

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 100

WCC No. 9405-7058

KRYSTYNA KRZAN

Appellant

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

WAR BONNET INN

Employer.

ORDER ON APPEAL

Introduction

This is an occupational disease case. The question presented is whether Krystyna Krzan's varicose veins were caused or aggravated by her employment as a motel maid. A hearing examiner of the Department of Labor and Industry (Department) found they were not. Ms. Krzan appeals.

Factual and Procedural Background

Krystyna Krzan (Krzan) worked as a motel maid at the War Bonnet Inn in Butte, Montana from 1975 until September 26, 1991. During that time she suffered from varicose veins in both of her legs. In 1977, Dr. Carl A. Birkelo, a surgeon, stripped the veins of the left lower leg. (Claimant's Ex. C.⁽¹⁾) In 1988, Dr. P. Giacomini and Dr. T.V. Stonger performed a second vein stripping of the left leg. (Claimant's Ex. B.) In 1991, Krzan experienced worsening pain in her legs due to her varicosities. She returned to Dr. Birkelo, who prescribed Naprosyn and referred her to Dr. Michael Trimble for venous injections aimed at symptomatic relief. (Claimant's Ex. A.) On September 26, 1991, she quit her job and has not worked since then. On September 30, 1991, Krzan reported that "she is unable to work because of discomfort in her legs LT > RT."⁽²⁾

Shortly after Krzan quit work she filed a claim for occupational disease benefits based on her varicose veins. In December of 1991 and January of 1992, two of her physicians -- Dr. Birkelo and Dr. Michael R. Trimble -- submitted letters to the State Compensation

Insurance Fund on her behalf.⁽³⁾ (Claimant's Exs. C and E.) The State Fund contested the claim and the Department thereafter initiated the medical panel procedures prescribed by Title 39, chap. 72, part 6.

The Department designated Dr. John Diggs, a member of the Department's Occupational Disease Panel, to examine Krzan. Dr. Diggs conducted his examination on May 12, 1993. Following his examination, Dr. Diggs submitted his report to the Department. He found no relationship between Krzan's job and her varicose veins:

The cause of her history of chronic and recurrent varicose veins in the legs, especially the left leg, is unrelated to her history of work as a motel maid. The physical demands of her job at the War Bonnet Inn would have had a beneficial effect because she was not required to stand in one position for very long. Movement and the activity required for motel room cleaning would not be the cause of her chronic venous problem. There is no reasonable medical indication that her history of leg swelling or varicose veins treated with vein stripping and sclerosing injections was a result of working as a motel maid. . . .

(Birkelo Dep. Ex. 6 at 3.)

Two of the physicians who treated Krzan over the years have weighed in on behalf of Krzan. Dr. Birkelo wrote a letter to the State Fund on January 22, 1992:

Krystyna Krzan has been a patient of mine for many years. She has long been known to have venous insufficiency in her lower extremities. **I believe that these symptoms have been aggravated by prolonged standing. She tells me that her work involves standing over long periods and I believe that this has aggravated the symptoms in her legs.**

(Claimant's Ex. C; emphasis added.) In a June 14, 1993 letter to Krzan's attorney, Dr. Birkelo attributed "60 percent" of her varicose vein problem to her work based "on the fact that more of her prolonged standing was done at work than would be done on her own time."

(Defendant's Ex. G.) Dr. Michael Trimble, who purchased Dr. Birkelo's practice in 1989 (Birkelo Dep. 5),⁽⁴⁾ treated claimant in 1991 with sclerosing injections of the veins (Birkelo Dep. 10; Claimant's Ex. E). On December 2, 1991, Dr. Trimble wrote to the State Fund:

Ms. Krzan has a problem with pain in her legs, secondary to chronic venous insufficiency. She has had previous vein stripping. She has had episodes of phlebitis. She has also had sclerotherapy of the veins to decrease her symptoms. The patient still has symptoms of discomfort in her leg when standing for prolonged periods. **This may be related to her work, as the patient does stand for long periods of time on her feet at work. . . . I do not know what percent her work contributes to her leg problems, but I do think that prolonged standing would aggravate [sic] her symptoms.**

(Claimant's Ex. E; emphasis added.)

In his deposition Dr. Birkelo testified that he related Krzan's varicose veins to her employment based on Krzan's report that she stood in one place for long periods of time. His testimony was in response to a question asking him to comment on Dr. Diggs' report:

Q. Have you seen the report from Dr. Diggs?

A. Yes, I saw that.

Q. In that he indicates that he doesn't think the varicose veins can be attributed to her job because of the walking she does, activity she does. Do you have any response to his statements?

A. The only response I have to that -- I thought he did a good work up from what I saw. I thought it was a complete evaluation. I was impressed that it was well done. The only thing I can say in response to that is most of what I stated was based on her statement to me, that she did a lot of standing, and I based it on that. And I assume that she walked around a lot, you know, from what I've seen when I've been in motels. I see the maids walking around. But she also indicated to me she did a lot of standing. I guess if you have the problem, I suppose the optimal position to be in is lying down with your legs elevated, if you have varicose veins and you're going to talk about the most optimal position you can assume for varicose veins -- not talking about leading your life, talking about optimal position for that -- I don't think many people would argue with that.

The second most beneficial position would be upright with elastic support and moving. The worst position you could be in would be upright and standing still. And I suppose what would be worse would be upright, standing still without external support. The next worse would be upright standing still with elastic support, and next worse would be sitting down with your feet dependent. And that's not a beneficial position at all for somebody with varicose veins.

A recliner isn't a beneficial position because then your bottom is the lowest point where gravity seeks its level and your heart is at the level of your ankles or your feet or something and your bottom is lower in between. So that's not beneficial, either, I guess. Does that answer make sense to you?

(Birkelo Dep. at 26-27.) Dr. Birkelo also conceded that his assignment of sixty percent (60%) of Krzan's disability to her employment was conjecture on his part:

. . . That was a pure guess on my part. I have no parameters to go by. I'm not a guy that reviews Workman's [sic] Comp. cases.

(*Id.* at 20-21.)

. . . So it was an attempt at an educated guess with a smile on my face as I said it because it is -- it's guess work.

(*Id.* at 24.)

Under the Occupational Disease Act either the claimant or the insurer may ask for a further evaluation by a second member of the Occupational Disease Panel. § 39-72-602(2)(b), MCA. Neither Krzan nor the State Fund did so in this case. Therefore, on June 24, 1993, the Department issued an order determining that Krzan was not suffering from an occupational disease. See § 39-72-602(2)(c), MCA. Krzan then requested a hearing pursuant to section 39-72-611, MCA.

A hearing was held on December 16, 1993. Krzan and a former co-worker testified. Dr. Birkelo's deposition testimony, along with a number of exhibits, were also submitted for consideration. Dr. Diggs' report was among the exhibits introduced at hearing. It was attached to Dr. Birkelo's deposition as Exhibit 6.

On April 19, 1994, the Department's hearing examiner issued his Findings of Fact; Conclusions of Law; Order. He affirmed the Department's Initial Order denying benefits.

Krzan filed her Notice of Appeal on May 19, 1994. On June 1, 1994, she filed an Amended Notice of Appeal in which she alleges that "the decision issued by the Department of Labor & Industry is clearly erroneous in view of the reliable, probative and substantial evidence in the entire record and characterized by an abuse of discretion or an unwarranted abuse of discretion."

The matter has been fully briefed. Oral argument was held on October 27, 1994, and the matter was deemed submitted at that time.

Standard of Review

Section 39-72-612(2), MCA, provides for a direct appeal to the Workers' Compensation Court from the Department's final order in an occupational disease case. The section further provides:

. . . The judge may overrule the department only on the basis that the department's determination is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Of these various grounds for appeal, Krzan has invoked subparagraphs (e) and (f).

Under the clearly erroneous standard of subparagraph (e), the hearing examiner's findings of fact must be overturned on judicial review where they are "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." **State Compensation Mutual Insurance Fund v. Lee Rost Logging**, 252 Mont. 97, 102, 827 P.2d 85 (1992) (quoting section 2-4-704(2)(a)(v), MCA). The Court will not reweigh the evidence; the findings and conclusions of the fact finder will be upheld if they are supported by substantial credible evidence in the record. **Nelson v. EBI Orion Group**, 252 Mont. 286, 289, 829 P.2d 1 (1992). Conclusions of law, however, must be examined to determine if they are correct. **Steer, Inc. v. Department of Revenue**, 245 Mont. 470, 474-75, 803 P.2d 601 (1990).

The "arbitrary or capricious" standard of subparagraph (f) is typically applied to procedural rulings. In **Steer** the Supreme Court said:

Our standard of review relating to conclusions of law is not to be confused with our review of **discretionary trial court rulings**. This has been defined as "encompassing the power of choice among several courses of action, each of which is considered permissible." See Aldisert, *The Judicial Process*, 1976, page 759.

Such rulings are **usually trial administration issues, scope of cross-examination, post-trial motions, and similar rulings. The standard of abuse of discretion will be applied to these rulings.** [Emphasis added.]

Id. at 475: *but see* **Silva v. City of Columbia Falls**, 258 Mont. 329, 335 852 P.2d 671 (1992) (applying the arbitrary or capricious standard of review to a Police Commissioner's decision which fixed the date disability benefits were to commence). If the findings of fact are not clearly erroneous and the conclusions of law are correct, it is difficult to envision how they could nonetheless be arbitrary, capricious or an abuse of discretion. Our review on appeal will therefore be limited to a "clearly erroneous" analysis.

Discussion

The Occupational Disease Act sets out specific procedures for determining whether a claimant suffers from an occupational disease. Initially, it requires the Department to appoint an occupational disease medical panel consisting of designated physicians who are certified, or are eligible for certification, by a specialty board for the "specialty area appropriate to the claimant's condition in relation to this chapter." § 39-72-601(1), MCA. The obvious purpose of the requirement is to secure independent evaluations by physicians with expertise in occupational disease.

Dr. Diggs was designated by the Department to examine Krzan and he did so on May 12, 1993. For purposes of the hearing held below, his report was "prima facie evidence as to the matters contained in the report." § 39-72-609, MCA. It was also entitled to a rebuttable presumption of correctness. Section 39-72-610, MCA, provides:

Report of and examinations conducted by medical panel. (1) At a hearing held before the department or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report.

The effect of the statutory presumption is specified by Rule 301 (b)(2), Mont.R.Evid., which provides:

(2) All presumptions, other than conclusive presumptions, are disputable presumptions and may be controverted. A disputable presumption may be overcome by a preponderance of evidence contrary to the presumption. Unless the presumption is overcome, the trier of fact must find the assumed fact in accordance with the presumption.

Thus, to prevail Krzan was required to rebut Dr. Diggs' report by a preponderance of evidence contrary to his conclusions.

In Conclusion of Law No. 4, the hearing examiner found that Krzan ` did not produce sufficient evidence to overcome the "rebuttable presumption" of correctness of the professional opinion of Dr. Diggs, a Panel physician (§ 39-72-610, MCA). In Conclusions of Law Nos. 3 and 5, the hearing examiner applied the proximate cause requirements of section 39-72-408, MCA, and found that Krzan failed to prove that her varicose veins were proximately caused by her employment. Ultimately, he concluded: "In this case the evidence shows that the Claimant's condition is attributable to non-work related [sic] events and family history." (Conclusion of Law No. 5.)

The medical evidence offered to contradict Dr. Diggs' opinion consisted of Dr. Birkelo's deposition testimony and the letter of Dr. Trimble. Both doctors indicated in their letters that "prolonged standing" would aggravate Krzan's symptoms, and reported their understanding was that Krzan's job involved prolonged standing. But in his deposition Dr. Birkelo made it clear that prolonged standing means standing in a stationary position and not moving around. (Birkelo Dep. at 27.) He pointed out that walking and moving around while wearing elastic stockings would actually benefit Krzan's condition. (*Id.*) Krzan testified that she wore support hose while working. (Tr. at 20.) Dr. Diggs observed that "[t]he physical demands of her job at the War Bonnet Inn would have had a beneficial effect because she was not required to stand in one position for very long." (Birkelo Dep., Ex. 6 at 3.) When asked about Dr. Diggs' evaluation and observation, Dr. Birkelo responded:

The only response I have to that -- I thought he did a good work up from what I saw. I thought it was a complete evaluation. . . . The only thing I can say in response to that is most of what I stated was based on her [Krzan's] statement to me, that she did a lot of standing, and I based it on that.

(*Id.* at 26.) Clearly, the difference in opinions among the doctors arises out of the different understandings the doctors had concerning the amount of standing required by Krzan's job.

The hearing examiner rejected Krzan's contention that her motel job required her to stand for long periods of time:

. . . The evidence as a whole did not show that there was any significant stationary standing involved, such as in a bank teller or grocery store checker-type jobs. The Claimant's assertions of much standing, to the extent she suggested stationary posture, is rejected. The evidence demonstrated that speed was required to clean the rooms as breaks were sometimes missed, and that workers such as the Claimant had to continually be moving to perform the cleaning duties.

(Conclusion of Law 3, ¶ 3 at 12.) Krzan vigorously disputes this conclusion, arguing that her testimony, along with that of Debbie Thielen, a former co-worker, established that "a motel maid at the War Bonnet Inn is standing on her feet, not moving around, for a minimum of two-hundred and eighty (280) minutes or approximately four and a half (4 1/2) hours of each day." (Appellant's Initial Brief at 4.)

Having reviewed all of the evidence presented to the hearing examiner, I find that the hearing examiners' determination is supported by substantial evidence and is not clearly erroneous. Krzan's and Thielen's testimony do not establish that they stood for any appreciable length of time.

Krzan argues that her evidence shows that she had to stand in one spot for long periods of time while cleaning bathrooms and making beds. She cites the Court to testimony found at pages 7, 29, 30 and 31 as her proof. The testimony at those pages is quoted below. The lines specifically quoted by Krzan are in regular type. Other pertinent lines, added for completeness, are in italics. The testimony from page 7 is by Krzan. The testimony from pages 29 and 30 is by Thielen.

SOMERS: Okay. How long did it normally take you to clean a bathroom?

KRZAN: It depends what you have, if you did your figure the job, you've got 14 rooms in eight hours so you have to schedule yourself to no more, like half hour in a room so you can figure how much you could possibly do. You know see you don't look in there with a time exactly but that's what got 50, half hour for a room to complete. And then you do tubs, the bathroom, everything complete with the shower, move bed, move the furniture into place

because they are all around the room, guests like it to do, vacuuming, dusting so that's the time what you spend it, you know, so --

SOMERS: You would stand in a, you would stand in a fairly small bathroom for how long? 15, 20 minutes at a time cleaning it?

KRZAN: Yes, something like that, you know, you can say.

(Tr. at 7)

SOMERS: How long did it take you, Debbie, on the average, to clean a bathroom?

THIELEN: A good 20 minutes.

SOMERS: So would it be fair, would it be fair to say that you were standing in a rather confined space for 15 minutes at a time for each of the 14 rooms throughout the day?

THIELEN: For each bathroom you mean?

SOMERS: Right.

THIELEN: Yes.

(*Id.* at 29.)

WHYTE: *Ms. Thielen, my name is Dan Whyte. I just have a couple of questions. You were on your feet for seven hours during a shift you said?*

THIELEN: I did seven hours, seven to maybe seven and a half hours depending on how bad the rooms were and depending on if you took your two 15 minutes breaks.

(*Id.* italics added.)

WHYTE: *There's a lot of movement in going from job to job.*

THIELEN: *From room to room, yes.*

WHYTE: Okay. So, in essence then, there really isn't much time that you spend standing. There's more time that you spend moving around and walking.

THIELEN: Depending on how bad the rooms were. I did quite a bit of standing sometimes, yes.

WHYTE: So, yes, you do quite a bit of walking or no?

THIELEN: You do quite a bit of walking, yes, depending on how bad the rooms were --

WHYTE: Okay.

THIELEN: -- how dirty or messy they were, but you do a lot of standing in one spot, too.

WHYTE: Okay, thank you. I have no further questions.

WALLACE: Okay. A follow up question -- well, let's see if, if Ms. Somers has anymore for you first.

SOMERS: I don't. Thank you.

WALLACE: Okay. Ms. Thielen, what, what job function would require that you remain stationary in one spot and stand? Can you tell me specifically?

THIELEN: Making beds.

WALLACE: In one spot?

THIELEN: *Yes, sir. Stripping beds, you know, before you make the beds you have to strip them depending on the laundry on the bed, the bedspreads, how dirty they were. . . .*

(Id. at 30 italics added.)

The passages cited by Krzan do not encompass all of the relevant testimony concerning the cleaning of bathrooms and making of beds. Additionally, Krzan testified:

SOMERS: Alright, thank you. Krystyna, I want to just ask you a couple more questions about the time you performed work at the War Bonnet Inn. Now, you are, you've testified previously that your job involved standing throughout the day. What kind of work demands were there (INAUDIBLE) such as lifting, carrying items, that sort of thing?

KRZAN: Okay, it was lots of lifting. Every day, it's the lifting because for you (INAUDIBLE).

. . . .

KRZAN: For one thing, can I say you walking and you standing and you pushing. It's the same time. It's a big vacuum which you always pushing sometimes with your legs because they are very industrial, heavy vacuums. There's furniture - for - moving around all over this room, which you have to put these in a place and it's very heavy wood furniture. The bed is - - make from box spring underneath which is stationary and a mattress on top which is very often a slided to one side and you have to replace again in a place, so also it's standing, but it's pushing with your whole body and your legs, because that's how that you can -- way you put that in a place. So it's -- also it's a big cart, a supply cart with the, with the sheets and blankets and towels, and that's heavy. You have to push it. Also, you stripping the beds with the towels wet and you have to carry that to your cart. You pushing also (INAUDIBLE), so it's very heavy job, you see, and require (INAUDIBLE) and also leg movement. *So that's, that's, you know, and another thing can I say? If you know, it's -- the top of showers, you know, see, you have to stretch and then pull it when the shower walls need, and so much bending and kneeling and that's, that's a lot -- lots of stress on your legs.*

(Id. at 22-24, italics added.)

Thielen testified:

SOMERS: Why don't you just explain to us briefly what your job duties entailed in a day?

THIELEN: Came to work by 8:00 every morning, getting a heavy cart out. If it wasn't loaded, you would have to load it up with towels, sheets, etc., a vacuum, very heavy industrial vacuum, (INAUDIBLE) and key rooms, you always had a sheet of what number of rooms, you know, what room numbers they were to do. You always took it upon yourself when you were trained to do everything from dusting to making beds to vacuuming to scrubbing shower walls, bathroom toilets, bathroom sink.

....

SOMERS: What sort of items were you required to lift and carry?

THIELEN: Move nightstands, their big wooden chairs, tables. They had pilot rooms, coffee pot makers, box springs, mattresses, hang shower curtains, take shower curtains down, replace shower curtain holders.

....

SOMERS: And what kinds of duties did you perform in the bathroom to clean it?

THIELEN: Usually you get the bathroom sink first and then you move to the toilet and then you move to the shower. Shower walls always have to be done no matter what. Especially when we houseclean we always had to do the, the ceilings and the walls, floors. Well, we had to do the floors everyday.

....

SOMERS: Were you also required to make the beds and move the beds around in the rooms?

THIELEN: Yes. When you -- when the box springs and the mattresses had slid off the makeshift of the wood you would always have to pick them up and move them back. You would usually have to do it by yourself because everybody else was usually busy doing their own rooms, and standing at the foot of the bed to make and strip the bed was the most time that you really spent on a bed until you moved around to the sides to tuck in the bottom sheets, top sheets, blankets, etc., bedspreads.

SOMERS: How long did that usually take you then per bed?

THIELEN: A good five, maybe ten minutes depending upon how fast and how more experience. . . .

....

SOMERS: Debbie, what -- would you say that your work in the bathroom was in a stationary posture?

THIELEN: Depending on how dirty it was, yes. There was quite a few minutes that I would have to stand at one certain -- like the sink, the shower walls. Shower walls, you stood for quite, you know, a few minutes (INAUDIBLE) the wall.

(Id. at 27-31.)

Considering all of the testimony and the hearing examiner's assessment of Krzan's credibility, his finding that Krzan did not stand in a stationary position while cleaning bathrooms or making beds was not clearly erroneous. Krzan's and Thielen's own testimony showed that in cleaning bathrooms Krzan moved from toilet to sink to shower. She cleaned the floors, which cannot be accomplished by standing in one place. She removed and replaced shower curtains. She even complained about the stretching and pulling and bending and kneeling when cleaning the shower. Making beds required not only stripping the bed clothes but moving around the beds to tuck in sheets and blankets.

Moreover, cleaning bathrooms and making beds are activities within the ordinary experience of the common folk, including hearing examiners. No specialized medical degree is needed to understand what is involved in these activities, and the hearing examiner was entitled to apply his common sense and experience in assessing Krzan's and Thielen's testimony. The Court's own experience in cleaning bathrooms⁽⁵⁾ and making beds supports the hearing examiner's conclusion that these activities require lots of moving about and do not involve standing in one place for any significant length of time.

Krzan also challenges the hearing examiner's finding as to her credibility. In Finding of Fact No. 19, the hearing examiner found that "[n]umerous items in the record and the Claimant's testimony detract from her credibility as it pertains to her occupational disease claim" His assessment was supported by substantial evidence. While Krzan argues that she has a language problem, and the transcript certainly shows that she speaks broken English, the transcript also shows that she has good comprehension and understanding of English and is able to express herself understandably. The hearing examiner's credibility assessment was based in large part on Krzan's denials of medical history contained in her medical records. The medical history was significant since it indicated that Krzan's varicose veins existed prior to her employment as a maid and that there is a significant familial history of varicose veins. After reviewing the medical records, the Court can only conclude it unlikely that Krzan's physicians misapprehended her history. The information is very specific, for example identifying specific siblings with and without a history of varicose veins, and is the type of information unlikely to be misunderstood.

Krzan was required to show that her employment proximately caused or aggravated her varicose veins. Section 39-71-102(10), MCA, defines "occupational disease" as "harm, damage, or death . . . arising out of or contracted in the course and scope of employment" Section 39-72-408, MCA, requires, among other things, "a direct causal connection between the conditions under which the work is performed and the occupational disease"

and that "the disease can be fairly traced to the employment as the proximate cause." The hearing examiner correctly found that Krzan failed to overcome the presumption favoring Dr. Diggs' conclusion that her work did not contribute to her varicose veins.

Even if the Court were to conclude that the hearing examiner erred in finding that Krzan did not stand for long periods of time, it would still affirm the decision below. Neither Dr. Birkelo nor Dr. Thielen opined that Krzan's work was the exclusive cause of her varicose veins, only that her work "aggravated" her condition. Section 39-72-706(1), MCA, provides for apportionment in occupational disease cases:

Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

Dr. Thielen did not express any opinion concerning the percentage of her condition attributable to her work. His opinion, therefore, provides no basis for apportionment. Dr. Birkelo apportioned sixty percent (60%) to Krzan's work but during his deposition he admitted that his estimate was "a pure guess" and that he had no experience or basis for apportioning. While certainty may not be required when apportioning, Dr. Birkelo's testimony places his estimate in the realm of speculation, leaving the hearing examiner with no substantial basis for apportionment.

ORDER

The hearing examiner's April 19, 1994 Findings of Fact; Conclusions of Law; Order are **affirmed**. This decision is certified as final for purposes of appeal.

Dated in Helena, Montana, this 4th day of November, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Christine D. Somers

Mr. Daniel J. Whyte

Ms. Melanie A. Symons

1. The exhibits in this case are labeled as claimant's and defendant's exhibits respectively. Since letters are used for both sets of exhibits, the claimant's and defendant's designations are used in citing to the record below.

2. "LT > RT" means "left greater than right."

3. It is apparent from this proceeding that the State Fund insures the War Bonnet Inn with respect to this claim.

4. Dr. Birkelo continued to follow his patients and perform limited procedures after he sold his practice. (Birkelo Dep. 5.)

5. A weekly responsibility!