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STATE OF OHIO,                    )  
                                      ) ss  
COUNTY OF CUYAHOGA,         )

DOC. 294

IN THE COURT OF COMMON PLEAS

LEON USYK, et al.,                    )  
                                      )  
Plaintiffs,                            )  
                                      )  
- vs -                                    )  
                                      ) Case No. 182301  
                                      ) Judge T. J. Pokorny  
EDWARD LAPP, et al.,                    )  
                                      )  
Defendants,                                )

- - - - -  
TME DEPOSITION OF ERNEST Be MARSOLAIS, MOD,  
TAKEN SATURDAY, MARCH 30, 1991

- - - - -  
The deposition of ERNEST B. MARSOLAIS, M.D.,  
called by the Defendants for examination, pursuant to  
the Ohio Rules of **Civil** Procedure, taken before me, the  
undersigned, Kathy A, Vazinski, a Registered  
Professional Reporter and Notary Public within and for  
the **State** of Ohio, taken at University Hospitals,  
Lakeside, 2074 Abington Road, Cleveland, Ohio,  
commencing at 12:15 p.m., the day and date above set  
forth,

WANOUS REPORTING SERVICE

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(216) 851-9270

APPEARANCES:

On behalf of *the* Plaintiffs:

Donna Taylor-Kolis, Attorney at Law  
Garson & Associates  
1600 Rockefeller Building  
614 Superior Avenue, N.W.  
Cleveland, Ohio 44113

On behalf of the Defendant:

Edward L. Bettendorf, Attorney at Law  
Ohio Bell Telephone Company  
45 Erieview Plaza  
Cleveland, Ohio 44114

ERNEST B. MARSOLAIS, M.D.

of lawful age, called to testify by the Defendant as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF ERNEST B. MARSOLAIS, M.D.

BY MR. BETTENDORF:

Q Dr. Marsolais, I'm Ed Bettendorf. As you know, I represent Ohio Bell. We've just met.

Let the record reflect this is a discovery deposition --

MS. TAYLOR: Absolutely.

Q -- by agreement.

Could you tell us your full name for the record, please, and spell your last name for the benefit of the court reporter,

A Ernest Byron Marsolais, M-a-r-s-o-l-a-i-s.

Q You are a medical doctor, is that correct?

A I am both a medical doctor and a doctor of philosophy.

Q Can you tell us, you are licensed in Ohio, I assume?

A Yes.

Q When did you receive your licensure?

A I was licensed in Ohio in 1970.

Q What medical specialty do *you* practice'?

A Orthopedic surgery with a subspecialty in the lumbar spine.

Q And are *you* board certified, Doctor?

A Yes.

Q In what specialty?

A Orthopedic surgery.

Q When did you receive that?

A 1972.

Q Thank you. I think the record shows that you were and are the treating physician for the plaintiff in this case, Leon Usyk?

a Yes.

Q When did *you* first see the plaintiff?

A I first saw him September 30th of 1988.

Q And had you had occasion ever to see or otherwise treat the patient prior to that: date for any other reason?

A I had not.

Q And how did you become involved?

A I was asked to see him by Dr. McFadden.

Q And Dr. McFadden is the plaintiff's chiropractor, is that correct, as you understand it?

a Yes.

1 Q Did you receive a communication from Dr.  
2 McFadden, either a letter or phone call  
3 reference?

4 A Phone call.

5 Q And it was a referral from him?

6 A Yes.

7 Q Have you ever received any medical records or  
8 reports from Dr. McFadden?

9 A I have received medical reports that Dr.  
10 McFadden has written which discussed his  
11 treatment prior to my seeing Mr. Usyk. I don't  
12 think that I have any actual reports in my chart  
13 from Dr. McFadden concerning Usyk, other than  
14 that phone call.

15 Q Okay. So you never did receive any reports from  
16 him?

17 A I had received reports following my treatment of  
18 Mr. Usyk, reports which I have not studied in  
19 detail at this point.

20 Q Those are not --

21 A But prior to seeing Mr. Usyk, I did not have any  
22 reports.

23 Q Thank you. And do I understand from what you  
24 just said after you looked through your file,  
25 you don't have those reports that you received

1           subsequent to your becoming involved in the case  
2           from Dr. McFadden?

3       A       Yes, I do not have those here.

4       Q       You have those somewhere in your office, though?

5       n       Yes. I have a copy of this manuscript which has  
6           been prepared concerning the whole **problem** and  
7           within that manuscript are rather comprehensive  
8           reports from Dr. McFadden.

9       Q       Thank *you*. When you **are** referring to the  
10           brochure, *you* mean the settlement brochure *that*  
11           has **been** made available to us as well?

12      A       Yes.

13                           MS. TAYLOR:                   Exactly the  
14           same.

15      Q       Just so I'm clear -- I'm not trying to belabor  
16           the point -- but I ~ a r k e o understand this  
17           point, Doctor. You received the reports then of  
18           Dr. McFadden, not directly from Dr. McFadden but  
19           through counsel; is that fair?

20      A       That is correct,

21      Q       When did you have **an** opportunity to see those  
22           reports, if you recall?

23      A       As I say, I haven't really seen them in detail  
24           at this point. It was just delivered to me last  
25           week.

1 Q Thank you. Can you tell us, *did* you obtain a  
2 history from the plaintiff at **the** time you saw  
3 him in on the first visit, 8-30-88?

4 A Yes.

5 Q Can you tell us what the history was he gave  
6 you, please?

7 A Yes. Mr. Usyk said that he was 41 years old and  
8 that his main problem was pain in his back. He  
9 stated that the first time he had actually had a  
10 significant problem with his back was March 20th  
11 of '86, following the broadsiding of his car by  
12 an Ohio Bell truck. **Correction:** Broadside of  
13 his truck by an Ohio Bell car.

14 He stated that he had had no major back  
35 problem prior to that. He had had one incident  
16 back in 1982 following moving a **filing** cabinet  
17 and indicated to me that this had **not** been a  
18 major problem. I had again later learned this  
19 *had* been a **more** major problem but that it had  
20 resolved.

21 Re then stated that the **auto accident**  
22 occurred in Broadview Heights. He went through  
23 the **accident** in detail as to the speeds, that he  
24 had beer, hospitalized *and* had beer, found to have  
25 fractured ribs on the left side, a cracked

1           pelvis on the right side, had been in the  
2           hospital for a week and that he had been  
3           followed up by Dr. Zaas, by Dr. McFadden, and  
4           McCoy therapists.

5           He stated that even with all of this  
6           follow-up and treatment now, he still was not  
7           improving in his back; in fact, it was getting  
8           worse and he was coming for help.

9           He stated that he had had a CT scan and an  
10          MRI and it showed bulging and perhaps ruptured  
11          discs. He had seen another doctor at St.  
12          Vincent's who told him possibly an injection  
13          might be a way to go or some kind of shaving or  
14          open surgery and he was coming to me to find out  
15          what could be done about that, He stated that  
16          he was not capable of doing his full job but  
17          that he was working,

18          He stated that he was capable of sitting  
19          for about thirty minutes for a total of six  
20          hours a day, could walk two hours for five hours  
21          a day, could lift thirty pounds for thirty  
22          minutes a day, bend just a minute for a total of  
23          fifteen minutes a day. He could squat three  
24          minutes for a total of three hours a day, climb  
25          two minutes for a total of three hours a day,



1 kneel fifteen minutes for a total of three hours  
2 a day, and twist one minute for a total of an  
3 hour a day and stand two hours for a total of  
4 six hours a day.

5 However, his job, if he were to do it,  
6 require8 him sitting sometimes up to eight  
7 hours, walking sometimes up to eight hours,  
8 lifting up to a hundred pounds intermittently  
9 eight hours, bending eight hours, squatting,  
10 climbing, kneeling, twisting, standing all up to  
11 eight hours a day, depending on what he had to  
12 do that particular day.

13 Me again emphasized he was limited in what  
14 he could do. He spent six hours a day in bed,  
15 His back pain, on our pain scale from 0 to 10,  
16 where 10 would be suicidal pain, was rated  
17 between a 7 and a 9, and it was 8 on the day we  
18 evaluated him. His leg pain was between a 0 and  
19 a 2 and it was 2 on the day we evaluated him.  
20 He had been taking Advil, ten a week, Soma, two  
21 a week, Feldene, two a day.

22 He had tried to exercise and wasn't able  
23 to do it and so he wasn't doing any. There was  
24 no numbness but he really felt the pain was  
25 worse than it had been a month prior. His

weight was 218, which had been ten pounds up since the accident. And in review of our ability scale, which is a List of activities in which we ask patients to rate whether they can do it on full ability, and 24 is full disability for the tasks we have outlined, and he was 18, so there were eighteen things he couldn't do on that list.

The pain drawing showed lumbosacral pain and his general review revealed he had a fracture of his right arm, a hernia repair. He had an ankle fracture of his left foot in the past, He stated that he had changed his work from being a major construction-type worker to just an inside finisher in order to try to get rid of some of the heavy tasks. So that was the history that he gave me,

Q Thank you, Doctor.

You mentioned while you were describing the history that the patient indicated to you that he had had no major back problem except for a minor incident in '82. Then I think you told us that you had later learned it had been more significant than it was earlier indicated?

A Yes.

1 Q When did you learn that, Doctor?

2 A I learned that from counsel.

3 Q And when was that?

4 A About, oh, six weeks ago.

5 Q Have you had any consultation with the patient  
6 concerning that question, or only through  
7 counsel?

8 A No, we have not discussed that.

9 Q What is it that you were able to learn about six  
10 weeks ago concerning that prior condition?

11 A That it had apparently taken something like a  
12 couple of years for him to get really functional  
13 again after that injury but that he truly did.

14 Q You mentioned also earlier today that you had an  
15 opportunity sometime last week to do some  
16 reports from Dr. McFadden. Was that in the  
17 context of seeing the entire brochure, the  
18 settlement brochure we referred to earlier?

19 A It was.

20 Q You said about six weeks ago you received  
21 information concerning this back history from  
22 counsel.

23 Did you receive any reports associated  
24 with that or was that an oral conversation?

25 A That was oral.

1 Q Is it fair to say then, Doctor, that the only  
2 records that you **have** seen in addition to your  
3 own are the ones that you **may** have or were  
4 contained in the **settlement** brochure that was  
5 made available to you sometime about a week or  
6 so ago?

7 A **Yes.**

8 Q You **were** referring a moment ago to your office  
9 notes, were you, Doctor --

10 A **Yes.**

11 Q -- when you were giving us the history?

12 A I was.

13 Q I think the record reflects and you have made  
14 available to us, Doctor, earlier, and counsel  
15 has **as** well as part of their settlement brochure  
16 and otherwise what I would identify as two  
E7 reports to plaintiff's lawyers, is that correct?  
18 I'm referring now to a 7-24-89 and a 8-13-90  
19 report. And the purpose of my question is  
20 really to learn whether **there** were only two or  
21 whether you have perhaps others as well?

22 A I believe there were only two.

23 Q I'm sorry. I have two dates that come out of  
24 the settlement brochure, which, for the record,  
25 it's tab 18.

1 a There should be copies in here, I don't see  
2 them in the medical record, They might be --  
3 here we are, yes. They're here in the front,

4 MS. TAYLOR: Summer of '89.

5 Q 7 July is what I have,

6 A This is '88 now. Here we are. July of '89.

7 Yes.

8 Q Doctor, is it fair to say that there were only  
9 two reports that you rendered to the plaintiff's  
10 lawyer in this case as far as you know?

11 A As far as I know, that is true.

12 Q Did you have occasion to send either of the two  
13 reports -- and I'm referring now, again, to the  
14 7-24-89 and the 1-53-98 reports to plaintiff's  
15 counsel -- to anyone else other than plaintiff's  
16 counsel, any other medical provider, far  
17 example, or otherwise?

18 a No. I have no knowledge that they were given to  
19 anyone else and it's our policy not to give  
20 anything out without the patient's distinct  
21 approval, with the original signature,

22 Q Did you have an opportunity to review those  
23 reports in preparation for this deposition,  
24 Doctor?

25 A I have reviewed them but not this morning.

1 Q Is it fair to say you have reviewed -- well,  
2 strike that.

3 What other, if any, documents have you  
4 reviewed in preparation for this deposition'?

5 A The documents, I have taken a brief look at some  
6 of the documents in the settlement brochure and  
7 I had a brief look but no time to study a  
8 document of an evaluation that had been done by  
9 someone else, And those are the only things  
10 that I reviewed.

11 Q Do you recall who the someone else was?

12 A I don't.

13 MR. BETTENDORF: Off the record.

14 [Discussion had off the record.]

15 BY MR. BETTENDORF:

16 Q Let the record reflect the other report was Dr.  
17 Rollins' report; is that fair?

18 A Yes.

19 Q Thank you. Doctor, do the medical reports that  
20 you rendered, these two we referred to -- I'm  
21 not going to mark them. I think the record is  
22 clear on what these are.

23 MS. TAYLOR: That's okay.

24 Q These reports, I think it's fair to say, is it  
25 not, that at the time they were written they

1 reflected your medical opinion?

2 A Yes, it's true,

3 Q Do they continue to reflect your medical  
4 opinion?

5 A Yes, they do.

6 Q Do you have any additional medical opinion  
7 concerning the patient's condition, diagnosis or  
8 prognosis that is in addition to what you have  
9 contained in your reports?

10 A I have no additional opinion.

11 Q Thank you. Have you learned anything else about  
12 the plaintiff's history, condition, diagnosis,  
13 or prognosis, Doctor, that differs from the  
14 opinions you've expressed in your two reports?

15 A I have not. The one bit of information was the  
16 information concerning the length of time it  
17 took for that previous injury to settle, But  
18 that really made no difference as to my opinion.  
19 It just indicated that he had had some prior  
20 problem, which I already knew.

21 Q And that's information, again, that counsel  
22 advised you of?

23 A Yes.

24 Q Do your records reflect when the last time it  
25 was that you saw the patient?

1 A Yes.

2 Q Please, when was that'?

3 A That was 6-30-90.

4 Q And you've indicated in your second report, the  
5 one we referred to as the 8-13-90, that history  
6 and that visitation?

7 A Yes.

8 Q Do you have an appointment with the patient at  
9 any time between now and the day of trial,  
10 Doctor, to your knowledge?

11 A I don't know.

12 Q I think I asked you this. I'm sorry. You've  
13 seen the entire brochure? You haven't studied  
14 it; I appreciate that.

15 A I've not studied it, just held it in my hands.

16 Q But all of it was made available to you?

17 A Yes, my understanding is that I have the entire  
18 brochure available to me.

19 Q What did you treat the patient for, Doctor, from  
20 the time you began to see him through the Past  
21 visitation in September of '90?

22 A I treated him for his back and then he had  
23 damage to his foot when he twisted and ended up  
24 with a fracture of his foot, secondary to his  
25 knee, but I didn't treat his knee.



1 Q Can you tell me briefly what your records  
2 reflect or your recollection is concerning the  
3 foot, please?

4 MR. BETTENDORF: Off the record.

5 [Discussion had off the record.]

6 A It's 3-7-89,

7 Q And I'm looking at a copy, I think, of your  
8 medical file record dated 3-7-89 against GR-0.

9 A Yes, that's it.

10 Q What does the "GR" stand for?

11 A Green Road.

12 Q That's an office that you have?

13 A Yes.

14 Q The indication is the proximal fifth metatarsal.  
15 Which toe is that, if you please, for laypeople?

16 A That would be the little toe.

17 Q On which foot, does it indicate here?

18 A The left foot.

19 Q He broke his left little toe.

20 A He broke the bone proximal to that or more into  
21 the foot, deep into the foot on the side of the  
22 little toe is where he really broke it. The  
23 metatarsal is really the bone that controls  
24 the -- that the toe hooks into. It's that one,  
25 the bone right here, [Indicating.] It's really

1           between the toe and the rest of the foot.

2           Q       In other words, it's this larger structure on  
3           the model?

4           A       That's correct,

5           Q       What was your understanding of -- if this is the  
6           right term -- the etiology of that injury?

7           A       Well, it was my understanding that he  
8           experienced difficulty with the left knee which  
9           caused him to lose his balance and start to  
10          fall, and then the foot got caught and then he  
11          managed to catch himself. So his whole body  
12          wasn't involved in this but the foot ended up  
13          taking the brunt of the energy and he pushed it  
14          down to catch himself and he broke it.

15          Q       Is it your understanding then that the bone  
16          struck the floor or the ground as opposed to an  
17          object other than the floor or ground?

18          A       I'm not certain at this time what it struck. He  
19          said he heavily stressed it but he didn't say  
20          what he heavily stressed it against, so I can't  
21          say for sure. But the type of fracture was one  
22          which would occur with heavy pressure of the  
23          foot against something,

24          Q       You indicated a moment ago that you didn't treat  
25          him for the knee?

1

A Yes.

2

Q Can you tell us why that is? What was the

3

reason, if you know?

4

A Because I basically don't treat knees. I'm a specialist in the spine. I do some things like this foot thing, which would be a fairly minor problem. But the knee is an intricate structure and we have subspecialists who would treat the knee.

9

10

Q Were you aware of who, if anyone, was treating the knee?

11

A My understanding was that Dr. Zaas was treating his knee.

12

13

Q Did you ever have any consultation, by the way, Doctor, with Dr. Zaas?

14

A Not directly.

15

Q And did you have indirectly?

16

A Indirectly, again, through this document.

17

Q I just want to be sure. That's what I thought you meant.

18

A Yes. Yes.

19

Q Okay. Thank you.

20

I asked you a moment ago about what you treated the patient for, the plaintiff, and you began to describe that for me, Doctor.

21

22

23

1                   What was the diagnosis that you rendered  
2                   on the plaintiff's condition in connection with  
3                   your treatment?

4       A       He has disc disease of the second, third and  
5                   fourth, primarily, with significant disruption  
6                   of the third and fourth discs.

7       Q       You said disc disease?

8       A       Yes.

9       Q       Is it disc disease or joint disease?

10      A       Disc disease.

11      Q       He doesn't have any joint *disease*?

12      a       He also has joint disease, And **that's** what  
13                   we're going **to be** talking about, the potential  
14                   of having to treat in the future.

15                   What I have treated him for at this point  
16                   is the disc disease, to the best of my ability,  
17                   which has been through a careful exercise  
18                   program, **through** surgery as to reduce the bulk  
19                   of the disease which is pushing on the neural  
20                   structures, **and now** we're in the process of  
21                   working on the joint **instability** problem which  
22                   has been created by the injury to the discs, and  
23                   by the time that has gone on since then with  
24                   degenerative changes **that** are occurring in these  
25                   joints.

1 Q You said now you're in the process of doing  
2 that, What did you mean by that?

3 A We have him on an exercise program for this at  
4 the moment,

5 Q So based on your last treatment, which was, I  
6 think you said, in September of '90, you have  
7 been preparing him for --

8 A That was my last visit. That's not my last  
9 treatment, Even now I'm not seeing the patient  
10 but I am treating him. I have taught him what  
E3 he needs to do to keep himself in the best  
12 possible shape to protect his back and to make  
13 it as functional as possible.

14 Now that treatment is continuing, He is  
15 required to go three times a week to a health  
16 spa, He's required to have an aerobic exercise,  
17 and that is something that he can do without me  
18 personally helping him,

19 Q I understand, Just so I'm clear, though, have  
20 you had any contact, whether it be a personal  
24 visit or telephone contact, correspondence  
22 contact -- I'm trying to be as broad as I can  
23 be -- with the plaintiff at any time since this  
24 September, excluding any contact he may have had  
25 through his lawyer?

1       A       I have no record of any such contact and it is  
2               my policy even with the telephone communication  
3               to record such, and I have no personal  
4               recollection.

5       Q       Thank you. Did you treat the patient for any  
6               other condition besides what we've already  
7               talked about, Doctor?

8       A       No.

9       a       Did you have any diagnosis other than what we  
10              have already talked about or that appears in the  
11              two reports we've referred to?

12      A       I personally did not make other diagnoses. He  
13              does have other problems. Me has some problems  
14              with his neck. He has problems with his  
15              thoracic spine, with his shoulder. These are  
16              things that I have not been directly treating at  
17              this time, and so I didn't really make these  
18              diagnoses because these are not areas that I  
19              have been treating. But that doesn't mean he  
20              doesn't have these problems.

21      Q       I understand, But you yourself haven't rendered  
22              any treatment or diagnosis based upon your own  
23              treatment of the patient?

24      A       The only treatment --

25      Q       Other than what we've talked about?

1           A       Well, yes. The program that I outlined for you  
2                   that I have him on for the treatment of his back  
3                   does necessarily involve the rest of his body to  
4                   some extent, and so it could be said that some  
5                   of the treatment that I'm doing has an effect on  
6                   the rest of him. However, I'm not primarily  
7                   treating these other parts.

8           Q       All right. Thank you.

9                   Doctor, according to your two reports, and  
10                  in particular the 8-13-90 report, it's my  
11                  understanding that you operated on the plaintiff  
12                  on or about January 5, 1989, is that correct?

13          A       Yes.

14          Q       And at that time you performed diskectomies of  
15                  the L3-4 and L4-5, am I right?

16          A       Yes, that is correct.

17          Q       That's reflected in your operative note of  
18                  1-10-89 as well, is it not? And I don't know if  
19                  you have that in front of you or not,

20          a       I have one part of it, I have the second page,

21                   MS. TAYLOR:                E have the  
22                  whole hospital chart somewhere.

23          Q       It's page 023 of tab 23, I have a copy,  
24                  Counsel has one as well.

25                   MS. TAYLOR:                Hopefully.

1 A Yes, I have a copy,

2 Q As I say, that operation of the L3-4 and 4-5 is  
3 reflected in your operative notes as well as in  
4 the report we were talking about a moment ago,  
5 the letter to the lawyer?

6 A Pes.

7 Q It's true, is it not, that based on your  
8 operative report you didn't find a truly  
9 ruptured disc at the L4-5 level. Do I read that  
10 correctly? I'm looking sort of in the middle of  
11 that paragraph.

12 A Yes. According to my description here, the  
13 material from inside the disc had pushed its way  
14 through the wall of the disc, but it wasn't out  
15 in the disc space. So that there was a big hump  
16 present which was pushing on the neural  
17 structures, but there wasn't any free material  
18 out in the disc space,

19 Q And then you also found at the L3-4 level, which  
20 I think is reflected in the next paragraph of  
21 that operative note --

22 A Yes.

23 Q -- significant scarring, among other things.

24 And do you see that about the midpoint of  
25 that paragraph?



1 A Yes.

2 Q What does that mean, Doctor?

3 A It means there had been irritation present,

4 Q And what was the etiology, if that's the right  
5 term, the history or the cause, if you will, of  
6 that scarring?

7 A I went on to describe that there was a large  
8 free fragment: present which would indicate with  
9 high medical probability that the scarring was  
10 secondary to the fact that we actually had a  
11 piece of Loose disc present here at this level.  
12 which the body was reacting to and which does  
13 cause scarring,

14 Scarring can also be caused by damage,  
15 such as occurred at the time of the accident  
16 with tearing of tissue. But in this case, that  
17 tearing was exemplified by a piece of material  
18 actually being exposed and moved from its  
19 original position out into a new environment,  
20 The body takes it as a foreign body and reacts  
21 violently to it, and this is the cause of the  
22 scarring,

23 Q Do you have an opinion as to a reasonable degree  
24 of medical certainty, Doctor, as to the cause of  
25 that condition for which you operated?

1 A As to the cause of the condition?

2 Q Yes. Is it causally related to the accident?

3 A Yes.

4 Q And is it your opinion to a reasonable degree of  
5 medical certainty that it's not caused by any  
6 other condition or incident or environmental  
7 issue?

8 A The situation is such that a problem such as  
9 these two discs is one that is generated over  
10 time in many cases. However, the patient or the  
11 individual can remain at a degenerated level  
12 throughout a lifetime and actually function  
13 extremely well with mild pain.

14 The precipitation of a serious episode of  
15 this is caused by some event. In this case,  
16 it's my opinion that the proximate cause of the  
17 particular damage that I found at the time of  
18 surgery was the accident because of the nature  
19 of the accident, with the way that the back  
20 moved during the time of the accident and  
21 because of the course of the patient following  
22 that accident.

23 So putting that together with his history  
24 of prior back problem, it is very clear in my  
25 mind that the proximate cause of the actual free

fragment being brought forth from the disc was the accident in question.

Q And I think that it's reflected in your reports and perhaps also in your operative notes that the L3, L4 and 4-5 surgery on January 5, 1989 was successful, is that correct?

A Yes.

Q And I think, in fact, you indicated in a report that he obtained excellent relief from that surgery?

A Yes.

Q You removed those free fragments from the L4-5 and 3-4, did you, after that first surgery?

A I removed the free fragment from the 3-4. The 4-5 did not have a free fragment.

Q I apologize. Yes.

A But I did remove the bulging fragment at that point and these were removed and the patient was functional following the surgery.

Q I think the record reflects he was discharged from the hospital sometime on or about January 8th and there was a three-day stay following your surgery?

A Yes.

Q And the record also reflects that on or about

1 the 13th or 14th of January, and I'm not certain  
2 which the date is, but it's probably in your  
3 record --

4 a Yes.

5 Q -- you had occasion to operate again?

6 A E did.

7 Q And can you tell us what you operated on,  
8 please?

9 A I operated again on the L4-5 level, And the  
10 reason for this was very similar to the reason  
11 for the first time operating, and that was that  
12 on the way home from the hospital, the car in  
13 which he was riding was involved in a minor:  
14 accident where it went into a deep chuckhole,  
15 causing him to flex his spine in a manner which  
16 he would not be allowed to do for six weeks post  
17 his surgery, and this caused another: piece of  
18 disc to be dislodged and to actually come out  
19 the way that had been prepared by the surgery,  
20 unfortunately.

21 Q That was, I think you said, the L4-5 at that  
22 point?

23 A Yes, that's correct.

24 Q So for the first time the L4-5 has a free  
25 fragment?

- 1 A Had a free fragment.
- 2 Q And you learned about, I think you called it a
- 3 minor accident concerning the pothole on the way
- 4 home from the hospital, from the patient
- 5 himself?
- 6 A I did, yes.
- 7 Q And you were referring to your office notes
- 8 concerning that second operation?
- 9 A I was.
- 10 Q I wonder if you have a copy of your operative
- 11 notes or report from the second operation. The
- 12 report is dated 1-15-89. It's a tab 23, 0111.
- 13 The operative note indicates among other
- 14 things, Doctor, that you worked at the L5-S1
- 15 level in connection with his second surgery?
- 16 A Yes. It says L5-S1 but I believe that is an
- 17 error, that it really means L4-5.
- 18 Q Where does the fifth root come out of the spine,
- 19 Doctor, the L4-5 or 5-S1?
- 20 A The fifth root comes out between 5-1. But the
- 21 disc that involves it is the L4-5 disc. And so
- 22 the discs that we were dealing with at the time
- 23 of his surgery was L4-5. How much, we followed
- 24 it down to the place where it would come out, so
- 25 the lamina of L5 was involved in our dissection,

1 too.

2 But the actual disc that we're talking  
3 about was the L4-5 disc, and when I wrote this,  
4 I did not make it clear, in looking back at it,  
5 that it was really the L4-5 disc that we were  
6 dealing with.

7 However, I'm certain we were down into the  
8 area of L5-S1 in following this tissue out, and  
9 I think that's why it is confusing. But 4-5 is  
10 the level that we did work on, and this was  
11 where the reherniation occurred.

12 Q Can you tell us what an osteochondroma is?

13 A Osteochondroma is a bony cartilaginous  
14 overgrowth of unknown etiology.

15 Q Were you aware that there was a potential  
16 osteochondroma of the patient's left knee?

17 A I was aware of that only from -- I think I just  
18 happened to see it in a report when I was  
19 leafing through this, but it had no significance  
20 upon my treatment,

21 Q As an orthopedic surgeon, are you able to tell  
22 us what an osteochondroma can do, if anything,  
23 in the way of presenting symptoms to a patient's  
24 knee?

25 A It is my understanding that it can deal with --

1 it can cause some problems with the knee.

2 However, I would not be a good person to ask  
3 about this and I would think it would be best to  
4 talk with someone who was familiar both with  
5 treating this problem, and more specifically,  
6 with this person's knee.

7 Q Why did you operate on the patient on January 5,  
8 Doctor, of 1989? Excuse me. The first surgery.

9 A Okay. The first surgery was done because we  
10 were unable to reach a reasonable level of  
11 function with the conservative treatment at that  
12 time.

13 Q What was the patient's condition at the time of  
14 the surgery, that is, the day before the  
15 surgery, let's say, that prompted you to  
16 undertake the surgery?

17 A I think that would probably be best found by  
18 referring to my notes from the last time I saw  
19 him.

20 Q Please. Thank you.

21 A Yes. Here we are. I had seen him on December  
22 16th of 1988. He had not been able to do the  
23 exercises that I wished him to do because of  
24 pain. He was having a numbness in the top of  
25 the foot on the left and he had a positive

1           bowstring test which indicated the nerve was  
2           very upset and there was some weakness in the  
3           great toe.

4                   Because of these findings, it was my  
5           decision that we should -- there was pressure on  
6           the nerves and we should do our best to remove  
7           this pressure,

8       Q       May I see your notes, Doctor, from that page,  
9               just that page you are looking at now?

10      A       Yes.

11      Q       And may I see the next page, too, please?

12      A       Sure.

13      Q       And again, the documents I'm looking at are your  
14               original notes, are they not, Doctor'?

15      A       Yes, they are.

16      Q       You have obviously dictated this and one of your  
17               assistants types it up, is that correct?

18      n       That's right.

19      Q       And there's some handwriting here as well Ear  
20               the 11-23-88; is that your handwriting?

21      A       No.

22      Q       Someone el,se's?

23      A       Someone else's.

24      Q       But somebody had that authorization to enter  
25               that?



1 A I don't know who entered it'

2 Q You don't recognize the handwriting?

3 A I do not,

4 MR. BETTENDORF: Off the record  
5 a minute,

6 [Discussion had off the record.]

7 BY MR. BETTENDORF:

8 Q Doctor, thank you for showing me the 12-16-88  
9 entry off your notes. I wonder, not today, but,  
10 if you could make a copy of that and get it to  
11 us.

12 MS. TAYLOR: I need one,  
13 too,

14 Q At the top of what amounts to page 78-k of tab  
15 18, which is beginning the 12-16-88 continued,  
16 you indicate it doesn't look like he's into any  
17 serious progression. What did you mean by that?

18 A I meant that even though the foot was weak that  
19 I didn't think he was becoming imminently  
20 paralyzed and that we wouldn't have to go into  
21 surgery that day.

22 Q You wrote a letter to Dr. McFadden dated  
23 10-4-88. Do you happen to have that, Doctor?

24 A I'm sure we do.

25 Q It's page 71-A of tab 18.

MS. TAYLOR:

We're going to

cheat and use this.

A As long as it's -- yes.

Q You indicate that he does not have any leg problem, in the second paragraph. Can you tell us what you meant by that, please?

A What I'm saying is that he is not becoming paralyzed in his leg, I'm not saying he doesn't have any leg problem. I'm saying he's really not having any leg problem, which isn't quite the same thing. He is having a leg problem but it's not severe enough for me to operate on him at this time is what I'm saying as of October 4th of 1988.

Q You are referring then to no radiculopathy --

A That's what.

Q -- down the left leg?

A Not a significant radiculopathy is what I'm saying, yes, which is why I --

Q ~ h a changed between October 4, 1988 and your office note from later that month that you're aware of? Well, it would be the following month, 12-16-88, where apparently there was a leg problem.

A There had been a leg problem at sometime before,

1                   and what the change was, I do not know.

2                   And also, I did ask Mr. Usyk about that  
3                   here, and he has no idea what, happened, that he  
4                   had! noted a marked list to the right that had  
5                   just gradually came on him. He had no  
6                   explanation for it, either,

7                   This is not unusual in a situation like  
8                   this for a problem to go up and down, I've seen  
9                   it happen many times over my thirty years of  
10                  interacting with patients with this kind of  
11                  problem, but I don't know exactly.

12                  Q       I wonder if you would take a look at page three  
13                          of your office notes, 74-A of tab 18?

14                  A       I have not,

15                  Q       You indicate in about the fourth paragraph down  
16                          where you begin with "it is my impression he  
17                          does have significant degenerative disc  
18                          disease." We've talked about that,

19                  A       Yes, we have.

20                  Q       And you indicate this is for a visitation of  
21                          9-30-88, "He certainly does not have any leg  
22                          component present," What did you mean by that?

23                  A       I meant on that particular exam that there was  
24                          no -- his leg was not involved and I'm not clear  
25                          there that -- I didn't find evidence of the leg

1           being tender or limited, except I did find some  
2           weakness in the toe.

3       Q       You indicate in the next sentence "there is  
4           definitely negative straight-leg raising."

5                   Does that mean, in fact, he could lift his  
6           legs through what is called straight-leg  
7           raising, the tests, without difficulty?

8       A       That is correct.

9       Q       And you said "it's my understanding it has been  
10          that way right along."

11                   What was the basis of that understanding  
12          that the plaintiff was telling you?

13      A       That would be my understanding of what I had  
14          said there, although I do not remember  
15          distinctly that discussion. I would say that  
16          would be -- my basis would have been information  
17          from Mr. Usyk.

18      Q       Thank you. You indicate there is weakness in  
19          the left great toe. You just indicated that now  
20          as well. But then you indicate also in "this  
21          note that it possibly is related to other  
22          difficulties in the leg. What did you mean by  
23          that?

24      A       And I don't remember at this time, although, I  
25          think he'd had some other injury to the left

1 leg.

2 Q You were aware of the gunshot wound in the Leg?

3 A Yes, and I believe this is probably what I was  
4 referring to at that time, yes,

5 Q Thank you.

6 A However, I have other examinations further on  
7 which indicate that he had full strength of the  
8 toe, so the problem was one that was apparently  
9 intermittent.

10 Q Come and go?

11 A Yes, which makes it more likely that it may have  
12 been neurologically based, even though at this  
13 particular time he wasn't having any  
14 straight-leg raising problem.

15 Q And I think you indicate in the next paragraph  
16 you use the word "radiculopathy", which is where  
17 I got it, Doctor, and you are saying he is  
18 showing no sign of radiculopathy and really is  
19 having only back problems?

20 A Yes, in that visit. Right.

21 Q And this is reference, again, to your treatment  
22 and examination of the patient that day and  
23 prior to that day, is that correct?

24 A I had not seen him prior to 9-30-88.

25 Q So it was based on --

1 A Eased only on that *day*, that **is** correct, yes.

2 Q Thank you. Then *you* indicate that **the** only  
3 surgical **treatment** that would really **be** of value  
4 **would be a** spinal fusion, which would have to be  
5 done L1 through L5.

6 What did you mean by **a** spinal. fusion,  
7 please?

8 A I meant to **immobilize** the joints so that the  
9 discs really and the joints were totally  
10 nonfunctional.

11 Q **Just** for the sake of clarity and for my own  
12 edification, Doctor, **is** there a difference  
13 between joint disease and **disc** disease, and, if  
14 so, can you tell us what that **is**?

15 A Disc disease usually happens first, and then  
16 with time, joint disease develops. With major  
17 **trauma**, it **is sometimes** possible to get both  
18 developing at the same time. *The* joint may be  
19 damaged significantly **at** the time of **the** injury  
20 along with the *disc*.

21 The more usual situation with the hack **is**  
22 that the **disc is** more vulnerable and **is** damaged,  
23 **not necessarily** ruptured -- sometimes, sometimes  
24 not -- but damaged, and **then** the joint disease  
25 evolves *over* time.

1 Q And the patient, I think you indicated, had, as  
2 a result of this accident, disc disease, is that  
3 correct?

4 A Yes. The patient had some disc disease prior to  
5 the accident in question. It is my opinion that  
6 he had a significant increment in damage to his  
7 discs through the accident and as a direct  
8 result of the accident, and then he progressed  
9 over time following the accident.

10 Q With joint disease?

11 A With progression of disc disease and joint  
12 disease.

13 Q Yes.

14 A Yes.

15 Q What happened in the accident that caused his  
16 disc disease, to your knowledge, or that spiked  
17 it, as I think you put it?

18 A Yes. The situation in the accident was that the  
19 patient was seated in a truck of fairly small  
20 mass which was struck on the side by another  
21 vehicle of a significant mass. This caused his  
22 vehicle to be rapidly moved and his body then in  
23 contact with the vehicle was restrained  
24 somewhat. The vehicle then moved around him and  
25 then he was thrown against the side of the

1 vehicle violently, causing him to fracture his  
2 ribs, and also, at the same time, causing major  
3 stress on his lumbar spine, also causing some  
4 stress of his spine, even into the neck,

5 But the major stress would be in the  
6 lumbar, where he was seated in the automobile,  
7 where the automobile is violently pushed away  
8 from him and his body then remains in space and  
9 is struck violently by the auto.

10 And we know it was violently because of  
11 the fractures. It was also violent enough to  
12 cause disruption of part of his pelvis, and that  
13 takes a lot of stress in a healthy young man.

14 so then there was a secondary injury which  
15 occurred where the automobile then struck a pole  
16 and that caused him to be thrown the other way  
17 and again cause major spine stress.

18 The most stress, in my opinion, occurred  
19 in the first blow while the -- because the most,  
20 the largest amount of energy was expended there,  
21 The secondary one, however, was in the other  
22 direction, and so it would cause damage to the  
23 other side of his spine. So he had major stress  
24 on the discs and the joints in the lumbar spine,  
25 all the way up the lumbar spine, and strong



1 enough, with force strong enough tu cause actual  
2 fractures of bone. So there is no question his  
3 spine was exposed to this,

4 Also, his spine, as we know, was not of  
5 the absolute best at the time that it was  
6 subjected to this because he had had some minor  
7 but sort of significant prior injury; one he had  
8 recovered from but still had happened, so that  
9 put him a little bit more at risk to the  
10 situation that he was exposed to with this  
11 accident as compared to a perfectly normal  
12 person, even though he was functioning pretty  
13 much as a normal person prior to the accident.

44 So that is the stress that his spine was  
15 exposed to. All the vertebrae, all the discs  
16 were exposed to this, The lower ones are the  
17 L5-S1. The bottom is a little better held by  
18 the ligaments than these higher ones, but the  
19 fourth and third are very much at risk here, and  
20 that resulted in further damage to these discs,  
21 in my opinion, that resulted to the further  
22 teasing which then did not become initially  
23 present clinically because of the other  
24 excruciating pain this man was undergoing from  
25 the fractured ribs and other injuries. And he

1           **was** even limited from his full **activity** because  
2           of this knee for a significant time **and** really  
3           never did get **up** to full activity **after** this  
4           accident.

5       Q       How do you know it wasn't manifested, Doctor, I  
6           mean, *is* it based on your **experience** or based on  
7           what the patient told *you*?

8       A       Well, based on my examination of him and based  
9           on what he told me about his **ability** to get back  
10          to part-time work. And these things, he was  
11          able to function somewhat afterwards. However,  
12          it kept getting worse *is* what he explained to  
13          me, and it makes sense that it did that,

14      Q       Why don't you fuse his back on January 5 or  
15           January 14?

16      a       Because this *is* a very, very major surgery. It  
17           **is** extremely major to fuse from 1 to the sacrum,  
18           which you would have to do, and **is** an operation  
19           of huge magnitude in itself. The complications  
20           of " *chatare* huge. The chance of him having to  
21           have another operation because *it* doesn't fully  
22           fuse **is** almost a hundred percent, or at least in  
23           the high eighties.

24      Q       Have you ever recommended that this patient have  
25           his back fused, Doctor?

1           A           I have told him that this may have to happen.  
2                       However, and I have told him that we want to try  
3                       the exercise program as long as we possibly can  
4                       and I want him to use every means he can to  
5                       avoid this. Although, it's within reasonable  
6                       medical probability, meaning better than fifty  
7                       percent chances he's going to have this done  
8                       some day. But I have been trying to avoid it  
9                       for the reasons I've told you.

10          Q           Are you aware the patient has been diagnosed as  
11                       having an affective disorder?

12                       MS. TAYLOR:                       I'll object.  
13                       You can answer.

14          Q           an affective disorder?

15          A           I assume you mean, by affective disorder, you  
16                       mean something with his personality? I am aware  
17                       he has been treated for problems with alcohol in  
18                       the past and this sort of thing. I'm not sure  
19                       that I was aware that somebody had actually  
20                       given him a psychiatric diagnosis, a firm  
21                       psychiatric diagnosis.

22          Q           What is affective disorder, do you know, Doctor?

23          A           I would assume it has something to do with his  
24                       thinking or with his emotions, but it's not an  
25                       area that I directly deal with.

I        Q        What, if any, effect would affective disorder  
2                   have on a person's perceived pain, if you can  
3                   tell us?

4        A        I don't -- I'm just talking about an affective  
5                   disorder. I'm afraid I wouldn't be able to help  
6                   you with that. We'd have to have a lot more  
7                   information about the type of problem that we're  
8                   talking about, and then I, again, wouldn't be  
9                   the best person to discuss that particular area.

10                   However, just talking in generalities, I  
11                   would not be able to give you any opinion at  
12                   all.

13        Q        Thank you, I'm almost done, Doctor,

14                   On page three of your office notes, 74-A  
15                   of tab 18, you indicate that with water jogging,  
16                   I think is the way it's put here, and perhaps  
17                   with other exercises, aerobic exercises, you  
18                   believed as of September 30, '88 that the  
19                   plaintiff's back would be so good he would be  
20                   uninterested in having any surgical procedure.

21        a        Yes,

22        Q        Did you discuss surgery with him on that  
23                   visitation, 9-30-88?

24        A        Yes, He had been told by other physicians that  
25                   surgery might be the thing to do, In fact,

E different surgeries had been talked to him about  
2 for his bulging discs and we had discussed my  
3 feeling about it,

4 Q Evidently, and I guess maybe you have indicated  
5 this, in part, at least you alluded to it, the  
6 water exercises didn't suffice, did they?

7 A No, they didn't.

8 Q Are you able to tell us whether you have an  
9 understanding as to why they didn't?

10 A My understanding --

11 Q You seem fairly optimistic in this note?

12 A My understanding of it and my testimony  
13 concerning this issue previously was that he  
14 became too irritated from the bulging and  
15 ruptured discs and began to have leg and nerve  
16 problems which were clearly assignable to these  
17 discs.

18 And when I got into that kind of  
19 situation, it became evident to me that I had to  
20 do something about that before we could continue  
21 with the water and the exercise. So I'm not --  
22 I haven't totally given up on the water  
23 exercises, as I said. But when the patient  
24 began to get into significant neurological  
25 difficulties, it was decided something had to be

1           Gone about that.

2           9       Doctor, did *you* have the nerve conduction study  
3           done by Dr. Mann dated October 11, 1988?

4           a       Yes.

5           Q       I don't know what tab it's at.

6                           MS. TAYLOR:               Don't worry  
7           about it. I'll find it.

8           Q       There's an indication in *the* EMG that the nerve  
9           conductant velocities were normal. What does  
10          that mean?

11          A       That only means that the nerves are capable of  
12          carrying a stimulus at normal, rated speed and  
13          that just says you have a nerve. It doesn't  
14          tell us how good it is. But the further  
15          information --

16          Q       Yes, I'm going to ask you to go ahead, please,  
17          and explain that, the balance of the entry here  
18          on the conclusion.

19          A       The balance of the entry indicates that, in  
20          fact, the problem that; the man, that Mr. Usyk  
21          had was coming from the spine and was not coming  
22          from something lower down because he had the  
23          previous injury to this leg.

24                   And there had been some concern that we  
25          have discussed before as to whether that

1 weakness in the toe was coming from the lower or  
2 upper: problem, This indicates it was coming  
3 from the upper problem because there were  
4 muscles that were above his gunshot that were  
5 involved, and that would be impossible for the  
6 gunshot: to have affected those muscles. So it  
7 was further documentation other than just my  
8 opinion that the nerve was involved,

9 Q All right. You indicated that you had an  
10 understanding that the patient's prior condition  
11 was -- I think you used the word he had  
12 recovered from that?

13 a Yes.

14 Q What did you mean by recovered?

15 a It's very similar to a sprained ankle. When you  
16 sprain your ankle, it's very painful. And then  
17 you wait some time, protect it for awhile and  
18 exercise it a little bit and usually you are  
19 able to function quite well with your sprained  
20 ankle, even though at the time it was quite a  
21 painful situation,

22 Q Is it your understanding that the prior incident  
23 that the patient told you was minor and that you  
24 learned was a little less than minor but  
25 resolved, I guess, or it was over, recovered

1 from, that he was not under any treatment at the  
2 time then?

3 A My understanding is that he did have some  
4 treatment, but I'm not very clear about exactly  
5 what was *done*. I believe that it was also  
6 chiropractic, but I don't believe it was Dr.  
7 McFadden.

8 Q And do you have an understanding that Dr.  
9 McFadden treated the plaintiff after the auto  
10 accident, that is, at some point either during  
11 or before your treatment?

12 A Yes, I am certain that he did. As I say, I  
13 haven't reviewed in detail his treatments but I  
14 am certain that he did treat the patient at the  
15 auto accident because *that's* how I got the  
16 patient was from Dr. McFadden.

17 Q Do you have any knowledge as to what the  
18 treatments were postaccident by Dr. McFadden?

19 A As I say, I haven't gone into any detail with  
20 that. It was my understanding that *those*  
21 treatments had to be fairly conservative because  
22 of the patient's rather touchy situation after  
23 the accident, that there was inflammation and it  
24 was difficult to do usual chiropractic treatment  
25 after that the accident.



1 Q And that information was based on counsel?

2 A It was from this note that counsel. has prepared,  
3 this set of notes, yes,

4 Q You are referring to the brochure?

5 A Yes.

6 Q Dr. McFadden has never indicated to you one way  
7 or the other as to what his treatments were  
8 then; is that fair?

9 A Not with personal discussion,

10 Q That's what I mean.

11 A No.

12 Q Has the patient ever indicated to you what his  
13 treatments were from Dr. McFadden postaccident?

14 A We did discuss his treatment, I don't think we  
15 have done it in any great detail. He talked  
16 about some exercises that Dr. McFadden had tried  
17 to have him do but he said the exercises were  
18 too painful, and I believe that was most of the  
19 discussion that we had was concerning the  
20 exercise that had been attempted.

21 Q Are you familiar with chiropractic manipulation?

22 A I am familiar with some,

23 Q And what is it that you know about that?

24 A The rotary manipulation is the type of  
25 manipulation that I am most familiar with from

1           chiropractic, and the rest would be ultrasound  
2           and heat, electrical. stimulation.

3       Q       Those are separate from --

4       A       Those are certain kinds of modalities used by  
5           most chiropractors,

6       Q       What, if any, effect would chiropractic  
7           manipulation have on the spine, Doctor, in your  
8           opinion?

9       A.       In my opinion, if chiropractic manipulation is  
10           done properly, it will have no bad effect on the  
11           spine. It has a possibility of immobilizing the  
12           joints, but if it is done properly, it doesn't  
13           actually damage the joints, in my opinion.

14      Q       What if it's done two or three times a week for  
15           a period of a dozen years?

16      A       I think that it can provide some relief to the  
17           individual if it is done, again, properly. And  
18           sometimes that is the best way for an individual  
19           to go if other forms of treatment really haven't  
20           been helpful and if he's not getting into a  
21           neurological problem.

22      Q       Did you ever prescribe that this patient undergo  
23           chiropractic manipulation, prescribe or  
24           recommend?

25      A       I have prescribed chiropractic treatment for

1 people.

2 Q I'm sorry, Just Mr. Usyk.

3 A No. Mr. Usyk directly, I don't recall. that I  
4 ever directly prescribed the treatment.

5 Q Were you aware that he was undergoing  
6 chiropractic treatment, including manipulation  
7 as well as some of the other modalities you have  
8 indicated you have some familiarity with, in the  
9 weeks prior to the auto accident; were you aware  
10 of that?

11 A I was aware that he was having such treatment  
12 prior to the auto accident, but, again, I was  
13 not aware of that at the time when I first saw  
14 Mr. Usyk.

15 Q But you are aware now that. in. the weeks prior to  
16 the accident that he was doing that?

17 A Yes, I am.

18 Q Were you aware at the time that he was  
19 undergoing chiropractic manipulation after the  
20 accident by Dr. McFadden?

21 A I was, yes, I was aware of that because of the  
22 referral by Dr. McFadden, yes.

23 MR. BETTENDORF : I have nothing  
24 further, Thank you, Doctor.

25 MS. TAYLOR: Would you like

1 to waive your signature for today?

2 THE WITNESS: Yes, I would.

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

I, Kathy A. Vazinski, a Notary Public within and for the State of Ohio, duly commissioned and authorized by the laws of the State of Ohio, do hereby certify that the within-named witness, Ernest E. Marsolais, 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 transcribed upon a typewriter, and that the foregoing is a true and correct transcript 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 Cleveland, Ohio, on this 4<sup>th</sup> day of April, 1991.

My Commission expires  
January 11, 1993

Kathy A. Vazinski  
Kathy A. Vazinski, Notary Public  
within and for the State of Ohio

[illegible]