

1 IN THE COURT OF COMMON PLEAS

2 CUYAHOGA COUNTY, OHIO

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4
5 JOSEPH GALLITTO,)
6 Plaintiff,)
7 vs.) CASE NO. 327588
8 RISER FOODS, INC.,)
9 et al.,)
Defendants.)

10
11 Videotaped deposition of ROBERT MARK
12 FUMICH, M.D., a witness herein, called by the
13 Defendant for direct examination pursuant to the
14 Rules of Civil Procedure, taken before me, the
15 undersigned, Michelle Clare Peters, a Registered
16 Professional Reporter and Notary Public in and
17 for the State of Ohio, at the offices of Robert
18 Mark Fumich, M.D., 26900 Cedar Road, Suite 221,
19 Beachwood, Ohio, on Monday, the 29th day of
20 March, 1999, at 1:11 o'clock, p.m.

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22
23 **COPY**
24
25

APPEARANCES:

On Behalf of the Plaintiff:

SPANGENBERG, SHIBLEY & LIBER

BY: Justin F. Madden, Attorney at Law
2400 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3400

On Behalf of the Defendant Riser Foods, Inc.:

WILLIAMS, SENNETT & SCULLY CO., L.P.A.

BY: Louis R. Moliterno, Attorney at Law
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On Behalf of the Defendant Zbin Landscaping:

QUANDT, GIFFELS & BUCK CO., L.P.A.

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On Behalf of the Defendant Kleist Ratner:

GALLAGHER, SHARP, FULTON & NORMAN

BY: Thomas J. Cabral, Attorney at Law
1501 Euclid Avenue
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Also present:

Don McNair, Videographer, Mirror Image

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1 MR. MOLITERNO: Doctor, it's my
2 understanding that you will waive reading of the
3 transcript and viewing of the tape?

4 THE WITNESS: Yes.

5 MR. MOLITERNO: Let the record
6 reflect this is the deposition of Dr. Robert Mark
7 Fumich, being taken pursuant to notice. It's my
8 understanding that the statutory and procedural
9 formalities of notice and service and the filing
10 of this deposition will be waived; is that
11 correct?

12 MR. MADDEN: Correct.

13 MR. MOLITERNO: This deposition is
14 being taken upon direct examination in order to
15 preserve the doctor's flight testimony in the
16 case of Joseph Gallitto versus my client, Riser
17 Foods, said action bearing case number 327588 in
18 the Court of Common Pleas, Cuyahoga County, Ohio.

19 ROBERT MARK FUMICH, M.D.
20 of lawful age, a witness herein, having been
21 first duly sworn, as hereinafter certified,
22 deposed and said as follows:

23 DIRECT EXAMINATION

24 BY MR. MOLITERNO:

25 Q. Good afternoon, Doctor, my name is Lou

1 Moliterno, I represent -- along with Roger
2 Williams -- Riser Foods. Would you please state
3 your full name for the record.

4 A. Robert Mark Fumich.

5 Q. And what is your current professional
6 address, Doctor?

7 A. 26900 Cedar Road in Beachwood.

8 Q. And are we at that address today?

9 A Yes, we are.

10 Q. And what is your profession, Doctor?

11 A I'm an orthopedic surgeon.

12 Q And when were you first licensed to practice
13 medicine in the State of Ohio?

14 A. Sometime in the middle 1970's.

15 Q. Doctor, it's my understanding that your
16 specialty is in the field of orthopedic surgery;
17 is that correct?

18 A. Correct.

19 Q. would you please explain to the ladies and
20 gentlemen of the jury what is involved in that
21 specialty?

22 A. Orthopedic surgery is a medical subspecialty
23 involving the evaluation and treatment of
24 musculoskeletal injuries, that includes muscles,
25 tendons, bones, ligaments, by physical, medical

1 and surgical means.

2 Q. Are you board certified, sir?

3 A. Yes, I am.

4 Q. And when were you so certified?

5 A. In 1981.

6 Q. And Doctor, what is involved in board
7 certification?

8 A. After you graduate from medical school,
9 there are several subspecialty fields, which a
10 young physician can choose to go into. They
11 require additional training, so we have to apply
12 and be accepted into an accredited residency
13 program in that subspecialty.

14 You then take an in-training exam on a
15 yearly basis, if you pass the examination you go
16 on to the next year of training.

17 After you've completed your three or four
18 year residency program, you're then eligible to
19 apply for a certifying examination in
20 orthopedics. At the time I took it, you had to
21 be in practice for a year and observed by your
22 peers, you then were eligible to sit for an
23 examination. That was a three-day examination,
24 combination written and oral. If you pass that
25 examination, then you are board certified.

1 Q. Doctor, would you give the ladies and
2 gentlemen of the jury a little bit of your
3 background, from undergraduate through medical
4 school, as well as your internships and
5 residencies?

6 A. I graduated from Case Western Reserve in
7 1971; I graduated from Ohio State Medical School
8 in 1974; I took my orthopedic internship in
9 residency at the Mt. Sinai Medical Center in
10 Cleveland and graduated there in 1978. I then
11 took two fellowships, one in reconstructive knee
12 surgery and sports medicine for a year in
13 Williamstown, Massachusetts. I then took a six
14 month fellowship in total joint replacement.

15 I started in private practice in Cleveland
16 in 1980, and I've been in private practice in
17 Cleveland ever since.

18 Q. Are you a member of any medical
19 organizations, societies or associations?

20 A. Yes, I am.

21 Q. In which ones are you a member of?

22 A. I am a Fellow of the American Academy of
23 Orthopedic Surgeons; Fellow of the American
24 College of Surgeons; Fellow of the American
25 College of Sports Medicine; Fellow of the

1 American Academy of Sport and Physicians. I'm
2 also a member of the International Knee Society;
3 International Arthroscopy Association; American
4 Orthopedic Society for Sport Medicine; the
5 Articular Cartilage Repair Society and many of
6 the local organizations.

7 Q. Now, do you have staff and courtesy
8 privileges at any area hospitals?

9 A. Yes, I do.

10 Q. And which ones would those be?

11 A. I'm an active staff member at Hillcrest
12 Hospital of the Cleveland Clinic Health System,
13 and PHS Mt. Sinai Hospital.

14 Q. And at any point in your career, Doctor,
15 have you been involved in teaching?

16 A. Yes.

17 Q. And what involvement have you had?

18 A. I've been a clinical instructor at Case in
19 the past; I have taught residents in the past; I
20 have had a primary care sports medicine
21 fellowship run through my practice and this
22 office in the past; presently I instruct
23 residents or medical students who want to rotate
24 through my office.

25 Q. What about publications, Doctor, have you

1 ever written and been published, in your area of
2 expertise?

3 A. I have several articles in the sports
4 medical literature. with regards to various
5 sports injuries, I have written on the use of
6 methylmethacrylate cement in joint replacement
7 and written on anterior cruciate ligament --
8 prosthetic ligaments for anterior cruciate
9 ligament reconstruction.

10 Q. Doctor, as part of your professional
11 practice, do you have occasion to examine
12 individuals who are not your patients, for the
13 purpose of evaluation, including for the purpose
14 of consultation, second opinion and evaluation in
15 legal matters?

16 A. Yes, I do.

17 Q. And did you have opportunity to examine
18 Joseph Gallitto at the request of my client,
19 Riser Foods?

20 A. Yes, I did.

21 Q. When did that examination take place?

22 A. On March 2, 1999.

23 Q. And where did it take place?

24 A. It took place in this office.

25 Q. And as part of your office records, do you

1 have a copy of the report prepared and dated
2 March 2, 1999, with regard to your examination of
3 the Plaintiff, Joseph Gallitto?

4 A. Yes, I do.

5 Q. And does that include your findings upon
6 that examination?

7 A. Yes.

8 Q. Now Doctor, please feel free to refer to
9 that report, as I ask you the following
10 questions:

11 Upon your first meeting with Mr. Gallitto,
12 did you obtain a history?

13 A. Yes, I did.

14 Q. And what was that history?

15 A. When I saw him, he was 40 years old, and
16 stated that on January 9 of 1996, he fell
17 stepping over some stuff as he called it,
18 slipping on something.

19 He flew in the air, put out his hand to
20 break his fall and landed on his elbow. He
21 stated he broke a few ribs and hit his head. He
22 also suffered bumps and bruises to the shoulder
23 and neck. The injury occurred at work. He
24 called someone at work, and stated someone from
25 his job took him to Hillcrest Hospital. He had

1 X-rays of his left elbow which showed a fracture,
2 he also had broken ribs.

3 In the emergency room he indicated he had a
4 CT scan of the head. I asked him specifically
5 about loss of consciousness, he indicated he may
6 have lost consciousness for a short period of
7 time, but not for any great length of time, since
8 he was able to get up and make a phone call.

9 At the time of the emergency room visit, he
10 was splinted and referred to Dr. Hissa. He had
11 surgery by Dr. Hissa three days later, with an
12 open reduction and internal fixation of an
13 olecranon fracture, which is a fracture of the
14 elbow. I asked him how his elbow did after that,
15 and he stated "as good as could be."

16 I asked how long it took him to recover, and
17 he stated that he was still recovering.

18 After the open reduction and internal
19 fixation, he had physical therapy. The internal
20 fixation was removed in June of 1996. At that
21 point in time, he was still having soreness and
22 stiffness and weakness. Physical therapy was
23 restarted, he continued with pain in the elbow
24 with a burning sensation and sharp pains with
25 numbness. An EMG was done, an MRI was not done.

1 In July of 1996, he had an ulnar nerve
2 transfer, he indicated this surgery relieved the
3 burning a little bit.

4 When I saw him he indicated the elbow was
5 painful all the time and he pointed to both the
6 medial aspect of the elbow, which is the inner
7 aspect, and the posterior aspect of the elbow.

8 He is left-hand dominant, so he did suffer a
9 fracture in his dominant arm.

10 I asked him if he had continued numbness in
11 the hand or fingers and he claimed numbness and
12 tingling to all the fingers. I asked him at that
13 point what Dr. Hissa had told him, and he
14 indicated Dr. Hissa told him it would take time
15 to heal and predicted him returning to 65 percent
16 of normal.

17 We asked specifically about the rib
18 fractures and he stated these were painful for
19 about four to six weeks, he stated he recovered
20 from these and denied any residuals.

21 With regards to the head injury, he suffered
22 headaches for a period of time, but recovered
23 from these.

24 On further discussion, he indicated that the
25 headaches consisted of dizziness and blurred

1 vision. He claimed periods of dizziness and
2 blurred vision on a daily basis. I asked him
3 specifically if he was seeing anyone for this and
4 I asked him if he had seen a neurologist and he
5 said no, but he was thinking about it.

6 He works in a warehouse and returned to work
7 after the open reduction, internal fixation of
8 the olecranon fracture the second or third week
9 in April. He worked until removal of the
10 internal fixation. He missed five months of work
11 as a result of the ulnar nerve transfer.

12 When I saw him he was working, but not at
13 the same job and was on a light duty status. He
14 indicated he had restrictions in the number of
15 hours he was working and the amount of weight he
16 was allowed to lift. We questioned him about
17 activities he could or could not do, he felt he
18 could not perform his previous job of driving a
19 truck.

20 We asked him more specifically about these
21 duties, and apparently he could handle the duties
22 of the actual driving, but the duties of loading
23 and unloading were the ones that caused pain and
24 discomfort, and for which his activities were
25 limited.

1 He indicated that the elbow was affecting
2 his entire life.

3 with regards to the past history, in 1987 he
4 was involved in a motor vehicle accident and hit
5 his head. He recovered from this quickly with no
6 residual, he denied any prior symptomatology or
7 injuries to the ribs or elbow, or any new
8 injuries to any of the involved area since the
9 January 9, 1996 accident.

10 At that point, we did a physical exam.

11 Q. So, Doctor, just to summarize, and correct
12 me if I'm wrong, the Plaintiff essentially
13 attributed three injuries to this accident, that
14 would be a left elbow fracture?

15 A. Yes.

16 Q. Also a head injury?

17 A. Yes.

18 Q. And which he described as including blurred
19 vision and dizziness?

20 A. Yes.

21 Q. And then also he described to you some rib
22 injuries?

23 A. Yes.

24 Q. Doctor, did you then perform a physical
25 examination of the Plaintiff?

1 A. Yes, I did.

2 Q. And what were your findings upon that
3 physical examination?

4 A. We first examined the chest and the rib
5 area. He had no pain to palpating the ribs, he
6 had full inspiration and expiration to the chest
7 with no pain on inspiration or expiration, the
8 breath sounds were clear in all lung fields.

9 We examined the left elbow, it showed a five
10 and a half inch well healed incision from the
11 open reduction of the olecranon, that was back in
12 this area. (Indicating.) He had a six and a
13 half inch incision on the ulnar aspect of the
14 elbow, that was in this area. (Indicating.)
15 That was from the ulnar nerve transfer.

16 He showed 0 to 145 degrees range of motion
17 on the right, and had full extension and
18 voluntarily flexed to 115 degrees on the left, so
19 he did have limitation in flexion on the left.

20 Forearm circumference was measured, we were
21 checking for atrophy. We measured around the
22 forearm muscle right in this area, (indicating)
23 and it showed the right equal to the left. Arm
24 circumferences were measured, and they were
25 equal.

1 Physical exam of the hands and wrist,
2 indicated the suggestion of a Tinel and Phalen's
3 test. These are tests for numbness and tingling
4 in the hand as a result of nerve problems in the
5 wrist area.

6 He had no redness, no warmth, no swelling to
7 the elbow. He was hesitant to accepting any
8 palpation or touching of the skin around the
9 elbow. There was no temperature change to the
10 hands or fingertips as compared to the other
11 side. The triceps, biceps and brachialis,
12 radialis reflexes were 2 plus and equal to the
13 opposite side. We tested for sensation,
14 sharpness, softness, and this was equal to the
15 opposite side.

16 After we were done with that, we did order
17 an X-ray and we reviewed some records.

18 Q. Okay. Now, Doctor, I'd like to discuss some
19 of the X-rays with you. Did you have an
20 opportunity to review either X-ray reports or
21 films?

22 A. I reviewed X-ray reports.

23 Q. Okay. And it's my understanding that at
24 some point, Mr. Gallitto had an X-ray taken of
25 his left femur; is that correct?

1 A. Yes.

2 Q. And do you know what the results were of
3 those X-rays?

4 A. Those were negative.

5 Q. Okay. And it's further my understanding
6 that Mr. Gallitto had X-rays of his ribs?

7 A. Yes.

8 Q. Do you know what the results were of those
9 X-rays?

10 A. The report indicated negative.

11 Q. Okay. And finally, Doctor, there were also
12 some X-rays taken of the left elbow?

13 A. Yes.

14 Q. What did you discover from those X-rays?

15 A. A comminuted olecranon fracture.

16 Q. Okay. Doctor, it's my understanding that at
17 some point an EMG study was performed?

18 A. Yes, there was.

19 Q. Do you know the results of that EMG study?

20 A. Yes, it was completed by Nicolet Biomedical
21 Instruments, it showed a left cubital and
22 bilateral carpal tunnel syndrome. Left cubital
23 syndrome is in this area of the elbow,
24 (indicating) carpal tunnel is a condition that's
25 in the wrist.

1 Q. And Doctor, finally, it's my understanding
2 that a CT scan was performed of the head?

3 A. Yes.

4 Q. Do you know what that CT scan revealed?

5 A. That was a negative study.

6 Q. Okay. And Doctor, have you detailed all the
7 tests performed and are these tests approved and
8 accepted within your field and performed by other
9 orthopedic surgeons?

10 A. Yes.

11 Q. Did you have sufficient time in which to
12 perform a full and complete orthopedic evaluation
13 of this particular patient?

14 A. Yes.

15 Q. And did you have an opportunity to review
16 additional medical records available either prior
17 to or subsequent to your examination of the
18 Plaintiff in this particular matter?

19 A. Yes.

20 Q. Okay. Doctor, from your examination of the
21 Plaintiff, Mr. Gallitto, and from the oral
22 history provided by him, from the records
23 reviewed, were you able to make a diagnosis
24 within a reasonable degree of medical certainty
25 as to his condition at the time of your

1 examina

2 Yes.

3 . . And what is that opinion?

4 Well, he had four areas that I felt needed
5 o be addressed. First was that he did suffer a
6 rature of the olecranon, the fracture had
7 ealed, it was in excellent anatomic position. I
8 didn't think that this fracture would have any
9 increased risk of arthritis over time. He
10 demonstrated decreased flexion as compared to the
11 opposite side, but this decrease in flexion was a
12 decrease in anatomic motion and not a decrease in
13 functional motion.

14 Records did not include any specific
15 strength testing or functional capacity
16 evaluation with regards to the extremity;
17 however, the circumference of the arms and
18 forearm musculature was equal bilaterally, so I
19 didn't anticipate any true decrease in strength
20 from a muscular point of view.

21 With regards to permanent residual from the
22 fractures alone, I felt that the fracture --
23 solely talking about the fracture, not the elbow
24 in general, but the fracture per se -- that the
25 only residual would be aches and pains to the

1 elbow with weather change or barometric pressure
2 changes.

3 I anticipate the only treatment being that
4 of antiinflammatories and the condition for the
5 fracture, itself, was good to excellent.

6 We then addressed the problem with the ribs.
7 He had symptoms for six weeks, with resolution of
8 symptoms at approximately six weeks. I suspect
9 that he did have a rib fracture, or rib
10 contusions. One would anticipate no residual, no
11 further treatment being required, and a prognosis
12 for the rib fractures I thought was excellent.

13 The head injury, I had some concern or
14 scepticism. I believe he did have a head injury,
15 with headaches, but his complaints of continued
16 blurred vision and dizziness, at this point in
17 time, I just didn't feel that that was credible
18 or realistic. Blurred vision and dizziness is a
19 serious condition, and that probably would be at
20 the head of his list of injuries. And for that
21 not to have been treated medically, or have
22 resolved in a relatively quick period of time,
23 just doesn't make sense to me.

24 MR. MADDEN: Objection.

25 Move to strike.

1 THE WITNESS: I believe that he
2 ay well have had blurred vision and dizziness
3 mmediately after the accident for a short period
4 f time, but at this point in time I do not
5 elieve that to be the case.

6 The fourth injury, which is the one that I
7 hink is the most significant, is the tardy ulnar
8 erve palsy. It's unclear as to why the symptoms
9 started in April of 1997, however in view of no
10 past histories of elbow symptomatology, most
11 specifically that of numbness or tingling in the
12 elbow or forearm, I had to related this condition
13 either directly or indirectly to the elbow
14 racture and the subsequent surgery and work
15 tctivities.

16 This is the injury for which I thought he
17 ad the greatest residual and present
18 symptomatology. This condition can cause
19 recurrent soreness and irritation to the elbow,
200 with lifting, carrying, flexion activities, and
211 he may require some limitations in these
222 activities as a result of this ulnar nerve
23 condition.

24 He did have the ulnar nerve transposition,
25 and I don't believe there is any further

1 treatment that would be considered with the
2 exception of restrictions in lifting, carrying
3 and repetitive flexion, extension activities.

4 His problem, however, is confusing in one
5 respect, in that the numbness and tingling in his
6 hands, at it relates to the whole situation, I
7 don't believe is related to the elbow, per se.
8 The ulnar nerve will innervate the 5th finger and
9 this side of this finger, (indicating) and he has
10 complaints of numbness and tingling in all the
11 fingers of the hand, and he has an EMG that shows
12 carpal tunnel. So I believe numbness and
13 tingling in the hands, per se, from the wrist
14 down, are as a result of carpel tunnel, which is
15 an unrelated condition.

16 That's not to say he doesn't have some
17 numbness in the fifth digit and part of the ring
18 finger, which is consistent with the elbow
19 situation anatomically.

20 Since he still had symptoms or complaints
21 around the elbow, I had to relate it to the ulnar
22 nerve injury. I considered the prognosis for
23 this condition as being fair, and that he would
24 have to accept some limitations in activities
25 with restrictions in carrying, lifting and

1 repetitive flexion and extension.

2 Q. Now Doctor, this diagnosis would be based on
3 the assumption that the records you reviewed,
4 with regards to Mr. Gallitto, were all accurate,
5 correct?

6 A. Yes.

7 Q. And of course, it would also depend on the
8 oral histories provides by Mr. Gallitto also
9 being accurate, correct?

10 A. Yes.

11 Q. Now Doctor, you had mentioned very briefly a
12 prognosis for Mr. Gallitto, and I'd like to ask
13 you about that. As a result of your examination
14 and review of all of the records as well as the
15 oral history provided by Mr. Gallitto, are you
16 able to express an opinion within a reasonable
17 degree of medical certainty, as to whether or not
18 this individual at the time of your examination,
19 presented an indication of these injuries, and
20 what is your prognosis with regard to these
21 injuries?

22 A. I believe he sustained these injuries, and I
23 believe the prognosis with regards to the elbow
24 fracture is good to excellent; the healed rib
25 fractures is excellent; the head injury, I

1 believe to be good or excellent; and the ulnar
2 nerve I believe that to be fair. So, you have
3 to -- with the elbow problem, you have to combine
4 the fracture with the ulnar nerve, so I would
5 give it an overall prognosis of fair.

6 Q. Now, Mr. Gallitto related a work history to
7 you, which involved driving a truck, correct?

8 A. Yes.

9 Q. Did he relate any other details with regard
10 to what his job involved?

11 A. He has to load and unload the truck.

12 Q. Okay. Did he provide you with any specifics
13 as to what type of loading or unloading he has to
14 do?

15 A. I thought it was a bread truck, but I don't
16 remember. I'm not sure exactly what he was
17 loading or unloading or the amount of weight.

18 Q. Okay. Now based upon your examination of
19 Mr. Gallitto, do you have an opinion as to
20 whether, based on the conditions you diagnosed,
21 he would be able to return to driving a truck?

22 A. I believe he'd be able to return to driving.

23 Q. Okay. And Doctor, you had described some
24 limitations with regard to lifting, what would
25 those limitations involve?

1 A. In the amount of weight that he can carry or
2 lift, or do repetitively.

3 Q. Now, Doctor, obviously you had to take time
4 out from a busy orthopedic practice in order to
5 present testimony this afternoon. I'd like for
6 you to advise us as to whether or not you will
7 charge for the time which you have taken out from
8 your practice and obviously do not see any
9 patients?

10 A. Yes.

11 MR. MOLITERNO: Thank you, Doctor, I
12 have nothing further.

13 MR. MADDEN: Off the record one
14 moment, please.

15 (Thereupon, a discussion was
16 held off the record.)

17 CROSS-EXAMINATION

18 BY MR. MADDEN:

19 Q. Good afternoon, Doctor, my name is Justin
20 Madden and I have the privilege to represent Jim
21 Gallitto. May I just ask a couple of questions
22 in follow up to the questions that the attorney
23 for Riser Foods asked you?

24 A. Please.

25 Q. Doctor, I take it from your report, which

1 you have in front of you and you've read
2 substantially from here today, you don't have any
3 criticisms of the care or treatment that Dr.
4 Hissa provided Mr. Gallitto; is that correct?

5 A. Correct.

6 Q. You were asked about the accuracy of the
7 medical records which you have reviewed
8 concerning Mr. Gallitto, there is no indication
9 of any inaccuracies in those medical records, is
10 there?

11 A. I don't believe so, no.

12 Q. Okay. Doctor, the report that you have in
13 front of you, was written following your review
14 of Joe Gallitto's medical records, as well as
15 having an opportunity to speak with him
16 personally in my presence, and examine him from a
17 medical standpoint concerning his injuries,
18 that's correct?

19 A. Correct.

20 Q. The report that you've written, I'm sure, is
21 the result of your attempt to be completely
22 truthful and accurate regarding your opinions in
23 this case, right?

24 A. Yes.

25 Q. We don't need to revisit the examination, it

1 was clear during your examination that Joe
2 Gallitto has a significant limited range of
3 motion in his dominant hand or elbow; is that
4 correct?

5 A. I measured limitation, yes.

6 Q. All right. And I think you indicated that
7 his range of motion is approximately 30 degrees
8 less than that in his right elbow; is that
9 correct?

10 A. Yes.

11 Q. It is your opinion that as a result of this
12 incident back in January of '96, Mr. Gallitto
13 suffered rib fractures which afflicted him for
14 approximately six weeks, but resolved without
15 further complication; is that correct?

16 A. He either suspended -- he either had very
17 bad rib contusions or a fractured rib.

18 Q. It is also your opinion that Mr. Gallitto
19 fractured his left elbow, more specifically the
20 olecranon region of that particular joint,
21 correct?

22 A. Correct.

23 Q. The X-ray indicated that he broke the
24 olecranon in three pieces; is that correct?

25 A. I remember comminuted, I don't know how many

1 pieces.

2 Q. Comminuted meaning a significant fracture?

3 A. Many pieces. Several pieces.

4 Q. All right. Dr. Hissa performed surgery on
5 this elbow by actually making an incision, going
6 in, and wiring and inserting other surgical
7 hardware to pull that comminuted fracture back to
8 one piece, correct?

9 A. Yes.

10 Q. Now, while Dr. Hissa achieved an excellent
11 result in your opinion on this particular
12 surgery, it is nevertheless your opinion that Joe
13 Gallitto will still continue to suffer from aches
14 and pains in that left elbow, correct?

15 A. Any fracture will be susceptible to some
16 residual aches and pains with barometric pressure
17 change.

18 Q. As a matter of fact, you've indicated in
19 your report that these aches and pains will arise
20 from consistent activity at work, with lifting
21 and carrying, or as you indicated, from simple
22 things such as changes in the weather or
23 barometric pressure, correct?

24 A. You want to talk about the elbow in total,
25 with the nerve injury and the fracture, or are we

1 just talking about the fracture?

2 Q. You indicated earlier, Doctor, and I may not
3 be clear in my question, that he will continue to
4 have ache or pain due to changes in the weather
5 or barometric pressure, correct?

6 A. And I relate that to the fracture.

7 Q. To the fracture, right.

8 A. Yes.

9 Q. Obviously from one Cleveland native to
10 other, changes in the weather are something that
11 we experience here on a regular basis, true?

12 A. It happens.

13 Q. Okay. Thirdly, you've told us in your
14 report that in your opinion, there isn't any
15 surgical procedure which will bring Joe Gallitto
16 further relief with regards to that particular
17 ache and pain, other than to continue to take
18 antiinflammatory medication as needed; is that
19 right?

20 A. He has had absolute anatomic perfect healing
21 of the fracture. This is -- the fracture is
22 healed and would be an excellent result graded by
23 anybody with regards to the fracture. A mild
24 ache or pain with weather change is par for the
25 course with any fracture.

1 Q. And to bring relief from that ache or pain
2 resulting from the fracture, he would need to
3 take antiinflammatory medication; is that
4 correct?

5 A. I would think he would take Tylenol or an
6 antiinflammatory, an Advil or something.

7 Q. There is really no medical intervention at
8 this point that would bring him relief, other
9 than the anti-inflammatories?

10 A. I don't think the type of symptomatology he
11 would have from the fracture itself, would
12 warrant any increased treatment, other than that.

13 Q. The alternative solution that Joe Gallitto
14 has, is to reduce his work activity with respect
15 to lifting, and carrying, and extension and
16 flexion, either with lighter loads or reduced
17 work hours, which you've indicated for us in the
18 report, true?

19 A. Yes.

20 Q. I take it then you have no quarrel with Joe
21 Gallitto being placed on a light duty status at
22 his place of employment?

23 A. No. I don't know or I don't have the job
24 description and I didn't take a detailed work
25 history with regards to what his previous duties

1 are and what his present duties are. But he can
2 do some lifting, he can do some carrying, it's a
3 matter of what to what degree. And there would
4 be restrictions, he can't do unlimited lifting
5 and carrying.

6 Q. Now, finally, you've talked about and given
7 us opinions about this tardy ulnar nerve palsy
8 that you confirmed Joe Gallitto to have in your
9 examination. What is tardy ulnar nerve palsy?

10 A. He has some -- it's a -- the nerve fits
11 through a groove back here, (indicating) your
12 so-called crazy bone, there is a groove. Somehow
13 that develops a constriction, an adhesion, a
14 hematoma, some type of an irritation to that
15 area, and when everything distal to that nerve --
16 it's like an electric cable. If the electricity
17 goes to point B and you turn off point B, then
18 nothing works further down the line. So he has
19 injury here, and consequently he'll have some
20 symptomatology in the forearm and into this
21 finger.

22 He had the correct procedure done with this
23 being transferred, he had it explored, I presume
24 the adhesions were -- or if there were adhesions
25 -- were lysed and he had the traditional specific

1 procedure done for that condition.

2 Q. That was the ulnar nerve transposition
3 surgery in July of '98?

4 A. Yes.

5 Q. And even following that surgery, he has
6 still not recovered complete relief from that
7 condition, as confirmed by your examination?

8 A. Yes.

9 Q. I take it then, Doctor, there is no question
10 as we sit here today, that Mr. Gallitto will
11 continue to require medical care and treatment
12 for his left elbow and this palsy condition
13 you've diagnosed; is that fair?

14 A. He will have, I believe, continued
15 symptomatology. Whether or not there will be
16 continued care or treatment, I'm not sure,
17 because I don't know that it can be made any -- I
18 think it's at an end point and it is what it is.
19 And I don't think anything will influence it. So
20 there may not be any care or treatment.

21 Q. These conditions that you've described in
22 the olecranon and the nerve palsy, those are
23 permanent conditions as we sit here today; is
24 that correct?

25 A. I believe so.

1 MR. MADDEN: Doctor, thank you
2 very much for your time, I have no further
3 questions.

4 MR. MOLITERNO: No further
5 questions, Doctor. Thank you very much.

6 (Thereupon, the proceedings were
7 concluded at 1:50 o'clock p.m.)
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C E R T I F I C A T E

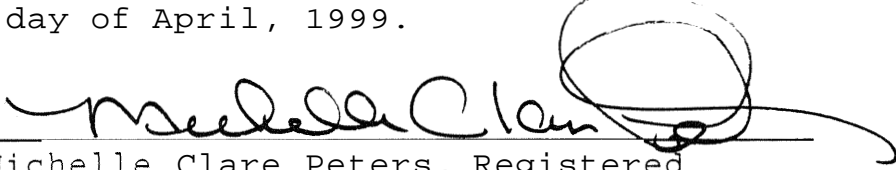
STATE OF OHIO,)
) SS:
SUMMIT COUNTY,)

I, Michelle Clare Peters, a Registered Professional Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, ROBERT MARK FUMICH, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to Stenotypy in the presence of said witness, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio on this 4th day of April, 1999.


Michelle Clare Peters, Registered
Professional Reporter and Notary
Public in and for the State of Ohio.

My commission expires April 13, 2003.