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Richmond, Va.

207 VA 639

Record No. 6241

In the

Supreme Court of Appeals of Virginia

at Richmond

ALTON W. BOSHER, INDIVIDUALLY, ETC.,

v.

NORVELL T. JAMERSON

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6241

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 11th day of October, 1965.

ALTON W. BOSHER,
INDIVIDUALLY AND TRADING AS BOSHER
& CONWAY HAULING COMPANY, Plaintiff in error,

against

NORVELL T. JAMERSON, Defendant in error.

From the Law and Equity Court of the City of Richmond
Alex H. Sands, Jr., Judge

Upon the petition of Alton W. Bosher, individually and trading as Bosher & Conway Hauling Company, a writ of error and *supersedeas* is awarded him to judgments rendered by the Law and Equity Court of the City of Richmond on June 24, 1963, and April 30, 1965, in a certain motion for judgment then therein depending wherein Norvell T. Jamerson was plaintiff and the petitioner was defendant.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of seven thousand, seven hundred and fifty dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

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page 1]

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Filed in the Clerk's Office the18th day of January, 1962

Teste:

LUTHER LIBBY, JR., Clerk

By EDDE G. KIDD, D.C.

MOTION FOR JUDGEMENT

TO THE HONORABLE JUDGES OF THIS COURT:

The plaintiff hereby moves the Court for judgement against the defendant, in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00) and costs for the following:

1. On or about September 5, 1962, at about 12:40 p.m., Re-Com Corporation was engaged in constructing an addition to the existing building of the Reynolds *Metal* Company Bellwood Plant in Chesterfield County, Virginia.

2. At the above time and place, the plaintiff, Norvell T. Jamerson, an employee of the said Re-Com Corporation was lawfully performing his duties as a carpenter on the said job-site when he was struck from the rear by a GMC Dump Truck owned by Alton W. Bosher, ind. and t/a Bosher & Conway Hauling Company, defendant herein, and operated by Fred Granderson, who at the said time and place was employed by the defendant and was using and operating the said truck in the business and as agent of the defendant and within the scope of his employment.

3. The direct and proximate cause of the collision was the negligence of Fred Granderson, employee and agent of the defendant, in the operation of the said dump truck.

4. That as a result of the aforesaid collision the plaintiff Norvell T. Jamerson, sustained grave, serious painful, lasting and permanent bodily injuries, including among others, a

fracture of both the tibia and fibula bones of the right leg, which was comminuted in type; has been pre-
page 2] vented from transacting his business; has suffered and will continue to suffer great pain of body and mind; has incurred and will continue to incur hospital, doctor, drug, x-ray and other medical bills in an effort to get healed; has been deprived of carrying on his normal activities in the usual pursuit of life and happiness and will continue to be so deprived in the future; has sustained loss of earnings, permanent disability and deformity, and loss of his earning capacity.

WHEREFORE the plaintiff prays judgement against the said defendant in the sum of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00).

NORVELL T. JAMERSON
By Counsel

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Filed Feb. 8, 1962

Teste:
LUTHER LIBBY, Clerk

SPECIAL PLEA

The defendant, Alton W. Bosher, individually and T/A Bosher & Conway Hauling Company, by his Attorney, comes and says:

1. That on the 5th day of September, 1961, Re-Com Corporation was engaged in the business of a general building contractor and in connection with that business had entered into a contract with Reynolds *Metal* Company to construct an addition to its plant known as the Reynolds *Metal* Company Bellwood Plant in Chesterfield County, Virginia.

2. That on the 5th day of September, 1961, Norvell T. Jamerson was an employee of Re-Com Corporation and was,

at the time of the accident in question, engaged within the course and scope of his employment on the above job of his employer.

3. That on September 5, 1961, Southern Materials Co., Inc. was engaged in the business of furnishing and *deliverying,* including spreading, of certain building materials in and around the vicinity of Richmond, Virginia.

4. That Southern Materials Co., Inc. contracted with Bosher & Conway Hauling Company to deliver the materials furnished by it and Bosher & Conway Hauling Company furnished to Southern Materials Co., Inc. trucks and drivers to perform such work as directed by Southern Materials Co., Inc.

5. That on September 5, 1961, Re-Com Corporation, in furtherance of its contract with Reynolds *Metal*
page 5] Company and in pursuance of its general work, trade and occupation, ordered sand from Southern Materials Co., Inc. to be delivered to the job site referred to above and spread in accordance with the instructions of the employees of Re-Com Corporation.

6. That on September 5, 1961, Bosher & Conway Hauling Company employed Fred Granderson to drive one of its trucks furnished to Southern Materials Co., Inc. as stated in paragraph four above, and at the time of the accident in question Fred Granderson was under the direction and control of Southern Materials Co., Inc. and was in the process of unloading and spreading a load of sand at the direction of and under the control of an employee of Re-Com Corporation in connection with the work being performed by Re-Com Corporation as set forth in paragraph one above when the plaintiff was injured.

7. That Fred Granderson was a borrowed or loaned employee of Southern Materials Co., Inc., who was a sub-contractor of Re-Com Corporation engaged at the time of the accident in question in performing part of the work, trade or occupation of Re-Com Corporation, and at the same time, the plaintiff was likewise so engaged, within the purview of the Workmen's Compensation Act of Virginia.

8. Or, in the alternative, Fred Granderson was an employee of Bosher & Conway Hauling Company, a sub-contractor of Southern Materials Co., Inc., engaged in part of the work, trade or occupation of Southern Materials Co., Inc., who at the time of the accident in question was a sub-contractor of

Re-Com Corporation engaged in part of the work, trade or occupation of Re-Com Corporation, and the plaintiff was an employee of Re-Com Corporation likewise engaged in performance of part of its work, trade or occupation, all within the purview of the Workmen's Compensation Act of Virginia.

9. Or, in the further alternative, at the time of the accident in question, Fred Granderson was a borrowed or loaned employee of Re-Com Corporation, and he and the plaintiff were both engaged in the general work and business of Re-Com Corporation in fulfilling its contract with Reynolds *Metal* Company, all within the purview of the Workmen's Compensation Act of Virginia.

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10. That neither Re-Com Corporation nor any of its employees had exempted themselves by proper notice from the provisions and operations of the Workmen's Compensation Act of Virginia.

THEREFORE, the said Defendant says that any right or remedy of the Plaintiff that might otherwise exist against this Defendant on account of the injuries alleged in the Motion for Judgment herein, is barred by the said Workmen's Compensation Act of the State of Virginia, and that the sole and exclusive right or remedy of the said Plaintiff or any other person or corporation entitled to any claim or benefits on account of the injuries of Norvell T. Jamerson is against Re-Com Corporation under the provisions of the Workmen's Compensation Act of Virginia, for which reason the Plaintiff cannot maintain his action set forth in the Motion for Judgment herein against this Defendant and that this Court ought not to take any further cognizance of this action, the rights and remedies afforded by the said Workmen's Compensation Act of the State of Virginia constituting a complete bar to the prosecution of the same; and this the Defendant is ready to verify.

ALTON W. BOSHER, individually and
T/A BOSHER & CONWAY HAULING
COMPANY.

By JACK B. RUSSELL
Of Counsel

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LAW AND EQUITY COURT
OF THE CITY OF RICHMOND
RICHMOND, VIRGINIA

February 14, 1963

J. W. MORRIS, III, Esq.
Attorney at Law
909 State-Planters Bank Building
Richmond, Virginia

ROBERT CANTOR, Esq.
Attorney at Law
1136 Mutual Building
Richmond, Virginia

Re: *Jamerson* v. *Bosher, etc.*
A-4889

Gentlemen:

This case is before the court upon special plea of the defendant seeking to bar the right of action asserted by plaintiff in the motion for judgment filed herein.

THE CASE

[Bosher]

On September 5, 1961, a truck owned by the defendant and operated at the time by Fred Granderson, struck and injured the plaintiff, Norville T. Jamerson at the Container Development Center of the Reynolds Metals Company located in Chesterfield County. Plaintiff at the time was an employee of Re-Com Corporation and when injured was engaged in the work of Re-Com under its contract with Reynolds for the expansion of the Center. Counsel has stipulated that plaintiff applied for and received benefits under Workmen's Compensation coverage carried by his employer Re-Com. Plaintiff sues Bosher, in tort, to recover for injuries thus received.

ISSUE

The issue involved in this plea is whether Bosher, under

the facts existing, is such an "other party" to the
page 17] work involved, under Sec. 65-38 of the Code of Va. of 1950, as amended, so as to permit a common law action against him in view of Sec. 65-37 of the Code.

PERTINENT FACTS

This issue must be resolved upon the basis of the particular facts of this case which are, for the most part, not in dispute and are as follows:

1. Re-Com, as general contractor, was under contract with Reynolds to construct an expansion of the latter's Container Development Center, under which contract it was expressly stipulated that Re-Com should supply all labor, materials, equipment and services for the job and in connection therewith was to "receive, unload, warehouse, and haul to the job site, all material you will supply for the work."

2. During the performance of its said contract Re-Com ordered from Southern Materials two loads of sand to be spread beneath the foundation of the project in question. One of these is the load here involved.

3. Southern Materials had two methods of selling materials, (a) pick up by purchaser at Southern's premises, and (b) delivery by Southern Materials to purchaser at job site. The differential in price was the cost to Southern of delivery to job site. Procedure under method (b) upon reaching job site was to dump or spread at such location and in such manner as directed by purchaser or his representative on the job site.

4. In the case at bar method (b) was followed.

5. For delivery of this order — as in the vast majority of all other orders — Southern used a truck and driver furnished by the defendant Bosher. Under the standing arrangement between Bosher and Southern, while Bosher hired, fired and paid the driver of his truck, the driver and truck were under the exclusive control of Southern. The driver in this, as in other cases, received his instructions from the Southern dispatcher. Here he was told to deliver his load of sand to the Re-Com job site and to deliver, dump or spread as directed by the Re-Com supervisor.

6. Upon reaching the job site defendant's driver, Granderson, was told by the Re-Com superintendent to take the load into the foundation area and to spread in a certain manner.

He was also told by the superintendent how to maneuver his truck into the foundation area.

" 7. During the spreading of the sand Granderson struck and injured the plaintiff." A1

page 18] RESPECTIVE CONTENTIONS

Defendant's contentions are threefold. He contends first that under these facts that Re-Com had the contractual duty to "receive, haul to the job site and unload" the sand in question, that such hauling to the job site and unloading was, therefore, a "part of Re-Com's trade, business and occupation" under the terms of the Compensation Act and that as the defendant, through his agent Granderson was performing this duty that he was not a "stranger to the employment and work" in contemplation of the definition *ununciated* in *Feitig* v. *Chalkley,* 185 Va. 96 and subsequent Virginia cases. Defendant further contends that by virtue of the same situation and for the same reason, Granderson was a statutory employee of Re-Com and thus a fellow employee of Jamerson so as to prohibit an action arising out of the work being performed at the time. Lastly defendant contends that during the act of spreading the sand when Granderson was obeying the directions of the Re-Com superintendent that he was *quoad* Re-Com, a "loaned employee" under *Coker* v. *Gunter*, 191 Va. 747.

Plaintiff, on the other hand, contends that Southern Materials was a supplier only and that the accident occurred during the course of delivery and that regardless of whether Granderson at the time was agent for Southern or for Bosher that in no event was the delivery of the sand a part of the "trade, business or occupation" of Re-Com and that Granderson and whoever might have been his employer at the time were "strangers" to the work and "other parties" in contemplation of the Compensation Act.

OPINION

The best statements of the tests for the determination of who is and who is not an "other party" in contemplation of the Compensation Act are found in *Feitig* v. *Chalkley,* 185 Va. 96 and *Floyd, etc.* v. *Mitchell*, 203 Va. 269. The *Feitig case* says that to be an "other party" such party must be "a

stranger to the employment and work" in which the principal contractor is engaged. The *Mitchell case* spells out the test thus:

"It (the test) is whether the independent contractor is performing work *that is part of the trade, business or occupation of the owner,*" (or principal contractor). (Emphasis added).

Aside from this statement of general principles, however, the decided cases in this jurisdiction help but little in solving the problem at hand, i.e. whether the delivery and unloading of material at a job site is such participation in the construction job itself as to be considered a part of the "trade, business or occupation" of the owner or contractor
page 19] engaged in the construction work in contemplation of the Compensation Act. Some of the cases dealing with this phase of the Act are concerned with the question of whether an injured employee can maintain an action against a fellow employee, (1) or whether an employee of a subcontractor can maintain an action against the principal contractor (2) or whether an employee of the principal contractor can maintain an action against a subcontractor (3) but in all these instances the business in which the injury is incurred is admittedly the trade and business of the principal contractor. These cases deal primarily with the relationship of the parties rather than the nature of the business. In two other cases which are based upon the nature of the business in performance of which the injury occurs, (4) it was held that the nature of the business in which the employee was engaged at the time *was* the trade, business or occupation of the owner (in one case the Chesapeake Ferry District and in the other the Richmond-Petersburg Turnpike Authority the work in each instance being a part of the very function for which the owner was created). In a late case in which recovery by an employee of one independent contractor upon a building project was allowed against another independent contractor upon the same project (5) the decision was based upon the

(1) *Feitig* v. *Chalkley,* 185 Va. 96.
(2) *Sykes, etc.* v. *Stone and Webster,* 186 Va. 116.
(3) *Rea* v. *Ford,* 198 Va. 712.
(4) *Williams* v. *Gresham,* 201 Va. 457 and *Anderson* v. *Thorington Construction Co.,* 201 Va. 266.
(5) *Kramer* v. *Kramer,* 199 Va. 409.

fact that the work of neither independent contractor could be said to be any part of the trade, business or occupation of the church which, as owner, was acting as its own principal contractor.

Returning then to the problem at hand, i.e. whether delivery to and unloading at job site of materials is a part of the trade, business or occupation of the principal contractor. Defendant says that the fact that Re-Com contracted as a part of its responsibility — as between it and Reynolds — to receive, deliver to job site and unload all materials, *ipso facto* made the performance of these duties a part of Re-Com's business, trade or occupation so that anyone performing these duties would, for purposes of the Comp. Act be subcontractors on the job and engaging in the "trade, business or occupation" of Re-Com. This position appears untenable. It would mean, if followed to its logical conclusion, that

page 20] any carrier, whether common or contract, delivering materials to the job site would be to the extent of such carriage, engaging in the business, trade or occupation of the contractor on the job. This does not appear to be the law. The mere act of delivering to and unloading at a job site of materials *to be used* in construction of the project does not bring the carrier or his employees under the contractor's compensation coverage. *Perkinson* v. *Thomas,* 158 Va. 699; *Garrett* v. *Tubular Products, etc.,* 176 F. Supp. 101.

Floyd v. *Mitchell,* 203 Va. 269 does not alter this rule. Here Glamorgan Pipe and Foundry Co. contracted with Powell Transfer Co. to haul all of its manufactured products to the market. Mitchell, an employee of Powell, was assigned to, and spent his full time in, Glamorgan's yard assisting Floyd, Glamorgan's employee in the loading of the pipe upon Powell's trucks. Through Mitchell's negligence Floyd was killed. Mitchell was held to be engaged in work which was a part of Gamorgan's "trade, business and occupation" and this barred any right of tort action against him by Floyd's estate. This holding was based, in the language of the court, upon the fact that "Glamorgan's trade, business or occupation was manufacturing pipe *and selling and shipping it to its customers. Transporting the pipe to the customers was a necessary element of this business.* (Emphasis added) (See 203 Va. at page 273).

In the case at bar had Granderson merely delivered the loaded truck to the job site and turned it over to Re-Com

without unloading he would have come squarely under the facts of *Garrett* v. *Tubular, supra.* Had he dumped his load at the first available spot at the job site this would still not have constituted participation in the "business, trade or occupation" of Re-Com.

The question remaining is whether by taking instructions from Re-Com's superintendent as to where and how the load was to be spread Granderson thereby became engaged in the trade, business or occupation of Re-Com or whether this act was, in fact, but a part of the act of transportation. The answer to this would also determine his status as a "loaned employee" of Re-Com.

In view of the facts in the case at bar it is believed that *Standard Oil Co.* v. *Anderson,* 212 U.S. 215, 53 L. Ed. 480 is controlling. There plaintiff, an employee of a stevedore, was injured by the negligent operation of a winch during the loading of a ship. The winch was rented by defendant to the stevedore but was operated by defendant's employees. Stevedore's employer gave instructions to the winch operator as to when to lower the load. It was contended by defendant that this power of direction by the stevedore's employees made the winch operator the servant of the stevedore. The court *held* the operator to be the servant of the defendant *who had contracted to furnish a service rather than to lend*
page 21] *the services of the winch operator* and that the submission of the operator to instructions of the stevedore's employees was by way of cooperation rather than subordination. In approving the case of *Driscoll* v. *Towle,* 181 Mass. 416 the U. S. Supreme Court quotes with approval this reasoning which appears peculiarly applicable to the case at bar:

"Of course, in such cases the party who employs the contractor indicates the work to be done and in that sense controls the servant, as he would control the contractor, if he were present. But the person who receives such orders is not subject to the general orders of the party who gives them. He does his own business in his own way, *and the orders which he receives simply point out to him the work which he or his master has undertaken to do.* There is not that degree of intimacy and generality in the subjection of one to the other which is necessary in order to identify the two and to make the employer liable under the fiction that the act of the

employed is his act." (Emphasis added).

So in the case at bar. Whether Granderson was at the time the employee of Southern Materials or of Bosher, his job was to make a delivery and dump and spread the sand where and how told by Re-Com. The principal undertaking was, however, the *delivery of the sand.* CF *Coker* v. *Gumter,* 191 Va. 747 where the truck driver was under the general control of Lock Joint for *all purposes.* This question and answer in the deposition of Jack Baum, the Southern Materials dispatcher, at page 9 is most pertinent:

"Q. And these deliveries of yours, or these drivers that left one of your plants with a load of material that you were delivering to a job site, or customer, were instructed to be co-operative with the customer in trying to expedite the delivery at the most *convenient* place and dump it and deliver it?

"A. That is correct."

CONCLUSION

The court at this stage is not called upon to determine whether, at the time of the accident, Granderson was the agent of Bosher or of Southern Materials.

It is, therefore, held that at the time of the accident Granderson was performing the act of delivery of sand to the job site, that his actions in dumping and spreading where and as directed by the Re-Com foreman were page 22] acts of cooperation rather than subordination, that he was not at the time the statutory employee of Re-Com, was not a loaned employee to Re-Com, that his activity in hauling to the job site and dumping and spreading were not part of Re-Com's "business, trade or occupation" and that Granderson was at the time, therefore, an "other party" in contemplation of the Virginia Workmen's Compensation Act.

The special plea will, therefore, be overruled and counsel are requested to present a sketch of order to this effect.

Yours very truly,

ALEX H. SANDS, JR., Judge

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ORDER

This day came the parties by counsel and the Court having maturely considered the special plea of the defendants that the plaintiff's claim is barred by the Workmen's Compensation Act of the State of Virginia and to enter summary judgment for the defendants doth over-rule the same for the reasons set out in the Court's letter-opinion of February 14th, 1963, to which action of the Court in over-ruling the said special plea and motion the defendants, by counsel, object and except.

* * * * *

ENTER
AHS JR.
June 24, 1963

We respectfully ask for this:

ROBERT CANTOR
of Counsel for Plaintiff

Objected & Excepted to:

J. W. MORRIS, III
of Counsel for Defendants

* * * * *

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* * * * *

In the Law and Equity Court of the City of Richmond, the 17th day of November 1964

* * * * *

This day came again the plaintiff and the defendant, in person and by counsel, and came also the jury sworn in this case pursuant to their adjournment on yesterday, and having fully heard the evidence and argument of counsel were sent out of Court to consult of a verdict and after some time returned into Court with a verdict in the words following, to-wit:

We, the Jury, on the issue joined, find for the plaintiff and assess the damages at $6,450.00."

Thereupon the plaintiff, by counsel, moved the Court to set aside the verdict of the jury and award a new trial to assess damages only, and the defendant, by counsel, moved the Court set aside the verdict of the jury and enter final judgment in his favor or in the alternative to award a new trial on all issues on the ground the verdict of the jury is contrary to the law and the evidence, and for other errors committed by the Court during the course of the trial as noted in the Reporter's transcript of the evidence, which motions the Court doth continue for argument thereon, and both parties are allowed ten days to file written motions if they desire to do so.

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MOTION TO SET ASIDE THE VERDICT

To The Honorable Alexander H. Sands, Jr., Judge

The Defendant, by Counsel, moves the Court to set aside the verdict for the Plaintiff in this case and enter a judgment for the Defendant on the following Grounds:

(1) The verdict is contrary to the law and the evidence and without evidence to support it;

(2) This Court is without jurisdiction to hear the Plaintiff's action at law, the Workmen's Compensation Act of Virginia being the exclusive remedy available to the Plain-

tiff under the facts and circumstances developed and/or stipulated at the previous hearing and at the trial of the case:

(3) The Plaintiff was guilty of contributory negligence as a matter of law;

(4) The Defendant's servant was as a matter of law free from negligence proximately causing the injury to the Plaintiff;

(5) The sole proximate cause of the accident and injury to the Plaintiff as a matter of law was the action or negligence of the witness Kester alone or concurring with the action or negligence of the Plaintiff;

(6) And for the reasons more fully and particularly set forth in the plea of workmen's compensation previously filed and argued and the Motions to Strike the Plaintiff's Evidence made at the close of the Plaintiff's case and at the close of all of the evidence;

page 119] The Defendant, by Counsel, without waiving his Motion for a Judgment for the defendant notwithstanding the verdict of the Jury, further moves the Court to reduce the amount of the judgment of the Plaintiff by the sum of THREE THOUSAND FOUR HUNDRED SEVENTY-FIVE AND 90/100 ($3,475.90) DOLLARS, the agreed amount of the compensation benefits paid to the Plaintiff, because of the negligence of the witness Kester acting within the course and scope of his employment for the subrogated employer, Re-Com Corporation, and its subrogated insurance carrier, Federal Insurance Company.

The Defendant, by Counsel, without waiving any of its foregoing Motions or Grounds therefore, further moves the Court to set aside the verdict for the Plaintiff and grant a new trial on all issues because of errors in the admission and exclusion of evidence, in the granting and refusing of instructions, and for other errors apparent from the face of the wreck.

ALTON W. BOSHER
By J. W. MORRIS III
Counsel

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MOTION FOR NEW TRIAL ON QUESTION OF DAMAGES ALONE AND REPLY TO DEFENDANTS MOTION TO SET ASIDE THE VERDICT

To The Honorable Alexander H. Sands, Jr., Judge

MOTION FOR NEW TRIAL ON QUESTION OF DAMAGES ALONE

The Plaintiff, by counsel, moves the Court for a new trial on the issue of damages alone on the following grounds:

(1) The jury has decided the liability issue in favor of the plaintiff.

(2) The jury should have been instructed, as requested by the plaintiff, that they could consider the costs of future medical expenses including medication, that the plaintiff may reasonably be expected to sustain in the future.

(3) The evidence relating to the receipt of *Workmans* Compensation Benefits by the plaintiff was improperly allowed to be presented to the jury by both Doctor Carpenter, Adjuster Snell, and by cross examination of the plaintiff.

4. The evidence given by a uniformed police officer that the plaintiff had been arrested for driving under the influence of intoxicants was improperly allowed to be presented to the jury.

(5) Because of errors relating to the admission and exclusion of evidence, in the granting and refusing of instructions, and for other errors apparent from the record.

REPLY TO DEFENDANTS MOTION TO SET ASIDE THE VERDICT

The plaintiff, by counsel, without waiving his Motion for a new trial on the question of damages alone, page 121] moves the Court to dismiss the defendants Motion to set aside the verdict for the following reasons:

(1) The jury has correctly found that the defendants employee was guilty of negligence and that the plaintiff was free on contributory negligence.

(2) The defendant stipulated that *at the time of the ac-*

cident the driver, Fred Granderson, was the employee of the defendant, and that no new evidence was adduced at the trial relating to the special plea of Workmens Compensation as all witnesses who testified had previously appeared and been fully examined at the prior hearing held specifically to determine the special plea of Workmens Compensation heretofore filed by the defendant.

(3) The verdict should not be reduced by the amount of *Workmen* Compensation Benefits paid to the plaintiff for the following reasons:

(a) Section 65-391 of the Code of Virginia places on the employer the burden of costs incurred and counsel fees payable for services rendered in the third party action.

(b) The question of the negligence, if any, of the witness Kester has to be submitted to the Jury in an action involving Kester or his employer as a party.

(c) The defendant having been found guilty of negligence has a remedy, if any, under Section 8-627 of the Code of Virginia relating to contribution between joint tort feasors.

(d) The Court after giving due regard to Section 65-39.1 of the Code of Virginia would have to exonerate the plaintiff of all liability under Section 65-39 of the Code of Virginia which gives the employer the right of subrogation against the employee out of funds recovered in a third party action.

Respectfully submitted,

NORVELL T. JAMERSON
By ROBERT CANTOR
Counsel

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LAW AND EQUITY COURT
of the
CITY OF RICHMOND
Richmond, Virginia
March 4, 1965

JAMES W. MORRIS, III, Esq.
Attorney at Law
State-Planters Bank Building
Richmond, Virginia

CANTOR AND CANTOR, Esqs.
Attorneys at Law
Mutual Building
Richmond, Virginia

WILLARD I. WALKER, Esq.
Attorney at Law
Mutual Building
Richmond, Virginia

Re: *Jamerson* v. *Bosher, etc.*
A-4889

Gentlemen:

This matter is before the Court upon motion of plaintiff to set aside the verdict rendered herein on November 17, 1964, upon the grounds of inadequacy and to award a new trial upon the issue of damages alone. Pending also is the motion of the defendant to set aside the verdict and enter judgment for the defendant upon the ground that the Workmen's Compensation Act of Virginia was the exclusive remedy available to plaintiff and other grounds set forth in defendant's written motion, or in the alternative, to reduce the amount of verdict by $3,475.90, this being the amount of compensation benefits heretofore paid plaintiff, upon the ground that plaintiff's employer's agent (and therefore employer) was guilty of negligence concurring with that of defendant to cause the injury to plaintiff and in the alternative to award a new trial upon all issues upon the ground of other errors committed by the Court.

I.

PLAINTIFF'S MOTION

It is not felt that the amount of verdict is inadequate as to justify the Court in disturbing the verdict and plaintiff's motion is, accordingly, overruled.

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II.

DEFENDANT'S FIRST MOTION

Defendant's chief ground for this motion is that the Virginia Workmen's Compensation Act is the exclusive remedy available to plaintiff. This was the substance of the plea filed herein prior to trial. The Court overruled the plea for the reason that Bosher and his driver, at the time of collision, were acting in the capacity of supplier in delivering the sand to the job site. This was in conformity with the holding in *Garrett* v. *Tubular Products, Inc.,* 176 Fed. Supp. 101 and *Perkins* v. *Thomas* 158 Va. 699. Finding nothing in the testimony introduced at the trial upon the merits of the case to warrant the altering of the Court's previous ruling upon this question, this motion is overruled.

DEFENDANT'S SECOND MOTION

The second motion presents a question of first impression in this jurisdiction. It is whether an employer, whose negligence has combined with that of a third person to cause injury to the plaintiff, can participate in plaintiff's recovery against such third person up to the amount of compensation benefits which the employer or his compensation carrier has paid to plaintiff.

It is quite true, as counsel for defendant contends, that there is a distinct split of authority upon this question. It is also true, however, that the decided weight of authority is to the effect that the negligence of the employer does not prevent the employer from recovering compensation payments made to an injured employee from a third party tort feasor whose negligence caused or contributed to cause the injury to such employee. (1) Reasons given in those cases supporting the majority rule are that the Compensation Act of the particular state does not preclude recovery in such instance when granting the general right of recovery to employer and that the rights of the employer and employee are identical insofar as this question is concerned, (2) i.e., that since the

(1) See *Witt* v. *Jackson,* (Col.), 366 P. (2d) 641, at page 649, comparing cases supporting the majority rule from Georgia, Iowa, Louisiana, Missouri, Michigan, Nebraska, New Mexico, Wisconsin and Federal authority with those jurisdictions supporting the minority rule from Illinois, Minnesota, Pennsylvania and North Carolina.

(2) See discussion in *Witt* v. *Jackson, supra,* at page 649.

employee can assert such claim his employer,
page 125] subrogated to a portion of his claim should enjoy
the same right. (3) But even in those few jurisdictions where the negligence of the employer is held to bar his right to participate in a recovery by his injured employee the concept which forms the basis of the holding is usually one which has been rejected in Virginia.(4)

For the above reasons it is felt that the majority rather than the minority rule above discussed reflects the intent of the Virginia Workmen's Compensation Act as construed by numerous decisions of our Supreme Court. These decisions, while not directly bearing upon the point in issue, nevertheless indicate a pattern of interpretation of the Act inconsistent with the concept here urged by defendant.

But there are two other strong reasons why defendant's theory should not be adopted. Few states have gone further than has Virginia, both in the language of its Compensation Act and in the construction of the Act by its highest court, in safeguarding the immunity of an employee from suit by a fellow employee injured on a compensation covered job. The end result of defendant's theory, if accepted, would be to permit the negligence of an employee to affect the amount of recovery by a fellow employee from a third party tort feasor, for in the enforcement of its subrogation claim the employer stands squarely in the shoes of the injured employee to whom he has made payments under the Act.

The second reason is thus aptly stated by the Court of Appeals in *Smith* v. *Va. Ry. & P. Co.*, 144 Va., at page 178:

"*The statute subrogating the employer to the rights of the employee was not enacted for the benefit of the negligent third party; he has slight interest in it.* He remains liable for the entire amount of such damages as may be lawfully recovered of him. *The most that he could possibly claim* is that after judgment he would be interested in having the proper apportionment made between the employer who has paid the compensation and the employee, if the recovery against him should exceed the amount paid to such employee under the compensation act." (Emphasis supplied).

(3) This is the concept which appears to have been approved in Virginia. See *U. S. F., etc. Co.* v. *Blue Diamond Co.*, 161 Va. 373:

(4) For example, Pennsylvania permits a third party to secure contribution from a negligent employer See *Maio* v. *Fahs*, 339 Pa. 180, 14 A. (2) 105. The contrary is true in Virginia.

page 126] CONCLUSION

For the above reasons all motions after verdict will be overruled and judgment entered on the verdict. Counsel may present sketch for order to this effect, reserving all desired exceptions.

Yours very truly,

ALEX H. SANDS, JR., Judge.

AHSjr:jh

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ORDER

This day came the parties, by counsel, and the Court having maturely considered the motion of the plaintiff to set aside the verdict of the jury upon the grounds of inadequacy and to award a new trial upon the issue of damages alone, doth overrule the same.

And upon consideration of the defendant's Special Plea to the jurisdiction and the Motion to set aside the verdict and enter judgment for the defendant, or in the alternative to reduce the amount of the verdict or in the further alternative to award a new trial upon all issues, upon the grounds set forth in the defendant's written Motion, the Court doth overrule the said Special Plea and Motions of the defendant for the reasons set out in the Court's letter — opinion of March 4, 1965;

THEREFORE, it is considered by the Court that the plaintiff recover of the defendant the sum of SIX THOUSAND FOUR HUNDRED FIFTY DOLLARS ($6,450.00) with interest thereon to be computed after the rate of 6% per annum from the date of November 17, 1964.

To which actions of the Court in overruling his said Special Plea and Motions and in entering final judgment on the verdict, the defendant, by counsel, objects and ex-
page 128] cepts.

To the action of the Court in overruling his Motions to set aside the verdict upon the ground of inadequacy

and to award a new trial upon the issues of damages alone, the plaintiff, by counsel, objects and excepts.

Enter:

ALEX H. SANDS, JR., Judge

Enter

April 30 1965

★ ★ ★ ★ ★

page 135]

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NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR

The defendant, ALTON W. BOSHER, individually a/t/a BOSHER & CONWAY HAULING COMPANY, hereby gives notice of appeal from the judgment entered herein on April 30, 1965, and makes the following assignment of error:

1. The Court erred in failing to hold that the Workmen's Compensation Act of Virginia was the sole and exclusive remedy of the plaintiff as was urged by the defendant in its Special Plea and in the trial on the merits.

I certify that true and correct copies of this Notice of Appeal and Assignment of Error were delivered to Robert Cantor, Esquire, Mutual Building, Richmond, Virginia; and mailed to Willard I. Walker, Esquire, Mutual Building, Richmond, Virginia, counsel of record for the plaintiff.

J. W. MORRIS, III
Of Counsel for the Defendant

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ORDER

On motion of counsel for both parties,

IT IS HEREBY ORDERED that the pleading entitled "In-

cidents of Trial Incorporated As Part of the Record to the End That Same May Become Part of the Record of Appeal" be and the same is hereby filed and incorporated as part of the record in this matter.

It is further ORDERED that the deposition of Jack Baum taken October 23, 1962 and heretofore filed herein be and the same is hereby inserted in the reporter's transcript after page 68 of the proceeding reported October 23, 1962. This order is entered *Neuc pro tunc* as of June 28, 1965.

ENTER: / /

_____

Judge

We respectfully ask for this:

ROBERT CANTOR
Counsel for Plaintiff

J. W. MORRIS, III
Counsel for Defendant.

Enter

AHS, JR.
June 29 1965

★ ★ ★ ★ ★

10/23/62
page 3] ALTON W. BOSHER,

a witness called by Mr. Morris, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Tell us your name, please, sir.
A. Alton W. Bosher.
Q. What is your business?
A. Trucking business.

Alton W. Bosher

Q. And are you associated in that business with anyone else?

A. Yes, sir.

Q. Who?

A. Paul P. Conway.

Q. Approximately how many vehicles do you have, sir?

A. Forty-two.

Q. What type of vehicles are they?

A. Tandems, small dumps, regular ten-wheel dump trucks.

Q. What is the principal part of your business? For whom do you haul?

A. Southern Materials.

Q. What do you haul for them?

10/23/62 A. Gravel, sand, *so-lite,* cement, bags of cement.

page 4] Q. Do you haul for anyone else?

A. No, sir.

Q. What is your arrangement with Southern Materials regarding hauling?

A. We have a mutual agreement. We work these jobs out together, so much for hauling.

Q. Explain that more fully.

A. Southern Materials will sell a quantity and we get together and give them a price for hauling it.

Q. Do you mean that the price of hauling varies according to your understanding you have with Southern Materials on a particular job?

A. Yes, sir.

Q. How long have you been hauling by this arrangement with Southern Materials?

A. A little over nine years.

Q. Nine years?

A. Yes, sir.

Q. Generally, how are you paid and under what basis are you paid?

A. We are paid a lot of times by ton-miles, and we get paid by the zone.

Q. Did you say ton-miles?

A. Yes.

10/23/62 Q. What is the difference?

page 5] A. A ton-mile is where you have a large quantity going fifteen, twenty miles, you haul it by the

ton-mile, and by zone if you haul it short distances, get paid more for it. It's simpler to haul it within three to four, five, six miles, work out of zones.

Q. How do you account to Southern Materials or the people to whom you make delivery?

A. We send trucks over to Southern Materials and they dispatch them where the material will go to.

Q. How do you know how many trucks to send to Southern Materials?

A. We send all we have.

Q. All?

A. Yes.

Q. Where do you keep the trucks?

A. Some are located in Chesterfield, some in Fredericksburg, some in Richmond.

Q. Your property, or Southern Materials?

A. Some on Southern Materials, some on our property, and some other properties around.

Q. Do you see any of these employees in the morning before they go to work for Southern Materials?

A. See them all, yes, sir.

10/23/62 page 6]

Q. Would you describe what you do with the trip tickets? Tell us about the trip tickets?

A. The trip tickets — Southern Materials gives us a daily contract for the work. We get a copy and Southern Materials keeps a copy, and they are turned in each night.

Q. What use do you make of these when it comes time to find out how much money you get?

A. Southern Materials figures up how much to pay at the end of the month.

Q. Based on the tickets you turn in?

A. Yes.

Q. Is there a difference in the cost of material picked up at the Southern Materials plant and those delivered by you?

A. No. Southern Materials makes all the deliveries. I furnish the trucks, they dispatch them themselves.

Q. Do you know whether or not Southern Materials charges their customers different for material that is delivered and material that the customer picks up at the Southern Materials plant?

Alton W. Bosher

A. A customer that picks it up gets one price, and if we deliver it, another price. If they pick it up at the yard it's one price, if we deliver it it's another price. We are paid by them how the job is quoted. If the contractor quotes FOB, and he wants to pick it up at the plant, it's his

10/23/62 page 7] privilege. If he wants it delivered it's a price added for the hauling.

Q. Do you know whether or not Southern Materials has anyone doing hauling for them besides you?

A. Not at this plant. No, I do not.

Q. What are your instructions for your drivers regarding their activity for Southern Materials?

A. We instruct our drivers to — how to sign a ticket, what to do, what job site to go to, try not to do any damage if you can help it. On the back of this ticket — where they go off the street where they think they are going to get stuck and do damage — they ask the person receiving it to sign the back of the ticket.

Q. Would you tell us, who tells them, the drivers, what material to haul, and where?

A. The dispatcher tells them where to haul it to.

Q. Dispatcher for whom?

A. Southern Materials.

Q. What are your instructions to your drivers in regard to dumping and spreading the material, if any?

A. Well, a driver goes out to a job with a lot of material, and they usually dump it wherever the contractor tells them to dump it. A lot of times they will ask for spreading, and they spread it to the best of their knowledge.

Q. So long as it's physically possible, then, you

10/23/62 page 8] instruct your drivers to spread the material at the request of the job foreman?

A. That's right. Usually someone at the job can instruct them what to do.

Q. How can you regulate the spreading of sand, for example, with your trucks?

A. Well, we have gates on the back of the trucks with chains on them. If you want to spread it thick, you open the chains wide, and if you want to spread it thin, you close the chains up.

Q. Who decides whether they want it thick or thin?

Alton W. Bosher

A. That is up to the contractor, how thick he wants it. A lot of times the contractor will adjust these chains his own self.

Q. Do you ever dump without orders of the job foreman?

A. No, sir.

Q. Do you know whether or not there had been any previous deliveries by your vehicles to the Re-Com job site in Chesterfield County where the accident that this case is about occurred? Were there any other deliveries to that area by your trucks before the accident that you know of?

A. I know this particular day there were two trucks delivering materials to this job.

Q. Do you know what they were hauling?

10/23/62 page 9] A. No, I do not.

Q. Now, do you know whether or not your vehicles have ever done any previous hauling for Re-Com or to Re-Com sites?

A. I couldn't answer that. Maybe they have, maybe they haven't. I just don't know.

Q. You just don't know. All right. Do you have any written contract with Southern Materials?

A. No, sir.

Q. The dispatcher for Southern Materials at the time of the accident was Jack Baum, is that right?

A. Jack Baum? He's the Richmond dispatcher. I don't know whether this came from Kingsland Reach or not. I think it come from Kingsland Reach. The ticket will show what plant it come from.

Q. Do you have a copy of the ticket?

A. No, I haven't got it. Probably it's in the files.

Q. You don't have it with you?

A. No, sir.

Mr. Morris: Answer any questions these gentlemen have.

CROSS EXAMINATION

By Mr. Williams:

10/23/62 page 10] Q. Does Southern Materials own any portion of your business, Mr. Bosher?

A. No, sir.

Alton W. Bosher

Q. Are you and Mr. Conway trading as partners?

A. That's right.

Q. And you are the sole owners of the physical equipment that you use and the business itself?

A. That's right.

Q. Now, sir, in order to operate a fleet of forty-two trucks in Virginia you have to qualify as a contract carrier with the State Corporation Commission, is that correct?

A. Yes, sir.

Q. And they furnish a successful applicant as a contract carrier, they issue you a certificate of conveyance, which is necessary to operate as a contract carrier — an operating certificate?

A. That's right, one with each truck.

Q. As a contract carrier you become obligated to serve the public need as you are called upon for hauling, is that right?

A. Yes, sir.

Q. You have to post evidence of insurance and other things with the State Corporation Commission before they give you this right in the first place, isn't that correct?

10/23/62 A. Yes, sir.

page 11] Q. Now, in connection with your business, you and your partner Mr. Conway have exclusive and sole control over your drivers insofar as the right to hire and fire is concerned, isn't that correct?

A. Yes, sir.

Q. You and your partner Mr. Conway are obligated and pay all of the salaries of those truck drivers, isn't that correct?

A. Yes, sir.

Q. You and your partner Mr. Conway reserve unto yourselves the absolute right to control the actions of those drivers to any given day as to what work they are to do, isn't that correct, sir?

A. Yes.

Q. Who are some of the other people in this area that have facilities like Southern Materials and use heavy trucks like you have?

A. My brother has the same equipment.

Q. Who are some of the people who have need of them? E. G. Bowles has need for this type of hauling, doesn't he?

A. All contractors around Richmond and around the country have need for it.

Alton W. Bosher

Q. If some other major contractor has a need
10/23/62 for trucks of the type that you have and gives you
page 12] a call for some work and your trucks aren't occupied, you take that type job, do you not?

A. Yes, we haul exclusively for Southern Materials.

Q. You don't have surplus trucks you use on other jobs other than Southern Materials?

A. That's right. We have to have enough to take care of them through the summer months.

Q. Southern Materials is such a big customer they use up all your trucks as a contract-carrier, isn't that the sum and substance of it?

A. Yes, sir.

Q. And in addition to the ones you own yourselves you have to either lease or rent other trucks so you can fulfill their needs?

A. That's right.

Q. Now, sir, isn't it customary in the trucking industry to have a trip ticket to show any cargo you handle for any customer?

A. Yes, sir.

Q. And the trip ticket you use with Southern Materials is no different from what you would use if you were hauling for Bowles, or if Dick Williams might need a load of something hauled?

A. All of the tickets are the same. The only thing
10/23/62 is just that one plant has a different number from
page 13] the other one to distinguish what plant it come from.

Q. But the trip ticket is worked out to accommodate everybody's own bookkeeping system, there is nothing peculiar about it that gives them any more control over you than anyone else would have?

A. That's right, all of them are just alike.

Q. It's customary in the industry, as I understand it, when you haul out a load of sand or gravel or whatever the cargo might be, to co-operate with the contractor and dump the load as best you can in the area that he designates?

A. Yes, sir.

Q. Because that is done by all contract-haulers, such as yourself, as a routine and customary sort of thing to keep the

good will of the contractor and people that hire them, isn't that correct, sir?

A. Yes, sir.

Q. And it simplifies construction work to have it spread or put in the most convenient location to the workers themselves, isn't that right, sir?

A. Yes, sir.

Q. And that was all that was done in this case, your driver under instructions from you tried to co-operate with the contractor as much as he could —

A. Yes, sir.

10/23/62 page 14] Q. — to get the load spreaded? And you had no interest in Re-Com or its employees, didn't know them from Adam, and still don't?

A. No, sir.

Q. And — Is that correct?

A. Yes, sir.

Q. And as far as you are concerned, the day that your truck driver went out to this Reynold's job site to deliver the sand he was still your employee, paid by you, and you had the absolute control over him just as you always do when you are hauling for Southern Materials or anyone else?

Mr. Morris: If your Honor please, before we get any further, insofar as this gentleman knows what control means legally —

Q. Mr. Bosher, either you or your partner are the only people that pay the salaries of these drivers, are you not, sir?

A. That's right.

Q. And you and your partner are the only people who have the right to fire and hire your own drivers, isn't that correct, sir?

A. Yes, sir, but if a driver goes out to the job and causes trouble on the job, if he can't co-operate with the customers, we get rid of him.

10/23/62 page 15] Q. If I called and said, Mr. Bosher, I saw one of your drivers driving like a fool down the road, you would call him in and take him and correct him or fire him, you are interested in trying to improve the quality of your drivers and the service they render?

Alton W. Bosher

A. Yes, sir.

Q. And anybody that is kind enough to give information that will enable you to improve the service that you render you are more than willing to accept that help, are you not?

A. Yes, sir.

Q. I believe you testified under direct examination by Mr. Morris that the instructions to go to Southern Materials comes from your office, there your employees are told who they are to be hauling for?

A. Yes, in the morning we tell the drivers to report to their dispatcher.

Q. To the extent that it's necessary for your driver to know where the job site is, he has to be told by Southern Materials, or their trip ticket will show it?

A. That's right. It shows on the trip ticket where the materials go.

Q. If you should decide during the course of the day you wanted that driver to come back in, you would have the right to bring him back in your self, isn't that correct, sir; or if you saw him on the job acting-up, and you wanted to fire him, you could fire him?

10/23/62
page 16]

A. Yes.

Q. Then after he arrives at the job site destination, then, on instructions from your office, he is supposed to co-operate with the construction people themselves in getting the load unloaded in a most convenient place?

A. He is supposed to find a contractor or someone on the job, a supervisor, to show him where to put the materials, and have him sign the ticket. If the load goes out and the ticket is not signed we run into a lot of difficulties.

REDIRECT EXAMINATION

By Mr. Morris:

Q. Insofar as whether the load is to be dumped, or spread, and where it's to be dumped, and how it's to be dumped — the thickness it's to be spread — if it is to be spread, you rely upon the job contractor to tell your man that?

A. Yes, sir.

Q. All right. In reference to trip tickets, is there, or do you know whether or not there is any notation on the trip ticket to show whether or not your trucks delivered it, or the

purchaser's personal trucks delivered it?

A. If their truck delivered it we have the name on it and also the truck number.

10/23/62
page 17] Q. Your name and truck number?

A. Yes, sir.

Q. And if Re-Com or anybody else picked it up with their own trucks, would they put their own name on the ticket?

A. Whoever picked it up, we would more than likely have put on the ticket their own name and truck number, and where it went to.

Mr. Morris: Unless the Court has some questions of this gentleman, that is all I have.

The Court: All right, I think that is all.

WITNESS STOOD ASIDE

Mr. Morris: For the record, Your Honor, I mentioned in my opening statement that I would stipulate with the consent of counsel that Re-Com Corporation who employed the plaintiff in this case had a policy of *workman's* compensation applicable to this job.

10/23/62
page 18] A. J. SUTHERLAND, JR.,

a witness called by Mr. Morris, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. By whom are you employed?

A. Reynolds Metals Company.

Q. In what capacity?

A. Assistant Director of Purchases.

Q. Are building contracts sometimes included?

A. That's correct.

Q. Now, in your department, do you have the contract and record of the contract made under Reynolds Purchase Order No. 10572 dated July 26, 1961?

A. I do.

Q. And what job was that, sir?

A. That was what we term Phase 2 of a construction project at the Container Development Center, Chesterfield County, Bellwood.

Q. Is there a request for a quotation in your file?

A. There is.

Q. To the Re-Com Corporation?

A. Yes, sir.

Q. I am going to ask that you introduce that into evidence.

I would like to introduce this as our first exhibit.

10/23/62 If you will, identify it first, sir. What is
page 19] it?

A. This is a standard form headed Request for Quotation. We use this in obtaining bids for construction and related work.

Q. To whom is it directed?

A. It is directed to a list of contractors that we have selected to bid on it.

Q. Included in there is Re-Com Corporation?

A. That's correct. Four contractors.

Q. Has the Re-Com Corporation performed any work for Reynolds Metals in the past?

A. Oh yes, a number of jobs.

Q. Before this job?

A. Yes, before this job and since.

Q. Is this request on a standard form which is used on all of those contracts?

A. Yes, it is. Now, this particular form of quotation has been in use for about two years. Prior to that we used the same general type of thing, but it was an individually written letter, but the same general information — to bid.

Q. Who is in charge of the Re-Com Corporation?

A. Jack Wright.

Q. Was Mr. Wright ever connected with Rey-

10/23/62 nolds Metals Company?
page 20] A. Yes.

Q. In what capacity?

A. Resident member of the Engineering Department and functioned with a resident engineer and supervising engineer on various construction jobs.

Q. In that capacity, do you know whether or not he had occasion to come in contact with the various contract forms

that you use for this type of job?

A. Oh, yes. When he was on the job, he, as the occasion — all resident engineers are furnished with copies of the bids and copies of the purchase order or contract, as the case would be, for his guide and specifications.

Q. How long was he employed for Reynolds, approximately?

A. Now, I will have to make a guess on this. I would say about two years. He was on several jobs, I would guess, approximately two to three years.

Q. Before he went into business for himself with Re-Com?

A. Yes, sir. He left us and went into business for himself.

Q. Referring specifically to the request for quotations, would you tell us what it says in the opening paragraph of that, please?

A. We say, Attached are our specifications and drawings covering — and then we type in what the work is — at your such and such a plant.

10/23/62
page 21]

Q. What did you type in this case?

A. Phase 2, general, mechanical, and electrical work at the Bellwood Development Plant.

Q. Go on. Read the rest of it.

A. We would appreciate your submitting a quotation for this work based on furnishing all supervision, labor, materials, tools, equipment, unloading, hauling, taxes, insurance, and all other things necessary — parenthesis — unless otherwise expressly provided in the specifications for the completion of this work.

Q. Can you tell me whether or not it makes any difference to Reynolds Metals whether the materials and equipment are owned by the contractor or he gets them somewhere else?

A. Not the slightest, as long as it complies with the specifications.

Q. Is it a concern of Reynolds whether he had someone else do the loading and hauling required in this contract?

Mr. Williams: Your Honor, if Reynolds has a contract with a general contractor, then they are out of the picture insofar as the mechanics by which the contract is performed and so

forth. I understand you are proceeding under the
10/23/62 theory this claim is barred because a general con-
page 22] tractor under 65-26 was in the picture. It would
be under 65-26, if Reynolds was doing it. I think this is irrelevant.

The Court: Mr. Morris, wouldn't the contract speak for itself on that?

Mr. Williams: That's right, and we stipulate that.

Mr. Cantor: We will stipulate that.

Mr. Williams: That is the only proof that is admissible on it.

Mr. Morris: All right, sir. You all have stipulated that. If you would, supply that to the Clerk as Plaintiff's Exhibit — or Defendant's Exhibit No. 1.

The Court: Just the one sheet, or the whole —

The Witness: Your Honor, that is the whole file, beginnning with the Invitation to Bid and ending with the Purchase Order Contract.

Mr. Morris: A great deal of it is irrelevant. I have no objection to Mr. Sutherland putting it all in evidence, if all of you gentlemen —

Mr. Cantor: Whatever is relevant in the contract we think should be in evidence. I haven't seen it. I don't know what it is.

10/23/62 Mr. Williams: You have an extra copy
page 23] of it, don't you?

Mr. Morris: No, I didn't.

Mr. Williams: You do have the pertinent information?

Mr. Morris: I have excerpts written in my handwriting for which I think is pertinent. I can identify by reference any of the items which I consider pertinent from that file.

The Court: Anyway, it is agreeable with me from the standpoint of the record that it wouldn't be typed — printed, except the portions indicated. If you want to offer this, there is no objection. You could offer it as one exhibit if you want. Take the parts out that are irrelevant.

Mr. Morris: If no one else can say just what they think is relevant —

Mr. Williams: In the event you may want a brief or anything in this case, I think we ought to certainly have access to a copy of it. Why don't you let Mr. Morris photostat the

pages he thinks are relevant and provide us with a copy and the Court a copy, and the miscellaneous reading—

10/23/62 page 24] The Court: All right. Will that be agreeable?

Mr. Morris: I think that which we consider relevant. I will be glad to do that. We will consider the items I mentioned are in evidence?

The Court: Yes, sir. And will be introduced as your exhibit as a group.

Mr. Morris: Yes, sir.

Q. (By Mr. Morris) Would you again refer to your contract file there? We have talked about the Request for Quotation. Was any quotation made by Re-Com Corporation?

A. There was.

Q. What was the date on it and by whom was it signed?

A. It's signed on the 19th day of July, 1961, by Mr. Jack F. Wright, who is President of Re-Com Corporation.

Q. What did they propose to furnish Reynolds Metals?

A. Complete per man work covered by the specifications known as Job No. 6694, Phase 2.

Q. What was the — is the language of the first paragraph?

Mr. Cantor: I object, unless he wants to build the record up.

Mr. Morris: I think the Court could go over it this way.

The Court: Go ahead. You may introduce it.

10/23/62 page 25] A. It starts, We propose to furnish all supervision, labor, tools, equipment, unloading, hauling, taxes, insurance, supplies and services, and all other things necessary to construct Phase 2, the 1961 Expansion, Container Development Center.

Mr. Morris: I would like to introduce for the record this as an addition to the original Request for Quotations, as part of our first exhibit.

The Court: All right.

Q. Now, sir, is there an actual purchase order for this contract?

A. There is.

Q. What is the number of that, sir?

A. 10572-M.

Q. What is the date of that?

A. J. Sutherland, Jr.

A. The original purchase order was dated July 26, 1961. There was two subsequent additions to purchase order for work that was not in the original contract, which was subsequent to either order as the job progressed.

Q. Was the original subject to any specifications?

A. It is subject completely to specifications set forth by our engineering department, known as Phase 2.

Q. Now, in the Purchase Order, is there any reference to the General Condition Form R-380?

A. There is.

Q. What is that reference?

10/23/62 page 26] A. The reference is General Conditions Form R-380-1 — dashed — and a copy is physically attached to both the original order to the contractor and to our control copies.

Q. Referring to Paragraph 15 of the General Conditions Form R-380, would you tell us what is required by that paragraph — Re-Com?

A. This is headed, Equipment and Materials. You agree to supply all tools, equipment, and handling facilities including operators that you will need to complete this order. All construction tools and equipment shall be in good operating condition when brought to the job site and so maintained for the duration of the job. They shall be suitable for the work and you will remove them immediately upon completion of your work. You also agree to receive, unload, warehouse, and haul to the job site all material you will supply for this work.

Mr. Morris: All right, sir.

I would like to introduce the Purchase Order referred to by No. 10572-M and attached Condition Form 380, dated July 26, 1961, also as a part of the exhibit.

The Court: All right.

Q. Now, sir, refer to the specifications, if you will, sir. What is the date of the specifications?

A. June 20, 1961.

10/23/62 page 27] Q. Are they the specifications for the job —

A. They are.

Q. — by Re-Com Corporation?

A. They are the specifications.

A. J. Sutherland, Jr.

Q. What is the duration of this job these contracts are put in evidence for?

A. The contract was, as I said, July 26, 1961. The final exchange order was issued on November 30, 1961. Now, frankly, I don't know the last day we worked on the job. That would come under the engineering department.

Q. So from your records, the work that was engaged on September 5, 1961, was some of the work under these contracts?

A. Very definitely.

Q. In referring to your specifications, sir — they are rather lengthy — is there any reference to granular base under special conditions for work to be done?

A. These are not numbered numerically. In addition, our work schedule form makes it difficult sometimes to pick out — It's under Excavating and Filling. That is the paragraph.

Q. What is the scope of excavating and filling under the specifications?

A. The contractor shall excavate for a sufficient distance — one foot minimum — from the work to be installed to allow for inspection and to permit the various trades to install their work. The contractor shall excavate whatever substance encountered for all of the work mentioned above and shown in detail on the drawings. Precaution shall be taken that excavations do not extend below the exact lines of footing and foundations. Otherwise, the contractor shall fill to the proper level with concrete specified for footings. Excavations shall be co-ordinated with concrete work so that excavations are not exposed to the weather for any length of time. All of concrete work around outside shall be backfilled and compacted. All backfill material shall be cleaned of all wood, trash, and refuse. The balance of the excavated material, if not used, shall be used for fill around the area.

10/23/62 page 28]

Q. I have got some notes I took from your records at one time, and perhaps I can help you find it.

A. The next paragraph is Compaction, if that is what you are after.

Q. Yes, sir. If you would, give us that.

A. All materials shall be compacted at optimum moisture content and compaction shall be accomplished by pneumatic tampers, power rollers, and other approved power equipment,

whichever is specified in each case. The contractor shall not flood or water tamp fillings of any kind.

Q. Now, under the same section, Compaction, is there a paragraph about granular material?

10/23/62 page 29] A. Yes, sir. Granular material shall be rolled with a ten-ton power roller or other approved equipment. Rolling shall continue until no further compaction is produced by additional rolling.

Q. Would you refer to the granular base?

A. There is a granular base for the building, which is a six-inch sand base will be required under concrete earth-bearing slab. The granular base shall be compacted as specified above for compacted fill. The granular fill shall be *course,* screened, washed sand.

Q. What is the reason for the requirements of sand under the concrete, sir?

A. That is normally a good construction parctice to control moisture.

Mr. Williams: This has absolutely no relevance. While it is interesting, just from a general standpoint, I have got a lot of other subjects but we aren't going to bring them up in a law suit.

The Court: Mr. Williams, you know, in his opening statement — I don't know what the relevancy is.

Mr. Morris: I suggest, Your Honor, that spreading this sand was the work and trade and occupation of Re-Com Corporation which they were engaged in,

10/23/62 page 30] and that they were required to do by the contractor's specifications. For the purposes of the record, I would like to introduce — to be physically introduced, rather, those following portions of the specifications of the contract for the Container Development Center, dated June 20, 1961, Job 6694, Page Y1-1 through Y1-4.

The Court: It this also going to be a part of your exhibit A?

Mr. Morris: Yes, sir. I will supply copies of all that and return that to Mr. Sutherland.

I have no other questions.

CROSS EXAMINATION

By Mr. Williams:

Q. Under your general conditions of your contract, Mr.

Sutherland, I believe you require any subcontract that is entered into by a general contractor will be approved by Reynolds Metals, is that correct?

A. If it's a subcontract and not only the furnishing of materials.

Q. That's right. But a subcontract, as such, has to be approved by Reynolds before your general contractor can enter into it?

A. Yes. We reserve the right to approve the subcontractor for obvious reasons of competency and other reasons.

10/23/62 page 31]

Q. That is Condition No. 11 in General Conditions, I believe?

A. I believe that is right.

Q. Now, you have no subcontract between Re-Com and Bosher and Conway that you approved, is that correct?

A. No, sir. I didn't even know Bosher and Conway was on the job.

Q. If they had just called them and said, Deliver me a keg of nails, you wouldn't have known about that?

The Court: Wait a minute. I think he can testify as to whether he would have known about that. But whether or not that is comparable or not —

Mr. Morris: I object, also, to its relevancy. It has no relevancy whatever. I think it's an opinion of the witness. Note the exception.

Q. If Re-Com had called Spotless Hardware and said, Deliver us a keg of nails, we are running short, you wouldn't have known about it?

A. No.

Q. And Reynolds wouldn't have cared?

A. No.

Q. And the only thing that you don't try to control in your contracts is the delivery of materials and incidental stuff to the contract itself?

10/23/62 page 32]

A. That's correct. We are primarily concerned with contracts where outside labor is on the job.

Q. But you maintain some control in cases where subcontracts are let directly by the general contractor?

A. That's correct. We reserve the right to approve their

selection of subcontractors.

Q. Your file here, I take it, would show the subcontracts that had been approved by Reynolds during the course of this job?

A. Yes. The contractor — Those approvals, however, of the subcontractors are normally verbal, based on our knowledge of the competency of the contractor with another. I hamstring the general contractor and he will say, I propose to subcontract the electrical to so and so. We say yes. In those instances, there would not be any written records in the file.

Q. The purpose of the contract, and all the documents you have been referring to, are to spell out and solidify Reynolds' obligations and commitments from the general contractor, more than anything?

A. The materials and form of the work —

Q. But they are incidental things that the contractor can do himself in fulfilling his contract with Reynolds that you all wouldn't know anything about?

A. That's correct. We expect a man to have a
10/23/62 maximum amount of freedom consistent with good
page 33] practice to run his job.

Q. You don't ever meddle with Re-Com in making contract haulers or anything —

A. Oh, no.

Q. — so far as you are concerned?

A. No, sir.

Mr. Williams: All right, sir. No further questions. Thank you.

Mr. Morris: No more questions.

(WITNESS STOOD ASIDE)

NOTE: At this point Mr. Morris called as a witness Jack Baum, and there being no response, the following witness was called:

10/23/62
page 34] FRED GRANDERSON,
first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your name?

Fred Granderson

A. Fred Granderson.

Q. By whom are you employed?

A. Bosher and Company.

Q. And how long have you been working for them?

A. I think approximately now about year and six months.

Q. Were you working for them on July 5, 1961?

A. I was.

Q. Now, on that day, what type of delivery did you have to make, if any?

A. Dispatcher instructed me to go leave the main office down on Dock Street and go to the Chesterfield plant to deliver sand to Reynolds Metals Company.

Q. Dispatcher for whom?

A. Southern Materials.

Q. Where did you load up with the sand?

A. At our Chesterfield Plant.

Q. And from there did you go to the job site of Re-Com?

10/23/62 A. I did.

page 35] Q. When you arrived there, were you met by anyone?

A. No. When I first got to the job to make the first trip, when I arrived on the job I saw Mr. Kester.

Q. Mr. Kester?

A. Yes.

Q. Did Mr. Kester say anything to you about the management of your truck, where to put it, and that type of thing?

A. When I arrived on the job, they had a retainer wall I imagine about three feet high. They had put up some long railroad ties so the truck could back over the retainer wall into where they were going to lay this floor.

Q. Who told you to back over inside the foundation?

A. Mr. Kester.

Q. And as you did that, did he —

Mr. Cantor: Why don't you just stop leading this witness and ask him what happened? I think he is on direct examination.

Mr. Morris: He said who it was. I can't see how that is leading.

The Court: Go ahead, pursue the question. I think your

last question might have been leading, but we don't have a jury. Go ahead.

Q. Did you or did you not receive any guidance in backing over this ramp?

10/23/62 page 36] A. Well, that particular day Mr. Kester, he was directing us over the retainer wall where he wanted the stuff dumped in this foundation; because they had — I think they had plumbing fixtures and things, you know, sticking up out of the ground. So when they poured sand out on the floor the plumbing fixtures would be out of the floor, and they would direct us around the circle so we wouldn't knock any pipes down.

Q. After you had gotten inside the excavation, did you or did you not receive any instructions as to what to do with your load?

A. Well, Mr. Kester, he was directing us where to put this particular load. So after I backed over on the ramp the ramp was so close to the right I tried — the right-hand side — Well, I couldn't maneuver the truck around. I told him I was going to pull up and get the right position where — so I could back around where he wanted it.

Q. What did he want you to to do with the load in regards to whether he wanted you to dump it or spread it?

A. He just wanted you to raise the body and dump the load and pull out so it would spread itself.

Q. Now, how do you spread a load when you use the truck?

10/23/62 page 37] A. It depends on the thickness. If you want it real thick, we had this chain on the back. But this particular day they had men out there shoveling the sand after we dumped it. You know, just spread it anyway it fell. So they would pick up the shovels.

Q. Then, can you tell me whether or not you put it in a pile, or whether you were to pull your truck over an area and let it pour out of the back as opposed to a pile?

A. Well, if I can recall correctly, he just wanted to dump it, pull up and let a little bit fall out as I went along.

Q. Did he tell you what area he wanted you to let it fall in, what part of the foundation?

A. He showed me where he wanted it at.

Q. What was the surface of this foundation at that time, was it dirt, or what?

Fred Granderson

A. I don't think I can recall back that far.

Q. In order to get to a position where you could put the load as Mr. Kester suggested, what did you have to do?

A. In order for me to maneuver where he wanted me to put the load I had to pull up.

Q. Do you remember approximately in what area he wanted you to spread or dump this load?

A. Well, he wanted it to my left back at the entrance of the building.

Q. Were you or were you not to come forward with the load and drag it out of the back, or go backwards?

10/23/62 page 38]

A. Well, if I had gotten in the position I wanted, I could have done it.

Q. Is that what he wanted?

A. Well, he said he wanted it dumped some, let it spread out as you roll along.

Q. Had you made any previous trips to this job yourself, as you recall?

A. On this particular job I think I had made one trip that day.

Q. Did you spread the other load at that time, or not?

A. Yes, I had dumped it out.

Q. At whose request?

A. Mr. Kester's.

Q. Now, do I understand you to say that as you poured the sand out of the back of the truck Mr. Kester had other people there spreading it around with shovels?

A. Yes, sir, he had men at the job with shovels spreading it after we dumped it.

Q. Did they or did they not follow you along spreading sand around?

A. I don't know about that.

Q. Did you say anything to Mr. Kester when he asked you to back it around this way to spread the load?

10/23/62 page 39]

A. I told him that I couldn't get in position where I was sitting, I had to pull the truck up to get the sand where he wanted it.

Q. Did he reply to that?

A. Well, he said all right, when I told him I had to pull up.

Q. Now, can you tell us whether or not you were instructed

by the dispatcher of Southern Materials or Bosher and Conway regarding the placement of a load once you get to the job, whether or not you are to —

A. We usually get our orders as to what to do with the load directly from the dispatcher from Southern Materials, where to haul it.

Q. When you get to the job, from whom are you told to get your instructions about spreading it and dumping it and that type of thing?

A. We are instructed to get it from the supervisor on that particular job.

Q. Let me get this straight: On the occasion when you pulled forward, what happened? Did you come in contact with somebody?

A. Well, when I pulled forward I—

Mr. Williams: Your Honor, that goes into the merits of how the accident happened, and it certainly isn't material here. It's stipulated he was injured on the job.

10/23/62 Mr. Morris: By this truck?

page 40] Mr. Williams: By this truck.

Mr. Morris: I had to prove that. Don't go into that. Answer their questions.

CROSS EXAMINATION

By Mr. Williams:

Q. Did Mr. Bosher hire you when you first went to work for his organization, Mr. Granderson?

A. He did.

Q. Are you still with him?

A. Yes, I am.

Q. And you receive your check each week or each two weeks from Bosher and Conway?

A. That's right.

Q. And they are your employers?

A. That's correct.

Q. I believe Mr. Bosher has a plant where he does some of his repair work and where he stores his trucks right next door to Southern Materials' plant on Dock Street, is that correct?

Fred Granderson

A. Yes, sir.

Q. And after you finish your day's work, do you bring your truck back and leave it on Mr. Bosher's premises or leave it at Southern Materials' premises?

10/23/62 page 41] A. I don't know who owns the property we leave the truck on.

Q. When you come to work in the morning, what time is it?

A. Approximately 7:00 or 7:15.

Q. You come to Mr. Bosher's truck, pick up your keys, or where are they left?

A. I go to Mr. Bosher's plant and pick up the keys.

Q. They tell you to go over to the dispatcher of Southern Materials, and they tell you then where the delivery is to be made —

A. That's right.

Q. —of the material that you are to haul that day?

A. That's correct.

Q. On this occasion, because the job site was closer to Southern Materials' Chesterfield plant, they instructed you to go to that plant and get your load, isn't that correct?

A. Yes, sir.

Q. And you went by there and picked up a load as you always did and hauled it to the job site?

A. That's right.

Q. No more complicated than that?

A. That's right.

10/23/62 page 42] Q. And because you don't know where the load is to be dumped or how it's to be used, you have been instructed by Mr. Bosher's dispatcher to find out from whoever is in charge of the job where they want the load dropped, is that correct?

A. Yes, sir.

Q. And you co-operate with them to the extent that you can in dropping the load in the place that is most convenient for them?

A. That's right.

Q. And your job is no more complicated than that. You just co-operate and try to be nice to everybody and get the load dumped where they want it, don't you?

A. Yes, sir.

Q. And you do that five days a week on salary from Bosher,

he pays your salary so far, because you have never been fired, is that right?

A. Yes, sir.

Mr. Williams: All right. No further questions.

The Court: Anything further, Mr. Morris?

Mr. Morris: No, sir. That is all.

(WITNESS STOOD ASIDE)

10/23/62
page 43] The Court: Suppose we take a short break, gentlemen, before we put on the next witness.

(Recess)

PHILIP R. BROOKS,
first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your name and occupation?

A. Philip R. Brooks, District Sales Manager for Southern Materials Company.

Q. As such, in your capacity as District Sales Manager for Southern Materials, have you had any relationships with the Re-Com Corporation or its president, Jack Wright?

A. Yes, sir.

Q. To what extent do you furnish them with supplies?

A. I should imagine we do a hundred percent of their work.

Q. Could you tell me what your price structure is for materials furnished by delivery to the job site as opposed to delivery picked up at one of your plants?

A. We produce and sell sand, gravel, stone and
10/23/62 concrete.
page 44] Q. Yes, sir.

A. With the exception of concrete, we have a F.O.B. plant price.

Q. Just tell me generally what F.O.B. plant price means?

A. That means contractors or individuals can come to the plant and pick up with their own equipment our materials. If, on the other hand, we have Bosher and Conway deliver, we

add unto our basic price the amount it costs us to hire them.

Q. In other words, the price delivered to the job is different from the price at your plant by the amount that you have to pay Bosher and Conway to make the delivery?

A. Yes.

Q. You say pick it up with their own equipment, speaking of contractors. Do you have any objection to them hiring hauling trucks themselves as opposed to using their own trucks?

A. No.

Q. They can pick it up that way, too?

A. They can.

Q. All right. Now, how long have you all been engaging Bosher and Conway trucks for deliveries under your contracts?

10/23/62 page 45] A. Well, I have only been with Southern Materials for about five and a half years, and they have been there ever since I have.

Q. As far as the Richmond plants are concerned, do they haul exclusively for you?

A. Except in dire emergency where we must—say during the construction of Interstate 95, I think we have had to go outside and hire additional people. But other than that, Bosher and Conway does all our hauling for the Richmond district—area.

Q. Is it a written contract with Bosher and Conway, or oral?

A. I don't believe anything is written. I couldn't give a definite answer, but I think it's oral.

Q. In the particular job that we are talking about today, the Container Development Center of Reynolds Metals Company out at Chesterfield County, did you handle the contract for supplies in that case with Re-Com?

A. You mean did I discuss it with Jack Wright?

Q. Yes, sir. And did you all come to a price for various materials he would find necessary at that job?

A. So many jobs pass through my hands it would be very difficult to think back a year and a half ago. But usually—and I say usually—when a contractor bids on a job they will call and ask what the price is for a specific

10/23/62 area, because our price is affected by the close-

Philip R. Brooks

page 46] ness or farness in distance from our various plants due to the additional haul involved.

Q. That is because Bosher and Conway charges more to go further, is that right?

A. Yes.

Q. On this particular job, did Re-Com deal with you for materials delivered at the job site, or picked up at your plant?

A. Delivered.

Q. And prior to this particular job, you had furnished other supplies for Re-Com?

A. Yes.

Q. And what did they do, pick them up, or were they delivered through Bosher and Conway?

A. Other supplies—the other job was the basic concrete. We delivered it in our own equipment.

Q. Southern Materials' equipment?

A. Yes.

Q. You own concrete trucks and no other kind?

A. We have a couple of trailer trucks within the city, but they don't usually deliver. We deliver to our production plant.

Q. In the five years you have been connected with Southern Materials—and you have been—How much of this time have you been dealing with—supplying Re-Com Corporation?

10/23/62 page 47]

A. Ever since they have been in existence, I guess.

Q. Did they always purchase their materials by delivery or send their trucks?

A. I don't think they have any equipment.

Q. All of *salesman* delivered through Bosher and Conway in relation to, say, anything you can't deliver yourself?

A. I would say.

Q. Approximately how long before September 5, 1961, had you been supplying them in this fashion?

A. To that specific job?

Q. And other jobs.

A. Yes. Since they have been organized.

Q. Approximately how long?

A. I couldn't tell you how long they have been in existence.

Philip R. Brooks

Q. Do you know whether it's a number of years, or months?
A. That Re-Com has been in existence?
Q. Yes.
A. No, sir.
Q. Would you—In arranging for a sale by delivery, what is the understanding about the disposition or spreading of the load? Who is to specify how that is to be done?
10/23/62
page 48] A. Well, as soon—

Mr. Williams: I think the best evidence of how that is done has already come in. This man can't add anything to what Mr. Bosher, who owns the truck, and the driver said.

The Court: I think perhaps you mean as far as arrangement with Re-Com?

Mr. Williams: That's right. If he makes any arrangement, he can explain it.

Mr. Morris: If he makes a contract with the people who want the materials, which includes the cost for hauling, and the details of hauling is what I want to develop.

The Court: All right. Go ahead.

Q. (By Mr. Morris) In a contract with—or in this contract with—or generally, in contracts for delivering, who is responsible for the placement and the plan of placement of the load at the job?

A. We dispatch the load to the job. Once it arrives on the job, the superintendent for the construction company or one of his associates tells Bosher and Conway's truck driver where to put it and how to place it.

Q. And in your contracts with these persons, is it or is it not understood that the load will be placed or spread, so far as it is physically possible, just as the contractor wants it?
10/23/62
page 49]
A. Yes, sir.

Q. And is that or is that not your instructions to Bosher and Conway?

A. We try our utmost to please the public, and without the public we are not in business. And therefore we have asked Bosher and Conway to do as the purchaser requests, wherever possible.

Philip R. Brooks

Mr. Morris: Answer any questions Mr. Williams might have.

CROSS EXAMINATION

By Mr. Williams:

Q. I believe Southern Materials sells ready-mix concrete, sand, gravel, and related materials?

A. Yes.

Q. If I called Southern Materials and wanted a load of ready-mix cement to build a patio, you would send one of those big trucks that are owned by Southern Materials out to deliver that?

A. Yes, sir.

Q. And those trucks are owned, maintained, and controlled by Southern Materials completely?

A. Yes, sir.

Q. You have even a radio hook-up in them, I
10/23/62 believe?
page 50] A. That's right.

Q. Do you have a certificate from the Corporation Commission that permits you to use those contract carriers for delivering your own materials?

A. You have gone beyond my scope. I am in charge of sales, not production.

Q. A man in charge doesn't know, if we are working over these things, Mr. Brooks, as much as a man on the job site would, does he?

A. Man on job site knows most everything going on the job.

Q. If I ordered from you in the Sales Department of Southern Materials a load of sand and I wanted it delivered because I was making a different type patio, then you would have to get a contract carrier to haul that sand out there and deliver it?

A. Yes, sir.

Q. And in the Richmond District you use Bosher and Conway?

A. Yes.

Q. Southern Materials operates fairly extensively in Virginia, do you not?

A. Yes, sir.

Q. Do you have other districts?

Philip R. Brooks

A. Three ways: Richmond, Norfolk District,
10/23/62 Jacksonville, Florida.
page 51] Q. And in each one of the districts, is it necessary for Southern Materials to use the services of a contract carrier to make the delivery?

A. I wouldn't say that. That depends upon the district.

Q. Who delivers your materials to the job sites down in the Norfolk District where you don't have trucks to do it yourself?

A. I have charge of Richmond, therefore I couldn't tell you.

Q. Don't you have *an* home plant? The company doesn't run leaderless.

A. It runs under our president, and that is divided into three districts. And the president of each district can designate exactly how he would like to run his district with certain limitations. And in this specific district, we hire a truck.

Q. Do you have a facility up in Fredericksburg, Virginia?

A. Yes, we do.

Q. Do you have a plant up there?

A. Yes, sir.

Q. What contract carriers do you use to deliver your materials up there?

10/23/62 A. We don't deliver any materials up there. We
page 52] use Massaponax Sand and Gravel Company and they in turn haul—Bosher and Conway hauls from them, and we have our production plant for concrete. We produce concrete. We don't sell sand and gravel.

Q. When you send your own delivery truck, you deliver concrete?

A. Yes, we do.

Q. Then all of your concrete deliveries are made in Southern Materials' trucks, absolutely?

A. Completely, with the exception of times when we are beyond our scope, and then we will hire upon occasion other ready-mix trucks.

Q. In other words, you will engage contract carriers to make up the deficiency?

A. That's right.

Q. Same thing if Bosher and Conway can't meet your customers' demands with their capacity to deliver the goods, then you engage other contract carriers?

A. Seldom, but it has happened.

Q. But if business is so good, as we move into the '60's, and you need other trucks and Bosher and Conway doesn't have them, then you will engage other contract carriers?

A. Yes.

10/23/62 page 53] Q. And you pay that other contract carrier what his rate is or the best deal you can get with him for that particular batch of material?

A. Yes.

Q. And sometimes the arrangements you have with Bosher and Conway, you strike the best bargain you can?

A. No. We have a definite area, zoning system from a basic plant. Usually on highway work we have—

Q. Did you have an difficulty getting a qualified contract carrier?

A. No, sir.

Q. Did anybody at Southern Materials, that you know of?

A. I couldn't answer that question.

Q. In other words, Mr. Bosher's thoughts would be more reliable on that?

A. Most definitely.

Q. You weren't at the job site the day the accident occurred?

A. No, sir.

Q. You have no direct knowledge as to whether no one was driving or not, except what somebody told you?

A. That's right.

Mr. Williams: No further questions.

10/32/62 page 54] REDIRECT EXAMINATION

By Mr. Morris:

Q. Mr. Brooks, do I understand that in your dealings with Re-Com they had three choices in the purchase from you: Send their own trucks and get the materials—sand, hire a carrier themselves to get the sand, or have you deliver it to the area?

A. That is up to the contractor, whatever way he wants to do it. It's up to him.

Q. Any way he wants it handled?

A. Yes.

Q. And the difference in price is based upon what you

have to pay to have someone else haul it for him?

A. That's right.

RECROSS EXAMINATION

By Mr. Williams:

Q. Do you have any radio hook-ups in Mr. Bosher's trucks so that your own dispatcher can control them after they leave?

A. No.

Q. From your dispatcher, all those trucks get is the destination, then they report to the superintendent or man in charge at the delivery site?

10/23/62
page 55]

A. That's right.

Q. And you have seen that they are instructed to be co-operative with your customers so that no one will be inconvenienced more than absolutely necessary?

A. Yes, sir.

The Court: Anything further, Mr. Morris?

Mr. Morris: No, Your Honor.

By the Court:

Q. Mr. Brooks, as I understand it, as far as Bosher and Conway are concerned, you have a regular standing arrangement with them based either on zone or mileage, but the rate is fixed between you all, and that same rate would apply on the distance and same time; but if you go outside and get some other contract carrier, you negotiate a separate price each time depending on what you can do with him?

A. Judge, the trucking industry is pretty much uniform. They have a certain amount of overhead and equipment and we recognize what their costs are and in turn we try to be fair with them and still have it within reason. Therefore, I would say that for what we pay Bosher and Conway we could employ other truckers for the same amount of money that we pay them.

Mr. Morris: You may go, as far as I am concerned.

Mr. Williams: Perfectly all right.

10/23/62
page 56]

(WITNESS STOOD ASIDE)

Mr. Morris: I would like to call an employee of Re-Com

Corporation and in view of the fact his actual position is adverse in this claim I would like to call him as an adverse witness.

The Court: I suppose that has got to be established, wouldn't it? In other words, his testimony is going to have to qualify him.

Mr. Morris: My understanding is if he holds a position which is adverse I do not have to demonstrate that he is going to be actually unfriendly in the sense that he is unwilling to answer questions, and that type of thing.

The Court: Doesn't he have to have some financial interest in the outcome or stand to be interested in the outcome of the case financially before he is adverse in nature?

Mr. Morris: To the extent that he is an employee of Re-Com and it's Re-Com's expense for compensation, an insurance interest and this being a compensation case, he is no different from an insured in an automobile case
10/23/62 who has sued for some loss. He would certainly
page 57] be an adverse witness, and the employee who was driving the carrier under the circumstances would be. I don't know if it actually came out—if it's coming out of his pocket, but indirectly his income depends upon the income of Re-Com.

The Court: Just because he is a employee of the company that is primarily involved doesn't make him adverse. A bus driver suing the transit company, the bus driver is not necessarily, by virtue of the fact he is a employee, adverse.

Mr. Morris: It's my thought he would be. I may be wrong about that.

Mr. Williams: I think the test is if the bus driver would have to respond by way of indemnification for his tort to the company he would be adverse, but any general employee who wouldn't be liable for indemnification to his employer would not be an adverse witness in the sense.

The Court: That is my understanding of the rule. I may—I don't know what his testimony will be. Unless it does reveal that he has got some interest in the outcome other than the fact that he is just an employee of the company primarily involved, I don't think that makes him ad-
10/23/62 verse.
page 58] Mr. Morris: All right. With the proper reservation we will call Mr. Kester.

DARWIN D. KESTER,
first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Would you tell us your name?

A. Darwin D. Kester.

Q. On September 5, 1961, by whom were you employed?

A. Re-Com Corporation.

Q. Where were you working?

A. Reynolds Metals Container Development Center.

Q. At this time, are you still employed by them?

A. Yes, sir.

Q. And are you employed as a supervisor?

A. Carpenter Foreman.

Q. At the time of the accident on September 5, 1961, did you assume any responsibility for the placement of a load delivered by Bosher and Conway?

A. Yes. I was told to tell him how to dump it.

10/23/62 page 59] Q. And in regard to the place where it was to be dumped, was it to be dumped inside of the foundation, or outside?

A. Inside.

Q. What was the extent of the construction on the building?

A. We had a retaining wall up.

Q. About how high was that?

A. I would say about fourteen inches above the ground.

Q. Nothing else standing above the ground at that time?

A. (Witness shaking head)

Q. Was there any method of entrance or exit over this wall provided?

A. We used railroad ties.

Q. What was it for?

A. To keep from breaking the wall.

Q. Was it intended to enable vehicles to get in and out of the foundation?

A. That was what it was for.

Q. Were you present at the time that Fred Granderson came up to the job with the truck load of sand?

A. Yes, sir.

Darwin D. Kester

10/23/62 page 60] Q. Would you tell us whether or not you assisted or directed him in getting into the foundation and over these railroad ties and things?

A. I helped assist him.

Q. In what way was that?

A. I helped direct him across the ramp.

Q. Did you tell him when he got to the job where—How did he know he was to go inside the foundation?

A. I told him I wanted it inside.

Q. Was anyone else there at that time giving directions also?

A. Yes, sir. Jamerson was.

Q. Mr. Jamerson? Once inside, was there any particular place that you would like this load to be spreaded?

A. Yes.

Q. Where was that?

A. To the driver's left.

Q. To the driver's left. And over how much area did you want it spread?

A. I told him to start dumping and as he dumped to pull out. I didn't tell him how much area he had to spread.

Q. Spread as much over the area as he could that way?

A. (Witness nodding head)

10/23/62 page 61] Q. Are dump trucks of this nature equipped for fine spreading, for example?

A. I expect they are.

Q. Did you see any equipment on the back?

A. There is chains on the back to control the tailgate.

Q. In this way, how would you spread sand to meet what you wanted done there that day?

A. All I wanted him to do was to open the tailgate and as the sand dumped out pull forwards.

Q. That would spread the sand over a area rather than in a big pile?

A. Yes.

Q. Did you have other men there helping with the spreading?

A. That was the first load.

Q. What was the purpose of spreading the sand there in the foundation?

A. That was for compacting to bring it up to the specifications before we poured the concrete slab.

Darwin D. Kester

Q. You heard the specifications of a six-inch granular base. Is that the specification you were trying to come up to spreading the sand?

A. Yes.

Q. After it was spread, were you not to roll it
10/23/62 or to tamp it?
page 62] A. We tamped it.

Q. Then it was for this purpose that you had Fred Granderson deposit the load and pull forward as he did?

A. He pulled forwards. I didn't direct him to pull forwards.

Q. I know. Other than the time he pulled forward and hit the fellow — you wanted him to dump the load and pull forward at the same time — that is what you wanted him to do?

A. Yes.

Q. When you instructed him, was there any discussion as to how he was going to get his truck into position —

A. No.

Q. — in reference to the fact how he was going to have to back around?

A. No. I just showed him where I wanted it dumped and how to dump it.

Q. Did he then begin to move his truck to get into position where you wanted it?

A. Yes.

Q. And at that time, is that when the accident happened?

A. Yes.

Q. Did Mr. Jamerson have a supervisory ca-
10/23/62 pacity also in connection with this load?
page 63] A. (Witness shaking head)

Q. Was he present at all times during the discussion with the driver about where you wanted the load?

A. No.

Mr. Morris: Would you then answer any questions these gentlemen might have?

CROSS EXAMINATION

By Mr. Williams:

Q. As foreman of carpenters, I imagine any deliverers of supplies would ask you where the supplies were supposed to go, would they not?

A. Yes.

Darwin D. Kester

Q. It was Re-Com's obligation under the contract with Reynolds to see that the specifications called for in the contract were complied with?

A. Right.

Q. And in order for Re-Com to fulfill its contractual obligations at that time, you had to have a great many supplies delivered there to the job site at one time or the other?

A. We have to have deliveries. Sure.

Q. They came from different sources — hardware stores, lumber mills, gravel plants — all the different
10/23/62 places that make materials that go into con-
page 64] structing a building, is that correct, sir?

A. Yes, sir.

Q. And as supervisor, especially foreman in charge of carpenters, part of your job is to see that when those deliveries of materials would come to the job site that they put them in the right place?

A. Right.

Q. And that was all you were doing in this case, was getting this deliverer of the supplies, Bosher and Conway, to put the sand in the right place?

A. Right.

Q. And Bosher — and Granderson had no more connection with this job than any other deliverer of supplies?

A. No.

REDIRECT EXAMINATION

By Mr. Morris:

Q. You were instructed by someone superior to you to have this load of sand placed as it was?

A. Right.

Q. Who was that?

A. Mr. Wright.

Q. He is the head of Re-Com Corporation?

A. Yes, sir.

10/23/62 Q. You were instructed or told where it was to
page 65] be put and where it was to be spread?

A. Right.

Q. And is it true that your instructions to the driver were in connection with Mr. Wright's instructions to you?

A. Right.

Q. If the material had been dumped at the curbline, how would you have gotten it in?

A. We would have had to have shoveled it.

Q. Your men?

A. Yes.

Mr. Morris: Thank you very much.

★ ★ ★ ★ ★

Dep.
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page 3]

JACK BAUM,

introduced on behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your name?

A. Jack Baum.

Q. Mr. Baum, on September 5, 1961, were you the dispatcher for the Southern Materials Corporation in Richmond?

A. Yes, I was.

Q. Are you familiar with the operation between Southern Materials and Bosher and Conway Hauling Company?

A. Yes, I am.

Q. Is there a difference in the charge for materials picked up at your plant and those delivered?

A. Yes, there is.

Q. What is the amount of the difference, what does that represent?

A. It represents what Southern Materials pays Bosher and Conway for hauling the materials.

Q. Is it exactly that amount in all cases?

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page 4]

A. That is correct.

Q. Tell me how you first come in contact with the trucks on the day of operation?

A. I get into my office and get ready for the day and at 7:00 o'clock all the trucks come on to the yard and I dispatch them from there.

Q. And when the drivers first come to your yard can you tell me whether or not you instruct them in any way regard-

ing the loading of the vehicles, that type of thing, how it is done?

A. I instruct them how much to put on their trucks and what type of material and if they have to go some place else to be loaded I tell them where to go, and as to loading their trucks, I instruct a new driver when he first comes there, after that it is up to them.

Q. What do you instruct the new driver to do?

A. How to operate the scales and the bins, and not to load his truck too heavy so that it runs on the ground and has to be cleaned up, things like that.

Q. Can you tell me whether or not you observe the drivers, or have them observed to see if they comply with your instructions?

A. They are observed. We have a yard crew — Southern Materials has a yard crew that takes care of the bins, loading at the bins, and keeps the area underneath the bins cleaned out so the trucks can back up to it without any trouble.

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page 5]

Q. Do you give them any instructions at all regarding the filling out of the tickets, routes to follow, or any other items?

A. A new driver is instructed in who to get to sign his ticket, what to do if someone doesn't want to sign it, where to get it signed, which copies to leave, and which to bring back. After we instruct them the first time they can do this. After that we don't bother with any further instructions. As far as the older drivers, they know those routine things. I have to instruct them where to deliver the material on every job. They have to be given directions.

Q. What control, if any, do you exercise over these drivers when they come to work in the morning?

A. Well, I have — I had, rather, full control over the drivers with the exception of hiring and firing. If a driver did something that I objected to I could stop them from hauling material which would be the same thing as firing them, as far as I was concerned. But if Bosher and Conway could use them somewhere else, that was their business.

Q. But you could not discharge them from Bosher and Conway?

A. No, sir.

Q. What were your instructions regarding the dumping

and spreading of the loads at the various job sites?

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A. We determined how the customer wanted the material delivered when they ordered and we make notes of everything when we take an order. Some things we have to ask customers to make sure that it is right before we deliver material and if they wanted it spread I instructed the drivers and made sure it was a truck capable of spreading material.

If they just wanted it dumped I explained that. If they wanted it dumped in a certain place I explained that. If a man said he would meet the truck I tell the driver who to look for. In some cases, which wasn't very often, the men won't be there and I would ask them where they wanted it dumped and they would leave a stake or something like that there.

Q. Did you give them any instructions at all regarding following directions of the people on the job?

A. Well, we do. That has been pressed pretty hard on new drivers. Of course, old drivers know that they have just got to go along with our policy which is when a driver gets on the job the man in charge, the foreman on the job, or whoever is receiving the material, you do anything that he wants you to do as long as you think it is not going to endanger yourself or your truck. And if you think that the man is absolutely wrong and you think he wants you to back in a place where you will go over a hill, the drivers then are instructed not to argue with the man, but to get out of the truck and call a salesman out, or Bosher and Conway will go out.

Dep. 10/23/62 page 7]

Q. Were you present, or did you have any connection with the order for two loads of flume sand on September 5, *1962*, for the Re-Com job at Chesterfield?

A. The order came into my office and I took the order and I phoned the order to the dispatcher at Kingsland Reach, and sent the trucks down there to haul.

Q. Was this an order they would pick up, or did you have to send trucks out?

A. This was an order that we delivered.

Q. Had you made any previous deliveries to the same job?

A. Yes. As long as I was dispatcher for Southern Materials we had been delivering to that company and we had delivered a lot of material to the same job already.

Jack Baum

Q. What vehicles did you use to make those deliveries?

A. We used — We were using small trucks on that job, because I think for some reason the big trucks couldn't get to the job, too close quarters.

Q. Were the trucks that were sent to Re Com Southern *Material's* trucks, or Bosher and Conway's?

A. Bosher and Conway's.

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Q. Were their trucks used on the previous deliveries you referred to?

A. That is correct.

Q. The ticket that is filled out for a delivery, how is it marked if it is done by a Bosher and Conway truck?

A. We put the customer's name, the truck is weighed on the scales and the ticket is put in the machine and stamped with the amount of material on the truck, and the truck number is put on the ticket, and that is about all.

Q. What if it is picked up by the owner of a truck he owns?

A. We put down the amount of material that he got, what kind it was, if it was a cash deal, the cash is put down, stamped paid, or if it is credit customer like Re Com we just put on what kind of material, how much they got, and as far as the truck is concerned we put own.

Q. You put "own" on the ticket?

A. That is correct.

Q. Is that the procedure that was used for the two loads that went to Re Com on September 5, 1961?

A. We delivered it, so, we had the truck numbers on the ticket, Bosher and Conway's truck numbers.

Mr. Morris: All right. Answer Mr. Williams questions.

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CROSS EXAMINATION

By Mr. Williams:

Q. Southern Materials doesn't have any profit sharing arrangement with Bosher and Conway, does it?

A. To the best of my knowledge, they don't.

Q. The charge that is made if Bosher and Conway makes the delivery as opposed to the customer picking it up is the rate that you would normally have to pay a contract carrier, isn't it?

A. That is correct.

Dr. John F. Butterworth

Q. And these deliveries of yours, or these drivers that left one of your plants with a load of material that you were delivering to a job site, or customer, were instructed to be co-operative with the customer in trying to *to* expedite the delivery at the most *convient* place and dump it and deliver it?

A. That is correct.

Q. You wouldn't want to put the customer to the trouble of carrying it in a wheel-barrow a hunderd yards and dumping it, but would back the truck up a little closer to the job, is that correct?

A. That is true in almost every case. The exception would be if a truck had to back over a curb or we had to back in somebody's backyard to get to their yard, something like that, then we have to have the customer sign the ticket accepting responsibility. If they didn't do this we couldn't get up to the job.

Dep. 10/23/62 page 10]

Q. If I ordered a load of cement to build a patio, you all would dump it where I told you, wouldn't you?

A. Yes.

Q. And your drivers would be instructed to co-operate with me as they reasonably could, so I wouldn't ruin my back lugging it in a wheelbarrow, wouldn't they?

A. As long as he didn't have to knock any fences down, he would.

Mr. Williams: Thank you. I don't have any further questions.

★ ★ ★ ★ ★

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page 3]

★ ★ ★ ★ ★

DR. JOHN F. BUTTERWORTH,
first being duly sworn, testified as follows:

DIRECT EXAMINATION

★ ★ ★ ★ ★

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page 5]

Dr. John F. Butterworth

* * * * *

By Mr. Cantor:

Q. Have you had occasion to examine Norvell T. Jamerson, the plaintiff in this case?

A. Yes, sir, I have.

Nov. 1964 page 6] Q. When and where did you first examine Norvell Jamerson?

A. The patient was admitted to the Medical College of Virginia, emergency case, on September 5, 1961.

Q. Do you have the approximate time on that?

A. He was admitted at approximately 1:35 p.m.

Q. What was his general physical and medical condition at that time?

A. At that time, he was complaining of tenderness in the right sacroiliac, or that area of the pelvis in the back, and also he was complaining of pain over the right hip area. He had some pain and swelling with tenderness in the area of the proximal end of the right tibia and, fibula. That is the perpendicular end of the shin bone in this area (indicating).

Q. What were your findings as a result of your examination?

A. You want my opinions as to his condition diagnosis?

Q. Yes, sir.

A. He was found to have a fracture of both the tibia and fibula within the proximal third area, and there was some suspicion on the initial X-ray that there was possibly some injury in the right sacroiliac area?

Q. What is the right sacroiliac area?

A. May I demonstrate?

Nov. 1964 page 7] Q. Yes, sir.

A. The sacroiliac region is this portion of the back (indicating). It is actually a portion of the pelvis.

Mr. Russell: Let the record show the doctor put his hand on what would be commonly called the right hip, in the lower part of it or middle part of it, I guess.

The Witness: That is the lay term.

Mr. Russell: Below the waist line.

Q. Could you describe the type fracture that you diagnosed that Mr. Jamerson had?

A. Well, it was a comminuted closed fracture.

Dr. John F. Butterworth

Q. What does comminuted mean?
A. It means the bone is crushed.
Q. Were any X-rays taken at that time?
A. There were.
Q. Would you illustrate your findngs, if you can, by means of X-rays that were taken?

NOTE: At this point the witness approaches the view box and testifies from the X-rays, as follows:

A. This is an X-ray that was made at the Medical College of Virginia and the number that is on this X-ray corresponds with that on the jacket of the Medical College. It is an X-ray of Mr. Jamerson. This is the thigh bone — the thigh bone or the femur.

Nov. 1964 That is the knee joint. It is the incline bone
page 8] or tibia. That small bone to the outer side of this is called the fibula.

If you will note this, you will see there are multiple lines running through the upper end of the so-called shin bone. This connotes that there is a comminuted type fracture. The terminology closed fracture merely means that there were no breaks between the skin and the bone. This used to be termed simple. We now prefer to use the term closed fracture.

You will also notice a comminuted fracture of the upper end of the fibula. You can see this on X-ray, so this is also comminuted.

Q. All right, sir. What is the function of the tibia?
A. To bear weight.
Q. That is the big bone, is it not, sir?
A. That's correct.
Q. What is the function of the other little bone?
A. The little bone in this area is primarily the attachment of large ligaments that prevent instability at the knee joint. The little bone in the mid-portion, which is not relative to this case, does aid in support of the body.
Q. But the primary function here is about the ligaments around that joint, is that correct, sir?
A. Yes, sir.

Nov. 1964
page 9] Mr. Cantor: If Your Honor please, we would like to have this X-ray marked as Plaintiff's Ex-

hibit No. 13.

Mr. Morris: No objection.

The Court. All right.

NOTE: The above-referred-to X-ray is marked and filed by the Court as Plaintiff's Exhibit No. 13.

By Mr. Cantor: (Continued)

Q. Doctor, what procedure was used in treating Mr. Jamerson's injuries at that time?

A. Initially, the fracture was reduced and placed in a plaster cast.

Q. What does the term reduced mean?

A. It means that those pieces that were not in their proper place were put in their proper place.

Q. Are there any special surgical tools used or —

A. There are for some reductions. In this case, it was done by manual — in a manual fashion.

Q. Does that require the use of any rope or block or tackle construction to do this?

A. No, sir.

Q. In other words, the patient, is he sedated when this is done?

A. He can be.

Nov. 1964 Q. You don't recall whether —

page 10] A. He does not necessarily have to be.

Q. You don't recall whether Mr. Jamerson was sedated at that time?

A. I do not, sir.

Q. Now, could you tell us what medication was prescribed for Mr. Jamerson at that time?

A. The exact medication, I do not have in my report. I am quite sure that narcotics were prescribed for him.

Q. What would be the purpose of prescribing narcotics at that time?

A. For pain.

Q. Do you recall whether or not a bed board or rail or anything was used in treating Mr. Jamerson at the hospital during this period?

A. I am quite sure a bed board was used because we orthopedists almost always use those, and particularly in view of the examination. Side rails may have been used, I don't recall.

Dr. John F. Butterworth

Q. Was anything else done to bring the swelling down of this fracture or reduce the fracture?

A. Elevation to reduce the fracture?

Q. Well, reduce the pressure inside the cast. Maybe I am not —

Nov. 1964 page 11] A. To be careful that the cast did not become too tight, the cast was split and a seam of plaster was removed. There were also orders written to have the cast — the leg in the cast elevated, and ice bags applied to it. This is a routine procedure.

Q. What is the purpose of placing ice bags on it?

A. It tends to hold down some subsequent swelling.

Q. Do you have in your notes when Mr. Jamerson was released from the hospital and how long he was there under your care, sir?

A. Yes.

Q. When was he released?

A. He was discharged from the Medical College on the 22nd of September 1961.

Q. Was it necessary while he was in the hospital to change the cast at any time?

A. It was, sir.

Q. When was that done?

A. On the nineteenth of September, 1961.

Q. What was the purpose of that, sir?

A. As the initial swelling subsided, the cast will in most cases become too loose, and therefore, once it is felt that the swelling has subsided a tight-fitting plaster is applied

Q. How long was this cast? I mean what part of his body did it cover, I should say?

Nov. 1964 page 12] A. From the groin to the toes.

Q. Doctor, I hand you Plaintiff's Exhibit No. 5 and ask you whether or not this is the cast that was on his leg?

A. I am sorry, sir. I could not say this is his cast. I presume that it is.

Q. Is this the type cast to which you refer?

A. This is the type cast.

Q. From the groin to the toe?

A. That's correct.

Q. Now, Doctor, when did you next see Mr. Jamerson after

his release from the hospital?

A. On the 5th of October, 1961.

Q. Did he have any complaints at that time?

A. Yes, he did, sir.

Q. What were they?

A. He was still complaining of pain in the so-called sacroiliac area and he also had some pain in the low back or lumbar region. He also stated he became nauseated unless he was lying on two pillows.

He also had a complaint that his right ankle tended to swell when his leg was in a hanging down position.

Q. What treatment did you prescribe, sir?

A. I suggested at that time that he apply local heat and massage to the area in his back that was painful.

Nov. 1964 page 13]

Q. When did you next see Mr. Jamerson?

A. On the 19th of October, 1961.

Q. What did you find at that time, sir?

A. On examination, there was some apparent tenderness in both the sacroiliac areas, especially on the left.

Q. What treatment did you prescribe for that, sir?

A. It was suggested he continue his local treatment to the painful area.

Q. When did you see Mr. Jamerson again, Doctor?

A. On the 9th of November 1961.

Q. What, if any, complaints did he have at that time?

A. He was still complaining of some backache but felt it was improving.

Q. Did you prescribe any further treatment then?

A. No change was made in his treatment.

Q. When did you next see him?

A. 20th of November 1961.

Q. What were his complaints at that time, if any?

A. He felt at that time that his back complaints were improving. At that time — well, I have answered your question as to his complaints.

Q. What was done at that time?

A. At that time, his cast was removed and the X-ray showed some healing.

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Q. Did you ask him to return again?

A. I did, sir.

Q. When did you ask him to return?

Dr. John F. Butterworth

A. 4th of December 1961.
Q. Did you examine him on the 4th of December?
A. Yes, sir.
Q. What were your findings at that time, sir?
A. At that time, he demonstrated a range of motion of 30 degrees from the fully extended position. In other words, considering this full extension, he could bend it down 30 degrees (indicating).

Mr. Cantor: Let the record show that Dr. Butterworth extended his right leg in full straight out in front of him then dipped it 30 degrees.

Q. That was the extent of Mr. Jamerson's motion at that time, sir?
A. That's correct.
Q. Did you observe any other physical findings at that time?
A. He was only complaining of a minimal amount of pain in his back at that time.
Q. Did you give him any medication for any reason?
A. Yes, sir.
Q. What type of medication did you give him?
A. He was given a prescription to procure some prednizone. That is a type of cortisone medication.

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Q. What is the purpose of that, sir?
A. It was hoped that this type of medication would cut down on the irritation in the joint while he was attempting to stretch the motion in it. Regain more motion.
Q. What joint were you referring to?
A. Knee joint.
Q. Does this in any way tend to retard the improvement or the healing process at the same time, sir?
A. You say retard?
Q. Or hold it back or slow it up?
A. Not in the amount that was given, no, sir.
Q. Did you ask him to come back again?
A. Yes, sir.
Q. When did you ask him to return?
A. 27th December, 1961.
Q. What did you find at that time?
A. At that time he had increased his range of flexion or bending of the knee 50 degrees so that at that time he could

bend his knee down 80 degrees from a fully extended position.

Q. Did he have any complaints then?

A. None other than the usual ones when one is attempting to regain more motion in the knee, sir.

Q. Did you ask him to return?

Nov. 1964 page 16] A. I did.

Q. When did you next see him?

A. 12 January 1962.

Q. Did he have any complaints at that time?

A. He was still complaining of pain — I would like to correct my statement. He had mentioned some discomfort in his right ankle and foot, and on the 12th of January he still complained in this area.

Q. Did you take an X-ray?

A. Yes, sir.

Q. What did the X-ray show, sir?

A. The X-ray showed rather marked osteoporosis.

Q. Tell us what that is, sir?

A. This is a term, medical term, to denote the demineralization, or so-called washing out of the calcium from the bone.

Q. Did you give him any medication for that condition, sir?

A. I did, sir

Q. What did you prescribe then?

A. A prescription was again given him for prednizone.

Q. Did you ask him to return again after this?

A. I did, sir.

Q. What day was that, sir?

A. On the 6th of February, 7th February, 1962.

Nov. 1964 page 17] Q. All right, sir. What were your findings at that time?

A. He was improved at that time and was able to walk some even without a cane.

Q. Did you ask him to come back again?

A. Yes, sir.

Q. When did you ask him to return?

A. 28 February 1962.

Q. What did you find at that time?

A. He showed further improvement.

Q. Did you ask him to return again?

A. Yes, sir.

Q. What was his next visit with you?

Dr. John F. Butterworth

A. 21 March 1962.

Q. What were his complaints to you then, sir? What was the situation?

A. He stated he had tried to return to work on 5 March. However, according to the patient, his employer said he had nothing available which he felt he could do or could perform.

Q. Did he have any other complaints, sir?

A. He continued to complain of a slipping sensation on the outer aspect of his right ankle.

Q. Did he tell you when this slipping sensation was worse?

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A. Yes, he did.

Q. How did he describe that?

A. He stated it was made worse when his foot was turned outward.

Q. Did you advise him on any procedure for that, sir?

A. I did.

Q. What did you advise him for that?

A. I suggested that he have a correction placed on his shoe which would build up the inside of the heel and would tend to prevent his foot from going into the outward position.

Q. That is to alleviate pain in his ankle that he was complaining about?

A. That was what it was prescribed for.

Q. Did you ask him to return again?

A. Yes, sir.

Q. When did you next see him, sir?

A. On 12 April 1962.

Q. Did you examine him on that day, sir?

A. Yes, sir.

Q. What was your impression at that time, sir?

A. It was my final opinion at that time that the patient had reached his maximum improvement, that he had suffered a percentage loss of the use of his right leg.

Q. Do you have this percentage?

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A. I do, sir.

Q. What is that percentage?

A. Thirty per cent.

Q. Could you tell us, or do you have an opinion, was his general ability impaired because of this disability you have referred to?

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A. As of April 1962?
Q. April 1962, yes, sir.
A. Yes, sir. I felt that he had very definitely.
Q. He had definite disability at that time?
A. Yes, sir.
Q. And you felt his earning capacity was impaired?

Mr. Morris: I object to the leading question.
The Court: Objection sustained.

Q. (Continued) Could you tell us whether or not in your opinion his earning capacity or his work capacity was impaired in April 1962?

A. I could not tell you by knowing of this at all, no, sir. I would think his work capacity would have been lessened.

Q. Yes, sir. That is what I will ask you. Now, did you next see Mr. Jamerson again?

A. I did, sir.

Q. Do you have your notes with you or your report of the next time you saw him?

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A. Yes, sir. He was seen again on 3 July 1963.

Q. What were your findings at that time, sir? Just approximately. That is a year or fourteen months later, I presume, isn't it?

A. That's correct. At that time, he complained of discomfort along this outer aspect of the right ankle. He stated that it tended to swell after prolonged standing. He stated that at this time he had to wear a shoe two sizes longer on the right. He also stated that his right knee was sore at times and that he had difficulty kneeling on the knee. That he couldn't run. His back — he was still complaining of some pain in the back area.

Q. All right, sir. Did you make any further treatment or prescribe any further treatment at that time, sir?

A. No, sir.

Q. Did you evaluate his condition at that time, sir?

A. I did, sir.

Q. What was that?

A. Do I take it your question is to what I felt his disability was or what his general condition was?

Q. His disability.

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A. I felt his general disability had lessened a great deal during the time, the interim, that I had not seen the patient.

Q. Did you feel he had still —

Nov. 1964
page 21] Mr. Russell: If Your Honor please, he is leading the witness.

The Court: Wait a minute. Go ahead. Frame it so it won't be leading.

Q. (Continued) Could you tell us whether or not in your opinion he still had any disability?

A. I felt he still had some disability, yes, sir.

Q. Did you express that percentage, or is that the type of thing you can express?

A. I did not express it at that time, no, sir.

Q. Did you feel that he had reached his maximum improvement at that time, sir?

A. Well, I had felt in April 1962 that he had reached his maximum improvement, but, apparently, my opinion was not correct.

Mr. Cantor: Your witness.

CROSS EXAMINATION

By Mr. Morris:

Q. Doctor, would you pardon us for a minute. I haven't a report in regard to the 23rd. May I look at your notes.

A. Certainly.

Q. July '63.

A. Would you like me to show it to you.

Nov. 1964
page 22] Mr. Morris: I apologize for the delay. We do not have a report in regard to this.

The Court: That's quite all right.

Q. Doctor, you had not seen this gentleman from the period of April 12, 1962 all the way over to July 1963?

A. That's right.

Q. He came to you for no treatment at all?

A. That's correct.

Q. Were you aware that this case was scheduled for trial

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in July 1963 just before he came to see you the last time?

A. I was.

Q. And the purpose for your seeing him was to testify at the trial at that time rather than treat him as a patient?

A. That's correct.

Q. So, in regard to treating him as a patient and giving him medical treatment you haven't had to do that since April 12, 1961.

A. That's right.

Q. '62. Excuse me.

A. '62.

Q. And despite the fact that in 1962 in April you thought he had some general disability that would be permanent, you found that it had lessened a great deal when you saw him in November of 1963?

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A. July '63. If you will bear with me on that.

Q. I think you know what I am talking about.

A. Yes, sir.

Q. There isn't any reason to suspect that the process has not continued, I don't suppose, is it? It is something that might continue to improve?

A. It is possible.

Q. In regard to his present condition, are you acquainted with Dr. William Deyerle?

A. I am, sir.

Q. Is he a competent orthopedist in the City of Richmond?

A. I should think so, yes, sir.

Q. Fully qualified to evaluate orthopedic injuries?

A. Yes, sir.

Q. If he had seen this man after you and found that he was even better than when you found him, you would not quarrel with that conclusion since he had the last look at him, I assume?

A. I would certainly think his opinion would be valid.

Q. You would think his opinion would be valid?

A. (Indicating in the affirmative).

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Q. You mentioned that in the hospital he was given drugs for his pain. Drugs for pain are quite effective in this day and time, are they not, Doctor?

A. Yes, sir.

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Q. They help quite a bit when the patient is in pain?

A. Yes, sir.

Q. He was out of the hospital after seventeen days with his broken leg?

A. I haven't counted them up, sir, but —

Q. Approximately from the 5th to the 22nd?

A. Yes, sir.

Q. After that time every visit that he paid you was in your office. I mean, he came to your office?

A. That's correct.

Q. You didn't have to visit him in his home or that type of thing?

A. No, sir.

Q. Now, in regard to the hip and sacroiliac pain you have mentioned that you found, I believe it was down in this low part of the back, is that correct?

A. Yes, sir.

Q. Where I have my hand just below the waist line, is that about right (indicating)?

A. That's about right, sir.

Q. No complaint about pain in the front, is that right?

Nov. 1964 page 25]

A. Not that I recall.

Q. You determined positively in your mind that there was no fracture of his pelvis, did you not?

A. In my mind, I would say there was none.

Q. I will be referring to your reports, so you might want to get them, too. In regard to this man's back, when you saw him in December, December 7, 1961, this was several months after the accident. Referring to your report to Mr. Cantor in that regard, you referred to him having only minimal complaints in regard to his back, is that correct?

A. Correct.

Q. And he told you prior to that on October 19, which I believe is mentioned in the same report, that his back was much better. I believe that is the expression you used?

A. That's right.

Q. You say that on November 20 that he was improving?

A. Correct.

Q. Then in December it was minimal?

A. Correct.

Dr. John F. Butterworth

Q. I believe I am correct in saying that there isn't any other reference in your report to the back after that?

A. That is correct.

Q. And you make an effort to put the patient's complaints in the report as they come up as best you can?

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A. As best we can.

Q. So, after the visit of December 7, 1961, you made no more mention in that report that he had trouble with his back?

A. I made no more mention in the report.

Q. When you saw him the last time here in July of 1963, there were no objective findings, that is, nothing that you could find wrong with his back?

A. I was unable to come up with any true objective findings.

Q. In the medical way of expressing that, you would have no objective basis for his complaints. Is that the way of expressing it?

A. I was unable to account for his complaint on a bony basis.

Q. Talking about muscle spasm, your muscles, if you have been having pain, spasm to protect your back from further pain?

A. Right.

Q. There was no spasm in his back, was there?

A. No, sir.

Q. The X-ray findings in regard to his back were negative?

A. Correct.

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Q. All were negative in regard to the back?

A. Yes, sir.

Q. You never really considered that the back was disabling or a significant problem in this case, did you, Doctor?

A. Not at the time the disability rating was made, no, sir.

Q. You certainly didn't feel it was needed or suggested for operation?

A. No, sir.

Q. Now, in regard to the man's ankle, he did not suffer any fracture to his ankle, did he?

A. None that we could identify.

Q. You X-rayed that and found no evidence of it?

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A. Right.

Q. The only foot problem that you saw that he had was one that you needed to put a one-eighth inch medial wedge to raise the heel?

A. That was referable to the ankle.

Q. At that time to the ankle. Certainly, you didn't feel the ankle difficulty posed any operational problem?

A. I did not consider any operation for the ankle.

Q. It didn't warrant it, in your opinion?

A. Not when he was under my supervision, no, sir.

Q. In regard to his knee or his leg, rather, the bone breaks were in the leg as opposed to the knee itself?

Nov. 1964 page 28]

A. Right.

Q. They were not below the knee joint itself?

A. Correct.

Q. When his leg was broken, the bones did not protrude from the skin?

A. No, sir.

Q. They stayed in place as showed on the X-ray?

A. Roughly.

Q. That is what you all used to call a simple fracture?

A. We prefer the term closed fracture.

Q. Closed fracture. This broken leg, would you say it had an excellent healing process?

A. I think it has done very well.

Q. It is a good solid bony union, is that correct?

A. That is correct.

Q. The knee cap itself was not involved in this, was it, Doctor?

A. Not that I was aware of, no, sir. I found no evidence to substantiate that it was.

Q. And, I believe that the last time you saw this man in July 1963 you found that he only had a 15-degree loss of flexion?

A. That's correct.

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Q. If I might stand up here, Doctor, and demonstrate this. Can you see —

Mr. Cantor: If Your Honor please, I object to counsel demonstrating. I think the doctor can demonstrate anything he wants to.

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The Court: He is on cross examination. Go ahead. That's all right, sir.

Mr. Cantor: Let the record show which leg he is raising.

Mr. Morris: I am raising my right leg.

Q. (Continued) Does this represent what you would call a 90-degree flexion (indicating)?

A. That's correct.

Q. I am holding my right thigh as best I can parallel to the ground.

Mr. Cantor: Let the record show he is holding on to the chair with his right hand.

Mr. Morris: That's right. I will agree to that. And the lower part of the leg is dangling straight down forming roughly a right angle. That represents 90 degrees.

Q. If you go past this, it gets to a 100 degrees and even, is that correct —

A. Yes, sir.

Q. — as I pull my leg up close to my hip. And, the only loss he had then was in this area that you found permanent?

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A. Correct.

Q. There was only fifteen degrees of limitation of motion?

A. Right.

Q. So, he had full complete motion from here to here and from here he lacked only 15 degrees of normal range?

A. That's correct.

NOTE: At this point the witness resumes the witness stand, and the matter continues as follows:

Q. The knee joint itself moves smoothly without difficulty?

A. Yes, sir.

Q. The ligaments of the knee were perfectly all right?

A. Yes, sir.

Q. Then, I assume, Doctor, since you didn't see him for treatment purposes after April 1962, you thought it wasn't necessary for him to have any further treatment in regard to his ankle and knee and his orthopedic problems?

A. I didn't feel there was any specific need, no, sir.

Q. In regard to this gentleman's use of a crutch and a cane, when he left the hospital on the 22nd day of September, 1961, he was on crutches at that time, is that correct?

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A. Correct.

Q. And if you would refer to your report of December 28, 1961, it was your advice to him at that time that he should go to one crutch?

A. Correct.

Q. Then, referring to the report of January 13, 1962, four or five months after the accident, you advised him to discontinue the single crutch that he was using, is that correct?

A. That is correct.

Q. That was your medical advice to him?

A. That's right.

Q. Then, in your report of February 8, 1962, about a month later you found that he was using only a cane and not the crutches?

A. Correct.

Q. And he was only using that part of the time?

A. That is correct.

Q. And your advice to him in regard to getting off the crutch and off the cane was it would be helpful to get him using that leg normally?

A. That is definitely correct.

Q. That was your medical advice for his own good?

A. Correct.

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Q. There is no further reference in your report after that to a use of a cane or use of a crutch?

A. No, sir.

Q. I assume from that that he did not come to your office, that you saw, on crutches or using a cane any time after that?

A. That would be my assumption since this report was made of it.

Q. Of course, it was your opinion that there wasn't any need for it in any event, is that true?

A. I did not feel that it was.

Q. In regard to his ability to work, when you first examined him in the hospital and during the month of September 1961, your experience with this type of break of the leg indi-

cated that you expected him to have only six months of disability? I am referring to a report — two reports dated in September. Dr. Decker, I believe.

A. Yes, sir. This would be a rough average, which is the only thing that one can make at the time of the initial injury.

Q. At the time of the initial injury, in the first month, you thought he wouldn't be disabled any more than six months?

A. At that time, it was my opinion.

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Q. Will you refer to your report of January 13, 1962. Did you state at that time that he could return to quote light work end quote.

A. Did you say January 13?

Q. Yes.

A. No, sir.

Q. You did not? Well, where is the one (looking through papers)?

A. I think you will find it February 8.

Q. February 8. Yes, sir, I am sorry. You were right. February 8, 1962, you found his condition was improved. It was suggested that he try to return to light work, is that correct?

A. It was suggested that he try to return to light work if available.

Q. Then, you saw him again on March 1, 1962, and you found that he was much improved at that time. Is that your report, much improved?

A. That's correct.

Q. It was therefore suggested that he try to return to his work on March 5, 1962?

A. Correct.

Q. Then, again in your report of March 22, 1962, you stated that he could return to his regular duties on April 12, 1961.

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Mr. Cantor: Wait a minute. Just a minute, now. There is nothing in there about that. I think you are reading something into the report that is not there, Mr. Morris.

Mr. Morris: If that is so, I will correct it.

Q. (Continued) All right. I will put it this way. March 2, 1962, the last paragraph, Doctor (reading) I have asked that he return to this office in two and a half weeks at which time I trust we can return this man to his regular work duties. Is

that a proper statement?

A. That's correct.

Q. Doctor, in regard to your medical reports up until April 1962, when you last saw him for treatment, did you mention at any time any unsteadiness on his part in your report?

A. No, sir.

Q. Or any inability to climb or work on scaffolds in your report?

A. Not in this report.

Q. Then, when you saw him in April '62, I believe if I am not mistaken, that your feeling about his limitation to work was limited to climbing a scaffold and ladders and things, is that correct?

A. Well, Mr. Morris, at that time it was suggested that he return to his regular work. It was my understanding that this man's job was a carpenter.

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Q. Yes, sir.

A. It was my feeling that if one is rated with a disability, although he may not be able to return to all his work duties, in many cases they can go back to doing what would, in essence, be termed a regular job.

Q. Yes, sir. By that, you mean that he could do most everything a carpenter could do in April of '62 with some limitations?

A. There were limitations, yes, sir. I suggested to him, although it is not written in the report, that it would not be wise for him to be on ladders and things. I felt he would be jeopardizing his own health.

Q. This was the limitation you put on his carpentry work in 1962, April, is that correct?

A. That was specifically spelled out, yes, sir.

Q. And he could do carpentry work ground level or not too high up, would that be fair?

A. Well, I have not been a carpenter. I would have said he could return to his regular work duties to his capacity which I do not believe I would have been capable of rendering such an opinion.

Q. Doctor, was he capable at that time of driving a motor vehicle?

A. It would have been my opinion that he could have.

Nov. 1964 page 36] Q. Could he drive a truck?

A. I think so.

Q. Could he use his right leg to have handled the brakes and accelerator and that type of thing?

A. I would think he could have, yes, sir.

Q. Worked at gas stations or carpenter work on the ground or painting on the ground, that type of thing?

A. I should think so.

Q. Laying tiles and things that had to do with ground work?

A. He was complaining of pain in his knee. He might have had some difficulty if he had to be on his knee.

Q. This was in April '62. Then you found a rather marked improvement the next time you saw him approximately a year later.

A. That's correct.

Q. And his disability had been substantially reduced in your opinion?

A. Yes, sir.

Q. Now, Doctor —

Mr. Cantor: Excuse me. I want to ask what is this?

Mr. Morris: It is a hospital record. You have a copy of it.

Mr. Cantor: I don't know.

Nov. 1964 page 37] The Court: Would you like some time. It is about time for a recess. I don't want to hold Dr. Butterworth here, but we will recess for ten minutes if you want to, because I take it that you will have some redirect examination after the cross examination.

Mr. Cantor: Yes, sir.

The Court: All right, gentlemen. The jury will recess for ten minutes, and during this recess let me again caution you not to discuss the case with anyone other than among yourselves and do not permit anyone to discuss it with you.

NOTE: At 11:45 a.m., recess is had until 11:59 a.m., whereupon court is reconvened, the witness resumes the witness stand, and the matter continues before the jury, as follows:

By Mr. Morris: (Continued)

Q. Doctor, can you identify this collection of documents.

A. This appears to be the chart of the patient for the Medical College of Virginia.

Q. Is this information his hospitalization in September 1961 immediately following the accident?

A. Yes.

Mr. Morris: Your Honor, we offer this as defendant's exhibit.

Nov. 1964 page 38] The Court: All right, any objection?

Mr. Cantor: If Your Honor please, there are certain papers which are not relative to this case. I do not believe they should be referred to. I would like to discuss those matters with the Court if they are, sir.

The Court: All right. Suppose we do this. I will mark this for identification, Mr. Morris, then I will hear you all at the lunch hour.

Mr. Morris: I understand that it is accepted with the exception of certain documents which he questions?

The Court: Right.

Mr. Morris: Which he will specify.

NOTE: At this point the above-referred-to hospital chart is marked for identification by the Court.

By Mr. Morris: (Continued)

Q. In regard to the complaints to the low back and sacroiliac, you stated you had X-rays made on more than one occasion and found no injury to the pelvis, is that so?

A. I X-rayed his pelvis and lumbar spine on several occasions and found no definite bony injury.

Q. During the period of time that this man was in the hospital, did you see him rather regularly?

Nov. 1964 page 39] A. Yes, sir.

Q. You saw him quite a number of times in your office after that?

A. Correct.

Q. At any time, Doctor, do your notes reflect that he was suffering from any diarrhea?

A. My notes do not reflect that, no, sir.

Q. Do your notes — how about the hospital chart, have you read the hospital chart, Doctor?

A. Not recently, no, sir.

Q. Doctor, first of all, your office notes and charts contain no reference to any such complaint?

A. No, sir.

Q. Do you have any recollection that the hospital chart shows any such complaints?

A. Of extensive diarrhea?

Q. Yes, sir.

A. No, sir.

Q. Diarrhea?

A. Not that I recall.

Q. Does the hospital chart or do your notes reflect any complaint by this man during the period of time that you saw him of vomiting blood?

A. I don't have any recollection of such, no, sir.

Q. This is a rather serious type of thing, isn't it, Doctor?

Nov. 1964 page 40]

A. Can be, yes, sir.

Q. You make an effort to make a note in the chart or on your notes of all important complaints a man has, do you not?

A. Correct.

Q. You have no such notes in regard to that?

A. No, sir.

Q. Do you have any notes in your records there or the hospital chart that you were aware of the fact this man for a period of seven months including a part of the time in the hospital had bloody diarrhea approximately twenty times a day?

A. No, sir.

Q. You have no such records?

A. No, sir.

Q. Do you have any record, Doctor, that he complained at any time in the hospital or to you that he had diarrhea and was messing the bed in the hospital and things of this nature?

A. I don't recall it, sir.

Q. Was there any history given you that you have any record of or in the hospital chart that he had pain in his abdomen or cramps in his abdomen?

A. No, sir. I have no record of this, no, sir.

Dr. John F. Butterworth

Q. The history that was given contains no reference, does it, Doctor, to a direct blow to the abdomen?

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A. No, sir.

Q. Did you at any time put this man on any diet?

A. No, sir.

Q. At any time was it suggested to you that he had any internal injury of any kind, sir?

A. No, sir.

Q. Doctor, if there had been any of these foregoing symptoms that you had no notes of, would they have not suggested to you that an internal medical specialist should see the man?

A. I wouldn't say an internal medical specialist, but I would say if any of these had been of any significant note, if I felt they warranted investigation, the appropriate person would have been called out without any hesitation.

Q. From September 1961 until you last saw him in April 1962, there was no such person called?

A. Not that I recall.

Q. No notes of any of these. Did you give this man medication for the six months prior to June '62, did you prescribe any medication for him for the six months prior to June 1962?

A. To June 1962?

Q. Yes, sir. Yes, for these last six months of the year.

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A. I don't recall. I have to look at my notes for the time I gave him medication for his foot.

Q. Was there any medication?

A. That was in January.

Q. In January. You prescribed none since January of 1962?

A. I don't have any record that I did, sir.

Q. Now, Doctor, finally, did you have any physical findings of injury to his right foot?

A. There were no X-ray findings of injury to his right foot. It is quite conceivable the patient had a sprain of his foot and ankle at the time of his initial injury.

Q. When you last saw this man in July of 1963, he had this 15-degree loss of use and flexion? Again, I am demonstrating for the record. This is approximately 15 degrees, is that correct?

A. Correct

Dr. John F. Butterworth

Q. Then, at that time, he was capable of climbing a ladder without experiencing difficulty?

A. It would be my opinion that at that time he could do climbing duties on a ladder.

Q. And, in fact, Doctor, at that time, taking all his complaints into consideration, if you would refer to your notes, he told you that he would be doing just fine if his back would only clear up?

A. That is a notation I made on my records.

Nov. 1964 page 43] Q. Of course, from December 1961 you had no further reference to it?

A. Correct.

Q. You found no physical findings to justify —

A. I was unable to come up with any orthopedic explanation for pain to his back.

Q. No orthopedic explanation for pain in his back?

A. That's right.

Mr. Morris: That's all.

REDIRECT EXAMINATION

By Mr. Cantor:

Q. Doctor, in July '63, did you make any findings relative to the size of his right leg or left muscle or right muscle?

A. I did.

Q. Would you tell us what those findings were, sir?

A. Yes, sir. There was a one and one-half inch atrophy of the thigh muscle on the right as compared to the left. That is determined by taking a tape measure and determining the circumference of the thigh, the midportions on both sides and comparing the measurements. The right side measured one and one-half inches less than the left.

Q. Also, the medical record, does this indicate the diagnosis made, page 18 and 20, when Mr. Jamerson entered the hospital on September 5, 1961, sir?

Nov. 1964 page 44] A. Does this represent the diagnosis that was made when he was admitted?

Q. Yes, sir.

A. No, sir.

Mr. Morris: Just a minute —

Q. What does that mean?
A. This diagnosis puts a request for physical therapy.
Q. What diagnosis?
A. The diagnosis on here states fracture of the right tibia, fibula and ilium.
Q. What is the ilium?
A. The ilium is a part of the pelvis.

Mr. Morris: He hasn't been asked if this is his diagnosis.

NOTE: At this point colloquy is had between Court and counsel, which is reported but in the interest of brevity is not here included in this transcript, whereupon the Court states as follows:

The Court: I think the point is well taken. I think, Mr. Cantor, they are correct in their objection. I think that, ordinarily, of course, we would pass on this right now, and if you want to designate what portion you object to, I will pass on this now so it can be admitted in evidence or rejected, and if it is admitted then you may pursue this as you are doing now.

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NOTE: At this point lengthy colloquy is had between Court and counsel, out of the presence of the jury, which is reported but in the interest of brevity is not here included in this transcript, following which the jury returns to the courtroom, and the matter continues as follows:

JURY IN:

The Court: All right, Mr. Cantor.

By Mr. Cantor: (Continued)
Q. Now, Dr. Butterworth, on page 20 of the hospital record, Defendant's Exhibit No. 1, does this reflect any diagnosis of Mr. Jamerson?
A. Yes, sir.
Q. What does that reflect, sir?
A. This is a nurse's record that reflects the diagnosis was made and taken directly from the emergency room sheet.

Dr. John F. Butterworth

Q. What is that diagnosis?

A. The diagnosis here is fractured tibia and fractured ilium.

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Q. On page 30, what does that indicate?

A. That is the emergency room sheet, which reflects the initial impressions of the admitting physician, and it is actually the emergency room sheet at the Medical College of Virginia.

Q. What does that sheet reflect insofar as fracture, or diagnosis of fracture?

A. That sheet shows — Dr. Clements has as his diagnosis a fracture of the right tibia and fracture of the right ilium.

Q. All right, sir. When you say fracture, what are those two again?

A. Fracture of the tibia or shin bone, and a fracture of the ilium or the portion of the pelvis.

Q. I notice in all of these three diagnoses they do not mention a small bone. Is it a general practice to omit that bone?

A. No, sir, it is not a general practice.

Q. It is not. In other words, those three diagnoses do not include or do not show the fracture of the — what is the small bone called?

A. Fibula.

Q. Doctor, often in your practice do you rely on the type of complaint which is called a subjective complaint from your patient, sir?

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A. In what way?

Q. In the diagnosis of the injuries.

A. Yes, sir.

Q. What is a subjective complaint as opposed to an objective complaint?

A. Well, I think that in general a subjective complaint is a description of a feeling that the patient has, whereas, an objective complaint is something that you can actually see.

Q. So, in other words, this type of feeling is not usually something you can demonstrate by X-ray?

A. That's correct.

Q. I believe it has been agreed by counsel, that since you could not find your bill from your recent move, that you were paid $270.00, or your charge is $270.00 for that?

A. I was unable to come up with the explicit bill. I feel

quite sure that the bill has been paid.

Mr. Cantor: We have no further questions of Dr. Butterworth.

Mr. Russell: Let me see this chart for a minute, please, sir.

The Witness: All right, sir.

RECROSS EXAMINATION

By Mr. Morris:

Nov. 1964 page 48] Q. Referring to this emergency room diagnosis, a fracture of the ilium or pelvic bone, this was not borne out, was it, Doctor?

A. That is correct.

Q. Is that incorrect?

A. That is correct.

Q. In fact, they didn't have all the — both bones were broken in the leg. They had only one break therein, and they had a diagnosis of a fracture of the hip, and they didn't have it there?

A. That's right.

Q. You are positive in your medical opinion, are you not, that he did not have a fracture of the hip?

A. That he did not have a fracture of the ilium, yes, sir.

Q. Referring to the X-ray reports and referring to what that says about the pelvis —

A. All right, sir.

Q. What does it say?

A. It says a report that was read by Dr. Mandeville, who is a radiologist, the gist of the report is the lumbar spine shows scoliosis to the right. This means there was a curvature of the low back bending toward the right side. On the report it says negative four, and then it is scratched through, and then it thereafter reads: Fracture of the superior rim of the right ilium just above the sacrum one inch in length.

Nov. 1964 page 49] Q. Then —

A. Here again, this is Dr. Mandeville's report, negative is scratched out. There is also a note on here made by me signed by me stating that repeat film did not show this, referring to the fracture.

Dr. Thomas Beath

Q. What about the pelvic bone and hip?

A. They were reported as negative.

Q. So, there won't be any question about it, in your opinion, there was not any fracture of the ilium?

A. As I have stated, X-rays made of the lumbar spine or low back and the pelvis repeatedly did not show any fracture.

Q. In regard to scoliosis, you refer to a curve. That, ordinarily, is a congenital condition, isn't it, Doctor?

A. No, sir, not ordinarily. I would say that in this case the scoliosis was probably due to some bending of the back. This can be produced by pain.

Q. Now, you prescribed some shoes for this gentleman back in your treatment of him, didn't you?

A. Yes, sir.

Q. You didn't prescribe any different size shoe for him, did you, Doctor?

A. No, sir.

Nov. 1964 page 50]

Q. The size you prescribed for him was the same size?

A. I suggested he procure a good supportive type of shoe. No mention was made of mismatched size.

★ ★ ★ ★ ★

DR. THOMAS BEATH,

first being duly sworn, testified as follows:

DIRECT EXAMINATION

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Nov. 1964 page 52]

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By Mr. Cantor:

Q. Have you had an occasion to examine Mr. Jamerson, who is the plaintiff in this case, sir?

A. Yes, sir.

Q. Will you tell us when and where that first examination was?

Dr. Thomas Beath

A. It was in my office on April 19, 1962.

Q. Now, as part of that examination, did you take a history?

A. Yes, sir.

Q. Will you tell us what that history was?

A. The history was that he was injured sometime before in September 1961, and that he was injured by a truck sort of running over him, running over him in some way, and I think a couple of times. As I understand, it hit him, or ran over him, and part of the injury was that his leg was sort of drove in lengthwise and then bent into a backward position at the knee. But, he was treated by Dr. Butterworth and his associates over a period of time. He had a cast on his leg and he had a good deal of difficulty with his knee, his ankle, and back over a period of time.

Nov. 1964 page 53]

Q. Let me ask you this. Were X-rays made at that time at your request?

A. Yes. X-rays were made by Dr. Galston a few days afterwards.

Q. Do you have those X-rays with you?

A. Yes, they are here.

Q. Would you please present those X-rays to us and let's see if it will assist you in your findings, sir? Do you have more than one?

A. Yes, there are about a dozen films here. They show the back, they show the knee and the ankle; and the interpretation of all except of the region of the knee is negative.

Q. Do you have that one in the region of the knee?

A. Yes, sir.

Q. Will you show that to us, sir?

A. That was made some months after — April 24, 1962. These are X-rays of the knee.

Q. Can you put them over here, Doctor.

NOTE: At this point the witness approaches the view box and testifies from the X-rays as follows:

A. This is a view of the knee region looking from front to back through the bone, and there is an old fracture line. This is the knee here. There is the old fracture line involving both bones. There is the small bone. Near the upper end and a continuation of the injury shown as a dense line of bone which represents

Nov. 1964 page 54]

the healed fracture.

Mr. Cantor: May I have the X-ray marked as Plaintiff's Exhibit.

NOTE: The above-referred-to X-ray is marked and filed by the court as *Plaintiff's Exhibit No. 14.*

A. (Referring to second X-ray) This is looking from the side. It just tells the same story. It shows the remainder of the fracture through the main bone. It doesn't show very well on that film.

On the ankle, there is some evidence of bone softening, which represents either lack of use of the bone or —

Mr. Cantor: We would like to have this marked.

The Court: 15.

NOTE: The above-referred-to X-ray is marked and filed by the Court as *Plaintiff's Exhibit No. 15.*

Q. You say you have some pictures of the ankle?

A. (Tendering another X-ray). The picture of the ankle at the same time, and we can interpret this as showing the general softening of the bone. The strength of the bone was weakened by absorption which can be associated with an injury higher up or can be associated with a local injury. But, there is no actual, let's say, break of the bone or dislocation of the bone, as shown on these films.

Nov. 1964 page 55] Mr. Cantor: We would like to have marked, if Your Honor please, this film as plaintiff's exhibit.

NOTE: The above-referred-to film is marked and filed by the Court as *Plaintiff's Exhibit No. 16.*

NOTE. The witness resumes the witness stand.

Q. Doctor, will you tell us the function of the knee joint, sir?

A. Well, the function is to let the knee bend in walking

and climbing and doing what a person does with the knee joint.

Q. Will you describe the relationship of those two bones where the fracture occurred with respect to the knee. Does this have any connection with the knee?

A. Well, the fracture, as shown, is an inch beyond the knee, beyond the knee in the bone about the level of the knee cap, and the fracture is about an inch below.

Q. What relationship does the small bone have with the ligaments, if any, of the knee?

A. Well, one, part of the ligaments of the knee is attached to the small end of the bone, but I don't think it has any practical bearing, you might say.

Q. What about the ankle?

A. Well, the ankle allows the foot to move, gives resilience in walking, running, jumping and climbing, so on.

Q. Will you tell us what your findings were as a result of your examination of Mr. Jamerson at that time in 1962?

Nov. 1964 page 56]

A. Well, he had limitation of motion of the knee joint by not quite half. His knee, from a straight position to about that position (indicating), then it was stuck. He had a little discomfort in his knee, but not very much. The ligaments were stable, so it wasn't wobbly and so on.

Did you ask me about the ankle too?

Q. Yes, sir.

A. The ankle would move satisfactorily, but he had soreness and the feeling of slipping on the right side of the foot near the ankle at the location of the peroneal tubercle, and it impressed me at that time as having been loosened in some way.

Q. Was that demonstrated to you by your feeling, how did you determine that?

A. Well, by feeling it and the feeling giving the impression of satisfactory moving at the location, but, very definitely, I was influenced by his report of how they seemed to slip, seemed to him to slip.

Q. Now, as a result of your examination and findings, how did you diagnose his injuries?

A. Well, at that time I diagnosed it as a restriction of motion of the knee due to some adhesion at his knee, that held

his knee from moving. I felt at the time there was some loosening of the attachment of these leaders or tendons
Nov. 1964 at the ankle, on the side of the ankle, at the foot,
page 57] and that he had a sprain of his back at the time.

Q. Do you have an opinion whether or not he was disabled in any way because of his injuries at that time?

A. Oh, yes. He did have definite disability. Of course, disability sometimes is used in a little different definition. We, in medicine, use the word disability to mean the person is not necessarily out of work but unable to perform physically satisfactorily.

Q. In your opinion as a physician, do you feel that he could perform his work satisfactorily at that time?

A. No, sir. I felt quite sure he could not.

Q. All right, sir, when did you next see Mr. Jamerson?

A. Well, I saw him again a few days later on April 25. That was after the X-rays were made, but that is all a part and parcel of one study.

Then, I saw him again on May 25 to go over the situation and make sure I had understood it well. Then, again —

Q. Was he working on May 25?

A. 1962?

Q. 1963.

A. Oh, this is 1962.

Q. Excuse me, '62. What did you find in '62?

A. Oh, no special difference. Really, that group of visits was all part and parcel of the study of the
Nov. 1964 case.
page 58] Q. When was the next time you saw him?

A. June 1963.

Q. What did you find at that time?

A. Well, I found him a good deal improved generally and that he had been back at work for some time.

Q. I beg your pardon. Would you go back. I forgot to ask you in your examination of 1962 in April or May did you have any definite findings about his lower back difficulty, sir?

A. Yes, sir. He had tenderness in his lower back and it was reported to be giving him a good deal of discomfort.

Q. Where could you pinpoint that tenderness?

A. Lowermost part of the hollow of the back and around and anatomically referred to as the sacroiliac.

Dr. Thomas Beath

Q. All right, sir. Going forward to your examination in 1963. At that time did Mr. Jamerson report as to whether he was working or not?

A. Yes, I think so.

Q. Did he tell you how long he had been working when you saw him in 1963?

A. Well, my — I just don't have it written down, but it was in the spring of 1963. As I remember, it was around February March, something like that.

Nov. 1964 page 59] Q. Based on your previous examination of him in 1962 and talking with him, did you feel it was reasonable for him not to be able to work until the spring of 1963?

A. I thought so, yes.

Q. You examined him in 1963. Did you find any residual injury present at that time?

A. Yes, sir.

Q. What did you find, sir?

A. Well, he had some residual in his back, in his knee, and in his ankle.

Q. Now, did you examine him again?

A. Yes. I next saw him just a little while ago, in November 1964.

Q. What did you find at that time.

A. Well, I found that he was still further improved and particularly in regard to his knee and ankle, but in all three aspects he impressed me as being further improved, particularly in his knee, which was a surprising improvement because he was able to bend his knee within a few degrees of what he did the opposite knee, but he still had some limitation of motion of the knee, a little evidence of some soreness in attempting to bend his knee completely, which would, I judge, prevent him from squatting readily. He had some soreness in his back, tenderness in his back, which I judged would slow him up a little.

Nov. 1964 page 60] Q. When you say his back would slow him up, does that have any connection with his ability as a carpenter to climb or work?

Mr. Russell: That is a leading question.

The Court: Objection sustained. You might ask him if he

knows what his occupation was and ask him what limitations, if any —

Q. (Continued) Do you know what his occupation is?
A. Yes.
Q. What is his occupation?
A. It is a carpenter.
Q. What limitations, if any, does that back injury at this time present to you about his inability, sir?
A. I felt in reviewing it now that it would bring out soreness in his back if he undertook to go back to unrestricted work activities, but he could undertake a good deal of work and perform well but not without some restrictions.
Q. Did you have any further findings in regard to his ankle at this time?
A. Yes, sir. He has some soreness of his ankle at this time. At this time, there is more restriction to his ankle joint on the other side, and, again, I am surprised that the problem about the tendons in his ankle seem to have resolved rather well, be pretty well over.

Nov. 1964 page 61]

Q. Doctor, what is your charge for services rendered to Mr. Jamerson?
A. Well, I have a charge against him now of $145.00.

Mr. Cantor: I have no further questions at this time.

CROSS EXAMINATION

By Mr. Morris:
Q. Did you have a report, Dr. Beath, on the reference of this patient?
A. Yes. Mr. Cantor referred him.
Q. He had been treated up until Mr. Cantor referred him to you by Dr. J. F. Butterworth?
A. That's what I said.
Q. He had received competent orthopedic treatment up until that time, had he not, Doctor?
A. As far as I know, he had.
Q. You saw him in April 1962, the one time —
A. Yes, sir.

Q. — or two or three times in a week?

A. Yes. All part of the same group.

Q. The next time you didn't see him again until July 1963?

A. Well, yes, sir. The last time I saw him was June 1962, but I had put that pretty much in the group. The next time was July 1963.

Nov. 1964 page 62] Q. That was when this case was coming up for trial, just before —

A. Excuse me. It was June 1962.

Q. This was when the case was coming up for trial, 19 July 1963.

A. I think I remember something like that.

Q. He came to you for evaluation for trial at that time?

A. Yes, that is right.

Q. Again, in time he came back to see you just before this trial for evaluation for the trial?

A. Yes, sir.

Q. He didn't come back at all in between those times, did he?

A. No, sir.

Q. Now, Doctor, you make a practice to make a full and complete history of the complaints people give you when they come into your office?

A. I try to, but I don't get it as fully as I would like.

Q. Everything you consider significant you put down in your notes?

A. Well, in my notes, in this case everything I have on that is in the report that —

Q. Everything that you have?

Nov. 1964 page 63] A. Everything I have is in the report, the report dated May 25, 1962.

Q. To get all of the complaints and difficulties he is having, it is essential to form a proper diagnosis?

Q. Well, I guess the more one knows about it, the better his understanding is, but I know one thing, we, not infrequently, don't get all of the points, that's true.

Q. The only thing that you have any reference to here, are his knee, back, his ankle and his coccyx, is that correct, Doctor?

A. I think so, yes, sir.

Q. Then, I take it then to pick up, again, you said that aside from any back, ankle and coccyx, there were no other com-

plaints that you had?

A. Not that I recorded.

Q. Your X-rays do not reveal any fracture of the pelvis, or ilium, did they?

A. No, sir.

Q. I believe you made a note when you saw him that he was not in severe distress and he handled ordinary activities with ease?

A. I think so.

Q. That was in April 1962?

A. That is my recollection, true.

Mr. Cantor: He didn't see him in April. When did you say this was?

Nov. 1964 page 64]

Mr. Russell: He said April '62.

Mr. Cantor: The doctor hasn't described his handling anything with ease in 1962.

Mr. Morris: He just said he did.

Q. Isn't that correct, Doctor? Will you refer to your report of May 25, 1962.

A. Yes. My notes say (referring to report) Superficially he certainly is not in any severe distress. In the ordinary activities around the office here is able to undertake them with comparative ease.

Mr. Cantor: Around the office?

The Witness: Yes, sir.

Q. In 1962, in April, he was not in severe distress, and he handled ordinary activities around the office with ease, is that correct?

A. Yes, sir.

Q. And that same report, you refer to, he told you he had not been on crutches since the early part of the year, that is 1962?

A. Yes, sir, that is in — that is correct.

Q. That is what he told you?

A. The early part of the year, that's what he told me.

Q. In regard to his ankle, I understood you to say that you were heavily influenced by what he felt?

Nov. 1964 page 65]

A. Yes, sir.

Dr. Thomas Beath

Q. Is that what we call subjective complaint?

A. Yes, sir.

Q. So that if he said he felt pain, you give that full credit?

A. I don't give it full credit. I take it into consideration.

Q. You say you relied heavily on his complaints in regard to his ankle?

A. Yes, sir.

Q. He made no complaint in regard to his foot itself, did he, Doctor?

A. You mean abnormal difficulty?

Q. Yes.

A. No, sir.

Q. Nothing abnormal about his foot that you could find?

A. Well, to be really technical, these tendons that he seemed to feel slipping were slipping at the side of the foot. Down the side of the heel.

Q. Dr. Beath, in regard to this man's condition when you saw him in April, he had an excellent firm bony union of his broken leg, did he not?

A. Yes, sir.

Nov. 1964 page 66]

Q. A good solid healing of the leg?

A. Yes, sir.

Q. When you last saw him, I understand that your findings were that he was back at work, and, apparently, doing all right?

A. Doing all right with some limitations.

Q. Now, in regard to this back, the back was his main complaint at this time, wasn't it?

A. His back and his ankle.

Q. In regard to his back, the X-rays, in regard to the lumbar spine, were entirely negative?

A. Yes, sir.

Q. The language used in the X-ray report in April 1962, lumbo-sacral area, lower part of the back, (referring to report) conclusion no post traumatic abnormality noted.

A. That's correct.

Q. Further up (referring to report) no evidence of fracture or malalignment, meaning all straight, I assume, is that right?

A. Yes. Well, that's right.

Q. And he had objective complaints and had tenderness, is

that right?

A. Oh, it is a controversial question whether the tenderness is subjective or in part objective and in part subjective.

Nov. 1964 page 67] Q. When he sits up and says "ouch," is this tenderness?

A. Yes, sir. If he jumped and did it automatically at the right time and consistently, yes, that is tenderness.

Q. Depending upon his reaction?

A. Yes.

Q. You didn't find any muscle spasm or any objective findings?

A. No, sir, other than the tendons.

Q. Other than jumped when you pushed him in the place on the back?

A. (Indicating in the affirmative).

Q. Doctor, you are acquainted with Dr. William Deyerle?

A. Oh, yes.

Q. He is a competent orthopedist?

A. I think so. In my opinion, he is.

Q. Every time you have seen him, he has improved over the last time you saw him?

A. Yes, sir.

Q. There is no reason to suspect that that won't continue, if he continued to improve every time you have seen him?

A. Oh, yes. I think it will continue.

Nov. 1964 page 68] Q. At this time, he can bend up with a very little limitation in here?

A. That's right. Almost to normal.

Q. Of course, that applies to the same way as this, on a 90-degree angle, is it not, and up like this (indicating)?

A. Yes. It will be as normal as the other leg with a little limitation.

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NOTE: At 12:55 p.m., the jury is excused for lunch, whereupon examination of the witness, Dr. Beath, is continued by Mr. Morris, whereupon colloquy is had between Court and counsel, and following recess for lunch until 2:10 p.m., Court and counsel retire to chambers, all of which is reported but

in the interest of brevity is not here included in this transcript, and at 2:30 p.m., Court is reconvened and the matter continues before the jury, as follows:

Nov. 1964
page 69] DR. SAMUEL MARTIN, JR.,
a witness of lawful age, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cantor:

Q. Doctor, will you state your name, sir, for the gentlemen of the jury and His Honor?

A. Samuel Martin, Jr.

Q. Are you a physician duly licensed to practice in the State of Virginia?

A. Yes, sir.

Q. Would you tell us where you received your medical and premedical education?

A. I received my premedical at Lincoln Memorial University in Harrogate, Tennessee, and my medical training at the University of Mississippi in Jackson.

Q. When did you graduate from Medical School?

A. In June, 1959.

Q. Where did you intern, sir?

A. Richmond Memorial.

Q. That is in Richmond?

A. Yes, sir.

Q. Do you specialize in any particular field of
Nov. 1964 medicine, sir?
page 70] A. I am a general *practioner.*

Q. Could you tell us some of the professional societies to which you belong?

A. Yes, sir. I belong to the Richmond Academy of General *Practioners.* The Medical Society of Virginia. And the local medical societies in Richmond.

Mr. Russell: May we have the records off the Court's desk in that white envelop that was summonsed this morning.

Mr. Cantor: Are they Dr. Martin's records?

Mr. Russell: Yes.

Dr. Samuel Martin, Jr.

Mr. Cantor: May I see them.
Mr. Russell: Sure. He is your witness.

Q. Doctor, have you had occasion to examine Norvell T. Jamerson, the plaintiff in this case, sir?
A. Yes, I have.
Q. I am going to hand you your records if you would like to refer to them, sir. Could you tell us when and where you first examined Norvell Jamerson, sir?
A. Yes, sir. The first visit and examination by me was on the 11th of February, 1963, in my office.
Q. Did you take a history from Mr. Jamerson at that time, sir?
A. Yes, I did.
Nov. 1964 Q. Would you tell us what history you took?
page 71] A. His complaints at that time were quote diarrhea off and on for past three weeks with some fever, and he also gave me a history of having had trouble with his bowels and stomach for the past fifteen months after being run over by a truck. These are just quotes. And, he also complained at this time of being rather nervous since that time.

The Court: What was the date you gave of his examination?
The Witness: 11 February 1963.

Q. Did you prescribe some treatment for him at that time, Doctor?
A. Yes, sir, I did.
Q. Would you tell us what that treatment was?
A. I gave him some antispasmodics and antisecretory tablets, Robinul-P.H. tablets, and some Mylanta liquid, which is is antacid and also for gas release, and prescribed the bland diet which is similar to the one we place ulcer patients on. I also prescribed Librium, which is a tranquilizer, and some Quintess, in suspension, as an antidiarrheal agent.
Q. Now, sir, could you tell us how he responded to that treatment. When did you next see him?
A. I next saw him on 29 June 1963.
Q. All right, sir.

Dr. Samuel Martin, Jr.

A. At which time he still complained of having
Nov. 1964 trouble with his stomach and bowles with the
page 72] slightest deviation from his dietary routine.

Q. Will you tell us what a bland diet consists of?

A. It is mainly an exclusion of any greasy foods, anything highly seasoned, hot with spice or fire, and any particular rough or coarse type food with a lot of fiber—celery, lettuce, that type, in general.

Q. Did he describe to you his complaints of February '63, whether this symptom you referred to became worse or lessened since the accident he suffered with?

A. Yes, sir. In questioning him about the past history, he, apparently, had had no difficulty at all prior to the accident, which he, at that time, stated had been fifteen months.

Q. Did you do any examination of him yourself?

A. Yes, I did.

Q. What did that examination consist of, sir?

A. Well, the main — I took his blood pressure, pulse, temperature, listened to his heart, chest, and abdomen, and also examined the abdomen manually, and the main findings at this time were some tenderness in the upper epigastrium which is a V below the ribs and diaphram, and also noted on listening to the abdomen increased bowel sounds throughout.

Q. Now, again on June 29, 1963, what were his complaints at that time, sir?

Nov. 1964 A. In June, they were quite similar to the ones
page 73] that he had previous — the difficulty with his stomach and bowles and occasional diarrhea, especially when he deviated from his rather strict dietary regimen. And, the findings at that time were the same as on the previous examination in February.

Q. When did you next hear from Mr. Jamerson for examination or treatment?

A. The next visit was on the 15th of August, 1963, at which time he had gone back to work, he stated about three months prior to this visit, and had been doing fairly well at that time.

Q. What were his complaints on August 15?

A. He did not offer any different from the above-stated, and he still had the abdominal tenderness and the increased

activity of that *intestional* tract.

Q. Did you continue the medication or prescribe other medication at that time?

A. Yes, sir, the medication was continued, the initial medication, and I also gave him some additional tablets for the spasm that he was having, which was Butibel-Gel tablets which is an antispasmodic, antidiarrheal preparation.

Q. When did you next hear from Mr. Jamerson?

A. October 18, 1963.

Q. What was that occasion, sir?

Nov. 1964 page 74]

A. This was following. He stated he had eaten some salad, which pained. It contained vinegar, and this had caused considerable cramping and nausea. This, again, was a deviation from his dietary routine. Vinegar, of course, is a rather strong acid and seasoning, which definitely would be contra-indicated on his dietary routine.

Q. Did you continue the treatment at that time, sir?

A. Yes. We continued the Robinul, Librium, and Mylanta.

The next time I treated him, I called in some tablets, Polymagma tablets, on the 3rd of February, 1964. This was for the loose stools and diarrhea he was having at that time.

Q. All right, sir.

A. The latest and most recent examination was on the 9th of November of this year at which time he stated he was doing pretty good with his stomach as long as he stuck strictly to his diet, but his back and hips had been giving him considerable difficulty with pain and stiffness for several days.

The only change in the treatment at this time, I gave him a muscle relaxant which I thought might relieve some of the stiffness and subsequently the pain. This was Balium, which is a tranquilizer, muscle relaxant compound, and also at this time he stated he had sustained a pelvic fracture and also a fracture of both bones in the right leg at the time of the

Nov. 1964 page 75]

initial accident. Of course, this had not been treated by me before. He had been seeing an orthopedic surgeon for this difficulty.

Q. Now, Doctor, do you know the approximate cost of these medications per month that you have prescribed for him, sir?

A. I would estimate —

Mr. Russell: If it please the Court, the medications that have been prescribed are susceptible of being proved, and under the best evidence rule we object to the doctor estimating any cost at all. The man can find out how much he spent for them by going to the drug store, because he got them by prescription, most of them.

The Court: I think the objection is sustained. You might examine him as to whether they are being continued now or as to their duration, but I think the objection is good as to the amount. I think the best evidence would be what has actually been paid up to now.

Q. (Continued) Let me ask you this, Doctor. Do you know of your own knowledge the cost of these drugs that you have prescribed for this patient?

A. Of course, this would only be an approximation. There is some variation from drug store to drug store.

Mr. Russell: We object to that.

Nov. 1964 page 76] The Court: I will sustain the objection to that.

Q. Well, Doctor, how long in your opinion will it be necessary for Mr. Jamerson to continue this medication, sir?

A. Probably indefinitely.

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Nov. 1964 page 78]

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Nov. 1964 page 79] Q. You say you came to your own opinion. What is your opinion, sir?

A. Well, my initial opinion was in February. Of course, the first report I received from Dr. Freund was the 6th of August, so, apparently, I would have had to have formed an independent decision prior to this, and at the initial visit, of course, my impression at that time was pyloric spasms with the possibility, of course, of an active duodenal or gastric ulcer to be excluded, and gastroenteritis, which not knowing the real cause I called non-specific, which means that

the cause is not known for sure or for certain, and on that basis I based my treatment.

Q. All right. With the knowledge that you have since the first visit up to now, what is your opinion of his difficulty?

A. Well, I think he is having some of the same difficulty he was having then. Of course, I did not know at that time about the special studies that had been done by Dr. Freund, and, of course, incidentally, the treatment has not been changed since the initial visit. If this makes any difference.

Q. What is the opinion now?

A. Well, the only change in my impression is possible pancreatic insufficiency.

Q. Do you have your bill with you?

A. No, I don't.

Nov. 1964 page 80] Q. Do you know how much you charged? $32.00 or something?

A. I think somewhere in that neighborhood.

Mr. Morris: We stipulate $32.00.

CROSS EXAMINATION

By Mr. Russell:

Q. I believe you testified, Dr. Martin, that you did not see Mr. Jamerson until some fifteen months after the accident?

A. True.

Q. And, at that time, if you will go back and look at your notes, please, sir, your notes of February 11, 1963, if you will refer to those again, Doctor, and you have quotation marks, I believe, around that first sentence which says quote diarrhea off and on for past three weeks. Some fever. Unquote.

A. Right.

Q. So, you were endeavoring there to put down the complaints verbatim as Mr. Jamerson gave them to you?

A. Yes, sir.

Q. The complaint that he gave you then was that he had diarrhea only for about three weeks?

A. That isn't the end of the quotation.

Q. Quotation marks and afterward fever?

A. Yes.

Nov. 1964 page 81] Q. That is the end of that quotation?

A. That is the end of that sentence.

Q. He said he had had diarrhea off and on for three weeks?

Dr. Samuel Martin, Jr.

A. He had some trouble with his bowels for the past fifteen months.

Q. Do you say past fifteen months?

A. Yes, sir.

Q. Where?

A. Right here (indicating).

Q. That said had some trouble with the bowels fifteen months ago?

A. That says for the past fifteen months.

Q. Now, I don't want to argue with you. Let's read the words on your notes if you don't mind.

Mr. Cantor: If Your Honor please, the doctor has a right to interpret his notes. I object to counsel attempting to interpret for the doctor what his notes mean.

The Court: Wait a minute, Mr. Cantor. The doctor isn't supposed to argue with counsel or counsel with the doctor. He can ask what his report says, and I think that is what the question was, and he has asked him to answer that. That is for the jury. The jury has to make the final determination as to the interpretation he puts on it. Go ahead sir.

Nov. 1964
page 82] Q. (Continued) On February 11, you quoted him, your notes show (reading) diarrhea off and on for the past three weeks and some fever.

Doctor, are there not any number of things that produce a fever and cause diarrhea?

A. Yes, sir.

Q. And many of them would have no relationship whatever to any kind of a trauma or anything of that kind?

A. That's true.

Q. Now the next sentence you have is (referring to notes) had some trouble with bowles fifteen months ago after being run over by a truck.

Mr. Cantor: If Your Honor please, I object to the way counsel is phrasing that, again. I don't know whether he is trying to argue or attempt to put words into the doctor's mouth or not.

The Court: Wait a minute. He is on cross examination. Now, Mr. Cantor, as I said, Mr. Russell is questioning him on his notes and on his report, which he has a right to do. He can read to him and ask him whether he said that which I understand him to be doing now.

Mr. Cantor: My objection was to expressing the next sentence after the doctor has already told him that it is not the next sentence in an effort to show there are several complaints.

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The Court: You can bring that out on redirect examination, but he is on cross examination now, and I think the line of questioning is proper. Go ahead, Mr. Russell.

Q. (Continued) May I go back, in light of some comments made by counsel.

Dr. Martin, I don't want to repeat myself. After where you have the word on the second line of your notation about the 11th of February 1963, on that second line you have some fever, then you have two quotation marks, have you not, is that correct, sir?

A. I eliminated the quotations on this record. I have one at the end.

Q. May I see it, sir?

A. (Showing Mr. Russell) I have it here.

Q. You don't have one right there, Doctor, after the word fever?

A. No, sir.

Q. Where are those two?

A. That is on this line.

Q. And the word fever?

A. Right.

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Q. I see the word fever. Are there two quotation marks?

A. Yes.

Q. Then a period?

A. Right.

Q. To show the end of a sentence?

A. Yes.

Q. Then the next sentence, Doctor—and you check it, I don't want to misquote you—had some trouble with bowels fifteen months ago after being run over by a truck. Is that a correct quotation?

A. Right.

Q. Then, you have another quotation mark?

A. Right.

Q. Then a period?

A. Yes.

Q. Then, you have another set of quotation marks and the word nervous?

Dr. Samuel Martin, Jr.

A. Uh huh.

Q. And another set of quotation marks, and these are the symptoms this man gave you, are they not, sir?

A. Yes, sir.

Q. Now, Doctor, will you read the notation you have over in the left margin?

A. He also stated at this time as an incidental statement that it was a strong family history of ulcers and cancer.

Nov. 1964 page 85]

Q. Now, what is the significance of a strong family history of ulcers, Doctor?

A. We, of course, cannot say that they are definitely inherited, but there is known increased incident in some families of ulcers or *gastrointestional* pathology, again, of course, not proven to be directly hereditary.

Q. The tendency toward this is reasonably strong, is it not?

A. Definitely.

Q. In a family history?

A. True.

Q. What are some of the more common causes of ulcers?

A. I think one of the causes, probably the most common nowadays, is this type of society in which we live with all the pressures and hurry scurry to go nowhere fast, and that type of living.

Of course, also, you get them following trauma, burn, severe burns, that type of thing, frequently enough that it has a particular name—Curling's ulcer. Or any severe traumatic experience. Of course, I think the trauma, again, can include emotional trauma as well as physical. Of course, the dietary cause has never been definitely established. Of course, we restrict certain types of foods while treating ulcers, but, again, no one has definitely proven that they have a specific causitive effect.

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Q. In arriving at your opinion, Doctor, and in treating this patient, the fact that he had a strong family history of ulcers would certainly have been taken into consideration in attempting to make your diagnosis each time you saw him?

A. Yes.

Q. Now, would you tell us very briefly what is a pyloric spasm?

A. That is a spasm of the pylorus which is the lower portion of the stomach where it joins onto the portion of the entrance of the duodenum.

Q. Up in the epigastric region, is it not?
A. Yes, sir.
Q. And, this, again, is one of the more common problems of people who have a tendency toward ulcers?
A. Yes. Sometime it would be a forerunner.
Q. And it would be the type of thing you could expect to find in a person particularly who had a family history of ulcers. It did not surprise you to find this, did it, Doctor?
A. No, sir.
Q. Gastroenteritis, what is that?
A. It, again, is what I consider a waste basket

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term, as we put them, which takes in a broad family of conditions which can be any inflammation in the lining of the *intestional* tract from the stomach to the rectum.
Q. And, this can have any number of causes, can it not?
A. Yes, sir.
Q. In this instance, you, based on everything you knew at that time, had no specific opinion as to what had caused him to have it?
A. No, sir.
Q. Did Mr. Jamerson at this time when you saw him the first time describe to you or tell you whether he had been treated for any of these conditions from the date of the accident up until the time he saw you?
A. Yes.
Q. What did he tell you?
A. I didn't include it in the record, but he stated he had been treated by another doctor.
Q. Did he tell you whom?
A. I don't believe he did at this time.
Q. Did he tell you when he had been treated by the other doctor?
A. No specific date, no, sir.
Q. Now, in view of the fact you didn't put it down, and I am not questioning your memory, but I do want you

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to be absolutely certain, is there any doubt in your mind, Dr. Martin, that he stated he was treated by some other doctor for these stomach difficulties prior to the time he saw you?
A. Do I remember the doctor?
Q. No. Is there any doubt in your mind that he told you? Are you positive of your recollection is what I am trying to ask you?

A. Yes, sir.

Q. All right. I wanted to know for sure. I wanted to be sure there wasn't any doubt about that.

What is the significance of a bland diet to pyloric spasms and gastroenteritis?

A. I think possibly you can prevent the late development of an ulcer by treating these people who manifest a symptom on an initial visit, and, of course, I treat them as though I would treat a person with a known diagnosed-by-X-ray ulcer. My treatment is the same whether they have it or whether they expect it.

Q. You take the conservative approach all the time?

A. The conservative approach, but it depends on the individual as to whether it is conservative or whether it is progressive.

Q. Now, the drugs you prescribed, Robinul and Librium and Quintess, are all prescription drugs, are they not?

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A. Yes, sir.

Q. Do you recall whether you on the prescription you gave him authorized the refilling of those prescriptions?

A. Yes, sir, I did.

Q. Unlimited?

A. No, sir, I never do that.

Q. How many times did you authorize them to be refilled?

A. The maximum is three times.

Q. Do you recall whether you allowed him the maximum on these or not?

A. Not offhand, but I am pretty sure I did, because I generally expect this type of prescription will need to be refilled.

Q. A hundred tablets of Robinul taken four times a day wouldn't last but twenty-five days, would it?

A. That's right. That's about right. Approximately three weeks.

Q. Is it not true that in the course of this general condition, and this is not anything unusual to run into, is it —

A. No sir.

Q. — that as symptoms subside the people cease taking the medicine from time to time?

A. Frequently.

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Q. As a matter fact, don't you suggest that, Doctor?

A. It would be suggested by the record that it

had not been taken strictly as ordered.

Q. Oh, well, even though some drugs aren't habit-forming, if you take them continually, you begin to rely on them?

A. Yes, sir.

Q. Even when you wouldn't ordinarily need them. They become a crutch to you if you take them too much?

A. That is a possibility.

Q. What is the importance in treating this kind of condition that you found in sticking to the diet pretty rigidly?

A. I think it is very important.

Q. And I am sure that you instruct all your patients, and you instructed Mr. Jamerson in this instance, to stick to this diet rigidly?

A. Yes, sir.

Q. Did you admonish him about taking or eating specific things?

A. Yes, sir. I gave him an outline of a printed dietary regimen of things to be avoided specifically.

Q. Would you mind telling me, sir, for a person who had the condition you found he had what the effect of

Nov. 1964 alcohol would be?

page 91] A. It would not be good. That, of course, has a tendency to cause increased secretion of acid in the stomach, and also, some of the digestive enzymes as well producing gastroenteritis which is an inflammation in the lining of the stomach.

Q. The more alcohol that is consumed the worse it becomes?

A. That's right.

Q. Do you recall admonishing Mr. Jamerson that he should not consume any alcohol?

A. Yes, sir.

Q. You did so?

A. Yes, sir.

Q. What about raw onion?

A. I think this would be in the highly seasoned group which is excluded.

Q. Would that give you a pretty hard time?

A. Yes, sir. Even you may have some difficulty occasionally. It does me.

Q. Now, I believe that when you saw him in June of 1963 the tenderness that you had found previously was now in the right epigastrium?

A. Yes, sir.

Q. Which had shifted from the middle over to the right hand side?

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A. Yes, sir.

Q. That is the one over the liver?

A. That would be underneath the liver.

Q. Is that where the gall bladder is situated?

A. Right. And, also closer anatomically to the region of the pylorus or lower end of the stomach.

Q. Further away from the pancreas?

A. No, sir, because the pancreas lies behind the stomach.

Q. More over on the right hand side?

A. No, sir, runs all the way across left to right.

Q. Runs all the way across. You did say the gall badder was over there, too?

A. On the right.

Q. Now, in June, you still felt he had this pyloric spasm?

A. Yes, sir.

Q. All the way through, with the exception of Mylanta, which is an antacid, and can be *brought* across the counter —

A. Right.

Q. — all the other drugs you have ever given him are prescription drugs?

A. Yes, sir, except on a few occasions I believe I did give him some samples which I had in the office, but under medical supervision or by prescription is the only way they can be dispensed publicly.

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Q. Now, I believe you said that your independent opinion is that he had pyloric spasm with possible ulcer and gastroenteritis of an unknown origin?

A. Right.

Q. That is still your opinion, is it not?

A. Part of my opinion.

Q. The rest of it is he possibly has a pancreatic insufficiency?

A. Yes, sir.

Q. So, that coupled with what I just stated constitutes your opinion of this man's condition?

A. Yes, sir.

REDIRECT EXAMINATION

By Mr. Cantor:

Q. Would you state again the names of the drugs you have prescribed for him.

A. Yes, sir. Robinul-P.H. tablets. The Mylanta liquid. Lib-

rium, 10 mg. capsules. That is the strength. 10 mg. is the way it is recorded. And, Quintess, which is an antidiarrheal preparation with Neomycin.

Q. What are the others?

Nov. 1964 page 94] A. On other occasions, I have given him Metropine tablets, which is an antispasmodic, antisecretory drug quite similar to Robinul and Butibel-Gel, which is a sedative, antispasmodic, antidiarrheal preparation.

Q. All right, sir.

A. Also, in February I gave him the Polymagma tablets, which is an antidiarrheal, and on the last visit the Balium was added. Five milligrams.

Q. And he is continuing on this regimen now?

A. Yes, sir.

RECROSS EXAMINATION

By Mr. Russell:

Q. Doctor, he is not taking all these things now, is he?

A. Not at one time. This is a complete run-down of what he has had in the past.

By Mr. Cantor:

Q. What is he taking now?

A. Now, he is taking Robinul-P.H., Balium, Mylanta, and the bland diet. That is all I have prescribed.

Q. Robinul, Balium, Mylanta, and what was the other one?

A. Of course, he is still on the bland diet.

By Mr. Russell:

Nov. 1964 page 95] Q. Doctor, Balium is a tranquilizer?

A. Tranquilizer and muscle relaxant. Basically a tranquilizer.

★ ★ ★ ★ ★

PAUL JEFFERSON,

a witness, first being duly sworn, testified on behalf of the plaintiff, as follows:

Paul Jefferson

DIRECT EXAMINATION

★ ★ ★ ★ ★

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★ ★ ★ ★ ★

By Mr. Cantor:
Q. Where were you, Paul?
A. I was standing back in this corner here.

Mr. Cantor: Let the record show he is pointing to the northeast corner.

Q. What were you doing over there?
A. I was spreading the sand.
Q. Where did the truck come; did you see the truck come back?
Nov. 1964 page 98] A. It backed in this corner here and finuggled over this way to spread sand over here. That is where he struck.

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Q. You were working to spread the sand?
A. Yes, sir.
Q. Mr. Kester was in charge of getting that truck where it ought to go?
A. Yes, sir.
Q. What made you take notice of the truck at all?
Nov. 1964 page 103] A. Well, I knew the truck was coming. I noticed him moving. When it backed in, it backed right, you know, where we were, right here. We was spreading sand here, and I reckon he decided to move it over here, move it over there (indicating exhibit).
Q. Mr. Kester was directing the movement of the truck, was he not?
A. Yes, sir.

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page 105] DR. JACK FREUND,

a witness of lawful age, first being duly sworn, testified as follows:

DIRECT EXAMINATION

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By Mr. Cantor:

Q. Have you examined Mr. Norvell Jamerson, the plaintiff in this case, sir?

A. Yes, sir.

Q. Could you tell us when and where you first examined him?

A. Examined him in my office on the Boulevard
Nov. 1964 in 1963, it was July, and took a complete history
page 109] and physical at that time and laboratory studies that were indicated.

Q. What were your findings as a result of that examination?

A. The findings indicated that this man had symptoms related to the *gastrointestional* tract, and further studies were indicated that were then done between the months of July and August, I believe.

Complete X-ray studies failed to reveal any pathology, however, studies of the stool revealed increased fat indicating that the secretion function of the pancreas was deranged. I don't know if that explains it.

Q. Doctor, I am going to ask the question. I am going to present you with this (tendering a sketch of a body on a large sheet of white paper).

Mr. Russell: What is the purpose of this?

Mr. Cantor: For him to show the relationship of the pancreas and other structures of the abdomen.

Mr. Russell: We ask that this be introduced in evidence as an exhibit, Your Honor.

The Court: All right. Do you want to offer it at this time or after?

Mr. Cantor: Yes, sir. I would like to offer it now.

Dr. Jack Freund

NOTE: At this point the above-referred-to- sketch Nov. 1964 is marked and filed by the Court as *Plaintiff's* page 110] *Exhibit No. 17.*

Q. (Continued) Doctor, would you come over here before the jury, please, sir.

NOTE: At this point the witness approached the jury box, and the matter continues as follows:

Q. (Continued) Doctor, could you step around before the jury, please, sir. Now, would you tell us what that drawing represents?

A. To me, this represents a drawing of the relationship of the pancreas and the body. It is an organ about four to six inches long. Associates with the back. It is cradled in the small intestine, and there is the head, there is the neck, and there is the tail. The tail is sort of adjacent to the spleen.

Is that what you want?

Q. Yes.

A. And, it has two main functions. One of the functions of this is the bile duct which releases secretions that digest food. The other function is to release insulin, which is a hormone, into the blood stream.

Q. Doctor, could you tell us which side of the body the pancreas is on or where it crosses, right, left, or —

A. Well, the head of the pancreas is on the right side and is nestled in the lap of the small intestine, then crosses over the midline and goes toward the left side, and that is called the body, and the tail of the pancreas, it ends up adjacent to the spleen on the left side and across the back, sort of cater-cornered around the back.

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Q. Does the pancreas play any function in the digestive system?

A. Yes. Really, two. One, exocrine is the enzyme going to the small intestine; and, second, the control of carbohydrate metabolism by insulin.

Q. Does that mean something to do with fat?

A. Yes. It does have to do with fat. And, it was on the basis of symptom-exclusion of other pathology by X-rays and physical examinations and increase in the fat in the stools that I was led to the impression that the patient had pancreatitus. It was certainly diarrhea which he presented as a symptom

time he veered from the bland diet, where he would have anywhere from twelve to twenty watery, sort of foul explosive bowel movements to occur. So, chronic pancreatitus.

Q. Doctor, is trauma a cause of pancreatitus?

A. Yes, it is one of the etiologies of pancreatitus.

Q. This particular difficulty that you diagnosed Mr. Jamerson as having, is that something that cures itself or what is the prognosis for the future for him with this difficulty?

A. It may become worse. It may stay the same. I don't think this usually cures itself. At least, from what
Nov. 1964 I have been able to determine, Mr. Jamerson has
page 112] had this for several years, and it has remained rather static.

Q. Do you feel it will remain that way for the future?

A. My impression would be that it would be the same. Certainly ten plus years foreseeably, is all I can say, if he ever gets rid of it. The symptoms.

Q. What treatment did you suggest for this?

A. I suggested anticholinergic drugs that interfere with the increased muscular activity of the bowel.

Q. Now, Doctor, based on your knowledge of the causes of pancreatitus and your reasonable medical certainty, can you say that the accident of Mr. Jamerson —

Mr. Russell: If Your Honor please, it is a leading question.

The Court: Yes. You might ask him whether or not he has an opinion as to the causal connection between the history given him by the patient and his condition. See what he has to say.

Q. (Continued) Do you have an opinion, Doctor, between the history given you and the causal effect of his present condition, sir?

The Court: With a reasonable degree of medical certainty.

A. Historically, this patient has had symptoms,
Nov. 1964 *gastrointestional* bowel symptoms following the
page 113] accident. There is, historically, a relationship as far as I am concerned between the symptoms and the accident, and this man does have a disease, and my impression is that he has pancreatitus.

Putting these together, I believe this. Historically, the disease, the process, indicates, historically, this, as far as I can determine from the patient.

Dr. Jack Freund

Q. Do you have your charge for your services or do you know what they were? You sent me a bill for $17.00 —

Mr. Morris: We will stipulate that if that is what you say it is.

A. I don't know, but my office sent —

Mr.Cantor: Yes, sir, my office called your office.

CROSS EXAMINATION

By Mr. Russell:

Q. While you are up here, Doctor, may I ask you a couple of questions.

A. Certainly.

Q. On this picture here, the pancreas is pretty well outlined on it. Would you tell us, Doctor, where the liver is on here. Outline it so the jury can see.

A. (Doing so).

Q. That is right over top of, to a certain extent, a little bit of the pancreas there?

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A. It is more anterior.

Q. All right. That is, in the front.

A. Okay. I am sorry.

Q. This thing is marked duodenum. Is that part of the intestine?

A. Yes, sir.

Q. Is that right at the small end of the stomach?

A. Yes. That is the stomach.

Q. Would you take this ballpoint pen of mine, or your pen either one, and outline the stomach on there.

A. (Doing so). This is the stomach.

Q. Now, will you tell us whether this lies over top or in front of the pancreas?

A. Yes. It does lie over it and in fact so does the large bowel.

Q. So, the pancreas then is situated anatomically in between the stomach and the large intestine and the back?

A. That's right.

Q. In the back —

A. Posterior. It is in the back.

Q. Well, it is in front of the spine, in other words?

A. Yes, sir.

Dr. Jack Freund

Q. Now, you said that it is cradled in the small intestine?

Nov. 1964 page 151] A. The head is cradled in the lap of the small bowel.

Q. Then, if I understand correctly, this is an organ that has other organs closer to the surface of the front and also closer to the surface of the back than it is?

A. Right.

Q. It is pretty well protected right in the middle of the body, then, isn't it?

A. If I can answer this in my own way without saying yes or no. I would like to say yes it is posterior, but that trauma does occur even in the abdomen, even in the chest cage. People can have heart injury even though the skeletal system is a relatively rigid cage, because the body does give, the abdomen does give, and the forces do go back. Certainly, trauma can occur to the pancreas even though it is protected, and the stomach that is over it is very thin tissue. The edge of the liver does not protect it by much.

All that I can say is that pancreatitus does occur with trauma. It occurs with other things, too.

Q. I don't ask, I don't even question your opinion. I simply asked whether or not it was protected.

A. Well, okay.

Q. It is reasonably protected in the middle of the body, is it not?

A. Oh, sure.

Nov. 1964 page 116] Mr. Russell: You may sit down, sir.

NOTE: At this point the witness resumes the witness stand, and the matter continues as follows:

Q. I believe you said, if I may go back for a moment, that you took two of your four years of training in the chest and cardiology?

A. That's right.

Q. Did you spend that entire two years working on the chest and the diseases that would be referred to as cardiology?

A. I did the last year, and —

Q. I may have misunderstood.

A. I spent the first year as assistant resident and the last year as senior resident in chest and cardiology.

Q. You said, I believe, that you are vice president of A. H.

Robins and Company?

A. That's right.

Q. How much of your time do you spend with A. H. Robins?

A. I would say ninety, eight-five per cent. The rest of my time I spend either in teaching or consultation medicine.

Q. And of the ten to fifteen per cent of time left, how much of that is spent in teaching?

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A. I would say half.

Q. So that only between five and six and a half per cent of your time do you spend actively engaged in the practice of medicine? Treating patients that are your private patients, we'll put it that way.

A. Yes. And, in teaching I might say I spend time with patients, too, and that is practicing medicine, teaching internal medicine. I would say some fifteen per cent of my time is actively spent with patients, and eighty-five per cent of my time is research administration and research.

Q. May I ask you, sir, who referred this patient to you?

A. Mr Cantor.

Q. You mean Mr. —

A. Robert Cantor, sir.

Q. Robert Cantor here?

A. Yes, sir.

Q. When you first saw Mr. Jamerson, you were vitally interested in obtaining a thorough history from him, were you not, sir?

A. Yes.

Q. He presented himself with what I believe the report of July 3, 1963, described as quote stomach trouble unquote?

A. That's right

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Q. That could have had any number of causes and attributing factors?

A. Absolutely.

Q. So, it would take a pretty thorough history to start you on the right *tract*?

A. That's right.

Q. Did you take a pretty thorough history?

A. To the best of my knowledge. I spent, I think, two or more hours obtaining the history.

Q. Did you bring your notes with you?

A. I think I did.

Q. I believe that the patient, Mr. Jamerson, told you that he received fractures of his pelvis, the right knee, the tibia, and fibula, and foot.

Mr. Cantor: If Your Honor please, would you excuse me. I think this may be blocking the view of some of these gentlemen here. If we can move it over to the side (referring to sketch).

The Court: Move it back as far as you can, sir.

Q. (Continued) Doctor, I don't think the jury has heard your answer to the question.

A. Yes.

Q. And he was hospitalized for about eighteen days under the care of Dr. Butterworth?

A. This I obtained from the patient.

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Q. That the day following the accident he vomited blood three or four times?

A. Yes.

Q. You obtained that from him?

A. That's what he told me.

Q. And that he had no bowel movement for six days following the accident?

A. That is what I wrote in my history, yes.

Q. And he also had bloody diarrhea approximately twenty times a day for seven months?

A. That's what he told me, yes.

Q. This was associated with sharp cramps across the mid abdomen to the left of the navel?

A. Yes.

Q. And following the cramps he would frequently have a bowel movement?

A. Yes, sir.

Q. And approximately seven months after that, after seven months he was given medication and was placed on a diet by by his family physician, Dr. Samuel Martin?

A. Yes.

Q. Now, I am sure there is no doubt in your mind that he told you, Dr. Martin told you, he saw him seven months after the accident.

A. (Referring to notes) Approximately, that's right.

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Q. This history of difficulty he experienced with the vomiting of blood and having bloody diarrhea over a period of seven months, when he gave you the history, this was all related to the time of the accident?

A. Yes, sir.

Q. So, that certainly the eighteen days or seventeen days

that he was in the hospital, this would have occurred during that time?

A. (Indicating in the affirmative). That is my impression I gained from the history, that's right.

Q. Doctor, are these not the type of things that would be noted in the chart of the patient?

A. They would.

Q. From your experience with the Medical College of Virginia, they would be noted in the chart, would they not?

A. As a rule, yes.

Q. Certainly, if they lasted for eighteen days, it is the kind of thing that would be noted, would it not?

A. That's right.

Q. In arriving at your opinion, which you stated a moment ago, I believe you said, historically, the patient gave these symptoms as beginning at the time of the accident?

A. Following the accident.

Q. And you tied the pancreatitus, which you now say he has, to the accident based entirely upon the history given you by the patient?

Nov. 1964 page 121]

A. That's right.

Q. If in fact all of these things occurred immediately after the accident took place —

A. Within a reasonable period, yes.

Q. — that would certainly be within the eighteen days he was in the hospital?

A. More or less, yes.

Q. Now, if the history were changed, this could materially change your opinion, could it not?

A. As to what?

Q. As to this relationship with the accident.

A. Yes.

Q. Now, I believe that trauma is only one of the causes of pancreatitus?

A. That's so.

Q. What about the ingestion of alcohol?

A. That too would do it.

Q. Will any type of gall bladder difficulty cause it?

A. Yes. I was almost going to help you. Yes.

Q. As a matter of fact, alcohol and difficulty with the gall bladder are two of the primary causes, are they not?

A. Yes. But this man had a gall bladder series. I don't think the gall bladder is implicated in this.

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Q. You didn't see him until nearly two years after the accident?

A. Yes, sir.

Q. Did you get any family history of predisposition of ulcers?

A. (Referring to notes). I did not. All I have here is that his father died of a heart attack, his mother with a brain hemmorrhage. He had one sister and five brothers. One brother was killed in an automobile accident. His wife was well, and he had a son sixteen then, and that was the history I obtained.

Q. Did he give you any history of any prior illness of any kind to himself?

A. No. He was in the Pacific, he said, and he had no diarrhea while he was in the Pacific.

Q. Did he say he had any prior illnesses of any kind?

A. I obtained no history of any, let's put it that way.

Q. Do you normally ask for a history of prior illnesses?

A. Yes, sir, I do.

Q. If he had given you any, I am sure you would have put them down, Doctor?

Nov. 1964 page 123]

A. I believe.

Q. So, it is reasonable for us to say that he didn't give you any?

A. All right.

Q. I believe that somewhere along the way, Doctor, didn't he tell you that he began having difficulty with his back in about November of 1963, and went to see an osteopath?

A. Yes, he told me that when I saw him these past few weeks.

Q. But, he stated that this came on him about a year before you saw him and he went to the osteopath then?

A. That is right.

Q. Do you know Dr. William Regan?

A. Regan, yes.

Q. He is a certified internist, is he not?

A. He is.

Q. Does he not also specialize in gastroenterology?

A. He does. In fact, we discussed Mr. Jamerson together.

Q. So that the jury won't have any doubt in its mind, your opinion in which you stated that the pancreatitus which you now believe he has, as related to the accident, is based on the history of the vomiting of the blood, bloody diarrhea around twenty times a day from the time the accident happened, or you said reasonably thereafter, certainly within the time he was in the hospital, for a period of seven months?

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A. That's right.

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DARWIN D. KESTER,
first being duly sworn, testified on behalf of the plaintiff, as follows:

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Q. Now, these timbers that are piled up here in Plaintiff's Exhibit No. 12, are these similar to what was piled up on the other side when this accident happened?

A. Yes, sir.

Nov. 1964 Q. And, this picture, No. 9, shows the way the
page 138] timbers were that Granderson had to back his truck over?

A. That is part of them, yes, sir.

Q. They were piled up more than that, were they higher than that?

A. Yes.

Q. He had to come over that wall and down on the other side, is that correct?

A. Yes, sir.

Q. And that was the first load that had been delivered to that job?

A. Yes, that's right.

Q. That was Granderson's first trip to the job?

A. Right.

Q. You were in charge there that day when the accident happened, when he backed in?

A. Yes.

Q. He came up to the job site. I believe you said you backed him in, is that correct?

A. Yes, sir.

Q. What do you mean you backed him in?

A. I was in the building area signalling, directing him to come on back.

Q. Is it true that on one occasion he got a little off center and you straightened him up so he would come over to the right.

Nov. 1964
page 139] A. I don't recall that I did, no. I don't remember.

Q. That would be what you were trying to do, back him in straight?

A. That's right.

Q. If I understand it — again, for the record, I am holding Exhibit No. 11, which shows the side of a building on which the accident happened — you wanted the sand to be spread over in the other corner?

A. No, over about the middle.

Q. About the middle of the building. Well, he backed in at your direction or you backed him in back in over this and back to the point where you were talking to him and told him where you wanted it?

A. Right.

Q. That followed a line parallel to the wall?

A. Right.

Q. That is when he backed over and backed up parallel to this wall and stopped at a place where you told him to stop?

A. Right.

Q. Where were you when you were backing him in?

A. I was on the driver's side of the truck.

Q. On the driver's side of the truck, and he was, of course, watching, looking at you and following your directions?

Nov. 1964
page 140] A. Right.

Q. Actually that was on his left hand side of the truck?

A. Right.

Q. Was he looking in the mirror or around out of the door?

A. The mirror.

Q. In the mirror. When he came to a stop, you walked up to the left hand side of the truck, is that right, right by the door?

Darwin D. Kester

A. Right.

Q. And, you said to Granderson, I want that stuff dumped over there, which, indicating my left hand, was to the driver's left?

A. Right.

Q. And you also wanted it spread, did you not?

A. Yes, sir.

Q. If he dumped it in the middle, you would have to have had your men spread it?

A. That's right.

Q. So, you told him you wanted him to back it up there and open the tailgate and pull forward slowly and spread the sand?

A. Right.

Q. In order to do that, he first pulled forward, then back to see if he could back his truck around?

Nov. 1964 page 141] A. Right.

Q. It was in the process of pulling forward — I believe you said he pulled forward about six feet, and he ran up on this man, Jamerson?

A. That's right.

Q. The distance his truck made from the point you were standing beside him to the point where it ran up on something was six feet?

A. Right, about six feet.

Q. All right, sir. Now, at that time, was the canning plant in operation? The canning plant?

A. Yes, sir.

Q. The factory press was all going on?

A. That is just a development center. It is not a regular factory. It is an experimental building.

Q. You had some *otherworkers* there on the job doing various jobs?

A. I had laborers.

Q. Some of whom were hammering and nailing, so forth and so on, and that makes some noise, does it not? There was noise on the job site?

A. Just what little noise was in the building.

Q. Now, a big truck like the one involved here, this International truck, which is carrying a load of

Nov. 1964 sand in the building, I am referring to Plaintiff's

page 142] Exhibit No. 7, makes quite a bit of engine noise does it not?

A. Yes.

Q. When it backed into this place and stopped and you talked to the man outside of the left window, he had to take it out of reverse gear and put it into neutral to talk to you, didn't he?

Mr. Cantor: I am going to object to Mr. Kester's testifying to how the truck was handled or anything else.

Mr. Morris: If Your Honor please, he was standing there.

The Court: He can state if he saw it, if he saw it, he may so testify.

Q. It came in in reverse gear, did it not?

A. Right.

Q. Then, it drove forward approximately six feet to where the accident happened?

A. Yes.

Q. Was there a change of gears in the accomplishment of this?

A. Oh, there had to be.

Q. These trucks make a noise when they change gears, do they not?

A. Sure.

Q. Don't have any trouble hearing them, do you?

Nov. 1964

page 143] A. No.

Q. When a truck that large is carrying a heavy load of sand, it makes quite a bit of engine noise as it pulls forward, does it not?

A. Yes.

Q. It pulls rather slowly from a stop with that kind of load, does it not?

A. Yes.

Q. And it did in this case, didn't it?

A. Yes.

Q. And you had no difficulty whatsoever hearing this truck from where you were standing, changing the gears and the engine noise as it rolled forward that six feet, did you?

A. No, sir.

Q. You had no idea as he pulled forward — if you had known Mr. Jamerson was over there, you would have hollered stop, before he hit him?

A. Sure.

Q. So, you had no idea that Mr. Jamerson was in this place of danger?

A. No.

Q. Now, you refer to this pilaster that he was working on.

A. Right.

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Q. This may be a foot wide, is it not, one of these pilasters, I believe you call them?

A. I don't know the exact width.

Q. I am referring to Plaintiff's Exhibit No. 11, and, of course, Jamerson was on the inside of that, was he not?

A. Yes.

Q. And squatting down?

A. Yes.

Q. And Mr. Jamerson is not a tall man, no taller than I am, anyway, is he?

A. No, sir.

Q. So that this may be clear, does this look like the truck in question, Plaintiff's Exhibit No. 7?

A. I couldn't identify it.

Q. Is that a similar truck?

A. Well, something like it, yes.

Q. In referring to this, then, the distance this truck drove on a slight angle to a point where the accident happened was a distance of approximately six feet, as you said?

A. Right.

Q. That means, obviously, this gentleman had to be within six feet of the right front of the truck squatting down just before the accident?

A. Right.

NOTE: At this point the witness resumes the witness stand, and the matter continues as follows:

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Q. I might pull forward and pull to the right in the direction where you wanted this load—

Mr. Cantor: I object to him testifying to what the driver

was getting ready to do. He can only testify to what he saw him do.

Mr. Morris: I withdraw the question. I will ask it another way.

Q. If I understand it correctly, if I represent the driver, facing the jury here, you wanted the sand to the left of the driver. That is this way?

A. Yes, sir.

Q. That means he had to back in that direction and pull forward, did it not?

A. Right.

Q. Is that right, sir?

A. Yes.

Q. And, then, in order to get in that position, he turned his truck well to the right and pulled forward in that direction on an angle to the right?

A. Right.

Q. In order to back around the other way?

A. (Indicating in the affirmative).

Q. So, the six feet he drove was in the direction of the wall, or —

A. Right.

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page 146] Mr. Morris: Thank you very much, Mr. Kester.

REDIRECT EXAMINATION

By Mr. Cantor:

Q. Did he hit the wall?

A. He went up on top of the wall.

Mr. Cantor: All right, sir.

The Court: Anything else?

Mr. Cantor: There is some more evidence from Mr. Kester that we spoke about, six, that Your Honor suggested that we put in the record.

The Court: All right, sir.

Mr. Morris: In the presence of the jury, Judge, I have another question before we finish.

By Mr. Morris: (Continued)

Q. I am going to ask you, Mr. Kester, were you on the left

hand side of the truck by the left hand door when it went up on something?

A. When he moved, I was beside the door, when he started to pull up.

Q. When you then realized he had gone up on something, or anything happened, naturally, you saw the unusual motion of the truck?

A. That's right.

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Q. So, you are basing that it went up on something on that, are you not?

A. (Indicating in the affirmative).

By Mr. Cantor:

Q. Did you hear Mr. Jamerson holler?

A. After the truck went over the first time.

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DR. WILLIAM MINOR DEYERLE,

a witness of lawful age, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Would you state your name and occupation.

A. William Minor Deyerle, orthopedic surgeon.

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Nov. 1964
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Q. Doctor, would you tell the jury whether you saw on two occasions at my request Mr. Norvell Jamerson?

A. Yes, sir. I saw Mr. Jamerson on July 8 of 1963, and, again, on the 11th of this month, this year.

Q. Would you first tell us what you found on your examination of July 16, 1963?

A. On July 16. July 8, rather. It was July 8. I reported on July 16. I believe that is the date the letter was typed. He

was in on July 8, and he stated that about two years ago, September 5, 1961, that he was in an accident when a truckload of sand ran backwards and forward across him. He stated that at the time he was admitted to the Medical College of Virginia, was treated for injuries to the right leg and injuries to the back. He further said that he was not knocked unconscious.

He was X-rayed and treated for fracture of the right leg and had many other X-rays made at that time.

He had been under the care of Dr. Butterworth and the fractured leg eventually healed, and at the present time that I saw him his chief complaint was referable to his back.

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Q. That was July 1963?

A. July 1963. At that time, he related this other history to me, and in terms of what his chief complaint was at that time, it was his back. He states that his back hurts and there is a stiffness in his hips, and he has a hurting and drawing in both thighs.

He stated that his stomach bothered him since the accident. He stated he could not eat fried food and can't stand alcohol. Hot coffee gave him a discomfort in the morning.

These were his complaints voluntarily.

On direct questioning, he stated he had no complaints referable to the injured right leg, although he did say the knee, which was specifically asked about, did not give way. He had no swelling or pain in the knee and he had no discomfort on direct questioning with reference to his ankle.

Q. What do you mean by direct questioning?

A. I asked him if it hurt?

Q. He said no?

A. Yes.

Q. All right, go on from there.

A. At that time, in July of 1963, the patient seemed to move with a normal ability to get about, but he did have somewhat of an unusual gait. It was difficult to tell whether he was favoring the right leg or whether he was walking with a stiff right leg. If you favor a leg, you don't necessarily walk with a stiffness. At any rate, he walked with an unusual gait.

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On examination of the right leg, he had good

Dr. William Minor Deyerle

stability in the knee. By that, I mean I checked the ligaments inside and outside to see if there was any relaxation and moved the leg backwards and forward to see if the ligaments were normal.

Q. What was the result of that?

A. They were normal. There was some slight crepitation, which means noise. If all of you worked your knee, I think that half of you will have some of it. It is a little grating motion that you feel. There was some in this right leg and there also was some in the left.

I thought the right knee flexed to almost normal. It lacked possibly ten degrees. By that, I mean put them on the stomach bind them up, and compare to the other leg, it lacks about ten degrees of coming up as far as the other one. With the weight of it.

Q. Doctor, could you get it as high as you demonstrated there?

A. No, he could get it within ten degrees as high as a normal leg.

(Indicating) If this is a normal leg, say this is normal, then he came within ten degrees of the same distance. It varies with the individual, and probably varies from time to time with the same individual if you are all suppled up. I mean, he would be able to do that better than some. But, he lacked, by comparison of his good leg to his bad leg, ten degrees. He had full strength in it.

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I felt there was a slight but definite wasting in the right thigh muscles. The thigh muscles sit up higher and straighter, and when you hurt the thigh or anything in the vicinity of the knee, — you don't use it quite so much, and, as a matter of-fact we see a fair amount of it — we get a wasting away of the muscles. I would say here it was slight, but definite.

Q. With regard to use, does it tend to bring back the muscle?

A. Usually. There was no difference in the leg length. The circulation of both legs was good. The leg raising test, which these are aimed at examining the back because he did have some complaints referable to his back, these are simply tests where you put them in full range of motion with a straight leg, bringing it up as high as it will go, and his will come up

to about eighty-five or ninety, which is normal. They were equal on the same sides.

There was no protective muscles spasm, muscle spasm being nature's way of protecting you. If you have a sore back you couldn't do all that you might be inclined to because these muscles hold on. They won't let go. This is a

Nov. 1964 protective muscle spasm.

page 153] I wouldn't really expect any muscle spasm at this late date from 1961, but he did not have any, and it should be recorded.

He had normal good posture. There was some slight thickening of the right knee. By that, to me, as compared to the other one, felt a little thicker in the region of the knee.

Q. Doctor, in your opinion, does this affect his ability in any way in working?

A. At that point, I don't know whether this would affect it, but that would be consistent with the ten degrees he was lacking.

There was no local heat or unusual tenderness. You can feel with the back of your hand. We are concerned that there is some inflammatory process going on there, and there was none present, and there wasn't any unusual tenderness. When I applied pressure around his knee, it didn't hurt, nor would I expect it to because the break was down below the knee, but, the knee, I think being out of the game for a while with the cast, just hadn't fully gotten back to itself.

There was no tenderness on pressure over the back. That was on firm pressure.

On deep pounding of it about this magnitude, he said he had some pain, and that it wasn't marked, but he

Nov. 1964 said it hurt on deep pounding.

page 154] The test to see whether the sacroiliac joints are involved, which is a test that you have to hold on to one knee and slip them over to the side and sort of spread them out, the test of the sacroiliac joints were normal.

There was no loss of gluteal tone. We have them squench up the muscles you sit on, to tighten them up. In back trouble, these are some of the first muscles to go.

If there is anything in the way of nerve root pressure in the back, certainly, after this long time, you would expect to see some loss of tone on one side or the other or both sides

over the range of contour. This was normal.

Q. There was no loss of tone?

A. No loss of tone. No weakness of dorsiflexion of the toe. We have them pull their toes up. Dorsiflexion simply means pulling your toes toward you, and for people with pressure on nerve roots, one of the signs that will show up early is a little weakness as you pull the toe up. That was normal.

There were no reflex changes. You are all familiar with the tapping of the knees and the ankles. No sensory changes, which is a test for sensation of the shin area of both legs. There was a clicking sensation on examining of his ankle that you could make a click when I would move it about, but this didn't seem to cause any particular pain. I think this again
Nov. 1964 was on the right side. That is the side
page 155] that was in the cast, and this joint probably was not quite as pliable and supple, and it made a little noise from examination.

The patient squatted very satisfactorily, however, when he walked up and down the stairs, he walked one step at a time. When you go up two steps at a time, you just go on up in a normal way. He went down one at a time and up one at a time. *Sometime* when a patient gets around the doctor, they tense up and they don't walk as well as they would normally walk. I don't know about him, but at any rate, he did have an unusual gait there at that time.

I was unable to account for this difficulty in climbing stairs on the basis of what I could determine from examining his knees and watching him squat.

Q. Doctor, on that point, if I may interrupt you at this time, when you say you are unable to account for this particular variation, is it correct or not that you could find no physical basis for his walking in that way?

A. I could find no orthopedic reason for his having to do that, but I am well aware that doctors don't bring out the best in patients. Sometimes they get a little tense when they are around us, and maybe he does better when he is not too worried about it.

Since the chief complaint is referable to his
Nov. 1964 back — at that time, he had previous X-rays I

page 156] had seen. I didn't X-ray anything but his back at that time, and I took four views, which was straight from front view, straight from side view, and two forty-five degree oblique views.

The back has a lot of little troubles that don't always show unless you take different views, and they were normal. He had a good looking back on X-ray.

At that time, based on medical records available and history given me, I felt that the patient had sustained a comminuted fracture of the upper third of his right lower leg, tibia, which had healed extremely well. He also, based upon his history and information, had sustained some bruising and contusions about his back, which apparently is causing symptoms although on the basis of the present examination at that time I could find no underlying cause for his pain and discomfort that he complained of referable to his back and hips and aching in the legs. I would expect that those symptoms that he was complaining of would eventually subside. I didn't expect that he would have any permanent disability referable to his back.

I thought he would probably have some permanency of the knee injury since at that time he lacked ten degrees of bend all the way down. He may later develop some changes of traumatic arthritis, but, to date, apparently developed none. By that, I mean the X-rays taken are current X-rays, did not show any. I have seen some on some of my own,

Nov. 1964 but I will go into that at a later examination.

page 157] I thought he had a slight definite disability in his leg, though this I did not think should incapacitate him from carrying out his usual work activities which I understand are from a carpenter and painter and manual labor.

How long his symptoms would continue in reference to his back and stomach I am not able to conclude. These things take quite a while for all his complaints to subside but I do not think they would disable him from carrying out his every day activities.

Q. All of this is in reference to your examination in July 1963?

A. Yes, sir.

Q. In regard to that, Doctor, did you have an opinion as

to whether or not in connection with all the complaints that he had he was capable of climbing ladders and working on scaffolds?

A. At that time?

Q. Yes, sir.

A. Yes, sir, I think he should be able to from the standpoint of or condition of his body.

Q. Now, have you seen him again since that time?

A. Yes, sir. I saw him day before yesterday on the 11th, and, at that time, having had the patient's history, I didn't go back into that. But, I asked him the main things

Nov. 1964 page 158] that bothered him at the present time, and he stated stiffness in his back, his right ankle, and his right knee, and there was some soreness in his right ankle and right knee, and that he could not climb ladders, and that lifting seemed to hurt his back.

He also stated he was still having stomach trouble. Those were his complaints as of day before yesterday.

Q. What were your findings, Doctor?

A. At that time, he is able to carry out the various activities that I mentioned before in about the same manner. He squatted in this manner, whereas before he squatted normal. Of course, normal, you come all the way down. Before, he came all the way down, but this time he was off a few degrees and didn't come all the way down (indicating).

Q. So, is it correct or not that on the first time you saw him he came all the way down?

A. All the way down. On this occasion, he couldn't quite go all the way down. He was hunched up a little bit. However, on this occasion examining his knees, having him lie down without the weight of his body, he now came down, all the way down with actual motion of his knees when there was no weight on them except the weight of the examiner's hand.

Q. So, this is an improvement over the last time you saw him then?

A. Well, these things are a little tricky. I think

Nov. 1964 page 159] if you will let me go further along and make a conclusion not just based on two things, I will make a little more sense.

Q. Go ahead.

A. The weight of your hand puts a little more strain on your

knee when you haven't got the weight of your body on your knee, and you keep putting more strain on it, and like a door in which if you put too much strain on it, the hinges start squeaking a little. I think this implies something, but that doesn't give me enough to make a conclusion at this point.

Q. Go ahead.

A. His ankle motion was normal. There was no clicking at this time as was present before.

He had good muscle tone. He had good power and strength in that leg, which I think was better than before. I think he had a better muscle on this right leg than he had before although I would say it was slightly just a little bit smaller than the opposite one.

The examination of his back was essentially the same as before. He had full range of motion in his hip. He had the normal test on his back, and the only real difference from my standpoint — Incidentally, he could walk on steps better than he could on the previous examination sometime before.

The circulation was the same. No changes there. Really, the only change was, instead of the slight limitation, he said on direct questioning that is gone, but he does have a little inability to squat.

Nov. 1964 page 160] He has improved in the thigh muscles. He didn't have the thickening of the knee that he had before.

I did X-rays of his knee and ankle because I had thought initially there was a possibility of his developing some sort of arthritis in his knee with an injury this close to it. This injury didn't go into the joints, but it is close by, and it required the knee to be held in a cast for a while. Although, it is not necessarily likely, this is a thing that could happen. His knee has healed nicely. There is no sign of traumatic arthritis, which is simply arthritis secondary to some injury.

X-rays of the ankle was normal. I did not re-X-ray his back, because as I said, he had perfectly normal X-rays before and the findings were essentially normal in his back at this time.

Q. Doctor, in regard to this, what is demineralization in the bone of the ankle?

A. That would be less minerals than ought to be there.

Q. Does that not come from immobilization of the cast, for example?

Dr. William Minor Deyerle

A. Yes.

Q. Could you tell me whether or not that improves once the ankle gets back to use again?

Nov. 1964 page 161] A. Yes, sir. I guess every fracture does some of this from the entire extremity that is encased in the plaster, and as you use it then nature begins to put back lime in proportion to the amount you used up.

Q. Did you find any fracture of this man's ankle?

A. Yes, sir.

Q. Do you know whether there was any indication of demineralization of his ankle when you saw him?

A. No, sir. I didn't X-ray it the first time I saw it. This was two years later that I saw him.

Q. Why didn't you X-ray it the first time?

A. I didn't feel that he had enough trouble to warrant it, to tell you the truth.

Q. He had no problem referable to his ankle?

A. No. He did have this little clicking sensation, but, essentially, he had no complaints referable to his ankle.

Q. Doctor, did you make any findings with regard to the size of the man's feet?

A. No, sir.

Q. You made no such finding?

A. His feet were like a right and left foot are. I didn't measure them inch by inch, but his feet appeared to be all right.

Q. After your second examination, could you tell me whether or not there was any physical reason that

Nov. 1964 page 162] you found for this inability to climb ladders as far as working on scaffolds?

A. No, sir.

Q. Could you tell me whether or not there was any problem with this man's balance that you could find?

A. He walked in and out with a normal balance and did not hold for support, and there was no history of unconsciousness. I didn't do any specific test aimed at determining his balance. He had no complaint of lack of balance, so I have no reason to believe that he didn't have good balance.

Q. Doctor, what is your estimate of his physical ability to work and do normal activity from now on?

A. I think he could do whatever he did prior to the accident.

Mr. Morris: Would you answer, please, Mr. Cantor's questions.

CROSS EXAMINATION

By Mr. Cantor:

Q. You talked about his traumatic arthritis. Is it likely that type of arthritis follows a trauma to a joint such as the injury this man had?

A. It is more likely to follow a trauma to a joint than it is to follow the particular injury that he had, because his injury is below the joint. It is close to the joint, so it is
Nov. 1964 possible that he could have some traumatic arth-
page 163] ritis. If he were older or something, the same complaints might indicate that his joints would take longer to heal, and then the possibility would increase.

Q. But, there is some possibility now that it can develop for him in the future?

A. Anything is possible.

Q. As I understand it, he had, when you examined him in July 1963, permanency of the knee injury?

A. I felt he would always have some permanent disability referable to his knee.

Q. You are familiar, of course, with Dr. Jack Butterworth?

A. Yes.

Q. Do you feel he is competent in his field of orthopedic surgery?

A. Yes, sir.

Q. Do you have any reason to doubt a rating that was made on this man in April 1962 stating he had a loss of approximately thirty per cent?

A. When in 1962?

Q. April.

A. April 1962 he had how much?

Q. Thirty per cent.

A. All I can say is he made a remarkable re-
Nov. 1964 covery between April of 1961 — and what year?
page 164] Q. '62.

A. Well, I would still say he did extremely well

in between those times. I didn't see him then.

Q. Does your opinion differ from what Dr. Butterworth said?

A. I am sure Dr. Butterworth told what he thought the situation was. It would be quite interesting to know what he thought later.

Q. I was specifically referring back to April 1962.

A. I don't doubt Dr. Butterworth's statement, but I really have no opinion on that statement, because I didn't see him then.

Q. You have no reason to doubt that did happen?

A. I am surprised. That's all I can say, because he was so much better when I saw him. But, I have been surprised before.

Q. This atrophy you spoke about, was it existing in the muscles the last time you saw him?

A. Just perceptible.

Q. So, you say there was still right much difference in his muscles?

A. What, the thigh muscles? The right muscle is slightly smaller.

Q. Muscle that goes from the knee to the hip or —

A. This goes from just below the knee to the hip.

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Q. Did you ever determine he was a painter. I know you mentioned before he was a painter, did manual labor. How did you determine that, sir?

A. I believe he told me.

Q. Do you have any —

A. Record of that?

Q. Yes.

A. Yes, sir. Says he is a carpenter.

Q. Carpenter. Did he tell you he was a painter?

A. I think he said he had to get up on things to do some painting.

Q. Do you have this in your notes?

A. No. It says carpenter.

Mr. Cantor: Carpenter in your notes. That is what I wanted to know. I have no further questions.

Dr. William Minor Deyerle

REDIRECT EXAMINATION

By Mr. Morris:

Q. Doctor, you don't believe there is going to be any arthritis in his knee, do you?

A. I don't believe there is.

Q. In regard to the question of the muscle atrophy being slightly perceptible, would you tell us what you found in regard to strength and power in that muscle?

Nov. 1964 page 166] A. Good strength, good power. He walked to the other side.

By Mr. Cantor:

Q. You said you don't believe there is any arthritis present. Isn't that what you just mentioned in response to Mr. —

A. I don't believe he is going to develop any arthritis in his knee.

Q. It is impossible for you to state, isn't it, that he will develop some traumatic arthritis as a result of this injury?

A. No, sir. I say it is improbable.

Q. Did you say in your report of July 18 that he might develop it?

A. I said he might possibly.

Q. How long does it take traumatic arthritis to develop?

A. It will develop in six weeks and usually develops within a matter of two or three years.

Q. It hasn't been two or three years even since 1963, has it?

A. It has since the accident.

Q. Well, it hasn't since July 1963?

A. No. I don't guess he had any, not if it takes that length of time to develop.

Nov. 1964 page 167] Q. Well, when you say two or three years, you could almost go to four. There is no limitation that specifically says that after three years it can't develop?

A. I said anything is possible.

Q. All right, sir, so it is just as likely?

A. No, sir, it is not just as likely. It is possible, in my opinion. In my opinion, it is not very probable.

Q. But, it is possible.

A. It is possible, yes, sir.

★ ★ ★ ★ ★

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DR. EARNEST BETTS CARPENTER,
a witness of lawful age, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your name, please?
Nov. 1964 A. Earnest Betts Carpenter.
page 169] Q. What is your occupation?
A. I am an orthopedic surgeon.

★ ★ ★ ★ ★

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Q. Now, Dr. Carpenter, did you have an occasion to examine Norvell T. Jamerson to determine his full existing injuries and his ability to return to his regular work duties in June 1962?

A. Yes, sir. I examined him on June 29, 1962.

Q. Now, Doctor, at whose request was this examination made?

A. That was made by the Industrial Commission of Virginia.

Q. Can you tell me, Doctor, whether any representative of the defendant, Alton W. Bosher, had anything to do with your hiring?

A. Well, I received a request from the Industrial Commission of Virginia with the request that the report be sent to them and copies to Mr. Robert Cantor and Mr. Willard Walker.

Dr. Earnest Betts Carpenter

Q. Now, can you tell me, sir, what was the actual purpose of this examination?

A. To determine this man's physical condition at that time and whether or not he was capable of returning to work at that time?

Q. Doctor, would you relate the full and complete history given you by this man at this examination.

Nov. 1964 page 171] A. He said that while he was working on September 5, 1961 a truck ran — backed over him and injured his right leg and his back. He was taken to the Medical College of Virginia Hospital where he was admitted under the care of Dr. John F. Butterworth. He had a cast placed on his right leg.

He remained in the hospital for nineteen days and then was discharged on crutches. The cast was changed at intervals and he had a cast on his right leg for a total of four months.

At the time of this accident in September he was employed as a carpenter, and he stated that he had not returned to work since the time of the accident.

I asked him for his complaints at that time, and he stated he was still having stiffness and soreness in his right leg and ankle and he still had soreness in his back.

Q. Now, Doctor, at this point, could you tell me whether or not at that time, June 1962, any reference was made to any abdominal injury of any kind?

A. In taking a history of this man, I asked him what parts of his body were injured and what occurred after the injury, and he stated that all of his injuries were to his right leg and to his back, and he did not complain or tell me of any abdominal complaint or anything of that nature.

Nov. 1964 page 172] He said he was injured in his lower back, but he did not relate any treatment for any abdominal condition, and he was, other than for the period he stated, in the hospital for nineteen days. He then was discharged using crutches.

Q. Could you tell me whether or not there was any claim made to you in regard to vomiting blood?

A. No, sir. He did not mention any complaint, and I routinely will ask a patient about all their symptoms while in the hospital.

Dr. Earnest Betts Carpenter

Q. Could you tell me whether or not, Doctor, what, if anything, was said to you about diarrhea for as much as twenty times a day for seven months?

A. No, sir. He didn't relate anything of that nature. His complaints were all to his right leg and his lower back.

Q. Doctor, could you tell me what, if anything, was said in regard to the bloody diarrhea?

A. No, sir, nothing was mentioned about diarrhea of any type.

Q. What, if anything, was said in regard to the abdominal pain and cramps at the time you saw him or any time prior to that?

A. Not prior to it, and at the time of my examination his complaints were to the lower part of his back, the pelvis.

Q. Is that near the abdominal cavity where the pancreas is located, Doctor?

Nov. 1964 page 173] A. No, sir. The pancreas is located higher up in the right side of the abdomen in front.

Q. His back pain was where?

A. The lower part of his spine where the spine joins on to the pelvis.

Q. Doctor, would you tell me whether or not any statement was made to you in regard to a direct blow to the stomach of any kind?

A. No, sir, he did not.

Q. Now, Doctor, would you tell us, please, what your examinations revealed?

A. Well, he was a forty-four year old white male. He was complaining, as I stated, of pain in his right knee and lower leg and ankle and lower back. He was walking without a demonstrable limp at that time.

Examination of his back, he was able to bend forward and backward and to the right and left without any evidence of limitation of motion. There was no evidence of any spasm of his back. He had no evidence of any nerve pressure in the lower back.

He had normal movements of the joints of the lower extremities with the exception of the right knee. He had normal movements of the hip, knee and ankle, and the joints of the left foot.

Nov. 1964 page 174] He had normal movement of the right hip. He was unable to bend the left knee backward. He was limited to seventy-five degrees of bending the knee backward. Normally, it would bend to approximately fifty to sixty degrees. He could straighten the knee fully.

There was some wasting or atrophy [illegible] cles on the front and the right ca[illegible] ight thigh muscles on the front and the right ca[illegible] the back.

Q. What is the cause of this [illegible]

A. That is from lack [illegible]

Q. Could you tell [illegible]

the muscles will [illegible]

A. Yes. I [illegible] les.

placed [illegible] the use of

st[illegible]

[illegible] idual is

[illegible] normal

[illegible] ches

to about eighty-five or ninety, which is normal. They were equal on the same sides.

There was no protective muscles spasm, muscle spasm being nature's way of protecting you. If you have a sore back you couldn't do all that you might be inclined to because these muscles hold on. They won't let go. This is a protective muscle spasm.

Nov. 1964 page 153] I wouldn't really expect any muscle spasm at this late date from 1961, but he did not have any, and it should be recorded.

He had normal good posture. There was some slight thickening of the right knee. By that, to me, as compared to the other one, felt a little thicker in the region of the knee.

Q. Doctor, in your opinion, does this affect his ability in any way in working?

A. At that point, I don't know whether this would affect it, but that would be consistent with the ten degrees he was lacking.

There was no local heat or unusual tenderness. You can feel with the back of your hand. We are concerned that there is some inflammatory process going on there, and there was none present, and there wasn't any unusual tenderness. When I applied pressure around his knee, it didn't hurt, nor would I expect it to because the break was down below the knee, but, the knee, I think being out of the game for a while with the cast, just hadn't fully gotten back to itself.

There was no tenderness on pressure over the back. That was on firm pressure.

On deep pounding of it about this magnitude, he said he had some pain, and that it wasn't marked, but he said it hurt on deep pounding.

Nov. 1964 page 154] The test to see whether the sacroiliac joints are involved, which is a test that you have to hold on to one knee and slip them over to the side and sort of spread them out, the test of the sacroiliac joints were normal.

There was no loss of gluteal tone. We have them squench up the muscles you sit on, to tighten them up. In back trouble, these are some of the first muscles to go.

If there is anything in the way of nerve root pressure in the back, certainly, after this long time, you would expect to see some loss of tone on one side or the other or both sides

not you found any evidence of organic injury to his back physically?

A. No, sir, I didn't find any evidence or abnormal findings in reference to his back at that time.

Q. In regard to the ankle, Doctor, were there any physical findings indicating injury so far as you could find?

A. No, sir. He did not have any evidence of any injury in his ankle. Right ankle or either one. He had normal movements of the right ankle and normal movements in the joints of his right foot.

There was no evidence of swelling in the right foot or ankle as compared to the left.

Nov. 1964 page 176] Q. What was the size of the right foot as compared to the left, Doctor?

A. It was the same.

Q. Can you tell us whether or not there would be any necessity for this man's feet to require different size shoes?

A. Well, there was no evidence of difference in size as for swelling or anything of that nature at the time of my examination. I see no reason why he would have to have a larger shoe on the right than on the left.

Q. Now, Doctor, in regard to these calluses you mentioned, can you tell us whether or not these calluses would remain on a man who did heavy work and hadn't done any for seven months, who formally did heavy work then didn't do any for seven months?

A. Well, we all know if we do work of a manual nature using our hands we will develop calluses there. If we stop doing them, depending on the thickness of the calluses, they will usually disappear at the maximum of two to three months. They will build up within a matter of two to three weeks if you are using your hands again.

Q. Doctor, in your opinion, what period of time were these calluses developed on this man's hands when you saw him in June 29, 1962?

A. Well, he had firm calluses in his hands at

Nov. 1964 page 177] that time, and, in my opinion, he had been doing some type of manual labor within two or three months to get calluses of this nature.

Q. Doctor, what type of aid to walk was he using like a cane or crutch when you saw him?

tim ... they ... normally ... did have an lar v... ...iculty in climbing stairs basis ... ...termine from examining his ... point, if I may interrupt you at this ... you are unable to account for this particu- ... it correct or not that you could find no physical ... walking in that way?

A. I could find no orthopedic reason for his having to do that, but I am well aware that doctors don't bring out the best in patients. Sometimes they get a little tense when they are around us, and maybe he does better when he is not too worried about it.

Nov. 1964 Since the chief complaint is referable to his back — at that time, he had previous X-rays I

A. He was not using a cane or crutches and didn't have a noticeable limp at that time.

Q. Now, on June 29, 1962, Doctor, did you have an opinion as to this man's ability to do his normal work?

A. I felt from my examination that the man was able to return to his work as a carpenter which he was doing at the time of the accident in September of the year before.

Q. Now, Doctor, could you tell us whether or not you found any evidence of instability in the man's knee or his legs or ankles, feet?

A. No. In a normal examination you test the supportive ligaments of the knee and ankle and they were intact. There was no evidence of any tearing or previous tearing or rupture of this ligament except for the inability to bend his knee backward and some wasting of this muscle of the thigh and *calfs*. There was no other abnormality of the leg. The ankle had normal motion, and the ligaments were intact.

Q. Doctor, do you have an opinion as to whether or not this man at that time, June 29, 1962, was capable of performing on ladders and scaffolding with safety?

A. In my opinion, he was able to at that time, yes, sir.

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Q. Doctor, the purpose of your examination was in connection with a claim that was being made for Workmen's Compensation?

Mr. Cantor: If Your Honor please, we have gone over this before. I object to it being repeated again. The doctor has no knowledge that he was requested for this, and any other knowledge is hearsay.

The Court: Well, I don't think he is going to that phase of it. He asked him for his history and contents of that history. I don't think he has — the doctor knows the purpose of the examination.

Mr. Cantor: All right, sir.

Q. (Continued) Do you know if the purpose of your examination was in regard to whether or not there was a claim made or not?

A. I would assume there was. I received a call from some member of the Industrial Commission.

Mr. Cantor: I object to that.

The Court: He can't testify to that.

Mr. Morris: All right, sir. Doctor, would you answer any questions Mr. Cantor might have.

CROSS EXAMINATION

By Mr. Cantor:

Nov. 1964 page 179] Q. Dr. Carpenter, you say you have been practicing as an orthopedic surgeon for twenty-three years, sir?

A. Yes, sir.

Q. I take it, of course, your reputation in the City of Richmond is that of an orthopedist, is it not, sir?

A. Yes, sir.

Q. You specialize in that field specifically?

A. Yes, sir.

Q. Now, in this last twenty-three years, have you treated anyone for any abdominal difficulties, sir, as such?

A. Yes, I have many times in the past with orthopedic injuries that involved the abdominal cavity or the pelvic cavity. If there is any question of intra-abdominal injury, I, as an orthopedist, should be capable of recognizing that and would ask a general surgeon to see if it is a question of a ruptured spleen or liver or something of that nature, but I, as well as any other orthopedist, should and do know the normal abdominal findings of an abdominal injury.

Q. Yes, but my question is that you would refer the patient to a specialist in that field?

A. If I had a patient with a suspected or intra-abdominal injury such as a rupture of any of the organs in the abdominal cavity or an injury to any of them, I would send them to a general surgeon for consultation.

Nov. 1964 page 180] Q. Now, you are very careful and you are very certain of your orthopedic injuries, aren't you, sir?

A. Well, I don't know what you mean by —

Q. Well, you examined him for a particular purpose when he came up there to see you?

A. I examined him for his general physical condition at that time.

Q. All right, sir. You were paid, were you not, by the —

who were you paid by?

A. I sent my report and the bill to the Industrial Commission of Virginia, and I would assume that the Industrial Commission forwarded it to someone for payment, as I understand the Industrial Commission doesn't pay —

Q. Well, as a matter of fact, Doctor, isn't it true that you are often employed by Workmen's Compensation carriers to examine parties for the purpose of giving them ratings, too?

A. I am, and also by the Industrial Commission, sir.

Q. In this particular instance, weren't you employed at the request of Mr. Willard Walker who was attorney for the carrier and that is the reason why you sent him a copy of the report?

A. Your Honor, I recall a telephone call in reference to this. May I say who the call was from?

The Court: There has been no objection. Go ahead.

Nov. 1964 page 181] Q. Who was it from?

A. It was either from Mr. Robinson or one of the Industrial Commissioners stating that —

Mr. Cantor: I object to what the call was. You can say who you got it from. You said you got it from Mr. Robinson.

A. It was either Robinson —

Q. You admit you sent a copy of this report to Mr. Walker?

A. Yes.

Q. Do you know who Mr. Walker is?

A. Yes, sir. I also sent one to you.

Q. Absolutely. I represent the plaintiff.

A. Now, the call from the Industrial Commission —

Q. That's all right, Doctor. I am not asking about that.

Mr. Russell: I think the doctor is entitled to give his testimony. Mr. Cantor is arguing with him.

The Court: Don't argue with him. I think Mr. Cantor is asking him to confine his answer strictly to the questions asked and not to relate the substance of it, because I think — go ahead.

Q. You know who Willard Walker is, don't you?
A. Yes, sir, I do.
Q. Do you know who he represented at the time?
Nov. 1964 A. No, I do not.
page 182] Q. You still don't?
A. I don't know what or who he represents.
Q. You got a check for $50.00, didn't you?
A. I don't know. I hope I did.
Q. You mean you don't know?
A. I don't know, no, sir. I would have to check my books.
Q. Your income is so great that you don't keep track of those things?

Mr. Russell: If Your Honor please, this is going beyond the scope of cross examination.
The Court: Objection sustained. Gentlemen, you will disregard the last question.
Mr. Cantor: It is obvious.

Q. (Continued) Now, in the field of orthopedics, what is scoliosis?
A. Scoliosis means the curvature of the spine.
Q. What causes a curvature of the spine?
A. Oh, there are about, I would say roughly six to eight causes for it. Defects of the spine from birth; poliomyelitis; cerebral palsy; degenerative neurological lesion, such as multiple sclerosis, muscular dystrophy; you can have scoliosis, a large degree or type of scoliosis, so-called idiopathic which there is no known cause for it.
Nov. 1964 I would say those include probably eighty to
page 183] eighty-five per cent of the cases of curvature of the spine. Fracture dislocations producing paraplegia can cause scoliosis. There are many cases.
Q. Is it true that scoliosis can be caused by pain or tense pain at certain moments, sir?
A. If there is a — not scoliosis. If there is intense pain, there will be muscle spasm and there will be straightening of the spine from front to back, but not causing sideward curvature of the spine.
Q. Did you find any scoliosis present in Mr. Jamerson when you took X-rays of his back?

Dr. Earnest Betts Carpenter

A. No, sir.

Q. Would you tell us where it could go from the date of September 5, 1961 and the date you examined him?

A. I did not see his original X-rays. You can place a patient on the X-ray table, and if the person taking X-rays is not careful that the body is lined up straight you can get a curve in the spine from that type of film, and it is a very common thing.

Q. Would you say that Dr. Mandeville at the Medical College was capable of diagnosing scoliosis on an X-ray film?

A. Dr. Mandeville is one of the most adept X-ray men in this country, but he doesn't take the X-rays himself. Young girl technicians take the X-rays.

Nov. 1964 page 184] Q. I say the interpretation of it.

A. At interpretation, he would be excellent.

Q. You have no explanation as to why if he found scoliosis on September 5, 1961 you didn't find it in July 1962, or June 1962?

A. If the patient were placed on a table in such a way as to produce scoliosis, it would be a very easy explanation.

Q. Now, also, in testifying, Doctor, a minute ago, you said he had difficulty with his left knee, is that correct?

A. No, sir, I said his right knee.

Q. Would you read that part back, Miss Reporter, to see what the doctor did say. I don't want to misquote him.

NOTE: The above-referred-to portion of the witness' testimony (He was unable to bend the left knee backward. He was limited to seventy-five degrees of bending the knee backward) is read to the witness by the reporter.

A. No, it was the right knee. I should have said right knee.

Q. Was that taken from your notes?

A. I have it right here written down, Mr. Cantor. His right knee complaints of stiffness of his right knee.

Q. Do you have your records other than your notes?

A. Yes, I have it right here.

Nov. 1964 page 185] Q. Doctor, what exactly do your notes say, sir? Would you read your notes from the beginning of your history. Just exactly that and not anything else.

Dr. Earnest Betts Carpenter

A. (Reading) Run over by truck with a load of sand. He injured his right leg and his back. Taken to MCV, John F. Butterworth, and cast placed on his right leg. He remained for nineteen days. He had a cast on his right leg for four months. He was employed by the Re-Com Construction Company. He has not returned to work since the accident. He was employed as carpenter. His complaints at that time were stiffness and soreness in the right knee and a slipping in his right foot and aching in the back. Those were the abnormal findings.

He had normal motion of his back; he had flexion of the right knee to seventy-five degrees; full ankle motion; he had moderate quadriceps atrophy. That is the thigh, the right thigh, and right calf atrophy. He had thick calluses on both hands.

Q. Right calf atrophy? Also, your notes don't say in there, do they, sir, the truck backed over him, do they?

A. He had told me he was run over by a truck.

Q. That is all you recall what is in your notes, is that right, sir?

A. You mean whether he was backed over or run over?

Q. Yes, sir. You don't know about that?

A. No, I asked him. He told me he was run over by a truck with a load of sand.

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Q. Now, you did rate this man with some permanent disability at that time, did you not, sir?

A. Yes, I did.

Q. What is a Thomas heel, Doctor?

A. A Thomas heel is really an extension of one-quarter to one and a half inches on the inside of the heel. It is a regular heel except the inside of the heel extends forward between one-quarter and one-half inch.

Q. Is that what you mean by a wedge of the Thomas heel?

A. No. A Thomas heel does not have a wedge to it. You can add a wedge if it is indicated, but the Thomas heel itself is just like a regular rubber heel except it extends on the inside or this side of the heel between a quarter and one-half inch.

Q. What is the purpose of a Thomas heel?

A. A Thomas heel is to give support to the longitudal origin of the foot.

Dr. Earnest Betts Carpenter

Q. What is the purpose of the wedge?

A. The same purpose.

Q. Do you know whether or not he had such a heel in his shoe at the time you examined him?

A. I don't recall. I do not have it on my notes at this time.

Q. If he had such a heel and wedge in his shoe,
Nov. 1964 that would help his gait or his limping or some-
page 187] thing?

A. If he had such an arch support in there.

Q. Did you know that Dr. Butterworth prescribed such a heel and wedge for Mr. Jamerson?

A. No, I did not. I do not. It is a normal thing to usually do that when a person has been in a cast for any period of time because the arch gets relaxant. I think I almost routinely do that.

Q. Now, this slipping in the foot that he complained to you about, are you certain it wasn't slipping in the ankle?

A. He complained at that time of slipping in the right foot. I wrote it down as he told it to me.

Q. Did he explain to you about what he felt?

A. He said he had slipping in the foot.

Q. He didn't mention the ankle to you?

A. No, sir, he did not.

Q. Well, what did you understand slipping in the foot to mean at that time?

A. I took it down exactly as the man described his symptoms. My examination did not reveal any abnormalilty of his foot or ankle.

Q. Did your X-rays reveal any abnormality of the ankle?

A. I did not X-ray his ankle. There was no evidence of abnormality of his ankle or foot. An X-ray was made of the lower leg and knee and the lower part of the
Nov. 1964 thigh.
page 188] Q. Now, an abnormality such as osteoporosis, that is not visible from the outside, is it, sir?

A. If you have *osteopororosis* of the bone — we are talking now of the lower extremity — you would usually find symptoms on the outside either of coldness of the extremity or limitation of motion or excessive sweating, and if it is in relation to the injury —

Q. But, the only way you could demonstrate would be by

taking an X-ray of that particular bone, is that right, sir?

A. Yes.

Mr. Cantor: That's all.

REDIRECT EXAMINATION

By Mr. Morris:

Q. Doctor, what does osteoporosis as such come from?

A. We are now speaking in relation to injury?

Q. Yes, in relation to someone who had worn a cast over a period of time.

A. Osteoporosis means in lay terms porous bone. Now, if anything breaks an extremity — we are talking now of a leg — you put it in a cast. The individual does not use that bone in a normal manner, and in time will absorb some of the mineral salts out of the bone. All fractures at any age group show some loss of mineral content which will, particularly in people in adult life, show some degree of osteoporosis after the cast is removed until the individual uses the leg and gets the calcium or the mineral contents back to normal.

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Q. What happens in the ankle when you put the leg back to use?

A. Nature gradually redeposits the mineral contents of the salt and I could say this man on my X-ray showed some osteoporosis around his knee, but that is a normal finding following a fracture and it is not worthy of our comment.

Q. Does it have any medical significance at all, Doctor, in regard to disabling the man?

A. If an individual has osteoporosis for a long period of time from lack of use of an extremity, it could be of significance.

Q. Did you find it to be of any significance in this case?

A. No. It was the normal amount you would see following this type of fracture.

Q. You would assume eventually this would disappear?

A. With use, yes, sir, it would.

Q. Doctor, in connection with your specialty and the history and complaints that you found to this man, could you tell us

whether or not your examination extended to re-
Nov. 1964 lating all of the difficulties this man complained
page 190] of or were simply related to that foot?

A. All of his difficulties.

Q. Now, Doctor, there is a reference to spasm. Could you tell us whether or not you found any evidence of muscle spasm in this man?

A. He had no evidence of any muscle spasm involving — well, any part of his body — at the time of my examination.

Q. Doctor, have you any way of knowing whether this man's condition has improved over that which you saw him for in June of 1962?

A. I have not seen him but that one time. I don't know his present condition.

Q. Doctor, you were asked about Mr. Willard Walker. Would you tell us what law firm he is connected with?

A. Battle, Neal, Harris, several of them.

Q. He is not connected with Mr. Russell and myself?

A. No, sir. He is with another law firm.

Q. So far as you know, Doctor, is he in any way connected at all with the defendant Alton W. Bosher?

A. To my knowledge, no, sir.

Mr. Morris: Thank you.

RECROSS EXAMINATION

Nov. 1964 By Mr. Cantor:
page 191] Q. Doctor, you said in some instances osteoporosis could be of significance. What do you mean by that, sir?

A. Mr. Cantor, this is particularly so in elderly females. It can occur in elderly males, but elderly females past menopause will frequently get osteoporosis following an injury, or they can have it in their spine without injury. And, prolonged osteoporosis in an elderly individual, mostly females, can be of significance in that they will continue to have some degree of discomfort until the osteoporosis can be corrected, and it can be corrected by diet and proteins and certain medications.

Q. By discomfort, do you mean pain or weakness, or what

do you mean by that?

A. Usually — well, again, it depends on location of the individual fracture, their age, their general physical condition. In general, osteoporosis, what we are talking about now, in the true term of osteoporosis, is not that we normally see following the average fracture. If any of us have a fracture and are put in a cast, we have some degree of osteoporosis which is corrected after the extremity is used again, but osteoporosis which is prolonged in elderly females mostly is manifested usually by excessive sweating or coldness of the extremity and varying degrees of pain.

Q. Is that sometimes referred to as softness of
Nov. 1964 the bone, or is this another difficulty?
page 192] A. That term has been used, although, actually it is an erroneous term because the bone actually is not softer or less strong that it was before. This is a poor statement that has been used at times.

Q. You do know Dr. Jack Butterworth, don't you, sir?

A. Yes, sir.

Q. Do you recognize him as practicing this same specialty you practice?

A. Yes, sir.

Q. Very capable orthopedist?

A. Yes, sir.

Q. Does he practice the same specialty that you do?

A. Yes.

Q. You feel he is a capable orthopedist?

A. Yes, sir, I do.

Mr. Cantor: I have no further questions, sir.

The Court: Anything further?

By Mr. Morris:

Q. Doctor, did you have anything available to you to review any of Dr. Butterworth's records in regard to this?

A. Yes, sir. I had a letter of Dr. Butterworth's of September 7, 1961, September 25, 1961, October 20, 1961,
Nov. 1964 November 21, 1961, December 5, 1961, December
page 193] 29, 1961, June 13, 1962, March 1, 1962, March 22, 1962, and April 13, 1962.

Q. Doctor, I asked you if in making your diagnosis and ex-

amination if you relied in part either for history or otherwise on any of these reports of the early treatment of this man?

A. My practice on these, Mr. Morris, is to read these reports after I have examined the patient. But, I am not influenced by anything, particularly, in what Dr. Butterworth's report has said as to the condition but as to confirmation of the history as given me by the patient.

Q. Would you tell us whether or not Dr. Butterworth reported any, if any, vomiting or diarrhea?

Mr. Cantor: If Your Honor please, we are going a little out of the field now.

The Court: Let him finish his question.

Q. (Continued) Did his report to you indicate any history of vomiting immediately after the accident, bloody diarrhea for as much as twenty times a day, severe abdominal cramps—

Mr. Cantor: I object to that question, sir. I think it is highly improper at this time, sir.

The Court: It seems to me, Mr. Morris, that Dr. Butterworth has testified and he has been examined as to the history given him, but Dr. Carpenter indicated that those reports don't form a basis for his opinion. I sustain the objection.

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Mr. Morris: Yes, sir. I note the exception. I have no further questions for the doctor.

WITNESS STOOD ASIDE.

The Court: Gentlemen, suppose we take a short recess at this time. The jury may recess now. Before counsel go, let's call in the witness, Kester, and take that short testimony in the absence of the jury.

We will recess briefly, gentlemen of the jury, and the sheriff will call you right back.

NOTE: At 11:20 a.m., the jury retires from the courtroom, and the matter continues as follows:

JURY OUT:

Mr. Cantor: If Your Honor please, I would like to state for the state for the record, and I want to make this motion while the jury is out, the plaintiff moves for a mistrial on the basis of the inference of Workmen's Compensation made by Dr. Carpenter.

The Court: All right, sir. The motion is over-
Nov. 1964 ruled. An exception is noted.
page 195] Mr. Cantor: Yes, sir.

DARWIN D. KESTER,

first being duly sworn, testified on behalf of the plaintiff, out of the presence of the jury, as follows:

DIRECT EXAMINATION

By Mr. Cantor:

Q. Mr. Kester, you testified yesterday?

A. (Indicating in the affirmative).

Q. You went to the hospital and accompanied Mr. Jamerson to the hospital?

A. That's right.

Q. You accompanied him to the hospital, then returned to the premises, the job site?

A. That's right.

Q. After you returned to the job site, do you recall about what time it was or how long it had been?

A. No, I don't. I don't have any idea what time it was.

Q. Would you say it was two hours later or three hours later?

Nov. 1964 A. Well, I would guess it was two hours.
page 196] Q. When you returned, at that time, did you see Fred Granderson on the premises again?

A. Yes, he came back with the second load of sand.

Q. Will you tell His Honor the actions of Fred Granderson relative to the operation of the vehicle at that time?

A. Well, the president of our company, general superintendent, was there, and when Granderson came up with the second load of sand, Mr. Wright was trying to direct him back in the area with the second load, and he would motion Granderson to come in one way, and Granderson would cut his wheels and go the other. He couldn't get him back. Final-

ly, he told him to take the load of sand and go on back, he didn't want it.

Q. So, Granderson was not permitted to dump his load of sand at that time, sir?

A. No, sir. He told him to take his load of sand and go on back, he didn't want it.

WITNESS STOOD ASIDE.

NOTE: At 11:23, recess is had until 11:34, whereupon Court is reconvened and the matter continues before the jury, as follows:

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★ ★ ★ ★ ★

NORVELL T. JAMERSON,
the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Cantor:

Q. State your name for the record, please, to His Honor and the gentlemen of the jury.

A. Name is Norvell Thomas Jamerson. Forty-six years old. Live in Highland Springs.

Q. How old were you at the time of this injury?

A. Forty-three years old.

Q. On September 5, 1961, by whom were you employed?

A. Re-Com Construction.

Q. What was your job with them?

A. My occupation was carpenter.

Q. Speak a little louder.

A. My occupation is carpenter. I work carpenter work. I am a union carpenter.

Q. What was your salary at that time?

A. $119.20 a week.

Q. Was that the regular base pay?

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A. Regular forty hour work week.

Q. That was $2.98 an hour?

A. That's right, not counting overtime.

Q. Did you average any overtime?

A. I averaged approximately $15.00 a week extra for overtime.

Q. Throughout the year?

A. Throughout the year.

Q. How many years did you work as a carpenter?

A. Well, I had been working as a carpenter since 1937.

Q. Had you ever lost a job during this period because of absenteeism?

Mr. Morris: If Your Honor please, I object to this question. It is character evidence, and not relative to this case.

The Court: I take it this goes to the question of whether or not he missed time. That is not as to character. Objection overruled. Go ahead.

Mr. Morris: Note the exception.

A. No, sir, I never had.

Q. Now, what was your health prior to September 5, 1961?

A. Good.

Q. Explain to us what you mean by good?

Nov. 1964 page 199] A. Well, I never went to a doctor. The last doctor I went to was when I came out of the service. I was examined when I came out of the service. They said I was okay. I never went to another doctor. I never had no headaches or pain, so I never did go to no doctor.

Q. Now, referring to the date in question, and in time, about twelve or twelve-thirty that day, what were you doing on the job out there at Reynolds *Metal* Company?

A. I was setting an anchor bolt on a grade wall. That grade wall is approximately fourteen inches from the ground. At this anchor plate, it forms a column. I was setting a bolt on top of this fourteen inch wall for a steel column, what you call a mullion, but carpenters call it a column.

Q. I am going to hand you Plaintiff's Exhibit No. 11 and ask you whether or not this shows the particular plate that you were working on?

A. Yes, sir, it does, but not in pictures. It shows the place, but if a man didn't know what it was, he couldn't explain what it was.

Norvell T. Jamerson

Q. Come over here so we can show the jury the spot where you were working.

NOTE: At this point the witness approaches the jury box and the matter continues as follows:

A. I would say I was working in this spot and was in the inside area close against this wall.

Nov. 1964 page 200] Q. You were up against the wall?
A. Up against the wall.

The Court: Have him put some mark there.

Q. Would you do that.
A. (Doing so).
Q. I hand you Plaintiff's Exhibit No. 10 and ask you whether or not that shows the condition of the wall that you were working on, not the same one, but a similar one?
A. That is a similar one, but I was working on the left side. Would be this side. And, this is the right side of it.
Q. This shows it before any cement was put on it?
A. No. The construction work was set during the time I was working there.

Mr. Morris: Would you make reference to north, south, east and west for the record so it will appear in the record.

Q. Now, this picture, Exhibit No. 10 illustrates the east wall, and you were working on the opposite, or west wall, is that correct, Mr. Jamerson?
A. West wall, that's what I would call it.

Mr. Cantor: All right. Take a seat, Mr. Jamerson.

NOTE: At this point the witness resumes the witness stand, and the matter continues as follows:

Nov. 1964 page 201] Q. Tell us what you were doing when the truck came on the job site? When did you first observe the truck?
A. I was leveling this anchor plate. It is a plate with two

bolts on it set down on two anchor bolts. I had a two-foot level leveling this up. The man working with me had an instrument I would say thirty feet over from me and he would check the grade with the instrument to see if I had it right.

Q. Did you see this truck coming to the enclosure?

A. I *see* this truck back into it, and I took enough notice of it, because — I knew he had no business there in the first place over this wall, hit me or nothing, but I did look around and took notice of the truck, and the truck completely passed me and I continued on to work.

Q. After it passed you, what did you do?

A. I continued on my work.

Q. What was the first knowledge that you had of this truck?

A. Well, the first knowledge of it I had was that something struck me in my right hip.

Q. What happened to you then?

A. I fell across this grade wall and struck — the way I can explain it, it came across my right hip the first time. Up on the grade wall, went all the way up onto the grade wall.

Q. Did the truck hit you any more times?

Nov. 1964 page 202] A. It backed off from me, I would say approximately six or eight foot. I was looking down. I was in terrific pain at the time and I was hollering, but I could see the driver from where I was laying flat of my back. He pulled straight back up on me again, came right up my right leg. Didn't injure my left leg. No bones, just bruises.

He pulled all the way up, all the way up across the pit of my stomach, back up against the wall again. He backed off me again and started to back on me the third time, and I hollered, and the foreman, Mr. Kester, ran in front of the truck and told the driver to stop that truck.

Q. Do you recall how long you lay there before an ambulance came to get you?

A. I would say approximately thirty-five minutes. It seemed like half a life time, the misery I was in, but I don't know. I would say approximately thirty-five minutes.

Q. Did you lose control of any of your body functions during this time you were lying there?

A. Yes, sir, I did. My water broke and I couldn't stop it.

Norvell T. Jamerson

Q. You were taken, I think, to the Medical College of Virginia Hospital?

A. That's right, sir.

Q. What happened when you got there?

Nov. 1964 page 203]

A. When I got there, they had me mounted on a board, strapped like a piece of plywood, strapped down. I told them my back was injured. They examined me on the scene. They told me, yes, something was the matter with my back. It was twisted so I couldn't straighten it.

My leg was hurting so I told the boy to take my shoe off. Who took my shoe off, I don't know. I was in such misery I don't know, but I never passed out, nothing like that.

Q. When you got to the hospital, did you recall them putting your leg in a cast?

A. Yes, sir. The first thing I asked the doctor was do something for my back.

Q. After you were put in a cast and X-rayed, what type of accommodations did you have in the hospital?

A. What do you mean by that?

Q. What type of room were you in, were you by yourself?

A. No. I was in what I would say the way ward. It was four in there. They asked which I preferred. I told them I would rather be in a room where I could talk to somebody, see somebody.

Q. Did you have private nurses or rely on the nurses on the floor?

A. Just the nurses on the floor.

Q. When you were there, were you able to take care of yourself and feed yourself or anything of that nature?

Nov. 1964 page 204]

A. No, sir. The doctor told me not to move my arm for fourteen days.

Q. What toilet facilities were available to you then?

A. It was a bed pan, and the colored orderlies that worked in the hospital, they always came around. If you rung a bell for them, they would come around if you could get one of them. My trouble was getting them.

Q. Will you tell us what your experiences were with regard to your bowel movements when you got to the hospital?

A. Well, I did not have no bowel movements for six days.

Q. Then what happened?

A. They kept asking me, the nurse, each day kept asking me have you had a B.M. today? I said no Ma'am. They kept giving me a glass of white stuff. I guess the glass would hold about three ounces. So, finally, one night a little nurse came in, she said have you had a B.M. today? She said you are going to have to take an enema, but I am going to give you one more dose of medicine. I said, all right, something will have to be done because I am in awful pain in my stomach. And, the following Monday after she gave me that, I would say about eight o'clock that night, about three *o-clock* in the morning, that is when I messed the bed up.

Nov. 1964 page 205] Q. Did you experience any further difficulty with bowel movements after that?

A. I continued these bowel movements after that.

Q. Now, what type of cast were you in at that time?

A. Well, I can show you better than I can tell you. I was in a cast from right here to the end of my toes, just the end of my toes sticking out of the cast (indicating from hip to toes).

Q. How long were you in the hospital, Mr. Jamerson?

A. Well, I had it figured eighteen days. I came out on the eighteenth day, as well as I can remember.

Q. Did you have your cast on when you went home?

A. Yes, sir.

Q. Did you ever have an occasion to go back to the hospital after that?

A. Yes, sir. I was at home — I don't know, it must have been approximately two weeks, and my ankle gave me so much trouble and was hurting me so bad I called Dr. Butterworth. He said, well, ain't nothing I can do, and he said if it keeps on, he said, you report back to the Medical College to the emergency room.

That night at two o'clock I got a boy to bring me to the Medical College, and they cut a hole in the cast right over my right ankle, I would say about a three-inch hole in there where my ankle was, to take the pressure off, but we

Nov. 1964 page 206] couldn't take the cast off.

Q. I hand you Plaintiff's Exhibit No. 14 and ask you whether or not this represents the type hole

you referred to?

A. Yes, sir. That's my leg.

Q. And this, Plaintiff's Exhibit No. 5, does that represent the cast that was on your foot?

A. That is the cast that was on my foot. That is in my home.

Q. How long did you have the cast on?

A. I would say approximately four months. I didn't keep right up to date. I kept begging for to take it off. He said, no, you have to wear it a little longer. He X-rayed it, said you will have to wear it a little longer. I would say approximately four months.

Q. After you went home, were you able to use crutches or any other aid in ambulatory?

A. Yes, sir. I could use crutches for walking a short distance if I didn't have no steps to go down or come up.

Q. How long did you use crutches, do you remember?

A. Well, as well as I can remember, I was on two crutches for approximately four months. After he took the cast off, I started using one crutch on my left side and putting as much weight on my right foot as I possibly could.

Q. Well, by the time, say, April had arrived in Nov. 1964 1962, were you able to walk for any distance page 207] without either a crutch or cane?

A. I would walk a short distance without a cane and without a crutch if it was on level ground.

Q. You did get around during that time without —

A. I did get around, yes, sir.

Q. Did you have a limp then?

A. Yes, sir, I had a limp.

Q. Going back to your personal life, again, during this period, did you ever after you got out of the hospital attempt to use any alcoholic beverage?

A. Yes, sir, I did.

Q. What was the result of it?

A. Well, it would give me loose bowel movements and cramps in the stomach and cause the vomiting.

Q. When I say use alcoholic beverage, is that a general thing?

A. Very little beer I ever drank in my life. I don't like it. But, I have drank a little whiskey in my life.

Norvell T. Jamerson

Q. Did you drink at social gatherings?

A. No, sir. I never was no heavy drinker. I would take a shot glass of whiskey.

Q. Now, I believe you went back to see Dr. Butterworth for the last time in his treatment of you in April 1962, is that right?

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A. That is right, as far as I can remember, yes, sir.

Q. Did you at that time seek to get any work?

A. Yes, sir. I wanted to get some light work. Well, I picked up a few little ends and odd jobs and stuff like that. I had a boy sixteen years old. I would get him to help me on odd jobs.

Q. What did you average in pay?

A. I would average around ten or fifteen dollars a week.

Q. In other words, sometimes you would make ten and sometimes fifteen dollars a week?

A. That's right. Then, I got to watch myself. I was a union carpenter, and I was afraid the union would find out. I would have to pay a hundred dollars, and I didn't have the hundred dollars.

Q. Why would you have to pay a hundred dollars?

A. That is a union rule. Local 388.

Q. In other words, if you took a job for less than union scale.

A. That's right. I would be fined from a hundred dollars to five hundred dollars if I was turned in.

Q. When did you get back to work with your regular boss?

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A. As well as I can remember, it was in February of '63. February 26, as well as I can remember.

Q. What type of work were you doing then when you went back to work?

A. I went back to work with him running a saw, a table saw, the best I can explain it to anybody who never run one before. You can pull the blade out and shove the material into it.

Q. Was that different from the usual duties that you had been doing?

A. That is not one of the carpenter's duties, that is a

special job. They don't put in and every carpenter on this type of job.

Q. Would you do the regular job as a regular carpenter?

A. No, sir, I don't.

Q. Why not?

A. I can't do the climbing and the bending.

Q. Were you restricted in any way to what you could lift?

A. Yes.

Q. How did that restrict you?

A. I was restricted in my back. When I picked up anything I would say that weighed as much as thirty pounds my back felt like it was pushing right together. It was the lower part of my back, it was below my belt line.

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Q. Do you recall when you went to see Dr. Martin, I believe in February '63, did you have any trouble with dysentery or —

A. Yes, I had dysentery from the time I got hurt on up to the time I went to see Dr. Martin. I had it real bad at that time. I had been using drug store remedies. I didn't really have the money to go to the drug store, I didn't have money enough to get the drugs, let alone go to a doctor.

Q. Have you been taking medication from Dr. Martin since then?

A. Continuously taking it since then.

Q. I think you have to stay on a bland diet?

A. Stay on this diet. When I get off this diet, I will start right back with the dysentery like I did before.

Q. Do you like the food on the bland diet?

A. No, sir, I don't.

Q. How much do these drugs cost you per month on the average?

Mr. Morris: If Your Honor please, we call for absolute proof by presentation of these bills. We object to it as not being the best evidence.

The Court: Let him get the records.

Mr. Cantor: He does not have them. He goes to the drug store as he needs them. I think he can tell us how much he spends per month.

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The Court: I think he can testify as to how much he spent if he has an accurate recollection of what

he spends.

Mr. Morris: We note the exception.

Q. (Continued) How much have you been spending for your drugs?

A. I would say approximately $25.00 a month.

Q. Are you able to run now, Mr. Jamerson?

A. No, sir, I cannot run.

Q. Dance?

A. No dancing.

Q. Are you restricted in any type work that you can do now?

A. Yes, sir, I am. Any type of work I do now I have to choose. Any lifting or climbing, I don't do it. I told the boys I can't do it. I just can't do it.

Q. You are working now?

A. I am working.

Q. What type of job are you on?

A. I am working as foreman on the job I am working on.

Q. How much do you earn now?

A. Well, been earning approximately $175.50 a week before taxes took out.

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Q. That is in your foreman capacity?

A. That's right.

Q. Did you lose any time from work between the time Re-Com stopped and the time you got this job?

A. Yes, sir, I would lose if I lift anything like setting a heavy form or something like that. I would lose anywhere from twenty days to ten days.

Q. I believe that your former employer is not any longer. After you ceased work for Re-Com, did you have any difficulty before you got this foreman's job?

A. No, sir. I went to work under the same superintendent that I had been working under for the last ten years.

Q. You did?

A. Yes, sir. I was that lucky, that fortunate somewhere.

Mr. Cantor: I have no further questions at this time, sir.

Norvell T. Jamerson

CROSS EXAMINATION

By Mr. Morris:

Q. Mr. Jamerson, how many people were working on the job site at the time of the accident?

A. Well, I would say it was two people outside of myself, as well as I can remember, employed on this job, right on the job site. They would have seen it if they would

Nov. 1964 have been looking, but whether or not they were

page 213] looking, I don't know.

Q. At this particular time, there were two people on the job site in addition to you?

A. That's right.

Q. Including Mr. Kester?

A. That's right, and a colored guy by the name of — what do you call him — Paul Jefferson.

Q. Prior to that time and afterward they had quite a bit more employees at various times on the job?

Mr. Cantor: I object to anything afterward.

The Court: Sustained.

Mr. Morris: Strike the question.

Q. Now, you say you saw the truck coming in, is that right?

A. (Indicating in the affirmative).

Q. Exactly, where were you?

A. Beg your pardon?

Q. When he was backing in, where were you exactly, Mr. Jamerson?

A. I was against this grade wall, west grade wall.

Q. I see. Did you watch it the entire time until it passed you?

A. Yes, sir, I did.

Q. It came straight back and over the ramp and

Nov. 1964 straight back?

page 214] A. That's right.

Q. And Mr. Kester was the foreman on the job?

A. Yes, sir.

Q. He was giving the driver hand and voice signals, was he not, putting it in straight?

A. Well, I didn't — I didn't pay that much attention. I was

working. I wasn't paying attention to it. We have to work on the job wherever they tell us to come to. We are hired through the union.

Q. Then, your answer to the question is you don't know what Mr. Kester was doing?

A. That's right, sir.

Q. Now, he is responsible for the location of the equipment on the job of which he is in charge, isn't that right?

Mr. Cantor: I object to that question. He doesn't know what Mr. Kester is responsible for.

The Court: He may or may not know from observation.

A. No, sir. Bricklayer could have ordered this load of sand as far as I know. Reynolds could have ordered it. I don't know who could have ordered the load of sand.

Q. Was Mr. Kester in charge of the job?

A. He was in charge. He was the foreman on the job.

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Q. Does the foreman arrange for the location of the equipment and that type of thing?

A. That's right, if the material belongs to him.

Q. Now, you knew that the material was going to be dumped on the east side of the wall?

A. No, sir. I didn't know where it was going to be. I didn't know the truck even had material on it. I just noticed the truck coming in the area. I figured it might be a truck picking up trash. I didn't know who he was.

Q. You didn't pay any more attention than that?

A. No, sir. What he was doing, I don't know. I didn't pay that much attention.

Q. You were still aware that a lot of sand was being dumped in that area?

A. I didn't know if it was a load of sand or what it was. I never did see it. Never did see what he had on the truck.

Q. Never saw it.

A. I seen the truck when he backed by me. I seen it again when he rolled up on me. I seen it when he came back the second time.

Q. Did the truck make any noise?

A. No more than the usual.

Norvell T. Jamerson

Q. You can certainly hear the trucks going by
Nov. 1964 out there, they make quite a bit of noise, don't
page 216] they?

A. Not to make a man quit work and see what truck is going by him.

Q. Exactly how were you situated in regard to this man, Mr. Jamerson. You said you were squatting down, is that right?

A. No, not squatting down. I call it in a balancing position.

Q. Show me, please.

A. This wall — you want me to show you? I will show you with this little table, if you don't mind me moving it here. It will be approximately the height of this grade wall. I had a two-foot level in my hand about this high. See, it bends in the center here. I was just about in the center of it. This position.

Q. You did make a statement to Mr. Kester that you were squatting down?

A. No, sir.

Q. How long had you been standing in that particular position?

A. Well, I would say approximately five minutes.

Q. You had been standing?

A. That's right. See, I had my level on top of this plate, and had two nuts on it and a bolt. I would raise this plate up, get the level to where it was level.

Nov. 1964 Q. Now, in the direction you were facing, were
page 217] you facing directly into the wall?

A. Directly into the wall.

Q. Directly into the wall?

A. Right, sir.

Q. The place where you were working, the far wall, was the place where the beam was to go?

A. Well, the beam sat on the wall.

Q. I understand. If I may refer to Plaintiff's Exhibit No. 10, since the place where the beam goes has an inset into the wall, into the building itself?

A. Do you mean an offset?

Q. Well, offset.

A. Yes.

Q. Into the interior of the building?

A. Yes. Approximately maybe six-inch offset.

Q. Were you working at the offset?

A. I was working opposite the wall. That offset wouldn't be more than six inches at the most. The wall was eight inches.

Q. As you bent over that way, if the wall were here where the arm of this chair is, you were in this position?

A. Yes, sir.

Q. Then the rear part of your body, at least was still standing in the interior of the building, wasn't it?

Nov. 1964 page 218] A. I would say so. Wouldn't be approximately over a foot, though.

Q. Well, perhaps, we can demonstrate to the jury how far that might be.

A. I am a great big man.

Q. Would you stand and face counsel table and bend as you were indicating you were.

A. (Doing so). Just like that.

Q. You have your hand on the table which is considerably higher than fourteen inches.

A. About that high (demonstrating).

Q. That's the distance your shoulder and your rear were into the building from the wall?

A. That's correct.

Q. Is it correct — where were you struck by the truck, Mr. Jamerson?

A. I was struck with his right front wheel on my right hip.

Q. Your right hip?

A. That's right. That would be right here (indicating).

Q. Then, you had your back to the truck?

A. That's right.

Q. Now, do you know for a fact whether it was a wheel or a bumper that struck you?

Nov. 1964 page 219] A. Well, when I could see it, I could see the wheel on top of it.

Q. What hit you first, the bumper or the wheel?

A. I don't know.

Q. You don't know?

A. No, I don't.

Q. You say Mr. Kester was standing off before the truck came in about thirty feet away?

A. No, he had his level — he was set up approximately

thirty feet from this.

Q. Is this where he was when the truck came up over the side?

A. I don't know, I didn't look around. I didn't pay that much attention. I was paying attention to the work I was doing, concentrating on the work I was doing.

Q. Weren't you working in connection with the setting?

A. Sure.

Q. So, you had to know where he was if you were to do your job?

A. No. When I got mine completely level, I would holler and ask him to give me a hand.

Q. When you were working, you had no idea where he was located?

A. No. I didn't pay any attention to where he was located.

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Q. You never looked around to see where he was?

A. No. I saw the truck backing. After he cleared me, I continued my work on.

Q. If Mr. Kester had been thirty feet away and sighting on you before the truck passed by, he would have known you were over there when the accident happened?

Mr. Cantor: I object, if Your Honor please, to what Mr. Kester would have known.

The Court: Objection sustained.

Mr. Morris: Note the exception.

Q. (Continued) Now, did you talk to the driver of the truck at any time before the accident?

A. No, sir, I didn't.

Q. Did you see him give any signal, the driver?

A. No. I didn't pay any attention to the signals.

Q. Did you prior to the time that you were struck hear the sound of the engine?

A. No, I didn't pay no attention to the sound of the engine because I was paying attention to setting those anchor plates.

Q. Did you hear the change in the gears of the truck?

A. No, sir.

Norvell T. Jamerson

Q. Did you hear the wheels of the truck as they
Nov. 1964 crossed the fresh dirt?
page 221] A. No, sir. It was heavily packed. It would have made no fuss anyway.

Q. This wall was relatively newly made, wasn't it?

A. That's right, a green concrete wall. Approximately had been poured seven days.

Q. The wall was not damaged as a result of the accident, was it?

A. No, no, sir. No more than just the truck markings where it went up on the wall.

Q. Do you have pictures of this truck marking?

A. Not to my knowledge.

Mr. Cantor: I took the pictures.

Mr. Morris: If Your Honor pleases, I vouch the record we have no photographs whatsoever.

Q. If there are any other pictures, you would have brought them up?

A. I would. Somebody took them at the job. I don't know who took them. It might have been —

Mr. Cantor: That's right.

Q. In regard to your total condition right now, are you any better than you were in June 1962?

A. Well, I would say I was considerably better.

Q. Considerably better?

A. Yes, sir.

Nov. 1964 Q. How is your condition now as compared to
page 222] when — let me put it this way: How is your condition now as compared with your condition when you saw Dr. Butterworth in April 1962?

A. It's better.

Q. How is your condition compared with the last time you saw Dr. Butterworth and Dr. Deyerle in July 1963?

A. I would say it is some better.

Q. You left the hospital after eighteen days?

A. Yes, sir, I would say approximately eighteen. Eighteen or nineteen, somewhere in there. I was in so much misery, I

didn't even know the days, whether it was Sunday, Monday, or what.

Q. What was the reason you asked to leave the hospital that early?

A. Well, I asked Dr. Butterworth could I go home and be taken care of? The same thing I would be here in the hospital with my family. My wife is sickly. I don't like to leave her by herself.

Q. Where do you buy your drugs that you say you spend money for?

A. Well, it is no special drug store, but mostly —

Q. Did you make any effort to pay your drug bills?

A. Yes, sir.

Q. Do you have a record available?

A. I think Mr. Cantor has one on my last state-
Nov. 1964 ment where I filed my income tax, which was 1963.
page 223] Q. That will show exactly how much you spent for drugs?

A. Not exactly. Approximately.

Q. Do you have any receipt from a drug store or anything like that?

A. No, I never kept no receipt.

Q. What exactly is the trouble that you have with your leg at this time?

A. Well, starting at my foot, would that be all right with you? My foot has a clicking and tingling like a sprained foot. Nobody has to be a doctor. Any man can come here and any lady and put a finger on my ankle and feel it. It don't have to be no doctor. You can hear it click, and it will slip in and out. I walk with a stiff foot on account of when this foot, when if I don't hold my foot in a certain position, it slips in and out and feels like a sprained ankle. Each time it slips, it makes it a little sorer.

Q. All right, go ahead.

A. I have a stiffness in my knee. I would say it is right in the knee joint, but the hurting part of it is approximately an inch and a half below the knee cap.

Q. Can you climb steps normally?

A. No, sir.

Q. Do you have to climp up one at a time?
Nov. 1964 A. I go up one at a time.

page 224] Q. Can you kneel down?

A. I can kneel down, but my knee has a tenderness in it. It is tender.

Q. Can you step over things?

A. If it is not over twelve inches high, I would say I can step over it.

Q. Can you climb a ladder or a scaffold?

A. I can climb it by taking time. I have to take my time to do it.

Q. How about driving an automobile or truck?

A. Well, I can drive an automobile. If I have to change gears and stuff, it bothers my legs. I can't keep myself in one position very long at a time. If I sit in an automobile or a car, say, for twenty minutes, I can hardly get out.

Q. How about a truck?

A. No, I don't never drive a truck.

Q. You don't ever drive a truck?

A. Oh, a pick-up.

Q. Well, a pick-up.

A. Well, no, sir. Mine is not classed as really a pick-up. It is a Falcon.

Q. What model Falcon is it?

A. '60 model.

Q. It's a '60 model pick-up truck, is it not?

Nov. 1964 A. That's right.

page 225] Q. You used it in your business?

A. I use it for transportation.

Q. Now, in regard to your back, how does it compare with when it was back in '62 when Dr. Carpenter saw you?

A. I don't see no difference.

Q. Can you bend your back naturally and normally?

A. I can bend, but it hurts me to bend. I can bend as a normal man, but it hurts to bend. It is not in the bending part of my back, Lawyer, but it is below the bending part of my back. It is mostly, I would call it, my hip, end of my spine.

Q. Did Dr. Butterworth, Dr. Deyerle, and Dr. Carpenter give you a full and complete examination of your back?

A. Well, I am no doctor. I couldn't say a full examination, but as for Dr. Carpenter, I wouldn't call him a veterinarian, but as for the very little examination he done, jerking and

pulling on my leg, he made me so sore that for about three days I couldn't hardly walk.

Q. Did Dr. Carpenter — what else did he do to you that you didn't approve of?

A. Well, I just finally figured he wasn't a doctor after he started pulling and twisting on my legs. It was sore and hurting and all.

Q. Could the fact that he told you that you were
Nov. 1964 ready to go back to work have anything to do
page 226] with how you feel about him?

A. No. I was paid off by my insurance company. I didn't pay no attention to him anyway.

Q. The reference you make to insurance company was Workmen's Insurance Company for your employer?

A. Well, I don't know. I didn't check into none of that.

Q. You made a claim for it, didn't you?

A. Yes, I made a claim for it.

Q. To Re-Com?

A. Yes, sir. That's the state law.

Q. He was the doctor appointed by the Industrial Commission to examine you, was he not, or do you know?

A. Well, I don't know. I just got a notice to report to Dr. Carpenter?

Q. It came from the Industrial Commission?

A. I had to lose a day's work going up there.

Q. It came from the Industrial Commission for you to go to see Dr. Carpenter?

A. As far as I know, it was. It had the state signature on the stamp.

Q. Didn't Dr. Deyerle give you a full and complete examination?

A. No, sir. Not, as I say, a full examination.
Nov. 1964 No, sir, he didn't.
page 227] Q. He didn't?

A. No, sir. Measuring from the length of my leg, the size of my leg, he did not.

Mr. Cantor: If Your Honor please, I want to object to this question unless it is shown that Mr. Jamerson knew it was a full complete medical examination. I don't even know what it is myself.

The Court: I think he has undertaken to answer it as to what his interpretation of it is. I think. Go ahead and answer the question.

Q. Now, isn't it true that —

Mr. Cantor: Note the exception.

Q. (Continued) — that all these doctors required you to bend in all directions you could bend with your back?

A. No, sir, not in all directions, no, sir.

Q. Which direction did they leave out?

A. Made me bend up, over, and straighten up. No side motion.

Q. How about the leg, ankle, and foot?

A. They made me move it. I told them about the slipping in it, and told them to feel it. They didn't even feel it.

Q. They X-rayed your ankle and knee and back, didn't they?

Nov. 1964
page 228] Mr. Cantor: I object to the question. The testimoney here is that Dr. Carpenter had X-rays of his ankles. That one didn't do that.

The Court: Well, he has this witness on cross examination, Mr. Cantor. I think it is perfectly proper for him to.

Mr. Cantor: All right, sir.

Q. Let's do it this way, then. Did you have a number of X-rays made of your ankle, your knee and your back?

A. I would say a few, not a great number of them.

Q. By various doctors?

A. Various doctors. If I wanted to find out what was the matter with me, if something could be done for it.

Q. In regard to Dr. Freund and Dr. Beath, they were doctors your lawyer recommended, is that true?

A. No. My lawyer didn't recommend Dr. Beath.

Q. Didn't you hear Dr. Beath say you were recommended to him by Mr. Cantor?

A. No. I went to Mr. Cantor and asked Mr. Cantor would it be all right if I went to Dr. Beath for a check up? He said yes, it would be perfectly all right.

Norvell T. Jamerson

Q. At that time, you had been receiving full treatment from Dr. J. F. Butterworth?

A. Not full treatment.

Q. He hadn't treated you fairly?

Nov. 1964 page 229] A. I had to buy my own medicine, crutches. I don't call that any full treatment.

Q. Didn't he tell you to report to him every four weeks?

A. He gave me a prescription to the drug store to buy medicine with.

Q. Did you present these drug bills to your Workmen's Compensation carrier?

A. No.

Mr. Cantor: Your Honor, I don't want the continuous injection of the Industrial Commission. I made my motion against it.

The Court: It is overruled. Go ahead.

Q. Is there any reason why you didn't present your bill to your Workmen's Compensation carrier?

A. I wouldn't get nothing out of Workmen's Compensation for turning them bills in.

Q. They weren't important enough to present?

A. Important to me. Sometime I wouldn't have money to buy the medicine. I have to buy it on credit. They don't let me have credit when I am not working.

Q. Did you have a lawyer handling the Workmen's Compensation case?

A. Yes.

Q. Do you know whether or not he presented any bills for your medical expenses?

Nov. 1964 page 230] A. I don't know.

Q. For your drugs?

A. I don't know.

Q. You came to my office in July 1963 and took what we call a deposition. Do you recall that?

A. Down on Main Street?

Q. Yes, sir. 909 Main Street.

A. Yes.

Q. You remember we talked at that time?

Norvell T. Jamerson

A. Yes, sir.

Q. I questioned you to find out what your claim was?

A. Yes, sir, I remember that.

Q. Do you recall at that time saying you had stayed on your crutches for at least one complete year?

A. Well, I don't know. I don't recall saying that I stayed on them one complete year. Wouldn't be but two weeks, then started on one crutch, then started walking with a cane.

Q. Then, you were on crutches and a cane for one full year?

A. That's right. A lot of times, I would twist my foot and have to go back on crutches again.

Q. I understand that you wore your crutches and your cane when you went to see the doctor on occasions?

A. No, not unless I needed them.

Nov. 1964 page 231] Q. Do you recall you testified in your deposition — do you recall that you went to see Dr. Carpenter for an examination without a cane, do you remember that, when you saw Dr. Carpenter?

A. Whether I was using a cane or not? I was using a cane at the time, but I could have left it in my automobile.

Q. So, the fact he didn't see you with a cane, it is possible that you left it in the car?

A. That's right. It's possible I could have left it in the car. Going a short distance like that. When I got so I could use it, I would try to use my leg as much as I could possibly use it.

Q. On those occasions when you went to work, sometimes you went using a cane or crutch, when you went looking for work?

A. That's right.

Q. That was in April. After that, you would go on crutches sometime or with the cane looking for work?

A. Depending on how my leg felt. I didn't look for work on crutches, no. I wasn't able to look for work on crutches. I wasn't able to work.

Q. You did go to see Re-Com and some of these people having your cane or crutch, one, with you?

A. When I went to Re-Com, the construction I was working on, I had crutches, and I asked them did they

Nov. 1964 have any light work I could do?

Norvell T. Jamerson

page 232] Q. Do I understand you to say you never had any previous injuries at all, Mr. Jamerson?

A. None I would say like that one.

Q. None like that one?

A. No, sir. Mashing your finger or some little odd stuff like that.

Q. You never had any broken bones?

A. No.

Q. Now, in regard to your stomach, if I understand your testimony correctly, the day after the accident, in the hospital you vomited blood several times?

A. I vomited blood off and on for aproximately a year after the accident.

Q. This was in the hospital as well as out?

A. Sure.

Q. Is it correct that after your initial constipation that you discussed that you began to have diarrhea?

A. That's right.

Q. Frequent bloody diarrhea?

A. Yes, it was watery and bloody.

Q. This occurred, of course, in the hospital as well as out, did it not?

A. Yes. The first movement of my bowels was a lot of blood in it. All over the bed.

Nov. 1964 page 233] Q. After that, in the hospital and on the outside, you had bowel movements as often as twenty times a day?

A. That's right, sir.

Q. You had in the hospital severe abdominal pains and cramps in your stomach?

A. Through my stomach.

Q. Right in here, here or where (indicating)?

A. I would say where my navel is. Right through where my navel is. Belt line.

Q. When you went to see Dr. Freund and Dr. Martin about your stomach complaint, you told them just what you told us here?

A. That's right. I explained to them I wanted them to find out what was the matter with my stomach.

Q. You reported all of this to Dr. Butterworth, I suppose?

A. Well, I mentioned it to him. I mentioned to Dr. Butter-

worth something was the matter with my stomach. He told me, he said, we don't practice that kind of stuff.

Q. Did you mention it to the nurses?

A. I mentioned it to the nurse in the hospital about diarrhea.

Q. Of course, about the vomiting of the blood, you thought that was important enough to mention?

A. No, I didn't think it was very important. I

Nov. 1964 figured I was mashed in my stomach, it was a

page 234] little intestine or something busted in there.

Q. You figured you busted your intestine but it wasn't important enough to mention to anyone?

A. I thought a blood vein or something like that.

Q. What did you do with this blood that you vomited in the hospital?

A. They gave me a little pan to spit in. Put it in there, put a napkin over it.

Q. Somebody came and carried that away?

A. Yes, sir, I wasn't able to do it.

Q. Did the nurses carry that away?

A. No. The colored help in the hospital.

Q. Were you on a bed pan the whole time you were there or did you have to call for it?

A. No, I had to call for it.

Q. So, every time you had this bowel movement, twenty times a day, you had to call for the bed pan?

A. I didn't have it twenty times a day in the hospital. That was after I had got out of the hospital.

Q. Didn't you tell Dr. Freund you had it twenty times a day in the hospital?

A. No, not in the hospital.

Q. Didn't you hear him testify to that?

A. No, I didn't hear him say in the hospital.

Nov. 1964 Q. How many times a day did it happen to you

page 235] in the hospital?

A. I would say several times a day and during the night.

Q. During the night, too?

A. That's right.

Q. During the night and day, would it be as much as ten?

A. Yes, sir. It would be approximately ten times.

Q. Frequently or all the time with blood?

Norvell T. Jamerson

A. Well, I didn't look in the pan.

Q. You didn't?

A. No, sir. I was in a position I couldn't turn and twist.

Q. How did you know it was bloody?

A. I could see it run off the side of the sheets. I couldn't tell when my bowels was going to move or won't going to move. They automatically moved. I was crushed. I was in a lot of misery.

Q. You frequently had blood all over your sheets?

A. Yes, sir, spots of blood. You could see it.

Q. Did you mention how often they changed your sheet on account of the blood, Mr. Jamerson?

A. Each time something happened like that during the night or any time.

Nov. 1964 page 236] Q. How much in a twenty-four hour day would they change the sheets? Would it be as much as three or four times?

A. I would say they changed as much as three times.

Q. The nurse did that?

A. No nurse helps in the hospital.

Q. Colored help?

A. Colored help. Mostly men.

Q. While you were there, was your broken leg up in the air?

A. No, not up in the air. It was down in the bed.

Q. You were instructed not to work the arm?

A. Not to move my arm.

Q. You were told not move, to be careful?

A. That's right, be careful.

Q. Yet, you stated the colored help in the hospital lifted you up to change your sheets?

A. That's right.

Q. Could you give us the names of any of the people who were in the ward with you at the hospital?

A. Not right offhand. Several different ones were in there when I was there.

Q. Have you made any effort to check the records of the hospital to see who they might have been?

A. No.

Q. They would have seen all this happen?

Nov. 1964 A. Oh, yes. They seen it and smelled it, too.

page 237] Q. I understand. Are any of them here to testify for you?

A. None of them here.

Q. As I understand from your deposition, from what you told Dr. Freund, you have been on sort of a diet every since the accident, is that right?

A. No, not every since the accident. Every since my stomach, diarrhea and no drug store prescription, a drug store prescription, a doctor's prescription wouldn't slow it up. It wouldn't stop.

Q. When was the first time you noticed you couldn't eat or drink what you wanted to?

A. Well, I didn't try to drink, I would say, for approximately three months after I was hurt.

Q. Why didn't you try to drink anything for three months?

A. Well, the doctors all told me that alcohol would go against healing of the bone.

Q. Well, what about other kinds of foods. When did you first notice they bothered you? Like fried foods?

A. Fried foods?

Q. When did you first notice that caused you trouble?

A. Well, I would say a week after I got home my

Nov. 1964 wife fixed pork chops and I ate one. It tore me up.

page 238] Q. How about things like lettuce, onions, that sort of thing, when did you first notice they gave you trouble?

A. Well, most anything I eat makes my stomach hurt. I think a lot of it comes from my back and hip, but I was sore through from the belt line down. I was so sore I couldn't stand for a belt to touch me.

Q. Mr. Jamerson, when did you first notice that onions or other kinds of foods aside from fried foods would cause you trouble?

A. I would say a week after I came out of the hospital.

Q. Every since that time, you can't eat any of these foods?

A. Fried foods or something spiced, like a lot of pepper in it, and vinegar or anything real sour or pickles, something like that. It definitely won't stay down.

Q. Do you have the same trouble eating onions?

A. Onions won't come back. Onions will stay down, but they give me cramps.

Norvell T. Jamerson

Q. They give you cramps?
A. Yes, sir.
Q. This was in September, October 1961?
A. That's right.
Q. After that time, you were careful about
Nov. 1964 what you ate and what you drank?
page 239] A. Yes, that's right, sir.
Q. And it made you sick every time you ate the wrong thing?
A. That's right, sir.
Q. It made you sick every time you drank whiskey?
A. That's right, sir.
Q. If it made you sick, did you stop doing those things?
A. I would say maybe for a couple of weeks, then I figured I was getting all right, then I would try it again. Like I do my medicine. I try to get off my medicine. For two or three days, I don't take any. When I get off, I get sick. I got to start back taking it again. I figure I have got well enough maybe I can go off. I am all right. I find I am not.
Q. You know that you are supposed to stay on your diet?
A. Several doctors told me.
Q. From time to time, you go back and take a drink?
A. If I am well enough that I can try it, I will take a drink of whiskey. I take the cramps and start to vomiting and dysentery.
Q. Straight whiskey?
Q. Mix it?
Nov. 1964 A. Yes, sir.
page 240] Q. Did you make any report of all this stomach trouble to Dr. Beath?
A. No, I don't believe I did. I found he was a bone specialist, not a stomach specialist.
Q. Did you make any complaint of this to Dr. Carpenter?
A. No, I didn't.
Q. Did you make any complaint of these to Dr. Butterworth?
A. Some of them, I did.
Q. How about any of the interns or residents of the hospital?
A. No, no.
Q. How about any of the nurses in the hospital?

A. A few of the nurses I mentioned it to.

Q. Anybody else connected with the hospital that you mentioned all this trouble to?

A. No. I was in a lot of misery when I was in the hospital. I didn't want to talk to nobody. I didn't want to look at nobody, to tell you the truth.

Q. I thought the reason you wanted a room with four people was because you wanted to talk to people?

A. Yes, sir, but I was in a lot of pain. Have you ever had a leg broken?

Nov. 1964 page 241] Q. What I am asking you is did you say on direct examination that the reason you wanted a room with four people in it was you wanted people to talk to?

A. That's right.

Q. Now, you are saying that you didn't tell the nurse and the interns about your trouble because you didn't feel like talking, is that right?

A. No. I said I didn't talk, didn't feel like talking.

Q. All right, sir. Now, let's get to about your work situation. Your work is dependent somewhat upon the weather, is it not?

A. No, sir.

Q. It isn't?

A. No, sir.

Q. The rain doesn't affect the amount of carpentry work available?

A. Not a carpenter like I am. Some carpenters are classified as rough carpenters. I am classified as any kind of carpenter, anything that comes along. Hanging doors, trim. I can go indoors or trimming, hanging doors, so this doesn't bother me.

Q. For example, if it had been raining that day when this accident happened, there wasn't any roof on this building, you would have been able to work?

Nov. 1964 page 242] A. Yes. I would be in the cannery.

Q. Working in the cannery?

A. In the cannery.

Q. Now, I am going to show you — well, while Mr. Cantor is looking at that, what doctors did you see from the time you last saw Dr. Butterworth in April 1962 and Dr. Beath in May '62 and Dr. Carpenter in June 1962. After that, what doctor

did you see until you saw Dr. Martin in February 1963?

A. Well, I can't recall. I saw Dr. Freund.

Q. Who?

A. Dr. Freund. I guess that's the way you pronounce his name. Supposed to be a stomach specialist. That is what he was recommended to me for.

Q. Where is his office?

A. It is on North Boulevard.

Q. Do you know how to spell his name?

Mr. Cantor: F-r-e-u-n-d.

Mr. Morris: Oh, Dr. Freund.

Q. (Continued) Well, you didn't see Dr. Freund until July 1963. I asked you what doctor you saw between June 1962 and February 1963 when you saw Dr. Martin?

A. I don't recall, I mean, right off hand the doctors I went to see during that time. Dr. Martin, Dr. Evans, Dr. Gammon.

Q. Who is Dr. Gammon, where is his office?

Nov. 1964 page 243] A. That is next door neighbor to me.

Q. Next door neighbor? Is he subpoenaed here as a witness?

A. No, sir.

Q. When did you see him?

A. I seen him practically every day I was hurt. He would check on me every day, and his wife was a nurse, she would help my wife out like most neighbors are supposed to do.

Q. What other doctors did you see between that period?

A. I can't recall the name right off hand.

Q. Isn't it so, Mr. Jamerson, that you did not have any official medical treatment from June 1962 until February 1963?

A. A lot of that, I wasn't able — didn't have the money to really go to the doctor. I would go to the drug store to get some drugs, call the druggist and ask him what did he have. Each time, he sent me something. Said if that don't work, I will send you this, I will send you that.

Mr. Morris: Have you examined that?

Mr. Cantor: What is the purpose of it? This is a withholding statement which I gave you of 1958, 1960, 1961. I have

a recapitulation here which might save you some trouble.

NOTE: At this point colloquy is had between
Nov. 1964 counsel, which is reported but in the interest of
page 244] brevity is not here included in this transcript,
whereupon the above-referred-to recapitulation of wages is marked and filed by the Court as *Defendant's Exhibit No. 3.*

Mr. Cantor: Let the jury know that it shows a recapitulation from social security and includes his salary up through the first quarter of 1961. It does not include the salary beyond the first quarter of 1961 because that is the date they had records available for.

Mr. Morris: These records stop in March 1961.

Mr. Cantor: That's right.

Q. Would you look at those. Those are your W-2 forms?

A. Must be.

Mr. Cantor: We will stipulate that.

A. (Continued) That is my name right there. I wrote right up there.

Q. In regard to this, if you will hold that in your hand, please, sir, three years before this accident, your income, total income, was $5,600.00 approximately, $5,000.00 approximately, and $4,600.00 approximately.

Now, that comes out to something less than $5,200.00 a year, roughly. Is that not so, Mr. Jamerson?

Nov. 1964 A. That's right.

page 245] Q. And that is closer —

A. It is the actual count right here.

Q. That is closer to $425.00 a month than six hundred something you are claiming here?

Mr. Cantor: If Your Honor please, I think what he is claiming here is based on the earnings at the time he was injured. Now, certainly, there has been a standard, the union standard, that goes back to 1936.

The Court: I think that's a matter of argument. That's proper cross examination. Go ahead.

Norvell T. Jamerson

Q. I am not talking about 1936, I am talking about 1958, 1959, 1960, the years immediately before the accident. You were averaging approximately $425.00 a month?

A. Somewhere in that neighborhood. I figure that was right good money. That's a good average for a working man when he has to work with his tools and his hands.

Q. During that period of those three years, you worked at seventeen different jobs?

A. I don't know. I might have had twenty-five as far as I know.

Q. Seventeen separate jobs?

A. I am a union carpenter. I might work here today, yonder tomorrow, anywhere the union sends you you work at.

Nov. 1964 page 246] Q. Now, Mr. Jamerson, isn't it true that on February 1962 Dr. Butterworth indicated that you could go back to light work?

A. This was during that time, yes, sir.

Q. And, if I understand your testimony correctly, you did some light work around —

A. Around the house, yes, sir, but not out on the job, something like that.

Q. You did some work for somebody for maybe ten to fifteen dollars a week?

A. I did different little jobs, picked up jobs, not what I would out here on a big job working as a contractor or something like that. That was just neighbors work, something like that I would do.

Q. Isn't it true he released you for the return to your regular employment in April 1962?

Mr. Cantor: Whether he released him or did not release him, Dr. Butterworth said he had some disability.

The Court: He has this witness on cross examination. This is a proper question. I overrule you.

Q. Weren't you released to return to regular work in April 1962?

Nov. 1964 Mr. Cantor: I think the record shows he was not released for work on April 1962, but Dr.

page 247] Butterworth testified he had a thirty per cent disability.

NOTE: At this point colloquy is had between Court and counsel, which is reported, but in the interest of brevity is not here included in this transcript, whereupon the matter continues as follows:

Q. What —

A. Do you want me to answer your question? He said light work. And, in my line of work, and a union man is not supposed to get a job unless he is able to do a full day's work. You can't go out there hanging around stuff like that.

Q. Then it was your understanding that the union regulations kept you from work?

A. I am a union man. I am strictly a union man, that's right. Kept my dues up during the time I was hurt.

Q. Then, do I understand that your union has such a harsh rule that if a man is injured and can't do climbing work, they will fine him money if he can't continue to carry on a job?

A. Yes, sir.

Mr. Cantor: I object to the word harsh.

Q. You have testified that you couldn't do other kinds of work because the union would fine you a hundred dollars?

Nov. 1964 A. That's right.

page 248] Q. You have a steward, don't you?

A. You have a steward on the jobs, union jobs.

Q. You mean to tell me the regulations of your union are such that if a man is injured and unable to do any climbing work that he is prohibited from doing other kinds of work?

A. That's right, sir.

Q. As a consequence of this, you refused all other kinds of work?

A. No, sir. I didn't refuse it. I would have to do most any kind of work I was able to do.

Q. I believe you testified in your deposition —

A. I took other types of work, I testified. Light jobs. If I could make a dollar outside of it, I did.

Norvell T. Jamerson

Q. Didn't you testify in your deposition back in July 1963, that you were offered office work but you refused that? Didn't you testify to that?

A. A man with a seventh grade education, Lawyer, can't do no office work like typewriting, stuff like that. I won't qualified for that. I couldn't work for a dollar an hour. I think you can't feed a family on a dollar an hour. I don't think.

Q. So, you didn't take the office work because you couldn't work for a dollar an hour?

Nov. 1964 page 249] A. No. I couldn't do an office job.

Q. They offered you an office job, didn't they?

A. No.

Q. I refer you to page 32 of your deposition. You say you went back to see him in April.

I am questioning you. (Reading from transcript). Didn't they have any work for you?

A. No, they didn't have any work.

Q. Let me ask you if this is not your answer. (Reading from transcript). Answer: Every time he told me to go back I went back and checked.

A. Yes, sir, that's right, sir.

Q. (Reading from transcript) When you went back you were no longer on crutches?

Answer: April. I was using one crutch.

A. Right offhand I don't remember if I was using one crutch or walking cane. Right off.

Q. (Reading from transcript) Question: Still on crutches in April? Answer: One crutch in April.

Question: And unable to work then? Answer: Unable to work.

Question: What kind of work did you ask for? Answer: I asked him did he have anything that I could do.

A. That's right, sir.

Nov. 1964 page 250] Q. So you went back in April. When Dr. Butterworth told you to try to go back you went back on crutches, is that not true?

A. I don't remember if I had a crutch or walking cane but I wasn't able to work, not like an average man could work.

Q. Did you testify in this deposition in 1963 that you went to work on a crtuch?

Norvell T. Jamerson

A. I didn't work on no crutch.

Q. You went to look or watch on a crutch?

A. No, sir. I didn't go to work on a crutch. I checked with the union hall to see if they had any work for me to do.

Q. What you said in the deposition is not correct? You were not?

A. I don't know if I was on one crutch or using a walking cane at that time I checked with the contractor because I could work for the contractor, light work, that wouldn't have been against union rules. This contractor I got hurt working for, if I had went back with the contractor he would put me to work for less than my union scale, but he wouldn't pay me a dollar an hour. I walked out. I would have been fined a hundred dollars for working for less than a dollar an hour.

Q. The question is you were telling the truth in Nov. 1964. July 1963 when you gave this deposition and page 251] you did in April go to Re-Com for work on one crutch, was that the truth?

A. It was either a crutch or a walking cane. I can't exactly remember. If I did give that statement, yes, it is true.

Q. You wouldn't expect them to hire you if you were on crutches?

A. I don't know. He might have had something I could have done.

Q. Isn't it true that Dr. Butterworth told you you didn't need that crutch back in February 1962?

A. Well, I don't know what the doctor told me. A lot of doctors told me a lot of things I found out won't even true. A man has got his personal feelings.

Q. Mr. Jamerson, is it not true that you were told in the winter of 1962 to get rid of that crutch or the crutches?

A. He told me to put as much weight on that foot as I could.

Q. Do you recall Dr. Carpenter instructed you to get off the crutches because it was better for you to get well quicker?

A. That doctor kept the cast off my leg. Took his advice to put a shoe on the foot. I couldn't find a shoe in Richmond big enough to fit on the foot.

Q. The question is were you told in February of 1962

Norvell T. Jamerson

to get off the crutches and try to walk without
Nov. 1964 them?
page 252] A. That's right.

Q. Yet, in April 1962 you went to your jobsite saying you were ready to go to work and you still had the crutch?

A. I didn't go to no jobsite. No, sir. I was called to the job.

Q. And you still had the crutch?

A. No. When I went to work, I didn't have no crutch.

Q. I am talking about April 1962. Did you look for work in 1962?

A. No, I wasn't able to work.

Q. You didn't look for work in '62?

A. No, but little ends and odd jobs I was able to do.

Q. Is that correct? I want to be sure I understand you. You did not look for carpentry work in 1962?

A. No, because I was disable to do carpentry work.

Q. You didn't ask anybody for carpentry work?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. This, despite the fact that Dr. Carpenter and Dr. Butterworth said that you could do carpentry work?

A. Light work. Dr. Butterworth said light
Nov. 1964 work.
page 253] Q. Also in your deposition when you were questioned about refusing office work, this is what I asked you last July: (Reading from transcript) Question: What kind of duties did you ask for in April 1962? Answer: I asked him did he have anything that I could do?

A. That's right.

Q. Question: What person is that? Answer: That was Jack Wright, owner of Re-Com Construction. He said if you can do office work I can put you to work, but not pay you the same scale that you were making when you got hurt.

A. Yes, sir.

Q. You said: I said I do not think that I could qualify for office work because I haven't had that much education. Question: You can read and write? Answer: I can read and write.

A. That's true.

Q. Isn't it also true that you were offered jobs as a truck

driver and you refused them?

A. No, sir. I wasn't able to drive a truck. I am not able to drive a truck right today.

Q. Do you recall any of the doctors saying that you were unable to drive a truck?

A. Not to know from my own personal feelings.

Q. Let me refer to page 45 of your deposition taken over a year ago. You say this: I got offers as a truck driver, driving a truck, but I couldn't drive, so I couldn't take it. Is that what you said?

Nov. 1964 page 254] A. I might have said truck driver. I can't drive no truck.

Q. You turned down work driving a truck also?

A. That's right. A carpenter ain't supposed to drive a truck no way. If he is a union carpenter, he is supposed to be a carpenter. He ain't supposed to be no truck driver.

Q. You admit then here that you had been doing some work prior to June 29, 1962 when Dr. Carpenter saw you?

A. That's right. Light work.

Q. Did you do some work on a house for Mrs. Crouse?

A. That's right.

Q. Did you make some windows for Mrs. Patsallas?

A. No, I didn't make no windows for her.

Q. Did you do some work for your brother?

A. A little work.

Q. You have a brother who paints and is a carpenter?

A. No, sir.

Q. What is his occupation?

A. The one you are speaking of works for Reynolds Metals Company, foreman for Reynolds Metals Company.

Q. Do they do painting and carpentry work?

A. A little. He doesn't have to do that to make a living.

Q. In 1962, April, wasn't he doing some of this work on the side?

Nov. 1964 page 255] A. He was trying to get some work for me, to do on the side. Something like I could do and make a living.

Q. You were doing that?

A. Anything that I could find that I could do, I would do it, yes, sir. He was trying to help me, he won't doing the work himself. He was trying to help me out.

Norvell T. Jamerson

Q. All right. You made the statement that you were unable to pay for your doctor's bills. Is that not what you said?

A. That's right, sir.

Q. Isn't it true that you had compensation benefits that paid your doctor's bills?

A. I ain't never had nothing pay any bills —

Mr. Cantor: If Your Honor please, again we renew that motion. I think it's improper. It has been gone into over and over again.

The Court: Overruled. Go ahead.

Q. Now, isn't it true, Mr. Jamerson, that you had Workmen's Compensation paid by Re-Com Corporation to pay your medical bills, that would have paid all your bills relating to this accident, if you had asked them to?

Mr. Cantor: I object to that. It certainly is not true. He keeps bringing in this Workmen's Compensation. He has said it again and again and again.

Nov. 1964 page 256] The Court: He is asking the witness if the witness knows. He may answer either in the affirmative or negative. If he doesn't know the answer, he may say so.

Q. (Continued) Again, you say you made a claim under Workmen's Compensation as a result of this injury?

A. That's right.

Q. Against Re-Com Corporation?

Mr. Cantor: Rather than my continuing to get up, I want to state that my objection runs to all these questions.

Mr. Morris: I will so stipulate, Your Honor.

Q. (Continued) You made such claim, did you not?

A. That's right.

Q. All right. Isn't it true that then they paid your medical expenses and not you?

A. If they paid the medical expenses, I don't know anything about it. I have never seen no receipt or nothing. They

paid no doctor's bills. They paid me $72.00 every two weeks. You can expect what would come out of that.

Mr. Cantor: I think that counsel has continued to go into this, he has drawn it out, and I think Your Honor should instruct the jury at this time about the fact that he has to pay it back.

Mr. Morris: If Your Honor please, this is an improper objection on the part of counsel for something
Nov. 1964 we have discussed in chambers so it wouldn't be
page 257] brought up.

The Court: Gentlemen of the jury, I am going to ask you to recess for lunch at this time, and, counsel, wait here, and I will ask you to be back here, if you will, at 2:00.

NOTE: At this point the jury is excused for lunch, whereupon a matter is taken up between Court and counsel, which is reported but in the interest of brevity is not here included in this transcript, and at 2:15 p.m., court is reconvened, and the matter continues before the jury, as follows:

The Court: All right. I believe the plaintiff was on the stand.

Gentlemen of the jury, you have heard certain testimony this morning as to the amount of compensation which the plaintiff received from Workmen's Compensation under an award from the Industrial Commission. You are told to disregard this or any testimony as to the amount of Workmen's Compensation which the plaintiff may have received, as the amount of Workmen's Compensation received has no bearing upon the issues in this case.

NOTE: At this point the witness resumes the witness stand, and the matter continues as follows:

Nov. 1964
page 258] CROSS EXAMINATION

By Mr. Morris: (Continued)

Q. Mr. Jamerson, listen carefully to my questions, please. I am not asking you nor have I asked you what the amount of compensation was that you received. I am asking you this.

You said that you didn't have the money to pay your medical bills?

A. (Indicating the affirmative).

Q. I ask isn't it true that from September 1961 until July 1962 all of your doctors and hospital bills were paid by the Workmen's Compensation carrier?

A. I don't know, sir.

Q. You did not pay them, did you?

A. I didn't pay them.

Q. They have been paid by someone?

A. But, my private doctors' bills, private doctors I went to see myself, I paid them out of my own pocket. I bought my own medicine.

Q. I see. You didn't see that private doctor in the seventeen months after the accident, isn't that so?

A. Oh, yes. I seen doctors before seventeen months after the accident.

Q. Dr. Martin, I am talking about, you didn't see him until February 1963?

Nov. 1964 page 259] A. Might have, somewhere in that neighborhood. I don't remember the date.

Q. Isn't it true that he is the first doctor that has testified here that said you had any trouble with your stomach? The first doctor who saw you who said you had trouble with your stomach? What I mean is prior to the time you saw Dr. Martin, did any of the doctors you saw before that make any reference to injury to your stomach?

A. Yes, sir.

Q. Who was that?

A. Dr. Freund.

Q. You saw Dr. Freund after you saw Dr. Martin?

A. I saw Dr. Freund before I saw Dr. Martin.

Q. Well, I don't want you to be confused about this. Did you see Dr. Martin in February 1963?

A. I don't recall the date, I don't, but I seen Dr. Freund before I seen Dr. Martin, and he recommended medicine to Dr. Martin.

Q. Well, — do you know whether it is true or not that you saw Dr. Freund in July of 1963, Mr. Jamerson?

A. I don't remember what month it was.

Q. Was that the first month you saw Dr. Freund and you

saw Dr. Martin in February 1963?

A. It was all just about together, because he examined me and run a test on me and said something had to

Nov. 1964 be done.

page 260] Q. Well, Mr. Jamerson, the question that I asked you is if you saw Dr. Martin in February 1963 and you said you didn't see Dr. Freund until July 1963, then you saw Dr. Martin first, would that be true?

A. Yes, that would be true. I don't exactly remember, because I was having trouble all along. I went to whatever doctor I figured it was my privilege to go to.

Q. What I am saying is from September 5, 1961, until February 17, 1963, you saw Dr. Butterworth, you saw Dr. Carpenter, you saw Dr. Beath, all three of those doctors?

A. That's right.

Q. For that seventeen month period.

A. That's right.

Q. Isn't it further true none of them read any history when they testified here of any injury to your stomach or vomiting blood or diarrhea or any of that business?

A. No, they didn't testify because I don't go to a bone specialist for stomach trouble. If I had a headache, I go to a head specialist. I don't go to a bone specialist for a headache.

Q. Why is it that you waited seventeen months to go to a specialist for your stomach?

A. Because I didn't have the money to go to him.

Q. Mr. Jamerson —

Nov. 1964 A. I wasn't getting any better. I was getting

page 261] worse instead of better.

Q. To begin with, the doctor you went to see first was not a specialist, he was a general practitioner, isn't that so?

A. That's right.

Q. You didn't see the specialist until July 1963 and that was at Mr. Cantor's recommendation, isn't that so?

A. Well, no, that was different ones telling me he was a good doctor to go see for stomach trouble, that thing or another, and I asked Mr. Cantor would it be all right for me to go see him?

Q. Mr. Cantor didn't recommend Dr. Freund?

A. He didn't really recommend Dr. Freund, no, sir.

Norvell T. Jamerson

Q. Did you hear —

A. I figured he was my attorney, he would give me the best advice.

Q. He was representing you for Workmen's Compensation?

A. That's right. Anything you want to know about that, you ask him.

Q. Did you see any specialist for the whole period that the Workmen's Compensation was paying, did you see any specialist or anything having to do with your stomach or internal injuries?

Nov. 1964 page 262]

A. Well, I mentioned it to them.

Q. To whom did you mention it?

A. I mentioned it to Dr. Jack Butterworth.

Q. And he ignored all that?

A. That's right. He didn't seem to pay any attention to them. Just like I got a little chip in my eye, and they didn't make no record of that.

Q. Mr. Jamerson, didn't you have another accident just last month involving your eye?

A. Yes, I had an accident about eight weeks ago. Stayed over here in the eye hospital for my right eye, but that wasn't for this injury.

Q. You pointed to your right eye on both occasions.

A. That's right.

Q. That was another accident entirely?

A. That was where I got hit in the sight of my eye this last time.

Q. That is what you —

A. The side of my head was stitched up. I fell over this grade wall. Chipped a little piece off on the bone here, and it is still in there, still loose. I push on it, right on it. I asked Dr. Butterworth. He doesn't know of any trouble with it like it is. Whether or not he made a record of it or not, I don't know.

Q. Mr. Jamerson, without getting into a lot of side issues, last year, you got hit with a crowbar, did you not?

Nov. 1964 page 263]

A. Not last year, this year.

Q. Isn't that when you hurt your eye, isn't that when you hurt your eye?

A. No, sir.

Mr. Cantor: If Your Honor please, I submit it is entirely irrelevant and immaterial.

The Court: Objection overruled, go ahead, sir.

Q. Mr. Jamerson, I didn't bring up this business of the eye. You said your doctors in this automobile accident, truck accident, ignored an injury to your eye, is that correct?

A. That's right.

Q. They simply refused to do anything about it?

A. That's right.

Q. You asked them to?

A. I asked them to and asked their advice about it, asked them about taking that little piece of bone out. They said it was no trouble, don't fool with it.

Q. You admit to getting hit in the eye with a crowbar, do you not?

A. Yes, sir, but —

Q. That was altogether a different matter from what you are talking about here?

A. You have been going on about that. That is my business, what I did in that, what the doctor said, that is

Nov. 1964 my business, that ain't even in this case.

page 264] Q. You don't want to tell me about this?

A. No, sir, I don't figure that's your business.

Q. Mr. Jamerson, you had for these many months after the accident pending a Workmen's Compensation claim, didn't you, against Re-Com Corporation and their Workmen's Compensation insurance company?

A. Whatever the State allowed me.

Q. During all that time, although you claimed that you were vomiting blood, and that you had diarrhea twenty times a day?

A. Not every day, not every day. If I did, I wouldn't have lasted long.

Q. How many?

A. At the time when I would eat greasy foods or rough foods would cause it.

Q. You had bloody diarrhea?

A. That's right.

Q. You had violent cramp-like pain in your stomach?

A. That's right.

Q. Double you up with pain?

A. That's right.

Q. You didn't go to any doctor during this time to treat you for that condition?

A. No.

Nov. 1964 page 265] Q. Yet, all that time if it might have happened from the accident like you say, wouldn't you have tried to make a claim for your Workmen's Compensation?

Mr. Cantor: That is a conclusion of law whether he had a right or not.

The Court: What he knows. You may ask him what he knows. I overrule the objection.

Q. But, you knew you had a right to make a claim for your injury to your leg, didn't you? You knew that, and didn't, isn't that so?

A. Yes. I hear they were supposed to pay me for the damage that was done.

Q. You made a claim for damages to your leg?

A. I talked to a lawyer first. I didn't do it myself. I asked the lawyer to do it.

Q. You brought a claim for damages to your leg?

A. That's right.

Q. Involved your back?

A. That's right.

Q. And your ankle and your foot that you complained about?

A. That's right.

Q. But, isn't it true during the period that you were being treated for the ankle, foot, that you didn't seek any help or advice for injury to your stomach?

A. No more than medical. I bought drugs myself.

Nov. 1964 page 266] Q. Didn't you know that if you got an injury to your stomach as well as an injury to your knee that your Workmen's Compensation would pay you for that, too? Didn't you?

A. No. They won't pay for no more than they did for the leg.

Q. But, you had legal advice at the time?

A. They paid me $72.00 every two weeks.
Q. You had legal advice during this period, legal advice?
A. No more than I asked for.
Q. Did your lawyer advise you during that period?

Mr. Cantor: I object to what his lawyer advised him to do.
Mr. Morris: If Your Honor please —
The Court: Objection overruled. He testified, Mr. Cantor, he left the question of making the claim, if I understood him, up to his counsel, and I think it is a proper question.

NOTE: At this point argument is had between Court and counsel, which is reported but in the interest of brevity is not here included in this transcript, whereupon the matter continues as follows:

The Court: I overrule the objection to that.
Mr. Cantor: I note the exception.

Nov. 1964
page 267] Q. During this period of time when you had a Workmen's Compensation claim pending, were you ever advised in the pursuit of this claim to see a doctor about any alleged internal injuries?

Mr. Cantor: I object to that question again, sir.
The Court: Overruled.

Q. (Continued) Do you understand the question, Mr. Jamerson?
A. I figured that was up to me to go see any doctor I wanted to go see.
Q. You just wanted to go see one, is that it?
A. No, I didn't have the money to go see the doctor.
Q. Well, Mr. Jamerson, isn't the answer to that if you had a legitimate claim for Workmen's Compensation from this injury, they would have paid that?

Mr. Cantor: I object to that question.
The Court: I don't think you can ask whether they would have paid it, Mr. Morris. I think you can reframe it.

Detective Edward T. Montgomery

Q. (Continued) All right, Mr. Jamerson, I won't take much longer. It has been a long time. I will simply ask you this. Are you planning to present any evidence here from the hospital which supports your claim that you were
Nov. 1964 vomiting blood three or four times a day, having
page 268] a bowel movement as often as twenty times a day, having bloody diarrhea, messing your bed, severe abdominal pains and cramps? Do you propose to bring up any evidence on that, sir?

Mr. Cantor: I object to that question.

The Court: Objection sustained. I think that is a matter of argument after all the evidence is in. Objection sustained.

Mr. Morris: I have no further questions at this time.

* * * * *

Nov. 1964
page 270]

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DETECTIVE EDWARD T. MONTGOMERY, Henrico County Police Department, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your name, sir?

A. Edward T. Montgomery.

Q. What is your occupation?

A. I am a detective with the Henrico Police Department.

Q. Officer, on April 4, 1962, were you in contact with Mr. Norvell T. Jamerson?

A. Yes, I was.

Q. How long were you in contact with him?

A. I had occasion to interrogate him that day. We had him in —

Nov. 1964
page 271] The Court: Just one moment. Be careful about the — just relate the time.

Detective Edward T. Montgomery

Q. The period of time you saw him.

A. Approximately 10:00 a.m. until approximately 4:30 p.m.

Q. This was on the fourth day of April 1962?

A. That's correct.

Q. For several days thereafter, did you have occasion to see him from time to time?

A. Just briefly for the following two days.

Q. Now, during the course of your conversation with him, can you tell us whether or not he made any statement in regard to the consumption of alcohol?

A. He admitted to Sgt. Wilshire and myself that he had been drinking the day before on April 3, 1962.

Q. Do you recall what he had in regard to whiskey and beer?

Mr. Cantor: If Your Honor please, I am going to object to that because it is not legal and material in this case. Mr. Jamerson has not denied this fact that he had taken some drinks in this period.

The Court: The medical testimony, as I recall, was that the consumption of alcohol would be one of the causes that could aggravate or affect a condition such as he was complaining of, therefore, I think that it would be relevant. It would be for whatever weight the jury might attach to it.

Nov. 1964 page 272]

Go ahead.

Q. Do you recall what he had in regard to quantity?

A. No, sir. No, I do not.

Q. Do you recall whether or not he made any statement in regard to his plan of moving some objects on behalf of someone else?

A. We had questioned him as to why he was at a particular location, and he told us why he was there.

Q. What was the reason?

A. To help move or remove some window sashes.

Q. Now, Officer, can you tell us whether during the time you saw him in early April of 1962 he used a cane or crutches?

A. Not during the time that I interrogated him.

Q. Officer, can you tell us whether or not he admitted to driving motor vehicles during this period of time?

Mr. Cantor: Judge, again, he has certainly not deneid driving any motor vehicles during this period of time.

The Court: I think that he did deny that he drove trucks, I believe

Mr. Morris: I think it would be limited to that.

Question withdrawn.

Nov. 1964
page 273] Q. (Continued) Officer, during the course of your conversation with him, would you tell us whether or not there was any complaint of illness of the stomach or diarrhea or similar conditions of any appreciable nature?

A. As I recall, during the interrogation he made no request for bathroom privileges.

Q. How long was the interrogation period that you saw him?

A. I would say continuously from 10:00 a.m. until 4:30 p.m.

Q. Could you tell us whether there was any reference to severe pain or cramps of the stomach?

A. I don't recall that.

Mr. Morris: Answer Mr. Cantor.

CROSS EXAMINATION

By Mr. Cantor:

Q. Did he walk with a limp during that time?

A. Yes, he did.

Q. A noticeable limp?

A. Yes, sir.

Mr. Cantor: No further questions.

WITNESS STOOD ASIDE.

Nov. 1964
page 274] OFFICER F. L. MULLIGAN,

Henrico County Police Department, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your name, please?

Officer F. L. Mulligan

A. F. L. Mulligan, Henrico County Police Department.

Q. How long have you been on the police department in Henrico County?

A. Approximately eight years.

Q. In June 1962, Officer, did you have occasion to talk with Norvell T. Jamerson?

A. I don't recall the month or the day. I did not keep a record on it, but I did talk with Mr. Jamerson.

Q. In what connection did you talk with him?

Mr. Cantor: I object to any conversation if you don't remember the day it was or the month it was or anything else.

The Court: He said it was in June.

Mr. Cantor: No, sir. This officer here said he doesn't recall the month or date.

The Court: I didn't so understand. I think he would have to be brought down to some specific period.

Nov. 1964 page 275] Q. Officer, do you recall specifically talking to this gentleman?

A. Yes, I do.

Q. Can you tell us whether it was in the spring or summer of 1962 or approximately? You need not be precise.

A. Yes.

Q. It was or was not in the spring?

A. It was.

Mr. Cantor: Submit that certainly is not sufficient. I don't know what this is about, unless it is for impeachment purposes. I submit, Your Honor it is irrelevant and immaterial.

The Court: I don't know, because I don't know the question yet.

Q. Officer, did your connection with Mr. Jamerson on that occasion have anything to do with the consumption of alcohol?

A. Yes, it did.

Q. Would you tell us in full and to the best of your recollection what the circumstances were?

A. Mr. Jamerson was stopped by myself on Nine Mile Road —

Officer F. L. Mulligan

Mr. Cantor: If Your Honor please, let me say this again. This man was not called upon to defend any infraction of the law. There is no denial on his part that he
Nov. 1964 has taken some alcoholic beverages during
page 276] this period of time. I submit all of this is red herring to throw before the jury. It is immaterial and irrelevant, sir.

The Court: Well, Mr. Cantor, the plaintiff, among other things, is claiming a condition, an intestinal condition, that is alleged to have causal connection with this accident. Now, the medical testimony has been that there are other causes which could bring on this and aggravate it, one, among others, being the consumption of alcohol. Now, I think that the evidence would be admissible for what the jury might attach to it as to instances in which he did engage in the consumption of alcohol, a situation which has been testified to as affecting this condition he is claiming. And, I think the jury have to have all this evidence in determining the causal connection between this particular — I think it is a proper question.

Mr. Cantor: We note an exception.

The Court: You may except to the whole line of testimony.

Mr. Cantor: All right.

Q. Officer, at the time, did he make any admission to you in regard to comsumption of alcohol?

Nov. 1964 A. He said he had a few beers.

page 277] Q. What odor, if any, did you detect about his person?

A. Well, at the time I stopped him, I made him step out of the vehicle. He was consuming some spring onions that he had on the seat of the vehicle.

Q. What was he consuming?

A. Spring onions. He was munching them into his mouth, taking large bites.

Q. Could you tell us what happened after you flashed him over to the side.

A. Yes.

Q. Go ahead from there.

A. But the presence of alcohol was still very strong and I could smell the presence of alcohol over the onions at that time.

Q. What was his speech ability?

A. Very impaired. I had to ask him several times.

Q. Will you tell us how he was able to perform the usual test that you give in regard to touching the nose, that type of thing?

A. I told him to walk the length of my vehicle. I was parked behind him. Turn around and walk back towards me. He did this and was very unsteady. I noted he had an injury, but what I had noticed was beyond injury. I mean,

Nov. 1964 his condition, the way he behaved and staggered.

page 278] Q. Could you tell us whether or not on this particular occasion he made use of a cane or crutches of any kind?

A. No, he did not.

Q. Now, Officer, do you have an opinion as to his condition in regard to sobriety on that occasion?

Mr. Cantor: I am going to object to that again. Certainly, this officer may have all the opinions he wants to, but this man has never been convicted of any drunk driving or anything else. I submit it is immaterial. He has been tried for this and dismissed.

The Court: He is not on trial here and we are not concerned with any prosecution against him. The reason this testimony is admissible is for the reason I have just indicated. It doesn't make a bit of difference as far as what he was charged with or anything or what previous arrest he has had, but it is important from the standpoint of showing the amount of alcohol that he may have consumed as affecting or causing the condition that he is complaining of from a medical standpoint. That is all we are concerned with here.

Mr. Cantor: I object to this officer's opinion —

Mr. Morris: Mr. Cantor is suggesting evidence. We didn't bring out that he was charged with any-

Nov. 1964 thing.

page 279] Mr. Cantor: You certainly imply that.

The Court: I overrule the objection. Go ahead. I think for the purposes I have indicated it would be relevant in this case and has a bearing on his medical, perhaps.

Q. Officer, did you at that time have an opinion in regard

to Mr. Jamerson's sobriety as to whether or not he was intoxicated or not?

A. Yes, I knew — it was no doubt in my mind that he had reached the point where he was intoxicated.

Q. You mentioned his limp, Officer. Could you tell us whether or not you observed him under conditions when he had not been drinking?

A. Yes. I noticed that the day of the court hearing.

Q. Would you speak up.

A. I did notice that the day of the court hearing. I watched for that.

Q. Would you tell me to what extent he limped?

A. I would have to show you. I mean, I couldn't explain it.

Q. Go ahead and demonstrate.

A. (Doing so). He was limping similar to that.

Q. How did that compare with his condition on the evening that you saw him?

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A. I noticed the limp was there, but, also, I noticed the impairment in his ability to walk.

Q. On that occasion, last occasion when you saw him, did he have with him crutches or cane that you saw?

A. I am not certain.

Q. Officer, how long after the time you first saw him were you in the company of this man on the night that you saw him drinking?

Mr. Cantor: If Your Honor please, I object to that. There is no evidence he saw him drinking.

Q. (Continued) In a condition that you thought he had been drinking.

A. I would say anywhere from an hour fifteen minutes to an hour and a half.

Q. Could you tell us, Officer, whether or not at any time during this period he expressed any distress or pain in his stomach or diarrhea as a result of the alcohol or onions?

A. No, sir, he did not. He advised me that the reason for his condition was that he had been taking medication. Dr. Butterworth. And, in turn, I had headquarters call Dr. Butterworth, and Dr. Butterworth told me —

Mr. Cantor: I object to anything like that, sir.

The Court: Don't tell what Dr. Butterworth told you.

Nov. 1964 page 281] Mr. Morris: Answer any questions Mr. Cantor might have.

CROSS EXAMINATION

By Mr. Cantor:

Q. In spite of your opinion of his sobriety or non-sobriety, this man was dismissed when he was tried in Henrico County Court?

A. On one charge, yes, sir.

Q. The charge of drunk driving?

A. That's right.

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FRED GRANDERSON,

first being duly sworn, testified on behalf of the defendant, as follows:

DIRECT EXAMINATION

By Mr. Morris:

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Nov. 1964
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Nov. 1964 page 284] Q. Exactly what happened from the time you pulled up on the job until the accident was over?

A. Well, when I got to the job, the superintendent of the job, named Mr. Kester, he met me at the truck, and

they had built a little ramp over a little wall to get into the foundation to dump the sand, and he directed me to back the truck over the foundation, and as I was backing back, he stopped me and told me, said he wanted the sand over on the other side of the building.

Q. What side of the building was this, so far as you were concerned?

A. That was the left side.

NOTE: At this point the witness leaves the witness stand and approaches the jury box, and the matter continues as follows:

Q. I am holding Plaintiff's Exhibit No. 9. Does this show a corner, a pole on the corner of the building? Do you recognize that?

A. That is where the ramp was at.

Q. That has concrete in here. Was that concrete there or not when the accident happened?

A. The concrete wasn't in there.

Q. This picture, No. 12, shows the west side of the building and shows no concrete in there. Is that how it looked on the east side?

Nov. 1964 A. Yes.

page 285] Q. Plaintiff's Exhibit No. 12 shows how it looked on either side of the building?

A. Yes, sir.

Q. It has been stipulated that these girders were not there.

A. No, they were not there.

Q. Now, in regard to this grade wall, does this show in this picture; does Plaintiff's Exhibit No. 9 show a ramp or part of a ramp that was in existence when this accident happened?

A. That is part of the ramp right there.

Q. Is that the truck you were in, Plaintiff's Exhibit No. 7?

A. That's right.

Q. It that also shown on Plaintiff's Exhibit No. 8?

A. That's right.

Q. What kind of truck was that?

A. Two and a half ton.

Q. Do you remember what model it was?

A. '52 International.

NOTE: At this point the witness resumes the witness stand, and the matter continues as follows:

Q. Where was Mr. Kester located as he was giving you your directions into the building?

A. He was standing at the tail end of

Nov. 1964 the truck.

page 286] Q. On which side?

A. On the left hand side.

Q. Was he giving you any signal of any kind or not?

A. He was beckoning to me to come on back until he stopped.

Q. What were your instructions upon carrying in loads to the job in regard to whose orders you were supposed to follow?

Mr. Cantor: I object to that, if Your Honor please.

The Court: On what grounds, Mr. Cantor?

Mr. Cantor: Any instructions he received before he got to the job is certainly hearsay, sir.

The Court: Yes. Mr. Morris, that would be relevant on another issue, but I don't believe on the issue we have here now. Objection sustained.

Q. (Continued) Let me ask you this: Were you or were you not attempting to follow the instructions of Mr. Kester?

A. I was.

Q. What was his position on the job?

A. He was supervisor.

Q. He is a white man, is that right?

A. Yes, sir.

Nov. 1964 Q. As he was beckoning you back, can you tell

page 287] us whether or not he then stopped you?

A. Yes, he stopped me.

Q. In what manner did he do that?

A. Well, he held up his hand and he stopped me.

Q. Did he say anything at that time?

A. Well, when he held up his hand, he didn't, but he walked up to the truck, and he told me where he wanted it.

Fred Granderson

Q. Now, as you were backing in, tell us whether or not your truck made any noise?

A. Truck made plenty of noise, because it was loaded down, and I had to give it a lot of gas to get over the ramp.

Q. As you drove backwards, what noise, if any, was it making then?

A. Well, it was making a lot of noise, because pulling through that soft ground.

Q. How much sand was on the back?

A. About eight tons.

Q. At the point where Mr. Kester stopped you, what happened then?

A. Where he stopped me?

Q. Yes.

A. When he stopped me, then he come up to the side of the truck, told me I was backing wrong, instead of getting the thing straight back, he wanted it over to the

Nov. 1964 corner near where the man was working.

page 288] Q. What corner was that?

A. Left corner.

Q. The left back where you —

A. Yes, sir, back of the building on the left hand side.

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Nov. 1964

page 303] JURY OUT

Mr. Morris: Yes, sir. This may be an area of some question. This is the representative of the compensation carrier who I am calling for the purpose of proving that despite the gentleman's denial that the medical bills were paid by the compensation carrier, and had evidence of internal injuries been presented they would have entertained the bills and paid them.

The Court: Did he say they would not?

Mr. Morris: I said they would. It is a matter of law. We can instruct from the statute. A full instruction on that point would be ample substitute for it, but, perhaps we would be entitled on instruction based —

The Court: Suppose you do this. Put him on in the absence of the jury.

Garnett H. Schnell

GARNETT H. SCHNELL,
first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. What is your full name?

Nov. 1964 page 304] A. Garnett H. Schnell.

Q. What is your occupation?

A. I am manager of the independent office, Insurance Claims Service.

Q. In connection with your duties, did you handle a Workmen's Compensation claim on behalf of Norvell T. Jamerson against Re-Com Corporation and their carrier?

A. I handled it for the Federal Insurance Company, yes.

Q. Now, in connection with that claim, was the hospital bill and the bill of Dr. J. F. Butterworth paid by the carrier?

A. Yes, sir.

Q. Can you tell us whether or not the carrier refused any bill proffered to it for payment?

A. None to my knowledge.

Mr. Cantor: There has been no proof offered that they didn't refuse any bill, neither has there been any evidence that they refused to pay any bill.

Mr. Morris: The witness did not seem to be aware that his bill had been paid or these bills would have been paid if they had been proffered.

The Court: Let's go ahead and finish examination. Go ahead sir.

Q. Were any bills for any medical treatment, or otherwise, hospital or drugs, proffered in this claim to the company refused that you are aware of?

Nov. 1964 page 305]

A. Not to my knowledge.

Q. Now, was any medical information furnished you from any doctors other than Dr. Butterworth and Dr. Carpenter?

A. None to my knowledge, sir.

Q. Was there anything in the medical information supplied you for the claim of this man for Workmen's Compensation

questioning damage or compensation for internal injuries in this report?

A. No, sir. The medical information that I had was related to fracture of the leg.

Q. Mr. Schnell, if there had been internal injuries sustained by Mr. Jamerson in this accident of *November* 5, 1961, and it was medically related to the injuries, and a claim had been made for medical treatment in regard to that, and drug bills, would your company have paid such bills?

A. Yes.

Q. Were any presented?

A. None.

Mr. Morris: That is what we propose to prove, Your Honor.

The Court: What have you got to say?

Mr. Cantor: If Your Honor please, I have this to say, that there has been no denial that the Workmen's Nov. 1964 Compensation carrier paid the hospital and page 306] Dr. Butterworth's bill. There has been no offer of proof that any claim was made to them, and Mr. Jamerson has so stated that proof was made.

NOTE: At this point colloquy ensued between Court and counsel, which is reported but in the interest of brevity is not here included in this transcript, whereupon the matter continues as follows:

The Court: Call the jury back.

Mr. Cantor: Your Honor, I would like to renew again my motion for a mistrial based on this type of evidence.

The Court: Your motion is overruled and exception noted.

Mr. Cantor: All right, sir.

NOTE: At 4:35 p.m., the jury returns to the courtroom, and the examination of the witness, Garnett H. Schnell, begins in the presence of the jury, as follows:

JURY IN

Mr. Morris: May we proceed, Your Honor.

The Court: Yes, sir.

Garnett H. Schnell

Mr. Morris: Let the record show that the witness was previously sworn.

Nov. 1964
page 307] DIRECT EXAMINATION

By Mr. Morris:

Q. Will you state your name.

A. Garnett H. Schnell.

Q. What is your occupation?

A. Insurance claims manager for R. W. Green Associates.

Q. In that capacity, Mr. Schnell, did you have occasion to handle a Workmen's Compensation insurance claim on behalf or made by Norvell T. Jamerson?

A. I did it for the Federal Insurance Company.

Q. On whom did they have Workmen's Compensation?

A. Re-Com Corporation.

Q. Could you tell us whether or not this arose out of an accident of September 5, 1961?

A. Yes, it did.

Q. To begin with, Mr. Schnell, could you tell us whether or not the hospital bill at the Medical College of Virginia and the bill from Dr. Butterworth was paid by your company?

A. Yes, it was.

Q. Could you tell us whether or not, Mr. Schnell, your company refused to pay any bill for drugs or medical treatment or hospitalization that was presented to the com-

Nov. 1964 pany on a claim arising out of this accident?
page 308] A. No.

Q. Could you tell us, Mr. Schnell, whether or not there was any medical information in the form of reports, presented to you during the time the claim was outstanding suggesting there was any internal injury to Mr. Jamerson?

A. None.

Q. Could you tell us, Mr. Schnell, in the event that medical information had been presented to you that there were internal injuries by the plaintiff related to this accident whether your company would have paid the expenses connected therewith?

A. If the claim injury were related to the accident, yes, it would have been paid.

Garnett H. Schnell

Q. How long was this file open in your office, approximately?

A. Approximately something over two years.

Q. During that time, was any medical information supplied to you in regard to a claim for internal injuries of any kind?

A. None whatsoever.

Mr. Morris: All right.

CROSS EXAMINATION

By Mr. Cantor:

Nov. 1964 page 309] Q. As a matter of fact, Mr. Schnell, this file is still open in your office, isn't it?

A. No, sir.

Q. Have you approached Mr. Walker on the subject if they recover the money you want to be paid back?

A. It is through Mr. Walker. I do not know.

Q. That is direct to you?

A. It is through the Federal Insurance Company.

Q. They are going to get the money back?

A. That I don't know, Mr. Cantor.

Q. If Mr. Jamerson recovers. Did you refer this matter to Mr. Walker?

A. At the instruction of my principal, yes, I did.

Q. And Mr. Walker is expected — aren't you aware of the fact that Mr. Walker is expected to get paid back?

A. I am aware of it, but I have no control over it.

Q. You say you had no knowledge of any internal injuries to Mr. Jamerson at any time?

A. By the way of medical information, no.

Q. By any kind of information?

A. I don't know what you mean by any kind of information.

Q. Were you aware that Mr. Jamerson suffered internal injuries?

A. No.

Nov. 1964 page 310] Q. Are you positive of that?

A. Yes.

Q. I hand you that statement and ask you what does it say, whether your name is on that statement?

A. Well, this is a memorandum agreement. I remember

that. Yes, we sent it out showing injuries to the right leg and pelvic area.

Q. What else?

A. It came back with something added to it showing back, knee, ankle and internal injuries.

Q. You were aware of that sheet, were you not?

A. I am aware of it, yes, sir.

Q. You were aware of any compromise agreement that went on between Mr. Walker and myself during the process of this workmen's compensation payment?

A. I did receive copies of that compromise agreement after it was agreed to by all parties.

Q. You had no idea of conversations that went on between Mr. Walker and myself?

A. I did not.

Mr. Cantor: I have no further questions. I would like to ask that be marked as an exhibit.

NOTE: The above-referred-to paper writing is marked and filed by the Court as *Plaintiff's Exhibit No. 18.*

Nov. 1964
page 311] REDIRECT EXAMINATION

By Mr. Morris:

Q. Could you tell us whether or not that last bit of information was added by your typewriter or someone else's?

A. Well, it is my belief it was added by someone else's.

Q. Can you tell me, Mr. Schnell, after these suggestions that Mr. Cantor made here, did anyone produce any medical information of any kind that you are aware of, to your knowledge, suggesting internal injuries during the time that the claim was open for payment in your office?

A. None whatsoever.

Q. Did you issue the draft from your office in payment of these?

Mr. Cantor: If Your Honor please, I object to that. Your Honor has ruled that the amount has nothing to do with it.

Mr. Morris: Withdrawn. I don't mean the amount. I am not getting into that.

Dr. William W. Regan

RECROSS EXAMINATION

By Mr. Cantor:

Q. You are not implying to the gentlemen of the jury that something has been added to that paper after it went to your file, are you?

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A. No.

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DR. WILLIAM W. REGAN,
a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Russell:

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page 313]

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Q. Are you certified by any board or group of medical professions that pass upon professional qualifications?

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A. I am a *diplomate* of the Internal Medicine Board, sir.

Q. Is an examination required in order to obtain this rating, sir?

A. Yes, sir.

Q. What other medical society do you belong to, Doctor?

A. I am a member of the American Medical Association; the American College of Physicians; the Virginia State Medical Association; Richmond Academy of Medicine; and, this year, I am president of the Richmond Society of Internal Medicine.

Q. Let me ask you this. How long have you been engaged in the private practice of internal medicine?

A. I have been practicing ten years in internal medicine with interest in a sub-specialty known as gastroenterology.

Q. With whom are you engaged in practice?

Dr. William W. Regan

A. I am associated with Dr. Charles Caravati, Dr. Dennis Morey, and Dr. Philip Frederick.

Q. Do you devote a substantial portion of your time to the field of gastroenterology?

A. Yes, sir. I would approximate that at seventy per cent.

Q. Are you acquainted with Dr. Jack Freund?

A. Yes.

Nov. 1964 page 315] Q. Do you know whether he does any work in the field of gastroenterology in his specialty of internal medicine?

A. He is an internist, and I would presume probably deals with some problems of gastroenterology although I don't know if he does.

Q. Did you have an occasion, Dr. Regan, to examine Norvell Jamerson at our request?

A. Yes, sir.

Q. When did you first examine him, sir?

A. On July 9, 1963.

Q. At the time you examined him, what were you looking for, sir?

A. I was asked to see him in an attempt to determine whether or not he had any gastro-intestinal diseases, particularly looking for an ulcer.

Q. What did you find, Doctor?

A. I examined him and reveiwed his X-rays which had been taken previously, and on the basis of this, felt that he did not have an ulcer and felt that he might have other difficulties based on a history of diarrhea and intestinal discomforts which I had obtained from him.

Q. Have you had an opportunity to see him a second time?

A. Yes.

Q. When was that, sir?

Nov. 1964 page 316] A. That was on November 10, 1964.

Q. What did your examination include at that time, sir?

A. This included a complete physical examination again with a blood count, urinalysis, and blood sugar.

Q. Were these all within normal limits?

A. Yes, sir.

Q. What was your opinion of his condition at that time?

Dr. William W. Regan

A. On examination, I found the edge of his liver to be palpable. That had been present on the first examination and was slightly tender. This, in itself, was not necessarily an abnormal finding in that livers can be tender when pressed upon.

I felt that he had regained eight pounds of weight and he had improved in muscle strength, although, I did not specifically test this, and he looked generally much better.

He still gave a history of diarrhea at times and abdominal discomfort at times. I felt that this might be the result of an irritable bowel syndrome or the possibility that it could have originally been caused by a pancreatic insufficiency.

I did not feel on the second examination there was sufficient evidence to make such a diagnosis.

Q. At the time you made your second examination, did you have an opportunity to examine the initial report of Dr. Jack Freund on his examination of this man?

A. No, sir, I had not.

Q. Have you ever had a chance to see the report of his examination?

A. No. Excuse me. May I correct myself. I did see this report, yes. I beg your pardon. This was —

Q. You didn't see it before you examined the man?

A. No. I did not see it before I examined him.

Q. All right, sir. Insofar as laboratory studies are concerned, Dr. Regan, doing what is referred to as a hematocrit study, doing a urinalysis, blood and sugar study, white blood count, red blood count, are these normal types of tests that would be run in doing a complete physical?

A. Yes.

Q. Would they have any particular bearing upon whether or not a person had difficulty with the pancreas?

A. The blood sugar might become abnormal in difficulties of the pancreas. If the pancreatic troubles are very extensive, the blood count might be affected.

Q. Are any of these tests, though, Doctor, designed specifically to determine whether there is any difficulty with the pancreas?

A. Not specifically.

Dr. William W. Regan

Q. Are any tests designed for that purpose?

Nov. 1964 A. Yes.

page 318] Q. To your knowledge, have any of these tests ever been run?

A. The only one that would have some bearing that I am aware of is the stool examinations for fat. They were done by Dr. Freund.

Q. What significance do they have, sir?

A. In pancreatic insufficiency, the pancreas is unable to digest fat properly, consequently, it is not absorbed and passes on out in the stool in larger amounts than normal. That passage of fat in the stool can also occur with many other situations and is not a specific test, but in the light of other things might be of value in the diagnosis of the pancreatic insufficiency.

Q. Are there other symptoms or conditions that can be determined upon examination which would, over a passage of time, concur with this excess fat in the stool to indicate whether or not there is pancreatic insufficiency?

A. Yes, there are other tests that would be helpful.

Q. Are there any other conditions that can be reasonably well ascertained?

A. That might produce excess fat in the stool?

Q. Well, are there other things you might look for —

A. Excuse me.

Nov. 1964 Q. — in making the examination that would

page 319] indicate there was or was not pancreatic insufficiency?

A. Yes.

Q. What are they?

A. One of these would be an attempt to determine whether the person can handle carbohydrates properly or glucose. That is called a glucose tolerance test. That is more than a blood sugar. It is a matter of a series of blood sugars after having the patient drink a sugar solution. In the X-ray, if there has been injury to the pancreas, we frequently see evidence of this injury left by the deposits of calcium within the pancreas gland. These can sometimes be seen on X-ray.

If there is a marked deficiency of pancreatic enzymes, the patient suffers nutritionally, and we sometimes see evidence

of malnutrition. They are about the only things we can pick out easily.

Q. Among those, did you ever find present fecal fats that Dr. Freund found at one time?

A. No, sir.

Q. Is a blood sugar of 107 within normal limits?

A. That would be determined by the method used.

Q. Did you run a urinalysis test on this man?

A. Yes, sir.

Q. Was it within normal limits at that time, sir?

Nov. 1964 page 320]

A. Yes.

Q. Based on your examination of this man, Dr. Regan, do you have an opinion as to what his present condition is with respect to his gastrointestinal tract?

A. I feel that he has an irritable bowel syndrome with increased peristaltic motility action through the intestinal tract.

Q. Does this have anything necessarily to do with pancreatic insufficiency?

A. No.

Q. Do you have an opinion, Dr. Regan, as to whether Mr. Jamerson is presently suffering from pancreatic insufficiency?

A. I think he is probably not, but I would like to say that there is insufficient evidence for this diagnosis, and I don't feel that I can rule it out completely on the evidence I have.

Q. Do you know of any examinations that were made that would rule it out?

A. No, sir.

Q. What are some of the causes of chronic pancreatitus?

A. The causes are unknown, but there are factors that are known to be extremely important in the development of it. One of these is the presence of gall bladder disease, particularly with gall stones. Another is the presence of over ingestion or even normal ingestion of chewing at times.

Nov. 1964 page 321]

The remaining group falls into those of unknown origin except for a small percentage which seems to inherit pancreatitus, and a few which are related to abnormalities of the parathyroid gland function, then a small group which are related to trauma or injury.

Q. What is the treatment for chronic pancreatitus?

A. The treatment depends upon the symptoms. If there is

excessive fat in the stool, an important nutrition, or important nutrition, either one, one attempts to give it pancreatic substances as a substitute for the deficiency just as one might take thyroid if he or she has a thyroid insufficiency. These pancreatic substances are given by mouth along with food in helping with digesting the food.

If there is pain, one attempts to control the stimulation of the pancreas by utilizing some form of anti-cholinergic drug, and at times an antacid.

It is thought that dietary measures are sometimes of value, and we know that condiments, coffee, and, at times, greasy food can over-stimulate the pancreas, so we attempt to take those things out of the diet.

Q. Will these same things also irritate the condition within an irritable bowel syndrome?

A. Yes, sir. We attempt to do the same thing within an irritable bowel syndrome.

Nov. 1964 page 322]

Q. Is it generally accepted to treat chronic pancreatitus with pancreatic extracts if the physician thinks the person really has it?

A. Where there is insufficiency so that digestion is not proper, yes, that would be good treatment. Those would be dictated by the presence of fat in the stool again.

Q. If a person were given Robinul-P.H., Mylanta, Librium, Quintess, Metropine, and various other things, not all at the same time, Butibel-Gel, and Balium, can you tell me, sir, what these drugs are the general treatment for?

A. These drugs are used in the treatment of many many conditions. How specific would you like me to be?

Q. Let me ask you this. Are they specifically a treatment for chronic pancreatitus?

Mr. Cantor: I think, if Your Honor please, the doctor has already stated that they are treatment for chronic pancreatitus.

NOTE: At this point colloquy is had between Court and counsel, which is reported but in the interest of brevity is not here included in this transcript, whereupon the matter continues as follows:

Dr. William W. Regan

The Court: I think it is a proper question. Objection overruled. Go ahead.

NOTE: The above question "Let me ask you this. Are they specifically a treatment for chronic pancreatitus?" is read to the witness.

Nov. 1964 page 323]

A. No, these are not specific treatment for chronic pancreatitus. They would be helpful in controlling the pain of acute pancreatitus or the exacerbation of chronic pancreatitus given pain. They would be treatment for pain or for hopefully the prevention of future attacks of pancreatitus.

Q. Are these also a treatment for irritable bowel syndrome?

A. That treatment can be used in that form.

Q. What is gastroenteritis?

A. That is an inflammation or infection of the stomach or intestinal tract.

Q. Would you generally refer to it as a waste basket term in medicine?

A. No, sir. It is a very proper term and it refers to a group of diseases involving the stomach and intestinal tract.

Q. Are these various drugs you mentioned a specific treatment for gastroenteritis?

A. Gastroenteritis could be treated by a number of these. These drugs would be of some help in treating gastroenteritis.

Q. Do you have an opinion as to whether or not Mr. Jamerson has had gastroenteritis or has it now?

Nov. 1964 page 324]

A. I would think that he does not have it.

Q. Doctor, what are some of the causes, more common causes, of an irritable bowel syndrome?

A. These can be numerous and may be related to improper eating habits, improper foods, poorly tolerated foods, tension, fatigue. General infections unrelated to the gastro-intestinal tract can sometime have a secondary effect in producing an irritable bowel syndrome. I think that covers most of them.

Q. Doctor, I want to hand you Defendant's Exhibit No. 1, which I believe is the hospital chart on Mr. Norvell Jamerson while he was hospitalized in September, I believe it is, of 1961, at the Medical College of Virginia.

Would you, sir, look at the admission notes and give us the history that is contained therein.

Dr. William W. Regan

Mr. Cantor: If Your Honor please, I think that the hospital notes speak for themselves. He can either read them or not read them. I think they have been read several times before.

Mr. Russell: Not from this chart and this is the basis of a question I want to ask the doctor.

The Court: All right.

Q. (Continued) Would you mind reading us the history given to the intern, please, Doctor?

A. (Reading from chart) Present illness: Well until 1:30 p.m.

Nov. 1964
page 325] Mr. Cantor: Excuse me. Page 1 on my slip just says discharge final diagnosis.

Mr. Russell: Mr. Cantor, you have been through this about twice.

Q. (Continued) Proceed, please, Doctor.

A. Present illness: Well until 1:30 p.m. One one-half hours ago when struck from left hip by truck while in semi-kneeling position such as right hip and lower extremity pressed into a concrete wall. Pain in right low back, hip and leg immediately with inability to walk or move hip. Not unconscious.

Past history: Auto wreck with multiple fractures at age 18. Tularemia, at age 20. Malaria age 24. Fracture of right forearm two times in the past ten years.

Q. Would you read me the findings the intern made when he examined this man, please, sir.

Mr. Cantor: I am going to object to the findings being read that the intern found at this time. They are his opinions. The intern is not here. I don't think the Medical College records are introduced for that purpose, sir.

NOTE: At this point colloquy is had between Court and counsel, whereupon the matter continues as follows:

Nov. 1964 The Court: I will overrule the objection. Go
page 326] ahead.

Q. Will you read what the intern found when

he examined this man physically.

A. (Reading from chart) Well-developed well-nourished white male in distress from right hip and back pain. Blood pressure 120 over 80. Pulse 80. Respiration 20.

Pupils and fundi—that is of the eyes—normal. Neck, no masses—I can't interpret this one word. Lungs clear. Head—no—heart normal.

Sinus rhythm regular without murmurs. Abdomen soft, flat, with no mal bowel sounds.

Liver, kidney and spleen not palpable. Neurological exam revealed deep tendon reflexes to be slightly increased.

Examination of the extremities and back revealed tenderness over the right sacroiliac joint. Exquisite tenderness over the proximal end of the right tibia and fibula with slight swelling and ecchymosis.

Q. What is ecchymosis?

A. Bruising.

Q. All right, go ahead.

A. Rectal examination was deferred.

The impression was fracture of the right tibia and fibula. Proximal one-third comminuted fracture of the right iliac posterior crest.

Nov. 1964 page 327]

Q. Who signed those notes, Doctor?

A. Dr. Holman.

Q. Was he an intern at the time?

A. I presume that he was.

Mr. Cantor: I object to it if he presumes it, sir.

Q. Was he an M.D. at the time, had he graduated from medical college?

A. I know Dr. Holman and helped to teach him at the Medical College, but I don't recall the years that he was there, and I don't know — if I recall correctly, he did not go to school at the Medical College of Virginia, but I would not be able to testify as to his status at this time.

Q. If he did not go to school there, then he would not have been a student, would he?

A. No, he would not.

Q. Would he have been beyond the student stage?

A. He would have been an intern or resident.

Dr. William W. Regan

Q. Now, is there any other signature at the end of those notes?

A. J. F. Butterworth.

Q. Is Dr. Butterworth's signature at the end of those notes?

A. There is a counter signature, which is used
Nov. 1964 by all of us in hospital records. That indicates
page 328] that we have looked at the hospital record, read
it, and either concur, or if we do not concur, have made changes of our own choosing.

Q. Did Dr. Butterworth make any change in the notes taken by this other doctor?

A. He made a note that he doubted he had a fracture of the right ilium posterior crest, and he had or somebody had added the words "by a truck" in the history.

Q. Now, from the physical examination made, Doctor, of the abdomen, do you have any opinion as to whether or not Mr. Jamerson sustained any type of severe trauma to his abdomen at all in this accident?

A. There is no indication—

Mr. Cantor: I object to the doctor making any observation based on somebody else's examination. I don't think it is proper.

The Court: I think the objection is well taken to that, Mr. Russell. He can testify, of course, from his own examination what he found, or the presence or absence of any condition on which he might base an opinion, but I don't think he could—I sustain the objection to that.

Mr. Russell: Note the exception.

The Court: All right.

Q. Doctor, I am going to read you off some symp-
toms, then ask you a question if I might,
Nov. 1964 sir.
page 329] Assuming that the day after the accident in
question occurred, which was on September 5, 1961, that the patient vomited blood three to four times during the day; that he had no bowel movements for six days following the accident, then developed bloody diarrhea approximately twenty times a day thereafter during the rest of his stay in the hospital, which was eighteen days; that—

Dr. William W. Regan

Mr. Cantor: I am going to object to this particular phase because I don't think there has been any testimony that he had diarrhea twenty times a day every day he was in the hospital.

Mr. Russell: That was the history that Dr. Freund based his opinion on. I have a perfect privilege to go into that.

The Court: All right. Go ahead.

Q. (Continued) That was associated with sharp cramps beginning in the middle of the abdomen to the left of the navel, and that frequently following this pain he would have a bowel movement, Doctor, do you have an opinion as to whether or not the symptoms I have just enumerated are consistent with the history that you found in this hospital chart?

Mr. Cantor: I object to that question, sir, and again, he is going back to somebody else's opinion.

Nov. 1964 page 330] The Court: No, I think that is a hypothetical question that undertakes to enumerate the various complaints that this man is supposed to have. There is a conflict in the evidence, of course. I think it is a proper question. Go ahead, sir.

Mr. Cantor: We note an exception.

A. I lost out on the last part of the question.

Q. I asked you, sir, whether or not the symptoms I just enumerated to you were consistent with the history that you found in this hospital chart.

A. No, sir.

Q. I want to refer you to page 14. Beginning on page 14 of this chart, isn't there a notation on there, Doctor, of the number of bowel movements per day had by Mr. Jamerson while he was in the hospital?

A. Yes, sir.

Q. Would you please tell us, sir, what the chart shows per day?

A. On the day of admission, 9-5-61, there is no notation at all. On September 6, there is a zero. September 7, zero. September 8, 1 bowel movement. September 9 zero. September 10 has no notation. September 11, zero. September 12, one bowel movement. September 13, one bowel movement. Sep-

tember 14, none. September 15, none. September 16, one.

No notation on the 17th. September 18, one
Nov. 1964 bowel movement. September 19, none. September
page 331] 20, one. September 21, one.

Q. Is that, from that point of view, Doctor, a normal type of condition for one hospitalized for a fracture of the leg such as that sustained by Mr. Jamerson?

A. Yes, sir. Where one is immobilized, this would seem perfectly reasonable.

Q. Is that at all consistent with bloody diarrhea?

A. No, sir.

Q. Would you examine the nurse's notes in there, Doctor, please.

A. Doing so.

Q. Are there any notations in there, in the nurse's notes, to indicate that Mr. Jamerson at any time while he was in the hospital vomited blood or was suffering from bouts of diarrhea, or, at times, bloody diarrhea?

A. No, sir.

Q. Can you tell us whether or not this type of symptom would be on the chart had they occurred?

Mr. Cantor: I object to that. Whether they are or not on this chart is a question for the nurses.

I don't think the doctor can state why they were not noted, sir.

The Court: He can't state why they were not. He can
state whether or not this is the type thing that
Nov. 1964 would ordinarily be noted. I think this is
page 332] cumulative. It is a proper question. Go ahead,
sir.

A. Generally, I would expect that to be noted on any hospital chart.

Q. Now, Doctor, on page 24 of the chart, I refer you to the nurse's notes and ask you, sir, if you will tell us whether or not any complaint was made by Jamerson on that day about any blood being on his sheets?

A. There is a notation here which says patient says that last night the back of his head was bleeding. There are bloodstains on his pillow. No pimple, et cetera, can be detected on

the back of his head or neck. There are some pimples on his back.

Q. So, what date was that that took place?

A. September 10, 1961.

Q. So, on September 10, he did complain about blood being on his pillow case, they having that noted in the chart?

Mr. Cantor: I object to that. It is calling for a conclusion.

Mr. Russell: I withdraw it. I withdraw the question.

Q. Doctor, would you examine pages 4, 5 and 6 of the chart which are the notations made by the doctors as they examined him each day, I believe.

Nov. 1964 page 333] A. (Doing so).

Q. Do you find in any of those notations—I will ask you first of all, were those notations made by the various doctors on the staff at the Medical College, not by the same one each time?

A. They are not by the same person each time, no.

Q. All of them are not by Dr. Butterworth, then?

A. No, sir.

Q. Do you find there any notation of any complaint by the patient of any abdominal pain, discomfort, or any other complaint of any kind related to the abdomen?

A. There is no reference to any complaint in the abdomen.

Q. As a hypothetical question, Doctor, assuming the history that you read from the chart, and the course in the hospital for the number of days that chart shows, and any other entry therein that may be relevant in the nurse's notes—temperature chart, and so forth—and an accident, as described in the chart, itself, do you have an opinion, sir, as to whether or not that patient sustained any type of injury to his gastrointestinal system?

A. I find no evidence of any mention pertaining to injury to the gastrointestinal tract in this chart.

Q. What is your opinion as to whether he sustained such an injury?

Nov. 1964 page 334] A. I would think he did not sustain an injury to the abdomen in view of this.

Mr. Russell: Answer Mr. Cantor.

Dr. William W. Regan

CROSS EXAMINATION

By Mr. Cantor:

Q. Doctor, while this is fresh in our minds, you did say that on certain dates, and I refer again to September 5, has no notation at all as to bowel movement. By that, I mean there is no indication whether there was none or whether there were twenty?

A. (Indicating in the affirmative).

Q. There is no notation on September 10 as to whether there was zero or twenty?

A. (Indicating in the affirmative).

Q. And, there is no notation on September 17 as to whether there was zero or twenty?

A. Correct.

Q. However, on September—I can't read this, so if you will help me. September 12, what does that indicate? Would you read that, Doctor?

A. Oil retention enema this morning followed with 4-H enema.

Q. That is done for constipation, is it not?

A. Yes, sir.

Nov. 1964 page 335]

Q. What is a 4-H enema?

A. I am not familiar with a 4-H enema.

Q. All right, sir. I am not either. Now, getting back to the present situation, what is the significance of the report that Dr. Goodman made that he examined the colon by barium enema and upper gastrointestinal tract. That does indicate there were no abnormalities according to Dr. Goodman, I think, in your report of July 9?

A. It indicates he examined the colon and the upper gastrointestinal tract.

Q. Well, the meaning of this is some type of swallowing some substance. Is that what is done?

A. No. The examination of the colon means barium was given by enema. The examination of the upper gastrointestinal tract means the barium was swallowed.

Q. That was given to Mr. Jamerson in, I think, June, July 1963. Did you make any subsequent tests when you examined him in 1964, this past November, I mean two days ago, two or three days ago?

Dr. William W. Regan

A. Tests of what sort?
Q. Such as that.
A. X-ray examination.
Q. By barium enema?
A. No, sir.

Nov. 1964 page 336]

Q. You did not. All right, sir. As I understand, you did tell us that one of the specific treatments of pancreatitus was anticholinergic drugs?
A. Yes, sir.
Q. And *Rubinol*-P.H., isn't that an anticholinergic drug?
A. Yes, sir.
Q. You made no examination for stools, as I understand?
A. No, sir.
Q. This time or before?
A. No, sir.

Mr. Cantor: I have no further questions, sir.

A. (Continued) May I qualify, sir?
Q. Sure.
A. I did a rectal examination and I made a visual examination of the stool obtained by rectal.
Q. But, you did not submit it to any laboratory test?
A. No, sir.

REDIRECT EXAMINATION

By Mr. Russell:
Q. Doctor, would twenty bowel movements a day or bloody diarrhea be a usual or unusual condition in a patient?
A. Most unusual.

Nov. 1964 page 337]

Q. How often do they change nurses over at the Medical College of Virginia?
A. Every eight hours.
Q. And over a period of twenty-four hours, is it—can you tell me from your experience whether it is likely or unlikely for a condition of this kind to go unnoticed in a chart?

Mr. Cantor: I object to the question, sir. Whether it is likely or unlikely is not pertinent to this situation.

Dr. William W. Regan

The Court: Hasn't he testified already on that?

Mr. Russell: The reason this was brought up, Your Honor, was Mr. Cantor picked out three days when there were no notations on the chart of any reference to a number of bowel movements this man may or may not have had.

The Court: I think he has been over that in pretty much detail.

Mr. Russell: All right, sir.

Q. (Continued) If a patient had to have the sheets on his bed changed three times a day on several occasions because of bowel inconsistencies, is this the type of thing that would come to the attention of the nurses?

Mr. Cantor: If Your Honor please, I object to that. Again, he is going into details. This doctor certainly doesn't know why anything was or was not put in this particular record.

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page 338]

The Court: No. I think he can testify generally as to whether this is the type of thing—the question hasn't been asked him before. I think it is a proper question.

A. I would think that would call attention to the reason behind the necessity for changing the bed that often.

Q. Can you tell me, sir, from your knowledge, from your experience at the Medical College whether the sheets on the bed can be changed without the nurses knowing about it?

Mr. Cantor: I object to it.

The Court: If he knows.

Q. Do you know whether or not the orderlies generally go into the room and change the patient's bed if they have no instructions?

A. I can't really say I know that.

Q. You were asked a question about an enema given the patient one day in the hospital. Is constipation one of the things you would normally expect for a patient hospitalized for a leg fracture?

A. Yes, sir. Particularly in view of the fact he received narcotics for pain, and narcotics tend to be very constipating.

Dr. William W. Regan

Q. Was the enema he received anything unusual?
A. No.

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Nov. 1964
page 341] THIRD DAY OF TRIAL
November 17, 1964
Tuesday, 10:00 a.m.

NOTE: At 10:00 a.m., Court and counsel meet in chambers, the events of which are reported but in the interest of brevity and by request of counsel are not included in this transcript, whereupon at 2:25 p.m., court reconvenes, the jury resumes the jury box, the instructions are read by the Court, argument is had by counsel, and at 4:31, the jury retires to the jury room until 6:05, whereupon the jury returns, and the matter continues as follows:

The Court: Gentlemen of the jury, have you agreed upon a verdict?
The Foreman: Yes, sir.
The Court: (Reading verdict) We the jury on the issues joined find for the plaintiff and assess the damages at $6,-450.00. Signed Robert M. Hart, Foreman.
Gentlemen, is this your verdict?

NOTE: The jury indicate in the affirmative.

The Court: Any motions before the jury is discharged?
Mr. Morris: None.

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk.

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