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1 Dr. Schuster - by Plaintiff - Cross  
 2 Mr. Barra and Mr. Morgan, right?  
 3 A I didn't talk to Mr. Morgan at all about my opinions  
 4 in this case. My opinions are my opinions.  
 5 Q Did you ever interview any of his friends?  
 6 A No.  
 7 Q Anybody in his family?  
 8 A Did not.  
 9 Q But he told you that he barely drives and rarely goes  
 10 out; is that right?  
 11 A He says he goes out, he is uncomfortable going out, he  
 12 is uncomfortable driving. That's what he said to me.  
 13 (Continued on next page)  
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1 Dr. Schuster - Plaintiff - Cross  
 2 Q. And you said Mr. Capotosto said that Mr. Barra  
 3 could have a job at 25 to 27,000 --  
 4 A. Something like that.  
 5 Q. Was it really 28?  
 6 A. Fine. 28. Great.  
 7 Q. Plus benefits?  
 8 A. Well, it depends. If it's a part-time job he will  
 9 likely not get benefits. Full-time he will likely get  
 10 benefits.  
 11 Q. Okay. You said that he had intensive cognitive  
 12 rehabilitation over the course of years, is that what you  
 13 told us?  
 14 A. Well, he had it certainly for a while. He tried to  
 15 get it in Florida but --  
 16 Q. Let's back up. You said he had intensive for  
 17 years; is that right?  
 18 A. I don't know for years.  
 19 Q. I think you said for years. Why don't you check?  
 20 MR. MORGAN: Check what?  
 21 Q. Well, is that what you testified to here just an  
 22 hour ago?  
 23 A. I don't believe I said -- I don't think I said any  
 24 time frame one way or the other.  
 25 Q. You didn't say for many years?  
 26 A. He had cognitive rehabilitation. I don't think I

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1 Dr. Schuster - Plaintiff - Redirect  
 2 said intensive or for many years.  
 3 Q. Would it surprise you if he had cognitive  
 4 rehabilitation for approximately three months?  
 5 A. I don't know. I don't know the length of time he  
 6 had off the top of my head. Could be.  
 7 Q. Well, is it in your record?  
 8 A. I am sure it's in the records.  
 9 Q. No, in --  
 10 A. I don't know how long. Let me see if I could find  
 11 it again. Maybe it is here.  
 12 (Brief pause.)  
 13 A. Okay. I don't know how long. Without going  
 14 through this in greater detail I couldn't tell you how long  
 15 he cognitive rehabilitation at the center. I don't have it  
 16 readily available.  
 17 MR. JOSEPH: Thank you, Doctor. No further  
 18 questions.  
 19 THE COURT: Redirect.  
 20 MR. MORGAN: Real short, Judge.  
 21 REDIRECT EXAMINATION  
 22 BY MR. MORGAN:  
 23 Q. Dr. Schuster, when you testified on Direct that  
 24 once you started your own practice you worked at night in  
 25 addition to seeing patients during the day, who would send  
 26 you those patients?

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1 Dr. Schuster - Plaintiff - Redirect  
 2 A. Mostly state rehabilitation agency.  
 3 Q. In which type of placements was the state sending  
 4 you?  
 5 A. What do you mean by which type of placements?  
 6 Q. Were -- the people they would send you at night,  
 7 were they people they couldn't find placement for so they  
 8 hired --  
 9 MR. JOSEPH: Objection. He is now leading the  
 10 witness.  
 11 THE COURT: Rephrase your question.  
 12 Q. Was there any specific demographic or injured -- or  
 13 substance abuse or --  
 14 A. All of this. Sixteen years of age and up.  
 15 Basically I would be the first person, typically, to see  
 16 these people. And the question would be, we have a  
 17 gentleman with -- or a kid with this or something and so on.  
 18 And maybe a very -- it may be a very specific issue. He is  
 19 interested in becoming a -- if the person is mentally  
 20 retarded, or he is eligible for a particular work setting.  
 21 Or a kid with learning disabilities, he wants to go to  
 22 college, is it a reasonable goal; if he is to go to college,  
 23 what kind of learning disabilities, combinations would be  
 24 necessary, whatever. Or it's just, like, Mr. Smith has  
 25 showed up, he has a history of lower back problems, so forth  
 26 and so on. He doesn't -- he is not clear what he wants to

1 Dr. Schuster - Plaintiff - Redirect  
 2 do. What kind of vocational directions would make sense for  
 3 this gentleman, what is necessary, are there other people  
 4 that need to get involved with this rehab. Any of those  
 5 types of things.  
 6 Q. Could you explain why he did not refer Mr. Barra to  
 7 DVR down in Florida?  
 8 A. As I said, about one-third of the cases I see here  
 9 I do make the referral to the state agency all the time. I  
 10 say go there, sign a release form, I will send my test  
 11 results so you don't have to do this six-hour exam again.  
 12 So they know how to try to get you going in a certain way.  
 13 If I saw him -- if I sent him there I would have written  
 14 back to the counselor he is not ready to go for any type of  
 15 training, or work. He is too inconsistent, can't  
 16 concentrate, can't focus, can't be consistent and not ready  
 17 to go to work. He has to meet that level of consistency  
 18 first and then we could think about sending him to a job.  
 19 That is -- so if he was consistent and it was just  
 20 physical attributes, I would have actually made the referral  
 21 down in Florida. I would have done it. But if I write this  
 22 report and send it back, the guy can't concentrate, focus,  
 23 apply appropriate effort, he could -- consistently  
 24 predictably do a product -- he can't even consistently take  
 25 care of his house predictably. They would say, like, you are  
 26 not ready yet for vocational rehabilitation when -- when you

1 Dr. Schuster - Plaintiff - Recross  
 2 you want to say. Didn't do it consistently.  
 3 Q. And part of that can be -- a factor in that could  
 4 be motivation, isn't that correct, yes or no?  
 5 A. Could be, gentlemen.  
 6 MR. JOSEPH: Thank you.  
 7 THE COURT: Thank you, sir. You may step down.  
 8 THE WITNESS: Is that it?  
 9 THE COURT: That is it. You are done.  
 10 (Witness excused.)  
 11 THE COURT: We are going to break for lunch at  
 12 this point. We will reconvene at 2:00. 2 p.m., at  
 13 which time we will continue with the trial. Remember,  
 14 do not discuss this case among yourselves or with anyone  
 15 else. Do not do any internet search about this case,  
 16 the parties, the lawyers, any witness or the Court.  
 17 Enjoy your lunch. I will see you back at 2:00.  
 18 COURT OFFICER: All rise. Jury exiting.  
 19 (Whereupon, the jury panel exited the  
 20 courtroom.)  
 21 THE COURT: 2:00.  
 22 MR. MORGAN: Thank you.  
 23 MR. JOSEPH: Thank you, your Honor.  
 24 (Whereupon, a luncheon recess was taken at this  
 25 time.)  
 26 - Proceedings continue next page -

1 Dr. Schuster - Plaintiff - Recross  
 2 are cleared, if you are able to do it, come back again and we  
 3 will get you going. That is why no referrals were made.  
 4 MR. MORGAN: Thank you, Doctor.  
 5 THE COURT: Recross.  
 6 MR. JOSEPH: Thank you.  
 7 RE-CROSS-EXAMINATION  
 8 BY MR. JOSEPH:  
 9 Q. You said he can't take care of his house  
 10 consistently?  
 11 A. Consistently.  
 12 Q. It's an apartment, right?  
 13 A. Condo apartment, yes.  
 14 Q. And you don't know anybody that actually ever seen  
 15 the inside of that apartment, is that correct, other than  
 16 Mr. Barra?  
 17 A. That's correct.  
 18 Q. So you are taking him on his word?  
 19 A. I am.  
 20 Q. Okay.  
 21 A. On his word and the testing, and presentation. I  
 22 mean, the whole picture is congruent. That is all I could  
 23 tell you.  
 24 Q. And you said that he doesn't put forth a consistent  
 25 effort on the testing; is that correct?  
 26 A. He didn't. Or concentration or focusing, whatever

1 Proceedings  
 2 THE COURT: Mr. Joseph.  
 3 MR. JOSEPH: Thank you, your Honor.  
 4 We are about to hear from Dr. Thomas Kolb who is  
 5 a radiologist. I just want to make sure he isn't in the  
 6 courtroom.  
 7 He prepared a series of reports which were  
 8 included in a 3101(d) exchange by plaintiff. He says he  
 9 examined both MRIs of the brain. His facility didn't do  
 10 any of the imaging.  
 11 THE COURT: Okay.  
 12 MR. JOSEPH: So he compares the first and the  
 13 second MRIs and writes a conclusion. I can mark this as an  
 14 exhibit if you want at some point.  
 15 THE COURT: This is his report?  
 16 MR. JOSEPH: It is his report: "Again noted is a  
 17 single" -- excuse me, "signal abnormality adjacent to the  
 18 anterior right insular cortex consistent with but not  
 19 limited to a traumatic injury and unchanged from the prior  
 20 examination of August 12, 2010."  
 21 So, Judge, my concern is that I think I am going  
 22 to need to voir dire him on this since it doesn't appear he  
 23 is going to express something with a reasonable degree of  
 24 medical certainty about that particular issue since it is  
 25 consistent with but might not be, so then the jury  
 26 shouldn't be able to hear it. So I am just visiting a

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1 Proceedings  
 2 similar subject that we did the other day. Do you want me  
 3 to do that in front of the jury or outside the presence of  
 4 the jury? If I do it in front of the jury and you preclude  
 5 him from testifying to that opinion, you know, I don't want  
 6 somebody to say they have been unduly prejudiced. That's  
 7 all.  
 8 THE COURT: "Consistent with but not limited to?"  
 9 MR. JOSEPH: Yes. So it might be something else.  
 10 He can't say to a reasonable degree of medical certainty  
 11 that it is because of traumatic brain injury. That's what  
 12 this says.  
 13 THE COURT: No. I think he is saying it is  
 14 traumatic brain injury but it may be more than simply  
 15 traumatic brain injury. "Consistent with but not limited  
 16 to" means it is that but it could also be more than just  
 17 that.  
 18 MR. MORGAN: Correct.  
 19 THE COURT: That's the way I read it.  
 20 MR. JOSEPH: Judge, he states in his own report,  
 21 a different report but on the first image: "There is a  
 22 4-millimeter area of signal abnormality adjacent to the  
 23 anterior right insular, which may be posttraumatic in  
 24 origin or nonspecific small vessel disease."  
 25 So he is not expressing to a reasonable degree of  
 26 medical certainty that this is a traumatic brain injury.

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1 Proceedings  
 2 All I am asking is that we voir dire him on this before it  
 3 goes into evidence, and the question is do you want to do  
 4 that in front of the jury or not.  
 5 MR. MORGAN: Judge, he has a conclusion at the  
 6 bottom of his MRI report.  
 7 THE COURT: What is his conclusion?  
 8 MR. MORGAN: That it's consistent with but not  
 9 limited to traumatic injury.  
 10 THE COURT: Okay.  
 11 MR. MORGAN: He can cross-examine him on it.  
 12 MR. JOSEPH: I was just trying to do this so it  
 13 is not unduly prejudicial.  
 14 THE COURT: I think it is subject for  
 15 cross-examination.  
 16 MR. JOSEPH: Okay.  
 17 THE COURT: Mr. Joseph, can you put on the record  
 18 your motion -- I don't know if it was a motion, but you  
 19 wanted to make a record with respect to some of the  
 20 testimony of the last witness we had.  
 21 MR. JOSEPH: Yes, your Honor thank you very much.  
 22 The last witness we had was Richard Schuster. He  
 23 on direct examination indicated that Mr. Barra -- I am  
 24 paraphrasing, I don't have the transcript yet so forgive  
 25 me. I am paraphrasing. He said Mr. Barra had been cut off  
 26 from certain medical benefits and he was in the process --

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1 Proceedings  
 2 and he had reapplied and had not been granted those  
 3 benefits in Florida. I objected and approached and said  
 4 that, you know, he was alluding to, apparently, Workers'  
 5 Compensation benefits and that the jury could read between  
 6 the lines and see that. I objected, you denied my  
 7 objection and allowed me to make the record at this time.  
 8 And then during my cross-examination he actually blurted  
 9 out, and he knows better, he testifies 20 times a year, he  
 10 said. He tried to discuss Workers' Compensation benefits.  
 11 Clearly he was trying to taint this jury. He  
 12 knows better. He testifies 20 times a year. He has been  
 13 doing this for many years. He knows he is not allowed to  
 14 bring that up. I ask that based upon that behavior by  
 15 their purported expert that we be granted a mistrial.  
 16 In the alternative, if you do not grant a  
 17 mistrial I am asking because of his behavior in the  
 18 courtroom that you strike all of his testimony.  
 19 Thank you.  
 20 THE COURT: Counsel?  
 21 MR. MORGAN: Your Honor, it was a two-second,  
 22 three-second blurt by the witness. I remember your Honor  
 23 sustaining the objection, striking that from the record,  
 24 and instructing the jury to not consider it, to get that  
 25 out of their minds, I believe was your statement. We moved  
 26 on and nothing was ever said again. I agree with your

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1 Proceedings  
 2 Honor's decision to strike it.  
 3 With regard to a mistrial, it wasn't conduct, it  
 4 was not behavior. It was one mistake rectified by your  
 5 Honor. That's all I have for that.  
 6 THE COURT: Okay. I am denying both motions.  
 7 Your exceptions are noted for the record.  
 8 The testimony of the witness and his blurting out  
 9 the words "Workers' Compensation" having been stricken from  
 10 the record, the jury having been instructed to disregard it  
 11 and dismiss it from their minds, and the Court having  
 12 sustained the objection of the defendant, and previous to  
 13 that the witness's testimony alluding to the plaintiff  
 14 having been cut off from certain benefits without having  
 15 mentioning the words "Workers' Compensation" did not rise  
 16 to the level of having tainted this jury in any way  
 17 requiring the granting of a mistrial or the striking of the  
 18 witness's testimony. So for those reasons, both motions  
 19 are denied. Your exception is noted for the record.  
 20 MR. MORGAN: Can we premark some exhibits, Judge?  
 21 THE COURT: How many do you have?  
 22 MR. MORGAN: Quite a few. There are eight. They  
 23 are blow-ups of the MRI films.  
 24 THE COURT: The same films?  
 25 MR. MORGAN: Yes. They're already in evidence.  
 26 THE COURT: We ended at 23, so --

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1 Dr. Kolb - by Plaintiff - Direct  
 2 MR. MORGAN: Can we just go with the disc numbers  
 3 that are already marked with an A through --  
 4 THE COURT: What are the films?  
 5 MR. MORGAN: The disc are in.  
 6 MR. JOSEPH: The CDs with these images are in  
 7 evidence.  
 8 THE COURT: What number are they?  
 9 MR. MORGAN: They are 21 and 22.  
 10 THE COURT: So which ones are blow-ups of 21?  
 11 MR. MORGAN: Are all except for this. So we can  
 12 have Exhibits 21A, B, C, D, E, F, G and 2A.  
 13 THE COURT: Let's mark them that way.  
 14 (Exhibit marked for identification  
 15 as Plaintiff's Exhibit 21A through G and 22A.)  
 16 (Jury enters courtroom)  
 17 THE COURT: Welcome back. We are continuing with  
 18 the trial. We are still on plaintiff's case.  
 19 Mr. Morgan, your next witness.  
 20 MR. MORGAN: Dr. Thomas Kolb.  
 21 (Dr. Thomas Kolb takes the  
 22 witness stand and is duly sworn/affirmed.)  
 23 COURT OFFICER: State your name and business  
 24 address for the record.  
 25 THE WITNESS: Dr. Thomas Kolb, K-O-L-B, 307 East  
 26 60th Street, New York, 10022.

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1 Dr. Kolb - by Plaintiff - Direct  
 2 THOMAS KOLB, having been called on behalf of  
 3 Plaintiff, first having been duly sworn, was examined and  
 4 testified as follows:  
 5 DIRECT EXAMINATION  
 6 BY MR. MORGAN:  
 7 Q God afternoon, Dr. Kolb. How are you?  
 8 A Good. Thank you.  
 9 Q Would you please state your professional  
 10 qualifications for the record?  
 11 A I'm a diagnostic radiologist. My educational  
 12 background, I went to college, Queens College City of New York  
 13 and graduated in 1979. I went to medical school in Brooklyn at  
 14 Downstate Medical Center and graduated 1983. I then became a  
 15 pediatrician. I spent three years doing a pediatric internship  
 16 and residency at Jacobi Hospital in the Bronx and at Montefiore  
 17 Hospital in the Bronx and became board certified as a  
 18 pediatrician in 1983.  
 19 Then I went back and did a second residency at  
 20 Columbia Presbyterian Medical Center in Manhattan in radiology,  
 21 diagnostic radiology for four years. I became board certified  
 22 again, also in radiology. So I am board certified in both.  
 23 From 1990 until now for the past 26 years I have been practicing  
 24 diagnostic radiology.  
 25 Q Are you licensed to practice medicine in the state of  
 26 New York, doctor?

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1 Dr. Kolb - by Plaintiff - Direct  
 2 A Yes.  
 3 Q Where have you practiced medicine since completing  
 4 training?  
 5 A I spent one year in New Jersey back in '90 to '91.  
 6 Then I worked for many years in Manhattan on 68th Street in  
 7 private practice as well as I had an appointment at Columbia  
 8 Medical Center as an assistant clinical professor of radiology  
 9 through 2010 for fifteen years. Then most recently about six  
 10 months ago I changed my office and am now on 60th Street instead  
 11 of 68th Street. So those are the offices that I have been in  
 12 over the past 20 years, 25 years.  
 13 Q And can you tell us what a diplomate is?  
 14 A After you study for four years, let's say in  
 15 radiology, you take a written examination and pass it, you then  
 16 take an oral examination. If you pass it you are board  
 17 certified or a diplomate of the Board of Radiology. It is  
 18 another way of saying being board certified.  
 19 Q Have you ever been qualified as a medical expert in  
 20 the past?  
 21 A Yes.  
 22 Q Approximately how many times?  
 23 A I testify approximately -- roughly five times per year  
 24 over the past number of years.  
 25 Q Have you ever testified for me personally?  
 26 A No, I don't believe so.

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1 Dr. Kolb - by Plaintiff - Direct  
 2 MR. MORGAN: Your Honor, at this time I offer  
 3 Dr. Kolb as an expert in the field of radiology.  
 4 THE COURT: Any objection?  
 5 MR. JOSEPH: No. Thank you, your Honor.  
 6 THE COURT: He is deemed an expert in the field  
 7 of radiology.  
 8 Q Doctor, who asked you to review the films of Joseph  
 9 Barra in this case?  
 10 A Your office did.  
 11 Q When did you review those films?  
 12 A In December of 2015.  
 13 Q Did you document your findings in a series of reports?  
 14 A Yes.  
 15 Q Do you have those reports with you here today?  
 16 A Yes.  
 17 Q Doctor, please feel free to refer to those reports to  
 18 refresh your recollection throughout your testimony as  
 19 necessary.  
 20 With regard to the reports that were issued to my  
 21 office did you charge a fee for your time in reviewing those  
 22 films and preparing those reports?  
 23 A Yes.  
 24 Q What was that fee, doctor?  
 25 A In general it's about \$450 for each report.  
 26 Q And did you also receive a fee for your time in