Doc. 246

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

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IN THE COURT OF COMMON PLEAS

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ROSEMARY WANK, et al., )
)
Plaintiffs, )
)
vs. ) Case Number 218390
) Judge Norman A. Puerst
JOHN DOE CORPORATION dba )
CHESTER'S, )
)
Defendant. )

- - - - -

DEPOSITION OF RALPH KOVACH, M.D.
Tuesday, August 2, 1994

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Deposition of RALPH KOVACH, M.D., called by the Defendant for direct examination under the Ohio Rules of Civil Procedure, taken before me, the undersigned, Renee L. Pellegrino, Registered Professional Reporter, a Notary Public in and for the State of Ohio, at the offices of Ralph Kovach, M.D., 9700 Garfield Boulevard, Garfield Heights, Ohio, commencing at 10:00 a.m., the day and date above set forth,

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Cleveland, Ohio 44114
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APPEARANCES

On Behalf of the Plaintiffs:

John V. Scharon, Jr., Esquire
Gaines & Stern
1400 Renaissance Center
1350 Euclid Avenue
Cleveland, Ohio 44115-1817

On Behalf of the Defendant:

Mark A. Greer, Esquire
Gallagher, Sharp, Fulton & Norman
The Bulkley Building - 6th Floor
1501 Euclid Avenue
Cleveland, Ohio 44115

Also Present:

Jon Jastromb, Multi-Video

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RALPH KOVACH, M.D.

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

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DIRECT EXAMINATION

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BY MR. GREER:

Q Doctor, would you please introduce yourself to the jury?

A I'm Dr. Ralph Kovach.

Q Doctor, where is your business address?

A 9700 Garfield Boulevard, Cleveland, Ohio.

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

A Graduated from the University of Dayton in Dayton, Ohio, Bachelor of Science degree, 1950, and I graduated from Loyola University School of Medicine, Chicago, Illinois, 1953, and I interned at St. Luke's Hospital in Cleveland 1953 to '54, and after that I completed a four-year training program in orthopedic surgery at St. Luke's also 1954 to 1958, and I started practice in July of 1958.

Q Doctor., do you have any specific certifications?

A Yes.

Q What are those?
A I'm certified by the American Board of Orthopedic Surgery.
Q Doctor, what does it mean to be board certified?
A It means that the individual who is certified has been checked through by an American Board, in this case the American Board of Orthopedic Surgery, to determine that my training and my practice meets their requirements, and also that I complete successfully the written and oral examinations that they've checked me out on.
Q Are all physicians board certified, Doctor?
A No, they are not.
Q That is something above and beyond a normal --
A Yes, that's abeve having a state medical board license.
Q Doctor, could you describe for the ladies and gentlemen of the jury where you have hospital privileges at?
A I have privileges at St. Luke's, Marymount, St. Alexis, Bedford and Deaconess Hospital.
Q What type of practice are you engaged in, Doctor?
a I do general orthopedics.
Q And what exactly is orthopedics, Doctor?
A Orthopedics is a branch of surgery that treats both injuries and diseases of the musculoskeletal system. And by using that word it means I'm treating the muscles, the skeleton. That means the bones, the joints, the ligaments,

the nerves as they relate to the muscle innervation, that type of thing.

Q Doctor, I believe today is the first time that we've had a chance to meet. You have on prior occasions performed independent medical examinations for me and my office?

A Yes, I have.

Q Approximately how many independent medical examinations do you do per week, per month?

A Well, weekly I see three minimum usually, sometimes as many as six.

Q Okay.

Doctor, in addition to that do you see other individuals, other patients?

a Yes, I have my regular practice and I see other people who I treat.

Q Are those people who may have been injured in car accidents or falls?

A Yes, either way. They have injuries or diseases.

Q Doctor, do you chasge when you perform an independent medical examination?

A Oh, certainly.

Q What is your normal charge for reviewing medical records?

A For review of the records and for examining the individual and submitting the report on my findings, I charge

$450.

Q Doctor, you're charging us for your time today, correct?

A Yes, I am.

Q And I believe you're charging us $950 for your time?

A Yes, sir.

Q That's the same that you charged the Plaintiff for your discovery deposition, correct?

A Yes, sir.

Q Doctor, did you have an opportunity to examine the Plaintiff and her medical records?

A Yes, I did.

Q What did you review prior to your examination of the Plaintiff?

A Well, actually, I looked superficially at many reports that were submitted, but I reviewed them primarily after I examined Rosemary Wank. And the reason I review after the exam, so that I don't form any preconceived opinion as to what may or may not be present. I like to do an examination without clouding any of her history, you know, listen to the individual and have her tell you what's what, and also when they're examined so you can examine thoroughly without having any preconceived idea of what's going on.

So in addition to taking her history and examining her, then I reviewed records from the hospitals where she had been

treated, also records from her treating doctor and letters that he had written.

Q Doctor, you had an opportunity to examine the Plaintiff, correct?

A Yes, I did.

Q When was that?

A I examined this lady on October 25 of 1993.

Q Did you obtain a history from her at that time?

A Yes, sir.

Q What history did you obtain from her?

A She told me that she was injured on January 26, 1991. So that was the beginning of '91. I saw her October 25, '93. So that was well over two years after the accident.

And she said that in January of '91 she was in a restaurant, she was walking toward a table to be seated and she had a fall. And I don't know exactly why she fell, but the point is she did have a fall. And she said she fell sideways and she twisted her left leg, and during that time she turned her upper body toward her right so that when she was in that position, the upper part of the body was across the window sill.

And she said that immediately she felt no sensation in either leg, but she said that was because she didn't have any feeling -- she said they're totally numb and that sensation lasted until she was seen in the hospital.

so she said she was taken to Marymount Hospital Emergency Room, she was examined, x-rays were taken, and they released her. And she did have an immobilizer put on her left leg.

Now, an immobilizer is a temporary splint that wraps around your leg and that's to keep the knee straight. The ankle and foot are free. So this goes from the thigh down to your calf so that you don't have any bending and it supports your knee. So that's what was placed on her. And she also -- and that was on the left knee.

She said the right knee was wrapped with an elastic bandage. And she also said her right arm was wrapped with an elastic bandage, and she said that it was wrapped because she was told that her right arm was swollen,

So after that she went to her doctor, who told her that she had had a partial tear in the ligament of her left knee and she was coatinuing to have treatment. She had physical therapy treatments, but she said she continued to have swelling and she said that these therapy treatments did not fully improve her condition.

So that in March of '91 -- so this happened on January 26 and by March she was advised to have a surgical procedure to her knee and that's called an arthroscopic surgery. And that's done by placing a small instrument inside the knee. And one is a small telescope-type of apparatus. We call that

an arthroscope. It is about as thick as a pencil, around four to five millimeters. And the joint is examined with a miniature camera and you look on the inside. So that's the procedure that was done.

And that -- after that was done she told me that she was told she had a strain of the ligament on the outside of her knee and that she said that some sutures were placed inside the knee joint, which means stitches.

And she said that she continued to have problems ever after this procedure had been done and her problems were, according to her, that her knea would frequently give way, in other words, she'd be standing or walking and the knee would suddenly bend and kind of give beneath her, and she said she was frequently falling.

And she was given various medications to try to diminish the swelling which was present in her knee and said that these conditions continued so that she finally had a second arthroscopic operation. This was done in February of '93 and this is about two years after the time of the fall because she got hurt in January of '91. So that some type of a surgery was performed. She didn't know exactly what. But this was to take care of what was described as a cracking in the kneecap. By the cartilage surface of the kneecap is where the crack was found and this was the area that was operated. She really didn't know or really didn't

understand, according to her, his particular operation.

And she also said, since that operation said that she was doing fair and that she had some episodes of swelling of the knee, but they were not continuously swollen. They were -- swollen episodes were intermittent and she had the sensation that the knee was feeling tight to her and that she occasionally had pain over the outer side. We'll call that the lateral side of the left knee

At that time she told me she didn't have any problems with the neck and she also said she didn't have any problems with her neck following her release from the hospital. She also told me that she never did have any problems with her arms or her back and that all of her symptoms were related to the left knee. And I proceeded to examine her.

Q Doctor, could you describe for the ladies and gentlemen of the jury what your examination consisted of?

A Well, this examination, a general orthopedic examination, showed that we're dealing with a short, well-developed, significantly overweight white lady. She had a marked genuvalgus of both knees. When I say genuvalgus, genu means knee, valgus means sideways. In common language that's a knock-knee deformity. So that when her knees were touching when she was standing, the ankles were six inches apart, and that's a significant deformity that she had.

Q And how so, Doctor? Why is that significant?
A Well, ordinarily, you know, a six-inch spread between your ankles when your knees are together, that puts quite a strain on the outer side of your knee and tends to put strain on your kneecap, so --
Q Continua, Doctor, with your examination.
A Anyhow, that was the general stance that she had and the configuration of her legs. And she was walking without any problems and she didn't have a limp. She wasn't favoring either leg. And when I examined her, both when she was sitting and when she was lying down, she was able to fully straighten out the knee and fully bend the knee. There was no difference between either knee as far as a range of movement. There wasn't any swelling or free fluid that you would consider abnormal in either knee.

And on her operated knee, which was the left, she had small scars where the arthroscope had been utilized on two occasions. You call those -- they are about a half-an-inch long, a stab wound through which you could place these instruments. And those were non-tender except for one on the lower side on the outer side. The scars above and below the kneecap, the one below the kneecap and over to the side, outer side, she said that was somewhat tender when I pressed on it. The other scars were non-tender.

And she also told me once she had the pain, that this

was the area where I pressed on that scar, that this was the area where she was having pain.

She had good strength of ligaments, which were tested, both the inner ligaments of the knee, the outer ligaments The ligament inside the knee, inside, we call those the cruciates. On the outside of the knee, we call those the collateral. Those were stable and her knee was solid. You could not bend it in an abnormal direction at all.

And I also checked her to see whether or not the inner cartilage, what we call the semilunar cartilage, were intact, and we do that by doing a test which we call the McMurray test, and that particular test was a normal examination.

Also, I had her, put her knee through a range of movement while I placed my hand on her knee to see if I could feel any crepitation, grating, which sometimes is present when there is a roughness on the sliding surfaces inside the knee, and she didn't have any of that crepitation present.

Also, I checked the thighs to see if there is any wasting of the muscles about the thighs because frequently with a knee problem, if it is an ongoing situation, the muscles can become quite weak and they waste away and the bulk of the muscle is diminished, so we measured that and that was normal so there wasn't any wasting there.

And I checked her neck and checked her elbows and the neurological examination and all of those findings were

normal. I didn't find any problems existing with her neck or with her elbow. I didn't find any nerve injury anywhere.

And that was the physical examination. Then I started to review the material that was sent.

Q Doctor, essentially, during your examination of the Plaintiff, did you note any abnormalities or problems?

A No. The only problem of course was, in the way of abnormalities -- I mean, there is a deviation. She did have a significant knock-knee deformity. She was born with that. And so that's one thing, rather than having the straight knee, which we usually associate.

For example, ordinarily when you stand up and you put your knees together and you're standing straight without bending your knees, your ankles will touch, and that's normal. Or you may have a little bit of spread between your ankles, but a six-inch spread would be significant. So that's a significant deviation from what you usually see,

And the other finding was that one area in the operative scar was tender to her, at least she told me that it was tender,

Other than that, I didn't find anything.

Q Okay, Doctor.

Doctor, I am going to ask you some questions about the Plaintiff, her congenital knock-knee condition, as you described, and what, if any injuries she may have sustained

when she fell at the restaurant. I am going to ask you to make all your answers to a reasonable degree of medical certainty.

A Yes, sir.

Q Doctor, based upon a reasonable degree of medical certainty, what injuries do you believe the Plaintiff sustained when she fell?

A Well, I have to go along with reports that her treating doctor submitted and the findings which he described in surgery, and it was his opinion that she had a second degree strain to the medial collateral ligament of the knee.

I've got a model and I think you can understand better if I show what we mean by medial collateral ligament. Ligaments on the outside of the knee prevent the knee from going in either direction. Those are called the collateral ligaments. Medial means on the inner side. So this is a medial collateral figament which has been cut. But if that's intact and not cut, you don't give that knee stability, you won't allow the knee to bend sideways. So the doctor felt that this was strained. And then he said second degree. It means that it was not disrupted, but it's a little wore painful with some fibers that could possibly be stretched and you could have some bleeding associated with it, but the knee is stable and it doesn't require any surgery to hold it. So he felt that that was one thing that she had.

Also, when he operated and describes having a tear in the inner semilunar cartilage because he thought that she had a cartilage tear on the outer side of the knee, but when he went in he found a tear in this cartilage, which you call semilunar cartilage, this being the inner semilunar or the medial because it's on the inner side (indicating).

And the tear that he found he describes as an area small, not down in here, but where it's attached to the joint lining at this level, He has found a small tear at that level, which he found by probing, but he could not displace it, so that was a finding that he didn't feel required any repair or any removal (indicating).

And the other thing that he described, he said that he found some softening of the cartilage that lines the surface of the kneecap. And the word that's used is chondromalacia. Chondro means cartilage and malacia means soft. So soft in qthe cartilage. And the cartilage over the inner portion of the kneecap -- he said softening. He didn't find any disruption or anything on the surface. He just felt it was soft compared to what he thought it should be.

So she did have a contusion or a bump on the knee when she fell. She did have a strain to that ligament, which is the medial collateral ligament, but not torn in half, but strained, and a tear in the periphery in the area where it's attached on the inner semilunar cartilage.

He says there was some softening here and the question is is that related to an injury or not.

So that was the only thing. I feel that the softening was not related to the fall.

Q Doctor, the second degree strain of the ligament that you've described, is that something similar to a person who has sustained a sprain or a strain of their ankle?

MR. SCHARON: Objection.

A Yes. It's similar except you're talking about a knee joint rather than an ankle joint and you're talking about degrees of strain. He said second degree, so -- and if we say third degree, we mean that there's an actual tear across the thing and it's disrupted and then it would be unstable. So let's just say second degree -- we'll say that you had some fibers of that ligament stretched or possibly torn, but not to the point where there was any instability so that you did not have to do any surgery to sew that together because it was together and it will heal, but it's a little more involved than having a slight stretch which doesn't tear any of the fibers, so just a degree, but no actual tearing in half.

Q So no actual repair or work was required on the ligament?

A No. They did an examination and found the knee to be stable and I agree that he didn't have to do any work,

Q In terms of the cartilage tear, was any repair required on that?

A No.

Fortunately for her, the tear was in an area where the cartilage attaches to the joint lining and there is good blood supply to that spot.

The reason people have cartilages removed -- and we are talking about the semilunar cartilage here -- is that blood comes only in at the area where it's attached with the joint lining, the blood vessels enter, but as you go out toward the inner side within the joint, there's no blood vessel and so the cartilage is nursed by the joint fluid rather than by blood, and joint fluid will not repair. But when you have good circulation, then you can form scar tissue and that can repair.

And so the tear being small and also he said it was stable. In other words, it didn't displace. He had to go in there with a probe to find this thing, but he couldn't displace it, so that meant that it would not displace, and with time, being in an area where there is good circulation, it would be expected to heal.

And if you check the doctor's second operation report, which he did a second procedure, this was found to be healed. It was no longer torn. So that had repaired itself,

Q What about the ligament, Doctor? During the second

procedure was that noted to have healed, also?
A Yes. That was stable. There was no instability when he checked the knee out and that had healed quite solidly.
Q So the two injuries that you believe the Plaintiff sustained in the fall were healed as of the second procedure?
MR. SCHARON: Objection.
A Yes, they were healed.
Q Doctor, you've described the finding of chondromalacia during the first surgical procedure. Based upon a reasonable degree of medical certainty, what do you believe caused the chondromalacia that was noted at that time?
A I feel that this was a pre-existing situation, This lady had the marked knock-knee deformity. And if I hold the knee and put this in a knock-knee position, you notice there is a little bit of change out sideways, but remember, this comes down at an angle from the hip and you usually have about seven to ten degrees offset, But when it's significant and with a six-inch spread between your knees, *you* go in a situation such as that and this has to ride on the groove, but when it's offset like that, it tends to keep pulling in this direction because the force of the muscles is going to go on the side where you have a smaller angle rather than trying to go in the opposite direction, and that will cause more pressure between the kneecap and the groove that it's riding (indicating).

Again, also with bending your knee and at any attempt at movement, going up and down steps, it's really going to grind in there because this is what pulls your knee straight, and if you're off sideways, it's going to be tough for that to grind away, so you have a lot of pressure between that and the articulating surface in here. And that will eventually lead to that generalized softening that was present (indicating).

Now, when this lady fell, she had more of a twisting situation in that knee and that's what caused the tear there. And just falling by itself is not going to cause any particular problems because most of her bruising was found along on the inner side of her knee.

Q Doctor, does the Plaintiff's weight have any significance in terms of the chondromalacia?

A Well, it would from this standpoint that you have the knee that's in a position where it is *out* sideways, and the heavier you are, the tougher you have to pull against that surface to, for example, go up steps. If you're going up steps, you're tightening this, and this is the muscle that is intended to use to straighten the knee and get you up. So the heavier you are, the more work is going to be required and the more pressure you are going to have against those two surfaces (indicating).

And so from that standpoint, if you're overweight, it's

going to put more stress on that cartilage and that can with time soften and erode and lead to arthritis.

Q Now, Doctor, what type of treatment is appropriate for an individual such as the Plaintiff who has sustained a strain of a ligament as well as a tear of the meniscus?

A I think she had the appropriate treatment. She didn't touch the inner ligament because it wasn't torn. It didn't require any surgery. He felt that she had a tear of the cartilage so he looked inside with a scope. He thought that she had a tear on the outer ligament, rather on the outer cartilage, but when he went in he found a tear on the inner cartilage. And that frequently happens because of symptoms not being exact as far as localizing your size. So arthroscopy was I think indicated and I think he did the right thing. He didn't do anything except look.

Q So I understand, the first procedure essentially consistsd of looking around the knee and flushing out the knee, correct?

A Yes, irrigated the knee, of course, Be flushed it with a sterile salt water solution because the surgery is done with the knee joint distended with fluid. Otherwise, you wouldn't be able to visualize through the scopes as well. And you also irrigate the joint when you do these procedures to see if there is any loose pieces that might be floating around as well.

But the main thing is, though, that he looked inside, he saw that there was a tear. He also determined that the tear would heal without having to put any sutures into that area. She thought that some sutures were put in, but none were. And he looked at the lining and thought that the kneecap was somewhat soft, but it didn't require anything. He didn't do anything other than look.

Q Now, Doctor, are you aware of the Plaintiff's condition subsequent to the first surgery?

A Well, she had some periodic visits to her doctor and she had some complaints of pain.

Q Do you recall what type of complaints of pain she had and what parts of her body those were?

A Well, if you read the doctor's reports, he's saying that she's having pain, and he states in this note as well as in the report that her pain is located around the patella tendon.

Q Where is that, Doctor?

A Well, the patella tendon is this structure. That's the kneecap and we call that the kneecap. So the patella tendon goes to the kneecap down to this part of the tibia or the leg bone, and we call this area the tibia tubercle because there's an elevation where this is inserted and that area is somewhat of a bump where that forms fhe attachment for the patella tendon. So the complaints were along the patella

tendon and along the tibia tubercle and also where the tendon inserted to the lower portion of the kneecap or the patella (indicating).

She also had some complaints along the outer side here, along what we call the ileal tibial tract. That's where structures called the ileal tibial band, which is an extension of the covering of the muscles, continues down to this area. That was stated to be tender as well (indicating).

Q Doctor, what significance did the complaints concerning the patella tendon have in relationship to the fall the Plaintiff sustained?

MR. SCHAROM: Objection,

A Well, as her doctor noted that he advised her that, you know, there's a lot of pull when you're walking around and there was enough of a pull and enough of a pain that he tried to lessen the pull on that tendon. That's primarily due to weight and the position of her kneecap that this was causing a lot of strain in this area.

So he put a strap that he prescribed for her to wear which presses just along that area. And that's an effort to lessen the pull onto that area and make the pull less in the spot. It's frequently used for athletes and primarily basketball players because a lot of jumping involves straightening that out and you use a lot of force in that

area, so that can become significantly inflamed. You call that patella tendonitis or jumper's knee. And this is what he was prescribing for her to try to lessen the pull onto that spot and diminish the pain.

MR. SCHARON: Move to strike.

Q Doctor, you're aware that the Plaintiff underwent a second surgical procedure, correct?

A Yes.

Q Do you recall how long that was after her fall?

A That was about two years I think. She was injured in the last of January of '91 and in February of '93 she had her second procedure.

Q Did you have a chance to review the operative notes from that surgical procedure?

A Yes, I did,

Q Doctor, what was done at that time?

A Well, the knee joint, again, was examined and was found to be stable. There was no instability of the knee. But an arthroscope again was put inside the knee joint, was inspected. And the cartilage, the inner semilunar cartilage, which had that tear, no longer had the tear, so that was found to be healed.

And looking at the rest of the joint, the doctor says that that was okay except for the under surface of the kneecap, and he says that he found a small crack in the

surface of the cartilage that lines the kneecap. And so what he did was scrape that area out and remove the cartilage in that spot until he got down to bleeding bone. He went deep enough until he hit some area of bleeding and he kind of smoothed that down. And the reason you do that is that some people feel that if you get down to bleeding bone, you're going to cause enough loose scar tissue to form that you'll develop the type of cartilage that will, which we call fibril cartilage, that might fill that defect when you scrape that area and that might give hex: a little bit of a resurfacing to it.

Q Doctor, based upon a reasonable degree of medical certainty, do you believe that any of the findings in the second surgical procedure were the result of the fall the Plaintiff sustained in January of 1991?

A The second procedure? No, I don't think she had any complaints or findings that I could contribute to the fall of '91. The cartilage that was torn was healed. She did have this crack in the articular surface of the kneecap, which I feel is not on the basis of that twisting fall that she had.

Q Why is that, Doctor?

A Well, I feel that her symptoms were primarily involving the patella and patella tendon. He was treating her for that. And arthroscopy isn't going to change anything in the way of those particular complaints. Granted she does have

the chondromalacia, which he followed the crack in her. I feel the chondromalacia is on the basis of the knee deformity and somewhat associated with her weight, but primarily the knee deformity. And doing the arthroscopy is not going to change the complaints about the patella tendon, patella tendonitis. That's not helped by that. That's on the basis of her knee deformity and her weight.

Q Doctor, what do you believe caused the crack that was noted in the second procedure?

A I believe that she had ongoing chondromalacia and that this wore enough so that at that point that became soft enough eventually and caused some separation of the cartilage.

Q Doctor, do you believe that the second surgical procedure was necessary?

MR. SCHARON: Objection.

A I don't think it was, but I think the first one was. The second I feel was done on the basis of the chronic complaints of the tendonitis that she was having, and I'm sure she still will have problems with that and the procedure isn't going to change that.

Q Doctor, do you believe the second surgical procedure was related in any way to the Plaintiff's fall?

A No, I don't think so.

Q Doctor, briefly I would like to wrap up a few things

here in summary.

What, again to a reasonable degree of medical certainty, injuries do you believe the Plaintiff sustained in the fall of January, 1991?

MR. SCHARON: Objection.

A. I feel that she did tear the semilunar cartilage that was found in the arthroscopy. I think she had the second degree sprain of that medial collateral ligament.

Q Doctor, based upon a reasonable degree of medical certainty, do you believe that those two injuries sustained by the Plaintiff in the fall healed?

A Yes.

Q In terms of the problems that the Plaintiff is having today, Doctor, do you believe based upon a reasonable degree of medical certainty that they are caused or were caused by her fall or some other condition?

MR. SCHARON: Objection.

A I believe that the ongoing problems are OR the basis of the bock knee deformity associated with the chronic strain that she has on the kneecap and the patella tendon, and she does have some chondromalacia, but chondromalacia in itself does not mean you're going to have any symptoms. That usually is, can be asymptomatic, complaints of pain, and that going on is on the basis of the patella tendon irritation,

MR. GREER: Thank you, Doctor. Your

witness.

MR. SCHARON: Thank you.

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CROSS-EXAMINATION

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BY MR. SCHARON:

Q Dr. Kovach, good to see you again. Let's start by discussing some things that I think we agree on.

At Dr. Masin's first knee operation in March of 1991, he found torn cartilage on the inner side of Mrs. Wank's left knee; is that right?

A Yes.

Q And that torn meniscus, as you've described it, was probably the result of her fall at Chester's?

A Yes, I'm sure it was.

Q Now, Dr. Masin also diagnosed a partial tear in the ligament that runs along the inner side of Mrs. Wank's left knee; did he not?

A Yes.

Q And you agree that Rosemary Wank probably did have a tear in that medial collateral ligament?

A Yes.

Q And this ligament tear, partial tear, was also a result of her fall at the restaurant?

A Yes.

Q Now, the medical treatment that Mrs Wank received up through the time of her first knee operation and her recovery from that surgery was appropriate and necessary treatment?
A Yes.
Q This medical treatment up to the time of the first knee operation and her recovery from that surgery, that was a result of her fall at Chester's?
A Yes.
Q At the first knee operation Dr. Masin also found this softening, or as you've described it, chondromalacia of the cartilage that lines the under side of the kneecap?
A Yes.
Q And after her first surgery, Mrs. Wank continued to complain of her left knee giving out and causing some falls?
A Yes.
Q By the time of her second operation, Doctor, in February of 1993, Rosemary Wank had developed this crack in the cartilage under the kneecap?
A Yes.
Q And then you examined her in October of 19933
A Yes, sir.
Q At the time of your examination, Doctor, Mrs. Wank was still complaining of pain and stiffness and swelling in her left knee?
A Yes.

Q And her complaints were appropriate and not exaggerated?
A I don't think she was exaggerating
Q And having reviewed her medical records, you would have expected Rosemary Wank to have the symptoms about which she complained?
A Yes.
Q Now, Rosemary Wank had no history of knee problems either in her right or left knee before the fall at Chester's; is that right?
A That's correct.
Q And there's nothing in her medical records to suggest that she did have knee problems before she fell at the restaurant?
A That's correct.
Q Now, then, let's talk about chondromalacia,
First of all, chondromalacia can be caused by a direct blow to the knee; can it not?
A Yes, it can be.
Q And as for Rosemary Wank's knock-knees, not everyone with knock-knees has chondromalacia, do they?
A No, sir.
Q In fact, not everyone of Rosemary Wank's age and weight even with knock-knees has chondromalacia; is that true?
A That's true.

Q Doctor, if a person had chondromalacia and was Rosemary Wank's age and weight and had knock-knees like her, you would expect that person to complain of knee problems; would you not?

A Sometimes they can depending on the degree of involvement.

Q But, again, before she fell art this restaurant, she did not have problems in her knees?

A No, she didn't have complaints, not as far as I know.

Q By the way -- I don't mean any pun by that -- did you weigh Mrs. Wank?

A No. I didn't want to embarrass her.

Q Now, another thing, Rosemary Wank has knock knees on both sides., in her right and her left knee, doesn't she?

A Sure, she has.

Q So if she had chondromalacia before she fell at Chester's, you would expect her to have it not only in the left knee but also in the right?

A She may very well have it in her left knee, but she's not having any complaints in her left knee. And that's entirely possible to have -- chondromalacia of itself does not produce pain.

Q I understand.

Now, I think you said left and my question was: You would expect that she has some chondromalacia in her right

knee as well?
A I think she Bas.
Q And yet even after her fall at Chester's, she has only complained of pain in the left and not the right knee?
A That's correct.
Q And the left knee is the one in which she tore a cartilage and a ligament as a result of this fall?
A Oh, yes
Q Now, one last point about chondromalacia. It is possible, isn't it, for a person to have this softening of the kneecap or the lining of the kneecap and yet not have any pain or other symptoms to show for it?
A Oh, sure.
Q And if a person with chondromalacia that's not causing problems then sustains a blow to the knee, that can cause the chondromalacia to become painful, and as you say, symptomatic?
A It's possible. Sure, it's possible.
Q So if Mrs. Wank had chondromalacia in her knee before she fell at Chester's, it is possible that the fall caused her chondromalacia to become painful and symptomatic?
A It is possible.
Q I just want to spend a couple minutes on some of your answers regarding how you became involved in this case.
A Yes.

Q Now, you were hired by the defense lawyer to examine Mrs. Wank, look at her medical records, write a report and then testify, if necessary?

A Why don't you use the word retained. You always use the -- it sounds like I did something wrong, I was hired. Sure, I was hired.

Q Okay, either way.

Mr. Greer has retained you to do this in other cases he has defended?

A Yes.

Q And other members of Mr. Greer's firm have retained you to testify in cases they're defending?

A Oh, yes, sure.

Q And you've perfumed these examinations, I think I heard you say, in legal matters three to six times per week?

A Yes, sir.

Q And have done so for several years?

A Yes, I have done it for several years.

Q Most of those examinations have been done for people who are defending these cases?

A Oh, sure,

Q And in this particular case, your physical examination of Rosemary Wank probably took about ten minutes or less?

A Physical exam, about ten minutes.

Q Between taking her history and examining her, you

probably spent half an hour or less with her?
A That's correct.
Q Now, for your examination and report I think you said your fee was $450?
A Yes, sir.
Q And for the deposition which I took of you last week, which lasted approximately half an hour, your fee was $950?
A Yes, sir.
Q And for your deposition this morning, your fee is another $950?
A Yes,. sir.
Q And if my math is right at all, that totals up to $2,350 in fees in this case; does that sound about right?
A Yes, But you didn't have to have a discovery deposition. That was your choice.

MR. SCHARON: I have nothing further. Thank you,

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REDIRECT EXAMINATION

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BY MR. GREER:
Q Doctor, I just have a couple follow-up questions. You were asked whether or not chondromalacia could be caused by a direct blow to the knee.
A Oh, certainly it can be.

Q Doctor, did the Plaintiff ever indicate to you that she sustained a direct blow to her left knee?

A No.

Q Doctor, do you believe that the chondromalacia which was noted in the Plaintiff's left knee at the time of the first surgical procedure was related to the fall?

A No, because that was just a generalized softening which the doctor described. He didn't describe any defect or any break in the surface. He felt that when he put a probe against that cartilage, that it was softer than what it should be.

Q Doctor, chondromalacia, how long does that normally take to develop?

MR. SCHARON: Objection.

A Ordinarily -- and no one really knows for sure because there aren't too many people volunteering to have their knees biopsied to try to find out that particular point. And so we do know that it's usually over a period of time. It's not an immediate thing.

In other words, if you have a particular situation and if we would go ahead and hit the kneecap with a hammer, you may not get this at all, but if you did, you certainly wouldn't find anything within a couple of months. It would take a long period of time if something's going to occur. So if I find softening one or two months after an injury, that

probably did not result from that particular blow that were experimentally kind of producing. So we do know that it does take a certain amount of time and that usually it's a protracted period of time, it's not early.

In this case we've had someone go in and look with an arthroscope within a couple of months. She was injured the end of January and in March was looking inside. So that finding, in my opinion, could not have taken place that quickly.

MR. GREER: Thank you, Doctor. I have no further questions.

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RECROSS-EXAMINATION

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BY MR. SCHARON:

Q Doctor, you did have a chance to review all the records on Rosemary Wank and her injury?

A Well, I got records. I guess it's everything. I'm not sure of everything.

Q Okay. Let me hand you Plaintiff's Exhibit Number 2, which is the Cuyahoga County EMS run report form from January 26, 1991, the night of the fall. Did you see that? Was that part of the records you reviewed?

MR. GREER: If you want to review your chart, Doctor, to see if that's in there.

A So I will look and see.
Q Does this look familiar to you?
A Let me take a look and I will tell you if it is because I've got a lot of stuff in there.
Yes, I got it.
Q Doctor, in the section marked "history," specifically "history of present illness/injury," that report says, does it not, that "The patient was found lying supine complaining of left knee pain sustained when the patient states slipped on wet floor and fell to knees and subsequently rolled onto her back"?
A Yes.

MR. SCHARON: I don't have any other questions for you. Thanks.

MR. GREER: No further questions.

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(Deposition concluded.)

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

I, Renee L. Pellegrino, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named RALPH KOVACH, M.D. 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 transcribed 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 4th day of August, 1994.

Renee L. Pellegrino, Notary Public
in and for the State of Ohio.

My Commission expires 3-15-95.