Doc. 220

State of Ohio,) SS:

County of Cuyahoga.)

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IN THE COURT OF COMMON PLEAS

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PATRICIA MORRIS, ET AL.,)
)
Plaintiffs,)
)
v.) Case No. 263385
)
)
ALLSTATE INSURANCE COMPANY,)
ET AL.,)
)
Defendants.)

- - -

THE DEPOSITION OF RICHARD S. KAUFMAN, M.D.

THURSDAY, NOVEMBER 2, 1995

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The deposition of RICHARD S. KAUFMAN, M.D., a Witness herein, called for examination by the Defendant, under the Ohio Rules of Civil Procedure, taken before me, Lauren I. Zigmont, a Notary Public in and €or the State of Ohio, pursuant to notice, at the offices of Beachwood Orthopedic Associates, 23250 Mercantile Road, Beachwood, Ohio, commencing at 4:45 p.m., the day and date above set forth.

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APPEARANCES:

On behalf of the Plaintiffs:

MITCHELL WEISMAN, ESQ.
210 Back Fork Street
P.O. Drawer 52
Webster Springs, WV

On behalf of the Defendant Allstate Insurance company:

JAMES M. JOHNSON, ESQ.
Keller and Curtin Co., L.P.A.
330 Hanna Building
1422 Euclid Avenue
Cleveland, Ohio 44115-1901

On behalf of the Defendant Anthem Insurance Company:

MARILYN J. SINGER, ESQ.
McNeal, Schick, Archibald and Biro Co., L.P.A.
Skylight Office Tower
1660 west Second Street
Cleveland, Ohio 44113-1454

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ALSO PRESENT:

Barry Hersch, Videoqrapher

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(Thereupon, Defendant's Exhibit 1 to the deposition of Or. Kaufman was marked for purposes of identification.)

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RICHARD S. KAUFMAN, M.O.

a Witness herein, called for examination by the Defendant, under the Rules, having been first duly sworn, as hereinafter certified, deposed and said as follows:

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MR. JOHNSON: Let the record reflect that this is the deposition of Dr. Richard Kaufman, which is being taken in the case of Patricia Morris versus the Allstate Insurance Company, which is presently pending before Judge Patricia Gaughan, Case No. 263385.

At this time I would ask if there is a waiver of the statutory and procedural formalities of notice, service of notice, as well as the filing of the deposition transcript?

MR. WEISMAN: Absolutely.

MS. SINGER: Yes.

MR. JOHNSON: Thank you.

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DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Doctor, if you could, for the record could you state your full name?

A. Richard S. Kaufman, M.D.

Q. All right. What's your current professional address?

A. 23250 Mercantile Road, Beachwood, Ohio.

Q. Now, I've mentioned that you're a doctor, can you tell the ladies and gentlemen of the jury what type of doctor that you are?

A. I'm an orthopedic surgeon.

Q. When you say "orthopedic surgeon," what does that mean?

A. Orthopedics 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 local motor system, that is the parts of the body that move you about, primarily the bones and joints, but also the ligaments and muscles and nerves and blood vessels, tendons of the spine and the arms and legs.

Q. Now, are you licensed to practice medicine in the State of Ohio?

A. I've been licensed to practice in the State

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of Ohio since 1956, which is now 38 years.
Q. Okay. There's also a thing called board certification, are you board certified?
A. Yes. I'm board certified by the American Board of Orthopedic Surgery.
Q. What is the significance of board certification?
A. When I became board certified I had to have four years of college, four years of medical school, five years of postgraduate training. When I finished 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 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 in that field.
Q. Is board certification, is that a high, if not the highest, achievement that you can obtain in your field?
A. Yes.
Q. Now, Doctor, if you could, could you just give us a little bit of your background in terms of your education and your medical training?
A. I received my BA Degree Summa Cum Laude,

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that means with highest honors, from Yale University in 1952. I had my MD Degree from Columbia University in 1956. I then had five years of postgraduate training, a year of internship at Mt. Sinai Hospital in Cleveland, a year of 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. All right. Doctor, are you a member of any medical organizations, societies, or 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 and Growth Society. I'm a fellow of the American College of Surgeons, a fellow of the American Academy of Orthopedic Surgeons, and a diplomat of the American Board of Orthopedic Surgery.
Q. Do you have any staff and/or courtesy privileges at any of the local hospitals?
A. Yes. I'm on the active staff at Meridia South Point Hospital, which used to be called Suburban 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

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Women's General Hospital for 23 years until they closed and I'm the orthopedic consultant to the Arthritis Clinic at Cleveland Metropolitan General Hospital or Metro Health as it's now called.
Q. Doctor, have you ever done any teaching or done any publishing in your field?
A. I'm a clinical instructor in orthopedic surgery at Case Western Reserve University Medical School for the last 32 years and I was a professor for 20 years at the Ohio College of Podiatry. I've published papers dealing primarily with the healing of fractures of broken bones and I've given enumerable papers on various topics.
I was invited to present a paper at Orthopedic Grand Rounds at Harvard University Medical School in Boston. I gave the Harold Cummins lectureship at Tulane University in New Orleans. I was invited to participate in a symposium at the Mid-America Orthopedic meeting in Colorado Springs and I gave the Dr. Russell Rizzo Memorial lectureship here in Cleveland.
Q. Doctor, I'm going to hand you what we had marked as Exhibit 1. If you could, could you identify that for us?
A. This is what's called my Curriculum Vitae, which means my credentials, and it is accurate and up-to-date.

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Q. That sets forth the credentials that we've just been talking about?
A. Yes.
Q. Now, Doctor, as part of your practice do you ever have an occasion to examine individuals for either a second opinion or in consultation for individuals such as myself in connection with legal matters?
A. Yes. About five percent of the people that I see are people I see in consultation just to examine and send a report to somebody, a plaintiff's attorney, a defense attorney, a third party, the Industrial Commission of Ohio, second opinion, that sort of thing. All together that represents about five percent of my practice. Ninety-five percent of the people that I see are sick and injured patients that I treat.
Q. Is it fair to say, Doctor, you don't work for free, so you charge us for those services?
A. Yes.
Q. Now, Doctor, in connection with this case did you ever have an opportunity to examine Patricia Morris?
A. Yes.
Q. When exactly was it that you did that examination?
A. September 24th, 1993.

Q. Okay. Pursuant to that examination did you prepare a report?

A. Yes.

Q. Okay. Now, Doctor, if you feel it's necessary during the course of this examination, please refer to your report.

A. Thank you.

Q. Okay. Doctor, when you examined her when she came to your office, what exactly did you do?

A. Well, the first thing I did was to take a history, which is her story as she tells it to me. Whatever she says I put down. I asked her how she was hurt, how she's been treated, what her symptoms are today, and whatever she says I put down, and then I do a physical examination, I may take some x-rays if they're indicated and review whatever records I may have available.

A. Yes.

Q. I or, what were h sy to s of h time that y. u ex i ed her?

A. She said that the neck pain had persisted unchanged since the accident. She said it was located on

the right side of her neck. She said it was constant and varied in degree from mild to severe. She said it was moderate on the day I examined her. She said that it was made worse by any activity and was relieved by rest.

She said the neck pain did not radiate, it didn't spread anywhere, it just stayed right in her neck. She said she had not had any numbness or weakness in her arms. Numbness and weakness and pain going down her arms would be indications of a pinched nerve, and she had none of these symptoms.

The low back pain she said had improved. She said it was located across both sides at the level) the pelvis. She said that it would come and go and it was mild in degree. She said that she was not having any pain at the time of this examination. Since the pain came and went, I asked her if she was having any pain when I saw her. She said she was not having any pain then and she had last had pain two days ago when she was driving up from West Virginia to Cleveland.

She said the pain was made worse by sitting more than an hour or by standing more than an hour and was relieved by rest. She said there was no spread of the low back pain. Again, she had no numbness or weakness in her legs indicating that she did not have any symptoms of a pinched nerve.

Q. Okay. Then after you got her symptoms and you took the history, what did you do next?

A. Physical examination.

Q. All right, Doctor. If you could, could you just explain to us what it was that you did on the physical examination and what you found?

A. On physical examination Mrs. Morris appeared to be in no discomfort, that is just looking at her she certainly did not appear to have any pain. She said she was having moderate neck pain at the time, but she certainly did not look that way the way she acted and got up and moved around. She was instructed to let me know if anything caused her pain during the examination.

The gait, the way she walked, was normal and she moved about easily. She could walk on her heels and toes easily indicating good strength in her legs and good balance. Examination of her neck showed her to hold her head straight, it wasn't tipped to one side or the other. Neck motion was normal in range, it could go down and

completely normally.

She complained of pain on bending to the left and on turning her head to the left, the pain said to be felt in the right trapezius muscle, which is this big muscle on the right side of her neck. On exam there

was no spasm in the trapezii muscles.

The spasm is the involuntary contracture of a muscle when there is underlying pain and the muscle goes into spasm to prevent motion and to prevent the pain. You can feel spasm through the skin. There was no spasm in the trapezii muscles, these big muscles on the side of the neck. There was no indication of any tenderness in the muscles or ligaments of the neck.

The neurological examination of the arms showed the reflexes to be normal. Just as when you tap the knee and the leg kicks, there are other tendons that you can tap and the muscles will twitch. Actually, there are th r in the arms, and these were all normal and there : no numbness or weakness in the arms.

So the only finding on the neck was the fact she said she had pain in the right side of her neck when she turned her head to the left or when she bent her head to the left.

Examination of the lower back showed her to stand straight, she wasn't tipped to one side or the other. The low back motion was normal in range and without any pain she could bend down and back and side to side. There was no restriction of the motion and there was no spasm, this involuntary contracture of the muscles there was no spasm present.

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There was no tenderness found in the muscles or ligaments of the lower back. The Lasague sign was normal on both sides. The Lasague sign is a sign, a test that we do. With the patient lying on her back and with the knees straight, the leg is brought up in the air, straight up in the air like a periscope. This puts a stretch on the sciatic nerve as it goes down the back of the leg and if that nerve is being irritated it will produce pain in the back and down the leg. It did not in this case indicating there was no irritation of the nerve.

The Patrick sign was also negative on both sides. This is a test that we do with the patient lying 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 except that you're lying flat on your back. Then the first leg is brought down into sort of a figure four position. This puts a stretch on the muscles and ligaments of the lower back and if these are sore or inflamed will produce pain. It did not in this case.

Measurements of the legs showed the length to be equal, which you would expect. The circumference of the thighs and calves were equal, which you would expect, indicating that there was no muscle wasting or muscle weakness.

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The neurological examination of the legs revealed the knee jerks to be equal. This is when you tap the knee and the leg kicks. There's a similar reflex at the ankle where you tap the heel cord and the foot kicks. These were also normal.

There was no numbness in the legs and there was no weakness in the legs. The examination of the lower back was totally normal.

Q. Now, Doctor, just to go through some of these tests that you talked about and some of the findings that you had.

You indicated that the neck motion was normal in range. First of all, did you check for her range of motion with either active or passive range of motion tests?

A. Active range of motion. I asked her to put her head down and back and side to side.

Q. In other words, you had her do it herself as opposed to you moving her head

A. Yes. I touched the side of her head just to indicate where I want her to go, but I don't push it at all.

Q. Okay.

A. I ask her to stop if it hurts at any time because I don't want -- I tell her I don't want to hurt her and she should stop whenever it hurts and she did not, it moved completely.

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Q. She was able to move it a full range of expected motion on her own?

A. Yes.

Q. Doctor, you also indicated that when you examined her or when you took her history, excuse me, she indicated that she didn't have any radiating pain, what's the significance of that?

A. Well, radiating pain is pain going down the arms or the legs. When you have an irritated nerve in the neck or in the lower back the brain thinks that the irritation is coming from wherever the nerve is supposed to be going to. It's like a party line. It doesn't know that the irritation is taking place in the neck, it thinks the irritation is taking place where that nerve is supposed to go. So it feels as if it's going down the arm or down the leg, and this is called referred pain or radiating pain and she didn't have any of this.

Q. Now, Doctor, we've heard talk about disks in the cervical spine and how those can affect these nerves. Could you explain a little bit about that, what the anatomy of the cervical spine is and the disk spaces and the nerves?

A. Well, this is a model of the lower back, but all the bones in the whole spine are basically the same. In the neck they're smaller. I use this model because the bones are bigger and they're easier to be seen by the people in the jury.

The bones in the back are stacked one on the other and between each one of the bones is a disk of cartilage that acts like a shock absorber. Down the back run the nerves in the canal and at each level a nerve is given off going to the arms or legs or wherever they're supposed to go and they come out in what we call a foramen, which really means, it's Latin for a hole. That comes out this little hole at each level.

If the nerve is irritated because a disk is bulging out or any other reason, you will feel, as I said, the referred pain going down the arm or down the leg.

Q. All right. Now, Doctor, during your examination of Mrs. Morris did you find any clinical s that she d any typ of nerv impingement or nerve am or t nerve injury resulting from her ?

A. No absolutely not, none at all.

Q. What were the tests th would e specifically done to look for those?

A. I did a neurological examination of her arms and it was totally normal.

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Q. Now, did you also check the strength of her arms?
A. Yes.
Q. How did you do that?
A. I asked her to grip my hands and I also tested the muscles around her elbow and they were normal.
Q. Now, you mentioned in your report on direct examination that you checked for atrophy of the muscles.
A. Yes.
Q. What's the significance of atrophy if it's present?
A. Well, if the nerve going to a muscle is damaged in any way the muscle will tend to lose its bulk sometimes before we can actually appreciate a weakness, particularly in the legs because the legs are so strong. The two legs ought to be the same size so that you can measure the circumference of the thighs and the calves and if they're equal this indicates that there is no wasting away of the muscles.
In the arms that's not the case because our dominant arm, if we're right-handed our right arm, is bigger than our left because we use it more than the left arm, but you can't do that in the legs because you walk one leg and then the other, so you don't use one leg more than the other, and so the two legs are generally the

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same size, whereas the dominant arm may be larger than the nondominant.
Q. Okay. During the time that you examined her, did she seem to be in any distress or have any complaints that she voiced to you about a discomfort or pain during the actual examination itself?
A. The only time that she said she had pain was when she bent her head to the left and when she turned it to the left and then she said she had pain in the muscle over here (indicating), but that's the only time she had pain at all. There was no tenderness or anything like that.
Q. Doctor, during the course of this case there's been talk of degenerative changes in the spine and things such as osteophytes and spurs and things of that nature. Can you have a bulging disk as a result of degenerative problems in a person's spine?
A. Oh, yes, we see it quite frequently. They've shown -- now that we have sophisticated studies like an MRI, which can visualize these disks, or a CAT scan, which can visualize the disks, they've shown that people over 65 about 90 percent of them have some bulging disks and some degenerative disks just normally without any symptoms at all.
Most of us, as we get over 40, begin to

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have spurs, which are little projections of bone from the ligaments pulling on the bone. They form like little icicles of bone and we all have this as we grow older.
Q. Okay. That process, that degenerative process, is that a short-term process or is that a long-term, long-standing process?
A. That's a very long-standing process. It takes years to develop the osteophytes, the little bony spurs and degenerative changes. It's a gradual process over a long period of time.
Q. Okay. If there were signs of degenerative spurs, either osteophytes or bone spurs, on an x-ray shortly after this accident, would those have been something that occurred since the accident or would that be something that had been there for a considerable time before the accident?
A. Oh, no, those would have been there for quite a while before the accident. It takes a long time, years to develop the spurs. They gradually increase and over time the natural history of the condition is that they will gradually increase, but it takes a long time to do it.
Q. What's the process or the effects of degeneration that causes a disk to bulge?
A. There's a very heavy ligament about the disk

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called an annular -- annular means circular or around the disk -- a big heavy ligament, and that keeps the disk in. The disk is sort of a much more fluid, gelatinous type of material, and if that ligament degenerates then the disk will bulge out a little bit just like a soft spot in a tire.
Q. Now, Doctor, Mrs. Morris was examined by a Dr. Weinstein and there was a CAT scan done and a myelogram done of her neck. At this time I present you with the results of that test. If you could to the jury, could you read what the results of those tests are?
A. Should I explain what a myelogram and a CT scan is?
Q. Yes, that might be helpful, as well.
A. A myelogram is a test that we do by putting a needle, actually it's put in the lower spine and then material is run up to the neck. You put a needle into the back and there's a sack that goes around all the nerves and the sack is filled with fluid, sort of a watery fluid, and they put in some material which the x-rays won't go through, so on the x-ray it looks white although actually in the syringe it's clear. We call it dye. It's not like dye you dye your clothes with because it's white, but it goes in and the x-rays won't go through it.

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You put this dye in the spinal fluid and then tip the patient and the dye runs all the way up to the neck and it outlines the inside of the canal where the fluid is and makes it much more evident on the x-ray. You can't see it actually on plain x-rays unless there's something contrasting like that.

The same thing with the CT scan. A CT scan is a test that we do with the patient lying flat and a whole series of x-rays are taken in a circle around the patient and the machine is moved a few millimeters and it's done again. All these x-rays are fed into a computer and you get a picture as if you sliced the spine like this (indicating) and looked at it end on and can see the spinal cord and the nerves and the disks as if you're looking at them straight on like that (indicating).

If you have this all filled with myelogram dye then it makes it even more evident, you can see the nerves and you can see the spinal cord even more evident if there's any impingement on the nerves or on the spinal cord.

So the CT myelogram then is a myelogram plus a CT scan done with the myelogram dye in place and all it showed was the osteophytes, that is the little bony spurs, at four different levels in the lower part of

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the neck. We numbered the bones from the top dow n There's seven in the neck, so C-4,5,6 and 7 would be the fourth, fifth, sixth, and seventh cervical, which means neck, vertebrae, which is the place where most of the wear and tear takes place in the neck, at the lower portion of your neck, those are the places we normally see bone spurs.

There was no evidence of any disk bulging or herniation on this study, all they saw were little bone spurs, which is disk degenerative changes.

Q. There were some words used in these ports I kind of t to refer to a littl bit. They mentioned Omnipaque, is this the dye that you're talking about?

A. That's the dye.

Q. They said that's introduced into the lumbar subarachnoid space.

A. That's the sack with the spinal fluid in it and then put in the lower back. Lumbar is lower back So they put the needle in the lower back and then they introduce the dye there and then tip the patient up and let the dye run up to the neck.

Q. Okay, Then the report goes on to say that there are posterior osteophytes.

A. That's little bone spurs. Posterior means towards the back. This is the front of the spine

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(indicating) and this is the back (indicating). The little osteophytes were towards the back of the spine where you get the wear and tear.

Q. Now, osteophytes, is that a degenerative process --

A. Yes.

Q. -- or is that a traumatic event?

A. No, that's degenerative, little bone spurs which are degenerative.

Q. The impression or the interpretation was that this woman was suffering from osteophytosis, what is steophytosis?

A. It doesn't say she was suffering from anything, it just says that's what she had was osteophytosis, which means just the presence of osteophytes. It's Greek for she has bone spurs.

Q. Okay. They also say there's no nerve root impingement, what does that mean?

A. That means that the nerve roots are perfectly clear, there's nothing pressing on the nerves or irritating the nerves at all.

Q. Now, Doctor, do you have an opinion as to a reasonable degree of medical certainty as to the conditions that Mrs. Morris was suffering from at the time that you examined her?

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A. Yes.

Q. What is that opinion, Doctor?

A. It was my opinion that Mrs. Morris -- that I found no objective evidence of injury at this time.

Now, objective evidence are the things which I can tell for myself, such things as muscle spasm, neurological changes, swelling, redness, heat over an area, x-ray changes, all these things, these are objective evidence.

Subjective evidence are those things the patient tells me are present and I can't tell whether they are or not, she just tells me they are. I found no objective evidence of injury at the time I examined her.

A diagnosis based entirely on what she told me, a possible -- and I'll say it first in medical terms -- cervical myofascitis. Cervical means neck. Myofascitis, myo means muscle, fascia means ligament, and itis is an inflammation. So it's an inflammation of the muscles and ligaments of the neck.

The diagnosis is based entirely on the fact that she said she had pain on neck motion. There were no substantiating subjective or objective findings to support that one subjective finding and I found no objective or subjective evidence of any injury to her lower back.

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Q. Doctor, you also indicated that when she turned her neck to the left she complained of pain upon motion and then you also said that when you actually touched the neck muscles she didn't have any complaints, is that consistent?

A. No. You would expect that if she had pain from the neck muscles and ligaments that they would be tender; if she had pain when she turned her head, you would expect that these muscles and ligaments would be tender and they were not.

Q. Doctor, to a reasonable degree of medical certainty, do you feel that the osteophytes or the osteophytosis that were demonstrated on the various x-rays and the CAT scans, do you have an opinion as to whether those were caused by this accident?

A. Yes.

Q. What is that opinion, Doctor?

A. It is my opinion, based on reasonable medical certainty, that the osteophytes or bone spurs are completely degenerative in nature and are unrelated to this accident.

Q. Doctor, to a reasonable degree of medical certainty, do you think that there's any surgery warranted in Mrs. Morris' case?

A. No. In my opinion, based on reasonable

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medical certainty, there's no indication whatsoever for any surgery. She has absolutely no nerve root findings that I found and certainly none that any other doctors found either actually, and there's no reason at all to have surgery, certainly not for anything which she might have injured in this accident.

Q. Okay. Doctor, in conjunction with the examination that you performed with Mrs. Morris did you also have some records to review?

A. Yes.

Q. Which records did you review?

A. I don't think I had any records -- here's some records I had at the time that I saw her and then I've had some records since then, but I'm not sure what I had at the time I saw her. Since then I had records from Dr. Frederick Armbrust and Dr. Kenneth D'Amato and also Victor Richenstein from St. Joseph's Hospital and also records of Chiropractor Bond and some records from the Cleveland Clinic which didn't add anything.

Q. Doctor, did you have enough time to adequately examine Mrs. Morris and perform an adequate examination of her?

A. I took enough time, whatever time it takes. I go in, I do the history and the physical examination

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amount of time, whatever it needs. Yes, I took as much time as I needed.

MR. JOHNSON. Thank you, Doctor, that's all the questions I have.

MR. WEISMAN Does Ms. Singer have any questions?

MS. SINGER: Not at this time.

MR. WEISMAN: okay. For the record, I'm Mitchell Weisman. I represent Mr. and Mrs. Morris, the plaintiffs in this case.

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CROSS-EXAMINATION

BY MR. WEISMAN:

Q. Dr. Kaufman, can you agree with me to answer questions with a yes or a no where appropriate?

A. If I am able to I'll be glad to.

Q. Very good. We'll try to move things along.

Dr. Kaufman, you would agree with me that most people over 40 have some degenerative disk disease and arthritis of the spine?

A. I would say so to a certain extent, yes.

Q. To a greater or lesser extent.

And the fact that they have degenerative disk disease, they may or may not have pain associated

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with that disease; is that accurate?

A. Yes.

Q. And the fact that Patricia Morris in this case showed some degenerative disk disease on x-ray in 1992, that may or may not be significant in terms of whether or not she had any pain ~~at that time~~ before collision; is that fair? In other words, the fact that she had arthritis showing up on x-ray to some degree may or may not have been significant back in 1992? before collision

A. Yes.

Q. Do you have any information, Dr. Kaufman, that suggests Patricia Morris had any neck pain before ~~June 22nd, 1992~~ the day of the collision?

A. No.

Q. Do you have any information that Patricia Morris was restricted from normal daily functioning before ~~June 22nd, 1992~~, the day of the collision?

A. No.

Q. Is it possible, sir, to sustain severe ~~neck~~ injury in an automobile collision just in general terms?

MS. SINGER: Objection.

MR. JOHNSON: Objection.

A. It's possible. Certainly you can -- you can break your neck.

Q. Sure. And would you agree with me in

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general that the faster cars are going in an automobile collision, the more force will be imposed on passengers involved in the collision?

MR. JOHNSON objection.

MS. SINGER: Objection.

A. Not necessarily. It all depends.

Q. But in general terms --

A. Well --

Q. -- if cars are going --

MS. SINGER: objection.

MR. JOHNSON: Objec t .

A. That all depends how they're going and how the passengers are seated and whether they have a headrest behind their head. Are you talking about their necks now?

Q. Okay. Well, let's just talk about speed. If someone was rear-ended by somebody going ten miles per hour, you would expect less force than if they were rear-ended by somebody going 40 miles per hour; is that a general --

MS. SINGER: Objection.

A. There would certainly be less force on the car.

Q. Okay.

A. But I don't know about the person, that

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would depend.

Q. Do you have any familiarity with the severity of this particular collision involved in this case?

A. No.

Q. So as to the speed of the vehicles, you're not familiar with those facts?

A. No.

Q. As far as the severity of the property damage to the vehicles, you're not familiar with those facts, I take it?

A. I just take care of people, not automobiles.

Q. Okay. Now, the fact that someone has degenerative arthritis in their spine, as a general statement would you agree with me that that may make the person more susceptible to injury? In other words, when they're involved in something like an automobile collision, if the spine has already started to degenerate to some extent with arthritis, can that make the person more vulnerable to being hurt?

A. Yes.

Q. Now, we talked, I think counsel used the expression, but if he did not, soft tissue. When we talk about soft tissues, and you orthopedic doctors talk about soft tissues, are we referring to non bony things like

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muscles and ligaments and tendons, those things?

A. Yes.

Q. Can soft tissues be permanently injured by trauma such as automobile collisions?

A. Yes, it's possible.

Q. In other words, you could stretch or tear a muscle or a ligament to the point that you have problems for the rest of your life with that part of your body?

A. That's possible.

Q. Have you treated people over the years, Doctor, with long-term -- just to use an example of this soft tissue problem -- with long-term low back problems not involved with the spine? In other words, you know that they have a muscular problem with the low back. Have you seen people --

A. Muscles of the spine?

Q. The muscles surrounding the spine, yes.

A. These are not involving the lumbar spine?

Q. Not involving the bony part of the spine.

A. Yes.

Q. So it is possible to have long-term permanent soft tissue problems?

A. It's possible.

Q. Now, in this particular case, Dr. Kaufman, you were hired by the Allstate Insurance Company to

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examine Patricia Morris and to issue a report to them and testify if necessary; is that the idea?

A. Yes.

Q. When you examined Patricia Morris -- and, I think, you mentioned this in the first part of your report -- a member of our office accompanied her; is that accurate based on your report?

A. Lori Weisman.

Q. Right. Now, if our information is based on notes taken that the exam started or you came in to see Patricia Morris at about 9:35 in the morning, do you have any idea if that would be accurate, do you keep those kinds of times?

A. No, I don't keep track of how much time. I take as much time as is necessary and I leave. I don't keep track of the time.

Q. Based on your custom of doing things, if we noted that the history went from about 9:35 to 9:40, approximately five minutes, would that be consistent with this type of a case?

MR. JOHNSON: Objection.

A. No. What I've testified to this afternoon I'm sure of, I don't know how long it took.

Q. I'm saying based on --

A. I think that five minutes to take the

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history is probably a lot less than it actually took. It generally takes much longer than that, but I don't know how long it took.

Q. Okay. If the physical exam was noted to be from 9:43 to 9:55, in other words, 12 minutes, minus there was four minutes apparently you were called away for a phone call, so approximately eight minutes to do your -- I'm talking about the nands-on portion of the exam. Would that be, do you think, consistent with either your memory or your report?

MR. JOHNSON. Objection. Sustained

A. Well, I don't remember it at all, of course, as I've just testified.

Q. Okay.

A. And it doesn't take long when there's nothing wrong, but I don't know how long it took, I have no idea.

Q. Okay. Now, with respect to the history given to you by Patricia Morris, I think she stated -- you can look at it, if you want, page 2 of your report, paragraph 2.

In paragraph 2 Mrs. Morris said there have been no previous or subsequent injuries or symptoms in the low back or neck; did I read that accurately?

A. In the above areas, that's right.

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Q. So in the relevant areas that were complained about in this collision, the low back and the neck, she said that she has not had any other injuries like automobile collisions or falls; is that what she stated?

A. That's what she said.

Q. Do you have any information, as supplied by defense counsel, that you feel that she was not accurate in any way on that?

A. No.

Q. So, at least to your knowledge, based on your review of the case, you know of no significant injuries to her low back or neck?

A. If she's had any other injuries before or after I was not informed of it.

Q. She also told you, I think -- and it's in your report -- that she was in good health generally; is that what she stated?

A. That's what she said.

Q. And that she's had no serious illnesses or operations in her life; is that the idea?

A. That's what she said.

Q. To your knowledge, based on what you've reviewed, that s accurate?

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Q. I mean, but have you been provided -- as far as the medical records, do you know of anything different than that?

A. No, not that I know of.

Q. Okay. You cannot, as a physician, feel somebody else's pain, is that generally an accurate statement, other than I know you can sense spasm and so forth, but you can't actually feel somebody's pain?

A. You can try to assess it by the way they look, the way they bear themselves, the way they move about, and by trying to elicit pain such as tenderness, but you can't actually feel. You have to depend on them to tell you when it's painful.

Q. Sure. I mean like if I'm sitting here with a headache, as a physician you can examine me for an hour, you can't necessarily tell I have a headache; is that generally true?

A. Not generally true. I think most patients that we examine who have pain appear to be in pain. You look at them and they look like they're in pain, they move like they're in pain, but I can't feel the pain if that's your question, I just observe it.

Q. Okay. If you assume, Doctor -- I understand what your findings are and that you felt that you could not find any neck problems with Mrs. Morris; is that your

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position?

A. I said -- no, that's not what I said.

Q. What was your finding with regard to her neck?

A. She said that she had pain on turning her head and bending her head, but I found no substantiating findings to substantiate that.

Q. I'm saying that came from her, you didn't find any problems with the neck?

A. I didn't find any objective evidence of any injury, that's correct.

Q. Right. Okay. If you assumed -- I want you just to assume for the purpose of this question that she's had neck pain on and off since the collision three years ago. Can you just assume that fact, whether you believe it or not, can you assume that for the purpose of this question?

A. I'll try.

Q. Okay. If you assume that fact and assume that she did not have any other injuries that we know of regarding her neck, would you know of any other cause of her problems other than the collision?

A. She's got degenerative changes in her neck and she might have some pain from that.

Q. So it could be either; it could be from the

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arthritis, it could be from the collision?
A. Yes.
Q. Or maybe a combination?
A. No -- well, yes, because you've got part of her pain from one. She's got so little findings when I examined her anyway, but if you assume that she's got pain, you say what could possibly be the cause of it, it certainly would be the degenerative changes in her neck.
Q. Dr. Kaufman, do you know who her treating physicians were in West Virginia?
A. Well, as I say, I reviewed some records. I'm not sure if she told me who treated her. Let me see. Chiropractor Pogano treated her in West Virginia.
Q. Did you review his records?
A. No.
Q. How about Dr. Wolford. did you review his records?
A. No. She didn't tell me about Dr. Wolford. I haven't seen any records from him.
Q. How about Dr. Weinstein?
A. I saw some records from Dr. Weinstein recently, I think.
Q. Is that the MRI and so forth?
A. Yes. I saw the report of his, too, recently.

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Q. Was that today?
A. Just today, yes.
Q. That was when you prepared with defense counsel beforehand?
A. Beforehand he showed them to me, yes. This had occurred since I had seen her. I hadn't seen her.
Q. Now, you normally note in your report if you have a problem with a patient; if they're not cooperating and so forth, do you usually note that?
A. I might, yes.
Q. You did not note any difficulties particularly with Mrs. Morris, did you?
A. No.
Q. So at least based on your report -- I know you don't have a specific memory you mentioned, but based on your report, Patricia Morris was cooperative with you?
A. I have no record that she was not.
Q. And apparently when you took the history she answered your questions in a straightforward manner?
A. Apparently.
Q. And from time to time do you note in the report if you feel somebody is exaggerating or misstating their symptoms, you'll put that in the report from time to time?
A. I might.

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Q. Did you note anything in your report indicating that Patricia Morris you felt was somehow grossly exaggerating her symptoms or anything like that?
A. No.
Q. Doctor, you are an orthopedic surgeon, meaning part of your work involves surgery, correct?
A. That's correct.
Q. You currently though, you do not operate on the neck; is that right?
A. That's correct. I take care of a lot of injured necks, but I don't operate on them.
Q. Now, as far as examining people like Patricia Morris, in other words, on behalf of an attorney or an insurance company, you do these examinations on a regular basis, correct?
A. About five percent of my patients that I see are for a plaintiff's attorney or defense attorney or Industrial Commission of Ohio or a second opinion or third party, that sort of thing.
Q. Okay. In terms of examining for lawyers -- let's just call it medical/legal type.
A. Consultations, I don't keep them separate, I don't know.
Q. In terms of these examinations that we're talking about, based on other cases we've had would you

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say that-six to eight per week is a ballpark fair estimate?
A. Yes, I think about six probably, something like that. Some weeks less, but about that.
Q. Give or take. Your charge for when you examine and issue a report in a medical/legal context is $350?
A. That's correct.
MR. JOHNSON Objection.
BY MR. WEISMAN:
Q. Is that the minimum charge typically?
A. That's the only charge.
Q. If the records are more voluminous, there's no additional charge?
A. Well, if there's a lot of records, but if there's not very many records I don't charge for them. It just depends if it's going to take another hour to go over the records, I obviously would charge more for that, but it's a flat rate charge for the examination and the report regardless of how long the examination and the report takes.
Q. A deposition like we're doing here today, again, ballpark estimate, if we said that you're testifying about twice a week in medical/legal matters, is that a fair estimate?

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MR. JOHNSON: Objection.
A. Asked either by a plaintiff's attorney or asked by a defense attorney I would say that's true.
Q. And your charge for testifying is $850?
A. That's right, for a half a day.
MR. JOHNSON objection.
BY MR. WEISMAN:
Q. Well, here, we started here at about 4:30, correct? We were supposed to, I was a few minutes late.
MR. JOHNSON More than a few.
A. It can go as long as anybody wants. It's a flat rate fee and that's all we charge.
Q. Okay, And you prepared with Mr. Johnson prior to the deposition?
A. We talked for about a half an hour.
Q. Well, in any event, you prepared for a half an hour, I'm going to estimate this wilt be an hour and a half deposition or something like that and the charge --
A. Is the same.
Q. -- is $850?
A. It's the same whether it took three hours or four hours or whatever.
Q. Okay. You've been reviewing matters for attorneys and issuing reports and testifying for some 30 years of your practice, correct!

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A. Yes.
Q. When you examine in these type of medical/legal situations, you take the time to treat each case with care, I take it?
A. Yes.
Q. And each case is different and unique?
A. Yes.
Q. What I mean by that is you've got a different patient and they're giving different histories, they've had different things that cause their injury, so each situation is unique and different generally?
A. Well, no, each is unique, but not necessarily different. There are a lot of people --
Q. A lot of automobile collisi ns
A. A lot of people injured in automobile accidents to the rear, so that certainly is not different from one case to another, but I treat all patients as individuals and as unique people.
Q. A therefore, d have diff(conclusions based on different cas :s, case to case?
A. Not necessarily. I mean, it all depends what's wrong with them. Again, as I say, there's a lot of similarity. I may come up with the same diagnosis on more than one occasion, it all depends on the individual.
Q. Doctor, would you please read for the jury

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the last three paragraphs of your report on Patricia Morris starting with, on the second page, "Based on the above history"?
A. "Based on the above history and physical examination, I find no objective evidence of injury at this time." And, of course, I did not. Diagnosis is based entirely on what the patient has told me, possible cervical myofascitis. The diagnosis is based entirely on the patient's statement that she had pain on neck motion, which is correct. There are no substantiating, that is confirming, subjective or objective findings. I find no objective or subjective evidence of injury to the lumbar spine, which is the low back, at this time, which is absolutely true.
Q. Showing you a report, another case handled by our office, Franklin Delaney, would you read the last paragraph of the report, June 22nd of '92, would you read the last paragraph of that report?
MR. JOHNSON: objection. Just.
A. 1992, so that would be three and a half years ago.
Q. Right. Just the last paragraph.
A. "Based on the above history and physical examination, I find no objective evidence of injury at this time. Diagnosis is based entirely on what the

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patient told me, possible lumbosacral myofascitis. The diagnosis is based entirely on the fact the patient said he had mild pain on motion."
So this is another case of yours that didn't have very much wrong.
Q. Yes, and here's another one, Anita Sandor.
A. I can't help it your cases --
Q. August 27 of '92. If you would, just read the last paragraph.
MR. JOHNSON: Objection. Just.
A. I don't pick the people you represent.
"Based on the above history and physical examination, I find no objective evidence of injury at this time." There was nothing wrong with this patient. "My diagnosis is based entirely on what the patient has told me, cervical myofascitis, mild."
So, again --
Q. Here's a client, Stephanie Fugate, March 12 of '93.
A. This one was in '92, as well.
Q. Would you read that last paragraph?
A. This one is in '93, okay. "Based on the above history and physical examination, I find no objective evidence of injury at this time. My diagnosis is based entirely on what the patient has told me, a

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possible cervical, dorsal, and lumbosacral myofascitis."

So it was possible she hurt her neck, her mid back, and her low back. Again, the diagnosis was based entirely on the patient's complaints of pain to me. "It is my opinion that the knee pathology found by Dr. Rodriguez was unrelated to this automobile accident."

So apparently she complained of some problems with her knee, which had nothing to do with the automobile accident that she was trying to bring in.

MR. JOHNSON: M(: strike.

BY MR. WEISMAN:

Q. Here's a report dated t 10 f '92 on a Wayne Edwards, one c our li s. Here the last -- just where I bracketed the t t sentences ld you read that, please, for the jury?

MR. JOHNSON: Objection.

A. The paragraph, I read it before. Cervical degenerative spondylosis, which means degenerative changes in the neck, with some bulging of the cervical disks. The degenerative changes obviously predated the accident. Status post cervical fusion, that is fusion of her neck which is solid. Status post lumbar laminectomy, which is an operation on her lower back for spinal stenosis, which is narrowing of the canal.

"It is my opinion that the lumbar

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symptoms are unrelated to this accident. I cannot explain the patient's continuing symptoms in view of th apparently solid cervical fusion." That is her neck was solid and she was still complaining of pain.

Q. Now, Doctor, I guess it would be your position that that's coincidental. That's just a sample of the reports that I pulled, but let me ask you this: You were examining, you said, in the ballpark of six a seven people a week?

A. I believe I said six. I think you said five or six.

Q. I said six to eight, it was an estimate, and you said around that, maybe six.

MR. JOHNSON: Objection.

A. Five or six probably.

Q. In any event, over the last couple of years you've issued literally hundreds of reports in medical/legal cases if you did the multiplication, correct?

A. M-hm.

Q. My question to you is this: Can you either name or locate here in your office a report where you examined on behalf of the defense --

A. I don't examine on behalf of anybody; I'm asked by.

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Q. Asked by the defense -- where you wrote a report favorable to an injured plaintiff?

A. Oh, yes.

MS. SINGER: objection.

MR. JOHNSON: Objection.

A. I can't find it. Of course, I can't put my hand on it, but I know there have been reports, actually reports in which --

Q. Doctor, if you would, just answer my question.

A. Yes.

Q. Can you locate one now?

A. No.

MR. WEISMAN: - okay, thanks. I have nothing further. objection.

MS. SINGER:

(Thereupon, there was a brief recess.)

CROSS-EXAMINATION

BY MS. SINGER:

Q. Doctor, my name is Marilyn Singer and I'm representing the Anthem Insurance Company in this lawsuit and I have a few follow-up questions.

You were asked in your direct examination by Mr. Johnson to review some test results, specifically

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the result of a CT myelogram. Could you tell the ladies and gentlemen of the jury about the accuracy of a CT myelogram as a test for determining problems with somebody's cervical spine?

MR. WEISMAN: Objection.

A. It depends what the problems are. If the problems are pinching of a nerve root, irritation of a nerve root because of something pressing on it, it's very accurate. There may be other problems in the cervical spine, but a CT myelogram is particularly accurate for outlining the nerves and the spinal cord and if there's anything pressing on those.

Q. Would that include a bulging disk pressing on a nerve root?

A. Yes, bulging disks, as well.

MR. WEISMAN: Objection.

BY MS. SINGER:

Q. And, in fact, the test results that you reviewed showed no such bulging disk and no such irritation of a nerve root; is that correct?

MR. WEISMAN: Objection.

A. That's correct.

Q. And you were asked on cross-examination by Mr. Weisman if a person can have a permanent soft tissue injury and you indicated that a person could.

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In your experience, Doctor, when somebody does have a permanent soft tissue injury. Is there objective as :ll as subjective finding of th t ;j)

A. Not always. Usually there are more than one subjective finding, but sometimes you don't have -- later on in the course of the problems you may not have any objective findings, but you certainly expect to find confirmatory subjective findings, such as if they have pain on motion you would expect to find tenderness in the muscles and ligaments.

Q. C . And in this case of Patricia Morris you u that she ;p :d of some pain on some motion of her ck, l you didn't fi d any c esp) tenderness; is that correct?

A. That's correct.

Q. You indicated th you don't do neck surgery anymore or now anyway, but do you evaluate people and then refer them out for surgery of the neck?

A. Yes. I treat a lot of patients with injured necks, of course. I treat them conservatively and if they need surgery I would refer them out for the surgery. I do low back surgery, but I don't do neck surgery.

MS. SINGER I don't have ar ther questi Tha you very :h.

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RECROSS-EXAMINATION

BY MR. JOHNSON

Q. Doctor, just a few follow-up questions.

Mr. Weisman asked you if there was any indication in the records that Mrs. Morris had any pain or restriction of movement in her neck before this accident. My question to you is did you find any objective signs that she had any pain or restriction of motion when you examined her?

A. She complained of some pain on motion of her neck, but no restriction of motion at all.

Q. Okay. When the woman that accompanied Patricia Morris came to your office along with Mrs. Morris, did she tell you that she was Mitch Weisman's sister-in-law?

A. She probably did actually. Obviously her last name was Weisman and I knew she must be related to the people in the office.

MR. JOHNSON Doctor, that's all the questions I have, thank you.

MR. WEISMAN: Thanks. Nothing further.

THE WITNESS: I'll waive viewing and I'll waive signing.

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(DEPOSITION CONCLUDED.)
(SIGNATURE WANED.)

- - -

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

CERTIFICATE

I, LAUREN I ZIGMONT, a Notary Public within and for the State of Ohio, duly commissioned nnd qualified, do hereby certify that the within-named witness, RICHARD S. KAUFMAN, M.D. was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was reduced to stenotypy in the presence of said witness, and afterwards transcribed by me through the process of computer-aided transcription, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition wm taken at the time and place in the foregoing caption specified.

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

IN WITNESS WHEREOF. I have hereunto set my hand nnd affixed my seal of office at Cleveland, Ohio, on this 3rd day of November, 1995.

_____
Lauren I. Zigmont, a Notary Public in and for the State of Ohio.
My commission expires December 3, 1995.