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on behalf **of** the Plaintiffs;

Davis & Young  
Jan Roller  
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Cleveland, Ohio

on behalf of the Defendant,

- - -

I'm just going to OBJECT before the doctor 70

MR. SCHARON:	OBJECTION	, I don't think he	14	1
I'm going to pose an	OBJECTION	here because I	42	
MR. SHAPIRO:	OBJECTION	Just for the	66	
to voice a continuing	OBJECTION	to any and all	75	2
MR. SHAPIRO:	OBJECTION	to what he -- A.	77	1
-- let me voice an	OBJECTION	to these questions.	107	1
MR. SHAPIRO:	OBJECTION	to any reference to	108	2
MR. SBWPIRQ:	OBJECTION	. A. No. No,	111	1

PROCEEDINGS

ADRAIN M. SCHNALL, M.D.,

Witness herein, called by the Defendant as upon cross-examination, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

CROSS-EXAMINATION OF ADRAIN M. SCHNALL, M.D.

By Ms. Roller:

Q. Doctor, as I stated, my name is Jan Roller, and I represent Durable Plating in the lawsuit brought by David Neeld; I'll be asking you some questions about your care and treatment of him.

First of all, doctor, since I don't have a copy of your C.V., I would like to know a little bit about your background. Can you tell me your educational history from college on?

A. Certainly. I attended the University of Chicago from 1961 to 1965 and have a BA in psychology from the University of Chicago. I then attended Yale Medical School from 1965 to 1969, an M.D. degree.

From Yale Medical School, after that time I did an internship at Cleveland Metropolitan General Hospital ending in June of 1970 and then served in the United States Air Force for two years ending in August of 1972.

1           Following that I did a residency in internal  
2 **medicine at Cleveland Metropolitan General Hospital** for  
3 one year, ending in June of 1973, and then a year of  
4 internal medicine residency at University Hospitals of  
5 Cleveland ending in June of 1974. Following this I did  
6 a one-year **fellowship in endocrinology** and metabolism  
7 in University **Hospitals** of Cleveland.

8           Since **July 1** of 1975 I've been in practice in  
9 **internal medicine, endocrinology and metabolism at**  
10 **University Suburban Medical Center.** I'm an associate  
11 professional of **medicine at Case Western Reserve**  
12 **University Medical School.**

13 Q.     And what field do you teach there at Case  
14 Western?

15 A.     I teach, in general, internal medicine and in  
16 endocrinology and metabolism.

17 Q.     Did you say you had a residency in endocrinology?

18 A.     I said a fellowship.

19 Q.     A fellowship.

20 A.     That's really equivalent to an advanced  
21 residency,

22 Q.     And where was that?

23 A.     In University Hospitals of Cleveland,

24 Q.     And when did that end?

25 A.     That ended June 30th, 1975,

1 Q. And since that time you've been in private  
2 practice?

3 A. That's right,

4 Q. And is this the only office you keep?

5 A. Yes.

6 Q. And this is located where, for the record?

7 A. At 1611 South Green, Cleveland, Ohio 44121,

8 Q. And at what hospitals do you have privileges?

9 A. At University Hospitals of Cleveland, the VA  
10 Medical Center and Cleveland Metropolitan General  
11 Hospital.

12 Q. Are you Board certified in any field, doctor?

13 A. Yes, I'm Board certified in internal medicine.

14 Q. And when did you receive your certification?

15 A. I received my certification, I believe, in June  
16 of 1975, but it will be written on my curriculum vitae,

17 Q. Have you published anything, doctor?

18 A. Yes. I've published seven or eight papers, most  
19 of which have to do with endocrinology and metabolism,  
20 and a couple of abstracts.

21 Q. Could you just define for me the field of  
22 endocrinology?

23 A. The field of endocrinology has to do with hormone  
24 production within the body and disorders involving  
25 hormone production.

1 Q. Doctor, have you ever had your deposition taken  
2 before?

3 A. Yes, I have,

4 Q. Have you ever testified in court before?

5 A. Yes, I have,

6 Q. And by that I mean in court live?

7 A. Yes,

8 Q. About how many times has that occurred?

9 A. In court live once.

10 a. And how about a videotaped deposition that you  
11 understood would be presented to court, how often has  
12 that happened?

13 A. Eight or nine times.

14 Q. And of those ten times, doctor -- first of all,  
15 when did they occur, over what period of time?

16 a. They've been spread over the last ten years,  
17 maybe one a year: or maybe two one year, another the  
18 next year.

19 Q. And do you know in those cases -- first of all,  
20 were all of the patients that you were testifying  
21 about, all the people that you were testifying about,  
22 were they your patients?

23 A. No.

24 Q. Do I take it then that you were retained to give  
25 an expert opinion in cases?

1 A. That's correct.

2 Q. And in how many of those ten cases did that  
3 occur?

4 A, I would say seven or eight. I believe I have  
5 testified in cases relating to three othex of my own  
6 patients.

7 Q. In the cases where you were asked to give an  
8 opinion, expert opinion, what field of expertise did  
9 that deal in?

10 A. It dealt in diseases of endocrinology.

11 Q. And, doctor, in the ten cases that you've  
12 testified in court before, do you know who you were  
13 asked to testify on behalf of, whether the plaintiff,  
14 the person --

15 A. I would say it was 50/50; you know, half the time  
16 I was testifying on behalf of the plaintiff, half the  
17 time I was testifying on behalf of the defendant,

18 Q. Doctor, when did David Neeld first become your  
19 patient?

20 A. The first record I have of seeing Mr. Neeld was  
21 on June 28th, 1984.

22 Q. And do you know haw he came to you?

23 A. Yes. He was the son of another of my patients.

24 Q. And who was that?

25 A, Her name was Ruth Neeld.



1       a.     Doctor, I believe I have the document you're  
2     looking at. Let me see if I can pull it out.

3                   MS. ROLLER:                   Off the record,  
4                   (Thereupon a discussion was had off the  
5     record.)

6                   MS. ROLLER:                   Back on the record.

7     Q.     Doctor, you're looking at some records in your  
8     file, and let me ask you, is this a copy of what you're  
9     referring to?

10    A.     Yes, it is.

11    Q.     What do you call these two pages of documents  
12    that are in your file?

13    A.     I call this an initial history and physical form,

14    Q.     And what was the reason that, or the complaints  
15    that Dave Neeld was making to you in June of 1984?

16    A.     The major complaints were that he had had high  
17    blood pressure, he had bruising of his arms on only  
18    minimal trauma, he had sensitivity to the sun and that  
19    another physician had told him that he had a calcium  
20    deposit in his heart,

21    Q.     Do you know what doctor that was?

22    A.     His name was Dr. Neumann.

23    Q.     And do you know if he was coming to you as a  
24    specialist?

25    A.     I don't honestly remember. These problems would

1 come within the purview of general internal medicine,

2 Q. Did he make any other complaints than the ones  
3 you've just listed?

4 A. He said that he had occasional coughing in the  
5 morning, he said that his stomach had been bloated  
6 since he had been on one medication for his blood  
7 pressure, he said that he urinated 15 times a day,  
8 which is an unusually large number, he said that he had  
9 a coldness of the hands and feet, unusually cold during  
10 the wintertime, and that he had lost 20 pounds in the  
11 previous year,

12 Q. Are those all the complaints that he made to you?

13 a. Those are all the complaints I have listed here,  
14 yes.

15 Q. Did you conduct a physical examination of him the  
16 first time you saw him on June 28th of '84?

17 A. Yes, I did,

18 Q. And what findings did you make as a result of  
19 that examination?

20 A. Do you want me to list all of the findings?

21 Q. Well, any abnormal findings, any negative  
22 findings that you made.

23 MR. SCHARON: You mean positive?

24 MS. ROLLER: Positive findings.

25 Excuse me,

A" Well, his blood pressure was higher than normal at 160 over 100. When repeated with a large blood pressure cuff, that was within the normal range at 142 over 86. His thyroid gland was slightly enlarged. He had mild wheezing on listening to his lungs and some abnormal sounds heard with the stethoscope called R H O N C H I. He had a clicking sound in his heart which is not normally heard. I was able to feel his spleen, which felt to me as though it was enlarged compared to normal. And he had a tremor of the outstretched arms,

Q. Of both arms, doctor?

A. I do not have that noted. I would assume that it was both arms since if it had been only one arm I normally make a notation of that.

Q. Did you make a determination as to the cause of that tremor?

A. I have marked down here that I ordered some thyroid tests, which, to my recollection, were normal, but may I check?

Q. Please.

A. Yes, the thyroid tests ordered on June 28th, 1984 were all within normal limits.

Q. Do I take it then you thought the tremor was related to a thyroid problem?

1 A. No.

2 Q. Well --

3 A. I thought on the -- oh, you mean did I think  
4 before I got the tests?

5 Q. Yes.

6 A. I thought that they might be related to an  
7 overactive thyroid, but the tests did not show that,  
8 therefore, tremor was not due to an overactive thyroid.

9 Q. Did you, after you received those thyroid tests,  
10 did you form an opinion as to the cause of the tremor?

11 A. Well, I have also marked down here that I thought  
12 that Mr. Neeld drank an excessive amount of alcohol,  
13 and although I haven't written it here, my recollection  
E4 is I thought: that the tremor was probably due to that.

15 Q. What was the basis for your opinion that he was  
16 drinking an excessive amount of alcohol at that time?

17 A. In response to my question, he responded that he  
18 drank four beers every day on average. In addition, I  
19 thought that I could smell alcohol on his breath.

20 Q. Were those all the positive findings that you  
21 found on your first examination of him?

22 A. Yes.

23 Q. Now, I notice your initial form has an area for  
24 extremities and there is something written next to  
25 extremities and then the line below, also, on joints.

1        Could you tell me what those notations mean?

2        A.        Yes. What's written on **the** line marked  
3        extremities **does** not relate to extremities.

4        Q.        Oh.

5               What it indicates is that his prostate gland was  
6        slightly **enlarged** and equally enlarged on right and  
7        left, It refers to the **Sine** immediately above that.  
8        What I have marked under **extremities** is a check mark  
9        next to the word **joints**, which means that I had tested  
10       every one of his joints for movement and found **that**  
11       there **was** no **swelling** and **no** limitation of movement of  
12       any of his joints.

13       Q.        And Likewise with the --

14       A.        S zero, T zero, L zero means there **was** no  
15       swelling, no **tenderness** and no limitation of motion of  
16       any joint .

17       Q.        Did you conduct a **similar** examination after this  
18       date of June 28th of '84?

19       A.        I don't have any record of doing a complete  
20       physical examination in this chart; however, when he  
21       was admitted to the hospital,, which occurred on at  
22       least **two** other occasions subsequent to **that**, I did  
23       perform a similar examination. Unfortunately, I don't  
24       **have the** complete records of those examinations in this  
25       chart, that would be in his hospital chart.

1 Q. Okay. Is that the only other time that you can  
2 recall that you would have performed --

3 A. A complete --

4 Q. Complete exam,

5 A. -- physical examination? Yes, that's the only  
6 time.

7 Q. There were two hospitalizations in '86, as I  
8 recall, one in January and one in July, Do you know  
9 which one you would be referring to? Approximately  
10 those dates, January and July of '86.

11 MR. SCHARON: Objection, I don't  
12 think he said he was referring to one; he was referring  
13 to both.

14 Q. Well, did you do complete examinations on each  
15 admission?

16 A. Normally I would do that; however, since I don't  
17 have the hospital records I can't --

18 Q. All right.

19 a. I can't tell you for certain if I did, On some  
20 occasions I would simply sign my name to the name of  
21 the medical resident who had written down the complete  
22 physical examination to note that my examination was  
23 not any different than his.

24 Q. Doctor, I have those records with me, Maybe you  
25 could look through them and we could go over that when

1 we get to that point,

2 A. Fine.

3 Q. As a result of your examination and interview  
4 wrth Mr. Neeld in June of '84, did you recommend any  
5 treatment?

6 A. Well, I recommended that he have a number of  
7 blood tests to determine whether there was any serious  
8 cause of the bruising that he had on his arms. I also  
9 ordered some blood tests relating to liver function  
10 because of the history of drinking alcohol, I ordered  
11 some blood tests relating to the control of his blood  
12 pressure and the medications that Re was taking for his  
13 blood pressure. And I asked him to authorize my  
14 getting his previous records because of this history of  
15 being told of a calcium deposit in his heart.

16 Q. And did he give you "chat authorization, first of  
17 all?

18 A. Yes.

19 Q. And did you get those records?

20 A. Yes, I did.

21 Q. Where had he treated before you?

22 A. We had treated with a Dr. Neumann, and the  
23 records that- I received were from Lake County Memorial  
24 Hospital.

25 Q. Did you receive those records then, doctor?

1 A, Yes, I did.

2 Q. And you're referring specifically to a Lake  
3 County Memorial set of records showing a  
4 hospitalization in March of 1982?

5 a. That's sight.

6 Q. Did you receive any other records from Lake  
7 County other than those for that hospital admission in  
8 '82?

9 A. No, These are the only hospital records that I  
10 received.

11 Q. Did you ask for all of his hospital records from  
12 Lake County?

13 A. I believe so.

14 Q. And how about from Dr. Neumann, what did you  
15 receive from him?

16 A. I don't believe I requested records directly from  
17 Dr. Neumann because of what the patient had told me,  
18 that the diagnosis of his heart disease had been made  
19 while he was in the hospital,

20 Q. At Lake County?

21 A. Yes.

22 Q. But you did receive a report from Dr. Neumann?

23 A. I don't think so. I don't think so.

24 Q. Did you receive anything from Dr. Neumann?

25 A, I think the only thing I received relating to



1 Dr. Neumann's care was the hospital records that we  
2 just were walk talking about,

3 Q. Did you know Dave Neeld had been treated By  
4 anyone other than Dr. Neurnann or by the people at Lake  
5 County Hospital?

6 A. Dr. Neumann has signed the discharge summary at  
7 Lake County Hospital, so I assume that he was the  
8 principal doctor taking care of him there? and I was  
9 not aware of any other doctor who cared for him prior  
10 to the time that I saw him.

11 Q. Do you know what kind of doctor Dr. Neumann is?

12 A. The patient told me that he was a cardiologist.  
13 Now I do not know this from any other source other than  
14 what Mr. Neeld told me,

15 9. And do you know then if David Neeld was seeing  
16 any family physician prior to you seeing him?

17 A, No, I don't.

18 Q. Did you prescribe any medication in June of '84  
19 for Mr. Neeld?

20 A. No. I told him to continue on the same  
21 medication he had been taking prior to that time.

22 Q. And what type of medication had he been taking  
23 before this?

24 A. He had been taking two medications, both for high  
25 blood pressure. One was called Capoten, C A P O T E N,

1 25 milligrams, four times a day, and the other called  
2 Indesal, I N D E R A L, 80 milligrams, twice a day.

3 Q. The tests that you had requested, what did the  
4 results of those tests; reveal for you?

5 A. I ordered a chest x-ray which was entirely  
6 normal. I ordered an electrocardiogram which showed  
7 some minor changes which I thought might relate to an  
8 abnormality of his blood potassium level, I ordered a  
9 series of blood tests, which included five different  
10 tests for blood clotting, all of which were really  
11 within the normal range, I ordered the thyroid tests I  
12 referred to which were normal, His red blood cell  
13 count was higher than normal. His white blood cell  
14 count was normal. His blood sugar and minerals in the  
15 blood were within the normal range and his kidney  
16 function tests were within the normal range, I ordered  
17 one, two, three different liver tests; two of them were  
18 normal and the third one was very mildly elevated.

19 Q. Were those the results of all the tests that you  
20 ordered, doctor?

21 A. Yes.

22 8. Then from what you've indicated the only thing  
23 that you found abnormal from the tests was that one of  
24 the liver tests was mildly elevated and a minor change  
25 In the EKG showing what you felt was related to blood

1 potassium?

2 MR. SCHARON: An elevated red  
3 blood cell.

4 9. Elevated red blood cell,

5 A. That's correct.

6 Q. Did you find the red blood cell elevation to be  
7 within normal limits?

8 A. No. His red blood cell count was 5.72 -- well,  
9 okay. Let me change my terminology slightly. His red  
10 blood cell count, strictly speaking, was within the  
11 normal range for this laboratory. The hematocrit,  
12 which is another index of the red blood cells in the  
13 blood, it refers to the percentage of the blood that is  
14 made up of red blood cells, was 54.0. The normal is  
15 between 42 and 52. So it was higher than the normal  
16 range.

17 Q. Eased upon those findings, your physical  
18 examination of him and the test results, what  
19 conclusion did you reach about; any problems that David  
20 Neeld had as of June 28th, 1984?

21 A. Well, I felt that his blood pressure was on the  
22 high side but was not dangerously high and that he  
23 could continue the same medications for the time being.  
24 I felt that the bruising that he had on his arms might  
25 be related to the medication that he was taking, and I

1     **also** felt **that** the high red blood cell count, or high  
2     hematocrit, **might be** related to either the medication  
3     or to an intrinsic problem with his blood-producing  
4     cells. The enlargement of the spleen that I mentioned  
5     before **is** frequently **present** in people that **have** an  
6     abnormality **of** the blood-producing cells in the body,  
7     and **so** I referred him to a **blood** specialist, the  
8     hematologist, because **of** these problems.

9             The problem with the calcium **deposit** on the  
10    heart, I felt, probably **was** the patient's  
11    interpretation **of** being told that he had a condition  
12    called mitral **valve** prolapse, because I had heard **the**  
13    click **when** I listened to **his** heard. **This** is a finding  
14    that **is almost** diagnostic **of** this heart condition,  
15    **which** is a very minor condition, **but** which **doctors** may  
16    be concerned **about** if **they're** not aware of it, And I  
17    think **saying** that he **had** a calcium deposit on his **heart**  
18    **really is** not an accurate description but is what he  
19    had thought in **response** to what the physician **had** told  
20    him.

23    Q.     Did **you** make any findings as to problems with **his**  
22    heart other than the clicking that you heard?

23    A.     No, I didn't, and I was, I requested his **records**  
24    **largely** to find out what **the!** other doctor **had** found,

25    Q.     Now, how about any **effects** that **you** felt alcohol

1 was playing with Ms. Neeld's condition as of June of  
2 '84, what was your opinion in that regard?

3 A. The only objective findings that I found relating  
4 to that or possibly relating to that were that he did  
5 have the tremor, Eos which I had found no other cause,  
6 and that he had a minor elevation of one of the Liver  
7 tests.

8 Q. Who was the blood specialist you referred him to?

9 A. Dr. Russell Weisman, W E I S M A N.

10 Q. And your records contain a report from  
11 Dr. Weisman?

12 A. That is right,

13 Q. And what was the conclusion of Dr. Weisman's  
14 evaluation of Mr. Neeld?

15 A. Dr. Weisman's conclusion was that Mr. Neeld very  
16 likely did not have any serious blood disorder even  
17 though his red blood cell count and hematocrit was  
18 higher than normal. His recommendations were that we  
19 follow Mr. Neeld carefully with periodic examinations  
20 and possibly a CAT scan to get a visual image of his  
21 spleen, which Dr. Weisman agreed was enlarged.

22 He also told me on the phone, which I have noted  
23 in script on his report., that he thought that his  
24 bruising was probably due to the medication and not due  
25 to any underlying blood condition and that he suggested

1       reducing one of the medications if he continued to have  
2       **this** problem and if he continued to be fatigued, which  
3       was a symptom that he had described to Dr. Weisman, In  
4       addition, he recommended that he stop drinking alcohol  
5       completely.

6       Q.     Did you make any recommendation yourself  
7       regarding his use of alcohol?

8       A.     I do not have any definite written note to that  
9       effect at that time. I do recall that I told him  
10      Dr. Weisman's recommendations and that included within  
11      those recommendations **were** that *he* should stop drinking  
12      completely.

13            On one of the next times that I saw  
14      Mr. Neeld I wrote down that he should keep off beer, so  
15      the first notation that I **have** of actually telling him  
16      that was on January 5th, 1985.

17      Q.     Doctor, I don't believe that I've seen your chart  
18      **before** the entries involving this accident, so if I  
19      might just **look** at that quickly,

20            Doctor, the next time you saw David Neeld after  
21      June 28th of '84 was when?

22      A.     On January 2nd, 1985.

23      Q.     You then saw him several times until, I believe,  
24      July 9th, 1985, is that correct?

25      A.     Yes.

1 Q. Tell me basically -- well, first of all, can you  
2 just tell me how many times it was that you saw him  
3 between those dates of June 28th, '84 to July 9th, '85,  
4 how many visits?

5 A. I saw him on January 2nd, 1985; I spoke to him on  
6 the phone January 5th, 1985; I saw him in the office on  
7 May 17, 1985; I saw him in the office on May 31st, 1985  
8 and I spoke to him on the phone on June 5th, 1985.

9 Q. Now, those visits between June 28th, 1984 and  
10 July 9th, 1985, what complaints, generally, was David  
11 Neeld making to you during that period of time?

12 a. Well, several of the visits were for: checking his  
13 blood pressure. On January 2nd, 1985 he had severe  
14 diarrhea and vomiting,

15 Q. Did you form an opinion as to what was causing  
16 that diarrhea and vomiting?

17 A. My opinion on the date that I saw him was that it  
18 might very well be due to a viral infection and that  
19 there may have been a contribution of his drinking  
20 alcohol.

21 Q. Could you just, for my own point of interest,  
22 enlighten me as to how drinking alcohol can cause  
23 diarrhea and -- vomiting maybe, but diarrhea -- how  
24 does that work?

25 A. Well, you're right, it usually does not cause

1       diarrhea; however, people, when they are, when they  
2       have a severe gastritis due to alcohol, may have  
3       bleeding and the bleeding may then cause an increase in  
4       fluid passing through the colon and so it causes  
5       diarrhea. Now, in his case, on this particular day, he  
6       did not have any bleeding, okay. So when I say  
7       "alcohol," I have that written under the vomiting and  
8       the pain that he had, not under the diarrhea that he  
9       had.

10      Q.     Okay.

11      A.     Okay.

12      Q.     Was it your opinion at that time that he was  
13       still using alcohol then, as of January of '85?

14      A.     Well, remember, I saw him on January 2nd, and in  
15       all fairness, I think many of us drink alcohol on  
16       December 31st and January 1st. The exact history was  
17       that he had drunk six or seven beers on both of those  
18       days.

19      a.     On which days?

20      A.     December 31st, '84 and on January 1st, 1985.

21      Q.     All right. What treatment did you recommend at  
22       that time?

23      A.     I recommended that he abstain from alcohol, that  
24       he stay on a clear liquid diet and that he take a  
25       medication that I gave him for diarrhea and report back



1 to me on the phone in a few days. I also ordered an  
2 ultrasound picture of his abdomen and a number of blood  
3 tests.

4 Q. Doctor, during this period of time did you  
5 observe that Dave Neeld had a protruding abdomen?

6 A. No. In fact, on January 2nd, 1985 I noted that  
7 his abdomen was soft and had no masses.

8 Q. At any point have you observed that about David  
9 Neeld?

10 A, Yes, I have.

11 8. And did that begin at a certain period that you  
12 noticed that he had?

13 A. Well, the only time I noted that, to my  
14 recollection, was in July of 1986. I can look back  
15 through every visit if you like, but that's my  
16 remembrance. May I make one other comment?

17 Q. Yes.

18 A. When you say "a protruding abdomen," you may mean  
19 was he overweight, and I would say that, yes, he was  
20 overweight during the period between June of 1984, when  
21 I first saw him, and July of 1986. But in terms of  
22 protruding to the point of meaning a disease process,  
23 the only time I remember that happening was in July of  
24 1986.

25 8. And for what period of time did you observe a

1 disease **process** involved with a protruding **abdomen**?

2 A. A week or ten **days**.

3 Q. And what **was** the disease process at **that** time?

4 A. At that time he had a **condition** known as  
5 cirrhosis of the liver. C I R R H O S I S.

6 Q. And, doctor, what **is** the cause of cirrhosis of  
7 the liver?

8 A. Cirrhosis of the liver **may be caused by** recurrent  
9 infections involving the liver, either viral  
10 infections, **bacterial** infections, or it **may be** due to  
11 chronic excessive **alcohol** intake.

12 Q. And in your opinion what **was** the cause of  
13 Mr. Neeld's cirrhosis?

14 A. In my opinion it **was most** likely due to excessive  
35 alcohol intake.

16 8. When did you **first** diagnose cirrhosis of the  
17 liver for Mr. Neeld?

18 A. It was between July 29 of 1986 and August 16th,  
19 1986. I don't have the exact **datu** because I don't have  
20 the complete hospital records in my chart.

21 Q. When they exhibit symptoms of cirrhosis **of** the  
22 liver, do you always have cirrhosis of the liver or **is**  
23 it something that can be **cured**?

24 A. The manifestations of cirrhosis of the liver,  
25 such as the protruding abdomen, which is due to fluid

1 inside the abdomen, definitely can be cured. The  
2 cellular abnormality may improve but generally does not  
3 go away completely.

4 Q. And what, if any, problems does that cause, the  
5 cellular abnormality which does not improve?

6 MR. SCHARON: In this patient or  
7 in every patient?

8 Q. In this patient.

9 A. Can you repeat the question, please?

10 Q. Yeah. You indicated that the fluid in the  
11 stomach or in --

12 A. The abdomen-

13 Q. -- the abdomen will decrease or be eliminated but  
14 that the cellular abnormality may not ever go away?

15 A. Yes.

16 Q. What, if any, problems -- well, first of all, do  
17 you believe that will happen in the case of Mr. Neeld,  
18 that the cellular abnormalities will not go away?

19 A. I think it's not likely that they would go away  
20 completely.

21 Q. What, if any, problems will that cause him, in  
22 your opinion?

23 A. If he abstains from alcohol, I would say it's  
24 Likely he will not have any further problems from this  
25 disease. I might add that on January 2nd, 1985 he had

1 an ultrasound of the abdomen which showed a normal  
2 liver. So that presumably he did not have cirrhosis of  
3 the liver at that time.

4 Q. And that was what date, doctor?

5 A. January 2nd, 1985.

6 Q. But then you did notice it in July of '86?

7 A. That's correct.

8 Q. Just one follow-up question then, What kind of  
9 problems would it cause, could cirrhosis of the liver  
10 cause a person?

11 A. Well, cirrhosis of the liver can cause a  
12 continuing collection of fluid in the abdomen and also  
13 fluid retention in the legs, It can also cause  
14 clotting disorders resulting in bruising, bleeding  
15 excessively on minor trauma, and it can cause retention  
16 of an chemical called bilirubin which can cause, on the  
17 one hand, yellowing of the skin and yellowing of the  
18 eyes, on the other hand can cause mental abnormalities,  
19 confusion, inability to concentrate and eventually  
20 death if the level becomes high enough.

21 Q. Could it cause swelling in the legs?

22 A. Ides,

23 Q. Doctor, I want to move us along in time. Did  
24 David Neeld exhibit any other types of problems until  
25 July 9th, 1985 when you saw him on those visits that

1       you've already indicated?

2       A.       No.

3       Q.       Now, you then saw him on July 9th 1985, is that  
4       correct?

5       A.       That is correct.

6       Q.       And did he come **here** to your office?

7       A.       Yes, Re did.

8       Q.       And what **were** his complaints on that date?

9       A.       His complaint was that: he had severe pain in **the**  
10       left lower back.

11       Q.       Any other area of his **body** that he indicated to  
12       you?

13       A.       **Mot** on that date,

14       Q.       All right. Did he give you a history as to what  
15       he had been doing **that**: he believed caused the pain in  
16       his back?

17       A.       Yes, he did.

18       Q.       And what was that history?

19       A.       He said that on June 26th, 1985 he had been  
20       pushing a heavy gear, which weighed approximately 100  
21       pounds, onto the truck, which he drove from a crane,  
22       that is, the gear was suspended from a crane, and his  
23       job was to push the gear from, onto his truck. He did  
24       this and then noticed that while he was driving the  
25       truck, approximately 15 minutes **after** he performed this

1 task, that he had developed pain in his lower back. At  
2 first. this **was** mild. Later that day he had to push a  
3 second **heavy gear** onto his truck, and in the process of  
4 doing this his pain became much worse.

5 On the morning of the next **day**, the **pain** was so  
6 **bad** that he was unable to **stand** up without being  
7 helped, Because **of** this, he was taken to Lake County  
8 West Hospital **Emergency Room**, **Me** told me that x-rays  
9 were taken **of** his back at that time and he was told  
10 that the x-rays were normal. He **was** given a muscle  
11 relaxant **called Soma** to **take** and also pain medications  
12 called Tylenol and codeine.

13 He felt that the pain was slightly better over  
14 the next two **or three days** and he returned to work. On  
15 the weekend of July 4th he had **been off work** and he was  
16 to **have** returned on the morning of July 8th, but when  
17 he **awoke** that morning he found that the **pain** was too  
18 severe and he did not report to work on July 8th and  
19 July 9th. And then he reported to me on July 9th  
20 because of this pain.

21 Q. From your understanding, did he work at all  
22 between the **date** of June 26th, '85 and July 9th?

23 A. Well, he told me that he returned to work,  
24 indicating that it was two or three days after the  
25 initial injury, and that: then he **did not** work after

1 July the 3rd. That's what my records indicate.  
2 Q. After July 3rd?  
3 A. Yes. He said he was off work from July 4th to  
4 July 7th and he was to have returned on July the 8th.  
5 Q. Do you have a notation of July 4th to July 7th?  
6 A. Yes, I do,  
7 Q. I guess I'm just not seeing it here in your  
8 notes, doctor. Where is it? I'm sorry, It looked  
9 like a 6 to me, Thank you. All right.  
10 You conducted a physical examination, I take it,  
11 doctor, on that date?  
12 A. Yes, I did.  
13 Q. And before I ask you about that, there is a  
14 notation in your records, is there not, on July 9th,  
15 1985 that there was no radiation to legs and buttocks?  
16 Was that a statement that Mr. Neeld made to you or is  
17 that a physical finding of yours?  
18 A. That was a question that I addressed to him to  
19 which he responded no.  
20 Q. Now, what did your examination consist of that  
21 day?  
22 A. Would you like me to give you all the findings?  
23 Q. Well, let me ask you this. Did you do a  
24 neurological examination?  
25 A. Yes, I did,

1 Q. And tell me what you did, yes, what type of tests  
2 you conducted?

3 A. I tested his deep tendon reflexes in the knee and  
4 ankle and found that they were equal on both sides and  
5 within normal Limits. I found that his ability to feel  
6 a pin prick was normal on both legs, I found that the  
7 strength of his right leg was normal but that the  
8 strength of his left leg was weak in flexing and  
9 extending his knee and in flexing his hip. I found  
10 that his strength in moving his left ankle, however,  
11 was normal, In addition, I found that a maneuver of  
12 raising his leg with the knee extended produced no pain  
13 on the right leg but produced severe pain in the left  
14 leg at approximately an elevation of 60 degrees.

15 Q. You're referring to straight leg raising?

16 a. That's right,

17 Q. Have you told me all of the tests that you  
18 erformed?

19 A Other than his blood pressure and pulse which are  
20 not relevant to his injury,

21 Q. Okay. Now, with "respect to the weakness that you  
22 state you found in his left knee -- is that correct,  
23 doctor?

24 A. Yes.

25 MR. SCHARON: And left hip.



1 Q. Well, I'll get to that.

2 MR. SCHARON: Oh, okay,

3 Q. How would you characterize the weakness, was it  
4 profound, was it severe, was it minor? Hew would you  
5 characterize --

6 A, I have written 3 out of 5. That means that he  
7 was barely able to overcome gravity, and that's  
8 equivalent to about 60 or 70 percent of normal  
9 strength.

10 Q. I notice that same notation for the left hip  
11 flexion.

12 A. That's right.

13 Q. And does that mean the same thing, 60 to 70  
14 percent: of normal?

15 A. That's right.

16 Q. Now did you conduct that test, doctor, those two  
17 tests the left knee?

18 a. I didn't hear what you said. Did you say how or  
19 why?

20 Q. No, how.

21 A. How did I conduct those tests. I asked him to,  
22 with respect to the knee, I asked him to bend his knee  
23 to approximately a 90-degree angle and to hold it in  
24 that position even though I was pulling against his  
25 ankle.

1 Q. Was this while he was seated?

2 a. I can't remember, to be honest, because it was  
3 four years ago, but I think it was seated, Normally I  
4 would conduct that test in a sitting position,

5 Q. And how about the hip flexion, how was that  
6 performed?

7 A. That 3 would normally do in a supine position,  
8 with him lying flat on his back, and raising his knee  
9 to approximately perpendicular to the floor.

10 Q. Did Mr. Neeld indicate to you how much time  
11 elapsed between the first time he pushed the gear and  
12 the second time he pushed the gear?

33 a. No, he did not.

14 Q. Your recommendation of treatment at that time,  
15 what was that, doctor?

16 A. My recommendation was that he rest in bed  
37 completely for seven days; that he have a CAT scan done  
18 of his lower lumbar spine; that he start taking a drug  
19 called Naprosyn, which is an anti-inflammatory  
20 medication, 375 milligrams, taken twice a day; that he  
21 start doing exercises called pelvic tilt exercises,  
22 which can be done lying flat on your back, but not to  
23 continue doing them if they caused severe pain; to stay  
24 off work for at least two weeks and to return to see me  
25 in one week. I also suggested that he stop taking the

1 medication called Soma, which was the muscle relaxant,  
2 because it wasn't doing any good and that he continue  
3 the Tylenol plus Codeine, if needed, for pain.

4 Q. And the Naprosyn, what was the purpose of your  
5 prescription of that?

6 A. Naprosyn is an anti-inflammatory agent which  
7 causes reduction in swelling around nerves as well as  
8 around joints and muscles.

9 Q. Now, there's an entry in your chart of 7-12, Did  
10 he come in on that day or was that a call?

11 A. That was a phone call.

12 Q. And what occurred during that telephone call,  
13 what was said?

14 A. I called him to inform him that the CAT scan  
15 which he had done showed that he had protrusion of the  
16 third lumbar disk and that I wanted him to know that  
17 and he should continue on the plan that I had  
18 recommended.

19 Be then told me that he was unable to take the  
20 Naprosyn because it caused vomiting and he had stopped  
21 taking that after 24 hours. He said that he was  
22 improved somewhat, but I told him 'to continue resting  
23 in bed and I prescribed a second medication called  
24 Dolobid, which is of the same family as Naprosyn but  
25 causes less, causes stomach upset less frequently.

1 Q. Your notation on 7-12, "Improved somewhat," was  
2 that in reference to the pain in his back?

3 A. Yes, it was.

4 Q. The CAT scan, first of all, doctor? did you  
5 review it yourself, the actual film?

6 A. No, I did not.

7 Q. And what did you tell David Neeld that it  
8 revealed? just a protrusion?

9 A. That's what I told him.

10 Q. He then came back to see you on July 16th,  
11 correct?

12 A. That's right.

13 Q. And he told you he felt much better in the last  
14 two days before that visit?

15 A. That's right.

16 Q. And that he was only a little sore?

17 A' That's right.

18 Q. Did he make any complaints anywhere other than  
19 his back on that visit, in other words, legs, buttocks,  
20 thighs, any other Location?

21 A. I have no notation of his making any such  
22 complaints.

23 Q. Is it fair for me to understand then that he did  
24 not?

25 A. That's right.

1 Q. You conducted a straight leg raising test,  
2 correct?

3 A. Yes,

4 Q. And he was improved?

5 A. He was improved but he continued to have pain on  
6 the left side, without any pain on the right side.

7 Q. When doing the straight leg raising?

8 A. That's right.

9 Q. Did you do the hip flexion and knee test as well?

10 A. Yes, I did.

11 Q. And what was revealed on that date?

12 A. He had normal strength.

13 9. Looking at your notes, doctor, your impression  
14 was that he was doing much better with respect to the  
15 back problem, is that correct?

16 A. That's correct.

17 Q. And that you had a plan for him to return to work  
18 on August 5th, is that correct?

19 A. That's right.

20 a. Now, there's an entry on July 26th and it says --  
21 first of all, did he come to see you on July 26th?

22 A. Yes, he did.

23 Q. It says, "Off meds." Does that mean at that time  
24 he was no longer taking medication?

25 A. It means he was no longer taking the medication

1 for his back problem.

2 Q. What, if anything, did David Neeld tell you on  
3 that visit?

4 a, He told me that he was doing his exercises,  
5 meaning the pelvic tilt exercises, he told me that he  
6 was able to walk three hours a day without having  
7 significant pain. He told me that occasionally at  
8 night he woke up having pain in his back and sometimes  
9 he would get a pain in the back when he sits too long  
10 in the same place.

11 Q. Now, the straight leg raising test that you  
12 performed that day, did that indicate any pain on  
13 any --

14 A. No.

15 Q. -- movement?

16 A. He did not have any pain either on the left or on  
17 the right on that day. I do have a notation that he  
18 described a tightness, using that word, in his left  
19 lower back when I got to 90 degrees on the left, but he  
20 did not describe any abnormalities on the right. So I  
21 suppose that you could say it was not quite normal on  
22 the left.

23 Q. But did he describe any pain to you other than  
24 what you've already noted?

25 A. No, he did not,

1 Q. And your impression as of that time was a  
2 **resolved** neurological abnormality, is that correct?

3 A. That is right.

4 Q. When you use the word "neurologic," what are you  
5 referring to in there?

6 A. I was referring to the weakness that he had  
7 initially.

8 Q. What was your diagnosis of his problem at that  
9 point in time?

10 A. You mean on July 26th, 1985?

11 Q. Yes.

12 A. I didn't write down the diagnosis, but I can tell  
13 you that my thinking at that time was that *he* had had a  
14 protrusion of the third lumbar disk as a result of the  
15 pushing of the gears and that as a result of resting in  
16 bed and taking the medication and doing the back  
17 exercises, that this protrusion was improved.

18 Q. As of July 26th you recommended that he be home  
19 one more week, is that correct?

20 A. That's right,

21 Q. And that he return to work on August 5th?

22 A. That's right.

23 Q. Now, on August 1st did he come to see you or is  
24 that a telephone call?

25 A. That's a telephone call.

1 Q. And did you initiate that call or did he?

2 A. I'm sure he initiated it from the way that the  
3 note is written.

4 Q. What did he report to you?

5 A. He reported that when he tried to walk an eighth  
6 of a mile and back, meaning an eighth of a mile one way  
7 and an eighth of a mile back, he developed pain in his  
8 back, so I told him to reduce the amount that he was  
9 walking, to cut it in half, and to delay returning to  
10 work for two more days, to returning to the 7th.

11 Q. Now, on 8-13, is that a visit or a telephone  
12 call?

13 A. Telephone call.

14 Q. And who initiated that?

15 A. The physician at his place of employment.

16 Q. And do you know the name of that doctor?

17 A. No, I don't.

18 Q. And what did that doctor say to you?

19 A. He told me that Mr. Neeld was supposed to have  
20 returned to work by August 7th but that he never  
21 reported on that day and that he had told him he should  
22 return on August 14. I don't know the details other  
23 than what's written here.

24 Q. Okay. All right. And it says, "Bernie gave him  
25 note for 8-14"?



1 A. That means my secretary gave him a note in  
2 response to this phone call, gave him a note saying he  
3 could return to work on August 14,

4 Q. Okay, Now, I take it then the next actual visit  
5 you had with Mr. Neeld was on August 29, is that  
6 correct?

7 A. That's correct.

8 Q. Did you conduct an examination of him at that  
9 time?

10 A. Yes, I did.

11 Q. And what were your findings?

12 A. My findings were that his straight leg raise test  
13 was normal and produced no pain, that he had  
14 boarderline weakness of the left knee flexion, meaning  
15 I wasn't sure whether it was weak or not, but that the  
16 right side was completely normal and that he had no  
17 abnormality of sensory examination and that his  
18 reflexes were: equal an left and right.

19 Q. So do I take it than khat other than that  
20 questionable weakness of the left knee everything else  
21 seemed to be normal?

22 A" That's right.

23 Q. Had you tested his knees previous to July 9th of  
24 '85?

25 A. I had no notation of doing that in this chart.

1 That may mean that I didn't do it or that may mean that  
2 I did it and didn't write it down. I would not **have**  
3 written it down if it was normal.

4 MR. SCHARON: I'm going to pose  
5 an objection here **because** I think the doctor's  
6 testimony was that in 1984 he **did** a complete  
7 examination of his joints and noted there **was** no  
8 deformity, full **range! of motion and** no problems.

9 MS. ROLLER: Thank you, John,  
10 Q. Now, let me pose the question to you, doctor.  
11 You did do an examination in 1984, June 28th, when you  
12 first **saw** him. Did you **examine** his knees at that time?

13 a. Yes, I did.

14 Q. And **what type** of testing **did** that involve?

15 A. Normally it would involve testing the range of  
16 motion of his knees, testing to **see** whether there **was**  
17 any swelling or **tenderness** of his knees and testing to  
18 **see** if the strength of knee movement was **normal** or not.

19 Q. Let me ask you this. Would you have conducted  
20 the same tests in June of '84 as you did July 9th of  
21 '85 on Mr. Neeld's knees?

22 A. Yes. I understood your previous question to mean  
23 since my initial examination and I conducted **tests** on  
24 his knees.

25 Q. No, I meant to certainly include that, and that's

1       why I wanted to follow this up, because I wasn't sure  
2       we did understand each other. You did you do straight  
3       leg raising test in your initial exam in June of 1984?

4       A.     Definitely.

5       Q.     And did you test: his hip flexion in June of '84?

6       A.     YCS.

7       Q.     Now, your diagnosis as of August 29, 1985 was  
8       resolved disk herniation, is that correct?

9       A.     That's correct,

10      Q.     Doctor, have you come to learn that David Neeld  
11      never had a herniated disk?

12      A.     I've come to learn that when he had surgery he  
13      didn't have a herniate disk, I believe, however, that  
14      doesn't tell me what was the case on July 9th, 1985.

15      Q.     All right, Could you look at the CAT scan  
16      report, doctor?

17      A.     Sure.

18      Q.     In reading the report, would you agree with me  
19      that it states, in the third sentence, "The findings

21      also, some central herniation''?

22      A.     That's what it says.

Q.

1 A. I would agree that the report is equivocal with  
2 respect to whether he had a disk herniation, but in my  
3 opinion the rmportant finding or this report is **that**  
4 there were compressions of **the** thylakoid  
5 sac by the disk material,

6 Q. So your conclusion, though, on August 29 of '85  
7 where you **stated** there **was** a resolved disk herniation,  
8 you would agree, though, that it, from the CAT scan he  
9 **may** not **have** had a disk herniation?

10 A. Yes.

11 Q. What, if any, treatment did you advise for  
12 Mr. Neeld as of August 29, 1985?

13 A. I recommended to him that he Could return to work  
14 but that he **avoid** any heavy lifting.

15 Q. Did you prescribe any medication as of that time?

16 A, No, other than the medication for his blood  
17 pressure.

18 Q. Oh, of course. Thank you. Now, September 11th  
19 of '85, did you see him then?

20 A. No, I did not.

21 Q. By the way, as of August 29, 1985 did you have  
22 any recommendation as to whether or not he should  
23 return to you for any treatment for his back?

24 A, I don't remember, to **be** very honest, Normally,  
25 if a person **was** feeling well and **able** to return to

1 work, I would not ask him to return to me unless he had  
2 further problems,

3 Q. Sa the entry in your office? chart of 9-11-85 is a  
4 reference to a telephone call?

5 A. That's right.

6 Q. And who initiated the call?

7 A. Mr. Neeld.

8 Q. And what did he tell you?

9 A. He told me that his employer had laid him off and  
10 had told him that the reason for his layoff did not  
11 have anything to do with his disability but that it was  
12 because of a lack of business,

13 Q. Was it just a friendly call to let you know that  
14 or did he make some complaints during that phone call?

15 A. Well, I think that the reason that he called was  
16 that since his employer was not allowing him to work,  
37 he was asking me to fill out forms indicating that he  
18 was not able to work, and I told him that I would be  
19 happy to fill out any forms that he wanted me to but I  
20 felt that he was able to work.

21 Q. Did you feel he was able to work full-time?

22 A. I did, but I did tell him there were certain  
23 restrictions, that he shouldn't lift more than 15  
24 pounds and that he should not do work involving bending  
25 at the waist.

1 Q. And was it your understanding that the forms that  
2 Mr. Neeld wanted you to fill out was *for* purposes of  
3 some sort of compensation?

4 A. I presumed so.

5 Q. You indicated that, "Will fill forms for  
6 disability again," Had you done that previous to  
7 9-11-85?

8 A. I don't have the forms in the chart, but I  
9 believe E filled out forms for temporary disability for  
10 the time that I told him that he should stay off work.

11 Q. And that was since July 9 of '85, correct?

12 A. Right,

13 Q. Now, *there* is an entry on 9-11-85 referencing  
14 some prescriptions.

15 A. Yes.

16 Q. Did you prescribe medication?

17 A. Those are prescriptions for his blood pressure.

18 Q. Okay. Did David Neeld make any complaints of  
19 back pain to you on that telephone call of 9-11-85?

20 A. No, he did not,

21 Q. Now, did you ask him if he had any?

22 A. I don't have any notation, and I can't remember,

23 Q. 9-14-85, the entry in your office chart for that  
24 date, is that for a telephone call?

25 A. Yes.

Q. And does this involve anything with the back?

2 A. Yes.

3 Q. And what is that?

4 A. This was in my absence, and the initials are  
5 those of one of my partner's. He okayed a refill for  
6 Mr. Neeld for -- this is an abbreviation for Tylenol  
7 and Codeine, which is the same pain medication that I  
8 had given him originally for his back pain.

9 Q. Do you have any other information regarding that  
10 telephone call? Have you talked to your partner or do  
11 you know anything other than what's written there?

12 A. I have no other information,

13 Q. The next reference in your office chart for David  
14 Neeld is 10-1-86?

15 A. No.

16 Q. Oh, I'm sorry. That's what I have. Is there  
17 something between 9-14-85 and 10-1-86?

18 A. Yes, there's a whole two pages. I'd be happy to  
19 give you my copy. You would like to see it here?

20 Q. Yeah. I've never seen them, so I certainly would  
21 like to see it.

22 MR. SCMARON: I don't have them  
23 either.

24 MS. ROLLER: Doctor, I'm going  
25 to ask to review these entries with you, and, of

3 course, I would like a copy of that, and most of your  
2 chart,

3 Off the record.

4 (Thereupon a discussion was had of the  
5 record.)

6 MS., ROLLER: Back on the record,

7 a. Tell me, doctor, what is the next entry?

8 MS. ROLLER: Off the record,

9 (Thereupon a recess was taken,)

10 MS. ROLLER: Back on the record,

11 Q. Doctor, what is the next activity with respect to  
12 Mr. Neeld after September 14, 1985?

13 A. There was a telephone call on November 4th, 1985  
14 in which I simply refilled some prescriptions for his  
15 blood pressure.

16 Q. Were there any complaints of back pain during  
17 that telephone call?

3.8 A. No.

19 8. Did you speak to Mr. Neeld personally?

20 A. I don't think so.

21 Q. 92-17-85 is the next entry, and what complaints  
22 did Mr. Neeld make at that time?

23 A. He complained of nausea, weakness, sweats,  
24 diarrhea, chest congestion and coughing mucus.

25 Q. Any back complaints made?



1 A. No.

2 Q. Was this an office visit'?

3 A. Yes.

4 Q. There is an entry, the second line down, and it  
5 says, "12-17-85. Still getting PT from Marsolais." I  
6 take it that means getting physical, therapy from  
7 Dr. Marsolais?

8 A. Well, Dr. Marsolais was not physically giving him  
9 the therapy, but he had ordered the therapy that  
10 Mr. Neeld was getting.

11 Q. Did you refer David Neeld to Dr. Marsolais?

12 A. Yes, I did,

13 Q. And when had you done that?

14 A. I had done that in September of 1985 after  
15 Mr. Neeld had told me that he was Laid off from work.  
16 There's no notation in my chart that I referred him.

17 Q. Well, how did that occur? Was that initiated by  
18 a telephone call or --

19 A. Yes,

20 Q. From whom to whom?

21 A. I can't remember, to be honest with you. I know  
22 that the reason for it was that Mr. Neeld was concerned  
23 because he was unemployed and that if he applied for  
24 work at a different place, that he was afraid that the  
25 fact that he couldn't do certain activities, such as

1 lifting more than 15 pounds, might impair his ability  
2 to get a job; therefore, he asked me if he could do  
3 more physical work, and I told him that I really  
4 thought he should see a specialist in back problems  
5 before he gat that kind of okay.

6 Q. When was that telephone call? Can you place it  
7 here, like before or after?

8 A. I can only tell you it was between September 14,  
9 1985 and November 4th, 1985.

10 Q. What was your reason for placing the restriction  
11 of lifting only 15 pounds as of September 11th, 1985?

12 A. The reason that I advised him about that  
13 restriction is that I felt that he had a disk problem  
14 in his lower back which was susceptible to injury and  
15 that, and I was trying to avoid him having any  
16 activities which might exacerbate that problem.

17 Q. Doctor, did you ever see any x-rays! any CAT scan  
18 of David Neeld's lumbar spine --

19 A. No.

20 Q. -- before June of '85?

21 A, No.

22 Q. Do you have an opinion as to whether or not the  
23 findings made on the CAT scan, the date of that is --

24 A. 7-11-85.

25 Q. Okay. Do you know whether or not or have an

I opinion as to whether or not they existed before? June  
2 of '85?

3 A. Do I have any opinion?

4 Q. Yes.

5 A. Yes.

6 Q. And what is that?

7 A. My opinion is that they probably did exist before  
8 June of '85.

9 Q. The findings that were on made on that CAT scan?

10 A. Well, I think that, I think that when you see  
11 protrusion of disks, generally speaking the patient has  
12 a disease in the lower lumbar spine that increases his  
13 susceptibility to protrusion of those disks. Now, I'm  
14 not saying khat the protrusion of the disks existed  
15 before? July 11th, 1985. What I'm saying is that it's  
16 likely that there was a disease process in that area of  
17 his back before that time,

18 Q. Then do you have an opinion about: the protrusion  
19 itself as to when that may have occurred in light of  
20 the fact that you did not have any x-rays, CAT scan or  
21 any other diagnostic tools before June of '85?

22 A. Yes, I have an opinion.

23 Q. And what's that?

24 A. My opinion is that that occurred on June 26th,  
25 1985.

1 Q. And your reason for **that**, doctor?

2 A. The **reason for** that is that the patient had  
3 **severe** back pain beginning on that date and when I  
4 first examined him **after** that **date** he had a strong and  
5 positive straight **leg** raising test.

6 Q. Doctor, what nerves innervate the knee?

7 A. What nerves or **what** nerve roots?

8 Q. What nerve **roots**. Thank you, doctor, for that,  
9 Correct.

10 A. L-3, L-4, L-5 and S-1.

11 Q. I take it both left and right knee?

12 A. *Yes*.

13 (Thereupon a recess was taken,)

14 - - -

15 (Mr. Scharon has left the deposition  
16 room.)

17 MS, ROLLER: Back on the record.

18 A. The nerves that innervate the knee.

19 Q. Okay. No, we're going to move on from there.

20 Going back to December 17, 1985, and I'm sorry, I may  
21 have asked you this, if I did, I'm sorry, did David  
22 Neeld make any complaints of back pain on that visit to  
23 you?

24 A. No.

25 Q. Did you ask him if he had any back pain or

1 problems?

2 A. I think not.

3 Q. Did he complain of any problems that you felt  
4 were related to his back?

5 A. Well, he mentioned that he was getting physical  
6 therapy, so I assumed he was still having some kind of  
7 problem with his back, but he did not specify to me  
8 what that problem was,

9 Q. On that visit did you observe any problems --

10 A. No.

11 Q. -- that you would relate to his back?

12 A. No, I did not,

E3 Q. I take it you examined him to a certain extent on  
14 that date for the problems that he complained of?

15 A. Yes .

16 Q. And you would have seen him walk?

17 A. Yes.

18 Q. And move?

19 A. Yes.

20 Q. Did he get up on an examining table?

21 A. Yes.

22 Q. Did you make a diagnosis as to the problems David  
23 Neeld was having as of December of '85?

24 A. Yes, I did. My diagnosis was acute bronchitis.

25 Q. December 24th, 1985, Christmas Eve, did he come

1 to see you?

2 A. Yes, he did,

3 Q. And what was the complaint at that time?

4 A. This was a follow-up appointment that was advised  
5 by me because of the severity of his bronchitis, He  
6 told me that the coughing was much better, that his  
7 wheezing was better, that his appetite was improving,  
8 and I felt that his bronchitis was improved,

9 Q. Did he make any complaints of back pain at that  
10 time?

11 A, No.

12 Q. Did you observe any?

13 A, No.

14 Q. The next visit: is January 7th, 1986, correct?

15 A. Yes.

16 Q. What was the problem at that time that: he was  
17 having?

18 A. This was another final follow-up visit for his  
19 bronchitis, and he said that all of his symptoms were  
20 improved.

21 Q. Any complaints of back pain at that time?

22 A. No.

23 Q. Any observation of any?

24 A. NO.

25 a. January 22nd, 1986 did you have a visit with him?

1 A. Yes.

2 O. Complaints then, doctor, were what?

3 A. A fever, sweating, cough and coughing up phlegm,

4 Q. Is this still related to the bronchitis?

5 A. It is related to a bronchitis but perhaps a  
6 different illness.

7 Q. Any complaints of back pain?

8 A. No.

9 Q. Any observations of any?

10 A. No.

11 Q. Do you see him then just five days later, January  
12 27th?

13 A. He was admitted to the hospital on January 26th,  
14 and I believe what I've written on the 27th is a  
15 summary of, written on the date he was discharged,

16 Q. Did you admit him to the hospital?

17 A. Yes.

18 Q. And what was your reason for admitting him?

19 He had a high fever, but more importantly he had  
20 marked wheezing when I listened to his lungs and I was  
21 afraid that he was not getting a good enough oxygen  
22 level.

23 Q. Let me turn, for a minute, to those records,

24 Doctor, I have the University Hospital records and

25 paginated page number 15 in the records that I have --

1 I don't know if you have 'chis,

2 A. No.

3 8. Let me ask you a *few* questions. Page 15, this is  
4 the discharge order summary sheet. Are you familiar  
5 with that?

6 A. I'm familiar with the sheet, certainly.

7 Q. It states, "Principal diagnosis: He Influenza,  
8 bronchitis"?

9 A. Yes.

10 Q. Would you agree that that was the principal  
11 diagnosis?

12 A. Yes.

13 Q. It also has, "Additional diagnoses: Chronic  
14 obstructive pulmonary disease," Do you agree with  
15 that?

16 a. Yes.

17 Q. First of all, what does that mean?

18 A. It means a disease that has been present for a  
19 long time affecting the small airways in the lungs  
20 which you might know as the name emphysema.

21 Q. He had emphysema?

22 A. Yes.

23 Q. How long had he had that?

24 A. It's impossible to say. All I can say is that it  
25 was present at that: time.



1 Q. What symptoms did he have of emphysema?

2 A. Wheezing and shortness of breath.

3 Q. And had you noticed that before this hospital  
4 admission?

5 A. Only during this episode of bronchitis. I think  
6 if we refer back to my initial note we will -- no, I  
7 take it back. On my initial note it does say that he  
8 had wheezing and ronchi, and that would be an  
9 indication of chronic lung disease. I did not note  
10 that in my conclusion on the initial examination, but  
11 it was clearly present on the examination.

12 Q. Now, the next additional diagnoses is -- you're  
13 going to have to help me. Do you see it there?

14 A. Hyponatremia.

15 Q. What is that?

16 A. That means a low level of sodium in the blood.

17 Q. What are the symptoms of that?

18 a. Weakness. If it becomes very severe, seizures  
19 and coma.

20 Q. When you said weakness, what type of weakness?

21 A. Generalized body weakness.

22 Q. Fatigue?

23 A. Fatigue, difficulty walking.

24 Q. How was that diagnosed?

25 a. A blood test.

1 Q. And he's also diagnosed as having hypertension?

2 A. Yes.

3 Q. And by the way, what are the symptoms of that?

4 A. The great majority of people with hypertension  
5 don't have any symptoms.

6 Q. Did David Neeld since you had begun treating him  
7 in June of '84?

8 A. None that I really attributed to hypertension,  
9 per se.

10 Q. There's an additional diagnoses of alcoholism,  
11 Now, first of all, do you agree with all of these  
12 diagnoses listed on the summary sheet?

13 A. Yes, I do.

14 Q. What problems was David Neeld having with  
15 alcoholism as of January 27th, 1986?

16 A. May look through the record?

17 Q. Yes. Please.

18 A. It is noted on the intern's note on January 22nd,  
19 1986 that the patient gave a history of drinking six to  
20 to eight beers per day.

21 a. Was there any indication he was having problems  
22 as a result of that level of drinking?

23 A. He had a tremor at rest similar to the one that I  
24 described on my initial note in June of 1984. This  
25 could be due to a number of different conditions<sup>p</sup> but

1 one condition that could **cause** that is **drinking** too  
2 much alcohol.

3 Q. How about any other **symptoms** that you observed,  
4 such as withdrawal or confusion, **any** symptoms of  
5 cirrhosis of the liver **at** that time, anything else?

6 MR. SBAPIRO: Everything now in  
7 January **of** '86?

8 Q. **Yes**, I'm just referring to January of '86 during  
9 **this** hospital -- I mean, if there's anything noted in  
10 the hospital admission,

11 A. **He** had mild abnormalities of **his** liver function  
12 at that time, but these are consistent with a person  
13 **with** severe **bronchitis**; they do not necessarily  
14 indicate cirrhosis, **We** did not **have** any evidence of  
15 abdomen **distent ion**,

16 Q. **Now** about any symptoms of withdrawal?

17 A. **He** did not **have** any symptoms of withdrawal on  
18 admission to the **hospital**, but I am going to look  
19 through the **vest** of the record.

20 On the note of January 24th, 1986 it is noted  
21 that the patient **had** disorientation in the evenings and  
22 some inappropriate behavior. It was **also** noted that  
23 his blood pressure was unusually **high** considering the  
24 medications that he **was** on. Both of these **findings**  
25 **were** thought to be possibly due to withdrawal from

1       alcoholi, This was described in the chart as being  
2       mild,

3       Q.       Doctor, Mr. Neeld was, at that time, a smoker,  
4       correct?

5       A.       Yes.

6       Q.       And how much was he smoking at that time? If you  
7       look on page 21, I believe there's a reference,

8       A.       "He has still been smoking one pack per day  
9       despite my strong advice to stop."

10      Q.       And whose advice is that?

11      a,       Mine.

12      Q.       And what reason were you giving? What was your  
13      reason for advising him to stop smoking?

14      A.       He had had bronchitis just a month before and I  
15      heard wheezing in his chest, and I felt that these both  
16      were brought on by or exacerbated by smoking  
17      ciyaxettes.

18      Q.       Did he admit to you that he was continuing to  
19      smoke?

20      A.       Yes.

21      Q.       Doctor, was "there any complaint during this  
22      hospital admission of back pain?

23      A.       There is a notation that he had a herniated disk  
24      in 1985.

25      Q.       May I ask what page you're referring to, doctor?

7 1 A. Page 23.

2 Q. Does it also state on that page that Mr. Neeld  
3 gave that as a reason for his loss of his job?

4 A. I don't see that on page 23.

5 Q. May I, doctor?

6 A. It's mentioned up here somewhere in this sentence  
7 and also down here. Yes, it is.

8 Q. Well, does that attribute cause and effect,  
9 though, or is it just a statement?

10 A. It's simply a statement that he made to the  
11 physician that was taking his history,

12 Q. That he lost his job after: he had a disk problem?

13 A. That's right.

14 Q. Who was taking this history here?

15 A. This is Dr. David Gihn, who is an assistant  
16 resident.

17 Q. All right. But, doctor, do you note any  
18 complaints of back pain during this hospitalization?

19 A. Not so far.

20 Q. Let me have you take your time, please.

21 A. No, I find no notation in this chart that he was  
22 suffering from any back pain at the time he was in the  
23 hospital.

24 Q. And how many days was he in the hospital?

25 A. He was in the hospital from January 22nd, 1986

1       until the morning of January 27th, 1986.

2       Q.       You said when you admitted him to the hospital  
3       both times that you thought you probably did a physical  
4       examination?

5       A.       Yes.

6       Q.       Is there evidence that you performed that  
7       examination in these records, doctor?

8       A.       I am very surprised to tell you that I did not  
9       sign the note of the intern during this  
10      hospitalization; however, I can assure that you I did a  
11      complete physical examination, The note of the intern,  
12  
13      have noted if I disagreed with, showed that he had a  
14      normal muscle strength throughout, including both hip  
15      flexors, and that he had normal deep tendon reflexes,  
16      equal on right and left, and that he had normal  
17      sensation to pin prick, light touch and vibration

18

19

20

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25

1 with anything related to his back, hips, legs, knees as  
2 a result of that examination?

3 A. That is correct,

4 Q. If we may, doctor, then go back to --

5 A. Excuse me.

6 Q. Yes?

7 A. I'm going to have to modify what I said because I  
8 see a little notation here, When I said "including hip  
9 flexors," the notation here actually says, "except hip  
10 flexion on the left," meaning that the examiner felt  
11 that there was weakness of the left hip flexion,

12 Q. And is that the same page, page 19, doctor?

13 A, Yes, I apologize,

14 Q. That's fine. Was there any complaint of pain,  
15 though, as a result of that?

16 a. There was none.

17 Q. As of this period of time, I take it you would  
3.8 have seen him every day while he was in the hospital?

19 A, That's right,

20 Q. Did you observe any problems related to his back  
21 during this period?

22 A. I did not.

23 Q. And did he make any?

24 A. I have no notation of his complaining about his  
25 back.

1 Q. How was he, generally, after he was released from  
2 the hospital, his physical condition?

3 A. He was much better. I would say very close to  
4 normal. I saw him again on February 5th, 1986 and he  
5 said that he had been feeling better gradually, that  
6 his cough was improving,

7 Q. Doctor, did you still have a limitation or  
8 restriction for him of lifting as of this period?

9 A. Well, after I referred him to Dr. Marsolais, I  
10 felt that he would give Mr. Neeld the restrictions, and  
11 he first saw him in October of 1985, so I was no longer  
12 giving him direction as far as his back problem.

13 Q. Did you feel, though, from your exposure to Mr.  
14 Neeld over this period that the restriction was still  
15 warranted?

16 A. You know, I really can't answer that question  
17 because I didn't ask him anything about his back, and  
18 it may be that he had a problem and that I was not  
19 asking him questions because I was so concerned about  
20 his bronchitis and about his other medical problems.

21 8. But did you observe any problems related to his  
22 back between, let's say, August 29, 1985 and the  
23 release from the hospital in January of '86?

24 A. All I can say is that on December 17, 1985 I  
25 noted that he was still getting physical therapy, which



1 indicates to me that he still had a problem, otherwise  
2 he would not have been getting therapy.

3 Q. Doctor, that's not my question, though, and I  
4 appreciate your answer, but here's -- it's a pretty  
5 basic question, You axe a physician, and what I'm  
6 asking, in your observations of David Neeld Erom that  
7 period, August 29, 1985 to the end of January, 1986, in  
8 your observations of him when physical examinations  
9 were done, when he was getting up on a table for those  
10 examinations, in your discussion with him, in your  
11 observations of him walking, of his movement, of his  
12 moving in bed, was there anything about him during that  
13 period of time that I just specified that you observed  
14 as a physician that there was anything wrong with his  
15 back during that period?

16 A. I don't: know,

17 Q. Is it that you don't have a memory of it or --

18 A. I don't have a memory of it, and my paint is  
19 this: when I'm seeing somebody with a fever of 101  
20 degrees who can't breathe, I don't look at his back --

21 Q. Okay.

22 A. -- okay? And it may be that he was having a  
23 problems and I didn't notice it because I wasn't  
24 focusing on it.

25 Q. But as you sit here, there's nothing that you can

1 tell me as to any observations you made in that regard?

2 A. That is correct,

3 MR. SHAPIRO: Objection. Just  
4 for the record.

5 Q. Let's move along. After he was released from the  
6 hospital, you next saw him on February 5th, 1986?

7 A. That's right,

8 Q. And what were his complaints at that time?

9 a. This was a follow-up visit. He really didn't  
10 have any complaints, His symptoms from the bronchitis  
11 were improving, and I didn't record any complaints  
12 other than those that he had in the hospital,

13 Q. Doctor, I see a reference to alcohol, What does  
14 that mean on this date?

15 A. It means I forgot to write down how many drinks  
16 he had per day because I left it blank.

17 Q. You had asked him, though?

18 A. I had asked him, and either he did not answer or  
19 I did not write down his answer.

20 Q. Was that something you were concerned with as of  
21 that date?

22 A. Yes, it was.

23 Q. Do you know whether or not he was still drinking  
24 as of that date?

25 A. I suspect he was not, to be honest with you,

1 because in the hospital we had told him to stop  
2 drinking and stop smoking, and my recollection,  
3 although I have no notation to this, is that he said he  
4 could do one but not both at that time, and on this  
5 date, February the 5th, 1986, I do have a notation he  
6 was still smoking three-quarters of a pack of  
7 cigarettes per day.

8 Q. But you really don't know one way or the other --

9 A. No, I don't.

10 Q. --- whether or not he was still drinking alcohol  
11 at this time?

12 A. Not for certain.

13 Q. Now, is the next time that you saw him October of  
14 '86? No?

15 MR. SHAPIRO; I don't have that  
16 either.

17 (Thereupon a recess was taken,)

18 Q. So let me ask you, doctor, when is the next time  
19 you saw Dave Neeld or had contact with him after  
20 February 5th, 1986?

21 A. On July 29, 1986.

22 9. What were the complaints at that time?

23 A. He had been dizzy for the past week, mostly when  
24 he walked, and he had had some diarrhea but a feeling  
25 of early fullness when he ate, Those were his

1 complaints.

2 Q. I see he was drinking at that time three to four  
3 beers a day?

4 A. Yes.

5 Q. Bid you conduct a physical examination?

6 A. Yes, I did.

7 Q. Did that examination include his back? His  
8 knees,. his hips, I mean.

9 A" No, it did mot. Not on that date.

10 Q. What was the reason far that?

11 A. He was extremely ill, he had an extremely low  
12 blood pressure, and he Rad a great amount of blood in  
13 his stool.

14 Q. When a patient comes in to you on an office visit  
15 like this, do you ask what's troubling you, what's  
16 bothering you, I take it, doctor?

17 a. Yes, I do.

18 9. And do you expect the patient to give you a Pull  
19 account of the problems bothering him or her that day?

20 A. It depends on the circumstances. If they're  
21 coming in for a routine physical examination, I  
22 certainly expect then to give me a long list of  
23 different problems, If 'they're corning in for a  
24 scheduled visit that has been scheduled far weeks in  
25 advance, I also expect them to give me a list of all

1 their complaints, When they're coming in for an  
2 emergency, which this was, I expect them mainly to tell  
3 me the one single urgent problem. In this case, Mr.

4 Neeld had lost 40 percent of the blood in his body,

5 Q. And that was through diarrhea?

6 A. That was through bleeding from a stomach ulcer  
7 causing diarrhea,

8 Q. I take it, though, as of this date he didn't  
9 complain of any back pain?

10 A. That's right,

11 Q. And did you observe any noticeable problems with  
12 movement?

13 A. Again, I have no notation of noting any such  
14 problems.

15 Q. Let me ask you, doctor, if you would have noticed  
16 a problem, and by that I mean a serious problem of  
17 movement, of limping or of inability to get up on a  
18 table, would you have made that notation?

19 A. Not on this occasion.

20 Q. And that's July 29" '86?

21 A. Yes. Because his blood pressure was so low when  
22 he stood up, that anybody with that blood pressure  
23 might have had difficulty climbing up on a table, back  
24 problem or no back problem.

25 Q. How about on the dates that you saw him before

3 July 29, 1986, if you had observed a noticeable  
2 restriction in movement, limping, would you have noted  
3 that on your office chart?

4 MR. SHAPIRO: I'm just going to  
5 object before the doctor answers because I think you've  
6 asked him this several different ways and I think he's  
7 responded to you on each occasion; now we're going  
8 through it again.

9 Q. Could you answer the question, doctor?

10 A. If the problem was very marked, I very likely  
11 would nota it, particularly if there was no acute  
12 emergency an that date.

13 Q. Now, did you admit David Neeld to the hospital as  
14 of or shortly after July 29, '86?

15 A. On that date I admitted him to the hospital,

16 Q. And the reason for the hospitalization was what,  
17 doctor?

18 A. He was bleeding from the gastrointestinal tract.

19 Q. Doctor, I have these records here, Again I'm  
20 going to ask you to review them. Maybe I can give you  
21 some guideline as to what page that starts, I believe  
22 on page 61. Was a complete physical examination  
23 performed at least during the period of his admission?

24 A. Yes, a complete physical examination was  
25 performed,

1 Q. And what date was that?

2 A. July 29, 1986.

3 Q. And what did that examination include on  
4 examination of his lumbar spine, back, his buttocks,  
5 hips, knees?

6 A. It involved a cursory examination of his back,  
7 which indicates there was no spinal tenderness, it  
8 included an examination of his strength and sensation  
9 to pin prick,

10 Q. What did that reveal'?

11 A, Which were all normal, At this time, I'm happy  
12 to say that I signed the mote,

13 Q. All. right, Does that mean that someone else did  
14 the examination and you reviewed it?

15 A. I wrote my own note, in addition, including a  
16 briefer sumaary of what were the urgent problems, but,  
17 yes, it means that: I did the exam and I signed the  
18 other person's note to indicate that I agreed with his  
19 findings.

20 Q. Now, while he was in the hospital for this  
21 admission, were there any complaints of back pain?

22 A. Yes.

23 Q. What date, doctor?

24 A. On August 2nd, 1986.

25 MR. SHAPIRO: Could you also tell

1 us what page you're looking at?

2 THE WITNESS: Page number 75.

3 MR. SHAPIRO: Thank you.

4 Q. And what were the complaints at that time?

5 A. I simply have a note: that he had back pain and I  
6 advised him to stay in bed and to take the Valium that  
7 we had ordered on a regular basis. Valium was for  
8 several reasons: it was to suppress his tremor,  
9 to improve his anxiety and also to relax the muscles in  
10 the lower back.

11 Q. Is there also a notation on 'chat date, "Please  
12 consider LS scan to exclude Budd-Chiari"?

13 A. No, it's Budd-Chiari.

14 Q. Is that notation there?

15 A. No, it doesn't mean lumbosacral, it means spleen,

16 9. What is that?

17 A. It's a condition where the veins draining the  
18 liver became blocked, and that can lead to fluid  
19 accumulation in the abdomen, quite independent of any  
20 alcohol intake, and it can have the same appearance as  
21 cirrhosis but it's a different disease than cirrhosis.

22 Q. Can problems with ones liver affect the sensation  
23 of the back?

24 A. No, not to my knowledge.

25 Q. All right. The notation on page 75, was there



1 any more specificity to that complaint other than back  
2 pain?

3 A. No.

4 Q. Any other complaints while he was hospitalized  
5 during that period?

6 A. On August the 3rd, page 77, the intern,  
7 Dr. Theil, notes that he's still having back pain and  
8 she ordered Codeine to be taken on an as-needed basis,

9 On August the 4th, page 78, I noted in my note  
10 that he was continuing to have back pain and I had  
11 asked

12 Dr. Marsolais to see him in consultation,

13 Q. Doctor, when was he first admitted to the  
14 hospital during this period?

15 a. July 29, 1986.

16 Q. During that period was he in bed the entire time?

17 A. Well, no, he wasn't, wasn't in bed every single  
18 minute of every single day, but he was very sick the  
19 first three or four days, he was probably in bed all  
20 day, but I think he started walking to the bathroom.

21 Q. When?

22 A. I can't tell exactly, although may I consult the  
23 nurse's notes?

24 Q. Please.

25 A. Let me see here. On July 30th it says that he

1 went to the solarium to eat dinner with his family who  
2 were visiting, so apparently he was out of bed that  
3 day.

4 Q. Have you known prolonged periods of being in bed  
5 to cause back pain?

6 A. I would say that if prolonged periods of bed  
7 causes some back pain, there's usually some underlying  
8 condition that's contributing to it.

9 Q. Have you known patients where you didn't know  
10 whether or not they had an underlying back condition,  
11 where they have made complaints of back pain after  
12 being in the hospital?

13 A. Certainly. Certainly I have, Yes.

14 Q. Any other complaints other than what you've noted  
15 during that hospitalization?

16 A. On August 11th, 1986 I have noted that he had  
17 both back pain and leg weakness.

18 Q. What page, doctor, are you referring to?

19 A. Page 86.

20 Q. All right.

21 A. And that Dr. Marsolais had seen him and  
22 recommended that he have physical therapy, and so that  
23 we ordered that on that date as he recommended,

24 Q. Doctor, how would you describe David Neeld's  
25 emotional condition during this hospital stay?

1 A. Ha was very depressed.

2 Q. And as a result of your observations of him you  
3 recommended to have a psychiatric evaluation, is that  
4 correct?

5 A. That's right.

6 Q. What symptoms regarding his emotional condition  
7 did you observe about him during the hospitalization?

8 A. He was tearful, he had emotional irritability, he  
9 expressed anger sometimes at the nurses, and other  
10 times, and sometimes would weep for no apparent: reason.

11 Q. You had Dr. George Streeter examine him, is that  
12 correct?

13 A. That's right.

14 Q. And was that while Mr. Neeld was in the hospital?

15 A. Yes.

16 Q. And you received a report from Dr. Streeter,  
17 correct?

18 A. Yes.

19 Q. And that's contained in your records that you  
20 have?

21 A. Yes.

22 Q. I would like to review that with you, doctor.

23 MR. SHAPIRO: So I don't keep  
24 interrupting you, I'm just going to voice a continuing  
25 objection to any and all questions referring to

1 Dr. Streeter's report,

2 Q. It is true, doctor, that you requested this  
3 examination because of observations you had made of  
4 Mr. Neeld, correct?

5 A, That's right.

6 Q. And Dr. Streeter's records or report to you is  
7 part of your office records on David Neeld, is that.  
8 correct.?

9 a. Yes.

10 Q. And did you request that report in order to help  
11 you in your care and treatment of Mr. Neeld?

12 A. Yes, I did.

13 Q. And did it assist you?

34 A. As soon as I find it, I'll answer your question.

15 Q. Okay, Doctor, I just want to review a few  
16 aspects of this report with you. First of all, under  
17 "Present illness," on Page 1 of the report it states,  
18 "There has been a walking problem for nine years,  
19 although this history wasn't explained." Had you  
20 observed that David Neeld had a walking problem?

21 A. I had never observed such a problem prior to his  
22 injury of June 1985.

23 Q. What problem did you observe after June of 1985  
24 with walking?

25 A. Well, he did walk in a, with a very slow gait.

1 Certainly in those first two visits that I saw him, you  
2 know, right after his injury he was, his gait was very  
3 limited, he was walking at a snail's pace and --

4 Q. How about after those first two visits?

5 A. I don't remember exactly. My best recollection  
6 is that he walked slower than a normal person but with  
7 a reasonable pace --

8 Q. But --

9 A. -- up until the time that he was extremely dizzy  
10 and I admitted him to the hospital,

11 Q. How about before June of '85, did you make any  
12 observations of his walking?

13 A, I don't have any notation and I don't remember  
14 there being any problem prior to that.

15 a. But you do agree that he had told Dr. Streeter  
16 that he had a problem with walking for nine years?

17 MR. SHAPIRO: Objection to what  
18 he --

19 A. I only know what Dr. Streeter says in his note.

20 Q. Okay. Did you investigate that further after you  
21 received Dr. Streeter's report --

22 A. No.

23 Q. -- any problem with walking? No. Okay.

24 A. I don't take physical complaints as noted by  
25 psychiatrists as being fact.

1 Q. Making reference to the next page, doctor, under  
2 family history, the last paragraph under that section,  
3 it says, "He was two years in military service, one of  
4 which was in Vietnam, There he was shot" -- oh, "shot  
5 at a few times." Okay, Did you ever have any  
4 knowledge as to whether or not he had ever been shot in  
7 Vietnam?

8 A. That's something that I would have noted on the  
9 original physical exam, and I have no notation of that.

10 Q. This is not related to Dr. Streeter's report, but  
11 did he have any prior surgery prior to your first visit  
12 with him?

13 A. The only record I have is of having surgery on  
14 his gums in 1982.

15 Q. Now, this report also makes reference to a fall  
16 that David Neeld had while in a bathroom --

17 A. Yes.

18 Q. -- on concrete?

19 MR. SHAPIRO: What page are we  
20 on?

21 MS. ROLLER: This is on page 2,  
22 it's the first sentence on the top page.

23 Q. "A recent fall in the bathroom caused him to hit.  
24 his spine on concrete. The thing that makes me mad  
25 is," David Neeld says, "I screwed everything up."

1 First of all, doctor, do you have some knowledge as to  
2 that fall that is stated there?

3 A. No, I do not.

4 Q. Would you please look at the hospital records,  
5 page 165?

6 A. Yes.

7 Q. Do you note there that there is a notation that,  
8 "I fell on the floor"?

9 A. Can you help me by telling me what part of the  
10 page it's on?

11 Q. (Indicating.)

12 A. Yes, I see that notation.

13 Q. Now, is that a nurse's notation?

14 A. Yes, it is.

15 Q. Were you made aware at the time of that fall? At  
16 the time were you made aware of the fall?

17 A. No, I was not.

18 Q. How do you know that you were not made aware of  
19 it?

20 a. Because I had written a note on that date and on  
21 the following date and neither one of them mentions  
22 that, and if I had known about it, I would certainly  
23 have put it in my note.

24 It says, in the nurse's note, by the way, that  
25 the intern was informed. She did not inform me,

1 Q. Would it have been the intern's duty to inform  
2 you of such an event?

3 A. They should, yes.

4 Q. Who gives orders if there were to have been any  
5 follow up needed for that fall? Could an intern do  
6 that, such as x-rays or --

7 A. Absolutely, yes, yes, an intern could do that,  
8 It says here, "Patient without apparent injury." I  
9 don't know if that refers to what the intern told the  
10 nurse or whether that refers to what the nurse thought,  
11 In the intern's note on that particular day there is  
12 also no notation of his falling down.

13 Q. By the way, is BR, the reference BR in that note  
14 bathroom?

15 A. Yes,

16 Q. And is the bathroom at University Hospital  
17 concrete?

18 A. No, it is not concrete,

19 Q. Is it carpeted? What is it, doctor?

20 A. I think that it's tiled, to the best of my  
21 knowledge. Some rooms are carpeted, but I don't think  
22 the bathrooms are.

23 Q. Doctor, as of August '86 was David Neeld still  
24 drinking?

25 A. Well, he was as of July 29, 1986, but he was not



1 as of August 1986.

2 Q. And how do you know that?

3 A. Well, he was in the hospital during the first  
4 part of August and we know he wasn't drinking there.  
5 As of August 28th, 1986, which was the first time I saw  
6 him after his discharge from the hospital, he stated to  
7 me he was not drinking,

8 Q. Doctor, what, if anything, did you do as a result  
9 of receiving Dr. Streeter's report?

10 A. Well, we had already started him on a medication  
11 for agitation, which also has an anti-depressant  
12 effect, mainly a medication called Xanax. X A N A X.  
13 In addition, I encouraged him to continue to see  
14 Dr. Streeter on a regular basis, which he did at that  
15 time,

16 Q. Do you know for how long?

17 A. No, I don't,

3.8 Q. But you do know he did follow up?

19 A. I know that he followed up at least several  
20 visits. In addition, we had already told him, as  
21 Dr. Streeter had also recommended, that he should  
22 abstain completely from alcohol.

23 Q. Now, he was released from the hospital after this  
24 admission when, doctor?

25 A. He was released on August 15th, 1986.

1 Q. And the next time you saw him was August 28th of  
2 1986?

3 A. That's right.

4 Q. Was that a follow up for that hospital admission?

5 A. Yes, it was,

6 Q. Now was he at that time, generally, would you  
7 say? You've indicated before he was very sick. How is  
8 he now?

9 A. He was doing very well compared to what he was  
3.0 like in the hospital.

11 &e You made a notation that he walks one --

12 A. Mile.

13 Q. Mile a day with no problem?

3.4 A. That's right.

15 8. Also on physical therapy?

16 A. Yes.

17 Q. And what is the notation after that, doctor?

18 A. That's the name of the therapist at University  
19 Hospital, Betsy Greenslade.

20 Q. Can you read me the rest of your notation for  
21 8-28-86, please;?

22 A. Yes. This refers to the type of therapy he does  
23 at Scandinavian Health Spa. "1, he walks in the pool  
24 several laps; 2," it says, "back-side pool," comma,  
25 "moves legs Like bicycle. Rests when tired;

1 3, he does a knee-to-chest maneuver and then rotates  
2 the knees from side to side."

3 Q. Was there any complaints of pain to you for his  
4 back during this visit?

5 A. No.

6 Q. Did you notice any problem regarding his back on  
7 this visit?

8 A. No, I did not.

9 Q. During this visit you are talking about his back,  
10 why is it that you were having that discussion, if you  
11 know, on this visit?

12 A. Because I was following up on the problems that  
13 he had in the hospital, and one of the problems that he  
14 had in the hospital was back pain.

15 Q. There's a notation off to the left there,  
16 something -- 8-15-86 what?

17 A. Home. That means he went home. He was  
18 discharged on 8-15-86.

19 Q. So as of 8-28-84 it appeared as though he was not  
20 having any back problems, is that correct?

21 A. Well, I think the fact that he was going to the,  
22 you know, going through this physical therapy indicates  
23 his back was not 100 percent normal, but he wasn't  
24 having any acute pain either.

25 a. Well, was he having any symptoms that you were

1       aware of as of 8-28-84?

2       A.       None that I have written down,,

3       Q.       Now, is the next visit October 1st, 1986, doctor?

4       A.       Yes.

5       Q.       Did he make any complaints of back pain at that  
6       time?

7       A.       Yes, he did.

8       Q.       And what was the purpose of this visit, by the  
9       way?

10      A.       This was an another follow-up visit for the  
11      various problems that he had had when he was in the  
12      hospital.

13      Q.       And what was the complaint at that time?

14      A.       He said that the back pain had been worse in the  
15      last week, meaning the week prior to October 1st, 1986,  
16      and that it involved the back and the left Rip, that it  
17      was bad for an hour or so at a time and then his sister  
18      would massage the area and that seemed to help.

19      Q.       Did you form an opinion from your conversation  
20      with him and observations of him as to how severe this  
21      problem was?

22      A,       I really -- I can't say based on this note,  
23      because what I have written down in the conclusion in  
24      terms of his back is that he should consult with  
25      Dr. Marsolais in terms of treating that problem, I do

1 not even have an examination written down of his back,  
2 and that's because I felt khat it was my major  
3 responsibility to attend to his other problems. He had  
4 six different major problems at this time, and this was  
5 a relatively short visit, so I told him, "I will take  
6 care of all the others, but in terms of your back, you  
7 should really talk to Dr. Marsolais."

8 Q. Could you tell me what problem number 3 is as  
9 noted an this entry of 10-1-86?

10 A. Ascites, A S C I T E S, and that means fluid in  
11 the free abdomen cavity. Free fluid in the abdominal  
12 cavity.

13 Q. And there's a reference to alcohol, ascites --

14 A. Gone virtually, And off alcohol,

15 Q. Does that relate to the protruded abdomen,  
16 ascites?

17 A. Exactly. He had, oh, three, four quarts of fluid  
18 floating free in the abdominal cavity when he was in  
19 the hospital, and that was as a result of the  
20 cirrhosis, but -- first of all, we removed some of it:  
21 directly by putting a needle in the abdomen and  
22 withdrawing it, but then if the person doesn't have  
23 improvement in the cirrhosis, it just recurs within a  
24 day or two. In his case, because of medication we had  
25 given him and because of a diet we had given him and

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9 Q. The notation I see there is, "Back not bad." Did  
10 you conduct an examination of his back?

11 A. No.

12 Q. Did *you* ask him about his back?

13 A. I just asked him how it was.

14 Q. And that was his response, "Back not bad"?

15 A. Yes.

16 Q. Did you make any other observations about his  
17 back condition at that time?

18 A. Only that he was taking a medication for it as  
19 prescribed by Dr. Marsolais.

20 Q. But as far as any observations of his movement:  
21 or --

22 A. No, I did not,

23 Q. How about with respect to how he moved generally  
24 as of this period, December of '86, did you make any  
25 observations of any abnormal movement which you would

8       it is three years ago, I'm just trying to get an  
understanding relative --

10       A.       I'm better; than Reagan,

11       Q.       -- of how he moved and walked about during this  
12       period of time. Did you notice anything unusual?

13

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21       A.       At worst.

22       Q.       At worst, oh. Where is that rating coming from?

24       1 indicates the slightest discomfort that one would

25       consider pain, 10 indicates pain so bad that one would

1 readily want to commit suicide, 9 indicates pain that's  
2 so bad that you can't hold still.

3 Q. Okay. But did you ask him, "Rate yourself on a 1  
4 to 10 scale"?

5 A. That's right,

6 Q. And that's what his response was --

7 A. Yes.

8 Q. -- "4 out of 10 average and 6 to 10 at worst"?

9 A. Right. Now, I also have noted in the parenthesis  
10 there that his description of 4 out of 10 was my  
11 objective observation of 2 out of 10,

12 Q. Well, I was certainly going to ask you about  
13 that, doctor, What was it that caused you to give the  
14 opinion that his 4 out of 10 is 2 out of 10 to you?

15 A. He didn't look -- when he said, "4 out of 10,  
16 average," he said, "Does that mean now?" And he said,  
17 "Yeah, it means now." And my observation was that he  
18 wasn't in the kind of pain that I would rate as 4 out  
19 of 10.

20 Q. Would you agree with the statement pain is  
21 whatever the patient says it is?

22 A. To a certain extent, I think this rating scale  
23 is designed to avoid concluding that pain is exactly  
24 what the patient says it is. Many patients will say  
25 that the pain they're having is the worst pain they



1 ever had in their life every single time that you see  
2 them, and when you say, "Well, is it worse than last  
3 time?" They'll say, "Yeah, it's worse than last time,"  
4 This kind of pain scale, they can't say that, because  
5 worse than fast time means they would be dead, right?  
6 If it is 10 out of 10, that means they would have  
7 committed suicided since the last time, 9 out of 10  
8 means that he can't hold still; that's something you  
9 can observe. Okay, So that it's an attempt to  
10 objectify the subject of experience of pain, So when  
11 you ask the patient, "Is the pain whatever it says it  
12 is?" in one sense it is, bud in another sense we are  
13 trying to compare patients to one another by using this  
14 kind of a scale,

15 Q. And so by that last statement you just made is it  
16 fair for me to understand that you believe that when,  
17 at least on "cis occasion when David Neeld said, "I'm a  
18 4 out of 10," other people, when you say, "I can  
19 attempt to compare them with other people," would be a  
20 2 out of 10 scale?

21 A. That's correct.

22 Q. And that was based upon your observations of him  
23 an that date?

24 A. That's right.

25 Q. Have you noted that type of reaction of David

1 Neeld with respect to other physical complaints, not  
2 his back, but other physical complaints such as, such  
3 as his bronchitis, that he seemed to complain more than  
4 what it seemed the physical condition warranted?

5 A. Honestly, no.

6 Q. How about with relation to any other type of  
7 problem that he had?

8 A. Well, I think he was a little more concerned  
9 about the bruising than the average person would have  
10 been, But in terms of his bronchitis, for example, I  
11 would say that most people would have come to seek  
12 medical attention long before he did, and similarly for  
13 the bleeding from his stomach, I mean, by the time he  
14 sought medical help, as I said, he had lost 40 percent  
15 of the blood in his body; that means he must have been  
16 feeling pretty bad before he came to seek attention.  
17 But in terms of his pain, that's how I observed it on  
18 that particular day.

19 Q. Did you make such observations at any time other  
20 than 2-10-87?

21 a. I don't think I probably need them, but I think  
22 my general opinion was that he complained of more pain  
23 in his back than I could observe on the basis of his  
24 movements, on the basis of his response to examination,  
25 in general. But I'm not saying he didn't have any

1 pain, I'm just saying that his complains were somewhat  
2 more than I would have rated them as myself based on  
3 just observing.

4 Q. Does that include facial grimacing, sweating? I  
5 mean, those are the types of things you look for?

6 A. Well, sweating, I would say, would be an  
7 involuntary response, not something that one could  
8 control.

9 Q. But if there was that, that: would be, may be an  
10 indication of pain?

11 A. A severe pain.

12 Q. Doctor, on what basis did you tell David Neeld to  
13 come back and see you as of February of '87?

14 A. This was primarily in follow up for his blood  
15 pressure and his liver disease, although I asked him  
16 about his back also.

17 8. I'm sorry, after that visit.

18 A. After that?

19 Q. Yes. Did you leave it that he should just come  
20 back to you when needed or --

21 A. No, no, no. I'm sure I told him to come back in  
22 three or four months.

23 Q. What medication was he taking as of that time,  
24 February of '87?

25 A. He was taking Lasix, 40 milligrams per day.

1 Q. What is khat? Could you tell me what each of  
2 them are for?

3 A. That's a diuretic, meaning that it makes the  
4 kidneys process more blood and, therefore, produce more  
5 urine. That isn't really true. They produce the same  
6 amount of blood but they get more urine out of the same  
7 amount of blood. Aldactone, 100 milligrams, twice a  
8 day, is also a diuretic, but in addition to making the  
9 kidneys produce more urine, it inhibits a certain  
10 hormone that is extremely high in people with  
11 cirrhosis.

12 Q. Oh. And are both of these medications for  
13 treatment of the cirrhosis of the liver?

14 A. Yes. And the third medication, Tenormin, 50  
15 milligrams a day, is for treatment of high blood  
16 pressure,

17 Q. Do you know how long he took the Xanax?

18 A. well, I have no notation of the Xanax as of  
19 October 1st, 1986. I do have a notation as of August  
20 28th, 1986, so presumably it was sometime in between  
21 those two dates that he stopped taking --

22 Q. August 28th and October 1st --

23 A Yes.

24 Q. -- of '86 he stopped? How about his emotional  
25 condition as of February of 1987, do you have any

1 memory or of it or did you make any notation of it?

2 A. No, I did not **make** any notation, and I don't have

3 any **memory**, I did say that he **was** still not drinking

4 **alcohol**.

5 Q. Did you see him on March 6th of '87?

6 A. No, that **was** a phone call.

7 Q. All right, June 4th of 1987, did you **see** him

8 then?

9 A. **Yes**.

10 Q. The only notation that I observe there regarding

11 **his back** is that it **was okay**. Do you notice that

12 several lines **dawn**?

13 Oh, I'm sorry, there's **something** more there.

14 "Nauseated with workout. Marsolais said cut **back** on

15 **weight work**."

16 A. That's right.

17 Q. And then two lines down, "Back **okay**."

18 A. Yeah, The reference to the weight work, I think,

19 indicates the **nausea** that he was having **after** his

20 **workouts**.

21 Q. Do you have an opinion as to why the **workout**

22 would cause nausea in David Neeld?

23 A. Well, some **people** get nausea when they **become**

24 *extremely* fatigued, and I don't think there's anything

25 **abnormal** about **that**;; I mean, I don't think it

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abdomen below the **abdomen**, that's what lower quadrants refers to.

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Q. Any complaints of back pain, though, made to you during this visit of 6-4-87?

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1       A,       Well, with -- there's a medication called  
2       Aldactone which sometimes causes enlargement of the  
3       breasts,   Mow when it happens in a woman, that's okay,  
4       although it may cause soreness, in which case *they*  
5       don't like it either, but in a man it's a side effect

6  
7       Q.       Did you see him on June 5th of '87, doctor, or is  
8       that a call?

9       A.       That's a phone call. It indicates that his  
10       stomach x-rays still showed a small ulcer. Oh, no, I'm  
11       sorry, It indicates that his stomach x-ray again  
12       showed a small ulcer, This was in his response to his  
13       complaining of nausea, okay. Because he had had an  
14       ulcer back in 1986, I took the symptom of nausea more  
15       seriously in him than I would have in just the average  
16       person

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A.       NO.

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13 Q.

14 A.

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17 that he had, and although I would ask him about it from

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1 be referred back to Dr. Marsolais?

2 A. Well, I assumed that he was still seeing  
3 Dr. Marsolais at that point in time, What I mean is  
4 that if he had complained of severe pain in the back or  
5 if I had observed any indication of severe pain in the  
6 back, I would have made a notation and I would probably  
7 have contacted Dr. Marsolais.

8 Q. I see. So 10-30-87 he's back on Xanax?

9 A. Yes.

10 Q. Who prescribed that if you know?

11 A. I did.

12 Q. And what was the reason?

13 A. The reason was that the patient called me on the  
14 phone and said that he was nervous because an attorney  
15 had contacted him and wanted to take a deposition,

16 Q. And, doctor, did you prescribe it?

17 A. Yes, I did.

18 MS. ROLLER: Off the record,

19 (Thereupon a discussion was had off the  
20 record.)

21 MS. ROLLER.: Back on the record.

22 Q. 11-2-87 he indicated to you that the Xanax was  
23 helping his nervousness?

24 A. That's right.

25 Q. How much of a prescription had you prescribed for

1 him?

2 A. I had given him 30 tablets an October the 30th.

3 Q. And for what period of time was that, one a day  
4 he was taking?

5 A, Well, no, it: was to be taken up to three times a  
6 day as needed, but I intended for him to take it only  
7 during the time that he was under acute stress.

8 Q. On 11-2-87, what type of visit was this?

9 A. This was a follow up for his various problems,  
10 meaning the stomach, the ulcer, the liver, the breast  
11 pain, the blood pressure, and again he did discuss his  
12 back with me.

13 Q. And what did he state to you at that time?

14 A. He said that he had had to stop the water jogging  
15 program that he was on because his feet hurt and he had  
16 been told that he had a wart on the bottom of one foot.

17 Q. Did he explain to you whether he had had any pain  
18 in his back at this time?

19 A. Me did not describe any back pain,

20 Q. Did you refer him for the warts?

21 A. Yes.

22 Q. And did he have them removed?

23 A. He had treatment for them. They were apparently  
24 not removed completely, because on his next visit he  
25 said they were 85 percent better but not 100 percent.

1 Q. Next you saw him on 12-4-87?

2 A. That's right,

3 Q. Did you discuss his back condition at that time?

4 A. Only to the extent that he was not able to get  
5 back on the jogging program because his foot still  
6 hurt. At the end I told him that he should get back on  
7 the jogging as soon as possible, This was juggling in  
8 water: by the way. And presumably I was concerned,  
9 because he must have had more back pain if I had told  
P0 him that.

11 Q. Did you see him on 12-22-87?

12 A. No, that was a phone call.

13 Q. And is the next visit you have 3-10-88?

14 A, That's right.

15 Q. And you have a conversation with him then  
16 regarding his back, correct?

17 A. Yes.

18 Q. And what is that?

19 A. He started to water jog again, immediately  
20 suffered pain in his back and left leg when he began to  
21 do that activity, and so Dr. Marsolais sent him to  
22 physical therapy for Nautilus exercises and also  
23 ordered an MR scan of his back. He was told that he  
24 could water jog for a short time but only every other  
25 day.

1 Q. Did you receive a copy of the MRI report?  
2 A. No.  
3 Q. You consulted with Dr. Marsolais regarding his  
4 condition for surgery for the laminectomy, correct,  
5 doctor?  
6 A. That's right.  
7 Q. And you felt he was physically able to withstand  
8 the surgery?  
9 A. Yes.  
10 Q. You did not see him between 3-10-88 and 5-34-88,  
11 is that correct?  
12 A. That's what it seems to indicate here, but I seem  
13 to remember seeing him. Yeah, here it is, I knew I  
14 saw him, because I saw him -- Dr. Marsolais called me  
15 and said, '\*This guy is a sick guy. Please hook at him  
16 and make sure he can withstand the surgery.'  
17 It's just on a different page. I saw him on  
18 April 15th, 1988.  
19 Q. I see. And how did you find him to be at that  
20 time, David Neeld?  
21 A. I found him to be medically stable, meaning that  
22 his lung problem was adequate to have surgery, that his  
23 heart was adequate to have surgery, that his blood  
24 pressure was adequate to have surgery, and I didn't see  
25 any contraindications.

1 a. What complaints did he make regarding his back?

2 A. He said that the pain was now the worst in the  
3 hips, worse on the right than the left, and that his  
4 left leg was numb,

5 Q. Did you see him while he was in the hospital --

6 a. Yes.

7 Q. -- for the laminectomy?

8 A, Yes, I did.

9 Q. Let me go back to one thing on 3-19-88, You have  
10 in the left-hand margin, "Smoking one pack per day"?

11 A, Right.

12 Q. "No beer, no alcohol"?

13 A. That's right.

44 Q. Indicating he told you he's not drinking at all?

15 A. That's right,

16 Q. Now, after he was released from the hospital, you  
17 saw him on July 26th, 1988, correct?

18 A. That's right,

19 Q. And what complaints did he make to you regarding  
20 any problems with his back?

21 A. He said the severe pain in his left leg was gone  
22 but that he still had numbness in the left leg,  
23 although it was now present only intermittently,  
24 whereas prior to surgery it had been there all the  
25 time, He also said that the pain in the left hip still

1       bothered him on and off.

2       Q.       Now, what observation did you make about his  
3       movement, his physical condition at this time, his  
4       walking, if you can recall? Was it unusual in any way?

5       A,       Well, I can tell you from recollection khat it  
6       was abnormal, but I did not make any notations,

7       Q.       Abnormal in what way, doctor?

8       A,       I believe he was still using a walker or cane at  
9       this time and that he walked very slowly.

10      Q.       When is the first time you ever observed him  
11      using a walker or a cane?

12      A,       It's really difficult for me to say because, you  
13      see, even on this visit -- as the visits become more  
14      recent, I can remember them better. That says  
15      something about my mental state, However, what I mean  
16      is, I recall his using a walker or cane in the hospital  
17      after his surgery,

18      Q.       After the back surgery?

19      A.       After the back surgery. But the fact that I did  
20      not make any notation this visit when I remember in my  
21      mind that he was using that --

22      Q.       That's on July 26th, '88?

23      A.       That's right. Suggests to me that he nay have  
24      been using the walker or cane on prior visits, and I  
25      may have not noted it on those times either.

1 Q. But as you sit here today, do you have any memory  
2 of him using a walker or a cane before June of '88?

3 A. I do not, But as I said, they're mote remote in  
4 time and I may just not remember.

5 Q. You say he was walking slowly at this time, July  
6 of '88?

7 A. That's right.

8 Q. Was it different than he had been walking, say,  
9 in June of '86, two years earlier?

10 A. I really can't remember. I really can't  
11 remember.

12 Q. Well, did he seem to be in more distress or  
13 problem with his physical movement?

14 A. Well, the greatest distress that I ever saw him  
15 in was on July 9th, 1985. That was the greatest  
16 distress that I ever saw him in,

17 a. After that period, let's say after August of '85,  
18 August 29 of '85, when did you see him, his back  
19 condition as being pronounced, noticeable, a problem?

20 a. I can only say my best memory is that it was a  
21 problem in March and April of 1988, but I do not  
22 remember him using a walker at that time.

23 Q. I don't want to misinterpret what you've just  
24 said, Is it that that is the next time after August of  
25 '85 that you recall there being a problem with his

1 movement, from your own observation?

2 A. No, that's my best recollection of when he had a  
3 serious problem with walking.

4 Q. Okay. After August of '85?

5 A. After August of '85.

6 Q. All right. When you saw him after his surgery,  
7 his back surgery, what were the reasons you were seeing  
8 him?

9 A. well, he was a man who had a number of medical,  
10 that is, non-surgical problems, meaning he had lung  
11 disease, he had liver problems, he had high blood  
12 pressure, and I was seeing him primarily to make sure  
13 that these things were under control in the  
14 postoperative period.

15 Q. And were they under control?

16 A. Well, the stomach was not under control. I had  
17 to start him back on medications for his ulcer.

18 Q. And when was this, doctor?

19 A. This is while he was in the hospital.

20 Q. June of '88?

21 A. In June of '88, yes,

22 Q. And the problems that was causing, the symptoms  
23 that it was causing was what?

24 A. I can't remember whether it was nausea or  
25 abdominal pain. It was one of the two.



a Q. Doctor, when is the last time you saw David  
2 Neeld?

3 A. August 9th, 1989.

4 Q. Could you tell me the times you saw him before  
5 then, because I don't have the end of your records, I  
6 just want to --

7 A. Sure.

8 Q. -- make sure what dates there were.

9 A. After his surgery on June 16th, 1988, I saw him  
10 in the office on July, 26, 1988, on September 9th,  
11 1988 --

12 a. September 9th, doctor?

13 A. I'm sorry, September 6th, 1988. And February 14,  
14 1989, and the last time was August 9th, 1989.

15 Q. Just tell me generally, doctor, your observations  
16 of him and his complaints to you on each of those  
17 visits after July 26th, 1988.

18 A. On September 6th, 1988 he said his Sack was,  
19 quote, pretty good, unquote, but he still had pain in  
20 the left hip.

21 On October 20, 1988 I got a call from Dr.  
22 Marsolais saying that he wanted to put him on a  
23 stronger anti-inflammatory medication, which indicated  
24 to me that he thought his back was worse.

25 On February 14, 1988 he said that his pain in

1 the hip and low back had improved since he had been on  
2 this new medication. He indicated to me that he was  
3 still wearing a brace on his back that he had had on  
4 since surgery. And I have indicated there that his  
5 walking was -- I said, "Gait within normal limits,"  
6 indicating that he seemed to be walking at a normal  
7 pace.

8 And on the last visit, August 9th, 1989, he rated  
9 himself 1 out of 24 on an ability scale. Meaning 24  
10 out of 24 was normal, and he rated himself at 1 out of  
11 24, meaning he couldn't do much of anything,

12 Q. Is this your scale or one that you --

13 A. No, that was Dr. Marsolais' scale, and I, quite  
14 honestly, am not familiar with it. On my scale of back  
15 pain, he rated himself between 6 and 8 out of 10.

16 Q. Doctor, one; time in the past we have notation in  
17 your records that he rated himself on that scale and  
18 what your thoughts were.

19 A. Yes.

20 Q. Did you make a similar observation at that time?

21 A. I didn't make any observation. This was his  
22 rating at that time, and, you know, 6 or 8 is pretty  
23 bad, and based on my previous comment, I would guess  
24 that I thought he was between 4 and 6.

25 Q. That was August 9th of '89 that: you saw him,

1 correct?

2 A. That's correct.

3 Q. Doctor, based on your observations of him at that  
4 time, do you have an opinion as to whether or not: he  
5 can go to work?

6 A. Based on my observations at that time and based  
7 on what he told me, my opinion is that he, that he  
8 cannot work full-time. Let's just say he cannot work  
9 at any job which would require considerable walking o  
10 bending.

11 Q. What about if it was a sedintary job, and by that  
12 I mean one where he can sit, that: he can get up and  
13 take a stretching break whenever he wants to --

14 A. Well, it's hard for me to say.

15 MR. SHAPIRO: Before you  
16 answer -- I'm not sure Ms. Roller is one with hex  
17 question -- let me voice an objection to these  
18 questions. I don't think the doctor's -- I don't  
19 believe that the doctor has been qualified as a  
20 vocational expert.

21 MS. ROLLER: Neither is  
22 Dr. Marsolais.

23 A. Could you repeat your question again?

24 Q. Sure, doctor, If Mr. Neeld had a sedintary job,  
25 one where he did work whale seated, but was able to get

1 up and stretch when he wanted to, do you have an  
2 opinion as to whether or not he could conduct that kind  
3 of activity?

4 A, I can't give you an opinion, because I didn't ask  
5 him specifically how his back feels when he sits for  
6 certain periods of time, how his back feels when he  
7 stands for certain periods of time. In other: words, if  
8 I was asked that question on a form, which I am on  
9 occasion, I would specifically ask a person all these  
10 different questions, "How do you feel when you do this  
11 for so long? How do you feel when you do that for so  
12 long? Have you ever sat in a chair for more than hour?  
13 What is your leg strength like at the end of a day?"  
14 So I can't answer the question because I never asked  
15 him those things.

16 Q. You had filled out a form for David Neeld for the  
17 Workers' Compensation Bureau, correct?

18 A. (Nodding head.)

19 Q. And --

20 MR. SHAPIRO: Objection to any  
21 reference to Workers' Compensation Bureau.

22 (He And let me show it to you, doctor, so you --

23 MR. SHAPIRO: Could I see it?

24 MS. ROLLER: Yeah, why don't  
25 you --

1 Q. And, doctor, the form that we're referring to is  
2 dated what?

3 A. Well, I have **two** forms, so maybe you should tell  
4 me which form.

5 Q. I'm sorry, I thought they were the same.

6 A. One is a form C-84 and one is a form C-1A. It's  
7 marked at the bottom, the very bottom of the form in  
8 the left-hand corner.

9 Q. Let's take the C-84 form then.

10 A. Okay.

11 Q. What date was that completed?

12 A. 8-29-85.

13 Q. And is the handwriting on this form yours?

14 A. Yes.

15 Q. And **number 6** is what I'm interested in, it says,  
16 "What **was** the claimant's position of employment at the  
17 time of injury?" And you've written, "Van driver, UPS  
18 and steel clerk, driving truck, Loading and unloading  
19 crates and equipment." And then, "What were claimant's  
20 duties?" "Van driver, general office worker, UPS and  
21 steel clerk." Where did you get the information  
22 that --

23 A. From the patient.

24 Q. And when did you get that information from him?

25 A. I presume I got it from him on that day because

1 that -- I normally, when I get this kind of form, I  
2 don't like to get them with that not filled in because  
3 I never know really exactly what the patient's duties  
4 are, so what I do in general is ask the patient when I  
5 get the form exactly what his duties are.

6 Q. And the words that you've written here, are those  
7 David's Neeld's words; in other words, he told you he  
8 was a van driver?

9 A. Either they're his words or his wife's words. I  
10 mean, I may have called him up on the phone. I just  
11 don't remember.

12 Q. What did you mean when you wrote "steel clerk"?

13 A. I was simply quoting what I was told, I had no  
14 idea what that meant.

15 Q. How would you characterize David Neeld's  
16 emotional condition as of the last time you saw him?

17 A. I would say that he was depressed, although not  
18 nearly as depressed as he had been in the hospital when  
19 he was so very ill with the stomach bleeding. But  
20 still depressed. I don't know if you're referring to  
21 anything else.

22 Q. No. Just simply that you made observations that  
23 he appeared to be depressed to you?

24 A. He appeared to be depressed, He was not  
25 emotionally labile to my recollection, he was not

1       openly crying, but, you know, he was mildly depressed.

2       Q.       Had you seen occasions of crying other than when  
3       he was hospitalized in July and August: of '86?

4       A.       I don't think so.

5       Q.       Had you ever discussed with him, other than that  
6       one notation, I think it was in September: of '85 when  
7       he was terminated, had you ever discussed his  
8       termination with him at any other time?

9       A.       No.

10      Q.       I want to make a reference back to Dr. Streeter's  
11      report. It states on the first page, I'll just read it  
12      to you, it says, "He left work a week early to benefit  
13      from the last week covered by insurance, doing all  
14      medical and dental work. The job loss, ha felt, was a  
15      great injustice and was thinking about suing the  
16      company." Did he ever tell you that?

17                      MR. SHAPIRO:                      Objection.

18      A.       No. No, he didn't.

19      Q.       If you suspected that a patient of yours was  
20      having nerve root involvement, what tests would you  
21      think would be appropriate to determine whether or not  
22      he indeed was?

23      A.       In 1985 or in 1989?

24      Q.       1988.

25      A.       In 1988 I would have done an MR scan,

1 Q. Anything else?

2 A. If you're referring to an EMG, I don't think  
3 they're very reliable.

4 Q. What about a myelogram?

5 A. I think a myelogram is a very reasonable test to  
6 do, but it involves a great risk, which an MR scan does  
7 not. Many people, following myelography, develop  
8 severe headaches, and some people develop severe back  
9 pain due to irritation of the nerve roots due to the  
10 dye that's put in. The people who specialize in back  
11 problems, whom I respect, feel that MR scans are very  
12 reliable, and they may not be exactly the same as  
13 myelograms, but they feel that they're very reliable in  
14 diagnosing nerve root problems.

15 Did you say nerve root problems, is that what  
16 you --

17 A. Yes, I did.

18 A. Yes, So a myelogram is certainly a test that I  
19 will consider' but it's not something that I would get  
20 on all patients.

21 Q. Do you believe that second opinions are important  
22 before conducting surgery or of any value?

23 A. I think they're of some value. To be very honest  
24 with you, I think that they're of limited value,  
25 because what happens, in practice, with second opinions



1 is that when a person decides he wants to have surgery,  
2 he can choose to go to a physician who he knows will  
3 recommend surgery, and if he doesn't want to have  
4 surgery, he can choose to go to a physician who he  
5 knows will recommend that he not have surgery. All he  
6 has to do is ask an honest physician like me.

7 Q. What about if the patient doesn't know the  
8 history of a particular doctor and assuming the  
9 physician is an honest physician, do you think a second  
10 opinion is of some value before surgery is performed?

11 A. Yeah, I do, I think it's of some value, I don't  
12 think it's absolutely necessary, but I think it's of  
13 some value.

14 MS. ROLLER: I don't have any  
15 questions, Thank you very much for all of your time,

16 MR. SHAPIRO: Doctor, as you  
17 probably know, you have the right to read your  
18 deposition if it's typed up, or you have the right to  
19 waive your signature. That's really your decision,

20 THE WITNESS: I waive the right  
21 to read the deposition.

22 - - -

23 (Signature waived.)

24

25

State of Ohio                    ) SS.  
 County of Cuyahoga            )

**CERTIFICATE**

I, Marcia Abbadini, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named witness, ADRAIN M. SCHNALL, 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 computer; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid, and that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my  
 hand this \_\_\_\_ day of \_\_\_\_\_, 1989.

-----  
 Marcia Abbadini  
 Notary Public

My commission expires October 16, 1994.