

Doc. 470

STATE OF OHIO)
)
CUYAHOGA COUNTY)

SS:

IN THE COURT OF COMMON PLE

CASE NO. 188198

WASYL KOTELEWEC,)
)
 PLAINTIFF,)
)
VS.)
)
CYNTHIA VULLO,)
)
 DEFENDANT.)

VIDEOTAPE DEPOSITION

OF

DR. DONALD MANN

JUDGE CAROLYN FRIEDLAND

VIDEOTAPE DEPOSITION taken before Tom Baker
a Notary Public within and for the State of Ohio, pursuant to
Notice, and as taken on April 10, 1991 in the office of
Dr. Donald Mann, 1611 South Green Road, South Euclid, Ohio.
Said deposition taken of Dr. Donald Mann is to be used as evidence
on behalf of the defendant in the aforesaid cause of action,
pending in the Court of Common Pleas, within and for the
County of Cuyahoga, for the State of Ohio.

APPEARANCES:

MR. DAVID POMERANTZ,

On Behalf of the Plaintiff,

MR. JOSEPH WANTZ,

On Behalf of the Defendant.

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OPERATOR: We're on the record. Doctor, would you raise your right hand, please?

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DR. MANN: You can turn that light away, I hope.

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OPERATOR: Do you swear the testimony you are about to give to be the truth, the whole truth, and nothing but the truth, so help you God?

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DR. MANN: I do.

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MR. WANTZ: For the record, we are here for the deposition of Dr. Donald Mann in the matter of Wasyl Kotelewec versus Cynthia Vullo, and that we are taking this deposition for trial at Dr. Mann's offices.

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DURING DIRECT EXAMINATION BY MR. JOSEPH WANTZ:

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Q Doctor, for the record, could you please state your... .

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3:09:33 - MR. POMERANTZ: Before we get to the questions there are a couple of things that I wanted to get on the record, if that is okay. First of all, we are going to register an objection to the fact that there is not a court reporter transcribing this contemporaneous with the videotaping. Secondly, Joe, for the record you have not received any records

Gene Rodriquez, is that correct?

MR. WANTZ: That is correct.

MR. POMERANTZ: Secondly, following the deposition we have an agreement that I'll be able to take the X-rays with me so that my

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doctor can review them
prior to his testimony,
correct?

MR. WANTZ: That is corre

MR. PONERANTZ: All right.

And, finally, I don't
know if you want to do thi
at this point, but can
we make a stipulation
as to the authenticity of
the medical records? I
would be willing to
stipulate to the
authenticity of the
records that you have
subpoenaed conversely
and provided to me. If
we can get a stipulation
as to the authenticity
of the records that we
have, thereby saving us
having to subpoena in
the record custodians
at the time of trial?

MR. WANTZ: Sure. The o:

1 DURING DIRECT EXAMINATION BY MR. JOESEPH WANTZ:

2 Q Doctor, for the record, could you please
3 state your complete name?

4 A Donald Charles Mann.

5 Q And, are you a licensed physician in the
6 State of Ohio?

7 A I am.

8 Q When did you obtain your license?

9 A 1974.

10 Q And, how long have you been practicing?

11 A I have been practicing here in this
12 location since that time.

13 Q Where did you obtain your medical
14 training, Doctor?

15 A My medical school training was obtained
16 at Indiana University Medical School and following
17 that I did an internship in the same institution,
18 and then I did three years of neurology training.

19 Q Doctor, do you specialize in any
20 particular branch of medicine?

21 A I do.

22 Q And, what is that?

23 A Neurology.

24 Q Doctor, for the record, where is your
25 office?

1 A My office is on Green Road. The street
2 number is 1611 and it is in the Cleveland suburb
3 of South Euclid.

4 Q And, are you part of any group, Doctor?

5 A Well, this is a medical building and we
6 all practice here, but we are not in a group.
7 There are groups here, but I am not in another
8 group here.

9 Q I see. Doctor, could you tell us what the
10 specialty of neurology is?

11 A Yes. It is that medical discipline
12 that deals with diseases of the nervous system
13 and the special senses; the brain, vision, hearing,
14 smell, et cetera, spinal cord, the nerves that
15 run in the arms and the legs and the muscles they
16 innervate, and supporting structures such as
17 the cranium, the spine, certain joints that
18 compress nerves and sinsuses and so forth.

19 Q Thank you, Doctor. Doctor, are you on
20 staff at any hospitals?

21 A I am.

22 Q What hospitals?

23 A I am on the staff at Metro Health Hospital
24 and University Hospitals of Cleveland.

25 Q And, do you do any teaching, Doctor?

1 A I do.

2 Q Where at?

3 A I teach at Case Western Reserve University

4 School of Medicine.

5 Q What is your position there?

6 A I am an associate clinical professor

7 of neurology.

8 Q What is a clinical professor or an

9 associate clinical professor?

10 A The associate refers to the fact that

11 I am one rank below professor and clinical

12 relates to the fact that I am not in a tenure

13 track or a research track, but I am just in

14 a teaching position.

15 Q In essence, what do you do?

16 What is your teaching duties...what are your

17 teaching duties?

18 A Well, they vary from year to year, but

19 basically it is teaching residents and interns

20 how to practice neurology in the clinics, in

21 the wards, how to diagnose conditions, and

22 how to supervise the care of patients with

23 neurologic illness.

24 Q Doctor, do you belong to any professional

25 societies, groups, or organizations?

1 A

I do.

2 Q

And, could you tell us some of those groups and organizations?

3 A

I belong to the Academy of Medicine of Cleveland, the Ohio State Medical Association, the American Academy of Neurology

4 Q

Doctor, at my request, did you examine Mr. Wasyk Kotelewec?

5 A

I did.

6 Q

And, do you recall when you performed that examination, Doctor?

7 A

That was done on March 4th of this year.

8 Q

Doctor, I note that you are looking through your records did you keep records of your examination?

9 A

I did.

10 Q

All right. And, those were made as part of your examination, Doctor?

11 A

They were.

12 Q

All right Doctor, if you need to refer to them, please feel free to do so. Do you remember or can you tell us what your examination consisted of?

13 A

Yes 11, the first part is an interview and asking the patient what kind of problems

1 or complaints he might have.

2 Q What did Mr. Kotelewec tell you in
3 that part of your examination?

4 A The major thing that bothered him was
5 neck pain.

6 Q What...did he give you any more specifics
7 as far as the neck pain or anything like that?

8 A Yes. He described his pain as being
9 like a pressure. His neck felt as if it was
10 in a vice. The pain radiated up the neck and
11 he had a certain funny sound in his neck when he
12 turned his head.

13 Q Did he tell you of any other problems,
14 Doctor?

15 A Yeah. That moving his head or turning
16 his head from one side to the other were
17 uncomfortable and difficult for him to do.

18 Q Were those the only complaints that he had?

19 A There were also symptoms in the right han

20 Q And, what do you mean by symptoms in the
21 right hand? What were they?

22 A He had pain in the right arm. He had had
23 numbness and tingling in the fingertips of the
24 right hand for a year, and so he had had trouble
25 writing with his right hand.

1 Q Were there any other complaints that
2 Mr. Kotelewec had at the time he saw you?

3 A No.

4 Q Doctor, did you find anything else out
5 during the course of your interview of
6 Mr. Kotelewec?

7 A I did.

8 Q And, what else did you find out?

9 A Well, he dated these problems back to
10 an accident that he had in April of 1988.

11 Q What did you tell you about the accident?

12 A That he was sitting in a car that was
13 struck from behind and he was thrown backwards and
14 forwards. Then he went on to tell me about
15 the subsequent medical care that he had received
16 after that.

17 Q Could you give us some idea of what
18 subsequent care he did receive, at least as he
19 told you?

20 A Sure. He went to the Kaiser Permanente
21 emergency room. He was given a collar.
22 He followed up with treatment at Kaiser Permanente
23 and he had physical therapy over the next several
24 months. He also saw another physician, Dr. Guillotto. (Phonic)
25 Then he had additional treatment, but that was

1 about a year later.

2 Q Who did he see a year later?

3 A He was...well, in July of 1988 he was
4 admitted to Metro Health Hospital with chest
5 pain.

6 Q Was that something that was related to
7 this accident, Doctor?

8 3:16:19 - MR. POMERANTZ:
9 Objection.

10 Q If you know? Well, strike that. Let
11 me as that. Doctor, that admission in July
12 of 1988 to Metro General...Metro Health Hospital,
13 do you have an opinion as to whether...to a
14 reasonable degree of medical certainty as to
15 whether that admission was related to this
16 automobile accident?

17 A I do have an opinion, yes.

18 Q And, what is your opinion, Doctor?

19 A That that admission was not related to
20 his accident.

21 Q Okay. Doctor, was there any other
22 treatment that Mr. Kotelewec received relative
23 to this automobile accident as he related it
24 to you?

25 A Apart from the Metropolitan...or Metro

Health admission, he had been another neurologist.
 Dr. Mucker, and he had also seen another physician.
 Mr. Kay

Q

Doctor, was there any other medical
 history that Mr. Kotelewec gave you at the time
 of your interview?

A

I believe that is all the history. Oh,
 he had one other injury in 1970.

Q

What kind of injury was that? Do you
 know?

A

Well, it was similar to the one that we
 are talking about in 1988. He was thrown....
 he had a flexion-extension or a forward-backward
 type of injury. He had neck pain as well as,
 for about a year or so and that he had to stop
 off work about a month from that 1970 injury.

Q

After you completed the interview of

Mr. Kotelewec, what did you do, Doctor?

A

I did a physical examination.

Q

And, could you tell us what that consisted
 of?

A

Sure. The examination is divided into
 parts. I had him move his neck. I actually
 wanted him and told him to move his neck certain
 ways, but I had also told him already how his

1 neck as I was sitting and talking to him in the
2 interview. I tested his strength in the arms and
3 the legs. I tested his sensation, his feeling
4 to pin and vibratory sense. I tested his
5 reflexes. I did a test for carpal tunnel syndrome.
6 And, I did a straight leg raising test to check
7 for sciatic nerve compression.

8 Q Doctor, what were the results of the
9 tests that you did?

10 A Well, for the most part everything was
11 okay. He could move his neck around pretty well.
12 He had good strength. He had normal sensation.
13 His reflexes were normal. The one thing that I
14 did find was that he had an abnormal finding when
15 I tapped over the right media nerve or the right
16 carpal tunnel nerve and he had pain there and
17 pain which shot into the hand, which is typical
18 of carpal tunnel and called a Tinnel's sign.

19 Q What is carpal tunnel, Doctor?

20 A It is a compression of a nerve as it
21 runs over the carpal bones and the area that
22 this nerve runs in is actually a tunnel shaped
23 affair. It can get smaller with age and various
24 processes and so it was...the nerve becomes
25 compressed and you get symptoms related to that;

1 namely problems downstream from the nerve, tingling,
2 numbness, pain in the fingers.

3 Q Where is...you mentioned the carpal bones.
4 Where are they located on the body?

5 A They are in the hand.

6 Q And, where would the symptoms appear when
7 you have carpal tunnel syndrome?

8 A In the fingers and the hand.

9 Q And, you found that Mr. Kotelewec did
10 have carpal tunnel syndrome?

11 A I believe he did, yes.

12 Q Doctor, do you have an opinion to a
13 reasonable degree of medical certainty as to
14 whether that carpal tunnel syndrome was related
15 to the automobile accident?

16 A I do.

17 Q And, what is your opinion?

18 A That the carpal tunnel syndrome that he had
19 was not related to his accident.

20 Q Doctor, did you do anything else as part
21 of your examination of Mr. Kotelewec?

22 A I looked at his records. I have looked
2.3 at some X-rays and that was the extent of my
24 evaluation.

25 Q Doctor, as a result of your examination,

1 of your review of those records and X-rays,
2 did you come to an opinion to a reasonable degree
3 of medical certainty as to what injuries
4 Mr. Kotelewec suffered in the automobile accident
5 of April of 1988?

6 A I did.

7 Q And, what is your opinion?

8 A That he had some immediate neck symptoms
9 which were due to the accident and they
10 probably persisted for a period of time. But,
11 that the symptoms that he was complaining about
12 when I saw him in 1991 and three years later
13 were due to a degenerative disease of the discs
14 in the neck, namely degenerative disc disease,
15 and that his problems that...most of the problems
16 that he had when I saw him in 1991 were not
17 related to his accident.

18 Q Doctor, what is degenerative disc disease?

19 A The discs tend to wear and wear unevenly.
20 Some of them become calcified and lose their
21 rubbery consistency over time in which case they
22 don't flex and move around as well and so when
2.3 pressure is put on them they crack, they hurt,
24 and they are not the nice spongy things that
25 the patient usually has in his teens or 20's.

1 So, as this degenerative process takes place,
2 motion becomes more difficult and more uncomfortable
3 and X-ray changes start to take place.

4 Q Doctor, how did you reach the conclusion
5 that his problems currently are related to
6 this degenerative disc disease rather than the
7 automobile accident?

8 A Two ways. The kind of complaints that
9 he has sound more like a chronic disc problem
10 rather than, say, a single disc herniation. The
11 X-rays he has had over the years show that he
12 has narrowed degenerative disc spaces.

13 Q You introduced another term, disc
14 degeneration, what is that, Doctor? .

15 A Well, disc degeneration and degenerative
16 disc disease I am using to mean the same thing.

17 Q Okay. And, Doctor, again, do you have an
18 opinion as to whether this degenerative disc
19 disease was caused by or aggravated by the
20 automobile accident?

21 3:22:02 - MR. POMERANTZ:

22 Objection.

23 Q Let me rephrase it. Doctor, do you have
24 an opinion to a reasonable degree of medical
25 certainty as to whether this disc...degenerative

1 disc disease was caused by or aggravated by
2 the automobile accident?

3 3:22:14 - MR. POMERANTZ:
4 I'll object to the
5 afore question, but go
6 ahead.

7 A I have an opinion.

8 Q And, what is that opinion, Doctor?

9 A That the degenerative disc disease that
10 **Mr.** Kotelewec has is not related to his injury
11 in 1988.

12 Q Okay. Doctor, I have no other questions.
13 Thank you.

14 MR. POMERANTZ: Can we
15 go off the record for a
16 minute? Can I take a look
17 at your chart?

18 OPERATOR: We're off the
19 record.

20 OPERATOR: We're on the
21 record.

22 DURING CROSS EXAMINATION BY MR. DAVID POMERANTZ:

23 Q Doctor, my name is David Pomerantz and I
24 represent the plaintiff in this case, Wasyl
25 Kotelewec and now I have a chance to ask you some

1 questions. First of all, so that the jury
2 understands your role in this case, can you tell
3 us when you first saw Mr. Kotelewec?

4 A Yeah. On...let me just look at my notes.
5 March 4, 1991.

6 Q So, that would have been a little over
7 a month ago?

8 A Right.

9 Q And, you had never seen him before that?

10 A That is correct.

11 Q Okay. So, the first time that you laid
12 eyes on Mr. Kotelewec was nearly three years
13 after the date of the accident which is the
14 subject of this lawsuit, correct?

15 A That is correct.

16 Q So, would it be fair to say that you don't
17 have any first hand knowledge regarding his
18 condition at any time before that?

19 A Correct.

20 Q And, you have no first hand knowledge of
21 his physical and mental state before this car
22 crash?

23 A Only what he has told me or what is in
24 the records?

25 Q All right. And, it would be fair to say

1 that all of your knowledge regarding this case
2 comes from the records that you reviewed, what
3 he told you, what we refer to as a history, and
4 from your examination of him, correct?

5 A That is correct.

6 Q All right. Now, since that examination
7 on March 4th, 1991, have you examined him since
8 that time?

9 A I have not.

10 Q So, that exam of March 4th, 1991 constitutes
11 your one and only exam of him?

12 A That is correct.

13 Q All right. And, the medical records that
14 you spoke of, what records exactly are those
15 that you have reviewed?

16 A It is the Metro Hospital records, the
17 Kaiser Permanente records including some X-ray
18 reports, an X-ray report that Dr. Guillotto
19 ordered, the emergency room record, some of
20 Dr. Guillotto's office notes, Dr. Tucker's report,
21 if I didn't say that. I believe that is it.

22 Q Do those kinds of records include records
23 pertaining to Mr. Kotelewec from prior to the
24 date of the motor vehicle collision?

25 A I believe all of this material is after

1 1988.

2 Q Okay. So, in other words, you have not
3 reviewed any medical records regarding any
4 conditions, physical or mental, of my client
5 from before the date of this collision?

6 A No. Only those that may be mentioned
7 or discussed in the records that were obtained
8 in 1988 or later.

9 Q All right. So, in other words, the
10 complete extent of your knowledge of his
11 condition up to the moment of this collision
12 are from what Mr. Kotelewec told you in the
13 history?

14 A Right. Or what is in the records because
15 some of the records, for instance, the Metro
16 Health records talk about prior conditions.

17 Q All right.

18 A But, those records

19 Q But, the actual records from those
20 prior conditions you don't have?

21 A Correct.

22 Q All right. And, so the jury understands
23 the taking of a history, this is not a situation
24 where the patient comes in and tells you everything
25 that they think is relevant. They respond

specifically to questions that you ask, correct?

A Yeah But the recitation on and the description of the symptoms is a and large a spontaneous patient directed phenomena that I encourage patients to tell on their own terms what they feel is wrong, and there is more patient talking than doctor talking in the interview.

Q But it is an interview. In other words, you are asking questions and the patient is answering?

Correct

Q All right Have you ever rendered any treatment to Mr. Kotelewec?

I have not

Q All right You never performed surgery or physical therapy or prescriptions or medication or gave him home exercises, anything like that?

Correct

Q The fact is is that is not the purpose of your examination and your evaluation, correct?

Correct

Q You were well, first of all so that we are clear, who retained you to examine Mr. Kotelewec?

A Mr. Wantz.

Q All right. And, Mr. Wantz hired you not to treat Mr. Kotelewec, but to evaluate him, write a report, send it to Mr. Wantz, and to testify against Mr. Kotelewec, if that became necessary?

3:28:49 - MR. WANTZ:

Objection.

Q Is that a fair statement?

A I would put it a little differently.

I was engaged to evaluate Mr. Kotelewec, render a report, and maybe give further comment or testimony as was needed.

Q Okay. And, in fact, you are testifying for the defendant and not for the plaintiff in this case, is that correct?

A That is how it turns out. Although I don't know that when I am engaged.

Q All right. And, of course, Mr. Wantz is paying you to do these things, is that correct?

A Yes, he is.

Q All right. If Mr. Kotelewec should need further treatment down the road for his injuries, you would not expect to be consulted

1 Q All right. In fact, I believe that you
2 in the past have evaluated injury victims that
3 I have represented or my office has represented,
4 is that a fair statement?

5 A I think so, although I am not certain.
6 because there is no active memory, but it seems
7 likely and possible.

8 Q Okay. If I represent to you that you
9 have, you have no reason to doubt that?

10 A I do not doubt your word.

11 Q All right. Is this type of work,
12 conducting what is commonly called defense
13 medical examinations, is this something that
14 is required of physicians in this area?

15 A No, it is not.

16 Q Okay. There is no mandate from the
17 A.M.A. or by the State of Ohio that you do a
18 certain number of these?

19 A It is voluntary.

20 Q Okay. And, the purpose that you do it
21 obviously is for compensation, correct?

22 A Well, there is more to it than it.
23 It is a stimulating and interesting kind of work
24 that I find challenging and I am compensated
25 for it at the same time usually.

1 Well, what I am driving at is that
2 you are not doing this to further patients
3 medically, per se?

4 Oh, there is usually no medical
5 benefit to the patient.

6 Okay. Now, you wrote a report to
7 Mr. Wantz setting forth your opinions regarding
Mr. Kotelewec, is that a fair statement?

9 I did.

10 And, in that report you registered
11 opinions regarding Mr. Kotelewec's condition
12 as it existed before the car crash. I think you
13 discussed the degenerative disc disease
14 specifically.

15 Correct.

16 All right. But, as you testified
17 previously, you did not have the benefit of
18 any records of prior treatment of Mr. Kotelewec
19 when you wrote that report, is that a fair
20 statement?

21 Only the records, right, that are made
22 in 1988 or later.

23 All right. Now, is it your belief
24 as we sit here today that your report was
25 accurate?

1 A I believe it is accurate, yes.

2 Q All right. And, that report bears your
3 signature?

4 A It does.

5 Q All right. Did you review the report
6 before you signed it?

7 A Yes.

8 Q All right. Now, Doctor, I noticed
9 a number of inconsistencies, and without going
10 through all of them, at the bottom of the first
11 page, can you read the last sentence starting,
12 "In July...."

13 3:32:56 - MR. WANTZ:

14 I'm going to object and
15 move to strike the comment
16 But, go ahead.

17 A "In July of 1988, a year and three months
18 after his injury, he was admitted to Metro
19 Hospital for chest pain."

20 Q All right. Doctor, according to your
21 records, what date was Mr. Kotelewec injured?

22 A April... .

23 Q Of?

24 A ...of 1988.

25 Q So, in fact, that was about three months

1 after and not a year and three months?

2 A Correct.

3 Q Okay. So, that was an inaccuracy?

4 A That is an inaccuracy.

5 Q Okay. On the second page, you stated
6 that Mr. Kotelewec played sports including
7 golf and volleyball, is that correct?

8 A That is what he told me.

9 Q All right. Doctor, isn't it a fact that
10 (Phonic)
11 my associate, Paul Nuendorp, was present with
12 Mr. Kotelewec in your office during this
entire evaluation?

13 A I believe that is right,

14 Q And, in fact, I think it is reflected
15 in your office notes that he was present?

16 A Correct.

17 Q All right. And, isn't it true that
18 Mr. Nuendorp took notes contemporaneous
19 with the exam and the interview?

20 A I don't recall that he did, but if you
21 say that he did then I would accept that.

22 Q Okay. Isn't it a fact that Mr. Kotelewec
23 told you at the time of the evaluation that he
24 had on occasion tried to played golf but was
25 unable to because of his injuries?

1 A My notes were that he tried skiing and
2 golf and that he was playing volleyball, meaning
3 that I think that he was playing volleyball and
4 probably tried golf and the others, but may not
5 have succeeded.

6 Q Okay. What I am driving at is that
7 Mr. Kotelewec did not represent to you that
8 he was engaging in the sports on an ongoing basis,
9 but rather that he had attempted them subsequent
10 to the injury but before you saw him?

11 A I believe that he had attempted them,
12 yes.

13 Q All right. Now, Doctor, you testified
14 previously that your opinions were based on
15 essentially three things. First of all, the
16 history of what Mr. Kotelewec told you, the
17 records that you reviewed, and your physical
18 examination of him. I would like to go through
19 these one at a time. First of all, when
20 Mr. Kotelewec came into your office, was he
21 cooperative with you?

22 A Yes.

23 Q All right. Did he appear to be a
24 sincere individual?

25 A Yes.

1 Q Do you normally take a history when
2 you evaluate a patient?

3 A Yes.

4 Q Would you agree with me that a history
5 is an important part of any medical examination?

6 A I would.

7 Q And, a patient is an important source of
8 information for the doctor in determining the
9 nature and the cause of injuries?

10 A Yes.

11 Q Isn't it true that when you took the
12 history in this case that Mr. Kotelewec told
13 you that he was injured in a rear end motor
14 vehicle accident on April 21st, 1988?

15 A Yes.

16 Q All right. Did he tell you that that
17 collision threw him backwards and forwards?

18 A Yes.

19 Q All right. And, did he also tell you
20 that he went to Kaiser emergency room the next
21 day and then follow up with Kaiser for physical
22 therapy, saw Dr. Guillotto for a period of time
23 for his injuries, and then later saw Dr. Tucker?
24 He told you all these things?

25 A He did.

1 Q All right. And, did all these things...
2 were all these things born out by the records
3 that you reviewed as being true and accurate?

4 A They were.

5 Q Did he also say that he had neck pain
6 following the collision?

7 A He did.

8 Q All right. Did he also tell you that
9 he developed pain, numbness, and tingling into
10 his right extremity following...upper extremity
11 following the collision?

12 A The tingling and numbness would have
13 occurred a year after the injury.

14 Q Okay. But, during the period following
15 the accident is when these things developed?

16 A After the accident, correct.

17 Q All right. And, did he also tell you that
18 he continues to suffer problems at the present
19 time?

20 A Yes, that is correct.

21 Q All right. So, to put this in perspective,
22 nearly three years after this motor vehicle
23 collision he is still complaining of pain?

24 A That is correct.

25 Q Incidentally, Mr. Kotelewec did not go to

1 Kaiser emergency room until the day following the
2 collision. You have an opportunity to see and
3 treat patients who are injured in your own
4 practice who are injured in motor vehicle
5 collisions, is that true?

6 A I do.

7 Q All right. And, I take it that some
8 do not seek emergency room treatment until,
9 say, the following day?

10 A That is true.

11 Q All right. That is not an unusual
12 situation?

13 A It is not.

14 Q All right. Now, if you could turn your
15 attention to the Kaiser emergency room records.
16 Do you have those before you?

17 A Yes.

18 Q All right. And, first of all, in the
19 records it does reflect that Mr. Kotelewec
20 told the emergency room doctor that he had
21 been involved in a motor vehicle collision or
22 rear end collision the day before, correct?

23 A He was hit by an automobile and then
24 the date of the record is April 21st or at least
25 that is what is stamped on the top. The date of

1 his accident was, I think, April 21st, although
2 it is written here that...it says, "yesterday."

3 Q Yeah. I think we have been laboring under
4 a false impression. That is, yeah, I think the
5 accident actually occurred on the 20th and
6 so that would be consistent, correct.

7 A It would be a day later then.

8 Q All right. And, he told the Kaiser
9 physician that the impact forced his head and
10 neck backward?

11 A Yes.

12 Q All right. And, according to the records
13 a physical examination was performed by the
14 emergency room doctor?

15 A That is correct.

16 Q All right. In that exam the doctor
17 found, quote, "Mid C-spine tenderness."

18 A Correct.

19 Q Do you see that? First, when we talk
20 mid C-spine, what does that refer to? What area?

21 A The cervical spine; the neck.

22 Q All right. And, they also found....
23 the doctor found tender right and left
24 trapezius trigger points, correct?

25 A Correct.

1 Q What is the trapezius?

2 A It is the muscle that runs down the back
3 of the neck to the shoulders.

4 Q All right. And, what are exactly trigger
5 points?

6 A Those are sore spots or points where
7 when they are touched they are exquisitely
8 tender or more tender than they should be.

9 Q All right. Incidentally, they also found
10 some clotted blood in his nose, is that correct?
11 I think that is on the bottom.

12 A "Nose clotted blood." Something about
13 "right septum," yes.

14 Q Were you aware that following the
15 collision Mr. Kotelewec suffered a bloody
16 nose from the collision?

17 A I am now.

18 Q Okay. And, what were the diagnoses
19 made by the emergency room following the collision?

20 A "Cervical sprain with traumatic". .I think
21 that is fibrositis...something about....

22 Q Fibromyositis, I think.

23 A Perhaps fibromyositis. "Trapezius and
24 then epistaxis, right nostril, controlled."
25 That is a bloody nose.

1 Q All right. Let's break that down, if
2 we could. Cervical, as we said, is the neck
3 area, correct?

4 A Correct.

5 Q All right. Sprain is what exactly?

6 A Well, that is sort of a lay term meaning
7 something has been stretched or pulled or hurt
8 and it is used to mean a great number of things.
9 But, I think here the idea is that some muscles
10 or ligaments have been pulled or stressed.

11 Q And, a sprain, as commonly used, means
12 a more severe injury than, for example, a strain,
13 would that be a fair statement?

14 A Well, they are both kind of vague and
15 in a mild range of terms, but I would say they
16 kind of overlap a bit. Neither of them connotes
17 something very serious.

18 Q All right. Well, let me ask you this.
19 When we talked about a sprain, we talked about
20 stretching of the soft tissues and also internal
21 tearing, am I correct?

22 A Yeah, there can be ligaments that are
23 pulled and tendons, that type of thing.

24 Q All right. Now, the other term was
25 traumatic and fibromyositis. Traumatic means from

1 a trauma such as car accident, correct?

2 A Right. From an injury.

3 Q And, well, in short, the emergency room
4 records were essentially consistent with what
5 Mr. Kotlewski told you in your office, correct?

6 A They were, yes.

7 Q All right. Do the Kaiser records also
8 reflect that Mr. Kotlewski sought and received
9 physical therapy from Kaiser thereafter?

10 A I believe so, but I would have to look
11 it up to be sure. Yes, he was getting physical
12 therapy at Kaiser.

13 Q And, that was for the neck injury, correct?
14 A Yes.

15 Q All right. Now, from my review of the
16 records it appears that he followed at Kaiser
17 physical therapy on a number of occasions in
18 May of '88 and then into June of '88, is that
19 a fair statement?

20 A Yeah. There is notation in June, May,
21 and the last one may be it looks like June 6th
22 where it says, "final."

23 Q Okay. Then he had a couple other visits
24 where apparently he was seen by the medical
25 doctor there on June 14th and June 20th?

1 A Yeah. June 20th he saw a physician. In
2 August there was a phone call. I don't see either
3 one from the 14th, but perhaps I have just missed
4 it.

5 Q I think they are out of order.

6 A Okay.

7 Q Also the records reflect that Mr.
8 Kotelewec did in fact see Dr. Guillotto for
9 continued neck pain?

10 A I know he saw Dr. Guillotto. I wanted to
11 look at the notes before I say exactly what he
12 was seeing him for.

13 Q Take your time.

14 A Okay.

15 OPERATOR: We're off the
16 record.

17 OPERATOR: We're on the
18 record.

19 Q Was that...he was seen for neck pain,
20 among other things?

21 A Correct.

22 Q All right. And, Dr. Guillotto ordered
23 some X-rays to be taken, is that correct, of
24 his neck area?

25 A He did. He did.

1 All right. And, the records also indicate
2 that Mr. Kotelewec has been treating with Dr. Tucke
3 for his problems?

4 Correct.

5 All right. Let's turn your attention to
6 the physical examination that you performed on
7 Mr. Kotelewec last month. Would you say that
8 your exam was a thorough one, Doctor?

9 Yes.

10 All right. How much time did the
11 physical exam portion of the evaluation take?

12 I don't keep specific time records, but
13 I would guess that the physical examination in
14 this situation would be anywhere from 15 to 30
15 minutes, something of that nature.

16 Okay. According to the notes of my
17 associate, the examination began at 11:14 a.m.
18 Do you have any reason to doubt that? That is
19 the physical exam portion.

20 3:44:47 - MR. WANTZ:

21 I'm going to object at
22 this point unless you
23 intend on introducing
24 Mr. Nuendorp as a witness.

25 Go ahead and answer.

1 A What was the question?

2 Q According to the notes of my associate,
3 Mr. Neundorpf, the exam began at 11:14 a.m., the
4 physical exam. Do you have any reason to doubt
5 that?

6 A I have no reason to say anything about
7 it. I mean, I can look in the books and see
8 when he came in and if his appointment was at
9 11:00. You are saying that it started at 11....

10 Q 14.

11 A Um. If his appointment was at 11:00 or
12 a quarter of 11:00 or so, that would be about a
13 logical time perhaps. I don't know quite what
14 to say about your associate's recollection or
15 reporting of this.

16 Q Well, according to his notes, the physical
17 exam portion ended at 11:20, so that would mean
18 that the physical exam itself only lasted about
19 six or seven minutes. Does that sound about
20 right to you, Doctor? (Voice over)

21 3:45:40 - MR. WANTZ:

22 Note an objection. (Voice
23 over with "Doctor")

24 A That sounds inaccurate to me.

25 Q Okay. Do you have any evidence to the

1 contrary then: any records?

2 A I do. I do.

3 Q Okay. What is that?

4 A This type of exam would take longer
5 than that. We can not do a six minute exam and
6 do reflexes, sensation, power tests, range of
7 motion tests in six minutes. I think that is
8 absurd.

9 Q Okay. So, you disagree with how long it
10 took?

11 A I disagree violently.

12 Q So, you think that a six or seven minute
13 neurological exam would be absurd?

14 A I think that, sir, that this was a
15 six minute is absurd.

16 Q Okay. Now, as part of your physical
17 exam you conducted certain range of motion tests
18 on Mr. Kotelewec's neck. You had him turn from
19 side to side, back and front, that sort of thing,
20 is that correct?

21 A I did.

22 Q All right. And, the purposes of these
23 tests, as I understand them, are first of all
24 to see if the patient is capable of making those
25 motions and, second of all, to see whether any of

1 those motions elicit pain?

2 A Yeah. They are to test how far the
3 patient can go and what type of response there is
4 when that motion is undertaken.

5 Q Okay. And, generally you determine that
6 a motion causes pain based on how the patient
7 reacts or what he says, correct?

8 A All right. What he says, what he shows
9 in terms of facial expression, that type of thing,
10 yes.

11 Q And, when Mr. Xotelewec turned his head
12 laterally....in other words...maybe you can
13 demonstrate for the camera a lateral movement
14 left and right?

15 A Yeah. This is a lateral movement.

16 Q Okay. And, when he made those lateral
17 movements he had discomfort, both to the left
18 and to the right, is that correct?

19 A That is what he reported, yes.

20 Q And, that would be what would be
21 considered a positive finding; in other words
22 pain was elicited?

23 A It was worth recording, but I don't
24 know whether I would call it a positive finding.

25 Q Okay. Well, you did find a positive

1 Tinnel's Sign, is that correct?

2 A Yes.

3 Q And, that would be on the right extremity?

4 A Right hand.

5 Q All right. Am I .tall us ~~how~~ a Tinnel's
6 Sign is found?

7 A Tap over the wrist in the center. You
8 are tapping the media nerve, carpal tunnel nerve.
9 You are adding pressure to an already compressed
10 nerve so the patient experiences pain along the
11 course of the nerve and running into the fingers

12 Q And, that test was positive when you
13 performed it, correct?

14 A It was.

15 Q All right. Would it be fair to say that
16 a positive Tinnel's Sign is an indication of
17 a sensory loss or irritation of some sort?

18 A No. It is only a sign of compression of
19 the media nerve, or if it is a Tinnel's Sign
20 over another nerve at another location then it
21 means another nerve in another location, but
22 it isn't specific for sensation.

23 Q All right. But, what I am getting at,
24 is it specific for where the compression is or
25 what ~~type~~ of compression it is?

1 A

It is helpful in diagnosing compression at places where they occur such as in the wrist. Now, sometimes over the knee, but it doesn't tell you anything more than that

5 Q

What I am getting at is if you tap over the wrist and get a positive Tinnel's Sign, does that necessarily mean that the compression was located in the wrist or could the nerve be compressed elsewhere?

10 A

The high likelihood is it is compression in the wrist.

12 Q

But, it is possible that it could be compression some place else?

14 A

Well, if it is it is compressed in two places then.

16 Q

Okay

17 A

What happens

18 Q

All right Doctor, what I would like to do now is try and narrow down the areas where there is agreement between me and you and where there is disagreement so that the jury understands where the issues really are. You do agree, do you not, that Dr. Kotzlewec is involved in a motor vehicle accident on March 20th, 1988?

25 A

I do.

1 Q

All right And you agree that the type of rear end collisions can cause neck injuries?

4 A

I do.

5 Q

All right These injuries are caused by sudden flexion and extension of the neck?

7 A

That is the physical process.

8 Q

Right. And, that in your opinion is what occurred on Mr. Kotelewec on this accident; he suffered a flexion-extension type of injury?

11 A

I believe that is correct, yes

12 Q

All right So you are not saying that Mr. Kotelewec was uninjured in this motor vehicle collision?

15 A

I am not saying that

16 Q

All right You agree that he was hurt?

17 A

I agree he was hurt

18 Q

All right Would you concur with the emergency room doctor's diagnosis of cervical sprain and traumatic fibromyositis of both trapezius?

22 A

Responding on how that term fibromyositis is used, I might or might not since we have only found it a little differently put, he certainly had a cervical sprain and some muscle

1 tenderness. I don't know that I would use the
2 term fibromyositis for that.

3 Q All right. And, you are aware that
4 Dr. Tucker diagnosed the neck injury as a
5 traumatic cervical myofascitis, correct?

6 A I believe he did and I believe he didn't.

7 Q All right. You believe you did diagnose...

8 A Let me look at Dr. Tucker's report rather
9 than....

10 Q Okay.

11 A He says that he originally thought it
12 was traumatic myofascitis, but that he thought
13 it should have cleared up meaning that he probably
14 didn't think he still had it.

15 Q He didn't explicitly say that. He
16 explicitly said that there was traumatic
17 myofascitis of the cervical spine, correct?
18 Although you are reading into it that because
19 it didn't resolve itself over a period of time
20 that Dr. Tucker might not think that that is
21 what it actually was.

22 A Well, he says, "Would have expected
23 it to clear by this time." Make up what you will
24 of that. I mean, to me that suggested, "I thought
25 it was, but since it has gone on all this time

1 maybe it isn't."

2 Q

All right. That is your interpretation of
3 his report? All right. So, that we are clear,
4 cervical sprain and cervical myofascitis are
5 essentially two sides of the same coin?

6 A

It depends on how you use the terms.

7 Q

All right. Do you think myofascitis
8 is a more serious condition than this sprain?

9 A

It depends on how it is used?

10 Q

Well, in the way that you normally use it.

11 A

I don't use that term. It is way too
12 vague a term and for this very reason. Myofascitis
13 strictly means irritation of muscle which is
14 what happens when you fall down the steps, when
15 you stretch, when you play golf the first time
16 of the year or move furniture. It also occurs
17 in viral infections of muscle and dystrophies
18 and other illnesses.

19 Q

Well, the traumatic we are talking about.

20 A

Traumatic damage to muscle you can call
21 traumatic myofascitis and I understand what that
22 means and I can talk about that, if that is what
23 you are asking me.

24 Q

That is what I am asking you.

25 A

Okay. Traumatic myofascitis is physical

1 damage to muscle. The muscle repairs itself
2 and it goes back to being normal.

3 Q Okay. So a sprain would be a broader
4 term then?

5 A Well, a strain is usually...again, these
6 are all lay terms used by different people to
7 mean different things. It applies to not only
8 muscles, but other things like joints, ligaments,
9 tendons, and non-muscular structures.

10 Q Not to cut you off, Doctor, but how would
11 you diagnose...you have already stated that
12 Mr. Kotelewec suffered an injury to his neck in
13 this motor vehicle accident. How would you
14 diagnose that injury and what terms would you
15 use?

16 A I would simply say that he had neck
17 pain. He probably had a stretch of ligaments
18 or tendons and I would just use those words, or
19 maybe a stress on a disc.

20 Q Okay. Would you agree that these
21 conditions that you have just diagnosed
22 were proximately caused by the motor vehicle
23 accident of April 20th, 1988 to a reasonable
24 degree of medical probability?

25 A Back then, yes.

1 Q All right uld you further agree that
 2 the Kaiser treatment in the emergency room and
 3 then the physical therapy that followed were
 4 necessary treatment for the injuries caused by
 5 this collision?

6 A Oh, yeah Absolutely

7 Q All right uld you agree that
 8 Mr. Kotelewec still had neck pain and radiating
 9 symptoms into his arm and hand about a year later
 10 when he saw Dr. Guillotto?

11 A If that is what the records reflect, yes

12 Q Okay. And, would you agree that those
 13 visits to Dr. Guillotto were necessitated by
 14 those ongoing problems?

15 A I believe that is correct, yes

16 Q All right Have you had the opportunity
 17 to review the medical bills of Kaiser, Dr.
 18 Guillotto, and Ryck, Siddleman which did the
 19 X-ray of Mr. Kotelewec at Dr. Guillotto's
 20 request? I think they were

21 A I have seen some of the bills, yes

22 Q Okay based on your experience as a
 23 physician, do those charges appear to be
 24 unreasonable for the services that were provided
 25 to Mr. Kotelewec?

1 A Which charges?

2 Q The charges from Kaiser, Dr. Guillotto,
3 Siddleman... Ryck, Siddleman, and Gynecki.

4 A Well, if they are the standard charges
5 rendered for that kind of care I would say, yes,
6 but I don't know exactly what they were and so
7 I don't want to say they were okay. Maybe I
8 should I look at them.

9 Q Yeah. Look at them.

10 A Okay.

11 Q As I said, Doctor, I am just trying to
12 get the areas where we agree and where we disagree.

13 A All right. Most of these charges in this
14 packet seem reasonable and appropriate. There is
15 one that is not identified, but....

16 Q Which one is that? Oh, that would be
17 from Medical Center South. All right. Why don't
18 we leave that one aside then.

19 A Okay.

20 Q All right. So, you would agree that the
21 charges are reasonable for the services reflected
22 in those bills?

23 A Yes.

24 Q All right. Doctor, would you further
25 agree that Mr. Kotelewec continues to have neck

1 pain which persists to the present time?

2 A He agrees, yes

3 Q All right. And, would you agree that his
4 neck is not fully resolved?

5 A He agrees, yes

6 Q All right Also, as I read your report,
7 at least some and as I understood your testimony
8 on direct exam. at least some of his ongoing neck
9 pain is still related to his injuries in this
10 motor vehicle collision, is that a fair statement?
11 A Some of his ongoing neck pain through years
12 later? No

13 Q You don't agree with that?

14 A No.

15 Q All right You address this issue in your
16 report, is that correct?

17 A Yes

18 Q All right And, on page three of your
19 report 11, first of all, when you wrote your
20 report you know that Mr. Nitz and He will be
21 relying on it, correct?

22 A He assumes you would, yes

23 Q All right And, you tried to be precise
24 in the language that you used in the report?

25 A He will, yes

1 Q

All right Now, on page three you said, quote, 'It appears to me that he has recovered for the most part from his injury.' And, when you mean injured you mean from the motor vehicle collision.

2 A

Yes.

3 Q

Is that what you said?

4 A

Yes.

5 Q

Okay You could have written, 'It is my opinion that he is fully recovered from his injury.' Correct?

6 A

I could have written that, yes

7 Q

And, you didn't do that

8 A

I did not.

9 Q

Okay Fair enough And, you didn't do so because you do believe that some of his problems at this point are still related to the motor vehicle collision?

10 A

What I mean by that is that....

11 Q

Well, I don't

12

MR. WANTZ: Well, let him answer.

13 Q

Do you have a yes or no answer? I mean, I think you can answer that yes or no.

14

MR. WANTZ: Well, I think

1 he can explain his answer.

2 Q Well, give me a yes or no or tell me that
3 you can't answer with a yes or no and then we'll
4 take it from there.

5 A Can you ask the question again?

6 Q Sure. The reason that you did not write
7 fully recovered is because you felt that some
8 of Mr. Kotelewec's ongoing problems at this
9 point are still related to the motor vehicle
10 collision, is that true?

11 A That is not true.

12 Q Okay. Why is it not true?

13 A He is not fully recovered. He is...I
14 mean, in the sense that he still has symptoms.
15 But, I don't believe there is any causal connection
16 I don't think there is any reason for that accident
17 to cause any of the symptoms that he has at the
18 present time, but I don't want to present him as
19 a recovered individual.

20 Q Okay. But, you didn't say that in your
21 report. In your report you said, "From his injury" ..
22 and I mean...correct me if I am wrong...but when
23 you said injury you mean the injury in the
24 motor vehicle collision, correct?

25 A Correct.

1 Q And, so when you say that he is not...
2 I mean, I am just using your language, Doctor.
3 Are you basically...so what you are saying is
4 that that...what you wrote there is not what
5 you meant and what you meant is that he is
6 recovered from his motor vehicle collision?

7 A I believe that he is mostly recovered
8 from his motor vehicle.

9 Q Okay. Mostly?

10 A Uh-huh.

11 Q All right. Fair enough. Now, as I
12 understand your testimony, you believe that some
13 of his ongoing...the part that was not from
14 the motor vehicle collision...the problems that
15 he is having now, the ongoing problems, are related
16 to degenerative disc disease, is that correct?

17 A That is correct.

18 Q All right. Now, Doctor, I don't disagree
19 with you that he had degenerative disc disease
20 before this car accident. I agree with you on
21 that. You have, however, heard the term
22 aggravation, have you not?

23 A I have, yes.

24 Q Okay. And, an aggravation in layman's
25 terms means a worsening of the pre-existing

1 condition, is that a fair statement?

2 A That is a good definition.

3 Q All right. Do you agree that a trauma
4 such a motor vehicle collision can aggravate
5 a pre-existing degenerative disc disease?

6 A Yeah, an injury can aggravate, add to
7 a degenerated disc's problem.

8 Q All right. Now, when we talk about this
9 degenerative disc disease, we are referring to
10 the ongoing process of changes in the spine...
11 in Mr. Kotelewec's case, the cervical spine,
12 such as narrowing of the disc space, loss of
13 flexibility and so forth. Is that a fair statement?

14 A For a degenerative disc, yes,

15 Q All right. And, this is all normal....a
16 normal result of the aging process, isn't it?

17 A Some of that loss of flexibility,
18 spongeability, bouncing back, yes, occurs with
19 the passage of time in all the cartilage of the
20 body.

21 Q Okay. I think you even made the
22 comparison in direct testimony about the difference
23 between Mr. Kotelewec, say, and an 18 or 20
24 year old healthy individual and how much elasticity
25 they may have in their neck joints, right?

1 A Well, that would be...may be a useful
2 comparison, yes.

3 Q Okay. The fact is is that all of us
4 sitting here that are over the age of 30 probably
5 have some degree of spine degeneration caused 'by
6 the aging procees. Would that be a fair statement:

7 A Well, we have some degree of change in
8 the spine. Whether it is degenerative or not
9 depends on radiographic appearance, things of
10 that nature, but this is a wear and tear sort
11 of ongoing process, yes.

12 Q Okay. The result of day to day living?

13 A Correct.

14 Q All right. This degeneration is not
15 necessarily debilitating in and of itself, is it?

16 A The degeneration is accompanied by
17 changes in the way the structures work, but
18 by and large they are not debilitating.

19 Q Okay. I assume that in your own practice
20 you have seen patients with some degree of
21 spine degeneration that have no outward
22 manifestations of that process, is that a fair
23 statement?

24 A That is correct.

25 Q Okay. In other words, you have patients

1 who although they have some degeneration, they
2 don't have any complaint of any pain or stiffness
3 and so forth associated with that degeneration?

4 A That is correct.

5 Q All right. I would assume that you
6 probably have patients who had no clue that they
7 had any degeneration until, say, an X-ray was
8 taken maybe even for another reason and then it
9 shows up, being the only reason that they find
10 out that they have any degeneration of the spine?

11 A Yeah. Now, we can...there are several
12 ways that the term is used. There are changes
13 in X-rays and there are changes that are
14 accompanied by symptoms, so sometimes you see
15 things on X-rays and there is nothing to go with
16 it and you just describe it and sometimes you have
17 both. So, you can X-ray degeneration. You can
18 have physical clinical degeneration. You can have
19 both together. There are a number of different
20 ways that this can happen.

21 Q All right. Now, Doctor, prior to.....
22 to your knowledge, prior to the time of this
23 collision, April 20th, 1988, or at the time of
24 this collision, April 20th, 1988, Mr. Kotelewec
25 was not actively treating for his degenerative

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discuss which we all agree that he had,
but he was not actively treating for it, was he?

A

He was receiving no treatment for his
neck is my understanding

Q

Okay In other words, he wasn't getting
physical therapy on an ongoing basis, that sort
of thing?

A

Right

Q

He wasn't taking medication for it?

A

Correct

Q

All right Now, you would agree that
patients with degenerative cervical disc disease
are more sensitive to injuries because the
discs are not as strong and
robust to begin with Is that a fair statement?

A

That is

Q

I think that is a direct quote from your
report, as a matter of fact

A

Correct

Q

All right In other words, the same
traumatic injury, be it a car accident or whatever,
would cause more problems, to a reasonably young
of medical probability, in a person who already
disc disease than to a person who is healthy?

A

Right. The same amount of pressure applied

1 to a degenerated disc is going to get a worse
2 result than if it is a normal, healthy, robust
3 disc.

4 Q Okay. So, I think as you yourself
5 pointed out in your report, it takes a person
6 such as Mr. Kotelewec, who had degenerative
7 disc disease, longer to recover from these
8 injuries than the person without the pre-existing
9 condition, isn't that a fair statement?

10 A Yeah. His discs would be longer in
11 recovering.

12 Q All right. So, what I am hearing from you
13 is that Mr. Kotelewec was hurt worse, had more
14 problems, has been slower to recover, has greater
15 damages than a totally healthy 18 or 20 year
16 old who would have been in the exact same
17 collision?

18 4:03:03 - MR. WANTZ:

19 Objection.

20 A Well, it is hard to say what would have
21 happened to somebody else exactly because these
22 conditions never occur. But, if precisely the
23 same thing had happened....

24 Q In a laboratory situation.

25 A Yeah. ..then he would have had a long

1 recovery. I think that is a fair statement.

2 Q Okay. Incidentally, you testified, I believe
3 that you have compared the X-rays of the date
4 following the accident on April 21st, 1988 and
5 the ones from a little more than a year later that
6 Dr. Guillotto ordered, is that correct?

7 A I have seen the X-ray reports.

8 Q Oh, you have not reviewed the X-rays
9 themselves?

10 A And, I have seen some of the X-rays.

11 Q Okay. Have you compared the X-rays
12 themselves from 1988, April 21st, and the ones
13 that I think are approximately July of '89?

14 A I have to look at the dates on the ones
15 that I have to tell you.

16 Q Do you have them handy with you right now?

17 A I do.

18 Q Okay. Why don't you do that.

19 A Okay.

20 OPERATOR: We're off the
21 record.

22 OPERATOR: We're on the
23 record.

24 Q Doctor, while we turned off the camera
25 for a minute you had a chance to look over some

1 X-rays that you have reviewed previously
2 regarding Mr. Kotelewec, correct?

3 A Correct.

4 Q And, is it a fair statement that you
5 do not have any X-rays...films themselves following
6 April 21st, 1988?

7 A Correct.

8 Q All right. But, you did review the
9 radiologist's reports from the X-rays of
10 both April 21st, 1988 and from July of 1989
11 that Dr. Guillotto ordered, correct?

12 A Yeah. The Guillotto ordered X-rays and
13 the Kaiser X-ray reports, both of those reports
14 I have reviewed.

15 Q Okay. And, would you agree with me
16 that Mr. Kotelewec's neck had more degenerative
17 changes in 1989 then at the time of the collision?

18 A Um. . . .

19 Q You can refer to those if you want.

20 A I'll have to look at that up.

21 Q Do you have them?

22 A Yeah. The '87 report...or excuse me...
23 the '89 Guillotto report says, "Degenerative
24 bearing C4-5 and C6-7. Encroachment on the
25 neural foramen at C3-4," That is the neck.

1 Then the Kaiser X-rays say...okay..."Spur formation.
2 Degenerative changes at 3-4 and 6-7. The disc
3 spaces are relatively narrow." They say
4 relatively the same thing to me.

5 Q Okay. And, there may be a difference of
6 semantics, Doctor, I am not really sure. But,
7 what I am getting at is that in '88 the Kaiser
8 report said that there was mild impingement
9 on intervertebral foramina and relatively
10 narrowed disc spaces. The word that you didn't
11 read on the '89, a year later, said there was
12 significant degenerative narrowing. Now, I don't
13 know if that a difference in semantics or
14 if that is...if there is a change. But, the point
15 is that you haven't seen the actual X-ray from
16 1989, is that correct?

17 A This latter X-ray I have not seen, correct.

18 Q So, you have no way of knowing whether
19 his condition has stayed the same or in fact
20 has gotten worse?

21 A From the X-ray standpoint I can not
22 tell you whether it has changed or not in '89.

23 Q Okay. Incidentally, trauma can cause a
24 disc to degenerate, is that correct, start a
25 process of degeneration?

1 A If the disc is badly enough injured, yes.
2 Q All right. And, I would take it that
3 trauma can likewise cause a degenerative process
4 to accelerate?

5 A Well, degeneration, by definition, is
6 a process that is determined by a biologic clock
7 and so you can't change that anyway I mean.
8 You can set the clock ahead or behind, but you
9 can't change the evolution of that process. So
10 trauma wouldn't accelerate degeneration. It may
11 move it down the line and make it worse, but it
12 won't make it happen any faster.

13 Q Okay. That is what I am saying. In
14 other words, what I am saying is that if I was
15 in a motor vehicle accident and I had a degenerative
16 disc at one level, the trauma could actually
17 jump it ahead to a ~~rsp~~ level, correct?

18 A If there is enough of a disc injury,
19 that is correct.

20 Q And, again, degeneration is a process
21 that happens over time, correct?

22 A Correct.

23 Q All right. I think we have covered the
24 neck so toms there are just a couple of other
25 things that I wanted to touch upon. Now you

1 agree that impingement on the neural foramina
2 in the cervical spine can cause pain, numbness,
3 and tingling into the upper extremities?

4 A It can, yes.

5 Q All right. In other words, a neck....
6 maybe..you know...some jurors may not understand
7 this. A neck injury can actually cause symptoms
8 into the arms and hands, correct?

9 A Yeah. The nerves of the arms exit
10 to the next structure and so things that happen
11 to the neck can effect those nerves, that is
12 correct.

13 Q All right. And, when we talk about the
14 neural formina, what we are talking about are the
15 little windows in the spinal column from out which
16 the nerve servicing the arms or other parts of the
17 body leave the spinal column?

18 A That is correct.

19 Q All right. And, Mr, Kotelewec has
20 complained both to you and in the records of
21 problems in his right hand and arm since the
22 time of the collision...or developing subsequent
23 to the time of the collision?

24 A Correct.

25 Q All right. And, you found some objective

1 evidence of nerve problems in the hands with the
2 positive Tinnel's Sign?

3 A Correct.

4 Q All right. Now, but you testified that
5 in your opinion the problems in the right upper
6 extremity are the result of carpal tunnel syndrome,
7 correct?

8 A The tingling and the numbness in the hand,
9 yes.

10 Q All right. So that the jury understands,
11 carpal tunnel syndrome is a narrowing of basically
12 another window, the carpal tunnel which is located.
13 can you show us where exactly it is located?

14 A Yeah. It is...this is the space under
15 which the media nerve runs. The carpal bones are
16 here. There are many of them which enable the
17 hand to move in various different directions. The
18 tunnel is right under this structure and the
19 Tinnel's Sign is the tapping right here.

20 Q All right. If I were to trace that nerve
21 backwards from the carpal tunnel back up the
22 arm it would end up in the neck, correct?

23 A It would end up in various branches
24 and recombinations in the neck, yes.

25 Q All right. And, am I correct that carpal

1 tunnel is not normally the result of a single
2 trauma?

3 4 Yeah by far and away most carpal
4 tunnel is just a narrowing; one of these so
5 called degenerative or biologic processes in
6 the hand

7 Q Would you agree with me that repetitive
8 motion can be a cause of that?

9 A Yeah There are certain types of
10 occupational situations that aggravate
11 predispose, or can cause it.

12 Q All right. In your opinion, is that
13 what caused what you delivered to Mr. Kotlewski's
14 carpal tunnel injury, or do you not render an
15 opinion as to the cause of it?

16 A Well, it could be I am not so sure
17 about that I mean people who engage in
18 repetitive hand motions, typists, at sort of
19 thing are more likely to get carpal tunnel

20 Q Okay You say that you are not so sure.
21 So, in other words, you feel that he has got
22 carpal tunnel, but you are not sure where it
23 came from?

24 4 I can't tell you exactly where it came
25 from.

1 Q All right. The reason that I bring that
2 out is because you are aware, are you not, that
3 **Mr.** Kotelewec, while he was machinist and. I
4 assume did some repetitive motions, he had been
5 unemployed for a number of months before this
6 collision happened?

7 A That is my understanding.

8 Q Okay. And, that the nerve type symptoms
9 didn't manifest themselves until sometime after
10 the collision?

11 A That is my understanding.

12 Q Okay. In fact, I think in your report
13 you said they occurred well after the collision?

14 A I believe that was year or so.

15 Q Okay. So, it would have been even more
16 well after any work he had done at his place of
17 employment?

18 A Correct.

19 Q All right. Incidentally, if somebody is
20 in a motor vehicle collision and that starts a
21 process of degenerating the disc, it is possible
22 that the ultimate symptoms in the hands and arms,
23 tingling and numbness, would not appear for a
24 number of weeks and even months, isn't that correct

25 A If the disc is herniated and moves off to

1 one side and compresses a nerve that can be
2 an evolutionary ongoing process, but only by
3 that means, yes.

4 Q All right. Now, Doctor, you have read
5 Dr. Tucker's reports, correct?

6 A I have. Report. One report.

7 Q Okay. Report. Did you...can we go off
8 the record for a second?

9 OPERATOR: We're off the
10 record.

11 OPERATOR: We're on the
12 record.

13 Q Dr. Tucker has determined that there is
14 a psychological or psychiatric component to
15 Mr. Kotelewec's problem, is that a fair statement?

16 A I believe that is correct.

17 Q All right. As a neurologist, I take it
18 that you have seen patients who suffer from
19 psychological or psychiatric injuries stemming
20 from physical trauma?

21 A I have.

22 Q All right. Doctor, these are real
23 injuries in the sense that they can cause a
24 patient to be unable to return to normal well
25 being or unable to return to normal activities

1 that he or she did before the physical injury?

2 A When you say "these", what are you
3 talking about?

4 Q Psychological or psychiatric injuries that
5 result from a physical trauma.

6 A There are such psychiatric states, yes,
7 that can be impairing.

8 Q Okay. Would you agree with me that a person
9 who is already under...and I understand that you
10 are not a psychiatrist. But, as neurologist
11 would you agree with me that a person who is
12 already under emotional stress, be it from the
13 loss a job or a death of a loved one, would be
14 more susceptible to psychological injury from
15 a trauma than a person who is not under any
16 such stress?

17 A Well, that is hard to say. You are
18 talking about the vulnerability of the
19 psyche which is basically invulnerable in most
20 people. But....

21 Q Well, you are not saying that people
22 can't suffer from psychiatric injury?

23 A Oh, they certainly can. But, we don't
24 know what kind of reactions the psyche will have
25 until they have happened. There is no way to

1 say what you are prone to because you have had
 2 other things. Statistically, if you want to
 3 talk about it that y, people who have stress
 4 are, they are more easily stressed But, to take
 5 an individual and say because 'X' has had and
 6 "Y" has happened that this individual is more
 7 prone to other trauma, I find that hard to
 8 accept.

Q

9 Well, let me put it this way You
 10 previously testified that a person such as
 11 Mr. Kotlewec who has a prior physical condition,
 12 specifically degenerative disc disease, is
 13 more prone to well, let's put it this way
 14 He is more likely to take longer to heal and
 15 suffer more serious problems than a person
 16 who had a previously robust and healthy disc.
 17 Is there an analogy to a psychological condition
 18 that a person who is stressed out before a physical
 19 injury is more likely to suffer a psychological
 20 component to the injury or have more trouble
 21 recovering from the psychological component?

A

22 Yeah. If there is a substantial degree of
 23 psychiatric impairment of any type, those
 24 patients are less resilient or less able to
 25 fend off the slings and arrows of life. I think

1 if there is an established psychosis and a
2 manic depressive illness, major depression, and
3 so forth, yes, those people are more vulnerable.

4 Q Okay. In other words, the same trauma,
5 physical trauma may effect somebody who has
6 these pre-existing conditions much more than
7 perhaps you, me, or a member of the jury who
8 doesn't have any of those pre-existing problems
9 are better able to handle these situations?

10 A Yeah. Particularly if there is an
11 established substantial impairment, correct.

12 Q Okay. Would you agree that a physical
13 injury where psychological problems are
14 superimposed is more complex, more complicated
15 to treat than a physical injury standing alone
16 without the psychologist sequelae?

17 A The combination of a psychologic and
18 a physical problem takes more a treatment
19 armamentarium, yes.

20 Q All right. Can a person who has both
21 physical and psychological injury take longer
22 to recover than one who has only a physical
23 injury?

24 A I think that that, yeah, is a fair
25 statement.

1 Q Okay. I have no further questions.

2 DURING REDIRECT EXAMINATION BY MR. JOSEPH WANTZ:

3 Q Doctor, I just have a couple follow up
4 questions for you. I hope **it** stays to a couple.
5 During the course of Mr. Pomerantz's questioning
6 of you he asked you to refer to some X-rays,
7 and I believe when we were off the record you
8 also noted that you had an X-ray taken of
9 Mr. Kotelewec for March of 1987, is that correct?

10 4:18:27 - MR. POMERANTZ:

11 I'm going to show an
12 objection. First of all,
13 that earlier X-ray was
14 not referred to in his
15 report and, therefore,
16 under the rules previous,
17 those things are not going
18 to be admissible. In addition,
19 we don't have a report for
20 **it** so that I haven't had
21 a chance to prepare for **it**.
22 But, having registered
23 **my** objections, I am going
24 to make a standing objection.
25 You can go ahead and direct

your questions.

Q All right. Doctor, there was an X-ray
from March of '87?

A Correct.

Q And, Doctor, what was that X-ray of?

A The cervical spine.

Q Doctor, what did that X-ray demonstrate?

A I should look at it before I say.

Q Go ahead. Please.

OPERATOR: We're off the
record.

OPERATOR: We're on the
record.

Q Go ahead, Doctor.

A Okay. These 1987 X-rays show changes
in the cervical spine. Some of the discs are
a little narrower. The end plates of the
vertebral bodies are a little bit thicker so
there is degenerative changes in the cervical
spine in 1987.

4:20:03 - MR. POMERANTZ:

Motion to strike.

Q Doctor, I want to also go back to the
carpal tunnel question. Now, you have already
indicated that in your opinion it is not related

1 to this accident, is that correct?

2 A That is correct.

3 Q And, Doctor, you also indicated that
4 repetitive type...repetitive action type jobs
5 like a secretary cause...can cause carpal tunnel
6 problems, is that correct?

7 A It can, yes.

8 Q Would the fact that Mr. Kotelewec in this
9 case had previously left his job approximately
10 a year before the accident and two years before the
11 carpal tunnel developed, would that be of any
12 significance as far as determining whether the
13 carpal tunnel was from his job?

14 A Well, it would be, I think, if he had had
15 symptoms earlier and he had those kinds of
16 repetitive actions. I should also point out
17 that the vast majority of carpal tunnel patients
18 get it for no reason at all. In 80 plus percent
19 it just happens as an act of God. So, if his
20 job was related, it may have been or he may be
21 like everybody else who gets it just from being
22 alive.

23 Q I see. Doctor, Mr. Pomerantz was asking
24 you about the psychological problems or whethe
25 general questions about psychological problems

1 in relating it to physical accidents. In your
2 opinion to a reasonable degree of medical
3 certainty, did Mr. Kotelewec have a psychological
4 problem?

5 4:21:41 - MR. POMERANTZ:
6 Objection.

7 Q Go ahead, You can answer.

8 MR. WANTZ: Can I ask
9 what the basis of that
10 objection is?

11 MR. POMERANTZ: This is
12 new medical not gone into
13 on direct or cross.

14 MR. WANTZ: Well, you went
15 into on cross. I beg to
16 differ.

17 Q Go ahead, Doctor.

18 A In my assessment of him, I could not
19 identify an ongoing psychological problem.

20 Q Doctor, you also mentioned that in
21 order for...that person who had an established
22 psychological impairment may also have more
23 problems with a physical injury. What is
24 an established psychological impairment? What
25 do you mean by that?

1 A We are talking about heavy duty illness.
2 We are talking about people who are...personality
3 disorders, psychosis, schizophrenia, chronic
4 depression, manic depressive illness, various
5 established neuroses either under treatment
6 or recognized through types of medical records
7 that have been accumulated over time. We are
8 talking about the kinds of conditions that are
9 identifiable or diagnoseable by performance or
10 medical treatment or some other assessment of
11 the patient's psychiatric profile.

12 Q Doctor, you also said that there are
13 physical injuries that can cause psychological
14 problems, is that correct?

15 A Yes.

16 Q What kind of physical injuries cause
17 psychological problems?

18 A In general, it is the massive traumatic
19 fatal types or potentially fatal types of injury.
20 We are talking about acts of war, accidents where
21 there is an amputation, loss of life, terrible
22 shocking, frightening types of events.

23 Q Doctor, would the injuries of the nature
24 that Mr. Kotelewec suffered in this accident
25 cause psychological problems?

1 4:23:30 - MR. POMERANTZ:
2 Objection.

3 Q Let me rephrase it. Doctor, again, would
4 the...in your opinion to a reasonable degree of
5 medical certainty, would the injuries that
6 Mr. Kotelewec suffered in this accident in
7 1988 cause psychological injury to him?

8 4:23:43 - MR. POMERANTZ:
9 Objection.

10 4 I would say that the type of injury that
11 he had wouldn't by itself be capable of
12 inflicting any psychologic damage upon him.

13 Q You say by itself. What in addition
14 would you expect to have seen or have discovered
15 to relate it to a psychological injury?

16 4 Well, assuming that is present, there
17 would have to be a lot of other things wrong
18 with him psychologically to start with.

19 4:24:09 - MR. POMERANTZ:
20 Motion to strike.

21 Q Doctor, again you also indicated that
22 because of the fact that Mr. Kotelewec already
23 had a pre-existing degenerative condition, you
24 would expect that it would take a little bit
25 longer for him to heal than it would a normal

1 person, is that correct?

2 Correct.

3 Q It is your opinion to a reasonable degree
4 of medical certainty that Mr. Kotelewec has
5 recovered from the injuries in this accident,
6 is that correct?

7 A I believe he has, yes.

8 Q And, Doctor, do you have an opinion to
9 a reasonable degree of medical certainty how
10 long in Mr. Kotelewec's case it took him
11 to make that recovery?

12 A Well, trying to put a time frame on this,
13 I would say something through the treatments of
14 Dr. Guilloto, maybe a year or so; something of
15 that nature.

16 Q Okay thank you, Doctor. I have no
17 other questions.

18 DURING RE-CROSS EXAMINATION BY MR. DAVID POMERANTZ:

19 Q Doctor, just a few things. The fact that
20 Mr. Kotelewec did not have symptoms of numbness
21 or tingling in his hands at the time that he
22 left his job and for a considerable period after
23 that, in your mind, rules out a job-related
24 occupational situation causing this carpal tunnel
25 that you have diagnosed. Is that my understanding

1 of your testimony?

2 A Yeah. Well, rule out is a little
3 harsh, but I think that his job was probably
4 not related to his carpal tunnel.

5 Q Okay. So, as I understand your testimony,
6 it was something, you are not sure what,
7 but you can pretty much rule out the work
8 as being the cause of these symptoms?

9 A That seems not to be the cause.

10 Q Okay. Now, we talked a little bit about...
11 on redirect you talked about psychiatric,
12 psychological conditions. Depression is a
13 psychiatric condition, am I correct?

14 A It is.

15 Q All right. And, isn't it a fact that
16 in your report you stated that depression may
17 contribute to Mr. Kotelewec's neck pain?

18 A To the extent that he has depression,
19 all of his symptoms, whatever they are, would
20 be worsened.

21 Q Okay. And, you indicated that in
22 your opinion it would have to be...he would have
23 to have had a very severe psychological condition
24 prior to this car accident for it to have an impact
25 on the slowness of his healing, basically?

1 A Yeah. Of such severity to be identified
2 by family, physicians, others around the
3 individual, yes.

4 Q Okay. But, you agree with me that there
5 are people out there walking around with
6 undiagnosed psychological conditions?

7 A Oh, without any doubt.

8 Q Okay. And, now you also mentioned that
9 in your opinion, and again you are not a
10 psychiatrist, but in your opinion as a
11 neurologist that it would have to be a major
12 physical trauma, a major physical injury for
13 him to have a psychological injury resulting.
14 Did I understand that correctly?

15 A Right. To get a psychologic reaction
16 from the injury it has to be quite a horrendous
17 injury.

18 Q Okay. Are you aware of something called
19 Holocaust Syndrome where people...in fact, it
20 was originated from people who had been through
21 the Holocaust and thereafter even the slightest
22 problem, inconvenience, or injury completely
23 debilitated them. Are you aware of that condition?

24 A If you are talking about a diagnoseable
25 condition, the Holocaust Syndrome, there is such

1 remain custodian of the
2 tape until the time of
3 showing at trial?

4 MR. WANTZ: I stipulate.

5 MR. POMERANTZ: That is
6 fine with me. Can I....
7 off the record.

8 OPERATOR: We're off the
9 record.

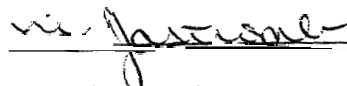
10 END OF THE TESTIMONY AS GIVEN BY DR. DONALD MA".
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STATE OF OHIO } SS: CERTIFICATE
COUNTY OF PORTAGE)

I HEREBY CERTIFY that the above and foregoing is to the best of my ability a true and complete transcript prepared by me of an audio tape recording of a videotape deposition taken 4/10/91 by Multi Video Service, Inc; that I was not present at the taking of the deposition; that I received the audio tape recording 4/11/91 and reduced the same to typewritten form.

I do further certify that I am not related to any party hereto or otherwise interested in the outcome of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office to attest these facts to be true at Kent, Ohio on this 12th day of April, 1991.



Terri Jastromb - Notary Public
Residence Portage County
My Commission expires 12/18/95.

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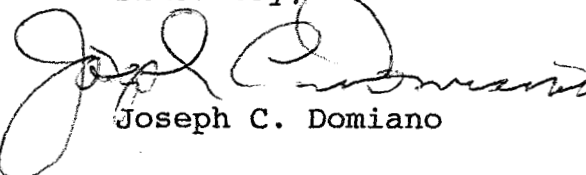
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Thank you for the use of your deposition transcript of Dr. Mann.
I am return same to you, along with the report.

As soon as I get a copy of the transcript of my recent deposition
of Dr. Mann, I will forward a copy of same to you.

Thanks again.

Sincerely,



Joseph C. Domiano

JCD:lay

Enclosure