1997 WL 33855980 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.

ROJAS & ROSALES,
v.
GREHOUND LINES, INC.

No. 10331596.
September 29, 1997.

(Transcript)

Case Type: Vehicle Negligence >> Bus
Jurisdiction: New York
Name of Expert: **Ali** E. **Guy**, M.D.
Area of Expertise: Health Care-Physicians & Health Professionals >>Physiatrist/Rehabilitation Medicine

Representing: Unknown

AFTERNOON SESSION

THE COURT: All right, let's continue.

(The jury was returned to the courtroom by the uniformed court officer.)

THE COURT: Ready with our next witness?

MR. BITTERMAN: Yes, we are, your Honor.

THE COURT: Very well.

MR. BITTERMAN: Your Honor, I would like to present to the Court Dr. Ali Guy.

(Short Pause.)

ALI E. GUY, M.D., 15 Jericho Turnpike, Jericho, New York, called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BITTERMAN:

Q. Dr. Guy, are you a duly licensed doctor to practice medicine in the State of New York?

A. I am.

Q. When did you receive your license?

A. 1985.

Q. Could you briefly go over your educational background.

A. Yes. Undergraduate, I attended at Queens College; medical school I attended the University of Northeast in the Dominican Republic. I graduated in 1981.

Thereafter, I served three separate residencies, the first one in the field of internal medicine at Mount Sinai School of Medicine, Mount Sinai Medical Center, for a period of 18 months.

Then I did one year of general surgery at Cabrini Medical Center. Then I did three years of physical medicine and rehabilitation at Mount Sinai School of Medicine.

I'm board certified in the field of physical medicine and rehabilitation.

I'm the acting director of rehab medicine at Mount Sinai Medical Center in Brooklyn. I'm the director of the neuromuscular equipment clinic at the Hospital for Joint Diseases Orthopaedic Institute. I'm a clinical instructor to the residents of the NYC Medical Center; also on staff of the Cabrini Medical Center.

Q. Dr. Guy, you mentioned you're board certified.

What does board certification mean?

A. Board certification is the highest degree which you can obtain in your level of training, the equivalent to a Ph.D. to a nonmedical person.

In other words, to become board certified in my specialty, you'd have to fulfill the following requirements:

You have to have had at least one year of prior training in the field other than physical medicine and rehabilitation, previously internal medicine.

You must then have had to pass the three years of physical medicine rehabilitation by passing the yearly examinations given by the department, scoring at least 70 percent or higher on each yearly examination.

You must then sit in for an eight-hour written examination after you graduate.

You must then be in private practice for a period of no less than 18 months, be sponsored by two other doctors that are already board certified, and they have to vouch for your clinical training expertise.

You would then apply to the Mayo Clinic in Minnesota. That's where all the textbooks and research is done. You get tested by doctors, orally, for a period of four to six hours. They test your skills and knowledge in internal medicine. orthopaedics, neurology, cardiac rehabilitation, pulmonary rehabilitation, interpretations of X rays. MRIs, EMGs, and other principles of physical medicine and rehabilitation.

If you prove to these doctors that your knowledge is up to par, they pass you and you're given a title of a diplomate and a fellow of the American Board of Physical Medicine and Rehabilitation.

Q. Dr. Guy, can you tell me -- you mentioned you are a clinical instructor. Are you a clinical instructor at any major teaching hospitals?

A. Yes. Cabrini Medical Center, Hospital for Joint Disease, Orthopaedic Institute and Maimonedes Medical Center.

Q. What are the requirements to become a clinical instructor and to teach other doctors?

A. First, you have to be board certified. Two, the credentials committee of the hospital has to review your documents, your records, and feel that you possess knowledge and ability to teach.

Q. Are you a member of any medical organizations?

A. Yes.

Q. What are they?

A. I'm a member of the American Medical Association, member of the New York County Medical Society, member of the New York State Medical Society.

Q. Can you tell us what the field of physical medicine and rehabilitation is all about?

A. Yes. This field was started after World War II by Dr. Howard Rusk, named after the Rusk Institute at NYU Medical Center. This doctor found that there was a great shortage, a great need, to rehabilitate patients that have been involved in extensive injuries, whether it's from a war injury, gunshot wound injury, amputation injury or cardiac injury, or pulmonary injury or just motor vehicle accident injury, and straightforward spinal problems -- neck, back, joint problems. The field is an overlap of internal medicine, orthopaedics, nonsurgical orthopaedics and neurology, peripheral neurology.

And by using these different sciences and trying to avoid surgery and using the principles of physical therapy, kinesiology, which is the study of motion, we try to rehabilitate the patients, avoiding medications and avoiding surgery.

Q. Dr. Guy, what is the difference between a physiatrist, a neurologist and an orthopaedic surgeon?

A. A physiatrist is a doctor that practices my specialty, physical medicine and rehabilitation. Physiatry should be not confused with psychiatry, because they sound close, but a different specialty.

The difference between orthopaedics and neurology is as follows: The field of orthopaedics deals with more surgical problems. They deal more with the skeletal or the bone system. Neurology deals more with central neurology, of the brain, disorders like Parkinson's disease, multiple sclerosis, Lou Gherig's disease, so on and so forth.

There's overlap between the three different specialties, but the physiatrist deals with the body as a whole. It's considered to be the most holistic of all the specialties because you treat the body from head to toe.

We have brain rehabilitation, cardiac rehabilitation, pulmonary rehabilitation and neurological rehabilitation. All these fields fall under our specialty.

Q. Dr. Guy, as part of your training, did you receive formal training in neurology, orthopaedics, internal medicine, interpretation of X rays and MRIs?

A. Yes.

Q. Does your field with traumatic injuries -- excuse me.

Does your field deal with traumatic injuries, and are yo?? a trauma expert?

A. Yes, I am.

Q. Is it true that because you are a trauma expert, the patients that you treat may lead you into the legal system, mainly having to come to court and testify?

A. Yes.

Q. Do you give lectures to various different people?

A. I give lectures to just about every walk of life: doctors, medical students, residents, rehab nurses, nonmedical personnel, firemen, policemen -- I'm a state police surgeon as well. I give lectures to police officers as well, how to prevent spinal injuries during car accidents and during work and altercation incidents.

I give lectures to the legal sector, attorneys.

I give lectures to just about every walk of life.

Q. When you give lectures to medical residents, and when you teach other doctors in hospitals, do you do it for money, to be compensated for, or do you do it strictly on a nonmonetary remuneration basis?

A. I do it without accepting the money.

Q. How many times have you been qualified as an expert witness in court?

A. Many times. I can't give you an exact number, but approximately between 40 to 45 times; a little bit less or more.

Q. Over how many years has that been?

A. I've been practicing since 1985, so over the past 12 years.

Q. Have you ever testified for me or my firm before?

A. No.

Q. What percentage of your practice is devoted to treating patients?

A. The majority, 90 percent or plus.

Q. What percentage is devoted to teaching?

A. Out of that 90 percent, I would say about 20, 30 percent.

Q. What percentage is devoted to doing consultation to other doctors?

A. Out of the remaining percentage, I would say about another 20 to 30 percent.

Q. Do you do hospital consultations?

A. I do. I'm chief of services at Maimonedes. I'm required to do hospital consultations.

Q. Have you testified in any supreme court in the State of New York before?

A. Yes, many times.

Q. Have you testified in any federal court in the State of New York before?

A. Yes, many times.

Q. Have you ever been turned down as an expert witness in the field of physical medicine and rehabilitation?

A. No.

MR. BITTERMAN: Your Honor, I now introduce this doctor as an expert witness in the field of physical medicine and rehabilitation.

THE COURT: Yes, I agree.

Q. Dr. Guy, are you being compensated for your time appearing in court today, and if so, how much are you being compensated?

A. My fee for canceling my patients and being away from my other responsibilities, I charge a fee of $3,000 for over half a day, and I charge a thousand dollars for pretrial preparation and consultation with the attorney; total of $4,000.

Q. Who referred you to this patient?

A. When I asked the patient, he told me that he lives in the area. One of his relatives referred the patient to me since they knew I spoke Spanish.

Q. Tell us briefly, go over the patient's history, pertinent physical examination findings, and please tell us what they mean.

A. The patient is a 37-year-old Hispanic male, right-handed, no prior significant medical problems or injuries. He was well until 11/24/95, when he was a passenger on a bus. He became involved in a very bad crash.

He sustained multiple injuries to different parts of his body, mostly injuries to his lungs. He had multiple lacerations, abrasions, had multiple rib fractures -- some of them caused lung collapse -- pneumothorax, atelectasis and hemothorax and he was hospitalized at a local hospital in Maryland for approximately several days and was in the intensive care unit.

After he was discharged, he continued seeking medical attention at Nassau County Medical Center.

When I saw him, he complained to me of having pain on the left side of his chest, the left rib cage, the left flank area. The pain was made worse by any kind of exercise, deep breathing. Pain increases with exercise.

These are the basic complaints.

Q. Dr. Guy, if you need to review any demonstrative models or anything else, if you'd like to refer to them. -- I would like the Court's permission.

A. Fine.

MR. BITTERMAN: Your Honor, we have here a model of the lung. I submit it for the Court's approval.

THE COURT: Any objection to this model?

MR. McELFISH: No objection.

THE COURT: Is it marked?

MR. BITTERMAN: Let's mark it for identification as Plaintiffs' Exhibit 1.

(Plaintiffs' Exhibit 1 was received and marked for identification.)

Q. Dr. Guy, in your residence training in internal medicine at Mount Sinai, what experience, if any, do you have with the pulmonary system?

A. As an internal medicine resident, you will -- you're required to rotate a minimum of two months in a pulmonary ward, where everybody has lung problems. It's a 45-bed ward -- especially at Bronx Street Veterans' Administration Hospital, which is a major affiliate of Mount Sinai. Everybody has lung problems. You rotate through that problem, and all you treat and see is lung problems.

Then when you admit patients every third night, you admit between five to eight patients, and they have different problems, from heart, lung, to other parts of the body.

So for a period of 18 months, all you see is different internal medicine problems.

Then when I did my second residency, in general surgery at Cabrini, two years -- sorry -- two months you spend in the emergency room and see all kinds of lung problems, stab wounds, gunshot wounds. Take the patients to the operating room, putting your fingers literally on the heart and lungs because blood is pouring all over the place, and you have multiple injuries.

You have people that try to commit suicide and drop themselves from heights of six stories. Every system is involved. You have hemopneumothorax.

Also, when I was doing my --

THE COURT: I think that's sufficient. Let's go on.

Q. Dr. Guy, how many patients with pulmonary problems have you treated in the past, both during and outside your residency?

A. Tens of thousands.

Q. Dr. Guy, have you ever treated patients with pneumothorax?

A. Yes.

Q. With hemothorax?

A. Yes.

Q. With atelectasis?

A. Yes. That means lung collapse.

Q. What is atelectasis?

A. Atelectasis is lung collapse. The lung -- the right side of the lung has three lobes; the left side has two lobes. The lung is filled with air, and it holds and expands, pumps the air through the cardiovascular system.

When a lung collapses, it does not expand and compress properly. Therefore, less volume of air is pushed out of the respiratory system, and thereby the patient doesn't get adequate air to the different organs in the body.

When that happens, after the atelectasis, it's more than 15 to 20 percent, you insert a chest tube and try to correct the problem. And if that problem is not corrected, you do a bronchoscopy, where you insert a scope through the trachea all the way down --

THE COURT: Let's confine ourselves to whatever was done in this case, shall we?

MR. BITTERMAN: Okay.

Q. Dr. Guy, can you tell us what a pneumothorax is?

A. Pneumo means air; thorax means the chest cavity. So it means air in the chest cavity. You are not supposed to have any air in a closed chest cavity. If you do. it interferes with normal lung expansion.

Q. Can you tell us what hemothorax is?

A. Hem means blood; thorax is the thoracic cavity. It means blood in the thoracic cavity.

Q. Can you tell us what bronchoscopy is?

A. Bronchoscopy is a procedure by which you insert the scope. At the end of the scope there are lights and water that comes out, and it has a sharp end where you can get biopsy specimen or cut small tissue fragments away.

From the -- right behind the pharynx is the trachea, and the trachea goes down and into the tracheal tree and branches off and gives -- branches into different portions of the lungs.

Q. Dr. Guy, did you review any hospital records?

A. Yes.

Q. Of Mr. Rojas?

A. Yes.

Q. Did you review the hospital discharge record?

A. I did.

Q. Did you review any hospital records that revealed thorachotomy?

A. Yes.

Q. What does this record state?

A. Which record?

Q. Thorachotomy.

A. The word “thorachotomy” means cutting the chest open and going inside the chest cavity and doing whatever procedure that is required to alleviate the patient's symptoms and/or problems.

Q. Dr. Guy, did you obtain a history from Mr. Rojas?

A. Yes.

Q. What history did you obtain?

A. That he was a passenger on a bus on 11/24/95, the bus apparently flipped, and he sustained multiple injuries to his body.

Q. What physical exam findings did you have?

A. (Referring) He had tenderness on the left and right rib cages. Upon asking the patient to take a deep breath, the pain increased on the area by the ribs on both sides. The left side was more so than the right.

Other than those two areas, it was essentially unremarkable.

BY MS. GUASTAFERRI:

Q. Did you also review the hospital records pertaining to Mr. Rojas?

A. Yes, the Hartford Memorial Hospital records as well as the Nassau County Medical Center emergency room records.

Q. Did you review the X ray reports?

A. Yes.

Q. Did you review the discharge summary?

A. Yes.

Q. What, if anything, did they reveal that Mr. Rojas' condition was?

A. The discharge summary --

THE COURT: Talking about the Baltimore --

THE WITNESS: Yes, your Honor.

A. The discharge summary revealed only three fractures, but, in fact, if you really read the actual X rays, there were more than three fractures; approximately ten or 12.

Q. The fractures that were indicated in the discharge summary, which fractures were those?

A. The left side, 5th, 6th and 7th ribs.

Q. What type of fracture was the fractures?

A. They were displaced and nondisplaced fractures.

Q. What is a displaced fracture?

A. The word “displaced” means once the two pieces break, there's movement on one end. And a nondisplaced means that simply when the ribs break, there's no movement.

I have the X rays. Perhaps I can show the X rays. They will explain it better.

MR. BITTERMAN: (Handing).

Your Honor, the plaintiff introduces for marking four X rays from the medical records of Hartford Memorial Hospital as Plaintiffs' Exhibits 2 through 5 for identification.

(Plaintiffs' Exhibits 2 through 5 were received and marked for identification.)

THE COURT: 2, 3, 4 and 5 are received in evidence, without objection.

(Plaintiffs' Exhibits 2, 3, 4 and 5 were received and marked in evidence.)

THE COURT: Would you please get a shadow box?

COURT OFFICER: Yes, your Honor.

(Short Pause).

THE COURT: All right?

COURT OFFICER: Yes, your Honor.

THE COURT: All right?

COURT OFFICER: Yes, okay. It's all set up.

THE COURT: Wouldn't it be better to put it on the bench right here?

COURT OFFICER: Okay. (Complying).

Q. Dr. Guy, before you is Plaintiffs' Exhibit 2.

Can you please describe what that is.

A. This is a chest X ray of Mr. Amado Rojas at the time of his accident, admitted at Fallston General Hospital, Hartford Memorial Hospital, X rays taken 11/24/95.

Q. Dr. Guy, can you tell us what this X ray shows?

A. Yes. This is the left side; this is the right side; this is the 5th rib.

Normally, when you look -- hold it.

Normally, when you look at rib fractures. the film has to be more darkened so you can see the fractures. Otherwise, you could very easily miss them.

So this film is taken darkened more so than usual so that the cartilage stands out.

Whenever you look for a fracture, you have to find a rib, follow its contour all the way across, all the way across.

Here, when you see -- this is the fifth one. You see a little fracture. This bone is separated from here. That's the 5th rib over here. You see this little black line in between; that indicates a fracture.

Here you can see the jagged edges of the fracture. They continue -- the continuity of the line is lost. As you can see, the white margin is lost. Here's the blackened area that indicates the fracture. That's the 6th.

And the 7th is another rib, the continuity of the margins are again interrupted. And this is a nondisplaced fracture.

This is nondisplaced.

This is minimally displaced.

So displaced means a slight movement.

I have more films to show you --

Q. Dr. Guy, before you is Plaintiffs' Exhibit 3 in evidence.

A. Yes.

Q. Can you identify that document?

A. This is, again, a chest X ray. This is the heart, left side, right side. As you can see on the right side, this is the hemidiaphragm. You can see --

MR. McELFISH: Objection, your Honor.

I want the witness to identify the date of this X ray so that we can get some sort of consequential idea.

THE WITNESS: Same date, 11 -- 12/3/95, rather.

Q. All right.

A. This is the left side; this is the right side; this is the right hemidiaphragm. As you can see, on the left side you lost the left hemidiaphragm. That's because you have an atelectasis, a collapse of the lung. The lung does not expand properly.

The margins should be much lower.

You see this better on the side view. A chest X ray is taken in AP, anteroposterior, and lateral views.

Let's see if I have the lateral view to show you (referring).

Yes, here it is.

Q. Dr. Guy, for the record, this is Plaintiffs' Exhibit 5.

Can you please identify this document with its date?

A. This looks like a portable chest X ray. How you know it's portable, because you have the ICU monitor leads on the patient's chest, and the quality is not as good as the regular, conventional X ray.

Again, you see the right hemidiaphragm. See the portions of the left. You don't see the complete portions. This is still a partial atelectasis.

All right.

Q. Dr. Guy, this is Plaintiffs' Exhibit 4. Can you identify that for the record?

A. This is again a chest X ray showing the expansion of the lungs. This is again taken with emphasis on the rib cage. The lungs are darkened so that the ribs stand out better.

Q. All right.

A. There's a big fracture right here. This is the borders of the 5th rib. The upper portion is displaced upwards, and the other portion is displaced downwards.

I don't know if you can all see it from there. If you can't, maybe you could come closer.

MR. BITTERMAN: With your Honor's permission.

THE COURT: The jury is free to come forward if they feel they have to.

A. (Continuing) This is the beginning portion of the rib. This is the fragment of the 5th rib, here and here.

Here's another fracture right here at the 6th level. You see the jagged edge right here. This jagged edge, in my opinion, was the one that punctured the lung and caused the bleeding, the atelectasis, and the lung collapse.

Here is another small fracture. It's nondisplaced. There's no movement.

This is displaced, and this is partially displaced.

I believe that's it.

MR. BITTERMAN: Thank you very much, your Honor.

THE COURT: All right, okay.

BY MS. GUASTAFERRI:

Q. Dr. Guy, based upon what you've just testified to, what type of pain would normally be produced with these type of injuries?

A. When you have air, abnormal air, in a normal place, called pneumothorax, it is extremely, extremely painful.

The patient cannot have adequate breathing. They can't expand the lungs. They are always gasping for air. It's very, very painful and frightening.

Q. What type of painkillers or medications to alleviate pain would be administered in this type of a circumstance?

A. First you'd have to do a chest tube to correct the problem and then administer medication. You could do it simultaneously.

The medication that works best in this situation is something in the morphine opiate derivative. Morphen, Demerol, Percocet, all very strong painkillers.

Q. Based on your review of the medical records, do you know what type of painkillers were administered to Mr. Rojas in Hartford Memorial?

A. Well, he had a shot of Demerol intramuscularly, and I believe he had a very bad reaction to it. His legs felt numb, and he didn't like that painkiller nay longer. And then he was given oral medication in the form of Percocet.

Q. What type of side effects would Demerol create?

A. Demerol -- any narcotic causes the central nervous system depression, causes sedation, drowsiness, nausea, vomiting and hypertension -- hypotension. If the blood pressure drops, you can become disoriented, light-headed, and also get a flush, a burning pain sensation or paresthesias in the extremities.

Q. In your medical experience, have you had instances where although patients may have been in pain, they refused Demerol due to the side effects of Demerol?

A. Yes. In a hospital without -- we have a better system to deliver pain -- the patient has an intravenous I.V. present. Every time they want a dose of medication, it's preset into a bottle. They press a button, and a set dosage is released through the intravenous route so they don't have to worry about getting stuck with a needle.

BY MR. BITTERMAN:

Q. Dr. Guy, based upon the injuries that you have seen on Mr. Rojas, what type of consequences could he -- actually, did he suffer as a result?

A. Well, he had pneumothorax, hemothorax, atelectasis, multiple rib fractures.

When you injure an area, the area heals with callus formation and heals with traumatic arthritis and synovits to the injured areas.

Also, the lung is covered by a membrane which coats and protects the lung from further irritation and infections and other types of inflammation.

When that membrane has been cut or damaged, that lung is missing a protective barrier. Therefore, it's a risk for recurrent infections, inflammations, bronchitis, all kinds of respiratory tract problems.

Q. Dr. Guy, in the hospital records, there was mention of emphysema. Can you tell us what that is.

A. When you have a subcutaneous emphysema, that means the air is stuck, collected under the soft tissue space, under the muscles. So you see a protrusion of the soft tissue space, because the air has leaked underneath the muscles and the soft tissues. So that's what a subcutaneous emphysema is.

Q. Based upon the things that happened to Mr. Rojas, is it reasonable that his pain could be lasting through today?

A. Yes. This kind of a pain is made worse by exercise, is not made worse at rest. Any kind of exercise -- pulling, pushing, deep breathing, coughing, sneezing -- this is what stresses the respiratory system, especially the alveolar tree.

Q. Dr. Guy, have you seen Mr. Rojas recently?

A. Yes.

Q. What were your findings from that visit?

THE COURT: Saw him last on 9/16/97. He still continues left-sided rib cage pain, anterior chest pain, made worse by exercise, coughing, any kind of expansion of his lungs, and also when he sleeps on that side. And on physical examination, he still had diffuse tenderness on the lateral portion of the left rib cage and on the anterior portion of the left side.

Q. Dr. Guy, can you approximate when these injuries may resolve themselves?

A. Everyone's injuries heal at a different rate. It depends on your age, on your prior preexisting condition. If you are in tip-top shape before and young and healthy, naturally it will heal faster.

If you were a smoker or obese and you had other underlying problems, like emphysema or bronchitis, it would heal much slower.

So it depends and it various from patient to patient.

Q. Did there come a time that you have had the opportunity to review Dr. Miller's report?

A. Yes.

Q. Can you tell us what that report says.

MR. McELFISH: Objection, your Honor.

There isn't a foundation. There's been no testimony so far that the patient has been even examined by Dr. Miller.

THE COURT: I think you'd best lay a foundation.

Q. Dr. Guy, Dr. Miller -- was there a referral to Dr. Miller in this matter?

A. Yes.

Q. Can you tell us what Dr. Miller does?

A. Dr. Miller is the chief of pulmonary medicine at Catholic Medical Center. He's a profession of clinical medicine at Albert Einstein School of Medicine. He's a clinical professor of community medicine at Mount Sinai Medical School.

Q. Did Dr. Miller have the opportunity to examine Mr. Rojas?

A. Yes.

Q. Can you tell me what his findings revealed?

THE COURT: Was he referred -- was the patient referred to him by you.

THE WITNESS: Yes.

THE COURT: For what purpose.

THE WITNESS: For pulmonary function tests, spirometry, for evaluation of his lung capacity.

THE COURT: And has this report been shown to counsel for the defense?

MR. BITTERMAN: Yes, it has, your Honor.

THE COURT: How recently?

MR. BITTERMAN: It was shown to counsel this morning.

MR. McELFISH: That's right, your Honor.

THE COURT: And do you have any objection to the witness referring to that report?

MR. McELFISH: No, sir.

THE COURT: Very well.

Q. Dr. Guy, before you refer to the report, can you tell the jury what title volume is?

A. Title volume is the ability for the lungs to fully expand and contract.

Q. And can you tell the jury what spirometry is?

A. Spirometry is a test by which you breathe into a breathing tube, and the breathing tube machine measures all different measurements -- your title volume, your forced expiratory volume and other measurements of lung capacity.

Q. Dr. Guy, based upon your examination of the plaintiff, a review of his records, a review of Dr. Miller's records, have you formed an opinion, with a reasonable degree of medical certainty, regarding Mr. Rojas' condition?

A. Yes.

Q. Would you please tell the jury, based upon that report, what it is.

A. I feel that the patient has sustained a permanent injury to his lungs. In medicine, any condition that lasts for 12 months or longer is considered permanent in some capacity. And, therefore -- this patient was involved in an accident on 11/24/95.

The patient was seen by Dr. Miller on September 18, '97 -- that's approximately a year, almost a year and eight months -- and was seen by me most recently on 9/16/97, also the same proximity, more than one year. And he still manifests subjective and objective evidence of residual problems from his accident.

Therefore, this is considered a permanent injury.

Q. Dr. Guy, can you -- did you review Dr. Miller's report?

A. Yes.

Q. What were Dr. Miller's findings?

A. On physical examination and on history, basically, the same as the patient had given me?? pain upon inspiration, pain made worse by coughing. breathing, pain made worse by walking a long distance. And on physical examination, palpation was diffusely tender to the sites of fractures.

On stethoscope examination of the heart and lungs, everything was normal, as expected, because the atelectasis improved and the pneumothorax was corrected. But when it heals, it heals with scarring to the superficial layers of the lung. That is not picked up on any clinical test, in the same way a closed head injury is not picked up by any diagnostic test. And the same with headaches, migraine headaches, are not picked up by any diagnostic studies.

In medicine, there are many conditions that are not picked up by any diagnostic studies.

Spirometry and pulmonary function tests measure restrictive and obstructive lung disease. Mr. Rojas has neither. That's why his tests were normal, as expected.

Q. Does Mr. Rojas still have problems as a result of the bus accident in November of 1995?

A. Yes, he does.

Q. Dr. Guy, in your review of the medical records -- Mr. Rojas earlier testified that a tube was -- a hose, as he described it -- was put down his throat.

Can you tell the jury what that is?

A. That's a bronchoscope.

Q. And can you tell us what type of pain might be involved in a procedure such as that?

A. Usually they sedate the patient, partially. Cannot sedate you completely because you have to make certain movements. You have to lay from one side to the other. So you are sedated partially.

When you stick a tube down someone's throat, it's very scary. Some patients gag, even with local anesthetics. And even with intravenous relaxing medications like Valium, it's a fruitful experience and a very painful experience.

When you go in, sometimes they can't visualize the different portions of the lungs, so they inject air or water into the area to improve the visibility to the area.

Q. Dr. Guy. Mr. Rojas testified that he was home-bound for more than three months immediately upon his arrival to New York.

Is that type of sedate life-style possible from an injury such as this?

A. With this type of injury, with multiple rib fractures, with atelectasis and with hemopneumothorax, you're supposed to take it easy for weeks to months.

Like I said earlier, every patient's response time is different. The more severe the injuries, the more rest is required. If you don't rest and you fully expand the lungs into a stressful ability, you'll get decompensated. The lung may not be able to deliver the amount of oxygen needed to reach different parts of the body.

Q. Dr. Guy, when you had seen Mr. Rojas in January of 1996, you had written in your report that the patient has clearly been disabled since the time of the accident present. He will continue to remain disabled for at least another two and a half to three months. When he does improve, he's been advised to return back to duty very slowly and gradually, with slow movements and gradual lifting of weights.

In Mr. Rojas' case, his recovery has been much longer than that.

Can you explain why that happened?

A. Again, every patient heals differently, and every condition has a different response time to different patients.

An injury of this caliber may have taken longer if he was 50 years or older and may have been less if he was 16 years or younger. It varies. The more severe the injury, the longer the time takes.

I don't think any doctor can give you an exact time as to how long an injury like this should take to heal.

Q. So, Dr. Guy, the fact that it took Mr. Rojas six to eight months before he was even able to resume normal activities, even though you had stated it probably would only take two and a half to three and a half months, is that a plausible situation?

A. Is that a what?

Q. Is that something that could have happened, that it took six to eight months?

A. Absolutely. That's why I said you should go back to work slowly and gradually, just in case you can't do any activity, so he doesn't have another major setback.

Q. Dr. Guy, as a result of this injury, what can Mr. Rojas expect for the remainder of his life as far as disabilities?

A. The major problem with disability comes when he's going to be exerting or stressing his lung, respiratory tract system and his chest cavity. Any kind of forceful expansion of the lungs will irritate the rib area, and where there's traumatic arthritis and synovitis setting in, that would cause some stiffness and pain.

In the cold weather, where everybody gets viruses and colds, he will have a longer time to recuperate from those colds and those upper respiratory tract infections, because the lung membrane has been damaged.

Also, there's a great deal of extensive scarring present on the superficial layers of the lungs. That's the equivalent of smoking cigarettes for a long time.

What happens to the superficial layers of the lung? They get decompensated, don't function properly.

So the same has happened to Mr. Rojas. He has permanent scarring to the superficial layers of his lungs on both sides, the right and the left sides.

Q. Dr. Guy, is that scarring a direct result of the accident on 11/24/95?

A. Yes, it is.

Q. Dr. Guy, are the rib fractures that you showed the jury in those X rays a direct result of the injuries that occurred on 11/24/95?

A. Yes. In fact, it was those rib fractures that caused the hemopneumothorax.

Q. Dr. Guy, lastly, my client has testified that approximately when he was 16 years old he was involved in some sort of a chest injury. He sometimes described it as rib fracture or chest pain. He never saw a physician, and due to the language barrier, it's a little confusing as to whether or not he understands the difference between fracture and bruising.

Nevertheless, is there any reason to believe that his condition as it exists today could have been caused by that injury?

A. The prior injury?

Q. Yes.

A. The answer is no, for very good reason. The initial X rays that were taken at the hospital in Maryland showed no callus formation to the rib cage. If there was callus formation, which is cementing of the cartilage and soft bone, that would indicate a prior injury or prior fracture.

None was present. Therefore, that goes against any prior fractures to those areas.

MR. BITTERMAN: Your Monor, at this point I have no further questions for my witness, and I reserve my right to recall him.

THE COURT: Cross-questions?

CROSS-EXAMINATION

BY MR. McELFISH:

Q. Good afternoon, Dr. Guy?

A. Good afternoon.

Q. You testified that you are board certified in physical medicine; is that correct?

A. Yes.

Q. Can you tell me what you mean when you're an expert in trauma?

A. Physical medicine deals with the disability and impairment. Disability and impairment usually comes from trauma, people that have been injured, not people that go for cosmetic injury.

Q. When you say “trauma.” do you mean accident?

A. Trauma is defined as the interruption of a normal integrity of a body part or function.

Q. Now, other than your board certification in physical medicine, are you board certified in any other area?

A. Only in physical medicine and rehabilitation.

Q. So you testified that you have some experience in cardiopulmonary diseases, but isn't it true that you're not board certified in that area?

A. Not in cardiology and not in pulmonary, absolutely not.

Q. Are you board certified in internal medicine?

A. No.

Q. You testified you had 18 months of experience with cardiopulmonary diseases. When was that?

A. Eighteen months of residency in internal medicine.

Q. How long ago was that?

A. In 1982 to 1983, and again in 1985 to 19 -- to the summer of 1985.

Q. It's fair to say, since that time, you haven't had a severe degree of experience in cardiopulmonary diseases; is that correct?

A. It's a very incorrect statement, because a vast majority of rehabilitation is cardiac and pulmonary rehabilitation. We have patients with acute myocardial infarctions after six weeks postheart attack. We rehabilitate their hearts. We're experienced in reading EKGs.

Q. You do that currently?

MR. BITTERMAN: Objection.

THE COURT: I think the witness could abbreviate these answers considerably.

Q. Doctor, is your board certification in physical rehabilitation, is that designated?

A. What do you mean?

Q. Do you know the difference between designated certification and nondesignated?

A. No.

Q. Are you familiar with a book of specialties called *The American Board of Medical Specialties?*

A. Yes.

Q. How are you listed ?? that book?

A. Physical medicine, rehabilitation.

Q. Now, you said -- I missed a little bit of it, but I think you said that you spend about 90 percent of your time in practice treating patients: is that correct?

A. Treating patients and teaching.

Q. Do you practice out of a particular location or an office address?

A. I practice out of Maimonedes Medical Center, out of my office in Gramercy Park, out of my office in Jericho, Long Island.

Q. Is it fair to say that the patients you treat are postdischarge patients that have problems that require physiotherapy modalities?

MS. GUASTAFERRI: Objection.

At which office?

MR. BITTERMAN: Either.

MR. McELFISH: Either.

MS. GUASTAFERRI: Or Maimonedes. He said -- he testified --

THE COURT: That question dealt with wherever he does his practice. I believe.

MR. McELFISH: That's right.

MS. GUASTAFERRI: He could treat them at Maimonedes as an out or inpatient basis.

THE COURT: I'll allow it.

A. If a patient is treated as an outpatient, by definition, it means postdischarge.

If a patient is treated in a hospital, by definition, it means in hospital.

Q. Do you treat patients in the hospital?

A. Yes, I do.

Q. Do you put chest tubes in patients, Doctor?

A. Now? No.

Q. Have you ever put chest tubes in patients?

A. Many times, in surgery and in internal medicine.

Q. How long ago?

A. Surgery, 1983.

Q. Now, is it part of your everyday practice to put patients on respirators or ventilators?

A. No.

Q. You're not qualified as an intensive care doctor; is that correct?

MR. BITTERMAN: Objection to form, your Honor.

Is that an interrogatory? I guess that's the objection, wasn't it?

MR. BITTERMAN: Yes.

MR. McELFISH: I'm permitted to ask leading questions on cross-examination.

THE COURT: I'm sure you are. But are you posing it as an interrogatory in form? It can be leading; no question about that.

MR. McELFISH: Would you like me to rephrase it?

THE COURT: Yes.

Q. Doctor, you qualified as an intensive care doctor; yes or no?

A. I do treat patients in intensive care units, but to become an intensive care doctor, you have to be either an internal medicine doctor or a general surgeon.

Q. So the answer is no; is that correct?

A. The answer is no, to the way you phrased the question.

Q. Are you qualified as an emergency room doctor?

A. When you say “qualified,” I have treated many patients in the emergency room. But I am not a specialist in emergency room medicine. That's a separate specialty.

Q. I understand.

I'm asking you if you're qualified or if you're board certified in those areas to practice that kind of medicine.

A. No, but I am qualified to practice it. There's a big difference between being --

Q. Thank you, Doctor.

Is it fair to say that a physiatrist is not qualified to treat acute injuries like a punctured lung that requires immediate hospital care, such as fractured ribs?

A. In the acute, immediate setting, no, no.

Q. Is it fair to say that these types of patients are generally treated by emergency room staff doctors?

MS. GUASTAFERRI: Objection, your Honor.

He hasn't testified that he treated Mr. Rojas in the emergency room setting.

THE COURT: Overruled.

Q. Is it fair to say that these types of patients are treated by emergency room staff doctors, intensive care doctors and surgeons?

A. In the acute phase?

Q. Yes.

A. Yes.

Q. Thank you, Doctor.

Isn't it true that the worst kind of these injuries, meaning punctured lungs, fractured ribs, which are at issue here, are usually treated at a level one trauma center? Isn't that correct?

A. It depends if there's a level one trauma center.

Q. Assuming there was one, is that where the worst kind of these injuries would be treated?

A. If possible, yes.

Q. Would you tell the jury what you understand a level one trauma center to be.

A. A level one trauma center, my understanding is that it has every type of a specialty. And some of those level one trauma centers are equipped with emergency helicopters with a Medivac, where they can evacuate the patient to a hospital rooftop and transfer directly to the operating room.

But very few places are equipped with level one facilities. And if a patient is in danger and the closest hospital -- you take the patient to the closest hospital. You don't wait for a helicopter.

Q. They are not treated on an outpatient basis; correct?

THE COURT: Limit your answers to the questions, please.

MR. McELFISH: Thank you, your Honor.

Q. They are not treated on an outpatient basis?

A. Absolutely not.

Q. I understand from your direct testimony here today that you treated Mr. Rojas back in January of 1996; is that correct?

A. Correct.

Q. Did you treat Mr. Rojas again after that -- withdrawn.

Did you examine Mr. Rojas again after your examination in January of 1996?

A. Yes.

Q. When was that?

A. September 16, '97.

Q. Last week; right?

A. Yes.

Q. Did you issue a report concerning the results of the January 1996 examination?

A. Yes.

MR. McELFISH: Your Honor, I want to move that report into evidence.

THE COURT: Dr. Miller's report?

MR. McELFISH: Dr. Guy's report, which he's going to be testifying about today.

THE COURT: Yes. Is that marked?

MR. McELFISH: I want to move it into evidence and mark it.

THE COURT: Mark it for identification.

(Defendants' Exhibit B was received and marked for identification.)

Q. I show you what's been marked as Defendants' Exhibit B for identification (handing).

Do you recognize that document?

A. (Referring) Yes.

Q. Is that a fair and accurate copy of your report concerning the January 1996 examination?

A. Yes.

Q. By the way, Doctor, do you speak Spanish?

A. I do.

Q. You do?

A. Yes.

THE COURT: Are you offering B in evidence?

MR. McELFISH: Yes, I would offer Defendants' Exhibit B into evidence, your Honor.

THE COURT: Any objection to B?

MR. BITTERMAN: No objection, your Honor.

THE COURT: B is received.

(Defendants' Exhibit B was received and marked in evidence.)

Q. Now, according to this report, Doctor, did you conclude that Mr. Rojas had suffered fractured ribs as a result of the accident?

A. Yes.

Q. First question I have about that is, as you testified here earlier today, that the x-ray films actually revealed, what, ten, 12 fractures?

A. No. I said that this chart's summary indicated the left 5th, 6th and 7th fractures, but the actual x-ray reports from the hospital revealed much more fractures, approximately ten.

Q. Did you review the films in connection with making that report?

A. No, I have not had the films when I did this report.

MR. McELFISH: (Referring).

(Short Pause.)

A. (Referring) Yes, I did review the films.

At the last paragraph it says “I first reviewed the films,” yes.

Q. If you personally reviewed the films back when you made the report in January of 1996, wouldn't you have seen the same rib fractures that you have testified about, ten 12 fractures?

A. Rib fractures are very hard to locate on X ray. The big and obvious, you see them. If they are small and covered by the angle of the lungs, you don't see them.

Q. So what you're basically telling me is that you looked at the films back then, and you only saw a couple of fractures. And when you looked again, you saw ten or 12; is that correct?

A. Even today, still, I see only the ones that I have indicated on the left side, 5th, 6th and 7th. I don't see the other ones.

Q. How do you know they are there?

A. The hospital x-ray reports indicated those other fractures.

Q. But you don't know they are there; you haven't seen them on the films; is that correct?

A. No, I can't see those on the film.

Q. How can the hospital doctor or the radiologist see that on the film if you can't?

A. He concentrates his entire time reviewing X rays.

Q. So you're saying he knows what to look for?

A. More so than I do, yes.

Q. You also conclude in this report that Mr. Rojas has limited breathing capacity as a result of the pneumothorax.

A. I didn't say he has limited capacity, but a limited chest expansion capacity. There's a difference between the two.

Q. What do you base that on?

A. The subjective and objective evaluation of the patient's -- what he tells you and what I find on my physical examination.

Q. What are the objective -- what were the objective tests and evaluations you gave Mr. Rojas to come to this conclusion?

A. You cannot come to a conclusion of residual title volume deficit on a clinical examination. That's why you refer to the -- Dr. Miller for that specific test, which turned out to be normal, as expected.

Q. You mean Dr. Miller, the one he first saw last week?

A. Yes.

Q. Other than clinically examining Mr. Rojas, did you perform any objective tests on Mr. Rojas yourself?

A. Other than the physical examination, no.

Q. Did you take X rays?

A. I did not, no.

Q. Why not?

A. Dr. Miller did.

Q. Why didn't you take X rays back in July of 1996?

A. It was advised to him that he should have repeat X rays and spirometry. He took that advice down the road. He didn't take it immediately because he had no money, no funds, to pay for those tests.

Q. When you say “down the road,” again, you mean last week; right?

A. Yes, correct.

Q. A year and a half later?

A. That's right.

Q. Now, when you based your conclusions in your report on the x-ray films, you're talking about the ones that came from Hartford Memorial Hospital or maybe the ones that came from Nassau County?

A. Those.

Q. From Hartford Memorial Hospital; correct?

A. I believe so, yes.

Q. Now, at the time of your examination, wasn't that two months after the accident?

A. Yes.

Q. Are you aware that the discharge summary in the hospital record says that the X rays showed that the lungs are essentially resolved, I believe was the phraseology? Are you aware of that?

A. The post-X rays, yes. The atelectasis improved.

Q. Yes or no; that's all I want to know.

A. The answer is yes, it did improve.

Q. Don't you think that if you examined Mr. Rojas two months later, when it appeared from the x-ray reports that he might be improving, that you would want to take an X ray to find out exactly how injured Mr. Rojas is at that time and place? Don't you think you'd want to do that, Doctor?

A. Of course.

Q. Why didn't you do that?

A. It was my job as a physician to recommend. I can't force a patient to go for any specific test. That was recommended --

Q. Why didn't you refer him out to a radiologist at that time?

A. I did. I did. He chose to wait, or he had no funds, or he had nobody to take him anyplace. I have no idea. You ask the patient.

Q. Well, Doctor, you're on the stand right now, so I'm going to ask you.

Where in your report does it say that you recommended that Mr. Rojas undergo further X rays in order to determine whether or not he's improved or he's still injured or whatever it is that you thought was wrong with him is still there?

A. (Referring) I left it off with a sentence, “Continued periodic medical supervision and treatments are indicated.” That's the way I left it off.

Q. What does that mean?

A. That means just what it says.

MR. McELFISH: Can he say that again?

MR. BITTERMAN: Objection, your Honor.

MR. McELFISH: I'm sorry, I didn't get it.

THE COURT: We have to speak one at a time, gentlemen.

Q. Dr. Guy, can you repeat your answer to that question?

MR. BITTERMAN: Objection, your Honor. It's been asked and answered.

THE COURT: I believe it's been answered.

MR. McELFISH: Okay.

Q. Can you tell us what that means, Dr. Guy?

A. That means that the patient needs a continued care. He has not finished with his care.

Q. And by “care,” you actually meant that he needed an X ray; right?

A. That's one of the things that he needed. Continued breathing exercises as indicated, chest X rays, pulmonary function tests.

Q. If you thought that Mr. Rojas really needed these things, why didn't you just say so in your report?

A. The way I left it off was “continued treatments and medical supervision is indicated.” That's the way I left it off. I don't know why I specifically didn't leave it in or out. That particular phrase means he still needs treatment and care.

Q. But you felt he needed an X ray at that time. Based on your examination, you felt that he needed it?

A. You asked the question five times. The answer is, for the fifth time, the patient needed a chest X ray and a pulmonary function test.

Q. Were you paid by Mr. Rojas when you examined him in January of 1996?

A. I don't take care of the billing department.

I have no idea who paid or didn't pay. I don't know if there's an outstanding bill or not at present.

Q. Was Mr. Rojas a referral from his attorney?

A. No, Mr. Rojas -- I asked him who referred him to me, and he told me one of his family members who goes up and down my office every day.

Q. Are you sure about that?

A. That's what he told me.

Q. Do you know that Mr. Bitterman told my doctor that it was a referral? Do you know that?

MR. BITTERMAN: Objection.

MS. GUASTAFERRI: Objection.

MR. BITTERMAN: Your Honor, I would like to approach on that.

THE COURT: This is not an appropriate question.

Come up.

(Discussion off the record.)

MR. McELFISH: I'll withdraw the question.

Q. When you reviewed the X rays in preparation for your January 1996 report, how did you physically get them in your hands? Did Mr. Bitterman bring them or did Mr. Rojas bring them or something else?

A. I believe Mr. Rojas brought them with him.

Q. And these are the X rays right here?

A. I don't remember specifically from a year ago if those specifically are the X rays. I believe they are the X rays.

Q. Let me ask you this: Do you know any radiologists that would have examined -- withdrawn.

Do you know any radiologist that you could have referred Mr. Rojas to that would have taken an X ray for free or on a lien?

MR. BITTERMAN: Objection.

THE COURT: We have been over it sufficiently.

Q. Mr. -- Dr. Guy, are you familiar that Mr. Rojas was treated at Nassau County Hospital?

A. Yes.

Q. Did you refer the patient back to Nassau County Hospital for X rays?

A. I don't refer a patient to any place. I gave him a slip. I told him to go. He goes wherever he wants to, to Nassau County or any radiology place of his choice.

Q. Are you aware that Nassau County treats patients who don't have money?

MR. BITTERMAN: Objection, your Honor.

MR. McELFISH: Your Honor, the testimony in this trial has been that plaintiff didn't get treatment because he didn't have any money.

I want to show through Mr. Guy's (sic) testimony --

THE COURT: That's not something that he can testify about.

MR. McELFISH: Am I entitled to ask him if he referred the witness to Nassau County for X rays?

THE COURT: I think he can answer that, and we can then move on.

MR. McELFISH: Yes, sir.

THE COURT: I think the answer has been that he made no specific recommendation. He simply noted he needs further medical supervision.

Q. Let me back up for a second, Doctor.

In the part of the record where you said “continued supervision and treatment,” okay, what other kind of treatment do you think that Mr. Rojas needed based on the injuries you found in your examination?

A. Just what it says in my report: breathing exercises to strengthen his diaphragm muscles, the intercostal muscles and the other chest muscles.

Q. Were there any other modalities that you could have ordered, you know, through physical rehabilitation that would have been beneficial for Mr. Rojas?

A. Not that I know of.

Q. What other types of treatments are available in your -- or modalities are available in your specialty that would be able to help the condition that Mr. Rojas has?

A. Just what I told you, breathing exercises and strengthening exercises to the muscles involved in breathing.

Q. Doctor, let me ask you this: In the worst case of a fractured rib, is the appropriate modality a thoracic brace?

A. Why would you give a thoracic brace? Could you please explain that to me?

Q. I'm asking you, is it or isn't it; yes or no?

A. In the initial fracture site, where the fracture has not healed, yes, you want to give him an elastic brace so that with the lung expansion he doesn't make the edges displace further and cause further harm.

Q. But you didn't recommend that in this case, did you?

A. I did not. I wanted to strengthen -- --

Q. Thank you, Doctor.

You said in your report that plaintiff should have recovered -- something to that effect -- within two to three months.

A. No, that's not the --

MR. BITTERMAN: Objection, your Honor. That's not what the report says. Counsel is testifying now, your Honor.

THE COURT: The witness is looking at the report.

THE WITNESS: (Referring)

A. I said he will continue to remain disabled for at least, at least, another two and a half to three and a half months.

Q. I note from your report there that you referred to a prior lung injury.

Is that a typo, or is that a misunderstanding, or did the plaintiff actually have a prior lung injury, too?

A. I'm referring to this accident. Because of a prior injury to the lung, scarring to the lung tissue is expected.

Q. When you say “prior,” you're talking about the injury he sustained in the bus accident?

A. Yes.

Q. Your report also states that if Mr. Rojas were exposed to dirt or dust, that could cause adverse breathing effects; is that correct?

A. That's correct.

Q. Isn't that true with anybody?

A. Yes, but more so in a person who has --

Q. Yes or no; that's all I want to know.

A. I'm trying to answer.

Q. I don't want you to explain; just answer the question yes or no.

A. The answer is yes, more so with this patient.

Q. You testified on direct that you have testified in court in these kinds of cases before; is that correct?

A. In court, period, not in these kinds of cases. I have testified in courts, period. There have been many different types of cases, spinal cord injury, people that have been -- all kinds of injuries.

Q. Is your fee $4,000 every time you testify in court?

A. My fee is $3,000 for half a day of testimony and a thousand dollars for pretrial preparation and consultation.

Q. You charge that every time you testify in court?

A. Not every time. Sometimes I don't charge a fee at all. I'm asked to come under subpoena, where you get no fee.

Q. But when you testify voluntarily, you charge a fee; is that correct?

A. Yes.

Q. Can you tell me, Doctor, in 1997, what percentage of your income you earned through testifying in court? Can you tell me that?

A. A very small percentage of my income. My income is derived from many sources, medical and nonmedical.

Q. You testified earlier that over the years you probably testified in approximately 45 to 50 cases.

MR. BITTERMAN: Objection, your Honor.

Q. Is that correct?

A. No, it's not correct. I testified 40 to 45 times, give or take a few.

Q. And during what time frame?

A. From 19 -- from the time I was licensed, 1985; 12-year span.

Q. If I told you the number was 51 times, would that ring a bell?

A. Fifty-one times based on what, a jury verdict search? Several of those cases that are reported have been settled, have not been any testimony. So that might be incorrect. Forty-five to 51 is close enough. It doesn't matter one way or the other.

Q. Can you tell me in the bulk of those cases what types of injuries you testified about?

A. Spinal cord injury, head trauma, comatose, disk herniations, multiple gunshot wounds, radiculopathies, head trauma -- these are the ones I remember. There has been all kinds of injuries.

Q. If I said the bulk of these cases involved back, bulging disk and disk herniation, would that be a fair statement?

A. That's what a physiatrist treats, mostly.

Q. Is it fair to say that you don't concentrate your testimony, and probably not your treatment, on people who have sustained pulmonary, cardiopulmonary, injury? Would that be a fair statement?

A. I have had patients with cardiopulmonary problems as well.

Q. The question is, you don't spend the majority of your practice treating people with cardiopulmonary injuries?

A. That's correct.

Q. You indicated in this report back in January of 1996 that plaintiff is a nonsmoker; right?

A. Yes.

Q. Who told you that?

A. (Referring) The patient.

Q. Because you speak Spanish and you got the medical history directly from him; correct?

A. That's usually the way you get the medical history, by talking to the patient.

Q. Are you aware that plaintiff testified in court that he smokes?

MR. BITTERMAN: Objection, your Honor.

THE COURT: Yes.

MR. BITTERMAN: Your Honor, I would like to approach.

THE COURT: Very well.

(Discussion off the record.)

MR. McELFISH: Doctor, I thank you for your testimony. I have no further questions.

THE WITNESS: You are welcome.

THE COURT: Any brief redirect?

REDIRECT EXAMINATION

BY MR. BITTERMAN:

Q. Dr. Guy, it has come to our attention today that there are some rib fractures that you found from a source other than reviewing the X rays.

Can you tell us what that was?

A. Yes. The Hartford Memorial Hospital records; specifically, the hospital x-ray reports dated 11/28/95, 11/25/95, 11/29/95. Basically, they are all the hospital x-ray reports.

Q. And is that all part of Defendants' Exhibit A, the Hartford Memorial Hospital record?

A. I don't know what Defendants' Exhibit A is.

Q. Is that part of the Hartford Memorial Hospital record?

A. Yes, it is.

MR. BITTERMAN: Thank you very much, Doctor.

I have no further questions for the witness.

THE COURT: Any question on that question?

MR. McELFISH: No, your Honor.

THE COURT: Thank you, Doctor.

You're excused.

(Witness Excused.)

THE COURT: Members of the jury, we have concluded with the testimony for today.

We will come back on Monday at 9:30, and we will finish the case. And you will have the case sometime on Monday. Plan your affairs next week accordingly.

One last time, please don't discuss the matter among yourselves. There's other evidence to come. So please keep an open mind on all these matters.

See you back here Monday morning at 9:30.

Thank you.

(The jury was taken from the courtroom by the uniformed court officer.)

THE COURT: See you Monday.

(The Court stood adjourned in this matter until September 29, 1997, at 9:30 a.m.)

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