IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

- - -

CARL PRICE,)
)
Plaintiff,)
)
vs.) Case No. CVOO 09 4348
) Judge Bond
SHERYL M. REZAC,)
)
Defendant.)

- - -

Deposition of ROBERT D. ZAAS, M.D., a witness herein, called by the Plaintiff for cross-examination pursuant to the Rules of Civil Procedure, taken before me, Michael Christy, a Stenographic Reporter and Notary Public in and for the State of Ohio, at the offices of Robert D. Zaas, M.D., Suite 314, Hillcrest Medical Building One, 6803 Mayfield Road, Mayfield Heights, Ohio, on Wednesday, the 7th day of November, 2001, at 6:07 o'clock p.m.

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APPEARANCES:

On Behalf of the Plaintiff:

Dennis J. Bartek, Attorney at Law
2300 East Market Street
Suite E
Akron, Ohio 44312

and

Richard L. Williger, Attorney at Law
2070 East Avenue
Akron, Ohio 44314

On Behalf of the Defendant:

Terrence J. Kenneally & Associates

BY: Sean M. Kenneally, Attorney at Law
20525 Center Ridge Road
Westgate Tower Building - Suite 505
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ALSO PRESENT:
Amanda Teuscher

- - -

I N D E X

EXHIBITS	MARKED
Plaintiff's	
1	29
2	97
3	98
4	100
5	100
6	94

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ROBERT D. ZAAS, M.D.

of lawful age, a witness herein, having been first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION

BY MR. BARTEK:

Q. Doctor, I previously introduced myself to you, but I'll do it again on the record.

My name is Dennis Bartek and along with Rick Williger who's sitting to my left here, we represent Carl Price and my understanding is that -- well, I know for sure that you examined Carl Price in this case at the request of the defense attorney and I requested the opportunity to ask you some questions so I could have some understanding of what your opinions are in this case.

Let me say to you first of all that I have some ground rules in depositions.

If I ask you a question and you don't understand it, will you let me know that?

A. I certainly will.

Q. Okay.

And if I ask you a question and you do answer it, would it be fair for me' to assume that you understood my question and you knew the answer?

A. Well, you can assume it.

I mean, I think each individual question and answer is a separate situation, but any time I'm asked a question I will answer it.

Q. Okay.

And if you don't know the answer to a question, you'll let me know that?

A. I will say I don't know.

Q. Okay.

A. Uh-huh.

Q. Doctor, would you agree with me that Mr. Price was injured as a direct and proximate result of the motor vehicle collision which occurred on October 12th, 1998?

A. Yes, I do.

Q. And what areas of his body were injured as a result of that collision?

A. He sprained his cervical spine, which is his neck, and he sustained an injury to his right shoulder.

Q. And when I ask you your opinions and I -- you phrased some of the things in your report, so 1 assume you're expressing whatever opinions you're expressing to a reasonable 'degree of medical probability or certainty with respect to these

injuries.

A. Yes, I respect that's the legal definition.

Q. Okay.

A. As a doctor I'll express it medically, but I will also adhere to the legal requirements of having them be -- my answers are within reasonable medical probability.

Q. Okay. Thank you, Doctor.

Doctor, would you agree within a reasonable degree of medical certainty that Mr. Price sustained a right shoulder rotator cuff trauma as a direct and proximate result of the accident of October 12th, 1998?

A. I'll accept that, sure.

Q. Okay.

Did you find that Mr. Price was suffering from pain and discomfort in his right shoulder when you did your examination?

A. Uh-huh.

He complained that when he moved his shoulder he had pain, Well, both shoulders, sure.

Q. And you -- as a result of that you feel that he was in pain in his right shoulder at the time of the exam?

A. Not unless he moved.

He didn't seem to be in pain unless I had him move during the examination.

Q. Okay.

When he moved he would be in pain and when he was still --

A. When he lifted --

Q. -- he would not?

A. -- his arm upward or outward, when he tried to bring his hand behind his neck and when he tried to take his right hand behind his back, he complained of pain with each of these movements.

Q. okay.

And would you agree that he was suffering from pain in his neck or I guess medically you'd say his cervical region at the time you conducted your exam?

A. No, he said didn't have any pain.

I found a little bit of tenderness, but he did -- said he did not have pain.

Q. Okay.

When you say you found tenderness, what is tenderness as differentiated from pain?

A. He told me when I touched his neck it was somewhat tender, but he told me he was not experiencing neck pain.

Q. Okay.

Well, when you touched it, it was sore?
A. He said it was.
Q. Okay.
A. 'Cause touching and complaints are a subjective symptom.
I didn't find anything physically wrong, but he did complain that certain areas of his neck were somewhat sore.
Q And I know that you -- you have been -- you know what I should have asked you first thing?
Do you have a CV? That would save me a lot of time.
A. Time out.
MR. BARTEK: We can go off the record.
MR. KENNEALLY: Sure.
(Whereupon, a discussion was held off the record.)
BY MR. BARTEK:
Q. Well, Doctor, you look younger than you are You've been a doctor for a long time.
In the years that you have been a physician -- you did your residency I see, your surgical residency, general surgery 'at Akron General Medical Center?

A. I had general surgery there, yes.
Q. Okay.
A. Uh-huh.
Q. In the many years that you have been a practicing orthopedic physician, I would imagine that you have treated thousands of patients that had subjective signs of injury without objective verification of it.
Would that be a fair statement to make?
A. In general terms.
I don't find a lot of subjective complaints without physical findings in real injuries so I don't really -- that's not really a very common situation.
Q. Do you consider it to be a physical finding when you touch somebody and they have tenderness?
A. It's a recorded symptom.
A physical finding would be something like muscle spasm, decreased range of motion, deformity, swelling, things of that sort.
Q. Okay.
A. A symptom of pain or tenderness is that, just a symptom.
Q. So you'd characterize, for example, a muscle spasm as objective and tenderness as subjective?

A. Sure.
Q. Okay.
Now, Doctor, would you agree with me to a reasonable degree of medical probability that Carl Price will suffer from pain and disability in his right shoulder for the rest of his natural life?
A. He'll have some degree of stiffness.
The pain will be variable.
In my experience, his type of postoperative type of pain tends to vary from time to time, but the stiffness probably will never completely go away.
Q. So my understanding of what you're saying is that he will likely experience pain, stiffness and disability in his right shoulder for the rest of his natural life.
A. Yeah, to some degree, but not at the same level every year.
As you get older your body changes and the amount of problem that you have will be a little bit of a different quality as well as quantity.
Q. And would you agree with me to a reasonable degree of medical certainty that the injury to his right shoulder that you discussed in your report is permanent in nature?

A. No.

The injury that he sustained at the time of this accident contributed to a situation that requires surgery and was a partial contributor but not the only cause for which he had surgery.

Q. I'm just -- I'm just asking --

A. Uh-huh.

Q. -- you this at this point and we'll get into it:

Do you have an opinion to a reasonable degree of medical certainty as to whether or not the damage or injury to Carl Price's right shoulder is permanent in nature?

A. The word injury is what I object to.

The condition of Mr. Price's right shoulder that I saw a week ago is to some degree permanent, that's correct.

Q. Okay.

So I will change that.

Would you agree with me to a reasonable degree of medical certainty that the condition of Mr. Price's right shoulder in terms of pain and stiffness and disability is permanent in nature and that he will have that the 'rest *of* his life -- natural life?

A. Can't answer that yes or no because, as 1 say, the condition that he has, his symptoms will not stay at the same level and I do not want to issue a statement as stating that what I found on one specific day is what's going to happen in the year 2002, 2004, 2008.

To some degree his right shoulder will probably not come back to the level that it was prior to this accident.

Q. Okay.

I appreciate that and I know you're differentiating that -- what I guess you're saying is there may be some variation in the degree and the extent of any pain or disability, but to some extent he will always have some?

A. Well, I don't know that.

Q. Sometimes --

A. That's a subjective --

Q. -- sometimes --

A. -- symptom.

He may -- you know, he could say he has pain every day and all the time, but physically I think he will always have some loss of motion even though the doctor that fixed his s'houlder did a very good job, did all the corrective problems which means

that he should get better.

Why he didn't I don't know, but I -- in just in general terms, for somebody his age he'll probably have some degree of stiffness and the amount of pain and soreness that he has won't always be constant but may be a bothersome thing in the future.

Q. Okay.

I appreciate that answer.

Would these -- would that same statement be true of his neck?

A. The neck he has arthritis.

I don't think it has anything to do with his accident.

Q. Well, we'll get into that --

A. Uh-huh.

Q. -- and all I'm asking you now --

A. Uh-huh.

Q. -- and I haven't -- I'm not asking any proximate cause questions.

A. Uh-huh.

Q. I -- and I know that, you know, that is something that you may be expressing opinions on, but right now I'm just trying to find out about his condition.

Would you agree with me that the condition of his neck is permanent and that although it may be variable, that to some extent it will never be what it was before?

A. Before what?

Q. Before this accident.

A. I disagree.

I think his neck is not significantly injured.

He's got some arthritis and he himself several times told me his neck isn't bothering him.

Q. Doctor, would you let me know -- and I see your file there and I --

A. Uh-huh.

Q. -- often review files.

That's a rather voluminous file.

Can you tell me what materials you've reviewed in this case in addition to your examination of Mr. Price?

A. Well, kind of going back from soon -- from now to before, there are records of two hospital admissions to Cuyahoga Falls General Hospital.

The more recent one was from -- I think it was February 2000 when Mr. Price had surgery to his left shoulder, then there's anot'her admission when Mr. Price had rotator cuff surgery to his right

shoulder in -- on March 25, 1999.

There are physical therapy records from Cuyahoga Falls General Hospital that takes us from the two or three months after October 28th, 1998, then another set of physical therapy records after the right shoulder surgery, an additional physical therapy, although there weren't very many, after the 2000 surgery.

There -- or it's a big file from Dr. Sassano. That's -- excuse me -- the family doctor.

There's records from Dr. Pinsky, Howard Pinsky. He's at Cuyahoga Falls General Hospital.

He's the one that did the two surgeries; and then there's a pretty-good size file from what we call the Ohio Bureau of Workers' Compensation and that goes back quite a bit. That's going back to 1968.

None of the bureau of workers' compensation had anything to do with the right shoulder. There was no previous right shoulder problem, but that did indicate to me -- answered some of the questions I asked to Mr. Price in that why he wasn't working.

Mr. Price hasn't worked since 1983 and the reason is he has a low back condition that's related to a 1983 accident, he's had a right ankle injury,

he's had right ankle surgery in 1974, he's had left shoulder problems since 1997 and he had a thumb injury and surgery.

That's what the workers' compensation was, mostly dealing with his disability, inability to work as a truck driver, low back problems and things like that and I think that's about it.

I don't remember any other.

Q. Do --

A. I think that's about the records that I saw, you know.

Q. Thank you, Doctor.

Do any of those records that you just described, aside from the records relating to his right shoulder surgery and the portions of Dr. Sassano's records, his office chart that relate to the injury to his shoulder and the injury to his neck, do you have an opinion as to whether or not any of those other records have any relevance to injuries that he might have sustained in this accident?

A. Well, they're very relevant to me in that they indicate to me that Mr. Sassano -- Mr. Price did not have previous right shoulde'r complaints before this accident.

That's where it's pertinent.

Where it also comes into play to me is just his general condition and how any injury might affect a person depending on what his condition is.

He was a disabled man, he's a diabetic who's out of -- in bad control. The last record on the -- record I see here his blood sugar is way out of control.

He's had a chronic left shoulder problem, chronic low back problem, but he never had any previous right shoulder problem on record before October 12, 1998.

That's what I get out of these records.

Q. Did he have any previous cervical problems on record?

A. Yeah, there's records from years ago that he had some neck pain and stiffness, but that -- that didn't seem to follow through on a continuing basis other than something that happened a long time ago.

Q. And some of those records, for example, including the workers' comp file I have not myself seen so we may end up marking that as an exhibit so I can look at it later, but are you able to tell me from a temporal point of view when the last time prior to the accident on October 12th, 1998 that he

might have had any difficulty with his neck?
A. No, I can't.
I think it's quite awhile ago.
I think it's over ten years ago or five to ten years before this.
Q. Would the records basically indicate that his neck had been asymptomatic for several years at least prior to the time of this accident?
A. Well, I don't know if it's asymptomatic, but he -- it was not an entry in the doctor's record that he sought treatment for that many years before.
Q. Well, my only question to you --
A. Ub-huh.
Q. -- is whether or not the records themselves --
A. Uh-huh.
Q. -- would indicate that he was having -- and I'll put it another way.
Did the records indicate that he ever had any complaints about his neck within the ten years preceding the accident?
A. I don't -- I'm trying to recall looking at that whole record.
It's a good point.
I don't think so. I just don't recall right now.

Again, look at the size of that and I don't remember if -- what year it was.

I don't see in my record that -- I did make a note that he had complaints of neck trouble within the years right before this accident.

Q. Is that information that he gave to you?

A. He wasn't really specific about it.

He didn't want to talk about his back and his neck.

To me, I kept asking him "Is your back bothering you?"

"Well, that doesn't have anything to do with this."

"And what about your neck?"

"My neck doesn't bother me anymore."

And I -- we went over the back a couple times.

I said "Well, why aren't you -- is it because of your back that you're not working," and he wasn't -- he's not -- he was very specific about other things.

He -- he didn't sort of want to talk about that so I'm not really quite sure about his neck or back beforehand 'cause he didn't want to talk about it.

Q. Well, I'd like to differentiate between --

A. Uh-huh.
Q. -- his neck and his back, because his difficulties with his back were essentially low back difficulties, weren't they?
A. Well, I don't know.
He won't -- he didn't want to talk about it --
Q. But --
A. -- in much detail.
Q. -- regardless of his detail, you have all these records from workers' comp and all of his doctors.
Don't those records indicate that his problem was essentially low back?
A. His disability was from his lower back --
Q. Okay.
A. -- absolutely, yeah.
Q. And -- and in any event' he did not complain -- what you're telling me is that when you asked him about his neck, he didn't really complain to you about his neck?
A. Kept telling me it doesn't bother him.
Q. Okay.
A. He also didn't say that his back bothered him until I asked him to bend forward at the waist and like he barely can get forward, even could get to

his knees and kind of winced a little bit, and I said "Is that -- does that bother you like that" and he says "No, not particularly."

He wasn't very specific about that.

He was specific about his two shoulders, but not his back and neck.

Q. He seemed to be stoic about them; would that be a fair characterization?

A. Don't know about the word stoic.

I think he just didn't seem to be very -- want to be very revealing about those two places.

Q. Okay.

But again with respect to his low back, you don't feel that has -- that any issues with his low back are related to this accident or have relevance to this accident?

A. Well, as a matter of fact, I asked him and he said it has nothing to do with it.

Q. Okay.

A. I mean, he did say something like that.

And I asked him about his left shoulder, too, which had the same surgery even more recently and he was very specific about that too.

He says "No, that's got to do with the way with -- from work. That's got nothing to do with

this accident."

He was very specific about that too.

Q. Okay.

And with respect to his right shoulder, he gave you a negative history in his personal report to you, did he not?

A. Absolutely.

Q. And that was consistent with the information that's contained in the medical records?

A. Correct.

Q. And we can say to a reasonable degree of medical certainty that he was not having any -- either any documented problems with his right shoulder or any problems in his own mind with his right shoulder prior to the time the accident occurred?

A. You have to ask him.

He told me he wasn't having any problems.

I can't say that he wasn't.

I've learned --

Q. Okay.

A. -- that when you're in practice a long time things started to develop; spuring in the shoulder, a little arthritis and you 'don't complain about it because it happens slightly and kind of ignore it to

begin with.

When something happens like an accident, boy, your attention is just, boom, focused on it just like that and you make a big thing about it.

To me he said he did not have trouble with his right shoulder before this accident.

I do not see anything in his record that would contradict that statement.

Q. Thank you, Doctor.

Doctor, in the -- the accident happened on October 12th and he experienced some pain, did he not, at the scene of the accident?

A. He said his shoulder hurt but didn't think it was bad enough to ask for medical care.

Q. Okay.

And then over the next two days after the accident the pain in his shoulder, his right shoulder -- I better differentiate that -- pain in his right shoulder became increasingly severe; would that --

A. Right.

Q. -- be a fair statement?

A. Not only a pain; he said he couldn't raise his arm up.

Q. Okay.

And he also complained of pain according to the emergency room record, didn't he?

A. Oh, yes.

He had pain in his right shoulder in the emergency room record and the day afterward in Dr. Sassano's record.

Q. Okay.

And that actually is something that you would expect with trauma to the right shoulder; that after it occurs, that the -- that the pain would increase and that the discomfort would increase over the period of the next few days?

A. Depends on what the injury was.

If it's a contusion or a sprain it takes awhile.

If you've torn something in two or broken it, that's instant. You don't have a second chance on that; you just don't move.

So yes, certain types of injuries can build up, other types of injuries, boom, they're there right to begin with.

Q. Well, in any event, you have no doubt in your mind that over -- that probably -- well, let me ask you this:

Would you agree that it is reasonably probable

from a medical point of view that over the next two days after the accident he had increased pain in his right shoulder and, I think as you indicated, he couldn't lift his shoulder or his right arm --

A. Well, that --

Q. -- above his --

A. Well, these are history.

Yes, he told me all of those things.

I took that in account in making my diagnosis and assuming it.

Yes, I hear that and --

Q. But -- but --

A. -- it's on the record and that's what he told them.

I wasn't there so I can't verify it, but I just -- he told me that, what, two years later, three years later that's what he felt like and I listened to his history.

Q. Yeah.

And obviously with all your patients --

A. Uh-huh, uh-huh.

Q. -- whomever you see, whatever causes their problem, you're not there, they tell you about it --

A. Uh-huh.

Q. -- and somebody determines whether there, you

know, is some discomfort or whatever, you may prescribe whatever.

That's the nature of the practice of medicine, isn't it?

You're not there when --

A. Yeah, anything, but we're not talking about nature of practice of medicine.

You're an attorney, you're asking a medical/legal question.

I can answer this, that he told me this, I put it down, that's part of the information that I assimilated in arriving at my diagnosis.

I then went to look at the records and his own doctors told me the same thing, that he did complain of right shoulder pain in the second and third day after this accident so I agree with that --

Q. Okay.

A. -- but that's his history.

I -- I can't be there to verify it.

Q. I realize that and you would not want to testify about something -- you couldn't ever testify to the truth or falsity of something that you cannot personally verify, would you?

A. Right.

Another way of putting it, two or three years

later it is amazing the kind of histories you get from people who in their recollection looking backward suddenly have symptoms that it's either in their mind, maybe not fabricated but as somewhat distorted by time, so we have to sort of take these things into context when you have to get the history two or three years later.

Q. Now, he was diagnosed at the hospital with acute cervical myositis.

A. Yes.

Q. Do you -- first of all, do you agree with -- that that is a -- that that was -- to a reasonable degree of probability that that was probably an accurate diagnosis?

A. It could be, but myositis is another word, that just sounds like inflammation of muscles, but I use the term myofascitis basically to describe tenderness and stiffness that relates from spraining injuries.

Q. Okay.

A. The new nomenclature, the word myositis really isn't much an accepted nomenclature that doctors have to use anymore for coding, for hospitals, for insurance companies, things' of that sort, but we have to use the word sprain/strain and we can use

the word myositis or myofascitis for a condition that is -- causes inflammation as a result of a sprain.

Q. But in -- in any event, what that would be in laymen's terms, he had some injury to the muscles in his neck --

A. Exactly.

Q. -- or ligaments in his neck?

A. Exactly.

Q. Okay.

And -- and he also -- you -- we have already discussed his injury to his right shoulder and you made reference in your report to the fact that he -- it was indicated from the -- from your report somewhere that you felt that he had preexisting arthritis in his shoulder and in his neck?

A. Oh, yeah, definitely.

I got the -- for two different reasons.

Number one, it shows up on his x-ray; and the most dramatic preexisting condition in both shoulders was what we call the acromial spurring, anterior spurring that caused the impingement.

It was the type of finding that Dr. Pinsky immediately found when he looked at the shoulder from an arthroscope internally.

So that's a preexisting condition. That's a preexisting arthritic condition.

Q. When Mr. Price was at the hospital, was he asked. to sign a consent form?

A. For what?

Q. For treatment.

A. Which time?

Q. Well, the -- when he was at the emergency room on October 14th of 19 --

A, I think that there's -- in other words, I don't recall in the actual emergency -- I don't even recall the consent form on the record.

I remember the actual emergency room doctor's record.

MR. BARTEK: Let's mark this as No, 1.

(Whereupon, Plaintiff's Exhibit 1 was marked for purposes of identification.)

MR. BARTEK: (Handing.)

MR. KENNEALLY: Thank you.

BY MR. BARTEK:

Q. Doctor, I going to hand you what's been marked for purposes of identification as Exhibit No. 1 and ask if that -- if you can review that quickly and

see if that is in fact the emergency room record that you yourself reviewed.

You know what? I gave you the wrong copy.

That has highlighting on it and I don't want to be unfair to you.

A. That's okay.

Q. You're welcome to use that --

A. That's okay.

Q. -- but we'll substitute that one.

A. I have the same thing.

Yeah, I saw that, you know.

Q. Okay.

MR. BARTEK: Let's remark this one, have an unmarked copy and I'll let you look at it to make sure it's --

(Whereupon, Plaintiff's Exhibit 1 was remarked for purposes of identification.)

MR. BARTEK: (Handing.)

MR. KENNEALLY: Thank you.

Give the doctor this?

Give it to the doctor or do you want this?

THE WITNESS: Is it the same thing?

MR. BARTEK: The doctor can

have that.

MR. KENNEALLY: All right.

MR. BARTEK: Yeah, you can look at it.

MR. KENNEALLY: It's the same thing. Yeah, it's the same thing.

THE WITNESS: What's that?

Okay. He said it was the same thing.

BY MR. BARTEK:

Q. I'd like you to look at the fourth page of it, and that's the Cuyahoga Falls General Hospital emergency care consent.

A. I have it.

Q. Okay.

That indicates on it, does it not, that he was unable to sign because of his injured right arm?

A. That's what it says.

Q. Okay.

Do you have any reason to take exception with that?

A. No.

Doesn't make sense. It's not -- nothing to do with the injuries that I saw.

You can break your shoulder, you can dislocate it, you still can sign.

What's that got to do with the hand?

I don't know. It doesn't make sense with what -- what the injuries there was to me.

Q. Is it your feeling you don't use your shoulder when you write?

A. Of course not.

Why would you use your shoulder?

Q. Okay.

Let me ask you this:

The records -- those records also indicate -- you have them in front of you -- that he was unable to raise his right arm and I think that you've already mentioned that.

Do you take exception to that finding in there?

A. No, that's what he told me.

Q. Okay.

And you don't take exception to that finding?

A. Right.

There's no -- there's no notation of what he could do.

I at least measured what he could.

There's no indication here how much limitation, what it was.

Q. Okay.

But at least it indicates he was unable to raise his right arm?

A. That's what he said.

Q. Okay.

And that's what the emergency room record says also, doesn't it?

A. The emergency room record says what he says that "I can't raise my arm," but there was no measurement and there was no test of it like I did.

Q. The emergency record -- room record is one of the records that you used, that you relied upon in the formulation of your opinions in this case?

A. Uh-huh.

I think so, sure.

Q. Okay.

And the emergency room record indicates he was experiencing pain in his right shoulder.

You do not take exception to that, do you?

A. That's what he told me.

Q. Okay.

Would you agree with me based on the information that you perused in the records and the information that was given to you by Mr. Price, that he was not in any way impaired in his activities of daily living by virtue of his right shoulder prior

to October 12th of 1998?
A. That's what he told me.
Q. Okay.
A. Uh-huh.
Q. And you have no information to the c ntrary?
A. Uh-huh.
Yeah, that's correct.
Q. And there's nothing in the voluminous medical records that you've reviewed to indicate to the contrary?
A. It's sounds like there's no prior shoulder symptoms.
He had a prior spurring but no symptoms according to these records.
Q. Okay.
He, incidentally, is right-handed?
A. Yes.
Q. And that is his dominant arm?
A. That's correct.
Q. Would you agree with me that an injury to a dominant arm has a greater impact on an individual in the performance of their activities of daily living than an injury to their nondominant arm?
A. I think that's generally true.
It makes a difference, of course, what you do.

He was an unemployed disabled person. But still I think it does have a greater impact to have your dominant or right-handed injury rather than a nondominant left-sided injury

I agree with that

Q And employment is one aspect daily living --

A. Uh-huh.

Q. -- but my question just to --

A U -huh.

Q - is to you in general terms in terms of activities of daily living

Would you agree that an injury to a dominant arm has a greater impact on an individual in the performance of his activities of daily living than an injury to a nondominant arm?

A Well, it's a little bit too broad of a statement.

I think I like mine better that usually if you are -- are limited from using your right arm which is your dominant side in what, 90 -- 94 or 95 percent of people, it probably does have more impact on your life than other things and there are cases where that's not the case

Q. Okay.

Q You know, there are some people that have to

use their left arm for certain activities as reaching.

A lot of factory workers, people that drive certain equipment, for instance, the left arm is actually more important.

But in general terms I would say that that's somewhat true, but not necessarily for everybody.

Q. Okay.

Of course, if you have a previous injury to your nondominant arm, then that -- you don't have any good arms left; isn't that true?

A. That -- unless you're a spider.

Q. Okay.

And that in fact was the situation with Mr. Price.

He had previous injury to his nondominant arm so as a result of this injury he had injuries to both arms and shoulders?

A. That's correct.

Q. Okay.

He, incidentally, was placed in a collar at the hospital, was he not, emergency room?

A. I believe so.

I don't -- I don't remember.

He made so little about his neck injury, that

I will admit I did not spend a great deal of concentrated time worrying about his neck because his shoulder was the problem that he so emphasized to me that he related to this accident.

Q. Okay.

But having looked at the record, he was placed in a collar?

A. Well, for the emergency, yes, for there.

I don't know that he was discharged from it.

I can't tell from this record here.

Q. Okay.

A. There's no indication that saying that as a treatment he was.

He was placed in a collar as a precaution to begin with.

I -- I don't see -- maybe you're going to point it out to me.

You know, different handwritings make it difficult for -- yeah, "Patient something, cervical collar applied."

That's when he was admitted, but it doesn't say -- "Return to emergency room --" oh, collar was taken off.

Oh, the collar was just on for -- from 9:42 -- 9:52 to 10:40.

It was on for 55 minutes or 54 minutes or something like that.

Q. Now, Doctor, what is a contusion?

A. A bruise.

Q. Okay.

As a general principle, would it be fair to say that a person presenting with a contusion to the right shoulder, pain, inability to raise his right arm and a person who in your opinion has suffered right rotator cuff trauma, would it be fair to say that that person may possibly be suffering from a torn rotator cuff?

A. Two days after an accident?

I could not possibly make that distinction.

A bruise is a very common injury, a bruise around the shoulder is a common injury.

When you have a bruise you have swelling so you can't raise your arm, the muscles won't let you go.

The last -- I'm not saying it's the last thing, but it's one of the end-thought processes that come out that you have a rotator cuff thing when you diagnose a bruise

You have to make that,diagnosis as time goes by.

Q Doctor, are you a fan of the Indians?
A Sure.
Q Are you aware of whether or not any baseball players suffer rotator cuff tears and that diagnosis is not made for a long period of time after the initial tear occurs?
A Uh-huh, but they're not really rotator cuff tears
A lot of them are posterior lateral instabilities, posterior glenoid labrum injuries which by frequently repeating the same movement leads to a thinning of the rotator cuff
I don't know any Cleveland Indians had a frank rotator cuff injury.
Actually I have seen the MRI scans of the -- what, the three that have been out this year I actually saw their scans
They're not -- no, they're not really torn, but they're thinned and most of them are what we call glenoid labrum injuries
It's a little bit different mechanism than this.
Q. It's a mechanism, but for them it is no less burdensome in their career as a baseball player, is it?

A. Well, if it were a simple rotate cuff without any instability they'd be back playing baseball.

The problem with baseball pitchers is that as you bring your arm back and turn, the ball of the humerus is driven backward and there's a lip around the back of the rotator cuff area we call the glenoid that eventually starts to fray and break down, and that's where your biggest injury is.

It isn't what the type of thing that he has here. It's really a whole different problem altogether.

Q. Your testimony --

A. Uh-huh.

Q. -- so that we don't have any -- any dispute about it, is that a person who suffers a rotator cuff tear could not go two days without being -- without -- when they have increasing pain over a period of two days, have the type of injury to -- an injury to their shoulder, to their rotator cuff which you've described in this case, they would not be suffering a rotator cuff tear?

A. A major full-thickness rotator cuff tear?

Q. How about a partial tear?

I'm just asking a rot'ator cuff tear --

A. Oh, partial is possible.

Q. Okay.
A. You can have a partial tear, a partial-thickness tear and you know something is wrong but you still can use your arm.

The swelling that comes in the next couple of days make it difficult to raise very far.

I'm talking about when you really tear your rotator.

The type of tears that he has that they saw at surgery, he was just completely separated and those feel like almost like something breaks.

You almost can hear something.

I got people that tell me that they reached out -- a policeman, two days ago he tried to restrain someone from running away.

He said "I could feel a rip," something like something tore apart and his arm just hung down at the side like that and that was instant.

So the full-thicknesses tears you know right away. It isn't something that you learn three or four days later.

The partial-thickness, the strains, those are the ones that go on for weeks and weeks before you can make the diagnosis.

Q. Okay.

So what I guess you're opining here is that he may have had a partial rotator cuff --

A. Uh-huh.

Q. -- tear as a result of the accident?

A. I agree.

Q. Okay.

And -- and you -- if it were -- your view is that if it were a complete tear, then it is something that would be apparent immediately?

A. Yeah, there -- there is something in his file that does ascribe an incident in which you feel a pop, you have excruciating pain, you can't move your arm at all.

That is more typical of a complete rotator cuff tear.

Q. Okay.

We are going to -- we're going to discuss that --

A. Uh-huh.

Q. -- a little bit later --

A. Uh-huh.

Q. -- in the deposition.

Let me ask you this:

If somebody presented to you with the complaints that Mr. Price had a couple of days after

the accident, as an orthopedic surgeon a rotator cuff tear or a partial rotator cuff tear would certainly be a part of your differential diagnosis, wouldn't it?

A. Down the line, but if this is acute sprain and almost everybody -- we see hundreds of people that strain or sprain or bruise their shoulder.

I mean, that's -- every day people parade into us like that and you treat them with -- with medicine, you treat them with exercises, with physical therapy and the great majority get better, they gradually get better.

A lot of them are complicated by neck pain and spasm, trapezius spasm.

You have to treat that also, but the great majority in two or three months get better.

Q. I appreciate that answer.

What I'm just --

A. Uh-huh.

Q. -- trying to discover --

A. Uh-huh.

Q. -- is as an orthopedic surgeon, somebody comes in to you with symptoms Mr. Price has described to you and they're described in the record, wouldn't a rotator cuff tear or a partial rotator cuff tear be

a part of your differential diagnosis as an orthopedic surgeon?

A. As any doctor.

There is no such thing anymore, the standard for care is not differentiating between an orthopedic surgeon, a general doctor or things like that.

Everybody is responsible for providing adequate and good care.

Dr. Sassano had a lot of opportunity to see him and I'm sure if he had the symptoms of a rotator cuff tear he would have ordered the appropriate tests.

Q. And so, again, with that differentiation, just so it's clear in the record, rotator cuff tear would be part of the differential diagnosis on presentation?

A. Again, you have to ask Dr. Sassano. He saw him at that stage.

For a third party like you are to describe secondhand some symptoms real or imaginary that happened three years ago, then ask me to say "Well, should you have ordered this" or "What could you diagnose," I can't tell you' that.

Q. Is that --

A. You're stating that anybody with a shoulder pain should have a rotator cuff tear test?

I don't know.

Q. Well, I was just trying to find out if it was part of the differential diagnosis and I think you indicated it was; is that correct?

A. It can be, but again you have to rely on what the symptoms and physical findings were and the only one that could have done that was Dr. Sassano.

You have to ask him.

Q. Do you think -- and I intend to do that.

A. Uh-huh.

Q. Do you think that Dr. Sassano --

A. Uh-huh.

Q. -- as the doctor that saw him at that time would be --

A. Uh-huh.

Q. -- in a better position to answer that question than you are?

A, Sure.

Q. Thank you.

You made some reference in your report that the -- well, strike that.

In this case, the x-rays as far as I could tell were negative for fracture and dislocation; is

that --
A. Correct.
Q. The fact that an x-ray is negative for fracture and dislocation does not mean in and of itself that a person was not injured, does it?
A. That's correct.
Q. And again in the course of your many years of practice, you have probably treated thousands and thousands of people who sustained injuries either to their neck or to their shoulder who had x-rays that were negative for fracture or dislocation; would that be a stair statement?
A. I think that's correct, sure.
Q. Okay.
In fact, some of those people who had negative x-rays, you may have in fact diagnosed them with permanent injury?
A. You're making too broad of a statement with that.
It's -- it is possible, but one has to take into account many other tests that would show additional information that wouldn't show up on a regular x-ray.
Q. Okay.
A. Just your statement that somebody has a

negative cervical spine x-ray will have permanent changes, I can't answer that just by -- alone.

Q. I did not --

A. Yeah.

Q. I did not intend to make that --

A. Yeah.

Q. -- as my statement --

A. Uh-huh.

Q. -- so perhaps I had phrased that question poorly and my only -- my only question to you was that there are some patients that are -- that are injured in accidents that initially have an x-ray that's fracture -- that is negative for fracture/dislocation and as time goes by in the course of events you eventually have come to the conclusion that person has in fact sustained a permanent injury as a result of that accident regardless of the fact that the original x-ray was negative for fracture or dislocation.

A. Uh-huh.

That's true with those additions that I made, because of other exams and tests revealed things otherwise.

Q. Would you agree with me that a person sustaining a traumatic injury in an accident to

their shoulder or their neck is at risk to develop posttraumatic arthritis?

A. It's possible.

What -- at least I was taught that 30 years ago.

Having the opportunity of being in the same part of the city -- I had three offices in my 36 years, they all been in the east side of Cleveland -- I'm still seeing people that I saw back in the '70s, they still come back.

I have saw really very little of that.

I've seen people get older. You get older and you get arthritis like you know what. Very hard to tell if it's posttraumatic.

If you fracture something, if you dislocate something, then your chances of posttraumatic arthritis kind of go up.

Just with bruising or rotator cuff problems I have not found that to be the case.

Q. Have you ever made a diagnosis, Doctor, in your career that somebody had sustained an injury to their neck, a soft tissue injury to their neck has developed posttraumatic arthritis?

A. I think it's possible,.

It's a very rare situation and extremely

difficult to actually prove because you take the same group of people in that person's age and look at their x-rays two years, four years, eight years and ten years, other people that weren't hurt, they are going to get arthritis.

We all get gray hair, we get changes in our body and we get arthritis of our joints.

I think it can happen, but it's very rare and very difficult to prove.

Q. And I guess the only question that I asked you is whether or not in the course of your practice, without asking you who the patients were, have you ever made that diagnosis in a soft tissue case.

A. Boy, I have in knees, ankles --

Q. How about necks?

A. -- probably in the shoulders.

Very -- I can't recall if I did. It's so unusual it would be very difficult.

I have to see that person for so many years, evaluate what the natural process would be and then have to put that together.

It's very difficult to prove that.

Q. Okay.

Would you agree with me that a person who already has preexisting arthritis is likely to

suffer an exacerbation or aggravation of that arthritis if they suffer a traumatic occurrence such as Mr. Price did?

A. Right.

You're saying it a different way.

I say that a person with arthritis is not as physically capable of tolerating an injury to that part of the body and they will suffer pain; they would have suffered pain without arthritis, but the pain will tend to last a little bit longer and doesn't go away as -- as easily with treatment.

I agree with that.

Q. Okay.

Based on the records and your conversations with Mr. Price, were you informed either by Mr. Price or by the records in words or substance that since the accident of October 12th, 1998 Mr. Price was not able to do many of the activities that he could do before the accident with his right arm and shoulder?

A. Yes, he did tell me that.

Q. And did he also make any reference to that with respect to his neck?

A. No, I -- I think I've told you four or five times he kept telling me his neck wasn't bothering

him.

Q. Okay.

A. His neck kind of got better in a few months with the therapy, but his shoulder didn't.

He kept saying that over and over again.

Q. Let me get back to the statement that I -- that I think that you made a moment ago to make sure that I understand it.

Your opinion in this case was that Mr. Price did have arthritis prior to the time this accident occurred in his right shoulder?

A, Yeah, he had anterior spurring of his acromion and some acromioclavicular arthritis.

Q. And putting that in English?

A. He had some arthritis.

Q. Okay.

But at least based on the information available to you, that arthritis was not affecting his activities of daily living?

A. That's what he told me.

Q. Okay.

And supported by the medical records?

A. I think that's correct.

Q. Okay.

And I think that what you started to say is

that as we -- as we all age -- I'm in my 50s now. I'm not like I was when I was 20 or 30.

I probably have developed some osteoarthritic changes in my system whether I'm experiencing any symptoms or not; would that be a fair --

A. I disagree.

You look very young. I think you got better.

Q. Think so?

A, No,

No, I think we -- we do.

Q. You're a good man.

A. I don't -- I don't know.

I -- I don't have a stopwatch with me to check your speed or time or I don't have the weights here for your power lifting, but I betcha you're pretty good.

It -- it makes -- there's a lot of things that depend on that.

Number one is heredity. You can't choose your parents, but, unfortunately, our bones, our joints, our hearts do seem to follow into certain family patterns.

A person today told me he's kind of worried that he's gaining a little 'weight and he can't do exercise 'cause he's got a bad back and that he

gives me five close relatives that died before they were 50; mother, father, uncle and things like that.

That's heredity.

The same thing with arthritis. It develops in some people more than others.

Number two is lifestyle, what you do.

We can wear our back and neck out. You do heavy work lifting, laboring, truck driving, this heavy stuff like that, it's going to start wearing you down.

You are sitting here and all you do is sit in your legal offices and get catered food and have limos -- am I misrepresenting you?

MR. KENNEALLY: I think, yeah.

MR. BARTEK: Off the record.

(Whereupon, a discussion was held off the record.)

THE WITNESS: Wear and tear can take -- take its toll, and injuries, no matter how many, each has an additive effect. You can't subtract them.

If Mr. Price had four'back injuries, when you added them up it might be that the last one, the one

in 1983 was more than he could handle so that did it.

So the added injuries to different parts of the body also affect whether we get arthritis or wear and tear or damage.

So there's a lot of different factors, not just an injury, but it's a compositive, the entire person's lifestyle, what he did and what type of heredity that he has.

BY MR. BARTEK:

Q. And I guess you're saying that every case is individual and I don't take --

A. Yes.

Q. -- exception to that, but let me just ask you as a general rule.

Would you agree that all of us, Mr. Price, you and I included, are going to have normal aging in our body which when we reach 40 or 50 we're going to have more arthritis as a normal 50-year-old than a normal 30-year-old would have?

A. Right.

Again, with my little -- my little round little exceptions, the heredity type, the wear and tear, but in general if you'took a hundred 30-year-olds, a hundred 40-year-olds and a hundred

50-year-olds, of those hundred 50-year-olds you'll find more arthritis than you will with a hundred 30-year-olds.

I agree with that.

Q. And I am talking now in -- you know just as to the norm, and anybody who would live a normal 50-year existence is going to have 50 years of aging which will to some extent show up on an x-ray as what we call arthritis; would you agree with that statement?

A. I think that's correct.

Q. And if we're not having any problem with the -- with pain or limitation of our activities of daily living, we say medically that the arthritis, though it shows up in an x-ray is asymptomatic?

A. Right.

Another way -- you're saying it a little bit differently than I do.

The arthritis so slowly develops day by day that little changes in your body, inability to reach all the way backwards, you sort of ignore it to begin with. A little aching at night where you have to get up and change or don't lay on that side, these things you ignore.

So you won't find symptoms like that in the

medical records because people don't complain about it, but those things do happen slowly, gradually to the point that a person doesn't notice it and doesn't complain about it.

That's what we call asymptomatic, but there is aches and pains even though we don't complain about them.

Q. And what you really mean by asymptomatic then, if I understand what you're saying, is that it means that it's no causing -- it's not causing us any serious problems in our activities of -- of daily living.

It may be causing some aches or discomfort, but it's not really affecting our lifestyle?

A. Right, and it can -- and it can be ignored.

That's correct.

Q. Okay.

Will you agree with me that there is a medical diagnosis called symptomatic activation of a previous arthritic condition?

A. I thought I was the only one to use that term.

Of course I do.

Q. Okay.

And by symptomatic activation, that means even though the condition, the arthritis was there before

an accident or trauma may occur, the force of the accident has caused the previous essentially not painful condition to get painful?

A. Uh-huh.

I agree with that.

Q. And the activation of preexisting arthritis in that type of a circumstance or the condition is started or triggered by the trauma of the accident that that person might experience even though the arthritic condition was present or could be shown on an x-ray prior -- long before the accident occurred?

A. Yeah, I've -- I've been advocating that for years. That's correct.

Q. Okay.

And at least since all the information available indicates that Mr. Price had no difficulty with his right arm or shoulder prior to the accident, it would be reasonable and probable to conclude that any arthritic problem that he's having after the accident is the result of symptomatic activation of his preexisting arthritis, wouldn't it?

A. It might be, but I don't think that was his problem.

I think his problem was a rotator cuff

injury.

I don't think it was arthritis.

Q. Well, you know, Doctor I thought you told me in the first or second question that I asked you --

A. Uh-huh.

Q. -- and -- and something that you indicated in the very end of your report was that he was having stiffness and pain in his right shoulder secondary to arthritis.

A. I did that because he was told that by his treating doctor; that where he didn't get all the way better, he was told that because he has arthritis he's not going to get better.

That's the very words that he used for me.

He has osteoarthritis of the acromioclavicular joint.

That was never operated on, that was never fixed and so he does have that, but I think the problem that he has had from this accident is the rotator cuff, not arthritis.

Q. Okay.

So to the extent that you would make a reference to his -- his pain and stiffness in his right shoulder probably secondary to his acromioclavicular arthritis --

A. That's correct.
Q. -- in your report --
A. Right.
That's not the shoulder joint.
That's the joint above the shoulder.
Q. To the extent that you make that statement in your report --
A. Uh-huh.
Q. -- and that he is probably suffering some permanent disability in his right shoulder from stiffness, pain and weakness --
A. Uh-huh.
Q. -- that is something you're relying more on what his other doctors told him?
A. No, no.
Just the arthritis. I mean, the arthritis is there.
It was there before the accident, it's on the x-ray before the accident it's on the MRI scan before.
I'm sorry.
Before the surgery after the accident. All of these tests were after the accident and at time of surgery it was found.
The acromioclavicular-type arthritis was never

addressed by Dr. Pinsky. He only operated on the acromion and the rotator cuff.

Q. Okay.

A. And he apparently -- according to Mr. Price, he told me directly. He said "They said I can't get better. My own doctor said I have arthritis, I can't get any better."

Q. Yeah, yeah.

A. 1 accept that.

Q. Okay.

And -- and my only point about it is before he injured his shoulder he was better and since he's injured his shoulder he's not.

A. Ah, but there's a rotator cuff problem in between.

See, that *sort of* changes the whole thing.

It isn't just like having somebody get two years or three years older.

It's kind of really a major change in the alignment of the shoulder.

If you tear your rotator cuff completely, there is nothing to hold the shoulder in alignment.

The shoulder is pulled up by the deltoid muscle, you have a change in the alignment of the arm bone to the shoulder or scapular area so it's a

whole different story than that.

You can't just use that as a comparison to say that the arthritis got worse.

The whole shoulder changed in its alignment and then needed surgery.

Q. The shoulder -- the changes in the shoulder --

A. Yes.

Q. -- inexorably began when he was struck by the other motor vehicle on October 12th, 1998, didn't it?

A. Yeah, I agree that he did injure his shoulder on that time.

Q. Okay.

A. Yes.

Q. And the -- prior to that time he was not having difficulties with that shoulder and since that time he's had nothing but difficulties with that shoulder?

A. No, it doesn't work exactly like that.

He told me that he wasn't having trouble before. I believe him and there's no documentation.

If you look at the record, he was not very specific.

He has a way of talking in broad terms like "I

got this accident and my shoulder got hurt, then I had surgery."

He has a way of talking in the same sentence.

But when you look at the record, he had the injury, he was seen by Dr. Sassano, he was referred to Cuyahoga Falls Hospital for different types of therapy; physical therapy, active therapy, massotherapy, and when you get into about six to eight weeks after this accident, even less than eight weeks, six weeks or so, he was improving.

The records show that the shoulder is better, he has less pain, he has better movement, still having some spasms.

That's what he's talking about the trapezius and muscular area.

So for maybe seven weeks he was improving.

So it's not a matter of inexorable progression.

There was a definite improvement until something happened to him.

Q. Well, we're going to go into that.

Let's just -- let's just say it this way, if you can agree with this:

He had no problems with his right shoulder before the accident, he has had continual problems

with his right shoulder since the accident.

A. But they weren't continual,

There were problems that were diminishing, that weren't there all the time that were in the neck.

I don't know that -- that word used continual, because it was something that was an improvement and may not even have been in the shoulder anymore.

I can't tell from the physical therapy records.

Q. Well, let me ask you this:

What was -- was there ever a period of time after October 12th, 1989 --

MR. KENNEALLY: '98.

MR. BARTEK: -- '98 to the present time that he was symptom-free in his shoulder?

THE WITNESS: Hard to tell from the records, but the physical therapy records would indicate that by the middle of November 1998, that the symptoms that he had were in his trapezius and scapular or neck area, not in his shoulder.

So I can't -- I can't answer that with a absolute certain yes or no.

Again, he's -- he's -- he's an honest man as

far as the way he tells his history, but his background is such that he doesn't -- he's not a very specific detailed teller of symptoms.

I think the jury will hear this and see what I'm talking about.

You know, he's -- he has a way of in one big, broad sweep saying "My neck -- my shoulder was hurt and didn't get better until I had surgery and I still can't do anything."

You know, one sentence he can talk about three years in one.

But when you look at the details, he was getting better, there was some periods in November that there's no indications that he had shoulder symptoms.

He had neck and trapezius pain and some spasm, but he didn't have any continuous shoulder problem till after December 3, 1998.

BY MR. BARTEK:

Q. Well --

A. So I can't -- I won't accept your statement that it's inexorable or continuous because that's not what the records show.

(Whereupon, a discussion was held off the record.)

BY MR. BARTEK:

Q. Boy, I hate to have the last question and answer read back so I'm just going to ask you this:

It's your opinion that -- well, strike that.

With respect to Mr. Price, do you know what his educational background is?

A. Yeah, I do.

It's marked in there as far as his workers' comp.

I think it's only 6th grade or 7th-grade education.

May not even been that.

I recall that in that there's a very detailed workers' compensation profile of his lifestyle in determining what he could do for a living if he couldn't drive a truck back in '83.

I believe it's only a -- it's just -- it's either elementary school or just afterward.

Q. He is not in -- say, for example, in comparison to me, if I were reporting symptoms to you, he is not what doctors would consider to be a particularly good historical reporter, is he?

A. He is not shy, he can speak for himself and he's very direct.

I just think in his historical reference to

things he tended to be I call it a lumper. He tended to kind of bring all things together.

He remembers this and the big sweeps about "I got hurt, my shoulder got damaged and I had surgery but I'm still not better," but I -- he can communicate very well.

Q. Okay.

A. He just doesn't -- he's not a very detailed producer and there are some things where you ask him questions he says he doesn't want to answer.

I must have asked him 20 questions about his back and he said "Well, it doesn't bother me" and "Well, that's something else. That's nothing to do with this."

I said "Why cant' you work?"

He says "Oh, that's a long story."

You know, he -- he has the things that he weigh -- he can talk to us and he could communicate, but he does what he wants to do.

Q. Now, Doctor, I think that you were giving an explanation before and I -- and I want to make sure that I understand it.

I think that what you said is that somebody who may have preexisting arthritis is going to be more susceptible to injury when they are subjected

to the force of an impact because they do not have either the rubbery elasticity or flexibility literally to go with a blow as compared to somebody who doesn't have that.

A. Yeah, the word susceptible I think you're using I use maybe in a different context.

I think that they will get hurt the same way as anybody who does not have arthritis, but they do not seem to have the quickness of recovery and they seem to have the -- you can't sort of stop the inflammation and pain reaction as much and it seems to kick off some of the arthritic joints that become swollen and sore; and in my experience with people that have that, it takes them longer to get better, it takes more treatment, but it does not in any way prevent them from getting better,

Q. Well, regardless of the getting better --

A. Uh-huh.

Q. -- would you agree with me that a person with that arthritis is more susceptible -- more susceptible to being subjected to injury from the force of an impact because they do not have the rubbery elasticity or flexibility literally to go with the blow?

A. Susceptibility in a medical term; not

necessarily in a --

Q. I don't remember saying --

A. -- physical term.

Q. Did I say "susceptibility"?

A. You said "susceptible" --

Q. Okay.

A. -- in a medical term which is the same injury would happen if you did or did not have arthritis, but the susceptibility that I'm talking about is that it allows you -- it doesn't get -- go -- get -- get as well as quickly and it doesn't respond to treatment as well.

Q. Let me ask you a question this way.

A. Uh-huh.

Q. Would you agree with me that somebody who has preexisting arthritis who is subjected to a -- the force of an impact or blow in an auto accident is more likely as a result to have the ligaments, the muscles and the capsules around the joint tend to be not only stretched, but torn as well and they will actually suffer a greater injury than a person who is arthritis-free and more flexible such as a younger person?

A. It is possible.

A younger person will have more spinal cord

injury because they have more a wider range of motion.

It's possible, yeah, and we see that --

Q. Did --

A. -- that type of susceptibility of greater injury.

Yes, I see that.

Q. Okay.

And -- and when we say "is it possible," my standard, as you know, is probability.

Would you agree that it is more probable than not?

A. No.

It's very possible and, again, I base this on all the years I've been in practice.

I've had individuals three generations in an automobile that's struck with considerable force so all three are theoretically subjected to the same trauma since they're all in the same vehicle.

I've had grandfathers, fathers and sons in the same car and it has worked out it is not true that the grandfather is necessarily the slowest healing and the father is the next slowest and the son in the quickest.

Sometimes it could be the other way and the

reason for that is there's other things involved just your -- than your age and so it's not necessarily always true.

It is possible, as you say, that arthritis can prolong it, but that's not what I've been finding in actual clinical practice.

Q. I'm not asking you now --

A. Uh-huh.

Q. -- about arthritis prolonging the injury --

A. Uh-huh.

Q. -- so I haven't been --

A. Uh-huh.

Q. -- making myself clear.

I'm asking you whether a person with arthritis who suffers a same blow as a person who does not have arthritis is more likely to be subjected to a greater injury because they lack the rubbery elasticity or flexibility literally to go with a blow.

A. Yes, it is possible.

Q. Okay.

Do you think that that is probable?

A. No

Q. Okay.

Do you think that it is probable that a person

with preexisting arthritis as compared to somebody who does not have arthritis -- and we'll use the example that we discussed earlier, the normal 50-year-old person as opposed to the normal 30-year-old person, that -- that when they suffer -- both suffer exactly the same blow, it is more probable than not that the ligaments, muscles and capsules around the joint of the arthritic person will tend to be not only stretched, but somewhat torn and that they will actually suffer a greater injury than the younger person who is more flexible?

A. I've -- I've seen that in certain cases, but the majority that's not correct.

Q. Okay.

A. That is a variable situation and does not hold off in the majority of cases.

In certain cases it's true, but not in every case.

Q. Okay.

So it can -- we're saying it can happen?

A. It can happen.

Q. All right.

Would you agree with me that a person who has sustained a traumatic injury such as a partial rotator cuff tear -- which you think apparently is

the case with Mr. Price here; am I right?
A. Yes.
Q. Initially?
That -- that that person is more likely to suffer an aggravation of that injury by virtue of performing activities after that injury which could have been carried out without incident prior to the traumatic injury?
A. Very difficult to tell.
Once you tear something, if you don't let it heal and you have another injury, you can tear it wide open,
It's kind of like the old business about a little piece of paper. You partly tear it and then you -- you come back with another force, it's going to go rip right down that same area.
Glass cutters do the same thing. Remember, they make a little scratch in one time and do it?
I think if you have another trauma you can widen the tear.
Q. So what you're really saying is if that paper is already partially torn --
A. Uh-huh.
Q. -- and there's a second trauma --
A. Uh-huh.

Q. -- it's more likely that that second trauma is going to cause the complete tear than if the paper hadn't been torn in the first place?

A. No.

Q. No?

A. It depends on what the trauma was.

I mean, I -- you could never sort of measure it.

You can see if you retraumatize something that hasn't healed yet that is a weak spot, 'cause a trauma depending how much it is, is going to be focused in that area.

It may not be something that wouldn't have been focused in another area and it may have been in the same area without the trauma.

But in general if you have a weak spot, you would think that if you would subject that to significant stress, that part will give easier.

Q. Okay,

I'm going to see if I understand that answer.

A. Uh-huh.

Q. What you're saying is if you're softened up in the right -- Mr. Price was softened up by an injury to the right shoulder and is -- is doing something that, in your words, might cause trauma --

additional trauma to the right shoulder, it's more likely that that's going to cause him problems than if he had not been softened up in the first place.

A. Hard to tell.

I think it's just additive.

It's like if something cost a dollar and 25 cents, if you have 25 cents down already and then you put a dollar down you have the 25 cents.

I think a second trauma may -- may be a bigger injury, may cause a bigger strain.

We've had a lot of people that I know have partial rotator cuff tears. There's probably millions and millions in this country that walk around with partial rotator cuff tears.

You know, it's not that big of a deal and they could do almost everything as long as they keep their shoulder straight.

Now, if they do something to really rip it out -- you know, we get this in labor which is heavy lifting or sudden changes in forces, sudden reaching up or pulling down on something or pulling up on something.

That's a complete tear.

Now, if that affects it from the first time, it probably does.

If you've had a weak spot there, I think there is probably an inter-reaction there.

But even if you didn't have the weak spot, if you injure it badly you're going to still tear it completely,

Q. It's more likely -- what you're saying is it's more likely if you already have the weak spot, that you'll do greater harm to it than if you didn't.

Is that what you're saying?

A. No.

I think it -- it can in many cases.

If the weak spot is already there and you put significant force on that shoulder, it may tend to give right at the weak spot.

I agree with that.

Q. Now, what if you don't put any force on that shoulder?

A. It should heal.

Now, I don't know they completely heal.

There's limitations on how much even small rotator cuff tears can heal.

That's been a kind of a constant, ongoing argument of doctors for 30 years, can small rotator cuff tears actually heal.

I think the general trend is they don't really

heal; they kind of stabilize and they remain stable enough so long as you don't retraumatize it.

Some doctors still advocate if you wait long enough you can get them to heal.

I'm not sure what it is.

Probably they don't completely heal.

Q. Now, it seems to me, Doctor -- well, strike that.

Let me ask you this:

When patients come to see you, do you take a history from them?

A. Yes.

Q. And when you take the history from them, what's the purpose of taking the history?

A. History is one-third of my examination.

It provides me with the focus of what happened to them, what's been done for them, what the response to that, then we go backward past history, we go back future history, we go to social history, occupational history, medical history, things of that.

See, that's a -- that first -- first big cornerstone of my exam.

The other two-thirds, by the way, are the actual physical exam and the lab studies.

Q. And when you do a defense medical exam such as in this case, is history one-third of your exam?
A. Yes.
Q. Okay.
And I'm taking it that a big part of the opinion you expressed is based on the history that is given to you by the patient.
A. It can be.
Some cases it's probably irrelevant.
Somebody tells me that "I was standing in the street and this guy ran me down, my bone stuck out in the thigh and I had three fractures," you don't have to give my any more history than that.
The rest of it has to do with medical.
If something has to do with something that is a long and involved case with a lot of other treatment and things like that, the history may be more important.
Q. Is the history in this case important to you?
A. I think it is, yeah.
Q. Okay.
And in the report that I read you have formulated your opinion on this case based on an alleged incident of Mr. Price serving as a pallbearer at a funeral.

A. I base it on the history of his being in the car accident, base it with the history of the treatment that he received, I base on the history of what Dr. Sassano found, I base it on the history of what Dr. Pinsky found, I base it on the history of the prior physical findings and the prior work injuries, I base it on the history of the physical therapies, the occupational therapies, the mechanotherapies or massotherapies like that.

I base it on all of them.

Q. Well, let me ask you this:

From reading your report, you came to the conclusion in your report that Mr. Price sustained an injury when he was carrying a -- a casket at a funeral, didn't you?

A. It's my opinion that mechanism with the description of something popping and something having immediate excruciating pain is consistent with a major rotator cuff tear.

Q. Well, and that was something that was important for you in the formulation of your opinion in this case?

A. Sure, and then what followed afterward.

Q. Okay.

A. It wasn't just that one incident. It's

everything from that date onward.

There's a whole new set of symptoms and physical findings.

Q. Doctor --

A. Uh-huh.

Q. -- did you ask Mr. Price anything about that incident?

A. I didn't know anything.

What would I know about it?

Q. My only question to you is --

A. No.

Q. -- did you ask Mr. Price about it.

A. No.

I couldn't -- I -- there's no way I could have known about it.

The answer is no.

You're trying to ask me -- if you asked me on September 10th would a plane fly into the Trade Center in New York, how could I possibly know?

Q. Doctor, when were you retained in this case?

A. I have no idea.

I saw him -- when was it -- October 26th.

Q. Okay.

And when did you receive the medical records?

A. Oh, they didn't come for a couple days ago.

I didn't have those, and these aren't even the records of copies.

These are the originals.

Q. Let me ask you this:

Had you reviewed -- you claim you had not reviewed the medical records at the time that you conducted your examination of Mr. Price?

A. I didn't have records for three or four days later. The records only came --

Q. Okay.

A. -- the end of last week.

Q. Okay.

Now, Mr. Price did not report to you, did he, that he ever was involved in carrying a casket and sustained an injury, did he?

A. No, but --

Q. Okay.

A. But that would be like the most -- how would I possibly ask a question like that if I had no knowledge it?

Q. Forget about that for a second.

A. Uh-huh.

Q. I'm not asking you how you'd ask the question or not.

A. Uh-huh.

Q He -- that did not come up in the conversation, did it?

A. Nope.

Q. All right.

Now, I want you -- what I would like you to do, okay, is I would like you to assume for purposes of this question that he never sustained any injury or been carried a casket

I want you to assume that for purposes of this question.

A. I'll assume it.

Q And every other fact in this case is the same

Wouldn't you agree to me that in all probability he suffered a torn rotator cuff as a direct and proximate result of the accident?

MR KENNEALLY: Objection.

You can answer.

THE WITNESS: You've not asked a complete question because the assumption also has to be there's a change in character of his symptoms very dramatically after December 3, first at the massotherapy's visits and then with the doctor's visits.

So something happened between November 28th or

29th and December 3rd, 1998. There's very dramatic change in his physical findings.

So I can't just write that off that nothing happened if you tell me assuming that it didn't happen.

Something must have happened 'cause there is a big change in his doctor's records.

BY MR. BARTEK:

Q. Well, what I'm asking you to assume is that he's in the auto accident, all the other medical information you have is accurate, the incident with the casket didn't occur and I will even make it better for you.

You can assume that he did not sustain any other trauma to that shoulder, any other activity.

Wouldn't you agree with me in that circumstance to a reasonable degree of medical probability it's probable that his rotator cuff tear came from the underlying original accident?

MR. KENNEALLY: Objection.

THE WITNESS: No, I can't do that because there's such a dramatic change in his symptoms and physical findings after December 3 that pointed out that something 'occurred, some thing, event happened more than just the extra four days or

three days.

There's no other explanation for that.

That wouldn't be consistent. Your statement would not be consistent with the actual medical history with a lot of different records. Not just one visit, but a number of different visits.

BY MR. BARTEK:

Q. Well, your assumption is that something happened between November 28th and December 3rd.

A. Yes, that's -- something did happen.

Q. All right.

And what I'm going to ask you to assume for purposes of answering this question is I'm going to ask you to assume that nothing did happen during that period of time.

A. Then there's complete inconsistency in the record and the symptoms.

Q. Would that mean you do not have an opinion one way or another about how this rotator cuff tear would have occurred?

A. I would have to say that there is some inconsistency in the history that I was given because it doesn't make sense with the type of symptoms and physical findings that happened afterward.

It's almost like two different activities, two different scenarios.

One they're getting better, it's mostly spasm, all of a sudden December 2nd, can't move your shoulder, marked weakness around the shoulder, excruciating pain.

Something different happened in between that time.

Q. Is it your testimony as we sit here today that after the accident he was able to move his shoulder without difficulty?

A. He said he couldn't raise it, but there's nothing in the medical records other than the initial emergency room visit saying that he couldn't raise his shoulder.

Q. Well, let me ask you to assume hypothetically --

A. Uh-huh.

Q. -- that after the accident he's unable to raise his shoulder, he had pain in his shoulder and he couldn't use his shoulder.

A. Uh-huh.

Q. And I'll tell you something further.

You can assume that Dr. Sassano is going to testify to that effect.

A. The jury will weigh that evidence.
Q. And taking those assumptions into account --
A. Uh-huh.
Q. -- and further assuming that this incident, alleged incident with the casket did not occur, wouldn't you agree with me that in all probability that that rotator cuff tear occurred as a direct and proximate result of this accident?
MR. KENNEALLY: Objection.
THE WITNESS: I can't state that knowing -- if you ask me to assume this is an entirely different case, a different person under different circumstances, I can assume anything that you say is correct, but that's not the case in this particular instance nor is it consistent with the records that I reviewed.
BY MR. BARTEK:
Q. Well, Doctor, I think you know better than me that I have a right to ask you a hypothetical question --
A. Sure.
Q. -- and if the jury doesn't believe what the -- accept the facts in the hypothetical --
A. Uh-huh.
Q. -- then they won't accept the answer, but I

would appreciate it if you would answer my hypothetical question and then the jury will sort out the facts.

A. I will only answer the question that hypothetically if it's a different person under different circumstances the answer could be yes.

Q. Why don't you articulate for me what you think his symptoms were prior to November 28th as opposed to --

A. Sure.

Q. -- what you think his symptoms were after November 28th.

A. Again, I'm sure the jury can hold the records in front of them.

The most detailed records are from the physical therapist.

Dr. Sassano's records if you take a look at them each visit, there's one or two mention about his neck is hurting, trapezius and shoulder pain, and then -- then a lot of it has to do with diabetes, some other medical problem.

He wasn't very specific, but maybe he will testify to some of the things he didn't write down.

But the details are in the physical therapy records and which describe, as you pointed out, neck

pain, spasm, trapezius pain, shoulder pain.

Even better detailed records are what they call -- they call the massotherapy record where at that -- by the time you got into mid-November, which is about a month after this accident, almost all the symptoms were the neck and the trapezius, not the shoulder.

There is nothing in the record other than the first or second visit with the therapist which says he could do 150 degrees or 130 degrees. I forgot which of the numbers.

From then on there's not even a notation regarding range of motion of the shoulder.

So the records for the first six weeks after your accident clearly document there was a neck, trapezius, upper back and some shoulder symptoms, but the treatment was primarily concentrated on the neck, upper back and scapular area.

After December 3 there's a whole different change.

Then he had all the -- there's very little neck problems afterward.

Almost everything afterward is shoulder, rotator cuff, unable to raise it.

That's how I made my opinion and we can let

the jury decide on that.
Q. We will let the jury decide on that.
A. Uh-huh.
Q. And you are essentially relying on what you characterize as the massotherapy records and you differentiate them before November 28th and after November 28th?
A. That's part of it, yeah.
Q. Okay.
What else, if that's part of it?
I just --
A. I think I just told you.
Q. -- want to understand the whole thing.
A. I just told you.
Dr. Sassano's records --
Q. Okay.
A. -- physical therapist's records, the massotherapist's records.
Those are the only people that he was seeing at that time.
Q. Do you know Dr. Sassano?
A. No.
Q. Do you know Dr. Pinsky?
A. He's an orthopedist.
Q. Do you know him?

A. Probably have run -- run into him like that.

He's a -- he's in the Akron area out of Cuyahoga Falls.

I don't -- you know, I know people in Akron General, most of the M.Ds., but I don't -- I know who he is but I'm not really familiar with him.

Q. Okay.

Let me ask you this just so that there's no question about it:

You have no personal knowledge of whether or not Mr. Price sustained any trauma between November 28th and December 3 or any other time for that matter?

A. Right.

I have no personal knowledge of anything that happened to him from December 12, 1998 onward.

Most of his treating doctors don't have personal knowledge of him until they came to see him.

I do not have -- yeah, I agree with you.

I don't have personal knowledge.

Q. Okay.

Let me ask you this:

You do know that at least initially it's reported -- and I believe this is reported in Dr.

Sassano's records, too, but you've read them and I've read them.

Wouldn't you agree with me that -- and I assume this is in the history that was given to you by my client, that he had an inability to raise his arm above his shoulder from the time of the accident really almost to the present.

A. Well, he didn't tell me that.

He told me that he had some pain in his right shoulder for the first day, second day apparently was still there, but he made it sound like by the second day or when he got up the second day he couldn't raise his arm up.

Q. Okay.

A. He didn't tell me he couldn't do it for the first few days.

Q. How did he make it sound like that?

What words did he say to you that made it sound like that?

Because that's not what he --

A. He made it sound to me -- and he was pretty clear. I mean, don't -- make no mistake. I sound like George Bush, make no mistake, yeah.

He -- he was -- he -- he communicated well.

He had no difficulty telling me.

He was telling me -- I said "Did you go to anything right at the time of the accident?"

"No."

"Is it bothering you?"

"Yeah, my shoulder was bothering me then, was hurting then."

"What about the next day?"

"Yeah, it was bothering me then."

"Well, what, did you go to the hospital or doctor?"

"The second day, 48 hours I couldn't raise my arm up."

So he's talking about something happened by the second day. That's how he let me know.

He was very specific about it.

Q. Now, did you read -- I assume you read all of Dr. Sassano's records including his reports?

A. Yeah, I saw his record, yeah,

Q. And Dr. Sassano, do you feel he provided good medical care to Mr. Price?

A. I think he was very good. He was excellent.

He showed care, he showed thoroughness, treated a lot of his medical problems.

He has a nice -- I like his -- well, from one doctor to another, he has this nice -- not

sarcastic, but the way he says -- in last year when Mr. Price came in with almost a 300 blood sugar, he has a nice way of putting it about this guy is completely uncontrolled and, yet, he has -- he has a way of being very understanding and he -- he -- he just -- he knows that he just can't communicate with that particular problem with Mr. Price.

So he makes it very clear that he understood the history and he did understand the symptoms.

Q. You know, Doctor, I really enjoy talking to you, but I'd like to get home to my family tonight.

So would we speed things up if -- if I ask you a question like did he provide good medical care to Mr. Price, if I could just get --

A. Right, but it was more than just good medical.

I think we should tell that to the jury

It was -- you can get good medical care and not know anything about him, but it just shows that Dr. Sassano knew a lot about him, a lot about his personality and about his character.

Q. Okay.

Do you have any reason to doubt Dr. Sassano's ethics or character?

A. I just said I agree a'hundred percent.

He's better than --

Q. Okay.
A. -- the average person 'cause he showed interest in his character and his personality.
Q. And do you have any reason to doubt Dr. Sassano's word?
A. 1 don't know what you mean by word.
The records that he wrote?
Q. Well, his -- his truthfulness or veracity?
A. Never an issue to me, no.
Q. And I would ask you the same questions about Dr. Pinsky.
Do you think Dr. Pinsky provided good medical care to Mr. Price?
A. He did.
Unfortunately, he didn't get a good result, but he certainly did the thing that we normally would do, that type of surgery and the postoperative care.
Unfortunately, it didn't work out very well.
Q. And do you have any reason to doubt Dr. Pinsky's ethics or character?
A. No.
I don't think that's my position to make a point -- a statement of tha't.
That's something that you have to issue to

judges and juries, not to another doctor.

Q. Let me just ask you this:

I'd -- I'd like to give you a -- and I think that we got to mark these as No. 6.

(Whereupon, Plaintiff's Exhibit 6 was marked for purposes of identification.)

MR. BARTEK: These are the medical specials.

BY MR. BARTEK:

Q. Doctor, I'm going to hand what's been marked for purposes of identification as Plaintiff's Exhibit 6; and this is an itemization of bills with the supporting bills attached for the charges from Cuyahoga Falls General Hospital, Falls Emergency Room Physicians, Falls Family Practice, Cuyahoga Falls General Hospital physical therapy, Dr. Pinsky, Cuyahoga Falls General Hospital surgery and from the physical therapies, and I'd just like you to, if you'll take a moment to look at them, and I'm going to ask you to express an opinion as to whether or not the fees indicated on there are reasonable and customary and necessary for the conditions for which Mr. Price was treated.

MR. KENNEALLY: Objection.

Doctor, you can answer when you're ready.

THE WITNESS: Yeah, I have an opinion.

BY MR. BARTEK:

Q. And what's your opinion?

A. In my opinion, all charges up to November 21, 1998 were exclusively totally related to the October 12, 1998 accident.

The charges from December 3, 1998 onward were partially related to the October 12, 1998 accident.

Q. Okay.

I -- I appreciate that.

When you say "partially" -- well, strike that,

And the other part of my question is are those bills reasonable and customary for the services that were performed.

A. They're for a combination of office visits, hospital admission and surgery.

They're customary for those particular procedures.

Q. Okay.

And it -- regardless of any -- any considerations of proximate cause for the conditions, the health conditions that Mr. Price was

experiencing, would you agree that those services were necessary?

MR. KENNEALLY: Objection.

THE WITNESS: Some of them were not in my field so I don't know if I can answer that.

Some of them were different therapy modalities and things like that, but these charges were for the first six-weeks treatment of Mr. Price's neck, back and to some degree his shoulder.

Treatment after December 3 were exclusively for his right shoulder and I think they're reasonable.

I don't know that I agree entirely all with them, but I have no right to do so 'cause they're not in my field.

BY MR. BARTEK:

Q. The physical therapy ones?

A. Yeah, physical therapy, massotherapy, certain rehab types of things, some of the medical treatment.

Look at Dr. Sassano's records. Some of those visits were primarily for medical problems.

Let's go -- we can go over each visit, because I did. I've gone over each visit.

You're asking the jury to say that each one of the visits are only for the treatment that he was getting because of the car accident.

If you look at each individual record -- and they're handwritten. You got to look at it very carefully -- many of those records are for medical problems. Not only for the neck or back, but for medical problems.

MR. BARTEK: Let's mark that as 2.

(Whereupon, Plaintiff's Exhibit 2 was marked for purposes of identification.)

(Whereupon, a discussion was held off the record.)

BY MR. BARTEK:

Q. My question to you, is there anything in Dr. Sassano's report of May 19th, 2000 which we've marked for purposes of identification as Plaintiff's Exhibit 2 with which you take exception?

A. No.

I mean, Dr. Sassano, the one sentence "He still has a minor disability to his shoulder secondary to the accident," I don't know what that word minor means.

It's certainly -- I don't know -- I don't know if I disagree with that.

Q. Okay.

Otherwise you do not take exception to it?

A. No, no --

Q. Okay.

A. -- but it's pretty general terms.

(Whereupon, Plaintiff's Exhibit 3 was marked for purposes of identification.)

MR. BARTEK: (Handing.)

MR. KENNEALLY: Go ahead.

BY MR. BARTEK:

Q. Is there anything -- and I'll give you a second to read that.

A. Okay.

I see it, uh-huh.

Q. All right.

Handing you what's been marked for purposes of identification as Plaintiff's Exhibit 3, which is Dr. Sassano's report of November 16th, 2000, is there anything in that report with which you take exception?

A. I don't know if I can take exception.

Dr. Sassano made a note that the

massotherapist's record that Mr. Price had lifted a casket as a pallbearer, he said "This was a mistake. In no way was Carl ever a participant as a pallbearer during this funeral due to his neck and shoulder."

Q. Did you have this record when you did your review --

A. No.

Q. -- and wrote your report?

A. No.

Q. You didn't have this record before you wrote your report?

A. I don't remember this one, no,

Q. Okay. Thanks.

Let me ask you this, because I -- this is something you brought up and I just want to -- to highlight this.

Dr. Sassano was -- was the family doctor for Mr. Price?

A. Correct.

Q. And there were portions of his record that you reviewed which involved medical conditions and other issues that were in no way related or relevant to whether or not he sustained the nature and extent of the injury that he sustained to his shoulder in the

auto accident --

A. Correct.

Q. -- would that be a fair statement?

A. (Nodding up and down.)

Q. And those portions of the records, for example, you mentioned his diabetes, but any records -- portions of the record relating to things like diabetes and such, they would not be really relevant one way or another to a consideration as to whether or not he injured his -- his shoulder in the accident or not?

A. That's probably true.

These records, Dr. Sassano's records made a lot of reference to the left shoulder, but a little bit later date, later in '99, and there's almost always a mention of the low back in almost all of those.

So there's other things that he treated during the time that he attended him.

(Whereupon, Plaintiff's Exhibits 4 and 5 were marked for purposes of identification.)

BY MR. BARTEK:

Q. These are -- these ar'e excerpts from Dr. Pinsky's records.

And is the one you're looking at 4 or is that -- is that --

A. 5.

Q. 5?

A. Uh-huh.

Q. Okay.

A. You want me to look at 4 first?

Q. Well, you can -- no, you can look at 5 first. That's fine.

A. Okay.

Q. Is there anything in there -- my question to you is the same.

Is there anything in his record that you take exception with?

A. No, but actually this was a year and a half ago, the No. 5 dated August 9, 2000 and actually had better movement then than he has now.

Q. Okay.

A. So I don't -- I can't take exception. It's a --

Q. Okay.

A. This one is November 8.

Q. All right.

And the next one, and that is Exhibit No. 4, and is there anything --

MR. KENNEALLY: I believe it's 4.

THE WITNESS: This is 4, yeah.

BY MR. BARTEK:

Q. Is there anything in there you take exception with?

That is his note of November 8th, 2000 or his letter to Mr. Williger.

A. No.

It is a partial correct term.

The bottom line is that Dr. Pinsky diagnosed a right shoulder rotator cuff tear as a result of the October 12, 1998 accident without reference to the details that happened near the end of November-beginning of December so his -- his opinion has to be addressed by the jury.

Q. Okay.

And your view on that I think that you've already expressed to me in detail.

A. I don't think it's just one injury. It isn't just a car accident.

Something happened eight, seven weeks later and that had a very serious impact on the recovery and then the need for surgery.

Q. And I guess what you're telling me, in looking at his note with respect to the disability rating, if anything, at this point the disability rating would be greater?

A. No.

I think it's less because you have to rate it -- he's rating it -- I don't think he's -- he's rating it on impairment, but I don't think that's based on the fourth edition of the Guides for the assessment of physical impairment because it wouldn't be that high

He's just not using the standard guides for doing it

We can make a statement on his own for certain percentages, but that's not based on what we now have to do as doctors in the required assessment of impairment.

Q. You yourself did not do an impairment -- disability impairment assessment under the guidelines?

A Under the federal guides for assessment --

Q Or any guidelines --

A -- on physical impairments?

Q. -- for that matter.

A. Well, that's the only guide that the State --

Q. All right.
A. -- of Ohio, the federal government and the local municipalities will allow to be used now.
No.
Q. Did you find that Mr. Price had any weakened muscles when you conducted your physical exam?
A. Actually he had surprisingly good strength in his rotator cuff which is a compliment to Dr. Pinsky because the rotator cuff muscles are intact.
You can test them and that one of the concerns might have been that the rotator cuff tore again, but his -- his rotator cuff is intact.
He has a little bit of weakness around the right deltoid 'cause he hasn't been exercising, but other than that I don't think there's any big weakness
Q. Okay.
You feel there's weakness in his right arm and that is pretty much the only physical finding; is that what you're telling me?
A. Well, it's hard to tell about weakness when you get a man that age, got so much other problems, got arthritis and a lot of other things.
I can't tell.
He doesn't have a discernible difference in

weakness from one side to the other.

Q. Did you tell him in words or substance when he was here that he did not have strength, the same strength in his right arm that a typical person his age would have?

A. The right arm was weaker than the left, yes, I told him that.

Q. Okay.

Did you -- do you recall making any other comments to him regarding shortcomings that he had as a result of his condition?

A. Be specific.

I don't know what you mean.

Q. Well, did he have -- did you find that he had restrictions on his range of motion as an example?

A. Oh, yes, absolutely.

Q. Okay.

A. I showed him that he could only go up about halfway which is 95, a hundred degrees.

Oh, absolutely.

Q. Okay.

Do you have any information on what his range of motion was at any time between the time the accident occurred and your ,high-water date of either November 28th or December 3rd of 1998, whichever one

you want to pick?
A. There's some original description of 120 to 130 degrees of elevation when he started therapy, but after that there's no -- there's not any mention.
Q. Okay.
So you don't know from any documentation in the records whether there was any change in that?
A. Well, that's not true.
The documents keep saying improvement, improvement.
He starts at 120 and they say improvement.
I assume that that's improvement even though the therapist did not write down a number.
Q. Okay.
In any event, there isn't any documentation in those records as to the range of motion?
A. Correct.
Q. We can agree on that?
A. Correct.
Q. You wrote in your report on page 7 that the left shoulder was noteworthy and I just wonder why you wrote that.
A. I'm sorry?
Q. If you look at page 7 of your report -- I can

dig out the report here, but you made a reference to the left shoulder and I think that we've agreed -- is it page 7?

MR. KENNEALLY: Yeah, it's the second to last full paragraph.

THE WITNESS: Uh-huh.

BY MR. BARTEK:

Q. You said "It's noteworthy that he also had pain, stiffness and weaknesses in his left shoulder."

A. Right.

It's almost the same as the right shoulder.

I didn't want to make it sound like the right shoulder was some isolated thing in an otherwise normal person.

The left shoulder was very close to having the same impairment as the other. I think it was only 5 or 10 degrees difference in all motion of the left shoulder compared to the right.

Q. Okay.

So at least at the time that you did your exam it would be fair to characterize -- or it would be fair to say that both shoulders had impairment, the right slightly more than the left?

A. I think I agree with that.

Q. Okay.

You gave me your CV and I took a quick glance at it. I did not examine it in any detail, but I -- you know, I saw when I took a quick glance at it, that certainly had provided information about your background, training, education and experience.

Is there any information in your -- in your background that is relevant to your qualifications that you intend to express at your trial deposition next week that is not contained in your CV?

And I'm simply asking that 'cause I don't want to be taken by surprise.

A. I don't know what you mean.

I don't think so.

Q. Okay.

A. I do general --

Q. Other words, whatever your --

A. -- general orthopedics, do spine work, joint replacement, for 20-something years I did emergency room work and I've done a lot of shoulder surgery, ankle surgery, knee surgery, but even more so hip and back surgery.

So, you know, I've done general -- general orthopedics.

Q. Okay.

Well, let's -- do you still do surgery, Doctor?

A. No.

I stopped, I stopped in January.

Q. Okay.

And let's talk about up until January.

What type of surgeries had you performed, say, in the ten years preceding the time that you stopped doing surgery?

A. Probably the two biggest areas were hip replacement, hip surgery, hip reconstruction and shoulder surgery, especially rotator cuff, shoulder replacements, joint replacements, you know, chronic arthritis conditions.

Just seemed to have an awful lot of patients referred for shoulder problems.

Before that I was doing a lot of spine with the hip and just decided the spine was too time-consuming. It would take a whole afternoon to do one case so I really got more referrals into shoulder and hip problems.

Q. When did that change from an emphasis on spines to shoulders and hips occur?

A. In the late 1980s, early '90s.

Q. Okay.

So it would be fair to say from the late '80s or early '90s until you quit doing surgery this past January that the main focus of any surgery you would have done would have been hips and shoulders and not --

A. Well, I did general surgery, but I stopped covering the emergency room probably in '85.

I didn't have to take emergency room call any more. I had two young doctors come on call so I didn't have to call the emergency room so I didn't do a lot of fracture work after that, but probably after that I started doing a lot more spine work and then I got -- it became too time-consuming and we got another -- two other doctors came on the staff that did spine work exclusively so I could refer that and then I would end up with a lot of problems that would happen in older people and by that time I was getting older so you get patients your age, you get people that want their creaky joints replaced and their torn rotator cuffs put together and things like that.

Did a lot of things like that.

Q. Would it be -- would it be fair to say that in the -- in 1999 or 2000 that if you were

characterizing your areas of special interest for the preceding 10 years, that it would either be hip replacement or back?

A. The ten years before?

Q. Yes.

A. Actually the numbers of cases, a lot of upper extremity surgery those last ten years --

Q. Okay.

A. -- but not -- there weren't big cases.

So by far the biggest number were called carpal tunnel, trigger fingers, tendinitis cases, tennis elbow type of cases, shoulder injuries, rotator cuff.

The upper extremity probably the biggest number.

The biggest cases as far as time consumption would be hip surgery, spine surgery, things of that sort.

Q. How many -- how many rotator cuff repairs would you do in an average month?

A. Oh, we were seeing two or three a day sometimes twice a week.

Q Okay.

So that would be - two or three a day twice a week would be -- over the course of a year --

A. Yeah.
Q. -- you probably work about --
A. Uh-huh.
Q. -- 48, 50 weeks a year?
A. Well, I only got -- I got it down to surgery last ten years, I only did it on Monday.

Monday was an open day so I could schedule surgery and Thursday morning.

But if I get a case that couldn't be scheduled otherwise, I see patients on Tuesday morning and after 1:00 o'clock in the afternoon would do surgery in the afternoon so -- but it didn't -- it didn't work out -- it's not going to come out like an accountant adds up and multiplies it by 52 'cause some weeks I didn't have any, some weeks I had one, some weeks I had three.

It's a case that -- but I was seeing a number of cases. I had a fairly busy schedule.
Q. Let me ask you this:

And this is a global question, but I'm hoping it will save us some time.

Other than areas that we already discussed, do you intend to express any opinions in this case other than what we've discussed already?
A. I can't answer that any more than I could have

answered the question about the airplane crashing into the building on September 10th.

I don't know.

If you ask me the question, I'll answer it.

Q. I understand that, but you were retained in this case and I guess the only thing I'm trying to find out -- I know if I ask you a question, you're going to answer it.

A. Correct.

Q. I'm just trying to find out if there is some area on -- on your direct examination on behalf of the defense that you're intending to express an opinion that I have not asked you about that you're aware of and I --

A. Impossible question --

Q. -- it's only because I want --

A. -- to answer 'cause I'm not being asked that right now.

Would you want to stop here and ask, you know, Mr. Kenneally to ask me questions? I'll answer them.

I don't know.

Q. Well, let me -- let me go back and ask you this:

When you were retained, what were you asked to

do?

A. I don't think I ever talked to anybody.

This one just sort of came -- I just walked in one day and the patient was here.

My general thing is to do a complete history and physical, review records and express an opinion regarding anything that happened in this case, be it causation, be it disability, whatever comes up in every case.

Q. Does anybody tell you in advance what they want you to examine like right shoulder or why they want you to examine it or what -- they want you --

A. No, they know me better.

I would throw them out tomorrow, you know.

Somebody comes here, they're -- they're a person that I examined everything. I ask every question.

That's why I asked Mr. Price about "What's wrong with your back" and "How come your left shoulder won't go up? How come your ankle is thick like that" and things like that.

So they know me better. I'm -- they'd never get past the front door.

Q. Okay.

Well, maybe I'll be taken by surprise.

What is your -- what is your experience or history for doing medical/legal consultations?

A. 1 see patients for treatment Tuesday, Wednesday, Thursday, Friday, Saturday morning and the Saturday morning's now ending up lasting till 2:00 o'clock.

But on Tuesday morning at 10:30 or 10:00 o'clock and occasionally if that doesn't do it, it will come out on a Wednesday; and occasionally if everything is canceled those two days they'll fit it in another time we'll see one case where we view what we call IME, be it for a workers' compensation problem or a case like we are talking about or -- or some other thing so one a -- once a week.

As it's turned out, we're now getting into the 40th week already of the year and I've only gotten to about 20 people that I've seen because the other 20, either they cancelled or they're not here or things like that.

They're supposed to come out once a week.

Versus the number of people I see, maybe 70, 60 or 70 patients a week, I see one for IME.

Q. Okay.

So I guess what you're telling me is that one a week -- how many weeks a year do you work; 48,

50 -- you would expect normally to do 48 or 50 a year, but this year there have been some cancellations?

A. There always are.

Q. How --

A. That's the nature of medical/legal work.

Q. How long have you been doing it?

A. Seen a few people probably starting in '95, '94, '90 -- I can't. I don't remember,

There were just scattered people at that time, but I was doing more surgery, see, and the difference between your time consumption in surgery and the time consumption it takes to go over that entire record, 'cause I was doing very little while I was doing a lot of surgery, so it's kind of inverse proportion to how much surgery I was doing.

Q. Did you provide any medical care, treatment or comfort to Mr. Price?

A. No.

Q. Were you asked to do that?

A. No.

It wouldn't be an IME.

Q. And you were retained in this case by whom?

A. I don't know.

Mr. Kenneally?

I don't know.
Q. Okay.
A. 1 guess.
Q. Most of the --
A. Yeah.
Q. You call them IMEs, but you're actually retained by the defense in this case, are you not?
A. Not necessarily.
This one --
MR. KENNEALLY: Objection.
THE WITNESS: -- yeah, but not necessarily.
MR. BARTEK: Okay
BY MR. BARTEK:
Q. Well, are you able to break down the number of cases that you're retained by the defense percentagewise as opposed to the plaintiff?
A. Yeah, 70 to 1 plaintiff.
Q. You do 70 to 1 plaintiff?
A. 1 see 70 people a week that I treat
Q. Okay.
A. I have one person that I do an independent exam with no intention to treat.
That to me comes out '70 to 1.
Q. Okay.

In other words, the patients that you treat, you view that as the plaintiff's side?
A. No.
That's just a treatment.
I don't know if they have lawyers or not.
Q. Okay.
A. That's not relevant --
Q. Well --
A. -- to me.
Q. -- here's --
A. They're here for treatment.
Q. Okay.
Here's my question to you.
A. Uh-huh.
Q. Of the -- of the medical/legal examinations that you perform --
A. Uh-huh.
Q. -- are you able to tell me what percentage are for defense interests as opposed to plaintiffs' interests?
A. No, because I don't know in many cases patients that I treat if they have retained attorneys.
I don't know that.
I can't answer --

Q. Well --
A. -- the question.
Q. -- let's set aside patients -- patients that you treat I'm setting aside, okay?
A. That's the 70 a week, yes.
Q. Okay. Right.
And I'm asking you about the -- you're telling me you do one a week of these --
A. Independent.
Q. -- you call them independent medical exams.
A. Yes.
Q. And what I'm asking you about those independent medical exams -- set aside your patients for a moment because Mr. Price wasn't your patient.
I'm trying to find out what percentage of those 50 or so exams that you do a year are plaintiffs' interests as opposed to defense interests.
A. Good point.
I would say that two-thirds of them are defense and a third of them are what we call workers' compensation plaintiff's case.
M/L, we call it M/L for workers' comp.
They're for an opinion for a person referred by a plaintiff attorney to give an opinion.

A lot has to do with physical impairment, percentages, things like that, but, you know, I may see -- I don't know -- every other week one of those, something of that sort.

The others are for defense attorneys.

Q. Okay.

Workers' comp you may do some plaintiff?

A. Uh-huh.

Q. And personal injury cases --

A. Uh-huh.

Q. -- is essentially defense attorneys?

A. No.

The personal injury cases means anybody that I treat.

Q. We're going to set aside the people that you treat for a moment.

A. Uh-huh.

Q. Okay.

And I'm just talking about independent -- what you call independent medical examinations.

A. Yes.

Q. Okay.

And the independent medical examinations, setting aside the workers' 'comp --

A. Uh-huh.

Q. -- then the exams you do are essentially for the defense?
A. Right.
Q. Okay.
Do you know how much money you make a year doing them?
A. No.
MR. KENNEALLY: Objection.
BY MR. BARTEK:
Q. I take it you charge for them?
A. Yes, I charge 250 an hour for the time I spend away from my practice.
Q. Okay.
And I'm not --
A. Uh-huh.
Q. -- giving you a hard time about it.
A. Uh-huh.
Q. I'm just -- I'm just asking.
Does your office have records on how much you make a year doing these exams?
A. No, we don't keep that unless you tell me who it is.
If you want to tell me exactly who the person is and you get medical release for it, I'll find out how much was charged.

There's no way I could find out. We don't have the -- the system that keeps track of anything by any virtual thing; only by alphabetical -- name of the patient.

Q. Well, what you're telling me is you are not able to articulate how much money you make a year doing your exams and you say you charge 250 dollars an hour?

A. Correct.

Q. Do you have an idea how much money you would make on a typical examination?

A. Could be three hours, could be four hours, could be two hours.

Could be 500 to a thousand dollars.

Q. Okay.

So it would be fair to say that if you do 40 to 50 -- whatever exams you do a year --

A. Uh-huh.

Q. That does not include -- does that include the time for preparing reports?

A. Sure.

Q. Okay.

Does it include your time for reviewing the records?

A. Of course.

Q. Does it include your time for giving testimony?
A. No, that's a separate charge.
Q. Okay.
How much do you charge for giving testimony?
A. 250 an hour.
Q. Okay.
Would it be fair to say that you earn in excess of 50,000 dollars a year doing medical/legal work for people other than your patients?
MR. KENNEALLY: Objection.
THE WITNESS: I doubt it, but I couldn't tell you that.
If that were the case, it would -- it would pay for my insurance, it would pay for the 7000 a month for rent, so that would pay for what, three months rent, for my insurance.
Boy, that won't be very much.
I'd hope I could make more than that.
BY MR. BARTEK:
Q. You hope you could make more than that?
A. Yeah.
I wish I did, but I don't.
Q. Okay.
It's a -- it's a service that you perform for

which you're compensated; am I right?

A. That is correct.

Q. All right.

And you're basically compensated by the people that retain you?

A. If it is a particular case.

I mean, anybody I treat -- I don't know how many attorneys they have -- they are responsible for their bill and for their services.

If I am retained by the specific IME type of cases just to give an evaluation -- oh, in those also are included -- I get them out of General Motors and Ford. That's an IM -- those are IMEs to evaluate an individual's ability to work at certain jobs.

I'm not to treat them. They're just here to -- my -- my professional ability to provide them -- the company, to provide them with a -- an assessment can they work in what jobs they have.

That's an IME, too, by the way. I forgot.

And another type of IME I do are a second opinion problem.

Somebody's told that they need foot surgery or knee surgery, they have to have a second opinion before they're cleared to have their case approved

and I do those also.

Those are not for treatment either.

Q. If I wanted you as a plaintiff's attorney to have you do an evaluation, you'd do that?

A. Sure, but I have one thing that I insist on, that I have the right to treat that patient.

If you say "No, I don't want you to treat it," then go somewhere else.

Anybody that comes in that has an ongoing problem, I have a right to have -- to approve over treatment I got.

If you don't want me to do that, then -- then go somewhere else.

Q. Okay.

For the plaintiffs, if they're willing to have you as a treating physician --

A. Right.

I -- you don't to have accept my treatment, but I have the right --

Q. I --

A. -- to accept the patient as a treating doctor.

Q. Right, and I'm -- and I'm not quarrelling with that.

A. Uh-huh.

Q. I'm just -- just understanding it --

A. Uh-huh.
Q. -- that if it's -- if it's the defense you will -- you will provide an independent -- you will provide what you call an independent medical evaluation or a defense medical evaluation without treating the patient, but if it's the plaintiff, then you -- that person has to become your patient.
MR. KENNEALLY: Objection.
THE WITNESS: No.
I have the right to have that patient one of my patients for treatment.
MR. BARTEK: Right.
THE WITNESS: They don't have to accept anything, but if -- if somebody who is an attorney and represents that person says "No, I don't want him to have any part of a treatment," then go somewhere else.
MR. BARTEK: Right.
BY MR. BARTEK:
Q. In other words, you only do --
A. Right.
I have to have -- I have to have the open-ended possibility that I could be their treating doctor.
Q. Okay.

In other words, if -- if the plaintiff sends them to you --

A. Uh-huh.

Q. -- you'll say that "I will do the exam if their -- if I can -- if I'm going to become the doctor."

A. I will have to able to state under oath that that is my patient.

Q. Okay.

And --

A. Even though they don't want anything, "Thank you, Doctor. Thank you for opinion," they can walk out, but I have the right under oath to say that is my patient.

Q. But you do not insist on having the right under oath when you do a defense medical exam --

A. That's not necessary.

Q. -- to say Carl Price is your patient?

A. No, no.

I wouldn't break the ethics.

Medical ethics are such -- I taught this at the medical school for too long -- if you're asked to do only an opinion, you are in no way to assume treatment responsibilities.'

That is what they call an IME.

Be it for General Motors or a second opinion or for a defense attorney, it doesn't make any difference, or workers' compensation problem like that.

Those are treatments of -- those are cases without treatment.

MR. BARTEK: I'm just going to take a second to talk to Amanda and then I think we're going to be done.

MR. KENNEALLY: That's fine.

(Thereupon, a recess was taken.)

BY MR. BARTEK:

Q. Doctor, I just have a few more questions for you.

In terms of the amount of time that you spent examining Mr. Price's shoulder -

A. Uh-huh.

Q. -- would it be fair to say that at most -- his right shoulder specifically, would it be fair to say that at most you spent approximately two minutes examining his right shoulder?

A. No.

I spend time examining his shoulder as soon as I walked in the room.

I watched how he held his shoulder, I watched

how he turned and then when he got up and how he moved his arm out with no difficulty.

My examination started the second I walked in there and then I asked him to do other things later on and I did the examination that was needed to make a complete diagnosis.

Q. Well, let's -- let's set aside your visual observations when he was in the room with you and --

A. But that was a very important part of the total exam.

Q. And -- and I'm sure that you will emphasize that in your testimony.

A. I will.

Q. The time that you actually spent doing your physical examination of his right shoulder.

A. Five to ten minutes.

Q. Five to ten minutes?

A. Uh-huh.

Q. Okay.

A. I came back to it, I looked at it, I watched him as he turned the other way, I watched him as he bent down and moved his arm down.

For instance, what I did, I said "Well, maybe he can't raise his arm like'that. I'm gonna have him bed forward and see if he can get over to touch

his toes," and when he did that, see, I'm watching his shoulder move.

When I had him turn his neck I could watch him how he affected his shoulder when he did that.

So I did things right along. We don't as doctors just make little compartments of that two minutes here, three minutes here, four minutes here.

It's part of the entire picture which I can do.

Q. In comparison to Dr. Sassano --

A. Uh-huh.

Q. -- and Dr. Pinsky --

A. Uh-huh.

Q. -- would you agree with me that their opportunity to observe this patient on an ongoing basis is far superior to yours?

A. No.

MR. KENNEALLY: Objection.

THE WITNESS: It is more frequent, but I have something they don't have.

I have every record that he has ever had for treatment since the 1960s.

I don't hear that Dr. Sassano has records from 1960, I didn't read that Dr. Pinsky saw all of the physical therapy notes, including the

massotherapist's record of the lifting incident when the shoulder popped,

There are a lot of things I have that they don't have.

They have the opportunity of frequency of seeing him, I have the opportunity of many records that they do not have.

BY MR. BARTEK:

Q. With respect to the injury to his right shoulder --

A. Uh-huh.

Q. -- and the injury to his neck which are the ones I guess that we're saying are at issue in this case, was there anything in those records going back to 1960 that were relevant to those injuries before October 12th of 1998?

A. Not to the shoulder, no --

Q. Okay.

A. -- but to the general health --

Q. Okay.

A. -- which is important in evaluating this, uh-huh.

Q. Did he tell you that he -- that he can't raise his shoulder very high and that he can't even cast a fishing rod?

A. Uh-huh.
Q. Okay.
A. He can t -- by the way, we talked about throwing, he couldn't -- he can't throw anymore, he talked about things around his house that he -- like little housework and lawn stuff and things like that he can't do anymore.
Oh, he certainly did.
Q. And do you -- do you agree that in all probability that the things that you discussed with him, that he really can't do that stuff?
A. Yeah, I think the shoulder is a contributor to it.
It's certainly not the only reason that he can't do those things, but it's a contributor, sure.
Q. Okay.
And I -- I think you already indicated to this, that he had a loss of power in his right bicep?
A. A little bit, uh-huh.
Q. Okay.
And did he also have a loss of -- of power in his right upper back muscle?
A. Deltoid.
Q. Deltoid?

A. Yeah.
Q. And did he -- did you push against him, push against his palm -- your palm against his elbow and hand?
A. Right.
That's when I found out the rotator cuff was intact.
Dr. Pinsky was a good surgeon. He did keep the shoulder and he put the rotator cuff together.
That's how we test rotator cuff integrity.
Q. Did you tell him in words or substance that he had less strength on pushing than a guy his size should have?
A. Yeah, but that would have nothing to do with the rotator cuff.
I don't know why that was -- pushing inward has nothing to do rotator cuff.
You can totally tear out it and you still can push. He just didn't do it very hard.
Q. Did you tell him in words or substance that additional therapy probably would never do him much?
A. Uh-huh.
That's because he told me he has arthritis.
I told him right afte'r he said he had arthritis. I said "You're probably even going to

waste time --"

Q. Okay.

A. "-- on therapy."

I agree.

Q. And the arthritis that he has is what called earlier symptomatic arthritis?

A. It can be.

I don't know.

I don't call it that.

I don't know what the word means --

Q. All right.

A. -- but that's what lawyers call it.

Q. You don't know what the word symptomatic arthritis --

A. No, no.

Q. -- means?

A. We don't call it that in the shoulder.

It's much too complex for this and his problem is combination of scarring, he has arthritis and probably is under rehab, whatever the word is, just never got it all the way back.

Q. Did you tell him in words or substance to be careful how he used his right arm?

A. Sure.

Q. Okay.

A. Not supposed to do that.

I'm not a treating doctor, but I'm still a doctor. I --

Q. That's -- that's --

A. -- did volunteer that.

Q. That's -- that's okay.

A. Uh-huh.

Q. And that he'll have to careful the rest of his life?

A. Well, he got so many medical and physical problems, yeah he'll have to be careful --

Q. Okay.

A. -- and the shoulder is one of the problems that he's going to have to be careful about, sure.

Q. Doctor, I don't have any other questions.

I'm going to -- it doesn't sound like -- you know, I don't know what the response will be, but I'm going to hand you a subpoena that requests information regarding your financial remuneration --

A. Uh-huh.

Q. -- for doing --

A. Uh-huh.

Q. -- medical examinations --

A. Yeah, we don't have t'hem, though --

Q. -- for your depositions.

A. -- you know?
Q. And I will just ask you for a response before we do your trial deposition and we'll go from there.
A. I'll say I don't have it.
I could tell you right now we don't keep it.
MR. KENNEALLY: We'll get you some type of response.
THE WITNESS: All right.
MR. BARTEK: Okay.
MR. BARTEK: I -- I actually have an extra copy for you too.
MR. KENNEALLY: Okay.
MR. BARTEK: (Handing.)
MR. KENNEALLY: Thank you.
MR. BARTEK: Sure.
And what do you want to do about signature?
MR. KENNEALLY: Well, you're aware of waiver of signature.
THE WITNESS: I think I will waive signature.
MR. KENNEALLY: Okay.
(Thereupon, the deposition was concluded at 8:23 o'clock p.m.)
- - -

C E R T I F I C A T E

STATE OF OHIO,)
) SS:
COUNTY OF SUMMIT,)

I, Michael Christy, a Stenographic Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, ROBERT D. ZAAS, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to Stenotypy in the presence of said witness, afterwards prepared and produced by means of computer-aided transcription and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

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

I do further certify that I am not a relative, counsel or attorney of any party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio, on this 10th day of November, 2001.

Michael Christy, Stenographic Reporter and Notary Public in and for the State of Ohio.

My commission expires February 12, 2002.

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