

#608

1 State of Ohio,)
2) SS:
County of Cuyahoga.)

3 - - -

4 IN THE COURT OF COMMON PLEAS

5 - - -

6 ROSS J. TALARICO,)
7 Plaintiff,)
8 vs.) Case No. 52,020
9 CONSOLIDATED RAIL CORPORATION,)
10 Defendant.)

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12 DEPOSITION OF BYRON K. HOFFMAN, M.D.

13 THURSDAY, APRIL 26, 1984

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15 The deposition of Byron K. Hoffman, M.D., a witness
16 called for examination by the defendants under the
17 Ohio Rules of Civil Procedure, taken before me,
18 Kathryn A. Keeler, a Registered Professional Reporter
19 and Notary Public in and for the State of Ohio, pursuant
20 to notice, at the offices of Byron K. Hoffman, M.D.,
21 25701 North Lakeland Boulevard, Euclid, Ohio,
22 commencing at 2:15 P.M., the day and date above
23 set forth.

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APPEARANCES:3
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On behalf of the Plaintiff:5
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ALSO PRESENT:13
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J. J. Cain
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BYRON K. HOFFMAN, M.D.

a witness called for examination by the defendant,
under the Rules, having been first duly sworn, as
hereinafter certified, deposed and said as follows:

DIRECT EXAMINATION

BY MR. SKKLINA:

Q Doctor, would you please state your name for the
record?

A Byron Hoffman.

Q And I have already called you doctor, but for the
record, what is your profession?

A Orthopedic surgery.

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

A In 1953.

Q Doctor, would you tell us something about your
educational background, where did you go to school?

A Ohio State University, undergraduate school;
Western Reserve University Medical School, University
Hospitals, Cleveland, Ohio, for five years of orthopedic
postgraduate training, residency and two years as
chief of surgery in an Air Force hospital.

Q Now doctor, you mentioned orthopedic surgery.
Would you tell the jury what field that encompasses?

A It is that field of surgery that specialized in the

1 treatment of problems, deformities, injuries, and
2 the prevention of those things with regard to what
3 we call skeletal muscular system. This means bones,
4 joints, tendons, ligaments, blood vessels, nerves, this
5 kind of thing.

6 Q What relationship does it have to the back, that
7 field?

8 A Oh, a very great relationship. About 50 percent
9 of my practice is back problems.

10 Q You mentioned the term "orthopedic surgery."
11 Do you actually do surgery is what I am getting at.

12 A Yes.

13 Q And what percentage of your practice is involved
14 with the back, to begin with?

15 MR. MICHELSON: Objection.

16 A Well, as I have already stated, about 50 percent
17 of my practice deals with back problems.

18 Q What percentage of your practice is involved with
19 surgery?

20 A What, on the back?

21 Q Yes.

22 A Very, very little, because I think very little
23 back surgery is indicated, percentage-wise.

24 Q What about surgery in general?

25 A As to a number of patients?

1 Q Yes.

2 A Oh, I would say I operate maybe on 10 or 15
3 percent of the patients I see, no more.

4 Q What hospitals have you been associated with?

5 A University Hospitals and their associate
6 hospitals, Huron Road, Euclid General, St. Luke's,
7 Lake County, Geauga, I think that is enough.

8 Q What posts have you held at these hospitals?

9 A I was clinical instructor in orthopedic surgery
10 at University, demonstrator of anatomy at Western
11 Reserve Medical School; chief of orthopedics at Huron
12 Road Hospital.

13 Q Have you done any teaching?

14 A Yes.

15 Q Where?

16 A At the medical school in anatomy, at St. Luke's,
17 Huron Road, University Hospitals in orthopedic surgery.

18 Q Have you done any writing in the field of
19 orthopedics?

20 A Yes.

21 Q What type of articles have you written?

22 A Oh, there were two on various problems of the
23 knee, one on -- years ago on gluing bones together with
24 a certain substance that didn't work. One on fat
25 embolism, several on fractures of the lower leg.

1 Q Doctor, what does board certification mean?

2 A Well, that implies that you satisfy the training
3 prerequisites that I have already alluded to, the
4 successful passage of a written and oral examination
5 at the conclusion of that training, and then another
6 written and oral examination two years following the
7 conclusion of that training.

8 Q Are you board certified?

9 A 1963.

10 Q Doctor, pursuant to my request, did you perform
11 a medical examination of Mr. Ross J. Talarico?

12 A Yes. I saw him in my office on 7-20-83.

13 Q Now, in the course of the examination of
14 Mr. Talarico, did you ask him what his major complaints
15 were?

16 A Well, I asked him where he hurt, at the time
17 I saw him, relative to what we were about to consider,
18 and he indicated that he had pain, and he indicated
19 the pain went across the left low back into the front
20 of the hip, down the anterior front aspect of the
21 thigh, down the inner aspect of the leg to the inner
22 aspect of the ankle.

23 Q And did he indicate anything else in his
24 complaints?

25 A And he said, "When I get it," that is this pain

1 "I drag my foot." And he indicated possible weakness
2 of the muscles that bring up the ankle on the left
3 foot.

4 Q And did you also ascertain from him some history
5 as to when he claims he was injured?

6 A Well, the history was a combination of responses
7 from the patient as well as a review of some records
8 that I had at the time of the exam. The patient
9 indicated that on 1-9-81 while working as a diesel
10 mechanic, he was walking toward a locomotive in the
11 snow, he fell over some scrap, and fell into a scrap
12 hole. He denied being unconscious, he walked away
13 from the accident, so to speak, in counter distinction
14 to having to be carried away on a stretcher. He said
15 his first medical attention was three or four days
16 following that accident, and this was rendered in the
17 plant dispensary.

18 Q Now doctor, in conjunction with my request to
19 examine Mr. Talarico, did we also send you some records
20 to review along with your personal examination of the
21 patient?

22 A Yes.

23 Q And what records did you review?

24 MR. MICHELSON: Objection.

25 A We had a plant dispensary record that indicated

1 that on 1-15-81 he was seen there,

2 MR. MICHELSON: Objection. Could we
3 see the record that we are talking about?

4 A Should I go on, or should I wait?

5 Q Just wait a minute. Let's just go off the
6 record for a minute because I have got another record I
7 want you to see.

8 (Thereupon, discussion was had off the
9 record.)

10 MR. MICHELSON: For the record,
11 please, I was not provided with a communication
12 by Dr. Casimer Radkowski dated April 3rd, 1981.
13 I was not provided with a copy of the record
14 of an EMG from Dr. Brickel. I was not provided
15 with a letter to Mr. Summer, the district claims
16 manager from Dr. Dohn, that was under the data
17 of May 15th, 1981. I haven't had a chance to
18 review them. I haven't had a chance to prepare
19 for any cross-examination in this deposition,
20 nor have I had a chance to have them reviewed
21 by somebody else, nor have we had an opportunity
22 to provide them to Dr. Wilke for his review prior
23 to his deposition and testimony.

24 We *were* also never provided with what
25 appears to be a radiology report from Deaconess

1 Hospital, under the date of February 3rd, 1977
2 in reference to a Dr. G. F. Sykora, S-y-k-o-r-a.
3 You are going to be referring to these --

4 MR. SKULINA: Before we get on the
5 record --

6 MR. MICHELSON: Do you have another
7 copy that I can have?

8 MR. SKULINA: No, I don't have it,
9 but I will see that you get a set. Also so the
10 record is clear, there is a report dated
11 July 20th, 1983. This report was given to
12 counsel.

13 MR. MICHELSON: Which one?

14 MR. SKULINA: Dr. Hoffman's report,
15 and he refers to all these reports in his report,

16 MR. MICHELSON: He does not,

17 MR. SKULINA: And, it is just a
18 matter of asking.

19 MR. MICHELSON: That is not accurate.

20 MR. SKULINA: Well, he does.

21 MR. MICHELSON: No, he doesn't. There
22 is a reference to Dr. Brickel's EMG. There is
23 no record of Radkowski's, there is a reference --

24 MR. SKULINA: He was seen by
25 Radkowski who has indicated he has left sciatica,

1 Mike.

2 MR. MICHELSON: We have a report
3 from Dr. Radkowski, which we provided to you,
4 which I assume was the only report from
5 Dr. Radkowski. That is okay, it doesn't look like
6 it is critical, but; I am still raising objection,
7 protecting the record that way. I am still
8 continuing my objection on other grounds to the
9 doctor's referring to records or reports.
10 My feeling is that he has got to refer to documents
11 or records that are in evidence.

12 MR. SKULINA: Did you return the
13 papers to the doctor?

14 MR. MICHELSON: Yes.

15 BY MR. SKULINA:

16 Q What records did he review?

17 A There was a record from the plant dispensary,
18 or a record that indicated that he was seen in the
19 plant dispensary on 1-15-81 with pain in the low back.

20 MR. MICHELSON: Could we have that
21 marked, please, for identification purposes,
22 each record that the doctor's referring to,
23 please?

24 Q Well, I think what we are going to do is just --
25 we will have you testify and then we will mark it so

1 so that you don't have to keep interrupting every time
2 we refer to the records, and then we will mark them.

3 MR. MICHELSON: Okay.

4 Can we use a reference number or something

5 MR. SKULINA: He's going to refer to
6 the records, and then after we finish, he will
7 then relate it so that we can -- otherwise, we
8 keep interrupting his testimony.

9 MR. MICHELSON: All right.

10 BY MR. SKULINA:

11 Q So, if you would then -- we will keep track of the
12 records that you have referred to, and we will mark them
13 afterward, if you would then proceed.

14 A In the plant dispensary records, it only alluded
15 to low back pain, it made no mention of leg pain.

16 MR. MICHELSON: Objection.

17 Q Okay.

18 A The records indicated on 1-23-81 he was seen by
19 a Dr. Radkowski.

20 MR. MICHELSON: Objection.

21 A Who indicated that he had left sciatica. EMG
22 and nerve conduction studies were performed on 2-2-81
23 by Dr. Brickel and are reported as showing slightly
24 slowing of the left peroneal nerve.

25 Q What is the left peroneal nerve?

1 A Well, that is a nerve that is a branch of the
2 sciatic nerve that goes down -- what we call the
3 anterolateral aspect of the leg in this area, and it
4 has two functions, it gives sensations to the top of
5 the foot, and enervates those muscles that bring the
6 ankle up like that.

7 Q And what relationship does that have to the
8 S-1 nerve?

9 A None.

10 Q Are they different nerves?

11 A They are different nerves.

12 Q And then, what other reports and records did you
13 see?

14 A Well, in addition, there was a -- let's see.
15 There was an electromyographic report, another EMG
16 study performed at the Cleveland Clinic dated 3-18-81,
17 and it resulted in the conclusion that there was left
18 S-1 radiculopathy as well as anterior tarsal tunnel syn-
19 drome due to local trauma, quote, unquote.

20 Q Now, what does that mean?

21 A That means on the EMG done at the Clinic, they
22 felt as although there was S-1 nerve root involvement,
23 or S-1 nerve involvement, where on the EMG Dr. Brickel
24 performed previously --

25 MR. MICHELSON: Objection.

1 A They felt that there was S-1 nerve root involve-
2 ment or L-5 nerve root involvement so that there was
3 a difference of opinion as to what each of those EMGs
4 showed.

5 The anterior tarsal tunnel syndrome due to local
6 trauma, they indicate that they felt as though the
7 results of the EMG done on 3-18-81 was due to injury
8 of the nerve in what we call the tarsal tunnel.

9 Now, the tarsal tunnel -- there is one that
10 goes behind the inner aspect of the ankle in that
11 fashion, there is another tunnel which is purely sensory
12 which goes on the front of the ankle.

13 Q Did Mr. Talarico mention anything to you
14 involving trauma to that portion of his body?

15 MR. MICHELSON: Objection. Objection.

16 A Which portion of the body is that?

17 Q The area where the tarsal tunnel is located.

18 MR. MICHELSON: Objection.

19 A No.

20 Q Now, what other records did you look at?

21 A Well, there was a report of a -- excuse me, there
22 was a report of a CATscan of the low back done at the
23 Cleveland Clinic on 3-23-81.

24 Q Can you tell us what a CATscan is, doctor?

25 A Well, a CATscan is an anacronym for Computerized

Axial Tomography. It is an x-ray procedure which, in essence, cuts the body in a transverse plane and gives you sections through -- in this particular case, the low back area. And then, these are put on film and you read them like an x-ray.

Q These were done by the Cleveland Clinic?

A On 3-23-81.

Q And what did that indicate?

A It indicated bony -- well, bony lipping with foraminal encroachment at the L-5 disc, that is between the L-5 and S-1 vertebra.

There was indentation of the inferior aspect of the intervertebral foramina for the L-5 nerve roots bilaterally.

And what that boils down to is that it showed bony narrowing of the area between the L-5 and S-1 vertebrae in the area where the nerves pass out of the bony spinal canal at that level.

Q Okay. Now doctor, did you also inquire from the patient whether he had had any previous accidents?

A Yes. He said, "I fell in 1977 while at work, and I injured my right hip and low back."

Q Okay.

A And was there any other injuries or accidents that the patient alluded to?

1 A. No.

2 Q. And did he also indicate what kind of occupation
3 he was involved in?

4 A. Yes. As I have already mentioned, he said he
5 was a diesel mechanic involving locomotives.

6 Q. Now, did you also make a general inquiry as to
7 the -- his general wellbeing, his health, and so forth
8 and so on?

9 A. Yes. He said under illnesses he had only had
10 the usual childhood diseases, he had a hemorrhoidectomy,
11 he wasn't allergic to anything, he was taking aspirin,
12 and that he had had no previous hospitalizations, but
13 I would imagine he was hospitalized for his hemorrhoid
14 operation.

15 Q. Which wouldn't affect the matter that you were
16 examining him for anyhow, would it?

17 A. No, this was just past history.

18 Q. Then doctor, after you had reviewed these
19 matters, and you had talked to Mr. Talarico, did you
20 then perform a physical examination?

21 A. Well, actually your physical examination entails
22 the entire time you are with the patient, so you are
23 doing part of your physical examination while you
24 are taking your history.

25 Then at the conclusion of that portion of the

1 history-taking, and the coincidental physical
2 examination, then he was put in the examining room,
3 undressed down to his shorts, and then we completed
4 the physical examination.

5 Q All right. What did your examination reveal?
6

7 A What did it reveal?

8 Q Yes.

9 A We examined his low back, his lower extremities
10 from a bone, joint, ligament, tendon, blood vessel,
11 nerve, muscle-standpoint, and the examination showed
12 that his pulse was normal, his temperature was normal,
13 he had mild varicosities involving both ankles, that
14 is, varicose veins on both sides.

15 He was tremendously obese.

16 Q Why do you use that adjective?

17 A Why do I use that adjective?

18 Q Tremendous, what do you mean by that?

19 A Well, he was very, very, very obese. Otherwise,
20 the examination was normal that we conducted.

21 Q And as part of your examination, is a neurological
22 examination also part of it?

23 A Yes.

24 Q And what did you ascertain in your neurological
25 examination?

26 A That the neurologic examination of the areas that

1 we examined that I have already alluded /a was normal,
2 There were no abnormal neurologic findings.

3 Q Did you check his Achilles tendons in his ankles?

4 MR. MICHELSON: Objection.

5 Q Among your procedures in taking the neurologic
6 examination, would you tell us what parts of his body
7 you examined, and what neurologic examinations you
8 examined?

9 A Well, the neurologic portion of the examination
10 of those areas that we examined consisted of watching
11 him walk, that is all part of the neurologic
12 exam, so you watch him walk, walk on heels, toes,
13 walk normally to see if there is any abnormalities.
14 You test muscle function which is an indication of the
15 status of his neurologic symptoms in the legs. You
16 test his vibratory sense which is a mechanism of testing
17 not only the nerves, but what we call the extraparametal
18 tracks of the spinal cord. You test his position, what
19 we call the position and station sense. You test
20 sensation, you test straight leg raising the Lasaque's sign,
21 which are two tests that evaluate neurologic function.
22 You test the deep tendon reflex in the knees, and
23 in the ankles.

24 Q What do those tests consist of?

25 MR. MICHELSON: Which tests?

1 A. Which tests?

2 Q. The last test you mentioned.

3 A. The deep tendon reflex?

4 Q. Yes.

5 A. They consist of striking the patella tendon,
6 which is in the knee, what we call the knee reflex,
7 and striking the heel cord, which is called the ankle
8 reflex, with a reflex hammer,

9 Q. What other neurologic tests, if any, did you
10 take?

11 A. I think that is the summation of the ones we
12 did.

13 Q. And your findings with respect to those examina-
14 tions was what?

15 A. They were all normal,

16 Q. All right. Now, did you also have x-rays taken?

17 A. Yes.

18 Q. And do you have those with you?

19 A. Yes.

20 MR. SKULINA: now, let's go off the
21 record, and we can mark some of these things.

22 (Thereupon, Defendant's Exhibits A through
23 M were marked for identification purposes herein.)

24 BY MR. SKULINA:

25 Q. Doctor, we have in the recess here marked for

1 identification purposes a series of x-rays, and they
2 are marked Exhibits A through G, Defendant's Exhibits.

3 What do those exhibits represent?

4 A They represent a series of x-rays of his low
5 back from different views.

6 Q Now, what has been your background with respect
7 to interpreting or reading x-rays?

8 A Well, as with any orthopedic surgeon, they always
9 review and read any x-rays that they order, so that I
10 review all the x-rays and read them to my satisfaction
11 on all patients upon which I order x-rays. So, I am
12 reading x-rays all the time from an orthopedic point
13 of view.

14 Q Now, what matters did you observe in conjunction
15 with the review of these x-rays?

16 A Well, I reviewed the x-rays, the radiologists,
17 Hill & Thomas, whose facility took the x-rays, their
18 radiologist read the x-rays, and in this case it was
19 Dr. Roda, R-o-d-a, and we both came to the same
20 conclusion, I think this x-ray probably -- this is
21 Exhibit D -- illustrates the findings as well as any.

22 But it shows that the patient has degenerative
23 changes between the fourth and fifth lumbar vertebrae
24 in this area, in the disc space. He has degenerative
25 changes in this area (indicating), between the fifth

1 lumbar and the first sacral, with narrowing of this
2 inner space. He has what we call osteophyte formation
3 spurs on these vertebra at the fourth, fifth, and
4 the fifth and the first sacral. He's beginning to
5 bridge here in the front a little bit, in the
6 calcification of the ligaments.

7 He also has a calcification in his aorta which
8 is the big abdominal blood vessel, the artery that
9 runs down the middle of your abdomen, and that is a
10 manifestation of a degenerative change.

11 So -- but, the x-ray shows an aging process in
12 the low back at the L-3, 4, 5, and L-4, 5, and L-5,
13 S-1 lumbar.

14 Q How long does it take to get to that condition,
15 do you know?

16 A No, I don't know. It starts right after --

17 MR. MICHELSON: Objection.

18 A It starts right after puberty, and just progresses
19 as we get older. It happens to all of us.

20 Q Doctor, would you look at Defendant's Exhibit
21 M and tell us what that states?

22 A This is an x-ray report from Deaconess Hospital
23 of the low back, the same area that we took x-rays of.
24 These were taken on 3-2-77, and it is a report of the
25 findings of those x-rays.
26

1 Q And what changes are there between the
2 matters that were reported in that document and the
3 matters that you found in the x-rays that you took?

4 MR. MICHELSON: Objection.

6 A They found the same thing that the x-rays that
6 we took show, that he has degenerative changes in his
7 low back and calcification in his aorta.

8 Q Thank you.

9 Doctor, after you had examined the patient,
10 and based on your examination, and the x-ray studies
11 that you have taken, do you have an opinion, based on
12 a reasonable medical certainty, whether he has any
13 disabling condition as a result of the accident of
14 January 9, 1981?

16 MR. MICHELSON: Objection.

16 A Yes, I have reached an opinion.

17 Q And what is your opinion?

18 A That I found no evidence of disability, or
19 abnormalities that I could attribute to the episode
20 of 1-9-81.

21 Q What significance did the complaints of pain
22 that you had described when we started this deposition
23 as leading down his leg, et cetera, what significance
24 did that have with respect to your evaluation of
25 Mr. Talarico?

1 to trauma?

2 MR. MICHELSON: Objection.

3 A. None.

4 MR. SKULINA: That is all the
5 questions I have -- ah, and a last thing, just
6 for the record, we have marked some other
7 documents that you have looked at. Would you
8 please identify them for the record?

9 Let me see them, doctor, and I will hand
10 them to you. Exhibit L, what is that? Let me
11 get them in order, excuse me. These are not in
12 order.

13 MR. MICHELSON: We can agree that
14 Defendant's Exhibits A through G were x-rays
15 taken by Drs. Hill and Thomas and their group
16 at the request of Dr. Hoffman.

17 Defendant's Exhibit H is a report of
18 a Dr. Himnan, which purports to be a record of
19 Consolidated Rail Corporation on the date of
20 January 15th, 1981.

21 Defendant's Exhibit I is a note over the
22 signature of a Dr. Casimer Radkowski, which --
23 Defendant's Exhibit J is an EMG report of a
24 Dr. Brickel.

25 Defendant's Exhibit K is a Cleveland Clinic

1 Foundation EMG report.

2 Defendant's Exhibit L is a Cleveland
3 Foundation CTscan report and Exhibit M is a
4 Deaconess x-ray report under date or over date
5 of 1977 relating to Mr. Talarico concerning
6 which the doctor has addressed himself.

7 MR. SKULINA: Let me just get
8 these in order. Where is M? We are going to
9 keep these -- M is the; last one, right, counsel?
10 Okay, okay,

11 - - -

12 CROSS-EXAMINATION

13 BY MR. MICHELSON:

14 Q Okay. Doctor, we have met. My name is Michelson,
15 and Mr. Giaimo and myself -- Frank Giaimo -- represent
16 the plaintiff in this action, Mr. Talarico. I have
17 several questions for you, if you will bear with me for
18 a moment.

19 Doctor, there was a question asked initially about
20 Dr. Brickel's EMG report concerning the test he did on
21 Mr. Talarico on February 2nd, 1981, and you there
22 addressed yourself to a slowing of the left or the
23 response of the left peroneal nerve which you describe
24 as a branch of the sciatica nerve and having no
25 relationship to the S-1 nerve; is that correct?

A. That's right.

Q. In addition to that, there was in that report a reference to increased polyphasic units without denervation and anterior and posterior myotomes supplied by L-5 on the left; is that correct?

A. That's correct, *yes*.

Q. In addition to that, Dr. Brickel found that those findings were principally related to L-5 radiculopathy which may be due to the bulging or herniated L-4, L-5 disc; is that correct?

A. That's correct as to what Dr. Brickel said in his report.

Q. That's correct.

A. Yes.

Q. All right, thank you.

Now, doctor, you testified concerning a report or letter from Dr. Radkowski, which we have marked as Defendant's -

You have testified to that over objection, which, within that report Dr. Radkowski felt that there was a stretching of the left sciatica nerve; isn't that correct?

A. I don't know. I will have to go back and read the report.

Okay.

1 not able to elicit it on other examinations?

2 A. I don't quite understand your question.

3 Q. You are aware, of course, that other physicians
4 were unable to elicit that response on physical
5 examination.

6 A. No, I wasn't aware of that.

7 Q. Is there a significance, if they have been unable
8 to elicit that response, what is the significance of
9 their failure to elicit an Achilles reflex response on
10 the left?

11 A. It just means that it was present when I examined
12 him, and it wasn't present when they examined him.

13 Q. What would be the significance of an absence of
14 an Achilles reflex response?

15 A. Well, the absence of it itself doesn't mean any-
16 thing, because about 20 percent of the population will
17 have absent reflex in the lower extremities, anyway.
18 But they are usually symmetrical, that is, if you have
19 absence, say, in one leg, you will have absence in the
20 other. So that doesn't really tell you anything.
21 That is a normal finding. If you have, say, a reflex
22 and we are talking about the Achilles reflex, if you
23 have it on one side and not on the other side, then
24 this becomes a significant physical finding, and in
25 this particular case, it would suggest that there was

1 an involvement of the S-1 nerve root portion of the
2 sciatic nerve.

3 Q Now, doctor -- by the way, did you take into
4 account in arriving at your conclusion and opinion that
5 prior to January 9th, 1981, Mr. Talarico had no problems
6 relating to his left leg, and there is no history of
7 that, did you take that into consideration?

8 A Well, yes, because I asked him, had he ever
9 had any other problems in those areas, that he had com-
10 plained of to me prior to this injury.

11 Q And he did not?

12 A He said he did not, other than for the low back,

13 Q Well, didn't he tell you that his low back problems
14 in 1977 resolved?

15 A No.

16 Q Did you ask him whether they did?

17 A No.

18 Q Doctor, further, the positive CTscan, such as we
19 have here, and that you have looked at, that is an
20 objective sign or an objective finding, is it not?

21 A Well, number one, I did not look at the CTscan,
22 I looked at the report of the CTscan.

23 Q Okay.

24 A There were objective abnormalities reported on the
25 CTscan on those reports.

1 Q All right. And the fact that the L-5 disc appear-
2 ing to bulge on the left with its shadow indistinguish-
3 able from the left S-1 nerve root, that is not a
4 significant finding on that CATscan.

5 A No.

6 Q That doesn't suggest anything to you at all?

7 A No. It suggests there was no herniated disc, it
8 was just a bulging.

9 Q Well, a bulging disc is not a normal disc.

10 A Yes, it is. We are finding more and more, as
11 we have more experience with CATscans, if you find these
12 bulging discs, which is really basically a normal
13 configuration of the disc, it is a description of the
14 configuration of the disc. It doesn't represent a
15 pathologic abnormality when the term "bulging" is used.

16 Q Is it of any significance at all when there are
17 complaints and objective signs that relate to problems
18 coming from that nerve root, the fact that it is bulging
19 is that of significance?

20 A Well, what you are asking me is, if you have
21 bulging of a disc at the site of a nerve in which you
22 find objective physical findings in that nerve, is
23 this significant?

24 Q Right.

25 A Well, the question -- the two premises on the

1 question are incompatible.

2 Q I will withdraw the question if it can't be
3 answered.

4 A Well, no, it can be answered. Yes, because,
5 number one, you wouldn't find objective findings with a
6 bulging disc, due to that disc.

7 Q Because the bulging itself is not an objective
8 finding, that is just secondary.

9 A No, because the bulging itself would not produce
10 subjective abnormalities with the nerve.

11 Q Is the history Mr. Talarico gives you significant?

12 A I think the history any patient gives you is
13 significant.

14 Q And, doctors rely upon histories a great deal
15 in coming to conclusions, do they not?

16 A That's right, yes.

17 Q In fact, in coming to conclusions as to an
18 appropriate course of treatment, physicians must rely
19 on history as well as clinical findings, as well as
20 tests, mustn't they?

21 A The history is one of the ingredients in your
22 diagnostic armamentarium, yes.

23 Q As well as the examination, the physical
24 examinations that the physician performs.

25 A Yes

1 Q As well as tests such as x-rays, EMGs, CTscans,
2 blood tests, all of those types of testing that the
3 medical profession

4

5

6

7 fall and injury on January 9th he had a normal neurologic
8 examination? Were you aware of that?

9 A No.

10 Q Doctor, do you disagree with the report of the
11 findings of Dr. -- by the way, do you know Dr. Asa
12 Wilbourn. Do you know of him?

13 A No.

14 Q You have never heard of him?

15 A No.

16 Q He's a neurologist at the Cleveland Clinic
17 Foundation who conducted and read the electromyographic
18 test that was conducted there.

19 Do you disagree with him when he says that his
20 findings -- the extensive EMG examination of the left
21 lower extremity and nerve conduction studies of the
22 right lower extremity reveal findings that in the
23 left lower extremity, these findings are consistent
24 with S-1 radiculopathy. Do you disagree with him?

25 A Certainly not.

1 Q You do agree that his findings are consistent
2 with S-1 radiculopathy?

3 A No. I said that I can't disagree with his report,
4 because, number one, I wasn't there at the time, so all
5 I can do is assume he was a competent doctor and his
6 report is accurate.

7 Q You find no S-1 radiculopathy with Mr. Talarico?

8 A At the time I examined him, no.

9 Q I see. And Dr. Dohn, are you familiar with
10 Dr. Dohn? Do you know who he is?

11 A I don't know him personally, I know who he is.

12 Q You know of him?

13 A He was a neurosurgeon, was he not?

14 Q That's correct.

15 A At the Cleveland Clinic Foundation?

16 Q Yes.

17 And do you disagree with him that based upon his
18 examination and the tests in the Cleveland Clinic,
19 which were the CTscan, and the EMG -- excuse me for
20 one minute, please.

21 By the way, do you disagree with him when he says
22 the CTscan that he reviewed showed a foraminal encroach-
23 ment at L-5 bilaterally. Do you agree with him there?

24 A I don't think it is really my place to agree or
25 disagree.

1 Q Okay.

2 A All I have to go on is the records. And
3 apparently Dr. Dohn disagrees with the report of the
4 CATscan, because I believe the CATscan indicated that
5 it was only on the left. He indicates that he thought
6 it was on both sides.

7 Q I see. Now, would you disagree if Dr. Dohn
8 recommended to Mr. Talarico that he not work at the
9 time he saw him, that he stay off work and was disabled
10 from working at his job as a machinist on the railroad?

11 A Again, I couldn't agree or disagree, that I
12 wasn't there at the time. But, I have had to rely upon
13 Dr. Dohn's opinion, because he was there.

14 Q How about Dr. Wilke; do you know Dr. Wilke?

15 A No.

16 Q He's a physician at the Cleveland Clinic, a
17 rheumatologist.

18 Would you agree or disagree with him in his
19 opinion? He believes Mr. Talarico is unable to perform
20 his job at the Consolidated Rail Corporation?

21 A At what junction?

22 Q Physically unable to do it?

23 A At what junction in time?

24 A In 1983, May.

25 A No. As I say, I can only testify to my opinions

1 as of the day I saw him.

2 Q Do you know a Dr. Jones, a physician at the
3 Cleveland Clinic Foundation? Are you aware of him?

4 A No.

5 Q Would you agree or disagree in your opinion if
6 he says that, in reference to Mr. Talarico in 1981,
7 after his examination and his review, that he had S-1
8 radiculopathy, improved, but still present, the patient
9 should not go back to heavy lifting, jumping off railroad
10 cars, cannot return to work of the character that he
11 performs on the railroad. Do you agree or disagree
12 with that?

13 A I don't disagree with it; I wasn't there,

14 Q But it is your opinion that at this time there
15 is nothing wrong with him?

16 A At what time?

17 Q I'm sorry, when you saw him there was nothing
18 wrong with him.

19 A At the time I saw him, I found no evidence of
20 pathology that I could attribute to the episode of
21 1-9-81.

22 Q Did you find any evidence of any pathology that
23 was attributable to anything?

24 A With regard to the complaints he voiced to me?

25 Q With your examination.

1 A. With regard to complaints he voiced to me, I
2 could find no objective reason for the complaints.

3 Q. Could you find any reason? Did you form an
4 opinion when you examined him as to whether or not
5 there was any orthopedic or neurologic pathology of
6 Mr. Talarico?

7 A. Yes, I formed an opinion.

8 Q. And what is that opinion?

9 A. That he had none.

10 Q. Okay.

11 A. Due to the accident.

12 Q. Objection.

13 Did he have any?

14 A. Well, he had orthopedic abnormalities in the sense
15 that he has degenerative changes both in his abdominal
16 aorta, he has got degenerative changes in his low back,
17 and he's got what we term morbid obesity, almost
18 pathologic obesity.

19 Q. Other than those, you found nothing else wrong with him
20 from an orthopedic-neurological standpoint; is that
21 correct?

22 A. That's correct.

23 MR. MICHELSON: Off the record.

24 (Thereupon, a discussion was had off the
25 record.)

1

2

Q Doctor, what is the vacuum effect? What does that mean?

3

4

A When in the particular case you are alluding to, this is in the disc space, the cushion between the vertebrae, that as a disc undergoes biologic degeneration, and that biologic degeneration is a process of drying out, we call it inspissation, that in that process, nitrogen, because of the breakdown of protein, is liberated into the tissue spaces, and it gives you a picture of air in the disc, if you want to call it that. And, it will be a bubble in the disc, a darkened area in the disc, and that is called a vacuum effect. So, it is a manifestation of degeneration of the disc.

14

15

Q I see. By the way, does the disc degeneration normally happen over the entire range of all the discs or many of the discs?

16

17

18

A No, it is very selective.

19

Q Individual discs one at a time?

20

A There is a certain sequence of disc degeneration with the aging process that is very predictable.

21

22

Q And what is that?

23

A In the spinal column.

24

Q What is that?

25

A Well, for example, in the low back, the first one

1 to wear out is the one between L-5-S-1.

2 The next one is L-4 and 5. Then, it proceeds
3 up from there, usually. In the neck, the disc space
4 between the 5th and 6th cervical vertebrae is usually
5 the one to wear out, and then the wearing out process
6 extends on each side of those.

7 MR. MICHELSON: Off the record for a
8 second, please?

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

11 BY MR. MICHELSON:

12 Q Doctor, in your review of the records, did you
13 review records of the Cleveland Clinic Foundation in
14 Mr. Talarico's visits there, and the examinations by the
15 physicians after the January 9th injury?

16 A I have no idea. You have got me so confused about
17 what the records were in this case. If you have any
18 records you would like me to look at, I would be happy
19 to.

20 Q No, I'm just wondering if you looked at them to
21 form your opinion.

22 Post-January 9th, 1981, Mr. Talarico was seen
23 at the Cleveland Clinic on many occasions. These were
24 records which were provided, and they are shown, the
25 dates that he was there. Did you review them at all,

1 before, or at any time, before or after you examined
2 Mr. Talarico, and reviewed other reports and notes?

3 A. The records that you have marked as exhibits
4 were reviewed. Here are some more records that were
5 reviewed from the Clinic. They extended from -- let
6 me see, where is it? Oh, let's see. We began
7 April 15th of 1981 and extended through -- when was
8 the last one? Here, it wasn't dated. I think it is
9 August the 3rd, probably, of '81.

10 Q Those are the ones you reviewed between those
11 dates?

12 A Yes.

13 Q I see. So you weren't aware that on February 27th,
14 1981 --

15 A Now, what date, February 27th?

16 Q 1981, Dr. Wilke at the Cleveland Clinic was
17 unable to elicit an Achilles reflex, positive Achilles
18 reflex on the left. You were not aware of that; is
19 that correct?

20 A No, I think the first handwritten notes I have
21 concerning outpatient treatment at the Clinic, in
22 going through these records, was April the 15th of '81.

23 Q Okay. And --

24 A On that April 15th record, it does indicate there
25 was absence of the left ankle jerk as compared to two

1 plus ankle jerk on the right. So that was the first
2 -- that is the first indication you have.

3 A. The first indication I have in the records re-
4 viewed, yes.

5 Q. And so, then, you weren't aware that on
6 March the 18th, 1981 --

7 MR. SKULINA: Let's just go off the
8 record a minute.

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

11 BY MR. MICHELSON:

12 Q. We are on the record.

13 Doctor, all I want to know is, you were not aware,
14 then, on March 18th, 1981, that doctors at the Cleveland
15 Clinic -- particularly Dr. Wilbourn and I presume a
16 Dr. Christopher or a Technician Christopher remarked
17 that there was an absence of H reflex, which I presume
18 is an Achilles reflex in the left leg?

19 A. No, H reflex is not.

20 Q. What is the H reflex?

21 A. H reflex is a finding on electromyography.

22 Q. Okay. What does that tell you? What does that
23 statement mean when the electromyographer says absent
24 H reflex in the left leg, the H reflex is present
25 in the right leg?

1 A. What does that mean?

2 Q. Yes.

3 A. It means there was an absent H reflex.

4 Q. What does that mean, what is the H reflex?

5 A. There is not enough information to tell, because
6 the H reflex, he doesn't say which nerve root or which
7 nerve he's indicating.

8 Q. I see. And he goes on to say, "A needle exam
9 revealing evidence of a left S-1 plus S(radiculopathy),
10 and there was evidence of active denervation in some
11 of the S-1 enervated, and a few of the L-5 enervated
12 muscles on the left side."

13 A. Yes. That is a handwritten synopsis of the
14 EMG that you have already quoted.

15 Q. I see. All right. One minute please.

16 (Thereupon, a short recess was taken.)

17 BY MR. MICHELSON:

18 Q. And doctor, you did say you were aware that
19 Dr. Dohn found an absent ankle jerk reflex on the left
20 on April 15th, 1981.

21 A. A number of people at the Clinic found an absent
22 left ankle jerk. Whether, specifically, Dr. Dohn
23 didn't find a left ankle jerk or not, I don't remember.
24 I can go over the record for you, but I would be willing
25 to take your word for it.

1 Q Okay. Doctor, how often do you do these
2 consultations and reviews for the purpose of writing
3 reports and testifying on behalf of lawyers in cases?

4 A Gee, I don't know. We don't keep those kinds
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11 Q And as I understand it, doctor, you don't do virtu-
12 tually any on behalf of any claimants; is that correct?

13 A Oh, no. I have got a couple scheduled in the
14 future for patients of mine who are claimants.

15 Q I'm sorry. I thought you testified in a matter
16 just recently that you don't accept patients who have
17 any litigation or are claimants?

18 A That's right. These patients that I am being
19 asked to testify for were patients who were injured,
20 fell down, broke bones, I treated, operated on, and
21 then they sue somebody. So I have got to testify as
22 the treating doctor.

23 Q Oh, I see. But for consultation purposes,
24 you only do it for the defense side; is that correct?

25 A No. My comments -- the comments that you are

1 alluding to is that I said I did not accept patients
2 on referral for treatments from attorneys.

3 Q But you accept referrals from defense counsel
4 for the purpose of doing evaluations with an eye towards
5 either reviewing the case and writing reports as well
6 as testifying in court; is that correct?

7 A That's correct, And I would do the same thing
8 for plaintiff's counsel,

9 Q Have you done any for plaintiff's counsel?

10 A No, because I am very rarely asked to do them.

11 Q How many have you done for Mr. Skulina?

12 A I have no idea.

13 Q More than one?

14 A More than one.

15 Q More than ten?

16 A I don't know. Have I?

17 MR. SKULINA: I don't think ten.

18 A I don't keep those records; I don't know.

19 MR. MICHELSON: I have nothing further.

20 - - -

21 REDIRECT EXAMINATION

22 BY MR. SKULINA:

23 Q Doctor, in the cross-examination, there was some
24 reference to one of the doctors suggesting that
25 Mr. Talarico enter into a weight reduction program.

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7 A. Well, two reasons. One, it would take an
8 excessive load off his low back, and secondly, it
9 would decrease his lumbar lordosis. When you are
10 obese, you tend to increase the curve in your back. As
11 a result of increasing that curve in your back, the
12 configuration of the holes through which the nerves
13 pass out the spine are decreased in size, and it leaves
14 less room for the nerves to exit the spine. So the
15 weight reduction would have a benefit in both those
16 regards.

17 Q And, just so the record is clear, your opinions
18 and your diagnoses and your findings are all based on
19 the examination and are confined to that time when you
20 saw that man; is that correct?

21 A. My opinions are based on his condition at the time
22 I saw him, yes.

23 MR. SKULINA: That is all the
24 questions I have.

25 - - -

RECROSS-EXAMINATION

BY MR. MICHELSON:

Q Doctor, you are aware that Mr. Talarico is essentially the same weight prior to January 9, 1981 as he was subsequent to January 9th, 1981. Are you aware of that?

A Yes. He said he has always been heavy.

Q And you were aware that he was always able to perform all of the functions of his daily life, including his work and employment prior to January 9th, 1981 at that weight, with no or none of the symptomatology of which you have been made aware, post-January, 1981. You are aware of that?

A I really didn't go into that with him, no.

Q And were you aware that in November of 1980, two months before January 9th, 1981, when he fell and injured himself and developed this symptomatology, he was at or near the same weight as when you saw him, and he had a completely normal orthopedic and neurologic examination?

A No, I am not aware of his status at that time.

Q Okay. Are you aware that post -- I will withdraw that.

MR. MICHELSON: I have nothing further at this time.

1 MR. SKULINA: Doctor, will you
2 waive signature?

3 THE WITNESS: I will.

4 MR. MICHELSON: I bet he will.

5 MR. JASTROMB: Will you waive viewing
6 of the videotape?

7 THE WITNESS: Yes.

8 MR. SKULINA: Will you waive the
9 filing formalities? I will do the same for you
10 in your situation.

11 MR. MICHELSON: Yes.

12 - - -

13 (DEPOSITION CONCLUDED)

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CERTIFICATE

46

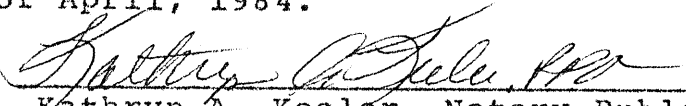
1 State of Ohio,)
2 County of Cuyahoga) SS:

3 I, Kathryn A. Keeler, a Registered Professional
4 Reporter and Notary Public in and for the State of
5 Ohio, duly commissioned and qualified, do hereby
6 certify that the within-named witness, BYRON K.
7 HOFFMAN, M.D., was by me first duly sworn to testify the
8 truth, the whole truth and nothing but the truth in the
9 cause aforesaid; that the testimony then given by him
10 was by me reduced to stenotypy in the presence of
11 said witness, afterwards transcribed upon a typewriter,
12 and that the foregoing is a true and correct transcript
13 of the testimony so given by him as aforesaid.

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

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

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Cleveland, Ohio, on
22 this 27th day of April, 1984.

23 
24 Kathryn A. Keeler, Notary Public
25 in and for the State of Ohio.
Registered Professional Reporter.

My commission expires October 31, 1988.