VIDEOTAPED DEPOSITION OF ROBERT ZAAS, M.D.

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CONDENSED TRANSCRIPT AND CONCORDANCE

PREPARED BY:

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THE STATE of OHIO, :
COUNTY of CUYAHOGA. :

- - - - -

IN THE COURT OF COMMON PLEAS

- - - - -

WILLIAM AIELLO, :
plaintiff, :
:
vs. : Case No. 307604
:
RALPH E. TITTLE, :
defendant. :

- - - - -

Videotape deposition of ROBERT ZAAS, M.D., a witness herein, called by the defendant for the purpose of direct examination pursuant to the Ohio Rules of Civil Procedure, taken before Kelly D. Keyes, Notary Public within and for the State of Ohio, at the offices of Robert Zaas, M.D., 26900 Cedar Road, Beachwood, Ohio, on THURSDAY, APRIL 24TH, 1997, commencing at 6:10 p.m., pursuant to agreement of counsel.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

David M. Paris, Esq.
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ON BEHALF OF THE DEFENDANT:

Walter Krohngold, Esq.
330 Hanna Building
Cleveland, Ohio 44114.

APPEARANCES:

David Tackla, videographer

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ROBERTZAAS, M.D.
of lawful age, a witness herein, called by the defendant for the purpose of direct examination pursuant to the Ohio Rules of Civil Procedure, being first duly sworn, as hereinafter certified, was examined, and testified as follows:

MR. PARIS: Doctor, how are you this evening?
THE WITNESS: Pretty good, it is 6:11 p.m. on a Thursday afternoon.
MR. PARIS: I'm David Paris and I represent Bill, or as we call him Mike Aiello, and I'm going to try to make this as brief as possible for us so we can get home to our families at a decent hour.

DIRECT EXAMINATION
BY MR. PARIS:
Q Will you tell the ladies and gentlemen of the jury your full name?
A My name is Dr. Robert David Zaas, I spell my last name Z-a-a-s.
Q What is your professional address?

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A 26900 Cedar Road, Beachwood, Ohio.
That's the Mount Sinai Medical Building near
the 271 Cedar Road exit.
Q You are a medical doctor?
A I am indeed.
Q When did you become licensed to
practice in the State of Ohio?
A 19 - I would have to look above your
head here - 1959.
Q When - are you licensed in any other
states?
A I was licensed in California and
Indiana, but it is so expensive every year
to renew that - I have no reason to renew
those other states, so I'm only presently
licensed in the State of Ohio.
Q Your specialty is orthopedic medicine?
A Orthopedic medicine and surgery,
correct.
Q Can you define that for us?
A Orthopedics is a subspecialty that
deals with the skeletal system, that means
our bones and our joints, but also deals
with the muscles and ligaments, tendons and
supporting structures that involve the

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entire spine and the extremities, the arms
and the legs.
An orthopedic surgeon such as
myself is qualified to do operations, to do
surgery on the spine and the extremities.
As it is in reality, the majority of the
cases that we see don't need surgery, so we
can treat them medically also.
Q You are going to be giving expert
opinions this evening, and I would
appreciate your telling us your education
and your credentials which qualify you as an
expert and let's start with college and move
forward,
A Right. I had to go to college first,
graduated from high school, went to Case
Western Reserve University which back in the
'50s when I went there was called Western
Reserve, Case was a separate institution, I
graduated with a Bachelor of Science degree
in 1953. From there I went right on to
medical school to the University of Chicago
School of Medicine and I graduated
four years later with an M.D. degree
in 1957.

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After medical school I then had
six additional years of postgraduate
training, we used to call it internship and
residency, now they call it PG or
postgraduate education. That was - that
six years was between Mount Sinai Hospital
in Cleveland, University Hospitals in
Cleveland, Akron General Hospital in Akron
and the University of Indiana Medical Center
in Indianapolis. So from the time I got out
of high school until the time I finished my
training it was a total of fourteen years of
my life just in education and training.
Q When did you finish medical school?
A 1957.
Q When did you - what did you do after
medical school in terms of residency -
internships and residencies?
A I had the six years at those
four institutions.
Q When did you go into a private
practice?
A Well, after 1956 because I - remember
back in the mid 1960's we had Viet Nam, so I
had to spend two years of active duty with

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the United States Navy. I was a surgeon for
the Seventh Fleet in the western Pacific
area and did mostly orthopedic work, but I
was only a surgeon so I also took out some
appendixes and did some stomach surgeries
and things like that, but I didn't go into
practice until 1965 because those two years
in the military.
Q Then you came into private practice in
Cleveland, Ohio?
A Yes.
Q And have you been in private practice
as an orthopedic surgeon in Cleveland, Ohio
since that time?
A Yes.
Q Are you a Board certified orthopedic
surgeon?
A Yes, I am.
Q What does that mean?
A That means that I'm an accredited
specialist recognized by my peers as being
at a level of expertise in orthopedic
surgery that qualified me for Board
qualifications and eligibility.
Q Is that one of the highest achievements

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in terms of certifications that an orthopedic surgeon can have?
A Yes, it is for orthopedics. There are additional Boards for specific problems, such as hand surgeries and spine surgery, but for an orthopedic surgeon to be able to do all types of bones and joint surgery that is the Board certification.
Q Would you name for us some of the major medical organizations and societies to which you belong?
A Well, I belong to a group of organizations whose membership is for physicians in good standing such as the American Medical Association, the Ohio State Medical Association, the Academy of Medicine of Cleveland. I belong to a group of organizations whose membership is for orthopedic specialists alone, that means the American Board of Orthopedic Surgery, the Ohio State Orthopedic Association, the Cleveland Orthopedic Society, which I am the past president.
Q Which hospitals in our community do you have staff and courtesy privileges?

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A During the almost 25 years that I have just past I try to limit my in hospital admissions, my teaching responsibilities, my surgical scheduling to Mount Sinai Hospital which at that time 25 years ago I became affiliated with the medical school at Case – excuse me, I have got a cold – I have what they call courtesy privileges which means I only use the emergency room and I don't admit patients to Hillcrest Hospital, Suburban Hospital, they now call it South Point and Saint Luke's Hospital.
Q Are you involved in teaching medicine?
A Yes.
Q To what extent?
A I have been involved in all different kinds of different levels. I gave a course in orthopedic pathology, that's the study of abnormal tissues involving bone and joint structures at the medical school at Case Western Reserve for fourteen years in conjunction with another doctor, Dr. Lester Elson, he was the assistant coroner of Cleveland at that time. We gave that course until Dr. Elson retired four or five years

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ago.
I am now involved in the teaching of orthopedic residents, these are doctors who had have finished medical school that are in training to become specialists in orthopedics. In the University Circle area of Cleveland, that's the University Hospital, Cleveland Clinic, Mount Sinai program.
Q Dr. Zaas, is Mike Aiello or William Aiello a patient of yours?
A Oh, yes.
Q Feel free to refer to your records. How was it that he became a patient of yours?
A Dr. Robert Musca, who's a general medical doctor/internist on the west side referred him to me.
Q When did you first see him?
A I actually first saw him on June 44, 1995.
Q Tell us a little bit about the history that you received and what his complaints were,
A Mr. Aiello told me that he had been in

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a car accident on February 20, 1995 – actually a van – when his van was struck head on by a car that had pulled up in front of his vehicle.
He told me that when the front of his van hit the car he was thrown forward, he struck his chest against the steering wheel and his knees, mostly his left knee, against the dashboard. And he told me that he felt kind of stunned, but he was able to pull himself out of his van and walk under his own power but that he developed pain in his back, his neck, his right arm and his left knee on the date of the accident. That he was examined at MetroHealth Medical Center in the near west side of Cleveland later on that day. He had x-rays done, he was allowed to go home; in other words, he was released by the emergency room doctor afterwards.
Now, he – I received – I don't know if he brought it or I received a copy of the x-rays that were done at MetroHealth and there was x-rays of his spine, that's the cervical spine and lumbar spine, and the

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cervical spine is his neck, the lumbar spine is his lower neck, and also an x-ray of his right forearm, all those areas had been injured and the x-rays in all areas were normal; but there were also an x-ray of his left knee which he told me he hurt at the time of his accident which showed an abnormality which was thought to be consistent with a condition called osteochondritis dissecans or an osteochondral fracture; in other words, there was an abnormality in the inner side of the femur bone of the left knee that was picked up by x-ray on the date of the accident.
Q I will tell you what, I will make a deal with you so I don't have to keep trying to pronounce osteochondritis dissecans can we refer to that as OCD during the course of the deposition?
A We can, but -
Q Otherwise I will get very tongue-tied.
A **You** call it that and if I make a mistake I will use the long term. I guess too many years of practice you just --- it

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sort of rolls off my mouth easier than it does yours, but I will try to.
Q Please, continue,
A Now Dr. Musca, the medical doctor, had treated Mr. Aiello. Dr. Musca has physical therapy, he's a medical doctor, he's able to prescribe medication and the treatment that he had provided including ultrasound therapy to Mr. Aiello's neck and back and also his left knee. His neck and back got better but his left knee did not, and that was the reason that he sent him to me.
Q Let's stop for a minute and take the easiest part of this case,
Getting back to what I was saying: Do you have an opinion to a reasonable degree of medical probability as to whether Mr. Aiello injured his neck and back as a direct and approximate result of this car accident?
A I do have such an opinion.
Q What is your opinion?
A **It** is my opinion that he -
MR. KROHNGOLD: Objection.
A **It** is my opinion that he had sustained

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spraining injuries to his cervical and lumbar spine at the time of this accident.
Q I take it you have had an opportunity to review the records of Dr. Musca and - I think they have been provided?
A Yeah, most of them - a handwritten note, he even sent me a little note regarding what he treated, yes.
Q We have and I will put before you Plaintiff's Exhibit 3 which is Dr. Musca's records which show physical therapy to his neck and his back over a period of the next several months consisting of heat and ultrasound and things of that nature. In your opinion to a reasonable degree of medical probability was that care and treatment reasonable and necessary by virtue of the injuries Mr. Aiello sustained in this accident?
MR. KROHNGOLD: Objection.
A Not only yes, it was - it was not only reasonable and necessary, it was very successful in that it resolved this neck and back problem.
Q Now let's focus on the left knee issues

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which are the most prevalent issues in this case.
Let's go back to your report where Mr. - when you saw my client he was still having pain, periodic swelling and clicking or catching in his left knee?
A Yeah. His left knee stayed painful, not only just painful, he had what we call mechanism symptoms, he could feel something catching or clicking. He had trouble kneeling, moving his knee up and down quickly as if something were inside that was getting in the way or was interfering with normal smooth movement.
Q Did you try to find out a little bit about Mr. Aiello's prior or past medical condition in this case?
A Right, and those are his symptoms when I saw him. There had been, by the way, also a right forearm bruise at the time of this accident that had all healed up also, so the neck and the back and the forearm had healed and the knee was **still** giving him a lot of problem.
I then **of** course, as most doctors

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will, inquire about what they call past history, has he had any trouble with his left knee before, had he been treated for his left knee before, had his left knee been injured before, and the answer to all those he gave to me was nothing, zero. He had not had any trouble with his left knee before, his left knee was not symptomatic before, and he told me that he was doing a type of a job that he could hardly not notice if his knee was bothering him, because he basically was in the building trade and he was up and down ladders, he was working on roofs, carrying and lifting things. His left knee had not caused him any problem before. There was, however, a history of the right knee in a previous accident where he had had surgery in the right knee back in 1988 or 1989 from a previous car accident and that surgery had been done in Pennsylvania, after which his right knee felt okay and was not giving him any problem, he didn't reinjure his right knee at the time of this accident. It is kind of a peculiar case in

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that he's a young gentleman, that when I saw him he was still in his 30's and he basically had had an injury to his right knee 1988 and had surgery in 1989 in Pennsylvania for the right knee, after which he recovered. He had never had any problem with his left knee until this accident, the accident of February 20, 1995 and the symptoms and the pain and the clicking in the left knee hadn't gone away by the time I saw him on June 14, 1995.

Q In 1988 some of the records that you have in your file I think will show that he actually had a contusion to the left knee which was not very symptomatic.

A Right, he did not remember that. I specifically noted that he said I don't remember anything at that time. His problem in 1988 was his right knee, that's the one that required surgery.

Q Understood, but the records will show that he had a contusion to the left knee that bothered him for a couple of months and then cleared up, and certainly after he had the right knee surgery there were no

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problems with either knee afterwards.

Anyway, what is osteochondral dissecans and did he have it in both knees before this accident?

A Osteochondral dissecans is kind of a term that's used for several different conditions, all of which involve the separation or the formation of a separate bone or a fragment of bone, either within the normal structure of the knee joint or something that may be separated from the knee joint. It is thought to be something related to circulation of a certain portion of a knee and it is a condition that you can see on x-ray or you see what appears to be a separate portion of bone lying either within its normal position or separated from a portion of the knee.

Q Show us on the knee model what you mean by OCD, or maybe we will go to two-camara picture or picture to picture for this with the videographer's help.

VIDEOGRAPHER: Off the record,

(Discussion had off the record.)

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BY MR. PARIS:

Q Doctor, you have a model, can you explain to us what that model is?

A This is not a real person's knee, this is a plastic model, but it is a fair representation of a human knee. If you look at the human knee there is the thigh bone which is up here, keeps going all the way up to the hip and then there is a shin bone. If you look at it in front of the big tibia bone and then on the lateral side or the outer side it is the little fibula bone, if you look at the whole calf it is all covered up and you don't see the two separate bones; but we do have the two separate things. Inside the he knee joint if you look at it from the side, enclosed in this - in what this model looks blue - this tendon is a kneecap or patella, but that is sort of going to get in the way so I can't show you the inside of the joint. When the knee moves, as you can see it goes up and down.

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THE WITNESS: Can you see it move?
VIDEOGRAPHER: Yes.
A In some people there is a portion of the surface of the knee which I will point out - get the kneecap out of the way - right here in the inner side. Actually the very surface of the knee joint where for some reason a portion of that bone that incorporates that knee loses its circulation at least for a period of time and that is called osteochondritis dissecans with a d-i, dissecans.
Q What effect does that have on the bone?
A Well, it may or may not have some effect on the bone. We certainly know that we see cases like changes in circulation in very young children where the condition occurs, you see it on an x-ray, you see come back four years later, three years later and it is gone, it corrects itself. That may be one of the variants in which there is a temporary disturbance of the circulation which catches up later on and they don't see it, it is all healed up.

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What they can do, they can take a portion of the bone and weaken it or just take a portion of the bone and have it sit there with less circulation than other portions and it just sits there. I bet you since January I have seen a couple of woman in their 80's who by an inadvertent type of x-ray, it wasn't planned because of that, took an x-ray of their knee and you could see that they have had osteochondritis dissecans for years, just been sitting there.
Q So do I understand -
A It can play a whole spectrum of losing of a small piece of bone, losing circulation within the knee, can sit there **for** a while. In young people tends to heal and adults it does not tend to heal very much, it tends to either sit there. If it stays very stable and just in place it won't cause any symptoms, if the person gets traumatized or is unlucky, something else happens to them, slides into second base, you know, drops off of a scaffold, does something that hurts themselves, then you can break that little

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piece loose and it becomes symptomatic.
Q So then do I understand that not all people who have this OCD condition automatically will have pain and disability?
A Well, I think the great majority do not. Great, great majority have no concept that they have it.
Q This is not necessarily a condition that progresses and gets worse and worse and worse over the years?
A That's correct. It can stay - as an adult one can usually pick up on an x-ray that there is an abnormality in a small piece of the bony structure of the joint, but can just stay there. In some people, again, if something happens to them it may not stay there, it may progress and that small piece of bone may become unstable or loose.
Q In 1988 when Mr. Aiello had a car accident and he struck his right knee into the dashboard, what happened?
A Now we're not talking about the knee, we're talking about -
Q That's the other knee,

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A Make it clear to the jury, totally the other knee which is not an issue with this particular accident but an -
Q Correct.
A - old accident, an '88 accident.
What had happened there according to the medical record I received from Pennsylvania, he had struck his knee in another car accident, to put so much - put so much force that that loose piece of bone came loose inside to float around within the knee, actually broke in two or actually two pieces, they broke loose and floated around within the knee and the doctor had to go in there and take those loose pieces out.
Q Was that done?
A Yes.
Q And you reviewed those records?
A Yes.
Q You understood what Mr. Aiello did for a living for many years before his accident in 1995?
A Right.
Q What did he do?
A When you are my age don't like to use

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the word "many years."
I mean, he is a young man who has
been - to my knowledge, has been in the
building trade in various capacities in
the - not only the north Ohio area, told me
he has went to Pennsylvania, New York,
worked in different areas like that also,
but he's in the building trade.
Q Is it your understanding that his
left knee - now the knee that was hurt in
this 1995 accident - was not painful or
symptomatic to him for years before his car
accident?
A Yes, sir. He was very specific in
saying he never had any trouble with his
left knee before.
Q With somebody whose job is to crawl
around on his hands and knees and climb
ladders and crawl around on roofs, would you
expect a person in that occupation to notice
left knee pain or go to a doctor if he has
got a painful OCD condition?
A Absolutely.
MR. KROHNGOLD: Objection.
A That's the kind of problem if you are

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having knee symptoms or instabilities within
the joint or the bone there isn't any
possible way you can have an active life in
the building trade and keep functioning.
I've put one or two shingles up on
a roof, how could you kneel on a knee that
had a loose piece of bone in front,
impossible. So this man could not have had
trouble with his left knee if he did that
kind of work.
Q Now, what is the history that you have
as it relates to his February 20, 1995
accident, the mechanics of his left knee
injury?
A Oh, he clearly was sitting in his van
as another car pulled up in front his van,
collided in the front causing his body to
shift forward not only striking his chest on
the steering wheel, but his knees, mostly
the left knee on the dashboard. So it was a
direct blow of the front of the left knee
which was in a bent position at that time.
Q Will that type of injury to the knee or
that kind of impact to the knee cause an
aggravation of his OCD condition?

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MR. KROHNGOLD: Objection.
A Sure. It would certainly cause direct
trauma to the condition because that is the
position in the knee joint, the front of the
knee, little bit behind the front of the
knee, that would be exposed if he hit it on
the dash.
Q Mr. Krohngold noted an objection, so
let me rephrase the question.
In your opinion to a reasonable
degree of medical probability was there a
cause and effect relationship between the
collision and the mechanism of this man's
left knee injury.
A yes.
MR. KROHNGOLD: Objection.
Q Can you tell us why and use any models
or films or x-rays that you need to to
demonstrate that?
MR. PARIS: Let's go off the
record for a minute.

(Discussion had off the record.)

BY MR. PARIS:

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Q Doctor, with the use of a model can you
demonstrate to the jury why the impact of
his knee into the dashboard aggravated this
condition -
A Okay.
Q - that caused this injury.
A Let's go back to the knee model that we
were using, you remember.
When the person sits remember your
thigh is going out and your knee is bent
down to a right angle, you know, pretty
close to a right angle like this, depends
how deep you sit in your car. Now, I'm
going to take this model and change it with
another one because the kneecap kind of
interferes with what the range is.
Take another model which is the
same idea except a smaller model, and with
the knee bent I have marked out on this
model in red the area that Mr. Aiello had a
condition called osteochondrosis dissecans.
He had that weaker circulation to that
portion of the bone.
Now, if you took the knee - here
is a knee - leg is sticking right out when

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you sit driving, you bend it like this. If I am in a car that strikes something else I get thrown directly forward, the portion that would hit the dashboard – I will use my little hammer here to pretend I'm a dashboard – would come forward and it would hit right where that red or bony weakened area is that has osteochondritis dissecans. It would require that the knee be bent and that the person be thrown forward. That was a mechanism that he told me, so I know that the front of this knee was traumatized or injured.

Now, you have to realize that there is a kneecap surrounding the front of the knee, so that when you hit the dashboard you actually drive your kneecap into this portion of the injured area or the weakened area. The kneecap actually becomes like a wedge.

Q Doctor, is that supported, is that area of OCD on Mr. Aiello's knee supported by what you see in the actual x-ray films of his knee?

MR. KROHNGOLD. Objection.

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A Yeah. Oh, yeah, you can see the condition on x-ray on every x-ray that has been taken, yes.

Q The area that you have outlined in red is also on the x-ray films?

A Oh, yes.

Q So that –

A Definitely, yeah. It is on the x-ray film on the day that he got hurt.

Q Let's go back to your report. Did Mr. Aiello become symptomatic in his knee and did his knee become unstable after this accident?

A He became symptomatic as far as pain is concerned and the feeling of catching, sensitivity, swelling. The portion that becomes – that became unstable was this reddened area which became loose after the blow that hit it. Before that it was securely in place and wasn't bothering him, afterward it loosened to the point that it became symptomatic.

Q Can you tell us a little bit about your examination of Mr. Aiello?

A When I examined him I found abnormalities on both sides. First I could see the arthroscopic scars, that's the type of surgery that was done to him on the right side in 1988 for the removal of the bony pieces that came off there, but the right knee was otherwise okay. The right knee could be fully extended and bent to a range of 132 degrees, that's very normal. The left knee, the one that he got hurt on February 20, 1995 was tender anteriorly, there was swelling of the membrane over this area right directly over where that reddened area is, and he could not fully extend the left knee. He still – bringing it all the way up hurt him, so he only had one or two degrees of lack of extension, but he could only bend through 120 degrees and he did so with pain beyond 90 degrees so one could see what was happening here. When he would take his knee and try to bend it back too far it would put more pressure in the area of where this osteochondritis dissecans is and it caused him more pain.

Q Okay.

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A So his physical findings were consistent with the diagnosis of osteochondritis dissecans.

Q I take it you also reviewed an MRI scan and report?

A Well, I reviewed a number of x-rays, MRI scans, a bone scan. There were a lot of tests that were done all related to the x-ray department mostly at Metro of Mr. Aiello after February 20, 1995.

Q They all bore out what you are telling us here today?

MR. KROHNGOLD: Objection.

A They will clearly tell us that he had osteochondritis dissecans.

Q What was the course of treatment that you recommended?

A I recommended surgery. I recommended that he should have the bony fragment which I felt was unstable, that had become loose or broken as a result of this impact should be explored surgically, should be bone grafted. Which means bone should be taken from another portion of the leg that could be spared and packed in in order to

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stabilize the joint and then pins be put in to keep the knee - that piece intact so that it would heal back in place. I recommended the surgery.
Q Do I understand that you were prepared to do that surgery?
A I would if he so chose, sure.
Q I understand that he wound up over at MetroHealth Medical Center?
A Right, I found that out at a later date, yes.
Q Because of insurance concerns.
MR. KROHNGOLD: Objection.
A Yeah, I guess that - we as doctor have to live with that. We can't take care of the same person for two years in a row anymore because they keep switching, that's correct.
Q I understand, but did you continue to follow Mr. Aiello after his surgery?
A Right, I've seen him on four or five different occasions, yeah.
Q In return to your - first of all, you reviewed the surgical report records, he was operated on in September of '95?

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A Right. He went to MetroHealth, they admitted him there, he had surgery on September 21, 1995. Just chronologically remember that the accident had been in February, 1995.
Q Correct.
A Specifically February 20. I saw him June 15,1995 and recommended surgery and he finally had the surgery at Metro in September, 1995, September 21.
Q It is my understanding that Mr. Aiello lost several months from work, nearly six months both before the surgery and after the surgery while he was on crutches.
MR. KROHNGOLD: Objection.
Q Do you have an opinion - is that your understanding, Doctor?
A Right. I know he - very quite up front, practical terms as somebody who does construction work - oh, yes, inside work too, he chose to do it in the later part or the latter part of the year so he won't lose as much in the summer when his jobs are more prolific, more things that he can do; but yeah, he missed the fall and much of the

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winter of 1995, '96 after this surgery as he would be expected to because he wasn't allowed to put full weight bearing on that leg for a long time.
Q That was going to be my question. In your opinion to a reasonable degree of medical probability was that amount of time off from work reasonable and necessary because of the injuries he sustained in this collision?
MR. KROHNGOLD: Objection.
A Yes, it was.
Q Thank you.
The surgery that was done was the surgery that you had recommended to be done?
A Yeah. Actually almost word for word even though the doctor who did it obviously never saw my recommendation he came to the same conclusions, as most doctors would to take care of this condition, this is the appropriate thing to do.
Q You saw him according to your records - and by the way, I have marked for the jury Plaintiff's Exhibit 6 which I take it are all your office records pertaining to

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this patient all the way through March 1st of '97?
A I have April 1st.
Q I'm sorry, April 1st of '97?
A Yes, yes.
Q Without going through each and every record, can you basically tell us how he's progressed since his surgery as you saw him December, February of '96, August of '96, and April of '97, basically tell us how he progressed up until the present.
A In to two words very well considering what was wrong with him with the surgery. By December, 1995 which would have been only a few months after surgery he was still on crutches, but he could put weight on his leg and he had started - actually started some weight bearing, I think had just - just recently discarded his crutches and he - the pain that he had had after the February accident had been relieved even by then. He hadn't really done anything and his leg was kind of weak and a little bit stiff because he hadn't used it, but I thought he had been making pretty good

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progress at that stage. Then I saw him a few months later in February of 1996, and that was about four and a half months after the surgery and he was sort of doing pretty good. He actually brought in a set of x-rays from Metro for me to look at. Apparently he had had them done at Metro, but his regular doctor wasn't there that day and nobody actually gave him any answer what was going on, and so he brought them in and I showed - we went over them together and at that time you could see that the bony fragment that had been bone grafted is staying in proper position, it had not at that point grown into place yet, it had not healed. I mean, you could certainly not see healing at that stage because that's only four and a half month months later and traditionally these types of conditions do not heal very fast, it is months and months and months and sometimes years before they really show signs if they are going to heal at all until they finally heal. I just couldn't tell you.

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Then I saw him again six months later in August, 1996, almost a year after the surgery, I think it was eleven months afterward. At that time he should have gone back to almost regular work, he was back working as a general contractor. He still had some pain in his left knee, not the type of pain he had before but it bothered him going up and down stairs, and he told me that he had to hire some extra help because he couldn't do the very heavy loading and unloading of all his supplies because of his knee. I thought he was doing pretty good because he had a good range of motion of the left knee at that time, that's only eleven months after surgery and had a little bit of weakness in the muscles, but I got another set of x-rays which I felt showed - was showing progressive healing, was doing pretty good. He was doing fine at that time, not 100 percent, but certainly showing some healing.

Q By August, 1996, Dr. Zaas -

A yes.

Q - did you form an opinion to a

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reasonable degree of medical probability as to whether Bill was going to develop posttraumatic arthritis in his left knee in years to come?

MR. KROHNGOLD: Objection.

A Oh, yes, that was my opinion and it was my opinion in every examination that I conducted of him because of my knowledge of osteochondritis dissecans.

Q And I will revisit that closer to the end of my examination, I wanted to finish up the office visits. The last time you saw him was April the 1st, '97?

A Right, a few weeks ago.

Q How was he doing at that time?

A Then, much better. There is a big jump in the physical status of his left knee and his functioning, how he felt between August of last summer and April of this spring, a few weeks ago. He was doing residential house building, his leg had gotten stronger and stronger over the past seven or eight months. He told me that he was

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concerned last summer that he still had a little catching or popping, but that had gone away, that had all cleared already and that his knee felt stronger and stronger, not quite 100 percent yet and he would occasionally feel like a little rubbing or scraping with movement, but most of the time he told me his knee felt pretty good and it was not having pain and he was not experiencing any trouble with movement.

Q Doctor, what is your final diagnosis with respect to Mr. Aiello's injuries from this accident?

MR. KROHNGOLD: Objection.

A Official diagnosis is trauma causing symptomatic aggravation of osteochondritis dissecans of the left knee medial femoral condyle.

Q And the neck and the back we talked about earlier?

A That, we talked about before. It was a straining injury to the cervical and lumbar spine and a contusion to the right forearm.

Q And I think you already addressed the cause and effect relationship between the

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accident and that aggravation of the OCD of the left knee; is that right?
A In my opinion the onset of symptoms, the loosening of the bone fragment and the knee for surgery were all causally related to the direct blow to the front of the left knee at the time of the February 20, 1995 accident.
MR. KROHNGOLD: Objection.
Q Is there any objective basis to say that Mr. Aiello would have needed surgery on his left knee even if this accident never happened, that he was bound to have it?
A No, that would be speculative.
Q Why would that be speculative?
A He was when I first saw him - in fact, he was born in 1968, so he is just past 29 years now and he had never had trouble with his left knee, was not treated for his left knee, and in the absence of trauma of that type of impact that he had on February 20, 1995 there is no indication that he was going to have trouble with his left knee. There was on a speculative possibility basis that it might have caused

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trouble, but in fact, it hadn't.
Q Well, if he bumped it in 1988 in a car accident, did that mean that he was going to develop this severe symptomatic OCD down the road in the future and have surgery, is there any basis to say that?
A Not in absolute certainty. If one will bring into a is it possible, is it a one in a whatever long percentage he could have had trouble, yeah, he could have, but there was no indication that he was having any ongoing, progressive problem with his left knee prior to this accident. He was testing it, he was using it every day, and as I told you before, I have seen elderly people where you look at their knee x-rays and say, hey, you got osteochondritis dissecans, and they never have any symptom in my life and you can have it.
If a bony chip or fragment stays stable and does not get loose or does not get knocked loose it does not cause symptoms, it allows you to have perfectly normal function.
Q Is the standard of care once you see

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somebody with OCD on an x-ray that you immediately do surgery?
A No, I would only do recommendation of surgery if I had a patient like Mr. Aiello. If there were a lot of Mr. Aiello's came in with his left knee, he had trauma to the knee, he was experiencing pain, he was experiencing symptoms of unstableness of the bony fragment and it was interfering with his daily functions, he was getting swelling, that type of person I would recommend surgery for. If a person walked in and I happen to get routine x-rays for whatever reason and happen to pick it up whether he had no symptoms, they was not tender, they were physically active, I would not recommend surgery, they can be followed and watched.
Q Doctor, what is the future outlook for Mr. Aiello's left knee?
MR. KROHNGOLD: Objection.
MR. PARIS: Strike that.
Q Do you have an opinion to a reasonable degree of medical probability as to what the future outlook or the prognosis is for

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Mr. Aiello's left knee?
MR. KROHNGOLD: Objection.
A Yes, I do.
Q What is it?
A In my opinion the good surgery, the very successful surgery that was done at Metro has greatly reduced the probability of serious arthritis, but his left knee will never be normal. He will be subjected to some degree of traumatic arthritis, that means arthritis following injury, but that he may not develop it for 15 or 20 years now.
Q When - but he will develop it?
A Oh, yeah, the knee can never be normal.
Q Right.
A He has had too much surface damage, even though the irregularity and the risk of loss of bone fragment has been overcome by good surgery it still cannot be a normal knee.
Q Is that future traumatic arthritis the arthritis which resulted from the injury in the motor vehicle accident?

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MR. KROHNGOLD: Objection.
A It certainly was an approximate cause
of the traumatic arthritis, yes.
Q Is that arthritis in his left knee in
the future going to be a source of pain and
discomfort to him in the future in your
opinion to a reasonable degree of medical
probability?
MR. KROHNGOLD: Objection.
A Yes, it will cause mainly stiffness but
also some pain.
Q Is that going to be a condition in your
opinion – when I say "in your opinion," I
mean to a reasonable degree of medical
probability and hopefully we can all agree
on that.
In your opinion is that going to
be a condition that is going to necessitate
him to seek medical attention?
MR. KROHNGOLD: Objection.
A Again, he is probably going to have
some follow-up treatment or at least
examinations of his left knee in the
future. Again, it must be stressed that
they had very, very good treatment, he has

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had expert surgery and that has minimized,
cut down on the probability of any rapid
downhill arthritic condition; but regardless
of that, you can't make his knee entirely
normal, and for that, we will have some
traumatic arthritis, but in the future.
Q Right, and given the fact that he's 29,
30 years old now, he will be my age when he
starts noticing the traumatic arthritis in
his left knee?
MR. KROHNGOLD: That's old.
A I hope he doesn't have to wait that
long, that's old.
Q All right.
A It is hard to tell, but I mean we
can – in general terms of physician's
recommendation the closer you bring a joint
especially the interior of any joint back
toward its normal shape, its normal contour,
the greater the lessoning or the less risk
there is for the rapid and severeness of
arthritis.
Q Mr. Aiello's care and treatment you are
familiar with by history, by the records
that you have reviewed, in your opinion to a

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reasonable degree of medical probability has
all the care and treatment he received from
the time he went to the emergency room, all
the radiological tests, the MRI, Dr. Musca's
care, the surgery, your care of course, the
therapy have been reasonable and necessary
by virtue of the injuries he sustained in
the accident?
MR. KROHNGOLD: Objection.
A Right, I may add it has been very
successful. Dr. Musca's treatment was very
successful with his neck and back, the
treatment that I had recommended that was
finally done at Metro, that was very
successful. Even though the knee is
not 100 percent normal, it is certainly a
lot better than it would have been had he
not had that treatment since February 20,
6995.
Q You have had a chance to see the
medical report of Dr. Robert Corn, the
doctor hired by Dr. Krohngold's office?
A Yes, I did.
Q Showing you a copy of Dr. Corn's
report, on page 6 does Dr. Corn state that

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this car accident caused Mr. Aiello's OCD to
become symptomatic?
MR. KROHNGOLD: Objection.
A If – Dr. Corn said it is my opinion
within a reasonable and dually medical
certainty that this preexisting condition
was not caused by the motor vehicle question
in question; by history, however, the lesion
was made symptomatic.
Q And do you agree?
A Oh, yes.
MR. KROHNGOLD: Objection.
MR. PARIS: *Off* the record.

(Discussion had off the record.)

BY MR. PARIS:.
Q Further, does Dr. Corn concede in his
report that this accident aggravated
Mr. Aiello's OCD?
MR. KROHNGOLD: Objection.
A He said at worst there was a subjective
aggravation of a preexisting osteochondritis
dissecans which was a developmental
abnormality, I totally agree with that.

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Q Okay.
MR. PARIS: Thank you very much, Dr. Zaas. I have nothing further.
MR. KROHNGOLD: Doctor, good evening – actually we are in the evening. My name is Walter Krohngold, I represent the defendants in this case.
___-
CROSS-EXAMINATION
BY MR. KROHNGOLD:
Q I take it that you disagree with Dr. Corn's last sentence in his report which indicates that he does not expect any arthritis down the road in the future for this man; is that correct?
A Well, he said in that this is a developmental not a traumatic abnormality this risk of posttraumatic arthritis is virtually nonexistent, that's wrong. I mean, that's – unfortunately it is the kind of a condition, osteochondritis dissecans, that if in severe form can lead to total joint replacement, I think Dr. Corn knows that, in fact, he's done total knees because of that. I guess I totally disagree with

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that.
(2) Q Well, we also – now, let's go back to the beginning here. You discussed with Mr. Paris the earlier accident surgery that he had and look at your report – and this is back in 1988,1989 – and I look at your report and you seem to indicate that he had osteochondritis dissecans–, if we can use that term again.
A yes.
Q In his right knee?
A Correct.
Q And he had surgery there, correct?
A Yes, the bone had already come loose and it was taken out.
Q You don't know to what extent that condition will effect him later on in life, correct?
A Oh, he will develop some arthritis with that condition for sure.
Q The extent that he will have arthritis in either knee, when it will happen, how bad and how much it will happen you really can't say at all, correct?

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A Not specifically. Since the 1988 accident occurred ten years ago – not quite, eight areas ago, seven years ago because I think in 1989 was the surgery, and since the damage to the knee was greater at that time in that the bone fragments broke up and couldn't be put back into place, that it is already a head start on the right knee for the damage and since the type of damage is more damaging, he will have more arthritis in the right knee than the left.
Q That will cause him more disability, pain, discomfort and perhaps the need for more medical treatment down the road, correct, than the left knee?
A It is more probable than not that that is correct, yes.
Q As far as the left knee goes, to what extent he will have problems, when they will occur, you really can't say?
MR. PARIS: Objection, he did say.
MR. KROHNGOLD: He said he can't –
A Can't say other than the frame of 10 to

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20 years, but I can't say anymore specific than that.
Q Since his right knee will probably be worse than his left, you really can't say to what extent his left knee it going to be a component of his ongoing problems?
A That's true because I can't even say exactly what his right knee is going to be. I can only say that from the type of physical structural damage that was done at the time of the two accidents or maybe because of the type of surgeries between the two that he's more likely to have more advanced arthritis in his right knee than his left.
Q You had a chance – did you have a chance to look at the emergency room records regarding Mr. Aiello's visit to the hospital right after the accident?
A I see a lot of records from Metro. I believe I have them, yeah.
MR. PARIS: Why don't we save time and put them in front of him.
A They are here somewhere, the x-rays.
Q Here let me give you my set, okay?

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A Okay.
Q Now, I think on the front page there is an indication that he did strike his chest on the steering wheel, correct?
A Chest on steering wheel, yes.
Q Is there any indication in those records from what you can see, Doctor, that he struck his knees on anything, is there any mention of that?
A I can't read everything, I mean there is obviously concern about the knee because x-rays of the knee were done and an examination of knee was done. I can't recall specifically that I saw it, nor can I right this minute pinpoint that there is a written indication that he struck his knee, but there is all kinds of concern about knees here and left knee soreness and x-ray of left knee, x-ray report of the left knee, there was concern about the left knee.
Q Yeah, but as far as you can see there is no mention of the actual trauma of the knee against the dash?
A Excuse me. That's correct, yeah.
Q Now, I think Mr. Paris had also asked

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you about Dr. – going to Dr. Musca before he came to you?
A Yes.
Q And I think when he handed you his – Dr. Musca's notes, I think this page was at the top and if I can ask you to please look at that and if you look in the corner, I think that's three days after the accident on February 23rd of '95?
A That's correct.
Q Now there is again an indication of – in the notes about striking his chest on the steering wheel, correct?
A Correct.
Q In Dr. Musca's notes?
A Correct.
Q Is there anything that you can see there about trauma of the knee against the dashboard in those notes?
A I don't believe so. I know he is very concerned with the left knee right to begin with, I mean, that first visit – but I – the only thing he marked something about what he struck was his chest, I think I agree with you it is not marked on there.

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Let me see – Dr. Musca sent me a little handwritten personal note, you wouldn't have had a copy of that, I don't remember – this is how Dr. Musca refers his patient. I got this in a little – almost like a slip it under the door, and I will let you know here. Please specifically address the question of the injury to the left knee, pain and diagnostic reports.
Well, he was aware of pain to the left knee, he referred to the abnormalities on the x-rays, he referred to a bone scan, he certainly was very much aware of the knee, but he didn't even on this little handwritten note write down the words struck the knee on dash.
Q It is not in there?
A No, sir. You can look at it.
Q Now, I think Mr. Paris indicated that he did have some – records do indicate that he did have some prior problems with the left knee, and I just wanted to refer to you a note that's back around 1988 and around 1989. He was examined I think by a Dr. Cotrell and it indicates that left knee

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occasional ache, bending okay, both knees crack and in parentheses is says painful.
A I saw that, yeah.
Q He didn't –
A He didn't remember that. He said he was – couldn't be very much because he doesn't remember anything like that.
Q But if he has cracking in both knees and it is painful is that an indication of any kind of early problem that he's having with his left knee at that time?
A Doesn't mean anything unless you have something physically radiographically structurally to back it up, could be that he just worked too hard, could be that he bumped it. I mean, there is no indication on that record of anything really wrong, and again Mr. Aiello very specifically – I showed him that and he said I don't remember that, I didn't have any trouble with my knee at that time. Must have been something that came and went very quickly.
Q Now, after the surgery I think it was when – that's when most of your follow-up care was rendered to him, correct?

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A Right. I saw him once before and then I think, what, about two or three times afterwards.
Q And I just wonder if we can turn to some of your notes, I just want to review some of those items in the notes.
A These are after the surgery?
Q Yes, beginning of December of 1995.
A Um-hum.
Q I think your initial concern was whether the bone graph would heal in the proper place, correct?
A Right. Again, for the jury's sake that type of surgery does not have a super good reputation for high rate of healing. A lot of people are - have had the same surgery done by expert doctors and the body kind of rejects it and that poor piece of bone that you are trying to make heal back in place never does heal into place, falls out and you have to go through another surgery like he had in 1988.
But in this case, I could not tell by February, 1996, just couldn't tell. He brought me the set of x-rays from Metro and

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compared them with x-rays that he had had beforehand, I really couldn't tell if it was healing or was not healing yet.
Q Going back to December, it looks like your notes say he was coming along well.
A yes.
Q His weakness is improving.
A Correct.
Q He had good flexibility of his knee and he had good power, I'm not sure what you meant by that.
A Right, he was improving. He had - over the period of time before he had the surgery because he couldn't do very much and the knee was so much painful and then after surgery he was totally - couldn't do anything, couldn't put weight on it, had to use crutches, he couldn't use a lot of strength, he lost a lot of strength in the left leg. By the time I saw him in Feb - December of 1995, a few months later, some of that was starting to come back, by February of 1996 even more had returned.
Q At that time you thought that it looked like this piece of bone was taking well

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where they had put it back in, correct?
A In February of 1996 I believe I couldn't really tell, yeah. The x-rays of February of 1996, these are the Metro x-rays.
Q Right.
A These are the ones that he had taken that he went back and saw his doctor and his doctor wasn't there and he really didn't have an answer from the Metro people, that's why he brought it to me to take a look at it. I just - if you look at the second page where you see page 2, x-rays do not as yet show incorporation of the bone fragment.
Q I looked at the page 4 and says x-rays clearly show the osteochondritis fragment clearly lying in seta, which I mean -
A Fallen out. There is two different things: Number one, as I explained before, many people will have a little osteochondritis fragment that just sort of sits there, stays there all their life, don't have injuries, don't have surgery, doesn't bother them. Other people that - like Mr. Aiello - when that fragment is

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knocked loose have to have it pinned back in place, as long as it stays in the place that's a good sign because what you really want, you want that to heal back to the regular bone so you can't see a separate piece and I couldn't tell that by February of 1996.
Q By August of 1996 it said he was very busy working as a generai contractor,
A Right.
Q Did he explain to you what kind of things he was doing?
A He has over different times I have seen him. He builds houses in the suburbs, he gets work in and out of state. He told me that, like, when the building business is kind of slow in Cleveland in the wintertime, you just don't see that many outside people, although they can work inside construction work, he goes up state to New York and he told me he builds chalets for like the ski people. He's built other different types of dwellings, not necessarily just residential dwellings. So he is kind of a varied construction builder.

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Q And I see back in August he didn't have
any obvious swelling of the knee, right?
A Right. There was a big improvement
between February, '96 and August '96,
correct.
Q He had good ligamentous stability?
A Right, his ligaments were very good.
Q Good range of motion?
A Right. He could bend all the way back,
yes.
Q You felt that there was - it looked
like the piece of bone that they had pinned
in was taking?
A Right. Now, that the he had not had
x-rays since that February picture I made
him get x-rays, I have them right here for
him, I have them right here. Now you can
see that the bone fragment is still in place
and I think it is starting to heal in.
Q At the end I see you notice you say
that he probably will be able to continue in
the construction business?
A Right.
Q In the forthcoming years?
A Right. I didn't think that the type of

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work he was in was interfering with the
healing, that's correct.
Q When you last saw him in August of this
year you mention he was doing these building
of ski chalets in the ski resorts?
A He had done that over the winter, yeah.
Q He had good flexion and extension of
the knee, correct?
A Yes.
Q And you didn't see any real tenderness
in the knee either?
A That's correct, that went away.
Q He had full range of motion and minimal
pain I think?
A Right, and not only that, the popping
had almost gone away completely.
Q And you didn't recommend any kind of
active treatment at that time?
A Oh, no. I think he was doing very well
and that it - kind of wished him luck that
nothing else would happen to his knee.
Q And hopefully he will not be back to
you?
A Well, we do say that to our patients,
but with good will because if they don't

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have to come back they are doing very well,
that's correct.
Q You indicated under your comment
sections that he's back working as a
builder, and I assume that's consistent with
your other notations as well?
A Oh, yeah, definitely. All he missed
was that winter or that fall and that winter
after '95,'96. He had been doing work ever
since that time, I'm aware of it, I knew
that he got extra help for a while because
his leg wasn't as strong; but as far as I'm
aware, as of this past winter and now he's
pretty much back to everything doing that he
did before.
Q Okay, all right.
MR. KROHNGOLD: Doctor, I don't
think I have got any further questions.
MR. PARIS: Nothing further.
Thank you very much, Doctor.
Off the record.
MR. KROHNGOLD: Thanks, Doctor.

(Discussion had off the record.)

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MR. PARIS: You waive your
reading of the transcript and the viewing of
the videotape?
THE WITNESS: I will waive
both the waiving of the video and the
reading of the transcript.
MR. PARIS: Waive the
one-day filing requirement?
MR. KROHNGOLD: Yes.
MR. PARIS: And any defects
in anything?
MR. KROHNGOLD: Yes.
MR. PARIS: And everything?
MR. KROHNGOLD: Yes.

(Deposition concluded.)

(Signature, viewing and
one-day filing requirement waived.)
.....

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(1) The State of Ohio, :
(2) County of Cuyahoga. : CERTIFICATE:
(3) I, Kelly D. Keyes, Notary Public within
(4) and for the State of Ohio, do hereby certify
(5) that the within named witness, ROBERT ZAAS,
(6) M.D., was by me first duly sworn to testify
(7) the truth in the cause aforesaid; that the
(8) testimony then given was reduced by me to
(9) stenotypy in the presence of said witness,
(10) subsequently transcribed onto a computer
(11) under my direction, and that the foregoing
(12) is a true and correct transcript of the
(13) testimony so given as aforesaid. I do
(14) further certify that this deposition was
(15) taken at the time and place as specified in
(16) the foregoing caption, and that I am not a
(17) relative, counsel or attorney of either
(18) party, or otherwise interested in the
(19) outcome of this action. IN WITNESS WHEREOF,
(20) I have hereunto set my hand and affixed my
(21) seal of office at Cleveland, Ohio, this
(22) 1ST day of MAY, 1997.
(23) ----------
(24) Kelly D. Keyes, Notary Public/State of Ohio.
(25) Commission expiration: 12-1-98.

Look-See Concordance Report

- - -

UNIQUE WORDS: **1,198**
TOTAL OCCURRENCES: **3,433**
NOISE WORDS: **385**
TOTAL WORDS IN FILE: **10,611**

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SINGLE FILE CONCORDANCE

- - -

CASE SENSITIVE

- - -

NOISE WORD LIST(S): **NOISE.NOI**

- - -

INCLUDES ALL TEXT OCCURRENCES

- - -

IGNORES PURE NUMBERS

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WORD RANGES @ BOTTOM OF PAGE

– D –

– E –

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