SUPREME COURT OF THE STATE OF NEW YORK

BRONX COUNTY: CIVIL TERM: PART TT-22

----------X

JOSEPH ZADRA,

Plaintiff, INDEX NO. 15070/95

-against-

METRO-NORTH COMMUTER RAILROAD,

Defendant. TRIAL

----------X

October 19, 1999

851 Grand Concourse
Bronx, New York

B E F O R E:

THE HONORABLE LUCINDO SUAREZ,
Justice

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

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New York, NY 10170
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New York, New York 10271-10079
BY: JAMES M. WOOLSEY III, ESQ.

PAMELA ROSS
OFFICIAL COURT REPORTER

THE COURT: Bring them out.

(Whereupon, the jurors enter the courtroom.)

THE COURT OFFICER: All rise, jury entering.

(Whereupon, the jurors enter the courtroom.)

THE COURT OFFICER: Trial Term 22, Bronx Supreme Court, now back in session. The Honorable Lucindo Suarez presiding.

THE COURT: Please be seated.

Mr. Maxwell, are you ready?

MR. MAXWELL: Yes Judge.

Plaintiff calls Dr. Ali Guy to the stand.

(Whereupon, the witness takes the stand.)

D R. A L I G U Y,

was duly sworn and proceeded to testify as follows:

THE COURT OFFICER: Tell us your name, spell your name and tell us your business address.

THE WITNESS: My name is Dr. Ali Guy, A L I, last name G U Y, my office address is 7 Grammercy Park, New York, New York 10003.

THE COURT: You may inquire, Mr. Maxwell.

MR. MAXWELL: Thank you, Judge.

DIRECT EXAMINATION

BY MR. MAXWELL:

Q Good morning.

A Good morning.

Q Doctor, are you licensed to practice medicine in the state of New York?

A Yes.

Q How long have you been licensed?

A Since 1985.

Q Doctor, could you briefly tell the jury about your educational background.

A Yes. My undergraduate, I went to Queens College. Medical School I went to the University of Northeast Dominican Republic, I graduated in June of 1981.

Thereafter I did three separate residencies. I did my first residency in the field

of internal medicine at Mt. Sinai School of Medicine, Mt. Sinai Medical Center, for a period of 18 months. Then I did one year general surgery at Cabrini Medical Center. Then I did three years physical medicine and rehabilitation at Mt. Sinai School of Medicine, Mt. Sinai Medical Center, period of three years, in physical medicine rehabilitation.

I'm board certified in the field of physical medicine and rehabilitation. I'm the director of the Department of Rehab Medicine at Maimonides Medical Center in Brooklyn, New York, where my duties are to be in charge of all the inpatient and outpatient rehabilitation services, conduct teaching rounds to the medical students, the residents, orthopedic residents, to prepare them for the boards in the physical medicine and rehabilitation field, give teaching to the Touro Medical College PA students and physical therapy students, and to conduct quality assurance conferences.

I'm also the director of the neuromuscular equipment clinic at New York Joint Disease Orthopedic Institute, New York City. I'm also a clinical instructor for the residents from N.Y.U. Medical

Center at the Hospital for Joint Diseases.

Q How do you become a clinical instructor?

A First you have to be board certified, you have to pass a credentials committee, you have to possess the knowledge and ability to teach, and then you get approved by the committee and then you're on probation for approximately one year. If your duties and your teaching is good you're asked to continue, if not you're asked to withdraw.

Q Doctor, do you have a specialty in your medical profession?

A Yes.

Q What is that?

A Physical medicine and rehabilitation known as physiatry, not psychiatry or podiatry, but physiatry.

Q Can you tell us briefly what the field of physical medicine rehabilitation is all about, what does it entail?

A It's a medical specialty that was founded shortly after WW 2 by Dr. Howard Rusk, namely the Rusk Institute at N.Y.U. is named after him.

It deals with the holistic picture of traumatic injuries from head to toe; problems with

the neck, problems with the back, problems with the cardiac pulmonary, muscular-skeletal disorders, neurological disorders.

A physiatrist has training and are considered the experts in disability and impairments of the injuries and our job is to rehabilitate an injured patient to bring him to the optimal level of care prior to their pre-injured state.

We use orthopedics, neurology, principals of internal medicine, general surgery, kinetheseology, the study of motion, we use physical therapy.

There's a great deal of overlap between what we do and what an orthopedic surgeon and neurologists do, the difference is how we differ. We try to avoid surgery. We don't zoom in only on the bony structures.

We deal with the whole body from head to toe including the muscles, the nervous system, the internal systems as well as the bony systems as well.

How we differ from a neurologist, a neurologist concentrates more on central neurology, neurology of the brain and central nervous system. A

physiatrist concentrates more on the peripheral neurology of the nerves to the hands, arms, legs and nerves that come off the spinal cord.

So again there's a lot of similarities and overlaps and some basic differences and we all cross refer patients to one another.

Q Doctor, you indicated your field deals with traumatic injuries and disability evaluations. In that field are you required to testify in court from time to time?

A Yes.

Q Incidentally, Doctor, are you compensated for the time you spend in court?

A Yes.

Q What are you being compensated?

A My fee is 3,000 half a day of testimony and 1,000 for pretrial prep, a total of 4,000 for half-a-day.

Q In your entire career have you been qualified as an expert in court before?

A Yes.

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A Yes, I have.

Q Approximately how many times over your career?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

Q You can answer.

A In my 14 year career as a physician approximately 80 times. Could be slightly more or less, approximately 80 times.

MR. WOOLSEY: I had trouble hearing the number.

THE WITNESS: Approximately 80 times, slightly more, slightly less.

MR. WOOLSEY: 88 or 80?

THE WITNESS: 80, 80.

Q Doctor, who do you testify for?

A Mostly for the patients that I treat. I do independent medical examinations, I do both sides, but the majority is for my patients.

Q What percent of your practice involves treating patients?

A The vast majority, 90 percent, and out of that 90 percent 30 percent is devoted to teaching.

MR. MAXWELL: At this time I would like to offer Dr. Guy as an expert in the

field of physical medicine rehabilitation.

MR. WOOLSEY: Could I have a brief voir dire?

THE COURT: You may.

MR. WOOLSEY: Doctor, you're not an orthopedist?

THE WITNESS: No.

MR. WOOLSEY: You're not a neurologist?

THE WITNESS: No.

MR. WOOLSEY: You're not an orthopedic surgeon?

THE WITNESS: No.

MR. WOOLSEY: You're not a neurological surgeon?

THE WITNESS: I'm not.

MR. WOOLSEY: No objection, limited to the area.

THE COURT: So qualified.

Q Doctor, did there come a time my office asked you to do an evaluation of Mr. Zadra?

A Yes.

Q You have a report in front of you?

A I do.

Q Is that the narrative report that you created for us in response to out request?

A Yes.

Q Doctor, what do you do when you see a patient for an evaluation of their disability?

A I take a history, I examine them, I review all past pertinent records, surgical reports, operative reports, hospital records, et cetera.

Q Doctor, can you tell me did you receive a history from Mr. Zadra and what was that history?

A That he was 34 years of age when I saw him, he was well built, on 11/2, 1994 when he was working on a job as a welder for Metro-North he had a heavy steel beam weighing approximately 1,000 to 2,000 pounds fall, hit him in the upper back.

He was dazed. He hit his head, he did not lose consciousness. He injured his neck and back. His knee slammed in the ground. He injured his left knee.

He was taken to Lincoln Hospital. He was sent there for approximately 10 hours. He had some initial X-rays taken then he went to his private medical doctor, Dr. Clarke, who then referred him to an orthopedic surgeon, Dr. Morales.

He had X-rays taken of the injured parts, they revealed no fractures. He had an MRI of his left knee. The initial MRI showed a tear, a partial tear of the posterior cruciate ligament, a large amount of effusion, which is defined as a collection of fluid inside the closed cavity, it's usually from either the arthritic process, inflammation or trauma, and the patient finally underwent arthroscopic surgery, and at the time of the surgery they found he had a partial ACL tear and of course the partial tear of the posterior cruciate ligament.

He had open knee surgery by Dr. Miraldo who performed an open knee surgery and correction of the tear of the ligament and he had another procedure done later for debridement of the patella.

He had approximately three procedures to the left knee. He had MRI of the lower back. There were numerous, numerous --

Q Let me stop you there. You spoke about the knee. In your review of the medical records did you examine Mr. Zadra's knee?

A Yes.

Q Can you tell the jury what your examination consisted of and what if any findings were

significant?

A There was a 7 centimeter scar over the patella with a positive patella grind test and crepitation.

What that means, when you press on the kneecap and the patient is actively extending the knee you feel a grind, and you feel grinding crepitation and the patient feel a tremendous amount of pain.

That indicates there's some sort of abnormality inside the knee joint with reference to the patella, which is the kneecap, and the surgical scar indicates there was surgery done underneath.

The muscle power was, is diminished to two grades weaker. Normally it's five over five, then five minus over five, then four plus over five. In his case it was four over five, that's two grades weaker than normal.

Q Doctor, you mentioned patella grind. In laymen's terms what is that?

MR. WOOLSEY: Asked and answered.

THE COURT: I'll allow it.

A The ways it's done, I'll show on my own knee, you have the patient's knee flexed, doctor puts

his hand over the patella, he extends the knee, then presses and grinds on it and you feel crepitation, which is the crackeling sound which indicates there's patella mal-alignment and trauma or problems with the underneath surface of the kneecap. That's basically what it is.

Q This was during the examination you did in 1998, correct?

A Yes.

Q Doctor, can you tell the jury, you mentioned a tear to the PCL and ACL. What happens to the human knee when those ligaments are torn?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A Basically we have four ligaments to the knee; the anterior cruciate ligament, the posterior cruciate ligament, the lateral collateral ligament and the medial collateral ligament.

If one structure is torn you put additional stress on the other ones that have not yet been torn and if one is partially torn you keep putting additional stress on the one that's partially torn.

It's like having a big weight hanging from the ceiling on a rope that's partially torn. As you

keep on adding stress to that rope that partial tear will become a full tear. You don't wait for that full tear to occur, you correct it surgically.

So to answer your question it puts stress on the other structures that have not yet been torn and puts increased stress on the structures that are already partially torn.

Q Doctor, in your disability evaluation is it important for you to understand the type of surgeries a person has undergone before you examine them?

A Yes.

MR. WOOLSEY: Objection, leading.

THE COURT: Overruled.

Q Why is that?

A Because first of all an anterior cruciate ligament tear is a very serious injury because that controls knee extension and the posterior cruciate ligament controls knee flexion and stability. The anterior along with the posterior controls forward slipping and backward slipping.

If you don't have these two structures intact as you walk and as you went to break abruptly you will have instability. The femur, the long bone will push out of its socket and rip right through the

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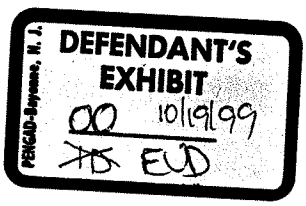

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GUY ~~ERAU~~ A.L.
~~153-03 14 AVE~~
~~FLUSHING NY~~

MATRIC DATE 2/74
HIGH SCHOOL BAYSIDE H
ADM AV 85.9 RANK 79.9
FEE 1 H

ADMISSION INFORMATION

Admitted on basis of High School record unless otherwise indicated.

- ☐ College Record
- ☐ Committee Action
- ☐ BHE Program
- ☐ Special Program

	Placement	Special Assignment
Engl.		

STATUS OF STUDENT

Honors

Major

* see BACK of card

Dropped for failure to do satisfactory work ☐

EXPLANATION OF GRADES & SYMBOLS:
The scale of passing grades ranges from A+ (highest) to D. F—Failure, P—Passed, S—Passed, X—No Credit, Inc.—Incomplete, WD—Withdrew without failure, WDF—Withdrew with failure, Abs.—Absent from final examination, J—Withdrew without permission equivalent to failure. A normal credit load is 16 credits per semester. A credit unit is normally one class hour requiring two hours of preparation—or 2 or 3 laboratory hours; 128 credits are required for graduation.
Each semester is 15 weeks. Each period is 50 minutes long.

COURSE NO.		DESCRIPTION	GRADE	CREDIT
SPRING 1974		110 091 46 4571		
MATH	3	CALC & ANAL GEOM	C-	4.0
ECON	1	INTRODUCT ECON 1	A-	3.0
ENGL	1	COMP RDG IN LIT	C	3.0
CHEM	6	INTRODUC CHEM	B	3.0
QC CR 13.0 QP 98.0 AVG 2.512 13.0				
SUM SESS 1974		110 091 46 4571		
FREN	1	ELEM FRENCH 1	B+	4.0
QC CR 17.0 QP 138.0 AVG 2.705 17.0				
FALL 1974		210 091 46 4571		
FREN	2	ELEM FRENCH 2	C-	4.0
CHEM	7	INTRODUC CHEM	C	4.0
PSY	1	GENERAL PSYCH	A+	4.0
MATH	5	CALCULUS	WP	0.0
QC CR 29.0 QP 234.0 AVG 2.689 29.0				
SPRING 1975		310 091 46 4571		
CHEM	8	INTRO COLL CHEM	C-	4.0
BIOL	1	GENERAL BIOLOGY	WP	0.0
SPAN	1	ELEM SPANISH 1	B	4.0
MATH	32	CALCULUS	C	2.0
QC CR ~~40.0~~ 39 QP ~~304.0~~ 302.0 AVG 2.533 2.581 ~~40.0~~ 41.0				
FALL 1975		310 091 46 4571		
MATH	33	CALCULUS	WP	0.0
ACCT	30	INT THRY & PRAC 1	D	3.0
ANTH	1	INTRO CULT ANTHRO	P	3.0
BIOL	1	GENERAL BIOLOGY	D	3.0
SPAN	2	ELEM SPANISH 2	B	4.0
QC CR 49.0 QP ~~352.0~~ 356.0 AVG ~~2.394~~ 2.421 ~~53.0~~				
SPRING 1976		410 091 46 4571		
BIOL	2	GENERAL BIOLOGY	C-	5.0
MATH	33	CALCULUS	F	0.0
PHYS	1	GENERAL PHYSICS	D	4.0
QC CR 61.0 QP 393.0 AVG 2.147 ~~62.0~~ 61				
SUMMER 1976		410 091 46 4571		
HECO	51	THE FAM AS CONS	A	3.0
QC CR 64.0 QP 429.0 AVG 2.234 ~~65.0~~ 64				
FALL 1976		510 091 46 4571		
BIOL	26	EMBRYOLOGY	WP	0.0
ARAB	1	ELEM ARABIC	A-	4.0
CHEM	51	ORGANIC CHEM 1	F	0.0
QC CR 73.0 QP 473.0 AVG 2.159 69.0				

COURSE NO.		DESCRIPTION	GRADE	CREDIT
SPRING 1977		610 091 46 4571		
ENGL	60	EXPOS WRITING	A-	3.0
CHEM	51	ORGANIC CHEM 1	D	5.0
PHIL	15	MORAL & SOC PHILO	A-	3.0
SOC	1	GEN INTRC TO SOC	B ~~ABS~~	3.0
PHYS E	2	GENERAL PHYSICS	WP	0.0
QC CR ~~84.0~~ 87.0 QP ~~554.0~~ 581.0 AVG ~~2.198~~ 2.226 ~~80.0~~ 83				
FALL 1977		610 091 46 4571		
LEAVE OF ABSENCE				
QC CR 87.0 QP 581.0 AVG 2.226 83.0				

DEFENDANT'S EXHIBIT
PP EUD
10/19/99
PERSKIE-Bayonne, N. J.

DEGREE AWARDED Date

OCT 29 1999

ASSISTANT DIRECTOR
OFFICE OF THE REGISTRAR

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kneecap.

So the type of surgery is very important so you know what the prognosis for the future is or what the future holds for the patient and how it will affect the other structures of the knee joint.

Q Does the surgery itself, Doctor, is that important regardless of what the underlying injury is, the surgery itself, the procedure, is that important to understand?

A Yes. A closed injury is not as devastating as an opened knee injury. Once you disrupt the normal integrity of a closed joint cavity the future rehabilitation is much longer and atrophy, shrinkage of the muscles to the surrounding structures is higher and it has more of a disability than a closed knee injury by way of a microscopic arthroscopic surgery.

Q Doctor, did you review any diagnostic films concerning Mr. Zadra's knee injury?

A Yes.

Q What did those films and reports indicate?

MR. WOOLSEY: Objection to the form, and also there's no time frame reference.

THE COURT: Rephrase.

Q Doctor, what if any films or reports of Mr. Zadra's knee did you review and when did you review them?

A The MRI reports of the knee done in 1994 that showed the partial PCL tear and the large joint diffusion. There was a subsequent MRI and there was another recent MRI in 1999 which showed the surgical procedure --

MR. WOOLSEY: Objection. Testifying to documents not in evidence.

THE COURT: Ask your question, Mr. Maxwell.

Q The 1999 MRI, did you review the report and rely on the report of that 1999 MRI of his left knee?

A Yes.

Q Can you tell me what, if anything, did you find significant from that MRI report?

A It shows there's a chronic partial tear of the same posterior cruciate ligament and it shows evidence of traumatic arthritis setting in by way of thinning of the cartilage and the ligaments inside the knee joint.

Q You mentioned traumatic arthritis. What is that?

A A condition that happens to an area after it gets injured. We have a natural aging arthritis called osteoarthritis, and traumatic arthritis, which means that the normal natural aging arthritis will now be accelerated rapidly as a result of trauma to the area.

Q At the time you examined Mr. Zadra did he make any complaints regarding his left knee?

A Yes.

Q What were those?

A Pain in the left knee and instability.

Q Are those consistent with the injuries that you found through the medical records in your examination?

A Yes.

Q Doctor, do you have an opinion with a reasonable degree of medical certainty as to what was the cause of Mr. Zadra's left knee injuries as you described it today?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A I do have an opinion.

Q What's that opinion?

A It was caused by the accident of 11/2/94.

Q Do you have an opinion about whether those injuries are permanent to a reasonable degree of medical certainty?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A Yes, I do have an opinion.

Q What is the opinion?

A Yes, they are permanent for very good reason.

Q Why is that?

A First of all, the partial tear of the posterior cruciate ligament is still present on that repeat MRI done five years later, that has not gone away.

Once you injure a ligament even when you repair it with surgery then it undergoes certain changes. It becomes fibrosed and scarred.

Once you have scar tissue of a ligament it becomes shrivelled up where it starts to shorten. Once it starts to shorten you have adhesion, spider cobwebs, adhesions start to form in the knee joint. That's what leads to the traumatic arthritis and accelerates it.

As a result you have pain, collection of

fluid inside the knee joint in a way for the joint to protect itself from getting re-injured and the pain, stiffness, traumatic arthritis cycle continues.

Q With respect to Mr. Zadra's left knee do you have an opinion with a reasonable degree of medical certainty whether that injury or the condition of that knee will get worse over time?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A The answer is yes, it will get worse over time because you still have a partially torn ligament inside that knee joint despite as I said five years after that.

The partial tear will put increased stress on the other structures and by putting increased on the other structures it's just inevitable.

If you have a tight rope which is partially torn, you keep adding weight to it, common sense eventually it will break.

When you have a patella grind test the patella must be perfectly aligned --

MR. WOOLSEY: Objection. Beyond the scope, not responsive to the question.

THE COURT: Overruled.

A You have the patella. This must be sitting perfectly aligned in its proper patella groove which is right here.

If you have a patella grind test it means the undersurface of the kneecap which is supposed to be smooth becomes uneven and rough. As a result you get the crepitation sound that you get when you extended and flex the knee, that's the sound.

Also when the patella is not properly aligned in its knee joint you get mal-tracking. As a result you have increased friction. This part of the knee starts to wear out faster.

It's analogous to having a patio door; if the groove is perfectly straight, if the path is perfectly lubricated it opens and closes perfectly smoothly, but if the groove is bent and/or if there's a lot of dirt and gravel it will not open and close properly, you'll have a lot of friction, you'll hear the squeaking sound.

That's the same thing with this patella grind test. It wears out fast and unusually.

Q When you say it wears out fast, in medical terms what process are you referring to?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A The deterioration or the degeneration of the knee joint.

Q Is such degeneration that painful?

A Yes.

Q Why is that?

A Because the structures are not properly aligned. Once the patella goes out of its place, goes too much to the sides, too much to the outer part it starts to wear out rapidly and this will put more pull and stress on the muscles above and below it and also to the structures below it and to the sides of it. There's a fiber that covers the kneecap called the retinacula. Those fibers will be pulled abnormally; that is painful.

Q Based on what you're talking about Mr. Zadra's left knee do you have an opinion with a reasonable degree of medical certainty whether Mr. Zadra will have pain the rest of his life in that knee?

A Yes, because the traumatic arthritis process starts and continues, it does not stop. We all know there is no cure for arthritis, there are treatments for it but no cure and the treatment at

best is symptomatic, just takes care of the pain and stiffness temporarily.

Q Incidentally, the changes you saw, the degeneration you indicated in the 1999 MRI of his left knee, were those consistent with a normal degenerative change in a 35 year old man?

A No.

Q Why is that?

A Those were consistent with an abnormal joint that has been traumatized before. As I indicated, again, once you injure a structure and once you disrupt the normal integrity of a closed knee joint cavity which is a major weight bearing joint that area starts to undergo rapid traumatic arthritis, which is a natural aging process which is accelerated, and the hallmarking is pain, stiffness, mal-tracking, joint space narrowing until eventually this joint space will become so narrowed that actually bone will be hitting bone and that's when it's inevitable, you have to have knee replacement.

Q Doctor, you mentioned, just to backtrack, you were talking about this degeneration in the knee is a sign of trauma. When does that degeneration show up; after the trauma, immediately after the

trauma or a time period?

A No, it's never immediately after trauma. It usually takes, depending on the patient's age and what he does and how fit he was before he was injured, it can vary from months to years. If the patient is younger it will happen in months, if the patient is older it will happen over years.

Q Doctor, you indicated something about a knee replacement surgery. Do you have an opinion with a reasonable degree of medical certainty as to what if any medical treatment Mr. Zadra will require to his left knee in the future?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A Yes.

Q What is that?

A He will eventually require a total knee replacement because as these structures start to wear out rapidly there's no more arthroscopic procedure you can do. Physical surgery won't work, you have to actually replace the injured structures with new parts and that is called a total knee replacement.

It's a Titanium material, the same material we use in spaceships.

Q Doctor, do you work with people with total knee replacements?

A Yes.

Q Doctor, do you know how long a total knee replacement lasts?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A Yes, I do know.

Q Doctor, what is your opinion as to how long they last with a reasonable degree of medical certainty?

A They vary from patient to patient depending on what he does on a daily routine. In some people it lasts longer, some less. On the average it lasts approximately 10 to 19 years.

MR. WOOLSEY: May we approach, Your Honor?

THE COURT: You may.

(Whereupon, an off-the-record discussion was held at the bench.)

THE COURT: You may continue, Mr. Maxwell.

Q Doctor, in addition to Mr. Zadra's left knee did you evaluate any other parts of his body?

A Yes.

Q What were those?

A His neck and back.

Q When you say his back, what portion of his back?

A Entire back; upper back, mid back, lower back.

Q Doctor, can you tell the jury, explain what you found the injuries to Mr. Zadra's lower back to be?

A He had diffused tenderness, which means the whole area, upper, middle and lower, there was diffused spasm. Spasm is defined as a prolonged involuntary contraction of a muscle fiber, involuntary meaning the patient has no control.

Normally when you touch a muscle that's normal it's soft to the touch. A muscle that's in spasm becomes very hard. As a result the fibers shorten, as a result stiffness sets in, as a result you lose range of motion, and Mr. Zadra, his lower back showed diffused tenderness, diffused spasm, decreased range of motion in backward bending, which is extension, and there were numerous trigger points which are areas of pinpoint tenderness, a palpable

nodule caused by trauma.

When a muscle gets injured you get a microscopic bleeding in the muscle fibers. It then heals with permanent scarring which forms these taught bands, clumps of muscles together like a little marble, and that indicates muscle degeneration, muscle ischemia, muscle damage.

If you have two or more trigger points in two more areas you classify the condition as traumatic myofacial pain syndrome.

Q Doctor, did you review any medical records or diagnostic films or reports with respect to Mr. Zadra's lower back?

A Yes.

Q What did you find from reviewing those reports?

A That he had an L4-L5 disc herniation and L5-S1 disc bulge.

Q I have here marked some MRI films and also some illustrations. Would it assist you in using either of these illustrations in explaining what you referred to as the herniation or the bulging to the jury?

A Yes.

MR. WOOLSEY: Note my objection on the record as previously stated.

THE COURT: Doctor, look at those charts for a moment.

MR. MAXWELL: Referring to Plaintiff's Exhibits 38 and 39 for identification.

THE COURT: And you see some graphic representations of what appears to be discs?

THE WITNESS: Yes.

THE COURT: You also see some narrative words or other words referring to the pictures?

THE WITNESS: Yes, Your Honor.

THE COURT: Do you need those words at all in your testimony?

THE WITNESS: Yes, I use them.

THE COURT: No, do you need them in order -- are you going to be using those words?

THE WITNESS: Some of them, yes. All of them, no.

THE COURT: Okay.

MR. MAXWELL: With the Court's permission, if he can use Plaintiff's 38 and 39.

THE COURT: He may.

MR. MAXWELL: May he step down and use the easel?

THE COURT: Yes.

Q Doctor, if you can explain, referring to, I believe that's Plaintiff's 38?

A Yes, it is.

Q Can you tell the jury what we're describing as the injuries to Mr. Zadra, you indicated a herniation at L4-L5 and a bulge at L5-S1?

A Yes. May I be allowed to use that easel?

MR. WOOLSEY: May I see it?

MR. MAXWELL: For demonstrative purposes, sure.

MR. WOOLSEY: No objection. I would like to have it marked when we get finished.

A In the spine we have three segments: The neck, known as the cervical region, the mid back, known as the thoracic spine, and we have the lower back, known as the lumbar spine.

The cervical region has 7 vertebrae. Each vertebrae in each nerve root or each disc is classified according to its anatomic location.

For example, if I say C3-C4 it means the space between the third and fourth cervical vertebrae. If I say L4-L5 it means the space between the 4th and 5th lumbar vertebrae.

Now, in this spine each of the vertebra is separated with a disc. A disc is analogous to a jelly donut. It has two parts; the outside cartilage known as the annulus fibrosis, and the inside. This is the outside known as the annulus fibrosis.

We look at the disc two ways; sideways, the sagittal view, and we look at the sections or the salami view.

So a disc has two parts. The outer portion, the annulus fibrosis, has approximately 100 rings. This is again fibro cartilage.

Once it is torn, once it is herniated, which means complete tear, it does not have the ability to repair itself.

Now, behind the vertebrae we have the spinal canal where the spinal cord travels from high up in the neck all the way down to the lumbar

region.

The spinal cord ends at L1-L2, it continues with branches of nerve endings. We have nerve endings on the right and left sides.

Each nerve root has a motor branch and a sensory branch. The motor branch controls movement, the sensory branch controls sensation of pain.

All the nerves that go to your arms come off the nerve roots in the neck. All the nerves that go to your legs come off the nerve roots in the lower back, so if you get a shooting pain in the leg or area it indicates its origin is in the lower back, and a physician must know from which part of the body it correlates to, which specific nerve root.

For example, the bicep is supplied by the nerve roots between the 5th and 6th nerve root, C5-C6, the buttocks, the calf is L5-S1.

We have three abnormal conditions to a disc: The mildest form is a disc bulge, next we have a disc protrusion, and finally a disc herniation, the most severe. Herniation and extrusion are the same or synonomous a disc bulge is a partial tear. A disc protrusion is a complete tear of all the annulus fibrosis but the disc material has not yet leaked

past the disc margin, in a herniation it has.

Now, once you have a disc bulge what happens? A disc bulge is seen like so and from the side view it's shown as so. Out of the 100 rings you may have maybe five or ten fibers torn.

It's similar to a dam. Suppose you have a crack in the dam. That dam doesn't break immediately, the pressure builds up, builds up, builds up, acids building up more and more, fibers continue to tear until eventually the dam ruptures and you get a full herniation. Herniation means a complete tear.

Now, what happens when have you a complete tear inside of a disc?

MR. WOOLSEY: Objection, Your Honor, this is a narrative response. There's no question for at least ten minutes.

THE COURT: Mr. Maxwell --

Q When a disc herniates, Doctor, as you found the herniation at L4-L5, what happens inside the human body when a disc herniates, and if you can use Plaintiff's Exhibit 39 to illustrate your explanation please do so.

A In this diagram what we're looking at is an

axial view or salami view of a disc. Make believe this bone is removed and you are looking at the disc. This is the spinous process and this is the disc and these are the nerve roots.

Once a disc completely herniates you have a complete tear --

Q Doctor, I'm sorry, I'm not sure every one can see. Can you just move it up a little?

(Witness complying.)

Q Go ahead, Doctor.

A Once a disc completely herniates, completely rips or tears, you have a microscopic bleeding which happens at the periphery or the end portion.

The outer one-third of the annulus fibrosis, the fiber cartilage or the doughy portion of the jelly donut, has sensory fibers known as nociciptors. These are tiny branches of nerve endings which comes off the major sinuvertebral nerve which comes off the nerve root, so once these are torn or disrupted that causes pain and this causes irritation to the surrounding muscles, that forms spasm and stiffness.

Also when you have a completely torn disc

you have a release of certain chemicals which once they're released they cause pain and inflammation to the nerve root which is right behind it.

These chemicals are prostaglandins, nitric oxide, phospholipases, metalloproteins and other inflammatory substances such as bradykinin, leukotrienes, and these are all inflammatory substances which irritate the nerve root.

Once it's irritated or damaged you get shooting pain down the leg into the buttock or calf and it can cause loss of sensation to the muscles which correlates to this nerve root.

In this case Mr. Zadra complained of shooting pain in the left buttock area and he had loss of sensation in his left calf. The left calf correlates to fibers from the L4-L5 and everything correlates together.

Q Doctor, you indicated Mr. Zadra had a decreased sensation in the left calf. That was based on what?

A On physical examination.

Q What physically did you do?

A I asked him to close his eyes. I had the blunt end of a paper clip, touched him in different

parts of his arm to make sure he had normal sensation, touched the thighs, asked if there was any difference, he said it was the same. When I went to the calf there was decreased sensation in the left calf versus the right calf.

Q Doctor, referring to Joe Zadra's injuries themselves, is there any consequence of a herniation to the levels above a herniation?

MR. WOOLSEY: Objection. Leading, improper form.

THE COURT: Overruled.

A Is there any risk you said?

Q No, is there any consequence, or let me ask it this way, what if anything happens to the levels above or below a herniated disc?

A Once you have instability at a level the levels above it or below it are vulnerable to recurring injuries.

The foundation of the human spine is L5-S1, that's where the discs end. If you have a big skyscraper, if the foundation is strong when winds come the building usually stays properly erect and the higher you go up the buildings on top it still remains erect, but if your foundation is weak any

little storm that comes can topple the building.

Same thing with the human spine, every level is kept in a perfect alignment. For example, the neck is concave depending which way you look at it, mid back is convex and the lower back is concave, everything is in proper alinement.

So if the foundation is torn and is unstable and the level above it is torn and unstable the rest is common sense; the patient will develop that trouble, the recurring injuries should he get another accident. It will be like a domino effect.

Q You said a couple of times if you have instability at a level or a level is unstable. When you refer to unstable what are you saying?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A The function of a disc is to provide stability, to provide as a shock absorber. Also there's a water content inside the disc which allows us to bend forwards and backwards. If we did not have that water content we could not bend, as we would go forwards and backwards we would have a much less range of motion.

So when a disc herniates that water content

in the disc comes out, the disc shrivels up and once a disc shrivels up you have osteophytes which start to form.

THE COURT: What's your next question.

Q Doctor, do you have an opinion with a reasonable degree of medical certainty whether or not Joe Zadra has the instability you're talking about?

A He does.

MR. WOOLSEY: Objection.

THE COURT: Overruled.

Q Where does he have it?

A At L4-L5 and L5-S1.

Q If you can take a seat I would like to take you through some film.

A Yes.

Q Doctor, I have here some MRI films of Mr. Zadra that are in evidence. Could you refer to those and explain to the jury the injuries to Mr. Zadra.

A Can I put this here?

MR. MAXWELL: Can we move it a little closer, Judge?

THE COURT: Yes.

A These are the MRI films of the patient. It has the patient's name, Joe Zadra, a date it was

taken, July 8, 1996, and it has the location it was taken, Phelps MRI. That's a test that detects damage to the soft tissues, the discs, the spinal cord and nerve roots.

What we're looking at here is an MRI of the lumbar spine. This is the sacrum or tailbone, this is L5, this is L4, L3, L2, L1.

Once we go to the L4-L5 level we see on the sagittal view or the side view, you see a disc coming all the way out and hitting the structure which is right behind it. This is the thecal sack or nerve root.

Q What level is that?

A L4-L5, and at L5-S1 we see a bulge coming all the way out to past the midline where it's not supposed to be. The boundary of the disc is right here, this is past the boundary of the disc.

Q In reviewing the records did you review an MRI from 1995 of Mr. Zadra's lumbar spine?

A Yes.

Q Were those findings any different from the MRI you are looking at today?

A Yes, it showed bulges.

Q What if any significance is there that the

'95 back MRI showed bulging and the 1996 MRI showed a herniation?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A It shows the progression. As I indicated earlier the crack in the dam, the pressure builds and builds.

As I showed you in the first diagram you have a bulge, a partial tear, then more tear until you have a complete tear.

Same thing happens with a disc herniation, it goes from a bulging to protrusion to full herniation.

Q Assume there's testimony that Mr. Zadra complained of low back pain after the accident in November of '94 but then in August of 1995 he complained of low back pain which radiated into his left buttock. Is that significant regarding your evaluation?

A If initially there was no radiation it implied there was not yet any nerve root damage. If you have radiation it implies nerve root damage and if you don't have radiation it implies there's usually no root damage.

So if he complained of radicular pain in the buttock area that means this probably herniated and was hitting the nerve root behind it.

Q Is it significant he didn't complain of that radiation until approximately nine months after the accident?

MR. WOOLSEY: Objection.

THE COURT: What's your objection?

MR. WOOLSEY: To the form. There's no foundation for the Doctor to give the opinion.

THE COURT: Rephrase.

Q Doctor, what if any significance is there that Mr. Zadra did not complain of pain radiating into the left buttock until approximately nine months after the accident?

MR. WOOLSEY: Asked and answered.

THE COURT: Overruled.

A There was no nerve root damage yet.

Q Does it mean there was an intervening injury between the accident and that MRI?

A No. It shows the progression of the normal course of this injury.

MR. WOOLSEY: Move to strike the

nonresponsive portion.

THE COURT: Overruled.

Q Is there a medical way to determine whether or not a herniation is old or new?

A Yes.

Q What is that?

A If a herniation is old you'd expect to see some osteophytes around it which are, if I may, these are osteophytes, bone strips, and you see evidence of disc degeneration, significant loss of height compared to the other discs. None was detected in the earlier films.

Q You mean the MRI of '95 and the MRI of '96?

A Yes.

Q Did you review an MRI film of Mr. Zadra's lower back in 1999?

A Yes.

Q What was significant or different from the prior MRI films?

A It showed, the disc herniations were no longer shown because as I indicated once a disc herniates it starts to shrivel up, the water content leaks out and the thickness of the size of the disc becomes small, it no longer shows itself sticking

out. It's like a turtle holding his head under the shell. It's still torn, but it does not show up on a repeat MRI.

Also as a result you have the arthritic process that starts. In the most recent MRI it shows facet arthritis at L4, L4-L5. The facets are these joints which control bending forward and backwards. It showed evidence of traumatic arthritis.

Q Doctor, I apologize, I think I said the 1999, I meant to say the September '98 MRI. You indicated that showed low back arthritis?

A Facet arthritis.

THE COURT: Mr. Woolsey, if you have an objection you must state it loudly so I can hear it.

MR. WOOLSEY: Objection. Asked and answered.

THE COURT: Sustained.

Q Doctor, do you have within a reasonable degree of medical certainty, do you have an opinion with a reasonable degree of medical certainty as to what is the cause of the facet arthritis that you saw in the '98 MRI film?

A The traumatic arthritis I spoke about

earlier. The traumatic arthritis affects all the different structures around the disc and/or the joint.

It affects the actual disc space, the facets, by sclerosing and causing irregular surface. As a result you have loss of proper contact with two facets and they don't glide normally going forwards and backwards.

Q Doctor, do you have an opinion with a reasonable degree of medical certainty as to what was the competent producing cause of that process you described?

A Yes.

MR. WOOLSEY: Objection.

THE COURT: Overruled.

Q What is that?

A The accident of 11/94.

Q The other conditions you spoke of, the herniation and the bulge, do you have an opinion with a reasonable degree of medical certainty what was the cause of those injuries?

A Again, the accident of 11/2/94.

Q Do you have an opinion whether the conditions you spoke about, the low back, are

permanent, with a reasonable degree of medical certainty?

A In my opinion they are permanent for the reasons I explained earlier.

Q Doctor, the injuries we spoke of, do you have an opinion whether or not those injuries to Mr. Zadra's low back will get worse over time?

A Yes, they will, because the natural traumatic arthritis process doesn't stop, it continues, so as it progresses the condition gets worse.

Q The conditions you've seen in Mr. Zadra's spine on these films, Doctor, are those consistent, are those commonplace in a 35 year old male?

A They are not, no.

Q Do you have an opinion whether the condition you spoke about in Mr. Zadra's low back is painful?

A Yes, it is.

Q Is that opinion based on a reasonable degree of medical certainty?

A Yes.

Q Doctor, do you have an opinion with a reasonable degree of medical certainty whether Mr.

Zadra will experience pain in his low back and left buttock for the rest of his life?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

A He will have intermittent bouts of low back pain. The intensity will vary from time to time depending on the conditions of weather.

According to the laws of physics, cold contracts and heat expands. In cold weather it contracts and it's less painful. Humidity aggravates it.

It also depends on what he does. Prolonged sitting or sleeping the wrong way, lifting, pulling or pushing heavy things can aggravate it.

Q Do you have an opinion with a reasonable degree of medical certainty whether Mr. Zadra is more susceptible to further injury in the low back?

A Yes.

MR. WOOLSEY: Objection.

Q Why is that?

MR. WOOLSEY: Objection. Beyond the scope.

THE COURT: Approach, counsel.

(Whereupon, an off-the-record

discussion was held.)

THE COURT: Objection overruled.

Q Doctor, I ask you do you have an opinion about whether his injuries to the low back will get worse over time?

A Yes, they will.

Q Why is that?

A As I explained earlier, traumatic arthritis will set in, you'll have osteophytes that will start to form and get longer and longer like the nails on your fingertips. As they grow they will strike the neurophage where the nerve roots exit.

As a result this will cause further damage, irritation and/or compression to a nerve root that's already damaged adding insult to injury, so this will get progressively worse over time.

Q Do you have an opinion with a reasonable degree of medical certainty as to what if any future medical care Mr. Zadra will require to the low back?

A I do.

Q What is that opinion?

A Since the injury is permanent and since traumatic arthritis will set in and there's no cure for arthritis that condition will get worse, so you

need something to control the pain and spasm.

One way is physical therapy and/or antiinflammatory medicine. I estimate he will need about 20 to 30 physical therapy sessions per year.

Q What are the cost of those sessions?

A Approximately $100.

Q Will that continue for the remainder of his life?

A That's correct.

Q Are there any other medical treatments that Mr. Zadra will require in the future?

A He will need to be monitored by a medical doctor; it could be either an orthopedic surgeon or a physiatrist. That would be at least 8 to 10 times a year. The approximate cost for each visit is $100.

He will require medications; Advil, Motrin, over the counter medications or prescription medications. The approximate cost is about $500 to $1,500 a year.

He will need a total knee replacement and/or repeat arthroscopic surgery to the knee and the approximate cost for that is $20,000 and for arthroscopic surgery about $15,000.

Q Doctor, you can be seated.

In addition to the left knee and low back did you evaluate any other injuries of Mr. Zadra?

A Yes.

Q What were those?

A The cervical region, the neck.

Q Briefly can you tell the jury what you found his, what if any injuries you found him to have in the neck?

A There was diffused tenderness and spasm, range of motion was slightly diminished.

Q What did you find his injury to be to the neck?

A Based on his MRI it showed a disc bulge between the third and fourth vertebra and straightening of the normal cervical lordosis, which means the normal curvature instead of being curved was straight. That's from muscle spasm.

Q Do you have an opinion as to what caused the conditions and bulging that you found in his neck?

A The accident of 11/94.

Q That's based on a reasonable degree of medical certainty?

A Yes, and the fact that the MRI had loss of

lordosis indicating recent injury.

Q Do you have an opinion whether those conditions in the neck are permanent?

A Yes, they're permanent.

Q Did you evaluate another area of his body?

A Neck, back, left knee.

Q Did you evaluate his head?

A His head, it was normal.

Q Did you in reviewing your records, did you ascertain what injuries he suffered to his head?

A Yes.

Q What was that?

A He had a post concussion syndrome.

Q What is that?

A We have two types of injuries to the head; a closed head injury and an open head injury. An open head injury usually comes from a fracture, a break into the skull and the pressure is released and you get bleeding and/or parts of the brain may come out depending on the severity of the fracture.

Then we have the most common type which is a closed head injury which carry a poorer prognosis because the pressure is not able to be released, it shoots forward and backward and to different parts of

the brain.

The force of the head and neck going forward and backward destroy neurons and axons in the brain which determines what symptoms he has.

MR. WOOLSEY: Objection.

THE COURT: Next question.

Q Doctor, did Mr. Zadra make any complaints regarding his head during your examination?

A Headaches initially, headaches. That was it.

Q At the time of your evaluation did he complain of headaches?

A Yes.

Q Is that complaint consistent with the closed head injury you spoke of?

A Yes.

Q Do you have an opinion as to whether or not, as to what was the cause of the closed head injury and headaches?

A The accident of 11/94.

Q That's based on a reasonable degree of medical certainty?

A Yes.

Q The headaches he was experiencing when he

saw you in October of '98, do you have an opinion whether those are permanent?

A At this point anything that lasts for more than one year is considered permanent.

Q Incidentally, in everything you evaluated with Mr. Zadra did you find any prior history or medical history that was significant to any of the areas we spoke of?

A Significant, no.

Q Doctor, at the conclusion of when you evaluated all the parts of the body we spoke of today did you make a determination or disability impairment of Mr. Zadra?

A Yes.

MR. WOOLSEY: Objection.

THE COURT: What's your objection, Mr. Woolsey?

MR. WOOLSEY: There's no foundation for the witness to give this testimony.

THE COURT: Rephrase, Mr. Maxwell.

Q What if any opinion did you reach regarding Mr. Zadra's disability following your evaluation of all the parts of the body we spoke of?

MR. WOOLSEY: Objection.

THE COURT: Your objection is that he's the doctor who cannot make findings of disability?

MR. WOOLSEY: No, not on that basis. I'm objecting that the testimony is not being elicited in the form of a medical opinion which is what the doctor is here to present.

THE COURT: Mr. Maxwell, are you eliciting this in the form of a medical opinion?

MR. MAXWELL: Yes, Doctor. I mean yes, Judge.

THE COURT: Overruled.

Q You can answer the question.

A The patient has sustained a permanent partial disability. It's permanent in the sense this will never get better, it's partial in the sense it's not total; he can still work, he still has use of his arms and legs, but he has a partial permanent injury.

Q With Mr. Zadra's disability can he lift things or climb on occasion?

MR. WOOLSEY: Objection, beyond the scope of the expert disclosure.

THE COURT: Overruled.

A Yes, he can climb as long as he doesn't have to work while he's climbing and doesn't have to climb too much. A few steps he can climb. He can carry as long as the objects are not too heavy.

MR. MAXWELL: That's all I have.

Thank you, Doctor.

THE COURT: Short break.

(Whereupon, the jurors exit the courtroom.)

(Whereupon, a brief pause in the proceedings was held.)

THE COURT OFFICER: Jury entering.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Mr. Woolsey, you may proceed.

CROSS EXAMINATION

BY MR. WOOLSEY:

Q Good afternoon, Dr. Guy.

A Good afternoon.

Q My name is Jim Woolsey, I represent Metro-North Railroad.

We have not met, correct?

A I don't believe so.

Q Doctor, I'm going to be asking you a series of questions that can be answered with a yes or no answer. If at any time during the course of the question you feel you can't give me a yes or no answer please let me know before you begin to answer the question. Is that agreeable to you?

A Yes.

Q Fine. Now, Doctor, you told us you are being compensated for your testimony today, correct?

A Yes.

Q You are being paid $4,000 for your appearance here, correct?

A I believe I said 3,000 for half-a-day and 1,000 for pretrial prep, yes.

Q How much --

MR. WOOLSEY: Withdrawn.

Q Tell me the length of time involved in the pretrial preparation.

A One to two hours.

Q Did you meet with Mr. Maxwell, Mr. Collins or both?

A I spoke to them on the phone.

Q Was that the one to two hours?

A That was two separate occasions, it was approximately 45 minutes.

Q On the telephone on two occasions?

A Yes, and also reviewing my records and becoming familiar with the case.

Q Reviewing all materials you brought with you in that maroon colored folder, correct?

A Yes.

Q That's everything you looked at pertaining to this case, correct?

A Yes.

MR. WOOLSEY: Could we please mark that? I think it's Defendant's Exhibit --

THE COURT: Mr. Woolsey, do you wish to have his folder marked?

MR. WOOLSEY: Yes.

THE COURT: We'll deem it marked. Proceed.

Q Doctor, you indicated earlier that you've testified in court approximately 80 times, correct?

A Yes.

Q You've been practicing since 1985?

A Yes.

Q So in that 14 year period of time,

approximately 80 times, you gave testimony, correct?

A Yes.

Q And, Doctor, that involved coming to court and giving testimony, correct?

A Yes.

Q You have also given deposition testimony, correct?

A On some rare occasions, yes.

Q So in addition to the 80 times you've come to court to give deposition testimony how many depositions have you given?

A Very few.

Q Can you give me a number?

A I believe there were four depositions, two were under subpoena, so I received --

MR. WOOLSEY: Move to strike nonresponsive portion of the testimony.

THE COURT: Sustained.

Q So four depositions.

Doctor, in addition to the 80 times you testified in court and the 4 times you've given depositions you've also testified at Workers Compensation hearings, correct?

A Yes.

Q How many times have you appeared and given testimony at Workers Compensation hearings?

A I have no idea.

Q Would it be fair to say more times then you've appeared in court?

A No, generally much less.

Q Okay, so somewhere in the ballpark of 50 times, correct?

A On the average I testify approximately four times a year at Workmen's Compensation hearings.

Q Okay, over the course of the last 13 years, correct?

A No, because I've --

Q Doctor, just yes or no.

A I'm trying to explain.

Q Yes or no to the answer.

A I have been a Workmen's Comp rated doctor since 1990, so since 1990.

Q About four times, correct?

A That's correct.

Q That would be another 36 times, correct?

A Yes.

Q Doctor, do you also testify at Workmen's --

MR. WOOLSEY: Withdrawn.

Q Do you also testify at No Fault proceedings?

A Arbitrations?

Q Yes.

A Yes.

Q Can you tell us how many times you've testified at No Fault proceedings?

A Four, five times a year.

Q Again, somewhere in the ballpark of another 36 times?

A Correct.

Q So, Doctor, the total number of times you actually appeared and have given testimony rather than being 80 is closer to 160?

A If the arithmetic is correct, yes.

Q Now, Doctor, you indicated that on the occasions where you went to court you're compensated in the range of $4,000 each time, so for your testimony in court we're talking about something in the ballpark of $320,000 for testifying, correct? 4,000 times 80 would be $320,000, correct?

A Yes.

Q Now, Doctor, you said some of the depositions you were subpoenaed so you didn't get

paid your usual customary fee, but some you weren't, correct?

A Correct.

Q So you did get paid for some of the depositions, correct?

A Yes.

Q You're paid to go to the Worker's Comp hearings and testify, correct?

A $400 per session.

Q What about Not Fault arbitration?

A Depending on how long I'm there, sometimes 2,000, sometimes more, sometimes less, depending how long I'm there.

Q So it's about in the range of what you get for coming in court?

A Much less.

Q $2,000, sometimes more or less, correct?

A Yes.

Q Doctor, in addition to all this testimony you also prepare reports for attorneys, isn't that true?

A Yes.

Q In fact you did that in this case for the Collins law firm, correct?

A Yes.

Q That pertained to an examination and review of records you did on or about October 23, 1998, correct?

A Yes.

Q You tried to make that report as comprehensive as possible, correct?

A Yes.

Q You also were compensated for that report, correct?

A Yes.

Q You were also compensated for Mr. Zadra's appearance at your office and examination, isn't that correct?

A Yes.

Q The cost of the examination and report, how much was that?

A Whole thing, 550.

Q Now, just so we're clear about that, the 550 basically had him come to your office, do an examination of him then sat down, reviewed the materials in the folder, correct?

A I took his history, examined him, spot checked part of the past records. After he left I

dictated a report.

Q That was 550, correct?

A Yes.

Q How many examinations and reports do you do on a weekly basis for lawyers?

A Maybe 5 to 10, could be less or more.

Q So 5 to 10, let's pick a fair range. Would you agree on 7 as an average?

A Okay.

Q You've been doing reports over the course of time you've been practicing, correct?

A My earlier stages much less, now slightly more.

Q For the period of time from 1990 until today, the last nine years, would you agree on seven a week as average?

A Yes, but I don't charge for all the reports.

Q Doctor, just please remember the instruction I gave you, yes or no. If you can't answer yes or no tell me, I'll rephrase the question.

A That's fine.

Q About 7 reports a week for lawyers,

correct?

A I would say.

Q That would be approximately 350 to 360 reports per year, correct?

A Except I don't charge for every report.

MR. WOOLSEY: Move to strike the nonresponsive portion of the testimony.

THE COURT: Sustained.

Q Doctor, you do between 300 and 400 reports a year for lawyers, correct?

A Correct.

Q And, Doctor, you have been doing 300 to 400 reports for lawyers for the past nine years, correct?

A If your math is right, correct.

Q That would be some place between 2,700 to 3,600 reports for lawyers involved in litigation proceedings in the last 10 years, correct?

A Correct.

Q Now, Doctor, you've indicated that your office was at Grammercy Park, correct?

A Correct.

Q That's not the only office you have, is it?

A That's correct.

Q Doctor, you also have an office in Jericho

Long Island, correct?

A Correct.

Q In fact, the stationery of the report that was written for the Collins law firm is on the Mid-Island Physical Medicine and Rehabilitation, PC, stationery; isn't that true?

A That's correct.

Q Now, Doctor, the name of the business which has its offices in Grammercy Park is the Grammercy Park Physical and Rehabilitative Medicine Professional Corporation, correct?

A That's correct.

Q That's comprised of yourself and you also have there a doctor by the name of Lata Bhansay, first name Lata, last name B H A N S A Y; did I spell that correctly?

A No, B L A N S A L I.

Q And a registered physician's assistant, Mr. Persaud?

A Yes, he's now deceased.

Q Now, Doctor, the entity that is at the location in Jericho, Long Island, the name of that is Mid-Island, we just talked about that, right?

A Yes.

Q At that particular location in addition to yourself there's a Mr. or Ms. Yahudo?

A Dr. Yahudo, he's an MD, a physiatrist.

Q Also two physicians assistants, a Mr. Woo and Miss Weber, correct?

A Correct.

Q The examination you did on Mr. Zadra was done where?

A Mid-Island location, Jericho location.

Q So Mr. Zadra traveled from his home to Jericho, Long Island, to see you?

A Yes.

Q Doctor, included in the materials you've got there there's no correspondence between you and the Collins law firm, correct?

A No.

Q How did you know he was coming to see you?

A By telephone.

Q He called up and made arrangements?

A That's how it's usually done.

Q Doctor, those medical offices you're affiliated with, there are other offices you're affiliated with, true?

A I have one other office location in

Yonkers, I go there once a month.

Q What's the name of the facility?

A Hudson Valley Physical Medicine and Rehabilitation.

Q Now, Doctor, each one of these offices, the three different offices treats patients involved in litigation, true?

A Some have litigation, some don't.

Q You're saying some of the patients do and some don't but all three offices do have patients who are involved in litigation, correct?

A Yes.

Q Okay. You said you go to the one office once a month, correct?

A Yes.

Q So you're affiliated with another office in Yonkers treating patients involved in litigation, correct?

A Correct.

Q Do you derive income from that business?

A I do, not very much, but I do.

Q Could you please tell me what percentage of your business would you estimate is involved with the treatment of patients, individuals who are involved

in some form of litigation?

A Small percentage, exact number I can't tell you.

Q Less than 10 percent?

A More than 10 percent.

Q Less than 20 percent?

A Say between 20 and 30 percent approximately. I'm not 100 percent sure if that's the number, but approximately.

Q Somewhere in the ballpark of 20 to 30 percent, okay.

Now, Doctor, you know Daniel McCarthy, correct?

A I do.

Q You also know Jesse Zabel, correct?

A I do.

Q You know Fred Gold, correct?

A Yes.

Q You know Michael Flynn, correct?

A Yes.

Q You know Ira Morra, correct?

A The same office.

Q Mr. Flynn's office?

A Yes.

Q You know George Cahill and Charles Goetsch, correct?

A I know of them.

Q You know of them?

A Yes.

Q You've never met them personally?

A That's correct.

Q You also are familiar with Joseph Altier, correct?

A Who?

Q Joseph Altier, Phillip Vogel?

A Doesn't ring a bell.

Q The other individuals, Mr. McCarthy, Mr. Zabel, Mr. Gold, Mr. Flynn, Mr. Morra, Mr. Cahill, Mr. Goetsch, all are attorneys that specialize in suing railroads; isn't that right?

A I don't know what they specialize in but I do know I've treated some of their clients that were railroad workers.

Q You've not only treated some of those individuals but you prepared reports pertaining to them, isn't that true?

A Yes.

Q And you've also testified for those lawyers

in court, correct?

A Mr. McCarthy I don't believe I did.

Q Well, did you testify for Mr. Zabel?

A One or two occasions, yes.

Q You did testify for Mr. Flynn's office, correct?

A I don't remember if I testified for his office. I do not believe I did.

Q Sir, in addition to those attorneys other people have sent you clients, correct?

A Yes.

Q Tell us some of the other law firms that sent you clients besides the Collins law firm.

A No idea. Many different firms have sent me clients.

Q How about Kelner and Kelner?

A They have.

Q Now, Doctor, I'm also correct that in addition to getting patients sent to you by attorneys you also from time to time go out and solicit business from lawyers, correct?

A In the early stages of my career, yes, because very --

MR. WOOLSEY: Move to strike

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nonresponsive portion.

THE COURT: Mr. Woolsey, you are allowing the witness to testify beyond the yes or no and then arresting the answer halfway through. I'm going to declare that you have waived it.

Overruled.

Q Doctor, you wanted to say something.

A I said in the early stages of my career I did advertise, I did try to market my services, because very few people know what a physiatrist is, I always had to explain it, so in the early stages of my career yes, I have.

Q In addition to just doing that you've made presentations to lawyers about how to make medical conditions appear to be serious injuries, correct?

A No, I've been asked as a guest speaker --

MR. WOOLSEY: Move to strike the nonresponsive portions.

THE COURT: Sustained.

MR. WOOLSEY: Could you mark this, please?

Your Honor, at this time defendant moves Exhibit OO, which I've shown to

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counsel, in evidence.

THE COURT: Mr. Maxwell?

MR. MAXWELL: No objection.

THE COURT: Without objection.

(Whereupon, Defendant's Exhibit OO, was moved and received in evidence.)

MR. WOOLSEY: Your Honor, I brought an enlargement of that just to make life a little easier for every one.

THE COURT: Anything to make life a little easier.

MR. WOOLSEY: Hopefully make things go a little more quickly.

Q Now, Doctor, what we've marked as Defendants OO, which you have a copy of, that's a flyer for a presentation that you were involved in, right?

A Yes, I was a guest speaker.

Q You were a guest speaker. Well, let's just stop there for a second.

Doctor, that says "Every Attorney Must Attend" exclamation point, right?

A That's what it says.

MR. MAXWELL: Objection. It speaks

for itself, it's in evidence.

Q Doctor, it says, quote unquote, "How to prove that bulging and degenerative discs as serious injuries" isn't that what it says the subject matter of your presentation was?

A That's what it says.

Q Now, in addition to yourself there was a Dr. Berstein, correct?

A Yes.

Q Dr. Berstein is a neuroradiologist who specializes in interpreting films, correct?

A That is correct.

Q You're not a neuroradiologist, right?

A I'm not.

Q At the presentation that you did for a group of attorneys there was a neuroradiologist there to help explain, correct?

A He was the one that hosted it, it was his presentation.

Q Actually, Doctor, that's interesting. You're suggesting that this was Dr. Berstein's presentation?

A Yes, he sponsored this.

Q Isn't it true your name is top billing?

A My name is on the top, yes.

Q It's not in alphabetical order, is it?

A No.

Q No. Doctor, just out of curiosity, the attorneys this was sent out to, it was mailed out to different law firms, correct?

A I imagine, yes.

Q It says RSVP by November 24th with a telephone number, doesn't it?

A Yes.

Q Tell us what you the telephone number is.

A (914) 793-1824.

Q Who do you get if you call that number on the telephone?

A I have no idea. This number is no longer in existence.

Q It isn't?

A I don't believe it is.

Q Isn't it the working telephone number for the Hudson Valley office you just told us you're the business partner in?

A Yes.

Q Isn't that the telephone number?

A No.

Q So if we call that number --

A Try and call it.

Q I called this morning and I got an answering machine that indicated it was the Hudson Valley Medical Facility.

A My number is 394-1577.

Q That's your personal telephone number.

A I don't recognize that phone number.

Q Doctor, in addition to doing this presentation the attorneys were asked to come and spend a period of two and a half hours on Thursday from 6:30 to 9:00 PM -- I should give you the benefit of turning it a little so you can see it better -- they came for two-and-a-half hours, correct?

A Yes.

Q Complementary cocktails and horsdouvres were served, right?

A Yes.

Q Doctor, how much did the invitations, the complementary cocktails, the open bar and horsdouvres cost you guys?

A Cost me nothing, I didn't sponsor it.

Q Doctor, the subject of the presentation was how to prove bulging and degenerative discs as

serious injuries, correct?

A Yes.

Q One of the things you talked about when you were here testifying today was bulging discs, right?

A Yes.

Q Another thing you talked about was degenerative disc disease, right?

A Yes.

Q And you talked about the serious injuries, correct?

A Yes.

Q Now, Doctor, isn't it true that the presentation was intended to show lawyers how to go about trying to convince juries that those conditions, bulging disc, degenerative disc disease, were serious injuries to get them to award damages in cases?

A That was not my subject matter. My subject matter was simply talking about the role of a physiatrist in treating disc bulges.

Q So you just freed up on an evening in November to be able to be around for a couple of hours to volunteer your services to a group of attorneys, teach them how to go about proving cases,

right, Doctor?

A I'm asked many times to give lectures that --

MR. WOOLSEY: Move to strike as not responsive.

THE COURT: Let's move on, Mr. Woolsey.

Q Doctor, this is not the only such presentation that you have done, is it?

A No.

Q You've done many presentations like this over the years.

A When you say many, I have given many lectures to doctors and some to attorneys. On the average I do maybe one a year or two every year.

Q To lawyers?

A Whoever is the audience. I'm a guest speaker.

Q Doctor, isn't it true you've done more than one a year over the last 10 years for attorneys?

A Some years I've done none, some years I have done one, some I've done two.

Q Now, Doctor, as a consequence of these presentations lawyers have been impressed with your

efforts and sent you clients, correct?

A Some have, some haven't.

Q How many lawyers attended that presentation?

A I have no idea. Maybe 20, 25.

Q Do you know one way or the other?

A I don't know.

MR. WOOLSEY: Your Honor, I'll take that down.

Q Incidentally, when you were doing that presentation did you happen to have Plaintiff's Exhibit 38 and 39 with you?

A No.

Q Did you have a model with you?

A I may have had the small spine model.

Q Now, Doctor, just to change gears for a moment, you went to medical school outside the United States?

A Yes.

Q Why didn't you go to United States Medical School?

A I never applied. I came from a very poor family. My mother was working two jobs, my father was working two jobs. They were putting my brother

through medical school. I didn't have $75 an application to apply. I didn't have a perfect 4.0 index.

Q In fact, Doctor, your grades were pretty good, weren't they?

A They weren't 4.0.

Q How close were there they?

A 3.1, 3.2.

Q Now, Doctor, so that was a tough time to be able to get into school, right?

A Yes.

Q That contributed to your situation in terms of ability to apply to schools, the fact it was very competitive at that point in time, isn't that true?

A Yes.

Q Even somebody with a good 3.1, 3.0 average would have had difficulty getting into medical school here in the States?

A Yes.

Q You went to Bayside High School, correct?

A Yes.

Q Your Social Security number is 091-46-4571?

A Yes.

Q Doctor, you attended undergraduate school

in Queens College?

A Yes.

Q You would agree with me, the study of biology --

MR. WOOLSEY: Withdrawn.

Q In laymen's terms biology is the study of various organisms, correct?

A Yes.

Q That's a fundamental building block to a medical school education, correct?

A Yes.

Q The study of chemistry, that's various elements, how they interact with each other, and it's essential to proceed with a medical education, isn't that true?

A Yes.

Q You attended Queens College between January '74 and December of '77?

A Yes.

MR. WOOLSEY: Mark that as PP, please.

(Whereupon, Defendant's Exhibit PP, was moved and received in evidence.)

Q Doctor, I want to show you what has been

marked Defendant's Exhibit PP in evidence. That's your college transcript from Queens College, isn't it?

A This is 25 years old.

MR. WOOLSEY: Move to strike nonresponsive portion of the testimony.

A I'm not sure it is or it isn't.

Q It has your name and Social Security number on it and also indicates that you went to Bayside High School, all three things you just testified about, isn't that correct?

A That's what it says, yes.

Q It also had a certificate on the body that it came from the office of the registrar on September 29, 1999, doesn't it?

A That's what it says, yes.

Q Now, Doctor, let's just talk about this for a moment. Doctor, you just told us your grade point average in school was a 3.0, 3.1. In fact, when you left Queens College in the spring of 1997 you had a 2.26, isn't that right?

A That's because --

Q Just yes or no, isn't that what it indicates?

A Yes.

Q Now, Doctor, you also told us biology was a important part of a premed education to an understanding of medicine and preparation for medical education, didn't you?

A Yes.

Q The first time that you took general biology you withdraw passing in 1975, right?

A Right.

Q Then you took it again in the fall of '75 and got a D, right?

A Right.

Q Then, Doctor, you took general biology in the spring of 1976 and got a C minus, correct?

A Correct.

Q And also I think that ended your involvement with biology, but you also took chemistry, correct?

A Yes.

Q Initially you took chemistry in the spring of '74 and got a B, right?

A Yes.

Q You also took introductory chemistry, the second portion, and got a C in it, right?

A Right.

Q Then you also took organic chemistry. Isn't that like one of the courses you absolutely have to have to get in a medical school?

A Yes.

Q You failed it the first time you took it in 1976, right?

A Yes.

Q You then took it the following spring of 1977 and you got a D, correct?

A Yes.

Q Then the following term you withdrew from school, correct?

A Right.

Q And you decided to go to school elsewhere?

A Right, that was medical school.

Q Right. This was your premedical education?

A Yes.

Q Now, Doctor, so your grade point average was 2.26 and I guess when you testified earlier you just made a mistake about that, right?

A Going by memory from 25 years ago.

Q Right. Well, Doctor, you actually have given testimony --

THE COURT: Court stands in recess for lunch. Please be back at 2:15.

(Whereupon, the jurors exit the courtroom.)

(Whereupon, luncheon recess was held.)

A F T E R N O O N S E S S I O N.

(Whereupon, the witness takes the stand.)

(Whereupon, the jurors enter the courtroom.)

THE COURT: Mr. Woolsey, you may continue.

MR. WOOLSEY: Your Honor, with the Court's permission I would like to have the court stenographer read back the last question and answer.

(Whereupon, the requested portion was read back.)

CONTINUED CROSS EXAMINATION

BY MR. WOOLSEY:

Q Doctor, in fact you've given testimony concerning your schooling at Queens College before; isn't that true?

A I may have, I believe I did.

Dr. Guy - Plaintiff - Cross

Q Okay.

MR. WOOLSEY: May I approach the witness, Your Honor?

THE COURT: Show whatever it is you're going to show the witness to your adversaries first, please.

MR. MAXWELL: Excuse me.

Q Doctor, didn't you testify in a case, United States District Court for the Southern District of New York, Dominic Raspente against National Railroad Passenger Corporation a/k/a Amtrack, and John Springer, defendants?

A Is this the one that had the leg amputated partially?

MR. WOOLSEY: Move to strike as nonresponsive.

THE COURT: Sustained.

Q Doctor, could you please turn to the inside of this document, take a look at the very first page, page 2 inside. Isn't this a transcript of your testimony?

A I guess it is.

Q Were you retained by Mr. Goldstein, the plaintiff's attorney, in that case?

A Yes.

Q Okay. Mr. Goldstein works for the plaintiff's law firm of Fuchsberg and Fuchsberg, correct?

A Yes.

Q And you testified on March the 28th, 1996, before the Honorable Denny Chin, district Judge in the United States District Court in Manhattan, right?

A Yes.

Q Doctor, during the course of that trial you were cross examined by an attorney by the name of Ronald Joseph, correct?

A I don't remember him but that's what the record says.

Q Okay. Now, Doctor, were you asked the following questions and gave the following testimony beginning at page 48 line 9:

"QUESTION: The second medical school, you had much higher ability in doing your clinical rotations in New York. What is the reason that you didn't go to medical school in the United States?

ANSWER: I never applied. 1977 was during the time I was applying was the

toughest time to get into medical schools. Friends of mine with much higher scores, 3.8, 3.9, I did not have 5,000 to 15,000 to loose in applications

QUESTION: Did you have a 3.8 or 9?

ANSWER: No, but slightly below that."

Doctor, were you asked those questions and did you give those answers under sworn testimony before the United States District Court, Southern District of New York, March 28, 1996?

A If that's what it says that's what I said.

MR. WOOLSEY: Move to strike, nonresponsive.

THE COURT: Overruled.

Q Now, Doctor, --

MR. WOOLSEY: May I have that back, please? Thank you.

Q You indicated that your practice at this point is about 30 percent, 20 to 30 percent involved with litigation, correct?

A Approximately, rough estimate.

Q Rough estimate. Doctor, at this point in time the amount of your practice involved in litigation is about the same as it was in 1996,

correct?

A It's less because now I'm devoting more time in the hospital. I became a director of a major teaching hospital. My duties there are increasing more and more. We just acquired two other hospitals. I have more and more doctors to supervise, so it's more hospital work, less office work.

Q So the answer to the question that I asked you, Doctor, would have been no, correct?

A Yes.

Q Doctor, as of March of 1996 you would agree with me that about 35 to 45 percent of your practice involved litigation, isn't that true?

A May be true.

Q And your testimony at this point is you've just recently decreased it because of your increased teaching responsibilities and administrative responsibilities, correct?

A Plus additional patients I have to see at the hospital.

Q Now, Doctor, it would be fair to say you've probably examined or treated 100 patients who were Metro-North employees before you saw Mr. Zadra?

A Might be true.

Q It would also be fair to say, Doctor, you don't like Metro North very much, do you?

A That is not true. I use the Metro North train all the time.

Q Didn't you sue Metro-North?

A Because they didn't pay my bills.

MR. WOOLSEY: Move to strike as nonresponsive.

THE COURT: Sustained.

Q Isn't it truly you personally brought a lawsuit against Metro-North?

A Answer is yes, for very good reason.

MR. WOOLSEY: Move to strike, not responsive.

Q Just yes or no as I indicated earlier.

A Yes.

Q Thank you. And Doctor you've already told us you've testified a number of times against railroads. I'm going to go through a few things and see if any of this refreshes your memory about any of the people you treated.

Do the following names mean anything to you: Anthony Angelo, Wendy Banen, Michael Balsetti,

Michael Coleman, Miguel Colon, Fernando Correra, Richard Declara, George Dir, Patrick Dolan, Robert Emerson, Robert Fernandez, John Figueroa, Vincent Gurgino, Bruce Handel, Earl Halliman, Michael Howard, Ron Marolla, Scott Lowenthal, Steven Neville, Elsa Osorio, Barbara Peterson, Robert Potthart, James Pimm, John Redgrave, Anthony Roscoe, Eva Rivera, John Sharkey -- Shankey --

A No, it's right the first time, Sharkey.

Q Michael Short, Melvin Smith, George Stefenekis, Matthew Treasure, Joanne Viola and James Versiek.

Doctor, do you recognize all those names?

A Sure.

Q Those are all Metro-North employees you examined or treated, correct?

A Yes.

Q All 33 of those people, correct?

A Yes.

Q They were all patients of yours in the period of time between 1989 and 1993, isn't that true?

A Some are still my patients.

Q Doctor, each and every one of them had

claims against Metro-North, isn't that true?

A Yes.

Q So, Doctor, during that period of time, that four year period of time, you were seeing about eight Metro North employees a year as part of your practice, correct?

A Sometimes more, yes.

Q Doctor, that's continued up until today; isn't that true?

A No.

Q It's discontinued?

A Yes.

Q With your office in Long Island you also see Long Island Railroad employees, correct?

A That would be fair.

Q You see how many?

A In the last five years maybe two.

Q See Amtrack employees from time to time?

A I don't recall any Amtrack.

Q Well, do you recall Mr. Raspente, you testified in the case with him?

A Yes.

Q Now, Doctor, it would be fair to say the cost of medical care has gone up since 1996, correct?

A Since 1986.

MR. WOOLSEY: I'll withdraw the question.

Q The cost of medical care has gone up since 1993, correct?

A Yes, but unfortunately the reimbursement has gone down.

Q Well, Doctor, did you hear the question that I asked you? Wasn't the question that I asked you isn't it true the cost of medical care has gone up since 1993?

A I believe I answered your question correctly, the cost has gone up but the reimbursement rate has gone down.

Q Doctor, isn't it true with respect to those 33 Metro-North employees you treated in that four year period of time you billed for your treatment $325,000?

A If the arithmetic is correct that's what it is.

Q That sounds right?

A I have no idea if it's wrong or not correct, but it sounds correct.

Q Now, Doctor, you're familiar with an

Dr. Guy - Plaintiff - Cross

individual by the name of Vincent Monroe?

A Was he a patient? I'm not sure.

Q Does that name ring a bell?

A No.

MR. MAXWELL: May we approach, Judge?

THE COURT: You may.

(Whereupon, an off-the-record discussion was held at the bench.)

(Whereupon, Defendant's Exhibit QQ, was marked for identification.)

Q Does looking at what has been marked Defendant's Exhibit QQ for identification refresh your memory about Vincent Monroe?

A Just give me a second. Yes.

Q Okay. Doctor, Mr. Monroe was a patient of yours, right?

A Yes.

Q He worked for Amtrack, right?

A Yes.

Q In fact, he sued Amtrack, right?

A Yes.

Q And you prepared a report and assisted him with the litigation and were one of his expert

witnesses, weren't you?

A I was his treating doctor.

Q As his treating physician you prepared one of these narrative reports similar to the type you prepared for the Collins law firm, correct?

A Yes.

Q Now, I'm correct, Doctor, that your impression about Mr. Monroe pertaining to that litigation was that he needed additional medical care beyond what your treatment had been able to accomplish at the time you generated your report, correct?

A Yes.

Q Also you weren't very optimistic about his prognosis, were you?

A I said he could work but in a different occupation.

Q Doctor, thank you very much.

A You're welcome.

Q Now, Doctor, how about an individual by the name of Pasquale Mineo?

A If you let me look at my records I'll probably refresh my recollection. The name itself, no.

Dr. Guy - Plaintiff - Cross

MR. WOOLSEY: May I mark that as an exhibit and I'll mark two at the same time?

THE COURT: Show it to your adversary first, please.

(Whereupon, document was marked Defendant's Exhibit RR.)

(Whereupon, document was marked Defendant's Exhibit SS.)

Q Doctor, does looking at those documents refresh your recollection as to whether Mr. Fragale and Mr. Mineo were patients of yours?

A Yes.

Q Mr. Fragale had a lawsuit against Amtrack, correct?

A Railroad worker, I'm not sure. I'll assume you're correct.

Q What about Mr. Mineo, he also was a patient of yours, correct?

A Yes, he was an Amtrack worker.

Q He had a claim against Amtrack, correct?

A I believe so.

Q Can I have those back, please.

Dr. Guy, there have been individuals that

you felt had permanent disabilities who have returned to their old occupation, isn't that true?

A Many have returned to their former occupations.

Q One of the people that had that set of circumstances was Ernest Lee Walker; isn't that right?

A Yes.

Q In fact, Doctor, you went to court and testified that Mr. Walker was completely disabled from all employment, didn't you?

A At the time that I testified, yes.

Q Doctor, isn't it true you gave sworn testimony under oath in his trial that he was totally disabled from all employment for the rest of his life in any kind of employment, yes or no?

A I don't remember about any type of employment but I did testify he was totally disabled at the time. I remember this case, he was a very tall, skinny gentleman. He begged me to return him back to work because he had to provide for his family.

MR. WOOLSEY: Move to strike as not responsive.

Dr. Guy - Plaintiff - Cross

THE COURT: Overruled.

Q Doctor, please listen to the question I'm asking. In that case isn't it true that you gave testimony that Mr. Walker was totally disabled?

A I just said yes.

Q Isn't it true that at the time you gave that testimony you indicated that he was going to be totally disabled for the rest of his life?

A I may have said that.

Q Thank you.

Now, Doctor, isn't it also true that approximately four months after his lawsuit concluded you wrote a note to Metro-North and indicated to Metro-North's medical department that he could go back to work in his old job, isn't that true?

A Yes, for --

Q Just yes, thank you.

Isn't it true, sir, that Mr. Walker had shoulder and knee surgery, yes or no?

A I believe he did. I believe he also had a back problem.

MR. WOOLSEY: More to strike as not responsive.

THE COURT: Sustained.

Q With respect to this particular case involving Mr. Zadra, you examined him one time?

A Yes.

Q In October of 1998?

A That's correct.

Q You were not his treating physician, correct?

A That's correct.

Q He came to you through his attorneys?

A That's correct.

Q Doctor, you helped to treat Mr. Zadra, correct?

A Initially I thought I was going to be treating him.

Q In fact, in your report doesn't it indicate he was there for treatment?

A Yes.

Q There was no treatment rendered, correct?

A There was no treatment.

Q I think you may have indicated this before, you are not an orthopedist, correct?

A Correct.

Q Not an orthopedic surgeon, correct?

MR. MAXWELL: Objection Judge, we've

been over this.

MR. WOOLSEY: It's just foundation.

THE COURT: I'll allow it.

Q You are also not a neurologist or neurosurgeon, correct?

A That's correct.

Q Now, Doctor, you mentioned you had an affiliation with Cabrini Hospital, correct?

A Yes.

Q That's just a courtesy position, isn't it, you have courtesy admitting privileges?

A When I first started, but not now.

Q Doctor, you do not do knee surgery, correct?

A I do not do any surgery.

Q You were talking a little earlier about surgeries when Mr. Maxwell was asking you questions, correct?

A That's correct.

Q You talked about the type of surgery he had in the past, correct?

A Yes.

Q And the type of surgery he might need in the future, correct?

A That's correct.

Q You talked about maybe he might need an arthroscopic procedure for his knee, correct?

A I said total knee replacement as well.

Q I think actually what you said was total replacement or an arthroscopic procedure and you weren't sure, isn't that correct?

A That's correct.

Q Now, Doctor, I'm correct, since you don't do surgery you wouldn't be doing any of that treatment, right?

A I would not be doing the surgery, no.

Q And, Doctor, I take it you've never done an ACL reconstruction, correct?

A Personally, no. Assisted.

Q Personally?

A No. That's what I said.

Q You don't limit your practice to the treatment of knee injuries through orthopedic surgeons, do you?

A I do not.

Q Incidentally, at the offices you talked about you mentioned that there are, we established there were some physician's assistants that worked

there, correct?

A Yes.

Q Those physician's assistants see patients, correct?

A Yes.

Q I'm correct, Doctor, that they basically can do anything you can do, correct?

A Yes, that's correct.

Q When patients see physician's assistants you charge the same fee as if you see them, correct?

A That's correct, that's the law.

MR. WOOLSEY: Move to strike as not responsive.

THE COURT: Sustained.

Q Yes or know, the same fee is issued whether it is you or a physician's assistant that sees the patient, correct?

A That's correct.

Q Now, Doctor, you indicated that this file folder you have, which we have marked Defendants Exhibit -- we deemed marked as a defendant's exhibit earlier contained everything you had reviewed with respect to this case, correct?

A Yes.

Q Now, Doctor, there's no X-rays in that folder, correct?

A No.

Q Now, a little while ago, a couple of hours ago Mr. Maxwell put you on the witness stand and showed you some films. In fact he showed you these films here?

A Yes.

Q So, I'm correct that prior to walking in the courtroom you had not seen these films?

A I don't remember if I did or didn't.

Q Let's see if we can clear that up.

You told us before your report was very comprehensive, correct?

A Yes.

Q There's nothing in your report that indicates you ever saw these films, correct?

A That's correct.

Q You have no notes or records of any other kind other than those materials here today, correct?

A That's correct.

Q Nothing else?

A That's correct.

Q So we can then conclude as a consequence of

that that you never saw these films before you walked into the courtroom, correct?

A Again, I may have seen them from the time I first saw the patient or I may have seen it here for the first time, I have no independent recollection.

Q It's not as though Mr. Collins or Mr. Maxwell got the films and took them to you or gave them copies for you to look at, correct?

A When I first saw the patient I didn't have those films in my possession.

Q When you formed your impressions and opinions about this case you put them down in your report, correct?

A Yes.

Q You're here testifying --

MR. WOOLSEY: Withdrawn.

Q You are here testifying based upon the opinions you formed at that time and are reflected in your report, correct?

A Or any other questions you may ask.

Q I'm not asking you questions about your opinions at this point, I'm just asking you isn't it true you're giving opinions based on the review of the materials you had at the time you did your

report?

A Yes, for the most part, yes.

Q Since you did not and have no recollection of having seen these films you didn't have an opportunity to be able to review them and interpret them before you testified, right?

A I did review those before I testified.

Q Where?

A Here.

Q Where?

A Right here.

Q Right here in this courtroom?

A Yes.

Q So the first time you can remember looking at the films was standing in this courtroom looking at them within an hour or so before you got on the stand, right?

A As far as I remember, yes.

Q Thank you.

Doctor, before you came down to court today --

MR. WOOLSEY: Actually withdrawn.

Q Isn't it true, Doctor, that you testified in looking at the films of Mr. Zadra's lumbar spine

that there were certain findings you made, correct?

A Which, '96?

Q You looked at the '95 and '96 MRI of his lumbar spine, correct?

A Yes, but I believe I showed the '96.

Q Yes, but you apparently looked at the '95.

A I did, yes.

Q Now, Doctor, you gave opinions concerning what was on those films, correct?

A Yes.

Q And you indicated certain findings you felt were reflecting conditions that were caused by the accident in this case, correct?

A Yes.

Q Now, Doctor, before you came here today you knew you were going to be testifying, correct?

A Yes.

Q And Doctor you knew you were going to be compensated for your time being here, correct?

A Yes.

Q Yet, Doctor, the first time you ended up looking at any of the films in order to be able to take a look at what they actually showed concerning his physical condition was after you were already

here in court, correct?

A About the films --

Q Yes or no?

A I'm trying to answer your question.

Q Doctor, you already, you were here in court, you knew you were going to be paid, you knew you were going to be testifying, but the first time you looked at the films that you explained to the jury and told them about your findings based on the films was right before you got on the witness stand, correct?

A Based upon the films, yes.

Q If the films ever turned out to be any bit inconsistent with any of your opinions you wouldn't have been able to testify, right?

A I still had the radiologist report to go by.

Q Let's talk about that for a minute. So you indicated and provided certain testimony based on your review of the films here in court, the radiologist's reports, if you want to take a look at those we can take a look at those, isn't it true that the radiologist's reports from August 4, 1995 -- do you have a copy of that from radiology?

A Ask me the question, I believe I remember.

Q Isn't it true there's no indication of any disc herniation?

A That's correct.

Q There's no indication of any nerve root impingement of any kind?

A That's correct.

Q Nothing in the report that reflects any instability at all on Defendant's Exhibit II, correct?

A That's correct.

MR. MAXWELL: What's the date?

MR. WOOLSEY: August 4, 1995.

Q Now, sir, I take it you also have the MRI report from July 8, 1996, also of Mr. Zadra's lumbar sacral spine?

A Yes.

Q I'm correct, there's nothing in that report that indicates there was instability in the spine, is there?

A By those exact words, no.

Q Sir, there is no phrase or indication --

MR. WOOLSEY: Withdrawn.

Q The only notation that's on that report,

Doctor, as far as impression was "early diffuse degenerative disc disease with a small" -- I'll shorten it.

Isn't it true basically the only significant finding on that report was the finding of the disc herniation at L4-L5, correct?

A No, there was also L5-S1 disc bulge.

Q Isn't it true that degenerative disc disease of the lumbar or cervical spine can develop as a natural consequence of the aging process, yes or no?

A Depending on what age.

Q Now, Doctor, it's also true we have no MRI films of Mr. Zadra to predate the accident; is that correct?

A That's correct.

Q Doctor, you got the Lincoln Hospital records, correct?

A Yes.

Q You have those?

A I do.

Q At the time you did your narrative report on October 23, 1998, isn't it true you didn't make any comment at all about what the complaints were of

the plaintiff at the time he was admitted to the hospital based on the hospital record?

A That's correct.

Q Doctor, did you have that hospital record initially?

A I don't believe I did.

Q You didn't do a supplemental report talking about that, did you?

A No.

Q In fact, nowhere in the comprehensive report does it indicate anything at all about the weight of the object that struck him, correct?

A Not the weight. It says "27 foot bridge section."

Q That's the history he came in and gave that day, correct?

A Yes.

Q Doctor, I'm also correct that at the time you did your initial evaluation the only things you had available are the things you listed in your report, correct?

A Yes.

Q Could you tell us exactly what it is you were provided by the Collins law firm to look at in

this case?

A Past medical records from Dr. Harold Clarke.

Q Through what period of time?

A I don't have the period of time.

Q Okay, next.

A MRI reports of his left knee, cervical spine, lumbar spine, summaries of cervical reports from Phelps Memorial Hospital as well as other consultants at the hospital.

Q Doctor, with respect to materials you've got here with you today, I'm correct that the Collins law firm sent you things at a later date?

A Yes.

Q Where is the correspondence that came with it?

A I believe these were given to me by messenger, there was no correspondence.

Q Well, wait a second. Mr. Zadra made some type of a telephone call and came to your office in Long Island, correct?

A I believe so, yes.

Q Do you have a record one way or the other as to how he came to your office?

A We don't make those records. They make a phone call, speak to the secretaries, the secretaries schedule an appointment and I see the patients.

Q Now, you had materials when you did your initial report, correct?

A Yes.

Q You told us what they were, correct?

A Yes.

Q How did they get to your office?

A Sent to me by messenger from the Collins firm.

Q Did they come with a covering letter?

A They may have.

Q Where is it?

A I don't keep covering letters unless I feel it's part of a patient's past medical history. If a covering letter comes and says these are the records for you to review, that's it, I get rid of it.

Q You don't keep covering records from all the hundreds of lawyers that send you things?

A That's correct.

Q Now, Doctor, you were sent other materials to be able to include in the materials you got pertaining to this case, right, after that?

A Yes.

Q In fact, you were sent the September 28, 1998 MRI report from White Plains Radiology concerning his back and you were sent the April 28, 1999 MRI report from Phelps Magnetic Residence Center concerning his knee, correct?

A As well as other records from Lincoln Hospital.

Q When did you get them?

A About a week ago.

Q Well, Doctor, you were already scheduled to come in and testify at that point, right?

A The schedule didn't come until I believe Friday.

Q You were aware of the fact we were here picking a jury in this case two weeks ago?

A I was informed you would be picking a jury. When my presence would be needed was unknown.

Q So it could have been any time in the last couple of weeks?

A Right.

Q So you never saw the Lincoln Hospital records until about a week ago, right?

A That's correct.

Q And you never saw this MRI from April 28, 1999 about the knee, that's the most recent knee MRI, right?

A That's correct.

Q And you never saw the most recent MRI of the spine?

A That's correct.

Q But you knew you would be coming to court testifying and would get paid if you came, correct?

A Obviously if I come, yes. Nobody works for free including yourself.

MR. WOOLSEY: Move to strike the gratuitous comment.

THE COURT: Sustained.

Q Doctor, when the Collins law firm sent you those recent materials did they send you a letter?

MR. MAXWELL: Objection. We've been over this.

MR. WOOLSEY: No, we haven't.

THE COURT: Mr. Woolsey, let me do my job, thank you.

Overruled.

Q When you got the most recent stack of things to look at did they come with correspondence

from Mr. Collins' law firm?

A I don't know. All I know these were the records left for me.

Q Even this nice binder all tabbed?

A That is correct.

Q Tabs done by their law firm?

A Yes.

Q They were?

A Yes.

Q Well, where are the records sent to you to begin with?

A Probably mixed in there.

Q No, could you go through them and pick out the ones that you got, please. We know it's not the Lincoln Hospital records.

A They're Phelps Medical.

Q At this point in time did you put those things in that binder?

A I did not.

Q Who put them in the binder?

A Mr. Collins' firm.

Q When did they do that?

A I received this about a week ago. When they did it, ask them, I don't know.

Q If you got that material in a binder that came from their law firm about a week ago you'd agree with me at this point in time it would be rather difficult to be able to figure out whether or not anything was added or taken out of what was originally sent to you, correct?

A I guess by your reasoning that might be correct.

Q Suffice to say you don't have the materials that -- you don't have anything with a correspondence from their law firm for us to be able to compare to be able to make that judgment here in court today, correct?

A That's correct.

Q So when the Collins law firm made these arrangements to get you that binder they didn't prepare any copies of films, did they?

A I don't believe so.

Q Doctor, there's nothing in this that pertains in any way to your billing in this case, is there?

A No.

Q Where is that stuff?

A It's not part of past medical records,

that's part of the computer billing system, it's been paid for.

Q You've already been paid?

A For the report and review of records, yes.

Q Now, Doctor, but you didn't bring any of that material with you either, correct?

A It's not part of medical records.

Q Well actually, Doctor, I think you indicated earlier it was your impression that you had --

MR. WOOLSEY: Withdrawn. Pardon me.

Q You testified earlier, you did your examination, you reviewed the records and you did your report, correct?

A Yes.

Q Basically you said I sat down and dictated the whole thing, correct?

A Yes.

MR. WOOLSEY: Mark this for identification, please.

(Whereupon, Defendant's Exhibit TT, was marked for identification.)

Q Sir, the document which we marked as Defendant's Exhibit TT for identification, that's

your handwritten notes from the day Mr. Zadra came to your office, correct?

A Those are scrap notes, they're incomplete notes used for the purpose --

MR. WOOLSEY: Move to strike. Not responsive.

THE COURT: Sustained.

Q Doctor, that's your handwriting, isn't it?

A This is not my handwriting, it's the handwriting of my physician's assistant.

Q Oh. Which physician's assistant?

A I believe Kim Woo.

Q Kim Woo?

A Yes.

Q So we can agree, Doctor, at this point in time that this is a document which was prepared at your business office in Jericho, Long Island, correct?

A Yes.

Q And you maintain that record in the course of your business, correct?

A This is not a medical record.

Q Just listen to the question I'm asking please, sir. I apologize for interrupting you but I

would appreciate it if you listen to my questions.

An employee of your office made that handwriting, correct?

A Yes.

Q And that reflects the information that was taken down during the course of the examination that was performed, correct?

A Yes, part of it, not all of it.

Q Doctor, just yes or no.

A Yes.

Q And this is Mr. Woo's handwriting, correct?

A Yes.

Q Sir, isn't it true that Mr. Woo did the examination of Mr. Zadra at the time that you saw him?

A The two of us --

Q Doctor, whose handwriting is this, Mr. Woo's?

A I examined him, Mr. Woo writes it down.

Q Mr. Woo was there doing the writing?

A Yes.

Q Didn't Mr. Woo actually do the examination?

A I did the examination, Mr. Woo did the writing down.

Q Well, there's a portion at the bottom of the document that says "DX"?

A Yes, diagnosis.

Q And it's blank?

A Yes.

Q Also there's an opinion?

A That's correct.

Q That's blank?

A It's blank because --

Q Doctor, just yes or no, DX means diagnosis, it's blank, opinion blank, correct?

A Yes.

Q Doctor, did you do any type of handwritten draft of that report for the Collins law firm?

A No.

Q You didn't?

A This is part of the hand drafted handwritten notes.

Q Well, Doctor, yeah, except for one thing, the report that you have got has got a diagnosis, right?

A Yes.

Q It's also got an opinion, right?

A That's correct.

Q This information, the handwritten notes from your office, has none of that.

A That's correct. Would you like to know why?

MR. WOOLSEY: Your Honor, I didn't ask the doctor any questions, I didn't ask him to ask any questions.

If the Court would please instruct him to just listen and answer my questions.

Q Doctor, could you take a look in the folder that the Collins law firm provided for you. Could you turn to Dr. Medalo's records?

A Dr. Medalo?

Q Yes.

A Yes.

Q Contained in that set of records is Dr. Medalo's narrative report from May of 1999 contained in there, correct?

A I don't see that report here, I see January of '98.

Q Fine. How about Dr. Robbins' narrative report, is that any place in there?

A Oh, some reports are here, yes.

Q No, I'm asking for the narrative report Dr.

Robbins prepared, is that in there any place?

A I don't see a narrative report.

Q How about Dr. Clarke's narrative report?

A Don't see it.

Q Don't see it, okay. What's the last date of treatment records that you've got for Dr. Medalo? Just look to the very end of that section, I'll ask the same question the last date for Robbins and also the last date for Clarke.

A I see the last note is here. I'm not sure if it's '98 or '99, January 9, 1998, '99.

Q From who? That's from Dr. Medalo?

A Medalo.

Q We can agree there's a letter there of some type and it's from January of '98 or '99?

A That's correct.

Q If I told you it was January of '98 you wouldn't dispute that, right?

A How would I know? It's crossed over.

Q Fair point, you wouldn't know.

Take a look at Dr. Robbins, what's the note that you have got from Dr. Robbins?

A 5/4/98.

Q So a year-and-a-half ago, right?

A Yes.

Q What about Dr. Clarke?

A 12/20/96.

Q So about three years ago?

A Yes.

Q Okay. So when the Collins law firm got the medical records together to give to you to be able to review and bring with you to court the medical records range in terms of the last visit, it's anywhere from a year ago to three years ago, right?

A Yes.

Q Doctor, are you aware of the fact the patient saw Dr. Medalo as recently as this past spring, do you know one way or the other?

A I don't know.

Q You don't have any idea what's going on with his medical treatment at this point, do you?

A That's correct.

Q That's true with Dr. Medalo, Dr. Robbins, Dr. Clarke too, correct?

A Correct.

Q Doctor, you testified that it was your impression that Mr. Zadra had an arthritic condition in his knee, correct?

A Yes.

Q Doctor, did you review any films of his knee?

A I reviewed a report, no films.

Q That's not the question I asked.

A No films.

Q So you never have seen the November 1994 MRI of his knee, correct?

A That's correct.

Q Never saw the November 1995 MRI of his knee, correct?

A That's correct.

Q Never seen the April 28, 1999 MRI of his knee, correct?

A That's correct.

Q Isn't it true Dr. Medalo --

MR. WOOLSEY: Actually, withdrawn.

Q How many surgeries did Dr. Medalo do?

A I believe two.

Q Okay, one on December 4, 1995?

A I believe that's about right.

Q Doctor, are you aware of the fact the doctor came in and testified last week that during the course of that intraoperative examination he

inspected the articular cartilage of the left knee under an arthroscope and found no evidence that there was any degenerative change in that knee?

A As of 1995 I wouldn't disagree with you.

Q Are you aware of the fact that's what he testified to?

A No.

Q Are you aware of the fact on an arthroscopic examination in 1996 he found an identical finding a year-and-a-half after the accident, are you aware of that fact?

A I have the report, there was no mention of arthritis.

Q Right.

A Until the recent MRI.

Q I understand, Doctor.

MR. WOOLSEY: Move to strike the not responsive portion of the testimony.

Q Doctor, you haven't looked at that film from April 28, 1999, right?

A I have not looked at the film.

Q You are just going upon a narrative report that you were given about a week ago for the first time, right?

A No, I'm going by a radiology report signed by a radiologist.

Q Well, no, but it was a radiology report dated April 28, 1999, right? Take a look at the front page, that's right there?

A That's correct.

Q That wasn't in the binder, that was something else that was added in, right?

A That was given to me this morning.

Q This morning?

A Yes.

Q Wait a second, this morning, where were you given that?

A When we met in the library.

Q In the library?

A Yes.

Q You mean downstairs on the second floor of this building, first floor?

A Yes.

Q So the first time you saw that April 28, 1999, report was when you walked into the courthouse?

A Yes.

Q Well, Doctor, you knew where you were going today when you got to the courthouse, didn't you?

A Yes.

Q You knew why you were here, right?

A Yes.

Q You were testifying, right?

A Right.

Q The lawyers are handing you narrative reports or radiology reports out in the hallway?

A They asked me if I had it, I said no, they said, well, look at it.

Q Look at it and then come into court and say Mr. Zadra was going to have degenerative arthritis in his knee and refer to this particular document which you'd never seen before, right? Right, Doctor, you never saw it before, correct?

A That's correct.

Q Did you happen to write down that opinion that you formed here in the courthouse today, any complaints in the interim before you got to the courthouse up here in the courtroom?

A I didn't have it. It's right here in the report.

Q Actually you're the one testifying, not the radiologist, right?

A I have his report in front of me.

Dr. Guy - Plaintiff - Cross

MR. WOOLSEY: Move to strike, not responsive.

THE COURT: Sustained.

Q Just yes or no, you're testifying, not the radiologist, right, Doctor?

A Yes.

Q You're the one who's getting paid, not the radiologist, right, Doctor?

A I am getting paid for my service, yes.

Q Now, you said that during the course of your examination the patient had crepitus, correct?

A Yes.

Q And he had a patella grind, correct?

A Yes.

Q Did you look at Dr. Robbins' notes, did you read them?

A I read them, whatever I have I read.

Q Isn't it true, Doctor, there's no place in Dr. Robbins' --

MR. WOOLSEY: Withdrawn.

Q Isn't it true there's no place --

MR. WOOLSEY: Withdrawn.

Q -- and refer to Dr. Medalo's notes, isn't it true, sir, that you read Dr. Medalo's treating

plan?

A I did read Dr. Medalo's findings.

Q Yes, you did read his notes. At this point in time isn't it true that no place in his notes is there any indication of crepitus, the word doesn't appear anywhere in his treatment records?

A Just give me a second. I don't see any notes past '96 in any examinations.

Q Right, you haven't seen, there's no notes in the last three years because you weren't given them and you didn't ask for them, right?

A I assume that what I was given was past medical records.

Q You thought you had everything, right?

A The most pertinent stuff.

Q And you could rely upon the lawyers to make a decision about what's most pertinent for you to review, right?

A I have no records. I assume yes.

Q Now, just to get the answer to the question, when you searched through Dr. Medalo's records you found no indication that there was crepitus or any type of patella grind on examinations when you looked at those charts, correct?

A Not those, but he found more substantial things than I found.

Q Doctor, let's talk for a moment, just a brief moment about the other MRI report that you have here. There's one that you have that pertains to Mr. Zadra's back, right?

A Yes.

Q Where is that?

A It's right here.

Q That's the one from 1998?

A 9/22/98 yes.

Q That's loose in that folder too, that's loose, correct?

A That's correct.

Q Which would indicate that that was also given to you by the Collins law firm this morning?

A Yes.

Q So the most recent MRI report of Mr. Zadra's back, the findings and so forth on it, that's something you looked at for the first time today in court with the lawyers, right?

A Yes.

Q They didn't provide that to you to be able to look at, review, reflect, at any time before you

hit the courthouse, right?

A That's correct.

Q Now, Doctor, you indicated Mr. Zadra had complaints of headaches when he came to see you, correct?

A Yes.

Q And in fact, sir, you indicated that it was your impression that was a permanent condition with the headaches, right?

A Yes.

Q Well, you're not aware of the fact Dr. Clarke testified that Mr. Zadra didn't have any complaints of headaches for more than three years, you're not aware of that, right?

A No.

Q Okay, you are also not aware Dr. Robbins indicated when he testified there hasn't been any complaints of headaches to him in three years of treatment, correct?

A I have no idea what Dr. Robbins or Dr. Clarke testified to.

Q Right, and you also since you don't have all the records you don't know everything about what their records reflect either, correct?

A That's correct.

Q Now, Doctor, you also indicated there was a condition with respect to his neck and that that was going to be the competent producing cause of neck complaints in the future, right?

A Yes.

Q Well, are you aware of the fact Dr. Robbins testified the other day that Mr. Zadra hasn't made any complaints to him about his neck in the last two years?

A I have no idea. All I can tell you is what he complained to me about.

Q You're not aware of the fact Dr. Clarke testified that Mr. Zadra hasn't made any complaints about his neck in the last three or four years, you are not aware of that?

A No.

Q But nonetheless, Doctor, I would like you to assume those doctors testified in that fashion that Mr. Zadra hasn't had any neck complaints in the last three years and that I would ask you would knowing that or assuming those facts to be true change your opinion about the permanency of Mr. Zadra's neck complaints?

A The answer is no because I'm going by --

Q I just asked you yes or no.

A The answer is no.

Q Okay, Doctor, assuming that Drs. Clark and Robbins testified Mr. Zadra had not had headaches in the last several years, would knowing that fact change your opinion that Mr. Zadra is going to have permanent headaches in the future?

A If he complained to me -- you want a yes or no answer?

Q Yes, sir.

A No, it would not change my opinion.

Q Okay. Now, Doctor, when you did your physical examination of Mr. Zadra you did an examination of both his leg and his back, correct?

A Yes.

Q And, Doctor, you did a straight leg raising test on him, correct?

A Yes.

Q You said you were able to get him to 75 degrees on the left, which means you were able to get his left leg raised up to about 75 degrees, correct?

A Yes.

Q And 90 degrees on the right side, which

would be normal range of motion, correct?

A Yes, 90 to 110 is normal for a 34 year old man.

Q Are you aware of the fact that one of the complaints or problems Mr. Zadra has had is tightness of his quadricep?

A Yes.

Q Both?

A No, left yes, right no.

Q Doctor, you also indicated that you did a test on Mr. Zadra's left calf, correct?

A What type of test?

Q To determine whether he had normal innervation or nerve function in the left calf --

A A pin prick test.

Q Whether or not he was sensitive to pain?

A Whether he felt the pin prick equally, the right compared to the left.

Q You touch the person's leg and you elicit a response, ask them what they feel, what they don't feel, correct?

A I believe I explained that. You ask the patient to close his eyes, you have a paper clip with the dull point, you touch the area, various parts of

the body to see if he has normal sensation, first the arms, the thighs, then you compare the right calf to the left calf to see if there's any diminished or increased sensation on one side compared to the next.

Q Doctor, are you aware of the fact neither Dr. Clarke nor Dr. Robbins found there to be any diminished sensation of any kind on testing of his left calf?

A I saw limited reports from their office. The subsequent notes didn't have detailed examination of that area.

Q Wait a minute, did you see an examination report from Dr. Dichkoff? Take a look at the very back of the documents. Didn't the Collins law firm provide you with copies of Dr. Dichkoff's report?

A Yes.

Q Isn't it true, Doctor, Dr. Dichkoff's reports he indicated he did a neurological examination of the plaintiff?

A I believe he found nothing wrong with the patient at all.

Q Including, Doctor, the fact there was a normal neurological examination, correct?

A He found everything to be normal.

MR. WOOLSEY: I have no further questions, Your Honor, thank you very much.

THE COURT: Mr. Maxwell?

MR. MAXWELL: Thank you, Judge.

REDIRECT EXAMINATION

BY MR. MAXWELL:

Q Mr. Woolsey asked you a bit about some MRI films and reports.

A Yes, sir.

Q In preparing your narrative report did you rely on the reports of the radiologist that you spoke of?

A Yes.

Q To your knowledge, Doctor, in your review of the films and explanation of the films to the jury today did your interpretation of the films differ from those reports you relied on?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

Q What was your answer?

A No.

Q Doctor, the handwritten note from your physician's assistant, why doesn't it have a

diagnosis?

A Because this is just a scrap note. This is not a note that you rely on. We scribble notes as we take a history then I dictate it and get rid of it. We don't even keep it.

Q Doctor, Mr. Woolsey asked you a lot about Queens College.

A Yes.

Q When did you attend Queens College?

A 1974.

Q And then after that you went to medical school in the Dominican Republic?

A Yes.

Q How did you do in medical school?

A Very good.

Q Doctor, did you subsequently come back to the United States and practice?

A Yes.

Q Did you have to do anything in order to come from the Dominican Republic and practice in the United States?

A Had to take a special test which is the equivalent of the same examination that the American medical graduate takes called an ECFMG, which is the

same exact examination American grads take, same knowledge, same information.

Q Doctor, you indicated you're board certified?

A I am.

Q Did you receive any certificates to practice medicine when you came back to the United States?

A Yes.

Q What areas?

A First after I passed the ECFMG I got my certificate which entitled me to start a residency. With each residency I obtained a resident certificate.

Q Doctor, just to go on another track here, Mr. Woolsey asked you about a Mr. Walker who you released to work.

A Yes.

Q Why did you release him to work?

A He came to my office --

MR. WOOLSEY: Objection. Beyond the scope.

THE COURT: Didn't you ask questions about that?

MR. WOOLSEY: I did, but I think it's amelioration as opposed to redirect.

THE COURT: Overruled.

MR. MAXWELL: I'm sorry, I didn't hear.

THE COURT: Overruled.

Q Go ahead.

A Yes. Mr. Walker had a shoulder and knee injury. He came to my office, told me he has to continue to work to continue to support his family and begged me to write a note saying that he could go back to work so he can continue to work for his family.

I read him the riot act, told him the pros and cons of working, did he understand? He was never any risk to other people or himself, and I released him.

Q Doctor, Metro-North, you had a lawsuit against Metro-North?

A Yes.

Q What happened to that lawsuit?

MR. WOOLSEY: Objection.

THE COURT: Overruled.

MR. WOOLSEY: Your Honor, can we

approach for a second?

THE COURT: You may.

(Whereupon, an off-the-record discussion was held at the bench.)

Q Doctor, with respect to that lawsuit was it resolved subsequently?

A Yes, they paid my bills.

MR. WOOLSEY: Move to strike, not responsive.

THE COURT: Sustained.

Q Doctor, you were asked about some lectures you have given. Do you lecture to people other than lawyers?

A Absolutely.

Q You also mentioned you're associated with Cabrini Medical Center. What's your association with them?

A I'm an attending there.

Q What do you have to do to become an attending?

A You have to have qualifications. If it's a teaching hospital you have to be board certified.

Q Doctor, you indicated you were a resident, a resident at what hospital?

A Mt. Sinai Medical Center.

Q Did you hold any position as a resident there?

A I was the chief resident for six months at the hospital.

Q How did you become a chief resident?

A Your director has to feel that you qualified to lead other residents.

Q Do you know Dr. Dichkoff?

A Yes, we trained together.

Q Where?

A At Mt. Sinai.

Q You were a resident?

A Yes.

MR. MAXWELL: That's all I have.

MR. WOOLSEY: I just have one question.

RECROSS EXAMINATION

BY MR. WOOLSEY:

Q Doctor, isn't it true that you did your residency at Elmhurst?

A No, Elmhurst has no program. The program is from Mt. Sinai. My certificate is from Mt. Sinai and the program is from Mt. Sinai.

Dr. Guy - Plaintiff - Recross

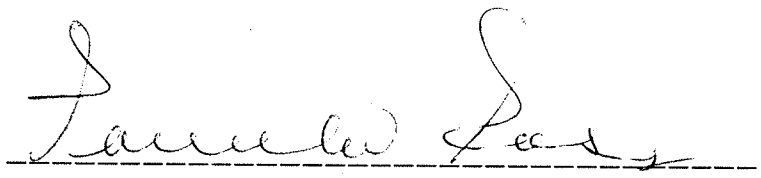
MR. WOOLSEY: No further questions.

THE COURT: Thank you, you may step down.

(Whereupon, the witness exits the stand.)

* * * * * * * * * * *

This is to certify that the foregoing is a true and accurate transcript of the stenographic minutes taken within.



PAMELA ROSS

Senior Court Reporter