

IN THE COURT OF COMMON PLEASCUYAHOGA COUNTY, OHIO

TIMOTHY S. ROSE,

Plaintiff,

-vs-

JUDGE LAWTHOR  
CASE NO. 179214

DAVID GEORGE ,

Defendant.

- - - -

Videotape deposition *of* DONALD C. MANN, M.D.,  
taken as if upon direct examination before  
Lynn A. Konitsky, a Registered Professional  
Reporter and Notary Public within and for the  
State of Ohio, at the offices of  
Donald C. Mann, M.D., 1611 South Green Road,  
South Euclid, Ohio, at 9:50 a.m. on Saturday,  
December 7, 1991, pursuant to notice and/or  
stipulations of counsel, on behalf of the  
Defendant in this cause.

- - - -

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Doc. 471

APPEARANCES:

Paul V. Wolf, Esq.  
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On behalf of the Plaintiff;

Kirk E. Roman, Esq.  
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On behalf of the Defendant.

ALSO PRESENT:

Doug Clark, Videotape Operator

VIDEOTAPE OPERATOR: We're on the record.

DONALD C. MANN, M.D., of lawful age, called by the Defendant for the purpose of direct examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

10        DIRECT EXAMINATION OF DONALD C. MANN, M.D.  
BY MR. ROMAN:

MR. ROMAN: Let the record show that this is the case Timothy Rose versus David George, a case pending in the Court of Common Pleas, Cuyahoga County, Ohio Case Number 179214 assigned to Judge Lawther.

16        We are here to take the videotape  
18        deposition of Dr. Mann to be played at the  
19        trial of this case. But before we begin,  
20        I'd like to ask plaintiff's counsel,  
22        Mr. Wolf, that if there would be any  
23        defects in notice or service that those  
24        would be waived?

MR. WOLF: They are waived.

25        MR. ROMAN: Thank you, Mr. Wolf.

1 Q. Doctor, would you state your name, please.

2 A. Donald Charles Mann.

3 Q. **Are** you a duly licensed physician in this  
4 state?

5 A. I am.

6 Q. When did you obtain your license, Dr. Mann?

7 A. In 1973.

8 Q. Do you maintain an of'fice in the area?

9 A. I do.

10 Q. Where is your office located?

11 A. The street address is 1611 South Green Road in  
12 South Euclid, one of the eastern Cleveland  
13 suburbs.

14 Q. How long have you been practicing your  
15 profession?

16 A. In this location for 17 years and then for two  
17 years before that in the service.

18 Q. Where did you receive your educational training,  
19 Dr. Mann?

20 A. My medical school was Indiana University where I  
21 went the standard four years, graduating in  
22 1968.

23 Q. Did you then continue your medical education?

24 A. I did.

25 Q. How so, doctor?

1 A. The, right after medical school graduation I did  
2 a year of medical internship also at Indiana  
3 University Medical Center and following that I  
4 did training, specialty training in neurology.

5 Q. Did you then serve our country?

6 A. I did, yes.

7 Q. Would you tell us about that, please?

8 A. Yeah, I was in the Army from 1972 to 1974  
9 stationed in Japan.

10 Q. And what did you do in the Army, doctor?

11 A. Well, I was a neurologist for a United States  
12 Army hospital which served troops in the  
13 southern Japan region.

14 Q. I see, thank you. Do you specialize in any area  
15 of medicine?

16 A. I do.

17 Q. Which one?

18 A. Neurology and specifically neurology of adults.

19 Q. Would you describe that specialty, please?

20 A. Yes. The diseases that we deal with have to do  
21 with the brain and all the parts of the anatomy  
22 and nervous system that bring information into  
23 the brain and take it out again, so we're  
24 talking about vision, muscles and nerves that  
25 run in the arms and the legs, not to mention

1 things like thinking and memory.

2 And common diseases that we deal with are  
3 things like epilepsy, migraine, brain tumor,  
4 stroke, Alzheimer, multiple sclerosis, nerve  
5 injuries, disc problems and so forth.

6 Q. As a neurologist, do you perform neurological  
7 surgery, Dr. Mann or is your practice devoted to  
8 some other area?

9 A. I confine myself just to the diagnostic and  
10 medical treatment and if a patient needs surgery  
11 then I refer that patient to a surgeon.

12 Q. After you completed your educational medical  
13 training and service to our country, did you  
14 then begin the practice of neurology on a full  
15 time basis?

16 A. I did.

17 Q. And you've been practicing ever since?

18 A. Yes.

19 Q. Dr. Mann, are you on the staff of any hospitals?

20 A. I am.

21 Q. Would you tell which ones, please?

22 A. The major hospital is University Hospitals of  
23 Cleveland. Also I'm on the staff of Metro  
24 Health and Geauga Community Hospital.

25 Have you taught at any medical schools?

1 A. I have.

2 Q. Would you tell us about that, please?

3 A. I have been teaching at Case Western Reserve  
4 University School of Medicine since I came to  
5 Cleveland and that teaching assignment takes  
6 different forms and different years.

7 Currently I help supervise the neurological  
8 clinic at Metro Health.

9 Q. Do you belong to any professional associations?

10 A. I do.

11 Q. Would you tell us about some of those, please?

12 A\* I belong to, the national organization is the  
13 American Academy of Neurology. And I belong to  
14 the Ohio State Medical Association and a local  
15 medical society is the Cleveland Academy of  
16 Medicine I belong to.

17 Q. What is a board certified physician, Dr. Mann?

18 A. One who has passed a difficult, usually  
19 difficult, test administered by senior people in  
20 the specialty designed to determine whether that  
21 individual can practice the specialty at its  
22 highest level.

23 Q. Are you board certified?

24 A. I am.

25 Q. In what area of medicine?

1 A. Neurology.

2 Q. Are all neurologists board certified, Dr. Mann?

3 A. No, they are not.

4 Q. When did you become board certified in  
5 neurology?

6 A. 1974.

7 Q. As part **of** your practice in neurology, doctor,  
8 have you observed and treated patients with  
9 injuries to the shoulders, arms, elbow and  
10 neck?

11 A. I have.

12 Q. Are you being paid for your time devoted to this  
13 case?

14 A. I would hope so, yes.

15 Q. Have you testified in personal injury cases  
16 before, Dr. Mann?

17 A. I **have**.

18 Q. And has that been on behalf of both plaintiffs  
19 and defendants?

20 A. It has.

21 Q. Dr. Mann, did you see the plaintiff, Tim Rose,  
22 at my request?

23 A. I did.

24 Q. When did you see the plaintiff?

25 A. Mr. Rose was seen on August 9th, 990.



Q. And after you saw the plaintiff and presumably examined him and evaluated him, did you prepare a report?

A. I did.

Q. Would that report be necessary to testify here this morning?

A. It would help me, yes.

Q. Doctor, feel free to refer to the report during your testimony. What is a history?

10 A. This is a recounting in the patient's own words of his or her symptoms and is sort of a natural flowing way that really only the patient can provide and in that history are details of how much, how long, where it hurts or doesn't feel right and other important things, like what helps it, what hurts it and so forth, so this is the major directive or clue as to what's the  
18 underlying problem.

During the history portion of your evaluation of  
20 the plaintiff, did you ask if he was having any medical problems because of his motor vehicle  
22 accident of December 3, 1987?

23 I did.

24 And what did he say in that regard, Dr. Mann?

25 Well, he told me that he had some symptoms,

1 fewer symptoms, but still had a few left from  
2 his 1987 accident.

3 And those things would be that his left  
4 hand grip wasn't quite as strong as it had  
5 been. And this tingling had pretty much gone  
6 away and that he was able to straighten his left  
7 elbow out, so he was really pretty much  
8 recovered from all the symptoms that he had had.

9 Q. After you obtained a history from the plaintiff,  
10 did you then examine him?

11 A. I did.

12 Q. And what did the examination consist of, what  
13 did you do, Dr. Mann?

14 A. Well, the exam here *is* directed largely to the  
15 involved part, namely the arm, the hand, the  
16 strength in the hand, the sensation, reflexes,  
17 the site of the surgery and so forth.

18 Q. Tell us what your examination showed.

19 A. The, I was looking particularly at his left hand  
20 to see if any of the muscles were gone and if he  
21 still had what had been described as a clawing  
22 or absence of certain muscle groups in the  
23 hand.

24 The muscles in the hand are very easy to  
25 see because they're, they stick out, there's

1       only bone in the hand, and I tested those  
2       muscles.

3               Apart from looking at them to see if they  
4       were the right size, I tested them to see if  
5       they were strong, particularly the ulnar  
6       innervated muscles. And they are very specific,  
7       they move the fingers apart and they move the  
8       little finger out on the end and so forth,

9               So I tested the strength and looked at the  
10       muscles that the ulnar nerve innervates in the  
11       left hand, to start with.

12      Q.   In layperson's terms, what did that part of your  
13       examination show?

14      A.   All right. **He** had good strength in all those  
15       muscles and there was no paralysis or weakness  
16       in any of the muscles that had been affected by  
17       his ulnar nerve in the past.

18      Q.   What else did your examination consist of?

19      A.   The rest of the examination was testing him for  
20       sensation. This is the part of the exam that  
21       corresponds with things like numbness,

22               And here I tested pin sensation in all the  
23       fingers and vibratory senses and here one is  
24       testing a feeling that is carried by separate  
25       nerves than pain and touch.

1           And I also did the other extremities, but  
2           the left side, left upper was the important  
3           one.

4       Q.   And again, in layperson's terms, what did that  
5           part of your examination show?

6       A.   The, he could feel pin sensation in all the  
7           fingers in the left hand except for the little  
8           finger and he could feel the vibrating tuning  
9           fork in the joints of the fingers of the left  
10          hand, so it was all normal except for the very  
11          little finger.

12      Q.   Was there any other examination that you did,  
13          Dr. Mann?

14      A.   All right. I checked his reflexes. I looked at  
15          his left elbow and then I did some other things  
16          that are unrelated to his problem, and all those  
17          were normal.

18      Q.   Okay. Does that describe in layperson's terms  
19          what your examination showed?

20      A.   Yes.

21      Q.   As part of your evaluation of the plaintiff, did  
22          you review his medical records?

23      A.   I did.

24      Q.   Doctor, after obtaining the plaintiff's history,  
25          reviewing the medical information and after

1 performing the examination, did you reach an  
2 opinion based upon a reasonable degree of  
3 medical certainty as to whether the plaintiff  
4 sustained any injuries as a direct and proximate  
5 result of the motor vehicle accident of  
6 December 3, 1987?

7 A. I did.

8 Q. And what is that opinion, Dr. Mann?

9 A. Well, particularly as relates to the arm, based  
10 pretty much on what he said, something happened  
11 to the ulnar nerve, presumably at the time of  
12 that injury, and there is something happened  
13 affecting the ulnar nerve, so there is some  
14 element of injury there.

15 There are other things going on with the  
16 ulnar nerve, based on the time pattern of what  
17 went on later, the testing that went on and so  
18 forth. So there is an element of injury in that  
19 accident.

20 There are also other things that affect the  
21 ulnar nerve which I think are probably more  
22 important contributing to his problem and his  
23 later need for treatment.

24 Q. Dr. Mann, what condition did Dr. Colombi perform  
25 surgery for?

1 A. He operated on the left ulnar nerve to move it  
2 out of the groove it lies in by taking off one  
3 part **of** that, sort of hill, called the  
4 epicondyle and moving the nerve away from its  
5 exposed position in the elbow up into the  
6 forearm. And that's called an ulnar nerve  
7 transposition or epicondylectomy.

8 Now, this has the effect **of** taking the  
9 nerve away from a location where it can be  
10 repeatedly injured, injured when we rest on our  
11 elbows basically or you bump your elbow. So it  
12 moves it from an exposed posture in the arm to a  
13 protected location in the forearm.

14 Q. Do you have an opinion again, based upon  
15 reasonable medical certainty, as to whether the  
16 sole proximate cause of the condition which  
17 Dr. Colombi operated **on** in September of 1988 was  
18 directly and proximately caused by the motor  
19 vehicle accident of December 3, 1987?

20 A. I do.

21 Q. And what is your opinion in that respect,  
22 doctor?

23 A. That the condition that Dr. Colombi operated on  
24 for was -- the sole cause of that condition was  
25 not the automobile accident.

1 Q. Why do you say that?

2 A. Well, a couple reasons. The ulnar nerve  
3 compression is a, most often a chronic recurring  
4 type of thing, like other nerve compression  
5 syndromes in the arm and it's not a one-time  
6 injury process, unless that injury is a severe  
7 fracturing, wrenching type of process where  
8 there is obvious damage to the structure, in  
9 this case the elbow.

10 Q. Were there any of those things present in this  
11 case?

12 A. No, there were not.

13 Q. I'm sorry, doctor, did I interrupt you?

14 A. Yeah. Well, the other thing is he, the vast  
15 majority of such patients injure their elbows  
16 simply from postural habits, either at work or  
17 the way they sit in chairs or the way they drive  
18 in cars and that type of thing. And since this  
19 appeared to evolve over a rather long period of  
20 time, my feeling is that he had ongoing trauma  
21 from other factors and not just this car  
22 accident.

23 Q. Do you have an opinion, Dr. Mann, as to whether  
24 the plaintiff suffers from a permanent injury as  
25 a direct and proximate result of his accident of

1 December 3, 1987?

2 A. I do.

3 Q. What is your opinion?

4 A. He does not have a permanent injury as a result  
5 of that accident.

6 Q. Why do you say that?

7 A. Well, to whatever extent that accident  
8 contributed to the ulnar nerve problem, it's  
9 been corrected and is correctable by the nerve  
10 transposition, the surgery that Dr. Colombi did  
11 and it's a standard sort of thing. A nerve is  
12 under pressure, take the pressure off, the nerve  
13 goes back to normal.

14 i don't see the accident as doing that much  
15 to him, in the first place, so given that the  
16 accident contributed a small part and that the,  
17 whatever all parts contributed to it has been  
18 corrected, there wouldn't be any permanent  
19 problem from that accident.

20 Q. Dr. Mann, do the injuries from the accident of  
21 December of 1987 prevent this individual from  
22 working?

23 A. Those injuries would not prevent him from  
24 working, no.

25 Why do you say that?



A Well, he's pretty much been returned to normal or he's back like he was before, so whatever he could do before the accident he could do after the surgery. And this is the standard way such things happen.

The vast majority of such patients go on about their lives normally after the surgery and are unchanged by the condition and helped by the surgery.

Q. Did Mr. Rose tell you that his left upper extremity or left elbow struck some part of the inside of his truck in the accident?

A. He did.

Q. Did the plaintiff receive emergency treatment at Marymount Hospital on the evening of the accident?

A. He did.

Q. Did you review the emergency records?

A. I did.

Q. Do the emergency records contain any mention of left arm complaints by Mr. Rose?

A. Not that I could find.

Q. Do the emergency records contain any mention of left elbow complaints of Mr. Rose?

A. Not that I could find.

1 Q. Was any treatment given to the plaintiff's left  
2 upper extremity or left elbow at Marymount  
3 Hospital on the evening of the accident?

4 A. No.

5 Q. Dr. Mann, was his left arm x-rayed?

6 A. It was not.

7 Q. Was his left elbow x-rayed?

8 A. No.

9 Q. Was his left knee x-rayed?

10 A. Yes.

11 Q. What were the results of that?

12 A. I have to look. He primarily had knee  
13 complaints and that's what the emergency visit  
14 was about.

15 The, I'm not exactly sure that his knee was  
16 x-rayed, but they diagnosed a knee contusion and  
17 he was given some sort of appliance for that.

18 Q. Was Mr. Rose actually given a knee immobilizer  
19 or crutches?

20 A. It says he -- I think it says he refused a knee  
21 immobilizer or cervical -- or crutches, meaning  
22 that he was probably offered them, but didn't  
23 want them.

24 Q. Was the plaintiff's neck examined at the  
25 emergency room?

1 A. Yes.

2 Q. What were the results of that?

3 A. It looks like normal full, looks like normal  
4 range of motion and not tender.

5 Q. And was there any indication of a back injury in  
6 the emergency records?

7 A. No.

8 Q. Mr. Rose's initial follow-up treatment was with  
9 Dr. Gabelman; is that correct?

10 A. Yes.

11 Q. Did you review Dr. Gabelman's records regarding  
12 his treatment of the plaintiff in the immediate  
13 post accident period?

14 A. I did.

15 Q. Now, the plaintiff saw Dr. Gabelman for the  
16 first time after the accident on December 11,  
17 1987.

18 A. Correct.

19 MR. WOLF: Objection. You can  
20 answer.

21 Q. Do Dr. Gabelman's records contain any mention of  
22 left elbow complaints or left elbow injury on  
23 12/11/87?

24 A. They do not.

25 Q. When was the plaintiff's second scheduled visit

1 with Dr. Gabelman?

2 A. January 8th, 1988.

3 Q. And what happened at that time?

4 A. Well, it's indicated in the notes that no show,  
5 meaning that he didn't come.

6 O. As I understand it, Dr. Gabelman saw the  
7 plaintiff again on January 27, 1988.

8 MR. WOLF: Objection.

9 Q. What happened at that time, Dr. Mann?

10 MR. WOLF: Leading.

11 A. He -- correct, he did. There's a note saying  
12 the patient feels much better and he's  
13 essentially back to normal.

14 Q. Is there any mention of left elbow complaint or  
15 injury for the January 27, 1988 visit?

16 A. No. It says, exam of injured parts is normal  
17 and that he just needs to return whenever he  
18 needs to, if then. So there's really, it looks  
19 like a normal sort of a visit.

20 Q. Does the note for January 27, 1988 make any  
21 indication as to how the plaintiff was feeling?

22 A. Much better.

23 Q. What is EMG testing, Dr. Mann?

24 A. Those are the initials for electromyographic  
25 testing. It's a form of examination to

1       determine which nerves and muscles are not  
2       working properly and it's applied to the  
3       extremities and there's a shock given to the  
4       nerve to measure the speed of electricity and a  
5       needle is used in the muscles to see if they're  
6       firing improperly. So it's **a** way of mapping out  
7       which nerves are not working.

8       Q. Is this an objective test, an EMG?

9       A. For the most **part**, yes. There **is** some variation  
10      among interpreters, but it's very objective.

11      Q. **Was** EMG testing on the plaintiff's left upper  
12      extremity done on June 18, 1988?

13      A. Yes.

14      Q. And that was about six months after the  
15      accident; is that right?

16      A. Correct.

17      Q. Did this EMG testing which was done show any  
18      objective abnormality with respect to the nerves  
19      which traversed the plaintiff's left elbow?

20      A. Well, the ulnar nerve itself, the conduction  
21      speeds and so forth, are normal.

22               Some of the muscles in the arm that are  
23      innervated by the ulnar nerve and by the muscles  
24      are affected by the needle part of the  
25      electromyographic part of the test,

1 Q. Is a myelogram an objective test?

2 A. Very.

3 Q. And I believe that was done in June or July, if  
4 I'm not mistaken, in 1988; is that correct?

5 A. Right.

6 Q. Did the -- and that was done on the plaintiff's  
7 neck?

8 A. Correct.

9 MR. WOLF: Objection.

10 Q. Where was the myelogram done, what part of the  
11 body, Dr. Mann?

12 A. Well, he had a cervical myelogram at Hillcrest  
13 Hospital in July of 1988.

14 Q. Was a CT scan also performed?

15 A. Yeah, that's a part of the test. The dye is put  
16 in and pictures are taken, that's the  
17 myelogram.

18 Then a CT scan is done afterwards and this  
19 gives you cross-sectional views, so you get  
20 three dimensional study, basically putting the  
21 myelogram and CT scan together.

22 Q. You mentioned the cervical spine, what area of  
23 the body is that?

24 A. Oh, that's the neck basically.

25 Q. And that's to what area of the body the

1 myelogram and the CT scan was directed; is that  
2 right?

3 A. Yes.

4 Q. Did the myelogram show any disc injury?

5 A. It did not.

6 Q. Did the CT scan show any disc injury?

7 A. It did not.

8 Q. When the plaintiff gave you his history at the  
9 time of your evaluation, did he tell you that  
10 before his left elbow operation in September of  
11 1988 whether he had been working?

12 A. He told me he had not been working actually.

13 Q. Do Dr. Gabelman's records reflect anything about  
14 any work being done by the plaintiff after the  
15 accident?

16 MR. WOLF: Objection,

17 A. **Well**, there is a note in July in Dr. Gabelman's  
18 records, saying that he had been doing some  
19 heavy work in May and June of 1988, **but** couldn't  
20 continue with it.

21 Q. What type of work do Dr. Gabelman's records  
22 reflect that the plaintiff was doing?

23 MR. WOLF: Objection.

24 A. Construction work.

25 Q. When is the first mention of any left elbow

1 symptoms in Dr. Gabelman's records, Dr. Mann?

2 A. This would be in the July 22nd, 1988 entry.

3 Q. Now, we talked about EMG testing before.

4 Did the plaintiff have any additional EMG  
5 testing after the first testing, which was done,  
6 I believe, in June of 1988?

7 A. Yes, he had a subsequent **study**.

8 Q. When was that done, Dr. Mann?

9 A. I believe that was in August -- this was in,  
10 prior to his surgery in September, so probably  
11 in, either the end of July or August.

12 Q. And what were the results of the EMG test at  
13 that time?

14 A. This is the one that was done for Dr. Colombi  
15 and I can tell you by looking in his notes if  
16 you'll just give me a second. It showed,  
17 according to Dr. Colombi, an ulnar neuropathy  
18 meaning there's something wrong with the ulnar  
19 nerve. And also the median nerve and also maybe  
20 a pinched nerve in the neck.

21 So there are more or less two or three  
22 findings in there, none of which, or any **of**  
23 which could explain some of his symptoms.

24 Q. When did Dr. Colombi do the surgery?

25 A. On September 2nd.



1 Q. And did you review the discharge summary which  
2 was prepared with respect to the surgery?

3 A. I did, yes.

4 Q. Did you review the history portion?

5 A. Pes.

6 Q. Is there anything of significance in the history  
7 portion *of* the discharge summary?

8 A. Well, I think there is, going on what Mr. Rose  
9 says and at least to a certain Dr. Scarsella,  
10 who took the history, Mr. Rose told that  
11 physician that he had had left ulnar complaints  
12 for three months prior to September of 1988.

13 Q. But the accident was done how many months before  
14 the surgery -- or strike that.

15 But the accident was how many months before  
16 the surgery, Dr. Mann?

17 A. About ten months.

18 Q. Is the surgery which Dr. Colombi did a major  
19 surgery?

20 A. No. It can be done even in an outpatient  
21 setting. There are reasons for not doing it  
22 that way, but it's minor, it's simple, there's  
23 no general anesthetic, there's very little risk,  
24 it has a high rate of success. It's pretty  
25 simple, straightforward stuff; not to say that

1           it doesn't take skill, but it's a pretty  
2           straightforward thing.

3       Q.   I understand. During the history portion of  
4           your evaluation of the plaintiff, did he tell  
5           you about an incident in February of 1988 where  
6           he injured his back?

7       A.   He did not.

8       Q.   Okay. Did he tell you that at that time he was  
9           knocked down by his dog and that he injured his  
10          back when he fell down six steps?

11                       MR. WOLF:    Objection.

12      A.   No,. he did not.

13      Q.   During the history portion again, did the  
14          plaintiff tell you that in February of 1989, a  
15          motorcycle fell on his left upper extremity?

16                       MR. WOLF:    Objection,

17      A.   No, he did not.

18      Q.   During the history, did the plaintiff tell you  
19          that he jammed his left elbow in February of  
20          1989 when he punched someone in the face?

21                       MR. WOLF:    Objection.

22      A.   No, I was not aware of that.

23      Q.   Dr. Mann, during the history, did Mr. Rose tell  
24          you about any incidents after December of 1987  
25          where his left extremity or left elbow may have

1       been injured?

2       A.   No, he did not.

3       Q.   Would you agree, Dr. Mann, that a physician's  
4       opinion as to what caused an injury is likely to  
5       be more accurate when an accurate history is  
6       obtained?

7       A.   Yeah.  The details, the exact events, the  
8       completeness and accuracy are quite helpful,  
9       particularly in injuries, in determining what  
10      happened, what is the major contributing factor,  
11      what was significant, what wasn't and so those  
12      are important.

13                   MR. ROMAN:    Thank you, doctor,  
14                   that's all the questions I have for you.

15                   -   -   -   -

16      CROSS-EXAMINATION OF DONALD C. MANN, M.D.

17      BY MR. WOLF:

18                   MR. WOLF:    Can we go off for a  
19                   minute?

20                   VIDEOTAPE OPERATOR:   We're off the  
21                   record.

22                   -   -   -   -

23                   (Off the record.)

24                   -   -   -   -

25                   VIDEOTAPE OPERATOR:   We're on the

1 record.

2 Q. Good morning, Dr. Mann, my name is Paul Wolf. I  
3 represent Timothy Rose, the plaintiff, **in** this  
4 case. I'm going to ask you a few questions on  
5 cross-examination.

6 Dr. Mann, at the time you wrote your report  
7 of August 20th, 1990, you had reviewed the  
8 office notes and records of Dr. Gabelman, had  
9 you not?

10 A. I had not.

11 Q. You had not?

12 A. No.

13 Q. Well, I want to refer you to the first page of  
14 your report of August 20th, 1990.

15 Could you read the first two paragraphs?

16 A. Oh, **I'm** sorry. Yeah, I did have some of  
17 Dr. Gabelman's notes, excuse me,

18 Q. Okay. And who provided you with Dr. Gabelman's  
19 notes?

20 A. Those would have, I presume, come from  
21 **Mr.** Roman's office.

22 Q. Okay. And do you agree that Dr. Gabelman's  
23 treatment was reasonable and necessary for the  
24 complaints that Mr. Rose had?

25 A. Yes.

1 Q. And in reviewing those records you noted that in  
2 addition to any ulnar neuropathy he may have had  
3 that Mr. Rose had complaints of his neck during  
4 his treatment with Dr. Gabelman; isn't that  
5 correct?

6 A. Yes, he did.

7 Q. Okay. By the way, doctor, are you aware that  
8 Dr. Gabelman has recently had a heart attack?

9 A. No, I wasn't.

10 Q. Dr. Mann, did you review Dr. Mars' records and  
11 office notes prior to writing your report of  
12 August 20th, 1990?

13 A. Yes.

14 Q. Okay. And do you agree from reviewing that and  
15 the other records that the treatment rendered by  
16 Dr. Mars was reasonable and necessary?

17 A. Yeah, for what I know, namely the EMG test, he  
18 admitted him to Hillcrest and so forth, that  
19 part of it, yes.

20 Q. Doctor, how is an EMG test done?

21 A. It's, the mechanics are, there are two parts.  
22 The EMG involves a needle being placed in given  
23 muscles in the extremity and the needle's hooked  
24 up to an oscilloscope where you can see the  
25 waves.

1           And you then ask the patient to move the  
2 muscle and you see certain types of waves and  
3 some are normal and some aren't or the thing may  
4 fire on its own, which is abnormal.

5           Then you move around the different muscles  
6 in the arm or the leg, and that's the first  
7 half.

8           The second half involves delivering an  
9 electric current to the nerves and seeing how  
10 long it takes the nerve to conduct the  
11 electricity down the extremity.

12 Q. And the needle component **of** the exam, are the  
13 needles inserted through the patient's skin into  
14 his arm?

15 A. Oh. Yes.

16 Q. Is there a component of pain involved with that  
17 examination?

18 A. The test is uncomfortable.

19 Q. And Dr. Mars performed one of these tests on Tim  
20 Rose in June of 1988; isn't that correct?

21 A. Yes, he did.

22 Q. And it is your opinion that that exam or you  
23 found from reading the records that that exam  
24 was abnormal, correct?

25 A. I did, yes.

1 Q. Okay. And subsequently Dr. Mars had Mr. Rose  
2 admitted to Hillcrest Hospital, correct?

3 A. He did.

4 Q. Okay. And Tim had a myelogram performed on him  
5 at Hillcrest Hospital, correct?

6 A. He did.

9 Q. How is a myelogram performed?

8 A. Well, dye is introduced into the spinal column  
9 through a needle. This is a bigger needle that  
10 can, material can travel through, usually  
11 injected into the neck, but it can be injected  
12 into the lower back.

13 And then the dye rotates, flows around and  
14 pictures are taken. And sometimes, if it's a  
15 water soluble dye, it just goes away. If it's  
16 not, it has to be taken out again.

17 Q. That test can be described as painful on  
18 occasion or at least uncomfortable?

19 A. Oh, yeah. It's not something you do without a  
20 good reason. You got to get a needle stuck in  
21 the back and it's uncomfortable to lie on that  
22 table, so, yeah, it's not just an every day  
23 thing.

24 Q. In fact, there can be complications from the  
25 myelogram?

1 A. There can.

2 Q. What types of complications might you see?

3 A. The major complication is a spinal tap headache,  
4 that's a trivial thing that just requires some  
5 attention.

6 You can, the dye can get into the head and  
7 there can be a rather violent period of nausea,  
8 vomiting. A seizure can occur.

9 And then the least likely I would say is  
10 the introduction of material inadvertently into  
11 the spinal fluid such that you get an infection  
12 or chemical reaction.

13 Q. In fact, you had opportunity to review the  
14 Hillcrest Hospital records; did you not?

15 A. I did.

16 Q. And from reviewing those records, isn't it a  
17 fact that Tim complained of one of these post  
18 myelogram headaches?

19 A. I can tell you that exactly. It often lasts a  
20 day or two and I think maybe that's the reason  
21 he was there, but let me just tell you for  
22 sure.

23 Well, I don't see it offhand, but if you  
24 say he did, he did.

25 Q. Well, isn't it a fact that Tim was in the



1 hospital on that occasion for eight days?

2 A. Yes, he was.

3 Q. He was placed in traction, correct?

4 A. Correct.

5 Q. And in fact the first myelogram he underwent at  
6 Hillcrest Hospital was described as subdural?

7 A. Right. The dye did not go into the spinal  
8 column, it went into the space outside but still  
9 within the confines of the bone, so basically  
10 you're in the wrong place, it won't flow, you  
11 got to take, start all over again and do it all  
12 over again and so you wait a day and that's  
13 usually what happens.

14 Q. In fact, he did have a repeat myelogram at  
15 Hillcrest Hospital; did he not?

16 A. Correct.

17 Q. And that was six or seven days after the initial  
18 myelogram, correct, from your recollection of  
19 the records you reviewed?

20 A. I can tell you exactly. **Yes.** 7/8 he had the  
21 second myelogram. On 7/2 he had the first.

22 Q. Doctor, in your experience have you ever known  
23 patients to have contractions or twitching of  
24 their muscles or extremities during one of these  
25 myelograms?

1 MR. ROMAN: Object. You can  
2 answer.

3 A. I'm not sure what you mean.

4 You have to move around during the test and  
5 I mean, you're on a hard table, the table moves,  
6 so you need to contract your muscles to survive  
7 the test. I mean, it's a physical demanding  
8 kind of a proposition.

9 Q. Well, have you ever seen nerves begin to twitch  
10 and extremities begin to twitch during one of  
11 these tests?

12 MR. ROMAN: Object, You can  
13 answer, doctor.

14 A. Well, only under -- that wouldn't be an expected  
15 part of the test. I mean, somebody can shiver,  
16 the rooms are cold. Patients have twitching  
17 muscles and nerves who get the test, in the  
18 first place. The test wouldn't be likely to  
19 make that happen.

20 That's not part of what I would consider  
21 the expected phenomenon or related phenomenon  
22 from a myelogram.

23 Q. That would be one of the more remote  
24 complications, correct?

25 A. Well, I wouldn't even use the word complication

1 to describe muscle contraction or muscle  
2 twitching. I mean those are phenomenon, not  
3 abnormalities.

4 Q. Okay. What was the date that you examined Tim  
5 Rose in your office?

6 A. August 9th, 1990.

7 Q. At that time you performed a physical exam,  
8 correct?

9 A. I did.

10 Q. Okay. And part of that, part of your exam  
11 consisted of measuring his grip strength,  
12 correct?

13 A. Correct.

14 Q. And at that time you noted that his grip  
15 strength was not quite as strong as it was prior  
16 to the accident, correct?

17 A. Now, he, he said that. I mean, that was his  
18 description, that the grip, the way he used it  
19 every day, the hand every day, didn't seem to be  
20 as good as it was a couple of years ago.

21 Q. Okay. Well, in fact, in your report of August  
22 20th, 1990 you related that lessened grip  
23 strength to his automobile accident of 1987?

24 A. I did?

25 Q. Well, if you look at the last paragraph on the

1 first page of that August 20th, 1990 report  
2 continuing to the top of Page 2.

3 A. Yes, an ulnar -- his automobile accident in '87,  
4 origin of hand complaints --

5 Q. Well, I'll read it to you. It says, Mr. Rose is  
6 now 44 years of age and he has a few symptoms at  
7 this time related to his 1987 accident.

8 Your next sentence says, the grip strength  
9 in his left hand is not quite as strong as it  
10 was.

11 A. That's what he's telling me. Whether, in fact,  
12 his grip strength is different or not, is  
13 another matter. He says it is, and so I want to  
14 know that and I write that down.

15 Whether there's an objective true  
16 difference in grip strength is another  
17 question.

18 Q. But on August 20th of 1990 you related that  
19 history as relating to his automobile accident  
20 of 1987?

21 A. Yes.

22 Q. Correct?

23 A. Yes, I did.

24 Q. Doctor, when you performed your physical  
25 examination I'm sure you also noticed that

1           Mr. Rose has a scar where the surgery was  
2           performed, correct?

3       A.    Correct.

4       Q.    Okay.  You mentioned that, as part of the ulnar  
5           transplant that Dr. Colombi performed, there was  
6           also an epicondylectomy that was performed?

7       A.    Right.

8       Q.    I believe you mentioned that that was a part of  
9           the bone is removed or shaved?

10      A.    Right.  The nerve lies in a groove which has  
11           sort of two peaks on either side, you can think  
12           of them as little mountains and a stream running  
13           between them.  They knock off one side, the  
14           nerve can be taken out of that little valley and  
15           moved away.  And it is the anatomy of those,  
16           that bone that causes the nerve to be exposed in  
17           the first place.

18      Q.    You also did a pin sensation test on Mr. Rose;  
19           did you not?

20      A.    I did.

21      Q.    And that examination revealed that there was a  
22           loss of sensation in his little finger of his  
23           left hand, correct?

24      A.    Correct.

25      Q.    Okay.  Now, doctor, at the time of your August

1        20th, 1990 report you arrived at an opinion that  
2        Mr. Rose's nerve injury was caused by the  
3        accident in 1987, December of 1987; isn't that  
4        correct?

5        A. I believe that the accident did do something to  
6        that ulnar nerve, yes.

7        Q. Okay. Ulnar nerves are an elusive type of  
8        injury or they can be; isn't that correct?

9        A. Well, yeah, they can be. For the most part,  
10       they're not, but any nerve injury can be  
11       difficult to pin down.

12       Q. In this case you would agree that the actual  
13       nature of the injury proved to be elusive until  
14       later discovered?

15       A. Well, I would say the actual nature of the  
16       condition was elusive.

17       Q. Okay. Is that what you mean when you say in  
18       your August 20th, 1990 report, that the origin  
19       of his hand complaints was elusive at first but  
20       finally identified by Dr. Colombi and  
21       corrected?

22       A. Where are we?

23       Q. That would be at the bottom of Page 3 of your  
24       report and the very top of the last page of your  
25       report.

1 A. Right. This thing went on for quite a long time  
2 before it was figured out what it was, the  
3 raising the question about where it came from in  
4 the first place. And so this evolutionary  
5 exercise tells us something about what's going  
6 on because it was so hard to figure out. But it  
7 was figured out by the time Dr. Colombi operated  
8 on it and corrected it.

9 So I see this problem as evolving, not so  
10 much just from December of '87, but from events  
11 that took place in '88 as well, whatever they  
12 were.

13 Q. But certainly you stand by your report where you  
14 say that the automobile accident of December  
15 1987 was a cause of his ulnar nerve injury?

16 MR. ROMAN: Object. You can  
17 answer.

18 A. Taking him at his word, for what he says and  
19 since I wasn't there, and, you know, I didn't  
20 see the thing, the car accident, and there are  
21 those who did see it closer and don't see that,  
22 but anyway giving him some credibility about  
23 that or giving some belief to that, I would say  
24 something happened in that accident, but it  
25 can't be very much because of the way this

1 condition went and the way such ulnar nerve  
2 compressions work in general.

3 But, I mean I think there's precious little  
4 reason to think the car accident did anything,  
5 however, giving him the benefit of the doubt, I  
6 will say that maybe it did do some little thing  
7 to the ulnar nerve.

8 Q. Well, what exactly did you mean when you  
9 dictated in your report of August 20th, 1990 at  
10 the bottom of Page 3 that Mr. Rose had, what I  
11 believe, was an ulnar nerve injury in his  
12 automobile accident in December of 1987?

13 A. That, based just on what he says, something  
14 happened to his elbow and the ulnar nerve,  
15 something, some little thing, maybe ten percent  
16 of the problem, 15 percent, some small factor,  
17 that's what I mean.

18 But the majority of his ulnar nerve problem  
19 are probably unrelated to the accident. And I'm  
20 giving him the benefit of the doubt there  
21 because of how clearly he articulates this.  
22 That's what I mean.

23 Q. But you also had other than the history that  
24 Mr. Rose gave you, you also conducted a physical  
25 examination, correct?



1 A. Right.

2 Q. And you also reviewed the office notes of  
3 Dr. Gabelman, correct?

4 A. Correct.

5 Q. And you also reviewed the office notes and  
6 operative records and reports of Dr. Colombi,  
7 correct?

8 A. Correct.

9 Q. And you also reviewed additional records from  
10 Mr. Rose's earlier injuries and evaluations  
11 dating back to as far as 1958 under Dr. Wolkin,  
12 correct?

13 A. Correct.

14 Q. And you also reviewed the notes and reports of  
15 Dr. Mars, including Mr. Rose's Hillcrest  
16 Hospital records, correct?

17 A. Correct,

18 Q. You also reviewed the Mt. Sinai Hospital records  
19 **from September 2nd, 1988 and '83**, correct?

20 A. Correct.

21 Q. And you also reviewed the Marymount Hospital  
22 emergency room report from December of 1987,  
23 correct?

24 A. Correct.

25 Q. So it wouldn't be a correct statement to suggest

1           that you totally rely on the history for  
2           arriving at your opinion that Mr. Rose sustained  
3           his ulnar nerve injury in the automobile  
4           accident of December of '87, correct?

5                       MR. ROMAN:     Object.   You can  
6                       answer.

7    A.   Not at all.

8    Q.   Now, do you believe that the ulnar nerve injury,  
9           in connection with some of Mr. Rose's **other**  
10          problems, is a significant limitation?

11   A.   Yes.

12   Q.   Okay.   How does the ulnar nerve problem become a  
13          significant limitation in Mr. Rose?

14   A.   Well, he's left-handed, so it's the dominant  
15          hand, that's a big factor.   And you don't want  
16          your dominant hand to have anything go wrong  
17          with it, with its nerve, bone or whatever.

18   Q.   Because that can limit you in certain types of  
19          work that you can do and certain other related  
20          physical activities, correct?

21   A.   Well, particularly those activities that require  
22          dexterity.

23   Q.   What were some of those other limitations that  
24          you referred to in your report of August 20th,  
25          1990?   The very end of the report, doctor.

1 A. Well, he had quite a head injury a number of  
2 years ago when he was a youngster and he  
3 required neurosurgical treatment of that.

4 Q. Is that the injury when he lost a portion of his  
5 brain and lost part of his speech center?

6 MR. ROMAN: Object. You can  
7 answer.

8 A. Yeah, he had a compound skull fracture meaning  
9 that the skull was broken and the bones indented  
10 inside the head and damaged the underlying brain  
11 to **some** degree. And **I believe** Julius Wolkin was  
12 the surgeon for that.

13 And after that he had an arm and leg  
14 weakness on the opposite side, the right side.

15 Q. And in reviewing the records dating back to  
16 Dr. Wolkin, **I'm** sure you've noticed that he had  
17 to **be** taught how to speak correctly again?

18 MR. ROMAN: Object. You can  
19 answer.

20 A, Yeah, he did require some, I'm sure lots of  
21 therapy, and I assume that among that, was  
22 speech and so forth.

23 Q. Doctor, is that one of the limitations you're  
24 referring to in your report of August 20th,  
25 1990, which **in** conjunction with the ulnar nerve

1 injury, makes this a, a significant problem?

2 A. Yes.

3 Q. Okay. Now, doctor, the defense is paying you  
4 for the time and providing your testimony today,  
5 isn't that correct?

6 A. I would hope so, yes.

7 Q. You were hired by the defendant to examine  
8 Mr. Rose, correct?

9 A. Yeah, I was asked by the defendant's counsel,  
10 yes.

11 Q. Okay. And you've only examined Mr. Rose one  
12 time, correct?

13 A. That is correct.

14 Q. And from reviewing the records of Dr. Colombi  
15 and the other records that you have, do you know  
16 how many times Dr. Colombi has seen Tim Rose  
17 with regard to this condition?

18 A. I don't know exactly, but I would guess  
19 somewhere around a half dozen and may still be  
20 seeing him, actually still seeing him today  
21 because they have taken, that office has taken  
22 care of him since he was a child.

23 So for the ulnar nerve thing I would guess  
24 half a dozen maybe a dozen times and all told,  
25 many more.



1 we're most interested in this case, because you  
2 can show that the ulnar nerve is conducting  
3 electricity, say at 40 meters per second instead  
4 of 60, across the elbow, and that pretty, that  
5 point's definitely the problem. That didn't  
6 show up here, so we don't have that kind of  
7 evidence to think of an ulnar nerve problem.

8 There's indirect evidence from muscles that  
9 the ulnar nerve and other nerves go to in the  
10 hand. And here we have, not only, the ulnar  
11 innervated muscles, but some others as well.

12 So it was abnormal in showing muscles  
13 weren't working right which have an innervation,  
14 best explained, somewhere in the neck. And that  
15 is I think what, in fact, what Dr. Mars  
16 concluded. That the abnormalities found in the  
17 left arm were best explained by a CAT one or a  
18 neck nerve type of problem.

19 Q. Was the abnormality found with respect to the  
20 ulnar nerve or somewhere else?

21 A. Well, somewhere else basically on the basis of  
22 those findings.

23 Q. When a physician tests someone's grip strength,  
24 Dr. Mann, is there any type of subjective  
25 component to that part of an examination?

1 A. Oh, sure. You're asking the patient to do  
2 something as hard as he or she can and that  
3 effort may be compromised by the anxiety, the  
4 desire to please somebody, whatever. So there's  
5 a definite subjective element to grip strength.

6 Q. Is there any subjective element to a test or  
7 examination of sensation decrease?

8 A. Yeah. That's highly subjective, because  
9 although I have ways of trying to make it  
10 objective, like testing neutral territory and so  
11 forth, the patient ultimately tells me what has  
12 filtered through his or her mind. And so  
13 there's an element of subjectivity there as  
14 well.

15 Q. And you said that the plaintiff had an ulnar  
16 injury because of his motor vehicle accident,  
17 was that accident the sole cause for the  
18 condition which Dr. Colombi performed the  
19 **surgery?**

20 A. It was not.

21 Q. Why?

22 A. Well, he didn't have any kind of significant  
23 injury to the elbow or the nerve at the time of  
24 the accident that I would accept as causative.  
25 You've got to have a big, heavy-duty elbow

1 injury that would take you to doctors and  
2 hospitals complaining of pain and tingling and  
3 so forth.

4 So number one: he didn't have the kind of  
5 injury you'd expect.

6 Number two: the thing didn't even evolve  
7 for a long time.

8 And the third thing is, most of these ulnar  
9 nerve problems come from people resting on their  
10 elbows or high riding nerves that they're going  
11 to get anyway.

12 Q. That brings me to my next question, what are  
13 causes of ulnar nerve injuries other than injury  
14 from an accident?

15 A. Okay. The most common cause is postural habits,  
16 namely resting on one's elbows, whether it's  
17 sitting in a chair, working at a desk, this type  
18 of thing.

19 So the average patient who comes into this  
20 office with an ulnar nerve problem sort of got  
21 it from sitting a certain way and didn't know or  
22 didn't even realize it.

23 The second most common factor probably is  
24 occupational situations where people have to use  
25 their elbows or rest on their elbows or use



1           their elbows to jam things or lots of elbow  
2           flexion.  Somebody hammering, for instance, with  
3           tight clothing on the elbow.

4           And then the third, I guess, I would say is  
5           people who have appliances applied to the elbow  
6           or are in bed in hospitals and injure their  
7           nerves that way.  But most of them, it's an over  
8           and over and over again thing.

9           They are very, I would say single injuries  
10          to the ulnar nerve, are unusual and infrequent.

11                   MR. ROMAN:  Thank you, that's all  
12                   the questions I have for you.

13

14           RECROSS-EXAMINATION OF DONALD C. MANN, M.D.

15           BY MR. WOLF:

16   Q.  Doctor, do you stand by your report of August  
17       20th, 1990?

18   A.  I do, yes.

19   Q.  And do you agree with the statement that you  
20       made in that report that, Mr. Rose had, what I  
21       believe was -- "I" being you -- an ulnar nerve  
22       injury in his automobile accident of December of  
23       1987?

24   A.  Yes.  With the qualification that it was a small  
25       contribution, yes.

1 Q. What were the other contributions?

2 A. Well, the ones that you always see in ulnar  
3 problems, postural habits, bad luck, high riding  
4 nerves that you get from your, **the** anatomy  
5 you're born with. And perhaps, in his case,  
6 perhaps occupational factors, if he was  
7 working. The life event sorts of things, the  
8 non injury causes of ulnar problems.

9 Q. But the only fact that you know of that could  
10 have been causative of this injury, was the  
11 automobile accident of December of '87,  
12 correct?

13 A, No.

14 Q. What else was related to you that would have  
15 caused this accident, this ulnar injury?

16 A. Well, what I know about ulnar nerve injuries,  
17 namely that most of them come about from the way  
18 people sit or rest on their elbows or their  
19 occupational predispositions, that's the way  
20 most of them come about.

21 Q. And anything that happened in 1989 to Mr. Rose  
22 would not affect your opinion that he had an  
23 ulnar nerve injury in the automobile accident of  
24 1987, correct?

25 A. Anything that happened to him in 1989?

1 Q. Correct.

2 A. well, you got to repeat the question. I am not  
3 sure I follow you.

4 Q. Well, Mr. Roman in his direct testimony made  
5 mention that Mr. Rose had some occurrences or  
6 injuries that were reported during 1989,  
7 correct, do you recall when he asked you about  
8 those?

9 A. Okay. The motorcycle, the fall down the steps,  
10 okay.

11 Q. Now, those accidents would have absolutely  
12 nothing whatsoever to do with the diagnosis that  
13 you made on August 20th, 1990, would they?

14 A. No. But I would rank them with that automobile  
15 accident as potential ulnar nerve problems, if  
16 you're talking about injuries to the ulnar nerve  
17 so.

18 Q. But hadn't Mr. Rose already been diagnosed and  
19 had surgery for his ulnar nerve before these  
20 accidents occurred?

21 A. That's correct.

22 Q. So those accidents could in no way have caused  
23 his ulnar nerve injury for which Dr. Colombi  
24 performed surgery in September of 1988, could  
25 they?

1 A. No, these are later events.

2 Q. Okay. Finally, doctor, do you believe that Tim  
3 Rose sustained an ulnar nerve injury in his  
4 automobile accident in December, of December of  
5 1987?

6 A. A small injury.

7 Q. Did you mention that you thought it was a small  
8 injury in your report of August 20th, 1990?

9 A. No.

10 Q. Okay.

11 MR. WOLF: Thank you. I have no  
12 further questions.

13 - - - -

14 FURTHER DIRECT EXAMINATION OF

15 DONALD C. MANN, M.D.

16 BY MR. ROMAN:

17 Q. Doctor, would the things that happened to  
18 Mr. **Rose** after Dr. Colombi performed the surgery  
19 have an affect on his left extremity condition  
20 after the surgery was performed by Dr. Colombi?

21 A. Oh, they could, yes.

22 MR. ROMAN: Thank you. That's all  
23 I have for you.

24 - - - -

25 FURTHER CROSS-EXAMINATION OF

DONALD C. MANN, M.D.

BY MR. WOLF:

Q. Doctor, do you have anything in your records from those 1990 '89 incidents which Mr. Roman is referring to, that would indicate that Mr. Rose sustained an injury to his elbow in those injuries?

A. I do not.

Q. Okay.

MR. WOLF: No further questions.

Thank you, doctor.

MR. ROMAN: Thank you, doctor.

VIDEOTAPE OPERATOR: Doctor, it's your right to view this videotape to prove its accuracy and you can also waive that right.

THE WITNESS: I waive.

MR. WOLF: Will counsel waive all filing requirements on this videotape?

MR. ROMAN: Yes.

MR. WOLF: Yes. Absolutely.

THE WITNESS: I waive my signature to the written transcript.

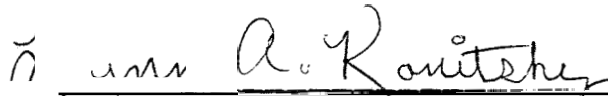
(Signature waived.)

C E R T I F I C A T E

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 9th day of December A.D. 1994.

  
Lynn A. Konitsky, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires February 8, 1995

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