Supreme Court of New York.
New York County
Dennis CIOFFI, et al.,
v.
AMERICAN AIRLINES, INC., et al.
No. 2002-124258.
2002.

(Transcript of Aric Hausknecht, M.D.)

Name of Expert: Aric Hausknecht, M.D.

Area of Expertise: Health Care-Physicians & Health Professionals >> Neurologist

Case Type: Premises Liability >> Retail & Other Business Properties

Jurisdiction: New York County, New York

Representing: Plaintiff

[Note: Pages 1-610 missing in original document]

MR. BOROWICK: Dr. Hausknecht, please.

(Witness enters Courtroom.)

ARIC HAUSKNECHT,

called as a witness by and on behalf of Plaintiff herein, having been first duly sworn, was examined and testified as follows:

COURT OFFICER: Thank you.

MR. BOROWICK: May I proceed?

THE COURT: Yes.

MR. BOROWICK: Thank you.

DIRECT EXAMINATION

BY MR. BOROWICK:

Q Doctor, what is your occupation?

A I'm a physician.

I was duly licensed to practice medicine and surgery in New York State in 1992.

Q Do you specialize?

A I currently specialize in neurology and I specialize in pain management.

Q Are you Board Certified?

A I am currently double Board Certified. I am Board Certified in neurology by American Board of Neurology and Psychiatry, and in pain management by the Academy of Pain Management.

Q Do you belong to all the ordinary and customary clubs, associations, for guys like you? I am trying to shortcut through this.

A I am one of the guys, yes. I belong to the American Academy of Neurologists, American Academy of Pain Management, affiliated with several different hospitals including Beth Israel, Pennsylvania General Hospital and Long Beach Hospital.

Q Can you tell me when did you first met Dennis Cioffi?

A I brought my office records with me for the sake of accuracy. But the patient was initially seen on April 2nd of 2004.

Q Can I ask you when a patient has a multiple, when he has a traumatic accident, multiple surgeries, multiple type-of conservative treatments, modalities and medication therapies, and your patient comes, has a lawsuit against Defendants that brings us to Court, are you called upon to come into Court and testify?

A Yes. From time to time I come to Court to testing specifically if it's on behalf of the patient I treated in my office. On occasion it's as an expert, either on the side of the Plaintiff or on the side of the Defendant.

Q Can you tell me, tell the Jury whether or not you ever treated patients that I have represented?

A Yes, I have.

Q And have I called you as a witness on prior cases where one of your patients was also my client?

A I believe twice over the past ten years,.

Q Now, will you tell us sir, where you first saw Dennis Cioffi, and if you said, oh--, that is after the three surgeries he had, what were his complaints to you?

A Well, I saw him on April 12 of 2004. He indicated to me he had sustained injury, injured his neck, back, left shoulder, left neck, undergone surgery for his shoulder and knee. He had undergone injections and surgery for the lower back and felt like nothing had worked very well for him. He was still experiencing pain and paresthesia which are tingling sensations in his left forearm and in the four, five digits of the left hand. He noticed his left forearm muscle had been stiffening up, reported his lower back had been feeling stiff and was having shooting pain in the back of the left thigh. His left arm and hand were feeling weak, and his left leg was feeling weak. He was having cramping sensation in the left thigh. Patient was having problems with his day-to-day activities and was having difficulty sitting, bending and lifting. He was taking multiple pain medication and experienced side effects from the medication.

Q Will you tell us, did you review the surgical record?

A I had the opportunity to review all the surgical records as well as other treating records of different doctors that have seen him, orthopedist, et cetera.

Q Were the therapies that were directed early on, conservative management of injuries, were they appropriate?

A Yes. Typically following traumatic injury of the neck or back, the initial approach is conservative. Physical therapy, chiropractic, antiinflammatory medication and pain medication. If that fails, you determine if the patient is a candidate for such as cortisone, epidural injection. If that fails, whether or not there's appropriate surgical procedure to help that patient.

Q Did he have those conservative modalities?

A Yes.

Q Did they cure him?

A No, they did not.

Q Okay. Were the surgical procedures, surgical intervention appropriate and necessary?

A In my opinion they were. The patient's symptoms had not responded to treatment that was given to him, physical therapy, medication, and injections-- really, no other option other than surgery for the moment.

(Whereupon, James Allocca relieved Robert Chodos as the official court reporter.)

(Continued on next page.)

Q Sir, would you tell us whether or not -- I'm sorry. You mentioned, in your original description of his complaints, that he had numbness and tingling, and you pointed to some of the digits. What is a dermatome?

A A dermatome is a description of the area of the body that receives innervation from a specific nerve root. The nerves are divided up by their levels, in the cervical spine or the neck, there are eight nerve roots, and they are numbered C1 through C8, in the thoracic spine or middle back, there are 12 nerve roots, and numbered T1 through T12, in the lower back, there are six nerve roots numbered L1 to S1. Each one of these nerve roots has a specific function, a motor function and sensory function. Motor function is to provide innervation to the muscle, so, in the neck, the nerve roots go down into the arms and hands, and cause those muscles to contract. Those nerves also provide feedback to the brain about sensation in the periphery, the temperature, whether or not something is painful or vibrating. So, each nerve root is assigned a specific portion of the body, more or less, and in the arm, the C5 nerve root is the upper portion of the arm, the C6 nerve root is the outer portion of the forearm, the C7 nerve root is the inner three fingers, the C8 is the pinky and outside of the forearm, and T1 is the inside of the arm. The dermatomes are different in each person, sort of like a thumbprint, everyone's thumbprint is similar, but not identical. Dermatomes, similarly, follow general rules from person to person, but they are not identical.

Q How do they help in clinical examination?

A The dermatomes help a doctor, in terms of his clinical examination, in narrowing down whether or not there is nerve damage, and determining the level at which that nerve damage occurs.

A doctor is sort of like a detective they have use clues what a person tells them subjective complaints or symptoms, what they find on their physical examination, objective findings or signs, including loss of sensation, and they take all this information, and analyze it, and come up with a conclusion or diagnosis of what is wrong with this person, and they come up with a plan, how can I treat this, the person, how can I alleviate pain and suffering, how can I maximize this person on a day-to-day basis.

Q As part of your initial exam, did you perform -- well, withdrawn. Did you get a history from him of what his complaints were, and what happened?

A. Yes, I did.

Q We have gone through that with the other two doctors. Did you -- in an effort to be this detective and do this clue searching, did you do a number of tests on him?

A Yes, I performed a comprehensive physical examination, as well as a detailed neurologic examination, with special attention to his neck, back, left arm and left leg because these were the areas where he was having most of his problems.

Q I want you to assume, for a moment, that as he was carrying a large wooden plank up a flight of stairs, as he got to the top, he turned, his foot went out, he lunged forward, slipped on a pipe, and went back, bending his knee, landing on his shoulder, and this plank hit him in the neck, or, you know, in the head, somehow, his neck was either extended, hyperextended, flexed, or whatever. Do you have an opinion, with a reasonable degree of medical certainty, as to whether or not the mechanics of that kind of accident could generate a problem in a person's neck?

A Yes. Based upon clinical experience and scientific literature, the biomathematic mechanical forces that come into play, that is to say, flexion, extension forward and backward, and twisting, can cause damage to the structures that, normally, stabilize the neck, tendons, ligaments and disks. If you injure those parts of the neck, it could result to damage to the nervous tissues, spinal cord, and nerve root.

Q If you talk about the cervical spine and nerve roots that come out of there that you say do motor and sensory stuff with the hand and fingers, how do you -- do you discriminate whether or not the problems of the shoulder -- I'm sorry, this side (indicating) -- problems in the shoulder is more localized to the hand or the problems in the neck? What clues do you look for, and how does a doctor detective make a decision as to what is causing it?

A The clues would include what the patient tells. you. If you are trying to differentiate between a neck and shoulder injury, if a person is not complaining of any neck pain, it makes it more likely it's coming from the shoulder than the neck. Depends on what you find on the physical examination. On the physical exam, all the findings are in the shoulder, it makes it more likely the shoulder is the cause of the problem than the neck itself. There is also an objective electrodiagnostic test called NCV, nerve conduction velocity; EMG, electromyography test that can be performed using a computer, and can determine whether or not there is any nerve damage, and if so, at what level that nerve damage is occurring, and how severe that nerve damage is.

Q In addition to the neurological testing that you did, objective testing that you will describe in a moment, did you also do an NCV, EMG?

A Yes.

Q Did you actually do it yourself?

A Yes.

Q Did you actually do the neurological exam of the objective testing yourself?

A Yes, sir, I did.

Q Let's get right to it, sir. Before we get to the actual clinical evaluation of the patient, let's talk about the EMG and NCC or NCV, EMG. Tell the jury, based upon your applying that test, what were your findings?

A The NCV, EMG study that was performed on September 17th of 2004 showed that the patient had a pinched nerve in his lower back at the level of L5-S1 on both sides.

Q Add, did you do one on the neck?

A I did.

Q And, what did you find?

A There was no nerve damage identified in the neck itself, so, under these circumstances, it would be an indication that the sensory problems that he was having in the arm were coming from the shoulder as opposed to the neck.

Q Did you examine, by palpating the parts of his body, whether or not he had any problems with his neck?

A Yes, I did.

Q And, are those objective tests that you do, or. are you just waiting for him to, you know, chuck out some pain, or, you know, say, ouch?

A These are objective findings, that is so to say, it doesn't matter what a person is saying or doing, this is what I find using my senses, my eyes and my hands. If somebody walks into my office, and they say, I'm having neck pain, by definition, this is a symptom or subjective complaint. I, as an outside observer, without lying a hand on that person, don't know whether or not they are. having neck pain. If I now examine them, and find there is muscle spasm, refl??y time, or a positive Sperling maneuver, which is performed by pushing down on a person's head, and these are positive, these would be objective findings or signs that confirm that person's subjective complaint or symptoms.

Q Did you do a mental status exam?

A Yes, I did.

Q Was it normal, or abnormal?

A His mental status is intact. His ability to think, process information was normal.

Q Did you do a cranial nerve exam?

A Yes.

Q. Was that normal?

A The cranial nerves were all completely normal.

Q Did you do a motor exam?

A Yes, I did.

Q Was that normal, or abnormal?

A It was abnormal.

Q. What's the clinical significance of weakness or atrophy? Take one at a time.

A Motor weakness and atrophy are a sequela of nerve damage. If you have an injured nerve that is abnormally providing stimulation to a muscle, that muscle would become weakened, and that muscle can shrink up or atrophy.

Q How do you discriminate, for example, in a man who is a righty, but the damage is to the left side? How do you discriminate between what is the non-dominant limb and what is atrophy?

A Typically, there's a very small variation between the two sides. Approximately two to five percent would be considered normal between the non-dominant and the dominant side. You measure atrophy visually by looking at the size of the muscle, you measure it manually by palpating the muscle, and you can measure it using a tape measure, actually taking an actual measurement, and comparing one side to the other.

Q Did you do a reflex exam?

A I did.

Q I'm sorry. Did he have weakness or atrophy based on your objective testing of him?

A Yes, he did. On physical examination, the patient demonstrated a four plus over five weakness of the left shoulder, abductor. The shoulder, abductor is the muscle that raises the left arm up. The patient had a 4 plus over five weakness of the intrinsic muscle of the left hand. The intrinsic muscles of the hand are muscles that make. a fist, and open the fingers up. The patient had atrophy to the left forearm, that is to say, the muscle of the left forearm had shrunken in comparison to the muscle of the right forearm. The patient demonstrated five minus over five weakness of the left hip flexor -- the hip flexor is a muscle that raises the knee up to the chest -- and the patient demonstrated atrophy of the left quadriceps. The quadriceps is the thigh muscle. Motor strength is based on zero to five, zero is paralysis, five is full strength. In this case, he wasn't paralyzed, but lacked full strength in the left leg.

Q Did you test-his reflexes?

A I did.

Q Were his findings normal, or abnormal?

A They are abnormal.

Q What reflexes did you test?

A I checked the biceps reflex by tapping the biceps tendon with a hammer, like right triceps, the brachioradialis reflex at the left, the knee jerk over the patellar tendon, and ankle jerk over the Achilles tendon.

Q What's the significance of a diminished reflex response?

A A diminished reflex response, similar to loss of strength or loss of sensation, is an indication of peripheral nerve injury.

Q Did you find any abnormal reflexes in any of those places?

A Yes, I did.

Q And, which ones?

A In this case, his left knee reflex was depressed, it was diminished in comparison to the right side.

Q What is hypoesthesia?

A Hypoesthesia is a lack of sensation, or decreased sense of feeling.

Q Is that what you mentioned before with dermatomes?

A A dermatome would refer to a specific portion of the body. If you have a loss of sensation in a specific dermatome, once again, this would be an indication of nerve damage.

Q Where was his hypoesthesia?

A On the evaluation, the patient demonstrated hypoesthesia in the fifth -- fourth and fifth digits of the left hand, and demonstrated hypoesthesia in the lateral aspect, outside of, the left knee and left calf.

Q What significance is that?

A This is consistent with a pinched nerve in the neck or shoulder, and pinched nerve in the lower back.

Q Did he have any spasm?

A He did.

Q And, what objective findings are there -- in a mechanical test, when you feel the body, can somebody fake a spasm?

A No. A spasm is a reflex tightening of a muscle. Somebody can tighten a muscle, but they can't create a sustained contraction of that muscle. This is a response to an underlying injury. It's an adaptational mechanism. If you injure your back, your back goes in spasm, and you avoid moving your back, and that gives your body the opportunity to repair any injury that has occurred. This is an involuntary reflex.

Q Did he have any preexisting, or health problems or conditions associated with anomalies, injuries, or the like in either his neck, low back, knee, or shoulder?

A He was a very healthy, very active person prior to this injury. The initial MRI of his back showed some very mild hypertrophy, which is the overgrowth of bone, that is typical for somebody his age and his occupation.

Q Do you have an opinion, with a reasonable degree of medical certainty in your field, as to what conditions he suffered from as a result of this accident as a pain management specialist?

A I do.

Q Have you treated him over the last six or seven months?

A Yes.

Q How frequently have you seen him?

A He was last seen on October 22 of 2004, and I've seen him about three or four times in between the first visit and the last visit.

Q So, over those five or six times, having reviewed all the medical records, having done testing yourself electrically through that NCV thing, having examined him on those occasions, what conditions does he suffer from?

A Specifically, the patient has a cervical derangement with C3-4 disk, C6-7 disk bulge, right C4 and left C6 nerve root impingement, a lumbosacral derangement with L4-5 disk bulge, L5-S1 disk protrusion with associated bilateral L5-S1 radiculopathy status post surgical decompression of his lower back. He's also sustained injuries to his left knee and shoulder, but I'm going to defer discussion about that to an orthopedist.

Q Were any of these conditions preexisting, based on your review of reports, your recitation or your eliciting his past medical history, or anything like that?

A No. In my opinion, these are related to the traumas that w?? sustained. If he had these problems before, he wouldn't have been active, he wouldn't have been working, he would have been under medical care.

Q If he had any preexisting hypertrophic changes such as you described in your low back without symptoms, would a trauma like this have done anything to aggravate or exite those?

A Certainly, hypertrophy is part of normal wear and tear in the human body. Every adult, throughout the course of their lifetime, will develop this normal wear and tear. It's due to overgrowth of bone not everybody will have problems from it. Everybody will have it. It does render an individual more susceptible to injury at that level.

Q. People -- if they are not injured in an accident, can people with hypertrophic changes live a lifetime without complaints or symptoms?

A Yes. Most people with hypertrophic changes never have any symptoms, never have any medical attention.

Q Could they go through their entire career, even. in construction, without having any limitations or symptoms?

A Certainly.

Q Do you have an opinion whether all these diagnoses you made were all caused by this accident?

A In my opinion, they were.

Q Are they all permanent. in nature?

A Yes. Once a disk slips out of place, it can never go back to its normal, healthy state, it tends to become dried out or desiccated, and forms the basis of osteoarthritis later on in life. Nerve tissue is fragile, it's not like other tissue in the body, Once it is damaged, that damage is irreversible. If you cut your skin and scar tissue grows back, it will function acceptably well as skin. If you damage a nerve, and scar tissue grows back, it-doesn't perform well transmitting impulses and transmitting and releasing neurotransmitters.

Q Over the course of the last five or six visits that you've had over the last -- over the course of the last five, or six months, or seven months, whatever it's been, I want you to assume that previous to this accident, he worked for 17, 18 years as an active construction worker both in New York and Los Angeles, that he played actively in sports, as you could see from the photograph of his baseball stuff, and I want you to assume he did surfing, and soccer, and all of those things, never had a complaint with regard to his neck, back, shoulder, I think years before, he may have had a pulled muscle in his back, never limited him, he never had days off for pain, never was treated by doctors, medication, therapists, none of those things. Sir, would you tell us whether or not these accidents or injuries have disabled him from either his work, or his avocations, or both?

A Yes. In my opinion, these injuries would prevent him from participating in a job that was, physically demanding, something that required a lot of heavy carrying, lifting, and going up and down. It precludes him from participating in any type of sporting activity which requires quick movements of the neck and back, running, jumping, sliding, those type of things.

Q Can you tell us -- I also want you to assume that two weeks before this accident, he had gotten married, and I want you to assume, subject to connection, that he has complained about his ability to engage in a physical sexual relationship with his wife. Based on your experience, with -- does a patient with the multiplicity of injuries, the variety of injuries that he has, have a -- typically, have problems having a sexual relationship?

MR. WHITELEY: Objection.

THE COURT: On what ground?

MR. WHITELEY: They are not part of anything that this doctor has exchanged.

THE COURT: I don't know. I haven't seen --

MR. BOROWICK: Judge, this has to do with the ordinary sequelae of having pain, pain management, pain in using your arms, using your knees, using your back. I mean, it goes to what you can enjoy, and what you can't. Loss of enjoyment of life has to do with eatery part of life.

THE COURT: You heard what the objection is. Was that exchanged as to any doctor?

MR. BOROWICK: It's the loss-of-services claim.

THE COURT: Oh, that's in the loss, oh.

MR. WHITELEY: It's not exchanged in any medical exchange, Judge.

MR. BOROWICK: We're not claiming sexual dysfunction, Judge.

THE COURT: Yes. But I'm looking for Ms. Sheryl Cioffi's allegations. Is that contained in that?

MR. BOROWICK: Well, it's part of it, sure. Judge, I could ask it in a different way.

THE COURT: Okay.

Q Does my client have any sexual dysfunction that's chemical, that could be addressed by Viagra, Levithro -- whatever that other one is called? Does he have any chemical dysfunction?

MR. WHITELEY: Your Honor, object again as to not part of this case.

THE COURT: Doctor -- you object again as to what?

MR. WHITELEY: It's not part of this doctor's exchange, it has nothing to do with his report, and what he was treating him for.

MR. BOROWICK: I will withdraw it.

THE COURT: Again, I haven't -- okay. It's withdrawn. Fine.

Q Mechanically, there are activities that a person might do using his arms, at the same time, using his knees, or using his back that this person is limited to because of his injuries?

A Yes.

Q And, if the person was able to go through the motions, even with the pain, would that -- withdrawn. Would the exertion, would any exertion that required using your arms, using your knees, using your back in a repetitive motion, would that be productive of pain in a patient like this?

MR. WHITELEY: Objection, leading.

THE COURT: Sustained. But, you can change the form.

Q How would it affect his ability to function physically?

THE COURT: In the description that you were just given?

MR. BOROWICK: Right.

MR. WHITELEY: Objection.

THE COURT: Overruled.

A Because of the injury to his neck and back, because his neck and back is unstable, anything that puts stress on his neck and back such as bending forward, sitting, standing, twisting, turning, activities like sexual intercourse, like stooping, like trying to play baseball, like surfing, these are all going to be limited by the injuries to his neck and back, he's not going to be able to do them as well. If he tries to do them, it's going to ruse him pain and discomfort, and he's going to pay the price the next day. It's not that he can't sit down, it's just, if he sits for a long time, it's going to create a big problem for him.

Q Have you consulted with a life-care planner named Dr. Charles Kincaid?

A Yes, I have.

Q And, have you discussed with him the need for pain management through therapy, medication, et cetera?

A Yes, I have.

Q And, sir, do you have an opinion, with a reasonable degree of certainty in your field, as to what his level -- assuming he has any surgery, shoulder surgery --

THE COURT: Why don't you have a seat.

MR. WHITELEY: I'm going to object, judge.

THE COURT: Wait until --

Q I will withdraw the question. Sir, what is your opinion as to his prognosis?

A In this case, the prognosis, what can be expected for the future, is poor. These injuries are not going to go away by themselves. These are permanent injuries. He's going to have good days, he's going to have bad days. That's typical for this type of condition. It's going to depend on the weather. It's going to depend on what he did the day before. But, it's never going to go away. He's always going to have this pain, he's always going to have this weakness and this numbness.

Q Do you have an opinion as it relates to his ability to do construction work either in the past, the present, or in the future? Can he do that, or has he been able to do that?

A In my opinion; he will never be able to return to construction work, a physically demanding type of occupation. Hopefully, if we can get his neck and back pain under control in the future, we can find some type of job which gives him the flexibility to alternate between sitting and standing, and he will be able to hold some type of job down, but never, definitely not a construction job.

Q Is he presently able to hold down 40 hours per week?

A At the present time, unfortunately, we don't have the pain under control. He has side effects from medication. I don't believe he can hold down any job at the present time.

Q At the present time, is he a candidate for training if training requires him to prepare for a 40-hour-a-week job sitting at a desk, standing at a table, lifting even light tools, or reaching, or anything like that? Is he a candidate, right now, for retraining?

A At the present time, he is not capable of doing that. Hopefully, in the future, he will be able to.

Q Assuming there's surgery planned for his back, shoulder and knee, do you have an opinion --

MR. WHITELEY: Objection.

MR. BOROWICK: Withdrawn. Nothing further.

THE COURT: Well, I am certain there's cross-examination. Right?

MR. WHITELEY: Yes, Judge.

THE COURT: It's five minutes to one. Would I be correct in assuming it would not be finished by one o'clock?

MR. WHITELEY: No, Judge.

THE COURT: So --

MR. BOROWICK: Is it possible if it's, like, even a half hour, we can finish with the doctor, and start with my client this afternoon? I'm just wondering if we could.

THE COURT: Come up, lawyers.

(All counsel approach bench. Discussion. held off the record at side-bar.)

THE COURT: So, we are going to break, and we will resume at two o'clock. Please do not discuss the case. Thank you, Doctor.

(Whereupon, the jury leaves the courtroom.)

(Luncheon recess taken.)

(A luncheon recess was taken.)

(After the luncheon recess, the following occurred:)

* *

AFTERNOON SESSION.

(The trial continued.)

COURT OFFICER: Come to order.

THE COURT: The last juror has arrived.

COURT OFFICER: Yes. Jury entering Courtroom.

(Whereupon, the jurors entered the courtroom and took their respective seats in the jury box.)

THE COURT: Thank you. Are you ready to cross-examine?

MR. WHITELEY: Yet, your Honor. Thank you.

CROSS EXAMINATION

BY MR. WHITELEY:

Q Doctor, I will give you back your file.

(Handed).

THE WITNESS: Thank you.

Q Dr. Hausknecht, how are you, sir, this afternoon?

A Good, thank you.

Q Just preliminarily, you are paid for your time -- for your time here in Court, sir?

A Yes. My foe for time away from my office is $500 per hour.

Q In terms of preparation time, $500 an hour also cover that?

A There was no fee for any preparation.

Q Is there any fee that you charge in preparation for consultation and the testing that you do?

A No.

Q No fee for that, it's free?

A No.

Q It does cost someone some money?

A Yes.

Q In terms of total prep and court time, how much are you charging for your services here today?

A Once again, $500 per hour. I guess when you finish asking your questions, I will be done.

Q Now, how often have you personally testified on behalf of the law firm of Sacks & Sacks?

A I think, four, five times over the past ten years.

Q How often have you also testified on behalf of the attorney Howard Borowick?

A As I stated before, I think twice in the past ten years.

Q Do you, like Dr. Touliopoulos, do a lot of work for construction people out of the union?

A I do, yes.

Q Will you say that's a large percentage of the work you do?

A No, minority of my work.

Q What percentage would you say is of referrals from union halls or unions or attorneys from unions?

A I see hundreds of patients a year. Less than one percent, I would say.

Q You have familiarity treating people who have had construction accidents through assignment from Sacks & Sacks, union and/or from Mr. Borowick?

A Yes.

Q Just to clear up something I thought I heard on direct, I want to make sure I did. You found nothing in terms of the testing that you did, the nerves, you found nothing wrong with the Plaintiff's neck?

A There was no nerve damage emanating from the patient's neck.

Q In terms of your treating Mr. Cioffi or your work that you did with regard to Mr. Cioffi, how are you contacted, how were you first approached?

A Patient was referred to me by Dr. Merola. We had a conversation to the effect that there is a guy who has years of therapy, surgery, medication, nothing, can you help him.

Q Did Dr. Merola approach you on behalf of the lawyers, Mr. Cioffi or both?

A On behalf of the patient.

Q Did Mr. Cioffi seek you out in terms of seeking your expertise out directly or through Dr. Merola?

A I don't think he had knowledge of me independently other than Dr. Merola recommendation.

Q The first time you were ever consulted in any capacity with regard to Mr. Cioffi's case was in 2004?

A That's correct.

Q After all the surgeries had taken place?

A That's correct.

Q You treated him-- would you say you treated him or you tested him, what would you say?

A I'm his treating doctor. I participate in a team of physicians.

Q What treatment do you do for him?

A I do not perform therapy. I review the medication, talk about other treatment, surgeries, et cetera.

Q How many reports have you issued -- strike that. How many times have you seen Mr. ??ffi in total?

A The first time was April 2, 2004. The second time was June 8, 2004. The third time was June 29, 2004. Next September 16, 2004. Then following day, September 17, 2004. Most recently October 22, 2004.

Q How many reports have you generated with regard to your treatment of, or your observations of Mr. Cioffi?

A There is a report generated each time I have seen him.

Q Can you just look through your file. I did not see the date of the report from any of those dates other than September, and the report you exchanged to us, the one dated April, 2004?

A I'm looking at them. They're all written in.

(Handed.)

Q Can you show me?

A Which day?

Q The series of five or six you mentioned?

A Here is the first one, April 2, 2004. Here is the second one (indicating).

Q Right.

A June 8, 2004. There is the third one, June 29, 2004. There is the fourth one --

Q Okay.

A -- September, 16.

MR. WHITELEY: Your Honor, we would object at this time to Dr. Hausknecht's testimony with regard to any of these reports he just--

THE COURT: I'm sorry?

MR. WHITELEY: We would object to his testimony with regard to any of the reports, and we ask for instruction that any reference to them in the direct testimony be stricken. They were not exchanged to us even though the doctor has been treating the patient.

THE COURT: Why don't we proceed? ou will make that motion at another appropriate time. Okay?

MR. WHITELEY: Thank you, your Honor.

Q The first time you saw him was April of '04. Correct?

A Right.

Q At that time, did you do any testing of him physically that day?

A Yes.

Q What testing specifically did you do that day?

A I performed a neurological evaluation which demonstrated motor weakness in the left arm and left leg. Atrophy in left arm, and left land. Diminished reflex at the left knee, loss of sensation in left hand and left knee. Diminished range of motion in the neck and back, para-spinal muscular spasm, positive seated straight leg-raising test. I performed, H- reflex which is part of the NCV test.

Q Tell me what that is.

A It's part of the NCV. NCV EMG is an electrodiagnostic test which measures the integrity of the nerve. Nervous system is like, all the information is transmitted from the brain to other parts of the body. For example, if you want to make a fist in your right hand, somewhere in the front portion of your left brain, a nerve cell fires off. That nerve cell triggers a series of cells down the brain stem, down the spinal cord, down into the muscle. Within microseconds you make a fist; it's a computer-rated test that measures how quickly the electrical call impulses are transmitted. In the Courtroom, say if there are five lights and five switches in the back of the Courtroom and you flip up all those five switches, and four of the lights go on, it's means there is a problem with the switch, the brain. A problem with the wiring; the spinal cord and the nerve roots or problem with the fixture and the bulb, neuromuscular junction. The EMG determines what level in the body the damage occurred.

Q With respect specifically, Doctor, to H reflex, what is the H reflex?

A H reflex is a -- it's a screening testing. It's for L5-S1 radiculopathy.

Q It's a test for that segment of the lumbar spine only?

A Yes.

Q It does not have any bearing on any other aspect of the lumbar spine or cervical spine?

A Only in connection with the L5-S1 level.

Q Doctor, when you finally did do your NCV EMG test, it was in September?

A Full study was done in September, correct.

Q NCV tests, when you finally did that NCV test, you tested portions of cervical spine, did you not?

A Yes.

Q And portions of lumbar spine?

A That's correct.

Q Do you have those tests available for you there in your report, Doctor?

A I do.

Q Just looking through the test results, would it be accurate to say that the only abnormal finding you found in all the NCV testing you did was at that one area, L-5 S-1?

A That would be accurate. Only level of nerve damage for the lower back, yes.

Q That would be an accurate statement?

A Yes, it would be.

Q There was no positive NCV finding for the neck, for any other part of his spine including L4-L5, all the things you mentioned about the cervical spine, C-1, 2, 3, the shoulders, all those normal in terns of NCV testing. Correct?

A It's just L-5, S-1. It's not accurate when you say nothing at L4-5. There was.

Q Everything else other than that, the shoulder, the neck, the knee, NCV testing normal with respect to everything else?

A Yes.

Q So, when you come in here and give opinion testimony based on assumptions of what-other doctors have found, is it the MRI finding that you are relying on? What is it you are relying on to make the statement that Mr. Cioffi cannot do work in terms of construction work or anything like that, if everything was negative but for the one finding?

A It's based on the history provided to me. It's based on my findings on the physical exam.

Q Hold it for the siren.

(Pause.)

A Based upon the Listory he provided to me, based on my finding on the physical exam, based upon the NCV, EMG study I performed, based on my review of the MRI film of neck and back, and based on the review of other doctors that I rendered treatment.

Q The MRI testing results, they're all in your file, right?

A Yes.

Q Those are the same MRI findings that I went through and I know you were not here; I went through at length with Dr. Touliopoulos, which were MRI findings of the cervical spine, MRI findings of the left shoulder and left knee, those were all essentially -- there were no positive findings post surgery, the repairs were done properly, there was no aggravation, no chondromalacia according to the MRI report?

MR. BOROWICK: Objection to form.

Q Would that be correct?

MR. BOROWICK: He has now summarized lots of records in a question.

MR. WHITELEY: I ask him to assume.

THE COURT: Break it down.

MR. WHITELEY: I ask him to assume.

THE COURT: I am not -- I am sitting here. Did you follow that whole question?

THE WITNESS: Not really.

Q I ask you to assume, Doctor, there were MRI testings done of the left shoulder, of the left knee and of the cervical spine, of the lumbar spine. I ask you to assume that findings in those preoperative MRI films were negative. There was minor spurring noted in the report, an X-ray report, cervical spine?

A I'm confused. You are talking about MRIs and then X-rays. I never have seen the x-rays..

Q I will show you. You never were shown by anyone from the Plaintiff's side the x-rays that were taken of Mr. Cioffi on the day of the accident.

MR. BOROWICK: We are not claiming any fractures at all, Judge. X-rays might be interesting, but not relevant. I ask that the -- if the lawyer is giving him a hypothetical or he is summarizing evidence, then I ask he bre?? it down as opposed to saying things like "essentially."

THE COURT: Thank you. Thank you. You are going for fractures?

MR. WHITELEY: I'll break it down. I will withdraw the question.

THE COURT: All right.

Q Doctor, I'll show you the X-ray which is in evidence of the Plaintiff's cervical spine.

(Handed).

Q You never have seen that before?

A Yes. This is part of the St. Vince ??'s record. This is not from Dr. Touliopoulos.

Q It's from before that?

A Sure, part of my file.

Q Only thing. The only finding in the X-ray, there's an osteophyte at C-6, correct?

A Yes.

Q What is an osteophyte at C-6?

A Basically an overgrowth of bone that occurs.

Q You cannot get that from a traumatic accident?

A No, over the course of time.

Q It happens over a long period of time?

A That's correct.

Q Were you given the lumbar X-ray?

A All part of the hospital record, yes.

Q How does that factor into your analysis of Mr. Cioffi -- causation of Mr. Cioffi's injury?

A It confirms it. The x-rays were normal for somebody his age. X-rays show been. MRI shows disk and nerve. You never see a slipped disk on X-ray. It does not show it.

Q When the x-rays says minimal, says a minimal disk space narrowing at L4-5 and a grade one retrolisthesis at L-3, L-4, that in your opinion is normal finding?

A Typical finding, yes.

Q You are also familiar with x-rays of the shoulder and of the knee. Those were unremarkable and normal as of the date of the accident?

A Yes, for most part. Yes.

Q Now, let me try to clear things up. I thought I heard on direct examination you said Mr. Cioffi cannot do construction work, is that correct?

A That's correct.

Q That is your professional opinion?

A Yes.

Q But, you did not say, I don't believe, correct me if I am wrong, you did not say he could not do other type of work, sedentary work, work he could sit and stand, work that he could do on construction sites as long as it did not involve heavy lifting. Is that an accurate characterization of what you were trying to say?

A No, it is not.

Q In your opinion, is Mr. Cioffi capable of doing sedentary work?

A At the present time, I don't believe he is. I am hopeful in the future once we get the pain under control, minimize the side effects of medication, he will be able to engage in sedentary type of occupation. He is not now.

Q Would sedentary occupation in your view include reading blueprints on a drafting table, pick up rolls of paper, things like that?

A Sedentary would indicate it's mostly a desk job. If he had to do a lot of carrying, traveling, standing, walking, I think he would have a problem.

Q What about a job like using an architectural drafting table, architect table where you sometimes stand and sometime sit, isn't that ideal occupation for a man like Mr. Cioffi who --

A I am not sure what would be the ideal occupation. He needs the opportunity to alternate between sitting and standing at will and take breaks during the day. If that type of occupation affords him that opportunity, then it would be okay.

Q That would be an okay type of occupation for him?

A If he had that opportunity, yes.

Q Reason I ask, there has been no testimony that Mr. Cioffi --

MR. BOROWICK: Object to the reason he asked.

THE COURT: You don't have to tell us that.

Q I ask you to assume, Doctor, that Mr. Cioffi,-- there has be testimony on this case that Mr. Cioffi was engaged as a teacher teaching blueprint reading to younger level construction workers, younger level labor union people. In that regard, would that be an occupation that you would encourage him to pursue?

A Right now, he cannot do it. Eventually that might be appropriate.

Q When you say eventually, he is presently engaged in a bunch of different type of physical therapy, right?

A I don't know about a bunch. He is doing exercise at home on his own. We are awaiting permission to do proper treatment.

Q Doctor, I forget which one, a doctor said he was recommending he have four different kinds of therapy, starting right away, or he was undertaking, hydrotherapy recreational, physical and another therapy I cannot remember. But, he is okay to do those things now, right.

MR. BOROWICK: Judge, that was the ??ocational life-care planner who said that he would need that in the future, after the surgeries. It was not--

THE COURT: Therefore, what? Therefore what?

MR. BOROWICK: Counsel is characterizing one of his doctors.

THE COURT: Okay. All right. Straighten that out. You are not referring to--

Q Assume one of the Plaintiff's people testified he would recommend immediately this guy have hydrotherapy, recreational therapy which is sport therapy, I guess, physical therapy which we know about, and another kind of therapy, maybe the Jury remembers, I forgot the fourth, those type of things he can do today, in your medical opinion; correct?

A I don't think he is an appropriate candidate for recreational therapy. He has not recovered enough. His spine is unable; that would be dangerous. Physical therapy and hydrotherapy which is physical therapy in a pool would be fine.

Q There. is-- you're a psychologist also--

A Board certified in neurology by the American Board of Psychiatry and Neurology. I am experienced in psychiatry, but not practicing psychiatry.

Q There is no claim in this case, is there, Doctor, nor has Mr. Cioffi informed you that he has any mental problem or mental injury cognitive deficit?

A I am not aware of the claims in the case. Based on my speaking with him, I don't find him to be psychological or cognitively impaired, no.

Q I ask you to assume there was a vocational doctor you said it available, now available to Mr. Cioffi for free, in New York, New York and California, occupational training that he can undergo, what is it to prevent him from going, undergoing occupational therapy if he can undergo physical therapy?

MR. BOROWICK: Objection.

Q If anything?

MR. BOROWICK: Objection. The witness did not say right now. It's available to him.

THE COURT: All right.

MR. BOROWICK: He said it is not.

THE COURT: So, the question is if he were able to avail himself of that now.

MR. WHITELEY: If he could avail himself of physical therapy, why couldn't he avail himself occupational therapy?

THE COURT: Sustained as to form. There are two different things. You want to ask which-- I thought it was asked before. Maybe not.

MR. WHITELEY: I'll withdraw it. I'll try to clear it up.

Q Occupational therapy, Doctor, what does that involve? What does it entail?

A Vocational or occupational?

Q Occupational training?

A Occupational training is undergoing, going to school to learn a different trade.

Q If someone had a skill, 18 years of training in a skill, would they necessarily need to be retrained?

MR. BOROWICK: Objection. This is vocational rehabilitation not what this witness -- he is not distinguishing between vocational retraining and occupational therapy.

THE COURT: I don't know what you are getting out, Mr. Whiteley. There are two different field. I don't know what this witness' connection is to either or both of them. You need to be clear.

Q Would Mr. Cioffi, in your medical opinion, require any training in order to do blueprint teaching which he already testified, not he, another expert testified he already does?

THE COURT: Wait. I will sustain the objection, because asking this doctor whether the Plaintiff requires vocational training is not, as I understand it, within his area. Is that right.

THE WITNESS: I am unfamiliar with requirements to be a blueprint teacher. I would not been able to answer that question.

Q If Mr. Myers, a union representative testified there was, in fact, Mr. Cioffi was, in fact, doing that for at least three years, what training would he need, what new skill?

THE COURT: He says he does not know.

MR. WHITELEY: I'm asking him as a medical doctor.

Q What training would he need to do anything differently?

THE COURT: How would he know that?

MR. WHITELEY: He is the doctor that says --

MR. BOROWICK: Excuse me.

THE COURT: Maybe I have not understood your point. Let me see if I can clarify this. Are you asking the witness whether he knows what Mr. Cioffi needs in the way of vocational training? Is that your question?

MR. WHITELEY: Derivative of that. This doctor has stated on direct --

THE COURT: I know what he stated. Just: help me clarify what the question is

MR. WHITELEY: Why can't this man, Mr. Cioffi, obtain training now if he even needs it for blueprint work.

MR. BOROWICK: Objection.

THE COURT: Sustained. I don't really follow that. Because now I don't know if you are asking about something physical or--

MR. WHITELEY: Judge, I don't know what is required either, that is what I am trying to find out. I don't know what is needed for this gentleman to be retrained in something --

THE COURT: This doctor is not the one to tell us what is needed for an individual to be able to do a particular, to be trained to do a particular thing like reading or teaching blueprints which is what I think you are asking.

MR. WHITELEY: It happens to be his skill set, Judge.

MR. BOROWICK: Objection.

THE COURT: Don't argue. That is what I think you are asking. Is that what you are asking?

MR. WHITELEY: I'll withdraw.

THE COURT: He says he does not know.

MR. WHITELEY: I'll move on to a different question.

THE COURT: All right.

Q Doctor, were you ever informed by Mr. Cioffi or by any of his Plaintiffs' attorney or by any other expert that Mr. Cioffi had for years trained blueprint reading?

A No.

Q When you gave your opinion he could not work now, you did not know he was trained in a specific skill and he was doing sedentary work already, did you?

MR. BOROWICK: Already as of when?

THE COURT: Sustained.

Q As of the date of the accident?

A He cannot work now because of his neck and back.

Q In your report of April 2, 2004, I think you find, do you not, doctor, that the patient was having some neck pain, but neck pain had improved, would that be an accurate statement?

A Yes. His neck condition was not his complaint on the first visit of April 2, 2004.

Q Since you began treating Mr. Cioffi up until the present date, has he had any further surgery, to your knowledge?

A No.

Q When you performed a general physical examination of Mr. Cioffi in April of 2004, was your general physical examination of him unremarkable, vital signs are stable?

A Yes.

Q So, other than the physical examination and what Mr. Cioffi tells you, you did not do any NCV testing at that time?

A No.

Q Other than the normal physical examination, what Mr. Cioffi tells you about pain or not pain, and the fact you have to diagnostic testing of your own, how is it you can make a professional opinion to medical a certainty about Mr. Cioffi's condition much less the cause of that condition?

A His neurological examination was markedly abnormal. We discussed that. General physical exam, blood pressure; pulse heart, lungs was otherwise normal. He is a healthy individual. Neurologically, he is impaired. Loss of strength in his left arm, left leg, atrophy of muscle in the left arm and left leg, diminished reflex in left knee, loss of sensation in this left arm, ankle. Muscle spasm in his neck, back. Restricted mobility in his neck and back.

Q Doctor, when you did that analysis of his arm, left shoulder, he just had surgery a month before that, wouldn't that be accurate?

A No.

Q He had a surgery to his left. shoulder on March 1, '03. Correct?

A I saw him, '04, a year.

Q We had a year since surgery?

A Year, month, what is the difference, right?

Q Did you order any additional MRI testing of Mr. Cioffi?

A I did.

Q Were those conducted, to your knowledge?

A Yes.

Q When was the one or owns that a asked for, when were they conducted?

A Initially I requested permission to do an MRI of the cervical spine for the neck. That was performed on July 19 of 2004. I also requested permission to repeat the MRI of lumbar spine. I have not yet received that permission.

Q You did not request any further MRI of the left shoulder or left knee. Correct?

A No. As I stated before, his left shoulder and knee is beyond what we were taking care of in my office.

Q Doctor --

MR. WHITELEY: Thank you very much.

REDIRECT EXAMINATION

BY MR. BOROWICK:

Q Doctor, is occupational therapy the same thing as vocational retraining?

A No, vocational retraining is going back to school to learn a profession, trade. Occupational therapy is a form of physical therapy that helps you to cope with neurological or a physical impairment. For example, if you have lost coordination in the hand, they will show you how to use a sponge with a big sponge holder. They teach you how to do lifting, if your back is injured. That is occupational therapy. It shows you how to alter your day-to-day function.

Q If he has these, this markedly abnormal neurological examination, whether he could do brain surgery before the accident or rocket engineering before the accident, with a markedly abnormal finding and what the rest of the care team has said, do you have an opinion as to whether or not he is ready for vocational retraining as opposed to occupational therapy?

A He is not yet ready for vocational retraining. He is still disabled. Hopefully, we will get the pain under control and find medication that he can tolerate without side effects, and that he should go and not today day.

Q Thank you.

RECROSS EXAMINATION

BY MR. WHITELEY:

Q Doctor, even though you characterize it as markedly abnormal neurological training, NCV testing is what is testing the neurological conduction. Correct?

A Correct.

Q NCV testing is objective. You talked about that, right?

A Yes.

Q You cannot fool or play with it, it is what it is?

A Sure.

Q Only abnormal finding on the NCV test was that one part of the lumbar back in the area right below where he had the surgery at L5-S1 level. Correct?

A Correct.

Q Everything is normal?

A Correct.

MR. WHITELEY: Thank you.

RE REDIRECT EXAMINATION

BY MR. BOROWICK:

Q When counsel says everything else was normal, with regard to the NCV, things being normal, beside what you found, how does that reconcile with the fact that the neurological exam was markedly abnormal, the surgical Operative Report described all the different problems and the surgeon described all these continuing problems so then why the NCV is being normal in a couple of ranges, why does that stop him from working?

A NCV, EMG studies the permanent nerve damage. He has permanent damage in the lower back, that is not to say he has a problem in with the neck and back beside the nerve damage; that problem is muscle spasm, disk, restriction of mobility, pain as well as the side effects from medication that he has to take for the pain. A person could be totally disabled with a normal NCV, EMG study. Furthermore, NCV will not show a problem to the disk or a problem to the tendon or to the ligament. It will not show problems with cartilage. It only shows permanent nerve damage.

MR. BOROWICK: Nothing further.

MR. WHITELEY: Thank you very much.

(Witness excused.)