

BEFORE THE ARBITRATION COMMITTEE

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In the Matter of:  
ROBERT WATJEN, et al.,  
Plaintiffs,  
vs. Case No. 69-675  
PENN CENTRAL,  
Defendant.

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MICHAEL J. KNAPIK, et al.,
Plaintiffs,
vs. Case No. 69-722
PENN CENTRAL,
Defendant.

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DAVID C. BUNDY, et al.  
Plaintiffs,  
vs. Case No. 69-947  
PENN CENTRAL,  
Defendant.

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G.V. SOPHNER, et al.
Plaintiffs,
vs. Case No. 74-914
PENN CENTRAL,
Defendant.

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Deposition of

HARVEY ROSEN, Ph.D.

October 2, 2007  
11:27 a.m.

Taken at:  
Hahn, Loeser & Parks  
3300 BP Tower  
Cleveland, Ohio

Kristin L. Wegryn, R.P.R.



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Court Reporting & Video Services & Media

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| <p style="text-align: center;">BEFORE THE ARBITRATION COMMITTEE</p> <p>-----</p> <p>In the Matter of:<br/>         ROBERT WATJEN, et al.,<br/>         Plaintiffs,<br/>         vs. Case No. 69-675<br/>         PENN CENTRAL,<br/>         Defendant.</p> <p>-----</p> <p>MICHAEL J. KNAPIK, et al.,<br/>         Plaintiffs,<br/>         vs. Case No. 69-722<br/>         PENN CENTRAL,<br/>         Defendant.</p> <p>-----</p> <p>DAVID C. BUNDY, et al.<br/>         Plaintiffs,<br/>         vs. Case No. 69-947<br/>         PENN CENTRAL,<br/>         Defendant.</p> <p>-----</p> <p>G.V. SOPHNER, et al.<br/>         Plaintiffs,<br/>         vs. Case No. 74-914<br/>         PENN CENTRAL,<br/>         Defendant.</p> <p>-----</p> <p>Deposition of<br/>         HARVEY ROSEN, Ph.D.</p> <p>October 2, 2007<br/>         11:27 a.m.<br/>         Taken at:<br/>         Hahn, Loeser &amp; Parks<br/>         3300 BP Tower<br/>         Cleveland, Ohio</p> <p>Kristin L. Wegryn, R.P.R.</p> | <p style="text-align: right;">3</p> <p>1 APPEARANCES: (Continued)<br/>         2 On behalf of the Defendant:<br/>         3 Blank Rome, LLP, by<br/>         4 THOMAS H. STEWART, ESQ.<br/>         5 JASON GROPPE, ESQ.<br/>         6 1700 PNC Center<br/>         7 201 East Fifth Street<br/>         8 Cincinnati, Ohio 45202<br/>         9 (513) 362-8704<br/>         10 Stewart@BlankRome.com<br/>         11 Groppe@BlankRome.com<br/>         12 ~ ~ ~ ~ ~<br/>         13<br/>         14<br/>         15<br/>         16<br/>         17<br/>         18<br/>         19<br/>         20<br/>         21<br/>         22<br/>         23<br/>         24<br/>         25</p> |
| <p style="text-align: right;">2</p> <p>1 APPEARANCES:<br/>         2<br/>         3 On behalf of the Plaintiffs:<br/>         4 Tricarichi, Carnes &amp; Clements, by<br/>         5 CARLA M. TRICARICHI, ESQ.<br/>         6 614 Superior Avenue NW, Suite 620<br/>         7 Cleveland, Ohio 44113<br/>         8 (216) 861-6677<br/>         9 -and-<br/>         10 Hahn, Loeser &amp; Parks, by<br/>         11 RANDY J. HART, ESQ.<br/>         12 3300 BP Tower<br/>         13 200 Public Square<br/>         14 Cleveland, Ohio 44114-2301<br/>         15 (216) 274-2410<br/>         16 Rjhart@hahnlaw.com<br/>         17 -and-<br/>         18 Griffin Law Firm, by<br/>         19 MARK GRIFFIN, ESQ.<br/>         20 614 Superior Avenue, N.W.<br/>         21 Suite 620<br/>         22 Cleveland, Ohio 44113<br/>         23 (216) 861-6677<br/>         24 Mark.d.griffin@gmail.com<br/>         25</p>                                                                                    | <p style="text-align: right;">4</p> <p style="text-align: center;">I N D E X</p> <p>1<br/>         2<br/>         3 EXAMINATION OF 5 5<br/>         4 HARVEY ROSEN, Ph.D.<br/>         5 BY MR. STEWART<br/>         6<br/>         7<br/>         8 Exhibit 1 was marked 8 6<br/>         9 Exhibit 2 was marked 33 4<br/>         10 Exhibits 3 through 34 were 66 5<br/>         11 marked<br/>         12<br/>         13<br/>         14<br/>         15<br/>         16<br/>         17<br/>         18<br/>         19<br/>         20<br/>         21<br/>         22<br/>         23<br/>         24<br/>         25</p>                                                         |

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| <p style="text-align: right;">21</p> <p>1 Q. Are you able to estimate the</p> <p>2 approximate number of times you've given a</p> <p>3 deposition?</p> <p>4 A. Many.</p> <p>5 Q. Would it be more than 50? 11:46:03</p> <p>6 A. Yes.</p> <p>7 Q. More than 100?</p> <p>8 A. Yes.</p> <p>9 Q. And with regard to the selected</p> <p>10 cases that you have listed on pages 5 and 6 of 11:46:19</p> <p>11 your curriculum vitae, were those cases in</p> <p>12 which you provided consulting or testimony on</p> <p>13 behalf of plaintiffs and defendants or were</p> <p>14 they all plaintiffs or all defendants?</p> <p>15 A. Both. 11:46:38</p> <p>16 Q. What's the -- of the cases that you</p> <p>17 have listed on there, what's the approximate</p> <p>18 percentage of which involve testimony or</p> <p>19 consulting services on behalf of plaintiffs?</p> <p>20 A. Well, I would have to count them 11:46:51</p> <p>21 up. They would be in the minority. Roughly,</p> <p>22 I --</p> <p>23 MR. GRIFFIN: You know what, I</p> <p>24 don't want you to guess. If you know.</p> <p>25 A. Not specifically. 11:47:44</p>                                                   | <p style="text-align: right;">23</p> <p>1 committee. About a half dozen of them, as I</p> <p>2 scan down, there would have been on behalf of</p> <p>3 defendants.</p> <p>4 Q. And is approximately that same</p> <p>5 percentage of your professional time devoted 11:48:49</p> <p>6 to -- with regard to litigation, civil</p> <p>7 litigation where you provide expert testimony</p> <p>8 or consulting services, is it primarily on</p> <p>9 behalf of defendants? I mean, excuse me,</p> <p>10 primarily on behalf of plaintiffs? 11:49:03</p> <p>11 A. Well, first of all, I wouldn't</p> <p>12 characterize it that way because I don't</p> <p>13 consider myself working on behalf of anybody in</p> <p>14 a sense that what I compute is, you know, the</p> <p>15 numbers. The numbers are the numbers 11:49:17</p> <p>16 regardless of whether it's for a plaintiff or</p> <p>17 for a defendant. But in terms of proportions</p> <p>18 of work, it would depend upon the type of</p> <p>19 litigation, but the higher proportionate amount</p> <p>20 of cases that I'm called upon to review 11:49:32</p> <p>21 generally are reflective of plaintiffs.</p> <p>22 Q. Well, for example, in this case,</p> <p>23 you've been retained as an expert on behalf of</p> <p>24 the claimants, or plaintiffs; isn't that right?</p> <p>25 A. Yes. 11:49:50</p> |
| <p style="text-align: right;">22</p> <p>1 MR. GRIFFIN: There's not a</p> <p>2 question pending, so --</p> <p>3 MR. STEWART: Actually, there is a</p> <p>4 question pending.</p> <p>5 MR. GRIFFIN: I think he answered 11:47:50</p> <p>6 and he said that they would be a minority. Is</p> <p>7 there another question after that?</p> <p>8 Q. Are you able to approximate the</p> <p>9 number of the percentage in which --</p> <p>10 A. Well, I don't know the percentage, 11:48:01</p> <p>11 but probably a half a dozen or so of those</p> <p>12 would be on behalf of defendants.</p> <p>13 Q. I'm sorry. On behalf of</p> <p>14 defendants?</p> <p>15 A. Uh-huh. 11:48:11</p> <p>16 Q. I just want to double-check. I</p> <p>17 thought I understood your answer before that</p> <p>18 said it would be a minority of cases on which</p> <p>19 you testified on behalf of plaintiffs.</p> <p>20 A. No. If I did say that, I didn't 11:48:23</p> <p>21 mean that.</p> <p>22 Q. Perhaps I misunderstood. I just</p> <p>23 want to make sure the record's clear.</p> <p>24 A. Most of those would either have</p> <p>25 been on behalf of plaintiffs or plaintiffs' 11:48:31</p> | <p style="text-align: right;">24</p> <p>1 Q. And is that -- when you say a</p> <p>2 majority of the work, is that cases in which</p> <p>3 you have been retained either to provide</p> <p>4 consulting or expert testimony on behalf of</p> <p>5 plaintiffs or claimants? 11:50:06</p> <p>6 MR. GRIFFIN: I don't understand</p> <p>7 the question. I'm going to object. It's a</p> <p>8 compound question.</p> <p>9 Q. With respect to civil litigation</p> <p>10 where you provide -- let me strike it. I'll 11:50:19</p> <p>11 just strike that.</p> <p>12 Sir, I'm going back to your</p> <p>13 educational background. Your M.A., what was --</p> <p>14 what was that in?</p> <p>15 A. Economics. 11:50:42</p> <p>16 Q. And your Ph.D.?</p> <p>17 A. Economics.</p> <p>18 Q. With respect to your testimony</p> <p>19 today, are you charging for your time to be</p> <p>20 here? 11:51:28</p> <p>21 A. Yes.</p> <p>22 Q. How much are you charging?</p> <p>23 A. My charge for testimony, whether it</p> <p>24 be by deposition or trial, is the same charge.</p> <p>25 It's \$1,200 for the first two hours, then \$425 11:51:39</p>                                                                                                                                                                                                                        |

6 (Pages 21 to 24)

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| <p style="text-align: right;">25</p> <p>1 per hour thereafter.</p> <p>2 Q. And is that the same -- strike</p> <p>3 that.</p> <p>4 What about with respect to</p> <p>5 consulting services that you provide in this 11:52:09</p> <p>6 case that are not testimonial?</p> <p>7 A. The charge for my time would be the</p> <p>8 same \$425 per hour. The time for one of my</p> <p>9 associates or assistants would be at a lesser</p> <p>10 rate. 11:52:25</p> <p>11 Q. And have you -- we'll get to this,</p> <p>12 but you've provided expert reports upon -- for</p> <p>13 each of the claimants involved that are left in</p> <p>14 this action?</p> <p>15 A. I don't know who is left. I have 11:52:38</p> <p>16 provided 32 reports in this action.</p> <p>17 Q. And have you presented a bill for</p> <p>18 the time it took to do that?</p> <p>19 A. Yes, up through last Friday.</p> <p>20 Q. And do you know the total amount of 11:52:56</p> <p>21 the fees that you've charged thus far?</p> <p>22 A. Yes, I do know that.</p> <p>23 Q. What is that amount?</p> <p>24 A. \$43,563.</p> <p>25 Q. And that reflects time through last 11:53:16</p>                                                                           | <p style="text-align: right;">27</p> <p>1 and after reviewing that data, whether I would</p> <p>2 have sufficient data to render an opinion as to</p> <p>3 the economic losses suffered by each of those</p> <p>4 individuals.</p> <p>5 Q. And during that initial contact, 11:55:23</p> <p>6 was any data provided to you or was it just to</p> <p>7 see whether or not that was something -- a</p> <p>8 service that you could perform?</p> <p>9 A. I don't recall if I was given any</p> <p>10 specific data at that time other than a general 11:55:38</p> <p>11 overview of what the litigation was all about.</p> <p>12 Q. And what was your understanding of</p> <p>13 what the overview of the litigation -- what the</p> <p>14 litigation was about?</p> <p>15 A. Well, that there was a protection 11:55:56</p> <p>16 agreement covering these employees who were</p> <p>17 affected by the merger of the Pennsylvania</p> <p>18 Railroad and the New York Central Railroad, and</p> <p>19 there were certain provisions in that agreement</p> <p>20 which provided for income and types of job 11:56:14</p> <p>21 protection for each of these individuals. And</p> <p>22 there were different classes of protection</p> <p>23 contained in the agreement and that to date,</p> <p>24 these individuals have not been compensated for</p> <p>25 the protections afforded within those 11:56:34</p> |
| <p style="text-align: right;">26</p> <p>1 Friday?</p> <p>2 A. Correct.</p> <p>3 MR. GRIFFIN: In addition to that,</p> <p>4 Dr. Rosen has submitted a letter which we've</p> <p>5 transmitted to you relating to fees for this 11:53:28</p> <p>6 deposition to be bourn by the defendants.</p> <p>7 Q. Right. And just so the record's</p> <p>8 clear, Doctor, I presented you a check before</p> <p>9 the deposition began in the amount of \$1,200,</p> <p>10 is that correct? 11:53:41</p> <p>11 A. Yes.</p> <p>12 Q. When were you first contacted by</p> <p>13 anyone to -- with regard to this case?</p> <p>14 A. This would have been sometime in</p> <p>15 the spring of 2007. Late winter, early spring. 11:54:25</p> <p>16 Q. By whom were you contacted?</p> <p>17 A. I believe by Carla Tricarichi.</p> <p>18 Q. And what was your understanding as</p> <p>19 a result of that initial contact, what services</p> <p>20 you were being, potentially being asked to 11:54:53</p> <p>21 provide?</p> <p>22 A. Whether I could review data as it</p> <p>23 pertained to some type of a protection</p> <p>24 agreement and how it applied to a variety of</p> <p>25 employees who were covered by that agreement, 11:55:10</p> | <p style="text-align: right;">28</p> <p>1 agreements.</p> <p>2 Q. Now, sir, were you -- let me just</p> <p>3 change tracks quickly.</p> <p>4 Were you born in Cleveland?</p> <p>5 A. I was. 11:56:50</p> <p>6 Q. And I notice on your CV that you</p> <p>7 got -- you list an M.A. at -- is it the M.A. at</p> <p>8 University of California, Berkeley in '66?</p> <p>9 A. No. That was actually -- well,</p> <p>10 that's a story by itself, but I skipped my M.A. 11:57:08</p> <p>11 when I got my Ph.D. They gave me one anyway.</p> <p>12 That was from Case Western.</p> <p>13 Q. And so at some point in time, did</p> <p>14 you actually live out in Berkeley?</p> <p>15 A. Yes. 11:57:21</p> <p>16 Q. When was that?</p> <p>17 A. 1965, '66.</p> <p>18 Q. And other than that, have you lived</p> <p>19 in Cleveland your whole life?</p> <p>20 A. Yes. There was one other period, a 11:57:29</p> <p>21 year that I was not a resident in Cleveland,</p> <p>22 but other than that, yes.</p> <p>23 Q. What year was that?</p> <p>24 A. That would have been 1960 -- I</p> <p>25 think it was '62 and '63. 11:57:47</p>                                                                                                                                                                                                                                                                               |

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1 opinions or just -- obviously, you work on a  
 2 case, you form an opinion, but nothing -- not a  
 3 professional opinion, no.  
 4 Q. That's what I meant.  
 5 Any other expert opinion that -- 14:43:03  
 6 with regard to damages for any of these  
 7 claimants?  
 8 A. No.  
 9 Q. During the course of preparing --  
 10 and let me ask you, would you categorize 14:43:14  
 11 Defendant's Exhibit 2 through 34 as your  
 12 report?  
 13 A. At this time, yes.  
 14 Q. Through 34.  
 15 And during the course of preparing 14:43:27  
 16 the letter or the individual calculations for  
 17 each claimant, did you ever -- was there ever a  
 18 time when you changed your methodology from  
 19 what you were originally using?  
 20 A. No, not that I can recall. 14:43:44  
 21 MR. STEWART: That's all the  
 22 questions I have, sir.  
 23 THE WITNESS: Thank you.  
 24 MR. GRIFFIN: Thank you. We'll  
 25 read. 14:44:07

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1 I do further certify that I am not  
 2 a relative, counsel or attorney for either  
 3 party, or otherwise interested in the event of  
 4 this action.  
 5 IN WITNESS WHEREOF, I have hereunto  
 6 set my hand and affixed my seal of office at  
 7 Cleveland, Ohio, on this 9<sup>th</sup> day of  
 8 Oct., 2007.  
 9  
 10  
 11  
 12  
 13 *Kristin L. Wegryn*  
 14 Kristin L. Wegryn, Notary Public  
 15 within and for the State of Ohio  
 16  
 17 My commission expires July 13, 2008.  
 18  
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1 CERTIFICATE  
 2 The State of Ohio, )  
 3 SS:  
 4 County of Cuyahoga. )  
 5  
 6 I, Kristin L. Wegryn, a Notary  
 7 Public within and for the State of Ohio, duly  
 8 commissioned and qualified, do hereby certify  
 9 that the within named witness, HARVEY ROSEN,  
 10 Ph.D., was by me first duly sworn to testify  
 11 the truth, the whole truth and nothing but the  
 12 truth in the cause aforesaid; that the  
 13 testimony then given by the above-referenced  
 14 witness was by me reduced to stenotypy in the  
 15 presence of said witness; afterwards  
 16 transcribed, and that the foregoing is a true  
 17 and correct transcription of the testimony so  
 18 given by the above-referenced witness.  
 19 I do further certify that this  
 20 deposition was taken at the time and place in  
 21 the foregoing caption specified and was  
 22 completed without adjournment.  
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