'll be glad to discuss it.
Q. That's Dr. Friedman's report dated September 9, 1991?
A. Yes. Well, when I took a history from her she never mentioned that she hurt her neck.
Q. But you reviewed Dr. Friedman's records?
A. That's what he said.
Q. That you stated on direct examination?
A. That's what he says. That's not what she said.
Q. Doctor, you have no criticism with the findings or the course of treatment by Dr. Friedman, do you?

A. Yes.
Q. You do?
A. Getting back to his report. Certainly I didn't find anything wrong with her neck and I, certainly there was no evidence that she had anything wrong with the brachial plexus. I don't know what Dr. Friedman even knows what those symptoms would be, but I don't -- what else, as far as his treatment, what I've got is she had physical therapy for about six weeks and pain pills and a muscle relaxant.
a Doctor, you did not --
4 That's, that's the treatment he did give her, then if you'll give me the report, I will review again what he said versus what she said, I wouldn't have any objection to that.
a Well, doctor, you did not put any of those objections in your report to Mr. Thomas, dated September 13 of 1994?
A What objections?
Q Any criticisms of the treatment or of the findings.
A What --
Q You had the opportunity to review his report before?

A. It's not for me to criticize Dr. Friedman. You're asking the questions about him.
Q. But you're making the criticism now and you didn't feel --
A. Only in response to your questions.
Q. Doctor, let me finish my question.
A. I'm sorry.
Q. You didn't feel that at the time you wrote the report that that criticism was important enough to put in a report, did you?
A. I didn't say anything about criticism, about it not being important enough, I'm just answering your questions. You seem to think it is.
Q. Now, you reviewed Dr. Zahrawi's records, correct?
A. Yes, and I couldn't read them, it's a poor Xerox copy, and I had a very, very tough time making anything out of them.
Q. Did you ask Mr. Thomas to provide you with clearer copies?
A. No, we didn't have enough time. I only saw the patient three days ago.
Q. Well, don't you think it's important, doctor, to get a full picture of her past medical history before you pass judgment on --

A. I'm not passing judgment on anybody.
Q. Don't you think, don't you think it's a good idea in, in following the standards of practice of medicine when you are doing a medical exam and writing a report and coming into court to testify to get a complete and clear history, past medical history of the patient?
A. I try to.
Q. And you know Dr. Zahrawi, don't you?
A. Yes, I know who he is.
Q. And he's a board certified orthopedic surgeon, such as yourself?
A. I believe he is, uh-huh.
Q. Now, in Dr. Zahrawi's report, isn't it true that he noted some objective symptoms?
A. I don't know. I don't know. You'll have to show me the report.
Q. I thought Dr. Zahrawi's report was part of your file?
A. I just finished telling you it's a poor Xerox copy and I couldn't read it is what I said initially.
Q. I'd be happy to provide you with a copy of it.
A. Oh, well, then sure.
Q. This is Dr. Zahrawi's report dated November 19th

of 1991.

A. Thank you. Okay. Let's see. First of all, Dr. Zahrawi didn't mention her neck either.

MS. TRAPP: Move to strike, unresponsive.

A. To what?

Q. There is no question before you.

A. Oh, I'm sorry.

Q. I'm just asking you if you've reviewed his records?.

A. Yes.

Q. All right. Now, Dr. Zahrawi noted that upon his physical examination he found that the straight leg raise test was positive, isn't that true?

A. That's what he says, but he doesn't say whether he did it with her sitting up or laying down and since, when I did it of course it, she had different complaints.

Q. Doctor, the question was very straightforward, I would, we're here at a deposition, unfortunately I don't have a judge here to admonish you, but please be responsive.

A. I'm trying to.

MR. THOMAS: I'll move to strike that statement by counsel.

A. I'm certainly trying to.
Q. Doctor, the straight leg raise test was found to be positive in Dr. Zahrawi's report, correct?
A. He doesn't say test.
Q. The straight leg raise was positive?
A. That's not exactly what he says either.
Q. Doctor --
A. He says straight leg raises are positive.
Q. All right. And I would assume that that's through a physical exam where he performed a straight leg raise test, correct?
A. That you would presume it or that it's correct?
Q. Wouldn't you presume that, another orthopedic surgeon puts in a report that the straight leg raise was positive, that he performed a test and that was his finding?
A. But he doesn't say how he performed it.
Q. But he found on a straight leg raise test that there was a positive sign, correct?
A. Yes, that's correct.
Q. Fine. Thank you.
A. That's what he says. If that's what you're asking me, that's what he says. That's what he says.
Q. Doctor --

MS. TRAPP: Move to strike.

Q. And a straight leg raise test, a positive finding is indicative of a disk problem, is it not?

A. It's one, I don't know what he means by positive, but it, the Lasegue's sign, the straight leg raising sign is one of the signs of a herniated, of a pinched nerve in the back, one of the causes of a pinched never in the back is a disk. .

Q. All right.

A. That answers your question?

Q. Yes.

A. Uh-huh.

Q. And also in Dr. Zahrawi's notes and I'll show them to you --

A. Uh-huh.

Q. -- since you apparently couldn't read his,

A. This has blanks in it, too.

Q. In his handwritten notes he notes that there was a complaint of pain radiating into the buttocks down S1 and L5 derms to the knee, isn't that what he found, among other things?

A. I'm just, I'm just looking for the blank in which that is filled in.

Not on the page which you just handed me, I'm afraid.
Q. Right there, doctor, pain into the buttocks down --
A. Oh, pain, I'm sorry, pain centrally and across iliac crest into buttocks and down S1 and L5 derms.
Q. Now, doctor, isn't that a classic distribution of pain in relationship to a herniated disk?
A. No, it's,.that's two different dermatomes. Herniated disk presses on one nerve. A dermatome -- do you want me to explain what a dermatome is or shall we just leave that --
Q. Just answer the question, doctor.
A. -- hanging.
Q. Isn't that a classical distribution of a herniated disk or disks in that area?
A. It's, it's not a classical distribution but it's a, it's a, could be caused by two different disks, yes.
Q. All right. And Dr. Zahrawi didn't rely alone on his clinical examination, he ordered an MRI, didn't he?
A. Yes.
Q. All right. You did not order an MRI when you,

after you performed a physical examination on Mae Campbell, did you?

A. I didn't need to.

Q. And you didn't order a CT scan?

A. I certainly did not.

Q. And after Dr. Zahrawi ordered an MRI he made a diagnosis of a disk protrusion at L4-5 and ordered therapy, conservative treatment, isn't that true?

A. That's his diagnosis. It wasn't right, but it was his diagnosis.

Q. Now, doctor, again your report does not contain any criticism of Dr. Zahrawi's findings or course of treatment, does it?

A. I was not asked to comment on Dr. Zahrawi's findings or course of treatment. Just you have asked me to, that's all.

Q. In your review of these records, neither of the doctors' notes, Dr. Friedman or Dr. Zahrawi's, notes any complaints of back problems experienced by Mrs. Campbell before the June, 1991 accident, does it, do they?

A. No.

Q. In fact, Dr. Zahrawi's notes under the heading of date of onset, says June, 1991 motor vehicle

accident?
A. That blank is filled in that way, correct.
Q. Now, you have reviewed Dr. Russell Hardy's chart, correct?
A. University Hospitals, I'm not sure I had his chart, per se, I have the University Hospitals records. I don't know if I had his chart as such.
Q. You know Dr. Hardy?
A. No.
Q. You teach over at the medical school, don't you?
A. I actually don't teach in the school, but I do teach the medical students. I'm a member of the medical faculty, that's right.
Q. You say you don't teach at the school?
A. I don't teach, I teach residents at Mt. Sinai, I teach them at University Hospital, at Metro, but not at the university.
Q. So you're in effect what they call an adjunct professor?
A. That's right, clinical instructor in orthopedic surgery.
Q. Now, you would not dispute with me if I told you Dr. Hardy is a board certified neurosurgeon and a professor at Case Western Reserve?

A. I wouldn't dispute anything. That's your department, not mine. I'm an orthopedic surgeon.

MS. TRAPP: Doctor, move to strike the colloquy.

Q. Dr. Hardy noted objective symptoms in the University Hospital records, did he not?

A. I don't know. I don't remember.

Q. In your review of his records, did you not find that Dr. Hardy found pain radiating into the left leg at approximately the S1 distribution since the motor vehicle accident in June, 1991?

A. I don't remember that, but it wouldn't be an objective finding in any case.

Q. Why not?

A. Because the pain is a subjective finding.

Q. But isn't, isn't there a mix when a physician is examining a patient, in the sense that the patient has to tell you that there is pain, I guess that's subjective, but where a patient describes a classical distribution or a normal distribution of pain for a problem, then what you have is objective; wouldn't you agree with that?

A. Yes;

Q. All right. And pain radiating into the left leg at approximately the S1 distribution, that would be a classic distribution for a herniated disk at that area?
A. Possibly.
Q. Probably, would it not be, doctor?
A. Well, there are other things that have to go along with it, other, I have to find out whether this was -- how we determined this, whether it was confirmed by other findings as well, a lot of other things that go into it than just that.
Q. But in coming up with the diagnosis, that would be one piece of the puzzle, so to speak?
A. That would be one piece, but only one piece.
Q. Now, on the date of the accident Mr., Ms. Campbell was 50 years old, was she not?
A. She was born 12-29-40, so the accident was June of '91, so she would be 50 years old.
Q. Okay. And you have reviewed, using your words from the report, copious records pertaining to her past medical history and treatment. And you would agree with me, doctor, that there is not one note of a complaint of back problems, especially with radiating pain, until after her June motor vehicle accident in 1991?

A. That's right.
Q. And in fact your report states no previous or subsequent injuries or symptoms in the above areas, correct?
A. That's not, that's not -- again you're, I don't know if you mean to, but the, this is her history, this is what she told me, that's not my report, it's just what she told me, that she had no previous symptoms in those areas.
Q. And you made --
A. I wrote it down.
Q. And you made that, you put that statement and put it into your record?
A. Oh, sure, I put all her statements down, that's her story, she told it to me, it doesn't make any difference what she said, I put them down.
Q. In fact, you learned in your history that until the motor vehicle accident she had been successfully working as a machine operator at TRW and she told you that the job required her to stand on her feet for eight hours and lift heavy parts, but you didn't put that in your report, did you, doctor?
A. I don't think she told me that.
Q. You're disputing that Mae Campbell told you that

during the history?
A. She told me she worked as a machine operator.
Q. And you're disputing that she --
A. I'm not disputing anything.
Q. Doctor, let me finish my question. You're disputing that she told you about the requirements of her job that she stand on her feet for eight hours and lift heavy parts?
A. I have no record that she told me that.
Q. And she also told you during that history here in your office just a few days ago that Dr. Hardy still has her on restrictions and that TRW has no light duty work for her and that's the reason why she's not, one of the reasons why she's not going back to work, isn't that true?
A. No.
Q. You're disputing that she told you that?
A. Yes. That's not, that's not why she said she wasn't going back to work.
Q. And you did not put those statements that she made, that she's testified to in your report, did you?
A. She didn't make them to me. She told me some -- there was other reasons that she gave to me why she wasn't going back to work, but that wasn't

it.

Q. And now, we are talking about this wear and tear degenerative changes on your direct examination. This starts in some people at age 35 or 40, doesn't it?

A. It may.

Q. And by 40 many people have some degree of arthritis?

A. Yeah.

Q. But most never have any symptoms?

A. That's right.

Q. And a person can live their entire life and never have a complaint or disability even though they have these degenerative changes in their spine --

A. That's possible.

Q. -- isn't that possible?

And a person with a degenerative condition in her back is probably more easily injured than a healthy person, isn't that true, doctor?

A. Yes.

Q. Didn't this accident, the motor vehicle accident in June of **1991**, aggravate or exacerbate her preexisting condition that you described?

A. No, not at all.

Q. It didn't?
A. No.
Q. It had no -- you're testifying, your testimony today is it had absolutely no affect on her back?
A. That's not what you asked.
Q. I asked you whether it aggravated her.
A. That's not what I said, it's not what you asked. It didn't aggravate and exacerbate the condition of spinal stenosis and bony overgrowth and degenerative changes in her back, no, it did not.
Q. And are you, it, are you saying it had no affect?
A. On that condition, that's exactly right, it did not.
Q. Doctor, so I'm clear, are you telling us that Ms. Campbell suffered no injuries in this accident?
A. No, I didn't say that.
Q. What injuries did she suffer?
A. I don't know, there was none, when I examined her there was no indication of, that, of any injuries she had suffered in this accident. When I examined her she had the bony overgrowth,

which essentially was not the cause, exacerbated or aggravated by this condition, by this accident, and that she had had her surgery, which was for that and not for her accident, and it was obvious exaggeration of symptoms. I don't know what if anything she hurt in this accident, but I can't say that she wasn't hurt initially.

Q. So you cannot say that she wasn't hurt?

A. I cannot say that she was not hurt initially, but I didn't find any evidence of it when I examined her.

Q. And you examined her three years later?

A. Oh, yes, that's right.

Q. After she's had surgery?

A. After she is over, got over what she got hurt in the accident, yes.

Q. Now, doctor in your report you said you reviewed a CT scan and a myelogram that was done at University Hospital, correct?

A. Yes.

Q. And that was what Dr. Hardy ordered before he did the surgery?

A. I believe so.

Q. And you stated in your report that you found the

nerve roots to fill well?
A. Uh-huh.
Q. Now, I'll turn your attention to that report and I'm showing you the MI -- lumbar myelogram report dated 7-14-92.
A. Uh-huh.
Q. And --
A. Yeah.
Q. Would you read what the doctor notes under impressions?
A. Enter, interspace narrowing and mild artholithesis of L5 on S1. **Also** that at this level there is moderate ventral extradural defect with incomplete filling of S1 nerve root sleeves, moderate ventral extradural at L4-5, mild ventral extradural defect at L3/4.
Q. Now, doctor what's the significance of a complete filling -- strike that.

What's the significance of an incomplete filling of the nerve root?
A. I don't think there is any significance of that, except for the extradural defect, but **I** don't think -- I think the nerve root is filled very nicely, it's a matter of degree. There is certainly no question that the nerve roots

filled.

Q. Isn't the significance of an incomplete filling of a nerve root is that there is nerve root impingement?

A. Yes. The nerve root may not be completely -- I think it's filled nicely, but if they want to call it incomplete filling, I wouldn't, I wouldn't argue with that. The nerve roots both filled, there are, I don't think there is any question 'about that either.

Q. And the incomplete filling would be --

A. A matter of degree.

Q. -- evidence of a nerve root, one piece of evidence of a nerve root impingement, correct?

A. Oh, yes.

Q. And what happens when a nerve root is impinged, that produces pain, does it not?

A. Not necessarily, but it may.

Q. In your report you also say that Dr. Hardy's operative note indicates that no herniated disk was found?

A. That's correct.

Q. Isn't there a delineation in terms that orthopedic, different orthopedic surgeons use between a frank herniation and a bulge?

A. No, I think everybody uses the term synonymously. Some call it bulging, some call it herniations. Dr. Hardy specifically says in his operative note, the note, disk herniations were found.
Q. But don't some orthopedic surgeons include in their definition of a herniated disk a bulging disk?
A. That is, both of them together, that's right. The two terms are synonymous.
Q. And a bulge --
A. They both mean the same thing.
Q. A bulge is where the, so that the jury can understand, like a jelly doughnut, a disk is like a jelly doughnut, when the jelly is bulging it's just pressing against the side, if there is an actual frank herniation the jelly is coming out of the doughnut?
A. That's call an extruded disk.
Q. All right.
A. Not a frank herniation, an extruded disk. Some people use, most people use the term herniation and bulging synonymously.
Q. And some orthopedic surgeons include a bulging disk, one that's pressing on the nerve root,

within their definition of a herniated disk?
A. Yes.
Q. In fact you do, don't you?
A. Yeah, I use the two terms synonymously, both mean the same thing, herniation and bulging mean the same thing.
Q. So if Dr., if Dr. Hardy and Dr. Smith found that there was a bulging disk that impinged on a nerve root, then you have no criticism that that was a, was a finding that that was a herniated disk?
A. Well, I think that you're asking a question about something that didn't exist because Dr. Hardy didn't find a herniated disk or even a bulging disk impingement on a nerve root. He said specifically he did not. And I don't see where Dr. Smith found a bulging disk impinging a nerve root either.

MS. TRAPP: We are off the record for a moment.

VIDEOTAPE OPERATOR: We are off the record.

- - - -

(Thereupon, a discussion was had off the record.)

- - - -

VIDEOTAPE OPERATOR: Stand by. We are on the record.

Q. Now, you're saying Dr. Smith and the report of the lumbar myelogram and CT did not find contact with the S1 nerve root?

A. No, what you just showed me before was the myelogram.

Q. All right. Now, you have read both the CT and the myelogram in preparing for your --

A. And the impression, you want me to read this impression too or don't you want me to read it?

Q. Uh-huh.

A. Examination of the facet joints, that's the joints in the back between the bones, and ligamentous hypertrophy and mild diffuse disk bulges at each of the lower three lumbar air spaces associated with mild canal stenosis, that's narrowing of the canal down through which the nerves come, at L5-S1 a combination of mild disk bulge and artholithesis caused by the bulging disk -- causes the bulging disk to contact the S1 nerve roots bilaterally as described above. It didn't say they are, they are pinched I think was the word you use, it

just said bulging disk, the mild bulging disk is contacting the nerve root.

Q. Doctor, I did not use the word pinched.

A. Oh, I'm sorry.

Q. I'm merely asking whether the, Dr. Smith found that there was contact between the bulging disk and the S1 nerve root? And I believe she found that in her report under impressions.

A. Oh, the S1 nerve root goes over the disk in everybody, it runs over the disk, everybody has a contact between the nerve roots and the disks. As they come out the back, they run over the nerve root, over the disks, all of them do, at every level.

Q. Doctor, you're not sitting here today criticizing the care given by Dr. Hardy as being unnecessary in light of her symptoms and test results, are you?

A. I'm sorry, what did we just go over, the care? If you'll ask me specifically what you've got in mind, I will be glad to answer your question.

Q. It's --

~ A . Everything blankly, everything he possibly could have done? Or just, are you just going to ask me Specifically and I'll answer you

specifically?
Q. Doctor, the question is pretty straightforward.
A. No, it's pretty broad.
Q. You're not here criticizing the care given by Dr. Hardy as being unnecessary, are you?
A. I think **I, I** can't answer your question without it being more specific.
Q. You can't answer th'at question?
A. Not without you being more specific. If you ask that broad a question, I don't know all of the care Dr. Hardy may have given this patient. So if you'll ask me specifically about specific care, I'll be glad to answer your question.
Q. Well, doctor, you've had plenty of opportunity, did you not, to review Dr. Hardy's chart? I mean we are looking at a huge stack of records here.
A. That's right.
Q. And films that you had to look at and during, as you say, a review of these copious records in order to come up with the report, you had ample opportunity to take a look at Dr. Hardy's records?
A. As much as reflected in the University Hospitals records, yes, but I don't know what else he

might have done, so I can't give you a blanket agreement with that statement. If you just ask me -- unless you don't want to ask me specifically, I can't answer you.

Q. Doctor --

MS. TRAPP: Move to strike.

Q. I ask you a very specific question, you are not criticizing, are you, the care given by Dr. Hardy as being unnecessary?

A. Not as far as I know.

Q. All right.

VIDEOTAPE OPERATOR: We are off the record.

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(Thereupon, a discussion was had off the record.)

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VIDEOTAPE OPERATOR: We are on the record.

Q. Thank you. Doctor, your histories and exams in preparation for medical/legal reports usually don't take very long, do they?

MR. THOMAS: Objection. You can answer the question.

A. First of all, I don't know what *you* mean by very

long; and, secondly, I don't keep track of how long they take. I go in, I do a complete and thorough job and I leave. I don't know how long it takes and I don't know what you mean by very long.

Q. Well, you have testified prior to today, doctor, that it doesn't take long when there is nothing wrong with the patient, isn't that correct?

A. It doesn't take as long as it does when there might be something wrong, but you're right, that's right.

Q. All right.

A. It doesn't take long when there is nothing wrong, that's right.

Q. You took a long time with Ms. Campbell, didn't you?

A. I don't have any idea how long I took. Sometimes a, sometimes a patient is more difficult than others and it's harder to examine them. But I don't have any idea how long it took. I go in, I do a complete and thorough job and I leave.

Q. But you did take a long time --

A. I don't know how long.

Q. You wouldn't disagree with Ms. Campbell's

testimony that you spent 45 minutes with her in a history and 20 minutes in exam?

MR. THOMAS: Objection. Asked and answered. He testified he didn't remember.

A. When you say Ms., I don't know how long --

Q. The question was you don't disagree with Ms. Campbell's testimony that you --

A. That it took an hour and five minutes?

Q. Doctor, let me finish the question. You do not disagree with Ms. Campbell's testimony that it took 45 minutes to do the history and 20 minutes in an exam?

A. AS I --

MR. THOMAS: Objection.

A. As I, what I've testified to this afternoon I'm sure of, I don't know how long it took, but I would be very surprised if it took an hour and five minutes. I think that is an overexaggeration.

Q. So you are disagreeing with her?

A. No, that's not what I'm saying at all. I said I don't know how long it took. What I've testified to I'm sure of, but it seems to me to be an exaggeration, maybe another exaggeration

on the part of Mrs. Campbell, that amount of time.

Q. It could have taken that time, correct?

A. No, I don't think it did.

Q. And the reason that it took that long is that you did find something wrong with her back, regardless of the cause, doctor, whether it's a motor vehicle accident or something else, you found something wrong with her back during that exam?

A. It didn't take that long, so I can't answer your question.

Q. You found that she had something seriously wrong with her back in the past, didn't you?

A. Oh, before the surgery --

Q. Uh-huh.

A. -- or at the time I saw her?

She had the surgery that corrected the degenerative changes that she had before the surgery.

Q. So you found something seriously wrong with her back in the past?

A. I didn't see her in the past.

Q. That's right, you didn't see her in the past.

A So I couldn't have found something seriously

wrong with her back in the past.
Q. The dispute here, doctor, is it not, the dispute is the cause of her bad back?
MR. THOMAS: Objection. You can answer.
A. What's the question?
Q. The dispute is the cause of her bad back?
A. I'm sorry, I don't, I'm lost as to what the question is. You're making a statement.
Q. You have a dispute --
A. I'm not disputing with anybody. So --
Q. Doctor, you obviously are. The dispute here is between you and Dr. Hardy of the cause of her bad back?
MR. THOMAS: Objection.
A. I'm not disputing with anybody.
MR. THOMAS: You can answer.
A. The answer to your question is I don't dispute with people.
Q. So you agree with Dr. Hardy's finding as to the cause of her bad back?
MR. THOMAS: Objection.
Q. Doctor, it's pretty clear, either you agree or disagree --
A. I have to -- no.

Q. -- with that doctor as to the cause of the back. It is a simple question.
A. What is Dr. Hardy -- I don't -- what does Dr. Hardy say is the cause of her back?
Q. The motor vehicle accident aggravated her prior condition.
A. No, I don't think that's true.
Q. So you're disagreeing with that?
A. I'll disagree with that.
Q. And you would disagree with Dr. Zahrawi when he makes the same statement?
A. Did he make that statement?
Q. He has made that statement in court testimony.
A. Well, I don't think --
MR. THOMAS: Objection. You may answer.
A. I don't think that -- it's my opinion that the motor vehicle accident did not aggravate or accelerate the spinal stenosis.
Q. And you're agreeing -- you're disagreeing and disputing Dr. Friedman --
A. No.
Q. -- as to the cause of her bad back and her symptoms?
A. I'm not disputing anybody. And if Dr. Friedman

said that the spinal stenosis and bony overgrowth was caused by the motor vehicle accident three or four -- or a week before he saw her, then I certainly would disagree with him.

Q. So once again, doctor, the dispute here is not whether she has or had had a bad back, it's what caused it, isn't that true?

A. I don't know what the disputes are. You, you guys talk about disputing. I'm never involved in any disputes, that's your department. I just examined this woman and I'm giving my testimony as to what I feel is wrong with her, that's all. I'm not disputing with anybody.

Q. And you're saying, your testimony, doctor, is that Dr. Hardy, a board certified neurosurgeon, and Dr. Zahrawi, a board certified orthopedic surgeon, and Dr. Friedman, who's on the staff at Suburban Hospital, are all wrong as to the cause of the symptoms, the onset of those symptoms that Ms. Campbell talked about to you and to those doctors beginning in June of 1991 in an automobile accident?

A. What I have said, I'll say it again so that I can make it perfectly clear. What I have said

or what I'm testifying to, it's my opinion, based on reasonable medical certainty, that the bony overgrowth and spinal stenosis and degenerative changes in her back were not caused by the automobile accident, were not accelerated by the accident and were not aggravated by the automobile accident.

MS. TRAPP: Objection. Move to strike as being unresponsive.

Q. It's a very simple question.

A. And I gave you the best answer I can.

Q. Do you agree, doctor, or disagree with Dr. Hardy, Dr. Zahrawi and Dr. Friedman as to the cause of the onset of the symptoms that necessitated the surgery was the motor vehicle accident in 1991?

A. I can't answer that question because I don't know what all these people said.

Q. Even though you've had an opportunity to review **all** of these?

A. Dr. Friedman doesn't even address spinal stenosis and bony overgrowth.

Q. And you didn't put that in your report, did you?

A. I wasn't asked to.

Q. That you had any disagreement or that you found

that there was something lacking in these records when you reviewed them, you didn't feel that that was a concern of yours to put it in your report, but now you're telling us that you don't agree with what you found?

A. You asked me the question.

Q. And you found that and you didn't see those things in those records?

A. I'm just responding to your questions.

Q. Isn't that true, doctor?

A. I'm responding to your questions, trying to answer them the best I can.

Q. Well, doctor, we'll let the jury decide.

A. Oh, I'm sure of that. I hope you will.

MS. TRAPP: I don't have anything further.

MR. THOMAS: I have a couple questions, doctor.

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REDIRECT EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MR. THOMAS:

Q. Doctor, you had the opportunity to review the operative notes of Dr. Hardy, is that correct?

A. Yes.

Q. And upon your review of those operative notes,

is it your opinion that they were detailed operative notes?

A. Oh, yes, very detailed, very good operative report, description of the procedure and what he found at the time of surgery.

Q. All right. And just for point of clarification, doctor, exactly what did Dr. Hardy find when he opened up Mae Campbell in October of 1992?

A. He found the bony overgrowth, the closure of the foramen, that is the hole out through which the nerves come, because of the bony overgrowth from the wear and tear type of changes and he specifically said he found no disk herniation.

Q. All right. And is it possible for a neurologist, neurosurgeon or orthopedic surgeon to see whether a disk is herniated when the patient is actually opened up and disks are in plain view?

MS. TRAPP: Objection. Form of the question.

looking at them, and that's what he described, I mean, he exposed the nerves, he exposed the disks and he looked at the disks and they were not herniated.

Q. All right. And doctor, is the actual -- strike that.

What is more accurate, doctor, an MRI test, a myelogram, or the actual viewing of the nerves and the disks that are actually in plain view to the operating surgeon?

A. Well, it's, the MRI is just a computerized image which is formed by magnetic fields. A CT scan is just a computerized image formed by multiple x-ray images, they are all just images. They are pretty good and, but they are not perfect, because again all they are are images, abstractions from the various physical shadows that the patient throws.

The most accurate way of determining whether pathology does or doesn't exist is to look at the patient and not the images of the patient. And that's what Dr. Hardy did. And regardless of what the MR showed or the CT or the myelogram, he did not find any herniated disks.

Q. All right. And, doctor, again for the ladies and gentlemen of the jury, what is spinal stenosis?

A. Spinal stenosis is the narrowing of the spinal

canal down through which the nerves come. This canal is a bony canal and if there is overgrowth of the bone due to wear and tear and degenerative changes, then that canal gets narrower, and stenosis means a narrowing of the spinal canal.

Q. All right. And based upon your review of Mae Campbell's medical records, why was the October 1992 surgery performed by Dr. Hardy?

MS. TRAPP: Objection.

A. For spinal stenosis and bony overgrowth of the foramen.

Q. All right. And, doctor, do you have an opinion based upon a reasonable degree of medical certainty, based upon your review of the medical records of Mae Campbell and your examination of Mae Campbell, do you have an opinion based on a reasonable degree of medical certainty as to why the October 1992 surgery was performed by Dr. Hardy?

MS. TRAPP: Objection. Beyond the scope again.

A. Yes. It's my opinion, based upon reasonable medical certainty, that Dr. Hardy did the surgery for spinal stenosis and bony overgrowth

of the foramen.

Q. And, doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not the spinal stenosis, which was caused by bony overgrowth of the foramen, was proximately caused by the October 14, 1991 motor vehicle accident?

MS. TRAPP: Objection.

A. Yes, yes. It's my opinion based on reasonable medical certainty that the bony overgrowth and the spinal stenosis are caused by degeneration and are unrelated to the automobile accident.

MR. THOMAS: Thank you, doctor. Nothing further.

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RECROSS-EXAMINATION OF RICHARD S. KAUFMAN, M.D.

BY MS. TRAPP:

Q. Doctor, I just have one other question.

A. Certainly.

Q. Are you disagreeing with Dr. Hardy's statement that the motor vehicle accident of June of 1991 aggravated her preexisting back condition?

A. Yes.

Q. That's a dispute that you have?

A. No, it's not a dispute, I disagree with him

though.

Q. And you disagree with Dr. Zahrawi when he makes a similar statement concerning the aggravation of the motor vehicle -- aggravation of her preexisting condition caused by the motor vehicle accident of June of 1991?

A. Yes, I would disagree with Dr. Zahrawi if he made that statement.

Q. And you're disagreeing with Dr. Friedman when he makes a similar statement concerning the aggravation of a preexisting back condition brought on by a motor vehicle accident of June of 1991?

A. I'm not aware that Dr. Friedman made that statement, but if he did, I would disagree with him.

MS. TRAPP: Thank you. I have nothing further.

MR. THOMAS: No further questions.

THE WITNESS: I waive the reviewing and I waive signing.

VIDEOTAPE OPERATOR: Does counsel waive filing of the tape?

MS. TRAPP: Yes, sir.

MR. THOMAS: Yes.

VIDEOTAPE OPERATOR: We are off the record.

RICHARD KAUFMAN, M.D.

C E R T I F I C A T E

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

I, Colleen M. Malone, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named RICHARD KAUFMAN, M.D., was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and was subscribed by said witness in my presence; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this _____ day of _____, A.D. 19 __.

_____
Colleen M. Malone, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires August 3rd, 1997

W I T N E S S I N D E X

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