

**In The Matter Of:**

*Kristen Salomon v.*

*USTA, et al.*

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*Ali Guy, M.D.*

*June 14, 2022*

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<p>1 SUPREME COURT OF THE STATE OF NEW YORK. COUNTY OF NEW YORK: 2 -----x 3 KRISTEN SALOMON, 4 Plaintiff, 5 -against- Index: 6 153060/15 7 UNITED STATES TENNIS ASSOCIATION, UNITED STATES TENNIS ASSOCIATION NATIONAL TENNIS CENTER, INC., LEVY RESTAURANTS, and A &amp; A ENTERPRISE, INC., 8 Defendants. 9 -----x 10 New York County Supreme Court 71 Thomas Street New York, New York 10013 11 June 14, 2022</p> <p>12 B E F O R E: HONORABLE LUCY BILLINGS, Justice of the Supreme Court</p> <p>14 A P P E A R A N C E S:</p> <p>16 BURNS &amp; HARRIS 17 Attorneys for Plaintiff 233 Broadway, Suite 900 18 New York, New York 10279 19 BY: SETH HARRIS, ESQ. ALISON R. KEENAN, ESQ.</p> <p>21 HARRIS BEACH, PLLC. 22 Attorneys for Defendant A &amp; A Maintenance 100 Wall Street, 23rd Floor 23 New York, New York 10005 24 BY: PAMELA GOLDSMITH, ESQ. WAYNE L. GLADSTONE, ESQ.</p>	<p>1 THE COURT: The witness is here? 2 MR. HARRIS: Yes. I did at some point want 3 to discuss the schedule. 4 THE COURT: You don't need to discuss it with 5 me. Tomorrow we won't start until 11:30. 6 MR. HARRIS: We are resting tomorrow, Judge. 7 That is the motivation for raising this issue. 8 THE COURT: Then the defense will proceed 9 with their defense, I assume. 10 Are we ready to bring in the jury? 11 COURT OFFICER: Judge, they need a minute. 12 They are using the restroom. 13 THE COURT: Okay. 14 COURT OFFICER: All rise. Jury entering. 15 (Whereupon, the jury panel entered the 16 courtroom.) 17 THE COURT: Please have a seat, everyone. 18 All right. Good morning, everyone. 19 Plaintiff is ready to call her next witness. 20 Go ahead. 21 MR. HARRIS: We call Dr. Ali Guy to the stand, your Honor. 22 THE COURT: Is he outside or here? 23 MR. HARRIS: He is here. Right outside. 24 COURT OFFICER: Follow me. Please stand.</p>	
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<p>1 A P P E A R A N C E S:</p> <p>3</p> <p>4 SHOOK, HARDY &amp; BACON, LLP. 5 Attorneys for Defendant Levy Restaurants 1325 Avenue of the Americas, 28th Floor 6 New York, New York 10019 BY: WILLIAM E. VITA, ESQ. ROBB A. DENNEY, ESQ. STEFON J. DAVID, ESQ.</p> <p>9 GOLDBERG SEGALLA 10 Attorneys for Defendant USTA 711 3rd Avenue, Suite 1900 11 New York, New York 10017 BY: KAREN SAAB-DOMINGUEZ, ESQ. RICHARD J. FEMIA, ESQ.</p> <p>14 ooo</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE COURT: Good morning, Dr. Guy. 2 THE WITNESS: Good morning, your Honor. 3 THE COURT: Okay. Raise your right hand. 4 A L I G U Y, M. D., called by and on behalf of the 5 Plaintiff, having been first duly sworn, was examined and 6 testified as follows: 7 THE COURT: Please have a seat. Would you 8 state and spell your name for us please. 9 THE WITNESS: Yes, my name is Dr. Ali Guy, 10 A-L-I, last name is GUY, G-U-Y. Office address is 7 11 Gramercy Park West, New York, New York, 10003. 12 THE COURT: All right. With the mask and 13 everything, Dr. Guy, just be sure to keep your voice 14 elevated at all times. Really shout back to the clock 15 at the back of the room. 16 THE WITNESS: Yes, your Honor. 17 THE COURT: Okay. 18 MR. HARRIS: May I proceed? 19 THE COURT: Yes. And I will just ask all the 20 attorneys, let's redouble our efforts to speak loudly 21 and clearly. 22 MR. HARRIS: Absolutely, Judge. 23 DIRECT EXAMINATION 24 BY MR. HARRIS: 25 Q Good morning, everyone. Good morning, Dr. Guy.</p>	

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<p>1 A Good morning, sir.</p> <p>2 Q All right. Can you tell us, are you duly licensed</p> <p>3 to practice medicine within the State of New York?</p> <p>4 A Yes, sir, I am.</p> <p>5 Q All right. What is your particular field of</p> <p>6 medicine, sir?</p> <p>7 A Physical medicine and rehabilitation and pain</p> <p>8 management.</p> <p>9 Q And what does that mean?</p> <p>10 A Physical medicine and rehabilitation is a medical</p> <p>11 specialty that was founded shortly after World War II. It</p> <p>12 deals with traumatic injuries covering the whole body from</p> <p>13 head-to-toe. It deals with chronic pain syndromes. It</p> <p>14 deals with spinal cord injuries, disk herniations, nerve</p> <p>15 damage problems, and deals with cardiac and pulmonary</p> <p>16 rehabilitation. It deals with disability, impairment and</p> <p>17 life care plans. It deals with orthopedic issues,</p> <p>18 neurosurgical issues, and internal medicine, muscle and</p> <p>19 nerve physiology and interpretations of X rays, CT scans,</p> <p>20 MRIs, and other radiological studies.</p> <p>21 Q Thank you, Doctor. And are you board-certified in</p> <p>22 your field?</p> <p>23 A Yes, sir, I am.</p> <p>24 Q And what does it mean to be board-certified,</p> <p>25 Doctor?</p>	Page 1544	<p>1 electrodiagnostics. That is the test to see if there is any</p> <p>2 muscle and nerve physiology. And other principles of</p> <p>3 physical medicine, rehabilitation and pain management, both</p> <p>4 pharmacological and interventional pain management, which is</p> <p>5 like epidural injections, nerve block injections,</p> <p>6 trigger-point injections, and other interpretational pain</p> <p>7 management procedures.</p> <p>8 Once you pass your Boards Part 1 and Part 2, all</p> <p>9 your credentials from college, from residency training get</p> <p>10 sent to the American Board of Physical Medicine and</p> <p>11 Rehabilitation, and they review everything. And if</p> <p>12 everything is up to par, they pass you, give you a title of a</p> <p>13 Diplomate of the American Board of Physical Medicine and</p> <p>14 Rehabilitation. That was the -- that was obtained in May of</p> <p>15 '89 and to this date it stands in good standing. And that is</p> <p>16 essentially what board-certification in my specialty is</p> <p>17 involved.</p> <p>18 Q Thank you, Doctor.</p> <p>19 A You're welcome.</p> <p>20 Q Could you also briefly tell us your educational</p> <p>21 background --</p> <p>22 A Yes.</p> <p>23 Q -- that led up to achieving your medical license.</p> <p>24 A Yes. My undergraduate, I went to Queens College,</p> <p>25 Flushing, New York. Medical school, I graduated from the</p>	Page 1546
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<p>1 A Board certification is the highest level of</p> <p>2 recognition you could obtain in your level of specialty.</p> <p>3 To become board-certified in my specialty you have to have</p> <p>4 the following prerequisites; you have to have training in</p> <p>5 the field of physical medicine and rehabilitation,</p> <p>6 preferably one year of internal medicine, one year of</p> <p>7 general surgery, and you then have to pass a three-year</p> <p>8 accredited training program in the field of physical</p> <p>9 medicine and rehabilitation. You have to pass the monthly</p> <p>10 examinations given by your teachers.</p> <p>11 You have to pass the annual exams given by the</p> <p>12 department. And once you finish that and graduate from the</p> <p>13 program, you sit and take your Boards Part 1, which is a</p> <p>14 written examination, which is approximately eight to nine</p> <p>15 hours. You get tested on orthopedic surgery, neurosurgery,</p> <p>16 muscle nerve physiology, neurology, diagnosis, and</p> <p>17 interpretations of radiological studies, MRIs, CT scans, X</p> <p>18 rays, disability and impairment evaluation. And other</p> <p>19 pockets of physical medicine and rehabilitation.</p> <p>20 Once you pass that you have to be in private</p> <p>21 practice for eighteen months, be sponsored by two doctors</p> <p>22 that know you closely, preferably your former teachers and</p> <p>23 then you fly to the Mayo Clinic, get reviewed by doctors that</p> <p>24 examine you orally for about a half day, again on similar</p> <p>25 topics and again on interpretations of X rays, MRIs,</p>	Page 1545	<p>1 University of Northeast in Dominican Republic, June of</p> <p>2 '81. Thereafter I did three separate residencies. I did</p> <p>3 eighteen months of internal medicine at Mount Sinai,</p> <p>4 School of Medicine, Mount Sinai Medical Center. I did one</p> <p>5 year of general surgery at Cabrini Medical Center. These</p> <p>6 were the prerequisites to getting into physical medicine</p> <p>7 rehabilitation. I then completed a three-year residency</p> <p>8 training program at Mount Sinai Medical Center.</p> <p>9 As I indicated, I am board-certified in this</p> <p>10 specialty. I was the former Director of the Department of</p> <p>11 Rehab Medicine at Maimonides Medical Center in Brooklyn from</p> <p>12 1997 to 2002. That would be five years. My duties were to</p> <p>13 teach the orthopedic residents, the internal medicine</p> <p>14 residents, the general surgical residents and also I had</p> <p>15 twelve other doctors under my supervision, to teach them and</p> <p>16 check their work, and also to render consultations to other</p> <p>17 doctors in my hospital.</p> <p>18 And from 1990 to 2006 I was the Director of NYU's</p> <p>19 Hospital for Joint Diseases Neuromuscular Equipment Clinic.</p> <p>20 My duties were to treat the patients assigned to the clinic.</p> <p>21 These would be patients that are born with birth defects,</p> <p>22 spinal cord injuries, cerebral palsy, severe Parkinson's</p> <p>23 disease, et cetera.</p> <p>24 And while I was treating these patients my duties</p> <p>25 were to teach the residents from N.Y.U. to prepare them for</p>	Page 1547

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<p>1 the Boards Part 1 and Part 2. And from 2006 to 2019 I was      2 Clinical Instructor of Physical Medicine and Rehabilitation      3 at N.Y.U. School of Medicine, N.Y.U. Medical Center. And      4 from October of 2019 to the present I was promoted to the      5 rank of Clinical Assistant Professor of Physical Medicine and      6 Rehabilitation at N.Y.U. Medical Center.</p> <p>7 And I am the current Director of the Pain Service at      8 North Queens Pain Surgery Center. I supervise approximately      9 thirty doctors, check their work, and I am also the Director      10 of Medical Education and Director of Rehab Medicine at      11 Med-Alliance, which is an Article 28 facility in the Bronx.      12 Again, I supervise and I teach. I am also a captain for the      13 New York National Guard. I take care of officers, soldiers,      14 and I am on stand-by for riots, disasters, et cetera, 24/7.      15 I also have a private practice in Gramercy Park and Long      16 Island.</p> <p>17 Q Thank you. You mentioned that you were on staff      18 at Maimonides here in Brooklyn. From what year to what      19 year?</p> <p>20 A Five years, 2002.</p> <p>21 Q And you taught there as well?</p> <p>22 A Yes, sir.</p> <p>23 Q What current hospital affiliations do you have,      24 Doctor?</p> <p>25 A Clinical Assistant Professor at N.Y.U. Medical</p>		<p>1 A's. I had A+ in psychiatry, A in economics, A+ in      2 English. But in the premed sciences I just didn't have      3 the ability to study as much as I needed. So I applied to      4 only one medical school in the Dominican Republic. They      5 told me that organic chemistry will not be validated, you      6 have to take this in medical school. Because in Europe      7 and most Latin American colleges medical school is      8 combined, two and four. It's six years. I took organic      9 chemistry from Dominican Republic. I passed it. I didn't      10 finish taking it. I used it as a primer to be ready when      11 I take it in medical school. So my GPA average was not      12 the greatest.</p> <p>13 Q At Queens College?</p> <p>14 A Yes, sir.</p> <p>15 Q And once you went to the medical school in the      16 Dominican Republic, how did you fair there, Doctor?</p> <p>17 A I did great. I got some of the highest grades in      18 anatomy. I got the highest grade in the school and I      19 passed all my grades the first time around. I passed all      20 my certifying exams the first time around. When I      21 graduated I took my Boards, Part 1 and Part 2. I passed      22 everything the first time around. I got into training      23 programs back in 1982. In Mount Sinai there is a great      24 training program. It still is. N.Y.U. is the first      25 training program in this specialty in the world. It's</p>	
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<p>1 Center.</p> <p>2 Q What does it mean to be a Clinical Assistant      3 Professor?</p> <p>4 A Well, you have to have a lot of teaching      5 abilities. You have to be board-certified. You have to      6 pass a rigorous credentials committee. You have to have      7 good evaluations by the students, the doctors you teach,      8 because they evaluate you as well. If you get good      9 evaluations, they ask you to stay on and they renew your      10 position. And then -- I have been there since 2006, so I      11 guess I must be doing something right.</p> <p>12 Q Well, Doctor, when you were in Queens College      13 doing I guess premedicine --</p> <p>14 A Premed.</p> <p>15 Q Premed. Did you have any results in the premed      16 area in Queens that, you know, was sub-par in terms of your      17 grades or grade point average or something like that?</p> <p>18 A Yes, sir.</p> <p>19 Q Tell us about that.</p> <p>20 A First of all, in organic chemistry, they cover      21 approximately five hundred pages per month. I was working      22 four part-time jobs; driving a yellow taxi, working at      23 Bloomingdales as a stock boy, working in a deli. I didn't      24 have the time to study the way it needed to be studied.</p> <p>25 There were only three questions and my -- I had a lot of</p>		<p>1 world-renowned; the RUSK Institute at N.Y.U. I am a      2 Clinical Assistant Professor at that facility. So, I      3 think I got off to a bad start; but I got off to a great      4 finish.</p> <p>5 Q Did you ever think when you were doing those      6 premed classes in Queens College, Doctor, that eventually      7 someday you would become an Associate Professor at N.Y.U.      8 Medical School?</p> <p>9 A Never entered my mind.</p> <p>10 Q All right. And, by the way, have you --</p> <p>11 MS. GOLDSMITH: Judge, I want to object. I      12 think plaintiff's counsel said Associate Professor, and      13 I think the testimony was Assistant.</p> <p>14 THE WITNESS: Clinical Assistant Professor.</p> <p>15 Q Thank you. I misspoke. I apologize.</p> <p>16 A Assistant -- Clinical Assistant.</p> <p>17 Q Now, moving forward, Doctor, have you and I worked      18 together before in the context of a forensic legal case?</p> <p>19 A Yes, sir.</p> <p>20 Q Can you explain?</p> <p>21 A Well, I have -- I am the Director of the      22 Department of Rehab Medicine in the Bronx at Med-Alliance.</p> <p>23 We have a lot of patients that come there. We have fifty      24 different doctors. So some of the patients that were      25 treated there were your clients and I think in the last</p>	

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<p>1 thirty, thirty-five years, I probably testified 2 approximately six times for you or your firm. It could be 3 slightly less, slightly more.</p> <p>4 Q Okay. And what about reports, you mentioned that 5 part of physical medicine and rehab includes, when 6 necessary, creating I believe you mentioned a life care 7 plan.</p> <p>8 A Yes, sir.</p> <p>9 Q And have you created life care plans on behalf of 10 clients before Kristen Salomon that I represented?</p> <p>11 A Yes, sir.</p> <p>12 Q And how many occasions have you done that, Doctor?</p> <p>13 A I cannot tell you exactly. If I tell you it 14 would be a guess and I don't want to speculate.</p> <p>15 Q All right. And what do you charge to do these 16 life care plans so that we have some evidence as to what 17 the future medical care needs will be for a particular 18 patient?</p> <p>19 A Depending on the amount of medical records, 20 anywhere from 1,500 to \$3,000.</p> <p>21 Q And do you know what you charged in this case for 22 that plan?</p> <p>23 A I believe in this case it was 2,500.</p> <p>24 Q 2,500. By the way, you said that you've testified 25 approximately six times on behalf of clients of mine that I</p>	Page 1552	<p>1 A Well, the Bronx office is not my office. I am an 2 employee of that facility. It's an Article 28 facility, 3 which is like a small mini hospital. We have fifty -- 4 approximately fifty doctors and approximately two hundred 5 employees. My Manhattan office, I am the sole 6 practitioner. I have a licensed physical therapist. I 7 employ approximately eight people there. And Long Island, 8 approximately six people.</p> <p>9 Q So about fourteen people in total that you 10 personally employ?</p> <p>11 A Yes, sir.</p> <p>12 Q And who is paying those employees while you are 13 here in court, Doctor?</p> <p>14 A I am.</p> <p>15 Q And what is your fee for your time away from your 16 offices to be here in court today?</p> <p>17 A For canceling my office schedule, it's five 18 thousand for a half day.</p> <p>19 Q And, now, did you have the opportunity to treat, 20 medically, Kristen Salomon?</p> <p>21 A Yes, sir.</p> <p>22 Q And do you recall who referred her to your office?</p> <p>23 A Yes. Um, my notes indicate she was referred by a 24 friend.</p> <p>25 Q And when was that first visit, Doctor?</p>	Page 1554
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<p>1 represented, but what about coming to court in general, how 2 many times have you testified in your life as an expert 3 witness?</p> <p>4 A Yes. Yes. I testified on the average eight to 5 ten times per year. In my thirty-five year approximate 6 experience, and testifying for my different offices, the 7 Bronx location, the Manhattan location, the Westbury 8 location, I testified under three hundred times and I have 9 been deemed an expert in my specialty every single time in 10 both Federal and State Supreme Courts.</p> <p>11 Q Doctor --</p> <p>12 MR. HARRIS: Your Honor, at this time we 13 would move to have Dr. Guy designated as an expert in 14 his field, physical medicine --</p> <p>15 THE COURT: I don't think it's necessary. Is 16 there any objection?</p> <p>17 MR. VITA: I have no objection.</p> <p>18 THE COURT: He may testify as an expert in 19 his field of specialty.</p> <p>20 MR. HARRIS: Thank you, your Honor.</p> <p>21 Q By the way, you mentioned that you have three 22 different offices.</p> <p>23 A Yes, sir.</p> <p>24 Q And how many employees are in those offices 25 combined?</p>	Page 1553	<p>1 A July 15th, 2019.</p> <p>2 Q After you saw her, did you see her on that day?</p> <p>3 A Yes, sir.</p> <p>4 Q And at some point shortly thereafter, did you 5 contact me or someone from my office?</p> <p>6 A Yes, I did, for a very good reason.</p> <p>7 Q What was that about?</p> <p>8 A When I saw her I was surprised I found complex 9 regional pain syndrome, type 2, and sciatic neuritis. I 10 wanted you to help me check the records to see if she was 11 diagnosed with this diagnosis before I saw her by anyone. 12 And you said I will check the records and get back to you 13 shortly. And you did. You got back to me the same day. 14 You told me based upon what you see the answer was no, and 15 you had asked me for a full report of -- on Kristen 16 Salomon, a life care report.</p> <p>17 Q And just, generally speaking, why would a life 18 care plan report be indicated for somebody with complex 19 regional pain?</p> <p>20 A Complex regional pain syndrome is a very 21 devastating condition. There is no cure for it if you 22 don't catch it early and if you don't treat it and 23 eradicate it early on. It's like a runaway train. If you 24 don't stop it, it keeps on going. It affects not just one 25 extremity. In this case it's the right lower extremity.</p>	Page 1555

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<p>1 So it could travel to the left side, travel to the upper 2 extremities. It could involve all four extremities and 3 can become systematic, affect the heart and blood vessels 4 and cause massive hypertension.</p> <p>5 And it causes tremendous psychological problems; 6 anxiety, depression, loss of income. And if persons are 7 married it leads to divorce because if it's the male who 8 supports the family, they could not provide support and then 9 there is marital problems and leads to divorce and 10 foreclosures on the house, properties, and usually involves 11 many different doctors from many different specialties to 12 treat this problem. And it involves a lot of expenses to 13 treat this condition.</p> <p>14 Q Well, Doctor, how many times did you have the 15 opportunity to treat Kristen Salomon since your first visit 16 in July 2019?</p> <p>17 A I saw her approximately twenty-one times and she 18 had six physical therapy sessions in my office.</p> <p>19 Q And, now, how is the -- it came up when Ms. 20 Salomon was on the stand that she apparently signed some 21 sort of a lien --</p> <p>22 A Yes.</p> <p>23 Q -- with your office in connection with the 24 treatment and the agreement to pay for that treatment.</p> <p>25 A Yes.</p>	Page 1556	<p>1 where it was mostly head, neck and thoracic spine 2 injuries, nothing relevant to this injury. She had a slip 3 and fall on August 19th, 2014. She injured her right leg, 4 right hip, right hamstring. She was seen by many 5 different doctors, she had physical therapy, she had 6 acupuncture, she had platelet rich plasma injections, 7 cortisone injections, she had a lot of physical therapy 8 and finally she had a right proximal arthroscopic surgery 9 performed by Robert Meislins.</p> <p>10 When I saw her she complained of severe burning pain 11 in the right foot and right leg. That raises my antennas. 12 Anytime a patient complains of severe burning pain your 13 antennas and your differential diagnoses should be complex 14 regional pain syndrome until proven otherwise. Because if 15 you missed it, it's -- the patient will have a long -- many, 16 many years of suffering. So it will be very bad for the 17 patient. She also complained of pain in the buttock area, 18 right buttock area with right leg pain. Then I went and I 19 examined the areas.</p> <p>20 Q Doctor, I want you to assume that Dr. Gutstein, a 21 neurologist that came in as an expert on behalf of 22 plaintiff in this case a couple days ago, went through all 23 the Orthology Physical Therapy records with the jury and 24 all the notes.</p> <p>25 Have you seen those records?</p>	Page 1558
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<p>1 Q Can you tell us about that and why that was done?</p> <p>2 A Well, when a patient comes to our office and they 3 don't have the appropriate funds to pay, I don't deny 4 them. I will treat them under a lien which means that 5 when they win the case, payment comes from whatever 6 settlement or win that comes from trial. And if they lose 7 the case they are still responsible for the bills. They 8 make some sort of a financial plan to pay whatever they 9 can at a monthly basis.</p> <p>10 Q Well, does that mean, Doctor, that you are 11 interested in the outcome of this case being that there is 12 a lien against the file in this case?</p> <p>13 A No, sir. I have no interest in the outcome of 14 this case. She wins, she wins. If she loses, she will 15 make an attempt to pay whatever she can. But I feel that 16 she's badly hurt and I have an ethical obligation to 17 continue to treat her to the best of my ability.</p> <p>18 Q Doctor, can you take us through your initial 19 examination on July 15th, 2019?</p> <p>20 A No history. Just examination?</p> <p>21 Q Well, you could include the history as well.</p> <p>22 Sure.</p> <p>23 A Well, she was forty-five years of age when I saw 24 her. No history of any significant past medical problems 25 except for subsequent car accident. That occurred in 2017</p>	Page 1557	<p>1 A Oh, yes, sir, I have them with me.</p> <p>2 Q What is the significance, just generally? I don't 3 wanted to go through all of them now, but in terms of your 4 own diagnosis, what is the significance of those complaints 5 that she made to the therapist over, you know, several 6 months there?</p> <p>7 A In my professional opinion those notes are the 8 most accurate, the most clearly chronologically -- it 9 takes us through the patient's chronology from the time 10 she had the surgery to the time I saw her. They document 11 all the basic complaints that is consistent with complex 12 regional pain syndrome.</p> <p>13 Q What are your -- what did your examination consist 14 of that day, Doctor?</p> <p>15 A I examined the back which showed tenderness, 16 spasm, in the right gluteal area, the buttock area there 17 were three small healed surgical scars. The area was 18 hypersensitive to touch. When I touched the patient she 19 felt a lot of pain and discomfort. And also the right 20 buttock and right proximal leg and right foot. The right 21 foot, the temperature was much colder than the left. The 22 skin was hypersensitive to touch. And there was weakness 23 in the entire right lower extremity. It was 4 minus over 24 5. Normal is 5 over 5. Next is 5 over minus 5. So 4 25 minus over 5 is three to four grades weaker than normal.</p>	Page 1559

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<p>1 And that is very significant.</p> <p>2 Sensation was diminished to pinprick and touch.</p> <p>3 Right medial calf and top of the right foot. That means that</p> <p>4 the -- there is some sort of a nerve condition going on. And</p> <p>5 I did an EMG, a nerve test on the lower extremities. And I</p> <p>6 found evidence of sciatic neuritis. And there was no other</p> <p>7 abnormality.</p> <p>8 In the medical field there is only one condition,</p> <p>9 not two, not three -- only one condition that gives a patient</p> <p>10 a unilateral hypersensitivity, temperature difference and</p> <p>11 pain with burning sensation and that is called complex</p> <p>12 regional pain syndrome. There is no other condition. There</p> <p>13 are some other conditions that affects the body, all four</p> <p>14 extremities or just two areas, such as Raynaud's. That is a</p> <p>15 completely different problem than the one she has. So I</p> <p>16 confirmed my diagnosis of having a right sciatic neuropathy</p> <p>17 and a complex regional pain syndrome type 2.</p> <p>18 Would you like me to explain what that is?</p> <p>19 Q Yes, Doctor. But first I want to go back for a</p> <p>20 minute. First you mentioned hypersensitivity?</p> <p>21 A Yes.</p> <p>22 Q Can you tell us what that is and the medical</p> <p>23 significance as it relates to your diagnosis?</p> <p>24 A Well, a history -- in her history the patient</p> <p>25 mentioned if any wind, even air-conditioning hits the</p>		<p>1 pain?</p> <p>2 A So the International Association for the Study of</p> <p>3 Pain in Budapest, Hungary, they got together some time</p> <p>4 around '94 and formulated the diagnostic criteria. And</p> <p>5 the diagnostic criteria was by process of elimination,</p> <p>6 rule-out the all other conditions that could cause this</p> <p>7 condition. Two, you have to have a history of trauma.</p> <p>8 You have to -- the patient has to have three out of the</p> <p>9 five chief complaints that goes along with complex</p> <p>10 regional pain syndrome; one is temperature change,</p> <p>11 hypersensitivity, discoloration and history of trauma.</p> <p>12 She has all of that on physical exam. You need to have</p> <p>13 three out of the five. So on physical exam she has</p> <p>14 hypersensitivity, history of trauma, there is</p> <p>15 discoloration, modeling of the skin, and temperature</p> <p>16 difference, and also weakness of the lower extremity. So</p> <p>17 she more than has all the criteria that is met by the</p> <p>18 International Association for the Study of Pain.</p> <p>19 Q What is the modeling of the skin that you just</p> <p>20 mentioned?</p> <p>21 A Modeling is purplish discoloration of the skin.</p> <p>22 Q Okay. Now, as a result of your examination, did</p> <p>23 you make findings on July 15th, 2019?</p> <p>24 A Yes, sir, I did.</p> <p>25 Q What were your findings?</p>	
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<p>1 right foot she feels tremendous sensitivity. That is</p> <p>2 called allodynia, an exaggerated response to a simple</p> <p>3 touch. If I -- if I touch the area, no big deal. But if</p> <p>4 you touch a person with complex regional pain syndrome in</p> <p>5 the right foot, they will really feel severe pain. So</p> <p>6 that is hypersensitivity, or allodynia.</p> <p>7 Q You also mentioned temperature changes, that one</p> <p>8 foot was colder than the other. Can you explain the</p> <p>9 temperature difference between the legs and the medical</p> <p>10 significance as it relates to your diagnosis?</p> <p>11 A Yes. As I explained earlier, there is only one</p> <p>12 condition, not two, not three, only one condition that</p> <p>13 gives you a temperature difference when you compare one</p> <p>14 foot to the other or one hand to the other. It usually</p> <p>15 affects the extremities, the hand or foot. So that is</p> <p>16 pathognomonic, indicative of complex regional pain</p> <p>17 syndrome. Then when you confirm it with other parts of</p> <p>18 the history and other signs and symptoms, and with the</p> <p>19 sciatic neuritis, it all comes together.</p> <p>20 Q You also mentioned that you observed color changes</p> <p>21 between the bottom of her -- by her ankles and feet, I</p> <p>22 believe; is that correct?</p> <p>23 A Yes, sir.</p> <p>24 Q And what is the medical significance of that</p> <p>25 finding, Doctor, again, as it relates to complex regional</p>		<p>1 A On physical exam?</p> <p>2 Q Yes.</p> <p>3 A I mentioned some of it. So the right foot temp</p> <p>4 was colder than the left. The skin was hypersensitive to</p> <p>5 touch. There was weakness in the lower extremity and</p> <p>6 there was a sensory deficit in the lower extremity.</p> <p>7 Q And did you formulate a treatment plan at that</p> <p>8 time, Doctor?</p> <p>9 A After I made my diagnosis, yes, I formulated a</p> <p>10 treatment plan.</p> <p>11 Q And what is the treatment plan?</p> <p>12 A What type of treatments you begin to offer the</p> <p>13 patient.</p> <p>14 Q And what did you offer here?</p> <p>15 A I offered initially some physical therapy, I</p> <p>16 offered her trigger-point injections. Complex regional</p> <p>17 pain syndrome has a comorbidity -- gluteal muscle</p> <p>18 tightness around the sciatic nerve. I was -- I tried to</p> <p>19 quiet down the tightness in those muscles that were</p> <p>20 surrounding the sciatic nerve. I tried a few of them. It</p> <p>21 gave us some short, very short temporary relief, nothing</p> <p>22 long-lasting. She had six physical therapy sessions,</p> <p>23 didn't give it much relief. Then I did steroid epidural</p> <p>24 injections. I did steroid epidural injections with the</p> <p>25 hope of with one stone killing two birds; mainly treating</p>	

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<p>1 sciatic neuritis and complex regional pain syndrome. 2 Q By the way, what is a steroid epidural block? 3 A Yes. 4 Q What is that? 5 A You inject medication right into the spine. I 6 did it from the tailbone. Medication goes all the way up 7 the spine, gets rid of the irritation. The sciatic nerve 8 is composed of the nerve roots from the L4 nerve root, 9 L5, S1, and S2. So by reducing the irritation to these 10 nerve roots I was hoping to give the patient some relief, 11 and I did. I was able to get some short temporary relief, 12 but only temporary. And I did a second one and we stopped 13 after that, and then the patient went to Dr. 14 Schottenstein. She had the lumbar sympathetic nerve 15 blocks, that is a different type of injection. 16 Q Now, the block that you gave, first of all, how 17 big is that needle, Doctor? 18 A I have it with me in my bag if you want to see 19 it. 20 Q Could you show us? 21 A It's three and a half inch long needle and it's 22 21 gauge. 23 Q Is this your bag over here, Doctor? 24 A Yes. 25 Q Can I just hand this to the witness, your Honor?</p>		<p>1 you mean by that? 2 A Well, the fact that the pain got better, the 3 burning sensation got better, the shooting pain down the 4 leg got better, and she was able to move the foot and the 5 ankle about better, walk a little better, function better, 6 that means it proved my diagnosis and clinically it helped 7 to treat that condition as well. 8 9 - Proceedings Continue Next Page - 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	
Dr. Ali Guy - Plaintiff - Direct/Mr. Harris	Page 1565	Dr. Guy - Plaintiff - Direct/Harris	Page 1567
<p>1 THE COURT: Yes. 2 (Brief pause.) 3 A So the needle looks like this (indicating). And 4 from the tailbone I insert the needle from the tailbone 5 and the medication, which is lidocaine, local anesthetic, 6 and cortisone is injected into the spine. It goes all the 7 way up the spine, breaks up the irritation and 8 inflammation to the nerve roots and it gives the patient 9 some relief. If you take medication by mouth, and if you 10 give it into the spinal -- the spinal is about ten times 11 to one hundred times more powerful and more effective. So 12 I gave her forty milligrams of cortisone. You can't give 13 that by mouth, you will shut down the patient's systems 14 and cause a massive bleed. But forty milligrams into the 15 spine is very nicely tolerated. 16 Q Doctor, did she report some temporary relief after 17 the initial block? 18 A She did. 19 Q And what is the significance of that from a 20 diagnostic perspective as it relates to your finding of 21 complex -- 22 A It was both diagnostic and therapeutic. Means 23 that it confirmed the diagnosis and it also helped with 24 the patient's pain as well. 25 Q When you say "it confirmed the diagnosis", what do</p>		<p>1 Q How long did she enjoy some temporary relief of her 2 symptoms of the burning from pain that you describe as a result 3 of the block? 4 A A few days to a couple of weeks. 5 Q And what is the significance of that, that it wears 6 off after that time period? 7 A The whole purpose is when you give it to a patient, 8 to have some temporary relief, the patient is advised to do 9 more exercises to build up the body better so that the patient 10 can withstand more stress later on. 11 And that was the plan with that and the home 12 exercises. 13 Q Now you mentioned you also did an EMG study 14 initially? 15 A Yes, sir. 16 Q What was the purpose of that? We had a description 17 of an EMG from Dr. Gutstein. 18 A Yes. 19 Q But why did you do that test as well? 20 A I did it because it was positive neurological 21 deficits. There was weakness. There was sensory abnormality 22 and there was complaints of shooting pain from the buttock down 23 the legs. I wanted to find out the cause of it to see what was 24 causing that problem. 25 Q What did you learn?</p>	

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<p>1 A That it was a sciatic neuritis inflammation of the 2 sciatic nerve.</p> <p>3 Q And is that consistent with the surgery that 4 Dr. Meislin had done a year earlier, that finding?</p> <p>5 A Yes, sir.</p> <p>6 MS. GOLDSMITH: Objection, your Honor. This is 7 beyond the scope of Dr. Guy's report and the 3101(d) 8 exchange for Dr. Guy. And it's not in his records.</p> <p>9 THE COURT: I don't think he is testifying as an 10 expert.</p> <p>11 MS. GOLDSMITH: He is. Plaintiff's counsel 12 admitted. He asked at the beginning that for him to be 13 admitted as an expert, and for the Court to recognize 14 him as an expert.</p> <p>15 MR. HARRIS: He is also being called as a 16 treating doctor.</p> <p>17 MS. GOLDSMITH: Then it has to be in his 18 records. He can't go beyond what's in his records as to 19 this question. And again, that was what we discussed 20 before trial.</p> <p>21 THE COURT: Do you have the expert disclosure?</p> <p>22 MS. SAAB-DOMINGUEZ: May I pass it up to the 23 Court?</p> <p>24 THE COURT: Yes. (Document handed to the Court at this time.)</p>	Page 1568	<p>1 surgery in his report, judge.</p> <p>2 THE COURT: Right.</p> <p>3 MR. VITA: Your Honor, may I be heard?</p> <p>4 THE COURT: Yes.</p> <p>5 MR. VITA: Your Honor, the question is not 6 whether the plaintiff had the surgery. The question is 7 causation, just as it was with Dr. Gutstein the other day.</p> <p>8 We had a whole argument, off the record out of 9 the presence the jury about Dr. Gutstein. I request 10 respectfully that we have a side-bar out of the presence 11 of the jury to discuss his opinions, regarding causation.</p> <p>12 THE COURT: All right. I will allow you to make 13 a record but seems to me this is within the scope that I 14 inform just outlined.</p> <p>15 I'll give the jury a short break.</p> <p>16 MR. VITA: Thank you, your Honor.</p> <p>17 COURT OFFICER: All rise.</p> <p>18 (Sworn jurors exit the courtroom at this time.)</p> <p>19 MR. VITA: Your Honor, may we do it out of the 20 presence of the witness as well?</p> <p>21 THE COURT: Yes. Dr. Guy, have a seat outside 22 the courtroom. Thank you.</p> <p>23 (The witness exits the courtroom at this time.)</p> <p>24 MR. VITA: May I begin, your Honor?</p> <p>25 THE COURT: Yes.</p>	Page 1570
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<p>1 THE COURT: Mr. Harris, where do you think this 2 is within the expert disclosure or do you concede that 3 it's not?</p> <p>4 MR. HARRIS: Our position judge is as a treating 5 doctor, he can testify about the causation permanency 6 without ever exchanging expert disclosure.</p> <p>7 We did this for the life care plan purpose. So 8 I am a little confused by their objection.</p> <p>9 MR. VITA: Your Honor, may we have a side-bar 10 outside of the presence of the jury to explain our 11 position?</p> <p>12 THE COURT: Let me just see what he comes up 13 with. Because if it's within the expert disclosure, there 14 is no issue.</p> <p>15 MR. HARRIS: I don't think it's in the 16 disclosure, judge.</p> <p>17 MR. VITA: It's not.</p> <p>18 THE COURT: The disclosure says that he's going 19 to testify regarding the natural flowing sequelae of the 20 injuries of the nature sustained by plaintiff.</p> <p>21 He is going to testify about plaintiff's medical 22 records, which include Dr. Meislin's surgery. He is going 23 to testify regarding the facts which he received by the 24 plaintiff.</p> <p>25 MR. HARRIS: Which included the history of</p>	Page 1569	<p>1 MR. VITA: The other day with Dr. Gutstein, we 2 moved to strike his testimony because he had no factual 3 basis for his assertion, which is really just a 4 hypothesis -- that was his word -- his assertion that the 5 surgery by Dr. Meislin caused the CRPS.</p> <p>6 Now, we are back at the same place except, we 7 are objecting earlier because this doctor did not put in 8 his report, any indication that Dr. Meislin's surgery 9 caused the plaintiff CRPS.</p> <p>10 The only mention of Dr. Meislin's surgery in 11 Dr. Guy's report is on page three, under the topic 12 diagnosis. Paragraph two, he writes, status post right 13 hip, arthroscopic surgery of the right hip, with 14 endoscopic hamstring proximal repair, bursectomy of the 15 ischial tuberosity, parenthesis, surgery as performed on 16 July 11, 2018.</p> <p>17 So your Honor, the only mention in this report 18 of -- that's the single mention of Dr. Meislin's surgery. 19 There is no mention that it had any causative effect with 20 the CRPS.</p> <p>21 So this doctor should be precluded from trying 22 to draw connections now; not to mention he has got all the 23 same problems that Dr. Gutstein had, regarding speculation 24 and lack of testimony scientific and medical facts. Plus, 25 he's not a board certified orthopedic surgeon.</p>	Page 1571

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<p>1 Thank you your Honor. 2 MS. GOLDSMITH: Judge, I would like to add to 3 that. 4 The issue is what you just read your Honor, 5 that's in the 3101(d) disclosure, it does not reference 6 causation as to the surgery. Plaintiff's counsel conceded 7 on the record that there is nothing in the disclosure or 8 in Dr. Guy's report anything about causation relating to 9 the surgery.</p> <p>10 THE COURT: I don't think he conceded that. 11 MS. GOLDSMITH: He just said there is nothing in 12 the report before you excused the jury. He concedes it's 13 not report.</p> <p>14 There is nothing in the report or the 15 3101(d)disclosure as to causation relating to the surgery. 16 That is why they retained Dr. Gutstein in March. And that 17 was the new opinion that we raised before, your Honor.</p> <p>18 And I will tell you judge, you can look at the 19 150 pages of Dr. Guy's records. There is nothing in there 20 about surgery causing CRPS.</p> <p>21 Moreover, all Dr. Guy says about causation is 22 that the CRPS is related to the accident of 23 August 19, 2014; nothing about the surgery.</p> <p>24 It's highly prejudicial for him to now come in, 25 way beyond the disclosure and his report and in his</p>	Page 1572	<p>1 testify based upon his review of plaintiff's medical 2 records. 3 MS. GOLDSMITH: That's general. That's based 4 upon the review but in 3101(d) disclosure your Honor, you 5 have to give the substance and opinions, and it's not 6 listed there. 7 THE COURT: If you didn't think it was specific 8 enough, you could have raised an objection. 9 MS. GOLDSMITH: What is there to raise an 10 objection to? Plaintiff's counsel is bound by the 3101(d) 11 disclosure and the report. 12 THE COURT: Right, but it's not limited by the 13 report. He is limited by the report plus the disclosure. 14 MS. GOLDSMITH: But you have to put in -- the 15 3101(d) is very clear. You have to put in the substance 16 and opinions that they are going to be testifying to, and 17 there is nothing in there about causation relating to the 18 surgery, not one thing. 19 And I think this is very prejudicial to allow 20 this witness to testify to this. It's not in his report 21 and it's not in the 3101(d) disclosure. 22 It still has to be there. There is nothing for 23 the defendants to have moved for. Plaintiff is bound by 24 what's in that disclosure. 25 THE COURT: Mr. Harris.</p>	Page 1574
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<p>1 records. Whether he is testifying as an expert, it's not 2 in the disclosure or report. And if he is testifying as a 3 treater, it has to set forth in his records. 4 And there is nothing in his records, which are 5 all handwritten. You can read them indicating-- 6 THE COURT: You can certainly cross examine him 7 about that. 8 MS. GOLDSMITH: But judge, he is testifying as 9 an expert here. Plaintiff moved to have the Court qualify 10 him as an expert. That's why he is testifying here today 11 as an expert. The fact that he may have been treating 12 her, that's something else. But he is -- he has no right 13 to give expert opinion outside the 3101(d) disclosure and 14 his expert report from July 15, 2019. 15 And there is nothing in there about causation 16 whatsoever regarding the surgery. 17 THE COURT: Okay. But he can testify based upon 18 Dr. Meislin's records. 19 MS. GOLDSMITH: But Dr. Meislin's records do not 20 indicate anything about CRPS. That's very different. 21 THE COURT: He can review the surgery and what 22 Dr. Meislin did and draw a conclusion from that. 23 MS. GOLDSMITH: But it has to be set forth in 24 his report or the expert disclosure, and it's not. 25 THE COURT: It does. It says he is expected to</p>	Page 1573	<p>1 MR. HARRIS: Your Honor, the disclosure itself 2 indicates that he is going to be testifying from all the 3 medical records. In his report, from the first visit, it 4 includes causation findings as it relates to the accident. 5 THE COURT: Right. 6 MR. HARRIS: The surgery was part of the 7 treatment from the accident that triggered the CRPS, 8 according to Dr. Gutstein, a neurologist who already 9 testified. That's already in the record. 10 Counsel seems to be confused. The First and 11 Second Departments have been very clear, judge. Treating 12 doctors, you don't need to exchange a 3101(d). We did it 13 because he did a life care plan. 14 But he can come in here under First and Second 15 Department Law and proffer opinions separate from all of 16 their objections. As to causation, as to permanency, about 17 any records that are in evidence as a treating doctor. 18 He treated her 21 times. So they want to 19 characterize rise him purely as an expert here. But 20 that's not the reality of this situation. So on those two 21 grounds, A, our 3101(d) covers it. And B, he is a 22 treating doctor that can give opinions regardless. I 23 don't really understand their motion. 24 MS. GOLDSMITH: The treating doctor First and 25 Second Department maintains that it has to be within the</p>	Page 1575

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<p>1 records. The information has to be within the records. 2 MR. HARRIS: No, it doesn't say that. 3 MS. GOLDSMITH: The information has to be 4 contained within the records, your Honor. This is a new 5 theory. 6 Again, we argued this with Gutstein because it 7 was a new theory and that's why we moved to preclude it. 8 Your Honor allowed it. However, we didn't move for 9 Dr. Guy. Now we are moving because it wasn't in his 10 report and it wasn't in the 3101(d) exchange. 11 I don't understand how this expert is allowed 12 now -- he is being offered as an expert and then he is 13 being offered as a treater, but it's still not in his 14 record. 15 You can't make up something -- even if he is a 16 treater, he can't just come and make up something that's 17 not in his records. 18 THE COURT: I think that's fodder for 19 cross-examination. All right. So the objection is 20 overruled. 21 MS. GOLDSMITH: Okay. I will take exception. 22 Again another new theory by another expert of plaintiff 23 that's being offered here. 24 MR. VITA: We take exception, your Honor. 25 MS. SAAB-DOMINGUEZ: I take exception, your</p>	Page 1576	<p>1 The operative report did not indicate any sciatic 2 nerve trauma, but traction, pulling, during the surgery in the 3 surrounding areas can irritate the sciatic nerve. And that's 4 exactly what happened in this case. 5 Q And is that your opinion, Doctor, within a reasonable 6 degree of medical certainty? 7 A Yes. 8 MS. GOLDSMITH: Objection. 9 THE COURT: Overruled. 10 A The answer is a, yes, and it is also consistent with 11 the patient's history that this condition happened shortly 12 after the surgery. 13 Q Doctor, besides the EMG and the blocks that you 14 mentioned over the 21 visits -- I certainly don't want to go 15 through each one-- 16 A Right. 17 Q It would take I think probably a day to do that. But 18 can you just sort of take us through the general care and 19 treatment over the last three years that you provided other 20 than what you've already mentioned? 21 A Yes. Well, I gave -- she had six physical therapy 22 sessions in my office which did not give any long lasting 23 relief. I explained to her that the purpose is not so much to 24 give you long lasting relief but it's designed to prevent 25 worsening of the condition, and to prevent atrophy, and to keep</p>	Page 1578
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<p>1 Honor. 2 THE COURT: I'll bring the jury back in and the 3 witness as well. 4 COURT OFFICER: All rise. Jury entering. 5 THE COURT: Please have a seat. 6 All right. This is continued examination of 7 Dr. Guy. 8 MR. HARRIS: Thank you. Can we have the last 9 question read back. I believe there was an objection. 10 THE COURT: Yes. The objection was overruled? 11 You can read back the last question. 12 (Requested portion read) 13 Q You may answer. 14 A I am sorry. I lost my train of thought. The 15 transcription one more time. 16 (Requested portion read) 17 Q Can you explain that, Doctor? 18 A Yes. So the patient had surgery in the vicinity of 19 the sciatic nerve in the buttock area. The sciatic nerve exits 20 between the piriformis muscle and the gluteus muscle. 21 This is the psychotic nerve. And when you have 22 surgery, and you do manipulation in the vicinity of the sciatic 23 nerve, even though it is intact at the time of surgery, there 24 is still -- if you just pull the sciatic nerve a little bit, it 25 will become inflamed and irritated.</p>	Page 1577	<p>1 the muscles strong. 2 And the purpose of the epidural was to give her some 3 temporary relief so she could exercise more at home and keep 4 her body into better condition, and again, to prevent her body 5 from deconditioning. 6 And the 21 times I saw her, was to see how she was 7 doing, documenting what was working, what was not working and 8 some of those visits were -- I gave her trigger point 9 injections into the gluteus maximus muscle, and around those 10 areas to try to relax that tightened fibrotic muscle. 11 Q The gluteus maximus, that's the buttocks, right? 12 A Yes, sir. 13 Q Did the trigger point injections provide any relief 14 for her? 15 A Very short temporary relief. 16 Q Doctor, also you noted in your records something 17 about her gait? 18 A Yes. 19 Q Can you explain that please? 20 A Yes. The way she walked, she walked with a limp 21 antalgic gait. Antalgic gait means she walked with a limp, and 22 many times with a straight cane to assist her. 23 As the condition got worse, the leg became weaker and 24 weaker and she had to use a cane. 25 Q Now, Doctor, did you also review some treatment</p>	Page 1579

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<p>1 records related to a motor vehicle accident that the patient 2 had from 2017?</p> <p>3 A Yes, sir, I did.</p> <p>4 Q Okay.</p> <p>5 And was there anything in those records that you 6 reviewed that would indicate a cause or a relationship to the 7 complex regional pain diagnosis that you made in connection 8 with this case?</p> <p>9 A Absolutely none whatsoever.</p> <p>10 Q And why is that, Doctor?</p> <p>11 A The car accident -- the injuries were mostly to the 12 head and the neck and a little bit to the upper back; nothing 13 with the lower extremities.</p> <p>14 Q Also, Doctor, there was I believe four, five weeks 15 postoperatively, she testified and there has been some evidence 16 in the case that she fell taking a shower.</p> <p>17 First of all, did you see any treatment related to 18 that fall in the shower?</p> <p>19 A No, sir. In fact, when she went back to see 20 Dr. Meislin, he wanted to make sure all the sutures were still 21 intact, and he found no evidence of any exacerbation or any 22 worsening, or any new problems. And I took a lot more history 23 from her, especially this morning to confirm that. And yes, 24 there was no other new injuries.</p> <p>25 Q Well, did you know about the shower incident when it</p>		<p>1 That's based on optimal level of care, providing that 2 the patient is able to afford all these treatments.</p> <p>3 So the plan was that this condition is permanent and 4 progressive. She is with a permanent partial disability. It 5 means she could still work, and she still is working, but on a 6 limited capacity.</p> <p>7 The condition is progressive, which means that it 8 will worsen over time. There is no cure for this condition.</p> <p>9 It worsens over time because it may travel from the 10 right side to the left side, and travel to both upper 11 extremities, involving all four extremities, involving the 12 cardiac and the vascular structures as well.</p> <p>13 So it has to be monitored. You can't just leave it 14 alone and say, good-bye. You are left with a permanent 15 disability. There is nothing else we can do. That's not the 16 way to treat this patient.</p> <p>17 So she will need a team -- a team approach to this 18 condition. She would need a neurologist, a physiatrist, and 19 physical therapist, and interventional pain management 20 specialist for the reasons I will go into later on.</p> <p>21 So she would need to see a neurologist at least six 22 to eight times per year to follow the neurological conditions.</p> <p>23 And the cost for each visit is two hundred dollars.</p> <p>24 She would need to see a physiatrist like myself, 25 trained in interventional pain management and Chronic Regional</p>	
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<p>1 occurred back at the time you initially saw her? Was it even 2 mentioned to you?</p> <p>3 A No, sir. It was irrelevant.</p> <p>4 Q Doctor, I want to ask you -- I want to move over to 5 the life care plan that you created in connection with this 6 case.</p> <p>7 Can you tell us what the plan is and explain it for 8 us with the jury. And keep in mind, Doctor, we already had a 9 Dr. Dwyer, who came in earlier to explain the present value of 10 the amounts that you have recommended here. But I am going to 11 ask that you tell us what you are recommending and why?</p> <p>12 MR. VITA: Objection. Leading.</p> <p>13 Move to strike.</p> <p>14 MR. HARRIS: What you are recommending and why?</p> <p>15 MR. VITA: No, all about Dr. Dwyer.</p> <p>16 THE COURT: The jury will disregard all the 17 preliminary statements.</p> <p>18 MR. HARRIS: Let me rephrase.</p> <p>19 Q Can you explain the life care plan for us?</p> <p>20 A Yes. First of all, the definition of a life care 21 plan is a plan designated by a physician to indicate the 22 patient's overall diagnoses, the prognosis, which means I look 23 into the future what the future holds for the patient, what 24 types of medical treatments the patient would have, and what 25 their cost would be over her lifespan.</p>		<p>1 Pain Syndrome at least 12 times per year, to monitor her 2 overall skeletal condition. Make sure it hasn't spread from 3 the right side to the left side. Make sure it hasn't spread to 4 the upper extremities, and make sure it has not become 5 systematic, to assess the need for physical therapy, assess the 6 need for referral to other specialists and other physiatric 7 treatments, the cost is two hundred dollars.</p> <p>8 She would need to have at the minimum, one physical 9 therapy session per week, not to cure the problem because there 10 is no cure for this problem. At this point, it's mostly to 11 prevent any further deconditioning, any further weakness of the 12 already weakened muscles, to try and improve the gait and 13 prevent it from getting weaker and worse, because if the gait 14 is getting weaker, she is going to fall down and wind up in a 15 wheelchair.</p> <p>16 So we want to avoid that by doing the physical 17 therapy.</p> <p>18 Seventeen and the cost for each physical therapy 19 session is \$150. She would need a trial of a lumbar 20 sympathetic nerve block, which she already had with 21 Dr. Schottenstein. I believe she had five or six with 22 Dr. Schottenstein. And each one gave her some relief.</p> <p>23 That being said, she would need nine per year. The 24 cost for each lumbar sympathetic nerve block is about \$2,000.</p> <p>25 The outpatient surgical facility for each is three thousand</p>	

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<p>1 dollars. So that's five thousand times nine. That would be 2 \$45,000.</p> <p>3 She would need three lumbar or corticosteroid 4 epidural injection for the sciatic neuritis and for the right 5 lower extremities Complex Regional Pain Syndrome, in addition 6 to the lumbar sympathetic nerve blocks. The cost is \$2,000 for 7 each injection. And the outpatient surgical facility fee for 8 each would be \$3,000.</p> <p>9 So that would be \$5,000 times three. That would be 10 \$15,000 per year.</p> <p>11 She would needed medications for neuropathic pain 12 such as Lyrica, L-Y-R-I-C-A. Lyrica is very expensive. It's 13 five dollars a pill. She would need two a day. And that will 14 be \$10 a day.</p> <p>15 And if she takes 200 milligrams, that will be \$20 per 16 day. She will also need psychological evaluation because of 17 the chronic pain which is leading to anxiety and depression.</p> <p>18 She would need to see a psychologist or psychotherapy 19 at least once a week. The cost is \$300 for one hour session.</p> <p>20 And if the condition worsens, she will need a trial 21 test for Dorsal Column stipulation implant.</p> <p>22 That is a device that has a lot of wires. It is 23 attached to the spine. It goes on top of the spinal cord and 24 spinal nerve roots.</p> <p>25 The trial is only for seven days. The patient tries</p>		<p>1 it at that level, you are blocking some of the painful stimuli 2 going to the brain. At the best, it works maybe 30 to 3 50 percent, at the best. It's never one hundred percent. 4 So that's how it works.</p> <p>5 Q When you say, at best, it's three to fifty percent? 6 A In terms of pain relief.</p> <p>7 Q In terms of reducing her pain?</p> <p>8 A Yes, sir.</p> <p>9 Q What do you do for the other 50 to 70 percent of her 10 pain?</p> <p>11 A Epidurals, neuropathic pain medications, such as 12 Lyrica, physical therapy, biofeedback, psychotherapies. They 13 show her special relax techniques to diminish the pain.</p> <p>14 If your anxiety is this much and your only pain is 15 only this much, the perception of pain will be this much 16 (indicating). By reducing the anxiety, reducing the 17 depression, the pain level will diminish automatically.</p> <p>18 Q Doctor, I want you to assume that Kristen Salomon 19 testified that to date, she hasn't sought out any 20 psychotherapy, other than talking to her mom on the phone 21 everyday, who is in essence, her therapist.</p> <p>22 And when further asked on whether she would seek 23 psychotherapy, she said that if she determines her condition is 24 permanent, like it's just never going to getter, that she is 25 then going go for the treatment.</p>	
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<p>1 it to see if it works. If it works then a permanent placement 2 is made. The trial is about ten thousand dollars. And if it 3 works, she would need a permanent Dorsal Column Stimulation 4 Implant. That is about \$35,000, including all the associated 5 expenses. And the expenses to monitor the stimulator is about 6 \$5,000 per year.</p> <p>7 The wires need to be readjusted. They need to be 8 reprogrammed. So that's \$5,000 for the year. And the average 9 longevity of such a device is about seven years. So every 7 10 years, there will be another \$35,000.</p> <p>11 Q Doctor, the Spinal Cord Stimulator, this last item 12 that you mentioned, how is that implanted? I think you used 13 the word, implanted. How is that done?</p> <p>14 A First, you are talking about the trial or the 15 permanent one?</p> <p>16 Q The permanent one.</p> <p>17 A So you have the purpose of the Spinal Cord Stimulator 18 is you have a generator. It goes into the buttock and you have 19 guide wires very, very long.</p> <p>20 They go all the way up the spine. They are attached 21 to the spinal cord. The back of the spinal cord blocks the 22 transmission of pain to the brain by stimulating it. You are 23 blocking the pain from the lower extremity going through the 24 brain.</p> <p>25 The spinal cord is your relay station and by blocking</p>		<p>1 I want you to further assume, Doctor, that Dr. Dwyer, 2 the Economist in this case, came in and projected psychotherapy 3 at two times a week, but your report had indicated at least one 4 time a week?</p> <p>5 A Yes, sir.</p> <p>6 MR. VITA: Objection. Compound, your Honor.</p> <p>7 MR. HARRIS: I haven't asked the question yet.</p> <p>8 MR. VITA: He gave an answer.</p> <p>9 THE COURT: He just said, yes, sir. He was 10 acknowledging what Mr. Harris said.</p> <p>11 Q Do you have opinion, Doctor, within a reasonable 12 degree of medical certainty as to how many psychological visits 13 per week Kristen Salomon is going to need once in her own mind 14 she determines, hey, you know what? This thing is not getting 15 any better and I got to learn how to deal with this for the 16 rest of my life?</p> <p>17 MS. GOLDSMITH: Objection.</p> <p>18 MR. VITA: Objection.</p> <p>19 THE COURT: Sustained.</p> <p>20 Q Well, Doctor, do you have an opinion within a 21 reasonable degree of medical certainty as to the amount of 22 psychological treatment Kristen Salomon will need in the future 23 based on your report that says at least one time a week?</p> <p>24 A Yes, sir.</p> <p>25 Q What is your opinion?</p>	

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1       A Ideally, it should be at least twice, minimum, once a 2 week.		1       in the past.	
3       Q Okay.		2       MS. GOLDSMITH: I will argue it's also not set 3 forth in the expert disclosure. So he is not here 4 treating her. He is doing this as an expert. He is not 5 doing this as a treating physician. He is doing this as 6 an expert. Nowhere is it in expert disclosure that this 7 is what he is going to do.	
4       By the way, what is the purpose of the -- I mean I 5 guess people could guess, but let's just hear it from you. 6 What is the purpose of the psychological treatment that you are 7 prescribing here for her future?		8       THE COURT: I think the expert disclosure says 9 it's based on his examination of the patient.	
8       A To reduce her anxiety, reduce her depression, by 9 lending a sympathetic ear, letting her voice her frustrations, 10 voice her concerns, and her disabilities and her impairments to 11 another health care professional, that by talking about it 12 sometimes, it reduces the level of anxiety and depression.		10      (Continued on the next page.)	
13      If it does not, then you have to refer to a 14 psychiatrist for medications for anxiety and depression.		11	
15      Q Well, over your 21 visits over the last three years, 16 Doctor, have you, yourself, made any observations?		12	
17      A Yes.		13	
18      Q Of Kristen Salomon being a depressed?		14	
19      A Very depressed. Her affect is flat, which means that 20 she is not bubbly. She answers the questions with very slight 21 answers. And she gets agitated very quickly.		15	
22      I witnessed that at the surgery center once when she 23 came for the epidural injections. They wanted to put an IV 24 into her and they tortured her putting the IV. She got so 25 frustrated, she left.		16	
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1       I tried to convince her to stay. She starts to cry. 2 She got very emotional. She says it's best that I leave. I 3 don't want to make a scene.		1       MS. GOLDSMITH: Past examination, coming to 2 the court. All of the information that he has --	
4       I said, okay. We'll talk later.		3       THE COURT: Yes -- physical examination on 4 July 15th --	
5       Q Doctor, you mentioned certain signs of the Complex 6 Regional Pain earlier. With the Court's permission, could you 7 show the jury her right leg as compared to the left leg to 8 explain the difference in the modeling that you mentioned, the 9 temperature and so forth. Can you do that for us?		5       MS. GOLDSMITH: Yes.	
10      MR. VITA: Objection, your Honor.		6       MR. HARRIS: Your Honor, as her treating 7 doctor, it has nothing to do with what is in the 8 disclosure, and counsel -- counsels keep repeating the 9 same objection twice, three times, about it not being 10 in the disclosure. He is the treating doctor. He is 11 allowed to examine her in front of the jury and show 12 why he made the findings he did.	
11      THE COURT: Grounds.		13      THE COURT: Right. And plaintiff's presence 14 before the jury is part of the evidentiary --	
12      MR. VITA: He is going to conduct a medical 13 examination in front of the jury. That is inappropriate.		15      MR. HARRIS: Absolutely.	
14      THE COURT: Why?		16      THE COURT: Overruled.	
15      Overruled.		17      MS. GOLDSMITH: I take exception to this, 18 Judge. This is again not -- he is a treating physician 19 but his treatment is up until now. He is now 20 conducting I guess a new examination in the courtroom 21 and -- I mean, this is just improper and --	
16      MR. VITA: Number one, we don't have that in his 17 medical report, number one.		22      THE COURT: Well, I was going to ask 23 Mr. Harris to lay a foundation to the contrary.	
18      THE COURT: You don't what?		24      MR. VITA: We take exception, your Honor.	
19      MR. VITA: He is conducting a new independent 20 medical examination of the plaintiff in front of a jury. 21 That is not something that our doctors are going to be 22 afforded. They are not going to be permitted to do that.		25      MS. SAAB-DOMINGUEZ: We join, your Honor.	
23      THE COURT: They could do the same thing.			
24      Mr. Harris, just lay a foundation of what the 25 doctor is going to do is consistent with what he has done			

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<p>1 Q Doctor, I am not asking that you examine Kristen 2 Salomon here, I am just asking you to point out to the jury 3 the signs, the physical findings you made that were 4 apparent to you that led to your diagnosis of complex 5 regional pain.</p> <p>6 A Yes.</p> <p>7 Q That is what I am asking you to do.</p> <p>8 A Yes. On 2/17/22 I examined her with an infrared 9 thermometer that showed a significant temperature change 10 of twelve degrees Farenheit. That is massive. If I could 11 use this infrared thermometer to document the temperature 12 change from the right to the left side?</p> <p>13 Q Sure. Can you also show us, Doctor, the 14 discoloration between the feet and what that means?</p> <p>15 A Yes.</p> <p>16 MR. VITA: Your Honor, I would object to the 17 thermometer as well. There's been no showing that --</p> <p>18 THE COURT: I don't think he is purporting to 19 use the thermometer.</p> <p>20 MS. GOLDSMITH: Yes, he is, your Honor.</p> <p>21 THE COURT: He is saying his examination in 22 February showed --</p> <p>23 MR. VITA: I would object to him using the 24 thermometer now, your Honor. There is no showing that 25 the thermometer is calibrated, tested or anything like</p>	Page 1592	<p>1 MS. GOLDSMITH: Objection, your Honor. He 2 just testified to what he found. Most recently is 3 February. I don't understand why --</p> <p>4 THE COURT: I don't think he is now 5 testifying about the temperature.</p> <p>6 MS. GOLDSMITH: Yes. That is what he just 7 said; if I could show the jury.</p> <p>8 THE COURT: Right, but I am not sure what he 9 is intending to show about the foot.</p> <p>10 Q Well, let's specifically explain, Doctor, for the 11 Court, jury and defense counsel; what specifically would 12 you like to show the jury with regards to Kristen Salomon's 13 foot?</p> <p>14 A I would like to show the discoloration. I would 15 like to show how the foot and ankle moves, and palpate the 16 foot to see if there is any hypersensitivity or any 17 significant temperature change. Just the back of my hand.</p> <p>18 Q How would you show the difference in temperature 19 change, Doctor?</p> <p>20 A It's so clearly evident that anyone that sees it 21 could clearly see the difference. If I may be allowed, I 22 could explain that.</p> <p>23 Q Sure. Please explain.</p> <p>24 THE WITNESS: Judge, may I step down to show 25 the patient's foot for the jury?</p>	Page 1594
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<p>1 that.</p> <p>2 MR. HARRIS: Isn't the defense here that 3 there was no temperature change, your Honor?</p> <p>4 MR. VITA: Objection to the colloquy, your 5 Honor.</p> <p>6 THE COURT: I think you have what you need on 7 the temperature change.</p> <p>8 MR. HARRIS: Sorry, Judge?</p> <p>9 THE COURT: You have -- you want to ask him 10 if he examined her since February, go ahead.</p> <p>11 MR. HARRIS: Sure.</p> <p>12 Q How many times did you measure the temperature 13 between her right and left leg over the twenty-one visits, 14 Doctor?</p> <p>15 A Once.</p> <p>16 Q If you know.</p> <p>17 A Twice.</p> <p>18 Q Twice. Okay. And on both of those occasions what 19 were the results?</p> <p>20 A The left foot temperature was 94.4 degrees 21 Farenheit. The right side was 82 degrees Farenheit. That 22 is a difference of twelve degrees. That is huge. It's 23 massive. And when you see it, it's clearly evident that 24 what I am trying to say, if I may be allowed to show the 25 jurors her examination of the foot.</p>	Page 1593	<p>1 THE COURT: Yes.</p> <p>2 MS. GOLDSMITH: And objection as to -- what 3 is the ruling on using this thermometer that he is 4 referring to?</p> <p>5 THE COURT: He is not going to use the 6 thermometer, as I understand it.</p> <p>7 MR. HARRIS: I would like to him to, Judge. 8 It's up to the Court --</p> <p>9 THE COURT: I think you could make a point 10 about the calibration -- maybe you could do that.</p> <p>11 Q Let me ask you that, Doctor. Counsel has raised 12 an objection as to the calibration of your thermometer. 13 What say you about the calibration of your 14 thermometer?</p> <p>15 A I just opened this up February 17th. I could 16 show the calibration on my own hands. The temperature 17 with the left and right will be about the same. That is 18 how you test for calibration. These units do not need to 19 be calibrated every two weeks. These units are designed 20 to last for a long, long time. Again, calibration is on 21 your own hands. I could show that on my own two hands.</p> <p>22 THE COURT: And, also, the point is to show 23 the difference. It's not whether it's 94 or 96. It's 24 whether it's 94 versus another temperature in another 25 extremity.</p>	Page 1595

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<p>1           MR. HARRIS: Exactly.      2           THE COURT: Overruled.      3           MS. GOLDSMITH: Note the objection.      4           MR. VITA: I join in that, your Honor.      5           MR. HARRIS: May I have Ms. Salomon come up      6           to a chair, Judge?      7           THE COURT: Yes.      8           THE WITNESS: Judge, may I be allowed to step      9           down?      10           THE COURT: Yes.      11           MR. HARRIS: I would just ask that the jurors      12           in the back be able to move to see what the doctor is      13           showing.      14           THE COURT: I think they could stand up.      15           That is fine.      16           A    So, first of all, the calibration, temperature on      17           my hand is 86.6. That was the left hand. Right hand is      18           85.2. One to two degrees is okay. So it's perfectly      19           calibrated.      20           Watch what happens. This is the left foot. 92.      21           92. 92. 92.      22           Now we go to the right foot. 80. 80. 80. 80.      23           80. 80.      24           Now, examining -- when you see the right foot, the      25           coloration of the left foot, nice clear white. Here is</p>	<p>1           Do you have any opinions about that      2           A    Yes. I don't want to sound --      3           MS. GOLDSMITH: Objection, Judge, as to what      4           another potential expert may testify to.      5           THE COURT: The question is sustained -- the      6           objection is sustained. Rephrase.      7           Q    Doctor, is what you see on the right foot any type      8           of rash?      9           A    There is no rash. That is part of the complex      10           regional pain syndrome. It is the modeling, the skin      11           discoloration from the complex regional pain syndrome.      12           Whoever says that that is a rash, they don't really      13           understand complex regional pain syndrome because it's a      14           very difficult diagnosis to make and the assertion -- and      15           it's sometimes confusing with other conditions.      16           Q    Thank you, Doctor.      17           A    See, it's becoming more and more discolored right      18           now.      19           MR. VITA: Your Honor, there is no question      20           pending.      21           THE COURT: Yes. Wait until another      22           question.      23           MR. VITA: Move to strike, your Honor.      24           THE COURT: The jury will disregard Dr. Guy's      25           last statement.</p>		
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<p>1           beginning to be a little purplish discoloration. The longer      2           it's exposed to cold air the more purplish it gets. When you      3           touch it, she tries to move away because it hurts. It's ice      4           cold. Ice cold. And the movements -- bring the ankle up and      5           down.      6           (Brief pause.)      7           A    The ankle range of motion is reduced. The muscle      8           power is massively reduced. Okay? And the muscle on the      9           right leg are replaced with fatty tissue and water. There      10           is no muscle tone as compared to the left. The left has      11           much more muscle tone than the right. How are you going      12           to walk normally with all these deficits? It's      13           impossible. This condition has lasted since 2014, and      14           it's eight years later. It's permanent and progressive.      15           This thermometer takes the guesswork out of all the      16           doctors that come and say there is no ice cold      17           temperature. Nobody tested with an infrared thermometer.      18           That is it.      19           Q    Doctor, I want you to assume -- stay for one      20           second, Doctor.      21           A    Yes.      22           Q    I want you to assume that a Dr. Saberski for the      23           defendants is coming in and has already opined in a report      24           that the redness that you see on her right foot is, in      25           fact, some sort of a rash possibly.</p>	<p>1           MR. HARRIS: Sure.      2           Q    What are you observing as to the coloration now      3           between the feet?      4           A    The discoloration is becoming a little more      5           pronounced.      6           Q    Thank you, Doctor.      7           MR. HARRIS: Thank you, Kristen.      8           (Whereupon, Dr. Ali Guy, the witness herein,      9           resumes the stand at this time.)      10           Q    Doctor, what is a prognosis?      11           A    A look to the future, what the future holds for      12           the patient's diagnosis.      13           Q    And what is your prognosis for this patient?      14           A    The patient is left with a permanent disability.      15           There is no cure for this condition. It has now been      16           approximately eight years after. This condition is      17           progressive. It will worsen over time.      18           Q    Doctor, as her treating physician -- as her      19           treating physician, can you tell us what you expect Kristen      20           Salomon, who is now forty-eight years old, what you expect      21           her life to be like when she is fifty-eight, sixty-eight      22           and seventy-eight years old? Take us through what you      23           expect to see with her with this complex regional --      24           A    Number one, she won't be able to do the normal      25           activities that a young lady should be able to do; dress</p>		

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1 up nice with heels, go to parties, to socialize, to meet a 2 boyfriend, to have the intimacy that normal people deserve 3 and should have. She has not had any of these things. 4 She's basically been introverted, house-confined, goes to 5 the medical doctors and back. And she is depressed, 6 anxious. Any slight little thing gets her upset like you 7 just saw today. And the quality of life will diminish 8 over time. And the treatments, they are only partial 9 ability to control the pain. 10 None of these treatments will be one hundred percent 11 in alleviating all of her pain. With the dorsal column 12 stimulator the best you could hope for is thirty to fifty 13 percent in conjunction with other treatments. And over time 14 the weakness will worsen and worsen and she'll eventually be 15 house-confined and confined to a wheelchair. 16 Q And, well, Doctor, I want you to assume that 17 Kristen Salomon told this jury when she testified that she 18 still was able to treat a few patients a week, and that she 19 does so, A, because she loves to help people, and B, to get 20 out of her apartment and not focus on her injury. 21 How long do you expect her to be able to continue 22 like that treating a few patients a week? 23 MS. GOLDSMITH: Objection, your Honor, to the 24 entire -- let him just ask the question at the end. 25 How long do you expect? He is summarizing --	1 A Good morning. 2 Q My name is Pamela Goldsmith. You never met me; is 3 that correct? 4 A I believe that is correct. 5 Q You never did any work for my firm, Harris Beach, 6 myself, correct? 7 A I believe not. 8 Q You have not done any work for any of these 9 defense firms, correct? 10 A I don't know who they are. 11 Q Shook Hardy Bacon? 12 A I don't believe so. 13 Q Goldberg Segalla? 14 A I believe I did some plaintiff work for them. 15 They do Workman's Comp. 16 Q Representing a plaintiff for them, correct? 17 A All I know is I treated some patients that have 18 worked with -- and I see them deposing me from time to 19 time on Workman's Comp depositions. 20 MS. SAAB-DOMINGUEZ: Your Honor, objection to 21 the characterization that the firm has retained Dr. Guy 22 for any reason. 23 THE COURT: I don't think he testified that 24 anyone had retained your firm. He just said he 25 observed your firm.	Page 1601	Page 1603
1 MR. HARRIS: Is this an objection to form? 2 MS. GOLDSMITH: It's -- 3 MR. HARRIS: Or are we having a speaking 4 objection? 5 MR. VITA: It's also compound. 6 THE COURT: It may be compound. Could you 7 simplify it a little bit? 8 MR. HARRIS: Sure. 9 Q What do you expect her work life to look like in 10 the future, Doctor? 11 A It would diminish as time goes on to the point 12 that she will become permanently and totally disabled. 13 Q Doctor, I want to thank you. 14 MR. HARRIS: I have no further questions. 15 A Okay. 16 THE COURT: Cross-examination. 17 MR. VITA: Yes, your Honor. 18 (Brief pause.) 19 MS. GOLDSMITH: Your Honor, I will start 20 today. 21 THE COURT: Okay. 22 CROSS-EXAMINATION 23 BY MS. GOLDSMITH: 24 Q Good morning, Dr. Gutstein -- good morning, Dr. 25 Guy.	1 MS. SAAB-DOMINGUEZ: Okay. 2 THE COURT: Overruled. 3 Q You talked about going to Queens College, right? 4 A Yes. 5 Q You didn't graduate from Queens College, right? 6 A I did not. 7 Q And you talked to Mr. -- Mr. Harris was asking you 8 questions about your sub-par GPA. You said you had a 9 sub-par GPA? 10 A That's correct. 11 Q Actually, the GPA was 2.26, correct? 12 A Yes. 13 Q You seen your transcript from there, correct? 14 A That's correct. 15 Q And when you left Queens College you first went to 16 one medical school in the Dominican Republic, correct? 17 A Yes. 18 Q And -- 19 A UCE. 20 Q You Brent went to Universidad Central del Este? 21 A Yes. 22 Q Initially, correct? 23 A Yes. 24 Q And then you went to the second one that you 25 talked about?	Page 1602	Page 1604

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<p>1 A Yes, a much better school.      2 Q And that is what you graduated from, the second      3 medical school, right?      4 A Yes.      5 Q You now you talked about doing three residencies      6 but you never completed three whole residencies; is that      7 correct?      8 A I did not.      9 Q As a matter of fact, you talked about the internal      10 medicine residency, that is three year residency and you      11 never completed that, correct?      12 A My prerequisite for physical medicine and rehab.      13 Q It's a little misleading when you said you did      14 three residencies. You didn't complete --      15 MR. HARRIS: Objection; argumentative.      16 THE COURT: Overruled.      17 MS. GOLDSMITH: It's Cross-examination.      18 A I said I did eighteen months of internal      19 medicine.      20 Q But an internal medicine residency though, if you      21 did complete it, it would be three years; is that correct?      22 A If you complete it, yes, it's a three year      23 program.      24 Q You never completed a surgical residency; is that      25 correct?</p>	Page 1604	<p>1 surgery you rotate with different departments.      2 Q Okay. But my question was, when -- do you recall      3 when -- let me ask you this, Doctor; the last time you did      4 any kind of surgery, assisting in surgery was during your      5 training; is that correct?      6 A Yes.      7 Q Okay.      8 A That is correct.      9 Q And your training was in -- when did that training      10 finish? Give us a year.      11 A '82. Or '83.      12 Q So the last time you assisted in any kind of      13 surgery was thirty-nine, forty years ago?      14 A Yes, that's correct.      15 Q And you are not a radiologist, correct?      16 A No, ma'am, I am not.      17 Q You don't hold yourself out as a radiologist,      18 correct?      19 A I do not.      20 Q In terms of surgery, you do not attend surgery      21 conferences that are specific for surgeons, correct?      22 A That is correct.      23 Q You are not in any department of surgery at any      24 hospital that you ever been at; is that correct?      25 A That is correct.</p>	Page 1606
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<p>1 A That's correct, because I never wanted to be a      2 general surgeon.      3 Q Okay. Well, whether you wanted to or not, when      4 you said you did do part of a surgical residency, you never      5 completed it, correct?      6 A That's correct.      7 Q And surgery residency, if you did it, would have      8 been five years, correct?      9 A If you wanted to be a general surgeon, yes, five      10 years.      11 Q You did about one year; is that correct?      12 A Yes, that's correct.      13 Q And you never practiced in surgery, correct?      14 A I never what?      15 Q Practiced as a surgeon, correct?      16 A Oh, as an assistant, but not as a general      17 surgeon.      18 Q Well, as an assistant, isn't it correct that the      19 last time you did any surgery was during your rotation for      20 three months in surgery?      21 MR. HARRIS: Objection. Relevancy, Judge.      22 A No.      23 THE COURT: The -- if there is an objection,      24 it's overruled. The doctor answered the question.      25 A I did one year of general surgery. And general</p>	Page 1605	<p>1 Q And you were not a neurologist, correct?      2 A That is correct.      3 Q The board-certifications that you talked about is      4 only in physical medicine and rehabilitation; is that      5 correct?      6 A That is correct.      7 Q That is the American Board of Physical Medicine      8 and Rehabilitation --      9 A Yes, that is correct.      10 Q And there are other board-certifications that are      11 available for neurology, correct?      12 A Yes.      13 Q For surgery, correct?      14 A That is correct.      15 Q And you wouldn't even be qualified to sit for      16 those Boards, fair?      17 A Yes. Undisputed.      18 Q When you were Director of the Neuromuscular      19 Equipment Clinic at Hospital for Joint Diseases, fair that      20 it was primarily pediatric patients?      21 A It was mixed.      22 Q But primarily pediatric; is that correct?      23 A Yes, that is correct.      24 Q The office that you talked -- I think Mr. Harris      25 asked you about the three offices that you work out of.</p>	Page 1607

Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1608	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1610
<p>1 A Yes.      2 Q You recall that?      3 A Yes.      4 Q And so in those offices, am I correct that your      5 only diagnostic equipment that you have in there is an EMG?      6 A In my New York City and Westbury office, yes. In      7 the Bronx we have many other equipment.      8 Q But that is not your office?      9 A That's correct.      10 Q You are just a contractor basically?      11 A I am an employee.      12 Q Employee.      13 A Yes.      14 Q Okay.      15 A That's correct.      16 Q All right.      17 (Brief pause.)      18 Q Now, your role as Clinical Assistant Professor at      19 N.Y.U. School of Medicine, I think you said you held that      20 position -- was it since 2006?      21 A No, Clinical Instructor was from '06 to November      22 of 2019. In 2019 I was promoted to Clinical Assistant      23 Professor.      24 Q Okay. And you said to be promoted you need -- you      25 have to have a lot of teaching abilities, you need to be</p>	Page 1608	<p>1 to do?      2 A A lot more publications, notoriety at an      3 international level.      4 Q You never been an Associate or Full Professor at      5 any institution, correct?      6 A That is correct.      7 Q Is there a special board-certification for the      8 performance of EMG?      9 A There is.      10 Q And is that also -- you are familiar with that      11 American Board of Medical Specialties?      12 A I am.      13 Q And that is where the different Boards that we      14 were talking about come from, like your Board comes from      15 that and it's sanctioned through the American Board of      16 American Specialties; is that correct?      17 A Yes.      18 Q And have you heard of the American Board of      19 Neuromuscular and Electrodiagnostic Medicine?      20 A Yes, I have.      21 Q Are you board-certified in that --      22 A In that area, I am not.      23 Q You never sat for that Board, correct?      24 A Never did.      25 (Brief pause.)</p>	Page 1610
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1609	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1611
<p>1 board-certified, you have to have good evaluation from      2 other healthcare providers from that facility; is that      3 correct?      4 A And from the students you are teaching and other      5 extracurricular activities, lectures, publication, et      6 cetera.      7 Q And in your forty years of practice you went from      8 clinical instructor to clinical assistant; is that correct?      9 A Clinical Assistant Professor.      10 Q Now, the jury has heard a little bit about this,      11 but there are other ranks that you could secure within      12 academic appointments, correct?      13 A If you wanted to be in the academic field, yes.      14 Q Okay.      15 A The next one is --      16 Q I am just asking you --      17 A The answer is yes.      18 Q The next one would be Associate; is that correct?      19 A Yes.      20 Q And then Full Professor; is that correct?      21 A Yes.      22 Q And in order to be Associate, what do you need to      23 do?      24 A Again, you -- more publications, more teaching.      25 Q And then to be a Full Professor, what do you need</p>	Page 1609	<p>1 Q You ever perform one of these litigation medical      2 examinations in an attorney's office?      3 A To the best of my recollection, no.      4 Q Why not?      5 A I don't do medical examinations in an attorney's      6 office.      7 Q Why not?      8 A That is not where an examination takes place.      9 Q Why doesn't an examination take place in an      10 attorney's office?      11 A Why can't you have a restaurant in a courtroom?      12 Similar ridiculous question, ridiculous answer.      13 Q Okay. You have been doing expert work, I think      14 you testified -- you testified in court, right?      15 A Many times.      16 Q This is not unusual for you coming in here and      17 sitting and answering Cross-examination questions, correct?      18 A It's not unusual, no.      19 Q You have done it hundreds of times, correct?      20 A That's correct.      21 Q And I think in one -- if I am correct, you -- in      22 the -- you have been doing expert work since about 1980?      23 A '81 I was still in residency. 1991.      24 Q Okay. Perhaps there is a typo in the transcript,      25 but let me --</p>	Page 1611

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<p>1 A I didn't type those transcripts.</p> <p>2 Q Perhaps. I just want to reference it. Okay.</p> <p>3 So -- so if anything says '81 that would be a typo because</p> <p>4 you were still in training; is that correct?</p> <p>5 A I still didn't have my license until 1985.</p> <p>6 Q When did you start doing expert work?</p> <p>7 A Around 1990, '91.</p> <p>8 Q And the expert work that you have done is -- each</p> <p>9 of the offices you work at, you have patients that are</p> <p>10 involved in litigation and -- in all three of those</p> <p>11 offices; is that correct?</p> <p>12 A Some, yes.</p> <p>13 Q And you have some patients that -- am I correct</p> <p>14 you have some patients that are referred to you by</p> <p>15 attorneys that you start treating; is that correct?</p> <p>16 A That is correct.</p> <p>17 Q And there are times that you refer patients that</p> <p>18 come to you to attorneys, conversely; is that correct?</p> <p>19 A If a rare occasion comes up, yes.</p> <p>20 Q And in 1990 to 1991 when you started doing this</p> <p>21 type of expert work in this arena, that includes doing</p> <p>22 medical exams, correct?</p> <p>23 A Yes.</p> <p>24 Q And it includes writing reports, correct?</p> <p>25 A Yes.</p>		<p>1 total.</p> <p>2 A I have no idea.</p> <p>3 Q Over five hundred?</p> <p>4 A No. Nowhere near five hundred.</p> <p>5 Q Over one hundred?</p> <p>6 A Nowhere near one hundred.</p> <p>7 Q Over fifty?</p> <p>8 A No.</p> <p>9 Q Okay.</p> <p>10 A Less.</p> <p>11 Q So could you --</p> <p>12 A It's a guess. You are making me guess.</p> <p>13 Q I am not making you.</p> <p>14 A Even that is a guess.</p> <p>15 Q Can you give us -- well, can you give us any</p> <p>16 sense, any sense of how many cases you have been retained</p> <p>17 on by his firm?</p> <p>18 A Again --</p> <p>19 Q A range.</p> <p>20 A This is a guess, about one to two dozen, maybe</p> <p>21 slightly less, slightly more.</p> <p>22 Q You know Dr. Hal Gutstein, right?</p> <p>23 A I know of him. I never met him.</p> <p>24 Q He testified that he has been involved in cases</p> <p>25 with you where you were the expert as well as him. Do you</p>	
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1613	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1615
<p>1 Q And it includes at times testifying, right?</p> <p>2 A That is correct.</p> <p>3 Q Also, depending on what jurisdiction you are</p> <p>4 doing, what state, if it's Federal Court, you may need to</p> <p>5 have your deposition taken; is that correct?</p> <p>6 A Yes.</p> <p>7 Q And you've done that a fair amount of times, you</p> <p>8 have had your deposition taken?</p> <p>9 A On some occasions, yes.</p> <p>10 Q And you were asked by Mr. Harris in total how</p> <p>11 many, you know, reports you have prepared. Not the court</p> <p>12 testimony, but how many reports and you said it would be</p> <p>13 just a guess, you would be unable to indicate that?</p> <p>14 A The question was for him, not just how many I</p> <p>15 prepared. Just for him.</p> <p>16 Q So you can't -- can you give the jury a range of</p> <p>17 how many -- how many cases has Mr. Harris or his firm</p> <p>18 retained you in?</p> <p>19 A I told you, about half a dozen, slightly less,</p> <p>20 slightly more than I testified for.</p> <p>21 Q That wasn't my question.</p> <p>22 A Okay.</p> <p>23 Q How many times -- how many cases, different cases</p> <p>24 has Mr. Harris retained, for his firm, retained you to be</p> <p>25 an expert in? Not how many times you testified in, just in</p>		<p>1 have recollection of that?</p> <p>2 A How I would have such a recollection? I never</p> <p>3 heard him testify.</p> <p>4 Q You don't have to hear him testify.</p> <p>5 A I never spoken to him about that.</p> <p>6 Q Did you ever read his expert report in this case?</p> <p>7 A Yes, in this case. Only in this case.</p> <p>8 Q Okay. You know Deborah Dwyer?</p> <p>9 A I never heard of Debra Dwyer.</p> <p>10 Q You never heard her name as an economist?</p> <p>11 A Oh, I never met her in person.</p> <p>12 Q I am not asking you -- you have been involved in</p> <p>13 cases, have you not, retained by different plaintiff's</p> <p>14 firms where you have been retained and Dr. Dwyer has been</p> <p>15 retained in the same case, the economist?</p> <p>16 A It's possible. I never know who comes after me</p> <p>17 and I never seen her report so I can't really answer that</p> <p>18 question with a perfect yes or no. But I do know who she</p> <p>19 is.</p> <p>20 Q And can you tell us -- because you said several</p> <p>21 hundred times you have come to court. Could you give --</p> <p>22 A I never said several. I said under three</p> <p>23 hundred.</p> <p>24 Q So is that 299?</p> <p>25 A Anywhere from 275 to 300. I don't keep tabs on</p>	

Page 1616	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1618
<p>1 those things.</p> <p>2 Q Okay. And what is the percentage of cases that</p> <p>3 you are hired for, that you are retained for, actually</p> <p>4 result in you coming to court to testify?</p> <p>5 A Most of them settle, so a small amount.</p> <p>6 Q So what, five percent?</p> <p>7 A I have no idea.</p> <p>8 Q Ten percent?</p> <p>9 A That is question that no physician could honestly</p> <p>10 answer unless they keep a tab of it. I do not keep a tab</p> <p>11 of it.</p> <p>12 - Proceedings Continue Next Page -</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 your Honor. I am just basing on what he said. He said he</p> <p>2 gets the information from this document.</p> <p>3 So I am just asking him, does that document</p> <p>4 provide the number of times that he has testified in court</p> <p>5 and deposition. That's all. Just a yes or no.</p> <p>6 THE COURT: It's still hearsay, I think.</p> <p>7 MS. GOLDSMITH: Okay.</p> <p>8 Q Can you tell the jury the number of cases in total,</p> <p>9 that you have been retained in by an attorney's firm?</p> <p>10 A The way you phrased that question, I cannot.</p> <p>11 Q Why not?</p> <p>12 A Because again, it calls for, if I have records of</p> <p>13 such these case testimonies and I just finished telling you</p> <p>14 five ten minutes ago, I keep no such records.</p> <p>15 I am only required to keep medical records, not legal</p> <p>16 testimony records.</p> <p>17 Q But you do get 1099's for your taxes, listing all</p> <p>18 cases, correct?</p> <p>19 A I do not look at my 1099's. It goes automatically</p> <p>20 office manager to my CPA.</p> <p>21 Q Okay. Can you tell the jury how many reports you</p> <p>22 have rendered as an expert in these types of cases?</p> <p>23 A I cannot. I do not keep any such records.</p> <p>24 Q Would it be fair to say that as of 1999, that eight</p> <p>25 years after you started doing expert work, that you had</p>	<p>Page 1617</p> <p>Dr. Guy - Plaintiff - Cross/Goldsmith</p> <p>1 Q You've testified in Federal Court, correct?</p> <p>2 A I have, yes.</p> <p>3 Q And in Federal Court, you are required to provide</p> <p>4 certain years, a list of all your testimony, correct?</p> <p>5 A You get that from the jury verdict report.</p> <p>6 Q I am asking, you have prepared those lists, have you</p> <p>7 not of all the cases you testified in?</p> <p>8 A I get them from the jury verdict report.</p> <p>9 Q So you believe that jury verdict recorder is accurate</p> <p>10 in terms of the times you have testified?</p> <p>11 A That's where I get them from.</p> <p>12 Q But that would then list when you have testified in a</p> <p>13 courthouse or -- at a courthouse or an attorney's office for</p> <p>14 deposition, correct?</p> <p>15 MR. HARRIS: Objection.</p> <p>16 Hearsay.</p> <p>17 MS. GOLDSMITH: He is relying on it and saying</p> <p>18 that's where he gets it from.</p> <p>19 THE COURT: Overruled. I'm sorry. Objection</p> <p>20 sustained.</p> <p>21 MS. GOLDSMITH: What's the basis, your Honor</p> <p>22 just so I can rephrase it.</p> <p>23 THE COURT: You are asking him to recite the</p> <p>24 contents of a document not in evidence.</p> <p>25 MS. GOLDSMITH: I am not asking for the truth</p> <p>1 rendered somewhere between 2700 and 3600 reports for lawyers</p> <p>2 involved in litigation?</p> <p>3 A Are you bring me back to 1999? I have no</p> <p>4 recollection. It's possible.</p> <p>5 It's also possible that is not correct. I have no</p> <p>6 independent recollection.</p> <p>7 Q Okay.</p> <p>8 Do you recall testifying in a case Joseph Zadra</p> <p>9 Z-A-D-R-A?</p> <p>10 A I do. I remember that case, yes.</p> <p>11 Q And you remember because it was against Metro North</p> <p>12 Commuter Railroad, right?</p> <p>13 A I do remember that case.</p> <p>14 Q And you have testified in a lot of cases that were</p> <p>15 against Metro North, correct?</p> <p>16 A That is correct.</p> <p>17 Q Didn't you even sue Metro North?</p> <p>18 A Because they didn't pay my bill. And they finally</p> <p>19 did pay my bill. I dropped the suit.</p> <p>20 Q Let's go back to the Zadra case, the one where you</p> <p>21 were an expert in Metro North. It took place in Bronx county</p> <p>22 October 19, 1999.</p> <p>23 MR. HARRIS: Objection to the statements, your</p> <p>24 Honor. Previous to a question.</p> <p>25 THE COURT: Yes. The jury will disregard those</p>

Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1620	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1622
<p>1 statements. 2 MS. GOLDSMITH: Okay. 3 Q Referring to page 61, line 16? 4 Line ten. 5 QUESTION: I apologize. "Doctor, you do between 6 three and 400 reports a year for lawyers, correct? 7 ANSWER: Correct. 8 QUESTION: That would be someplace between 2700 to 9 3600 reports for lawyers involved in litigation proceedings in 10 the last then years, correct? 11 ANSWER: Correct." 12 Q Now, does that refresh your recollection? First of 13 all do you remember being asked that question? 14 A I do not. Can I see those transcripts? 15 Q Absolutely. How many? You want to see all the 16 transcripts or you just want to see this one? 17 A First of all, is it a certified transcript? 18 MS. GOLDSMITH: Shall we mark this, your Honor 19 since he wants to see it? 20 THE COURT: I don't think you need to mark it, 21 no. 22 MS. GOLDSMITH: Okay. 23 A What page. 24 Q Sixty-one. 25 A You said page 16?</p>	Page 1620	<p>1 A I said it could be less. I am guessing. That's a 2 guess. 3 Q Okay. 4 Well, is that a fair number 1300 to 1800? 5 A It's a fair guess. 6 Q Okay. 1300 to 1800 for a ten-year period? 7 A I just finished telling you it's a guess. 8 Q Okay. 9 So if you use that guess, that would be over the last 10 20 years another 2600 to 3600 reports that you have done? 11 MR. HARRIS: Objection your Honor. We can't 12 have a predicate with a guess. 13 THE COURT: We can't what? 14 MS. GOLDSMITH: He said it was a fair guess. 15 MR. HARRIS: I am just making an objection if I 16 may, that the predicate for her current question is based 17 on a guess in a prior answer. That's my objection. 18 THE COURT: Overruled. 19 Q You can answer. 20 A I did. I said, yes. It's a guess. 21 Q How much have you earned from this expert work since 22 1991? 23 A There is no way I can answer that question for you. 24 Q Can you give us a range? 25 A Again, it calls for a guess. You want me to keep</p>	Page 1622
<p>1 Dr. Guy - Plaintiff - Cross/Goldsmith</p> <p>1 MR. FEMIA: Sixty-one. 2 A That's what it says. That is correct. 3 Q Okay. 4 Are you finished with that? Then, can I have it 5 back? 6 A Yes. 7 (Document handed to defense counsel at this time.) 8 Q So, does that testimony you gave in 1999 refresh your 9 recollection that as of 1999, eight -- nine years into doing 10 this, you had rendered about 2700 to 3600 reports for 11 attorneys? 12 A That is correct. 13 Q Okay. And have you continued at the same rate since 14 that time? 15 A Much less during COVID. That was almost no reports. 16 Q Up until COVID -- let's go to 2020. So we will take 17 that period from 2000 to 2020, did it continue at the same 18 rate? 19 A No, much less. 20 Q How much less? 21 A I would say at least 50 percent less, at least. 22 Q At least 50 percent? 23 A Could be more, but at least 50 percent less. 24 Q So somewhere around 13 to 18 reports a year. That's 25 50 percent?</p>	Page 1621	<p>1 Dr. Guy - Plaintiff - Cross/Goldsmith</p> <p>1 A I will keep guessing. I have no idea. 2 Q More than a million? 3 A I have no idea. 4 Q More than five million? 5 A Not even close to five million. 6 Q Somewhere between one and five? 7 A Again, you are asking -- it's way below one million. 8 Q It's way below one million? 9 A Again I'm guessing. I don't keep a record of those 10 things. 11 Q Would you agree, Doctor, that as of 2006 -- so about 12 16 years ago, you had earned \$900,000 from doing this? 13 A It's possible. 14 Q With that, can you estimate for us how much more you 15 have earned since 2006? 16 A I have no idea. 17 Q When you started doing expert work, you advertised 18 early on in that space, correct? 19 A Yes, because nobody knew what psychiatry was all 20 about. They thought I was a psychiatrist. 21 Q But that's another thing though. You are not board 22 certified in psychiatry, correct? 23 A No. My former brother was, yes. 24 Q Your former brother? 25 A He passed away.</p>	Page 1623

Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1624	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1626
<p>1 Q I am sorry. But you are not a psychiatrist?</p> <p>2 A I am not a psychiatrist, no.</p> <p>3 Q You don't have any formal psychological education, correct?</p> <p>5 A We do. Reactive anxiety and depression as part of the field of physical medicine and rehabilitation. I prescribe 6 medications for both anxiety and depression.</p> <p>8 Q Is there a psychiatry residency that's available?</p> <p>9 A There is.</p> <p>10 Q Did you ever perform a psychiatry residency?</p> <p>11 A I did not.</p> <p>12 Q In terms of your advertising when you started doing 13 all this expert work, you hired a Director of marketing, correct?</p> <p>15 A I did.</p> <p>16 Q Betsy Rosen, correct?</p> <p>17 A That's correct.</p> <p>18 Q You then had another marketing person, Karen Gordon, correct?</p> <p>20 A That's correct.</p> <p>21 Q Okay.</p> <p>22 And they sent out letters on your letterhead, correct?</p> <p>24 A That's correct.</p> <p>25 Q You offered immediate appointments?</p>	Page 1624	<p>1 A That's correct.</p> <p>2 Q And you actually had a flyer that you prepared about 3 that, correct?</p> <p>4 A No. I did not have a flyer. Somebody else sent a 5 flyer, not me.</p> <p>6 Q But there is a flyer that had your name on it as one 7 of the guest speakers?</p> <p>8 MR. HARRIS: Objection. Hearsay. Flyer that he 9 did not prepare.</p> <p>10 THE COURT: Sustained. The jury will disregard 11 that question and answer.</p> <p>12 MS. GOLDSMITH: Okay. Let's mark this. Mark it 13 and show it to the witness?</p> <p>14 THE COURT: Exhibit Z?</p> <p>15 MS. GOLDSMITH: I thought it was Y.</p> <p>16 THE COURT: Exhibit Z.</p> <p>17 MS. GOLDSMITH: We can make it Z then.</p> <p>18 (Document is received and marked Defendant's 19 Exhibit Z for identification by the court reporter as of 20 this date.)</p> <p>21 MS. GOLDSMITH: Your Honor if I may hand it to 22 the witness.</p> <p>23 THE COURT: Yes.</p> <p>24 MR. HARRIS: Can I just see what it is?</p> <p>25 (Document handed to counsel at this time.)</p>	Page 1626
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1625	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1627
<p>1 A Yes.</p> <p>2 Q You offered appointments for recent injuries, correct?</p> <p>4 A That's correct.</p> <p>5 Q You offered prompt narrative reports within 24 hours, correct?</p> <p>7 A That's correct.</p> <p>8 Q You offered hotline communications from your office 9 to attorney offices, correct?</p> <p>10 A That's correct.</p> <p>11 Q And what you specifically said in there is, our team 12 can be your team, correct?</p> <p>13 A That's a marking tool. That is correct.</p> <p>14 Q Okay. And you sent that to all the attorneys in the 15 Manhattan area, in that time frame, in the early 1990's 16 correct?</p> <p>17 A I believe that is correct.</p> <p>18 Q Okay.</p> <p>19 Did that include Burns &amp; Harris?</p> <p>20 A I don't know. If he is one of the attorneys in the 21 metropolitan area, he probably got one too. You could ask him.</p> <p>22 I don't know.</p> <p>23 Q You've also given lectures to attorneys in the past.</p> <p>24 And I don't know if you are doing it now, but in the past, you 25 have done one or twice a year, correct?</p>	Page 1625	<p>1 A I never prepared this flyer. I just sent it out.</p> <p>2 Q It wasn't a question. You know the rules. Wait for 3 a question.</p> <p>4 THE COURT: The jury will disregard that 5 statement. Wait for a question, Doctor, please.</p> <p>6 A Yes, your Honor.</p> <p>7 (Document handed to the witness at this time.)</p> <p>8 Q I am showing you Exhibit Z.</p> <p>9 First of all, do you recognize the document?</p> <p>10 A I have seen it before. I have never prepared this 11 document. I never sent it out. The phone number on the bottom 12 has never been my phone number.</p> <p>13 Q Okay. Doctor, you are aware that -- am I correct, 14 Doctor, you are aware that as part of your lecturing, flyers 15 were sent out with your name on it, correct?</p> <p>16 A Obviously, yes.</p> <p>17 Q Okay.</p> <p>18 And you are aware that when flyers were sent out, it 19 was marketed towards attorneys, correct?</p> <p>20 MR. HARRIS: Objection, your Honor. Hearsay.</p> <p>21 THE COURT: Sustained.</p> <p>22 Q In what context have you seen these flyers before?</p> <p>23 A Passed around in the courtroom and most judges did 24 not let it come in because I never prepared it. I never sent 25 it out.</p>	Page 1627

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<p>1 Q But you are aware of it, right?</p> <p>2 MR. HARRIS: Objection. Asked and answered.</p> <p>3 THE COURT: Sustained.</p> <p>4 Q Doctor, you just made a statement is that the</p> <p>5 telephone number is a -- the telephone number that's not</p> <p>6 related to you, correct?</p> <p>7 A That is correct.</p> <p>8 Q Okay. Isn't that a working telephone number for the</p> <p>9 Hudson Valley office that you were a business partner in?</p> <p>10 MR. HARRIS: Objection, your Honor.</p> <p>11 THE COURT: Just a moment.</p> <p>12 MR. HARRIS: She is citing something in the</p> <p>13 document that's not in evidence.</p> <p>14 THE COURT: Just ask him about the telephone</p> <p>15 number.</p> <p>16 Q Telephone number 914-793-1824, wasn't that a working</p> <p>17 telephone number for Hudson Valley office that you were a</p> <p>18 business partner in?</p> <p>19 A I was never a business partner with that office.</p> <p>20 That's the first thing you got wrong.</p> <p>21 Second, my office number has always been</p> <p>22 212-254-7588.</p> <p>23 Q You know the Hudson Valley office, you were</p> <p>24 affiliated with that, correct?</p> <p>25 A Affiliated -- I used to see patients there, yes. I</p>	Page 1628	<p>1 Q And you've testified, Doctor, that upwards -- in</p> <p>2 reaching a diagnosis and opinions that upwards -- the history</p> <p>3 accounts for upwards of 70 to 80 percent of that, correct?</p> <p>4 A I said 70 percent and 10 percent from the</p> <p>5 examination. That's 80 percent.</p> <p>6 The rest comes from pertinent medical records and</p> <p>7 imaging studies.</p> <p>8 Q At times you have testified that it could be 70 to</p> <p>9 80 percent of the history, correct?</p> <p>10 A It's possible, yes.</p> <p>11 Q And you would agree, Doctor, that history guides a</p> <p>12 physician in the right direction?</p> <p>13 A A pertinent history, yes.</p> <p>14 Q Well, you are saying pertinent. Is it only pertinent</p> <p>15 history that guides?</p> <p>16 A Not everything in the history is pertinent.</p> <p>17 Q And as a physician, Doctor, you have an obligation to</p> <p>18 elicit as complete and thorough an accurate history as</p> <p>19 possible, correct?</p> <p>20 A Correct.</p> <p>21 Q Okay. And you would agree, Doctor, that it's equally</p> <p>22 important to get as many of the hospital records and past</p> <p>23 treating records as possible, correct?</p> <p>24 A That is correct.</p> <p>25 Q And the history, Doctor, can it also prevent risks if</p>	Page 1630
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1629	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1631
<p>1 was never a partner with that facility.</p> <p>2 Q I want to go back to the Zadra case that I read to</p> <p>3 you before that you saw the transcript. Again 1999, page 71.</p> <p>4 "QUESTION: Tell us what the telephone number is --</p> <p>5 914)793-1824.</p> <p>6 QUESTION: Isn't it the working telephone number for</p> <p>7 the Hudson Valley office you just told us you are the business</p> <p>8 partner in?</p> <p>9 ANSWER: Yes.</p> <p>10 A I was never a business partner in that facility.</p> <p>11 Q But you are not disputing that that was the telephone</p> <p>12 number for the Hudson Valley?</p> <p>13 A Hudson Valley Chiropractic, not Ali Guy office. That</p> <p>14 may be the phone number for Hudson Valley Chiropractic.</p> <p>15 Q History is very important, is it not, Doctor?</p> <p>16 A Pertinent history, yes, it is very important.</p> <p>17 Q Okay.</p> <p>18 History is what a patient tells the doctor, correct?</p> <p>19 A Yes.</p> <p>20 Q It is what a patient says it wrong with them,</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q It involves how something -- an injury may have</p> <p>24 happened, correct?</p> <p>25 A Yes.</p>	Page 1629	<p>1 a patient is not accurate?</p> <p>2 A I am sorry? Repeat that please.</p> <p>3 Q Doctor, in terms of obtaining a history, there are</p> <p>4 times that a patient cannot be accurate, correct?</p> <p>5 A Yes. That's correct.</p> <p>6 Q Okay. They may forget something, correct?</p> <p>7 A Yes.</p> <p>8 Q They may not be telling the truth, correct?</p> <p>9 A That's correct.</p> <p>10 Q In terms of the past medical history, you would agree</p> <p>11 Doctor, that it's significant because you want to know what</p> <p>12 prior problems a patient had, correct?</p> <p>13 A Yes.</p> <p>14 Q You want to know what medications a patient is on,</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q And you would agree, Doctor, that if anything about</p> <p>18 the history is incorrect, the opinion that's reached by the</p> <p>19 physician may be wrong?</p> <p>20 A The answer is a yes, with an explanation.</p> <p>21 Q And you would agree, Doctor, that you would need to</p> <p>22 know the history before giving a causation opinion, like you've</p> <p>23 done here today, correct?</p> <p>24 A That is correct.</p> <p>25 Q And, Doctor, isn't it your practice that you</p>	Page 1631

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<p>1 typically record -- you document everything that you obtain 2 when taking the history?</p> <p>3 A I don't understand your question. Are you asking 4 that I take an intake sheet?</p> <p>5 Q I'm asking if you -- in your practice, Doctor, you 6 take a history from a patient. You are taking notes at some 7 point, correct?</p> <p>8 A That's correct.</p> <p>9 Q Okay.</p> <p>10 So when you take that history, you are writing down 11 what you are told, correct?</p> <p>12 A Or I dictate it immediately as I'm done with the 13 patient.</p> <p>14 Q Is your practice in terms of documentation, is it the 15 same whether a patient is involved in litigation or not 16 involved in litigation? Is it the same?</p> <p>17 A Same.</p> <p>18 Q Okay.</p> <p>19 So your practice -- you saw this patient in 2019 -- 20 let me ask you, has your practice in terms of charting and 21 documenting, has that changed at all?</p> <p>22 A No.</p> <p>23 Q Okay. I see from your records -- and we are going to 24 look at your chart in a minute -- you have it with you, 25 correct?</p>		<p>1 A That's correct. 2 MR. HARRIS: Objection. Asked and answered. 3 Q In terms of the typing? 4 THE COURT: I am sorry. There was an objection. 5 MR. HARRIS: I just said asked and answered. I 6 will withdraw. He already answered it. 7 Q In terms of the typing, is that something that you 8 personally do? 9 A I do not. 10 Q Okay. 11 How do the type written reports get done? 12 A I dictate it. It goes to a typing service. They 13 type it. They bring it back. I read it. I sign it. 14 Q Okay. So you read it for accuracy before you sign 15 it, correct? 16 A Yes. 17 Q Okay. 18 And if there is an error before you sign it, you 19 would send it back to the transcript service? 20 A If I catch the error, yes. 21 Q Well, fair to say, Doctor, that when you issue these 22 types of reports, you want to be very precise, correct? 23 A Everyone wants to be as precise as possible but we 24 are not infallible. 25 Q You have heard of the concept secondary gain?</p>	
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1633	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1635
<p>1 A I do. 2 Q Electronic medical record, you don't use that, is 3 that correct? 4 A I think now, they are using a little bit of both but 5 I use the old traditional medical record keeping. 6 Q Okay. So for this July 15, 2019 report that was put 7 on the screen, that was typed, correct? 8 A Yes. 9 Q Every other note that you have in your chart is 10 handwritten, with your notes by either a physical therapist or 11 by you, correct? 12 A Except for the operative procedures for the two 13 epidurals that was done. The rest was handwritten, yes; that's 14 correct. 15 Q But even with those -- what you are calling Op notes, 16 that still has some handwriting on it, correct? Some of them 17 have handwriting? 18 A There is no handwriting here. 19 Q That's just one. But did you look at every one? 20 A The trigger point injections, yes. That's not an 21 operative. That's trigger point injection. Operative is the 22 epidural injections. 23 Q Okay. But your practice has been the same. You've 24 not used the electronic medical record. You have handwritten 25 your notes or you have them typed, right?</p>		<p>1 A I have. 2 Q Okay. 3 When someone has other reasons for taking a position 4 on a case, correct? 5 A That is correct. 6 Q Another terminology for secondary gain may be a 7 malingerer, correct? 8 A It could be, yes. 9 Q Secondary gain would include an ulterior motive for 10 legal purposes or for litigation purposes, correct? 11 A That's one possibility, yes. 12 MS. GOLDSMITH: Judge, I would like to see the 13 records. I don't know if you wants to give the jury five 14 minutes? 15 THE COURT: You need that amount of time to 16 review them? 17 MS. GOLDSMITH: Maybe for all three of us. We 18 might need ten minutes total. 19 THE COURT: We will take a break until noon. 20 Please do not discuss your testimony up to this point with 21 anyone. 22 THE WITNESS: Yes, your Honor. 23 (Sworn jurors exit the courtroom at this time.) 24 25</p>	

Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1636	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1638
1 (Whereupon, Defendant's Exhibit AA was marked 2 for I.D. at this time.) 3 THE COURT: Okay. Are you ready? 4 MS. GOLDSMITH: Yes. 5 MR. HARRIS: Before bringing in the jury I 6 want to make a standing objection to counsel's constant 7 "okays" after the witness -- 8 THE COURT: You know what, other attorneys 9 also have a bad habit. I will ask you to -- 10 MS. GOLDSMITH: Yes, your Honor. 11 THE COURT: You are not the only person who 12 does it by a long shot. 13 MS. GOLDSMITH: Okay. Thank you. I am 14 trying to be very diligent, your Honor. It's not done 15 on purpose, as you know. 16 THE COURT: Also, before the jury comes in, I 17 received a note from juror number 2 at 10:30 a.m. 18 signed at 10:30 a.m., which reads: 19 "I have a granddaughter eighteen graduating 20 from high school on June 27th, 2022, at 2 p.m., 21 MetroTech College in Brooklyn. I would love to attend 22 due to the fact that she is the first graduating of 23 grandkids." 24 So I am hoping the trial will be over by 25 then. But do you all agree that we should accommodate		1 THE COURT: Okay. At the end of the day, 2 perhaps at the lunch break, may I assure juror number 2 3 that she may attend the graduation? 4 MR. DENNEY: Yes, your Honor. 5 MR. HARRIS: Yes. 6 THE COURT: Everyone in agreement? 7 MS. SAAB-DOMINGUEZ: Yes. 8 THE COURT: Okay. All right. We will bring 9 the jury in. This will be marked -- the note will be 10 marked as the next Court Exhibit. 11 COURT OFFICER: All rise. Jury entering. 12 (Whereupon, the jury panel entered the 13 courtroom.) 14 THE COURT: Please be seated, everyone. This 15 is continued Cross-examination by Ms. Goldsmith for A & 16 A Enterprise. 17 Dr. Guy, you are still under oath. 18 THE WITNESS: Yes, your Honor. 19 THE COURT: Okay. 20 Q Dr. Guy, you testified in response to plaintiff's 21 counsels questioning that at some point you looked at the 22 records from the car accident, right? 23 A I did. 24 Q And you saw, am I correct, that Ms. Salomon was 25 diagnosed with several disk herniations in the cervical	
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1637	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1639
1 her if it's not? 2 MS. SAAB-DOMINGUEZ: Yes, your Honor. 3 MR. DENNEY: Yes. 4 MR. HARRIS: I do, your Honor, yes. And I 5 would also point out that I believe the tennis outing 6 is on the same day. 7 THE COURT: I know. I would love for the 8 trial to be over by June 27th as well. 9 Are you suggesting that we just take the 27th 10 off no matter what? 11 MR. HARRIS: I -- 12 THE COURT: The problem I see, you already 13 asked to take off -- 14 MR. HARRIS: I am not asking for that, Judge, 15 because I already did ask for that commitment, that 16 prior commitment for the 29th and 30th that I am 17 obligated to be at. But I am assuming that we are 18 going to be on schedule to finish by the 24th as we 19 promised the jury. 20 THE COURT: Well, I didn't promise them. I 21 specifically told them there were no guarantees. 22 MR. HARRIS: Correct. Maybe I overstated 23 that, but that was sort of the hope that we would be 24 done by then. And I am certainly going to do 25 everything in my power to keep to that schedule.		1 spine and the thoracic spine; is that correct? 2 A One in the thoracic spine. Two or three in the 3 cervical, yes. 4 Q And also bulges as well? 5 A Yes. 6 Q At different levels; is that correct? 7 A Yes. 8 Q And you'd agree with me, Doctor, that there is no 9 cure for a disc herniation? 10 A That is correct. 11 Q You can't take that broken piece and suture it 12 back together? 13 A You got that from my transcripts. That is my 14 phrase, yes. 15 Q That is. 16 A Yes. 17 Q You can't glue it back together, that is your 18 phrase as well. 19 A Yes. 20 Q And it's -- once you have a disc herniation, it's 21 a permanently irreversible injury because the cartilage 22 does not have the ability to repair itself; is that 23 correct? 24 A Yes, that's correct. 25 MR. HARRIS: Objection. Relevancy.	

Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1640	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1642
<p>1 MS. GOLDSMITH: Very relevant.      2 MR. HARRIS: And beyond the scope.      3 THE COURT: Overruled.      4 (Brief pause.)      5 Q And, Doctor, once a patient has a disc bulge or a      6 herniated disc they could hold themselves in a certain      7 posture, kind of a reflex posture because they are always      8 worried about getting reinjured; is that correct?      9 A To the injured area, yes.      10 Q And you are familiar with what a traumatic brain      11 injury is?      12 A I am.      13 Q Correct?      14 A Yes.      15 Q Yes?      16 A I said yes.      17 Q I am sorry. I didn't hear you. In some of the      18 records that you saw from the different providers from the      19 car accident she was diagnosed by some of those providers      20 with a traumatic brain injury; is that correct?      21 A I saw some notations, I don't know if that was      22 really a complete diagnosis or not.      23 Q Okay.      24 A I did see that in the records.      25 Q Okay. And you don't have any reason to disagree</p>	Page 1640	<p>1 sheering force of the brain going forwards and backwards?      2 A You are quoting me again. That's correct.      3 Q Yes, I am quoting you.      4 A Yes, that is correct.      5 Q And you do not need a direct blow to the head to      6 have symptoms for a closed head injury; is that correct?      7 A That is correct.      8 Q And you mentioned in response to plaintiff's      9 counsel's questioning about the Budapest criteria?      10 A Yes.      11 Q Right?      12 A Yes.      13 Q Okay. You would agree with me that one of the      14 criteria in Budapest criteria for CRPS is that there must      15 be no other diagnosis that better explains the signs and      16 symptoms, correct?      17 A Yes.      18 Q Can a fall cause CRPS?      19 A It can.      20 Q You said that you were looking at your notes      21 earlier and that the plaintiff was referred to you by a      22 friend?      23 A Yes.      24 Q Okay. Which note was that in?      25 A (No response.)</p>	Page 1642
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1641	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1643
<p>1 with what are in the records from the car accident,      2 correct?      3 A She does not have traumatic brain injury right      4 now.      5 Q She doesn't have it right now?      6 A She does not.      7 Q And that was based upon an exam that you did of      8 her brain?      9 A After seeing her multiple occasions, and having      10 elicited all the different symptomatologies I do not      11 believe she has traumatic brain injury.      12 Q But you don't have any opinion as to whether she      13 had a traumatic brain injury in 2017, 2018 or 2019 up until      14 you saw her; is that correct?      15 A That is correct.      16 Q And, now, traumatic brain injury, you could get      17 that by having an open head injury where, you know, there      18 is an opening to your brain; is that correct?      19 A That is one way.      20 Q And another way is closed -- where there is no      21 opening and you could still get it, right?      22 A You could still get it, yes.      23 Q And it's basically -- even if there is no opening      24 in the head, if there is no cut or wound or anything, when      25 it's closed you could still get the injury because of the</p>	Page 1641	<p>1 Q You could just tell us.      2 A In the inner portion of my folder.      3 Q The inner portion of your folder?      4 A That's correct.      5 Q Can I see that?      6 A Yes, you could see it.      7 (Documents submitted.)      8 Q Okay, okay. Just so it's clear, on the actual      9 manila folder you wrote --      10 MR. HARRIS: Objection, it's not in evidence.      11 THE COURT: Sustained.      12 MS. GOLDSMITH: I'd like to mark the doctor's      13 records and I would like to put them in evidence. And,      14 actually, I think, if I am not mistaken, the records      15 from Dr. Guy were already marked in evidence and I'd      16 like to put these in evidence as well.      17 Could we mark this as BB? Can I have your --      18 THE COURT: Was there an AA?      19 MS. GOLDSMITH: Yes, I will be introducing      20 that.      21 THE COURT: We could certainly mark it as BB.      22 (Whereupon, Defendant's Exhibit BB was marked      23 for Identification at this time.)      24 THE COURT: Okay.      25 MS. GOLDSMITH: Your Honor, may I inquire?</p>	Page 1643

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<p>1                   THE COURT: Yes.</p> <p>2   Q  Doctor, I am showing you Exhibit BB. Is that your 3  office records?</p> <p>4   A  Yes.</p> <p>5   Q  Is that the complete office record?</p> <p>6   A  As well -- as well -- yes. As well as records 7  from other treating physicians.</p> <p>8   Q  All right.</p> <p>9        MS. GOLDSMITH: I will move this into 10  evidence, your Honor.</p> <p>11      THE COURT: Is there an objection?</p> <p>12      MR. HARRIS: With regard to the other 13  treating physicians? I don't -- subject to any 14  redactions that would be appropriate --</p> <p>15      THE COURT: Well, that is the whole ballgame.</p> <p>16      MR. HARRIS: I don't know.</p> <p>17      THE COURT: Is there an objection or not?</p> <p>18      MR. HARRIS: I have to see what is in there. 19  I don't know.</p> <p>20      MS. GOLDSMITH: This was here for him to look 21  at. Can I show it --</p> <p>22      MR. HARRIS: You asked to look at it. I 23  didn't need to look at it.</p> <p>24      THE COURT: Okay.</p> <p>25      MR. HARRIS: Copies are already in evidence.</p>		<p>1  related since on Direct he was asked if he reviewed the 2  records, if he was sent them, his opinions are based 3  upon those records in part. So I think the foundation 4  was laid.</p> <p>5                   THE COURT: Not as a business record, no.</p> <p>6        MS. GOLDSMITH: What is the objection, your 7  Honor?</p> <p>8        THE COURT: I believe he -- the objection is 9  to the extent that the file includes reports from other 10  physicians or medical facilities that are not in the 11  exhibit, Dr. Guy's records that was already admitted 12  without objection, because those other medical reports 13  are hearsay. Just because Dr. Guy puts them in his 14  file doesn't make them his business record.</p> <p>15</p> <p>16                   - Proceedings Continue Next Page -</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1645	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1647
<p>1  So I don't know.</p> <p>2        MS. GOLDSMITH: These are not yet. 3  (Exhibit submitted.)</p> <p>4        MR. HARRIS: Your Honor, I don't want to 5  waste time with this now, but we consent to his records 6  going in and anything that is in here that is not his 7  records we do not consent to.</p> <p>8        MS. GOLDSMITH: Well, your Honor, I would -- 9  our position is that anything that is in evidence 10  should come in. If there is something that is not in 11  evidence, then we would --</p> <p>12      THE COURT: You mean already in evidence in 13  another exhibit?</p> <p>14      MS. GOLDSMITH: Yes. And everything in here 15  from what I could tell, in terms of the medical records 16  is already in evidence.</p> <p>17      THE COURT: Then -- and plus more?</p> <p>18      MS. GOLDSMITH: There is differences in terms 19  of the -- there is differences, your Honor.</p> <p>20      THE COURT: Just putting it in a file doesn't 21  make it a business record so if there is -- if there 22  are records from other physicians in there, you haven't 23  laid the foundation for their admissibility.</p> <p>24      (Brief pause.)</p> <p>25      MS. GOLDSMITH: Well, I thought it was</p>		<p>1  MS. GOLDSMITH: Okay, your Honor.</p> <p>2        Judge, I am going to show what's already been 3  marked, and in evidence.</p> <p>4        Q  I am going to show you -- I believe that's 5  Exhibit 12, introduced by plaintiff's counsel. Looking at 6  that, there is a certification on the front of that, is there 7  not?</p> <p>8        A  There is.</p> <p>9        Q  Says it's the complete records, correct?</p> <p>10      A  It does.</p> <p>11      Q  There are records missing from there, correct?</p> <p>12      A  Other treating physicians' records, yes.</p> <p>13      Q  Your other records are missing from there, correct?</p> <p>14      A  Let me just see for a second. 15                   (Witness peruses document at this time.)</p> <p>16      A  Some. Records, that is correct.</p> <p>17      Q  Okay.</p> <p>18                   I'm going to show you what I am marking as Exhibit AA 19  for identification. What I would like you to do is take a look 20  at Exhibit AA. And your office manager is in Gramercy Park 21  Nabeda Sheikh, N-A-B-E-D-A, S-H-E-I-K-H, correct?</p> <p>22      A  Correct.</p> <p>23      Q  And you are aware that my office sent your office an 24  authorization and a subpoena to produce records, correct?</p> <p>25      A  I don't doubt it but I don't look at those things.</p>	

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<p>1 It's handled by the office manager.</p> <p>2 Q Are you aware that records from your office were sent</p> <p>3 to my office in response to either the authorization and a</p> <p>4 subpoena?</p> <p>5 A That's the normal course but specifically, no. I</p> <p>6 don't get involved with those issues.</p> <p>7 Q So those records that I am handing you in terms of</p> <p>8 your office records are complete, with the exception of what I</p> <p>9 noticed in your new records was a visit from June 2nd, this</p> <p>10 year, correct?</p> <p>11 A Give me a second. I just want to confirm it. June</p> <p>12 2nd and 2/17/22.</p> <p>13 Q 2/17 is it?</p> <p>14 A Okay. Just the 6/22/22.</p> <p>15 MS. GOLDSMITH: Your Honor, I would like to move</p> <p>16 to have Exhibit AA introduced into evidence.</p> <p>17 MR. HARRIS: What happened to BB?</p> <p>18 THE COURT: She withdrew that.</p> <p>19 MR. HARRIS: Okay.</p> <p>20 Well, I would have the same -- I have no</p> <p>21 objection to AA going in, if that's the complete copy of</p> <p>22 the records, excluding any other doctors that are</p> <p>23 commingled in there, that are not his creation, or legal</p> <p>24 documents, which there may be some of that in there.</p> <p>25 THE COURT: Is there an objection?</p>	<p>1 Q Well, plaintiff was referred by Burns &amp; Harris to</p> <p>2 you, correct?</p> <p>3 A No. No, ma'am. That is not correct.</p> <p>4 Q I just want --</p> <p>5 MS. GOLDSMITH: Judge, can I publish to the jury</p> <p>6 what this is, what it shows here? It's in evidence.</p> <p>7 THE COURT: That's Exhibit AA.</p> <p>8 MS. GOLDSMITH: This one is BB.</p> <p>9 THE COURT: BB is not in evidence.</p> <p>10 MS. GOLDSMITH: Yes, your Honor. I move to</p> <p>11 introduce both of them upon the stipulation.</p> <p>12 THE COURT: I thought this was just AA.</p> <p>13 MS. GOLDSMITH: It was both.</p> <p>14 MR. HARRIS: I thought it was both, subject to</p> <p>15 the redactions.</p> <p>16 THE COURT: Okay. All right.</p> <p>17 MR. HARRIS: I do have a problem with an</p> <p>18 attorney doing her own publishing.</p> <p>19 MS. GOLDSMITH: That's what it is.</p> <p>20 THE COURT: As long as it's not one of the</p> <p>21 redacted documents.</p> <p>22 MS. GOLDSMITH: No, your Honor.</p> <p>23 THE COURT: Yes, you may.</p> <p>24 MS. GOLDSMITH: All right. I just want to show</p> <p>25 everyone where it says that.</p>		
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1649	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1651
<p>1 MS. GOLDSMITH: I have no objection to AA and BB</p> <p>2 going in, in evidence, with the records from other</p> <p>3 providers and any legal documents removed.</p> <p>4 So I would like to have both of them introduced.</p> <p>5 I will agree with what plaintiff's counsel would like.</p> <p>6 MR. HARRIS: Great.</p> <p>7 THE COURT: Then it's admitted with the agreed</p> <p>8 upon redaction.</p> <p>9 (Document is received and marked Defendant's AA</p> <p>10 in evidence by the court reporter as of this date.)</p> <p>11 Q Since it's in evidence, I just want to refer to that</p> <p>12 manila folder of yours on your record. Thank you.</p> <p>13 So you mentioned that it says, referred by friend,</p> <p>14 and you said it was on the folder, correct?</p> <p>15 A Correct.</p> <p>16 Q And what's written here is, R-E-F, by friend?</p> <p>17 A That is correct.</p> <p>18 Q Whose handwriting is that?</p> <p>19 A That's my handwriting.</p> <p>20 Q When did you write that?</p> <p>21 A Sometime from the time I treated her to the present.</p> <p>22 Exactly when, I don't know.</p> <p>23 Q Well, if somebody comes to your office, for the first</p> <p>24 time, don't you ask them how they came, who referred them?</p> <p>25 A Sometimes, I do. Sometimes, I don't.</p>	<p>1 (Exhibit displayed to the jury at this time.)</p> <p>2 Q Doctor, do you have referred by friend in any of your</p> <p>3 medical notes, other that you wrote on the manila folder at</p> <p>4 some point?</p> <p>5 A No.</p> <p>6 Q So who is the friend?</p> <p>7 A I have no idea.</p> <p>8 Q Did you ask her?</p> <p>9 A No.</p> <p>10 Q The date you first saw her was July 15, 2019,</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And you drafted your report on that date, correct?</p> <p>14 A That is correct.</p> <p>15 Q You signed your report for that day, correct?</p> <p>16 A That is correct.</p> <p>17 Q Did you dictate this report?</p> <p>18 A I did.</p> <p>19 Q Is your transcription service on site or an outside</p> <p>20 vendor?</p> <p>21 A Sometimes it's on site. Sometimes it's an outside</p> <p>22 vendor.</p> <p>23 Q Can you tell from looking at your report which one</p> <p>24 this was?</p> <p>25 A This was an outside vendor.</p>		

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<p>1 Q So they are pretty quick with their turn around, 2 right?</p> <p>3 A Usually, yes.</p> <p>4 Q So within the same you day, you got it. You reviewed 5 it for accuracy and you signed it, correct?</p> <p>6 A I don't know if it's the same day but recently after 7 I dictate it, I get it back recently.</p> <p>8 Q Okay. And the date is July 15th, the same day you 9 saw her, correct?</p> <p>10 MR. HARRIS: Objection. Asked and answered.</p> <p>11 THE COURT: Sustained.</p> <p>12 Q So you said to us -- when the plaintiff came to see 13 you on July 15th, did she bring any records with her?</p> <p>14 A I don't believe so.</p> <p>15 Q Okay.</p> <p>16 Did she bring any imaging studies with her?</p> <p>17 A No.</p> <p>18 Q MRI, ultrasounds, anything like that?</p> <p>19 A No.</p> <p>20 Q Did she bring any legal documents with her?</p> <p>21 A What's a legal document?</p> <p>22 Q Well, you don't know what a legal document is?</p> <p>23 A What are you referring to as a legal document?</p> <p>24 Q Any deal document.</p> <p>25 A She brought nothing. She just brought herself.</p>	Page 1652	<p>1 Q Okay. And you said that you asked him to check the 2 records, right?</p> <p>3 A Correct.</p> <p>4 Q And during that call, did he check the records?</p> <p>5 A He called me back.</p> <p>6 Q Did he call you back that day?</p> <p>7 A Yes.</p> <p>8 Q How long after?</p> <p>9 A I don't know, couple of hours.</p> <p>10 Q Had you dictated your report yet?</p> <p>11 A No.</p> <p>12 Q Okay.</p> <p>13 And you said you learned that there was no medical 14 record that listed CRPS before you saw her, correct?</p> <p>15 A That is correct.</p> <p>16 Q Did you ask for the records?</p> <p>17 A I did.</p> <p>18 Q Okay. Were they sent to you?</p> <p>19 A Shortly after, yes.</p> <p>20 Q When?</p> <p>21 A I don't know exactly when it could have been the same 22 day. I'm not sure when.</p> <p>23 Q Well, I guess my question to you is, you have a 24 patient come in supposedly not referred by an attorney. Why 25 wouldn't you ask her for the medical records to get them?</p>	Page 1654
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1653	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1655
<p>1 Q Okay.</p> <p>2 You said on direct examination that after you 3 examined her, you then contacted Burns &amp; Harris?</p> <p>4 A That is correct.</p> <p>5 Q And you asked them -- you said if she had been 6 diagnosed with CRPS?</p> <p>7 A That is correct.</p> <p>8 Q Okay.</p> <p>9 A To look and see in the other records if that was the 10 case.</p> <p>11 Q You asked them to look in the other records?</p> <p>12 A Yes.</p> <p>13 Q So when you saw her on July 15th, you knew she had a 14 lawsuit and you knew she was represented by Burns &amp; Harris, 15 right?</p> <p>16 A That is correct.</p> <p>17 Q And you knew them well enough for you to just pick up 18 the phone and give them a call, right?</p> <p>19 A Well, long enough -- I do know who they are, yes.</p> <p>20 Q Okay. You know their number?</p> <p>21 A It's in my office directory.</p> <p>22 Q It's in your contacts?</p> <p>23 A Yes.</p> <p>24 Q Who did you call from plaintiff's office?</p> <p>25 A I spoke with Mr. Seth Harris.</p>	Page 1653	<p>1 A Patients don't have medical records.</p> <p>2 Q You are aware -- I am sure, you have patients that 3 sign a HIPAA authorization allowing you to obtain their 4 records, correct?</p> <p>5 A In some cases, yes.</p> <p>6 Q Did you ask Ms. Salomon to do that?</p> <p>7 A I don't know. It's possible. I am not sure.</p> <p>8 Q Did you ask Ms. Salomon to get the records either on 9 her own or from her attorney?</p> <p>10 A No. Why would I do that? It's a lot faster to get 11 it directly from the attorney.</p> <p>12 Q You charged for that visit of July 15, 2019, right?</p> <p>13 A I did.</p> <p>14 Q Burns &amp; Harris paid you for that, correct?</p> <p>15 A They paid for the report. It's all included. It's 16 the same package.</p> <p>17 Q Right, but there is three separate entries in your 18 billing records for that, right?</p> <p>19 A Let me see.</p> <p>20 Q Take a look.</p> <p>21 A Yes. One is for the office visit. One is for of the 22 EMG, correct?</p> <p>23 Q I just want to put this up so the jury can see. This 24 is from the chart that's admitted in, correct?</p> <p>25 (Exhibit displayed.)</p>	Page 1655

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1 Q Let's go to July 15th. I think there is three 2 entries there.		1 A I have to call my office. Tell them to look into it 2 to see if that's correct or if it's a mistake.	
3 A That is correct.		3 Q When we -- so potentially these billing records 4 that -- what you are saying that are a better part of your file 5 are incorrect?	
4 Q We are just going to show the jury -- if you want to 5 look, I think it's on your monitor as well.		6 A I am not saying that. Let me get the record 7 straight.	
6 A I see it.		8 I do not do the billing in my office. I do not get 9 involved with the billing in my office. I have people that do 10 that.	
7 Q Three entries that I have highlighted, that's for new 8 patient evaluation, EMG complete and nerve conduction studies 9 5-6 studies, correct?		11 I am not sure if that's correct or incorrect. I am 12 not saying it is incorrect. I am not saying it is correct. 13 I am saying to you I don't believe that Mr. Seth 14 Harris' office paid for the EMG.	
10 A Correct.		15 Now that you bring it up, I can easily check and 16 verify that.	
11 Q You billed \$500, 1300 and \$550 respectively, correct?		17 Q When we take a lunch break, can you get that 18 information and produce the email correspondence?	
12 A Correct.		19 A E-mail correspondence? Now you are asking for 20 something else. What email correspondence?	
13 Q And it was received, correct?		21 Q Well, I don't think that you will be able to testify 22 to what somebody said outside of this. But if you have email 23 correspondence, we can produce it to you?	
14 A Not for the EMG; was not received. I don't know why 15 it says received. No. It was not received.		24 A Okay. I can get you that.	
16 Q Well, I don't know what you are saying. It says 17 received. Doesn't that column say received?		25 Q Okay. Now, why don't you believe -- why do you	
18 MR. HARRIS: Objection.			
19 THE COURT: Overruled.			
20 A It says received but I don't believe it was paid for, 21 the EMG. That was not paid for.			
22 Q Who does the billing?			
23 A My office manager.			
24 Q Okay. The one that we just finished Ms. Sheikh 25 before?			
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1 A That is correct.		1 believe this may not be correct in terms of the billing for 2 those three entries?	
2 Q She's been working with you for awhile, right?		3 A I don't believe an attorney is supposed to be paying 4 for patient's medical services.	
3 A That is correct.		5 Q Well, you did a life care plan report?	
4 Q How many years?		6 A That's not --	
5 A Twenty plus years.		7 Q Let me finish. You did a life care plan report, 8 correct?	
6 Q She does a lot of your billing, right?		9 A Yes.	
7 A She does and I have another billing person.		10 Q You got paid for that?	
8 Q This is from almost three years ago. Did you ever 9 make a correction here to this billing?		11 A Yes.	
10 A I don't look at the billing.		12 Q How much did you get paid for that?	
11 Q But you get paid?		13 A Either it was \$2,500 or three thousand. I am not 14 sure.	
12 A Just because I get paid doesn't mean I look at all 13 the billing. If I looked at all the billing, I would be 14 spending hours and hours and hours.		15 Q That came from Burns & Harris, right?	
15 Q According to this, you received it on July 15th 16 correct, at least--		16 A That is correct.	
17 A I don't know if I did or I did not. But it says -- 18 it does say received.		17 Q Where is the billing record for that?	
19 Q So at least from what you are saying is at least the 20 first two entries, you were paid for by Burns & Harris, 21 correct?		18 A I don't believe there is a billing record for that.	
22 A I repeat, I am not sure. The record indicates 23 received. I am not sure if it was paid for by anyone.		19 Q Did you submit--	
24 Q How would you find that out, Doctor, if it was paid 25 by anyone?		20 A It's not listed here.	
		21 Q Did you submit an invoice to Burns & Harris?	
		22 A My office manager handles that stuff. I don't get 23 involved with those billings aspects.	
		24 Q Let me rephrase it.	
		Did someone from your office submit an invoice to	

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<p>1 Burns &amp; Harris for the life care plan report?</p> <p>2 A It is possible that it came from my office manager</p> <p>3 Nabeda. I will verify for you after lunch. I will get you an</p> <p>4 email.</p> <p>5 Q Now I am asking a different question though, Doctor.</p> <p>6 I am asking now, just -- we went through this. I'm asking</p> <p>7 about the life care plan report, okay.</p> <p>8 Somebody from your office would have submitted an</p> <p>9 invoice to Burns &amp; Harris for that, correct?</p> <p>10 MR. HARRIS: Objection.</p> <p>11 Asked and answered.</p> <p>12 THE COURT: Sustained.</p> <p>13 MS. GOLDSMITH: Okay. Judge, I think he is</p> <p>14 going back and forth between his--</p> <p>15 MR. HARRIS: I think she is going back and forth</p> <p>16 with the same questions over and over again, judge.</p> <p>17 THE COURT: The objection was sustained.</p> <p>18 Q If Ms. Salomon came to you at the referral of a</p> <p>19 friend, why didn't you bill her insurance company for the first</p> <p>20 visit?</p> <p>21 A Bill whose insurance company?</p> <p>22 Q Ms. Salomon.</p> <p>23 MR. HARRIS: Note my objection about any</p> <p>24 reference to insurance.</p> <p>25 MS. GOLDSMITH: Your Honor, this is very clear</p>	Page 1660	<p>1 A Either we didn't accept her insurance. We don't</p> <p>2 participate in that plan or she never gave us any insurance</p> <p>3 information.</p> <p>4 I don't know. One of those two possibilities.</p> <p>5 Q You do workers' compensation?</p> <p>6 A I do.</p> <p>7 Q Was this a workers' compensation case?</p> <p>8 A This was not a workers' compensation case.</p> <p>9 Q Was she injured at work?</p> <p>10 A I am not aware this was a workers' compensation case.</p> <p>11 Q My question is, was she injured at work? Is that the</p> <p>12 claim that she told you?</p> <p>13 A Just because somebody gets injured at work, if they</p> <p>14 are working for themselves, it's not a workers' compensation</p> <p>15 case.</p> <p>16 Q Do you take Oxford?</p> <p>17 A Some Oxfords, yes. Most Oxfords, no.</p> <p>18 Q Do you take United Health Care, correct?</p> <p>19 A Some United Health Care, yes. Some, no. United</p> <p>20 Health Care has over 25 different plans.</p> <p>21 Q You take no-fault, right? You're a no-fault</p> <p>22 provider, correct?</p> <p>23 A We do, yes.</p> <p>24 Q Correct?</p> <p>25 A Yes.</p>	Page 1662
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1661	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1663
<p>1 because there has been -- it's not a collateral source.</p> <p>2 There is no claim per the discovery.</p> <p>3 I am asking about this because it's very</p> <p>4 relevant to the testimony that we had and the upcoming</p> <p>5 testimony of this witness.</p> <p>6 THE COURT: Would you read back the question,</p> <p>7 please.</p> <p>8 (Requested portion read)</p> <p>9 THE COURT: Overruled.</p> <p>10 A First of all, that question makes absolutely no</p> <p>11 sense. Just because a patient is referred by a friend, I have</p> <p>12 to be billing an insurance company? One has nothing to do with</p> <p>13 the other one.</p> <p>14 Maybe we didn't take her insurance, if she had one,</p> <p>15 if it was even given to us. I don't get involved with</p> <p>16 insurance issues. That's why I have people that work in the</p> <p>17 office that deal with that kind of stuff.</p> <p>18 I don't get involved with that stuff.</p> <p>19 Q Doctor, you said 21 visits and six physical therapy</p> <p>20 visits. Why didn't you ever bill her insurance company for any</p> <p>21 of those visits as a treating physician?</p> <p>22 A I just answered that question.</p> <p>23 Q I am asking as a treating physician.</p> <p>24 A I answered your question. The reason is--</p> <p>25 Q You don't guest involved--</p>	Page 1661	<p>1 Q Okay. Did you ever make a determination as to</p> <p>2 whether Ms. Salomon had insurance that your office took?</p> <p>3 A I just finished telling you I don't get involved with</p> <p>4 that information.</p> <p>5 Q Did you direct anyone to make that determination?</p> <p>6 A I did not.</p> <p>7 Q So the records, am I correct, that after you had this</p> <p>8 conversation with Mr. Harris, you said you got records at some</p> <p>9 point, right?</p> <p>10 A That's correct.</p> <p>11 Q How were the records transmitted to you?</p> <p>12 A I don't know how they were sent in this fashion.</p> <p>13 They could be sent through email. They could be sent through a</p> <p>14 messenger or somebody from his office could have dropped it</p> <p>15 off. I'm not sure.</p> <p>16 Q Did you ask Mr. Harris to send you any specific</p> <p>17 records?</p> <p>18 A I said send me all the pertinent records, all the</p> <p>19 records.</p> <p>20 Q When you say, pertinent, I am a little confused. You</p> <p>21 said two things. You said you told Mr. Harris to send you all</p> <p>22 pertinent records and then to send you all records. Which was</p> <p>23 it?</p> <p>24 MR. HARRIS: Objection to form, your Honor.</p> <p>25 MS. GOLDSMITH: I am trying to get clarity.</p>	Page 1663

Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1664	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1666
<p>1                   MR. HARRIS: Well, the statement about being 2                   confused and such. 3                   THE COURT: Sustained. 4           Q Did you ask Mr. Harris to send you all pertinent 5           records or did you ask him to send you all records? 6           A All records. 7           Q Did you limit it in any way? 8           A I did not. 9           Q Did you rely on Mr. Harris to send you all records? 10          A Yes. 11          Q The records that you received around -- I think you 12         said around July 15, 2019 were partial records for East River, 13         the MRI reports, correct? 14          A Yes. 15          Q Some records from Dr. Drew Stein, correct? 16          A Yes. 17          Q Some records from Dr. Meislin, correct? 18          A Correct. 19          Q You had a report from Dr. Kiprovska? 20          A The EMG report. 21          Q Yes. With the full narrative, correct? 22          A Yes, correct. 23          Q A report from Dr. Kenneth McCullough? 24          A Correct. 25          Q And then he sent so you some legal documents in that,</p>	<p>1                   A That's correct. 2           Q That was given to you recently, correct? 3           A That is correct. 4           Q When was that given to you? 5           A Maybe a week ago. 6           Q And that was the first time you looked at them, 7           correct? 8           A That is correct. 9           Q Okay. 10          You were never sent the Presbyterian Rehabilitation 11         records, correct? 12          A That's correct. 13          Q Did you ever ask for them? 14          A I never knew they existed. 15          Q Okay. 16          What I am telling you the first time right here? 17          A Yes. 18          Q You know of Dr. Meislin, correct? 19          A I know of him, yes. 20          Q Okay. 21          He is at NYU? 22          A Yes. 23          Q Same hospital that you are at? 24          A Yes, that's correct. 25          Q What do you know -- and Dr. Meislin is in sports</p>		
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1665	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1667
<p>1                   correct? 2           A Whatever that was in there, yes. 3           Q Okay. 4                   When did you review those records? 5           A As soon as I got them or shortly after that the 6           visit. 7           Q And was it then that you dictated the report after? 8           A I dictate the report shortly after, yes. When 9           exactly, I don't remember. 10          Q Well, you just told us earlier that you dictated it 11         on the same day, July 15th? 12          A Maybe, I did. I don't remember. 13          Q When you got the records that were sent to you, those 14         records that I mentioned, did you review all of those that were 15         sent? 16          A Yes. 17          Q When you reviewed them, did you make a determination, 18         at all, if there were any records that were missing? 19          A No, not exactly. 20          Q Did you at any time, up until the end of last year, 21         December of 2021, request any additional records? 22          A I don't believe I did. 23          Q Okay. 24          Because you mentioned earlier today in response to 25         Mr. Harris' question that you looked at the Orthology records?</p>	<p>1                   orthopedic surgery? 2           A That is correct. 3           Q He is a full professor, correct? 4           A Yes. 5           Q Did you ever contact him to talk about this case? 6           A I did not. 7           Q Did you ever contact him to say, hey, you know what? 8           I was retained in a case where you did surgery, anything like 9           that? 10          A That's the most ridiculous question I ever heard in 11         my life. That's not how it's done. 12          MS. GOLDSMITH: Your Honor, I just want an 13         answer to the question. It's a yes or no question. 14          THE COURT: Can you answer the question? 15          THE WITNESS: The answer is I did not. 16          Q Okay. Did you ever attempt to seek out from 17         Dr. Meislin what specifically he did during the surgery? 18          A I have his report. I did not. There was no need. 19          Q Do you know Dr. Kiprovska? 20          A I know of him. 21          Q Right. He is also at NYU, correct? 22          A He is. 23          Q He is a neurologist. Is that correct? 24          A I believe he is. 25          Q Okay.</p>		

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1        And he is a clinical associate professor, correct?		1        Q    Physical exam, right?	
2        A    I believe he is, yes.		2        A    That is correct.	
3        Q    Okay.		3        Q    Go to page three. Do you see that?	
4        And he is the Director of the Division of		4        A    I do.	
5        Neuromuscular Medicine at NYU, correct?		5        Q    Okay. That's part of your exam?	
6        A    That is correct.		6        A    Right.	
7        Q    Dr. Meislin has never referred any patient to you,		7        Q    What does it say for the gait?	
8        correct?		8        A    Antalgic .	
9        A    That is correct.		9        Q    Didn't you first prepare another report in this case?	
10      Q    Dr. Kiprovska has never referred any patient to you,		10      A    I don't know.	
11      correct?		11      Q    Let's put this on. It's in the chart?	
12      A    That is correct.		12      A    Okay.	
13      Q    Okay.		13      Q    Another report dated July 15, 2019. You see that,	
14      The records if we can, I would like to put up the		14      page one?	
15      report that I think your attorney had --		15      A    I see that, yes.	
16      I want to put this report up.		16      Q    Go to page two, right? Page three.	
17      (Exhibit displayed at this time.)		17      A    Okay.	
18      Q    All right. So let me ask you, when you did your		18      Q    That's the second report. Now we are going to put up	
19      report, Doctor, after you drafted it. You said probably the		19      the other report. That's the report -- do you see that? You	
20      same day. You came back to it the same day.		20      have another page here?	
21      You reviewed it. It was accurate and you signed it,		21      A    I see that yes.	
22      right?		22      Q    What does it say for the gait here?	
23            MR. HARRIS: Objection, your Honor. Compound		23      A    Gait is normal. Probably a typo.	
24      question and it misstates his prior testimony.		24      Q    There are two different reports, Doctor. You have	
25            THE COURT: Sustained.		25      two different pages here?	
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1        Q    After you determined the report was accurate, did you		1        A    Yes.	
2      sign it?		2        Q    Okay. So when you first dictated this report, you	
3        A    Yes.		3      dictated -- you dictated it and said the gait was normal,	
4        Q    Did you send the report to anyone?		4      correct?	
5        A    Yes.		5        A    Not that I said. The report says the gait was	
6        Q    Who?		6      normal. That's why a second report came to probably correct	
7        A    Mr. Harris' office.		7      that gait. Her gait has never been normal.	
8        Q    When did you send him the report?		8        Q    You said that you are the one who dictated the	
9        A    I don't get involved with sending report. Again, I		9      report, correct?	
10      have people that do that. When it was sent, I don't know.		10      A    Correct. And I told you I am not infallible.	
11      Q    Did Mr. Harris or anyone from his firm assist you in		11      Neither is the typing service, neither are you.	
12      preparing this report?		12      Q    Dictating antalgic and dictating normal, very	
13      A    Absolutely not.		13      different sounding words we can agree, correct?	
14      Q    Did they ask you to make any changes to the report?		14      A    I never said I dictated normal. I said that's	
15      A    Absolutely not.		15      obviously a typo. Her gait has never normal, since I first saw	
16      Q    Did you ever make any changes to the report?		16      her.	
17      A    To my knowledge, no.		17      Q    Doctor, the records that you produced here today and	
18      Q    Okay.		18      the ones that were marked as exhibits that your office	
19      So this is the report that you produced here, right,		19      certified, it didn't include this first report you did,	
20      that was just up. I just want to go through it. Take a look.		20      correct?	
21      You can see it on the monitor?		21      A    Again, I don't get involved with reports and sending	
22      A    Yes. I see it.		22      them out to you. But if you have that report, that's a	
23      Q    Page one, right. We are down to the second page,		23      mistake. That's a typo.	
24      history, past medical history?		24            I am here to tell you that is not correct.	
25      A    That is correct.		25      Q    Doctor, that wasn't my question. My question is, the	

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<p>1 big file you brought today that we marked as Exhibit BB, and 2 the certified chart that was introduced to you today -- that 3 was introduced by plaintiff's counsel, neither of those 4 exhibits contained the report that says the gait is normal, 5 correct?</p> <p>6 A Obviously, that was a mistaken report.</p> <p>7 MS. GOLDSMITH: Your Honor, this is a good 8 time -- it's close to one. Can we break for lunch now?</p> <p>9 THE COURT: You don't want to keep going a 10 little bit longer?</p> <p>11 MS. GOLDSMITH: Okay. It's a good time. I just 12 think it's a good time. But if you want me to, I will.</p> <p>13 THE COURT: Yes. We need to use the time. I 14 don't want to be going over 4:30 again today.</p> <p>15 MS. GOLDSMITH: Okay.</p> <p>16 Q What time was your appointment on July 15th, 2019?</p> <p>17 A You have got to be kidding? You are asking me to 18 know what time the appointment was? I have no idea.</p> <p>19 Q Would that information be known by your office 20 manager?</p> <p>21 A Maybe.</p> <p>22 MR. HARRIS: Objection. Calls for someone 23 else's state of mind.</p> <p>24 Q During the lunch break--</p>	Page 1672	<p>1 A I don't remember.</p> <p>2 Q When she came to your office, did you have her 3 complete a form?</p> <p>4 A I did.</p> <p>5 Q That's standard. You have everyone that comes do 6 that?</p> <p>7 A Not everyone. A lot of my patients don't speak 8 English well. So I speak fluent Spanish. So I ask them the 9 questions. They don't fill out the form.</p> <p>10 Q But plaintiff here spoke fluent English, correct?</p> <p>11 A She did fill out the report.</p> <p>12 Q And you have that form?</p> <p>13 A I do.</p> <p>14 Q We are going to put that up so the jury can see it. (Exhibit displayed at this time.)</p> <p>15 Q Okay. So do you see that on your monitor?</p> <p>16 A I do.</p> <p>17 Q Okay. And if we look here, the date was 7/15/19, 18 correct?</p> <p>19 A Correct.</p> <p>20 Q And is it your practice back then that you have the 21 patient actually fill this out?</p> <p>22 A Yes.</p> <p>23 Q Okay.</p> <p>24 A And based on your evaluation and treatment of</p>	Page 1674
Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1673	Dr. Guy - Plaintiff - Cross/Goldsmith	Page 1675
<p>1 THE COURT: Sustained.</p> <p>2 Q During the lunch--</p> <p>3 THE COURT: The jury will disregard the last 4 question and answer.</p> <p>5 Q During the lunch break, can you ascertain what time 6 the appointment was?</p> <p>7 MR. HARRIS: Objection.</p> <p>8 THE COURT: Yes. Sustained.</p> <p>9 Q What were your office hours back then at Grammercy?</p> <p>10 A Same as they are now.</p> <p>11 Q Which are what?</p> <p>12 A Monday, I start at 8:30 to nine. I finish whenever I 13 finish.</p> <p>14 Q Okay. And July 15th being a Monday?</p> <p>15 A I don't know. It could be a Monday. Sometimes I see 16 patients on Thursdays. My schedule varies.</p> <p>17 Q But at least at Grammercy this is where -- It was the 18 Grammercy office that you did the exam on July 15th?</p> <p>19 A That is correct.</p> <p>20 Q And you have a regular day of Monday and maybe 21 Thursdays?</p> <p>22 A Every Monday, some Thursdays and sometimes some 23 Fridays.</p> <p>24 Q Did anyone accompany the plaintiff to that 25 appointment?</p>	Page 1673	<p>1 Ms. Salomon, this was a document that she filled out on 2 July 15, 2019, correct?</p> <p>3 A Correct.</p> <p>4 Q Okay.</p> <p>5 So let's just start here with the medical history 6 questions, right?</p> <p>7 A Right.</p> <p>8 Q I want to draw your attention to number five.</p> <p>9 A Okay.</p> <p>10 Q What part of your body did you injure and what parts 11 of your body hurt you at the present time?</p> <p>12 A Correct.</p> <p>13 Q Do you see that?</p> <p>14 A I do.</p> <p>15 Q Did she lift anything here about burning?</p> <p>16 A That's not a body part. Burning is a complaint -- is 17 a subjective complaint. And yes, she did complain to me of 18 burning sensation.</p> <p>19 Q That's not what I am asking.</p> <p>20 A I answered your question.</p> <p>21 Q I am asking if she indicated that here?</p> <p>22 A Read the question carefully. It says what parts of 23 the body did you injure and what parts of your body hurt you at 24 the present time. Nothing about burning pain.</p> <p>25 That's why I elicit from further history. I elicit</p>	Page 1675

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<p>1 that from the patient. So it says injury to the right 2 hamstring and the sitting bone area.</p> <p>3 Q Is there anything here about the leg below the knee?</p> <p>4 A No.</p> <p>5 Q Is there anything in here about the foot?</p> <p>6 A No.</p> <p>7 Q Is there in here about the ankle?</p> <p>8 A No.</p> <p>9 Q Anything in here about the toes?</p> <p>10 A No.</p> <p>11 Q Okay.</p> <p>12 Let's move on to the next questions. Look at number 13 eight year.</p> <p>14 I am going to blow that up so the jury can see.</p> <p>15 A Okay.</p> <p>16 Q What is the reason -- and by the way, this is a 17 preprinted form that was created by your office at some point, 18 correct?</p> <p>19 A That is correct.</p> <p>20 Q Why do you ask patients who come to you if they have 21 neck pain? Why do you want to know that?</p> <p>22 A To see if there is any unrelated injuries or the past 23 injuries.</p> <p>24 Q Why specifically for the neck pain?</p> <p>25 A I ask about the neck pain. I ask about the lower</p>		<p>1 their complaints are related -- are not related or due to an 2 unrelated accident?</p> <p>3 A No.</p> <p>4 Q Do you have any knowledge as to why Ms. Salomon wrote 5 this here, due to unrelated accident?</p> <p>6 MR. HARRIS: Objection.</p> <p>7 MS. GOLDSMITH: Just to knowledge.</p> <p>8 MR. HARRIS: As to why she wrote it.</p> <p>9 Objection.</p> <p>10 A I don't think he can read her mind, no matter what.</p> <p>11 MS. GOLDSMITH: Let's move on.</p> <p>12 THE COURT: Sustained.</p> <p>13 Q Number nine, do you have any history of any prior 14 significant accidents or injuries before the onset of your 15 current symptoms? And she circled, no, right?</p> <p>16 A That's correct.</p> <p>17 Q What were the onset -- from what you determined, when 18 was the onset of her current symptoms?</p> <p>19 A The 2014 accident.</p> <p>20 Q So it's your -- well, but you talked about burning 21 pain and allodynia. Are you saying that started in 2014?</p> <p>22 A No. It's in my report and in history, it started 23 after the hip surgery.</p> <p>24 Q Okay. So then according to this, prior to that hip 25 surgery, she had no history of any prior significant accident</p>	
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<p>1 back pain. Lower back pain is number ten. Those are areas 2 that are important to me.</p> <p>3 Q According to this, the plaintiff circled that she 4 does have neck pain, correct?</p> <p>5 A Yes.</p> <p>6 Q She circled that at sometimes or always travels to 7 the shoulders or down the arms, correct?</p> <p>8 A Yes.</p> <p>9 Q And she said that there is occasional numbness or 10 tingling in the arms, correct?</p> <p>11 A Correct.</p> <p>12 Q Do you see there is some handwriting next to that?</p> <p>13 A Due to unrelated accident.</p> <p>14 Q Is that handwriting from you or from her?</p> <p>15 A No. That's not from me.</p> <p>16 Q So in this form that she was filling out, she wrote 17 in due to unrelated accident, correct?</p> <p>18 A Correct.</p> <p>19 Q Do you ask that question in this form, if any of the 20 pain complaints are due to an unrelated accident? Do you ask 21 that information?</p> <p>22 A I ask them to explain it when I interview them 23 afterwards.</p> <p>24 Q That's not my question. This form, is there anywhere 25 in this form that you ask the patients to indicate if any of</p>		<p>1 or injury?</p> <p>2 A That's what it states.</p> <p>3 Q Okay.</p> <p>4 What do you mean by -- when you wrote this, what did 5 you mean by prior significant accident or injury?</p> <p>6 A Before the accident of 2014.</p> <p>7 Q That's not what I am asking.</p> <p>8 A That's my --</p> <p>9 Q What do you mean by these words? What does that mean 10 significant accident or injuries?</p> <p>11 MR. HARRIS: Objection. Asked and answered.</p> <p>12 Q What does that mean?</p> <p>13 THE COURT: Overruled.</p> <p>14 A I was trying to answer you. You cut me off twice.</p> <p>15 So let me finish this third time please.</p> <p>16 What that means is any prior accidents before 2014.</p> <p>17 That's what that means.</p> <p>18 Q Doctor, I am asking you -- not about this patient. I 19 am just asking when you created this form and you listed the 20 word, prior significant accident or injury, I am trying to 21 understand from you what mean by significant accident or 22 significant injury?</p> <p>23 MR. HARRIS: Objection, your Honor. It's been 24 asked and answered.</p> <p>25 MS. GOLDSMITH: I am asking generally what he</p>	

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<p>1 means by those words. 2 THE COURT: Overruled. 3 A What it means is if she had an injury, just a sprain, 4 that's not significant. I don't need to know that. 5 I am talking about the accident that she is here for 6 me. This is the 2014. I am asking if there is anything 7 significant prior to this accident of 2014. 8 Q Right. But again, I think we established the onset 9 of her symptoms did not start until after July 2018, correct? 10 A You asked me what that means. I explained it to you 11 three times, four times. And now you are going to another 12 question. So are you happy with that answer or are you not 13 happy with that answer? 14 Q Doctor, if a patient had a fall, would you expect 15 them to check off yes, here? 16 A I have no idea what they would expect. I would go 17 into my own history. I would use it as a guide but I take my 18 own history and I conduct my own examination. 19 I conduct my own evaluations. A lot of times, the 20 patient may get that stuff wrong. That's why I take my own 21 history. 22 MS. GOLDSMITH: Let's go to number 14 now. 23 (Exhibit displayed.) 24 Q Part of your form you needed to know if she was 25 working on the job while injured, correct?</p>	Page 1680	<p>1 COURT OFFICER: All rise. Jurors exiting. 2 (The sworn jurors exit the courtroom.) 3 (Continued on the next page.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	Page 1682
<p>1 A Yes. 2 Q She said yes, correct? 3 A She did. 4 Q She even says that injury report was filled out, 5 correct? 6 A Correct. 7 Q Weren't you required, Doctor, as a workers' 8 compensation doctor to submit this to the workers' 9 compensation? 10 MR. HARRIS: Objection, your Honor. 11 THE COURT: Grounds. 12 MR. HARRIS: Relevance. Weren't you required to 13 submit it to the workers' compensation board. 14 THE COURT: Would you read back the question 15 please. 16 (Requested portion read) 17 THE COURT: Overruled. 18 A The answer is no, because she did not come with a 19 workers' compensation accident file number or case number, 20 third-party carrier. 21 She was working for herself when she got injured. So 22 this does not become a workers' comp injury case, as per say. 23 THE COURT: All right. We are going to break 24 now for lunch. All right we will resume at 2:15. Same 25 instructions to everyone as during the prior break.</p>	Page 1681	<p>Proceedings</p> <p>1 THE COURT: All right. 2 MR. HARRIS: Your Honor, did you see Alison's 3 e-mail over lunch? 4 THE COURT: No. I didn't have a chance. 5 MR. HARRIS: We notified the defendants that 6 Dr. Guy -- 7 THE COURT: I asked you not to e-mail me, 8 right, at the beginning of the trial? 9 MS. KEENAN: Correct. I did not e-mail you, 10 your Honor. 11 MR. HARRIS: My mistake. I thought maybe you 12 were. 13 THE COURT: You want to get in touch with me, 14 telephone me. I was right by the telephone the entire 15 lunch hour. 16 MR. HARRIS: Okay. 17 THE COURT: What do you need? 18 MR. HARRIS: Could we discuss the schedule 19 briefly? 20 THE COURT: Okay. I don't know what we need 21 to discuss. 22 MR. HARRIS: Well -- 23 THE COURT: We will start at 11:30 tomorrow 24 morning. 25 MR. HARRIS: Right. And Dr. Guy we indicated</p>	Page 1683

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<p>1 to defense counsel will be our last witness. So I 2 don't know -- we asked them who they have for tomorrow. 3 THE COURT: You just want to receive notice 4 of who the first witness will be? 5 MR. HARRIS: Right. Yes. 6 THE COURT: That is not scheduling. 7 MR. HARRIS: Well, it may be because I don't 8 know if there is a witness. 9 MS. SAAB-DOMINGUEZ: There is. 10 MS. GOLDSMITH: We are trying to confirm 11 that -- I think -- so Mandel was supposed to go 12 tomorrow morning, right? We assumed -- tonight we will 13 be able to confirm if we could produce somebody 14 tomorrow. I think we will be able to. 15 MR. HARRIS: Who is it? 16 THE COURT: We need to have somebody 17 tomorrow. 18 MR. GLADSTONE: Your Honor, you didn't see 19 the e-mail. There was a witness, plaintiff's witness 20 that has been withdrawn that we found out about an hour 21 ago. That is what we just found out. 22 THE COURT: Okay. 23 MS. GOLDSMITH: Now we are scrambling to get 24 someone in here by 11:30. That is the whole thing. 25 So, Judge, if we started at 11:30, when would we break</p>	Page 1684	<p>1 THE COURT: We don't need to have any of this 2 discussion. 3 MR. HARRIS: Well, if they are requesting a 4 missing witness for that expert, then we do. 5 THE COURT: Have you discussed that with your 6 adversaries? 7 MS. GOLDSMITH: No. 8 MS. SAAB-DOMINGUEZ: No. 9 THE COURT: So do so. 10 (Brief pause.) 11 THE COURT: Bring the jury in. 12 MR. HARRIS: I asked the question but I am 13 not hearing any response. 14 COURT OFFICER: Judge, are you ready? 15 THE COURT: Bring them in. 16 (Brief pause.) 17 COURT OFFICER: Jurors entering. 18 (Whereupon, the jury panel entered the 19 courtroom.) 20 THE COURT: All right. Please have a seat, 21 everyone. This is continued Cross-examination by A &amp; A 22 Enterprise of Dr. Guy. 23 MS. GOLDSMITH: Yes. 24 Q Good afternoon, Dr. Guy. 25 A Good afternoon, ma'am.</p>	Page 1686
<p>Proceedings</p> <p>1 for lunch and when would we come back? 2 THE COURT: Same time. 3 MS. GOLDSMITH: 1 to 2:15? 4 THE COURT: Yes. 5 MS. GOLDSMITH: So hour and a half in the 6 morning. 7 MR. HARRIS: So now I am asking on the 8 record, Judge, who they are calling pursuant to our 9 agreement. 10 THE COURT: I thought Ms. Saab-Dominguez said 11 so. 12 MS. SAAB-DOMINGUEZ: I am waiting for 13 confirmation, your Honor, whether or not I could have 14 Dr. Grelsamer come in earlier. 15 MR. HARRIS: Thank you. 16 MS. SAAB-DOMINGUEZ: Because it was 17 anticipated that your witness would be on the stand. 18 MR. HARRIS: I totally understand that. 19 THE COURT: Okay. You could discuss this all 20 among yourselves. 21 MR. HARRIS: By the way, Judge, if they want 22 Dr. Mandel on their case, I could have him produced 23 here. We just don't need him because it would be 24 bolstering opinions that have already been entered into 25 the record through other experts.</p>	Page 1685	<p>Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith</p> <p>1 Q I wanted to show you a document from your record, 2 I believe it's in Exhibit AA, but you will see it on the 3 screen that comes up. 4 A Okay. 5 Q This is called a Patient Demographic Sheet, 6 correct? It's on your sheet, sir. 7 A Yes, correct. 8 Q And this is for the plaintiff, correct? 9 A Yes. 10 Q Kristen Salomon? 11 A Correct. 12 Q Okay. This lists additional referring documents, 13 referral source, you see that? 14 A I do. 15 Q What does the referral source say? 16 A It says Burns &amp; Harris, and the address given. 17 Q Okay. Meaning that Burns &amp; Harris was the 18 referral source for the plaintiff, correct? 19 A Um, to tell you the truth, this is the first time 20 I am seeing my own demographic sheets. I don't look at 21 these things. I don't know what that means. I never seen 22 this before. 23 Q Sir, primary carrier, you see that down here at 24 the bottom? It says "major, medical." We could blow this 25 up. Down here. You see that?</p>	Page 1687

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<p>1 A I do.</p> <p>2 Q Who is the primary carrier for plaintiff?</p> <p>3 A I just finished telling you, I never seen this document before. I have no idea. I don't know.</p> <p>5 Q What is listed in this document that is in your record that was prepared at your office? Who is listed as the primary carrier?</p> <p>8 A It says major medical.</p> <p>9 Q Who is the primary carrier in that box, sir?</p> <p>10 A That is not the primary carrier. It says Seth Harris, PLLC.</p> <p>12 Q Okay. Okay. And the information, sir, that is supposed to be in here under primary carrier is who the carrier is, correct?</p> <p>15 A That's correct.</p> <p>16 Q Okay. And instead of a -- I mean, is that a carrier, Seth A. Harris, PLLC, is that a medical carrier you are aware of?</p> <p>19 A No, absolutely not.</p> <p>20 Q But he is who was responsible for the bills here, correct?</p> <p>22 A Again, I don't know. I never seen this document before.</p> <p>24 Q Okay. You had the plaintiff sign a lien letter here; is that correct?</p>	Page 1688	<p>1 understand, Judge, we are not supposed to be discussing insurance.</p> <p>3 MS. GOLDSMITH: No, Judge. There is health insurance.</p> <p>5 THE COURT: Overruled.</p> <p>6 MS. GOLDSMITH: Not talking about other insurance.</p> <p>8 Q Sir, you could answer.</p> <p>9 A Some pay full amount, some pay much less.</p> <p>10 Q And fair to say Worker's Compensation rates would be much less than this?</p> <p>12 A Usually one half.</p> <p>13 Q And if we could just go to the bottom of this so we could show, just to confirm, this is signed by the plaintiff here, Kristen Salomon, on that first time you saw her, 7/15/19; is that correct?</p> <p>17 A Yes, that's correct.</p> <p>18 Q Did the plaintiff -- was the plaintiff --</p> <p>19 MS. GOLDSMITH: I am done with that. Thank you.</p> <p>21 Q Were you able to determine during the break what time plaintiff came to see you on July 15th, 2019?</p> <p>23 A No, no one knows what time.</p> <p>24 Q Had Ms. Salomon seen any other doctors that day before she came to you?</p>	Page 1690
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1689	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1691
<p>1 A Yes, that's correct.</p> <p>2 Q You testified in response to Mr. Harris's question, right?</p> <p>4 A Yes.</p> <p>5 MS. GOLDSMITH: Let's put the lien letter up if you can.</p> <p>7 (Exhibit displayed.)</p> <p>8 Q We will blow the top part up. Now, this is something your office prepared, correct?</p> <p>10 A Yes.</p> <p>11 Q "Liens, major medicals, and out-of-state no-fault fees", correct?</p> <p>13 A Yes, correct.</p> <p>14 Q And these are fees that your office has set for anything -- any kind of services that are rendered by your office, correct?</p> <p>17 A That is correct.</p> <p>18 Q Fair to say, Doctor, that these fees that you charge here are more than you would get from insurance reimbursement?</p> <p>21 MR. HARRIS: Objection.</p> <p>22 THE COURT: Sorry. Is there an objection?</p> <p>23 MR. HARRIS: Yes.</p> <p>24 THE COURT: Grounds?</p> <p>25 MR. HARRIS: Relevancy and it's -- I</p>	Page 1689	<p>1 A How would I know? I wouldn't know.</p> <p>2 Q Do you know if she saw anyone after you?</p> <p>3 A How would I know? I don't know.</p> <p>4 Q Are you aware that she went to see a dermatologist, Dr. Liebman, the same day she saw you?</p> <p>6 A No, I do not know.</p> <p>7 Q Were you given that record by Mr. Harris?</p> <p>8 A The doctor's name is Liebman?</p> <p>9 Q Tracy Liebman.</p> <p>10 A I may have been given that record, yes.</p> <p>11 Q Do you have that record in the pile of -- that we marked as BB?</p> <p>13 A I think it was sent to me by e-mail. I have it on my -- I believe I have it on my telephone.</p> <p>15 Q Who sent it to you by e-mail?</p> <p>16 A Mr. Harris's office.</p> <p>17 Q Okay. Then you read that record?</p> <p>18 A I did.</p> <p>19 Q And there were no findings with regard to the lower extremities; is that correct?</p> <p>21 A I believe a diagnosis was complex regional pain syndrome.</p> <p>23 Q I am not sure -- let's put, if we can --</p> <p>24 A If we are talking about the same doctor.</p> <p>25 Q I don't know what you are talking about. I will</p>	Page 1691

Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1692	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1694
<p>1 put up Dr. Liebman's records.</p> <p>2 A Okay.</p> <p>3 Q From N.Y.U. Langone, the hospital that you are affiliated with, you see this, Tracy Liebman?</p> <p>4 A I don't believe I saw this report.</p> <p>5 Q Okay. Do you know Dr. Liebman?</p> <p>6 A I don't know who Dr. Liebman is.</p> <p>7 Q Okay.</p> <p>8 MS. GOLDSMITH: Let's go down to the physical exam. Let me see.</p> <p>9 (Brief pause.)</p> <p>10 MS. GOLDSMITH: Right here.</p> <p>11 Q You see there was a skin exam that was done here?</p> <p>12 A Yes.</p> <p>13 Q And no findings were from the skin exam, correct?</p> <p>14 MR. HARRIS: Objection, your Honor. Beyond the scope of Direct.</p> <p>15 THE COURT: Sustained.</p> <p>16 Q Doctor, are you aware that on the same day you did your examination that a dermatologist evaluated the skin and determined there was nothing abnormal on the skin?</p> <p>17 MR. HARRIS: Same objection.</p> <p>18 Q Are you aware? Yes or no.</p> <p>19 A No, I am not aware.</p> <p>20 THE COURT: The objection is overruled.</p>	Page 1692	<p>1 A Absolutely not.</p> <p>2 Q Okay. Was the exam done here in front of everybody?</p> <p>3 A No.</p> <p>4 Q Where did you do the exam out in the courtroom -- sorry. Withdrawn.</p> <p>5 Where did you do the exam here in the courthouse?</p> <p>6 A All I did was take a temperature, that is it.</p> <p>7 Q So the first time you took her temperature using an actual device was not until almost three years after you first saw her, fair?</p> <p>8 A That is correct.</p> <p>9 Q And you took it then because this case was supposed to go to trial about a week after that, correct?</p> <p>10 A I had no idea when this case was going to trial.</p> <p>11 Q You mentioned that she came to your office for physical therapy appointments, right?</p> <p>12 A Correct.</p> <p>13 Q She actually came to your office since July 2019 for only seven physical therapy appointments, correct?</p> <p>14 A That is correct.</p> <p>15 Q If we could --</p> <p>16 MS. GOLDSMITH: See if Roy is able to -- if I may, I want to put that up so we could show the jury.</p> <p>17 (Brief pause.)</p>	Page 1694
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1693	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1695
<p>1 Q Dr. Guy, you testified earlier that you took the temperature twice of plaintiff; is that correct?</p> <p>2 A Yes.</p> <p>3 Q The first time was on July 15th, 2019; is that correct?</p> <p>4 A Not with an infrared thermometer. By hand, yes.</p> <p>5 I checked the temperature on almost every single visit.</p> <p>6 Q On July 15th, 2019, when she presented to you, you did not use any type of device to measure the temperature, fair?</p> <p>7 A I did not, that is correct.</p> <p>8 Q As a matter of fact, you did not even record what the temperature was on either of her extremities on July 15th, 2019; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q And you said earlier -- and I want to try to understand -- you said you took her temperature twice. What are the two days you took them?</p> <p>11 A One was on February 17th, 2022, and the second time was this morning.</p> <p>12 Q This morning in the courtroom?</p> <p>13 A Yes, outside the courtroom.</p> <p>14 Q So you did an exam here in the courtroom?</p> <p>15 A I did.</p> <p>16 Q Are you charging her for the exam?</p>	Page 1693	<p>1 Q Do you have a physical therapist there in your office?</p> <p>2 A I do.</p> <p>3 Q I will just put up one of the pages from your record. This one happens to start with 8/21/19; is that correct?</p> <p>4 (Exhibit displayed.)</p> <p>5 A Correct.</p> <p>6 Q And there are seven of these in your chart, just like this, this kind of half -- I think it takes up about a third of a page.</p> <p>7 A Yes, that's correct.</p> <p>8 Q And so there are seven entries in total; is that correct?</p> <p>9 A That is correct.</p> <p>10 Q I think you testified on Direct, if I am correct, that you recommended that she go for physical therapy at least once per week?</p> <p>11 A That is correct.</p> <p>12 Q Okay.</p> <p>13 A Yes.</p> <p>14 Q And so let's say about one hundred thirty weeks, one hundred forty weeks that happened since you made that recommendation, correct?</p> <p>15 A More or less, that's correct.</p>	Page 1695

Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1696	Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1698
1 Q So she only went seven times? 2 A That's correct. 3 Q Did you tell her to stop going? 4 A I did not. 5 Q Did you tell her to continue going? 6 A I did. 7 Q Now, this physical therapist, what is his name? 8 A Jose -- I can't -- 9 Q Here it is. 10 A Jose. 11 Q You could see it blown up on yours if you can. 12 A I am cutting -- Acostas. 13 Q Do you know who that is? 14 A I call him Jose. He's my physical therapist. 15 Q But you needed to see -- you didn't know his last 16 name? 17 A I have a lot of people that work with me. I go by first name. 18 Q You said there were fourteen people that worked 20 for you. 21 A That is a lot of people for me. 22 Q How long has Jose worked for you? 23 A Yes. 24 Q Competent physical therapist? 25 A Yes.	Page 1696	1 A That is correct. 2 Q And what that means, Doctor, is that signs, 3 symptoms of a nerve injury would not occur until about at 4 least ten to twenty-one days after the insult; is that 5 correct? 6 A Correct. 7 Q Doctor, I will put up -- you testified in response 8 to Mr. Harris's questions that the Orthology notes are the 9 most accurate because they take you through the chronology 10 of what happened. 11 A Correct. 12 Q Right? 13 A Yes. 14 Q And the Orthology notes are the physical therapy 15 notes that you were recently provided with this year; is 16 that correct? 17 A Yes. 18 Q What I would like to do is put up the initial 19 visit, I believe -- I think it's August 20th. I am not 20 sure. Let me check. (Brief pause.) 22 Q So I will put this up, Doctor, for you to look at. (Exhibit displayed.) 24 Q So this is -- we could find the visit date. (Brief pause.)	Page 1698
Dr. Ali Guy - Plaintiff - Cross/Ms. Goldsmith	Page 1697	Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1699
1 Q Writes down information as to what he observed, 2 what is being done? 3 A Again, he is not infallible, but generally yes. 4 Q So under S, subjective, subjective means what the 5 patient tells you; is that correct? 6 A Correct. 7 Q Okay. And in every single one of these entries, 8 and we could go through all of them, what she complains of 9 is right hip and right buttock pain, right? 10 A Correct. 11 Q Nothing in the physical therapist note about any 12 burning; is that correct? 13 A That's correct. 14 Q Nothing about any complaints of her leg, correct? 15 A Correct. 16 Q Nothing about any tingling sensations; is that 17 correct? 18 A Correct. 19 Q Nothing about any paraesthesia, correct? 20 A Correct. 21 Q You would agree with me, Doctor, that a nerve 22 injury takes ten to twenty-one days to manifest itself? 23 A Generally speaking, yes. 24 Q A nerve injury never manifests itself immediately, 25 correct?	Page 1697	1 Q August 20th, 2018. 2 A Yes. 3 Q This is something you looked at, correct? 4 A Yes. 5 Q And, now, under there past medical history -- by 6 the way, that is what the patient would provide information 7 about that, correct? 8 A Correct. 9 Q Okay. And what is listed, the last line, could 10 you read that first sentence? 11 A "No fall reported in the past year. No report of 12 falling two or more times in the past year." 13 Q Now, that information was inaccurate, correct? 14 A Yes. 15 MS. GOLDSMITH: Thank you. I have no further 16 questions. 17 A Okay. 18 CROSS-EXAMINATION 19 BY MR. VITA: 20 Q Good afternoon, Doctor. 21 A Good afternoon, sir. 22 Q Now, Dr. Guy, you diagnosed the plaintiff with 23 CRPS after seeing her for the first time on July 15th, 24 2019, is that right, Doctor? 25 A Yes, sir, that is correct.	Page 1699

Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1700	Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1702
<p>1 Q And when you did so, you were the first medical 2 doctor who made that diagnosis since her fall at the U.S. 3 Open in 2014; is that right?</p> <p>4 A Yes, sir.</p> <p>5 Q No doctor diagnosed CRPS in 2014; is that correct?</p> <p>6 A That's correct.</p> <p>7 Q No doctor diagnosed CRPS in 2015?</p> <p>8 A That's correct.</p> <p>9 Q No doctor diagnosed CRPS in 2016?</p> <p>10 A That's correct.</p> <p>11 Q No doctor diagnosed CRPS in 2017?</p> <p>12 A That's correct.</p> <p>13 Q And no doctor diagnosed CRPS in 2018?</p> <p>14 A That is also correct.</p> <p>15 Q Now, during that time the plaintiff saw Dr. Drew 16 Stein, multiple times, right?</p> <p>17 A Yes.</p> <p>18 Q And she saw Dr. Hausknecht multiple --</p> <p>19 A I believe Hausknecht was only with the car 20 accident.</p> <p>21 Q That is not my question, Doctor.</p> <p>22 A The answer to your question is yes, the patient 23 did see Hausknecht.</p> <p>24 Q And so what you are doing I think is you are 25 setting up two cases, right? The motor vehicle accident</p>	Page 1700	<p>1 Q Right?</p> <p>2 A Yes.</p> <p>3 Q And then you made a diagnosis right there and then 4 of CRPS?</p> <p>5 A That's correct.</p> <p>6 Q Okay.</p> <p>7 A Plus sciatic neuritis.</p> <p>8 Q Plus -- okay. Now, Doctor, did you do a 9 differential diagnosis at that time?</p> <p>10 A No.</p> <p>11 Q Okay. No differential diagnosis?</p> <p>12 A No.</p> <p>13 Q Doctor, I want you to assume that this is a 14 diagram that the plaintiff used with Dr. Gutstein, okay, 15 sir?</p> <p>16 A Okay.</p> <p>17 Q This is an explanation of CRPS, you see that, sir?</p> <p>18 A I do.</p> <p>19 Q And according to this diagram, CRPS involves the 20 brain, right?</p> <p>21 A Yes, it does.</p> <p>22 Q Would you agree with that?</p> <p>23 A Yes.</p> <p>24 Q And it involves the spinal column, right?</p> <p>25 A Yes, sir.</p>	Page 1702
Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1701	Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1703
<p>1 case, and the fall at U.S. Open, right, Doctor?</p> <p>2 A All I am interested -- all I am treating her for 3 is the 2014 accident.</p> <p>4 Q What about Dr. Hausknecht?</p> <p>5 A Ask him. What about him?</p> <p>6 Q Is he treating her just for the motor vehicle 7 accident, or for the 2014 U.S. Open accident?</p> <p>8 A Based on the notes that I saw, it was for the car 9 accident.</p> <p>10 Q Okay. And what about Dr. Schottenstein?</p> <p>11 A He was treating her for both.</p> <p>12 Q Now, when the plaintiff came to see you, the first 13 time, right, when she was referred by a friend -- are you 14 with me, Doctor?</p> <p>15 A I am with you.</p> <p>16 Q That was on July 15th, 2019, right?</p> <p>17 A Yes, sir.</p> <p>18 Q And you don't know how much time you spent with 19 the plaintiff, right?</p> <p>20 A I do not know.</p> <p>21 Q You gave a list of some medical records that you 22 looked at, right?</p> <p>23 A I gave her a list?</p> <p>24 Q No. You gave us earlier in your testimony --</p> <p>25 A Oh, yes. That's correct.</p>	Page 1701	<p>1 Q And that is part of the central nervous system, 2 right?</p> <p>3 A Well, the spinal cord -- yes, part of the central 4 nervous system.</p> <p>5 Q And earlier during your testimony you said that 6 the spine was the relay -- you remember saying that?</p> <p>7 A Yes.</p> <p>8 Q What is the relay between?</p> <p>9 A The spinal cord is the relay between the brain 10 and the lower extremities through the peripheral nervous 11 system.</p> <p>12 Q Okay. So when you make a diagnosis of CRPS, 13 wouldn't it be important to know about any injuries to the 14 brain, Doctor?</p> <p>15 A Absolutely not, for a variety of good reasons.</p> <p>16 Q All right. So --</p> <p>17 MR. VITA: Let's pull up Dr. Hausknecht's 18 records.</p> <p>19 (Exhibit displayed.)</p> <p>20 Q Now, are you aware, Doctor, that the plaintiff saw 21 Dr. Hausknecht almost exactly one month prior to her visit 22 to you -- her visit to you is --</p> <p>23 A Yes, this is correct.</p> <p>24 Q -- in July of 2019. This is in June, yes?</p> <p>25 A Yes.</p>	Page 1703

Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1704	Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1706
<p>1 Q So approximately one month?</p> <p>2 A That's correct.</p> <p>3 Q Now, you didn't have this report from Dr.</p> <p>4 Hausknecht when you first saw the plaintiff; is that right?</p> <p>5 A That's correct.</p> <p>6 Q And --</p> <p>7 MR. VITA: Could we go down to previous</p> <p>8 testing and highlight that?</p> <p>9 (Brief pause.)</p> <p>10 Q Now, Doctor, Dr. Hausknecht reported on June 18th,</p> <p>11 2019 --</p> <p>12 MR. VITA: Highlight the first line.</p> <p>13 (Brief pause.)</p> <p>14 Q He reported that there was an EEG. What is an</p> <p>15 EEG?</p> <p>16 A Electroencephalography.</p> <p>17 Q Say that again?</p> <p>18 A It calculates the brain's electrical activity.</p> <p>19 Q And one was taken on 7/27/2017, is that right,</p> <p>20 Doctor?</p> <p>21 A Yes.</p> <p>22 Q And that revealed diffuse cerebral dysfunction,</p> <p>23 you see that?</p> <p>24 A Yes, sir, this was in post-concussion syndromes.</p> <p>25 Q And the next line down says "MRI of the brain",</p>	Page 1704	<p>1 A "Impression. Closed head trauma with</p> <p>2 post-concussion syndrome and mild traumatic brain injury."</p> <p>3 Q Okay. So is it your testimony that this plaintiff</p> <p>4 did not have mild traumatic brain injury on June 18th,</p> <p>5 2019?</p> <p>6 A I am not saying that at all. I am saying she had</p> <p>7 a post-concussion syndrome and the mild traumatic brain</p> <p>8 injury. I did not test her for that, I could not say</p> <p>9 whether I agreed or disagreed. I simply don't know.</p> <p>10 Q Right. So would you agree with me, Doctor, that</p> <p>11 you did not do the EEG, right?</p> <p>12 A Yes, I did not.</p> <p>13 Q You did not read the MRI, right?</p> <p>14 A That's correct.</p> <p>15 Q So there is no medical facts that you are aware of</p> <p>16 that would lead you to say she's got a traumatic brain</p> <p>17 injury, right?</p> <p>18 A I cannot answer that question with a yes or no.</p> <p>19 Q What medical facts do you have yourself that</p> <p>20 showed there is a mild traumatic brain injury?</p> <p>21 A There is no such thing as medical facts.</p> <p>22 Q Okay.</p> <p>23 A That is just the -- that is just the opinion of</p> <p>24 Dr. Hausknecht on that date. Now, these mild traumatic</p> <p>25 brain injuries do resolve. So do post-concussion</p>	Page 1706
Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1705	Dr. Ali Guy - Plaintiff - Cross/Mr. Vita	Page 1707
<p>1 can you read that, sir?</p> <p>2 A "MRI of the brain taken on 8/29/17, reveals left</p> <p>3 subcortical white matter injuries."</p> <p>4 Q And white matter is part of the brain, right?</p> <p>5 A Yes, sir.</p> <p>6 Q So on that date the plaintiff had a brain injury,</p> <p>7 right?</p> <p>8 A Had a post-concussion syndrome, yes.</p> <p>9 Q Which could also be called traumatic brain injury,</p> <p>10 right?</p> <p>11 A That is a lot different.</p> <p>12 Q Okay.</p> <p>13 MR. VITA: Go to the next page, please.</p> <p>14 (Exhibit displayed.)</p> <p>15 Q Now, Doctor, to be clear, you were treating the</p> <p>16 plaintiff not for the motor vehicle accident, you said</p> <p>17 that?</p> <p>18 A That's correct.</p> <p>19 Q Dr. Hausknecht was treating the plaintiff for the</p> <p>20 motor vehicle accident, correct?</p> <p>21 A That's correct.</p> <p>22 Q Okay.</p> <p>23 MR. VITA: Highlight the first sentence</p> <p>24 there.</p> <p>25 Q Would you read what Dr. Hausknecht wrote there?</p>	Page 1705	<p>1 syndromes. They do resolve.</p> <p>2 Q Doctor, are you aware of any records in this case</p> <p>3 whatsoever that show that the traumatic brain injury</p> <p>4 resolved?</p> <p>5 A I did not see any, but based upon --</p> <p>6 Q It was yes or no, Doctor.</p> <p>7 A No.</p> <p>8 Q You were not aware of any?</p> <p>9 A No.</p> <p>10 Q Doctor, did you -- have you conducted an EEG on</p> <p>11 the plaintiff since 2019?</p> <p>12 A No, sir.</p> <p>13 Q Doctor, have you done an MRI of her brain since</p> <p>14 2019?</p> <p>15 A I have not.</p> <p>16 Q Will you read the last paragraph that we pulled</p> <p>17 up, Doctor.</p> <p>18 A Starting with the word "with."</p> <p>19 Q Yes.</p> <p>20 A "With a reasonable degree of medical certainty</p> <p>21 her condition is casually related to the motor vehicle</p> <p>22 accident that occurred on 5/22/17. She is disabled and I</p> <p>23 have advised her to restrict her activities. Prognosis is</p> <p>24 guarded. She will be followed here for continued care."</p> <p>25 Q What is prognosis as guarded mean?</p>	Page 1707

Page 1708	Dr. Guy - Plaintiff - Cross/Vita	Page 1710
<p>1 A Means it's unknown.      2 Q And on -- in June 18th, 2019, her prognosis was      3 guarded and she was disabled as a result of the motor      4 vehicle accident, right?      5 A That is what the report indicates, yes.      6 MR. VITA: Would you go down one more      7 paragraph.      8 (Exhibit displayed.)      9 Q And here Dr. Hausknecht certifies -- well,      10 actually, withdrawn.      11 Why don't you read that paragraph, Doctor?      12 A "I, Eric Hausknecht, M.D., being duly licensed to      13 practice medicine in the State of New York pursuant to      14 applicable provisions of the CPLR hereby affirm under      15 penalty of perjury that the statements contained herein      16 are true and accurate."      17      18 - Proceedings Continue Next Page -      19      20      21      22      23      24      25</p>	<p>1 understand, Doctor?      2 A I see it.      3 MR. VITA: Will you put up the two bottom lines,      4 Bryan.      5 (Exhibit displayed at this time.)      6 Q So Doctor, in the summer of 2019, can we agree that      7 both you and Dr. Hausknecht affirmed under penalty of perjury      8 that the plaintiff was disabled, correct?      9 A I found the patient was partially disabled. I don't      10 know what Dr. Hausknecht found, if it was partial or      11 temporarily totally disabled.      12 Q Let's go back to Dr. Hausknecht's report, page two.      13 And by the way, Doctor, you both found that her prognosis was      14 guarded. Is that right?      15 A That's correct.      16 Q As you said, prognosis is something that you are      17 looking into the future on, right Doctor?      18 A Yes.      19 Q You are looking into a crystal ball and trying to get      20 a prognosis, right?      21 A With a reasonable degree of medical certainty and      22 probability, yes.      23 Q And Dr. Hausknecht was doing the same thing, right?      24 MR. HARRIS: Objection to what Dr. Hausknecht      25 was doing.</p>	<p>Page 1710</p>
<p>Dr. Guy - Plaintiff - Cross/Vita</p>	<p>Page 1709</p>	<p>Dr. Guy - Plaintiff - Cross/Vita</p>
<p>1 Q As of June 18, 2019, Dr. Hausknecht believed under      2 penalty of perjury that the plaintiff was disabled from the      3 motor vehicle accident. Am I right?      4 MR. HARRIS: Objection to form.      5 THE COURT: Sustained.      6 Q That's what you just read right, Doctor?      7 A That's what I just read, yes.      8 Q Now, when you did your report from the US Open fall      9 about a month later, July of 2019?      10 A Right.      11 Q You found that the plaintiff was disabled from the      12 US Open accident, right?      13 A One second. I thought I said she was partially      14 disabled. Let me just make sure.      15 (Witness peruses document at this time.)      16 A Yes, partially disabled, not totally.      17 Q And you, Doctor, affirm that under penalties of      18 perjury, right?      19 A Yes.      20 Q And you, Doctor, found that the prognosis was guarded      21 because of the US Open accident, right, Doctor?      22 A Yes.      23 Q Doctor, I've put your report, which is July 15, 2019      24 on the screen and Dr. Hausknecht's report, which is      25 June 18, 2019 on the screen. We'll have a split screen</p>	<p>Page 1711</p>	

Dr. Guy - Plaintiff - Cross/Vita	Page 1712	Dr. Guy - Plaintiff - Cross/Vita	Page 1714
<p>1 Q Now, you see the second sentence in that paragraph, 2 Doctor?</p> <p>3 A Yes.</p> <p>4 Q Would you read that for us.</p> <p>5 A If she does not pursue spinal surgery at Spinal Cord 6 Stimulator trial should be considered risks, benefits and 7 alternatives have been discussed with the patient.</p> <p>8 Q Is the Spinal Cord Stimulator similar to the 9 stimulator that you were testifying about this morning?</p> <p>10 A Yes, sir. Just the placement differs.</p> <p>11 Q Placed differently?</p> <p>12 A Yes.</p> <p>13 Q Do you know if the plaintiff ever actually got that 14 Spinal Cord Stimulator?</p> <p>15 A Never.</p> <p>16 Q But at that time, Dr. Hausknecht thought it would be 17 appropriate to suggest it, right Doctor?</p> <p>18 A That's what it states in this report.</p> <p>19 Q Yes.</p> <p>20 A Yes.</p> <p>21 Q Doctor, you mentioned that you are board certified in 22 physical medicine and rehab, right Doctor?</p> <p>23 A Yes, sir.</p> <p>24 Q You were not board certified in Neurology?</p> <p>25 A No, sir.</p>		<p>1 Q That involves electrodes.</p> <p>2 A That is correct.</p> <p>3 Q That was completely normal. Is that right?</p> <p>4 A As expected, yes, sir.</p> <p>5 Q Okay.</p> <p>6 And by the way, Dr. Kiprovski found the same thing 7 when he did an EMG. Isn't that right, Doctor?</p> <p>8 A That is correct.</p> <p>9 Q And the Nerve Conduction Velocity does not involve 10 the insertion of pins?</p> <p>11 A Does not.</p> <p>12 Q You have to let me finish. I know you know where I 13 am going with it but you got to let me finish, okay.</p> <p>14 The Nerve Conduction Velocity does not involve any 15 needles, right?</p> <p>16 A That's correct.</p> <p>17 Q It's all electrodes?</p> <p>18 A That is correct.</p> <p>19 Q Now there is something called a needle EMG, right 20 Doctor?</p> <p>21 A That is correct.</p> <p>22 Q Needle EMG involves needles, right?</p> <p>23 A Yes, sir.</p> <p>24 Q Where do you insert the needles?</p> <p>25 A I inserted them in various muscles in the legs. I</p>	
Dr. Guy - Plaintiff - Cross/Vita	Page 1713	Dr. Guy - Plaintiff - Cross/Vita	Page 1715
<p>1 Q Or Psychiatry?</p> <p>2 A No, sir.</p> <p>3 Q Or Clinical Neurophysiology?</p> <p>4 A No, sir.</p> <p>5 Q You are not certified by the American Board of 6 Electro Diagnostic Medicine, right?</p> <p>7 A No, sir.</p> <p>8 Q Doctor, describe to me how you did the EMG on the 9 plaintiff back in July of 2019?</p> <p>10 A I inserted sterile needles into various muscles in 11 the leg and the hamstring muscles. I looked for abnormal 12 activities such as increased insertional activities and 13 positive sharp waves.</p> <p>14 And I then checked the perispinal muscles by the same 15 insertion. And the Nerve Conduction was performed placing 16 electrodes over the muscles in the foot and the ankles; 17 stimulating those areas, and also stimulating the nerve behind 18 the knee in the inferior portion of the hamstring. And the 19 distal portion of the lateral ankle, and the proximal portion 20 of the nerve at the fibula head, the common peroneal nerve.</p> <p>21 The nerve conduction was normal. The needle 22 examination as abnormal.</p> <p>23 Q Let's break that down. The Nerve Conduction 24 Velocity. That's one part of the test?</p> <p>25 A Yes.</p>		<p>1 inserted them into the vastus medialis, gluteus maximus, the 2 peroneus longus, the extensor pollicis longus, the biceps 3 femoris, the medial gastrocnemius, and then the paraspinal 4 muscles.</p> <p>5 Q About how many needles is that that you inserted?</p> <p>6 A How many muscles that were tested.</p> <p>7 Q How many needles did you insert in how many muscles?</p> <p>8 A One same needle. Amount of muscles, one, two, three, 9 four. Six muscles on each side of the leg and in the lumbar 10 paraspinal -- one, two, three, four muscles in the paraspinal 11 areas.</p> <p>12 Q Did the plaintiff allow you to stick that needle in 13 her leg, Doctor?</p> <p>14 A She did. She was in pain. I didn't go near the foot 15 though.</p> <p>16 Q But we saw today in front of the jury that she 17 wouldn't allow you to touch her foot, though?</p> <p>18 A It hurts.</p> <p>19 Q But she allowed you to touch her leg?</p> <p>20 A The leg does not hurt like the foot does.</p> <p>21 Q Doctor, a needle EMG test is a painful test, right?</p> <p>22 A Hundred percent.</p> <p>23 Q It's because there is jolts of electricity going 24 through the nerves and the muscles; is that right, sir?</p> <p>25 A You have that wrong, sir. With the needle insertion,</p>	

Dr. Guy - Plaintiff - Cross/Vita	Page 1716	Dr. Guy - Plaintiff - Cross/Vita	Page 1718
<p>1 there is no jolt of electricity going whatsoever. None.</p> <p>2 That's part of the nerve conduction study.</p> <p>3 Q Is that uncomfortable as well?</p> <p>4 A Absolutely, but it takes maybe a second.</p> <p>5 Q But during that second, you have electricity coursing</p> <p>6 through your leg?</p> <p>7 A Just that area.</p> <p>8 Q And the plaintiff allowed you to do that, right?</p> <p>9 A With difficulty, yes.</p> <p>10 MR. VITA: Can we pull up 246, Bryan.</p> <p>11 Q Doctor, this is a portion of your report that you did</p> <p>12 on July 15, 2019. Do you see that, sir?</p> <p>13 A That's correct.</p> <p>14 Q Can we focus in on the first paragraph?</p> <p>15 A Okay.</p> <p>16 Q Now you found that the right foot temperature was</p> <p>17 cooler than the left. Is that right?</p> <p>18 A That is correct.</p> <p>19 Q You did not give a thermometer reading there. Is</p> <p>20 that right, Doctor?</p> <p>21 A I did not.</p> <p>22 Q Okay.</p> <p>23 Next you say, the skin is very hypersensitive in the</p> <p>24 right dorsal foot as well. Do you see that, sir?</p> <p>25 A I do.</p>	Page 1716	<p>1 Q But the only time you mentioned that surgery is in</p> <p>2 that one sentence. Isn't that right, Doctor, in your report?</p> <p>3 A That is not correct.</p> <p>4 Q Where else?</p> <p>5 A I will tell you right now.</p> <p>6 Page two under history. The patient had surgery on</p> <p>7 7/11/2018 by Dr. Robert Meislin, where the postoperative</p> <p>8 diagnosis was right hip proximal hamstring, ischial bursitis</p> <p>9 and proximal hamstring tear.</p> <p>10 The patient underwent arthroscopic surgery of the</p> <p>11 right hip with endoscopic hamstring proximal repair with</p> <p>12 bursectomy of the ischial tuberosity. And it goes on and on.</p> <p>13 Q Okay.</p> <p>14 Can we look at -- going back to 007. Can we look at</p> <p>15 Opinions Bryan. Can we pull that up.</p> <p>16 Now Doctor, this is your opinion. Can you read --</p> <p>17 can you highlight the first sentence.</p> <p>18 So you based your opinion upon the history obtained.</p> <p>19 Is that right, Doctor?</p> <p>20 A Yes, sir.</p> <p>21 Q Now the history was obtained from the plaintiff?</p> <p>22 A That's what a history is, from the patient.</p> <p>23 Q And the plaintiff didn't tell you about her treatment</p> <p>24 for the motor vehicle accident. Is that right, Doctor?</p> <p>25 A That is correct.</p>	Page 1718
Dr. Guy - Plaintiff - Cross/Vita	Page 1717	Dr. Guy - Plaintiff - Cross/Vita	Page 1719
<p>1 Q That's the allodynia that you are talking about?</p> <p>2 A That is correct.</p> <p>3 Q Can we down three more sentences. The next one down.</p> <p>4 Sorry.</p> <p>5 Now you also found that sensation is diminished to</p> <p>6 pinprick and touch in the right medial calf and right dorsal</p> <p>7 foot?</p> <p>8 A That is correct.</p> <p>9 Q Is that true?</p> <p>10 A That is correct.</p> <p>11 Q Let's go down to diagnoses.</p> <p>12 MR. VITA: Can you highlight number two.</p> <p>13 (Exhibit displayed.)</p> <p>14 Q Doctor, this is what you wrote about Dr. Meislin's</p> <p>15 surgery. Can you read that for us, Doctor?</p> <p>16 A Yes. Status post right hip arthroscopic surgery of</p> <p>17 the right hip, with endoscopic hamstring proximal repair, coma,</p> <p>18 bursectomy of the ischial tuberosity. Surgery was performed on</p> <p>19 July 11, 2018.</p> <p>20 Q And what is status post?</p> <p>21 A The condition after.</p> <p>22 Q Condition after. You made no other comments in this</p> <p>23 report about Dr. Meislin's surgery. Is that right, sir?</p> <p>24 A Just the diagnosis. That is only the diagnosis</p> <p>25 section. It's not supposed to include anything else.</p>	Page 1717	<p>1 Q So the plaintiff didn't tell you that she was</p> <p>2 currently disabled according to Dr. Hausknecht for her motor</p> <p>3 vehicle accident. Is that right, Doctor?</p> <p>4 A That is correct.</p> <p>5 Q All right. The next thing you looked at is clinical</p> <p>6 exam findings. Is that right?</p> <p>7 A That is correct.</p> <p>8 Q What were those? What were the clinical examination</p> <p>9 findings?</p> <p>10 A There was some tenderness in the back. There was</p> <p>11 tenderness in the buttock area. There was weakness in the</p> <p>12 right lower extremity.</p> <p>13 The right foot and the ankle temperature was cooler</p> <p>14 than the left. There was hypersensitivity. And there was --</p> <p>15 just let me refresh my memory. And there was a decreased</p> <p>16 sensation in the right medial calf and right dorsal foot. And</p> <p>17 the gait was antalgic.</p> <p>18 Q Do you like to do a complete exam for a new patient,</p> <p>19 Doctor?</p> <p>20 A Would I like to do a new exam? What do you mean by</p> <p>21 that?</p> <p>22 Q Withdrawn.</p> <p>23 Did you do a complete medical exam for this patient</p> <p>24 when you first met her in July of 2019?</p> <p>25 A Pertaining to the accident of 8/19/14, yes.</p>	Page 1719

Dr. Guy - Plaintiff - Cross/Vita	Page 1720	Dr. Guy - Plaintiff - Cross/Vita	Page 1722
<p>1 Q Okay.</p> <p>2 What were your findings regarding her cervical spine?</p> <p>3 A Unrelated area of injury. I did not examine the</p> <p>4 neck. There was no complaint to me about the neck. My focus</p> <p>5 and her focus was this accident, with me.</p> <p>6 Q So, you didn't do the exam of her cervical spine?</p> <p>7 A I did not, no.</p> <p>8 Q And you didn't know that the Dr. Hausknecht at the</p> <p>9 exact same time had found that she was permanently disabled --</p> <p>10 excuse me -- disabled because of problems with her cervical</p> <p>11 spine, right Doctor?</p> <p>12 MR. HARRIS: Objection.</p> <p>13 Asked and answered.</p> <p>14 THE COURT: Sustained.</p> <p>15 Q Doctor, there is no mention that the plaintiff was</p> <p>16 walking with a cane in your report from July of 2019, is there</p> <p>17 Doctor?</p> <p>18 A That is correct.</p> <p>19 Q Can you pull up the second full paragraph.</p> <p>20 (Exhibit displayed at this time.)</p> <p>21 Q And then would you highlight the second to last</p> <p>22 sentence.</p> <p>23 Doctor, would you read the second to last sentence</p> <p>24 from Dr. Meislin's operative report?</p> <p>25 A Yes. The bursitis was tracked laterally and the</p>	Page 1720	<p>1 THE COURT: Let him finish the answer also.</p> <p>2 MR. VITA: Okay.</p> <p>3 Q Doctor, did Dr. Meislin follow best medical practices</p> <p>4 in that surgery?</p> <p>5 A To my knowledge, yes.</p> <p>6 Q And he's another doctor at NYU Medical Center. Is</p> <p>7 that right, Doctor?</p> <p>8 A Yes, sir.</p> <p>9 Q One of the best medical centers in the world?</p> <p>10 A Yes, sir.</p> <p>11 Q He is actually a full professor there, right?</p> <p>12 A Yes, sir.</p> <p>13 Q Hire up than you?</p> <p>14 A Yes, sir.</p> <p>15 MR. VITA: Can we go to 025. Can we go to the</p> <p>16 July 24th entry, the one above that.</p> <p>17 Can you highlight the follow-up in yellow, please.</p> <p>18 Q Now the plaintiff -- withdrawn.</p> <p>19 The plaintiff was seen by Dr. Meislin on July 24th,</p> <p>20 right Doctor?</p> <p>21 A Yes, sir, thirteen days after surgery.</p> <p>22 Q Yes. She notes mild cramping pain in the right calf?</p> <p>23 A That's correct.</p> <p>24 Q Right, Doctor?</p> <p>25 A Yes, sir.</p>	Page 1722
<p>Dr. Guy - Plaintiff - Cross/Vita</p>	Page 1721	<p>Dr. Guy - Plaintiff - Cross/Vita</p>	Page 1723
<p>1 sciatic nerve was identified, noted not to be tethered. And no</p> <p>2 constrictions present. At this point, a partial tear of the</p> <p>3 semimembranosus tendon was identified.</p> <p>4 Q By the way that's a partial tear. That's not an</p> <p>5 avulsion?</p> <p>6 A That is correct.</p> <p>7 Q Now that, Doctor, where in that report does it say</p> <p>8 that Dr. Meislin injured the sciatic nerve?</p> <p>9 A I never said that. Never said that.</p> <p>10 Q Are you saying that Dr. Meislin committed</p> <p>11 malpractice?</p> <p>12 A Absolutely not.</p> <p>13 Q Are you saying that Dr. Meislin didn't follow best</p> <p>14 medical procedures?</p> <p>15 A I am saying you are putting words in my mouth.</p> <p>16 Q Doctor--</p> <p>17 A Never said that.</p> <p>18 Q Yes or no?</p> <p>19 A Never said that.</p> <p>20 Q Is that what you think?</p> <p>21 A Your question -- that's the way your question is,</p> <p>22 yes.</p> <p>23 Q Did you think -- you got to let me finish, Doctor?</p> <p>24 A Sorry.</p> <p>25 Q The reporter can't take us both down.</p>	Page 1721	<p>1 Q That's the only mention of pain there?</p> <p>2 A That is correct.</p> <p>3 Q Can we go to the August follow up.</p> <p>4 (Exhibit displayed.)</p> <p>5 Q August 14, 2018, the plaintiff returned to</p> <p>6 Dr. Meislin, right?</p> <p>7 A Yes, sir.</p> <p>8 Q What does that first sentence say in follow up?</p> <p>9 A Patient returns today with a recent fall on the right</p> <p>10 hip, this past Saturday. Surgery was five weeks ago.</p> <p>11 She is using a cane for support. Exam of right hip</p> <p>12 with healed portal scars from endoscopic portal hamstring</p> <p>13 semimembranosus repair, range of motion improved.</p> <p>14 Q Doctor, you are not an orthopedic surgeon, right?</p> <p>15 A I am not.</p> <p>16 Q You were not there with Dr. Meislin in the operating</p> <p>17 room when he conducted this surgery on July 11, 2018?</p> <p>18 A Obviously not.</p> <p>19 Q So you don't know of your own knowledge what happened</p> <p>20 during that surgery, do you Doctor?</p> <p>21 A No, sir.</p> <p>22 MR. VITA: Can we pull up 253, please. Are you</p> <p>23 aware, Doctor, that the plaintiff went to New York</p> <p>24 Presbyterian for physical therapy after her surgery?</p> <p>25 A No.</p>	Page 1723

Dr. Guy - Plaintiff - Cross/Vita	Page 1724	Dr. Guy - Plaintiff - Cross/Vita	Page 1726
<p>1 Q Okay. Well, this is the record from physical therapy 2 for the plaintiff. Can you pull up the date. This is on 3 August 13, 2018.</p> <p>4 Do you see that, Doctor?</p> <p>5 A I do.</p> <p>6 Q That's one day before the record from Dr. Meislin we 7 were just looking at. Do you see that?</p> <p>8 A That is correct, yes, sir.</p> <p>9 Q Can you pull up the upper half of that page. And put 10 up history and subjective report?</p> <p>11 A Yes.</p> <p>12 Q So Doctor, would you withdrawn.</p> <p>13 Would you read what this physical therapist wrote on 14 the 13th of August, 2018?</p> <p>15 A Yes. Patient reported she slipped and fell out of 16 the shower on 8/11/18 Saturday. She felt throbbing pain at 17 incisional site. Patient reported she felt as if she pulled 18 something.</p> <p>19 Q Doctor, can patients injure surgical sites with falls 20 like this?</p> <p>21 A It's possible.</p> <p>22 Q Doctor, you are not a psychiatrist, right?</p> <p>23 A No, sir.</p> <p>24 Q And you don't diagnose clinical depression?</p> <p>25 A I sure do.</p>	Page 1724	<p>1 I think you have it as 0020.</p> <p>2 Q Actually just highlight the first history. Would you 3 pull up the second to last sentence in that paragraph, the 4 history paragraph.</p> <p>5 Dr. Guy, Dr. Hausknecht reported on 6 September 14, 2017 that the patient has been feeling frustrated 7 and a little depressed.</p> <p>8 Do you see that, Doctor?</p> <p>9 A Yes.</p>	Page 1726
		(Continued on the next page.)	
Dr. Guy - Plaintiff - Cross/Vita	Page 1725	Dr. Ali Guy - Plaintiff - Cross/Ms. Saab-Dominguez	Page 1727
<p>1 Q Okay. Doctor, what is the DSM?</p> <p>2 A Diagnostic -- that's the criteria the psychiatrists 3 use for diagnosing certain ailments.</p> <p>4 Q What does DSM stand for?</p> <p>5 A I'm not sure.</p> <p>6 Q Would that be Diagnostic and Statistical Manual?</p> <p>7 A It's possible. I am not sure.</p> <p>8 Q Is that the bible of psychiatrists?</p> <p>9 A I wouldn't call it the bible. It's the diagnostic 10 criteria.</p> <p>11 Q Okay.</p> <p>12 When was the plaintiff first diagnosed with 13 depression, do you know?</p> <p>14 A First?</p> <p>15 Q Yes.</p> <p>16 A It's a slow gradual process. When it was first, I 17 don't know.</p> <p>18 Q When was it first reported?</p> <p>19 A First, I don't know.</p> <p>20 MR. VITA: Pull up 229, please, number 0024. (Exhibit displayed.)</p> <p>21 MR. VITA: Would you blow up the first half of 22 the page, please Bryan. I'm sorry. I must have given you 23 the wrong number.</p> <p>24 Could you pull up the September 14, 2017 report.</p>	Page 1725	<p>1 Q That is before -- that is -- withdrawn. That 2 date, September 14th, 2017, is after the car accident, 3 right, Doctor?</p> <p>4 A That's correct.</p> <p>5 Q And it is before Dr. Meislin's surgery, right, 6 Doctor?</p> <p>7 A Yes, sir.</p> <p>8 Q So as of that date, Dr. Hausknecht reported that 9 plaintiff was depressed?</p> <p>10 A That is correct.</p> <p>11 (Brief pause.)</p> <p>12 MR. VITA: Thank you, Doctor. I have nothing 13 further.</p> <p>14 THE COURT: All right. Ms. Saab-Dominguez?</p> <p>15 CROSS-EXAMINATION</p> <p>16 BY MS. SAAB-DOMINGUEZ:</p> <p>17 Q Good afternoon, Doctor. I just have a couple 18 questions. You had a lot of earlier questions so I will be 19 brief.</p> <p>20 A Okay.</p> <p>21 Q You saw Ms. Salomon on July 15th of 2019?</p> <p>22 A Yes, ma'am, that is light.</p> <p>23 Q Did you take any photographs of her lower 24 extremity on that date?</p> <p>25 A No.</p>	Page 1727

Dr. Ali Guy - Plaintiff - Redirect/Mr. Harris	Page 1728	Dr. Ali Guy - Plaintiff - Redirect/Mr. Harris	Page 1730
<p>1 Q What about next time you saw her for physical 2 therapy?</p> <p>3 A I never taken any photographs.</p> <p>4 Q Any of the other six times you saw her?</p> <p>5 A Never taken any photographs.</p> <p>6 Q All right. And on July 15th, 2019, did you notice 7 if she had a tattoo?</p> <p>8 MR. HARRIS: Note my objection, your Honor. 9 Beyond the scope of Direct.</p> <p>10 THE COURT: Overruled.</p> <p>11 A I did not look for any tattoos. I don't know if 12 she had any listed.</p> <p>13 Q Okay.</p> <p>14 MS. SAAB-DOMINGUEZ: Thank you. I have no 15 other questions for you.</p> <p>16 A Okay.</p> <p>17 THE COURT: Redirect?</p> <p>18 MR. HARRIS: Thank you, your Honor.</p> <p>19 DIRECT EXAMINATION</p> <p>20 BY MR. HARRIS:</p> <p>21 Q Good afternoon, Doctor.</p> <p>22 A Good afternoon.</p> <p>23 Q Good afternoon, everybody. Just a couple 24 follow-ups, Doctor. There was some -- there were some 25 questions about the brain and its involvement with complex</p>	Page 1728	<p>1 Q And why is that?</p> <p>2 A Not related areas.</p> <p>3 Q There was also some talk about whether Kristen 4 Salomon told you about her motor vehicle accident in that 5 first visit. If we could just have that form brought up. 6 It had the numbers with Kristen Salomon's handwriting on 7 the forms.</p> <p>8 (Exhibit displayed.)</p> <p>9 A Okay.</p> <p>10 Q Okay.</p> <p>11 MR. HARRIS: If we could just blowup number 8 12 please. Thank you. Just the sentence on number 8. 13 The handwriting at the end there.</p> <p>14 A Did you want me to read it?</p> <p>15 Q I just want to get it so the jury could see what 16 is written exactly on there.</p> <p>17 (Exhibit displayed.)</p> <p>18 Q What does that say there, Doctor?</p> <p>19 A "Due to an unrelated accident."</p> <p>20 Q If you look at the rest of the sentence that is 21 cut-off, it says "do you have neck pain, yes", right?</p> <p>22 A Yes.</p> <p>23 Q "Does it sometimes travel to the shoulders or down 24 the -- or down the arms, yes."</p> <p>25 A Yes.</p>	Page 1730
Dr. Ali Guy - Plaintiff - Redirect/Mr. Harris	Page 1729	Dr. Ali Guy - Plaintiff - Redirect/Mr. Harris	Page 1731
<p>1 regional pain. I think Mr. Vita brought up a diagram 2 involving CRPS.</p> <p>3 A Right.</p> <p>4 Q Explain to us how the brain is involved with CRPS 5 as compared with a concussion from a car accident.</p> <p>6 A Yes. First of all, the brain has many, many, 7 many parts. To this date we still don't fully know and 8 understand how the brain exactly works. Number one. 9 Complex regional pain syndrome, the best way that could be 10 explained in layman's terminology, it's a short in the 11 electrical system of the body, the sympathetic fibers, 12 which controls temperature regulation, controls the blood 13 vessels, controls sweating, et cetera. So impulses from 14 the foot are sent all the way up to the brain. The brain 15 deciphers those messages and sends signals back down with 16 an exaggerated response.</p> <p>17 So it's an exaggerated response from the stimuli 18 coming from the right foot and this short circuit or the 19 short in the electrical system -- it has nothing to do with 20 the post-concussion syndrome which covers the superficial 21 neurons of the brain.</p> <p>22 Q Well, Doctor, in all of your years practicing 23 medicine, have you ever seen a concussion in somebody's 24 head result in pain in their foot?</p> <p>25 A Absolutely never.</p>	Page 1729	<p>1 Q "Is there occasional numbness or tingling in the 2 arms, yes." And then she wrote "due to unrelated 3 accident."</p> <p>4 A Correct.</p> <p>5 Q Is that consistent, Doctor, with Kristen Salomon 6 telling you through this form that you had her fill out 7 about the prior motor vehicle accident?</p> <p>8 MR. VITA: Objection to form.</p> <p>9 MS. GOLDSMITH: Objection. Doesn't say what 10 type of accident in this form.</p> <p>11 THE COURT: That form is in evidence, right?</p> <p>12 MR. HARRIS: It's in evidence.</p> <p>13 THE COURT: Yes. Overruled.</p> <p>14 A No, she -- she, she was telling me she had a 15 prior accident. There was neck involvement with arms, 16 with the neck pain shooting down the arm with numbness and 17 tingling. She also says it's unrelated to this accident.</p> <p>18 Q When the defense attorneys were questioning you 19 this afternoon about this form, did they blowup that 20 handwriting that she wrote there that told you about the 21 accident?</p> <p>22 MS. GOLDSMITH: Objection, your Honor. We 23 did. I did. And he read it.</p> <p>24 THE COURT: Overruled.</p> <p>25 A Well, I did read it. But I didn't get a chance</p>	Page 1731

Dr. Ali Guy - Plaintiff - Redirect/Mr. Harris	Page 1732	Dr. Ali Guy - Plaintiff - Recross/Ms. Goldsmith	Page 1734
<p>1 to explain it the way you are asking me to explain it.</p> <p>2 Q Well, I believe the defense attorneys collectively</p> <p>3 were trying to make the point that she never told you about</p> <p>4 the motor vehicle accident. Is that true or not?</p> <p>5 MS. VITA: Objection; form.</p> <p>6 MS. GOLDSMITH: Objection.</p> <p>7 THE COURT: Sustained.</p> <p>8 MR. HARRIS: I will move on.</p> <p>9 THE COURT: Just ask a question.</p> <p>10 Q Based upon what she wrote there, Doctor, when you</p> <p>11 first saw her, did you ask her any questions about the</p> <p>12 unrelated accident?</p> <p>13 A I did not.</p> <p>14 Q Why not?</p> <p>15 A Wasn't related.</p> <p>16 MR. HARRIS: Could we just pull up that</p> <p>17 August 14th, 2018, note from Dr. Meislin that was up on</p> <p>18 the screen there?</p> <p>19 (Exhibit displayed.)</p> <p>20 MR. HARRIS: Yes. That is it. If we could</p> <p>21 just blowup the follow-up note there.</p> <p>22 (Brief pause.)</p> <p>23 Q Doctor, the date that she reports to Dr. Meislin</p> <p>24 about falling in the shower, what does Dr. Meislin note</p> <p>25 about her range of motion?</p>	<p>1 A She did not mention the car accident.</p> <p>2 Q And you took no steps to find out what that</p> <p>3 accident involved, correct?</p> <p>4 A I did not.</p> <p>5 MS. GOLDSMITH: Thank you.</p> <p>6 THE COURT: All right. Anyone else?</p> <p>7 Mr. Vita?</p> <p>8 MR. VITA: No, your Honor.</p> <p>9 THE COURT: Ms. Saab-Dominguez?</p> <p>10 MS. SAAB-DOMINGUEZ: No, your Honor.</p> <p>11 THE COURT: Dr. Guy, thank you very much.</p> <p>12 THE WITNESS: Thank you. Judge, these</p> <p>13 records stay here, right?</p> <p>14 THE COURT: I think they --</p> <p>15 MS. GOLDSMITH: Yes, your Honor. They are in</p> <p>16 evidence.</p> <p>17 THE COURT: We will take good care of it.</p> <p>18 THE WITNESS: Okay.</p> <p>19 (Witness excused.)</p> <p>20 THE COURT: All right. Does plaintiff have</p> <p>21 any further evidence to present this afternoon?</p> <p>22 MR. HARRIS: We do not, your Honor. The</p> <p>23 plaintiff rests.</p> <p>24 THE COURT: Plaintiff rests.</p> <p>25 Do you have any evidence to present this</p>		
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<p>1 A In fact, it improved.</p> <p>2 Q So what was the significance of that fall in the</p> <p>3 shower given that note?</p> <p>4 MR. VITA: Objection; form.</p> <p>5 THE COURT: Overruled.</p> <p>6 A Means that it had no effect on her injuries.</p> <p>7 MR. HARRIS: Thank you, Doctor. No further</p> <p>8 questions.</p> <p>9 THE COURT: All right.</p> <p>10 MS. GOLDSMITH: Judge --</p> <p>11 THE COURT: Recross?</p> <p>12 MS. GOLDSMITH: Just two.</p> <p>13 RECROSS-EXAMINATION</p> <p>14 BY MS. GOLDSMITH:</p> <p>15 Q Doctor, if the patient comes to you with symptoms,</p> <p>16 do you rely on the patient?</p> <p>17 A That's for me to find out. The rest is for me to</p> <p>18 find out. I take the history.</p> <p>19 Q Do you rely on the patient to tell you whether the</p> <p>20 symptoms are related or unrelated to an event or is that</p> <p>21 for you to determine?</p> <p>22 A No, that is history. Based upon what the patient</p> <p>23 tells me.</p> <p>24 Q Okay. And no indication in there when she wrote</p> <p>25 unrelated accident, that it was a car accident, correct?</p>	<p>1 afternoon, any of the defendants?</p> <p>2 MS. SAAB-DOMINGUEZ: No, your Honor.</p> <p>3 THE COURT: Okay. What time will we be ready</p> <p>4 to proceed? 11:30 tomorrow?</p> <p>5 MS. SAAB-DOMINGUEZ: Yes.</p> <p>6 THE COURT: Okay. Members of the jury, I</p> <p>7 will let you go early and you will have a little extra</p> <p>8 time to sleep in tomorrow morning.</p> <p>9 We will resume 11:30 tomorrow. I hope it</p> <p>10 will be a full day after that. All right? Please</p> <p>11 continue to observe my instruction. We have a little</p> <p>12 longer break. Do not use it as a vacation to discuss</p> <p>13 the trial with anyone. Just tell them you could</p> <p>14 discuss it to your heart's content once there is a</p> <p>15 verdict. Please don't communicate with anyone involved</p> <p>16 in the trial.</p> <p>17 Thank you. Have a great evening.</p> <p>18 COURT OFFICER: All rise. Jury exiting.</p> <p>19 (Whereupon, the jury enters the jury room at</p> <p>20 this time.)</p> <p>21 THE COURT: Counsel, we will remain on the</p> <p>22 record for a few moments after the jury leaves.</p> <p>23 COURT OFFICER: All rise. Jury exiting.</p> <p>24 (Whereupon, the jury panel exited the</p> <p>25 courtroom.)</p>		

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1                   THE COURT: All right. Let's bring her back 2 out into the courtroom.	1736	1                   MR. HARRIS: Yes, Judge. 2                   THE COURT: Okay.	1738
3                   COURT OFFICER: Sure.		3                   MR. HARRIS: With regard to Dr. Mandel, we 4 chose not to call him and we offered the defendants to 5 produce him if they want to call him on their case for 6 some reason. But I just wanted it to be clear -- and 7 the only reason I made that offer, actually, is because 8 if they ask for a missing witness charge, they will be 9 obligated to do so before I rest. I wanted to give 10 them the opportunity to be here. He was paid for 11 tomorrow. If they want him here, I will have him here 12 11:30.	
6                   THE COURT: All right. Good afternoon, Ms. 7 Torres. Have a seat wherever it's comfortable. Thank 8 you for your jury service. I received your note from 9 this morning and shared it with the attorneys. We are 10 all unanimous that you must not miss your 11 granddaughter's graduation. We are all hoping that the 12 trial will be over before June 27, but if it is not, 13 what time would you need to leave to attend the 14 graduation and whatever --	1736	13                   THE COURT: Okay. Are the defendants going 14 to seek a missing witness charge with regards to Dr. 15 Mandel if he's not called by plaintiff?	
15                   SWORN JUROR: It's not far. It's across the 16 bridge on Metro -- on Jay Street, I think it is, in 17 Brooklyn.	1736	16                   MR. VITA: Yes, your Honor. 17                   MS. GOLDSMITH: Yes. 18                   THE COURT: Okay.	
18                   THE COURT: Right.	1736	19                   MS. GOLDSMITH: And there is another expert 20 too that they didn't call. Two experts.	
19                   SWORN JUROR: And that is at 2:00.	1736	21                   MR. HARRIS: Who is the other one?	
20                   THE COURT: Okay.	1736	22                   MS. GOLDSMITH: Wechsler. Also listed as an 23 expert.	
21                   SWORN JUROR: And I am too old to stay for 22 the party.	1736	24                   THE COURT: When did you notify plaintiff 25 that you were going to seek a missing witness charge if	1738
23                   THE COURT: Okay.	1736		
24                   SWORN JUROR: And it's too much walking.	1736		
25                   THE COURT: Let's not talk about age, okay?	1736		
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1                   SWORN JUROR: No, but it's too much walking 2 for me.	1737	1                   plaintiff did not call him?	1739
3                   THE COURT: Okay. Would you -- if we broke 4 at 1, would you be able to get there?	1737	2                   MS. GOLDSMITH: They just told us today, just 3 now about Dr. Mandel.	1739
5                   SWORN JUROR: No. No. 1:00, I think, is 6 okay.	1737	4                   THE COURT: Right. Didn't you have an 5 obligation before the trial began to notify plaintiff 6 that if she did not call Dr. Mandel you would seek a 7 missing witness charge?	1739
7                   THE COURT: Okay. 1:00 is fine.	1737	8                   MR. GLADSTONE: At lunchtime, your Honor? 9                   THE COURT: What?	1739
8                   SWORN JUROR: And I think the train stops 9 right here.	1737	10                  MR. DENNEY: You said before trial began? 11                  THE COURT: As early as possible.	1739
10                  THE COURT: Yes, it does. At Chambers Street 11 and West Broadway, which is the street we are on.	1737	12                  MR. GLADSTONE: We expected Dr. Mandel here 13 tomorrow.	1739
12                  SWORN JUROR: And then I could take the train 13 back here.	1737	14                  MS. GOLDSMITH: They told you yesterday they 15 were calling him.	1739
14                  THE COURT: All right. Well, you wouldn't 15 have to come back that afternoon.	1737	16                  THE COURT: Before then, had they told you 17 for sure that they were calling him?	1739
16                  SWORN JUROR: Okay.	1737	18                  MS. GOLDSMITH: Yes, and it's on the witness 19 list who they are calling. And they --	1739
17                  THE COURT: Enjoy the rest of the day with 18 your family, please. Congratulations on your 19 granddaughter's graduation.	1737	20                  THE COURT: I think you still have the 21 obligation to notify the plaintiff that you are going 22 to ask for a missing witness charge if the plaintiff 23 doesn't call and specify --	1739
20                  SWORN JUROR: Thank you.	1737	24                  MR. GLADSTONE: Your Honor, when plaintiff's 25 counsel opted not to call Drew Stein, who they	1739
21                  THE COURT: Okay. Have a nice evening.	1737		
22                  SWORN JUROR: You too.	1737		
23                  (Whereupon, juror number 2 exits the 24 courtroom at this time.)	1737		
25                  THE COURT: Anything else on the record?	1737		

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1 initially said they were going to call, they said, oh, 2 we are thinking about not calling him, this is a 3 treater, will you guys seek a missing witness charge, 4 and we had a conversation about it. Okay. Fine. 5 Today at lunch we get an e-mail saying Dr. 6 Mandel, who we noticed, who we were told is coming, 7 everyone expected to be here tomorrow, is now not 8 coming in. 9 Where does the obligation rise that we have 10 to make a decision within the -- 11 THE COURT: I believe the obligation is 12 within the law. You are supposed to notify your 13 adversary about a potential missing witness charge as 14 soon as possible. 15 MS. SAAB-DOMINGUEZ: Your Honor, this is as 16 soon as possible. We just learned about it. 17 THE COURT: I am not sure it is. 18 MR. DENNEY: Before the -- 19 THE COURT: Look at the witness list and you 20 say if you don't call X, Y and Z, we will ask for a 21 missing witness -- 22 MS. GOLDSMITH: When is your Honor suggesting 23 that needed to be done? 24 THE COURT: Before trial. 25 MS. GOLDSMITH: So that is before trial, for	1 (Discussion off the record.) 2 THE COURT: Is there a resolution? 3 MR. VITA: Yes, I believe there is, your 4 Honor. The defendants have agreed collectively not to 5 request a missing witness charge for Dr. Mandel. And 6 it's my understanding in return, plaintiff will not 7 call Dr. Mandel to the stand. Plaintiffs already 8 rested but -- they won't call Dr. Mandel to the stand. 9 MR. HARRIS: Correct. 10 THE COURT: So stipulated? 11 MS. SAAB-DOMINGUEZ: Yes. 12 MS. GOLDSMITH: Yes, so stipulated. 13 THE COURT: Is there anything else on the 14 record? 15 MR. VITA: Not at this time. 16 MS. GOLDSMITH: Your Honor, how do you want 17 us to move in terms of motions for directed verdicts? 18 THE COURT: You want to do that now? 19 MS. GOLDSMITH: No, not now. Because we 20 thought they would rest tomorrow. We would like to do 21 it tomorrow morning or later after the witness 22 tomorrow. 23 THE COURT: Yes. I mean, I asked the jury to 24 come back at 11:30. I will not be able to until 11:30 25 I think.		

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1 both sides it has to be done? 2 THE COURT: Yes. 3 MR. GLADSTONE: I am sorry to tell you 4 something you already know. I just want to be clear. 5 We were advised at 1:22 today by e-mail that they were 6 not calling Dr. Mandel. This morning we thought -- 7 THE COURT: I understand. You said that 8 about five times now. 9 MR. GLADSTONE: Okay. So before -- between 10 1:22 and when we went back on the record -- 11 THE COURT: Right, so they know -- they may 12 decide to forego a particular witness. 13 MR. DENNEY: Just to reflect on the record, 14 counsel were discussing that very issue when the jury 15 was brought back in for this afternoon's session. We 16 were having that discussion as to the circumstances -- 17 THE COURT: Right. I asked you to try to 18 work it out amongst yourselves. 19 MR. DENNEY: And we were having that 20 conversation. 21 THE COURT: Do you want to continue to have 22 that conversation now? 23 MR. DENNEY: May we -- 24 MR. HARRIS: Do you guys want me to bring him 25 in? He could be here tomorrow at 11:30.	1 MS. GOLDSMITH: Could we do it after the 2 witness, your Honor? 3 THE COURT: We could do it tomorrow 4 afternoon. 5 MS. GOLDSMITH: After the witness? 6 THE COURT: You think the -- how long do you 7 think the witness will be? 8 MS. SAAB-DOMINGUEZ: Can't imagine -- 9 THE COURT: You will just have one witness? 10 MS. SAAB-DOMINGUEZ: Yes. 11 THE COURT: Okay. I just spoke briefly with 12 plaintiff's counsel. So I will speak to defendants 13 now. 14 MR. DENNEY: Okay. 15 (Whereupon, the case is adjourned to June 16 15th, 2022.) 17 18 19 20 21 22 23 24 25		

\$	1688:19;1694:1; 1703:15;1716:4; 1721:12;1729:25  <b>academic</b> (2) 1609:12,13  <b>accept</b> (1) 1662:1  <b>accident</b> (57) 1557:25;1572:22; 1575:4,7;1580:1,11; 1638:22;1640:19; 1641:1;1677:13,17,20; 1678:2,5,19,25;1679:5, 6,10,20,21;1680:5,7; 1681:19;1700:20,25; 1701:3,7,7,9;1705:16, 20;1707:22;1708:4; 1709:3,12,21;1718:24; 1719:3,25;1720:5; 1727:2;1729:5;1730:4, 19;1731:3,7,10,15,17, 21;1732:4,12;1733:25, 25;1734:1,3  <b>accidents</b> (2) 1678:14;1679:16  <b>accommodate</b> (1) 1636:25  <b>accompany</b> (1) 1673:24  <b>according</b> (6) 1575:8;1657:15; 1677:3;1678:24; 1702:19;1719:2  <b>accounts</b> (1) 1630:3  <b>accredited</b> (1) 1545:8  <b>accuracy</b> (2) 1634:14;1652:5  <b>accurate</b> (9) 1559:8;1617:9; 1630:18;1631:1,4; 1668:21;1669:1; 1698:9;1708:16  <b>achieving</b> (1) 1546:23  <b>acknowledging</b> (1) 1587:10  <b>Acostas</b> (1) 1696:12  <b>across</b> (1) 1736:15  <b>activities</b> (6) 1599:25;1609:5; 1707:23;1711:15; 1713:12,12  <b>activity</b> (1) 1704:18  <b>actual</b> (2) 1643:8;1694:10  <b>Actually</b> (11) 1603:11;1616:3; 1626:2;1643:14;	1674:22;1694:19; 1708:10;1712:13; 1722:11;1726:2; 1738:7  <b>acupuncture</b> (1) 1558:6  <b>add</b> (1) 1572:2  <b>addition</b> (1) 1584:5  <b>additional</b> (2) 1665:21;1687:12  <b>address</b> (2) 1543:10;1687:16  <b>adjourned</b> (1) 1743:15  <b>admissibility</b> (1) 1645:23  <b>admitted</b> (5) 1568:12,13;1646:11; 1649:7;1655:24  <b>adversaries</b> (1) 1686:6  <b>adversary</b> (1) 1740:13  <b>advertised</b> (1) 1623:17  <b>advertising</b> (1) 1624:12  <b>advised</b> (4) 1567:8;1707:23; 1711:14;1741:5  <b>affect</b> (2) 1556:3;1588:19  <b>affects</b> (3) 1555:24;1560:13; 1561:15  <b>affiliated</b> (3) 1628:24,25;1692:4  <b>affiliations</b> (1) 1548:23  <b>affirm</b> (2) 1708:14;1709:17  <b>affirmed</b> (2) 1710:7;1711:2  <b>afford</b> (1) 1582:2  <b>afforded</b> (1) 1589:22  <b>afternoon</b> (14) 1686:24,25;1699:20, 21;1727:17;1728:21, 22,23;1731:19; 1734:21;1735:1; 1736:6;1737:15; 1743:4  <b>afternoon's</b> (1) 1741:15  <b>afterwards</b> (1) 1677:23  <b>again</b> (26) 1545:24,25;1548:12; 1561:25;1568:19;	1576:6,22;1579:4; 1591:18;1595:20; 1609:24;1614:18; 1618:12;1622:25; 1623:7,9;1629:3; 1642:2;1660:16; 1669:9;1671:21; 1672:14;1680:8; 1688:22;1697:3; 1704:17  <b>against</b> (3) 1557:12;1619:11,15  <b>age</b> (2) 1557:23;1736:25  <b>agitated</b> (1) 1588:21  <b>ago</b> (8) 1558:22;1606:13; 1618:14;1623:12; 1657:8;1666:5; 1684:21;1723:10  <b>agree</b> (15) 1623:11;1630:11,21; 1631:10,17,21; 1636:25;1639:8; 1642:13;1649:5; 1671:13;1697:21; 1702:22;1706:10; 1710:6  <b>agreed</b> (3) 1649:7;1706:9; 1742:4  <b>agreement</b> (3) 1556:24;1638:6; 1685:9  <b>ahead</b> (2) 1542:20;1593:10  <b>ailments</b> (1) 1725:3  <b>air</b> (1) 1597:2  <b>air-conditioning</b> (1) 1560:25  <b>Ali</b> (4) 1542:21;1543:9; 1599:8;1629:13  <b>A-L-I</b> (1) 1543:10  <b>Alison's</b> (1) 1683:2  <b>alleviating</b> (1) 1600:11  <b>allodynia</b> (4) 1561:2,6;1678:21; 1717:1  <b>allow</b> (4) 1570:12;1574:19; 1715:12,17  <b>allowed</b> (8) 1576:8,11;1591:11; 1593:24;1594:21; 1596:8;1715:19; 1716:8	allowing (1) 1655:3  <b>almost</b> (5) 1621:15;1657:8; 1693:7;1694:10; 1703:21  <b>alone</b> (1) 1582:14  <b>along</b> (1) 1562:9  <b>alternatives</b> (1) 1712:7  <b>always</b> (3) 1628:21;1640:7; 1677:6  <b>American</b> (9) 1546:10,13;1550:7; 1607:7;1610:11,15,16, 18;1713:5  <b>among</b> (1) 1685:20  <b>amongst</b> (1) 1741:18  <b>amount</b> (7) 1552:19;1587:21; 1613:7;1616:5; 1635:15;1690:9; 1715:8  <b>amounts</b> (1) 1581:10  <b>anatomy</b> (1) 1550:18  <b>anesthetic</b> (1) 1565:5  <b>ankle</b> (7) 1566:5;1594:15; 1597:4,7;1676:7; 1713:19;1719:13  <b>ankles</b> (2) 1561:21;1713:16  <b>annual</b> (1) 1545:11  <b>answered</b> (14) 1605:24;1628:2; 1634:2,5,6;1652:10; 1660:11;1661:22,24; 1675:20;1679:11,24; 1711:5;1720:13  <b>antalgic</b> (5) 1579:21,21;1670:8; 1671:12;1719:17  <b>antennas</b> (2) 1558:11,13  <b>anticipated</b> (1) 1685:17  <b>anxiety</b> (9) 1556:6;1584:17; 1586:14,16;1588:8,12, 14;1624:5,7  <b>anxious</b> (1) 1600:6  <b>apartment</b> (1) 1600:20
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