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

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IN THE COURT OF COMMON PLEAS

Doc. 249

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AMY HOKAJ, )
)
Plaintiff, )
)
-v- Case Number 227004
)
VANDRA BROTHERS CONSTRUCTION)
COMPANY, ET AL., )
)
Defendants.

- - - - -

DEPOSITION OF RALPH KOVACH, M.D.
Thursday, December 7, 1995

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Deposition of RALPH KOVACH, M.D., called by the Defendants 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, pursuant to agreement of counsel, at the offices of Ralph Kovach, M.D., 970 Garfield Boulevard, Garfield Heights, Ohio, commencing at 10:00 a.m., the day and date above set forth.

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APPEARANCES:

On Behalf of the Plaintiff:

Philip J. Korey, Esquire
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Cleveland, Ohio 44113

On Behalf of Defendant Vandra Brothers Construction Company:

Mark A. Greer, Esquire
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On Behalf of Defendant City of Rocky River and Osterland Company:

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Lakewood, Ohio 44107

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RALPH KOVACH, M.D.

called by the Defendants 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 ladies and gentlemen of the jury?

A My name is Ralph Kovach and I'm an orthopedic surgeon.

Q Doctor, where are we today?

A Here at my office at 9700 Garfield Boulevard in Cleveland.

Q Doctor, could you describe for the jury your educational background?

A I attended the University of Dayton, graduated 1950, bachelor of science degree, and graduated from Loyola University School of Medicine in Chicago, Illinois in 1953 with an M.D. degree.

Q After graduating from Loyola, Doctor, did you undergo *any* additional training?

A Yes. I took five more years of training. One year

was an internship at St. Luke's from 1953 to '54 and then four years of training in orthopedic surgery and that was 1954 to 1958.

Q Where was that at, Doctor?

A St. Luke's in Cleveland.

Q Doctor, after you completed that training did you go into the private practice of medicine?

A Yes, I did.

Q Are you licensed to practice medicine, Doctor?

A Yes.

Q When were you licensed?

A 1953.

Q What state?

A Ohio.

Q Could you describe for the ladies and gentlemen of the jury your experience in the field of medicine, Doctor?

A Well, as I mentioned, I had a training program and I've practiced orthopedics exclusively since that time.

Q Doctor, could you describe for the ladies and gentlemen what the area of orthopedics entails?

A That's a division of surgery that deals with the musculoskeletal system. That's a big word meaning the muscles, joints, tendons, ligaments and nerves as they involve locomotion.

Q Doctor, where do you have privileges at today?

A St. Luke's, St. Alexis, Marymount, Deaconess Hospitals.
Q Are you a member of any associations, Doctor?
A Yes.
Q What associations?
A Locally it's the Academy of Medicine and the' Cleveland Orthopedic Society. Statewide it's the Ohio Medical Association and the Ohio Orthopedic Association. And nationally it's the A.M.A., the American Academy of Orthopedic Surgeons, Mid-America Orthopedic.
Q Doctor, what positions do you hold or have you held in the past at local hospitals or organizations?
A Well, at St. Luke's I've been head of orthopedics for approximately 20 years till I relinquished that two years ago. I've been president of the medical staff on two occasions, the last was two years when I stepped down one year ago.
Q Doctor, are you board certified?
A Yes.
Q Are all doctors board certified?
A No.
Q What does it mean to be board certified?
A That means that your training has been examined by a board set up to certify you in a particular field. In this case it's the American Board of Orthopedic Surgery and they

reviewed my training and felt that it was satisfactory and was given a written and oral examination and I completed that satisfactorily. Then my practice was evaluated for a period of two years and when that was found to be satisfactory then I was allowed to take another written and oral examination, part two, and completing that I was then certified.

Q Doctor, do you perform surgery?

A Yes.

Q Approximately how *many* times per week do you perform surgery?

A At this time about two to three times a week.

Q Was the frequency of that any greater?

A Yes.

Q When was that?

A Well, in the last few years when the practice patterns have changed.

Q Doctor, we're here today for your trial testimony and is there a charge associated with your time today?

A Yes.

Q Now, Doctor, have you had an opportunity to review the medical records and examine the Plaintiff, Amy Hokaj, in this case?

A Yes.

Q Could you describe for the ladies and gentlemen of

the jury what history you obtained from the Plaintiff?

A First of all, I examined this young lady on September 14th of 1995. That's this year. She told me that she was employed as a social worker at one of our local hospitals, she was 28 years of age and she said that she sustained an injury around the 25th of June in 1991. So that was approximately four years before I examined her.

And she said that on that day in 1991 she was walking home and was crossing the street and it was about 12:45 in the morning and she stepped into a hole that was in the street. She did not see this and therefore her left foot and leg went down into the hole and she said that it went in as deep as her upper thigh.

As she went in she said she twisted the leg and said that the leg was bruised and that her left ankle and knee were painful. And she said she called for help, no help was available, so she said she was able to get out of that depression and kind of hop into a house and then was able to go to Fairview Hospital.

She said she was examined there, that x-rays were taken, no fractures were found and that they put an immobilizing type of dressing onto her ankle and she said she was using crutches and then went for further treatment to Dr. John Wilbur who had been treating her before.

And he treated her and sent her for physical therapy

for approximately six to eight weeks and this is primarily treating the ankle. They used various modalities of treating her, including balance boards and exercises and strengthening exercises as well. And she said that this improved and she told me that her left knee continued to be painful. She said it was the kneecap and that this was painful and so that eventually she had to have a realignment operation on that kneecap and she said that they put some screws in at the time, but she required a second operation for removal of one of the screws that was causing her some pain.

So at the time I saw her she said she was still having chronic tendon type of pain and when she said that, she pointed to the upper part of the kneecap and said that this area became worse with activity.

And that she had been on various types of medication in the past but she wasn't taking any medicines at the time that I saw her.

And she said she was having a dull, aching pain again over the upper, inner part of the left kneecap and she also said that her knee would feel weaker and that she would tire more easily, and when she walked on uneven surfaces she would have more of a problem with her knee.

And so I asked her if she had had any prior problems before this had occurred.

Q Did she, Doctor, give you a prior medical history for any problems she was having before the incident on June 21st, 19911

A Yes. She said that she was having problems with that knee and that way back in 1981 she had had torn cartilages in that knee and she also used the word that she said she had chondromalacia in that knee, and that's a long word that means softening of cartilage that lines surfaces of bone.

So she said she was operated in 1981 and that she had another operation on that knee in 1988 and that was what they call a lateral release operation and that means that the tissues that hold the joint together to the outer side of the kneecap were cut through and released so that the pull of the muscles on the outer side would not pull as much on the kneecap in that manner and allow the muscles on the inner side of the kneecap to function and pull it more toward the midline.

Q . That was in 1988, Doctor?

A Yes, that was in 1988. And she said the original injury that she had was way back in '81 and that was when she was jumping on a trampoline.

Q Now, Doctor, did she indicate to you the number of knee operations she had had before the incident in June of '91?

A The only two that I mentioned -- there may have been more, but what I wrote down and what she told me were the two, one where she had the torn cartilage and then that lateral release.

Q Doctor, subsequently did you have a chance to review the medical records concerning the Plaintiff?

A The records that were submitted to me, yes.

Q Did you see in the records that the Plaintiff had had six prior knee operations before the incident in June of '91?

A I didn't note the number as such.

MR. KOREY: What was the answer?

THE WITNESS: I didn't note that there were six.

Q Doctor, did the Plaintiff indicate to you that she had been advised at one point that she needed a total knee replacement?

A No, she didn't tell me that.

Q Doctor, if you could describe for the jury, and if you need to use your model, do that, Doctor, if you could please give the jury an idea as to the condition of the Plaintiff's knee and what problems she was having before the June 21st, 1991 incident.

A Reviewing the records that were submitted and these were primarily the records of the doctor who took care of

her, was Dr. Wilbur, they described what he called chondromalacia symptoms, in other words, of the kneecap, symptoms that could be attributed to softening of the cartilage, due to, in this instance what he said was abnormal tracking of the kneecap, and with abnormal you have to know that the kneecap rides in a groove that's in the thigh bone. So if I have a model here to illustrate what we're talking about, this would be the model and this is plastic, so it's not real bone, but this would be an illustration of the muscles, but it's only a central portion of the muscles that move the kneecap, and when that pulls, that transmits forces through the kneecap down to the area that's just below our knee called the tibial tubercle. When this pulls, this is what straightens the knee out.

And when that's done, this kneecap -- you'll notice this is like a wedge and it rides in a groove at this point, so if that's tracking -- and this would be the outer side, that's the fibula bone -- if it's tracking abnormally as the doctor described, this wag not riding in the grove but it was riding a little bit off-center and as a result this would be riding with abnormal forces pulling the surfaces together rather than riding the central portion.

So that's what the doctor was describing as lateral tracking, and was talking about another thing we call

increased q. angle. Now, q. means quadriceps which is the four muscles, four, quadro, muscles that attach to the kneecap, the central portions and muscles on either side. So there's four muscles. And the center of that kneecap of the muscle is one and then a line that goes down the center from the middle of the kneecap to the tibial tubercle is another. Now, if this line is increased in that direction, that's what we mean by an increased q. angle, and then that would mean that again this is pulling off-line on your forces rather than keeping your kneecap centered in that groove.

So essentially that's what she had, she had an increased q. angle, this was tracking laterally and this was giving her problems.

The first operation she had before Dr. Wilbur operated was releasing, as we say, the lateral release, cutting these forces, the muscles on the outer side to kind of weaken them so that the muscles on this side would tend to keep it more in that direction, so that was the purpose of the lateral release and of course that had failed and wasn't working for her.

Q And that was essentially the condition of the Plaintiff on the day of the incident, June 21st, 19913

A Yes.

Q Doctor, did *you* have an opportunity to examine the

Plaintiff?

A Yes, I did.

Q Could you describe for the ladies and gentlemen of the jury what your examination consisted of?

A Well, the general examination primarily centered on her knee and the ankle and on the left side. This was a very cooperative young lady. She was well-nourished. She did not appear to be in pain or difficulty. At the time I saw her she was walking without a limp. The left knee showed that there was scarring secondary to the operations that she had had and these are some of the things that I drew in my notes.

She had a scar down in the midline where she had the main operation. Over on the upper outer side she had that scar from the lateral release operation and then she had multiple small scars where arthroscopy incisions had been made and she was slightly knock kneed, in other words, when I put her knees together, put three fingers between your ankles, we call that a Genu valgum, she was born with that.

And the examination showed that she had a full range of movement, in other words, she could fully extend her knees and bend her knees the same. There was no difference from side to side. When she did bend the knee, you could feel a little grinding sensation as the kneecap was

rubbing. I'm attributing that to the kneecap. We call that crepitation. It wasn't severe, but it was present. When I would push the kneecap down against the underlying bone and move it, we call it a grinding test, that was painful to her. And she also was quite tender in the area where she told me she was having the pain along her kneecap area.

And remember this is a skeleton and the muscles are stripped, but this would be the upper inner side. These would be muscles that attach through ligamentous tissue to the bone and that's how it's attached. Well, she was tender in that area, but you have to remember, she also had surgery in that area, this was cut and repaired and this muscle was advanced, reading the doctor's operative report, so there would have been scar tissue from surgery in that area, so she was tender in that area.

I also checked for stability, see if the ligaments were loose or laxed or torn. They were not. She had good stability.

At the time I saw her I didn't detect *any* unusual swelling. In other words, there wasn't *any* excess joint fluid present.

We also do what we call a McMurray test to see if the cartilages inside the knee -- and if I'll pull this aside again, if you look down the top of the knee you see two

washer-like things. That's usually what we'll call a torn cartilage or meniscus. The test is a grinding test to see if those are torn. That was a normal test. So by physical examination I didn't detect any problem with that.

The scars that she had were non-tender, they weren't painful, and examined her left ankle and at that time there was no swelling of the ankle. There was no area that was painful or tender to pressure. I checked it for stability and the ankle was stable, the ligaments were intact. She had complete range of movement. When I compared it to the opposite side, there was no restriction of movement. And in the ankle there was no crepitation or this grinding feeling that you check for.

Then I took x-rays of the ankle and of the knee and the reason for taking that is to see if the injuries had produced any arthritic change8 and I didn't see any on the x-ray studies of the ankle. The x-rays of the knee did show that she had had an operation and the operation that was done was in this area where this insertion of the tendon was cut and then rotated and they had a couple of screws in there, There was still one screw in that area, but the bone that had been twisted and changed in position had solidly united. And the x-ray also did show there was a small rounded bit of calcium inside the tendon there and I presume that was secondary to the operation but

it's within the substance of the tendon down to this level, not involving the knee joint.

Q Doctor, did you have a chance to review the medical records pertaining to the Plaintiff?

A Yes.

Q Did you have an opportunity to review the office notes of Dr. Wilbur?

A Yes.

Q Doctor, you have those notes in front of you I believe?

A Yes, I have.

Q And they were previously marked, I believe, for identification purposes as Defendants' Exhibit A. Now, Doctor, I'd like you to turn to Dr. Wilbur's note beginning on February 12th of 1991.

A Yes, I have that.

Q Doctor, at that time what problems was the Plaintiff having?

A On February 12th you'll notice that she was being followed up for an arthroscopic debridement of her knee.

Q Was she having problems at that time?

A It says that patella tracks reasonably well, though she still has some significant pain with patella femoral compression.

Q Was there any mention about chondromalacia at that

time?
A Yes. The assessment, as the doctor put in the note, is that though the patient has improved, she is still having significant patella femoral pain. And by patella femoral you mean pain between the kneecap, which is the patella, and the groove, which is the groove within the thigh bone. So in that area she was still having patella femoral pain according to his assessment, and said that tracking overall is adequate although she has significant symptoms of chondromalacia patella. That means softening cartilage of the kneecap.
Q Now, on the next visit, Doctor, which was April 30th, 1991, was the Plaintiff still having problems with her left knee?
A Yes. The doctor states that she continues to have problems with aching pain and it seems to be getting worse with therapy.
Q How did he describe the patella femoral pain that she was experiencing at that time?
A Well, on physical exam he stated that she has moderate to severe patella femoral pain with both dynamic and static compression. That means if she's bending that's dynamic compression, static is just tightening the kneecap.
Q What was Dr. Wilbur's assessment at that time, Doctor?

A Well, he also said that she still had some lateral tracking. In other words, the kneecap was still off to the side. That's what he said. And his assessment was that she continues to have problems with patella femoral pain and she has worked very hard with therapy and has really failed considerably with treatment.

Q What does that mean, Doctor?

A It means that if you don't operate, that's it, that she's as good as she's going to be, no more treatment other than surgery is going to improve her condition.

Q Does this note indicate what he advised the Plaintiff at that time?

A Yes. He discussed the options of an open possible realignment. That means by surgery they would give the various, or describe the various things that could be done to improve her condition.

Q Now, subsequently, Doctor, it appears that Dr. Wilbur saw her on June 25th of 1991 for her ankle sprain and then he saw her in €allow-up on July 22nd of 1991 and August 26th of 1991?

A Yes.

Q On the follow-up visits in July and August of 1991 did Dr. Wilbur discuss the Plaintiff's knee at all?

A Which date, sir?

Q July 22nd of 1991 and August 26th of 1991.

A On July 22, yes, he did discuss that.
Q Were the problems the Plaintiff was experiencing on July 22nd of 1991 and August 26th of 1991 any different than the problems she was having before she stepped into the hole on June 21st, 1991?
A No, they are no different.
Q They are the same problems?
A The same problems.
Q Did Dr. Wilbur's examination find anything any different?
A No, same findings.
Q Had the Plaintiff gotten any worse according to the notes, Doctor?
A No, not according to what he's written here.
Q Now, Doctor, let's talk about the Plaintiff's ankle.
A Yes.
Q Dr. Wilbur first saw the Plaintiff on June 25th, 1991 for that ankle injury?
A Yes.
Q What treatment did she have following that ankle injury?
A The treatment was an air splint and that's the splint that goes around from one side of your ankle to the other side, something like a sugar tong grasping you like that, and it has air in it for compression and also for softnes

and it's rigid on the outside and these are affixed with a couple of straps. So that's one type of splint. That's to keep your ankle from moving from side to side when you're weight bearing in order to protect it during the healing phase of an ankle sprain.

So that was applied and his opinion when he examined her was that she had probably a grade two sprain. Now, a grade two sprain is one that would probably mean that some fibers of the ligament were torn but there was not a complete tearing. In other words, her ankle was stable but some fibers were probably torn because that was his opinion primarily because of the tenderness over the ligaments and the swelling that was present.

And so he referred her for therapy to strengthen the ankle. Now, you don't strengthen the ligaments. Ligaments heal whether you do anything or not. They'll heal. I don't care whether you cook them, freeze them, whatever, ultrasound on them, whatever, anything, it still takes three to six weeks to heal no matter what you do, but what he sent her for was to keep the muscles that move, because there are no muscles that go across a joint but your calf muscles and your foot muscles, in tone so that they would not atrophy and so as a result when you walk your muscles can tighten and support you so you don't go onto a sprained-ankle. So that's what he was sending her for and that was

appropriate.

Q Doctor, the Plaintiff followed up for her ankle on July 22nd and August 26th of 1991?

A Yes.

Q How did her condition change after the initial ankle injury?

A On July 22, which is approximately four weeks after he had first seen her, he said the ankle was sprained, was resolving slowly, he noted she needs continual therapy and he would see her again in about six weeks.

And when he saw her on August 26th, which is about eight weeks afterwards, she had completed the therapy program, he said that she is feeling much better and at that time his physical exam, he stated that she still has some mild tenderness over the anterior fibular tarsal ligament, that means the outer side of the ankle, had a full range of motion with good strength, no evidence of instability. That was her ankle. His assessment was that the ankle sprain was well-resolved and she is doing well.

Q Did Dr. Wilbur render any more treatment for the Plaintiff for her left ankle after that visit, Doctor?

A I believe that was the end of the treatment for the ankle as such. The remaining notes, as far as I can tell, did not address the ankle at all.

Q Now, Doctor, did you also have an opportunity to

review the admission notes of the Plaintiff for the surgery in January of 19923 And I believe, to make things easier, Doctor, it's page 24 of that stack.

A Page 24, yes.

Q And that's of exhibit -- what's been previously marked as Plaintiff's Exhibit 42.

THE VIDEOGRAPHER: We're off the record.

(Recess had.)

THE VIDEOGRAPHER: We're on the record.

Q Doctor, you have in front of you page 24 of Plaintiff's Exhibit 423

A Yes.

Q What is that, Doctor?

A This is a summary, usually called a discharge summary of a hospital admission, and it's of -- at MetroHealth Medical Center regarding Amy Hokaj and relates to her admission on January 15th of '92 and discharge of January 17th, '92.

Q Doctor, what was the diagnosis which was listed there?

A It says, "Left subluxing patella with chondromalacia patella." And when we use the word subluxing, it means that it's partially dislocating. Luxation means complete

dislocation, sub means partial dislocation. So it says partial dislocating left kneecap with softening of the cartilage underneath the kneecap.

Q Now, Doctor, those were the conditions that the Plaintiff was suffering from before the June 21st, 1991 incident?

A Yes

MR. KOREY: Objection.

Q Is there any indication in the admission note that the June 21st, 1991 incident had any impact or anything at all to do with the Plaintiff's surgery on January 15th, 1992?

A No, there is none.

MR. KOREY: Objection.

Q Doctor, what does the history indicate?

A The history indicates that, according to what's typed here, this is a 24 year old white female who has had trouble with left knee pain for the past ten years. She's had multiple episodes of subluxing of the left patella. She's had a lateral release in the past which did not benefit her. She has therefore elected to have the realignment procedure.

Q Is there anything in the history which indicates that the injury -- that she sustained an injury to her left ankle or that left ankle injury had anything to do with the

procedure and problems she was having?
A No.
MR. KOREY: Objection.
Move to strike.
Q Doctor, have you also had a chance to review Dr. Wilbur's report which was authored subsequent to that procedure?
A Yes, I have.
Q When was that report authored, Doctor?
A That report was authored approximately by date two weeks after she had had the knee operation, which was the realignment procedure.
Q Doctor, in Dr. Wilbur's report where he describes the injuries that the Plaintiff sustained as a result of stepping in the hole on June 21st, 1991, did he discuss or in any way mention the Plaintiff's left knee?
A No, he did not.
Q Doctor, I'd like to ask you some questions today about what, if any, injuries the Plaintiff sustained when she stepped in the hole on June 21st, 1991, okay?
A Yes.
Q Now, Doctor, do you have an opinion to a reasonable degree of medical certainty as to what injury, if any, the Plaintiff sustained when she stepped in the hole on June 21st, 1991?

A Yes.
Q What is your opinion, Doctor?
A My opinion is that she sprained her left ankle and had a bruise on her knee.
MR. KOREY: Objection.
Q Doctor, do you have an opinion to a reasonable degree of medical certainty as to how the Plaintiff's injury moved through time in terms of her left ankle?
A Her left ankle gradually improved, so that at the time that I saw her -- well, let me go back to the doctor's records. Essentially eight weeks after the injury, for practical purposes, she had recovered from the sprained ankle and when I saw her there were no residuals on that ankle.
Q Now, Doctor, with regards to the Plaintiff's left knee, do you have an opinion to a reasonable degree of medical certainty as to whether the incident on June 21st, 1991 had any impact whatsoever on her left knee?
MR. KOREY: Objection.
A The only impact that it had was that she had a bruise that she described, that there was an abrasion or something on the inner side of her knee. Other than that, she didn't make this knee any worse than it was.
Q Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether the surgery the

Plaintiff underwent in January of 1992 and July of 1992 had anything whatsoever to do with her stepping in the hole on June 21st, 19913

MR. KOREY: Objection.

A No, it had none.

Q Can you describe for the ladies and gentlemen why that is, Doctor?

A Well, she did not really injure anything in the knee. She had chronic problems which were not made *any* worse. She had this chondromalacia, as the doctor kept describing, before she ever had this particular incident occur. All of his findings were exactly the same. He did not even describe or examine her knee as such when she first presented herself to him following that. The only notation was that she said she had a bruise on it which she told me when she went to Fairview emergency room. That was it. She did not mention the kneecap in any way and that was it. It's just chronic problems that existed before this accident and were not made any worse and did not cause her to have the operation any sooner than she elected to have the operation.

Q Doctor, do you have an opinion to a reasonable degree of medical certainty as to what caused the Plaintiff to have surgery in January of 1992 and July of 19923

A Those are all pre-existing problems with chronic knee

complaints.

Q Now, Doctor, you're aware that Dr. Wilbur testified about the Plaintiff not being able to do all of her normal exercises and physical therapy in terms of her left knee following her ankle sprain and that that had an impact on her left knee condition.

Do you have an opinion to a reasonable degree of medical certainty as to whether the lack or the reduction in the amount of physical therapy the Plaintiff was able to do had any impact on her knee condition?

A I have an opinion.

Q What is that, Doctor?

A It had no influence whatsoever. Her problem was that she had a subluxating knee which is never ever corrected by exercise. Whether she did them or whether she didn't do them, the ultimate outcome is the same. You're just trying to strengthen these muscles and the muscles themselves were in the wrong alignment and that had nothing to do with her complaints, so in regards to how long she would exercise, she certainly did that over the years, that never improved her, and as the doctor stated, even before she had the particular incident occur that we're discussing here, that her conservative treatment had failed, he was already of that opinion.

Q Doctor, do you have an opinion to a reasonable degree

of medical certainty as to whether any of the problems the Plaintiff continues to experience today are related to the incident where she stepped in the hole in June of 1991?

MR. KOREY: Objection.

A I have an opinion.

Q What is that opinion, Doctor?

A It was a pre-existing condition that is giving her the ongoing problems, but since surgery of course to a much lesser degree than before she had the operation, but none of the complaints of the knee as such are related to the accident.

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

MR. KOREY: Off the record.

THE VIDEOGRAPHER: We're off the record.

(Recess had.)

THE VIDEOGRAPHER: We're on the record.

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CROSS-EXAMINATION

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BY MR. KOREY:

Q Doctor, I'm Phil Korey. Ms. O'Malley and I represent Amy Hokaj. Thanks for being here.

Doctor, is this the first time -- you understand that Mr. Greer works for the law firm of Gallagher, Sharp; you're aware of that?

A Yes.

Q And on how many occasions in the past has Gallagher, Sharp asked you to make a medical examination of someone who was not your patient?

A I don't know, but they have asked me in the past on more than one occasion.

Q And I notice that there was a bill in your file for $4501

A Sure. I don't do this free. It's not pro bono.

Q Now, would that fee be paid by the law firm, Mr. Greer's law firm?

A I'm sure his law firm or whoever subsidizes his fees.

Q And that fee for examining Amy Hokaj and preparing the report was $4501

A Yes, sir.

Q And you conducted what, an examination of Amy Hokaj. About how long were you with Ms. Hokaj?

A I don't know, but between 20 to 30 minutes.

Q And you understand from the notes that Dr. Wilbur had been regularly seeing her as a patient since 1990?

A Yes.

Q Now, on occasions in the past a number of times

defense firms and insurance companies asked you to evaluate a patient?

A Yes, sir.

Q In 1994 you testified at least at that time that you do approximately four medical exams for either law firms or insurance companies a week?

A Yes, that's true.

Q Is that about the same number as now?

A Yes.

Q So four a week and would they be always asking you to prepare a report?

A Well, usually.

Q Would your fee be the same, $4503

A Yes.

Q So that would be approximately $1,800 a week that you would receive this year and last year for doing these types of medical exams?

A It might be, yeah.

Q And if there's 50 weeks in a year, that would mean that you would earn approximately $90,000 from doing these types of examinations?

A First of all, it's more than 50 weeks in a year, it's 52 weeks a year, and I usually am gone at least four weeks out of a year off and on, so subtract four weeks.

Q So subtracting four weeks --

A But what does it matter? I rely on your figures. I know you're correct.
Q So it's approximately $90,000 a year?
A Yes. We're approximating, sure.
Q What percent of the -- and again, just an approximation, Doctor -- what percent of your total income is based on these types of medical exams?
A I don't know. I'd say perhaps maybe 10 percent, 13 percent of individuals whom I examine are in one way or another involved in a legal matter.
Q You mentioned that the course of practice has changed in medicine?
A Yes, sir.
Q Could you explain a little bit?
A Yes. The HMOs, which you know and I know mean health maintenance organizations, have prevented many people from seeing me because they are insured and they're only allowed to see the other physicians. And at the hospitals where I practice many of the physicians have also lost their patients in this manner. As a result, the referrals have to go elsewhere to people who are enrolled in other HMOs, and of course I can't belong to every HMO. I'm prevented by companies that have their own physicians, for example, Kaiser. These are full-time people under salary and I no longer can take care of people who have that insurance, so

this is what I mean by the practice of medicine has changed and this is in general throughout the whole area.

Q Now, you're aware that Dr. Wilbur is the director of orthopedic surgery of trauma at University Hospitals?

A I'm not aware of it, but he may very well be.

Q Have you ever been published, Doctor?

A No, sir.

Q Ever lectured on a national level?

A No.

Q And I think you've indicated your deposition is taken approximately how many times a year?

A Approximately once or twice a month. If people cannot arrive at a mutual agreement, then occasionally a deposition has to be taken.

Q What do you charge for being here at a deposition?

A $950.

Q So in addition, then, to the approximately $7,500 a month that you would earn from doing these types of medical examinations, you also receive an additional $2,000 for doing a deposition?

A That's possible, sure.

Q And do you know Mr. Jastromb who is working the video here?

A I've seen him before.

Q And he's conducted other depositions of you?

A I'm sure he has.
Q Do you keep a separate calendar for patients -- of your own patients versus patients you're examining for insurance companies or law firms?
A No, sir.
Q So they would be all in the same book?
A Yes.
Q So you saw Ms. Hokaj for approximately 20, 25 minutes in your office here?
A Yes.
Q But you were never her treating physician?
A No. I just examined her to give an independent examination and the report.
Q Yes, I understand.
And you were not with her during any of the physical therapy that she received?
A Obviously not, nor was I in the operating room where she was operated.
Q Now, I notice, Doctor, in looking at the file, the records that you reviewed there, I notice that you did not have the physical therapy records when she was undergoing physical therapy for her ankle after the fall?
MR. GREER: I'm going to object. Those were just produced by Plaintiff's counsel, I believe, yesterday.

Q Doctor, did you meet with Mr. Greer prior to your deposition here this morning?

A Sure. Yes.

Q And at that time did he give you any of the physical therapy records from Ms. Hokaj during her ankle sprain?

A No, he did not produce any new records.

Q Perhaps at this time, Doctor, if we could go off the record and you could -- perhaps you could just take a look at them now, if you could.

A Sure.

THE VIDEOGRAPHER: Off the record.

(Recess had.)

THE VIDEOGRAPHER: We're on the record.

Q Thank you, Doctor.

Doctor, with respect to the incident, first, Amy Hokaj was a very cooperative person?

A Yes, she was.

Q And she freely talked about her condition to you and answered the best she could your questions?

A Yes.

Q You felt she was a pleasant person?

A Yes.

Q Doctor, regarding the emergency room records at Fairview Hospital, Doctor, you are aware that x-rays were

taken of her left knee in the emergency room that evening of the fall?

A Yes.

Q And you're aware, Doctor, that the emergency room doctor notes in there that there is soft tissue injury to the left knee?

A Can I see that, please?

Q Yes. That would be Plaintiff's Exhibit 41, Doctor. Thank you.

A There are two diagnoses in here, sir. One states soft tissue injury to the knee, but the one that's typed and described there, nothing but a diagnosis placed there. But if you turn over about three pages you'll see where the physician who examined her is an osteopathic physician, O.D. states soft tissue injury to her ankle.

Q Yes.

Now, Doctor --

A So that looks like it could be an error because there's nothing describing physical examination on the sheet that you pointed to, but the physical examination is described and the x-ray results are described on the other sheet.

Q Well, then we could take this one at a time, Doctor.

A Yea.

Q Well, you agree it does say, "Soft tissue injury,

left knee"?
A Yes, I do,
Q In the physical examination there's also a marking there of a contusion to the left knee?
A Yes.
Q There's also that she was x-rayed, the left ankle as well as the left knee, correct?
A Certainly, sure.
Q Now, you mentioned the osteopathic doctor?
A That's his degree. Wine is an W.D., his is a D.O. There's no difference.
Q Would you say that an orthopedic surgeon is more trained in the area of bone injury than an osteopath?
A Well, of course, it certainly is. They're much more trained than an osteopath. Osteopath is just a general medical degree. That's all it is. He's not trained in anything special. It's a myth out there that they are. They are not.
Q But this osteopath did order x-rays of the left ankle and the left knee?
A Sure. He should have because she said she bumped it. He should check it out.
Q Particularly where she indicated where the finding was there was soft tissue injury to the left knee?
A What part of the knee? It just says soft tissue.

Soft tissue means anything other than bone or cartilage.
Q Soft tissue could include ligaments?
A Yes.
Q Muscles?
A Yes.
Q Tendon?
A Yes, and skin.
Q Was she also prescribed, Doctor, Darvocet for pain?
A I don't recall, but if it's down there, I'm sure she was given it. She had a significant ankle injury. She should have had something for pain.
Q There's an indication, Doctor, there that says Darvocet and Motrin?
A Yes.
Q That would be given for pain, correct?
A Well, Motrin --
Q That would be like an anti-inflammatory?
A Probably because of its anti-inflammatory properties rather than analgesic properties.
Q But would Darvocet be more related to --
A Pain.
Q Now, there's a notation, Doctor, in the emergency room report that she arrived there at approximately 1:07 a.m.; is that accurate?
A Yes.

Q so immediately after the fall she came to the emergency room?
A Yes. That's what she said, sure.
Q Now, Doctor, are you also aware that when she left the hospital she was on crutches?
A Yes.
Q Are you aware, Doctor, that when she went to Dr. Wilbur on June 25th, three days later, that she was on crutches?
A Yes. They told her to use them, so she should have showed up with them.
Q So you're aware, Doctor, that during that time period Amy Hokaj did not put any weight on her left leg at all?
A No, I'm not aware of it, but she probably was advised not to.
Q And, Doctor, when she came in to see Dr. Wilbur and she -- you mentioned there was no indication regarding the knee at that time?
A No, there was none.
Q *Are* you aware, Doctor, that when she began to put weight on the left leg and during physical therapy for the ankle she complained of knee pain?
MR. GREER: I am going to object.
A The only thing I saw on those notes in the physical therapy regarding any knee pain was when she was jumping

rope, and that of course would be the same thing she was complaining about before, overuse of the knee was painful to her.

Q Doctor, in the physical therapy notes on July lst, what's been marked as Plaintiff's Exhibit 50, if you could follow with me if you could, does it indicate, Doctor, she was -- that she was doing fine to a certain point?

MR. GREER: I'm going to object to the form of the question.

Q Perhaps I could clarify it, Doctor, if I had the -- thank you.

Doctor, is there an indication in there, "She was previously very active but has been unable to continue sports activities other than controlled bicycling"?

A Yeah, we know that. She had that problem even before that, she was noted by the doctor there that bicycling, because she was going so hard at it, was giving her knee problems. Yeah, that's nothing new.

Q There's a statement there that on July lst, that's of 1992, that the patient was started on a range of motion with the board in a non-weight bearing position. Could you explain to us, Doctor --

A All that means is you sit down -- this is a balance board and it's -- say you put a board down and a ball underneath it and then you try to roll it from side to

side, get your ankle to do that. In other words, you're moving your ankle but you're not doing it standing. Now, this is a recent injury, so it's a range of motion exercise. You're doing them that way instead of you sitting down twirling your ankle around.

Q But she's not standing when she's doing this?

A No. They didn't want her to stand for that particular because it's early. That's July. She got injured -- was it June?

Q Yes, it was June 21st, Doctor.

A Okay, so the reason for not doing it standing is if I sprained my ankle and I start stretching that thing and really twisting it, I'm going to cause more injury. All you want to do is just go through a general range of movement without adding any more problems to the area and causing any more injury. So you're stretching an area that was previously injured, it's swollen so it doesn't stretch as easy, but you want to control that so that you don't cause more problems because a swollen part is more easily injured than one that isn't. So it shouldn't be done with the weight bearing. They're treating it properly.

Q So overall, Doctor, you would say that the treatment, the physical therapy and the treatment that was rendered by Dr. Wilbur was very good medical treatment?

A I would say it's good.

Q And you noted that there was, as part of the physical therapy she was asked to do jump roping, correct?
A Yes.
Q And that aggravated the left knee pain?
A I don't know why they asked her to do that. I think that's stupid that they did it and of course the knee is going to hurt. It had been hurting before. *Why* shouldn't it hurt?
Q Now, in the end, Doctor --
A She already told them right in the first thing that she was having chronic problems and they're making her jump a rope. That's dumb.
Q In the last of the physical therapy notes, Doctor, in August, there's a reference here that, "Recommend hightop shoes or an air brace for any sports"?
A That's a recommendation of a therapist, not the doctor. And of course, you know, whenever you have an ankle injury, you put a hightop shoe on thinking that's going to make a difference as far as protecting your ankle, but unless it's a special type, it won't make a bit of difference, but that's a protective mechanism so she doesn't reinjure.
Q You mentioned that it was a second degree ankle sprain?
A I didn't say that. The doctor did. I just tried to

elaborate what they mean by second degree.
Q You mentioned that there's a ligament tear with a second degree ankle sprain?
A Yes. That means it's partial, it's not complete.
Q And when the ankle or ligament is stretched, it will never get back to its regular size; is that true, Doctor?
A No. That's false. It will get back because the stretching, I should say tearing, it can get back to its regular size and it will heal, but if it's completely torn it will heal with scar tissue.
Q And is the ankle as structurally sound as it was?
A Of first and second degree, yes, it's as structurally sound as it was.
Q Isn't it more open now to other future ankle sprains?
A No. She's recovered and protected herself properly. It's not any more subject.
Q When you say she has to protect herself properly, she has to do things --
A She did it already. She no longer requires *any* protection.
Q So you don't agree with the idea, Doctor, that once you have a second degree sprain, it's prone or more susceptible to future injury?
A No. The only thing is if you put yourself in a position where you're going to have an injury, you probably

will have more of a problem if you're in that position, but you're not *any* more susceptible in ordinary activities of having a recurrent sprain.

Q Now, there was some discussion, Doctor, in the notes on July 22nd that Amy complained of additional knee pain?

A I don't say additional. Can I see that? I don't think there was additional. I think she complained of knee pain, but I don't think --

Q She still complained of the knee pain?

A Because the word additional you put in. She did not say that nor did the doctor say that, if I recall correctly.

Q Well, if we could look at the notes, Doctor, on --

A I have a copy.

Q Doctor, on April 30th of -- let me back up just for a second, Doctor.

Now, when she had the prior arthroscopy on the lateral release of her knee, that is on an outpatient basis, Doctor?

A It can be done on an outpatient basis, usually done that way. When they were first done, usually we kept individuals overnight because of concern that you might have real excessive bleeding.

Q But that was nowhere near like the surgery that was performed in January of 1992?

A No. That's why it failed. She needed more than that.
Q My question, Doctor, is: In the surgery that was performed in January of 1992 they had to go in with a saw on her knee?
A In the realignment operation that she had?
Q Right.
A Absolutely. It's either that or a chisel. You have to cut the bone.
Q And they cut the bone in this case?
A Yes.
Q And they put in two screws?
A Yes. That's to hold the bone in its new position.
Q When you say it was subluxing, just so I'm clear, Doctor, Amy Hokaj's left knee was protruding to the outside?
A The kneecap was tracking out of its track and this is what they meant by subluxing patella.
Q The purpose of the two screws that was performed by Dr. Wilbur was to get the kneecap from moving left to on the center line?
A No. The two screws were to hold the bone that he moved in its position until it could heal in that position. The placement of everything in that position that was done, he did a lateral release, he moved the bone

over and rotated it and also he moved the muscle on the inner side a little bit farther down so that you would change the forces on that kneecap.

Q This would be major surgery?

A Absolutely, sure.

Q She was in the hospital for three days?

A According to what I see.

Q As far as the physical therapy, she had physical therapy thereafter for approximately four months?

A Oh, absolutely.

Q Now, if we could go, Doctor, to 2-12-91.

A Yes, sir.

Q And at that point in time Dr. Wilbur indicates that the patella tracks reasonably well?

A Yes.

Q Meaning, Doctor, that the left kneecap, as I understand it, was not swaying to the left?

A No, that's not what he said.

Q What does it mean when he says there's no tracking?

A Qualifying word reasonably means that it wasn't all that great. It means that it was pretty good, but it wasn't all that great. So when he says reasonably well, the next sentence, which you didn't follow through on, he said she is still having significant pain with patella femoral compression.

Q Now, chondromalacia does not mean, Doctor, that your patella is moving to the left, does it?
A No. Chondromalacia means -- is a general term meaning soft cartilage.
Q So just because you have soft cartilage doesn't mean you have to have realignment surgery of your knee, correct?
A It depends on what the soft cartilage is a result of, what's causing it. In this instance it meant she needed realignment of her knee.
Q Well, you agree that chondromalacia doesn't necessarily mean that the left kneecap is moving to the left?
A No.
Q Now, with respect to April 30th, 1991 -- there was some discussion there when counsel asked you -- does he indicate in that third paragraph, Doctor, on the assessment, "I discussed the options of a proximal realignment"?
A Yes. Of an open operation, yes.
Q And on August 26th after the fall doesn't Dr. Wilbur indicate she should have both a proximal and a distal realignment?
A Yes.
Q And so at that point earlier before the fall he described it as an option and on August 26th of 1991 he

described that she should have it, correct, that's what his notes indicate?

A Well, those are the words used, but he's telling her what operations can be done because obviously, as he stated, she has really failed conservative treatment. He said that on April 30th.

Q My question is in August of '91 he indicates that he should have both a proximal and a distal realignment?

A Yes. That's probably what he should have told her when he saw her in April.

Q Doctor, you agree there's a difference between contemplating surgery and having to have surgery?

A You don't contemplate it unless you really feel the individual will require the surgery, otherwise you don't talk operation.

Q Well, isn't with your patients -- I don't mean the patients you examine for --

A I mean my own patients. I don't talk about an operation unless I'm thinking that yeah, you ought to have this and this is what you can expect, but it's the individual's option whether or not they will agree to have it. After all, it's their body, you don't want to assault anybody.

Q Yes, you certainly don't want to do that.

Now, would you agree, Doctor, that there are many

occasions where a patient -- it's within the treatment plan to have surgery and some patients go along with it and in other cases the doctor requires them to have surgery; that's quite a difference, isn't it?

A Well, the doctor could never require anyone to have an operation, unless of course you're mentally incompetent and someone else has to make the decision for you.

Q You certainly agree, Doctor, that there's a difference between discussing an option of surgery versus the physician saying, "You need this surgery, you should have this done"?

MR. GREER: I'm going to object. It's been asked and answered.

A His opinion is that the individual would be better off with the operation and they have a better chance of success than just a 50/50 situation.

Q But you agree that in April of '91 he discussed, Dr. Wilbur discussed that with a patient and with Amy Hokaj as an option, correct?

A I wasn't there. All I can say is that -- the word he used was option.

Q But in August of '91 the words in the report are should have, correct?

A Again, he said I discussed with her the surgical options and at this point I feel if she has anything done,

she should have both a proximal and distal realignment, which is a little bit different than your emphasis on should. But he's saying as an issue for the operation that both what he did was proximal and distal and that means, again to illustrate, doing some surgery up above, which he did, then there was cutting that tendon and giving a release, advancing the muscle a little bit farther down there, and then distal being changing the point of attachment.

Q Now, counsel showed you Dr. Wilbur's letter in January of 19923

A Yes, sir.

Q And he asked you, did Dr. Wilbur in that letter indicate anything about the knee or anything about the left knee3

A No, he didn't.

Q But you received -- of course at that point in time she was still undergoing physical therapy for the knee operation, correct, Doctor, in January of 1992, January 31st of 19923

A This was two weeks after he operated the knee he wrote --

Q That's a simple question, Doctor.

A Well, I'm bringing it in time, in focus, that he wrote a letter and never mentioned the knee whatsoever. He

only described an ankle injury.
Q But you're aware, Doctor, that in June of '95 after --
A A couple of years later he wrote another letter, yes.
Q And in that he details in there regarding her knee, correct, Doctor?
A He says that he operated her knee, yes.
Q And does he also indicate in that letter, Doctor, that he relates the fall in June of '91 to her surgery?
A I don't know. My understanding is that he testified -- and I don't know if he testified under oath that he was relating that or not. There's a lot of difference between a letter and being on a witness stand.
Q I have a copy, Doctor.
A June 5, 1995.
Q Yes, we have that.
And in that letter you're aware that her treating physician, Dr. Wilbur, relates the fall in June of '91 to her having surgery in January of 1992?
A I don't say relates. The word he uses, after this fall her knee problems seem to have gotten worse. That's the word he used.
Q And later on in the -- on the bottom of page two does he indicate -- well, are you aware, Doctor, that Dr. Wilbur has testified on deposition?

A I understand, but I don't know what he testified to.
Q If he relates the fall in June, '91 to the surgery in January of '92 as her treating doctor, you're saying, Doctor, that you have a difference of opinion on that?
A Absolutely.
Q Now, Doctor, you're aware that Amy is a social worker at Fairview Hospital?
A Yes, I am.
Q And, Doctor, from your experiences would a social worker have to stand virtually six to eight hours a day?
A Not always. Most of the time I see them sitting around talking to people, but not necessarily standing.
Q And --
A They conduct so many -- much of their work over telephones. When they interview patients, they usually sit down. They don't do it all standing. But it doesn't matter. I don't think the job had anything to do with her problems.
Q But now you mentioned that Amy has a dull, aching pain at the present time?
A She said that and I agree that she has a dull, aching pain at this time in her knee.
Q Do you agree, Doctor, that is permanent in nature?
A Absolutely. I don't think that knee operation corrected her to that point where she'll ever be totally

painless. I don't see how it's possible.
Q So you would agree with Dr. Wilbur that it's a permanent pain she'll have in her left knee?
A I'm sure she'll have some chronic pain in that knee. She had plenty of problems in that knee.
Q What about the screw that remains in her knee at the present time, Doctor?
A I don't think it will cause any problem. It seems to be well-seated and the screw itself is not going to be a problem. The reason for removal of the other screw is that it was irritating it, it wasn't seated to the point where it was totally buried and so she had problems and that's the reason for removing it.
Q And are those screws that are left in the knee, this particular one, is that intended to last forever or is there an expectancy of about ten years?
A Oh, I think there's an expectancy of about 25 to 100 years. Actually, it's an irrelevant question. The screw is not doing anything, it's buried, and we've seen screws that have been placed in people ever since we've had stainless screws available for implant that caused absolutely no problems and I don't anticipate any problems from this.
Q But you have had patients who have had a screw in their knee and later they've had to go in and remove that

or replace it?
A First of all, let's say where the screw is. The screw is not in the knee, the screw is in the tibia bone down here, the knee joint is up in here. The screw is down here. That's not going to bother anything (indicating).
Q Have you had experiences, Doctor, where you've had to go in and remove a screw that was placed in in a prior surgery?
A Oh, sure. We all have.
Q So you've done that a number of times?
A Yes, where it was so superficial that it caused an irritant to the overlying tissues, yeah. We've all had to do that.
Q So that's a situation that Amy may have to face down the road?
MR. GREER: Objection.
A I don't think she will, but that's a very faint possibility. And I mean the difference between the probability and the possibility. This is possible, but highly improbable.
MR. KOREY: Off the record for a second.
THE VIDEOGRAPHER: We're off the record.
(Recess had.)

THE VIDEOGRAPHER: We're on the record.

Q Doctor, you mentioned that questions were asked of you as to what the condition of Amy Hokaj's knee was at the time prior to the fall and just after the fall. Now, Doctor, you did not see Amy Hokaj until September of 1995, correct?

A Yes, sir.

Q So that's more than three and-a-half years after the surgery?

A Yes, sir.

Q So your knowledge is not on a physician/patient basis but it's a review of notes, correct?

A It's a review of doctor's records and notes, yes.

Q And it's fair to say, Doctor, you're at a disadvantage insofar as the treating physician was seeing her on a regular basis?

A I don't think I'm at any disadvantage. I'm relying on the same notes that he had and I'm sure his notes were accurate.

Q Now, as far as the -- seeing her three and-a-half years later for 20 minutes, when you did examine her, you did make some physical findings, did you not, with respect to her condition?

A Yes.

Q And when she was doing a range of motion, when she was sitting down, I think you indicate that there was a cracking sound in her left knee?

A No. It's what they call crepitation.

Q Isn't that a cracking sound?

A No.

First of all, it's not a sound at all. It's if I place my hand -- in this instance we're talking about a knee joint -- place it on the knee joint and the knee is bent up and down and normally you're not going to feel anything, sometimes you will feel like a crunching or a grinding sensation that something may be a little bit rough in that area that's transmitted to your hand. So crepitation, this is what we mean by that. Sometimes, of course, you can hear it, but in this case you didn't hear it, you just felt it.

Q When she was walking here you heard the left knee crack?

A No, sir.

Q Well, when she was walking what did you hear?

A Nothing.

Q Perhaps I misread that.

She indicated the wood of the screws in the knee was causing her pain though?

A No. It had. The remaining screw was not indicated

to be causing her any discomfort.
Q And she was tender over the kneecap, correct?
A Yes, but not over the entire kneecap. It's when I pushed that kneecap against the groove on the knee, she had some tenderness, yeah. The main point of tenderness was where the quadriceps muscle inserts into the upper inner part of the kneecap and that's the area where she had some surgery and some sutures in there. And she may very well be tender. I'm sure she is.
Q There was a long scar that you described to us that was down the kneecap, approximately six inches in length?
A About.
Q And that was from the surgery in January of 1992?
A Yes, sir.
Q Obviously the scar, Doctor, that would be permanent in nature?
A Oh, sure.
Q You also mentioned, Doctor, there was calcification in the patella tendon?
A Yes.
Q And is calcification due to a healing process of the body?
A Probably what happened was when they did the realignment and they cut the bone down below and twisted it, you had some bleeding in that area and that may have

caused the calcium to build up within that tendon, but as I mentioned, this is not giving her any problems, she's not kneeling on that area or anything, so that's just something that goes along with the operation. I don't think that's got any real significance. Certainly you'd never operate anybody for that.

MR. KOREY: Off the record for a second.

THE VIDEOGRAPHER: We're Off the record.

(Discussion had off the record. )

THE VIDEOGRAPHER: We're on the record.

Q Dr. Wilbur has testified that her problems after the fall with her knee were different than before the fall. So just so we're clear, Doctor, you disagree with Dr. Wilbur's opinion on that?

A I do.

Q And, Doctor, can I ask you when your next independent medical exam is scheduled for?

A I have office hours today so I'm sure I have one today.

Q Would that be also referred by a defense lawyer's firm or insurance company?

A Oh, I'm sure it probably is.

MR. KOREY: I have nothing further at this time. Thank you, Doctor.

MR. RASMUSSEN: Off the record, please.

THE VIDEOGRAPHER: We're off the record.

(Recess had.)

THE VIDEOGRAPHER: We're on the record.

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DIRECT EXAMINATION

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BY MR. RASMUSSEN:

Q Good morning, Doctor, my name is John Rasmussen and I'm here representing the City of Rocky River and the Osterland Company and I have a few follow-up questions for you.

Doctor, you've described that small part of your practice that involves the independent medical examinations in connection with litigation, but I want the jury to have a fair understanding of your practice.

A Yes.

Q What is the large percentage of your practice devoted to, Doctor?

A Primarily people having injuries, arthritic changes

in the joints, fractures, dislocations.

Q Do you care for people who are injured in accidents, Doctor?

A Yes.

Q And from time to time are you called upon by lawyers who represent injured people to produce reports?

A Oh, absolutely.

Q And from time to time are you called upon to testify on behalf of people who are injured in accidents and whom you've treated?

A Occasionally, yeah, I have to testify for them. I'm their doctor and I testify as to what I did, sure.

Q Now, as far as your examination of Amy Hokaj is concerned and the opinions that you've rendered here this morning, first of all, the physical therapy records that Mr. Korey provided to you just a few minutes ago that you reviewed, does that affect any of the opinions that you've rendered so far this morning?

A No, they do not.

Q As far as the Fairview Hospital emergency room records are concerned where Ms. Hokaj went following the accident, we understand that the sprained ankle was diagnosed and treated there and there's also mention of a soft tissue injury to her knee?

A Yes, sir.

Q And as I understand it, the only record of a problem with her knee is an abrasion; is that accurate, Doctor?
A Yes, sir.
Q Would an abrasion of the knee be considered a soft tissue injury, Doctor?
A Yes.
Q Now, you've also testified in great depth concerning your review of Dr. Wilbur's office notes and the information that's contained therein. If you'd turn to his note dated April 30th, 1991, which would have been the last visit before the accident, do you see on the first line his description that Amy is seen in follow-up for her chronic chondromalacia patella?
A Yes, sir.
Q First of all, Doctor, is there a generally-accepted meaning in the medical community for the term chronic?
A Chronic means of longstanding and usually anything after three months' duration we also kind of say either subacute, and then a little bit longer than that then it becomes a chronic thing that's been present for a long period of time.
Q As I understand your testimony, Doctor, you've described the chondromalacia and what that condition is and also that Ms. Hokaj had lateral tracking of the patella on her left knee and that's the equivalent of partial

dislocation; am I accurate?
A Yes. It's -- you may call it subluxing, but lateral displaced tracking or lateral tracking is going off to the side, not where it should be tracking.
Q Again, as I understand your testimony, Doctor, the surgery that was performed by Dr. Wilbur in January of 1992 was solely to correct that lateral tracking condition in Ms. Hokaj's left knee?
A Yes, because nothing other than that was done. Of the various things that were done, all of it was directed to correct the tracking. The kneecap itself was not touched. In fact, he makes absolutely no description of the description of the undersurface of the kneecap in his operative report.
Q Again, Doctor, so would it be fair to say that that surgery in January of 1992 was solely to correct the condition that pre-existed the accident in June of 1991?
A Yes.
Q And nothing about that surgery in January of 1992 had anything to do with the injuries that Amy sustained in the fall of June of 1991?
MR. KOREY: Objection.
A That's my opinion, sir.
Q Finally, Doctor, in your opinion, within a reasonable degree of medical surgery, are any of Amy Hokaj's medical

bills which pertain to treatment or surgery of her left knee related to the accident of June 21st, 1991?

A My opinion is that they would not be related to the accident of that date.

MR. RASMUSSEN: Thank you very much, Doctor. That's all I have.

THE VIDEOGRAPHER: We're off the record.

(Recess had.)

THE VIDEOGRAPHER: We're on the record.

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REDIRECT EXAMINATION

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BY MR. GREER:

Q Doctor, the last question that Mr. Rasmussen asked he asked you to a reasonable degree of medical surgery and it should have been reasonable degree of medical certainty. Is your answer the same, Doctor?

A The answer is the same.

Q Doctor, I'll be very brief.

You had a chance to review the physical therapy records from Fairview -- from MetroHealth Medical Center for the Plaintiff's ankle injury, correct?

A Yes.

Q You referenced a paragraph on the first visit and you were asked some questions about that paragraph where it indicated that she was previously very active but had been unable to continue sports activities other than controlled bicycling, and that she had given the physical therapy a history of knee problems including several arthroscopes and the lateral release. What is your understanding of what that means, Doctor?

A It means that she had ongoing problems before this ankle sprain.

Q And those ongoing problems prevented her from performing certain physical activities?

A Yes, sir.

MR. KOREY: Objection.

Q Does the reference in there about her previously being very active and now being unable to continue sports activities have anything at all to do with the ankle injury?

A No.

Q Now, Doctor, on the other page where you reference that the only note you saw of any pain that she experienced in the left knee was while she was doing jump roping; is that correct, Doctor?

A Yes.

Q Would that be an activity that if you had a knee

problem could create knee pain such as that?
A If you had a knee problem and tried to jump rope, it's going to hurt.
Q Doctor, in looking at the records of Dr. Wilbur on July 10th of 1990, is it fair to state that the Plaintiff was having more pain after she was finished riding her bike?
A Yes, sir.
Q And on February 12th of 1991 is it fair to state that Dr. Wilbur indicated in his notes that activity definitely made the Plaintiff's knee problem worse?
A That's his notation here, activity definitely makes her knee problem worse.
Q Are those consistent with the physical therapy notes that we've just discussed?
A Yes.
Q Doctor, in light of the questioning by Plaintiff's counsel have any of your opinions changed?
A No.
Q And, Doctor, to finalize, your opinion to a reasonable degree of medical certainty is what in terms of what injuries the Plaintiff sustained in the June 21st, 1991 fall?
MR. KOREY: Objection.
A She sprained her ankle and she had a contusion

abrasion of her knee.

Q And your opinion to a reasonable degree of medical certainty concerning the Plaintiff's knee problems, the surgery in January and July of 1991 and any medical bills related to that is what, Doctor?

A Well, those are related to her prior knee problems, not to this accident.

MR. GREER: Thank you, Doctor.

THE VIDEOGRAPHER: We're off the record.

(Recess had.)

THE VIDEOGRAPHER: We're on the record.

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RECROSS-EXAMINATION

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BY MR. KOREY:

Q Doctor, you testified regarding your medical practice. There were some questions by Mr. Rasmussen who represents the City of Rocky River and Osterland Company.

Now, Doctor, we went through that of the independent medical exams, when you conduct an independent medical exam, that is done on behalf of a law firm or an insurance company, correct?

A Usually, some of them.

Q Isn't the vast majority of the independent medical exams always requested by a defense lawyer's firm or an insurance company?

A Almost always because if someone already has a physician, they have retained an attorney, there's no reason to get another physician involved unless they feel that another opinion is more valid.

Q And your income annually based on these so-called independent medical examinations, including deposition testimony, is approximately $100,000 a year?

A No. Close to that,

Q Very close to that?

A Well, it may be, sure. Probably about -- I don't know the exact, but it may very well be.

Q And you mentioned that they're a problem with physicians now because of the HMOs?

A Yes. I just mentioned that in general. It's well-known, it's documented in every newspaper and business report and medical reports that you look at, certainly.

Q Now, Doctor, as far as the condition of Amy Hokaj's knee before the fall, you are relying on the notes of Dr. Wilbur, correct?

A Oh, certainly, because I hadn't seen her until that day.

Q Yes.

And when Dr. Wilbur says after the fall her condition was different --
A He didn't say that in his notes.
Q Well, you recall, Doctor, that he testified that the situation with Amy's knee was worsened by that fall?
A I don't know if he did.
Q Assuming, Doctor, that that's what Dr. Wilbur testified, you're saying you disagree with that opinion?
A If he testified to that, I definitely disagree, sir.
Q So you base your opinions on his -- on the notes that he has, correct?
A Yes, because those notes were validly written while he's actively treating someone and I have to go along with what he puts down. If he states something different, why was that not in his notation before? It's not there.
Q You agree, Doctor, that the -- you agree with his notes but you disagree with his conclusion; is that a fair statement?
A If that was his conclusion that it was made worse by this, yes, then I do disagree.
MR. KOREY: I have nothing further, Doctor. I'm sorry we had to take so long.
MR. GREER: Thank you, Doctor.
THE VIDEOGRAPHER: Doctor, you have a right to review this videotape to review its

accuracy and will you waive that right?

THE WITNESS: I waive.

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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 8th day of December, 1995.

Renee L. Pellegrino, Notary Public in and for the State of Ohio.
My Commission expires 3-20-00.