

IN THE COMMON PLEAS COURT OF

FRANKLIN COUNTY, OHIO Doc. 306

MICHAEL DUNIGAN,
et al.,

:
:

ORIGINAL

Plaintiffs,

VS.

: CASE NO. 89CV-10-7263
:

ERIE INSURANCE GROUP,
et al.,

Defendants.

Deposition of ROBERT L. MCLAURIN, MD, a
witness herein, called by the plaintiff for
cross-examination, pursuant to the Ohio Rules of
Civil Procedure, taken before me, Lee Ann Berry,
a Notary Public in and for the State of Ohio, at
the offices of Robert L. McLaurin, 111 Wellington
Place, Cincinnati, Ohio 45219, on Tuesday,
October 22, 1991, at 5:19 p.m.

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Christopher M. Mellino, Esq.
4 Charles Kampinski, Co.
5 1530 Standard Building
6 Cleveland, Ohio 44113

7 On behalf of the Defendant Dr. Smith:

8 William A. Davis, Esq.
9 Jacobson, Maynard, Tuschman & Kalur
10 Corporate Pavilion at city Center
11 175 South Third Street
12 Suite 880
13 Columbus, Ohio 4321514 On behalf of Defendant Midwest
15 Heating & Cooling:16 Vincent J. Lodico, Esq.
17 Crabbe, Brown, Jones, Potts & Schmidt
18 500 South Front Street
19 Suite 1200
20 Columbus, Ohio 4321521 On behalf of the Defendant
22 Mount Carmel Hospital:23 Ted L. Earl, Esq.
24 Earl, Warburton, Adams & Davis
136 West Mound
Columbus, Ohio 43215

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21 S T I P U L A T I O N S22 It is stipulated by and among counsel for
23 the respective parties that the deposition of
24 ROBERT L. MCLAURIN, MD, a witness herein, called

by the plaintiff for cross-examination pursuant to the Ohio Rules of Civil Procedure, may be taken at this time by the notary; that said deposition may be reduced to writing in stenotypy by the notary, whose notes may then be transcribed out of the presence of the witness; and that proof of the official character and qualifications of the notary are expressly waived.

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I N D E X

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1 ROBERT L. MCLAURIN, MD
2 having been first duly sworn, testified as
3 follows:

4 CROSS-EXAMINATION

5 BY MR. MELLINO:

6 Q. Doctor, would you state your name,
7 please?

8 A. Robert L. McLaurin.

9 Q. And your address?

10 A. My office address is 111 Wellington
11 Place, Cincinnati, Ohio.

12 Q. Okay. Do you practice under a group
13 name?

14 A. I'm sorry?

15 Q. Do you practice under a group name?

16 A. No. I'm just a single, lone
17 practitioner.

18 Q. Okay. Your office is in with a group
19 of neurosurgeons though?

20 A. Well, we share the offices, that's all.

21 Q. Okay.

22 A. We're not associated otherwise.

23 Q. Are the other doctors here associated
24 with each other?

1 A. No.

2 Q. Okay. There was a sign down the hall
3 that said Neurosurgical Associates, who are they?

4 A. Well, the term is meaningless.
5 There's, there are one, two, three, four, five
6 neurosurgeons that share the offices here, but
7 none **of** us are associated with each other
8 economically or in any other way. There was
9 originally a group here that were associated and
10 that's probably where the name came from, but
11 we're no longer associated.

12 Q. Okay. Well, were you ever associated
13 with Neurosurgical Associates?

14 A. No.

15 Q. You've just handed me your CV before we
16 started and I tried to take a look at it a little
17 bit. I noticed on here that in between all your
18 internships there seems to be a gap between 1945
19 and 1947, what were you doing during that period
20 of time?

21 A. I was in the army.

22 Q. Okay. Where at?

23 A. Most of the time I was at Walter Reed
24 Hospital in Washington.

1 Q. Okay. And you're board certified in
2 neurosurgery?

3 A. Yes.

4 Q. Have you ever attempted to become board
5 certified in any other field?

6 A. No.

7 Q. How many times have you taken the board
8 certification examination?

9 A. Once.

10 Q. Is there any requirement to become
11 recertified?

12 A. No.

13 Q. Is the -- by the way, let me just mark
14 this CV as Exhibit 1. Doctor, I'm handing you
15 what's been marked as Exhibit 1, would you
16 identify that, please?

17 A. That's a copy of my curriculum vitae.

18 Q. Is that current and up-to-date as of
19 today?

20 A. Practically up-to-date, there's
21 probably one or two publications that are not
22 included here, but that's all.

23 Q. Okay. What are those publications that
24 would be included on there?

1 A. Well, the most recent one was one that
2 was, that is just in publication at the present
3 time, it was a -- I'm not sure what you're
4 asking. It has to do with, it's the publication
5 of a lecture that I gave at the American
6 Association of Neurological Surgery in about
7 March of 1991, known as the Matson lecture in
8 pediatric neurosurgery.

9 Q. Okay.

10 A. I'm not quite sure what else you want
11 to know about it.

12 Q. Was there another publication or is
13 that the only other one?

14 A. I think there may be one other one that
15 is not included in here, which has to do with,
16 also with some pediatric, pediatric neurosurgical
17 problems having to do with tumors in the brain in
18 children.

19 Q. Okay. Are there any articles or books
20 that you've published that are on point to the
21 issues involved in this case?

22 A. Well --

23 Q. Do you want to look at the CV?

24 A. Well, there's certainly one article

1 that, that I can think of. With regard to books,
2 the books that I have done certainly include, or
3 some of them certainly include material that
4 would be, would be relevant to this problem. For
5 example, the books on pediatric neurosurgery
6 include,, among other things, infections of the
7 spine.

8 Q. Okay.

9 A. The books on spina bifida have to do
10 with congenital abnormality of the spine, which
11 also may be complicated by infections, so that
12 would be included as part of it. Now, there was
13 a specific article that, that I would have to go
14 through here to find, it had to do with
15 infections of the spine. Do you want me to spend
16 some time going through it?

17 Q. Yes, could you find that for me and
18 just indicate?

19 A. Here it is.

20 Q. Just tell me what number it is.

21 A. It's number 43.

22 Q. Okay. Now, your CV indicates that
23 you're, you have appointments at several
24 different hospitals --

1 A. Yes.

2 Q. -- in the Cincinnati area, and these
3 are all still, you still currently have
4 privileges at these hospitals?

5 A. I think I have discontinued my
6 privileges at Bethesda Hospital, if that's still
7 on there.

8 Q. Yes.

9 A. Okay. Otherwise they're all current.

10 Q. Okay. What does courtesy staff mean?

11 A. It's a, a type of staff appointment to
12 the hospital, which is generally used by a person
13 who doesn't use the hospital very much, and it is
14 sort of a less commitment to the hospital than
15 say an attending neurosurgeon.

16 Q. Do you have full privileges at all
17 these hospitals?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. What does consultant mean?

22 A. Well, that's a rather honorary title
23 which eliminates the need for certain
24 requirements of the hospital, attending staff

1 meetings and that sort of thing. It's
2 principally for people who are considered rather
3 senior persons, and they are no longer required
4 to serve on committees and attend staff meetings
5 and that sort of thing.

6 Q. Okay. And your CV also reflects that
7 you graduated last year from the University of
8 Cincinnati, College of Law. You received a J.D.
9 degree?

10 A. That's correct.

11 Q. Are you currently working in the legal
12 profession?

13 A. Part-time, yes.

14 Q. Where?

15 A. The firm Rendigs, Fry, Kiely & Dennis.

16 Q. Okay. And how long have you been
17 employed there?

18 A. Approximately a year.

19 Q. What's your position there?

20 A. Of counsel.

21 Q. How many hours a week do you work
22 there?

23 A. Roughly 30 hours a week.

24 Q. What type of firm is that, what kind

1 of, what's their area of practice?

2 A. Well, it's a rather broad-based firm.
3 They do some defense work, they do plaintiffs'
4 work in the areas of malpractice and personal
5 injury, and they also do corporate and estate
6 management and environmental law. It's a,
7 between 40 and 45 member firm.

8 Q. And how about your practice, what does
9 that consists of?

10 A. I've emphasized principally personal
11 injury and, and malpractice work.

12 Q. On behalf of the defense?

13 A. I'm sorry?

14 Q. Defendants, you represent defendants in
15 lawsuits?

16 A. Well, I, yes, and plaintiffs both, yes.

17 Q. How many plaintiffs have you
18 represented in the last year?

19 A. Well, let me clarify. When I say I've
20 represented them, I don't personally, haven't
21 represented any of them, but I have consulted
22 with the attorneys that are their
23 representatives, that do represent. And the
24 answer to your question, with that modification,

1 is probably, I've been involved in three or four
2 plaintiffs type work, plaintiffs' cases.

3 Q. How many, and were those personal
4 injury cases?

5 A. No, no, malpractice cases.

6 Q. All of them?

7 A. I think, I think most of those that I
8 was referring to are malpractice, I thought
9 that's what you were asking about, frankly. I
10 can't remember any plaintiffs' cases in personal
11 injury, but there have been about three or four
12 plaintiffs' cases in malpractice that I've been
13 involved in.

14 Q. Okay. And how about defendants?

15 A. Probably the same number, or -- yes,
16 probably five or six.

17 Q. These are cases that you've consulted
18 on?

19 A. Yes.

20 Q. Not actually handled yourself?

21 A. That's correct.

22 Q. And these are malpractice cases?

23 A. I'm sorry?

24 Q. These are --

1 A. Those are malpractice cases, yes.

2 Q. Have you handled any cases by, or that
3 you were the primary attorney handling them in
4 the last year?

5 A. Well, there was one, there was one case
6 that I personally tried, yes. It was a personal
7 injury defense.

8 Q. All right. You tried this case?

9 A. I'm sorry?

10 Q. You tried this case?

11 A. Yes.

12 Q. Okay. That was in defense of a
13 personal injury case?

14 A. Yes.

15 Q. Do you have any of your own clients
16 that you brought to this firm?

17 A. No.

18 Q. Are there other cases that you're
19 handling?

20 A. By myself, no.

21 Q. Well, what do you do there at the law
22 firm on a daily basis?

23 A. Well, I review cases, I take
24 depositions. I've been involved in arbitration,

1 I've filed several motions for summary judgement
2 on some personal injury cases, that sort of
3 thing.

4 Q. Okay. And most of the work that you've
5 done, has it been on behalf of defendants?

6 A. Well, probably the majority has, I
7 guess, although it has been for both. I, I
8 presume the majority has been for the defendants.

9 Q. Well, do you know the percentage of
10 defense clients your firm has as opposed to
11 plaintiffs?

12 A. No, I really don't know that.

13 Q. Okay.

14 A. I'm not familiar with that.

15 Q. Well, when you say that the majority of
16 the work you've done has been for defendants, can
17 you give me an estimate percentage wise?

18 A. Well, you know, 60-40, 65-35, something
19 like that. As I indicated before, I've been
20 involved in three or four cases for the
21 plaintiffs and probably five or six for the
22 defendants in malpractice work. And as I also
23 stated, most of the personal injury work has been
24 for the defense, so I'm not quite sure how I can

1 answer it better than that.

2 Q. Okay. How frequently do you act as an
3 expert witness in medical malpractice cases?

4 A. Well, I would guess that, probably two
5 or three times a year I'm asked to review cases.

6 Q. And for how long have you reviewed
7 cases?

8 A. How long have I been doing that?

9 Q. Yes.

10 A. Oh, probably -- well, I can't say that
11 it's been at that rate for, I was going to say
12 between ten and fifteen years, but I'm not sure
13 that it's been at that rate for that length of
14 time. I would estimate that it probably --

15 Q. Can you tell me how long you've been
16 acting as an expert witness?

17 A. Well, probably fifteen years, I guess.

18 Q. Okay.

19 A. But initially it was probably one case
20 every year or two.

21 Q. And at some point was it more than two
22 or three times a year?

23 A. No.

24 Q. Okay. So it's never been more than two

1 or three times, but the early years was less than
2 that?

3 A. Yes, that's correct. I think that's
4 correct.

5 Q. How many hours a week would you say you
6 spend in your capacity as a medical expert?

7 A. As a medical expert?

8 Q. Yes.

9 A. How many hours a week? Gosh, not more
10 than, if I averaged it out to per week, it would
11 probably be less than one hour a week.

12 Q. And how many hours a week do you spend
13 practicing neurosurgery?

14 A. About 30 hours a week.

15 Q. When you became a lawyer, did you
16 intend to cut down your neurosurgery practice to
17 part-time?

18 A. Yes, I have cut it down to part-time.

19 Q. Okay. Have you ever had any of your
20 privileges at any of the, any hospital suspended,
21 revoked or restricted in any manner?

22 A. No.

23 Q. Have you ever had your license
24 suspended or revoked?

1 A. No.

2 Q. Have you been sued?

3 A. Yes, I've been sued.

4 Q. How many times?

5 A. I believe three.

6 Q. And when did those occur?

7 A. I'm sorry?

8 Q. When did those occur?

9 A. Well, one is pending right now, and --

10 Q. What's the name of the case?

11 MR. LODICO: I'm going to object to
12 this line of questioning.

13 A. I knew you'd ask that and really I,
14 quite honestly I can't remember his name. He was
15 a person that I operated on about two or three
16 years ago and I honestly cannot recall his name
17 at the moment.

18 Q. Are you the only defendant in the
19 lawsuit?

20 A. I'm sorry?

21 Q. Are you the only defendant in the
22 lawsuit?

23 A. Yes, yes.

24 Q. What are the allegations?

1 A. He had a complication of the surgery,
2 and of course the allegation is that the surgery
3 wasn't performed properly.

4 Q. What was the complication?

5 A. He had some disturbance of bladder and
6 bowel function post, after the operation.

7 Q. What was the operation?

8 A. For a herniated disc in the lumbar
9 region.

10 Q. When did the other two occur?

11 A. Oh, there was one about ten years ago.

12 Q. 1981?

13 A. Again I don't remember the, I can't
14 recall the name. It was a person that I had seen
15 in consultation in my office, and the patient
16 deteriorated over the weekend and I was not
17 notified. And the allegation was, of course,
18 that I should have hospitalized him at the time
19 that I saw him on Friday in my office. And there
20 was a settlement made in that case, I think the
21 settlement was, I don't know, \$75,000 or
22 something of that sort.

23 Q. What was his condition then that
24 deteriorated?

1 A. What was the condition?

2 Q. Yes.

3 A. A brain, a brain abscess.

4 Q. Okay. And you don't remember the name
5 of that case?

6 A. No.

7 Q. Were there other defendants?

8 A. No.

9 Q. You were the only defendant in that
10 case also?

11 A. That's right.

12 Q. All right. What was the other one?

13 A. The other one was a child that I
14 operated on who became quadriplegic, and that
15 ended up as a summary judgement for the defense.

16 Q. Okay. Were these all in Hamilton
17 County?

18 A. I believe that the child, that the
19 child case was probably in Clermont County, I
20 believe.

21 Q. I'm sorry, Clermont?

22 A. Clermont, I believe that's correct.

23 Q. And in your capacity as a lawyer, have
24 you done work for Erie Insurance Company?

1 A. Done work for?

2 Q. Erie Insurance Company.

3 A. Erie?

4 Q. Yes, is that one of the clients of your
5 firm?

6 A. You've lost me, what are you asking,
7 whether I --

8 Q. Right, I did change the question. The
9 question is, is Erie Insurance Company a client
10 of your firm?

11 A. I don't know.

12 Q. Okay. Have you --

13 A. I don't believe so, but I don't know.

14 Q. All right. So then I take it you
15 haven't done any, you haven't represented them
16 and done any work on any of their cases as a
17 lawyer?

18 A. That's correct.

19 Q. Are you currently affiliated with the
20 University of Cincinnati?

21 A. Yes.

22 Q. But you're no longer the director of
23 neurosurgery?

24 A. That's correct.

1 Q. Why is that, why are you no longer the
2 director?

3 A. Well, for one thing I was requested to
4 be, to discontinue my job as director; and
5 secondly, I'd be too old anyway.

6 Q. Okay.

7 A. I would have had to have retired by now
8 as director.

9 Q. Okay. When would you have had to
10 retire?

11 A. At age 65 is when they expect you to
12 retire.

13 Q. They expect you to retire?

14 A. (Witness nodded head.)

15 Q. It's not mandatory then?

16 A. I think you can, with special
17 permission you can stay till 68.

18 Q. Okay. You were asked to step down in
19 1982?

20 A. That's correct.

21 Q. All right. You were 60 years old at
22 that time?

23 A. That's correct.

24 Q. Who asked you to step down?

1 A. The chairman of the department of
2 surgery.

3 Q. Okay. And why did he ask you to step
4 down?

5 A. Because he and I had disagreements
6 about how the department should be run and he
7 asked me to step down.

8 Q. Okay. And you stayed on there as a
9 professor of surgery?

10 A. That's correct.

11 Q. Was there a lawsuit that arose out of
12 you being asked to step down?

13 A. Yes.

14 Q. Is that still pending?

15 A. No.

16 Q. How did that resolve?

17 A. The question, and the ultimate question
18 in the lawsuit, was whether he could do it with
19 no apparent reason, or with no reason given. And
20 the conclusion was that he did have the right to
21 do that without any reason, and so --

22 Q. Was it a wrongful discharge type --

23 A. Huh?

24 Q. It was a wrongful discharge type

1 lawsuit?

2 A. Yes, but the conclusion was that I did
3 not have a property right in the position and
4 that he, it was an employment of will sort of
5 situation, and regardless of whether there was a
6 reason or not, he had a right to do it.

7 Q. Did that case go to trial?

8 A. Yes.

9 Q. In Hamilton County?

10 A. Yes.

11 Q. When?

12 A. Probably about 1984, '85.

13 Q. How many times have you been deposed as
14 an expert witness?

15 A. Now, you're including personal injury
16 as well as malpractice?

17 Q. No, I guess what I want to know is
18 expert witness in a malpractice case.

19 A. How many times? I would estimate ten
20 times.

21 Q. And over what period of time are we
22 talking about?

23 A. Ten years.

24 Q. How many of those were Ohio cases?

1 A. Well, I have, I'm guessing on this now.

2 Q. Do you keep records of --

3 A. No, no, I do not. Probably half of
4 them, I guess.

5 Q. Do you know the names of the lawyers
6 that have taken your deposition?

7 A. No, I don't recall.

8 Q. Of these ten times that you've been
9 deposed, are any of those cases similar to the
10 Dunigan case?

11 A. Well, I'm not quite sure what you mean
12 by similar to, regarding infections in the
13 spine? Would that be a similar situation to you,
14 or does it have to be specifically an infection
15 in the cervical spine? Or are we, is just any
16 infection a similar case, I'm not quite sure how
17 you're limiting similar.

18 Q. I didn't intend to limit it. I guess
19 if you think it's similar, then I think it's
20 similar, I guess, is the answer to that
21 question.

22 A. Well, there is one specific case that I
23 can recall that did involve infection of the
24 spine. It was not the cervical spine, it was the

1 lumbar spine.

2 Q. Okay.

3 A. I don't recall a specific case in the
4 cervical area.

5 Q. Well, was that the only case involving
6 an infection?

7 A. No, no, it's not the only case
8 involving an infection, the other one that comes
9 to my mind was an infection in the brain. I
10 don't recall any other specific ones dealing with
11 infection.

12 Q. When was your deposition taken in this
13 one case that dealt with infection in the spine?

14 A. Actually I, I was a live witness in
15 court on that one, and that was probably three
16 years ago.

17 Q. Do you know the name of the case?

18 A. No, that was down in Louisiana.

19 Q. Do you remember the name of the
20 plaintiff's attorney?

21 A. No. Incidentally I was testifying for
22 the plaintiff in that case.

23 Q. You don't remember the name of the
24 person that retained you in that case?

1 A. No, he's an attorney in Louisiana and
2 I, I do not recall his name.

3 Q. Okay. Have you ever been retained as
4 an expert by Mr. Lodico or a member of his firm
5 before this?

6 A. Well, honestly I don't remember. I
7 don't think so.

8 MR. LODICO: I've never met him before
9 today.

10 A. Have I?

11 MR. LODICO: I never met you before
12 today.

13 A. Yes, I don't think I've been -- I don't
14 believe so, no.

15 Q. How about for Mr. Davis or Mr. Earl,
16 have you ever been retained by them or anybody in
17 their firm?

18 A. Not to my knowledge, no.

19 Q. Okay. Do you know why it is that you
20 were retained in this case?

21 A. No, I do not.

22 Q. Who were you contacted by?

23 A. Mr. Lodico.

24 Q. What did he ask you to do?

1 A. Review some records and some
2 depositions.

3 Q. All right. What did you review in this
4 case?

5 A. What did I, what have I reviewed?

6 Q. Yes.

7 A. A deposition of Dr. Sadar, S A D A R.
8 Let's see, a deposition of a Dr. Scharer, S C H A
9 R E R, some hospital records.

10 Q. Well, what hospital records?

11 A. Well, let's see, Mount Carmel Medical
12 Center, I believe these are all from Mount Carmel
13 Medical Center, and a deposition of Dr. Smith. I
14 believe those are the only materials that I have
15 reviewed.

16 Q. Okay. That's your complete file that
17 you're holding in your hand right now?

18 A. That's the complete file that was sent
19 to me by Mr. Lodico, yes.

20 Q. Well, is there something else?

21 A. There are other things that I have
22 added to the file by way of some research of my
23 own and the literature, but I thought you were
24 asking me what Mr. Lodico had asked me to review.

1 Q. Okay. Could I take a look at this?

2 A. Yes.

3 MR. EARL: Pass that CV over, will
4 you?

5 Q. Why don't you mark this, just the
6 folder.

7 A. You're not going to take that.

8 Q. We're just going to mark it now.

9 A. Yes, but you're not going to take it.

10 Q. All right. Doctor, I'm handing you
11 what's been marked as Exhibit 2, would you
12 identify that for the record?

13 A. Yes, this is my file concerning this
14 matter.

15 Q. Okay. That's your entire file,
16 everything you reviewed in this matter?

17 A. That's correct.

18 Q. Okay. I know I asked you this before,
19 but I forgot your answer. What is it that you
20 were asked to do in this case?

21 A. Specifically to review the records and
22 give an opinion as to whether there was any
23 relationship between the accident which had
24 occurred in May of 1988, and the subsequent

1 infection that occurred in the spine.

2 Q. Okay. When were you contacted in this
3 case?

4 A. Well, I guess in June of 1990 was the
5 first, first correspondence that I had from Mr.
6 Lodico.

7 Q. Okay. And you were not asked to
8 formulate an opinion as to whether or not any of
9 the other defendants fell below the standard of
10 care required of them, that would be a fair
11 statement?

12 A. No, no, that was not a specific
13 request, no.

14 Q. Okay. And then you did, there's a copy
15 of your report in the file, isn't there?

16 A. I'm sorry?

17 MR. LODICO: Your letter to me.

18 Q. Your letter, yes.

19 A. My letter, yes.

20 Q. Okay. And that's dated January 31st,
21 1991?

22 A. That's correct.

23 Q. And you -- well, from looking through
24 your file, I got the impression that you

1 formulated an opinion in this case that there was
2 no causal relationship between the accident and
3 Mr. Dunigan's subsequent outcome prior to
4 reviewing Dr. Scharer's deposition; is that true?

5 A. I believe that's correct, yes.

6 Q. Okay. Well, you authored this report
7 after reviewing Dr. Scharer's deposition, is
8 that --

9 A. That's correct.

10 Q. Okay. How many epidural infections in
11 the cervical area have you treated in your
12 practice?

13 A. I would guess probably between five and
14 ten.

15 Q. Did any of those occur after trauma?

16 A. Not to my knowledge, no.

17 Q. Despite not being asked to do so, did
18 you formulate any opinions regarding the other
19 defendants in this case?

20 A. No, not really. I didn't review it
21 from that standpoint.

22 Q. Okay. And did you formulate any
23 opinions regarding what Mr. Dunigan's eventual
24 outcome would have been if he hadn't subluxed?

1 A. Well, I think it was the subluxation
2 that caused his neurologic deterioration, his
3 deficit. **If** he hadn't subluxed, one would have
4 to conclude that he would not have had that
5 deterioration.

6 Q. Okay. Can you point me to some medical
7 literature that supports the position that you
8 stated in your report?

9 A. Well, which opinion are you asking
10 about? The lack of a relationship between the
11 trauma and the, and the infection, is that the
12 opinion that you're asking about?

13 Q. Well, that is, yes. That's the opinion
14 I was asking about.

15 A. Well, I think the literature that I
16 have referred to in this report to Mr. Lodico
17 supports that.

18 Q. All right. And this is the same
19 literature that Dr. Scharer cited in his
20 deposition?

21 A. Well, one of them is, yes.

22 Q. Okay. Other than that, though, you
23 can't cite me any literature?

24 A. Well, those are the, probably the most

1 extensive ones that deal with epidural
2 infections, and specifically the more recent one,
3 1975, which is probably the most extensive of the
4 recent ones dealing with that problem.

5 Q. All right. That's the one by Baker?

6 A. That's correct, yes.

7 Q. Did you ask to review any other records
8 in this case?

9 A. No.

10 MR. LODICO: What was your last
11 question, Chris?

12 Q. Did he ask to review any other records
13 in this case.

14 MR. LODICO: Okay.

15 Q. What do you charge, or what are you
16 charging in this case for your time?

17 A. I have a little, I have a different
18 rate that I charge for reviewing records from
19 what I charge for depositions. My charge for
20 deposition is \$400 an hour. I don't recall quite
21 frankly what I charged for review of the records,
22 but it was less than that.

23 Q. Okay. You don't have a set charge in
24 cases?

1 A. Well, I think that at the time that I
2 reviewed these, my charge was less than it is
3 now, and that's why I think, my guess is it was
4 in the neighborhood of 250, 300.

5 Q. I think there's a note in there that
6 you have two hours, \$500.

7 A. Okay. So that's what I was saying,
8 \$250 an hour.

9 Q. Is that your same rate today?

10 A. No, no, I think my rate today is 300 or
11 350, I forget quite honestly.

12 Q. And that's for reviewing records?

13 A. That's correct.

14 Q. Okay. And your charge today I take it
15 is \$400 for the deposition?

16 A. Per hour.

17 Q. Per hour, right. How much do you
18 charge for testifying at trial?

19 A. Well, I don't make a distinction
20 between that and deposition. Obviously
21 testifying at trial requires more time because of
22 transportation to and from the trial, but as far
23 as the -- I don't have a set rate for that. If
24 it's something locally in Hamilton County, I'll

1 just figure it on the basis of portal to portal
2 so to speak, my time.

3 Q. How about if it's in Columbus?

4 A. I think I will still consider it portal
5 to portal.

6 Q. Okay. You charge \$400 an hour, portal
7 to portal?

8 A. I believe that's correct. I have,
9 really this has not come up in my experience, so
10 I, I don't have -- just off the top of my head, I
11 think that would be reasonable, yes.

12 Q. Okay. Are you intending to testify
13 live at this trial?

14 A. I have been requested to, and I think
15 if it's, if it's at all possible I will.

16 Q. Okay.

17 MR. LODICO: He's given me a time when
18 he can be there during the trial week, so I hope
19 he's going to be there live.

20 Q. Okay. The second to the last sentence
21 on page one of your report talked about, it says,
22 particularly since his symptoms subsided between
23 the time of the trauma and the onset of his
24 infections. What symptoms are you talking about?

1 A. Well, symptoms of his cervical injury,
2 injury to the cervical spine.

3 Q. Did his infections or symptoms of
4 infection subside during that time period?

5 MR. LODICO: Objection. There's no
6 evidence there was any symptoms of infection
7 during that period of time.

8 A. What, yes, that's why I didn't
9 understand the question.

10 Q. Okay. You don't know about any
11 infections he had during that time?

12 MR. LODICO: Oh, infections, okay.

13 A. He had the dermatitis problem, but not
14 in the cervical spine.

15 Q. So he did have infections during that
16 time period?

17 A. He had, he had a chronic dermatitis
18 with infection. Whether he had, I can't tell you
19 exactly when that was, but apparently that was a
20 chronic problem that he had.

21 Q. Well, do you know if he had it between
22 the time of the accident and the time he was
23 hospitalized?

24 A. Oh, I think he did, yes.

1 Q. Did he?

2 A. Yes, he had a chest wall and lung
3 infection.

4 Q. Okay. Did those ever subside in
5 between the time he was, had the accident and he
6 was hospitalized?

7 A. I don't recall specifically whether the
8 condition of those infections did.

9 Q. If there's chronic infection and injury
10 to the disc space, can't the infection invade the
11 disc space?

12 MR. EARL: I'm sorry, what was that
13 question?

14 A. His question was whether, if there's a
15 chronic infection and an injury to a disc space,
16 can the infection invade the disc space. There
17 has been speculation about that in medical
18 literature, but there is nothing to support
19 that. And in my, to the best of my knowledge,
20 there's nothing to support it, although it
21 certainly has been speculated about.

22 Q. Well, what medical literature?

23 A. Well, in all medical literature that
24 has to do with infection, there is always the

1 speculation as to whether trauma may have played
2 a role, but there is nothing to support it.
3 There has been nothing over the many years to
4 support that, and it is similar to the
5 speculation that occurs as to whether trauma can
6 induce cancer. And there is, again there's
7 nothing to support the concept that trauma
8 induces cancer, but you find that in the
9 literature as a point of speculation not
10 infrequently. I think the opinion of the
11 majority of physicians who are working in the
12 area feel that there is no relationship.

13 Q. Well, define what you mean by
14 speculation for me.

15 A. Well, for example, in these articles
16 that were, that -- in fact, in the article that
17 Dr. Scharer cited, to quote that article --

18 Q. Are you reading from the Baker article
19 now?

20 A. No, I'm reading from the article that
21 Dr. Scharer --

22 Q. The human index?

23 A. I'm sorry?

24 Q. What are you reading from?

1 A. It's a chapter from Yoman's text by Dr.
2 Carey.

3 Q. Okay.

4 A. Trauma to the spine occurring just
5 before the onset of symptoms has been reported in
6 10 to 40 percent of patients, but its
7 significance is difficult to assess unless small,
8 clinically insignificant trauma epidurally,
9 subsequently becomes colonized with bacteria. In
10 other words, well, that's what I'm talking about,
11 speculation. The question is raised, but no one
12 has ever been able to document it.

13 Q. Well, can chronic skin infections lead
14 to episodes of bacterium?

15 A. Episodes of?

16 Q. Bacteriemia.

17 A. Oh, sure.

18 Q. And can cervical osteomyelitis be
19 associated with disc space infection?

20 A. Sure.

21 Q. And can Mr. Dunigan have, he did have a
22 disc injury from that accident?

23 A. No, I did not know that.

24 Q. Well, you said he had --

1 A. He had a cervical spine injury, that's
2 not the same as a disc injury.

3 Q. Well, do you have an opinion as to
4 whether or not he had a disc injury?

5 A. I don't believe he did from what I saw.

6 Q. What are you basing that on?

7 A. This review of the records, that he
8 essentially recovered from the symptoms that he
9 had, basically that would be it.

10 Q. What if his cervical symptoms continued
11 up until the time he was hospitalized, would that
12 change your opinion as to whether or not he had a
13 disc injury?

14 A. No, no, it would not.

15 Q. You would still think that he didn't
16 have a disc injury?

17 A. That's correct.

18 Q. Well, based on the fact that his
19 symptoms subsided --

20 A. Well, that would be one indication; the
21 second is, I've never seen a disc injury from
22 that kind of accident.

23 Q. So if you've never seen it, it can't
24 happen?

1 A. I didn't say that, I said in 40 years
2 of practice, I've never seen one.

3 Q. Okay. Well, is there -- strike that.
4 Can discitis and osteomyelitis culminate in
5 epidural abscess?

6 A. Sure.

7 Q. And you don't believe that if he had
8 chronic problems after the accident with his
9 neck, that that has any significance in this
10 case?

11 A. If he had trauma?

12 Q. Chronic problems with his neck.

13 A. No, no.

14 Q. And why not?

15 A. For the reasons that I have indicated,
16 I've never seen a disc injury from this kind of
17 accident, his symptoms that he had were not those
18 of a disc injury. The symptoms were, to the best
19 of my recollection, were purely involving the
20 neck, did not involve evidence of a disc
21 herniation or pressing on nerves and that sort of
22 thing that one would expect with a disc injury.

23 Q. And if he had an infectious problem
24 from the time of the accident up until the time

1 he was hospitalized, you don't find that
2 significant either?

3 A. Significant in what regard?

4 Q. In terms of determining whether or not
5 the accident is related to --

6 A. Well, I don't, I don't think that --
7 it's not significant in terms of the relationship
8 of the accident to the subsequent infection. The
9 infection of the skin was certainly related to it
10 in my judgement.

11 Q. How so?

12 A. Through the bacteriemia that you
13 mentioned.

14 Q. Okay. How did the infection enter the
15 disc space?

16 A. If there's a bacteriemia, a blood
17 stream infection, the infection can go to
18 anyplace in the body.

19 Q. Is the disc space a likely place for it
20 to go?

21 A. It's not a likely place, but it
22 certainly is one of the places that it does go,
23 we've seen this any number of times.

24 Q. Well, did it go anywhere else into the

1 body besides the disc space?

2 A. There was some question about a lung
3 infection, and I'm not quite sure whether that
4 was secondary to his chest infection or not, but
5 I don't know. I don't know of anyplace else.

6 Q. All right. In these cases where it
7 does go to the disc space, does it go somewhere
8 else in addition?

9 A. Not necessarily, no.

10 Q. Well, how many cases have you seen
11 where it's only been to the disc space and
12 nowhere else?

13 A. Oh, quite a few. I mentioned about,
14 that I've probably seen between five and ten in
15 the cervical area, and in other areas of the
16 spine, you know, it would probably be in the
17 neighborhood of 25 or 30 cases that I've seen.

18 Q. That seated only in the disc space and
19 nowhere else in the body?

20 A. And the epidural space, yes. I might
21 mention that the, that the case that I testified,
22 that I told you that I testified on in Louisiana
23 was exactly that same problem.

24 Q. What problem is that?

1 A. An epidural infection from a, actually
2 from an infection in the leg. I would also, I
3 might add that the article that I've pointed out
4 to you in my bibliography, I think it was number
5 43, deals with that specific problem, about
6 infections in the spine, that they are the result
7 of bacteriemias.

8 Q. Is it fair to say that less than 15
9 percent of your neurosurgical practice involves
10 trauma?

11 A. 15 percent of, less than 15 percent of
12 my practice at the present time?

13 Q. Yes.

14 A. At the present time it is less than 15
15 percent. In the, up until the time that I slowed
16 down practice, approximately three years ago, it
17 constituted probably over half of my practice, or
18 at least half of it.

19 Q. And the area now that you're most
20 involved with is pediatric neurosurgery?

21 A. No, no, that's not true. I've just,
22 part of the mechanism of slowing down practice is
23 to reduce trauma, and so I have reduced trauma
24 both in pediatric and in adults, but I still do

1 both pediatric and neurosurgical, pediatric and
2 adult neurosurgery, but I have slowed down on the
3 trauma.

4 Q. Well, how much of your practice is
5 pediatric neurosurgery?

6 A. At the present time?

7 Q. Yes.

8 A. Between a third and a half.

9 Q. How else do you spend your professional
10 time, other than the practice of law and the
11 practice of neurosurgery and acting as an expert
12 witness in medical-legal cases?

13 A. How do I spend it?

14 Q. Yes.

15 A. I see patients in the office here two
16 days a week, I operate.

17 Q. I think you misunderstood my question.

18 A. Oh, what did you ask?

19 Q. I asked you how do you -- well, maybe I
20 should, maybe I didn't ask it very well, let me
21 try it again.

22 A. Okay.

23 Q. Do you spend your time professionally
24 in any other manner other than the practice of

1 law, the practice of neurosurgery, and acting as
2 an expert witness in medical-legal cases?

3 MR. LODICO: Do you understand his
4 question, Doctor?

5 A. Well, up to the last point about the
6 expert witness. That's a very small part of my
7 practice, sir.

8 Q. Well, I'm not, I'm just --

9 A. And I do independent medical
10 examinations. I do second opinion examinations,
11 consultations, independent medical examinations
12 for Workman's Compensation, for example, or for
13 Crippled Children's programs, so I'm not quite
14 sure what you're asking. I do a number of
15 activities relating to my field of neurosurgery,
16 and being an expert witness in the malpractice
17 case is an infinitesimal part of it.

18 Q. I think you're reading something into
19 my question that I'm not asking.

20 A. Well, your question was how do I spend
21 it other than in neurosurgery or the law practice
22 or being an expert witness.

23 Q. Yes, those --

24 A. I guess in reading it, the answer is,

1 an expert witness is part of the medical practice
2 because I do that as a physician, just as I see
3 on consultation. That's what I was trying to
4 explain, just as I see, doing second opinions and
5 independent medical examinations as a physician,
6 and so I'm either a physician or a lawyer and I
7 don't do anything else.

8 Q. Okay.

9 A. Does that answer the question?

10 MR. EARL: Yes, it does, me being an
11 impartial observer.

12 Q. Well, I don't know how impartial, I
13 wouldn't agree to the fact that you're
14 impartial.

15 A. I'll try again to answer the question.

16 MR. LODICO: The question, Doctor, was
17 professionally do you --

18 Q. I'll ask another question.

19 A. Okay.

20 MR. LODICO: Okay.

21 Q. You don't consider acting as a
22 professional witness --

23 MR. LODICO: Objection, he's never said
24 that he was a professional witness.

1 Q. I'm sorry, I didn't mean to say that,
2 I'm sorry. Acting as an expert witness in
3 medical-legal cases is not clinical practice of
4 medicine?

5 A. It is not clinical practice of
6 medicine, but it is certainly included in the
7 practice of medicine.

8 Q. I understand what you're saying. What
9 about the independent medical examinations that
10 you do, is that clinical practice?

11 A. Not in the strict sense, no. It's not
12 clinical practice in the strict sense of the
13 word.

14 Q. What about second opinions?

15 A. Well, that's sort of on the borderline
16 of clinical practice because there is, there
17 you're giving a recommendation regarding
18 treatment, and to that extent, it is clinical.
19 In an independent medical examination, of course
20 you, one is not rendering an opinion about
21 treatment, but only about a condition of the
22 individual.

23 Q. Okay.

24 A. When one gets into a second opinion

1 area, you are expected to make a recommendation
2 about treatment, so that in a sense is clinical.

3 Q. Okay. How much time do you spend doing
4 independent medical exams, how many hours a week?

5 A. About two, two-and-a-half maybe.

6 Q. Okay. And what were the, some of the
7 other things you were telling me that you do?

8 A. Well, I said I see, I do independent
9 medical exams for various agencies other than
10 attorneys and so on. You know, an insurance
11 company may ask me to do an independent medical
12 exam, Crippled Children's may ask me to do it,
13 Workman's Compensation may ask me to do it.

14 Q. Well, would that be all the
15 two-and-a-half hours a week?

16 A. Yes.

17 Q. Okay. What else do you do in your
18 professional capacity that's not the clinical
19 practice of medicine, not counting being a lawyer
20 and the things we've already talked about?

21 A. Now, wait a minute, in my clinical
22 practice?

23 Q. No, as a physician.

24 A. Yes.

1 Q. That you do that doesn't involve the
2 clinical practice.

3 A. Well, I'm involved in various national
4 societies and do committee work and things of
5 that sort in medicine, and hospital committees,
6 that sort of activity.

7 Q. How many hours a week do you spend
8 doing that?

9 A. Well, again I'm just sort of trying to
10 estimate an average, maybe three or four hours a
11 week perhaps.

12 Q. Okay. Anything else you can think of?

13 A. No, not that I can think of.

14 Q. Okay.

15 A. I attend meetings, of course. I
16 attend --

17 Q. You're talking about the hospital?

18 A. What?

19 Q. At the hospital?

20 A. Well, and also national meetings and so
21 on.

22 Q. That would be part of what you were
23 telling me though as far as professional
24 societies?

1 A. Yes, that's -- well, I attend meetings
2 as well as participate in committee work that one
3 does in between the meetings.

4 Q. Okay. Do you know Dr. Smith?

5 A. No, I do not.

6 Q. How about Dr. Sadar?

7 A. I know who, I know of Dr. Sadar. I
8 probably have met him, but I don't know, I don't
9 know him personally though.

10 Q. Okay. Did you make any other notes,
11 other than that one yellow sheet in your file?

12 A. No.

13 Q. Do you hold any other opinions that are
14 relevant to this lawsuit that aren't in your
15 report, that we haven't talked about today?

16 A. I don't believe so.

17 MR. MELLINO: Okay. I don't have any
18 other questions for you, Doctor.

19 CROSS-EXAMINATION

20 BY MR. DAVIS:

21 Q. Dr. McLaurin, my name is Bill Davis, I
22 represent Dr. Smith in this case and I just have
23 one point of clarification that I wanted to ask
24 you.

1 A. Okay.

2 Q. You've already testified that your
3 function as a consultant in this case, when you
4 were contacted by Mr. Lodico, was purely to
5 review the case with an eye towards arriving at
6 an opinion as to whether or not any causal
7 relationship existed between the automobile
8 accident and this man's subluxation; is that
9 correct?

10 A. Yes, that's correct.

11 MR. LODICO: Just for point of
12 clarification, it was more of a causal
13 relationship between the automobile accident and
14 the abscess.

15 A. And the infection.

16 Q. I'm sorry, thank you, thank you if I
17 misspoke. With that proviso, and I understand
18 that because you stated that you were not
19 retained to examine the case in terms of
20 rendering an opinion as to the care that was
21 rendered by the hospital or the doctors, but with
22 that proviso, when you reviewed the records that
23 you did review in this case, during the course of
24 that review, did you come to any criticisms of

1 the care rendered by Dr. Smith?

2 MR. MELLINO: Objection.

3 A. I don't recall that I did, sir, no.

4 MR. DAVIS: Thank you, that's all I
5 have.

6 CROSS-EXAMINATION

7 BY MR. EARL:

8 Q. Doctor, in your review of the medical
9 chart of Mount Carmel, did you come to any
10 criticism of the care rendered by Mount Carmel?

11 MR. MELLINO: Objection.

12 A. No.

13 MR. EARL: That's all.

14 MR. LODICO: He'll read it.

15

16

17

18 ROBERT L. MCLAURIN, MD

19 - - -

20 (Deposition concluded at 6:40 p.m.)

21 - - -

22 (Plaintiff's Exhibit 2 retained by Dr. McLaurin)

23 - - -

24

C E R T I F I C A T E

STATE OF OHIO:
SS:
COUNTY OF HAMILTON:

I, Lee Ann Berry, a duly qualified and
commissioned notary public in and for the State
of Ohio, do hereby certify that prior to the
giving of his deposition, the within named ROBERT
L. MCLAURIN, MD was by me first duly sworn to
testify the truth, the whole truth and nothing
but the truth; that the foregoing pages
constitute a true and correct transcript of
testimony given at said time and place by said
deponent; that said deposition was taken by me in
stenotypy and transcribed under my supervision;
that I am neither a relative of nor attorney for
any of the parties to this litigation, nor
relative of nor employee of any of their counsel,
and have no interest whatsoever in the result of
this litigation.

IN WITNESS WHEREOF, I hereunto set my
hand and official seal of office at Cincinnati,
Ohio this 5 day of November, 1991.

MY COMMISSION EXPIRES:
AUGUST 5, 1994

Lee Ann Berry
LEE ANN BERRY

NOTARY PUBLIC-STATE OF OHIO

CURRICULUM VITAE

ROBERT LOVE MCLAURIN, M.D.

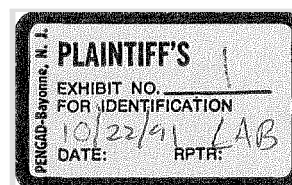
Place of Birth: Dallas, Texas Date of Birth: January 5, 1922
Father's Name: John McLaurin (deceased) Mother's Name: Lucy Coke McLaurin (deceased)
Children: 5
Home Address: 415 Bond Place, # 9-D, Cincinnati, Ohio 45206
Office Address: 111 Wellington Place, Cincinnati, Ohio 45219

Education

<u>Institution and Location</u>	<u>D'egree</u>	<u>Year Conferred</u>
Rice Institute, Houston, Texas	B.A.	1944
Harvard Medical School, Boston Mass.	M.D.	1944
Peter Bent Brigham Hospital, Boston, Mass. Medical Intern		10/01/44-07/01/45
Peter Bent Brigham Hospital, Boston, Mass. Surgical Intern		03/15/47-07/01/47
New Haven Hospital, Hartford, Conn. and Hartford Hospital, Hartford, Conn. Neurosurgical Residency		07/01/47-07/01/50
Peter Bent Brigham Hospital, Boston, Mass. and The Childrkn's Hospital, Boston Mass. Neurosurgical Residency		07/01/50-07/01/51
Peter Bent Brigham Hospital, Boston Mass. and The Children's Hospital, Boston, Mass. Research Fellow in Neurosurgery		07/01/51-07/01/53
University of Cincinnati, College of Law	J.D.	1990

Teaching Appointments

Harvard Medical School, Boston, Mass. Ass't in Surgery	07/01/51-07/01/53
University of Cincinnati, Cincinnati, Ohio Instructor, Neurosurgery	08/01/53-09/01/54
University of Cincinnati, Cincinnati, Ohio Ass't Prof. of Surgery (Neurosurgery)	09/01/54-09/01/57
University of Cincinnati, Cincinnati, Ohio Acting Director, Division of Neurosurgery	09/01/54-09/01/55
University of Cincinnati, Cincinnati, Ohio Director, Division of Neurosurgery	09/01/55-1982
University of Cincinnati, Cincinnati, Ohio Assoc. Prof. of Surgery (Neurosurgery)	09/01/57-09/01/64
University of Cincinnati, Cincinnati, Ohio Professor of Surgery (Neurosurgery)	09/01/64-



Hospital Appointments

Peter Brigham Hospital, Boston, Mass.	07/01/51-07/01/53
Ass't in Surgery	
Children's Hospital, Cincinnati, Ohio	08/01/53-
Attending Staff and Director	
Division of Neurosurgery (since 1954)	
Cincinnati General Hospital, Cincinnati, Ohio	08/01/53-
Attending Staff and Director	
Division of Neurosurgery (since 1954)	
Our Lady of Mercy Hospital, Cincinnati, Ohio	08/01/53-
Attending Staff and Consultant	
Good Samaritan Hospital, Cincinnati, Ohio	08/01/53-
Attending Staff	
Bethesda Hospital, Cincinnati, Ohio	10/01/53-
Courtesy Staff	
Veteran's Administration Hospital, Cincinnati, Ohio	10/01/53-
Consultant	
Christ Hospital, Cincinnati, Ohio	09/01/57-
Courtesy Staff and Consultant	
Jewish Hospital, Cincinnati, Ohio	04/01/59-
Courtesy Staff and Consultant	

Professional Organizations

American Association of Neurological Surgeons
Program Committee - 1967-69
Annual Meeting Chairman - 1970
Vice President - 1980
The Congress of Neurological Surgeons
The American Academy of Neurological Surgeons
Secretary-Treasurer - 1958-62
President - 1972
Society of Neurological Surgeons
Treasurer - 1971-76
Vice President - 1981
Section of Pediatric Neurosurgery of the American Association of Neurological Surgeons
Chairman - 1971
American Neurological Association
The Society of British Neurological Surgeons (Honorary)
Association for Research in Nervous and Mental Diseases
Society for Neuroscience
American Medical Association
American College of Surgeons
American Trauma Society
The Society for Research in Spina Bifida and Hydrocephalus
Ohio State Medical Association
Ohio State Neurosurgical Association
President - 1982
The Mont Reid Surgical Society
Academy of Medicine of Cincinnati
Cincinnati Society of Neurology and Psychiatry
President - 1957-58

Professional Organizations

(cont)

Cincinnati Society of Neurology and Neurosurgery
President - 1979-82
American Board of Neurological Surgery - 1976-81
International Society of Pediatric Neurosurgery
American Society of Pediatric Neurosurgery

Honorary Organizations

Alpha Omega Alpha
The Society of Sigma Xi

Board Certification

The American Board of Neurological Surgery - 1954

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