

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

JOHNNIE COOKS,

Plaintiff,

-vs-

JUDGE LILLIAN GREENE  
CASE NO. 118985

GREATER CLEVELAND  
REGIONAL TRANSIT AUTHORITY,

Defendant.

- - - -

Deposition of ROBERT D. ZAAS, M.D., taken as  
if upon direct examination before Gala J.  
Marzec, a Notary Public within and for the State  
of Ohio, at the offices of Robert D. Zaas, M.D.,  
26900 Cedar Road, Beachwood, at 6:00 p.m. on  
Thursday, August 3, 1989, pursuant to notice  
and/or stipulations of counsel, on behalf of the  
Plaintiff, in this cause,

- - - -

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1        APPEARANCES::

2            David Paris, Esq.  
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8                    On behalf of the Plaintiff,

9            Joseph Taddeo, Esq.  
10           Linda Cooper McGarry  
11           Greater Cleveland Regional Transit Authority  
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13           Cleveland, Ohio 44113  
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15                    On behalf of the Defendant.

16        ALSO PRESENT:

17            Daniel Davis, Videotape Operator

18                    - - - -

1 MR. PARIS: It is stipulated  
2 by and between counsel for the respective  
3 parties here that this deposition will be used  
4 in trial and be taken by Dan Davis, pursuant to  
5 Ohio Superintendence Rule 15 by means of  
6 videotaping and audiotape simultaneously and may  
7 later, out of the presence of the witness,  
8 transcribe or cause said videotape to be  
9 transcribed and/or cause said videotape or the  
10 transcript thereof to be filed in the Court of  
11 Record. That the video recording may be edited  
12 as directed by the Court of Record to remove  
13 objectionable materials; that all formalities as  
14 to the notice of the time and place of the  
15 taping of the said deposition, the showing of  
16 the videotape to the witness, the qualifications  
17 of officers before whom taken, the signature of  
18 the witness and the written certification of the  
19 officer before whom taken shall be expressly  
20 waived.

21 Is that all right with you, Joe?

22 MR. TADDEO: Yes.

23 MR. PARIS: I would also ask that  
24 you waive the one-day filing requirement of the  
25 doctor's transcript, and I will take custody of

1 the videotape myself and bring it to the  
2 courthouse.

3 MR. TADDEO: We'll stipulate.

4 VIDEOTAPE OPERATOR: This now  
5 begins the deposition. Will the court reporter  
6 please swear in the witness.

7 ROBERT D. ZAAS, M.D., of lawful age,  
8 called by the Plaintiff for the purpose of  
9 direct examination, as provided by the Rules of  
10 Civil Procedure, being by me first duly sworn,  
11 as hereinafter certified, deposed and said as  
12 follows:

13 DIRECT EXAMINATION OF ROBERT D. ZAAS, M.D.  
14 BY MR. PARIS:

15 Q. Good afternoon, Doctor, I'm David Paris and I  
16 represent Johnnie Cooks.

17 Would you please state your full name for  
18 the jury.

19 A. Dr. Robert David Zaas. I spell my last name  
20 Z A A S.

21 Q. And can you tell the jury where your offices are  
22 located?

23 A. 26900 Cedar Road, Beachwood, Ohio.

24 Q. And that's where we are this evening, is that  
25 right?

1 A. Yes, we are.

2 Q. And you're a medical doctor?

3 A. Yes, I am.

4 Q. Are you licensed to practice medicine in the  
5 State of Ohio?

6 A. Yes. I've been so licensed since 1959.

7 Q. And you are a specialist in orthopedic surgery?

8 A. Ses, I am.

9 Q. Can you tell the jury what orthopedic surgery  
10 deals with?

11 A. Orthopedic surgery is a subspecialty that deals  
12 with medical and surgical conditions of the  
13 skeletal system, that means our bones and  
14 joints, and of the supporting soft tissue  
15 structures. That includes muscles, ligaments,  
16 tendons, even nerve and circulation supply.  
17 Orthopedic surgeons such as myself treat  
18 conditions that may or may not require surgery  
19 of the arms, legs and spine.

20 Q. Okay. Do you have any special areas of  
21 interest?

22 A. I've been particularly interested in the last  
23 ten years in spine surgery and in reconstructive  
24 surgery of the hip, hip replacement.

25 Q. Could you tell the jury a little bit about your

1 educational background, from the time you went  
2 to college through medical school and so forth  
3 up to the present time?

4 A. I went to college in Cleveland, graduated from  
5 Western Reserve University, now called Case  
6 Western Reserve, in 1953 with a Bachelor of  
7 Science degree. From there I went to medical  
8 school at the University of Chicago. And I  
9 graduated from there four years later with an  
10 M.D. degree in 1957.

11 After I received my degree, I had one year  
12 of internship at Mt. Sinai Hospital in  
13 Cleveland, two years of general surgery training  
14 at Mt. Sinai and University Hospital program in  
15 Cleveland. And then I had three years of  
16 orthopedic surgical training, that's bone and  
17 joint surgery, at Indiana University in  
18 Indianapolis. All told, after medical school I  
19 actually had six years of training or resident  
20 training, as we call it.

21 Q. And did you spend any time in the military?

22 A. Yes. I spent two years in the United States  
23 Navy, a lieutenant commander and then medicine.  
24 And I did orthopedic and general surgery with  
25 the Seventh Fleet in the western Pacific, early

1 Vietnam, early '60's, mostly orthopedic but some  
2 general surgery.

3 Q. Okay. And how long have you been in private  
4 practice?

5 A. Since 1965.

6 Q. And that was here in the Cleveland area?

7 A. Yes.

8 Q. Okay. Are you a board certified orthopedic  
9 surgeon?

10 A. I am.

11 Q. When did you become so board certified?

12 A. Become board certified two and a half years  
13 after physicians in practice because we have to  
14 take two parts to an examination to become  
15 certified. One part you take when you complete  
16 your training and the second part you take two  
17 and a half years later, You always take the  
18 examination I think in December. You finish  
19 training in June, so it's two and a half years  
20 later. So I became board certified, I think in  
21 1968.

22 Q. Can you tell us with which national, state and  
23 local medical organizations and societies that  
24 you belong?

25 A. I belong to a group of organizations whose

1 membership is for physicians in good standing,  
2 the American Medical Association, the Ohio State  
3 Medical Association, the Academy of Medicine of  
4 Cleveland. I belong to a group of organizations  
5 whose membership is for orthopedic specialists.  
6 That means the American Board of Orthopedic  
7 Surgery, the Ohio State Orthopedic Association,  
8 the Cleveland Orthopedic Association. I've been  
9 just about every officer in that group. At the  
10 present time I'm chairman for the continuing  
11 education committee.

12 Q. What are your duties in that regard, doctor?

13 A. As part of my educational, or I say teaching  
14 responsibility, is to prepare, arrange and  
15 organize and contribute to teaching of doctors  
16 already in practice. We physicians, especially  
17 myself who graduated 30 years ago, have to  
18 continue to go to school to keep upgrading to  
19 stay modern, to stay current. My responsibility  
20 is for the Northern Ohio orthopedic area, to  
21 provide educational seminars both as a  
22 contributor and as a moderator for the doctors  
23 in practice. We carry an area between Toledo on  
24 the west, Pennsylvania boarder in the east,  
25 Mansfield in the south, Lake Erie on the north.



1 We cover the whole northern Ohio area.

2 Q. Are you also involved in teaching medical  
3 students?

4 A. Yes. I've been for a long time I've been  
5 active, I've been an instructor at Case Western  
6 Reserve University. I gave a course in  
7 orthopedic pathology with Dr. Lester Adelstein  
8 until he retired two years ago. And we haven't  
9 renewed that course lately, but I do teach  
10 medical students on a clinical basis.

11 And I've been active in teaching resident  
12 doctors, doctors now who have completed their  
13 education in medical school but going to become  
14 specialists. There is an orthopedic training  
15 program at Mt. Sinai which coordinates with the  
16 University Hospital and I'm very active in that  
17 training program.

18 Q. Okay. Can you tell the jury with which  
19 hospitals you have staff and courtesy  
20 privileges?

21 A. I like to limit all of my inhospital admissions,  
22 surgical scheduling and most of my teaching  
23 responsibilities to Mt. Sinai Hospital, which,  
24 of course, is affiliated with the medical school  
25 at Case. I have courtesy privileges but only

1 use the emergency room at Hillcrest, Suburban  
2 and St. Lukes Hospitals.

3 Q. Doctor, at my request did you examine Mrs.  
4 Johnnie Cooks?

5 A. Yes.

6 Q. And would you tell the jury on what date that  
7 examination took place?

8 A. April 14, 1989, a few months ago, three or four  
9 months ago.

10 Q. And in the course of setting up that  
11 appointment, did I send you various medical  
12 records?

13 A. Yes, I did receive records that referred to  
14 treatment that she had received before I saw  
15 her, yes.

16 Q. And did you review those records before you  
17 examined her or after?

18 A. No. I don't think I even saw that they were  
19 there until I finished the examination. I  
20 didn't see them until after.

21 Q. All right. First of all, doctor, would you tell  
22 the jury what history you obtained from Johnnie  
23 Cooks?

24 A. Mrs. Cooks told me on April 14, 1989, this is  
25 when all of my experience with her occurred,

1 that she had been involved in an RTA bus  
2 accident as a passenger on October 21, 1986,  
3 that's about two and a half years before. And  
4 she told me that she was standing on a bus; the  
5 bus suddenly stopped and caused her to fall  
6 backward and she struck her -- she said her back  
7 and buttock area. She had immediate pain in her  
8 back afterward.

9 She was taken to University Hospitals in  
10 Cleveland and there she received emergency  
11 treatment, which included x-rays of her back.  
12 And after the examination and the x-rays were  
13 completed, she was released from the emergency  
14 room, allowed to go home and was given a  
15 prescription for a pain pill, specifically  
16 Tylenol Number 3.

17 She told me that the back pain continued,  
18 that she also developed what she called shooting  
19 pain or radiating pain into her left leg and  
20 that she first treated with doctors at  
21 University Hospital Orthopedic Clinic and then  
22 with Dr. Laurence Bilfield, who is an  
23 orthopedist,

24 Dr. Bilfield in particular prescribed  
25 physical therapy which she received as an

1 outpatient, In other words, she went back and  
2 forth for treatment. She didn't have to be  
3 confined in a hospital. He provided her with  
4 medicine or pain prescriptions.

5 And even despite all that she was still  
6 having difficulty with her back and the feeling  
7 of weakness affecting her left leg, when in the  
8 spring of 1987, I think it was late February, to  
9 be more specific, or early March, late February,  
10 her left leg gave way and this caused her to  
11 fall and she fractured her left ankle.

12 Now, she came under Dr. Bilfield's care for  
13 the ankle, He treated her with a cast to the  
14 left leg. And eventually when the leg healed,  
15 she thinks it was six or seven or eight weeks,  
16 she wasn't exactly sure, the cast was removed  
17 and apparently the ankle fracture did heal  
18 successfully.

19 But then after that, because she was still  
20 having problems with her back, including this  
21 feeling of weakness or shooting pain in the  
22 legs, he sent her for an MRI scan of her lower  
23 back. That was done at the Cleveland Clinic.  
24 She thought it was late in 1987. It was way  
25 after the ankle had healed already.

1 Q. Right.

2 A. Now when I saw her in April of 1989 she was  
3 still having difficulty with her back. And what  
4 happened is that her back wouldn't feel so bad  
5 for a while, but then she would get a flare-up,  
6 which her back pain would come back by itself,  
7 It would be worse on the left side and seemed to  
8 affect her left leg, not so much with pain, but  
9 the feeling of weakness, although she had not  
10 fallen again. And she told me that when she  
11 would get a flare-up, it would last for two or  
12 three days and she had to lay down and rest and  
13 use a heating pad and then she could kind of go  
14 on her way. She kept talking about good days  
15 and bad days. That would refer to how much pain  
16 she had in her back.

17 With regard to her left ankle, she said  
18 sometimes her ankle would be sore and stiff, but  
19 she kind of related that more to weather change.  
20 Like when it was wet and damp, her ankle would  
21 give her trouble. And she also could make her  
22 ankle go into a cracking sensation, In other  
23 words, when she would move or turn she would  
24 feel a snap or cracking in the left ankle. The  
25 same would not happen in her right ankle and

1        hadn't happened in her left ankle before the  
2        break. Those are basically her symptoms she had  
3        with me, these off again on again pains in her  
4        lower back on the left side and the swelling and  
5        some stiffness and cracking sensation in her  
6        left ankle. They were still there when I saw  
7        her on April 14, 1989.

8        Q. Did you inquire about her employment?

9        A. Yeah. She had been working in a nursing home  
10       lifting patients, kind of moving patients back  
11       and forth at the time of the October 21, 1987  
12       accident. Now after the accident she lost  
13       several weeks from work and then was back only  
14       on light duty for a period of time. Up for  
15       about four or five months she was still on light  
16       duty because she couldn't do the lifting. And  
17       then when her ankle broke she wasn't able to go  
18       back to the nursing home on a regular basis.  
19       And she now works as a private duty nurse in the  
20       eastern suburban area. She told me she had a  
21       patient who could get about herself, that didn't  
22       need a lot of lifting or carrying. That kind of  
23       job she was doing.

24                So her employment after this accident was  
25       some loss of work time to begin with, then light

1 duty for three and a half to four months, and  
2 then not being able to go back to the regular  
3 nursing home work after the accident, because a  
4 combination of her back and leg. Now she works  
5 only as a private duty in selective patient  
6 care. She selects her patients that don't need  
7 a lot of physical carrying or moving.

8 Q. Okay. Did you perform a physical examination on  
9 Mrs. Cooks?

10 A. Yes.

11 Q. Can you tell us about that?

12 A. When I examined her she could walk well, didn't  
13 seem to be suffering acutely, In other words,  
14 she didn't look like she was in acute distress,  
15 and her back was well-aligned. She did not  
16 complain of any pain in the upper part of her  
17 spine, that's the neck or the shoulder area.  
18 But in the lower part of the back, that part we  
19 call the lumbar spine, it's the kind of part of  
20 your back in which if you would put a belt on  
21 and where the belt crosses your back, that's the  
22 lumbar spine. And in the left of the midline,  
23 just to the left of the mid portion of the  
24 lumbar spine, I found tenderness and muscle  
25 spasm.

1 Q. Doctor, I'm sorry. What is a muscle spasm?

2 A. Muscle spasm is an involuntary locking  
3 contracture shortening of a muscle that is  
4 usually due to some type of condition such as an  
5 injury.

6 Q. When you say involuntary, what do you mean?

7 A. Muscle spasm occurs regardless of an  
8 individual's desire or personal control. Muscle  
9 spasm, by the way, is the same thing that occurs  
10 in a person's calf when you have a severe calf  
11 cramp. Ladies who are expecting seem to get  
12 those or the evening that an athlete works out  
13 very vigorously, they can get those. Anybody  
14 that's ever had a -- awakened in the middle of  
15 the night with a calf cramp understands that  
16 it's something that just occurs and they have no  
17 control over it. It just happens and it's one  
18 of those involuntary situations.

19 Q. Thank you, doctor.

20 A. I found she had stiffness in her back. She  
21 could only bend forward so far keeping her knees  
22 straight. In fact, she couldn't go any farther  
23 than 12 or 13 inches getting her fingertips on  
24 at the floor. And other than that, the  
25 neurological sensation of her lower extremities,



1 that part that would relate to her spine, were  
2 grossly normal. She complained that her left  
3 leg didn't feel quite as sensitive as the right  
4 leg. I don't know what the exact meaning of  
5 that was.

6 And when I saw her left ankle, examined her  
7 left ankle, her ankle was what they call thick  
8 in the region of the fibula. That's the bone on  
9 the outer side of the ankle. And I ran my  
10 finger down her ankle. You can feel the  
11 thickness in that area. That would be  
12 consistent with a bone that had been broken but  
13 which has healed.

14 Q. All right.

15 A. And the ankle had good motion when she would  
16 circumduct, is what we call it, make the ankle  
17 go around and around. You could hear a clicking  
18 sensation. She tried it with the other ankle  
19 and it didn't click. That's the only finding I  
20 found. The left ankle actually only measured  
21 one-quarter inch greater in girth than the left  
22 ankle, than the other ankle,, than the right  
23 ankle.

24 Q. Do you have a model of an ankle handy?

25 A. Yeah, I think I doe

1 Q. Okay. You can get that.

2 A. I have to climb away.

3 Q. That's all right.

4 A. You must have good eyes. I didn't remember  
5 that.

6 Q. With painted toenails, terrific.

7 A. My secretary has a --

8 Q. Interesting sense of humor.

9 A. I didn't personally paint the toenails.

10 Q. I'm sure.

11 What are we looking at, doctor?

12 A. We're looking at the skeleton of a human ankle  
13 and foot with painted toenails. And the bone  
14 I'm talking about was broken is a little bone on  
15 the side called the fibula. The big bone on top  
16 is the tibia and the bone that fits right  
17 between the two long bones of your shin is the  
18 talus, T A L U S. So the ankle is made up of  
19 the fibula, the tibia and talus. In Mrs. Cooks'  
20 case she broke the little bone, and she broke it  
21 right about over here, maybe a -- right about an  
22 inch --

23 Q. That's called a severe dislocation.

24 A. About an inch or so above the ankle is where she  
25 broke it.

1 Q. Okay. Do you have any x-rays that we can show  
2 the jury?

3 A. Yeah. You did bring me some x-rays that were  
4 during the time that she was treated for this  
5 ankle injury. And I will put up what is marked  
6 Plaintiff's Exhibit 29-A.

7 Q. Thank you.

8 A. Plaintiff's Exhibit 29-A is an x-ray that  
9 includes two views of Johnnie Cooks' ankle and  
10 the date is February 27, 1987. You can see  
11 engraved right on the film.

12 Q. Okay.

13 A. There is a number over here. And this is an  
14 x-ray taken of Mrs. Cooks' left ankle already in  
15 a cast, You can see what a cast looks like.  
16 Here is a white plaster cast on either side.  
17 And if you look very carefully, you're looking  
18 through the ankle. Remember this is the big  
19 tibia bone.

20 Q. It's the shin bone,

21 A, Right. And here is the fibula on the side and  
22 here's the talus, just like I showed on the  
23 model. But what you have to look at, and I  
24 don't want to mark into it,

25 Q. You can mark on it,

1 A. Yeah, but I'll not mark right here because as  
2 soon as you put it around it we're going to be  
3 covering up part of the bone.

4 Q. Okay.

5 A. There is a crack or a break running obliquely  
6 right through the end of the fibula from above  
7 the ankle to the level of the ankle.

8 On the same picture but a little bit to the  
9 right here is a second view taken with the ankle  
10 turned a little bit. Again, we can see here is  
11 the red arrow. Here is that kind of irregular,  
12 it looks like a double Z zag, zip zip zip,  
13 broken through with a little bit of  
14 displacement. I think the two bones are a  
15 little bit out of place.

16 If you look back to the first view you also  
17 begin to see that there is a little bit of extra  
18 space between the tibia or shin bone and the  
19 talus, like there is a dark space in here. That  
20 means that the ankle has shifted a little bit to  
21 the outer side. That tells me this is a very  
22 fresh fracture that has just been put in a cast  
23 and it's not quite right yet. The bone hasn't  
24 been completely set.

25 Q. All right.

1 MR. TADDEO: Just let me interrupt  
2 for a second. I want to make an objection to  
3 the --

4 MR. PARIS: Let's go off the  
5 record.

6 MR. TADDEO: -- the discussion --

7 VIDEOTAPE OPERATOR: We'll go off  
8 the record.

9 - - - -

10 (Thereupon, a discussion was had off  
11 the record.)

12 - - - -

13 MR. TADDEO: The objection is  
14 based on the issue that certainly exists in this  
15 case as to the relevancy or connection or causal  
16 connection or relationship in terms of the ankle  
17 injury to anything that has to do with this  
18 particular case.

19 So I'm going to -- I'm not going to make  
20 any more objections to that, but any further  
21 discussion that is made concerning the ankle,  
22 the injury, the x-rays, form of injury, et  
23 cetera, the permanency that exists thereof are  
24 all subject, that line of questioning will be  
25 subject to the objection and I am making now so

1 I don't have to make any further interruptions.

2 MR. PARIS: I appreciate that.

3 Can you read back the last question and answer,

4 - - - -

5 (Thereupon, the requested portion of  
6 the record was read by the Notary.)

7 - - - -

8 MR. PARIS: Back on the record.

9 VIDEOTAPE OPERATOR: We are now  
10 back on the record.

11 Q. Doctor, are there any other films that you can  
12 show us?

13 A. Yes. On the same day, February 27, 1987, I have  
14 a second x-ray which we have marked Plaintiff's  
15 Exhibit 29-B and it's the same ankle except that  
16 it now shows the same day, February 27, 1987,  
17 Johnnie Cooks' name on it, but now the cast was  
18 changed. It's a different cast, **It's** thinner,  
19 there **is** some more padding on the side. And now  
20 we can still see the break, This is the same  
21 day. And you can see the edge of the break on  
22 the fibula, but the space between the tibia and  
23 the talus, that little separation is no longer  
24 there. That just tells me that between these  
25 two x-rays, the one that shows a double view and

1       this single view x-ray, the cast was changed.  
2       It's a different cast, It doesn't even look  
3       like the same. It's much thinner and not even  
4       shaped the same way. Number two, the bone has  
5       been set, the ankle was set more correctly.  
6       Something was done on February 22, we know  
7       that.

8   Q.   Okay. Thank you, doctor.

9   A.   Then there is a third x-ray that sort of  
10       completes the picture. This is Plaintiff's  
11       Exhibit 29-C. This is an x-ray of Johnnie  
12       Cooks' ankle on April 14, 1989. That's when I  
13       saw her. Actually, I'll put it up this way.  
14       It's the same view. And now we can see the end  
15       result. Remember the first two x-rays I showed  
16       were on the day that she broke her ankle. These  
17       are x-rays that are done quite away later.  
18       Actually, the -- maybe I have to correct that --  
19       yeah, the first two x-rays were close to when  
20       she broke it and this is after. And all you can  
21       see on these x-rays, if you look at the two  
22       views, the same picture of the ankle head on and  
23       the fibula bone is irregular, but it's healed.  
24       You don't see any sharp, jagged edges on this  
25       view here.

1           You look over to the oblique view, it's a  
2           little bit offset, The fibula is extension  
3           farther down. You see there is a little bit of  
4           a bulge there and a little bit of an inward  
5           bulge here. These x-rays which are in April of  
6           1989 shows that the fibula has healed a little  
7           bit irregular, but generally in good position.

8   Q.   Okay. Thank you, doctor.

9           Now we can return back to your office  
10          notes. Did you review any medical records and  
11          reports?

12   A.   Yes.

13   Q.   Tell us about that.

14   A.   Well, there are a number of different records,  
15          emergency room records from University Hospital  
16          on October 21, 1986. At that time that's the  
17          time Mrs. Cooks was taken from the RTA accident  
18          to University Hospital. She complained of back  
19          pain, was treated for her back pain problem.  
20          She had x-rays of her lower back. And she was  
21          given a prescription for Flexeril and codeine.

22   Q.   And the diagnosis?

23   A.   The diagnosis at that time was low back muscle  
24          strain and spasm on the emergency room record.

25   Q.   Okay.



1 A. She followed up at University Hospital Adult  
2 Orthopedics. She was seen there on November  
3 12. That's about what, two and a half weeks  
4 later. She had back pain and still went on. At  
5 that time she was advised to go to bed, put heat  
6 on, take medicine.

7 Then she came under the care of Dr.  
8 Bilfield, who I guess first treated her in  
9 December of 1986, where the accident was in  
10 October of 1986. And he prescribed physical  
11 therapy. He gave her different medicines, and  
12 followed her through into January, March. At  
13 that time she apparently still had pain in her  
14 back going into her leg. And at that time she  
15 fell and had fractured her left ankle as I had  
16 noted before, She apparently fell February 27,  
17 1987 and she was followed by Dr. Bilfield for  
18 this fracture, although she went to the  
19 emergency room at University Hospital when she  
20 did break her left ankle, and Dr. Bilfield then  
21 followed her afterward again. The follow-up  
22 included changing the cast, as I noted, and then  
23 following her until the fracture had healed.  
24 When it finally had healed, the cast was taken  
25 off. And some later x-rays, there was a whole

1 series of x-rays, reports on the records that I  
2 reviewed indicating that the fibula fracture,  
3 the ankle fracture did go on to heal okay,

4 But then there were some later visits from,  
5 I think, Dr. Bilfield that also referred to her  
6 low back. There were treatment for her back in  
7 November, 1987, November -- let's see,  
8 September, 1987, November, 1987. And one of the  
9 occasions she had left leg radiating pain to the  
10 point that an **MRI** scan was ordered and done but  
11 found to be normal.

12 Q. Doctor, can you tell the jury what an MRI scan  
13 is?

14 A. Yeah. An **MRI** scan is one of the newer high tech  
15 computerized scans in which a person has to  
16 slide into a tube and x-rays are -- in this case  
17 a magnetic imaging system is able to scan our  
18 body all the way around. In fact, when one is  
19 lying there very still you can actually feel  
20 this scanner passing all the way around you  
21 outside of the tube. You're inside of the  
22 tube. It gives us basically a printout, it  
23 looks like an x-ray, of the human spine or other  
24 areas if we wanted. And we can now detect  
25 abnormalities that deal with parts of the spine

1       that we couldn't see on regular x-ray. That  
2       includes discs, nerves, even muscles and  
3       ligaments. So a scan is a much more  
4       sophisticated test for spine injury.

5   Q. Will that demonstrate inflammation to the  
6       muscles which irritate nerve roots?

7   A. It's beginning to show it. Unfortunately, scans  
8       have only been around for a few years and their  
9       quality is greatly and rapidly improving. At  
10      the present time if there is a great deal of  
11      inflammation, I mean gross inflammation to the  
12      point that the muscle is swollen outward, it  
13      will show up on the scan. Unfortunately, the  
14      details are not quite yet perfected enough to  
15      show us small areas of present scarring or  
16      inflammation. We can't quite see that yet in  
17      the spine.

18   Q. Doctor, by virtue of your physical examination,  
19      by virtue of the history that you took from  
20      Johnnie Cooks, and by virtue of the history that  
21      you obtained from reviewing her medical records,  
22      did you make a diagnosis as to the injuries she  
23      sustained?

24   A. Yes.

25   Q. What were those injuries?

1 A. The injuries she sustained based on the history  
2 she gave me, my own examination and my own  
3 review of x-rays was spraining injury to the  
4 lumbar spine, resulting in posttraumatic  
5 myofascitis reaction predominantly on the left  
6 side and secondary weakness in the left leg  
7 resulting in a fracture of the left fibula.

8 Q. Okay. Doctor, do you have an opinion based upon  
9 reasonable medical certainty as to whether or  
10 not there is a cause and effect relationship  
11 between Johnnie Cooks' bus accident of October  
12 21, 1986 and her low back injury? First of all,  
13 do you have an opinion?

14 A. Yes, I have.

15 Q. What is your opinion?

16 A. It is my opinion that the low back injury, those  
17 conditions that I diagnosed when I examined her  
18 are directly related by cause, within reasonable  
19 medical certainty, to the October -- let's get  
20 the date straight here.

21 Q. 21st.

22 A. -- 21st, 1986.

23 Q. Doctor, do you have an opinion based upon a  
24 reasonable degree of medical certainty as to  
25 whether there is a cause and effect relationship

1       between Johnnie Cooks' fractured left ankle in  
2       February of 1987 and her bus accident of October  
3       21, 1986? First of all, do you have an opinion,  
4       doctor?

5                       MR. TADDEO:     Note my objection.

6   A.   Yes, I have an opinion.

7   Q.   What is your opinion?

8   A.   It is my opinion that the fracture of the left  
9       ankle was ultimately related to the bus accident  
10      of October 21, 1986.

11 Q.   And the basis of your opinion, doctor?

12 A.   I base my opinion on the history given to me by  
13      Mrs. Cooks and again my own physical findings  
14      and the x-rays that I reviewed.

15 Q.   Doctor, do you have an opinion based upon a  
16      reasonable degree of medical certainty as to the  
17      prognosis or future outlook of Johnnie Cooks'  
18      low back injury?

19 A.   Yes.

20 Q.   What is your opinion?

21 A.   I think its prognosis for the lumbar spine, that  
22      means the lower back injury, is either fair to  
23      fairly good.

24 Q.   What does that mean?

25 A.   It means that I expect that she'll continue to

1 have problems with her back. She'll continue to  
2 have good days and bad days, but I do not  
3 anticipate that her condition will rapidly  
4 deteriorate, nor do I anticipate any immediate  
5 or foreseeable change in the types of symptoms  
6 that she's going to experience,

7 Q. With regard to her activities?

8 A. Yes, I think that her, in my opinion, her  
9 activities have been significantly curtailed,  
10 mostly because of her back. Her ankle may have  
11 contributed some, but it's her back that when I  
12 saw her in April, 1989 was by far the  
13 overwhelming cause of her ongoing disability.  
14 It curtails her from bending, lifting, doing the  
15 type of nursing work that she did before October  
16 11, 1986.

17 Q. Doctor, do you have an opinion based upon a  
18 reasonable degree of medical certainty as to the  
19 prognosis or future outlook of Johnnie Cooks'  
20 left ankle injury?

21 A. I think the prognosis for the left ankle is  
22 good. Patients who, like Johnnie, who have  
23 fractured her lateral malleolus or the fibula  
24 bone eventually work it out. There's sometimes  
25 pain or aching with weather changes, but that

1 particular type of fracture carries a good  
2 outlook. Occasionally some catching,  
3 occasionally some weather aching, but again, it  
4 is not a source of large or major disability in  
5 the long run.

6 Q. With regard to the symptoms that she has  
7 expressed with regard to weather changes and  
8 with rapid or sudden movements, do you have an  
9 opinion based upon reasonable medical certainty  
10 as to whether or not those symptoms will be  
11 permanent or not?

12 A. Yes. I have an opinion.

13 Q. What is your opinion?

14 A. My opinion, I think they will persist, what I  
15 call, indefinitely. I just can't predict how  
16 long they will continue on. But there is a  
17 potential that they will not be as severe in the  
18 future.

19 Q. Okay. Doctor, having reviewed the medical  
20 records and the care and treatment by way of  
21 history that Johnnie Cooks gave to you, do you  
22 have an opinion as to whether or not her care  
23 received by, at the University Hospital  
24 emergency room and the follow-up visit to  
25 University Orthopedic Clinic were reasonable and

1       necessary by virtue of her low back injury?

2       A.   Yes, I have an opinion.

3       Q.   What is your opinion?

4       A.   It is my opinion that the treatment she received  
5       was reasonable, appropriate, of good quality and  
6       was necessary because of the injuries that she  
7       sustained on particularly, to begin with October  
8       21, 1986.

9       Q.   Doctor, do you have an opinion based upon a  
10      reasonable medical certainty as to whether the  
11      care Johnnie received to her low back from Dr.  
12      Bilfield in Beachwood Physical Therapy, as well  
13      as the MRI scan in November of 1987, as to  
14      whether that care was reasonable and necessary  
15      by virtue of her low back injury?

16      A.   Yes, I have an opinion.

17      Q.   What is your opinion?

18      A.   For the same reasons as the University  
19      treatment, they were, in my opinion, medically  
20      reasonable and necessary for the injuries that  
21      occurred on October 21, 1986.

22      Q.   Likewise, doctor, do you have an opinion based  
23      upon a reasonable medical probability as to  
24      whether the treatment afforded to Johnnie Cooks  
25      for the left ankle fracture, that being at



1 University Hospital emergency room, Dr. Bilfield  
2 throughout the summer of 1987, and Beachwood  
3 Physical Therapy into the summer of 1987, was  
4 reasonable and necessary?

5 A. Yes, I have an opinion.

6 Q. What is your opinion?

7 A. It is my opinion that treatment was reasonable  
8 and necessary for the ankle injury.

9 Q. Doctor, Johnnie Cooks, you do have a history  
10 that she was employed as a nurse's aid at the  
11 Marietta Nursing Home and had been so employed  
12 since 1984. Her duties, I believe you have a  
13 history., was taking care of geriatric or elderly  
14 patients, bathing them, lifting them, feeding  
15 them and helping some of them ambulate or walk  
16 around. Immediately after the bus accident of  
17 November 21, 1986 Johnnie Cooks was off work  
18 until November 6, 1986. Doctor, was that time  
19 off from work reasonable?

20 A. Yes.

21 Q. And was it necessary by virtue of the low back  
22 injury she sustained on October 21, 1986?

23 A. It was, and I base this on the history she  
24 provided me.

25 Q. Of course.

1           After returning to work on November 6, 1986  
2 she continued to work on a part-time basis, but  
3 in a light duty capacity whereby her duties were  
4 restricted to feeding the patients for the most  
5 part, with very little lifting, climbing of  
6 steps or bending. That light duty continued  
7 into February of 1987,

8           Doctor, do you have an opinion based upon a  
9 reasonable medical certainty as to whether the  
10 extent of time of that light duty work was  
11 reasonable and necessary by virtue of her low  
12 back injury?

13 A. Yes, I have an opinion.

14 Q. What is your opinion?

15 A. In my opinion, it was reasonable and necessary  
16 by virtue of the low back injury.

17 Q. And on February 17, 1987 Johnnie Cooks called  
18 into work advising that she had injured her  
19 ankle, left ankle, and was off of work until May  
20 24, 1987, Doctor, in your opinion, based upon a  
21 reasonable medical certainty -- strike that --  
22 do you have an opinion based reasonable medical  
23 certainty as to whether that period of time off  
24 from work was reasonable and necessary by virtue  
25 of the left ankle fracture? First of all, do

1       you have an opinion?

2       A.   I have a qualified opinion, yes.

3       Q.   What is your opinion?

4       A.   Well, it is my opinion that certainly during  
5       that period of time and I think you are talking  
6       about one year -- you're talking about one year  
7       or two years?

8       Q.   February 17, 1987 through May 21, 1987.

9       A.   I'm sorry. I misunderstood you.

10      Q.   That's okay.

11      A.   Yes. I have an opinion then.

12      Q.   What is your opinion?

13      A.   In my opinion that is reasonable. My  
14      misunderstanding, for the jury, was that I  
15      misunderstood the year that you told me.

16      Q.   Okay. She did return back to Marietta Nursing  
17      Home after May 24, 1987 and continued to work  
18      part-time, but in a light duty capacity still,  
19      by virtue of the combination of her low back and  
20      left ankle and continued to work on light duty  
21      through October, 1988, a year and five months  
22      when she finally resigned that position because  
23      of the ongoing low back pain.

24                Doctor, do you have an opinion based upon  
25      reasonable medical certainty as to, number one,

1 whether or not her continuation of light duty  
2 work through October of 1988 was reasonable and  
3 necessary by virtue of her low back injury?

4 A. Yes, I have an opinion.

5 Q. What is your opinion?

6 A. It is my opinion that her continued low back  
7 symptoms and disability would cause her to limit  
8 her work ability to light or limited duty within  
9 reasonable medical certainty, yes. It is true  
10 the type of back condition she had would  
11 necessitate light duty, yes,

12 MR. PARIS: Thank you, doctor. I  
13 have nothing further at this time.

14 - - - -

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

16 BY MR. TADDEO:

17 Q. Doctor, my name is Joseph Taddeo. I'm a staff  
18 attorney for the Regional Transit Authority.  
19 Pursuant to the rules that prevail in our  
20 courts, not only in the State of Ohio but  
21 throughout the United States, I'm now allowed to  
22 ask some questions as if on cross-examination.

23 First of all, I just want to make a couple  
24 of things clear so that the jury understands.  
25 You never treated Johnnie Cooks in any way

1       whatsoever for anything throughout her lifetime,  
2       is that true?

3   A.   That's probably true.   I don't think I treated  
4       her before.   I didn't -- I came into the scene  
5       in this particular injury after everything had  
6       healed up to a point, so I did not actually  
7       contribute to healing.

8   Q.   And it's true that you only saw her on one  
9       occasion and that was April the 14th of 1989?

10  A.   Correct.

11  Q.   And the reason that you saw her on that date was  
12       at the request of her attorney, correct?

13  A.   That's what he just told us.   I wasn't certain  
14       exactly why he saw -- I have a letter indicating  
15       that he made an appointment.   He didn't  
16       specifically say why I was treating her.

17  Q.   Well, you weren't treating her?   You were only  
18       examining her, right?   That's what I want to  
19       make clear.

20  A.   But I didn't know that at the time of the  
21       examination.   When she came, I assumed it was  
22       for treatment or evaluation and/or treatment.   I  
23       did not know at the moment what it was for.

24  Q.   But you now know that the reason why you saw her  
25       was only for the examination, correct?

1 A. I think that's what Mr. Paris told us about a  
2 half hour ago, yes. I wasn't aware of that  
3 before.

4 Q. All right. So that is a correct statement then?

5 | A. It must be. He said so about a half hour ago.

6 Q. And plus the fact that you have never treated  
7 her?

8 A. I did offer her treatment. As a matter of fact,  
9 my record, you'll note, describes what I  
10 recommended she do. But on the other hand, I  
11 did not have anything that I had an opportunity  
12 to treat her even though I offered.

13 Q. You may have offered treatment, but you never,  
14 in fact, treated her?

15 A. I think that's true.

16 Q. And so the reason why you were consulted by this  
17 patient at the request of her attorney was for  
18 the purpose of giving testimony in this case?

19 A. No, sir. I don't take patients to give  
20 testimony. The only patient I had an  
21 opportunity to see in this particular case was  
22 for an opportunity to make an examination, offer  
23 a treatment and render an opinion. I had no  
24 knowledge whatsoever about testimony.

25 Q. All right. But you're giving testimony now in

1           this case?

2   A.   Yes.   I think it's five months or four and a  
3       half months later, yes,

4   Q.   Without ever having rendered any treatment to  
5       the patient for the injuries that are claimed to  
6       be the subject of this case?

7   A.   I think that's true, sure.

8   Q.   So you never treated her for the first accident  
9       on October 21, '86, correct?

10   A.   Right. During the time that she had the  
11       accident or immediately afterward?

12   Q.   Right.

13   A.   No, I did not, no.

14   Q.   And you never treated her following her second  
15       accident of February 17, 1987, correct?

16   A.   That's correct, yeah.

17       And you have given an opinion today that the  
18       second, that the injuries sustained in the  
19       second accident, that is the fracture of the  
20       left fibia is related to this -- fibula is  
21       related to the original accident of October 21,  
22       1986?

23   A.   That is correct.

24   Q.   And you have said that the basis of that is the  
25       history given by the patient, that is her own

1 statements?

2 A. That's correct,

3 Q. The physical findings that you made?

4 A. That's correct.

5 Q. And the x-rays that you have reviewed?

6 A. That's correct,

7 Q. Now, insofar as the examination that you  
8 conducted, did you weigh this patient?

9 A. No. She's overweight.

10 Q. She's overweight?

11 A. Yes, sir.

12 Q. But you didn't weigh her?

13 A. We don't have a scale, No.

14 Q. Did you take down her height?

15 A. No. She's average, slightly tall. I don't  
16 consider her unusual in height,

17 Q. Would you consider her an obese person?

18 A. I think so. I think she's more than 35 pounds  
19 overweight, yes.

20 Q. Would you call that grossly obese?

21 A. No.

22 Q. Now, do you know whether or not this lady was  
23 coming from an Eagles Supermarket when she fell  
24 down on February 17, 1987?

25 A. No, sir, I do not.



1 Q. Do you know whether or not it was snowing on  
2 that particular day?

3 A. No.

4 Q. Do you know whether or not after grocery  
5 shopping she was carrying some grocery bags with  
6 her when she fell down on February 17?

7 A. No, I do not.

8 Q. Do you know whether or not the pavement where  
9 she was walking on that day was wet?

10 A. No, sir.

11 Q. Do you know whether or not there was ice on the  
12 pavement on that day?

13 A. No.

14 Q. So the condition of the pavement and whether or  
15 not this patient was carrying grocery packages  
16 could not have formulated anything having to do  
17 with the basis for your opinion that her fall is  
18 related to the bus accident?

19 A. That's correct. That would not be an important  
20 -- those would not be important facts, no.

21 Q. Do you know whether or not it was sunny or  
22 cloudy on the day of the fall down in front of  
23 the Eagles Supermarket on February 17, 1987?

24 A. No, sir. But knowing Ohio, it would be most  
25 likely to be cloudy.

1 Q. Most likely be snowy and icy, too?

2 A. Yes, sir.

3 Q. Do you know or did you take any tests or conduct  
4 any physical examination with regard to the  
5 eyesight of Johnnie Cooks?

6 A. No, but she had no difficulty moving around,  
7 seeing me or having eye contact and moving  
8 around the room.

9 Q. Well, do you know whether or not she wears  
10 glasses? You have glasses, but you have them  
11 off right now. Do you know whether or not she  
12 wears glasses on occasion or whether or not she  
13 has a prescription for correction of her  
14 eyesight?

15 A. No, sir, I do not.

16 Q. You didn't inquire into that?

17 A. No.

18 Q. Do you know whether or not when Johnnie Cooks  
19 fell on February 17, 1987 she was with anyone or  
20 she was alone?

21 A. I do not know.

22 Q. Do you know whether or not she was in a hurry or  
23 if she was walking slowly or at a moderate pace?

24 A. No, I do not know that either.

25 Q. Do you know whether or not she was walking up

1 and down a curb or nearby some thing that would  
2 require her to step up or down when she fell on  
3 February 17, 1987?

4 A. No.

5 Q. And you didn't inquire into any of these  
6 factors, the weather conditions, the visibility,  
7 her eyesight, whether she was with anyone,  
8 carrying anything or any of those, you didn't  
9 inquire of her when you saw her?

10 A. No. I don't think I did, no.

11 Q. Do you know what type of clothing Johnnie Cooks  
12 was wearing when she fell down in front of the  
13 Eagles Supermarket on February 17, 1987?

14 A. No, I don't. I hope it was warm enough, because  
15 it's usually cold in February.

16 Q. Do you know what type of shoes she was wearing  
17 or if she was wearing boots?

18 A. No.

19 Q. Do you know whether or not she was wearing shoes  
20 that may have had these artificial heels that  
21 are made out of plastic or Corfam or something  
22 like that, artificial soles?

23 A. No.

24 Q. You didn't inquire on that?

25 A. No, I did not.

1 Q. You know that some shoes or some boots are more  
2 slippery when you're walking on ice and wet  
3 pavement, you're aware of that?

4 A. I think that's true, sure.

5 Q. Now, when Johnnie Cooks was seen following the  
6 RTA accident at the University Hospital  
7 emergency room, you have a record of that, don't  
8 you, the emergency room record?

9 A. I believe I do, yes.

10 Q. That was sent to you by the attorney for Johnnie  
11 Cooks?

12 A. Yes.

13 Q. And the first thing that it says on that  
14 particular record is -- do you have it in front  
15 of you, doctor?

16 A. Yes, I think I do, yeah.

17 Q. I think that's it right there with the heavy  
18 line across the top.

19 A. Um-hum.

20 Q. And under the nurses notes, the vital signs,  
21 there is an O there and a colon, does that mean  
22 observed? Does the O stand for observed or do  
23 you know what that indication means?

24 A. I don't know. That's nursing type notes. I  
25 really don't know what that means.

1 Q. Well, you used the term just a while ago that,  
2 you used the term no acute distress. You used  
3 that word during your testimony with the  
4 plaintiff's counsel. And then right after that  
5 O colon, it says NAD. Is that the standard  
6 notation for no acute distress, NAD?

7 A. I don't know.

8 Q. You don't know what that means?

9 A. I don't know. That's a nurse's note. I'm not a  
10 nurse. I don't know.

11 Q. Now, there was a neurological examination  
12 conducted in the emergency room, wasn't there?

13 A. There is some notations of some things  
14 neurologically, yes.

15 Q. Okay. And when it says PE, do you know whether  
16 or not PE stands for physical examination?

17 A. Yes. That's a physician's note, yes.

18 Q. And it says, back symmetric?

19 A. Yes.

20 Q. Is that what it says? Tender to palpitation  
21 across low back L/3, L/5?

22 A. Yes.

23 Q. Tender bilateral buttock pain?

24 A. Yes.

25 Q. And no, and it has an arrow pointing downward.

1 Does that mean no decrease in sensation?

2 A. Yes.

3 Q. And LE, does that mean lower extremities?

4 A. Correct.

5 Q. And what is D? What is the next D?

6 A. Deep tendon reflexes.

7 Q. Deep tendon reflexes, they're one plus slash one  
8 plus?

9 A. Yes.

10 Q. Does that indicate a normal finding?

11 A. It's a little bit low. It should be 2 plus, but  
12 it means that they're depressed a little bit.

13 Q. Okay. Then it says toes and two arrows down, is  
14 that what it says?

15 A. Yes.

16 Q. And the meaning is?

17 A. That means that there is no damage to the brain  
18 or neurological symptoms above the spinal cord.

19 Q. And then it says, motor responses. It says  
20 motor and it says five slash five?

21 A. Yeah. Five is standard, good strength. The  
22 best strength is five, worst strength is zero.

23 Q. All right. So this is a normal neurological  
24 exam in the emergency room, is that correct?

25 A. That's correct.

1 Q. And then moving down in the documents that you  
2 have to the Adult Orthopedic Clinic exam at  
3 University Hospital on November 12, 1986, that  
4 would have been about three weeks following post  
5 accident, correct?

6 A. That's right,

7 Q. And she was examined there by an orthopedist, is  
8 that correct? He signed it at the bottom,  
9 Capracotto, 08754?

10 A. Yeah. He's one of the residents, yes.

11 Q. He's a resident orthopedist at the clinic, so  
12 far as you know?

13 A. Yes.

14 Q. Are you acquainted with him? Do you know him?

15 A. I think I know who it is. He's with -- I don't  
16 even know if he's there anymore. He was one of  
17 the orthopedic or maybe general surgery  
18 residents at University Hospital at that time.

19 Q. All right. Now, one of the bases that you have  
20 testified under oath that the falldown and  
21 result in ankle injury during February of 1987  
22 is related to the bus accident of October 21,  
23 1986 is the history given to you by the patient,  
24 is that correct?

25 A. That is correct.

1 Q. That means her verbal statements to you,  
2 correct?

3 A. Yes, it does,

4 Q. And one of the statements that she made to you  
5 that would be the basis of your testimony is her  
6 statement to you that she experienced weakness  
7 in her leg, correct?

8 A. Uh-huh, more on the left side, yeah.

9 Q. More on the left side. And then she reported to  
10 you that her left Peg gave out and that was the  
11 cause of her fall?

12 A. That's what she told me.

13 Q. Okay. If you would then review the orthopedic,  
14 Adult Orthopedic notes dated November 12, on the  
15 12th line down I want to refer you to that.  
16 It's the 12th line down of that orthopedic note,  
17 if you would count down, please.

18 A. Um-hum.

19 Q. Do you see the line where it says, denies  
20 weakness or numbness?

21 A. Yes.

22 Q. So is it a fair statement then that at that time  
23 she denied any weakness or numbness?

24 A. Well, it's a fair statement that this doctor  
25 interpreted what he put in his history as a



1 denial of weakness and numbness. I wasn't  
2 there, so I couldn't say that was the actual  
3 thing. That's what that doctor recorded,

4 Q. You have no reason to believe he would report  
5 anything other than what the patient had told  
6 him?

7 A. Yes. I cannot -- No, I can't testify as  
8 document of his correctness since I wasn't  
9 there. I don't have any way of authorizing or  
10 quantifying his accuracy.

11 Q. Well, he started out by saying that her weight  
12 was 207 pounds at the very stop. And he says  
13 patient, abbreviated PT, is a 47 YO, I assume  
14 that means year old, BF, meaning black female,  
15 who presents to the Ortho Clinic. All those  
16 things would be true, wouldn't they?

17 A. Yes, I believe so.

18 Q. Okay. And so you wouldn't have any basis to say  
19 that when he wrote down denies numbness or  
20 weakness that that was something other than  
21 true, would you?

22 A. Well, again, you're asking me to make a positive  
23 statement in front of the jury that I completely  
24 agree with what he wrote down, another doctor, a  
25 doctor in training wrote down when I wasn't

1       there. I didn't have an opportunity in  
2       overseeing the interview, I don't have any  
3       reason to say that he didn't think it was  
4       correct, but I can't testify in a positive  
5       manner that I totally agree with what he said.  
6       I just wasn't there to make a statement on it.

7   Q. All right. Assuming that is correct and that is  
8       what the patient told him, then what she told  
9       the physician three weeks after, post accident  
10      and what she told you regarding numbness and  
11      weakness of her legs would be totally opposite?

12  A. Oh, absolutely not. She didn't tell me that the  
13      numbness and weakness was there present at all  
14      times, At this time she said she wasn't having  
15      numbness and weakness. When I saw her in 1989  
16      she had no numbness and weakness, but at other  
17      times she did.

18  Q. Doctor, you have seen a great many patients in  
19      your practice who have sustained bone or  
20      ligament tendon injuries as a consequence of  
21      falling down, is that true?

22  A. Yes.

23  Q. And you've seen patients having various,  
24      different kinds of back problems and back  
25      maladies as a consequence of injury, is that

1 right?

2 A. That's correct,

3 Q. Whether it's a falldown or some other kind of  
4 injury, is that right?

5 A. That's correct.

6 Q. And in your practice you have seen a great many  
7 of these very same conditions, that is a malady  
8 having to do with the back, if it's a stenosis  
9 or if it's spurring or if it's myofascitis or  
10 muscle spasm that don't result from any specific  
11 trauma, is that true?

12 A. Yes. I hesitated because people traumatize --  
13 trauma means injury, People cause little  
14 injuries to themselves on a day by day basis,  
15 that's why I had to hesitate, in that sometimes  
16 when it doesn't seem to be a single injury it  
17 can be an additive of many injuries as it goes  
18 along.

19 Q. Sometimes if someone goes out and works in their  
20 garden and while they're working in the garden  
21 in the springtime and they're planting, and  
22 they're like myself or yourself, they spend a  
23 lot of time behind a desk and they're not used  
24 to physical exercise, and then when they  
25 straighten up and feel some tinge or twinge in

1       their back and they go in and feel like they  
2       have to take, put warm heat on it and they take  
3       a hot shower or hot bath for that muscle  
4       soreness, that's the same type of myofascitis  
5       that they're experiencing?

6    A.   Yeah, I think -- I think it's what you and I  
7       talked about a second ago, that that is a form  
8       of injury. I think that is not a big injury,  
9       but you've done something beyond what you're  
10      normally comfortable doing and you do injure  
11      muscles and ligaments. That causes  
12      inflammation, that's correct,

13   Q.   All right. And that's the same thing that you  
14      witnessed or that others have witnessed, the  
15      myofascitis, and you have testified that you  
16      witnessed when you saw this patient on February  
17      14 of 1989, correct -- or excuse me, April 14 of  
18      1989?

19   A.   Right. I found an abnormality in the left side  
20      of her lower back called muscle spasm which I  
21      diagnosed as myofascitis, which means  
22      inflammation of muscles, which again, I think I  
23      testified earlier, can be a result from trauma,  
24      which is injury, or from other conditions, Yes,  
25      I did witness that.

1 Q. It can result from overexertion. It can result  
2 sometimes from sitting in an uncomfortable chair  
3 in a drafty area that will cause your back to  
4 tighten up, We've all experienced that, that's  
5 a fair statement, isn't it?

6 A. Tighten up, but not actual muscle spasm, I've  
7 not, personally, in 24 years of practice  
8 encountered real muscle spasm from sitting in a  
9 chair. It usually takes a pretty good injury to  
10 do that.

11 Q. Well, are you saying that people who fly in an  
12 airplane and are required to sit in the same  
13 airplane seat for an extended period of time, if  
14 they're flying from here to the West Coast, when  
15 they get off the plane they have that tightness  
16 in their back, that's the same myofascitis that  
17 we're talking about?

18 A. I don't think it has real muscle spasm. It does  
19 have that tenderness, muscular stiffness,  
20 achiness, but not actual muscle spasm. That's  
21 the difference between what Mrs. Cooks had and  
22 the usual types of aches and pains you get from  
23 overactivity.

24 Q. Yeah. And when you said that you witnessed the  
25 myofascitis in her back, did you call it mild

1 myofascitis? In your report you reported that  
2 it was mild myofascitis.

3 A. I may have -- I think that's a typographical  
4 error. It should be myo, not mild,

5 Q. M I L D.

6 A. Oh, that must be a typographical error. I think  
7 maybe the secretary -- I said posttraumatic  
8 myofascitis reaction.

9 Q. The conclusion that you've made that the  
10 falldown during February of 1987 is related to  
11 the injury sustained in the bus accident October  
12 of '86 relies to a great extent upon the truth  
13 and veracity of the person who's telling you  
14 about it, correct?

15 A. Absolutely correct.

16 Q. And that's the patient herself, Johnnie Cooks?

17 A. Yes, it is,

18 MR. TADDEO: Thank you very much,  
19 doctor. I have nothing further.

20 - - - -

21 DIRECT EXAMINATION OF' ROBERT D. ZAAS, M.D.

22 BY MR. PARIS:

23 Q. Dr. Zaas, you've examined people for 24 years as  
24 an orthopedic surgeon?

25 Well, in private practice. I'd have to add a

1 couple years in the Navy and then six years of  
2 training, yeah.

3 Q. Okay. Tell me, doctor, was there anything about  
4 the history that you took from Johnnie Cooks or  
5 the physical exam or her reactions during the  
6 exam which caused you to believe that she was  
7 not being truthful or accurate?

8 A. No. I thought that she was a very  
9 straightforward individual who was able to  
10 really give me a pretty forward history. She  
11 wasn't very detailed in exactly what date, but  
12 she knew that, for instance, one thing occurred  
13 four months later, and the cast was four or five  
14 weeks. She didn't have a lot of -- she didn't  
15 come in with a lot of this date or that day, but  
16 she was a good historian, except for the little  
17 details about how many days or how many weeks,  
18 and was otherwise very honest and  
19 straightforward with me.

20 Q. Was there anything about the examination that  
21 you performed that caused you to believe that  
22 she was exaggerating her symptoms?

23 A. Oh, no. You can't exaggerate the type of  
24 symptoms that I described anyhow. I just  
25 don't -- I don't pay attention to exaggerated

1 symptoms. After 20 years doctors pretty much  
2 learn how to find what's important and what  
3 isn't. I only described the findings that were  
4 important, the enlarged ankle, the degree of  
5 stiffness, the muscle spasm. These can't be  
6 exaggerated.

7 Q. You mentioned that Dr. Capracotto, this is the  
8 physician that examined Johnnie Cooks on  
9 November 12, 1986 in the University Hospital  
10 Adult Orthopedic Clinic, as a doctor in  
11 training. What does that mean?

12 A, He's one of the doctors that finished medical  
13 school and they're now undergoing teaching and  
14 training while working in the hospital. And if  
15 he completes his five years in the hospital as a  
16 resident, then goes on to pass the two parts of  
17 boards of examinations, be it orthopedic or what  
18 else he's going into, that he will be a board  
19 certified specialist. He's a doctor who's  
20 learning yet.

21 Q. I see. These are -- In other words, he's the  
22 type of gentleman that you're engaged in  
23 teaching?

24 A. Yes, sir.

25 Q. Okay. Have you reviewed any other records of



1 physicians who agree with you that there is a  
2 cause and effect relationship between the bus  
3 accident and Johnnie Cooks' ankle fracture?

4 A. Yes, I do.

5 Q. Who?

6 A. Dr. Laurence Bilfield.

7 Q. Thank you. And can you explain to the jury  
8 whether or not it is significant to you as to  
9 what the weather conditions were in February of  
10 1987 or what Johnnie Cooks was carrying or what  
11 she was wearing?

12 A. It wasn't significant because, in my opinion, a  
13 person who experiences these quick leg  
14 weaknesses that can occur from the lower back or  
15 perceived as shooting from the back down to the  
16 leg can occur in the summertime or wintertime,  
17 if you're wearing a teeshirt or wool coat, if  
18 you're wearing slippers or boots. I don't think  
19 it's terribly important what the weather is. If  
20 you're getting a sudden episode your leg is  
21 going to give on you regardless of how, where or  
22 what you are doing.

23 Q. Is there any way you can look at an x-ray and  
24 determine as an orthopedic surgeon the exact  
25 mechanism of injury?

1 A. Yeah. The x-ray in this particular case is a,  
2 you call it supination external rotation  
3 injury. The leg -- the foot actually was  
4 twisted outward in relationship to the shin  
5 bone. That's very characteristic of that  
6 particular fracture.

7 Q. Doctor, is that consistent with the type of  
8 history that Johnnie Cooks gave you?

9 MR. TADDEO: Objection.

10 Q. Doctor, do you have an opinion based upon  
11 reasonable medical probability as to whether  
12 that mechanism of fracture is consistent with  
13 the history that Johnnie Cooks gave you?

14 MR. TADDEO: Objection.

15 A. It would be consistent with some type of fall.  
16 I don't recall that she specifically knew that  
17 her leg was thrown out or how her foot was. I  
18 think she actually thought her leg was twisted  
19 under here.

20 MR. PARIS: Okay. Thank you,  
21 Doctor. I don't have anything further,

22 - - - -

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

24 BY MR. TADDEO:

25 Q. Doctor, I have a couple more questions.

1 Referring back to the University Hospital  
2 Adult Orthopedic Clinic report of November 12,  
3 1986, and specifically the second paragraph on  
4 that page, you must also have -- I think you  
5 have it in your left hand, the part that's in  
6 your left hand, yes, The second paragraph at  
7 the bottom of the page, it says, obese 47 year  
8 old black female CO -- does that mean complained  
9 of?

10 A. Yes.

11 Q. -- pain in LB, low back.

12 A. Yes.

13 Q. And often -- and often more concerned about  
14 litigation process than actual SX.

15 A. Symptoms. SX means symptoms.

16 Q. Okay. So you recognize that this particular  
17 physician did not -- wrote down his doubt about  
18 her veracity?

19 A. I think you would have to ask him that.

20 Q. Okay.

21 MR. PARIS: One last question.

22 I'm sorry, Joe,

23 MR. TADDEO: That's all I have.

24 - - - -

25 FURTHER DIRECT EXAMINATION OF

ROBERT D. ZAAS, M.D.

BY MR. PARIS:

Q. Notwithstanding Dr. Capracotto's ostensible feelings, did the doctor prescribe anything for Johnnie Cooks as it relates to her injuries?

A. Yes. He prescribed a lot of things, bed rest with hot packs. He was the first one that actually sent her home to bed. Motrin, 800 milligram, that's the largest dose, That's really a heavy therapeutic dose. Normally, Motrin comes anywhere from 200 to 800. This is 800 milligrams. Flexeril, Flexeril is a strong muscle relaxant. He did prescribe several different things.

Q. Did he schedule her back?

A. He scheduled her back in two months.

Q. Are those the actions of a physician who tends not to believe their patient's complaints?

A. Again I --

Q. You would have to ask the doctor,

A. I wasn't there. I didn't see it, but probably not, especially with that type of medication prescribed. That's a pretty strong medication.

MR. PARIS: Okay. Thank you very much, Dr. Zaas.



C E R T I F I C A T E

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

I, Gala J. Marzec, 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 2th day of August A.D. 19 89.

Gala J. Marzec  
Gala J. Marzec, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires September 19, 1990