

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

JANET TALIAK,

Plaintiff,

-vs-

RANI SIDHWA,

Defendant,

JUDGE C. FRIEDMAN  
CASE NO. 154787

- - - -

Deposition of ROBERT D. ZAAS, M.D., taken as  
if upon direct examination before Ralph A.  
Ceburon, a Registered Professional Reporter and  
Notary Public within and for the State of Ohio,  
at the Mt. Sinai Medical Building, 26900 Cedar  
Road, Beachwood, Ohio, at 6:15 p.m. on Thursday,  
March 29, 1990, pursuant to notice and/or  
stipulations of counsel, on behalf of the  
Plaintiff in this cause.

- - - -

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1        APPEARANCES:

2            David M. Paris, Esq.  
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9            On behalf of the Plaintiff;

10           Lynn A. Lazzaro, Esq.  
11           Meyers, Hentemann, Schneider ■ Rea  
12           2121 The Superior Building  
13           Cleveland, Ohio 44114  
14           (216) 241-3435,

15           On behalf of the Defendant,

16        ALSO PRESENT:

17           Daniel Davis, Video Technician

18           - - - -

1 MR. PARIS: It is stipulated by and  
2 between counsel for the respective parties here  
3 that this deposition will be used in trial and  
4 be taken by Daniel Davis, pursuant to Ohio  
5 Superintendence Rule 15 by means of videotaping  
6 and audiotape simultaneously and may later, out  
7 of the presence of the witness, transcribe or  
8 cause said videotape to be transcribed and/or  
9 cause said videotape or transcript thereof to be  
10 filed in the Court of Record.

11 I take it, by the way, you will waive the  
12 one day filing requirement of the transcript?

13 MR. LAZZARO: I will waive.

14 MR. PARIS: Will you also stipulate  
15 that the video recording can be held in my  
16 custody without filing that so it doesn't get  
17 Post?

18 MR. LAZZARO: I will waive the  
19 filing of the video.

20 MR. PARIS: Thank you very much,  
21 Mr. Lazzaro,

22 VIDEO TECHNICIAN: This begins the  
23 deposition and will the court reporter please  
24 swear in the witness.

25 - - - -

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

7           DIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.

8           BY MR. PARIS:

9       Q.   Doctor, my name is David Paris. I'm one of the  
10           lawyers that represents Janet Taliak McMillen.

11                Would you please tell the jury your full  
12           name?

13   A.   Dr. Robert David Zaas.

14   Q.   And you are an orthopedic surgeon?

15   A.   I am.

16   Q.   And when were you licensed to practice medicine  
17           in the State of Ohio?

18   A,   1959.

19   Q.   And can you tell the jury what orthopedic  
20           surgery is?

21   A.   Orthopedic surgery is a subspecialty that deals  
22           with both medical and surgical conditions of the  
23           skeletal system. Of course the skeletal system  
24           is our bones and our joints. An orthopedic  
25           surgeon such as myself are trained and qualified

1 to treat conditions of the arms, the legs, and  
2 the spine. This both -- means both medical  
3 treatment of those conditions that don't need  
4 surgery and surgical treatments. I'm a trained  
5 surgeon.

6 Q. Okay. In connection with your training, would  
7 you tell the jury your background, educationally  
8 and trainingwise, which qualifies you to be an  
9 expert in this case?

10 A. In my case I went to college at Case Western  
11 Reserve University in Cleveland. I graduated  
12 from there in 1953 with a bachelor of science  
13 degree.

14 From there I went to medical. school. I  
15 went to the University of Chicago School of  
16 Medicine. I graduated from there in 1957 with  
17 an M.D. degree,

18 After medical school, that means after four  
19 years of college and after four years of medical  
20 school, I had six additional years of specialty  
21 training. I had one year of internship at Mount  
22 Sinai Hospital, two years of general surgery and  
23 neurosurgery training at University Hospitals,  
24 Mount Sinai program in Cleveland, and then three  
25 additional years of orthopedic surgical training

1 at Indiana University in Indianapolis,

2 I went into private practice in the  
3 Cleveland area. Actually our first office with  
4 two other orthopedic surgeons was on Shaker  
5 Boulevard next to St. Luke's Hospital in 1965.

6 Before E went into private practice though  
7 I had two years of active duty with the United  
8 States Navy. I was surgeon for the Seventh  
9 Fleet stationed on an aircraft carrier in the  
10 fairly early Viet Nam era.

11 Q. All. right. And you have been in private  
12 practice ever since the mid-1960s I take it?

13 A. Yes. 1965.

14 Q. Okay. Would you tell the jury whether or not  
15 you are a board certified orthopedic surgeon?

16 A. I am board certified.

17 Q. And what does that mean?

18 A. Board certification means that a doctor is an  
19 expert and a qualified registered specialist in  
20 a given field. I am a diplomat, which means I  
21 have completed all of my training and passed the  
22 examinations by the American Board of Orthopedic  
23 Surgery. To become so qualified a doctor has to  
24 graduate from an accredited medical school,  
25 receive a minimal of five years of training in a

1 training program after medical school, and then  
2 be able to pass two sets of examination; these  
3 are both written and oral. One set is given  
4 immediately after a doctor goes into practice,  
5 the second set after he's been in practice for  
6 two-and-one-half years.

7 Q. Are you a member of any medical organizations  
8 and societies?

9 A. Yes, I am.

10 Q. Would you name some of those for us, please?

11 A. I'm a member of a number of ortho -- societies  
12 whose membership is for physicians in good  
13 standing; that includes the American Medical  
14 Association, the Ohio State Medical Association,  
15 the Academy of Medicine of Cleveland.

16 I'm a member of organizations whose  
17 membership is for orthopedic specialists; that  
18 includes the American Board of Orthopedic  
19 Surgery, the Ohio State Orthopedic Association,  
20 the Cleveland Orthopedic Association, which I  
21 have been, oh, many different officers. At the  
22 present time I'm chairman of the continuing  
23 education committee.

24 Q. Okay. Are you affiliated with any hospitals in  
25 the Cleveland area?

1 A. Yes, I am.

2 Q. And which hospitals?

3 A. Since the late 1970s, I think it's about ten or  
4 11 years now, I have tried to limit all of my  
5 in-hospital admissions of patients, my surgical  
6 scheduling and my teaching responsibilities to  
7 Mount Sinai Hospital at University Circle in  
8 Cleveland since it became affiliated with the  
9 medical school at Case Western Reserve. I use  
10 the emergency room, which means courtesy  
11 privileges only at Suburban Hospital, St. Luke's  
12 Hospital and Hillcrest Hospital.

13 Q. Okay. Getting back to your comment about  
14 teaching, to what extent are you involved in  
15 teaching?

16 A, I have instructed at the medical school,  
17 particularly at Case Western Reserve. I gave a  
18 course on orthopedic pathology with Dr. Lester  
19 Adelstein, who is chief of the pathology  
20 department, as a matter of fact coroner of the  
21 state -- the City of Cleveland, the County, oh,  
22 for about 12 or 14 years. But since  
23 Dr. Adelstein retired we have not renewed the  
24 course this year. But up until this year we  
25 gave the course every year for many years. That



1 was for medical students.

2 I still teach medical students as they  
3 rotate through the program at Mount Sinai  
4 Hospital.

5 I have been active in the training of  
6 orthopedic residents, these are the doctors who  
7 have passed medical school and are going on for  
8 specialty training, Again most of it is through  
9 Mount Sinai, but we have affiliations with  
10 Western Reserve University or University  
11 Hospital and the Cleveland Clinic and rotate our  
12 residents or doctors through the three  
13 hospitals. We have doctors from either the  
14 Clinic or University Hospital or Mount Sinai.

15 And finally, probably my most time  
16 consuming teaching responsibilities have been in  
17 the field of continuing education of doctors  
18 already in practice. We as physicians have to  
19 continue to go to school. I have been out of  
20 medical school for, what, 30 years, and what I  
21 learned 30 years ago would not make me very  
22 popular with patients who come for me for help  
23 now. They want something that's up to date, So  
24 we continuously go to school. We have courses  
25 and my responsibility has been working through

1 the committee for continuing education through  
2 the Cleveland Orthopedic Society to make  
3 lectures, seminars, teaching sessions for the  
4 orthopedic doctors in the Northern Ohio area  
5 we do this once a month. It takes a whole day  
6 on Saturday or at least half a day sometimes, and  
7 we cover an area from Toledo to the Pennsylvania  
8 border, east and west, and from Lake Erie to  
9 Mansfield, north and south

10 Q. Okay. Have you published any articles in your  
11 field of orthopedic surgery?

12 A. Yes, I have.

13 Q. Now, as an orthopedic surgeon I take it that not  
14 all of your patients come to you strictly for  
15 surgical reasons?

16 A. Oh, I think that's true. In my particular  
17 practice I tend not to specialize or subspecialize  
18 in spine conditions, surgically and  
19 nonsurgically, and reconstructive surgery of the  
20 hip.

21 More hip patients come to me, the patients  
22 require hip surgery, but in patients with the  
23 spine, the great majority do not need surgery

24 Q Okay. Directing your attention to Mrs. Tadiak,  
25 did you have an occasion to see her and treat

1 her?

2 A. Yes, I have seen her on several occasions.

3 Q. And using your office notes, if you like, can  
4 you tell us the first time that you saw her?

5 A. August 4, 1988.

6 Q. And when she came to you on that occasion, did  
7 she voice any complaints to you?

8 A. Yes.

9 Q. And did you obtain a history as to what problems  
10 she was having?

11 A. Yes. She was able to give me her own history.

12 Q. Would you tell us that, please?

13 a. She gave a history that on October 28, 1987 the  
14 car she was driving was struck from behind by  
15 another car as her car was stopped. She told me  
16 that she remembers being thrown forward and to  
17 the side and that even when she was sitting in  
18 the car began to feel a tingling, weakness and a  
19 numbness of her hands. She told me that she  
20 couldn't even turn the ignition switch by  
21 herself at that time, her hands felt so weak and  
22 numb.

23 She was taken by emergency vehicle to  
24 Fairview General Hospital, x-rays of her neck  
25 were done. She was given a cervical collar,

1 that's one of those soft collars that supports  
2 your neck, and then she was allowed to go home.

3 Now, she told me that she also had some  
4 soreness of the left side of her hip or the side  
5 of her left hip which was bumped inside the car,  
6 but that the hip symptoms then seemed to go away  
7 pretty quickly, but after the next couple of  
8 days she had more and more pain, stiffness, and  
9 soreness involving the back of her neck or upper  
10 back and then going down into her left arm. She  
11 told me that she had some tingling, numbness and  
12 weakness in both hands that seemed to go on for  
13 a number of months and that she had to keep  
14 using the collar until the spring of 1988; in  
15 other words, the accident was in the fall of  
16 1987, October 28, she was having to use the  
17 collar through the winter and then into the  
18 spring of 1988,

19 Q. What is the purpose of the collar, by the way?

20 A. A neck collar basically is an external support.  
21 It supports the muscles, ligaments and spine and  
22 actually allows a certain amount of distraction  
23 or traction between the neck and the upper part  
24 of the chest to allow a release of some of the  
25 pressure that comes from neck injuries, either

1 involving ligaments, muscles or infrastructures  
2 such as disks.

3 Q. And I take it that is an accepted modality of  
4 treatment for an injury such as Mrs. Taliak's?

5 A. Oh, yes, definitely. I tend to use it more if  
6 there are concerns that there might be damage to  
7 the spine, such as the spine itself or one of  
8 the nerves. One of the clues that we get as a  
9 physician is the pain entirely limited to the  
10 neck or to the muscles, that; would just be a  
11 stiff neck, that would makes us think it's only  
12 a muscular injury. If, however, we also get  
13 symptoms that involve pain shooting outward into  
14 the arm or the fingers or, in addition to pain,  
15 there would be a numbness, a tingling, maybe a  
16 paralysis, paralysis means weakness, that would  
17 indicate that there is more injury than just  
18 muscles and ligaments and that would be  
19 particularly suitable for a support collar.

20 Q. Okay. And by way of history, is that your  
21 understanding of the complaints that Mrs. Taliak  
22 had?

23 A. The -- oh, yes, definitely. She was having so  
24 much so I was very impressed with the fact that  
25 she had even trouble turning her ignition key to

1           begin with. That would indicate a lot of  
2           weakness.

3       Q.   Okay. Please continue with your history.

4       A.   Basically when I saw her on August 4, 1988, we  
5           are now ten months after her accident, and even  
6           at that time she complained that she was getting  
7           pain in her neck and she would get either a  
8           tingling, sometimes a numbness, sometimes a pain  
9           that went down into her left arm and hand, but  
P0          the left-sided symptoms were not as bad as they  
11          were during the immediate months after the  
12          accident. She had had some trouble with her  
13          right side; in other words, tingling in her  
14          right arm, but these had quickly gone away, at  
15          least as compared to the left-sided. She  
16          complained of a clicking sensation or cracking  
17          when she moved her neck or shoulders and had  
18          just not been able to physically get back to  
19          doing everything she did before October 28,  
20          1987. So she was still having neck pain and  
21          stiffness and radiating pain that went from her  
22          neck to her left arm, not as quite as bad as  
23          immediately after her accident but still  
24          persisting.

25       Q.   Okay. She, of course, had told you that she had

1       seen some other doctors before she came to see  
2       you?

3       A.   Oh, she had other medical treatment.  She's seen  
4       treatments in the southwest area, at least one  
5       neurologist that she saw, saw her family  
6       doctor.  She had gotten what we call the usual  
7       form of treatment for nonsurgical injuries or  
8       conditions that don't require operations of the  
9       spine.  Physical therapy.  Physical therapy  
10      included ultrasonic treatments, medications;  
11      these included Motrin, which is a nonsteroidal  
12      antiinflammatory medicine.  It is a medicine to  
13      reduce inflammation in muscles and Ligaments and  
14      she also had received some chiropractic  
15      treatments on a limited basis while she was in  
16      the Phoenix area.

17      Q.   Doctor, what is the purpose of ultrasound, heat  
18      and traction, those modalities of physical  
19      therapy?

20      A.   The physical therapy is another method of  
21      relieving inflammation, stiffness and a  
22      condition we call spasm of muscles of the  
23      spine.

24                Ultrasound is kind of a form of microwave,  
25      if we want to call it, ultrasound is a way of

1 bringing heat inside tissue rather than on a  
2 surface. For instance, a microwave oven will  
3 get the inside of a hamburger hotter than the  
4 surface. Ultrasound will get the inside of a  
5 muscle warmer than the skin. It's just a  
6 another way of generating heat inside the  
7 muscles to relieve pain, to ease inflammation,  
8 to improve mobility.

9 Q. Okay. Did you get a history as to what she did  
10 for a living?

11 A. Yes. She was a director of home care at  
12 Fairview General Hospital. In hospital language  
13 every hospital has a home care director. The  
14 person is involved with making the transition  
15 when a person is in the hospital to getting them  
16 home. It's a desk job, but it requires a lot of  
17 contact with family and the patient and running  
18 around the hospital, sometimes a lot of writing,  
19 sometimes a lot of forming of reports, sometimes  
20 a lot of reading. Basically a patient  
21 contact/paperwork type of job.

22 Q. Okay. Did you ask her about any prior problems  
23 she had?

24 A. Yes. She told me that she was aware of having  
25 arthritis in her neck a long time ago for many



1 times, she never had any previous car accidents  
2 where she had any injuries. I was subsequently  
3 aware, I don't think I recorded direct to begin  
4 with, I was subsequently aware that she had hurt  
5 her neck, oh, I don't know, 18, 20 years ago in  
6 some type of a summer sport, I think water  
7 skiing accident, and had some trouble with her  
8 neck afterward and had occasional problems in  
9 her neck off and on even before the accident we  
10 are concerned here about, which she described as  
11 arthritis by the way8

12 Q. Okay. Does that complete your history?

13 A. Basically, yes. She told me that since this  
14 accident, the one of October 1987, that she was  
15 not able to do many of the activities that she  
16 could do beforehand. Even though again, she  
17 knew she had arthritis of her neck in the past,  
18 but they didn't limit her in the past.

19 Since this accident she told me, for  
20 instance, that she could swim in a certain way.  
21 For instance, she could swim if she would turn  
22 her neck to the left but not to the right. In  
23 other words, when you swim you have to make your  
24 strokes.

25 Other activities, other sports she was able

1 to do where she could have done them beforehand,  
2 so there had been a change in her ability to  
3 participate in more physical type of athletic  
4 things such as workout sports since this  
5 accident as compared to before the October 1987  
6 accident.

7 Q. Okay. Now, did you examine her?

8 A. Yes.

9 Q. And first of all, how old is Mrs. Taliak?

10 A. Well, she was 51 years old when I saw her on  
11 August 4, 1988.

12 Q. And how did she appear from the standpoint of  
13 being in shape?

14 A. Oh, I thought she was very youthful appearing,  
15 physically in good condition, appropriate body  
16 build, not overweight. As a matter of fact, I  
17 commented as very youthful appearing who  
18 ambulated normal -- more normally.

19 Q. Can you tell us about your examination?

20 A. Yes. When I examined her as an orthopedic  
21 doctor I'm concerned with what we call  
22 appearance, alignment and function of the spine  
23 as opposed, for instance, when your own family  
24 doctor does the examination they're going to  
25 check your tonsils and your ears and your heart

1 and stomach, we are more concerned with the  
2 spine and extremities, how they move, how they  
3 function, how the circulation is, how the nerve  
4 control is. And one of the things we do is  
5 watch a person walk, watch a person as they  
6 stand, see if the spine is straight, see if  
7 there are deformities or curvatures, and in her  
8 case I didn't find that she had any curvatures.  
9 I thought she had a normal spine, had good  
10 posture.

11 Now, the abnormalities that she had  
12 involved the muscles in the back of her neck  
13 which in medical terms is called cervicospinal,  
14 those are the muscles that run from the nape of  
15 your neck down toward your shoulder,

16 I found muscle spasm and tenderness of the  
17 lower cervical muscles on the left side and also  
18 associated limited or restricted cervical  
19 bending and restricted cervical rotation, which  
20 was actually more limited to the right than on  
21 the left, and extremes of movement caused pain  
22 at the base of the neck.

23 I also found muscle spasm that went from  
24 the back of the neck outward toward the  
25 trapezius muscles, that's the muscle at the base

1 of your neck, For all you weightlifters, we  
2 sometimes use the word trap muscles, but that's  
3 just the muscle at the base of your neck.

4 Q. Excuse me.

5 A. There was still muscle spasm at that time.

6 Q. What is a muscle spasm?

7 A. Muscle spasm is an uncontrolled locking or  
8 contracture of a muscle that is not within a  
9 person's voluntary control, that is usually  
10 related to protective tightening after an  
11 accident. If the spasm occurred in your calf  
12 you would call it a muscle spasm or charley  
13 horse basically. And anyone knows who's ever  
14 had a charley horse or the cramp, of the calf,  
15 it's very, very painful. Neck or back muscle  
16 spasms tend not to come on quite so rapidly, but  
17 they tend to last a long time, oh, they can come  
18 and go, and they restrict motion and are  
19 actually sore to the touch.

20 Q. And, doctor, is a muscle spasm something that  
21 you can touch and feel independent of what the  
22 patient tells you?

23 A. Oh, sure. Again, let's go back to when the calf  
24 would be, if you had a sudden cramp in your  
25 calf, anybody who has ever had one of those will

1 quite immediately know that it feels like a hard  
2 knot, almost like a ball, tender, you can hardly  
3 touch it. The one in the back of the neck also  
4 feels hard, tender, although it tends to be more  
5 of a -- in a lineup rather than in a round ball  
6 as the calf muscle would be. But it's a similar  
7 feeling, you can feel it and the patient can't.  
8 control it. It's there as a result of an injury  
9 or some other condition and it is not within the  
10 person's ability to turn it on or turn it off.

11 Q. And that was ten months after this accident --

12 A. Yes.

13 Q. -- when you first saw her? Okay. Please  
14 continue with your exam.

15 A. Well, I found when I would rotate or make the  
16 left arm rotate, we call that scapular rotation,  
17 it's sort of taking your arm and making a big  
18 circle, I could feel what I call a crepitus or a  
19 clicking sensation under the shoulder blade.  
20 When I did it on the right side everything there  
21 really wasn't much catching on the right the  
22 same way. It is interesting that the grip of  
23 the left hand was weaker than the right, but  
24 when I checked all the reflexes and feeling and  
25 sensation in the left arm I was not able to show

1 any other abnormalities. The only nerve related  
2 type of abnormality that I could demonstrate was  
3 this slight weakness of grip on the left hand.

4 Q. Okay. Did that complete your physical  
5 examination?

6 A. Basically the rest of her orthopedic examination  
7 as far as I was able to determine was not  
8 abnormal. Her lower back was painless and had  
9 good motion. The only trouble was with the  
10 neck.

11 Q. Okay, Did you have an opportunity to review any  
12 x-rays?

13 A. Yes.

14 Q. And what x-rays did you review?

15 A. I saw x-rays from West Side Imaging. The date  
16 on those was December 14, 1987.

17 Q. And what did those reveal?

18 A. These showed what we call arthritis of the lower  
19 spine, specifically degenerative disk disease  
20 with spurring at three levels in the cervical  
21 spine. And there was another test that went  
22 along with the regular x-rays called an MRI  
23 scan. The three words, MRI, stand for magnetic  
24 resonance imaging and it is a newly high-tech  
25 type of examination that does not require any

1 radiation, that not only will show bones as  
2 x-rays do, but also shows soft tissue such as  
3 muscles, ligaments, tendons and what is  
4 particularly more important to us, the spinal  
5 cord, spinal nerves and disks.

6 The MRI scan, in my opinion, didn't really  
7 show anything much different than the regular  
8 x-rays; basically showing that she had arthritis  
9 of the lower spine without oh, any problem of  
10 direct pressure on a nerve root.

11 Q. Okay. And that was at three of the what, seven  
12 levels of the neck?

13 A. Uh-huh. She had fourth, fifth and sixth disks  
14 in the neck were arthritic,

15 Q. All right. Doctor, are there many people  
16 walking around Janet Taliak's age with  
17 degenerative arthritis in their neck who are  
18 able to function and work in a normal manner  
19 without pain or symptoms?

20 MR. LAZZARO: Objection.

21 Q. Let me rephrase the question.

22 Doctor, have you treated patients in this  
23 same age category as Janet Taliak who are able  
24 to function in a normal manner without pain and  
25 disability even though they have had

1           degenerative disk disease at those three levels  
2           of the neck?

3       A.   Oh, certainly.   The word degenerative disk  
4           disease is just, as physicians must do, give a  
5           technical diagnostic term to something that we  
6           may use more simply as arthritis of the neck,  
7           It is a form in this particular instance, as in  
8           most other people, of normal aging.   Everybody  
9           is going to have normal aging.   As I look around  
10          the room I see some younger faces and **some** older  
11          faces, and basically every year that you live  
12          you're going to have a little bit of aging in  
13          your body.   So, of **course**, when a person reaches  
14          40 and then 50, they're going to have more aging  
15          than a person who is 20 and 30, which means that  
16          they're going to have more arthritis in their  
17          spine, both in their neck and their lower back.

18                 So the answer to your question is obviously  
19                 yes, anybody who could live a normal 50 year old  
20                 existence is going to have 50 years of aging  
21                 which will show up on an x-ray as what we call  
22                 arthritis.   If it occurs at a natural, normal,  
23                 average growing capacity it really seldom causes  
24                 too much problem.

25       Q.   Okay.   Did you render a diagnosis as it relates



1 to Janet Taliak?

2 A. Yes.

3 Q. And what was your diagnosis?

4 A. Moderately severe traumatic myofascitis of the  
5 cervicospinal trapezius and upper paradorsal  
6 muscles superimposed on symptomatic activation  
7 of preexisting, previously quiescent, multiple  
8 level cervical degenerative disk disease and  
9 osteoarthritis, and then subsiding left brachial  
10 radiculitis.

11 Q. Doctor, I don't mean to make a joke, but can you  
12 put that into layman's terms for all of us?

13 A. Sure. I think in my opinion based on my  
14 examination on August 4, 1988 and then the  
15 review of these x-rays, taking the complete  
16 history from her, I made several diagnoses.

17 I think in my opinion, Mrs. Taliak suffered  
18 several different layers of injuries to her  
19 neck.

20 The more surface injury was a muscle and  
21 ligament injury. In medical terms we call that  
22 traumatic myofascitis. Myofascitis means  
23 muscles and ligaments. It is involved with what  
24 we call the cervicospinal trapezius and  
25 paradorsal muscles. We're just saying what part

1 of the body. Muscle injuries to the neck,  
2 trapezius area and upper back, more in the left  
3 than on the right.

4 Now, in addition to the surface injury, the  
5 muscle and ligaments injury, it was my opinion  
6 that she also suffered a somewhat deeper  
7 injury. Deeper injury meant down into the area  
8 where the disks and bones of her neck are,  
9 because that's obviously the deeper level than  
10 the muscles which you almost can feel on the  
11 surface, and my diagnosis was a symptomatic  
12 activation of a previous arthritis condition of  
13 her neck. Symptomatic activation means that  
14 even though the condition, the arthritis was  
15 there before the accident that we are talking  
16 about, the force of this accident has caused  
17 this previous not painful condition to get  
18 painful.

19 Q. Okay.

20 A. Technically we call that symptomatic activation  
21 of a preexisting arthritis condition.

22 Q. Okay. And then your second diagnosis was  
23 subsiding left brachial radiculitis. Can you  
24 break that down?

25 A. Actually a third, Let's go back.

1 Q. I'm sorry. Your third.

2 A. We're getting down to the third level now.

3 Q. Okay.

4 A. Another level, we're dealing with the spinal  
5 cord or nerve roots. This is actually in a way  
6 even deeper since the spinal cord and nerve  
7 roots are housed within a hollow within the  
8 bones of the neck we call the spinal cord and  
9 the little outlets from the spinal cord, and I  
10 made a diagnosis of subsiding brachial  
11 radiculitis, The word brachial radiculitis  
12 means the nerves that come from the base of the  
13 neck, in her case on the left side, were  
E4 inflamed. or have pressure on them, again as a  
15 result of the accident that we are talking  
16 about. That by the time I saw her ten months  
17 after her accident the degree of pressure was  
18 not very bad, it was what we call subsiding.

19 Q. Okay.

20 A. So in summary I made diagnoses of three levels  
21 of injuries, muscular, ligamentous injuries to  
22 her neck and back. Number 2, activation or  
23 inception of symptoms in an arthritic spine.  
24 And then finally pressure and inflammation of a  
25 nerve emanating from the spine on the left side,

1 Q. Okay. First of all, doctor, do you have an  
2 opinion based upon a reasonable degree of  
3 medical certainty as to whether or not those  
4 three conditions which you have just described,  
5 those three injuries, were caused by  
6 Mrs. Taliak's car accident of October 28, 1987?

7 First of all, do you have an opinion?

8 A. Yes, I have an opinion.

9 Q. And what is that?

10 A. It is my opinion that the soft tissue cervical  
11 injury was totally and directly caused by the  
12 accident of October 1970 -- '87. The activation  
13 of the preexisting condition was in, started or  
14 was triggered by this accident even though the  
15 arthritic condition was there long before this  
16 accident, and these so-called brachial  
17 radiculitis and nerve root inflammation was  
18 directly caused by the October 1987 accident.

19 Q. Okay, As it relates to the nerve injury, would  
20 that be consistent with her complaints of the  
21 numbness and tingling down the arm and into the  
22 hand?

23 A. Absolutely. Nerve injury could involve pain  
24 that goes from the base of the nerve where it  
25 starts in the spine, that's of course the neck,

1 and then through its course over the arm, and  
2 then of the five nerves that go into the hand,  
3 could go as far as the fingers. Not only pain,  
4 however, it can involve numbness, it can involve  
5 weakness, it can involve coordination, and it  
6 could involve some other physical changes, such  
7 as reflexes and measurement. It can involve  
8 anyone of those. Pain and numbness and tingling  
9 being the more prominent.

10 Q. Okay. And, doctor, can you explain to the jury  
11 why someone such as Mrs. Taliak who had  
12 arthritis in her neck before this car accident  
13 with minimal, if any, symptoms suddenly  
14 developed symptoms in her neck which were not  
15 previously there?

16 A. That's a very important question.

17 MR. LAZZARO: Objection.

18 A. It's a point that I would bring out. Number 1,  
19 a person who has arthritis, particularly in the  
20 spine, does not have the normal flexibility that  
21 a person without arthritis has. Kind of like  
22 thinking about a 20 year old against a 60 year  
23 old, that the 60 year old just can't bend as  
24 far, can't move as well, doesn't have the ease  
25 of flexibility that the 20 year old does. If

1       you took somebody who has arthritis, which has  
2       already had some stiffness, and then subject him  
3       to a sudden force, a sudden jerking backward or  
4       a sudden, we call deceleration force, they do  
5       not have the rubbery like elasticity or  
6       flexibility literally to go with the blow. They  
7       are more brittle, they are stiffer and instead  
8       of flexibly going back and forth, ligaments,  
9       muscles, capsules around joints and even around  
10      the disks will tend to be not only stretched,  
11      will be somewhat torn, separated, will actually  
12      suffer a greater injury than a person who is  
13      very flexible will, That's basically what it  
14      is, they just don't are have the flexibility.

15             In simple terms, I think we all, I mean it  
16      is not even very surprising, everybody's  
17      grandmother will tell you they don't heal like  
18      they use to. Well, the real grand -- the reason  
19      grandma doesn't heal like she used to is she's  
20      got some arthritis. She doesn't have the  
21      rebound or recoil or flexibility to get over  
22      things like she did before she had the  
23      arthritis. That's the typical answer.

24      Q. And, doctor, in your opinion based upon a  
25      reasonable degree of medical probability is that

1           what occurred with Mrs. Taliak?

2       A.   Absolutely.   That's typically what will occur  
3           with anybody, not only with Mrs. Taliak, but  
4           anybody who has a preexisting arthritis  
5           condition of the spine who is subject to the  
6           same type of injury that would be much better  
7           tolerated by a person who doesn't have the  
8           arthritis.

9                   It is not a 'matter of age by the way, it is  
10          not chronological age, doesn't make any  
11          difference if a person is 20, 30 or 40, I didn't  
12          mean that, there are people who are 30 who have  
13          a lot more arthritis than she does.   There are  
14          people that are 60 who have less than she does.  
15          I think it depends on the amount of arthritis in  
16          the spine rather than the actual birthday age of  
17          the patient.

18       Q.   Okay.   Now, based upon your first visits with  
19           Mrs. Taliak, did you make any recommendations to  
20           her?

21       A.   At that time the only thing that was available  
22           to her is what we call a light rehabilitative  
23           type of exercise program.   She was beyond the  
24           point that she was going to get much benefit  
25           from physical therapy.   I did not feel that she

1 was a surgical candidate; in other words, there  
2 was no operation that could help her, and other  
3 recommendations were just activity restrictions,  
4 avoid the things that were bothering you that  
5 would make your neck worse.

6 Q. Did you see her again?

7 A. Yes.

8 Q. And when was that?

9 A. September 8, 1988.

10 Q. September 9?

11 A. Was it 9th? Right.

12 Q. Okay.

13 A. September -- September 9, 1988.

14 Q. Okay. And just for the record, you saw her  
15 again after that August 16th of 1989?

16 A. Yes.

17 Q. And then again on March 1st of 1990?

18 A. That is correct.

19 Q. Could you briefly take us through those three  
20 visits?

21 A. In September 1988 she had been on a leave of  
22 absence from her job because her neck made it  
23 not possible for her to continue her job because  
24 she had too much pain, stiffness and pressure on  
25 her back and also headaches. When I saw,



1 examined her on September 9, 1988, she could  
2 move well, but she still had some muscle spasm  
3 of the left cervical muscles and still had that  
4 catching sensation when she moved her left  
5 shoulder blade.

6 Other than that her physical findings were  
7 about the same, When I would compare her  
8 examination of August 1988 and September 1988 I  
9 thought it was almost identical, I didn't think  
10 there was really much change, and I basically  
11 told her just to go along with her light  
12 exercise program. I didn't change my  
13 recommendation at that time.

14 Q. Okay. When you saw her the following year in  
15 August of '89?

16 A. Right. August 16, 1989, maybe about a year  
17 later, she told me that she had ongoing  
18 symptoms, the back of her neck was painful.  
19 Pain would go to her upper back, sometimes up to  
20 the back of her head.

21 She had found work in the Phoenix area  
22 doing some hospital administration work during  
23 the winter, but this job was nonphysical, but  
24 caused her problems because she had to do a lot  
25 of paperwork, I mean, in other words she was

1           doing a lot of bending forward and writing and  
2           when she goes down a long time she would have  
3           more pain in the back of her neck.

4       Q.   Is that consistent with the type of injury that  
5           she sustained in this accident?

6       A.   Well, it would be consistent if there was muscle  
7           spasm, Muscle spasm will limit forward bending  
8           or if a person with muscle spasm bends forward  
9           too long instead of the injured muscle yielding  
10          or flexing forward like a big spring, it stops  
11          you. Now, when you keep trying to go forward  
12          you're constantly pulling in your own muscle  
13          which in turn is going to cause it to get more  
14          painful. So it will be consistent with somebody  
15          with muscle spasm, sure.

16      Q.   Did she have muscle spasms on the first two  
17          occasions that you saw her?

18      A.   Yes.

19      Q.   And on the third occasion that you saw her?

20      A.   On the third occasion --

21      Q.   August 16.

22      A.   She -- yes, she had some spasm on both sides  
23          actually in the neck, not only just on the left  
24          side, and she still had limitation of movement,  
25          she had the extension down into her left

1       shoulder blade. I even obtained additional  
2       x-rays of her neck on August 16, 1989 because  
3       the symptoms were just not going away and, as a  
4       matter of fact, I thought they kind of moved  
5       over into both sides, even though the left was  
6       still worse, and the x-rays of August 16, 1989  
7       were about identical to those that were taken  
8       earlier.

9       Q. There was no change in the arthritic condition?

10      A. Right. The same arthritic condition that was  
11      present at the time of her accident was present  
12      in August 1989. Hasn't changed.

13      Q. Okay.

14      A. And the conclusions were she was still  
15      symptomatic, she still had mostly muscular soft  
16      tissue type of symptoms, that of the muscle  
17      spasm, of the motion restriction, and while she  
18      did have the complaint that her pain would go  
19      out toward the left I could not make a diagnosis  
20      that she had any clearly definable pinched  
21      nerves or nerve root problems. About the same  
22      as my previous examination. Again if we want to  
23      go back compared to the previous examination  
24      before August 1989, it wasn't a great deal  
25      different. There has been, what impressed me

1           that by August of 1989 the whole condition had  
2           become more of a chronic problem. It just  
3           hadn't gotten too much better, but it hadn't  
4           gotten too much worse, That was my impression  
5           at that time.

6       Q. Doctor, my August 16th of 1989, did you have an  
7           opinion based upon a reasonable degree of  
8           medical certainty as to the prognosis or future  
9           outlook of Mrs. Taliak's injuries from this  
10          accident?

11       A. Yes, I had a prognosis.

12       Q. And what was your prognosis?

13       A. It is my prog -- it was my prognosis that her  
14          condition -- her prognosis was fair, It was my  
15          estimate and it still is, by the way, that she  
16          would have a long-standing problem with her  
17          neck, the condition of stiffness, muscle spasm  
18          of varying degrees, pain that went from her neck  
19          outward toward her neck and shoulder, and the  
20          physical limitation imposed upon her because of  
21          her neck would just persist indefinitely, but  
22          they hadn't changed nor did I expect them to  
23          change in the near future.

24       Q. Okay. Please continue on with your March 1,  
25          1990 examination.

1 A. My last examination a few weeks ago was on March  
2 1, 1990, and at that time she told me that she  
3 had received more treatment in the Phoenix  
4 area. She had what they call a nerve block test  
5 and nerve block injection in the back of her  
6 skull where the nerve from the back of the neck  
7 spreads up over her skull. We call this an  
8 occipital nerve block. She went to a pain  
9 management center for her neck in Phoenix. She  
10 thought the pain shot, actually, or the actual  
11 nerve block had been pretty effective in  
12 relieving some of the head radiating symptoms.  
13 In addition to some of the pain she went from  
14 the back of her neck to her left arm, she had  
15 already been experiencing that pain that went up  
16 over the back of her head. We call this  
17 headaches. That had been somewhat better, a lot  
18 better since this nerve block had been done, but  
19 it didn't seem to affect very much the pain that  
20 went from her neck to her left shoulder. She  
21 has the same kind of symptoms in March of 1990,  
22 three weeks ago, that she had when I saw her in  
23 1988, and when I saw her, actually three times  
24 in 1988 and one time in 1990, pain in the back  
25 of her neck, stiffness, some ongoing muscle

1           spasm, everything worse on the left side, some  
2           restriction of movement from side to side, but  
3           no definite physical changes indicating a spinal  
4           cord or nerve root involvement.

5       Q.    Okay.

6       A.    The condition had become pretty chronic by the  
7           time I saw her three weeks ago.

8       Q.    Okay.  And as of three weeks ago, doctor, did  
9           you have an opinion and do you currently have an  
10          opinion based upon a reasonable degree of  
11          medical certainty as to Janet Taliak's future  
12          outlook for her injuries?

13      A.    Yes.

14      Q.    What is your opinion?

15      A.    It is my opinion that she will continue to have  
16          what we call ongoing pain at the base of her  
17          neck, stiffness, muscle spasm of varying degree,  
18          all symptoms predominantly on the left side, and  
19          all symptoms aggravated by a number of  
20          activities, positions and weather changes on an  
21          indefinite basis.

22      Q.    And, doctor, do you have an opinion based upon a  
23          reasonable degree of medical certainty as to the  
24          relationship between this motor vehicle accident  
25          and her future outlook?  Is there a cause and

1 effect relationship?

2 A. Yes. Yes, there is. Yes, I have an opinion.

3 Q. And what is that. opinion?

4 A. It is my opinion there is a definite causal  
5 relationship between the future outlook, which  
6 includes all of the future symptoms and  
7 disabilities that I have described, and the  
8 motor vehicle accident that occurred in October  
9 1987 within reasonable medical certainty.

10 Q. Okay. Doctor, to what extent, in your opinion,  
11 based upon a reasonable degree of medical  
12 certainty, will Ms. Taliak suffer from  
13 disability, what type of activities will she be  
14 disabled from participating in due to these  
15 injuries?

16 A. Well, several different types.

17 Number 1 has been sports, physical  
18 conditioning and exercise, which all physicians,  
19 certainly myself strongly included, strongly  
20 believe every patient should do just for general  
21 health purposes. A number of exercises she's  
22 not able to do anymore because of her neck. A  
23 number of exercises that involve movement of her  
24 neck, turning of her neck, shoulder and arm,  
25 various exercises, even calisthenics, swimming

1 in certain areas, although she can swim  
2 somewhat, any running sport will cause more of a  
3 bouncing or impact effect, sports that require  
4 your arms, such as tennis or golf, those have  
5 all caused her increased problems and pain and  
6 the only way she's been able to control the pain  
7 that comes from them is just not to be able to  
8 participate in these sports. That's Number 1.

9 The second area that has caused her  
10 problems, and that's what bothered her as far as  
11 working is concerned, is the maintaining her  
12 neck and head positions in one spot very long.  
13 Working as she does, or as she is trained, as an  
14 administrative type of individual for a hospital  
15 means a lot of paperwork, it means a lot of work  
16 with your looking down, writing, holding down  
17 that one, maintaining this position hour after  
18 hour, long times over and over again has become  
19 a problem and has caused the symptoms to get  
20 worse, it interferes with a person continuing to  
21 do it, and that's what's caused her problems as  
22 she has tried to work with the pain. It  
23 interferes with concentration, and just makes  
24 the job much more difficult. So it does  
25 interfere, her symptoms interferes with



1 maintaining her head or neck in one position too  
2 long.

3 Those are the two major areas, physical  
4 sports and activities and exercising; Number 2,  
5 maintaining head or neck in single positions  
6 very long.

7 Q. Doctor, I would like to ask you to assume that  
8 before this accident Mrs. Taliak was able to  
9 work without problems or disability or pain at  
10 her job at Fairview General Hospital as director  
11 of home care management; that she had an  
12 exemplary work record in that connection; and  
a3 that after this accident due to the continued  
14 muscle spasms in her neck, the pain that she had  
15 in her neck and into her left shoulder and down  
16 into her left arm were distracting her, were  
17 causing her to be unable to concentrate in one  
18 position and to look down for any extended  
19 period of time with regard to the important  
20 paperwork that she had to do for her patients,  
21 for the patients at the hospital; and that  
22 finally by June of 1988 she requested a medical  
23 leave of absence from that job and did not  
24 secure employment in a related field until  
25 February of 1989.

1           Doctor, do you have an opinion based upon a  
2           reasonable degree of medical probability,  
3           assuming those facts to be true, as to whether  
4           that medical leave of absence was reasonable and  
5           made necessary by virtue of the injuries this  
6           woman sustained in her accident?

7                       MR. LAZZARO:  Objection.

8   Q.   First of all, do you have an opinion?

9   A.   I have an opinion.

10  Q.   And what is your opinion, doctor?

11                       MR. LAZZARO:  Objection.

12  A.   It is my opinion based on her history as she  
13       related to me that the leave of absence as you  
14       describe was a substantial degree necessitated  
15       as a result of the October 1987 accident.

16  Q.   Okay.  Doctor, you do have a history that  
17       Mrs. Taliak went to the emergency room after  
18       this accident, she consulted with a  
19       neurosurgeon, Dr. Eltomey, she received physical  
20       therapy **from** November of 1987, in November of  
21       1987 at Fairview General Hospital, she had some  
22       MRI scans at Fairview General Hospital during a  
23       confinement in December of that year to both her  
24       brain and her neck, she had a consult with  
25       Dr. John Collis, the neurosurgeon, a consult

1 with Dr. Milton Good, the neurologist, and of  
2 course she treated with yourself.

3 Doctor, do you have an opinion based upon a  
4 reasonable degree of medical probability as to  
5 whether that care and treatment was necessitated  
6 by virtue of the injuries she sustained in this  
7 accident?

8 First of all, do you have an opinion?

9 A. Yes, I have an opinion.

10 Q. And what is your opinion?

11 A. Yes, It is my pain based on her history and  
12 based on my assumption that each of these  
13 visits, each of these treatments were given only  
14 for the neck, upper back and shoulder  
15 conditions, that all of the medical treatments  
16 and examinations and consultations she received  
17 as you so reported were causally related and  
18 necessitated by the October 27, 1977 accident.

19 Q. '87, doctor.

20 A. I'm sorry. '87. October 28, 1987.

21 Q. Thank you, doctor,

22 A. I had to get it straight.

23 MR. PARIS: Thank you, doctor. Off  
24 the record.

25 VIDEO TECHNICIAN: We will now go

1 off the record,

2 - - - -

3 (Thereupon, a discussion was had off  
4 the record.)

5 - - - -

6 MR. PARIS Go back on.

7 VIDEO TECHNICIAN: Here we go. We  
8 are now back on the record.

9 MR. PARIS: Thank you, doctor. I  
10 have no further questions,

11

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

13 BY MR. LAZZARO:

14 Q. Doctor, my name is Lynn Lazzaro, I think we've  
15 met before on other depositions. I have a few  
16 questions to ask you here today, and I would  
17 like to start out with the question have you  
18 referred to various documents during the care  
19 and treatment of this patient?

20 A. Yes, I have.

21 Q. And have you prepared various documents during  
22 the care and treatment of this patient?

23 A. You mean did I keep records?

24 Q. Yes.

25 A. I kept records, yes.

1 Q. Okay.

2 A. Sure.

3 Q. And those records are in a file that is in front  
4 of you at present that you referred to --

5 A. Absolutely.

6 Q. -- during the course this depo?

7 A. Absolutely. This mess of papers is all mine,  
8 yes.

9 Q. Okay. As to that mess of papers, are those the  
10 only documents which you reviewed in connection  
11 with the treatment of this patient?

12 A. No, I have seen some other documents.

13 Q. What other documents have you seen and how is it  
14 that you came to see those documents?

15 A. The how is it, Mr. Paris showed me some other  
16 documents. And I received the x-ray file which  
17 I believe was from Fairview, I believe, Let me  
18 look it back up again. I know that had -- I'm  
19 sorry. Take it back. West Side Imaging. I  
20 knew it was on the west side. But I had some  
21 documents from Mr. Paris, a previous CAT scan,  
22 an x-ray, I think, from Fairview Hospital. I  
23 don't recall. Maybe another doctor's notation  
24 about treatment. I don't recall who it was  
25 though.

1 Q. So is it fair to say that the records that you  
2 have seen or that you have prepared are all in  
3 front of you?

4 A. No.

5 Q. All the records that you have prepared are not  
6 in front of you relative to this patient?

7 A, No. No. You didn't ask that question.

8 Q. Okay.

9 A. All the records that I make are here.

10 Q. Okay.

11 A. All of the records that I have seen are not  
12 here.

13 Q. If that was unclear, I'm sorry.

14 The other records that you have seen you  
15 indicated Mr. Paris showed you, is that  
16 correct?

17 A. Uh-huh. It was a hospital records for instance,  
18 I don't have it in front of me,

19 Q. When did Mr. Paris show you that hospital  
20 record?

21 A. Earlier today.

22 Q. Okay. Did you see any records other than what  
23 is in front of you at any other time other than  
24 earlier today?

25 A. The x-rays,

1 Q. Okay. And the x-rays aren't here right now?

2 A. Yes, they're here.

3 Q. Okay. Those are the x-rays that are behind you?

4 A. Yes.

5 Q. Okay. And those are the x-rays from what date?

6 A. The ones behind me are x-rays from the summer of  
7 1989. Let me get the date straight. August 16,  
8 1989.

9 Q. And those were x-rays which you ordered?

10 A. Yes.

11 Q. Okay. Did you review other x-rays?

12 A. Yes.

13 Q. And which other x-rays did you review?

14 A. A Fairview Hospital cervical spine x-ray of the  
15 date of the accident, an MRI scan of December  
16 1987 from West Side Imaging.

17 Q. And did you actually review that MRI or did you  
18 review the report?

19 A. The MRI, it's right on -- right standing --  
20 sitting right behind you on your right elbow.

21 Q. Okay. I'm just interested in knowing what you  
22 reviewed. Anything else that you reviewed in  
23 connection with this case?

24 A. That I told you about already?

25 Q. Other than what you told me about.

1 A. No.

2 Q. Okay.

3 MR. LAZZARO: I would like to go  
4 off the record at this point and see the  
5 documents that are before you.

6 VIDEO TECHNICIAN: We will now go  
7 off the record,

8 - - - -

9 (Off the record.)

10 - - - -

11 VIDEO TECHNICIAN: We are now back  
12 on the record.

13 Q. Doctor, in reviewing your file I note that your  
14 personal office notes are in that file, is that  
15 correct?

16 A. Yes.

17 Q. And those would be the notes from each of the  
18 four visits that you mentioned, is that true?

19 A. That's correct.

20 Q. And then there is a bill, or two and a billing  
21 chart in there, is that correct?

22 A. Uh-huh. Correct,

23 Q. And then there is a letter in there from  
24 Mr. Plevin's office dated August 11th of 1988,  
25 is that correct?



1 A. You must have found it there. Yes. That's when  
2 I received the -- what do you call it -- release  
3 to release information for Mrs. Taliak, yes.

4 Q. And the first time you saw this patient wasn't  
5 until August. 16th of 1988, is that correct?

6 A. August 4, 1988.

7 Q. August 4, 1988 was --

8 A. Yes.

9 Q. -- the first day you saw the patient?

10 A. Yes.

11 Q. Okay. And there was an office visit on that  
12 date?

13 a. Sure.

14 Q. Okay. Now, doctor, it's true that you do not  
15 have anywhere in your records the records of a  
16 Dr. John Brick, is that correct?

17 A. In my records, no, I do not.

18 Q. Okay. Have you seen the records of Dr. John  
19 Brick?

20 A. I think I saw one page of a record, but I didn't  
21 see anything complete. I saw records from a  
22 hospital four months earlier, June 1987, in  
23 which John Brick saw Mrs. Taliak as a consultant  
24 even though the condition for which she was  
25 there was not directly a neurological problem.

1 Q. So you were aware or you are at least now aware  
2 of the fact that Dr. John Brick saw this  
3 particular patient for a neck ailment in June of  
4 1987?

5 A. I'm aware **he** saw her for neurological  
6 consultation for a condition cabled arthritis of  
7 spine. I think in his own word he used the word  
8 spondylosis.

9 Q. And you saw that record for the first time  
10 today?

11 A. Uh-huh.

12 Q. Okay. And you recognized **from** that record the  
13 fact that there was a diagnosis of spondylosis  
14 relative to this particular patient in June of  
15 1987?

16 A. Oh, sure. I knew that condition was there from  
17 the first visit she had there. **She** told me  
18 about it.

19 Q. And spondylosis, what is that, doctor?

20 A, Arthritis of the joints and disks of the spine,

21 Q. Okay. And as a matter of fact she was  
22 complaining of pain relative to those joints and  
23 disks in June of 1987, is that correct?

24 A. No, not that I am aware of.

25 Q. Okay. Then in June of 1987 when she saw

1 Dr. Brick she had no complaints relative to that  
2 area of the spine?

3 A. She had complaints relative to her neck which  
4 were at that time studied as a vascular problem  
5 suspected for having some type of blockage in  
6 her neck because she was feeling a whirring  
7 sensation of her ear. I think in part of that  
8 study or work-up, a neurologist was asked to see  
9 her, Dr. Brick being the neurosurgeon, and he  
10 ordered a scan at that time. That was my  
11 understanding of why she was seen at that time.

12 Q. Do you know whether she treated with Dr. Brick  
13 at any time prior to that day?

14 a. Apparently from my knowledge that she was not  
15 formally treated by him, but knew him through  
16 the hospital.

17 Q. Is it your understanding as well that she saw  
18 him on more than one occasion for neck pain?

19 A. Yes.

20 Q. And is it your understanding that she had had  
21 neck pain from an earlier accident involving a  
22 boat accident?

23 A. Yes. I thought it was a water skiing. Was it a  
24 boat?

25 Q. Water skiing accident where she injured her

1 neck, is that correct?

2 A. **Right..** 20 years ago or something like that,  
3 yes.

4 Q. And she had had some problems with her neck from  
5 that date forward?

6 A. **Absolutely.**

7 Q. And she had treated with Dr. Brick on at least a  
8 few occasions relative to that?

9 A. I don't know about the word treated. I think  
10 that **she** saw him. She didn't tell me she had  
11 any treatment.

12 Q. Okay. When you say she saw him, normally a  
13 person sees a doctor for care or treatment, do  
14 they not?

15 A. Not necessarily. For an opinion, consultation.

16 Q. I see. Are you aware of the fact that her  
17 former husband was a doctor?

18 A. No, I don't know who her former husband is.

19 Q. Are **you** aware of the fact that Dr. Brick worked  
20 with her former husband and was referred to her  
21 by her former husband?

22 A. No. But that makes sense now since she was  
23 working in a hospital, That's not surprising to  
24 me.

25 Q. Okay. And there is no question but the **fact**

1           that she had spondylosis and arthritis of the  
2           cervical. spine **for** a considerable period of time  
3           prior to this accident?

4       A.   Yes.   Even if I had never got a history **from**  
5           her, just my review of the x-ray indicates to me  
6           that this arthritis condition was there for a  
7           long time, decades.   Right.

8       Q.   And **so** then **it** is also true that in order to  
9           know what her condition was prior to the  
10          accident you have to rely on her history or see  
11          **some** other sorts **of** records, is that correct?

12      A.   Correct.

13      Q.   And in this particular case she gave you her  
14          first history **some** ten months after the  
15          accident?

16      A.   Uh-huh.   Just about.

17      Q.   Okay.   And you hadn't seen her for any reason  
18          prior to that time?

19      A.   I had never met her before.

20      Q.   And **you** had not treated her neck or any  
21          arthritic condition prior to that accident?

22      A.   I had **not**.

23      Q.   But Dr. Brick at least had seen her and heard  
24          her complaints prior to that time?

25      A.   Yes, I think that's correct.   I think that short

1           note that I have seen from Dr. Brick accepts  
2           that, yes.

3       Q.   Okay. Did you ever have an opportunity to see  
4           the emergency room records from Fairview General  
5           Hospital?

6       A.   I don't think so. I saw the emergency room  
7           x-ray, but not the written part of the record.

8       Q.   Did you have a chance to review the medical  
9           records of Dr. Eltomey? I don't believe so.  
10          He's a neurologist?

11      A.   I don't believe so.

12      Q.   He's one of the doctors that you testified --

13      A.   Yes.

14      Q.   -- treated this particular patient as a result  
15          of the accident, is that correct?

16      A.   I was told that he was a treating doctor on her  
17          history. I don't know what he is as far as his  
18          specialty. I think he's a neurologist.

19      Q.   All right. And you never saw his records, is  
20          that correct?

21      A.   I do not believe so, no.

22      Q.   And you never saw the Fairview General physical  
23          therapy records, is that correct?

24      A.   That's correct.

25      Q.   And you never saw the medical records having to

1 do with the chiropractic treatment, is that  
2 correct?

3 MR. PARIS: Objection.

4 A. From Phoenix, you mean?

5 Q. Yes.

6 A. No, I didn't see them.

7 Q. And you never saw Dr. Collis' records, did you?

8 A. I don't think so, although if I did that would  
9 have been the one that made some mention of the  
10 water skiing accident. That's the one I saw.  
11 If it isn't that, I don't think I did.

12 Q. The water skiing accident wasn't brought to your  
13 attention during the initial visit with this  
14 patient?

15 A, No, it may have been. I didn't put it down.  
16 But E mean she referred to that in other visits  
17 though.

18 Q. If you hear something of the nature of a water  
19 skiing accident and there is an allegation or  
20 there is an indication by the patient that they  
21 have had prior problems as a result of that  
22 water skiing accident, that would be something  
23 you normally would write down in your history,  
24 would it not?

25 A. Not necessarily. I was concerned mostly with

1 motor vehicle problems. I knew that there was  
2 symptoms in the past and I so recorded it. I  
3 remember distinctly bringing it up when I got  
4 the x-rays again in August of '89, and I  
5 remember going over the x-rays with her and we  
6 got back to talk about previous problems there,  
7 so I may not have talked to her to begin with  
8 when I first saw her, but I did later on that  
9 yeas.

10 Q. Again, doctor, you didn't see the records of  
11 Dr. Milton Good either, did **you**?

12 A. NO.

13 Q. And these were all doctors who had treated this  
14 particular patient prior to you ever seeing her  
15 in **August** of 1989, some ten months after the  
16 accident?

17 MR. PARIS: Objection. August of  
18 '88.

19 Q. I'm sorry. August of 1988, **some** ten months  
20 after the accident,

21 A. Yes.

22 Q. Okay. And those are all records -- records that  
23 would reflect upon the need for the treatment by  
24 this particular patient, is that correct?

25 a. I don't know what that means.



1 Q Well, let me rephrase it then, Those are all  
2 records that you have testified -- strike that.

3 Those are all records from doctors that you  
4 have testified treated this patient as a result  
5 of the accident, is that correct?

6 A If those are the names that I testified to, they  
7 were based on the fact that I was told by  
8 Mrs. Taliak that she consulted these doctors and  
9 received either evaluation or treatment because  
10 of her symptoms and disabilities that came after  
11 the October 1987 accident.

12 Q Okay.

13 A It was based on her history.

14 Q So again it goes back to her history?

15 A Absolutely.

16 Q That you're basing your opinion as to the need  
17 for this treatment and the treatment being  
18 connected with this accident on the history that  
19 was given to you by Mrs. Taliak?

20 A Absolutely.

21 Q Okay.

22 A I have no reason to disbelieve her.

23 Q Okay. And you base your opinion that she had no  
24 prior problems on her statement to you --

25 A No, I did not.

1 Q. -- that she had no --

2 A. No, I did not say that.

3 Q. I believe you did --

4 A. No.

5 Q. -- when you talked about the necessity of the  
6 treatment.

7 MR. PARIS: I will object to the  
8 argumentative nature of the question.

9 A. No.

10 MR. LAZZARO: Well, I think if  
11 there is argument it's going both ways,

12 Q. If there was --

13 MR. PARIS: I don't think the  
14 doctor has answered your question yet. There  
15 was a question that he didn't answer.

16 MR. LAZZARO: Well, I think there  
17 was an objection. I will withdraw the  
18 question.

19 Q. Now, doctor, the notes that you have prepared in  
20 this particular case indicate that at least from  
21 August 16, 1989 on there was no findings of any  
22 kind relative to radicular symptoms, is that  
23 correct?

24 A. That is correct.

25 Q. And that's true in the August 16, '89 visit and

1           it's true again in the August of the March 1st,  
2           1990 treatment?

3       A.   To be very -- quite frankly, I think it was also  
4           true for September 9, 1988.

5       Q.   Okay.   So you never found then any radicular  
6           findings?

7       A.   No.

8       Q.   Okay.   You just had made note of the fact that  
9           she gave you a history of having pain radiating  
10          down into her hand and to her arm?

11      A.   That was part of it.   The other part was my own  
12          knowledge and experience in evaluating the type  
13          of symptoms, correlating with what her symptoms,  
14          her subjective problems still exist, and  
15          correlating them with the soft tissue findings  
16          and the x-rays that still exist I was able to  
17          make a determination that there had been a  
18          radiculitis, but that it had improved.

19      Q.   Okay.   But that has to be based on the fact that  
20          she told you that she had those things, right?

21      A.   It was in part, but it was also based on my  
22          experience and expertise.

23      Q.   Okay.   But there is no question about the fact  
24          that you never in your examinations found any  
25          evidences of those?

1 A. Oh, I found a lot of evidences, but I could not  
2 find any objective changes --

3 Q. Okay.

4 A. -- that I could indicate that the radiculitis,  
5 radiculitis means pinched nerve, was still  
6 persisting, but the ongoing complaints were very  
7 consistent with there had been a radiculitis  
8 which had no longer showed any great impression  
9 or major abnormality.

10 Q. And what you mean by that, doctor, is you looked  
11 during your examination for physical findings  
12 that would substantiate the complaint, is that  
13 correct?

14 A. Oh, I do -- that's sounds like I'm a detective.  
15 I'm a physician.

16 Q. Physicians are detectives, are they not?

17 A. Not entirely. We treat people, we try to be  
18 fair and we try to show whatever we find, we  
19 find, And in the case what we find here, there  
20 were no objective findings anymore when I saw  
21 them, but there were subjective findings that  
22 will be consistent with the fact that there had  
23 been a radiculitis. There had been a pinched  
24 nerve. It had gotten better when I saw it, but  
25 there were still some aftereffects. It's

1           basically as simple as that.

2       Q.   And objective findings would be tests that would  
3           reflect some evidence of the existence of the  
4           radiculitis, is that correct?

5       A.   Well, objective tests would mean that I could  
6           measure, make a test that shows a finding  
7           regardless of what the person tells me that  
8           could indicate that there was nerve pressure  
9           yet, yes, that's right.

10      Q.   But you didn't find any of those?

11      A.   No.   There was none of those there, no.

12      Q.   Okay.   Thank you, doctor.   And the spasm which  
13           you found and you say you found at the time of  
14           the first examination, you can't tell us how  
15           long that had been there by anything other than  
16           the history that she gave you?

17      A.   Not at that time, no.

18      Q.   You can't tell us whether that preexisted the  
19           accident other than by history?

20      A.   Other than by history, correct.

21      Q.   And the ranges of motion that you talked about  
22           and the restrictions to those ranges of motion,  
23           since you didn't see her before the accident you  
24           can't tell us how long those restrictions had  
25           been there?

1 A. Other than what she told me as the difference  
2 between before and after the accident, that is  
3 correct.

4 Q. Okay. And the other positive findings that you  
5 found there, again you're dependent upon the  
6 history that she gave you to say that they were  
7 caused by the accident?

8 MR. PARIS: Objection.

9 Q. The tingling and the numbness.

10 A. Yeas. The symptoms that she, herself,  
11 experienced. She of course would be the only  
12 one that would know what she was experiencing,  
13 that's correct.

14 Q. Other than any indication that those things  
15 might have been present in prior records, is  
16 that correct?

17 A. That is correct. There was no indication of any  
18 prior records of those being present, no.

19 Q. Okay. **And** how about headaches, was there any  
20 prior indication of headaches?

21 A. Yes. She had long history of headaches,  
22 including migraines,

23 Q. And do you know who treated her for that history  
24 or for those headaches?

25 A. No.

1 Q. Okay. And who told you about the long history  
2 of the headaches?

3 A. She told me.

4 Q. Okay. When did she tell you that?

5 A. Several different visits. I don't recall.

6 Q. Okay. She told you that she had had headaches  
7 that in the past had caused her to seek  
8 treatment?

9 A. She told me she had migraines before, sure.

10 Q. Did she tell you that she had had headaches that  
11 had woken her up?

12 A, I don't recall. I'm not a headache expert and I  
13 don't usually pursue the details of headaches.

14 Q. Okay. And you didn't treat her for those  
15 headaches?

16 A. No, sir.

17 Q. Okay. The spasms you indicated are indicated by  
18 uncontrolled tightness, is that correct?

19 A. Well, I can tell contraction or knotting of a  
20 muscle, correct.

21 Q. And that's something that you feel for to  
22 determine whether or not it's there?

23 A. Oh, sure.

24 Q. And in this case when you first saw this  
25 particular patient there was a very minimal or

1           slight spasm, is that correct?

2       A.   I think it was mild to slight throughout.   It  
3           was never of any range that her neck was held so  
4           rigidly that she couldn't move, but it was  
5           present on each of my four visits, correct.

6       Q.   And you have seen certainly patients who had the  
7           kind of arthritic changes that this particular  
8           patient had who also had spasm as a result of  
9           those arthritic changes, is that correct?

10      A.   I think that's correct, sure.

11      Q.   with or without an injury, isn't that correct?

12      A.   That's possible, sure.

13      Q.   All right.   And it's true that there have been  
14           no changes in the x-rays from the time of the  
15           accident to the present, is that correct?

16      A.   Well, at least until the summer, late summer of  
17           1989, up until --

18      Q.   Which is the last time you did x-rays?

19      A.   For seven months ago, eight months ago, that's  
20           correct.

21      Q.   Okay.   And you mentioned crepitus.   That would  
22           be clicking of joint movement?

23      A.   Yes.

24      Q.   Did the patient ever tell you whether or not she  
25           had any crepitus prior to this accident?



1 A. Yes. Very specifically. She never had it  
2 before.

3 Q. Okay. She said she had no prior crepitus, is  
4 that correct?

5 A. That's right.

6 Q. Crepitus is caused by bones rubbing against one  
7 another?

8 A. Either bones or what we call bursa, sacs that  
9 line the bones. Much of the crepitus I felt  
10 with her involved her left shoulder blade as it  
11 moved across under the spasmodic muscle against  
12 the ribs,

13 Q. And you never saw any evidences in any of the  
14 records which you saw of any prior crepitus?

15 A. Prior means before --

16 Q. Yes.

17 A. -- October 1987. That's correct.

18 Q. Okay. You said that there was an MRI test that  
19 was done, is that correct?

20 A. Two MRI tests; one of the brain and one of the  
21 cervical spine.

22 Q. The MRI test that was done, do you know when it  
23 was done?

24 A. Yes. December 12 -- 18, 1987.

25 Q. Okay. And at that time do you know who asked

1 for the **MRI**?

2 A. Dr. Eltomey and Dr. Shaw.

3 Q. Okay. Do you know what Dr. Shaw was treating  
4 the patient for?

5 A. No.

6 Q. Do you know whether that MRP was taken in  
7 connection with a hypertension problem that she  
8 was having?

9 A. Two different things. The **MRI** scan of the brain  
10 was taken because of the history of ringing in  
11 the right ear. The MRI scan of the cervical  
12 spine was done because of the "auto accident in  
13 October 1987, since then noted pain in the  
14 neck."

15 Q. And the -- so then the **MRI** which was done of the  
16 brain was done for the ringing?

17 A. Yes, that's what it says on the scan, yes.

18 Q. And are you aware of the fact that she was  
19 hospitalized at that time for hypertension?

20 A. In December 1987?

21 Q. Yes.

22 A. No, I was not.

23 Q. **Okay.** Because you haven't had a chance to  
24 review those medical records from Fairview  
25 Hospital and that hospitalization, is that

1 correct?

2 MR. PARIS: Objection.

3 A. As a matter of fact I did, but I don't remember,  
4 I thought it was before, I thought it was the  
5 hospitalization -- I think there was two  
6 hospitalizations. One was in June 1987 and then  
7 there was one later on. I think I was shown  
8 both of those. Neither seemed to involve  
9 orthopedic or neurological problems.

10 Q. Thank you, doctor. Are you aware of the fact  
11 that the patient returned to work within three  
12 days of the accident?

13 A. Yes. It was after a short time up to a period  
14 of time, **yes**.

15 Q. Are you aware of the fact that she then  
16 continually worked up until the time of her  
17 hospitalization for hypertension?

18 A. Well, I mean, I was aware that she worked up  
19 until a month or two before I saw her on her  
20 second visit here.

21 Q. Well, let me ask it this way then, doctor. Were  
22 you aware of the fact that she took any time off  
23 as a result of the hypertension?

24 A. I don't know,

25 Q. And you have not seen Dr. Callahan's records or

1 the physician that eventually replaced  
2 Dr. Callahan and treated her for the  
3 hypertension?

4 A. No.

5 Q. And so then you really can't say what her  
6 condition was relative to the hypertension at  
7 the time she decided to take the leave of  
8 absence, can you?

9 A, No. In September 1988 she told me that she had  
10 been treated for hypertension and that her blood  
11 pressure had gone back to normal. That's that I  
12 can read.

13 O. But you never saw the records to indicate what  
14 her condition was or how that had affected her  
15 during the last six months before that?

16 A. No.

17 O. Okay. Thank you. Doctor, obviously if the  
18 hypertension was causing her difficulty with  
19 work that could have been a cause for her to  
20 discontinue her work and to take her leave of  
21 absence, is that correct?

22 A. I can't answer that yes or no. I just don't  
23 have any opinion.

24 Q. Okay. So then the opinion that you gave before  
25 that the leave of absence was caused by this

1 particular accident -- accident would have to be  
2 shaded by the facts that you don't have the  
3 records relative to her hypertension or her  
4 treatment, is that correct?

5 MR. PARIS: Objection. That was a  
6 hypothetical question. His answer was based  
7 upon that.

8 MR. LAZZARO: Based upon the  
9 information that was given to him.

10 THE WITNESS: Yes.

11 MR. LAZZARO: That's correct.

12 MR. PARIS: Right.

13 A. Again, I can only answer on the basis of what I  
14 was told as to the cause of the disability;  
15 namely the neck pain and headaches which she  
16 attributed in significant degree to this  
17 accident as the reason that would indicate the  
18 reason that she couldn't work part of that  
19 time.

20 Q. And you can't tell us what the relationship of  
21 the hypertension was to the headaches that she  
22 was experiencing, can you, doctor?

23 A. No, not to my knowledge.

24 Q. Okay. And you can't tell us, doctor, what the  
25 relationship of the hypertension was to the

1           tinnitus that she was suffering in her ears, is  
2           that correct, doctor?

3       A.   Tinnitus means ringing in the ear.   I don't know  
4           what the cause of that was at any time, either  
5           hypertension or an inner ear problem or nerve  
6           related,   I just don't know.

7       Q.   All right.

8                       MR. LAZZARO:   Thank you, doctor.  
9           We will go off the record for a moment.

10                      VIDEO TECHNICIAN:   We will now go  
11           off the record,

12                               -   -   -   -

13                               (Off the record.)

14                               -   -   -   -

15                      VIDEO TECHNICIAN:   We are now back  
16           on the record.

17                      MR. LAZZARB:   Doctor, just a couple  
18           more things.

19       Q.   You agree there is absolutely no need for any  
20           operative procedure in this particular case?

21       A.   Yes.

22       Q.   You agree that there is no evidence at present  
23           of any radicular problems?

24       A.   As of three weeks ago I did not find any  
25           evidence of a significant radicular problem,

1           yes.

2       Q.   And you agree that you have not seen the bills  
3           of the other physicians in this particular  
4           case?

5       A.   The bills?

6       Q.   The bills, themselves.

7       A.   No.

8                       MR. LAZZARO:   I have no further  
9           questions, doctor.

10                      MR. PARIS:    Doctor, just a couple  
11           of questions.

12                               -   -   -   -

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

14                      BY MR. PARIS:

15       Q.   Mr. Lazzaro is right, there is a big question  
16           about what Mrs. Taliak's prior condition was,  
17           and I would like to hand you what Mr. Lazzars  
18           has subpoenaed as her family doctor's own office  
19           notes which begin in October of 1986 and they  
20           take us all the way up to the time of our  
21           accident and beyond.

22                      Would you take a moment and take a look at  
23           those records and tell us whether she had voiced  
24           any complaints to her family doctor about neck  
25           pain, limitation of motion or muscle spasms in

1 her neck prior to October 28, 1987,

2 If you would like to take a moment to read  
3 that, we can go off the record,

4 VIDEO TECHNICIAN: We will now go  
5 off the record.

6 - - - -  
7 (Off the record.)

8 - - - -  
9 VIDEO TECHNICIAN: We are now back  
10 on the record.

11 Q. Doctor, would you like the question repeated?

12 A. Please.

13 Q. Do the records of Mrs. Taliak's family doctor  
14 which start in October of 1986, two years before  
15 our accident, one year before our accident, and  
16 extend **up** to the time of the accident and  
17 thereafter, do any of the prior medical visits  
18 describe any complaints by Mrs. Taliak of neck  
19 pain, limitation of motion of her neck or neck  
20 spasms?

21 A. No. Again these reports, these records start  
22 from October 3, 1986. There is a record of July  
23 1987 describing a circulatory problem in the  
24 neck, those she has no symptoms, circulatory  
25 problem is called a bruit, B R U I T, which is a



1 diagnosis that would concern a doctor of a  
2 possible partial blockage of a circulation of  
3 the neck, but there was no symptoms, she didn't  
4 have any problems and the recommendation at that  
5 time was that she be --

6 MR. LAZZARO: Objection.

7 A. -- admitted for some type of ultrasonic, some  
8 type of examination of that circulation  
9 problem. That's the only thing I could see.  
10 There is no other record of any neck problem.

11 Q. Sure. And that would have been like a duplex  
12 scan, is that right, is that what your --

13 A. I guess so, It seemed to be a concern over the  
14 carotid artery, which is that big artery --

15 Q. Sure.

16 A. -- that goes up into your head.

17 Q. And handing you another record which Mr. Lazzaro  
18 has subpoenaed from Lakewood Hospital in July of  
19 1987, can you take a look at that record and  
20 tell us what that is?

21 A. Well, it's basically a specialized test for  
22 circulation of the neck. It's called a duplex,  
23 D U P L X - - D U P L E X, scan of the carotid  
24 arteries of the neck as a circulatory problem,  
25 nothing to do with spine or with nerves.

1 Q. Okay. Can it be a painful condition?

2 A. Blocked arteries?

3 Q. Yes.

4 A. Just the opposite. I think it can cause reduced  
5 circulation. It has nothing to do with pain.

6 Q. Okay. Now, I did show you very briefly previous  
7 to your deposition a record from Southwest  
8 General Hospital which Mr. Lazzaro has also  
9 subpoenaed from June of 1987, four months before  
10 this accident, and did you -- did you take a  
11 look at that record, doctor?

12 A. Yes. You showed me that before.

13 Q. And was there concern at that time as it relates  
14 to her neck?

15 a. Yes. The reason she was there was to evaluate  
16 the carotid problem. During that work-up she  
17 was seen by Dr. Brick and that's when that CAT  
18 scan was done. We're talking now in July,  
19 actually June 1987.

20 Q. Okay. Four months before this accident did  
21 Dr. Brick ask this woman whether or not she had  
22 any pain radiating down into her arms or hands?

23 A. He really doesn't have much concern over that.  
24 There is certainly nothing in this record that I  
25 saw that indicated that she was even having any

1 problems with her neck. There is notation that  
2 in the studies for the circulation in the neck  
3 that the neurosurgeon thought that a scan should  
4 be done and he did diagnosis spondylosis.

5 Q. Okay. And, doctor, was she given a physical  
6 exam as it relates to her neck?

7 A. Yes.

8 Q. And did that physical exam four months **before**  
9 this accident reveal any limitation of motion of  
10 her neck?

11 A. The only thing the neck examination showed was  
12 normal range of motion, no gland enlargement, no  
13 neck vein distention, high pitched right carotid  
14 bru -- bruit, which is that buzz in there,  
15 Actually the only abnormality was that  
16 circulation problem in the neck. The neck had  
17 normal motion four months before this accident.

18 Q. And that's with the same amount of arthritis in  
19 her neck that she had after the accident?

20 A. Yes, sir.

21 Q. Even though she had spondylo -- spondylosis of  
22 her neck as in June of 1987?

23 A, Yes. I think as we talked of before the  
24 presence of arthritis itself slowly developing  
25 and without injury, without something happening

1 to you, does not cause many symptoms, occasional  
2 aching and stiffness, but may not necessarily  
3 really cause any limitations,

4 MR. PARIS: Off the record,

5 VIDEO TECHNICIAN: We will now go  
6 off the record.

7 - - - -

8 (Off the record.)

9 - - - -

10 VIDEO TECHNICIAN: We are now back  
11 on the record.

12 Q. And I'm going to hand you another hospital  
13 record from Fairview General Hospital which  
14 Mr. Lazzars has subpoenaed from August 25, 1987,  
15 just two months before this accident. She was  
16 evaluated by a medical doctor for anesthesia  
17 when she had some female surgery at that time?

18 A. Yes.

19 Q. And was she able to flex her neck at that time  
20 without any difficulty?

21 A. It was what you call a preoperative anesthesia  
22 evaluation; in other words, anybody that's  
23 scheduled for a surgery, regardless of what the  
24 surgery is, has to be checked by the anesthesia  
25 doctor to make sure that their health is okay.

1           He was aware that she had problems with  
2           arthritis in her neck, but said she was able to  
3           flex her neck fully.

4       Q.   Okay.  Is it important for you to review the  
5           records of other treating physicians who come  
6           into play after a motor vehicle accident to  
7           support your opinions?

8       A.   No.  In fact, I prefer not to see them.  The  
9           reason for that is I have taught in the medical  
10          school, I believe strongly that when a person  
11          comes and consults a physician, they want that  
12          physician's opinion based on his examinations.

13                I find that if physicians tend to go  
14          through a lot of other doctors records and  
15          absorb everything they tend to be influenced and  
16          they tend then to kind of play back onto the  
17          patient what the other doctors say.

18                So I would prefer not to see any records.  
19          I want to make my own judgment, my own opinion.

20                I would like to see other records if there  
21          has been like an operation, I want to know  
22          what's under the scar if I can't see from the  
23          outside, but I rely on the patients.  I would  
24          rely on the person to tell me what the other  
25          doctor told them.  If there is any question, if

1 I have to get, for instance, a specific medical,  
2 pharmaceutical or drug dose or what they did or  
3 something like that, I could contact them, but  
4 I, my personal recommendation is for me to make  
5 my own judgments, to come to my own opinions,  
6 and then I can, if I have to, I can go back and  
7 compare with other doctors.

8 Q. And did you find Janet Taliak to be an honest  
9 provider of a history and honest in the way she  
10 related her symptoms?

11 A. Well, during the four visits that I saw her I  
12 thought she was very articulate, very direct,  
13 very easy to take a history from, did not  
14 exaggerate. I thought if anything she tended to  
15 kind of undermine some of the things that she  
16 was still having trouble with, learned to live  
17 with a problem that I thought was still having  
18 problems, but now that I see other records that  
19 is even more documentation that her history was  
20 quite accurate. They're exactly what the other  
21 doctors say.

22 MR. PARIS: Thank you very much,  
23 doctor. I have no further questions.

24 - - - -  
25

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

2        BY MR. LAZZARO:

3        Q.    Doctor, you said that other doctors' records  
4            aren't of significance to you. Would a history  
5            that reflected something other than what the  
6            patient has told you be significant?

7        A.    Yes. But let's answer part one at a time.

8            Number 1, I didn't say that they weren't  
9            significant. I said that I prefer that if I am  
10           to make a judgment or a diagnosis that I want to  
11           do this from the very beginning on my own. I  
12           don't want to be influenced by others, I'm not  
13           saying they're not significant, I'm just saying  
14           I would prefer to make my own.

15           Number 2, if after I make my own and I have  
16           access to other records and they showed  
17           something greatly different, now I have cause  
18           for concern to review the whole case. That's  
19           correct.

20        Q.    All right. And this patient didn't tell you  
21            that **she** had a long-standing history of neck  
22            pain, did she?

23        A.    She told me that she had a long-standing history  
24            of having injured her neck and had troubles with  
25            her neck off and on for 20 years, yes.

1 Q. She didn't say long-standing, continual problem  
2 with her neck, did she?

3 MR. PARIS: Objection.

4 A. Absolutely not.

5 Q. Okay. Now, as far as range of motion is  
6 concerned, range of motion varies from person to  
7 person and age group to age group, does it not?

8 A. **That's** correct.

9 Q. What might be a full range of motion for one age  
10 group would be not be considered a full range of  
11 motion for another age group, is that correct?

12 AB Not exactly. The differences are very slight  
13 until you get past the ages of 60 or 70, Then  
14 you start losing a lot. But there are some  
15 slight changes. For instance, I can easily  
16 touch my chin to my shoulder and I'm ten years  
17 older, not ten, eight years older than  
18 Mrs. Taliak. I don't know if anybody else can  
19 touch their chin any farther than over their  
20 shoulder, so it's not just really the entire  
21 age.

22 Q. It's **not** an exacting thing, doctor?

23 A. Right. The differences aren't very great, let's  
24 put **it** that way, from age to age.

25 Q. And a doctor could well find that what



1       Mrs. Taliak was able to do back in August of  
2       19 -- or July of 1987 was full range of motion  
3       and still be within the ranges of motion which  
4       you saw?

5       A.   Oh, it was not normal when I saw her.   No,  
6       that's not correct.

7       Q.   And, doctor, as far as other doctors findings  
8       are concerned and other doctors who treated this  
9       particular patient after the accident, you have  
10      no idea as to **what** ranges of motion they found  
11      at that time and whether they were normal or  
12      abnormal, is that correct?

13      A.   After October 1987?

14      Q.   Yes, and before your visit.

15      A.   **Correct.** I don't think that I saw any specific  
16      range of motion records from other doctors, no.

17                   MR. LAZZARO:   Thank you, doctor. I  
18      have no further questions,

19                   MR. PARIS:   No further questions,

20                   VIDEO TECHNICIAN:   This now will  
21      conclude the deposition.

22                   MR. PARIS:   Doctor, will you **waive**  
23      your signature to the transcript.

24                   THE WITNESS:   I will waive  
25      signature to the transcript.

1 MR. PARIS: And waive your viewing  
2 of the videotape?

3 THE WITNESS: I will waive viewing  
4 of the videotape.

5 MR. PARIS: Thank you so much.

6 (Signature waived.)

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C E R T I F I C A T E

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 9<sup>th</sup> day of APRIL A.D. 19 90.



Ralph A. Cebron, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires August 20, 1993