

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

3 CARL WEINDEL, et al.,

4 Plaintiffs,

5 - vs -

JUDGE COLEMAN
 CASE NO. 78626

6 EVAN E. FRANCIS,

7 Defendant.

8 - - - - -

9 Deposition of ROBERT DAVID ZAAS, M.D., taken
10 as if upon direct examination before Dawn M.
11 Hagestrom, a Registered Professional Reporter
12 and Notary Public within and for the State of
13 Ohio, at the offices of Robert David Zaas, M.D.,
14 26900 Cedar Road, Beachwood, Ohio, at 6:30 p.m.,
15 on Wednesday, November 27, 1985, pursuant to
16 notice and/or stipulations of counsel, on behalf
17 of the Plaintiffs in this cause.

18 - - - - -

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1 APPEARANCES:

2 David M. Paris, Esq.
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4 Seventh Floor Engineers Building
5 Cleveland, Ohio 44114
6 (216) 621-2300,

7 On behalf of the Plaintiffs;

8 Joseph W. Pappalardo, Esq.
9 Gallagher, Sharp, Fulton & Norman
10 Sixth Floor Bulkley Building
11 Cleveland, Ohio 44115
12 (216) 241-5310,

13 On behalf of the Defendant.

14 ALSO PRESENT:

15 Dan Davis, Videotape Operator

16 - - - -

1 ROBERT DAVID ZAAS, M.D., of lawful age,
2 called by the Plaintiffs 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 DAVID ZAAS, M.D.

8 BY MR. PARIS:

9 MR. PARIS: I have a little
10 stipulation I'd like to ask you to go through.

11 It is stipulated by and between counsel for
12 the respective parties here that this deposition
13 will be used in trial and be taken by Daniel
14 Davis, pursuant to Ohio Superintendent's Rule 15
15 by means of videotaping and audiotape
16 simultaneously and may later, out of the
17 presence of the witness, transcribe or cause
18 said videotape to be transcribed and/or cause
19 said videotape or the transcript thereof to be
20 filed in the Court of Record. That the video
21 recording may be edited as directed by the Court
22 of Record to remove objectionable materials;
23 that all formalities as to the notice of the
24 time and the place of the taping of said
25 deposition, the showing of the videotapes to the

1 witness, the qualifications of the officers
2 before whom taken, the signature of the witness
3 and the written certification of the officers
4 before whom taken shall be expressly waived.

5 And I take it you will also waive the one
6 day filing requirement of the deposition
7 transcript as well as the videotape itself?

8 MR. PAPPALARDO: Yes. I mean
9 that's waived throughout in this case,
10 everything.

11 MR. PARIS: Yes.

12 MR. PAPPALARDO: No sweat.

13 THE VIDEOTAPE OPERATOR: We are now
14 on the record. Will the court reporter please
15 swear in the witness.

16 - - - -

17 (Thereupon, the witness was sworn by the
18 notary.)

19 - - - -

20 Q. Doctor, my name is David Paris. I represent Mr.
21 Carl and Patricia Weindel.

22 Would you please state your full name for
23 the jury?

24 A. Doctor Robert David Zaas.

25 Q. And what is your professional address?

1 A. 26900 Cedar Road, Beachwood, Ohio.

2 Q. And you are an M.D., a medical doctor?

3 A. Yes, I am.

4 Q. And are you licensed to practice in the State of
5 Ohio?

6 A. I am.

7 Q. And when did you become so licensed?

8 A. 1959.

9 Q. And do you have a particular specialty?

10 A. I specialize in orthopedic surgery.

11 Q. And can you tell the jury what orthopedic
12 surgery is?

13 A. Orthopedic surgery is a subspecialty that deals
14 with both the medical and surgical problems of
15 the skeletal system. That means the bones and
16 the joints and of their supporting structures,
17 which, of course, includes muscles, ligaments,
18 tendons, circulation and nerve control.

19 An orthopedic surgeon, as myself, takes
20 care of conditions that involve the spine,
21 that's the neck, the mid back and the lower back
22 and the extremities, the arms and the legs.

23 Q. You are a board certified orthopedic surgeon?

24 A. Yes.

25 Q. And, doctor, is that the highest achievement

1 attainable in your specialty in this country?

2 A. Board certification is the level of excellence
3 or recognition of a specialist in orthopedic
4 surgery in this country.

5 I'm a board certified orthopedic surgeon
6 certified by the American Board of Orthopedic
7 Surgery.

8 Q. Okay. Could you tell us a little bit about your
9 credentials, your educational background
10 providing us from the time you went through
11 medical school, your internships, residencies
12 and so forth up to the present time?

13 A. Well, after I graduated from Case Western
14 Reserve University in 1953, I went to the
15 University of Chicago School of Medicine, and I
16 graduated with an M.D. Degree in 1957.

17 I then had a one year internship at Mt.
18 Sinai Hospital in Cleveland, two years of
19 general surgery and neurosurgery training at
20 University Hospitals and Mt. Sinai Hospital in
21 Cleveland, and three additional years of
22 orthopedic surgical training.

23 And I finished my orthopedics at Indiana
24 University, that's at Indianapolis.

25 Q. And how long have you been in private practice?

1 A. Actually I have been in the Cleveland area in
2 private practice since 1965.

3 I did spend two years on active duty with
4 the United States Navy, I was surgeon for the
5 7th Fleet in the mid 1960's as, in the early
6 Viet Nam era.

7 Q. Would you tell us with what medical
8 organizations, societies and associations you
9 are a member?

10 A. I'm a member of the American Medical
11 Association, the Ohio State Medical Association,
12 the Academy of Medicine of Cleveland.

13 I'm also a member of a group of
14 organizations whose membership is limited to
15 orthopedic specialists such as the American
16 Board of Orthopedic Surgery, the Ohio State
17 Orthopedic Association, the Cleveland Orthopedic
18 Association, and I have been several different
19 officers with the Cleveland group.

20 Q. Could you tell us with what hospitals you have
21 staff and courtesy privileges?

22 A. During, I think, the past ten or eleven years I
23 have tried to limit all of my admissions,
24 surgeries and teaching responsibilities to Mt.
25 Sinai Hospital, particularly since they have

1 been affiliated with the medical school at Case
2 Western Reserve University.

3 I also have courtesy privileges, mostly in
4 the emergency room, at Hillcrest Hospital, St.
5 Luke's Hospital and Suburban Hospital.

6 Q. You alluded to your involvement in teaching.
7 Can you tell us a little bit about that?

8 A. I have a number of different responsibilities
9 which actually take up at least two full days of
10 my week, such as I teach at the medical school
11 in orthopedics as an instructor, also anatomy,
12 orthopedic anatomy.

13 I have been director of orthopedic resident
14 training at Mt. Sinai Hospital. I have
15 responsibilities in arranging ongoing lectures,
16 what we call biomechanical and on-hand training
17 for doctors who have been out of medical school,
18 but are in training as residents in orthopedics.

19 And I have also been a member and chairman
26 of the Northern Ohio Orthopedic Association
21 Committee for continuing education for doctors
22 already in practice.

23 So I have been responsible for arranging
24 educational programs and lectures for the
25 orthopedic doctors in the Northern Ohio area to

1 continue their education.

2 I think two weeks ago Saturday I was a
3 chairman of a Saturday morning session on hip
4 reconstruction and total hip surgery.

5 Q. Okay. Could you tell the ladies and gentlemen
6 of the jury if in your professional capacity you
7 had occasion to examine and treat Mr. Carl
8 Weindel?

9 A. Yes.

10 Q. When was the first time that you saw him?

11 A. Well, I saw Mr. Weindel for the first time on
12 October 5, 1983.

13 Q. Did you obtain a history as to what problems he
14 was having?

15 A. Yes.

16 Q. And what was that history?

17 A. The history he gave me, that he was struck and
18 knocked down by a car while he was a pedestrian
19 standing on a sidewalk on August 5, 1983. And
20 he told me that he was struck from the right
21 side and from behind by the car, and this caused
22 him to be knocked to the ground.

23 He was taken by ambulance to Euclid General
24 Hospital. He told me he had some cuts,
25 particularly a cut on the back of his skull, and

1 that he had to have the cut stitched up or
2 sutured.

3 And while in the emergency room, he also
4 told me that he had pain, not only in his head
5 where the cut was, but that pain that went down
6 from his upper back to his lower back.

7 And that as he stayed in the emergency
8 room, I think the accident was later in the day
9 or later in the p.m., and he was actually in the
10 emergency room until the next day, I think till
11 after midnight, and then he had a set of x-rays
12 of his entire spine as well as the skull.

13 And then he was finally released and
14 allowed to go home.

15 Now, he went on to tell me that most of his
16 trouble that he had afterward was with his lower
17 back. He had some other problems involving his
18 neck or upper back, sometimes his shoulder or
19 arm, but most of the problems that he had that
20 continued after this accident was for his lower
21 back.

22 Now, he told me, when I saw him on October
23 5, 1983 that after he went home from Euclid
24 General, that he received some follow-up
25 treatment from Dr. Gallo at the Euclid Clinic,

1 and Dr. Gallo obtained some additional x-rays
2 apparently of his mid or lower back, I guess his
3 ribs to be more specific. And that Dr. Gallo
4 prescribed some pain medication.

5 And when I saw Mr. Weindel on October 5,
6 now that's two months after his accident, he was
7 still experiencing pain in his back. The pain
8 would seem to start in the mid or lower portion
9 of his back, was worse on the right side.

10 The pain would seem to go to the side and
11 go up to his shoulder blade or down into his,
12 really lower waist area of his back.

13 He complained that when he would raise his
14 right arm up in certain directions that the pain
15 of his back would get worse.

16 He also told me that his lower back would
17 feel bad if he would bend down and lift upward,
18 and that he had some other symptoms, such as
19 ringing in the ears, which he felt related to
20 the head injury and although better, had not
21 completely gone away.

22 So basically what he complained to me
23 about, two months after his accident, was back
24 pain, mid back and low back pain more on the
25 right side and aggravated by such things as

1 bending and twisting and lifting, and also by
2 movement of his shoulder blade.

3 Q. Okay. Did he give you any past medical history?

4 A. Yes.

5 Q. And what was that?

6 A. Well, he told me that he had had a number of
7 injuries in the past, like he thought it was
8 1967, I'm sorry, 1976 or 1977, that he had been
9 in a motorcycle accident and had some type of
10 fractured left hip, and that he was treated by
11 Dr. Curran, whose is an orthopedic surgeon, that
12 he was hospitalized for nine days, but didn't
13 have to undergo any surgery at that time.

14 He told me his hip healed up and he didn't
15 have any problems with it once it did heal up.

16 He told me he was in Viet Nam, he thought
17 that was in the '60's, and that he suffered a
18 right forearm gunshot fracture, and that healed
19 up, with some scarring.

20 And he showed me some limitation of extreme
21 turning, but his right arm was actually quite
22 good.

23 He told me that he never previously had any
24 significant back injuries or symptoms before
25 August 5, 1983, told me that most of the time he

1 had been doing a type of construction work
2 related to paving or road work, that type of a
3 thing, and that he had never had to miss any
4 work time, nor had he had to have any treatment
5 for his back for many years before the August 5,
6 1983 accident.

7 Q. Okay. Did you perform a physical examination on
8 the gentleman?

9 A. Yes.

10 Q. And can you tell us a little bit about that,
11 both your objective and subjective findings?

12 A. Well, my examination is an orthopedic
13 examination. It is a little bit different then
14 what one gets when you go to a doctor who
15 listens to your chest and is looking in your
16 throat.

17 We are interested in, orthopedic surgeons,
18 basically in the muscles, ligaments, bones,
19 joints, tendons, use of your joints, motion of
20 your spine, strength of your muscles, things
21 like that.

22 When I examined Mr. Weindel he appeared to
23 be muscular, well developed. He was 34 years
24 old when I saw him in 1983. And I found some
25 abnormalities in specifically two areas, one was

1 the base of his neck, what we call the cervico
2 trapezius junction, that's what we call the nape
3 of the neck, the muscles that connect up from
4 the base of the neck up toward the side of the
5 neck.

6 I found at that time some muscular
7 tightness, and I found a little bit of
8 restriction of bending, but otherwise good
9 motion of the neck.

10 I did note, however, that when he turned
11 his neck completely to the right, that this
12 would cause some pain that went up into the
13 upper arm.

14 And I also was able to palpate, not in the
15 neck itself, but in the trapezius muscle, that
16 is right above the shoulder blade, some muscle
17 spasm on the right side.

18 Q. Can you tell us what muscle spasm is, doctor?

19 A. Muscle spasm is an uncontrolled or, how would I
20 say, a spontaneous cramping or knotting up of a
21 muscle, that, in this case, was related to
22 injury. I think we can call it a charley horse
23 if it will occur in the leg.

24 But a muscle spasm is that cramping or
25 knotting of the muscle that a person feels after

1 an injury to a muscle.

2 Q. Doctor, is that an objective sign of injury to
3 the muscle?

4 A. Absolutely. One can feel it. In fact,
5 sometimes one can see it.

6 Q. Okay. Please continue with your examination.

7 A. Again, certain movements of the right shoulder
8 caused pain in the region of the trapezius, but
9 that was the area of the muscle spasm.

10 Now, I also found some muscle spasm on the
11 right side in the lower back, I called it the
12 dorso lumbar muscles, that's the muscles just
13 above the waist where one would have a belt
14 line, it would be just above that level. And,
15 again, these, this muscle spasm was limited to
16 the right side.

17 When Mr. Weindel bent forward, he could
18 only do so to bring his, the tips of his finger
19 to 9 inches to the finger, finger tip to the
20 floor. I thought that was a moderate
21 restriction for a young man with good muscle
22 build, of that young age who, otherwise, was
23 doing, had normally done heavier work.

24 I did not find any abnormalities that would
25 relate to the nerve system of the upper and

1 lower spine.

2 I did find some tightness of the muscles of
3 the right shoulder and shoulder girdle, but,
4 again, I thought that was due to the same
5 muscles that were in spasm, the trapezius and
6 scapular muscles.

7 Basically the area of the body, maybe I'm
8 confusing everybody, the area of the body was to
9 the right of the midline, if you looked at Mr.
10 Weindel's back from behind, if you look at where
11 his shoulder blade started, going to the right
12 of that all the way down toward the mid to the
13 mid and lower back, those muscles were tender,
14 stiff, and had some spasm.

15 Q. Okay. Does that complete your physical
16 examination?

17 A. Those are basically my positive findings.
18 Specifically, I just found certain degrees of
19 limitation in different areas. But, to put it
20 in very clear terms, the muscles to the right of
21 midline, the shoulder blade to the mid back, the
22 lower back, showed evidence of injury.

23 Q. Okay. Now, based upon the history that Mr.
24 Weindel gave you, his complaints and your
25 examination, did you formulate a diagnosis?

1 A. Yes.

2 Q. And what was your diagnosis?

3 A. Contusing and/or spraining injuries to the right
4 scapular, thoracic and dorso lumbar region with
5 posttraumatic myofascitis reaction involving the
6 right trapezius, paradorsal, interscapular and
7 upper lumbar muscles and ligamentous
8 attachments.

9 Q. Can you break that down in layman's terms for
10 us, doctor?

11 A. Sounds clear to me. The, basically we're
12 talking about spraining or soft tissue injury,
13 not fractures, not bone injuries, that involve
14 the muscles that start from just below the base
15 of the neck and involve the muscles starting
16 with the base of the neck, we call it trapezius
17 muscles, involving the muscles between the
18 shoulder blades, those are the interscapular
19 muscles, the muscles that go down a little bit
20 farther in the back, again, just above the
21 waist, we call those the dorso lumbar muscles.
22 And then the lower muscles of the back, those
23 that go almost to the upper hip area, called the
24 lumbar muscles.

25 And as a result of those soft tissue

1 apraining injuries inflammation, tenderness,
2 stiffness and muscle spasm developed.

3 The word that we use for that combination
4 of muscle spasm, stiffness and tenderness is
5 myofascitis. Since it occurred after injury we
6 use the word traumatic myofascitis.

7 All I really did, in that long dissertation
8 about the different areas of the body, was
9 describe which muscles were injured.

10 I think it was, again I'll go back and make
11 it clear, again, they were the muscles between
12 the shoulder blades all the way down to the
13 lower back on the right side.

14 Q. Okay. Did you give Mr. Weindel any
15 recommendations at that time?

16 A. The most important thing that I felt that he
17 needed was to try to stretch out the muscles
18 that were bunched up and in muscle spasm.

19 But, again, I said that he would have to
20 try to limit from doing really too much heavy
21 things, because I felt that a lot of excessive
22 bending or lifting or really repeatedly working
23 with his right side, his arm, shoulder and back,
24 would tend to prolong the type of work, the kind
25 of injury he had. In other words, would make

1 his healing slower.

2 So I did stress certain specific activity
3 restrictions. Even though I did become aware at
4 that time the type of work he had to do to make
5 a living.

6 I thought that he could take heat or put
7 heat on it, and at the other times maybe take a
8 pain pill or a muscle relaxer.

9 Q. Okay. Did you formulate an opinion based upon
10 reasonable medical certainty as to whether or
11 not Mr. Weindel was disabled from working in
12 heavy construction as of the date of your
13 examination?

14 A. Yes, I did.

15 Q. And what was that opinion?

16 A. It was my opinion as of October 5, 1983, that he
17 still had not recovered enough from the accident
18 that occurred on August 5, 1983, that he was
19 still disabled from working in heavy
20 construction because of the trunk and spinal
21 injuries that I described.

22 Q. Okay. Now, I take it, doctor, you did have a
23 history that he was a laborer in the
24 construction field?

25 A. Yes. I was more aware that he did things that

1 have to do with paving and road paving, and that
2 type of construction work, yes.

3 Q. Doctor, I'd like to ask you to assume that Mr.
4 Weindel had an opportunity to work on a job
5 construction project beginning August 8th, 1983,
6 and that this particular job project involving
7 paving and road work and labor continued and
8 lasted and he would have been able to work at
9 that job through October 30th, 1983.

10 Now, I'd also like you to assume that he
11 did not participate in that job at all, and I
12 would like to ask you, based upon those assumed
13 facts, and assume those to be true, do you have
14 an opinion based upon reasonable medical
15 certainty as to whether the time off from work
16 that Mr. Weindel took between August 8th, 1983
17 and October 30th, 1983 was made necessary and
18 was reasonable by virtue of the injuries he
19 sustained in this accident.

20 First of all, doctor, do you have an
21 opinion?

22 MR. PAPPALARDO: Objection. Go
23 ahead.

24 A. Yes, I have an opinion.

25 Q. And what is your opinion?

MR. PAPPALARDO: Objection. Go

ahead.

A. It is my opinion, based on the history given to me by Mr. Weindel, my physical findings and review of subsequent x-rays that Mr. Weindel was disabled from doing construction work between August 5, 1983 till the latter part of October, 1983.

Q. Okay. Thank you, doctor.

Now, did you see Mr. Weindel again?

A. Yes.

Q. And when was that, doctor?

A. I next saw him on November 28th, 1984.

Q. May I interrupt you just one second.

Would it make any difference to you in the opinions or the diagnosis that you made or the type of treatment that you rendered if Mr. Weindel was, rather than standing on the sidewalk at the time that he got hit, standing in the street next to the curb?

MR. PAPPALARDO: Objection.

Q. Would that alter your diagnosis or your treatment of this gentleman?

A. None whatsoever. The exact mechanism of the injury was that he was struck by a car, that

1 determined my opinion. That was the history I
2 found most important in determining the
3 treatment that he needed.

4 Q. Would it affect you're diagnosis or treatment of
5 this gentleman as to whether he was struck from
6 the left side or the right side?

7 A. No, sir.

8 Q. Okay. Moving to the next time you saw Mr.
9 Weindel, doctor, when was that?

10 A. November 28, 1984.

11 Q. And can you tell us a little bit about that
12 visit?

13 A. Well, he told me on November 28, 1984, now we're
14 getting a little bit more than a year after the
15 August 5, 1983 accident, that he was still
16 having problems with his back. He told me that
17 his lower back had remained somewhat painful and
18 stiff.

19 He had gone back to work in road
20 construction. Again, he told me that his job
21 was rather heavy and that not always, but at
22 times he had to do a lot of bending and lifting
23 and twisting and turning, and that he really
24 never was able to throw off the after effects of
25 the August 5, 1983 accident in that the constant

1 strain of his job just seemed to limit him from
2 making too much progress.

3 He told me that his back felt stiff and
4 sore when he would get up in the morning, even
5 after a nice full nights sleep, and that he felt
6 stiff early in the day. And that actually if he
7 would go back to work and then keep moving and
8 keep on the go, in other words, get really
9 warmed up and kept going, his back actually let
10 him tolerate the discomfort and he could go on
11 to work. As soon as he would finish work and
12 sit down his back would stiffen up again.

13 These type of symptoms he specifically said
14 he never had before August 5, 1983 and he told
15 me his pain, again, was on the right side, a
16 little worse between the mid and upper lumbar
17 spine, that's the lower back again just above
18 the waist, and pretty much the same area that he
19 told me in 1983, although not as much up into
20 the shoulder blade or upper part of his back,
21 most of that had gone, up toward the base of the
22 neck had felt better.

23 But the part that was in the lower part
24 well below the shoulder blade, what we had
25 called the low back, had not gotten better. And

1 he was a little bit apprehensive in that he knew
2 the type of work that he had been doing and the
3 fact that he just wasn't making much progress,
4 he just didn't feel that he got much better over
5 a whole year.

6 He had had some conservative treatment, I
7 think, by two different doctors, mostly in the
8 form of either osteopathic or chiropractic type
9 of treatments, physical therapy.

10 And these were, he told me, of limited
11 value, but really didn't give him any lasting
12 benefit.

13 Q. Okay. More like temporary relief?

14 A. Yes, yes. I think there is two separate doctors
15 he went to, a few visits each, and none of them
16 really helped him over a long period of time.

17 Q. Okay. Did you perform a physical examination?

18 A. Yes.

19 Q. And can you tell us about that, doctor?

20 A. Yes. My examination, again, showed that he had
21 muscle spasm, this time pretty much confined to
22 the lumbar spine and going down the middle of
23 the lumbar spine almost to the waist level, the
24 belt level and then outward toward the right
25 side.

1 His shoulders could be moved okay. There
2 was, you know, some tenderness over the upper
3 spine, but that spasm that I had noted before in
4 the upper spine between the shoulder blades had
5 healed up.

6 The only thing I found was the same area in
7 the lower back and the right side that was
8 present in 1983 remained tender in the lower
9 back, remained with muscle spasm.

10 There was still some limitation of
11 bending. For instance, Mr. Weindel could only
12 go forward to about nine or ten inches to get
13 his finger tips to the floor, and, again, for a
14 man whose doing the type of work he did I would
15 have normally thought, with his age, would be
16 quite flexible and be able to bend all the way
17 down. And there was a fair amount of limitation
18 of motion.

19 Neurologically, in other words, the nerves
20 in the legs were all right, they did not show
21 evidence of pressure or injury.

22 Q. And, once again, on that examination you were
23 able to see and palpate muscle spasm?

24 A. Yes.

25 Q. And muscle spasm is an objective finding that

1 you can see or touch, not withstanding what the
2 patient tells you?

3 A. Yes, that's correct.

4 Q. Okay. What did you advise Mr. Weindel as a
5 result of that visit?

6 A. Basically the same type of treatments, that's
7 about all that was really available for this
8 type of injury, more or less control of his
9 activities to the best he could within the
10 confines of his job.

11 Type of stretching type of exercises, not
12 straining, but stretching, try to loosen it up,
13 and aspirin or what we call non-narcotic
14 analgesic type medication.

15 Heat was recommended when he got up in the
16 morning so that he could loosen his back up
17 sooner than it was happening when he was telling
18 me.

19 Q. Okay. Did your diagnosis remain the same,
20 doctor?

21 A. Yes.

22 Q. And at that time, as of November of 1984, did
23 you have an opinion -- well, let me interrupt
24 one second.

25 I'm going to be asking you a number of

1 opinions because of your expertise throughout
2 this deposition.

3 When I do ask an opinion, if it's okay with
4 my opposing counsel, I'd like you to assume that
5 it's based upon reasonable medical certainty.

6 MR. PARIS: Is that okay, Mr.
7 Pappalardo?

8 MR. PAPPALARDO: Oh, sure, that's
9 okay with me. I would hope it would be based on
10 that.

11 Q. Okay. I just want you to assume that all your
12 answers to my questions regarding your opinion
13 are based upon reasonable medical certainty.

14 Doctor, at that time, November 28th, 1984,
15 did you have an opinion as it relates to whether
16 or not there was a direct cause and effect
17 relationship between the findings that you made
18 in regard to Mr. Weindel's low back injury and
19 his automobile accident of August 5th, 1983?

20 A. Yes.

21 Q. And what was your opinion?

22 A. It was my opinion that the soft tissue injuries
23 I diagnosed and treated were causally related to
24 the August 5, 1983 pedestrian/automobile injury.

25 Q. Okay. At that time on November of 1984, did you

have an opinion as to the future outlook of Mr. Weindel's injury?

MR. PAPPALARDO: Objection.

4 A. Yes, I have an opinion.

5 Q. And -- he makes me nervous when he objects.

6 MR. PAPPALARDO: No, no. That's
7 not the basis. It's not based on reasonable
8 medical certainty. Don't worry about that.

9 Q. And, doctor, what was your opinion?

10 MR. PAPPALARDO: Objection. Go
11 ahead.

12 A. It was my opinion as of November 28, 1984, again
13 based on the history given by Mr. Weindel, his
14 physical findings, and review of other studies
15 for corroboration, that the condition that I
16 diagnosed, the soft tissue, lower spinal injury
17 would continue to cause him difficulty
18 indefinitely.

19 I felt there was potential for some
20 improvement in the future.

21 Q. Okay. Can you tell us a little bit about the
22 injuries to the muscles and ligaments and
23 tendons as it relates to somebody like Mr.
24 Weindel, and tell us what is it about the
25 dynamics or mechanism of the injury that causes

1 the type of chronicity or chronic problems that
2 last into the indefinite future? What happens
3 to the muscles?

4 A. Injuries to the spine or the back, particularly
5 the lower back, are very complex because the
6 muscles themselves are a very complicated
7 weaving in and out of various groups.

8 Once muscles or ligaments, ligaments being
9 the hard tendons that hold the bones together,
10 muscles, of course, being the meat of the back,
11 that's what lets us move from side to side,
12 forward and backward, but once these portions
13 are injured it's difficult to get a complete
14 healing, because if we allow a patient to be
15 totally at rest the muscles will stiffen up, if
16 we tell them to go out and do a lot of exercise
17 and strain and strengthen themselves, the
18 stretched out, scarred areas of the muscle never
19 will heal.

20 It is almost one of those dilemmas that
21 doctors don't have a complete answer to it.

22 On top of that, certain individuals who
23 have jobs which in themselves are strenuous,
24 make it more difficult to even make a
25 satisfactory healing of the problem because the

1 fatigue and strain of the job itself seems to
2 limit the amount of healing that will happen on
3 a day-to-day basis.

4 So when a person goes to sleep at night
5 maybe they're healing a little bit and they go
6 back to work and they get so much fatigue that
7 it tends to make it sore again.

8 We just have more difficulty with laborers
9 and individuals who have moderately severe soft
10 tissue injuries and who have to use their back a
11 lot, and particularly when the injury was a
12 fairly significant one.

13 Q. Okay. Thank you, doctor.

14 Did you have occasion to see Mr. Weindel
15 again after November of '84?

16 A. Yes.

17 Q. And when was that?

18 A. November 14, 1985.

19 Q. And can you tell us about that visit?

20 A. Again, Mr. Weindel came in pretty much with the
21 same symptoms. He was still experiencing pain
22 in his back, and he felt, he told me, though,
23 that during the last summer that perhaps his
24 back wasn't quite as bad because he was doing
25 some outdoor road construction.

1 He was working, what, three or four days a
2 week doing paving work. And that with the
3 weather being very warm for the past mild summer
4 that we had, except for the stiffness that he
5 got up in the morning, that he seemed to be a
6 little bit better than he was once the fall
7 came.

8 He told me that he still had to take a hot
9 tub bath in the morning, even in the summer, in
10 order to loosen up to go to bed, to go to work,
11 because his back still felt stiff.

12 Now, at other times he told me that his
13 back would get tight again and when the weather
14 got cooler after September or October he got
15 much more painful and stiff.

16 The pain started in his lower back, would
17 go across his back mostly to the right side. He
18 was complaining about some sensitivity of a bone
19 in the back, in his lower back on the left side
20 as well, and that he told me that he would just
21 have to stop sometimes and rest or take a warm
22 bath to relieve his symptoms.

23 He told me, again, that the bending and
24 lifting of the type of things that he was doing,
25 particularly when he was very busy, very

1 strenuous, when he to do a lot of it, would make
2 his pain worse.

3 His back always would tighten up after he
4 would stay quiet for a long time, like when he
5 went to bed or sit in a chair.

6 I think breaking that down, that was pretty
7 much the same type of symptoms that he had in
8 1984, pretty much the same type of symptoms that
9 he had in 1983, although in 1983 because he
10 still hadn't recovered from the upper spinal
11 symptoms, too.

12 Everything after late 1983 has involved the
13 lower portion of the back.

14 Q. Okay. Now, did he also give you a history as it
15 relates to any event which occurred in December
16 of 1984?

17 A. Yes.

18 Q. Can you tell us about that?

19 A. In December, 1984 he was involved in another
20 automobile accident when his car was struck by
21 another car, and this caused him to sustain
22 fairly serious, what we call anterior pelvic and
23 bladder injuries.

24 He actually underwent an emergency
25 operation to repair a ruptured urethra. That's

1 an injury to the bladder at the base of the
2 bladder. And he was treated for some other
3 extremity injuries, I think an ankle fracture, a
4 hand injury, some chest problem. Most serious
5 by far was this anterior pelvic area, really the
6 lower portion of the abdomen, the lower portion
7 of the pelvis in the front.

8 Q. So in the area of the, above the groin, but the
9 lower abdomen area?

10 A. Yes.

11 Q. Okay. Did you perform an examination of Mr.
12 Weindel on that occasion?

13 A. Yes.

14 Q. And can you tell us about that?

15 A. His examination, he had very much the same
16 findings that I found in 1984 and 1983.

17 Specifically, I found some muscle spasm in
18 the mid and lower lumbar spine, this time it was
19 slightly worse on the left side, but he was only
20 able to forward bend about 7 or 8 inches to get
21 his finger tips to the floor.

22 He had some tenderness over the posterior
23 left sacroiliac joint.

24 He had slight tightness of left hip
25 flexion, but other neurological tests were

normal.

Breaking that down in simple terms, primarily the same physical findings that I had noted in the previous examinations were present in the lower lumbar spine.

There was just one other area of tenderness on the left side in the lower sacroiliac area that hadn't been present before, but that was about the only change in his physical findings.

Q. Okay, did you take any x-rays on that occasion?

A. Yes. I requested x-rays of the lower back, hip joints and pelvis be obtained.

Q. And what did the lower back x-rays reveal?

A. They were basically within normal limits. I thought a lateral projection there may be a slight tendency towards straightening of the lordotic curve. That would be a result of muscle spasm in the back. Quite borderline findings.

But Otherwise the back itself was normal. There was a minor anomaly at the first sacral segment of no significance.

Q. What is that called?

24 A. Spina bifida occulta of S-1.

25 Q. And what is that?

A. It is an area of the lower portion of the spine which instead of becoming totally filled with calcium partially remains in a cartilage state. The spine looks perfectly normal except that part of the bone is still slightly soft.

6 Q. Doctor, do you have an opinion as to whether
7 that anomaly that you just described has any
8 significance as it relates to the ongoing
9 complaints of pain that Mr. Weindel has in his
10 low back?

11 A. No. That's just an individual appearance of a
12 spine that a person was born with.

13 Q. Okay.

14 A. I didn't really mention it before, except for
15 completion.

16 Q. Okay.

17 A. There was, on that same series of x-rays, there
18 was also an x-ray of the pelvis which clearly
19 showed that there had been some fractures of the
20 right side of the pelvis.

21 This, I guess, was related to the December
22 of 1984, really right up in the groin, right up
23 under the abdomen, and there was a fair amount
24 of deformity in the pelvis as a result of that.

25 There was, also, just outside and above the

1 left hip, some, what we call, bony ossification,
2 that means calcium deposits, not in the hip
3 socket, but just in the surface, that apparently
4 related to a 1976 motorcycle accident.

5 Q. Okay. Did you make any recommendations to Mr.
6 Weindel at that time?

7 A. I unfortunately told him that we did not have
8 very much more to offer him other than the
9 conservative treatment, the heat, the activity
10 restrictions, the type of exercises that I told
11 him, we call it light stretching and mobilizing
12 exercises, and he just was not a candidate for
13 any of the surgical procedures that we might
14 have, he was not a candidate for something that
15 we could take him into the hospital for and
16 cure.

17 He was basically an individual that had to
18 be treated over a long term period of time with
19 what we call conservative, nonsurgical
20 treatment.

21 Q. Something that would include like heat or
22 medication or rehabilitative stretching
23 exercises?

24 A. Yes, I think we can have many, many different
25 forms of heat, anything from a hot shower to the

1 more superficial types, to the more deeply
2 ingrained types, such as physical therapy type
3 of heat which he had received and unfortunately
4 wasn't very beneficial to him.

5 Some of those physical therapies include
6 ultrasonic and diathermy. Then there is some
7 exercises that we basically call the William's
8 Program, that's the type of stretching of the
9 muscles without putting strain on that area.

10 And then really getting back to the most
11 important thing, trying to avoid putting
12 excessive strain on an already injured back.

13 Q. Okay. So, in other words, if Mr. Weindel was
14 using a heating pad at home, taking hot baths at
15 home, perhaps his wife would give him a message
16 a couple of times a week, as it relates to the
17 low back, take some aspirin when necessary,
18 these forms of self help, as well as the
19 stretching would be acceptable, recommended
20 modalities of treatment, wouldn't they?

21 A. Not only that, I'll have to quite interject and
22 say that's all we got. There isn't really very
23 much more for that type of back condition that
24 has gone on that long in the absence of bone
25 changes, surgical changes, neurological

1 changes. That is the treatment that there is.

2 MR. PAPPALARDO: Objection. Move
3 to strike.

4 Q. Maybe I should rephrase the question in terms of
5 I would like to ask you to assume that Mr.
6 Weindel was utilizing a heating pad at home on a
7 regular basis, that he is taking hot baths in
8 the morning and in the evening, that his wife is
9 giving him messages a few times a week to the
10 low back, that he is performing some light
11 stretching exercises and trying, as best he can,
12 in view of his financial situation, to restrict
13 some of the heavier lifting activities that he
14 has.

15 Asking you to assume those things, those
16 facts to be true, doctor, do you have an opinion
17 based upon reasonable medical certainty as to
18 whether these types of modalities of treatment
19 are acceptable for Mr. Weindel?

20 A. Yes, I have an opinion.

21 Q. And what is your opinion?

22 A. It is my opinion that the types of treatment you
23 described, the various types of heat, heat
24 being, him using a heating pad. Other forms of
25 heat, of course, would be ultrasonic or some of

1 the deeper heat modalities, which he already has
2 received, followed by certain stretching
3 exercises, not straining, but stretching
4 exercises, sometimes called the William's
5 Exercise Program, which are efforts to tone up,
6 stretch out or limber up the back without
7 putting strain.

8 And finally the activity restrictions,
9 which are needed, these are in my opinion not
10 only the acceptable, but this is what we have to
11 offer.

12 We don't have too much more to offer an
13 individual with this type of back condition at
14 this stage in the absence of any changes in his
15 x-rays or neurological status.

16 Q. Okay. Doctor, I'd like to ask you if you have
17 an opinion, as of today, after your November,
18 1985 examination of Mr. Weindel, if you have an
19 opinion as to whether a direct cause and effect
20 relationship exists between the injuries that
21 you treated Mr. Weindel for and his
22 automobile/pedestrian accident of August 5th,
23 1983?

24 A. I do have an opinion.

25 Q. And what is your opinion?

1 A. It is my opinion that the back condition that I
2 treated Mr. Weindel for or for which I treated
3 Mr. Weindel related by cause to the August 5,
4 1983 accident.

5 Q. And, doctor, do you have an opinion as to
6 whether Mr. Weindel's present complaints,
7 present symptoms, your present findings are
8 primarily due to his accident of August 5th,
9 1983? First of all, do you have an opinion?

10 A. Yes.

11 Q. And what is your opinion?

12 A. It is my opinion, that as of, I think it was,
13 November 14, 1985, when I last examined Mr.
14 Weindel, that the major degree of his complaints
15 mostly those of his lower back were still an
16 after effect or thus causally related to the
17 August 5, 1983 accident.

18 Q. And do you have an opinion as to whether Mr.
19 Weindel's present complaints, symptoms and your
20 findings are consistent with the type of
21 injuries he sustained on August 5th, 1983?

22 MR. PAPPALARDO: Objection.

23 Q. First of all, doctor -- doctor, let me rephrase
24 that question in view of the objection.

25 Do you have an opinion based upon

1 reasonable medical certainty as to whether Mr.
2 Weindel's present complaints, his present
3 symptoms, your present findings are consistent
4 with the type of injuries he sustained on August
5 5th, 1983.

6 MR. PAPPALARDO: Objection.

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

8 A. Yes.

9 Q. What is your opinion?

10 MR. PAPPALARDO: Objection.

11 A. Mr. Weindel's symptoms, his complaints and my
12 clinical findings would be consistent with an
13 injury of the type that occurred on August 5,
14 1983.

15 Q. Doctor, do you have an opinion based upon
16 reasonable medical certainty as to whether Mr.
17 Weindel's lower back injury is chronic as of
18 this time?

19 MR. PAPPALARDO: Objection.

20 A. I certainly do.

21 Q. And what is your opinion?

22 MR. PAPPALARDO: Objection.

23 A. The word chronic in medicine means over six
24 months duration. Therefore, it is my opinion
25 that Mr. Weindel's condition is chronic, in

1 other words, it has lasted more than six
2 months. As a matter of fact, it has lasted more
3 than two years.

4 Q. And, doctor, do you have an opinion based upon
5 reasonable medical certainty as to the prognosis
6 or future outlook of Mr. Weindel's low back
7 injury?

8 A. Yes, I have such a prognosis.

9 Q. And what is your prognosis?

10 MR. PAPPALARDO: Objection.

11 A. My prognosis is that for his lower back the
12 outlook or prognosis is fair to fairly good. I
13 base that on the fact that although he is still
14 experiencing symptoms and I'm able to detect
15 positive clinical findings, he has not developed
16 complications, his spinal x-rays have remained
17 free of any major arthritic change and he has
18 not had any neurological complication.

19 However, I acknowledge he is continuing to
20 have symptoms.

21 Q. And, doctor, do you have an opinion based upon
22 reasonable medical certainty as to whether his
23 complaints, symptoms and findings will last into
24 the indefinite future? First of all, doctor, do
25 you have an opinion?

1 MR. PAPPALARDO: Objection.

2 A. Yes.

3 Q. What is your opinion?

4 A. It is my opinion, I think it's been repeated
5 after my 1984 and again my recent 1985
6 examination, that on the basis of the clinical
7 course thus far and the type of symptoms and
8 physical findings that I detected when I
9 examined Mr. Weindel, that his back pain,
10 stiffness, the type of limitation of motion will
11 continue indefinitely.

12 Q. And, doctor, do you have an opinion based upon
13 reasonable medical certainty as to whether or
14 not Mr. Weindel will, in all likelihood, require
15 future medical treatment of a conservative
16 nature?

17 A. Yes, I have an opinion.

18 Q. And what is your opinion?

19 MR. PAPPALARDO: Objection.

20 A. Again, based on all of the history and the
21 events that have transpired so far, my physical
22 findings on three examinations between '83 and
23 '85, that Mr. Weindel will need some further
24 conservative treatment to his back mostly
25 outpatient treatment probably in the form of

1 physical therapy, therapy modalities and
2 medication in the future for this indefinite
3 period of time.

4 THE VIDEOTAPE OPERATOR: Excuse me
5 one moment. Thank you.

6 Q. Doctor, I'd like to ask you to assume a few more
7 facts to be true for my next couple of
8 questions.

9 I'd like to ask you to assume that sometime
10 in 1968, when Mr. Weindel was either in high
11 school or just getting out of high school, he
12 had a low back x-ray, for one reason or the
13 other, he may have injured his low back in some
14 regard, but, in any event, the low back film was
15 negative for fracture or injury; that whatever
16 the event or incident was was certainly not an
17 incident that required any follow-up medical
18 care for Mr. Weindel's low back and certainly
19 caused him no pain, problems of any ongoing
20 nature.

21 I'd also like to ask you to assume that
22 sometime in the early '70's, while on the road
23 construction crew, Mr. Weindel was riding a
24 tractor and was involved in an automobile
25 accident with a car and that he sustained a

1 minor soft tissue injury to his low back, for
2 which he went to Lake County Memorial Hospital
3 emergency room, and thereafter had no follow-up
4 medical care or treatment of any kind, nor after
5 that did he experience any pain, problems or
6 discomfort with his lower back at any time after
7 that, and, in fact, returned back to work on the
8 construction crew within a couple of days.

9 Asking you to assume those facts to be
10 true, do you have an opinion based upon
11 reasonable medical certainty as to whether those
12 two isolated events or episodes have any effect
13 upon Mr. Weindel's present low back condition?
14 First of all, doctor, do you have an opinion?

15 MR. PAPPALARDO: Objection to the
16 form, and objection.

17 A. Yes, I have an opinion.

18 Q. What is your opinion?

19 MR. PAPPALARDO: Objection.

20 A. Based on the minor nature of the two back
21 episodes, as you described, I can't, in any way,
22 can not in any way relate that those earlier
23 minor problems could in any way relate to the
24 type of symptoms or physical findings that I
25 detected when I examined Mr. Weindel, nor do

1 they contribute to his present symptoms.

2 Q. Doctor, do you have an opinion based upon
3 reasonable medical certainty as to whether the
4 injuries that Mr. Weindel sustained in his
5 December, 1984 automobile accident contribute to
6 Mr. Weindel's present low back problems? First
7 of all, doctor, do you have an opinion?

8 A. Yes, I have an opinion.

9 Q. And what is your opinion?

10 A. In my opinion, I think that the pelvic fracture
11 probably indirectly contributes a little bit to
12 some of the complaints that Mr. Weindel has, not
13 specifically to his back, but to the complaints
14 that he has around his sacroiliac joint, that's
15 way down in the lower pelvic area on the left
16 side, that type of problem which I did not note
17 before last month or this month.

18 His back problem, however, was the same
19 when I recently examined him as it was in
20 November of 1984, therefore, I do not believe in
21 my opinion that the December, 1984 pelvic
22 fracture in any way directly contributes to his
23 back.

24 Other symptoms close to his back, however,
25 probably do relate to the pelvic fracture.

1 Q. Okay. Off the record a minute.

2 THE VIDEOTAPE OPERATOR: We will
3 now go off the record.

4 - - - -
5 (Thereupon, a discussion was had off
6 the record.)

7 - - - -
8 MR. PARIS: Dawn, I'd like you to
9 take down that, between Joe and I, we are going
10 to stipulate that the Euclid General Hospital
11 emergency room bill of August 5th, 1983 in the
12 amount of \$267.75 was made necessary and was
13 reasonable and necessitated by virtue of the
14 injuries in this accident.

15 Ditto for the Euclid Clinic Foundation bill
16 of \$119. Ditto for the Euclid General emergency
17 room visit of August 20th of '83, for which I do
18 not have the bill as of this time.

19 Ditto for Dr. Zaas' total bill of \$225.
20 Ditto for Dr. Sessano's bill in the amount of
21 \$212.

22 Ditto for Dr. Hocka, H O C K A, his bill in
23 the amount of \$205. And that is all.

24 Is that correct, Joe?

25 MR. PAPPALARDO: Yes, that's right.

1 MR. PARIS: Okay.

2 THE VIDEOTAPE OPERATOR: We are now
3 back on the record.

4 MR. PARIS: Thank you, doctor. I
5 have no further questions at this time.

6 - - - -

7 CROSS-EXAMINATION OF ROBERT DAVID ZAAS, M.D.

8 BY MR. PAPPALARDO:

9 Q. Doctor, my name is Pappalardo, and I represent
10 the defendant in this case.

11 Before I get started asking you some
12 questions, can I take a peak at your file?

13 A. Certainly.

14 MR. PAPPALARDO: We can go off.

15 THE VIDEOTAPE OPERATOR: We will
16 now go off the record.

17 - - - -

18 (Thereupon, a recess was had.)

19 - - - -

20 THE VIDEOTAPE OPERATOR: We are now
21 back on the record.

22 Q. Doctor, how is it that Mr. Weindel came to see
23 you?

24 A. Mr. Paris referred him to my office.

25 Q. His attorney asked you to take a look at him and

1 evaluate him for this case?

2 A. No, I think he referred him for treatment.

3 Q. Well, you saw him a total of three times, since
4 1983?

5 A. That's right.

6 Q. One time in 1983, one time in 1984 and one time
7 in 1985?

8 A. That's correct.

9 Q. Two weeks ago?

10 A. Just about, yes.

11 Q. November 14th?

12 A. Yes.

13 Q. And you consider that referred for treatment?

14 A. Yes, he was referred for treatment, yes.

15 Q. I see. Doctor, tell me what another word for
16 contusion would be?

17 A. A bruise.

18 Q. So when you say he had a contusion injury, you
19 are basically saying he bruised his lower back,
20 is that pretty fair to say?

21 A. He had both contusing and or spraining
22 injuries. And I think I put that. In other
23 words, he had both contusing, that's bruising,
24 and spraining, that's tearing of muscles and
25 ligaments.

1 Q. It doesn't necessarily mean tearing, does it? I
2 mean, it can just be a twist of a muscle could
3 be considered a sprain, right?

4 A. Well, it depends what you break down the word
5 sprain. Sprain indicates an injury in which
6 muscles are either stretched beyond their
7 capacity, actually torn or parts of each.

8 I think we have sometimes used the word
9 sprain or strain, strain being the more mild
10 form, sprain being the more significant form.

11 Q. So, at any rate, this is kind of on the
12 boarderline between a contusion and a sprain and
13 a strain, it's sort of all in that area?

14 A. Yes, I was aware that he was both struck,
15 because the car struck him and he was knocked
16 down, plus as he fell or was twisted or a
17 combination of it all he also pulled or strained
18 muscles, so there were combinations of both.

19 Q. All right. Doctor, by the way, whether it has
20 an effect on your opinion or not, he did tell
21 you that he was on the sidewalk and that he was
22 hit from the right, isn't that true?

23 A. Yes.

24 MR. PARIS: Objection.

25 Q. Doctor, you saw him about two months, well,

1 actually two months to the day after the
2 accident and --

3 A. That's correct.

4 Q. And were you aware at that time that he was also
5 treating with a doctor, an osteopath named
6 Sassano, Dr. David J. Sassano, S A S S A N O?

7 A. I was aware that he had seen Dr. Sassano. I'm
8 not sure if he saw him before or after I saw him
9 in October of 1983. I wasn't aware at that
10 moment.

11 Q. Okay. Well, did you review Dr. Sassano's report
12 before testifying today?

13 A. No. I know what he received. I was told that
14 he received some heat modalities.

15 There was another osteopathic doctor also,
16 there were two separate doctors that he had
17 treatment from.

18 Q. Yes, we will get to that.

19 A. But they were physical therapy he received, yes.

20 Q. Yes. What did you review before your testimony
21 today, doctor?

22 A. I think we have everything right here. And
23 Mr. Paris did appraise me of the number of
24 treatments he received from the two osteopathic
25 doctors. I think it was four treatments from

1 one and three or four from the other.

2 Q. Okay. At any rate, you didn't review Dr.
3 Sassano's report, which is available, I have got
4 a copy here?

5 A. No, I have not physically seen that.

6 Q. All right. Now, he diagnosed a lumbar sacral
7 strain, doesn't say anything about --

8 MR. PARIS: Objection. Move to
9 strike.

10 Q. -- contusions or sprains here, did you know
11 that?

12 MR. PARIS: Objection.

13 A. I certainly agree with the diagnosis.

14 Q. Okay. He saw him twice, saw him on the 6th and
15 on the 15th. I'm sorry, he saw him three
16 times. He saw him on the 26th of October
17 again. On the 15th --

18 MR. PARIS: Four visits.

19 MR. PAPPALARDO: There are four
20 visits? Okay. Well, you know, It's not
21 reflected on here, but you tell me there are
22 four?

23 MR. PARIS: Yes.

24 Q. Okay. He saw him four times. By the 26th of
25 October he had no complaints except for mild

1 spasm of the lumbar spine, that's according to
2 Dr. Sassano?

3 MR. PARIS: Objection.

4 Q. Were you aware of that?

5 MR. PARIS: Objection and move to
6 strike. Hearsay.

7 Q. No, I have only seen Mr. Weindel on October 5.
8 He then want to treat with Dr. Sassano
9 afterwards.

10 Q. So after you saw him, Dr. Sassano saw him a
11 couple of times, and by the 26th, according to
12 Dr. Sassano --

13 MR. PARIS: Objection. Move to
14 strike.

15 MR. PAPPALARDO: Why don't we just
16 mark it, then.

17 MR. PARIS: Good luck. It's
18 hearsay.

19 MR. PAPPALARDO: It is a business
20 record.

21 MR. PARIS: Of who?

22 MR. PAPPALARDO: Dr. Sassano.

23 MR. PARIS: Well, are you going to
24 have him authenticate it? Are you going to have
25 him down at the court house?

1 MR. PAPPALARDO: Sure. We'll mark
2 it.

3 - - - -

4 (Thereupon, Plaintiffs' Exhibit No. 4 was
5 marked for purposes of identification.)

6 - - - -

7 Q. Why don't you take a look at this report,
8 doctor. Why don't you just review it.

9 MR. PARIS: Note a continuing
10 objection. Motion to strike this.

11 Q. It is written on Dr. Sassano's letterhead
12 there. Do you see that, Dr. David Sassano?

13 A. Yes.

14 Q. Okay. Would you look at the second page?

15 A. Oh, let me get through the beginning first.

16 Q. Oh, you want to read through, go ahead.

17 A. I have to read before I can tell what you I
18 have.

19 Q. Okay.

20 A. I have reviewed the record, and I don't think
21 you read this complete to me. There are some
22 very important findings there.

23 Q. Well, I haven't finished.

24 A. Yes.

25 Q. Okay. He -- I'm just concerned with his final

1 diagnosis as of the end of his treatment, which
2 was after you saw Mr. Weindel in October of
3 '83.

4 He says that he had no complaints except
5 for mild spasm of the lumbar spine. He was then
6 again given osteopathic manipulative therapy to
7 the thoracic and lumbar spine with adequate
8 results, do you see that?

9 A. Yes, but I mean, he still had muscle spasm.
10 That's a very significant finding.

11 Q. Well, it says mild spasm?

12 A. Yes, that's about what I found.

13 Q. That's what you found?

14 A. Yes. Even on October 5, that means he really
15 didn't improve very much with treatment.

16 Q. Well, doctor, you would agree it says right
17 there that the prognosis is excellent, it says
18 that, doesn't it?

19 A. I don't see where you see that.

20 Q. Well, I see it right here.

21 A. Oh, okay. Yes at this time he thought the
22 prognosis at that time was excellent.

23 Q. Okay.

24 A. He also pointed out that he still had muscle
25 spasm as of the last visit.

1 Q. Now, see, you are leaving something out. Mild
2 muscle spasm.

3 A. Yes.

4 Q. Okay. And that's all after you saw him back
5 then in October?

6 A. Yes.

7 Q. You didn't see him again for a whole year until
8 he was sent back to you in November --

9 MR. PARIS: Objection.

Q. -- of '84, right?

11 A. A year and a month, yes.

12 MR. PARIS: Objection as to the
13 word sent back to him.

14 Q. He came back to you after a whole year, didn't
15 see you for a whole year in between that?

16 A. Yes, 13 months, yes.

17 Q. He was working --

18 A. Yes.

19 Q. -- during that time.

20 A. Yes.

23 Q. And he came to see you one more time in November
22 of 1984?

23 A. Yes.

24 Q. All right. Now, in your original report you
25 referred to low grade muscle spasm?

1 A. Yes, I think that's like Dr. Sassano calls mild.

2 Q There is a hierarchy of spasms, you would agree
3 with that, wouldn't you, or a rating of spasms?

4 A I think so. We use the words mild, moderate and
5 severe, yes.

6 Q So low grade would be mild?

7 A Yes.

8 Q That would be the least severe of all of the
9 muscle spasms?

10 A. We could do minimal, slight, boarderline, we can
11 go down. I mean, it depends how big a
12 vocabulary you have.

13 It wasn't the most severe spasm.

14 Q. Well, I don't have a very big vocabulary, I'm
15 sure it's less than yours, so we will call it
16 mild or low grade, all right?

17 A. Yes.

18 Q. Okay. And at all times, his neurological exam
19 was normal?

20 A. Yes, he never had any spinal cord or nerve
21 damage.

22 Q. And, in fact, he could do pretty much all the
23 maneuvers you asked him to do, but at the upper
24 limit of those maneuvers he would tell you, he
25 had some pain?

1 A. Well, you mean in 1983 or 1984?

2 Q. We're right in 1983 now.

3 A. In 1983 he had some limitation of the right
4 shoulder. That disappeared by 1984.

5 Q. Okay. Well, he had some limitation. Well, you
6 said he could get to 140 degrees. Can you show
7 us, you have the camera on you, can you show us
8 140 degrees?

9 A. Well, zero is at your side, 90 degrees is
10 straight out, two-thirds of the way up beyond
11 that is about 145 degrees, and straight up is
12 180 degrees.

13 Q. Okay.

14 A. And mostly young people, working people, even
15 someone my age can get your arm pretty far up
16 like that, so 140 is three quarters of the way
17 up.

18 Q. You don't know whether he could get it all the
19 way up, you just stopped at 140 degrees when he
20 told you he had some pain?

21 A. Oh, I'm satisfied that's the limit he had.

22 Q. You didn't see if he could go any further?

23 A. Oh, I certainly did.

24 Q. You did?

25 A. Sure.

- 1 Q. Where is that reflected? All it says here is --
- 2 A. Because that was the limit of the elevation, the
- 3 right shoulder could be elevated to
- 4 approximately 140 degrees.
- 5 Q. Before what happened?
- 6 A. That was the limitation?
- 7 A. How do you know that was the limitation.
- 8 Q. Because I tested it about five or six different
- 9 modalities, lying down, on your side, testing it
- 10 straight up, and each different method of
- 11 testing and reaching, have him reach behind his
- 12 head, reach behind his back, go to the side. I
- 13 checked him with x-ray. This is the limit I
- 14 felt that he could do at that time.
- 15 Q. All right. At no time has there been a positive
- 16 finding on an x-ray with regard to the lower
- 17 back or shoulder or anything like that, right?
- 18 A. Right. These areas that we are describing or
- 19 discussing here, not the pelvis, have never been
- 20 fractured or damaged as far as bones and joints
- 21 are concerned.
- 22 Q. Okay. So 13 months after, what we were just
- 23 discussing, your original report, he comes back
- 24 and you say he ambulates, or as a layman here
- 25 like me, he walks normally without a definite

1 limp or list?

2 A. Yes, he could walk and he didn't look funny when
3 he walked, and he didn't limp.

4 Q. No tenderness, significant stiffness or spasm in
5 the upper spinal area?

6 A. Yes. That's, I think what I pointed out before,
7 that the upper half, the shoulder area healed by
8 the time I saw him the second time.

9 Q. And the neck, too, for that matter?

10 A. Yes.

11 Q. The trapezius?

12 A. Yes, the upper half of the body.

13 Q. Now, a low grade muscle spasm you felt with your
14 fingers, did you?

15 A. Yes.

16 Q. Okay. And you note that extreme lateral bending
17 to the right and left causes increased pain?

18 A. Yes.

19 Q. That would be, again, at the limits of ones
20 bending?

21 A. Well, I felt he could bend fully, but that when
22 he did bend fully that he would have pain.

23 Q. He told you that, he told you he had pain?

24 A. Yes. I observed his response and I believe he
25 had pain, yes.

1 Q. And his legs, he could get 80 degrees on the
2 right and 90 degrees on the left; and 90 would
3 be it, right, that would be the maximum?

4 A. Oh, no. I have patients that do a 135, a ballet
5 dancer that probably could do 140 degrees. She
6 could lie back and touch her foot right directly
7 back over her head. That's an unusual
8 individual.

9 If a person can straight leg raise beyond
10 90 or a hundred degrees, especially if you're
11 young, talking about people in their 30's,
12 that's all right. We're not talking about
13 somebody in their 60's or 70's. But at that
14 age, 90 degrees is certainly okay.

15 Q. So he is pretty close to that?

16 A. I think that straight leg raising was about all
17 right, sure.

18 Q. So these tests that you gave, or these maneuvers
19 you gave him, he performed pretty well at that
20 point?

21 A. Yes. Except for the forward bending he could do
22 real well.

23 Q. Okay. The forward bending leaves him about nine
24 inches away from the floor with his finger tips,
25 is that right?

1 A. That's right.

2 Q. Okay. And I think you note quite honestly that
3 soft tissue injuries are unpredictable and you
4 just really can't tell what their course is
5 going to be, you might have real good days and
6 you might have some bad days interdispersed
7 there, just sort of up to what he does to
8 determine what his reaction is going to be, is
9 that fair?

10 A. Well, that's part of it. I mean sort of picking
11 out some essential things.

12 Part of the problem is the length of the
13 time, and, as you pointed out, a varying degrees
14 of pain, not only during the day and each one
15 day, but from day-to-day, that's correct.

16 And then there is a varying degrees of
17 relationship of what you do as to how bad you
18 feel. Yes, some of those are correct, yes.

19 Q. Okay. And you have also noted several times
20 during your direct examination that his job is
21 strenuous?

22 A. Yes.

23 Q. And it does put a strain on ones body?

24 A. Yes, it does.

25 Q. Back and shoulders and all of that?

1 A. It certainly does.

2 Q. He is a working man, he works with his body all
3 day?

4 A. He certainly does.

5 Q. Okay. And certainly these pains that one has in
6 his back or neck or shoulders can occur
7 completely in the absence of trauma, you would
8 agree with that?

9 A. No, I would not agree that the presence of
10 muscle spasm, that type of characteristic pain
11 and limitation of motion, would relate just to
12 simple working.

13 Q. Well, his spasm, have you ever made an opinion
14 or belief that it's constant, always?

15 A. I don't know. I have only seen him three times
16 and it was each time that I saw him.

17 Q. Well, did he have it the whole time when you
18 would see him?

19 A. Oh, yes, it would never disappear.

20 As a matter of fact, the report you showed
21 me from Dr. Sassano, it was present in each of
22 his examinations, also.

23 Q. That mild muscle spasm?

24 A. Yes.

25 Q. Okay. At any rate, he has been working during

1 those 13 months between November or October of
2 '83 and November of '84, right?

3 A. Well, I don't think he works completely. I
4 think he is connected with some type of
5 construction where there is outside paving.

6 Q. Right.

7 A. Which I understand, at least what he told me,
8 and I think I do understand that type of work
9 that there is part of the time during the winter
10 when there is no job they can do, so I don't
11 think he works during the middle of the winter
12 in that type of construction work.

13 Q. Okay. However seasonal his work is, when it's
14 that season he was working?

15 A. Yes, he told me three or four days a week, yes.

16 Q. That's when we come to November of '85, when he
17 came back to see you again?

18 A. Yes.

19 Q. After another year, right, didn't see you during
20 that year?

21 A. Right, been almost exactly a year minus a week
22 or so.

23 Q. During this time, doctor, you don't have any
24 information that he's been getting any physical
25 therapy on an outpatient basis or anything, do

1 you?

2 A. Well, again, I know that he saw Dr. Sassano on
3 one occasion, then another doctor on another
4 occasion for some therapy. I don't recall, I
5 think that was before November of '84.

6 Q. Yes. That was all--

7 A. I don't think that was afterward.

8 Q. Yes, that was all back in '83?

9 A. Yes, I believe.

10 MR. PARIS: Objection. He saw Dr.
11 Hocka in July of '84, August of '84, November of
12 '84.

13 MR. PAPPALARDO: I meant to say
14 '84.

15 Q. That was all back in December of '84. And as
16 far as you know, that is the last physical
17 therapy he ever had, right?

18 A. Right. As I said, I don't think, to my
19 knowledge, he was treated after I saw him in
20 November, 1984, before I saw him November, 1985
21 that's what I mean.

22 Q. I'm just trying to get clear in your own mind
23 the last physical therapy he had was in the
24 December of '84, is that fair to say?

25 A. Right. Over a year ago.

1 Q. Okay. Now, in spite of all that, you think
2 sometime in the future he might need to have
3 some outpatient physical therapy again?

4 A. Yes.

5 Q. When?

6 A. Depends on his physical findings. It depends on
7 the severity of his muscle spasm. It depends on
8 the improvement that he might make over a period
9 of time in the future. I can't say that.

10 Q. So it would be speculative to say when he might
11 have to have it?

12 A. Yes, when would be speculative. The type of
13 treatment I'm pretty sure of.

14 Q. Well, he hadn't had that type of treatment for
15 over a year?

16 A. That's correct.

17 Q. That outpatient physical therapy, that's right
18 isn't it?

19 A. Right, but there has been a long period of
20 interruption when he was treated for some other
21 conditions where he could not have been a
22 candidate for it.

23 It wasn't just a total year that went by.
24 We are actually dealing with a period of time
25 when he was not available for his physical

therapy because he was treated for a bladder
condition.

Q. You don't know whether anybody would have
prescribed it for him at that time or any doctor
would have told him to go see a physical
therapist, do you?

A. He was being treated by a therapist or a
chiropractor or osteopath in 1984. I don't see
why he wouldn't have gone back at other times if
it were available to him.

Q. Well, it was all over by the summer of 1984?

MR. PARIS: Objection. Will you
stop mischaracterizing it. It was November of
'84, November 9th of '84 he last saw Dr. Hocka.

MR. PAPPALARDO: I thought you said
in August.

MR. PARIS: He saw him July 31st of
'84, August 23rd of '84, November 6th of '84,
November 9th, '84. And you have those records.
And you have those bills.

Q. So the fall of 1984, and that was before his
accident?

A. Right, I think we have to point out that right
after that he was involved in this other
accident. It was a long period of

1 hospitalization and treatment for this bladder
2 condition.

3 It was well into the spring or summer when
4 it was getting warm again in 1985. He said that
5 he felt a little bit better during the summer.

6 And then when it came to the fall again, I
7 saw him again. So I don't know that there was
8 really much time for him to get treatment in
9 1984.

10 Q. At any rate, you didn't send him for physical
11 therapy when you saw him a couple weeks ago, did
12 you?

13 A. No, I didn't.

14 Q. All right. So he shows up two weeks ago.
15 Again, he can walk completely normally, no limp,
16 no list, right?

17 A. Yes.

18 Q. Upper spine fully mobile?

19 A. Yes.

20 Q. His -- again, you saw some spasm in the lower
21 lumbar spine. But it, he looks like he has made
22 some progress on his finger tip bending, he is
23 close to seven or eight inches from the floor,
24 right, so he has made some progress?

25 A. I suppose you could say that.

2 Q. Well --

2 A. I don't know if my measurements are that good.

3 It was certainly at least as flexible in 1985 as
4 it was in 1984. He had not lost anything.

5 Q. Okay. So he is not getting any worse. And his
6 leg raising is up to 90 degrees on the right and
7 85 on the left?

8 A. Yes.

9 Q. He is close to normal there?

10 A. That's correct.

11 Q. Knee and ankle reflexes are brisk on both sides
12 bilaterally?

13 A. Yes. His neurological, in other words nerves
14 are normal.

15 Q. Okay. Good muscle tone and motor power on both
16 lower extremities, which are the legs?

17 A. Strong legs on both sides, yes.

18 Q. Okay. So you told him, you say that, you know,
19 he should do a light stretching and exercise
20 program?

21 A. Yes.

22 Q. That's a good thing for almost anybody to do,
23 isn't it, to exercise?

24 A. I think so, sure.

25 Q. Stretch. You recommended that.

1 You say, long term activity restrictions
2 were discussed, but you don't actually put him
3 on any specific restrictions at least according
4 to this report, except to avoid lengthy and
5 prolonged excessive activities?

6 A. Our long discussion came to the fact that his
7 skills and his training is in construction,
8 particularly driveway or pavement, and there is
9 a dilemma there in that the type of physical
10 things that he has to do to make that living
11 like that are not good for his back. That's
12 where our discussion came in.

13 Q. But he can do his job?

14 A. He will try to do it as much as he can, not with
15 medical recommendation, but despite the caution
16 that continuing to do that job is not going to
17 make his back heal any better.

18 Q. Well, it doesn't disable him or anything or lay
19 him up for two, three days at a time where he
20 can't get out of bed, you never had that with
21 him, have you?

22 A. I certainly hope it does not.

23 Q. I hope it doesn't either. And it hasn't?

24 MR. PARIS: Objection. If he
25 knows.

1 A. I really don't know.

2 Q. Well, if this man had been laid up for two or
3 three days in bed, don't you think he would have
4 told you since you took such a detailed report
5 from him?

6 MR. PARIS: Objection.

7 A. I would have thought so. But it was my
8 impression that he couldn't work five days a
9 week. He was only working three or four days
10 because by that time his back would get worse.
11 That was my general impression.

12 Q. Okay. Well, that might just have been
13 availability of work, too, for all you know?

14 A. That is possible.

15 Q. Okay. Now, let me ask you about this accident
16 where he fractured his pelvis and, what, he tore
17 his urethra?

18 A. Yes.

19 Q. That's a heck of an injury and trauma to a body,
20 isn't it?

21 A. It certainly is.

22 Q. And you would expect an accident of that
23 magnitude would give you a pretty fair whack to
24 your back and your neck and your spine and all
25 of that, wouldn't you?

1 A. Well, it would certainly give you a pretty hard
2 whack to your pelvis. I don't know that it hurt
3 his back.

4 Q. If it's enough to break your pelvis it's a
5 pretty traumatic assault on the body?

6 A. Yes. Again, this is right in the front. Now,
7 let's get this straight. It was the anterior
8 pelvis in that the pelvis symphysis, that's the
9 part right above the pubic hair area, and the
10 portion right in the lower abdomen. That's
11 where the portion was fractured.

12 And, to my knowledge, he did not fracture
13 or injure his back, didn't fracture his back,
14 that was to my knowledge.

15 Q. That wouldn't, an accident like that wouldn't
16 cause any contusion or twisting or bruising?

17 A. He said it did not.

18 Q. Okay. At any rate, you say his major complaints
19 are an after effect of the August, '83 accident?

20 A. Yes.

21 Q. And that his symptoms are primarily due to that
22 accident, I guess?

23 A. The low back and muscle spasm which were the
24 same in 1983, 1984, 1985 are, in my opinion, a
25 continuing effect of the 1983 accident.

1 I think he does have some other stiffness
2 from these pelvic problems.

3 Q. That gives him some pain?

4 A. Yes.

5 Q. From the pelvic accident, right?

6 A. Yes.

7 Q. Sure. By the way, you are not a neurologist?

8 A. No, sir.

9 Q. Okay. And you didn't, at any time, review the
10 report of Dr. Coppola?

11 A. No, sir.

12 Q. The neurologist that saw him?

13 A. No. He is an osteopathic neurologist. I think
14 he works out of Richmond Heights. I think, I
15 know who he is. I did not see his report.

16 Q. Was that one of the doctors Mr. Paris told you
17 about, that you said he had two doctors?

18 A. I know he had treatment from two osteopathic
19 doctors. I don't think Dr. Coppola gives
20 treatment. I wasn't aware of his findings.

21 Q. Okay. So you wouldn't, you are not aware of his
22 findings?

23 A. No, sir.

24 Q. You don't know what his opinions are, at least
25 according to the report that we have been

1 furnished with?

2 A. No. The physical findings that I had, I can
3 assure you in my experience as neurology, would
4 be that he would not find any major neurological
5 abnormalities.

6 Q. A lot of what can be done for Mr. Weindel can be
7 done at home, just the way you described, right,
8 with showers?

9 A. Yes.

10 Q. With manipulation, massage, things like that?

11 A. Yes, it can.

12 Q. Let's just clear up one thing here. You
13 suspected maybe a little problem with the
14 lordosis, the lordotic curve?

15 A. Yes.

16 Q. Well, the x-ray report that you just submitted
17 to me or Mr. Paris did, mentions that he has a
18 normal lumbar lordotic curve?

19 A. Maybe perhaps we should show the x-rays, and I
20 can demonstrate why I felt it is borderline
21 abnormal. I can actually demonstrate it. Maybe
22 the radiologist didn't quite pick it out.

23 Q. Well, you don't have to show me. I just --

24 A. Yes. But I am prepared to show you why I said
25 it. Maybe the jury can see why I feel that it

1 is more straightened.

2 Q. All I asked was whether the radiologist found a
3 normal lumbar lordotic curve?

4 A. Yes. He reported it as normal. I somewhat
5 object to that. I would be very happy to show
6 it, because I have the x-rays right here. We
7 can demonstrate it.

8 Q. Maybe Mr. Paris will want you to. All I asked
9 was a simple question as to what the radiologist
10 found.

11 A. Yes. The radiologist wrote that it was a normal
12 lordotic curve.

13 MR. PAPPALARDO: Almost done.

14 Almost finished, excuse me, since we are talking
15 about grammar here.

16 Okay. That's all I have, doctor. Thanks.

17 - - - -

18 FURTHER DIRECT EXAMINATION OF ROBERT ZAAS, M.D.

19 BY MR. PARIS:

20 Q. Doctor, Mr. Pappalardo was alluding to the fact
21 that you have only seen Mr. Weindel on three
22 occasions over a period of two and a half years
23 or so.

24 First of all, is that unusual for the type
25 of injury that Mr. Weindel received, to see him

1 three times?

2 A. Well, it's variable. The type of injury that he
3 received again gives variable symptoms, but it's
4 not, that is not rare.

5 The fact that I could not offer him very
6 much, I certainly don't want to just have him
7 come back and sit in my waiting room, and then
8 tell him I can't help him any more.

9 I did not encourage him to come back
10 excessively if I couldn't offer him a lot.

11 Q. And he didn't come back excessively, did he?

12 A. No, sir.

13 Q. As a matter of fact, doctor, if one treats
14 themselves at home with heat, exercises, massage
15 from the wife and some light stretching
16 exercises, and it does give them some temporary
17 relief, do you encourage that for your patients?

18 A. I certainly do.

19 Q. Now, can one have a normal neurological exam, in
20 other words, can ones nerves emanating from the
21 back and into the legs and so forth, can that
22 examination be normal and one still have a
23 chronic and disabling injury to the muscles and
24 ligaments of the low back?

25 MR. PAPPALARDO: Objection.

1 A. Oh, certainly. I think we are talking apples
2 and oranges, we're talking two different
3 systems.

4 One system is the muscle and ligament
5 system, that's what Mr. Weindel injured, muscles
6 and ligaments.

7 And there is another system, the spinal
8 cord and the nerves. If something goes wrong
9 with them we get paralyzed, get an infection, we
10 get poliomyelitis, if we get a nerve pressure we
11 get leg pain and things.

12 He never had that. He only had the muscle
13 and ligament system. I did not personally find
14 any evidence that he had a spinal cord or nerve
15 system injury.

16 Q. Okay. And, doctor, can one have a normal x-ray
17 picture of the low back and still have chronic
18 and disabling injuries to the muscles and
19 ligaments of the low back?

20 A. Yes, sir. The same problem that goes with
21 comparing neurological to muscular. X-rays will
22 only show us bony type structures, structures
23 that pick up a positive radio graphic image when
24 an x-ray beam is placed through them. All we
25 see on x-rays are shadows of bones.

1 Muscles, on the other hand, are soft.
2 Muscles cast no shadow on x-rays. Therefore,
3 regardless of what's wrong with the muscles, it
4 will always cast a negative or hollow shadow on
5 the x-rays.

6 Therefore, we can have a perfectly normal
7 bone x-ray, since the bones weren't injured and
8 we can have injuries to muscles and not show
9 anything on x-ray.

10 That's pretty much the same correlary as
11 comparing neurological problems with muscular
12 problems. You can't compare muscular problems
13 to bone problems.

14 Q. Maybe we can demonstrate that for the jury. And
15 at the same time show the jury the straightening
16 of Mr. Weindel's lower -- I'm sorry, curve of
17 his lower spine, lumbar spine?

18 A. Yes, sir. I do have some x-rays I had of the
19 back.

20 Q. Do you have the lower back?

21 A. Yes. There is two views on the lower back. I
22 will demonstrate what I was talking about.

23 Q. First off, doctor, as an orthopedic surgeon you
24 have, you read x-rays, you are able to read
25 x-rays?

1 A. Yes, I read them. I teach it. We gave, as a
2 matter of fact, in a course this morning on
3 radio, orthopedic radiology to medical students
4 and residents.

5 Q. It's imperative that you know how to read
6 x-rays?

7 A. Oh, yes. That is part of our training. Yes.

8 Q. Now, we have two views of the spine of Carl
9 Weindel taken November 14, 1985.

10 One view, let's see, are we focused in on
11 this one over here? One view is a front on view
12 of his lower back and we can see the, above, the
13 ribs and, below, the pelvic area.

14 The view on the opposite side over here is
15 a side view. This view shows the vertebra or
16 blocks of bone. There is five vertebra in the
17 lower back, one, two, three, four, five.

18 This is a side view of Mr. Weindel. Here's
19 his her back here and tummy up in front, so
20 we're looking in the side view.

21 Now, the bones are all normal, I don't see
22 any real abnormality in any of the bones
23 throughout the back really of significance.

24 What, I pointed out about the so-called
25 lordosis, that means the sway back or the

1 natural curve of the lower back, if you look at
2 the side view of his lower back, the lower back
3 is really almost straight here. There is a
4 slight curve going backward, but I think it is
5 somewhat straightened and it is not the usual
6 type of, you know, very deep curve that we get
7 with people whose muscles are not too tight or
8 too firm.

9 That's the only thing, as a matter of fact,
10 that I can see as an abnormality in that x-ray
11 that struck me as not being entirely right.
12 That seems to be that the muscle spasm has
13 created a bit of stiffness in that lordotic
14 curve.

15 Q. So, Doctor, your opinion based upon reasonable
16 medical certainty is that the absence of that
17 curve at the lumbar spine is related to what?

18 A. Muscle spasm.

19 Q. Which, in turn, was caused by the accident of
20 August 5th, 1983?

21 A. Yes, sir.

22 Q. Okay. And to demonstrate, the film actually
23 only shows the bones and it doesn't show the
24 muscles or the soft tissues?

25 A. That's correct. All the white structures that

1 we are seeing in both views are bones. We
2 really don't see anything if we go back here
3 where my pencil is going up and down, just pure
4 black. So that muscle just casts a totally
5 black shadow. We don't see anything back there.

6 MR. PARIS: Okay. Thank you very
7 much, doctor. I have no further questions.

8 - - - -

9 FURTHER CROSS-EXAMINATION OF ROBERT ZAAS, M.D.

10 BY MR. PAPPALARDO:

11 Q. Doctor, there isn't an absence of the curvature,
12 he still has a sway back?

13 A. Sure. I think you can see it. But I think you
14 can also see that it is not the usual type of
15 curve we get, what we call the normal lordosis.
16 I just disagree with that and I'm willing to
17 show why I disagree with that.

18 Q. In other words, you disagree with the
19 radiologist.

20 A. I certainly do on that view.

21 Q. In your report, of course, you say there is
22 perhaps minimal straightening of the lower
23 lumbar lordotic curve?

24 A. Yes.

25 Q. You don't actually say there is, you say may be?

1 A. Yes. I think I can show that right here.

2 Q. May be?

3 A. Yes.

4 MR. PAPPALARDO: Okay. That's all
5 I have, thanks.

6 MR. PARIS: Thank you, doctor.
7 Will you waive your signature to the reading of
8 deposition?

9 THE WITNESS Yes, I will.

10 MR. PARIS: Thank you. And the
11 viewing of the deposition?

12 THE WITNESS: Yes, I will.

13 THE VIDEOTAPE OPERATOR: This now
14 concludes the deposition.

15 (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, Dawn M. Hagestrom, 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 DAVID 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 3rd day of December A.D. 19 85.

Dawn M Hagestrom
Dawn M. Hagestrom, Notary Public, State of Ohio
650 Engineers Building, Cleveland, Ohio 44114
My commission expires October 20, 1987