CIVIL COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : TRIAL TERM, PART 6

VINCENT FRAGLE,

Plaintiff,

- vs -

INDEX NO. 12326/86

NATIONAL RAILROAD PASSENGER CORPORATION,

Defendant.

H E L D: 111 Centre Street
New York, New York 10013
March 27, 1990

B E F O R E:

HONORABLE PETER TOM,

J.C.C.

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

JESSE C. SABLE, ESQ.
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Nanette Dottin
Official Court Reporter

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A L I G U Y having been duly sworn by the Court, was examined and testified as follows:

THE COURT: Okay, have a seat. Give us your name and your work address.

THE WITNESS: My name is Dr. Ali Guy. My address is 7 Gramercy Park, New York, 10003.

THE COURT: Spell your first name.

THE WITNESS: A-L-I.

THE COURT: Mr. Gold, your witness.

MR. GOLD: Thank you, Judge.

DIRECT EXAMINATION

BY MR. GOLD:

Q Good afternoon, Dr. Guy.

A Good afternoon.

Q I will ask that you keep your voice up so that we can all hear clearly, and the reporter will tell us to slow down if we are speaking too fast.

Could you tell us something about your educational background, doctor?

A I did my undergraduate training at Queens College. I went to medical school in the Dominican Republic. I graduated in June of '81. I did one and a half years of internal medicine at Mt. Sinai School of Medicine. I did one year of general surgery at Cabrini Medical Center. I

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did three years of physical medicine, rehabilitation, at Mt. Sinai School of Medicine, and board certified in physical rehabilitation.

Q Now, could you explain to us what you mean by board certified in physical rehabilitative medicine?

A Board certification is the highest degree you can attain in your field of specialization. You have to be in private practice for two years. You have to complete a fully approved residency program. Then you have to take a written examination which is eight hours long. Then two years later, you have to take an oral examination which is again eight hours long. This exam is conducted by other specialists in your field, and once you attain that then you are considered an expert by the experts.

THE COURT: Dr. Guy, I don't believe you testified as to when you graduated from medical school. What year was that?

THE WITNESS: I think I said that, June of '81.

THE COURT: June of '81?

THE WITNESS: Yes.

Q Now, doctor, do you practice in any medicine or specialty?

A Yes, I do.

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Q And what specialty is that?

A Physical medicine and rehabilitation.

Q And what does that specialty entail?

A It is a combination of orthopedics , non-surgical orthopedics and neurology. We deal with problems that deal with the neuromuscular system, the muscles, nerves, bones. We treat neck problems, back problems, shoulder problems, knee problems.

Q Okay. Are you presently licensed to practice medicine in the State of New York?

A I am.

Q And do you presently maintain an office in New York State?

A I do.

Q And where is that?

A My current office is at 7 Gramercy Park, New York.

Q Is that where you practice your specialty of physical medicine and rehabilitation?

A That's correct.

Q Are you affiliated with any hospital in New York?

A I am.

Q What are those?

A I am affiliated with the Orthopedic Institute, Hospital for Joint Diseases, Cabrini Medical Center,

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Interfaith Hospital, Brooklyn.

Q Now, Dr. Guy, did there come a time when you had an occasion to examine Vincent Fragle?

A I did.

Q And I will tell you now you can refer to your office notes which I assume you have in front of you with regard to anything you are going to testify about.

In referring to your records, can you tell us when was the first time that you saw Mr. Fragle?

A April 3, 1989.

Q Now, when you first saw Mr. Fragle, did he give you a history?

A He did.

Q And what was that history?

A The history obtained was that he was 37 years at the time. He was a railroad worker. He had no significant past medical problems. He had no previous history of injuries to his neck or his back, and I believe it was on 10-11-84 when he was working on the job, he was hit by a railroad metal plate, and he was dazzled. He didn't lose consciousness. He hurt his head neck and upper back. He was dizzy, and he was confused. He didn't recall full details of the accident, and he was treated in a hospital in Queens Boulevard Hospital. He was seen by

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multiple doctors including a chiropractor, a neurologist. He was treated by physical therapists. He had extensive physical therapy, and also chiropractic treatments.

Q Now, at the time, after you took his history, did you also conduct a physical examination?

A I did.

Q And could you tell us what that consisted of, and what your findings were-- consisted of?

A Upon examination, his neck-- I found his neck to be diffusely tender, that means it was painful upon touch throughout the entire part of his neck.

I found multiple trigger points, and later on, I will come to tell you what trigger points are, I found that, some spasm.

The range of motion was within normal limites, but it was painful upon extreme range of motion, and on his upper back, again, it was diffusely tender.

He had multiple trigger points present in the upper muscles in his back, the mid-upper musculature again, and the range of motion was normal.

The remainder of the physical exam, the reflex on the left biceps was diminished. Otherwise, it was unremarkable.

Do you want me to tell you what trigger points are?

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Q Yes.

THE COURT: Answer the questions only asked of you. Okay. Ask the question.

Q Would you describe to us what you meant by trigger points which you mentioned twice?

A Okay. Trigger points are pinpoint areas of tenderness that has a nodule or mass around it. It feels like a little marble inside a muscle. When you have two or more of these trigger points in two or more different parts of the body, the condition then becomes called fibromyositis. It is a very painful condition, and it doesn't usually respond to the common forms of treatment available such as medication, such as manipulations, physical therapy, et cetera.

One of the most useful and efficient ways of eradicating this problem is by injecting them with Novocain. When you infultrate Novocain into them, they bust, the little capsules, the little pockets, and you break up those nodes, and then the muscles go into spasm, so then afterwards you have to treat it with heat, electrical stimulation, or massages, and special exercises. It is a very long and lengthy process, and sometimes this condition has a tendency of recurring.

Q Now, just to back up for a minute. You mentioned

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that fibromyositis, upon your physical examination, you found spasm, and you found tender parts when you examined the musculature of his upper back and neck?

A That's correct.

Q Doctor, are you familiar with the term objective findings and subjective findings?

A I am.

Q Could you explain to us what your understanding of those terms are?

A Subjective is what the patient feels, and what the patient complained of. Objective is what the doctor finds on his physical exam.

Q So objective is not something that the patient is telling you, that is something that you are finding physically?

A That's correct.

Q And the findings that you talked about before, the spasm, the trigger points, things like those, are those objective or subjective?

A Those are objective.

Q Now, after your initial examination and history taken of Mr. Fragle, did you thereafter recommend any treatment?

A Yes. I first did an EMG study to rule out any

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possibility of nerve injury, and I found none. Then I started him on a treatment protocol of trigger points. They are injections consisting of-- you inject the muscles once a week, and the next two days, you follow it up by physical therapy.

Q Now, how many times did you give Mr. Fragle trigger point injections?

A I believe it was three or four times.

Q And that would be followed up on each one of those three or four times?

A Or by each two subsequent treatments.

Q Can you explain to us how you actually give a trigger point injection?

A Okay. First, I have the patient disrobe. I palpate with my thumbs, I put a lot of pressure, and when I palpate a nodule underneath my finger and my thumb, and I confirm it with the expression on his face, he grimaces because of the pain, that is a trigger point by definition. You trigger the patient, and then I clean the area with alcohol, and I spray it. I make a-- it numb with ethyl Chloride spray, and I infultrate small amounts of Novocain and I probe the needle around in about 10 different directions; it is a painful procedure, and I try to break up the knotted muscles, and on release, the nodes, and then

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this is followed once a week.

Q Now, reviewing your records, can you go down for us the times that you saw Mr. Fragle while he was under your treatment?

A Sure. I saw him the first time on 4-3-89, 4-10-89, 4-11-89, 4-12-89, 4-19-89, 4-20-89, 4 27-89, 4-29 89, and on 3-26-09.

Q And on which of those dates did you give him the trigger point injections, if your records indicate?

A 4-10 89, 4-19-89.

Q And, doctor, after your examination and treatments that you rendered to Mr. Fragle, did you have a diagnosis as to his condition?

A I did.

Q Could you tell us what that diagnosis was?

A Sure. He had traumatic fibromyositis, and he had a cranial cerebral contusion with post-concussion syndrome.

Q Now, I believe that the last time that you said you saw him was March 26. 1990. which is just a few days ago?

A That's correct.

Q And prior to that I believe the last time you saw him was July. You said July. I didn't catch that.

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THE COURT: Counselor, I want you to have the witness explain to the jury what those terms are, what he found.

Q I believe that you have already talked about what fibromyositis was?

A That's correct.

Q Could you explain what that means in terms of what it means to Mr. Fragle, and his back, and his condition?

A Okay.

MR. BONVENTRE: I am going to object to the form of the question.

THE COURT: I want you to explain what the terms is, what the terms is so the jury would understand what those conditions are. He found these two conditions. They are not in layman terms. You get to that now.

Q Okay. Can you explain to us the terminology you just used in talking about his-- your diagnosis?

THE COURT: First of all, once you found the plaintiff to be suffering, you just gave us a couple of terms, what you testified to before.

THE WITNESS: Right.

THE COURT: What was the condition that you found?

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THE WITNESS: Traumatic fibromyositis.

Q Which is what? Explain that, please.

A Okay. Fibromyositis is caused by certain disorders. It is caused by trauma; it is caused by stress; it is caused by certain systemic diseases such as lupus.

THE COURT: We don't have to know what it is caused by. We want to know what it is.

THE WITNESS: It is a chronic inflammatory disease of the muscles. It is chronic in nature. It has periods of time where there is improvement and worsening. It makes the patient tired, very weak.

Patient sometimes felt numbness, tingling down the extremities of the involvment. If the neck is involved, they may feel numbness and tingling down the upper back. If the lower back is involved, they may feel numbness and tingling down the legs.

They have restrictions of range of motion of the neck. They may have trouble falling asleep, problems with sleep patterns, and the main thing about this disorder is that it last sometimes indefinitely. Most of the time, it is a permanent problem.

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As you make the patient better as soon as a little bit of stress comes, it makes the condition come back again to its full blown picture, and the nodules that are present in the muscles, you have abnormal forces of pull on those muscles.

For instance, if you have a-- two trigger points on the left side, they pull the muscles on the right side, and vice versa. Therefore, a lot of abnormal forces are pulled, working on the muscles causes more spasm and pain.

Q Okay. Before we go onto the other terms, can I just ask you would fibromyositis be affected by either heavy work or weather changes, or stress as you have just stated in the patient?

A Absolutely.

Q That would cause exacerbations or remissions?

A Yes.

Q Could you explain to us what exacerbation of the condition would be?

A Exacerbation means worsening, and remission means improvement.

Q Okay. Now, the other terms you referred to in your diagnosis, could you explain those to us?

A Yes. Cranial cerebral contusion is a condition

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when a patient receives a blow to the head, sometimes a blow causes bleeding inside the head. Many times it does not. You have a closed head injury.

The problems with a closed head injury when there is no bleeding, the problems and the further complications are worse than if it was an open head bleed. The problems that occur is--the problem that the patient may have are problems with higher intellect of thinking, abstract thinking, memory. Sometimes the patient may feel dizziness, headaches, trouble with concentration. Once these things are present after a few months, the condition is called a post-concussion syndrome with all these other symptomatologies present.

Q Okay. I believe there was one more other term that you used in your diagnosis?

A No, the other one was rule out cervical radiculopathy; that was ruled out by the EMG.

Q That was the electrical testing you referred to before?

A That's right.

Q Now, doctor, you stated that the last time you saw--- prior to this week-- the last time that you saw Mr. Fragle was in July of 1989, is that correct?

A No, it was April 29, '89.

Q Oh, okay. And, at that time, did you discharge

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Mr. Fragle from your care?

A Yes. We had a discussion, and he told me that he wasn't getting better from these treatments; that his condition was the same, so I discharged him with a program of home exercises. I told him if his condition gets worse, and if he wants to return, he is welcome.

Q Now, doctor, I want you to assume for the moment that Mr. Fragle suffered a head injury as described to you before,by you before, on October 11, 1984, I want you to assume he got the treatment from a neurologist for a few months; that he received physical therapy on and off during 1985 into 1986; that in 1987 into 1988, he received treatments from a chiropracter that you spoke of, and that he had the problem up until the time that you saw him, and that he had the problem-- by the way, before when you examined him the other day, what were your findings if you have any record of that?

A My physical examination findings were that he still had multiple trigger points present in his lower neck muscles, the upper back muscles, and the mid-back muscles.

Q Had his condition gotten better or worse, or stayed the same since the last time that you treated him back in April of 1989?

A It is hard to tell for sure, and just the physical

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exam after such a lengthy time I believe it is about the same.

Q Okay. Now, getting back to the things that I just asked you to assume in terms of the accident, is the treatment -- up until your treatment, and your examination on the 26th, do you have an opinion with a reasonable degree of medical certainty as to what the cause of the complaints that require the treatments that we spoke of according to Mr. Fragle were?

MR. BONVENTRE: Objection, your Honor. There is no foundation as to that question.

THE COURT: Sustained.

Q Doctor, I want you to assume that you examined Mr. Fragle; that you treated him on those examinations; you rendered a diagnosis; you rendered treatment, do you have an opinion as to what the cause of the injuries were based on the history given by him to you, and based on your examinations,and your treatment, and review of the records as to what the cause of the injuries that you just spoke of were with Mr. Fragle?

MR. BONVENTRE: Same objection, your Honor.

THE COURT: Sustained.

MR. GOLD: Your Honor, can we approach for a minute?

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(At this time, a side bar conference was held, off the record.)

Q Doctor, I want you to assume the following that on October 11, 1984, Mr. Fragle was walking-- working at his job at the railroad, and that he was struck by a tire plate, a metal tire plate, in the hat that he was wearing, his hard hat, that he was knocked dizzy or semi-unconscious at the time, did not lose consciousness, that he was treated by the neurologist---

THE COURT: Assuming.

Q (Cont'g.) ---assuming that, well, I said that at the beginning, Judge.

THE COURT: You have to assume that, every fact.

Q (Cont'g.) --assuming that he saw a neurologist from approximately October of 1984 until the end of March of 1985, assuming that he thereafter went back to work in April of 1985, and that thereafter in the end of 1985, I want you to assume he further had problems with his neck, his head, and his back, and that he thereafter went to seek further physical therapy which assuming he had gotten in 1984 and 1985, I want you to thereafter assume that he received no treatment during the months of 1986, that he was working two jobs in 1986 thereafter quitting

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one job in May of 1987; that he thereafter got chiropractic care for approximately one year into 1988, May of 1988; I want you to assume that he received no care from May of 1988 up until the time that you saw him in April of 1989; that you examined him, you treated him thereafter; that the last time that you saw him was on March 26 of 1990; I am asking you if you have an opinion based on the following assumptions and hypotheticals with a reasonable degree of medical certainty as to what the cause of Mr. Fragle's injuries were?

MR. BONVENTRE: Same objection, your Honor.

THE COURT: You have to go into what this doctor found in his examination assuming that he examined him on April 10.

Q I want you to further assume that the diagnosis that you just spoke of namely, that he was suffering from trigger point problems with his upper back; that he was suffering from post-cranial cerebral concussion, he had traumatic fibromyositis; I want you to assume that you treated him for those conditions with trigger point injections following each trigger point injection with at least two days of physical therapy; I want you to assume that at the end of April of 1989, that you spoke with Mr. Fragle, you discussed his condition, discussed further treatment namely that you recommended some home exercises, and that he was

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thereafter discharged, based upon all of those assumptions, do you have an opinion--

THE COURT: Also assuming that Mr. Fragle informed this doctor that he did not have any intervening incidents or accidents.

Q (Cont'g.) Okay, and further assuming that since October of 1984, he did not suffer from any other traumatic injuries or any other type of injuries to his neck, head, or upper spine, also assuming that he had no prior injuries up to October of 1984 concerning those parts of his body, do you have an opinion with a reasonable degree of medical certainty as to the causation of those injuries that we have spoke of?

MR. BONVENTRE: I am going to note my objection again for the same reasons.

THE COURT: Overruled.

A Yes, I do.

Q And what is that opinion?

A I believe that it was due to the trauma sustained on 10-11-84.

Q Now, based upon the same assumptions that we just went into, do you have an opinion with a reasonable degree of medical certainty as to whether Mr. Fragle's condition, the injuries that we spoke of are permanent or

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not permanent in nature?

A Yes, I do have an opinion.

Q And what is that?

A I believe they are permanent.

MR. GOLD: That's all I have, your Honor. Thank you.

THE COURT: Cross. Before you ask a question, Dr. Guy, you testified you specialize in physical therapy and rehabilitation?

THE WITNESS: Physical medicine.

THE COURT: Physical medicine.

THE WITNESS: And rehabilitation.

THE COURT: Okay. All right. Continue on the cross.

CROSS EXAMINATION

BY MR. BONVENTRE:

Q Good afternoon, doctor.

A Good afternoon.

Q We never met have we?

A (Nodded.)

THE COURT: What is your answer? You have to answer.

THE WITNESS: I did, I said, no.

THE COURT: Okay. You can't nod your head.

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You have to answer.

A (Cont'd.) No, we never met.

Q I understand you saw the patient, oh, two days ago, correct?

A Correct.

Q And you hadn't seen this patient for approximately one year, a little less than one year until two days ago?

A Correct.

Q How is it that you happened to see the patient two days ago?

A Patient called up made an appointment, and wanted to come to see me.

Q Did the patient tell you why he was there?

A He told me he still had symptoms, he still had problems, and he did tell me that he-- the case-he had a case going, and he still had problems. He wanted me to examine him, tell him if there was anything else that could be done, and I reiterated what I told him before.

Q He did somewhere in that little explanation you just gave he just happened to mentioned that he happened to be on trial this week, he happened to see you a year after you hadn't seen him, is that correct?

A Well--

Q Is that correct? Did he tell you, oh, by the

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way, doctor, I am on trial this week you know, you are going to be testifying did he happen to tell you that?

A I don't remember how that was brought up.

Q Did you know that this man you-- who hadn't seen you for a year just happen to just-- the week he was on trial-- to see you?

A Yes, I did.

Q You did know that?

A Yes.

Q Did you also know in fact, you were going to be called by Mr. Gold to testify, isn't that correct?

A Yes.

Q Now, you conducted a physical examination of him on 3-26-90?

A Yes, I did.

Q And you found the same terrible symptoms on 3-26-90?

A I did.

Q What did you do for him?

A I reiterated to him what I told him before.

Q What did you physically do for him?

A Nothing, gave him advice.

Q Other than advice and kind words of wisdom, what did you do for this patient who has this same terrible condition?

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A Absolutely nothing.

Q Do you have your notes here, doctor?

A I do.

Q Can I take a look at them?

A Yes.

Q Thank you.

THE COURT: Counsel, do you wish to take a few minutes?

MR. BONVENTRE: It will take literally two minutes.

THE COURT: If you are going to take longer, I don't want the jury to sit here. They can relax a little bit in the jury room if you are going to take time to go over those documents.

Q Now, doctor, you said the patient saw you on various-- approximately nine visits, correct?

A Right.

Q And on approximately two of those visits, you gave these very important trigger point injections, correct?

A That's correct.

Q By the way, these trigger point injections you said are Novocain?

A Yes.

Q That is what a dentist gives a patient to numb

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the pain, is that correct?

A That's correct.

Q Now, on the nine times you saw him, twice you gave him these trigger point--

A That's correct.

Q And on the one other occasion, the first occasion, you examined him, correct?

A Right.

Q Okay. And what happened on those other six occasions?

A One other occasion was the EMG.

Q EMG?

A EMG.

Q Okay, that is a nerve test?

A Yes.

Q To determine if there was any nerve damage?

A That's right.

Q And, by the way, that test was normal?

A That's right.

Q You ruled out that, in fact, there was no nerve damage, isn't that correct?

A That's correct.

Q Okay. What did you do for him on the others? So now we have the initial visit, two trigger point injections,

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the nerve test, what did you do on those other four visits or so?

A Physical therapy.

Q Did you do-- administer it?

A I believe once,I may have administered it twice. The other was administered by my therapist.

Q How do you know that he was there on those two visits?

A We have sign in sheets, patients sign in.

Q By the way, you didn't-- you don't have any treatment records of those other four visits, do you?

A Treatment records for fibromyositis, it is the same.

Q Do you have any treatment records for those other four visits?

A That piece of paper you are holding in your hands if it has the dates with the codes, those are the treatment records.

Q This is a billing chart, correct?

A It is also used for treatment records because of the codes that are used.

Q Doctor, did you receive a subpeona from my office?

A I believe I did.

Q And, at any time, in response to that subpeona, did

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you ever attach the only dodument that you have in your records which indicates this patient had physical therapy on four occasions?

A I'm sorry, what is the question?

Q In your response to that subpeona, did you ever attach any documents, in fact, the only document that would have indicated this patient had physical therapy, did you?

A First of all, when I get a subpeona, I don't answer the subpeona. I am answering your question.

Q Do you know if someone in your office did?

A I don't know.

Q Did you tell someone in your office in responding to this subpeona maybe, gee, you should put all the records in there? Did you tell anyone in the office that?

A They know that.

Q I see, okay. Do you need this too? You can hold onto this.

A Okay.

Q Now, how did this patient happen to come to your office in April of 1989?

A I am not sure. I think he may have been referred by a friend.

Q How about Mr. Gold? Would that refresh your recollection?

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A I am not sure. I don't have a referring source filled out here. Usually, the patient comes in and fills out a patient information sheet, and I have referring source; it is left blank, so I am not sure.

Q Okay. Well, the patient testified yesterday he was referred by a friend in Mr. Gold's office, would that refresh your recollection as to how this patient--

A No.

Q It wouldn't surprise you that this patient was referred to you by Mr. Gold, would it?

A No.

Q This is not the first time you have been referred a client of Mr. Gold for you to treat, isn't that correct?

A No, that is not the case.

Q There have been others, haven't there?

A Yes.

Q And these others were also people who were suing somebody, isn't that correct?

A Yes.

Q And, in fact, the other people were suing Amtrak, by the way, isn't that also correct?

A No.

Q It is not correct? You never treated anyone else who was suing Amtrak?

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A You said are all the other people all of them people that dealt with Amtrak , the answer is no, not all.

Q Some-- you have people who have lawsuits?

A I have treated patients that have been--

Q Doctor, please, respond to my question.

A Okay.

Q Have you treated clients of Mr. Gold that are suing Amtrak?

A Yes.

Q And you also treated clients of Mr. Gold that are suing other people, correct?

A Yes.

Q By the way, are you-- have you been referred clients of other lawyers besides Mr. Gold?

A Yes.

Q How many other law firms?

A I don't know, I can't answer that question.

Q Is it more than one?

A Yes, it is more than one.

Q More than five?

A It is more than five.

Q More than 10?

A More than? Around 10, 12.

Q Around 10 or 12. And how long have you been

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accepting referrals from lawyers?

A Ever since I started practicing.

Q When you first started practicing?

A No, not my first-- when I first started. I would say approximately about two years.

Q About two years into your practice?

A Yes.

Q Okay. Now, I take it, doctor, that you are being compensated for being here today, correct?

A Yes.

Q And how much are you going to be compensated?

A It goes by the time that I spent on a case. I charge $300.00 an hour.

Q $300.00 an hour?

A That's right.

Q Okay. And does that include time in which you have written reports?

A That includes all time spent.

Q Does that include time in which you have written reports, yes?

A Yes.

Q And you did that in this case, correct?

A Yes.

Q And does that include time in which you examined

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the patient?

A Examination is not part of that fee.

Q Other than your testifying, and the time in which you write reports, what else is included, for example?

A Any time spent on discussions, any time spent in travelling to and from my office, all those are included.

Q Okay. Well, up to this point, how many hours have you spent in which you are going to charge Mr. Gold on this case? By the way, I assume you are charging Mr. Gold, correct?

A Mr. Gold's firm.

Q Yes, okay. How many hours have you spent so far?

A So far not including this?

Q Exclude this long winded cross-examination, how many hours have you spent?

A I would say about two or three hours the most.

Q Two or three hours, that's all?

A That's all.

Q Okay. So that is approximately-- at this point, we are approximately and when we are done with cross-examination will be in the ball park of about 1000 bucks, would you say that is fair?

A Right.

Q Now, these other cases that you see on behalf of Mr. Gold's office, you have written reports in those other cases,

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correct?

A Yes.

Q By the way, how many other clients of Mr. Gold have you also examined?

A I can't answer that question, I don't know.

THE COURT: Set a time period.

Q At any time, at any time from today until the time you opened your practice, how many patients of Mr. Gold have you seen?

A I would have to say it is less than-- about 15.

Q Less than 15?

A Yes.

Q More than 10, less than 15?

A Less than 15.

Q Okay. It is more than 10?

A I really don't know.

Q Okay. And so-- and you have written reports in those cases, is that correct?

A Yes.

Q Okay, and you-- you are going to charge him the same rate of $300.00 an hour?

A It is the first time I am testifying for him. I never testified for him before.

Q No, no, you charge for the reports. You charge him--

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you are going to charge him for those reports?

A My report is what I quoted to you before.

Q $300.00 an hour?

A That's right.

Q And if those other cases go to trial,you will testify?

A If I am needed, yes.

Q And you will charge for that time, isn't that also correct?

A That's correct.

Q Let's assume, hypothetically, doctor, that in all the cases it will require say three to four hours like this one so-- we said that was worth about $1,000.00 to $1,200.00?

A Right.

Q And in those approximately somewhere between 10 and 15, 15 cases, of Mr. Gold's clients it is a potential income to you of approximately $10,000.00 to $15,000.00, isn't that correct?

A If your arithmetic is correct, that is correct, yes.

Q And how many other clients of lawyers in addition to the 10 to 15 of Mr. Gold's have you written reports for lawyers?

A Lawyers?

Q Yes.

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A Well, I am an expert witness in the field of personal injury.

Q Doctor, my question is--

A I am trying to answer.

Q You are not answering.

MR. GOLD: He is not allowing him to answer.

THE COURT: He has got to answer. Be responsive to the question.

THE WITNESS: Okay.

Q How many clients who become your patients did you write reports and you are charging other lawyers on? How many others other than Mr. Gold?

A I can't answer that question.

Q Was it more than 10, would you say?

A Yes.

Q More than 20?

A More than 20.

Q More than 30?

A More than 30.

Q More than 40?

A Between 40 to 50.

Q Let's say 40 other people.

A Okay.

Q So we are talking about potentially another if you

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are charging the same rates, and even if you just spend the three or four hours like you did here, we are talking about another $40,000 to $50,000, correct?

A Yes.

Q Okay. Now, you are a specialist in physical medicine, doctor?

A That's correct.

Q And part of your function, do I understand, has a specialty in physical rehabilitative medicine to attempt to rehabilitate your patients, correct?

A Yes.

Q Attempt to try those that are not working to get them back to work?

A Correct.

Q And those who have a-- have pain, you attempt to try to reduce or eliminate that pain?

A Correct.

Q By the way, isn't it correct that you treat many of your patients with these trigger point injections, correct?

A Depending on their diagnoses. If the diagnosis warrants it, yes.

Q This is not the first patient you have ever diagnosed as needing trigger point injections?

A No.

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Q There have been many others, isn't that correct?

A Yes.

Q Obviously, if you don't find that the patient has something, there is no need to treat the patient, correct?

A That's correct.

Q And if there is no need to treat the patient, then you obviously can't bill the patient if you are not treating them, correct?

A I'm sorry.

Q If you-- if you don't have to treat the patient, you can't bill the patient or whoever for that treatment if there is no treatment to give, correct?

A Well--

Q Let me put it this way, doctor, you only make money from your patients if you find something wrong with them and say it has to be treated, correct?

A I don't make money from my patients, I have other sources of income.

Q Lawyers. I am talking now about your patients.

A Right.

Q You make money from your patients obviously when you treat them, if they don't need treatment, you are not going to bill them?

A That is true.

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Q I want to get back to the history that the patient gave you, that the plaintiff gave you. By "plaintiff" you know who I am talking about, right?

A Yes.

Q The plaintiff told you he was hit with a-- by the way, let me withdraw that, I'm sorry.

You completed a report for Mr. Gold's office, correct?

A That's correct.

Q Okay. And, indeed, in the report that you completed, you reached many of the same conclusions that you testified to today on direct, correct?

A Yes.

Q Okay. And that report was written approximately one year ago, correct?

A That's correct.

Q Okay, and that report andyour conclusions were based on what the patient told you, and your physical examination, correct?

A That's correct.

Q Okay. You did not, for example, at the time when you wrote your report review any of the treatment records from any of the doctors that this patient had allegedly seen, isn't that correct?

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A That's correct.

Q And, in fact, you did not look at any of the hospital records of the two emergency room visits that this patient had, isn't that also correct?

A That's correct, but that wasn't important in this case.

Q It is not important to look at the medical records?

A In this case.

Q In this case not important to look at what other doctors have said about this patient?

A No the--

Q It is not important?

A Not the emergency room records.

Q Well, apparently, it is not important to you either to look at the records of Dr. Brown, the neurologist, isn't that correct?

A That is important.

Q Well, but you didn't look at them when you wrote your report?

A I didn't have it at my disposal.

Q Despite the fact you didn't have that at your disposal and didn't look at them, you were still able to reach these conclusions, isn't that correct?

A That's right.

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Q And that same goes to Dr. Nicolletti, the chiropractor, correct? You didn't look at those either, correct?

A No.

Q Okay. Did you call any of them up, by the way?

A No.

Q By the way, when was the first time you heard the name, Dr. Alan Brown?

A I don't recall, but I have heard is name mentioned a couple of times.

Q By whom?

A Different patients, different doctors.

Q I am talking with respect to this particular patient, when was the first time you heard Dr. Brown?

A Most recently, I heard it two days ago when I reviewed the past history with the patient, and just reviewed the events to make sure that everything I had was correct, and--

Q By the way, why were you reviewing the past history for a patient that you had previously treated a year ago?

A I wanted to make sure I made no mistakes.

Q In your testimony here at trial?

A In my history.

Q For your testimony here at trial?

A The testimony has nothing to do with it.

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Q Your testimony had nothing to do with your seeing this patient two days ago?

A The history that I reobtained from the patient had nothing to do with this testimony.

Q In any event, doctor, the patient told you he was hit by a railroad tire--

A Correct.

Q Did he tell you he was wearing a hard hat?

A I don't recall.

Q You don't recall. Well, do you think it would be significant in terms of your diagnosis as to whether or not when this patient was hit by a piece of metal whether or not he was wearing a hard hat?

A Yes.

Q Obviously, the injury would be even more severe than you say itis if he wasn't wearing a hard hat?

A The fact is he had no open head trauma.

Q Doctor, you have to respond to my question. The fact that he was wearing a hard hat certainly would tend to make the injury less severe than if he was not wearing a hard hat, isn't that correct?

A In certain situations, yes.

Q What about in this situation?

A Inthis situation it was mostly a soft tissue injury,

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so the fact that he had his hard hat on the force goes to the musculature.

Q Okay. Well, in any event, did he tell-- he told you he didn't lose consciousness, correct?

A Correct.

Q Did he ever tell you he ever blacked out?

A Well, I associate loss of consciousness with black-out, so.

Q So he certainly never said, by the way, doctor, I blacked out?

A No, I don't recall that.

Q What else did he tell you about the accident, the accident itself? What else did he tell you?

A Let me refresh my memory from my notes. Basically, what I repeated before, he told me he was working on the job; he was hit by a railroad metal plate; he became dazed, dizzy; didn't lose consciousness; became confused, and he didn't recall the details of the accident.

Q Now, he told you he went to Boulevard Hospital?

A Yes.

Q But you never looked-- have you ever looked at the Boulevard Hospital records?

A No.

Q Okay. Did he tell you if the Boulevard Hospital--

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Did he tell you or let me put it this way, doctor, were you aware that the Boulevard Hospital emergency room records reflected no complaints about the patient's neck? Were you aware of that?

A That is not surprising. Initially, those things don't happen right away.

Q The question is were you aware of it?

A No.

Q Now, were you aware that the patient was alert and oriented when he got to the Boulevard Hospital? Were you aware of that?

A Based on what he told me, yes, I was. He was alert and oriented.

Q Were you aware that his affect was deemed appropriate?

A I am not surprised.

Q By the way, what does it mean his affect is appropriate?

A His behavior, his mood is appropriate.

Q What does it mean he is alert and oriented?

A Alert and oriented means that he is awake, he is aware of where he is, what his surroundings are.

Q Okay. Now, I want you to assume, not assume but actually, I want you to assume what those things are, what I read to you from the Boulevard Hospital record, having been

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told those things, does that change your opinion as to whether or not the subjective symptoms this patient complains about, complains to you about, have anything to do with an accident that happened five years ago?

A Absolutely not because--

Q It makes no difference?

A No.

Q Okay. Did the patient tell you that he went to Lawrenceville Hospital?

A Lawrence Hospital he did mention that to me.

Q He did?

A Yes.

Q Is there any reason why in your report you only indicated he went to one hospital?

A I just included the initial history. Had he gone to Lawrence Hospital, it did not make any difference in my diagnosis and treatment.

Q It wouldn't make any difference as to what was found in Lawrenceville Hospital?

A I know it wasn't anything significant.

Q How do you know if he didn't tell you?

A Because of the history and physical exam.

Q How do you know if the patient didn't even tell you he went to Lawrenceville Hospital there was no significance?

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A The patient is a very good historian. If there was anything there, he would have told me, and I would have pursued the matter further and obtained the medical records.

Q Didn't you tell us that the patient told you he couldn't tell you some of the details of the accident?

A No, no, no, no. I said initially he did not recall the details of the accident.

Q Let me ask you this, you saw the patient for the first time in April of 1989, correct?

A Right.

Q And based on your conversation with him you were able to make a determination that this man was a very good historian?

A Yes.

Q And despite the fact you didn't look at any of the medical records, you were able to tell this was a good historian?

A That's right.

Q Well, I want you to-- were you aware, for example, that when the patient went to the hospital, Lawrenceville Hospital, two days after the accident that the patient stated on the day before he had done very well? Did you know that?

A No.

Q Okay. Did you know that when he got to the hospital,

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he made no complaints of nausea or double vision, did you know that?

A No.

Q Okay. Did you know that when he went to the hospital, he was alert and oriented?

A No. As I said, I was not aware of those records. I wouldn't be aware of any of the questions you are asking me.

Q Did you know that, if he complained of a mild headache?

A Same answer.

Q Same answer. Did you know that the hospital records noted that he had full range of motion of his neck, did you know that?

A I found the same thing.

Q And, well, did you notice that the hospital records made, in fact, not a single notation,that plaintiff made a single complaint about his neck, did you know that?

A No.

Q You didn't know that?

A No.

Q Okay. Did you know that the neurological examination was completely normal, did you know that?

A So was mine.

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Q Well, doctor, I want you to then to know in light of the fact that the patient had no nausea, no double vision complaints only of mild headaches, had full range of motion os his neck, had a normal neurological test,made no complaints about his neck, I want you to just know that, does any of that change, does any of that change your opinion as to whether or not the patient's current subjective symptoms were caused by an accident that happened five and a half years ago?

A When was the date of that?

Q Two days after the accident.

A No, that does not in any way change my opinion.

Q None at all?

A If you give me a chance, I will explain to you why.

Q It doesn't change your opinion?

A Absolutely not.

Q By the way, were you aware that x-rays were taken at Boulevard Hospital?

A Yes, I was aware of it.

Q Do you know what the results of those x-rays were?

A No fractures.

Q Do you know if the x-rays showed anything else, doctor?

A No.

Q Are you interested in knowing if those x-rays showed

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anything else, doctor?

A If it revealed no fracture, no.

Q How do you know that it revealed no fracture?

A The patient told me.

Q Do you normally rely on what the patient-- how the patient describes the results of his x-rays in making a diagnosis and treatment plan, doctor?

A If I feel that the patient is a good historian, and there is nothing in my physical examination to tell me otherwise, yes, I do rely on that patient's history as a good source of information.

Q Do you say, by the way, Mr. Patient, did you have x-rays taken, and he says, yeah, and they were negative, that is sufficient for you?

A If somebody gets a fracture, they are told about it.

Q Is a fracture the only significant finding on an x-ray?

A In this case, yes.

Q Okay. Were you aware that the patient-- well, you are now aware that this patient saw a neurologist named Dr. Brown, correct?

A Yes.

Q A neurologist is a specialist in nerves among other things, damage to nerves, correct?

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A Yes.

Q Damage to nerves, excuse me, is that correct?

A Yes.

Q And a neurologist also treats concussions, correct?

A That's correct.

Q Did you ever refer this patient to a neurologist?

A No.

Q All right. Did you ever refer this patient to anyone outside of your office?

A No.

Q Okay. Were you aware that this patient had an electroencephalogram in April of 1985-- excuse me, were you aware that the patient had an electroencephalogram in October of 1984?

A No.

Q Do you know what an electroencephalogram is?

A Of course.

Q What is it?

A It a special test that checks the brain waves to see if there is any damage to the brain. It is not a very accurate test and leaves a lot of room for errors.

Q The fact that that test was normal is of no significance to you?

A No.

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Q Well, if it is of no significance why do doctors order them?

A EEG is useful in cases of seizures and in other conditions where there is increased brain activity in terms of electrical discharge, but not in cases of post-concussion syndromes.

Q So there was no reason--

A It is always the EEG is normal.

Q There is no reason for Dr. Brown to have ordered this test?

A Sure, there was, he wanted to rule out any possible problems, and he did his job like the same way I ruled out radiculopathy and nerve root problems with an EMG.

Q By the way, did you ever take any single other diagnostic test other than the nerve test?

A There is no other test that is needed.

Q No other test is needed?

A Absolutely.

Q No. You are relying on the patient's history?

A My physical exam and the history, yes.

Q What is an echoencephalogram, doctor?

A Echoenchephalogram, I am not familiar with that test, and I rather defer on explaining it.

Q Do you know what an echoencephalogram is, doctor?

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A I am not throughly familiar with it.

Q Do you know what it is?

A I just answered it.

Q That a yes or no?

A I am not familiar with it.

Q How about a brain system evoke potential test, do you know what that is?

A Yes.

Q What is that, doctor?

A That is done to check the mid-brain to see if there is any dysfunction to the mid-brain.

Q Okay. Were you aware if this patient in October of 1984 had one of those?

A No.

Q Patient never told you? Mr. Accurate Historian never told you he never had these three tests?

A Those tests were not important to me.

Q Are you telling me then his history is so accurate he knows that these three tests would not be important to you?

A The problem, okay--

Q Doctor, you said he was-- gave you an accurate history, correct?

A He was a good historian.

Q Did this good historian tell you he had these three

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tests?

A No, he didn't tell me.

Q He didn't tell you, okay. So the fact that the brain system evoke test was normal would be of no significance to you?

A All those tests are normal in a post-concussion syndrome, in a closed head injury.

Q It is of no significance to you that he had those tests?

A No.

Q Did the patient advise you, doctor, did the patient say he had neck pain?

A He told me, yes.

Q Did he tell you for how long he had been having neck pain?

A Ever since the injury.

Q He did say that?

A Yes.

Q Well, he didn't tell you as he did here yesterday on cross-examination that he could not recall whether or not he had neck pain or complained of neck pain to Dr. Brown, did he?

A That he had mentioned to Dr. Brown?

Q Did he tell you that he couldn't recall whether or

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not he ever complained of neck pain to his treating neurologist?

A I never asked him if he complained to Dr. Brown or if he ever had neck pain.

Q Would it alter your opinion in any way if you found out that the patient testified here yesterday he can't recall whether or not he ever made any complaint of neck pain to Dr. Brown?

A See, most of his problem is--

Q Does he have a problem with his back?

THE COURT: You have to slow down.

Q Slow down. I would ask him to respond to the question.

I asked you if you would change your opinion if the patient said he has no idea if he ever complained of neck pain to Dr. Brown, would that change your opinion?

A No.

Q Does that coincide with your analysis of him as an accurate historian?

A Well, the main problem here is the head injury, and the trigger points.

Q Doctor, would that coincide with your statement that he was an accurate historian upon which you used to base your treatment and diagnosis?

A Well, I can't answer that question.

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Q Okay. Doctor, let me ask you this, you treated other patients before, correct?

A Yes.

Q And is it a fact that if a patient would say that he can't recall whether or not he complained of neck pain or had neck pain, would that tell you anything about whether in fact this patient had neck pain or how significant the neck pain was?

A I have many patients that tell me they have no neck pain. Family members tell me, don't you remember three, four weeks ago you were complaining of neck pain in a post-concussion syndrome. There's memory problems; they may not recall.

Q So they don't even recall that they are in pain sometimes?

A That they should recall if you are in pain, that should be recalled.

Q That was my question, would it be significant if you heard that the patient said he couldn't recall if he had neck pain when he was seeing Dr. Brown?

A If he told me he has absolutely no neck pain, and he never had no neck pain, that would be a wholly different story. If he didn't complain at that particular visit or a couple of visits, no, that would not change my opinion.

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Q Okay. Did he tell you this, did the patient ever tell you that on March 25 of 1985 he told Dr. Brown that he was all better? Did he ever tell you that?

A If he was all better?

Q Did he ever tell you that?

A No.

Q He didn't?

A No.

Q Would that be significant that the patient told his treating neurologist that he was "all better?" Would that make any difference to you as far as whether or not his subjective complaints today have anything to do with this accident of five years ago?

A It would make a difference if he was given a chance to explain why he said that. Sometimes patients say that to defer any further diagnostic testing.

Q Doctor, I want you to assume that this patient told his treating neurologist,the only doctor who was treating him, that he was all better, is that significant to you in your diagnosis, treatment, and conclusions?

A As I told you, the condition has remissions and exacerbations. He may feel better, then he may have a worsening condition later on, so.

Q You told me originally, doctor, that you relied very

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heavily on this patient, what he told you his history was. Now, you are telling me that it is not significant that when this patient says he is all better, he really does not know what he is talking about?

A If you recall what I said, I said that that is in conjunction with the nature of this illness. You have days that you are better, you have-- sometimes that you are completely pain free, and other times that the pain comes back like arthritis. Arthritis you are in pain all the time. There's degrees of pain, and there's levels of pain, and days where you are pain free.

Q So the bottom line is, doctor, it changes none of your conclusions or opinion if this patient told his treating neurologist he was all better, it makes no difference to you?

A Again, it would depend, okay. He was completely better as to what period of time? If he tells his neurologist, I have been better, I have had no pain for the past four, five months or so then, yes, it might make a change in my opinion, but if he was just better at that particular time, the answer is no.

Q Are you aware, doctor, that you are the first physician that he has seen since April of 1985? Are you aware of that?

A No.

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Q You are not aware of that?

A No.

Q Do you find it significant that a man that you say has such great pain and difficulty, do you find it significant that he has not seen a physician in four years until he saw you. Do you find that significant?

A I have no comment on that.

Q Do you find it signficant in reaching your conclusions that you gave on direct that this man did not see a doctor for four years? Do you find that signficant?

A No.

Q It does not change your opinion?

A No.

Q Do you find it significant that it took two and a half years from the time he left with the neurologist to go to a chiropractor, do you find that signficant?

A It took him two--

Q Two years, two and a half years. Do you find that significant?

A You mean to say if he was treated by anybody from two and a half years until the time of the injury?

Q That he left his neurologist on 3-25-85, and he followed up at the chiropractor in May of 1987, do you find that significant?

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A Possibly.

Q That is significant?

A Possibly.

Q And it is significant because it might indicate to you this patient was doing pretty darn good for two and a half years, isn't that correct?

A Yes.

Q Okay. It also might lead you to conclude that maybe, perhaps something that happened five years ago was not responible for his complaints today, isn't that also possible?

A That is a possibility.

Q That is possible, correct?

A Sure.

Q So that might change your opinion?

A What might change?

Q That the gap there between the neurologist and the chiropractor that might change some of your conclusions?

A But my understanding is that he initially was treated by somebody, and he did have extensive physical therapy, okay. If there is a gap here and there that does not change my opinion.

Q Is two and a half years a little gap?

MR.GOLD: Your Honor, he is saying two and a

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half years trying to say that there was no treatment during the two and a half years. Dr. Guv is saying that there was physical therapy and chiropractic care. I think it should be made clear by Mr. Bonventre whether he is talking about specifically no treatment for four years or whether he is including in that he didn't get any physical therapy, any chiropractic care, or any other type of care. I think that should be made clear to the doctor, and to the jury what he is talking about.

THE COURT: All right, rephrase your question.

Q I want you to assume that he left the care of his neurologist in March of 1985, okay, and that when he left the care of the neurologist by then he had already discontinued physical therapy; I want you to also assume that he picked up physical therapy for approximately two months in December and January '86, '87, and then he appeared at a chiropractor in May--

MR. GOLD: '85-'86.

Q (Cont'd.) -- '85-'86, and then he shows up at a chiropractor in 1987, May, is that significant to you?

A Let me answer your question with just a reutterance of what has been said.

Q I want you to answer my question, is that significant

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to you?

A Okay, first of all, if I understand correctly the accident was 10-11-84. He started on physical therapy December of '84.

Q That's correct.

A Okay, so he did have treatment so.

Q Doctor, I want you to assume that he stopped this treatment, and the neurological treatment approximately the end of March beginning of April of 1985.

A Okay.

Q Okay, and then there is this gap of two years until he sees the chiropractor, and in between that he has approximately two months of physical therapy, now, is that significant to you?

A A two-year gap that could-- could be significant.

Q And, again, is that significant because it could indicate that maybe this patient was doing well?

A It could indicate many things.

Q Well, what are some of the things it would indicate?

A It would indicate that he learned to live with his pain. It could indicate that his condition got a little bit better. It could indicate that he--

Q Did it indicate that his condition had gotten completely better?

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A It could indicate that.

Q In fact, you told us that this fibromyositis is a very chronic, constant thing that does not go away?

A Chronic.

Q And usually does not go away?

A That's right.

Q And usually does not disappear for two years? It usually doesn't disappear for two years?

A The condition does not disappear, the symptoms can disappear.

Q For two years?

A For months.

Q For two years?

A Two years, I mean it is unusual, but it could.

Q Have you ever heard of a patient who had this chronic condition, and the symptoms disappeared for two years?

A I have four right now.

Q That disappeared for two years?

A That's right.

Q Are they also suing people from Amtrack?

A No.

A Are you aware, doctor, that neither-- that no doctor other than the initial emergency room doctor, not a single doctor, chiropractor, therapist, none have ever

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prescribed any medication for this patient? Are you aware of that?

A It doesn't matter. Medication will not work in this case.

Q Medication does not work in this case for this patient?

A Does not work for the trigger points. It will not penetrate the area that has lost the vascular supply, it will not reach it.

Q So medication will not help this patient?

A Will not do anything for trigger points.

Q Let me ask you this, the fibromyositis is an inflammation?

A Inflammatory condition of the muscles.

Q Are there drugs called anti-inflammatories?

A Yes.

Q And those anti-inflammatories would not work on this--

A They work in the acute phase only. They will not work in the chronic phase. There are some medications that will work to mask the symptoms and diminish some of the pain. They will do nothing for the actual trigger points.

Q Doctor, if a patient says he is in great pain, isn't it normal for a doctor, part of his function is to

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attempt to alleviate that symptom of pain?

A Yes.

Q And one of the ways that a doctor does this is he gives medication, isn't that correct? Is that one of the ways?

A Exercise is another way, physical modality.

Q Is prescription one of the ways you alleviate pain?

A One of the ways.

Q Doctor, I think doctors give us prescriptions everyday, don't they?

A They do.

Q And you don't find it significant that this patient has never been given a prescription for pain other than the emergency room hospital?

A Well, I think the people that were treating him were not trained to pick up fibromyositis, that is why they never gave him the proper treatments for this disorder.

Q Oh, I see, okay. Now, were you aware, doctor, that from the period of mid-1986 through mid-1987 that this man, who you say has this permanent, chronic condition, was working two full-time jobs simultaneously? Were you aware of that?

A Yes.

Q When did you first become aware of that?

A When I was speaking to him two days ago reviewing the

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past record.

Q By the way,he didn't happen to mention that in his accurate history when you saw him in 1989, did he?

A No.

Q Now, he tells you he is working two full-time jobs, did he tell you what these two full-time jobs consisted of?

A I believe sanitation work.

Q Do you know what other job he was doing?

A No.

Q Okay. Well, let me ask you this, doctor, the fact that this patient was working two full-time jobs, does that change any of your conclusions or opinions?

A No, it doesn't, no. Most people with this condition can continuously work without any problems with their job, but they will be in pain and discomfort, and the pain can be minimal, moderate; it could be severe.

Q Does the fact that he was working two full jobs indicate to you as a physician how bad the pain was?

A No.

Q Would it indicate to you if he could work two jobs he really didn't have that much pain?

A Not necessarily true.

Q But, in any event, it is your testimony that people with this condition they work all the time?

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A That's right, they do.

Q They work all the time?

A That's right, and it could-- they can aggravate it all the time.

Q Two jobs does not change your opinion, no, is that correct?

A No.

Q Okay. Doctor, were you aware that this man has been working for the sanitation department for four years approximately, has never lost a single day of work from the sanitation department because of this injury? Were you aware of that?

A No.

Q Okay. He didn't tell you that in his history either?

A It is not important.

Q It is not important that this man , who has this chronic, permanent disability, hasn't lost a day of work in four years; that is not important to you?

A Fibromyositis does not impair you from working, it just makes work a lot more encumbersome.

Q Do you know that if he lost any time from work from Amtrack? Do you know if he lost any work?

A Let me check my records. I didn't obtain a history

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in my records; I am not sure.

Q So Mr. Accurate Historian didn't tell you that?

A No, I didn't ask him, so he didn't.

Q It is not significant to you to know whether or not he was so disabled he couldn't work?

MR. GOLD: Judge, can we have a clarification of what he is talking about, time lost from Amtrack; was it the initial period, or from April '85 thereafter.

Q Was it significant to you that this patient lost five months of work initially after the accident?

A He could have missed two weeks work, it still would have had the same-- it wouldn't change my opinion.

Q It wouldn't change your opinion one way or the other?

A No.

Q In fact, you told us people with this condition can work?

A Right.

Q As far as you know-- as far as you know, there is no reason why he shouldn't have been able to work during those five months?

A Every situation, every patient's case is different, the condition itself. Yes, they can work, okay. It depends

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on what the job is, okay.

Q Well, doctor, do you know whether or not his job with Amtrak was more or less physical than his job with the sanitation department?

A No, I don't.

Q You don't know. Well, doctor, were you told, for example, that the job with the sanitation department, in fact, was a more physical job than the job with Amtrak? Were you told that?

A I am not. I don't think that was clarified to me.

Q You don't think that was told-- that was not told to you, is that what you mean?

A It was not told.

Q Were you aware that this man, who was in such great pain, and had to take five months off from work from Amtrak during that time period while he was allegedly unable to work for Amtrak, he was applying for a more physical job with the sanitation department during that time period, were you aware of that?

A No.

Q Does that change your opinion in any way?

A Still does not change my opinion.

Q Makes no difference?

A No.

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Q Were you aware when he made that application to the sanitation department for this more physical job while he was out of work with Amtrak , were you aware that he completed a medical health form?

A No.

Q Were you aware on the medical health form he indicated he had no medical disabilities? You weren't aware of that?

A No.

Q Were you aware that he signed a report which says he is fully capable of doing the work that he was applying for?

A I wasn't aware of it.

Q Does that change your opinion in any way?

A No, because as I explained to you before people with this condition can work.

Q People with this condition, do they have any pain? Do they have--

A Yes, they do. The amount of pain, the level of pain fluxuates. Some days it is very, very high, some days it is moderate, it is minimal. Some days they have no pain.

Q Let me ask you this, did the patient tell you whether or not he had been having any problems with his head?

A He told me that he has trouble concentrating. He

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occasionally gets dizzy. He gets headaches.

Q Okay. He told you that he has trouble concentrating; he gets dizzy?

A Yes.

Q Doctor, are you aware that yesterday and this morning at no time did the patient ever indicate that he loses concentration?

A I said occasionally.

Q Well, were you aware that the patient did not testify to that today or yesterday?

A No, I was not aware of it.

Q Does that change--- does that alter your opinion in any way?

A Possibly.

Q Okay. You said the patient had complained of headaches?

A Yes.

Q Did he describe the headaches?

A Dull, aching.

Q Dull, aching?

A Yes.

Q Did he ever tell you he had headaches so strong he felt like fainting?

A Not that I recall.

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Q Not that you recall. Were you aware in his medical history he filled out with the sanitation department that he indicated that he had never had-- or been told-- he had severe headaches, were you aware of that?

A No.

Q Would that change any of your-- your opinion?

A No. Sometimes people may not tell the truth in a job application. It happens to my staff all the time.

Q Even this guy who is very accurate to you?

A Sure, he is going for a job application.

Q Doctor, are you aware that neither Boulevard-- the doctors at Boulevard Hospital nor the doctors at Lawrenceville Hospital diagnosed this patient as having a Concussion? Are you aware of that?

A Concussion you don't make that diagnosis initially, that diagnosis is made later on.

Q Were you aware that neither hospital diagnosed this patient as having a concussion? Are you aware of that?

A As I--

Q Are you aware of it?

A I am not aware of any records from those hospitals.

Q The fact that neither hospital diagnosed this patient as having a concussion, is that of any significance to you?

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A No.

Q None at all?

A And I told you in-- that was the initial treatment.

Q Are you aware that neither hospital diagnosed this patient as having any problems with his neck? Are You aware of that?

A I think I answered that question before.

Q You are not aware of that?

A I said, initially, you don't feel a neck pain that comes on days or weeks afterwards.

Q So, initially, you don't feel the headaches, and initially you don't feel the neck pain, is that correct?

A That is absolutely correct.

Q Well, doctor, can you explain why the patient testified yesterday that immediately after this accident he had headaches, and he immediately had neck pain? Can you explain that?

A No. Sometimes you can have it, sometimes you can't have it.

Q Doctor, you just said that with this you don't get them sometimes for several weeks, correct?

A I am telling you that the condition, okay, whenever you have an injury sometimes you can have the full blown symptoms initially. Sometimes you can have it up to 10, 14

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days later; that is how it is present.

Q That's what you just said three questions ago, doctor. Didn't you just say that these symptoms don't appear for several weeks? Didn't you just say that?

A You can recall what I said. What I meant to say is that you don't have to have these symptoms present initially. Usually, they are present later on, days or a couple of weeks later on.

Q Doctor, are you -- were you told by this patient that in April of 1985, he advised a physican that he was in excellent health? Did he tell you that?

MR. GOLD: It's been asked and answered, Judge.

MR. BONVENTRE: It has not been asked and answered.

MR. GOLD: He went into great detail before.

MR. BONVENTRE: I am referring to a specific physician.

THE COURT: Overruled.

Q Did he tell you that?

A I'm sorry, did he tell me?

Q That in April of 1985 he advised a physician that he was "in excellent health," did he tell you that?

A No.

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Q Did he tell you that he told that same physician that he was fully capable of doing heavy physical, manual labor? Did he tell you that?

A No. I am not aware of that.

Q Would that change any of your opinions?

A I think I answered this question before.

Q That would not change any of your opinions?

A No.

Q Doctor, if I can is it your testimony that despite the fact that this individual never had any prescription medication, despite the fact that this individual had negative x-rays, and negative electric tests, despite the fact that this individual never lost a day from work with the sanitation department in four years, despite the fact that this individual worked two full jobs for an entire year that despite the fact that this individual chose to apply for a more physical job than he was doing previously ,despite the fact that he didn't see a physician for four years, that despite all those factors, and despite the fact that you didn't see this patient for four and a half years after the accident, that despite that none of those facts change your opinion as to whether or not his subjective complaints have anything to do with an accident which happened five and a half years ago?

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A No.

Q None of them?

A Not at all.

Q And despite those facts, doctor, you are telling this Court and jury you can state with a reasonable degree of medical certainty that an accident that happened five and a half years ago for which you saw the patient four and a half years later, you could state with a reasonable degree of medical certainty that they are causally related?

A That's right.

Q Okay. And with this severe, terrible, causally related problem, you saw this patient two times, and that you gave him treatment, the trigger point injections, correct?

A That's correct.

Q And, in fact, you testified originally, did you not, on direct that this is the type of condition that takes a long time and needs a lot of treatment, isn't that correct?

A That's correct.

Q And you told that to this patient, isn't that correct?

A That's correct.

Q And, in fact, he followed up a grand total of two times for this trigger point injection, isn't that

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also correct?

A That's right, that was his choice.

Q That wouldn't indicate to you whether or not this patient really had any pain one way or the other?

A He told me he didn't feel any improvement at all whatsoever from these injections, and they were too painful, and he did not want to continue these injection.

Q Did you tell Mr. Fragle, now, you have to wait a little longer than two treatments? Did you say that to him?

A I did tell him.

Q And he still didn't come back?

A No.

Q Now, when you did your initial physical examination, you said the neck was tender, correct?

A Yes.

Q And by that you mean the patient said to you, my neck hurt?

A That's right.

Q And you also said his upper back was tender, correct?

A Correct.

Q And that means he said to you, my upper back hurt, correct?

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A He didn't just say that, I also watched the grimaces on his face. When I put pressure which goes by two criterias, I ask him,does this hurt, and I look at the grimace on his face, and I put less pressure, I increase the pressure, and I watch to see what happened.

Q You asked him if he hurt, he said, yes, and he also at the same time grimaces, is that it? Is that correct?

A I don't know if it happened in those exact sequence of events, but when I said-- the definition of tenderness that means when you palpate, and you change the intensity of the pressure, and you watch for certain facial expressions.

Q By the way, he had a full range of motion of his neck? He could completely move his neck, correct?

A Correct.

Q You found he complained of pain when he moved his neck to the greatest extremes, is that correct?

A Yes.

Q Doctor, I want you to assume when I move my neck right now I get a pain right here, I want you to assume that, am I permanently partially disabled?

A I am not basing my disability on that.

Q You are not?

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A I am basing my disability on the fact that he has multiple trigger points still present, and he still has certain post-concussion residuals.

Q Do you have any idea why the neurologist missed these numerous trigger points?

A Neurologists always miss, I shouldn't say always, they most of the time miss these problems, and that is why they send them to us for these kind of treatments.

Q Did you test the muscle strengths of his neck?

A Yes.

Q And that was normal despite this chronic inflammation he allegedly had for five years?

A Muscle power is normal in this man.

Q This condition does not affect your ability to work, does not affect the strength or the muscles, does not affect the ability to move your neck, is that correct?

A Sometimes it can.

Q But not in this case?

A Not in this case.

Q I just have a few more questions, doctor. Could I have the-- Judge, the Boulevard Hospital records?

Doctor, are you aware what a degenerative disease is?

A Yes.

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Q Do I understand that a degenerative disease is a sort of a slow,ongoing process, correct?

A Yes.

Q And certainly if there is a degenerative disease, for example, if you took an x-ray of me and I had degenerative disease on that x-ray today that means I have had it for a while obviously, it just didn't happen today, correct?

Right.

Q Now, degenerative disease can it not cause some discomfort to a patient, isn't that correct?

A Sometimes depending on the level of the degeneration.

Q Okay, and it also can cause say discomfort when he tries to move his neck that can be caused by degenerative disease?

A It will not cause trigger points.

Q It can cause spasm?

A Possibly.

Q Were you aware that when the x-ray was taken on the date of the accident this patient was diagnosed as having minimal degenerative disease? Were you aware of that?

A No.

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Q Doctor, is it possible since degenerative disease can cause these things that at least some of this patient's subjective complaints are caused by a degenerative disease condition that existed way before the day of the accident? Is that possible?

A It is possible.

Q All right. Doctor, in attempting to get patients back to work, first of all, and part of your job is to rehabilitate the patient, you have to make a determination that the patient needs rehabilitation?

A That's correct.

Q And part of your job is to determine whether or not in the common vernacular the guy is faking or not, correct?

A Right.

Q Are you aware of the medical term called malingering?

A Yes.

Q Are you aware of this book, doctor, DSM III R, revised?

A I never read it, I am aware of it.

Q You know it exists?

A Yes.

Q Well, you are aware of this term malingering, are

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you not, doctor?

A Yes.

Q And, doctor, isn't it correct that malingering is the intentional exaggeration or lying by a patient for a certain reason, isn't that correct?

A Yes.

Q And one such reason would be for a gain, for some kind of a gain, correct?

A Yes.

Q And one such gain would be a financial gain to make money, is that correct?

A That's correct.

Q Another such gain would be to get out of work for a while, isn't that correct?

A That's correct.

Q And there's certain things that happen that should make a doctor suspicious about malingerers?

A That's correct.

Q And one of the things is if the patient was referred to the doctor by his lawyer, isn't that correct?

A No.

Q That is not correct?

A That is not correct.

Q Doctor, take a look at this, and see if this refreshes your recollection.

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A Okay. That is what it says there, that does not mean I am in agreement with it.

Q You are not in agreement with this?

A Not always.

Q Okay. Well, should you be suspicious if, for example, the patient or if one of the symptoms of malingering is the patient's subjective complaints, what he says contrast sharply with, for example, with what diagnostic tests show?

A Sometimes certain diagnostic tests will not show up anything like, for instance, in fibromyositis.

Q That was not my question. My question is is one of the indicia of malingering when a patient's subjective complaints are not mapped by any objective tests?

A Yes, objective test, yes.

Q Or when the patient's subjective complaints aren't mapped by his actions, for example?

A That's correct.

Q For example, when a patient says he is terribly disabled and can't work but in the meantime he is applying for another job, would that possibly be something that might make you suspicious of malingering?

A If you are asking me in reference to this case--

Q No, I am asking you your medical expert opinion.

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A Generally?

Q You have a patient that is telling you he was unable and disabled for five months to work at his job, and at the same time you find out that in the middle of that disabling period allegedly he has applied for a different job that is more physical, would that make you maybe suspicious that this patient was-- might be malingering?

A If I had no objective clinical findings it-- to answer your question-- would be yes, but if I had no objective findings, I would be a little confused, and I would want more information as to why unless I understood the nature of the illness.

Q Now, doctor, when you first saw this patient, you knew he was involved in a lawsuit, correct?

A I knew that?

Q He was involved in a lawsuit?

A Yes, I did know.

Q He was referred to you by his lawyer, right?

A Right.

Q And you knew, doctor, that the reason he was involved in the lawsuit was he wanted some money; he was trying to get some money?

A Well, that is not really-- I don't really get involved with that so.

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Q Is it at all important in your diagnosis, examination and treatment of this patient that the patient who is there to see you, and who is providing the history has an economic incentive in telling you he is in pain, and he is disabled,does that have any impact on your conclusions?

A He can say what he wants, it is my findings that determine what he has.

Q Did you consider with this patient whether or not the fact that he was suing Amtrak had anything to do with his subjective complaints to you?

A I always take that into consideration whenever I see a patient with a litigation pending;that is part of my job to consider that as well, and again to reutterate What I said to you, if I found as you gave me that book and it said, if the malingerer is a person that has no objective findings to corroborate his subjective complaints, but in this case, I have multiple objective findings to corroborate his subjective complaints.

Q What other findings did you have besides this trigger point?

A He only has two diagnoses. I can quote you a couple of books on fibromyositis.

Q Did you have any other objective complaints

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besides this alleged trigger point for which you gave him two treatments? Anything else?

A No, because there is nothing else present with this disorder.

Q By the way, the other clients of Mr. Gold you have seen in fact, you have also diagnosed them as having fibromyositis, isn't that correct?

A If there was a trauma involved, and they had trigger points, the answer is yes.

Q And, in fact, those clients of Mr. Gold did--- in every single one of them you found them at least partially disabled, isn't that also correct?

A I can't answer.

Q You don't remember. Can you name me a single client of Mr. Gold you have seen that you did not find at least partially disabled?

A Yes.

Q Name me one.

A There was a young boy that came. I said there was no injury, one treatment, one visit, that was the end of it. There was another patient that came, I called Mr. Sable back, I said there is no injury, I am stopping treatment, that was it.

Q What were their names?

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A I don't recall the names. If it is important to you, I might do some research and find out the name.

Q Thank you, doctor.

A You're welcome.

REDIRECT EXAMINATION

BY MR. GOLD:

Q First with regard to the x-ray findingsat Boulevard Hospital, Mr. Bonventre told you that the findings on those x-rays were minimal degenerative disease. Does the fact that it was minimal have any significance to you as far as what his neck condition might be at that time?

A The patient is probably symptom free if it is minimal.

Q And if they found minimal degenerative disease that wouldn't necessarily be he is suffering for a long time prior to that, would it?

MR. BONVENTRE: Objection, your Honor, he is leading the witness.

THE COURT: Sustained. Rephrase the question.

Q The fact that as Mr. Bonventre stated from the Boulevard Hospital there was minimal degenerative disease, what does that indicate to you as far as the prior history of that neck of that person?

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A That minimal degenerative disease means that the patient probably had no symptoms or minimal as the condition denotes, minimal.

Q Now, Mr. Bonventre didn't want you to explain why, but he asked you if there would be any significance to you to the fact that upon Mr. Fragle's initial visit to either the Boulevard or to Lawrencevilb Hospital that he had no neck complaints, complaints regarding his neck at that time, and you answered no. Do you have an explanation as to why it would have no significance to you?

A Yes, as I stated before this condition has remissions and exacerbations. There will be times that you have no symptoms at all, and like people who have arthritis, there are days that you feel good and there are days that you feel bad.

Q Just to clarify what Mr. Bonventre was saying, I have never referred any patients to you, have I, personally?

A No.

MR. GOLD: Okay. Thank you, doctor.

RECROSS EXAMINATION

BY MR. BONVENTRE:

Q Well, Mr. Gold's office certainly has, correct?

A The firm.

Q Yes, the firm.

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A Yes.

Q And, by the way, is minimal degenerative disease the type of condition that would cause some say minor neck pain the patient would still be able to work two jobs at once?

A Yes, he could.

Q On this issue of the hospital records, I want you to assume that the patient complained and stated under oath yesterday that immediately upon this accident, he had severe headaches, and severe neck pain, do you have any explanation as a physician as to why that would not be reflected in two separate hospital reports?

A No.

MR. BONVENTRE: Okay. Thank you. I have nothing further.

MR. GOLD: I have nothing, Judge.

THE COURT: You may step down.

(Witness left the stand.)

* * *

IT IS HEREBY CERTIFIED THAT THE ABOVE TRANSCRIPT IS A TRUE AND ACCURATE EXCERPTED TRANSCRIPTION OF THE STENOGRAPHIC MINUTES.

Nanette Dottin
Official Court Reporter

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