TRIAL TRANSCRIPT OF ALI ERAJ GUY, M.D., F.A.A.P.M.R.; 1993 Trial Trans. LEXIS 949

Civil Court of the City of New York, New York County

October 29, 1993

Reporter
1993 Trial Trans. LEXIS 949 *

JOHN SHARKEY, Plaintiff, -gainst- METRO-NORTH COMMUTER RAILROAD, A Subsidiary of Metropolitan Transportation Authority Excerpts Defendant.

Expert Name: Dr. ERAJ GUY, M.D., F.A.A.P.M.R.

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Counsel

[*1] JESSE C. SABLE, ESQ., Attorneys for the Plaintiff, New York, New York, BY: FREDRIC GOLD, ESQ.

RICHARD R. BERNHARD, ESQ., Attorney for the Defendant, New York, New York, BY: JOSE RIOS, ESQ.

Judges

Before HONORABLE PAULA OMANSKY, JUDGE AND A JURY

Proceedings

2

[1]Colloguy

[2]TRIAL CONTINUED

[3]THE COURT: We're going to exclude you

[4]from the courtroom, Mr. Sharkey, so you will

[5]have to leave as soon as the doctor comes in.

[6](Discussion off the record.)

[7]THE COURT: All right, bring in the jury

[8]please.

[9](Whereupon, all sworn members of the

[10]jury enter the courtroom.)

[11]THE COURT: Good morning , jurors . Just

[12]let me say for the record, that alternate

[13]juror number two is sick and unable to

[14]appear, so that means that alternate number

[15]one, you have to stay **[*2]** well -- let me set the

[16]record straight, it's not alternate number

[17]one, its alternate number two, Mr. Cooper,

[18]who is going to remain healthy. And all the

[19]other regular jurors are here now.

[20]apologize for the delay.

[21]Yesterday I promised you that there

[22]would be no delays in the court for the

[23]lawsuit and I want to know whether or not I

[24]delivered on my promise, and the answer is

[25]yes. I know that the jurors were here, but

[3]
[1]Colloquy

[2]it's the nature of the beast. There are

[3]delays that come up and there's frequently

[4]business at the bench between the attorneys

[5]and the Judge, so please forgive us and beat

[6]with us and we will try to expedite. Now in

[7]my instructions to the jury yesterday I told

[8]you that sometimes we take witnesses out of

[9]order and this is a case where we're goinq to

[10]do that. Mr. Sharkey was testifying

[11]yesterday and his direct examination has not

[12]been completed, and there has been obviously

[13]no cross examination yet, However, for the

[14]convenience of the doctor who has been called

[15]by the Plaintiff we will listen to the

[16]doctor's testimony first. And for without

[17] **[*3]** legal reasons that have nothing to do with

[18]anything that the doctor is, going to say

[19]were going to act that the Plaintiff Mr.

[20]Sharkey not be present during the doctor a

[21]examination. I won't go into the reason for

[22]that. We will excuse him from the courtroom

[23]with his wife who is there also. So since I

[24]know we're going to call the doctor, Mr. and

[25]Mrs. Sharkey, could you please step out of

[4]
[1]Colloquy

[2]the courtroom and your attorney will be in

[3]touch with you.

[4]All right Mr. Gold, you may proceed.

[5]MR. GOLD: Your Honor, could we have a

[6]moment at the bench?

[7]THE COURT: Yes.

[8](Discussion off the record at the

[9]sidebar.)

[10]MR. GOLD: Plaintiff at this time calls

[11]Dr. Alie Guy to the witness stand.

[12]Dr. A L I E G U Y, a witness called on behalf or

[13]the Plaintiff, having been duty sworn testified under

[14]oath as follows:

[15]THE COURT: Be seated and give your name

[16]and your address to the Court Reporter.

[17]THE WITNESS: Dr. Alie Guy, last name IS

[18]spelled G-u-y, 7 Grammercy Park, New York,

[19]New York, 10005.

[20]THE COURT : All right proceed.

[21]DIRECT **[*4]** EXAMINATION

[22]BY MR. GOLD:

[23]Q Good morning Dr. Guy. I ask you to speak as

[24]clearly as possible so everybody can hear you.

[25]Could you tell us something about your education?

[5]
[1]Guy - Plaintiff - Direct

[2]A Yes, I did my undergraduate training at

[3]Queens College. I went to medical school in the

[4]Dominican Republic, and I did two residences: first at

[5]Mt. Sinai Medical Center in the field of internal

[6]medicine. A year general surgery at Cabrini, and three

[7]years in medical rehabilitation. I am board certified

[8]and on the staff of Cabrini Medical Center, Hospital

[9]for Joint Diseases, Orthopaedic Institute, NYU Medical

[10]Center. Residences in the hospital in the flied of

[11]medical medicine- and rehabilitation.

[12]I'm also director the Neuromuscular Equipment

[13]Clinic at the Hospital for Joint Diseases, and also

[14]teach physical medicine at Cornell Medical Center.

[15]Q You mentioned something about being board

[16]certified

[17]A Yes.

[18]Q In what field?

[19]A Physical medicine and rehabilitation.

[20]Q Could you tell us what board certified means?

[21]A Board certification is **[*5]** the highest degree you

[22]can obtain in your specialty. First you have to

[23]complete a three year residency, practice in that

[24]specialty, and then you have to have private practice

[25]for on year. You then fly to the Mayo Clinic where the

[6]
[1]Guy - Plaintiff - Direct

[2]research is done and then you get tested in that field

[3]and if you prove that you are competent and your

[4]knowledge is better in that flied they give you the

[5]title of Diplomate.

[6]Once again, it's the highest degree you can

[7]obtain.

[8]Q What is the field of physical medicine and

[9]rehabilitation?

[10]A The field of physical medicine and

[11]rehabilitation consists of neurological problems,

[12]muscle problems, nerve problems. Our job is to

[13]rehabilitate the patient and bring him back to optimum

[14]care prior to the injury.

[15]We are also experts in the field of

[16]electromyelogram which is better known as EMG, where

[17]you test muscles and nerves whenever you have an injury

[18]to the muscles and nerves. We are also experts in

[19]disability evaluations. We are called upon by the

[20]legal system to do what is called independent medical

[21]examinations **[*6]** to give impartial opinion as the status

[22]of patient's injuries. We also treat stroke patients,

[23]amputees and people with cardiac problems. We do

[24]cardiac rehabilitation, pulmonary rehabilitation and

[25]nerve detect experts in back injuries, sport injuries,

[7]
[1]Guy - Plaintiff - Direct

[2]et cetera.

[3]Q Thank you doctor. Are you licensed to

[4]practice in the State of New York?

[5]A I am.

[6]Q And do you maintain an office in New York

[7]A Yes , I do .

[8]Q Where is that?

[9]A Grammercy Park .

[10]Q Did there come a time that you had occasion

[11]to treat a Mr. John Sharkey?

[12]A I did.

[13]Q have you brought your notes concerning Mr.

[14]Sharkey today?

[15]A Yes.

[16]Q When did you first treat -- could you tell us

[17]When you first had occasion to treat Mr. Sharkey

[18]A October 24, 1985.

[19]Q Now when you first saw Mr. Sharkey, did you

[20]take come find at history and some find of notes on

[21]him?

[22]A Yes, I did.

[23]Q What did that consist of?

[24]A At the time he was 48 years of age, he was a

[25]Metro North railroad worker and had a history of a

[8]
[1] **[*7]** Guy - Plaintiff - Direct

[2]herniated disc in his lower back. He had two lumbar

[3]laminectomies at the level of L4, and L5, and had no

[4]other prior significant medical problems or any other

[5]prior significant injuries. That on or about 4, 88 , he

[6]was helping some commuters off a railroad train when he

[7]was electrocuted, thrown to the ground, injured his

[8]neck, left shoulder, left hand and lower back. And he

[9]was taken to a hospital in Connecticut where he was?

[10]hospitalized for approximately 11 days, and he had had

[11]EMG studies which repealed left nerve injury, and I

[12]third also revealed a left ulnar injury.

[13]Q What is a left ulnar injury?

[14]A The ulnar nerve supplies power to the past

[15]two fingers of the hand. These last two finqers mostly.

[16]provide sensation to the fifth digit or the hand and it

[17]also supplies sensation to the lateral portion of the

[18]forearm.

[19]Q Now you also mentioned the tunnel

[20]syndrome, could you explain what that is?

[21]A Carpal tunnel -- inside your wrist there is a

[22]tunnel called thro carpal tunnel named after Dr. Corpal

[23]who discovered it. There is a whole nerve that runs

[24] **[*8]** through underneath it, it's called the median nerve.

[25]The median nerve supplies power to the first three

[9]
[1]Guy - Plaintiff - Direct

[2]fingers of the hand and the first half of the fourth

[3]digit. It supplies power as well as sensation to the

[4]hand, and also controls power to the hand grip.

[5]Q Backtracking -- you mentioned in your history

[6]Mr. Sharkey told you that he had prior surgery to his

[7]back, L4 and L5. Could you tell us where that is in

[8]the back?

[9]A In the lower back you have five vertebrae,

[10]Between these vertebra is a disc. The disc acts as a

[11]shock absorber and -- if I may be permitted to refer to

[12]this diagram. This is a vertebra. In the lower back

[13]you have five vetebra. The fourth and fifth vetebra,

[14]the space between the fourth and fifth that's called

[15]the L4, L5 level so it s the level between the two

[16]vertebra.

[17]Q So what's significance did it have an either

[18]obtaining the history or proposed treatment for Mr.

[19]Sharkey, the fact that he had two lamenectomies?

[20]A You're dealing with an injured man and a man

[21]with a handicap that has had two prior surgeries there,

[22] **[*9]** and he suddenly falls again on his back and reinjures

[23]the back. It s not as if you have a man who tails down

[24]and gets injured, you have a man already injured and

[25]gets reinjured so that the consequence is far more

[10]
[1]Guy - Plaintiff - Direct

[2]detrimental.

[3]Q You stated that Mr. Sharkey came to see you

[4]in October '88 and was injured in April '88 and he has

[5]undergone some prior testing. Were you able to review

[6]any prior testing of Mr. Sharkey?

[7]A Yes. I have an EMG report from St. Joseph

[8]Medical Center in Stamford, Connecticut, dated 8/2/88

[9]with a diagram of the left ulnar neuropathy, and I also

[10]have the injury report from a prior injury dated

[11]5/3/88, also the same hospital, with findings of a left

[12]carpal tunnel syndrome and a left carpal guyon

[13]syndrome, and an axonal neuropathy of the left arm.

[14]THE COURT: What?

[15]THE WITNESS: A-x-o-n-a-l.

[16]THE COURT: What does that mean?

[17]THE WITNESS: The nerve has two parts.

[18]It's covered by myelin, which controls the

[19]speed and the axon is the actual nerve

[20]itself. And when that part gets damaged you

[21]have decreased **[*10]** amplitude, or the response of

[22]the nerve on the EMG basically means that the

[23]nerve is damaged at a level of the axion

[24]which is the main stem or the stem of a

[25]nerve. So just to explain what these

[11]
[1]
[2]findings were, carpal tunnel as I mentioned

[3]to you, the median nerve in the wrist has

[4]been damaged, and the left canal of the guyon

[5]syndrome which means the ulnar nerve has Deen

[6]damaged at the level of the guyon, analogous

[7]to carpal tunnel. And it also means that the

[8]main stem of the nerve was damaged. These

[9]were the findings.

[10]Q What significance did that have to you in your

[11]initial examination of Mr. Sharkey in your considering

[12]the treatment?

[13]A Also in their findings they found the muscle

[14]power of his, hand was at least three grades weaker and

[15]he had loss of sensation in the entire left hand, and

[16]also had some other findings --

[17]MR. RIOS: Objection. I don't I now what

[18]he' s referring to now.

[19]THE WITNESS: EMG is also muscle finding

[20]and physical findings.

[21]Q You were talking about the significant

[22]findings as well as your course of treatment.

[23]A Well, **[*11]** here we have a person who has extensive

[24]nerve damage, basically two nerves -- also, I would

[25]repeat that the EMG findings --

[12]
[1]Guy - Plaintiff - Direct

[2]THE COURT: What does that mean?

[3]THE WITNESS: Every so often when you

[4]have a nerve injury you are obligated to

[5]access the status of the nerves to see if

[6]they are getting better or worse.

[7]THE COURT: Did you repeat the test, is

[8]that what you're saying?

[9]THE WITNESS: Yes. And I found more

[10]problems, and I also found problems at the

[11]level of the neck where the nerves come out.

[12]All the nerves from the neck go to the arms.

[13]So I found problems not only in the hand and

[14]the arm, but also I found problems in the

[15]neck.

[16]Q Did you also examine Mr. Sharkey for shoulder

[17]complaints that he was having.

[18]A Yes.

[19]Q Was that in your initial evaluation or the

[20]first few evaluations that you made of him

[21]A From the very beginning.

[22]Q I don't believe that you mentioned on thing

[23]about the shoulder in the report. Can you tell us what

[24]your findings were?

[25]A I found there was pinpoint tenderness over

[13]
[1] **[*12]** Guy - Plaintiff - Direct

[2]the biceps. There was tendonitis of the shoulder and

[3]at was made worse by positive range of motion. When

[4]you ask a patient to hold his arm this way and this way

[5]and when you resist, the pain increases and this is

[6]consistent with either tendonitis or rotar cuff tear or

[7]both. The rotar cuff tear --

[8]THE COURT: Do you want him to continue?

[9]You asked him what he found.

[10]Q Was that part of your findings as a result of

[11]your first few initial evaluations of Mr. Sharkey

[12]A Yes, this is what I found in my office exam.

[13]Q Did you thereafter describe a course of

[14]treatment or further diagnostic testing for Mr.

[15]Sharkey.

[16]A I gave him a drescription for some physical

[17]therapy and also he came to my office for some physical

[18]therapy, but I think because of the commute to th[ILLEGIBLE WORD]

[19]it was difficult for him to come, so subsequently [ILLEGIBLE WORD]

[20]went to a local physical therapist.

[21]In answer to your second question, on 11/9/[ILLEGIBLE TEXT]

[22]performed repeated EMG studies.

[23]Q What were the findings of the repeated EMG

[24]studies? **[*13]**
[25]A A left ulnar nerve neuropathy, and a mild

[14]
[1]
[2]left carpal tunnel syndrome. These are the findings.

[3]Q Could you tell us and give us a brief

[4]description of how EMG is performed.

[5]A Yes. Before he came to me two EMGs were

[6]performed and I then performed approximately six or

[7]seven over the four years.

[8]Q Could you tell us now how many were

[9]performed, but what is the actual procedure of living

[10]some EMG tests?

[11]A The procedure involved.

[12]Q Yes.

[13]A The EMG has two basic parts. The first part

[14]is called the nerve conducting study and the second

[15]part is called the needle EMG, or the actual needle

[16]electromyography part. The first part you place

[17]electrodes over with a few muscles in the hands. If

[18]you want to study the median nerve you place electrodes

[19]either in the second or third digit for the sensory

[20]part of the exam. You stimulate the wrist here and in

[21]the forearm right above the elbow here and you study

[22]the response that you get. The stimulation is like

[23]getting tiny shocks, shocks of electricity running

[24]through your arm and the body and it's a little

[25] **[*14]** painful. And the other part, the motor part you place

[15]
[1]
[2]electrodes over the muscle right where the thumb is,

[3]and again you stimulate the wrist here and again the

[4]forearm right above the elbow and study the response in

[5]the nerves and look for the latency which is the time

[6]it takes to stimulate until the nerve response. And

[7]you look for the size of the nerve and for the speed by

[8]which it travels, better known as conduction or

[9]velocity. And then you go to actual EMG where you

[10]insert sterile instruments into the Forearm and into

[11]the neck region to see it there are any problems in the

[12]neck. The first two parts of the test test the distal

[13]part of the nerve, and the second tests different parts

[14]or the neck.

[15]Q You stated before that you had started Mr.

[16]Sharkey on a course of physical therapy, how long did

[17]that last, if your records indicate

[18]A Well it's been up until the last time that

[19]saw him which is about 8/24/92.

[20]THE COURT s August 24, 1992?

[21]THE WITNESS: Right.

[22]Q Let's see if we can break down your treatment

[23]by the year. You started seeing him in October of

[24] **[*15]** 1988. Can you basically give us a recitation of the

[25]treatment that you rendered to him through the last few

[16]
[1]
[2]months of 1938?

[3]A The type of physical therapy?

[4]Q And any other treatment.

[5]A Well, he received physical therapy in the

[6]form of heat, electrical stimulation, massage, special

[7]therapeutic exercises and he also received periodic

[8]weekly trigger point inject ions with one percent

[9]lydocane. Trigger point inject ions are used to break

[10]up trigger points which are defined as pinpoint areas

[11]of mil animation with a palpable nodule inside the

[12]muscle. Basically what you have is a knotted muscle

[13]fiber. All the waste products of normal muscle

[14]metabolism gets trapped within the muscle fibers, so

[15]with a needle you inject novacane to numb the area and

[16]you go in different directions. You go one o'clock.

[17]two o'clock, three o'clock until you break up the

[18]actual knot. You do this on a weekly basis until for

[19]break up the knot. We did this on several episodes, it

[20]would get better sometimes and then it would come back

[21]and we would have to start again. So basically he has

[22]a pinched nerve **[*16]** in his neck which constantly and

[23]continuously irritates the nerve in his upper back and

[24]he has a problem which has made his muscle weak so they

[25]go in spasms at trigger points.

[17]
[1]
[2]Q So he received trigger point treatments all

[3]through 1988?

[4]A Yes.

[5]Q Could you give us a time when he was

[6]receiving therapy and when he was receiving trigger

[7]point therapy, each of the years that you were treating

[8]him?

[9]A We started with trigger point injections

[10]11/26/90.

[11]Q Has that the first time after the trigger

[12]points that you had given him in 1988?

[13]MR. RIOS: Objection to the form of the

[14]question. I think that he said that was the

[15]first time.

[16]THE COURT: Yes, I understood that was

[17]the first time that he gave him.

[18]THE WITNESS: No, your Honor, the first

[19]time. I gave him injections was on 10/27/88.

[20]I saw him the first time on October 24th.

[21]Three days later I started giving him trigger

[22]point injections and also gave him injections

[23]to his left shoulder.

[24]Q What was the inject ion to his left shoulder

[25]for?

[18]
[1]
[2]A For the tendonitis: **[*17]** and rotar cuff tear that

[3]he had. I continued with injections through November

[4]December of 1988, January of '89, February of '89,

[5]March of '89, April of '89. July of 89 I again

[6]injected his left shoulder. I injected his neck, upper

[7]back area, again a week later. Again trigger point

[8]injections again the week after, again trigger point

[9]injections and again in September of '89 again

[10]injections to the back and also to the shoulder.

[11]December of '89, and again December of '89. Then on

[12]1/5/90 he had a new injury while he was riding the

[13]train going home. His right arm was on a handrail

[14]holder and he reinjured his left shoulder and [ILLEGIBLE WORD] and

[15]right arm.

[16]Q Did you see him after that reinjury on

[17]January 5th

[18]A Yes, I did.

[19]Q An d what did you find when he reinjured his

[20]shoulder, I should say.

[21]MR. RIOS: Objection, maybe I record

[22]wrong. I heard right arm.

[23]THE COURT: I heard -- what did you say?

[24]THE WITNESS: Left shoulder neck and

[25]right arm.

[19]
[1]
[2]Q Did you see Mr. Sharkey after that January

[3]5th incident?

[4]A Yes, I did.

[5]Q When **[*18]** did you see him?

[6]A I saw him again on 1/8/90, that was the time

[7]that I saw him for this new injury. Then I was trying

[8]to arrange for him to be hospitalized at Cabrini

[9]Hospital and I gave him a prescription to go for his

[10]physical therapy locally. I saw him again in March '90

[11]and he told me again that he was hospitalized at

[12]Stamford. Connecticut and then he went back to work as

[13]of 2/23/90 and then I continued seeing him after that

[14]again.

[15]Q From March of 1990 on you continued to again

[16]him again?

[17]A Right.

[18]Q What were you doing for him from March of

[19]1990 on?

[20]A Well on the followup visit of March 6, 1990

[21]again gave him trigger point injections.

[22]Q Where was that to?

[23]A It was in the upper trapezius area, the

[24]shoulder area on both sides. Then on 3/19/90 because

[25]of his increased lower back pain I performed an EMG of

[20]
[1]
[2]his back and found a pinched nerve on the left side.

[3]Then I saw him again for re-evaluation on 7/10/90 and

[4]he continued to complain of left hand pain with

[5]numbness, continued to experience left shoulder pain

[6]and neck pain and I told **[*19]** him at this point we're going

[7]to start with the trigger point injections again and

[8]the physical therapy, which we aid.

[9]Q Was the physical therapy in conjunction with

[10]the trigger points

[11]A Yes. If you don't do physical therapy after

[12]the trigger point injections -- it you get a muscle,

[13]the back is very, very sore and if you do them in an

[14]area already damaged the pain will be far worse so you

[15]have to give physical therapy a couple of days after to

[16]calm down the patient, so usually yes.

[17]Q So you are up to July of 1990 where yon give

[18]him more trigger point injections and more therapy?

[19]A Yes

[20]Q Did he get relief from his trigger point

[21]injections?

[22]A Yes, he would get temporary relief.

[23]Q When you say temporary relief, does that mean

[24]--

[25]A Well after three or four in a row he would

[21]
[1]
[2]have relief for months. Sometimes it would be weeks,

[3]some times it would be months. Don't forget, I treated

[4]this man for over four years.

[5]Q Continuing in July 01 1990?

[6]A At that time in August -- August 27, 1990

[7]because of persistent symptoms in his hand **[*20]** and neck I

[8]performed repeated EMG of his neck and upper

[9]extremities. I found bilateral carpal tunnel syndrome,

[10]left ulnar neuropathy and cervical radiculopathy which

[11]means a pinched nerve in the neck. Then I continued

[12]seeing him and he continued to follow through with

[13]therapy, continued injections through 11/ 26/ 90 and then

[14]I saw him again January 21, '91 and he still continued

[15]to experience shoulder pain, decreased range of motion,

[16]weakness in his left arm, left hand; I again gave him

[17]trigger point injections and I prescribed a very strong

[18]narcotic medication for pain which is Tylox.

[19]Q Why did you all of a sudden, in 1991, give

[20]him the prescription for this strong narcotic

[21]medication?

[22]A I believe my notes of 1/9/90 he had some

[23]strong analgesics From the hospitalization in

[24]Connecticut, that's why I didn't prescribe it for him

[25]before. And my notes of 12/7/89 he also mentioned he

[22]
[1]
[2]was taking Naprosyn.

[3]Q What is Naprosyn?

[4]A A very strong anti-inflammatory medication

[5]also used for pain. So he had some medication on his

[6]own and also the trigger points were helping, **[*21]** the

[7]physical therapy was helping and then after the new

[8]injury of January 90 it took a turn for the worse.

[9]Q But you said you prescribed the medication in

[10]January of 1991, I believe?

[11]A That s correct.

[12]Q Was he having more complaints in 91?

[13]A According to my notes of January 30, 1991, he

[14]was complaining of increased shoulder pain, increased

[15]weakness, decreased range of motion and a lot more pain

[16]in the upper back, and lower back pain.

[17]Q Did you continue him on the injection and

[18]therapy after January of 1991?

[19]A Yes, I did. In the February 5, 91 and

[20]February 12, he continued to receive trigger point

[21]injections followed by therapy. Again, 3/8/91, he

[22]continued to receive trigger point injections.

[23]At the followup exam of 4/11/91 he mentioned to me

[24]that he had seeked some relief from the pain

[25]medications and the treatment and at that point I said

[23]
[1]
[2]let's stop for a while and I'll see you in a month. I

[3]saw him a month later which was 5/9/91, and at that

[4]point I prescribed the TENS unit for him. The TENS

[5]stands for Transcutaneous Electrical Nerve Stimulation

[6] **[*22]** which controls pain. Again, you have four electrodes

[7]and you place them over the area that hurts and you get

[8]stimulation. So I used that in connection with the

[9]trigger point treatment and the physical therapy

[10]Q How did this course of treatment 90 say after

[11]June of '91

[12]A Well, I saw him again in July of 91 and he

[13]had a relapse again . I gave him trigger point

[14]infections again 7/18/91: again, trigger point

[15]injections on --

[16]Q was it of any concern to you that Mr. Sharkey

[17]would have periods or getting better and periods of

[18]relapse?

[19]A That's exactly the course and the nature of

[20]his injuries. He would have remissions and

[21]exacerbations which would mean he would get better then

[22]the symptoms come back again because the nerve of

[23]are permanent.

[24]Q What would cause the nerve exacerbations?

[25]Would it come by itself or would it be some sort of --

[24]
[1]
[2]MR. RIOS: Objection.

[3]THE COURT: Ask it again

[4]Q I was asking whether these periods of

[5]exacerbation would come on by itself or had to be

[6]brought on by some type of incident?

[7]MR. RIOS: Objection.

[8] **[*23]** THE COURT: Overruled.

[9]THE WITNESS: They can be caused by

[10]changes in the weather; extremes of

[11]temperature, cold. We know cold makes

[12]everything extract, and heat expands, so by

[13]humidity it would get worse. By posture if

[14]you sit or stand in an abnormal posture or

[15]sit or stand continuously that could also

[16]make it worse. Some activities reaching

[17]over certain things or playing goal that

[18]kind of stuff would make the condition worse.

[19]And also, the condition has propensity of

[20]getting worse with time, because of the

[21]nature on the nerve damage in the arm and in

[22]the neck.

[23]Q Did you in any way restrict Mr. Sharkey's

[24]activities, either work activities or other activities?

[25]A During that time, no. During the time that

[25]
[1]
[2]he had extreme exacerbation or worsening of his

[3]condition I did restrict them. Then once he would get

[4]better with treatments I lot him live his life as

[5]normally as possible. He told me he was an avid golf.

[6]player and I told him if he played golf it might get

[7]better so he played a little golf, but not too much.

[8]So the answer is yes during the time of exacerbation

[9] **[*24]** and when it would got better I left him to his own

[10]decision.

[11]Q And during 91 in this year does your records

[12]indicate that?

[13]A Yes, I saw him 8 /14 /91 and then I saw him

[14]again September 15, 1991. At that point he had a

[15]setback to his left shoulder, left hand and wrist. His

[16]left hand was very weak, his shoulder again was

[17]inflammed and there was some atrophy. Atrophy means

[18]loss of muscle bulk in the shoulder. I don't I know if I

[19]mentioned to you before, but early in the course of in.

[20]treatment I had sent him for ultrasound in his left

[21]shoulder which showed damage in his left shoulder.

[22]Q Is that a diagnostic test?

[23]Q How does that work, is it x-ray films?

[25]A No, x-ray only shows bone and calcium

[26]
[1]
[2]deposits in the shoulder, it's not a good test of

[3]muscles and tendons. Three things are good for this;

[4]one is MRI, ultrasound, and arthrogram.

[5]Ultrasound is good. The MRI and the ultrasound is

[6]better. Less and less people are doing the arthrogram

[7]because you can get an allergic reaction and have

[8]complications, so ultrasound as you ask is a diagnostic

[9]test to see **[*25]** the structures in the shoulder and namely

[10]the muscles and tendons. And it shows a partial tear

[11]of the muscles that hold the shoulder down in place.

[12]Q When was the ultrasound performed?

[13]A It was performed on 12/15/88 at Dr. Leech's

[14](phonetic) office, and it revealed what I mentioned to

[15]you before, incomplete tears in the left rotar cuff

[16]area and some post traumatic changes.

[17]Q That was the left shoulder?

[18]A Correct.

[19]Q Was there anything that could be done for the

[20]findings of that test?

[21]A For a partial tear you don t operate, you

[22]operate if it's a complete tear. You treat the patient

[23]with physical therapy and try to strengthen the muscles

[24]around the shoulder and whenever it acts up injections

[25]of lydocane, cardisone, anti-inflammatory medications,
27

[1]
[2]that's what you can do. Then if it does not net any

[3]better and gets to a complete tear, you do arthroscopic

[4]surgery.

[5]Q Have you treated Mr. Sharkey in 1992, this

[6]year?

[7]A I saw him 7/1/92, and again he had a little

[8]bit of exacerbation of his condition. I took

[9]measurements of his arm; the left biceps **[*26]** measured 29

[10]centimeters, in circumference, the right biceps measured

[11]31 centimeters in circumference -- a two centimeter

[12]difference. The left was hard to measure, but there

[13]was visible atrophy. There was spasm in his neck and

[14]upper back range of motion WAS decreased to or.

[15]half.

[16]Shoulder and neck muscles -- poor to testing of the

[17]left shoulder which was two grades weaker and at this

[18]point I tell there wad an exacerbation of his condition

[19]and I scheduled him for repeated EMG of upper extremity

[20]performed on 7/8/92 which now showed bilateral carpal

[21]tunnel syndrome and the same left ulnar nerve

[22]neuropathy which had worsened since the injury of

[23]10/91; and also revealed bilateral C4 , C7 cervical

[24]radiculopathy.

[25]Q You just mentioned that you had done other
28

[1]
[2]EMG in October '91?

[3]A Yes, in October '91 I repeated the? EMG which

[4]showed bilateral carpal tunnel syndrome which had not

[5]worsened or improved since the last EMG, and also

[6]revealed left ulnar neuropathy and bilateral Co. C7

[7]radiculopathy.

[8]Q Had you seen Mr. Sharkey since October '91

[9]and July of '92?

[10] **[*27]** A I saw him again on 12/12/91. He still

[11]continued to have increased neck pain, numbness.

[12]stiffness, tingling in his left hands and fingers. He

[13]had mentioned to me that he had been working full time

[14]with severe pain. He had mentioned to me that was

[15]not allowed to tale medication because of Metro-North's

[16]random drug testing, so he had to suffer with his [ILLEGIBLE WORD]

[17]He would use his TENS machine periodically for [ILLEGIBLE WORD]

[18]or pain. And at the time, again I found some [ILLEGIBLE WORD]

[19]weakness, decreased range of motion, abnormal [ILLEGIBLE WORD]

[20]findings in the previously mentioned areas; [ILLEGIBLE WORD]

[21]hands, neck, left shoulder.

[22]Q You mentioned a few times, and most recently.

[23]backtracking to 1982 that you noticed atrophy. You

[24]described that as shrinking of the muscles?

[25]A Yes.

29

[1]

[2]Q What would cause atrophy to occur?

[3]A Nerve damage, lack of use.

[4]Q Did you continue to see Mr. Sharkey after

[5]July of 1992?

[6]A Yes, he was seen last time on 8/24/72, and he

[7]received trigger point injections and he was told to

[8]return back to the office if the **[*28]** pain persisted.

[9]I later found out that he was involved in another

[10]injury, he was assaulted while he was on the train and

[11]he was unable to return back to my office.

[12]Q Do you have any course of treatment for Mr.

[13]Sharkey planned from now into the future?

[14]A Basically the same as what we have been

[15]doing. He s left with a permanent injury. I have been

[16]following him for four years, we have had numerous

[17]visits. If any nerve would have lot ten better we would

[18]have seen some improvement. And after four years of

[19]treatment I see no evidence of improvement, but

[20]evidence of worsening. Go eventually, what will happen

[21]is he will need surgery for bilateral --

[22]MR. RIOS: Objection.

[23]THE COURT: That is sustained, and we

[24]will disregard any mention of any future

[25]surgery. It s not an issue in this case.

30

[1]

[2]MR. GOLD : Can we approach?

[3]THE COURT: No . Let's continue with

[4]this and you can approach later .

[5]Q Okay , doctor, I want you to assume the

[6]following facts for a moment. I want you to assume on

[7]April 27, 1988, Mr. Sharkey was involved in incident

[8]and he received **[*29]** electric shock, he was thrown backwards

[9]between two railroad cars, catching him with his left

[10]hand, hi is left arm and his buttocks, and he tell on his

[11]back. Subsequently, was hospitalized for a period of

[12]almost two weeks and thereafter came under the care or

[13]some orthopedist in Connecticut, that he thereafter

[14]came under your care for treatment of carpal tunnel

[15]syndrome injury to shoulder and neck and associated

[16]nerve injuries. I want you to assume that he received

[17]the treatment you spoke of during 1989 to 1990. And I

[18]want you to assume January 5 of 1990 that he had an

[19]incident where his left arm was caused to be stretched

[20]out, he fell a few feet from a train sustaining injury

[21]to his back and shoulder where he required

[22]hospitalization and thereafter came under treatment.

[23]during '91 and '92 for carpal tunnel syndrome and

[24]because of injuries to his neck and back he had

[25]ultrasound and diagnostic tests you gave him and

[31]
[1]
[2]trigger points you gave him. Do you have an opinion

[3]with a reasonable degree of medical certainty as to

[4]what the cause of those sustaining injuries were?

[5]MR. RIOS: Objection. **[*30]**
[6]THE COURT: Overruled.

[7]THE WITNESS: My opinion is it came as a

[8]direct result of the electrical injury

[9]episode of April 1980.

[10]Q Assuming all I told you, do you have an

[11]opinion with a reasonable degree of medical certainty

[12]as to whether there's any permanency directly related

[13]to what you just testified about?

[14]A These are all permanent injuries.

[15]Q Doctor, at the present time, do yon have any

[16]cut standing bills with regard to the treatment rendered

[17]to John Sharkey?

[18]A I do.

[19]Q Could you tell us what the amount of those

[20]bills are?

[21]A $11,110.00.

[22]Q Do those bills represent a fair and

[23]reasonable and the customary charges for the services

[24]and treatment that you rendered to Mr. Sharkey over the

[25]past number of years that those bills covered?

[32]
[1]
[2]MR. RIOS: Objection.

[3]THE COURT: Overruled.

[4]THE WITNESS: Yes.

[5]Q And the amount of that was $11,100.00 to

[6]date?

[7]A Exact act amount is 11,110.00.

[8]MR. GOLD: Thank you, doctor . I have no

[9]further questions at this time.

[10]THE COURT: I think for the sake **[*31]** of

[11]Phyllis, if not for the jury, we should take

[12]a ten minute break. So I instruct the jury

[13]not to discuss this case at all and we will

[14]take a ten minute break.

[15]MR. RIOS: I request 15 minutes, your

[16]Honor.

[17]THE COURT: All right. 15 minutes

[18]FIFTEEN MINUTE RECESS

[19]*****

[20]THE COURT: On the record, please.

[21]MR. RIOS: your Honor, Dr. Guy testified

[22]on numerous occasions concerning a pinched

[23]nerve at the cervical area. Last year before

[24]we almost went to trial there was a

[25]supplemental verified Bill of Particulars.
33

[1]
[2]MR. GOLD: Is that the one that you

[3]talked about that was withdrawn.

[4]MR. RIOS: Yes.

[5]MR. GOLD: Well, I'm willing to

[6]stipulate that it was limited to pinched

[7]nerve of the neck.

[8]MR. RIOS: Well, that's all that he said

[9]that there was a pinched nerve in the neck

[10]area.

[11]MR. GOLD: Well I instructed him not to

[12]tall about the herniated disc.

[13]MR. RIOS: But the pinched nerve in the

[14]herniated disc.

[15]MR. GOLD: Well I instructed him not to

[16]tell about that.

[17](Discussion of the record.)

[18]THE COURT: All **[*32]** right, bring on the

[19]jury.

[20](Whereupon, all sworn members on the

[21]jury returned to the courtroom.)

[22]THE COURT: Mr. Rios, before you begin

[23]this was a long delay. Mr. Rios wanted to

[24]look over some records, but I contributed to

[25]the delay. If you saw those other people

[34]
[1]
[2]coming in they were from the different parts

[3]of the court, commercial landlord tenant

[4]parts, so I'm doing several things at once.

[5]Mr. Rios?

[6]CROSS EXAMINATION

[7]BY MR. RIOS:

[8]Q Good morning, doctor Guy.

[9]A Good morning.

[10]Q Now, Dr. Guy, you mentioned that when you

[11]first saw the Plaintiff was in October of 1983?

[12]A That s right.

[13]Q Approximately five months after this alleged

[14]incident, right?

[15]A Yes, that's correct.

[16]Q And you said that you tool a history at that

[17]time?

[18]A That's correct.

[19]Q And am I correct that doctors rely on

[20]histories, records, in order to determine the type of

[21]treatment to provide the patient"

[22]A Yes.

[23]Q And that will indicate the type of tests or

[24]x-rays of any part of the body that has to be x-rayed

[25]or examined, **[*33]** correct?

35

[1]
[2]A If x-rays are needed.

[3]Q Or if any other test is needed?

[4]A That's right.

[5]Q Now you mentioned that you reviewed several

[6]records, did you review the emergency room admission

[7]record for the January 5, 1990 incident?

[8]A January 5, 1990 history?

[9]Q No, incident.

[10]A At which time? The first time that I saw the

[11]patient?

[12]Q At any time. Did you review that emergency

[13]record?

[14]A Let me see it I have it in my possesion.

[15]Q I'm speaking of the January 5 admissions, do

[16]yon have that

[17]A You win through my records. Did you find it

[18]here?

[19]Q I saw it there, doctor.

[20]A So why don't you show it to me. Date of

[21]admission, 1/1990

[22]Q No, it's either, or 15/90, doctor. All

[23]right, I found my copy, doctor.

[24]Do you recognise that as being an emergency room

[25]admission record for St. Joseph's Hospital dated
36

[1]
[2]January 5, 1990?

[3]A Yes.

[4]Q And doctor, is this type at record a record

[5]that is normally prepared in the regular course of

[6]business of a hospital during emergency room visits?

[7] **[*34]** A Yes.

[8]Q And now that you see this hospital room

[9]record, do you recall having reviewed it during the

[10]course of Mr. Sharkey's treatment?

[11]A Yes.

[12]MR. RIOS: Your Honor, defendant offers

[13]the emergency room record into evidence.

[14]THE COURT: Any objection?

[15]MR. GOLD: No objection.

[16]THE COURT: All right defendant's

[17]Exhibit in evidence.

[18](So maked Defendant's Exhibit A in

[19]evidence.)

[20]Doctor let me show you what has been marked

[21]as Defendant's A into evidence and ask you if that

[22]record indicates whether any x-rays were taken on that

[23]day?

[24]A Yes.

[25]Q On what part of the body?
37

[1]
[2]A X-ray for the back .

[3]Q No x-rays of the shoulder indicated in any of

[4]those records?

[5]A I don't see any x-rays of the shoulder.

[6]Q Doctor you mentioned that when you took the

[7]history of the Plaintiff that he mentioned that he had

[8]12 laminectomies in the past?

[9]A Yes.

[10]Q And he had some nerve damage in the past?

[11]A That part I didn't obtain.

[12]Q He didn't give you that?

[13]A No.

[14]Q Well if you look **[*35]** at your October 24, 1988

[15]report, he told you that he had a laminectomy in 1978?

[16]A Correct.

[17]Q And he told you that he had no significant

[18]problems afterwards?

[19]A That's correct.

[20]Q And you were referring to his back

[21]A Correct.

[22]Q And this is what he told you?

[23]A That is correct.

[24]Q And you are assuming what he told you is the

[25]truth?

38

[1]
[2]A Yes.

[3]Q And in the course of your treatment of Mr.

[4]Sharkey you are assuming what he tells you is the

[5]truth?

[6]A That's correct.

[7]Q Just going bad to the beginning of your

[8]testimony you mentioned that you were Board Certified?

[9]A Yes.

[10]Q And you also mentioned that you teach

[11]physicians assistants?

[12]A Yes.

[13]Q You don t teach physicians

[14]A Yes, I also teach physicians at the [ILLEGIBLE WORD]

[15]for Joint Disease, and from NYU Medical Center.

[16]Q There Is another specialist in the [ILLEGIBLE WORD]

[17]neurology, correct?

[18]A I don t understand.

[19]Q You can also be Board Certified [ILLEGIBLE WORD]

[20]specialize in the area of neurology

[21]A There's **[*36]** different specialties for neurology

[22]internal medicine, yes .

[23]Q And there's a board for orthopaedics?

[24]A Correct.

[25]Q And you're not certified in any of those, are

39

[1]
[2]you?

[3]A I mentioned just physical therapy and

[4]rehabilitation.

[5]Q And there s also a Board for radiologists?

[6]A Yes.

[7]Q And you're not Board Certified in that area

[8]either?

[9]A No.

[10]Q You mentioned in the course of the

[11]introductory, testimony in your back ground that you were

[12]also involved with consultation in the legal system--

[13]A I do independent medical examinations.

[14]Q Am I correct that you have near done

[15]independent medical examination of on behalf of Metro

[16]North ?

[17]A That's correct.

[18]Q You have testified before against Metro North

[19]on behalf of employees, is that correct?

[20]A Yes.

[21]Q And alot of those cases which have been

[22]retained or testified in are with Mr. Gold's office, is

[23]that correct?

[24]A I believe I testified two times for Mr.

[25]Gold's office, if my memory serves me correctly.
40

[1]
[2]Q And how many clients from Mr. **[*37]** Gold's office

[3]have you examined?

[4]A I would say maybe a dozen in the four years

[5]that I have been in practice.

[6]Q Did Mr. Gold's office refer Mr. Sharkey to

[7]you?

[8]A No, Mr. Sharkey came from Metro North

[9]Employees. Metro North Employees. We treat Metro

[10]North Employees whether they have on the job injuries

[11]or not on the job injuries.

[12]Q In the history that Mr. Sharkey gave you, did

[13]he ever tell you that he suffered from a back injury or

[14]a back problem in 1984?

[15]A Just what I have in my records that he did

[16]have a back problem and he had two laminectomies and no

[17]significant problem with his back.

[18]Q So he didn't mention anything about 1984?

[19]A No.

[20]Q He didn't mention anything about 1986?

[21]A The answer to your question is nothing

[22]significant. If there was a small problem he didn't

[23]tell me.

[24]Q If he had what he considered a small problem

[25]he didn't tell you?

[41]
[1]
[2]A No.

[3]Q Back ground requiring traction, would that be

[4]a small problem?

[5]A It could be. You could have problems in

[6]traction for a herniated fracture or **[*38]** a herniated

[7]muscle.

[8]Q He didn't tell you that he had traction in

[9]1986, did he?

[10]A No.

[11]Q You mentioned that you reviewed two EMG

[12]reports from St. Joseph's?

[13]A That s correct.

[14]Q Could you find those for me, please? Am I

[15]correct that the same area was examined in each

[16]occasion?

[17]A That's, correct, sir, more or less -- yes.

[18]Q And you mentioned that the one in May of '88.

[19]May 3 of '88, found leftcarpal tunnel syndrome, left

[20]canal guyon syndrome, and myopathy of left arm

[21]secondary to electrical burns?

[22]A Correct.

[23]Q And later on, August 1988, that the EMG

[24]examination of the left upper extremity as a suggestion

[25]of the left ulnar neuropathy, and findings of minimal

[42]
[1]
[2]and thinly calcification suggested, correct?

[3]A Yes.

[4]Q No mention in there about carpal tunnel

[5]syndrome, is that right?

[6]A That's right.

[7]Q And no mention of that guyon, that other one?

[8]A That's correct. It should also mention that

[9]different doctors did different tests.

[10]Q I'm asking you whether or not it shows carpal

[11]tunnel syndrome? **[*39]**
[12]A Right.

[13]Q And it does not show that other finding?

[14]A It does not.

[15]Q Did you review the April 1988 emergency room

[16]admission records?

[17]A I don t recall off the top of my head, but I

[18]don't have it in my records so I probably did not. I'm

[19]sorry, I have a copy here.

[20]Q Doctor, referring to a record similar to this

[21]one that has been marked into evidence, the emergency

[22]room record. This is not the same record, is that

[23]right?

[24]A No, this is not the same record this is a

[25]1990 record. This is 4/30/88 consultation record.
43

[1]
[2]Q One is a consultation record and one is an

[3]emergency room admission record?

[4]A That's correct.

[5]Q You don't have that April 1988 record in your

[6]file, is that correct?

[7]A That s correct.

[8]Q So you don t know doctor whether there was

[9]any findings of any burns to Mr. Sharkey's body, is

[10]that correct?

[11]A I don't know if there was.

[12]Q Findings of any burns to his body, is that

[13]correct?

[14]A That's, correct.

[15]Q You described the arthrogram that you [ILLEGIBLE WORD]

[16]that is the injection **[*40]** for dye?

[17]A Correct.

[18]Q And that is then seen by way of an x-ray

[19]A Yes.

[20]Q And then the changes that the dye cause?

[21]the area will show up in the x-ray?

[22]A The way the procedure is done you inject the

[23]dye into the shoulder and then you take x-rays to see

[24]it the dye leaks to certain structures, but it there is

[25]incomplete tear it may not show up on that test it
44

[1]
[2]shows up if there is a complete tear.

[3]Q The question I asked you was If you used an

[4]x-ray after you inject the dye, is that correct?

[5]A That's correct.

[6]Q Did you review records from Orthopaedic

[7]Associates?

[8]A I don't believe I did, no.

[9]Q Are you aware that the Plaintiff saw doctors

[10]at Orthopaedic Associates from May of 1986 to August of

[11]1988?

[12]A Is that in Connecticut.

[13]Q Yes.

[14]A He had told me that he had seen some doctors.

[15]yes.

[16]Q But you didn't review those records?

[17]A No.

[18]Q You mentioned that most recently Mr. Charles

[19]had been involved in an assault?

[20]A Yes, that's correct.

[21]Q That's this month, correct?

[22]A Either **[*41]** late September of sometime this month,

[23]that is correct.

[24]Q Is there any other mention by Mr. Sharkey to

[25]you about any other accidents he has been involved in

[45]
[1]
[2]since 1990?

[3]A Other than the episode of January 5, 1990?

[4]Q Correct.

[5]A I don't recall anything else, no.

[6]Q Did he mention to you he was involved in an

[7]accident in a card shop in Connecticut?

[8]A I don't believe he did, no.

[9]Q He didn't mention that he sustained a back

[10]injury at that time?

[11]A I don't believe he did, no.

[12]Q Did he mention to you he was involved in an

[13]accident in a supermarket in January of 1992 where he

[14]hurt his back?

[15]A I'll check my records. That was January of

[16]1992, right?

[17]Q Yes.

[18]A No. I didn't see him at that time I saw him

[19]in February of '92.

[20]Q He didn't mention anything then, is that

[21]right?

[22]A That's correct.

[23]Q Doctor, isn't it true that carpal tunnel

[24]syndrome can be caused by repetitive motion? Is that

[25]right?

46

[1]

[2]A Well, no it can be caused from electrical

[3]injury, electrocution or current running through **[*42]** the

[4]hand, from trauma directly below to the wrist, a fall,

[5]injury, it can be caused by systemic problems such as

[6]-- well, the other things are not related to Mr.

[7]Sharkey, such as system lupus, arthritis --

[8]Q Riding a motorcycle, for example, can cause

[9]carpal tunnel syndrome?

[10]A Do you ride a motorcycle for ten hours a day?

[11]THE COURT: Hold it. Dr. Guy, this is

[12]cross examination and to the extent that you

[13]can, I ask, you to answer yes or no to these

[14]questions. And it's not appropriate now to

[15]expand on your testimony. So that if you

[16]could confine yourself to answering questions

[17]and not asking them, I would appreciate it.

[18]THE WITNESS: The answer to your

[19]question Mr. Rios is that that would depend.

[20]If you ---

[21]Q No, you just answered it, doctor. Thank you.

[22]It would depend sometimes yes, and sometimes no.

[23]is that what you're saying?

[24]A No, that is not what I'm saying.

[25]MR. GOLD: Your Honor, let him explain.
47

[1]
[2]THE COURT: It's still cross examination

[3]and it the answer can be answered yes or no,

[4]it should be. That is the rule. He's **[*43]** not

[5]entitled to explain it if he says in response

[6]to a question by Mr. Rios, no -- which he

[7]just did.

[8]MR. COLD: But your Honor, he did that

[9]when Mr. Rios tried to put words in his

[10]mouth.

[11]THE COURT: Mr. Gold, I am quite capable

[12]of making his position clear. This is cross

[13]examination. I just want to tell the our.

[14]that there are different rules for cross

[15]examination and I would tell you why, because

[16]Dr. Guy, is the Plaintiffs witness and not

[17]the defendant s witness and therefore is that

[18]case we don t -- the law says that you don t

[19]unless you want to the law says that you

[20]don't have to and you're not going to use

[21]that witness to expand and to explain or do

[22]anything else. It's basically -- this is

[23]cross examination with respect to matters he

[24]has already testified to. There are

[25]different rules, that's all. You have to go
48

[1]
[2]to law school for this, but by the time you

[3]finish this trial you will be experts.

[4]Q Thank you. At any rate, did Mr. Sharkey ever

[5]tell you whether he owned a motorcycle?

[6]A I don t believe I ever asked him, or he

[7]volunteered that **[*44]** information either.

[8]Q Do you know whether he's right handed or

[9]left handed?

[10]A I usually ask that question but here I don t

[11]have it, I m not sure.

[12]Q You mentioned that you did some measurements

[13]of his shoulder or whatever?

[14]A Yes.

[15]Q When was the first time that you made those

[16]measurements?

[17]A The first time the actual measurements here

[18]taken, or the actual atrophy was noticed?

[19]Q The first time you tool measurements.

[20]A 7/1/92.

[21]Q Prior to that you didn't take any

[22]measurements?

[23]A No.

[24]Q And you mentioned atrophy. Am I correct that

[25]a person's arm can have different measurements
49

[1]
[2]depending an whether he's right handed or left handed

[3]A That is not called atrophy.

[4]Q I didn't ask about atrophy, I asked if he

[5]could have separate measurements

[6]A Yes, he can have separate measurements.

[7]Q Usually the dominant limb is larger than the

[8]non-dominant limb, is that right?

[9]A By less than a half of a centimeter, right.

[10]Q But it is larger?

[11]A By less than a half of a centimeter.

[12]Q Did **[*45]** you conduct any other measurements

[13]A No.

[14]Q That was the only measurements you made

[15]A Right.

[16]Q So you had no prior measurements, to compare

[17]your measurements too. right?

[18]A The answer to your question is no.

[19]Q You mentioned that Mr. Sharkey has a TENS

[20]unit, his own TENS unit?

[21]A Right.

[22]Q You didn't prescribe that, did you?

[23]A Yes, I did.

[24]Q When did you prescribe it?

[25]A Some time in 1989, the exact date I don't
50

[1]
[2]know. Some time in '89.

[3]Q Is it in your records?

[4]A I would try and look for it.

[5]Q But your memory is that it was some time in

[6]1989?

[7]A That's right.

[8]Q You mentioned also that he was taking

[9]Naprosyn?

[10]A Yes.

[11]Q And you didn't prescribe that, did you?

[12]A No.

[13]Q When was it that he was taking Naprosyn?

[14]A On my office records of 12/7/89 I mentioned

[15]that he had taken Naprosyn.

[16]Q And he didn't tell you who prescribed

[17]Naprosyn, did he?

[18]A No.

[19]Q Now you testified that prior to January of

[20]1990 before the second incident, that Mr. Sharkey's

[21] **[*46]** condition was improving?

[22]A I think if my memory serves me correctly I

[23]think he had improved and he had remissions and

[24]exacerbation, but generally he was going into the

[25]improvement stage. I'll check my records.

[51]
[1]
[2](Perusing document.)

[3]Yes, the answer is he was generally improving.

[4]Q And what was the history that he gave you?

[5]What did he say occurred to him January 5, 1990?

[6]A While riding his train going home he had his

[7]right arm on a handrail, he went to reach with his left

[8]arm and his arm gave away. He tell, landed on his

[9]back, injured his left shoulder and his back, went to

[10]the local hospital in Connecticut and on Friday night

[11]he was advised admission.

[12]Q I just want to know what he claimed happened.

[13]A That's what he claimed happened -- correct.

[14]Q Did you review the discharge or do you know

[15]whether there was any discharge summary from St.

[16]Joseph's Hospital after that January 1990 incident?

[17]A Are you referring to the discharge form of

[18]1/1990? That's where it says flexoral, Naprosyn, et

[19]cetera.

[20]Q Now, a typed discharge summary. Is there

[21] **[*47]** anything in your records that say discharge summary?

[22]A Yes. Here it says discharge order form.

[23]Q No, discharge summary -- s-u-m-m-a-r y.

[24]A No, I don't have that particular --

[25]Q So if it's not in your records doctor, is it

[52]
[1]Guy -- Plaintiff - Cross

[2]safe to assume you didn't review that document, a

[3]discharge summary?

[4]A You can say that, yes.

[5]Q Doctor, you said that you testified before.

[6]Did you testify before for a trial involving one of Mr.

[7]Gold's clients, a Plaintiff from Saber, Gold and

[8]Dinhofer?

[9]A Did I testify before for that firm?

[10]Q Yes, in court?

[11]A I believe I answered I believe my memory

[12]serves me correctly it's two times.

[13]Q Two times?

[14]A Yes.

[15]Q Let me ask you this question, doctor, in the

[16]time that you have testified against the railroad -- by

[17]the way, any other railroad employees that have as

[18]patients from Conrail?

[19]A I think maybe one or two patients.

[20]Q Long Island Railroad?

[21]A Actively under my care, maybe one or two.

[22]Q Amtrak?

[23]A Amtrak, I'm not sure.

[24]Q Well with **[*48]** Metro North, am I correct, there

[25]haven't been cases that you testified in court where
53

[1]
[2]you found the Plaintiff that you have been treating to

[3]be improved

[4]A What was that

[5]Q Am I connect, the cases you testified to in

[6]court that those patients that you have been treating

[7]did not improve?

[8]A Yes, they did. As a matter of fact, all of

[9]them improved and they have all gone back to work.

[10]Q Did you testify in the case of Lee Ernest

[11]Walter?

[12]A Yes.

[13]Q That was a Plaintiff from Mr. Gold's office.

[14]right?

[15]A Yes.

[16]Q And that was in August of 1990?

[17]A I believe that is correct.

[18]Q And approximately May 1990?

[19]A Yes.

[20]Q Am I correct that in that case you testified

[21]that the patient in that case was never going to

[22]improve and was never going to be able to work again

[23]for the railroad?

[24]A At that capacity .

[25]MR. GOLD: Your Honor, I object.
54

[1]
[2]Without the knowledge of what the injuries

[3]were in Mr. Walter's case, which I am not

[4]familiar with, I don't understand the

[5]relevance to this. He has not asked him **[*49]** it

[6]the injuries were the same nature and extent,

[7]he's talking about two individuals with

[8]separate injuries.

[9]THE COURT: Overruled. Dr. Guy

[10]recollects the case very well and he

[11]explicitly said in that capacity, so I think

[12]he's quite capable.

[13]Q Sir, is that the transcript of your testimony

[14]at that trial?

[15]THE COURT: It you know

[16]THE WITNESS: I've never seen it, but

[17]You say so.

[18]Q Well, is it a transcript of your testimony

[19]Tat- e a few second J to look through it.

[20]I s it another doctor or Dr - buy""

[21]THE COURT: That's not your, lets have
22a representation from you Mr, Rios that this

[23]is has testimony.

[24]DR. GUY: I can represent that that is

[25]his testimony.
55

[1]
[2]THE COURT: Well let's say to the jury

[3]it's impossible for Dr. Guy to review the

[4]whole transcript right now and we have

[5]counsel's recollection that it is his

[6]testimony. Is his complete testimony

[7]THE WITNESS: Yes.

[8]Q Doctor, if I direct you to page 48 of that

[9]transcript, line nine through 19, am I correct that at

[10]that time you were asked questions with respect **[*50]** to that

[11]employee as to whether he can return to his previous

[12]occupation and you said no, is that correct

[13]A That's correct.

[14]Q And you were asked whether he can do any

[15]physical labor and you said none, is that correct?

[16]A That's correct.

[17]Q And the Court asked you if he can't field a

[18]shovel in the snow and you said no way -- absolutely.

[19]A What line is that

[20]Q Lines 18 and 19.

[21]A Okay.

[22]Q I'm on page 50 doctor , did you answer on

[23]lines 18 and 19 -- or did you state on lines 18 and 19

[24]that he's not going to be able to hold down any job on

[25]a permanent or regular basis?

[56]
[1]
[2]A Yes, I said that.

[3]Q As far as you know, that trial went to

[4]verdict?

[5]A Yes.

[6]Q After that trial in August of 1990 -- let's

[7]go back, your testimony was April 1990.

[8]A That's right.

[9]Q In August of 1990, did you then give Mr.

[10]Walker a note saying -- well did you give a note

[11]concerning Mr. Walker?

[12]A Yes. I also think the jury should know what

[13]his injuries were.

[14]Q Did you give that note to Mr. Walker, all

[15]concerning Mr. Walker? **[*51]**
[16]A I did.

[17]Q And in that case you're now saying at that

[18]time that --

[19]THE COURT: Wait a minute, I'm contused.

[20]We know he testified in the case of Ernest

[21]Walker --

[22]MR. RIOS: This is after the trial was

[23]over.

[24]MR. GOLD: Objection, your Honor. I

[25]think that is giving a truly misleading
57

[1]
[2]representation here of Dr. Guy.

[3]THE COURT: Let me see it. Step up,

[4]please .

[5](Discussion off the record.)

[6]Q Am I correct that at that time in August 1990

[7]after you testified at the trial you said that Mr.

[8]Walker may resume full employment now and in the

[9]future; yes or no?

[10]A Okay, I think --

[11]Q Yes or no?

[12]A I can't answer that question with a yes or

[13]no, it has to be explained. In this letter --

[14]Q Is that sentence included in that report?

[15]A What sentence?

[16]Q That he may now resume employment in the

[17]future.

[18]MR. GOLD: That is taken out of content.

[19]THE COURT: The question was is that

[20]sentence included and the answer is

[21]THE WITNESS: It is included. And --

[22]MR. RIOS: Thank you.

[23]Q Well **[*52]** did you suggest that he may need re--

[24]evaluation?

[25]A More than that.

58

[1]
[2]Q But you did find him qualified to return to

[3]work?

[4]THE COURT: He answered that already.

[5]Q You testified that you had some outstanding

[6]bills?

[7]A Who did, Mr. Sharkey?

[8]Q No, there was some outstanding bills of

[9]$11,100.

[10]A With reference to Mr. Sharkey?

[11]Q Yes.

[12]A That's correct.

[13]Q Am I correct that you have a lawsuit pending

[14]against Metro North?

[15]A Yes, Metro North has forced --

[16]Q Yes or no?

[17]A Yes.

[18]Q You have a law suit against Metro North?

[19]A Yes.

[20]Q We don't want to try your case hero. Am I

[21]correct that Metro North questioned whether your fees

[22]were customary and reasonable?

[23]A I'm glad you asked that question. Now I'll

[24]answer that question for you. Even to this date, after

[25]my regular fee schedule, they are still paying me at my
59

[1]
[2]regular fee schedule. After they questioned me they

[3]are still paying me. Let me tell you, Metropolitan --

[4]MR. RIOS: Objection.

[5]THE COURT: Sustained.

[6] **[*53]** Q It was questioned, that was the answer --

[7]Yes?

[8]A That was not the basis of not paying the

[9]bills.

[10]Q That is one of the questions they asked?

[11]A Yes.

[12]Q And you say you saw some bills and some bills

[13]were paid at the rate that you put in, but then they

[14]were refused, is that right?

[15]A Many have not even been paid.

[16]THE COURT: Let's not get too far into

[17]this.

[18]MR. RIOS: Your Honor, I need to know

[19]whether they were reduced and --

[20]THE COURT: He just answered that.

[21]THE WITNESS: Yes, some were paid

[22]before.

[23]Q Do you know whether these bills are part of

[24]you lawsuit?

[25]A I don't know.

60

[1]

[2]Q And your lawsuit is also for slander, is that

[3]right?

[4]A That is one of the many things.

[5]Q That is another course of action?

[6]A Correct.

[7]MR. RIOS: Thank you, no more questions.

[8]THE COURT: Any redirect?

[9]MR. GOLD: Yes.

[10]REDIRECT EXAMINATION

[11]BY MR. GOLD:

[12]Q Could you explain to us about the problem

[13]that you had with the Metro North bills that you wanted

[14]to explain?

[15]A Metro North **[*54]** started playing games with me

[16]back in --

[17]MR. RIOS: Objection.

[18]MR. GOLD: Let's just talk about the

[19]dispute about the value --

[20]THE COURT: And let's try to be

[21]objective. Just answer the questions.

[22]Q Has Metro North ever paid bills which you

[23]presented to them in the past?

[24]A Yes.

[25]Q And they paid in full?

[61]
[1]
[2]A Yes, without question until April of 1990.

[3]Q When?

[4]A In 1990 they disputed paying the bills. They

[5]never told me why they were not paying the bills, just

[6]that they were never paid. I spoke with the claim

[7]representative and they never gave me an answer. They

[8]just never responded to me until they forced me to

[9]proceed with a lawsuit.

[10]Q Is there any rhyme or reason --

[11]THE COURT: Don't use rhyme or reason.

[12]Q Is there any consistency as to the bills not

[13]being -- are they not paying all of your bills, or are

[14]they not paying bills for people who have lawsuits

[15]against the railroad?

[16]A To tell you the truth, there's no

[17]consistency. They repeatedly refute their own -- it's

[18]not clear. If you say it's not and they **[*55]** --

[19]THE COURT: That s enough on that.

[20]Q With regard to Mr. Walker, do you know

[21]whether that case ever went to verdict?

[22]A I believe it did, yes.

[23]Q But you have no real knowledge of that?

[24]A No.

[25]Q Isn't it true Mr. Walker had some severe
62

[1]
[2]injuries in your opinion?

[3]A Yes.

[4]Q Did he suffer from a complete tear of the

[5]rotar cuff?

[6]A Yes.

[7]Q And did he have to have surgery because of

[8]any injuries?

[9]A Yes, he required surgery.

[10]Q He had two --

[11]A I know that he had one.

[12]Q Those were based on the injuries that you

[13]examined him for to the shoulder and to the knee?

[14]A Yes.

[15]Q So it was a combination of those things?

[16]A Yes.

[17]Q I believe when Mr. Rios was questioning you,

[18]whether there were certain things you wanted to

[19]explain?

[20]A Yes -- well, there was a --

[21]MR. RIOS: I don't there was a question

[22]pending.

[23]THE COURT: I think he was asking him if

[24]there was anything to explain.

[25]THE WITNESS: I wanted to explain his
63

[1]
[2]diagnosis. Left knee torn miniscus, **[*56]** status

[3]quo; oscopic tear, status quo; chondromalasia

[4]of his knee; right shoulder, rotar cuff tear;

[5]partial tear, L4; two disc protrusions and --

[6]THE COURT: So they were severe

[7]injuries?

[8]THE WITNESS: Yes, this patient had

[9]significant injuries and he --

[10]MR. RIOS: Your Honor, I think that he

[11]answered the question.

[12]THE COURT: Yes.

[13]THE WITNESS: At the time I testified in

[14]court I was testifying up until the time of

[15]my assessment of him, and you could see with

[16]those injuries, would anybody in this room

[17]let this patient go back to work at that time

[18]with those injuries?

[19]MR. RIOS: Objection.

[20]THE COURT : Sustained.

[21]THE WITNESS: As of the August visit he

[22]had one lengthy visit with me and he told me

[23]that he must work that he has to provide for

[24]his family and I told him that if you want to

[25]go back to work you have to observe certain
64

[1]
[2]guidelines, you have to continue under my

[3]care . I have to see you, and --

[4]THE COURT: We have it.

[5]Q At any time have you ever advised Mr. Sharkey

[6]he's not able to continue with his work **[*57]** at Metro North?

[7]A No.

[8]Q Mr. Rios asked you about the measurements you

[9]took with regard to atrophy?

[10]A Yes.

[11]Q And he asked you if isn't it true whether the

[12]dominant arm would show a greater measurement than the

[13]lesser arm?

[14]A Yes, he asked me that.

[15]Q What were the measurements that you found?

[16]A It was a two centimeter difference and I told

[17]Mr. Rios normally if there is a difference it's under

[18]half a centimeter, so this patient was off by 1.5

[19]centimeters, not significant in a situation such as

[20]his.

[21]Q And that would be indication of atrophy?

[22]A Yes.

[23]Q Is there any significance that you had not

[24]taken any measurements prior to that occasion?

[25]A There was no reason because you could see the
65

[1]
[2]atrophy, it was so prominent you could see it with your

[3]eyes, and you can take accurate measurements of the

[4]deltoid.

[5]Q With regard to the carpal tunnel syndrome,

[6]you testified that carpal tunnel can come about with

[7]repetitive use of hands. Mr. Rios brought up riding a

[8]motorcycle. Would occasional riding of a motorcycle

[9]even **[*58]** on the basis of an hour a day, be reason to cause

[10]carpal tunnel syndrome?

[11]A In my opinion, no.

[12]Q What type of repetitive use?

[13]A We're talking about a person at a computer

[14]terminal seven hours a day for years. Nobody rides

[15]motorcycle seven hours a day unless they are messengers

[16]or couriers, and I don't think Mr. Sharkey is a

[17]courier.

[18]Q Just one last thing. Dr. Guy, it was

[19]mentioned a couple of EMGs taken early on, back in

[20]1988, shows some slightly different findings. Would

[21]that be normal ?

[22]A If you look at the EMG findings, first you

[23]see a different doctors did the tests. Sometimes that

[24]happens, one doctor has a different criteria for

[25]borderline and normal. During the questioning I
66

[1]
[2]reviewed both of them. Even if you look at both of

[3]them you see there is prolonged latencies in the ulnar

[4]as well. I think if you go back and question the

[5]doctor who performed his emergency, you would agree

[6]there are some abnormalities here.

[7]MR. RIOS: Objection.

[8]THE COURT: Sustained. The jury should

[9]disregard the last statement that the doctor

[10]made.

[11] **[*59]** MR. GOLD: Thank you, I have no further

[12]questions.

[13]THE COURT: Mr. Rios?

[14]RECROSS EXAMINATION

[15]BY MR. RIOS:

[16]Q Doctor, you don t know the doctors that

[17]prepared those reports, do you?

[18]A No, I don't.

[19]Q And you're not saying that you are better at

[20]reading those EMG reports than they are, are you?

[21]A No, I am not.

[22]Q And you say you cannot take accurate

[23]measurements of the deltoid?

[24]A Right.

[25]Q That's what you measured?

[67]
[1]
[2]A I measured the biceps.

[3]Q So you didn't measure the deltoid?

[4]A No.

[5]Q So you didn't take measurements of the

[6]deltoid before the one time that you stated?

[7]A No.

[8]Q You don't know doctor whether he had a

[9]difference -- you said two centimeters, and you don't

[10]know whether he had a two centimeter difference in the

[11]biceps in '77 or '86, right?

[12]A No.

[13]MR. RIOS: Thank you, I have no further

[14]questions.

[15]MR. GOLD: One more question.

[16]RE-REDIRECT EXAMINATION

[17]BY MR. GOLD:

[18]Q You testified earlier that you were able to

[19]visibly notice the atrophy?

[20]A The deltoid **[*60]** is so visible that you could pick

[21]up just by your eyes.

[22]MR. GOLD: Thank you, I have no further

[23]questions.

[24]MR. RIOS: I have nothing further.

[25]THE COURT: Thank you Dr. Guy. You are
68

[1]
[2]permitted to take your records now.

[3]Ladies and gentlemen of the jury, it is

[4]lunch time and we will come back at 2:15. Do

[5]not discuss the case among yourselves or with

[6]anyone else. I say that again and again and

[7]again . We will see you back here at 2:15.

[8]*****

[9]CERTIFIED TO BE A TRUE

[10]AND ACCURATE TRANSCRIPT /s/PHILLIS STEWART

[11]PHYLLIS STEWART

[12]Official Court Reporter

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