

1                                    IN THE COURT OF COMMON PLEAS

2                                    SUMMIT COUNTY, OHIO

3                    CARL PRICE,

4                                    Plaintiff,

5                                    -vs-

JUDGE BOND

CASE NO. CV2000094348

6                    SHERYL M. REZAC,

7                                    Defendant.

8                                    - - - -

9                                    Videotape deposition of ROBERT D. ZAAS,  
10                    M.D., taken as if upon cross-examination before  
11                    Rachel M. Gentile, a Notary Public within and for  
12                    the State of Ohio, at the offices of Robert D.  
13                    Zaas, M.D., 6803 Mayfield Road, Suite 314,  
14                    Cleveland, Ohio, at 6:00 p.m. on Wednesday,  
15                    November 14, 2001, pursuant to notice and/or  
16                    stipulations of counsel, on behalf of the  
17                    Defendant in this cause.

18                                    - - - -

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7           On behalf of the Plaintiff;

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13          On behalf of the Plaintiff;

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20          On behalf of the Defendant.

21           ALSO PRESENT:

22           John Wiesen, Legal Video Operator.  
23  
24  
25

1 VIDEO OPERATOR: We're on the  
2 record.

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

9 DIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.  
10 BY MR. KENNEALLY:

11 Q. Doctor, would you please introduce yourself to  
12 the members of the court and jury?

13 A. My name is Dr. Robert David Zaas. I spell my  
14 last name Z-a-a-s. I'm a physician, an MD. I  
15 specialize in orthopedic surgery.

16 Q. Dr. Zaas, where do you maintain your office,  
17 practice?

18 A. We're at the Hillcrest Medical Building, 6803  
19 Mayfield Road in Mayfield Heights, Ohio. If this  
20 is out of a county, we're in the kind of far  
21 eastern corner of Cuyahoga County, kind of right  
22 off of 271. Hillcrest Hospital is part of the  
23 Cleveland Clinic Health System.

24 Q. You indicated that you are, you specialize in the  
25 branch of medicine known as orthopedic surgery.

1           Would you tell the members of the court and jury  
2           what orthopedic surgery embraces as a specialty?

3   A.   Orthopedic surgery is a subspecialty that deals  
4           with the skeletal system, that means our bones  
5           and our joints, but also the supporting  
6           structures such as muscles, ligaments, tendons,  
7           in the case of the spine, discs, nerves and  
8           circulation.

9           We orthopedic surgeons are trained to do  
10          surgery on the spine, and the extremities, but  
11          fortunately most of the patients that we treat  
12          don't need surgery and we can treat them  
13          nonoperatively.

14        Q.   In order to become an orthopedic surgeon I assume  
15          you had to receive medical training. Where did  
16          you receive your medical training to become an  
17          orthopedic surgeon?

18   A.   Well, after I graduated college at Western  
19          Reserve University, now called Case Western  
20          Reserve, I graduated from there with a Bachelor  
21          of Science degree in 1953. I then went on to  
22          medical school, to the University of Chicago  
23          School of Medicine. That's a four year course,  
24          which I completed in 1957. I became an MD at  
25          that time.

1           After medical school I had six years of  
2           postgraduate training at Mount Sinai Medical  
3           Center, Akron General Hospital, University  
4           Hospital and Indiana University at Indianapolis,  
5           completing the final training leading me to  
6           orthopedic surgery. I finally finished all my  
7           training in 1965.

8       Q.   After completing your postgraduate training,  
9           studies and training, Doctor, did you then engage  
10          in the full time practice of your medical  
11          specialty?

12      A.   Well, I was interrupted because of the early  
13          Vietnam War. I spent two years of active duty  
14          with the United States Navy. I was surgeon for  
15          the 7th Fleet, stationed on an aircraft carrier.  
16          I did general surgery, but mostly orthopedic  
17          surgery.

18      Q.   Doctor, are you currently on the staff of any  
19          hospitals in the greater Cleveland area?

20      A.   Yeah. I'm on the staff at Hillcrest Hospital,  
21          but as of January of this year I do not admit  
22          patients for surgery.

23      Q.   Where were you formerly on the staff before  
24          January of this year?

25      A.   Well, from 1965 until the, I think right at the

1           end of 1999, early 2000, Mount Sinai Medical  
2           Center finally closed, but I spent 35 years of  
3           doing surgery, staff, full time active staff  
4           measure, member, part of the teaching faculty of  
5           Mount Sinai Medical Center, which in a way was  
6           connected with the University Hospital or  
7           University Medical training programs and I did  
8           pretty much all of my surgery through the Mount  
9           Sinai System.

10       Q.   The surgery that you did at Mount Sinai for that  
11           30 plus years, did that include from time to time  
12           rotator cuff surgery?

13       A.   Oh, yeah, for sure. Over a long period of time,  
14           for the first 20 years much of my time was spent  
15           covering the emergency room so I did a lot of  
16           trauma work. Trauma work for the jury's sake are  
17           injury cases, broken bones, torn tendons, things  
18           of that sort.

19           Then I went through a period of time where I  
20           did mostly spine and total joint surgery,  
21           particularly hip surgery, and in the last eight  
22           to ten years I did more outpatient surgery  
23           because we did have a wonderful outpatient  
24           facility at the Mount Sinai Suburban Medical  
25           Center on Cedar Road in Beachwood and we could

1 do -- I was doing an awful lot of hand, elbow,  
2 shoulder surgery at that time. People could go  
3 home. They could stay overnight there or at  
4 least for a long period of time. So the first  
5 part of my career I did mostly injury. Then I  
6 was doing mostly joint reconstruction and  
7 replacement and spine surgery. Then I did mostly  
8 outpatient surgery where the person can go home.

9 Although the surgery, for instance, you could  
10 do elbow reconstruction, ligament reconstruction,  
11 which is a two and a half hour case, rotator cuff  
12 injuries, shoulder dislocation, reattachments,  
13 which are sort of long surgery, but they could go  
14 home at the same time.

15 Q. Do you belong to any professional societies or  
16 groups within the field of orthopedic surgery?

17 A. I do.

18 Q. Can you tell or list for the jury a few of those,  
19 please?

20 A. I belong to a group of organizations whose of  
21 membership is for doctors in good standing. That  
22 means the American Medical Association, the Ohio  
23 State Medical Association, the Academy of  
24 Medicine of Cleveland. I think they changed the  
25 name to Northern Ohio Medical Association, but I

1           also belong to that group of organizations whose  
2           membership is limited to orthopedic surgeons, the  
3           American Board of Orthopedic Surgery, the Ohio  
4           State Orthopedic Association, the Cleveland  
5           Orthopedic Society of which I've been about every  
6           member, any officer you can be. I'm past  
7           president. At the present time I'm secretary for  
a          the continuing education committee.

9   Q.    Doctor, we sometimes here mentioned within a  
10       variety of medical specialties board  
11       certification.

12                What does it mean to be board certified  
13       within a particular profession, and in your case  
14       orthopedic surgery?

15   A.   Board certification is a recognition that a  
16       doctor is a specialist in his field. It's a  
17       certification made by a national board which sets  
18       the standards for that particular specialty. To  
19       become a board certified specialist a doctor has  
20       to have the accredited training, be recommended  
21       by the doctors who train him, then be able to  
22       successfully take two sets of examinations, both  
23       written and oral. You can't even take the second  
24       set until you've been in practice for two and a  
25       half years and you have to complete everything



1           successfully, pass everything. Then you limit  
2           your practice to that given field and you're said  
3           to be board certified or an acknowledged  
4           specialist in your field.

5   Q.   I take it this certification is something over  
6           and above your license to practice medicine?

7   A.   Oh, yeah. I mean I could have practiced really  
8           after my internship. I think the state of Ohio  
9           requires at least you have an internship, but I  
10          could have gone into practice in 19, what, 58.

11   Q.   When were you board certified?

12   A.   I was born certified, let's see '95, '96, end of  
13          1990 -- end of 1968.

14   Q.   Okay. Now, Doctor, we're here in your office  
15          this evening to take your deposition in  
16          connection with an examination and opinion that  
17          you rendered pertaining to the plaintiff in this  
18          case, Mr. Price.

19                In your office practice do you see patients  
20          of your own on a daily basis?

21   A.   Just about. As a matter of fact, today this week  
22          I'm going to be seeing six out of the day, so I  
23          did see a couple patients on Monday. Normally I  
24          see patients Tuesday, Wednesday, Thursday, Friday  
25          and Saturday morning. Tuesday morning usually

1           until 2:00 or 3:00, Wednesday and Thursday in the  
2           afternoon, although Wednesdays I start at 11:30,  
3           Friday I start at 11:30 and stay the rest of the  
4           day. Saturday I start at 9:30, and well, try to  
5           get finished at 1:00, although it's been running  
6           later. So those are patients I see for  
7           treatment.

8       Q. And these are patients that you see for treatment  
9           of a variety of orthopedic problems?

10      A. Exactly.

11      Q. Okay. Now, in addition to your own practice that  
12           you just described for us and the days that  
13           you're here in your office, do you also on  
14           occasion perform what we sometimes refer to as  
15           independent medical examinations?

16   MR. BARTEK: Objection. *11 a*

17      A. Right.

18      Q. And how often or how frequently do you do that,  
19           Doctor?

20      A. Once a week, Tuesdays at 10:30.

21      Q. In conjunction with some of those independent  
22           medical examinations, are you called upon to  
23           testify by attorneys who have asked you to do the  
24           independent medical examination?

25      A. No. I'm asked to testify for any type of case.

1 People that I treat mostly, people who have some  
2 problem with, can I use the word Workers'  
3 Compensation, things of that type and people that  
4 I'm asked to do an independent examination and  
5 not to treat. Yeah. I see people for all types  
6 of problems.

7 Q. In conjunction with that type of work have you  
8 and I worked together in the past, in that type  
9 of a context, where I would refer a person to you  
10 for an examination of this type?

11 A. Yeah. I think we first met when you were doing  
12 what we call plaintiff's work and you were  
13 treating, had a couple patients of your own that  
14 you represented. But yes, we've had mutual, you  
15 had a client or represented somebody else and I  
16 have made an examination at your request, yes.

17 Q. And likewise in conjunction with some of those  
18 you've also testified in this forum in some of  
19 those cases?

20 A. On occasion, yeah.

21 Q. Now, Doctor, at my request in connection with  
22 this case did you have an opportunity to examine  
23 Carl Price?

24 A. I did.

25 Q. When did you examine him?

1 A. October 26th, 2001. I don't think that that was  
2 a Tuesday. I may be wrong. I think that was a  
3 week in which the Tuesday appointments canceled  
4 and I fit him in some other time later on. I can  
5 look up the date, but I don't think that was a  
6 Tuesday.

7 Q. Okay. Did you cause a report to be completed in  
8 conjunction with that examination?

9 A. I did.

10 Q. And do you have that report in front of you?

11 A. Right here.

12 Q. You may refer to it during my direct examination  
13 and if need be through any cross-examination by  
14 Mr. Bartek.

15 When Mr. Price came in to see you on the 26th  
16 of October, did you take a history from him?

17 A. I did.

18 Q. Before getting into the specifics of that  
19 history, the history that he gave you, tell the  
20 members of the court and jury the importance of a  
21 history to any doctor seeing a patient for the  
22 first time?

23 A. Yeah. History is really the cornerstone of a  
24 complete examination. It focuses on what the  
25 problem is, when it happened, what was done for

1           it, how long it was there, what are the after  
2           effects. It's really kind of an important  
3           situation or part of the entire picture that we  
4           have to take into consideration in arriving at a  
5           diagnosis and then providing treatment. So it's  
6           an important, it's really a good, serves as part  
7           of the complete examination.

8       Q.   What was the history that Mr. Price gave you when  
9           he came in to see on the 26th?

10     A.   Well, Mr. Price told me he had been in a motor  
11           vehicle accident on October 12, 1998. That's  
12           three complete years before I saw him. And he  
13           told me that he was driving his truck when the  
14           truck was struck from the front by another  
15           vehicle that turned into the path of his truck  
16           and forced him off the road and up over a curb.

17               Then he told me, he said he saw it coming, he  
18           tried to hold fast to the steering wheel, was  
19           shaken up, wasn't cut, wasn't unconscious and he  
20           told me that he could get out of the truck, walk  
21           around under his own power and he remembers the  
22           police coming, investigating the accident.

23               He told me that they asked him if he needed  
24           any help and he told me that my shoulder was  
25           hurting, but I didn't want to go with them, so he

1 declined care and that was the beginning of the  
2 injury.

3 Q. Okay. Let me stop you there just for a moment.  
4 In your report, and you've basically reiterated  
5 it just a moment ago in your testimony, you  
6 indicated, and this is in the first paragraph of  
7 that report, he told me that he tried to hold  
8 fast to the steering wheel, felt shaken and was  
9 able to exit and walk around under his own power;  
10 is that correct?

11 MR. BARTEK: Object to the form of  
12 the question.

13 A. That is correct.

14 Q. Okay. Did Mr. Price say anything to you when you  
15 took that history about the fact that when this  
16 accident happened, when the impact took place,  
17 that he was thrown upwards in his car and he  
18 struck his right shoulder on the roof of his  
19 vehicle?

20 MR. BARTEK: Objection, to the  
21 form of the question. It's an improper  
22 leading question. You already asked him  
23 for the history and he gave it

24 A. My take on what he told me, and he's a very  
25 direct man, the way he spoke is unquestionably

1 direct. I mean I had no difficulty understanding  
2 him. He was -- in fact, during about this time  
3 we started discussing his professionalism as a  
4 driver because he had been a truck driver for  
5 years, driven over the country and I remember him  
6 showing me, he was putting, he put his arm up,  
7 because he can't go all the way up, because he  
8 has shoulder problems, and he said he tried to  
9 reach out to hold real hard because he could see  
10 this thing, car coming in front of him and even  
11 though he tried to keep control it carried his  
12 truck over the curb.

13 I don't remember anything that he told me  
14 about jumping upward or being thrown upward.

15 ! MR. BARTEK: Move to strike the  
16 answer on the basis of my objection, but  
17 also in particular the nonresponsive  
18 portions of that answer.

19 Q. What else did he tell you about the history,  
20 Doctor?

21 A. Well, again, he said my shoulder hurt, was in  
22 pain, but I didn't go and get any treatment to  
23 begin with. He didn't go the next day for any  
24 treatment, but he told me that his neck and  
25 shoulder were hurting during that time. The

1 second day, I guess you get to the 14th of  
2 October, he finally went to the emergency room at  
3 Cuyahoga Falls General Hospital and while in the  
4 emergency room he suddenly had x-rays of his  
5 shoulder and his neck and they gave him some type  
6 of medication to let him go home.

7 At that time he kind of pointed to the back  
8 of his neck and also to his right shoulder. Then  
9 over the next day, the third day, he went to see  
10 Dr. Sassano, who was his family doctor, and Dr.  
11 Sassano referred him to the physical therapy  
12 department at Cuyahoga Falls General Hospital for  
13 physical therapy, which was directed to his neck  
14 and his right shoulder.

15 Now, he told me his neck improved and wasn't  
16 giving him any trouble anymore, but his right  
17 shoulder never got any better and that Dr.  
18 Sassano eventually had to send him to Dr. Pinsky.  
19 Howard Pinsky is an orthopedic surgeon in the  
20 Cuyahoga Falls area.

21 Dr. Pinsky diagnosed rotator cuff tear and  
22 then did rotator cuff surgery in March 1999 and  
23 that after the surgery Mr. Price told me he had  
24 to go back for more therapy, but it never worked.  
25 That was his words. He never got all the



1 movement back. His right shoulder stayed painful  
2 and was still painful when I saw him.

3 Q. Did you learn anything else from him with respect  
4 to any medical treatment that he had received  
5 subsequent to the motor vehicle accident of  
6 October 12th, 1998?

7 A. You mean other than the right shoulder?

8 Q. Yes.

9 A. Well, he had a lot of problems. Mr. Price, as we  
10 got into discussion about driving, driving over  
11 the road, he said, well, I haven't been able to  
12 work since 1983.

13 MR. BARTEK: Objection, move to  
14 strike. *over*

15 A. And I said why can't you work since 1983 and he  
16 said, well, I got a lot of problems and they're  
17 physical problems. And what it was, he told me  
18 how he had hurt his back back in the early 1980s,  
19 and he wasn't very explicit or detailed about it,  
20 but he told me his back been bothering him and  
21 that's why he can't drive a semi tractor trailer  
22 truck. He hasn't worked at all since what, 18,  
23 19 years now.

24 He also had an injury to his left shoulder.  
25 For the jury's sake, we're talking about the

1 right shoulder that Mr. Price is claiming was  
2 hurt in October 12, 1998, but even before that he  
3 had a bad left shoulder and he continued to treat  
4 for the left shoulder. The left shoulder was  
5 indirectly related to a work accident. He had  
6 had some work accidents. He injured some  
7 extremities. One time he broke his ankle. He's  
8 had ankle surgery in the past and one time in  
9 1997, apparently his ankle gave way causing him  
10 to injure his left shoulder and that's been a  
11 problem ever since '87. The left shoulder was  
12 not reinjured on October 12, 1998, but he's had  
13 surgery to his left shoulder after he finished  
14 the surgery with the right shoulder. The surgery  
15 to the left shoulder was in early 2000. I got so  
16 many dates I have to look this up here.

17 But Dr. Pinsky also did the left shoulder  
18 surgery. It has nothing to do with this  
19 accident. His back had nothing to do with this  
20 accident. And he had some previous, it's been a  
21 previous car accident, but I don't think he ever  
22 had any serious injuries in the other previous  
23 accident.

24 MR. BARTEK: Motion to strike. b

25 Q. After getting this history that you've just told

1           us about, did you then perform a physical  
2           examination?

3     A.   Yeah, I did.

4     Q.   Before getting into the specifics of the Carl  
5           Price physical examination, tell the members of  
6           the jury what an orthopedic examination such as  
7           you would perform consisted of?

8     A.   A lot of orthopedic examination is observations  
9           and measurements. We as orthopedic surgeons are  
10          not the kind of doctors that look down your  
11          throat or in your ear or any other unmentionable  
12          place. We take care, we look at function,  
13          alignment, mobility, strength, circulation and  
14          nerve control, we are interested in how well your  
15          arm, leg, neck, back, moving parts of your body  
16          function, much of which is by observation.

17                To measure the range of motion, for instance,  
18                as I did with Mr. Price, I asked him to move  
19                various parts of his body, checked how far it was  
20                and asked him his response on how he felt when he  
21                did so. That's basically an orthopedic exam.

22     Q.   Tell us about the exam that you performed on Carl  
23           Price.

24     A.   Well, when I saw him, on October 26th, 2001 --  
25           wait. Today is November 14th, so it's, what, a

1        few weeks, three weeks ago, not even three weeks  
2        ago. 60 years old, moved about without  
3        difficulty, very friendly, very cooperative,  
4        responding quickly to everything I said. You  
5        know, he didn't seem to show any signs that he  
6        was holding anything back. Nice individual to  
7        talk to. Anyhow, he was able to walk normally.  
8        He kind of got up slowly from a seated position  
9        and he didn't say anything, but I can see that  
10       his back wasn't exactly flexible, but he didn't  
11       complain.

12       The two areas that were of most interest  
13       that might relate to this case were his neck,  
14       which is called the cervical spine, and his  
15       shoulder, both shoulders. And with regard to his  
16       neck, one could see that he could move around  
17       fairly well, but didn't have 100 percent range of  
18       motion, but for his age I rated it as a good  
19       range of motion of his cervical and lumbar spine.

20       He had no difficulty turning, maybe a little  
21       bit of tightness in looking on extension and he  
22       really didn't complain about his neck and every  
23       time -- one thing about him, I said, well, move  
24       this way, that and he said, no, my neck is fine,  
25       it's not bothering me anymore. He must have said

1           that about four times during the examination, but  
2           he did have good range of motion of the neck,  
3           maybe not for a 20 year old, but for a man of his  
4           age. He didn't complain that his neck was  
5           bothering him. The big abnormalities that I  
6           found were in his shoulders, both shoulders. If  
7           you look at him straight on, there's long scars  
8           over the upper anterior portion of both  
9           shoulders. The one scar on the right shoulder,  
10          that was from the March 1999 surgery for the  
11          right shoulder. The scar on the left, almost a  
12          mirror image of the two, was for the earlier 2000  
13          surgery for the left shoulder rotator cuff  
14          problem. Both of these scars were made during  
15          the time of the operation done by Dr. Pinsky.  
16          Both shoulders did not have good motion. At best  
17          I would say that the right shoulder had maybe 55  
18          percent of normal motion, the left shoulder maybe  
19          58 percent. You want to measure exact range of  
20          motion that I put down. Mr. Pinsky was barely  
21          able to raise his right shoulder. Let me get the  
22          number of the dates here.

23                 I measured it at about 120 degrees, but he  
24                 had pain after 60 degrees. Straight out, if I go  
25                 from my side to straight out, that's 90 degrees.

1       Straight up would be 180 degrees. So he was able  
2       to come out just about, a little bit more than  
3       90, but not 140 on the right shoulder and when he  
4       went sideways, coming up sideways, he could  
5       barely get to 100 degrees. 90 is horizontal and  
6       100 is -- well, it's only 60 percent of normal  
7       not going all the way up like that. There was  
8       some limitation of rotation also.

9       Shoulder rotations allow you to bring your  
10      hand behind your neck and behind your back. I  
11      can't imagine a woman being able to do her bra  
12      until she has perfectly normal range of motion  
13      because they can, you know how women can do, they  
14      can bring their arms right behind their back like  
15      that, and he couldn't. Mr. Price did not have  
16      full rotational movement of either shoulder.

17      I measured the left shoulder to be slightly  
18      better in motion than the right, but only by five  
19      degrees. For instance, the right shoulder can be  
20      flexed 120, the left 125. Both quite a bit of  
21      way from 180. There were some generalized loss  
22      of strength about both shoulders. It was my  
23      impression that the right shoulder whole area was  
24      not even quite as strong as the left and the left  
25      wasn't normal. So there was abnormal function of

1 both shoulders. It was marked by loss of motion.  
2 He got complaints of pain when he moved his  
3 shoulders, both of them, and there was some loss  
4 of strength in both shoulders, perhaps slightly  
5 more on the right. He had some other losses of  
6 strength in the shoulder other than about the  
7 shoulder itself, certain movement such as pushing  
8 down forward or pushing under, inward, which  
9 would be something that you're rotator cuff has  
10 nothing to do with it. Mr. Price definitely had  
11 some weakness on the right side that he didn't  
12 have on the left. I have no explanation for  
13 that.

14 MR. BARTEK: Motion to strike the  
15 portions of that answer that relate to the  
16 left shoulder.

17 Q Doctor, in conjunction with this examination,  
18 you've told us so far about the history that you  
19 obtained and about your physical examination of  
20 the plaintiff Carl Price.

21 Did you also have an opportunity to review  
22 records which were provided to you?

23 A. I did.

24 Q. What records did you review?

25 A. I saw records from Cuyahoga Falls General

1 Hospital, including the emergency room report two  
2 days after this accident. There was an Ohio  
3 Traffic Crash Report, I guess that's done by the  
4 highway department. I'm not sure. That was  
5 dated October 12, 1998. There were records from  
6 Dr. Sassano. They started on October 15, 1998.  
7 I didn't see any previous records, but they also  
8 continued onward until, into, I think it was the  
9 spring of 1999.

10 I saw records from physical therapists, from  
11 massotherapists. The massotherapist went from  
12 October 27th, '98 to December 3, '98. The  
13 physical therapy records were a couple, several  
14 physical therapy records. One set was from  
15 Cuyahoga Falls General Hospital in January and  
16 February 1999. There were therapy notes from  
17 Portage Physical Therapy in April, May and June  
18 1999. There was one therapy visit, I think it  
19 was from Portage in November 1999. And then  
20 there were records from Dr. Pinsky, Howard  
21 Pinsky, the orthopedic surgeon, and they went  
22 from March 1999 well into 2000.

23 I don't remember the last dates because they  
24 had -- the visits after, I don't know, the fall  
25 of 1999 were for the left shoulder, but there



1           were some records from Dr. Pinsky that went later  
2           than 1999 and they were that whole set of records  
3           for the unrelated left shoulder condition.

4   Q.   What did you learn in your review of the Cuyahoga  
5           Falls General Hospital Emergency Room record?

6   A.   That was done two days after the October 12, 1998  
7           accident and Mr. Price presented himself, he gave  
8           a history of the October 12, 1998 accident and he  
9           complained that his neck and right shoulder were  
10          painful and that he had tingling in his right  
11          hand.

12   Q.   Is that the first medical record that you could  
13          find relating to the injuries that Mr. Price  
14          allegedly suffered in this accident?

15   A.   Right. That was the first medical contact after  
16          October 12, 1998.

17   Q.   So that was two days after?

18   A.   Correct.

19   Q.   Okay.

20   A.   This crash report only listed what the automobile  
21          damage was and I don't think it made, I don't  
22          recall it had any notation about an injury or  
23          about patients or individuals' trauma.

24   Q.   What did you learn from your review of Dr.  
25          Sassano's records?

1 A. Well, Dr. Sassano started treating Mr. Price on  
2 October 15, 1998, that's three days later. And  
3 the symptoms at that time were neck pain, right  
4 shoulder pain, headache and dizziness and there  
5 was described as cervical strain, right shoulder  
6 sprain, trapezius strain and muscle tension  
7 cephalgia. Those are the four diagnoses that Dr.  
8 Sassano treated Mr. Price for.

9 Q. You indicated that Dr. Sassano, that you learned  
10 through the history as well as in your review of  
11 the records that Dr. Sassano prescribed some  
12 physical therapy for Mr. Price?

13 A. Right.

14 Q. Did you have an opportunity to review the  
15 physical therapist records?

16 A. Yes. I saw physical therapist records and  
17 massotherapist records, yeah.

18 Q. Okay. Do you have those records in front of you?

19 A. Yes. I think they're over here.

20 Q. Okay. What did you learn from the massotherapist  
21 records?

22 A. The massotherapist, who apparently was responsive  
23 to the prescription written by Dr. Sassano  
24 because he made note that Dr. Sassano did the  
25 referral, were for treatments from October 27,

1 1998, that takes us about two weeks after this  
2 accident, until December 3, 1998. That takes us  
3 to seven weeks or so after the accident. And  
4 they're very specific as far as what areas were  
5 treated.

6 The massotherapist said he treated the neck,  
7 trapezius, upper back and shoulder muscles. He  
8 actually treated the three muscles that involve  
9 the rotator cuff area, but he treated the muscle  
10 part and he did it with massage therapy and heat  
11 and on each visit there were notations and on  
12 some visits there were more spasm.

13 Spasm is that knotting and stiffness of  
14 muscles and at other times there was some local  
15 tenderness, but as we got into the middle of  
16 November of 1998 every note by the therapist was  
17 that there's improvement, improvement, better  
18 range of motion still has spasm, things of that  
19 sort and that was the case on November 2,  
20 November 7, November 9, November 11 and November  
21 21. All of those visits that there was some pain  
22 and tenderness of the right shoulder, right  
23 trapezius.

24 Remember, the trapezius is that muscle that  
25 extends from the neck to your shoulder and the

1 thoracic area. That's the upper back between the  
2 shoulders. There was a note by the therapist on  
3 October 28, 1998 that, that would take us, what,  
4 I'm sorry, on November 21, 1998, which would take  
5 us five weeks or six weeks after the accident  
6 that there was improvement. He was still having  
7 muscle spasm and the only place that was treated  
8 at that time was the trapezius and cervical  
9 muscles. That's November 21. Then there is a  
10 note on December 3 when something significantly  
11 changed.

12 Q. All right. In addition to the physical therapy  
13 records you've also said you also reviewed Dr.  
14 Pinsky's records?

15 A. I did.

16 Q. And there's evidence in this case, obviously, and  
17 you were aware of it, that Dr. Pinsky performed  
18 surgery on the right shoulder in March of 1999?

19 A. Exactly.

20 Q. And did you review Dr. Pinsky's operative note  
21 and records in that regard?

22 A. Right. He wrote an operative note. Sometimes  
23 an orthopedic surgeon, I certainly recognize and  
24 Dr. Pinsky used the standard form for an  
25 operative note and in it he described when he did

1 surgery on Mr. Price's right shoulder, that was  
2 in March, I think March 25, 1999, that there was  
3 a large rotator cuff tear.

4 The rotator cuff is a large band of tissue  
5 that eventually connects to three separate  
6 muscles back in your shoulder blade. And in  
7 Mr. Price's case, the two front half of the  
8 shoulder rotator cuff segments, two-thirds of the  
9 rotator cuff, let's put it that way, were torn.  
10 It was a very large tear, to use the word massive  
11 if all three areas were torn, but this is a very  
12 large rotator cuff tear that Dr. Pinsky found.

13 Q. And that's what Dr. Pinsky ultimately operated  
14 upon?

15 A. Right. And how we repair those, it's basically  
16 like, like a seamstress. If I want to tear my  
17 jeans here and I rip them across here, you got to  
18 kind of make a folded over and sew it back. With  
19 a rotator cuff you have some very nice --  
20 especially the last, that's why I like the last  
21 eight to ten years of surgery. I did a lot more  
22 rotator cuff injuries.

23 We have what they call anchors, suture  
24 anchors, which we have a way of anchoring a  
25 stitch into bone. Now the stitch is hanging out

1           and anchored to the bone we can bring the stitch  
2           through the rotator cuff and bring it back and  
3           bring the rotator cuff back to the surface of the  
4           bone where it belongs. That's exactly what Dr.  
5           Pinsky did and he repaired the large rotator cuff  
6           tear.

7       Q.   Dr. Zaas, you mentioned several times in your  
8           testimony that you've had extensive experience  
9           over your career dealing with rotator cuff  
10          injuries, rotator cuff tears and obviously  
11          rotator cuff surgery?

12      A.   That's correct.

13      Q.   What has been your experience, Dr. Zaas, with  
14          respect to what I'll call the natural history of  
15          a rotator cuff, a large rotator tear such as Dr.  
16          Pinsky found in this particular case?

17      A.   That's a good point. Large rotator cuff tear, I  
18          mean a lot of people have small tears, partial  
19          thickness tears, stretching of the rotator cuff  
20          and there must be millions of people, because I  
21          see them every day and they complain, but they  
22          can use their arm.

23                But a large full thickness rotator cuff tear,  
24          when the entire rotator cuff is pulled off, feels  
25          like you broken your shoulder. It's an instant

1            thing. You feel something rip or pop. You can  
2            actually feel this, first off, very large tendon  
3            and when it gives, there is a very sudden giving  
4            and most people that I run into in the emergency  
5            room when I've seen them in the emergency, they  
6            think I've broken my shoulder. I said how do you  
7            know, because I could feel it, something just  
8            suddenly gave, I have no movement in my shoulder.  
9            That's an emergency case, most of those people  
10          who go there

11           Small tears, stretches, those are the ones  
12          that finally show up at a doctor's office a week  
13          or two later. But these massive tears, they're  
14          instant, they're disabling and a person doesn't  
15          walk out and tell a policeman that I'm fine, I'll  
16          go home because they are really very disabling.

17                   MR. BARTEK: Move to strike the  
18                   last portion of that answer. *OK d*

19          Q. What evidence do you see, Doctor, in this  
20          particular case that the course of treatment of  
21          Mr. Price changed with respect to how his  
22          condition was progressing during this period  
23          where he was receiving the massotherapy that Dr.  
24          Sassano had prescribed?

25          A. Well, the treatment that he received in October

1 and through most of November 1998 was standard  
2 muscle strain, whiplash, that type of treatment.  
3 It was massage, heat, exercise, and according to  
4 the treatment doctor or the treatment therapist,  
5 the one who actually gave him the treatment, the  
6 treatment was being directed to his neck,  
7 trapezius, upper back, thoracic area and  
8 shoulder, shoulder blade muscles that control the  
9 rotator cuff, very specific to what he was doing,  
10 certain types of massage, certain types of heat,  
11 certain types of exercise. That was the case  
12 through the end of November 1998.

13 Then something drastically changed because  
14 after December 3 everything else thereafter was  
15 directed toward the true rotator cuff. Before  
16 that it was directed to muscles and ligaments of  
17 his neck and upper back.

18 Q Doctor, you've indicated that you reviewed these  
19 massotherapy reports that Mr. Price had received  
20 the treatment, that he had received at the  
21 direction of Dr. Sassano, I'm handing you what  
22 was previously marked as Defendant's Exhibit F, I  
23 believe in a deposition that you gave before.  
24 That includes that December 3, 1998 visit that  
25 you just referred to.



1           Would you read, for the benefit of the court  
2           and jury, what is indicated in that particular  
3           massotherapy report?

4                       MR. BARTEK: Objection. *OK'd*

5   A.   Carl Price, December 3, 1998 massotherapy report,  
6           paragraph, he had a death in the family and had  
7           to miss therapy for a couple of weeks. He was  
8           put into the position of a pallbearer for his  
9           father-in-law. When he lifted up the casket, he  
10          felt a loud pop in his shoulder and has had  
11          excruciating pain in the shoulder since then. He  
12          has extremely limited range of motion and then  
13          today I did galvanic stimulation and muscle  
14          strengthening, that type of thing, and massage.

15   Q.   Okay. And it's your testimony that after that  
16          particular visit that you just read to us, the  
17          December 3 visit, his condition worsened?

18   A.   Changed. From then on, if you look at all the  
19          subsequent examinations and therapy visits, there  
20          were no longer muscle spasm of the neck or upper  
21          back. It was rotator cuff dysfunction, couldn't  
22          raise it, he had terrible rotator cuff pain and  
23          neck symptoms simply disappeared because there  
24          were no neck treatments after December 3, 1998,  
25          but there was everything connected to the

1           shoulder rotator cuff after that.

2       Q.   What kinds of things can people do in their every  
3           day lives that can cause a rotator, a large  
4           rotator cuff tear, such as was found by Dr.  
5           Pinsky on his operative note?

6                           MR. BARTEK:  Objection. *Sust' 2'*

7       A.   Hopefully nothing because hopefully it doesn't  
8           happen.  Rotator cuff tears usually caused by a  
9           downward force or an outstretched, forward  
10          elevated or upward pulling force on the shoulder.  
11          Remember, the rotator cuff is that series of  
12          muscles with the tendon connections that keep our  
13          shoulder in place.  And if you lift something  
14          upward, if you didn't have the rotator cuff, your  
15          shoulder, the only thing holding it would be the  
16          skin, and the rotator cuff is the muscles and  
17          tendons that hold you together.  If you put a  
18          sudden force on a rotator tendon that isn't  
19          strong enough, it will fail.  Failing could mean  
20          rupture, complete tear or partial tear.

21       Q.   The December 3rd note that you just read to us  
22           indicates that when he lifted up the casket he  
23           felt a loud pop in his shoulder and has had  
24           excruciating pain ever since.  Can lifting a  
25           casket cause a rotator cuff to tear?

1 MR. BARTEK: Object; to the form of  
2 the question. *AT 1d*

3 A. Lifting anything, especially if you reach forward  
4 or outward and then pull upward because that puts  
5 the ultimate stress on your rotator cuff. That's  
6 where the stress is coming the most. You can't  
7 hurt your rotator cuff by falling on it. I mean,  
8 you can, but it can't really cause any major tear  
9 and you can have chronic tears that are full  
10 thickness where people that are doing kind of  
11 repetitious things like over and over again  
12 lifting and finally you wear the rotator cuff in  
13 two. But complete tears are sudden. People say  
14 something just happened, what happened, I just  
15 heard it give. That's almost a classic  
16 description of a rotator cuff tear.

17 MR. BARTEK: Move to strike. *R*

18 Q. That massotherapy report that you just read to  
19 us, was that report, that particular December  
20 3rd, 1998 report, was that signed by the  
21 massotherapist?

22 A. Yes,

23 Q. And there is also another signature alongside the  
24 massotherapist, an A. Hugh McLaughlin, DO. Is  
25 that also signed?

1 A. As I said, there's two -- can you hold it up for  
2 the jury? You get reports like this. You get  
3 one massotherapist and here is the doctor. What  
4 happens, we as physicians now, I didn't do it for  
5 many years, but we as physicians every time you  
6 make a note that isn't handwritten or if it's  
7 handwritten, you have to sign it or if you have a  
8 dictated note about a patient, every time you  
9 have to sign it. That's now requirements, the  
10 American Medical Association, the Hospital  
11 Association, that's what happened there. And the  
12 therapist did sign it, but you have to have it  
13 cosigned by a physician.

14 Q. So the fact that it's the practice that when one  
15 of these notes is dictated like the one you just  
16 read to us, it has to be signed by the person who  
17 authored it?

18 A. Oh, yeah. Again, makes no difference to me. I  
19 have to do the same thing, too. Every patient I  
20 treat, every time I dictate something my  
21 transcriptionist gets it back to me and I have to  
22 sign it. That's a required note because I have  
23 to read it and make sure it was done right.

24 Q. Also, in this particular case it's, the person  
25 who signed it was a massotherapist. It has to be

1 countersigned by a physician?

2 A. Correct, especially if the physician is the  
3 employer of the massotherapist or the one that  
4 referred it to that massotherapist.

5 Q. Okay. Now, Doctor, did you also have an  
6 opportunity to review the materials from Dr.  
7 Sassano, a medical report that he authored  
8 sometime in the year 2000?

9 A. In May.

10 Q. In May of 2000?

11 A. The one in May, yeah.

12 Q. You reviewed that also?

13 A. May 19, 2000.

14 Q. Is there any indication in that report, Dr. Zaas,  
15 of Dr. Sassano indicating in any way that this  
16 December 3rd, 1998 massotherapist note was in  
17 error?

18 MR. BARTEK: Object to the form.

19 A. No. There is not even a mention of it. *OR - n'*

20 Q. Okay. Doctor, let me ask you a couple of  
21 questions with regard to your opinions in this  
22 case. Based upon the history that you obtained  
23 from Mr. Price, based upon your physical  
24 examination of him, based upon the medical  
25 records which you told us about which you

1 reviewed, and of course based upon your 35 plus  
2 years experience as an orthopedic surgeon, a  
3 doctor who has operated upon and treated rotator  
4 cuff injuries, do you have an opinion to a  
5 reasonable degree of medical certainty as to  
6 what, if any, injuries Mr. Price suffered in the  
7 car accident of December 12th, 1998?

8 A. I have an opinion, and it is that Mr. Price  
9 sustained spraining injuries to his neck. That's  
10 called a cervical spine. And that preexisting  
11 arthritis of his neck was probably transiently  
12 for a short period of time aggravated. The  
13 second injury he had is what we call a sprain of  
14 the right shoulder.

15 Q. What is a sprain?

16 A. Sprain is a stretching or pulling of muscles or  
17 ligaments, theoretically ligaments, but we also  
18 now use that terms for muscles.

19 Q. And the basis for that opinion?

20 A. I base the opinion on what Mr. Price told me. I  
21 strongly base it on documentation of the  
22 treatment he received for the next six or seven  
23 weeks after this accident and it's actually the  
24 same diagnosis that Dr. Sassano made.

25 Q. Doctor, we know from what transpired following

1           this accident that Mr. Price underwent right  
2           rotator cuff surgery in March of 1999.

3           Do you have an opinion based upon history,  
4           physical exam, review of the records and your  
5           experience as to whether the large tear that was  
6           found by Dr. Pinsky when he operated upon  
7           Mr. Price in March of 1999, whether that large  
8           tear was caused by the motor vehicle accident of  
9           October 12, 1998.

10          Do you have an opinion, first of all?

11   A.   I do have an opinion, yeah.

12   Q.   What is that opinion? Tell the jury.

13   A.   The large full thickness rotator cuff tear that  
14           Dr. Pinsky repaired in March 1999 was not caused  
15           by the October 12, 1998 accident.

16   Q.   What is the basis for that opinion, Doctor?

17   A.   The basis of my opinion is that there is, there  
18           is no evidence that there was a large rotator  
19           cuff tear for at least seven weeks after October  
20           12, 1998 and whatever strain or partial tear that  
21           was there after October 12, 1998 was improving  
22           according basically to the only two people that  
23           treated Mr. Price at that time, Dr. Sassano and  
24           the massotherapist. However, after December 3,  
25           1998 there is a dramatic change in the physical

1 findings, which at that time became consistent  
2 with a rotator cuff large tear.

3 Q. Doctor, based upon the history that you obtained  
a and the physical examination that you performed,  
5 the review of records, and again your experience  
6 having treated and surgically repaired these  
7 kinds of problems through most of your career, do  
8 you have an opinion to a reasonable degree of  
9 medical certainty as to whether the surgery that  
10 Dr. Pinsky performed in March of 1999, whether  
11 that was causally related to the motor vehicle  
12 accident of October 12, 1998?

13 MR. BARTEK: Objection. *OR'd*

14 A. I have an opinion.

15 Q. What is that opinion, Doctor? *OR'd*

16 MR. BARTEK: Objection.

17 A. My opinion, the major reason or cause for the  
18 rotator cuff tear, unless the surgery was  
19 something that happened a couple of months later,  
20 but the background of underlying strain and  
21 possibly small tear probably did occur on October  
22 12, 1998 and therefore the October 12, 1998  
23 accident had some input or reason for the surgery  
24 to be done, but the majority of the problem came  
25 afterwards.



1 MR. KENNEALLY: Thank you, Dr.  
2 Zaas. That's all I have.

3 MR. BARTEK: Doctor, could I see  
4 your file, please?

5 VIDEO OPERATOR: We're off the  
6 record.

7 - - - -  
8 (Off the record.)

9 - - - -  
10 VIDEO OPERATOR: We're on the  
11 record.

12 - - - -

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

14 BY MR. BARTEK:

15 Q Dr. Zaas, we met before, but I will reintroduce  
16 myself for the record. I'm Dennis Bartek and I'm  
17 one of the attorneys for Carl Price. I've just  
18 had the opportunity to review your entire file.  
19 I take it what you handed me is your entire file  
20 in this case; is that correct?

21 A That's what I have with me, yes. There were many  
22 other records which I saw the original of and I  
23 gave them back to Mr. Kenneally because I don't  
24 think there were copies of them.

25 Q. And none of those records are presently in your

1 file?

2 A. In my file? No.

3 Q. Well, do you have possession of them here at your  
4 office as an office record?

5 A. I never keep records more than a period of time  
6 that I need to refer to them. We just don't have  
7 the storage space.

8 Q. Okay. When you gave your testimony today you  
9 essentially went over your report and essentially  
10 relied on what you had written in your report to  
11 refresh your recollection; is that correct?

12 A. Right. Although, I can remember most of it.  
13 Mr. Price was only here a few weeks ago.

14 Q. Let me ask you this, I thought you testified on  
15 direct examination that you had not, did not see  
16 any medical records from Mr. Price prior to 1995.  
17 Did you say that on direct examination?

18 A. No. From Dr. Sassano.

19 Q. Okay. The fact is that you saw an extensive  
20 amount of medical records on Mr. Price going back  
21 into the 1960s?

22 A. Not from Dr. Sassano.

23 Q. Well, my question to you is, you reviewed an  
24 extensive amount of medical records on Mr. Price  
25 going back to the 1960s?

1 A. You didn't ask that to begin with. For the  
2 jury's sake he asked me -- on direct testimony I  
3 was asked if I saw any records from Dr. Sassano  
4 before October 12. I said no. I was never asked  
5 on direct if I saw records from previous  
6 injuries.

7 Q. Okay. Mr. Kenneally did not ask you that?

8 A. No.

9 Q. It's not just previous injuries. You reviewed  
10 voluminous records. In fact, I think that when  
11 you and I discussed this before you told me you  
12 had every medical record for Mr. Price going back  
13 into the 1960s?

14 A. Absolutely correct, but not from Dr. Sassano.

15 Q. Okay. And in reviewing all of those medical  
16 records going back to 1960 and the history that  
17 was given to you by Mr. Price, would it be fair  
18 for me to say that prior to October 12th, 1998  
19 the day that Mr. Price was injured in the motor  
20 vehicle collision he had no problem whatsoever  
21 with his right shoulder?

22 A. Absolutely correct. He told me that and I agree  
23 with that since there was nothing in the record  
24 to indicate anything otherwise.

25 Q. Okay.

1 A. Uh-huh.

2 Q. Are you aware of the fact or were you made aware  
3 of the fact that the car driven by Miss Rezac,  
4 who was the other party in this accident, was a  
5 total loss?

6 A. No. Mr. Price told me that his vehicle was lost.  
7 It was an '82 Chevy truck, but I'm not sure  
8 because that doesn't make exact correlation with  
9 what the officer said. He said it was drivable  
10 and usable, but I'm not aware of what happened to  
11 the other vehicle.

12 Q. Okay. And, in fact, have you ever met Miss  
13 Rezac?

14 A. Who?

15 Q. Okay.

16 A. Who is Miss Rezac?

17 Q. She is the driver --

18 A. Okay. I wouldn't have any idea, no.

19 Q. She did not retain you in this case,  
20 Mr. Kenneally did?

21 A. I guess.

22 Q. And he has retained you, either he or some other  
23 entities other than Miss Rezac?

24 A. I guess. I mean he's an attorney who has asked  
25 me to do an examination and issue a report.

1 That's my only contact with anybody related to  
2 this case other than Mr. Price directly who I did  
3 see.

4 Q. And ordinarily the fees that you'd receive for  
5 doing these defense medical examinations that you  
6 do, they're ordinarily paid by somebody other  
7 than the parties to the accident?

MR. KENNEALLY: Objection. *SV 5-11 d*

9 A. I think that's correct.

10 Q. In fact, one of the things that you provided to  
11 me tonight or made available that's in your file  
12 are some records of 1099s that you received from  
13 entities that have paid fees directed towards  
14 doing these defense medicals?

15 A. No. They have nothing to do with that. The  
16 1099s --

17 MR. KENNEALLY: Doctor, let me  
18 object for the record, go ahead. *SV 5-11 d*

19 A. 1099s are written by a specific company for all  
20 of the fees that were sent to me. They are at  
21 least half, if not two-thirds, related to med pay  
22 and that's what it says on the 1099, med pay.  
23 Med pay means that a person is injured and they  
24 want to use that particular type of medical  
25 coverage to pay for their services. It also

1 includes fees for evaluations, but they don't  
2 break it down. I called them. They won't give  
3 you a breakdown.

4 Q. Well, you would agree with me that a portion of  
5 the fees reflected in those 1099s are for doing  
6 defense medical examinations?

7 A. They might be, yeah.

8 Q. And you've actually done a number of those for  
9 Mr. Kenneally in the past?

10 A. I've done examinations at his request and I've  
11 done examinations in treating his own clients.  
12 Yes, I've met him before.

13 Q. And having said that, and getting back to the  
14 facts of this case, from a temporal point of view  
15 you were told by Mr. Price that he was in pain at  
16 the scene of the accident?

17 A. That's what he told me.

18 Q. And subsequently when he was seen in the  
19 emergency room he was in pain in the emergency  
20 room and he could not even raise his arm up at  
21 that point?

22 A. He told me he couldn't raise his arm up.  
23 Unfortunately, the emergency room doctor didn't  
24 make a specific statement about that.

25 Q. Okay. Well, let me ask you this, you have the

1           opinion, do you not, that two days after the  
2           accident he couldn't even his raise his arm up?

3       A.   No.   He told me that when he went to the  
4           emergency room he couldn't raise his arm up.   I  
5           looked at the emergency room record.   There isn't  
6           any specific statement about that.

7       Q.   Well, doctor, I took your deposition a week ago,  
8           did I not?

9       A.   Uh-huh.

10      Q.   And your deposition is your statement under oath  
11          about what you know about the case?

12      A.   I believe so, yeah.

13      Q.   Okay.   And a court reporter was here then as  
14          there is tonight and the court reporter took down  
15          what you said?

16      A.   That's correct.

17      Q.   Okay.   Doctor, I'm going to hand you your  
18          deposition, a copy of your deposition, let you  
19          take a look at it and I'm going to refer you to  
20          page 23 of your deposition.   Then I'm going to  
21          refer you to lines 15 through 24.

22                Do you recall me asking you this question at  
23          the deposition and then you giving me this  
24          answer?

25                Question, okay and then over the next two

1 days after the accident the pain in his shoulder,  
2 the right shoulder, I better differentiate that,  
3 pain in the right shoulder became increasingly  
4 severe, would that -- and then you interjected  
5 and you said right, and then I said would that be  
6 a fair statement, and your answer was not only a  
7 pain, but he said he couldn't raise his arm up.

8 A. For the sake of the jury, I just exactly said  
9 that. Mr. Price told me, I've written it down,  
10 it's in my record, I told you that before. He  
11 said I couldn't raise my arm, to which I said  
12 that's why he went to the emergency room.  
13 Unfortunately, the emergency room doctor didn't  
14 make any statement about the motion of his arm,  
15 but I said that correctly. He said he couldn't  
16 raise his arm.

17 Q. Doctor, Mr. Price was right handed, was he not?

18 A. Yes.

19 Q. And the right arm would be his dominant arm?

20 A. Yes.

21 Q. Okay. Now, you would agree that Mr. Price  
22 injured his neck and his right shoulder and  
23 suffered trauma to his right rotator cuff as a  
24 direct and proximate result of the collision with  
25 Miss Rezac which occurred on October 12th, 1998?



1 A. I agree with that

2 Q. And I believe you defined trauma for us before on  
3 your direct examination?

4 A. It means just injury.

5 Q. And wouldn't you also agree with me that the  
6 traumatic injury that in all probability he  
7 sustained to his right shoulder was what I think  
8 you characterized as a partial rotator cuff tear?

9 A. Well, there's a strain, partial thickness rotator  
10 cuff or a small tear based on the actual physical  
11 findings of a medical professional such as a  
12 massotherapist or Dr. Sassano.

13 Q. And what you indicated to me last Wednesday, that  
14 you were opining, was he had a partial rotator  
15 cuff tear as a result of the accident?

16 A. Uh-huh. I agree.

17 Q. Okay. Now, you felt, based on all these records,  
18 review going back to the 1960s, including the  
19 records that relate to this accident and your  
20 interview with Carl, you felt that Carl is an  
21 honest man as far as the way he tells history?

22 A. Right. I think I used the word he's a lumper.  
23 He has a way of telling a story and then kind of  
24 merging it together with something that happened  
25 a year later, but he is a straightforward man.

1 He talks like a trucker and he's proud of it, and  
2 I have a lot of patients that are truckers. That  
3 was my dream of being, for an occupation. I'd  
4 love to do that. And he tells it as it feels how  
5 he felt it. Yes. I believe he's honest about  
6 it.

7 Q. Okay. In your conversations with Mr. Price you  
8 did not ever discuss with him any issue of  
9 carrying a casket, did you?

10 A. I would have no way of knowing about that. I'd  
11 have no way of knowing if he skydived. I'd have  
12 no way of knowing if he shoots shotguns. I mean,  
13 there's certain things I could have no way of  
14 knowing. So I obviously did not ask him about  
15 that.

16 Q. Okay. The only question I have for you, and I  
17 guess your answer is no, you did not discuss with  
18 him anything about the casket incident?

19 A. My only answer to that is how could I?

20 Q. And how could you means you didn't do it?

21 A. How could I have known about it? If he didn't  
22 tell me about it, I couldn't have known about it

23 Q. Doctor, if you do have a rotator cuff tear, if  
24 you do have a partial tear of the rotator cuff  
25 and you sustain some other even minor trauma,

1           would you agree with me that that second trauma  
2           could tear open the first rotator cuff?

3       A.   It could extend it, sure.  It could make it  
4           bigger.

5       Q.   And that is part of when you gave your  
6           qualifications that you think the auto accident  
7           had a role in the surgery it's because that's  
8           what we're talking about, you felt he had a  
9           partial tear and maybe that was extended by this  
10          other incident that you made reference to?

11      A.   Yeah.  I think he had a partial tear, maybe  
12          partial thickness tear, but we're never going to  
13          know because something that happened afterwards  
14          changed what was there which was improving and if  
15          you assume that you're bad and you're gradually  
16          improving then you're finally okay or at least  
17          you're better, if something happens in between  
18          and rips it all the way through, since you  
19          haven't improved completely I still relate part  
20          of the problem to the underlying preexisting,  
21          which is the partial tear that happened on  
22          October 12, 1998.

23      Q.   Doctor, even with a partial tear there are  
24          limitations on them that they do not heal by  
25          themselves, wouldn't you agree with me?

1 A. Yeah. I don't know that. That's a very  
2 controversial subject. We've had four day  
3 meetings determining, and different opinions, can  
4 a rotator cuff tear heal. There's a lot of  
5 controversy about that.

6 The answer is probably, no, not completely.  
7 I think they can patch over. They can have  
8 improved function if the tear isn't real big,  
9 there is still enough tendon around to support  
10 you. If you have a rope with a lot of different  
11 intertwining things, you cut part of the twine,  
12 but most of it is still there, the rope can still  
13 hold you together. But I agree, my opinion about  
14 it, they probably don't ever completely ever  
15 tear, heal.

16 Q. Even a partial tear or small tear?

17 A. That's my opinion. We can meet a lot of very  
18 knowledgeable shoulder specialists who disagree  
19 with that.

20 Q. Now, your opinion when we talked last week is  
21 that, or you have the assumption, and I assume  
22 you're premising that as part of your opinion  
23 that something happened to Mr. Price between  
24 November 28th, 1998 and December 3rd, 1998?

25 A. That is correct.

1 Q. And what your assumption is is what you read from  
2 the note that Mr. Kenneally provided to you?

3 A. A very explicit note that I read is what made me  
4 believe that something, that was the something  
5 that happened. Something else might have  
6 happened, but that was the note that I'm using as  
7 my basis for saying that there is a change in the  
8 function of his right shoulder.

9 Q. And, Doctor, you actually have no personal  
10 knowledge of whether or not Mr. Price would have  
11 sustained any trauma between November 28th and  
12 December 3rd or any other time for that matter,  
13 would you agree with that?

14 A. Oh, no. Something happened to him very  
15 dramatically. Even if you took that page out and  
16 didn't tell us about it, there is such a big  
17 change in his physical presentation after the end  
18 of November and the beginning of December that  
19 something happened even if that was a mistake or  
20 not correct because from then on his neck was all  
21 better, but from then on he couldn't do anything  
22 with his shoulder and ended up with surgery. So  
23 there was a big dramatic change there.

24 MR. BARTEK: I move to strike that  
25 answer and I'm going to restate the

OR'd

1 question to you.

2 Q. My question to you is based on your personal  
3 knowledge -- you do not have any personal  
4 knowledge as to whether or not Mr. Price  
5 sustained any trauma between November 28th and  
6 December 3rd or any other time for that matter,  
7 do you?

8 A. Define the word personal knowledge because the  
9 knowledge that I gave you is personal knowledge  
10 based on what I read.

11 Could you please define the word personal  
12 knowledge? I thought I answered that to what I  
13 felt was personal knowledge.

14 Q. Well, why don't we look at your deposition on  
15 page 89? Line seven through line 21. Question,  
16 okay, let me ask you this about, let me ask you  
17 this just so there is no question about it, you  
18 have no personal knowledge of whether or not  
19 Mr. Price sustained any trauma between November  
20 28th and December 3rd or any other time for that  
21 matter.

22 Answer, right. I have no personal knowledge  
23 of anything that happened to him from December  
24 12th, 1998 onward. Most of his treating doctors  
25 don't have personal knowledge of him until they

1           came to see him. I do not have the eye. I agree  
2           with you. I do not have any personal  
3           acknowledge.

4           Was that question asked and was that  
5           answered?

6   A. Yes, it is, but we never discussed what personal  
7           knowledge meant. I did it on the basis of what  
8           you asked me. I wasn't there. I didn't have  
9           personal knowledge. I didn't see him happen. On  
10          the other hand, when you asked me the question a  
11          little bit differently this time I based it on  
12          what I read. Now, is that personal knowledge?  
13          Let the jury decide. I wasn't there.

14   Q. Now, Doctor, would you agree with me that Dr.  
15          Sassano provided good medical care to Mr. Price?  
16          In fact, I think you told me he provided  
17          excellent care?

18   A. Uh-huh. He did the right thing for a sprain. He  
19          treated it with medicine. He treated it with  
20          therapy. I agree 100 percent with what he did.

21   Q. I think you also agreed with me that Dr. Sassano,  
22          that you could tell by reviewing the medical  
23          records that Dr. Sassano knew a lot about Carl, a  
24          lot about his personality and a lot about his  
25          character?

1 A. Right. Remember, he talked about diabetes, how  
2 it was out of control and made a comment that  
3 Carl doesn't think he's out of control, but I do.  
4 Remember that?

5 MR. BARTEK: I move to strike  
6 everything after the word right as  
7 nonresponsive.

8 A. You asked me the question last time and I  
9 answered it. If you want to keep it from the  
10 jury, I'm sure the judge will straighten that  
11 out.

12 MR. BARTEK: I move to strike the  
13 gratuitous remarks by the Doctor.

14 Q. And if the judge were here, I'd ask her to  
15 caution you about -- you've been in court more  
16 than I have. You understand --

17 A. Not me. I haven't been in court for five years.

18 Q. Have you given trial, video trial depositions?  
19 You may not go to court, but you give video trial  
20 depositions?

21 A. Yes, but I've not been in a court room since  
22 1996.

23 Q. But you give video trial depositions regularly?  
24 You're not going to tell me it's been five years  
25 since you've done that?



1 A. I don't know what happens to the video. I'm  
2 sitting here. What you do with the video is out  
3 of my hands. I don't know what happens to those.

4 4 MR. BARTEK: I move to strike this  
5 entire dialogue.

6 Q. Let me ask you this, you have no reason to doubt  
7 Dr. Sassano's ethics or character, do you?

8 A. No.

9 Q. Okay. And the same would be true of Dr. Pinsky?

10 A. No. I think he did a nice job.

11 Q. And you think that Dr. Pinsky also provided good  
12 medical care to Mr. Price?

13 A. Uh-huh. He repaired what he found.  
14 Unfortunately, the results weren't that good, but  
15 he did do a nice job.

16 Q. And if I understand what you're saying with  
17 respect to at least the medical charges in this  
18 case, you feel that all the charges up until  
19 November 21st were exclusively or totally related  
20 to the accident?

21 A. That's correct.

22 Q. And the total charges from December 3rd onward  
23 were partially related --

24 A. That's correct.

25 Q. -- to the accident?

1 A. That's correct.

2 Q. Okay. And I think that you made some reference  
3 on direct examination to the report of May 19th  
4 of Dr. Sassano, and I'm going to hand you what's  
5 been marked for purposes of identification as  
6 Plaintiff's Exhibit 3 since you don't have it in  
7 your file, and these are the records from the  
8 Falls Family Practice.

9 You do not question anything in Dr. Sassano's  
10 report of May 19th, 2000, do you?

11 A. Well, a little bit. In May 2000 -- no, I don't.  
12 I agree. I agree. I'm sorry. I thought this  
13 was 1998. This is 2000. No. I pretty much  
14 agree with Dr. Sassano.

15 He basically is saying there was improvement  
16 with the treatment, especially the surgery, but  
17 that Mr. Price still had a problem with his  
18 shoulder secondary to the motor vehicle accident.  
19 And I don't disagree with that, no.

20 Q. Okay. You actually do not take exception with  
21 his report of November 16th, 2000, do you?

22 A. I never saw that until you showed it to me and  
23 the only thing different in that report is Dr.  
24 Sassano's explanation of what he felt was an  
25 incorrect reporting of an event at a funeral.

1           That was the major thing on that one and I never  
2           saw that before and I don't know what to make of  
3           that. Whatever I told you. The jury has to  
4           decide. I just don't know what that means.

5   Q. And there also incidentally is in these records a  
6           note from Dr. McLaughlin, is there not?

7   A. I didn't see it. Could we read it to the jury?  
8           Because I don't know what it means.

9   Q. Well, be my guest. Read it to the jury.

10   A. The injury to Carl Price's shoulder -- this was  
11           written by Dr. McLaughlin on November 6th, 2000.  
12           The injury to Carl Price's shoulder was a direct  
13           result of the auto accident that occurred on  
14           October 12, 1998. The massotherapist that worked  
15           for us at the time inadvertently included some of  
16           his duties, such as a pall bearer, and it in no  
17           way meant that this was a cause or had anything  
18           to do with his injury or his car accident.

19   Q. Thank you. Now, let's talk a little bit about  
20           the injury to his neck. The injury to his neck,  
21           which you've characterized as a cervical strain,  
22           if we put that into layman's terms, what we're  
23           actually talking about is he suffered damage to  
24           the ligaments and muscles in his neck, did he  
25           not?

1 A. I don't think there's any damage. There's never  
2 been any proof that was any damage because he  
3 never had any special tests or surgery, but it  
4 means a stretching or swelling of muscles and  
5 ligaments in and around the neck. It could be  
6 the front or the back of the neck.

7 Q. And he had muscle spasms, did he not?

8 A. Yes. That was repeatedly noted.

9 Q. Okay. He had muscle spasms which gave him pain  
10 in his neck, his shoulders, back and gave him  
11 headaches?

12 A. That's correct.

13 Q. Okay. And you don't have any disagreement with  
14 that?

15 A. I don't see how I could disagree. I'm not even  
16 at issue. I wasn't even there.

17 Q. Muscle spasms are uncontrolled locking or  
18 contractions of muscles, which would be  
19 involuntary, which would be involuntarily,  
20 something he could not control?

21 A. That's exact -- that's a good definition.

22 Q. And muscle spasms are very painful?

23 A. They can be. Some people have no pain, some  
24 people have stiffness, some people have a lot of  
25 pain, but it can be painful.

1 Q. And he reported a lot of pain in connection with  
2 his or they were attributed to a lot of pain, him  
3 to be in a lot of pain?

4 A. Yes, he did.

5 Q. Okay. And they would have restricted his  
6 movement, would they not?

7 A. Right. When you have a muscle spasm, if I had a  
8 spasm back of my neck here, I'm not going to be  
9 able to turn like I can here because the muscle  
10 spasm will lock up the joints and prevent me from  
11 moving. That's correct.

12 Q. Okay. And if you would move when those muscles  
13 are locked up like that, then you would  
14 experience pain?

15 A. Right. The spasm stops you. You just don't have  
16 the flexibility because the muscles, instead of  
17 being flexible, are spasmed.

18 Q. And through your date of November 21st that I  
19 think you made reference to in your direct  
20 examination, he had persistent muscle spasms  
21 including muscle spasms were reported on November  
22 21st of 1998; isn't that true?

23 A. Right, of his neck and trapezius muscles, yes.  
24 That were so reported.

25 Q. Well, actually, Doctor, isn't it true that on

1 November 21st, 1998 he reported that he was in a  
2 restaurant and his arm twitched and he threw a  
3 chicken leg up into the air?

4 A. I don't know.

5 Q. You don't know.

6 A. I have no personal knowledge of chicken legs.

7 Q. Okay. My question to you was that reported in  
8 the record -- well, let me tell you, you have my  
9 exhibit here and you can feel free to look at it  
10 any time you need to.

11 A. Is this the one you're talking about?

12 Q. I'm talking about November 21st, 1998.

13 A. I have it here. He is improving. He's still  
14 having muscle spasms and the other day he was in  
15 a restaurant and his arm twitched and he threw  
16 the chicken leg up into the air that he was  
17 eating. That's what it says.

18 Q. And the arm twitching, would you attribute that  
19 to muscle spasm?

20 A. Probably could be. It didn't show he had a  
21 rotator cuff tear, but it does show he had spasm,  
22 yeah.

23 Q. In other words, you'd express the opinion that on  
24 November 21st he would not have had the rotator  
25 cuff tear other than the partial tear that you

1           already --

2       A.   Right, and I base that -- how could he throw  
3           something up in the air? He told me he can't  
4           throw anything anymore.

5       Q.   Okay. Incidentally looking, and I'm looking at  
6           all the records, isn't it true that he received  
7           physical therapy to his right shoulder on every  
8           visit to the massotherapist?

9       A.   The SIT muscles. It says SIT shoulder,  
10          Supraspinatus, Infraspinatus, Teres minor  
11          muscles, they're in your -- Supraspinatus is in  
12          the upper part of your shoulder. The  
13          Infraspinatus and Teres minor are in the lower  
14          part of your scapula.

15      Q.   When you do defense medical exams such as you did  
16          in this case, Mr. Price is not your patient, is  
17          he?

18      A.   No.

19      Q.   Okay. If as a plaintiff's attorney you indicated  
20          that in the past perhaps Mr. Kenneally was a  
21          plaintiff's attorney and he may have sent a  
22          patient to you for an evaluation, I think you  
23          said that in your testimony earlier?

24      A.   For treatment.

25      Q.   For treatment. Okay. If a plaintiff's attorney

1           wants to get an opinion from you regarding his  
2           patient, you would only agree to do that if the  
3           client becomes your patient?

4   A.   Right.  I think I testified that I prefer not to  
5           see anybody who is going to be potentially  
6           treatable, that they will not accept the fact  
7           that I can be their treating doctor.  They don't  
8           have to, but that's under the premise that they  
9           see me.

10  Q.   So that there is no mistake for the jury since  
11           you characterized your work in this case as an  
12           independent medical examination --

13  A.   Yes.

14  Q.   -- you were not hired by mutual agreement by  
15           Mr. Kenneally and myself, were you not?

16  A.   I don't know what you two did together, but  
17           Mr. Kenneally is the one that referred Mr. Price  
18           for an evaluation, not for a treatment, and to  
19           issue a report after I have a chance also to  
20           review records.  That was my understanding.

21  Q.   Doctor, you've been doing this for a long time  
22           and you've been medical legal work for a long  
23           time.  You're aware of the fact in this case that  
24           you were retained by the defense and it wasn't a  
25           joint effort between us, .aren't you?



1 A. How could I know? I only got a record, a request  
2 from Mr. Kenneally. If you -- I've had patients  
3 that had joint -- I've had a number of those  
4 where I was the independent doctor and both sides  
5 agreed to use me. So I don't know that you were  
6 one of those. I just had one of those a couple  
7 months ago

8 Q. When both sides agree to use you or when the  
9 court appoints you you may be an independent  
10 doctor. In this case you were hired by the  
11 defense; isn't that true?

12 A. That's correct.

13 Q. All right. And you were hired in this case, not  
14 to provide any medical care or assistance to Carl  
15 Price, but to serve as a witness for the  
16 defendant?

17 MR. KENNEALLY: Object'ion. Asked  
18 and answered.

19 A. No. I was never asked to serve as a witness  
20 until I was asked to testify in court here. I  
21 was only asked to issue a report.

22 Q. And you were just hired on October 25th?

23 A. I don't know when -- is that when it was? I  
24 don't know. We don't keep records of that. The  
25 only way I can tell is when the girls up front,

1           our secretaries, will find a spot and a lot of  
2           that is dependent upon if there is a cancellation  
3           or some other problem.

4   Q.   What is the first date in your record, in your  
5           file that you showed me, that has, that indicates  
6           any connection with this case?  What is the first  
7           date in your file?

8   A.   October 26th, 10-26.  Where do you see that?  I  
9           have a 10-24 here, a letter from Kenneally.

10  Q.   Okay.

11  A.   10-24.

12  Q.   Okay.  Now, when you conducted your physical  
13           examination of Mr. Price in this case, would you  
14           agree that your actual physical examination took  
15           no more than five to ten minutes?

16  A.   I don't remember.

17  Q.   Okay.  Do you recall telling me last week that it  
18           took five to ten minutes?

19  A.   Nope.  You asked me and I said I started the  
20           examination the second I moved in, but part of  
21           the thing I wanted to see was how much Mr. Price  
22           had motion of his neck.  So as I walked in and  
23           started to talk to him I moved to his left and he  
24           followed me without difficulty.

25           Then I asked him more questions and I moved

1 to his right and I watched him and that went on  
2 for 20 minutes or so. I asked him to, I asked  
3 him to kind of take off his jacket and reach up  
4 and he could do it with his shoulder, but not  
5 really well. So I actually was doing an  
6 examination probably during the 45, 50 minutes  
7 that I examined him all the way through.

8 Q. Well, let me ask you this question specifically,  
9 the time that you actually spent doing your  
10 physical examination of the right shoulder was  
11 five to ten minutes, wasn't it?

12 A. I don't know. I can't tell you that. I would  
13 have to say that the time that I touched his  
14 shoulder and asked him to move may have been five  
15 minutes. The time that I observed him and  
16 watched him raise his arm and point to something  
17 was 45 minutes, but what difference does that  
18 make?

19 Q. Okay. And just so that I have a clarification,  
20 and if you want to refer to page 129 of your  
21 deposition, lines 14 through 16 or lines 14  
22 through 18.

23 A. Go ahead.

24 Q. The time -- question, the time that you actually  
25 spent doing your physical examination of his

1 right shoulder, answer five to ten minutes,  
2 question five to ten minutes, answer uh-huh?

3 A. Yeah, I agree.

4 Q. All right.

5 A. But I also, if you go back previous pages and I  
6 also made the note that much of my examination is  
7 conducted by observation.

8 Q. And the first time you saw him was more than  
9 three years after the accident?

10 A. Uh-huh. Three years and 14 days. That's exactly  
11 right.

12 Q. And it was after the repair had been completed?

13 A. After both shoulders were repaired, that's  
14 correct.

15 Q. Dr. Sassano and Dr. Pinsky both saw him on an  
16 ongoing basis as their patient, did they not?

17 A. That's correct.

18 Q. Okay. You are compensated for your time by  
19 Mr. Kenneally for providing your services here  
20 tonight?

21 A. Oh, sure.

22 Q. Okay. And you actually do, I think you so far  
23 this year through this point of the year you have  
24 done 25 to 35 of these examinations?

25 A. Uh-huh, independent exams, but I also explained

1 to you for the jury's sake they weren't all for  
2 litigation like this. Some of them were for  
3 ability to work, some were for Workers'  
4 Compensation allowances, oh, second opinion type  
5 of problems. They're not all for litigation  
6 reasons.

7 Q. But you do do them for medical legal cases?

8 A. Is this medical legal you're talking about, like  
9 this?

10 Q. You used that term last week with me.

11 A. Is this what you're talking about?

12 Q. This type of situation.

13 A. Yes. I do this sort also, but they're not all  
14 for this particular type of venue.

15 Q. You are no longer actively practicing surgery,  
16 are you?

17 A. No, I don't do surgery as of January of this  
18 year

19 Q. Okay. Your practice at the present time is  
20 essentially what you do do as an office practice?

21 A. I have an office practice because there is a huge  
22 amount of people that are not satisfied and there  
23 is no available nonsurgical orthopedic treatment  
24 available. Every orthopedist wants to do surgery  
25 and they don't want to treat people

1 nonoperatively. That has a opened up a huge  
2 practice for me. That's why I work five days or  
3 six days a week.

4 Q. You agree with me that there are things that Carl  
5 cannot do now that he could do before the  
6 accident?

7 A. Oh, yeah. A lot of things with his right arm and  
8 left arm. Absolutely.

9 Q. And I think that you'll agree with me when we  
10 talk that the injury to his right shoulder has  
11 affected his lifestyle or his activities of daily  
12 living?

13 A. Well, the composite injury, everything that has  
14 happened to his right shoulder certainly has  
15 happened, yes. That has affected his life, yeah.

16 Q. And you agree with me that the condition to his  
17 right shoulder regardless of the good care he  
18 received from Dr. Pinsky and Dr. Sassano, that  
19 the condition of his right shoulder and his  
20 limitations and his disability are permanent in  
21 nature?

22 A. Yeah. I think to some degree. I don't think  
23 he'll ever be back as good as he was before.

24 Q. Incidentally, Doctor, is it your testimony as you  
25 sit here today that the physical therapy that

1           Mr. Price received in January and February of  
2           1999, that none of that physical therapy was  
3           directed towards his neck?

4   A.   Mostly the shoulder.

5   Q.   And you're saying none was directed to his neck?

6   A.   I don't know. I wasn't there, but I mean mostly  
7           the shoulder because the descriptions on the  
8           range of motion of the shoulder for the first  
9           time is an inability to move the shoulder at that  
10          time.

11   Q.   Okay. And my only question to you is do you know  
12          as we sit here today whether or not he received  
13          physical therapy to his neck and his upper back  
14          in January and February of 1999?

15   A.   He may have, but I can't tell you exactly how  
16          many visits. I don't have that in front of me.

17   Q.   Physical therapy and massotherapy are basically a  
18          method of relieving inflammation, stress -- or  
19          stiffness and muscle spasm, are they not?

20   A.   I think it's pain relief, yeah.

21   Q.   It's used to relieve pain, ease inflammation and  
22          improve mobility?

23   A.   Ease pain and improve mobility. I don't know  
24          that there's proven documentation that it eases  
25          inflammation, but it certainly does improve

1 mobility and eases pain.

2 Q. Okay. Now, Doctor, on November 17th of 1998,  
3 according to the note contained in the physical  
4 therapy records, and feel free to refer to it, on  
5 November 17th when Mr. Price saw the physical  
6 therapist he had a continuous headache stemming  
7 from a trigger point in his trapezius, did he  
8 not?

9 A. Yeah. I was aware of that, yeah

10 Q. Okay. And actually at least on the 17th at the  
11 time of that evaluation he was basically treated  
12 for his trapezius, his right shoulder, his  
13 thoracic paraspinals, which is his back, his  
14 levatator or scapulae which are his shoulder  
15 blades and his posterior cervicals, which is his  
16 neck?

17 A. Yeah. I think I said that very clearly to the  
18 jury. He was treated for the muscular conditions  
19 in his neck and upper back during that period of  
20 time.

21 Q. And it would be fair if we put this in layman's  
22 terms, he was having a lot of physical discomfort  
23 from the middle of his back to the top of his  
24 head on the 17th?

25 A. You have to ask him. I don't know. It just said



1 he was having a headache and he had trigger  
2 points. I don't see the words lot of discomfort  
3 written on here.

4 Q. Now, you don't feel, as I understand it, and if I  
5 asked you this before I apologize, you do not  
6 feel that his rotator cuff was severely troubling  
7 him on Novembers 21st of 1998, do you?

8 A. There is no evidence that that's the case.  
9 Therefore, I don't feel that's the case.

10 Q. Okay. Would you agree to a reasonable degree of  
11 medical certainty that Carl will suffer variable  
12 post-operative pain in his right shoulder or for  
13 the rest of his life?

14 MR. KENNEALLY: Objection, asked  
15 and answered. *OK'd*

16 A. The word variable is inclusive and I would have  
17 to say that's correct because there would be  
18 times when it didn't bother him at all and other  
19 times when he over does it the shoulder will  
20 bother him more. That's correct.

21 Q. And by post-operative we mean post rotator cuff  
22 surgery operative?

23 A. Correct. There is something else other than the  
24 repair that's causing his problem, but he still  
25 is having pain and still has lost mobility or

1 strength in his shoulder, that's correct.

2 Q. And he has stiffness in his right shoulder which  
3 will completely never go away?

4 A. I wish our maker above us would send me a beam to  
5 say that the word never on a human body, could  
6 never do that, but it's probable that it will  
7 never get back to what it was before.

8 Q. Okay. To be fair to you, I will attempt to  
9 rephrase that question since it put it in such a  
10 global term and that is not a legal standard.  
11 You used the correct legal standard. Would you  
12 agree to a reasonable degree of medical  
13 probability and certainty that's it's fair to say  
14 he will experience pain, stiffness and disability  
15 in his right shoulder for the rest of his natural  
16 life?

17 A. I think to some degree, and the word variable is  
18 important. That's correct

19 Q. Now, Doctor, you feel that some event happened  
20 between November 28th and December 3rd that you  
21 feel would have caused excruciating pain.

22 Did Mr. Price receive any medical attention,  
23 by medical attention I mean from a physician,  
24 from a doctor, any time between October 16th of  
25 1998 and December 15th of 1998?

1 A. I don't know. Dr. McLaughlin -- Dr. McLaughlin  
2 was there, either was there on each visit or  
3 countersigned it. That's the only one that I  
4 know is a doctor that saw him during that period  
5 of time.

6 Q. He has his countersignatures on there. The  
7 reality with respect to Dr. Sassano who is the  
8 physician in charge of his case, he saw Dr.  
9 Sassano on October 16th, four days after the  
10 accident, did he not?

11 A. 15th, I believe it was.

12 Q. Okay. Well, you can take a look.

13 A. I stand corrected. October 16th. It was  
14 actually four days after, not three days after.

15 Q. Okay. And the next time I saw, that Dr. Sassano  
16 saw him was on December 15th, 1998?

17 A. That's what the record says.

18 Q. And there is no evidence that Carl went to the  
19 emergency room or had any other medical help  
20 between November 28th or in fact between October  
21 16th of 1998 and December 15th of 1998?

22 A. Other than the countersigned record of Dr.  
23 McLaughlin, he's responsible for it. So whatever  
24 was there he would have to be responsible.

25 Q. Other than the massotherapy, we will set that

1       aside for a moment, the massotherapy records will  
2       speak for themselves. Other than the  
3       massotherapy, wouldn't it be fair to say that  
4       Carl Price did not receive care or treatment from  
5       a doctor, from an emergency room, from an  
6       emergency based physician's office, from any  
7       other medical care provider between October 16th  
8       of 1998 and December 15th of 1998?

9       A. Probably so. And that's assuming that Dr.  
10       McLaughlin's signatures on each visit was only a  
11       countersignature and he himself did not see him.  
12       I don't know.

13       Q. Now, Doctor, would you look at the records, the  
14       office records, for the Cuyahoga Falls Family  
15       Practice for October 16th of 1998?

16       A. The one four days after the accident?

17       Q. Yes.

18       A. Yes. I saw that several times, yeah.

19       Q. First of all, looking at the progress notes, the  
20       progress notes report that Carl experienced  
21       immediate pain to his right side, do they not, at  
22       the time of the accident?

23       A. Right side of his neck and right arm, yes and  
24       they have numbness of his right arm. Yes, I read  
25       that.

1 Q. Okay. And the next thing I was going to ask you  
2 about was numbness in his right arm. There was  
3 not any numbness reported any time after November  
4 21st, was there, between November 21st and  
5 December 3rd?

6 A. I don't recall. I don't think so. I think  
7 you're right.

8 Q. Okay. And the, there was no numbness reported --  
9 strike that.

10 His symptoms on the 16th, on October 16th,  
11 only four days after this accident, his symptoms  
12 were so severe and he was in such severe distress  
13 secondary to pain that he was actually crying in  
14 the examining room in Dr. Sassano's office,  
15 wasn't he?

16 A. That's what he wrote, yes.

17 Q. That's what Dr. Sassano wrote?

18 A. He is crying in the room, that's correct.

19 Q. Okay. And you have no reason -- because of  
20 severe distress?

21 A. No. I think he was in distress. I made that  
22 diagnosis myself.

23 Q. Okay. When he was there, when he was back to see  
24 Dr. Sassano on December 15th there was no report  
25 that he was crying?

1 A. No, but there's something very significant that  
2 was, that intervened on that day, very  
3 significant.

4 Q. My question to you, and if something is  
5 significant and Mr. Kenneally hasn't brought it  
6 out already, I'm sure that he will try to do that  
7 on direct examination.

8 A. Well, you wouldn't want to keep it from the jury.

9 MR. BARTEK: Well, I move to  
10 strike your gratuitous remarks.

11 Q. I'd appreciate it if you just answer my  
12 Questions.

13 When you look at the records for December  
14 15th of 1998, there is no evidence of such severe  
15 distress that he's crying at that point, is  
16 there?

17 A. No, just having trouble with the right side.

18 Q. That's right. He said he is still having trouble  
19 with his right side?

20 A. That is correct.

21 Q. And he attributes it, he comes in for a recheck  
22 on his motor vehicle accident and that's what Dr.  
23 Sassano attributed it to?

24 A. That's what it says, yes.

25 MR. BARTEK: Okay. If I could

1                   just take a moment off the record.

2                   VIDEO OPERATOR: We're off the  
3                   record

4                   - - - -  
5                   (Off the record.)

6                   - - - -  
7                   VIDEO OPERATOR: We're on the  
8                   record.

9                   MR. BARTEK: Back on the record.

10       Q. Doctor, I'm going to hand you what's been marked  
11           for purposes of identification as Plaintiff's  
12           Exhibit 4, and I believe I showed this to you and  
13           discussed this with you at your deposition last  
14           week and these are Dr. Pinsky's records and I'm  
15           going to show you Dr. Pinsky's note of 11-8-2000.

16                 Is there anything in that note that you  
17           disagree with?

18       A. I think with the history that he received, I  
19           can't disagree with that.

20       Q. Okay. The history that Dr. Pinsky received in  
21           this case was approximately March, approximately  
22           six months after the accident?

23       A. Right. The only history that he's referring to  
24           is a car accident. He makes no other reference  
25           of any other event.

1 Q. And the history that you received was three years  
2 after the accident, more than three years after  
3 the accident, and the history you received made  
4 no reference to any other event?

5 A. The history that Mr. Price gave me?

6 Q. Yes.

7 A. That's correct. He told me nothing else other  
8 than the car accident.

9 Q. So the history that was given to Dr. Sassano and  
10 the history that was given to Dr. Pinsky and the  
11 history that was given to you by Mr. Price were  
12 consistent?

13 A. In a way. Dr. Sassano wrote a separate report  
14 addressing the, just before December 3, 1998  
15 casket event. So he was aware of that. And then  
16 Dr. McLaughlin made a reference to that. So they  
17 did have that information in their access.  
18 Everything else was just the history of what  
19 Mr. Price gave them

20 Q. Doctor, I would like you to tell me your  
21 basis -- or strike that.

22 I'm going to ask you the question this way.  
23 Isn't it true that Mr. Price was able to use his  
24 right arm to the same degree after December 3rd  
25 of 1998 that he had been before December 3rd,



1           1998 according to the office notes of Dr. Sassano  
2           and the records of the physical therapist from  
3           Cuyahoga Falls General Hospital?

4       A.   No.   Dr. Sassano doesn't even address that.   He  
5           didn't even make an examination on his record.  
6           He may have done it, but he didn't put it in his  
7           record.   The records from the Cuyahoga Falls  
8           Hospital, the therapy department, there's a  
9           difference from -- the massotherapy did make  
10          reference to the fact that he couldn't use his  
11          shoulder, couldn't raise his arm.   There was  
12          nothing before that that said he could raise his  
13          arm or couldn't.

14       Q.   Well, I think that we discussed this before.  
15           From the time that he was in the emergency room  
16           two days after the accident at least Mr. Price  
17           reported to you that he could not raise his arm  
18           at that time?

19       A.   That's what he told me.

20       Q.   Okay.   Now, the other thing about it is there's a  
21           reference in that December 3rd note that  
22           Mr. Price missed a couple of weeks of therapy.  
23           Do you see that?

24       A.   Yeah.

25       Q.   In looking at those records Mr. Price, and I

1 think you enumerated the dates that he did it,  
2 but the last three relevant dates that he was  
3 there on November 21st and then he was there on  
4 December 3rd; is that right?

5 A. Right. What, 12 days in between, something like  
6 that. That's about right, yeah.

7 Q. 30 days has November?

8 A. Right.

9 Q. So it would have been nine days then?

10 A. And three more.

11 Q. And three more.

12 A. Uh-huh.

13 Q. Prior to November 21st, he did not miss any  
significant period of time for therapy up till  
15 the 21st?

16 A. That's probably true. There were four day  
17 intervals, five day intervals. You're right.  
18 Everything else was a shorter interval.

19 Q. And you have no information, and there was no  
20 information in the records, is there, that would  
21 indicate a mechanism by which Carl Price might  
22 have been carrying a casket or a mechanism as to  
23 how your theoretical injury might have occurred?

24 A. It was very specific. He reached out and lifted  
25 up in the casket. That's a specific mechanism to

1 put huge strain on the rotator cuff.

2 Q. Doctor, when we look at Carl Price's medical  
3 history and his medical condition with respect to  
4 his right arm and shoulder and with respect to  
5 his neck prior to October 12th, 1998, Carl was  
6 having, as a practical matter, no difficulty  
7 whatsoever with his right shoulder, do you agree  
8 with that?

9 A. I agree, believe that. That's correct. I think  
10 for his age that's absolutely correct and he did  
11 not have any treatment for his shoulder before  
12 this, that's correct.

13 Q. And he was essentially not having any difficulty  
14 with his neck?

15 A. That is correct.

16 Q. And as a result of the accident he had difficulty  
17 with his neck for a period of time which he told  
18 you resolved?

19 A. That's correct.

20 Q. And he has had continuous difficulties with his  
21 shoulder since that time which he has reported to  
22 you and which Dr. Sassano and Dr. Pinsky indicate  
23 in their record has never resolved?

24 A. From beginning to end, that's correct. It has  
25 not ever resolved from the time that he first got

1 hurt regardless of what happened in the interim,  
2 but since the surgery his shoulder has not gone  
3 back to what it was before. I agree with that.

4 MR. BARTEK: Thank you, Doctor. I  
5 don't have any further questions at this  
6 time.

7 - - - -

8 FURTHER DIRECT EXAMINATION OF

9 ROBERT D. ZAAS, M.D.

10 BY MR. KENNEALLY:

11 Q. Doctor, let's first all deal with this neck  
12 condition that you were asked questions about.

13 When you saw Mr. Price a couple of weeks ago,  
14 did he complain to you of any neck problems, any  
15 ongoing neck problems?

16 A. No. He had a little bit of stiffness because he  
17 has arthritis, but he told me at least three or  
18 four times my neck is fine, doesn't bother me  
19 anymore, that got better with treatment, my  
20 shoulder didn't. He kept saying that over and  
21 over again.

22 Q. Now, you talked about a partial tear in your  
23 testimony on direct examination. Did you see  
24 anything in any of the records which you reviewed  
25 that Dr. Sassano, the primary treating physician

1 in this case, ever confirmed that he had suffered  
2 a partial tear of the right rotator cuff?

3 MR. BARTEK: Objection. *OR'd*

4 A. No.

5 Q. Now, you were asked whether or not you knew  
6 anything about the casket incident when you  
7 examined the plaintiff, do you remember that  
8 question?

9 A. Yes. I said I did not know anything about that.

10 Q. And that's because Mr, Price didn't tell you  
11 anything about it, correct?

12 A. That's correct.

13 Q. And you had not had an opportunity to review the  
14 records at the time that you took that history?

15 A. Right. The records, for the jury's sake, I saw  
16 no records. I think they didn't come for two or  
17 three days later. I think they were your  
18 originals, not copies and they didn't come. I  
19 didn't see the records probably for 48 hours  
20 afterwards.

21 Q. And it was when you reviewed the records, and  
22 you've testified several times now during this  
23 deposition that it was while you reviewed the  
24 records of the massotherapy treatment, that you  
25 first learned of the casket incident in the

1 December 3rd, 1998 massotherapy report?

2 MR. BARTEK: Objection. *DR'd*

3 A. That is correct.

4 Q. Okay. Now, you've been shown two reports from  
5 the two doctors who have testified in this case  
6 on behalf of the plaintiff, Dr. Sassano and Dr.  
7 Pinsky. And those reports disavow the fact that  
8 there was any incident, any casket incident  
9 around December 3rd that caused the worsening of  
10 the right rotator cuff problems?

11 MR. BARTEK: Object to the form of  
12 the question.

13 A. Correct. They did not indicate that they had a  
14 history of a casket accident. That's correct.

15 Q. What do you make of this disavow on the part of  
16 the two doctors?

17 MR. BARTEK: Objection. *Su'd*

18 A. If I hadn't known in documented form as written  
19 by the massotherapist that there was such a  
20 significant event, I also would have had to  
21 conclude that the rotator cuff evolved out of the  
22 car accident, but it's a very significant  
23 difference of knowing something had happened.

24 Q. When you say a very significant event, what do  
25 you mean by that?

*Debate*

1 A. Well, it's a difference when you have a person,  
2 when you have the therapist records of somebody  
3 improving, improving, improving, improving by the  
4 fourth week after the accident, improving by the  
5 fifth week after the accident, the six, six and a  
6 half weeks after the accident then you see at  
7 seven weeks there's a dramatic downfall. For the  
8 first time in any record the massotherapist wrote  
9 on December 3 couldn't raise arm. That's the  
10 first time that an outside observer wrote that he  
11 couldn't raise his arm.

12 MR. BARTEK: Motion to strike.

13 A. And that is a very significant change that led me  
14 to my conclusion.

15 MR. BARTEK: Motion to strike.

16 Q. Just so the jury understands, the information  
17 contained in these individual massotherapy  
18 reports, the information, who gives that  
19 information to the massotherapist?

20 MR. BARTEK: Objection.

21 A. Obviously, Mr. Price.

22 Q. I mean, is that typical of any patient that  
23 treats --

24 A. Sure.

25 Q. -- with a physical therapist or massotherapist on

1 an ongoing basis?

2 MR. BARTEK: Objection.

3 A. With any medical people. See, when I see a  
4 person, and maybe I will see them for follow up  
5 for a fractured wrist, how are you feeling, well,  
6 it's stiff, Doc, I'm still having a lot of  
7 trouble, but I'm improving here. I will write  
8 still complains of stiffness, but strength is  
9 improving. I measure the arm, motion is  
10 increasing. He has to tell me what his symptoms  
11 are and then I can mark down that I measured when  
12 I did it. The therapist does the same thing.  
13 The massage therapist does the same thing. The  
14 nurse will do -- we have nurses' notes that will  
15 report the same thing. This is standard medical  
16 documentation of an event that's told to him by  
17 the patient.

18 Q. You indicated in your testimony that, and you  
19  
20 note of October the 14th, which was the first  
21 time that, excuse me, October 16th of 1998 was  
22 the first visit to Dr. Sassano and then you were  
23 shown the visit of December 15th?

24 A. Correct.

25 Q. And that there was no visits to a doctor in



1           between those periods of time. Of course there  
2           were the ongoing massotherapy visits, correct?

3                       MR. BARTEK: Objection. *UP!*

4   A.   The massotherapy and Dr. McLaughlin visits, but I  
5       believe that they may have been just a  
6       countersigned visit.

7   Q.   I want you to assume, Doctor, that based on the  
8       testimony of Dr. Sassano this morning, he  
9       testified that when he saw Mr. Price on December  
10      the 15th, 1998, that second visit after the  
11      December 3rd incident, he prescribed the  
12      medication prednisone for his condition?

13   A.   That's what he wrote in his record, yes.

14   Q.   What is prednisone?

15   A.   Prednisone is a steroid, antiinflammatory, kind  
16       of a cousin to a, to a cortizone, direct  
17       cortizone. And cortizone, of course, is the  
18       hormone that comes out of the adrenal gland. We  
19       use it for -- it's a very powerful  
20       antiinflammatory. Normally you would inject it  
21       for the shoulder which Dr. Sassano did make  
22       reference to. You only use that for very acute,  
23       suddenly occurring high level joint  
24       inflammations. It has no real value for muscles  
25       and ligaments. It's for joint problems.

1           We'll use prednisone for an acute knee  
2           problem filled up with fluid if a person can't be  
3           injected. We can use it for the shoulder, hand,  
4           inflammation like it's usually for something that  
5           suddenly happened because you use it only over a  
6           two or three day period of time. It's too  
7           powerful and there are too many side effects to  
8           use it longer.

9       Q. Do you see any reference in the records you  
10       reviewed prior to December the 15th of 1998 of  
11       Dr. Sassano prescribing prednisone for the care  
12       and treatment of his patient?

13      A. Oh, no. No. You wouldn't do that for muscular  
14       injuries and the only reason he prescribed  
15       prednisone is that Mr. Price told him -- Dr.  
16       Sassano wrote that he wanted to inject Mr. Price,  
17       do an injection, but then when you look at the  
18       records, Mr. Price told him I'm allergic to  
19       injections. I don't know what that means. So he  
20       decided to give him a two day supply of  
21       prednisone.

22           Normally, if you have a rotator cuff problem  
23       you can inject it and it will feel better for a  
24       while. It doesn't correct the pain, but at least  
25       it's got people sleeping at night better and they

1 sleep better sometimes for a couple weeks and  
2 that would be the choice to inject the torn  
3 rotator cuff just for symptom relief, but I guess  
4 Mr. Price can't get injections because he's  
5 allergic.

6 Q. I guess my question though is was there any  
7 evidence in the records that you reviewed from  
8 Dr. Sassano or the family practice that he is  
9 associated with that he had ever prescribed or  
10 treated Mr. Price with prednisone before December  
11 15th, 1998?

12 MR. BARTEK: Objection to the form  
13 of the question.

14 A. No.

15 MR. KENNEALLY: That's all I have,  
16 Doctor. Thank you.

17 MR. BARTEK: Nothing further.

18 VIDEO OPERATOR: Doctor, would you  
19 like the opportunity to read and sign the  
20 transcript or review the videotape or do  
21 you want to waive those rights?

22 THE WITNESS: Yeah. I will waive  
23 both, viewing the video, reading the  
24 transcript.

25 - - - -

(The reading and signing of the  
deposition was expressly waived by the witness  
and by stipulation of counsel.)

- - - -

C E R T I F I C A T E

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

I, Rachel M. Gentile, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulation of counsel; and that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney, or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 20 day of November A.D. 2001.

Rachel M. Gentile  
Rachel M. Gentile, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires November 7, 2002

W I T N E S S I N D E X

	<u>PAGE</u>
DIRECT EXAMINATION	
ROBERT D. ZAAS. M.D.	
BY MR. KENNEALLY.....	3
CROSS-EXAMINATION	
ROBERT D. ZAAS. M.D.	
BY MR. BARTEK.....	41
FURTHER DIRECT EXAMINATION	
ROBERT D. ZAAS. M.D.	
BY MR. KENNEALLY.....	84

O B J E C T I O N I N D E X

<u>OBJECTION BY</u>	<u>PAGE</u>
MR. BARTEK.....	10
MR. BARTEK.....	14
MR. BARTEK.....	14
MR. BARTEK.....	15
MR. BARTEK.....	17
MR. BARTEK.....	31
MR. BARTEK.....	33
MR. BARTEK.....	34
MR. BARTEK.....	35
MR. BARTEK.....	35
MR. BARTEK.....	37
MR. BARTEK.....	40
MR. BARTEK.....	40
MR. KENNEALLY.....	45
MR. KENNEALLY.....	45
MR. BARTEK.....	53
MR. BARTEK.....	56
MR. BARTEK.....	56
MR. BARTEK.....	57
MR. KENNEALLY.....	65
MR. KENNEALLY.....	73
MR. BARTEK.....	78
MR. BARTEK.....	85
MR. BARTEK.....	86
MR. BARTEK.....	86
MR. BARTEK.....	86
MR. BARTEK.....	87
MR. BARTEK.....	88
MR. BARTEK.....	89
MR. BARTEK.....	91