

In The Matter Of:

*Sandra Slusarczyk v.
Dennis Stanfield*

SCANNED
3/9/02

*Robert D. Zaas, M.D.
December 6, 2001*

*Mehler & Hagestrom
Court Reporters
1750 Midland Building
101 West Prospect Avenue
Cleveland, OH 44115
(216) 621-4984 FAX: (216) 621-0050*

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Word Index included with this Min-U-Script®

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[1] IN THE COURT OF COMMON PLEAS
[2] CUYAHOGA COUNTY, OHIO
[3]
[4] SANDRA SLUSARCZYK,
[5] Plaintiff,
[6] JUDGE SUSTER
[7] -vs- CASE NO. 425134
[8] DENNIS STANFIELD,
[9] Defendant.
[10] Videotaped Deposition of ROBERT D. ZAAS,
[11] M.D., taken as if upon direct examination before
[12] Judith A. Gage, a Registered Realtime Reporter
[13] and Notary Public within and for the State of
[14] Ohio, at the offices of Robert D. Zaas, 6803
[15] Mayfield Road, Mayfield Heights, Ohio, at 6:00
[16] p.m. on Thursday, December 6, 2001, pursuant to
[17] notice and/or stipulations of counsel, on behalf
[18] of the Defendant in this cause.
[19]
[20] MEHLER & HAGESTROM
Court Reporters
[21]
CLEVELAND AKRON
[22] 1750 Midland Building 1015 Key Building
Cleveland, Ohio 44115 Akron, Ohio 44308
[23] 216.621.4984 330.535.7300
FAX 621.0050 FAX 535.0050
[24] 800.822.0650 800.562.7100
[25]

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[1] APPEARANCES:
[2] Mark W. Ruf, Esq.
Linton & Hirshman
[3] 700 West St. Clair Avenue
Hoyt Block, Suite 300
[4] Cleveland, Ohio 44113-1230
(216) 771-5800,
[5]
On behalf of the Plaintiff;
[6]
Tracey McGurk, Esq.
[7] Allstate & Encompass Staff Counsel
The 113 St. Clair Building, Suite 525
[8] Cleveland, Ohio 44114
(216) 771-3336,
[9]
On behalf of the Defendant.
[10]
[11] ALSO PRESENT:
[12] Peter C. Graves
Certified Legal Video Specialist
[13]
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[1] **VIDEOTAPE OPERATOR:** We're now
[2] ready to begin the deposition. Will the
[3] court reporter please swear in the doctor.
[4] **ROBERT D. ZAAS, M.D.,** of lawful age,
[5] called by the Defendant for the purpose of direct
[6] examination, as provided by the Rules of Civil
[7] Procedure, being by me first duly sworn, as
[8] hereinafter certified, deposed and said as
[9] follows:
[10] **DIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.**
[11] **BY MS. McGURK:**
[12] **MS. McGURK:** Let the record
[13] reflect that this is the videotape
[14] deposition of Dr. Robert Zaas for Case
[15] Number 425134 before the Honorable Judge
[16] John Sutula, caption is Sandra Slusarczyk
[17] versus Dennis Stanfield, and Mr. Ruf, will
[18] you waive any defects as to notice or
[19] service?
[20] **MR. RUF:** Yes.
[21] **MS. McGURK:** Okay.
[22] **Q:** Doctor, my name is Tracey McGurk and I represent
[23] the defendant, Dennis Stanfield.
[24] If you could, please introduce yourself to
[25] the jury.

1—17:57:12 25—17:58:16 Page 6

[1] **A:** Yes. My name is Dr. Robert David Zaas and I
[2] spell my last name Z-a-a-s. I am a physician, I
[3] specialize in orthopedic surgery.
[4] **Q:** And where is your office located?
[5] **A:** We're at the Hillcrest Medical Building. Our
[6] address is 6803 Mayfield Road. We're in the most
[7] east building of the two buildings across from
[8] Hillcrest Hospital.
[9] **Q:** And you might have mentioned this earlier, but
[10] what is your occupation?
[11] **A:** I am a physician, an M.D.
[12] **Q:** Are you licensed to practice medicine in the
[13] State of Ohio?
[14] **A:** I certainly am.
[15] **Q:** And when were you licensed?
[16] **A:** Right after internship. It would be 1958.
[17] **Q:** Okay. And if you could just kind of briefly tell
[18] us about your educational background.
[19] **A:** Yes. I went to college here in Cleveland at
[20] Western Reserve University; they now call it Case
[21] Western Reserve. I graduated from there in 1953
[22] with a Bachelor of Science degree. I then went
[23] to medical school, to the University of Chicago
[24] School of Medicine and I graduated from there in
[25] 1957 with an M.D. degree. I then had six

1—17:58:20 25—17:59:24 Page 7

[1] additional years of post-graduate training,
[2] that's internship and residency, I split that
[3] between Mount Sinai Hospital in Cleveland,
[4] University Hospital in Cleveland, Akron General
[5] Hospital, where I had general surgery, and I
[6] finished in orthopedic spine and children's
[7] surgery at Indiana University in Indianapolis.
[8] **Q:** Okay. And are you Board certified as an
[9] orthopedic surgeon?
[10] **A:** I am.
[11] **Q:** And when were you Board certified?
[12] **A:** You had to be in practice for like two and a half
[13] years. You could go in practice in June; you
[14] can't take your board, second part of the board
[15] until December of two and a half years later, so
[16] I went into practice in Cleveland in June of
[17] 1965. I was Board certified in 1968.
[18] **Q:** Okay. And if you can just briefly explain to the
[19] jury what the requirements of becoming Board
[20] certified are.
[21] **A:** For a doctor to become Board certified, which
[22] means that a doctor is an accredited specialist
[23] in his field, he has to receive training in
[24] specialized training centers to then be able to
[25] take two sets of examinations successfully, one

1—17:59:28 25—18:00:40 Page 8

[1] oral and one written, being successful
[2] throughout. The doctor then limits his practice
[3] to that given field, and is said to be Board
[4] certified. He is recognized as a specialist in
[5] his field, really around the world.
[6] **Q:** And if you could also tell the jury, what are the
[7] duties and responsibilities of an orthopedic
[8] surgeon?
[9] **A:** Orthopedic surgeons like myself take care of
[10] conditions that involve the skeletal system.
[11] That means our bones and our joints. But also
[12] the supporting structures, such as muscles,
[13] ligaments, tendons, nerves and circulation.
[14] We as orthopedic surgeons are trained to do
[15] surgery on the spine and the extremities, the
[16] arms and the legs, but also are qualified to
[17] treat conditions without surgery if appropriate.
[18] **Q:** And are you a member of any medical associations?
[19] **A:** Yes. I belong to a group of organizations whose
[20] membership is for orthopedic surgeons, such as
[21] the American Board of Orthopedic Surgery, the
[22] Ohio State Orthopedic Association, the Cleveland
[23] Orthopedic Society. I have been past president,
[24] at the present time I have been chairman of a
[25] committee for continuing education, but I have

1—18:00:44 25—18:01:48

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[1] also been a member and still am a member of
[2] organizations for physicians in good standing,
[3] the American Medical Association, the Ohio State
[4] Medical Association, the Academy of Medicine of
[5] Cleveland.

[6] Q: Now, are you currently engaged in the private
[7] practice of medicine?

[8] A: Yes. I have been continuously in private
[9] practice in the Cleveland area, I have actually
[10] been in three different offices between June of
[11] 1965 and the present time. There is no absence
[12] from practice during that time.

[13] Q: And what kind of practice do you have?

[14] A: I've had different practices in different
[15] decades. From '65 to '80, I did a lot of
[16] Emergency Room work because I was part of the
[17] Emergency Room coverage for Mount Sinai Medical
[18] Center, so I did an awful lot of what we call
[19] trauma work, broken bones, injuries, spinal
[20] fractures, things of that sort.

[21] Then from '80 to '92 or four, in between
[22] there, most of my work was either spine surgery
[23] or hip reconstruction surgery. I didn't have to
[24] cover the Emergency Room at that time because the
[25] younger doctors were covering it.

1—18:01:50 25—18:03:02

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[1] In the last five years, up until this past
[2] February, I did more generalized orthopedics,
[3] mostly a lot of upper extremity work, elbow
[4] surgery, hand surgery, foot surgery, the type of
[5] surgery that you can do, the in and out type of
[6] surgery. I did less spine and less total joint
[7] surgery, and during this past year, fortunately,
[8] I have given up surgery since February, so it
[9] would be, what, ten months, because we have two
[10] other doctors in our office that do surgery, but
[11] I see an awful lot of patients for second
[12] opinions, consultations, things of that sort.

[13] Q: Now, doctor, in your professional experience have
[14] you treated patients with injuries to their back?

[15] A: Oh, yes. I think that's probably the number one
[16] in frequency of the people that I see, back
[17] injuries.

[18] Q: Do you have any idea how many patients you have
[19] seen with similar injuries to those suffered by
[20] the plaintiff?

[21] A: I can only estimate that injuries to the lower
[22] back probably constitute, oh, 40 to 50 percent of
[23] all the people that I see. If you want to go
[24] back to 1965, where at that time I was probably
[25] seeing 110, 120 people a week, now I see 65 or

1—18:03:08 25—18:04:08

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[1] 70, and if you take that for 36 years and
[2] multiply that out, 50 weeks a year, and then take
[3] 40 percent of that, you are going to come into
[4] many thousands.

[5] Q: Okay. Now, doctor, on August 7 of 2001, at my
[6] request did you have an opportunity to examine
[7] the plaintiff, Sandra Slusarczyk, for this case?

[8] A: I saw Sandra, um-hmm.

[9] Q: And doctor, you have a busy schedule during the
[10] day seeing patients, correct?

[11] A: Right. I see people Tuesday, Wednesday,
[12] Thursday, Friday, and Saturday morning. Saturday
[13] morning doesn't end until 2:00 lately, but Monday
[14] I do paperwork and some hospital visits.

[15] Q: And are you being reimbursed for your time here
[16] today?

[17] A: I hope so.

[18] Q: Now, doctor, did you have an opportunity to
[19] review any medical records regarding the
[20] plaintiff?

[21] A: I have a small medical file on this case, yes.

[22] Q: And did you keep a record of that examination?

[23] A: Yes, I did.

[24] Q: And do you have that record with you?

[25] A: I do.

1—18:04:08 25—18:05:08

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[1] Q: Okay. And does that record reflect your
[2] recollection of your examination of Sandra
[3] Slusarczyk?

[4] A: It does, yes.

[5] Q: Now, when you saw her on August 7 of 2001, what
[6] were her complaints?

[7] A: She was complaining of pain in her back that
[8] would go to her left hip and occasionally down
[9] her left leg into the foot.

[10] Q: And these complaints that she told you about, at
[11] this point were these subjective in nature?

[12] A: Well, all complaints are subjective.

[13] Q: And if you could just explain to the jury what
[14] you mean when you say "subjective."

[15] A: Well, the word "subjective" is really not used by
[16] doctors very much, but attorneys do, and I
[17] understand the meaning of it. It is a complaint.
[18] An objective finding, which is an opposite of
[19] subjective is, for instance, if you had a young
[20] man came here today, and he had broken the
[21] metacarpal bone, you could see that the bone was
[22] bent and it was sticking out, that's objective.

[23] Subjective, if he came in saying my hand
[24] hurts and I don't see anything, that would be a
[25] subjective complaint.

1—18:05:10 25—18:06:22

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[1] Q: Okay. Now, what did the plaintiff tell you about
[2] her treatment that she had since this accident
[3] that we're here for, that I believe it was
[4] December of '99?

[5] A: Well, she told me that she — first of all, she
[6] went to the Emergency Room on the date of this
[7] accident, which was December 1, 1999, she went to
[8] St. John West Shore. That's one.

[9] She then saw physicians at MetroHealth
[10] Medical Center, I know one of them was Dr. Heidi
[11] Morris but I think that's in the family practice.
[12] She saw Dr. Matt Likavec, do you want me to spell
[13] it, L-i-k-a-v-e-c, it took me years to figure
[14] that one out, and then she had some physical
[15] therapy, I think she had six total physical
[16] therapy treatments and we are talking about an
[17] interval between December 1, 1999, when she saw
[18] the Emergency Room, and March 3, 2000, when she
[19] last saw Dr. Likavec.

[20] I think there was one physical therapy
[21] session in April, 2000.

[22] Q: Okay.

[23] A: But that's — those are the records that I
[24] reviewed.

[25] Q: Okay. And in your review of those records and

1—18:06:24 25—18:07:34

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[1] Dr. Likavec's records —

[2] A: I'm sorry. That's what she told me. But I also
[3] reviewed the records and she told me exactly
[4] right, exactly what was in the records. Um-hmm.

[5] Q: And you reviewed those records and I know you
[6] mentioned this, did Dr. Likavec or her other
[7] physicians refer her to physical therapy?

[8] A: Yes.

[9] Q: And if you could explain to the jury, what is the
[10] importance of physical therapy for a back injury
[11] such as the one that she sustained?

[12] A: She had an injury which was treatable with what
[13] we call conservative measures.

[14] Conservative measures involve exercises,
[15] physical therapy modalities, medications,
[16] sometimes a support brace, activity changes.
[17] That's what they call conservative treatment and
[18] that was the kind of condition that she had.

[19] Physical therapy is a very important part of
[20] treatment of most back injuries because it
[21] involves a rehab element, which is probably the
[22] most important in recovering from back injuries.

[23] Q: And is there a difference between having physical
[24] therapy versus doing home exercises?

[25] A: Well, it's entirely two different things. It's

1—18:07:36 25—18:08:40

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[1] like going to the hospital to have an operation
[2] and staying home, and I don't know, doing what
[3] you have.

[4] Physical therapy is a professional,
[5] specialized form of treatment. Sometimes we have
[6] — you break physical therapists into different
[7] types, there are athletic trainers, rehab
[8] physical therapists, athletic physical
[9] therapists, things of that sort, but it is a
[10] specialty for which you have to be there for
[11] treatment.

[12] Q: Now, when you saw her on August 7 of 2001, you
[13] had an opportunity to examine the plaintiff.

[14] A: Yes.

[15] Q: And if you could just kind of explain to the jury
[16] what your examination consisted of.

[17] A: My examination is different from a family doctor
[18] who may be interested in your ears, eyes, nose
[19] and other parts of your body. We as orthopedists
[20] are interested in physical function. A lot of
[21] our examination is done when you are talking to a
[22] person. I can see how they sit, I can see how
[23] they move, I can see how they turn their head and
[24] neck, I watch them as they get up from a seated
[25] position, we ask them to take off their shoes, we

1—18:08:44 25—18:09:56

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[1] can see how they bend over to tie, something like
[2] that, but what we are interested in is how much
[3] movement and strength you have in your spine, how
[4] much flexibility you have, if there are any
[5] associated nerve problems that relate from your
[6] neck to the arm or from your back to your leg,
[7] and where your complaints of tenderness are,
[8] where your complaints of swelling might be, where
[9] your complaints of discoloration or deformity
[10] might be. These are the parts that we are
[11] looking at, and we are involved with the spine
[12] and the extremities.

[13] Q: Now, if you could, please tell the jury what your
[14] examination revealed about the injuries that Mrs.
[15] Slusarczyk claimed were caused by this accident.

[16] A: The diagnoses, you mean?

[17] Q: Sure.

[18] A: Yeah. Well, I diagnosed sprain/strain of the
[19] lumbar spine and small intervertebral disk
[20] herniation, left L4/5 — I'm sorry, left L5/S1.

[21] Q: Okay. And if you could kind of in laymen's terms
[22] explain to the jury what that means.

[23] A: Part of her injury was a strain or stretching of
[24] the muscles of the ligaments of her back. Part
[25] of the injury is that the last disk, we call it

1—18:09:58 25—18:11:18

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[1] the fifth disk, had bulged out, the word we use
[2] is herniation, bulged out on the left side
[3] adjacent to the last nerve.

[4] Q: Okay. And I know that you mentioned it was a
[5] small intervertebral disk herniation. I mean,
[6] are there different size herniations?

[7] A: Oh, yes. I mean, you get into a whole different
[8] category of other problems. Small herniations,
[9] some radiologists prefer to use the word bulge,
[10] they say disk bulging, some use the word
[11] protrusion; small herniation is another word for
[12] it. It is a self-contained bulging of a disk
[13] which is the cartilage-like substance that
[14] separates bones in your spine, and as the
[15] weakness allows the intervertebral substance to
[16] bulge out, the only problem that comes with it is
[17] if it is near a nerve it is going to cause that
[18] nerve to become irritated, or impressed, whatever
[19] word you can use. Those small ones are always
[20] self-contained. They always are treated
[21] conservatively. They just about always get well,
[22] but you have to take a long time before it
[23] happens.

[24] There is massive disk herniations, we call
[25] them extrusions, where the interior of your disk

1—18:11:22 25—18:12:30

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[1] just blows out.

[2] I liken that to a tire, automobile tire, that
[3] may have a weak sidewall, and if you look at the
[4] sidewall, it has kind of like a little bubble on
[5] it, you don't see that any more with the steel
[6] belted ones but in olden days like when I
[7] remember them we had a little bulge there. That
[8] is like what Susan has, it is a protrusion or
[9] herniation.

[10] If your tire blows out, total flat tire,
[11] that's an extrusion. She didn't have that.
[12] Extrusions you have to operate on. Bulges are
[13] treatable.

[14] Q: Okay. Now, as a part of your, the physical
[15] examination that you did, what were your
[16] neurological findings, if any?

[17] A: Neurologically, I found that she had a slightly
[18] smaller left thigh and calf, one quarter of an
[19] inch, but she was right handed, and then the
[20] second thing is had little — I thought there was
[21] a little bit of weakness of her left leg below
[22] her knee compared to the other side, but
[23] that's — you can't measure that. I can't put a
[24] tape measure around it and measure that, but my
[25] impression of the left leg was not quite as

1—18:12:32 25—18:13:48

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[1] strong as the right.

[2] Q: And what were your findings in reference to her
[3] mobility?

[4] A: She could side to side bend normally. She could
[5] bend forward and get her fingertips to the
[6] ankles. That is a little bit under. She is
[7] young and healthy and flexible type of body, but
[8] that is a little bit less than full flexion,
[9] flexibility, and other than that, I thought her
[10] mobility was pretty good.

[11] Q: Now, would any sort of restrictions to one's
[12] activities, would that affect their mobility?

[13] A: Oh, yes.

[14] MR. RUF: Objection.

[15] A: The reason that older people tend to get less
[16] flexible as they get older — there is two
[17] reasons. Number one, our joints start to get a
[18] little arthritic breakdown, but the major thing
[19] is your activity level drops off and as your
[20] activity level drops off, so will be your
[21] mobility, your strength and your flexibility.

[22] Q: And did you also have an opportunity to review
[23] the MRI that would have been taken of the
[24] plaintiff's lumbar spine?

[25] A: Yes, I saw the MRI, yes.

1—18:13:50 25—18:14:50

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[1] Q: Okay. Now, doctor, based on your review of the
[2] Plaintiff's medical records, the MRI, the history
[3] that you took and then your examination, do you
[4] have an opinion based upon a reasonable degree of
[5] medical certainty as to what if any injury Sandra
[6] Slusarczyk sustained in the motor vehicle
[7] accident of December 1, 1999?

[8] A: I have an opinion.

[9] Q: And what is that opinion?

[10] A: Again, my opinion is that she sustained a
[11] sprain/strain of her lumbar spine and a small
[12] L5/S1 disk herniation on the left side.

[13] Q: And doctor, based on your review of the
[14] plaintiff's medical records and your medical
[15] examination and the history that you took from
[16] the plaintiff, do you have an opinion based upon
[17] a reasonable degree of medical certainty as to
[18] the plaintiff's prognosis?

[19] A: My opinion, her prognosis was fair to fairly
[20] good.

[21] Q: And what was the basis for that, for you reaching
[22] that prognosis?

[23] A: I saw Susan —

[24] Q: Sandra.

[25] A: Pardon?

1—18:14:52 25—18:16:04

Page 21

[1] Q: Sandra.

[2] A: Pardon, I'm making you Susan.

[3] I saw Sandra on August 7, 2001. Her accident
[4] was December 1, 1999. So it's a year and a half
[5] or so afterward. She still had complaints. She
[6] had complaints on the left side of her lower
[7] back. She had complaints that she told me would
[8] occasionally go down in her leg, but even though
[9] her physical finds were good she probably still
[10] was experiencing some aftereffect of this
[11] particular condition, which is a small
[12] herniation.

[13] After taking care of people with herniations
[14] for 36 years, I can tell you that herniations of
[15] this type will get better. I've had too many
[16] thousands of people that started out maybe much
[17] worse than her that had all kinds of leg pain,
[18] couldn't move, but as time goes by, a herniation
[19] will shrink down, will come back into place, and
[20] as that happens, you might lose a little
[21] flexibility, but your leg pain will go away, then
[22] the back pain will go away. That is my, the
[23] reason I felt she had a fairly good prognosis.

[24] The one thing I cannot tell you is how long
[25] it takes. I have documentation, I can show you

1—18:16:08 25—18:17:06

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[1] x-rays that show within four years, a large
[2] herniation goes down to almost nothing. I have
[3] seen that. I have done it in my own patients
[4] where the herniation will shrink back into place
[5] so that if another scan were done you could see
[6] that the size of the herniation will get smaller.
[7] And that's the basis where I think the prognosis
[8] is fairly good but it may take a while.

[9] Q: Now, doctor, based on your review of the
[10] plaintiff's medical records and your medical
[11] examination and the history that you took from
[12] the plaintiff, do you have an opinion based on a
[13] reasonable degree of medical certainty as to
[14] whether or not she will be able to carry out her
[15] regular job duties?

[16] MR. RUF: Objection.

[17] A: Yes. I have an opinion only because she told me
[18] that she basically has not a physical job, I
[19] think it's a sedentary job, I'm not sure, I think
[20] it's in an office, but I don't remember the
[21] details but it wasn't physical.

[22] Q: So based on what she has told you, she has been
[23] able to continue at her job?

[24] A: That was my understanding, but there was nothing
[25] physically involved with that was my

1—18:17:08 25—18:18:12

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[1] understanding.

[2] Q: Now, doctor, in your expertise and experience as
[3] an orthopedic surgeon, would you agree with Dr.
[4] Likavec's recommendation that the plaintiff
[5] should increase her activity level?

[6] A: Yes. That is the treatment for this. I have
[7] been very successful, I have all these years,
[8] tried it, sent people to a good rehabilitation
[9] center, it may take a combination of water
[10] exercises, physical exercises, leg strengthening,
[11] and then different types of physical therapy
[12] modalities to really achieve the maximum, but
[13] that is the way that people get better with this
[14] condition.

[15] Q: Now, doctor, based on your review of the
[16] Plaintiff's medical records, the medical
[17] examination, the history that you took from the
[18] plaintiff, do you have an opinion as to whether
[19] or not she would be able to engage in any sort of
[20] physical activity?

[21] MR. RUF: Objection.

[22] A: That's a pretty broad term, but I would —
[23] activities that I mentioned would be like
[24] walking, swimming, you know, like mobilization,
[25] stretching exercises.

1—18:18:14 25—18:19:28

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[1] I would not recommend power lifting, I would
[2] not recommend contact sports, like judo class
[3] where you get thrown up and down on your back. I
[4] would stay away from areas that would cause
[5] greatly increased strain on your back, but
[6] flexibility exercises are very good.

[7] Q: Now, doctor, we already will have heard testimony
[8] from Dr. Likavec also through a videotape, and he
[9] had testified about some of your findings on your
[10] examination regarding, I think the straight leg
[11] raising and the different degrees that she was
[12] able to lift her legs.

[13] Would you agree based on your experience as
[14] an orthopedic surgeon that a person's range of
[15] motion can vary from day to day?

[16] A: Oh, yes, especially with back pain. Just for the
[17] jury's sake, people with back pain, and this is
[18] over thousands and thousands of cases, you are
[19] never the same every day. If you have the same
[20] kind of pain every single day you don't have an
[21] organic back pain. You have a vivid imagination
[22] or something else. But back pain has a way of
[23] changing from time to time. There are times
[24] when, gee, it doesn't feel too bad or you don't
[25] think about it. There are other times that all

1—18:19:30 25—18:20:34

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[1] day long it bothers you. That is sort of typical
[2] of back pain, because it's kind of waning and
[3] waxing up and down, so if you happen to catch a
[4] person that they are not having a good day, yeah,
[5] they are going to lose flexibility.

[6] **Q:** Also, Dr. Likavec mentioned complications with
[7] back injuries and degenerative conditions and
[8] spurring that can occur.

[9] Is that something that a normal person is
[10] going to experience over their lifetime,
[11] regardless of an injury or not?

[12] **A:** Absolutely. The only thing that you can ever
[13] tell — if someone fractures their spine, breaks
[14] a bone in your back that affects some of the
[15] joints in your back, that you can guarantee will
[16] predispose to arthritis or a breakdown.

[17] There is so much variation from person to
[18] person in how you get arthritis, it is almost
[19] impossible to tell, especially small disk
[20] herniations or minor bulges, things of that type,
[21] how that would have any influence on that
[22] whatsoever.

[23] **Q:** Now, doctor, in your expertise and experience as
[24] an orthopedic surgeon, do you have an opinion
[25] based on a reasonable degree of medical certainty

1—18:20:36 23—18:21:20

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[1] after your review of the Plaintiff's medical
[2] records and your examination as to whether or not
[3] the plaintiff will have less pain in the future
[4] as a result of her injury?

[5] **MR. RUF:** Objection.

[6] **A:** Yes, I have a strong positive opinion on that.

[7] **Q:** And what is that?

[8] **A:** And it is based on huge experience that I have
[9] had with this that she will continue to have
[10] pain, more on the left side, gradually the pain
[11] will kind of come out of the left leg and hip and
[12] be left over in the lower back but aggravated by
[13] too much on your feet, too much lifting, you
[14] know, overactivity and tiredness, and gradually
[15] that will fade away, but it may take years.

[16] **MR. RUF:** Move to strike.

[17] **MS. McGURK:** Okay. I have nothing
[18] further.

[19] **MR. RUF:** Let's go off the record.
[20] I'd like an opportunity to look at his
[21] file.

[22] **VIDEOTAPE OPERATOR:** We're going
[23] off the record.

[24]

[25] (Thereupon, a discussion was had off

3—18:23:16 25—18:24:06

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[1] the record.)

[2]

[3] **VIDEOTAPE OPERATOR:** We're now
[4] back on the record.

[5]

[6] **CROSS-EXAMINATION OF ROBERT D. ZAAS, M.D.**

[7] **BY MR. RUF:**

[8] **Q:** Doctor, my name is Mark Ruf, I represent Sandra
[9] Slusarczyk.

[10] First of all, doctor, it is your opinion that
[11] the L5/S1 herniation was caused by the accident
[12] of December 1, 1999, correct?

[13] **A:** I do. I do.

[14] **Q:** Do you agree with the MRI report that there is
[15] compression of the proximal left S1 nerve root?

[16] **A:** Small impression, yes.

[17] **Q:** As a result of the herniation?

[18] **A:** I agree.

[19] **Q:** So you agree that the MRI shows compression of
[20] the nerve root?

[21] **A:** I call it a small impression. We're talking
[22] about different words. Remember, some doctors
[23] will call it bulging, some herniation. I call it
[24] a small impression. But I agree with that.

[25] **Q:** And would you agree that an MRI is an objective

1—18:24:10 25—18:25:14

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[1] finding?

[2] **A:** I think so. It's a high tech type of thing that
[3] can be manipulated, but I think in this case, I
[4] saw the films, they are very good films, she is
[5] easy to take a scan of, the way her body build
[6] is, and I think it is an accurate scan and shows
[7] what was wrong with her.

[8] **Q:** Doctor, do you agree that there is no medical
[9] evidence that she had a disk herniation at L5/S1
[10] before the accident of December 1, 1999?

[11] **A:** I agree.

[12] **Q:** Do you agree that Sandra Slusarczyk had symptoms
[13] a year and a half after the automobile accident?

[14] **A:** Well, she still has some symptoms. A little bit
[15] more, actually. A year and seven months or eight
[16] months, yes.

[17] **Q:** And would you agree that if there is shrinkage of
[18] the disk, there is probably going to be a
[19] reduction in symptoms?

[20] **A:** Well, again, it is a sequential thing. She will
[21] lose the pressure on the nerve, so she will
[22] get — she won't have any leg pain any more. The
[23] pain will end up the hip and that will gradually
[24] go away. Then you are left with some soreness in
[25] your back, possibly some stiffness in your back,

1—18:25:16 25—18:26:20

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[1] but that can be controlled with exercise.

[2] **Q:** Doctor, please answer my specific question.

[3] Wouldn't you expect there to be a reduction
[4] in symptoms if there was a shrinkage of the disk?

[5] **A:** Well, if I answered yes or no I would be
[6] perjuring myself because I would not be answering
[7] the truth, the whole truth and nothing but the
[8] truth. You have to answer like I did, saying
[9] that you will lose the leg pain and the hip pain
[10] entirely, and then the backache will gradually
[11] diminish and most parts can be controlled with
[12] exercise. I can't answer that question yes or
[13] no.

[14] **Q:** But do you agree that she had leg pain, back
[15] pain, and pelvic numbness at the time you saw
[16] her?

[17] **A:** No, I don't know anything about pelvic numbness.
[18] I know she had back pain. Tenderness over the,
[19] we call it the greater sciatic notch, and she
[20] told me that she was experiencing left hip pain
[21] and sometimes pain going down her leg.

[22] **Q:** Doctor, do you agree that there is no medical
[23] evidence here that she has had shrinkage of the
[24] disk at L5/S1?

[25] **A:** Yes. And I criticize that a little bit because

1—18:26:22 25—18:27:20

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[1] her doctor should have gotten another MRI scan
[2] updated and that was never done, so I can't tell
[3] you that it has shrunken yet.

[4] **Q:** Well, doctor, an additional MRI scan would cost
[5] an additional thousand to \$1500, would it not?

[6] **A:** Wow. With somebody with pain, you would even say
[7] that? I object to that. If a person is in pain,
[8] and they can be helped, saying that it costs a
[9] measly one thousand dollars for human body
[10] health? I totally object to that. You're
[11] talking to the wrong person. If I think they
[12] need it I would say that they should have it.

[13] **Q:** Did you tell Sandra Slusarczyk that she was a
[14] nice young woman who had been hurt in this
[15] accident?

[16] **MS. McGURK:** Objection.

[17] **A:** I don't know. I see her here and she is, I
[18] thought she was a nice lady, yes.

[19] **Q:** Did you tell her that this herniated disk was
[20] going to be a problem for her?

[21] **MS. McGURK:** Objection.

[22] **A:** It is. It has been a problem for her, I agree.

[23] **Q:** And did you tell her this herniated disk was not
[24] going to get better?

[25] **MS. McGURK:** Objection.

1—18:27:20 25—18:28:18

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[1] **A:** No. I would be lying. I wouldn't lie to her.

[2] **Q:** So if she testifies to that at trial, that you
[3] told her that this disk would not get better, you
[4] would disagree with that?

[5] **MS. McGURK:** Objection.

[6] **A:** Absolutely. Why would I say something that's a
[7] lie?

[8] **Q:** Doctor, you said you see 40 to 60 patients per
[9] week?

[10] **A:** It is probably more. It is probably more,
[11] because thinking about Saturday, usually that's
[12] the people that work during the week, I have to
[13] see them during Saturday morning, at least that
[14] many, yes.

[15] **Q:** So wouldn't you agree in seeing 40 to 60 patients
[16] per week you can get patients confused, and it is
[17] hard to remember what you said to a patient back
[18] six months ago?

[19] **MS. McGURK:** Objection.

[20] **A:** I doubt it. That's what I'm trained for.

[21] **Q:** So you're telling me you remember a conversation
[22] with a specific patient six months ago, even
[23] though you see 40 to 60 patients a week?

[24] **A:** No. I'm only saying that if I told somebody
[25] something that is a complete lie, I would not

1—18:28:20 25—18:29:30

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[1] have done that. There would be no reason to tell
[2] her that. Maybe there was a misunderstanding of
[3] communication from one person to another.

[4] It is clear that she is going to have a
[5] problem for a while, I just testified, I think
[6] three times, but that gradually, in my experience
[7] and I've had thousands and thousands and
[8] thousands of cases, these conditions get better.

[9] **Q:** Doctor, could you take a look at your report? I
[10] want to go over some things you have listed in
[11] your report.

[12] **A:** Whoops. Excuse me. I got it right here.

[13] **Q:** You noted in your report that according to the
[14] Emergency Room record, Sandy complained of pain
[15] in her lower back that was worse with movement
[16] and which extended to her right hip. Isn't that
[17] a sign or symptom of a herniated disk?

[18] **A:** That's on the other side. If that's it, she
[19] really has an imagination, because how could she
[20] have right hip pain when she has a left herniated
[21] disk? I can't understand that.

[22] **Q:** Doctor, in your report you state during the days
[23] immediately after the accident, the pain in her
[24] lower back became worse and she developed
[25] radiating pain, mostly into her left hip but

1—18:29:34 25—18:30:34

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[1] occasionally down to her left leg and foot.

[2] Correct?

[3] A: That's what she told me, yes. I don't know that.

[4] I said she states that that's what happened, yes.

[5] Q: And isn't that a sign or symptom of a herniated
[6] disk?

[7] A: Oh, sure.

[8] Q: You also note in your report, Dr. Morris
[9] diagnosed low back pain secondary to the motor
[10] vehicle accident, with muscle spasm and left
[11] sacroiliac joint inflammation. Is that correct?

[12] A: That's what the doctor said, yes.

[13] Q: A herniated disk can cause muscle spasm in the
[14] lower back, correct?

[15] A: It sure can.

[16] Q: And could it also cause left sacroiliac joint
[17] inflammation?

[18] A: No. It has nothing to do with that. It's
[19] understandable — Dr. Morris is a general
[20] practitioner. It's understandable that I don't
[21] think she has the expertise to diagnose herniated
[22] disks. She certainly is very close and she has
[23] recognized where the pain was, but I — I take
[24] that to say that she recognized that there was
[25] something wrong with the left sacroiliac area,

1—18:30:36 25—18:31:40

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[1] which is actually called the sciatic nerve, but I
[2] think she made the right localization of where
[3] the symptoms were.

[4] Q: Muscle spasm is involuntary movement of the
[5] muscles, correct, doctor?

[6] A: That's correct.

[7] Q: So would you agree that muscle spasm is an
[8] objective finding?

[9] A: Oh, yes.

[10] Q: And would you agree that inflammation is an
[11] objective finding?

[12] A: You have to define that. I don't know what you
[13] mean by that. Inflammation can mean swelling, it
[14] can mean redness, it can mean heat, but I don't
[15] know, she didn't define what she meant by that.

[16] Q: Well, a patient can't control whether or not
[17] they've got inflammation, is that correct,
[18] doctor?

[19] A: Yes, but I don't know what that means because the
[20] doctor didn't identify what she called
[21] inflammation. It turned out that she was wrong,
[22] it was sciatic neuritis, not inflammation, but I
[23] can understand, her not being an expert, could
[24] confuse the two, so I don't know that there was
[25] any inflammation.

1—18:31:40 25—18:32:50

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[1] Q: And the sciatic neuritis was caused by the disk
[2] herniation that was impinging on the nerve,
[3] correct, doctor?

[4] A: That's correct.

[5] Q: You also note in your report that she was seen on
[6] January 27, she said that she had developed
[7] numbness and tingling of her pelvis, relieved by
[8] leaning backward or lying down.

[9] Isn't that a sign or symptom of a herniated
[10] disk?

[11] A: I never heard of that. Leaning backward will
[12] make it worse. When you lean backward, you
[13] greatly increase the pressure on your disk. The
[14] disk comes out farther when you lean backward, so
[15] I don't understand how it could be relieved or a
[16] symptom could be relieved by leaning backward.
[17] There may be some other type of problem in the
[18] pelvic that she has. I can't explain that.

[19] Q: Doesn't the nerve that exits at the level of
[20] L5/S1 supply the pelvis?

[21] A: It supplies — basically, the S1 nerve root
[22] supplies the lateral aspect of the calf, the
[23] lateral aspect of the heel, and part of the
[24] plantar or standing surface of the foot. There
[25] can be a branch of the nerve that controls the

1—18:32:52 25—18:34:02

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[1] muscles in your pelvis.

[2] Q: So would you disagree with Dr. Likavec if he has
[3] testified that the nerve exiting at L5/S1
[4] supplies the pelvis?

[5] A: A branch. I mean the posterior branch. The
[6] major branch supplies the left leg. It is the
[7] one that gives us a reflex in the ankle. It is
[8] the one that gives us motor power and flexion of
[9] the calf. It is the one that gives us sensation
[10] of the outer side of your calf.

[11] There is, as I say, a branch that covers
[12] around the pelvis that does supply some of the
[13] pelvic muscles.

[14] Q: So would you agree that a herniation at L5/S1
[15] that was impinging on the nerve could cause
[16] pelvic numbness?

[17] A: I have never heard of it.

[18] Q: Doctor, in your report you state Sandra
[19] Slusarczyk states that her low, lower back is
[20] still painful on a daily basis and at times she
[21] feels pain radiation outward over her left hip
[22] and into her pelvis, correct?

[23] A: That's correct.

[24] Q: You also say occasionally the pain is radiated
[25] down into her left foot and at the base of her

1—18:34:06 25—18:34:58

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[1] toes, correct?

[2] A: That's what she told me.

[3] Q: And she has taken Motrin up to 800 milligrams at
[4] a time but not on a regular basis —

[5] A: All these things are what she told me. That's
[6] correct.

[7] Q: And she told you that she has had to try and
[8] restrict her activities to protect her back from
[9] greater pain. Correct?

[10] A: Yes. She did tell me that, yes.

[11] Q: And wouldn't that be consistent with having a
[12] herniated disk that was impinging on the nerve?

[13] MS. McGURK: Objection.

[14] A: Not necessarily, no. It could be counter
[15] productive. It could actually be making the disk
[16] worse.

[17] Q: And she also told you that her pain becomes worse
[18] with strenuous physical activity, correct?

[19] A: That's what she told me, yes.

[20] Q: And prolonged walking, standing, carrying
[21] groceries, or prolonged driving will cause
[22] increased pain and left leg numbness.

[23] A: That's what she told me, yes.

[24] Q: And she told you she had been very physically
[25] active before December 1, 1999?

1—18:35:00 25—18:35:50

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[1] A: Exactly.

[2] Q: And she never previously experienced any problems
[3] with her lower back.

[4] A: Exactly.

[5] Q: And in your examination, you found her to be a
[6] physically fit young woman, correct?

[7] A: Yes.

[8] Q: She also told you that she does some exercises at
[9] home to try and maintain her strength, correct?

[10] A: Right. She is really working on her legs, as far
[11] as I know. I don't know if she did any exercises
[12] of her back. She told me about she was doing leg
[13] exercises.

[14] Q: Do you know whether or not she is doing physical
[15] exercises at home that the physical therapist
[16] taught her to do to help her with her back
[17] problem?

[18] A: Well, I don't know what you mean by physical
[19] therapy. Was there a physical therapist there,
[20] you mean?

[21] Q: No, that the physical therapist taught her during
[22] physical therapy.

[23] A: That's a home exercise program. That's not
[24] physical therapy.

[25] Q: Your report also says that she added that

1—18:35:56 25—18:36:50

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[1] prolonged sitting at her causes her left leg to
[2] feel numb and she has to get up and move around
[3] periodically, correct?

[4] A: She told me all of those things; I think I got
[5] them right.

[6] Q: You did a physical examination on her, correct?

[7] A: I checked her neck, back and extremities, yes.

[8] Q: And when you examined her lumbar spine or the
[9] lower part of her spine —

[10] A: Um-hmm.

[11] Q: She complained of tenderness in the midline and
[12] in the paraspinous muscles at L4 and L5, correct?

[13] A: Yes, more on the left side. That's correct,
[14] um-hmm.

[15] Q: Would you agree that the tenderness of the
[16] muscles was caused by the herniation at L5/S1?

[17] A: Probably left over, yes.

[18] Q: Would you agree that Sandra Slusarczyk sustained
[19] injury to the muscles and the ligaments in her
[20] back?

[21] A: Probably.

[22] Q: You also noted that on the left side, there was
[23] tenderness that extended down over the region of
[24] the left sacroiliac joint, correct?

[25] A: Um-hmm. That's correct.

1—18:36:50 25—18:38:02

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[1] Q: And into the region of the left sciatic notch.

[2] A: I agree.

[3] Q: Before on direct you talked about her bending
[4] over.

[5] In your examination, you found that forward
[6] bending at the waist was carried out slowly,
[7] fingertip to just above the ankles, with
[8] increasing lumbar pain from the mid thigh
[9] downward. Correct?

[10] A: That's what she told me, yes.

[11] Q: Well, that's what you found upon physical
[12] examination, correct, doctor?

[13] A: I don't find anything that she tells me. I
[14] watched her bend forward and she told me it was
[15] painful. That is not a finding. That is a
[16] complaint that I registered.

[17] Q: Doctor, you wrote in your report that she felt
[18] some increased low back pain discomfort when she
[19] stood on her left foot. Correct?

[20] A: That's what she told me.

[21] Q: You also found that in the sitting position,
[22] straight leg raising caused lower lumbar and
[23] gluteal discomfort at 75 to 80 degrees on the
[24] right, and 65 degrees on the left. Correct?

[25] A: Correct.

1—18:38:02 25—18:39:12

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[1] Q: You also noted that her left thigh and calf were
[2] each a fourth inch less in girth than the right
[3] side, correct?

[4] A: That's correct.

[5] Q: So the left thigh and calf were smaller than the
[6] right thigh and calf?

[7] A: By one quarter of an inch, that's correct.

[8] Q: Doctor, would you agree that a herniated disk can
[9] cause muscle wasting?

[10] A: It can.

[11] Q: And would you agree that when you have muscle
[12] wasting, one side of a patient could be smaller
[13] than the other side of the patient?

[14] A: If there is muscle wasting, yes, uh-huh.

[15] Q: And is muscle wasting evidence of impingement on
[16] the nerve by herniation?

[17] A: It can be. That can cause numbness, it can cause
[18] pain, it can cause weakness, yes.

[19] Q: You also wrote in your report that it was your
[20] impression that extension of the left ankle and
[21] toes was slightly weaker than the right side.

[22] A: It was.

[23] Q: Doctor, you also wrote in your report, today on
[24] examination, Miss Slusarczyk complained of left
[25] sided back pain with neurotic radiation into her

1—18:39:16 25—18:40:26

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[1] left lower extremity, but usually only as far as
[2] her left hip and also involving the pelvis,
[3] correct?

[4] A: Um-hmm. That's what she told me, um-hmm.

[5] Q: You also noted that physical findings related to
[6] the lumbar spine itself showed some diffuse
[7] stiffness from her activity — from her admitted
[8] reduced activity level, correct?

[9] A: That's correct.

[10] Q: Doctor, don't you also get stiffness of the
[11] muscles in the lumbar spine because you are
[12] trying to compensate for the herniated disk?

[13] A: There was no direct relationship between
[14] stiffness and a herniated disk. If a person
[15] would keep their activity and flexibility level
[16] the same, they wouldn't get stiff.

[17] Understandably, some people won't do that
[18] because they say it hurts, but there is no direct
[19] one-on-one relationship because you have a small
[20] herniated disk and that you have to get stiff. A
[21] herniated disk does not involve a direct joint.

[22] Q: Doctor, you noticed she had reduced hip flexion
[23] mobility —

[24] A: Right.

[25] Q: Correct?

1—18:40:28 25—18:41:30

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[1] A: Right. See, that has nothing whatsoever to do
[2] with a herniated disk. That's the hip joint, the
[3] hip socket, and the only way that that can get
[4] stiff is if you stop doing the exercises that
[5] allow your hip muscles to remain flexible. That
[6] is not directly related to your disk.

[7] Q: In your report, you acknowledge that Miss
[8] Slusarczyk was susceptible to aggravation of the
[9] small disk with additional trauma?

[10] A: Yes. That is correct. Even a person who has a
[11] condition, what I call a disk bulge or small
[12] herniation, if they were re-traumatized, in other
[13] words, if they had a big accident, got knocked
[14] down, got really struck hard, that disk could get
[15] worse again.

[16] Q: So would you agree that she could have further
[17] extrusion of the disk material or an additional
[18] amount of the nucleus expand out if that disk is
[19] subject to additional trauma?

[20] A: Correct. Now, the word "trauma" means
[21] significant injury, yes.

[22] Q: And that could cause a worsening of her
[23] condition?

[24] A: I sure agree.

[25] Q: And would you agree that if her condition

1—18:41:32 25—18:42:30

Page 44

[1] worsens, it could necessitate surgery?

[2] MS. McGURK: Objection.

[3] A: Well, then you are dealing with a different
[4] condition. You have put it from a relatively
[5] small bulge or herniation to one that is a large
[6] herniation or extrusion. Those are two different
[7] conditions. They really shouldn't be discussed
[8] — in medical school we discussed them
[9] separately. Those are two entirely different
[10] problems.

[11] Q: Doctor, you also wrote a supplemental report, is
[12] that correct?

[13] A: Yes. I think I saw the films before I sent that
[14] in.

[15] Q: And in your supplemental report didn't you state
[16] "I acknowledge her statement when I examined her
[17] on August 7, 2001, that she was experiencing
[18] daily low back pain and left hip pain and that
[19] she was taking Motrin 800 milligrams for relief."

[20] A: Um-hmm. Right.

[21] Q: Doctor, do you agree that you only saw Sandra
[22] Slusarczyk for 15 minutes?

[23] MS. McGURK: Objection.

[24] A: No, I don't agree.

[25] Q: You would disagree if she would testify that you

1—18:42:32 25—18:43:28 Page 45

[1] saw her at 10:25 and you were done at 10:40?

[2] A: Probably.

[3] Q: You would disagree with that, doctor?

[4] A: Yes. I think I spent longer.

[5] Q: Well, don't you schedule your patients at 15

[6] minute intervals?

[7] A: No.

[8] Q: And didn't you tell her a lot of stories during

[9] this time you spent with her?

[10] A: I hope so.

[11] Q: Doctor, this is not the first time you have given

[12] a deposition, correct?

[13] A: I have been in depositions before, correct.

[14] Q: You have given depositions for your patients, and

[15] you have also done defense exams like this one,

[16] correct?

[17] MS. McGURK: Objection.

[18] A: Right. I have — several different types of

[19] depositions. I have looked them up.

[20] I have given deposition in the last year,

[21] four of them I think were for Workers'

[22] Compensation, nothing to do with, I don't know if

[23] it is plaintiff or defendant.

[24] I have given depositions at the request of a

[25] plaintiff's attorney. I have given depositions

1—18:43:30 25—18:44:32 Page 46

[1] at the request of a defense attorney. Yes.

[2] Q: Well, doctor, haven't you given opinions that

[3] your own patients have suffered a permanent

[4] condition?

[5] MS. McGURK: Objection.

[6] A: Every person is different. I'm sure I did.

[7] Q: And haven't you given opinions that your own

[8] patients have suffered permanent low back

[9] conditions?

[10] MS. McGURK: Objection.

[11] A: Oh, sure. I see, again — look at the thousands

[12] of people I have seen with back injuries. Every

[13] person being entirely different, I certainly

[14] would agree that some people have permanency,

[15] some people will not have permanency, sure.

[16] Q: Doctor, would you agree that injuries to the

[17] spine or the back, particularly the low back, are

[18] very complex because the muscles themselves are

[19] very complicated, weaving in and out of various

[20] groups?

[21] A: They can be, sure.

[22] Q: Would you also agree that once muscles or

[23] ligaments, the ligaments being the hard tendons

[24] that hold the bones together, muscles of course

[25] being the meat of the back, that's what lets us

1—18:44:34 25—18:45:54 Page 47

[1] move from side to side, forward and backward, but

[2] once these portions are injured, it's difficult

[3] to get a complete healing because if we allow a

[4] patient to be totally at rest, the muscles will

[5] stiffen up; if we tell them to go out and do a

[6] lot of exercise and strain and strengthen

[7] themselves, the stretched out, scarred areas of

[8] the muscles never will heal.

[9] A: Exactly what I have been testifying. It takes a

[10] professional rehabilitation therapist to correct

[11] that problem at the end rather than telling

[12] someone to just go out there and exercise. I

[13] agree a hundred percent.

[14] Q: Doctor, would you agree that a condition is

[15] chronic if it has lasted for more than six

[16] months?

[17] A: That's the definition of chronic.

[18] Q: And doctor, didn't you testify that your patient,

[19] Carl Wendell, sustained a permanent lower back

[20] injury because his condition lasted longer than

[21] six months?

[22] MS. McGURK: Objection.

[23] A: Really, you want me to tell the jury that —

[24] you're reading excerpts from another patient,

[25] entirely different patient, probably a different

1—18:45:56 25—18:47:10 Page 48

[1] age, a different sex, and trying to compare that

[2] with what we are talking about in Sandra's case.

[3] I may have, I may not, but that's an entirely

[4] different problem. That's a different human

[5] being. So I can't in any way equate that to this

[6] case.

[7] Q: Doctor, would you agree that your patient, Carl

[8] Wendell, had a lumbar sprain/strain?

[9] MS. McGURK: Objection.

[10] A: What year was it? I really do not remember a

[11] fellow by that name.

[12] Q: Would you agree that a lumbar sprain/strain is

[13] not as severe of an injury as a herniated disk?

[14] A: Oh, it can be.

[15] MS. McGURK: Objection.

[16] A: It is almost identical. The treatment is the

[17] same. That's a very good point that you brought

[18] up for the jury.

[19] The treatment of a small herniated disk is

[20] identical to a sprain/strain. That's exactly

[21] one. So they are about the same.

[22] Q: Doctor, didn't you testify that your patient, Mr.

[23] Wendell, Mr. Wendell's back pain, stiffness, and

[24] his limitation of motion would continue

[25] indefinitely because it had lasted more than six

1—18:47:12 25—18:48:06

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[1] months?

[2] **MS. McGURK:** Objection.

[3] **A:** Um-hmm. I used the word "indefinitely" because
[4] that means that it could end tomorrow, it could
[5] end in five years from now, that's correct.

[6] **Q:** And didn't you testify in that deposition that
[7] you thought home heat, exercise, and massage was
[8] good treatment for the patient?

[9] **MS. McGURK:** Objection.

[10] **A:** For that patient, I may have, sure.

[11] **MS. McGURK:** Continuing objection
[12] to any of this.

[13] **A:** Sure.

[14] **Q:** Doctor, didn't you also testify in a separate
[15] case that your patient, Janet Taliak, had
[16] sustained a permanent injury —

[17] **MS. McGURK:** Objection.

[18] **Q:** — to her spine?

[19] **A:** I do not remember.

[20] **Q:** Do you want to take a look at the deposition
[21] transcript, doctor?

[22] **A:** No, I'm not going to read it unless you give me
[23] the whole thing and tell me when it happened, and
[24] then I want a release from that patient to say
[25] that that patient's name can be used in public.

1—18:48:08 25—18:48:56

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[1] Otherwise, I hold you responsible for using
[2] someone else's name without their permission.

[3] **Q:** Doctor, do you understand that depositions are
[4] public record?

[5] **MS. McGURK:** Objection.

[6] **A:** I do not understand that another person that is
[7] not involved in this case has — her name is
[8] being used here without her permission, and
[9] unless I get an order from the Judge to say so,
[10] otherwise, I will not comment on that.

[11] **Q:** Well, doctor, it is public record and since it is
[12] public record anybody can use the information.

[13] **A:** You're a lawyer, I'm only a doctor. I'm told I
[14] will have to get my legal advice and see if I am
[15] able to do that.

[16] **Q:** Doctor, would you agree that you testified that
[17] your patient, Johnny Cooks, sustained a permanent
[18] injury?

[19] **MS. McGURK:** Continuing
[20] objection.

[21] **Q:** If you would like to look at the transcript you
[22] are free to do so, doctor.

[23] **A:** No, I won't look at it, because you are talking
[24] about an entirely different person. It is like
[25] asking a person if their Honda has headlights

1—18:48:58 25—18:49:48

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[1] that fit with a Chevrolet. We are talking about
[2] entirely different people, different conditions.

[3] **Q:** Doctor, you have been willing to testify that
[4] your own patients have suffered permanent injury,
[5] correct?

[6] **MS. McGURK:** Objection.

[7] **A:** I don't think it's relevant. It is an entirely
[8] different problem. I've had many amputated
[9] patients, I have had patients who have had
[10] strokes, I have patients who have paralysis. I
[11] have patients who have, you know, crippled,
[12] deformed limbs. Yes, that's permanent. Sure,
[13] I've testified for that because I have taken care
[14] of conditions like that.

[15] **Q:** But Sandra Slusarczyk is not your patient, is
[16] she, doctor?

[17] **A:** No.

[18] **Q:** You didn't provide any treatment to her?

[19] **A:** No.

[20] **Q:** Correct?

[21] **A:** I did not.

[22] **Q:** All you did was an examination of her, correct?

[23] **A:** That is correct.

[24] **Q:** Would you agree with Dr. Likavec that within six
[25] months, ninety percent of healing to the lumbar

1—18:49:52 25—18:51:04

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[1] spine occurs?

[2] **A:** For soft tissue injuries, that's correct.

[3] **Q:** And would you agree that a disk injury is a soft
[4] tissue injury?

[5] **A:** No, it is not. We call that a more extensive
[6] injury. As you have asked me to point out
[7] before, a soft tissue injury to me is a muscle,
[8] ligament injury that does not involve a bone or a
[9] disk. A disk condition is the next level of
[10] depth of injury to a spine.

[11] **Q:** Well, doctor, you have testified under oath that
[12] if an injury lasts longer than six months, it is
[13] chronic, correct?

[14] **MS. McGURK:** Objection.

[15] **A:** I don't know if I testified to that. If you look
[16] in the dictionary, the word "chronic" means
[17] lasting over six months. That's not my
[18] definition. We're just using the same
[19] established, basically by physicians in general.

[20] **Q:** Doctor, would you agree that surgery is indicated
[21] for a herniated disk if a patient has nerve
[22] impingement which results in numbness, weakness,
[23] and loss of range of motion?

[24] **MS. McGURK:** Objection.

[25] **A:** Absolutely not. If that were the case, we

1—18:51:06 25—18:52:16

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[1] wouldn't have enough hospitals and hospital beds
[2] to take care of our population. That's how
[3] common combinations of disk herniations and some
[4] impingement are.

[5] Surgery is confined to a very specific group
[6] of people. Large herniations are not responsive
[7] to treatment. Extrusions, conditions that cause
[8] paralysis or potentially permanent damage to a
[9] nerve, those are the conditions that require
[10] surgery. It's an entirely different problem, and
[11] not the one that we're talking about here.

[12] Q: Doctor, would you agree that the longer a nerve
[13] is compressed, the more likely the area is to be
[14] a permanent injury to the nerve?

[15] A: If there is true compression, yes.

[16] Q: Doctor, would you agree that there are risks to
[17] going forward with lumbar surgery for a disk
[18] herniation?

[19] MS. McGURK: Objection.

[20] A: Yes, there are.

[21] Q: And do you agree that surgery is only indicated
[22] if conservative therapy fails and the patient
[23] continues to have numbness and weakness or a
[24] progression of symptoms?

[25] MS. McGURK: Objection.

1—18:52:16 25—18:53:18

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[1] A: Yes. That's one of the indications. It's a
[2] specific condition that requires surgery versus a
[3] condition that requires therapy and medication.

[4] Q: Doctor, you were hired by the defense in this
[5] case?

[6] A: I don't know if I was hired. I mean, I was asked
[7] to review a record and examine Sandra, yes.

[8] Q: Doctor, weren't you hired by Allstate Insurance
[9] Company?

[10] MS. McGURK: Objection.

[11] A: I don't know. I don't see anything about
[12] Allstate. I was hired by Ms. McGurk.

[13] Q: Well, on Ms. McGurk's letterhead, doesn't it
[14] state that she is employed exclusively by
[15] Allstate Insurance Company?

[16] MS. McGURK: Continuing objection
[17] to any mention of insurance.

[18] A: Yes. I didn't even notice that, yes.

[19] Q: Doctor, you have done work for Allstate in the
[20] past, have you not?

[21] MS. McGURK: Objection.

[22] A: I believe so, yes.

[23] Q: You have been paid by Allstate in the past to do
[24] these type of examinations, correct?

[25] MS. McGURK: Objection.

1—18:53:18 25—18:54:34

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[1] A: I don't know. I think you subpoenaed some
[2] records from me from Allstate. I don't know.
[3] The entire year, we don't get the year end amount
[4] that we are paid until, before April, but all of
[5] 1990 — 2000, all of last year, I think I was
[6] paid \$850 the entire year from a check that was
[7] written by Allstate.

[8] I know at least \$325 of that was for a
[9] fracture, in other words, an accident case, med
[10] pay. I don't know what the other \$500 was for.

[11] Q: Well, you have been paid by Allstate in the past
[12] to do these type of examinations; that's correct?

[13] MS. McGURK: Objection.

[14] A: Yes. \$500 for a whole year, yes.

[15] Q: Well, actually weren't you paid \$1325, doctor?

[16] MS. McGURK: Objection.

[17] A: By who?

[18] Q: By Allstate Insurance Company.

[19] A: I thought it was \$500. Okay. It's \$825 for med
[20] pay, that's for a fracture, treatment, \$500 for
[21] something else, I don't know what that is.

[22] Q: Plus another \$500 for nonemployee compensation,
[23] correct?

[24] MS. McGURK: Objection.

[25] A: I don't know what that is.

1—18:54:36 25—18:55:26

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[1] Q: You were paid an additional \$500, though,
[2] correct, doctor?

[3] MS. McGURK: Objection.

[4] A: I was paid \$825 to treat several cases. One was
[5] \$325 for a fractured arm. I don't remember what
[6] the other injury was. That's called med pay.

[7] There was, according to that statement,
[8] another \$500. I was paid for another service.
[9] That's all that there was. That's all I got for
[10] the entire year.

[11] Q: Doctor, you are being paid for your time here
[12] today, correct?

[13] A: Yes.

[14] Q: What has your total bill been to Ms. McGurk or
[15] Allstate Insurance Company?

[16] MS. McGURK: Objection as to
[17] mention of insurance.

[18] A: I believe it was \$500 for the work I have done
[19] and I charge \$250 an hour for a deposition.

[20] Q: Doctor, didn't you tell Sandra Slusarczyk that
[21] she will probably have to live with this
[22] herniated disk for the rest of her life?

[23] MS. McGURK: Objection.

[24] A: No. I said into the future.

[25] MR. RUF: I have no further

1—18:55:28 25—18:56:30

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[1] questions.

[2] A: Some people — okay.

[3]

[4] REDIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.

[5] BY MS. McGURK:

[6] Q: Doctor, I just have a couple follow-up.

[7] You were asked some questions about some

[8] things that you may or may not have told the

[9] plaintiff as to whether or not — I don't

[10] remember exactly what it was that you supposedly

[11] told her, but something that she will have to

[12] live with this pain for the rest of her life.

[13] I know we went over this earlier, but in your

[14] report, if you could please explain to us again

[15] what your prognosis was for Miss Shusarczyk.

[16] A: I said it was fair to fairly good.

[17] Q: And Mr. Ruf was going over with you a lot of the

[18] things that were in your report, and if you could

[19] just clarify, they were all — I'll mention some

[20] specifically because there was quite a few of

[21] them.

[22] He was talking about she stated she has low

[23] back pain, she states she has to restrict her

[24] activities. In general, if you could explain to

[25] the jury that all of the things that he was going

1—18:56:32 25—18:57:38

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[1] through with you, these were all things that she
[2] was telling you.

[3] A: Right. I — she told me she had the accident,

[4] shortly after, I don't think it was the same day,

[5] but shortly afterwards she started getting not

[6] only back pain but radiating pain down her leg,

[7] then she told me a whole series of things that

[8] were related to that pain and going down the

[9] back, and I thought they were consistent with the

[10] diagnosis of a small herniated disk, simple as

[11] that, without spending 45 minutes talking about

[12] every little thing, I think she does have a

[13] herniated disk symptoms and I think she's had

[14] them as a result of this accident, but in my

[15] experience, and I certainly have seen thousands

[16] and thousands of similar cases, they tend to get

[17] better. They tend to get better by first having

[18] the leg pain kind of fade away, and then the hip

[19] pain sort of goes away, and finally the backache

[20] is not as bad. You can help yourself by

[21] physically conditioning yourself. That's the one

[22] treatment that you have some control over. And

[23] certain things do hurt, so you have to watch what

[24] exercises you do and you need a professional, but

[25] with the proper therapy and with the proper

1—18:57:40 25—18:58:38

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[1] exercise, that's even a better prognosis.

[2] Without exercise, without working out, it

[3] will still get better, but not maybe as fast.

[4] Q: And Mr. Ruf was going through with you

[5] specifically the physical examination and I want

[6] to comment on a couple of the things that he

[7] overlooked.

[8] Would you agree in your report you have she

[9] was able to stand and walk normally?

[10] A: Yes. The jury can see her walk into the room.

[11] You can see that she physically looks in good

[12] condition and stands straight and can walk

[13] normally.

[14] Q: And in the standing position her spine was

[15] normally aligned?

[16] A: Right. She doesn't have a curvature or a

[17] deformity of her spine.

[18] Q: And also you went through some different ranges

[19] of motion with her with her neck and upper back

[20] and you have motion of her neck or upper back did

[21] not cause any lower back pain or reaction?

[22] A: Right. I mean, the upper part of her spine is

[23] normal. The shoulders are normal, and even

[24] moving her neck and upper back doesn't cause any

[25] reaction on the lower back.

1—18:58:40 25—18:59:44

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[1] Q: She was able to bear full weight on each lower
[2] extremity?

[3] A: Right. She could stand and toe walk, do things

[4] like that, but she stood on her left leg, she did

[5] say that that side hurts a little bit more than

[6] the other side, yeah.

[7] Q: Which we are not denying, that she has an injury

[8] to her low back, correct?

[9] A: Right. Absolutely.

[10] Q: And it was also mentioned about the fact of, if

[11] she was to have additional trauma, whether it be

[12] an accident or a fall or something, that that

[13] could cause additional injury, she could be more

[14] susceptible to an injury to her low back?

[15] A: I think so, and that her injury could have caused

[16] another disk entirely, I mean, that's not the

[17] only thing, but if you have a weak disk that has

[18] not completely shriveled back or dried up again

[19] or gone back into place and you are in the

[20] process of having that condition undergo those

[21] changes and then you are, bang, somebody hits you

[22] hard, your parachute doesn't open or you have

[23] some kind of a full contact wrestling match and

[24] you get slammed down, something that happens real

[25] suddenly, yes, that can weaken that wall again.

1—18:59:48 25—19:00:56

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[1] Q: Now, as time goes on and progresses, is this, you
[2] know, susceptibility to additional trauma, does
[3] that decrease as time increases?

[4] A: Right, because by that time it shrinks down. The
[5] only way I can explain it to a jury, if you have
[6] a fruit, a peach or a plum, and you leave it out
[7] and you forget about it and you leave it on a
[8] window sill and you forget about it all winter
[9] long, you come back in the spring, what is that
[10] peach going to look like? It is shrunk back, and
[11] that's what happens to certain parts of the body.
[12] Intervertebral disks will do that. Now, it won't
[13] go — not as fast. A peach, you leave it there
[14] for four months and it is like a raisin, you know
[15] it is going to shrink back. Disks will do that,
[16] but at a smaller rate, and I've seen it happen in
[17] three or four years; I've seen it go on over
[18] five.

[19] Q: And also you were being asked about nerve root
[20] compression. There haven't been any subsequent
[21] MRIs that have been done to her to show whether
[22] or not there, what kind of compression there is
[23] on the nerve, correct?

[24] A: Right. That was a good point that I think
[25] Mr. Ruf brought out, that you have an opportunity

1—19:00:58 25—19:01:46

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[1] to get follow-up scans. Scans is a noninvasive
[2] test. There is no radiation. It is not
[3] dangerous. You just can't wear metal while you
[4] are getting it done. But you can monitor this
[5] and see if it is making good progress or not, but
[6] unfortunately that was never done.

[7] MS. McGURK: I think that's all I
[8] have.

[9] MR. RUF: I have no additional
[10] questions.

[11] VIDEOTAPE OPERATOR: Excuse me,
[12] sir. You have a right to review this tape
[13] in its entirety or you can waive that
[14] right. Do you wish to —

[15] THE WITNESS: I will waive viewing
[16] the tape.

[17] VIDEOTAPE OPERATOR: You also have
[18] a right to review the written transcript or
[19] you can waive that right as well.

[20] THE WITNESS: I will waive reading
[21] the transcript.

[22] VIDEOTAPE OPERATOR: Is there a
[23] stipulation that the tape remains in the
[24] custody of Mehler & Hagestrom until trial
[25] in Court?

1—19:01:46 11—19:02:04

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[1] MS. McGURK: Yes.

[2] MR. RUF: No. She wouldn't
[3] stipulate to doing that with my expert so I
[4] will not stipulate to that.

[5] MS. McGURK: Oh, I didn't?

[6] MR. RUF: You made me file it, so
[7] you can do the same.

[8] VIDEOTAPE OPERATOR: This now
[9] concludes the deposition. We are now going
[10] off the record.

[11] MS. McGURK: Thanks.

[12]
[13] (The reading and signing of the
[14] deposition was expressly waived by the witness
[15] and by stipulation of counsel.)
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CERTIFICATE

The State of Ohio,) SS:

County of Cuyahoga.)

I, Judith Gage, 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

_____ day of _____ A.D. 20_____.

Judith Gage, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires March 24, 2005

Lawyer's Notes

\$

\$1325 55:15
\$1500 30:5
\$250 56:19
\$325 55:8; 56:5
\$500 55:10, 14, 19, 20,
22; 56:1, 8, 18
\$825 55:19; 56:4
\$850 55:6

1

1 13:7, 17; 20:7; 21:4;
27:12; 28:10; 37:25
10:25 45:1
10:40 45:1
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15 44:22; 45:5
1953 6:21
1957 6:25
1958 6:16
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Lawyer's Notes
