IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

JAMES WILKENS,

Plaintiff,

-vs-

CASE NO. 324250

ABLE RENTS COMPANY,

Defendant.

- - - -

Deposition of RALPH KOVACH, M.D., taken as if upon cross-examination before Heidi D. Smith, a Notary Public within and for the State of Ohio, at the offices of Ralph Kovach, M.D., 9700 Garfield Boulevard, Garfield Heights, Ohio, at 1:15 p.m. on Monday, March 2, 1998, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiff in this cause.

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On behalf of the Plaintiff;

John F. Gannon, Esq.
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On behalf of the Defendant.

RALPH KOVACH, M.D., of lawful age, called by the Plaintiff for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF RALPH KOVACH, M.D.

BY MR. SUCHER:

Q. Doctor, would you please state and spell your name for the record.

A. Ralph Kovach.

MR. SUCHER: Just let the record reflect that we are here pursuant to agreement of counsel. Is that correct, John?

MR. GANNON: Yes.

Q. Doctor, you've been deposed before. We don't have to go over the ground rules, do we?

A. No.

Q. Okay.

A. Well, I'm sure you won't ask something that you're not supposed to.

Q. I will try not to. If I do, there will be an objection.

Doctor, would you first give the court

reporter your file so we can have it marked as an exhibit?

A. The entire file?

Q. The entire file, please.

A. I won't surrender my whole file, but it can be marked and I'll give you copies of everything I have and it will be duplicated.

Q. That's fine.

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(Thereupon, Plaintiff's Exhibit 1 was marked for purposes of identification.)

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MR. SUCHER: Just let the record reflect that Dr. Kovach turned over what appears to be his entire file on James Wilkens and we marked that as Plaintiff's Exhibit 1.

Q. Doctor, Plaintiff's Exhibit 1 is your entire file on this case, is that correct?

A. Yes, sir.

Q. Doctor, would it be correct to state that any materials that you reviewed in this case were forwarded to you by Mr. Gannon?

A. I didn't understand.

Q. Doctor, would it be safe to say that any

materials that you reviewed, any materials in this file had all been forwarded to you by Mr. Gannon?

A. Oh, yes.

Q. Nothing was forwarded to you by any independent source, is that correct?

A. No, sir.

MR. SUCHER: Can you mark this 1A, please.

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(Thereupon, Plaintiff's Exhibit 1A was marked for purposes of identification.)

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Q. Doctor, I'm going to hand you what's been marked as Plaintiff's Exhibit 1A, which is a two-page letter dated December 29th, 1997 which is addressed to you by Mr. Gannon.

Now, doctor, I would presume that you've had an opportunity to review that letter prior to today's deposition?

A. Oh, yes, I did.

Q. Okay. And, doctor, what is the purpose of that, what we'll refer to as a transmittal letter?

A. Well, the purpose of this is to give me some idea of an accident and when it occurred and the

general mechanisms of how it occurred and also that the claimant has had treatment and some of the reports of these treatments and who rendered the treatments and what has been filed and what it was allowed for and then also some records of treatments that he had including a report of magnetic resonance imaging from Marymount, and he asked me to conduct an examination and review the records and after I've done that to give an opinion what I thought the injury would be and whether or not he had a herniated disc that can be related to the incident of September of 1998.

Q. Doctor, would it be safe to say that part of that letter does contain an outline or a summary of some of the medical care that was done in this matter?

A. Yes, it does.

Q. And everything in that letter though was prepared by Mr. Gannon, is that correct?

A. Yes.

Q. And the issues that you're to address, those were at the request of Mr. Gannon, is that correct?

A. Oh, yes.

Q. Did you receive any letters from any other individuals to perform an examination of Mr. Wilkens other than Mr. Gannon?
A. No.
Q. And would you agree with me that this examination was performed by you for Mr. Gannon, is that correct?
MR. GANNON: Objection. For my client.
Q. For Mr. Gannon's client. This examination was performed for Mr. Gannon's client, isn't that correct, doctor?
A. Yes. I think essentially that covers it.
MR. SUCHER: Mark this 1B.
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(Thereupon, Plaintiff's Exhibit 1B was marked for purposes of identification.)
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Q. Okay. Doctor, I'm going to hand you what's been marked as Plaintiff's Exhibit 1B, which appears to be a fax memo from Mr. Gannon to yourself dated January 28th of 1999.
MR. GANNON: '98.
MR. GANNON: 1998. I'm sorry. Thank you, John.

Q. And, doctor, I take it since this was in your file you had an opportunity to review that?
A. Yes, sir.
Q. Okay. And those are specific questions that Mr. Gannon or specific things Mr. Gannon wanted you to do during your examination of James Wilkens, is that correct?
A. Yes.
Q. Okay. Were you asked by anybody else to perform any specific tests or to ask any specific questions?
A. No. I have not other than Mr. Gannon had any contact with anyone.
Q. So would it be safe to say the only contact that you had with any individual other than today is with Mr. Gannon, is that correct?
A. In what way do you mean? You mean as far as this case is concerned?
Q. Yeah. As far as this case is concerned.
A. Only with Mr. Wasser.
Q. Mr. Goldwasser?
A. Goldwasser. I'm sorry.
Q. Did you discuss any of the issues in this case with Mr. Goldwasser?
A. No.

Q. Okay. He just accompanied Mr. Wilkens to his defense medical?
A. He was representing Mr. Wilkens' interests.
Q. Right. He was here. He was present. But you weren't involved with him in any discussions about the particular treatment or diagnosis?
A. No, sir.
Q. The only person that you ever talked to about diagnosis or treatment or opinions in this case is Mr. Gannon, is that correct?
A. Yes.
Q. Okay. When we look at Question Number 1, Mr. Gannon wants you to ask Mr. Wilkens about an incident involving moving chairs and developing pain in March of '97 referred to on the second page of Dr. Moss' report. Did you ask Mr. Wilkens that question?
A. I believe I did and in my report --
Q. Is it in your office notes?
A. No, it's not.
Q. It's not in your office notes?
A. It's not in this. I don't write everything down. It would be ten times as long as my typed report.

MR. SUCHER: Can you mark that as

1C.

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(Thereupon, Plaintiff's Exhibit 1C was marked for purposes of identification.)

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Q. We have marked as Plaintiff's Exhibit 1C, which appears to be your handwritten notes that you took during the examination and history of Mr. Wilkens, is that correct, doctor?

A. Yes, sir.

Q. And are these the only notes that you took that day?

A. Yes.

Q. Now, is it your testimony that there is nothing in that particular document relating to this question about moving chairs?

A. No.

Q. Okay. Doctor, is there any other correspondence between you and Mr. Gannon other than the transmittal letter that we've marked as 1A and the fax that we've marked as 1B?

A. Yes.

Q. Okay. Where are those letters?

Okay. Mr. Gannon then faxed you or his office faxed you on February 17th, '98 a

supplemental report of Kenneth Moss, is that correct?

A. Yes, sir.

Q. Any other letters of correspondence between you and Mr. Gannon, faxes or letters other than the three documents that we've talked about?

A. I believe that's all I have.

Q. Okay.

MR. SUCHER: Mark this 1D.

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(Thereupon, Plaintiff's Exhibit 1D was marked for purposes of identification.)

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Q. Doctor, I'm now going to hand you what's marked as Plaintiff's Exhibit 1D, which is a MRI interpretation. Did you have this when you prepared your report?

A. Yes, I had it, but the copy that I had was not as legible as this and, therefore, I asked Mr. Gannon to be sure that I would have a legible copy and that I could be certain that the interpretation that I had read in that would be exact, and he brought this copy with him today and it is what I alluded to.

Q. Okay. Would you agree with me that you do now

have a legible copy of the MRI?
A. Yeah. I mean I just wanted to be certain that I had everything correctly before and it is a legible copy.
Q. And with that legible copy in hand does that change any of the opinions that you've rendered in this case?
A. No, sir.
Q. Okay. Doctor, I believe you've also been provided with the films, is that correct?
A. Yes, sir.
Q. And did you review the films?
A. Yes, I have.
Q. And your review of the films, did that change any of your opinions in this matter?
A. No.
Q. Okay. Now, doctor, you are scheduled to testify on videotape to present to the trial on Friday. Do you plan on doing any review of any additional records between now and Friday?
A. There are no other records that I know of.
Q. Okay.
A. Excuse me.
MR. GANNON: There is something. You must have forgotten. You want to go

off the record or stay on the record?

MR. GANNON: State it on the record.

MR. GANNON: Subsequent to that time, in fact, just recently I did obtain through a subpoena copies of Dr. Moss' chart and I plan on giving them to the doctor for whatever value they may have. These are his actual charts.

MR. GANNON: You are going to provide me with a copy of that also?

MR. GANNON: Yeah. Sure. But I haven't given them to him yet. This is my copy, but I'll make a copy for him and you.

Q. Other than what Mr. Gannon has alluded to that he will provide you with a chart from Dr. Moss, is there any other documents that you intend to review before your testimony on Friday?

A. No.

Q. Okay. Do you plan on reviewing anything prior to your deposition on Friday?

A. Well, I'm going to look at my chart.

Q. Okay. But anything other than what we have here?

A. No.

Q. You're not going to consult any journals?
A. No, sir.
Q. Or do anything other than what you've done today?
A. No.
Q. Doctor, do you have a current CV in the office?
A. I do and I'll get it for you.
Q. You'll provide me one. And I take it it is up-to-date, so we don't have to cover those areas, your education and all of that?
A. No.
Q. It has all your background and it will be a complete CV?
A. Yes.
Q. Okay. Doctor, in terms of my client, James Wilkens, and if you'd like to refer to your report, please do so. I did not remove it from the file. Your report that's contained in the file, is it a four-page report, doctor?
A. Well, it's five pieces of paper.
Q. Okay. Four full pages and one paragraph on another page?
A. Right.
Q. Okay. You haven't submitted any additional reports or supplemental reports, is that

correct?
A. No, sir.
Q. Okay. Would you agree with me based upon your examination of my client and a review of records to a reasonable degree of medical probability he was injured in this accident of September 17th of 1996?
A. Yes.
Q. Okay. Doctor, what injuries do you believe to a reasonable degree of medical probability that he sustained in that accident?
A. The obvious one would be contusion to the head with lacerations and probably sustained an injury to his neck.
Q. What injury did he sustain to his neck in your opinion, doctor?
A. Probably bending his head backwards at the time he pulled this table leg and it struck him.
Q. And that would be consistent with hitting himself in the head?
A. You pull away from it. I think you can.
Q. And that wouldn't surprise you, doctor, that he sustained some injury to his neck in that accident?
A. Yes, sir.

Q. Is that correct?

And what is your diagnosis of the neck injury sustained in this accident?

A. My diagnosis would be probably hyperextension, sudden strain of the neck.

Q. And what do you mean by a strain, doctor?

A. Meaning pulling of the muscles and ligaments.

Q. Doctor, would it also be safe to say that -- strike that.

Doctor, in your opinion the records would -- strike that again.

Let me do it this way. Doctor, the records would indicate that Mr. Wilkens had some headaches after the accident?

A. Yes.

Q. Would you relate those headaches to the accident?

A. I don't know. A headache is someone is telling you that they had head pain. And I think if you got hit on the front and side of your head that you'd probably have pain on the head, and if you are going to call that contusion type of pain a headache, then, you know.

Q. Okay. Also though, doctor, aren't headaches sometimes associated with strains and sprains?

A. Well, sometimes they are. Yes.
Q. Okay. So it wouldn't be uncommon to have a strain or hyperextension injury and have headaches associated with that also?
A. That can occur.
Q. Okay. Would you believe that that was the type of headaches that Mr. Wilkens sustained in this accident?
A. Probably did have that type.
Q. Okay. Doctor, would you also agree with me to a reasonable degree of medical certainty that Mr. Wilkens sustained a permanent injury in this accident?
A. No. I don't agree.
Q. Scars are not permanent, doctor?
A. Well, you are going beyond that, but I will agree that he did have a scar. Yes.
Q. Would you agree with me that a scar is permanent?
A. Oh, yes. There is no question about it.
Q. So let's be clear though, doctor, so we are all on the same page, to a medical certainty there was an injury, correct?
A. Yeah.
Q. Correct, doctor?

A. Correct.
Q. And we'd also all agree that as a direct result and to medical certainty there was a permanent injury in this accident?
A. Yes.
Q. Would we all agree to that?
A. Yes.
MR. GANNON: Objection.
A. And you're defining -- when I say yes, that's is the permanency of the scar and that I agree to.
Q. Okay. Now, doctor, what opinions are you going to testify to in your trial deposition on Friday? What opinions are you going to give?
MR. GANNON: Objection, but go ahead. If you can answer his question not knowing exactly what I'm going to ask you on Friday, if you can do it, go ahead.
A. My opinion is that he has the head injury and he has the resulting scar when I measured it was two inches and one inch, two scars, and that's as far as I'm going to testify as permanency.
Q. In terms of --
A. In terms of the acute injury?
Q. Yes, doctor.
A. In terms of the acute he did have a contusion to

the head. He probably did have the headaches resulting from that. He had the lacerations. And he had a sprain/strain of his neck.

Q. Doctor, would you agree with me that the emergency room treatment was reasonable and necessary in this case?

A. Yes.

Q. And that the follow-up at the hospital to have the sutures removed was reasonable and necessary?

A. Yes.

Q. Would you agree with me that his visits with Dr. Moss were reasonable and necessary?

A. Yes.

Q. Would you agree with me that the physical therapy he had at Treister Physical Therapy was reasonable and necessary?

A. I think he would need therapy, and I don't think he had an excessive number. I didn't count the number of times he was in therapy, but I think it was consistent with a reasonable amount of time.

Q. Okay. And your review of the records in this case, was there any inappropriate treatment rendered?

A. I don't believe there was anything inappropriate.
Q. Okay. Doctor, would it be safe to say your involvement in this case is to ascertain whether or not there was a herniated disc as a result of the accident?
MR. GANNON: Objection.
A. No.
Q. Go ahead and answer.
MR. GANNON: You can answer.
A. No. It's more than just whether or not he had a herniated disc. That is one of the questions, and also my opinions to, whether he had anything that is permanent and ongoing as well.
Q. Okay. Would it be those two issues primarily, doctor?
A. I think that would be the main.
Q. The records will indicate that Mr. Wilkens missed some time from work. Would you agree with me that it was reasonable that he would miss some time from work after this injury?
A. I think he said about a month that he missed from work, and that's reasonable.
Q. Okay. Now, doctor, in your report you refer to the disc injury as a mild central C3-C4 disc

herniation.

A. Yes, sir.

Q. I'm sorry, doctor. Strike that. Plaintiff's Exhibit 1D --

A. Yes.

Q. -- refers to the herniation --

A. Yes.

Q. -- as mild central?

A. Yes.

Q. But in your report you refer to it as small?

A. Yes.

Q. What is the distinction, doctor, between small and mild?

A. When I say small, I mean tiny in degree of protrusion. When I -- someone says mild, I don't know what they are talking about, whether they are talking about a mild mustard, a hot mustard or what because mild is a stupid term in regards to whoever uses it in trying to give a description of what you're actually looking at. There is no such description anywhere in medicine that says mild when you are looking at a picture. So, therefore, I never would use that term. And I can't speak for the radiologist who read that, and I do know the

radiologist personally who read that, and I don't think one should use the word mild. He should say how many millimeters or whatever in the way of a measurement if he thinks there is a herniation. But, you know, that's why I say the word mild is totally inappropriate when you are describing something when you are looking at it.

Q. So at that time without having seen the film and without having seen a legible copy of the interpretation, you just presumed that it was small?

A. Certainly because that's the word that the radiologists usually use. When they say the word mild, even though they are wrong, they should say small, medium or large or give the number of millimeters that a protrusion actually does present by measurement.

Q. So then you knew that mild meant small?

A. This is what I would presume. That's why I don't use the word mild.

Q. But do you presume that?

A. Yeah. Sure I presume that. I'm familiar with their reading from Marymount Hospital where this was taken and I know the use of terminology such as that.

Q. So you are critical of Dr. Masten's terminology, is that correct?
A. Oh, sure, but not his interpretation.
Q. But you would agree with me then, doctor, that there is a herniated disc here?
A. There is a bulge and I believe there is associated herniation and degeneration of that disc along with other areas.
Q. But let's see -- so that we are on the same page, doctor, there is a herniation, correct?
A. Yes.
Q. Okay. And your opinion is that herniation is not related to the accident?
A. That's correct.
Q. Okay. But that there clearly is a herniation?
A. Yes, sir.
Q. Because in your report you say in my opinion the MRI study does not show a herniated disc, and this would be on Page --
A. Yes.
Q. Do you know where I'm referring to, doctor?
A. No.
Q. Second to the last page.

MR. GANNON: Page 4 near the bottom.

A. The last --
Q. In my opinion, the second to the last sentence, you say it does not show a herniated disc. Is that incorrect?
A. That's not incorrect. That is how I wrote that and looking at the MRI study it will bear out exactly that I'm correct.
Q. Okay.
A. And I was -- I can prove that.
Q. Okay. Doctor, so let's -- I just want to be clear so there is no misunderstanding. Is there or isn't there a herniated disc?
A. There is a bulge at the level along with spur formation at the third and the fourth cervical vertebrae posteriorly that enter into that area. There is degeneration of that disc and that is a disc osteophyte complex and that can be sometimes classified as a herniation, but it's more of a protrusion. It does not progress beyond the ligament which confines the disc itself.
Q. Doctor, what's the difference between a protrusion and a herniation?
A. Protrusion is just a change in the straight line that causes an elevation. Regardless of whether

you are drawing a straight line or a curved line, at one point there is pouching and herniation would be an actual rupture through a ligament.

Q. Okay. You would agree with me, doctor, that there is at a minimum a protrusion here, is that correct?

A. Yes. It is small.

Q. And would you agree with me that a protrusion is an abnormal condition?

A. Ordinarily it would be considered abnormal, but -- I'll just leave it at that. It would be considered abnormal.

Q. Continue, doctor. I'd like to get a complete answer from you.

A. It would be. I answered your question.

Q. It would be abnormal to have a protrusion, is that correct?

A. Yes.

Q. And, of course, a herniation would be abnormal?

A. Yes.

Q. Now, doctor, would you agree with me that a radiologist is in a better position to interpret an MRI than yourself?

A. Yes. I'll agree to that.

Q. Okay. So then you would disagree with Dr. Masten's interpretation or impression that, 1, mild central C3-C4 disc herniation?
A. Yes.
Q. And you would disagree with that?
A. I would disagree with that, but here again you're using the terminology mild and I would say small and herniation or protrusion has to be defined.
Q. So what would your impression be, doctor? Would you say it would be a small central C3-C4 disc protrusion?
A. Well, he has a C3-C4 degenerated disc with osteophyte disc complex which causes a small bulge posteriorly with one to one and a half millimeters in height.
Q. Okay. And do you disagree with that reading?
A. Well, that's my --
MR. GANNON: That's what he said.
Q. That's your reading?
A. Yes, sir.
Q. Once again, doctor, what was your reading of the film?
A. I just stated it. She can read it back.
Q. Okay. Do you disagree with anything else --

well, first off, doctor, what do you disagree with in the interpretation? You disagree with the term mild, is that correct?

A. Yes.

Q. Okay. And you disagree with the impression of mild central C3-C4 disc herniation, is that correct?

A. Yes, because it's not a complete description of what's shown radiographically, I'm sorry, not radiographically, but by the MRI.

Q. Okay. Do you disagree with anything else in the MRI interp?

MR. GANNON: Here it is. Let him see it. Take your time and look it over if you need to, doctor.

A. Yes.

Q. What else do you disagree with, doctor?

A. There are incomplete descriptions of further bulges at the C2-3 level. He does not describe it here. It's also present between C5-6 and it's not described here. And essentially that's the main thing. It's an incomplete description of what's seen on the MRI.

Q. Doesn't he have in there though, doctor, that the remaining disc levels are unremarkable?

A. I disagree with that.
Q. You disagree with that?
A. Yes.
Q. But you would agree with me that he's in a better position to interpret an MRI than you are?
A. Not after I read that.
Q. Okay. His reading is not competent in your opinion, doctor?
A. I don't think it describes everything.
Q. Okay. Doctor, would it be -- strike that.

Isn't it typical that one would defer to a radiologist to interpret an MRI?

A. Only that I -- I don't interpret an MRI alone, but whenever I have ordered an MRI study I never accept the radiologist's report without examining the film. If there is a disagreement with what I see, then I will consult with the radiologist to see whether my interpretation is any different than his and if we can agree on that. So I just don't accept the written report alone as being accurate without actually viewing the films or studies in this case.
Q. Have you consulted --
A. So frequently a radiologist only describes some

things, but they often are not complete. And they are human, too and they do not describe some things that are there.

Q. Did you consult with Dr. Masten to discuss his interpretation in this matter?

A. No. I am not --

Q. Just answer my question, doctor.

A. -- in a position --

Q. Did you consult --

MR. GANNON: No. No. Let him answer.

Q. It's a yes or no.

MR. GANNON: No. You're not the judge. You asked him a question. He's going to answer it the way he wants. Okay. That's the way it's going to be.

Q. Doctor, yes or no.

MR. GANNON: Answer the way you want.

A. Would you repeat your question?

MR. GANNON: And then answer it the way you want. Don't fall for this yes or no stuff. He's a lawyer.

Ask him a question.

He's not the judge who tells you

how to answer it.

Q. Doctor, here is my question. Yes or no.

A. Yes or no what, sir?

Q. Yes or no.

A. What?

Q. Did you consult with Dr. Masten about his interpretation of the MRI?

A. No. I did not.

Q. Okay. Doctor, there is mention in the record, and I believe mention in your report, that there is tingling in the right hand, particularly in the fifth finger?

A. Yes, sir.

Q. Okay. Now, is that consistent, doctor, with a disc herniation to have a problem in the right hand, tingling sensation?

A. Where, sir?

Q. In the fifth finger?

A. No.

Q. The fifth finger of the right hand, that would not be consistent with a herniation?

A. No, sir. It would not be consistent.

Q. Okay. What would be consistent with a C3-C4 herniation? Where would tingling and radiation be?

A. It would be more in the thumb.
Q. Okay. Would it be consistent if you have nerve root irritation in the C3-C4 to have tingling or sensation in the hand?
A. Ordinarily you wouldn't have it in the hand. If you are going to have it -- it depends on where it is. But we know that the bulge or this radiologist that interpreted says this is a central area and because of that being central that would not be consistent because it's not pressing on the nerve root that supplies that area.
Q. Okay. Doctor, would you agree with me when there is a herniation or a bulge or a protrusion, and we can take them one by one if you want me to, but would you agree --
A. No. We can put it together.
Q. But generally when we have that type of an injury, and they are all abnormal conditions, would you agree with me there, doctor?
A. Yes.

MR. GANNON: Objection.

Q. That we are going to have some kind of reactive inflammation to that protrusion or bulge or herniation, is that true, doctor?

A. No. That's not specific enough.
Q. And what do you mean by not specific enough?
A. Well, the question is not specific. You said there would be some type of reaction. What is the reaction?
Q. Inflammation in the area, doctor.
A. No, not necessarily having inflammation in the area. In the area of what?
Q. In the area of the canal, doctor, in the area of where that disc is, would there be some sort of inflammation in that area, that soft tissue that surrounds that disc?
A. No. I don't think that would be what you would be looking for if you are going to have inflammation. Ordinarily that's an overreaction before you can get to inflammation. Inflammation means an increase of blood supply to an area only.
Q. Okay. So in your testimony, doctor --
A. And we are not talking about an infection or anything like that.
Q. So would it be your testimony that when we have a protrusion or a herniation, that there is no inflammation associated with that --
A. Later on you may possibly get some localized

inflammation specifically to the area, otherwise you wouldn't form scar tissue. But what you are talking about, the initial reaction usually is edema or swelling.

Q. Okay. But when we get down the road then though, it would not be uncommon for there to be some inflammation?

A. Inflammation is confined to that particular area.

Q. It's local?

A. If you are talking about a localized area. If you are talking about the ligament, then it's to the ligament.

Q. But would you agree with me, doctor, that at some time down the road with a disc injury there should be some sort of inflammation, localized inflammation? Would you agree with that statement?

A. Yes.

MR. GANNON: Objection.

Q. Okay. And when we have this localized inflammation, wouldn't that inflammation sometimes come in contact with the nerve?

A. Well, when you say sometimes, then, of course, whenever you are going to use the word

sometimes, then we are going to have to agree with it.

Q. Okay. Let's say would it be consistent, doctor, with this inflammation that we've agreed on that there would be some nerve root irritation, that inflammation would cause --

MR. GANNON: Objection.

Q. -- some nerve root irritation?

A. No. It does not have to. It depends on where the particular area is localized only.

Q. Okay. But it's probable that it could, doctor, cause --

MR. GANNON: Objection.

A. You use the word probable and I can't agree with that.

MR. GANNON: Objection.

A. There is a difference between probable and possible. I don't think that happens.

Q. 51 percent or better, doctor, you don't think that it would happen?

A. No, not 51 percent. In this instance we know there is no contact just by looking at the MRI with any nerve root.

Q. I'm talking about inflammation.

MR. GANNON: Objection.

A. I understood the question.
Q. Okay. Would the inflammation show up on the MRI?
A. No.

MR. GANNON: Dan, would you make your question specific to this case, otherwise I'm going to object. It seems to me you are getting beyond the scope of what a discovery deposition should be. He rendered a report in this case based upon examination. If you want to discover more than what's in his report, you should ask specific things. You are asking general things and your questions are not precise and I'm going to have to object and, you know, I don't know, maybe we'll just have to terminate it or something if you are going to go that far afield.

MR. GANNON: Your objection is noted, John. Thanks.

Q. Doctor, would you agree with me that nerve -- I'm sorry. Strike that.

Would you agree with me that protrusions can cause radicular problems?

MR. GANNON: Objection.

A. The question again is so generalized that no matter who you ask they are going to have to say yes.

Q. You don't want to say yes to that, do you, doctor?

MR. GANNON: Objection.

A. No, because you are not specific to what we are talking about in this instance, and it's the location of the protrusion rather than that. So the way you asked the question you'd undoubtedly have to say yes.

Q. Doctor, does one have pain from a disc protrusion?

A. Most of the time, yes. Sometimes not at all.

Q. Okay. Doctor, do disc protrusions heal themselves?

A. Usually. But it hasn't been shown that protrusion is a pathological condition because we can take MRI studies and you'll find that close to more than 20 percent of people under the age of 40 will show a bulge or protrusion on an MRI study, and these are totally asymptomatic volunteers, at least this has been done, and it is well-known in the radiological and orthopedic literature that these findings can be present

without absolutely no symptomatology. So again to answer the question do they always cause pain? No, they don't.

Q. No. But they can cause pain?

A. Yes, they can.

Q. And it's not inconsistent to have pain --

A. No.

Q. -- associated with that, is that correct?

A. That's correct.

Q. Now, doctor, if we talk about the mechanism of injury, what's your understanding of how this accident occurred?

A. I think I testified to that. Exactly what the gentleman told me. He pulled the table leg up. The mechanism that locked, it was not functioning properly. It went beyond the right angle, pulled it into his forehead and he jerked backward.

Q. Based upon that mechanism of injury, doctor, is it possible to sustain a disc protrusion in that type of an accident?

A. Because you use the word possible, then obviously I have to answer yes.

Q. Well, doctor, disc protrusions can occur in many different ways, is that correct?

A. Yes, sir.
Q. And one of those is by trauma, is that correct?
A. Yes.
Q. And one of those would be by a direct trauma to the head, is that correct?
A. That's one of the ways. Yes.
Q. In fact, one can get one by sneezing, isn't that correct, doctor?
A. Yes.
Q. Now, you've reviewed Dr. Moss' supplemental report of February 10th?
A. I believe I have.
Q. I think it's in your file, doctor. If not, I have an extra copy.
A. Yes. I have it here.
Q. Okay. Now, doctor, I would -- strike that.

You disagree with Dr. Moss' opinions in this case, is that correct, doctor?

A. Yes, sir.
Q. Okay. And what is it in particular that you disagree with?

MR. GANNON: Objection. His opinions are fully stated in his report. I don't think you can confine him with one question to one opinion.

Q. What is it that you disagree with, doctor?

Let's go in order, doctor. You disagree with the MRI finding of herniation, is that correct? We are on the --

A. Yes.

Q. You disagree with that?

A. Yes.

Q. Okay. Do you disagree that the subjective complaints of neck pain are related to the accident?

A. No. I don't disagree with that.

Q. Okay. So you agree that there were subjective complaints of neck pain directly caused from this accident? You agree with that?

A. Yes.

Q. Okay. What about the paresthesia, do you disagree that that's related to the accident?

A. Paresthesias usually relate to unusual sensations, not necessarily pain like tingling or crawling or other sensations, and that's possible for that to have occurred without a herniation.

Q. Okay. So that's possible it could have occurred in this accident?

A. That can happen because we know you can have

pain radiating, not from a herniation, but from muscle and other areas that are strained and that can occur.

Q. Doctor, did Mr. Wilkens sustain some type of nerve root irritation in this accident?

A. I don't believe he did.

Q. Okay. And, doctor, when you saw him, I believe it was last month, February 5th --

A. Yes, sir.

Q. -- at that time you believe that he had no residuals from his accident other than the scars, is that correct?

A. Yes, sir.

MR. SUCHER: Would you mark these.

- - - -

(Thereupon, Plaintiff's Exhibits 1E and 1F were marked for purposes of identification.)

- - - -

Q. Doctor, I'm going to hand you what's been marked as 1E and 1F.

First of all, I'll hand you 1E. It says at the top Screening Examination?

A. Yes, sir.

Q. Who filled out that particular document?

A. I did.
Q. Okay. And then 1F is a pain chart I believe you refer to that as?
A. Yes.
Q. Okay. And there is red Xs on that pain chart?
A. Yes.
Q. Who put those on there?
A. Mr. Wilkens.
Q. Did you do anything to that document?
A. No. I used the document to form my opinion.
Q. But otherwise --
A. But I didn't put the name and date on there.
Q. When we have the check marks on the previous exhibit --
A. Yes, sir.
Q. -- 1E, those were all put in by you?
A. Yes, sir.
Q. And was that during the time you took the history?
A. No.
Q. That was done when?
A. After I completed the examination.
Q. And you take notes and you also supplement your notes then with those particular questions?
A. Yeah. These are not questions. This is all

part of the examination.

Q. Okay. Is there anything else that is part of the examination or any other documents generated by you?

A. No, sir.

MR. SUCHER: Would you mark this, please.

- - - -

(Thereupon, Plaintiff's Exhibit 1G was marked for purposes of identification.)

- - - -

Q. Doctor, I'm going to hand you what's been marked as Plaintiff's Exhibit 1G which comes from your chart, is that correct, doctor?

A. Yes, sir.

Q. And is that a bill --

A. Yes, it is.

Q. -- for your services rendered in this case?

A. Yes.

Q. That bill only includes your examination, review of records and report, is that correct?

A. Yes, sir.

Q. And what is the total for that, doctor?

A. $497.

Q. Okay. And has that been paid, doctor?

A. Yes, sir.
Q. Now, doctor, is that your customary fee to perform one of these examinations?
A. Yes, sir.
Q. Okay. And, doctor, I believe from testimony that I reviewed in the past you do approximately four medical/legal examinations a week, is that correct?
A. Four to six.
Q. Four to six.

Okay. And, doctor, you are charging me $500 today to take this deposition?
A. Yes.
Q. And is that your customary fee to charge an attorney, plaintiff's attorney for a discovery?
A. No. Most of the time it is 950.
Q. Okay. Why did I get a break?
A. I don't know. I didn't think you'd take this long.
Q. So, doctor, your customary fee then for deposition testimony, doctor, is $950, is that correct?
A. Yes.
Q. And, doctor, approximately how many depositions do you do a week?

A. You can't put it that way because I don't know. It varies, for example, whether someone will come to an agreement ahead of time. Many are scheduled, but fewer are actually carried out. So in a year's time I may have to testify up to 30 times under oath.

Q. Okay. Has it been more than that, doctor?

A. Sometimes it has been more. Sometimes it's less.

Q. And then each time you testify it's $950, is that correct, doctor?

A. Yeah. It's not pro bono.

Q. Sure.

A. Just like you are, you know.

Q. Doctor, would you agree with me though you do it at least once a week?

A. No.

MR. GANNON: Objection because he just said --

MR. GANNON: Are you going to answer, John?

MR. GANNON: No. He said 30 times a year. I think your math is way off.

A. No. That gives me time for vacation, too.

MR. GANNON: I was just doing the

math based on what he said. Once a week would be 52 times.

A. It isn't that often. It's approximately 30 times.

Q. 30 times?

A. Yeah. Sometimes a little more. Sometimes a little less.

Q. Okay. Doctor, would you agree with me that the majority of your testimony in medical/legal matters -- strike that.

Would you agree with me, doctor, that about 90 percent of the time your testimony in medical/legal matters is for the defendant?

A. No, because the way you word that it sounds as if I testify for a defendant.

Q. Let's strike that.

A. Most of the time, I agree that 90 percent of the time I have been retained --

Q. Okay.

A. -- by an individual who is being litigated against. Yes.

Q. Okay. Somebody defending a claim like Mr. Gannon for example, you'd be retained by him in 90 percent of the time?

A. To give an examination and if necessary to

testify, because I should be able to defend any report.

Q. Okay. Would you agree with me that your actual testimony in trial, that would be, over 90 percent of the time it would be for the defendant's portion of the claim?

A. Yes, sir.

Q. Okay. And you've testified for Mr. Gannon before I believe, haven't you?

A. I believe I have, but I can't tell you how long ago.

Q. Okay. And you've testified for his client Cincinnati Insurance Company before, haven't you?

MR. GANNON: Objection.

A. I probably have.

Q. Okay. And it wouldn't surprise you if I had a case where you testified on behalf of his client Cincinnati Insurance Company, would it, doctor?

A. No. I don't recall.

Q. Now, doctor, you've testified I believe in the past that your role in cases like this and the fees that you generate from cases like this comprises ten percent of your income?

A. No.

Q. Do you remember -- no?
A. At the time it may have been ten percent, but I'm sure it's more now because the number of patients that one sees has been declining and the number of litigations have been the same.
Q. Okay. Well, what percentage would you put on it today?
A. Now I would estimate that as close to 30 percent.
Q. Okay. So 30 percent of your time is involved in cases like this; is that safe to say, doctor?
A. Yes.
Q. Okay. And, doctor, what would be 30 percent of the income? How much money do you generate from cases like this?
A. You mean last year how much did I generate? Last year I think it was $130,000.
Q. Okay. Doctor, in the past you referred to your examination as independent. Do you still believe that to be true?
A. Yes.
Q. Okay. Doctor, can you explain to me why your examination is independent?
A. Because I'm not under retainer or a salary by anyone. I'm an independent practitioner.

Furthermore, I testify under oath. I realize the implication of testifying under oath. And the same thing applies to any report that I write. That's my honest opinion. I back it up with facts. It's my duty to report adverse opinions to whoever retains me as well as opinions that are in their favor. And I'm also duty bound by the Code of Medical Ethics that it yet has been recently reiterated by the American Academy of Orthopaedic Surgeons that I must be honest in all of my opinions and that duty bound report both good and bad to whoever retains me.

Q. Do we have the films here?

MR. GANNON: Uh-huh.

MR. SUCHER: Can we take a look at the films for a minute? I have a couple questions about those.

- - - -

(Off the record.)

- - - -

Q. Would you show me the particular area that we are talking about?

Okay. And where, doctor, is the protrusion on that particular film?

A. That little elevation is a protrusion, but if

you'll look at this level, it's got those other levels, too.

Q. And which levels are those, doctor, so we are clear?

A. 2-3, 5-6, in addition to 3-4.

Q. Now, would you agree with me, doctor, that the protrusion at 3-4 is more significant than the protrusion you seem to think is at the other levels?

A. Oh, no question about it that it's more significant, but in addition -- no. Let it go at that.

Q. Do you agree with me, doctor?

A. Yes.

Q. Okay. Any of these other films, doctor, show where the protrusion is?

A. The level that corresponds over there.

Q. And, doctor, where in particular is the protrusion?

A. That little area right there in the middle.

Q. Okay. This level here, doctor, what level is that?

A. This is 2-3, and then go a little farther down, but that's not this. That is bulge sticking out.

Q. That's the level in question?
A. Yes. That's bone.
Q. And there is an abnormal condition though, doctor?
A. Yeah. That's the osteophyte.
Q. And you believe that's degenerative in nature?
A. Yeah. Because it is shown in here compared to these as definitely degenerative.
Q. Doctor, in your opinion why would one disc be more significant or one abnormality be more significant than another?
MR. GANNON: Excuse me. On this patient or generally?
MR. SUCHER: On this patient.
A. I don't think it's --
Q. Well, you've agreed with me there is a more significant abnormality at C3-4?
A. Yeah. I agree with you.
Q. Why is there more significant abnormality at C3-4 than at the other levels?
A. Because he has more of a degeneration involved with large bone osteophyte formation above and below that I testified before that that was the disc and the osteophyte complex. Example, the bone is sticking out farther than the disc

material.
Q. But why isn't that at all levels?
A. It's located at other levels as well, but this seems to be more prominent than the other.
Q. My question is why is it more prominent?
A. Because he has more degeneration in there. He has spurring at that level indicating that he's got degenerative disc disease there.
Q. Is it just coincidental it is more prominent at one level than another level?
A. No. It's not coincidence. He has that degeneration.
Q. And your interpretation or definition of degenerative is the aging process?
A. It doesn't have to be an aging process. This man isn't that old.
Q. Okay. What is your definition of degenerative?
A. Degeneration is drying out of the disc. It's dehydration. It's shown by the MRI studies. The radiologist doesn't make much of it, but he does mention there is a change between the second and third and third and fourth disc. The words that he used I believe were on the T2 waited images, they are not showing up as brightly as the others are indicating that the

water content is down, that these discs are closer together indicating it's a long-standing process and they are just dried out.

Q. What would cause that dehydration, doctor?

A. Nobody knows.

Q. Okay. That's all the questions I have. Wait a minute. One second.

- - - -

(Off the record.)

- - - -

MR. GANNON: Counsel have agreed that the films that are currently in the custody of Dr. Kovach, which may well be the original films, are going to leave today with Mr. Sucher, plaintiff's counsel, but come back with Mr. Sucher when Dr. Kovach testifies on direct examination, which would be this Friday in the morning.

MR. SUCHER: Correct.

RALPH KOVACH, M.D.

C E R T I F I C A T E

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

I, Heidi D. Smith, 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 RALPH KOVACH, 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 ____.

_____
Heidi D. Smith, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires October 27, 1999

WITNESS INDEX

EXHIBIT INDEX

LAWYER'S NOTES

PAGE	LINE	

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MOLLY A. STEIBER
JOHN A. FIOCCA, JR.
JOHN J. SPELLACY

AKRON, OH
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HENRY G. BERLON, RETIRED
TIMOTHY L. TIMMEL, OF COUNSEL

December 29, 1997

JAN 5 1998

Ralph Kovatch, M.D.
St. Alexis Hospital
5109 Broadway
108
Cleveland, Ohio 44127

PLAINTIFF'S EXHIBIT 1A 3-2-98 Kovatch

Re: **James Wilkens vs. A Able Rents Company**
Cuyahoga County Court of Common Pleas
Case No.: 324250

Dear Dr. Kovatch:

Thank you for agreeing to perform an independent medical examination on James Wilkens. Mr. Wilkens has alleged that he suffered, among other things, a mild central disk herniation at the C 3-4 level. Mr. Wilkens was working in his capacity with the City of Cleveland attempting to set up a table when he claims that the table leg broke and came back and hit him in the head. That allegedly occurred on September 17, 1996. He alleges that, among other injuries, he suffered a herniated disk. I am enclosing, for your review, all of the medical records that I have been able to obtain.

I have a report dated June 24, 1997 from Dr. Kenneth Moss which consists of 6 pages, not numbered. I also have St. Vincent Charity Hospital Emergency Room records. With respect to those, I would like to point out that the only diagnosis made was a laceration to the eyebrow which required 10 stitches. On the top portion on the second page of those records, there is a statement that he "denies neck and back pain." It appears that he went back to the hospital a week later to have the stitches removed and at that time he told them that his headaches were less than they had been on the day of the accident. He did, however, complain that his head was hurting. He filed a Worker's Compensation claim and initially asked that it only be allowed for "laceration of left eyebrow and sprain of the neck." I should mention that Dr. Moss whose report I referred to above did not examine until about one month later.

I am also enclosing some physical therapy records from Treister Physical Therapy. There is a MRI from Marymount Hospital. There is a report from Dr. Moss dated March 13, 1997 which was sent to the Bureau of Worker's Compensation. The doctor stated that he did not display any ridicular findings. I am enclosing 55 pages of records that I obtained through the Bureau of Worker's Compensation regarding this matter. After you have had a chance to examine Mr. Wilkens and review these records, if you could write a report which sets forth your findings and opinion regarding what injury he sustained and whether o r not he has a herniated disk that was caused by the incident of September 17, 1998, it will be greatly appreciated.

Very truly yours,

John F. Gannon

JFG/kmk
Enclosure(s)

BERLON & TIMMEL
526 Superior Avenue, NE
Cleveland, Ohio 44113

Memo

To: Dr. Kovatch

From: John F. Gannon

CC:

Date: January 28, 1998

Re: **James Wilkens**

Dr. Kovatch:

1. Please ask Mr. Wilkens about the incident "moving chairs" and developing pain in March 1997, referred to on the second page of Dr. Moss' report.

2. I saw Dr. Moss' May1, 1997 note and he says "...probably secondary to an osteophyte formation."

Thank you.

Very truly yours,

John F. Gannon

JFG/kmk

BERLON & TIMMEL
526 Superior Avenue, N.E.
633 Leader Building
Cleveland, Ohio 44113
PH: (216) 696-6454 FAX: (216) 696-0227

FACSIMILE TRANSMITTAL SHEET

TO: Dr. Kovach
FAX: 441-3208
FROM: BERLON & TIMMEL
SENDER: John F. Gannon
DATE: January 28, 1998
TOTAL PAGES INCLUDING COVER SHEET: 2

Re: IME of James Wilkens scheduled for Feb. 5th @ 12:30

If you do not receive all of the pages, please contact us as soon as possible at (216) 696-6454

CASE NO. ________ James Wilkens PATIENT'S NAME

ADDRESS ________ INSURANCE ________ DATE ________

TEL. NO. ________ REFERRED BY ________ OCCUPATION lolor AGE 37 SEX M S.M.W.D.

GARFIELD CA

JAN 20 1998 DI 9/17/96 (Actual 9/23/96)

JAN 29 1998 GARFIELD CA

FEB 5 1998 GARFIELD

Skelepin / Omnivail) and meds

PLAINTIFF'S EXHIBIT 1C 3-2-98 Kovach

Pulled up a table leg That was folded The locking mechanism of the table was defective & He struck the side of the left Eye (supra-lateral) was lacerated —

← 11 stitches —

Face was swollen —
The "Whole head" was a pole
a Co-worker took him Charity loop — Ex - Sutured
No x-ray nor were copies of —
was discharged —
went back to clinic for suture removal — head pain —
Told the neck pain started 5-6 days later & still had head pain at time of suture removal —
was discharged —

Then went to Dr. Kenneth Morse about a month later
Exam — head hurts
wasn't able to turn neck - unable to right
& still had neck pain.
Tingling right hand - 5th ē no loss of feeling
Catches for shoulder & right hand — (could not 3 wk post inj)
tingling was continuous — MRI — told he had herniated disc (3-4?)
advised Exercise — Range of Motion Exercises —
after with neck — also collar — Also had PT
& traction & neck —
about 2 wks of the MRI — pain at Thoracic level
later Had EMS — neck & back

Wrist 2 x ½ / wk —

Still no injury — headache less
Tightness in hd less
Pain worse less

abt 2½ hr Rx —

Still sees Dr. Moss —

Was also given TP's injections 1 Shot [illegible]

6 x ½ — [illegible] spots it & left

Still take Skelaxin & Norvasc, more or less for worse

Still sees Dr. Moss — about weekly — [illegible]

NOW — ① Neck pain & ② occipital pain —

pain is continuous — sometimes less for short periods of time.

P.M. — Neg for past [illegible] & injuries —

Returned to work about 1 week

Ex — Slim build short [illegible] — [illegible]

Motion neck & back ok — complete

Eyes 1 x 2 inch —

NO TP's palpated but [illegible]

Complained of pain c superficial touch — of side & back of neck & trapezium —

Skin rolling [illegible] entire body

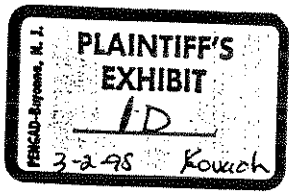
Neural Neg — reflexes intact equal & [illegible]

Has volar [illegible] left wrist —

Neg Phalen & Tinel Sit —

NO weakness in a leg — NO sensory changes [illegible] —

Seated SLR by neg — reflexes negative —



Patient Name	Rm/Bd Stn	ATCSR	Admitted	Dischrgd	Age	T	Account#	MRN
1) WILKINS, JAMES		AT	04/10/97	04/11/97	36	O	975153347	202983

Order Date/Time	Radiology Test Description	TY	CPT	Status
1 15625 04/10/97 08:43	(MRI)2910 - *MRI C-SPINE CANAL W/O CONT	O	72141	SIGNED

(MRI)2910 - *MRI C-SPINE CANAL W/O CONTRAST

DATE OF EXAM: 04/10/1997

MRI - CERVICAL SPINE:

REASON FOR EXAM: RIGHT ARM AND HAND NUMBNESS

T1W and T2W sagittal and 3D gradient echo thin section axial imaging was performed.

There is mild narrowing of the C2-3 and C3-4 disc spaces. The corresponding discs are T2W hypointense. There is central focal disc protrusion which appears subligamentous at the C3-4 level causing minimal impression upon the anterior aspect of the cervical spinal cord which, otherwise, appears intact. There is narrowing of the C3-4

Hit <RETURN> For Next Page

Patient Name	Rm/Bd Stn	ATCSR	Admitted	Dischrgd	Age	T	Account#	MRN
1) WILKINS, JAMES		AT	04/10/97	04/11/97	36	O	975153347	202983

Order Date/Time	Radiology Test Description	TY	CPT	Status
1 15625 04/10/97 08:43	(MRI)2910 - *MRI C-SPINE CANAL W/O CONT	O	72141	SIGNED

neural foramina bilaterally, to a greater degree on the right, appearing to be secondary to uncovertebral osteophytosis. The remaining disc levels are unremarkable.

IMPRESSION: 1) MILD CENTRAL C3-4 DISC HERNIATION.

2) RIGHT C3-4 NEURAL FORAMINAL STENOSIS, PROBABLY SECONDARY TO UNCOVERTEBRAL OSTEOPHYTOSIS. PLAIN FILM CORRELATION IS RECOMMENDED FOR FURTHER EVALUATION.

TRANSCRIBED BY: CAN READING DOCTOR: JAMES E. MASTEN, M.D.
ELECTRONIC SIGNATURE
TRANSCRIBED BY: (CAN) READING DOCTOR: (121194)

TRANSCRIBED DATE: 4/10/97

End Of Radiology Result

Hit <RETURN> For Next Page

Patient Name: Jan Wilson Date: 2/8/98

PLAINTIFF'S EXHIBIT 1E 3-2-98 Kovach

SCREENING EXAMINATION

1. Gait — Normal ✓ Abnormal ___

2. Posture
   a. Posterior View
      - Shoulder level low on: L___R___Equal ✓
      - Iliac crest low on: L___R___Equal ✓
      - Head Sidebent to: L___R___Equal ✓
      - T spine paravertebral fullness: L___R___Equal ✓
      - L spine paravertebral fullness: L___R___Equal ✓
   b. Lateral View
      - Cervical lordosis: Increased___Decreased___Normal ✓
      - Thoracic kyphosis: Increased___Decreased___Normal ✓
      - Lumbar lordosis: Increased___Decreased___Normal ✓

3. Standing Trunk Sidebending
   a. Restricted sidebending: L___R___Equal ✓
   b. Restricted rotation: L___R___Equal ✓

4. Standing Flexion Test
   a. Negative ✓ Positive___
   b. Lumbar spine paravertebral fullness: L___R___
   c. Thoracic spine paravertebral fullness: L___R___

5. Stork Test
   a. Left: Positive___ Negative ✓
   b. Right: Positive___ Negative ✓

6. Seated Flexion Test
   a. Negative___ Positive___
   b. Lumbar spine paravertebral fullness: L___R___
   c. Thoracic spine paravertebral fullness: L___R___

7. Seated Upper Extremity Motion
   a. Restricted ? Yes___ No ✓
      Left___ Right___ Equal___

8. Seated Trunk Rotation
   a. Restricted ? Yes___ No___
      Left___ Right___ Equal___

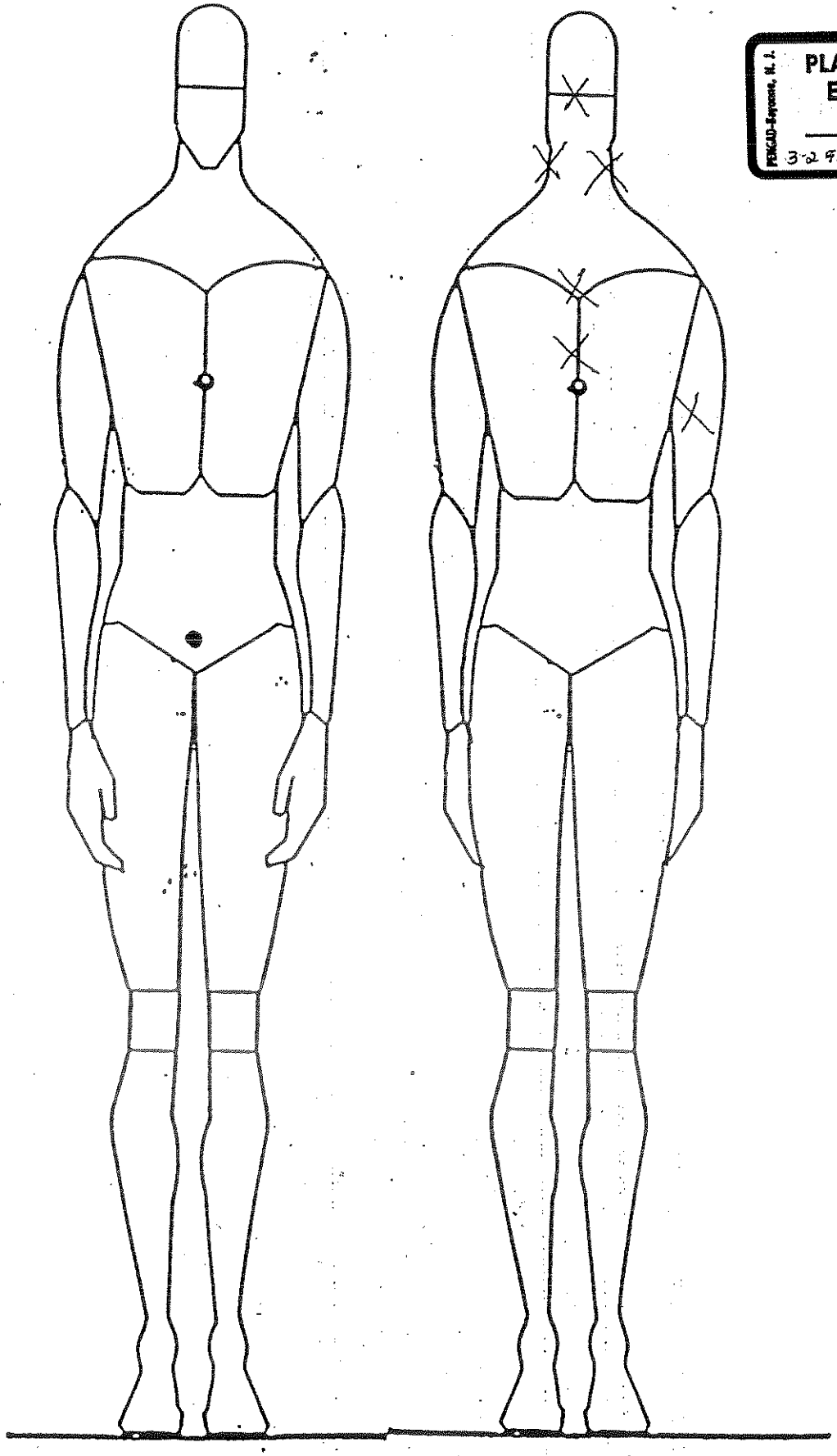
9. Seated Trunk Sidebending
   a. Restricted ? Yes___ No___
      Left___ Right___ Equal___

10. Seated Head and Neck Motion
    a. Extension restricted: Yes___ No ✓
    b. Flextion restricted: Yes___ No___
    c. Rotation restricted: Left___Right___Equal ✓ neb

11. Supine Thoracic Cage Motion
    a. Upper Ribs:
       - Inhalation restricted: L___R___Equal___
       - Exhalation restricted: L___R___Equal___
    b. Middle Ribs:
       - Inhalation restricted: L___R___Equal___
       - Exhalation restricted: L___R___Equal___
    c. Lower Ribs:
       - Inhalation restricted: L___R___Equal___
       - Exhalation restricted: L___R___Equal___

12. Lower Extremity Motion
    a. Straight Leg Raising restricted: L___R___Equal ✓
    b. Squatting restricted: Yes___ No

NAME: James Wilbers DATE: 2-5-98



CLEVELAND ORTHOPAEDIC ASSOCIATES, INC. TELEPHONE 441-3223
GARFIELD HEIGHTS MEDICAL CENTER
9700 GARFIELD BOULEVARD
CLEVELAND, OHIO 44125

RALPH J. KOVACH, M.D. **CYRIL E. MARSHALL, M.D.**

CHARGES OR PAYMENTS MADE AFTER LAST DATE SHOWN WILL APPEAR ON YOUR NEXT STATEMENT

John F. Gannon
633 The Leader Building
526 Superior Avenue, N.E.
Cleveland, OH 44114
RE: James Wilkens
Cuyahoga County Court Case No: 324250

BALANCE FORWARD

	DATE ENTERED	DETAIL	ADJ	CHARGES	PAYMENTS	BALANCE
2-5-98		Exam & Report		$450 00		
		Review of 47 pgs.				
		addt'l records @				
		$1 per page		$47 00		$497 00

PLAINTIFF'S EXHIBIT 16 3-2-98 Kovach

PLEASE PAY LAST AMOUNT IN BALANCE COLUMN

IOV - Initial Office Visit
OV - Office Visit
ERT - Emergency Room Treatment
IHV - Initial Hospital Visit
HC - Hospital Care
CON - Consultation
SU - Surgery
FC - Fracture Care
ROC - Removal of Cast
DR - Dressing
INJ - Injection
NC - No Charge
MR - Medical Report
MLL - Medical Legal Letter
CNR - Consultation and Report
CM - Cast Materials

Curriculum Vitae

Ralph J. Kovach, M.D.

INDENTIFYING INFORMATION	Ralph J. Kovach, M.D. DOB: 08-27-25
PRE-MEDICAL EDUCATION	University of Dayton/Bachelor of Science Degree/1950
MEDICAL EDUCATION	Loyola University School of Medicine, Chicago,Illinois/M.D. Degree/1953
INTERNSHIP	St Luke's Hospital, Cleveland, Ohio/1953-1954.
RESIDENCY	St. Luke's Hospital, Cleveland, Ohio/ Orthopaedic Surgery/1954-1958.
LICENSING INFORMATION/ CERTIFICATION	Licensed in Ohio Since 1953/General Orthopaedic Surgery Certifield by American Board of Orthopaedic Surgery/1962
MEDICAL SOCIETY MEMBERSHIP	Cleveland Academy of Medicine Ohio State Medical Association American Medical Association Cleveland Orthopaedic Club Ohio State Orthopaedic Association Mid-America Orthopaedic Association American Academy of Orthopaedic Surgeons
CURRENT STATUS/ STAFF MEMBERSHIPS	St. Alexis Hospital - Cleveland, Ohio St. Luke's Hospital - Cleveland, Ohio MaryMount Hospital - Garfield Hts., Ohio Deaconess Hospital - Cleveland, Ohio
	Instructor in Orthopaedic Surgery/Case Western Reserve University School of Medicine
	Past President Medical Staff - St. Alexis