

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

3 DOREEN M. ELDRIDGE,

4 Plaintiff,

5 -vs-

JUDGE SWEENEY
CASE NO. 248465

6 JEANETTE HOWARD,

7 Defendant.

8 - - - -

9 Videotape deposition of RALPH KOVACH, M.D.,
10 taken as if upon direct examination before Heidi
11 D. Smith, a Notary Public within and for the
12 State of Ohio, at the offices of Dr. Ralph
13 Kovach, 9700 Garfield Boulevard, Cleveland,
14 Ohio, at 10:00 a.m. on Thursday, September 7,
15 1994, pursuant to notice and/or stipulations of
16 counsel, on behalf of the Defendant in this
17 cause.

18 - - - -

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1 APPEARANCES:

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6 On behalf of the Plaintiff;

7 Keith Thomas, Esq.
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12 On behalf of the Defendant.

13 ALSO PRESENT:

14 John Smith, Videotape Technician
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1 VIDEOTAPE TECHNICIAN: Stand by.

2 We're on the record.

3 RALPH KOVACH, M.D., of lawful age,
4 called by the Defendant for the purpose of
5 direct examination, as provided by the Rules of
6 Civil Procedure, being by me first duly sworn,
7 as hereinafter certified, deposed and said as
8 follows:

9 DIRECT EXAMINATION OF RALPH KOVACH, M.D.

10 BY MR. THOMAS:

11 MR. THOMAS: Let the record reflect
12 that this is the videotape deposition of
13 Dr. Ralph Kovach taken for trial purposes
14 for the case captioned Doreen Eldridge
15 versus Jeanette Howard. It's Case Number
16 248465. And this deposition is being taken
17 again for trial purposes and will be played
18 to the jury during the course of this
19 trial.

20 And I assume all formalities of
21 service and notice concerning this
22 deposition are waived?

23 MR. KULWICKI: So waived.

24 MR. THOMAS: All right. Thank you.

25 Q. Would you please state your name for the record,

1 sir.

2 A. Ralph Kovach.

3 Q. And, sir, are you a duly licensed physician and
4 surgeon in the State of Ohio?

5 A. Yes, I am.

6 Q. All right. And when did you obtain your
7 license?

8 A. June of 1953.

9 Q. And where is your office located?

10 A. It's 9700 Garfield Boulevard, Cleveland, Ohio.

11 Q. And how long have you been practicing medicine,
12 since 1953, is that correct?

13 A. I started active practice after my training was
14 completed on July 1, 1958.

15 Q. All right. Thank you, doctor.

16 And would you please tell the ladies and
17 gentlemen of the jury where you received your
18 education and your medical training.

19 A. I graduated from the University of Dayton in
20 Dayton, Ohio in 1950, bachelor of science
21 degree. I graduated from Loyola University
22 School of Medicine in 1953 with an M.D. degree.
23 Subsequent to that I interned at St. Luke's in
24 Cleveland, 1953 to '54, and I completed the
25 orthopedic residency training program at St.

1 Luke's in Cleveland. That was 1954 to 1958.

2 And I started practice in July of 1958.

3 Q. All right. Thank you, doctor.

4 And, doctor, do you specialize in any
5 particular branch of medicine?

6 A. Yes, sir.

7 Q. And what is your specialty?

8 A. Orthopedic surgery.

9 Q. And would you explain to the ladies and
10 gentlemen of the jury just what the practice of
11 orthopedic surgery is.

12 A. That's a branch of surgery that deals with
13 diseases and injuries to the musculoskeletal
14 system, and by that I mean the spine, the
15 ligaments, muscles, nerves as they innervate
16 these areas.

17 Q. And after receiving your education and your
18 medical training, doctor, did you then begin a
19 practice of orthopedic surgery on a full-time
20 basis?

21 A. Yes.

22 Q. And are you currently on staff of any hospitals?

23 A. Yes.

24 Q. What hospitals are you on staff at, sir?

25 A. St. Luke's, St. Alexis, Marymount, Deaconess and

Bedford.

Q. And, doctor, are you board certified?

3 A. Yes, sir.

4 Q. And would you explain to the ladies and
5 gentlemen of the jury just what it means to be
6 board certified.

7 A. It means that a particular board, in this case
8 it's a medical board and it's an orthopedic
9 board, that's been set up to determine whether
10 an individual who applies for certification is
11 qualified to be so certified. And in my case
12 certification consists of making sure that the
13 schools that I attended were satisfactory, that
14 my training program, the hospital where I took,
15 it was certified by them as being satisfactory.

16 And then I was given several examinations,
17 one at the completion of training, which was a
18 written and oral examination. And after that
19 was satisfactory, then I was evaluated in my
20 practice pattern for several years, all the
21 cases that I had hospitalized were reviewed.
22 After that was satisfactory to the board, then I
23 sit for another examination, and that was again
24 written and oral examination. And after
25 successfully completing that, then I was

1 certified as being qualified to practice
2 orthopedic surgery.

3 Q. All right. Thank you, doctor.

4 And are you board certified in orthopedic
5 surgery?

6 A. Yes, sir.

7 Q. All right. Doctor, do you belong to any
8 professional associations?

9 A. Yes.

10 Q. What associations do you belong to, doctor?

11 A. I belong to The Cleveland Orthopedic Society,
12 The Ohio Orthopedic Association, American
13 Academy of Orthopedic Surgeons and Mid-America
14 Orthopedic Association.

15 Q. Thank you, doctor.

16 And as part of your practice in orthopedic
17 surgery, have you treated patients who have
18 complained of pain in the neck area, back,
19 thighs, hips and elbows?

20 A. Yes, sir.

21 Q. All right. And, doctor, are you being
22 compensated for the time that you have devoted
23 to this particular case?

24 A. Yes, I am.

25 Q. And have you testified in personal injury cases

1 before on behalf of plaintiffs?

2 A. Yes.

3 Q. And, doctor, did you have the opportunity to
4 review and examine medical records and actually
5 examine Doreen Eldridge at the request of my
6 office?

7 A. Yes, I have.

8 Q. And when did you examine Doreen Eldridge?

9 A. I examined this lady on March 10th of 1994.

10 Q. And did you prepare a report subsequent to your
11 examination of Doreen Eldridge?

12 A. Yes, I did.

13 Q. All right. Feel free to review that report,
14 doctor, if you deem it necessary, if it will
15 help you in your testimony here today.

16 Doctor, would you explain to the ladies and
17 gentlemen of the jury just what a history is.

18 **A.** A history is the story of, in this case an
19 injury that a lady sustained in an automobile
20 accident. It's a story of how she was injured,
21 what the mechanism was, what her complaints were
22 after the injury had occurred, what did she do
23 about it, how was she treated, what was her
24 response to that particular injury up until the
25 time that I examine her. And then she tells me

1 what her problems are at the time that I examine
her and what had been her response to the
treatment that she had received.

4 So that's a story of a particular injury.
5 We call that a history.

6 Q. All right. Thank you, doctor.

7 And prior to your examination of Miss
8 Eldridge, did she give you a history?

9 A. Yes, she did.

10 Q. And would you tell the ladies and gentlemen of
11 the jury the history that was given to you by
12 Doreen Eldridge.

13 A. She told me that she had been involved in a
14 motor vehicle accident, that the accident had
15 occurred on February the 12th of 1992. So that
16 was two years before I had examined her when I
17 was talking to her.

18 And she told me that on that date in
19 February of '92 she was fully restrained in the
20 driver's seat, by that I mean she had shoulder
21 belts as well as seat belts in place, and that
22 she was driving a car and was traveling about 25
23 miles an hour and she had to make a sudden stop
24 because two stops -- the two cars that were
25 directly in front of her had suddenly stopped.

1 So she slammed on her brakes and she said that
2 her car swerved toward the right and then
3 another car was strike from behind by another
4 car and that this was right into the rear part
5 of her automobile when it was struck. She said
6 that she was then pushed forward as a result of
7 this collision, struck another car, which was in
8 front of her.

9 She also told me that she didn't hit
10 herself anywhere within the confines of the
11 automobile. In other words, she didn't hit her
12 head or any part of her body, but that she said
13 that she was jarred back and forth and that
14 initially she was having no particular pain or
15 any particular discomfort, that she'd made a
16 police report.

17 But that the following day she called a
18 doctor and subsequently saw him for an
19 examination because she was now having some
20 complaints. She said that she had x-rays taken
21 and that she was treated with diathermy
22 treatments at his office. And she said that she
23 did not particularly improve, that medication
24 that was prescribed for her was not helping her
25 at all and she continued to have complaints and

1 the complaints were that she was having pain in
2 the back of her neck, across the back of both
3 shoulders and also pain which went down into the
4 lower back and some of that pain would radiate
5 down into the lower right extremity, by that I
6 mean the thigh.

7 She had then said that she left her
8 treating doctor and saw another physician and
9 was still seeing him at the time that I examined
10 her. She said that more x-rays were taken and
11 that she was under physical therapy treatments
12 and that the therapy treatments she was
13 receiving were being given at Fairview General
14 Hospital.

15 Also of significance was that there was
16 approximately a one-year interval that occurred
17 from the time she stopped seeing her first
18 physician until the time she started seeing the
19 second doctor who was treating her.

20 So when I examined her she was telling me
21 that she was having pain in the back of the
22 neck, pain across the back of both shoulders,
23 pain in the lower back and occasionally she had
24 some pain that went down into her right thigh.
25 She also said she was having some cramping of

1 her feet, which was not related to any
2 particular activity that she was engaged in.
3 She said there was no loss of sensation anywhere
4 in her arms or in her legs. There was no
5 unusual sensations that she would experience
6 such as crawling or tingling in the arms or in
7 her legs. And she said she couldn't tolerate
8 most medications, so she was not taking any
9 medications at the time that I saw her. But she
10 did say she was going for therapy and she was
11 doing some exercises.

12 And then I asked her about her past, and as
13 far as her past medical history, and she said
14 that she did not have any prior problems with
15 the neck or upper back or her lower back and she
16 had never been in any previous accidents.

17 Q. All right. Thank you, doctor.

18 After receiving Miss Eldridge's history,
19 did you then examine her?

20 A. Yes, I did.

21 Q. And would you tell the ladies and gentlemen of
22 the jury just what your examination revealed.

23 A. Well, it showed that we were dealing with a
24 well-developed, well-nourished, short, shortly
25 overweight white lady of approximately 58 years

1 of age. She did not appear to be in any acute
2 distress, and by that I mean she did not appear
3 to be having any pain, was any particular
4 uncomfortable position either when I observed
5 her sitting, walking or standing. And when I
6 saw that she was able to sit perfectly
7 comfortable while she talked to me and then when
8 she got out of that car and was sitting on the
9 side of the examining table with her hips bent
10 to 90 degrees like I am in a chair and her knees
11 bent to 90 degrees hanging down, she was
12 perfectly comfortable in that position as well.

13 And she told me, rather pointed, so I asked
14 to point to the spots where you have your
15 particular pain so I can concentrate on those.
16 And she pointed to the upper back and the lower
17 back as being the areas that she was having pain
18 in. So I felt these areas thoroughly, both when
19 she was standing, when she was seated, when she
20 was lying down, and I found no muscle spasm in
21 these areas.

22 Also when she was seated I found that she
23 had normal reflexes both, we call the biceps and
24 triceps. In other words, the reflexes in the
25 arms and in the legs were present. They were

1 not absent. There was no difference from one
2 side to the other.

3 And I did what we call a straight leg
4 raising test and popliteal stretch test. That
5 means when she was seated like I am in a chair,
6 the hips and knees are bent. I straighten the
7 knee out to 90 degrees. So that's putting my
8 hips at 90 degrees to my body. My knee
9 perfectly out. If I'm lying on my back, reverse
10 that position, that's like putting my legs
11 straight up in the air and that was done seated.

12 And also in this position I pulled on the
13 sciatic nerve in the back of her knee while this
14 is stretched. I put more pressure on that nerve
15 and that did not produce any complaints of
16 discomfort and that was the same on either
17 side.

18 And also while she was seated I checked her
19 to see if there was any changes in the arms or
20 the legs as far as sensation is concerned.
21 There was no loss of the ability to feel touch
22 either anywhere in her arms or in her leg.

23 And also I checked the movement of her neck
24 and her shoulders while she was seated, and
25 there was no restriction of movement. All

1 movement was present and none was diminished.

2 And then I had her lying down, and when I
3 had her lying down on her back, then I tried to
4 bend one hip and knee at the same time so that I
5 could then straighten the leg out. Well, when I
6 was attempting to do that, she stated that this
7 was giving her severe pain in her lower back and
8 she said that was present on both the right as
9 well as the left side. And this is significant
10 in that when I checked her the same way while
11 she was seated, there was no discomfort, no
12 pain.

13 And when I was then examining her while she
14 was lying down, she told me she was having
15 severe muscle spasm in the middle of her lower
16 back area. So I asked her to put her hand to
17 the spot or asked me to move my hand to the spot
18 until she -- I would be right over the area
19 where she was experienced this muscle spasm, and
20 which she did do; however, I could not feel any
21 muscle spasm that she said was taking place at
22 the time.

23 And then I examined her when **she** was lying
24 on her abdomen. We call that the prone
25 position. And I picked up the skin between my

1 fingers. Such as this without squeezing it.
2 But just pick it up. And then gently roll it.
3 And that should be supple and should be
4 painless. And, of course, that's what it was,
5 the skin was supple and it was painless when I
6 did this test. And I did this from the buttocks
7 up to the shoulders, both her right and left
8 side and then the middle. And I again felt the
9 entire back and did not find any muscle spasm,
10 nor when I pressed in areas did she tell me that
11 she had any areas that were painful to her when
12 I would press on them.

13 And that was the completion of the
14 examination that I performed.

15 Q. All right. Thank you, doctor.

16 You had indicated that you examined the
17 plaintiff when she was in a recumbent position?

18 A. Yes, sir.

19 Q. And what is that position again?

20 A. Recumbent is lying on your back.

21 Q. All right. And at that point in time she had a
22 positive complaint of pain?

23 A. Yes.

24 Q. And that was significant. And why was that
25 significant, doctor?

1 A. Well, the difference with that is when I flexed
2 the hip and knee at the same time, you know, it
3 was bended to the same position that you would
4 be sitting, and she had absolutely no pain in
5 that particular position. Yet when I would lie
6 her down, she said that was hurt. That should
7 not be. That's a significant inconsistency on
8 her part.

9 Q. Okay. Thank you, doctor.

10 What is the difference between a subjective
11 finding and an objective finding, doctor?

12 A. Well, subjective is not really a finding. It's
13 just a complaint on the part of the individual
14 because when we talk about subjectivity, that
15 means the person whom I'm examining will tell me
16 what they are feeling, and if they tell me they
17 have pain, I can't feel their pain, but they are
18 telling me they have pain.

19 So one example would be was that she was
20 telling me that she was having a spasm. Well,
21 okay, I couldn't feel any spasm where she had me
22 move my hand to the point on her back where she
23 said she was having a spasm. She may have had
24 had some other symptom, but it wasn't a spasm.

25 And so spasm, rather, I'm sorry, symptoms

1 that are subjective really are only complaints
2 on the part of the individual.

3 Now, when you say objective findings,
4 that's something that I can see or feel or in
5 some way with my senses actually determine
6 something that's abnormal, and that would be an
7 objective finding.

8 Q. All right. Doctor, during the course of your
9 examination of Doreen Eldridge, was there -- did
10 you have any objective findings?

11 A. No. There were none.

12 Q. Which -- and there were no objective findings
13 which supported her subjective complaints; would
14 that be a fair statement?

15 A. Yes, sir.

16 MR. KULWICKI: Objection.

17 MR. THOMAS: Let's go off the
18 record for a second.

19 VIDEOTAPE TECHNICIAN: We're off
20 the record.

21 - - - -

22 (Off the record.)

23 - - -

24 MR. THOMAS: Let's go back on the
25 record.

1 VIDEOTAPE TECHNICIAN: Stand by.

2 We're on the record.

3 Q. Doctor, did you have the opportunity to review
4 the medical records of Doreen Eldridge?

5 A. Yes. I did review some records.

6 Q. And specifically did you have the opportunity to
7 review a medical report that was drafted by Dr.
8 Arnold Morscher and which was dated November 6th
9 of 1992?

10 A. Yes, sir.

11 Q. All right. In that report, Dr. Morscher
12 indicates that an x-ray taken of Miss Eldridge's
13 cervical spine and neck shows loss of normal, is
14 that lordotic curvature?

15 A. Yes. That's the word he uses.

16 Q. Which may be due to muscle spasm.

17 A. Yes,

18 Q. What does that mean, doctor?

19 A. That really doesn't mean a heck of a lot. If a
20 person is relaxed and if we take an x-ray of the
21 neck, we take it from the side view. Ordinarily
22 that will have a slight curvature **to** the neck
23 because when we look up this way, you just have
24 a little curve to it and the front part of the
25 curve is toward the front and the head and

1 shoulders are in the back portion such as, a
2 little curve such as this. Not very
3 accentuated, but it is a moderate curve.

4 Now, when the x-ray was taken on this lady
5 is described that that curve is more of a
6 straight position. Now, there is some loss of
7 the lordotic curve or straightening.

8 What can that be due to? It can be due to
9 many, many things. The most frequent reason,
10 you have a picture of that position is when the
11 x-ray technician says, okay, now hold very
12 still. You hold real still. And now my neck
13 becomes straight and it's not curved as much.

14 So by itself it doesn't mean anything and
15 you can't attribute anything to that particular
16 thing other than saying that that was the
17 position that the x-ray showed.

18 Q. Thank you, doctor.

19 In light of what you've just indicated,
20 doctor, would it be fair to say that it would be
21 difficult for any physician to attribute a loss
22 of a normal lordotic curvature to muscle spasm?

23 A. Yes, because if you always read -- they always
24 put the qualifying. There again there it says
25 which may be due to. It can be due to a hundred

1 other things, too.

2 Q. All right.

3 A. You can also which may be due to. But the most
4 frequent reason is just that the individual held
5 their neck straight when the x-ray was taken
6 voluntarily or involuntary.

7 Q. All right. Thank you, doctor.

8 MR. THOMAS: Let's go off the
9 record for a second.

10 VIDEOTAPE TECHNICIAN: We're off
11 the record.

12 - - - -

13 (Off the record.)

14 - - - -

15 MR. THOMAS: All right. Let's go
16 back on the record.

17 VIDEOTAPE TECHNICIAN: Stand by.
18 We're on the record.

19 Q. Doctor, upon reviewing the medical records of
20 Miss Eldridge, was there any evidence in those
21 records which indicated that she had a
22 preexisting condition in her cervical spine?

23 A. The Dr. Morscher reports, and I'm sure that he
24 was just reiterating an x-ray report which he
25 read, and it says there is degenerative spurring

at the C6/7 interspace. The neural foramina are intact and --

Q. What does that mean, doctor?

A. Well, it means two things, that there are some changes on x-ray which would indicate that the disk between the 6 and 7th vertebrae up in the neck area, and that is getting down to the very lowest part of the neck, shows some changes that are consistent with time, that the disk is probably a little bit narrower compared to the ones above and below it due to loss of water content in that this allowing that to come a little closer together.

And also it says there is some spurring. In other words, at the periphery or the edges of that vertebrae, and we're talking about the round part of the vertebrae, that's the front part of the neck, shows some development of bony elevations at the joint edges which often are referred to as spurs or a better term would be osteophytes.

But the significant part of that is that this states that the neural foramina are intact. That means that the opening between the 6 and 7th vertebrae in that part or the nerve

1 roots come out from the spinal cord are not
2 involved with this process. It means that the
3 intervertebral foramina are intact. So I'm
4 presuming that that's what he means, that there
5 are no spurs at that point that could impinge on
6 the nerve at that level.

7 Q. Thank you, doctor.

8 Now, the degenerative spurring that was
9 found on the x-ray, would that have been caused
10 by the February 12th, 1992 motor vehicle
11 accident?

12 A. No. That was present prior to the accident.
13 Spurring and degeneration take a long period of
14 time to manifest themselves on an x-ray
15 picture. And the x-ray was taken shortly after
16 she saw her doctor, which was I'm sure within
17 the first week of the time of the accident. And
18 that certainly takes months to years to
19 develop. So that was already present at the
20 time she saw her doctor.

21 Q. All right. Thank you, doctor.

22 Doctor, did you have the opportunity to
23 review the medical report of Miss Eldridge's
24 second treating physician, Dr. Jeffrey Shaw?

25 A. The only time I saw that was shortly before we

1 started this deposition. I did not have a copy
2 until you let me look at that this morning.

3 Q. All right. Doctor, what are cervical paraspinal
4 blocks?

5 A. These probably mean that -- let me break the
6 words down to begin with. Cervical means neck.
7 ~~Qay:~~ And paraspinal, para means alongside or
8 parallel to the spine. And we're presuming that
9 this is in the back of the neck and that we're
10 talking about muscle mass that's alongside the
11 midline in that area and that these muscles in
12 either side of the spinous parts in which we can
13 all feel the midline of our neck. Move your
14 hand out a little bit and you can feel the
15 muscles. So that would be the paraspinal
16 muscles and the cervical area. So paraspinal
17 cervical blocks would mean that you inject a
18 muscle.

19 Q. And based upon your review of the medical report
20 and bills of Dr. Jeffrey Shaw, was that
21 performed by Dr. Shaw on Doreen Eldridge?

22 A. From what I could see on that, I'm presuming
23 that he injected those muscles with probably an
24 anesthetic such as, well, everybody knows what
25 novocaine is, but it may be a variety or a

1 longer acting type like Lidocaine or Marcaine or
2 something like that that would numb the area and
3 give you some pain relief if you injected it
4 into an area that's painful. Sometimes people
5 also mix that with cortisone in an effort to
6 cause some diminution of inflammation which may
7 or may not be present there.

8 Q. All right. Doctor, the bill that was submitted
9 by Dr. Shaw describes the cervical paraspinal
10 blocks which were performed as injection for
11 nerve block. Is there a difference between a
12 nerve block and a cervical paraspinal block?

13 A. I'm sure there is. When you're injecting a
14 nerve, you're going into a different area and
15 you're specifically trying to inject around the
16 nerve itself. You don't want to put any
17 medication into a nerve proper as you may cause
18 injury to that nerve. So a medication is
19 usually instilled around the nerve trying to
20 either diminish swelling such as putting a
21 cortisone in there. So there is a difference
22 and the technique is entirely different.

23 But a nerve block isn't done from the
24 back. You have to hit it from the front
25 alongside the neck and catch it as it exits. So

that would be a nerve block.

This would be just an inject -- paraspinal block would be just an injection into a muscle. and I don't know why they call it a block, but the term is used.

4 and I don't know why they call it a block, but
5 the term is used.
6 Q. Yeah. And now, would it be fair to say, doc --
7 well, strike that.

8 Is a nerve block a more tedious procedure
9 than a cervical paraspinal block?

10 A. Yes. Oh, absolutely. There's a definitely
11 difference in the structures that you are trying
12 to get through to.

13 Q. Based upon your review of the medical report and
14 bill of Dr. Jeffrey Shaw, what was actually
15 performed by Dr. Shaw, a cervical paraspinal
16 block or a nerve block?

17 A. AS far as I can tell it's just a paraspinal
18 block, an injection into a muscle.

19 Q. All right. Thank you, doctor.

20 Based upon your review of the medical
21 records of Doreen Eldridge and your examination
22 of Doreen Eldridge, do you have an opinion based
23 upon a reasonable degree of medical certainty as
24 to whether or not Miss Eldridge sustained an
25 injury as a result of the February 12th, 1992

1 motor vehicle accident?

2 A. Yes.

3 Q. And what is your opinion, doctor?

4 A. My opinion is that she was involved in an
5 accident, involved in a double collision. First
6 the car being struck from behind and then her
7 car striking something else. So she was shaken
8 back and forth, but she does not recall bumping
9 herself anywhere within this area. So I presume
10 she sustained a moderate strain of her neck area
11 and possibly her lower back.

12 Q. All right. Doctor, do you have an opinion based
13 upon a reasonable degree of medical certainty as
14 to whether or not Doreen Eldridge has recovered
15 from the injuries that you diagnosed that she
16 did sustain as a result of the February 12th,
17 1992 motor vehicle accident?

18 A. Yes. I have an opinion.

19 Q. And what is your opinion, doctor?

20 A. My opinion is that basically from my examination
21 she had recovered from any injuries. And I'm
22 talking about primarily strain of the neck and
23 maybe the lower back. I didn't **find** any
24 residuals. And in my opinion she has covered.

25 Q. All right. Thank you, doctor.

1 And, doctor, just one last question. Is it
significant that Miss Eldridge did not seek or
receive treatment from Dr. Jeffrey Shaw until
4 approximately a year after her treatments with
5 Dr. Morscher?

6 A. I think that should be taken under consideration
7 that if you have a period of 12 months after
8 you've been charged by one physician before you
9 see someone else that for whatever reason you
10 didn't really need a physician during that time.

11 Q. All right. Thank you, doctor. I don't have
12 anything further.

13 - - - -

14 CROSS-EXAMINATION OF RALPH KOVACH, M.D.

15 BY MR. KULWICKI:

16 Q. Doctor, would you describe Doreen Eldridge, what
17 she looks like? Can you recall that?

18 A. I would only have to go from my records. If she
19 walked in right now, I couldn't tell her. I'd
20 have to refer to my notes.

21 Q. So, in other words, your opinions and the
22 findings with regard to Miss Eldridge are all
23 contained in the report that you have in front
24 of you. You have no independent recollection of
25 her, correct?

1 A. No. No, sir.

2 Q. Okay. And isn't it true that if the report that
3 you have in front of you is wrong or based on
4 incomplete or wrong information, then the
5 opinions that you've expressed here today or the
6 findings that you've shared with us today would
7 likewise be flawed, wrong or incomplete?

8 A. If I was working with flawed information, yes.

9 Q. And, doctor, wouldn't you agree with me that
10 it's important to get the complete picture of
11 Mrs. Doreen Eldridge's medical condition after
12 this accident in order to render a full and fair
13 opinion of her condition?

14 A. Oh, sure. It would be helpful.

15 Q. Okay. And isn't it the fact that you have no
16 record whatsoever of her treatment for
17 temporomandibular dysfunction related to this
18 accident?

19 A. No.

20 Q. So you had no idea about that?

21 A. No. I wouldn't even enter into it.

22 Q. Okay.

23 A. Because I wouldn't even render an opinion about
24 temporomandibular dysfunction.

25 Q. Fine. And, doctor, likewise, you don't have any

notes with regard to the actual type of medication that Miss Eldridge was offered and which she said she could not tolerate, do you?

A. They were antiinflammatories of various types and **if** you can't tolerate one, you usually can't tolerate another one. And in my opinion none would be helpful anyhow.

Q. Okay. Fine. How come it doesn't say that in your report, that they were antiinflammatory medications?

A. Because she told me.

Q. Okay. You are sure it wasn't pain pills?

A. No. It wasn't pain pills. Antiinflammatories.

Q. Okay. Well, you're wrong because it was, in fact --

A. Well, I just read her report that she couldn't tolerate the antiinflammatories. I just read it this morning.

Q. All right. So you didn't know about the temporomandibular dysfunction. You don't have any --

A. She mentioned it, but it doesn't matter because I'm not --

Q. Fine.

A. Really that's not in my field, so I wouldn't

1 talk about that.

2 Q. Likewise, your report doesn't list any of the
3 activities that Mrs. Eldridge cannot do today as
4 a result of this accident. You don't have any
5 indication of that, do you?

6 A. In my opinion she can do anything she wishes to
7 do.

8 Q. Okay. Likewise, your report doesn't reflect
9 whether or not her condition is reflected by
10 weather or activity, does it?

11 A. No.

12 Q. Okay. And, doctor, you only saw Mrs. Eldridge
13 once -- that one time, didn't you?

14 A. Yes. One time.

15 Q. Okay. And how long was that visit, ten minutes?

16 A. No. I think it was probably longer than that.
17 Usually it's between 20 minutes to a half an
18 hour.

19 Q. Okay. And wouldn't you say that when you have
20 patients that you, yourself, are treating and
21 have responsibility for that you'd see them more
22 than once to see how they changed over time?

23 A. Well, but you're talking about someone who I'm
24 actively treating and naturally, certainly.

25 Q. Fine. So you didn't have the benefit of seeing

1 Mrs. Eldridge over a period of time to see how
2 her condition changed?

3 A. No. I just saw her to evaluate her present
4 condition.

5 Q. All right. In fact, doctor, the only time that
6 you saw Mrs. Eldridge this 10 or 20 or 30 minute
7 examination that you did was a full two years
8 after the date of the accident, correct?

A. That's what I testified to.

Q. Okay.

11 A. And I said that in my open statement.

12 Q. Doctor, you didn't even bother to review any
13 emergency room records or treatment records from
14 Dr. Morscher. You don't have any of his office
15 notes, do you?

16 A. I have his report that he sent to you.

17 Q. Okay. You haven't reviewed emergency room
18 records or his office notes?

19 A. As far as I -- no. She did not go to an
20 emergency room.] [If she did go to an emergency
21 room, she then was not truthful with me because
22 she said she didn't go to one.

23 Q. All right, doctor. And you didn't review --

24 A. Is there something from the emergency room that
25 you have that I missed?

1 Q. Let me ask questions. This is your deposition.

2 A. Well, I know, but I mean it sounds as if I'm
3 missing something.

4 Q. Well, I think --

5 A. Did I miss an emergency room record?

6 Q. I think you missed quite a few things.

7 A. What? Please enlighten me because you said --

8 Q. I will. Let's continue.

9 A. -- was there an emergency room record.

10 Q. Well, I have to ask the questions here. Let me
11 continue.

12 A. Well, then there wasn't no emergency room record
13 which you intimated that there was one.

14 MR. KULWICKI: I'm going to move to
15 strike this colloquy between the doctor and
16 I.

17 A. Well, you may move, sir, but the point is you
18 asked me a question and my response was is if
19 there was an emergency room record, I don't have
20 one. So my question was, was there an emergency
21 room record?

22 Q. Listen, are you going to answer the questions or
23 are you going to argue with me?

24 A. Yeah.

25 Q. Answer the questions.

1 A. I'm answering the questions.

2 Q. All right.

3 A. You asked me did I review an emergency room
4 record. I said if there was an emergency room
5 record, I did not review it.

6 ~~MR.~~ MR. KULWICKI: All right. I'm
7 moving to strike all the colloquy by the
8 doctor and the argumentative nature of his
9 responsive. Nonresponsive.
10 Argumentative.

11 A. Well, now I'm not -- I'm responsive. I did not
12 see an emergency room record --

13 Q. Now, doctor --

14 A. -- which I thought you said there was one.

15 MR. KULWICKI: Objection.

16 Q. Are you going to answer my questions or are you
17 going to continue to --

18 A. No.

19 Q. -- carry on like this?

20 A. No. I'll answer the questions.

21 Q. All right. Now just --

22 A. There is no problem.

23 Q. Answer the questions.

24 A. Yes.

25 Q. There is a problem.

1 A. Oh, I have none.

2 Q. Yeah, you do.

3 A. All right. Go ahead, please.

4 Q. All right.

5 A. Continue.

6 Q. All right.

7 MR. KULWICKI: And I move to strike
8 the remainder of the colloquy that just
9 took place.]

10 Q. All right. Doctor, likewise, you don't have --
11 you have not reviewed Dr. Shawls testimony that
12 was given about a week ago on videotape, did
13 you?

14 A. No. I did not.

15 Q. Okay. And, in fact, you have several questions
16 or you have many questions in your mind about
17 what, in fact, took place with Dr. Shaw and Miss
18 Eldridge, correct?

19 A. I have not viewed anything other than the report
20 that I read.

21 Q. Okay. So when you're talking about your
22 opinions about what time of injections took
23 place, you really don't know what you're talking
24 about, do you?

25 A. No. All I'm talking about --

1 Q. Okay.

2 A. .. is what I read on the report. It says
3 paraspinal injections.

4 Q. Doctor, you haven't reviewed any original x-rays
5 of Mrs. Eldridge's back or neck, have you?

6 A. No.

7 Q. And, doctor, you haven't reviewed any photos of
8 the impact between the vehicles, have you?

9 A. No.

10 Q. Okay. You haven't bothered to call Dr. Morscher
11 or Dr. Shaw or Dr. Babish or Dr. Bizga all of
12 whom examined and treated Mrs. Eldridge for
13 injuries related to this accident, have you?

14 A. This will require a qualified answer. Please do
15 not interrupt my answer. I am not required to
16 call any of these people because they will --
17 should refuse to discuss anything that I would
18 call for because I am not her treating physician
19 and they have no legal right to dispense any
20 information to me; therefore, sir, I did not
21 call them.

22 Q. Okay. Other than the fact that Mrs. Eldridge
23 issued or was willing to issue an authorization
24 to allow you to talk, but you never asked for
25 that, did you?

- 1 A. No.
- 2 Q. Okay.
- 3 A. And I told you why I didn't.
- 4 Q. Fine. You don't have any dispute about Dr.
- 5 Shaw's qualifications as a licensed board
- 6 certified orthopedic surgeon in the State of
- 7 Ohio, do you?
- 8 A. No, sir.
- 9 Q. Okay. And if, in fact, he palpated muscle
- 10 spasms on Mrs. Eldridge as recently as August of
- 11 1994, you have no reason to dispute that, do
- 12 you?
- 13 A. If, in fact, he palpated that, I don't disagree
- 14 with that.
- 15 Q. All right. Doctor, let's get down to brass tax
- 16 here. You do agree, in fact, that Mrs. Eldridge
- 17 was injured in the February 12th, 1992 accident?
- 18 A. Yes. I believe she had injuries.
- 19 Q. Okay. And, doctor, would you explain for the
- 20 jury how injuries to the musculature of the neck
- 21 and back occur and how they result in ongoing
- 22 spasms, strain or sprain?
- 23 A. First of all, I don't know if there was any
- 24 ongoing spasm and strain.
- 25 Q. I'm not asking about Mrs. Eldridge. I am

1 talking generally.

2 A. I am giving you my -- and you are interrupting
3 my answer, sir. Please let me give my answer to
4 the question that you asked.

5 Would you repeat this question, please?

6 Q. I'll repeat it. Doctor, what I wanted you to
7 explain for the jury is how automobile accidents
8 cause injury to the musculature of the neck and
9 back. I'm not talking about Mrs. Eldridge in
10 general.

11 A. Okay.

12 Q. I'm talking about people in general who have
13 suffered these type of injuries and how they
14 result in spasm, strain and sprain type
15 injuries.

16 A. Okay. Now, we're opening up a large, large, not
17 qualified situation because the gentleman asked
18 me a question how automobile injuries,
19 automobile injuries can happen in many ways, but
20 now we're going to get it down to specifics.

21 We're talking about someone who's got a
22 seat belt in place. Someone who has a shoulder
23 restraint in place, which is now going to
24 prevent them from being thrown forward and
25 hitting anything within the front of them.

1 You have a rear-end collision, which then
2 if you are at a standstill and a total
3 standstill, will cause your vehicle to be pushed
4 forward. But because your neck is at a
5 standstill, it will go backwards first, probably
6 strike the seat rest and then flex forward.

7 And if you had another collision in front
8 where your vehicle is moved and hits another
9 stationary object, that will again cause you to
10 come forward. So you will go back and forth.
11 This will then move your neck in a backward
12 position, stops on a seat rest, if you have such
13 a head rest in place, and cause you to flex
14 forward and that will then pull on the
15 structures in the back and the muscles are
16 attached to the upper back and lower down and
17 that will stretch these areas and that can
18 produce a strain or a sprain.

19 Q. Doctor --

20 A. Now, some --

21 Q. I'm sorry.

22 A. I'm not finished, please.

23 Q. I'm sorry. Go ahead.

24 A. Please don't interrupt, sir.

25 Now, sometimes, sometimes you can get

1 muscle spasm. But you don't have muscle spasm
2 all the time.

3 Q. Okay.

4 A. Muscle spasm, if present, usually is a
5 protective mechanism to kind of splint the area
6 so that it won't move because you'll put more
7 strain on to that area. So sometimes that
8 happens. Most of the time it does not. Muscle
9 spasm is not a frequent finding, but it can be
10 frequently present. And the areas that were
11 pulled can be painful.

12 Now, that's only one mechanism. But then
13 we can go on and on as far as other things that
14 can happen. You can have injuries to the disks
15 and things like that which in my opinion didn't
16 happen, happen in this particular situation.

17 Q. Okay. Doctor, when an individual has a spasm or
18 a strain or a sprain of the neck and back as a
19 result of a motor vehicle accident, do you agree
20 that that can be a painful condition?

21 A. Yes, sir.

22 Q. And in this case Doreen Eldridge did complain of
23 pain, correct?

24 A. Yes. When she saw her physician she did have
25 pain.

1 Q. Okay. And do you agree or disagree with the
2 contention that these injuries can be
3 long-standing, that they can last a lifetime?

4 A. No.

5 Q. Okay.

6 A. Just depends on the severity. If you're talking
7 about, yes, injuries that can last a lifetime.
8 Most last eight to ten weeks and then no longer.

9 Q. Okay. I'm not saying that all injuries, sprain,
10 strain, 'spasmtype injuries last a lifetime.
11 But some can, correct?

12 A. Yes. Some can.

13 Q. Okay. And let's see. And in this case there is
14 no evidence whatsoever, is there, that Mrs.
15 Eldridge had any back or neck problems prior to
16 this accident of February 12, 1992?

17 A. No. She told me that she hadn't had any prior
18 problems.

19 Q. And this issue brought up about the spurring,
20 that wasn't apparently causing her any problems
21 either before or after the accident. It really
22 has no impact on her condition.

23 A. No. The spurring has no impact on the
24 condition.

25 Q. Fine. That's all I have.

1 A. Just a finding on the x-ray.

2 Q. Thank you.

3 MR. THOMAS: I have a couple
4 questions. Let's go off the record for a
5 second.

6 VIDEOTAPE OPERATOR: Off the
7 record.

8 MR. THOMAS: Let's go back on.

9 VIDEOTAPE TECHNICIAN: Stand by.
10 .We're on the record.

11 - - - -

12 RE-DIRECT EXAMINATION OF RALPH KOVACH, M.D.

13 BY MR. THOMAS:

14 Q. Doctor, prior to your testimony here today, you
15 had the opportunity to review a report drafted
16 by Dr. Shaw, is that correct?

17 A. Yes, sir.

18 Q. And in that report is there a mention of Miss
19 Eldridge's inability to take antiinflammatory
20 medications?

21 A. It says patient was on antiinflammatory
22 medications briefly, but apparently it made her
23 tired so she stopped taking it.

24 Q. All right. So you had testified on direct
25 examination that she could not take

1 antiinflammatories, is that correct?

A. Yes.

MR. KULWICKI: Objection.

4 Leading.

5 Q. All right. Doctor, you're an orthopedic
6 surgeon, is that correct?

7 A. Yes.

8 Q. And as an orthopedic surgeon, do you treat or
9 diagnose temporomandibular joint dysfunction?

10 A. No. I do not.

11 Q. What specialty treats and diagnoses that
12 condition?

13 A. Usually that's an orthodontic surgeon.

14 Q. And you are not an orthodontic surgeon?

15 A. No, I'm not,

16 Q. And would knowledge of problems that Miss
17 Eldridge possibly complained about concerning
18 her temporomandibular joint dysfunction, would
19 that have any bearing on your examination and
20 diagnosis of other injuries that Miss Eldridge
21 complained about?

22 A. No. Not a bit.

23 MR. THOMAS: Let's go off the
24 record for a second.

25 VIDEOTAPE TECHNICIAN: We're off

1 the record.

2 - - -

3 (Off the record.)

4 - - - -

5 MR. THOMAS: All right. Let's go
6 back on the record.

7 VIDEOTAPE TECHNICIAN: Stand by.
8 We're on the record.

9 Q. All right. Doctor, the injuries that you've
10 diagnosed that Doreen Eldridge sustained as a
11 result of the motor vehicle accident, do you
12 have an opinion based upon a reasonable degree
13 of medical certainty as to an average how long
14 injures of those -- of that nature last?

15 MR. KULWICKI: Objection.

16 A. Here again, if someone didn't have to seek
17 immediate help, then I'm going to have to say
18 that the injuries that they had were not as such
19 a severity that they had to have help right
20 away. The fact that she went for help the
21 following day would indicate that she's having
22 problems, but it wasn't that bad that immediate
23 help had to be.

24 So that type I would describe as a moderate
25 strain which allowed the individual to seek help

1 the following day rather than immediately and
2 something like that ordinarily is resolved after
3 eight to ten weeks.

4 Q. Thank you, doctor. I don't have anything
5 further.

6 - - - -

7 RECROSS-EXAMINATION OF RALPH KOVACH, M.D.

8 BY MR. KULWICKI:

9 Q. Doctor, isn't it the case that you often find
10 yourself in disagreement with treating
11 physicians as to their diagnosis and prognosis
12 for patients?

13 A. Not always. Sometimes.

14 Q. Doctor, isn't it the case that you are often
15 times hired by defense attorneys and insurance
16 companies and employers to evaluate victims of
17 injury and render opinions?

18 A. Yes. I evaluate for the Bureau of Workers'
19 Compensation as well,

20 Q. You always do it on behalf of the defendant,
21 whether it's an insurance company or an employee
22 or something like that, is that right?

23 MR. THOMAS: Objection.

24 Objection. Move to strike.

25 A. No, sir. Because you said always and that is

1 not true. I frequently will examine and give an
2 opinion for someone who is not in those
3 situations, for example, a plaintiff's attorney
4 such as you.

5 Q. Okay. Doctor, isn't it the case that you do
6 many of these exams a year?

7 A. Yes. I do several a year.

8 Q. How many would you say you do on an average
9 week?

10 A. I do about four a week.

11 Q. Okay. And you mentioned earlier that you get
12 paid for these exams. What do you get paid for
13 these exams?

14 A. For the examination and the report I charge
15 \$450.

16 Q. Okay. And then following that if you do a
17 deposition like today where they videotape you,
18 what do you charge for that, doctor?

19 A. I charge 950.

20 Q. Okay. So on one case, for instance, you can
21 make over a thousand dollars and you do
22 approximately two hundred of these a year?

23 A. Well, we have to talk about one case. Let me
24 put the case of Dr. Morscher. \$2,300 I believe
25 this is one bill that he submitted to you.

1 MR. KULWICKI: Well, objection.

2 Objection. Nonresponsive.

3 Q. I'm asking you --

4 A. Well, I'm just giving an example. Yes.

5 Q. Okay.

6 MR. KULWICKI: I'm going to move to
7 strike the nonresponsive part.

8 Q. And, doctor, how many years have you been doing
9 these exams for?

10 A. Oh, approximately four to five years.

11 Q. And --

12 A. And I have done some exams all my life. But, of
13 course, I haven't done them at this volume --

14 Q. Okay.

15 A. -- in the past.

16 Q. How would -- do you advertise or how do they
17 find -- how do these --

18 A. No. I'm not attorney, so I don't advertise.

19 MR. KULWICKI: Objection. Move to
20 strike.

21 A. I don't have anything on billboards. I don't
22 advertise on TV. I don't advertise. The only
23 thing that's in the telephone book is my name.
24 I don't say what I do.

25 Q. Okay. Well, how have you gotten a reputation

1 for doing these type of exams where you --

2 A. I don't --

3 MR. THOMAS: Objection.

4 Q. Have claims on behalf of defense attorneys and
5 such?

6 MR. THOMAS: Objection.

7 A. I have submitted reports and I have testified to
8 like cases and people have seen these reports
9 and depositions that I have and they've asked me
10 to do exams for them, give my independent
11 opinion.

12 Q. How many times have you been hired by the
13 defendant's attorneys for Meyers, Hentemann in
14 the past year?

15 A. I just wonder why attorneys use the word hire
16 instead of retain like they use retained.

17 MR. KULWICKI: Objection. Move to
18 strike.

19 Q. Could you answer the question, doctor?

20 A. I've been retained I think by Mr. Thomas about
21 four times, and I'm guessing.

22 Q. All right. And prior to today's deposition you
23 met with Mr. Thomas to discuss your testimony
24 today?

25 A. Oh, absolutely.

1 Q. Okay.

2 A. You'd with a fool not to --

3 Q. That's all I have, doctor.

4 A. -- find out what I'm going to talk about.

5 MR, THOMAS: I have a couple
6 questions.

7 - - - -

8 RE-REDIRECT EXAMINATION OF

9 RALPH KOVACH, M.D.

10 BY MR. THOMAS:

11 Q. Doctor, as an orthopedic surgeon, do you
12 primarily treat patients?

13 A. Yes.

14 Q. And in the course of treating patients, have you
15 treated patients who have been involved in
16 personal injury lawsuits?

17 A. Absolutely.

18 Q. And have you testified on behalf of those
19 patients who were plaintiffs in personal injury
20 lawsuits?

21 A. Yes.

22 Q. All right. I don't have anything further.
23 Thank you.

24 VIDEOTAPE TECHNICIAN: Doctor, you
25 have a right to review the videotape for

1 its accuracy. Do you waive that right?

2 THE WITNESS: I waive

3 VIDEOTAPE TECHNICIAN: And does
4 counsel waive filing?

5 MR. KULWICKI: Yes.

6 MR. THOMAS: Yes.

7 VIDEOTAPE TECHNICIAN: We're off
8 the record.

9 (Signature waived.)

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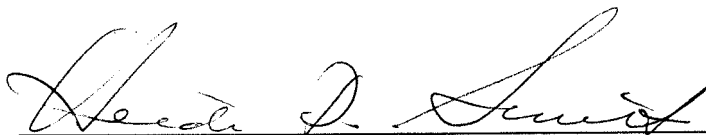
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C E R T I F I C A T E

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

I, Heidi D. Smith, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named RALPH KOVACH, M.D. Was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and the reading and signing of the deposition was expressly waived by the witness and by stipulation of counsel; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 8/24 day of September A.D. 19 94.



Heidi D. Smith, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires October 24, 1994

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