IN THE COURT OF COMMON PLEAS

OF LORAIN COUNTY, OHIO

[redacted] ZADOROZNY,

Plaintiff-Appellant,

vs. Case No.

NATIONAL GYPSUM COMPANY, 89-CV-102556

et al.,

Defendants.

Doc. 396

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Deposition of MELVIN SHAFRON, M.D., a witness herein, called by the Defendants for examination under the statute, taken before me Heidi L. Geizer, a Registered Professional Reporter and Notary Public in and for the State of Ohio, pur8uant to notice and stipulations of counsel, at the offices of Melvin Shafron, M.D., 26900 Cedar Road, Beachwood, Ohio, on Friday, June 29, 1990, at 4:00 o'clock p.m.

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COPY

APPEARANCES:

On behalf of the Plaintiff:

Nurenberg, Plevin,
Heller & McCarthy Co., L.P.A, by
DAVID PARIS, ESQ.
First Floor Standard Building
Cleveland, Ohio 44113
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On behalf of the Defendant National Gypsum Co.:

ROBERTA K. SPURGEON, ESQ.
1490 The Illuminating Building
Cleveland, Ohio 44113
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On behalf of the Defendant Bureau of Workers' Compensation:

Attorney General Lee Fisher, by
DIANE J. KARPINSKI, ESQ.
Workers' Compensation
Cleveland District Office,
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787-3030

ALSO PRESENT:

Paul McGuire,

Legal Technical **Video**

A

PG	LN	[Ngl](comm)DRSHAFRO OBJECT!
16	5	MR. PARIS: **Objection.** A. Do I
28	25	MR. PARIS: **Objection.** A. No.
29	2	MR. PARIS: **Objection.** Move to
29	16	MR. PARIS: **Objection.** Q.
30	5	MR. PARIS: **Objection.** A. No. Q.
30	18	MR. PARIS: **Objection.** A. One
31	12	the difference between **objective** evidence and
31	13	evidence? A. Well, **objective** things are
31	16	An X-ray is a very **objective** way of
31	21	that can be **objective** and be beyond
32	3	test, those are **objective** tests.
32	9	would have revealed **objective** evidence? A.
32	14	things which are **objective** and devoid **of**
32	20	tests. Those are **all** **objective** examinations.
32	21	Q. And of the **objective** tests that
32	25	MR. PARIS: **Objection.** A. None
35	7	MS. KARPINSKI: **Objection.** A. That **is**
35	16	MS. KARPINSKI: **Objection.** A. So whom
36	17	MS. SPURGEON: **Objection.** Q. **And**
38	1	MS. SPURGEON: **Objection** to the
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47	2	MS. KARPINSKI: **Objection.** Q. And you
47	10	MS. SPURGEON: **Objection.** A. They
66	9	MR. PARIS: **Objection.** Q. Is
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72	5	MR. PARIS: **Objection.** A. I guess
72	17	MR. PARIS: **Objection.** A.
73	5	MR. PARIS: **Objection.** Move to
76	16	MS. KARPINSKI: **Objection.** Q. **And** the
76	20	MS. KARPINSKI: **Objection** again. **A.**
77	2	MS. KARPINSKI: **Objection.** MR. PARIS:

(The following was had off the videotape record:)

MS. SPURGEON: Let the record reflect that this is a videotape deposition being taken at the offices of Dr. Melvin Shafron on direct examination by me on behalf of National Gypsum pursuant to Rule 30 of the Ohio Rules of Civil Procedure and Rule 12 of the Supreme Court Rules of Superintendence for use at trial pursuant to Rules 32 and 40 of the Ohio Rules of Civil Procedure regarding the case of Harry Zadorozny versus National Gypsum Company, the Bureau Workers' Compensation, and the Industrial Commission of Ohio. That's case number 89-CV-102556 in the Lorain County Court of Common Pleas, currently scheduled to go forward at trial commencing May 20, 1991, in the courtroom of Judge Kosma J. Glavas. And that this deposition is being taken pursuant to notice served upon David Paris, who is counsel for the plaintiff Harry Zadorozny, and Diane Karpinski, who is counsel for the Industrial Commission and the Bureau, all legal formalities and any defects with respect to notice having been waived by agreement of the

parties.

Is that true?

MR. PARIS: That is correct.

MS. SPURGEON: Is that true?

MS. KARPINSKI: That is correct.

MS. SPURGEON: Okay. Dr. Shafron, will you be waiving signature?

DR. SHAFRON: I would certainly hope so.

MS. SPURGEON: Do you want me to ask you at the end?

THE WITNESS: Whatever you wish.

MS. SPURGEON: You can either waive now or at the end.

DR. SHAFRON: I would waive now, obviously.

MS. SPURGEON: We have a stipulation to put on the record, too. It is stipulated among counsel, that is Attorney avid Paris, Attorney Diane Karpinski, and yself, that the X-rays, myelogram film, iskograms, and any other film that will be sed during this deposition are both authentic nd relevant to the issues before this court, nd that those X-rays that will be marked as

exhibits during this deposition will be at the conclusion of this deposition given to Mr. Paris for use during the deposition of his expert, Dr. Robert Biscup, and that those X-rays will then -- having been marked during both depositions -- be introduced into evidence during the trial.

Is that correct, Mr. Paris?

MR. PARIS: Correct.

MS. KARPINSKI: That's correct.

MS. SPURGEON: Okay. The dates of the X-rays and the places that they were taken will be identified during the course of the deposition as we proceed, and all of those dates and places will be incorporated by reference into this stipulation.

Is everybody ready?

MR. PARIS: Yes.

(The following was had on the videotape record:)

MELVIN SHAFRON, M.D., of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF MELVIN SHAFRON, M.D.

BY-MS. SPURGEON:

MS. SPURGEON: Okay. This is the deposition of Dr. Melvin Shafron, all the previous formalities having been made off the record.

Q. Doctor, would you tell the Ladies and Gentlemen of the Jury your name, please, and business address?

A. My name is Melvin Shafron, and my business address is 26900 Cedar Road in Beachwood, Ohio.

Q. And how long have you been at this address, doctor?

A. I think about 12 years.

Q. And what is your profession?

A. I am a neurosurgeon or a neurological surgeon.

Q. And that is your specialty?

A. Yes.

Q. What kind of profession do you practice other than your specialty? What's the /more general category?

A. That is the only thing I practice. I practice neurosurgery and nothing else.

Q. Okay. You are a medical doctor?

A. Yes, sir -- yes, ma'am. Excuse me. I'm sorry.

Q. And where are you licensed?

A. Licensed in the State of Ohio.

Q. Okay. And how long have you been so licensed?

A. 34 years.

Q. And where did you receive your medical training?

A. I received my medical education, my medical school education at Harvard Medical School.

MR. PARIS: Just to shorten things, counsel for plaintiff would be more than happy to stipulate to the outstanding credentials and qualifications of Dr. Melvin Shafron.

Q. Okay. Doctor, when did you graduate from Harvard Medical School?

A. 1956.

Q. Okay. And where did you do your residency?

A. I did my residency at the University -- I had a year of training in general surgery after I got out -- after I

finished my internship and completed military service. I had a year of training in general surgery, and I had from 1960 to 1964 four years of training in the specialty of neurological surgery at the University Hospitals of Cleveland.

Q. Okay. And would you please explain to the Ladies and Gentlemen of the Jury what a neurosurgeon does?

A. A neurosurgeon is a specialist who deals with the diagnosis and either the surgical or nonsurgical treatment of a variety of conditions which can affect the brain, the bony spine, the spinal cord, and the nerves of the body.

Q. Okay. And are you board certified in your specialty, doctor?

A. Yes, ma'am, I am.

Q. And would you explain just very briefly what board certification means?

A. Board certification means that a physician has first been trained at institutions which are approved to train specialists in a given specialty. And after receiving your training for neurosurgery then,

as it is now, you have to have been in practice for a two-year period of time, and after appropriate letters of recommendation, and things like that, you became eligible to take an examination which is given collectively by a group of neurosurgeons and certain other specialists, as well as guest examiners.

These are people appointed by the various major national neurosurgical organizations. And they gather in a city twice a year, and candidates come before this group of doctors and are examined in various aspects of neurosurgery. And if you pass their examination you become certified as a specialist in neurosurgery.

Q. Are you a member of any professional organizations?

A. Yes, ma'am, I am.

Q. And would you tell us what some of those organizations are?

A. I am a member of the American Association of Neurological Surgeons, the Neurosurgical Society of America, the Ohio State Neurosurgical Association, the American Medical Association, the Ohio State Medical

Association, and our local medical society, which is the Cuyahoga County Medical Society, or in this area it is called the Academy of Medicine of Cleveland.

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

A. I have staff privileges to do surgery at four institutions in the Greater Cleveland area. Mt. Sinai Medical Center, St. Luke's Hospital, what's called Meridia Hillcrest Hospital, and Meridia Suburban Hospital.

Q. Do you do any teaching, doctor?

A. Yes.

Q. And what kind of teaching do you do?

A. I am an associate clinical professor of neurosurgery at Case Western Reserve Medical School, and we are involved with teaching young physicians who are learning the specialty of neurological surgery and neurosurgery.

Q. Okay. Did you have an occasion at my request to review any medical records and X-rays regarding the plaintiff in this case,

Harry Zadorozny?

A. Yes, ma'am, I did.

Q. And do you recall when it is that you reviewed those records and X-rays and film, other film?

A. In September of 1990, last fall.

Q. Okay. would you just briefly tell the Ladies and Gentlemen of the Jury what records and what X-rays and other film you did review?

A. Yes. Records from Dr. Mota, who is a specialist in internal medicine and rheumatology. These are his office records.

There were records and letters from various orthopedists, which include correspondence to Dr. Mota. There are copies of various nerve tests which presumably came from Dr. Mota's records.

Q. Excuse me, doctor. As you identify the records could you just by year give us a time frame for when the records were prepared, as well?

A. Well, the records that Dr. Mota prepared are dated February -- there is a note from him saying dated February 23, 1990, and

these records are true copies. These records go back to 1987, at least long before the incident or the alleged incident in question.

Q. Uh-huh.

A. There are various nerve studies which were done, and these were done in -- there is a special nerve test called EMG and nerve conduction studies done in 1982, before the accident in question.

Copies of consultation reports from a hospital in Lorain done in December of 1982, or I should say -- yeah, December of 1982.

There are patient treatment records, April of 1988. These are records from Lorain Community Hospital with respect to X-rays done in February of 1987.

Records of diagnostic studies which were performed, that is a myelogram test done at Lorain Community Hospital in 1983, copies of records from Lorain Community Hospital in 1986, which are not pertinent except for the fact that they relate to some shoulder surgery that he had.

The records from Lorain Community Hospital of December of 1987 when the patient

his intestine, brain scans, X-rays of his

spine, X-rays of his gall bladder, and are related to the time he had a colonoscopy. That is a procedure relative to the large intestine.

There are records from Physicians Medical Care Center which relate to the dates of April of 88. Records from Dr. Soo Kang -- perhaps his last name is Kang, I am not sure -- with respect to his records.

Records from St. Joseph's Hospital with respect to the periods of hospitalization that the patient had both before and after his operation on the low back, that is the operation that was done in May of 1988.

And copies of records from Lorain Community Hospital that go back to a period of time before the alleged injury and after the alleged injury, December of 1988.

Q Okay. Now, doctor, based upon your review of all of those records that you just briefly described, what facts would you pick out as being medically significant to this case?

A The most important thing is that this patient had a history of back pain going back forever. He was plagued by back pain, it

required heavy uses of narcotic medications which he took, plus other medications for his back pain. There is a note in one of his doctor's records that --

MR. PARIS: Objection.

A. Do I just --

Q. Go ahead.

A. -- Dr. Mota, I believe, that in January of 1988 even before this alleged incident at work that he had to take a week off from work because of the severity of his pain. So that there is reference to pain in every medical record that I reviewed prior to the alleged incident in January of 1988.

Q. Okay. Doctor, now, I believe you said that you also had reviewed some X-rays and other films --

A. Yes.

Q. -- that I had provided you. Would you briefly put those film on your view box and describe what they are, and as you do that we will have them marked as exhibits here, too?

A. Okay.

Q. I don't know what's the most efficient way to do that. Maybe we ought to

have them marked and then discuss them, if you want to go off the record while we do that.

MR. McGUIRE: It is 5:27. We are going off the record.

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(Thereupon, Defendant's Deposition Exhibits G-MM were mark'd for purposes of identification.)

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MR. McGUIRE: The time is 5:45. We are back on the record.

MS. SPURGEON: Okay. For purposes of the record, Exhibits -- Defendants' Exhibit G through HH have been marked for purposes of identification. Is there a G? Off the record.

THE WITNESS: Very first one.

MS. KARPINSKI: What record?

MS. SPURGEON: Tell me what it is.

THE WITNESS: It is an X-ray of the low back dated 4-22-77.

MS. SPURGEON: Okay. Sorry about that.

MS. KARPINSKI: Coming from Lorain Community Hospital?

MS. SPURGEON: Okay. Are we back on the record?

MR. McGUIRE: Yes.

MS. SPURGEON: Exhibit G is an X-ray of the low back dated April 22, 1977. H is an X-ray of the low back dated December 6, 1982. I and J are X-rays dated January 3, 1982. K, L, and M are X-rays of the low back dated February 1, 1988. N, O, P, Q, R, and S are post-myelogram CT scans dated February 1, 1988. Exhibits T, U, and V are diskogram film dated February 5, 1988. W, X, Y, Z, AA, BB, and CC are X-rays from K & K Services, which I believe is the radiologist used by Dr. Biscup. Those are dated January 21, 1988. DD, EE, FF are X-rays from St. Joseph Hospital dated May 14, 1984. GG and HH are X-rays from St. Joseph Hospital dated March 9, 1987.

If I neglected to say it, Exhibits G through V are all from Lorain Community Hospital.

Exhibit II is a St. Joseph Hospital X-ray dated May 14, 1984. JJ, KK, LL, and MM are X-rays from St. Joseph Hospital. JJ is September 1, 84. KK, LL, and MM are September

1, 1988.

Q. Now, doctor, would you, using those X-rays that have just been marked for purposes of identification as I described them, explain to the Ladies and Gentlemen of the Jury what you found on those X-rays that was medically significant to you?

A. Okay. The first of these is Exhibit G, which is what we call a plane X-ray of the low back. As the patient is lying on his back the X-ray tube is in front, the X-ray film is behind. And what this shows is that --

A. Yes. This is 4-22-77.

And this X-ray shows that in this area here that we call -- the part of the low back that we call S1, count down one, two, three, four, five, these are the five bones of the lumbar spine, this is the top bone of the sacrum, there is a failure of the bones to come together in the midline. That's called a spina bifida, and it is something that is what we call a developmental thing. That is something that occurred in the process of formation of

the bony structures of the spine, and there is incomplete formation of what we call the neural arch, and we call this a spina bifida.

Q. Is that something that Mr. Zadorozny would have been born with?

A. Yes. Yes. Let's see. This is just more of the same thing. This is an X-ray of the same -- of 1982, X-ray just confined to this area, and which shows the same thing basically.

MS. KARPINSKI: Could you tell us what number X-ray it is, the exhibit number?

A. Yes, I am sorry. It is Exhibit H, 5-2-91 -- I'm sorry, 12-6-82.

In 1982 he also had a special test -- excuse me -- on January 3, 1982. These would be Exhibits I, J. He had a special test called a myelogram test, and there are only two films that I could uncover with that. And this is a test that's done by having the X-ray specialist or whoever put a needle in the low back and inject a material that we can see when you fluoroscope the patient. And this is an oily material, it is called Pantopaque, which has to be removed or should be removed after

the study is completed.

And there are just a few films here, very limited examination, which really doesn't show anything striking. No striking abnormalities that one can see on this relatively limited examination.

Q. What would be the purpose of such an examination, doctor?

A. The purpose of the examination is not to uncover why anybody has a backache, it's to see whether or not he could have a problem like a herniated lumbar disk.

Q. Is there any evidence of a herniated --

A. No.

Q. -- disk on those?

A. No, no, not at all. The next set of X-rays is another myelogram which was done on 2-1-88> This is done in a little different fashion, and this is done by instilling a material called -- it is called what we call a water soluble X-ray material. That is once it's put in the needle can be withdrawn by the X-ray specialist, or whoever did the myelogram, the material is gradually absorbed into the

system by the patient who receives this type of test so that he doesn't have to undergo sometimes the discomfort of having to have the dye removed.

And this is a test that's done in several positions. This is a test -- these are X-rays, this is Exhibit K, this is an X-ray taken with the patient probably either -- I can't tell for sure whether it's done by either having the patient lie on the side, and they have the X-ray tube here and the X-ray film here, or the patient is turned this way to have it done. I just can't tell. But you can see that there is nothing striking ~~except there is~~ some narrowing of the spine, narrowing of the space where this die is seen between the third and fourth vertebrae of the low back. And you can see this manifest on all of the X-rays. You can't quite tell what that's from. You know what it isn't from, but you can't quite tell for sure what it is from. And there is certainly no evidence of a herniated disk.

And on this X-ray, which is Exhibit M, the patient is lying face down, and the fluoroscope tube is above the patient, and the

X-ray film is beneath the patient. You can see there is a suggestion of some narrowing here, a suggestion of maybe just artifact because of the position the patient is in. If the patient is sitting up like this or standing up like this it may be just an artifact of the dye itself or of the position.

And this is an X-ray taken at the same time. This is taken with the patient standing and with the patient in extension. That is the doctor has asked the patient to put his back like this or to stretch like this when he's lying on the X-ray table, and the X-ray tube again is to one side, and the X-ray film is to the other.

I presume that it was taken that way. It could also again have been taken by having the patient rotate and stand against with his arm against the X-ray table and have the X-ray taken in that position.

And again, this shows some crowding of the structures at L3-4 not due to a herniated disk without question, which one can easily identify on the CT scan of the spine that was done afterwards.

Q. Doctor, have you shown us two different sets of myelograms taken two different times?

A. Yes. One in 1982 and one in 1988.

Q. Is a myelogram a test that would be done if a person were not complaining of backache?

A. Well, it depends on what doctor you ask this. I, in all candid honesty, never have these studies done for treatment of a backache because you do a test like this, you are looking for something that you can't quite explain, or you do a test in anticipation of recommending an operation to a patient. And I basically and most reasonable people don't recommend surgery for backaches, because that is something that is doomed to futility or failure. I don't think there is any surgical treatment for a backache.

So I would not probably have anything like this done on this patient if he were mine. But be that as it may, after -- with this water, with this special dye in place, one can then do a special type of X-ray examination called a CT scan. And this is

what's done. This is a special type of X-ray.

Q. And when was that done?

A. That's done at the same time that the second myelogram was done, in February of 1988. And --

MR. PARIS: Specifically February 1, doctor?

THE WITNESS: Yes, that is correct, sir.

A. And what one sees is sort of a corroboration of the fact that there is probably some narrowing of that sac or that sausage casing with the dye in it around between L3 and L4, and the reason for that is that there is some arthritic change and there is some thickening of the ligaments which you can see right over here. It is called a ligamentum flavum. There is some thickening of the ligaments around the spine.

The rest of the areas don't show anything striking. And these are just variations of the same thing. There is certainly nothing to suggest a herniated disk on any of the X-rays that were done.

And these are -- all of these

scans, Exhibit N, O, P, are scans of the spine which are done. One can see in the lowest area of the spine between L5 and S1 where there is a little what we call a spondylolisthesis, that there is a little overshaddow here right in this film, right over here, which is related to perhaps a mild slippage of one bone with respect to the other, but also with the fact that as this X-ray was done you have to tilt the X-ray tube to get a proper alignment of the X-ray beam with the curvature of the spine, and it wasn't quite done at the lowest level, L5-S1, as well as at the other two levels.

Q. Doctor --

A. So that it's called that the gantry, the X-ray gantry or tube was not tilted enough.

Q. Doctor, the spondylolisthesis that you mentioned --

A. Yes.

Q. -- seeing on that particular film, is that something you are born with?

A. For this gentleman, yes. And there is no change on the myelogram on this area, but one can see a slight change on the MRI scan.

You can do more -- it depends on what the cause of the spondylolisthesis is There are patients who are born with defects in the formation of bone who develop this and there are patients who as they get older will develop this on an arthritic basis or a degenerative basis

In this gentleman's case I strongly suspect that it is something that is related to an abnormality, a deviation from the normal in terms of way the bones were formed.

Q. In other words, something he was born with?

A Yes

Q Other than arthritis?

A Yes So these were the diagnostic studies he had.

There was also a biskogram done. I don't do biskograms, I don't have diskograms done on my patients because I don t think they are necessary.

And where are three X-rays that are part and parcel of a test called a discography where a dye is actually injected into the disc One is quite poor, I really can't read

it. And the other two are X-rays taken with the needles in place with the dye being injected between L3 and L4, and L4 and L5. This is an X-ray with the needles in place, with the patient lying on his back probably.

MR. PARIS: Letters, please?

A. I'm sorry, sir.

MR. PARIS: And dates?

A. The dates are 2-5-88. The letters, V and T; T, U, and V. I'm sorry.

Q. That's okay.

A. And so that the only conclusion that one can come to in looking at these X-rays is that there is certainly no evidence of a herniated lumbar disk. He has a slight narrowing of the spinal canal at L3-4 and that he has a very mild spondylolisthesis at L5-S1, and one can't really surmise any reasonable or rational explanation for his lifelong history of back pain.

Q. Does Mr. Zadorozny have anything of

No.

MR. PARIS: Objection.

A. No.

MR. PARIS: Objection. Move to

A. No, he does not.

Q. Doctor, you mentioned a few conditions that Mr. Zadorozny does have, that is spina bifida, spondylolisthesis, and I think -- did you say retrololisthesis?

A. A little bit on one X-ray. I mean, that is a trivial change. That is of no significance really.

/spondylolisthesis you say are things he was born with?

A. Yes.

MR. PARIS: Objection.

Q. Doctor, was Mr. Zadorozny born with spondylolisthesis and spina bifida?

A. They are what we call congenital changes, yes.

Q. Was there any evidence of herniated disk?

A. No.

Q. Was there any evidence, based upon your review of both the medical records and the

various film, of any condition that with reasonable medical certainty could have been aggravated by the incident that's been alleged in this case?

MR. PARIS: Objection.

A. No.

Q. Doctor, do you see any evidence whatsoever, taking into account all of the medical records that you reviewed from 1977 through 1988, and all of the film that you reviewed covering a span of those same dates, that show any significant medical change in the condition of Mr. Zadorozny's back?

A. No, I do not.

Q. Do you see any evidence of any condition that is primarily due to natural deterioration of his spine?

MR. PARIS: Objection.

A. One can see some, you know, very minor bony changes. If one wants to call that natural, I suppose it is. But that's all that one can see. There is just nothing else to see on these studies.

MS. **SPURGEON:** Okay. Thank you. You may inquire, Mr. Paris.

MR. PARIS: Off the record.

MR. McGUIRE: The time is 6:00, we are going off the record. .

(Discussion off the record.)

MR. McGUIRE: It is 6:02, we are back on the record.

EXAMINATION OF MELVIN SHAFRON, M.D.

BY-MS. KARPINSKI:

Q. Doctor, just a few quick questions. Could you explain to the Ladies and Gentlemen of the Jury the difference between objective evidence and subjective evidence?

A. Well, objective things are things, for example, that you can see on an X-ray which are above and beyond a patient's control. An X-ray is a very objective way of evaluating a patient.

There are certain things -- not everything, but there are certain things that a doctor does on an examination, a hands-on examination, that can be objective and be beyond a patient's control to alter the response of a test.

The nerve tests that he had where needles are stuck into various muscles and

certainly recordings are made by a physician skilled in interpreting them, that is an EMG or a nerve conduction test, those are objective tests.

Subjective things are things that a patient complains of.

Q. And what kinds of tests was doctor -- pardon me -- was Mr. Zadorozny taking that would have revealed objective evidence?

A. The X-ray examination, the various X-ray examinations he had. Certainly a skilled examiner with an appropriate physical examination could determine things which are objective and devoid of influence by the patient's responses, or if there are certain unusual responses that a skilled examining doctor can interpret the changes to see if they are correct or incorrect or appropriate for a condition. And the various nerve tests. Those are all objective examinations.

Q. And of the objective tests that you saw in the records, was there any evidence one way or another indicating a change in Mr. Zadorozny's condition as of January 23, 1988?

MR. PARIS: Objection.

A. None that I could tell.

Q. Was there any -- what evidence was there that he had a surgically treatable condition?

A. I don't think there was any evidence that he had a surgically treatable condition.

MS. KARPINSKI: I have no more questions.

MR. PARIS: Off the record.

MR. McGUIRE: It is 6:04, we are going off the record. We are off the record.

(Discussion off the record.)

MR. McGUIRE: The time is 6:05, we are back on the record.

EXAMINATION OF MELVIN SHAFRON

BY-MR. PARIS:

Q. Thank you. Doctor, my name is David Paris, and I represent Harry Zadorozny.

I take it that you were careful in reviewing all of the medical records that you discussed for the Jury earlier?

A. I felt I was, yes.

Q. Okay. And I take it that you are charging -- you have charged a fee for the

review of those records and films?

A. Absolutely.

Q. And what was that fee?

A I honestly don't know. Miss Spurgeon might.

Q What were your --

A Maybe 100 or $150. I don't know. I really don't know.

Q Okay. And did you prepare a fee for the dictation and submission of your report?

A That was part and parcel.

Q All part of it?

A. Yes.

Q And, of course, you are charging a fee for your deposition this evening --

A Absolutely.

Q. - for your time?

A. Yes.

Q And what are your charges in that regard?

A I charge by the hour. I charge at least $200 an hour.

Q And just to clarify for the Ladies and Gentlemen of the Jury, the purpose of your

involvement in this case is not for the purpose of treating Harry, but rather to be in a position to render an opinion and to testify, if necessary, on behalf of National Gypsum Corporation?

A. That is absolutely --

MS. KARPINSKI: Objection.

A. That is correct, sir.

Q. And/or the Bureau of Workers' Compensation?

A. I have no idea. I don't know whom Miss Spurgeon represents. I sent her a report, and I don't know.

Q. She retained you?

A. Yes.

MS. KARPINSKI: Objection.

A. So whom she represents specifically, I don't know.

Q. All right. And I take it you have performed this task in the past for other defense counsel, insurance companies, and employers in a Workers' Compensation context?

A. Gee. I am not sure about that, but I certainly have seen patients for both defense, as you mentioned, and plaintiff,

including people from your office. Sure.

Q. And with regard to the voluminous medical records and films that you have reviewed? can we agree that the information contained therein is important in determining Harry's claimed injury as to whether it was (caused by an event at work on January 23, 1988?

A. Sure. Sure.

Q. All right. And in Dr. Biscup's reports and the Lorain Community Hospital records of February 1, 1988 and May 18, 1988 you are aware that Harry gave a history that on January 23, 1988 while loading a belt onto or off of a conveyor line he hurt his low back?

A. That's what he said.

MS. SPURGEON: Objection. — withdraw

Q. And developed pain and numbness radiating down his left leg and left foot?

A. I don't know how one could say that this was any different from what he had before, but I can't say that, but that's what he said. You know, I can't dispute that. That's what's recorded.

Q. I'm sorry, I wasn't sure if the

first part of your answer was responsive to my question.

A. I don't know. I don't know whether this is new or not, but that's what was recorded in the records, and there is no way I could say anything about that.

Q. All right. I just want to make sure that you did read in those records --

A. Sure, sure.

Q. -- after January 23 of 88 Harry gave that history and he gave a history and complained of low back pain with pain going down his left leg?

A. That's what he said.

Q. And numbness into the left foot?

A. That's what he said.

Q. All right. Were you given Harry's deposition testimony before your deposition today --

A. No, sir.

Q. -- wherein he said that he was pulling and jerking a two-by-four to his left to get a large conveyor belt off when he suddenly developed a .severe low back pain and pain down his left leg?

MS. SPURGEON: Objection to the question. It is hearsay, and the doctor has already said that he didn't see it.

A I have not seen the deposition.

Q All right. Has anybody described the mechanism of Harry's injury to you?

A. No.

Q I would like to ask you to assume that that is the mechanism of Harry's injury for purposes of the remainder of this deposition.

A. Sure.

Q Would you agree with me, doctor, that this type of activity is capable of producing a herniated disk?

A I don't know whether it is or not. That is a question -- that is a question like -- that's like asking me a question, if I plant a seed will a vegetable grow? There is no way that anybody can answer a question like that.

Q Let me ask you this, doctor.

A I can't answer that.

Q Have you treated or evaluated patients such as railroaders who have sustained

similar herniated disks from pulling and jerking on frozen brake switches?

A. Absolutely, because I evaluated a patient for one of your associates who got an acute herniated disk after doing this, absolutely, but he had a well defined herniated disk, it was clear-cut, and I operated on him for it.

Q. Okay. But the mechanism *of* injury, the pulling and the tugging and the jerking --

A. It is possible. Sure.

Q. Okay. All right. And in many such individuals who have that type of surgery they cannot be certified to return to work, depending on the type of physical activity they are involved in?

A. That, you know, that's -- again, that's a question I can't answer, because most of the patients I operate on can go back to work. This patient that you are referring to, and you know who it is, they had other problems besides a low back problem in that particular accident.

Q. All right. Could you describe to the Ladie and Gentlemen -- by the way, doctor,

do you have any models of the low back? I did not bring a model.

A. Not really a model. I've got a poster.

Q. A poster?

A. It might not be what you are looking for, but it might be.

Q. It may be instructive for the Jury.

A. Sure.

MR. PARIS: Can we go off the record, please?

MR. McGUIRE: Let's go off the record.

(Discussion off the record.)

MR. McGUIRE: It is 6:12, we are back on the record.

THE WITNESS: Excuse me one second. Let me just put this up higher so that --

Q. You have in front of you an illustration, doctor, that depicts the human spine?

A. Yeah. It is a reasonable depiction.

Q. And on that, would you select one area that you feel is best descriptive of the

lumbar vertebral bodies?

A. These are the ones, 5, 4, 3, 2, 1. These are the lumbar vertebral bodies right here.

Q. And is there a portion of the illustration that depicts the nerve roots and the cord area?

A. Well, there is no spinal cord here.

Q. All right.

A. One can see not a very good depiction, but a depiction of the nerves leaving the spine through a hole or space that's called the intervertebral foramen in these areas here.

Q. How about in the lower left segment? Is that a good --

A. Here -- those I think -- those are really not nerve roots. I am not sure -- these -- it is done for a little different purpose. It may be a depiction of the same thing, but I don't think so. These are paraspinal nerves really or parts of the nerves as they pass through the foramen.

Q. All right. And the material

between those vertebral blocks, what is that?

A. These right here?

Q. Yes, sir.

A. That's a pictorial representation of a thing that we call a disk.

Q. Can you briefly discuss for the /Jury and help us understand the relationship between the -- the relationship and the purpose of the disks and the vertebral bodies and how they interact with the nerve roots?

A. Well, the vertebral bodies obviously -- that is the bones of the spine -- are obviously the supporting structures of our entire body. They are held together by a variety of ligaments in a very complex fashion.

In between each adjacent vertebra there is a structure called the intervertebral disk, which again is a very complicated structure, comprised of various ligamentous structures which support it, what we call anterior and posterior ligaments. And there is in addition to that an annular ligament. And inside of all of this stuff is a material that we call the nucleus pulposus, which is sort of a spongy gelatinous material that lies in a

disk space.

And if one looks at this blue diagram here, the yellowish portion here is the central portion that's called the nucleus pulposus, which people sort of glibly say is the herniated -- is the disk, but in reality the entire thing is a disk, and a lot of the disk is really made up of the structures that we call annulus or ligamentous, ligamentous apparatus. So that the disk is a very complicated thing, and it lies in between adjacent vertebrae.

It allows us certain degrees of movement between adjacent vertebrae and perhaps has, you know, people call them shock absorbers. To some extent I would suppose they behave in that way. But there are a number of complex functions that a disk has.

Q. And the nerve roots that come out of the sides of the foraminal openings are -- I am not sure if I am misquoting you --

A. That's good, sure. These are the nerves here, and they sort of leave the spine not only in the low back but in what we call the thoracic part of the spine and that part of

the spine in the neck that we call the cervical spine.

Q. And where do those -- the lumbar nerve roots go?

A. They form complex structures called the lumbar plexus and eventually they supply each lower extremity and other parts of the lower half of our body with -- supply us with the ability to do certain things like move a leg, move a toe. They even more complicatedly are related to the ability to pass water, to have a bowel movement, to have an erection in the case of a male, to perceive things like sensation of various kinds in our feet, legs, lower part of our body.

Q. All right. And I take it that at each level of the lower back, let's say the lumbar spine and the nerve roots that come out of each level there, can affect different parts of the lower half of the body?

A. Sure.

Q. For instance, if there is an abnormality of the nerve roots at L1, the first lumbar vertebra, you would expect to see what type of symptoms?

A. It is extremely rare, I am not sure if I have ever seen an L1 herniated disk, but it is conceivable that if a patient had one the major manifestation of that would be pain in the lower abdomen on one side or the other.

Q. And at L2?

A. Pain in the groin, sometimes pain in the thigh, and the distribution of pain would be toward the groin, the front of the thigh, and if the patient were to have a problem of weakness it would be related to the patient's ability to bring the leg up like this. That's also extremely rare.

Q. And 3?

A. L3 the pain would also be in the anterior thigh, occasionally patients will complain of pins and needles or funny feelings down the shin, one side or the other. You never-- you very rarely see this bilateral.

Patients often but not invariably will have an altered or absent reflex here at the knee. And if they have any altered sensation it will be in the anterior thigh to the knee. They may have weakness or they may not have weakness. If they do display weakness

it will involve the ability to straighten the leg out, that is extend, what we call extend the knee, or one can have weakness of what's called the hip flexor group muscles again.

Q. Doctor, can we agree that symptoms of low back pain and pain and numbness down the left leg, the anterior of the thigh down to the knee and into the foot, as well as a positive straight leg raising at 65 degrees on the left, can be consistent symptoms of a compression of the nerve roots at L3-L4?

MS. SPURGEON: Objection to the form of the question. You are asking the doctor to speculate about facts that aren't in evidence here.

MR. PARIS: Let's go off the record one minute.

MR. McGUIRE: All right. We are going off the record.

(Discussion off the record.)

MR. McGUIRE: It is 6:19, we are back on the record.

Q. There are certain symptoms which can be consistent with nerve root impingement at L3-L4?

A. Sure, sure.

MS. KARPINSKI: Objection.

Q. And you would agree with me, would you not, that low back pain with pain radiating down the anterior left thigh to the knee and even into certain aspects of the left foot, as well as positive straight leg raising at 65 degrees on the left, can be consistent?

A. No, they can't be.

MS. SPURGEON: Objection,

A. They cannot be.

Q. They cannot be?

A. That is correct, because patients with lesions at L3-4 don't have pain down the foot and they have normal straight leg raising.

Q. All right. And what about with a left-sided herniated disk at L3-L4?

A. Same thing.

Q. Impossible, right?

A. Well, let's speak within the realm -- nothing in God's earth is impossible. Within the realm of reasonable probability.

Q. Okay.

A. Patients with lesions at L3-L4

don't have foot pain, and patients with herniated disks at L3-L4 don't have positive straight leg raising.

Q. Do they have altered sensation in those areas?

A. They certainly can.

Q. Okay. Well, let's talk about altered sensation then.

A. Sure, sure.

Q. Would you agree then, doctor, that left leg numbness of the anterior thigh, the knee, and certain aspects of the foot --

A. No.

Q. What part do you disagree with, doctor?

A. The foot. No way.

Q. There are no symptoms related to L3-4?

A. It would be very unusual in my experience. The answer to that is there would be none related to the foot.

Q. Okay. Now, doctor, would you agree that a herniated disk is a specific condition that is different than a back strain?

A. Oh, sure.

Q. Would you agree that a herniated disk is a specific condition that is different than spondylolisthesis?

A. Absolutely.

Q. And would you agree that a (herniated disk is a specific condition that is different than spina bifida?

A. Yes. Absolutely.

Q. Now, it would also be important to you in your analysis to know whether or not Mr. Zadorozny had any prior problems with pain going down his left leg, numbness down his left leg, or any altered sensation down his left leg on occasions prior to January of 88? Would that be important?

A. Can I answer your question?

Q. Yes.

whether he had them before or had them after that. I really don't know. I can't answer that.

Q. Well, it is kind of important to my cross-examination,

A Sure. Well, if you'd like me to stop --

Q So if you would bear with me then, doctor --

A. Okay.

Q -- perhaps we could just take some of the records which I feel are important.

A Sure.

Q And I will begin with if you can pull out -- since you have your stack right there --

A Sure. Which one would you like?

Q Let's start with December 8 of 82, Lorain Community Hospital.

A. Okay.

Q Do you have the consultation report?

A I am sure it's there somewhere.

Q Okay. Well --

A Do you want to just hand it? Okay.

Q. All right. In the first paragraph do you see a specific notation that Mr.

Zadorozny did not have any leg pain radiating down his leg?

A. That's what it said in 1982.

Q. All right. And his EMG, the nerve studies were normal?

A. That is correct, but, you know, here is -- let me finish -- I mean, you know --

Q. You are not responding to a question.

A. Okay.

MS. SPURGEON: He's entitled to explain his reasons.

Q. Would you agree with me, doctor, that the neurological examination in the following paragraph was normal?

A. Well, I am not sure, because the doctor said that in the lower limbs knee jerks were difficult to obtain on either side and the ankle jerks were fairly normal.

Now, I don't understand why. The doctor came to a possible conclusion after that.

Q. The possibility -- I understand the term possibility..

A. Yes. So the examination is -- I am

trying to interpret what this doctor recorded as his examination. And he described something about the fact that this patient doesn't have ankle jerks or knee jerks that are easily /obtained, and that is not normal. And he also describes -- well, he described -- I am not sure whether or not -- what he relates to as a straight leg raising test up to 75 degrees. I am not quite sure what he means by that.

But the thing that -- he does describe that the patient had knee jerks which were difficult to obtain on either side compared to the other reflexes. That can be of significance. And that can be of significance with respect to a problem at L3-4.

Q. Absolutely. And the myelogram that was done four weeks later was absolutely negative as it relates to L3-4?

A. As far as I can tell.

Q. Okay. So the man was not having any complaints of radiating pain at that time?

A. Not as far as that one record states. That is correct, sir.

Q. . And when I say radiating pain, I mean pain starting from his low back and going

into one or the other legs or both?

A. That record does not indicate that.

Q. All right. Now, if we can move forward from 1982 and go to Lorain Community Hospital on May 9 of 1984. I believe you had an opportunity to review those records, as well?

A. Sure. Sure.

Q. And specifically when he was evaluated for the -- his musculoskeletal --

A. Wait one moment.

Q. -- on the musculoskeletal exam, did the patient deny having any pain going down either leg?

A. I am not sure whose this is, whether this is a nurse's evaluation or not, but --

Q. But is there a history --

A. Just a minute. Pain is nonradiating, it says.

Q. All right.

A. That's what it says.

Q. In the context of what? .

A. Musculoskeletal.

Q. Thank you. And --
A. It is recorded by a nurse practitioner.
Q. All right. Certainly you believe that nurse practitioners are capable of taking an accurate history from a patient?
A. Some are and some aren't. Just the same with doctors, some are and some aren't.
Q. All right. And you, of course, reviewed Dr. Biscup's initial evaluation on January 21, 1988?
A. Sure, I looked at it a long time ago. Sure.
Q. Well, would you pull that out to refresh your memory?
A. Okay. Which one, what was the date of that?
Q. January 21.
A. What year?
Q. 1988.
A. I have to see if I have it here.
Q. If not --
A. You have it. You have them all.
Q. I have it, but it's not so hard to get to.

Do you see that Dr. Biscup performed a physical examination?

A. Uh-huh.

Q. And at that time there was a negative straight leg raising test?

A. That's what he has. That's what he says.

Q. All right. The reflexes were present and equal bilaterally?

A. That's what he says.

Q. He had a negative bow string?

A. I don't know what that is.

Q. All right. You don't recognize that as any type of a --

A. No, no. I am sure it is, but I don't know what it is.

Q. His neurological examination apparently was within normal limits?

A. I assume he was, sure.

Q. Okay. The straight leg raising is a test normally done in conjunction with looking for disk involvement or nerve involvement?

A. Nerve compression with certain problems, yes.

Q. Okay. Now, after January 23, 1988 have you reviewed the records indicating that Mr. Zadorozny did have complaints of pain radiating down his legs and altered sensation or numbness down his legs?

A. Well, let me just look at this.

Q. And I make specific reference, we can start with the February 1, 19- --

A. Well, this is what he says.

Q. Who?

A. Dr. Biscup.

Q. What date are we on?

A. 2-9-88.

Q. 2-9?

A. That's after his accident. And if you can understand it, fine. I really don't. Okay?

Q. Well --

A. But this is, you know --

Q. All right. Go ahead, doctor.

A. It says, "Harry is here for follow-up examination. At this point the problem was reviewed with him. We have determined that he has a painful spondylolisthesis at L5-S1 with bilateral

radiculopathy.

I don't know how he said that, but that's what he said.

He also demonstrated a focal stenosis with a midline disk protrusion at L3-4 but was not painful on diskography. And I don't know how he says that, either.

And then he says, at this point options were reviewed with him. My recommendations would be to consider surgical intervention for decompression, body fusion, internal stabilization, and bilateral lateral fusion, and simple -- at L5-S1, and simple decompression at L3-4, which is sort of like killing a mosquito with a hydrogen weapon, but that's what he recommended.

Q. Well, doctor, my initial question was this --

A. Yes.

Q. -- and I would appreciate a response to that question.

A. Well, I am trying to answer it.

Q. My question to you is, after January 23, 1988, did you review the records which demonstrate or disclose that Harry

Zadorozny not only had low back pain but pain going down his left leg, including numbness in his left leg and altered sensation?

A. Well, I don't --

Q. Did you review those records?

A. Well, wait a minute. Let me finish. I don't see that in Dr. Biscup's office notes at the time he saw the gentleman.

Q. Then, doctor, let me show you --

A. I have to look at something else then.

Q. Let me show you February 1, 1988, the records from Lorain Community Hospital.

A. Sure. Sure.

Q. Did you review that record, doctor?

A. Uh-huh, yep.

Q. And --

A. This is a -- I don't know who took this history. It is done in the X-ray department, which is part of the routine that they go through when they do a test like this gentleman had called myelogram. It says, "Low back pain radiating to left leg, numbness in left leg and radiating to the left foot."

That's what's recorded here.

Q. Okay. And that is apparently the history that was obtained from the patient; is that right?

A. By someone, yes, that is correct.

Q. Okay. Thank you, doctor.

MS. KARPINSKI: Excuse me. May I know what date that was? I didn't hear it.

MR. PARIS: February 1, 1988, counsel.

Q. Let me see if I can pull out one other record, doctor. Bear with me.

A. Fine. I'm at your pleasure, sir.

Q. Have you also had an opportunity, doctor, to review the May, 1988 Lutheran medical records? Do you have those?

A. Yes. Uh-huh. Sure.

Q. And do you see a history given from the patient where he has low back pain radiating down his left leg?

A. That's not a history. That's a face sheet.

Q. I'm sorry, I --

A. This is an evaluation by the department. I don't know who wrote this, I can't answer who wrote this, but -- I am not

quite sure where I see that, sir.

Q. Presenting problem.

A. Oh, I'm sorry. Back pain with radiation to left leg.

Q. Okay.

A. Uh-huh, yeah.

Q. And that was a complaint that was made there right before he had his surgery; is that right?

A. That was something that was told to the anesthetist or anesthesiologist, yes.

Q. All right. Please forgive me for fumbling here.

A. No problem.

Q. Now, in this case, as I understand your testimony, you don't believe that Harry sustained a herniated disk at L3-L4?

A. Absolutely not.

Q. Did you review the diskograms?

A. I told you, I don't ever have diskograms performed on my patients because I think there are studies -- I didn't review them, I can't make any comment about them.

Q. Okay. Do you have -- I read your report.

A. Uh-huh.

Q. And do I understand that you cannot interpret the diskogram?

A. I wouldn't know how to do it.

Q. Okay.

A. And I wouldn't make any comment about it, because it is not a test that I ever have done on any patients. I don't think they are necessary.

Q. All right. Is a diskogram -- whether you think it is necessary or not or whether you agree with the utility of the procedure -- an accurate diagnostic tool?

A. No. That's been well described, and I can't go into all the reasons for it. And it is not done at any major institution in this city except at Lutheran Hospital. I know that. It is not done at the Cleveland Clinic, it is not done at the University Hospitals, it is not done at Mt. Sinai where I work, and it is not done at St. Luke's.

Q. Is it done by colleagues of yours in this community?

A. Only one that I know of.

Q. That would be Dr. Collis?

A. That would be Dr. Collis.
Q. John Collis, the neurosurgeon?
A. Yes. He is the only one that I know of.
Q. All right. And apparently you have a -- you disagree with the use of that procedure?
A. It is of no diag- -- we can do things even without invading the patient's body with a needle that can tell us anything that a diskogram can tell us, so I don't think that it is appropriate to have needles put in the patients when we don't have to.
Q. I take it then you do not disagree with the radiologist who interpreted the diskogram?
A. I can't -- look. I am telling you, I don't know how to interpret them. There is no way I can disagree with it, because I don't know.
Q. Is Dr. Biscup a physician in good standing and with a good reputation in this community?
A. I don't know. I don't know the gentleman at all, sir. I really don't know.

Q. Are you suggesting to this Jury, doctor,. that Dr. Biscup performed unnecessary surgery on Harry?

A. I'm saying that I don't see any reason for his having had this kind of surgery done. And that's not for me to decide.

In other words, I don't see anything to be therapeutically gained by doing the kind of operation that he did, or any operation.

Q. I'm sorry, doctor. I thought that you -- it was your opinion that there was an honest difference of opinion between yourself and Dr. Biscup.

A. I don't know the man. I don't know the man. I am not trying to accuse him of anything. All I am saying is that I don't see any reason for this kind of surgery.

Q. You would not have done the surgery?

A. Absolutely not.

Q. You are not criticizing Dr. Biscup or suggesting to this Jury that he did unnecessary surgery, are .you?

A. Well, I don't see any reason for

the surgery. You can interpret my statement any way you want to.

Q. Okay.

MR. PARIS: Off the record.

MR. McGUIRE: Okay. It is 6:35, we are going off the record,

(Discussion off the record.)

Q. And if I understand your response to Miss Spurgeon's question, you do not have an opinion based upon reasonable medical certainty as to the cause of Harry's low back pain that radiated into his left leg and the altered sensation down his left leg after January 23, 1988 --

A. First of all --

Q. Doctor, you have to let me finish my question.

A. I'm sorry, excuse me.

Q. Doctor --

A. I'm sorry. Excuse me.

Q. Let me rephrase the question.

A. You don't have to.

Q. Or restate it.

A. Okay. .

Q. If I understand your testimony in

response to Roberta Spurgeon's questions, you do not have an opinion based upon reasonable medical certainty as to the cause of Harry's low back pain that went down his left leg and the altered sensation down his left leg which occurred after January 23, 1988; is that correct?

A. No way. That is correct.

MR. PARIS: Thank you very much, doctor.

MS. SPURGEON: Just a couple of redirects.

EXAMINATION OF MELVIN SHAFRON, M.D.

BY-MS. SPURGEON:

Q. Doctor, I want to be sure I understand your testimony, too. Now, Mr. Paris asked you a number of questions about 'possibilities, and a number of those 'possibilities had to do with questions about herniated disks. Do you have any opinion with reasonable medical certainty as to whether or not Harry Zadorozny has suffered from a herniated disk?

A. I do have an opinion.

Q. And what is that opinion?

A. That there is no evidence that he had a herniated lumbar disk.

Q. When Mr. Paris was asking you about the consultation note, the December, 1982 consultation note which I believe was prepared at Lorain Community Hospital by a Dr. Fernando, there was something that you started to explain, and Mr. Paris interrupted you.

MR. PARIS: Objection.

Q. Is there anything --

MR. PARIS: Don't mischaracterize that.

Q. All right. Let me ask it another way.

Is there anything further that you would like to explain about that December, 1982 consultation?

A. No, not really, no, except that sometimes it is very hard to interpret things that you see written in a hospital record. And he asked me basically was that examination normal. And if you were to be very objective in interpreting the results of the examination the doctor on the day he examined the patient found that all of the reflexes were easily

obtained on this patient except for the ones at the knees, which is -- and one can see an altered knee jerk or a knee response with an L3-4 disk, with a herniated disk at L3-4, as with other things, too. You can see it with other things, but that's one of the causes of it.

And he didn't come to any conclusions, but he did mention something about L3-4 nerve problems, but he couldn't be sure because the patient basically was complaining of nothing except for the things that he was complaining of for many, many years, that is backache.

And you can't make a diagnosis of a herniated disk unless patients really have leg pain. That's the only way that a doctor as he sits and talks to the patient can say, gee whiz, you might have a herniated disk because you have this pain going down your leg.

Q. Now, doctor, you reviewed X-rays and other film both before and after Mr. Zadorozny's surgery that Dr. Biscup performed. Is that correct?

A. Yes.

Q. Is there any evidence whatsoever on any of that film before or after to show that there was a herniated disk?

A. None whatsoever.

MR. PARIS: Objection.

A. In fact, in all honesty, that was not his preoperative diagnosis even at the time he operated on the patient.

MR. PARIS: Move to strike.

Q. I want to ask you just a couple of questions about diskograms.

You said you don't use them?

A. I don't.

Q. And you don't interpret them?

A. That is correct.

Q. Why do you not use them?

A. Because there are -- there is a lot of question about the reliability of diskography. We have other means, we have a very simple means of telling whether or not a patient has a herniated disk or degenerated disk that don't require sticking needles into patients' spines of any kind.

Q. And were those other reliable means done with Mr. Zadorozny?

A. No, no.

Q. What are those other reliable means?

A. MRI scan. An MRI scan, which is not an X-ray, but it is a scan obtained by placing a patient in a machine that has a nagnetic field around it. It is very complicated, and I wouldn't know how to really begin to explain it to you except that once this magnetic force is applied to the patient certain constituents of our bodies respond in a certain way to this magnetic field, and the way they respond is picked up by a device called a coil, which in turn sends all of this information to a computer, and low and behold the computer figures things out and hands us something on that sheet of X-ray film which depicts various body parts. You can study the brain, the spine, the abdomen. A lot of things can be studies.

Q. Are you saying that the MRI scan hen is more reliable than a diskogram?

A. Oh, you can -- absolutely. It is a ery reliable examination. I mean, it could ell you the same thing. I mean, there is very

little that a diskogram can tell you that a myelogram and CAT scan and MRI scan can't tell you. In other words, there is nothing basically. And because of this I have never -- because I have a feeling, and this is that when doctors do diskography they are looking for a reason to operate on somebody, they are trying to look for an answer. But if you can't see the things that you think you want to see with a diagnostic study, that's the end of it.

And diskography, as I said, is not done by anybody in this community anymore except one place. And, you know, I am sure that the institutions that I mentioned probably do a lot more spinal surgery than I do, although I do probably 150 spinal operations a year. I am sure that the University Hospitals -- and I am on the staff there, and I go to meetings there every week, and I know it's not done there, and I know it's not done at the Cleveland Clinic because we have a resident in training from the Cleveland Clinic who spends six months at a time at Mt. Sinai, and I know what they do there, and I know how they handle certain things. They are just not done. There

are other ways to get the same information.

Q. When you say that a diskogram is an invasive procedure, what do you mean by that?

A. The patient has to have a needle placed in him, and it is placed through the soft tissues of the muscles in the back and has to be properly placed into the disk space, into the disk itself, so you violate the disk itself with a small needle, then you inject a dye. And there are things you look for.

It was thought, it was reported many years ago that if you could reproduce the patient's pain that's abnormal. In other words, as reported here, that just causing backache -- anybody will get a backache when you put a needle in their disk when you inject this dye. Well, some people thought that if you injected the dye and if they had, let's say, instead of not only backache, if they had leg pain, that would be very significant. But the significance of these things was just not borne out by the experience of those doctors who pioneered with use of this examination over the years. It just hasn't been borne out.

Q. Are there any hazards associated

with doing a diskogram?

MR. PARIS: Objection.

A. Sure, sure there are.

Q. And what are those hazards?

MR. PARIS: Objection.

A. I guess the major hazard with a diskogram of the low back would be getting a diskogram.

MR. PARIS: Move to strike.

Q. Now, when you say an MRI scan is more accurate and more reliable and that it's not invasive, you mean then that you can get the same or better information without a needle?

A. Absolutely.

MR. PARIS: Objection.

A. Absolutely.

Q. It is your opinion then that the MR -- strike that. Let me ask it another way.

Would you explain to the Ladies and Gentlemen of the Jury your reasons for believing that an MRI scan is a superior diagnostic tool to a diskogram?

my opinions, those are the opinions of radiologists and neurosurgeons and orthopedists all over the country, perhaps even all over the world.

MR. PARIS: Objection. Move to strike.

A. You can, for example, by the signal that one gets when you look at a film on a patient who has had an MRI scan of the low spine you can tell, we think, or at least the authorities in the field say that if there is an altered signal that one can infer that a patient has disk degeneration. In other words, you can see that on an X-ray.

And, of course, disk degeneration is a very nebulous kind of term, because there are literally millions of patients who have disk degeneration with no complaints with reference to the low back. It is a meaningless kind of thing, and it's been well documented. And if you take groups of patients who are totally asymptomatic with respect to their backs or their necks and put them in age categories, as one gets older you are more likely to find disk degeneration. And these

are people who are asymptomatic. This has been well recorded and well described. So disk degeneration of and in itself doesn't mean anything.

But in terms of you can see herniated disks, you can see many things with MRI scan, and so that certainly today we do fewer and fewer myelograms on patients because of this. And many of the patients we see now that I operate on now have as their only diagnostic study an MRI scan, which is done in a radiologist's office or in a hospital somewhere.

MS. SPURGEON: Okay. Do you have any?

MS. KARPINSKI: Yes. I have one quick question.

EXAMINATION OF MELVIN SHAFRON, M.D.

BY-MS. KARPINSKI:

Q. You said-- you used the term asymptomatic. Could you explain that to the Jury?

A. No complaints. In other words, you can have disk degeneration without question with having no complaint whatsoever. And if

you find it in a patient who has complaints of backache, that doesn't necessarily explain the cause of the patient's backache.

Backache is a real mystery, and the solutions to it are very mysterious. There are no surgical solutions to patients with chronic backache that have backache all their lives. It just doesn't work.

Q. And I just wish to clarify. You said before Dr. Biscup's -- you were observing in Dr. Biscup's notes whether or not there was any reporting in his notes alone on leg pain. Hould you clarify again whether you found snything there?

A. Well, I looked at his typewritten records, and I don't know whether he examined she patient -- he never found any sensory loss, and he never really mentioned leg pain in those records that I have copies of.

Now, whether -- you know, he's the operating surgeon. I don't know, you know, whether it's there somewhere else in his record, I just didn't see it.

MS. KARPINSKI: Thank you. That's all I have.

EXAMINATION OF MELVIN SHAFRON, M.D.

BY-MR. PARIS:

Q. But, doctor, there are surgical solutions to herniated disks, are there not?

A. Absolutely.

Q. And doctor, are you prepared to tell this Jury that back in early 1988 the Industrial Commission of Ohio recognized MRI technology as no longer experimental so that the thousand-dollar charges would be paid?

A. I don't know when, I have absolutely no idea when an MRI scan was recognized as being an unexperimental procedure by the Industrial Commission. I just don't know.

MS. KARPINSKI: Objection. w/draw

Q. And the charges are about 985, $985 per scan?

A. I don't know.

MS. KARPINSKI: Objection again. w/draw

A. I don't know. That's probably a ballpark figure, but I don't know. I just don't know.

Q. Do you know the charges for a kiskogram?

A. I have no idea.

MS. KARPINSKI: Objection.

MR. PARIS: Thank you, doctor.

MR. McGUIRE: The time is 6:47, we are going off.

(Signature waived.)

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CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Heidi L. Geizer, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, MELVIN SHAFRON, 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 the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio; on this 15th day of May, 1990

Heidi L. Geizer, Notary Public
within and for the State of Ohio

My commission expires January 22, 1995.