

II of III



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ALI E. GUY, M.D., :

Plaintiff, :

-against- :

Index N  
023179/

METRO NORTH COMMUTER RAILROAD COMPANY :  
and JOHN HERRLIN, M.D., :

Defendants. :

-----X

EXAMINATION BEFORE TRIAL of ALI E. GUY, the Plaintiff herein, taken by Defendant pursuant to Court Order, held at the offices of Kelner & Kelner, Esqs., 222 Broadway, New York, New York 10038, on Thursday, August 19, 1993, at 10:05 o'clock a.m., before Stewart Nissenbaum, a Shorthand Reporter and Notary Public of the State of New York.

\* \* \*

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A P P E A R A N C E S:

KELNER & KELNER, ESQS.  
Attorneys for Plaintiff  
222 Broadway, 24th Floor  
New York, New York 10038  
BY: ROBERT B. MARCUS, ESQ.

SIFF ROSEN P.C.  
Attorneys for Defendant  
233 Broadway  
New York, New York 10279  
BY: CATHLEEN GIANNETTA, ESQ.

ALSO PRESENT:

DEAN R. LOGIUDICE, Agent  
METRO NORTH COMMUTER RAILROAD  
347 Madison Avenue  
New York, New York 10017

\* \* \*

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED,  
by and between the attorneys for the  
respective parties hereto, that all rights  
provided by the Civil Practice Law and  
Rules, including the right to object to any  
question except as to form, or to move to  
strike any testimony at the examination,  
are reserved, and, in addition, the failure  
to object to any question or to move to  
strike any testimony at this examination,  
shall not be a bar or waiver of the right

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to make such objection or motion at, and is reserved for the trial of this action.

IT IS FURTHER STIPULATED AND AGREED that this examination may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so, or to return the original transcript of this examination to counsel, shall not be deemed a waiver of the rights provided by Rule 3116 of the Civil Practice Law and Rules, and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED that the filing and certification of the original of this examination are waived.

\* \* \*

A L I E. G U Y, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY  
MS. GIANNETTA:

Q Please state your full name and

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address for the record.

A Dr. Ali Guy, 7 Gramercy Park, New York, New York 10003.

Q Good morning, Dr. Guy. My name is Cathleen Giannetta, I'm the attorney representing Metro North and John Herrlin, M.D. in the lawsuit you've brought against them.

I'm going to ask you some questions regarding your basis for this lawsuit. If you don't understand something I've asked you, please let me know, and I'll repeat it or rephrase it. Just be sure to answer out loud, particularly with yes or no answers, so the reporter can take everything down.

What is your office address?

A Currently, 7 Gramercy Park, New York, New York 10003.

Q How long have you been at that address?

A Approximately three and a half years.

Q Prior to that address, what was your office address?

A 247 Third Avenue, New York, New York

Q Do you maintain any other offices?

Guy

1

A I do.

2

Q Where are those offices?

3

A Plainview, Long Island.

4

Q What is the address in Plainview?

5

A 146 Manetto Hill Road, Plainview,

6

Long Island, and 475 Tuckahoe Road, Yonkers, New  
York.

8

Q What is your home address?

9

MR. MARCUS: Objection. Don't

10

answer it.

11

Q Do you spend time at each of the

12

offices that you mentioned, the Gramercy --

13

A I do spend time, yes.

14

Q Do you have a regular schedule --

15

A Yes.

16

Q -- of the time that you spend at each

17

particular office?

18

A I do.

19

Q What is that schedule?

20

A The last address, 475 Tuckahoe Road,

21

that's a new address, I just acquired that not

22

long ago. I'm there every other Thursday

23

afternoon, half a day, every two weeks.

24

Q How often are you at the Plainview

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office?

A I'm there about two to three times a

week.

Q And the office on Gramercy?

A About two and a half days a week.

Q Are you in practice alone at the

Gramercy address, or do you have any partners?

A I don't have a partner.

MR. MARCUS: That's the answer.

THE WITNESS: Okay.

Q Do you have any physicians working

for you?

A I had a physician working for me, he

is no longer with me.

Q When did he leave?

A About three months ago.

Q What was his name?

A John Megarr, M-e-g-a-r-r.

Q How long had Dr. Megarr worked for

you?

A Approximately nine months.

Q Do you have partners in your practice

at the Plainview address and the Yonkers address?

A I have no partners there.

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Q Do you have any physicians working for you at the Plainview address?

A Well, Dr. Megarr used to commute back and forth between the two locations.

Q Do you have any physicians working for you at the Yonkers address?

A For me, no.

Q Do you have any registered physician's assistants working for you?

MR. MARCUS: Note my objection to this line of questioning, but you can answer it.

A Yes, I do.

Q How many?

A Currently?

Q Currently.

MR. MARCUS: Note my objection. What's the relevance of what he currently has? You want to talk about the incidents that are the subject of this lawsuit and the time periods that are covered by this lawsuit, I'll allow him to answer. I'm not going to allow him to answer regarding events that took place

Guy

1 after the period of time covered by this  
2 lawsuit.

3 MS. GIANNETTA: Well, it is my  
4 understanding, and perhaps you can correct  
5 me if I'm wrong, that the lawsuit is  
6 covering up to the present time.

7 MR. MARCUS: He still hasn't been  
8 paid, if that's what you mean. But, I  
9 don't think that that has anything to do  
10 with who is working, what his staff  
11 consists of.

12 MS. GIANNETTA: Some of the Metro  
13 North employees, it is my understanding,  
14 are still seeing Dr. Guy up to the present  
15 time.

16 MR. MARCUS: That's correct. What's  
17 the difference whether he has physician's  
18 assistants working for him or not.

19 MS. GIANNETTA: I'll address that  
20 point when we get to the individuals.

21 Q Do you have a specialty, Dr. Guy, in  
22 your practice?

23 A I do.

24 Q What is your specialty?  
25

Guy

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A Physical medicine and rehabilitation.

Q Are you board certified in any area?

A In --

MR. MARCUS: Objection. You can answer it.

A I'm board certified in physical medicine and rehabilitation.

Q Is that two separate board certifications?

A It's one specialty, it's one board.

Q Do you practice in any other area besides physical medicine and rehabilitation?

A I also do general practice.

MR. MARCUS: Wait until the question is finished before you give your answer.

Q Are you licensed to practice medicine in New York?

A I am.

Q Where did you go to medical school?

A University of Northeast, Dominican Republic.

Q When did you receive your degree from that school?

A In June of 1981.

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Q Where did you complete your residency or residencies?

A Which one?

Q How many did you complete?

A I completed physical medicine and rehabilitation at Mount Sinai Medical Center. I did 18 months of internal medicine at Mount Sinai again. I did one year of general surgery at Cabrini Medical Center.

Q Are you presently affiliated with any hospitals?

A I am.

Q What hospitals?

A Cabrini Medical Center and Hospital for Joint Diseases/Orthopedic Institute. That's one hospital.

(Witness confers with counsel.)

Q Do you have admitting privileges at Cabrini?

A At both these hospitals.

Q In general, can you describe what the practice of physical medicine and rehabilitation consists of?

A It's a combination of orthopedics,

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neurology, some internal medicine. The job of a specialist in this specialty is to rehabilitate the patient, bring him back to the optimum level of functioning, whether it be from an accident, a fall, stroke, or amputation.

Q Have you ever taken the test to become board certified in orthopedics?

MR. MARCUS: Objection. Don't answer the question.

MS. GIANNETTA: That's clearly relevant.

MR. MARCUS: You haven't laid a foundation. It is not relevant and you haven't laid a foundation.

MS. GIANNETTA: He says that his practice involves a combination of orthopedics --

MR. MARCUS: That's correct. His practice is in a separate and distinct medical specialty. You have not established whether he qualified to take the examination in orthopedics by completing an orthopedic residency. If you recall, he never took an orthopedic

Guy

1 residency and, therefore, he would not be  
2 eligible to take a board in orthopedics,  
3 and he doesn't have to practice in his  
4 specialty, and I'm not going to allow him  
5 to answer.

6 If you want to mark it for a ruling,  
7 do what you want. I made my statement for  
8 the record. If you ask the same question  
9 about neurology or internal medicine, I'll  
10 give you the same objection and direct him  
11 not to answer. It is a frivolous question.

12 MS. GIANNETTA: It is not frivolous  
13 because this lawsuit involves Dr. Guy's  
14 professional qualifications, credentials,  
15 and reputation.

16 MR. MARCUS: The fact that Metro  
17 North and either its lawyers or the  
18 individuals it claims are its doctors are  
19 not familiar with Dr. Guy's medical  
20 specialty, which is a nationally recognized  
21 and hospital recognized and board  
22 recognized medical specialty, is of no  
23 concern to me or to my client.

24 You do what you got to do, Counsel.  
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Guy

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Ask your questions, I'll make my decisions.

Q Doctor, did you ever --

MS. GIANNETTA: I know you just put statements on the record, Mr. Marcus, concerning this, but I prefer to get them directly from the witness.

Q Did you ever perform a residency in orthopedics?

MR. MARCUS: It calls for a yes or no answer.

A No.

Q Were you ever board eligible for orthopedics, the area of orthopedics?

MR. MARCUS: Objection. Don't answer the question.

MS. GIANNETTA: Mark that for a

\* ruling.

Q Did you ever perform a residency in neurology?

A No.

Q Is a residency in neurology required to be board eligible in the area of neurology?

MR. MARCUS: Objection. Don't answer the question. He is not a

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specialist in neurology.

MS. GIANNETTA: I'm not --

MR. MARCUS: He is not here as your expert. He is here as a fact witness. He is not an expert in neurology. He has never said he was board certified in neurology.

Don't answer the question.

Next question.

Q Have you ever been or are you board eligible for the area of neurology?

MR. MARCUS: Objection. Don't answer the question.

\* MS. GIANNETTA: We'll mark all these for a ruling.

If I ask him the same questions in the area of internal medicine, will you have the same objections?

MR. MARCUS: Absolutely.

\* MS. GIANNETTA: Then we'll mark that for a ruling as well.

Q Has your license to practice ever been revoked or suspended?

MR. MARCUS: Objection, don't answer

Guy

1 the question.

2 MS. GIANNETTA: Mr. Marcus, that's  
3 completely relevant.

4 MR. MARCUS: It is never relevant.  
5 As long as he has said he is licensed, he  
6 is licensed. If you want to ask him a  
7 proper question, was he licensed at the  
8 time he treated the Metro North employees,  
9 I will allow him to answer that, and that's  
10 the only question I will allow him to  
11 answer. I'm not suggesting that his  
12 license was ever revoked or suspended, but  
13 it is an improper question. You want to  
14 ask him questions referable to this  
15 lawsuit, you go right ahead.

16 MS. GIANNETTA: Let me state my  
17 position on the record. This is referable  
18 to the lawsuit because Dr. Guy is claiming  
19 that certain actions of Metro North and its  
20 employee, Dr. Herrlin, were the reasons for  
21 his business being diminished.

22 In addition, he's making a claim of  
23 slander, although we say that Dr. Herrlin  
24 did not say what Dr. Guy says that he said.  
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even if he did, truth is a defense, so everything that bears on Dr. Guy's professional credentials and repetition has a bearing on this lawsuit, and we'll just mark that for a ruling also.

\*

MR. MARCUS: Fine. If you had done your homework, you can find out from the New York State Department of Health whether Dr. Guy has a valid license to practice medicine and whether that license was in full force and effect at all relevant times. And if you had done your homework, you would have found out that it was. The fact that you haven't done your homework is your business.

MS. GIANNETTA: Objection to the personality attacks. Regardless of what information comes from other places, questions are still relevant to the witness and still permissible.

MR. MARCUS: Mark it for a ruling.

\*

Next question.

Q Have you ever been disciplined by a professional board or by the Department of

Guy

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Education?

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MR. MARCUS: Objection. Don't

3

answer the question.

4

MS. GIANNETTA: Mark that for a

5

ruling on the same basis.

6

Q Have you ever been sued for

7

malpractice?

8

MR. MARCUS: Objection. Don't

9

answer the question.

10

MS. GIANNETTA: Mark that for a

11

ruling.

12

Q In the course of your practice, have

13

you ever treated employees of Metro North Commuter

14

Railroad?

15

A Yes.

16

Q Have you ever treated employees of

17

other railroads?

18

A Yes.

19

Q At the present time, what percentage

20

of your income is derived from treating injured

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railroad employees?

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MR. MARCUS: Objection. Don't

23

answer the question.

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MS. GIANNETTA: Mr. Marcus, Dr. Guy

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is claiming that his income is reduced because of the actions of defendant.

MR. MARCUS: No, he is not.

MS. GIANNETTA: He is not making that claim.

MR. MARCUS: No. Let me put a statement on the record which will make your life much easier and his life much easier:

Dr. Guy is claiming that his professional reputation was impugned by statements made by Dr. Herrlin. As a result of that, Dr. Guy lost a certain amount of business which came to him by way of patients who were Metro North employees. However, Dr. Guy was able to replace those patients elsewhere so that he is not and will not in this lawsuit make a specific claim of actual business loss by virtue of the slander by Dr. Herrlin.

We are not going to claim that, therefore, it should shorten your examination, and we will so stipulate. There is no claim of actual monetary loss

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because he was able to replace the monetary loss elsewhere.

The one claim of monetary loss that is clear is the failure to pay him by Metro North for treatment previously rendered to Metro North employees; that claim remains, as does a claim of slander.

MS. GIANNETTA: Then he is claiming, as I understand it, then, no loss of income.

MR. MARCUS: We're not making a claim of loss of income in this lawsuit because the Doctor was able to replace that income elsewhere. He is not looking for unjustified enrichment.

Q At the present time, Doctor, how many Metro North employees are under your care?

A At the present time? The exact number, I don't know.

MR. MARCUS: If you leave a place in the transcript, we'll attempt to fill that in from his business records.

MS. GIANNETTA: Thank you.

Guy

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Q Can you approximate the number,  
Doctor?

A It may not be exactly correct.

Q I understand that.

A I would say it is under a dozen.

Q Approximately how many employees of  
Metro North were you treating at this time last  
year, 1992?

A Again, the exact number, I don't  
know. I can tell you that after this ordeal that  
started with the Metro North, the slander and the  
road blocks that were put, I lost a tremendous  
amount of patients from Metro North, I would say  
more than half.

Q When did the number of Metro North  
employees that you were treating begin to  
diminish?

A Right on or about or shortly after  
the problem that the bills weren't being paid, my  
name was repeatedly slandered by Dr. Herrlin, and  
there was feedback that was given to me through  
the patients, and that was all around that time.

Q What time was that?

A Well, the record speaks for itself.

Guy

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It was some time around late -- second half of '91 to second half of '92, if the record is correct. I'm not 100 percent sure.

MR. MARCUS: We will state it for the record, that as of that time period, according to Dr. Guy's records, which is the subject of the claim against Metro North, there were approximately 28 Metro North employees who came under his care in the period from 1989 through June of 1992, and as of June 5, 1992, there was due and owing for that treatment the sum of \$201,621.

Q Doctor, is that sum that your attorney just read from your office records?

A Yes, it is.

Q Is that from one particular type of record that's kept in your office?

A I don't know what you mean by "one particular type of record."

MR. MARCUS: For the record, I asked his office manager to prepare for me, in conjunction with this lawsuit, a list of patients, the dates of treatment that were

Guy

1 covered, and the amounts due from Metro  
2 North. If we have not previously supplied  
3 you with that itemization, I'll be happy to  
4 do so in response to a formal demand for  
5 same.

6 MS. GIANNETTA: Thank you. And I do  
7 call for the production of that, and I will  
8 make a formal demand.

9 MR. MARCUS: Serve me with a written  
10 demand and you'll immediately get a  
11 response. It is something you're entitled  
12 to, and I'll be happy to give it to you.

13 Q Is that just patients who have  
14 outstanding bills and are all Metro North  
15 patients?

16 MR. MARCUS: These are patients  
17 that, as of June 5, 1992, had been or were  
18 still patients of Dr. Guy and for whom  
19 Metro North had previously undertaken to  
20 pay for treatment but had failed to pay for  
21 treatment.

22 I will give you the amounts that are  
23 due for each of these patients and the  
24 dates of treatment, beginning and ending  
25

Guy

1 dates, through that particular date of June  
2 5th of 1992, which is encompassed in the  
3 lawsuit.

4 Q Have there been patients of yours  
5 that are employees of Metro North for whom the  
6 bills have been paid by Metro North?

7 MR. MARCUS: When? Before this  
8 period began or after or during?

9 Q First, before this period began.

10 MR. MARCUS: In other words, prior  
11 to the time that he encountered this  
12 problem, was Metro North paying the bills  
13 for any Metro North employees?

14 MS. GIANNETTA: That's correct.

15 MR. MARCUS: It calls for a yes or

16 no.

17 A Let me see if I understand the  
18 question. Prior to, that's the time they started  
19 roadblocking me.

20 MR. MARCUS: Yes, prior to the time  
21 you encountered the problem that led to the  
22 lawsuit.

23 A The answer is yes.

24 Q After you began having problems, as  
25

Guy

1  
2 you say, with Metro North, did Metro North pay any  
3 bills to you?

4 MR. MARCUS: Or any portions of  
5 bills.

6 THE WITNESS: Yes.

7 Q For how many patients?

8 A The exact number, I don't know. All  
9 I can tell you is, that sometime after that demand  
10 letter went out to them and sometime after a lot  
11 of negotiations between the patients that were  
12 represented by attorneys -- and I don't believe,  
13 that had anything to do with it either -- they  
14 sent me a big package, a lot of patients, computer  
15 printouts that this is their new customary rates,  
16 this is what they pay, and this is the amount that  
17 remains unpaid, and a copy of those things came to  
18 me and a copy went to the patients.

19 After that, even during that time,  
20 there were some patients that the bills were paid  
21 in full without those -- without your customary  
22 rates, without that formal computerized printout  
23 form where it says that the amount that was  
24 customary and reasonable by their standards and  
25 amount paid, amount unpaid. As you can see, there

Guy

1  
2 was a lot of inconsistency on the Metro North  
3 payments.

4 Q Do you still have a copy of that  
5 package that you received with the correspondence?

6 A I do.

7 MS. GIANNETTA: I call for a  
8 production of that.

9 MR. MARCUS: Serve us with a formal  
10 demand. We'll be happy to provide it to  
11 you.

12 Let the record reflect that since  
13 the outset of this litigation, we have  
14 demanded and still have not received full  
15 computer printouts from Metro North on all  
16 charges submitted by Dr. Guy for treatment  
17 rendered to Metro North employees and the  
18 disposition of those claims by Dr. Guy by  
19 Metro North including payments made,  
20 payments rejected, payments reduced. We  
21 have not received any of that. We have  
22 been waiting two years for that material.  
23 Are we ever going to see it? It's been  
24 formally demanded, and you were ordered to  
25 provide it to us. You have not yet

Guy

1 provided us with that.

2 MS. GIANNETTA: We provided  
3 everything that we were ordered to provide.  
4 That's all I'll say about that. I have  
5 been in court every time the judge has made  
6 an order, and I have served you with all of  
7 the proper documents.

8 MR. MARCUS: Fine.

9 Q I'm not asking the Doctor this in  
10 connection with a loss of income, but what  
11 percentage of your income, Doctor, is presently  
12 derived from treating injured railroad employees?

13 MR. MARCUS: Objection. Don't  
14 answer as to what is presently derived from  
15 treating injured railroad employees.

16 Q In 1988, what percentage of your  
17 income was derived from treating injured railroad  
18 employees?

19 MR. MARCUS: Are you talking about  
20 Metro North railroad employees?

21 MS. GIANNETTA: Yes, I'll ask him  
22 that first.

23 Q Metro North railroad employees?

24 MR. MARCUS: Objection. You can  
25

Guy

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answer over objection if you can recall.

2

A I have no way of knowing for sure.

3

4

Q Do you have records that would show you how much of your income was derived from treating Metro North employees in 1988?

5

6

MR. MARCUS: It calls for a yes or

7

no answer.

8

A No. No.

9

10

Q Do you have records of how much income, dollarwise, you derived from treating Metro North employees in 1988?

11

12

MR. MARCUS: Objection.

13

You can answer it over objection.

14

It calls for a yes or no. Do you have records?

15

16

THE WITNESS: Yes, the record that I

17

have --

18

MR. MARCUS: It calls for a yes or

19

no.

20

THE WITNESS: Yes, I do.

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Q What records do you have that would show how much income?

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A The 1099 that Metro North sends me at

25

the end of the year.

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Q Would that cover all the payments that Metro North has made to you during that year?

A I imagine so.

Q Would you have that document for 1989?

A I'm sure my accountant has it someplace.

Q Would you have that document for 1990, 1991, and 1992?

A If Metro North sent me a 1099, I imagine I would have it, yes.

Q If Metro North had not sent you a 1099, do you have any other records from which you could determine how much income you derived from treating Metro North employees during those years?

A The record that you have -- yes.

Q What records would those be?

A The record that was sent to you about my outstanding bills as of June of '92.

MR. MARCUS: No. The question is not what you were owed. The question is: Do you have any records that establish what your income was from Metro North, what they paid you? It calls for a yes or no.

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THE WITNESS: No.

Q Do you keep a record of bills that are paid for each patient?

A Do I have -- I'm trying to think.

MR. MARCUS: Yes or no.

A I'm trying to think if I have a record. Yes, there would be the patient's charts.

Q So, for each Metro North employee, then, you would have a record attached to his or her chart on the total amount that you were paid for him or her?

A Yes.

MS. GIANNETTA: I call for the production of those records from 1988 to the present.

Q Doctor, what was your total income in

1988?

MR. MARCUS: Objection. Don't answer the question.

MS. GIANNETTA: Do you make the same objection for all the years?

MR. MARCUS: Of course. I told you we are not claiming a loss of income. That's privileged information that you're

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not entitled to. It is not relevant to any of the issues in the lawsuit.

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If we are not claiming loss of income, you're not entitled to know his income.

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MS. GIANNETTA: I'm entitled to know the percentage he makes from Metro North employees.

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MR. MARCUS: You're not. It's irrelevant.

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MS. GIANNETTA: I call for the production of his tax returns for those years, 1988 through the present.

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MR. MARCUS: Declined.

15

16

Q

Doctor, do you claim that you lost any other business other than from Metro North employees as a result of the claims that you make in this lawsuit?

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18

19

A No, I'm not claiming that.

20

21

Q

Do you claim that you lost business from any other railroad or from any other railroad employees because of the claims in this lawsuit?

22

23

A

No. I'm not claiming that, either.

24

25

Q

How many clients of Kelner & Kelner

Guy

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have you treated?

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MR. MARCUS: Objection. Don't

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answer the question.

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MS. GIANNETTA: We'll mark it for a

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ruling.

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Q How many times have you testified in

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court this year in connection with a lawsuit?

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MR. MARCUS: Objection. You can

9

answer it over objection.

10

In connection with what lawsuit?

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MS. GIANNETTA: In connection with

12

personal injury lawsuits.

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MR. MARCUS: Objection, relevance.

14

Objection that it is not germane to any of

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the issues in this lawsuit. It's palpably

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improper.

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Don't answer the question.

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MS. GIANNETTA: Mark that for a

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ruling.

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Q How many times have you testified in

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court this year in connection with a law suit

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brought by a Metro North employee?

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MR. MARCUS: Objection. Over

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objection, you can answer that question.

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A This year, none. None that I can recall.

Q How many times did you testify last year in connection with a lawsuit brought by a Metro North employee?

MR. MARCUS: Objection. You can answer it over objection.

A If my memory serves me correctly, three or four times.

Q How many times did you testify in 1991 in connection with a lawsuit brought by a Metro North employee?

MR. MARCUS: Objection. Over objection, you can answer the question.

A Again, if memory serves me correctly, approximately three to four times.

Q Doctor, did you review any records before coming here today to testify?

A I did.

Q What records did you review?

A I reviewed the transcript of my last testimony and the testimony that was given by Mr. Ramnarine Lall, R-a-m-n-a-r-i-n-e, L-a-l-l.

Q Did you review anything else to

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prepare for your testimony here today?

A No.

Q Do you recall testifying at the public authorities hearing that you maintained a Metro North file in your office?

MR. MARCUS: Objection. Don't answer the question. Objection to the form.

Q Doctor, do you maintain any type of special file in your office for Metro North parties?

A With reference to this lawsuit, yes.

Q What do you keep in that file?

A Basically, the copy of the demand letter, copies of correspondence from Metro North to my attorney and from them to me, copies of outstanding billing statements, copies of what the patients have said to me regarding my -- the slanderous remarks from Dr. Herrlin about me.

Q Did you bring that file with you today?

A No.

MS. GIANNETTA: I call for the production of that file with the exception

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of course, of any material privileged between Dr. Guy an his attorneys.

Q Doctor, do you use any type of fee schedule in setting your fees for your patients?

MR. MARCUS: Objection. You can answer it over objection.

Objection to the form. I don't understand the question.

MS. GIANNETTA: I'll reask it.

Q Doctor, do you have set fees for particular services you render?

A I do.

Q Do you have a fee schedule that you use or that your billing department uses?

MR. MARCUS: Objection. You just asked the same question. Asked and answered.

(Witness confers with counsel.)

MS. GIANNETTA: Let the record reflect that the witness and his attorney are conferring.

MR. MARCUS: Yes, he is exercising his constitutional privilege under the United States and New York State

Guy

1  
2 Constitutions to confer with counsel. Do  
3 you have some objection that?

4 MS. GIANNETTA: I just wanted it  
5 noted on the record.

6 MR. MARCUS: Absolutely, by all  
7 means.

8 Q Doctor, do you have a Workers  
9 Compensation fee schedule that you will use for  
10 certain types of claims?

11 MR. MARCUS: Objection. Are you  
12 referring to the statutory fee schedules  
13 set by New York State Workers Compensation  
14 Board which is imposed on all health care  
15 providers by the State of New York by law?  
16 Is that what you are referring to, Counsel?

17 MS. GIANNETTA: Let me ask the --  
18 I'll rephrase the question.

19 MR. MARCUS: Fine.

20 Q Doctor, do you abide in certain cases  
21 by the Workers Compensation fee schedule?

22 MR. MARCUS: Are you asking the  
23 Doctor if he obeys the laws of the State of  
24 New York? The answer is yes.

25 MS. GIANNETTA: No, I'm asking if he

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treats patients for which that fee schedule is applicable.

MR. MARCUS: It calls for a yes or no. You're talking about the New York State Workers Compensation.

MS. GIANNETTA: Fee schedule.

MR. MARCUS: Yes or no, do you ever treat patients under that fee schedule?

THE WITNESS: Under Worker's Comp rules and regulations?

MR. MARCUS: Yes.

THE WITNESS: Yes, I do.

Q Is that the same fee schedule that you use for railroad employees when you treat them?

MR. MARCUS: Are you talking about all railroad employees or Metro North railroad employees?

MS. GIANNETTA: Metro North railroad employees.

A No.

Q Do you have a printed fee schedule that applies to Metro North railroad employees?

MR. MARCUS: As of today, or at the

Guy

1 time that is the subject of this lawsuit?

2 MS. GIANNETTA: Well, at the time --

3 MR. MARCUS: You have to be time  
4 specific or I'm not going to allow the  
5 answer.

6 MS. GIANNETTA: It's my understand-  
7 ing that the relevant time period continues  
8 to the present.

9 MR. MARCUS: Just ask your question,  
10 Counsel. I asked you to be time specific.

11 Q In 1988, did you have a fee schedule  
12 that applied to your treatment of Metro North  
13 employees?

14 MR. MARCUS: A fee schedule  
15 generated by whom, by the Doctor?

16 MS. GIANNETTA: By the Doctor.

17 MR. MARCUS: Or by Metro North or by  
18 some third party?

19 MS. GIANNETTA: I'm first asking him  
20 if he had a fee schedule, and I'll ask him  
21 who generated that fee schedule.

22 MR. MARCUS: Over objection, you can  
23 answer it.

24 A Yes.

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Q Who set the fees on that fee schedule in 1988?

A I did.

Q In 1988, did you treat patients other than Metro North employees?

A Yes.

Q Did you have the same fee schedule for those other patients as for the Metro North employees?

A Yes.

Q In 1989, did you have a fee schedule for Metro North employees?

A Yes.

Q Is that the case in 1990, 1991, 1992 and to date?

A I have only one fee schedule. It's been the same.

Q That was my next question. Has it changed at all since 1988?

A Maybe slightly on some procedures, but for the most part, it is about the same ballpark figure.

MS. GIANNETTA: I call for production of that fee schedule for 1988 to

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the present.

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Q

Other than the Workers Compensation fee schedule and the fee schedule that applied to the Metro North employees, do you have any other fee schedule, or have you since 1988, that applies to any patients that you treat?

A

Fee schedule? Let me ask my attorney a question.

Q

Okay.

(Witness confers with counsel.)

A

Yes.

Q

Okay. Can you describe -- did you have one other fee schedule or more than one other fee schedule?

A

At the time I was treating Metro North employees at the beginning, I was not a Medicare participant. I became a Medicare participant I would say about the last year and a half, and I must abide by the federal fee schedule, the rules and regulations.

And also, I participated with one

HMO, U.S. Health Care, and I abide by their fee schedule. I also participate with the Blue

Cross/Blue Shield Wraparound Plus, and I follow

Guy

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their fee schedule as well.

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Q Since 1988, have you used any other fee schedules set by yourself, other than the one that you have described already?

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A I have one standard fee schedule, just one.

7

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Q Okay. Do you call it your standard fees, or something else?

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A

I call it my standard fee schedule.

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Q In 1988, did you treat any Metro North employees that were clients of Daniel McCarthy?

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A

In 1988? I do not recall.

Q

How about in 1989?

A

Again, I do not recall.

Q

Do you recall in 1990, '91, or '92?

A

Yes.

Q

How many clients of Dan McCarthy did you treat in 1991?

A

The exact number, I do not know.

Q

Do you know an approximate number?

A

I do not.

MR. MARCUS: When you say Daniel F. McCarthy, are you referring to the law firm

Guy

1 of Graham, Campaign & McCarthy, P.C.?

2 MS. GIANNETTA: Yes, I am.

3 MR. MARCUS: So the record is clear.

4 MS. GIANNETTA: Thank you.

5 Q I may have just asked you this. In  
6 1991, do you recall how many clients of Graham,  
7 Campaign & McCarthy you treated?

8 A When?

9 Q 1991.

10 A No, I don't recall.

11 Q Do you recall in 1992?

12 A I do not.

13 Q Do you have records in your office?

14 A I think the only record that I have  
15 is the record from the billing statement that was  
16 sent to Metro North, and you can simply take the  
17 patients and cross-match them to their attorneys  
18 and you would get your answer.

19 Q In your office, do you keep any  
20 records that would show the identity of a Metro  
21 North employee's attorney?

22 A Not a record per se.

23 Q Would you note it in the chart?

24 A In the chart, yes, it would be noted,  
25

Guy

1 just part of general information.

2 Q At the present time, are you treating  
3 any clients of Daniel McCarthy?

4 A I am.

5 Q Or Graham, Campaign & McCarthy?

6 A I am.

7 Q How many patients are you treating  
8 now?

9 A The exact number, I don't know. I  
10 can tell you it's very small.

11 Q Is it a lesser number than in 1991?

12 A Much lesser number. Again, I'm not  
13 sure when I started treating patients from that  
14 law firm, but all I can tell you is the numbers  
15 that I'm treating right now is very, very few.

16 Q Have you ever discussed the reduction  
17 in the number of the clients of that firm that you  
18 treat with any attorney from that firm?

19 A Yes.

20 Q Who did you discuss that with?

21 A Mr. Daniel McCarthy himself, the  
22 senior.

23 Q Did you initiate that conversation?

24 A I don't remember if I was the one who  
25

Guy

1  
2 initiated it or -- but I remember it was sometime  
3 around the problem I was having getting my bills  
4 paid, and that was around the time that the  
5 discussion was made.

6 Q Approximately when did that occur?

7 A I would say, during the period where  
8 my -- the demand letter went out, and I would say  
9 for the next few months afterwards.

10 Q What was the substance of your  
11 conversation with Mr. McCarthy in this regard?

12 A I was asking him what to do with the  
13 unpaid Metro North bills. He told me he would  
14 contact Metro North to see if he can get an  
15 answer, and then he called me back and he gave me  
16 some feedback.

17 Q What was the substance of the  
18 feedback he gave you?

19 A The feedback was that Metro North do  
20 not like you, they are not happy with you, you're  
21 like a thorn at their sides, something to the fact  
22 that they have it in for you, they are going to  
23 give you troubles, and his answer was, "We don't  
24 know what we can do, and we'll see, we'll try to  
25 keep in touch with them."

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Q Did you question Mr. McCarthy on why fewer clients of their's were coming to see you?

A He never gave me a specific answer, but the feedback was that a lot of his clients were very unhappy that the bills, the big package that Metro North sent out to me, that there were partial payments made and that the client would be responsible for the balance, that his clients called him back and were frightened, said "what does this mean, we signed a lien letter with Dr. Guy that we would be ultimately responsible for the unpaid balances," what that meant, and he had no specific answer for them, and that scared a lot of his clients, and also at that point, everybody knew the patients, Mr. McCarthy himself knew about the slanderous remarks made about me because some of these clients told Mr. McCarthy directly.

Q How do you know that some of his clients told him directly?

A How did I know that?

Q Yes.

A He told me himself. He sent me a correspondence, a letter from two of -- one was a Dr. Balensweig, B-a-l-e-n-s-w-e-i-g, who examined

Guy

1  
2 one of my patients, a Richard Glissetti, if I  
3 remember correctly, and in his remark he puts down  
4 these very negative remarks about me. You can  
5 read the report yourself, he calls me a  
6 physiotherapist not an M.D., and he says something  
7 derogatory, to the fact that he does not consider  
8 me as an expert in the field of EMG to be able to  
9 document a carpal tunnel, that I'm a  
10 physiotherapist not an M.D. Everybody knows my  
11 profession is a well-recognized medical specialty  
12 since World War II, one of oldest.

13 Also there was a remark made by Dr.  
14 Herrlin to Else Osorno in the correspondence he  
15 sent to me that Dr. Herrlin referred to my  
16 treatments as bullshit.

17 Q Do you mean in the correspondence  
18 that Mr. McCarthy sent to you?

19 A Yes.

20 Q Doctor, have you retained copies of  
21 the correspondence forwarded to you by Mr.  
22 McCarthy?

23 A Yes, I have them. My attorney has  
24 them as well.

25 MS. GIANNETTA: I call for the

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production of that correspondence.

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Q

In the correspondence you referred to, or the report you referred to, of Dr. Balensweig, was there any indication that Dr. Balensweig had spoken to Dr. Herrlin?

A

In that report?

Q

Yes.

A

How could it? How could it? That report was --

MR. MARCUS: It just calls for a yes

or no.

A

No. The report was an independent medical examination report. I believe --

MR. MARCUS: Just answer the

question yes or no. Don't volunteer.

Q

Doctor, did Mr. McCarthy ever tell you that he was recommending that Metro North employees who were his clients not continue to see you?

A

Did he ever say that to me directly?

Q

Yes.

A

No.

Q

Did any client of Mr. McCarthy ever tell you that they were no longer going to see

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you?

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A No.

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Q Does Mr. McCarthy's firm, or did Mr. McCarthy's firm at any time from 1988 until you say you began having problems with Metro North, did Mr. McCarthy's firm ever refer their clients to you for treatment?

A He may have.

Q Did you, during that time period, ever refer Metro North employees who you were treating to Mr. McCarthy for legal representation?

A I may have.

Q On how many occasions, approximately, would you have done that?

A Exact number, I don't recall.

Q Would you have any notations in charts or any other records of when you did that?

A No.

Q In the instances that you referred patients, would you receive -- to Mr. McCarthy's firm -- did you receiver any compensation?

A Absolutely not. First of all, I'm not --

MR. MARCUS: Just answer yes or no.

Guy

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A The answer is no.

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Q When was the last time Mr. McCarthy's firm referred a Metro North employee to you for treatment?

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A The last time?

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Q Yes.

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A The exact last time, I don't recall, but I can tell you it hasn't happened in a very long time since this lawsuit, this business with Metro North, started.

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MS. GIANNETTA: I call for the production of records that would show what Metro North employees presently under the care of Dr. Guy are clients of Mr. McCarthy's firm.

MR. MARCUS: You already have that information, Counsel.

Q Have you had, in the last two years, any disputes with Mr. McCarthy's firm unrelated to the allegations in this lawsuit?

A Not that I can think of.

Q Since 1988, have you treated Metro North employees who were clients of Jesse Sable's office?

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A Yes.

2

Q Or of Sable, Gold &amp; Dinhofffer?

3

A Yes.

4

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Q Approximately how many clients of --

6

when I say "Jesse Sable's office," I mean Jesse

7

Sable's office which is now Sable, Gold &amp;

8

Dinhoffer. In 1988, how many clients of Mr.

9

Sable's office did you treat?

10

A There's no way for me to know. I

11

have no knowledge of the exact number.

12

Q Would that be noted in the patients'

13

charts?

14

A If you ask me would that be in the

15

general patient information?

16

Q Yes.

17

A It usually is.

18

MS. GIANNETTA: I call for --

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Q Is the general patient information,

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by the way, Doctor, a form that is filled out by

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all patients?

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A Yes.

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MS. GIANNETTA: I call for the

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production of the general patient

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information form from 1988 to the present

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for all Metro North employees.

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MR. MARCUS: Absolutely not. That's privileged material. Without a patient release, we cannot give you anything out of the patient's file. It's against the law.

MS. GIANNETTA: I disagree with you, Mr. Marcus.

MR. MARCUS: The Doctor cannot put into issue his patient's chart. You can't do it in a claim where the Doctor is against you. This is not a lawsuit brought by those individuals. To the extent that they may have lawsuits, that material against Metro North, that material may be available to you through the lawyers representing those people.

In fact, I am reasonably certain that your legal department, to the extent that they are defending claims by these people, has already requested authorizations for that information. By "you," I mean the legal department of Metro North. But in the context of this lawsuit, you are absolutely not entitled to anything

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out of a patient's chart, other than  
billing records which may be the subject of  
this lawsuit. Other than that, you're not  
entitled to anything else on the patients  
without violating their privilege, which is  
protected by statute.

MS. GIANNETTA: Let me just state  
for the record, then, that Dr. Guy, in the  
context of this lawsuit, has witness  
immunity, and he has put the patients'  
treatment in issue. The only -- a main way  
for Metro North and Dr. Herrlin to defend  
the case is by showing that truth is a  
defense in this case.

MR. MARCUS: Truth that Dr. Guy is  
not competent to practice medicine, you're  
going to show that by looking at the  
patient charts without the permission of  
the patients? You are not going to do that  
through me not without a Court Order.

MS. GIANNETTA: Dr. Guy has said  
that Dr. Herrlin told patients, in  
substance, that his treatment was not  
helpful. In that regard, we are the -- the

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only way to defend those charges is to know what that treatment is and to ask Dr. Guy and examine the charts.

MR. MARCUS: You already know what that treatment is. Dr. Guy submitted itemized bills with descriptions of the treatment as required by Metro North. You already have that information. We are not going to invade these charts to satisfy your curiosity. We cannot do that without releases from the patients.

MS. GIANNETTA: We'll have to mark that for a ruling.

MR. MARCUS: We will not do that without releases from the patients.

MS. GIANNETTA: We'll have to mark that for a ruling, then.

Q Doctor, you referred to a lien letter earlier. Can you describe what that is?

A A lien letter basically says -- on the top of it says --

MR. MARCUS: Don't describe what it says. The document will speak for itself.

Q What is the purpose of that lien

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letter?

A The purpose of the lien letter is, in case the insurance company does not cover all the medical charges, expenses -- they may cover some or none at all -- that the balance of the unpaid bills would come out of the proceeds from the settlement.

MR. MARCUS: It's an assignment, is it not?

THE WITNESS: It's like an assignment, yes.

MS. GIANNETTA: I call for the production of that lien letter for all Metro North employees treated by Dr. Guy since 1988.

Q Doctor, have you or has your office sought to obtain any of the outstanding amounts of bills on the Metro North employees, have you sought to obtain that from the patients themselves?

MR. MARCUS: Go ahead.

A Yes, we have tried to obtain that through the patients and through their attorneys, and -- yes.

1  
2 Q Are some of the amounts that you have  
3 sought to obtain from the patients and their  
4 attorneys also included in the amounts you're  
5 seeking in this lawsuit?

6 A The amount that I'm seeking in the  
7 law suit is only the unpaid amounts.

8 Q Yes, are some of those unpaid amounts  
9 also amounts that you're seeking at the same time  
10 to get from the patients directly?

11 A It may be.

12 MR. MARCUS: Is it your intention to  
13 get paid twice?

14 THE WITNESS: Oh, no, I'm not trying  
15 to get paid twice, absolutely not.

16 Q In 1988, how many patients of Mr.  
17 Sable's office were you treating? I may have  
18 asked you this.

19 MR. MARCUS: Objection. Asked and  
20 answered.

21 Q Do you recall, in 1989 or in any year  
22 up to the present, how many patients of Mr.  
23 Sable's office were Metro North employees you were  
24 treating?

25 MR. MARCUS: You mean clients of Mr.

Guy

1 Sable's office who became patients of Dr.  
2  
3 Guy.

4 MS. GIANNETTA: Yes.

5 A No, there's no way for me to recall  
6 it.

7 Q Can you say whether the number --  
8 first of all, are you treating, at the present  
9 time, any clients of Mr. Sable's office?

10 A Not that I can recall.

11 Q Did you, at any time during this  
12 year, treat any clients of Mr. Sable's office?

13 A Again, not that I can recall.

14 Q Did you treat any clients of Mr.  
15 Sable's office during 1992?

16 A I may have been.

17 Q Was that number approximately the  
18 same or more or less than the number of clients of  
19 his office that you treated the year before?

20 A I would say it was less.

21 Q Have you spoken to anyone at Mr.  
22 Sable's office regarding the decrease in number of  
23 their clients who are Metro North employees?

24 A In that particular --

25 MR. MARCUS: It calls for a yes or

1.

2

no.

3

A Let me see if I understand the

4

question.

5

MR. MARCUS: Could we have it read

6

back, please?

7

(Question read.)

8

A I may have.

9

Q Did you ever ask why fewer of their

10

clients who were Metro North employees were now

11

your patients?

12

A Yes.

13

Q To whom did you ask that question?

14

A Mr. Sable himself.

15

Q In substance, what was his response?

16

A It was the same general substance as

17

the discussion I had with Mr. McCarthy, the senior

18

himself, same general substance, same general

19

feeling, same general answer.

20

Q Did he tell you that he did not

21

intend to refer any clients to you?

22

A No.

23

Q Since 1988, have you ever treated

24

clients of Mr. Sable's office who were employees

25

of other railroads?

Guy

1  
2 MR. MARCUS: Objection. Don't  
3 answer the question.

4 MS. GIANNETTA: That's perfectly  
5 relevant because Dr. Guy is claiming in  
6 this lawsuit that there's only a reduction  
7 in the number of patients from Metro North,  
8 and --

9 MR. MARCUS: He has already said  
10 that he is not making a claim that the  
11 slander caused him to lose any other  
12 business other than Metro North employees.  
13 He has already said that. Therefore --

14 MS. GIANNETTA: It's still relevant.  
15 If he was treating other railroad employees  
16 and that number has also reduced, it could  
17 be for a reason other than what he claims  
18 is the slander by Metro North.

19 MR. MARCUS: No, I don't see it that  
20 way. Don't answer the question.

21 Q Since 1988, have you treated any  
22 Metro North employees who were clients of Michael  
23 Flynn or Michael Flynn's office?

24 A Since 1988?

25 Q Yes.

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A Yes.

Q Are you presently treating any clients of Michael Flynn or his office who are Metro North employees?

A No.

Q Did you ever treat any clients of Michael Flynn who were employees of other railroads other than Metro North?

MR. MARCUS: Objection. Don't answer the question.

Q At present, are you treating any clients of Michael Flynn's firm?

A No.

Q Have you had, since -- well, say, in the last two years, any disputes with Michael Flynn or his offices unrelated to the allegations in the lawsuit?

MR. MARCUS: Objection to the form. Don't answer the question.

Q Have you spoken to Michael Flynn or his office regarding why no clients of their's are presently patients of yours?

A Basically --

MR. MARCUS: It calls for a yes or

1

no.

2

A When did I --

3

Q Have you spoken to him?

4

A Yes.

5

Q When did you speak to someone at Mr.

6

Flynn's office regarding that?

7

A The exact time, I don't recall, but

8

again, it was sometime around the same time of  
this stopping of the payments, slanderous remarks,  
generally around the same time.

10

11

Q What was the substance of -- who did

12

you speak to at Mr. Flynn's office, was it Mr.  
Flynn himself?

13

14

A Mr. Flynn.

15

Q What was the substance of what Mr.

16

Flynn said to you in this regard?

17

18

A Again, it was basically the same as  
with the other mentioned attorneys.

19

20

Q What do you mean "basically the  
same"? Can you tell me what you recall of the  
conversation with him?

21

22

A Basically, I was asking him, I said

23

24

"What should I do? Do you have any answers why  
Metro North is not responding to my letters? They

25

Guy

1  
2 are not paying my bills, and when I call their  
3 claims examiners, they tell me we have special  
4 instructions to put your bills in a special file  
5 and we have no permission to process any of those  
6 bills."

7 I said, "What does this all mean?  
8 What should I do?" Again, he says, "Well, let me  
9 make some phone calls see what I can do." He  
10 calls me back and says the same thing, "General  
11 consensus is they don't like you, you're a thorn  
12 at their side and they are going to try to give  
13 you problems," and again he doesn't know what he  
14 can do to work things out with Metro North.

15 Q Since that conversation that you had  
16 with Mr. Flynn, has he referred any clients of his  
17 to you for treatment?

18 A Not that I can recall.

19 Q Since 1988, has he ever referred  
20 clients to you for treatment?

21 A I don't remember if the clients,  
22 patients, came directly from him or through other  
23 Metro North employees, that I recall.

24 Q Had you, since 1988, ever referred  
25 Metro North employees to Mr. Flynn for legal

Guy

1 representation?

2 A No.

3 Q Had you ever, since 1988, referred  
4 Metro North employees to Mr. Sable for legal  
5 representation?

6 A I'm not sure. I may have.

7 Q Since 1988, have you treated Metro  
8 North employees represented by any other  
9 attorneys, other than those already mentioned?

10 A Since 1988 to the present?

11 Q Yes.

12 A By other law firms?

13 Q Yes.

14 A Oh, yes, I may have.

15 Q Have you treated any employees of  
16 Cahill, Goesch & Depersia?

17 MR. MARCUS: Employees?

18 Q I'll reask the question. Have you  
19 treated any clients of the law firm of Cahill,  
20 Goesch & Depersia?

21 A When, in 1988?

22 MR. MARCUS: From 1988 up to the  
23 present.

24 A I may have. Maybe one or two.

25

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Q Have those bills been paid?

3

4

A I don't recall. I'm not sure. I mean, it is in the letter. There's no way for me to know.

5

6

7

8

Q Have you treated any clients since 1988 of Altier, Wayne & Klein or Joe Altier's office?

9

10

A I don't recognize that name, so the answer should be no.

11

12

Q Have you treated any clients of Juron & Minzner?

13

14

A Again, I don't recognize that name.

15

16

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19

Q Let me show you a letter and an attachment that was marked Respondent Exhibit 1 on January 30, 1992 at the public authorities hearing. I'm just asking you, is that what you have been referring to, Doctor, as your demand letter?

20

A Yes.

21

22

23

MS. GIANNETTA: I would ask that this be marked as Defendants' Exhibit A for identification.

24

25

(A letter was marked Defendants' Exhibit A for identification this date.)

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Q Doctor, within the last year, have you had any disputes with any attorneys at Mr. Sable's office unrelated to the allegations in this lawsuit?

MR. MARCUS: Objection to the form.

Don't answer the question.

Q In the last year, have you had any disputes with Mr. Sable's law firm or any of the attorneys in it?

MR. MARCUS: Objection to the form.

Don't answer the question.

MS. GIANNETTA: What's the objection to the form, Mr. Marcus?

MR. MARCUS: It's not my job to educate you. I don't know what you mean.

MS. GIANNETTA: I'm looking to see if there's any other reasons that there might have been a diminution in --

MR. MARCUS: Ask a proper question. That may be more of the proper question. I don't know what you mean by "dispute."

Q Let me ask you it this way, Doctor. Did any attorney at Mr. Sable's office tell you that they were no longer sending clients to you

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for treatment?

A No.

Q Did anyone at Mr. Sable's office tell you that they were recommending to their clients that they no longer see you for treatment?

A No.

Q Did anyone at Mr. Flynn's office ever tell you that they would recommend that their clients no longer see you for treatment?

A No.

Q Did anyone at Mr. Flynn's office ever tell you that they were instructing their clients not to go to you for treatment?

A No.

Q For the outstanding amounts of the bills on the Metro North employees, did you contact the employees directly or did you contact their attorneys?

MR. MARCUS: Objection to the form, but you can answer it.

A Their attorneys.

Q Did you make any complaints to any professional boards against any of the attorneys for nonpayment of the bills?

1

Guy

65

2

A One second.

3

(Witness confers with counsel.)

4

A Yes.

5

Q Against how many of the attorneys?

6

A I believe just one.

7

Q Which attorney was that?

8

A That was Michael Flynn.

9

Q To whom did you make a complaint

10 about Michael Flynn?

11

A To the Bar Association.

12

MR. MARCUS: Disciplinary Committee.

13

A Disciplinary Committee.

14

Q Did that complaint involve the

15 payment of bills?

16

A That complaint involved the -- not

17

following with the lien agreement signed by

18

patient and by attorney.

19

Q In connection with the payment of

20

bills?

21

A Yes.

22

Q When was that complaint made by you,

23

Doctor?

24

A Shortly after the client --

25

THE WITNESS: Am I allowed to

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mention the client's name?

MR. MARCUS: No.

Q Do you know what year it was?

A Yes.

Q What year was that?

MR. MARCUS: 1992.

Q Was that complaint revolved in any manner?

A Resolved in any manner? I don't know what you mean by "resolved."

Q I'll withdraw it, then.

Was the bill or bills in question paid?

A By whom?

Q By anyone.

A No.

Q Doctor, in 1988, did you ever recommend any diagnostic tests be performed for any Metro North employees that you were treating?

A Of course.

Q Did you perform any of those tests yourself?

A Yes.

Q What tests did you perform yourself?

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A The electro diagnostic studies.

Q Did you continue to perform electro diagnostic studies yourself --

A Yes.

Q -- until the present time?

A Yes.

MR. MARCUS: Wait until the question is finished before answering.

A Yes.

Q Is that done in your own office?

A Yes.

Q Is any certification required to perform that test?

A You have to be either a neurologist or a physiologist. You have to have satisfactory training in EMGs.

Q Is there some board or body that looks at the credentials and makes that determination?

A There's no credentials, per se, needed. If you have adequate training, you can perform them.

Q Would you make that determination yourself?

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A The person in charge of the program where you graduated from, he makes that determination. If he feels you're competent, he certifies you, he signs your diploma at the end of your training, and he says you're qualified in every area, unrestricted, in the field of physical medicine and rehabilitation.

That's exactly what he did, said that I'm capable, competent and able to do everything that a physical medicine and rehabilitation specialist can do.

Q In other words, there's no separate certification to perform electrodiagnostic studies?

A There's no --

MR. MARCUS: Calls for a yes or no.

THE WITNESS: I can't answer that yes or no.

Q By having an unrestricted diploma, does that mean that you can do the electrodiagnostic studies?

A Me, personally?

Q Yes.

A Yes.

Guy

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Q Do you perform any other of the diagnostic tests, or have you since 1988, on Metro North employees in your office?

A Diagnostic studies?

Q Yes.

A The only diagnostic tests I've done on Metro North employees were basically IMGs, and in '91 or '92 I may have taken a couple of x-rays myself, and that's the extent of it.

Q Since 1988, have you ever recommended that any Metro North employee undergo an MRI?

A Yes.

Q Have you referred those employees, in 1988, to a specific place to do the MRI?

A To a radiology place, yes.

Q Was there one radiology place you were using in 1988?

A There were more than one.

Q Do you continue to use the same radiology places?

A I continue to use the same different radiology centers.

Q Would those same centers perform any CAT scans that you recommended?

1

2

A Yes.

3

4

5

Q What centers have you recommended that Metro North employees go to for MRIs and CAT scans?

6

A You want the name of the centers?

7

Q Yes.

8

A Lenox Hill Radiology, Nuclear Magnetic Resonance Imaging, there may have been others.

11

MR. MARCUS: Gramercy?

12

13

14

15

A Gramercy Park Radiology. Kip's Bay. Cabrini Hospital. I'm trying to think what other centers. These are the basic ones I can think of in 1988.

16

17

Q Do you use these same centers at present?

18

19

A I still refer some patients to those centers, yes.

20

21

Q Do you have any ownership interest in any of these centers?

22

A None, none whatsoever.

23

24

25

MR. MARCUS: Do you receive any fee from any of these centers for any referral of any patient for any diagnostic study.

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THE WITNESS: Absolutely not.

That's illegal.

(Witness confers with counsel.)

MR. MARCUS: Do any physicians associated with those centers refer any patients to you, or have they ever?

THE WITNESS: No.

Q Doctor, did you treat a railroad employee named James Pymn, P-y-m-n?

A Yes.

Q When did you treat Mr. Pymn?

A The first time I treated him, I believe, was sometime in 1988.

Q Did you treat him for one injury or more than one injury?

A More than one injury.

Q How many injuries did you treat him for?

A I believe -- I believe it was two. It may have been more. I'm not sure.

Q What attorneys represented Mr. Pymn on the two injuries, that you recall?

A I believe Mr. Sable was one, and I believe he changed counsel now.

1

2

Q Do you know who his counsel is at the present time?

3

4

A Yes.

5

Q Who is his counsel?

6

A I believe it is Kelner & Kelner.

7

Q Did you refer Mr. Pymn to Kelner & Kelner?

8

9

A I'm not sure.

10

Q Would there be a notation in his chart if you had done so?

11

12

A No.

13

Q Would there be a notation anywhere if you had done so?

14

15

A No.

16

Q Do you know when Mr. Pymn changed counsel?

17

18

A The exact time, I don't know.

19

Q The approximate time.

20

A The approximate time? Sometime in '92.

21

22

Q Did Mr. Pymn have a pending FELA lawsuit?

23

24

A What's FELA?

25

Q Does Mr. Pymn have a pending lawsuit