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

IN THE COURT OF COMMON PLEAS

ROSEMARY WANK, ET AL.,

Plaintiffs,

- vs -) Case No.
A. CHESTER'S, INC.,) 218390
Defendant.)

- - - - -

Videotaped deposition of Richard R.
Masin, M.D., a witness herein, called by
the Plaintiff as if upon direct
examination under the statute, and taken
before Luann Zadell, 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 Wednesday, the 3rd
day of August, 1994, at 9:30 a.m., at the
medical office of Richard R. Masin, M.D.,
4100 Warrensville Center Road, City of
Cleveland, County of Cuyahoga and the
State of Ohio.

- - - - -

1 APPEARANCES:

2

3 On behalf of the Plaintiffs:

4 Gaines & Stern, by:

5 John V. Scharon, Esq.

6

7 On behalf of the Defendant:

8 Gallagher, Sharp, Fulton &

9 Norman, by:

10 Mark Greer, Esq.

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1 P R O C E E D I N G S

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3 RICHARD R. MASIN, M.D., a
4 witness herein, being of lawful
5 age, having been first duly sworn
6 according to law, deposes and says
7 as follows:

8 - - - - -

9 CROSS-EXAMINATION OF

10 RICHARD R. MASIN, M.D.

11 BY MR. SCHARON:

1.2 Q Good morning, Doctor. Would you,
13 please, state your full name for the
14 record?

15 A Richard R. Masin.

16 Q And what is your professional address?

17 A 4100 Warrensville Center Road,
18 Cleveland, Ohio.

19 Q And by profession, you are?

20 A Orthopedic surgeon.

21 Q Doctor, with what is the specialty of
22 orthopedic surgery concerned?

23 A With the treatment of injuries to the
24 musculoskeletal system, including backs,
25 extremities, hands, feet.

1 Q Would that include the know?
2 A Yes.
3 Q All right. Doctor, what, by way of
4 education and training, have you had for
5 the practice of orthopedic surgery?
6 A I went to medical school at the Kansas
7 City College of Osteopathic Medicine. I
8 did an internship here at -- at Brentwood
9 Hospital, followed by a residency in
10 orthopedic surgery at Brentwood Hospital.
11 Q And are you licensed to practice
12 orthopedic surgery in the State of Ohio?
13 A Yes, I am.
14 Q And for how long have you been so
15 licensed?
16 A Since 1976.
17 Q All right. Doctor, are you board
18 certified in orthopedic surgery?
19 A Yes, I am.
20 Q What does it mean to be board
21 certified?
22 A Board certified is, after you've
23 completed your residency training, you
24 take a qualifying exam to show your
25 proficiency in your field of expertise

1 and, if you pass that, you become board
2 certified.

3 Q And you did?

4 A Yes.

5 Q Doctor, with what hospitals are you
6 affiliated?

7 A With Brentwood, Richmond Heights,
8 Marymount, and Robinson Memorial Hospital.

9 Q Dr. Masin, do you teach medicine?

10 A Yes, I do.

11 Q And in what capacity?

12 A To medical students, interns and
13 residents at hospitals I'm affiliated
14 with.

15 Q And have you published any works in
16 the medical literature?

17 A Yes, I have.

18 Q All right. Doctor, I want to turn now
19 to Rosemary Wank, with whom this case is
20 concern. Is she a patient?

21 A Yes.

22 Q And for how long has she been a
23 patient of your office?

24 A Since 1991.

25 Q Doctor, we have marked, as Plaintiff's

Exhibit No. 14, records which we've been provided, and ask you to look at those. Are those the office records of your practice?

A Yes, they are.

Q And were they prepared in the -- by physicians in your office in the ordinary course of the practice?

A Yes, they were.

10 Q And were the notations made therein
11 made at or near the time of the events
12 that are recorded?

13 A Yes.

14 Q Thank you. You have a copy of those
15 in front of you?

16 A Yes, I do.

17 Q Or actually, you probably have the
18 originals.

19 A The originals, yes.

20 Q Doctor, when was Rosemary Wank first
21 seen in your offices?

22 A In -- on January the 31st, 1991.

23 Q All right. And was a history taken?

24 A Yes, it was.

25 Q What was her history, at that time?

1 A Her history was that she fell at a
2 restaurant on the previous Saturday night,
3 injuring her knees; most specifically, her
4 left. The left remained painful. You
5 want me continue with that?

6 Q Yes, please.

7 A She complained of immediate pain and
8 swelling in her left knee and she was
9 unable to walk. On exam, at that time, I
10 found that she did have swelling, fluid
11 within her knee, having what's called a
12 grade two effusion, which means it's a
13 moderate amount of fluid within the knee
14 joint. Also, pain over her medial
15 collateral ligament, which is the ligament
16 on the inner side of the knee. **Also**, pain
17 on the inner aspect of her kneecap. She
18 was only able to bend her knee,
19 approximately, 30 degrees, due to her
20 pain.

21 Q Doctor, did Rosemary Wank give you any
22 history about whether she had had prior
23 problems with her knees; that is, problems
24 before she fell at the restaurant?

25 A No, she did not.

1 Q She did not give you a history, or she
2 had no problems?

3 A Actually, she -- she did not give me a
4 history of previous pain.

5 Q Okay. I think in -- I'm looking at
6 the fourth line of your first office note.

7 A "No prior injuries," correct.

8 Q So she did give a history of having
9 had no prior knee problems?

10 A Correct.

11 Q All right. And Doctor, did you reach
12 any diagnoses at the time of this?

13 A Yes, my impression at that time was a
14 sprain of her medial collateral ligament
15 and a possible tear of her medial
16 meniscus.

17 Q And using what's been marked as
18 Plaintiff's Exhibit No. 15, which is a
19 model of the knee joint, could you explain
20 to the ladies and gentlemen who will see
21 this video what part of the anatomy you're
22 talking about?

23 A This is looking at the knee from the
24 front. Here's the kneecap and this tendon
25 that goes through kneecap, this is the

1 muscle up above, which is your thigh
2 muscle in the front. The ligaments on the
3 -- this is on the outside, here's the
4 inside, this is her medial collateral
5 ligament. Her pain, at the time of her
6 injury, was at the insertion of this
7 ligament on the femur and this is where
8 her ligament was stretched and partially
9 torn from at the time of her injury. The
10 -- also in question was that of a tear of
11 her cartilage, or her medial meniscus,
12 which is the shim-type structure within
13 the knee, which can be seen. (Witness
14 indicating.) How's that, is that a good
15 enough picture? And anytime there's an
16 injury to the medial collateral ligament,
17 you may well have an associated injury to
18 the medial meniscus.

19 Q All right. Doctor, on examination did
20 you find whether Rosemary Wank had a knock
21 knee, or a valgus deformity?

22 A Yes, she did.

23 Q All right. And was this a -- a
24 condition that she had prior to her fall
25 at the restaurant?

1 A Yes -- yes, it was.

2 Q And did you find that she had it in
3 one knee, or both knees, which?

4 A She had it in both knees; although,
5 her left knee was more pronounced after
6 her injury.

7 Q Okay. We'll get to that in .. in a
8 moment.

9 Was the knock knees a source of
10 any problems for her prior to her fall at
11 the restaurant?

1.2 A Not that I'm aware of.

13 Q Doctor, what was your treatment plan
14 after having seen her for the first time
15 in the office?

16 A She was to continue in a knee
17 immobilizer in which she had been placed
18 at the time of her injury and that's to
19 give her support for her ligament injury.
20 However, I wanted her to begin taking it
21 out of the knee immobilizer, start doing
22 range of movement exercises, continue
23 using ice, as necessary, and the patient
24 would then return to my office in two to
25 three weeks if her symptoms persisted.

Q And did she return to the office?

A Yes, she did.

Q All right. And when was that?

A I should also mention that she had also been placed on the anti-inflammatory agent at the time of her injury. She was taking Voltaren and Dolobid for her pain and inflammation.

Q Okay.

10 A She returned to my office in February
11 of '91. She felt --

12 Q I was going to say, how was she doing
13 then?

14 A Well, She was better, but still having
15 some difficulties with her knee. She was
16 still unable to bend it fully, she still
17 had tenderness over her ligament, off of
18 the -- on the inside of her knee and when
19 I did a stress test on her knee, she still
20 had what's called valgus instability,
21 where her knee would actually open up a
22 little bit in pushing the foot out to the
23 side and the knee to the inside. At that
24 time, we decided to stay on the
25 anti-inflammatory type medications, as I

1 felt that her biggest problem was her
2 sprain of her medial collateral ligaments
3 and sprains of the medial collateral --
4 collateral ligament that she has do heal
5 on there own.

6 Q Let me back up for a minute, because I
7 wanted to ask something about that valgus
8 instability that you found.

9 A Yes.

10 Q The ability of the -- the leg to be
11 pushed out, or the knee to open up, as you
12 said. Was that something that was the
13 same as she had had before the fall, or
14 was that worse?

15 A No, she had more on her involved side
16 than on her pre -- on her uninvolved knee.

17 Q And is that something you would
18 expect, if it had preexisted the fall?

19 A No.

20 Q Now, was there any additional
21 treatment that was ordered in February?

22 A Just, she was going to go to physical
23 therapy for strengthening and range of
24 movement exercises. She was to
25 discontinue use of her immobilizer. I

1 ordered her a hinged brace for her to use,
2 at that time, for her daily activity.
3 Q So you ordered physical therapy?
4 A That's correct.
5 Q All right. When was she next in the
6 office, Doctor?
7 A Actually, one week later. She was
8 unable to tolerate the brace, her knee
9 pain had continued without improvement.
10 This had been six weeks from her injury.
11 And at that time we discussed doing an
12 arthroscopy on the knee and we then
13 proceeded with that.
14 Q All right. Now, is arthroscopy a
15 surgical proceed?
16 A Yes, it is.
17 Q Is anesthesia used?
18 A Yes it is.
19 Q Did Rosemary Wank have that operation?
20 A Yes, she did.
21 Q Who performed it and where, Doctor?
22 A I performed her surgery at Richmond
23 Heights Hospital.
24 Q All right. Doctor, we've marked as
25 Plaintiff's Exhibit No. 5 the records from

1 Richmond Heights General Hospital. Are
2 those the records from the arthroscopy
3 procedure that you did on Rosemary?
4 A Yes, they are.
5 Q All right. You have the originals, or
6 your copies before you?
7 A Not of that, no. I -- all's I have in
8 my record is her actual surgical report-
9 Q All right. Well, that's what we want
10 to turn to now, so -- how is the
11 arthroscopy performed? How was it
12 performed in her case? How -- how do you
13 go about doing it?
14 A The actual procedure itself?
15 Q Yes, sir.
16 A Patient's given an anesthetic. We
17 make small punctures about a centimeter in
18 length and about the size of your small
19 fingernail and we -- and we make three
20 basic punctures in the knee; one above the
21 kneecap, two below the kneecap, and insert
22 an instrument called an arthroscope, which
23 is about a centimeter, again, in diameter,
24 inside the knee, which has got a TV camera
25 attached to it, and then we observe the

1 inside of the knee and watch it on a TV
2 monitor. Through the other punctures we
3 put other small instruments in there. We
4 could probe the knee surfaces, the --
5 inside of the knee surfaces with them and,
6 also, if there is any pathology within the
7 knee, such as a tear of the cartilage, or
8 roughened areas, we can smooth those
9 areas, or remove loose pieces, or torn
10 cartilage.

11 Q All right. What -- on the subject of
12 anesthesia, do you know -- remember what
13 kind of anesthesia Rosemary had at that
14 first arthroscopy?

15 A She had a spinal anesthetic.

16 Q And how's that administered?

17 A By the department of anesthesia with a
18 needle in the -- and they inject Novocain
19 in the back, along the nerves of the back.
20 They then -- that gives them relief for
21 their pain, they have no symptoms, just
22 like having an anesthetic from a dentist.

23 Q Okay. Now, Doctor, at your
24 arthroscopy procedure what did you find
25 inside Rosemary's knee?

.....

1 A First of all, before -- we should back
2 up. Before you put the scope in the knee,
3 you do an exam of the knee, which is done
4 right when they're given their anesthetic,
5 and that's where you ascertain any
6 ligamentous instability. And at that
7 time, we did find that she had what's
8 called a second degree medial collateral
9 sprain, which is a partial tearing and
10 stretching of the medial collateral
11 ligament.

12 Q And you've --

13 A I'm sorry?

14 Q And you've shown us that particular
15 ligament on the model?

16 A Correct. This is the ligament on the
17 side here.

18 Q Okay.

19 A At the time of her examination she was
20 noted to have a slight gapping of the knee
21 with anesthesia and, again, that goes
22 along with the second degree sprain of her
23 medial collateral ligament.

24 Then, at the time of the
25 arthroscopy, she was noted to have a --

1 what's called a small peripheral tear,
2 which is thought to be stable, which is at
3 the edge of the cartilage. Again, there
4 would be a normal thing, or -- expected to
5 have found with an injury to the medial
6 collateral ligament. The medial
7 collateral ligament is inherently attached
8 to the medial meniscus and you can have a
9 small tear along its periphery when you
10 have the injury that she had. And this
11 was thought to be a stable tear and, once
12 again, that's because it's along the edge
13 of the cartilage, it was not easily pulled
14 out into the joint, so it was felt that
15 this tear would heal on its own.

16 : She was also noted to have, at
17 the time of her arthroscopy, some
18 softening of the undersurface of the
19 kneecap, which was graded as a grade one
20 chondromalacia of the kneecap.

21 Q All right. Doctor, have you had an
22 opportunity to review what's been marked
23 as Plaintiff's Exhibit No. 2, which is the
24 Cuyahoga County EMS run report?

25 A I -- I have seen parts of that.

1 Q All right. Okay. Doctor, calling
2 your attention to the history section of
3 Plaintiff's Exhibit 2, the patient was
4 said to be found lying supine; how is
5 that?

6 A On her back.

7 Q All right. Complaining of left knee
8 pain sustained when the patient states:
9 Slipped on wet floor and fell to knees and
10 subsequently rolled onto her back.
11 Patient states: Did not strike a head on
12 floor. I can also tell you -- or ask you
13 to assume, by way of history, that at the
14 time of her fall, Rosemary Wank fell and
15 struck her left knee on a hardwood floor
16 at the restaurant. Now, Doctor, based
17 upon the history, the physical
18 examination, your findings during your
19 surgery, do you have an opinion, with
20 reasonable medical certainty, as to
21 whether the tear of the medial collateral
22 ligament, the tear of the medial meniscus,
23 and the chondromalacia of the kneecap were
24 a direct and proximate result of her fall
25 at the restaurant?

1 A Yes, they were.

2 Q And can you explain your reasoning?

3 A Because that's the history that the
4 patient gave and these findings at surgery
5 would, certainly, go along with her injury
6 and she did not have these problems
7 beforehand.

8 Q All right. Now, Doctor, was there
9 enough time between the fall on January
10 26th of 1991 and your arthroscopy in March
11 for that chondromalacia to have developed?

12 A Yes.

13 Q Now, Doctor, we have obtained records
14 from Marymount -- I'm sorry, from Richmond
15 Heights General Hospital for just, I
16 think, two days after your arthroscopy
17 from Richmond Heights dealing with an
18 emergency room visit that she had there.

19 Are you familiar with what caused her to
20 go to the emergency room two days later?

21 A I believe she was having calf pain.

22 Q This would be Plaintiff's Exhibit No.
23 6.

24 A No, this is back pain. Back pain.

25 Q Yes. And was that -- can you tell me

1 what that -- what the cause was determined
2 to be of the problems that she was having
3 two days after her arthroscopy?

4 A Not really.

5 Q Okay.

6 A No. I -- I mean, she was diagnosed as
7 having a lumbar sprain/strain at that
8 time.

9 Q What -- okay. I -- I, in reviewing
10 this record myself, and -- and I'm not
11 looking to testify here, but I want to ask
12 you, rather, she was -- she had had an
13 arthroscopic procedure with a spinal
14 anesthetic and --

15 A Did that have anything to do with it?
16 I don't believe so.

17 Q Okay

18 A Because she never had any symptoms of
19 a -- of an infection, or anything like
20 that. I mean, that's the only problem you
21 can have with a spinal, besides a spinal
22 headache, and I don't see anything in
23 there mentioned about a spinal headache.
24 I understood that there was a problem with
25 a spinal headache?

1 Q I was looking for that note. That was
2 the nursing assessment and, apparently,
3 that was all just in the back?

4 A Yeah, the pain was in the back, so --

5 Q Fine. Now, Doctor, what was Rosemary
6 Wank's condition when you next saw her
7 after the arthroscopy?

8 A That would have been on March the
9 14th, 1991.

10 Q Okay.

11 A Her knee was sore, which would be
12 expected after a surgery. Her puncture
13 sites were healing without any problem.
14 Her range of movement was still
15 restricted, because she had a minimal
16 amount of fluid within her joint. At that
17 time, I -- she was to continue her
18 exercises. I placed her on medication
19 called Coumadin, which is a blood thinner
20 and that, I believe, was because she had
21 had previous problems with phlebitis and
22 this was to help prevent a reoccurrence of
23 a phlebitis, or blood clots in the leg.
24 And I told her, at that time, she could
25 use her crutches, as needed. She was to

1 beginning her rehabilitation exercises and
2 I would see her back, then, in a month.

3 Q All right. Now, did you continue to
4 follow up with her after this?

5 A Yes, I did.

6 Q And can you tell us how she progressed
7 at the next visits?

8 A Yes. In the 25th of April, 1991, she
9 still had some swelling and some pain,
10 especially at night. She did have, still,
11 a small amount of fluid within her joint.
12 She had a range of movement from near full
13 straightening or extension of the knee,
14 down to 90 degrees of bend.

15 Q And how is that in terms of full or
16 normal?

17 A That's still not normal. She lacked,
18 you know, probably about 5 degrees of
19 straightening and probably 15 to 25
20 degrees of bend.

21 Q All right. And the plan?

22 A She was just to continue her exercises
23 at that point and to see me again in six
24 weeks.

25 Q And did you see her, approximately,

1 six weeks later?

2 A Yes, on June the 6th, 1991.

3 Q And what was her condition then?

4 A She states she was feeling better, but
5 she's still having episodes that her knee
6 was buckling, or giving out on her. I
7 felt on exam, at that time, she was
8 improved, but her quadriceps strength,
9 which is the muscle in the front of the
10 thigh, was still weak and that's one of
11 the main reasons why she was -- that's one
12 of the main reasons why her knee was
13 giving out. She was able to walk with a
14 little to no limp at that time. And due
15 to her continued buckling, which was in,
16 again, going back to her medial collateral
17 sprain, her knee tended to have more
18 valgus deformity. I felt that some
19 support of her medial collateral ligament
20 might help her and we got for her a -- a
21 brace to help support her ligament.

22 Q Now, Doctor, with respect to that knee
23 buckling, did Rosemary Wank ever relate to
24 you whether this had caused her to -- to
25 fall?

1 A Yes.

2 Q Doctor, do you have an opinion, with a
3 reasonable degree of medical certainty, as
4 to whether the buckling of the knee was a
5 direct and proximate result of her fall at
6 restaurant and the injuries that she
7 sustained there, that you've already
8 testified --

9 A Well, it was subsequent to her fall,
10 so it would be directly related.

11 Q And I think you said that the -- it
12 was related to the sprain of the medial
13 collateral ligament?

14 A Yes.

15 Q Now, did she continue to come to the
16 office after this?

17 A Yes, she did.

18 Q And after June of 1991, when did you
19 see her next?

20 A The -- on the 25th of July, 1991.

21 Q All right. And how was she doing?

22 A She was still having problems with her
23 knee still swelling, some continued pain
24 on the inside of the knee. She still
25 continued to have her weakness of her

1 quadriceps. She had full extension, at
2 that time, down to a hundred degrees of --
3 of bend, so she **had** just about complete
4 return of her motion. She still had pain
5 when her medial collateral ligament was
6 stressed and still had tenderness on the
7 other -- undersurface of the kneecap on
8 the inside.

9 Q Was there any new diagnosis, or
10 additional diagnosis at that time?

11 A Not really. I think that she was
12 still -- just a continuation of her
13 previous problems.

14 Q All right. And was there any
15 additional treatment?

16 A We did order her a brace to help her
17 kneecap track, to take some of the
18 symptoms away from her kneecap, which is
19 called a horseshoe brace, which gives
20 support to the kneecap and the tendon
21 below it, and she was, again, to continue
22 doing her exercises.

23 Q All right. Did she return to the
24 office after?

25 A Yes, on October 31st of 1991.

1 Q Okay. And what was her condition on
2 Halloween of 1991?

3 A She states that her knee continued to
4 bother her, especially at the insertion of
5 her patellar tendon, which is the tendon
6 just below the kneecap, which attaches the
7 kneecap to the tibia, or the bone below
8 the knee.

9 Q And physical -- on physical
10 examination?

11 A She did have tenderness in the same
12 area, just below the kneecap. I also
13 felt, at that time, she had slightly more
14 valgus deformity of her left knee as
15 compared to the right and her weakness
16 continued of her quadriceps mechanism.
17 And I gave her a diagnosis at that time of
18 -- of a patellofemoral syndrome, which is
19 pretty much just an overall catchall term
20 for pathology in the patellofemoral joint,
21 which is the joint between the kneecap and
22 the femur below.

23 Q And do you have an opinion, Doctor,
24 with a reasonable degree of medical
25 certainty, as to whether this

1 patellofemoral syndrome was a direct and
2 proximate result of her fall at Chester's,
3 and the injuries that you said she
4 suffered in that fall?

5 A Well, this is -- you know, this was a
6 continuing scenario of symptoms since the
7 fall, so I do believe that it was a result
8 of it.

9 Q All right. And did you have any
10 additional orders in October of '91?

11 A Yes, we were -- we obtained an MRI
12 exam, which is a x-ray-type exam, even
13 though there's no radiation involved, but
14 it gives cross-sectional-type images of
15 the knee. We did that, at that time.
16 Actually, I did it at that time to make
17 sure that she did not have a partial tear
18 of her patellar ligament, or patellar
19 tendon, which she did not have.

20 Q Did she come back to the office after
21 the MRI?

22 A Yes, she did.

23 Q And I assume you discussed the results
24 with her?

25 A Yes, on November the 14th, 1991.

1 Q All right. Did she have any
2 particular problems with her knee on that
3 day?
4 A Yeah, she was -- yes, she was
5 continuing to have pain and problems with
6 her knee, but at that time we felt we'd
7 still continue with a conservative means
8 of treatment and that meant a continued
9 exercise program.
10 Q All right.
11 A I -- I did, also -- excuse me, I did
12 also order her another brace for her
13 patellar tendon that was less cumbersome
14 from the first, which is called a Chopat
15 strap, which is just a small strap that
16 goes around the tendon itself to help give
17 support to the tendon.
18 Q Now, Doctor, did the **MRI** show
19 something with respect to the patellar
20 tendon?
21 A No, it did not. It -- it showed that
22 it was not -- there was not a partial
23 tear.
24 Q All right. Now, In your office note
25 of November 14th it -- it states that:

1 Although she has a little bit of altered
2 density in her proximal patellar tendon,
3 which I attribute to some sprain of the
4 tendon. And I was wondering to what
5 you're referring there.

6 A Oh, okay. Well, actually, I think
7 that would go back to that she may have
8 had a partial, you know, stretch or just a
9 partial tear of the fibers of the tendon,
10 that it's since healed.

11 Q All right. And do you have an
12 opinion, with a reasonable degree of
13 medical certainty, again, as to whether
14 there -- this was a direct and proximate
15 result of her fall and the injuries
16 sustained therein?

17 A Again, this is the continuing symptoms
18 from -- from her fall, in the first place.

19 a All right. Now, I think we move into
20 1992 at this point. Rosemary is
21 continuing to see you in the office?

22 A Yes.

23 Q And the next time was February of
24 1992?

25 A The 27th of 1992.

1 Q And how was she doing then?

2 A She continued to have pain over her
3 patellar tendon and that was her main
4 complaint, at that time.

5 Q All right. Did the pain seem to
6 depend upon any kinds of activities?

7 A Yes, because she was doing a lot of
8 bending and squatting in her day-care
9 center and those aggravated her pain.

10 Q All right. Did you physically examine
11 her?

12 A Yes. Again, she was tender -- she was
13 positive to tenderness over her patellar
14 tendon.

15 Q Okay. Did you have any additional
16 treatment -- prescriptions for her?

17 A Just of her to continuing using ice
18 and continuing doing her rehabilitation
19 exercises.

20 Q All right. And these were exercises
21 to be done at home?

22 A Yes.

23 Q All right. Did she come back to the
24 office after February?

25 A Yes, on the 11th of June, 1992.

1 Q And how was she doing then?
2 A She was continuing to have pain in her
3 knee, more so along the -- now on the
4 outside aspect of her knee, or the lateral
5 aspect of her knee. She still had
6 weakness of her quad, or her thigh muscle,
7 once again. And the tenderness or the
8 outside was over a structure called her
9 iliotibial band, which is a supportive
10 tendinous structure on the outside of the
11 knee, which I believe she had a
12 tendonitis. I did inject her; at that
13 time, she got pretty good relief from the
14 injection.
15 Q Injection of what?
16 A Of a combination of Novocain and
17 Marcaine, which is a long-acting
18 anesthetic, and cortisone.
19 Q Doctor, do **you** have an opinion, with a
20 reasonable degree of medical certainty,
21 once more, as to whether this tendonitis
22 that you've just talked about was a direct
23 and proximate result of her fall and the
24 injuries that she sustained in that fall?
25 Yes.

This deposition was delivered to C.A.T.A. with the following pages missing

Pages 33 to 34 (as one sheet)

Pages _____ to _____

Pages _____ to _____

that is?
, it -- it was a continuation of
ptoms --
right.
from the fall.
right. Her next visit, Doctor,
uary of '93 now?
the 28th of January, 1993. At
me, she was having increasing
Eort and -- and pain, especially
her kneecap. She continued to have
enderness along her iliotibial band,
was not as bad as it had been
us. My impression, at that time,
re along the lines of
omalacia; however, increased
ms of her kneecap, also, with the
ness on the inside, I was concerned
her cartilage, once again.
l right. Now, in your note, Doctor,
.isis just to clear up the record,
s a reference here to follow-up on
ght knee; is that accurate?
, it was her left.
l right. So that's just a

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etic this

1 A No, she had a general anesthetic this
2 time.

3 Q All right. And what did you find when
4 you did the arthroscope?

5 A At -- at this time, she was found to
6 have a full thickness injury to her
7 chondral surface, which is the
8 cartilaginous surface of the undersurface
9 of the kneecap. It had a full thickness
10 crack on the inner, or the medial facet,
11 which is the inside facet of her kneecap,
12 where she'd had been having her symptoms
13 previously.

14 Q All right. And did you undertake any
15 repair of that condition?

16 A Yes, we did.

17 Q How did you do that?

18 A We cleaned out the area of the crack
19 and actually took away -- not only is
20 there a crack there, but there's roughened
21 cartilage. We took those roughened areas
22 away, down to bone, which is the
23 supporting structure underneath the
24 cartilage, and then -- we accomplished
25 that by having the bone bleed; you'll

1 hopefully get what's called a secondary
2 pseudo cartilage, or fiber cartilage to
3 fill in and fill the crack in, to thereby
4 give them less symptoms. It's kind of a
5 second-best cartilage.

6 Q All right. Now, Doctor, based upon
7 the history, all of the complaints that
8 you've -- that you've told us about up
9 until now, the physical examination
10 findings that you had, as time went on,
11 and your arthroscopic findings, do you
12 have an opinion, with a reasonable degree
13 of medical certainty, as to whether the
14 crack in this cartilage under the kneecap
15 was, also, a direct and proximate result
16 of the fall at the restaurant, the injures
17 -- injuries that she sustained there and
18 -- and the -- as you've -- as you have
19 said, the course of complaints and -- and
20 problems that she's had -- had since?

21 A Yes, I believe it's a direct result.

22 Q And can you explain your reasoning a
23 little bit?

24 A Because it -- the fact that she had,
25 really, not had any problems with her knee

1 prior to this; she sustained the injury,
2 and this is just a continuing scenario of
3 -- of symptoms from the time of the
4 injury.

5 Q Did she follow up at your office after
6 that arthroscope?

7 A Yes, she did.

8 Q And when was the next time?

9 A That was on the 18th of February,
10 1993.

11 Q Now, did she have any kind of
12 postoperative complications following that
13 second arthroscopy?

14 A Yes, I believe she did have symptoms
15 down into her calf, where she had some
16 tenderness and some ecchymosis of blood
17 into her calf. At that time, I would
18 question whether she, again, had a
19 phlebitis. Fortunately, she did not,
20 because she -- we obtained what's you
21 called a venogram, which is a test that is
22 used to make a diagnosis of a phlebitis,
23 to see if there are any blood clots or
24 blockages of the veins in the leg. This
25 was, fortunately, negative. I believe

1 that she, therefore, had a superficial
2 phlebitis. She -- we placed her on Advil
3 for treatment of that.

4 Q All right. And when was that the next
5 time you saw her?

6 A On the 11th of February -- or, excuse
7 me, of March, 1993.

8 Q And how was she doing then?

9 A She felt a lot better at that time.
10 She was not having the cracking and
11 crepitus in her knee that she'd had
12 previously and that she was going to
13 continue doing her exercise and I would
14 see her back, then, as necessary.

15 a So, at that point in time you released
16 her just to come back if she needed to?

17 A Correct.

18 Q And did she come back?

19 A Yes.

20 Q And when was the next time?

21 A She came back on the 10th of June,
22 1993. Again, stating that her knee had
23 given out and complaining of pain along
24 her iliotibial band, once again, and also
25 in the back of her knee. She states, when

1 it did give out, she did have some
2 swelling at that time. On my exam, at
3 that time, I found that she did have
4 tenderness, once again, along her
5 iliotibial band and along her calf with
6 some tenderness in her calf when she did a
7 push-off with the sole of her foot, I did
8 not find any swelling within her knee. I
9 did find a small click -- excuse me. When
10 straining her knee, once again, in a
11 valgus-type strain, where I was pushing
12 her foot to the outside, her knee to the
13 inside, but I did not find any instability
14 at that time. My impression, at that
15 time, was a sprain of her leg and a muscle
16 pull and a continued iliotibial band
17 tendonitis.

18 Q Now, your record says it's strain of
19 the right leg. Is that a typographical
20 error?

21 A Yes.

22 Q All right. It was actually the left?

23 A Yes.

24 Q And Doctor, you said that at the time
25 of her knee giving way, that it had

1 swelled up. Did Rosemary give you a
2 history of actually having fallen?

3 A Yes.

4 Q All right. And handing you what's
5 been marked as Plaintiff's Exhibit 9,
6 these are records from Richmond Heights
7 General Hospital Emergency Department.
8 Are those the records of -- concerning
9 treatment she had with respect to a fall,
10 I think, two days before she came to your
11 office?

12 A Yes, they are.

13 Q All right. Doctor, do you have an
14 opinion, with a reasonable degree of
15 medical certainty, as to whether the
16 muscle strain and the iliotibial band
17 tendonitis, this fall, and emergency
18 treatment that she had were a direct and
19 proximate result of her fall at Chester's
20 and the injuries she sustained and the
21 course of treatment that she underwent?

22 A I believe it is; although, this is
23 quite a -- a long time after, the -- you
24 know, her surgery -- her arthroscopy, but
25 she -- but she continued to have weakness

1 of her quadriceps mechanism and that,
2 certainly, attributed to her -- to her
3 fall.

4 Q All right. That's the basis for your
5 opinion?

6 A Yes.

7 Q I think she came back to your office
8 one more time?

9 A Yes, on the 23rd of June, 1994. It
10 states that her knee continues to give her
11 some pain and achiness. She has problems
12 with weather -- she can tell weather
13 changes, but she is pretty much able to
14 get around and do most of her daily
15 activities. Her pain, once again, is
16 mostly in and about her kneecap. On exam,
17 at that time, again, her tenderness was on
18 the inner aspect of her kneecap and on the
19 outside of her kneecap. She did have a
20 full range of movement, her quad strength
21 was improved, but it was still decreased
22 from previous -- or decreased from normal.
23 Her ligaments, at that time, were normal,

24 Q All right. And your impression?

25 A My impression was still the same; I

1 mean, it was -- she was still having
2 problems, you know, mostly from her
3 patellofemoral joint.

4 Q All right. Now, Doctor, you mentioned
5 quad strength a number of times today.
6 Have you actually ever sent her for
7 testing of her strength?

8 A Yes, with did quadriceps testing of
9 her left knee --

10 Q And what kind of test --

11 A -- on a machine called a Cybex
12 machine.

13 Q All right. Doctor, handing you what's
14 been marked as Plaintiff's Exhibit No. 10,
15 are those the records of that testing?

16 A Yes, they are.

17 Q What are the results of that testing?

18 A It showed that she still had quite a
19 significant weakness of her left thigh in
20 both extension and flexion.

21 Q Now, Doctor, are those tests given in
22 such a way as to allow the persons
23 administering the tests to determine if
24 the patient's giving best effort?

25 A Yes, they are.

1 Q All right. And how is that done?
2 A The test is repeated on more than one
3 occasion. If the person is not giving
4 full effort, different elevations in the
5 amplitude of the test are seen on the
6 monitor, plus they do not -- they don't
7 show a consistent pattern between one test
8 and the next and that can be used to
9 determine whether the patient's giving
10 full effort or not.
11 Q And was there anything invalid about
12 the test results in that --
13 A Not to my knowledge.
14 Q Was -- from the test results, was
15 Rosemary giving best efforts?
16 A To -- to my knowledge, she was, and
17 that's stated in the test results.
18 Q All right. Dr. Masin, based upon
19 Rosemary Wank's history, your knowledge of
20 her, gained by treating her since January
21 of 1991, do you have an opinion, with
22 reasonable medical certainty, as to
23 whether there are any physical activities
24 which she should avoid, or which will
25 cause her to have problems with her left

1 knee?

2 A We've discussed this and, as far as
3 I'm concerned, she's probably going to
4 have problems with prolonged stair
5 climbing, any activities down on her knees
6 in a squat position. I believe those will
7 be her biggest problems.

8 Q Okay. How about extended walking or
9 kneeling?

10 A If she develops arthritic changes in
11 her knee, then -- then those certainly may
12 give her problems, also.

13 Q Doctor, are these limitations that
14 you've just talked about, in your opinion,
15 to a reasonable degree of medical
16 certainty, a direct and proximate result
17 of her fall in January of 1991 and the
18 injuries that she sustained?

19 A Yes, I believe they are.

20 Q All right. Doctor, given the fact
21 that Rosemary has had the problems which
22 you've described since January of 1991,
23 and based, of course, on her history and
24 your knowledge gained in treating her, do
25 you have an opinion, with reasonable

1 medical certainty, as to whether Rosemary
2 is likely to have problems with her left
3 knee permanently as a direct and proximate
4 result of her fall and the injuries?

5 A I think that there is a probability
6 that she will have continued symptoms in
7 her knee and problems and that's mainly
8 due to the fact that this has gone on now
9 for, approximately, three years and she's,
10 you know, continued to have a scenario of
11 pain and symptoms all related to her knee
1.2 from the time of the injury. So I think
13 that that is a probability.

14 Q Now, Doctor, let's turn for a moment
15 to the question of this -- the knock
16 knees, or this valgus posture that we
17 talked about very briefly. Are Rosemary's
18 problems caused by her knock knees?

19 A I don't believe they're caused by
20 them. I think that they, certainly,
21 contribute to the problem.

22 Q In what way?

23 A In the fact that she has this, you
24 know, basic genu valgus, which many women
25 have. I think, though, that hers was

1 exacerbated by her fall, because she
2 sprained her medial collateral ligament
3 and -- and that has, certainly, continued
4 to be a -- a source or a cause of her
5 symptoms.

6 Q Does that posture, Doctor, make a
7 person such as Rosemary more susceptible
8 to the type of injury that she sustained?

9 A Do her valgus knees make her more
10 susceptible to the injury?

11 Q Yes, or to --

12 A Yes, I do.

13 Q -- symptoms -- I would say symptoms of
14 the --

15 A Actually, it does make her more
16 susceptible to the injury, because she's
17 in that position to begin with and if she
18 is a significant twisting stress come down
19 on it, she's going to be more susceptible
20 to, certainly, somebody who has a
21 straight knee or, actually, a varus knee,
22 or a -- a knee that's buckled, bowlegged.

23 Q Now, Doctor, prior to the deposition,
24 have you had a chance to review
25 Plaintiff's Exhibit No. 11, which is an

1 index of the medical billing on Rosemary?

2 A Yes, I have.

3 Q All right. Doctor, based upon her
4 history, complaints, physical examination,
5 findings, obviously, your knowledge of
6 her, do you have an opinion, with a
7 reasonable degree of medical certainty, as
8 to whether the charges reflected on
9 Exhibit 11 were all necessary as a direct
10 and proximate result of Rosemary Wank's
11 fall at the restaurant and the injuries
12 she sustained?

13 A Yes, they were.

14 MR. SCHARON: I don't have
15 anything else for you now. Thank
16 you.

17 MR. GREER: Doctor, my
18 name is Mark Greer, we had an
19 opportunity to meet a few minutes
20 ago. I'm going to, basically,
21 trying to go through certain
22 documents that you have, primarily
23 your office notes, and a report
24 that you wrote.

25 CROSS-EXAMINATION OF

1 RICHARD R. MASIN, M.D.

2 BY MR. GREER:

3 Q Going back to the .. the original fall
4 that the Plaintiff sustained, am I correct
5 that she was seen at Marymount Hospital
6 that evening?

7 A Yes.

8 Q At that time, all x-rays of her knees
9 and neck were normal?

10 A Correct.

11 Q No fracture or any other abnormality
12 was noted; correct?

13 A That's correct.

14 Q She was discharged that evening?

15 A I believe so.

16 Q Okay. The first time that you saw the
17 Plaintiff was on January 31st of 1991?

18 A Correct.

19 Q At that time, she had some swelling of
20 her left knee?

21 A Yes, she did.

22 Q And you felt that she had,
23 essentially, sprained her knee?

24 A Correct.

25 Q Is that similar to a sprained ankle,

1 from -- from a mechanism standpoint --
2 A Yes.
3 Q -- a stretching of the ligaments?
4 A Stretch .. yeah, stretching, tearing
5 of the ligament, correct.
6 Q You saw the Plaintiff again on
7 February 21st of 1991?
8 A Correct.
9 Q At that time, she was feeling better?
10 A Yes.
11 Q She had some swelling, though?
12 A Yes, she did.
13 Q You discontinued the use of her
14 immobilizer?
15 A That's correct.
16 Q You continued her on medication?
17 A Yes.
18 Q And you wanted to .. her to start on a
19 physical therapy program for her range of
20 motion and strengthening?
21 A Correct.
22 Q The next time you saw the Plaintiff,
23 or the third time, was on February 28th of
24 1991?
25 A Yes.

1 Q That was about six weeks following her
2 fall?
3 A Correct.
4 Q At that visit you decided to do an
5 arthroscopic surgery in order to look at
6 her knee?
7 A Correct.
8 Q At that time of that visit she had had
9 two physical therapy sessions?
10 A That may be.
11 Q Okay. If the records reflect that, do
12 you agree with that?
13 A Yes.
14 Q And you had seen her a total of three
15 times when you made that decision?
16 A Yes.
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1 looking inside the knee.

2 Q And during using the scope you found a
3 minor tear of the cartilage?

4 A Correct.

5 Q And you also noted some chondromalacia
6 of the patella?

7 A That's correct.

8 Q That's, essentially, some softening of
9 the cartilage?

10 A Yes, it was. It was determined to be
11 a grade one chondromalacia, which is
12 softening of the undersurface of the
13 cartilage.

14 Q Now, grade one is -- is the least
15 severe; correct?

16 A Correct.

17 Q Essentially, Doctor, the procedure you
18 performed on March 8th of 1991 consisted
19 of looking at her knee and then flushing
20 out her knee with saline solution?

21 A Correct.

22 Q You did not perform any actual
23 surgical repairs on her?

24 A That's correct.

25 Q During the course of that examination,

1 the surfaces of her patella, the femoral
2 and tibial regions were essentially
3 normal?

4 A Except for the softening.

5 Q She went home that same day?

6 A Correct.

7 Q Now, Doctor, the chondromalacia that
8 you noted on the Plaintiff's knee at that
9 time, would you agree that that's sort of
10 a degenerative-type process?

11 A A degenerative-type process; a wear
12 and tear type process?

13 Q Yes.

14 A Yes, it can be.

15 Q Would you agree that degenerative
16 changes generally occur over time?

17 A Yes, they do.

18 Q Would you agree that patellar
19 chondromalacia is very common?

20 A Yes, it is.

21 Q Would you agree that the
22 patellofemoral joint is usually the first
23 joint to develop this type of condition?

24 A I think maybe.

25 Q Would you agree that chondromalacia

1 may develop as early as the teens?

2 A Yes.

3 Q Would you also agree that a
4 malalignment, or a congenital condition,
5 such as the Plaintiff's genu valgus, or
6 knock knees, may cause chondromalacia?

7 A Yes, it may.

8 Q Would you agree that the Plaintiff's
9 condition is such that, when her knees are
10 together, the bottom portion of her ankles
11 are, approximately, six inches apart?

12 A That very well could be.

13 Q Okay. Would you agree that this is a
14 rather marked condition?

15 A Yes.

16 Q Would you also agree that an
17 overweight condition may cause
18 chondromalacia, due -- due to the
19 excessive stress and strain on the knee
20 joint?

21 A Yes, I do.

22 Q Doctor, would you agree that it's
23 possible the chondromalacia you noted in
24 the Plaintiff's knee six weeks after the
25 fall may have been caused by her

1 congenital condition, or her weight, or a
2 combination of both?
3 A Yes, it may have.
4 Q Following the surgery, Doctor, on
5 March 8th of 1991, you followed up with
6 the Plaintiff on March 14th; correct?
7 A Yes.
8 Q At that time, she felt rather well?
9 A Yes.
10 Q And she was to start physical therapy?
11 A Yes.
12 Q She started physical therapy on March
13 26th?
14 A Yeah.
15 Q If .. if the physical therapy notes
16 reflect that?
17 A Yes.
18 Q It appears, Doctor, that she had one
19 more session after March 26th of 1991, and
20 then cancelled or failed to appear for
21 several other appointments; were **you** aware
22 of that?
23 A No, I was not.
24 Q Were you aware, Doctor, that, in fact,
25 the Plaintiff had only four physical

e 1 therapy sessions where she actually
2 appeared, the last being May 1st of **1991**?

3 A If that's what the record reflects, I
4 would certainly believe that.

5 Q Were you aware of that before today,
6 though, Doctor?

7 A I may -- that does ring a bell.

8 Q Okay. Would you agree, Doctor, that
9 the physical therapy was important in
10 terms of the Plaintiff's recovery?

11 A Very.

12 Q Would you agree that, when you saw the
13 Plaintiff on April 25th, **1991**, you told
14 her to continue with the physical therapy
15 and return in six weeks?

16 A Yes.

17 Q Are you aware that the Plaintiff only
18 had one physical therapy session after you
19 saw her on April 25th of **1991**?

20 A No, I was not aware of that, but it's
21 very possible.

22 Q Okay. And you next saw the Plaintiff
23 on June 6th of **1991**?

24 A Yes.

25 Q At that time, her condition had

1 improved somewhat?

2 A Yes.

3 Q You told her that it was important to

4 exercise and lose weight?

5 A Yes, I did.

6 Q At that time, she had minimal

7 swelling?

8 A (Witness nodding affirmatively.)

9 Q Her range of motion was good?

10 A I believe it was.

11 Q She was walking with little to no

1.2 limp?

13 A Correct.

14 Q And this was, approximately, five

15 months after her fall?

16 A Yes.

17 Q The next visit was on July 25th, and

18 then on October 31st of 1991?

19 A Yes.

20 Q Doctor, in those visits the Plaintiff

21 indicated that if she was on her leg for a

22 long time, such as going to a Brown's

23 game, she would have some swelling and

24 pain.

25 A Yes.

Q During your exam of October 31st of 1991, there is no swelling?

A That's correct.

Q And she had a full range of motion?

A Yes.

Q She stated that she had no locking or giving away of her knee?

A That's correct.

9 Q And she also stated that she was
10 having enter -- intermittent pain, such as
11 if she would go to an activity like the
12 Brown's game?

13 A Correct.

14
15 the results were, essentially, normal?

16 A Correct.

17 Q And you next saw the Plaintiff again
18 on November 14th of 1991?

19 A I'll go back to that. They were read
20 as normal and my interpretation of it,
21 once again, goes back to my note, where I
22 thought that she did have some thickening
23 of the tendon, indicating, you know, that
24 she had had some injury to her patellar
25 tendon.

1 Q The radiologists interpreted them as
2 normal; correct?

3 A Right. But that's why you have more
4 than one person look at an MRI.

5 Q When you saw the Plaintiff on November
6 14th of 1991, you again stressed that she
7 needed to lose weight?

8 A Correct.

9 Q The next appointment was February 27th
10 of 1992?

11 A Yes.

12 Q At that time, the Plaintiff indicated
13 that she was only have occasional
14 discomfort?

15 A Correct.

16 Q And that was dependent upon how active
17 she was at work?

18 A Right.

19 Q At that time, you noted that the
20 Plaintiff had put on some weight and that
21 she needed to work on that?

22 A Yes.

23 Q Okay, Doctor, you then had an
24 opportunity to write a medical report
25 concerning the Plaintiff, I believe, dated

1 March 22nd, 1992?

2 A That is correct, I assume. Yes.

3 Q That was a little bit over a year
4 after her fall?

5 A Correct.

6 Q In your report you say that the
7 Plaintiff's prognosis was good.

8 A Yes.

9 Q And I -- I believe you indicated that
10 the reason for that was because there was
11 very minimal intra-articular problems from
12 the injury?

13 A That's correct.

14 Q Okay. You also noted in your report
15 that, if the Plaintiff's weight continued
16 to be elevated, she would most likely
17 continue to have problems with her knee?'

18 A That's correct.

19 Q Now, you saw the -- the Plaintiff for
20 an exam on January 28th of -- of 1993?

21 A Yes.

22 Q At that time, she stated that she was
23 having -- still having some problems and
24 wanted another arthroscopic procedure and
25 you agreed and scheduled the procedure?

1 A Correct.

2 Q That procedure was scheduled for
3 February 10th of 1993?

4 A Yes.

5 Q In your operative notes you found some
6 chondromalacia at that time?

7 A Correct.

8 Q You also noted a small crack in the
9 patella?

10 A Well, that's --

11 Q The cartilage of the patella?

12 A Yes.

13 Q The strain in the ligament that you
14 had seen during the first procedure had
15 healed; correct?

16 A That's correct.

17 Q And the tear of the cartilage that you
18 had seen during the first procedure had
19 also healed?

20 A That's correct.

21 Q During the first procedure in 1991
22 there was no crack that you noted in 1993?

23 A That's correct.

24 Q So that it's something that had
25 occurred subsequent to that first

1 procedure?

2 A Correct.

3 Q Would you agree, Doctor, that the
4 crack could have been caused by a number
5 of things?

6 A That's correct.

7 MR. SCHARON: Objection.

8 BY MR. GREER:

9 Q Would you agree that it could have
10 been caused by her congenital genu valgus
11 condition and the stress and strain that
12 that places upon the knee?

13 A It's possible.

14 Q Would you agree that it could have
15 been caused by her weight?

16 A Yes.

17 Q Would you agree that it could have
18 been caused by chondromalacia, or the
19 continuation of that?

20 A The continue -- continuing progress of
21 her chondromalacia, yes.

22 Q Would you agree, Doctor, that you do
23 not know for a fact what actually caused
24 that crack to develop?

25 MR. SCHARON: Objection.

1 A Did I --

2 Q Do not know for a fact?

3 MR. SCHARON: Objection.

4 A Well, I guess you could say that,

5 pretty much, about anything that

6 progresses.

7 Q Okay. Well, Doctor, would you agree

8 that the pathology report of the cartilage

9 that you removed from the kneecap stated

10 that it -- that it demonstrated

11 degenerative changes?

12 A Right. That's what all cartilage is,

13 as seen on pathology, that comes out of a

14 knee.

15 Q Okay. You had a follow-up -- you had

16 three follow-up visits with the Plaintiff

17 in 1993 after the surgery, the first being

18 February 18th?

19 A Yes.

20 Q At that time, she was doing well?

21 A Yes.

22 Q She had minimal swelling?

23 A Correct. Well, she -- ~~she~~ she was doing

24 well, except she was having a lot of calf

25 pain.

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24 of motion?

25 A Yes.

1 Q Did you advise the Plaintiff to
2 return, as needed, after that examination?

3 A I believe so.

4 Q Have you seen her since then?

5 A No, I have not.

6 Q Are any appointments presently
7 scheduled to see her in the future?

8 A No, they are not.

9 Q So, essentially, you've seen the
10 Plaintiff one time in the last 13 to 14
11 months?

1.2 A Yes.

13 MR. GREER: Thank you,
14 Doctor.

15 THE WITNESS: Okay.

16 REDIRECT EXAMINATION OF
17 RICHARD R. MASIN, M.D.

18 BY MR. SCHARON:

19 Q Doctor, "return as needed," means that
20 the patient can come back and make an
21 appointment at any time?

22 A Yes.

23 Q Back up for a moment. Is it fair to
24 say, Doctor, that Rosemary Wank's
25 sustained an injury that's like a simple

1 sprained uncle?

2 A No. I believe he was using the
3 mechanism of injury.

4 Q And what does that mean, exactly?

5 A Of how you sprain an ankle, and that's
6 by joint surfaces coming apart and the
7 joint surfaces -- the joint itself is
8 protected by the ligament, that's what
9 gives it its stability, and when those --
10 or when the bones are strained apart,
11 something has to give; therefore, the
12 ligament gives. So, **yes**, it -- it is a
13 mechanism of injury. Is a sprained ankle
14 like a sprained knee? No.

15 Q Doctor, you were talking about
16 chondromalacia and whether chondromalacia
17 can be a wear and tear problem, and can be
18 one that -- that develops over to time,
19 and I think you said that can occur. In
20 your opinion, Doctor, again, with a
21 reasonable degree of medical certainty,
22 was Rosemary's Wank's chondromalacia a
23 problem which was a wear and tear that
24 took place over time, or was it a result
25 -- a direct and proximate result of her

1 injury at the restaurant?

2 A I think it was both.

3 Q Okay. Would you explain that, please?

4 A Well, I mean, if you want to get back
5 to the basics of it, her symptoms began
6 when she had a fall. So therefore, the
7 scenario that ensues afterwards, I think
8 you can say is a result of that. But I
9 mean, she also had other circumstances
10 that would certainly put extra stresses on
11 her knee, such as, you know, her weight,
12 her valgus knee, her lack of ~~p~~physical
13 rehab all contributed.

14 Q Doctor, if she had chondromalacia
15 before she fell at the restaurant, was it
16 causing any symptoms?

17 A Not to my knowledge.

18 Q All right. Was she overweight before
19 she fell?

20 A Yes, she was.

21 Q Did she have the valgus deformity
22 before she fell?

23 A Yes, she was -- she did,,

24 Q Was she having any problem -- and was
25 she having any problems in her knees

1 before she fell?

2 A Not to my knowledge.

3 Q If Rosemary Wank had chondromalacia

4 before she fell at the restaurant, do you

5 have an opinion, with a reasonable degree

6 of medical certainty, as to whether the

7 fall aggravated the chondromalacia and

8 made it become painful?

9 A Yes, I believe that it did.

10 Q You were asked a question about

11 whether you, in fact, know what caused the

12 crack on the underside of her patella. Do

13 you have an opinion about what caused it?

14 A I think it was her continuing

15 disability from the time of her injury.

16 Q All right.

17 A Because it was not seen in her first

18 surgery, it was seen in her second, so it

19 did occur in between those and, again, it

20 goes back to what caused her

21 chondromalacia, as we've already

22 discussed; I mean, it was a combination of

23 factors.

24 Q Now, is that an opinion that you hold

25 with a reasonable degree of medical

1 certainty?

2 A Yes.

3 Q And is that as sure as a physician can
4 be about something like this?

5 A I believe so.

6 MR. SCHARON: I don't have
7 any other questions for you.
8 Thanks.

9 MR. GREER: No follow-up.
10 Thank you, Doctor.

11 MR. SCHARON: Do you want
12 to read and sign, or waive?

13 THE WITNESS: I'll waive
14 it.

15 - - - - -

16 (Whereupon, deposition was
17 concluded at 10:35 a.m.)

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1 CERTIFICATE

2
3 The State of Ohio,)

4) SS:

5 County of Cuyahoga.)
6

7 I, Luann Zadell, a Notary Public
8 within and for the State of Ohio, duly
9 commissioned and qualified, do hereby
10 certify that the within-named witness,
11 RICHARD R. MASIN, M.D., was by me first
12 duly sworn to testify to the truth, the
13 whole truth and nothing but the truth in
14 the cause aforesaid; that the testimony
15 then given by the above-referenced witness
16 was by me reduced to stenotypy in the
17 presence of said witness; afterwards
18 transcribed, and that the foregoing is a
19 true and correct transcription of the
20 testimony so given by the above-referenced
21 witness.

22 I do further certify that this
23 deposition was taken at the time and place
24 in the foregoing caption specified and was
25 completed without adjournment.

1 I do further certify that I am not a
2 relative, counsel or attorney for either
3 party, or otherwise interested in the
4 event of this action.

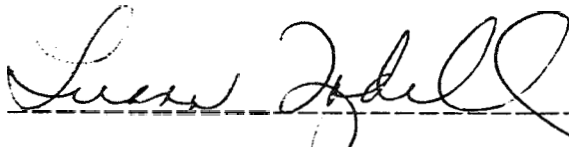
5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office
7 at Cleveland, Ohio, this 8th day of
8 August, A.D., 1994.

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12



Luann Zadell, Notary Public

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Within and for the State of Ohio

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My Commission Expires 8-8-95

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