Doc. 468

The State of Ohio,)
County of Cuyahoga.) SS:
IN THE COURT OF COMMON PLEAS
Cheryl Nola, et al.,)
Plaintiff,) Case No.
-vs-) 277238
Brendon Hernon,)
Defendant.)

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Deposition of DONALD MANN, M.D., a witness herein, called by the Plaintiff as if upon direct examination under the statute, and taken before Luanne Protz, a Notary Public within and for the State of Ohio, pursuant to the agreement of counsel, and pursuant to the further stipulations of counsel herein contained, on Tuesday, the 10th day of October, 1995 at 3:30 P.M., at the offices of Donald Mann, M.D., 1611 South Green Road, the City of Cleveland, the County of Cuyahoga and the State of Ohio.

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APPEARANCES:

On behalf of the Plaintiffs:
Nurenberg, Plevin, Heller & McCarthy, by:
David Paris, Esq.

On behalf of the Defendant:
Patrick Corrigan, Esq.

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P R O C E E D I N G S

MR. PARIS: I'll ask, Pat, whether you'll enter into the same stipulation that we did with Dr. Hugus which is to waive any defects in the notice and service of this deposition.

MR. CORRIGAM: Yes, I'll do that.

MR. PARIS: And we'll waive the one-day filing requirement of the transcript and the requirement that the videotape be filed with the court, and we'll allow Dave Tackla to retain custody?

MR. CORRIGAN: Fine.

DONALD MANN, M.D., being of lawful age, having been first duly sworn according to law, deposes and says as follows:

DIRECT EXAMINATION OF DONALD MANN, M.D.

BY MR. PARIS:

Q Doctor, my name is David Paris. I represent the Nola family. Would you tell the ladies and gentlemen of the jury your full name, please?

A Donald Charles Mann.

Q And, Dr. Mann, what is your professional address?

A **1611** South Green Road in the University Suburban Health Center building in South Euclid.

Q You are a medical doctor?

A I am.

Q And when did you become so licensed in Ohio?

A **1974.**

Q Are you licensed in any other states?

A I am.

Q What states?

A Ohio -- besides Ohio, I'm licensed in Indiana and California.

Q Your specialty is neurology?

A It is.

Q And can you explain to us what that is?

A Diseases of the nervous system, every-day examples being things like migraine, epilepsy, brain tumors, stroke, nerve injury, Alzheimer's disease, multiple sclerosis; any affliction of the brain, spinal cord, nerves that run in the arms and legs, the structures that support the nervous system; that's the skull and the spine, would come in the purview of neurology.

Q Doctor, since you're going to be expressing expert opinions this afternoon, would you tell the ladies and gentlemen of the jury a little bit about your educational background, your credentials and other qualifications that permit you to be an expert in this case.

A Yes. I graduated from medical school in 1968. I then was able to practice medicine but went on to additional training in the area of neurology, the additional training being one year of medicine at Indiana University. I went to medical school, and then three years of specialty training in neurology. So, four years of medical school and four years of training thereafter qualified me to be able to practice the specialty of neurology.

Q And how long have you been in private practice?

A Twenty-five years.

Q Are you a Board certified neurologist?

A I am.

Q And what is Board certification in your area?

A It is an examination to test the skills of a practitioner in a specialty. In other words, it's something beyond just general medicine. For us the test is a day-long written examination and a live examination in which one is literally watched taking a history, doing a physical, presenting such cases, and successfully completing that exercise enables one to be considered competent to practice the specialty at its highest levels.

Q Would you tell us some of the major medical organizations, societies and associations to which you belong?

A Yes. The local medical society is the Cleveland Academy of Medicine. I belong to the Ohio State Medical Association and a national group called the American Academy of Neurology.

Q And with which hospitals in our community do you have staff and courtesy privileges?

A The main one is University Hospitals of Cleveland. I'm also on the staff of MetroHealth and Geauga hospitals.

Q Are you involved in the teaching of medicine to students and doctors?
A I am.
Q To what extent?
A Mow my teaching post has been in the neurology clinic at MetroHealth supervising residents and interns. In the past I've done ward teaching, classroom teaching, teaching at the VA, teaching at clinics at University Hospitals. So, I've done any number of things over the years.
Q Doctor, in your professional capacity, have you had occasion to see and treat Cherie Nola?
A I have.
Q All right. For any of my questions and any of Mr. Corrigan's questions, feel free to refer to your office records' your notes and so forth, all right?
A Yes.
Q First of all, would you tell us on which date you -- you first saw her?
A I saw Ms. Nola on July 26th, 1994. That would be about nine months ago.
Q And did you obtain a history as to what

her problems were?
A I did.
Q Would you tell us briefly about that?
A On that occasion, she had numbness in the left arm, neck pain, some numbness in the left leg, and pain in the mid chest region in the spine and the back. And -- and those were her -- essentially her complaints at that time.
a Did you find out what brought upon those problems?
A I did.
Q And tell us what that was.
A She had these pains after an accident which occurred on May 11th. So, that would be two months before I saw her, when her vehicle was struck by another from behind.
Q All right. Did you perform a physical examination?
A I did.
Q Tell us about that.
A The examination was two-part, a spine exam and a neurologic. I tested her neck range of motion or her spine range of motion, straight-leg raising test to see if

there was any pressure on the sciatic nerve. I tested sensation in the extremities to see if she had any loss of feeling. That would go with numbness. I tested her strength. I tested her reflexes, and I looked at the nerves that go to the special senses in the face.

Q And based upon the history that she gave you, her complaints, the findings that you made on the examination, did you formulate an initial diagnosis at that time?

A I did.

Q And what was your diagnosis?

A That she suffered a thoracic disk herniation, and that caused her chest pains, and that she had a pinched nerve or a root disorder in the neck causing neck pain and her left arm symptoms.

Q All right.

A And a smaller degree of trouble at the lower back, in that order of importance.

Q Did you understand from this first visit that, prior to her seeing you, she had been under the care of her family doctor, Dr. Charles Hugus?

A Yes.
Q And did you also understand that she had been prescribed a course of physical therapy at Brentwood Hospital?
A Yes.
Q And did you also understand that she had been to University Hospitals for an MRI film shortly before she saw you?
A Correct.
Q And did you have an opportunity to review that MRI scan?
A I had reviewed the report, yes.
Q Okay, and what did that report indicate?
A The report from the MR scan in July of 1994 pointed to a disk herniation between the 7th and 8th thoracic vertebrae at T-7/8 disk -- I'm sorry, T-8/9, between 8th and 9th, and a herniation to the left side.
Q Okay. Can you tell us, Doctor, whether or not we have those films with us that we can show the jury those disk herniations?
A We do, and we can.
Q Okay, and before we go on, Doctor, recently in September of 1995 while she was

still under your active care and treatment and the active treatment of Dr. Hugus, did she have a follow-up MRI scan?

A She did.

Q And I think that was in September of '95; is that right?

A Correct.

Q And what did that MRI scan disclose?

A It shows the same disk herniation at 8/9 and one above it as well at 7/8. So, there -- a year later there are now two disk herniations, the bigger one being that found in 1994, but there are now two.

Q Okay. If we can go off the record a minute, and we'll get set up for showing the -- the MRI films, okay?

MR. PARIS: Off the record, please.

(At this time a short recess was had.)

BY MR. PARIS:

Q Doctor, we have appearing on the screen a -- an MRI film. Can you tell us, first of all, what this depicts and what the MRI imaging technique is?

A We're now looking at a sideview of the thoracic or the chest spine, so if you're standing, looking at someone from the side, their profile, so to speak, this is what you'd see in the chest if you could actually look through the chest, and that can be done by a magnetic field applied to the spine and, then, reversed. You can get pictures of the structures within the chest by looking at their magnetic properties basically, and the structures you see are the vertebrae, the spinal cord, the skin, and of course the organs elsewhere in the chest. So, it's a good technique for looking inside at solid organs.

Q And which are the bony vertebrae -- vertebrae?

A The vertebrae are stacked here. You see these are all vertebrae or vertebral bodies, each one of them perfectly situated on top of the other.

Q The lighter blocks, and in between those vertebrae, what do you see?

A Between them, this space here, for instance, the dark pancake-like structures

are disks. Those are cushions. They're made of cartilage. They're softer than bone. They're not soft, but they enable motion to take place at a very low level in the spine.

Q Okay, and in the area immediately to the right of the vertebrae in the disks?

A Okay. This whitish column here is the spinal column. It has that white color because of the fat covering. There's a thin layer. Within it is the spinal cord. Behind it is the back itself, and here's muscle and fat, and here's the skin, this dense, thick material. It looks thicker than it is because you're seeing several layers on end, but this is skin. This is muscle. This is spinal cord. This is vertebrae. This now is the chest here. There's heart, lung and that.

Q To the left there?

A Correct.

Q Okay. Now, what, if anything, unusual is depicted on this particular frame?

A The spinal column is a straight up-and-down affair with no bumps and indentations

in normality, and that's true all along here. This is a relatively straight line until we get to this point where there's a widget sticking out, and, of course, it continues straight on down.

This indentation, that sticking out is a disk. It's in a disk space. We know from counting down it's the 8th and 9th space. This is 8, and this is 9, and the disk has been squeezed so to speak, and it can only go in one direction. That's straight back, and it pushes on the spinal column and its contents.

Q And is that the disk herniation that's depicted in the MRI report?

A Correct.

Q Okay. Let's move on to the next film, if we might. This is the MRI film -- the films that we're looking at, Exhibit 1 which we just looked at and now Exhibit 2, are the films of Cherie Nola done on July 18th of '94; is that correct?

A Correct.

Q All right. Now, we're going to be looking -- let's see. Mr. Videographer, if

we can go over to -- to that frame. Okay. Can you tell us now what we're looking at?

A Now, the -- this is a cross-sectional view of the spine. In other words, if you cut someone off in the middle and look down, you'd see into the chest, You'd see a vertebra here. This is the bony part. This is the aorta that carries blood back and forth to the heart, and this is the spinal column that we're so interested in. That white ring is space around the column and the spinal cord in which spinal fluid lies and the spinal cord itself.

Q I think we're having trouble picking up the ring inside the -- the ring, the disk inside the -- the spinal canal. Okay. I think that's coming up -- up now.

A Now, the -- this ring, and we'll look at another normal one in a minute, but this white area around should be a totally closed ring, like a signet ring, and it isn't. It's broken at the top, and it's broken there by the herniating disk.

Now, the disk comes from here and pushes the hole backwards. If we go over

two sections, you can see that the ring is complete all the way around. We have a nice white halo without any break in it, any dents in it.

Q And that's what a normal-appearing disk would look like?

A Correct. That space behind the disk is -- is adequate, is normal. There's fluid in there. That's this business. If we go over the two, you can see where the spinal column space ends here. There's a disk actually sticking out here, and the column picks up again here, so --

Q And is that -- I'm sorry, Doctor.

A So that -- and that's the -- the top-down view of the same disk herniation.

Q And that's a left-sided disk herniation?

A It is.

Q Okay. Thank you, Doctor. Let's move on, if we could, to the 1995. We'll look at Exhibit 3. September, 1995, which are we looking at now, Doctor?

A We are now looking at this space here.

Q Okay, and what does that depict? First

of all, the -- what is unusual about that?
A We have a side view of the spine, again. You see the vertebrae here all stacked on one on another, and at this particular point, there's another indentation, and one above it as well which is less well seen, but what you have is a disk bulging out into the spinal column, and denting the space behind it and giving the black appearance where there should be white.
Q And that is representative of an abnormal disk herniation?
A It is.
Q Okay.
A In this location, where there's precious little extra space, that would be abnormal. It would be expected to produce symptoms and would be quite notable.
Q Okay, and if we can go on to the last MRI film, Exhibit 4, that too is the September, 1995 MRI film.
A Correct.
Q And which view are we going to look at first, Doctor?
A Let's start with a normal here. We

have this nice white ring all the way around. Inside is the spinal cord. If we can go up here, we see the ring broken at the top. There's disk busting that space so the ring ends here and ends here, and the disk herniation is in this direction coming down.

Q Now, which level is that disk herniation at now in September of '95?

A That's the higher of the two. That's the 7/8 disk herniation. If we go down to this picture, we see the disk herniation wiping out the space over here and a little bit down lower but at the same level, we see the ring ending here and here. This disk has come down from the vertebrae blunting that space, pushing on it, and herniating -- basically herniating into the spinal column.

Q So, by 1995, based on these views, you now see two disk herniations in her mid-back?

A Correct.

Q Okay. Thank you, Doctor.

MR. PARIS: Let's go back off the record.

(At this time a short recess was had.)

BY MR. PARIS:

Q Doctor, do we also have a model which would assist the jury in understanding the physiology that we've just talked about, the vertebrae and the disks and the herniations in Cherie Nola?

A Yes.

Q Would you use that model to -- to explain again the nature of her herniations?

A Sure. This is a bony column with two vertebrae in it, one, two. Between them is the rubbery disk material, and if we look at this end-on, we're now looking at it the same way as we did at the MR scan. On top of this vertebrae is a disk, and the disk is moving back and pushing like so.

Q What's that pushing up against, the tip of your pen?

A It is now pushing on the spinal cord. That hasn't happened in this case, I don't think; it's just pushed on the space, but the ring, the clear space around the spinal cord that we saw in the scans would be

indented by disk material, and if it went any further, it would then push on the spinal cord and cause great symptoms and great trouble. So, you can see how small the spinal column is. Looking at it on the end, it's no bigger than the size of a smaller finger. It's a tight space. Anything impinging on it produces trouble.

Q All right. Thank you very much, Doctor. Now, did you continue to follow Cherie Nola after the initial visit of July 19, '94?

A I did.

Q And can you basically tell us how she progressed and what your recommendations were to her?

A The condition waxed and waned, came to be concentrated exclusively in the mid chest region that we've been talking about.

Q When you say the mid chest, do you mean her chest hurt?

A No. The spine hurt, but at the chest level as opposed to, say, neck or lower back.

Q Oh, so --

A She doesn't have chest pain. She has back pain, but it's at -- as high as the chest goes.

She'd have good periods, and I'd encourage her to be more active, try to return to sports in a graded, slow fashion. She might attempt that, but she never quite made it back to any -- any sports, even starting out.

Plus, she'd have pain off and on, and that was a reminder not to do very much, and then in September she had a bout of rather intense spine pain. Hence, the second MR scan. So, the condition became and has become chronic. It's worsened since I saw her first a year and three months ago, and I would say overall her condition has worsened.

Q Doctor, did you arrive at a final diagnosis as it pertains to Cherie Nola?

A I did.

Q And what's your final diagnosis at this point in time?

A That she suffers a thoracic disk herniation, and I believe one for certain,

possibly two, and that this condition is going to be with her for some time and bears close watching and will restrict her activities in a substantial way.

Q Okay. As it relates to the final diagnosis, let's talk about number one. She has -- does she have, Doctor, in your opinion, a disk herniation at the T-8/T-9 level?

A She does.

Q And, Doctor, in your opinion to a reasonable degree of medical probability, does she also have a central disk herniation at the T-7/T-8 level?

A She does.

Q Okay. Doctor, do you have an opinion to a reasonable degree of medical probability as to whether Cherie's car accident of May of '94 was the cause of those two disk herniations?

MR. CORRIGAM: Objection.

THE WITNESS: I do.

BY MR. PARIS:

Q What is your opinion?

A That the car accident caused those disk herniations.

Q Okay. Have you had an opportunity to look at an X-ray of Cherie's mid-back taken on May 27th, 1994 at Brentwood Hospital?
A I have.
Q And the X-ray report?
A Also.
Q Okay. That X-ray report indicates very slight wedging at T-8/9, minimal thoracic spondylo -- spondyloarthrosis. What does that mean, Doctor?
A That the -- those two vertebrae are not perfectly squared off. One is slightly lower on one end than the other, hence that term "wedging."

Spondylosis refers to calcification in or around the disks at that point.

Q Doctor, in your opinion to a reasonable degree of probability, does that condition have any relationship at all to her disk herniations, based on probabilities?

MR. CORRIGAN: Objection.

THE WITNESS: It has some relationship in that there is the location of the disk herniations, but that wedging or the changes there didn't cause it. The

accident did. There are changes there; there's no question about that, and it -- so the herniations occurred there rather than 9 or 10 or 7 or 8 or 6 or 5, but I think that's unrelated to the fact that she is the way she is now.

Q Okay. Doctor, do you have an opinion to a reasonable degree of medical certainty and probability as to whether Cherie's going to have some pain and disability in her mid-back from those disk herniations on a permanent basis?

MR. CORRIGAN: Objection.

THE WITNESS: I have an opinion.

BY MR. PARIS:

Q What is your opinion?

A That she will suffer with this back pain on an enduring and permanent basis for a long time until something is done about it or they resolve.

Q Now, Doctor, in your opinion to a reasonable degree of medical certainty, is therapy going to make that resolve, physical therapy going to make those two disk herniations resolve?

A No.
Q Okay. Are those two disk herniations, as they exist in the form that they are in today, going to remain painful for her, in your opinion?
MR. CORRIGAN: Objection.
BY MR. PARIS:
Q To a reasonable degree of medical certainty.
A They are.
Q All right. What options are open to Cherie Nola as a means to abate the pain caused by those disk herniations, in your opinion to a reasonable degree of medical probability?
A The options are these: she can remain utterly inactive and not bend, move, twist, and she'll have less pain. In other words, she won't use her back. That's unrealistic, but that's a choice some people opt to take.
The second choice is to treat the pain with medication and just live with it. And the third option is to undergo a thoracic disk removal. That's a big undertaking. It's substantial surgery, but

it's an option, nonetheless.
Q Is that an option to Cherie Nola?
A It is.
Q Okay. Is that an option that you recommend for her at this time, though?
A I would not recommend it at this time because the situation is tolerable, but I wouldn't say that she should live with this for ten years and not look at surgery harder, but right now, I don't think she's bad enough to consider all that a thoracic disk removai entails.
Q Cherie has testified and -- and will testify in this case, Doctor, that -- that activities such as vacuuming and lifting and gardening and -- and bending to any appreciable extent are painful to her. Can you explain why that is, Doctor? First of all, is that consistent with the type of injury she has?
A Yeah, it's -- it's consistent, actually expected, because every time she moves, those disks move a bit, push on the ligaments, stretch the ligaments, and just -- just the act of breathing, coughing,

sneezing, rolling over in bed aggravate this condition. So, just being alive is an aggravating factor, but additional stress comes from weight-bearing which is lifting things, household work of all descriptions, pushing a vacuum. So, those are expected symptoms from this kind of problem.

Q Okay. She had only the one herniation that showed up right after this accident, the herniation at T-8/T-9. Can you explain to the jury why, Doctor, it wasn't until the following September of '95 that the second herniation at T-7/T-8 appeared on the MRI?

A The 7/8 disk was damaged or the fibers were loosened. The annulus may have been damaged in the accident, but the disk was retained and didn't move, but over time, the ligaments and the material that hold the disk in place gave way, and it started to move and bulge.

So, I think the initial injury occurred in the accident. The disk remained in place for a matter of months when the first MR scan was taken, but as the material that would hold it in place gave way from

the original injury, it started to herniate, so we didn't see it until later.

Q And is that uncommon, Doctor, for one trauma to cause multiple -- for there to be a -- a domino effect, if you will, in these type of cases --

MR. CORRIGAN: Objection.

BY MR. PARIS:

Q -- at various disk levels?

MR. CORRIGAN: Objection.

THE WITNESS: That's not uncommon. It's not common, but it's not uncommon for there to be multiple disk damage and herniations to show up immediately, and later or several of them later, creating a multiple disk problem from the same injury.

BY MR. PARIS:

Q Are you familiar biomechanically with -- did you see the photographs of the cars and -- before this deposition, Doctor?

A I did.

Q And is that consistent with what your patient told you about how the accident happened?

A It is.

MR. CORRIGAN: Objection.
BY MR. PARIS:
Q Doctor, are you familiar with -- with biomechanics to the extent that you apply that to your everyday practice?
A Yeah. From the common sensical medical standpoint, I -- I understand those things. I'm not so well grounded in the physics of it.
Q Okay, but from the -- from the medical aspects of it, is what happened to Cherie Nola as a result of having that broadsided rear-end collision and being spun counterclockwise, in your opinion to a reasonable degree of medical probability, is that consistent with the type of injury she sustained to her mid-back disk herniations?
MR. CORRIGAN: Objection. Move to strike.
BY MR. PARIS:
Q Do you have an opinion?
A I do have an opinion.
Q What's your opinion, Doctor?
a Yeah. That's -- that's the kind of injury with a lot of twisting, a lot of

impact, a lot of force transmitted to the thoracic spine that -- that could produce this picture.

Q And did it, then, in this particular incident?

A It did.

Q Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether Cherie's going to need future medical care and treatment, monitoring, MRI films and neurological consultations?

A I believe she will.

Q Can you be more specific and tell us with what regularity?

A Yes. The condition is going to wax and wane and -- and needs to be monitored on a visit basis. She needs to see a physician every three months, interview about level of pain and activities, a brief spine and neurologic examination to make sure there's no neurologic damage, and at a six-month interval, a reassessment of the MR picture of the disk herniations; in other words to see if they've gotten any worse or things have changed. That -- that needs to be done

regardless of what happens to her from an everyday standpoint because these things can change without the patient being aware of it.

So, that kind of monitoring of physician visit with examination and MR scan, I see a necessity for the next two years and probably beyond.

Q Okay. Thank you, Doctor.

MR. PAXIS: I have nothing further.

CROSS-EXAMINATION OF DONALD MANN, M.D.

BY MR. CORRIGAN:

Q Doctor, I'm Patrick Corrigan here on behalf of Brendon Hernon in this case.

I see you have a file of records in -- in front of you. May I review those, please?

A Sure.

MR. CORRIGAN: Off the record.

(At this time a short recess was had.)

BY MR. CORRIGAN:

Q Dr. Mann, you're not a neurosurgeon; are you?

A No, I'm not.
Q And you don't perform surgery on your patients; isn't that correct?
A Correct.
Q And as a neurologist, you're limited to basically diagnosis and treatment outside of the realm of surgery.
A Right, and referral where appropriate.
Q In this case with Cheryl Nola, you had the opportunity to take a history of your patient; isn't that true?
A I did.
Q And do you rely on the accuracy of the history in making your diagnoses?
A I do.
Q And in taking the history, did you ask extensive questions about Cheryl Nola's actual accident and the mechanics of the accident itself?
A Questions, yes; extensive, no.
Q Do you recall recording her responses in your history-taking?
A Let me look that up. The -- what I recorded was that she was hit from behind. The car spun around. She had a seat belt

on. The -- she did not anticipate the accident. She didn't have no knowledge it was coming. It was a complete surprise to her, and she hit her head on the side window.

Q Not on the windshield, Doctor?

A I believe it -- I believe -- I recorded the side window, but it may have been the windshield.

Q Okay. Well, Doctor, did you ever have an EMG performed on this patient?

A I did not.

Q What is an EMG?

A Electromyogram is a testing technique to evaluate nerve loss, nerve impairment, nerve compression.

Q And would that identify nerve root impingement?

A You can, yes.

Q What other tests would you use to identify nerve root impingement?

A Well, the major test is examination to see if there's any loss of strength or sensation. The EMG test that you mentioned is an ancillary test, and there are others,

of course; X-ray evaluation for nerve root compression.

Q And were those done, any X-rays for nerve root compression?

A They were.

Q And did you review X-rays in that regard?

A I did.

Q Okay. Doctor, in -- in this case, you indicated that the original MRI showed a small herniated disk at T-8 and 9 to the left; that's in the 1994 MRI, correct?

A Yes.

Q Well, how does that -- in light of the X-rays taken relatively soon after the accident, isn't it possible that there was a herniated disk prior to the date of the accident?

MR. PARIS: Objection.

THE WITNESS: Possible, but unlikely.

BY MR. CORRIGAN:

Q In -- in fact, don't the X-rays taken on May 27th of 1994 indicate slight wedging at the T-8 and T-9 of the thoracic verte-

brae?
A It does, yes.
Q And we have -- we've already talked a little bit about the wedging, or you and Mr. Paris did, and when I spoke with Dr. Hugus about this wedging and the fact that the X-ray report said it was considered remote, he indicated that "remote" meant an old injury.
MR. PARIS: Objection.
BY MR. CORRIGAN:
Q Or perhaps an old trauma.
MR. PARIS: Objection.
BY MR. CORRIGAN:
Q What do you identify the word, "remote," as being in an interpretation of an X-ray?
A That means the radiologist is describing a change in the anatomy of the vertebrae, but there's nothing in the X-ray to say that it happened recently. So, he is saying there: this vertebrae isn't as tall as it should be. It happened some time long ago. "Long ago" could be years, decades, but something far away from the present

time.
Q In fact, hadn't you mentioned that, when you reviewed those X-rays, you noticed calcification and spondylosis?
A Correct.
Q So, that indicates there was some previous trauma. Is that what -- is that what we can conclude from those X-rays?
A Well, I don't think you can say it's trauma because people get these kinds of changes who have never been injured or injury doesn't even come into the picture. It can just be a wear and tear thing, and I suspect that's the case here because she's never had any kind of injury before that would give her this.

So, for some reason, those vertebrae changed their shape. There was a little calcification built up there. It could have happened at any level. It could have been at the neck. It could have been in the lumbar region, but for reasons that are unknown, it settled on the T-8/9 level.
Q And, Doctor, when that MRI was taken, when the first MRI of '94 was taken, isn't

it the case that the interpreter found that there was no neurologic compromise?

A Correct.

Q And, Doctor, isn't it true that many people have herniated disks without even knowing it?

MR. PARIS: Objection.

THE WITNESS: A significant number do have herniated disks. We're again talking about outside the thoracic area, and they're not bothered by it and don't need to do anything about it. That is true.

BY MR. CORRIGAN:

Q So, a herniated disk can exist without symptoms, true?

A It can be in a low symptom state. I think along the way, and recognize now we're talking about processes that go on for years. Somebody had some kind of pain, if they had a herniated disk, but it may have resolved. I don't think I'd say that you have a herniated disk, and it's been utterly and absolutely painless, but most herniated disks go on without pain or need of elaborate treatment outside the thoracic

area.
Q Doctor, in this case, would you agree with me that a finding that there's only mild posterior protrusion of disk material at the T-8/T-9 level with no cord compromise and no irregularity of the ligamentous structure is consistent with the chronic developmental type process?
A No, I wouldn't say that it's a developmental process. I would say it's an acquired one. I think that she started out with not that picture, that something happened to her, and that developed later.
Q But, in fact, isn't it consistent with a chronic developmental process where there's only a mild protrusion and no cord compression? Wouldn't that be consistent with a developmental, nontrauma-related disk herniation?
A No. I -- I don't -- by developmental, we mean that somebody who has a short leg develops arthritis of the hip there, and this is explained by antecedent, preexisting, even congenital problems, and I don't see that being an explanation of her thor-

acic disks,
Q Even despite the X-ray of May 27th, 1994?
A Correct.
Q You -- you don't see that?
A No.
Q Excuse me. Doctor, you had occasion to meet with the patient on many -- on approximately six times; isn't that true?
A Yes.
Q And in your first meeting which was in the summer of 1994, you took a history of this patient.
A I did.
Q And you advised her to, from what I can gather, to reduce some of her activities.
A Correct.
Q Now, you've testified that she -- she is not able to take part in recreational activities as a result of this now two herniated disks; is that correct?
A Yes.
Q Do you know what kind of activities she took part in before?
A Skiing, swimming and gardening.

Q And since the time of the accident, has she done any type of activities that would require physical exertion?

A Well, at my suggestion she has tried some of these. I think she's only succeeded in working around the house. I don't -- I don't believe she's been able to pursue any sports at all.

Q No sports at all. Well, Doctor, you've already testified that she has a chronic condition. Well, what is chronic? Will you tell the jury what you define "chronic" as meaning?

A Yes. A process that is longstanding, that will go on for long periods of time. In the spine we're talking about many months and years. In different organ systems it may have a different time frame. In the brain, for instance, chronic may mean decades or even a lifetime. In the skin it may mean several weeks. So, the disease process determines the time frame. For chronicity for the spine, it's many months and many years.

Q So, with respect to that particular

injury we're discussing today, it would be many months or years that would --

MR. PARIS: I --

BY MR. CORRIGAN:

Q -- based on your definition that would make it a chronic condition; isn't that true?

A It is.

Q Doctor, in reviewing the notes that you gave me at the beginning of my cross-examination, I see that on October 13th, 1994, you had occasion to meet with Ms. Nola, Mrs. Nola.

A Yes.

Q And do you recall indicating that she -- in your notes, that she tried painting a barn on her lot, and this worked out well?

A Correct.

Q And that -- that certainly requires physical exertion; doesn't it?

A It does.

Q In addition, you say, "Overall she feels better in her left scapular and mid and lower thoracic pain."

A Correct.

Q Did you take any -- any other notes reflecting the amount of pain she suffered or the frequency of her pain?
A No. That's the only description of her pain.
Q In fact, you say there's no tenderness palpating the spine, but she points to a region around the T-5 or 6 where the pain is the greatest. Now, what is tenderness? What does that mean?
A That touching or pushing or tapping on portions of the spine would be reported by the patient as something that's sore or uncomfortable or might cause her to jump or grimace.
Q Now, Doctor, you've testified that she even had difficulty doing housework and couldn't do her housework as a result of this condition, correct?
A Yes.
Q But in your December 15th, 1994 note, you say that she has been able to do her housework and is anticipating exercise. That --
A Correct.

Q That conflicts with your testimony today about her condition.

A Well, when I say she can't do housework, I mean overall. I'm talking about the big picture of months. If she can push a sweeper for a day or two or even a week or two, that doesn't mean she can do housework, and she's actually doing what I asked her to do, to try these things.

The measure of their success is whether she can do it on a sustained basis. I wouldn't consider someone a housekeeper who did laundry once every couple of weeks and cleaned the floors once a month. So, these are attempts, unsuccessful, I think, to do the chores of her daily life.

Q Now, despite that litany of what she can and can't do, I see that you indicate in December of 1994 she takes three to five Motrin in three to five weeks. Now, Doctor, that tells me she maybe takes one Motrin a week in over a five-week period. Is that a typical patient in chronic pain? Does that reflect the typical patient in chronic pain, Doctor?

A It can. The Motrin doses, that's a reasonable dose of over-the-counter Motrin, and I'm saying there that she used that dose over a five-week stretch, probably quit it because it didn't work. I wouldn't expect Motrin to make a big difference to her. It certainly won't change things drastically, but it might give her some relief. So, she, like many patients, tried this three or four times over a five-week period. That, I think, is an everyday patient-kind of experience.

Q Well, Doctor, you're telling us she tried it, you know, during this little three to five-week period, but none of your notes from any of your other entries, March 23, '95 or February, '95, indicate whether or not she used Motrin, and isn't it true you've decided or you declared to the jury here that, you know, Motrin or medication is one way to deal with a herniated disk, with the symptoms of herniated disk?

A To alleviate the symptoms, yes.

Q Now, Doctor, having decided that she has a chronic condition, is that only based

on your most recent meeting with Cheryl Nola in September of 1995?

A No.

Q In fact, in your -- your notes for September of 1995, if we can refer to those, doesn't it show -- don't your notes reflect that this -- I think your words are "flare-up." Do your notes reflect that she had a flare-up of pain?

A I don't see that, but I think that's an okay kind of term to use.

Q Doctor, in fact, you wrote an opinion letter for David Paris on September 26th, 1995. Is that in your file?

A Yes.

Q And in the first sentence, you state, "Mrs. Nola experienced a flare-up of thoracic pain around Labor Day, and Dr. Hugus obtained an MR scan," et cetera. So, your words are "flare-up" with respect to this pain.

A Yes.

Q And a flare-up would be different than a chronic condition where somebody is in constant pain; am I correct?

A Well, in this case, the flare-up is on top of the chronic issue. She had pain all along, and it got worse, That's what I mean to say.

Q In fact, Doctor --

MR. PARIS: Excuse me. Let the doctor finish his answer, please.

THE WITNESS: That's my meaning, that this is an acceleration of a chronic process. It didn't flare from zero. It flared from pain.

BY MR. CORRIGAN:

Q In fact, don't your notes from September 21st indicate that Mrs. Nola was on a boat ride at that time?

A Correct.

Q And -- and did you inquire into what type of a boat ride it was, or how -- what type of seas she was riding on?

A I did not, but I -- I may have casually. I didn't write it down, but I know from seeing her that she wasn't out bouncing around on Lake Erie in a storm, and that with the caution that she'd exercised about all spinal movements, that this was

probably just a leisurely ride, more likely to affect her as she stepped in and out of the boat than anything else, but I can't tell you that with any certainty.

Q Right. I mean, Doctor, you've conceded you didn't ask her about it, and it's not really reflected in your notes. So, the jury doesn't know what type of a boat ride this is; do they?

A No, they don't.

Q And, Doctor, it's quite possible that a person can get a herniated disk from a boat ride; isn't that true?

A I think not unless it crashes or something else awful happens. Just riding in a boat is not likely to herniate a disk.

Q Well, Doctor, don't people get herniated disks from missing a golf swing?

A Well, there are circumstances where disks herniate for no reason at all. You can be sitting in a movie theater. You can bend over to tie your shoes. Someone can slap you on the back at a party. Disks will herniate under any and all sets of circumstances, known and unknown. When that hap-

pens, you know it. I mean, it's a sudden, new thing. There's a dramatic change in symptoms. So, the spectrum of disk herniation can be anything from nothing or casual to a rather dramatic set of circumstances.

Q And, Doctor, in -- in most cases, the recommendation is -- is temporary rest in bed and analgesics, local heat as a treatment for disk herniation?

A Yeah, for a simple first, a clean disk herniation where no other problems exist, yeah, you take it easy. You use home remedies like heat and wait it out.

Q And, Doctor, you don't have a crystal ball or any ability to identify when Cheryl Nola's symptoms will go away; do you?

A No, only my knowledge of the behavior of disk herniations and, in particular, thoracic ones.

Q Okay.

MR. CORRIGAN: Thank you very much, Doctor.

REDIRECT EXAMINATION OF DONALD MANN, M.D.

BY MR. PARIS:

Q Doctor, with all the talk about boat

rides and -- and some wedging in her back that may have existed before this accident, have -- has anyone given you any records of all the voluminous records that have been subpoenaed on Cherie that were generated before this accident at any time from the time she was born up until the date of this accident to suggest that she had a disk herniation or a chronic mid-back pain before this accident?

MR. CORRIGAN: Objection. Move to strike.

BY MR. PARIS:

Q Was any record put before you to suggest that?

A None whatever.

Q Okay. When you use the term "chronic," just so that there's no misunderstanding here, did you mean to imply that her pain and her condition was a process that was going on chronically before this accident or chronically since this accident?

A Oh, the latter. The accident gave her a chronic condition. The chronicity of this came from the accident and not any other

way.
Q Now, we -- I understand that there are people, based on your exchange with Mr. Corrigan a moment ago, that there are people walking around in the world today who have disk herniations in parts of their spine other than the thoracic spine that will have a low -- that can have a low degree of symptoms or a high degree of symptoms in their back; is that right?
A Yes, it is.
Q But you were very careful to limit that to outside the thoracic spine. Why is that, Doctor?
A Well, the disks that -- everyday disks that herniate, neck and low back, are resilient. They have enough space, generally speaking, to move around.
The thoracic disks are another kettle of fish altogether. There's very little space. The repair process is -- is vastly slower. You can't rest your thoracic spine the way you can rest and protect your neck or low back. So, these patients have a long road to hoe, and they go on for long

periods of time. That's just the way our bodies are put together. There's almost no mobility in the thoracic spine. There's no way to protect it, and, so, these people face a long picture.

Q Doctor, I understand you don't have a crystal ball, and I wouldn't be presumptuous enough to ask you to a hundred degree of certainty what the future holds for anyone, but based on your knowledge, your experience, your training, your qualifications as an expert in this field, do you have an opinion to a reasonable degree of medical certainty as to whether Cherie's going to have pain and disability in her mid-back from these herniations on a permanent basis?

A I do.

Q And what's your opinion?

A That she will have these -- this pain on a permanent basis.

Q And, although she has undertaken, pursuant to your instructions, certain activities and tried to get back into certain of her daily routines, whether it be painting the barn or trying to run a vacuum cleaner,

is she -- are these disk herniations going to interfere with her ability to perform her normal daily functions in the future?

A They are.

MR. PARIS: Thank you, Doctor. I have nothing further.

MR. CORRIGAN: Nothing further, Doctor. Thank you very much.

MR. PARIS: Off the record.

(Off the videotape.)

MR. PARIS: Doctor, will you waive the reading of the transcript?

THE WITNESS: I do.

MR. PARIS: Will you waive the viewing of the videotape?

THE WITNESS: I do.

MR. PARIS: Thank you.

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CERTIFICATE

The State of Ohio,)
County of Cuyahoga.)

I, Luanne Protz, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the above-named witness, DONALD MANN, M.D., was by me first duly sworn to testify to the truth, the whole truth and nothing but the truth in the case aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed; and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

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 for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Cleveland, Ohio this 12th day of October A.D., 1995.

Luanne Protz

Luanne Protz-Notary Public
Within and for the State of Ohio
My commission expires 4/5/98.