IN THE COURT OF COMMON PLEAS OF BELMONT COUNTY, OHIO

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Raymond E. Fisher, et al., :

Plaintiffs, :

vs. : Case No. 80-CIV-245

Donald Skelton, et al., :

Defendants. :

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DEPOSITION

of Robert J. Thompson, M.D., a witness herein, called by the Defendants under the applicable Rules of Civil Procedure, taken before me, Eileen M. Hines, a Notary Public in and for the State of Ohio, by agreement and stipulations of counsel hereinafter set forth, at the offices of Robert J. Thompson, M.D., 2835 Maple Avenue, Zanesville, Ohio, on Wednesday, April 14, 1982, at 1:30 o'clock, P.M.

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APPEARANCES:

Mr. James G. Bordas, Jr.,
2208 National Road,
Wheeling, West Virginia,

On behalf of the Plaintiff.

Mr. Frank J. Micheli,
P.O. Box 1307,
Zanesville, Ohio 43701,

On behalf of the Defendants.

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Wednesday Afternoon Session,

April 14, 1982.

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that the deposition of Robert J. Thompson, M.D., a witness herein, called by the Defendants under the applicable Rules of Civil Procedure, may be taken at this time by agreement of counsel and reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the signature of the said Robert J. Thompson, M.D., to the transcript of his deposition is expressly waived by counsel and the witness; said deposition to have the same force and effect as though signed by the said Robert J. Thompson, M.D.

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MR. MICHELI: Let the record show that this deposition is being taken pursuant to an adjournment; that the deposition of Dr. Thompson in this matter was originally scheduled for Monday, this previous Monday, at 1:30 P.M. pursuant to notice, the notice of which I request the Court Reporter to attach to the deposition,

together with the return receipt, certified mail with respect to that notice; that the deposition originally scheduled was adjourned to the present date and time pursuant to an agreement with Plaintiffs' counsel.

MR. BORDAS: The Plaintiff will agree that the deposition of today's date is being taken pursuant to agreement of counsel. We would further add, however, that the notice that defense counsel speaks of was received by my office this past Thursday, and that would have been Holy Week, was received late in the day Thursday. And our office was closed Friday for Good Friday. Saturday and Sunday, of course, were holidays, and we were not really appraised of the deposition until Monday, the day of the deposition. And we felt of course that a reasonable notice was not given to us of the first deposition, if that is an issue.

We do not disagree with the taking of the deposition today and would state that that is with agreement of counsel.

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ROBERT J. THOMPSON

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

By Mr. Micheli:

Q Would you state your full name, please?

A Robert Jorden, J-o-r-d-e-n, Thompson.

Q And your residence address?

A 2932 West Drive, Zanesville, Ohio.

Q And your profession?

A Physician.

Q Where do you maintain your professional offices, Doctor?

A 2835 Maple Avenue, Zanesville, Ohio.

Q Dr. Thompson, where did you take your undergraduate schooling?

A University of Pittsburgh.

Q And in what year did you graduate?

A From college or medical school?

Q College.

A 1968.

Q And where did you attend medical school?

A University of Pittsburgh.

Q And what year did you graduate from medical school?

A 1972.

Q Was that followed with an internship?

A Yes.

Q And where was your internship served?

A Montefiore Hospital in Pittsburgh.

Q And for how long?

A One year.

Q Following the period of your internship, Dr. Thompson, did you go on to take a residency in some special service?

A Yes.

Q And where was that residency taken?

A At the University of Pittsburgh.

Q And the residency was in what?

A Neurology.

Q And how long a period did that cover?

A Three years.

Q Doctor, do you limit your practice to a particular field?

A Yes.

Q And what field is that?

A Neurology.

Q Would you explain to the Jury, Dr. Thompson, generally what the field of neurology encompasses?

A Generally it encompasses disorders of the nervous system, including brain, spinal cord, peripheral nerves and muscles.

Q To the extent that neurology encompasses peripheral nerves and muscles, as you've described,

does it sort of overlap in those respects with, say, the field of orthopedic surgery?

A Yes.

Q Doctor, do you belong to any societies or associations dealing with your specialty?

A Yes.

Q And would you relate those to the Jury, please?

A The American Academy of Neurology.

Q And are you a Diplomate of the American College of Neurology or Academy of Neurology?

A Yes.

Q And would you state to the Jury what the requirements for membership are?

A Three years in an approved residency, following which one must pass an oral and a written examination.

Q Is this known as Board certification?

A Yes.

Q Do you belong to any other associations dealing with your specialty, Doctor, other than the one you've mentioned?

A American Medical Association, Ohio State Medical Association, Muskingum County Medical Society.

Q Are you on the staff of any hospitals?

A Yes.

Q And would you tell the Jury those hospitals?

A Bethesda Hospital in Zanesville, Good Samaritan Medical Center in Zanesville, Guernsey Memorial Hospital in Cambridge.

Q Are you associated in the practice of neurology with any other doctors?

A Yes.

Q And who are they?

A Dr. Michael Somple, who is a neurologist, and Dr. Albert Camma, who is a neurosurgeon.

Q What is the difference between the neurology you practice and the neurosurgery of Dr. Camma?

A A neurologist is involved in the diagnosis and treatment of all disorders of the nervous system that do not require surgery, and the neurosurgeon is involved in those disorders which do involve surgery.

Q Doctor, at my request did you conduct an examination of a gentleman by the name of Raymond Fisher?

A Yes.

Q Can you state to the Jury when that examination took place?

A March 23, 1982.

Q And where did that examination take place?

A In my office.

Q Was he accompanied by anyone?

A Yes.

Q And who was that?

A His wife.

Q Is that Rose?

A Yes.

Q I believe she was also here for the purpose of an examination on that same date?

A Yes.

Q Dr. Thompson, preparatory to your examination of Mr. Fisher, did you take from him what is commonly referred to as a case history?

A Yes.

Q And what is the purpose, generally, of a case history?

A To determine exactly what areas of the body are injured.

Q Did you also make inquiry of Mr. Fisher as to any circumstances that may have been the origin of his complaints?

A Yes.

Q Was that part of the case history?

A Yes.

Q Would you relate to the Jury, Dr. Thompson, what case history Mr. Fisher related to you?

A He informed me that he had suffered an injury to his left knee in a vehicular accident in April of 1979. He stated that his vehicle was struck from behind by a truck.

He struck his left knee against the dashboard. He was not immediately aware of any injury, but the next day began to develop an aching pain in his left knee. He was able to continue working as a state safety inspector, although at times his knee would ache at the end of the day.

Occasionally he would have episodes of acute pain in his knee, whenever he made a quick movement. In September of 1981, he was scheduled to have an athroscopic examination of the left knee joint and possible meniscectomy by Dr. Barton & Associates in Wheeling, West Virginia. Either prior or immediately after his admission for this procedure, he was diagnosed as having a malignant lymphoma, and the procedure was canceled.

And he is currently undergoing chemotherapy for this. The lymphoma is not in remission, and he is still having chemotherapy. He also had a spleenectomy as a result of the lymphoma.

The patient told me that the lymphoma was not in remission, but I really do not have information

as to what the ultimate prognosis for this is. He informed me he is on total permanent disability as a result of this lymphoma. He has not worked since September of 1981, due to the lymphoma.

He tells me that at the present time his left knee aches but not too bad. If he tries to carry his grandchild or move very quickly, he will get an occasional sharp pain. And he does wear an elastic brace on his knee occasionally for support.

Q Doctor, in relating that case history to the Jury, you mentioned that Mr. Fisher advised you that he had been scheduled for an athroscopic examination of the left knee joint. What is an athroscopic examination?

A A small incision is made in the region of the knee joint, and a special scope is passed into the joint for examination of the joint itself and possible removal of torn cartilage or any other treatment that may be seen at the time of the procedure.

Q You also stated that he was scheduled for a possible meniscectomy. What is that?

A That is removal of a torn meniscus or cartilage within the knee joint.

Q I believe you stated that Mr. Fisher advised you that both of these procedures had been canceled?

A That's correct.

Q Then up to the date of your examination of him, had they ever been rescheduled?

A No.

Q Did you then -- strike that.

Was your examination limited then, Doctor, simply to the knee?

A No. I also checked his ability to do certain movements to the body as a whole.

Q I take it then you did undertake a physical examination or clinical examination of Mr. Fisher?

A Yes.

Q And would you state to the Jury what your examination consisted of and what you found with respect to the various things that you did?

A Well, first I appraised his general appearance, and I was actually rather surprised that he was suffering from a malignancy because he did appear rather robust and healthy appearing.

I watched him walk and his gait and station appeared normal. I then had him walk up on his toes. I had him walk on his heels, and then I had him walk placing one foot in front of the other, which he did quite well.

I then had him hop up and down on both his

left and his right leg, and he did this easily with no complaints of pain. I was able to move his knee through a full range of motion with no complaints of pain or evidence of instability.

Q Based upon the case history which Mr. Fisher related to you, taking into account the accident he related to you and what he had undergone subsequent to the accident, together with your physical examination and the results of that examination which you've just told the Jury, did you arrive at an opinion as to whether or not Mr. Fisher had suffered an injury in the automobile accident of April 1979?

First, did you arrive at an opinion as to that?

A Yes.

Q And what was that opinion?

A I felt that he did have a mild injury to the left knee as a result of the accident, although the exact cause of the knee pain could not be determined because the athroscopy had never been completed.

Q Again, based upon the history and the physical examination which you conducted, Dr. Thompson, did you have an opinion following your examination as to whether or not Mr. Fisher with respect to the knee problem was disabled in any way that would prevent him

from employment?

A Yes.

Q And what was that opinion?

A I did not think that the knee injury would hinder him from employment.

Q How did Mr. Fisher himself categorize to you any residual with respect to the knee, Dr. Thompson?

A He told me that mainly the knee would ache occasionally and that if he made any quick movements, he would occasionally get a sharp pain in the leg. I asked him if he had to wear his elastic brace all the time, and he told me that he did wear it occasionally for support but generally could get along well without it.

Q Other than employment, Dr. Thompson, did Mr. Fisher relate to you how he got along with other normal activities of daily living with respect to his knee?

A The only thing he mentioned is that if he tried to move very quickly or if he tried to carry his grandchild, he would occasionally get a sharp pain.

Q Were you able to arrive at an opinion, Dr. Thompson, based upon the case history and your examination as to whether or not Mr. Fisher's knee condition was of a permanent nature with respect to his symptomatology?

A No.

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(EH:mj

MR. MICHELI: I have no further questions at this point.

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CROSS EXAMINATION

By Mr. Bordas:

Q. Doctor, my name is Jim Bordas, and I am the attorney that represents Mr. and Mrs. Fisher in this matter that is being tried here in Belmont County before this jury.

The last question that was asked of you by Mr. Micheli concerned an opinion as to whether or not you were able to state, and I assume with a reasonable degree of medical certainty, the extent and nature of the future injuries Mr. Fisher might have sustained as a result of the accident. And your answer was no; is that correct?

A. That's correct.

Q. Does that mean no, you are not able to determine whether or not Mr. Fisher has permanent injuries or, no, he does not have permanent injuries?

A. I was not able to determine whether he had permanent injuries.

Q. Doctor, did you take x-rays here in Zanesville, Ohio, when you conducted your examination of Mr. Fisher?

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A. No.

Q. Is it normal for you to take x-rays of a person that you are seeing in a medical examination to properly and completely determine the extent and nature of your patient's injuries?

A. If I was involved in the treatment of the patient, I would think it would be necessary. Otherwise, I wouldn't want to expose him to unnecessary x-ray exposure.

Q. Do you feel that you could have obtained a more clear and accurate opinion as to Mr. Fisher's condition had you taken x-rays here at Zanesville?

A. It's possible.

Q. Do you have the equipment and the machinery available here in Zanesville, either at your office or across the street at the hospital, for the taking of x-rays?

A. Yes.

Q. Did Mr. Fisher bring with him any x-rays from Wheeling, West Virginia?

A. No.

Q. Did you talk to Mr. Fisher's treating physician, Dr. Barton, concerning Mr. Fisher's complaints?

A. I reviewed the written material that Mr. Fisher brought with him from Dr. Barton, but I did not

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speak with Dr. Barton himself.

Q. Okay. And it's -- how long did the examination that you conducted of Mr. Fisher last, Doctor?

A. Approximately 25 minutes.

Q. And were there other appointments scheduled before Mr. Fisher and then later after Mr. Fisher on the day of his examination?

A. I know I saw more patients that day.

Q. Would your daily log book reflect the number of patients that you saw on that day?

A. Yes.

Q. Do you have that here in the office?

A. Yes.

Q. May I look at it, please?

MR. MICHELI: I'm going to object. It's irrelevant and confidential. It contains the names of the patients that were in to see Dr. Thompson.

MR. BORDAS: I would like to proffer the record and ask the witness be allowed to show me the book for the sole purpose of determining the amount of time, if that's possible, that was actually spent with Mr. Fisher based on the records that the doctor has at his disposal.

MR. MICHELI: I have no objection to the doctor looking at the records and refreshing his own

recollection as to the time spent, but I certainly object and I would instruct the doctor that he violates the confidentiality of his patients by permitting counsel to look at his book or the book containing the identity of patients who have been in to see him for treatment. I don't think that's proper.

MR. BORDAS: I feel that's fair and would ask the doctor to refresh his memory.

A. On the morning I saw the Fishers, from 8:30 in the morning till 12:30 I saw five new patients and eight follow-up patients.

Q. So then you saw 13 patients in addition to the Fishers on the morning that you saw the Fishers?

A. Of the five new patients, the Fishers are included in that five. So I saw three new patients and two Fishers as new patients for a total of five new patients.

Q. And that was from what time?

A. 8:30 in the morning till 12:30.

Q. And did you terminate your office hours at 12:30 and make rounds at the hospital or so forth?

A. I don't remember what I did afterwards. I terminated my office hours at 12:30.

Q. How far apart were the patients scheduled timewise?

A. Generally for a new patient I'll give 20 to 30 minutes, and for a follow-up patient I'll give five to ten minutes.

Q. Sometimes the examination that you give to these follow-up patients actually takes longer than the five to ten minutes that you normally alot to them?

A. Yes.

Q. Do you recall that being the case on the day that you examined the Fishers?

A. I don't recall.

Q. Doctor, you've not seen Mr. Fisher since your examination in March of this year, have you?

A. No.

Q. And he's actually not a patient of yours, is he?

A. No.

Q. And the sole purpose of your examination of Mr. Fisher was at the request of Mr. Micheli and for the purpose of this deposition for use at the trial; is that correct?

A. Yes.

Q. Doctor, were you compensated by Mr. Micheli for the service that you rendered to him in the examination of Mr. Fisher?

A. Yes.

Q. And can you tell me and the members of the jury the amount of the bill that was charged?

A. $80.

Q. And is there a bill for the testimony here today?

A. Yes.

Q. And what is that?

A. A hundred dollars an hour.

Q. Doctor, do you have an ongoing working relationship with Mr. Micheli and his law firm for the examination of patients in cases such as this?

A. Yes.

Q. And how long has that relationship existed?

A. Six months to one year.

Q. And do you feel that that will be a continuing and ongoing relationship?

A. Yes.

Q. And I assume that since I saw Mr. Micheli in your office here without you when I first walked in that you and he are on a fairly friendly and first-name basis; is that correct?

A. Yes.

Q. Do you belong to some of the same clubs and organizations?

A. Yes.

Q. And do you socialize together?

A. No.

Q. Doctor, Mr. Fisher -- strike that, will you please.

Seeing Mr. Fisher, Doctor, you saw a man that came to you some three years after the date of the collision that you've attributed his injuries to. Is it unusual for a man to still be suffering from those injuries if they are either feigned or if the man is a malingerer?

A. Repeat the question.

Q. Do you believe that -- let's just strike that question and go back to something that's more clear.

Do you believe that Mr. Fisher was telling you the truth when he presented his complaints to you?

A. Yes.

Q. And do you believe pains that he spoke of were real?

A. Yes.

Q. And do you likewise believe that they were caused by the collision, the rear-end collision, that he suffered when struck by a truck?

A. Yes.

Q. Did he tell you, Doctor, that the truck that

struck him was a tractor-trailer truck?

A. He mentioned truck. I don't recall whether he said the size of the truck.

Q. Did you have that in mind when you were examining Mr. Fisher?

A. Yes.

Q. I mean a truck and not necessarily a large tractor-trailer truck?

A. I don't recall.

Q. Would that make some difference as to your determination as to the severity of his injuries; that is, if he were struck by a mere, say, Ford pickup as opposed to a tractor-trailer truck?

A. Not really.

Q. Do you believe in Newton's law of gravity?

A. We've seen -- we see a lot of trauma in this area, and I've seen people killed in accidents where there is barely a scratch on the vehicle. And I've seen other vehicles which are smashed beyond recognition where the person walks away without a scratch.

So I'm not surprised by anything that -- you can't look at the vehicle or the size of the vehicle that you were struck by and have any idea whatsoever as to the extent of the injuries of the occupants of that car.

Q. Do you feel it's more likely, though, Doctor, that a person struck by a very large truck as opposed to a smaller truck or car would be more severely injured?

A. It depends on the speed that they're going.

Q. And if the car that is struck, that is, the car in which the Fishers were passengers -- Mr. Fisher was the driver -- was stationary, do you feel that would cause any greater degree of injury to him, be it that the truck that struck him was moving?

A. It really just depends on the relative speed of each vehicle. It depends on how much faster one is going than the other. It doesn't make any difference if it's stationary or not.

Q. So if there is no speed of one vehicle and the other vehicle is traveling at any speed, there is going to be a degree of difference?

A. It mainly depends what the difference in speed is between the two vehicles.

Q. Doctor, you spoke on direct examination, being questioned by Mr. Micheli, of two types of examinations that had been earlier recommended by Dr. Barton, who is Mr. Fisher's treating physician, and had been kind of put on hold at present time due to Mr. Fisher's cancer.

Do those examinations, and first we'll speak

of the meniscectomy -- is that the correct pronunciation of the word?

A. Yes.

Q. Does that require hospitalization?

A. Most orthopedic surgeons will hospitalize patients for it, but with the new arthroscopic tools that they have, I would imagine that a lot of them could be done as an outpatient.

Q. Okay. And the removal of the cartilage and the work that might be necessary to be done on the leg, would that be done within a hospital, the confines of a hospital?

A. It just basically depends on the treating physician.

Q. What's your procedure here, Doctor?

A. Most of them are done on an inpatient basis.

Q. And is the patient afterwards regulated to bed rest for a certain period of time or can he resume his normal activities?

A. They're generally required to rest for a period of time.

Q. And are they then followed up to determine the degree of their progress?

A. Yes.

Q. Doctor, do you feel that it's likely that

the pain that Mr. Fisher told you of, that you found, will continue into the future in Mr. Fisher's case and perhaps last for the remainder of his life?

A. It's difficult to say for sure because a definite diagnosis was never made.

Q. Okay. You can't rule that out, though, can you?

A. No.

MR. BORDAS: I have no further questions.

MR. MICHELI: I have a few questions, Doctor, so as to clarify for the jury some of the questions that counsel has asked you on cross examination.

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REDIRECT EXAMINATION

By Mr. Micheli:

Q. When he asked you about a working arrangement with our office, there are occasions, such as in the case of the Fishers, where I ask you to conduct an examination of someone and give me your best medical judgement as to what, if anything, is wrong with that person; is that right?

A. That's correct.

Q. And is that what you had in mind when you said that in response to his question about a working arrangement?

A. Yes.

Q. Dr. Thompson, you've testified on cross examination that no x-ray was taken of Mr. Fisher's knee but you, I believe, also testified, did you not, that you were able to determine that the knee was stable?

A. Yes.

Q. And that you were able to put it through a full range of motion without any pain or discomfort on Mr. Fisher's part?

A. Yes.

Q. You didn't need x-rays to make that determination?

MR. BORDAS: I would object to the leading nature of the testimony and also to the fact that the defense counsel is actually testifying for the witness and ask that the question be stricken from the record.

Q. Would an x-ray, Doctor, of Mr. Fisher's knee have added anything to your diagnosis that the knee was stable and was able to go through a full range of motion without any pain or discomfort?

MR. BORDAS: Same objection.

A. No.

Q. To what did Mr. Fisher himself attribute his inability to work?

A. His malignancy.

Q. At any time during your discussions with him did he attribute his inability to work to his knee problem?

A. No.

Q. Doctor, assuming that the surgical procedures that counsel asked you about were in fact performed on Mr. Fisher's knee, what would be the expected or hoped-for results of that operation?

A. Normally orthopedic surgeons will delay knee surgery until the patient practically begs for it, just literally can't get around. Otherwise, they tend to be quite conservative. Mr. Fisher had minimal complaints regarding his knee, and his symptoms were only intermittent, and I'd actually be surprised if he would ever agree to undergo the surgery.

Q. Well, what's the surgery designed to accomplish?

A. It's designed to get rid of pain.

Q. So if the surgery were actually performed and it was successful, would the knee be stable and the pain be gone, assuming the success of the surgery?

A. Well, the knee is already stable. I don't think anyone would guarantee him that he would be pain free.

MR. MICHELI: I have nothing further.

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RECROSS EXAMINATION

By Mr. Bordas:

Q. Doctor, on both direct examination and redirect you spoke of the possibility of this further examination of Mr. Fisher's knee by these more advanced tests. And on direct examination I believe you indicated to Mr. Micheli that you had reviewed the reports of Dr. Barton & Associates, Mr. Fisher's treating physician; is that correct?

A. Yes.

Q. And in those reports isn't it true that Dr. Barton, the treating physician, had actually felt that Mr. Fisher's problems concerning his knee were sufficient to actually schedule and authorize the tests that we have been speaking of here today?

A. Yes.

MR. BORDAS: No further questions.

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REDIRECT EXAMINATION

By Mr. Micheli:

Q. Doctor, your arthroscopic examination is just that, is it not, a test?

A. At the time of the arthroscopic examination

if a torn meniscus is seen or another injury, this can also be removed at the time of the examination. It may just turn out to be an examination, if nothing surgical is seen during the course of it.

Q. So until that examination, arthroscopic examination, is actually performed, is there any certainty that there is a torn meniscus?

A. No.

MR. MICHELI: That's all.

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RECROSS EXAMINATION

By Mr. Bordas:

Q. Doctor, you are at least -- so that the jury is not misled, and I know this is not intentional, but you are at least aware that in Dr. Barton's letter that you've read and made reference to in your testimony that he indicated Mr. Fisher was encountering increasing episodes of insecurity with respect to his left knee joint, ache left knee by the end of a long day and more frequent episodes of acute pain on unguarded left knee motion and is interested in proceeding with definitive management. And then he said the plan was to repeat the arthroscopic examination of left knee joint under general anesthesia on an outpatient basis prior to admission to the hospital as a candidate

for definite meniscectomy.

And those were the examinations we've talked about, correct?

A. Dr. Barton referred to this in his letter of September of 1981.

Q. Right.

A. And you're quoting from that letter.

Q. Correct.

A. When I spoke with Mr. Fisher March of 1982, he gave me the impression that his knee was of minimal discomfort and only occasional mild discomfort to him and certainly did not hinder his activity in any way. So I must assume that between the time that Dr. Barton wrote this letter and the day I saw him that Mr. Fisher's knee has improved.

Q. You are aware that immediately after this letter we're speaking of, September 1, 1981, and the scheduling of the examinations we spoke of, that the cancer that Mr. Fisher presently suffers from was discovered. And that is the reason that the tests were discontinued.

A. I am aware of that, but still Mr. Fisher's complaints at the time he saw me were very minimal concerning his knee.

Q. Well, could it be that they were minimal in

comparison to the threat, the life threatening disease that he now experiences, and that is the cancer that he's dying from?

A. I was amazed when I saw him that he had a malignancy because he looked great. I even asked him about the chemotherapy that he was undergoing, and he was even tolerating that very well. He does not -- at the time I saw him he did not look like a man who had a malignancy, and hopefully he'll continue that way, but he seemed to be doing quite well even from the malignancy point of view.

Q. We'll agree with you there, but sometimes when you have something that's as serious or something that's going to kill you -- and certainly the knee, in all likelihood, the knee problems would not take his life, where the cancer --

A. I zeroed in on this knee thing and tried to get from him specifically how much problem he was currently having from the knee, and he was having minimal difficulty, certainly much less than what was implied in Dr. Barton's letter of September of 1981.

Q. And you gathered that from your 25-minute examination, which included the history of Mr. Fisher?

A. Right.

Q. And even in spite of that you will agree

that at least at one point Dr. Barton felt that these examinations that you would rule out in all but the worst cases were considered and were actually scheduled, according to Dr. Barton?

A. Yes.

MR. BORDAS: I have no further questions.

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DIRECT EXAMINATION

By Mr. Micheli:

Q. Dr. Thompson, on the same date that you examined Mr. Fisher, I believe you examined his wife, Rose; is that correct?

A. Yes.

Q. And preparatory to conducting your examination of Rose Fisher, did you also take from her a case history?

A. Yes.

Q. And would you relate to the jury the case history which Mrs. Fisher related to you?

A. She was involved in an auto accident in April of 1979. She was in the front passenger seat when a truck struck their car from behind. Her "neck and back were jerked." Her head did not strike the dashboard. She was not even aware of any injuries at the scene but does state that she was quite frightened.

Later that day she began to notice some neck pain. She called her physician and he recommended a soft collar. This was on a Friday. And he told her to go in Monday and get x-rays of the cervical spine.

I am in possession of an x-ray report dated April 18, 1979, which revealed degenerative changes in the cervical spine. This apparently was quite severe. There was no evidence of traumatic injury to the spine or to the right shoulder. She did not have any back complaints at that time, so back x-rays were not done.

Since then she has been treated as an outpatient with a soft cervical collar and intermittent cervical traction at home. She has had constant neck stiffness and pain. As a result of this, she has difficulty looking up and doing heavy work at home. She did work as a saleslady at a carpet store at the time of the injury and was off work for two weeks but then was able to go back to work answering the phone. Since then this store went out of business and she is unemployed.

About one year ago, approximately a year or a year and a half after the accident, she began to complain of low back pain and again consulted her physician. She told me on the day I examined her that actually her low back pain was hindering her more than her neck pain. Because of the low back pain she is

unable to lift and has continual back stiffness and pain. She was on several medications, including a sinus medication and a nerve pill. She didn't know exactly what these were.

She's otherwise been in good health. She has never been hospitalized for this injury. She has not had any surgery, myelography or any formal physical therapy other than at home. She is not on any specific medication for treatment of her symptoms other than what I mentioned.

Q. In the case history, Dr. Thompson, you made reference to an x-ray report dated April 18, 1979, revealing degenerative changes in the cervical spine, which you categorized as quite severe. What do you mean by degenerative changes?

A. These are the changes that commonly occur in people who develop osteoarthritis, most commonly over the age of 50.

Q. And what is osteoarthritis?

A. This is a degeneration of the joints which can affect any joints in the body, which typically causes stiffness, pain, a decreased flexibility.

Q. Is this type of arthritis commonly referred to also as a sort of wear-and-tear type arthritis?

A. That would be one of the lay terms for it.

Q. Did you then undertake an examination of Mrs. Fisher?

A. Yes.

Q. And would you relate to the jury, Dr. Thompson, what your examination consisted of and what your findings were with respect to each of these things that you did?

A. She was a very pleasant, cooperative lady. She gave a very clear history. She was able to walk normally. Again she was able to walk on her toes, heels and heel to toe very well. Her balance was normal.

However, she did have severe limitation in range of motion of the cervical spine in all directions, including lateral rotation, and complained of pain and stiffness when she got to about half of what would be the normal range of motion.

The range of motion of her lumbar spine was also limited, although not as severe as the cervical spine, and limited her ability to fully bend forward especially.

There were no signs of weakness, loss of sensation or incoordination. Her reflexes, deep tendon reflexes, were normal and straight leg raises were normal.

Q. Doctor, do you attach any significance to the normal deep tendon reflexes and the pathological reflexes that you've mentioned?

A. Yes. This would be evidence that there's no involvement of the spinal nerve roots or the spinal cord.

Q. And you said the straight leg raising is negative. What is the straight leg raising?

A. This is a test to determine whether there is any involvement of the nerve roots in the lumbar region.

Q. How is that test performed?

A. With the patient laying on their back, one of their legs is raised straight up and they're questioned about whether this causes pain or whether they resist the motion.

Q. And when you say that that was negative, what do you have reference to?

A. That means she did not complain of significant pain and did not resist the movement.

Q. Which indicates to you what?

A. That this is again evidence that there is no involvement of the nerve roots in the lumbar region.

Q. Dr. Thompson, if the x-rays of the cervical spine which were taken in April of 1979, which was also

the month and year of the accident in question, revealed the degenerative changes, the severe degenerative changes you've made reference to, could you state with a degree of medical certainty as to whether or not those degenerative changes would have predated the accident?

A. Yes. They definitely would have preceded the accident.

Q. And why do you say that?

A. This is a chronic disorder. This is a disorder that progresses over years. Patients may even have symptoms before x-ray changes appear. And the fact that the x-ray changes are already there would indicate that this would have been a matter of years prior to the accident, in my opinion.

Q. Dr. Thompson, based upon the case history which Mrs. Fisher related to you and your examination of her, together with your review of the x-ray report of April, 1979, did you arrive at an opinion based upon a reasonable degree of medical certainty as to what the cause of her complaints were?

A. Yes.

Q. And what was that opinion?

A. It was my opinion that she had preexisting osteoarthritis of the cervical spine, although when she was in the accident, I feel that she did suffer

muscle strain, which did cause her some temporary discomfort and stiffness.

Q. Did you find any evidence in your examination of any traumatic injury of any kind?

A. No.

Q. How about her low back, Dr. Thompson? Do you have an opinion as to whether or not the accident of April, 1979 was the direct and proximate cause of her low back complaints?

A. I do not think that the accident in question had anything to do with her low back complaints.

Q. Do you have an opinion as to what has caused the continuation of her symptoms with respect to the cervical spine?

A. Yes.

Q. And what is that opinion?

A. She has severe osteoarthritis.

Q. Doctor, assuming that an injury superimposed upon osteoarthritis can aggravate that condition, do you have an opinion as to whether or not there comes a point in time where the traumatic incident ceases to be a factor in that overall condition?

A. Yes.

Q. And what is that opinion?

A. I would say the normal person after such a

minor injury may have a little neck stiffness for several days to a week or two, and an individual who already has osteoarthritis, that discomfort may extend further, perhaps four to eight weeks after the injury. It may be difficult to tell when the symptoms from the injury go away and the symptoms from the underlying osteoarthritis begin. And I suspect that in Mrs. Fisher's case this was rather difficult to say exactly when the discomfort from her injury went away.

Q. At the time of your examination, however, bearing in mind that the accident was April of 1979, at the time of your examination, do you have an opinion as to whether or not the accident, the injuries that she may have received in the accident were still part and parcel of her continuing symptomatology?

A. Yes.

Q. And what is that opinion?

A. I do not think she is having any of her current symptoms due to the accident in question.

Q. Doctor, for whatever time you spent with Mrs. Fisher in conducting your examination, whatever time that may have been, was that time sufficient for you to make an evaluation of her condition and give the opinions that you've given here today?

A. Well, I didn't have copies of her x-rays,

but I did have the report. I think it was certainly sufficient to rule out any signs of spinal cord or nerve root involvement and based on the material that I had, which consisted of x-ray reports, come to a reasonable conclusion, yes.

MR. MICHELI: Thank you.

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CROSS EXAMINATION

By Mr. Bordas:

Q. Doctor, as I understand your testimony to this jury, you did not have actual x-rays in front of you when you were examining Mrs. Fisher?

A. That's correct.

Q. Nor did you take any x-rays here at your office of Mrs. Fisher?

A. No.

Q. And again you had the opportunity and the equipment was available so that you could have taken x-rays; is that correct?

A. Yes.

Q. And in cases such as Mrs. Fisher's, it is not only normal but it's just about always done, that is, the taking of x-rays for the determination of the extent and nature of the neck injuries that a patient complains of?

A. Absolutely not. I do not like to expose patients unnecessarily to x-ray unless there's a good medical reason, in my opinion, for doing so. It is conceivable I could see a patient for determination of impairment or disability that I would recommend they have x-rays. In Mrs. Fisher's case I did not feel that x-rays were necessary and that the x-ray report of April, 1979 was adequate.

Q. Doctor, would it have been helpful to have had both the x-rays of '79 and to have taken x-rays here in 1982, to give you a better idea as to the nature and extent of Mrs. Fisher's injury?

A. Not in this case.

Q. It would not have been helpful?

A. No.

Q. It would not have been helpful to determine the degree of continuing change in Mrs. Fisher's neck, assuming there may be one, or a lack of change?

A. There was no evidence of trauma on the initial x-rays, and the question I was asked was whether there was -- her problem was due to the trauma she was involved in. If there was no evidence of trauma on the original x-rays, there certainly wouldn't be any evidence of trauma now.

Q. Doctor, it's my understanding of x-rays that

there are quite a few things that they sometimes don't show, which would be the soft tissue problems; that is, the muscle, the ligaments, the tendons, the skin or anything of that nature. Those wouldn't show on x-rays anyway, would they?

A. Very severe ligamentous injuries can be seen on x-ray because the vertebrae are disrupted. The ligaments are what hold the vertebrae together. Injuries to the anterior spinal ligament we can frequently see swelling in what's called the retropharynx or the back of the throat. So in severe injuries you can see soft tissue changes on plain x-rays.

Q. So in order to rule out a severe injury, it might be necessary to take x-rays to actually do that?

A. Yes.

Q. Doctor, while Mrs. Fisher was here did you or members of your staff here at this office take Mrs. Fisher's blood pressure?

A. No.

Q. Did you take her pulse?

A. No.

Q. Her temperature?

A. No.

Q. Her weight?

A. No.

Q. And during the course of the examination and the history that was taken of Mrs. Fisher, did Mrs. Fisher at any time during the taking of the history -- I assume you took the history personally?

A. That's correct.

Q. Did she tell you of any problems, aches or pains to her neck or back before the accident in question here that occurred in 1979?

A. I specifically asked her if she had ever had any neck pain or stiffness prior to the accident of April, 1979, and she said no, she had never had any neck problems.

Q. So it's true, too, that these degenerative changes that you spoke of on direct examination by Mr. Micheli, those changes do occur sometimes and oftentimes perhaps in older people; isn't that correct?

A. Usually not to the extent that hers were. She had severe disc space narrowing at three levels. She had encroachment of osteophytes, which are large calcium deposits on the neural foramina, which are the holes which the nerve roots come from. So I would have to say no, it is not common to have someone who is asymptomatic of this degree have x-ray changes.

Q. That's not a common occurrence in people who,

say, are 60 and above?

A. It's common to have some changes. It's not common to have the severity of changes she had. And when these x-rays were taken, she was only 56. It might be more common if she was 75, but for 56 these changes were pretty bad.

Q. And, Doctor, these degenerative changes that some people suffer from and that you've testified that Mrs. Fisher suffered from, are those sometimes dormant and lay dormant until actually something traumatic happens to the person to bring them pretty much to the forefront?

A. Usually, it's just the opposite. Very often we'll see people who come in with vague complaints of neck stiffness or back stiffness, and we'll take x-rays of the neck or back and they'll be completely normal. We'll sometimes have people get upset with us because we tell them their x-rays are normal and they say, gee, well, there has to be something wrong. Only several years later will some of these changes appear.

Now we do see an occasional person, as you mentioned, whose x-rays are abnormal but who really doesn't have any symptoms. But I would say in my experience that the reverse is usually true.

Q. What I'm actually saying is that a person

could have these degenerative changes and be pain free, and all of a sudden be involved in a traffic collision, such as Rose Fisher, and then from that point on begin to experience the pains that she complained of to her treating physician, Dr. Wyler, Dr. Poulos, later to you?

A. It's hard for me to believe that her symptoms from this particular accident, the injury was so minor that her symptoms from that would persist past two or three weeks. The accident didn't cause the arthritis. The arthritis has been there for years. It's possible that it could just have been coincidence, but I am speculating. I don't have a good explanation as to why her symptoms have persisted for so long, but there's definitely no evidence of any trauma that could have done it.

Q. There's also no evidence of any pain that Mrs. Fisher had to her neck before the date of the collision that we're speaking of.

A. That's correct.

Q. Doctor, the injury that Mrs. Fisher complained of was in her neck and in the cervical area of her spine. That's true, isn't it, the basic injury, the primary injury she was complaining of?

A. I don't think Mrs. Fisher had any injury to her spine. I think she had some strained muscles in

her neck.

Q. Okay. Some strained muscles in her neck?

A. Yes.

Q. And that's near the cervical area of the spine then; is that correct?

A. Yes.

Q. Is the cervical area of the spine and the area of the neck, in general, is that basically more susceptible to injury than, say, other parts of the spine or the back?

A. Well, it depends on the injury. In auto accidents certainly the cervical spine is more commonly affected than other parts of the spine.

Q. And why is that?

A. Generally because of the movement of the head on the cervical spine during an acceleration-deceleration injury. The head may move in an extension-flexion type injury. The head may be forcibly jerked back and then forward, thus either straining muscles; in more severe injuries, tearing ligaments; and even in more severe injuries, disrupting the vertebrae and damaging the spinal cord, causing paralysis.

Q. We typically see those in the rear-end collision type cases, isn't that basically true?

A. No, any acceleration-deceleration injury,

hitting a telephone pole, for instance, head-on would do it. Smashing your head into the windshield would cause a crush injury to the cervical spine. So it is varied mechanisms that can occur.

Q. So what we're speaking of then is one body is stationary and all of a sudden that body is either lunged into another body or something from behind strikes the body, causing the first body to lunge forward?

A. That's one mechanism of injury, yes.

Q. And that's basically the type of collision that we had in the Fisher case?

A. That's correct.

Q. Doctor, a doctor-patient relationship does not exist between you and Mrs. Fisher, does it?

A. No.

Tape 3 follows

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Q And again she was examined by you at the request of Mr. Micheli?

A Yes.

Q For the purpose of this deposition here today and later the introduction of the deposition at the trial of the case, which is scheduled for this coming Tuesday?

A Yes.

Q And you have no plans to see Mrs. Fisher in the future?

A No.

Q Nor do you have plans to submit your report of your findings of Mrs. Fisher's condition to Mrs. Fisher's treating physician, Dr. Wyler or Dr. Poulos?

A No.

Q Have you talked to Dr. Wyler or Dr. Poulos?

A No.

Q Doctor, when you've told us in your report that Mrs. Fisher's range of motion in her neck was 50 percent of normal, does that mean that it is what you imply, it is cut in half, in effect, the range of motion?

A Yes.

Q And when you're testing for the range of motion, are you testing for six different degrees of motion?

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A Generally we check for flexion, extension, lateral flexion in both directions and lateral rotation in both directions.

Q So that's six different areas you're testing for?

A Yes.

Q And she was at least half, only at 50 percent in each of those directions?

A One may have been 40, one may have been 60, but she did not have normal range of motion in any direction.

Q How would that hamper a patient, this inability to have a normal range of motion?

A You know, when you reach to grab something over your head and you have to look up, this would hamper it. When you go to pick something up off the floor, you don't realize how much you normally have to flex your head forward to do that. Like bending over to tie your shoes, for instance, you would be impaired because you had difficulty seeing it unless you put your foot out further. Backing the car out of the driveway and having to look over your shoulder would be impaired. Probably you may have some difficulty with heavy lifting because of that.

Q Doctor, were you advised that Mrs. Fisher

had received some home therapy and home traction?

A Yes.

Q And do you likewise advise in certain cases home therapy and home traction for the patients that you see and actually continue to treat as your patient?

A Yes.

Q And what is the purpose of the home therapy and home traction?

A In some individuals, especially patients that have nerve root involvement, this tends to not only relieve muscle spasm in many people but also to change the alignment of the spine ever so slightly to improve impingement on nerve roots.

Q Do you also sometimes recommend to your patients the use of a cervical collar?

A Rarely.

Q What's the purpose of the cervical collar?

A I usually use it for acute injuries. In someone who's had an acute muscle strain, for instance, it helps their pain because they can actually rest their chin on the front of the collar and the muscles in their neck can be put at rest. You don't realize you use the muscles of your neck that much until you hurt the muscles in your neck and then it will even hurt to hold your head up. This only helps with the

acute pain. I discourage it on a long-term basis because people tend to get dependent on it, and the muscles of their neck actually get weak.

Q Then actually the treatment that Mrs. Fisher's doctors had recommended to her and that she followed, that is, the use of the cervical collar and the home traction and the home therapy, were pretty much the same things that you would have recommended had you seen her as your patient?

A With the exception of the collar. I wouldn't -- she was still wearing it and I would try to discourage her from still wearing it.

Q Do the patients that you see initially and treat for neck injuries resulting from car accidents, do you oftentimes continue to see them for three, four, five years later after the accident?

A No.

Q Only in the more serious cases do you continue to see those people?

A They all get better. Very rarely do I have to see anyone more than several weeks.

Q So Mrs. Fisher and the treatment that she's receiving from Dr. Wyler or Dr. Poulos, that would have been an unusual situation; that is, the continuing treatment?

A Well, I really think she's -- I don't think it's unusual because I think she has osteoarthritis of the cervical spine, and I think she's probably going to need treatment for the rest of her life to some extent. I don't think in any way is it related to the trauma she sustained in the accident.

Q But you will agree that there is nothing to indicate that she had ever experienced any pain to her neck before the accident that we're speaking of?

A Well, she hadn't had any back pain either but then that started about a year and a half later. And I suspect, although I don't have X-ray confirmation, that she also has osteoarthritis in her back. And I can only assume that the reason that she didn't start getting pain in her neck till after the accident was just coincidental.

Q And you can only assume that because you don't have any X-rays to really confirm that?

A Oh, no, we do have X-rays to confirm the osteoarthritis was preexisting, but she just started to develop symptoms sometime after the accident. And just like she started -- osteoarthritis can be a very diffuse disease, and I think she has that in her back, too, and I think she developed that a year after the accident. I think it's just coincidental that she

started developing the neck symptoms after the accident also.

Q You say you're assuming the back injuries are caused by osteoarthritis because you don't have X-rays to support that?

A The reason I'm assuming it's osteoarthritis is because she has it in the neck and it's very common for people that have osteoarthritis in one part of their body to develop it in other parts of their body. So that's why I'm assuming she also has it in her back. Also, her symptoms in her back are very typical for osteoarthritis.

Q Since you're making assumptions, is it also possible to assume that the problems she's experiencing in her back were also caused by the automobile accident in 1979?

A Absolutely not. Her symptoms started a year and a half after the accident and, in my opinion, they are in no way related to the accident.

Q Your opinion is then that Mrs. Fisher is suffering from chronic neck pain, that she had a problem with her cervical spine, that she had a cervical strain that was caused by the accident of 1979; is that correct?

A That's correct.

MR. BORDAS: No further questions.

MR. MICHELI: Doctor, a couple of questions.

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REDIRECT EXAMINATION

By Mr. Micheli:

Q Counsel asked you whether or not you had made available to Mrs. Fisher's treating physicians your report and your findings, and your answer to him was no. So as to clear up any misconception, if any of Mrs. Fisher's treating physicians were to make inquiry of you or to request that report from you, would you furnish it to them?

A I would probably request that they get it from you.

Q Okay. But you have no objections to their having it?

A No.

Q And to the record, and I don't think counsel would disagree with this statement, the copy of your report both with respect to Mrs. Fisher and Mr. Fisher I have, in fact, furnished to Mr. Bordas, Plaintiffs' counsel here.

MR. BORDAS: That's true. I don't know if the Doctor knows it, but that's certainly true.

MR. MICHELI: Mr. Bordas does in fact and

has had today a copy of your report both with respect to Mr. Fisher and Mrs. Fisher.

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Thereupon, an X-ray report dated April 18, 1979, was marked for the purpose of identification herein as Defendants' Exhibit A.

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Q Dr. Thompson, I've requested the Court Reporter to mark this document for purposes of identifying it in this deposition as Defendants' Exhibit A, which purports to be a report from the radiology department of Wheeling Hospital, which Mr. Bordas, Plaintiffs' counsel, very graciously furnished to me a while back. And I'll ask you if Defendants' Exhibit A is the X-ray report which you make reference to in your testimony.

A Yes.

MR. MICHELI: Let the record show an offer of Defendants' Exhibit A to the deposition.

That's all I have.

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RECROSS-EXAMINATION

By Mr. Bordas:

Q Doctor, in the paper that was just marked as Defendants' Exhibit A we see that there is disc space narrowing between, is it, C5 and C6; is that correct?

A C4-5, 5-6 and perhaps 6-7.

Q What is a disc space narrowing?

A In between all of the small bones in the neck, which are called vertebrae, is a structure called a disc, which serves as a cushion for the vertebrae. If there is degeneration of this soft material, the vertebrae become closer together and that space that is occupied by the disc becomes narrower.

Q What does that result in to the patient?

A This generally results in neck stiffness, pain, occasionally with impingement on nerve roots and pain and weakness in the arm.

MR. BORDAS: I have no further questions.

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REDIRECT EXAMINATION

By Mr. Micheli:

Q Looking at Defendants' Exhibit A, Doctor, those findings were made on what date? What date were those X-rays taken?

A April 18, 1979.

Q And I believe you've already testified that anything that's in that X-ray report would have predated the accident?

A By years, in my opinion.

MR. MICHELI: Thank you.

Dr. Thompson, you have the right to wait until this Court Reporter transcribes this deposition, types it up for you to read and to sign, or you can save both her and yourself that time and inconvenience by agreeing to waive the reading of the transcribed deposition and the signing of the same.

THE WITNESS: I'll waive the right to sign.

(Signature waived.)

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CERTIFICATE

State of Ohio :

County of Franklin : SS:

I, Eileen M. Rines, a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named Robert J. Thompson, M.D., was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a typewriter; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid; and that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, employee, or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 16th day of April, 1982.

Eileen M. Hines

Eileen M. Hines, Notary Public
in and for the State of Ohio, and
Registered Professional Reporter.

My commission expires August 16, 1984.

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