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

-----x
JOSEPH BARRA,

Index:
102339/11

Plaintiff,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK
CITY TRANSIT AUTHORITY, MTA CAPITAL CONSTRUCTION,
CITY OF NEW YORK, NEW YORK CRANE & EQUIPMENT
CORPORATION,

Defendants.
-----x

71 Thomas Street
New York, New York 10013
April 14, 2016

B E F O R E:
HONORABLE MANUEL J. MENDEZ, Justice

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

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BY: RONALD E. JOSEPH, ESQ.

Tal R. Hahn,
Senior Court Reporter

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1 Proceedings
 2 THE COURT: Ready. Okay. Mr. Morgan, you
 3 wanted to make a record?
 4 MR. MORGAN: Yes, your Honor. Based on the
 5 testimony of Ms. Barsky on Tuesday, and seeing where
 6 defendant --
 7 THE COURT: Is your witness here?
 8 MR. MORGAN: My witness is here.
 9 THE COURT: Does it relate to whatever the
 10 witness will testify about?
 11 MR. MORGAN: No, your Honor.
 12 THE COURT: Okay.
 13 MR. MORGAN: This is simply the admission into
 14 evidence of any photographs from plaintiff's Facebook
 15 page. I understand that they could use any photograph
 16 they want to cross-examine Mr. Barra, but, again, they
 17 have exchanged no photographs with my office on
 18 photographs they intend to put into evidence.
 19 And I believe the CPLR and the PCR in this case
 20 are clear that photos you intend to use in litigation
 21 need to be exchanged with plaintiff's counsel or defense
 22 counsel depending on who is using it. So for them to be
 23 able to use it to cross-examine, I understand, but for
 24 it to come into evidence I would ask that it be
 25 precluded.
 26 THE COURT: Because you have not seen --

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1 Proceedings
 2 MR. MORGAN: I have not --
 3 THE COURT: -- what they intend to use?
 4 MR. MORGAN: They haven't served it on me,
 5 correct.
 6 THE COURT: Mr. Joseph?
 7 MR. JOSEPH: First of all, the first photo is
 8 already stipulated in.
 9 MR. MORGAN: True.
 10 MR. JOSEPH: Second of all, your Honor, these
 11 are photographs that he posts to the public. You know,
 12 it's not like somebody took a picture of him, whether it
 13 was an investigator of mine or somebody else, and
 14 somehow I got -- he has posted it to the public. He
 15 knows what he has put out there.
 16 THE COURT: So these are his own photographs?
 17 MR. JOSEPH: Photographs of -- or photographs
 18 taken of him. Yes. And he has put them on his social
 19 media.
 20 THE COURT: That he uploaded to his own pages?
 21 MR. JOSEPH: Yes.
 22 THE COURT: Okay.
 23 MR. JOSEPH: So he is on notice because he put
 24 them up. There is no -- there is no requirement for me
 25 to show him photographs that he has posted to the
 26 public.

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1 Proceedings
 2 THE COURT: Okay.
 3 MR. MORGAN: First of all, the way Facebook
 4 works, if you upload it or anyone tags you in a
 5 photograph, meaning someone else put your name on it, it
 6 automatically goes onto your site. Doesn't
 7 automatically mean Mr. Barra is the one taking the
 8 photographs, doesn't automatically mean that Mr. Barra
 9 even knows those photographs are going onto his page.
 10 Even if he did, they still need to exchange the
 11 photographs they intend to use in litigation. If I had
 12 photographs taken by any of the defendants, it doesn't
 13 mean that I could walk in here today and have them
 14 admitted into evidence if I don't show them to defense
 15 counsel first. I can't -- that is what the CPLR and the
 16 P.C. Orders are for.
 17 THE COURT: When is your client testifying?
 18 MR. MORGAN: On Monday.
 19 THE COURT: On Monday. To the extent that you
 20 have any photographs that you intend to use, exchange it
 21 with the plaintiff's counsel by tomorrow.
 22 MR. JOSEPH: Sure. Your Honor, I can't do it
 23 right now. I don't have them.
 24 THE COURT: I understand. By tomorrow.
 25 MR. MORGAN: Thank you, Judge.
 26 THE COURT: We are still waiting for one juror.

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1 Proceedings
 2 MR. JOSEPH: Okay.
 3 THE COURT: As soon as that juror gets here we
 4 will get going.
 5 MR. JOSEPH: Okay.
 6 (Whereupon, a brief recess was taken at this
 7 time.)
 8 MR. MORGAN: The motions in the beginning of
 9 the case, your Honor, I made a motion to redact the
 10 history that plaintiff gave to Dr. Cushner the day after
 11 the accident. And you said we will see how it --
 12 THE COURT: Hold on one second.
 13 (Brief pause.)
 14 MR. MORGAN: You said we will see how it plays
 15 out.
 16 THE COURT: Right.
 17 MR. MORGAN: I will put records into evidence
 18 of Dr. Cushner and Dr. Radna and Dr. Blanco, and I just
 19 wanted to make sure that when Dr. Cushner takes the
 20 stand that I still have an opportunity to have -- that
 21 it be redacted from his records if you, Judge, sees fit.
 22 You already did rule that he could cross-examine the
 23 plaintiff on it, and I agree that he should be able to
 24 do that, but I -- because I will not be able to make my
 25 ruling before Dr. Schuster testifies with regards to the
 26 life care plan, I thought I make the application now.

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1 Proceedings
 2 MR. JOSEPH: Judge, you denied the application
 3 at the beginning of the trial to redact the record.
 4 MR. MORGAN: Correct.
 5 MR. JOSEPH: You -- he asked if he would be
 6 able to reargue and you said yes. The reason why this
 7 is coming up, because he said he wants to put Dr.
 8 Cushner's records into evidence. The witness is here,
 9 but I intend to show him -- cross-examine him with Dr.
 10 Cushner's records. And if it goes in, it's in. It's
 11 not subject to redaction at this point.
 12 MR. MORGAN: First of all, all the records that
 13 are in are subject to redaction.
 14 THE COURT: The history as related by the
 15 plaintiff is usually something that is relevant.
 16 MR. MORGAN: If it goes to diagnosis and
 17 treatment.
 18 THE COURT: Right.
 19 MR. MORGAN: And --
 20 THE COURT: I mean, if that is the history he
 21 gave to a doctor that will be coming to some form of
 22 diagnosis as to his condition, that would be relevant.
 23 MR. MORGAN: But if in that history it said --
 24 MR. JOSEPH: I will object. You do have the
 25 witness here.
 26 MR. MORGAN: I --

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1 Proceedings
 2 MR. JOSEPH: You do have the witness here.
 3 MR. MORGAN: It all depends on if what is in
 4 that record changes how he would diagnose and treat the
 5 patient.
 6 THE COURT: The competent producing cause of
 7 whatever injury he claims, isn't that something that the
 8 doctor usually takes into consideration?
 9 MR. MORGAN: The falling, I agree. There are
 10 other things in there other than falling.
 11 THE COURT: These are his own statements.
 12 MR. MORGAN: They are not in quotes, your
 13 Honor. They are just a history taken by the doctor.
 14 THE COURT: How would the doctor know this?
 15 MR. MORGAN: That is what we could ask the
 16 doctor.
 17 THE COURT: That is why I think -- the only way
 18 he would know this is if he was told by somebody, and
 19 that somebody --
 20 MR. MORGAN: By somebody.
 21 THE COURT: -- and that somebody would be your
 22 client.
 23 MR. MORGAN: Maybe.
 24 THE COURT: Maybe? It wasn't him?
 25 MR. MORGAN: I just think we should find out
 26 what the doctor says, and if it is germane to diagnosis

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1 Proceedings
 2 and treatment.
 3 THE COURT: Well, I think that -- in the first
 4 instance, we are to assume that if he's treating your
 5 client and your client is seeing him, and giving a
 6 history, the history was given by your client, and,
 7 therefore, whatever is in the records is a history taken
 8 down by the doctor from someone -- something your client
 9 said to him.
 10 MR. MORGAN: But if --
 11 THE COURT: You are going to tell me someone
 12 else --
 13 MR. MORGAN: No, Judge. If it's not in quotes
 14 and not germane to diagnosis and treatment, then it's a
 15 hearsay statement in a document.
 16 THE COURT: I disagree. I would allow it in.
 17 MR. MORGAN: Note my exception.
 18 THE COURT: So noted. Bring them in.
 19 COURT OFFICER: All rise. Jury entering.
 20 (Whereupon, the jury panel entered the
 21 courtroom.)
 22 THE COURT: You may have a seat. Good morning
 23 everyone. Welcome back. We are continuing with the
 24 trial. Mr. -- we are still on plaintiff's case.
 25 Mr. Morgan, your next witness please.
 26 MR. MORGAN: Plaintiff calls Dr. Richard

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1 Dr. Schuster - Plaintiff - Direct
 2 Schuster.
 3 COURT OFFICER: Remain standing.
 4 RICHARD SCHUSTER, P h D., called by and
 5 on behalf of the Plaintiff herein, having been first duly
 6 sworn, was examined and testified as follows:
 7 COURT OFFICER: Be seated. In a loud and clear
 8 voice, state your name, spelling your first name and
 9 spelling your last name for the record.
 10 THE WITNESS: Richard Schuster, R-I-C-H-A-R-D,
 11 S-C-H-U-S-T-E-R. 275 Madison Avenue, New York, New
 12 York, 10016.
 13 COURT OFFICER: Thank you, sir.
 14 THE COURT: You may.
 15 DIRECT EXAMINATION
 16 BY MR. MORGAN:
 17 Q. Good morning, Dr. Schuster.
 18 A. Good morning.
 19 Q. Would you please state your professional
 20 qualifications for the record.
 21 A. I am a psychologist, neuropsychologist and
 22 rehabilitation psychologist, vocational evaluator.
 23 Do you want me to go through my --
 24 Q. Just go through your education and work history.
 25 A. Okay. I graduated City College of New York, 1968.
 26 I majored in psychology. I graduated Phi Beta Kappa. I

1 Dr. Schuster - Plaintiff - Direct
 2 went on for my Ph.D. at New York University. I graduated in
 3 1973, with my Ph.D..
 4 I have not had any other additional formal degrees,
 5 but of course I continued with continued education and
 6 seminars on a regular basis since the past forty some odd
 7 years. My work history, it begins during my years at N.Y.U..
 8 I worked at the V.A. Hospitals in New York. These are both
 9 psychiatric and medical institutions, fundamentally in the
 10 role of a psychologist in -- working in a hospital as part of
 11 my training, moving up with increasing responsibilities as I
 12 advanced in my graduate school curriculum.
 13 When I graduated N.Y.U., my first position, this is
 14 in the early 70's, was with New York State Drug Abuse Control
 15 Commission. This is an inpatient facility for adolescents
 16 with multiple problems. They had drug problems, learning
 17 problems, psychiatric difficulties. There were some adult
 18 sections as well, but the primary focus was with the
 19 adolescent unit. And what is relevant here, at that point I
 20 began working with the State Rehabilitation Agency in New
 21 York.
 22 Now, forty some odd years ago the name of the agency
 23 was OVR, Office of Vocational Rehabilitation. About twenty
 24 some odd years ago they changed the name to VESID, Vocational
 25 Educational Services for Individuals with Disabilities. And
 26 then about three years ago they changed the name to ACCES-VR,

1 Dr. Schuster - Plaintiff - Direct
 2 assessments, and these are people with all types of
 3 disabilities, a large percentage of people with brain
 4 dysfunction. These are mostly kids with learning and
 5 behavioral problems in terms of a school-related or
 6 psychiatric difficulties. So my private practice was in the
 7 field of rehab. And that lasted until about the mid-80's.
 8 In the mid-80's I left family court. I incorporated
 9 my private practice into my current business. It's
 10 Comprehensive Rehabilitation Consultants. Private
 11 rehabilitation firm. And I am still an active consultant for
 12 ACCES-VR. In fact, there is a client in my office this
 13 morning who -- for a neuropsychological evaluation --
 14 MR. JOSEPH: Objection.
 15 THE COURT: Sustained.
 16 A. Still an active consultant for ACCES-VR. Obviously
 17 I ended up getting involved in legal matters based upon --
 18 as an outgrowth of the work I was doing in the state. The
 19 same types of issues, of course, are necessary in legal
 20 cases as well. I am an active consultant for the Board of
 21 Education for children with special needs. If you are a
 22 parent that feels the Board of Ed has not adequately placed
 23 your child or adequately provided services for your child
 24 with a disability you have an option to have an independent
 25 evaluator do those assessments. These are mostly
 26 neuropsychological evaluations. And that is what I have

1 Dr. Schuster - Plaintiff - Direct
 2 Adult Career and Continuing Education Services Vocational
 3 Rehabilitation. It's the same organization, just changed the
 4 acronym to make it more modern, so to speak.
 5 Well, going back to the early mid-70's there was an
 6 OVR council located within the facility. Obviously they were
 7 not going to discharge these residents into the community
 8 without some type of after-care educational vocational plans
 9 developed. And I began working with the counselor at that
 10 point in developing just such plans for the residencies upon
 11 discharge.
 12 Now in the mid 70's I left Cooper Rehabilitation,
 13 and a -- in the mid-70's and mid-80's I was the Chief
 14 Psychologist for Family Court Mental Health Services for the
 15 City of New York. And the Director of the Bronx Family Court
 16 Mental Health Clinic, and basically we got referrals from the
 17 Judge on family court matters and did the evaluations
 18 requested by the Judge in terms of custody cases, what to do
 19 with these kids who got them into trouble, what plan would
 20 make sense, termination of parental rights, all family court
 21 issues. That was my day job for about ten years.
 22 In the evening I had a private practice. I -- my
 23 office was in the Bronx. And I became a consultant for OVR.
 24 I became the consultant for Social Security Disability. I
 25 did work for the Department of Labor. I basically would see
 26 about eight or ten people per week from OVR, vocational rehab

1 Dr. Schuster - Plaintiff - Direct
 2 been doing for the past, you know, thirty years or so.
 3 Q. Are you board-certified, Doctor?
 4 A. Of course I am licensed as a psychologist in New
 5 York State. I have four national board-certifications in
 6 neuropsychology, vocational neuropsychology, case management
 7 and medical psychotherapy.
 8 Q. And can you tell the jury exactly what vocational
 9 rehabilitation is?
 10 A. Well, vocational rehabilitation is taking people
 11 with disabilities, and trying to place them back into an
 12 appropriate setting in the labor force. And this entails
 13 everything from doing evaluations, finding direct services
 14 for these people, being involved in placement. Depends on
 15 the disability obviously. That will be the focus of it.
 16 Q. And you are -- you said you are board-certified in
 17 neuropsychology and psychology?
 18 A. Neuropsychology, case management and medical
 19 psychotherapy and licensed as a psychologist in New York
 20 State.
 21 Q. How does neuropsychology relate to your work in
 22 vocational rehabilitation?
 23 A. Well, a very large percentage of the people I see
 24 have some type of brain dysfunction, either a primary brain
 25 dysfunction or secondary dysfunction. A primary would be
 26 someone that had a stroke, a head injury. And secondary