

#623

DEPOSITION OF RALPH KOVACH, M.D.

George Criss, Jr. vs. Consolidated Rail Corp.

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CONDENSED TRANSCRIPT AND CONCORDANCE
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(1) IN THE UNITED STATES DISTRICT COURT
 (2) NORTHERN DISTRICT OF OHIO
 (3) EASTERN DIVISION
 (4) George Criss, Jr.,)
 (5) Plaintiff,) Case No.
 (6) -vs-) 1:97CV2857
 (7) Consolidated Rail)
 (8) Corporation.)
 (9) Defendant.)
 (10) --- oOo ---
 (11) Deposition of RALPH KOVACH, M.D., an
 (12) expert witness herein, called by the
 (13) Plaintiff as if upon cross-examination under
 (14) the statute, and taken before Luanne Stone,
 (15) a Notary Public within and for the State of
 (16) Ohio, pursuant to the agreement of counsel,
 (17) and pursuant to the further stipulations of
 (18) counsel herein contained, on Friday, the 3rd
 (19) day of September, 1999 at 10:00 o'clock A.M.
 (20) at the offices of Ralph Kovach, M.D., 9700
 (21) Garfield Boulevard, the City of Cleveland,
 (22) the County of Cuyahoga and the State of
 (23) Ohio.
 (24)
 (25)

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(1) APPEARANCES:
 (2) On behalf of the Plaintiff:
 (3) Chattman, Gaines & Stern, by:
 (4) Michael Michelson, Esq.
 (5)
 (6)
 (7) On behalf of the Defendant:
 (8) Gallagher, Sharp, Fulton & Norman,
 (9) by:
 (10) Joseph Santoro, Esq.
 (11)
 (12)
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(1) P R O C E E D I N G S
 (2) RALPH KOVACH, M.D., being of lawful
 (3) age, having been first duly sworn according
 (4) to law, deposes and says as follows:
 (5) CROSS-EXAMINATION OF RALPH KOVACH, M.D
 (6) BY MR. MICHELSON:
 (7) Q Hello, Doctor. We're here for this
 (8) discovery deposition in the matter of George
 (9) Chriss versus Conrail. Any questions I ask
 (10) you that you don't understand or you don't
 (11) hear me, please, I'll repeat or explain it.
 (12) A Yes, sir.
 (13) Q And I ask you to keep your voice up
 (14) so that the reporter can get down what you
 (15) have to say. Let's take a quick look, if we
 (16) could, through your CV. When were you Board
 (17) certified?
 (18) A 1962.
 (19) Q Okay. You took your orthopedic
 (20) residency at St. Luke's?
 (21) A Yes, sir.
 (22) Q And that was in 1958 that you finished
 (23) that?
 (24) A Yes, sir.
 (25) Q Okay. Did you pass your boards the

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(1) first time you took them?
 (2) A The first time, yes, sir.
 (3) Q Okay.
 (4) A There were several occasions on taking
 (5) the boards. It's several parts, so you have
 (6) exams.
 (7) Q Oral and written?
 (8) A Yes.
 (9) Q Okay.
 (10) A One, then one several years later.
 (11) Q Okay.
 (12) A So, to answer your question, the first
 (13) time, yes.
 (14) Q Are you licensed to practice medicine?
 (15) A Yes, in Ohio.
 (16) Q In Ohio. Have you ever lost your
 (17) license for any reason?
 (18) A No, sir.
 (19) Q Or had it suspended or anything?
 (20) A No.
 (21) Q I notice here it says that you are an
 (22) instructor in orthopedic surgery at Reserve
 (23) Medical school.
 (24) A Yes. I'm a clinical instructor in
 (25) orthopedic surgery. Whether that will

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(1) continue, I don't know because St. Luke's no
 (2) longer has a training program, although my
 (3) instructorship was just renewed in July.
 (4) Q Now, as I understand it, what that
 (5) means is that, when they send medical
 (6) students or --
 (7) A Well, may I explain it? It will be
 (8) easier.
 (9) Q Yes, please.
 (10) A They had a certified orthopedic
 (11) training program at St. Luke, and that's
 (12) where I was an instructor. That's how I
 (13) held that position, through Western Reserve
 (14) University School of Medicine. Now, St.
 (15) Luke's has abandoned medicine and surgery.
 (16) It will be mainly psychiatric. There no
 (17) longer is a residency training program. So,
 (18) this will probably be just abandoned.
 (19) Q You have privileges at the four
 (20) hospitals that I listed here?
 (21) A Yes.
 (22) Q And you admit patients there?
 (23) A Yes.
 (24) Q Okay. That's enough of that. Doctor,
 (25) tell me a bit about your practice. What

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(1) type of a practice do you have?
 (2) A General orthopedics.
 (3) Q Do you do surgery yourself?
 (4) A Yes, sir.
 (5) Q Do you do back surgery?
 (6) A I no longer do back surgery. I stopped
 (7) doing back surgery possibly five years ago,
 (8) and the reason for that is that the
 (9) insurance premiums did not justify me
 (10) continuing to do back surgery for the
 (11) minimal remuneration that was coming.
 (12) Q So, you no longer do that in the last
 (13) five years?
 (14) A I stopped, yes, sir. --
 (15) Q Do you do any other kind of surgery?
 (16) A Yes.
 (17) Q Presently?
 (18) A, Yes.
 (19) Q Now, you've reviewed the George Chriss
 (20) matter.
 (21) A Yes, sir.
 (22) Q And Cleveland Orthopedic Associates,
 (23) before we get to that --
 (24) A Yes.
 (25) Q -- I notice that there are two people

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(1) on the letterhead. That's you and Dr.
 (2) Marshall
 (3) A Yes, sir.
 (4) Q You and he are partners here?
 (5) A No. We are associated because this is
 (6) not a partnership. It's a corporation.
 (7) There's a legal difference, as you know
 (8) better than I. So, before I say the wrong
 (9) thing --
 (10) Q No, that's all right.
 (11) A But --
 (12) Q We're not trying to catch you here.
 (13) A I know, but I'm trying to be legalistic
 (14) --
 (15) Q Okay.
 (16) A -- in my reply. Essentially, I was
 (17) incorporated some 25 years-plus alone, and
 (18) then I subsequently had several people who
 (19) were with me, and the last is Dr. Marshall
 (20) who's been with me now for over 23 years.
 (21) Q Now, you've issued a report based upon
 (22) your evaluation of Mr. Chriss; is that
 (23) correct?
 (24) A Yes, sir.
 (25) Q All right. Now, as I understand it,

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(1) you have determined that, or you agree with
 (2) the diagnosis that Mr. Chriss does not have
 (3) any herniated disks.
 (4) A That's my opinion, yes, sir.
 (5) Q And that there is no nerve root
 (6) impingement here.
 (7) A Yes, sir.
 (8) Q All right, and you also find that there
 (9) was no objective evidence to substantiate
 (10) the complaints that he gave you.
 (11) A On my examination, yes, sir.
 (12) Q On your examination.
 (13) A Yes.
 (14) Q All right. Is that the sum total of
 (15) the opinions that you're rendering here and
 (16) that you intend to render in this case?
 (17) A Well, that's what I put in my report to
 (18) Mr. Dover, yes.
 (19) Q I appreciate that. I just want to make
 (20) sure that that's --
 (21) MR. SANTORO: I'd like to just
 (22) clarify. The report speaks for itself, so
 (23) the opinions in the report are --
 (24) THE WITNESS: Yes,
 (25) MR. SANTORO: --what opinions

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- (1) Dr. Kovach is bringing to this case, just
 (2) for the record.
 (3) MR. MICHELSON: Okay.
 (4) BY MR. MICHELSON:
 (5) Q All right. So, those are the opinions
 (6) that you're rendering in this case?
 (7) A Yes, sir.
 (8) Q And those are the only opinions that
 (9) you've formed regarding this matter?
 (10) A Yes, yes, sir.
 (11) Q Nor do you intend to testify to
 (12) anything different than that.
 (13) A No, I would not --
 (14) Q I mean --
 (15) A No, unless you have something new that
 (16) would be different from what is on the
 (17) record, I see no change in what I would
 (18) testify to.
 (19) Q Now, Doctor, in general, do you treat
 (20) people who have chronic low back problems?
 (21) A Yes.
 (22) Q Have you over the years?
 (23) A Yes, sir.
 (24) Q Is the phrase, a mechanical back
 (25) syndrome, one that you are either familiar

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- (1) with or agree that it's a condition --
 (2) A It's a catch word that's out there now.
 (3) Many people say "mechanical back syndrome,"
 (4) not being really defined as to what it
 (5) exactly means, but it seems to be
 (6) pontificating that this is an honest to God
 (7) thing, but by "mechanical," it would infer
 (8) that something in the body mechanics may be
 (9) out of whack, and that would be contributing
 (10) to the individual's complaints. So, you
 (11) know, you could put it down rather than
 (12) saying that he has a degenerated epiphyseal
 (13) joint, and when it moves under a load, it
 (14) produces pain.
 (15) Q The people that you treat for chronic
 (16) back problems, are there -- well, there are
 (17) -- let me back up.
 (18) There are people who have chronic
 (19) pain symptoms in their low back which are
 (20) the result of multiple problems, correct?
 (21) A Correct.
 (22) Q Different kinds of problems can create
 (23) that condition.
 (24) A Yes, sir.
 (25) Q And that condition can exist often

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- (1) without or sometimes without any objective
 (2) findings; isn't that true?
 (3) A When you say "sometimes," that doesn't
 (4) exclude anyone. So, when you say it that
 (5) way, then, I would have to agree that
 (6) sometimes that's possible.
 (7) Q And you have, yourself, treated
 (8) patients who have significant, ongoing
 (9) complaints of pain where you cannot pinpoint
 (10) from any objective finding the specific
 (11) cause of that pain; is that right?
 (12) A That's true.
 (13) Q Okay. Now, out of all of the patients
 (14) that you've treated and have treated for low
 (15) back problems, have there been -- I'll
 (16) withdraw that.
 (17) How many are there, if you can
 (18) possibly quantify this, where you recommend
 (19) surgery on their low back?
 (20) A How many would I recommend surgery,
 (21) percentagewise?
 (22) Q Yes.
 (23) A I can't give you a percentage, but very
 (24) few.
 (25) Q So, traditionally -- not

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- (1) "traditionally," but commonly, low back pain
 (2) patients are treated conservatively without
 (3) surgery.
 (4) A Yes, sir.
 (5) Q And that doesn't necessarily mean that
 (6) they don't have a problem; it just means
 (7) that they're not appropriate surgical
 (8) candidates for any one of a number of
 (9) reasons.
 (10) A Yes, sir.
 (11) Q Now, would you agree that there are
 (12) persons who have chronic low back pain or
 (13) chronic low back difficulties that often are
 (14) restricted in the nature or the extent of
 (15) the activities that they can endure without
 (16) difficulty?
 (17) A Yes.
 (18) Q Even those who do not necessarily have
 (19) herniated disks or nerve involvement, or any
 (20) kind of nerve impingement.
 (21) A Yes.
 (22) Q And these types of patients, if they do
 (23) engage in activities, in certain activities,
 (24) it can cause exacerbations of their problem
 (25) that can be fairly significant or severe.

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- (1) A Yes.
- (2) Q And if they refrain from those types of
- (3) activities, then, their condition can get
- (4) somewhat quiescent and under control?
- (5) A Yes.
- (6) Q Those are fair statements?
- (7) A Yes.
- (8) Q Okay. With those types of patients, is
- (9) it appropriate for orthopedic physicians or
- (10) any physicians to then recommend that they
- (11) restrict themselves from that type of
- (12) activity?
- (13) A Just on the basis of what you've been
- (14) leading up to so far, and just saying that
- (15) you restrict without doing the appropriate
- (16) workup and appropriate treatment --
- (17) Q That's a fair statement.
- (18) A You know, without doing those things,
- (19) some people will say: okay, we'll restrict
- (20) your activity because this will produce pain
- (21) for you; so that you won't be painful, you
- (22) don't do that. So, yes, under that
- (23) circumstance, but we haven't gotten into
- (24) whether he tried to make him any better.
- (25) Q I understand.

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- (1) A In other words, that's like giving a
- (2) guy a slip that you don't have to work for
- (3) the next five years because, if you work, it
- (4) will hurt, rather than trying to get him
- (5) better.
- (6) Q I appreciate that. My question,
- (7) however, if you assume --
- (8) A Yes, assuming that, I agree with your
- (9) statement.
- (10) Q If you assume that, in fact, the
- (11) physician has done appropriate testing to
- (12) see if they can objectify any particular
- (13) course of care that would remedy the
- (14) situation, and has tried conservative --
- (15) measures which may include, well, any pain
- (16) management type thing, physical therapy, if
- (17) you assume that that's all been done, and we
- (18) still are left with a patient with this
- (19) chronic pain condition, that's my question.
- (20) A We're going to assume all of those
- (21) things
- (22) Q Right.
- (23) A And under that assumption that the
- (24) appropriate consultation has also been
- (25) obtained, that the individual, if he can't

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- (1) find the cause and treatment, would also
- (2) request proper consultation, and under those
- (3) circumstances, yes.
- (4) Q Okay. Now, a musculoligamentous low
- (5) back injury --
- (6) A Yes.
- (7) Q -- which has chronic symptomatology,
- (8) all right, which results in that, will you
- (9) agree that that certainly may very well not
- (10) be accompanied by positive MRI, CT, X-rays,
- (11) EMG or nerve conduction studies?
- (12) A None of those should be positive with
- (13) that particular injury.
- (14) Q Okay, and those tests themselves, the
- (15) purpose of those is to determine the nature
- (16) and extent and location of nerve and disk
- (17) injuries in the back, correct? I'm talking
- (18) about back injuries now.
- (19) A Yeah, plus arthritic changes as well in
- (20) those joints.
- (21) Q Okay. Now, orthopedic physicians very
- (22) often get their referrals from either family
- (23) physicians or internists, primary care
- (24) people, correct?
- (25) A Yes, sir.

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- (1) Q For patients, it's perfectly
- (2) appropriate to go to a primary care
- (3) physician and perhaps even engage in a
- (4) course of treatment or conservative care and
- (5) testing until such time as the physician
- (6) determines that he or she ought to be seen
- (7) by an orthoped.
- (8) A It is appropriate for any licensed
- (9) physician to see them, and if they get to
- (10) the point where they are out of their field
- (11) of expertise as far as helping the
- (12) individual, then, they should get
- (13) consultation, and then that's fine. That's
- (14) appropriate.
- (15) Q All right. Now, is it a fair statement
- (16) to say that diagnoses of medical problems or
- (17) conditions in patients are often made based
- (18) upon history and subjective complaints, even
- (19) though you can't necessarily objectify them?
- (20) A The history is most important, most
- (21) important, and as you said, sometimes the
- (22) diagnosis is predicated upon the history.
- (23) Q Okay. Now, my understanding, and you
- (24) correct me if I'm wrong.
- (25) A Yes, sir.

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(1) Q I believe you've told me in the past
 (2) that, when you have patients, your own
 (3) clinical patients, physicians basically,
 (4) unless they can show specifically otherwise,
 (5) you have to rely on the history that your
 (6) patients give you.
 (7) A Yes, you have to take the history
 (8) that's given.
 (9) Q Now, Doctor, tell me, when you would do
 (10) the medical examination of Mr. Chriss and
 (11) other -- before we leave, Doctor, I just
 (12) want to take a quick look at the file.
 (13) A Allright.
 (14) Q But before we get to that, to do the
 (15) examination of Mr. Chriss, how long did that
 (16) take, or how long did it typically take you?
 (17) A I don't know how long this one took,
 (18) but --
 (19) Q Typically.
 (20) A To be in the general ball park, it
 (21) depends on primarily the length of the
 (22) history that's involved because I want to
 (23) get everything that the individual can
 (24) relate to me, so that they have an
 (25) opportunity to tell me everything, and that

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(1) varies anywhere from five minutes -- it can
 (2) be a half an hour. I don't know how long it
 (3) took in this instance, but it was long
 (4) enough that he was, I'm sure, satisfied
 (5) because I asked him: is there anything else
 (6) that you want to tell me? And, that took,
 (7) perhaps, 15 to 20 minutes. The physical
 (8) examination will take approximately five to
 (9) seven minutes.
 (10) Q Okay, and, then, you then write a
 (11) report; is that correct?
 (12) A Well --
 (13) Q Or you review documents?
 (14) A Not yet.
 (15) Q Tell me what else is part of the
 (16) process.
 (17) A Then, I'll do the review and then try
 (18) to tie everything together, and then I'll
 (19) submit a report.
 (20) Q I see, and when you say "review," what
 (21) do you mean by that?
 (22) A Well, pardon me?
 (23) Q What do you mean by "review"?
 (24) A Well, I review other documents that
 (25) have been submitted on behalf of the

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(1) individual who has the complaints, such as
 (2) the past medical treatment, his doctors'
 (3) reports, sometimes the doctor's records, the
 (4) letters that may have been written on his
 (5) behalf, and various reports from either
 (6) radiologists or others involved, and then
 (7) when that's digested, then, we'll submit a
 (8) report.
 (9) Q How long would that take you?
 (10) A It varies depending on the volume;
 (11) anywhere from two hours to five, six hours.
 (12) Q Okay, and now, you do medical
 (13) examinations, consult in medical
 (14) examinations on a fairly regular basis; is
 (15) that right?
 (16) A Yes, sir.
 (17) Q Okay. Are all of -- other than --
 (18) well, I'll withdraw that.
 (19) What percentage of the examinations
 (20) that you're asked to do are on behalf of
 (21) either defendants, law firms, insurance
 (22) companies, manufacturers, railroads,
 (23) businesses?
 (24) MR. SANTORO: I'm going to
 (25) object.

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(1) THE WITNESS: You are not
 (2) including my own patients who've been
 (3) injured?
 (4) BY MR. MICHELSON:
 (5) Q Right, I'm not including them.
 (6) A So, if you're saying: do I examine,
 (7) for example, if a plaintiffs attorney
 (8) wishes to have me do an exam and a report, I
 (9) practically have done none of those.
 (10) Q So, the others --
 (11) A If there is an independent examination
 (12) requested, it's almost always on the part of
 (13) the defendant.
 (14) Q Okay.
 (15) A But I do have my own cases which I
 (16) submit, and very occasionally, there will be
 (17) a request to evaluate a case and give my
 (18) opinion without necessarily examining the
 (19) individual on the part of a plaintiffs
 (20) attorney
 (21) Q Have you done other work for Gallagher,
 (22) Sharp and Mr. Dover?
 (23) A Yes, I have.
 (24) MR. SANTORO: Objection.
 (25) THE WITNESS: Yes, I've done some

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(1) cases for them.
 (2) BY MR. MICHELSON:
 (3) Q Consulting for them?
 (4) A Yes, sir.
 (5) Q Howoften? Howoften?
 (6) A I can't tell you the exact number
 (7) because I don't keep individual count, but
 (8) suffice it to say that it's been probably
 (9) more than ten within the last two, three
 (10) years.
 (11) Q More than ten within the last two or
 (12) three years?
 (13) A Within the last two or three years.
 (14) The exact number, I don't keep a record of.
 (15) Q Less than 50, more than 50?
 (16) A Probably less than 50. I'm sure it was
 (17) less than 50.
 (18) Q Okay. Are there any other law firms
 (19) that you consistently get, or who are
 (20) clients of yours that send you consulting
 (21) work?
 (22) A No, I don't have any clients.
 (23) Q Okay, who are folks who ask you to
 (24) consult on these defense medical
 (25) examinations?

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(1) A Yes, there are other firms.
 (2) MR. SANTORO: Objection.
 (3) THE WITNESS: And individuals who
 (4) do
 (5) BY MR. MICHELSON:
 (6) Q And who are some of those?
 (7) A I can't recall offhand to give you
 (8) names. So, rather than be totally
 (9) inaccurate, I won't answer that.
 (10) Q You can't recall who they are?
 (11) A If you mention names, I can say: yes,
 (12) I recall that name.
 (13) Q Okay. How about insurance companies;
 (14) do you do work for them too, independent
 (15) exams --
 (16) MR. SANTORO: Objection.
 (17) BY MR. MICHELSON:
 (18) Q -- or is it always for law firms who
 (19) work --
 (20) A Well, when you say "insurance
 (21) companies," would you then say a claims
 (22) examiner would ask me to do an examination
 (23) and report? In those instances, yes, that
 (24) has happened where there's no attorney
 (25) involved

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(1) Q Okay. Is it primarily for attorneys?
 (2) A It's almost always --
 (3) Q Okay.
 (4) A -- a legal situation or, you know, when
 (5) we're talking about employers, it isn't.
 (6) Q Okay. Doctor, I want to show this to
 (7) you.
 (8) (At this time Plaintiffs Exhibit
 (9) 1 was marked for identification purposes.)
 (10) BY MR. MICHELSON:
 (11) Q This is what we've previously marked as
 (12) Plaintiffs Exhibit 1. Doctor, do you
 (13) recognize that as a subpoena with some other
 (14) documents attached that we served on you
 (15) some time ago?
 (16) MR. SANTORO: Just for the
 (17) record, some of the documents weren't
 (18) attached to the subpoena.
 (19) MR. MICHELSON: That's right. In
 (20) there, there's a subpoena with an exhibit
 (21) attached to it, and then there's a couple of
 (22) pieces of correspondence.
 (23) THE WITNESS: Yes, sir.
 (24) BY MR. MICHELSON:
 (25) Q Do you recognize the subpoena?

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(1) A Yes, sir.
 (2) Q And in response to that subpoena, I
 (3) know that your attorney, Mr. Mathews, was in
 (4) touch with our office.
 (5) A Yes, sir.
 (6) Q And he has provided to us a schedule
 (7) which is in that Exhibit 1.
 (8) A Yes, sir.
 (9) Q Do you have that there?
 (10) A Yes, sir.
 (11) Q Do you have a copy of it?
 (12) A Yes.
 (13) Q Okay, good. Just give it to her.
 (14) A Because I have a copy, because I
 (15) submitted that to him.
 (16) Q Now, the document that's in there, that
 (17) is something that you created; is that
 (18) right?
 (19) A Yes, sir.
 (20) Q And you did this by reviewing your
 (21) records and whatever would be required to
 (22) conform to that subpoena, to the extent that
 (23) you have it.
 (24) A Let me elaborate on your question.
 (25) Q Go ahead.

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(1) A Because I think the answer will be more
 (2) clear
 (3) Q Goahead
 (4) A So that you understand how I did this,
 (5) individuals for whom I do the examinations
 (6) and submit reports are not kept separately,
 (7) and that includes the U.S. Government
 (8) compensation cases. They're all put in
 (9) under a classification in the computer, not
 (10) separately but all put together, as a PPD.
 (11) That's the code that's used, telling me that
 (12) these are permanent partial disability
 (13) exams, and that includes everything, okay,
 (14) so that I can -- also we include each case,
 (15) so that on the computer, I can bring up the
 (16) total number of charges or patients that
 (17) I've seen in a year's time and the total
 (18) number of these which are the PPD exams, so
 (19) this is how we arrive at that. That's the
 (20) total, and then when there was a deposition,
 (21) I broke that down a little farther for you.
 (22) Q Okay.
 (23) A During that particular time, that's
 (24) kept, not who the deposition was for, but
 (25) that there was a deposition, so that's how

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(1) we arrived at the total on these things, and
 (2) then, of course, the charges that were out
 (3) of that total for each one of those.
 (4) Q Categories?
 (5) A Those things in those particular years.
 (6) Q So, we have here the PPDs which are
 (7) permanent partial exams?
 (8) A But like I explained, that's the all-
 (9) inclusive term for an IME exam, an actual
 (10) exam for a permanent partial disability, for
 (11) example, for State Workers' Compensation, a
 (12) U.S. Department of Labor exam, the U.S. Post
 (13) Office; all of these things are put in the
 (14) one category.
 (15) Q And then the total number of charges,
 (16) what is that?
 (17) A That's the number of people in the year
 (18) that I've made charges on.
 (19) Q That's just the total number of
 (20) patients you've seen?
 (21) A No, charges. Each one has a charge
 (22) Sometimes if there is no charge, for
 (23) example, it's a follow-up for a surgical
 (24) procedure, and there's no second charge.
 (25) Q Do the total number of charges --

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(1) A Yes, sir.
 (2) Q -- in either the -- well, let's just go
 (3) to the number. It says 2399.
 (4) A Yes, over 1996, that's 2399, and that's
 (5) the monetary charge that those charges
 (6) amounted to, and included in that 2399 is
 (7) also the total number of the PPD exams.
 (8) Q Okay.
 (9) A The depositions in that total of
 (10) charges
 (11) Q I see
 (12) A But as a further breakdown of that
 (13) total number, so much of that was due to the
 (14) generation of the PPD exams, and the other
 (15) is the deposition charges.
 (16) Q I'm just going from the top of the
 (17) page
 (18) A Yes, sir
 (19) Q Of the 2399 charges that were made --
 (20) A Yes
 (21) Q -- 263 of them were for independent
 (22) medicals or permanent partial evaluations?
 (23) A Yes, of that category, yes, sir.
 (24) Q In that category, and were those all
 (25) where you were retained by a lawyer or an

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(1) insurance examiner or somebody to do an
 (2) evaluation, or an employer?
 (3) A It could be an employer. It could be
 (4) the U.S. Government. For example, the U.S.
 (5) Department of Labor, they examine -- I
 (6) examine many cases for them, and all of
 (7) those are categorized in there.
 (8) Q I see, and the same is true for each of
 (9) these categories, each of these years; is
 (10) that the idea?
 (11) A Yes, sir.
 (12) Q Okay. Can you tell me how many of the
 (13) PPD exams, as you've called them here, I
 (14) mean, whether there's any subcategories for
 (15) those that you can identify?
 (16) A No.
 (17) Q You can't do that?
 (18) A No.
 (19) Q Okay
 (20) A Not without trying to find each and
 (21) every one of those charts, trying to find
 (22) out who it was, because the charges are just
 (23) put in under the category.
 (24) Q Okay. Do your normal appointment
 (25) calendars carry with them any information

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(1) regarding not only the names of the patients
 (2) and times, but what the purpose of them is,
 (3) on whose behalf you're doing them?
 (4) MR. SANTORO: Before you answer
 (5) that, I'm going to object to this question.
 (6) It involves –
 (7) MR. MICHELSON: It involves what?
 (8) MR. SANTORO: It involves an
 (9) answer that will divulge or is trying to
 (10) seek information that's protected by the
 (11) doctor/patient privilege.
 (12) MR. MICHELSON: What information
 (13) is that? I'm sorry.
 (14) MR. SANTORO: This objection has
 (15) been made by Tyler Mathews on behalf of Dr.
 (16) Kovach in a letter to Mr. Michelson.
 (17) MR. MICHELSON: Uh-huh.
 (18) MR. SANTORO: And I just want
 (19) that on the record.
 (20) MR. MICHELSON: Okay, but you can
 (21) answer the question.
 (22) MR. SANTORO: You can answer.
 (23) THE WITNESS: When someone makes
 (24) an appointment, often the receptionist will
 (25) indicate a phone number, who to contact in

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(1) case an individual does not show up, so they
 (2) can be informed that they were not there.
 (3) The other indication that there
 (4) might be for an examination is that the time
 (5) allotted is not five minutes, but we try to
 (6) allot at least a half an hour for an
 (7) examination, so that I'm not jammed in the
 (8) middle, and someone comes in with a
 (9) youngster, and they're carrying on, and I've
 (10) got a half an hour exam scheduled ahead of
 (11) them. So, that would indicate that, and
 (12) also it would probably be put down who was
 (13) requesting the examination rather than the
 (14) individual, because we also try to get a
 (15) phone number if it's a new patient whom I
 (16) haven't seen, whether they're for that
 (17) reason or for some other reason. So, in
 (18) case something happens to me, we have a
 (19) number to contact and say: please, he's not
 (20) going to be able to make it, or something
 (21) happened to him. Can we reschedule the
 (22) appointment?
 (23) Q Okay. Now, I know your lawyer called
 (24) me, and I spoke to him regarding some of the
 (25) information requested in the subpoena. Now,

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(1) some of the information that we requested
 (2) included a copy of records that had to do
 (3) with tax forms that would have been supplied
 (4) to you by those who retained you in a
 (5) consulting capacity. You do not get any of
 (6) those from law firms or anybody who hires
 (7) you for these things?
 (8) A Okay. First of all, let me explain.
 (9) You used the word "retained." My
 (10) understanding of "retain" is that there's
 (11) money up front.
 (12) Q No, that's not it.
 (13) A That's my understanding of the word
 (14) "retained." So, that's why I'm elaborating
 (15) on my understanding.
 (16) Q Go ahead.
 (17) A Meaning if I'm retained to do
 (18) something, whether or not I have to complete
 (19) something or not, where there's a baseline
 (20) that you're retained for, and you have such
 (21) income forthcoming because of being
 (22) retained, that's what the word means, is my
 (23) understanding.
 (24) Q Right, okay.
 (25) A So, from that standpoint, no, I'm not

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(1) retained where I receive an income from
 (2) anybody, and, therefore, each case that I
 (3) see would be as an individual contractor for
 (4) which a 1099 is not submitted, and I have
 (5) never received one from anyone because I'm
 (6) not in the employ of anyone. Each case is
 (7) its own, individual case. Now, the
 (8) individuals who do retain me for each
 (9) individual case –
 (10) Q Right.
 (11) A – and they pay me, they also will have
 (12) to use my corporation's tax ID number to
 (13) report to the government what they have paid
 (14) to this firm.
 (15) Q Right.
 (16) A You know, they have that, but a 1099 as
 (17) such is never submitted at any time. In my
 (18) many years of practice, I have never
 (19) received one from that standpoint. I have
 (20) where I was working for someone else, yeah.
 (21) Q All right. In the matters that you
 (22) have now –
 (23) A In these matters, there's no such thing
 (24) ever submitted.
 (25) Q And your company doesn't get a report

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(1) from them either?
 (2) A No.
 (3) Q Or any document or any copy of any
 (4) document that they submit to the government?
 (5) A No. Sometimes they will say that this
 (6) will be reported, but I've never received
 (7) anything saying that this has been sent to
 (8) the government.
 (9) Q Okay.
 (10) A That's why that wasn't available.
 (11) Q I understand.
 (12) A Okay.
 (13) Q I'm just asking. You've mentioned to
 (14) us that you have done some work for, and I
 (15) understand, you know, you're not employed by
 (16) them, but Gallagher, Sharp, the attorneys at
 (17) Gallagher, Sharp, Fulton & Norman have asked
 (18) you to do these defense medical
 (19) examinations, correct?
 (20) A Most of the time, it's defense, yes.
 (21) Q Right, but Gallagher, Sharp is one of
 (22) the firms that does that?
 (23) A Yes.
 (24) Q All right. Can you tell me some of the
 (25) other firms that you do that for?

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(1) A No.
 (2) Q No, you can't?
 (3) A If you mention some names, if I recall
 (4) them, I'll tell you.
 (5) Q Squire, Sanders & Dempsey.
 (6) A I believe I had once or twice for them,
 (7) for that firm.
 (8) Q James Glowacki & Associates.
 (9) A The name is familiar. I haven't seen
 (10) Mr. Glowacki or heard from him for a long
 (11) time, but the name is familiar.
 (12) Q Okay. Rather than go through the
 (13) entire litany of Cleveland law firms, you've
 (14) done 83 examinations this year of all kinds
 (15) that you've described to us as PPD.
 (16) A Yes, up until August 23rd.
 (17) Q Who besides Gallagher, Sharp has asked
 (18) you to do these?
 (19) A I can't recall.
 (20) Q None?
 (21) A No, no, I can't recall any.
 (22) Q Okay. Do you have a record of that
 (23) anywhere?
 (24) A No.
 (25) Q There would be no record --

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(1) A No.
 (2) Q -- of who paid you?
 (3) A You'd have to go through and find each
 (4) one of those charts out of those 83 to see
 (5) who the others were.
 (6) Q I see. There's no other record that
 (7) talks about the sum total --
 (8) A No.
 (9) Q -- from each provider?
 (10) A No, because I've already testified to
 (11) that. There isn't.
 (12) Q Okay. That's all I wanted to know. I
 (13) have nothing further. Thank you.
 (14) MR. SANTORO: Okay.
 (15) MR. MICHELSON: Do you want to
 (16) ask any questions?
 (17) MR. SANTORO: I'm not going to
 (18) ask anything. We have his video depo coming
 (19) up on Tuesday.
 (20) MR. MICHELSON: Doctor, you can
 (21) either waive your signature or go down to
 (22) the reporter's office and read it. She'll
 (23) have it ready for you promptly. What do you
 (24) want to do?
 (25) THE WITNESS: I don't want to

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(1) read this.
 (2) MR. MICHELSON: Okay.
 (3) THE WITNESS: You were very fair
 (4) MR. MICHELSON: You waive?
 (5) THE WITNESS: Yes, I do.
 (6) MR. MICHELSON: Thank you.
 (7)
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CERTIFICATE

(1) **CERTIFICATE**
(2) The State of Ohio,)
(3) County of Cuyahoga.) SS:
(4) I, Luanne Stone, a Notary Public within
(5) and for the State of Ohio, duly commissioned
(6) and qualified, do hereby certify that the
(7) within-named witness, RALPH KOVACH, M.D.,
(8) was by me first duly sworn to testify to the
(9) truth, the whole truth and nothing but the
(10) truth in the case aforesaid; that the
(11) testimony then given by the above-referenced
(12) witness was by me reduced to stenotypy in
(13) the presence of said witness; afterwards
(14) transcribed; and that the foregoing is a
(15) true and correct transcription of the
(16) testimony so given by the above-referenced
(17) witness.
(18) I do further certify that this
(19) deposition was taken at the time and place
(20) in the foregoing caption specified and was
(21) completed without adjournment.
(22) I do further certify that I am not a
(23) relative, counsel or attorney for either
(24) party, or otherwise interested in the
(25) event of this action.

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(1) IN WITNESS WHEREOF, I have hereunto set
(2) my hand and affixed my seal of office at
(3) Cleveland, Ohio this _____ day of
(4) _____, A.D., 1999.
(5)
(6)
(7) _____
(8) Luanne Stone, f.k.a. Protz
(9) Notary Public
(10) In and for the State of Ohio
(11) My commission expires 4/6/03
(12)
(13)
(14)
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