

1                   IN THE COURT OF COMMON PLEAS

2                   CUYAHOGA COUNTY, OHIO

3           PEARL LEWIS, et al.,

4                   Plaintiffs,

5                   -VS-

JUDGE FUERST

CASE NO. 389421

6           MICHAEL L. GUNSBERG,

7                   Defendant.

8                   - - - -

9                   Videotaped deposition of ROBERT D. ZAAS,  
10           M.D., taken as if upon direct examination before  
11           Colleen M. Malone, a Notary Public within and for  
12           the State of Ohio, at the offices of Robert D.  
13           Zaas, M.D., 26900 Cedar Road, Beachwood, Ohio, at  
14           6:00 p.m. on Wednesday, August 30, 2000, pursuant  
15           to notice and/or stipulations of counsel, on  
16           behalf of the Defendant in this cause.

17                   - - - -

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APPEARANCES:

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On behalf of the Plaintiff;

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On behalf of the Defendant.

ALSO PRESENT:

Don McNair, Videographer



1                   ROBERT D. ZAAS, M.D., of lawful age,  
2           called by the Defendant for the purpose of direct  
3           examination, as provided by the Rules of Civil  
4           Procedure, being by me first duly sworn, as  
5           hereinafter certified, deposed and said as  
6           follows:

7                   DIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.  
8           BY MR. WILLIAMS:

9   Q.   Doctor, could you please state your full name for  
10       the record for us.

11   A.   Yeah, my name is Dr. Robert David Zaas. I spell  
12       my last name Z-a-a-s.

13   Q.   And, doctor, what's your current professional  
14       address?

15   A.   26900 Cedar Road. We're in what is now called  
16       The Cleveland Clinic Suburban Medical Building, I  
17       guess that's what they call it. We're on Cedar  
18       Road, oh, a quarter of a mile down from the 271  
19       exit of Cedar Road.

20   Q.   And are we at that address obviously here today?

21   A.   Yes, we are.

22   Q.   All right. And what is your profession, doctor?

23   A.   I am a physician, an M.D.

24   Q.   When were you first licensed to practice medicine  
25       here in the State of Ohio?



1 A. I was practice -- I actually -- I got my license  
2 after I was an intern, so that's 1958.

3 Q. All right. And do you have a speciality in the  
4 field of medicine?

5 A. I specialize in orthopedic surgery.

6 Q. Could you give us a little understanding as to  
7 what's involved in the practice of orthopedic  
8 surgery?

9 A. Orthopedic surgery is a subspecialty that deals  
10 with the skeletal system, which is our bones and  
11 our joints. As an orthopedic surgeon, I take  
12 care of conditions that involve the spine and  
13 extremities; the spine being the back;  
14 extremities being the arms and the legs. I'm  
15 qualified to do surgery, but fortunately most of  
16 the patients that I see don't need surgery, and I  
17 can also treat them non-operatively.

18 Q. Are you board certified in orthopedic surgery?

19 A. I am indeed.

20 Q. And how long have you been board certified?

21 A. I was board certified two-and-a-half years after  
22 I was in practice, so it was 1968.

23 Q. Okay. And have you maintained that certification  
24 up and to the present time?

25 A. Oh, yes



1 Q. Okay. Doctor, could you give us a little bit  
2 about of your background, college through medical  
3 school, up until the time that you went into  
4 private practice?

5 A. Yeah, I went to college here in Cleveland at  
6 Western Reserve University, now known as Case  
7 Western Reserve. I graduated from there in four  
8 years with a bachelor of science degree in 1953.  
9 We're talking about old history now. I went then  
10 to medical school, to the University of Chicago  
11 School of Medicine, and I graduated from there in  
12 four years with an M.D. degree in 1957.  
13 Thereafter, I had six years of postgraduate  
14 training, that means an internship, which I had  
15 at Mt. Sinai Medical Center. Then I had general  
16 surgery training at University Hospital and at  
17 Akron General Hospital. Then I had additional  
18 orthopedic training at Mt. Sinai, and I finish at  
19 ' Indiana University in Indianapolis where I did  
20 mostly spine and pediatrics. So all told, I had  
21 four years of college, four years of medical  
22 school, six years of orthopedic training, general  
23 surgery in and mostly orthopedic, before I could  
24 qualify to go into practice.

25 Q. How long have you been in private practice?



1 A. Well, there's two more years in there we have to  
2 add. Remember Vietnam and remember the '60s. So  
3 I spent two years of active duty with the United  
4 States Navy, one of which was on an aircraft  
5 carrier in the Vietnam area, western Pacific,  
6 where I did general surgery and orthopedic  
7 surgery. Mostly orthopedic, because active duty  
8 personnel get hurt, but they don't really get  
9 that sick. And I went into practice in 1965 in  
10 Cleveland.

11 Q. Okay. I assume you're a member of medical  
12 organizations or societies, and, if so, could you  
13 give us just a brief listing?

14 A. Yeah, I'm a member of a group of medical  
15 societies whose membership is for doctors in good  
16 standing, such as: The American Medical  
17 Association; the Ohio State Medical Association;  
18 the Academy of Medicine of Cleveland. But I also  
19 belong to that group of organizations whose  
20 membership is for orthopedic specialists. That  
21 includes the American Board of Orthopedic  
22 Surgery; the Ohio State Orthopedic Association;  
23 The Cleveland Orthopedic Society, of which I am  
24 past president. At present, I'm the secretary  
25 for the continuing education committee.



1 Q. With all the changes that we've had as far as  
2 hospitals are concerned in Cleveland, what  
3 hospitals do you currently have staff or curtesy  
4 privileges at?

5 A Well, that's sort of debatable right now. As I  
6 testified, Cleveland Clinic has purchased the  
7 building that we're sitting in, where it used to  
8 be the Mt. Sinai Medical Center, Mt. Sinai  
9 Suburban Medical Center for 20 years, and did  
10 much of my work right here. There's an  
11 outpatient surgical suite here and since The  
12 Cleveland Clinic bought it and has taken it over,  
13 they haven't opened the suite yet. So I'm not  
14 sure what I'm going to do right now, whether I  
15 have to go to Hillcrest or wait for them to open  
16 it here. But I have for years, I mean since  
17 1965, primarily did all my surgical work at Mt.  
18 Sinai in the main campus down in University  
19 Circle and a fair amount of it up right here. We  
20 have six operating rooms right at the Beachwood  
21 facility here.

22 **a.** Okay. Are you involved in teaching at all in  
23 your field?

24 A. I have for many years and I still do. Again, I'm  
25 chairman -- I've been chairman, and I stayed on



1 as secretary of the continuing education division  
2 of the Cleveland Orthopedic Society as -- my  
3 position now is to participate in and arrange  
4 seminars for doctors already in practice, so that  
5 we can learn to be updated and what's current in  
6 medicine. Many of us, like myself, graduated a  
7 long time ago and have to continuously go to  
8 school. I'm strongly involved with that. I have  
9 taught at the medical school level. I was on the  
10 faculty for the university orthopedic training  
11 programs through The Cleveland Clinic, University  
12 Hospital, and Mt. Sinai, until Mt. Sinai closed  
13 last summer, and still involved with resident  
14 training. I still go over to the Mt. -- to the  
15 University Hospitals part of their resident  
16 training seminars.

17 Q. Doctor, as part of your general practice, do you  
18 have occasion to either examine individuals or  
19 examine records of individuals who are not  
20 necessarily your patients but for the purpose of  
21 providing a second opinion or an independent  
22 evaluation, such as we asked you to do in this  
23 case?

24 A. Right. On occasion. Like my general office  
25 practice technique has been Mondays is a



1        miscellaneous day for me, usually that would have  
2        been my surgical day, or if I had some other  
3        things to pick up as far as the office work. But  
4        we see patients on Tuesday, Wednesday, Thursday,  
5        Friday, and Saturday. Saturday because a lot of  
6        my patients work during the week, so I have to  
7        stay open on Saturday. But of all -- without Mt.  
8        Sinai -- when Mt. Sinai was open, I used to see  
9        25 patients a week down there. Now that I've  
10       lost that, so I now see about 75 patients a week  
11       in my office, but one of which would be for an  
12       independent examination, such as a second  
13       opinion, review of records. That one patient,  
14       sometimes two, but mostly one, is for making an  
15       evaluation or rendering an opinion and not for  
16       treating.

17    Q.    Okay. Doctor, did you have an occasion in this  
18       particular circumstance to examine some records  
19       that I provided to you in reference to the  
20       plaintiff in this particular case, Pearl Lewis?

21    A.    Yes, I did.

22    Q.    All right. And, doctor, do you have part, as  
23       part of your office records a copy of a report  
24       dated August 7, 2000 that you directed to my  
25       attention in reference to your review of those



1 records and your findings on that review?

2 A. That's correct.

3 Q. Okay. And we also had an opportunity this  
4 evening right before we commenced the deposition  
5 to have you take a look at a portion of Dr.  
6 Froimson's videotaped deposition; is that  
7 correct?

8 A. No, only x-rays.

9 Q. X-rays.

10 A. I didn't see anything on -- the videographer put  
11 some x-rays up, and I watched.

12 Q. Okay. Feel free, obviously, to refer to your  
13 report, as well as -- answering my questions, as  
14 well as those of Mr. Paris, if you would.

15 Could you tell the ladies and gentlemen of  
16 the jury what records, Dr. Zaas, that you  
17 reviewed in reference to Pearl Lewis?

18 A. I reviewed an emergency room record from  
19 Hillcrest Hospital of December 18, 1997, that was  
20 the date of the motor vehicle accident; records  
21 of Dr. Bruce Cohn, C-o-h-n, from January 1, 1998  
22 to September 23, 1998; records from Dr. Mark  
23 Froimson from -- let me get my date straight  
24 here, August 25, 1999 until I believe it was May,  
25 2000; and then, finally, records from Meridia



1 Hillcrest Hospital on February 11, 2000 to March  
2 4, 2000; and then records from an extended care  
3 facility from March 4, 2000 to March 22, 2000.

4 Q. Now, doctor, in reference to those records, if we  
5 could go through them with you. First off, you  
6 talked about the emergency room record at  
7 Hillcrest Hospital. What did that reveal to you  
8 in reference to your review of that record?

9 A. Well, it revealed that Pearl Lewis was involved  
10 in a motor vehicle accident; that she had been  
11 taken to the emergency room where she was  
12 examined on the date of the accident, namely  
13 December 18, 1997; and that her complaints at  
14 that time was right knee pain; and that she also  
15 reported that she had had a right hip prosthesis,  
16 that's an artificial hip joint, it's usually  
17 known as total joint replacement, which had been  
18 done a couple years before that; and that x-rays  
19 of the right knee were done; x-rays of the pelvis  
20 were done. The x-rays of the right knee showed  
21 arthritis; long-standing condition with  
22 arthritis, it's been there for a long time.  
23 X-rays of the pelvis showed that there had been a  
24 right hip arthroplasty, that's a total  
25 replacement, and that the hip device was what the



1 radiologist called not dislocated, it was in  
2 place, and that the final diagnosis in the  
3 emergency room were hip and knee contusion and  
4 that she was released after the examination. And  
5 apparently, nothing else was given to her,  
6 because she was on a number of other medications  
7 for other medical conditions unrelated to her  
8 hip, or her knee, or any other bone problem.

9 Q. Okay. Then following her discharge from the  
10 hospital she came under the care of Dr. Cohn; is  
11 that correct?

12 A. Yes. Dr. Bruce Cohn is an orthopedist. He's in  
13 this building, also. He had done the original  
14 total hip arthroplasty. He did the hip  
15 replacement, oh, a couple of years before the  
16 December 18, 1997 accident, so he knew her. He's  
17 the one that originally did the hip operation,  
18 and he treated her from January 1, 1998 to  
19 September 23, 1998. And from what I can tell  
20 from his record, all he treated was her right  
21 knee and her back. He stated that he looked at  
22 the x-rays that were done at Hillcrest --

23 MR. PARIS: Objection.

24 A. -- and concluded that there was no change in her  
25 hip and that she had arthritis of her hip -- of



1 her knee and that his final diagnosis was  
2 degenerative joint disease of right knee and  
3 contusion of the lumbar spine and exacerbation of  
4 the arthritis of the right knee.

5 MR. PARIS: Objection. Move to  
6 strike.

7 Q. Okay. Now, based upon your review of the records  
8 of Dr. Cohn, when was the last time that Dr. Cohn  
9 had seen Mrs. Lewis before she came under  
10 Dr. Froimson's care?

11 A. September 23, 1998, oh, nine-and-a-half, almost  
12 ten months after this accident.

13 Q. Okay. Now, in reference to Dr. Cohn's records  
14 and your review of those records, did they reveal  
15 Mrs. Lewis having any complaints of pain or joint  
16 dysfunction in the right hip during the time that  
17 Dr. Cohn treated her?

18 A. Dr. Cohn, who is the orthopedist again, who is  
19 the doctor who did the hip replacement, did not  
20 make any comment, statement, or finding of an  
21 abnormality about the right hip. His record did  
22 not indicate that he himself made reference to  
23 any hip symptoms. In his records, there are some  
24 physical therapy notes that there were some  
25 complaints of right hip pain in February, 1998.



1           Those were rendered -- those are put down by the  
2           therapist, but not by Dr. Cohn himself.

3       Q.   Okay.  Was there any abnormal physical findings  
4           or complaints recorded by Dr. Cohn himself in  
5           reference to the right hip from that time in  
6           January of '98 through September of '98?

7       A.   No, I don't know if I stated it correct, it was  
8           from January 7, 1998 to September 23, 1998.  
9           None.

10      Q.   Okay.  You also had an opportunity, I believe,  
11           to review the narrative report of Dr. Froimson;  
12           is that correct?

13      A.   That is correct.

14      Q.   All right.  And are you familiar with Dr.  
15           Froimson, Mark Froimson?

16      A.   Oh, I know him extremely well.  He trained at  
17           Western Reserve University, and he had his  
18           residency there, also.  Then he became a member  
19           of the staff at Mt. Sinai, and we worked together  
20           for all the years that Mt. Sinai was open.

21      Q.   Okay.  In reference to Dr. Froimson's report,  
22           what was of interest or note to you in that  
23           report, in your review of that report?

24                               MR. PARIS:  Objection.

25      A.   Well, number one, he didn't see Pearl Lewis until



1 August 25, 1999. That's, what, 20 something  
2 months later after the accident. And he  
3 concluded that when he saw her that one of the  
4 components, the thigh portion, which we call the  
5 femoral component of the total hip, was loose and  
6 that he recommended that the right femoral  
7 component be revised; in other words, another  
8 operation be performed, that the loose portion be  
9 taken out and replaced by a somewhat larger other  
10 component, so that he can make it firm again or  
11 stable again. And he did the right hip surgery  
12 on February 29, 2000, and he indeed in his  
13 operative note did state that the femur, or the  
14 femoral component, was loose and that he  
15 successfully performed a replacement.

16 Q. Okay. In reference to this finding of the right  
17 hip femoral component being loose his records  
18 revealed, when did he make that determination?

19 A. Apparently he made it on August 25, 1999, the  
20 first time he saw her, and that he referred to  
21 x-rays in his report, which I presume were  
22 August, 1999, although he was not very specific  
23 with that, showing that the right hip was loose.

24 Q. Okay. And you indicated, I believe, that you  
25 also reviewed the records from Meridia Hillcrest



1 Hospital and Mrs. Lewis's admission at that  
2 facility?

3 A. Right. That was from February 29, 2000 to March  
4 4, 2000. We're now talking two years and three  
5 months after the accident.

6 Q. Okay. And you also had an opportunity, I  
7 believe, to review the extended care facility  
8 records from March of 19 -- March of 2000; is  
9 that correct?

10 A. Right. For explanation, our normal procedure for  
11 replacing a major joint, especially on an older  
12 person, would be to keep them in the regular  
13 hospital and do the acute care and start therapy  
14 for a period of four or five or six days,  
15 depending on how quick they make a response, and  
16 then get two weeks of rehab or follow-up therapy  
17 at an extended care facility. That is normal,  
18 current medical practice for a joint replacement,  
19 but mostly in an older person. Younger people  
20 can have a joint replaced and go home by  
21 themselves.

22 Q. Okay. In reference to the care and treatment  
23 that was rendered to Mrs. Lewis at Hillcrest  
24 Hospital and then again at the extended care  
25 facility, I assume that was commensurate or



1 reasonable for the treatment that she had?

2 A. Oh, yes, that's exactly what we normally do for  
3 an uncomplicated case. If, however, we start  
4 getting complications, such as an infection or  
5 dislocation, now you can greatly extend that,  
6 that could go on for months and in-hospital  
7 treatment. But what happened on this particular  
8 case, what was normally called a right hip  
9 revision, which was performed by Dr. Froimson at  
10 the end of February, 2000, the treatment in the  
11 hospital for five days and then two more weeks in  
12 an extended care facility is current accepted  
13 normal treatment.

14 Q. Okay. Now, doctor, based upon your review of all  
15 the records in reference to the initial right hip  
16 replacement surgery that was done at Mt. Sinai  
17 Hospital, were you able to obtain a history in  
18 reference to what had happened at that facility  
19 back in '95?

20 A. No, never received it.

21 Q. Okay. There was some indication in the records  
22 of the use of the term trochanteric bursitis; is  
23 that correct?

24 A. There was reference in some of the later records  
25 that Dr. Froimson brought it up that after the



1        19, I guess it was '95 total hip operation done  
2        by Dr. Cohn, there was a problem with what was  
3        called trochanteric bursitis. That is a painful  
4        condition of the outer side of the upper hip and  
5        that went on into late 1996, and, apparently,  
6        nothing came of it, because there was no interval  
7        treatment between December, 1996 and the  
8        December, 1997 accident, from what I was given as  
9        far as information.

10        But trochanteric bursitis is of concern to us  
11        that do total joint replacements because that's  
12        sometimes an indication that the femur is  
13        becoming problematic.

14        Q. Okay. And when you use that term becoming  
15        problematic, what do you mean by that?

16        A. It is a frequent condition that we see in  
17        patients after total joints in which there is a  
18        reaction between the cement, the material that is  
19        put into the bone that allows the stem of the  
20        prosthesis to fit closely and then harden.

21        One of the things that you begin to see if  
22        the cement starts to break up or becomes reactive  
23        to the bone, is that you start getting  
24        inflammation on the outer side of the thigh,  
25        which presents itself as what we call



1           trochanteric bursitis.

2       Q.   Okay.

3       A.   That's not the only cause of trochanteric  
4           bursitis, it can be strictly just a tendonitis or  
5           just an inflammation superficially. But anybody  
6           who has had a total hip we are concerned that  
7           once you see that, that's frequently an  
8           indication that the hip is becoming loose.

9       Q.   Now, in reference to the care and treatment that  
10          was rendered by Dr. Cohn initially in 1998,  
11          there's some reference in the records that he did  
12          an examination and part of that was with regard  
13          to the hip rotation examination; is that correct?

14      A.   He says it was normal.

15      Q.   Okay.

16      A.   He basically said that the right hip was  
17          normal --

18      Q.   Okay. Now --

19      A.   -- through September, 1998.

20      Q.   When we talk about hip rotation, can you explain  
21          to us how you do that particular test?

22      A.   Yeah, well, hip rotate -- you rotate your hip  
23          when you cross your leg over the other leg.  
24          Here, I'm sitting here, and see what I'm doing,  
25          I'm externally rotating. I'm bringing my leg



1           outward, pointing my knee out that way but  
2           bringing my hip up this way. That is called  
3           external rotation. If you turn your hip way back  
4           inward, that's internal rotation. And if there  
5           is a problem with either the hip socket or one of  
6           the components, you will lose the ability to  
7           rotate it as well or to flex up and down.

8           In more normal people, you could bring your  
9           hip up almost your knee to your chest. You can't  
10          do that with a total hip, because there is a  
11          certain blockage that occurs from the two  
12          components and it isn't that necessary. As long  
13          as you can get up over 90 degrees, it's pretty  
14          safe.

15          But according to Dr. Cohn, she has good range  
16          of motion of her hip within the confines of a  
17          total hip replacement.

18       Q.   Okay. Would that be significant in reference to  
19          the need for revision some two years later?

20       A.   Not necessarily, because a total joint,  
21          particularly if it is cemented, is not a thing  
22          for forever. We -- we're getting better, doctors  
23          are getting better. When I first started to do  
24          them in the '60s, a patient was lucky to get  
25          three or four years out of any total joint. Two



1           or three years would be, boy, you're lucky.  
2           We're going to do it again. As you started  
3           getting into the '60s, then 70s, '80s, especially  
4           the mid '80s and onward and now into the '90s,  
5           there is an optimistic aim to try to get up to 20  
6           years from a total joint.

7           You can't really do that with a cemented  
8           total joint. You have to put the cement in and  
9           then put the stem in the cement. That will not  
10          last as long as when you put a non-cemented  
11          custom made fit, where the component fits  
12          directly into the bone. But you can't do that  
13          with older people, because their bones aren't  
14          strong enough to do that, so we try to get ten to  
15          12, 15 years out of a total hip, if possible.

16          But in certain number of cases, probably  
17          equally in the cemented and non-cemented, the hip  
18          will start to come loose, will move bone against  
19          bone or cement against bone, and once you start  
20          moving it, the cement will start to break up.  
21          And when you look at an x-ray, you can actually  
22          see where the cement is starting to loosen up and  
23          pull away from the bone and that is the  
24          indication that the hip is becoming loose.

25          That can happen, in many cases, when nothing



1 happens. If there was no complication, if the  
2 person is completely careful and the operation  
3 was done expertly, it still can occur. But it  
4 doesn't occur in most cases. Probably, probably  
5 not one in ten will lose the ability to keep  
6 their hip strong, oh, for more than five years.  
7 But it happens.

8 Q. Dr. Froimson had I think earlier this week  
9 indicated that about 90 percent of the time that  
10 they last for some extended period and about ten  
11 percent of the time there would be a failure.  
12 Would that be a fair number?

13 A. He's about right. It's somewhere between ten,  
14 12, 14 percent, depending on what it is. What we  
15 find, though, if you have to put a cemented hip  
16 in, especially on an older person, then the  
17 incident of early loosening is greater. It can  
18 be up to 15, 18 percent. However, if you have a  
19 younger person, a person in their 60s or 50s and  
20 then you put a non-cemented hip in, a custom made  
21 one, the incident of loosening is much less,  
22 probably under five percent. If you put them  
23 altogether, it's about ten percent of cases will  
24 loosen within a couple of years, even if  
25 technically done perfectly.



1 Q. And this loosening of the femoral component in a  
2 total hip replacement, that can occur without  
3 trauma?

4 A. Oh, yeah. It will occur even higher if there's a  
5 complication of the surgery. Apparently there's  
6 reference by Dr. Froimson that the first  
7 operation in 1995 had to be done in stages. It  
8 couldn't be all done at one time, it had to be  
9 done at two stages. In other words, part of the  
10 operation was done once; she went away; came back  
11 a second time; had another operation; had the hip  
12 completed. Now that's always associated with a  
13 greater incident of loosening. There is  
14 reference to that in the record, but I didn't see  
15 the operative note from 1995 specifically  
16 describing the two stages.

17 Q. Okay. In reference to trauma, can a femoral stem  
18 become loose following trauma?

19 A. Oh, yeah, we've seen those. Unfortunately, I've  
20 had a big collection of my own. But the trauma  
21 that it occurs is that one of several things  
22 happen: Number one, the femur, the thigh bone  
23 breaks. If you are on a scaffold and the  
24 scaffold breaks and you fall down with great  
25 force and you have a total hip, you break your



1 thigh bone. The thigh bone is a rounded tubular  
2 bone into which the stem of the femur goes. If  
3 you break the thigh bone, you've broken the femur  
4 and the stem is going to come loose. Now, that's  
5 pretty dramatic. I mean, that's one good way  
6 that trauma can break it. You can have trauma,  
7 fall down and your hip will dislocate, the socket  
8 and the ball come apart, and you're out of place.  
9 That has to be set. Those are the two major  
10 reasons that you can really get that type of  
11 problem, and, you know, Pearl Lewis did not  
12 fracture her femur, there never was any femur  
13 fracture at any time during any of the records  
14 that I saw and, specifically, from the December  
15 18, 1997 accident.

16 Q. Okay. Now, early this evening before we began  
17 you had an opportunity to take a look at some  
18 x-rays that Dr. Froimson utilized in his  
19 testimony, one of which was in January of '98,  
20 then there was a subsequent one I believe --

21 A. Two years later.

22 Q. -- two years later in January of 2000, and then  
23 the one that showed the hip replacement as it is  
24 currently, or how it appeared after the surgery.  
25 If we can work our way backwards, as far as the



1           one -- I assume the one you looked at postsurgery  
2           everything looked fine, meaning postsurgery after  
3           the surgery in 2000?

4       A.   Oh, when Dr. Froimson reattached it?

5       Q.   Yes.

6       A.   Oh, yeah, he did a beautiful job doing all the  
7           technically proper things for a femur or femoral  
8           component of a total hip that had become loose.  
9           He removed all of the previous femoral component  
10          and cement, he had to use a longer prosthesis to  
11          overcome the changes that occur from the  
12          loosening, and then he recemented the second  
13          component. So he just revised -- he does -- he  
14          replaced the old femur with the new one.

15      Q.   And you did have an opportunity to take a look at  
16          the x-ray from January of 1998, and you were able  
17          to see the line that he was describing in that  
18          x-ray?

19      A.   Oh, yeah. In January, 1998, which we're only  
20          talking a month after this accident, you already  
21          can see that the femur was loose or was  
22          loosening. I don't know that if on that date we  
23          took her to surgery, you could see any gross  
24          loosening, but you could see that it was  
25          loosening already.



1 Q. Okay. Dr. Zaas, based upon your education,  
2 experience, and your review of these records, as  
3 well as those x-rays, do you have an opinion  
4 within a reasonable degree of medical certainty  
5 as to whether or not that loosening that you saw  
6 on that x-ray in January of 1998 could have  
7 arisen from the motor vehicle accident that  
8 occurred in December of 1997?

9 MR. PARIS: Objection.

10 A. I do have an opinion.

11 Q. Okay. And what is your opinion, doctor?

12 A. It is my opinion after reviewing the video, a  
13 very good quality video, by the way, and close-up  
14 of Pearl Lewis's right total hip arthroplasty  
15 from January, 1998, one month after the accident  
16 that we're discussing, that that beginning  
17 loosening had already been present for months.  
18 It would take six to 12 months before you can see  
19 a loosened line like that and that has already  
20 been present that long.

21 If you want to go back and ask me if it was  
22 related to the trochanteric bursitis, I would say  
23 it would be more probable that would be the case.

24 MR. PARIS: Objection.

25 A. The trochanteric bursitis occurred in 1995.



1 Q. Okay. Now, doctor --

2 MR. PARIS: Move to strike.

3 Q. -- again based upon your review of the records,  
4 and let us take aside the x-ray that you reviewed  
5 this evening, based upon the review of the  
6 records that I provided to you, do you have an  
7 opinion, within a reasonable degree of medical  
8 certainty, as to whether or not the loosening of  
9 the femoral component, which required the  
10 revision surgery in February, 2000, was as a  
11 direct and proximate result of the motor vehicle  
12 accident in December, 1997; do you have an  
13 opinion?

14 MR. PARIS: Objection.

15 A. I do have an opinion.

16 Q. And what is your opinion, doctor?

17 A. It is my opinion, based on the material that I  
18 reviewed, mainly the Hillcrest records, the  
19 records of Dr. Cohn, the records of Dr. Froimson,  
20 that the loosening of the right femoral component  
21 could not be causally attributable to the  
22 December 18, 1997 accident.

23 Q. Okay. Now, doctor, you did review records which  
24 I had provided to you. You did not review any  
25 records or any x-rays prior to December, 1997; is



1           that correct?

2       A.   That is correct.   I did not actually see the  
3           actual x-rays of any time, although the video of  
4           the three sets of x-rays after December, 1997  
5           were made available to me today.

6       Q.   Okay.

7       A.   But I saw no records from before December, 1997.

8       Q.   Would it be beneficial, not only to yourself but  
9           to the ladies and gentlemen of the jury, to be  
10          able to review those x-rays in reference to those  
11          taken before December, 1997?

12      A.   Oh, sure.   Not only x-rays, but records.   I would  
13          like, ideally, to show the ladies and gentlemen  
14          of the jury x-rays that go back to 1995, '96, if  
15          there were any in '97 before this accident, if  
16          not, from '97 afterward, and then we all could  
17          compare them side to side.   There's particular  
18          reference now we're concerned about loosening of  
19          the femur.   My reference would be to very  
20          carefully review each one side by side to see if  
21          there was any indication, such that was occurring  
22          and when it started.

23      Q.   Okay.   There has been some discussion, both by  
24          Mrs. Lewis and by Dr. Froimson, that at some  
25          point in time she consulted with a doctor Lester



1 Borden. Are you familiar with Dr. Borden?

2 A. Very much so, yes.

3 Q. Okay. And can you tell us a little bit about  
4 your familiarity with Dr. Borden?

5 A. Lester, Dr. Borden, is the director of the joint  
6 replacement department at The Cleveland Clinic  
7 and has been for many years. He has extensive  
8 experience with joint replacement. He's a very  
9 desired out-of-town speaker and lecturer, being  
10 such an authority. Yes, he and I know each other  
11 for a long, long time.

12 Q. Okay. Now, doctor, all of your opinions that you  
13 provided us with this evening, I assume, were  
14 based upon your assumption that all the medical  
15 records that I provided to you were true and  
16 accurate copies of the originals, and the history  
17 and information contained in there was true and  
18 correct?

19 A. That is correct.

20 MR. WILLIAMS: Okay. Thank you,  
21 doctor, I have nothing further.

22 - - - -

23 CROSS-EXAMINATION OF ROBERT D. ZAAS, M.D.

24 BY MR. PARIS:

25 Q. Doctor, my name is David Paris, and I represent



1 Pearl Lewis.

2 You are not and were never Pearl Lewis's  
3 physician; is that right?

4 A. No, I don't recall her as a patient, no.

5 Q. You have never met this woman?

6 A. I've been a doctor for so long, I have to  
7 hesitate a little bit when I answer questions  
8 like that. To my recollection, I have never met  
9 her.

10 Q. In the context of the case, this case in which  
11 you're appearing before this jury, you've never  
12 met this woman?

13 A. No. But I cannot absolutely say I've never met  
14 her at any time during the past 30 years.

15 Q. Your purpose here in front of this jury is that  
16 you were asked by the defendant's representative  
17 to look at her medical records?

18 A. Correct.

19 Q. And render an opinion in this case as to whether  
20 this car accident was a cause of any injury to  
21 Pearl Lewis?

22 A. That is correct.

23 Q. You never reviewed any of her actual x-ray films  
24 taken before her first hip surgery?

25 A. That is correct.



1 Q You never reviewed any of her actual x-ray films  
2 taken after her first hip surgery?

3 A. What is correct

4 Q You never reviewed any of the actual x-ray films  
5 taken after this accident?

6 A. What is correct.

7 Q or taken after her second surgery in February of  
8 2000?

9 A. Not the actual films, only the video  
10 representation.

11 Q Did you ever ask Mr. Williams for those actual  
12 films?

13 A I think I indicated to him I would like to see  
14 them, yeah.

15 Q I mean, let me get the sequence here  
16 Mr. Williams calls you or send you a package of  
17 materials her's some medical records?

18 A. Correct.

19 Q. I need you -- would you please get involved and  
20 express an opinion if you have one, right?

21 A. That's correct

22 Q When you take a look at the records and you  
23 say to yourself, you know, I don't have the

24 films --

25 A. Correc<sup>a</sup>t



1 Q. -- do you call Mr. Williams typically and say,  
2 before I can prepare a report and express any  
3 opinions, I ought to have the films?

4 A. I express the opinion based on what he sent to  
5 me. I concluded, as you will note on page four,  
6 that it would be very helpful for me to review  
7 x-rays from before and after 1997.

8 Q. Actually what you say, it's very important.

9 A. Uh-uh.

10 Q. Very important are your words to review those  
11 x-ray films?

12 A. Well, it would be helpful. I think I said that  
13 somewhere else.

14 Q. Second line.

15 A. Line.

16 Q. Second paragraph.

17 A. Right. Right.

18 Q. It would be very important.

19 A. Yeah, I believe so. Yeah.

20 Q. Did you --

21 A. But again, I read from the bottom here, also.

22 Q. I want to make sure that the jury understands  
23 that I'm reading your report accurately. You use  
24 the terms that it would be very important --

25 A. Exactly.



1 Q. -- to look at those films?

2 A. Exactly.

3 Q. Okay. You realize that Dr. Froimson had the  
4 opportunity to review all of those actual films  
5 that you did not, correct?

6 A. I presume he did. I know he testified that he  
7 saw films before the accident but didn't show  
8 them, and then he said he did see them, though.

9 Q. And certainly you don't doubt Dr. Froimson's word  
10 on that, do you?

11 A. But he didn't identify which ones he saw.

12 Q. And you realize that Dr. Froimson treated Pearl  
13 and saw her over a one-year period from August  
14 1999 through today, she's still his patient,  
15 right?

16 A. That's correct.

17 Q. You -- do I understand that you never reviewed  
18 Pearl's old medical records, the records that  
19 predate this accident?

20 A. That is correct, I've never seen them.

21 Q. You've never seen the Hillcrest Hospital records  
22 that describe her first hip surgery?

23 A. That is correct, I have not seen that.

24 Q. When you testified about her first hip surgery,  
25 is that based on references made by other people?



1 A. It's based on references first alluded to by  
2 Dr. Cohn and then more specifically described by  
3 Dr. Froimson in their records.

4 Q. But you never --

5 A. Secondhand, I did not see the records directly.

6 Q. Okay. All right. So you've never actually seen  
7 that operative report from 1995?

8 A. I did not. There may be two reports, I did not  
9 see them.

10 Q. In all -- did you ask Mr. Williams for those  
11 records?

12 A. I would -- again, I asked for additional records,  
13 but I don't know that I specifically got anything  
14 other than what I received.

15 Q. Would you agree that reviewing those records  
16 would also be very important to you --

17 A. Sure.

18 Q. -- in assessing, in expressing your opinion?

19 A. It would be. Again, my opinion was rendered on  
20 the material that I had and that's what I based  
21 it on.

22 Q. Of course --

23 A. If other material came through, if other material  
24 added or subtracted anything, it could change my  
25 opinion.



1 Q. I know. But right now we're only about two weeks  
2 from trial, so I'm basing my questions on the  
3 report that you furnished me.

4 A. Mr. Paris, you have the influence, maybe you can  
5 get me the records, I'd be happy to look at them  
6 if you could get them.

7 Q. Ask and you shall have them.

8 A. Okay.

9 Q. Next, doctor, you would agree that you have not  
10 reviewed any of Dr. Cohn's medical records on  
11 Pearl Lewis that predate this accident?

12 A. That is correct.

13 Q. So when you talk about this trochanteric  
14 bursitis, which Pearl apparently was suffering  
15 from before this car accident, that's not based  
16 on any records of Dr. Cohn's that you've  
17 reviewed?

18 A. He did make a record, he did state that he did  
19 treat her for trochanteric bursitis, but he did  
20 not say when, and he did not make any detailed  
21 information about it.

22 Q. For example, do you know whether or not in 1995  
23 she had -- in August of '95 she had complained of  
24 any hip trochanteric bursitis?

25 A. No.



1 Q. Do you know, for example, in April of '96 she was  
2 treated by Dr. Cohn for this trochanteric hip  
3 bursitis?

4 A. She was treated in 1996, according to Dr. Cohn,  
5 but he didn't say to what exactly month this is  
6 followed to.

7 Q. Did you see Dr. Froimson's testimony, or did  
8 Mr. Williams read any part of Dr. Froimson's  
9 testimony when I asked him to comment on  
10 Dr. Cohn's record of September 4, 1996, in which  
11 Dr. Cohn opined that her trochanteric bursitis  
12 had resolved?

13 A. No, I did not hear that.

14 Q. Okay. And Mr. Williams didn't share that with  
15 you?

16 A. No, I didn't look at any -- I think I made it  
17 very clear to the jury, I didn't want to look at  
18 any other doctor's testimony, but I only looked  
19 at three x-rays on this video.

20 Q. And you weren't aware that, of Dr. Cohn's entry  
21 in his medical record from December 11, 1996,  
22 when he expressed that Pearl's right hip was  
23 doing great?

24 A. I did not see that.

25 Q. Okay. And of course with the trochanteric



1           bursitis resolved in September '96 and December  
2           of '96 her hip doing great, would you expect  
3           there to be any treatment over the course of the  
4           next year for such a patient who had full  
5           resolution of that problem?

6       A.   No.   I mean, again, she didn't have treatment the  
7           whole year of 1997, I think that's correct, and  
8           she didn't have any treatment for her hip the  
9           whole year of 1998 and half of 1999.

10      Q.   Let's start with '96.

11      A.   All right.

12      Q.   You would agree she had made a pretty good  
13           recovery, and she was well on her, well on her  
14           way to normal activities?

15      A.   Again, I don't have any records to really comment  
16           on that, except for the fact that there is no  
17           indication from Dr. Cohn, who was the last doctor  
18           that treated her in 1996 and possibly '97, I  
19           don't even know that, he made no retrospective  
20           reference that she was having problems before  
21           this 1997 accident.

22      Q.   Right.   Doctor, under the circumstances, Dr.  
23           Froimson having had an opportunity to review all  
24           these documents and you have not, would you agree  
25           that Dr. Froimson is in a better position to



1 analyze Pearl's injury from this accident?

2 A. I would, were it not for my viewing of an x-ray  
3 of Pearl Lewis's right hip taken barely one month  
4 after December, what, 17, 18, 1997, in which  
5 there is indication that the loosening of the  
6 femur had been there for a long time. That's my  
7 particular opinion. It doesn't really make any  
8 difference what he got to see before or after, as  
9 long as I also had a chance to see that  
10 particular x-ray, I then can make a comment on  
11 whether causation could be related to the  
12 accident you're talking about.

13 Q. You saw a videotape of an x-ray?

14 A. Yes, a very, very excellent, as the jury can see,  
15 a very excellent and detailed close-up videotape,  
16 which clearly showed that the loosening was  
17 easily seen at that time.

18 Q. Okay. Doctor, I seem, and you correct me if I'm  
19 wrong, but I seem to recall that hip replacement  
20 is not your area of special interest in  
21 orthopedic surgery?

22 A. Oh, wrong, that's what I've done more than  
23 anything else, either spine surgery or hip  
24 replacement.

25 a. It is hip?



1 A. I gave up doing knee replacements ten years ago  
2 and really have done hips and revisions of hips,  
3 primary hips, things of that sort, oh, yes.

4 Q. Your time for reviewing these records and the  
5 time for this deposition I take it is being paid  
6 by the defendant's representative?

7 A. Yes.

8 Q. And your charges per hour for this testimony?

9 A. I charge 250 an hour.

10 Q. Okay. The emergency room diagnosed Pearl as  
11 having a hip contusion and a knee contusion from  
12 this accident?

13 A. Correct.

14 Q. You have no reason to disagree with that?

15 A. That's correct, I do not, I don't disagree,  
16 because I wasn't there.

17 Q. Typically when you have -- are you familiar with  
18 the mechanism of this injury -- the mechanism of  
19 the impact, the collision?

20 A. According to the records, I am, yeah.

21 Q. Have you reviewed any of the photographs of the  
22 vehicles involved?

23 A. No.

24 Q. Are you aware what happens to a body in a car  
25 biomechanically when there's a, not necessarily a



1 head-on collision but a car is coming left of  
2 center and hits Pearl's car in the driver's side  
3 front quarter panel?

4 A. That's correct, left front, that's what I have,  
5 yeah.

6 Q. And do you have some kind of an acceleration/  
7 deceleration force placed on somebody in Pearl's  
8 position?

9 A. Well, you're kind of -- at that time your body is  
10 still moving forward and when the car stops, your  
11 body continues to move. It's sort of a little  
12 bit different that happens than from getting hit  
13 from behind.

14 Q. It's not uncommon to see dashboard injuries,  
15 under those circumstances, where people strike  
16 their knees against the dash?

17 A. Dashboard, floorboard injuries, yes.

18 Q. And when somebody strikes their knee against the  
19 dash, you have the forces traveling up the leg  
20 into the hip?

21 A. It could.

22 Q. Okay. You mentioned that Dr. Cohn performed a  
23 hip rotation examination on Pearl on January 21,  
24 1998, which would happen to be the same date that  
25 he diagnosed her as having a right hip contusion



1 from this accident. He never --

2 A. I'm sorry, January 7th. Did I say the 21st? It  
3 should have been the 7th.

4 Q. I thought it was January 21st he performed that  
5 exam?

6 A. Oh, the 21st? I take it back. I take it back  
7 then, yeah.

8 Q. He never performed that hip rotation maneuver  
9 again for the rest of the time that he treated  
10 her; is that correct?

11 A. Well, I don't know, because he didn't put it down  
12 in his record. But it is standard fair, they  
13 check the whole leg.

14 Q. Let me stop you. He did not record ever  
15 performing that exam on her again?

16 A. That's correct.

17 Q. Okay.

18 A. But I can't say that he didn't do it, because it  
19 is common fair for orthopedics to only put down  
20 abnormalities.

21 Q. I'm only asking you what he recorded.

22 A. He did not record it.

23 Q. Okay. And, doctor, would you agree that the  
24 pain, that pain travels down the thigh into the  
25 area of the knee and patients with hip prostheses



1 is recognized in the medical literature?

2 A. Yeah, that's correct.

3 Q. And do you agree that -- oh, I'm sorry. Thanks a  
4 lot.

5 You agree that occasionally physicians can  
6 confuse prosthetic loosening pain with knee pain  
7 in such patients?

8 A. My students better not, but, yes, that's correct  
9 that can be a fooler sometimes, yeah. Experts  
10 don't get fooled.

11 Q. I'm sorry, no experts get fooled?

12 A. Experts don't get fooled. Not Dr. Cohn, not  
13 somebody who has that much experience with joint  
14 replacements.

15 Q. I just want to make sure that orthopedic surgeons  
16 can't be fooled?

17 A. It doesn't happen very much to orthopedic  
18 surgeons. It certainly can happen to general  
19 medical, who's not familiar with the mechanism.

20 MR. PARIS: Okay. Off the  
21 record.

22 VIDEOGRAPHER: We're off the  
23 record.

24 - - - -

25 (Thereupon, a discussion was had off



1 the record.)

2 - - - -

3 VIDEOGRAPHER: We're back on the  
4 record.

5 Q. Doctor, if Pearl's trochanteric bursitis had  
6 completely resolved in September, 1996, as  
7 indicated in Dr. Cohn's records, would you accept  
8 that to be true?

9 A. I have no other way -- any other conclusion,  
10 other than what he found.

11 Q. And if it had completely resolved in September of  
12 1996, would you agree that condition had no  
13 relationship at all to the loosening of Pearl's  
14 prosthetic device?

15 A. Oh, no, it had nothing to do with it. You will  
16 get resolution of symptoms at certain stages when  
17 a hip is loosening, and you can be fooled for a  
18 while. We as doctors get fooled because patients  
19 say, well, it's not too bad now. But the  
20 loosening is a progressive thing. It isn't bad,  
21 it doesn't cause many symptoms if you don't have  
22 a lot of pain or inflammation at that stage, but  
23 as you keep going month by month, it's going to  
24 change into thigh pain and then pain down the  
25 leg. That is typical of a loosening of a femur.



1           It doesn't have to have trochanteric symptoms  
2           continuously.

3       Q.   And she did have thigh pain down the leg  
4           throughout her care and treatment with Dr. Cohn,  
5           didn't she?

6       A.   No, he didn't make one comment.  That's what I  
7           was looking for, for the jury's sake, that could  
8           be a sign of loosening.  I was carefully looking  
9           at Dr. Cohn's records for such indication, but  
10          all he found was a knee arthritis.

11      Q.   And, yet, doctor, in your four-page expert report  
12          that you authored only three weeks ago, August  
13          7th of 2000, what you basically told Mr. Williams  
14          and myself and I guess you'd be willing to  
15          represent to this jury, that without the x-rays  
16          and with only the records that I reviewed, I  
17          cannot, and you underline cannot, conclude to  
18          what degree, if any, the December 18, 1997  
19          accident contributed to the femoral stem  
20          loosening and subsequent reoperation performed by  
21          Dr. Froimson?

22      A.   Exactly.

23                               MR. PARIS:   Thank you very much,  
24                               doctor.  I have nothing further.

25                               -   -   -   -



1        REDIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.

2        BY MR. WILLIAMS:

3        Q.    Doctor, just two follow-up questions.

4                In reference to Dr. Cohn and there was some  
5        exchange between yourself and Mr. Paris in  
6        reference to Dr. Cohn, are you familiar with  
7        Dr. Cohn, also?

8        A.    Oh, he was our resident, we trained him, and he  
9        stayed on, not becoming senior, but he's  
10       certainly been an experienced orthopedic for a  
11       number of years.

12       Q.    He would be a well respected orthopedist in this  
13       area?

14       A.    Oh, sure.

15       Q.    All right. And in reference to the records that  
16       I provided to you, what was going on in reference  
17       to getting additional records, et cetera,  
18       obviously you have no knowledge of what goes on  
19       behind the screens, you rely upon what I provide  
20       to you?

21       A.    Right. I only, again I'll repeat it for the  
22       fourth or fifth time, I rendered all my opinions  
23       only on the records I had and I identified them.  
24       One other thing popped up that I didn't see until  
25       this afternoon or evening was the x-ray, three



1 x-rays that were done after December, 1997 and  
2 the most telling one was the January, 1998  
3 x-rays, which showed that there already was  
4 loosening. But that's the only thing different  
5 from the records that I have identified. I saw  
6 x-rays for the first time.

7 MR. WILLIAMS: Okay. Thank you,  
8 doctor. I don't have anything further.

9 - - - -

10 RECROSS-EXAMINATION OF ROBERT D. ZAAS, M.D.

11 BY MR. PARIS:

12 Q. Doctor, with respect to Dr. Cohn not being  
13 fooled, Dr. Zaas, you told the ladies and  
14 gentlemen of the jury that the x-ray that you  
15 looked at taken one month after this accident  
16 clearly shows loosening of the prosthesis?

17 A. It does.

18 Q. Dr. Cohn didn't pick that up, did he?

19 A. She does have to be symptomatic. Early  
20 loosening, I think I testified before, that you  
21 remember you mentioned about the trochanteric  
22 bursitis, for the jury's sake, when you have  
23 inflammation, you feel pain. If loosening  
24 continues, you may not feel pain for a while.

25 Q. Didn't Dr. Cohn look at that film and say --



1 A. Uh-uh.

2 Q. -- this film shows no interval changes from her  
3 last visit?

4 A. Yeah. That worries me, because that means the  
5 loosening was there beforehand if there's no  
6 interval change. That's why I would be  
7 interested in seeing the x-rays from before.

8 Q. It doesn't necessarily mean that at all. It can  
9 also reasonably mean that Dr. Cohn did not  
10 appreciate the loosening; isn't that also an  
11 additional reasonable interpretation?

12 A. It might be Mr. Paris, but you're interpreting  
13 something out of what he wrote. He wrote there  
14 is no interval change, period. Go back and look  
15 at that. That's all he wrote.

16 Q. And did you see how he characterized her previous  
17 hip x-ray?

18 A. No, I did not see --

19 Q. And if he characterized that previous hip x-ray  
20 as normal --

21 A. I didn't see the previous one.

22 Q. If he characterized the previous x-ray as  
23 normal --

24 A. That's correct.

25 Q. -- then he would have been fooled, correct?



1 A. Not necessarily. It may be --

2 Q. Is his interpretation of the January '98  
3 report -- x-ray is different than yours, correct?

4 A. I think you have to ask him. See, you and I,  
5 Mr. Williams, are trying to make what some other  
6 doctor say something where you don't know what he  
7 says and his own interpretation.

8 My interpretation is that there was no change  
9 from the x-rays from before this accident and  
10 that he didn't tell me what there was, but you  
11 have to ask him.

12 Q. Let me say --

13 A. If he called those normal and what he calls  
14 normal.

15 Q. Doctor --

16 A. He may call --

17 Q. When he interpreted in his report the x-ray of  
18 her hip in January of '98 --

19 A. That's correct.

20 Q. -- he never once said that I see loosening of the  
21 prosthesis, did he?

22 A. He said it was unchanged.

23 Q. He didn't say that there is loosening of the  
24 prosthesis, did he?

25 A. No.



1 Q. Okay. And that is an abnormal finding; is it  
2 not?

3 A. I thought it was abnormal, yes.

4 MR. PARIS: Thank very much,  
5 doctor.

6 MR. WILLIAMS: I don't have  
7 anything further, doctor. Thank very much.

8 VIDEOGRAPKER: Doctor, you have a  
9 right to review the transcript or the  
10 videotape in its entirety, or you may wish  
11 to waive that right.

12 THE WITNESS: I will waive viewing  
13 both the transcript and the videotape.

14 VIDEOGRAPHER: Thank you. We're  
15 off the record.

16 (Signature waived.)  
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C E R T I F I C A T E

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this A day of September A.D. 20 02.

Colleen Malone  
Colleen M. Malone, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires August 25, 2002



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