Doc. 250

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

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IN THE COURT OF COMMON PLEAS

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GARY M. GAFFGA,)
)
Plaintiff,)
)
vs.) Case Number 92 CV 702
) Judge Boggins
CHARLES M. RUSSELL, ET AL.,)
)
Defendants.)

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DEPOSITION OF RALPH KOVACH, M.D.
Tuesday, June 22, 1993

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Deposition of RALPH KOVACH, M.D., called by the Plaintiff for examination under the Ohio Rules of Civil Procedure, taken before me, the undersigned, Rena J. Muzzin, a Notary Public in and for the State of Ohio, pursuant to agreement of counsel, at St. Alexis Medical Building, 5109 Broadway, Cleveland, Ohio, commencing at 3:55 p.m., the day and date above set forth.

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Cleveland, Ohio 44114
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APPEARANCES:

On Behalf of the Plaintiff:

George V. Pilat, Esquire
McIntyre, Kahn & Kruse Co., L.P.A.
The Galleria & Towers at Erieview
1301 East Ninth Street, Suite 1200
Cleveland, Ohio 44114-1824

On Behalf *of* the Defendants:

Russell A. Buzzelli, Esquire
Roetzel & Andress
75 East Market Street
Akron, Ohio 44308

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RALPH KOVACH, M.D.

called by the Plaintiff for examination under the Ohio Rules of Civil Procedure, after having been first duly sworn, as hereinafter certified, was examined and testified as follows:

MR. BUZZELLI: If I may, we are here this morning for the deposition of Ralph Kovach, a witness for the defense, in the matter of Gary M. Gaffga versus Charles M. Russell, et al.

Prior to going on the record, I informed Plaintiff's counsel, Mr. Pilat, there are two motions before the Court for protective orders concerning, one, medical records from Dr. Patel's office, and number two, a protective order concerning the deposition of Dr. Patel.

I spoke to Dr. Kovach before the deposition, and informed him that these matters are presently pending before the Court, and I told him he is not allowed to discuss those with us, but I am stating on behalf of Dr. Kovach that he has the right to amend or change without discussion his report related to any claims made by the Plaintiff in this cause. Thank you.

MR. PILAT: And I would just like to say

to the extent, Doctor, to the point that you may have to amend or change anything in your report, we reserve the right to ask questions at a later time.

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EXAMINATION

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BY MR. PILAT:

Q Dr. Kovach, would you state your name, please?

A Ralph Kovach, K-o-v-a-c-h.

Q Did I pronounce that right, Kovach?

A Yes.

Q Dr. Kovach, have you ever had your deposition taken before?

A Yes.

Q Approximately how many times have you been deposed?

A Probably at least 30.

Q So you are familiar with the process?

A Yes.

Q I will be asking you some questions today. Give the answer to the best of your ability. If for some reason you don't understand something, please let me know and I will try to rephrase the question.

Can we agree if you answer a question, it is fair for me to assume that you understand the question, you understood

it?

A Yes.

Q Doctor, could you state your address?

A 9 -- change that. 6671 Gates Mills Boulevard, Gates Mills, Ohio.

Q And your date of birth, please?

A August 27, 1925.

Q And your Social Security number?

A 295-14-7712.

Q Now, I have not received a copy of your curriculum vitae, so I am going to ask you a couple questions about your background.

First of all, starting with your education, where did you go to college and when?

A I graduated from the University of Dayton, in Dayton, Ohio in 1950 with a Bachelor of Science degree.

Q And did you go to medical school after that?

A Yes, sir.

Q Where did you go to medical school?

A Loyola University in Chicago, Illinois. I graduated in 1953.

Q And did you do a residency after that?

A Yes, I did.

Q And where did you do your residency?

A I did that after I completed my internship. Both my

internship and residency was at St. Luke's Hospital in Cleveland.

Q And when did you finish the internship and residency?

A The internship was finished in July, 1954, and the residency was finished in July, 1958.

Q Now, was the residency in any particular area of medical practice?

A General orthopedic surgery.

Q And since this might be read to a jury at some point, can you briefly tell us what general orthopedic surgery, is what you do?

A We use the term general now because there is now subspecialization in various branches of orthopedic surgery for which someone would take added training for perhaps six months or sometimes a year. General orthopedics means that you deal in general with all phases of orthopedic surgery around the musculoskeletal system, bones, ligaments, nerves as they innervate these areas and diseases and injuries.

Q That would exclude any operation or treatment of any vital organ such as the heart, lung, liver?

A That's correct.

Q And have you been in the military?

A Yes.

Q When was that?

A That was -- I was in the United States Navy from 1943

to 1946 second-class.

Q And you were discharged in 1946?

A Yes. That is when I started college.

Q Now, where do you have hospital privileges?

A I have it in Cleveland in several hospitals; St. Luke's, St. Alexis, Deaconess, Marymount and Bedford.

Q Have you done any teaching in orthopedics?

A Yes.

Q What have you taught and when?

A I have taught periodically usually for several weeks a year. I have an orthopedic residency program at St. Luke's, and that is usually one month a year. I have done that since I have completed my training. I still do it.

Q And do you have any position, like a department head, any type of position with St Luke's Hospital?

A I'm on the active staff.

Q Not the head of any departments or on any committees or anything like that?

A No.

Q Have you written any articles?

A No, sir.

Q Is it possible to get a copy of your CV before we leave here today?

A No. I don't have one here. I have one in my other office.

MR. BUZZELLI: George, we will see to getting you one. In fairness to the Doctor, that request was not made to him. I will get you a copy.

MR. PILAT: Okay. That was in the notice of deposition that was served upon you.

MR. BUZZELLI: The subpoena duces tecum was to bring his file, but we will get you a copy of the CV. Thank you.

Q Do you know Dr. Buel Smith of Akron?

A I know who he is.

Q How do you know him?

A We completed our training programs at the same time. He was a resident at University Hospitals, and I was at St. Luke's, and we met off and on through the years.

Q And would you consider him as a friend or acquaintance?

A I assume one whom I knew. I wouldn't say a friend, because we don't have any social get-togethers.

Q Professional acquaintance?

A Yes.

Q Would you say, based on your knowledge of Dr. Buel Smith, that he is a man with expertise in the field of orthopedics?

A I would say he is a good orthopedic surgeon, sure.

Q Now, have you brought -- I notice you have some notes

in front of you. Have you brought your file on this matter?
A Yes.
Q On Gary Gaffga?
A Sure.
Q Can I see that, please?
A Yes (handing).
MR. PILAT: We can go off the record while I look at his file.
(Recess had.)
MR. PILAT: Back on the record.
Q Now, Doctor, is that the entire file that you have related to Gary Gaffga or this litigation?
A This is, plus this here (indicating).
Q Okay. I didn't see this extra stack.
MR. PILAT: Off the record.
MR. BUZZELLI: If we could go back on the record to stipulate and to save time, I also forwarded to Dr. Kovach all X-rays that Dr. Smith provided to me recently. Those are not here in the office. We are trying to get those here, but they are the same ones that you had previously seen and that Dr. Smith authorized and provided to us. Those are also part of the file.
Q Including the file and this other group of items that

are clipped together, are there any other documents that you have that relate to Gary Gaffga?

A No.

Q And we talked about the X-rays that are coming?

A Yes.

Q Have any items been removed from any of your files regarding Gary Gaffga based on this litigation?

A Yes.

Q Can you tell me what items have been removed?

A A couple things with bills and payments, and a work-up review that I provided to Deanna White in my review of this material before I had examined Mr. Gaffga.

Q Now, the bills, those relate to the time that you have spent?

A My bills.

MR. BUZZELLI: Objection to the previous answer. Go ahead.

Q Now, with respect to the document that you had provided earlier to Deanna White of Transamerica, when was that removed?

A That was removed today.

Q And on whose instructions?

A It was on the instruction of Mr. Buzzelli.

Q I'm just going to take a second to make sure. We had served a notice of deposition duces tecum on counsel for the

defendant which contained some document requests. I'm just going to go through them to make sure that we have got everything or whether or not there is anything else.

Number 1, your entire file related to Gary M. Gaffga, Social Security number, which we have that, but for the items that you have removed --

MR. **BUZZELLI:** The only item that has been removed from the file, again are the bills related to Transamerica, which again, this is without abrogating any privilege, and, of course, the report where we are asserting a privileged work product.

Q Number 2, to the extent not covered above, any and all documents that refer to any and all documentation, all documentation related to Gary M. Gaffga, notes, charts, correspondence or reports prepared by you or any person at your direction or request. Are those items contained there in front of you?

A Yes.

Q 3, to the extent not covered above, any and all medical records or documentation you were provided from any person referring to or relating in any and way to Gary M. Gaffa. That is all there?

A Yes.

Q 4, your curriculum vitae, and we will be getting that?

A Yes.
Q Any engagement letter from counsel of defendant Charles Russell or any representative of defendant including any insurance company representative?
MR. BUZZELLI: Objection. Go ahead and answer.
Q Is there any such engagement letter, do you know?
MR. BUZZELLI: Objection. Go ahead and answer.
A Yeah, it's here.
Q All documents substantiating or referring or relating to any monies or fees paid to you, billed to you by Defendant .Charles Russell, defendants' counsel or any other representative of defendants, including any insurance company representative?
MR. BUZZELLI: Objection. Go ahead and answer.
A Just what we removed, as I stated.
Q Now, Doctor, let me backtrack. How did you first get involved with this case concerning Gary Gaffga?
A I was requested to review certain materials and give my opinion, which I then did. And subsequent to that, I was requested to examine Mr. Gaffga again to give the report.
Q Who was it that first contacted you regarding this case?

A Deanna L. White.
Q Do you know when that was?
A 'Itwas in 1992. I sent her the report on April 20th of that year.
Q Do you know how long it had been or how long it was from your time of contact to the time you provided the report?
MR. BUZZELLI: Objection. Go ahead and answer the question.
A Probably a week or so. It took awhile to read the material and submit an opinion.
Q And have you done any prior work on any cases for Transamerica Insurance Company?
MR. BUZZELLI: Objection. Go ahead and answer.
A To my knowledge, no.
Q And do you currently have any other matters, open files or pending matters relating to Transamerica Insurance Company?
MR. BUZZELLI: Objection. Go ahead and answer.
A Not as far as I know.
Q Have you done any prior work for the law firm of Roetzel & Andress?
A I don't think I did. I don't recall.

Q Have you done any prior work for Attorney Russell Buzzelli?
A No. The first time I met Mr. Buzzelli was a week or two ago.
Q Now, Transamerica provided you with some medical information on Mr. Gaffga?
MR. BUZZELLI: Objection. Go ahead and answer.
A Yes.
Q And do you know when they were provided?
A It had to be provided in early April or perhaps the month before of 1992.
Q And was this provided by Ms. White?
A Yes.
Q And in your file, is it fair to say that the items that are clipped together with the Acco binder, is what was provided by Ms. White?
A Yes.
Q And that is the full extent of everything that she provided to you?
A Yes, sir.
Q And you have received the records.
I would like you to tell us what you did in your analysis and in preparing this report that you mentioned.
MR. BUZZELLI: Objection. At this point

in time, I'm going to assert the privilege as it relates to work product concerning any report that was rendered to a Ms. White. I have that report here today. I will not reveal that report. However, I will apply for a protective order. I will put that on the record right now since that is part and parcel of the work product process. However, I have previously provided to counsel a copy of the report that Dr. Kovach rendered to counsel and which has been provided before the discovery deadline which will be used in concert with his expert testimony at trial.

I have no problem with any conversation that may have occurred or reviewed as it relates to the expert report. However, as it relates to any conversation with Ms. White, that is work product not subject to discovery based upon it is privilege herein. We will disagree on that. However, I will assert that privilege and ask counsel to please move on, and I will file a protective order.

MR. **PILAT:** And we disagree, and we will take this up with the Court. However, I do believe that I am entitled to ask some type of

questions, so I can have a better understanding of the report itself, and I will do my best, subject to discussing it with the Court, not to get into the substance of that.

Q With respect to the written report that was dated April 20th, I think you said --

A Yes.

Q -- was there one draft of the report that was prepared?

MR. BUZZELLI: Objection. Go ahead and answer.

A One draft, and, of course, I had my copy.

Q Okay.

And was this document provided to anyone other than Ms. White?

A No.

Q Did this report contain your medical opinions at that time regarding your review of records?

MR. BUZZELLI: Objection. Go ahead and answer.

A I reviewed the records and gave my thoughts.

Q Did you examine Gary Gaffga for that report?

A For that report, no. He was examined in the subsequent request.

Q So it was based solely on medical records that you had in your possession from Transamerica at that time?

A Yes, sir.

Q And with respect to your review of the medical records that were provided, did you come to any conclusions or opinions regarding Mr. Gaffga's injuries?

A Yes.

Q And what were those?

A To my best recollection --

Q I'm sorry to interrupt. I'm focusing on this time period, not any other reports.

A It's on my recollection at that time. And my recollection was that this gentleman was involved in an accident. He was rear ended. He was shaken back and forth.

He had complaints about his neck, but he had pre-existing problems with his neck as shown by X-ray studies that have been made. And the problems that he had with his neck, by X-ray examination, were significant.

He did have a degenerating disc. He had a lot of arthritic changes, we call them spurs or osteophytes, around the area between the fourth and fifth vertebrae in the neck. We call that the cervical area.

Also, these spurs were projecting into the opening. We call that the intervertebral foramen. And those were present in that area, and this appeared from some previous time. They had to be present at least four years, because it takes a while for such changes to develop.

So he had symptoms, and he had symptoms that went into his arms. They were not well localized, but he had symptoms in his arms, and he had treatment. Most of his symptomatology had settled down.

He also had some complaints about his lower back. He had previous surgery to his back in 1982. He had a herniated disc, that was the fifth disc, or the one between the fifth vertebrae and the sacrum, and that had apparently been successful. And his symptoms in the lower back had settled down, so that his main treatment phase was for his neck area.

He had physical therapy treatments. He had various medications prescribed, primarily anti-inflammatory drugs. And then after awhile, those things settled down, so I feel that he did have some soft tissue injuries in the area of the neck, and that he had a pre-existing problem in his neck.

From the studies that were made, I don't see any thing on record that showed that that particular problem in the neck had progressed, at least by any means that you could trace, either by X-rays or other things. And that was my opinion, that he had a pre-existing problem, that he had another injury, and the conclusion is he is doing fairly well.

Q I notice in that documentation there was a letter that Dr. Smith had provided to myself noting his opinion?

A Yes.

Q Have you reviewed that?
A Yes,
Q And do you recall that Dr. Smith had indicated that one of the conditions he indicated, diagnosed was a cervical strain that Gary suffered?
A Yes.
Q Would you agree with the doctor's diagnosis of a cervical strain?
A Yes, I would.
Q And can you give me your definition of what you would call a cervical strain?
A Cervical means the neck area, and strain means that the soft tissues were stretched.
Q And what types of conditions or symptoms would show up with a cervical strain? What kind of problems would the patient have?
A Usually you will have pain in that area. And if the muscles are involved, the muscles can be quite painful. Attempting to use these muscles can produce pain.
Q Which muscles are we referring to?
A Well, we are talking about the muscles that move the neck, primarily muscles in the back and your neck. Because there is no record of him having any pain in the front of his neck, which you would expect if he had a significant problem. But he never did complain about the front of his neck.

Ordinarily when you are struck from behind, your head is going to be thrown forward, and your neck will be painful, and you are going to have a lot of difficulty swallowing. That is nowhere recorded by anybody, so we are dealing, as far as the records are concerned, that it is the back of his neck, which is the trapezius muscle, which is the muscle in the back of your neck that is attached to the head. So when you use these muscles you will have pain.

Q And also the muscle around the scapula region?

A Yes.

Q I just want to make sure we both understand the same thing.

A The trapezius muscle, ilio-costalis.

Q I'm not very good on Greek.

A I'm very good on Greek. I know a little bit. You forgot.

Q Based on your records and your review of that time, there is no dispute that Gary suffered some injury, an injury to his neck?

MR. BUZZELLI: Objection. Go ahead and answer.

A Some he did.

Q Now, with respect to this pre-existing condition based on your review of the medical records and focusing on April of 1992, would you say that the auto accident had aggravated

this pre-existing condition to whatever degree, but there had been an aggravation?

MR. BUZZELLI: Objection. Go ahead and answer.

A I would think there was some aggravation to the standpoint that he had some symptoms down into his hand, where he doesn't give a history of having any previous disc problem.

Q Do you recall that Dr. Smith -- well, if we can agree that there is some degree, would you state to a reasonable degree of medical certainty that there was some degree of aggravation?

A Yes.

Q Dr. Smith, if you recall, had made a diagnosis of a lumbosacral radiculitis, do you recall that?

A Yes, I recall that.

Q Based on your review of these records up to around the time of April of '92, would you agree with that diagnosis?

A No, sir.

Q Why would you not agree with that?

A This gentleman had a strain in his lower back, but the physical findings as recorded are not those of radiculitis. Radiculitis refers to something like a disc, which he previously had and certainly had no new pain on the stretch of the sciatic nerve. He didn't have the loss of feeling.

He didn't have the particular weakness in the extremities.

So that is a word that he used, but I think he had more of a lower back strain. I don't think he had a herniated disc in the lower back. That is pretty much what you are talking about when you say radiculitis.

Q If I understand you correctly, so there was some lower back strain caused?

A Yes.

Q But it was not radiculitis?

A That's correct. That is a disagreement on the things.

Q And would you say that Gary -- I know that he had surgery previously in 1982 to remove a disc?

A Yes.

Q Now, would you say that the accident that we are talking about here had aggravated that condition at all?

A No, sir.

Q And why not?

A He had a low back strain. There is no aggravation. He fully recovered and has no symptoms.

Q He has no symptoms now?

A He didn't have any then with radiculitis, and that's what we are talking about. But he had low back strain, I will agree to that, sure.

Q And you would state to a reasonable degree of medical certainty that he had suffered a low back strain as a result

of the accident?

A Yes, I would.

Q Now, up to April of '92, had you reviewed any of the treatment methods employed by Dr. Smith?

A I looked at them, sure. What was done here, primarily what is physical therapy.

Q I have heard it described generally as pain management including physical therapy, medications, things like that. Is that something you are familiar with?

MR. BUZZELLI: Objection to the form. Go ahead and answer the question.

A Sometimes they use pain management or treatment.

Q Now, the physical therapy, if my notes are correct, and you have reviewed the records, included traction, electrical stimulation, ultrasound, heat packs, massages and requesting home exercises be done. Is that your recollection, as well?

A Yes.

Q Would you agree with that as a treatment method for the types of injuries that you saw from the records?

A Yes.

Q And with respect to the medications, and if I don't get the pronunciation right let me know; Naprosyn, Fiorinal, Darvocet, Butalbital, Propoxyphene and Hydrocodone?

MR. BUZZELLI: Objection. I previously asked for this information as it relates to

any and all medications and I have not received anything.

With that, please go ahead, Doctor.

MR. PILAT: And I will ask you to review what I provided because the medication document contains all of those names, because that is where I got them from.

Q Those different medications, do you prescribe them when dealing with patients with cervical low back strain or low back strain?

A No.

Q Is there some reason why you don't prescribe those drugs?

A Because Naprosyn is totally worthless. It's an anti-inflammatory agent that never, in my opinion, helps pulled muscles, although it's prescribed all the time.

Q And what about Fiorinal?

A It's a pain medication. It doesn't cure, but helps control pain.

Q What about Darvocet?

A Darvocet is a good drug, an analgesic. It's very good.

Q Butalbital?

A I don't know if that is for sleep or what, but it sounds like it. Usually I don't prescribe anything to people for sleep. I don't like to get them started on this.

Q And the Propoxyphene?
A Yes. It's another name for a Darvon. It's a generic make name, because it's cheaper because the patent is off.
Q Hydrocodone?
A It's frequently known as Percocet. It's a very addicting drug. I try not to use it unless I absolutely have to because of the degree of pain.
Q And I think you have reviewed Dr. Buel Smith's deposition transcript?
A Yes.
Q And I think there is testimony in there that he prefers to wait until one year before making an initial diagnosis to see whether surgery might be required or whether a person might be able to resolve some of these conditions?
A I don't remember reading that, but if you say it's there, then he said that.
Q Would you agree or disagree with that as part of a treatment philosophy?
A It's a philosophy, but I'm sure he does not stick to it in all instances.
Q So you don't have an opinion one way or the other?
A No. There are some people that don't have to wait that long if there is nothing wrong with them. In general, we all tend to wait. We don't rush into something unless you see something that should be taken care of immediately.

Q Because there are some things that, like a situation like this, that might resolve over a short period of time?
A Sure.
Q Now, subsequent to April of '92, you did examine Garry Gaffga?
A Yes, I did.
Q And when was that?
A He was examined August 17th, 1992, which was just about two years after the accident.
Q And where was that examination?
A That was in my office on Garfield Boulevard in Cleveland, Ohio.
Q Now, prior to that August 17th date, had ou ever seen Garry Gaffga before?
A No, that was my first and only meeting with him.
Q And when Gary came to your office, describe that for us just generally, and we can get into some of the details of what you did when he came here.
A At this time, he had had surgery, and he was wearing the neck brace. So we introduced each other, and we went over what was going on. He told me that he wasn't getting better, he had problems, and that he had a work-up, which included having a diskogram, and then he went to a spinal fusion operation at that level, then with a bone graft that was taken from his pelvis, so he was wearing a brace. He

told me that he was doing much better even though surgery had taken place only in June. So that was on June 22, and I saw him approximately four weeks after the operation, two months, eight weeks after the operation.

And he said that he had headaches before, and his headaches had dissipated, and he didn't have any pain in the back of his shoulder or in his upper arm, and he didn't have the tingling in his hands. And he told me that he had some tingling over the fifth finger of the right hand and on the ulnar border of his right hand, but this has not been present for the last two weeks, and that was no longer actually present. Then I proceeded to examine him.

Q Okay.

And so what we have been talking about up to this point is kind of the history, getting information from him?

A Yes.

Q And then you conducted an examination of Mr. Gaffga?

A Yes.

Q And could you describe for us generally what the examination entai1ed?

A It's a general orthopedic examination of someone who has had surgery. The surgery was on his neck, so we needed -- he was wearing a brace. He wasn't allowed to move his neck, so I wasn't going to remove him from the brace for examination. I wasn't going to have any X-rays done, because

it was for his surgeon to rule on whether he would be able to come out of this brace to take the X-rays.

So we looked at him, and I saw that he had an operative scar on the front of his neck. It was about three inches, three and-a-half inches wide, and it was still indurated and slightly tender. It was still thickened, because it was a recent operation that had not softened up yet.

Then I did a neurological examination. I checked his reflexes in his arms and legs, and found all his reflexes to be present. They are equal on both sides.

I noted that Dr. Smith, when he examined him, found an Achilles reflex out, but it was present when I examined him. Then I stretched the sciatic nerve both when you are sitting down and lying down and pulled on it, and that didn't produce any problems.

He didn't have any sensation changes in his hands or arms or legs or in his feet, but I did find when I would bend his right elbow, the ulnar nerve would dislocate. And that is on the inner side of your elbow better known as the crazy bone. He didn't have that on the other side, so this could account for the problem that he had with his hand, that little bit of sensation change in there, but it wasn't present anymore, at least it wasn't present at the time that I examined him.

He didn't have any weakness that I could find in the

muscles of his arms or legs. That was pretty much the end of the examination.

Q Approximately how much time did you spend with Mr. Gaffga that day?

A Probably about a half hour.

Q And would you say that Gary was cooperative with you?

A Oh, yeah, he was cooperative. There was no question.

Q He answered your questions, he did what you wanted him to do?

A Yes.

Q Did you palpate the areas at all, either his neck, back or shoulders or anything like that?

A I felt the muscles around those areas, and I didn't find anything, no.

Q Nothing unusual?

A No.

Q Now, I know that while we have been discussing this, and from what you have been telling us, you have been referring to the report that you have prepared for Attorney Orlando Williams?

A Yes.

Q And that's dated August 17th of 1992?

A Yes, sir.

Q And I saw one document that was in your file, a yellow page?

A Yes. This is some notation from the history and physical that I dictate after I complete that.
Q So this one yellow page, there is some on the front and some on the back?
A Those are notations so I could dictate.
Q From the examination?
A Yes.

MR. BUZZELLI: For the record, we provided a record of Dr. Kovach's report previously to counsel prior to the doctor's deposition.

MR. PILAT: I'm not disputing those, I'm just asking if those are notes.

A Yes, those are notes.
Q I mean, I would like to refer to some of the notes in your report. There are a couple things that I didn't understand.

MR. PILAT: Off the record for a second.

(Discussion was had off the record.)

MR. PILAT: Back on the record.

Q Now, with respect to the second full paragraph, you mentioned, "Since that time, Mr. Gaffga states that he has had chronic problems as a result of the accident that took place." My question is, what time are you referring to when you say "since that time?"

A Since the time I set the time frame that is within these particular notes, let's say the last time that Dr. Smith had seen him, and to put in a time frame you have to get around sometime of October of 1990.

Q So that is the time period we are referring to, from October of '90 up to the time when you saw him?

A Yes, because there is nothing in here that refers to any other time after as far as I can tell.

Q Okay.

And with respect to, this is, like the third sentence, "Mr. Gaffga states that he continues to have problems, however, with his neck and upper extremities." Now, you are not saying, continues since the surgery." Can you tell me what you mean by "continues"?

A That is probably stated wrong. It should probably be continued rather than continues. It should have been past tense rather than present.

Q And what time period again are you referring to, since the time of the accident?

A Since the time -- no. From the last time that he had seen Dr. Smith up until he went to see him again and had his surgical procedure.

Q A continuing of the same things that are referred to in the records that you had in your possession previously?

A Yes.

Q In the next paragraph, I guess it's the third one, "Because of ongoing problems consisting of severe headaches, pain in the back of the left shoulder near the scapula, pain in the upper left shoulder, and tingling in both hands to such a degree that he would be awakened, and because the traction was no longer of any help to him", the ones that you have listed there and the ones I read, are those problems consistent with a neck injury from a rear-end collision?

MR. BUZZELLI: Objection. Go ahead and answer.

A They could be consistent with a chronic strain. They could be consistent with a mild fascitis.

Q What is a mild fascitis?

A Mild fascitis, it's a poor term, but we think it's referred to as an injury or no injury, but a condition where the muscle in the overlying cover of the fascia is painful to a person, described as fibromyology, and that condition could give you this problem.

The tingling in both hands could be related to other conditions such as carpal tunnel syndrome which, of course, he does not have. And it could also be related to chronic irritation in the nerves in the neck.

Q And in your medical opinion, would the ongoing problems that you have mentioned be indicative of a cervical strain?

MR. BUZZELLI: Objection only as to the

term "ongoing". What time frame?

Go ahead and answer if you understand the question.

A The problem could be consistent with cervical strain. It could also be consistent with the osteophytes that he had in his neck area with some pressure on the nerve, so that they became symptomatic and was painful to him.

Q So then it would also be consistent with evidence of aggravation of this pre-existing condition that we have been talking about?

A Probably would be.

Q And I'm using the term "ongoing problems" as you have described it in there with reference to that paragraph. Based on those things that you have detailed there, would you have recommended surgery for Mr. Gaffga?

A Well, I would have recommended a work-up, which he had. And what I would recommend for the individual is, "It's your neck. These are the things that could happen to you if things do not go right. You are 33 years old. What do you want to do?"

Because there is no life threatening problem involved, it was primarily a matter of pain. And I think I would say, "This is the option that you have." And the chances of getting over this, since it is only one level involved, they are pretty good.

Q A good chance of recovery?
A Good chance, but no guarantee that you will recover, but a pretty good chance.
Q And you make a reference of the fact that the diskogram was performed of the neck. Why would am orthopedist do a diskogram?
A Well, only to be certain that this is really the cause of the problem.
Q So more as part of evaluating whether surgery should be brought up as an option?
A Some people would not do it. But I think it was a prudent thing that was done in this case. I thought the discs below that level were okay when they did the study on it. And when that particular disc was injected, he had reproduction of his complaints of pain, and it showed that the that degeneration, which, of course, you know from your MRI, which he had done, but it just confirms that you do not want to fuse any other level.
Q Now, during this, I think maybe probably in the fourth paragraph down, Mr. Gaffga is describing to you what he knew of the surgery that had been done?
A Yes, sir.
Q And his description, would that coincide with your knowledge what a standard thought of cervical disc surgery would be?

A Yes.
Q A pretty standard method of operation?
A Yes, it is.
Q And you are familiar with fusion surgery, I take it?
A I do not do it, but I'm familiar with it.
Q And would a person with this type of surgery concerning cervical disc surgery feel pain, experience pain after that surgery?
A Sure. Whenever you get cut in the neck, you are going to have pain. He went through an operation. He had some muscle pulled off his pelvis, and his pelvis was going to hurt awhile after, too.
Q Is it likely that a person who would be having this type of surgery would be missing work for sometime?
A Sure.
Q You made reference to the cervical four poster brace?
A Yes.
Q And are these standard post-operatives for this type of surgery?
A It's standard to use these types of braces. It's up to the preference of the surgeon or whoever makes these braces. They are usually custom made to fit properly if he is going to be wearing them for a while. That is a pretty good one. It allows *you* to get to the neck to shave and wash a bit.
Q So it's a type of brace that you have seen before?

A Yes.
Q And you also make reference in the paragraph at the bottom of page 1, which carries over to page 2, and I will just characterise it this way: Some of the problems that you had identified earlier on in the letter are then repeated, and basically that the problems are no longer there, the problems he was having before the surgery?
A Yes. Those particular things that he said were bothering him were now relieved or at least they were no longer present with the operation, and we are hoping that they will stay that way.
Q Would that be indicative of a successful surgery?
A Well, so far, yes.
Q And indicative that the surgery helped Mr. Gaffga?
A Yes.
Q Now, you mentioned in the next paragraph down about the neurological examination?
A Yes.
Q And with respect to the brachioradialis, first of all, if you could tell us, a juror might not know, where that is and how do you test it?
A Okay. We will test three reflexes in the arm. One is the biceps reflex. We tap it and see if the muscle contracts. We tap the triceps, and see if that contracts. Sometimes if you get motion you watch the muscle expand. And

the other area, you hit over here and watch the fingers release the muscle, and above the elbow, that is how you lift your wrist.

Q And the patellar reflex is where you tap on the front of the knee?

A Yes.

Q How is the Achilles reflex checked?

A I tap on the back of the Achilles tendon, which is at the back of your ankle, to see if your foot moves downward. In this case when I examined him it was present.

Q So the reflexes of the neurological tests would be normal?

A Yes.

Q What were the other things with respect to the neurological exam?

A What I meant as far as neurological, I look at atrophy, muscle strength, sensation, it's not just for checking reflexes.

Q Now, you mentioned also that the straight leg raising test bilaterally was negative. Can you tell us, for a person who doesn't know what any of that means, what you mean by that?

A We call it the straight leg raising test when someone lies down still, and his knee is kept straight, and you lift the heel up, and you are stretching tissues in the back.

One of the things that you stretch is the sciatic nerve, and that can be tested several ways. You can do the same situation with the individual sitting on the examining couch. His hips would then be bent at 90 degrees, his knees bent to 90 degrees downwards, and you straighten the knee. And in effect, you have done a straight leg raising test lying down except in this instance you would straighten the leg over the head 90 degrees, and that would be straight up. That is sitting down and lying down, and that would not produce any discomfort.

Q And that is what you are looking for in this test is discomfort?

A Yes, because primarily I am checking to see if there is any involvement of the sciatic nerve or the branches that make up the sciatic nerve.

Q It would have to do with the lower extremities and have nothing to do with the neck?

A No, nothing to do with the neck.

Q And that was a normal examination?

A That was normal upon examination.

Q And you mention in that same paragraph, regarding no sensory changes were present in the upper and lower extremities. Could you tell us what you mean by that, by sensory changes?

A When I touch you, you have sort of a reception that I

have so much pressure. Well, I do the same thing when I rub over various areas to see if you could feel me touching you or not, and if there is any difference from one side to the other. There was no difference.

Q Every time you did that it came out normal? .

A Yes. In both his arms or legs we know what to expect, that is why we check to see.

Q What you would hope to find is that a person is normal?

A Yes, because there would not be any change.

Q Now, in the second to the last paragraph there is reference to tingling, and we had heard about tingling earlier on in the report, and I think we are talking about two types of tingling, at least I think we are. I want to make sure I understand.

We are talking about tingling of the hands in general, and a second set of tingling which relates to the ulnar nerve on the outside of the hand?

A Yes.

Q So when you are saying the tingling which has only recently noted to be gone --

A Actually that is the inner side of the hand. The hand has to be facing in a fully open position, so this would be the inner side.

Q Okay. Thank you.

A And with respect to the tingling you are talking about

being gone, you are talking about the general hand tingling which was chronic, he didn't have that before the surgery, the tingling, which he has only recently noted to be gone, he did not have this problem in the previous two weeks. He had that on this particular finger and that side on the inner part of the palm.

Q So there are two types of tingling, one which was no longer of any concern?

A Right, and this was no longer present.

Q And you said the one for the pinkie side, the little finger side of the hand, that was related to a dislocating ulnar nerve?

A That is my opinion, that it came from that nerve.

Q What do you mean by "dislocating nerve"?

A The funny bone or ulnar nerve, that is located on the inner side of your elbow. The elbow is indicated in a small bony groove on the back of the humeral bone at the elbow. And it stays in that position, because there is soft tissue that binds it and holds it in the position. That is called the cubital tunnel. Some people are born with this area being very loose, so that when they bend their elbow, the nerve jumps up from the tunnel and dislocats to the inner side of the bone and it's stretched to the inner side of the bone. That would be something you are born with. It's not really due to any injury. It's something that you either

have on you or you don't.

Q And I think you indicated it's fairly common?

A Yes, it's common. And some people have enough symptoms that they have to have surgery to change that problem.

Q And so that I'm clear, when we are talking about the tingling, we see it mentioned a couple times in the report, the one set of tingling does not have anything to do with the ulnar nerve situation, and you would trace to the cervical strain?

A Yes. Well, more than likely not too much on the strain, but more likely the pressure on the nerve because he had these osteophytes on both sides.

Q But nothing relating to the ulnar nerve?

A No.

Q That ulnar nerve was related to the inner side of the hand?

A Yes, and which he did not have after the accident, but he had it sometime after the surgery.

Q Okay.

Based on your examination of Mr. Gaffga and the records that you had reviewed, everything that you have reviewed up to the time of your August, 1992 report, would you still agree that Gary had sustained some degree of injury to his neck in the accident?

A Yes.

Q A cervical strain, I think you said also aggravates this pre-existing condition?
A Yes.
Q And would you have the same opinion with respect to the lower back? And again, I don't want to get into the radiculitis thing, but a little back strain?
A I will agree he had back strain.
Q Some injury to the low back?
A Yes.
Q And you would state that to a reasonable degree of medical certainty?
A Yes.
Q Now, with respect to the conclusion that you had stated in the report and which is in the final sentence, you refer to the condition progressed to the point where it did require surgical fusion. Now, "progressed," what do you mean by progressed, it became worse?
A That he had more symptoms, and the symptoms were not relieved, and he wanted to do something about it.
Q And can you put a time frame on this progression?
A No.
Q Nothing in the records that you had reviewed or in your examination that would give you any --
A No, because the last time he saw Dr. Smith he was doing pretty good. Then he didn't see him for a while, and

then he said this is bothering me, and this is what is going on.

Q And, Doctor, based on your examination of the patient and your review of all the different records that you have, would you agree or disagree that surgery for this man was necessary for his condition?

MR. BUZZELLI: Objection as to the form. Go ahead and answer the question.

A I would agree only in that the patient requested surgery, and when a patient requests surgery, of course, surgery was done for the proper indication.

Q And so I am clear, you mentioned --

A Surgery is never necessary unless something is going to harm you or you are going to die or lose a limb or get paralyzed, and that hasn't gone through here. The main problem was this gentleman was complaining of a lot of pain, and that was enough to relieve his painful symptoms.

Q So it's more necessity from the patient's standpoint of whether or not they are willing to put up with a condition or can live with a certain --

A That's right.

Q And you mentioned that the surgery was on a pre-existing condition at the time of his accident, but we have said there can be an aggravation of that injury that has attributed to --

A Yes.
Q Can you say whether or not that aggravation is what precipitated the surgery or it becoming an option?
A It may temporarily increase the symptomatology. He may have come to surgery a bit sooner than otherwise, but it is my firm belief this 31 year old man, with his back and neck as it was, he would have to have an operation with or without a the accident.
Q I think you mentioned that it may have speeded up the process, if he had it earlier maybe than later?
A That's right.
Q Based on all your review of the records, could you put a ballpark on when he may have had to have it in the future?
A I would anticipate anytime from 10 or 15 years.
Q So it would most likely have to be done.
So a person who in the condition that you observed with Mr. Gaffga, probably a typical age would be 50 or 45?
MR. BUZZELLI: Objection. Go ahead and answer.
A That is probably about the time that you require it or sometimes sooner. But it's unusual for this man to have such a neck problem. You usually see those in older individuals.
Q Okay.
Now, we have talked about this pre-existing degenerative disc condition, and I wonder if you can tell us

what you mean, and we both used that, what you mean by degenerative disc condition, describe what it is.

A A disc is a spacer between the vertebrae, and it's the round part of what we will call the vertebral bodies, and it is compressible. It's got a high water content.

When we describe the disc degenerating, it loses its water content and starts to break up *so* that the height of the disc is not what it used to be. It gets compressed. That may be accompanied by strains along the ligaments that hold the vertebrae together, and stressing that area so that new bone is formed as a result of these pulls and stresses, and that builds up things which we call spurs or osteophytes.

Also, when this happens, the smaller joint in the back, and the disc in the front, those are called the coccygeal joints, those are no longer in the same position if the disc narrows, and they are not functioning as they did before. And they may now produce degenerative changes where the cartilage which lines those joints can start to wear out, where you can get inflammation of that lining of those joints. That can become painful, and that can now produce new bones, which we get hypertrophy or a building up to the chronic arthritis situation.

So that is the scenario that could lead to disc degeneration which can produce these other things. And that takes a long time to happen.

Q Now, the way that you just described, is that a progression of symptoms?

A No. I'm just describing the physical changes that take place in the disc. That is what we mean by degenerative disc, it's no longer elastic, it's not the same height, and it produces the other changes in the surrounding joints at that level.

Q And when we are talking about these bone spurs, how big are these pieces that we are talking about so the jury can get an idea?

A A spur varies. First of all, you don't have any to begin with, and it depends where the spurs are. The spur is a response to a strain on his ligament, as we mentioned, and with time they get larger and larger. So they vary in size from one millimeter up to ten millimeters.

Now, if the spurs are out in the front or out on the side, there is no particular problem, because they are not pressing on anything vital, unless they get too big, then you might have difficulty swallowing. Your esophagus is right over the vertebrae. But if they project backwards or out to the side, that is where you have these foramen where the nerves exit, and at that point that may be where they produce pressure.

Q Now, how can you tell as an orthopedist whether or not someone has a degenerative disc condition?

A It depends on when, earlier or later.

Q I would like to preface it by saying is there -- with respect to degenerative disc conditions in general, is there anything peculiar in the cervical spine as opposed to other areas of the spine?

A The difference would be that moat of the time you wouldn't see it at a very early age in the cervical spine. It takes a while. This could be a response to repeated stress or repeated injuries. Frequently the individual has a problem and is not cognizant of it, because it has not progressed to the point where it is troublesome, because the spurs are not in an area that is impinging on anything that is painful.

Q And what I would like to do for the next couple of questions is talk about the degenerative disc conditions as you would see them in the cervical disc area. And I had asked whether you can tell whether or not someone has one?

A Well, first of all, you are not going to tell by looking at them. You have to get X-rays. Very early on you are not going to see the changes. The changes have to be there in order for you to see them. The earliest way that you are going to be able to tell that you have a disc that is going to degenerate is by doing an MRI examination today. And this will have certain changes, and it is primarily a decrease in the water content. In other wors, a disc,

instead of showing up as a white structure, but a darker structure depends on how much was waster is lost. So from that, you can infer that the disc is undergoing some degeneration.

Q Just so I understand what you are saying or if I understand you correctly, you are saying that you need some type of MRI or X-ray to be able to tell whether someone has a degenerative disc condition?

A If they are having it very early, by the time they have change that you can visualize on an X-ray, that information, it's already been going on for sometime and these other changes have taken place. The disc is usually lower in height, it's narrowing on the disc space, and you have the other changes now taking place where the bone spurs are now showing and arthritis is taking place in the other joints.

Q So with respect to X-rays or MRIs in the cervical area, to look at that, that wouldn't be done as part of a general physical or normal exam?

A No, it's never part of a general physical unless someone thinks everybody should have a chest X-ray.

Q So these things could not be done unless someone says, "I have something wrong with my neck, something really bothers me"?

MR. BUZZELLI: Objection as to the form.

A The neck usually is not taken then unless you have some

symptoms and information that may be indicated

Q And the same with an MRI?

A MRIS, you have to have a decent reason to take one. It's a very costly procedure, and it's not done as routine procedure.

Q Now, you mentioned that you normally don't see someone who has a degenerative disc condition, you would need some of these other things. Is there any point in time that you would see any amount of pain that would lead to a person who has a degenerative disc condition?

A No. There are a lot of things that you would throw in together, but none really specifically where you could say that you have a degenerative disc condition in my neck. You may say, "My neck cracked," and have your neck crack and there is nothing wrong with it.

Q So pain in the neck or say pain in the muscles from the back --

A Yes, or in your arms.

Q -- it doesn't have to be a degenerative disc condition?

A Those are possibilities you have to investigate, but any one particular thing without these other studies doesn't tell you whether you have a degenerative disc, you can't tell that.

Q Absent all these things that we have talked about, the MRI, the pain, would a person know whether or not they have a

degenerative disc condition?

MR. BUZZELLI: Objection as to form.

Go ahead and answer.

A I don't know anyone who walks into my office that says, "I have a degenerative disc." No one says that. They would have symptoms that they come to see you for. They cannot tell whether it's due to degeneration or due to something else, nor could I without doing the proper examination and X-rays if necessary.

Q Usually the first time they would come in to anyone would be when someone started experiencing some type of pain or something different with themselves that wasn't before?

MR. BUZZELLI: Objection as to the form.

Go ahead and answer the question.

A And say we have not had any problems, but we have all had painful necks at one time or another. Whether you are 30 or over 30, we all going to have some problems where we are going to have pain that we never went to a physician for, and rightfully so, because we got over it in a week, and this given a degenerative disc that was not that painful. So people do have symptoms which don't present. We all have that.

Q Now, I know that we have said some things, certain types of pain that may not indicate a degenerative disc condition, it may indicate one of many things. Is there any

type of symptom that would be seen first as to degenerative disc conditions?

A No, sir.

Q Anything unique to that?

A No.

Q And with respect to the point where you might do the X-rays or MRIs or things like that, what types of complaints would the people be presenting with that would lead then to take the next step?

MR. BUZZELLI: Objection to the form.

A They would have many symptoms. And if it has been presenting for a certain period without improving, and I mean improving without treatment, then I think you are entitled to have an X-ray.

Q But up to that point, that is not something that --

A If we find someone who has a specific sore muscle, we are not going to get an X-ray for that because we have found something which we can treat. But if he doesn't improve, we are going to get an X-ray to make sure we didn't miss something that could be important.

Q And the tingling in the hands that we talked about, is that something that is unique to degenerative conditions?

A No.

Q Could be a number of things?

A Yes, it could be several things.

Q And I know that I had heard, after becoming more and more educated, that you might see some type of muscle atrophy, especially the muscle between your index finger and your thumb?

A There might be if there is enough pressure on your nerve.

Q So that is something that you might see with degenerative disc conditions as opposed to something else?

A No. You could see it with a herniated disc in the neck, an isolated nerve problem down in the disc not necessarily coming from higher up.

Q If there were no signs of the atrophy or any tingling, would that indicate that this condition is not as severe?

A All it would indicate is that if it's a disc, if this is what we are talking about and nothing else, it only means that it wasn't as severe, not producing that much pressure on that particular nerve, that the muscle had not atrophied. That is all it means. It doesn't mean he doesn't have a problem. It means, how severe is that particular pressure. The pain could be the same.

Q The atrophy or tingling, as an example, would that indicate anything about how long the disc condition may have been present?

A The atrophy would usually take a little bit of time. But let's say there is a sudden and severe rupture of a disc,

then immediate pressure on that nerve, then the muscle becomes weak immediately, and that is going to go quite rapidly, it could happen within weeks.

If it's a longstanding thing, not that much sudden pressure on the nerve, it could take months or sometimes years.

Q Is there any progression or general progression of some a of these symptoms that we have talked about of degenerative disc conditions?

A If it's a sudden, severe pressure, it's going to go faster than with a low, moderate pressure. Usually when we are talking about a degenerative condition, it's a slow thing, not a fast thing. If you are talking about rupture of a disc that is sudden, it's immediate, it wasn't there, it's there now, and it progresses much faster.

Q In your examination of Mr. Gaffga and from the records that you have reviewed, can you give any type of position or statement on how long the condition may have been present?

A No.

Q No idea?

A I couldn't say.

A He doesn't have too much on physical therapy in the beginning. His main examination was he had that positive diskogram. This gentleman had pain. It was by these particular studies, rather than atrophy, rather than

significant loss of sensation, loss of reflexes in the arm, those usually mean you have to do something quickly. He didn't have those things. Even at the time of surgery, he didn't have those things.

Q Can people have a degenerative disc condition and not know about it?

A Yes.

Q Can they have a degenerative disc condition and never really have a problem with anything, there is something wrong with the disc, but they may never know about it?

A It depends what happens. Yes, it's possible, but it depends on, you know, what he had. Not everyone is the same. As I said, most of us ignore the routine aches and pains that we have, and we all recover from them.

"Do you have any problems?"

"No, I never saw a doctor about it."

Q But it certainly is not impossible that somebody could have a degenerative disk condition and not know about it and have a problem?

MR. BUZZELLI: Objection.

A Sure, it's possible.

Q And that there are people with degenerative disc conditions that never require surgery for them?

A That's correct.

Q And I would like to talk a little bit more about the

cervical area, I would like to expand on it. Is there any relationship between the areas of disc degeneration, whether it's cervical, thoracic, lumbar, and the possibility of not knowing of its presence? I mean, is it easier or harder in one area or another to know or not know?

A I don't know. I have seen people with both areas involved, and find it on X-rays taken for other reasons.

Q Nothing really special for one area or another such as -- well, it's harder to know that you have got one in the lumbar area, where as if you have got one in the cervical area, it's real easy -- it is usually something that you are going to know about?

A I don't think you can go on either one more. It can happen in both, and you have to leave it at that.

Q Does the presence of osteophytes or bone spurs have any relationship to how long a degenerative disc condition may have been present?

A Yes.

Q And can you explain that relationship or give an idea?

A Well, I want to know how the degenerative disc developd, and how the spurs form and why they form. And that takes usually several years to happen. It doesn't occur immediately. It's a slow situation.

Q And that is something that see after a few years, but can we fit that into the life of the condition, you know, is

it seen at such as the midpoint of the condition or later on when it's more extensive, the degeneration?

A The situation sometimes will stop at a certain point depending on your activity and doesn't progress. Those are the people that probably never have to have any treatment or any surgery. They are not in a situation where they have to move around or put a strain on an area. If they have to put a strain on the particular area where something occurs, then it can become painful.

Q And you may have answered this, but does presence of the bone spurs have any special relationship to the severity of the condition?

A It only means, on the length of the condition and the severity would be how much. And again, we are saying the bone spurs pressing on anything, that becomes painful.

In this instance that we are discussing, you are talking about bone spurs around the nerve root, so those would have to be of a certain size if they are going to cause narrowing or what we call stenosis of the area, so that the nerve doesn't have the same amount of room that it had to move about as you twist and turn, as you had before.

Also, the disc is narrower, and that brings the opening of the foramen to a smaller size, so that also contributes to the narrowing. So when you say, "Does it have anything to do with the size," yeah, it has something to do with the size.

Q The tiny one probably won't bother you, and the big one can?

A Yes.

Q Now, you mentioned the stenosis, as I understand it, and tell me if I am correct, that is a narrowing of an opening basically?

A Yes.

Q And is that from an osteoarthritic component of a degenerative disc condition?

A It's two things we are speaking about. We are talking about the foramen of the nerve, rather than the opening for the spinal cord, which runs up and down the spine, but we are talking about where the nerve roots come out.

At that particular area, if you have a bone spur pressing backward and it is a narrowing of that where that nerve passes through, that, in fact, narrows it down. But the response to the arthritis is also the joints in the back become hypertrophied or larger, that grows in toward the opening, too. That is a general opening. Then the disc height comes down, narrows the length, so you have the spurs in there. And if the disc narrows down, that brings the spurs closer together, just like the iron maiden coming down with the jaws coming down to the nerve. It happens very slowly, though.

Q We are taking about a long period of time before those

things would happen?

A Yes.

Q Now, can a person have bone spurs and not know about them?

A Yes, that could happen, yes.

Q Would you agree that if bone spurs were present in the neck or cervical area that a rear-end accident could cause them to move and impact the nerve areas?

A No.

Q You don't think so?

A No, sir.

Q And would any type of trauma to the neck cause any of the spurs to dislodge or impact a nerve area?

A No, they will not dislodge.

Q They are going to keep the same space, they are not going to move around?

A They are not going to move around. What you are saying is the sudden flexion of the neck momentarily changes things. Momentarily it might come down, but the spurs are not dislodged, they are attached.

Q With respect to the different things that had been noted in some of the medical records that we had talked about that Gary complained of with respect to the pain in the neck, the trapezius, the hand pain and things like that, would you say that is caused by the bone spurs impacting the spinal

cord?

A No, they are not impacting the spinal cord. All you are talking about is nerve roots, that is what that means. They were not impacted. You are tallking about a very, very serious situation now, you are talking about nerve paralysis which he never had. So it wouldn't impact the spinal cord.

Q But the nerves come out of the spinal cord?

A Certain nerves, if they are stretched sometimes --or probably we are talking about more if you had a stretching in the area where you had bone spurs protruding, and they temporarily stretch, again, and you have your symptoms in nerve distribution, plus also it is a localized prominence that he had in his back. He had local pressure over the trapezius muscle found by Dr. Smith. That doesn't come from the nerve, that comes from the muscle itself, from the spurs. Because if I had a problem up here pressing over here, it wouldn't do anything. But he was hurt over here, and it was painful to direct pressure to that area. So he had a localized pressure in that area, and that particular thing eventually got better, and we were talking about the soft tissue strain.

Q A whiplash-type injury for a better term?

MR. BUZZELLI: Objection.

A Yes.

Q And, in fact, people suffer injury to the neck from

rear-end auto collision?

MR. BUZZELLI: Objection.

A Not all the time.

Q But you certainly have seen some?

A I have seen some. But I disagree that they have a whiplash injury with every rear-end collision. I definitely disagree. That is not one hundred percent.

MR. BUZZELLI: I disagree with that one, too.

MR. PILAT: I'm glad to hear that.

MR. BUZZELLI: Sorry. Strike that.

MR. PILAT: Leave it in.

Q What we are chuckling about, not everyone has it, and it certainly would depend how fast the car is going?

MR. BUZZELLI: Objection.

A That is not true. That is not the main factor.

Q So it is the same thing with the rear-end collision regarding the lower back?

A Most of the time they don't, but they can.

Q And you have seen them?

A Very few would I have seen.

Q Most likely rear-end collision causes aggravation of pre-existing conditions?

A Sometimes if you have a pre-existing condition, it is possible that the pre-existing condition becomes a little

more painful than it was before.

Q And with respect to the likelihood or potential for there to be injury to these, certainly a factor would be whether it was a low-speed or high-speed impact?

MR. BUZZELLI: Objection.

Q Is it agreed, Doctor?

A No, it doesn't depend on the impact, but what happens to the body.

Q And what happens to the body is affected by the speed of the vehicles?

MR. BUZZELLI: Asked and answered. Go ahead and answer the question.

A Yes, sometimes.

Q And so that I'm clear, you are not saying here today that a rear-end accident cannot cause the aggravation of a pre-existing condition?

A I did not say that.

Q Nor would you say that it cannot cause an aggravation of a pre-existing degenerative disc condition?

A No, it could cause something to become painful, yes.

Q And it could be severe aggravation?

MR. BTJZZELLI: Objection to the terminology. In what context are we talking about?

Go ahead and answer if you understand

the question.

A Yes, it becomes painful now, as it wasn't as painful before, and it becomes painful to the point where he has to take medication where he didn't take it before, so it's fair from that standpoint, yes, that is possible.

Q I think you had said, Doctor, that you don't believe that the accident necessitated the surgery that was performed on Gary's neck, the two were not related?

A My opinion would be that it may have accelerated it. But as far as the symptoms were concerned, the opinion is that this young man would eventually have surgery on his neck. So the opinion is that the accident alone was not the only reason why he had to have surgery on his spine. He had a problem there that in my opinion would eventually cause him to have the same operation that he did have, but he probably had it at a younger age than he would have.

Q And with respect to the certainty of your conclusion, is there any information that you would have that would make it more certain than what you are saying?

A No.

Q Any MRI or X-ray studies that you had seen that were done before you had seen him?

A None were done before. The only study he had were after, not before.

Q Or if you had seen him, say, near the time of the

accident or a couple times subsequent to the accident within a year or two after that, if you had examined him on more than just right after the surgery, you had seen him before the surgery, say two or three or four times, would that make it easier for you to be able to give a more certain conclusion?

MR. BUZZELLI: Objection. Go ahead and answer.

A It's very difficult to say. I have to go along with the records that you have and in my reviewing of the records, the review of what was stated by the treating professionals. He was very early advised that he may have to have surgery on his neck, and subsequently would have been in about another year, and that's what was done. But you are only giving options as to what problems are going to happen. You see X-rays like this, and you have complaints, and that is probably what you are going to advise.

Q Are you saying that a rear-end collision couldn't aggravate a pre-existing condition to a point where it would need surgery?

MR. BUZZELLI: Objection. This has already been asked and answered two times.

A It's possible, yes.

Q And you said you do not do anterior cervical fusions?

A No, I do not.

Q Are you aware of any effects or adverse effects that a person might have from a person having such an operation?
A If things go wrong, you can have a lot of effects. But he doesn't have any of these.
MR. BUZZELLI: Objection. Go ahead and answer.
Q Infection?
A He didn't have infection.
Q I'm saying -- I'm let me short circuit this a little bit.
MR. BUZZELLI: Thank you.
Q Would a patient have a loss of mobility in his neck?
A Loss of mobility is very, very minimal, because almost 60 to 70 percent of your motion does not take place at that particular point. He had only one small segment of his neck that was fused, so I don't think a lay person would be able to pick up any loss of motion on the fusion. There was nothing fused, it was just two vertabrae. I don't think anyone would notice that.
Q Would there be added stress above and below the defused area?
A There always is.
Q *Any* time you have a fusion done?
A Yes.
Q Is there pain from time to time?

A Not necessarily. It may be totally pain free.
Q Would a person who has a cervical disc fusion be susceptible to developing arthritis in his disc?
A Well, he has already had it to begin with, and we don't know why. So it's possible he has it at another level.
Q With respect to the taking of the bone graft from the hip area --
A Pelvis.
Q -- is that going to create any problems for him in the pelvis area, weakening or anything like that?
A That should not cause any problem. The area where the graft was taken was above or beyond the attachment of any vital areas and he will never notice it.
Q Do you know how big a piece of bone we are talking about?
A Eight to ten millimeters according to the operative report.
Q Which would be how big to a lay person?
A Half an inch.
Q Were there any records that were provided to you or any information that you have seen showing that Gary Gaffga ever sustained an injury to his neck prior to August of 19903
MR. BUZZELLI: Objection to the form.
Go ahead and answer the question.
A I don't recall seeing any.

Q Were there any medical records or information that you have seen showing that Gary ever saw a doctor or received any treatment to his neck prior to 1991?

MR. BUZZELLI: Objection to the form. Go ahead and answer.

A I didn't see any.

Q Any information that had manifested, that Gary had manifested any symptoms or anything indicative of a degenerating disc condition prior to August of 19901

MR. BUZZELLI: Same objection.

A The only problem was in his lower back for which he had surgery in '82.

Q But nothing else that would show there was any type of problem or treatment for injury to his neck?

MR. BUZZELLI: Same objection. Go ahead and answer.

A Right.

Q Leaving aside the surgery in 1982, is there any other information showing that he had any other problems with hi5 lower back?

A NO.

Q And do you believe that neck surgery helped Gary?

A Yes.

Q And why do you believe it helped him?

A He said he is free of pain. He still had his cervical

collar on. He was still in the post-operative phase, but I believe what happened was that the height between the two vertebrae at that disc level was increased, and that gives him more room at the vertebral frame then he had prior to the surgery.

Q And since August of 1992 when you wrote your report, have you reviewed further medical records of Gary Gaffga?

A No, other than these particular things, which was the depositions and letters that were sent to you and that was all.

MR. PILAT: That is Dr. Smith's record.

MR. BUZZELLI: We will stipulate to that on the record.

Q And his deposition transcript?

A Yes.

Q Those are the only other records?

A Yes.

Q Now, since August of '92 when you wrote that report up to now, would you change or revise any of the statements that you have made in that report relating to Gary Gaffga?

A No, I wouldn't.

Q Your conclusions would still remain the same?

A Yes.

Q Now, do you plan on testifying at the trial on June 28th?

A Yes.
Q And do you plan on reviewing any further items?
A If some are presented to me, I will review them.
Q Okay.
A I don't know what else I could review, but if there are things that I have not seen, I will be glad to look at them.
Q Have you read Gary Gaffga's deposition transcript?
A I don't believe I read his transcript.
Q And you have read the transcript of Dr. Smith?
A Yes. I don't remember every word, but I read it last night.
Q Have you read the deposition transcripts of any of the physical therapists?
A No, sir.
MR. PILAT: Let me just check my notes here. Let's go off the record for a second.
(Recess had.)
Q Just a couple more things to tie up some loose ends. I had noticed in the packet of documents that were provided to you by Ms. White, there was some information relating to time that was missed by Gary Gaffga, some of his time slips and things likes that?
A Yes.
Q Have you done any type of work or any analysis as to whether any of his loss wage claim, whether any time --

A I think that would be foolish for me to get into that. I'm the physician. I'm not going to worry about any time slips that his boss signed that he is working off site. I don't bother with that.

Q But you have not been asked to deal with any by the defendants?

A No.

MR. PILAT: Russ, I'm finished, so if you will explain signature or waiver?

MR. BUZZELLI: Doctor, you have a right to read this transcript after it has been typed up, or you can waive that right and say you waive the right to read the transcript. Given the complex nature, as it relates to the medicals that are being explained, my advice is that you read it and sign it.

THE WITNESS: I would like to read it. However, I assume that if you receive it back unsigned, under the law it is taken as if I am waiving, but I would like to have a copy and reserve that right.

MR. PILAT: Thank you.

MR. BUZZELLI: Thank you.

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(Deposition concluded.)

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Ralph Kovach, M.D.

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

I, Rena J. Muzzin, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the deposition of RALPH KOVACH, M.D., the within-named, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him/her was by me reduced to stenotypy in the presence of said witness, afterwards transcibed upon a computer, and that the foregoing is a true and correct transcript of the testimony so given by him/her as aforesaid,

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio on this 25th day of June, **1993.**

Rena J. Muzzin, Notary Public
in and for the State of Ohio.

My Commission expires **9-30-97.**